19.

٤٥٣٦٥

THE

ENGLISH AND EMPIRE DIGEST

WITH

COMPLETE AND EXHAUSTIVE

ANNOTATIONS.

CUMULATIVE SUPPLEMENT

In this Volume the new English Cases reported up to 1st January, 1939, are included, and other new cases are included so far as the Volumes of Reports of the same were available in London on that date.

ALL ENGLAND LAW REPORTS

References to cases subsequent to January, 1936, are followed by a citation to the above series of Reports. Thus :

Green v. *Berliner*, [1936] 1 All E.R. 199.

THE
ENGLISH AND EMPIRE
DIGEST

WITH

COMPLETE AND EXHAUSTIVE

ANNOTATIONS

CUMULATIVE SUPPLEMENT

BRINGING THE WORK UP TO

1939

BEING CUMULATIVE AND CONTAINING ALL THE MATTER OF THE PREVIOUS SUPPLEMENTS, AND, IN ADDITION, ALL THE NEW CASES AND ANNOTATIONS WHICH HAVE BEEN DECIDED IN THE INTERVAL

VOLUMES 1–22

EDITED BY

PHILIP F. SKOTTOWE, ESQ., LL.B.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

LONDON

BUTTERWORTH & CO. (PUBLISHERS), LTD.

BELL YARD, TEMPLE BAR.

SYDNEY: MELBOURNE:	BUTTERWORTH & CO. (AUSTRALIA), LTD.
CALCUTTA: MADRAS: BOMBAY:	BUTTERWORTH & CO. (INDIA), LTD.
TORONTO:	BUTTERWORTH & CO. (CANADA), LTD.
WELLINGTON (N.Z.):	BUTTERWORTH & CO. (AUSTRALIA), LTD.
DURBAN:	BUTTERWORTH & CO. (AFRICA), LTD.

1939

PRINTED IN GREAT BRITAIN

PRINTED IN GREAT BRITAIN BY
WILLIAM CLOWES AND SONS, LIMITED,
LONDON AND BECCLES.

Editorial Board.

COMMENCED UNDER THE DIRECTION OF
the late
THE RIGHT HONOURABLE THE
EARL OF HALSBURY,
LORD HIGH CHANCELLOR OF GREAT BRITAIN, 1885–86, 1886–92, and 1895–1905
A MEMBER OF THE JUDICIAL COMMITTEE OF HIS MAJESTY'S
MOST HONOURABLE PRIVY COUNCIL

Editor in Chief:

the late
SIR T. WILLES CHITTY, BART., K.C.,
BENCHER OF THE INNER TEMPLE,
LATE SENIOR MASTER OF THE SUPREME COURT AND KING'S REMEMBRANCER,
MANAGING EDITOR OF "THE LAWS OF ENGLAND."

Editors:

HARRY GEEN, ESQ.,
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW,
RECORDER OF POOLE,
AND
R. K. HANDOO, ESQ., M.A.,
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.
Assisted by
E. S. MOBERLY BELL, ESQ., AND W. KERR CHALMERS, ESQ., M.A.,
BARRISTERS-AT-LAW.

Colonial Advising Editor:

HENRY STEPHEN, ESQ.,
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

Sub-Editorial Staff:

JOHN SOUTHALL, ESQ., B.A., R. HARRISON, ESQ., B.A., REGINALD DODD, ESQ., PHILIP R. THOMASON, ESQ., B.A., LL.B., L. C. BELL-COX, ESQ., B.A., A. C. GRAINGER, ESQ., B.A., E. M. HOY, ESQ., W. J. WILLIAMS, ESQ., B.A., A. CARRERAS, ESQ., LL.B.. H. ALLEYN PALMER, ESQ., M.A., H. PARRISH, ESQ., LL.B., R. HENDRY WHITE, ESQ., M. R. ELLINGER, ESQ., A. P. ARNOLD, ESQ., R. D. H. OSBORNE, ESQ., B.A., P. F. SKOTTOWE, ESQ., LL.B., E. R. E. OLSSON, ESQ., LL.B., HOWELL JONES, ESQ., B.A., R. H. CODE HOLLAND, ESQ., B.A., Barristers-at-Law; I. GWYNNE JONES, ESQ., B.A., Solicitor of the Supreme Court; and J. H. FISHER EVANS, ESQ., E. STOPFORD HOLLAND, ESQ., and R. POWELL, ESQ., M.A., B.C.L.

Associate Editors and Advisory Board.

Scotland:

THE RIGHT HON. LORD SALVESEN,

FORMERLY SENATOR OF THE COLLEGE OF JUSTICE, SCOTLAND.

Ireland:

THE RIGHT HON. CHARLES A. O'CONNOR,

LATELY A JUDGE OF THE SUPREME COURT OF THE IRISH FREE STATE.

THE RIGHT HON. SIR DUNBAR PLUNKET BARTON, BART.,

LATELY A JUDGE OF THE CHANCERY DIVISION AND FORMERLY A JUDGE OF THE KING'S BENCH DIVISION AND OF THE HIGH COURT OF JUSTICE IN IRELAND,

AND

the late

HENRY DANIEL CONNER, ESQ., M.A.,

ONE OF HIS MAJESTY'S COUNSEL.

The Empire of India:

the late

THE RIGHT HON. SIR LAWRENCE JENKINS, K.C.I.E.,

LATELY CHIEF JUSTICE OF BENGAL, A MEMBER OF THE JUDICIAL COMMITTEE OF HIS MAJESTY'S MOST HONOURABLE PRIVY COUNCIL.

The Dominion of Canada:

THE RIGHT HON. SIR CHARLES FITZPATRICK, G.C.M.G.,

FORMERLY CHIEF JUSTICE OF THE SUPREME COURT OF CANADA, A MEMBER OF THE JUDICIAL COMMITTEE OF HIS MAJESTY'S MOST HONOURABLE PRIVY COUNCIL, NOW LIEUTENANT-GOVERNOR OF THE PROVINCE OF QUEBEC,

the late

THE RIGHT HON. SIR LOUIS HENRY DAVIES, K.C.M.G.,

CHIEF JUSTICE OF THE SUPREME COURT OF CANADA, A MEMBER OF THE JUDICIAL COMMITTEE OF HIS MAJESTY'S MOST HONOURABLE PRIVY COUNCIL,

AND

the late

E. R. CAMERON, ESQ., K.C.,

REGISTRAR OF THE SUPREME COURT OF CANADA.

The Provinces of Canada:

Alberta.

THE HON. HORACE HARVEY,

CHIEF JUSTICE OF THE SUPREME COURT OF ALBERTA.

British Columbia.

THE HON. JAMES A. MACDONALD,

CHIEF JUSTICE OF THE COURT OF APPEAL FOR BRITISH COLUMBIA.

Manitoba.

the late

THE HON. THOMAS G. MATHERS,

CHIEF JUSTICE OF THE COURT OF KING'S BENCH, MANITOBA.

New Brunswick.

THE HON. OSWALD S. CROCKET,

A JUDGE OF THE SUPREME COURT OF NEW BRUNSWICK.

Nova Scotia.

THE HON. BENJAMIN RUSSELL,

A JUDGE OF THE SUPREME COURT OF NOVA SCOTIA.

Ontario.

THE HON. W. E. MIDDLETON,

A JUDGE OF THE SUPREME COURT OF ONTARIO.

Prince Edward Island.

THE HON. JOHN A. MATHIESON,

CHIEF JUSTICE OF THE SUPREME COURT OF PRINCE EDWARD ISLAND.

Quebec.

THE HON. SIR FRANÇOIS X. LEMIEUX,

CHIEF JUSTICE OF THE SUPERIOR COURT OF THE PROVINCE OF QUEBEC.

Saskatchewan.

THE HON. SIR FREDERICK W. G. HAULTAIN,

CHIEF JUSTICE OF SASKATCHEWAN.

The Commonwealth of Australia:

the late

THE RIGHT HON. SIR SAMUEL WALKER GRIFFITH, G.C.M.G.,

CHIEF JUSTICE OF AUSTRALIA,
A MEMBER OF THE JUDICIAL COMMITTEE OF HIS MAJESTY'S MOST HONOURABLE PRIVY COUNCIL.

Assisted by

PROFESSOR SIR JOHN BEVERLEY PEDEN, K.C.M.G.,

DEAN OF THE FACULTY OF LAW,

AND

R. CLIVE TEECE, ESQ.,

BARRISTER-AT-LAW.

The Dominion of New Zealand:

THE RIGHT HON. SIR ROBERT STOUT, K.C.M.G.,

FORMERLY CHIEF JUSTICE OF NEW ZEALAND,
A MEMBER OF THE JUDICIAL COMMITTEE OF HIS MAJESTY'S MOST HONOURABLE PRIVY COUNCIL.

The Dominion of Newfoundland:

THE HON. SIR WILLIAM H. HORWOOD,

CHIEF JUSTICE OF NEWFOUNDLAND.

The Union of South Africa:

THE RIGHT HÓN. SIR JAMES ROSE-INNES, K.C.M.G.,

CHIEF JUSTICE OF THE UNION OF SOUTH AFRICA,
A MEMBER OF THE JUDICIAL COMMITTEE OF HIS MAJESTY'S MOST HONOURABLE PRIVY COUNCIL.

Assisted by

MURRAY BISSET, ESQ.,

BARRISTER-AT-LAW.

PUBLISHERS' PREFACE.

THE new series of law reports commenced in 1936, the All England Law Reports Annotated, continues to supply the profession with a number of valuable decisions not reported in any other series. These are digested in this Supplement of the "English and Empire Digest" and provide precedents for various points not otherwise covered by authority.

The Spanish civil war has given rise to a number of interesting cases, in the course of which consideration has been given to the meaning of "blockade" in a charterparty (*Spanish Govt.* v. *North of England S.S. Co.*, SHIPPING, No. 4938a); to the right of seamen to decline a voyage exposing them to risk of capture (*Robson* v. *Sykes*, SHIPPING, No. 892a); and to the position arising in case of requisition by both *de facto* and *de jure* Governments (*The Arantzazu Mendi*, ADMIRALTY, No. 141f).

Cases arising out of claims for damages for loss of expectation of life continue to occupy the attention of the courts (see title NEGLIGENCE), particularly with reference to this overlapping of damages occasioned by claims under the Law Reform (Miscellaneous Provisions) Act and the Fatal Accidents Act.

The Matrimonial Causes Act, 1937 has resulted, as was to be expected, in a number of new decisions on questions relating to desertion and upon the new principal of divorce for insanity. The latter will be found collected at page 33 of the title HUSBAND & WIFE.

BUTTERWORTH & CO. (PUBLISHERS), LTD.

BELL YARD,
TEMPLE BAR,
LONDON.
FEBRUARY, 1939.

J.S.

TABLE OF ABBREVIATIONS OF THE TITLES IN THE WORK.

FULL TITLE.	ABBREVIATIONS.
Vol. I.	
ACTION	Action
ADMIRALTY	Adm.
AGENCY	Agcy.
Vol. II.	
AGRICULTURE	Agric.
ALIENS	Aliens
ANIMALS	Animals
ARBITRATION	Arbn.
Vol. III.	
AUCTION AND AUCTIONEERS	Auct.
BAILMENT	Bailmt.
BANKERS AND BANKING	Bank.
BARRISTERS	Barr.
BASTARDY	Basty.
Vols. IV. & V.	
BANKRUPTCY AND INSOLVENCY	Bkpcy.
Vol. VI.	
BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS	B. of Exch.
Vol. VII.	
BILLS OF SALE	B. of Sale
BONDS	Bonds
BOUNDARIES, FENCES AND PARTY WALLS	Bounds. & F.
BUILDING CONTRACTS, ENGINEERS & ARCHITECTS	Bldg. Conts.
BUILDING SOCIETIES	Bldg. Soc.
BURIAL AND CREMATION	Burial
Vol. VIII.	
CARRIERS	Carr.
CHARITIES	Char.
CHOSES IN ACTION	Chos.
CLUBS	Clubs
Vols. IX. & X.	
COMPANIES	Coys.
Vol. XI.	
COMMONS AND RIGHTS OF COMMON	Comns.
COMPULSORY PURCHASE OF LAND AND COMPENSATION	Comp. Pche.
CONFLICT OF LAWS	Confl.
CONSTITUTIONAL LAW	Const. L.

FULL TITLE.	ABBREVIATIONS.
Vol. XII.	
CONTRACT	Contr.
Vol. XIII.	
COPYHOLDS	Cohlds
COPYRIGHT AND LITERARY PROPERTY	Coprt.
CORONERS	Crnrs.
CORPORATIONS	Corpns.
COUNTY COURTS	Cty. Cts.
Vols. XIV. & XV.	
CRIMINAL LAW AND PROCEDURE	Crim.
Vol. XVI.	
CONTEMPT OF COURT, ATTACHMENT AND COMMITTAL	Cntmpt.
COURTS	Courts
CROWN PRACTICE	Cr. Pract.
Vol. XVII.	
CUSTOM AND USAGES	Custom
DAMAGES	Damgs.
DEEDS AND OTHER INSTRUMENTS	Deeds
DEPENDENCIES INCLUDING DOMINIONS, DEPENDENCIES, COLONIES AND BRITISH POSSESSIONS	Dep.
Vol. XVIII.	
DESCENT AND DISTRIBUTION	Desct.
DISCOVERY, INSPECTION AND INTERROGATORIES	Discy.
DISTRESS	Distr.
Vol. XIX.	
EASEMENTS AND PROFITS À PRENDRE	Easmt.
ECCLESIASTICAL LAW	Eccl.
EDUCATION	Educ.
Vol. XX.	
ELECTIONS	Elect.
ELECTRIC LIGHTING AND POWER	Electric
EQUITY	Eqy.
Vol. XXI.	
ESTATE AND OTHER DEATH DUTIES	E.D.
ESTOPPEL	Estpl.
EXECUTION	Exon.

TABLE OF ABBREVIATIONS OF THE TITLES IN THE WORK—*Continued.*

FULL TITLE.	ABBREVIATIONS.
Vol. XXII.	
EVIDENCE	Evid.
Vols. XXIII. & XXIV.	
EXECUTORS AND ADMINISTRATORS	Exors.
EXTRADITION AND FUGITIVE OFFENDERS	Extrdn.
FACTORIES AND SHOPS	Fact.
FAMILY ARRANGEMENTS	Fam. Arr.
FERRIES	Ferries
Vol. XXV.	
FISHERIES	Fish.
FOOD AND DRUGS	Food
FRAUDULENT AND VOIDABLE CONVEYANCES	Fraud. Conv.
FRIENDLY SOCIETIES	Fr. Soc.
GAME	Game
GAMING AND WAGERING	Gaming
GAS	Gas
GIFTS	Gifts
Vol. XXVI.	
GUARANTEE AND INDEMNITY	Guar.
HIGHWAYS, STREETS, AND BRIDGES	Hghys.
Vol. XXVII.	
HUSBAND AND WIFE	H. & W.
Vol. XXVIII.	
INCOME TAX	Inc. T.
INDUSTRIAL, PROVIDENT, AND SIMILAR SOCIETIES	Ind. Soc.
INFANTS AND CHILDREN	Infts.
INJUNCTION	Injon.
Vol. XXIX.	
INNS AND INNKEEPERS	Inns
INSURANCE	Insce.
INTERPLEADER	Intpr.
Vols. XXX. & XXXI.	
INTOXICATING LIQUORS	Intox.
JUDGMENTS AND ORDERS	Jdgmts.
JURIES	Juries
LAND IMPROVEMENT	Land Imp.
LAND TAX	Land Tax
LANDLORD AND TENANT	L. & T.
Vol. XXXII.	
LIBEL AND SLANDER	Libel
LIEN	Lien
LIMITATION OF ACTIONS	Limit. of A.
LITERARY AND SCIENTIFIC INSTITUTIONS	Lit. Inst.
LOAN SOCIETIES	Loan Soc.
Vol. XXXIII.	
LOCAL GOVERNMENT	L. G.
LUNATICS AND PERSONS OF UNSOUND MIND	Lunat.
MAGISTRATES	Mags.
MALICIOUS PROSECUTION AND PROCEDURE	Mal. Pros.
MARKETS AND FAIRS	Mkts.

FULL TITLE.	ABBREVIATIONS.
Vol. XXXIV.	
MASTER AND SERVANT	Mast. & S.
MAYOR'S AND CITY OF LONDON COURT	May. Ct.
MEDICINE AND PHARMACY	Med.
METROPOLIS	Metrop.
MINES, MINERALS AND QUARRIES	Mines
Vol. XXXV.	
MISREPRESENTATION AND FRAUD	Misrep.
MISTAKE	Mistake
MONEY AND MONEY-LENDING	Money
MORTGAGE	Mtge.
NAME AND ARMS	Name
Vol. XXXVI.	
NEGLIGENCE	Negl.
NOTARIES	Notar.
NUISANCE	Nuis.
OPEN SPACES AND RECREATION GROUNDS	Open Sp.
PARLIAMENT	Parl.
PARTITION	Partn.
PARTNERSHIP	Prtnrs.
PATENTS AND INVENTIONS	Pats.
Vol. XXXVII.	
PAWNS AND PLEDGES	Pawns
PEERAGES AND DIGNITIES	Peer.
PERPETUITIES	Perps.
PERSONAL PROPERTY	Pers. Prop.
POLICE	Police
POOR LAW	Poor L.
POST OFFICE	Post Off.
POWERS	Powers
PRESS AND PRINTING	Press
PRISONS	Prsns.
PRIZE LAW AND JURISDICTION	Prize L.
Vol. XXXVIII.	
PUBLIC AUTHORITIES, BODIES AND OFFICERS	Pub. Auth.
PUBLIC HEALTH AND LOCAL ADMINISTRATION	Pub. Hlth.
RAILWAYS AND CANALS	Rys.
RATES AND RATING	Rates
REAL PROPERTY AND CHATTELS REAL	Real Prop
Vol. XXXIX.	
RECEIVERS	Recrs.
REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS	Regn.
RENTCHARGES AND ANNUITIES	Rntchgs.
REVENUE	Revenue
ROYAL FORCES	Royal F.
SALE OF GOODS	S. Goods
Vol. XL.	
SALE OF LAND	S. Land
SET-OFF AND COUNTERCLAIM	Set-off
SETTLEMENTS	Sttlmts.
Vol. XLI.	
SEWERS AND DRAINS	Sewers
SHERIFFS AND BAILIFFS	Shrffs.
SHIPPING AND NAVIGATION	Ship.

FULL TITLE.	ABBREVIATIONS.
Vol. XLII.	
SMALL HOLDINGS, SMALL DWELLINGS, AND ALLOTMENTS	Sm. Hldgs.
SOLICITORS	Solrs.
SPECIFIC PERFORMANCE	Sp. Pfce.
STATUTES	Stats.
STOCK EXCHANGE	Stk. Ex.
STREET AND AERIAL TRAFFIC	Str. Traf.
TELEGRAPHS AND TELEPHONES	Tele.
THEATRES AND OTHER PLACES OF ENTERTAINMENT	Theatres
TIME	Time
TORT	Tort
Vol. XLIII.	
TRADE AND TRADE UNIONS	Trade
TRADE MARKS, TRADE NAMES, AND DESIGNS	Trade Mks.
TRAMWAYS AND LIGHT RAILWAYS	Tram.
TRESPASS	Tresp.
TROVER AND DETINUE	Trov.
TRUSTS AND TRUSTEES	Trusts
VALUERS AND APPRAISERS	Vlrs.
WATER SUPPLY	Wtr. Sply.
Vol. XLIV.	
WATERS AND WATERCOURSES	Waters
WEIGHTS AND MEASURES	Wghts.
WILLS	Wills
WORK AND LABOUR	Work

PLEADING, PRACTICE AND NEW PROCEDURE.

FULL TITLE.	ABBREVIATIONS.
PLEADING	Pldg.
PRACTICE AND NEW PROCEDURE	Pract.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS

A. C. (preceded by date)	Law Reports, Appeal Cases, House of Lords, since 1890 (*e.g.*, [1891] A. C.)	Eng.
A. Jur. Rep.	Australian Jurist Reports	Aus.
A. L. J.	Australian Law Journal	Aus.
A. L. T.	Australian Law Times	Aus.
A. R.	Ontario Appeal Reports, 27 vols., 1876—1900	Can.
Act.	Acton's Reports, Prize Causes, 2 vols., 1809—1841	Eng.
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842	Eng.
Adam	Adam's Justiciary Reports (Scotland), 1893—(current)	Scot.
Add.	Addams' Ecclesiastical Reports, 3 vols., 1822—1826	Eng.
Agra	Agra High Court	Ind.
Agra F. B.	Agra High Court, Full Bench	Ind.
Alc. & N.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833	Ir.
Alc. Reg. Cas.	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841	Ir.
Aleyn	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649	Eng.
All.	New Brunswick Reports (Allen)	Can.
All E. R. (preceded by date)	All England Law Reports, 1936—(current)	Eng.
Alta. L. R.	Alberta Law Reports	Can.
Amb.	Ambler's Reports, Chancery, 1 vol., 1716—1783	Eng.
And.	Anderson's Reports, Common Pleas, fol., 2 parts in one vol., 1535—1605	Eng.
Andr.	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740	Eng.
Anst.	Anstruther's Reports, Exchequer, 3 vols., 1792—1797	Eng.
App. Cas.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—1890	Eng
App. Ct. Rep.	Appeal Court Reports	N.Z.
App. D.	South African Law Reports, Appellate Division	S. Af.
Architects' L. R.	Architects' Law Reports, 4 vols., 1904—1909	Eng.
Argus L. R.	Argus Law Reports	Aus.
Arkley	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848	Scot.
Arm. M. & O.	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842	Ir.
Arn.	Arnold's Reports, Common Pleas, 2 vols., 1838—1839	Eng.
Arn. & H.	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841	Eng.
Ashb.	Ashburner's Principles of Equity, 1902	Eng.
Asp. M. L. C.	Aspinall's Maritime Law Cases, 1870—(current)	Eng.
Atk.	Atkyns' Reports, Chancery, 3 vols., 1736—1754	Eng.
Ayl. Pan.	Ayliffe's New Pandect of Roman Civil Law	Eng.
Ayl. Par.	Ayliffe's Parergon Juris Canonici Anglicani	Eng.
B.	Barber's Gold Law	S. Af.
B. & Ad.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834	Eng.
B. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822	Eng.
B. & C.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830	Eng.
B. & C. R. (preceded by date)	Reports of Bankruptcy and Companies Winding up Cases, 1918—(current) (*e.g.*, [1918—19] B. & C. R.)	Eng.
B. & S.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870	Eng.
B. C. R.	British Columbia Reports	Can.
B. Dig.	Bose's Digest	Ind.
B. L. R.	Bengal Law Reports	Ind.
B. L. R. A. C.	Bengal Law Reports, Appeal Cases	Ind.
B. L. R. P. C.	Bengal Law Reports, Privy Council	Ind.
B. L. R. Sup. Vol.	Bengal Law Reports, Supp. Vol.	Ind.
B. R. A.	Butterworths' Rating Appeals, 4 vols., 1913—1931	Eng.
B. W. C. C.	Butterworths' Workmen's Compensation Cases, 1907—(current)	Eng.
Bac. Abr.	Bacon's Abridgment	Eng.
Bail Ct. Cas.	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854	Eng.

Baild.	Baildon's Select Cases in Chancery (Selden Society, Vol. X.)	Eng.
Ball & B.	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814	Ir.
Bankr. & Ins. R. ...	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855 ...	Eng.
Bar. & Arn.	Barron and Arnold's Election Cases, 1 vol., 1843—1846 ...	Eng.
Bar. & Aust.	Barron and Austin's Election Cases, 1 vol., 1842	Eng.
Barn. Ch.	Barnardiston's Reports, Chancery, fol., 1 vol., 1740—1741 ...	Eng.
Barn. K. B.	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734	Eng.
Barnes	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—1760	Eng.
Batt.	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826	Ir.
Beat.	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830 ...	Ir.
Beav.	Beavan's Reports, Rolls Court, 36 vols., 1838—1866	Eng.
Beav. & Wal.	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846	Eng.
Beaw.	Beawes's Lex Mercatoria	Eng.
Bell, C. C.	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860	Eng.
Bell, Ct. of Sess. ...	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792	Scot.
Bell, Ct. of Sess. fol. ...	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794—1795	Scot.
Bell, Dict. Dec. ...	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808—1833	Scot.
Bell, Sc. App.	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850	Scot.
Bellewe	Bellewe's Cases *temp.* Richard II., King's Bench, 1 vol. ...	Eng.
Belt's Sup.	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756	Eng.
Ben.	Benloe's Reports, Common Pleas, fol., 1 vol., 1357—1579 ...	Eng.
Benl.	Benloe's (or Bendloe's) Reports, King's Bench, fol., 1 vol., 1440—1627	Eng.
Ber.	New Brunswick Reports (Berton)	Can.
Bing.	Bingham's Reports, Common Pleas, 10 vols., 1822—1834 ...	Eng.
Bing. N. C.	Bingham's New Cases, Common Pleas, 6 vols., 1834—1840 ...	Eng.
Biss. & Sm.	Bissett and Smith's Digest	S. Af.
Bitt. Prac. Cas. ...	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875—1876	Eng.
Bitt. Rep. in Ch. ...	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884	Eng.
Bl. Com.	Blackstone's Commentaries	Eng.
Bl. D. & Osb.	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846—1848	Ir.
Bli.	Bligh's Reports, House of Lords, 4 vols., 1819—1821	Eng.
Bli. N. S.	Bligh's Reports, House of Lords, New Series, 11 vols., 1827—1837	Eng.
Bluett	Bluett's Isle of Man Cases	I. of M.
Bom.	Bombay High Court Reports	Ind.
Bom. A. C.	Bombay Reports, Appellate Jurisdiction	Ind.
Bom. Cr. Ca.	Bombay Reports, Crown Cases	Ind.
Bom. O. C.	Bombay Reports, Original Civil Jurisdiction	Ind.
Bos. & P.	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796—1804	Eng.
Bos. & P. N. R. ...	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807	Eng.
Bott.	Bott's Laws Relating to the Poor, 2 vols., 6th ed., 1827 ...	Eng.
Bourke	Bourke's Reports	Ind.
Br. & Col. Pr. Cas. ...	British and Colonial Prize Cases, 3 vols., 1914—1919	Eng.
Bract.	Bracton De Legibus et Consuetudinibus Angliæ	Eng.
Bro. Abr.	Sir R. Brooke's Abridgement	Eng.
Bro. C. C.	W. Brown's Chancery Reports, 4 vols., 1778—1794	Eng.
Bro. Ecc. Rep.	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850—1872	Eng.
Bro. N. C.	Sir R. Brooke's New Cases, 1 vol., 1515—1558	Eng.
Bro. Parl. Cas.	J. Brown's Cases in Parliament, 8 vols., 1702—1800 ...	Eng.
Bro. Supp. to Mor. ...	M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols.	Scot.
Bro. Synop.	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1532—1827	Scot.
Brod. & Bing.	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819—1822	Eng.
Brod. & F.	Broderick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol., 1705—1864	Eng.
Broun	Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845 ...	Scot.
Brown. & Lush. ...	Browning and Lushington's Reports, Admiralty, 1 vol., 1863—1866	Eng.
Brownl.	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569—1624	Eng.
Bruce	Bruce's Decisions, Court of Session (Scotland), 1714—1715 ...	Scot.

Buch.	Buchanan's Reports of the Supreme Court of the Cape of Good Hope, 1868—1879	S. Af.
Buch. A. C.	Buchanan's Reports of Appeal Court (Cape)	S. Af.
Buchan.	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813	Scot.
Buck	Buck's Cases in Bankruptcy, 1 vol., 1816—1820	Eng.
Bull. N. P.	Buller's Nisi Prius (published, London, 1772)	Eng.
Bulst.	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626	Eng.
Bunb.	Bunbury's Reports, Exchequer, fol., 1 vol., 1713—1741	Eng.
Burr.	Burrow's Reports, King's Bench, 5 vols., 1756—1772	Eng.
Burr. S. C.	Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776	Eng.
Burrell	Burrell's Reports, Admiralty, ed. by Marsden, 1 vol., 1648—1840	Eng.
C. A.	Court of Appeal Reports, 3 vols., 1867—1877	N.Z.
C. & P.	Carrington and Payne's Reports, Nisi Prius, 9 vols., 1823—1841	Eng.
C. B.	Common Bench Reports, 18 vols., 1845—1856	Eng.
C. B. N. S.	Common Bench Reports, New Series, 20 vols., 1856—1865	Eng.
C. B. R.	Canadian Bankruptcy Reports Annotated, 1920—(current)	Can.
C. C. C.	Canadian Criminal Cases, Annotated, 1898—(current)	Can.
C. C. Ct. Cas.	Central Criminal Court Cases (Sessions Papers), 1834—1913	Eng.
C. L. Ch.	Common Law Chambers	Can.
C. L. J.	Cape Law Journal	S. Af.
C. L. J. N. S.	Canada Law Journal, New Series, 1865—(current)	Can.
C. L. J. O. S.	Canada Law Journal, Old Series, 10 vols., 1855—1864	Can.
C. L. R.	Common Law Reports, 3 vols., 1853—1855	Eng.
C. L. R.	Commonwealth Law Reports	Aus.
C. L. R.	Calcutta Law Reporter	Ind.
C. L. T.	Canadian Law Times	Can.
C. L. T. Occ. N.	Canadian Law Times, Occasional Notes	Can.
C. P.	Upper Canada Common Pleas	Can.
C. P. D.	Law Reports, Common Pleas Division, 5 vols., 1875—1880	Eng.
C. P. D.	Cape Provincial Division Reports	S. Af.
C. R. [date] **A. C.**	Canadian Reports, Appeal Cases	Can.
C. T. R.	Cape Times Reports of the Supreme Court of the Cape of Good Hope	S. Af.
C. W. N.	Calcutta Weekly Notes	Ind.
Cab. & El.	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885	Eng.
Cald. Mag. Cas.	Caldecott's Magistrates' Cases, 1 vol., 1776—1785	Eng.
Calth.	Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618	Eng.
Cam. Cas.	Cameron's Supreme Court Cases	Can.
Cam. Prac.	Cameron's Supreme Court Practice	Can.
Camp.	Campbell's Reports, Nisi Prius, 4 vols., 1807—1816	Eng.
Can. C. C.	Canadian Criminal Cases, Annotated, 1898—(current)	Can.
Can. Com. Cas.	Commercial Law Reports of Canada, 4 vols., 1901—1905	Can.
Can. Crim. Cas.	Canadian Criminal Cases, Annotated, 1898—(current)	Can.
Can. Gaz.	Canadian Gazette	Can.
Can. Ry. Cas.	Canadian Railway Cases	Can.
Car. & Kir.	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1843—1853	Eng.
Car. & M.	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—1842	Eng.
Car. C. L.	Carrington's Treatise on Criminal Law	Can.
Card. Doc. Ann.	Cardwell's Documentary Annals of the Reformed Church of England, 2 vols., 1546—1716	Eng.
Carl.	New Brunswick Reports (Carleton)	Can.
Carp. Pat. Cas.	Carpmael's Patent Cases, 2 vols., 1602—1842	Eng.
Cart.	Carter's Reports, Common Pleas, fol., 1 vol., 1664—1673	Eng.
Cart.	Cases on British North America Act (Cartwright)	Can.
Carth.	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700	Eng.
Cary	Cary's Reports, Chancery, 1 vol.	Eng.
Cas. in Ch.	Cases in Chancery, fol., 3 parts, 1660—1697	Eng.
Cas. Pract. K. B.	Cases of Practice, King's Bench, 1 vol., 1655—1775	Eng.
Cas. Sett.	Cases of Settlements and Removals, 1 vol., 1685—1727	Eng.
Cas. *temp.* Finch	Cases *temp.* Finch, Chancery, fol., 1 vol., 1673—1680	Eng.
Cas. *temp.* King	Select Cases *temp.* King, Chancery, fol., 1 vol., 1724—1733	Eng.
Cas. *temp.* Talb.	Cases in Equity *temp.* Talbot, fol., 1 vol., 1730—1737	Eng.
Cass. Dig.	Cassells' Digest	Can.
Ch. (preceded by date)	Law Reports, Chancery Division, since 1890 (*e.g.*, [1891] 1 Ch.)	Eng.
Ch. App.	Law Reports, Chancery Appeals, 10 vols., 1865—1875	Eng.
Ch. Cas. in Ch.	Choyce Cases in Chancery, 1557—1606	Eng.
Ch. Ch.	Upper Canada Chancery Chambers Reports	Can.
Ch. D.	Law Reports, Chancery Division, 45 vols., 1875—1890	Eng.
Ch. Rob.	Christopher Robinson's Reports, Admiralty, 6 vols., 1798—1808	Eng.
Char. Cham. Cas.	Charley's Chamber Cases, 2 vols., 1875—1876	Eng.
Char. Pr. Cas.	Charley's New Practice Reports, 3 vols., 1875—1876	Eng.
Chip.	New Brunswick Reports (Chipman)	Can.

Chit.	Chitty's Practice Reports, King's Bench, 2 vols., 1770—1822 ...	Eng.
Cl. & Fin.	Clark and Finnelly's Reports, House of Lords, 12 vols., 1831—1846	Eng.
Cl. & Sc. Dr. Cas. ...	Clark and Scully's Drainage Cases	Can.
Clay.	Clayton's Reports and Pleas of Assizes at Yorke, 1 vol., 1631—1650	Eng.
Clif. & Rick.	Clifford and Rickards' Locus Standi Reports, 3 vols., 1873—1884	Eng.
Clif. & Steph.	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872	Eng.
Co. A.	Cook's Lower Canada Admiralty Court Cases	Can.
Co. Ent.	Coke's Entries	Eng.
Co. Inst.	Coke's Institutes	Eng.
Co. L. J.	Colonial Law Journal	N.Z.
Co. Litt.	Coke on Littleton (1 Inst.)	Eng.
Co. Rep.	Coke's Reports, 13 parts, 1572—1616	Eng.
Coch.	Nova Scotia Reports (Cochran)	Can.
Cockb. & Rowe ...	Cockburn and Rowe's Election Cases, 1 vol., 1833	Eng.
Coll.	Collyer's Reports, Chancery, 2 vols., 1844—1846	Eng.
Coll. Jurid.	Collectanea Juridica, 2 vols.	Eng.
Colles	Colles' Cases in Parliament, 1 vol., 1697—1713	Eng.
Colt.	Coltman's Registration Cases, 1 vol., 1879—1885	Eng.
Com.	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740	Eng.
Com. Cas.	Commercial Cases, 1895—(current)	Eng.
Com. Dig.	Comyns' Digest	Eng.
Comb.	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698	Eng.
Con. & Law.	Connor and Lawson's Reports, Chancery (Ireland), 2 vols., 1841—1843	Ir.
Cong. Dig.	Congdon's Digest	Can.
Const	Const's edition of Bott's Poor Laws, 3 vols., 1807	Eng.
Cooke & Al.	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834	Ir.
Cooke, Pr. Cas.	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747	Eng.
Cooke, Pr. Reg. ...	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742	Eng.
Coop. G.	G. Cooper's Reports, Chancery, 1 vol., 1792—1815	Eng.
Coop. Pr. Cas.	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838	Eng.
Coop. *temp.* Brough. ...	C. P. Cooper's Cases *temp.* Brougham, Chancery, 1 vol., 1833—1834	Eng.
Coop. *temp.* Cott. ...	C. P. Cooper's Cases *temp.* Cottenham, Chancery, 2 vols., 1846—1848 (and miscellaneous earlier cases)	Eng.
Cor.	Coryton's Reports	Ind.
Corb. & D.	Corbett and Daniell's Election Cases, 1 vol., 1819	Eng.
Correspondances Jud. ...	Correspondances Judiciaires	Can.
Couper	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885 ...	Scot.
Cout.	Coutlees' Unreported Cases	Can.
Cout. Dig.	Coutlees' Digest	Can.
Cowp.	Cowper's Reports, King's Bench, 2 vols., 1774—1778	Eng.
Cox & Atk.	Cox and Atkinson's Registration Appeal Cases, 1 vol.,1843—1846	Eng.
Cox, C. C.	E. W. Cox's Criminal Law Cases, 1843—(current)	Eng.
Cox, Eq. Cas.	S. C. Cox's Equity Cases, 2 vols., 1745—1797	Eng.
Cox, M. & H.	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, 1 vol., 1846—1852	Eng.
Cr. & J.	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832	Eng.
Cr. & M.	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834	Eng.
Cr. & Ph.	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841 ...	Eng.
Cr. App. Rep.	Cohen's Criminal Appeal Reports, 1908—(current)	Eng.
Cr. M. & R.	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1834—1835	Eng.
Craw. & D.	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846	Ir.
Craw. & D. Abr. C. ...	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838	Ir.
Cress. Insolv. Cas. ...	Cresswell's Insolvency Cases, 1 vol., 1827—1829	Eng.
Cripps' Church Cas. ...	Cripps' Church and Clergy Cases, 2 parts, 1847—1850	Eng.
Cro. Car.	Croke's Reports *temp.* Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641	Eng.
Cro. Eliz.	Croke's Reports *temp.* Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603	Eng.
Cro. Jac.	Croke's Reports *temp.* James I., King's Bench and Common Pleas, 1 vol., 1603—1625	Eng.
Cru. Dig.	Cruise's Digest of the Law of Real Property, 7 vols.	Eng.
Cunn.	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735	Eng.
Curt.	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844	Eng.
D.	Duxbury's Reports of the High Court of the South African Republic	S. Af.
D. C. A.	Dorion's Queen's Bench Reports	Can.
D. L. R.	Dominion Law Reports	Can

Dal.	Dalison's Reports, Common Pleas, fol., 1 vol., 1546—1574	Eng.
Dalr.	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720	Scot.
Dan.	Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823	Eng.
Dan. & Ll.	Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829	Eng.
Dav. & Mer.	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—1844	Eng.
Dav. Ir.	Davys' (or Davis' or Davy's) Reports (Ireland), 1 vol., 1604—1611	Ir.
Dav. Pat. Cas.	Davies' Patent Cases, 1 vol., 1785—1816	Eng.
Day	Day's Election Cases, 1 vol., 1892—1893	Eng.
Dea. & Sw.	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857	Eng.
Deac.	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840	Eng.
Deac. & Ch.	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835	Eng.
Dears. & B.	Dearsly and Bell's Crown Cases Reserved, 1 vol., 1856—1858	Eng.
Dears. C. C.	Dearsly's Crown Cases Reserved, 1 vol., 1852—1856	Eng.
Deas & And.	Deas and Anderson's Decisions (Scotland), 5 vols., 1829—1832	Scot.
De G.	De Gex's Reports, Bankruptcy, 2 vols., 1844—1848	Eng.
De G. & J.	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859	Eng.
De G. & Sm.	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852	Eng.
De G. F. & J.	De Gex, Fisher and Jones's Reports, Chancery, 4 vols., 1859—1862	Eng.
De G. J. & Sm.	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862—1865	Eng.
De G. M. & G.	De Gex, Macnaghten and Gordon's Reports, Chancery, 8 vols., 1851—1857	Eng.
Delane	Delane's Decisions, Revision Courts, 1 vol., 1832—1835	Eng.
Den.	Denison's Crown Cases Reserved, 2 vols., 1844—1852	Eng.
Dick.	Dickens' Reports, Chancery, 2 vols., 1559—1798	Eng.
Dirl.	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol., 1665—1677	Scot.
Dods.	Dodson's Reports, Admiralty, 2 vols., 1811—1822	Eng.
Donnelly	Donnelly's Reports, Chancery, 1 vol., 1836—1837	Eng.
Doug. El. Cas.	Douglas' Election Cases, 4 vols., 1774—1776	Eng.
Doug. K. B.	Douglas' Reports, King's Bench, 4 vols., 1778—1785	Eng.
Dow	Dow's Reports, House of Lords, 6 vols., 1812—1818	Eng.
Dow & Cl.	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832	Eng.
Dow. & L.	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849	Eng.
Dow. & Ry. K. B.	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822—1827	Eng.
Dow. & Ry. M. C.	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—1827	Eng.
Dow. & Ry. N. P.	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822—1823	Eng.
Dowl.	Dowling's Practice Reports, 9 vols., 1830—1841	Eng.
Dowl. N. S.	Dowling's Practice Reports, New Series, 2 vols., 1841—1843	Eng.
Dr. & Wal.	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—1841	Ir.
Dr. & War.	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1841—1843	Ir.
Dra.	Draper's King's Bench Reports	Can.
Drew.	Drewry's Reports, Chancery, 4 vols., 1852—1859	Eng.
Drew. & Sm.	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865	Eng.
Drinkwater	Drinkwater's Reports, Common Pleas, 1 vol., 1840—1841	Eng.
Drury *temp.* Nap.	Drury's Reports *temp.* Napier, Chancery (Ireland), 1 vol., 1858—1859	Ir.
Drury *temp.* Sug.	Drury's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1841—1844	Ir.
Dugd. Orig.	Dugdale's Origines Juridiciales	Eng.
Dunl. (Ct. of Sess.)	Dunlop, Court of Session Cases (Scotland), 2nd Series, 24 vols., 1838—1862	Scot.
Dunning	Dunning's Reports, King's Bench, 1 vol., 1753—1754	Eng.
Durie	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621—1642	Scot.
Dyer	Dyer's Reports, King's Bench, 3 vols., 1513—1581	Eng.
E. & A.	Upper Canada Error and Appeal	Can.
E. & B.	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—1858	Eng.
E. & E.	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861	Eng.
E. B. & E.	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol., 1858—1860	Eng.
E. D. C.	Reports of the Eastern Districts Court (Cape) from 1880	S. Af.
E. D. L.	South African Law Reports, Eastern Districts Local Division	S. Af.
E. L. R.	Eastern Law Reporter	Can.
E. R. (or Eng. Rep.)	English Reports	Eng.
E. R.	Ontario Election Reports	Can.
Eag. & Y.	Eagle and Younge's Tithe Cases, 4 vols., 1204—1825	Eng.

East	East's Reports, King's Bench, 16 vols., 1800—1812	Eng.
East, P. C.	East's Pleas of the Crown	Eng.
Ecc. & Ad.	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—1855	Eng.
Eden	Eden's Reports, Chancery, 2 vols., 1757—1766	Eng.
Edgar	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725	Scot.
Edw.	Edwards' Reports, Admiralty, 1 vol., 1808—1812	Eng.
Elchies	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754	Scot.
Emden's B. C.	Emden's Building Contracts, Building Leases and Building Statutes	Eng.
Eng. Pr. Cas.	Roscoe's English Prize Cases, 2 vols., 1745—1858	Eng.
Eq. Cas. Abr.	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744 ...	Eng.
Eq. Rep.	Equity Reports, 3 vols., 1853—1855	Eng.
Esp.	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810	Eng.
Ex. C. R.	Exchequer Court Reports	Can.
Ex. D.	Law Reports, Exchequer Division, 5 vols., 1875—1880 ...	Eng.
Exch.	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856	Eng.
Exch. C. R.	Exchequer Court Reports	Can.
F. (Ct. of Sess.) ...	Fraser, Court of Session Cases (Scotland), 5th series, 8 vols., 1898—1906	Scot.
F.	Foord's Reports of the Supreme Court of the Cape of Good Hope, 1879—1880	S. Af.
F. & F.	Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856—1867	Eng.
F. L. J. (Can.)	Canada Fortnightly Law Journal	Can.
F. N. D.	Finnemore's Notes and Digest of Natal Cases, 1863—1867 ...	S. Af.
Fac. Coll.	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), 38 vols., 1752—1841	Scot.
Falc.	Falconer's Decisions, Court of Session (Scotland), 2 vols., fol., 1744—1751	Scot.
Falc. & Fitz.	Falconer and Fitzherbert's Election Cases, 1 vol., 1835—1838	Eng.
Fenton	Fenton, Important Judgments	N.Z.
Ferg.	Ferguson's Consistorial Decisions (Scotland), 1 vol., 1811—1817	Scot.
Fitz. Nat. Brev. ...	Fitzherbert's Natura Brevium	Eng.
Fitz-G.	Fitz-Gibbons' Reports, King's Bench, fol., 1 vol., 1727—1731	Eng.
Fl. & K.	Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol., 1840—1842	Ir.
Fonbl.	Fonblanque's Reports, Bankruptcy, 2 parts, 1849—1852 ...	Eng.
For.	Forrest's Reports, Exchequer, 1 vol., 1800—1801	Eng.
Forb.	Forbes' Decisions, Court of Session (Scotland), fol., 1 vol., 1705—1713	Scot.
Fort. De Laud. ...	Fortesque, De Laudibus Legum Angliæ	Eng.
Fortes. Rep.	Fortescue's Reports, fol., 1 vol., 1692—1736	Eng.
Fost.	Foster's Crown Cases, 1 vol., 1708—1760	Eng.
Fount.	Fountainhall's Decisions, Court of Session (Scotland), fol., 2 vols., 1678—1712	Scot.
Fox & S. Ir.	M. C. Fox and T. B. C. Smith's Reports, King's Bench (Ireland), 2 vols., 1822—1825	Ir.
Fox & S. Reg.	J. S. Fox and C. L. Smith's Registration Cases, 1 vol., 1886—1895	Eng.
Fras.	Fraser (Simon), Election Cases, 2 vols., 1793	Eng.
Freem. Ch.	Freeman's Reports, Chancery, 1 vol., 1660—1706	Eng.
Freem. K. B.	Freeman's Reports, King's Bench and Common Pleas, 1 vol., 1670—1704	Eng.
G.	Gregorowski's Reports of the High Court of the Orange Free State from 1883	S. Af.
G. & R.	Nova Scotia Reports (Geldert & Russell)	Can.
G. I. Dig.	General Index Digest	Can.
G. W. D.	South African Law Reports, Griqualand West Local Division	S. Af.
G. W. L.	South African Law Reports, Griqualand West Local Division	S. Af.
Gal. & Dav.	Gale and Davison's Reports, Queen's Bench, 3 vols., 1841—1843	Eng.
Gale	Gale's Reports, Exchequer, 2 vols., 1835—1836	Eng.
Gaz. L. R.	New Zealand Gazette Law Reports	N.Z.
Geld. Dig.	Geldert's Digest	Can.
Gib. Cod.	Gibson's Codex Juris Ecclesiastici Anglicani	Eng.
Giff.	Giffard's Reports, Chancery, 5 vols., 1857—1865	Eng.
Gilb.	Gilbert's Cases in Law and Equity, 1 vol., 1713—1714 ...	Eng.
Gilb. C. P.	Gilbert's History and Practice of the Court of Common Pleas	Eng.
Gilb. Ch.	Gilbert's Reports, Chancery and Exchequer, fol., 1 vol., 1706—1726	Eng.
Gilm. & F.	Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I. (Gilmour) 1661—1666, Part II. (Falconer) 1681—1686	Scot.
Gl. & J.	Glyn and Jameson's Reports, Bankruptcy, 2 vols., 1819—1828	Eng.
Glanv.	Glanville, De Legibus et Consuetudinibus Regni Angliæ ...	Eng.
Glanv. El. Cas.	Glanville's Election Cases, 1 vol., 1623—1624	Eng.
Glascock	Glascock's Reports (Ireland), 1 vol., 1831—1832	Ir.

Godb.	Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol., 1574—1637	Eng.
Gouldsb.	Gouldsborough's Reports, Queen's Bench and King's Bench, 1 vol., 1586—1601	Eng.
Gow	Gow's Reports, Nisi Prius, 1 vol., 1818—1820	Eng.
Gr.	Upper Canada Chancery (Grant)	Can.
Griffin's Patent Cases ...	Griffin's Patent Cases, 1884—1887	Eng.
Gwill.	Gwillim's Tithe Cases, 4 vols., 1224—1824	Eng.
H.	Hertzog's Reports of the High Court of the South African Republic, 1893	S. Af.
H. & C.	Hurlstone and Coltman's Reports, Exchequer, 4 vols., 1862—1866	Eng.
H. & N.	Hurlstone and Norman's Reports, Exchequer, 7 vols., 1856—1862	Eng.
H. & Tw.	Hall and Twells' Reports, Chancery, 2 vols., 1848—1850 ...	Eng.
H. & W.	Hurlstone and Walmsley's Reports, Exchequer, 1 vol., 1840—1841	Eng.
H. B. R. (preceded by date)	Hansell's Reports of Bankruptcy and Companies' Winding up Cases, 3 vols., 1915—1917 (*e.g.*, [1915] H. B. R.)	Eng.
H. C.	Reports of the High Court of Griqualand West	S. Af.
H. E. C.	Hodgin's Election Reports	Can.
H. L. Cas.	Clark's Reports, House of Lords, 11 vols., 1847—1866 ...	Eng.
Hag. Adm.	Haggard's Reports, Admiralty, 3 vols., 1822—1838	Eng.
Hag. Con.	Haggard's Consistorial Reports, 2 vols., 1789—1821	Eng.
Hag. Ecc.	Haggard's Ecclesiastical Reports, 4 vols., 1827—1833 ...	Eng.
Hailes	Hailes's Decisions, Court of Session (Scotland), 2 vols., 1766—1791	Scot.
Hale, C. L.	Hale's Common Law	Eng.
Hale, P. C.	Hale's Pleas of the Crown, 2 vols.	Eng.
Han.	New Brunswick Reports (Hannay)	Can.
Har. & Ruth.	Harrison and Rutherford's Reports, Common Pleas, 1 vol., 1865—1866	Eng.
Har. & W.	Harrison and Wollaston's Reports, King's Bench and Bail Court, 2 vols., 1835—1836	Eng.
Harc.	Harcarse's Decisions, Court of Session (Scotland), fol., 1 vol., 1681—1691	Scot.
Hard.	Hardres' Reports, Exchequer, fol., 1 vol., 1655—1669	Eng.
Hare	Hare's Reports, Chancery, 11 vols., 1841—1853	Eng.
Hawk. P. C.	Hawkins's Pleas of the Crown, 2 vols.	Eng.
Hay	Hay's Reports	Ind.
Hay & Marr.	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779 ...	Eng.
Hayes	Hayes's Reports, Exchequer (Ireland), 1 vol., 1830—1832 ...	Ir.
Hayes & Jo.	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol., 1832—1834	Ir.
Hem. & M.	Hemming and Miller's Reports, Chancery, 2 vols., 1862—1865	Eng.
Het.	Hetley's Reports, Common Pleas, fol., 1 vol., 1627—1631 ...	Eng.
Hob.	Hobart's Reports, Common Pleas, fol., 1 vol., 1613—1625 ...	Eng.
Hodg.	Hodges' Reports, Common Pleas, 3 vols., 1835—1837 ...	Eng.
Hog.	Hogan's Reports, Rolls Court (Ireland), 2 vols., 1816—1834 ...	Ir.
Holt, Adm.	W. Holt's Rule of the Road Cases, Admiralty, 1 vol., 1863—1867	Eng.
Holt, Eq.	W. Holt's Equity Reports, 2 vols., 1845	Eng.
Holt, K. B.	Sir John Holt's Reports, King's Bench, fol., 1 vol., 1688—1710	Eng.
Holt, N. P.	F. Holt's Reports, Nisi Prius, 1 vol., 1815—1817	Eng.
Home, Ct. of Sess. ...	Home's Decisions, Court of Session (Scotland), fol., 1 vol., 1735—1744	Scot.
Hong Kong L. R. ...	Hong Kong Law Reports	Hong Kong
Hop. & Colt.	Hopwood and Coltman's Registration Cases, 2 vols., 1868—1878	Eng.
Hop. & Ph.	Hopwood and Philbrick's Registration Cases, 1 vol., 1863—1867	Eng.
Horn & H.	Horn and Hurlstone's Reports, Exchequer, 2 vols., 1838—1839	Eng.
Hov. Supp.	Hovenden's Supplement to Vesey Jun.'s Reports, Chancery, 2 vols., 1753—1817	Eng.
How. C.	Howard's Chancery Practice	Ir.
How. C. S.	Howard's Supplement to Rules, etc., of the High Court of Chancery in Ireland	Ir.
How. E. E.	Howard's Equity Exchequer	Ir.
How. P. L.	Howard on the Popery Laws	Ir.
Hud. & B.	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols., 1827—1831	Ir.
Hudson's B. C.	Hudson on Building Contracts, 2 vols.	Eng.
Hume	Hume's Decisions, Court of Session (Scotland), 1 vol., 1781—1822	Scot.
Hut.	Hutton's Reports, Common Pleas, fol., 1 vol., 1617—1638 ...	Eng.
Hy. Bl.	Henry Blackstone's Reports, Common Pleas, 2 vols., 1788—1796	Eng.
Hyde	Hyde's Reports	Ind.
I. C. L. R.	Irish Common Law Reports, 17 vols., 1849—1866	Ir.
I. Ch. R.	Irish Chancery Reports, 17 vols., 1850—1867	Ir.
I. Eq. R.	Irish Equity Reports, 13 vols., 1838—1851	Ir.

I. L. R.	Irish Law Reports, 13 vols., 1838—1851	Ir.
I. L. R. (Vol.) All. ...	Indian Law Reports, Allahabad	Ind.
I. L. R. (Vol.) Bom. ...	Indian Law Reports, Bombay	Ind.
I. L. R. (Vol.) Calc. ...	Indian Law Reports, Calcutta	Ind.
I. L. R. (Vol.) Lah. ...	Indian Law Reports, Lahore	Ind.
I. L. R. (Vol.) Mad. ...	Indian Law Reports, Madras	Ind.
I. L. R. (Vol.) Pat. ...	Indian Law Reports, Patna	Ind.
I. L. R. (Vol.) Ran. ...	Indian Law Reports, Rangoon	Ind.
I. L. T.	Irish Law Times, 1867—(current)	Ir.
I. L. T. Jo.	Irish Law Times Journal, 1867,—(current)	Ir.
I. R. (preceded by date)	Irish Reports, since 1893 (*e.g.*, [1894] 1 I. R.)	Ir.
I. R. (Vol.) C. L. ...	Irish Reports, Common Law, 11 vols., 1866—1877	Ir.
I. R. Eq.	Irish Reports, Equity, 11 vols., 1866—1877	Ir.
I. R., R. & L.	Irish Reports, Registry Appeals in the Court of Exchequer Chamber and Appeals in the Court for Land Cases Reserved, 1 vol., 1868—1876	Ir.
Ind. Awards	Industrial Awards Recommendations	N.Z.
Ind. Jur. N. S.	Indian Jurist, New Series	Ind.
Ind. Jur. O. S.	Indian Jurist, Old Series	Ind.
Ir. Cir. Rep.	Reports of Irish Circuit Cases, 1 vol., 1841—1843	Ir.
Ir. Jur.	Irish Jurist, 18 vols., 1849—1866...	Ir.
Ir. L. Rec. 1st ser. ...	Law Recorder (Ireland), 1st series, 4 vols., 1827—1831 ...	Ir.
Ir. L. Rec. N. S. ...	Law Recorder (Ireland), New Series, 6 vols., 1833—1838 ...	Ir.
Irv.	Irvine's Justiciary Reports (Scotland), 5 vols., 1852—1867 ...	Scot.
J. Bridg.	Sir John Bridgman's Reports, Common Pleas, fol., 1 vol., 1613—1621	Eng.
J. D. R.	Juta's Daily Reporter, reporting Cases in the Cape Provincial Division	S. Af.
J. P.	Justice of the Peace, 1837—(current)	Eng.
J. P. Jo.	Justice of the Peace (Weekly Notes of Cases)	Eng.
J. R.	Jurist Reports	N.Z.
J. R. N. S.	Jurist Reports, New Series	N.Z.
J. Shaw, Just.	J. Shaw's Justiciary Reports (Scotland), 1 vol., 1848—1852 ...	Scot.
Jac.	Jacob's Reports, Chancery, 1 vol., 1821—1823	Eng.
Jac. & W.	Jacob and Walker's Reports, Chancery, 2 vols., 1819—1821 ...	Eng.
James	Nova Scotia Reports (James)	Can.
Jebb & B.	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol. 1841—1842	Ir.
Jebb & S.	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols., 1838—1841	Ir.
Jebb, C. C.	Jebb's Crown Cases Reserved (Ireland), 1 vol., 1822—1840 ...	Ir.
Jebb, Cr. & Pr. Cas. ...	Jebb's Crown and Presentment Cases	Ir.
Jenk.	Jenkins' Reports, 1 vol., 1220—1623	Eng.
Jo. & Car.	Jones and Carey's Reports, Exchequer (Ireland), 1 vol., 1838—1839	Ir.
Jo. & Lat.	Jones and La Touche's Reports, Chancery (Ireland), 3 vols., 1844—1846	Ir.
Jo. Ex. Ir.	T. Jones' Reports, Exchequer (Ireland), 2 vols., 1834—1838 ...	Ir.
John.	Johnson's Reports, Chancery, 1 vol., 1858—1860	Eng.
John. & H.	Johnson and Hemming's Reports, Chancery, 2 vols., 1859—1862	Eng.
Jur.	Jurist Reports, 18 vols., 1837—1854	Eng.
Jur. N. S.	Jurist Reports, New Series, 12 vols., 1855—1867	Eng.
K.	Kotze's Reports of the High Court of the Transvaal Province 1877—1881	S. Af.
K. & G.	Keane and Grant's Registration Cases, 1 vol., 1854—1862 ...	Eng.
K. & J.	Kay and Johnson's Reports, Chancery, 4 vols., 1853—1858 ...	Eng.
K. B. (preceded by date)	Law Reports, King's Bench Division, since 1900 (*e.g.*, [1901] 2 K. B.)	Eng.
Kames, Dict. Dec. ...	Kames, Dictionary of Decisions, Court of Session (Scotland), fol., 2 vols., 1540—1741	Scot.
Kames, Rem. Dec. ...	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols., 1716—1752	Scot.
Kames, Sel. Dec . .	Kames, Select Decisions, Court of Session (Scotland), 1 vol., 1752—1768	Scot.
Kay	Kay's Reports, Chancery, 1 vol., 1853—1854	Eng.
Keb.	Keble's Reports, fol., 3 vols., 1661—1677	Eng.
Keen	Keen's Reports, Rolls Court, 2 vols., 1836—1838	Eng.
Keil.	Keilwey's Reports, King's Bench, fol., 1 vol., 1327—1578 ...	Eng.
Kel.	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707	Eng.
Kel. W.	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732; King's Bench, fol., 1731—1734...	Eng.
Keny.	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759 ...	Eng.
Keny. Ch.	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—1754	Eng.
Kerr	New Brunswick Reports (Kerr)	Can.

Kilkerran	Kilkerran's Decisions, Court of Session (Scotland), fol., 1 vol., 1738—1752	Scot.
Kn. & Omb.	Knapp and Ombler's Election Cases, 1 vol., 1834—1835 ...	Eng.
Knapp	Knapp's Reports, Privy Council, 3 vols., 1829—1836	Eng.
Knox	Knox's Reports	Aus.
Konst. & W. Rat. App.	Konstam and Ward's Reports of Rating Appeals, 1 vol., 1909—1912	Eng.
Konst. Rat. App. ...	Konstam's Reports of Rating Appeals, 2 vols., 1904—1908 ...	Eng.
L. & G. *temp.* Plunk. ...	Lloyd and Goold's Reports *temp.* Plunkett, Chancery (Ireland), 1 vol., 1834—1839	Ir.
L. & G. *temp.* Sugd. ...	Lloyd and Goold's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1835	Ir.
L. & Welsb.	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol., 1829—1830	Eng.
L. C. & M. Gaz. ...	Local Courts and Municipal Gazette	Can.
L. C. J.	Lower Canada Jurist	Can.
L. C. L. J.	Lower Canada Law Journal	Can.
L. C. R.	Lower Canada Reports	Can.
L. G. R.	Local Government Reports, 1902—(current)	Eng.
L. J. Adm.	Law Journal, Admiralty, 1865—1875	Eng.
L. J. Bcy.	Law Journal, Bankruptcy, 1832—1880	Eng.
L. J. C. C.	Law Journal (County Courts Reporter), 1912—(current) ...	Eng.
L. J. C. P.	Law Journal, Common Pleas, 1831—1875	Eng.
L. J. Ch.	Law Journal, Chancery, 1831—(current)	Eng.
L. J. Eccl.	Law Journal, Ecclesiastical Cases, 1866—1875	Eng.
L. J. Ex.	Law Journal, Exchequer, 1831—1875	Eng.
L. J. Ex. Eq.	Law Journal, Exchequer in Equity, 1835—1841	Eng.
L. J. K. B. or Q. B. ...	Law Journal, King's Bench or Queen's Bench, 1831—(current)	Eng.
L. J. M. C.	Law Journal, Magistrates' Cases, 1831—1896	Eng.
L. J. N. C.	Law Journal, Notes of Cases, 1866—1892 (from 1893, see Law Journal)	Eng.
L. J. O. S.	Law Journal, Old Series, 10 vols., 1822—1831	Eng.
L. J. P.	Law Journal, Probate, Divorce and Admiralty, 1875—(current)	Eng.
L. J. P. & M.	Law Journal, Probate and Matrimonial Cases, 1858—1859, 1866—1875	Eng.
L. J. P. C.	Law Journal, Privy Council, 1865—(current)	Eng.
L. J. P. M. & A. ...	Law Journal, Probate, Matrimonial and Admiralty, 1860—1865	Eng.
L. Jo.	Law Journal Newspaper, 1866—(current)	Eng.
L. L. R.	Leader Law Reports	S. Af.
L. M. & P.	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols., 1850—1851	Eng.
L. N.	Legal News	Can.
L. R. A. & E.	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols., 1865—1875	Eng.
L. R. C. C. R.	Law Reports, Crown Cases Reserved, 2 vols., 1865—1875 ...	Eng.
L. R. C. P.	Law Reports, Common Pleas, 10 vols., 1865—1875	Eng.
L. R. Eq.	Law Reports, Equity Cases, 20 vols., 1865—1875	Eng.
L. R. Exch.	Law Reports, Exchequer, 10 vols., 1865—1875...	Eng.
L. R. H. L.	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols., 1866—1875	Eng.
L. R. Ind. App. ...	Law Reports, Indian Appeals, Privy Council, 1873—(current)	Eng.
L. R. Ind. App. Supp. Vol.	Law Reports, India Appeals Privy Council, Supplementary Volume, 1872—1873	Eng.
L. R. Ir.	Law Reports (Ireland), Chancery and Common Law, 32 vols., 1877—1893	Ir.
L. R. P. & D.	Law Reports, Probate and Divorce, 3 vols., 1865—1875 ...	Eng.
L. R. P. C.	Law Reports, Privy Council, 6 vols., 1865—1875	Eng.
L. R. Q. B.	Law Reports, Queen's Bench, 10 vols., 1865—1875	Eng.
L. R. Q. B.	Quebec Reports, Queen's Bench	Can.
L. R. Sc. & Div. ...	Law Reports, Scotch and Divorce Appeals, House of Lords 2 vols., 1866—1875	Eng.
L. T.	Law Times Reports, 1859—(current)	Eng.
L. T. Jo.	Law Times Newspaper, 1843—(current)	Eng.
L. T. O. S.	Law Times Reports, Old Series, 34 vols., 1843—1860	Eng.
L. Th.	La Themis	Can.
Lane	Lane's Reports, Exchequer, fol., 1 vol., 1605—1611	Eng.
Lat.	Latch's Reports, King's Bench, fol., 1 vol., 1625—1628 ...	Eng.
Laws. Reg. Cas. ...	Lawson's Registration Cases, 1895—(current)	Eng.
Ld. Raym.	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols., 1694—1732	Eng.
Le. & Ca.	Leigh and Cave's Crown Cases Reserved, 1 vol., 1861—1865 ...	Eng.
Leach	Leach's Crown Cases, 2 vols., 1730—1814	Eng.
Lee	Sir G. Lee's Ecclesiastical Judgments, 2 vols., 1752—1758 ...	Eng.
Lee *temp.* Hard. ...	T. Lee's Cases *temp.* Hardwicke, King's Bench, 1 vol., 1733—1738	Eng.

Leg. Rep.	Legal Reporter	Ir.
Legge	Legge's Reports	Aus.
Leon.	Leonard's Reports, King's Bench, Common Pleas and Exchequer, fol., 4 parts, 1552—1615	Eng.
Lev.	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols., 1660—1696	Eng.
Lew. C. C.	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822—1838	Eng.
Ley	Ley's Reports, King's Bench, fol., 1 vol., 1608—1629	Eng.
Lib. Ass.	Liber Assisarum, Year Books, 1—51 Edw. III.	Eng.
Lilly	Lilly's Reports and Pleadings of Cases in Assize, fol., 1 vol.	Eng.
Litt.	Littleton's Reports, Common Pleas, fol., 1 vol., 1627—1631	Eng.
Lloyd, L. R.	Lloyd's List Law Reports, 1919—(current)	Eng.
Lloyd, Pr. Cas.	Lloyd's Reports of Prize Cases, 10 vols., 1914—1924	Eng.
Lofft	Lofft's Reports, King's Bench, fol., 1 vol., 1772—1774	Eng.
Long. & T.	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol., 1841—1842	Ir.
Lords Journals	Journals of the House of Lords	Eng.
Lud. E. C.	Luder's Election Cases, 3 vols., 1784—1787	Eng.
Lumley, P. L. C.	Lumley's Poor Law Cases, 2 vols., 1834—1842	Eng.
Lush.	Lushington's Reports, Admiralty, 1 vol., 1859—1862	Eng.
Lut.	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 vols., 1682—1704	Eng.
Lut. Reg. Cas.	A. J. Lutwyche's Registration Cases, 2 vols., 1843—1853	Eng.
Lynd.	Lyndwood, Provinciale, fol., 1 vol.	Eng.
M.	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	S. Af.
M. & S.	Maule and Selwyn's Reports, King's Bench, 6 vols., 1813—1817	Eng.
M. & W.	Meeson and Welsby's Reports, Exchequer, 16 vols., 1836—1847	Eng.
M. C. C.	Mining Commissioner's Cases	Can.
M. C. R.	Montreal Condensed Reports	Can.
M. H. C. R.	Madras High Court Reports	Ind.
M. L. R. (Vol.) K. B. or Q. B.	Montreal Law Reports, King's Bench or Queen's Bench	Can.
M. L. R. (Vol.) S. C.	Montreal Law Reports, Superior Court	Can.
M. M. Cas.	Martin's Reports of Mining Cases	Can.
M. P. R.	Maritime Provinces Reports	Can.
Mac.	Macassey's New Zealand Reports	N.Z.
Mac. & G.	Macnaghten and Gordon's Reports, Chancery, 3 vols., 1849—1852	Eng.
Mac. & H.	Macrae and Hertslet's Insolvency Cases, 1 vol., 1847—1852	Eng.
M'Cle.	M'Cleland's Reports, Exchequer, 1 vol., 1824	Eng.
M'Cle. & Yo.	M'Cleland and Younge's Reports, Exchequer, 1 vol., 1824—1825	Eng.
Macfarlane	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts, 1838—1839	Scot.
Macl. & Rob.	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol., 1839	Scot.
Macph. (Ct. of Sess.)	Macpherson, Court of Session (Scotland), 3rd series, 11 vols., 1862—1873	Scot.
Macq.	Macqueen's Scotch Appeals, House of Lords, 4 vols., 1849—1865	Scot.
Macr.	Macrory's Patent Cases, 2 parts, 1847—1856	Eng.
Mad.	Madras High Court Reports	Ind.
Madd.	Maddock's Reports, Chancery, 6 vols., 1815—1822	Eng.
Madd. & G.	Maddock and Geldart's Reports, Chancery, 1 vol., 1819—1822 (Vol. VI. of Madd.)	Eng.
Madox	Madox's Formulare Anglicanum	Eng.
Madox, Exch.	Madox's History and Antiquities of the Exchequer, 2 vols.	Eng.
Mag.	Magistrate and Municipal and Parochial Lawyer, London, 5 vols., 1848—1852	Eng.
Man. & G.	Manning and Granger's Reports, Common Pleas, 7 vols., 1840—1845	Eng.
Man. & Ry. K. B.	Manning and Ryland's Reports, King's Bench, 5 vols., 1827—1830	Eng.
Man. & Ry. M. C.	Manning and Ryland's Magistrates' Cases, 3 vols., 1827—1830	Eng.
Man. L. J.	Manitoba Law Journal	Can.
Man. L. R.	Manitoba Law Reports	Can.
Man. R. *temp.* Wood	Manitoba Reports *temp.* Wood	Can.
Manns.	Manson's Bankruptcy and Company Cases, 21 vols., 1893—1914	Eng.
Mar. L. C.	Maritime Law Reports (Crockford), 3 vols., 1860—1871	Eng.
March	March's Reports, King's Bench and Common Pleas, 1 vol., 1639—1642	Eng.
Marr.	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779	Eng.
Marsh.	Marshall's Reports, Common Pleas, 2 vols., 1813—1816	Eng.
Marsh.	Marshall's Reports	Ind.
Mayn.	Maynard's Reports, Exchequer Memoranda of Edw. I. and Year Books of Edw. II., Year Books, Part I., 1273—1326	Eng.
Meg.	Megone's Companies Acts Cases, 2 vols., 1889—1891	Eng.

Men.	**Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850**	S. Af.
Mer.	**Merivale's Reports, Chancery, 3 vols., 1815—1817**	Eng.
Milw.	**Milward's Ecclesiastical Reports (Ireland), 1 vol., 1819—1843**	Ir.
Mod. Rep.	**Modern Reports, 12 vols., 1669—1755**	Eng.
Mol.	**Molloy's Report's, Chancery (Ireland), 3 vols., 1808—1831**	Ir.
Mont.	**Montagu's Reports, Bankruptcy, 1 vol., 1829—1832**	Eng.
Mont. & A.	**Montagu and Ayrton's Reports, Bankruptcy, 3 vols., 1832—1838**	Eng.
Mont. & B.	**Montagu and Bligh's Reports, Bankruptcy, 1 vol., 1832—1833**	Eng.
Mont. & Ch.	**Montagu and Chitty's Reports, Bankruptcy, 1 vol., 1838—1840**	Eng.
Mont. & M.	**Montagu and Macarthur's Reports, Bankruptcy, 1 vol., 1826—1830**	Eng.
Mont. D. & De G.	**Montagu, Deacon, and De Gex's Reports, Bankruptcy, 3 vols., 1840—1844**	Eng.
Moo. & P.	**Moore and Payne's Reports, Common Pleas, 5 vols., 1827—1831**	Eng.
Moo. & S.	**Moore and Scott's Reports, Common Pleas, 4 vols., 1831—1834**	Eng.
Moo. Ind. App.	**Moore's Indian Appeal Cases, Privy Council, 14 vols., 1836—1872**	Eng.
Moo. P. C. C.	**Moore's Privy Council Cases, 15 vols., 1836—1863**	Eng.
Moo. P. C. C. N. S.	**Moore's Privy Council Cases, New Series, 9 vols., 1862—1873**	Eng.
Mood. & M.	**Moody and Malkin's Reports, Nisi Prius, 1 vol., 1826—1830**	Eng.
Mood. & R.	**Moody and Robinson's Reports, Nisi Prius, 2 vols., 1830—1844**	Eng.
Mood. C. C.	**Moody's Crown Cases Reserved, 2 vols., 1824—1844**	Eng.
Moore, C. P.	**J. B. Moore's Reports, Common Pleas, 12 vols., 1817—1827**	Eng.
Moore, K. B.	**Sir F. Moore's Reports, King's Bench, fol., 1 vol., 1485—1620**	Eng.
Mor. Dict.	**Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols., 1532—1808**	Scot.
Morr.	**Morrell's Reports, Bankruptcy, 10 vols., 1884—1893**	Eng.
Mos.	**Moseley's Reports, Chancery, fol., 1 vol., 1726—1730**	Eng.
Mun. Rep.	**Municipal Reports**	Can.
Murd. Epit.	**Murdoch's Epitome**	Can.
Murp. & H.	**Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1837**	Eng.
Murr.	**Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830**	Scot.
My. & Cr.	**Mylne and Craig's Reports, Chancery, 5 vols., 1835—1841**	Eng.
My. & K.	**Mylne and Keen's Reports, Chancery, 3 vols., 1832—1835**	Eng.
N. A. C.	**Native Appeal Cases**	S. Af.
N. & S.	**Nichols and Stop's Reports (Tasmania)**	Tasmania
N. B. Dig.	**New Brunswick Digest (Stevens)**	Can.
N. B. Eq. Rep.	**New Brunswick Equity Reports**	Can.
N. B. R.	**New Brunswick Reports**	Can.
N. B. R. (All.)	**New Brunswick Reports (Allen)**	Can.
N. B. R. (Ber.)	**New Brunswick Reports (Berton)**	Can.
N. B. R. (Carl.)	**New Brunswick Reports (Carleton)**	Can.
N. B. R. (Chip.)	**New Brunswick Reports (Chipman)**	Can.
N. B. R. (Han.)	**New Brunswick Reports (Hannay)**	Can.
N. B. R. (Kerr)	**New Brunswick Reports (Kerr)**	Can.
N. B. R. (P. & B.)	**New Brunswick Reports (Pugsley and Burbidge)**	Can.
N. B. R. (P. & T.)	**New Brunswick Reports (Pugsley and Trueman)**	Can.
N. B. R. (Pug.)	**New Brunswick Reports (Pugsley)**	Can.
N. B. R. (Tru.)	**New Brunswick Reports (Trueman)**	Can.
N. I. (preceded by date)	**Northern Ireland Law Reports, 1925—(current) (*e.g.*, [1925] N.I.)**	Ir.
N. L. R.	**Natal Law Reports**	S. Af.
N. P. D.	**South African Law Reports, Natal Provincial Division**	S. Af.
N. S. R.	**Nova Scotia Reports**	Can.
N. S. R. (Coch.)	**Nova Scotia Reports (Cochran)**	Can.
N. S. R. (G. & O.)	**Nova Scotia Reports (Geldert and Oxley)**	Can.
N. S. R. (G. & R.)	**Nova Scotia Reports (Geldert and Russell)**	Can.
N. S. R. (James)	**Nova Scotia Reports (James)**	Can.
N. S. R. (Old.)	**Nova Scotia Reports (Oldrights)**	Can.
N. S. R. (R. & C.)	**Nova Scotia Reports (Russell and Chesley)**	Can.
N. S. R. (R. & G.)	**Nova Scotia Reports (Russell and Geldert)**	Can.
N. S. R. (Thom.)	**Nova Scotia Reports (Thomson)**	Can.
N. S. W. Adm. or Ad.	**New South Wales Reports, Admiralty**	Aus.
N. S. W. B.	**New South Wales Reports, Bankruptcy**	Aus.
N. S. W. Bkpty. Cas.	**New South Wales Bankruptcy Cases**	Aus.
N. S. W. Eq.	**New South Wales Reports, Equity**	Aus.
N. S. W. Ind. Arbtn. Cas.	**New South Wales Industrial Arbitration Cases**	Aus.
N. S. W. L. R.	**New South Wales Law Reports**	Aus.
N. S. W. Land App. Cts.	**New South Wales Land Appeal Courts**	Aus.
N. S. W. S. C. R. (Eq.)	**New South Wales Supreme Court Reports (Equity)**	Aus.
N. S. W. S. C. R. (L.)	**New South Wales Supreme Court Reports (Law)**	Aus.
N. S. W. S. C. R. N. S.	**New South Wales Supreme Court Reports, New Series**	Aus.
N. S. W. W. N.	**New South Wales Weekly Notes**	Aus.
N. W.	**North-Western Provinces High Court Reports**	Ind.
N. W. T. R.	**North-West Territories Reports**	Can.
N. Z. Jur.	**New Zealand Jurist**	N.Z.
N. Z. Jur. Mining Law	**New Zealand Jurist Mining Law**	N.Z.

N. Z. Jur. N. S.	New Zealand Jurist, New Series	N.Z.
N. Z. L. J.	New Zealand Law Journal	N.Z.
N. Z. L. R.	New Zealand Law Reports, 1883—(current)	N.Z.
N. Z. L. R. C. A. ...	New Zealand Law Reports, Court of Appeal, 5 vols., 1883—1887	N.Z.
Nels.	Nelson's Reports, Chancery, 1 vol., 1625—1693	Eng.
Nev. & M. K. B. ...	Nevile and Manning's Reports, King's Bench, 6 vols., 1832—1836	Eng.
Nev. & M. M. C. ...	Nevile and Manning's Magistrates' Cases, 3 vols., 1832—1836	Eng.
Nev. & P. K. B. ...	Nevile and Perry's Reports, King's Bench, 3 vols., 1836—1838	Eng.
Nev. & P. M. C. ...	Nevile and Perry's Magistrates' Cases, 1 vol., 1836—1837 ...	Eng.
New Mag. Cas. ...	New Magistrates' Cases (Bittleston, Wise and Parnell), 5 vols., 1844—1850	Eng.
New Pract. Cas. ...	New Practice Cases (Bittleston and others), 3 vols., 1844—1848	Eng.
New Rep.	New Reports, 6 vols., 1862—1865	Eng.
New Sess. Cas.	New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851	Eng.
Nfld. L. R.	Newfoundland Reports	Nfld.
Nolan	Nolan's Magistrates' Cases, 1 vol., 1791—1793	Eng.
Notes of Cases	Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols., 1841—1850	Eng.
Noy	Noy's Reports, King's Bench, fol., 1 vol., 1558—1649 ...	Eng.
O. B. & F.	Ollivier Bell and Fitzgerald's Reports	N.Z.
O. B. S. P.	Old Bailey Session Papers	Eng.
O. Bridg.	Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660—1666	Eng.
O. F. S.	Reports of the High Court of the Orange Free State, 1879—1883	S. Af.
O. L. R.	Ontario Law Reports	Can.
O'M. & H.	O'Malley and Hardcastle's Election Cases, 1869—(current) ...	Eng.
O. P. D.	South African Law Reports, Orange Free State Provincial Division	S. Af.
O. R.	Ontario Reports...	Can.
O. R. (preceded by date)	Ontario Reports, since 1931 (*e.g.* [1931] O. R.)	Can.
O. R.	Official Reports of the South African Republic, 1894—1899 ...	S. Af.
O. R. C.	Reports of the High Court of the Orange River Colony ...	S. Af.
O. S.	Upper Canada Queen's Bench, Old Series	Can.
O. W. N.	Ontario Weekly Notes	Can.
O. W. R.	Ontario Weekly Reporter	Can.
Old.	Nova Scotia Reports (Oldrights)	Can.
Ont. Dig.	Digest of Ontario Case Law, 4 vols., 1823—1900	Can.
Owen	Owen's Reports, King's Bench and Common Pleas, fol., 1 vol., 1557—1614	Eng.
P. (preceded by date) ...	Law Reports, Probate, Divorce, and Admiralty Division, since 1890 (*e.g.*, [1891] P.)	Eng.
P. & B.	New Brunswick Reports (Pugsley and Burbidge)	Can.
P. & T.	New Brunswick Law Reports (Pugsley and Trueman)... ...	Can.
P. Cas.	Prize Cases Heard and Decided in the Prize Court During the Great War, 3 vols., 1914—1922	Eng. & Col.
P. D.	Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890	Eng.
P. E. I.	Prince Edward Island Reports	Can.
P. R.	Ontario Practice	Can.
P. Wms.	Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1695—1735	Eng.
Palm.	Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629 ...	Eng.
Park.	Parker's Reports, Exchequer, fol., 1 vol., 1743—1767; App. 1678—1717	Eng.
Pat. App.	Paton's Scotch Appeals, House of Lords, 6 vols., 1726—1822	Scot.
Pater. App.	Paterson's Scotch Appeals, House of Lords, 2 vols., 1851—1873	Scot.
Peake	Peake's Reports, Nisi Prius, 1 vol., 1790—1794	Eng.
Peake, Add. Cas. ...	Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812 ...	Eng.
Peck.	Peckwell's Election Cases, 2 vols., 1803—1806	Eng.
Pelham	Pelham (S. A.) Reports	Aus.
Per. & Dav.	Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841	Eng.
Per. & Kn.	Perry and Knapp's Election Cases, 1 vol., 1833	Eng.
Per. C. S.	Perrault's Counsell Superieur	Can.
Per. P.	Perrault's Prévosté de Quebec, 1726—1756	Can.
Ph.	Phillips' Reports, Chancery, 2 vols., 1841—1849	Eng.
Phil. El. Cas.	Philipps' Election Cases, 1 vol., 1780	Eng.
Phillim.	J. Phillimore's Ecclesiastical Reports, 3 vols., 1809—1821 ...	Eng.
Phillim. Eccl. Jud. ...	Sir R. Phillimore's Ecclesiastical Judgments, 1 vol., 1867—1875	Eng.
Phip.	Phipson's Digest of Natal Reports, 1858—1859	S. Af.
Pig. & R.	Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845 ...	Eng.
Pitc.	Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624 ...	Scot.
Plowd.	Plowden's Reports, fol., 2 vols., 1550—1580, and Plowden's Queries, Vol. I.	Eng.
Poll.	Pollexfen's Reports, King's Bench, fol., 1 vol., 1670—1682 ...	Eng.
Poph.	Popham's Reports, King's Bench, fol., 1 vol., 1591—1627 ...	Eng.
Pow. R. & D.	Power, Rodwell, and Dew's Election Cases, 2 vols., 1848—1856	Eng.

Pratt	Pratt's Supplement to Bott's Poor Laws, 1833	Eng.
Prec. Ch.	Precedents in Chancery, fol., 1 vol., 1689—1722	Eng.
Price	Price's Reports, Exchequer, 13 vols., 1814—1824	Eng.
Price	Price's Mining Commissioners' Cases	Can.
Pug.	New Brunswick Reports (Pugsley)	Can.
Py. R.	Pykes' Lower Canada Reports	Can.
Q. B.	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols., 1841—1852	Eng.
Q. B. (preceded by date)	Law Reports, Queen's Bench Division, 1891—1901 (*e.g.*, [1891] 1 Q.B.)	Eng.
Q. B. D.	Law Reports, Queen's Bench Division, 25 vols., 1875—1890	Eng.
Q. J. P.	Queensland Justice of Peace Reports	Aus.
Q. L. J.	Queensland Law Journal and Reports, 11 vols., 1879—1901	Aus.
Q. L. R.	Quebec Law Reports	Can.
Q. L. R. (Beor)	Queensland Law Reports by Beor, 1876—1878	Aus.
Q. P. R.	Quebec Practice Reports	Can.
Q. R. (Vol.) K. B. or Q. B.	Rapports Judiciaires de Québec, Cour du Banc du Roi, 1892—(current)	Can.
Q. R. (Vol.) S. C.	Rapports Judiciaires de Québec, Cour Supérieure, 1892—(current)	Can.
Q. S. C. R.	Queensland Supreme Court Reports, 5 vols., 1860—1881	Aus.
Q. S. R.	Queensland State Reports, 6 vols., 1902—1906	Aus.
Q. W. N.	Weekly Notes, Queensland	Aus.
R.	The Reports, 15 vols., 1893—1895	Eng.
R.	Roscoe's Reports of the Supreme Court of the Cape of Good Hope, 1861—1867, 1871—1872, 1877—1878	S. Af.
R. (Ct. of Sess.)	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols., 1873—1898	Scot.
R. A. C.	Ramsay, Appeal Cases	Can.
R. & C.	Nova Scotia Reports (Russell & Chesley)	Can.
R. & G.	Nova Scotia Reports (Russell and Geldert)	Can.
R. C.	La Revue Critique de Législation et de Jurisprudence de Canada	Can.
R. de J.	Revue de Jurisprudence	Can.
R. de L.	Revue de Législation et de Jurisprudence, 3 vols., 1845—1848	Can.
R. E. D.	New South Wales, Reserved and Equity Decisions	Aus.
R. E. D.	Ritchie's Equity Decisions (Russell)	Can.
R. J. R. Q.	Quebec Revised Reports	Can.
R. L. N. S.	Revue Légale, New Series, 1895—(current)	Can.
R. L. O. S.	Revue Légale, Old Series, 21 vols., 1869—1892	Can.
R. P. C.	Reports of Patent Cases, 1884—(current)	Eng.
R. R.	Revised Reports	Eng.
Rast.	Rastell's Entries	Eng.
Rayn.	Rayner's Tithe Cases, 3 vols., 1575—1782	Eng.
Real Prop. Cas.	Real Property Cases, 2 vols., 1843—1847	Eng.
Rep. Ch.	Reports in Chancery, fol., 3 vols., 1615—1710	Eng.
Rep. in C. of A.	Reports in Courts of Appeal	N.Z.
Res. & Eq. Jud.	New South Wales Reserved and Equity Judgments	Aus.
Reserv. Cas.	Reserved Cases	Ir.
Rick. & M.	Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889	Eng.
Rick. & S.	Rickards and Saunders' Locus Standi Reports, 1 vol., 1890—1894	Eng.
Ridg. L. & S.	Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol., 1793—1795	Ir.
Ridg. Parl. Rep.	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1784—1796	Ir.
Ridg. *temp.* H.	Ridgeway's Reports *temp.* Hardwicke, 1 vol., King's Bench, 1733—1736; Chancery, 1744—1746	Eng.
Ritch. Eq. Rep.	Ritchie's Equity Reports	Can.
Rob. Eccl.	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853	Eng.
Rob. L. & W.	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol., 1849—1851	Eng.
Robert. App.	Robertson's Scotch Appeals, House of Lords, 1 vol., 1707—1727	Scot.
Robin. App.	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841	Scot.
Roll. Abr.	Rolle's Abridgment of the Common Law, fol., 2 vols.	Eng.
Roll. Rep.	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625	Eng.
Rom.	Romilly's Notes of Cases, 1 part, 1767—1787	Eng.
Roscoe's B. C.	Roscoe, Digest of Building Cases	Eng.
Rose	Rose's Reports, Bankruptcy, 2 vols., 1810—1816	Eng.
Ross, L. C.	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.	Eng.
Rowe	Rowe's Reports (England and Ireland), 1 vol., 1798—1823	Eng.
Rul. Cas.	Campbell's Ruling Cases, 25 vols.	Eng.
Russ.	Russell's Reports, Chancery, 5 vols., 1824—1829	Eng.
Russ. & M.	Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833	Eng.

Russ. & Ry.	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823	Eng.
Rus. E. R.	Russell's Election Reports...	Can.
Ry. & Can. Cas. ...	Railway and Canal Cases, 7 vols., 1835—1854	Eng.
Ry. & Can. Tr. Cas. ...	Railway and Canal Traffic Cases, 1855—(current)	Eng.
Ry. & M.	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826 ...	Eng.
Ryde & K. Rat. App. ...	Ryde and Konstam's Reports of Rating Appeals, 1 vol., 1894—1904	Eng.
Ryde, Rat. App. ...	Ryde's Rating Appeals, 3 vols., 1871—1893	Eng.
S.	Searle's Reports of the Supreme Court of the Cape of Good Hope	S. Af.
S. A. L. J.	South African Law Journal	S. Af.
S. A. L. R.	South Australian Law Reports	Aus.
S. A. L. R.	South African Law Reports	S. Af.
S. A. R.	Reports of the High Court of the South African Republic, 1881—1892	S. Af.
S. A. S. R.	South Australian State Reports, since 1921 (*e.g.*, [1921] S. A. S. R.)	Aus.
S. C.	Reports of the Supreme Court of the Cape of Good Hope from 1880	S. Af.
S. C. (preceded by date)	Court of Session Cases (Scotland), since 1906 (*e.g.*, [1906] S. C.)	Scot.
S. C. (H. L.) (preceded by date)	Court of Session Cases (Scotland) (House of Lords), since 1906 (*e.g.*, [1906] S. C. (H. L.))	Scot.
S. C. (J.) (preceded by date)	Court of Justiciary Cases (Scotland), since 1906 (*e.g.*, [1906] S. C. (J.))	Scot.
S. C. R.	Canada, Supreme Court Reports	Can.
S. L. T.	Scots Law Times, 1893 (current)	Scot.
S. Q. R.	Queensland State Reports	Aus.
S. R.	Reports of the High Court of Southern Rhodesia	S. Af.
S. R. C.	Stuart's Lower Canada Reports	Can.
S. R. N. S. W.	New South Wales, State Reports	Aus.
S. R. Q.	Queensland Reports, Supreme Court	Aus.
S. V. A. R.	Stuart's Vice-Admiralty Reports	Can.
S. W. A.	South-West Africa Law Reports	S.-W. Af.
Saint	Saint's Digest of Registration Cases, 1843—1906, 1 vol. ...	Eng.
Salk.	Salkeld's Reports, King's Bench, 3 vols., 1689—1712	Eng.
Sask. L. R.	Saskatchewan Law Reports	Can.
Sau. & Sc.	Sausee and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840	Ir.
Saund.	Saunders's Reports, King's Bench, 2 vols., 1666—1672 ...	Eng.
Saund. & A.	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904	Eng.
Saund. & B.	Saunders and Bidder's Locus Standi Reports, 1905—(current)	Eng.
Saund. & C.	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848 ...	Eng.
Saund. & M.	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols., 1852—1858	Eng.
Sav.	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591 ...	Eng.
Say.	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756 ...	Eng.
Sc. Jur.	Scottish Jurist, 46 vols., 1829—1873	Scot.
Sc. L. R.	Scottish Law Reporter, 61 vols., 1865—1924	Scot.
Sc. R. R.	Scots Revised Reports	Scot.
Sch. & Lef.	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806	Ir.
Scott	Scott's Reports, Common Pleas, 8 vols., 1834—1840	Eng.
Scott, N. R.	Scott's New Reports, Common Pleas, 8 vols., 1840—1845 ...	Eng.
Sea. & Sm.	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860	Eng.
Sel. Cas. Ch.	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.)	Eng.
Selwyn's N. P.	Selwyn's Abridgement of the Law of Nisi Prius	Eng.
Sess. Cas. K. B. ...	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747	Eng.
Sett. & Rem.	Cases adjudged in K. B. concerning Settlements & Removals, 1 vol., 1685—1727	Eng.
Sh. (Ct. of Sess.) ...	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—1838	Scot.
Sh. & Macl.	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838	Scot.
Sh. Dig.	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols., 1726—1868	Scot.
Sh. Just.	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831	Scot.
Sh. Sc. App.	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824	Scot.
Sh. Teind Ct.	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831	Scot.
Shep. Touch.	Sheppard's Touchstone of Common Assurances	Eng.
Show.	Shower's Reports, King's Bench, 2 vols., 1678—1695	Eng.
Show. Parl. Cas. ...	Shower's Cases in Parliament, fol., 1 vol., 1694—1699... ...	Eng.
Sid.	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657—1670	Eng.

Sim.	Simons' Reports, Chancery, 17 vols., 1826—1852	Eng.
Sim. & St.	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826	Eng.
Sim. N. S.	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852	Eng.
Skin.	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697	Eng.
Sm. & Bat.	Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825	Ir.
Sm. & G.	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1857	Eng.
Smith, K. B.	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1806	Eng.
Smith, L. C.	Smith's Leading Cases, 2 vols.	Eng.
Smith, Reg. Cas.	C. L. Smith's Registration Cases, 1895—(current)	Eng.
Smythe	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840	Ir.
Sol. Jo.	Solicitors' Journal, 1856—(current)	Eng.
Spence	Spence's Equitable Jurisdiction of the Court of Chancery	Eng.
Spinks	Spinks' Prize Court Cases, 2 parts, 1854—1856	Eng.
St. R. Qd. (preceded by date)	Queensland State Reports, since 1902 (*e.g.*, [1902] St. R. Qd.)	Aus.
Stair Rep.	Stair's Decisions, Court of Session (Scotland), fol., 2 vols., 1661—1681	Scot.
Stark.	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823	Eng.
State Tr.	State Trials, 34 vols., 1163—1820	Eng.
State Tr. N. S.	State Trials, New Series, 8 vols., 1820—1858	Eng.
Stewart	Stewart's Nova Scotia Admiralty Reports, 1803—1813	Can.
Stockton	Stockton's Vice-Admiralty Report and Digest	Can.
Story	Story's Commentaries on Equity Jurisprudence	Eng.
Stra.	Strange's Reports, 2 vols., 1716—1747	Eng.
Stu. M. & P.	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851—1853	Scot.
Stuart	Sessions Cases (Stuart)	Scot.
Stuart, Adm.	Stuart's Vice-Admiralty (Lower Canada) Cases, 1836—1856	Can.
Stuart, Adm. N. S.	Stuart's Vice-Admiralty (Lower Canada) Cases, 2nd series, 1859—1874	Can.
Stuart, K. B.	Stuart's Reports of Cases in King's Bench, etc. (Lower Canada), 1810—1835	Can.
Sty.	Style's Reports, King's Bench, fol., 1 vol., 1646—1655	Eng.
Sw.	Swabey's Report, Admiralty, 1 vol., 1855—1859	Eng.
Sw. & Tr.	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865	Eng.
Swan.	Swanston's Reports, Chancery, 3 vols., 1818—1821	Eng.
Swin.	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841	Scot.
Syme	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829	Scot.
T. & M.	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851	Eng.
T. H.	Reports of the Witwatersrand High Court (Transvaal Colony), 1902—1909	S. Af.
T. Jo.	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1667—1685	Eng.
T. L.	Reports of the Witwatersrand High Court (Transvaal Colony), 1910—(current)	S. Af.
T. L. R.	The Times Law Reports, 1884—(current)	Eng.
T. P.	Reports of the Supreme Court of the Transvaal, 1910—(current)	S. Af.
T. P. D.	South African Law Reports, Transvaal Provincial Division	S. Af.
T. Raym.	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—1683	Eng.
T. S.	Reports of the Supreme Court of the Transvaal, 1902—1909	S. Af.
Taml.	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830	Eng.
Tas. L. R.	Tasmanian Law Reports	Aus.
Taunt.	Taunton's Reports, Common Pleas, 8 vols., 1807—1819	Eng.
Tax Cas.	Tax Cases, 1875—(current)	Eng.
Tay.	Taylor's King's Bench Reports	Can.
Temp. Wood	Manitoba Reports *temp.* Wood	Can.
Term Rep.	Term Reports (Durnford and East), fol., 8 vols., 1785—1800	Eng.
Terr. L. R.	Territories Law Reports	Can.
Thom.	Nova Scotia Reports (Thomson)	Can.
Toth.	Tothill's Transactions in Chancery, 1 vol., 1559—1646	Eng.
Town St. Tr.	Townsend, Modern State Trials	Eng.
Trem. P. C.	Tremaine Pleas of the Crown, 1 vol., 1667	Eng.
Trist.	Tristram's Consistory Judgments, 1 vol., 1872—1890	Eng.
Tru.	New Brunswick Reports (Trueman)	Can.
Tudor, L. C. Merc. Law.	Tudor's Leading Cases on Mercantile and Maritime Law	Eng.
Tudor, L. C. Real Prop.	Tudor's Leading Cases on Real Property	Eng.
Turn. & R.	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825	Eng.
Tyr.	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835	Eng.
Tyr. & Gr.	Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836	Eng.
U. C. Jur.	Upper Canada Jurist	Can.
U. C. L. J. N. S.	Canada Law Journal, New Series, 1865—(current)	Can.

U. C. L. J. O. S.	Canada Law Journal, Old Series, 10 vols., 1855—1864	Can.
U. C. R.	Upper Canada Reports, Queen's Bench	Can.
Udal	Fiji Law Reports (Udal)	Fiji.
V. L. R.	Victorian Law Reports	Aus.
V. R.	Victorian Reports	Aus.
V. R. (Adm.)	Victorian Reports (Admiralty)	Aus.
V. R. (Eq.)	Victorian Reports (Equity)	Aus.
V. R. (Law)	Victorian Reports (Law)	Aus.
Vaugh.	Vaughan's Reports, Common Pleas, fol., 1 vol., 1666—1673	Eng.
Vent.	Ventris' Reports (Vol. I., King's Bench; Vol. II., Common Pleas), fol., 2 vols., 1668—1691	Eng.
Vern.	Vernon's Reports, Chancery, 2 vols., 1680—1719	Eng.
Vern. & Scr.	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol., 1786—1788	Ir.
Ves.	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817	Eng.
Ves. & B.	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814	Eng.
Ves. Sen.	Vesey Sen.'s Reports, 2 vols., 1747—1756	Eng.
Vin. Abr.	Viner's Abridgment of Law and Equity, fol., 22 vols.	Eng.
Vin. Supp.	Supplement to Viner's Abridgment of Law and Equity, 6 vols.	Eng.
W.	Watermeyer's Reports of the Supreme Court of the Cape of Good Hope, 1857	S. Af.
W. A. L. R.	West Australian Law Reports	Aus.
W. A'B. & W.	Webb, A'Beckett and Williams' Victorian Reports	Aus.
W. & W.	Wyatt and Webb	Aus.
W. C. C.	Workmen's Compensation Cases (Minton-Senhouse), 9 vols., 1898—1907	Eng.
W. H. C.	South African Law Reports, Witwatersrand High Court	S. Af.
W. Jo.	Sir W. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640	Eng.
W. L. D.	South African Law Reports, Witwatersrand Local Division	S. Af.
W. L. R.	Western Law Reporter	Can.
W. L. T.	Western Law Times	Can.
W. N. (preceded by date)	Law Reports, Weekly Notes, 1866—(current) (*e.g.*, [1866] W. N.)	Eng.
W. N.	Calcutta Weekly Notes	Ind.
W. R.	Weekly Reporter, 54 vols., 1852—1906	Eng.
W. R.	Sutherland's Weekly Reporter	Ind.
W. R.	Weekly Reporter, reporting cases in the Cape Provincial Division	S. Af.
W. W. & A'B.	Wyatt, Webb and A'Beckett	Aus.
W. W. R.	Western Weekly Reports	Can.
Wallis by Lyne	Wallis' Reports, Chancery (Ireland), 1 vol., 1766—1791	Ir.
Web. Pat. Cas.	Webster's Patent Cases, 2 vols., 1602—1855	Eng.
Welsh, Reg. Cas.	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840	Ir.
Went. Off. Ex.	Wentworth's Office and Duty of Executors	Eng.
West	West's Reports, House of Lords, 1 vol., 1839—1841	Eng.
West *temp.* Hard.	West's Reports *temp.* Hardwicke, Chancery, 1 vol., 1736—1740	Eng.
West. Tithe Cas.	Western's London Tithe Cases, 1 vol., 1592—1822	Eng.
White	White's Justiciary Reports (Scotland), 3 vols., 1886—1893	Scot.
White & Tud. L. C.	White and Tudor's Leading Cases in Equity, 2 vols.	Eng.
Wight	Wightwick's Reports, Exchequer, 1 vol., 1810—1811	Eng.
Will. Woll. & Dav.	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837	Eng.
Will. Woll. & H.	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839	Eng.
Willes	Willes' Reports, Common Pleas, 1 vol., 1737—1758	Eng.
Wilm.	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770	Eng.
Wils.	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774	Eng.
Wils. & S.	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols., 1825—1835	Scot.
Wils. Ch.	J. Wilson's Reports, Chancery, 2 vols., 1818—1819	Eng.
Wils. Ex.	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817	Eng.
Win.	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625	Eng.
Wm. Bl.	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779	Eng.
Wm. Rob.	William Robinson's Reports, Admiralty, 3 vols., 1838—1850	Eng.
Wms. Saund.	Williams' Notes to Saunders' Reports, 2 vols.	Eng.
Wolf. & B.	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864	Eng.
Wolf. & D.	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858	Eng.
Woll.	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841	Eng.
Wood	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798	Eng.
Y. A. D.	Young's Vice-Admiralty Reports	Can.

Y. & C. Ch. Cas. ...	Younge and Collyer's Reports, Chancery Cases, 2 vols., 1841—1843	Eng.
Y. & C. Ex.	Younge and Collyer's Reports, Exchequer in Equity, 4 vols., 1833—1841	Eng.
Y. & J.	Younge and Jervis' Reports, Exchequer, 3 vols., 1826—1830...	Eng.
Y. B.	Year Books	Eng.
Y. B. (Rolls Series) ...	Year Books (Rolls Series)	Eng.
Y. B. (Sel. Soc.)... ...	Year Books (Selden Society)	Eng.
Y. S. C. P.	Yearly Practice of the Supreme Court	Eng.
Yelv.	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613 ...	Eng.
You.	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832 ...	Eng.

ABBREVIATIONS

USED IN THIS WORK.

(For Abbreviations used in citing Reports, *see* pp. xv—xxxi, *ante*.)

A.-G.	for Attorney-General.
Act.	„ Actiengesellschaft.
Add.	„ Additional.
Admlty.	„ Admiralty.
Affd.	„ Affirmed.
Affg.	„ Affirming.
Akt.	„ Aktiengesellschaft; Aktiebolaget; Aktieselskabet.
Alta.	„ Alberta.
Anon.	„ Anonymous.
Apld.	„ Applied.
Appct.	„ Applicant.
Appln.	„ Application.
Appln.	„ Application to Register a Trade Mark.
Applt.	„ Appellant.
Apprvd.	„ Approved.
Arbn.	„ Arbitration.
Archbp.	„ Archbishop.
Art.	„ Article.
Ass. Tax Case	„ Assessed Tax Case.
Assce.	„ Assurance.
Assocn.	„ Association.
B. C.	„ Borough Council.
B. C.	„ British Columbia.
Bkpcy.	„ Bankruptcy.
Bkpt.	„ Bankrupt.
Bldg. Soc.	„ Building Society.
Bp.	„ Bishop.
C. A.	„ Court of Appeal.
C. & S. L. Ry. Co.	„ City & South London Railway Co.
C. C. A.	„ Court of Criminal Appeal.
C. C. R.	„ County Court Rules.
C. C. R.	„ Court of Crown Cases Reserved.
C. L. P. Act.	„ Common Law Procedure Act.
C. L. Ry. Co.	„ Central London Railway Co.
C. O. R.	„ Crown Office Rules.
C. S. U. C.	„ Consolidated Statutes of Upper Canada.
Ca. sa.	„ *Capias ad satisfaciendum.*
Cale. Ry. Co.	„ Caledonian Railway Co.
Ch.	„ Chancery.
Ch. Div.	„ Chancery Division.
Co.	„ Company.
Co-op. Assocn.	„ Co-operative Supply Association.
Comrs.	„ Commissioners.
Consd.	„ Considered.
Corpn.	„ Corporation.
Ct.	„ Court.
Ct. of Ch.	„ Court of Chancery.
Ct. of Eq.	„ Court of Equity.
Ct. of R.	„ Court of Review.
D. C.	„ Divisional Court.
Dbtd.	„ Doubted.

Deft.	for Defendant.
Distd.	„ Distinguished.
Div. Ct.	„ Divisional Court.
Eccl. Comrs.	„ Ecclesiastical Commissioners.
Eccl. Ct.	„ Ecclesiastical Court.
Ex. Ch.	„ Exchequer Chamber.
Ex p.	„ *Ex parte.*
Exch.	„ Exchequer.
Exor.	„ Executor.
Exorship.	„ Executorship.
Expld.	„ Explained.
Extd.	„ Extended.
Extrix.	„ Executrix.
Fi. fa.	„ *Fieri facias.*
Folld.	„ Followed.
G. & S. W. Ry. Co.	„ Glasgow & South Western Railway Co.
G. C. Ry. Co.	„ Great Central Railway Co.
G. E. Ry. Co.	„ Great Eastern Railway Co.
G. N. of Scotland Ry. Co.	„ Great North of Scotland Railway Co.
G. N. Picc. & Brompton Ry. Co	„ Great Northern, Piccadilly & Brompton Railway Co.
G. N. Ry. Co.	„ Great Northern Railway Co.
G. S. & W. Ry. Co. of Ireland	„ Great Southern & Western Railway Co. of Ireland.
G. W. Ry. Co.	„ Great Western Railway Co.
Govt.	„ Government.
Grdns.	„ Guardians or Guardians of the Poor.
H. C. of A.	„ High Court of Australia.
H. L.	„ House of Lords.
I. R. Comrs.	„ Inland Revenue Commissioners.
Insce.	„ Insurance.
JJ.	„ Justices.
Jud. Act	„ Judicature Act.
K. B. Div.	„ King's Bench Division.
L. & B. Ry. Co.	„ London & Brighton Railway Co.
L. & N. E. Ry. Co.	„ London & North Eastern Railway Co.
L. & N. W. Ry. Co.	„ London & North Western Railway Co.
L. & S. W. Ry. Co.	„ London & South Western Railway Co.
L. & Y. Ry. Co.	„ Lancashire & Yorkshire Railway Co.
L. B.	„ Local Board.
L. B. & S. C. Ry. Co.	„ London, Brighton & South Coast Railway Co.
L. C.	„ Lord Chancellor.
L. C. & D. Ry. Co.	„ London, Chatham & Dover Railway Co.
L. C. C.	„ London County Council.
L. Elec. Ry. Co.	„ London Electric Railway Co.
L. G. Board	„ Local Government Board.
L.J.	„ Lord Justice.
L.JJ.	„ Lords Justices.
L. M. & S. Ry. Co.	„ London, Midland & Scottish Railway Co.
L. T. & S. Ry. Co.	„ London, Tilbury & Southend Railway Co.
M. S. Act	„ Merchant Shipping Act.
M. S. & L. Ry. Co.	„ Manchester, Sheffield & Lincolnshire Railway Co.
Mags.	„ Magistrates.
Man.	„ Manitoba.
Mentd.	„ Mentioned.
Met. Dist. Ry. Co.	„ Metropolitan District Railway Co.
Met. Ry. Co.	„ Metropolitan Railway Co.
Mid. G. W. Ry. Co.	„ Midland Great Western Railway Co.
Mid. Ry. Co.	„ Midland Railway Co.
Mtge.	„ Mortgage.
Mtgee.	„ Mortgagee.
Mtgor.	„ Mortgagor.
N. B.	„ New Brunswick.
N. B. Ry. Co.	„ North British Railway Co.
N. E. Ry. Co.	„ North Eastern Railway Co.
N. F.	„ Not Followed.
N. P.	„ Nisi Prius.

N. S.	for Nova Scotia.
N. W. P.	,, North-West Provinces.
N. W. T.	,, North-West Territories.
Ont.	,, Ontario.
Ord.	,, Order.
Overd.	,, Overruled.
P. C.	,, Privy Council.
P. E. I.	,, Prince Edward Island.
Petn.	,, Petition or Election Petition.
Pltf.	,, Plaintiff.
Q. B. Div.	,, Queen's Bench Division.
Qu.	,, *Quære.*
Que.	,, Quebec.
R. C.	,, Rural Council.
R. D. C.	,, Rural District Council.
R. S. A.	,, Rural Sanitary Authority.
R. S. C.	,, Revised Statutes of Canada.
R. S. C.	,, Rules of the Supreme Court, 1883.
Refd.	,, Referred.
Regn. of Trade Mk.	,, Registration of Trade Mark.
Regr. of Trade Mks.	,, Registrar of Trade Marks.
Resp.	,, Respondent.
Restg.	,, Restoring.
Revsd.	,, Reversed.
Revsg.	,, Reversing.
Ry. Co.	,, Rail. Co. or Railway Co.
S. C.	,, Same Case.
S. C. (name of colony following)	,, Supreme Court of a Colony.
S. E.	,, Settled Estates.
S. E. & C. Ry. Co.	,, South Eastern & Chatham Railway Co.
S. E. Ry. Co.	,, South Eastern Railway Co.
S. P.	,, Same Point.
S.S.	,, Steamship.
Sask.	,, Saskatchewan.
Sched.	,, Schedule.
Sci. fa.	,, *Scire facias.*
Sect.	,, Section.
Set. Land Act	,, Settled Land Act.
Settlmt.	,, Settlement.
Soc.	,, Society.
Soc. Anon.	,, Société Anonyme, etc.
Solr.	,, Solicitor.
Trade Mk.	,, Trade Mark.
Tram. Co.	,, Tramways Company.
U. C.	,, Urban Council.
U. D. C.	,, Urban District Council.
U. S. A.	,, United States of America.
Union Assmt. Com.	,, Union Assessment Committee.
Urban S. A.	,, Urban Sanitary Authority.
V.-C.	,, Vice-Chancellor.
Workmen's Comp. Act	,, Workmen's Compensation Act.
Y. T.	,, Yukon Territory.

MEANING OF TERMS

USED IN CLASSIFYING ANNOTATING CASES.

THE different expressions used to describe the effect of the annotating cases have the following meanings, and the classification of the annotating cases has been done strictly in accordance with these meanings. The annotating cases, except such as are classified as "Mentioned," are grouped according to the points in the case which they annotate: within these groups they are listed chronologically, except such as are classified as "Referred to," which come at the end of the group and are arranged *inter se* in chronological order. Cases which annotate the annotated case generally are grouped together after cases which annotate specific points, similarly arranged, and are followed by cases classified as "Mentioned" arranged chronologically *inter se*. The terms used in classifying the annotating cases are as follows:—

"APPLIED" (Apld.).—This expression is used to denote the fact that the principle of law enunciated in the annotated case has been applied to a new set of facts and circumstances in the annotating case.

"APPROVED" (Apprvd.).—This expression is used to denote the fact that the annotated case has been considered to be good law in the annotating case where the latter is in a higher court than the former.

"CONSIDERED" (Consd.).—This expression is used where the remarks in the annotating case are devoid of adverse criticism and merely denote the giving of more or less careful consideration to the annotated case.

"DISTINGUISHED" (Distd.).—This expression is used where the earlier case is not necessarily doubted, but where some essential difference (either on the facts or in law) between it and the annotated case is pointed out.

"DOUBTED" (Dbtd.).—This expression is used where the court in the annotating case without definitely going to the length of saying that the annotated case is wrong, adduces reasons which seem to show that it is not accurate.

"EXPLAINED" (Expld.).—This expression is used where the earlier case is not necessarily doubted, but the decision arrived at is justified or accounted for by calling attention to some point of fact or of law which is usually, but not necessarily, one not obvious on the face of the report.

"EXTENDED" (Extd.).—Compare "APPLIED," *supra*.

"FOLLOWED" (Folld.).—This expression is used to denote that the same principles of law are applied in the two cases. It does not necessarily imply that the facts are substantially identical in the two cases.

"NOT FOLLOWED" (N.F.).—Compare "FOLLOWED," *supra*, to which it is the adverse.

"OVERRULED" (Overd.).—This expression is used where the annotating case is on substantially identical facts with the annotated case and in a higher court and the rule in the latter case is held to be wrong.

"REFERRED" (Refd.).—This expression is used only where the annotating case deals with the point of the Digest paragraph and is without comment of any definite character on the case annotated, and where there is no delicate shade of approval or disapproval which would justify the use of any of the foregoing words.

"MENTIONED" (Mentd.).—This expression is used only where none of the foregoing terms apply. In other words, it is used only where the case annotated is cited on a point having nothing to do with the point in the Digest paragraph.

TABLE OF CASES.

INCLUDING CASES FROM THE COURTS OF SCOTLAND, IRELAND, THE EMPIRE OF INDIA, AND DOMINIONS BEYOND THE SEAS.

The Figures in **Black Type** *relate to Volumes.*

The Figures in Ordinary Type *relate as regards English cases to the number of the case, and as regards other cases to the page in the Supplement on which the case appears.*

A.

— *v.* — (1839); **19.** *Eccl.* No. 4034
A. *v.* A. (Can.); **27.** *H. & W.* pp. 25, 37, 38
A. & B., *Re* (Can.); **35.** *Mtge.* p. 48
A. & B. Taxis, Ltd., *Re* (Ir.); **10.** *Coys.* p. 78
— *v.* Secretary of State for Air (1922); **11.** *Const. L.* No. 499a
A. & C. Black, Ltd. *v.* Claude Stacey, Ltd. (1929); **13.** *Coprt.* No. 196a
A. & M., *Re* (1926); **4.** *Bkpcy.* Nos. 226a, 1879a
A. Hobrecker, Ltd. *v.* Wilson (Can.); **27.** *H. & W.* p. 14
A.'s Estate, *Re* (Can.); **21.** *E. D.* p. 16
A. B.'s Application, *Re* (1902); **36.** *Pat.* No. 1352a
A. B.'s Committee *v.* Simpson (1928); **28.** *Inc. T.* No. 545g
A. B.'s Petition, *Re* (1927); **3.** *Basty.* Nos. 130d, 130e; **16.** *Courts*, No. 280a
—, *Re* (1928); **27.** *H. & W.* No. 4280a
A. C. Cossor, Ltd. *v.* Patents Comr. (Can.); **36.** *Pats.* p. 79
A. C. Spark Plug Co., Ltd. *v.* Canadian Spark Plug Service, Super Refined Motor Oils & Timothy William Brazil (Can.); **43.** *Trade Mks.* p. 24
— *v.* Logan (Can.); **43.** *Trade Mks.* p. 47
A. D. Raj *v.* R. (Ind.); **25.** *Gaming*, p. 37
A. K. A. C. T. V. Chettyar (Firm) *v.* Income Tax Comr. (Ind.); **16.** *Cr. Pract.* p. 32; **28.** *Inc. T.* p. 103
A. R. Williams Machinery Co., Ltd. *v.* Moore (Can.); **8.** *Chos.* p. 92
A. T. S., Ltd. *v.* Handley Page, Ltd. (1936); **36.** *Pats.* No. 459m
A. W., Ltd. *v.* Cooper & Hall, Ltd. (1925); **13.** *Cty. Cts.* Nos. 645a, 783a
Aarnes *v.* Aarnes (Can.); **3.** *Basty.* p. 53
Aaronson *v.* Ghadieh (1936); **17.** *Dep.* No. 716f
Abakah Nthah *v.* Anguah Bennieh (1931); **17.** *Dep.* No. 656a
Abalian *v.* Innous (1936); *Pract.* No. 2092a
Abass *v.* Globe & Rutgers F. Insurance Co. (Can.); **29.** *Insce.* p. 57
Abbey *v.* Barnstyn (1930); **31.** *L. & T.* No. 7359c
Abbey Sports Co., Ltd. *v.* Priest Bros. (1936); **43.** *Trade Mks.* Nos. 610a, 1431d
Abbotsford Lumber Co. *v.* Stevenson (Can.); **9.** *Coys.* p. 48
Abbott *v.* Abbott (1931); **27.** *H. & W.* Nos. 4171a, 5405a
— *v.* — (1936); **36.** *Prtnrs.* No. 1645a
— *v.* Bank of Montreal (Can.); **3.** *Bank.* p. 33
— *v.* Bank of Toronto (Can.); **3.** *Bank*, p. 33
— *v.* Davis (Can.); **36.** *Negl.* p. 23
Abbott *v.* McDougall & Cowans (Can.); **1.** *Agcy.* p. 66
— *v.* Union Trustee Co. (Aus.); **23.** *Exors.* p. 14
Abdul Aziz Khan *v.* Nanhe Khan (Ind.); **28.** *Infts.* p. 137
Abdul Ghafur *v.* Hussain Bibi (Ind.); **22.** *Evid.* p. 5
Abdul Hamid *v.* Muhammad Afzal (Ind.); **2.** *Arbn.* p. 87
Abdul Rahaman *v.* R. (Ind.); **14.** *Crim.* p. 32
Abdul Rahman *v.* D. K. Cassim & Sons (Ind.); **17.** *Dep.* p. 84
Abdul Razack *v.* Khandi Row (Ind.); **2.** *Aliens*, p. 45
Abdul Sattar *v.* V. E. A. R. M. Chettyar Firm (Ind.); **4.** *Bkpcy.* p. 10
Abdul Shakur *v.* Nand Lal (Ind.); **31.** *L. & T.* p. 55
Abdul Vahad, etc. *v.* Hasanalli Atibhai, etc. (Ind.); **9.** *Coys.* p. 22
Abdur Rahim *v.* Mahomed Barkat Ali (Ind.); **21.** *Estpl.* p. 32
Abdur Rahman, son of Ismail *v.* Abdur Rahman, son of Zahuri (Ind.); **20.** *Elect.* p. 8
Abdur Rashid *v.* R. (Ind.); **30.** *Juries*, p. 33
A'Beckett *v.* Trustees, Executors & Agency Co. (Aus.); **37.** *Powers*, p. 27
Abel *v.* Cooke (Can.); **18.** *Discy.* p. 22
— *v.* Cooke & Lloydminster & District Hospital Board (Can.); **34.** *Med.* p. 187
Abell *v.* Screech (1804); **24.** *Exors.* No. 8768a
Abell (John) Engine & Machine Works Co. *v.* Scott (Can.); **21.** *Exon.* pp. 51, 52
Abercorn Estates Co. *v.* Edinburgh Assessor (Scot.); **38.** *Rates*, p. 52
Abercrombie's Will Trusts, *Re*, Public Trustee *v.* Abercrombie (1931); **24.** *Exors.* No. 8757a
Abercromby *v.* Morris (1932); **39.** *Revenue*, No. 145a
Aberdeen Assessor *v.* Aberdeen Cemetery Co., Ltd., (Scot.); **7.** *Burial*, p. 42
— *v.* Collie (Scot.); **30.** *Jdgmts.* p. 27; **38.** *Rates*, p. 54
— *v.* Lumsden's Heirs (Scot.); **38.** *Rates*, p. 54
— *v.* Trades Hospital (Master) (Scot.); **7.** *Burial*, p. 42.
Aberdeen Grit Co. *v.* Ellerman's Wilson Line (Scot.); **41.** *Ship.* p. 34
Aberdeen Harbour Comrs. *v.* Stott (Scot.); **25.** *Fish.* p. 3
Aberdeen Supply Comrs. *v.* Russell (Scot.); **28.** *Inct. T.* p. 58
Aberdeenshire Assessor *v.* Marr's Trustees (Scot.); **38.** *Rates*, p. 53

Abergavenny Settled Estates, *Re*, Abergavenny (Marquis) *v.* Nevill (1926); **21.** *E. D.* No. 274a
Abernethy-Lougheed Logging Co. (Can.); **4.** *Bkpcy.* p. 37.
Abeyesekera *v.* Jayatilake (1932); **17.** *Dep.* Nos. 17a, 712c
Abhiramavalli *v.* Madras Official Trustees (Ind.); **27.** *H. & W.* p. 9
Abid-Ud-Din *v.* Bisharat Ali, etc., Raoof-Un-Din, etc. (Ind.); **21.** *Estpl.* p. 30
Abigail *v.* Lapin (Aus.); **35.** *Mtge.* p. 41
Abraham, *Re* (Can.); **5.** *Bkpcy.* p. 51
Abraham *v.* Abraham & Harding (1919); **3.** *Barr.* No. 383b
— *v.* A.-G. (1934); **2.** *Aliens*, No. 20a
— *v.* Durban Corpn. (S. Af.); **17.** *Dep.* p. 65
Abram S.S. Co. *v.* Westville Shipping Co. (1923); **3.** *Barr.* No. 421a
Abramson *v.* United States Fire Insurance Co. (Can.); **18.** *Discy.* p. 16
Absalom *v.* United Insurance Co., Ltd. (Aus.); **29.** *Insce.* p. 37
Absalom (F. R.), Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933); **2.** *Arbn.* No. 1603b; **7.** *Bldg. Conts.* No. 87a
Absolom *v.* Gething (1863); **25.** *Fr. Soc.* No. 51a
Abubaker Haji Abdulla, *Re* (Ind.); **5.** *Bkpcy.* p. 80
Acadia Coal Co. *v.* McNeil (Can.); **36.** *Negl.* pp. 9, 22
Acadia Coal Co.'s Assessment, *Re* (Can.); **38.** *Rates*, p. 63
Accountants & Auditors Society *v.* Goodway & London Assocn. of Accountants, Ltd. (1907); **28.** *Injon.* No. 906b
Accumulator Industries, Ltd. *v.* Vandervell & Co. (1912); **28.** *Injon.* No. 830a
Achilli *v.* Tovell (1927); **28.** *Injon.* No. 677a
Achillopoulos, *Re*, Johnson *v.* Mavromichali (1928); **23.** *Exors.* No. 2441a
Achutha Naidu *v.* Oakley, Bowden & Co. (Ind.); **1.** *Agcy.* p. 74
Ackerman *v.* Morrison (Can.); **39.** *S. Goods*, p. 49
Ackles *v.* Beatty (Can.); **1.** *Agcy.* p. 87
Acklom, *Re*, Oakeshott *v.* Hawkins (1929); **40.** *Stllmts.* No. 2739a
Ackton Hall Colliery Co., Ltd. *v.* Barker (1937); **34.** *Mast. & S.* No. 3922c
Acme Grain Co., Ltd. *v.* Wenaus (Can.); **12.** *Contr.* p. 4
Acme Products, Ltd., *Re*, Hopps' Case (Can.); **9.** *Coys.* p. 17
Acme Spinning Co., Ltd., *Re*, *Re* Amalgamated Cotton Mills Trust, Ltd. (1937); **9.** *Coys.* No. 839b
Acme Steel Goods Co. of Canada, Ltd. *v* Walsh Construction Co., Ltd. (Can.); **1.** *Agcy.* p. 58
Acorn *v.* MacDonald (Can.); **42.** *Str. Traf.* p. 39
Acuna *v.* Bingley (1616); **1.** *Action*, No. 366a
Acutt *v.* Acutt (Scot.); **11.** *Confl.* p. 23
Adair, *Ex p.*, *Re* Gross (1871); **3.** *Bank.* No. 347
— *v.* Clare (1937); **29.** *Insce.* No. 2771a
— *v.* Colville & Sons, Ltd. (Scot.); **34.** *Mast. & S.* p. 181
— *v.* Craighouse Cabinet Works (Scot.); **42.** *Str. Traf.* p. 56.
— *v.* Fleming (Scot.); **42.** *Str. Traf.* p. 55
— *v.* M'Garry (Scot.); **37.** *Prsns.* p. 33
— *v.* Tilton (Can.); **35.** *Misrep.* p. 5
Adair & Co., Ltd. *v.* Birnbaum (1938); **39.** *S. Goods*, No. 2585a
Adam, *Ex p.*, *Re* Cooke (1813); **4.** *Bkpcy.* No. 218b
— *v.* Jhavary (S. Af.); **17.** *Deeds*, p. 29
Adam *v.* Zomogen Food Products, Ltd. (Scot.); **34.** *Med.* p. 193
Adam Hilger, Ltd., *Re*, Twyman & Green Patents (1931); **36.** *Pats.* No. 1750c
Adami *v.* Adami (1929), **16.** *Cntmpt.* No. 1071a
Adams, The (1919); **1.** *Adm.* No. 1298b
— *v.* Adams (Aus.); **27.** *H. & W.* p. 40
— *v.* Baldwin (1935); **26.** *Hghys.* No. 1481a
— *v.* Camfoni (1929); **30.** *Intox.* No. 733a
— *v.* Fairweather (Can.); **19.** *Easmt.* p. 6
— *v.* Galloway (1925); **2.** *Animals*, No. 690a
— *v.* Huck (Can.); **20.** *Elect.* p. 8
— *v.* Huck (No. 2) (Can.); **20.** *Elect.* p. 3
— *v.* Jenks (1937); **42.** *Str. Traf.* No. 5e
— *v.* Jennings (Can.); **34.** *Mast. & S.* p. 11
— *v.* Liverpool Corpn. (1927); **34.** *Mast. & S.* No. 628a
— *v.* London General Insurance Co. (1932); **29.** *Insce.* No. 3217v
— *v.* London Improved Motor Coach Builders, Ltd. (1921); *Pract.* No. 4086a
— *v.* Loomis (Can.); **27.** *H. & W.* p. 8
— *v.* Lunenburg Gas Co. (Can.); **9.** *Coys.* p. 21.
— *v.* M'Goldrick (Ir.); **31.** *L. & T.* p. 47
— *v.* Medhurst & Sons Pty., Ltd. (Aus.); **31.** *L. & T.* p. 63
— *v.* Morgan & Co. (1924); **1.** *Agcy.* No. 1872a
— *v.* Musker (1930); **28.** *Inc. T.* No. 540d
— *v.* Rau (Aus.); **39.** *Revenue*, p. 13
Adams & Adams *v.* Betts (Can.); **42.** *Str. Traf.* p. 60
Adams & Bafealds Case (1591); **34.** *Mast. & S.* No. 1306c
Adams & Westlake *v.* Wright (E. T.), Ltd. (Can.); **36.** *Pats.* p. 67
Adams (Francis), Ltd. *v.* Fishwick (1928); **9.** *Coys.* No. 3335a
Adams River Lumber Co. *v.* Kamloops Sawmills, Ltd. (Can.); **16.** *Cr. Pract.* p. 33
Adams Shoe Co., *Re*, *Ex p.* Penetanguishene Town (Can.); **4.** *Bkpcy.* pp. 24, 38
Adamson *v.* Adamson (Can.); **38.** *Real Prop.* p. 99
— *v.* A.-G. (1933); **21.** *E. D.* No. 67a
— *v.* Birkenhead Corpn. (1937); *Pract.* No. 4631a
— *v.* Duncan's Exors. (1935); **28.** *Inc. T.* No. 576e
— *v.* Kenworthy (1931); **36.** *Pats.* No. 49a
— *v.* Melbourne & Metropolitan Board of Works (1929); **42.** *Stat.* No. 342a
— *v.* Newcastle Steam-Ship Freight Insurance Assocn. (1879); **12.** *Contr.* No. 3178a
— *v.* Union Cold Storage Co., Ltd. (1931); **28.** *Inc. T.* No. 217b
— *v.* Vachon (Can.); **22.** *Evid.* p. 15
Adamson & Co. *v.* Collins (1938); **28.** *Inc. T.* No. 252h
Adamson (Daniel) & Co., Ltd. & Kerfoot Application for a Patent No. 353,087, *Re* (1932); **36.** *Pats.* No. 1468a
Adanac Grain Co., Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 32
Adansonia Fibre Co., *Re*, Miles' Claim (1874); **6.** *B. of Exch.* No. 691a
Adari Sanyasi *v.* Nookalamma (Ind.); **32.** *Lien*, p. 23
Addie (R.) & Sons (Collieries) *v.* Dumbreck (1929); **36.** *Negl.* No. 457a
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 43
— *v.* McAllister (1937); **34.** *Mast. & S.* No. 2970e
— *v.* McCracken (1936); **34.** *Mast. & S.* No. 3288t
Addington Election, *Re* (Can.); **20.** *Elect.* p. 3
Adelaide Corpn. *v.* Australasian Performing Right Assocn., Ltd. (Aus.); **13.** *Coprt.* p. 16
Adelaide Electric Supply Co., Ltd. *v.* Prudential Assurance Co., Ltd. (1934); **35.** *Money*, No. 17i
Adelaide, Local Court, Action, *Re*, Burke *v.* Staehr (Aus.); **16.** *Cr. Pract.* p. 40; **33.** *Mags.* p. 35

Adelaide Mortgage & Investment Co., Ltd., *Re* (Aus.); **9.** *Coys.* p. 11
Adelaide Oil Exploration Co., Ltd. *v.* Goldfields Diamond Drilling Co. (Proprietary), Ltd. (Aus.); **7.** *Bldg. Conts.* p. 21
Adelkind *v.* Amies (Can.); **39.** *S. Goods*, p. 58
Adelmann & Ham Boiler Corpn. *v.* Llanrwst Foundry Co. (1928); **36.** *Pats.* No. 308a
Adelom, *Re*, Oakshott *v.* Hawkins (1928); **40.** *Stllmts.* No. 2739a
Adey *v.* Adey (Aus.); **27.** *H. & W.* p. 32
Adib el Hinnawi *v.* Yacoub Fahmi Abu el Huda el Faruqi (1936); **6.** *B. of Exch.* No. 1086a
Adjai Coal Co. *v.* Panna Lal Ghosh (1930); **34.** *Mines*, No. 540a
Adler (Wm.) & Co., Ltd., *Re* (1935); **10.** *Coys.* No. 6880a
Administration Act, *Re*, *Re* Haddon (Can.); **28.** *Infts.* p. 141
Admiralty, The *v.* Mills (1908); **3.** *Bank.* No. 338a
Admiralty Comrs. *v.* National Provincial & Union Bank of England, Ltd. (1922); **3.** *Bank.* No. 333a
— *v.* Valverda Owners (1938); **39.** *Royal F.* No. 56b
Adolph *v.* Hilton & Stephens (Can.); **21.** *Exon.* p. 58
Adriatic, The (1931); **11.** *Confl.* No. 694a
Advance-Rumely Thresher Co. *v.* Braunstein (Can.); **32.** *Lien*, p. 22; **39.** *S. Goods*, p. 60
— *v.* Selbee (Can.); **39.** *S. Goods*, p. 60
— *v.* Zomar (Can.); **22.** *Evid.* p. 23; **39.** *S. Goods*, p. 60
Advance Rumely Thresher Co. Incorporated *v.* Manske (Can.); **17.** *Deeds*, p. 29
— *v.* Service (Can.); **1.** *Agcy.* p. 108
— *v.* Yorga (Can.); **12.** *Contr.* p. 9
Advocate, An, *Re* (Ind.) (1923); **3.** *Barr.* p. 48
—, *Re* (Ind.) (1929); **17.** *Dep.* p. 84
Advocate, H.M. *v.* A. E. (Scot.); **15.** *Crim.* p. 97
— *v.* Aitken (Scot.); **14.** *Crim.* p. 40
— *v.* Anderson (Scot.); **15.** *Crim.* p. 94
— *v.* Bickerstaff (Scot.); **14.** *Crim.* pp. 20, 36
— *v.* Carson (Scot.); **14.** *Crim.* p. 50
— *v.* Grainger & Rae (Scot.); **15.** *Crim.* p. 94
— *v.* Joseph (Scot.); **14.** *Crim.* p. 37
— *v.* Keen (Scot.); **14.** *Crim.* p. 39
— *v.* Lee (Scot.); **14.** *Crim.* p. 44
— *v.* Lieser (Scot.); **14.** *Crim.* p. 40
— *v.* Logan (Scot.); **15.** *Crim.* p. 94
— *v.* M'Fadyen (Scot.); **14.** *Crim.* p. 39
— *v.* M'Phee (Scot.); **15.** *Crim.* p. 89
— *v.* Macphie (Scot.); **14.** *Crim.* p. 44
— *v.* Montgomery (Scot.); **15.** *Crim.* p. 95
— *v.* Ritchie (Scot.); **14.** *Crim.* p. 3
— *v.* Savage (Scot.); **15.** *Crim.* p. 89
— *v.* Semple (Scot.); **15.** *Crim.* p. 94.
— *v.* Sharp (Scot.); **14.** *Crim.* p. 3
— *v.* Tully (Scot.); **42.** *Str. Traf.* p. 52
Advocate-General of Bengal *v.* Webb-Johnson (Ind.); **8.** *Char.* p. 81
Aeneas, The (1935); **41.** *Ship.* No. 6165a
Aeolian Co., Ltd. *v.* Inland Revenue Comrs. (1936); **28.** *Inc. T.* No. 99p
Aerial Advertising Co. *v.* Batchelors Peas, Ltd. (Manchester) (1938); **12.** *Contr.* No. 3166b; **17.** *Damgs.* No. 389a
Aeronautics in Canada, Regulation & Control of, *Re* (1932); **17.** *Dep.* No. 130g
Affréteurs Réunis Société Anonyme *v.* Leopold Walford (London), Ltd. (1919); **1.** *Agcy.* No. 1786a
African Guarantee & Indemnity Co., Ltd. *v.* Thorpe (S. Af.); **26.** *Guar.* p. 7
Agar *v.* East St. Paul Rural Municipality (Can.); **38.** *Rates*, p. 77
— *v.* Nokes (1905); **41.** *Sewers*, No. 304a
Ager *v.* Gates (1934); **36.** *Nuis.* No. 774a
Agha Husain *v.* Qasim Ali (Ind.); **21.** *Exon.* p. 48
Agnew *v.* Ellen (Can.); **36.** *Ncgl.* p. 37
— *v.* Hamilton (Can.); **31.** *L. & T.* p. 51
Agricultural Credit Corpn. *v.* Vale (Ir.); **28.** *Inc. T.* p. 16
Agricultural Fire Insurance Co. of Watertown, New York Claim, Clarke *v.* Union Fire Insurance Co. (Can.); **29.** *Insce.* p. 3
Agricultural Holdings Act, 1923, *Re*, O'Connor *v.* Brewin (1933); **2.** *Agric.* No. 266cc
Agricultural Wholesale Society, *Re* (1929); **10.** *Coys.* Nos. 6394a, 6396a, 6409a
Agricultural Wholesale Society *v.* Biddulph & District Agricultural Society (1925); **9.** *Coys.* Nos. 431a, 1226a
Agriculture for Scotland, Department of *v.* Goodfellow (Scot.); **2.** *Agric.* p. 1
Ahamath *v.* Sariffa Umma (1931); **16.** *Courts*, No. 546a
Ah Chuck *v.* Needham (N.Z.); **3.** *Bastly.* p. 53
Aheir *v.* Caplette (Can.); **2.** *Animals*, p. 69
Ahern, *Ex p.* (Aus.); **42.** *Solrs.* p. 2
Ahmadpur-Katwa Ry. Co., Ltd., *Re* (Ind.); **28.** *Inc. T.* p. 16
Ahmed Angullia Bin Hadjee Mohamed Salleh Angullia *v.* Estate & Trust Agencies (1927), Ltd. (1938); **23.** *Exors.* No. 5461a
Ahmed Hamid Moussa, *Ex p.*, R. *v.* Graham Campbell (1921); **2.** *Aliens*, Nos. 553d, 558h, 558i
Ahmed Hassan *v.* Hassan Mahomed Malek (Ind.); **12.** *Contr.* p. 22
Ahmed Sait *v.* Bank of Mysore (Ind.); **3.** *Bank*, p. 41
Ahrens, Ltd. *v.* Cohen (George) Sons & Co., Ltd. (1934); **39.** *S. Goods*, No. 1461b
Ah Yet *v.* Union Government (S. Af.); **2.** *Aliens*, p. 51
Ah You *v.* Gleeson (Aus.); **2.** *Aliens*, p. 48
Aickin *v.* Baxter (Can.); **17.** *Damgs.* pp. 5, 6
— *v.* Baxter & Co. (Can.); **44.** *Work*, p. 58
Aidall, Ltd., *Re* (1933); **10.** *Coys.* Nos. 6217a, 6315a
Aikenhead *v.* Spivak (Can.); **35.** *Mtge.* p. 35
Aikens *v.* O'Brien (Can.); **32.** *Lien*, p. 23
Aikins, *Re* (Can.); **23.** *Exors.* p. 26
— *v.* Blain (Can.); **21.** *Estpl.* p. 24
Aikman *v.* Burdick Brothers (Can.); **1.** *Agcy.* pp. 60, 71
— *v.* Mills & Co., Ltd. (Can.); **38.** *Pub. Auth.* p. 4
— *v.* Nulls & Co. (Can.); **34.** *Mast. & S.* p. 16
Ailsa (Marquess) *v.* Monteforte (Scot.); **44.** *Waters*, p. 4
Ainley *v.* Edens (1935); **28.** *Inc. T.* No. 244b
— *v.* Lowey (Can.); **2.** *Agric.* p. 4
Ainleyville Trustee Wesleyan Methodist Church *v.* Grewer (Can.); **22.** *Evid.* p. 11
Ainsbury *v.* Ainsbury (S. Af.); **27.** *H. & W.* p. 24
Ainslie *v.* Ainslie (Aus.); **11.** *Confl.* p. 54
Aird *v.* Johnson (Can.); **19.** *Eccl.* p. 31
Airedale Co-operative Worsted Manufacturing Society, Ltd., *Re* (1933); **28.** *Ind. Soc.* No. 96a
Airedale Garage Co., *Re*, Anglo-South American Bank *v.* Airedale Garage Co. (1933); **10.** *Coys.* No. 4982d; **38.** *Rates*, No. 1188a
Airey (H. W.) & Airey (P. B.), *Ex p.*, *Re* Airey (Edward) (1931); **4.** *Bkpcy.* No. 2905a
Airey (Edward) & Sons, *Re*, *Ex p.* Airey (H. W.) & Airey (P. B.) (1931); **4.** *Bkpcy.* No. 2905a
Aitchison *v.* Dowling (1936); **8.** *Carr.* No. 1563

Aitchison *v.* Galbraith (1936); **8.** *Carr.* No. 1656
— *v.* Page Motors, Ltd. (1935); **34.** *Mast. & S.* No. 1095a
Aitken *v.* McMeckan (1895); *Pract.* No. 2401a
Aitkin *v.* London, Midland & Scottish Ry. Co. (1936); **8.** *Carr.* No. 1696
Aiyaswamy Chetty *v.* Madras Official Assignee (Ind.); **5.** *Bkpcy.* p. 56
Aizkarai Mendi, The (1938); **36.** *Negl.* No. 953m
Ajudhia Prasad *v.* Chandau Lal (Ind.); **20.** *Eqy.* p. 20
Akbar Khan *v.* Attar Singh (1936); **6.** *B. of Exch.* No. 292a
Aker, *Ex p.*, *Re* Dominion Ticket, etc. Corpn. (Can.); **5.** *Bkpcy.* p. 57
Akerele (David Evaristo) *v.* R. (1934); **17.** *Dep.* No. 234c
Akerley *v.* Bellefleur (Can.); **19.** *Easmt.* p. 16
Akeroyd *v.* Strange (1932); **36.** *Pats.* No. 896a
Akers *v.* London & North Eastern Ry. Co. (1926); **34.** *Mast. & S.* No. 4055a
Akkayya *v.* Vanama Lakshamma (Ind.); **24.** *Exors.* p. 40
Akoon *v.* Jhavary (S. Af.); **31.** *L. & T.* p. 75
Akt. Fuer Stickstoffduenger *v.* Shawinigan Chemicals, Ltd. (Can.); **36.** *Pats.* p. 112
Akt. fur Autogene Aluminium Schweissung *v.* London Aluminium Co., Ltd. (No. 2) (1921); **18.** *Discy.* No. 1283a
Akt. Ocean *v.* Harding (B.) & Sons, Ltd. (1928); **41.** *Ship.* Nos. 1780a, 4001a, 4126a
Akties. Steam *v.* Arcos, Ltd. (1933); **41.** *Ship.* Nos. 1879d, 1879e, 4764a
Alabama Coal, Iron, Land & Colonization Co., Ltd. *v.* Mylam (1926); **28.** *Inc. T.* No. 122b
Alaire & Frechette, *Re* (Can.); **35.** *Mtge.* p. 31
Albatross S.S. Owners *v.* Ford Motor Co., Ltd. & Port of London Authority (1936); **44.** *Waters*, No. 831a
Albemarle Supply Co., Ltd. *v.* Hind & Co. (1928); **32.** *Lien*, No. 322a
Alberni Pacific Lumber Co., *Re*, Thomas *v.* Lawson (Can.); **10.** *Coys.* p. 82
Albert *v.* Albert (Can.); **27.** *H. & W.* p. 26
— *v.* Fraser Companies, Ltd. (Can.); **11.** *Confl.* p. 30
— *v.* Gramophone Co., Ltd. (Aus.); **13.** *Coprt.* p. 13
— *v.* Hoffnung & Co., Ltd. (Aus.); **13.** *Coprt.* p. 17
— *v.* Storey (Can.); **12.** *Contr.* p. 45; **18.** *Distr.* p. 27
Albert Mining Co. *v.* Spurr (Can.); **12.** *Contr.* p. 30
Albert Saunders' Registered Design No. 747,128, *Re*, Saunders *v.* Automotive Spares, Ltd. (1932); **43.** *Trade Mks.* No. 934a
Albert Wood & Amcolite, Ltd. *v.* Gowshall, Ltd. (1936); **36.** *Pats.* No. 2268b
Alberta Act, Section 17, *Re* (Can.); **17.** *Dep.* p. 40
Alberta Dental Assocn. *v.* Sharp (Can.); **34.** *Med.* p. 190
Alberta Election Act, *Re*, *Re* Bow Valley Election (Can.); **20.** *Elect.* p. 4
Alberta Government *v.* Canadian National Railways & Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 45
Alberta Legislation Reference, *Re* (Can.); **17.** *Dep.* p. 57
Alberta Lumber Co. *v.* Alberta Department of Agriculture, *Re* Froment (Can.); **4.** *Bkpcy.* p. 26
— *v.* Hines (Can.); **32.** *Lien*, p. 24
Alberta Potato & Vegetable Co. *v.* Canadian Pacific Ry. Co. (Can.); **8.** *Carr.* p. 4
Alberta Province, *Re*, *Re* Cardston U.F.A. Co-operative Assocn., Ltd. (Can.); **4.** *Bkpcy.* p. 39
Alberta Province's Claim, *Re*, *Re* Standard Pharmacy, Ltd. (Can.); **4.** *Bkpcy.* pp. 37, 38, 39
Alberta Provincial Treasurer *v.* Kerr (1933); **17.** *Dep.* No. 142b
Alberta Railway Legislation, *Re* (Can.); **17.** *Dep.* p. 51
Alberta Wheat Pool *v.* Nahajowicz (Can.); **18.** *Discy.* p. 8
Albion Machine Co., *Re* (Can.); **10.** *Coys.* p. 67
Albrecht *v.* Milk River Consolidated School District (Can.); **19.** *Educ.* p. 46
Albutt (W. J.) & Co., Ltd. *v.* Continental Guaranty Corpn. of Canada, Ltd. (Can.); **39.** *S. Goods*, p. 59
— *v.* Riddell (Can.); **39.** *S. Goods*, p. 57
Alcantara S.S. Owners *v.* Tovarisch S.S. Owners (1931); **41.** *Ship.* No. 5630a
Alchin *v.* Railways Comr. (Aus.); **38.** *Rys.* p. 39
Aldam *v.* Brown (1890); *Pract.* No. 2604b
Alderman *v.* Bannister (1826); **2.** *Agric.* No. 964a
— *v.* Great Western Ry. Co. (1937); **34.** *Mast. & S.* No. 2385a
— *v.* Kemp (Aus.); **27.** *H. & W.* p. 80
Alderson *v.* R. (Can.); **2.** *Animals*, p. 71
Alderton *v.* Essex County Council (1937); **33.** *L. G.* Nos. 717a, 717b
Aldington Court, The (1932); **41.** *Ship.* No. 4461a
Aldous *v.* Ross & Royal Bank of Canada, Williams, Manson, Brown & Harvey (Can.); **21.** *Exon.* p. 59
Aldred *v.* Aldred (S. Af.); **27.** *H. & W.* p. 24
Aldridge *v.* Wright (1929); **19.** *Easmt.* No. 210b
Aldwarke Co., Ltd. *v.* Inland Revenue Comrs. (1933); **28.** *Inc. T.* No. 674s
Alexander, *Ex p.*, *Re* Anderson (Aus.); **4.** *Bkpcy.* p. 9
— *v.* Alexander (1929); **27.** *H. & W.* No. 5680a
— *v.* A.-G. (Can.); **11.** *Confl.* p. 29; **21.** *E. D.* p. 18
— *v.* Canadian National Ry. (Can.); **8.** *Carr.* p. 7
— *v.* City & South London Ry. Co. (1928); **8.** *Carr.* No. 598b
— *v.* Cowie (Can.); **18.** *Distr.* p. 30
— *v.* Diamond (Can.); **18.** *Discy.* p. 17
— *v.* Kirkland (Can.); **34.** *Med.* p. 185
— (Charles) *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1938); **8.** *Carr.* No. 1562
— *v.* Rayson (1936); **30.** *L. & T.* No. 749a; *Pract.* No. 2228a
— *v.* Webber (1922); **1.** *Agcy.* No. 1638a
Alexander Brown Milling Co. *v.* Canadian Pacific Ry. Co. (Can.); **11.** *Comp. Pche.* pp. 8, 12
Alexander Drew & Sons, Ltd. *v.* Inland Revenue Comrs. (1932); **28.** *Inc. T.* No. 674r
Alexander Frew & Co., Ltd. *v.* Inland Revenue Comrs. (1931); **28.** *Inc. T.* No. 214a
Alexander Hamilton Inst. *v.* McNally (Can.); **12.** *Contr.* p. 30
Alexander Pirie & Son's Trade Mark Application, *Re* (1932); **43.** *Trade Mks.* Nos. 277b, 397a
Alexander's Estate, *Re* (Can.); **33.** *Lunat.* p. 16
—, *Re* (Ir.); **20.** *Eqy.* p. 31
Alexander's Will, *Re* (Nfld.); **8.** *Char.* p. 71
Alexandria Kerkraad of the Dutch Reformed Church *v.* Scheepers (S. Af.); **8.** *Char.* p. 75
Alexandrovna (Princess) *v.* Metro-Goldwyn-Mayer Pictures, Ltd. (1934); **32.** *Libel*, No. 24b
Alford *v.* Riley Newman, Ltd. (Aus.); **13.** *Corpns.* p. 35
Alford's Case (1662); **37.** *Perps.* No. 53
Alfred Dunhill, Ltd. *v.* Griffiths Bros. (1933); **36.** *Pats.* No. 1602a
Alfred Nonmus, *Re* (Aus.); **4.** *Bkpcy.* p. 41

Algemeene Bankvereeniging *v.* Langton (1935); **29.** *Insce.* No. 3260b
Algie *v.* Brown & Son, Ltd. (N.Z.); **36.** *Negl.* p. 17
Alien Enemy Property Custodian *v.* Passavant (Can.); **2.** *Aliens*, p. 40
Alington *v.* Booth (1856); **31.** *L. & T.* No. 6308b
Aliotis & Cliris, *Re* (Can.); **5.** *Bkpcy.* pp. 49, 67
Alisandiri *v.* R. (1937); **17.** *Dep.* No. 561a
Alison *v.* Alison (Aus.); **37.** *Powers*, p. 29
— *v.* Alison, *Re* Sutcliffe (1934); **44.** *Wills*, Nos. 6239a, 7086a
Alison (J. Gordon) & Co., Ltd. *v.* Wallsend Slipway & Engineering Co., Ltd. (1927); **17.** *Deeds*, No. 1735a
All Hallows, Lombard Street, *Re* (1937); **19.** *Eccl.* No. 2443h
All Risk Insurance Agencies, Ltd., *Re* (Can.); **10.** *Coys.* p. 97
All Souls' College, Oxford *v.* Middlesex County Council (1938); **2.** *Arbn.* No. 1177a
Allahabad Bank, Ltd., Lahore *v.* Rattan Chand Chawla (Ind.); **6.** *B. of Exch.* p. 10
Allan, *Ex p.*, *Re* Hercules Rubber Co. (Can.); **4.** *Bkpcy.* p. 38
—, *Re*, Roberts *v.* Robinson (1933); **44.** *Wills*, No. 5811b
— *v.* Bower (1790); **30.** *L. & T.* No. 503a
— *v.* Inland Revenue Comrs. (1925); **28.** *Inc. T.* No. 673a
— *v.* Levesconte (Can.); **27.** *H. & W.* p. 9
Allan Brown's, Ltd. & Dryall, *Re* (Can.); **9.** *Coys.* p. 53
Allan Grain Growers' Co-operative Assocn., *Re*, *Ex p.* Robinson, Little & Co. (Can.); **4.** *Bkpcy.* p. 28
Allatt *v.* London & North Eastern and London, Midland & Scottish Ry. Cos. (1935); **8.** *Carr.* Nos. 1505, 1694
Allbrighton, *Ex p.*, R. *v.* Leicester JJ. (1927); **30.** *Intox.* No. 381a
Allchurch *v.* Beresford (Aus.); **14.** *Crim.* p. 32
— *v.* Healey (Aus.); **30.** *Intox.* p. 9
— *v.* Popular Cash Order Co., Ltd. (Aus.); **35.** *Money*, p. 23
Allcock *v.* Manitoba Windmill & Pump Co. (Can.) *See* Vol. 39, pp. 464, 475.
— *v.* Moorhouse (1882). *See* Vol. 31, pp. 369, 401, 402, 423.
— *v.* Rogers (1918). *See* Vol. 34, p. 315.
Allen, *Re* (1935); **4.** *Bkpcy.* No. 2007a
—, *Re* (Aus.); **44.** *Wills*, 44
—, *Re*, *Ex p.* Board of Trade *v.* Nelson (1935); **4.** *Bkpcy.* No. 2007a
— *v.* Digby Colliery Co., Ltd. (1931); **34.** *Mast. & S.* No. 3668c
— *v.* Edmonton (City) (Can.); **43.** *Tram.* p. 49
— *v.* Embleton (1858); **40.** *Stlmts.* No. 2207a
— *v.* Farquharson Bros. & Co. (1932); **28.** *Inc. T.* No. 226c
— *v.* Froh (Can.); **34.** *Med.* p. 188
— *v.* Graham (Can.); **25.** *Gifts*, p. 47
— *v.* Hanson, *Re* Scottish Canadian Asbestos Co. (Can.); **10.** *Coys.* p. 106
— *v.* Harrison (Can.); **32,** *Lien*, p. 23
— *v.* Hornchurch Urban District Council (1938); **26.** *Hghys.* No. 2425a
— *v.* Jackson, *Re* Vinogradoff (1935); **43.** *Trusts*, No. 863a
— *v.* London Passenger Transport Board (1936); **38.** *Pub. Auth.* No. 1049b
— *v.* Lord (Can.); **36.** *Negl.* p. 15
— *v.* Margolinsky (1931); **28.** *Inc. T.* No. 204h
— *v.* Norfolk Co-operative Dairy Co., Ltd. (N.Z.); **7.** *B. of Sale*, p. 10
— *v.* O'Hearn & Co. (1937); **42.** *Stk. Ex.* No. 211a
Allen *v.* Royal Bank of Canada (1925); **12.** *Contr.* No. 3784c
— *v.* Siddons (1932); **34.** *Mast. & S.* No. 2340b
— *v.* Smith (Can.); **2.** *Animals*, p. 68
— *v.* Trehearne (1938); **28.** *Inc. T.* No. 569f
— *v.* Trusts & Guarantee Co., Ltd. (Can.); **2.** *Agric.* p. 25
— *v.* Waters & Co. (1935); **38.** *Pub. Hlth.* No. 335a
— *v.* Whitehead (1930); **14.** *Crim.* No. 616a; **30.** *Intox.* No. 716a
Allen & Bennett Brothers, Ltd.'s Patents, *Re* (1929); **36.** *Pats.* No. 1687d
Allen & Co., Ltd. *v.* Whiteman (1920); **1.** *Agcy.* No. 836b
Allen (David) & Sons Billposting, Ltd. *v.* Inland Revenue Comrs. (Scot.); **39.** *Rntchgs.* p. 8
Allen, Craig & Co. (London), Ltd. (1934); **9.** *Coys.* No. 3674a
Allen Estate, *Re* (Can.); **44.** *Wills*, p. 20
Allen General Supplies, Ltd. *v.* Ritchie (Can.); **39.** *S. Goods*, p. 58
Allen (Thomas), Ltd. *v.* Hagger (No. 1) (1931); **34.** *Mast. & S.* No. 3762a
— *v.* — (No. 2) (1931); **34.** *Mast. & S.* No. 4043a
— *v.* — (No. 3) (1931); **34.** *Mast. & S.* No. 3762b
Allen-Stoltze Lumber Co., Ltd. *v.* Summit Lake Lumber Co., Ltd. (Can.); **7.** *B. of Sale*, p. 1
Allenach *v.* Des Brisay (Can.); **21.** *Exon.* p. 53
Allester (D.), Ltd., *Re* (1922); **3.** *Bank.* No. 865a; **7.** *B. of Sale*, No. 138a
Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator (1931); **2.** *Aliens*, Nos. 389a, 389b
Alliance & Dublin Consumers' Gas Co. *v.* Davies (Ir.); **28.** *Inc. T.* p. 42
— *v.* M'Williams (Ir.); **28.** *Inc. T.* p. 13
Alliance Film Corpn., Ltd. *v.* Knoles (1927); **10.** *Coys.* No. 6436a
Alliance Finance Co. & Standard Motors, Ltd. *v.* Simons (Can.) (1928); **32.** *Lien*, p. 21; **39.** *S. Goods*, p. 59
Alliance Finance Co. & Standard Motors, Ltd. *v.* Simons Garage & Goodchap (Can.), (1925); **32.** *Lien*, p. 21
Alliance Trust Co. *v.* Johnson (Can.); **6.** *B. of Exch.* p. 9
Allied Amusements, Ltd. *v.* Reaney (Can.); **15.** *Crim.* p. 88
Allied Newspapers, Ltd. *v.* Hindsley (1937); **28.** *Inc. T.* No. 217c
Allied Oil & Gas Co., *Re*, Smith *v.* Trustee (Can.); **4.** *Bkpcy.* p. 24
Allingham, *Re*, Allingham *v.* Allingham (Aus.); **38.** *Real Prop.* p. 91
Allison, *Re* (Can.); **18.** *Desct.* p. 2
— *v.* Allison (1927); **27.** *H. & W.* No. 5523a
— *v.* Paice, *Re* Bogg (1917); **20.** *Eqy.* No. 1283a
— *v.* Smith (Can.); **38.** *Real Prop.* p. 99
Allnutt *v.* Mills (1925); **21.** *Estpl.* No. 204a
Alloa, Magistrates *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 17
Alloway *v.* Campbell (Can.); **38.** *Rates*, p. 85
Alloway & Champion, Ltd. *v.* Stephenson (Can.); **35.** *Mtge.* p. 44
Allvey *v.* Wilson (1930); **34.** *Mast. & S.* No. 3726a
Almon *v.* Fairbanks (Can.); **7.** *Bldg. Soc.* p. 34
Almonte Board of Education & Almonte, *Re* (Can.); **19.** *Educ.* p. 33
Almur Fur Trading Co., *Re*, Bank of United States *v.* Ross (Can.); **9.** *Coys.* p. 51
Alpha Mortgage & Investment Co., *Re* (Can.); **9.** *Coys.* p. 40
Alston *v.* Alston (1929); **27.** *H. & W.* No. 5680b
Alter *v.* Soloway (Can.); **42.** *Str. Traf.* p. 38

Althouse *v.* Besana (Can.); **2.** *Animals*, p. 60
Altobelli *v.* John Ellis & Sons, Ltd. (1926); **34.** *Mast. & S.* Nos. 2426a, 2574a
Altrincham Electric Supply, Ltd. *v.* Sale Urban District Council (1936); **20.** *Electric*, No. 106c
Altrincham Urban District Council *v.* O'Brien (1927); **26.** *Hghys.* No. 2229a
Altwasser *v.* Home Insurance Co. of New York (Can.); **2.** *Arbn.* p. 81
Alwar Chetty *v.* Madras Electric Supply Corpn., Ltd. (Ind.); **36.** *Nuis.* p. 49
Alward *v.* McIntosh & Minister of Education (Can.); **19.** *Educ.* p. 34
Alymer *v.* Mahaffey (Ir.); **21.** *Estpl.* p. 26
Amalgamated Anthracite Collieries, Ltd.'s Application, *Re* (1927); **34.** *Mines*, No. 180a
Amalgamated Builders Council *v.* Herman (Can.); **17.** *Dep.* p. 43
Amalgamated Business Men's Club, Ltd., *Re*, *Re* Securities Act (Can.); **42.** *Stk. Ex.* p. 34
Amalgamated Carburetters, Ltd. *v.* Bowden Wire, Ltd. (1930); **36.** *Pats.* No. 659a
Amalgamated Clothing & Allied Trades Union of Australia *v.* Arnall & Sons (Aus.); **17.** *Dep.* p. 60
Amalgamated Cotton Mills Trust, Ltd., *Re*, *Re* Acme Spinning Co., Ltd. (1937); **9.** *Coys.* No. 839b
Amalgamated Engineering Union, *Ex p.*, R. *v.* Ellis (1921); **42.** *Stats.* No. 1344b
Amalgamated Handwork Manufacturers Co. *v.* Cole (Aus.); **6.** *B. of Exch.* p. 16
Amalgamated Ry. Cos. *v.* Associated Builders' Merchants, Ltd. (1930); **8.** *Carr.* No. 1245d
— *v.* British Heat-Resisting Glass Co., Ltd. (1936); **8.** *Carr.* No. 1245f
— *v.* London Chamber of Commerce (1930); **8.** *Carr.* No. 1245j
— *v.* Railway Carriage & Wagon Builders (1933); **8.** *Carr.* No. 1245e
Amalgamated Society of Engineers *v.* Adelaide S.S. Co. (Aus.); **17.** *Dep.* p. 60
Ambard *v.* A.-G. for Trinidad & Tobago (1936); **16.** *Cntmpt.* No. 153a; **17.** *Dep.* No. 430a.
Ambatielos, The, The Cephalonia (1923); **1.** *Adm.* No. 430a
Amell *v.* Maloney (Can.); **31.** *L. & T.* p. 74
American Canning Co. *v.* Canadian Government Merchant Marine (1928); **30.** *Jdgmts.* No. 728a
American Chain & Cable Co., Inc. *v.* Hall's Barton Ropery Co., Ltd. (1938); **36.** *Pats.* No. 2944c
American Hydro Carbon Co. *v.* Clayton-Kennedy, *Re* Maritime Education Co. (Can.); **4.** *Bkpcy.* p. 29
American Seamless Tube Corpn. *v.* Goward (Can.); **9.** *Coys.* p. 17
American Timber Holding Co. *v.* Fukukawa (Can.); **2.** *Agric.* p. 21
Amey, *Re* (Can.); **37.** *Poor L.* p. 18
Amherst *v.* Coulson (Can.); **33.** *Mags.* p. 37
Amherst Boot & Shoe Co. *v.* Carter (Can.); **7.** *B. of Sale*, p. 11
Amin *v.* Ebrahim (S. Af.); **31.** *L. & T.* p. 72
Amir Husain *v.* Abdul Samad (Ind.); **44.** *Wills*, p. 18
Amiss *v.* Hall (1857); **24.** *Exors.* No. 7250a
Amjad Khan *v.* Ashraf Khan (Ind.); **25.** *Gifts*, p. 49
Amos *v.* Amos (Aus.); **27.** *H. & W.* p. 31
— *v.* Hops Marketing Board (1935); **2.** *Agric.* No. 979d
Amplaudio, Ltd. *v.* Snell (1938); **36.** *Pats.* No. 49c
Ampleman *v.* Court of Sessions of the Peace (Can.); **14.** *Crim.* p. 73
Amusements Construction Co., Ltd., *Re* (1927); **10.** *Coys.* No. 5908a
Anaconda Oil Co., Ltd. *v.* Aladdin Oils, Ltd. (Can.); **21.** *Estpl.* p. 42
Anandi *v.* Nand Lal (Ind.); **22.** *Evid.* p. 15
Anantalal Singha *v.* Watson (Ind.); **16.** *Cntmpt.* p. 5
Anantapadmanabhaswami *v.* Secunderabad Official Receiver (Ind.); **5.** *Bkpcy.* p. 56
Anan Tapur District Board President *v.* Ismail Shahib (Ind.); **34.** *Mast. & S.* p. 18
Anastasia S.S. Owners *v.* Ugleexport Charkow (1933); **41.** *Ship.* No. 1879a
Ancholme Drainage & Navigation Comrs. *v.* Wedhen (1936); **28.** *Inc. T.* No. 543a
Anchor Donaldson, Ltd. *v.* Crossland (1929); **34.** *Mast. & S.* No. 3702d
Anchor Line (Henderson Bros.), Ltd., *Re* (1937); **39.** *S. Goods*, No. 28c
Anchor Line (Henderson Bros.), Ltd. (No. 2), *Re* (1937); **11.** *Confl.* No. 395a
Andanoff *v.* Smith (Can.); **36.** *Negl.* p. 26
Andersen *v.* Omineca Silver King Mines, Ltd. (Can.); **34.** *Mines*, p. 199
Anderson, *Ex p.*, R. *v.* Wood (1928); **13.** *Crnrs.* No. 308a
—, *Re* (Can.); **44.** *Wills*, p. 21
—, *Re* (N.Z.); **4.** *Bkpcy.* p. 33
—, *Re*, *Ex p.* Alexander (Aus.); **4.** *Bkpcy.* p. 9
— *v.* Ameliasburg (Can.); **21.** *Estpl.* p. 23
— *v.* Caledonia Insurance Co. (Can.); **29.** *Insce.* p. 49
— *v.* Cameron (Can.); **1.** *Agcy.* p. 51
— *v.* Commonwealth, The (Aus.); **17.** *Dep.* p. 62
— *v.* Conn (Can.); **21.** *Exon.* p. 43
— *v.* Debt Adjustment Comr. (Can.); **35.** *Mtge.* p. 51
— *v.* Egan (Can.); **2.** *Aliens*, p. 50
— (or Lavelle) *v.* Glasgow Royal Infirmary (Scot.) (1931); **34.** *Med.* p. 186
— *v.* — (Scot.) (1932); **34.** *Med.* p. 187
— *v.* Gorrie (1894); **11.** *Const. L.* No. 324a
— *v.* Herbert Paint & Varnish Co., Ltd. (Can.); **9.** *Coys.* p. 28
— *v.* Hickman (H.) & Co., Ltd. (1928); **34.** *Mast. & S.* No. 2368a
— *v.* Inland Revenue Comrs. (1938); **35.** *Mtge.* No. 1278a
— *v.* — (Scot.); **28.** *Inc. T.* p. 103
— *v.* John Deere Plow Co., Ltd. (Can.); **27.** *H. & W.* p. 6
— *v.* Kennedy (Can.); **2.** *Animals*, p. 68
— *v.* Lake (Can.); **1.** *Agcy.* p. 89
— *v.* McIntyre (Can.); **12.** *Contr.* p. 12
— *v.* McLaren (Can.); **6.** *B of Exch.* p. 1
— *v.* McNair Lumber & Shingle Co., Ltd. (Can.); **35.** *Mtge.* p. 45
— *v.* Newton (Can.); **10.** *Coys.* p. 63
— *v.* Nor-West Motors (Can.); **10.** *Coys.* p. 90
— *v.* Parney (Can.); **36.** *Negl.* p. 17
— *v.* Royer (Can.); **3.** *Bailmt.* p. 8; **34.** *Mast. & S.* p. 12
— *v.* Scrutton (Aus.); **39.** *S. Goods*, p. 37
— *v.* Serge (Can.); **4.** *Bkpcy.* pp. 30, 32
— *v.* Shepard, Ltd. (Can.); **36.** *Pats.* p. 91
— *v.* Smythe (Can.); **32.** *Libel*, p. 16
— *v.* Stasiuk (Can.); **2.** *Agric.* p. 15; **21.** *Exon.* p. 51
— *v.* Stasiuk (No. 3) (Can.); **21.** *Exon.* p. 52
— *v.* Thomas (Can.); **11.** *Confl.* p. 23
— *v.* United Church of Canada, *Re* Stephens (Can.); **8.** *Char.* p. 73
Anderson & Munro, Ltd., *Re* (Scot.); **9.** *Coys.* p. 19
Anderson & Son *v.* Dawber (Can.); **21.** *Exon.* p. 58

Anderson Estate, *Re* (Can.) (1925); **28.** *Inc. T.* p. 11
—, *Re* (Can.) (1934); **18.** *Desct.* p. 2
—, *Re*, Canada Permanent Trust Co. *v.* McAdam (Can.); **21.** *E. D.* p. 20
Anderson, Greene & Co., Ltd. *v.* Kickley (Can.); **43.** *Trusts*, p. 62
Anderson, Ltd. *v.* Daniel (1924); **2.** *Agric.* No. 978a
Anderson-Berry, *Re*, Harris *v.* Griffith (1928); **20.** *Eqy.* No. 2702a; **23.** *Exors.* No. 2744a
Anderson's Trustees *v.* Scott (Scot.); **8.** *Char.* p. 80
Anderton (Township) *v.* Malden & Colchester South (Townships) (Can.); **41.** *Sewers*, p. 4
Anderton *v.* Seroka (Can.); **3.** *Basty.* pp. 60, 63
Anderton & Halstead, Ltd. *v.* Birrell (1932); **28.** *Inc. T.* Nos. 254a, 592b
Andler *v.* Duke (No. 2) (Can.); **28.** *Injon.* p. 146
Andover & Perth Electric Light Comrs., *Ex p.* (Can.); **20.** *Electric*, p. 10
Andrade (Cyril), Ltd. *v.* Sotheby & Co. (1931); **3.** *Auct.* No. 171a
Andreæ *v.* Selfridge & Co., Ltd. (1938); **36.** *Nuis.* Nos. 94a, 598b
Andrea Sanguineti, Fu Davide of Genoa *v.* Ugleexport of Moscow (1934); **41.** *Ship.* No. 1879b
Andrew, *Re*, *Ex p.* Official Receiver (Trustee) (1937); **5.** *Bkpcy.* No. 6920c
—, *Re*, Andrew *v.* Andrew (N.Z.); **44.** *Wills*, p. 37
—, *Re*, Official Receiver *v.* Standard Range & Foundry Co., Ltd. (1937); **5.** *Bkpcy.* No. 6920c
— *v.* Andrew, *Re* Andrew (N.Z.); **44.** *Wills*, p. 37
— *v.* Coad, *Re* Lawry (1938); **37.** *Powers*, No. 87a
— *v.* Griffin (Can.); **3.** *Bailmt.* p. 7
— *v.* Rockell (N.Z.); **32.** *Lien*, p. 25
Andrew Kelly, The *v.* Commodore, The (Can.); **1.** *Adm.* p. 35
Andrew Motherwell Estate, *Re* (Can.); **4.** *Bkpcy.* p. 26; **5.** *Bkpcy.* p. 90
Andrew Motherwell of Canada, Ltd., *Re* (Can.); **5.** *Bkpcy.* p. 85; **32.** *Lien*, p. 22
Andrews, *Ex p.*, *Re* Emett (1816); **4.** *Bkpcy.* No. 3558
—, *Re*, *Ex p.* Official Receiver (Trustee) *v.* Standard Range & Foundry Co., Ltd. (1936); **4.** *Bkpcy.* Nos. 4794a; **5.** *Bkpcy.* No. 6920c
— *v.* Andrews & Chalmers (1924); **3.** *Basty.* No. 22a
— *v.* Carlton (1928); **33.** *Mags.* No. 500a
— *v.* Denaby & Cadeby Main Collieries, Ltd. (1935), **34.** *Mast. & S.* No. 3288e
— *v.* Director of Public Prosecutions (1937); **42.** *Str. Traf.* No. 222g
— *v.* Hopkins (Can.); **22.** *Evid.* p. 16
— *v.* River Thames Conservators (1938); **44.** *Waters*, No. 906a
— *v.* Sinclair (Can.); **1.** *Agcy.* p. 53
— *v.* Walton (1845); **16.** *Cntmpt.* No. 926a
Andrews, Andrews & McBride *v.* Two-in-One Gold Mines, Ltd. (Can.); **42.** *Solrs.* p. 2
Andrews Bros. (Bournemouth), Ltd. *v.* Singer & Co., Ltd. (1934); **39.** *S. Goods*, No. 903a
Angelides *v.* Stedman (James), Hendersons Sweets, Ltd. (Aus.); **43.** *Trade Mks.* p. 46
Angell *v.* Burn (1933); **31.** *L. & T.* Nos. 2909a, 6370a
Angerstein, *Re*, *Ex p.* Angerstein (1874); **5.** *Bkpcy.* No. 7438a
Anglia *v.* R. (S. Af.); **2.** *Aliens*, p. 51
Anglican Synod *v.* Russell & May (Can.); **35.** *Mtge.* p. 47
Angliers Railway Crossing Reference, *Re* (Can.); **38.** *Rys.* p. 38
Anglin & Co. *v.* Simmons (Can.); **32.** *Lien*, p. 25
Anglo-American Brush Electric Light Corpn. *v.* Crompton (1886); **36.** *Pats.* No. 2664a
Anglo-American Oil Co. *v.* Manchester Ship Canal (1929); **8.** *Carr.* No. 1166a
Anglo-Australian & Universal Family Life Assurance Co., *Re* (1875); **12.** *Contr.* No. 4985
Anglo-Austrian Bank, *Re*, *Re* Dresdner Bank, *Re* Direction der Disconto Gesellschaft (1920); **2.** *Aliens*, Nos. 219c, 223e
—, *Re*, *Re* National Bank für Deutschland (1921); **2.** *Aliens*, No. 236b
Anglo-Austrian Confectionary Co., Ltd., *Re*, Bartlett *v.* Anglo-Austrian Confectionary Co., Ltd. (1912); **10.** *Coys.* No. 6472a
Anglo-Baltic & Mediterranean Bank *v.* Barber & Co. (1924); **10.** *Coys.* No. 7034
Anglo-Celtic Shipping Co., Ltd. *v.* Anglo-Soviet Shipping Co., Ltd. (1932); **41.** *Ship.* No. 2056a
Anglo-Indian Drug & Chemical Co. *v.* Swastik Oil Mills, Ltd. (Ind.); **43.** *Trade Mks.* p. 36
Anglo-Newfoundland Development Co. *v.* R. (1920); **2.** *Arbn.* Nos. 26a, 316a, 379a, 408a
Anglo-Persian Oil Co., Ltd. *v.* Dale (1932); **28.** *Inc. T.* Nos. 249a, 611a
Anglo-Persian Oil Co., Ltd. (Madras) *v.* Panchapakesa Aiyar (Ind.); **2.** *Arbn.* p. 83
Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council (1937); **35.** *Mistake*, No. 484a
Anglo-South American Bank *v.* Airedale Garage Co., *Re* Airedale Garage Co. (1933); **10.** *Coys.* No. 4982d; **38.** *Rates*, No. 1188a
Anglo-Spanish Tartar Refineries, Ltd., *Re* (1924); **10.** *Coys.* No. 7407a
Anglo-Swedish Society *v.* Inland Revenue Comrs. (1931); **28.** *Inc. T.* No. 476f
Angostura Bitters (Dr. J. G. B. Siegert & Sons), Ltd. *v.* Kerr (1933); **9.** *Coys.* No. 4023a
Angrignon *v.* Bonnier & Montreal City (Can.); **33.** *L.G.* p. 1
Angus *v.* Burnaby Corpn. (Can.); **44.** *Waters*, p. 3
— *v.* Stamp Duties Comr. (Aus.); **21.** *E.D.* p. 4
Anhaeusser *v.* Anhaeusser & Roth (Aus.); **27.** *H. & W.* p. 21
Anheuser-Busch Insce. *v.* Canada Bud Breweries, Ltd. (Can.); **43.** *Trade Mks.* p. 39
Aniff *v.* Jadu Nath Majumdar (Ind.); **12.** *Contr.* p. 17
Ankers *v.* Bartlett (1936); **25.** *Gaming*, No. 295a
Ankin *v.* London & North Eastern Ry. Co. (1930); **18.** *Discy.* Nos. 843a, 1209a, 1223a
Anlezark, *Ex p.*, *Re* Manufacturers' Mutual Insurance, Ltd. (Aus.); **16.** *Cr. Pract.* p. 34
Anna Christiana, The (1778); **37.** *Prsns.* No. 1177a
Annable *v.* Coventry (Can.); **38.** *Real Prop.* p. 95
Annama *v.* Express Collection Agency (S. Af.); **22.** *Evid.* p. 11
Annamalay Chetty *v.* Thornhill (Ind.); **21.** *Estpl.* p. 24
Annapolis Municipality, N. S. *v.* Canadian National Rys. (Can.); **38.** *Rys.* p. 45
Annapurnabai *v.* Ruprao (1924); **16.** *Courts*, No. 403a
Annesley, *Re*, Davidson *v.* Annesley (1926); **11.** *Confl.* Nos. 249a, 251a
Annette, The, The Dora (1919); **1.** *Adm.* Nos. 141b, 170a
Anon. (1364), Y. B. 38 Edw. 3, fo. 1a; **27.** *H. & W.* No. 1860a
— (1469), Y. B. 9 Edw. 4, fo. 31, pl. 4; **34.** *Mast. & S.* No. 1306b
— (1470), Y. B. 10 Edw. 4, fo. 7, pl. 19; **2.** *Animals*, No. 174a
— (1523), Y. B. 14 Hen. 8, fo. 16, pl. 3; **15.** *Crim.* No. 8459a; **16.** *Courts*, No. 302a

Anon. (1531), Bro. N. C. 86; **17.** *Deeds*, No. 1869a
— (1538), Bro. N. C. 16; **12.** *Contr.* No. 1914a
— (1541), Cary, 9; **3.** *Bailmt.* No. 106
— (1553), Bro. N. C. 95, pl. 437; **30.** *L. & T.* No. 1225a
— (1561), Moore, K. B. 24, pl. 82; **31.** *L. & T.* No. 1783a
— (1563), Dal. 53; **19.** *Eccl.* No. 292
— (1574), 1 And. 47; **19.** *Eccl.* No. 3615
— (1606), Lane, 22; **25.** *Fraud. Conv.* No. 604a
— (1612); **14.** *Crim.* No. 4765a
— (1632), Cro. Car. 264; **19.** *Eccl.* No. 3391a
— (1654), Sty. 414; **32.** *Libel*, No. 2587a
— (1667), Freem. Ch. 128; **25.** *Gifts*, No. 73a
— (1675), 1 Vent. 274; **7.** *Burial*, No. 165
— (1677), 2 Vent. 35; **19.** *Eccl.* No. 2599a
— (*circa* 1678), 1 Eq. Cas. Abr. 20, pl. 5; **12.** *Contr.* No. 1217a
— (*circa* 1680), cited in 1 Eq. Cas. Abr. 20, pl. 5; **12.** *Contr.* No. 1217b
— (1695), 12 Mod. Rep. 73; **21.** *Exon.* No. 1579b
— (1701), 12 Mod. Rep. 495; **15.** *Crim.* No. 7033a
— (1702), 7 Mod. Rep. 8; **21.** *Exon.* No. 1584a
— (1702), 7 Mod. Rep. 118; **21.** *Exon.* No. 881a
— (1704), 6 Mod. Rep. 105; **21.** *Exon.* No. 574a
— (1705), 1 Salk. 404; **11.** *Confl.* No. 352
— (*circa* 1716), cited in 2 Atk. at p. 32; **6.** *B. of Exch.* No. 295a
— (1718), 2 Eq. Cas. Abr. 48; **30.** *L. & T.* No. 472a
— (1774), Lofft. 390; **21.** *Exon.* Nos. 1569, 1578b
— (1806), 12 Ves. 4; **23.** *Exors.* No. 209a
— (1815); *Pract.* No. 2286a
— (1820), 4 Bro. C. C., Belt's ed. 284, n.; **36.** *Partn.* No. 35a
— (1837), 1 Jur. 84; **21.** *Exon.* No. 1577a
— (1839), 3 Jur. 125; **22.** *Evid.* Nos. 6052a, 6108a
— (1849), 13 L. T. O. S. 325; **17.** *Deeds*, No. 1157a
— (1934); **27.** *H. & W.* No. 4355d
— (I. O. M.); **34.** *Mast. & S.* p. 8
Ansell *v.* Ansell (1930); **27.** *H. & W.* No. 6144a
— *v.* Arctic Electric Supplies, Ltd., *Re* Arctic Electric Supplies, Ltd. (1932); **10.** *Coys.* No. 4987a
— *v.* Enfield Highway Co-operative Assocn., Ltd. (1938); **34.** *Mast. & S.* No. 2799a
— *v.* Inland Revenue Comrs., (1929); **39.** *Revenue*, No. 440a
Ansley *v.* Watertown Insurance Co. (Can.); **21.** *Estpl.* p. 41
Anson *v.* Black & White Cabs, Ltd. (N.Z.); **36.** *Negl.* p. 24
— *v.* Parker (N.Z.); **3.** *Basty.* p. 65; **33.** *Mags.* p. 34
— *v.* Tooth & A.-G. (1917); **22.** *Evid.* No. 6831a
Anthony, *Re* (Can.); **33.** *Mags.* p. 29
—, *Re*, Anthony *v.* Anthony (1892); **23.** *Exors.* No. 5451a
— *v.* Anthony & Cordato (Aus.); **27.** *H. & W.* p. 25
— *v.* Charter (Can.); **22.** *Evid.* p. 13
Anthony Salt Co., *Re* (Can.); **4.** *Bkpcy.* p. 39
Antigonish (Town) *v.* Chisholm (Can.); **35.** *Mtge.* p. 32
Antoniuk *v.* Smith (Can.); **34.** *Med.* p. 185
Antrobus, *Re*, Henderson *v.* Shaw & Morton (N.Z.); **37.** *Perps.* p. 4
Antunovich *v.* Collins (N.Z.); **29.** *Insce.* p. 47
Antwerp Waterworks Co., Ltd., *Re* (1931); **9.** *Coys.* No. 977a
Antwerpen, The (1919); **2.** *Aliens*, No. 156a
Anup Mahto *v.* Mita Dusadh (Ind.); **16.** *Courts*, p. 14
Anweiler *v.* Grand Trunk Pacific Ry. Co. (Can.); **18.** *Discy.* p. 22
Anziani, *Re*, Herbert *v.* Christopherson (1930); **8.** *Chos.* No. 27b
Apex Lumber Co. *v.* Johnstone (Can.); **4.** *Bkpcy.* p. 44
Apostal *v.* Simons (1936); **7.** *Bounds. & F.* No. 223a
Apothecaries' Co. *v.* Fernyhough (1826); **22.** *Evid.* No. 2486a
Appasanu Mudaliar *v.* R. (Ind.); **14.** *Crim.* p. 11
Appelbe *v.* West Cork Board of Health (Ir.); **38.** *Pub. Auth.* p. 9
Appenrodt *v.* Central Middlesex Assessment Committee (1937); **38.** *Rates*, No. 1031a
Applebe *v.* Applebe (Ir.); **22.** *Evid.* p. 23
Appleby *v.* Hazel Bluff School District (Can.); **19.** *Educ.* p. 46
— *v.* Searle (Can.); **25.** *Fr. Soc.* p. 20
Applestone *v.* Trustees, *Ex p.*, *Re* Lovegrove (1935); **5.** *Bkpcy.* No. 6128a; **7.** *B. of Sale*, No. 55a
Appleton *v.* Doily (1609); **23.** *Exors.* No. 3687a
Appleton & Ross, *Re* (Can.); **35.** *Mtge.* p. 35
Apsley *v.* Barr (Ir.); **31.** *L. & T.* p. 90
Apted *v.* Apted & Bliss (1930); **16.** *Cntmpt.* No. 393a; **27.** *H. & W.* Nos. 3449b, 3459a, 3475a, 3499a, 3513a, 4355a, 5076b, 5117a
Aramayo Francke Mines, Ltd., *Re* (1921); **2.** *Aliens*, No. 237b
— *v.* Public Trustee (1922); **2.** *Aliens*, No. 237b
Arantzazu Mendi, The (1938); **1.** *Adm.* No. 141f
Araya *v.* Coghill (Scot.); **4.** *Bkpcy.* p. 4
Arbitration Act, *Re*, *Re* Guyot & Vigouret & Award made by Gosselin (Can.); **2.** *Arbn.* p. 92
—, *Re*, *Re* Roshko & Winnipeg School District No. 1 (Can.); **11.** *Comp. Pche.* p. 17
—, *Re*, *Re* Woods (Can.); **11.** *Comp. Pche.* p. 15
Arbuthnot *v.* Campbell (Can.); **6.** *B. of Exch.* p. 11
— *v.* — (No. 2) (Can.); **6.** *B. of Exch.* p. 1
Arcadi *v.* R. (Can.); **14.** *Crim.* p. 58
Archangel Saw Mills Co. *v.* Baring Brothers & Co. (1922); **1.** *Agcy.* No. 2814a
Archbold, *Re*, McKee *v.* Archbold (Ir.); **44.** *Wills*, p. 26
Archer *v.* Sadler (1859); **2.** *Agric.* No. 311a
Archer & Palmer *v.* Colvin (N.Z.); **34.** *Med.* p. 190
Archer-Shee *v.* Baker (1927); **28.** *Inc. T.* No. 442
— *v.* Garland (1931); **28.** *Inc. T.* No. 441a
Archibald, *Re* (Can.); **38.** *Real Prop.* p. 89
— *v.* McNerhanie (Can.); **36.** *Prtnrs.* p. 58
— *v.* Truro Corpn. (Can.); **38.** *Pub. Auth.* p. 11
— *v.* Union Steamship Co. of New Zealand (N.Z.); **34.** *Mast. & S.* p. 67
— *v.* Washer & Co. & Kinnerney (N.Z.); **3.** *Auct.* p. 4; *Bailmt.* p. 14
— *v.* Youville (Can.); **38.** *Rates*, p. 85
Archibald Russell, Ltd. *v.* McNeilly (1934); **34.** *Mast. & S.* No. 2970d
— *v.* Nether Pollok, Ltd. (Scot.); **34.** *Mines* p. 201
Archie Parnell & Alfred Zeitlin, Ltd. *v.* Theatre Royal (Drury Lane), Ltd. (1936); **42.** *Theatres*, No. 195a
Architects (Society of) *v.* Kendrick (1910); **28.** *Injon.* No. 906a
Architects Registration Board of Victoria *v* Hutchison (Aus.); **16.** *Cr. Pract.* p. 33
Arcos, Ltd. *v.* Ronaasen (E. A.) & Son (1933); **1** *Action*, No. 303a; **39.** *S. Goods*, No. 1887b
Arctic Electric Supplies, Ltd., *Re*, Ansell *v.* Arctic Electric Supplies, Ltd. (1932); **10.** *Coys.* No. 4987a
Ardath Tobacco Co., Ltd. *v.* Ocker (1930); **33.** *Mkts.* No. 472a
Arden, *Re*, Short *v.* Camm (1935); **20.** *Eqy* No. 63a; **37.** *Powers*, No. 171a

Arden *v.* Goodacre (1852); **8.** *Chos.* No. 106a
— *v.* Rutter (1923); **2.** *Agric.* No. 264a
— *v.* Sharpe & Gilson (1797); **6.** *B. of Exch.* No. 713a
Arden & Rutter, *Re* (1923); **2.** *Agric.* No. 264a
Ardesar Jivanji *v.* Aimai Kuvarji (Ind.); **26.** *Hghys.* p. 35
Ardill *v.* Ardill (Aus.); **27.** *H. & W.* p. 79
Argo, The *v.* Emma Heyn, The (1856); **1.** *Adm.* No. 1304a
Argonaut *v.* Hani (1918); **1.** *Agcy.* No. 2609
Argonaut Marine Insurance Co., Ltd., *Re* (1932); **10.** *Coys.* No. 7622a
Argos, The (Cargo Ex), Gaudet *v.* Brown, The Hewsons, Geipel *v.* Cornforth (1873); **1.** *Adm.* No. 40
Argyle Motor Services, Ltd., *Re* (Can.); **10.** *Coys.* p. 59
Argyll Education Authority *v.* Campbeltown Corpn., *Re* Campbell Endowment Trust (Scot.); **19.** *Educ.* p. 42
Aria *v.* Bridge House Hotel (Staines), Ltd. (1927); **29.** *Inns*, No. 151a
Ariadne S.S. Co., Ltd. *v.* McKelvie (J.) & Co. (1922); **1.** *Agcy.* No. 2549a
Arial *v.* Edmonton City (Can.); **38.** *Pub. Auth.* p. 3
Ariff *v.* Jadu Nath Majumdar (Ind.) (1928); **20.** *Eqy.* p. 20; **30.** *L. & T.* p. 40; **38.** *Real Prop.* p. 99
— *v.* Jadunath Majumdar (Ind.) (1931); **20.** *Eqy.* p. 20
— *v.* Rai Jadunath Majumdar Bahadur (1931); **30.** *L. & T.* No. 487a
Aris *v.* Toronto, Hamilton & Buffalo Ry. Co. (Can.); **34.** *Mast. & S.* p. 8
Arizona Copper Co., Petitioners (Scot.); **9.** *Coys.* p. 11
Arjun Kaibarta *v.* Manoranjan De Bhoumik (Ind.); **25.** *Fish.* p. 1
Arlidge, *Ex p.*, R. *v.* Chapman (1918); **1.** *Agcy.* No. 1033a
Armaghdale (Lord), *Re*, Craig *v.* Armaghdale (Lady) (1928); **28.** *Inc. T.* No. 696a
Armand *v.* Carr & Carr & Wilcox (Can.); **36.** *Negl.* p. 3
Armour, *Re* (Can.); **23.** *Exors.* p. 20
— *v.* British International Pictures (1930); **34.** *Mast. & S.* No. 2057b
— *v.* Dinner (Can.); **3.** *Barr.* p. 50
Armson *v.* Thompson (Can.); **23.** *Exors.* p. 29
Armstrong, *Re*, *Ex p.* Lipton (1926); **4.** *Bkpcy.* Nos. 3105a, 3173a
— *v.* A.-G. (Aus.); **8.** *Char.* p. 78
— *v.* Bastedo (Can.); **42.** *Sp. Pfce.* p. 16
— *v.* Canadian Northern Ry. (Can.); **34.** *Mast. & S.* p. 19
— *v.* Currie (Can.); **30.** *Jdgmts.* p. 23
— *v.* Dawson (Can.); **34.** *Med.* p. 185
— *v.* Estate Duty Comr. (Hong Kong), [1937] A. C. 885; **21.** *E. D.* p. 8
— *v.* —, [1937] 2 W. W. R. 593; **42.** *Stats.* p. 22
— *v.* Houston (Can.); **36.** *Negl.* p. 31
— *v.* Imperial Bank of Canada (Can.); **27.** *H. & W.* p. 9
— *v.* Kelleher (N.Z.); **30.** *Intox.* p. 9
— *v.* Marshall (Can.); **8** *Chos.* p. 94
— *v.* Mead (1930); **38.** *Rys.* No. 5a
— *v.* New Westminster Harbour Board (Can.); **11.** *Comp. Pche.* p. 15
— *v.* Oliver, Ltd. (Can.); **31.** *L. & T.* p. 66
— *v.* Thompson (Can.); **2.** *Animals*, p. 59
— *v.* Vulco Dry Battery Co., Ltd. (1931); **34.** *Mast. & S.* No. 3540b
— *v.* Whitten (Can.); **36.** *Prtnrs.* p. 63
— *v.* Wright (Can.); **35.** *Mistake*, p. 9
Armstrong Growers' Assocn. *v.* Harris (Can.); **21.** *Exon.* p. 58
Armstrong, Taylor & Whittaker *v.* Oldham Corpn. (1937); **17.** *Deeds*, No. 1736a
Armstrong-Logan Agency, Ltd. *v.* Ehmann (Can.); **6.** *B. of Exch.* p. 15
Arneil *v.* Paterson (1931); **2.** *Animals*, No. 197a
Arnholz *v.* Hudson, *Re* Northcliffe (1929); **21.** *E. D.* No. 137a
Arning *v.* James (1936); **43.** *Trusts*, No. 1422b
Arno Andreas Application for Letters Patent No. 360,547 (1934); **36.** *Pats.* No. 3433a
Arnold *v.* Arnold (Aus.); **15.** *Crim.* p. 84
— *v.* Gates, *Re* Gates (1933); **42.** *Solrs.* No. 1148a
— *v.* Norris (falsely called Arnold) (Aus.); **15.** *Crim.* p. 84
Arnold & Weaver *v.* Amari (1928); **27.** *H. & W.* No. 1800a
Arnoldi *v.* Gouin (Can.); **32.** *Lien*, p. 23
Arnott, *Re*, *Ex p.* Sheriff, The (Aus.); **41.** *Shrffs.* p. 7
— *v.* Barbour (Can.); **3.** *Basty.* p. 61
Aron (J.) & Co. *v.* Miall (1928); **29.** *Insce.* Nos. 480a, 488a
Arpad, The (1934); **41.** *Ship.* No. 3821a
Arpin *v.* Leclaire (Can.); **1.** *Action*, p. 16; *Agcy.* p. 53
Arram *v.* Walters (1936); **44.** *Work*, No. 78a
Arranging Debtor, An, *Re* (Ir.).; **4.** *Bkpcy.* p. 37
Arrears of Taxes Act, *Re*, *Re* Land Titles Act (Can.); **38.** *Rates*, p. 84
Arrow River & Tributaries Slide & Boom Co. *Re* (Can.); **11.** *Const. L.* p. 72; **17.** *Dep.* p. 56
Arsenault *v.* Bishop (Can.); **27.** *H. & W.* p. 14
Artemisia (Owners) *v.* Douglas (Owners) (1925); **1.** *Adm.* No. 1198b
Arthur *v.* Massey Harris & Co. (Can.); **32.** *Libel*, p. 15
Arthur Berton, Ltd. *v.* Jarrett Rainsford & Laughton, Ltd. (1930); **36.** *Pats.* No. 459b
Arthur Fuel Co., *Re* (Can.); **5.** *Bkpcy.* p. 90
Arthur James & Co. *v.* John Weston & Co., Ltd. (1929); **1.** *Agcy.* No. 2482a
Article X of Articles of Agreement for a Treaty between Great Britain & Ireland, *Re* (1929); **16.** *Courts*, No. 690b; **17.** *Dep.* No. 714c
Artley *v.* Curry (Can.); **7.** *Bounds. & F.* p. 15
Arunachalam Chetty *v.* Income Tax Comrs. (Ind.); **28.** *Inc. T.* p. 43
Arunachala Naidu *v.* Balakrishna & Co. (Ind.); **16.** *Courts*, p. 14
Arundell, *Ex p.*, Innes *v.* Arundell (Aus.); **31.** *L. & T.* p. 78
— *v.* Provident Mutual Life Assurance Assocn. (1934); **29.** *Insce.* No. 2971a
Asbestos Corpn., Ltd. *v.* Cook (Can.); **34.** *Mast. & S.* p. 4
Aschkenasy *v.* Midland Bank, Ltd. (1934); **3.** *Bank.* No. 298b
Aschrott, *Re*, Clifton *v.* Strauss (1927); **21.** *E. D.* Nos. 96a, 136a
Ascot Timber Co. Pty., Ltd. *v.* Carter, *In the Estate of* Carter (Aus.); **21.** *Exon.* p. 50
Ash *v.* Dickie (1936); **13.** *Coprt.* No. 577b; *Pract.* No. 3395a
— *v.* Hutchinson & Co. (Publishers), Ltd. (1936); **13.** *Coprt.* Nos. 547a, 559a, 560b, 575b
Ash Estate, *Re* (Can.); **4.** *Bkpcy.* p. 43
Ashalata Ray *v.* Protection of Children in India, Society of (Ind.); **28.** *Infts.* p. 141
Ashanti Goldfields Corpn., Ltd. *v.* Merrifield (1934); **28.** *Inc. T.* No. 557e
Ashbridge *v.* Shaver & Harrison (Can.); **17.** *Dep.* p. 83
Ashby, *Re* (Can.); **34.** *Med.* p. 195
— *v.* Ashby (Aus.); **27.** *H. & W.* p. 79
— *v.* Hayden (Aus.); **21.** *E. D.* p. 12; **44.** *Wills*, p. 36

Ashby *v.* Tolhurst (1937); **3.** *Bailmt.* No. 13a
Ashby, Warner & Co., Ltd. *v.* Simmons (1936); **10.** *Coys.* No. 4944b
Ashby-de-la-Zouch Guardians *v.* Summers (1928); **37.** *Poor L.* No. 225a
Ashenden & Co. *v.* Dorney (Aus.); **3.** *Auct.* p. 4
Ashford *v.* McNaughton (Can.); **38.** *Real Prop.* p. 99
Ashiq Husain *v.* Chatarbhuj & Ahmad-Ullah Khan (Ind.); **32.** *Limit. of A.* p. 35
Ashley *v.* Brenton (Can.); **18.** *Discy.* p. 8
Ashmore *v.* Trans-Canada Finance Corpn., Ltd. (Can.); **39.** *S. Goods*, p. 58
Ashton, *Re*, Sier *v.* Ashton (1934); **18.** *Desct.* No. 221a; **20.** *Eqy.* Nos. 1895a, 2280a; **21.** *E. D.* No. 173a
—, *Re*, Westminster Bank *v.* Farley (1938); **8.** *Char.* No. 702b
— *v.* Ashton (Can.); **27.** *H. & W.* p. 7
— *v.* Horsfield (1860); **24.** *Exors.* No. 6014a
— *v.* Wainwright (1936); **42.** *Solrs.* Nos. 962b, 1062a
Ashutosh Sikdar *v.* Chidam Mandal (Ind.); **23.** *Exors.* p. 18
Ashwin *v.* Ashwin (Can.); **27.** *H. & W.* p. 73
— *v.* Ashwin & Fort Rouge Coal Co., Ltd. (Can.); **26.** *Guar.* p. 6
Ashwini Kumar Gupta *v.* Emperor (Ind.); **15.** *Crim.* p. 106
Ashworth, *Ex p.*, *Ex p.* Meinertzhagen, *In the Estate of* Leguia (1934); **23.** *Exors.* No. 1675a
Askarau Choutmal *v.* East Indian Ry. Co. (Ind.); **3.** *Barr.* p. 50
Askew, *Re*, Marjoribanks *v.* Askew (1930); **3.** *Basty.* Nos. 141a, 152a
Askin *v.* Askin (Can.); **27.** *H. & W.* p. 9
— *v.* Canadian Pacific Railway (Can.); **8.** *Carr.* p. 6
Askwith, *Re* (Can.); **22.** *Evid.* p. 17
Aslan *v.* Imperial Airways, Ltd. (1933); **42.** *Str. Traf.* Nos. 260a, 260b
A/S Ocean *v.* Black Sea Baltic General Insurance Co. (1935); **29.** *Insce.* No. 1970a
Aspden *v.* Seddon (1874); **30.** *Jdgmts.* No. 506a
Aspell *v.* Seymour (1929); **2.** *Arbn.* No. 336a
Aspro, Ltd. *v.* Taxes Comr. (N.Z.); **28.** *Inc. T.* p. 37
A/S Rendal *v.* Arcos, Ltd. (1937); **22.** *Evid.* No. 1273a; **41.** *Ship.* Nos. 1879g, 1879h
Assaf & Dabous, *Re* (Can.); **5.** *Bkpcy.* p. 75
Assam Railways & Trading Co., Ltd. *v.* Inland Revenue Comrs. (1935); **28.** *Inc. T.* No. 557c; **42.** *Stat.* No. 447a
Assessment Act, *Re* (Can.); **28.** *Inc. T.* p. 80
Assheton *v.* Merrett (Aus.); **33.** *Mal. Pros.* p. 40
Assicurazioni Generali *v.* Selim Cotran (1932); **35.** *Money*, No. 17h
Assiniboia Rural Municipality *v.* Suburban Rapid Transit Co. (Can.); **9.** *Coys.* p. 2
Associated Colour Printers, Ltd.'s Application (No. 814,271), *Re* (1937); **43.** *Trade Mks.* No. 908e
Associated Distributors, Ltd. *v.* Hall (1938); **3.** *Bailmt.* No. 252a
Associated Growers of British Columbia, Ltd. *v.* British Columbia Fruit Land, Ltd. (Can.); **9.** *Coys.* pp. 4, 40, 50; **17.** *Damgs.* p. 17
Associated Growers of British Columbia, Ltd. & Kelowna Growers Exchange *v.* Edmunds & Byzant Orchards, Ltd. (Can.); **9.** *Coys.* p. 2
Associated Investment Underwriters (N.Z.), Ltd. *v.* MacKenzie & Dominion Mutual Insurance Assocn. (N.Z.); **12.** *Contr.* p. 40
Associated Newspapers, Ltd. *v.* City of London Corpn. (1913); **36.** *Parl.* 2b
Assurantie Compagnie Excelsior *v.* Smith (1923); **11.** *Const. L.* No. 412a
Aston *v.* Innis (Can.); **38.** *Rates*, p. 84
Aston & White, *Re* (Can.); **38.** *Real Prop.* p. 95
Aston Coal Co., Ltd. *v.* Stancil (1926); **34.** *Mast. & S.* No. 3275a
Astor *v.* Perry (1935); **28.** *Inc. T.* 576e
Astor Properties, Ltd. *v.* Tunbridge Wells Equitable Friendly Society (1936); **17.** *Damgs.* Nos. 131a, 131b
Astra-National Productions, Ltd. *v.* Neo-Art Productions, Ltd. (1928); **13.** *Coprt.* No. 657a; **18.** *Discy.* No. 440a
Astroff *v.* R. (Can.); **34.** *Med.* p. 192
Atchison *v.* Dominion Bank (Can.); **3.** *Bank*, pp. 25, 42
Athelviscount (Motor-Tanker) Owners & National Petroleum Co., *Re* (1934); **41.** *Ship.* No. 2289a
Athenæum Life Assce. Society, *Re*, *Ex p.* Eagle Insce. Co. (1858); **9.** *Coys.* Nos. 3112a, 4094a
Athenic, The (1931); **1.** *Adm.* No. 1267a
Atherton *v.* British Insulated & Helsby Cables, Ltd. (1925); **28.** *Inc. T.* No. 264
Athey, *Re*, Pickerings, Ltd.'s Application (1926); **34.** *Mast. & S.* No. 3359c
— *v.* Pickerings, Ltd. (1926); **34.** *Mast. & S.* No. 3359c
— *v.* United Steel Co., Ltd. (1935); **34.** *Mast. & S.* No. 3545b
Atholl (Duke) *v.* Read (1934); **33.** *Mags.* No. 1277a
Athonas *v.* Ottawa Electric Ry. Co. (Can.); **43.** *Tram.* p. 49
Atkins *v.* Charles Spreckley & Co., Ltd. (1931); **34.** *Mast. & S.* No. 3298a
— *v.* Hutton (1909); **18.** *Distr.* No. 1555
— *v.* Spreckley (Charles) & Co., Ltd. (1931); **34.** *Mast. & S.* No. 3298a
Atkins (Charles) & Co., Ltd. *v.* Backhouse (Aus.); **31.** *L. & T.* p. 76
Atkinson, *Re*, *Ex p.* Rowe (Aus.); **34.** *Mast. & S.* p. 95
—, *Re*, Atkinson *v.* Atkinson (1916); **37.** *Perps.* No. 402a
—, *Re*, Webster *v.* Walter (1930); **23.** *Exors.* No. 5919a
— *v.* Atkinson (Can.); **12.** *Contr.* p. 43
— *v.* Baldwins, Ltd. (1938); **24.** *Fact.* No. 76c
— *v.* London & North Eastern Ry. Co. (1926); **24.** *Fact.* No. 76b
Atlantic & Pacific Fibre Importing & Manufacturing Co., Ltd., *Re*, Burnham (Viscount) *v.* Atlantic & Pacific Fibre Importing & Manufacturing Co., Ltd. (1928); **10.** *Coys.* No. 4904a; **32.** *Limit. of A.* No. 785a
Atlantic Coast S.S. Co. *v.* Montreal Transportation Co. & The Mary Ellen (Can.); **1.** *Adm.* p. 33
Atlantic Shipping & Trading Co. *v.* Dreyfus (L.) & Co. (1922); **2.** *Arbn.* Nos. 165a, 265a
Atlas Coal Co., Ltd. & Regal Coal Co., Ltd. *v.* East Coulee Village School District, Board of Trustees (Can.); **19.** *Educ.* p. 41
Atlas Construction Co., Ltd. *v.* St. John (City) (Can.); **38.** *Rates*, p. 49
Atmore, *Ex p.*, *Re* Christensen (Aus.); **25.** *Gaming*, p. 38
Atta Mohammad *v.* R. (1929); **17.** *Dep.* Nos. 439a, 532a
Attfield, *Re* (1924); **16.** *Cr. Pract.* No. 46a
Attorney, *Re* Registration of a Power of, *Re* Land Titles Act (Can.); **1.** *Agcy.* p. 53
A.-G. *v.* Adamson (1933); **21.** *E. D.* No. 67a
— *v.* Arthur Ryan Automobilies, Ltd. (1938); **34.** *Mast. & S.* No. 4103a

A.-G. *v.* Arts Theatre of London, Ltd. (1933); **39.** *Revenue*, No. 786a
— *v.* Australian Agricultural Co. (Aus.); **17.** *Dep.* p. 63
— *v.* Barnes Borough Council & Ranelagh Club, Ltd. (1938); **38.** *Pub. Hlth.* No. 670d
— *v.* Bedford (Duke) (1926); **21.** *E. D.* No. 799a
— *v.* Belilios (1927); **21.** *E. D.* No. 796a
— *v.* — (1928); **21.** *E. D.* Nos. 90a, 796a
— *v.* Birkenhead Corpn. (1928); **33.** *L. G.* No. 69a; **43.** *Trade*, No. 1047
— *v.* Blackpool Corpn. (1928); **13.** *Corpns.* No. 997a
— *v.* Bloomfield (1930); **13.** *Corpns.* No. 902a; **25.** *Gaming*, No. 462a
— *v.* Boden (1912); **16.** *Courts*, No. 143a
— *v.* Boylan (Ir.); **14.** *Crim.* p. 3
— *v.* Bristol Corpn., *Ex p.* Goodenough (1845); **8.** *Char.* Nos. 2330b, 2346a
— *v.* Brown (1844); **16.** *Courts*, No. 974a
— *v.* Canter (1938); **24.** *Exors.* No. 6771a; **28.** *Inc. T.* No. 642a
— *v.* Carlton (1930); **13.** *Corpns.* No. 902a; **25.** *Gaming*, No. 462a
— *v.* Carrington (Lord) (1850); **19.** *Educ.* No. 335a
— (Macken) *v.* Cavan (Ir.); **30.** *Intox.* p. 4
— *v.* Christie (Can.); **12.** *Contr.* p. 41
— *v.* Church of England Property Trust Diocese of Sydney (Aus.); **8.** *Char.* p. 83
— *v.* Cohen (1937); **39.** *Revenue*, No. 437a
— *v.* Colman's Publicity Service (1928); **13.** *Coprt.* No. 332b
— *v.* Corke (1933); **36.** *Nuis.* No. 344c
— *v.* Cornwall County Council (1933); **24.** *Ferries*, No. 71a
— *v.* County of London Electric Supply Co. (1926); **20.** *Electric*, No. 42a
— *v.* Cozens (1934); **30.** *Intox.* No. 159a
— *v.* Cunningham (Ir.); **20.** *Elect.* p. 4
— *v.* Davidson (N.Z.); **16.** *Cntmpt.* p. 4
— *v.* De Trafford (1934); **21.** *E. D.* No. 666a
— *v.* Dickinson & Baron (1937); **21.** *E. D.* No. 127a
— *v.* Dunedin (N.Z.); **26.** *Hghys.* p. 18
— *v.* East Retford Grammar School (1848); **8.** *Char.* No. 2330a
— *v.* Eastbourne Corpn. (1934); **13.** *Corpns.* No. 991b
— *v.* Farrell (1931); **21.** *E. D.* No. 63a
— *v.* Feely (Ir.); **30.** *Intox.* p. 10
— *v.* Forde (Ir.); **8.** *Char.* p. 80
— *v.* Forsikringsakt. National (of Copenhagen) (1924); **10.** *Coys.* No. 7490a
— *v.* Gale (1802); **3.** *Bank*, No. 4a
— *v.* Geeling Harbor Trust Comrs. (Aus.); **16.** *Cr. Pract.* p. 44
— *v.* Glen Line, Ltd. & Liverpool & London War Risks Insurance Association, Ltd. (1929); **29.** *Insce.* No. 2463a
— *v.* Glyn, Mills & Co. (1938); **21.** *E. D.* No. 699a
— *v.* Goddard (1929); **1.** *Agcy.* Nos. 1608b, 1626a; **16.** *Cr. Pract.* No. 298a
— *v.* Gravesend Corpn. (1935); **19.** *Educ.* No. 121a
— *v.* — (1936); **20.** *Electric*, Nos. 6a, 6b
— *v.* Great Southern & Western Ry. Co. of Ireland (1925); **16.** *Cr. Pract.* No. 323a; **17.** *Dep.* No. 714
— (Jackman) *v.* Griffith (Aus.); **38.** *Pub. Hlth.* p. 18
— *v.* Guy Motors, Ltd. (1928); **11.** *Const. L.* No. 339a
— *v.* Healy (Ir.); **16.** *Courts*, p. 11; *Cr. Pract.* 44; **33.** *Mags.* pp. 25, 26; **39.** *Revenue*, p. 25
— *v.* Hodgson (1922); **19.** *Easmt.* No. 721a
— *v.* Hornsey Borough Council (1927); **26.** *Hghys.* No. 2766a
A.-G. *v.* Howe (Earl) (1925); **21.** *E. D.* No. 129a
— *v.* Jackson, *Re* Cockell (1932); **23.** *Exors.* No. 4538a
— *v.* Jaffé (Ir.); **17.** *Dep.* p. 88; **21.** *E. D.* p. 19
— *v.* Johnstone (1926); **28.** *Inc. T.* No. 642b
— *v.* Joyce (Ir.); **14.** *Crim.* pp. 18, 59
— *v.* Langford (Lord) (Ir.); **16.** *Cr. Pract.* p. 23
— *v.* Lawless (Ir.); **15.** *Crim.* p. 101
— *v.* Leeds Corpn. (1929); **13.** *Corpns.* No. 986a
— *v.* Leopold Walford (London), Ltd. (1924); **41.** *Ship.* No. 2974a
— *v.* Lewis & Burrows (1932); **34.** *Med.* Nos. 252a, 253a
— *v.* Linehan (Ir.); **14.** *Crim.* pp. 45, 47
— *v.* Liverpool Corpn. (1938); **20.** *Electric*, No. 43a
— *v.* Llewelyn (1935); **21.** *E. D.* No. 102a
— *v.* Lloyds Bank, Ltd. (1935); **21.** *E. D.* No. 67b
— *v.* London & Home Counties Joint Electricity Authority (1929); **20.** *Electric*, No. 6d
— *v.* London Casino, Ltd. (1938); **39.** *Revenue*, No. 787a
— *v.* Luncheon & Sports Club, Ltd. (1929); **39.** *Revenue*, No. 93a
— *v.* M'Bride (Ir.); **17.** *Dep.* p. 87; **33.** *Mags.* p. 35
— *v.* M'Cabe (Ir.); **14.** *Crim.* pp. 38, 40
— *v.* McDermott (Ir.); **22.** *Evid.* p. 20
— *v.* M'Gann (Ir.); **14.** *Crim.* pp. 60, 62
— *v.* M'Loughlin (Ir.); **39.** *Revenue*, p. 13
— *v.* Mallock (1931); **26.** *Hghys.* Nos. 164a, 390a
— *v.* Manchester Corpn. (1931); **11.** *Comp. Pche.* No. 116b; **26.** *Hghys.* No. 310a
— *v.* Meehan (Ir.); **39.** *Revenue*, p. 13
— *v.* Metropolitan Water Board (1928); **28.** *Inc. T.* No. 394a
— *v.* Middleton (1751); **13.** *Corpns.* No. 770a
— *v.* Midland Bank Executor & Trustee Co., Ltd. (1934); **28.** *Inct. T.* Nos. 569b, 642c
— *v.* Mucklow (1815); **20.** *Eqy.* No. 2637a
— *v.* Murray (Ir.); **14.** *Crim.* pp. 26, 38, 42
— *v.* — (No. 2) (Ir.); **14.** *Crim.* p. 76
— *v.* National Provincial & Union Bank of England, *Re* Tetley (1924); **8.** *Char.* Nos. 687a, 740b
— *v.* National Provincial Bank, Ltd. (1928); **28.** *Inc. T.* No. 9a
— *v.* North Metropolitan Tramways Co. (1892); **18.** *Discy.* No. 1374a
— *v.* Norwich Corpn. (1851); **33.** *L. G.* No. 557a
— *v.* O'Brien (Ir.); **14.** *Crim.* p. 3
— *v.* O'Kelly (Ir.); **16.** *Cntmpt.* p. 1
— *v.* Oldham Corpn. (1936); **13.** *Corpns.* No. 997b
— *v.* O'Leary (Ir.); **14.** *Crim.* p. 35
— *v.* O'Sullivan (Ir.); **14.** *Crim.* p. 44
— *v.* Percy (Ir.); **39.** *Revenue*, p. 11
— *v.* Plowden (1931); **8.** *Char.* No. 208a
— *v.* Poole Corpn. (1938); **36.** *Open Sp.* No. 41a
— *v.* Premier Line, Ltd. (1932); **28.** *Injon.* No. 36b; **42.** *Str. Traf.* Nos. 76a, 76b, 76d
— *v.* Prices' Tailors (1928), Ltd. (1930); **26.** *Hghys.* Nos. 2580a, 2580b
— *v.* Pritchard (1928); **3.** *Bailmt.* No. 258a
— *v.* Prossor (1938); **16.** *Cr. Pract.* No. 75a; *Pract*, No. 5028a
— *v.* Public Trustee & Tuck (1929); **21.** *E. D.* No. 209e
— *v.* Quixley (1929); **19.** *Educ.* No. 293b; **21.** *E. D.* No. 33a
— *v.* Racecourse Betting Control Board (1935); **25.** *Gaming*, Nos. 480a, 480b
— *v.* Rand (Aus.); **27.** *H. & W.* p. 5
— *v.* Reilly (Ir.); **14.** *Crim.* p. 19

A.-G. *v.* Ringwood Rural District Council (1928); **22.** *Evid.* No. 5403b
— *v.* Rochdale Canal Co. (1938); **38.** *Rys.* No. 943a
— *v.* Rudge (1928); **21.** *E. D.* No. 462a
— *v.* Sharp (1929); **42.** *Str. Traf.* No. 86a
— *v.* — (1931); **28.** *Injon.* No. 36a
— (Butler) *v.* Sheehan (Ir.); **30.** *Intox.* p. 18
— *v.* Smethwick Corpn. (1932); **33.** *L. G.* No. 550a
— *v.* Smith (Ir.); **14.** *Crim.* p. 63
— *v.* Smith & France (N.Z.); **12.** *Contr.* p. 47
— *v.* South Staffordshire Waterworks Co. (1909); **16.** *Cr. Pract.* No. 3678a
— *v.* Southport Corpn. (1934); **39.** *Revenue*, No. 791a
— (Feversham's (Earl) Trustees) *v.* Stokesley Rural District Council (1928); **26.** *Hghys.* No. 355b
— *v.* Sunderland Corpn. (1929); **11.** *Comp. Pche.* No. 133a; **13.** *Corpns.* No. 991a; **42.** *Str. Traf.* No. 5b
— *v.* — (1930); **11.** *Comp. Pche.* No. 133a; **13.** *Corpns.* No. 991a; **42.** *Str. Traf.* No. 5b
— *v.* Tasker (1928); **26.** *Hghys.* Nos. 263a, 274a
— *v.* Tonks (N.Z.); **16.** *Cntmpt.* p. 5
— *v.* Traynor (Ir.); **39.** *Revenue*, p. 11
— *v.* Tube Investments, Ltd. (1930); **9.** *Coys.* No. 1126a
— *v.* Tynemouth Union (1930); **37.** *Poor L.* No. 38a
— *v.* Valle-Jones (1935); **34.** *Mast. & S.* Nos. 1456a, 1490a, 1490b
— *v.* Walford (Leopold) (London), Ltd. (1924); **41.** *Ship.* No. 2974a
— *v.* Walker (Ir.); **21.** *E. D.* p. 6
— *v.* Walkergate Press, Ltd. (1930); **13.** *Corpns.* No. 902a; **25.** *Gaming*, No. 462a
— *v.* Walsh (Ir.); **14.** *Crim.* pp. 18, 59
— *v.* Weeks (1931); **34.** *Med.* No. 218a
— *v.* Westminster City Council (1924); **16.** *Cr. Pract.* No. 3637a
— *v.* Wilcox (1938); **26.** *Hghys.* Nos. 1384a, 1569a
— *v.* Wreford-Brown, *Re* Bateman (Baroness) (1925); **21.** *E. D.* Nos. 107a, 755a
— *v.* Wright (1932); **34.** *Mines*, No. 623a
— *v.* Yule & Mercantile Bank of India (1931); **11.** *Confl.* Nos. 58a, 80a, 155a, 169a
A.-G. & Bromley Rural Council *v.* Corke (1933); **36.** *Nuis.* No. 344c
A.-G. & Dommes *v.* Basingstoke Corpn. (1876); **13.** *Corpns.* No. 1275a
A.-G. & Down County Council *v.* Newry No. 1 Rural District Council (Ir.); **36.** *Nuis.* p. 50
A.-G. & General Council of Medical Education of United Kingdom Registration *v.* Barrett Proprietaries, Ltd. (1932); **43.** *Trade Mks.* No. 1210a
A.-G. & Lumley *v.* T. S. Gill & Son Pty., Ltd. (Aus.); **13.** *Corpns.* p. 28; **38.** *Pub. Hlth.* p. 16
A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929); **26.** *Hghys.* Nos. 137a, 951a
A.-G. & Taylor & Son, Ltd. *v.* Todmorden Borough Council (1937); **26.** *Hghys.* No. 795a
A.-G. for Alberta *v.* A.-G. for Canada (1928); **17.** *Dep.* Nos. 98a, 178a, 381a
— *v.* — (1938); **17.** *Dep.* No. 136a
— *v.* Cook (1926); **11.** *Confl.* No. 899a & p. 24
— *v.* Cowan (Can.); **21.** *E. D.* p. 17
— *v.* Lees & Courtney (Can.); **28.** *Injon.* p. 145; **34.** *Med.* p. 191
— *v.* Pearce (Can.); **21.** *E. D.* p. 21
— *v.* Roskiwich (Can.); **17.** *Dep.* p. 56
— *v.* Smoky Lake Municipal District (Can.); **38.** *Rates*, p. 85
A.-G. for Alberta & Neilson *v.* Underwood & A.-G. of Canada (Can.); **17.** *Dep.* p. 56
A.-G. for Australia *v.* Somerville (1924); **8.** *Char.* No. 199b
A.-G. for British Columbia *v.* A.-G. for Canada (1924); **17.** *Dep.* No. 128c
— *v.* —, *Re* Criminal Code, Sect. 498A (1937); **17.** *Dep.* No. 130m
— *v.* —, *Re* Farmers' Creditors' Arrangement Act (1937); **17.** *Dep.* No. 130n
— *v.* —, *Re* Natural Products Marketing Act (1937); **17.** *Dep.* No. 130l
— *v.* Bank of Montreal (Can.); **2.** *Agric.* p. 21
— *v.* British Columbia Sugar Refining Co. (Can.); **38.** *Rates*, p. 50
— *v.* Brooks, Bidlake & Co. (Can.); **12.** *Contr.* pp. 20, 41
— *v.* Canadian Pacific Ry. Co. (1927); **17.** *Dep.* No. 135b
— *v.* Kingcome Navigation Co., Ltd. (1934); **17.** *Dep.* No. 135g
— *v.* McDonald Murphy Lumber Co., Ltd. (1930); **17.** *Dep.* Nos. 128d, 135e
— *v.* Pacific Foam, The (Can.); **41.** *Ship.* p. 66
— *v.* Parker (Can.); **19.** *Educ.* p. 40
— *v.* Robertson (Can.); **2.** *Agric.* p. 23
— *v.* Royal Bank for Canada & Island Amusement Co., Ltd. (Can.); **10.** *Coys.* p. 96
— *v.* Standard Lumber Co., Ltd. (Can.); **28.** *Inc. T.* p. 21
— *v.* Wilson, *Re* Succession Duty Act (Can.); **21.** *E. D.* p. 18
A.-G. for British Columbia & Watt *v.* Saanich Corpn. (Can.); **2.** *Agric.* p. 17
A.-G. for British Columbia College of Dental Surgeons *v.* Cowen (Can.); **28.** *Injon.* p. 153
A.-G. for Canada, *Ex p.*, *Re* Canadian Carpet & Comforter Manufacturing Co. (Can.); **4.** *Bkpcy.* p. 24; **5.** *Bkpcy.* p. 79
A.-G. for Canada Intervening, A.-G. for New Brunswick *v.* Canadian Pacific Ry. Co. (1925); **17.** *Dep.* Nos. 121a, 130d
A.-G. for Canada *v.* Alexander Brown Milling & Elevator Co. (Can.); **17.** *Dep.* p. 43
— *v.* A.-G. for British Columbia (1930); **17.** *Dep.* No. 119a
— *v.* A.-G. of Nova Scotia (Can.); **11.** *Const. L.* p. 73
— *v.* A.-G. for Ontario, *Re* Employment & Social Insurance Act (1937); **17.** *Dep.* No. 130o
— *v.* —, *Re* Weekly Rest in Industrial Undertakings Act; *Re* Minimum Wages Act; *Re* Limitation of Hours of Work Act (1937); **17.** *Dep.* Nos. 110a, 130p, 130q, 130r
— *v.* —, A.-G. of Quebec & A.-G. of Manitoba, *Re* Aeronautics in Canada, Regulation & Control of (1932); **17.** *Dep.* No. 130g
— *v.* A.-G. for Province of Ontario (Can.); **11.** *Const. L.* p. 65
— *v.* A.-G. of Quebec, *Re* Insurance Act of Canada (1932); **17.** *Dep.* No. 128b
— *v.* Coleman Products Co. (Can.); **39.** *Revenue*, p. 14
— *v.* Flint (Can.); **17.** *Dep.* p. 43
— *v.* Foster (Can.); **17.** *Dep.* p. 41
— *v.* Goldberg (Can.); **39.** *Revenue*, p. 14
— *v.* Gordon (Can.); **18.** *Distr.* p. 25
— *v.* MacDougall (Can.); **42.** *Str. Traf.* p. 63
— *v.* O'Reilly (Can.); **12.** *Contr.* p. 4
— *v.* Pugh (Can.); **11.** *Const. L.* p. 77
— *v.* Vancouver Land Registration District Registrar of Titles (Can.); **17.** *Dep.* p. 50
A.-G. for Commonwealth, *Ex p.*, *Re* New South Wales (State of) (Aus.); **17.** *Dep.* p. 62
— *v.* Ah Sheung (Aus.); **17.** *Dep.* p. 67

A.-G. for Isle of Man *v.* Moore (1938); **17.** *Dep.* No. 712a
A.-G. for Manitoba *v.* A.-G. for Canada (1925); **17.** *Dep.* No. 135a
— *v.* — (1929); **17.** *Dep.* No. 117a
— *v.* — (1935); **17.** *Dep.* No. 385c
— *v.* Brookes (Can.); **16.** *Courts*, p. 9; **17.** *Dep.* p. 48
— *v.* Forbes (Can.); **16.** *Courts*, p. 9; **17.** *Dep.* p. 48
— *v.* Harper (Can.); **16.** *Courts*, p. 9; **17.** *Dep.* p. 48
— *v.* Kelly (1922); **2.** *Arbn.* Nos. 288a, 1593a
— *v.* Rosenbaum (Can.); **17.** *Dep.* p. 56
— *v.* Worthington (Can.); **28.** *Inc. T.* p. 78
A.-G. for New Brunswick *v.* Canadian Pacific Ry. Co., A.-G. for Canada Intervening (1925); **17.** *Dep* Nos. 121a, 130d
— *v.* Cohen (Can.); **32.** *Lien*, p. 26
A.-G. for New South Wales *v.* Dickson (1904); **11.** *Const. L.* No. 728a
— *v.* Jackson (Aus.); **17.** *Dep.* p. 67
— *v.* New South Wales, Collector of Customs for (Aus.); **17.** *Dep.* p. 60
— *v.* Trethowan (1932); **17.** *Dep.* No. 192a
— *v.* Williams (1915); **11.** *Const. L.* No. 240a
A.-G. for New Zealand *v.* New Zealand Insurance Co., Ltd. (1936); **8.** *Char.* No. 841c
A.-G. for Newfoundland *v.* Ryan (Nfld.); **11.** *Const. L.* p. 77
A.-G. for Nova Scotia *v.* A.-G. for Canada (Can.); **39.** *Revenue*, p. 25
— *v.* Davis (Can.); **21.** *E. D.* p. 4
— *v.* McDougall (Can.); **2.** *Agric.* p. 18
— *v.* Nova Scotia Legislative Council (1928); **17.** *Dep.* Nos. 52a, 52b
A.-G. for Ontario *v.* A.-G. for Canada (1925); **17.** *Dep.* Nos. 181a, 200a
— *v.* —, *Re* Dominion Trade & Industry Commission Act (1937); **17.** *Dep.* No. 130s
— *v.* Baby (Can.); **11.** *Confl.* p. 32; **17.** *Dep.* p. 50; **21.** *E. D.* p. 18
— *v.* Booth (Can.); **7.** *Bounds. & F.* p. 15
— *v.* Canadian Wholesale Grocers Assocn. (Can.); **17.** *Dep.* p. 39
— *v.* Daly (1924); **16.** *Courts*, p. 13; *Cr. Pract.* p. 33; **17.** *Dep.* Nos. 538a, 538b
— *v.* Fasken (Can.); **21.** *E. D.* p. 18
— *v.* Hamilton Street Ry. Co. (Can.); **42.** *Time*, p. 73
— *v.* Huteson (Can.); **42.** *Stk. Ex.* p. 34
— *v.* McLean Gold Mines, Ltd. (Can.); **16.** *Cr. Pract.* p. 24
— *v.* National Trust Co., Ltd. (Can.); **21.** *E. D.* p. 21
— *v.* Perry (Can.); **17.** *Dep.* p. 72; **21.** *E. D.* p. 16
— *v.* Reciprocal Insurers (1924); **17.** *Dep.* Nos. 108a, 128a, 145a, 162a, 170a
— *v.* Russell (Can.); **11.** *Const. L.* p. 68; **16.** *Cr. Pract.* p. 44
A.-G. for Quebec *v.* A.-G. for Canada (1926); **17.** *Dep.* No. 378a
— *v.* —, *Re* Silver Bros., Ltd. (1932); **17.** *Dep.* Nos. 130i, 130j
— *v.* A.-G. for Canada, A.-G. of Ontario, A.-G. of New Brunswick, A.-G. of Manitoba, A.-G. of Saskatchewan, A.-G. of Alberta & Canadian Radio League, *Re* Radio Communication in Canada (1932); **17.** *Dep.* No. 130k; **42.** *Tele.* No. 4a
— *v.* A.-G. for Canada, Belding Corticelli, Ltd., *Re* Insurance Act of Canada (1932); **17.** *Dep.* No. 128b
— *v.* A.-G. for Ontario (Can.); **19.** *Educ.* p. 40
— *v.* Nipissing Central Ry. Co. & A.-G. for Canada (1926); **17.** *Dep.* No. 122a
A.-G. for Quebec *v.* R. (1938); **17.** *Dep.* No. 374a
— *v.* Slanec (Can.); **17.** *Dep.* p. 53
A.-G. for Saskatchewan, A.-G. of Canada (1932); **17.** *Dep.* No. 372a
A.-G. for Straits Settlements *v.* Pang Ah Yew (1925); **16.** *Cr. Pract.* No. 356a
A.-G. for Trinidad & Tobago *v.* Ambard (Can.); **16.** *Cntmpt.* p. 7
— *v.* Gordon Grant & Co., Ltd. (West Indies); **39.** *Revenue*, p. 12
A.-G. for Victoria *v.* Commonwealth (Aus.); **16.** *Cr. Pract.* p. 44
A.-G. Nova Scotia, *Ex p.* (Can.); **30.** *Intox.* p. 11
A.-G. to Prince of Wales *v.* Bradshaw (1930); **13.** *Cohlds.* No. 1157a
— *v.* Collom (1916); **11.** *Const. L.* No. 927
— *v.* Lambe (1848); **18.** *Discy.* No. 1087a
Attygalle *v.* R. (1936); **17.** *Dep.* No. 554a
Atwell *v.* Atwell (Can.); **27.** *H. & W.* p. 75
Atwood *v.* Lubotina (Can.); **36.** *Negl.* p. 29
Auchterlonie *v.* Arms (Can.); **12.** *Contr.* p. 41
Auchteroni & Co. *v.* Midland Bank, Ltd. (1928); **3.** *Bank.* No. 600a
Auckland City Corpn. *v.* Mercantile & General Insurance Co., Ltd. (N.Z.); **29.** *Insce.* p. 29
— *v.* St. John's College Trust Board (N.Z.); **38.** *Rates*, p. 63
Auckland Corpn. *v.* Alliance Assurance Co., Ltd. (1937); **35.** *Money*, No. 17d
Auckland Harbour Board *v.* R. (1924); **17.** *Dep.* No. 288a
Audet *v.* Wetsch (Can.); **36.** *Negl.* pp. 3, 15
Auditorium, Ltd. *v.* Lumsden (Can.); **9.** *Coys.* p. 19
Audoorn *v.* Audoorn & Pelsma (Can.); **27.** *H. & W.* p. 9
Auerbach *v.* Nelson (1919); **12.** *Contr.* No. 1022a
Augusta, The (1909); **1.** *Adm.* No. 1078a
Augustinian Community Trustees *v.* Pietermaritzburg Corpn. (S. Af.); **38.** *Rates*, p. 62
Augustino *v.* Canadian North-Western Ry. Co. (Can.); **2.** *Aliens*, p. 30
Auld, *Ex p.*, *Re* Consolidated Press, Ltd. (Aus.); **16.** *Cntempt.* p. 5
— *v.* Davis (Can.); **23.** *Exors.* p. 38
— *v.* London, Midland & Scottish Ry. Co. (1935); **8.** *Carr.* No. 1692
Aumann *v.* McKenzie (Can.); **32.** *Lien*, p. 22; **35.** *Mistake*, p. 8
Aung Hla *v.* R. (Ind.); **15.** *Crim.* p. 77
Aung Pe *v.* King-Emperor (Ind.); **14.** *Crim.* p. 46
Aure *v.* Van Cauwenberghe & Fils (1938); **39.** *S. Goods*, No. 871a
Aurora Trading Co., Ltd. & Jackson *v.* Neison Freezing Co., Ltd. (N.Z.); **3.** *Bailmt.* p. 10
Ausman (Doe d.) *v.* Minthorne (Can.); **21.** *Exon* p. 42
Ausonia, The (1933); **41.** *Ship.* No. 5233a
Austen, *Re*, Collins *v.* Margetts (1929); **40.** *Stllmts.* No. 2600a
Austin, *In the Estate of* (1929); **23.** *Exors.* No. 1313a
— *v.* Boone (Can.); **17.** *Deeds*, p. 30
— *v.* Columbia Graphophone Co. (1923); **13.** *Coprt.* Nos. 118a, 488a
Austin (Doe d.) *v.* Cowderoy (1837); **31.** *L. & T.* No. 5788a
— *v.* Jordan (Can.); **29.** *Insce.* p. 46
— *v.* O'Keefe (Aus.); **40.** *Set-off*, p. 24
— *v.* Partington Steel & Iron Co., Ltd. (1928); **34.** *Mast. & S.* Nos. 3056b, 3057b
— *v.* Wright (Aus.); **19.** *Easmt.* p. 6
Austin Reed, Ltd. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 70
Austins of East Ham, Ltd. *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 674x

Austman & Oddson *v.* Bjarnason (Can.); **16.** *Cntmpt.* p. 2
Australasian Brokerage, Ltd. *v.* Australian & New Zealand Banking Corpn., Ltd. (Aus.); **35.** *Misrep.* p. 3
Australasian Investment Co., *Ex p.*, *Ex p.* Union Bank of Australia, *Re* Queensland Mercantile & Agency Co. (1892); **11.** *Confl.* No. 417a
Australasian Performing Right Assocn., Ltd. *v.* 3DB Broadcasting Co. Proprietary, Ltd. (Aus.); **13.** *Coprt.* p. 17
Australasian Temperance & General Assurance Corpn., Ltd. *v.* Mount Albert Borough (N.Z.); **11.** *Confl.* p. 43
Australasian Temperance & General Mutual Life Assurance Society, Ltd. *v.* Howe (Aus.); **17.** *Dep.* p. 59
Australia (Owners) *v.* Nautilus (Owners), The Australia (1927); **1.** *Adm.* No. 1198a
Australia, Commonwealth of *v.* New South Wales State (1929); **17.** *Dep.* Nos. 56a, 390a
Australian Bank of Commerce *v.* Perel (1926); **1.** *Agcy.* No. 338a
Australian Boot Trade Employees Federation *v.* Whybrow & Co. (Aus.) (1910), 10 C. L. R. 266; **17.** *Dep.* p. 63
— *v.* — (Aus.) (1910), 11 C. L. R. 311; **17.** *Dep.* p. 60
Australian Federal Life & General Assurance Co., Ltd. (No. 2), *Re* (Aus.); **10.** *Coys.* p. 106
Australian Group & General Assurance Co., Ltd., *Re* (Aus.); **9.** *Coys.* p. 20
Australian Investment Trust, Ltd *v.* Strand & Pitt Street Properties, Ltd. (Aus.) (1932); **9.** *Coys.* p. 12
Australian Knitting Mills *v.* Grant (Aus.); **39.** *S. Goods*, p. 40
Australian Metropolitan Life Assurance Co., Ltd. *v.* Lea (Aus.); **7.** *B. of Sale*, p. 2
Australian Mutual Provident Society *v.* Gregory (Aus.); **11.** *Confl.* p. 30
— *v.* Public Curator of Queensland (Aus.); **10.** *Coys.* p. 63
Australian Performing Right Assocn. & J. Leist Incorporated *v.* Turner & Son (Aus.); **13.** *Coprt.* p. 19
Australian Railways Union *v.* Victorian Rys. Comrs. (Aus.); **17.** *Dep.* p. 60
Australian Scale Co., Ltd. *v.* Comr. of Taxes (Aus.); **17.** *Dep.* p. 64
Australian Slate Quarries, Ltd., *Re* (Aus.); **9.** *Coys.* p. 17
Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1932); **2.** *Aliens*, No. 215u
Auto Car & Sport Equipment Co., Ltd. *v.* Ford Service Station Co., Ltd. (1931); **1.** *Agcy.* No. 885a
Auto Supply Co., Ltd. *v.* Raghunatha Chetty (Ind.); **3.** *Bailmt.* p. 13
Autographic Register Systems, Ltd. *v.* Canadian National Ry. Co. (Can.); **11.** *Comp. Pche.* p. 7
Automatic Bottle Makers, *Re*, Osborne *v.* Automatic Bottle Makers (1926); **10.** *Coys.* No. 4730a
Automatic Telephone Manufacturing Co., Ltd., *Re*, *Re* Mellinger's Patent (1928); **36.** *Pats.* No. 2127a
Automobile & General Finance Corpn., Ltd. *v.* Morris (1929); **3.** *Bailmt.* No. 244a
Automobile Finance Co. of Australia *v.* Henderson (Aus.); **6.** *B. of Exch.* p. 10
— *v.* Law (Aus.); **6.** *B. of Exch.* p. 21
Automobile Fire & General Insurance Co. of Australia, Ltd. *v.* Davey (Aus.); **29.** *Insce.* p. 38
Avelsgaard's Case, *Re* Land Titles Act (Can.); **38.** *Real Prop.* p. 93
Avenue Theatre, Ltd. *v.* Vancouver Gas Co. (Can.); **36.** *Nuis.* p. 48
Averbach *v.* Bloom & Dworkin (Can.); **17.** *Deeds*, pp. 30, 32
Avery *v.* Canadian Pacific Railway (Can.); **8.** *Carr.* p. 14
Avery (W. & T.) *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 54
Avery *v.* London & North Eastern Ry. Co. (1937); **34.** *Mast. & S.* Nos. 2021a, 3324b
Avory & Son *v.* Parks (Can.); **2.** *Arbn.* p. 102
Award of Wellington Cooks & Stewards Union, *Re* (N.Z.); **17.** *Dep.* p. 37
Axel Brostrom & Son *v.* Louis Dreyfus & Co. (1932); **41.** *Ship.* No. 3517a
Axford *v.* Prior (1866); **29.** *Inns*, No. 116a
— *v.* Southern Ry. Co. (1936); **8.** *Carr.* No. 1493
Ayer *v.* Orme (1563); **19.** *Eccl.* No. 292
Ayers, *Re* (Can.); **11.** *Confl.* p. 54
— *v.* South Australian Banking Co. (1871); **35.** *Mtge.* No. 78a
Aylesford Fruit & Produce Shipping Co. *v.* Nichols (Can.); **43.** *Trade*, p. 2
Aylesford's (Earl) Case (1727); **12.** *Contr.* No. 1234a
Aylet *v.* Dodd (1741); **2.** *Agric.* No. 107a
Ayleworth *v.* Toronto (Can.); **38.** *Rates*, p. 87
Ayling, *Re*, Royal Bank of Canada *v.* Heyler & Ayling (Can.); **7.** *B. of Sale*, p. 1
— *v.* Wellington Corpn. (N.Z.); **34.** *Mast. & S.* p. 66
Aylward, *Re*, *Ex p.* McMillan (Can.); **4.** *Bkpcy.* p. 30; **35.** *Mtge.* p. 31
— *v.* Aylward (1928); **27.** *H. & W.* No. 2733a
Aylwin *v.* Evans (1882); **29.** *Intpr.* No. 443a
Aynek Syndicate, Ltd., *Re* (1936); **10.** *Coys.* No. 6513a
Ayotte, *Re* (Can.); **22.** *Evid.* p. 20
Ayr Picture Houses, Ltd., *Re* (Scot.); **28.** *Inc. T.* p. 43
Ayre, *Re*, *Ex p.* Potts (1840); **4.** *Bkpcy.* No. 1007a
Ayres *v.* South Australian Banking Co. (1871); **35.** *Mtge.* No. 78a
Ayrshire Education Authority *v.* Buteshire Education Authority (Scot.); **19.** *Educ.* p. 37
Ayrshire Pullman Motor Services & Ritchie (D.M.) *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 32
Ayscough *v.* Sheed Thomson & Co. (1923); **2.** *Arbn.* No. 164a
— *v.* — (1924); **2.** *Arbn.* No. 164a
Ayusha *v.* Babalal (Ind.); **11.** *Confl.* p. 33
Azamgarh (Vakil of), *Re* (Ind.); **3.** *Barr.* p. 49
Azzole *v.* Yates Construction Co. (Can.); **36.** *Negl.* p. 8

B.

B., *Re*, Canada Trust Co. *v.* Gardiner (Can.); **43.** *Trusts*, p. 61
— (otherwise H.) *v.* B. (1901); **27.** *H. & W.* No. 2377
— *v.* B. (1929); **27.** *H. & W.* No. 5335a
— *v.* — (1935); **27.** *H. & W.* No. 6102a
— *v.* — (Can.), [1935] S. C. R. 231; **27.** *H. & W.* p. 39
— *v.* — (Can.), [1935] 1. W. W. R. 290; **27.** *H. & W.* p. 51
— *v.* — (Can.) (1936); **27.** *H. & W.* p. 1
— *v.* — (Can.) (1937); **27.** *H. & W.* p. 1
— *v.* — & G. (1937); **27.** *H. & W.* No. 3993a
— *v.* — & S. (Can.); **27.** *H. & W.* p. 44
— *v.* L. (1919); **22.** *Evid.* No. 3437a

B. C. Timber Industries Journal, Ltd. *v.* Black (Can.); **9.** *Coys.* p. 33
B. N. Sen & Brothers *v.* Chuni Lal Dutt & Co. (Ind.); **3.** *Barr.* p. 50
B. S. Lyle, Ltd. *v.* Chappell (1931); **35.** *Money*, Nos. 353q, 353r; **39.** *Revenue*, No. 548b
— *v.* — (1932); **35.** *Money*, Nos. 353q, 353r, 353u; **39.** *Revenue*, No. 548b
B. V. D. Co., Ltd. *v.* Canadian Celanese, Ltd. (Can.) [1937] S. C. R. 221; **36.** *Pats.* p. 75
— *v.* —, [1937] S. C. R. 441; **36.** *Pats.* p. 112
B. W. B. Navigation Co. *v.* Kiltuish, The (Can.); **1.** *Adm.* p. 38
Baarn, The (1933); **1.** *Adm.* Nos. 1223a, 1403a; **35.** *Money*, Nos. 17k, 55a
— (No. 2) (1934); **1.** *Adm.* No. 1403b
Baars *v.* Keep (1931); **26.** *Hghys.* Nos. 1435d, 1435e
Baba Gurdit Singh *v.* Statesman, Ltd. (Ind.); **32.** *Libel*, p. 1
Babbidge *v.* Pirelli General Cable Works, Ltd. (1933); **34.** *Mast. & S.* No. 3283k
Babbitt *v.* Clarke (Can.); **38.** *Real Prop.* p. 92
Babcock *v.* Babcock & King (Can.); **27.** *H. & W.* p. 42
— *v.* Standish (Can.); **30.** *Jdgmts.* p. 19
Baber *v.* Ford (1938); **34.** *Mast. & S.* No. 3969d
Babineau *v.* Bourque (Can.); **12.** *Contr.* p. 43
Babitt *v.* Boileau (Can.); **38.** *Real Prop.* p. 95
Babiuk *v.* Anderson (Can.); **33.** *Mags.* p. 26
Babu *v.* Dayambai (Ind.); **36.** *Prtnrs.* p. 59
Bach *v.* Cockburn, *Re* Hicks (1933); **21.** *E. D.* Nos. 227b, 531a
Back *v.* Kett (1822); **20.** *Egy.* No. 1637a
— *v.* Whitlock (1932); **28.** *Inc. T.* No. 449a
Backer, Klorasance *v.* Ahmed Esmail Jamal (Ind.); **7.** *B. of Sale*, p. 12
Backhouse, *Re*, Westminster Bank, Ltd. *v.* Shaftesbury Society & Ragged School Union (1931); **44.** *Wills*, No. 2511a
Backus *v.* Smith (Can.); **19.** *Easmt.* p. 8
Bacon *v.* Campbell (Can.); **18.** *Discy.* p. 17
— *v.* Longrake Spar Co., Ltd. (1931); **34.** *Mast. & S.* No. 2137a
— *v.* Wills & Sons, Ltd. (1933); **34.** *Mast. & S.* No. 3801h
Badat, *Ex p.* (S. Af.); **30.** *Regn.* p. 2
Badger, *Re* (1858); **34.** *Metrop.* No. 46a
— *v.* James (1934); *Theatres*, No. 147a
Badger's Estate, *Re*, Ostrander & Co., Ltd. *v.* Canadian Credit Men's Trust Assocn. (Can.); **4.** *Bkpcy.* p. 29
Badische Co., Ltd., *Re*, *Re* Bayer Co, Ltd., *Re* Griesheim Elektron, Ltd., *Re* Kalle & Co., Ltd., *Re* Berlin Aniline Co., Ltd., *Re* Meister Lucius & Bruning, Ltd. (1921); **2.** *Aliens*, Nos. 195a, 405a
Badiuk *v.* Moore (Can.); **21.** *Exon.* p. 49
Badman *v.* Allchurch (Aus.); **30.** *Intox.* p. 17
Badman Brothers *v.* R. (1924); **16.** *Cr. Pract.* No. 374a
Badtolph *v.* Bamfeild (1674); **11.** *Confl.* No. 788
Baechler, *Re* (Can.); **24.** *Exors.* p. 39
Baelz *v.* Public Trustee (1926); **9.** *Coys.* No. 26a
Bagan *v.* Portage La Prairie Mutual Insurance Co. (Can.); **29.** *Insce.* p. 62
Baggaley *v.* Baggaley (Can.); **27.** *H. & W.* p. 38
Baglehole *v.* Walters (1811); **39.** *S. Goods*, No. 643b
Bagnalstown & Wexford Ry. Co., *Re* (Ir.); **10.** *Coys.* p. 103
Bagshaw *v.* Johnston (Can.); **32.** *Lien*, p. 26
Bahadur Lal *v.* Allahabad High Court Judges (Ind.); **17.** *Dep.* p. 82
Baijnath *v.* Atlas Assurance Co., Ltd. (S. Af.); **29.** *Insce.* p. 57
Baildon Urban (Park Lane Areas) Confirmation Order, 1935, Baildon Urban Tong Park No. 1 Housing Confirmation Order, 1935 (1936); **38.** *Pub. Hlth.* No. 502s
Bailey, *Re* (1933); **44.** *Work*, Nos. 139a, 139b
—, *Re*, Duchess Mill, Ltd. *v.* Bailey (1932); **24.** *Exors.* Nos. 8520c, 8558a
Bailey (or Balasanovich), *Re*, Foam Lake Town *v.* Insinger Rural Municipality (Can.); **37.** *Poor L.* p. 18
— *v.* Bailey (1926); **3.** *Bank.* No. 112a
— *v.* — (Can.) (1929); **27.** *H. & W.* p. 48
— *v.* — (Can.) (1934); **27.** *H. & W.* p. 44
— *v.* Croft (Can.); **39.** *S. Goods*, p. 37
— *v.* Curzon of Kedleston (Marchioness) (1932); *Pract.* No. 2788
— *v.* Duggan (1932); *Pract.* No. 2788
— *v.* Geddes (1938); **42.** *Str. Traf.* No. 31c
— *v.* Grogan & Bailey (Can.); **36.** *Negl.* p. 17
— *v.* Howard (1938); **36.** *Negl.* No. 953o
— *v.* McNeill (Can.); **34.** *Mast. & S.* p. 15
— *v.* Miller & Broatch (Can.); **18.** *Distr.* p. 34
— (Stoke-on-Trent Revenue Officer) *v.* Potteries Electric Traction Co., Ltd. (1931); **30.** *Jdgmts.* No. 707a; **38.** *Rates*, No. 226d
— *v.* Taylor (N.Z.); **42.** *Str. Traf.* p. 64
— *v.* Vile (N.Z.); **19.** *Easmt.* p. 13
Bailey (William) (Birmingham), Ltd., Application to Register a Trade Mark, *Re*, *Re* Gilbert & Co. Opposition (1935); **43.** *Trade Mks.* No. 214a
Bailie *v.* Inglis & Co., Ltd. & Jamison (Ir.); **18.** *Discy.* p. 7
Baillie, *Re*, Whiting *v.* Cavendish (Aus.); **43.** *Trusts*, p. 63
Baillie Estate, *Re*, Montreal Trust Co. *v.* Baillie (Can.); **22.** *Evid.* p. 8
Baillie-Hamilton *v.* Morgan, *Re* Salting (1932); **40.** *Sttlmts.* No. 1008a
Baily & Co., Ltd. *v.* Clark, Son & Morland (1938); **43.** *Trade Mks.* No. 78a
Bain, *Ex p.*, *Re* Carroll & Wright (Can.); **42.** *Stk. Ex.* p. 34
—, *Re*, Public Trustee *v.* Ross (1930); **8.** *Char.* No. 717a
— *v.* Bank of Canada & Woodward (Can.); **3.** *Bank*, p. 20
— *v.* Fife Coal Co. (Scot.); **34.** *Mines*, p. 211
— *v.* McIntyre (Can.); **23.** *Exors.* p. 3
— *v.* Ormeston (Scot.); **41.** *Ship.* p. 11
— *v.* Springbank Quarry Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 91
Bainbridge *v.* Bainbridge (1934); **27.** *H. & W.* No. 5128a
— *v.* Black (Can.); **21.** *Exon.* p. 49
Baines *v.* Harman (Can.); **32.** *Lien*, p. 25
— *v.* National Provincial Bank, Ltd. (1927); **3.** *Bank.* No. 270a
Baird, *Re* (Can.); **13.** *Corpns.* p. 26
— *v.* District Registrar of Titles (Can.); **13.** *Corpns.* p. 26
— *v.* Elliott & Sheard (Can.); **44.** *Waters*, p. 5
— *v.* Equitable Life Assurance Society (Can.); **29.** *Insce.* p. 34
— *v.* Lees (Scot.); **10.** *Coys.* p. 69
— *v.* Murphy (Ir.); **21.** *Exon.* p. 59; **39.** *Recrs.* p. 1
— *v.* West Kildonan (Can.); **38.** *Rates*, p. 82
Baird (William) & Co. *v.* Campbell (Scot.); **21.** *Exon.* pp. 54, 59; **34.** *Mast. & S.* p. 133
Baird & Peters, *Ex p.*, *Re* Wetmore (Can.); **5.** *Bkpcy.* p. 73
Baird & Sons, *Re* (Scot.); **9.** *Coys.* p. 52
Baird Estate, *Re* (Can.); **44.** *Wills*, p. 51
Baird (Robert), Ltd. *v.* Glasgow Corpn. (1936); **38.** *Pub. Hlth.* No. 530a

Baird Television, Ltd. *v.* Gramophone Co., Ltd. (1932); **36.** *Pats.* No. 2944h
Baird's Trustees *v.* Baird (Scot.); **39.** *Rntchgs.* p. 8
Baittle, *Re*, Freedman *v.* Hart (Can.); **5.** *Bkpcy.* p. 82
Baker, *Re* (1936); **5.** *Bkpcy.* No. 7149a; **25.** *Fraud. Conv.* No. 408a
—, *Re* (Can.) (1900); **33.** *Mags.* p. 29
—, *Re* (Can.) (1937); **27.** *Poor L.* p. 18
—, *Re*, *Ex p.* Trustee *v.* Baker & Arnold (1936); **5.** *Bkpcy.* No. 7149a; **25.** *Fraud. Conv.* No. 408a
—, *Re*, Steadman *v.* Dicksee (1934); **44.** *Wills*, No. 3143a
— *v.* Archer-Shee (1927); **28.** *Inc. T.* No. 442
— *v.* Baker (Can.) (1904); **21.** *Estpl.* p. 38
— *v.* — (Can.) (1932); **27.** *H. & W.* p. 9
— *v.* Baker, *Re* Baker (1929); **44.** *Wills*, Nos. 1651a, 2008a
— *v.* Balderston (Can.); **27.** *H. & W.* p. 1
— *v.* Berkeley (1827); **43.** *Tresp.* No. 348a
— *v.* Cook (1937); **28.** *Inc. T.* No. 119f
— *v.* Dewey (Can.); **32.** *Lien*, p. 25
— *v.* Dumaresq (Can.); **44.** *Wills*, p. 47
— *v.* Gillum (Can.); **21.** *Exon.* p. 47
— *v.* Guaranty Savings & Loan Assocn. (Can.); **32.** *Loan Soc.* p. 45
— *v.* Harris (Can.); **19.** *Easmt.* p. 7
— *v.* Henderson (1830); **18.** *Discy.* No. 651a
— *v.* Lloyds Bank (1920); **3.** *Bank.* Nos. 921a, 921b
— *v.* Longhurst (E.) & Sons, Ltd. (1933); **36.** *Negl.* No. 389d
— *v.* Mabie Todd & Co., Ltd. (1927); **28.** *Inc. T.* No. 241a
— *v.* McClelland (Can.); **21.** *Exon.* p. 46
— *v.* New South Wales Ry. Comrs. (Aus.); **34.** *Mast. & S.* p. 38
— *v.* Peck (1860); **30.** *Jdgmts.* No. 752a
— *v.* R. (Can.) (1926); **14.** *Crim.* p. 36
— *v.* R. (Can.) (1930); **15.** *Crim.* p. 103
— *v.* Richards (Can.); **5.** *Bkpcy.* p. 66
— *v.* Sillitoe (1931); **25.** *Gaming*, No. 415e
— *v.* Tang & Mitchell (Can.); **1.** *Agcy.* p. 99
— *v.* West Cannock Colliery Co., Ltd. (1931); **34.** *Mast. & S.* No. 2407a
Baker, Application for Letters Patent, No. 373,702, *Re* (1933); **36.** *Pats.* No. 1468b
Baker, Carver & Morell Inc. *v.* Astoria (Can.); **1.** *Adm.* p. 23
Bakewell *v.* Bakewell (Aus.); **27.** *H. & W.* p. 19
Bakker *v.* Winkler (Can.); **17.** *Deeds*, p. 29
Balabuk Estate, *Re* (Can.); **18.** *Descr.* p. 3
Balasanovich (or Bailey), *Re* Foam Lake Town *v.* Insinger Rural Municipality (Can.); **37.** *Poor L.* p. 18
Balasundara Mudaliar *v.* Mahamed Oosman Saheb (Ind.); **12.** *Contr.* p. 22
Balchin *v.* Balchin (1937); **27.** *H. & W.* No. 6177a
Balcombe, The, The Carlston (1926); **1** *Adm.* No. 894b
Balcovske *v.* Stanley Theatre Co., Ltd. (Can.); **34.** *Mast. & S.* p. 15
Balden *v.* Shorter (1933); **1.** *Action*, No. 274b
Balderston *v.* Central Sugar Co., Ltd. (1936); **34.** *Mast. & S.* No. 3885d
Baldry *v.* Dixon (Can.); **18.** *Distr.* p. 30
— *v.* McBain (Can.); **36.** *Pats.* p. 71
Baldwin, *Ex p.*, R. *v.* Surrey Comet (1931); **16.** *Cntmpt.* No. 179a
— *v.* Baldwin (1922); **17.** *Dep.* No. 586a
— *v.* Bell (Can.); **36.** *Negl.* p. 17
— *v.* Brianger (Can.); **2.** *Animals*, p. 68
— *v.* Ellis (1929); **20.** *Elect.* Nos. 1145a, 1146a, 1146b
— *v.* Hormasji (Ind.); **10.** *Coys.* p. 89
Baldwin *v.* London & North Eastern Railway (1936); **34.** *Mast. & S.* No. 3025d
— *v.* McIver (N.Z.); **43.** *Trade*, p. 4
— *v.* Mooney, *Re* Donald Estate (Can.); **18.** *Descr.* p. 3
— *v.* Snook (Can.); **2.** *Animals*, p. 71
Baldwin & Willinsky, *Re* (Can.); **2.** *Arbn.* p. 91
Baldwin International Radio Co. of Canada, Ltd. *v.* Western Electric Co. Incorporated & Northern Electric Co., Ltd. (Can.); **36.** *Pats.* p. 69
Baldwin Raper *v.* Baldwin Raper & Metz, Baldwin Raper *v.* Baldwin Raper (1926); **27.** *H. & W.* No. 4882a.
Bale & Church, Ltd. *v.* Sutton, Parsons & Sutton & Astrah Products (1934); **43.** *Trade Mks.* No. 740a
Balfour *v.* Kensington Gardens Mansions, Ltd. (1932); **31.** *L. & T.* No. 5291a
Balfour's Settlement, *Re*, Public Trustee *v.* Official Receiver (1938); **5.** *Bkpcy.* No. 5894a
Balgownie Land Trust, Ltd. *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 23
Bal Krishna *v.* Ram Krishna (1931); **16.** *Courts*, No. 668a
Balkans & Near East Shipping Agency *v.* United Shipping Agencies, Ltd. (1935); **41.** *Ship.* No. 4886a
Ball, *Re*, Jones *v.* Jones (1930); **43.** *Trusts*, No. 3491a
— *v.* Krokback & Co. (Can.); **43.** *Tresp.* p. 50
— *v.* Sawyer-Massey Co. (Can.); **43.** *Trov.* p. 55
— *v.* Thorne (Can.); **4.** *Bkpcy.* p. 38
Ball (T.) (Leicester), Ltd. *v.* Platts Bros. (1937); **8.** *Carr.* No. 1600
Ball (T. M.) Lumber Co., Ltd. *v.* Bunting (Can.); **35.** *Mtge.* p. 45
Ballam *v.* Hatfield (Can.); **12.** *Contr.* p. 6
Ballantine, *Ex p.*, *Re* Central Illawarra Shire Council (Aus.); **38.** *Pub. Hlth.* p. 22
— *v.* International Ry. Co. (Can.); **36.** *Negl.* p. 30
Ballantyne *v.* Cloutt (Aus.); **1.** *Agcy.* p. 77
— *v.* McCulloch & Co. & Sims (Can.); **21.** *Exon.* p. 50
Ballarat Trustees, Executors & Agency Co., Ltd. *v.* National Trustees, Executors & Agency Co. of Australasia, Ltd., *Re* Mitchell (Aus.); **44.** *Wills*, p. 39
Ballard *v.* Horton's Estate, Ltd. (1926); **26.** *Hghys.* No. 2591a
Ballard's Conveyance, *Re* (1937); **40.** *S. Land*, No. 2675a
Ballas & Minister of Education, *Re* (Can.); **19.** *Educ.* p. 39
Ballem *v.* Fried (Can.); **6.** *B. of Exch.* p. 14
Ballingall & Son *v.* Dundee Ice & Cold Storage Co. (Scot.); **3.** *Bailmt.* p. 10
Balls *v.* McGregor (Can.); **1.** *Agcy.* p. 82
Balls Bros., Ltd. *v.* Sinclair (1931); **31.** *L. & T.* No. 2995b
Balne *v.* Sunnyside Amusement Co., Ltd. (Can.) **36.** *Negl.* p. 6
Baloise Fire Insce. Co. *v.* Martin (Can.); **29.** *Insce.* p. 25
Balsarini *v.* Lewis (Aus.); **7.** *B. of Sale*, p. 10
Baltzan *v.* Fidelity Insurance Co. of Canada (Can.); **34.** *Med.* p. 185
Bampton (Ronald) & Partners *v.* Garner & Sons, Ltd. (1937); **1.** *Agcy.* No. 1755d
Banbury, *Ex p.*, *Re* Wegg (1843); **5.** *Bkpcy.* No. 7735
Banco de Bilbao *v.* Rey (1938); **11.** *Const. L.* No. 387b
— *v.* Sancha (1938); **11.** *Const. L.* No. 387b
Banco de Portugal *v.* Waterlow & Sons, Ltd. (1930); **3.** *Bank.* No. 456a; **12.** *Contr.* No. 5168b

Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932); **3.** *Bank.* Nos. 456a, 456b; **12.** *Contr.* No. 5168b; **17.** *Damgs.* Nos. 347b, 411a
Banco de Vizcaya *v.* Don Alfonso de Borbon y Austria (1935); **11.** *Confl.* No. 8a
Bancroft, *Re*, Eastern Trust Co. *v.* Calder (Can.); **44.** *Wills*, p. 47
— (Manchester Revenue Officer) *v.* Manchester Assessment Committee (1930); **38.** *Rates*, No. 226f
— *v.* Montreal Trust Co. (Can.); **9.** *Coys.* p. 18
Bane *v.* Foxall & Canfor in the County Court of Norfolk (1856); **13.** *Cty. Cts.* No. 272a
Banffshire County Council *v.* Scottish Education Dept. (Scot.); **19.** *Educ.* p. 40
Banfield *v.* Chester (1925); **11.** *Confl.* No. 1243b; **17.** *Dep.* No. 714a
Banford *v.* Buckerfields, Ltd. (Can.); **40.** *S. Land*, p. 13
Bangley's Trust, *Re* (1852); **40.** *Sttlmts.* No. 2209b
Bangor Urban District Council *v.* McKee (Ir.); **26.** *Hghys.* p. 41
Banham, *Re*, Westminster Bank, Ltd. *v.* A.-G. (1931); **44.** *Wills.* No. 5881a
Bank of Athens Société Anonyme *v.* Royal Exchange Assurance (1938); **35.** *Money*, No. 142a
Bank of Australasia *v.* Bank of Australia (1847); **3.** *Bank.* Nos. 156, 264
— *v.* Curtis (N.Z.); **6.** *B. of Exch.* p. 10
Bank of Baroda, Ltd. *v.* H. B. Shivdasani (Ind.); **10.** *Coys.* p. 57
Bank of British North America *v.* Edgecombe (Can.); **5.** *Bkpcy.* p. 67
— *v.* St. John & Quebec Ry. Co. (Can.); **9.** *Coys.* p. 51
Bank of Commerce, *Ex p.*, *Re* Wiarton Lumber Co. (Can.); **3.** *Bank.* p. 44
Bank of England *v.* Lunn (1809); **3.** *Bank*, No. 9a
— *v.* Martin (Ir.); **3.** *Bank*, p. 27
Bank of Ethiopia *v.* National Bank of Egypt & Liguori (1937); **10.** *Coys.* No. 8523d; **11.** *Const. L.* No. 387a
Bank of Hamilton *v.* Black (Can.); **25.** *Fraud. Conv.* p. 13
Bank of Hindustan, Ltd., Madras *v.* Govindarajulu Naidu (Ind.); **6.** *B. of Exch.* p. 21
Bank of Liverpool & Martins, Ltd. *v.* Holland (1926); **8.** *Chos.* Nos. 204d, 221a
Bank of Montreal, *Re*, *Re* Winding-up Act & Franco-Canadian Mortgage Co., Ltd. (Can.); **26.** *Guar.* p. 12
— *v.* Bole (Can.); **30.** *Intox.* p. 14
— *v.* Dominion Gresham Guarantee & Casualty Co., Ltd. (1930); **3.** *Bank*, No. 546b
— *v.* Guaranty Silk Dyeing & Finishing Co., Ltd. (Can.); **3.** *Bank.* p. 44; **32.** *Lien*, p. 21
— *v.* Haffner (Can.); **32.** *Lien*, p. 26
— *v.* Holoboff (Can.); **3.** *Bank.* p. 41
— *v.* Hopkins (Can.); **35.** *Mtge.* p. 48
— *v.* Hueston (Can.); **3.** *Bank.* p. 43
— *v.* Irvine & Feinstein (Can.); **6.** *B. of Exch.* p. 13
— *v.* Isbell (Can.); **3.** *Bank.* p. 42
— *v.* Lyon (Can.); **18.** *Distr.* p. 24
— *v.* McNeill & McNeill (Can.); **6.** *B. of Exch.* p. 15
— *v.* Morrow (Can.); **24.** *Exors.* p. 32
— *v.* Normandin (Can.); **3.** *Bank.* p. 42
— *v.* Reis (Can.); **25.** *Fraud. Conv.* p. 13
— *v.* Robshaw (Can.); **32.** *Limit. of A.* p. 32
— *v.* Shean (Can.); **5.** *Bkpcy.* p. 73
— *v.* Tannas (Can.); **21.** *Exon.* p. 47
— *v.* Taylor (Can.); **21.** *Exon.* p. 45
— *v.* Weisdepp (Can.); **3.** *Bank.* p. 42; **12.** *Contr.*
Bank of Montreal Assessment, *Re* (Can.); **28.** *Inc. T.* p. 42
Bank of N. T. Butterfield & Son, Ltd. *v.* Golinsky (1926); **9.** *Coys.* No. 2703a
Bank of New Zealand *v.* Baker (N.Z.); **3.** *Bank.* p. 46
Bank of Nova Scotia, *Ex p.*, *Re* Colonial Manufacturing Co. (Can.); **4.** *Bkpcy.* p. 43
—, *Ex p.*, R. *v.* Woodstock Town Assessors (Can.); **16.** *Cr. Pract.* p. 39
— *v.* Cushing (Can.); **6.** *B. of Exch.* p. 26
— *v.* Hatfield (Can.); **1.** *Agcy.* p. 104
— *v.* Philpott (Can.); **6.** *B. of Exch.* pp. 3, 13
— *v.* Wigmore (Can.); **26.** *Guar.* p. 3
— *v.* Wright, *Re* Monkley (Can.); **35.** *Mistake*, p. 9
— *v.* Zink (Can.); **26.** *Guar.* p. 2
Bank of Ottawa *v.* McLaughlin (Can.); **6.** *B. of Exch.* p. 26
Bank of Russian Trade, Ltd. *v.* British Screen Productions, Ltd. (1930); **18.** *Discy.* No. 1806a
Bank of South Australia, *Re* (1894); **10.** *Coys.* No. 7290
Bank of Toronto *v.* Adames (Can.); **3.** *Bank.* p. 43
— *v.* Bennett (Can.); **6.** *B. of Exch.* p. 16
— *v.* Borys (Can.); **6.** *B. of Exch.* p. 10
— *v.* Cochrane (Can.); **6.** *B. of Exch.* p. 10
— *v.* Matheson (Can.); **1.** *Agcy.* pp. 52, 53
— *v.* Matheson & M'Caskill (Can.); **35.** *Mtge.* p. 47
— *v.* Simonson (Can.); **3.** *Bank.* p. 43
— *v.* Sweeney (Can.); **6.** *B. of Exch.* p. 10
— *v.* West Kildonan Rural Municipality (Can.); **29.** *Insce.* p. 30
Bank of United States *v.* Ross, *Re* Almur Fur Trading Co. (Can.); **9.** *Coys.* p. 51
Bank of Upper Canada *v.* Armstrong (Can.); **38.** *Real Prop.* p. 99
— *v.* Beatty (Can.); **30.** *Jdgmts.* p. 24
— *v.* Murphy (Can.); **21.** *Exon.* p. 50
Bank of Victoria *v.* Michall (Aus.); **17.** *Deeds*, p. 24
Bank of Yorkton *v.* Bryan (Can.); **6.** *B. of Exch.* p. 25
Bankers' & Traders' Insurance Co., Ltd. *v.* Jumna Khan (Aus.); **29.** *Insce.* p. 6
Banking Service Corpn., Ltd. *v.* Toronto Finance Corpn., Ltd. (Can.); **9.** *Coys.* p. 18
Bankruptcy Act, *Re*, *Re* Tenenbein (Can.); **4.** *Bkpcy.* p. 10
Bankruptcy Notice, A, *Re* (1924); **4.** *Bkpcy.* No. 797a; **5.** *Bkpcy.* No. 8782a; **12.** *Contr.* Nos. 1178a, 1248a
— (No. 292 of 1928), *Re* (1928); **4.** *Bkpcy.* No. 274b
— (No. 171 of 1934), *Re* (1934); **4.** *Bkpcy.* No. 940a
— (No. 62 of 1924), *Re*, *Ex p.* Petitioning Creditors *v.* Debtor (1924); **4.** *Bkpcy.* No. 797a; **12.** *Contr.* No. 1178a.
Banks, *Re*, Hamilton *v.* Loughnan (N.Z.); **44.** *Wills*, p. 33
—, *Re*, Loughnan *v.* Hamilton (N.Z.); **44.** *Wills*, p. 33
— *v.* Beals (Can.); **7.** *Bounds & F.* p. 15
Banks Peninsula Electric Power Board *v.* Akaroa Borough Council (N.Z.); **12.** *Contr.* p. 4; **17.** *Deeds*, p. 28; **19.** *Easmt.* p. 1
Bannan *v.* Toronto Corpn. (Can.); **30.** *Intox.* p. 16
Bannatyne *v.* Pritchard (Can.); **38.** *Rates*, p. 84
Bannatyne (*Re* Taylor Estate) & Assiniboia Rural Municipality (No. 2), *Re* (Can.); **11.** *Comp. Pche.* p. 10
Bannatyne & Assiniboia Rural Municipality (No. 3), *Re* (Can.); **11.** *Comp. Pche.* p. 16
Bannerman's Estate, *Re* (Can.); **23.** *Exors.*

Bannermann *v.* Bradley (Can.); **1.** *Agcy.* p. 87
Banning (Doe d.) *v.* Griffin (1812); **22.** *Evid.* No. 1499a
Bannister, *Re*, Heys-Jones *v.* Bannister (1921); **43.** *Trusts*, No. 544a
Banque Belge Pour L'Etranger *v.* Hambrouck (1921); **3.** *Bank.* No. 639a
Banque Canadienne Nationale *v.* Houde (Can.); **21.** *Exon.* p. 46
— *v.* Labine & Courtemanche (Can.); **21.** *Exon.* p. 57
— *v.* Mutual Life Insurance Co. of New York & Shragge (Can.); **4.** *Bkpcy.* p. 24; **29.** *Insce.* p. 34
— *v.* Sawchuk (Can.); **3.** *Bank.* p. 43; **10.** *Coys.* p. 96
— *v.* Shragge (Can.); **3.** *Bank.* p. 41
— *v.* Tencha (Can.); **25.** *Fraud. Conv.* p. 15; **27** *H. & W.* p. 6
— *v.* Wood River Rural Municipality (Can.); **18.** *Distr.* p. 34
Banque d'Hochelaga *v.* Brownstone (Can.); **7.** *B. of Sale*, p. 1
— *v.* Brunet (Can.); **3.** *Bank.* p. 20
— *v.* Hayden & Gillespie Elevator Co. (Can.); **7.** *B. of Sale*, pp. 7, 8
— *v.* Jeannotte (Can.); **5.** *Bkpcy.* p. 74
— *v.* Marshall (Can.); **1.** *Agcy.* p. 107
Banque Internationale de Commerce de Petrograd *v.* Goukassow (1925); **10.** *Coys.* No. 8524
Banque Provincial *v.* Ricciardi (Can.); **34.** *Mast. & S.* p. 13
Banque Provinciale du Canada *v.* Capital Trust Corpn. (Can.); **24.** *Exors.* p. 34; **35.** *Mtge.* p. 32
Bansi Lal *v.* Gopal Lal (Ind.); **17.** *Dep.* p. 84
Bansilal Abirchand *v.* Ghulan Mahbub Khan (Ind.); **12.** *Contr.* p. 43
Banta Singh, *Re* (Can.); **2.** *Aliens*, p. 50
Banting *v.* Law Union & Crown Mortgage Co. (Can.); **29.** *Insce.* p. 29
— *v.* Western Assurance Co. (Can.); **29.** *Insce.* p. 29
Banvard *v.* Moolla (Ind.); **25.** *Gaming*, p. 26
Baptistin Bodrero's Application, *Re* (1938); **43.** *Trade Mks.* No. 180a
Bar Councils Act, *Re* (Ind.); **3.** *Barr.* p. 48
Barager *v.* Wallace (Can.); **1.** *Agcy.* p. 78
Barakat, *Re* (N.Z.); **4.** *Bkpcy.* p. 19
Baramdeo Pande *v.* Debidatt Singh (Ind.); **16.** *Courts*, p. 9
Baranowski *v.* Einsteins Electro-Chemical Process, Ltd. (1931); **34.** *Mast. & S.* No. 732a
Barbanell *v.* Naylor (1936); **15.** *Crim.* No. 12, 167a
Barber, *Ex p., Re*, Petrie (H. W.), Ltd. (Can.); **4.** *Bkpcy.* p. 41
—, *In the Goods of* (1886); **23.** *Exors.* No. 774a
— *v.* Chudley (1922); **8.** *Char.* No. 23a
— *v.* Pigden (1937); **27.** *H. & W.* No. 1852b
Barber & Sons *v.* Rigley (1922); **5.** *Bkpcy.* No. 6150a
Barber, etc. *v.* New Zealand Sounds Hydro Electric Concessions, Ltd. (N.Z.); **9.** *Coys.* p. 43
Barbour *v.* Barbour (Can.); **27.** *H. & W.* p. 59
Barcauckas, *Re*, Minister of Justice of Canada *v.* Martin (Can.); **33.** *Lunat.* p. 18
Barclay, *Re*, Gardner *v.* Barclay, Steuart *v.* Barclay (1929); **8.** *Char.* Nos. 79a, 128a 991a
— *v.* Collett (1838); **38.** *Real Prop.* No. 536a
— *v.* Pearse (1884); **10.** *Coys.* No. 7479a
Barclay & Co., Ltd. *v.* Malcolm & Co. (1925); **12.** *Contr.* Nos. 4340a, 4377a
Barclays Bank, Ltd. *v.* Simmons, *Re* Howell's Trusts (1937); **44.** *Wills*, No. 7620a
— *v.* Stockton-on-Tees Corpn., *Re* Spence (1938); **8.** *Char.* Nos. 183a, 183b
Barclays Bank, Ltd. *v.* Trustee, *Ex p., Re* Lyons (1934); **5.** *Bkpcy.* No. 7185a
Barickman Hutterian Mutual Corpn., *Re* (Can.); **2.** *Agric.* p. 25.
Barish & Co. *v.* Gap No. 3 Rural Municipality & Biss (Can.); **38.** *Rates*, p. 82
Barker *v.* Allanson (1937); *Pract.* No. 1166a
— *v.* Associated Manufacturers (Gowns & Mantles), Ltd. (1933); **43.** *Trade Mks.* No. 908c
— *v.* Buck (Can.); **32.** *Lien*, p. 22
— *v.* Hutson (1929); **31.** *L. &. T.* Nos. 7037a, 7351a, 7352e, 7359a
— *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1936); **8.** *Carr.* Nos. 1623, 1693
— *v.* Martin (1647); **21.** *Estpl.* No. 555a
— *v.* Skrine (No. 2) (Can.); **42.** *Solrs.* p. 2
— *v.* Stead (1847); **30.** *Jdgmts.* No. 661a
— *v.* Westover (Can.); **27.** *H. & W.* p. 16
— *v.* Wood (1932); **25.** *Gaming*, No. 466b
Barker (Walker) & Co., Ltd. *v.* Flint (1929); **34.** *Mast. & S.* No. 3737b
Barker & Skrine, *Re* (Can.); **42.** *Solrs.* p. 8
Barker's Estate, *Re* (Can.); **23.** *Exors.* p. 5
Barkley *v.* Bush (Can.); **1.** *Agcy.* p. 88
— *v.* London, Midland & Scottish Ry. Co. & London & North Eastern Ry. Co. (1935); **8.** *Carr.* No. 1490
— *v.* Winnychuk (Can.); **1.** *Agcy.* p. 101
Barks *v.* Done (Can.); **27.** *H. & W.* p. 6
Barkwell, *In the Estate of*, Barkwell *v.* Barkwell (1928); **23.** *Exors.* No. 938a
— *v.* Barkwell (1928); **23.** *Exors.* Nos. 938a, 1022a
Barley, *Re*, *Ex p.* Harrison (1923); **4.** *Bkpcy.* No. 3152a
Barlow (H. T.), *Re* (1933); **23.** *Exors.* No. 919a
Barlow *v.* Barlow (Aus.); **27.** *H. & W.* p. 19
— *v.* Barlow & Klemich & Angus (Aus.); **27.** *H. & W.* p. 36
— *v.* Breeze (Can.); **18.** *Distr.* p. 28
— *v.* Canadian Pacific Ry. Co. (Can.); **30.** *Juries*, p. 33
— *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 689g
— *v.* London & North Eastern & London, Midland & Scottish Ry. Co. (1935); **8.** *Carr.* No. 1597
— *v.* Merchants Casualty Insurance Co. (Can.); **29.** *Insce.* p. 40
— *v.* Pacific Steam Navigation Co. (1930), 23 B. W. C. C. 228; **34.** *Mast. & S.* No. 4042d
— *v.* Pacific Steam Navigation Co., Ltd. (1930); 23 B. W. C. C. 383; **34.** *Mast. & S.* No. 3702f
— *v.* Rhodes (1833); **19.** *Easmt.* No. 153
Barnaby *v.* Union Assurance Society (Can.); **29.** *Insce.* p. 39
Barnard, *Re*, Martins Bank *v.* Trustee (1932); **4.** *Bkpcy.* No. 2721a; **36.** *Prtnrs.* No. 1909a
— *v.* Barnard (Ind.); **11.** *Confl.* p. 46
— *v.* Evans (1925); **2.** *Animals*, No. 572a
— *v.* Sully (1931); **36.** *Negl.* No. 400a
Barnard's Estate, *Re* (Can.); **44.** *Wills*, p. 33
Barnes, *Re* (1938); **21.** *E. D.* No. 144a
—, *Re*, Simpson *v.* Barnes (1922); **8.** *Char.* No. 981b
— *v.* Allen (1927); **19.** *Easmt.* No. 1442a
— *v.* Birmingham Corpn. (1935); **28.** *Inc. T.* No. 276b
— *v.* Black (Can.); **8.** *Chos.* p. 94
— *v.* Bradshaw (Can.); **36.** *Negl.* p. 30
— *v.* Cadogan Developments, Ltd. (1930); **26.** *Hghys.* No. 91a; **40.** *S. Land*, Nos. 1162a, 1178a; **42.** *Sp. Pfce.* Nos. 707a, 707b
— *v.* Coburg (City) (Aus.); **38.** *Pub. Hlth.* p. 19
— *v.* Commonwealth (Aus.); **17.** *Damgs.* p. 9
— *v.* Cunningham (Can.); **44.** *Wills*, p. 12

Barnes *v.* Hely-Hutchinson (1938); **28.** *Inc. T.* No. 545j
— *v.* Irwell Valley Water Board (1938); **43.** *Wtr. Sply.* No. 136a
— *v.* London & North Eastern Ry. Co. (1929); **34.** *Mast. & S.* No. 3283a
— *v.* Pooley (1935); **32.** *Limit of A.* No. 58a
— *v.* R. (N.Z.); **11.** *Const. L.* p. 63
— *v.* Sharpe (Can.); **21.** *Exon.* p. 60
— *v.* Strathern (Scot.); **25.** *Gaming*, p. 37
— *v.* Sykes (Can.); **32.** *Libel*, pp. 14, 15
Barnes Corpn., *Re*, *Ex p.* Hutter (1933); **20.** *Elect.* Nos. 1104a, 1109a
Barnet *v.* Barnet (Can.); **27.** *H. & W.* 45
Barnet Glass Rubber Co., Ltd. *v.* McDonald (N.Z.); **12.** *Contr.* p. 20
Barnet Lighterage Co. *v.* Kiltuish, The (Can.); **1.** *Adm.* p. 38
Barnett, *In the Estate of* (Aus.); **22.** *Evid.* p. 8
— *v.* Beirnstein (or Bernstein), *Re* Beirnstein (or Bernstein) (1925); **23.** *Exors.* No. 5594a
— *v.* Caxton Floors, Ltd. (1928); **24.** *Fact.* Nos. 153a, 180a
— *v.* Cox (1847); **38.** *Pub. Auth.* No. 834a
— *v.* Milner (S. Af.); **27.** *H. & W.* p. 14
— *v.* Sanker (1925); **12.** *Contr.* No. 2089b; **17.** *Custom*, No. 734a
Barnett & Son *v.* Boyle Bros. (N.Z.); **1.** *Agcy.* p. 90
Barnett Joel, Ltd. *v.* London & North Eastern Ry. Co. (1937); **8.** *Carr.* No. 1556
Barney *v.* Lauzon (Can.); **6.** *B. of Exch.* pp. 12, 13
Barnhart *v.* Robertson (Can.); **12.** *Contr.* p. 48
Barnsley Revenue Officer *v.* Eyre Brothers, Ltd. (1931); **38.** *Rates*, No. 226t
Baron *v.* R. (Can.); **14.** *Crim.* p. 62
— *v.* Whalen (Can.); **33.** *Lunat.* p. 12
Baron Vernon S.S. *v.* Metagama S.S. (Scot.); **41.** *Ship*, No. 6240a
Baroni *v.* Secretary of State for India (Ind.); **11.** *Const. L.* p. 63
Barr *v.* H.M. Advocate (Scot.); **15.** *Crim.* p. 108
— *v.* Miller (Can.); **36.** *Negl.* p. 33
Barr & Anderson *v.* Percy & Co. (Can.); **32.** *Lien*, p. 24
Barr (A. G.) & Co., Ltd. *v.* Macgeoghegan (1931); **28.** *Injon.* No. 959a; **30.** *Jdgmts.* No. 705b; **43.** *Tresp.* Nos. 448a, 555a
Barr & Co., Ltd. *v.* Macgheoghegan (Scot.); **28.** *Injon.* p. 151
Barr & Higgins, Ltd. *v.* Green (1928); **34.** *Mast. & S.* No. 3993a
Barrackpore Cantonment Committee Secretary *v.* Satish Chandra Sen (1930); **17.** *Dep.* No. 641b
Barras *v.* Aberdeen Steam Trawling & Fishing Co., Ltd. (1933); **41.** *Ship.* No. 685c
— *v.* Aberdeen Steam Trawling & Fishing Co. (Scot.); **41.** *Ship.* p. 10
Barrat, *Re*, Body *v.* Barrat (1929); **40.** *Sttlmts.* No. 3138a
Barratt *v.* Richardson & Cresswell (1930); **32.** *Limit. of A.* Nos. 956a, 1130a
Barratt & Co., Ltd. *v.* London, Midland & Scottish, London & North Eastern & Great Western Ry. Cos. (1936); **8.** *Carr.* Nos. 1568, 1581
Barre *v.* R. (Can.); **14.** *Crim.* p. 58
Barrell *v.* Fordree (1932); **31.** *L. & T.* No. 7103b
Barrett *v.* Baron (Can.); **4.** *Bkpcy.* p. 32; **25.** *Fraud. Conv.* pp. 14, 15
— *v.* Gallagher (Aus.); **43.** *Trov.* p. 55
— *v.* Hardie & Thompson, Ltd. (N.Z.); **2.** *Animals*, p. 61
— *v.* London General Insurance Co., Ltd. (1935); **29.** *Insce.* No. 3202b
— *v.* Rapelje (Can.); **12.** *Contr.* p. 5
Barrick Estate, *Re* (Can.); **24.** *Exors.* p. 39
Barrier Reef Trading Co., Ltd., *Re* (Aus.); **10.** *Coys.* p. 69
Barron, *Re*, *Ex p.* Barron (Can.); **4.** *Bkpcy.* p. 40
— *v.* Morgan & Silver Leaf Mines, Ltd. (Can.); **35.** *Mistake*, p. 10
Barrow, Lane & Ballard, Ltd. *v.* Gilbert J. McCaul & Co. (1929); **12.** *Contr.* No. 3078a
— *v.* Phillip Phillips & Co., Ltd. (1929); **39.** *S. Goods*, No. 403a
Barrowcliff, *Re*, Elder's Trustee & Executor Co., Ltd. *v.* Kenny (Aus.); **37.** *Pers. Prop.* p. 9
Barry *v.* Desrosiers (Can.); **7.** *Bounds & F.* p. 15
— *v.* James (S. Af.); **11.** *Confl.* pp. 24, 29
— *v.* McGuire (Can.); **25.** *Fraud. Conv.* p. 17
— *v.* Porthleven (Owners) (1928); **34.** *Mast. & S.* No. 3226c
— *v.* Rae (Can.); **38.** *Pub. Auth.* p. 12
— *v.* Roberts (1835); **3.** *Bailmt.* No. 103a
— *v.* Rubenstein (Can.); **30.** *Juries*, p. 32
— *v.* Winnipeg Electric Co. (Can.); **36.** *Negl.* p. 35
Barry & Staines Linoleum, Ltd. (1934); **9.** *Coys.* No. 3345a
Barstow *v.* Ingham's Thornhill Collieries, Ltd. (1934); **34.** *Mast. & S.* No. 3291d
— *v.* Terry (1924); **13.** *Coprt.* No. 308a
Bartel *v.* Beyea (Can.); **17.** *Deeds*, pp. 26, 29
Barter, *Re* (Can.); **5.** *Bkpcy.* p. 74
Barthe *v.* Sharples (Can.); **17.** *Dep.* p. 59
Bartlam *v.* Evans (1937); *Pldg.* No. 1424a; *Pract.* No. 964a
Bartlet *v.* Delaney (Can.); **44.** *Waters*, p. 3
Bartlett *v.* Anglo-Austrian Confectionary Co., Ltd., *Re* Anglo-Austrian Confectionary Co., Ltd. (1912); **10.** *Coys.* No. 6472a
— *v.* Bartlett (1925); **11.** *Confl.* No. 440a
— *v.* — (Aus.); **27.** *H. & W.* p. 31
— *v.* Nova Scotia Steel Co. (Can.); **34.** *Mines*, p. 205
— *v.* Osterhout (Can.); **35.** *Mtge.* p. 46
— *v.* Tottenham (1932); **19.** *Easmt.* Nos. 252a, 1055a; **36.** *Nuis.* No. 330a
— *v.* Wells (1862); **28.** *Infts.* No. 363a
— *v.* West Metropolitan Tramways Co. (1893); **10.** *Coys.* No. 8444a
Bartley *v.* Gall (Can.); **3.** *Basty.* p. 62
Bartley & Co. *v.* Russell (Can.); **42.** *Stk. Ex.* p. 34
Bartman *v.* Ukrainian Publishing Co. of Canada (Can.); **32.** *Libel*, p. 17
Bartok *v.* Tantallon Village (Can.); **26.** *Highys.* p. 28
Barton, *Re*, Barton *v.* Bourne (1932); **43.** *Trusts*, No. 379a
— *v.* Alliance Economic Investment Co., Ltd. (1935); **31.** *L. & T.* No. 4735a
— *v.* Blackburn (1933); **2.** *Arbn.* No. 1603c
— *v.* Bourne, *Re* Barton (1932); **43.** *Trusts*, No. 379a
— *v.* Keeble (1928); **31.** *L. & T.* Nos. 2913a, 2981a, 7358b
— *v.* Moorhouse (1935); **42.** *Stats.* No. 1681a
— *v.* Muir (1874); **12.** *Contr.* No. 2435a
— *v.* R. (Can.); **14.** *Crim.* p. 18
— *v.* Reed (1932); **31.** *L. & T.* Nos. 2932a, 2932b, 2932c, 2981b
Barton (Stepney Revenue Officer) *v.* Twinning (R.) & Co., Ltd. (1931); **38.** *Rates*, No. 226f
Barton (Poplar Revenue Officer) *v.* Union Lighterage Co., Ltd. (1931); **38.** *Rates*, No. 226e
Bartram, *Re* (Can.); **4.** *Bkpcy.* p. 1
— *v.* Brown (1929); **31.** *L. & T.* Nos. 7037a, 7351a, 7352e, 7359a
— *v.* Lloyd (1904); **1.** *Agcy.* No. 1640
Bartter *v.* Gambrill (1932); **42.** *Solrs.* No. 962a

Basant Singh & Jagat Singh *v.* Kehar Singh Gill (Can.); **35.** *Mtge.* p. 30
Basavana Gowd *v.* Narayana Reddi (Ind.); **19.** *Easmt.* p. 13
Base-O-Lite Products, Ltd., *Re* (Can.); **10.** *Coys.* p. 67
Basedow *v.* Basedow (Aus.); **27.** *H. & W.* p. 48
Bashford *v.* Cann (1863); **29.** *Insce.* No. 3052c
Baslingawa *v.* Chinnava (Ind.); **20.** *Eqy.* p. 20
Basque, *Ex p.*, R. *v.* Slipp (Can.); **33.** *Mags.* p. 37
Bass, Ratcliff & Gretton, Ltd. *v.* Nicholson & Sons, Ltd. (1932); **43.** *Trade Mks.* Nos. 277a, 300a, 305a
Bass, Ratcliff & Gretton's Trade Mark, *Re* (1932); **43.** *Trade Mks.* No. 277a
Bassel's Lunch, Ltd. *v.* Kick (Can.) (1936); **16.** *Cntmpt.* p. 6
— *v.* — (Can.) (1937); **16.** *Cntmpt.* p. 6
Bassett, *Re*, Bassett *v.* Bassett (N.Z.); **43.** *Trusts*, p. 68
Batakrishna Pramanik *v.* Bhowanipur Banking Corpn., Ltd. (Ind.); **3.** *Bank.* p. 38
Batchelor *v.* Smith (1935); **3.** *Basty*, No. 365a
Bate, *Re*, Public Trustee *v.* Bate (1938); **20.** *Eqy.* No. 414a; **44.** *Wills*, No. 373a
Bateman (Baroness), *Re*, A.-G. *v.* Wreford-Brown (1925); **21.** *E. D.* Nos. 107a, 755a
Bateman *v.* Snelgrove & Garden (Can.); **1.** *Agcy.* p. 79
Bateman & Matthews *v.* Spencer (Can.); **12.** *Contr.* p. 13
Bates, *Re* (Can.); **33.** *Mags.* p. 23
—, *Re*, Mountain *v.* Bates (19[illegible]8); **40.** *Stllmts.* No. 2009a
— *v.* Harris, *Re* Shenton (1935); **5.** *Bkpcy.* No. 8977a
Bates & Co. *v.* Dale (1937); **43.** *Trade*, No. 591a
Bates & United Shoe Machinery Co., Ltd.'s Patent, *Re*, *Re* Bates, Richards & United Shoe Machinery Co., Ltd.'s Patent (1928); **36.** *Pats.* No. 2064b
Bates Valve Bag Co. *v.* Kershaw (B.) & Co. (1920), Ltd. (1932); *Pract.* No. 4526a
Bateson *v.* Hartsink (1801); **22.** *Evid.* No. 2642a
Bath's Estate, *Re* (Can.); **24.** *Exors.* p. 35
Batho *v.* Fulton (1824); **23.** *Exors.* No. 3732a
Bathori, The (1934); **37.** *Prize L.* No. 1103a
Bathurst *v.* Workmen's Compensation Board (Can.); **34.** *Mast. & S.* p. 166
Bathurst Co., *Ex p.* (Can.); **19.** *Educ.* p. 41; **38.** *Rates*, p. 63
Batlow Packing House & Cool Stores Rural Co-operative Society, Ltd. *v.* Commonwealth & Dominion Line, Ltd. (Aus.); **22.** *Evid.* p. 14
Batt (John) & Co. (London) *v.* Kanoolal & Co. (Ind.); **2.** *Arbn.* p. 100
Battagin *v.* Bird (Can.); **42.** *Str. Traf.* p. 38
Batten, *In the Goods of* (1849); **24.** *Exors.* No. 993a
Batten Pooll *v.* Kennedy (1907); **21.** *Estpl.* No. 1318a
Battersea Borough Council, *Ex p.*, R. *v.* Roberts (1914); **38.** *Rates*, No. 675*f*
Battistoni *v.* Thomas (Can.); **34.** *Mast. & S.* p. 14
Battle Abbey Settled Estate, *Re*, Webster *v.* Troubridge (1933); **40.** *Stllmts.* No. 1878c
Battle Creek Toasted Corn Flake Co. *v.* Kellogg Toasted Corn Flake Co. (Can.); **1.** *Agcy.* p. 104; **16.** *Courts*, p. 14; **17.** *Deeds*, p. 25; *Dep.* p. 79; **21.** *Exon.* p. 44
Battrum *v.* Noakes (Can.); **35.** *Mtge.* p. 39
Batts Combe Quarry Co. *v.* Barclays Bank, Ltd. (1931); **3.** *Bank.* No. 986b
Batty *v.* Lee (1938); **37.** *Poor L.* No. 1623a
Batu Pahat Bank, Ltd. *v.* Tan Keng Tin (Straits Settlements); **9.** *Coys.* p. 20
Bauer *v.* Bauer & Hass (Can.); **27.** *H. & W.* p. 37
Baulderstone, *Re* (Aus.); **44.** *Wills*, p. 47
Baumfelder *v.* Secretary of State of Canada (Can.); **2.** *Aliens*, p. 31
Baur *v.* Canadian Pacific Railway (Can.); **36.** *Negl.* p. 36
Bausch & Lomb Optical Co. *v.* Comr. of Patents (Can.); **43.** *Trade Mks.* p. 16
Baveridge *v.* Stephenson (Robert) & Co., Ltd. (1933); **34.** *Mast. & S.* No. 3288q
Baxter *v.* Adams (Can.); **43.** *Trov.* p. 57
— *v.* Derasz & Derasz (Can.); **21.** *Estpl.* p. 26; **25.** *Fraud. Conv.* p. 13
— *v.* Gapp & Co., Ltd. (1938); **1.** *Agcy.* No. 1263b
— *v.* Kennedy (Can.); **32.** *Lien*, p. 23
— *v.* Rollo (Can.); **17.** *Deeds*, p. 30
Bayack, *Re* (Can.); **38.** *Rates*, p. 82
Bayer *v.* Kaizer (Can.); **17.** *Dep.* p. 40
Bayer Co., Ltd., *Re* (1921); **2.** *Aliens*, Nos. 195a, 405a
Bayley *v.* Trusts & Guarantee Co., Ltd. (Can.); **1.** *Agcy.* p. 74; **22.** *Evid.* p. 21
Bayly *v.* Sydney Municipal Council (Aus.); **33.** *L. G.* p. 8; **38.** *Pub. Auth.* p. 13
Bayne *v.* Canadian National Rys. (Can.); **8.** *Carr.* p. 14
Baynes & Horie *v.* Vancouver Board School Trustees (Can.); **7.** *Bldg. Conts.* p. 20
Bayview Cemetery Co. *v.* McLean (Can.); **7.** *Burial*, p. 38
Bazar *v.* Grant & Grant (Can.); **21.** *Estpl.* p. 41
Beach *v.* Hydro-Electric Power Commission of Ontario (Can.); **2.** *Arbn.* pp. 95, 97; **16.** *Cr. Pract.* p. 44; **20.** *Electric*, p. 17
Beadman *v.* Beadman, *Re* Hack (1925); **13.** *Cohlds.* No. 1533a
Beale *v.* Beale & Lindon (Can.); **27.** *H. & W.* p. 36
— *v.* Mouls (1847); **1.** *Agcy.* No. 645a
Beale's Settlement Trusts, *Re*, Huggins *v.* Beale (1932); **43.** *Trusts*, Nos. 3466a, 3469a
Beall *v.* Bostal Bros., Ltd. (1933); **34.** *Mast. & S.* No. 2691a
Beaman *v.* Tully (Can.); **2.** *Agric.* p. 16
Beamish, *Re*, *Ex p.* R. (N.Z.); **5.** *Bkpcy.* p. 58
— *v.* A.-G. (Ir.); **1.** *Action*, p. 1
— *v.* Owens (1846); **22.** *Evid.* No. 4161a
Beams *v.* Weardale Steel, Coal & Coke Co., Ltd. (1937); **28.** *Inc. T.* No. 119c
Bean *v.* Sinclair (Scot.); **42.** *Str. Traf.* p. 49
— (William) & Sons, Ltd. *v.* Flaxton Rural District Council (1929); **38.** *Pub. Hlth.* Nos. 121a, 333a, 509b
Bear *v.* Soper (1759); **24.** *Exors.* No. 3611b
Bear Creek Lumber Co. *v.* Edmonton Lumber Co. & Ross Smith Lumber Co. (Can.); **2.** *Agric.* p. 21
Beard *v.* Davidson (1843); **5.** *Bkpcy.* No. 7801b
Beard & Scott's Patent, *Re*, *Re* Scott & Beard's Patent (1927); **36.** *Pats.* Nos. 1557b, 1687a, 1706a
Beardmore, *Re* (Can.); **38.** *Pub. Hlth.* p. 19
Beardmore & Co., Ltd. *v.* Barry (Scot.); **9.** *Coys.* p. 16
Beardsley *v.* Clark (Can.); **36.** *Negl.* p. 17
Beare *v.* Ward (Aus.); **42.** *Tele.* p. 67; *Time*, p. 75
Beasley *v.* Suare (1849); **39.** *Recrs.* No. 233b
Beaton *v.* Cooper (Can.); **9.** *Coys.* p. 22
— *v.* Hambicki (Can.); **40.** *S. Land*, p. 9
— *v.* Nedruvan (Can.); **32.** *Lien*, p. 24
— *v.* Schulz (Can.); **34.** *Mines*, p. 199
Beattie *v.* Beattie (1938); **27.** *H. & W.* No. 3140a
— *v.* —, Ltd. (1938); **2.** *Arbn.* No. 331a; **9.** *Coys.* No. 347a
— *v.* Dorosz & Dorosz (Can.); **42.** *Str. Traf.* p. 61

Beattie *v.* Ebury (Lord) (1872); **21.** *Estpl.* No. 1036a
— *v.* — (1874); **21.** *Estpl.* No. 1036a
— *v.* London, Midland & Scottish Ry. Co. (Ir.); **34.** *Mast. & S.* p. 100
— *v.* Murphy, *Re* Jackson (1933); **44.** *Wills*, Nos. 4653a, 6708a
— *v.* United States Fidelity & Guaranty Co. & Home Insurance Co. of New York (Can.); **22.** *Evid.* p. 6
Beatty *v.* Beatty (1924); **11.** *Confl.* No. 1113a
— *v.* Colman (Can.); **38.** *Real Prop.* p. 89
— *v.* London Spiritualistic Alliance, *Re* Hummeltenberg (1923); **8.** *Char.* No. 4a
— *v.* Mathewson (Can.); **2.** *Agric.* p. 20
— *v.* Sisters of Misericorde of Alberta (Can.); **34.** *Med.* p. 187
Beatty & Finlayson, *Re* (Can.); **21.** *Exon.* p. 50
Beatty Bros., Ltd. *v.* Johnson & Ardley (Can.); **39.** *S. Goods*, p. 58
— *v.* Murphy (Can.); **27.** *H. & W.* p. 14
Beaty *v.* Radenhurst (Can.); **35.** *Mtge.* p. 45
Beau Monde Ladies' Tailoring Co. *v.* Garrett (Can.); **21.** *Exon.* p. 60
Beauchamp *v.* Frome Rural District Council (1938); **43.** *Wtr. Sply.* No. 13a
— *v.* National Mutual Indemnity Insurance Co., Ltd. (1937); **29.** *Insce.* No. 3202e
Beauchamp Brothers, *Re*, *Ex p.* Carr (1896); **4.** *Bkpcy.* Nos. 3981a, 4116a, 4152a
Beauchene *Ex p.* (Can.); **16.** *Cr. Pract.* p. 39; **22.** *Evid.* p. 23
Beauchene & Peltier *v.* Gunson (Can.); **16.** *Cr. Pract.* p. 39; **22.** *Evid.* p. 23
Beaudet *v.* R. (Can.); **30.** *Intox.* p. 16
Beaudoin *v.* Trudel (Can.); **11.** *Confl.* p. 34
Beauharnois Light, Heat & Power Co. *v.* Hydro-Electric Power Commission (Can.); **17.** *Dep.* p. 57
Beaulieu *v.* Ouellett (Can.); **6.** *B. of Exch.* p. 18
Beaumont *v.* Beaumont (1933); **27.** *H. & W.* No. 4577a
— *v.* — (1938); **28.** *Infts.* No. 1119a
— *v.* — (No. 2) (1932); **27.** *H. & W.* No. 4577b
— *v.* Grover (1701); **24.** *Exors.* No. 6861a
— *v.* Jeffery (1925); **13.** *Cohlds.* No. 394a, 404a
— *v.* Ruddy (Can.); **36.** *Negl.* p. 25
Beaumont Petition, *Re* (1933); **27.** *H. & W.* No. 4577a
Beaumont Settled Estates, *Re* (1937); **40.** *Stlmts.* No. 2620a
Beausejour School District, *Re*, (Can.); **19** *Educ.* p. 41; **38.** *Rates*, p. 82
Beaver Lumber Co., Ltd. *v.* Brenner (Can.); **5.** *Bkpcy.* p. 87
— *v.* Curry (Can.); **32.** *Lien*, pp. 24, 26, 27
— *v.* Hopfauf (Can.); **6.** *B. of Exch.* p. 18
— *v.* Korotky (Can.); **32.** *Lien*, p. 23
— *v.* Maess (Desroches) (Can.); **6.** *B. of Exch.* p. 3
— *v.* Pritchard (Can.); **38.** *Real Prop.* p. 96
Beaver Truck Co., *Re* (Can.); **10.** *Coys.* p. 79
Beaver Wood Fibre Co., Ltd. & American Forest Products Corpn., *Re* (Can.); **2.** *Arbn.* p. 92
Beaverford, The *v.* The Kafiristan (1938); **41.** *Ship.* No. 7678a
Beaverford S.S. Owners *v.* Kafiristan S.S. Owners, The Kafiristan (1937); **41.** *Ship.* No. 7678a
Beaverton Public School, Board of Trustees & Thorah Township (Can.); **19.** *Educ.* p. 40
Beavis, *Ex p.*, Roughley *v.* State of New South Wales (Aus.); **17.** *Dep.* p. 62
Beazley, *Ex p.*, R. *v.* Magistrates' Court & Esmond (Aus.); **7.** *Bounds. & F.* p. 17; **16.** *Cr. Pract.* p. 38
— *v.* Mills Bros., Ltd. (Can.); **36.** *Negl.* p. 3
Bebside Coal Co., Ltd., *Re* (1929); **29.** *Insce.* No. 3212a
Bechoff & Co. *v.* Bubna, *Re* Sutherland (Duchess) (1921); **2.** *Aliens*, Nos. 156b, 166
Beck, *Re* (Can.); **4.** *Bkpcy.* p. 30
—, *Re*, Crook *v.* Royal National Lifeboat Institution (1926); **8.** *Char.* No. 1186a
— *v.* Armstrong (Can.); **34.** *Mines*, p. 200
— *v.* Board of Trade (Solicitor) (1932); **9.** *Coys.* No. 3916a
— *v.* Dexter (Can.); **36.** *Negl.* p. 25
— *v.* Motley (1835); **24.** *Exors.* No. 7225a
Becker, *Re* (Aus.); **34.** *Med.* p. 185
— *v.* Bachman (Can.); **6.** *B. of Exch.* p. 11
— *v.* Miller (Aus.); **34.** *Med.* p. 189
— *v.* Toronto (City) (Can.); **38.** *Rates*, p. 82
Becker, Shillan & Co. & Barry Brothers, *Re* (1921); **2.** *Arbn.* Nos. 1954a, 2361a
Beckermet Mining Co., Ltd.'s Application (1938); **34.** *Mines*, No. 967a
Beckett *v.* Booth (1708); **26.** *Guar.* No. 782a
— *v.* Case (1828); **6.** *B. of Exch.* No. 696a
Beckman *v.* Wallace (Can.); **1.** *Agcy.* p. 64
Beckman's Estate, *Re* (Can.); **24.** *Exors.* p. 34
Beckstead, *Re* (Can.); **44.** *Wills*, p. 45
Bedali, *Ex p.*, *Re* Olympia Cafe Co., Ltd. (Can.); **4.** *Bkpcy.* pp. 24, 38
Bedard *v.* Dawson & A.-G. for Quebec (Can.); **17.** *Dep.* p. 56
Beddoes *v.* Shaw (1937); **35.** *Mtge.* No. 1916a
Beddow *v.* Beddow (1878); **28.** *Injon.* No. 22a
Beddy *v.* Smith (Ir.); **23.** *Exors.* p. 20
Bede Steam Shipping Co., Ltd. *v.* Bunge y Born Limitada S.A. (1927); **2.** *Arbn.* No. 165d
Bedford *v.* Bedford, *Re* Sigsworth (1935); **18.** *Desct.* No. 283j; **44.** *Wills*, No. 506a
— *v.* Bedford & Powdrill (1926); **27.** *H. & W.* No. 4677a
— *v.* Bell & Winney, Ltd. (1933); **34.** *Mast. & S.* No. 2951c
Bedford (Duke) *v.* Bucks Water Board (1938); **43.** *Wtr. Sply.* No. 76a
Bedford, Duke of (Russell) *v.* Murphy & Caron (Can.); **25.** *Fraud. Conv.* p. 14
Bednall *v.* Bednall & Shivussawa (1927); **3.** *Bastly.* No. 130a; **27.** *H. & W.* No. 5781a
Bedwas Navigation Colliery Co. (1921), Ltd. *v.* South Wales Coal Mines Scheme Executive Board (1935); **34.** *Mines*, No. 327m
Beebee & Co. *v.* Turner's Successors (1931); **21.** *Exon.* No. 1002a
Beecham, *Re*, Welles *v.* Trustee (1934); **4.** *Bkpcy.* No. 4372a
Beecham's Settlement, *Re*, Johnson *v.* Beecham (1934); **4.** *Bkpcy.* No. 2791a
Beechbay S.S. Co., Ltd. *v.* Wenchita, The (Can.); **41.** *Ship.* p. 56
Beel (Doe d.) *v.* Reaumore (Can.); **18.** *Distr.* p. 32
Beemer *v.* Brownridge (Can.); **27.** *H. & W.* p. 11; **43.** *Trusts*, p. 59
Beer *v.* Fairclough (T. M.) & Sons, Ltd. (1937); **42.** *Str. Traf.* No. 232n
— *v.* W. H. Clench (1930), Ltd. (1936); **42.** *Str. Traf.* No. 232l
Beere *v.* Bates, *Re* Taare Waitara (N.Z.); **43.** *Trusts*, p. 59
Beesley, *Re* (1913); **4.** *Bkpcy.* Nos. 1177c, 1178b
Beeston *v.* Williams (Can.); **36.** *Negl.* p. 29
Beetham *v.* James (1937); **34.** *Mast. & S.* No. 1378a
Beetknife *v.* Packington (Sir H.) (1729); *Pract.* No. 2286b
Beevor *v.* Simpson (1829); **40.** *S. Land*, No. 1416a
Begg *v.* Hagan (N.Z.); **1.** *Agcy.* p. 98
Begley *v.* Irvine (Can.); **2.** *Arbn.* p. 85

Beirnstein, *Re*, Barnett *v.* Beirnstein (1925); **23.** *Exors.* No. 5594a
Beiswanger *v.* Swift Current (Can.); **1.** *Action*, p. 11
Bejko *v.* Robson (Can.); **38.** *Real Prop.* p. 96
Bejoy Lal Seal *v.* Benarasidas Khandelwal (Ind.); **30.** *L. & T.* p. 42
Beland *v.* Beaudoin & Travellers Insurance Co. (Can.); **29.** *Insce.* p. 30
Belanger *v.* Belanger (Can.); **23.** *Exors.* p. 12
Belanger, etc. *v.* Royal Bank of Canada (Can.); **5.** *Bkpcy.* p. 90; **17.** *Dep.* p. 40
Belbridge Property Trust, Ltd. *v.* Milton (1934); **31.** *L. & T.* No. 3120c
Belcham & Gawley's Contract, *Re* (1930); **40.** *S. Land.* No. 838a
Belcher *v.* Dixon (N.Z.); **6.** *B. of Exch.* p. 12
— *v.* Magnay (1843); **5.** *Bkpcy.* No. 7000a
Belcher's Appeal, *Re* Essex Flour & Grain Co., Ltd. (1938); **44.** *Work*, No. 142a
Belding-Corticelli, Ltd. *v.* Kaufman (Can.); **36.** *Pats.* p. 71
Beldis, The (1936); **1.** *Adm.* Nos. 66a, 1720a
Belfast Corpn. *v.* Turnbull (Ir.); **28.** *Inc. T.* p. 62
Belfast Riots Commission Case (1886); **3.** *Barr.* No. 66a
Belford *v.* Foord (1595); **19.** *Eccl.* No. 3614
Belgian Grain & Produce Co., Ltd. *v.* Cox & Co. (France), Ltd. (1919); **30.** *Jdgmts.* No. 436a
Belgian Industrial Co., Ltd. *v.* Canada Cement Co., Ltd. (Can.); **12.** *Contr.* p. 33
Belgo-Canadian Real Estate Co., Ltd. & Winnipeg City, *Re* (Can.); **38.** *Rates*, p. 77
Bell, *Re* (Can.); **5.** *Bkpcy.* pp. 58, 72, 74; **22.** *Evid.* p. 11; **32.** *Limit. of A.* p. 37
—, *Re*, Bell *v.* Agnew (1931); **44.** *Wills*, No. 2825a
— *v.* Agnew, *Re* Bell (1931); **44.** *Wills*, No. 2825a
— (or Young or Farrell) *v.* Arnott (Scot.); **2.** *Arbn.* p. 83
— *v.* Bell (Aus.); **11.** *Confl.* p. 47
— *v.* — (Can.); **27.** *H. & W.* p. 10
— *v.* — (Ir.); **11.** *Confl.* p. 48
— *v.* Bennett (1928); **34.** *Mines*, Nos. 1117a, 1120a
— *v.* Carruthers (Can.); **38.** *Real Prop.* p. 99
— *v.* Chartered Trust & Executor Co. (Can.); **5.** *Bkpcy.* p. 70
— *v.* Harker (1928); **25.** *Fr. Soc.* No. 35a
— *v.* Hutchings (Can.); **22.** *Evid.* p. 6; **42.** *Str. Traf.* p. 38
— *v.* Krohn (Can.); **1.** *Agcy.* p. 107
— *v.* Lever Bros., Ltd. (1932); **34.** *Mast. & S.* No. 565c; **35.** *Misrep.* No. 138a; *Mistake*, No. 58a; *Pldg.* Nos. 1067a, 1095a
— *v.* Long (Can.); **21.** *Exon.* p. 60
— *v.* New Zealand Rugby Football Union (N.Z.); **12.** *Contr.* p. 57
— *v.* Parent (Can.); **33.** *Mags.* p. 25
— (Doe d.) *v.* Roe (Can.); **38.** *Real Prop.* p. 98
— *v.* Spelliscy (Can.); **23.** *Exors.* p. 8
— *v.* Thompson (Aus.); **2.** *Animals*, p. 58
— *v.* Toronto Transportation Commission (Can.); **18.** *Discy.* p. 12
— *v.* Union Bank (N.Z.); **3.** *Bank.* p. 25
Bell & Schiesel *v.* Jacobson & Weitzer (Can.); **18.** *Distr.* p. 27
Bell & Sime *v.* Dundee Assessor (Scot.); **38.** *Rates*, p. 76
Bell (Robert) Engine & Thresher Co. *v.* Farquharson (Can.); **1.** *Agcy.* p. 62
Bell Estate, *Re* (Can.) (1929); **23.** *Exors.* p. 9
—, *Re* (Can.) (1934); **5.** *Bkpcy.* p. 66
Bell Telephone Co. of Canada *v.* Canadian National Railways (Can.); **38.** *Rys.* p. 46
— *v.* St. Laurent Ville (Can.); **42.** *Tele.* p. 68
Bell Telephone Co. of Canada *v.* Toronto, Hamilton & Buffalo Ry. Co. & Hamilton Corpn. (Can.); **38.** *Rys.* p. 46
Bell-Irving *v.* Macaulay Nicolls, Ltd. (Can.); **1.** *Agcy.* p. 80
Bella Guidita, The (1785); **2.** *Aliens*, No. 419a
Bellairs *v.* Yale Hotel Calgary, Ltd. (Can.); **29.** *Inns*, p. 1
Bellamy *v.* Green (Can.); **34.** *Mast. & S.* p. 20
— *v.* Porter (Can.); **6.** *B. of Exch.* p. 20
Bellemare *v.* Gamache (Can.); **7.** *B. of Sale*, p. 12
Beller *v.* Klotz (Can.); **12.** *Contr.* p. 12
Belling *v.* Hamilton City (Can.); **26.** *Hghys.* p. 21
Belliss, *Re*, Polson *v.* Parrott (1929); **33.** *Lunat.* No. 204a
Belliveau *v.* Tait (Can.); **24.** *Exors.* p. 37
Bellotti *v.* Chequers Developments, Ltd. (1936); **40.** *S. Land*, No. 821a
Belton *v.* Crowle District Drainage Board (1935); **41.** *Sewers*, No. 432a
Belyea *v.* Belyea (Can.); **7.** *Bounds. & F.* p. 15
— *v.* R. (Can.); **43.** *Trade*, p. 1
Belyea Construction, Ltd., *Re* Cushing *v.* Snaddon (Can.); **21.** *Estpl.* p. 37
Ben Line Steamers, Ltd. *v.* Compagnie Optorg of Saigon (1937); **41.** *Ship.* No. 3634d
Benabu & Co. *v.* Produce Brokers Co., Ltd. (1921); **2.** *Arbn.* No. 1107a
Benaim & Co. *v.* Debono (1924); **11.** *Confl.* No. 658a
Bence-Jones *v.* A.-G., *Re* Ludlow (1923); **8.** *Char.* No. 755a
— *v.* Zoological Society of London, *Re* Lopes (1931); **8.** *Char.* No. 70a
Bender *v.* National Acceptance Corpn., Ltd. (Can.); **39.** *S. Goods*, pp. 46, 57
Bendigo, etc. Co. *v.* Cunningham (Aus.); **1.** *Agcy.* p. 74
Bendir *v.* Anson (1936); *Pract.* No. 1025a
Bendjy *v.* Munton (Can.); **36.** *Prtnrs.* p. 63
Benefices of Edburton & Poynings (Chichester), *Re* (1933); **19.** *Eccl.* No. 2443e
Benefices of Great Massingham & Little Massingham (1931); **19.** *Eccl.* No. 2443b
Benefices of Thelnetham & Hinderclay (St. Edmundsbury & Ipswich), *Re* (1933); **19.** *Eccl.* No. 2443d
Bengal & North-Western Ry. Co., Ltd. *v.* Matukdhari Singh (Ind.); **38.** *Rys.* p. 38
Bengal Governor in Council *v.* Tusharkanti Ghosh (Ind.); **16.** *Cntmpt.* p. 5
Bengal Income Tax Comr. *v.* Shaw, Wallace & Co. (Ind.); **42.** *Stats.* p. 27
Bengal National Bank, Ltd. *v.* Janaki Lath Roy (Ind.); **31.** *L. & T.* p. 64
Bengal Superintendent & Remembrancer of Legal Affairs *v.* Jnanendra Nath Ghosh (Ind.); **14.** *Crim.* pp. 22, 59
— *v.* Raisalee (Ind.); **14.** *Crim.* p. 8; **41.** *Ship.* p. 8
Beni Madho Prasad *v.* Wajid Ali (Ind.); **32.** *Libel*, p. 11
Beni-Felkai Mining Co., Ltd., *Re* (1934); **10.** *Coys.* Nos. 6950a, 6956a
Benjamin, *In the Estate of* (1934); **44.** *Wills*, No. 961a
—, *Re* (Can.) (1926); **29.** *Insce.* p. 35
—, *Re* (Can.) (1931); **44.** *Wills*, p. 42
— *v.* Benjamin (Ind.); **27.** *H. & W.* p. 22
— *v.* Haskell (Can.); **24.** *Exors.* p. 38
Benjamin Electric, Ltd. *v.* Garnet, Whiteley & Co. (1930); **36.** *Pats.* No. 3081b
Benn *v.* Hawthorne, *Re* Drummond (Can.); **21.** *Estpl.* p. 23
— *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 674cc

Bennet *v.* Bennet (1879); **20.** *Eqy.* No. 1873a
Bennett, *Re*, Bennett *v.* Bennett (1934); **40.** *Stlmts.* No. 368a
—, *Re*, Clarke *v.* White (1808); **35.** *Mtge.* No. 583a
—, *Re*, Gibson *v.* A.-G. (1920); **8.** *Char.* No. 751a
— *v.* Bennett (1934); **27.** *H. & W.* Nos. 5330b, 5406c
— *v.* — (Can.); **27.** *H. & W.* p. 79
— *v.* —, *Re* Bennett (1934); **40.** *Stlmts.* No. 368a
— *v.* Elder's Trustee & Exor. Co., Ltd. (Aus.); **44.** *Wills*, p. 55
— *v.* Evans (1892); **20.** *Elect.* No. 123a
— *v.* Ewens (1928); **25.** *Gaming*, No. 401a
— *v.* Fraser (Can.); **12.** *Contr.* p. 2
— *v.* Gilmour (Can.); **21.** *Estpl.* p. 35; **38.** *Real Prop.* pp. 95, 96
— *v.* Greensill (N.Z.); **12.** *Contr.* p. 2
— *v.* Kidd (Ir.); **17.** *Deeds*, p. 25
— *v.* Lucas (Ir.); **20.** *Eqy.* p. 26
— *v.* Marshall (1938); **28.** *Inc. T.* No. 448a
— *v.* Ogston (1930); **28.** *Inc. T.* No. 380a
— *v.* Peattie (Can.); **22.** *Evid.* p. 22
— *v.* Quebec Pharmaceutical Assocn. (Can.); **17.** *Dep.* p. 37
— *v.* Smith (1852); **3.** *Auct.* No. 155a
— *v.* Stone (1902); **2.** *Agric.* No. 173a
— *v.* White (1937); **11.** *Confl.* No. 926d
Bennett (T. W.) & Co., Ltd. *v.* Smith (1931); **35.** *Money*, No. 353j
Bennett & Fisher, Ltd. *v.* Commercial Bank of Australia, Ltd. (Aus.); **3.** *Bank.* p. 36
Bennett (Sidney), Ltd. *v.* Kreeger (1925); **17.** *Damgs.* No. 215a
Bennett, Oswald & Worskett *v.* Bennet (1937); **28.** *Inc. T.* No. 122f
Bennett-Pacaud Co., Ltd. *v.* Dunlop (Can.); **34.** *Mast. & S.* p. 11
Bennett's Estate, *Re*, Manitoba Provincial Treasurer *v.* Bennett (Can.); **21.** *E. D.* p. 19
Bensinger *v.* Snowman (1934); **27.** *H. & W.* No. 2351a
Benson *v.* Grand Union Hotel Co. (Can.); **12.** *Contr.* p. 19
— *v.* Kwong Chong (N.Z.); **36.** *Negl.* p. 24
— *v.* Road Transport & Railways Comr. (Aus.); **16.** *Courts*, p. 12
Benson-Johnston, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 26
Bensted *v.* Midland Dairy Farmers, Ltd., Society (1928); **28.** *Inc. T.* No. 483d
Bent, *Re* (Can.); **24.** *Exors.* p. 39
— *v.* Banks (Can.); **30.** *Jdgmts.* p. 23
— *v.* McDougall (Can.); **18.** *Distr.* p. 25
Bentall, Horsley & Baldry *v.* Vicary (1931); **1.** *Agcy.* Nos. 1813b, 2083b
Bentley, *Ex p.*, *Re* West (1842); **5.** *Bkpcy.* No. 6444a
—, *In the Goods of* (Ir.); **23.** *Exors.* p. 4
— *v.* Allen & Young (Can.); **43.** *Tram.* p. 49
— *v.* Mackay (1862); **12.** *Contr.* No. 1432a
— *v.* O'Sullivan (1925); **2.** *Arbn.* No. 2580a
— *v.* Vancouver Exhibition Assocn. (Can.); **31.** *L. & T.* p. 51
Bentley's Trusts, *Re* (Can.); **44.** *Wills*, p. 38
Benton *v.* Campbell, Parker & Co. (1925); **1.** *Agcy.* No. 2753a; **3.** *Auct.* No. 312a
Benyon *v.* Thorpe (1928); **28.** *Inc. T.* No. 496b
Benyon's Trusts, *Re* (1860); **11.** *Comp. Pche.* No. 1707
Berchtold, *Re*, Berchtold *v.* Capron (1923); **11.** *Confl.* Nos. 302, 439a
Beresford *v.* Royal Insurance Co., Ltd. (1938); **29.** *Insce.* No. 2955a
Beresford's Will Trusts, *Re*, Sturges *v.* Beresford (1938); **37.** *Powers*, No. 587a
Berg *v.* Bosence (Can.); **34.** *Mines*, p. 199
— *v.* Pigeon Timber Co., Ltd. (Can.); **34.** *Mast. & S.* p. 31
— *v.* Sadler & Moore (1937); **39.** *S. Goods*, No. 2522a
Berg & Penn Coals, Ltd. *v.* Northern Alberta Rys. Co. (Can.); **38.** *Rys.* p. 36
Berge *v.* Grew (Can.); **2.** *Arbn.* p. 81; **35.** *Misrep.* p. 1
Bergen & Mott, *Re* (Can.); **31.** *L. & T.* p. 85
Bergens Dampskibs Assurance Forening *v.* Sun Insurance Office, Ltd. (1930); **29.** *Insce.* No. 729a
Bergeon *v.* De Kermor Electric Heating Co., Ltd. (Can.); **36.** *Pats.* pp. 70, 82, 83
Bergerem *v.* Marsh (1921); **5.** *Bkpcy.* No. 6115b
Bergeron *v.* R. (Can.); **15.** *Crim.* p. 97
Bergklint *v.* Western Canada Power Co. (Can.); **34.** *Mast. & S.* p. 20
Bergman, *Re* (Can.); **22.** *Evid.* p. 12; **23.** *Exors.* p. 4
— *v.* Canadian Farm Imp. Co. (Can.); **1.** *Agcy.* p. 63
Bergman & Waldron, *Re*, *Re* Infants Act (Can.); **11.** *Confl.* p. 54
Bergougnan *v.* British Motors, Ltd. (Aus.); **3.** *Bailmt.* p. 14
Berkley *v.* Ryder (1754); **25.** *Gifts*, No. 169a
Berlin Aniline Co., Ltd., *Re* (1921); **2.** *Aliens*, Nos. 195a, 405a
Berliner *v.* Fairclough (T. M.) & Sons, Ltd. (1930); **31.** *L. & T.* No. 6361a
Berliner Gramophone Co., Ltd. *v.* Phinney (N. H.) & Co., Ltd. (Can.); **12.** *Contr.* p. 57
Bermack *v.* Blank (Can.); **18.** *Distr.* p. 28
Bermondsey Borough Council *v.* Mortimer (1926); **7.** *Burial*, Nos. 300a, 300b, 323a
Bernard *v.* Williams (1928); **12.** *Contr.* No. 2621a; **40.** *S. Land*, No. 2009a
Bernardi *v.* National Sales Corpn., Ltd. (1931); **6.** *B. of Exch.* No. 2093a; **26.** *Guar.* No. 312a
Berners *v.* Fleming (1925); **12.** *Contr.* No. 2835a
Bernhard *v.* Gahan (1928); **28.** *Inc. T.* No. 226a
— *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 226a
Bernhardt *v.* Galsworthy (1929); **43.** *Trusts*, No. 3475a
Bernstein, *Re*, Barnett *v.* Bernstein (1925); **23.** *Exors.* No. 5594a
— *v.* Erickson (Can.); **12.** *Contr.* p. 26
Bernstone *v.* Montgomery, *Re* Hind (1933); **40.** *Stlmts.* Nos. 3143g, 3143h, 3143j
Berquist, *Re* (Can.); **16.** *Cr. Pract.* p. 41
Berrey, *Re*, Lewis *v.* Berrey (1936); **18.** *Descr.* No. 283c
Berridge *v.* Everard (1938); **13.** *Cty. Cts.* No. 341d; **36.** *Negl.* No. 953j
Berringer, *Re* (Can.); **7.** *B. of Sale*, p. 11
Berry, *Ex p.*, R. *v.* Minister of Agriculture & Fisheries (1932); **2.** *Agric.* No. 979b
— *v.* Adamson (1827); **33.** *Mal. Pros.* No. 101a
— *v.* Berry (1929); **12.** *Contr.* No. 2936a; **20.** *Eqy.* No. 497a
— *v.* Confederation Life Assocn. (Can.); **1.** *Agcy.* p. 88
— *v.* Geen, *Re* Blake (1938); **37.** *Perps.* No. 740b
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 102
— *v.* Morse (1847); **28.** *Infts.* No. 1074a
— *v.* Richard (Can.); **42.** *Str. Traf.* p. 38
— *v.* Sempronius (1830); **33.** *Mal. Pros.* No. 101a
Berry & Gulliver, *Re*, *Ex p.* Law Institute of Victoria (Aus.); **42.** *Solrs.* p. 15
Berry & Stewart *v.* Tottenham Hotspur Football & Athletic Co., Ltd. (1935); **18.** *Discy.* No. 1705b
— *v.* — (1936); **9.** *Coys.* No. 2390a

Berryman *v.* Boake, Roberts & Co. (1934); **34.** *Mast. & S.* No. 3885c
Berthiaume *v.* Dastous (1930); **11.** *Confl.* No. 835a
Berton, *Re*, Vandyk *v.* Berton (1938); **44.** *Wills*, No. 299d
— (Arthur), Ltd. *v.* Jarrett Rainsford & Laughton, Ltd. (1930); **36.** *Pats.* No. 459b
Bertram *v.* Wightman (1936); **28.** *Inc. T.* Nos. 16a, 79b
Bertrand *v.* Neilson & Vancouver City (Can.); **26.** *Highys.* p. 33
— *v.* Warre (Can.); **39.** *S. Goods*, p. 32
Berwick *v.* Baird, *Re* Joel's Lease (1930); **2.** *Agric.* No. 30f
Besant *v.* German Reich, *Re* Robinson (1931); **8.** *Char.* Nos. 23c, 272b, 864a, 1246a, 1273a, 1373b
Besinnett *v.* White (Can.); **28.** *Injon.* p. 153
Besseler, Waechter & Glover & Co., Ltd. *v.* South Derwent Coal Co., Ltd. (1938); **12.** *Contr.* No. 2946a
Best, *Re* (Aus.); **29.** *Insce.* p. 30
— *v.* Barber (1782); **4.** *Bkpcy.* No. 5399b
— *v.* Barker (1782); **4.** *Bkpcy.* No. 5399b
— *v.* Best (N.Z.); **11.** *Confl.* p. 48
— *v.* Butler & Fitzgibbon (1932); **43.** *Trade*, No. 1157a
— *v.* Wertheim, *Re* Biedermann (1922); **2.** *Aliens*, No. 215h
Betcherman *v.* Pierce & Co. (Can.); **42.** *Stk. Ex.* p. 31
Betford *v.* Ford (1596); **19.** *Eccl.* Nos. 3614, 3615
Bethel *v.* Automatic Totalizators, Ltd. (Aus.); **10.** *Coys.* p. 90
Bethell *v.* Bethell (Can.); **27.** *H. & W.* p. 23
Bethlem Hospital, *Re* (1875); **30.** *Jdgmts.* No. 680a
Bettcher *v.* Turner (Can.); **36.** *Nuis.* p. 47
Bettinson's Representative *v.* Trustee, *Re* Wadsley (1925); **2.** *Agric.* No. 226a; **5.** *Bkpcy.* No. 7756a
Bettles *v.* Canadian National Railways (Can.); **36.** *Negl.* p. 9
Betts *v.* Clare & Heyworth, Ltd. (1927); **28.** *Inc. T.* No. 210
— *v.* Laycock, Sons & Co., Ltd. (1930); **28.** *Inc. T.* No. 204g
— *v.* Leicester Corpn. (1932); **20.** *Electric*, No. 103c
— *v.* Metropolitan Police District Receiver & Carter Paterson & Co., Ltd. (1932); **38.** *Pub. Auth.* Nos. 777b, 920a; **43.** *Trov.* No. 185a
Betts & Gallant *v.* Workmen's Compensation Board (Can.); **34.** *Mast. & S.* p. 47
Betty & Tom, Ltd. *v.* Southern Essex Assessment Committee (1937); **38.** *Rates*, No. 226tt
Bevan *v.* Grovesend Steel & Tinplate Co., Ltd. (1929); **34.** *Mast. & S.* Nos. 3701c, 3954c
— *v.* Lancasters Steam Coal Collieries (1927); **34.** *Mast. & S.* No. 2831a
— *v.* Nixon's Navigation Co., Ltd. (1929); **34.** *Mast. & S.* No. 3243b
— *v.* Waterhouse (1876); **40.** *Sttlmts.* No. 2197b
— *v.* Williams, *Re* Davies' Will Trusts (1932); **40.** *Sttlmts.* No. 3143e
Bevan & Girling, *Re* (1863); **16.** *Cntmpt.* No. 931a
Bevilockway *v.* Schneider (Can.); **38.** *Real Prop.* p. 93
Bevington *v.* Perks & Bell Assurance Society (1925); **13.** *Cty. Cts.* No. 695b
Bevir *v.* British Wagon Co., Ltd. (1935); **18.** *Distr.* No. 1069a; **32.** *Limit of A.* No. 1839a
Bevis *v.* Bevis (1934); **27.** *H. & W.* No. 4161a
— *v.* — (1935); **27.** *H. & W.* No. 2771a
Bevoy Krishna Mukherjee *v.* Satish Chandra Giri (1927); **16.** *Courts*, No. 348a; **39.** *Recrs.* No. 106a
Bewley *v.* Hancock (1856); **36.** *Pats.* No. 1557a
Bexon *v.* Bexon (Can.); **27.** *H. & W.* p. 66
Beyak *v.* R. (Can.); **30.** *Intox.* p. 17
Beyea *v.* Johnston & Ward (Can.); **9.** *Coys.* p. 21; **42.** *Stk. Ex.* p. 35
Beyer Estate, *Re* (Can.); **24.** *Exors.* p. 34
Beyers, *Ex p.*, R. *v.* Associated Newspapers, Ltd. (1936); **16.** *Cntmpt.* No. 197a
— *v.* Co-operative Press, Ltd. (1936); **16.** *Cntmpt.* No. 197a
— *v.* Daily Sketch & Sunday Graphic (1936); **16.** *Cntmpt.* No. 197a
— *v.* Green (1936); **32.** *Limit. of A.* No. 1807a
Beynon *v.* Thorpe (1928); **28.** *Inc. T.* No. 496b
Bezborodka *v.* Sebenthall (Can.); **38.** *Real Prop.* p. 95
Bhagat Singh *v.* Crown (Ind.); **17.** *Dep.* p. 35
— *v.* King Emperor (1931); **17.** *Dep.* No 31a
Bhagwan Das Lachmi Narain *v.* Bengalnagpur Railway (Ind.); **8.** *Carr.* p. 6
Bhagwan Sahai *v.* Bhagwan Din (Ind.); **35.** *Mtge.* p. 30
Bhagwati Dayal *v.* Dhan Khunwar (Ind.); **17.** *Dep.* p. 84
Bhamboo Mal *v.* Ram Narain (Ind.); **1.** *Agcy.* p. 70; **16.** *Courts*, p. 9
Bharat National Bank *v.* Banarje Das (Ind.); **3.** *Bank.* p. 38
Bharat National Bank, Ltd. of Delhi *v.* Bishan Lal (Ind.); **3.** *Bank.* p. 47
Bhawani Singh (Raja) *v.* Maulvi Misbah-ud-din (1929); **1.** *Agcy.* No. 1438a
Bhikabai *v.* Manilal (Ind.); **11.** *Confl.* p. 32
Bhimji *v.* Bombay Trust Corpn., Ltd. (Ind.); **3.** *Bailmt.* p. 12
Bhogi Ram *v.* Kishori Lal (Ind.); **6.** *B. of Exch.* p. 1
Bhola Nath *v.* Raghunath Das Mithan Lal (Ind.); **1.** *Action*, p. 2
Bhowanidas Ramgobind *v.* Pannachand Luchmipat (Ind.); **2.** *Arbn.* p. 79
Bianco *v.* Banks (Can.); **7.** *Bounds. & F.* p. 16
— *v.* Mathers (I. H.) & Son, Ltd. (Can.); **9.** *Coys.* p. 50
Bick *v.* Motly (1835); **24.** *Exors.* No. 7225a
Bickerdike *v.* Lucy (1920); **2.** *Agric.* No. 267b
Bickersteth *v.* Dickinson, *Re* Dickinson's Settlements (1938); **28.** *Infts.* No. 844a
— *v.* Shanu (1936); **44.** *Wills*, Nos. 8897a, 8913a
Bickerton *v.* Dakin (Can.); **32.** *Lien*, p. 27
Biddulph & District Agricultural Society *v.* Agricultural Wholesale Society (1927); **9.** *Coys.* No. 431a; **28.** *Ind. Soc.* No. 45
Biden & Thompson, *Re* (Can.); **2.** *Arbn.* p. 97
Bidgood *v.* Davies (1826); **11.** *Const. L.* No. 264a
Bidwell, *Ex p.*, R. *v.* Brixton Prison, Governor of (1937); **24.** *Extrdn.* No. 159a
Biedermann, *Re*, Best *v.* Wertheim (1922); **2.** *Aliens*, No. 215h
— *v.* Allhausen & Co. (1921); **6.** *B. of Exch.* No. 2205a
Biel's Estate, *Re*, Gray *v.* Warner (1873); **25.** *Fraud. Conv.* No. 895a
Bielitski *v.* Obadisk (Can.); **17.** *Damgs.* p. 9
Bifrost Rural Municipality *v.* Stadnick (Can.); **38.** *Pub. Auth.* p. 4
Bigaouette *v.* R. (Can.); **14.** *Crim.* p. 29
Bigelow *v.* Craigellachie-Glenlivet Distillery Co. (Can.); **12.** *Contr.* pp. 4, 5
Biggar, *Re*, Biggar *v.* Stinson (Can.); **38.** *Real Prop.* p. 90
— *v.* Biggar (Can.); **11.** *Confl.* p. 49

Biggar *v.* Stinson, *Re* Biggar (Can.); **38.** *Real Prop.* p. 90
Biggard (Doe d.) *v.* Millard (Can.); **25.** *Fraud. Conv.* p. 14
Biggs *v.* Burridge (1924); **14.** *Crim.* No. 72c
— *v.* London Loan & Savings Co. of Canada (Can.); **42.** *Solrs.* p. 3
Bijapur District School Board *v.* Bhagwan Vasuder (Ind.); **19.** *Educ.* p. 33
Bijou Motor Parlors *v.* Keel (Can.); **3.** *Bailmt.* p. 8
Bikramkishore Manikya *v.* Ali Ahmad (Ind.); **16.** *Courts*, p. 18
Bilbrough *v.* Demaer (Can.); **29.** *Insce.* p. 6
Bilham *v.* Smith, *Re* Smith's Estate (1937); **27.** *H. & W.* No. 1226c
Bilinski *v.* Kowbell (Can.); **34.** *Mast. & S.* pp. 17, 18
Bill's Estate, *Re* (Can.); **7.** *B. of Sale*, p. 9
Billett *v.* Billett (Can.); **24.** *Exors.* p. 39
Billings *v.* Mooers & McGuire (Can.); **36.** *Negl.* p. 30
Billingsgate Fish, Ltd. *v.* British Columbia Sugar Refining Co., Ltd. (Can.); **36.** *Nuis.* p. 49
Billingsly (Lady) *v.* Hersey (1612); **2.** *Agric.* No. 518a
Bills of Sale & Chattel Mortgage Act, *Re*, *Re* Crop Payments Act (Can.); **7.** *B. of Sale*, p. 1
Bilodeau *v.* McLean (Can.); **1.** *Agcy.* p. 87; **12.** *Contr.* p. 18
Bilsland *v.* Inland Revenue Comrs. (1936); **28.** *Inc. T.* No. 656c
Bimalacharan Batabyal *v.* Indian Museum Trustees (Ind.); **11.** *Const. L.* p. 63
Bingham, *Re* (Can.); **44.** *Wills*, p. 14
Bingle, *Re* (1854); **22.** *Evid.* No. 5951a
Binkley *v.* Stewart (Can.); **29.** *Insce.* p. 5
Binney *v.* Binney & Hill (1936); **27.** *H. & W.* No. 3317a
Binns, *Re*, Public Trustee *v.* Ingle (1929); **20.** *Eqy.* No. 2006a
Binns (W. C.) *v.* Avery (W. & A.), Ltd. (Ind.); **35.** *Mistake*, p. 9
Bipin Behari Ghatak *v.* Ramnath Ghatak (Ind.) **19.** *Easmt.* p. 6; **44.** *Waters*, p. 1
Bipulbihari Chakravarti *v.* Nikhilchandra Chakravarti (Ind.); **42.** *Stats.* p. 24
Bir Bikram Kishore Manikya *v.* Ali Ahamad (Ind.); **17.** *Dep.* p. 67
Birch, *Re* (1808); **33.** *Lunat.* No. 827a
— *v.* Delaney (Ir.); **28.** *Inc. T.* p. 23
— *v.* John (1930); **34.** *Mast. & S.* No. 3540a
Birch Brothers, Ltd. *v.* Brown (1931); **34.** *Mast. & S.* No. 3231b
Birch Lake, Municipal District *v.* London Guarantee & Accident Co., Ltd. (Can.); **21.** *Estpl.* p. 41
Birch's Estate, *Re* (1929); **23.** *Exors.* No. 1772b
Bird *v.* Bass (1843); **21.** *Exon.* No. 563a
— *v.* King-Emperor (Ind.); **17.** *Damgs.* p. 7
Bird & Co. (London), Ltd. *v.* Cook (Thomas) & Son, Ltd. & Cook (Thomas) & Son (Bankers), Ltd. (1937); **6.** *B. of Exch.* No. 1314a
Birdsall *v.* Merritt (Can.); **2.** *Animals*, p. 62
Birkby, *In the Estate of* (1929); **44.** *Wills*, No. 1513a
Birkdale District Electric Supply Co. *v.* Southport Corpn. (1926); **13.** *Corpns.* No. 949a; **20.** *Electric*, No. 52
Birkenhead Borough Council *v.* Lancashire County Council (1934); **37.** *Poor L.* No. 473a
Birkenhead, Cambridge Place, Clearance Order, 1934, *Re*, *Exp.* Frost (1935); **38.** *Pub. Hlth.* No. 502u
Birkenhead School, Ltd. *v.* Dring (1926); **28.** *Inc. T.* No. 69a
Birkett *v.* Canadian Pacific Ry. (Can.); **38.** *Rys.* p. 38
— *v.* Northern L. Assurance Co. (Can.); **29.** *Insce.* p. 32
— *v.* Purdom (1895); **4.** *Bkpcy.* No. 4334a
— *v.* Sherwin-Williams (Can.); **4.** *Bkpcy.* p. 40
Birkett & Sons, Ltd., *Ex p.*, *Re* Sun Ray Manufacturing Co. (Can.); **9.** *Coys.* p. 17
Birkin, *Re*, Birkin *v.* Birkin (1901); **43.** *Trusts*, No. 2503a
Birmingham *v.* Tuite (Ir.); **29.** *Intpr.* p. 63
Birmingham & Midland Motor Omnibus Co., Ltd. *v.* Nelson (1933); **42.** *Str. Traf.* Nos. 76j, 76n, 76p
Birmingham Corpn. *v.* Barnes (1935); **28.** *Inc. T.* No. 276b
— *v.* Inland Revenue Comrs. (1929); **28.** *Inc. T.* No. 393b
— *v.* Mother-General of Convent of Sisters of Charity of St. Paul (1927); **26.** *Highys.* No. 2466a
Birmingham Criterions, Ltd. *v.* Inland Revenue Comrs. (1938); **28.** *Inc. T.* No. 674v
Birmingham Jewellers & Silversmith's Assocn. *v.* Stock (Can.); **43.** *Trade Mks.* p. 12
Birt *v.* Magnay (1843); **33.** *Mal. Pros.* No. 14
Birtchnell *v.* Morris (Aus.); **1.** *Agcy.* p. 78
— *v.* Walker & Co. Pty., Ltd. (Aus.); **43.** *Tresp.* p. 50
Birtle Election Recount, *Re* (Can.); **20.** *Elect.* p. 8
Birtwhistle *v.* Sumner Engineering Co. (1928); **36.** *Pals.* Nos. 502a, 2697a
— (Doe d.) *v.* Vardill (1835); **3.** *Basty.* No. 144a
Birtwistle, *Re* (Can.); **8.** *Char.* p. 77
— *v.* Doyle (Can.); **33.** *Mags.* p. 37
Birtwistle (Peter) Trust *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 75
Bisheshwar Pratap Narayan Sahi *v.* Chandreshwar Prasad Narayan Singh (Ind.); **39.** *Recrs.* p. 1
Bishop, *Re*, Public Trustee *v.* Bishop (Aus.); **44.** *Wills*, p. 45
— *v.* Black (Can.); **27.** *H. & W.* p. 20
— *v.* Consolidated London Properties, Ltd. (1933); **31.** *L. & T.* Nos. 4575a, 4589a
— *v.* Coster (Can.); **40.** *S. Land*, p. 2
— *v.* Cox (Can.); **32.** *Limit. of A.* p. 37; **38.** *Real Prop.* p. 92
— *v.* Deakin (1936); **33.** *L. G.* Nos. 26a, 277a
— *v.* Kilcup (Can.); **16.** *Courts*, p. 9
— *v.* Liden (Can.); **2.** *Animals*, p. 59
— *v.* Western Trust Co. (Can.); **38.** *Real Prop.* p. 95
Bishop (W. I.), Ltd. *v.* Maclaren (James) & Co. (Can.); **7.** *Bldg. Conts.* p. 24
Bishop Printing Co., Ltd. *v.* Ontario Beauty Supply Co., Ltd. (Can.); **34.** *Mast. & S.* p. 14
Bishun Chand Firm *v.* Seth Girdhari Lal (1934); **32.** *Limit. of A.* No. 672b
Biskawbad *v.* Mukamnad (Ind.); **17.** *Deeds*, p. 26
Bissell *v.* Rochester (Can.); **38.** *Pub. Auth.* p. 12
Bissett *v.* Heiton & Co., Ltd. (Ir.); **24.** *Fact.* p. 53
Bjornstad & Ouse Shipping Co., *Re* (1924); **2.** *Arbn.* No. 629a
Black, *Ex p.*, R. *v.* Westminster Assessment Committee (1934); **38.** *Rates*, No. 1611a
— *v.* Admiralty Comrs. (1924); **7.** *Bldg. Conts.* No. 287a
— *v.* Aitkenhead & Son (Scot.); **34.** *Mast. & S.* p. 41
— *v.* Beliveau & Newton (Can.); **4.** *Bkpcy.* p. 5
— *v.* Black & Stobie (Can.); **27.** *H. & W.* p. 54
— *v.* — (No. 2) (Can.); **27.** *H. & W.* p. 57
— *v.* Drouillard (Can.); **21.** *Exon.* p. 48

Black *v.* Edenwold Rural Municipality (Can.); **38.** *Pub. Hlth.* p. 21
— *v.* Hardwell & Gloeckler (Can.); **22.** *Evid.* p. 3
— *v.* Hesperides (Owners) (1929); **34.** *Mast. & S.* No. 2552c
— *v.* Hunter (Can.); **28.** *Infts.* p. 132
— *v.* Lanarkshire County Council (Scot.); **33.** *L. G.* p. 8
— *v.* MacFarlane (N.Z.); **27.** *H. & W.* p. 16
— *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 88
v. Ocean Accident & Guarantee Co. (Can.); **18.** *Discy.* pp. 9, 13
— *v.* Parker (George) & Sons, Ltd. (1929); **34.** *Metrop.* No. 98a
v. Speedcraft, Ltd. (Aus.); **39.** *Revenue*, p. 23
— *v.* Stebnicki (Can.); **18.** *Distr.* p. 28; **31.** *L. & T.* pp. 65, 82
— *v.* Tidy, *Re* Hawksley's Settlements (1934); **43.** *Trusts*, No. 487a; **44.** *Wills*, Nos. 1613a, 1642a, 1967a, 3490a
— *v.* Wiebe (Can.); **32.** *Lien*, p. 26
— *v.* Williams & Co. (Wishaw), Ltd. (Scot.); **2.** *Arbn.* p. 87
Black & White Cabs, Ltd. *v.* Anson (N.Z.); **16.** *Courts*, p. 14; **36.** *Negl.* p. 24
— *v.* Nicholson (N.Z.); **21.** *Estpl.* p. 40
Black & White Hat Shop, Ltd., *Re*, Newton *v.* Finesilver (Can.); **5.** *Bkpcy.* p. 73
Black (A. & C.), Ltd. *v.* Claude Stacey, Ltd. (1929); **13.** *Coprt.* No. 196a
Blackburn, *Re* (Can.) (1937); **33** *Mays.* p. 28
—, *Re* (Can.) (1938); **30.** *Intox.* p. 12
—, *Re, Ex p.* Moffatt (Can.); **7.** *B. of Sale*, p. 9
— *v.* McIntosh (Can.); **34.** *Mast. & S.* p. 82
Blacker *v.* Waters (Aus.); **36.** *Negl.* p. 25
Blackett *v.* Clutterbuck Brothers (Adelaide), Ltd. (Aus.); **12.** *Contr.* p. 5
Blackhall *v.* Neary (N.Z.) (1935); **42.** *Time*, p. 74
— *v.* — (N.Z.) (1936); **42.** *Time*, p. 73
Blackie *v.* Blackie (1935); **36.** *Parl.* No. 77a
— *v.* Miniota Municipality (Can.); **26.** *Hghys.* p. 24
Blackley *v.* Kenny (Can.); **25.** *Fraud. Conv.* p. 15
Blackman *v.* R. (Can.) (1924); **21.** *E. D.* p. 20
— *v.* — (Can.) (1931); **16.** *Cr. Pract.* p. 27
Blackmore, *Ex p.* (1801); **4.** *Bkpcy.* No. 79a
— *v.* Cumberford (1680); **17.** *Deeds*, No. 1944a
— *v.* Liberty (Stewart), *Re* Liberty's Will Trusts (1937); **40.** *Stllmts.* No. 1003b
— *v.* Tidderley (1705); **32.** *Limit. of A.* No. 131a
Blackpool Corpn., *Re* (1931); **44.** *Work*, No. 123b
— *v.* Starr Estate Co., Ltd. (1922); **11.** *Comp. Pche.* No. 650
Blackpool Corpn. & Barritt, *Re* (1931); **44.** *Work*, Nos. 123b, 123c, 123d
Blackstock *v.* North Alberta Land Registration District Registrar (Can.); **38.** *Real Prop.* p. 96
Blackwell *v.* Arrol (Sir William) & Co., Ltd. (1935); **34.** *Mast. & S.* No. 2768d
— *v.* Ashbee & Sons, Ltd. (1936); **34.** *Mast. & S.* No. 2876a
— *v.* Blackwell (1929); **43.** *Trusts*, No. 463a
— *v.* Wood (1831); **40.** *Stllmts.* No. 897b
Blades. *Re* (Can.); **4.** *Bkpcy.* p. 47
— *v.* Nelson (Can.); **32.** *Lien*, p. 23
— *v.* Wool Exchange & General Investments, Ltd. (1937); **34.** *Mast. & S.* No. 3175a
Blades & Great Bend Consolidated School District, *Re* (Can.); **19.** *Educ.* p. 34
Blagburn Estate, *Re* (Can.); **23.** *Exors.* p. 13
Blagg (Doe d.) *v.* Steel (1832); **35.** *Mtge.* No. 3495a
Blaina Colliery Co., Ltd., *Re* (1926); **9.** *Coys.* No. 1448b
Blainey *v.* Toronto (Can.); **30.** *Jdgmts.* p. 23
Blair, *Re, Ex p.* Maple Leaf Mllg. Co. (Can.); **7.** *B. of Sale*, p. 8
— *v.* Inland Revenue (Scot.); **39.** *Revenue*, p. 22
— *v.* Martin (N.Z.); **42.** *Solrs.* p. 4
— *v.* Mutual Supplies, Ltd. (Can.); **34.** *Mast. & S.* p. 5
Blais, *Re* (Can.); **4.** *Bkpcy.* p. 32
— *v.* Paradis (Can.); **7.** *Bldg. Conts.* p. 25
Blake, *Re, Re* Minahan's Petition of Right (1932); **32.** *Limit of A.* No. 1761b
—, *Re*, Berry *v.* Geen (1938); **37.** *Perps.* No. 740b
Blakeley *v.* Charleswood Rural Municipality (Can.); **33.** *L. G.* p. 8; **38.** *Pub. Auth.* p. 13
— *v.* Moreash (Can.); **40.** *S. Land.* p. 10
Blakemore *v.* Delta Mill (1919), Ltd. (1935); **34.** *Mast. & S.* Nos. 3431a, 3733a
Blakeney *v.* Hurdle, *Re* Hurdle (1936); **44.** *Wills*, No. 712a
Blakey *v.* Elliott (Aus.); **20.** *Elect.* p. 4
— *v.* Pendlebury Property Trustees (1931); **5.** *Bkpcy.* No. 6858a
Blakey & Co., Ltd. *v.* R. (Can.); **42.** *Stats.* p. 30
Blakie *v.* McLennan (Can.); **17.** *Deeds*, p. 29
Blanc, Le *v.* Emilien Burke, The (Can.); **1.** *Adm.* p. 31
Blanchard, *Re, Ex p.* Blanchard (1932); **5.** *Bkpcy.* No. 8494a
— *v.* Blanchard (1928); **27.** *H. & W.* No. 2813a
— *v.* Jenkins (Can.); **14.** *Crim.* p. 32
— *v.* Randall & King, Ltd. (Aus.); **3.** *Bailmt.* p. 13
— *v.* Scanlan (Can.); **38.** *Rates*, p. 86
— *v.* Vaughan (Can.); **36.** *Negl.* p. 10
Bland, *Re* (Can.); **28.** *Infts.* p. 140
— *v.* Agnew (Can.); **17.** *Dep.* p. 72
— *v.* — (No. 2) (Can.); **28.** *Infts.* p. 140
— *v.* — (No. 3) (Can.); **17.** *Dep.* p. 72
Bland & Mohun, *Re* (Can.); **8.** *Chos.* p. 90
Blandy *v.* Willis, *Re* Bradshaw (1938); **27.** *H. & W.* No. 548b
Blanks, *Re* (Can.); **35.** *Mtge.* p. 51
Blanshay, *Re* (Can.); **17.** *Dep.* p. 36
Blatcher *v.* Kemp (1782); **14.** *Crim.* No. 1678a
Blatchford *v.* A.-G. for Alberta & Van Ruyven (Can.); **27.** *H. & W.* p. 58
Blaustein *v.* Maltz, Mitchell & Co. (1937); **1.** *Agcy.* No. 1385b
Blay *v.* Dadswell (1922); **2.** *Agric.* No. 30d
— *v.* Pollard & Morris (1930); **35.** *Mistake*, Nos. 203a, 300a
Bleachers Assocn., Ltd., & Bennett & Jackson, Ltd. *v.* Chapel-en-le-Frith Rural District Council (1933); **44.** *Waters*, No. 262a
Blee *v.* London & North Eastern Ry. Co. (1938); **34.** *Mast. & S.* No. 2348b
Bleecker *v.* Stutsman (Can.); **1.** *Agcy.* p. 101
Bleeker *v.* Bleeker (S. Af.); **27.** *H. & W.* p. 27
Bleke *v.* Grove (1664); **15.** *Crim.* No. 9046
Blenkhorn *v.* Royal Bank (Can.); **3.** *Bank.* p. 22
Bletchingdon Surveyor *v.* Dand (1849); **18.** *Distr.* No. 1532
Blewett *v.* Blewett (1936); **31.** *L. & T.* Nos. 6342a, 6353a, 6353b
Bligh *v.* Minister of Agriculture & Fisheries (1931); **2.** *Animals*, No. 694a
— *v.* Tredgett (1851); **28.** *Infts.* No. 1735a
Bliss *v.* Malberg (Can.); **42.** *Str. Traf.* p. 39
Blitz *v.* Hussein (1938); **27.** *H. & W.* No. 148a
Bloemfontein Municipality *v.* Jacksons, Ltd. (S. Af.); **18.** *Distr.* p. 25
Blois *v.* Halifax (City) (Can.); **35.** *Misrep.* p. 5
Blome *v.* Regina (City) (Can.); **2.** *Arbn.* p. 97; **7.** *Bldg. Conts.* pp. 25, 32
Blonde *v.* Doe (Can.); **7.** *Bldg. Conts.* p. 26
Bloom, *Ex p.*, R. *v.* Brixton Prison (Governor) (1920); **2.** *Aliens*, No. 553a

Bloom *v.* Creed & Consumers' Gas Co. (Can.); **36.** *Nuis.* p. 45
— *v.* Imperial Lighting Co. (Implitico, Ltd.) (1935); **36.** *Pats.* No. 3112a
— *v.* Shulman (1934); **36.** *Pats.* No. 3032a
Bloomaert *v.* Dunlop (Can.) (1926); **30.** *Juries*, p. 33; *L. & T.* p. 38
— *v.* Dunlop (Can.) (1930); **17.** *Dep.* p. 72
Bloomfield, *Re*, Public Trustee *v.* Kohlbeck (1933); **8.** *Char.* No. 841b
— *v.* Lysnar (N.Z.); **34.** *Mines*, p. 207
— *v.* Monarch Overall Manufacturing Co., Ltd. (No. 1) (Can.); **18.** *Discy.* p. 15
— *v.* Monarch Overall Manufacturing Co., Ltd. (No. 2) (Can.); **9.** *Coys.* p. 38
Bloor *v.* Liverpool Derricking & Carrying Co., Ltd. (1936); **21.** *Exon.* No. 366a; **34.** *Mast. & S.* No. 1819a; **36.** *Negl.* No. 196a
— *v.* Sutton (Owners) (1926); **34.** *Mast. & S.* No. 2166a
Bloudoff *v.* Canadian National Rys. (Can.); **36.** *Negl.* p. 34
Blouin, *Re*, Gagnon *v.* Grain & Provision Co. (Can.); **5.** *Bkpcy.* p. 67
Blow *v.* Mayland (Can.); **36.** *Negl.* p. 16
Blowey Estate, *Re* (Can.); **21.** *E. D.* p. 16
Bloxham *v.* Medical Defence Union, Ltd. (1894); **9.** *Coys.* No. 4072a
Bloxholm *v.* Oldham (1750); **5.** *Bkpcy.* No. 6998a
Blucher (Prince), *Re*, *Ex p.* Debtor (1931); **5.** *Bkpcy.* No. 8653a
Bludoff *v.* Osachoff (Can.); **25.** *Fraud Conv.* p. 14; **26.** *Guar.* p. 3
Blue Band Navigation Co., Ltd. Trustee *v.* Price, Waterhouse & Co. (No. 1) (Can.); **18.** *Discy.* p. 22
— *v.* Price, Waterhouse & Co. (No. 2) (Can.); **9.** *Coys.* 41
Bluebird Corpn., Ltd., *Re* (Can.); **9.** *Coys.* pp. 15, 16
Bluebird Fashion Shops, Ltd., *Re* (Can.); **5.** *Bkpcy.* p. 90
Blumberger *v.* Solloway, Mills & Co., Ltd. (Can.) (1931); **18.** *Discy.* p. 23
— *v.* Solloway, Mills & Co., Ltd. (Can.) (1932); **42.** *Stk. Ex.* p. 31
Blumsen *v.* National Light & Power Co., Ltd. (Can.); **20.** *Electric*, p. 16
Blundy, Clark & Co., Ltd. *v.* London & North Eastern Ry. Co. (1931); **38.** *Rys.* Nos. 931a, 934a, 936a, 1043a, 1043b
Blunt (West Derby Revenue Officer) *v.* West Derby Assessment Committee & Tate & Lyle, Ltd. (1931); **38.** *Rates*, No. 226ff
Bluston *v.* Dally (Aus.); **18.** *Discy.* p. 22
Blygh *v.* Solloway Mills & Co., Ltd. (Can.); **18.** *Discy.* p. 8
Blyth *v.* Anderson (Aus.); **42.** *Str. Traf.* p. 42
— *v.* A.-G., *Re* Smith (1920); **8.** *Char.* Nos. 703a, 841a
— *v.* Carter (Aus.); **33.** *Mags.* p. 27
— *v.* Hudson (Aus.); **42.** *Str. Traf.* p. 46
— *v.* Whiffin (1872); **20.** *Eqy.* No. 290a
Blyth Chemicals, Ltd. *v.* Bushnell (Aus.); **34.** *Mast. & S.* p. 7
Blyth Shipbuilding & Dry Docks Co., *Re*, Forster *v.* Blyth Shipbuilding & Dry Docks Co. (1926); **7.** *Bldg. Conts.* No. 319a
Blythswood's (Lord) Judicial Factor *v.* Douglas (Scot.); **21.** *E. D.* p. 17
Boag *v.* Standard Marine Insurance Co., Ltd. (1937); **29.** *Insce.* No. 2380a
Boak *v.* Merchants' Marine Insurance Co. (Can.); **29.** *Insce.* p. 14
— *v.* Woods (Can.); **9.** *Coys.* p. 29
Boak (Geo. E.) & Son, *Re* (Can.); **5.** *Bkpcy.* p. 73
Boake *v.* Guild (Can.); **32.** *Lien*, p. 24
Boanas *v.* Barrwhin S.S. Owners (1936); **34.** *Mast. & S.* No. 2439d
Board of Control, *Re* (1938); **27.** *H. & W.* No. 3015c
Board of Public Utility Comrs. *v.* Model Dairies (Can.); **17.** *Dep.* p. 66
Board of Railway Comrs. Order No. 448 Regarding Railway Freight Rates in Canada (Can.); **38.** *Rys.* p. 45
Board of Trade, *Ex p.*, *Re* Burr (1892); **4.** *Bkpcy.* No. 1586a
— *v.* Cayzer, Irvine & Co. (1927); **2.** *Arbn.* No. 254a; **32.** *Limit of A.* Nos. 16, 79, 139a
— *v.* Hain S.S. Co. (1929); **41.** *Ship.* No. 8760
— *v.* Nelson, *Exp.*, *Re* Allen (1935); **4.** *Bkpcy.* No. 2007a
Board of Trade of Halifax, St. John & Sackville, N. B., Canadian Lumbermen's Assocn. *v.* Canadian National Rys. (Can.); **38.** *Rys.* p. 44
Boardman *v.* Boardman (Aus.); **11.** *Confl.* p. 48; **27.** *H. & W.* p. 48
— *v.* Grand Trunk Ry. Co. of Canada (1933); **38.** *Pub. Auth.* No. 58a
Boase *v.* Fife County Council (Scot.); **33.** *Mags.* p. 24
— *v.* Paul (Can.); **34.** *Med.* p. 190
Bobby *v.* Chodiker (Can.); **28.** *Infls.* p. 132; **42.** *Str. Traf.* p. 61
Bocalter *v.* Hazle (Can.); **12.** *Contr.* p. 8
Bocz *v.* Hugonnard (Can.); **38.** *Pub. Auth.* p. 6
Bocz *v.* Spiller (Can.); **21.** *Exon.* p. 46
Boddy *v.* Carpenter (Can.); **44.** *Wills*, p. 22
— *v.* Dawes (1836); **23.** *Exors.* No. 5240a
Boden *v.* Smith (1849); **36.** *Parl.* No. 2a
Bodey, Jerrim & Denning, Ltd. & Graham Cochrane Boag *v.* Pentiron S.S. Co., Ltd. (1937); **29.** *Insc.* No. 2380a
Bodkin *v.* Manchester Collieries, Ltd. (1932); **34.** *Mast. & S.* No. 3155a
Bodordoja *v.* Ajijuddin Sarkar (Ind.); **31.** *L. & T.* p. 79
Body, *In the Goods of* (1865); **23.** *Exors.* No. 1031c
— *v.* Body (Can.); **27.** *H. & W.* p. 12
Boehner, *Ex p.* (Can.); **33.** *Mags.* p. 35
— *v.* Backman (Can.); **7.** *Bldg. Conts.* p. 24
Boehner's, Ltd., *Re* (Can.); **10.** *Coys.* p. 62
Boericke *v.* Sinclair (Can.); **40.** *S. Land*, p. 5
Boers, *Re* (Can.); **2.** *Agric.* p. 25
Boga *v.* Chamberlen (Can.); **11.** *Confl.* p. 51
Bogach *v.* Huhn (Can.); **32.** *Lien*, p. 21
Bogg, *Re*, Allison *v.* Paice (1917); **20.** *Eqy.* No. 1283a
Bogota (Owners) *v.* Alconda (Owners) (Scot.); **1.** *Adm.* p. 37
Bohan *v.* Walker (Can.); **12.** *Contr.* p. 10; **25.** *Gifts*, p. 51
Bohane *v.* Driscoll (Ir.); **19.** *Educ.* p. 46
Bohemian Union Bank *v.* Austrian Property Administrator (1927); **2.** *Aliens*, No. 49g
Bohn Aluminium & Brass Corpn. *v.* Berry (Can.); **36.** *Pats.* p. 67
Bohrmann, *In the Estate of*, Cæsar & Watmough *v.* Bohrmann (1938); **44.** *Wills*, No. 229a
Boily *v.* McNulty (Can.); **4.** *Bkpcy.* pp. 4, 44
Boisseau *v.* R. (Can.); **14.** *Crim.* p. 39
Boisvert *v.* Lavallee (Can.); **6.** *B. of Exch.* p. 15
Boivin *v.* Boivin (Can.); **27.** *H. & W.* p. 42
— *v.* Boivin & Schiffers (No. 2) (Can.); **27.** *H. & W.* p. 45
— *v.* R. (Can.); **15.** *Crim.* p. 80
Boivin & Boivin *v.* Glenavon School District (Can.); **19.** *Educ.* p. 34
Boks & Co. & Peters, Rushton & Co., *Re* (1919); **2.** *Arbn.* No. 1985a
Boland *v.* Canadian National Rys. (1927); **11.** *Comp. Pche.* Nos. 62a, 99a
— *v.* — (Can.) (1926); **17.** *Dep.* p. 83
— *v.* — (Can.) (1934); **38.** *Rys.* pp. 36, 41

Bowden, *Re*, Hulbert *v.* Bowden (1936); **40.** *Stllmts.* No. 897a
Bowden (Lady), *Re*, Trustee *v.* Bankrupt (1937); **5.** *Bkpcy.* No. 6092a
Bowden *v.* R. (N.Z.); **7.** *B. of Sale*, p. 7
Bowdler *v.* Smith (1706); **23.** *Exors.* No. 5697b
Bowen, *Re*, *Ex p.* The Debtor (1924); **4.** *Bkpcy.* No. 1357a
— *v.* Bramidge (1833); **5.** *Bkpcy.* No. 8929a
— *v.* Davidson, *Re* Stokes (1928); **23.** *Exors.* No. 5273a
— *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 689f
— *v.* Lightfoot (Can.); **2.** *Animals*, p. 63
— *v.* Norman (1938); **3.** *Basty.* No. 65f
Bower, *Ex p.*, R. *v.* Lindsey, Parts of, Lincolnshire JJ. (1912); **18.** *Distr.* No. 1604
—, *Re* (Can.); **23.** *Exors.* p. 25
—, *Re*, Bower *v.* Mercer (1930); **37.** *Powers*, Nos. 521a, 521b
— *v.* Richardson Construction Co. (Can.); **36.** *Nuis.* p. 43
Bower Williams, *Re*, *Ex p.* Trustee (1927); **5.** *Bkpcy.* No. 7096b
Bowerbank *v.* Walker (1787); **16.** *Cr. Pract.* No. 3185b
Bowers *v.* Cator (1798); **30.** *L. & T.* No. 463a
Bowes, *Ex p.* (Can.); **21.** *Exon.* p. 56
— *v.* Chaleyer (Aus.); **12.** *Contr.* p. 41
— *v.* Fec (or Fecz) (Can.); **31.** *L. & T.* p. 61
— *v.* Hawke (Can.); **36.** *Negl.* p. 34
— *v.* Reid (Can.); **19.** *Easmt.* p. 6, 7
Bowie (or Ramsay) *v.* Liverpool Royal Infirmary (1930); **11.** *Confl.* Nos. 88a, 236a
Bowie *v.* Shenkin (Scot.); **36.** *Negl.* p. 9
Bowker, *In the Goods of* (1932); **23.** *Exors.* No. 1369c
— *v.* Premier Drug Co. (1928); **25.** *Food*, Nos. 78a, 98a, 150a
— *v.* Woodroffe (1928); **25.** *Food*, Nos. 78a, 98a, 150a
Bowker & Richards, *Re* (Can.); **41.** *Sewers*, p. 4
Bowler *v.* Blake (Can.); **36.** *Negl.* p. 38
— *v.* Lovegrove (1921); **3.** *Auct.* No. 15a
Bowler & Mack *v.* Turner (1933); **34.** *Mast. & S.* No. 3706a
Bowles *v.* Bowles (1937); **27.** *H. & W.* No. 5613a
— *v.* Southern Ry. Co. (1931); **34.** *Mast. & S.* No. 2270a
Bowling & Welby's Contract, *Re* (1895); **10.** *Covs.* Nos. 7669a, 7669b
Bowmaker, Ltd. *v.* Williams (1930); **39.** *S. Goods*, No. 11a
Bowman, *Re*, R. *v.* Middlesex JJ. (1834); **33.** *Mags.* No. 995a
—, *Re*, South Shields (Thames Street) Clearance Order (1931) (1932); **38.** *Pub. Hlth.* Nos. 502h, 502j, 524a
— *v.* A.-G. (Can.); **21.** *E. D.* p. 22
— *v.* Denison (Can.); **35.** *Mtge.* p. 50
— *v.* Epstein (Can.); **43.** *Trade Mks.* p. 13
Bowman's Settlement, *Re* (Aus.); **43.** *Trusts*, p. 66
Bowser & Co., *Ex p.*, *Re* Randwick Municipal Council (Aus.); **16.** *Cr. Pract.* p. 34
Bowyer, *Ex p.* (Can.); **33.** *Lunat.* p. 15
Boyak *v.* Kobylanski (Can.); **3.** *Basty.* p. 64
Boyce *v.* Cox (1922); **3.** *Basty.* No. 262a
— *v.* Norwich Union Fire Insurance Society (Can.); **29.** *Insce.* p. 47
— *v.* Whitwick Colliery Co., Ltd. (1934); **28.** *Inc. T.* No. 324a
Boyd, *Re* (Can.) (1924); **8.** *Char.* p. 74
—, *Re* (Can.) (1937); **21.** *E. D.* p. 4
— *v.* Alexander (Aus.); **25.** *Fraud. Conv.* p. 16
— *v.* Boyd (1938); **27.** *H. & W.* No. 2939a
— *v.* —, *Re* Boyd's Estate (Ir.); **23.** *Exors.* p. 22
Boyd *v.* Dickeson (Can.); **31.** *L. & T.* p. 60
— *v.* Halling (Can.); **7.** *B. of Sale*, p. 4
— *v.* Millett (Can.); **38.** *Real Prop.* p. 99
— *v.* O'Connor (Aus.); **1.** *Agcy.* p. 55
— *v.* Petrie (1868); **18.** *Discy.* No. 1266a
— *v.* Smith (Can.), [1931] 1 D. L. R. 729; **42.** *Str. Traf.* p. 61
— *v.* — (Can.), [1931] 3 D. L. R. 748; **34.** *Mast. & S.* p. 14
— *v.* Winnipeg Electric Co. (Can.); **18.** *Distr.* p. 32
— *v.* Wray (Can.); **11.** *Confl.* p. 44
Boyd & Anderson *v.* Superior Spruce Mills, Ltd. (Can.); **32.** *Lien*, p. 23
Boyd & Elgie *v.* Kersey (Can.); **21.** *Exon.* p. 58
Boyd (T. L.) & Sons, Ltd. *v.* Stephen (1926); **28.** *Inc. T.* No. 179
Boyd Bros. *v.* Cunningham (Can.); **29.** *Intpr.* p. 64
Boyd's Estate, *Re*, Boyd *v.* Boyd (Ir.); **23.** *Exors.* p. 22
Boyd's Settled Estates, *Re* (1880); **35.** *Mtge.* No. 383a
Boyer, *Re*, Neathercoat *v.* Lawrence (1935); **44.** *Wills*, No. 7255b
Boyer (William) & Sons (Transport), Ltd., *Re* (1937); **8.** *Carr.* No. 1499
Boyes *v.* Borley (Can.); **21.** *Estpl.* p. 37
Boylan & Toronto Corpn., *Re* (Can.); **38.** *Pub. Hlth.* p. 15
Boyle *v.* Blackstock (1863); **5.** *Bkpcy.* No. 8929b
— *v.* Boyle (Can.); **11.** *Confl.* p. 29
— *v.* Fitzsimons (Ir.); **31.** *L. & T.* pp. 91, 93, 95
— *v.* Union Cold Storage Co., Ltd. (1935); **34.** *Mast. & S.* No. 3630a
Boynton *v.* Richardson (1924); **2.** *Arbn.* Nos. 53a, 71a
Boys *v.* Star Ptg. & Pub. Co. (Can.); **32.** *Libel*, p. 14
Brabazon *v.* Peterson (Can.); **35.** *Mtge.* p. 47
Braby *v.* Donaldson (S. Af.); **13.** *Coprt.* p. 20
Bracey, *Re*, Hull *v.* Johns (1936); **24.** *Exors.* No. 6020a
Bracey *v.* Pales (1927); **31.** *L. & T.* No. 7037b
— *v.* Royal National Lifeboat Institution, *Re* Clarke (1923); **8.** *Char.* Nos. 47a, 735a
Bracia Czeczowiczka *v.* Loy (1936); **4.** *Bkpcy.* Nos. 929a, 929b
— *v.* — (Kenya); **4.** *Bkpcy.* p. 10
— *v.* Markus (1935); **17.** *Dep.* No. 234e
— *v.* — (1936); **4.** *Bkpcy.* Nos. 929a, 929b
— *v.* — (Kenya); **4.** *Bkpcy.* p. 10
Bradburn *v.* Edinburgh Life Assurance Co. (Can.); **17.** *Dep.* p. 40
— *v.* Peterborough (Can.); **38.** *Rates*, p. 52
Bradbury *v.* London Guarantee & Accident Co., Ltd. (Aus.) (1927); **29.** *Insce.* p. 25
— *v.* London Guarantee & Accident Co. Ltd., (Aus.) (1928); **29.** *Insce.* p. 27
— *v.* Loney (Can.); **21.** *Exon.* p. 53
— *v.* Moffatt & Carman (Can.); **18.** *Discy.* p. 11
Bradfield *v.* Swanton (Ir.); **2.** *Aliens*, p. 27
Bradford Advance Co., Ltd. *v.* Ayers (1924); **7.** *B. of Sale*, No. 283b
Bradford & Sons *v.* Price Brothers (1923); **1.** *Agcy.* No. 747a
Bradford City Premises, *Re*, Scaife *v.* Public Trustee (1928); **40.** *Stllmts.* No. 3151b
Bradford Overseers & Bradford Corpn., *Ex p.*, *Re* Lister (1926); **5.** *Bkpcy.* No. 7764a
Bradford Overseers & Corpn. *v.* Durrance, *Re* Lister (1925); **5.** *Bkpcy.* No. 7764a
Bradford Revenue Officer *v.* Bradford Assessment Committee & Laycock, Son & Co., Ltd. (1931); **38.** *Rates*, No. 226m
Bradley *v.* Bailey & Jasperson (Can.); **17.** *Damgs.* pp. 8, 11, 14

Bradley *v.* Bell Bus Co. (N.Z.); **8.** *Carr.* p. 6
— *v.* De Coste (Can.); **30.** *Intox.* p. 1
— *v.* Imperial Bank of Canada (Can.); **27.** *H. & W.* p. 13
— *v.* Laycock, Son & Co., Ltd. (1744); **8.** *Chos.* No. 274a
— *v.* London & North Eastern Ry. Co. (1931); **34.** *Mast. & S.* Nos. 2329a, 2737a
— *v.* McAtamney (Ir.); **18.** *Desct.* p. 1
— *v.* McNaught (Can.); **41.** *Shrffs.* p. 7
Bradley, Lang & Scragg *v.* Crittenden (Can.); **25.** *Gifts*, p. 48
Bradshaw, *Re*, Blandy *v.* Willis (1938); **27.** *H. & W.* No. 548b
— *v.* Air Council (1926), **11.** *Comp. Pche.* No. 773a
— *v.* Bickerstaffe Collieries (1931); **34.** *Mast. & S.* No. 2836d
— *v.* Bird (1920); **2.** *Agric.* Nos. 265b, 266a
— *v.* British Columbia Rapid Transit Co., Ltd. (Can.); **17.** *Dep.* p. 83; **30.** *Juries*, p. 31
— *v.* Customs & Excise Minister (Can.); **39.** *Revenue*, p. 14
— *v.* Epp (Can.); **39.** *S. Goods*, p. 46
— *v.* Lemon (Ir.); **31.** *L. & T.* p. 63
— *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1936); **8.** *Carr.* Nos. 1540, 1634
— *v.* Patterson (Can.); **32.** *Limit. of A.* p. 37
— *v.* Richardsons, Westgarth & Co., Ltd. (1931); **34.** *Mast. & S.* Nos. 2720a, 2768b
Bradshaw & Simcoe County Registrar, *Re* (Can.); **35.** *Mtge.* p. 31
Bradshaw Estate, *Re* (Can.); **44.** *Wills*, p. 46
Bradshaws' Stores, Ltd. *v.* Walker & London, Midland & Scottish Ry. Co. (1936); **8.** *Carr.* No. 1572
Bradstreets British, Ltd. *v.* Mitchell & Caravayoli & Co., Ltd. (1933); **12.** *Contr.* No. 2195a; **17.** *Damgs.* No. 237a; **26.** *Guar.* No. 1762a; **32.** *Libel*, No. 1104a
Brady, *Ex p.*, *Re* Oram (Aus.); **13.** *Crnrs.* p. 24
— *v.* Canadian Pacific Ry. Co. (Can.), [1933] 1 W. W. R. 83; **36.** *Negl.* p. 38
— *v.* Canadian Pacific Ry. Co. (Can.), [1933] 1 W. W. R. 250; **36.** *Negl.* p. 38
Braemar Woollen Mills Co-op, Ltd. *v.* Poinsettia Hosiery Mills Pty., Ltd. (Aus.); **10.** *Coys.* p. 104
Bragg *v.* Hatchard (1858); **16.** *Cntmpt.* No. 781a
Bragg & Hatchard, *Re* (1858); **16.** *Cntmpt.* No. 781a
Brain *v.* Crinnian (Can.); **36.** *Negl.* p. 17
Braithwaite *v.* Braithwaite (N.Z.); **5.** *Bkpcy.* p. 67
Brakspear (W. H.) & Sons, Ltd. *v.* Barton (1924); **13.** *Cty. Cts.* No. 71a
Bramdaw *v.* Union Government (S. Af.); **11.** *Const. L.* p. 63
Brammall *v.* Brammall (Can.); **27.** *H. & W.* p. 47
Branch *v.* Bennett's Dairies, Ltd. (1928); **31.** *L. & T.* No. 7346a
— *v.* Ellis (Can.); **36.** *Negl.* p. 24
Brand *v.* Culme-Seymour, *Re* Watson (1928); **40.** *Stllmts.* Nos. 3032a, 3032b, 3032c
— *v.* Glasgow Corpn. (Scot.); **20.** *Electric*, p. 11
— *v.* National Life Assurance Co. of Canada (Can.); **2.** *Arbn.* pp. 81, 83
Brand Estates, Ltd., *Re* (1936); **12.** *Contr.* No. 4b
Brandon, *Re*, Samuels *v.* Brandon (1932); **43.** *Trusts*, No. 2289a
— *v.* Bank of Montreal (Can.); **3.** *Bank.* p. 21
— *v.* Dale (Can.); **32.** *Limit. of A.* p. 37
Brandon (City) *v.* Manitoba Municipal Comr. & A.-G. for Manitoba (No. 2) (Can.); **16.** *Cr. Pract.* p. 45
— *v.* Municipal Comr. (Can.); **17.** *Dep.* pp. 48, 56
Brandt *v.* Heatig (1818); **24.** *Exors.* No. 7439a
Brandwood *v.* Banker (1928); **28.** *Inc. T.* No. 97b
— *v.* Inland Revenue Comrs. (1928); **28.** *Inc T.* No. 97b
Branigan *v.* Saba (N.Z.); **12.** *Contr.* p. 27; **21.** *Estpl.* pp. 25, 40
Brantford (City) *v.* Imperial Bank (Can.); **18.** *Distr.* p. 32
Brantford Cordage Co. *v.* Milne (Can.); **3.** *Bank.* p. 21
Brantford Corpn. *v.* Grand River Navigation Co. (Can.); **35.** *Mtge.* p. 43
Brassard *v.* Smith (Can.); **21.** *E. D.* p. 19
Brasseth *v.* Royal Bank of Canada (Can.); **1.** *Agcy.* p. 65; **3.** *Bank.* p. 42
Bratt *v.* Malden (Township) (Can.); **19.** *Easmt.* p. 1
Braund *v.* Mutual Life & Citizens Assurance Co., Ltd. (N.Z.); **29.** *Insce.* p. 4
Bray *v.* Vulcan Iron Works (Can.); **25.** *Gifts*, p. 50
Brazewell *v.* Emmott & Wallshaw, Ltd. (1929); **34.** *Mast. & S.* No. 2143b
Bread Manufacturers, Ltd., *Ex p.*, *Re* Truth & Sportsman, Ltd. (Aus.); **9.** *Coys.* p. 4
Bready *v.* McLennan (No. 2) (Can.); **19.** *Easmt.* p. 4
Breakey (Doe d.) *v.* Breakey (Can.); **22.** *Evid.* p. 15
Brealey *v.* Andrew (1837); **12.** *Contr.* No. 1285a
Brebner *v.* Henderson (Scot.); **6.** *B. of Exch.* p. 8
Brechin & Drapery Importing Co., Ltd., *Re* (N.Z.); **2.** *Arbn.* pp. 90, 94
Brecht *v.* Heffel (Can.); **6.** *B. of Exch.* p. 13
Breen *v.* Breen (Can.); **11.** *Confl.* p. 46
— *v.* Lee (Can.); **43.** *Tresp.* p. 50
— *v.* Morgan Crucible Co., Ltd. (1933); **34.** *Mast. & S.* No. 2274a
Brelsford, *Re* (1932); **5.** *Bkpcy.* No. 6918b
—, *Re*, Official Receiver & Trustee *v.* Shell Mex, Ltd. (1932); **5.** *Bkpcy.* No. 6918b
Bremen, The (1931); **41.** *Ship.* Nos. 5748c, 6423a, 6455a
Bremer Oeltransport G.m.b.H. *v.* Drewry (1933); **2.** *Arbn.* Nos. 1981b, 2043a; *Pract.* Nos. 606a, 622a
Bremner *v.* Bleakley (Can.); **1.** *Action*, p. 5
— *v.* Morrison (Scot.); **38.** *Pub. Hlth.* p. 14
— *v.* Trusts & Guaranty Co. (Can.); **38.** *Real Prop.* p. 94
Brendon *v.* Spiro (1938); **42.** *Solrs.* No. 3563a
Brendzij *v.* Hajdij (Can.); **19.** *Eccl.* p. 17
Brennan *v.* Arcadia Coal Co., Ltd. (Can.); **28.** *Injon.* p. 154
— *v.* A.-G., *Re* Bond (Aus.); **8.** *Char.* p. 72
— *v.* Berwick Fruit Co. (Can.); **1.** *Agcy.* p. 105
— *v.* R. (Aus.); **14.** *Crim.* p. 4
— *v.* Winnipeg City (Can.); **26.** *Highys.* p. 27
Brennan & Manning *v.* Ashwell (N.Z.); **34.** *Mast. & S.* p. 58
Brenner *v.* American Metal Co. (Can.); **5.** *Bkpcy.* p. 83
— *v.* Cisek (Can.); **17.** *Damgs.* p. 21
Brenner (N.) & Co., Ltd., *Re* (Can.); **5.** *Bkpcy.* p. 85
Brenner's Trustee *v.* Brenner (Can.); **5.** *Bkpcy.* p. 82
Brennock *v.* Fraser (Can.); **17.** *Deeds*, p. 29
Brentall *v.* Hetrick (N.Z.); **43.** *Trade*, p. 9
Brentnall *v.* London & North Eastern Ry. Co. (1933); **34.** *Mast. & S.* No. 2349c
Bresand *v.* Northern S.S. Co., Ltd. (N. Z.); **34.** *Mast. & S.* p. 33
Breslauer & Warren *v.* Fireman's Fund Insurance Co. (Can.); **29.** *Insce.* p. 59
Breslin *v.* London & North Eastern Ry. Co. (Scot.); **36.** *Negl.* p. 21

Bresnik, *Re* (Can.); **2.** *Aliens*, p. 47
Bressler, *Ex p.*, R. *v.* Home Secretary (1924); **2.** *Aliens*, No. 553c
Brethour *v.* Taylor & Bank of Montreal (Can.); **21.** *Exon.* p. 58
Brett, *Ex p.*, R. *v.* Lincolnshire JJ. (1926); **3.** *Basty.* No. 403b
— *v.* Brett (No. 1) (Can.); **22.** *Evid.* p. 20
— *v.* — (No. 2) (Can.); **25.** *Fraud. Conv.* p. 17
Brett & Co., Ltd. *v.* Bow's Emporium, Ltd. (Scot.); **1.** *Agcy.* p. 79
Brewer, *Re*, Solicitor-General *v.* Bydder (N.Z.); **8.** *Char.* pp. 61, 62
— *v.* Brewer, *Re* Brewer's Will (Can.); **44.** *Wills*, p. 49
— *v.* Calori (Can.); **3.** *Bailmt.* p. 7
— *v.* Firestone Tyre Rubber Co. (1931); **34.** *Mast. & S.* No. 3562a
— *v.* Gething, *Re* Edwards' Will Trusts (1937); **32.** *Limit. of A.* No. 901a
Brewer's Will, *Re*, Brewer *v.* Brewer (Can.); **44.** *Wills*, p. 49
Brewster *v.* Hendershot (Can.); **19.** *Eccl.* p. 31
Brewster & Co. (Woking), Ltd. *v.* Beckett (1929); **41.** *Ship.* No. 4499a
Brewster Transport Co. *v.* Rocky Mt. Tours & Transport Co. (Can.) (1929); **43.** *Trade Mks.* p. 47
— *v.* — (Can.) (1931); **43.** *Trade Mks.* p. 32
Brice *v.* Frere, *Re* Brice's Estate (1937); **25.** *Gaming*, No. 192c
Brice & Sons *v.* Christiani & Nielsen (1928); **3.** *Bailmt.* No. 218a
Brice's Estate, *Re*, Brice *v.* Frere (1937); **25.** *Gaming*, No. 192c
Bricker Estate, *Re* (Can.); **24.** *Exors.* p. 39
Bridgeford *v.* Dixon (S. Af.); **1.** *Agcy.* p. 49
Bridgen, *Re*, Chaytor *v.* Edwin (1938); **44.** *Wills*, No. 7496a
Bridges *v.* Carson (N.Z.); **43.** *Trade*, p. 6
— *v.* Hales (1729); **20.** *Eqy.* Nos. 1918a, 1920a
— *v.* New Rock Collieries Co. (1932); **34.** *Mast. & S.* No. 3801g
Bridgetown *v.* Patterson (Can.); **17.** *Dep.* p. 53
Bridgett & Hayes' Contract, *Re* (1928); **23.** *Exors.* No. 3819a
Bridgewater *v.* Permanent Trustee Co. of New South Wales, Ltd. (1936); **25.** *Fraud. Conv.* No. 962a
Bridgman *v.* Vollans (Can.); **7.** *Bldg. Conts.* p. 32
Bridson *v.* McAlpine (1845); **36.** *Pats.* No. 2829a
— *v.* Perth Diocesan Trustees (Aus.); **34.** *Mast. & S.* p. 62
Brierley *v.* Brierley & Williams (1918); **27.** *H. & W.* No. 2770a
Briese *v.* Dugard (Can.); **18.** *Discy.* p. 10
— *v.* — (No. 2) (Can.); **44.** *Wills*, p. 12
Briggs *v.* Carson (Can.); **21.** *Exon.* p. 51
— *v.* Inland Revenue Comrs. (1932); **28.** *Inc. T.* No. 666a
— *v.* Lee (Can.); **32.** *Lien*, p. 24
— *v.* Parsloe (1937); **35.** *Misrep.* No. 510a
Briggs & Turivas *v.* Canadian Pacific Railway (Can.); **8.** *Carr.* p. 19
Brighouse *v.* Morton (Can.); **43.** *Trusts*, p. 65
Bright *v.* Ashfold (1932); **29.** *Insce.* No. 3217r
— *v.* McMurray (Can.); **35.** *Mtge.* p. 42
Bright & Sarnia, *Re*, *Re* Wilson & Sarnia (Can.); **41.** *Sewers.* p. 4
Brighten *v.* Bowman (1929); **9.** *Coys.* No. 4136a
Brighton Convent of the Blessed Sacrament *v.* Inland Revenue Comrs. (1933); **28.** *Inc. T.* No. 483o
Brighton (Everton Place Area) Housing Order, 1937, *Re*, Robins & Son, Ltd.'s Application (1938); **38.** *Pub. Hlth.* No. 502bb
Brighton Motors Pty., Ltd., *Re* (Aus.); **10.** *Coys.* p. 83
Brightwell *v.* Peikoff (Can.); **40.** *S. Land*, p. 14
Brighty *v.* Pearson (1938); **42.** *Str. Traf.* No. 199c
Brigstocke *v.* Brigstocke (1878); **40.** *Stlmts.* No. 1975a
Brij Raj *v.* Ram Sarup (Ind.); **28.** *Infts.* p. 142
Brijmohan Lal *v.* Hazari Lal (Ind.); **41.** *Sewers*, p. 3
Brilliant Silk Manufacturing Co. *v.* Kaufinan (Can.); **12.** *Contr.* p. 29
Brindle, *Ex p.*, R. *v.* Henderson (Can.); **33.** *Mags.* p. 27
Brine *v.* Bazalgette (1849); **32.** *Libel*, No. 1910a
Brine & Brine *v.* Dubbin (Can.); **36.** *Negl.* p. 4
Brine & Davies' Contract, *Re* (1935); **40.** *S. Land*, No. 1219a
Brining, *In the Goods of* (1870); **24.** *Exors.* No. 1011a
Brinson *v.* Three Hills Town & Nikolaus (Can.); **13.** *Corpns.* p. 31
Brinton, *Re*, Brinton *v.* Preen (1923); **23.** *Exors.* No. 4869a
Brisbane City Council *v.* Hodge (Aus.); **33.** *Mags.* p. 23; **38.** *Rates*, p. 86
Brisco *v.* Heide (Can.); **31.** *L. & T.* p. 79
Briscoe *v.* Hixon Creek (Cariboo) Gold, Ltd. (Can.); **34.** *Mines*, p. 199
— *v.* Molsons Bank (Can.); **5.** *Bkpcy.* p. 74
— *v.* Standard Bank (Can.); **5.** *Bkpcy.* p. 73
— *v.* Yorkshire & Canadian Trust, Ltd. of Vancouver & London & Western Trust Co., Ltd. (Can.); **42.** *Stk. Ex.* p. 35
Bristol Channel Steamers, Ltd. *v.* R. (1924); **11.** *Const. L.* No. 526a
Bristol Corpn. *v.* Great Western Ry. Co. (1928); **8.** *Carr.* No. 1323g; **38.** *Rys.* Nos. 761a, 761b, 761c
— *v.* Virgin (1928); **38.** *Pub. Hlth.* No. 502c
Britain S.S. Co., Ltd. *v.* Bunge & Co., Ltd. (1929); **41.** *Ship.* No. 1731a
— *v.* Louis Dreyfus & Co. of New York (1935); **41.** *Ship.* No. 3601a
Britannia Hygienic Laundry Co. *v.* Thornycroft & Co. (1925); **17.** *Damgs.* No. 235a
Britannic Assurance Co., Ltd. & Assurance Companies Act, 1909, *Re* (1927); **10.** *Coys.* No. 7542a
British Acoustic Films, Ltd. *v.* Nettlefold Productions (1935), 52 R. P. C. 296; **36.** *Pats.* No. 1199a
British Acoustic Films, Ltd., Poulsen & Petersen *v.* Nettlefold Productions (1935), 53 R. P. C. 221; **36.** *Pats.* Nos. 613c, 1213b
— *v.* — (1937); **36.** *Pats.* No. 1213b
British Aluminium Co. *v.* Inverness-shire Assessor (Scot.); **20.** *Electric*, p. 16
British America Elevator Co. *v.* Bank of British North America (1919); **3.** *Bank.* No. 381a
British America Nickel Corpn. *v.* O'Brien (1927); **10.** *Coys.* No. 4858a
British American Continental Bank *v.* British Bank for Foreign Trade (1926); **12.** *Contr.* No. 4590a
British American Oil Co. *v.* Shurr (Can.); **26.** *Hghys.* p. 30
British American Timber Co. *v.* Elk River Timber Co. (Can.) (1933); **12.** *Contr.* p. 8
British American Timber Co., Ltd. *v.* Elk River Timber Co., Ltd. (Can.) (1934); **12.** *Contr.* p. 8
British & French Trust Corpn. *v.* New Brunswick Ry. Co. (1937); **21.** *Estpl.* No. 229a; **35.** *Money*, No. 17c
British & North European Bank, Ltd. *v.* Zalzstein (1927); **3.** *Bank.* No. 284a

British Blue Spot Co., Ltd. *v.* Keene (1931); **36.** *Pats.* No. 2819a
British Broadcasting Co. *v.* Wireless League Gazette Publishing Co. (1926); **13.** *Coprt.* Nos. 85a, 332a
British Canadian Securities *v.* Mutual Life Assurance Co. (Can.); **35.** *Mtge.* p. 33
British Celanese, Ltd. *v.* British Acetate Silk Corpn., Ltd., Maloney & Hillier Parker, May & Rowden (1936); **36.** *Pats.* No. 3243c
— *v.* Courtaulds, Ltd. (1932); **36.** *Pats.* No. 1182a
— *v.* — (1935); **36.** *Pats.* Nos. 459h, 2967a
British Celanese, Ltd., Ellis & Brown, Application for a Patent, *Re* (1934); **36.** *Pats.* No. 810b
British Celanese, Ltd., Henry Dreyfus & Clifford Ivan Haney's Application, *Re* (1933); **36.** *Pats.* No. 954a
British Coal Corpn. *v.* R. (1935); **17.** *Dep.* Nos. 60b, 91b, 442a, 447b, 531a
British Columbia & Alberta (Provinces of) *v.* Canadian National & Canadian Pacific Ry. Cos. (Fares for Provincial Police Case) (Can.); **38.** *Rys.* p. 44
British Columbia Bond Corpn., Ltd. & Lang, *Re* (Can.); **5.** *Bkpcy.* p. 70; **9.** *Coys.* p. 38
British Columbia County Courts, *Re* (Can.); **17.** *Dep.* p. 54
British Columbia Electric Ry. Co. *v.* Key (Can.); **36.** *Negl.* p. 31
British Columbia Electric Ry. Co., Ltd., & Canadian Pacific Co. *v.* Canadian National Ry. Co., North Fraser Harbour Comrs. & Province of British Columbia (Can.); **38.** *Rys.* p. 44
British Columbia Empire Salmon Canners, Ltd., *Re* (Can.); **8.** *Chos.* p. 92
British Columbia Fir & Cedar Lumber Co., Ltd. *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 15
British Columbia Hop Co., Ltd. *v.* Kent District (Can.); **26.** *Hghys.* p. 20
British Columbia Interior Vegetable Marketing Board *v.* Kamloops Produce Co. (Can.); **28.** *Injon.* p. 148
British Columbia Land & Investment Agency, Ltd. *v.* Montreal Trust Co. (Can.); **35.** *Mtge.* p. 37
British Columbia Law Society *v.* Stewart (Can.); **36.** *Notar.* p. 42
British Columbia Liquors Co., Ltd. *v.* Consolidated Exporters Corpn., Ltd. (Can.); **18.** *Discy.* p. 8
British Columbia Mills, Timber & Trading Co. *v.* Horrobin, Henshaw & Senkler (Can.); **32.** *Lien*, p. 26
British Columbia Minister of Public Works & Tipping (Can.); 2. *Arbn.* p. 98
British Columbia Permanent Loan Co. *v.* Canadian Northern Ry. Co. (No. 3) (Can.); **11.** *Comp. Pche.* p. 7
— *v.* Canadian Northern Ry. Co., *Re* Arbitration under the Railway Act (No. 1) (Can.); **11.** *Comp. Pche.* p. 15
British Columbia Plumbing Supplies Co. *v.* Taylor (Can.); **32.** *Lien*, p. 27
British Columbia Realty Development Corpn., Ltd., *Re* (Can.); **35.** *Mtge.* p. 52
British Columbia Red Cedar Shingle Co. *v.* Stoltze Manufacturing Co. (Can.); **9.** *Coys.* p. 47
British Columbia Tie & Timber Co., *Re* (Can.); **10.** *Coys.* p. 80
British Columbia Timber Industries Journal, Ltd. *v.* Black (Can.); **9.** *Coys.* p. 38
British Dominions Films, Ltd. *v.* Dominion Picture-Theatres Co., Ltd. (N.Z.); **42.** *Theatres*, p. 70
British Electrical Repairs, Ltd. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 55
British Empire Steel Corpn., Ltd., *Re* (Can.); **10.** *Coys.* p. 67
British Empire Underwriters *v.* Wampler (Can.); **29.** *Insce.* p. 53
British Equitable Assurance Co., Ltd. (Consolidated) *v.* Clare (1937); **29.** *Insce.* No. 2771a
British Extracting Co., Ltd., British Soap Co., Ltd. & British Creameries, Ltd. *v.* London & North Eastern Ry. Co. (1925); **8.** *Carr.* No. 1349a
British Games, Ltd., *Re* (1938); **35.** *Money*, Nos. 353aa, 353ff
British Hartford-Fairmont Syndicate, Ltd. *v.* Jackson Bros. (Knottingley), Ltd. (1932); **36.** *Pats.* Nos. 2996a, 3151a
— *v.* Jackson Bros. (Knottingley), Ltd. (1934); **36.** *Pats.* No. 2996a
British Hay Traders' Assocn. *v.* London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Southern Ry. Co., & Great Western Ry. Co. (1925); **8.** *Carr.* No. 1326a
British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co., Ltd. (1935); **12.** *Contr.* No. 5c; **35.** *Mistake*, No. 34a
British Imperial Oil Co., Ltd. *v.* Federal Comr. of Taxation (Aus.); **16.** *Courts*, p. 8; **17.** *Dep.* pp. 59, 61; **28.** *Inc. T.* p. 101
British Incandescent Mantle Works, Ltd., *Re* (1923); **2.** *Aliens*, No. 223g
British Industrial Plastics, Ltd. *v.* Ferguson (1938); **42.** *Tort*, Nos. 168a, 179a, 184a
British Industries Federation *v.* London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Southern Ry. Co., & Great Western Ry. Co. (1925); **8.** *Carr.* No. 1326a
British Legion *v.* British Legion Club (Street), Ltd. (1931); **9.** *Coys.* No. 228c
British Maritime Trust *v.* Upsons, Ltd. (1931); **38.** *Real Prop.* No. 908a
British Medical Assocn. *v.* Marsh (1931); **9.** *Coys.* No. 228d
British Metal Corpn., Ltd. *v.* Ludlow Bros. (1913), Ltd. (1938); *Pract.* No. 4764a
British Metal Corpn., Ltd. & Ludlow Bros. (1913), Ltd., *Re Arbitration between*, British Metal Corpn., Ltd. *v.* Ludlow Bros. (1913), Ltd. (1938); **2.** *Arbn.* No. 618a
British Mexican Petroleum Co., Ltd. *v.* Inland Revenue Comrs. (1932); **28.** *Inc. T.* No. 99n
— *v.* Jackson (1932); **28.** *Inc. T.* No. 99n
British Motor Trust Co., Ltd. *v.* Hyams (1934); **26.** *Guar.* No. 1198a
British Music Industries Federation *v.* Caledonian Ry. Co. (1922); **8.** *Carr.* No. 1323j
British North America Act, Sect. 24, *Re* (Can.); **42.** *Stats.* p. 22
British Oil & Cake Mills, Ltd. *v.* Moor Line (1935); **41.** *Ship.* No. 3611*a*
British Oxygen Co., Ltd. *v.* Gesellschaft für Industriegasverwertung M.B.H. (1930); **36.** *Pats.* No. 3322a
— *v.* Liquid Air, Ltd. (1925); **13.** *Coprt.* Nos. 43a, 398a
British Petroleum Co., Ltd. *v.* A.-G. for Ceylon (Ceylon); **11.** *Const. L.* p. 66
British Petroleums, Ltd., *Re*, *Re* Companies Act (Can.); **9.** *Coys.* p. 21
British Photomaton Trading Co., Ltd. *v.* Henry Playfair, Ltd. (1933); **31.** *L. & T.* No. 4375a

British Products Proprietary, Ltd., *Ex p.*, *Re* Willard (Aus.); **25.** *Gaming*, p. 38
British Provident Life & Fire Assurance Co., Orpen's Case (1863); **9.** *Coys.* No. 2299b
British Provident Life & Fire Assurance Society, *Re*, *Re* Orpen (1863); **9.** *Coys.* No. 2299b
British Railway Traffic & Electric Co. *v.* Kahn (1921); **7.** *B. of Sale*, No. 15b
British Reinforced Concrete Engineering Co., Ltd., *Re* (1929); **16.** *Courts*, No. 22b
-- *v.* London & North Eastern Ry. Co. (1928); **8.** *Carr.* No. 1224a; **38.** *Rys.* No. 691a
British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd. (1933); **1.** *Agcy.* No. 2755a; **12.** *Contr.* No. 3593a; *Pract.* No. 4036a
British Salmson Aero Engines, Ltd. *v.* Inland Revenue Comrs. (1938); **28.** *Inc. T.* No. 252f
British S.S. Owners' Assocn. *v.* Chapman (R.) & Sons (1934); **29.** *Insce.* No. 3399a
British Sugar Manufacturers, Ltd. *v.* Harris (1938); **28.** *Inc. T.* No. 224d
British Thomson-Houston Co., Ltd. *v.* Crompton Parkinson, Ltd. (1935); **36.** *Pats.* No. 2676b
— *v.* Crowther & Osborn, Ltd. (1924); **9.** *Coys.* No. 3327a
— *v.* Federated European Bank, Ltd. (1932); **9.** *Coys.* No. 4170b
— *v.* Henry (P.) & Co., Ltd. (1928); **36.** *Pats.* No. 2781a
— *v.* Metropolitan-Vickers Electrical Co., Ltd. (1928); **36.** *Pats.* Nos. 472a, 659
— *v.* Pryce's Stores (1933); **43.** *Trade Mks.* No. 1436a
— *v.* Sterling Accessories, Ltd. (1924); **9.** *Coys.* No. 3327a
— *v.* Tungstalite, Ltd. (1938); **36.** *Pats.* No. 2944m
British Thomson-Houston Co., Ltd., Marconi's Wireless Telegraph Co., Ltd., & Electric & Musical Industries, Ltd. *v.* Guildford Radio Stores & E. K. Cole, Ltd. (1937); **36.** *Pats.* No. 837a
British Thomson-Houston Co.'s Patent, *Re* (1929); **36.** *Pats.* No. 2036a
—, Nos. 15,448 of 1915, & 148,129 (1931); **36.** *Pats.* No. 1695a
— (No. 283,120), *Re* (1935); **36.** *Pats.* No. 1242a
British Trade, The (1924); **1.** *Adm.* Nos. 368a, 417a
British Trade Corpn., Ltd., *Re* (1932); **6.** *B. of Exch.* No. 1548a; **32.** *Limit. of A.* No. 154a
British Traders Insurance Co., Ltd. *v.* Queen Insurance Co. of America (Can.); **29.** *Insce.* p. 4
British Trawlers' Federation *v.* London & North Eastern Ry. Co. (1934); **44.** *Waters*, No. 821b
British United Shoe Machinery Co., Ltd. *v.* Gimson Shoe Machinery Co., Ltd. (1928); **36.** *Pats.* No. 680b
— *v.* Gimson Shoe Machinery Co. (No. 2) (1928); **36.** *Pats.* No. 3081a
— *v.* Isaacson & Ralphs (Norwich), Ltd. (1934); **36.** *Pats.* No. 2268a
— *v.* Isaacson & Ralphs (Norwich), Ltd. (1935); **40.** *Set-off.* No. 574a
— *v.* Lambert Howarth & Sons, Ltd. (1929); **18.** *Discy.* No. 77a
— *v.* Lambert Howarth & Sons, Ltd. & Gimson Shoe Machinery Co., Ltd. (1927); **36.** *Pats.* No. 680a
— *v.* Pemberton (Albert) & Co. (1930); **36.** *Pats.* No. 249a
British United Shoe Machinery Co., Ltd. & United Shoe Machinery Corpn. *v.* Holdfast Boots, Ltd., A. T. Ralphs (Norwich), Ltd. & Maschinenfabrik Moenus (1934); **36.** *Pats.* Nos. 2864a, 2868a
British United Shoe Manufacturing Co., Ltd. *v.* Holdfast Boots, Ltd. (1936); *Pract.* No. 4843a
Briton Ferry Steel Co., Ltd. *v.* Barry (1938); **28.** *Inc. T.* No. 210m
Britt *v.* Galmoye & Nevill (1928); **34.** *Mast. & S.* No. 1100a
Britton *v.* Leverson's Wallsend Collieries, Ltd. (1934); **34.** *Mast. & S.* No. 3822e
Britton & Toronto City, *Re* (Can.); **38.** *Pub. Hlth.*, p. 15
Broad Street Press, Ltd., *Re* (1933); **9.** *Coys.* No. 2244a
Broadbent *v.* Broadbent (1927); **27.** *H. & W.* No. 6250b
— *v.* 1600 Club of Southern Manitoba (Can.); **17.** *Dep.* p. 72; **25.** *Fr. Soc.* p. 20
Broadcasting Co. of Australia Pty., Ltd. *v.* Commonwealth (Aus.); **42.** *Tele.* p. 67
Broadhurst *v.* Merrett (Aus.); **42.** *Str. Traf.* p. 56
Broadley *v.* Checker Cab Co. (Australia), Ltd. (Aus.); **3.** *Bailmt.* p. 11
Broadview (Town) *v.* Saskatchewan Co-operative Creameries, Ltd. (Can.); **20.** *Electric*, p. 14
Broatch *v.* Vermont Loan & Trust Co. (Can.); **1.** *Agcy.* p. 77
Brock *v.* Benness (Can.); **30.** *L. & T.* p. 38
— *v.* Cameron (Can.); **23.** *Exors.* p. 18
— *v.* Saul (Can.); **3.** *Auct.* p. 2
Brock & Patterson, Ltd. *v.* Crockett (Can.); **6.** *B. of Exch.* p. 15
Brockest *v.* Radio Oil Co., Ltd. (Can.); **36.** *Negl.* p. 39
Brockie *v.* McKay (Can.); **36.** *Negl.* p. 16
Brocklebank (T. & J.), Ltd. *v.* Noor Almode (Ind.); **34.** *Mast. & S.* p. 20
Brocklebank, Ltd. *v.* R. (1924); **11.** *Const. L.* No. 526b
— *v.* — (1925); **11.** *Const. L.* No. 526b
Brocklesby *v.* Freedman-Ellis (Can.); **5.** *Bkpcy.* p. 74
— *v.* Merricks (1934); **28.** *Inc. T.* No. 460b
Brockville *v.* Dobbie & Ritchie & Paramount Theatres, Ltd. (Can.); **30** *L. & T.* p. 44
— *v.* Paramount Theatres, Ltd. (Can.); **30.** *L. & T.* p. 44
Brockway *v.* East Kent Road Car Co., Ltd. (1934); **34.** *Mast. & S.* No. 2855c
Broder, *Ex p.*, *Ex p.* Stewart, *Ex p.* Joe Go Get, *Ex p.* Henderson (Can.); **16.** *Cr. Pract.* p. 27; **30.** *Intox.* pp. 6, 18
Broderick *v.* Broderick (1713); **25.** *Fraud. Conv.* No. 964a
Brodie *v.* Inland Revenue Comrs. (1933); **28.** *Inc. T.* No. 349a
— *v.* R. (Can.); **14.** *Crim.* p. 6
Brodie & Bowmanville Corpn., *Re* (Can.); **38.** *Pub. Hlth.* p. 16
Brodie & Sons *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 54
Brodt *v.* Wearmouth & Pyle (Can.); **17.** *Damgs.* p. 20
Brody *v.* Dominion Life Assurance Co. (Can.); **29.** *Insce.* p. 5
Brohm *v.* British Columbia Mills, Timber & Trading Co. (Can.); **11.** *Const. L.* p. 76
Broit *v.* Bennie S. Cohen & Son (N. S. W.), Ltd. (Aus.); **29.** *Insce.* pp. 26, 55
Brojo Lal Saha Banikya *v.* Budh Nath Pyarilal (Ind.); **36.** *Prtnrs.* p. 57

Broken Hill Associated Smelters Pty. *v.* Monaghan (Aus.); **34.** *Mast. & S.* p. 13
— *v.* Vella (Aus.); **34.** *Mast. & S.* p. 153
Broken Hill Proprietary Co. *v.* Broken Hill Municipal Council (1926); **21.** *Estpl.* No. 256a
— *v.* Latham (1933); **35.** *Money*, Nos. 17j, 61a
— *v.* Warnock (Aus.); **2.** *Aliens*, pp. 39, 45
Bromage, *Re*, Public Trustee *v.* Cuthbert (1935); **3.** *Basty*, No. 22d
Bromiley *v.* Collins (1936); **34.** *Mast. & S.* No. 1784a
Bromley *v.* Reed, *Re* Shuker's Estate (1937); **37.** *Powers*, No. 87b
Bromley Guardians, *Re* (1845); **11.** *Comp. Pche.* No. 1242a
Bromley Rural District Council *v.* Brooker (1934); **26.** *Hghys.* No. 2367c
Bromley Trading Co., Ltd. *v.* John Gill Contractors, Ltd. (1936); **2.** *Arbn.* No. 1139b
Brondson *v.* Northgraves (Can.); **22.** *Evid.* p. 2
Bronstone *v.* Burdett (Can.); **39.** *S. Goods*, p. 43
Brook *v.* Brook (1839); **43.** *Trusts*, No. 1226a
— *v.* Cripps (Can.); **35.** *Mistake*, p. 9
Brook & Allison *v.* Hendricks (Can.); **1.** *Agcy.* p. 80
Brook's Wharf & Bull Wharf, Ltd. *v.* Goodman Bros. (1937); **39.** *Revenue*, No. 80a
Brooke *v.* Bool (1928); **1.** *Agcy.* No. 2318b; **36.** *Negl.* No. 473a
— *v.* Independent Milk Producers' Co-operative Assocn. (Can.); **25.** *Food*, p. 10
Brooker, *Re*, Public Trustee *v.* Young (1934); **43.** *Trusts*, No. 3639c
—, *Re*, Young *v.* Public Trustee (1934); **43.** *Trusts*, No. 3639c
— *v.* Collins (Can.); **43.** *Trade Mks.* p. 13
— *v.* John Friend, Ltd. (N.Z.); **13.** *Coprt.* p. 5
— *v.* Thomas Borthwick & Sons (Australasia), Ltd. (1933); **34.** *Mast. & S.* No. 2610a
Brookes *v.* A.-G., *Re* Hodson's Settlement (1938); **21.** *E. D.* No. 67c
— *v.* Liffen (1928); **31.** *L. & T.* No. 7352d
Brookfield Brothers, Ltd. *v.* Shofer (Can.); **32.** *Lien*, p. 27
Brooks, *Re* (Can.) (1900); **21.** *Exon.* p. 51
—, *Re* (Can.) (1930); **21.** *Estpl.* p. 33
— *v.* Bloor (1920); **2.** *Agric.* No. 30c
— *v.* Blount (1923); **15.** *Crim.* No. 9399a
— *v.* Brimecome (1937); **31.** *L. & T.* No. 7359f
— *v.* Jefferies (1936); **42.** *Str. Traf.* No. 31a
— *v.* Kensington Borough Council (1931); **26.** *Hghys.* Nos. 1435d, 1435e
— *v.* R. (Can.); **14.** *Crim.* pp. 67, 73
— *v.* West Leigh Colliery Co., Ltd. (1933); **34.** *Mast. & S.* No. 2855a
— *v.* Whyte (Can.); **26.** *Hghys.* p. 24
Brooks & Doxey, *Ex p.*, R. *v.* West Gorton General Comrs. (1931); **28.** *Inc. T.* No. 620a
Brooks, Ltd. *v.* Claude Neon General Advertising, Ltd. (Can.) (1931); **9.** *Coys.* p. 50
— *v.* Claude Neon General Advertising, Ltd. (Can.) (1932); **1.** *Agcy.* p. 105
Brooks Steam Motors, Ltd., *Re* (Can.); **9.** *Coys.* p. 19
Broome *v.* Agar (1928); **32.** *Libel*, No. 1045a
Brophy *v.* A.-G. of Manitoba (1895); **17.** *Dep.* No 177b
Brosseau & Brosseau *v.* Belland (Can.); **33.** *Lunat.* p. 12
Brotex Cellulose Fibres, Ltd. *v.* Inland Revenue Comrs. (1933); **10.** *Coys.* No. 7155a
Brotherson *v.* Kennedy (Can.); **2.** *Animals*, p. 57
Brotherton *v.* Jackson (J. & A.), Ltd. (1928); **34.** *Mast. & S.* No. 2430a
Broughton *v.* London & North-Eastern Ry. Co. (1930); **34.** *Mast. & S.* Nos. 3392a, 3392b
Broughton *v.* Snook (1938); **40.** *S. Land*, Nos. 39a, 247a
Brouncker, *Re*, Mairis *v.* Mandeville (1938); **23.** *Exors.* No. 4914a
Brovey *v.* Bull (Can.); **1.** *Agcy.* p. 74
Brown, *Ex p.*, *Ex p.* Carrigan, R. *v.* Archdall & Roskruge (Aus.); **43.** *Trade*, p. 9
—, *Ex p.*, *Re* Fada (Australia), Ltd. (Aus.); **43.** *Trusts*, p. 62
—, *Ex p.*, *Re* Morris (Aus.); **3.** *Basty.* p. 61
—, *Ex p.*, R. *v.* McTavish (Can.); **14.** *Crim.* p. 16
—, *Ex p.*, R. *v.* Midland, etc. Ry. Co. (1867); **11.** *Comp. Pche.* No. 160
—, *Re* (Can.) (1851); **12.** *Contr.* p. 45
—, *Re* (Can.) (1871); **38.** *Real Prop.* p. 94
—, *Re* (Can.) (1927); **30.** *Intox.* p. 11
—, *Re* (Can.), [1928] 1 D. L. R. 1125; **35.** *Mtge.* p. 50
—, *Re* (Can.), [1928] 3 D. L. R. 234; **16.** *Cr. Pract.* p. 30
—, *Re* (Can.) (1931); **33.** *Mags.* p. 36
—, *Re* (Can.) (1932); **4.** *Bkpcy.* p. 7
—, *Re* (Can.) (1936); **38.** *Real Prop.* p. 89
—, *Re*, Boriani *v.* Trustee (1934); **4.** *Bkpcy.* No. 3029a
—, *Re*, Brown *v.* Brown (N.Z.); **44.** *Wills*, p. 40
— *v.* Adamson (1937); **28.** *Inc. T.* No. 540k
— *v.* Aimers (N.Z.); **7.** *B. of Sale*, p. 12
— *v.* Albany Bell, Ltd. (Aus.); **34.** *Mast. & S.* p. 36
— *v.* Alberta & Great Waterways Ry. Co. (Can.); **35.** *Money*, p. 15
— *v.* Aveling & Porter, Ltd. (1929); **34.** *Mast. & S.* No. 3025a
— *v.* Barber (Can.); **42.** *Sp. Pfce.* p. 18
— *v.* Birch Brothers, Ltd. (1929); **34.** *Mast. & S.* No. 3963a
— *v.* Bonnycastle (Can.); **25.** *Gaming*, p. 38
— *v.* Bonnyrigg & Lasswade Magistrates (Scot.); **38.** *Pub. Hlth.* p. 22
— *v.* Brown (1937); **27.** *H. & W.* No. 5625c
— *v.* — (Aus.); **11.** *Confl.* p. 27
— *v.* — (Can.) (1927); **21.** *Exon.* p. 54
— *v.* — (Can.) (1932); **43.** *Trusts*, p. 71
— *v.* — (N.Z.); **21.** *E. D.* p. 12
— *v.* — (Scot.); **11.** *Confl.* p. 29
— *v.* —, *Re* Brown (N.Z.); **44.** *Wills*, p. 40
— *v.* Buck (Can.); **39.** *S. Goods*, p. 52
— *v.* Bulmer (Can.); **5.** *Bkpcy.* p. 70
— *v.* Canadian National Rys. (Can.); **36.** *Negl.* p. 34
— (H.) *v.* Canadian National S.S. Co., Ltd. (Can.); **41.** *Ship.* p. 10
— *v.* Cotterill (1934); **7.** *Burial*, No. 324a
— *v.* Croome (1817); **32.** *Libel*, No. 1638b
— *v.* Croucher & Douse (Can.); **42.** *Time*, p. 75
— *v.* Dagenham Urban District Council (1929); **33.** *L. G.* Nos. 52a, 212a; **37.** *Poor L.* No. 24a
— *v.* Dixon (William), Ltd. (Scot.); **34.** *Mast. & S.* p. 163
— *v.* Dominion Express Co. (Can.); **8.** *Carr.* p. 3
— *v.* Doyle (1788); **1.** *Agcy.* No. 2740a
— *v.* Eastern & Midlands Ry. Co. (1889); **26.** *Hghys.* Nos. 1457a, 1546a
— *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 54
— *v.* Great Northern Ry. Co. (Can.); **38.** *Rys.* p. 38
— *v.* Hand-in-Hand Fire Insurance Society (1895); **3.** *Bailml.* No. 374a
— *v.* Harrower (Can.); **40.** *S. Land.* p. 2
— *v.* Hose (Can.); **16.** *Courts*, p. 10
— *v.* Jones, *Re* Morgan (1927); **3.** *Barr.* No. 191a
— *v.* Joyce (1931); **8.** *Clubs*, No. 127a
— *v.* Keele (Can.); **25.** *Gaming*, p. 40
— *v.* Kelly-Douglas & Co. (Can.); **4.** *Bkpcy.* pp. 10, 14

Brown *v.* Laurie, E. G., Ltd. (N.Z.); **32.** *Lien*, p. 25
— *v.* Leech (1924); **3.** *Basty.* No. 65a
— *v.* Liell (1885); **18.** *Discy.* No. 597a
— *v.* London & North Eastern Ry. Co. (1937); **8.** *Carr.* No. 1575
— *v.* McInness (Can.); **11.** *Confl.* p. 49
— *v.* McKeel (Can.); **26.** *Hghys.* p. 20
— *v.* M'Millan (1840); **21.** *Exon.* No. 1564a
— *v.* MacPherson (1840); **21.** *Exon.* No. 1564a
— *v.* McRae (Can.); **36.** *Negl.* p. 35
— *v.* Monmouthshire County Council (1935); **34.** *Med.* Nos. 234a, 234b
— *v.* Moore (Can.); **16.** *Courts*, p. 15
— *v.* Morgan Nicholson, Ltd. (Can.); **18.** *Distr.* p. 30
— *v.* Mount Barker Soldiers' Hospital Incorporated (Aus.); **17.** *Damgs.* p. 9
— *v.* New Empress Saloons, Ltd. (1937); *Pract.* No. 4161a
— *v.* New Zealand Federate Seaman's Union (N.Z.); **42.** *Tort*, p. 79
— *v.* Norbury (Can.); **17.** *Deeds*, p. 33
— *v.* Patchell (Can.); **1.** *Agcy.* p. 81
— *v.* Roberts (Can.); **40.** *S. Land*, p. 9
— *v.* Sage (Can.); **21.** *Exon.* p. 51
— *v.* St. Francois Xavier Rural Municipality & Breland (Can.); **18.** *Distr.* p. 34
— *v.* St. Phalle, Ltd. (1930); **42.** *Stk. Ex.* No. 434a
— *v.* State Taxation Comr. (Aus.); **28.** *Inc. T.* p. 23
— *v.* Street (Can.); **43.** *Tresp.* p. 51
— *v.* Strickland (Can.); **21.** *Exon.* p. 57
— *v.* Thornes (N.Z.); **1.** *Agcy.* p. 67
— (Ellis) *v.* Van Rooyen (S. Af.); **1.** *Agcy.* p. 100
— *v.* Vardon, *Re* Vardon (1938); **39.** *Rntchgs.* No. 196b
— *v.* Weil (Can.); **25.** *Fraud. Conv.* pp. 15, 16
— *v.* William Dixon, Ltd. (Scot.); **34.** *Mast. & S.* p. 163
Brown & Argue, *Re* (Can.); **3.** *Basty.* pp. 52, 53
Brown & Bostock Patent, *Re* (1931); **36.** *Pats.* No. 2005c
Brown (E. G.) & Co., Ltd. *v.* Stewart (1929); **28.** *Inc. T.* No. 204f
Brown & Machine Motors, Ltd., *Re* (Can.); **16.** *Cr. Pract.* p. 43
Brown & Sons *v.* Lincolnshire Beet Sugar Co., Ltd. (1929); **39.** *S. Goods*, No. 433a
Brown Brothers & Burnstad, Ltd., *Ex p.*, *Re* Progressive Farmers Co. (Can.); **5.** *Bkpcy.* p. 73
Brown, Janson & Co. *v.* Hutchinson & Co. (1895); **36.** *Prtnrs.* No. 1459a
Brown, Jr. *v.* Indochine S.S. (Can.); **1.** *Adm.* p. 21
Brown, Macfarlane & Co. *v.* Inland Revenue (Scot.); **38.** *Rates*, p. 53
Brown (Alexander) Milling Co. *v.* Canadian Pacific Ry. Co. (Can.); **11.** *Comp. Pche.* pp. 8, 12
Brown, Sons & Co., *Re* (Scot.); **9.** *Coys.* p. 11
Brown, Son & Vardy *v.* Trustee, *Re* Pavyer (1936); **4.** *Bkpcy.* No. 4377a
Brown Taxi Co. & Detroit Radiator Co., *Re* (Can.); **4.** *Bkpcy.* pp. 23, 24
Brown Transfer Co. *v.* Townshend (Can.); **13.** *Corpns.* p. 28
Brown's Case (1500); **7.** *Bonds*, No. 536
— (1647); **14.** *Crim.* No. 1663a
Brown's (Allan), Ltd. & Dryall, *Re* (Can.); **9.** *Coys.* p. 53
Browne *v.* Collins (1872); **24.** *Exors.* No. 7190b
— *v.* Garborough (1588); **12.** *Contr.* No. 1828a
— *v.* London Necropolis & National Mausoleum Co. (1857); **10.** *Coys.* No. 8621a
— *v.* Moody (1936); **44.** *Wills*, No. 9210a
— *v.* Pearce (Ind.); **21.** *Exon.* p. 57
Brown *v.* Railways Comr. (Aus.); **11.** *Const. L.* p. 63
— *v.* Sidney Mills, Ltd. (Can.); **5.** *Bkpcy.* p. 79
Brownie Wireless Co. of Great Britain, *Re* (1929); **36.** *Pats.* Nos. 1651a, 1655a
Browning *v.* Aylwin (1827); **18.** *Discy.* No. 640a
— *v.* Duckworth (1935); **28.** *Inc. T.* No. 573a
Brownlee *v.* Hand Firework Co. (Can.); **36.** *Negl.* p. 12
Brownlee (J.) & Co. *v.* Canadian National Rys. (Can.); **38.** *Rys.* p. 36
Brownlie, *Re* Brownlie *v.* Muaux (1938); **44.** *Wills*, No. 7958a
— *v.* Muaux, *Re* Brownlie (1938); **44.** *Wills*, No. 7958a
Brownscombe *v.* Johnson (1898); **13.** *Corpns.* No. 326a
Bruce, *Re*, Brudenell *v.* Brudenell (1932); **34.** *Mines*, No. 417a
— *v.* Bruce (Can.); **27.** *H. & W.* p. 30
— *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 37
— *v.* Graham (Can.); **17.** *Dep.* p. 56; **27.** *H. & W.* p. 3
— *v.* Neish (Scot.); **41.** *Ship.* p. 75
— *v.* Odhams Press, Ltd. (1936); **32.** *Libel*, No. 2298b; *Pldg.* No. 1733a
— *v.* Tolton (Can.); **12.** *Contr.* p. 7
Bruce Lindsay Bros. *v.* "Bruce Hudson" (Can.); **1.** *Adm.* p. 33
Brudenell *v.* Brudenell, *Re* Bruce (1932); **34.** *Mines*, No. 417a
Bruff *v.* Conybeare (1862); **12.** *Contr.* No. 3379a
— *v.* — (1868); **12.** *Contr.* No. 3379a
Bruin *v.* Bruin (Can.); **27.** *H. & W.* p. 20
Brule, *Re* (Can.); **44.** *Wills*, p. 32
Brune *v.* Stensto (Can.); **27.** *H. & W.* p. 5
Brunet *v.* R. (Can.); **14.** *Crim.* p. 15
Brunk *v.* Continental Casualty Co. (Can.); **29.** *Insce.* p. 37
Brunning *v.* Kollross (1923); **2.** *Aliens*, No. 558c
Bruno Claus Application for a Patent, *Re* (1934); **36.** *Pats.* No. 3433b
Brunstetter *v.* Zushing (Can.); **1.** *Agcy.* p. 107
Brunt, *Re* (Can.); **30.** *Intox*, p. 12
Brutton, *Ex p.*, *Re* Fisher (1845); **4.** *Bkpcy.* No. 4704a
Bryan *v.* London Street Ry. Co. (Can.); **43.** *Tram.* p. 49
— *v.* Upland (1936); **34.** *Mast. & S.* No. 3524a
Bryant *v.* City Dairy Co. (Can.); **1.** *Action*, p. 12
— *v.* Marx (1932); **42.** *Str. Traf.* No. 232c
— *v.* Toronto (Can.); **26.** *Hghys.* p. 48
Bryant & May, Ltd. *v.* United Match Industries, Ltd. (1932); **43.** *Trade Mks.* No. 1350c
Bryant & Son, Ltd. *v.* Birmingham Hospital Saturday Fund (1938); **7.** *Bldg. Conts.* No. 180a
Bryant, Isard & Co., *Re* (Can.) (1924); **5.** *Bkpcy.* pp. 50, 84
—, *Re* (Can.) (1925); **4.** *Bkpcy.* pp. 23, 24
—, *Re* (Can.) (1926); **4.** *Bkpcy.* p. 25
—, *Re*, *Ex p.* Langley (Can.); **16.** *Cntmpt.* p. 6
Bryce *v.* Bryce (1933); **11.** *Confl.* No. 68b
— *v.* Hornby (1938); **3.** *Bailmt.* No. 67a
— *v.* Mercantile & General Insurance Co., Ltd. (N.Z.); **29.** *Insce.* p. 25
— *v.* R. (Can.); **11.** *Const. L.* p. 64
Bryden *v.* Bryden (Grierson) (Scot.); **43.** *Trusts*, p. 68
Brydon *v.* Samuel, *Re* Ogden (1933); **44.** *Wills*, No. 4392a
Brylinski *v.* Inkol (Can.); **2.** *Arbn.* p. 80; **8.** *Clubs*, p. 98
Brymont *v.* Brymont (N.Z.); **27.** *H. & W.* p. 30

Brys & Gylsen, Ltd. *v.* Drysdale & Co. (1920); 41. *Ship.* No. 3005a
Bryson *v.* Bryson (Can.); 3. *Bank.* p. 20
— *v.* Rosser Municipality (Can.); **32.** *Lien*, p. 26
Bubb, *Ex p.*, R. *v.* Sussex JJ. (1933); 30. *Intox.* No. 582a
— *v.* — (1934); **30.** *Intox.* No. 582c
Buccari, The (1929); 41. *Ship.* No. 6069a
Buccinum, The (1936); 41. *Ship*, No. 6104c
Buccleuch (Duke) *v.* Metropolitan Board of Works (1872); 11. *Comp. Pche.* No. 275a
Buchanan *v.* Crawford (or Mollison) (Scot.); 20. *Eqy.* p. 29
— *v.* Glasgow Corpn. (Scot.); **8.** *Carr.* p. 9
— *v.* Kerby (Can.); **35.** *Mtge.* p. 47
— *v.* Neale (N.Z.); **1.** *Agcy.* p. 89
— *v.* Samson (N.Z.); **1.** *Agcy.* pp. 51, 70, 77
Buchanan & Carswell *v.* Eugene, Ltd. (Scot.); 39. *S. Goods*, p. 38
Buchanan (James) & Co. *v.* Glasgow Assessor (Scot.); 38. *Rates*, p. 55
Buchanan (R. M.) Co., Ltd. *v.* Eby (Can.); 1. *Agcy.* p. 79
Buchanan-Sumner (R. M.) Co., Ltd. *v.* Scottish Co-operative Wholesale Society, Ltd. (Can.); 9. *Coys.* p. 55
Buchanan-Wollaston's Conveyance, *Re*, Curtis *v.* Buchanan-Wollaston (1938); 38. *Real Prop.* No. 341a
Buchannan, *Re* (Can.); 5. *Bkpcy.* p. 74
Buchner, *Re* (Can.); 4. *Bkpcy.* p. 2
Buck *v.* Denning (1926); 34. *Mast. & S.* No. 3227a
Buck Estate, *Re*, Mather *v.* Canadian Credit Men's Trust Assocn., Ltd. (Can.); 4. *Bkpcy.* p. 31
Buckett (J.), *Re* (Aus.); 44. *Wills*, p. 57
Buckhaven & Methil Corpn. *v.* Wemyss Coal Co. (Scot.); 38. *Rates*, p. 66
Buckie Magistrates *v.* Seafield's (Dowager Countess) Trustees (Scot.); 26. *Hghys.* p. 36; **38.** *Pub. Hlth.* p. 22
Buckingham, *Re*, *Re* Howell, Liggins *v.* Buckingham (1915); 30. *Jdgmts.* No. 789a
— *v.* Counter, *Re* Counter's Petition (1938); **20.** *Elect.* No. 1598a
Buckland *v.* French (1929); 34. *Mast. & S.* No. 2388a
— *v.* R. (1933); **16.** *Cr. Pract.* No. 353a; **39.** *Revenue*, No. 70a
Buckland Rural Municipality *v.* Donaldson & Horton (Can.); 38. *Rates*, p. 51
Buckle *v.* Bayswater Road Board (Aus.); 26. *Hghys.* p. 27.
— *v.* Holmes (1926); **2.** *Animals*, Nos. 163a, 188a
Buckley, *Re*, Public Trustee *v.* Wellington Society for Prevention of Cruelty to Animals Inc. (N.Z.); 8. *Char.* p. 72
— *v.* Monmouthshire County Council (1935); **34.** *Med.* Nos. 234a, 234b
— *v.* Queen Insurance Co. (Can.); **2.** *Arbn.* p. 83
— *v.* Taylor (Can.); **32.** *Limit. of A.* p. 33
Buckley & Schell *v.* Heckert (Can.); 40. *S. Land*, p. 12
Buckmaster *v.* Knickle (Can.); 20. *Elect.* p. 8
Bucknall *v.* R. (1930); 11. *Const. L.* No. 293a
Buckolz *v.* Graham & Sons, Ltd. (Can.); 21. *Exon.* p. 54
Buczko *v.* Chobotar (Can.); 15. *Crim.* p. 77
Budberg *v.* Jerwood & Ward (1934); 1. *Agcy.* No. 489b
Budd *v.* Cambria Rural Municipality (Can.); 38. *Pub. Hlth.* p. 20
Budd Estate, *Re*, Harmon *v.* Furber (Can.); 18. *Desct.* p. 3
Budge *v.* Marbin Lumber Co., Ltd. & Martyn Lumber Co., Ltd. (Can.); 29. *Insce.* p. 25
Bueb, *Re*, *Ex p.* Trustee (1927); 4. *Bkpcy.* No. 3365a
Bueckert *v.* Friesen (Can.); 6. *B. of Exch.* p. 21
Buell *v.* R. (Can.); 22. *Evid.* p. 25
Buerger *v.* New York Life Assurance Co. (1927); 17. *Damgs.* No. 612a
Buerger & Co. *v.* Barnett (1919); 2. *Arbn.* Nos. 1603a, 1822a
Buff Pressed Brick Co., *Re* (Can.); 9. *Coys.* p. 15
Buffalo & Lake Huron Ry. Co. *v.* Gordon (Can.); 32. *Lien*, p. 20
Buffet *v.* Waller & Lazarnick (Can.); 1. *Agcy.* p. 80
Buick Sales, Ltd., *Re* (N.Z.); 10. *Coys.* pp. 56, 72
Bulgaria (Ferdinand, Ex-Tsar), *Re* (1921); 2. *Aliens*, No. 208a
Bulgaris *v.* Bunge & Co., Ltd. (1933); 41. *Ship.* Nos. 2705a, 4313d
Bulger *v.* Home Insurance Co. (Can.); 2. *Arbn.* p. 85; **30.** *Jdgmts.* p. 19
Bull *v.* Laing (Aus.); 14. *Crim.* p. 13
— *v.* Sloan, *Re* Sloan's Estate (Can.); **44.** *Wills*, p. 38
— *v.* Smith, *Re* Smith (1933), **13.** *Cohlds.* No. 1533b; **44.** *Wills*, No. 7171a
Bull (A. H.) & Co. *v.* West African Shipping, etc. Co. (1927); 34. *Mast. & S.* No. 55a
Bullar, *Ex p.* (1857); 8. *Char.* No. 2111a
Bullas *v.* Empire Life Insurance Co. (Can.); 29. *Insce.* p. 38; **42.** *Stats.* p. 26
Bullen, *Re* (Can.); 23. *Exors.* p. 8
—, *Re* (Ir.); **4.** *Bkpcy.* p. 4
Bullen Estate, *Re*, Royal Trust Co. *v.* Warter (Can.); 28. *Infts.* p. 141
Buller, *Ex p.* (1855); 8. *Char.* No. 2019a
— *v.* Windover (Can.); **14.** *Crim.* p. 32
Buller & Co., Ltd. *v.* Brooks (T. J.), Ltd. (1930); 37. *Pawns*, No. 173a
Bullers *v.* Altus Shoemakers, Ltd. (1934); 34. *Mast. & S.* No. 2691b
Bulley *v.* Bulley (1874); 20. *Eqy.* No. 233a
Bullingdon Rural District Council *v.* Oxford Corpn. (1936); 35. *Mistake*, No. 583a
Bullock *v.* Hansen (Can.); 42. *Str. Traf.* p. 51
Bullock-Webster, *Re*, Royal Exchange Assurance *v.* Royal Trust Co. of Canada (1936); 21. *E. D.* No. 272a
Bulmer, *Re*, *Ex p.* Greaves (1937); 4. *Bkpcy.* No. 2293a
—, *Re*, Greaves *v.* Inland Revenue Comrs. (1937); **4.** *Bkpcy.* No. 2293a
—, *Re*, Inland Revenue Comrs. & Trustee *v.* National Provincial Bank, Ltd. (1936); **4.** *Bkpcy.* No. 4851a
— *v.* R. (Can.); **11.** *Const. L.* p. 64
Bulmer & Byron *v.* Baluchistan S.S. (1934); 34. *Mast. & S.* No. 2602b
Bulmer Rayon Co., Ltd. *v.* Freshwater (1933); 21. *Estpl.* No. 585a
Bulters *v.* Roope (N.Z.); 1. *Agcy.* pp. 49, 67
Bulwer *v.* Hoare (1825); 20. *Eqy.* No. 1580a
Bunarsee Dass *v.* Gholam Hossein (1870); 6. *B. of Exch.* No. 692a
Bund, *Re*, Cruikshank *v.* Willis (1929); 44. *Wills*, Nos. 1707a, 2196a
Bundey *v.* Seabrook (1932); 25. *Fr. Soc.* No. 73a
Bundy *v.* Motor Cab Owner Drivers' Assocn. (1930); 5. *Bkpcy.* No. 8439a; **11.** *Const. L.* No. 268; **21.** *Exon.* No. 80a
Bunge North American Grain Corpn. & Fire Assocn. of Philadelphia *v.* Skarp S.S. (Can.); 11. *Confl.* p. 39; **41.** *Ship.* p. 24
Bunge (Australia) Pty., Ltd. *v.* Ying Sing (Aus.); 35. *Mistake*, p. 8
Bunk *v.* Bouffard (Can.); 42. *Str. Traf.* p. 51
Bunn, *Ex p.*, *Re* Electric Telegraph Co. of Ireland (1860); 9. *Coys.* No. 1265a
Bunn's Case, *Re* Electric Telegraph Co. of Ireland (1860); 9. *Coys.* No. 1265a

Bunting *v.* Bell (Can.); **32.** *Lien*, p. 26
— *v.* Hovland & Watkins (Can.); **1.** *Agcy.* p. 78
— *v.* Servos (Can.); **36.** *Partn.* p. 56
Bunton *v.* Miller (Scot.); **25.** *Gaming*, p. 29
Bunyan *v.* Jordan (Aus.); **36.** *Negl.* p. 2
Buonaparte Ranch *v.* Schneider (Can.); **44.** *Waters*, p. 1
Burbank *v.* Zimmerman (Can.); **18.** *Distr.* p. 33
Burbidge *v.* Halifax Fire Insurance Co. (Can.); **29.** *Insce.* p. 27
Burch *v.* Reid (Can.); **36.** *Negl.* p. 30
Burchell *v.* Burchell (Can.); **11.** *Confl.* pp. 52, 56
— *v.* Sydney Corpn. (Can.); **32.** *Lien*, p. 22; **38.** *Pub. Hlth.* p. 15
Burchill *v.* Vancouver (City) (Can.); **26.** *Hghys.* p. 29
Burchmore *v.* Hills (1934); *Pldg.* No. 1431a
Burden *v.* Harris (1937); **15.** *Crim.* No. 10516a
Burdett *v.* Abbot (1811); **21.** *Exon.* No. 574b
— *v.* — (1817); **21.** *Exon.* No. 574b
— *v.* Colman (1817); **21.** *Exon.* No. 574b
Burdett Coutts, *Ex p.* (1927); **11.** *Comp. Pche.* No. 1384a
Bureau *v.* Campbell (Can.); **32.** *Libel*, pp. 5, 12
Burges & Stock's Case, *Re* Phœnix Life Assurance Co. (1862); **10.** *Coys.* No. 6922a
Burgess, *Ex p.*, R. *v.* Horsham & Worthing Assessment Committee (1937); **38.** *Rates*, No. 1158d
—, *Ex p.*, R. *v.* Worthing Borough Council & Horsham & Worthing Assessment Committee (1937); **38.** *Rates* No. 1158d
— (otherwise Leadbetter) *v.* Burgess (1937); **27.** *H. & W.* No. 2751b
— *v.* Hodginson (Can.); **42.** *Str. Traf.* p. 39
— *v.* Southampton Town (Can.); **26.** *Hghys.* p. 34
— *v.* Tredegar Iron & Coal Co., Ltd. (1932); **34.** *Mast. & S.* No. 3811e
Burgin *v.* Fitzwilliam's (Earl) Collieries Co. (1937); **34.** *Mast. & S.* No. 3899a
Burgin's Will, *Re* (Aus.); **2.** *Agric.* p. 15
Burgoine & Sons *v.* Four Amalgamated Ry. Cos. (1934); **8.** *Carr.* No. 1533
Burgoyne *v.* Rose Bridge Colliery Co., Ltd. (1936); **34.** *Mast. & S.* No. 3058b
Burjor F. R. Joshi *v.* Ellerman City Lines, Ltd. (Ind.); **2.** *Arbn.* p. 73; **41.** *Ship.* p. 29
Burkard *v.* Oakley (Aus.); **2.** *Aliens*, p. 33
Burkard & Co., Ltd. *v.* Wahlen (Aus.); **17.** *Damgs.* p. 15; **22.** *Evid.* p. 2; **39.** *S. Goods*, p. 54
Burke, *Re*, King *v.* Terry (1919); **5.** *Bkpcy.* No. 6115a
— *v.* Amla, The (Can.); **1.** *Adm.* pp. 30, 38; **41.** *Ship.* p. 11
— *v.* Beatty & White (Ir.); **12.** *Contr.* p. 50
— *v.* British Columbia Electric Ry. Co., Ltd. (Can.); **8.** *Carr.* p. 8
— *v.* Clausen (N.Z); **30.** *Intox.* p. 9
— *v.* Power (Ir.); **8.** *Char.* p. 61
— *v.* Ritchie (Can.); **35.** *Mistake*, p. 9
— *v.* Staehr, *Re* Adelaide, Local Court Action (Aus.); **16.** *Cr. Pract.* p. 40; **33.** *Mags.* p. 35
— *v.* Weir (Can.); **39.** *S. Goods*, p. 59
Burke & Margot Burke, Ltd. *v.* Spicers Dress Designs (1936); **13.** *Coprt.* Nos. 108a, 467a
Burke Estate, *Re* (Can.); **11.** *Confl.* pp. 30, 33, 36
Burley (C.), Ltd. *v.* Lloyd (Edw.), Ltd. (1929); **44.** *Waters*, No. 961a
Burlington Presbyterian Church, *Re* (Can.); **19.** *Eccl.* p. 31
Burlington Property Co., Ltd. *v.* Odeon Cinemas, Ltd. (1938); **7.** *Bounds. & F.* No. 315a
Burma Government Advocate *v.* Saya Sein (Ind.); **16.** *Cntmpt.* p. 5
Burma Oil Co., Ltd. *v.* Ma Hmwe Yin (Ind.); **34.** *Mast. & S.* p. 38
Burmah S.S. Co. *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 15
Burmah Trading Corpn. *v.* Mirza Mahomed Ally Sherazee & Burmah Co., Ltd. (Ind.); **43.** *Trov.* p. 57
Burman *v.* Burman (Scot.); **3.** *Basty.* p. 53; **27.** *H. & W.* p. 26
Burmingham *v.* Lindsell (1936); **42.** *Str. Traf.* No. 232r
Burn (J.), *Re*, *Ex p.* Dawson (E. W. de V.), McClellan (H. T.) & Trustee (1932); **4.** *Bkpcy.* Nos. 1966a, 4808b, 6318a
Burn, *Re*, Dawson *v.* Bankrupt (1932); **5.** *Bkpcy.* No. 6318a
—, *Re*, Dawson *v.* McClellan (No. 2) (1931); **4.** *Bkpcy.* Nos. 1966b, 4996a
Burn *v.* Carvalho (1834); **5.** *Bkpcy.* No. 6208a
— *v.* — (1839); **5.** *Bkpcy.* No. 6208a
Burnaby District Corpn. *v.* Ocean View Development, Ltd. (Can.); **7.** *Burial*, p. 42
Burnard *v.* Lysnor (N. Z.); **26.** *Guar.* p. 10
Burnard & Algers, Ltd. *v.* Player & Co. (1928); **41.** *Ship.* No. 3089a
Burnes *v.* Sykes (Can.); **32.** *Libel*, p. 10
Burnett, *Re* (Can.); **28.** *Infts.* p. 132
— *v.* Berry (1896); **14.** *Crim.* Nos. 6298a, 6298b
— *v.* Brown (Aus.); **33.** *Mags.* p. 28
— *v.* Burnett (1935); **27.** *H. & W.* Nos. 5621a, 5621b
Burnett S.S. Co., Ltd. *v.* Danube & Black Sea Shipping Agencies (1933); **41.** *Ship.* No. 3873a
Burnfiel *v.* Burnfiel (Can.); **11.** *Confl.* p. 49; **18.** *Desct.* p. 3
Burnham (Viscount) *v.* Atlantic & Pacific Fibre Importing & Manufacturing Co., Ltd., *Re* Atlantic & Pacific Fibre Importing & Manufacturing Co., Ltd. (1928); **10.** *Coys.* No. 4904a; **32.** *Limit. of A.* No. 785a
Burnham *v.* Boyer & Brown (1936); **42.** *Tort*, No. 108a
— *v.* Carroll Musgrove Theatres, Ltd. & Victoria Arcade, Ltd. (Aus.); **21.** *Estpl.* p. 25; **31.** *L. & T.* p. 78
— *v.* Ramsay (Can.); **7.** *Bonds*, p. 13
Burnham-on-Sea Urban District Council *v.* Channing & Osmond (1933); **38.** *Pub. Hlth.* Nos. 509c, 509d
Burnley Revenue Officer *v.* Burnley Rating Authority (1933); **38.** *Rates*, No. 226b
Burns (No. 1), *Ex p.* (Can.); **16.** *Cr. Pract.* p. 29
— (No. 2), *Ex p.* (Can.); **16.** *Cr. Pract.* p. 27
—, *Re*, *Ex. p.* Official Assignee in Bankruptcy (N.Z.); **5.** *Bkpcy.* p. 69
— *v.* Associated Newspapers, Ltd. (1925); **20.** *Elect.* No. 1038a
— *v.* Burne (S. Af.); **2.** *Arbn.* pp. 87, 88
— *v.* Burns (Can.); **18.** *Desct.* p. 3
— *v.* Dilworth Trust Board (N.Z.); **31.** *L. & T.* p. 50
— *v.* Garscube Colliery Co., Ltd. (1937); **34.** *Mast. & S.* No. 2970e
— *v.* Graham (Can.) (1922); **5.** *Bkpcy.* pp. 69, 74
— *v.* — (Can.) (1923); **5.** *Bkpcy.* p. 84
— *v.* MacDonald Consolidated (Can.); **36.** *Negl.* p. 37
— *v.* Minchau (Can.); **1.** *Agcy.* p. 82
— *v.* Royal Bank of Canada (Can.); **5.** *Bkpcy.* pp. 69, 74
Burns & Brown *v.* Zulauf & Doeer (Can.); **7.** *B. of Sale*, p. 5
Burns (J.) & Co. *v.* Canadian S.S. Explorer (N.Z.); **41.** *Ship.* p. 25

Burns & Co. *v.* Carlton Hotel (Can.); **42.** *Str. Traf.* p. 37
Burns & Co., Ltd. *v.* Corry (Can.); **42.** *Str. Traf.* p. 37
Burns (P.) & Co. *v.* Czernij (Can.); **23.** *Exors.* p. 3
Burns & Co., Ltd. *v.* Marcus & Dimor (Can.); **36.** *Prtnrs.* p. 59
Burns Philp & Co., Ltd. *v.* Myrhe (Aus.); **41.** *Ship.* p. 10
Burnside *v.* Reid (Can.); **36.** *Negl.* p. 26
Burpee *v.* Burpee (Can.); **11.** *Confl.* p. 51
Burr, *Re* (Can.); **42.** *Solrs.* p. 13
— *Re, Ex p.* Board of Trade (1892); **4.** *Bkpcy.* No. 1586a
— *v.* Anglo-French Banking Corpn., Ltd. (1933); **10.** *Coys.* No. 8527d
Burradon & Coxlodge Coal Co., *Re* (1930); **10.** *Coys.* No. 5149b
Burradon & Coxlodge Coal Co., Ltd., *Re*, Martin's Bank, Ltd. *v.* Burradon & Coxlodge Coal Co., Ltd. (1930); **29.** *Insce.* No. 3212b; **30.** *Jdgmts.* No. 517a
Burrard Drydock Co., Ltd. *v.* Bank of Toronto & Vulcan Engineering Works, Ltd. (Can.); **8.** *Chos.* p. 96
Burrard Inlet Tunnel & Bridge Co. *v.* Eurana S.S. (Can.); **11.** *Const. L.* p. 76; **41.** *Ship.* p. 61
Burrell *v.* Evans (1930); **34.** *Med.* No. 109a
— *v.* Maashaven S.S. Co., Ltd. (Scot.); **2.** *Aliens*, p. 40
— *v.* Watt & Hardinge (Can.); **16.** *Courts*, p. 10; **18.** *Distr.* p. 27; **42.** *Sp. Pfce.* p. 19
Burrell & Kinnaird *v.* A.-G. (1937); **21.** *E. D.* No. 27c
Burrell & Son *v.* Leven (1926); **25.** *Gaming*, No. 70a
Burridge & Son *v.* Haines (F. H.) & Sons, Ltd. (1918); **2.** *Animals*, No. 145a
Burris *v.* Dartmouth Town (Can.); **13.** *Corpns.* p. 34; **34.** *Mast. & S.* p. 12
— *v.* Rhind (Can.); **12.** *Contr.* p. 10
Burrough's Adding Machine, Ltd. *v.* Aspinall (1924); **21.** *Estpl.* No. 1319a
Burroughs *v.* Intercolonial Gold Min. Corpn. (Can.); **22.** *Evid.* p. 25
— *v.* R. (Can.); **11.** *Const. L.* p. 67
Burrow *v.* Burrow (1930); **27.** *H. & W.* No. 6108a
Burrowes *v.* Burrowes (1929); **27.** *H. & W.* Nos. 5995a, 5995b
— *v.* Isnor (Can.); **30.** *Jdgmts.* p. 23
Burrows *v.* Base, *Re* Whitrod (1926); **23.** *Exors.* No. 5340a
— *v.* Burrows (1827); **44.** *Wills*, No. 597a
— *v.* Greenwood (1840); **40.** *Sttlmts.* No. 803
— *v.* Honeysette, *Re* Wright Estate (Can.); **44.** *Wills*, p. 23
— *v.* Johnston (Can.); **7.** *B. of Sale*, p. 11
— *v.* Rapson (1927); **25.** *Food*, No. 475a
— *v.* Winter (Aus.); **35.** *Mistake*, p. 8
Bursaw's Estate, *Re* (Can.); **12.** *Contr.* p. 10
Burstall *v.* Deck, *Re* Wilson-Barkworth (1933); **8.** *Char.* No. 1248a
Burt *v.* Broken Hill South, Ltd. (Aus.); **34.** *Mast. & S.* p. 35
— *v.* Crown, The (Aus.); **17.** *Dep.* p. 64
— *v.* National Bank of South Africa, Ltd. (S. Af.); **3.** *Bank.* p. 40
Burt Business Forms, Ltd. *v.* Autographic Register Systems, Ltd. (Can.); **36.** *Pats.* p. 71
Burtnick *v.* Soffer & Soffer (Can.); **36.** *Negl.* pp. 3, 4
Burton *v.* Board (1929); **32.** *Libel*, No. 1849a
— *v.* Burton (1929); **27.** *H. & W.* Nos. 6128b, 6286b
— *v.* — (N.Z.); **27.** *H. & W.* p. 63
Burton *v.* Chamberlain (1938); **34.** *Mast. & S.* No. 3918a
— *v.* Dobson Ship Repairing Co., Ltd. (1938); **34.** *Mast. & S.* No. 3761a
— *v.* Hunter (Can.); **12.** *Contr.* p. 45
Burton (James) & Sons, Ltd., *Re* (1927); **9.** *Coys.* No. 1654a
Burton (Montague), Ltd. *v.* Inland Revenue Comrs. (1936); **28.** *Inc. T.* No. 674p
Burton's Charity, *Re*, Queen Anne's Bounty *v.* A.-G. (1938); **8.** *Char.* No. 1418c
Bury *v.* Canner, *Re* Canner (1923); **34.** *Mines*, No. 277a
— *v.* Greenwood (1934); **42.** *Solrs.* No. 1531a
Busby *v.* Avgherino (1928); **19.** *Eccl.* No. 3454a
Busby & Co., Ltd. & Twine *v.* Telsen Electric Co., Ltd. (1932); **36.** *Pats.* No. 3207a
Busch, *Re* (Can.); **24.** *Exors.* p. 34
— *v.* Eastern Trust Co. (Can.); **44.** *Wills*, p. 49
Bush, *Re*, Lipton (B.), Ltd. *v.* Mackintosh (1930); **24.** *Exors.* No. 8520b
— *v.* Bush (1938); **27.** *H. & W.* No. 2987c
— *v.* London County Council (1933); **23.** *Exors.* No. 3624a
Bush & Niagara Falls Park Comrs., *Re* (Can.); **11.** *Comp. Pche.* p. 8
Bushell *v.* Timson (1934); **34.** *Mast. & S.* No. 3668j
Bushill *v.* Melville (N.Z.); **17.** *Dep.* p. 72
Busse *v.* Edmonton Grain & Hay Co., Ltd. (Can.); **39.** *S. Goods*, p. 32
Bussell *v.* Bussell & McKenna (No. 2) (Can.); **27.** *H. & W.* p. 56
— *v.* — (No. 3) (Can.); **27.** *H. & W.* p. 43
— *v.* Stoner (Can.); **16.** *Cr. Pract.* p. 29
Butchart, *Re*, Butchart *v.* Butchart (N.Z.); **44.** *Wills*, p. 54
— *v.* Butchart, *Re* Butchart (N.Z.); **44.** *Wills*, p. 54
— *v.* Doyle (Can.); **19.** *Easmt.* p. 10
Butcher, Wetherly & Co., Ltd. *v.* Norman (1934); *Pract.* No. 5147a
Bute (Marquess), *Re* Bute (Marquess) *v.* Ryder (1884) **40.** *Sttlmts.* No. 2205a
— (Marquis) *v.* M'Kirdy & M'Millan (Scot.); **26.** *Hghys.* p. 18
Butler, *Re* (N.Z.); **28.** *Infts.* p. 137
—, *Re, Ex p.* Toohey's, Ltd. (Aus.); **42.** *Stats.* p. 26
—, *Re*, Camberwell (Wingfield Mews) No. 2 Clearance Order 1936 (1938); **38.** *Pub. Hlth.* No. 502y
— *v.* Butler (Ir.); **35.** *Mtge.* p. 43
— *v.* Durban Corpn. (S. Af.); **36.** *Negl.* p. 35
— *v.* English Steel Corpn., Ltd. (1931); **36.** *Pats.* No. 2944a
— *v.* Evans (Can.); **6.** *B. of Exch.* p. 26
— *v.* Fairhall (Can.); **9.** *Coys.* p. 21
— *v.* Kleine Patent Fire Resisting Flooring Syndicate, Ltd. (1928); **24.** *Fact.* Nos. 153a, 180a
— *v.* Meagher, *Re* Mulcahy (Ir.); **8.** *Char.* p. 78
— *v.* Millimumul S.S. (Aus.); **41.** *Ship.* p. 63
— *v.* Minister of Health (1938); **38.** *Pub. Hlth.* No. 502y
— *v.* Mortgage Co. of Egypt, Ltd. (1928); **28.** *Inc. T.* No. 430b
— *v.* Norris (N.Z.); **33.** *Mags.* p. 28
— *v.* Nova Scotia L. & P. Co. (Can.); **26.** *Hghys.* p. 22
— *v.* Saskatoon Star-Phœnix, Ltd. (Can.); **32.** *Libel*, p. 14
Butler & O'Loughlin *v.* Breen (Ir.); **34.** *Mast. & S.* p. 41
Butler's Trust, *Re* (1852); **40.** *Sttlmts.* No. 2209c
Butson *v.* Davies, *Re* Davies (1888); **16.** *Cntmpt.* No. 98
Butt *v.* Oshawa Corpn. (Can.); **17.** *Damqs.* p. 19

Butterfield *v.* Cormack & Mackie (Can.); **12.** *Contr.* p. 20
Butterfield (N. T.) & Son's Bank, Ltd. *v.* Golinsky (1926); **9.** *Coys.* No. 2703a
Butterworth *v.* Page (1935); **28.** *Inc. T.* No. 97c
Buttrum *v.* Udell (Can.); **22.** *Evid.* p. 22
Butts *v.* Sydney Mines (Can.); **37.** *Poor L.* p. 16
Butwick *v.* Grant (1924); **1.** *Agcy.* No. 714a
Buxton, *Re*, Buxton *v.* Buxton (1930); **23.** *Exors.* No. 4877a
— *v.* Buxton, *Re* Buxton (1930); **23.** *Exors.* No. 4877a
— *v.* Cumming (1927), **22.** *Evid.* No. 81a; **25.** *Gaming*, No. 62a
Buxton & High Peak Publishing & General Printing Co. *v.* Mitchell (1885); **5.** *Bkpcy.* No. 7950a
Buzacott & Co., Ltd. *v.* Dutch (Aus.); **13.** *Coprt.* p. 7
Byam *v.* Byam (1854); **40.** *Stlmts.* No. 1011a
Bye-law made by Prospect District Council, *Re*, *Ex p.* Hill (Aus.); **22.** *Evid.* p. 7
Bye-law No. 304 of Minnedosa (Town), *Re*, Wong Sing *v.* Minnedosa (Can.); **38.** *Pub. Hlth.* p. 16
Byers *v.* Chinn (S. Af.); **42.** *Stats.* pp. 20, 30
— *v.* Murphy (Can.); **21.** *Exon.* p. 47
— *v.* Singleton (Can.); **16.** *Courts*, p. 10
Bynoe *v.* General Federation of Trade Unions Approved Society (110) (1938); **44.** *Work.* Nos. 169a, 169b
Byrn *v.* Paterson S.S., Ltd. (Can.); **36.** *Negl.* p. 36
Byrne *v.* Baird & Co. (Scot.); **34.** *Mast. & S.* p. 178
— *v.* Deane (1937); **32.** *Libel*, Nos. 109b, 1071a
— *v.* Evans Lifts, Ltd. (1932); **34.** *Mast. & S.* Nos. 3892a, 3976b
— *v.* H.M. Advocate (Scot.); **37.** *Prsns.* p. 33
— *v.* Prudential Insurance Co. (Can.); **29.** *Insce.* p. 31
— *v.* Revenue Comrs. (Ir.); **39.** *Revenue*, p. 18
— *v.* Steele (Aus.); **19.** *Easmt.* p. 10
Byrne Estate, *Re* (Can.); **21.** *E. D.* p. 17
Byrom, *Re*, *Ex p.* Eckersley (1853); **4.** *Bkpcy.* No. 3134
Bysouth *v.* Blackburn Shire & Mitcham (No. 2) (Aus.); **7.** *Bldg. Conts.* p. 25
Bywater *v.* Stothert & Pitt (1932); **34.** *Mast & S.* No. 3231c, 3363a
Byzantion, The (1922); **1.** *Adm.* Nos. 248a, 768a

C.

C., *Re* (1938); **28.** *Infts.* No. 1253b
—, *Re* (Ir.); **5.** *Bkpcy.* pp. 92, 93
C. *v.* C. (Aus.); **30.** *Intox.* p. 18
— *v.* — (N.Z.); **27.** *H. & W.* p. 2
C. & A. Modes, Ltd. *v.* Central Purchasing Assocn., Ltd. (1930); **43.** *Trade Mks.* No. 1207a
C. & H. Crichton (1921), Ltd., *Re* (1932); **10.** *Coys.* Nos. 7169a, 7169b
C. & L., *Re* (Ir.); **5.** *Bkpcy.* p. 92
C. & W. *v.* H.M. Advocate (Scot.); **15.** *Crim.* p. 97
C. B. & M. (Tailors), Ltd., *Re* (1932); **10.** *Coys.* No. 6533a
C. D.'s Petition, *Re* (1927); **3.** *Bastv.* No. 130e; **16.** *Courts*, No. 280a
C. G. Vokes, Ltd. *v.* Evans & Marble Arch Motor Supplies, Ltd. (1931); **43.** *Trade Mks.* Nos. 1516a, 1516b, 1516c
C. L. *v.* C. F. W. (1928); **27.** *H. & W.* Nos. 5360a, 5513a
Caballero *v.* Slater (1854); **31.** *L. & T.* No. 4142a
Cabana *v.* Bank of Montreal (Can.); **3.** *Bank.* p. 33
Cabaret Electric Co., Ltd. (trading as Motorola Distributing Co.) *v.* Marconi's Wireless Telegraph Co., Ltd. (1934); **36.** *Pats.* No. 3353b
Cabaret Electric Co., Ltd. *v.* Marconi Wireless Telegraph Co., Ltd. (1936); **36.** *Pats.* No. 3353d
Cadbury Bros., Ltd., *Ex p. Re* Debtor (1936); **4.** *Bkpcy.* No. 274e
— *v.* Sinclair (1933); **28.** *Inc. T.* Nos. 228b, 228c
Caddick *v.* Terry (1864); **12.** *Contr.* No. 487b
Cadeddu *v.* Mount Royal Assurance Co. (Can.); **29.** *Insce.* p. 46
Cadman *v.* Strong (Can.); **38.** *Real Prop.* p. 91
Cadogan (Earl) *v.* Guinness (1936); **40.** *S. Land.* No. 2807e
Cadrain *v.* Nash (Can.); **18.** *Distr.* p. 34
Cadwell *v.* Campeau (Can.); **26.** *Guar.* p. 7
Cadwell's, Ltd., *Re*, Trustee *v.* Royal Bank (Can.); **3.** *Bank.* p. 42
Cadzow Coal Co., Ltd., *Re* (Scot.); **9.** *Coys.* p. 9
Cadzow Colliery Co., Ltd. *v.* Lanarkshire Assessor (Scot.); **38.** *Rate*, p. 75
Caerphilly Urban District Council *v.* Griffin (1928); **20.** *Electric*, No. 39a
Cæsar & Watmough *v.* Bohrmann, *In the Estate of* Bohrmann (1938); **44.** *Wills*, No. 229a
Cafferata *v.* Wilson (1936); **43.** *Trade*, No. 117a
Caffrey *v.* Inverclyde (Lord) (Scot.); **18.** *Discy.* p. 14
Cahill *v.* London Co-operative Society, Ltd. (1937); **28.** *Ind. Soc.* No. 10a
— *v.* Nicholls, (Can.); **35.** *Misrep.* p. 6
— *v.* West Ham Corpn. (1937); **19.** *Educ.* No. 23d
Cahuac *v.* Erle (Can.); **30.** *L. & T.* p. 42
— *v.* Scott (Can.); **30.** *L. & T.* p. 42
Caie, *In the Estate of*, *In the Estate of* Davis (1927); **23.** *Exors.* No. 1371a
Cain *v.* Copeland (Can.); **7.** *Bounds. & F.* p. 15
— *v.* Teare (1843); **38.** *Real Prop.* No. 520a
Caine *v.* Schultz (Can.); **2.** *Agric.* p. 20
Caire, *Re*, Public Trustee *v.* Hood (Aus.); **29.** *Insce.* p. 38
Cairns *v.* Brown (Can.); **12.** *Contr.* p. 41
— *v.* Cairns (Can.); **3.** *Barr.* p. 50
— *v.* — (No. 2) (Can.); **28.** *Infts.* p. 139
— *v.* Worthy (Can.); **21.** *Estpl.* p. 39
Cairns & McNairn, *Re* (Can.); **12.** *Contr.* p. 50
Cairns Bros. *v.* Canadian National Railway Can.); **38.** *Rys.* p. 36
Calcott & Elvin's Contract, *Re* (1898); **4.** *Bkpcy.* No. 1040
Calcraft *v.* London General Omnibus Co. (1923); **13.** *Cty. Cts.* No. 497b
Calcus Co., Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 44
—, *Re*, *Ex p.* McGuire (Can.); **4.** *Bkpcy.* p. 39
Calcutta Port Comrs. *v.* Bhubaneshwar Prasad (Ind.); **41.** *Ship.* p. 8
— *v.* Calcutta Corpn. (Ind.); **38.** *Pub. Auth.* p. 4
Calcutta Steam Navigation Co., Ltd. *v.* R. (Ind.); **44.** *Waters*, p. 8
Calcutta Stock Exchange Assocn., Ltd., *Re* (Ind.); **28.** *Inc. T.* p. 24
Caldbeck *v.* Stafford & Lindemere, *Re* Jennings (Ir.); **44.** *Wills*, p. 35
Caldecutt *v.* Piesse (1932); **29.** *Inns*, No. 157a
Caldeira *v.* Gray (1936); **16.** *Courts*, Nos. 622a, 634a
Calder *v.* Alexander (Scot.); **19.** *Educ.* p. 38
— *v.* Allanson (1935); **28.** *Inc. T.* No. 79a
Calder Vale Manufacturing Co., Ltd., Registered Design, *Re*, *Re* Lappet Manufacturing Co. Ltd. (1934); **43.** *Trade Mks.* No. 908a
Calder's Yeast Co. *v.* Stockdale (1928); **31** *L. & T.* No. 4482a
Caldwell *v.* Glasgow Corpn. (Scot.); **8.** *Carr.* p. 8
— *v.* Reilly & Bell (Can.); **11.** *Confl.* p. 44

Caldwell & Toronto, *Re* (Can.); **11.** *Comp. Pche.* p. 3
Caldwell, etc. *v.* Fleming (N.Z.); **21.** *E. D.* p. 11
Caledonia & Haldimand, *Re* (Can.); **26.** *Hghys.* p. 48
Caledonia Grammar & Common School Trustees *v.* Farrell (Can.); **19.** *Educ.* p. 41
Caledonian Collieries, Ltd. *v.* Australasian Coal & Shale Employees' Federation (Aus.); **17.** *Dep.* p. 60
Caledonian Employees Benevolent Society, *Re* (Scot.); **10.** *Coys.* p. 101
Caledonian Heritable Estates, Ltd. *v.* Methven (Scot.); **31.** *L. & T.* p. 96
Caledonian Ry. Co. *v.* Greenock Corpn. (Scot.); **3.** *Barr.* p. 50
Calgary (City) *v.* Blow (Can.); **2.** *Arbn.* p. 84
Calgary Associate Clinic *v.* Johnston (Can.); **36.** *Prtnrs.* p. 59
Calgary City Charter, *Re* (Can.); **22.** *Evid.* p. 7; **33.** *L. G.* p. 1
Calgary Furniture Store, Ltd. & Higgs, *Re* (Can.); **10.** *Coys.* p. 78
Calgary Herald, Ltd. *v.* Barnes Corpn. (Can.); **17.** *Damgs.* p. 6; **35.** *Misrep.* p. 5
Calhoun, *Ex p.*, *Re* Germantown Lake District Sewers Comrs. (Can.); **38.** *Rates*, p. 78
— *v.* Canadian National Rys. (Can.); **38.** *Rys.* p. 45
— *v.* Reid (Can.); **2.** *Animals*, p. 56; **27.** *H. & W.* p. 9
Calico Printers' Assocn. *v.* Barclays Bank & The Anglo-Palestine Co., Ltd. (1931); **1.** *Agcy.* No. 945a
California State (People of) *v.* Skinner (Can.); **15.** *Crim.* p. 94
California Wall Bed Co. of Canada, Ltd. *v.* Prudential Insurance Co. of America (Can.); **35.** *Mtge.* p. 33
Calkin *v.* Wolfville Fruit Co. (Can.); **44.** *Work*, p. 58
Call & Mirror Newspapers, Ltd. *v.* Humble (Aus.); **18.** *Discy.* p. 14
Callaghan *v.* Nicholls (Can.); **11.** *Confl.* p. 55
Callan *v.* Harty, *Ex p.* Harty (Aus.); **3.** *Basty.* p. 62
— *v.* M'Kenna (Ir.); **17.** *Dep.* p. 87
Callander *v.* Callander (Can.); **27.** *H. & W.* p. 42
— *v.* Smith (Scot.); **2.** *Agric.* p. 1
Callard *v.* Beeney (1930); **19.** *Easmt.* No. 687a
Callbeck *v.* Maxwell (Can.); **42.** *Str. Traf.* p. 39
Callender Cable Construction, Ltd. *v.* Walsh (1938); **34.** *Mast. & S.* No. 3766b
Calmenson *v.* Merchants' Warehousing Co. (1921); **13.** *Crnrs.* No. 409a
Calow, *Re*, Calow *v.* Calow (1928); **20.** *Eqy.* No. 937a
— *v.* Shelton Iron, Steel & Coal Co., Ltd. (1928); **34.** *Mast. & S.* No. 3737a
Calthorpe's (Lord) Will Case (*circa* 1790); **40.** *Sttlmts.* No. 2020a
Calton *v.* Samuel Fox & Co., Ltd. (1938); **34.** *Mast. & S.* No. 2467a
Calver's Yeast Co. *v.* Stockdale (1928); **31.** *L. & T.* No. 4482a
Calvert, *Re* (Can.); **44.** *Wills*, p. 23
— *v.* Burham (Can.); **35.** *Mtge.* p. 36
— *v.* Taxes Comr. for Victoria (Aus.); **28.** *Inc. T.* p. 36
Camberwell Motors Pty., Ltd., *Re* (Aus.); **9.** *Coys.* p. 28
Camberwell (Wingfield Mews) No. 2 Clearance Order 1936, *Re* Butler (1938); **38.** *Pub. Hlth.* No. 502y
Camberwell Revenue Officer *v.* Camberwell Assessment Committee & Watney, Combe, Reid & Co. (1931); **38.** *Rates*, No. 226u
Cambo Shipping Co., Ltd. (Rossetti (Owners)) *v.* Dampskibsselskabet Magnus (Scot.); **1.** *Adm.* p. 37
Cambridge County Council Case, Fordham *v.* Webber (1925); **20.** *Elect.* No. 1593a
Cambridge University *v.* A.-G., *Re* Stanford (1924); **8.** *Char.* No. 1457a
Cambridge University Press *v.* University Tutorial Press (1928); **13.** *Coprt.* No 420a; **43.** *Trade Mks.* No. 1121b
Camden (Marquis), *Ex p.*, R. *v.* Powell (1925); **2.** *Agric.* Nos. 29b, 29c
Camden (Lord) *v.* Home (1791); **16.** *Cr. Pract.* No. 2187a
Came *v.* City of Glasgow Friendly Society (Scot.); **25.** *Fr. Soc.* p. 20
Cameron, *Re* (Can.); **30.** *Intox.* p. 12
— *v.* Campbell & Worthington, Ltd. (Aus.); **39.** *S. Goods*, p. 53
— *v.* Dauphin (Can.); **38.** *Pub. Hlth.* p. 22
— *v.* Deputy Federal Comr. of Taxation (Aus.); **17.** *Dep.* p. 59
— *v.* Harper (Can.); **23.** *Exors.* p. 18
— *v.* Haszard, *Re* Roberson (Can.); **44.** *Wills*, p. 49
— *v.* McDonald (Can.); **36.** *Negl.* p. 15
— *v.* Milloy (Can.); **24.** *Exors.* p. 36
— *v.* Moseley (Can.); **4.** *Bkpcy.* p. 23
— *v.* Murray (Can.); **40.** *Set-off*, p. 23
— *v.* Nicol (Scot.); **2.** *Agric.* p. 6
— *v.* Parsons (Can.); **32.** *Limit. of A.* p. 31
— *v.* Rounsefell (Can.); **21.** *Estpl.* p. 27
— *v.* St. Luke's Salt Springs (Trustees) (Can.); **19.** *Eccl.* p. 31
— *v.* Sweeney (Scot.); **39.** *Revenue*, p. 25; **42.** *Str. Traf.* p. 48
Cameron & Cameron *v.* Boulton (Can.); **42.** *Solrs.* p. 6
Cameron Lumber Co., Ltd. *v.* Mount Royal Assurance Co. (Can.); **29.** *Insce.* p. 29
Cameron-Hutt, Ltd. *v.* MacMillen (Can.); **22.** *Evid.* p. 23
Camillo *v.* Edmonton (Can.); **38.** *Pub. Auth.* p. 12
Camillo Tank S.S. Co., Ltd. *v.* Alexandria Engineering Works (1921); **1.** *Agcy.* No. 2139b
Cammaert *v.* Grasswold (Can.); **3.** *Bailmt.* p. 9
Cammell, *Re*, Public Trustee *v.* A.-G. (1925); **8.** *Char.* No. 657a
Cammell Laird & Co., Ltd. *v.* Manganese Bronze & Brass Co., Ltd. (1934); **39.** *S. Goods*, Nos. 726a, 744b, 788a
Campbell, *Re* (Can.) (1928); **44.** *Wills*, p. 44
—, *Re* (Can.) (1933); **28.** *Infts.* p. 137
—, *Re* (Can.) (1935); **4.** *Bkpcy.* p. 46
—, *Re* (N.Z.) (1933); **23.** *Exors.* p. 9
—, *Re* (N.Z.) (1935); **24.** *Extrdn.* p. 46
—, *Re*, Commercial Bank of Scotland *v.* Campbell (1923); **28.** *Inc. T.* No. 646b
—, *Re*, Peacock *v.* Ewen (N.Z.); **8.** *Char.* p. 56
— *v.* Baillie (1823); **36.** *Prtnrs.* No. 631a
— *v.* Belt (Can.); **42.** *Str. Traf.* p. 61
— *v.* Campbell (Can.) (1921); **11.** *Confl.* p. 50
— *v.* — (Can.) (1932); **25.** *Gifts*, p. 50
— *v.* — (Can.), [1936] 1 D. L. R. 236; **5.** *Bkpcy.* p. 85
— *v.* — (Can.), [1936] 4 D. L. R. 52; **12.** *Contr.* p. 22
— *v.* Canadian Pacific & Canadian National Ry. Cos. (Can.); **8.** *Carr.* p. 3
— *v.* Cleugh (Can.); **21.** *Exon.* p. 48
— *v.* Cochrane (Scot.); **22.** *Evid.* p. 16
— *v.* Cox & Mitchell (Can.); **22.** *Evid.* p. 9
— *v.* Elliott, Black, Moore & Southwick (Can.); **19.** *Educ.* p. 47
— *v.* Fenwick (Can.); **25.** *Gifts*, p. 51
— *v.* Funk (Can.); **22.** *Evid.* p. 24

Campbell *v.* Gallant, Crockett & Royal Bank of Canada, *Re* Milligan Estate (Can.); **5.** *Bkpcy.* p. 75
— *v.* Gemmell (Can.); **21.** *Exon.* p. 56
— *v.* Hannaford (Aus.); **26.** *Hghys.* p. 33
— *v.* Hedley (Can.); **2.** *Animals*, p. 56
— *v.* Hogg (Can.); **43.** *Trusts*, p. 71
— *v.* Hopkins (G.) & Sons (Clerkenwell), Ltd. (1931); **12.** *Contr.* No. 5054a; **36.** *Pats.* Nos. 2648a, 2648b
— *v.* Hopkins (G.) & Sons (Clerkenwell), Ltd. (1933); **36.** *Pats.* No. 1587a
— *v.* Imperial Bank (Can.); **3.** *Bank.* p. 38
— *v.* Kingsville (Can.); **43.** *Wtr. Sply.* p. 75
— *v.* McGregor (Can.); **16.** *Courts*, p. 10
— *v.* McIsaac (Can.); **26.** *Guar.* p. 1
— *v.* Mahler (Can.); **12.** *Contr.* pp. 9, 14; **17.** *Damgs.* p. 14
— *v.* Moore & Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 88
— *v.* National Trust Co., Ltd. (Can.); **1.** *Agcy.* p. 77
— *v.* Raynor (Can.); **35.** *Mtge.* p. 47
— *v.* Rofe (1933); **9.** *Coys.* No. 1455a
— *v.* Royal Canadian Bank (Can.); **38.** *Real Prop.* p. 89
— *v.* Smith (Can.); **21.** *Exon.* p. 52
— *v.* Stamp Duties Collector (Aus.); **39.** *Revenue*, p. 21
— (Doe d.) *v.* Thompson (Can.); **21.** *Exon.* p. 50
— *v.* Turner & Curtis (Can.); **32.** *Lien*, p. 27
— *v.* Woods, Irmie & The Canadian Press (Can.); **18.** *Discy.* pp. 9, 14
Campbell & Cowdy, *Re* (Can.); **40.** *S. Land*, p. 17
Campbell & Cowper, *Re* (Can.); **16.** *Cntmpt.* pp. 1, 3
Campbell Auto Finance Co., Ltd. *v.* Warren (Can.); **20.** *Eqy.* p. 31
Campbell Endowment Trust, *Re*, Argyll Education Authority *v.* Campbeltown Corpn. (Scot.); **19.** *Educ.* p. 42
Campbell River Mills, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 40
Campbell Wilson, *In the Goods of* (Aus.); **23.** *Exors.* p. 3
Campbell's Hardware, *Re* (Can.); **38.** *Rates*, p. 87
Campbell's Trustees *v.* Campbell (Scot.); **8.** *Char.* p. 69
Campbell's Trusts, *Re* (1871); **30.** *Jdgmts.* No. 422a
Campbellford, Lake Ontario & Western Ry. Co. *v.* Massie (Can.); **2.** *Arbn.* p. 74
Campbeltown Coal Co. *v.* Argyll (Duke) (Scot.); **31.** *L. & T.* p. 83
Campisi *v.* Water Conservation & Irrigation Commission (Aus.); **38.** *Pub. Auth.* p. 3
Camrud *v.* Camrud (Can.); **27.** *H. & W.* pp. 42, 49, 51, 58
— *v.* Hendry (Can.); **3.** *Bastv.* p. 60
Canada *v.* Miller (Can.); **36.** *Negl.* p. 33
Canada & Newfoundland in Labrador Peninsula, *Re* Boundary between (1927); **17.** *Dep.* No. 378b
Canada (Dominion of) & Provinces of Ontario & Quebec, *Re*, *Re* Indian Claims (Can.); **17.** *Dep.* p. 74
Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929); **39.** *S. Goods*, No. 916a
Canada Atlantic Transit Co. *v.* Eastern S.S. Co., Ltd. (Can.); **1.** *Adm.* p. 44
Canada Central Ry. Co. *v.* McLaren (Can.); **22.** *Evid.* pp. 3, 15
Canada Crayon Co., Ltd. *v.* Peacock Products, Ltd. (Can.); **43.** *Trade Mks.* p. 20
Canada Cycle & Motor Co., Ltd. *v.* Mehr (Can.); **12.** *Contr.* p. 57
Canada Dredging Co. *v.* Russell (Can.); **41.** *Ship.* p. 48
Canada Drugs, Ltd. *v.* A.-G. for Saskatchewan (Can.); **17.** *Dep.* p. 51
Canada Hockey Club *v.* Arena Amusements, Ltd. (Can.); **12.** *Contr.* p. 57
Canada Jurisdiction Tariff Board Reference, *Re* (Can.); **39.** *Revenue*, p. 10
Canada Life Assurance Co., *Re* (1930); **10.** *Coys.* No. 7493a
— *v.* Coughlan (Can.); **35.** *Mtge.* p. 45
— *v.* McClellan (Can.); **35.** *Mtge.* p. 50
— *v.* MacMurchy (Can.); **35.** *Mtge.* p. 46
Canada Life Assurance Co.'s Case, *Re* Land Titles Act (Can.); **35.** *Mtge.* p. 31; **38.** *Real Prop.* p. 95
Canada Life Insurance Co. *v.* McHardy (Can.); **35.** *Mtge.* p. 42
Canada Lumber Co. *v.* Gaffney (Can.); **5.** *Bkpcy.* p. 88
Canada, Minister of Interior for *v.* Nelson (Can.); **7.** *Bounds. & F.* p. 17
Canada Morning News, Ltd. *v.* Thompson & Binnington, Low Yee Quan & Wai Hon (Can.); **18.** *Distr.* p. 24; **30.** *L. & T.* p. 38
Canada National Fire Insurance Co., *Re* (Can.), [1930] 3 W. W. R. 113; **10.** *Coys.* p. 97
Canada National Fire Insurance Co., *Re* (Can.), [1930] 3 W. W. R. 209; **10.** *Coys.* p. 69
—, *Re* (Can.), [1931] 1 D. L. R. 751; **10.** *Coys.* p. 82
Canada National Fire Insurance Co. (No. 2), *Re* (Can.); **10.** *Coys.* p. 82
Canada Permanent Corpn. *v.* Christensen (Can.); **21.** *Estpl.* p. 24
Canada Permanent Loan & Savings Co. *v.* McKay (Can.); **38.** *Real Prop.* p. 99
Canada Permanent Mortgage Corpn. *v.* Barnard (Can.); **12.** *Contr.* p. 5
— *v.* Dalgleish (Can.); **35.** *Mtge.* p. 51
Canada Permanent Mortgage Corpn. *v.* Inland Revenue Comrs. (Scot.); **10.** *Coys.* p. 60
Canada Permanent Trust Co. *v.* McAdam, *Re* Anderson Estate (Can.); **21.** *E. D.* p. 20
Canada Preserving Co., *Re* (Can.); **4.** *Bkpcy.* p. 37
Canada Southern Ry. Co. *v.* International Bridge Co. (Can.); **26.** *Hghys.* p. 23
Canada S.S. Lines, Ltd. *v.* Blue Cross, The (Can.); **1.** *Adm.* p. 29
— *v.* Champlain, Tug (Can.); **41.** *Ship.* p. 48
— *v.* Emile Charland, Ltd. (Can.); **17.** *Dep.* p. 72; **41.** *Ship.* p. 69
— *v.* Montreal Trust Co. (Can.); **41.** *Ship.* p. 48
— *v.* Paisley S.S. (Can.); **41.** *Ship.* p. 49
— *v.* Porter & Sons, Ltd. (Can.); **41.** *Ship.* p. 56
— *v.* Rival, The (Can.); **1.** *Adm.* p. 30
Canada Temperance Act Reference in Counties of Perth, Huron & Peel in Ontario Province (Can.); **30.** *Intox.* p. 11
Canada Trust Co. *v.* Gardiner, *Re* B. (Can.); **43.** *Trusts*, p. 61
— *v.* Schultz (Can.); **31** *L. & T.* p. 85
Canada West Grain Co., Ltd. *v.* Melfort Mills, Ltd. (Can.); **35.** *Mtge.* p. 46
Canadian Allis-Chalmers, Ltd. *v.* Lachine City (Can.); **38.** *Rates*, p. 81
Canadian American Shipping Co. *v.* Woran S.S. (1927); **1.** *Adm.* No. 1794a
Canadian American Trust Co., Ltd. & Central Properties, Ltd. *v.* McMullen (Can.); **40.** *S. Land*, p. 9
Canadian Bank of Commerce *v.* Annable, *Re* Legal Profession Act (Can.); **42.** *Solrs.* p. 7
— *v.* Brookdale Collieries, Ltd. (Can.); **6.** *B. of Exch.* p. 15
— *v.* Colwell (Can.); **6.** *B. of Exch.* pp. 9, 14

Canadian *v.* Davison (Can.), [1930] 1 D. L. R. 1003; **27.** *H. & W.* p. 13
— *v.* — (Can.), [1930] 4 D. L. R. 605; **27.** *H. & W.* p. 13
— *v.* Dembeck (Can.); **12** *Contr.* p. 9
— *v.* Foreman (Can.); **26.** *Guar.* p. 12; **27.** *H. & W.* p. 13
— *v.* Johnson (Can.); **6.** *B. of Exch.* p. 24; **10.** *Coys.* p. 55
— *v.* Kenzie (Can.); **5.** *Bkpcy.* p. 88
— *v.* Koffman & Cherry (Can.); **26.** *Guar.* p. 4
— *v.* La Brash (Can.); **8.** *Chos.* p. 92
— *v.* Livingston (Can.); **6.** *B. of Exch.* p. 1
— *v.* Mothersill (Can.); **26.** *Guar.* p. 3
— *v.* Munroe (Can.); **7.** *B. of Sale*, p. 9
— *v.* Peebles (Can.); **6.** *B. of Exch.* p. 12
— *v.* Pioneer Farm Co., Ltd. & Hall (Can.); **9.** *Coys.* p. 48
— *v.* Postman & Postman (Can.); **3.** *Bank.* p. 41; **35.** *Mtge.* p. 49
— *v.* Raby (Can.); **21.** *Exon.* p. 60
— *v.* Reid (Can.); **3.** *Bank.* p. 42
— *v.* Rolston (Can.); **21.** *Exon.* p. 50
— *v.* Royal Bank of Canada (Can.); **8.** *Chos.* p. 94
— *v.* Smith (Can.); **9.** *Coys.* p. 32; **12.** *Contr.* p. 46
— *v.* Treacy (Can.); **5.** *Bkpcy.* p. 74
— *v.* Winnipeg District Registrar (Can.); **35.** *Misrep.* p. 3; **38.** *Real Prop.* p. 95
— *v.* Yorkshire & Canadian Trust, Ltd. (Can.); **3.** *Bank*, p. 44
Canadian Birkbeck Investment & Savings Co. *v.* Ryder (Can.); **38.** *Real Prop.* p. 94
Canadian Cap Co., *Re*, *Ex p.* Trustee (Can.); **4.** *Bkpcy.* p. 10
Canadian Cap Co., Ltd., *Re*, Stevenson *v.* Taylor (Can.); **5.** *Bkpcy.* p. 70
Canadian Car Demurrage Bureau *v.* Department of National Defence, Ottawa (Can.); **3.** *Carr.* p. 22
Canadian Carpet & Comforter Manufacturing Co., *Re*, *Ex p.* A.-G. for Canada (Can.); **4.** *Bkpcy.* p. 24; **5.** *Bkpcy.* p. 79
Canadian Cereal & Flour Mills Co., *Re* (Can.); **4.** *Bkpcy.* p. 23
Canadian Chocolate Co., *Re* (Can.); **4.** *Bkpcy.* p. 11
Canadian Coal Supply, *Re*, *Ex p.* Staples Bell Inc. (Can.); **4.** *Bkpcy.* pp. 20, 21
Canadian Collieries (Dunsmuir), Ltd. *v.* Dunsmuir (Can.); **17.** *Deeds*, p. 28
Canadian Co-operative Wheat Producers, Ltd. *v.* Paterson S.S., Ltd. (Can.); **16.** *Courts*, p. 17
Canadian Cordage & Manufacturing Co., *Re* (Can.); **10.** *Coys.* p. 74
Canadian Credit Men's Assocn., Ltd. *v.* Jenkins (Can.); **5.** *Bkpcy.* p. 69
Canadian Credit Men's Assocn., Ltd. & Watters, *Re* (Can.); **38.** *Real Prop.* p. 91
Canadian Credit Men's Trust Assocn. *v.* Anderson (Can.); **6.** *B. of Exch.* p. 25
— *v.* Bungalow Construction Co. (Can.); **35.** *Misrep.* p. 6
— *v.* Caldwell, *Re* Supplies, Ltd. (Can.); **9.** *Coys.* p. 18
— *v.* Campbell, Wilson & Strathdee, Ltd., *Re* Colquhoun & Son, Ltd. (Can.); **5.** *Bkpcy.* p. 72
— *v.* Chow Lun (Can.); **25.** *Fraud. Conv.* p. 15
— *v.* Dealers Finance Corpn., Ltd. (Can.); **39.** *S. Goods*, p. 56
— *v.* Edmonton (City) (Can.); **4.** *Bkpcy.* p. 37
— *v.* Edmonton Lumber Co., Ltd. (Can.); **2.** *Agric.* p. 21
— *v.* Hoffar, Ltd. (Can.); **17.** *Dep.* p. 38
Canadian Credit Men's Trust Assocn. *v.* Hopper, *Re* Dainty Confections, Ltd. (Can.); **7.** *B. of Sale*, p. 12
— *v.* Jang Bow Kee & Yin Shee (Can.); **4.** *Bkpcy.* p. 45; **5.** *Bkpcy.* p. 84
— *v.* Monka (Can.); **4.** *Bkpcy.* p. 39
— *v.* Morton (Can.); **18.** *Discy.* p. 17
— *v.* Reaume (Can.); **5.** *Bkpcy.* p. 76
— *v.* Royal Bank of Canada (Can.); **3.** *Bank.* p. 27
— *v.* Ryan (Can.); **11.** *Confl.* p. 57
— *v.* Snider & Duncan, *Re* Shannon (H. S.) & Co., Ltd. (Can.); **5.** *Bkpcy.* p. 71
— *v.* Southern Alberta Co-operative Assocn., Ltd. (Can.); **25.** *Fraud. Conv.* p. 13
— *v.* Spivak, *Re* Cohen & Mahlin (Can.); **4.** *Bkpcy.* p. 36; **5.** *Bkpcy.* pp. 49, 67, 73, 75
— (Pallesen Dairy & Creamery Co., Ltd.) *v.* Toole Peet Trust Co. (Pallesen Estate) (Can.); **29.** *Insce.* p. 30
— *v.* Umbel & Gillespie Grain Co., Ltd. (Can.); **5.** *Bkpcy.* p. 71; **21.** *Exon.* p. 46
— *v.* Winnipeg Fire Underwriters' Agency (Can.); **5.** *Bkpcy.* p. 54
Canadian Credit Men's Trust Assocn. & Dinning *v.* Ingham (Can.); **31.** *L. & T.* p. 62
Canadian Credit Men's Trust Assocn., Ltd. & Merland Oil Co. of Canada, Ltd., *Re*, *Re* Publix Oil & Gas, Ltd. (1936); **7.** *B. of Sale*, p. 3
Canadian Dredging Co. *v.* Northern Navigation Co. (Can.); **1.** *Adm.* p. 40
Canadian Educational Films, Ltd. & Goodart Pictures Incorporated *v.* Horan & Nichols Theatres, Ltd. (Can.); **42.** *Solrs.* p. 8
Canadian Electrical Association *v.* Canadian National Railways (1934); **17.** *Dep.* No. 125b
— *v.* — (Can.); **38.** *Rys.* p. 46
Canadian Electrical Association & Hydro-Electric Power Commission of Ontario *v.* Canadian National Railways (Can.); **38.** *Rys.* p. 46
Canadian Equipment & Supply Co. *v.* Bell & Schiesel (Can.); **32.** *Lien*, p. 23
Canadian Express Co., *Ex p.*, *Re* Christie Grant, Ltd. (Can.); **5.** *Bkpcy.* p. 58
—, *Ex p.*, *Re* Standard Imports, Ltd. (Can.); **5.** *Bkpcy.* p. 57
Canadian Farm Implement Co., Ltd. *v.* Alberta Foundry & Machine Co., Ltd. (Can.); **35.** *Misrep.* p. 1
Canadian Fertilizer Co. *v.* Maritime United Farmers Co-operative (Can.) (1931); **12.** *Contr.* p. 51
— *v.* Maritime Farmers Co-operative, Ltd. (Can.) (1934); **16.** *Cr. Pract.* p. 34
Canadian Flexible Skate Co., Ltd. *v.* Monarch Brass Manufacturing Co., Ltd. (Can.); **17.** *Damgs.* p. 14
Canadian General Electric Co., Ltd. *v.* Crosley Radio Corpn. (Can.); **36.** *Pats.* p. 67
— *v.* Fada Radio, Ltd. (Can.) (1927); **36.** *Pats.* pp. 68, 70, 75, 76
— *v.* — (Can.) (1929); **36.** *Pats.* p. 74
— *v.* — (1930); **36.** *Pats.* No. 655a
— *v.* National Illumination Co. (Can.); **36.** *Pats.* p. 103
— *v.* Toronto Electric Supply Co., Ltd. (Can.); **16.** *Cntmpt.* p. 6
Canadian General Securities Co., Ltd. *v.* George (Can.); **1.** *Agcy.* p. 61
Canadian Goodrich Co., Ltd. *v.* Hall (Can.); **43.** *Trade Mks.* p. 16
Canadian Grain Co., Ltd. *v.* Nichol (Can.); **1.** *Agcy.* p. 91
Canadian Guarantee Trust Co. *v.* Delisle, *Re* Smith's Estate (Can.); **21.** *Exon.* p. 48

Canadian Guaranty Trust Co. *v.* Young (Can.); **9.** *Coys.* pp. 31, 34
— *v.* Young (No. 2) (Can.); **10.** *Coys.* p. 71
Canadian Gypsum Co., Ltd. *v.* Gypsum, Lime & Alabastine, Canada, Ltd. (Can.); **36.** *Pats.* p. 71
Canadian Hart Products, *Re* (Can.); **5.** *Bkrpcy.* p. 85
Canadian Hart Products, Ltd. (Trustee) *v.* Royal Bank (Can.); **3.** *Bank.* p. 43
Canadian Highlander, The, Gosse Millerd, Ltd. *v.* Canadian Government Merchant Marine, Ltd. (1929); **30.** *Jdgmts.* No. 728a; **41.** *Ship.* No. 2721
Canadian Hoffman Machinery Co., Ltd. *v.* Medicine Hat (City) (Can.); **18.** *Distr.* p. 31
Canadian Horseshoe Co., *Re* (Can.); **4.** *Bkrpcy.* p. 87
Canadian Hotel Co., Ltd. *v.* Neepawa Town (Can.); **38.** *Rates*, pp. 84, 87
Canadian International Paper Co. *v.* Soper (Can.); **39.** *S. Goods*, p. 50
Canadian Linen Co., Ltd. *v.* Mole (Can.); **43.** *Trade*, p. 6
Canadian Lumbermen's Assocn. *v.* Canadian National & Canadian Pacific Ry. Cos. (Can.); **38.** *Rys.* pp. 36, 44, 45
Canadian Mausoleums, Ltd. *v.* Irwin (Can.); **40.** *S. Land*, p. 11
Canadian Minister of Finance *v.* Smith (1926); **28.** *Inc. T.* No. 99g
Canadian Mortgage Assocn. *v.* R. (Can.); **35.** *Mistake*, p. 12
Canadian National Fire Insurance Co. & Brownstone, *Re* (Can.); **10.** *Coys.* p. 82
Canadian National Rys. *v.* Boland (Can.); **11.** *Comp. Pche.* p. 16
— *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 46
— *v.* Clark (Can.); **38.** *Rys.* p. 39
— *v.* Croteau & Cliche (Can.); **1.** *Action*, p. 2
— *v.* Hydro Electric Power Commission & Department of Highways for Ontario (Westhill Crossing Case) (Can.); **38.** *Rys.* p. 38
— *v.* Kovinsky & Sons (Can.); **12.** *Contr.* p. 26
— *v.* Lepage (Can.); **8.** *Carr.* p. 8
— *v.* Lewis (Can.); **38.** *Rys.* p. 36
— *v.* Montreal Tramways (Guy St. Crossing Case) (Can.); **38.** *Rys.* p. 38
— *v.* Muller (Can.); **8.** *Carr.* p. 6
— *v.* Nova Scotia Province (Can.); **38.** *Rys.* p. 45
— *v.* Pomerleau (Can.); **38.** *Rys.* pp. 38, 39
— *v.* St. John Motor Line, Ltd. (Can.); **38.** *Rys.* p. 40
— *v.* Stamford (Township) (Can.); **38.** *Rys.* p. 45
— *v.* Toronto Iron Works (Can.); **11.** *Comp. Pche.* p. 3
Canadian National Rys. Co. & Terwindt, *Re* (Can.); **38.** *Rys.* p. 36
Canadian National Steamships *v.* Bayliss (Can.); **41.** *Ship.* pp. 24, 25
Canadian Niagara Power Co. *v.* Stamford (Can.); **38.** *Rates*, p. 52
Canadian Northern Quebec Ry. Co. *v.* Fleet (Can.); **8.** *Carr.* p. 2
Canadian Northern Ry. Co. *v.* Ketcheson (Can.); **11.** *Comp. Pche.* p. 15
— *v.* Ousley (Can.); **2.** *Arbn.* p. 86
Canadian Northern Ry. Co. & Ottawa, *Re* (Can.); **17.** *Deeds*, p. 30
Canadian Oil Co., Ltd. *v.* Jamieson (Can.); **25.** *Fraud. Conv.* p. 14
Canadian Oil Cos., Ltd. *v.* Margeson (Can.); **16.** *Courts*, p. 9
Canadian Orchestraphone, Ltd. *v.* British Canadian Trust Co. (Can.); **43.** *Trov.* p. 56
Canadian Pacific Ry. Co., *Re* (Can.); **38.** *Real Prop.* p. 94
— *Re*, Crown Lumber Co. *v.* McKenzie (Can.); **21.** *Exon.* p. 47
— *v.* Calgary (Can.); **28.** *Injon.* p. 152
— *v.* CanadianNational Ry. Co. (Can.); **38.** *Rys.* p. 39
— (Owners of Princess Adelaide) *v.* Hampholm, The (Can.); **41.** *Ship.* p. 53
— *v.* Hampholm, The (Can.); **41.** *Ship.* p. 53
— *v.* Hickman Grain Co. (Can.); **8.** *Carr.* p. 3
— *v.* Mang (Can.); **38.** *Real Prop.* p. 94
— *v.* Murray (Can.); **38.** *Rys.* p. 41
— *v.* Ottawa Fire Insurance Co. (Can.); **17.** *Dep.* p. 53
— *v.* Parent (Can.); **22.** *Evid.* p. 26
— *v.* Paul (Can.); **11.** *Comp. Pche.* p. 16
— *v.* Prickett & Showalter (Can.); **40.** *S. Land*, p. 9
— *v.* R. (1931); **30.** *L. & T.* Nos. 1664a, 1677a, 1694a; **42.** *Tele.* No. 24a
— *v.* — (Can.); **1.** *Agcy.* p. 53
— *v.* Rosecastle S.S. (Can.); **41.** *Ship.* p. 57
— *v.* Silzer (Can.); **21.** *Exon.* p. 51
— *v.* Stewart (Can.); **2.** *Agric.* p. 15; **21.** *Exon.* p. 47
— *v.* Toronto Transportation Commission (Can.); **38.** *Rys.* pp. 44, 46
— *v.* Windebank (Can.); **2.** *Arbn.* p. 92
Canadian Pacific Ry. Co. & County & Township of York, *Re* (Can.); **17.** *Dep.* p. 40
Canadian Pacific Ry. Co., Grand Piles, P. Q., *Re* (Can.); **38.** *Rys.* p. 45
Canadian Peerless Jewelry Co. & Royal Trust Co. *v.* R. (Can.); **32.** *Lien*, p. 22
Canadian Performing Right Society *v.* Canadian National Exhibition Assocn. (Can.); **13.** *Coprt.* p. 17
— *v.* Famous Players Canadian Corpn. (Can.); **13.** *Coprt.* p. 14
— *v.* Ford Hotel (Can.); **13.** *Coprt.* p. 17
Canadian Port Huron Co. *v.* Burnett (Can.); **35.** *Mtge.* p. 40
Canadian Provincial Power Co. *v.* Nova Scotia Power Commission (Can.) (1927); **38.** *Real Prop.* p. 95
— *v.* — (Can.) (1929); **11.** *Comp. Pche.* p. 6
Canadian Radio Patents, Ltd. *v.* Higel Radio, Ltd. (Can.); **36.** *Pats.* p. 103
— *v.* Hobbs Hardware Co., Ltd. (Can.); **36.** *Pats.* p. 103
Canadian S. K. F. *v.* Royal Bank (Can.); **29.** *Insce.* p. 9
Canadian Shippers' Traffic Bureau *v.* Canadian National Rys. (Can.); **38.** *Rys.* p. 45
Canadian Shredded Wheat Co. *v.* Kellogg Co. (Can.); **43.** *Trade Mks.* p. 13
Canadian Shredded Wheat Co., Ltd. *v.* Kellogg Co. of Canada, Ltd. (1938); **43.** *Trade Mks.* No. 1094a
Canadian Starch Co. *v.* St. Lawrence Starch Co. (Can.); **1.** *Action*, p. 5
Canadian Steamship Lines, Ltd. & Toronto Terminals Ry. Co., *Re* (Can.); **11.** *Comp. Pche.* p. 6
Canadian Stevedoring Co., Ltd. *v.* Robin Line S.S. Co. (Can.); **17.** *Deeds*, p. 28
— *v.* Seas Shipping Co. (Can.); **17.** *Deeds*, p. 28
Canadian Surety Co. *v.* Doucett (Can.); **29.** *Insce.* p. 55
— *v.* Finch (Can.); **8.** *Chos.* p. 89
— *v.* Quebec Insurance Agencies, Ltd. (Can.); **29.** *Insce.* p. 55
Canadian Terminal System, Ltd. *v.* Kingston Corpn. (Can.); **7.** *Bldg. Conts.* p. 26

Canadian Utilities, Ltd. *v.* Strasbourg Town (Can.); **20.** *Electric*, p. 16
Canadian Vickers Co., Ltd. *v.* Susquehanna, The (Can.); **1.** *Adm.* pp. 40, 44
Canadian Western Steel Corpn., *Re* (Can.); **4.** *Bkpcy.* pp. 30, 32
Canadian Westinghouse Co., Ltd. *v.* Canadian Pacific Ry. Co. (Can.); **8.** *Carr.* p. 2
Canadian Wm. A. Rogers, Ltd. *v.* International Silver Co. of Canada, Ltd. (Can.); **43.** *Trade Mks.* p. 28
Canadian Woodmen of the World *v.* Hooper (Can.) (1933); **25.** *Fr. Soc.* p. 22
— *v.* — (Can.) (1935); **17.** *Damgs.* p. 15
Canal Co., Ltd. & Minister of Marine, *Re* (Aus.); **11.** *Comp. Pche.* p. 7
Canary *v.* Vested Estates, Ltd. (Can.) (1930); **18.** *Discy.* p. 10
— *v.* — (Can.) (1931); **18.** *Discy.* p. 23
Candy, *Ex p.* (Aus.); **40.** *S. Land*, p. 2
Cancy *v.* Leith (1937); **12.** *Contr.* No. 3324a
Canivet *v.* Brown's Bread, Ltd. (Can.); **2.** *Animals*, p. 61
Cann, *Re* (Can.); **20.** *Eqy.* p. 27
Cannel *v.* Buckle (1724); **7.** *Bonds*, No. 947a
Canner, *Re*, Bury *v.* Canner (1923); **34.** *Mines*, No. 277a
Canniffe *v.* Howie (Aus.); **1.** *Agcy.* p. 50
Canning *v.* R. (Can.); **14.** *Crim.* pp. 70, 71
Canning's Will Trusts, *Re*, Skues *v.* Lyon (1936); **37.** *Perps.* No. 493a
Cannock *v.* Jones (1849); **31.** *L. & T.* No. 4622a
Cannon *v.* Southwark Borough Council (1929); **33.** *L. G.* No. 48a
Cannon Brewery Co., Ltd. *v.* Signal Press, Ltd. (1928); **31.** *L. & T.* No. 6352a
Cannop Colliery Co., Ltd. *v.* Executive Board, *Re* Forest of Dean District (Coal Mines) Scheme, 1930 (1937); **34.** *Mines*, No. 327v
Cant *v.* Harley & Sons, Ltd. (1938); **25.** *Food.* No. 361a
Canterbury (Archbp.) *v.* Robertson (1832); **23.** *Exors.* No. 2754a
Canterbury Park Race Course Co., Ltd. *v.* Hopkins (Aus.); **13.** *Coprt.* p. 7
Cantiere *v.* Clyde (Scot.); **2.** *Aliens*, p. 45
Cantiere Navale Triestina *v.* Handelsvertretung der Russ. Soz. Föd. Soviet Republik Naphtha Export (1925); **12.** *Contr.* No. 3183a
Canton, The (1928); **36.** *Parl.* No. 155a
Canton (Owners) *v.* Rhesus (Owners) (1928); **1.** *Adm.* No. 1695a; **36.** *Parl.* No. 155a
Cantrell & Cochrane *v.* Neeson (Ir.); **3.** *Bailmt.* p. 6
Canvey Island Comrs. *v.* Preedy (1922); **7.** *Bounds. & F.* No. 171a
Cape Asbestos Co., Ltd. *v.* Lloyds Bank, Ltd. (1921); **3.** *Bank.* No. 756c
Cape Breton Cold Storage Co., Ltd. *v.* Rowlings (Can.); **9.** *Coys.* p. 29
Cape Breton Troops, *Re* Reference (Can.); **11.** *Const. L.* p. 73
Cape Coast Exploration, Ltd. *v.* Scholtz (S. Af.); **22.** *Evid.* p. 2
Capel St. Mary, Suffolk (Rector & Churchwardens) *v.* Packard (1927); **19.** *Eccl.* Nos. 1768a, 2801a, 2809a, 2818a, 2824a, 2899a, 2899b, 2904a, 2915a, 2924a, 2947a, 2947b, 2947c, 2947d, 2965a, 2972a, 3015a
Capel St. Mary, Suffolk (Rector & Churchwardens) *v.* Packard (1928); **19.** *Eccl.* Nos. 1768a, 1775a, 1789a, 2801a, 2809a, 2818a, 2824a, 2899a, 2899b, 2904a, 2915a, 2924a, 2947a, 2947b, 2947c, 2947d, 2965a, 2972a, 3015a
Capital Brewing Co., Ltd. *v.* R. (Can.); **31.** *L. & T.* p. 63
Capital Building Cleaners *v.* Slater-Sherwood (Can.); **36.** *Negl.* p. 25
Capital Transit, Ltd. *v.* Highway Transport, Ltd. (Can.); **42.** *Str. Traf.* p. 42
Capital Trust Corpn. *v.* Wilson, *Re* Wilson (Can.); **43.** *Trusts*, p. 63
Capital Trust Corpn., Ltd. & Coffey *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 80
Caplan, *Re* (Can.); **4.** *Bkpcy.* p. 48
Capon *v.* R. (Can.); **11.** *Const. L.* p. 67
Capron *v.* Capron (1927); **21.** *Exon.* No. 1754a; **27.** *H. & W.* No. 5957a
Captain J. A. Cates Tug & Wharfage Co. *v.* Franklin Insurance Co. (1927); **29.** *Insce.* Nos. 2014a, 2055a, 2152b, 2333a
Caraman Rowley & May *v.* Aperghis (1923); **12.** *Contr.* No. 5066a
Carbon Coal & Clay Co. *v.* Nanoose-Wellington Collieries (Can.); **12.** *Contr.* p. 4
Carbonit Akt., *Re*, *Re* Letters Patent No. 139,207 (1924); **11.** *Const. L.* No. 348a
Cardell *v.* New Quay Local Board (1875); **36.** *Nuis.* No. 134a
Carder, *Ex p.*, R. *v.* Barnstaple Justices (1938); **33.** *Mags.* Nos. 1433a, 1461a; **42.** *Theatres*, No. 159a
Cardiff Archdiocese Trustees *v.* Pontypridd Area Assessment Committee & Mountain Ash Rating Authority (1930); **38.** *Rates*, No. 267a
Cardiff Collieries, Ltd. *v.* Great Western Ry. Co. (1927); **8.** *Carr.* No. 1237c
— *v.* Meredith (1929); **34.** *Mines*, No. 1106a
Cardiff Corpn., *Ex p.*, R. *v.* Ayton (1935); **37.** *Poor L.* No. 91a
— *v.* Cardiff Pure Ice & Cold Storage Co., Ltd. (1930); **26.** *Hghys.* No. 2449a
— *v.* Cook (1923); **11.** *Comp. Pche.* No. 533a
Cardiff Hall, The (1918); **1.** *Adm.* No. 1280a
Cardiff Revenue Officer *v.* Cardiff Assessment Committee & David Duncan & Sons, Ltd. (1931); **38.** *Rates*, No. 226bb
— *v.* Cardiff Assessment Committee & Western Mail, Ltd. (1931); **38.** *Rates*, No. 226bb
— *v.* Lewis (William) & Sons, Ltd. (1931); **38.** *Rates*, No. 226k
Cardinal *v.* R. (Can.); **14.** *Crim.* p. 58
Cardston U.F.A. Co-operative Assocn., Ltd., *Re*, *Re* Province of Alberta (Can.); **4.** *Bkpcy.* p. 39
Carew's Trusts, *Re*, Gellibrand *v.* Carew (1910); **5.** *Bkpcy.* No. 5902a
Carey *v.* Carey (Ir.); **27.** *H. & W.* p. 51
— *v.* Leith (1937); **12.** *Contr.* No. 3324a
— *v.* Ocean Coal Co., Ltd. (1938); **34.** *Mines*, No. 1184b
— *v.* Rees (1938); **34.** *Mines*, No. 1184b
— *v.* Richards (1938); **34.** *Mines*, No. 1184b
Carey & Lot 65, Sub-division of Lot 39 E., St. John, *Re* (Can.); **38.** *Rates*, p. 85
Cariboo Gold Quartz Mining Co. *v.* Island Mountain Mining Co. (Can.); **34.** *Mines*, p. 199
Carl Ingenohl & Werner Davidis Trade Mark, *Re* (1931); **43.** *Trade Mks.* No. 432a
Carlaw (David) & Sons, Ltd. *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 103
Carlile *v.* Northern Trusts Co. (Can.); **1.** *Agcy.* p. 69
Carling Export Brewing & Malting Co., Ltd. *v.* R. (Can.); **39.** *Revenue*, p. 14
Carlino *v.* Zimblarte (Can.); **32.** *Limit. of A.* p. 28
Carlisle *v.* Orr (No. 2) (Ir.); **1.** *Action*, p. 12
Carlisle Corpn. *v.* Saul's Exors. (1907); **26.** *Hghys.* No. 2401a
Carlson *v.* Duncan (Can.); **2.** *Agric.* p. 15
— *v.* Thompson (Can.); **1.** *Agcy.* p. 85

Carlsson *v.* Saga, The (Can.); **1.** *Adm.* p. 38
Carlston, The, The Balcombe (1926); **1.** *Adm.* No. 894b
Carlton, The (1931); **41.** *Ship.* Nos. 8697a, 8698a
Carlton Hall Club *v.* Laurence (1929); **25.** *Gaming*, No. 188b
Carlton Hotel Co., Ltd. *v.* Gardiner (Can.); **9.** *Coys.* p. 37; **17.** *Deeds*, p. 27
Carlton Main Colliery Co., Ltd. *v.* Clawley (1917); **35.** *Mtge.* No. 4246a
Carluke Co-operative Society *v.* Lanarkshire Assessor (Scot.); **38.** *Rates*, p. 55
Carlyle, The (1858); **1.** *Adm.* No. 970a
Carmarthen Revenue Officer *v.* United Dairies (Wholesale), Ltd. (1931); **38.** *Rates*, No. 226dd
Carmichael, *Ex p.*, R. *v.* Postmaster-General (1928); **16.** *Cr. Pract.* No. 2736a
— *v.* Bowers (Can.); **1.** *Agcy.* p. 80
— *v.* Kent (Can.); **27.** *H. & W.* p. 2
Carmichael & Carmichael *v.* Edmonton (City) (Can.); **38.** *Pub. Auth.* p. 12
Carmichael Rural Municipality *v.* Gilberg (Can.); **32.** *Limit. of A.* p. 29
Carmichael's Trustee *v.* Carmichael (Scot.); **4.** *Bkpcy.* p. 29
Carnarvon *v.* Inland Revenue Comrs. (1934); **28.** *Inc. T.* No. 688a
Carnarvon Estates Co. *v.* Inland Revenue Comrs. (1935); **28.** *Inc. T.* No. 674t
Carnarvon Harbour Acts, 1793 to 1903, *Re*, Thomas *v.* A.-G. (1937); **30.** *Jdgmts.* No. 202b
Carnarvon's (Earl) Chesterfield Settled Estates, *Re*, *Re* Carnarvon's (Earl) Highclere Settled Estates (1927); **13.** *Corpns.* No. 903a
Carnegie *v.* Carnegie (Ir.); **21.** *Estpl.* p. 23
— *v.* Cox (Can.); **18.** *Discy.* p. 17
Carney *v.* Fair (Ir.); **1.** *Agcy.* p. 61
Carnoustie Golf Course Committee *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 18
Caron, *Ex p.*, R. *v.* Begin (Can.); **16.** *Cr. Pract.* p. 43; **30.** *Intox.* p. 6
— *v.* R. (1924); **17.** *Dep.* Nos. 130b, 130c
Carpathia Tin Mining Co., Ltd., *Ex p.* (Aus.); **28.** *Inc. T.* p. 103
Carpenter *v.* Commercial Bank of Canada (Can.); **21.** *Estpl.* p. 28
— *v.* Ebblewhite (1938); *Pract.* No. 1120a
— *v.* Fox (1929); **42.** *Str. Traf.* Nos. 185a, 232a, 232b
— *v.* Haymarket Hotel, Ltd. (1931); **29.** *Inns*, No. 186a
Carpenter Hales & Co., Ltd., *Re* (Aus.); **10.** *Coys.* p. 77
Carpenters Co. *v.* British Mutual Banking Co., Ltd. (1938); **3.** *Bank.* No. 680b
Carpet Import Co., Ltd. *v.* Beath & Co., Ltd. (N.Z.); **19.** *Easmt.* p. 6; **26.** *Hghys.* p. 18; **28.** *Injon.* p. 147
Carpmael's Application, *Re* (1928); **36.** *Pats.* No. 1495a
Carr, *Ex p.*, *Re* Beauchamp Brothers (1896); **4.** *Bkpcy.* Nos. 4116a, 4152a
—, *Re*, *Ex p.* Jacobs (1901); **4.** *Bkpcy.* Nos. 1177a, 1178a, 1178c
— *v.* Baker (Aus.); **1.** *Action*, p. 13
— *v.* Bank of Montreal (Can.); **26.** *Guar.* p. 2
— *v.* British Columbia Nickel Mines, Ltd. (Can.); **9.** *Coys.* p. 48
— *v.* — (No. 2) (Can.); **10.** *Coys.* p. 92
— (otherwise Fowler) *v.* Carr (1936); **27.** *H. & W.* No. 175a
— *v.* Dempsey (Can.); **32.** *Lien*, p. 23
— *v.* Forrest, *Re* Forrest (1931); **44.** *Wills*, No. 2249a
— *v.* Fry & McCune (Can.); **1.** *Agcy.* p. 59
Carr *v.* Guardian Assurance Co., Ltd. & Cracknell & Crimp (N.Z.); **29.** *Insce.* p. 40
— *v.* La Dreche (Can.); **1.** *Agcy.* p. 80
— *v.* London, Midland & Scottish Ry. Co. (Ir.); **8.** *Carr.* p. 12
— *v.* Tannahill (Can.); **1.** *Action*, p. 15
Carr's Settlement, *Re*, Riddell *v.* Carr (1933); **40.** *Stlmts.* No. 1979a
Carr-Harris *v.* Canadian General Electric Co. (Can.); **12.** *Contr.* p. 22
Carrall *v.* Montreal Bank (Can.); **21.** *Exon.* p. 48
Carras *v.* London & Scottish Assurance Corpn., Ltd. (1936); **29.** *Insce.* No. 2093a
Carrel *v.* Hart (Can.); **32.** *Lien*, p. 24
Carrick, *Re* (Can.); **8.** *Char.* p. 74
Carrie, *Re* (Can.); **5.** *Bkpcy.* p. 90
Carrigan, *Ex p.*, *Ex p.* Brown, R. *v.* Archdall & Roskruge (Aus.); **43.** *Trade*, p. 9
Carrington, *Re*, Ralphs *v.* Swithenbank (1932); **20.** *Eqy.* No. 956a
Carrique *v.* Catts (Can.); **35.** *Misrep.* p. 6
Carroll, *Re* (1930), 94 J. P. Jo. 785; **3.** *Basty.* No. 226a
— (J. M.), *Re*, [1931] 1 K. B. 317; **3.** *Basty.* No. 226a; **13.** *Corpns.* No. 1411a
—, *Re* [1931], 1 K. B. 104; **16.** *Courts*, No. 903a; *Cr. Pract.* No. 804a; *Pract.* No. 3740a
—, *Re* (Can.); **30.** *Intox.* p. 17
— *v.* Baer (Can.); **17.** *Damgs.* p. 19
— *v.* Carroll (Can.); **27.** *H. & W.* p. 12
— *v.* Ewers (Ir.); **2.** *Animals*, p. 72
— *v.* Hargrave (Ir.); **32.** *Limit. of A.* p. 35
— *v.* Kennerley (Can.); **21.** *Estpl.* p. 31
— *v.* National Press, Ltd. (Can.); **32.** *Libel*, p. 17
— *v.* Rogers (Can.); **35.** *Mtge.* p. 40
— *v.* Solomon (Aus.); **3.** *Auct.* p. 1
Carroll & N. I. M. U. Insurance Co. Arbitration, *Re* (N.Z.); **29.** *Insce.* p. 48
Carroll & Wright, *Re*, *Ex p.* Bain (Can.); **42.** *Stk. Ex.* p. 34
Carron Co. *v.* Thom (Scot.); **34.** *Mast. & S.* p. 179
Carrot River Rural Municipality, *Re*, *Re* Rural Municipality Act, Minaker *v.* Sanderson (Can.); **20.** *Elect.* p. 6
Carruth *v.* Galbraith's Stores (Scot.); **34.** *Mast. & S.* p. 155
— *v.* Imperial Chemical Industries, Ltd. (1937); **9.** *Coys.* No. 849a
Carruthers, *Ex p.*, *Re* Gaudreau (Can.); **5.** *Bkpcy.* p. 82
— *v.* MacGregor (Scot.); **7.** *Bldg. Conts.* p. 26; **36.** *Negl.* p. 25
— *v.* Peake (1911); **25.** *Fraud. Conv.* No. 220a
Carscaden, *Re* (Can.); **30.** *Jdgmts.* p. 23
Carscallen *v.* Leeson (Can.); **2** *Agric.* p. 14
— *v.* Moodie (Can.); **21.** *Exon.* p. 49
Carson, *Re* (Can.) (1922); **5.** *Bkpcy.* p. 70
—, *Re* (Can.) (1924); **5.** *Bkpcy.* pp. 72, 74
— *v.* Simpson (Can.); **21.** *Exon.* p. 48
— *v.* Willitts (Can.); **17.** *Damgs.* p. 7
Carstairs *v.* Spence (Scot.); **19.** *Easmt.* p. 10
Carswell *v.* Carswell (Can.); **27.** *H. & W.* p. 40
Carter, *In the Estate of*, Ascot Timber Co. Pty., Ltd. *v.* Carter (Aus.); **21.** *Exon.* p. 50
—, *In the Goods of* (1843); **23.** *Exors.* No. 1031e
—, *Re* (Can.); **34.** *Mast. & S.* p. 87
— *v.* Beard (1839); **7.** *Burial*, No. 20a
— *v.* Bell & Sons (Canada), Ltd. (Can.); **34.** *Mast. & S.* p. 5
— *v.* British Thomson-Houston Co., Ltd. (1927); **34.** *Mast. & S.* No. 2515a
— *v.* Carter (Aus.); **27.** *H. & W.* p. 29
— *v.* — (N.Z.); **11.** *Confl.* p. 51
— *v.* Golland (Can.); **35.** *Misrep.* p. 5
— *v.* Lanarkshire Assessor (Scot.); **38.** *Rates*, p. 52

Carter *v.* Maritime United Farmers Co-operative (Can.); **12.** *Contr.* p. 54
— *v.* Murray (Aus.); **34.** *Mast. & S.* p. 24
— *v.* Patrick (Can.); **18.** *Desct.* pp. 2, 4
— *v.* Sharon (1936); **28.** *Inc. T.* Nos. 425b, 449b
— *v.* Suddaby (Can.); **19.** *Easmt.* p. 13
— *v.* Van Camp & Anderson (Can.); **36.** *Negl.* p. 33
— *v.* Warne (1830); **5.** *Bkpcy.* Nos. 7649b, 9026a
— *v.* Wilson (Can.); **42.** *Str. Traf.* p. 38
Carter's (Sir John) Case (1774); **16.** *Cr. Pract.* No. 1848
Cartier Rural Municipality *v.* Director of Child Welfare (Can.); **3.** *Bastly.* p. 59
Cartlidge *v.* Shelton Iron, Steel & Coal Co., Ltd. (1934); **34.** *Mast. & S.* No. 2865a
Cartwright, *Re*, Cartwright *v.* Smith (1938); **11.** *Confl.* No. 511a
— *v.* Amatt (1799); **36.** *Pats.* No. 1534a
— *v.* Crossley & Porter Orphan Home & School, Governors (1934); **34.** *Mast. & S.* No. 3401a
— *v.* Glover (1861); **5.** *Bkpcy.* No. 7670a
— *v.* Lilleshall Co., Ltd. (1937); **34.** *Mast. & S.* No. 3052a
— *v.* Lyster & Bank of Nova Scotia (Can.); **3.** *Bank.* p. 43
— *v.* Shell-Mex & B.P., Ltd. (1932); **34.** *Mast. & S.* No. 2486a
— *v.* Smith, *Re* Cartwright (1938); **11.** *Confl.* No. 511a
Carus Wilson's Case (1845); **16.** *Cr. Pract.* No. 650a
Carver *v.* A.-G. of Prince Edward Island (Can.); **11.** *Const. L.* p. 69
Carvill *v.* Black (Can.); **21.** *Exon.* p. 49
Carville, *Re*, Shone *v.* Walthamstow Borough Council (1937); **23.** *Exors.* No. 5408b
Casa Loma, *Re* (Can.); **38.** *Pub. Hlth.* p. 14; *Rys.* p. 46
Cascade Brewery Co., Ltd. *v.* Collector of Stamp Duties (Aus.); **35.** *Mtge.* p. 33
Case (J. I.) Threshing Machine Co. *v.* Dalton (Can.); **39.** *S. Goods*, p. 60
— *v.* General Motors Acceptance Corpn. (Can.); **8.** *Chos.* p. 94
— *v.* Mitten (Can.); **21.** *Estpl.* p. 42
Casey *v.* Continental Casualty Co. (Can.) (1933); **29.** *Insce.* p. 39
— *v.* Grey County Council (N.Z.); **34.** *Mast. & S.* p. 26
Casey Estate, *Re* (Can.); **20.** *Eqy.* p. 25
Cashin *v.* Cashin (1938); **24.** *Fam. Arr.* No. 86a
Cashin & Lewis *v.* R. (Can.); **39.** *Revenue*, p. 26
Casse, *Re*, *Ex p.* Robinson *v.* Trustee (1937); **5.** *Bkpcy.* No. 8869a
—, *Re*, Robinson *v.* Grigg (1937); **5.** *Bkpcy.* No. 8869a
Cassel, *Re*, Public Trustee *v.* Mountbatten (1927); **21.** *E. D.* Nos. 22a, 136c, 254a
— *v.* Thompson (Can.); **36.** *Negl.* p. 19
Cassels *v.* T. T. C. (Can.); **36.** *Negl.* p. 30
Cassidy, *Re* (Can.); **38.** *Real Prop.* p. 93
— *v.* A.-G. of Irish Free State (Ir.); **17.** *Dep.* p. 87
— *v.* Blaine Lake Rural Telephone Co., Ltd. (Can.); **34.** *Mast. & S.* p. 25
— *v.* Daily Mirror Newspapers, Ltd. (1929); **32.** *Libel*, Nos. 866a, 907a
— *v.* Ingoldsby (Can.); **21.** *Estpl.* p. 27
— *v.* Langmuir (Scot.); **25.** *Gaming*, p. 33
— *v.* R. (Can.); **14.** *Crim.* p. 64
— *v.* Stuart (Can.); **42.** *Solrs.* p. 10
Cassidy (A. W.) & Co. *v.* Hicks (Can.); **7.** *Bldg. Conts.* p. 27; **32.** *Lien*, p. 27
Cassimjee *v.* Maharaj (S. Af.); **6.** *B. of Exch.* p. 18
Casswell & Co., Ltd. & Donald & Jacobs, Ltd., *Re* (N.Z.); **2.** *Arbn.* p. 93
Castelein *v.* Boux (Can.); **21.** *Exon.* p. 58
Castle *v.* Bilsky (Can.); **12.** *Contr.* p. 47
Castlecomer Co-operative Society, *Re* (Ir.); **28.** *Ind. Soc.* p. 128
Castleman *v.* Johnson (Can.); **16.** *Cr. Pract.* p. 34
Castner-Kellner Alkali Co., Ltd. (1930); **10.** *Coys.* Nos. 7385a, 7398a
Castor, The (1932); **41.** *Ship.* Nos. 7475a, 7477b
Caswell *v.* Powell Duffryn Associated Collieries, Ltd. (1938); **34.** *Mines*, No. 1184c
Catala, The *v.* Dagsland (Can.); **1.** *Adm.* p. 47; **34.** *Mast. & S.* p. 179
Catalina S.S. Owners *v.* Norma Owners (1938); **2.** *Arbn.* No. 812a
Catchpool, *Re*, Harris *v.* Catchpool (1928); **40.** *Stllmts.* No. 3139a
Cates Co., Ltd. *v.* Bank of Montreal (Can.); **35.** *Mtge.* p. 44
Catholic Publishing & Bookselling Co., Ltd. *v.* Wyman (1863); **22.** *Evid.* No. 5523a
Cathro's Application, *Re* (1934); **36.** *Pats.* No. 1658b
Catlin & Reid, *Re* (Can.); **43.** *Trusts*, p. 64
Catling, *Re*, Public Trustee *v.* Catling (1931); **40.** *Stllmts.* No. 2633a
Cato *v.* Alion (S. Af.); **17.** *Damgs.* p. 7
Cattle *v.* Thorpe (1900); **43.** *Trade*, No. 457a
Catton *v.* Ashwell & Nesbit, Ltd. (1928); **34.** *Mast. & S.* No. 3702c
Caudwell *v.* George (Can.); **21.** *Exon.* p. 52
Caufield *v.* R. (Can.); **14.** *Crim.* p. 24
Caughey *v.* Copeland, *Re* Patton (Ir.); **23.** *Exors.* p. 26
Cauldon Potteries, Ltd. *v.* Johnson (1926); **34.** *Mast. & S.* Nos. 3192a, 3821a
Caulfield *v.* Arnold (No. 1) (Can.); **12.** *Contr.* p. 23
— *v.* Arnold (No. 2) (Can.); **35.** *Mistake*, p. 7
Caus, *Re*, Lindeboom *v.* Camille (1934); **8.** *Char.* No. 106a
Cavaliero *v.* Slater (1854); **31.** *L. & T.* No. 4142a
Cavanagh, *Re* (N.Z.); **44.** *Wills*, p. 55
Cave *v.* Dudley Co-operative Society (1934); **25.** *Food*, No. 439j
— *v.* Page (1923); **2.** *Agric.* No. 265a
Cavelier, The *v.* Liverpool Shipping Co. (Can.); **41.** *Ship.* p. 54
Caven *v.* Canadian Pacific Ry. Co. (Can.); **18.** *Discy.* pp. 17, 22
— *v.* Ottawa (Can.); **38.** *Rates*, p. 82
Cavenett, *Re* (N.Z.); **16.** *Cr. Pract.* p. 29; **33.** *Mags.* p. 29
Cavicchi, *Re* (Can.); **4.** *Bkpcy.* p. 3
Cawthra *v.* McGuire (Can.); **35.** *Mtge.* p. 46
Cay & Hill *v.* Marcotte, *Re* Stretton Estate (Can.); **24.** *Exors.* p. 35
Cayley & Evans' Contract, *Re* (1930); **40.** *Stllmts.* No. 3074b
Cayzer, Irvine & Co. *v.* Board of Trade (1925); **2.** *Arbn.* No. 254a
— *v.* Board of Trade (1927); **32.** *Limit. of A.* No. 139a
Cecil *v.* Plaistow (1794); **5.** *Bkpcy.* No. 9253a
— *v.* Wettlaufer (Can.); **1.** *Agcy.* p. 85
Cecil-Wright *v.* McCulloch (1936); *Pract.* No. 2036a
Cecilian Co., *Re* (Can.); **4.** *Bkpcy.* p. 38
Cedar Rapids Manufacturing & Power Co. *v.* Lacoste (Can.); **11.** *Comp. Pche.* p. 15; **38.** *Rys.* p. 35
Cellulose Acetate Silk Co., Ltd. *v.* Widnes Foundry (1925), Ltd. (1933); **17.** *Damgs.* No. 426b
Cellulose Acetate Silk Co.'s Ltd.'s Application for a Patent, *Re* (1935); **36.** *Pats.* No. 459p

Celtic, The (1931); **41.** *Ship.* Nos. 685a, 685b **42.** *Stats.* Nos. 448a, 598a
Cement Gun Co., Ltd. Trade Marks, *Re* (1933); **43.** *Trade Mks.* No. 442a
Central Bank & Hogg, *Re* (Can.); **9.** *Coys.* p. 16
Central Broadcasters, Ltd. *v.* South Australia Deputy Federal Taxation Comr. (Aus.); **28.** *Inc. T.* p. 43
Central Canada Ry. Co. Arbitrations, *Re* (Can.); **11.** *Comp. Pche.* p. 10
Central Hotel & Homfray & Bral, *Re* (Can.); **31.** *L. & T.* p. 63
Central Illawarra Shire Council, *Re*, *Ex p.* Ballantine (Aus.); **38.** *Pub. Hlth.* p. 22
Central India Mining Co. *v.* Société Coloniale Anversoise (1920); **2.** *Aliens*, No. 198a
Central London Railway *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 369d
Central Marine Engine Works *v.* Amalgamated Ry. Cos. (1930); **38.** *Rates*, No. 226kk
Central Motors, Glasgow, Ltd. *v.* Cessnock Garage & Motor Co. (Scot.); **3.** *Bailmt.* p. 8
Central Trust Co. of Canada *v.* MacPherson (Can.); **44.** *Wills*, p. 45
Centre Star Mining Co., Ltd. *v.* Rossland Miners' Union (Can.); **13.** *Corpns.* p. 26; **18.** *Discy.* p. 7
Century Indemnity Co. *v.* Northwestern Utilities, Ltd. (Can.); **29.** *Insce.* pp. 58, 59
— *v.* Rogers & Fitzgerald (Can.); **21.** *Exon.* p. 54
Cephalonia, The, The Ambatielos (1923); **1.** *Adm.* No. 430a
Chabot *v.* Davies (1936); **13.** *Coprt.* Nos. 70a, 403a
Chadwyck-Healey *v.* Crawford, *Re* Nicholson (1938); **23.** *Exors.* No. 4937a
Chajutin *v.* Whitehead (1938); **2.** *Aliens*, No. 558l; **14.** *Crim.* No. 82a
Chalefour *v.* Cretien (Can.); **2.** *Animals*, p. 56
Chalifoux, *Ex p.*, *Ex p.* Fong, *Ex p.* You (Can.); **16.** *Cr. Pract.* p. 27; **17.** *Dep.* p. 56
Challenger *v.* Rae (Aus.); **17.** *Dep.* p. 61
Challis *v.* Warrender (1930); **25.** *Gaming*, No. 504b
Challoner *v.* Challoner (Can.); **27.** *H. & W.* p. 11
Chalmers, *Ex p.*, *Re* R. *v.* Solloway (Can.); **16.** *Cntmpt.* p. 4
— *Re* (N.Z.); **3.** *Barr.* p. 48
— *v.* Chalmers (1930); **21.** *Estpl.* No. 224a; **27.** *H. & W.* Nos. 4763a, 5159a, 5194a
— *v.* R. (Can.); **14.** *Crim.* p. 58
Chamandy Brothers, Ltd. *v.* Albert (Can.); **6.** *B. of Exch.* p. 9
Chamberlain, *Ex p.* (Can.); **38.** *Real Prop.* p. 95
— *v.* Agar (1813); **23.** *Exors.* No. 718a
— *v.* Chamberlain, *Re* Chamberlain's Settlement (1921); **2.** *Aliens*, Nos. 49c, 49j, 215c
— *v.* Haig Thomas (1933); **28.** *Inc. T.* No. 545e
Chamberlain & Peerless Bumper & Accessories, Ltd., *Re* (Can.); **18.** *Distr.* p. 25
Chamberlain & Sproat *v.* Wall & Lloyd (1920); **3.** *Bank.* No. 38a
Chamberlain & Willows *v.* Rose (1924); **1.** *Agcy.* Nos. 1813a, 2083a
Chamberlain's Settlement, *Re*, Chamberlain *v.* Chamberlain (1921); **2.** *Aliens*, Nos. 49c, 49j, 215c
Chamberlin *v.* Maw (Can.); **1.** *Agcy.* p. 76
— *v.* Sperry (Can.); **36.** *Negl.* p. 11
Chambers, *Re* (Aus.); **44.** *Wills*, p. 47
— *v.* Chambers (1730); **40.** *Stllmts.* No. 2319a
— *v.* Dollar & Stevenson (Can.); **21.** *Estpl.* p. 26
— *v.* Unger (Can.); **21.** *Estpl.* p. 26
— *v.* Waters (1833); **43.** *Trusts*, No. 769a
Chambers, Clark & Crighton *v.* Sampson (Can.); **42.** *Str. Traf.* p. 37
Chamier *v.* De Vere Hotels, Ltd. (1928); **29.** *Inns*, No. 177a
Chamney *v.* Lewis (1932); **28.** *Inc. T.* No. 446c
Champagne Heidsieck et Cie Monopole Societe Anonyme *v.* Buxton (1930); **43.** *Trade Mks.* No. 414a
Champaklal Gopaldas *v.* Keshrichand Naganmal (Ind.); **6.** *B. of Exch.* p. 1
Champdany Jute Co., Ltd., *Re* (Scot.); **10.** *Coys.* p. 91
Champion, The (1934); **1.** *Adm.* No. 1724a
Champney's Executors *v.* Inland Revenue Comrs. (1934); **28.** *Inc. T.* No. 674ll
Champsey Bhara & Co. *v.* Jivraj Balloo Spinning & Weaving Co. (1923); **2.** *Arbn.* No. 1598b
Chance, *Re* (1936); **21.** *Exon.* No. 1536a
— *v.* Billing, *Re* Chance's Settlement Trusts (1918); **20.** *Eqy.* No. 2373a
Chance's Settlement Trusts, *Re*, Chance *v.* Billing (1918); **20.** *Eqy.* No. 2373a
Chancel Repairs Act, 1932, *Re*, Wickhambrook Parochial Church Council *v.* Croxford (1935); **19.** *Eccl.* No. 472c
Chandan Mall Karnani *v.* Sardari Lal Thapar (Ind.); **16.** *Cntmpt.* p. 1
Chandanmull Benganey *v.* National Bank of India, Ltd. (Ind.); **3.** *Bank.* p. 89
Chandler *v.* Chandler (1858); **27.** *H. & W.* No. 3891a
— *v.* R. (N.Z.); **8.** *Carr.* p. 8
Chandler & Co. *v.* Winchester (1930); **1.** *Agcy.* No. 176a
Chandler (J. H.) & Co., Ltd., *Re* (Ind.); **9.** *Coys.* p. 5
Chandler & Massey *v.* Irish (Can.); **9.** *Coy.* p. 29
Chandler Bros., Ltd. *v.* Boswell (1936); **7.** *Bldg. Conts.* No. 369a
Chandler's Estate, *Re* (Can.); **24.** *Exors.* p. 41; **35.** *Mtge.* p. 41
Chandra Das *v.* Raseswari Chaudhurani (Ind.); **16.** *Contmpt.* p. 7
Chandra Kishore Chakravarty *v.* Biseswar Pal (Ind.); **38.** *Real Prop.* p. 91
Chandrasekera (otherwise Alisandiri) *v.* R. (1937); **17.** *Dep.* No. 561a
Chandreshwar Prasad Narain Singh *v.* Bisheshwar Pratap Narain Singh (Ind.); **23.** *Exors.* p. 12
Chandulal Madhavlal *v.* Maneklal (Ind.); **39.** *Recrs.* p. 1
Chaney *v.* Maclow (1929); **3.** *Auct.* No. 63a
Chaney & Bull, *Re* (Scot.); **10.** *Coys.* p. 67
Channel Queen, The (1928); **1.** *Adm.* No. 1521a
Channell *v.* O'Cedar Corpn. (Can.); **36.** *Pats.* pp. 92, 103
Chan Pyv *v.* Saw Sin (Ind.); **11.** *Confl.* p. 33; **17.** *Custom*, p. 1
Chantrey's Will, *Re*, Leighton *v.* Hughes & A.-G. (1889); **32.** *Lit. Inst.* No. 10a
Chapdelaine *v.* R. (Can.), [1935] 1 D. L. R. 805; **14.** *Crim.* p. 40
— *v.* — (Can.), [1935] S. C. R. 53; **14.** *Crim.* p. 38
Chapelas *v.* Coukes (Can.); **27.** *H. & W.* p. 86
Chapel-en-le-Frith Church Council *v.* Bagshawe, *Re* Lichfield Cathedral Grant (1929); **19.** *Eccl.* No. 1981a
Chapiewski *v.* Campbell (Can.); **2.** *Agric.* p. 20
Chaplin, *Ex p.*, *Re* Harrington Motor Co. (1928); **10.** *Coys.* No. 6056a
—, *Re*, Neame *v.* A.-G. (1933); **8.** *Char.* No. 47d
— *v.* Chaplin (Aus.); **27.** *H. & W.* p. 42
— *v.* Ruane, *Re* Messenger's Estate (1937); **44.** *Wills*, No. 4385a
Chapman, *Re* (1882); **42.** *Solrs.* No. 2813a
—, *Re*, Hales *v.* A.-G. (1922); **8.** *Char.* Nos. 740a, 1424a, 1449a

Chapman *v.* Chapman (N.Z.); **27.** *H. & W.* p. 41
— *v.* Chapman & Thomas (1938); **27.** *H. & W.* No. 2999b
— *v.* Doherty (Can.); **16.** *Courts*, p. 10
— *v.* Ellesmere (1932); **17.** *Damgs.* No. 625a; **32.** *Libel*, Nos. 167c, 1654b, 1654c
— *v.* Fylde Waterworks Co. (1894); **26.** *Hghys.* No. 1372a
— *v.* Garlick, Burrell & Edwards, Ltd. (1937); **8.** *Carr.* No. 1526
— *v.* Marshall Sons & Co., Ltd. (1936); **34.** *Mast. & S.* No. 3283e
— *v.* Morley (1891); **33.** *Mal. Pros.* No. 100a
— *v.* Paulson (Can.); **32.** *Limit. of A.* p. 32
Chapman (or Oliver) *v.* Saddler & Co. (1929); **36.** *Negl.* No. 662a
— *v.* Warren (Can.); **9.** *Coys.* p. 33
Chapman & Cook & Lectro Linx, Ltd. *v.* Deltavis, Ltd. (1930); **36.** *Pats.* No. 2358b
Chapman & Sons *v.* Stoddart & Co. (Can.); **18.** *Discy.* p. 14
Chapman's Patent, *Re* (1938); **36.** *Pats.* No. 2005a
Chappell, *Ex p.*, *Re* Merchant Traders' Ship, Loan & Insurance Assocn. (1852); **4.** *Bkpcy.* No. 5367
— *v.* Chappell (1938); **27.** *H. & W.* No. 6030a
— *v.* Rees (1852); **32.** *Limit. of A.* No. 976a
Chappell & Co., Ltd. *v.* Associated Radio Co. of Australia, Ltd. (Aus.); **13.** *Coprt.* p. 17
Chapple *v.* Chapple (1929); **27.** *H. & W.* No. 5364a
— *v.* Moss (Aus.); **1.** *Agcy.* p. 76
Chappus *v.* La Salle (Town) (Can.); **26.** *Hghys.* p. 25
Chappus & La Salle (Town), *Re* (Can.); **26.** *Hghys.* p. 45; **38.** *Pub. Hlth.* p. 15
Chardon, *Re*, Johnston *v.* Davies (1928); **8.** *Char.* No. 231a; **37.** *Perps.* No. 408a
Charlebois *v.* Baril (Can.); **12.** *Contr.* p. 7
Charles *v.* Cardiff Collieries, Ltd. (1928); **34.** *Mines*, No. 1106a
— (Doe d.) *v.* Cotton (Can.); **32.** *Limit. of A.* p. 37
— *v.* Kempthorne, *Re* Kempthorne (1930); **20.** *Eqy.* No. 817a; **23.** *Exors.* No. 5917f
— *v.* Lewis & McMahon (Can.); **20.** *Elect.* pp. 1, 6
Charles (L. H.) & Co., Ltd., *Re* (1935); **10.** *Coys.* No. 4967b
Charles Atkins & Co., Ltd. *v.* Backhouse (Aus.); **31.** *L. & T.* p. 76
Charles Dale, Ltd. (Scot.); **10.** *Coys.* p. 96
Charles Hunt, Ltd. *v.* Palmer (1931); **3.** *Auct.* No. 191a; **40.** *S. Land*, Nos. 576a, 1220a
Charles II, King's Grant, *Re*, Giffard *v.* Penderel-Brodhurst (1936); **39.** *Rntchgs.* No. 335a
Charlesworth *v.* Fox (Samuel) & Co., Ltd. (1937); **34.** *Mast. & S.* No. 3811l
Charlotte, The (1920); **1.** *Adm.* No. 781h
Charlotte (Owners) *v.* Theory (late) (Owners), The Charlotte (1921); **1.** *Adm.* No. 1553a
Charlottetown *v.* Foundations Maritime, Ltd. (Can.); **17.** *Dep.* p. 48; **38.** *Pub. Hlth.* p. 16
— *v.* Tanton (Can.); **38.** *Rates*, p. 82
Charlton *v.* Fox (1865); **30.** *Jdgmts.* No. 448a
— *v.* Saden (1836); **24.** *Exors.* No. 7276a
— *v.* Union Castle Line, Ltd. (1930); **34.** *Mast. & S.* No. 3748a
— *v.* West (1861); **33.** *Lunat.* No. 1459a
Charman *v.* Southern Ry. Co. (1934); **8.** *Carr.* Nos. 1682, 1689, 1701, 1702
Charrington & Co., Ltd. *v.* Simpson (1935); **31.** *L. & T.* Nos. 2306j, 2306m
Charrington, Gardner, Lockett & Co., Ltd. *v.* Southern Ry. Co. (1926); **8.** *Carr.* No. 976a
Chartered Bank of India, Australia & China *v.* Mercantile Bank of India, Ltd. & Strauss & Co., Ltd. (1937); **9.** *Coys.* No. 4129a
Chartered Bank of India, Australia & China *v.* Mercantile Bank of India, Ltd. & Strauss & Co., Ltd (No. 2) (1937); **3.** *Bank.* No. 865c
Chartered Surveyors' Benevolent Fund (Incorporated), *Re* (1936); **9.** *Coys.* No. 4362a
Chartered Trust & Executor Co. *v.* Bell & Bursey (Can.); **5.** *Bkpcy.* p. 70
Charteris, *Re* (Can.); **33.** *Lunat.* p. 16
Charters, *Re*, *Ex p.* Trustee (1923); **5.** *Bkpcy.* No. 7119a
Chartrand *v.* D'Aoust Frenette Auto, Ltd. (Can.); **42.** *Str. Traf.* p. 61
Charvonia *v.* Esterman (1931); **31.** *L. & T.* No. 7038a
Chase *v.* Coleridge (Can.); **2.** *Animals*, p. 57
— *v.* Layton, *Re* Grazebrook (Aus.); **44.** *Wills*, p. 30
— *v.* Layton, *Re* Grazebrook (No. 2) (Aus.); **24.** *Exors.* p. 42
— *v.* Northern Trusts Co. (No. 2) (Can.); **22.** *Evid.* p. 25
Chasteney *v.* Nairn (Michael) & Co., Ltd. (1937); **24.** *Fact.* No. 71b
Chatenay *v.* Chatenay (Can.); **11.** *Confl.* p. 50
Chatham (Township) Corpn. *v.* Houston (Can.); **12.** *Contr.* p. 49
Chatham Corpn. *v.* Wright (1929); **26.** *Hghys.* Nos. 2423a, 2430a, 2447a
Chatsworth Estates Co. *v.* Fewell (1931); **40.** *S. Land*, No. 2785a
Chatterby, *Ex p.*, *Re* Wix (1881); **5.** *Bkpcy.* No. 7601
Chatterson *v.* Dutton (Can.); **2.** *Arbn.* p. 101
Chattock *v.* Reid, *Re* Gillott's Settlement (1934); **40.** *Stlmts.* No. 1003a
Chatur Bhuj *v.* Crown (Ind.); **22.** *Evid.* p. 16
Chaturbhuj Piramal *v.* Chunilal Oomkarmal (Ind.); **8.** *Chos.* p. 87
Chatwood, The (1930); **41.** *Ship.* No. 6163a
Chatwood *v.* National Speedways, Ltd. (Aus.); **36.** *Negl.* p. 6
Chaytor *v.* Edwin, *Re* Bridgen (1938); **44.** *Wills*, No. 7496a
Cheah Soo Tuan, Official Assignee of the Estate of *v.* Khoo Saw Cheow (Straits Settlements); **5.** *Bkpcy.* p. 69
Cheam Common School, *Re*, Dennis *v.* Malcolm (1934); **19.** *Educ.* No. 259a.; *Pract.* No. 3063a
Cheang Thye Phin *v.* Lam Kin Sang (Straits Settlements); **43.** *Trusts*, p. 72
— *v.* Tan Ah Loy (Straits Settlements); **3.** *Basty* p. 52
Checker Taxicab Co. *v.* Stone (N.Z.); **3.** *Bailmt.* p. 6
Chee Wor Lok *v.* Yeoh Saw Geok (Straits Settlements); **25.** *Fr. Soc.* p. 22
Cheesebrough Manufacturing Co. *v.* Kudhoos (1929); **16.** *Courts*, No. 592a
Cheeseman *v.* Corey (Can.); **40.** *S. Land*, p. 14
Chellew Navigation Co., Ltd., A. R. Appelquist Kolimport A. G. (1933); **41.** *Ship.* Nos. 2073a, 2128a, 3092a
Chelsea Vestry *v.* King (1864); **2.** *Animals*, No. 333a
Chelston, The (1920); **1.** *Adm.* No. 1600a
Cheltenham Borough Election Case (1880); **20.** *Elect.* No. 1430a
Chemische Fabrik auf Actien (Vorm E. Schering) Patent, *Re* (1928); **36.** *Pats.* No. 810a
Chenoweth *v.* Hay (1813); **4.** *Bkpcy.* No. 669a
Cherbon *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 41
Cherico *v.* Sudbury (Can.); **7.** *Bldg. Conts.* p. 25
Chernenkoff *v.* Chernenkoff (Can.), [1930] 1 W. W. R. 365; **27.** *H. & W.* p. 58
— *v.* — (Can.), [1930] 2 W. W. R. 165; **27.** *H. & W.* p. 3

Cherniak *v.* Parsons (Can.); **42.** *Str. Traf.* p. 60
Cherniak Estate, *Re* (Can.); **21.** *Exon.* p. 46
Cherrier & Orton *v.* McCreight & Pennington (Can.); **12.** *Contr.* p. 39
Cherrington *v.* Bell (N.Z.); **19.** *Eccl.* p. 25
Cherry *v.* Bredin (Can.); **2.** *Agric.* p. 14
— *v.* Smith (Can.); **17.** *Dep.* p. 69; **30.** *L. & T.* p. 39
— *v.* Thompson (1872); *Pract.* No. 624a
Chertkow *v.* Feinstein (Can.); **33.** *Lunat.* p. 12
— *v.* Retail Credit Co. (Can.); **18.** *Discy.* p. 19
Chesham (Lord) *v.* Chesham Urban District Council (1935); **44.** *Waters*, No. 337a
Cheshire County Council *v.* Hopley (1923); **2.** *Agric.* No. 229a
Cheshire Lines Committee *v.* Liverpool Corpn., *Re* Heywood's Conveyance (1938); **11.** *Comp. Pche.* No. 4a
Chesline *v.* Hermiston (Can.); **44.** *Wills*, p. 18
Chesnel *v.* R. (Can.); **39.** *Revenue*, p. 11
Chester *v.* Bateson (1920); **11.** *Const. L.* No. 558a
— *v.* Kinnear (Can.); **36.** *Negl.* p. 18
Chesterman *v.* Federal Comr. of Taxation (Aus.); **8.** *Char.* p. 55; **21.** *E. D.* p. 8
Chesters, *Re*, Whittingham *v.* Chesters (1935); **20.** *Eqy.* No. 2309a; **35.** *Mtge.* No. 3587a
Chesterville Public School Board, *Re* (Can.); **19.** *Educ.* p. 37
Chettiar (C. K.) *v.* Chettiar (C. V. S.) (1935); **32.** *Limit. of A.* No. 1539a
Chetty *v.* Thornhill (Ind.); **21.** *Estpl.* p. 24
Chetwynd's Estate, *Re*, Dunn's Trust, Ltd. *v.* Brown (1938); **12.** *Contr.* No. 4440a
Cheveley *v.* Fuller (1853); **22.** *Evid.* No. 2477a
Chevrier & Son, Ltd., *Re* (Can.); **4.** *Bkpcy.* pp. 23, 24
Cheyne *v.* Paterson (Scot.); **42.** *Sm. Hldgs.* p. 1
Chhathi Lalsahkalwah *v.* Bindeshwari Pranadsahu (Ind.); **35.** *Mtge.* p. 32
Chhatra Kumari Devi *v.* Mohan Bikram Shah (Ind.); **20.** *Eqy.* p. 20
Chhedi Lal *v.* Punnu Lal (Ind.); **9.** *Coys.* p. 4
Chhote Lal *v.* Kedar Nath (Ind.); **5.** *Bkpcy.* p. 58
Chiandetti, *Re*, *Ex p.* Trustee (1921); **5.** *Bkpcy.* Nos. 6912a, 6916a, 7113a
Chicago & North West Granaries Co., Ltd., *Re* (1898); **10.** *Coys.* No. 4652a
Chichester *v.* Chichester (1936); **27.** *H. & W.* No. 5380b
Chick Lumber & Fuel Co. *v.* Moorehouse (Can.); **32.** *Lien*, p. 25
Chidambaram Chettyar *v.* Chettyar Firm (Ind.); **30.** *Jdgmts*, p. 19
Chidzey *v.* Breckler (Aus.); **1.** *Action*, pp. 2, 3
Chiemelewski, *Re* (Can.); **28.** *Infts.* p. 136
Chihattoo Lal Misser *v.* Naraindas Baijnath Prasad (Ind.); **17.** *Dep.* p. 66; **36.** *Prtnrs.* p. 58
Child *v.* Comber (1723); **12.** *Contr.* No. 1185
— *v.* Mann (1867); **29.** *Intpr.* No. 173a
Child & Gower Piano Co., Ltd. *v.* Gambrel (Can.); **39.** *S. Goods*, p. 58
Child Villiers' Application, *Re*, Villiers *v.* A.-G. (1922); **8.** *Char.* No. 2137
Child Welfare Director *v.* Cartier Rural Municipality (Can.); **37.** *Poor L.* p. 17
— *v.* St. Clements Rural Municipality (Can.); **33.** *Mags.* p. 26
Children's Aid Society *v.* North Sydney (Can.); **28.** *Infts.* p. 144
Children's Aid Society of St. Adelard *v.* Ste. Rose Rural Municipality (Can.); **16.** *Cr. Pract.* p. 37
Children's Aid Society of Winnipeg *v.* Brooklands Village, *Re* Kowaliuk (Can.); **33.** *Mags.* p. 24
Chillagoe Railway & Mines, Ltd. Trust Deed, *Re* (1930); **10.** *Coys.* No. 4677a
Chillginworth *v.* Esche (1924); **12.** *Contr.* No. 546b
Chin Kow *v.* Moquin (Can.); **16.** *Cr. Pract.* p. 42
Chin Man Yee, *Ex p.*, Porter *v.* R. (Aus.); **16.** *Cutmpt.* p. 2; **17.** *Dep.* p 61.
Chin Shack, *Ex p.* (Can.); **2.** *Aliens*, p. 49
China Navigation Co., Ltd. *v.* A.-G. (1932); **11.** *Const. L.* No. 7a; **39.** *Revenue*, No. 3a; *Royal F.* No. 120a
Chinese Immigration Act & Chin Sack, *Re* (Can.); **2.** *Aliens*, p. 49
Chinese Immigration Act & Lee Chow Ying, *Re* (Can.); **2.** *Aliens*, p. 49; **16.** *Courts*, p. 9; *Cr. Pract.* p. 28
Chinniah, *Re* (Ind.); **25.** *Gaming*, p. 30
Chipman (Doe d.) *v.* Deveber (Can.); **32.** *Limit. of A.* p. 38
— *v.* R. (Can.); **38.** *Pub. Auth.* p. 1
— *v.* Roscoe (Can.); **8.** *Chos.* p. 90
Chipman Chemicals, Ltd. *v.* Fairview Chemical Co., Ltd. (Can.); **36.** *Pats.* p. 68
Chippendale *v.* Winnipeg Electric Co. (Can.); **36.** *Negl.* p. 24; **43.** *Tram.* p. 49
Chippendall *v.* Tomlinson (1785); **5.** *Bkpcy.* No. 6298
Chipps *v.* R. (S. Af.); **15.** *Crim.* p. 106
Chipuke *v.* Shandro (Can.); **12.** *Contr.* p. 17
Chirnside, *Re*, Digby *v.* Union Trustee Co. of Australia, Ltd. (Aus.); **4.** *Bkpcy.* p. 23
Chisholm *v.* Aird (Can.); **36.** *Negl.* p. 31
— *v.* Chisholm (Can.); **28.** *Infts.* p. 137
— *v.* London Passenger Transport Board (1938); **42.** *Str. Traf.* No. 31d
— *v.* Sheldon (Can.); **2.** *Agric.* p. 18
Chisholme & Oakville (Town), *Re* (Can.); **38.** *Real. Prop.* p. 95
Chiswell *v.* Charleswood Rural Municipality & Alcrest Golf Club, Ltd. (Can.); **36.** *Nuis.* p. 49
— *v.* — (No. 2) (Can.); **26.** *Hghys.* p. 32
— *v.* — (No. 3) (Can.); **28.** *Injon.* p. 150
Chiswick Products Agreed Charge, *Re* (1934); **8.** *Carr.* No. 1377p
Chittenden *v.* Hale (N.Z.); **2.** *Animals*, p. 65
Chittick *v.* Lowery (Can.); **21.** *Exon.* p. 52
Chloride Electrical Storage Co., Ltd. *v.* Silvia Wireless Stores (1931); **36.** *Pats.* No. 2344a
Chmelnitsky, *Re* (Can.); **5.** *Bkpcy.* p. 92
Chockalinga Mudaliar *v.* Durairwami Mudaliar (Ind.); **8.** *Char.* p. 82
Chocolate Express Omnibus Co., Ltd. *v.* London Passenger Transport Board (1934); **34.** *Metrop.* No. 6a
Chopowich *v.* Eagle Star & British Dominions Insce. Co. (Can.); **29.** *Insce.* p. 5
Chorba *v.* Kimbriel (Can.); **42.** *Str. Traf.* p. 60
Chorley, *Ex p.*, R. *v.* Hendon Rural District Council (1933); **16.** *Cr. Pract.* No. 2736b; **38.** *Pub. Hlth.* No. 524d
Chorlton upon Medlock (Constables & Burgesses) *v.* Walker (1842); **26.** *Hghys.* No. 2470a
Choukhani *v.* King-Emperor (Ind.); **14.** *Crim.* p. 18
Chow Duck Yuet, *Re* (Can.); **34.** *Med.* p. 194
Chowood, Ltd. *v.* Lyall (1929); **7.** *Bounds. & F.* No. 436a
— *v.* — (2) (1930); **38.** *Real Prop.* No. 911a
Chowood's Registered Land, *Re* (1933); **38.** *Real Prop.* No. 913a
Chr. Knudsen, The (1932); **1.** *Adm.* No. 484a; **41.** *Ship.* No. 6811a
Christ College Trust *v.* Hobart (City) Corpn. (Aus.); **38.** *Rates*, p. 61
Christchurch (Mayor, etc.) *v.* Pyne, Gould, Guinness (N.Z.); **38.** *Rates*, p. 51

Christchurch City Corpn. *v.* Canterbury Education Board (N.Z.); **11.** *Const. L.* p. 65
Christensen, *Re*, *Ex p.* Atmore (Aus.); **25.** *Gaming*, p. 38
Christensen (Hans. C.), Ltd., *Re*, Thom *v.* Everett (Can.); **35.** *Mtge.* p. 31
Christian, *Ex p.*, *Re* Jamieson (Aus.); **38.** *Rates*, p. 84
Christian Community of Universal Brotherhood, Ltd. *v.* Trafimenkoff (Can.); **9.** *Coys.* p. 55
Christianson *v.* Clanwilliam Rural Municipality (Can.); **26.** *Hghys.* p. 35
Christie *v.* Fraser (Can.); **28.** *Injon.* p. 149
— *v.* Lord Advocate (1936); **21.** *E. D.* 40a
Christie & Clark's Appeal, *Re* (Can.); **38.** *Rates*, p. 77
Christie Estate, *Re*, *Re* Great West Life Assurance Co. (Can.); **35.** *Mtge.* p. 45
Christie, etc. Petitioners (Scot.); **7.** *Burial*, p. 38
Christie Grant, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 29
—, *Re*, *Ex p.* Canadian Express Co. (Can.); **5.** *Bkpcy.* p. 58
Christison *v.* Christison (Scot.); **27.** *H. & W.* p. 72
Christmanson *v.* Christmanson (Can.); **27.** *H. & W.* p. 37
Christoforides *v.* Terry (1924); **1.** *Agcy.* No. 1550a
Christopher *v.* Cohen (Ind.); **19.** *Easmt.* p. 7
Christopher (Hove), Ltd. *v.* Williams (1936); *Pract.* No. 218a
Christy *v.* Courtenay (1849); **25.** *Gifts*, No. 83a
— *v.* McKay (Can.); **32.** *Lien*, p. 27
Chruszcz *v.* Chruszcz (Can.); **27.** *H. & W.* p. 53
Chubb *v.* Emery (Aus.); **3.** *Bank.* p. 24
Chudyj *v.* Canada Permanent Mortgage Corpn. (Can.); **38.** *Real Prop.* p. 90
Chunbidya *v.* R. (1934); **17.** *Dep.* No. 223b
Chung Chi Cheung *v.* R. (1938); **14.** *Crim.* No. 1129a
Chung Chuck *v.* R. (1930); **17.** *Dep.* No. 621a
Chung Chuck & Mah Lai *v.* Gilmore (Can.); **17.** *Dep.* p. 57
Chuni Lal-Tulsi Ram *v.* Amin Chand (Ind.); **17.** *Dep.* p. 84
Chunilal *v.* Chaturbhiy Piramal (Ind.); **38.** *Pub. Auth.* p. 1
Church *v.* Church (1933); **27.** *H. & W.* No. 6184a
— *v.* College of Physicians & Surgeons (Can.); **34.** *Med.* p. 184
— *v.* Dugdale & Adams, Ltd. (1929); **34.** *Mast. & S.* No. 2836b
— *v.* Jones (Can.); **35.** *Misrep.* p. 5
Church of Scotland General Trustees *v.* Inland Revenue Comrs. (Scot.); **39.** *Revenue*, p. 22
Church Stretton Mineral Water Co., Ltd., *Re* (1904); **10.** *Coys.* No. 5111a
Church Temporalities Comrs. in Wales *v.* Bryant (1935); **28.** *Inc. T.* No. 46a
Churchbridge Rural Municipality No. 211 *v.* London Guarantee & Accident Co., Ltd. (Can.); **26.** *Guar.* p. 12
Churchill, *Ex p.*, R. *v.* Essex JJ. (1933); **15.** *Crim.* No. 6434a
— *v.* Norris (1938); **42.** *Str. Traf.* No. 232h
Churchill & Sim *v.* Goddard (1936); **1.** *Agcy.* No. 2461a
Churchward *v.* Lancaster's Steam Coal Colliers, Ltd. (1935); **34.** *Mast. & S.* No. 3932j
Cie des Bois du Nord *v.* St. Louis S.S. (Can.); **1.** *Adm.* p. 23
Cimitian *v.* Gout (1922); **2.** *Aliens*, No. 13a
Cincinnati Grinders (Inc.) *v.* B. S. A. Tools, Ltd. (1930); **36.** *Pats.* No. 796b
Cinnamond Park & Co., Ltd., *Re* (Ir.); **10.** *Coys.* p. 75
Cipriani *v.* Burnett (1933); **1.** *Action*, No. 412a; **25.** *Gaming*, No. 483a
Cirencester Case (1893); **20.** *Elect.* No. 1290b
Citadel Brick, Ltd. *v.* Garneau (Can.); **19.** *Easmt.* p. 14
Cities Services Oil Co. *v.* Pauley (Can.); **30.** *L. & T.* p. 44
— *v.* Rubel (Can.); **6.** *B. of Exch.* p. 9
Citizens Coal & Forwarding Co., *Re* (Can.); **9.** *Coys.* p. 43
Citizens Insurance Co. *v.* Johnston (Can.); **11.** *Const. L.* p. 66
City Dairy, Ltd. *v.* Winnipeg City (Can.); **38.** *Rates*, p. 49
City Equitable Fire Insurance Co., Ltd., *Re* (1925); **9.** *Coys.* Nos. 432a, 3059a, 3060a, 3063a, 3063b, 3068a, 3109a, 3127a, 3128a, 3280a, 3282a, 3661a, 3662a, 3670a; **10.** *Coys.* Nos. 6150a, 6173a
City Equitable Fire Insce. Co. (2), *Re* (1930); **4.** *Bkpcy.* No. 3562a; **10.** *Coys.* No. 7551a
City Fur Manufacturing Co., Ltd. *v.* Fureenbond (Brokers) London, Ltd. (1937); **39.** *S. Goods*, No. 1461c
City Garage & Machine Co., Ltd., *Re*, *Re* Land Titles Act (Can.); **5.** *Bkpcy.* p. 91
City Life Assurance Co., Ltd., *Re* (1926); **10.** *Coys.* No. 7627b
City of Baroda, The (1926); **1.** *Adm.* No. 1062b; **18.** *Discy.* Nos. 373a, 874a
City of Dublin Steam Packet Co. *v.* O'Brien (Ir.); **28.** *Inc. T.* p. 17
City of Edinburgh, The (1921); **1.** *Adm.* No. 579a
City of London Insurance Co., Ltd., *Re* (1925); **9.** *Coys.* No. 432c
—, *Re* (1932); **10.** *Coys.* Nos. 6293a, 6293b
City of London Real Property Co., Ltd. *v.* Jones (1930); **28.** *Inc. T.* No. 116a
City Tailors, Ltd. *v.* Barder (1929); **31.** *L. & T.* No. 6930a
— *v.* Rogers (1929); **31.** *L. & T.* No. 6930a
Civil Engineers, Institution of *v.* Inland Revenue Comrs. (1932); **28.** *Inc. T.* No. 476d
Civilian War Claimants Assocn., Ltd. *v.* R. (1932); **1.** *Agcy.* No. 91a; **16.** *Cr. Pract.* No. 370a; **38.** *Pub. Auth.* No. 48a
Clack *v.* Clack (1935); **28.** *Inc. T.* No. 361a
Clague *v.* Winnipeg Jockey Club (Can.); **36.** *Negl.* p. 30
Claman *v.* Claman (Can.); **27.** *H. & W.* p. 22
— *v.* — (No. 2) (Can.); **27.** *H. & W.* p. 58
Claman's, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 39
Clan Colquhoun, The (1936); **41.** *Ship.* No. 5140a
Clan Line Steamers, Ltd. *v.* Board of Trade, The Clan Matheson (1929); **41.** *Ship.* No. 8755a
Clan Line Steamers, Ltd. (Clan Stuart (Owners)) *v.* Uskside S.S. Co., Ltd. (Uskhaven (Owners)) (Scot.); **41.** *Ship.* No. 6104b
Clan Matheson, The, Clan Line Steamers, Ltd. *v.* Board of Trade (1929); **41.** *Ship*, No. 8755a
Clancarty, *Re* (Ir.); **5.** *Bkpcy.* p. 61
Clapham, *Re*, Minister of Finance *v.* Burke-Roche (Can.); **21.** *E. D.* p. 21
Clapman *v.* Edwards (1938); **30.** *L. & T.* No. 1668a
Clapp *v.* Travellers' Indemnity Co. (Can.); **29.** *Insce.* p. 47
Clappison Bridge Case, Public Highways Dept., Ontario *v.* Canadian Pacific Ry. Co. (Can.); **26.** *Hghys.* p. 49
Clara Camus, The (1925); **1.** *Adm.* No. 1655a
— (1926); **1.** *Adm.* No. 1655a
Clare & Heyworth *v.* Betts (1927); **28.** *Inc. T.* No. 210

Clare Hall *v.* Harding (1848); **21.** *Estpl.* No. 1441a
Claremont *v.* Hill, *Re* Hill (1934); **42.** *Selrs.* No. 1148b
Claremont Municipality *v.* Ferguson (Aus.); **38.** *Pub. Auth.* p. 2
— *v.* Ferguson (A. E. N.) (Aus.); **38.** *Pub. Auth.* p. 2
Claremont Municipality *v.* Ferguson (L. M.) (Aus.); **8.** *Pub. Auth.* p. 2
Clarendon's (Earl) Case (1667); **14.** *Crim.* No. 967a
Claridge *v.* Hoare (1807); **18.** *Discy.* No. 1150a
Clark, *Re* (1932); **23.** *Exors.* No. 1348a; **44.** *Wills*, No. 6827a
— *Re* (Can.); **24.** *Extrdn.* p. 45
—, *Re*, Clark *v.* Clark (1926); **4.** *Bkpcy.* No. 5387a; **5.** *Bkpcy.* No. 5826a
— *v.* Appleby (Can.); **35.** *Mistake*, p. 11
— *v.* Bank of Nova Scotia (Can.); **35.** *Misrep.* p. 2
— *v.* Barnes (1929); **19.** *Easmt.* Nos. 181b, 196a
— *v.* Brager (Can.); **31.** *L. & T.* p. 62
— *v.* Buchanan, *Re* Mellish (1927); **21.** *E. D.* Nos. 209a, 271a
— *v.* Cayen (Can.); **1.** *Action*, p. 11
— *v.* Chambers (1878); **26.** *Hghys.* No. 1381a
— *v.* Chittick (Can.); **31.** *L. & T.* p. 63
— *v.* Clark (1931); **27.** *H. & W.* No. 6128a
— *v.* Downes (1931); **31.** *L. & T.* Nos. 7028a, 7028b
— *v.* Epsom Rural District Council (1929); **30.** *Jdgmts.* No. 198a; **38.** *Pub. Hlth.* No. 29a; **41.** *Sewers*, No. 19a
— *v.* Hepworth (Can.); **1.** *Agcy.* p. 74
— *v.* Hetherton (Can.); **42.** *Str. Traf.* p. 59
— *v.* Hume (1825); **5.** *Bkpcy.* No. 7650a
— *v.* Lawson (Can.); **14.** *Crim.* p. 2
— *v.* Littlewood, *Re* Littlewood (1931); **23.** *Exors.* No. 5908a
— *v.* McKenzie (Can.); **28.** *Injon.* p. 148
— *v.* MacWorth (Can.); **14.** *Crim.* p. 16
— *v.* Mawby (1931); **31.** *L. & T.* Nos. 7028a, 7028b
— *v.* Mead (1933); **31.** *L. & T.* Nos. 7028d, 7123a
— *v.* Smith (Can.); **25.** *Fraud. Conv.* p. 15
— *v.* Stephens, Sutton, Ltd. (1937); **34.** *Mast. & S.* No. 2348c
— *v.* Thomas J. Gaytee Studios Incorporated (Can.); **10.** *Coys.* p. 104
— *v.* Urquhart (1930); **9.** *Coys.* No. 770a; **17.** *Damgs.* No. 1a
— *v.* Vare (N.Z.); **32.** *Libel*, p. 6
— *v.* Wilson (Aus.); **36.** *Negl.* p. 34
Clark & Co. *v.* Robinson (Can.); **42.** *Stk. Ex.* p. 33
Clark (R. P.) & Co. (Vancouver), Ltd., *Re* (Can.); **1.** *Agcy.* p. 93; **42.** *Stk. Ex.* p. 34
Clark (R. P.) & Co. (Vancouver), Ltd., No. 2 (Can.); **9.** *Coys.* p. 36
Clark (R. P.) & Co., *Re*, Shimmin *v.* Clark (Can.); **9.** *Coys.* p. 24
Clark & London & Manchester Assurance Co., *Re*, *Re* Hirst & Liverpool Victoria Friendly Society (1930); **25.** *Fr. Soc.* No. 175b
Clark (Marcus) (Australia), Ltd. *v.* Brown (Aus.); **3.** *Bailmt.* p. 12; **39.** *S. Goods*, p. 43
Clark (C. & J.), Ltd. *v.* Clark's Shoe Service (1935); **43.** *Trade Mks.* No. 1504a
Clark Martin & Co., Ltd., *Re* (Can.); **42.** *Stk. Ex.* p. 34
Clark, Son & Morland, Ltd.'s Trade Mark, *Re* (1938); **43.** *Trade Mks.* No. 78a
Clark's Appeal (1937); **8.** *Carr.* No. 1659
Clark's Case (1596); **13.** *Corpns.* No. 736a
Clarke, *Ex p.* (Can.); **17.** *Dep.* p. 42
—, *In the Goods of* (1896); **23.** *Exors.* No. 771a
—, *Re*, Bracey *v.* Royal National Lifeboat Institution (1923); **8.** *Char.* Nos. 47a, 735a
—, *Re*, Clarke *v.* St. Mary's Convalescent Home (1907); **24.** *Exors.* No. 8819a
—, *Re*, Clarke *v.* Sturt (Aus.); **44.** *Wills*, p. 53
— *v.* Anderson (Can.); **40.** *S. Land*, p. 10
— *v.* Babbitt (Can.); **32.** *Limit. of A.* p. 37
— *v.* Bellamy (Can.); **24.** *Exors.* p. 38
— *v.* Canadian Northern Ry. (Can.); **17.** *Damgs.* p. 22
— *v.* Chamberlin (1880); **38.** *Real Prop.* No. 663a
— *v.* Clarke (Aus.); **27.** *H. & W.* p. 50
— *v.* — (Can.); **27.** *H. & W.* pp. 5, 33
— *v.* Coburn Lumber Co. (Can.); **43.** *Tresp.* p. 50
— *v.* Eby (Can.); **43.** *Trusts*, p. 59
— *v.* Edmonton (City) (Can.) (1928); **22.** *Evid.* p. 9; **44.** *Waters*, p. 3
— *v.* — (Can.) (1933); **38.** *Pub. Auth.* p. 4
— *v.* Ellerman, Bucknall & Co., Ltd. (N.Z.); **18.** *Discy.* p. 7
— *v.* Fidelity-Phoenix Fire Insurance Co. of New York (Can.); **29.** *Insce.* p. 25
— *v.* Griffiths (1927); **8.** *Clubs*, No. 111b
— *v.* Haney & Dunlop (Can.); **38.** *Real Prop.* p. 99
— *v.* Hawke (Can.); **23.** *Exors.* p. 25
— *v.* Hoggins (1862); **42.** *Str. Traf.* No. 50a
— *v.* Langs & Roddis, Ltd. (Can.); **12.** *Contr.* p. 11
— *v.* London & Manchester Assurance Co. (1929); **25.** *Fr. Soc.* No. 175b
— *v.* Moore & Simpson (Can.); **32.** *Lien*, p. 24
— *v.* Moose Jaw (City) (Can.); **17.** *Dep.* p. 47
— *v.* Murray (Can.); **17.** *Damgs.* p. 21
— *v.* Ogilvie Flour Mills Co., Ltd. (Can.); **36.** *Negl.* p. 36
— *v.* Peabody Overall Co. (Can.); **12.** *Contr.* p. 7
— *v.* Plummer & Marcellus (Can.); **33.** *Mags.* p. 23
— *v.* Roche (1877); **13.** *Cty. Cts.* No. 1120a
— *v.* Roman Catholic Bishop of St. John (Can.); **25.** *Gifts*, p. 49
— *v.* St. Mary's Convalescent Home, *Re* Clarke (1907); **24.** *Exors.* No. 8819a
— *v.* Southern Ry. Co. (1927); **34.** *Mast. & S.* No. 2488a
— *v.* Sturt, *Re* Clarke (Aus.); **44.** *Wills*, p. 53
— *v.* Union Fire Insurance Co., Agricultural Fire Insurance Co. of Watertown, New York Claim (Can.); **29.** *Insce.* p. 4
— *v.* Wawken Rural Municipality (Can.); **17.** *Dep.* p. 42
— *v.* Wentworth Stores, Ltd. (Can.); **34.** *Mast. & S.* p. 24; **42.** *Stats.* p. 25
— *v.* White, *Re* Bennett (1898); **35.** *Mtge.* No. 583a
Clarke Bros. & Co. *v.* Lawrence (Can.); **39.** *S. Goods*, p. 51
Clarke Brothers, Ltd. *v.* Goodin & Pederson (Can.); **8.** *Chos.* p. 91
Clarke-Jervoise *v.* Scutt (1920); **2.** *Agric.* Nos. 56a, 117a
Clarkson *v.* Alliston Corpn. (Can.); **19.** *Educ.* p. 41; **40.** *Set-Off*, p. 23
— *v.* Canada Accident & Fire Assurance Co. (Can.); **29.** *Insce.* pp. 54, 55
— *v.* Clarkson (1930); **27.** *H. & W.* 2704a
— *v.* Corrimal Balgownie Collieries, Ltd. (Aus.) **34.** *Mast. & S.* p. 26
— *v.* Hanway (1723); **25.** *Fraud. Conv.* No. 807a
— *v.* Lawson (Can.); **6.** *B. of Exch.* p. 16
— *v.* McLean (Can.); **3.** *Bank.* p. 20
— *v.* Robinet (Can.); **3.** *Bank.* p. 20
— *v.* Ryan (Can.); **17.** *Dep.* p. 59
— *v.* Smith & Goldberg (Can.); **3.** *Bank.* p. 20
— *v.* Todd (Can.); **5.** *Bkpcy.* p. 77
Clarkson & Home Bank of Canada *v.* Lancaster (Can.); **3.** *Bank.* p. 20

Clarkson Lamplough, *Re*, *Ex p.* Harding (1885); **5.** *Bkpcy.* No. 9034a
Clary *v.* Boulay (Can.); **35.** *Mtge.* p. 49; **38.** *Rates*, p. 84
Clason Estate, *Re* (Can.); **28.** *Infts.* p. 141
Clatworthy & Son, Ltd. *v.* Dale Display Fixtures, Ltd. (Can.); **43.** *Trade Mks.* pp. 28, 29
Clausen *v.* Canada Timber & Lands, Ltd. (Can.); **12.** *Contr.* p. 30; **17.** *Damgs.* p. 19
— *v.* Couchman Cycle Co., Ltd. (N.Z.); **34.** *Mast. & S.* p. 41
Clavel's Application, *Re* (1928); **36.** *Pats.* No. 1363a
Clavelle *v.* Russell (Can.); **1.** *Agcy.* p. 87
Clawley *v.* Carlton Main Colliery Co., Ltd. (1918); **35.** *Mtge.* No. 4246a
Claxton, *Re* (Can.); **21.** *Exon.* p. 51
Clay, *Re*, Clay *v.* Booth, *Re* A Deed of Indemnity (1919); **1.** *Action*, No. 153a
— *v.* Earnshaw, *Re* Clay's Policy of Assurance (1937); **27.** *H. & W.* No. 1227a
— *v.* Eastern Trust Co., *Re* Moran (Can.); **44.** *Wills*, p. 45
— *v.* Powell & Co., Ltd. (Can.); **9.** *Coys.* p. 17
Clay & Clay *v.* Powell & Co., Ltd. (Can.); **42.** *Stk. Ex.* p. 31
Clay Hill Brick & Tile Co., Ltd. *v.* Rawlings (1938); **9.** *Coys.* No. 3126b
Clay's Policy of Assurance, *Re*, Clay *v.* Earnshaw (1937); **27.** *H. & W.* No. 1227a
Clayton *v.* Barclay (1895); **35.** *Mtge.* No. 3378
— *v.* Clayton (1930); **38.** *Real Prop.* No. 537b; **40.** *Stlmts.* No. 2377a
— *v.* Clayton (Scot.); **25.** *Gaming*, p. 39
— *v.* Clayton & Sharman (1932); **11.** *Confl.* No. 946a; **27.** *H. & W.* No. 3069a
— *v.* Kearsey (1935); **42.** *Solrs.* No. 1067a
— *v.* Newcastle (Duke) (1682); **21.** *Estpl.* No. 993b
— *v.* Vincent's Products, Ltd. (Aus.); **13.** *Coprt.* p. 19
Clayton & Barclay's Contract, *Re* (1895); **35.** *Mtge.* No. 3378
Clayton & Beaumonts' Contract, *Re* (1895); **5.** *Bkpcy.* Nos. 6331, 7089
Clayton (Herbert) & Jack Waller, Ltd. *v.* Oliver (1930); **12.** *Contr.* No. 5122a; **17.** *Damgs.* No. 181b
Clayton's Petition, *Re* (1927); **3.** *Basty.* No. 130d
Clayton's Women's Wear, Ltd., *Re* (Can.); **31.** *L. & T.* p. 66
Clazy, *Re* (Can.); **23.** *Exors.* p. 4; **38.** *Real Prop.* p. 94
Cleadon Trust, Ltd., *Re* (1938); **9.** *Coys.* No. 3100a; **12.** *Contr.* No. 4367a
Clearing Office Controller *v.* Edwards & Co. (Bread Street), Ltd. (1923); **2.** *Aliens*, No. 215b
— *v.* Weir & Co. (1925); **2.** *Aliens*, No. 215q
— *v.* — (1926); **2.** *Aliens*, No. 215q
Clearview, Ltd. *v.* Yatala South District Council (Aus.); **38.** *Rates*, p. 52
Clearwater *v.* Childs Co. of Manitoba, Ltd. (Can.); **39.** *S. Goods*, p. 58
Cleary, *Re*, *Ex p.* Fuller (Aus.); **38.** *Rys.* p. 42
— *v.* Hite (Can.); **2.** *Animals*, p. 59
Cleasby *v.* Park Estates (Hughenden), Ltd., *Re* Disraeli Agreement (1938); **2.** *Agric.* No. 266n i
Cleave *v.* Commercial Loan & Finance Co., Ltd. (N.Z.); **18.** *Distr.* p. 29
— *v.* McDonald (N.Z.); **16.** *Courts*, p. 18
Cleethorpes Urban District Council, *Re*, *Re* London & North Eastern Ry. Co. Valuation Roll (1936); **38.** *Rates*, No. 800f
— *v.* London & North Eastern Ry. Co. (1936); **38.** *Rates*, No. 800f
Clegg *v.* Pacific Stock Co., Ltd. (Can.); **12.** *Contr.* p. 56
Clegg Estate, *Re* (Can.); **44.** *Wills*, pp. 54, 55
Cleghorn, *Re* (Can.); **23.** *Exors.* p. 1
Clelland *v.* Edward Lloyd, Ltd. (1938); **34.** *Mast. & S.* No. 55b
Clementi *v.* Fielding (1848); **37.** *Perps.* No. 19a
Clements *v.* Coughlan (Can.); **1.** *Agcy.* p. 89
— *v.* County of Devon Insurance Committee (1918); **2.** *Arbn.* No. 36a
— *v.* Howett (1845); **2.** *Arbn.* No. 905a
Clemons *v.* St. Andrews (Can.); **38.** *Rates*, p. 85
Clemow, *Re*, Yeo *v.* Clemow (1900); **23.** *Exors.* Nos. 5448a
Cleobury Mortimer Rural District Council *v.* Childe (1933); **38.** *Rates*, No. 552c
Clergy Orphan Corpn. *v.* Christopher (1933); **8.** *Char.* No. 980a
Clerical Disabilities Act, 1870, *Re*, *Ex p.* Cowan (1927); **19.** *Eccl.* No. 1851a
Cleveland Literary & Philosophical Society's Land, *Re*, Bolchow *v.* Laughton (1931); **8.** *Char.* No. 1870b
Clews *v.* Clews (1932); **27.** *H. & W.* No. 6124f
Clibborn *v.* Forstall (Ir.); **28.** *Infts.* p. 142
Cliffe *v.* Gibbons (1714); **24.** *Exors.* No. 4089a
Clifford *v.* Thames Ironworks & Shipbuilding Co. (1898); **13.** *Cty. Cts.* No. 900a
Clifford & O'Sullivan, *Re* (Ir.); **16.** *Cr. Pract.* p. 39
Clifford & Son, Ltd. *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 224a
— *v.* Puttick (1928); **28.** *Inc. T.* No. 224a
Clifton, *In the Estate of* (1931); **23.** *Exors.* Nos. 134a, 134b
—, *Re*, Duckworth *v.* Fair (1931); **23.** *Exors.* No. 134c
— (otherwise Packe) *v.* Clifton (1936); **27.** *H. & W.* No. 5399b
— *v.* Holborn Borough Council (1929); **42.** *Time*, No. 131a
— *v.* Johnstone (N.Z.); **1.** *Agcy.* p. 51
— *v.* Strauss, *Re* Aschrott (1927); **21.** *E. D.* Nos. 96a, 136a
Cline *v.* Battle (Can.); **34.** *Mast. & S.* p. 17
Clinton *v.* Bernard (Ir.); **28.** *Infts.* p. 142
Clitheroe Borough (2nd Case) (1853); **20.** *Elect.* No. 865a
Clock, Ltd. *v.* Clock House Hotel, Ltd. (1936); **43.** *Trade Mks.* No. 1171a
Cloghran Stud Farm *v.* Birch (Ir.); **28.** *Inc. T.* p. 13
— *v.* Trustee, *Re* Sykes (1932); **5.** *Bkpcy.* No. 6098a
Clonard Brick & Estate Co., Ltd., *Re* (Ir.); **10.** *Coys.* p. 96
Cloncurry (Lord) *v.* Laffan (Ir.); **12.** *Contr.* p. 15
Cloney *v.* Trerrice (Can.); **36.** *Negl.* p. 30
Clore *v.* Theatrical Properties, Ltd. & Westby & Co., Ltd. (1936); **30.** *L. & T.* No. 1650a
Close *v.* McMeans (Can.); **24.** *Exors.* p. 33
— *v.* Stewart (Can.); **26.** *Guar.* p. 9
Clouse *v.* Coleman (Can.); **22.** *Evid.* p. 9
Cloutman *v.* Regnart, *Re* Rayner (1920); **8.** *Char.* No. 27a
Clow *v.* Doull (Can.); **6.** *B. of Exch.* pp. 12, 15, 19
Clubb *v.* Wimpey & Co., Ltd. (1936); **43.** *Tresp.* No. 757a
Clubine *v.* Clubine (Can.); **17.** *Dep.* p. 53
— *v.* McMullen (Can.); **21.** *Estpl.* p. 29
Cluett, Peabody & Co. Inc. *v.* Dominion Textile Co., Ltd. (Can.); **36.** *Pats.* p. 75
Cluff Brothers, *Re* (Can.); **4.** *Bkpcy.* p. 14
Clutterbuck *v.* Imperial Lumber Co. (Can.); **35.** *Mtge.* p. 31

Clyde & Dobbie McInnes, Ltd. Patents, *Re* (1929); **36.** *Pats.* No. 2060a
Clyde Engineering Co., Ltd. *v.* Cowburn (Aus.); **17.** *Dep.* p. 63
Clyde Industrial Training Ship Assocn. (Scot.); **8.** *Char.* p. 80
Clyde Navigation Trustees *v.* Bowring S.S. Co., Ltd. (Scot.); **41.** *Ship.* p. 65
— *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 56
— *v.* Inland Revenue (Scot.); **38.** *Rates*, p. 56
— *v.* Kelvin Shipping Co., Ltd. (Scot.); **35.** *Money*, p. 22
Clydebank Co-operative Society *v.* Binnie (Scot.); **42.** *Str. Traf.* p. 45
Clydebank Investment Co., Ltd. *v.* Marshall (Scot.); **31.** *L. & T.* p. 92
Clydesdale *v.* McManus (Aus.); **21.** *Exon.* p. 60
Clydesdale Bank, Ltd. *v.* Senior (James Allan) & Son (Liquidators) (Scot.); **3.** *Bank.* p. 29
Coady, *Re* (Can.); **30.** *Intox.* p. 17
Coakley *v.* Summerlee Iron Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 95
Coal & Coke Rates Case, Standard Hardwood Lumber Co. *v.* Canadian Pacific Ry. Co. & Canadian National Rys. (Can.); **38.** *Rys.* p. 45
Coal Mines Regulation Amendment Act, 1890, *Re* (Can.); **17** *Dep.* p. 52
Coaldrake *v.* Brisbane City Council (Aus.); **38.** *Rates*, p. 63
Coalville Urban District Council *v.* Boyce (1934); **28.** *Inc. T.* No. 324a
Coast Cement Co., Ltd. *v.* Navigazione Libera Triestina S. A. (Can.); **44.** *Waters*, p. 7
Coaster, The (1922); **1.** *Adm.* No. 1548a
Coates *v.* Parker (Can.); **42.** *Str. Traf.* p. 39
— *v.* Rawtenstall Borough Council (1937); **36.** *Negl.* Nos. 451b, 460a
Coates Buildings, Ltd. & Law Union & Rock Insurance Co., Ltd. (Ir.); **10.** *Coys.* p. 62
Coats *v.* Union Bank of Scotland, Ltd. (1929); **3.** *Bank.* Nos. 803a, 862a
— *v.* Union Bank of Scotland (Scot.); **36.** *Parl.* p. 55
Coats (J. & P.), Ltd.'s Application, *Re* (1936); **43.** *Trade Mks.* Nos. 113b, 388a
Cobalt Corpn. *v.* Temiskaming Telephone Co. (Can.); **38.** *Pub. Auth.* p. 4
Cobb *v.* Roy (Can.); **7.** *Bldg. Conts.* p. 33
Cobban Manufacturing Co. *v.* Lake Simcoe Hotel Co. (Can.); **32.** *Lien*, p. 27
Cobbett, *Re* (Aus.); **8.** *Char.* p. 58
Cobbold *v.* Abraham (Aus.); **40.** *S. Land*, p. 18
— *v.* Garrett (1929); **22.** *Evid.* No. 6743a
Cobeldick, *Ex p.* (1883); **42.** *Solrs.* No. 3655a
Cobourg & Grafton Toll Road Co., *Re* (Can.); **11.** *Comp. Pche.* p. 13
Cobourg Felt Co., *Re*, *Ex p.* Weaver (Can.); **5.** *Bkpcy.* p. 93
Coburn *v.* Saskatoon City (Can.); **36.** *Negl.* p. 10
Coca Cola Co. *v.* Duckworth & Co. (1928); **18.** *Discy.* No. 1690a
Cochran's Trusts, *Re* (No. 2) (Can.); **2.** *Arbn.* p. 102
Cochrane, *Re* (N.Z.); **5.** *Bkpcy.* p. 75
— *v.* Baird (William) & Co. (Scot.); **34.** *Mast. & S.* p. 96
— *v.* Elgin Consolidated School District (Can.); **19.** *Educ.* p. 35
— *v.* T. Eaton Co., Ltd. (Can.); **43.** *Tresp.* p. 54
Cochrane (Town) & King, *Re* (Can.); **38.** *Rates*, p. 51
Cochrane & Sons, Ltd. *v.* Hutchens (1936); **34.** *Mast. & S.* No. 3932p
Cockburn *v.* Eager (Can.); **28.** *Injon.* p. 147
— *v.* Gordon (Scot.); **33.** *Mags.* p. 33; **39.** *Revenue*, p. 17; **42.** *Str. Traf.* p. 51
— *v.* Sylvester (Can.); **6.** *B. of Exch.* p. 10
Cockell, *Re*, A.-G. *v.* Jackson (1932); **23.** *Exors.* No. 4538a
—, *Re*, Jackson *v.* A.-G. (1932); **23.** *Exors.*, Nos. 4428a, 4538a
—, *Re*, Jackson *v.* A.-G. (No. 2) (1932); **23.** *Exors.* No. 4163a
Cockerill, *Re*, Mackaness *v.* Percival (1929); **21.** *E. D.* No. 265b; **44.** *Wills*, No. 2732a
Cockerline & Co. *v.* Inland Revenue Comrs. (1930); **28.** *Inc. T.* No. 9b
Cocking *v.* Hoffmann (Aus.); **8.** *Carr.* p. 3
Cockman *v.* Cockman (Ind.); **27.** *H. & W.* p. 26
Cocks Estate & Consort Trading Co., *Re* (Can.); **5.** *Bkpcy.* p. 57
Cockshutt Plow Co., Ltd. *v.* Kornyssyn (Can.); **32.** *Limit. of A.* p. 38
Cockshutt Plow Co., Claimant, Imperial Lumber Yards, Ltd. *v.* Ferguson (Can.); **7.** *B. of Sale*, pp. 7, 8
Codling *v.* Ridley (1933); **34.** *Mast. & S.* No. 2618b
Codrington *v.* Codrington & Anderson (1865); **27.** *H. & W.* No. 3974a
Codville, *Re* (Can.); **11.** *Comp. Pche.* p. 5
Codville Co., Ltd. *v.* Goddard (Can.); **12.** *Contr.* p. 45
Codville Co. *v.* Jordan (Can.); **6.** *B. of Exch.* pp. 9, 15
Cody *v.* Cody (Can.); **11.** *Confl.* p. 53; **28.** *Infts.* p. 137
Coffey *v.* Geraldton Lumpers' Union (Aus.); **43.** *Trade*, p. 10
— *v.* Quebec Bank (Can.); **39.** *S. Goods*, p. 44
— *v.* Watts, *Re* Watts (1931); **37.** *Powers*, No. 256c
Coffey Estate, *Re* (Can.); **2.** *Arbn.* p. 101
Coffin & O'Flynn *v.* Protoco, The (Can.); **1.** *Adm.* p. 47
Cofield *v.* Waterloo Case Co., Ltd. (Aus.); **24.** *Fact.* p. 52
Coghlin *v.* La Fonderie de Joliette (Can.); **17.** *Damgs.* p. 21
Cogstad (C. T.) & Co. *v.* Newsum (H.), Sons & Co. (1921); **2.** *Arbn.* Nos. 1058a, 1083a, 1357a
Cohen, *Re*, *Ex p.* Trustee *v.* Snow (W. R.) & Co. (1924); **4.** *Bkpcy.* No. 4665a; **5.** *Bkpcy.* No. 7225a
—, *Re*, Cohen *v.* Cohen (1915); **40.** *Sttlmts.* No. 83a
—, *Re*, Cohen *v.* Cohen (1918); **3.** *Bank* No. 128a
— *v.* Cohen (Aus.); **12.** *Contr.* p. 1; **32.** *Limit. of A.* pp. 32, 40
— *v.* — (Ind.); **44.** *Wills*, p. 25
— *v.* —, *Re* Cohen (1915); **40.** *Sttlmts.* No. 83a
— *v.* Dominion Atlantic Ry. Co. (Can.); **1.** *Agcy.* p. 104
— *v.* Donegal Tweed Co., Ltd. (1935); **31.** *L. & T.* No. 6917a
— *v.* Gold (1927); **31.** *L. & T.* No. 7351b
— *v.* Jonesco (1926); **21.** *Estpl.* No. 103a
— *v.* Lapin (Aus.); **21.** *Estpl.* p. 30
— *v.* Lester (J.), Ltd. (1938); **35.** *Money*, No. 353jj
— *v.* Roche (1927); **3.** *Auct.* Nos. 76a, 151b
— *v.* Sellar (1926); **25.** *Gifts*, No. 175a
— *v.* West Ham Corpn. (1933); **38.** *Pub. Hlth.* Nos. 491a, 491b, 491c
Cohen & Cohen, *Ex p.*, *Re* Lavey (1920); **5.** *Bkpcy.* No. 8104a
—, *Ex p.*, *Re* Lavey (1921); **4.** *Bkpcy.* No. 2028a; **5.** *Bkpcy.* No. 8104a
Cohen & Mahlin, *Re*, Canadian Credit Men's Trust Assocn., Ltd. *v.* Spivak (Can.); **4.** *Bkpcy.* p. 36; **5.** *Bkpcy.* pp. 49, 67, 73, 75, 76
Cohen & Moore *v.* Inland Revenue Comrs. (1933); **39.** *Revenue*, No. 762a

Cohen & Sweigman, *Re, Ex p.* Gelman (Can.); **4.** *Bkpcy.* p. 30
—, *Re, Ex p.* Rosenberg (Can.); **4.** *Bkpcy.* p. 4
Cohen's Will Trusts, *Re,* Cullen *v.* Westminster Bank, Ltd. (1936); **44.** *Wills,* No. 7781a
Cohn *v.* Canary (Can.); **27.** *H. & W.* p. 6
Coimbra, The (1923); **1.** *Adm.* No. 1541a
Coke *v.* Leicester, *Re* Leicester's Settled Estaes (1938); **40.** *Sttlmts.* No. 2297b
Cokers *v.* Belleville (Can.); **26.** *Hghys.* p. 26
Col *v.* A.-G. for British Columbia, *Re* Promis & Frank Estate (Can.); **17.** *Dcp.* p. 50
Colbourne *v.* Wilks, *Re* Eighmie (1935); **8.** *Char.* Nos. 78a, 80a; **21.** *E. D.* No. 861a; **35.** *Money,* No. 34a
Colchester *v.* Peck (1926); **3.** *Basty.* No. 366a
Colchester South (Township) *v.* Hackett (Can.); **32.** *Limit. of A.* p. 37; **38.** *Real Prop.* p. 98
Colclough *v.* Colclough & Fisher (1933); **27.** *H. & W.* No. 5680c
Coldicutt *v.* Coldicutt (Can.); **27.** *H. & W.* p. 24
Coldman *v.* Hill (1919); **2.** *Animals,* No. 346a
Coldstream District Municipality *v.* Bellevue (Can.); **28.** *Infts.* p. 133; **42.** *Stats.* p. 28
Coldwell *v.* Municipal Tramways Trust (Aus.); **42.** *Str. Traf.* p. 38
Coldwell Rural Municipality *v.* St. Adelard Children's Aid Society (Can.); **33.** *Mags.* p. 36
Cole, *Re,* Trustee in Bankruptcy *v.* Public Trustee (1931); **5.** *Bkpcy.* Nos. 7104a, 7121a
— *v.* Amalgamated Anthracite Collieries, Ltd. (1933); **34.** *Mast. & S.* No. 3801j
— *v.* Cole (Can.); **20.** *Eqy.* p. 30
— *v.* Inland Revenue Comrs. (1934); **28.** *Inc. T.* No. 674gg
— *v.* London & North Eastern Ry. Co. (1928); **34.** *Mast. & S.* No. 2310a
— *v.* Merton Park (Wimbledon) Golf Club, Ltd. (1927); **8.** *Clubs,* No. 21b
— *v.* Nanalal Morarji Dare (Ind.); **3.** *Bailmt.* p. 12
— *v.* Operative Plasterers Federation of Australia (N.S.W. Branch) & Hudson (Aus.); **32.** *Libel,* p. 16
— *v.* Police Constable 443A (1937); **19.** *Eccl.* Nos. 90a, 1049a
— *v.* Reed (Can.); **36.** *Prtnrs.* p. 60
— *v.* Sumner (Can.); **12.** *Contr.* p. 9
— *v.* Young (1938); **42.** *Str. Traf.* No. 180b
Cole & Knowles, *Re* (Can.); **34.** *Mines,* p. 199
Colebourne *v.* Harrop (Can.); **38.** *Rys.* p. 37
Coleby *v.* Coleby (1866); **23.** *Exors.* No. 5560a
Coleman, *In the Goods of* (Ir.); **23.** *Exors.* p. 9
—, *Re, Ex p.* Propsting (Aus.); **1.** *Agcy.* p. 109
—, *Re,* Public Trustee *v.* Coleman (1936); **37.** *Perps.* No. 493b
— *v.* Eight Mile Consolidated School District (Can.); **21.** *Exon.* p. 56
— *v.* Innes, *Re* Harwood (1936); **8.** *Char.* No. 1373c
— *v.* Monahan (Can.); **31.** *L. & T.* p. 61
— *v.* Yarmolinsky (Can.); **35.** *Mtge.* p. 37
Coleman (Township) & Northern Ontario Light & Power Co., Ltd., *Re* (Can.); **28.** *Inc. T.* p. 17; **38.** *Rates,* p. 49
Coleman & Toronto & Niagara Power Co., *Re* (Can.); **2.** *Arbn.* p. 99
Coleman's Case (1619); **15.** *Crim.* No. 7564a
Coleridge *v.* Coleridge (Can.); **27.** *H. & W.* pp. 22, 43
Coleridge-Taylor *v.* Novello & Co., Ltd. (1938); **13.** *Coprt.* No. 290b; **42.** *Stats.* No. 995a
Coles, *In the Goods of* (1871); **23.** *Exors.* No. 54a
— *v.* Odhams Press, Ltd. (1936); **25.** *Gaming,* No. 433b
— *v.* Wawken Rural Municipality (Can.); **38.** *Pub. Hlth.* p. 20
Coles *v.* White City (Manchester) Greyhound Assocn., Ltd. (1929); **9.** *Coys.* No. 525a
Coles (G. J.) & Co., Ltd. *v.* Coles (G. J.) (N.Z.), Ltd. (N.Z.); **9.** *Coys.* p. 3
Coles' Appeal, *Re* (1934); **8.** *Carr.* Nos. 1593, 1665
Coles (J. H.) Proprietary, Ltd. *v.* Need (Aus.); **43.** *Trade Mks.* p. 47
Coleshill *v.* Manchester Corpn. (1928); **16.** *Courts,* No. 22a; **26.** *Hghys.* No. 1191b
Coletta, *Re* (1932); **30.** *Intox.* No. 455a
Colgan *v.* Department of Health for Scotland (Scot.); **44.** *Wills,* p. 65
Colgrove *v.* Gundy (Can.); **20.** *Eqy.* p. 32
Colin *v.* Chamberlin, *Re* Robertson (1930); **8.** *Char.* No. 1444b
Coliseum (Barrow), Ltd., *Re* (1930); **9.** *Coys.* No 3126a; **10.** *Coys.* No. 6399a; **32** *Limit. of A.* No. 356a
Collard *v.* River Stour (Kent) Catchment Board (1937); **41.** *Sewers,* No. 432b
Collaroy Co., Ltd. *v.* Giffard (1928); **10.** *Coys.* No. 6989b
Colledge *v.* Curlett Construction Co., Ltd. (N.Z.); **31.** *L. & T.* p. 62
— *v.* Horlick, *Re* Horlick's Settlement Trusts (1938); **39.** *Rntchgs.* No. 592b
College Brand Clothes Co., Ltd. *v.* Brown & Fitzpatrick (Can.); **18.** *Discy.* p. 10; **22.** *Evid.* p. 23
College of Dental Surgeons of British Columbia *v.* Coultas (Can.); **34.** *Med.* p. 191
College of Physicians & Surgeons *v.* Hebert (Can.); **34.** *Med.* p. 189
Coller *v.* Coller, *Re* Coller's Deed Trusts (1937); **39.** *Rntchgs.* No. 457a
Coller's Deed Trusts, *Re,* Coller *v.* Coller (1937); **39.** *Rntchgs.* No. 457a
Collett, *Re,* Collett *v.* Public Trustee (N.Z.); **44.** *Wills,* p. 55
— *v.* Eaton (T.) Co., Ltd. (Can.); **34.** *Mast. & S.* p. 19
— *v.* Priest (S. Af.); **1.** *Action,* p. 2
— *v.* Public Trustee, *Re* Collett (N.Z.); **44.** *Wills,* p. 55
Colley (B.) & Sons, Ltd. *v.* Moone (1931); **34.** *Mast. & S.* No. 3162b
Collier, *Ex p.,* R. *v.* Glamorganshire County Council (1936); **33.** *L. G.* No. 758a
—, *Re, Ex p.* Collier's Executors (1930); **5.** *Bkpcy.* No. 6012a; **27.** *H. & W.* No. 1223a
Collier & Beale, Ltd. *v.* Stamp Duties Comr. (N.Z.); **36.** *Pats.* p. 90
Collier & Co., Ltd.'s Applications for Registration of Designs, *Re* (1937); **43.** *Trade Mks.* No. 880a
Collier & Sons, Ltd. *v.* Inland Revenue Comrs. (1933); **28.** *Inc. T.* No. 674l
Collin, *Re* (Aus.); **44.** *Wills,* p. 55
Collings, *Re* (Can.); **17.** *Dep.* p. 40
—, *Re, Ex p.* Collings & Murphy (No. 1) Can.); **4.** *Bkpcy.* p. 44
—, *Re, Ex p.* Collings & Murphy (No. 2) (Can.); **4.** *Bkpcy.* p. 45
— *Re,* Jones *v.* Collings (1933); **44.** *Wills,* No. 5731a
— *v.* Charles Bradbury, Ltd. (1936); **35.** *Money,* Nos. 353d, 410e
Collings & Murphy, *Ex p., Re* Collings (No. 1) (Can.); **4.** *Bkpcy.* p. 44
—, *Ex p., Re* Collings (No. 2) (Can.); **4.** *Bkpcy.* p. 45
Collingwood *v.* Home & Colonial Stores, Ltd. (1936); **20.** *Electric,* Nos. 84a, 84b; **36.** *Nuis.* No. 316b
— *v.* Union Government (S. Af.); **2.** *Aliens,* p. 51
— *v.* Wallis (1727); **20.** *Eqy.* No. 914a

Collins, *Re* (1925); **5.** *Bkpcy.* Nos. 6129a, 6659a, 6745b
—, *Re* (Can.); **24.** *Exors.* p. 41
—, *Re, Ex p.* Salaman (Trustee) (1925); **5.** *Bkpcy.* No. 6659a
—, *Re,* Jowers *v.* Collins (1929); **40.** *Sttlmts.* No. 3138b
—, *Re,* Toronto General Trusts *v.* A.-G. for British Columbia (Can.); **21.** *E. D.* p. 22
—, *Re,* Towers *v.* Collins (1929); **40.** *Sttlmts.* No. 3138b
— *v.* Adamson & Co. (1938); **28.** *Inc. T.* No. 252h
— *v.* Associated Greyhounds Racecourses, Ltd. (1930); **1.** *Agcy.* No. 2130a; **9.** *Coys.* Nos. 581a, 581b, 581c, 1169a, 1169b
— *v.* A.-G. (1931); **3.** *Basty.* No. 142a
— *v.* British Timkin, Ltd. (1934); **34.** *Mast. & S.* No. 2647b
— *v.* Cahir (Can.); **27.** *H. & W.* p. 6
— *v.* Collins (Ind.); **27.** *H. & W.* p. 33
— *v.* — (Ir.); **18.** *Desct.* p. 1
— *v.* Feltham Urban District Council (1937); **38.** *Pub. Hlth.* No. 670b
— *v.* General Service Transport Co. (Can.); **36.** *Negl.* p. 15
— *v.* Margetts, *Re* Austen (1929); **40.** *Sttlmts.* No. 2600a
— *v.* Metters, Ltd. (Aus.); **34.** *Mast. & S.* p. 57
— *v.* Reid (Can.); **35.** *Mtge.* p. 37
— *v.* Whiteway (Henry) & Co. (1927); **16.** *Courts,* No. 17a; **32.** *Libel,* No. 1347a
Collins Estate, *Re* (Can.); **18.** *Desct* p. 3
—, *Re,* Toronto General Trusts Corpn. *v.* A.-G. for British Columbia & Collins (Can.); **18.** *Desct.* p. 3
Collinson, *Re,* Collinson *v.* Collinson (1853); **25.** *Gifts,* No. 103a
— *v.* Manvers Main Collieries, Ltd. (1937); **34.** *Mast. & S.* No. 2274b
— *v.* Ward, *Ex p.* Ward (Aus.); **39.** *Revenue,* p. 22
Collis *v.* Carew Lumber Co., Ltd. (Can.); **39.** *S. Goods,* pp. 57, 58
— *v.* Collis & Thomas (1933); **3.** *Basty.* No. 22f
Colliss *v.* Hector (1875); **23.** *Exors.* No. 2511a
Collyer *v.* Hoare & Co., Ltd. (No. 2), (1938); **28.** *Inc. T.* No. 292c
Colman *v.* Dunbar (S. Af.); **36.** *Negl.* p. 10
Colman (J. & J.), Ltd. Application to Register Trade Mark (1929); **43.** *Trade Mks.* No. 326a
Colonial Ammunition Co., Ltd. *v.* R. (N.Z.); **35.** *Money,* p. 15
Colonial & General Gas Co., *Re,* Lishman's Claim (1870); **10.** *Coys.* No. 4852a
Colonial Assurance Co., *Re* (Can.); **10.** *Coys.* p. 79
Colonial Bishoprics Fund, 1841, *Re* (1935); **8.** *Char.* Nos. 981d, 1418b
Colonial Gas Assocn., Ltd. *v.* Taxation Comr. (Aus.); **17.** *Dep.* p. 62; **28.** *Inc. T.* p. 26
Colonial Investment & Loan Co. *v.* Demerchant (Can.); **38.** *Real Prop.* p. 99
— *v.* Hush (Can.); **25.** *Fraud. Conv.* p. 13
— *v.* Martin (Can.); **11.** *Confl.* p. 57; **35.** *Mtge.* p. 44
Colonial Loan & Investment Co. *v.* Grady (Can.); **17.** *Dep.* p. 66
Colonial Manufacturing Co., *Re, Ex p.* Bank of Nova Scotia (Can.); **4.** *Bkpcy.* p. 43
Colonial Mutual Life Assurance Society, Ltd. *v.* Federal Taxation Comr. (Aus.); **28.** *Inc. T.* p. 51
— *v.* Long (N.Z.); **29.** *Insce.* p. 39
— *v.* Macdonald (S. Af.); **34.** *Mast. & S.* p. 2
Colorado, The (1923); **11.** *Confl.* No. 1309a
Coloured Asphalte Co., Ltd. *v.* British Asphalt & Bitumen, Ltd. (1935); **36.** *Pats.* No. 2944b
Colp *v.* Hunter (Can.); **12.** *Contr.* p. 11; **25.** *Fraud. Conv.* p. 18
Colpen *v.* Callahan (Can.); **34.** *Mines,* p. 199
Colpitts *v.* Sherwood (Can.); **35.** *Mtge.* p. 41
Colquhoun *v.* Driscoll (Can.); **38.** *Rates,* p. 82
Colquhoun & Son, Ltd., *Re,* Canadian Credit Men's Trust Assocn., Ltd. *v.* Campbell, Wilson & Strathdee, Ltd. (Can.); **5.** *Bkpcy.* p. 72
Colquitt *v.* United Steel Co., Ltd. (1928); **34.** *Mast. & S.* No. 3247a
Colson's Trusts, *Re* (1853); **44.** *Wills,* No. 9071a
Coltness Iron Co., Ltd. *v.* Sharp (1938); **34.** *Mines,* No. 1173b
Columbia Furnishing Co. *v.* Goldblatt (S. Af.); **21.** *Exon.* p. 47
Columbia Gramophone Co., Ltd. *v.* Fossey (Aus.); **36.** *Pats.* p. 100
Columbia Graphophone Co. *v.* Oxford Camera & Trading Co., Ltd. (1933); **36.** *Pats.* No. 1603c
Columbia Graphophone Co. *v.* Union Bank of Canada (Can.); **3.** *Bank.* pp. 33, 38
Columbia Graphophone Co., Ltd., Trade Marks (Nos. 288,624, 324,745 & 407,537, *Re* (1932); **43.** *Trade Mks.* No. 511a
Columbia Phonograph Co., General *v.* Regent Fittings Co. (1913); **36.** *Pats.* No. 3152a
Columbia Pictures Corpn.'s Application, *Re* (1932); **43.** *Trade Mks.* No. 353a
—, *Re* (1933); **43.** *Trade Mks.* No. 539a
Colville (D.) & Sons, Ltd. *v.* Ayreshire Assessor (Scot.); **38.** *Rates,* p. 76
Colville Estate, *Re* (Can.); **44.** *Wills,* p. 19
Colville Estate, Ltd. *v.* Inland Revenue Comrs. (1930); **28.** *Inc. T.* Nos. 674j, 674m, 674n
Colwell's Claim, *Re, Re* Stobie Forlong & Co. (Can.); **4.** *Bkpcy.* p. 30
Colwin *v.* Metropolitan Life Insurance Co. (Can.); **29.** *Insce.* p. 33
Colwood Park Assocn., Ltd. *v.* Oak Bay Corpn. (Can.); **35.** *Mistake,* p. 7
Comba *v.* Simpson (Can.); **16.** *Courts,* p. 9
Comean *v.* Leblanc (Can.); **12.** *Contr.* p. 41
Comforter & Cushion Manufacturing Co., *Re, Ex p.* Henderson (J. B.) & Co. (Can.); **7.** *B. of Sale,* p. 6
Cominelli *v.* Lake View & Star, Ltd. (Aus.); **34.** *Mines,* p. 199
Commane, *Re* (Aus.); **43.** *Trusts,* p. 66
Commercial Air Hire, Ltd. *v.* Wrightways, Ltd. (1938); **42.** *Str. Traf.* No. 260k
Commercial & Estates Co. of Egypt *v.* Board of Trade (1925); **11.** *Const. L.* Nos. 534a, 535a
Commercial Bank of Scotland *v.* Campbell, *Re* Campbell (1923); **28.** *Inc. T.* No. 646a
Commercial Corpn. Securities, Ltd. *v.* Nichols (otherwise Butterfield) (Can.); **11.** *Confl.* p. 38; **39.** *S. Goods,* p. 58
Commercial Credit Co. of Canada, Ltd. *v.* Fulton Brothers (Can.); **7.** *B. of Sale,* p. 8
Commercial Finance Corpn., Ltd. *v.* Capital Discount Corpn., Ltd. (Can.); **7.** *B. of Sale,* p. 8
— *v.* Martin, *Re* Grand River Motors, Ltd. (Can.); **7.** *B. of Sale,* p. 10
— *v.* Wilson (Can.); **7.** *B. of Sale,* p. 11
Commercial Hotel, Ltd. *v.* Campbell (Can.); **29.** *Inns.* p. 2
Commercial Life Assurance Co. of Canada *v.* Cadenhead (Can.); **18.** *Distr.* pp. 25, 27, **30.** *Jdgmts.* p. 23
— *v.* Strynadka (Can.); **2.** *Agric.* p. 26
Commercial Motor Bodies & Carriages, Ltd. *v.* Perth, Ltd. (Can.); **39.** *S. Goods,* p. 56
Commercial Pacific Cable Co. *v.* Prince Albert, The (Can.); **1.** *Adm.* p. 19

Commercial Properties, Ltd., *Re* (Ind.); **28.** *Inc. T.* p. 13
Commercial Securities Corpn., Ltd., *Re* (Can.); **38.** *Real Prop.* p. 95
— *v.* Davies (Can.); **32.** *Limit. of A.* p. 31
Commercial Securities (British Columbia), Ltd. *v.* Johnson (Can.); **1.** *Agcy.* p. 57
Commercial Signs *v.* General Motors Products (Can.); **13.** *Coprt.* p. 9
Commercial Trust Co. *v.* White (Can.); **44.** *Wills*, p. 52
Commercial Union Assurance Co., Ltd. *v.* Colonial Carrying Co. of New Zealand, Ltd. (N.Z.); **29.** *Insce.* p. 46
— *v.* Inland Revenue Comrs. (1938); **39.** *Revenue*, No. 619b
Commerer *v.* Stratford Carrying Co., Ltd. (N.Z.); **42.** *Str. Traf.* p. 37
Commodore, The (1853); **1.** *Adm.* No. 1277
Common Councilmen for the Ward of Farringdon Without in the City of London, *Re* Election of (1925); **20.** *Elect.* No. 1038a
Commonwealth, The *v.* Brisbane Milling Co. (Aus.); **17.** *Dep.* p. 67
— *v.* Colonial Ammunition Co. (Aus.); **17.** *Dep.* p. 36
— *v.* Kreglinger & Fernau, Ltd. & Bardsley (Aus.); **17.** *Dep.* p. 60
— *v.* New South Wales (Aus.) (1918); **17.** *Dep.* p. 63
— *v.* — (Aus.) (1923), 32 C. L. R. 200; **17.** *Dep.* p. 67
— *v.* — (Aus.) (1923), 33 C. L. R. 1; **17.** *Dep.* p. 74
— *v.* Queensland (Aus.); **17.** *Dep.* p. 62
Commonwealth Agricultural Service Engineers, Ltd., *Re* (Aus.); **10.** *Coys.* p. 84
Commonwealth & A.-G. for Commonwealth *v.* Australian Commonwealth Shipping Board (Aus.); **13.** *Corpns.* p. 35; **17.** *Dep.* p. 63
Commonwealth & Central Wool Committee *v.* Colonial Combing, Spinning & Weaving Co., Ltd. (Aus.); **17.** *Dep.* p. 61
Commonwealth & Commonwealth Oil Refineries, Ltd. *v.* State of South Australia, Ltd. (Aus.); **17.** *Dep.* p. 62
Commonwealth of Australia *v.* New South Wales State (1929); **17.** *Dep.* Nos. 56a, 390a
Community Development Co., Ltd. *v.* Myers (Can.); **40.** *S. Land.* p. 14
Community of Sisters of the Holy Names of Jesus & Mary, *Re*, *Re* Winnipeg Charter (Can.); **16.** *Courts*, p. 12
Compagnie Centrale des Emeris et Produits a Polir for Letters Patent (No. 343, 970) (1933); **36.** *Pats.* No. 351b
Compagnie Chemin de Fer Paris, Orleans *v.* Leeston Shipping Co., Ltd. (1919); **41.** *Ship.* No. 1764a
Compania Mercantil Argentina *v.* United States Shipping Board (1924): **1.** *Action*, No. 393a
Compania Mexicana de Petroleo el Aguila *v.* Essex Trading & Transport Co. (1929); **36.** *Negl.* Nos. 636a, 790a
Compania Naviera Bachi *v.* Hosegood (Henry) & Co., Ltd. (1938); **41.** *Ship.* No. 2635a
Compania Naviera Vascongada *v.* British & Foreign Marine Insurance Co., Ltd. (1936); **41.** *Ship.* No. 1663a
— *v.* Cristina S.S. (1938); **1.** *Adm.* No. 141c
Companies Act, s. 110, Reference, *Re* (Can.); **17.** *Dep.* p. 43
— *Re*, *Re* British Petroleums, Ltd. (Can.); **9.** *Coys.* p. 21
Companies Creditors Arrangement Act Reference, *Re* (Can.); **17.** *Dep.* p. 40
Companies Registrar, *Re*, *Re* Pioneer Savings & Loan Society (Can.); **16.** *Cr. Pract.* p. 31; **32.** *Loan Soc.* p. 45
Companies Winding Up Act, *Re*, *Re* Saskatchewan Co-operative Elevator Co., Ltd. (Can.); **2.** *Agric.* p. 1
Compressed Yeast, Ltd. *v.* Distributing Agency, Ltd. (S. Af.); **12.** *Contr.* p. 39
Compte de Wohronzoff, The (1781); **2.** *Aliens*, No. 419a
Comstock *v.* Ashcroft Estates, Ltd. (Can.); **2.** *Animals*, p. 66
Con Planck, Ltd. *v.* Kolynos Incorporated (1925); **13.** *Coprt.* No. 229a
Conboy *v.* Millsap (Can.); **8.** *Carr.* p. 26
Concord Canning Co.'s Trade Mark, *Re* (1932); **43.** *Trade Mks.* No. 152b
Condon *v.* Gassall & Drinkle (Can.) **21.** *Exon.* p. 43
Condon Estate, *Re* (Can.); **22.** *Evid.* p. 21
Conds *v.* Kabota (Can.); **16.** *Cr. Pract.* p. 32
Coneys *v.* Morris, *Re* Morris (Ir.); **3.** *Bank.* pp. 44, 45
Conger Lehigh Coal Co., Ltd. & Toronto City, *Re* (Can.); **11.** *Comp. Pche.* pp. 4, 6
Coniagas Reduction Co., Ltd. *v.* Ontario Hydro Electric Power Commission (Can.); **20.** *Electric*, p. 11
Conklin *v.* Dickson (Can.); **36.** *Negl.* p. 10
Conlan, *Ex p.*, R. *v.* Barnes Borough Council (1938); **16.** *Cr. Pract.* No. 1290a
Conlan's Estate, *Re* (Ir.); **32.** *Limit. of A.* p. 38
Conley, *Re*, *Ex p.* Trustee *v.* Barclays Bank, Ltd. (1938); **5.** *Bkpcy.* No. 7183b
—, *Re*, *Ex p.* Trustee *v.* Lloyds Bank, Ltd. (1938); **5.** *Bkpcy.* No. 7183b
— *v.* Lee (Can.); **38.** *Real Prop.* p. 99
Conn *v.* David Spencer, Ltd. (Can.); **43.** *Tresp.* p. 54
— *v.* Spencer (David), Ltd. (Can.); **43.** *Tresp.* p. 54
Conn Presbyterian Church, *Re* (Can.); **19.** *Eccl.* p. 31
Connacher *v.* Devenish (Can.); **40.** *S. Land*, p. 1; **43.** *Trov.* p. 58
Conneely *v.* Upton Colliery Co., Ltd. (1936); **34.** *Mast. & S.* No. 854a
Connel (Doe d.) *v.* Dickinson (Can.); **17.** *Deeds*, p. 32
Connell *v.* Olsen (Can.); **42.** *Str. Traf.* p. 61
— *v.* Rorke (Nfld.); **25.** *Fish.* p. 4
— *v.* Union S.S. Co. (Aus.); **34.** *Mast. & S.* p. 179
Connelly *v.* Moore (A. G.) & Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 162
— *v.* R. (Can.); **14.** *Crim.* p. 60
Conner, *Re* (Can.); **23.** *Exors.* p. 29
Connolley *v.* Connolley (Can.); **27.** *H. & W.* p. 25
Connolly, *Re* (Can.); **44.** *Wills*, p. 41
Connolly Shaw, Ltd. *v.* Nordenfjeldske S.S. Co. (1934); **41.** *Ship.* No. 3179c
— *v.* Shives (Can.); **24.** *Exors.* p. 36
Connor, *Re* (Ir.); **3.** *Basty.* pp. 58, 59
— *v.* Butlin (Ir.); **25.** *Food*, p. 6.
— *v.* Cadzow Coal Co., Ltd. (1932); **34.** *Mast. & S.* No. 3288a
— *v.* McPherson (Can.); **38.** *Rates*, p. 84
— *v.* Nelson, Moate & Co. (N.Z.); **31.** *L. & T.* p. 52
— *v.* Rockhampton City Council (Aus.); **38.** *Rates*, p. 62
— *v.* Tasmanian Permanent Exors. & Trustees Assocn., Ltd. (Aus.); **26.** *Guar.* p. 14
Connors *v.* Connors Bros., Ltd. (Can.); **43.** *Trade*, p. 6
— *v.* Egli (Can.); **17.** *Dep.* pp 53, 71

Connors *v.* McGregor (Can.); **12.** *Contr.* p. 55; **17.** *Damgs.* p. 14; *Deeds*, pp. 29, 31
— *v.* Myatt (Can.); **21.** *Estpl.* p. 38
Conquer *v.* Boot (1928); **21.** *Estpl.* No. 447a
Conquest, *Re*, Royal Exchange Assurance *v.* Conquest (1929); **40.** *Sttlmts.* No. 1873b
Conradie *v.* Roussouw (S. Af.); **12.** *Contr.* p. 17
Conrod *v.* R. (Can.); **34.** *Mast. & S.* p. 20
Conron *v.* London County Council (1922); **11.** *Comp. Pche.* No. 2225b
Conway *v.* Rogers (Can.); **44.** *Wills*, p. 52
— *v.* Spruce Grove, Municipal District of (Can.); **26.** *Hghys.* p. 29
— *v.* Wilkinson (Thomas) & Sons, Ltd. (1938); **34.** *Mast. & S.* No. 3829a
Consett Industrial & Provident Society, Ltd. *v.* Consett Iron Co. (1922); **11.** *Comns.* No. 903
Consett Iron Co., Ltd. *v.* Clavering Estates (Durham), Ltd. (1938); **34.** *Mines*, No. 327d
— *v.* Clavering Trustees (1935); **34.** *Mines*, No. 327j
— *v.* Durham County Assessment Committee for the North-Western Area (1931); **38.** *Rates*, Nos. 1057a, 1297a
Consett Iron Co., Ltd.'s Application (1938); **34.** *Mines*, No. 327d
Consolidated Coal Co., Ltd. *v.* Big Chief Woodyard, Ltd. & MacFarlane (Can.); **9.** *Coys.* p. 29
Consolidated Distilleries, Ltd. *v.* R. (1933); **17.** *Dep.* No. 216a
— *v.* R. (Can.) (1931); **7.** *Bonds*, p. 14
— *v.* R. (Can.) (1933); **39.** *Revenue*, p. 11
Consolidated Entertainments, Ltd. *v.* Taylor (1937); **10.** *Coys.* No. 5038a
Consolidated London Properties, Ltd. *v.* Johnstone (1932); **28.** *Inc. T.* Nos. 25d, 25h
Consolidated Press, Ltd., *Re*, *Ex p.* Auld (Aus.) **16.** *Cntmpt.* p. 5
—, *Re*, *Ex p.* Terrill (Aus.); **16.** *Cntmpt.* p. 3
— *v.* Gibson (J. E.) (Can.); **40.** *S. Land*, p. 13
Consolidated Rendering Co. *v.* Canadian National Rys. (Can.); **38.** *Rys.* p. 36
Consolidated South Rand Mines Deep, Ltd., *Re* (1909); **10.** *Coys.* No. 6787a
Consolidated Wafer Co., Ltd. *v.* International Cone Co., Ltd. (Can.); **22.** *Evid.* p. 1; **36.** *Pats.* p. 93
Conson *v.* London County Council (1922); **11.** *Comp. Pche.* No. 2225b
Constantinidi *v.* Ralli (1935); **40.** *Sttlmts.* No. 849a
Constitutional Questions Act, *Re*, *Re* Income Tax Act, 1932 (Can.); **16.** *Courts*, p. 9
Constitutional Questions Determination Act, *Re*, *Re* Legal Professions Act (Can.); **17.** *Dep.* p. 51
Consumers' Gas Co. *v.* R. (Can.); **25.** *Gas*, p. 45
Contal Radio, Ltd., *Re* (1932); **10.** *Coys.* Nos. 7373a, 7373b
Continental, *Re* (Aus.); **2.** *Aliens*, p. 45
Continental Casualty Co. *v.* Casey (Can.); **29.** *Insce.* p. 39
— *v.* Yorke (Can.); **29.** *Insce.* p. 47
Continental Contractors *v.* Medway Oil & Storage Co. (1928); **40.** *Set-Off*, No. 562
Continental Fire & Casualty Co., *Re* (Can.); **10.** *Coys.* pp. 71, 99
Continental Guaranty Corpn. of Canada, Ltd. *v.* Horodyske & Canmore Coal Co., Ltd. (Can.); **21.** *Exon.* p. 56
— *v.* Mark (Can.); **28.** *Infts.* p. 131
Continental Guaranty Corpn. *v.* Vance (Can.); **6.** *B. of Exch.* p. 2
Continental Marble Co., Ltd. *v.* Langs (Can.); **16.** *Cr. Pract.* p. 37
Continental Oil Co. *v.* Comr. of Patents (Can.) (1934); **43.** *Trade Mks.* p. 19
— *v.* — (1935); **43.** *Trade Mks.* p. 12
— *v.* Consumers Oil Co., Ltd. (Can.); **43.** *Trade Mks.* p. 12
Continental Publishing Co., *Re*, *Ex p.* Davis & Simmons (Can.); **4.** *Bkpcy.* pp. 28, 38
Converse *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 39
Conway *v.* Campbell (Can.); **39.** *S. Goods*, p. 52
— *v.* New Ideal Homesteads, Ltd. (1936); **13.** *Cty. Cts.* No. 847a
— *v.* Westwood (S. Af.); **32.** *Libel*, p. 6
Conway (Theo.), Ltd. *v.* Henwood (1934); *Pract.* No. 3816a
Conway's, Ltd. *v.* Ryan (Can.); **21.** *Exon.* p. 60
Conybear *v.* British Briquettes, Ltd. (1937); **9.** *Coys.* Nos. 2356a, 2590a
Cooey *v.* Brome Municipality (Can.); **17.** *Dep.* p. 51
Cooil *v.* Clarkson (Can.); **21.** *Estpl.* p. 42
Cook, *Ex p.*, *Re* Gunsbourg (1920); **5.** *Bkpcy.* No. 5775a
—, *Re* (Aus.); **21.** *E. D.* p. 9
—, *Re*, *Ex p.* Cook (Can.); **22.** *Evid.* p. 21
—, *Re*, *Ex p.*, McElwain (Aus.); **24.** *Extrdn.* p. 46
— *v.* Alfred Plumpton, Ltd. (1935); **42.** *Str. Traf.* No. 232k
— *v.* Bell Bros. (1937); **34.** *Mast. & S.* No. 2407c
— *v.* Belshaw (Can.); **32.** *Lien*, p. 26
— *v.* Cook (Can.); **32.** *Limit. of A.* p. 39
— *v.* Davidson (Can.); **13.** *Corpns.* p. 35
— *v.* Henderson (1935); **42.** *Str. Traf.* No. 232k
— *v.* Koldofpky (Can.); **32.** *Lien*, p. 26
— *v.* Lemieux (Can.); **38.** *Real Prop.* p. 99
— *v.* M'Dougall (Scot.); **4.** *Bkpcy.* p. 19
— *v.* Orr (Can.); **7.** *B. of Sale*, p. 11
— *v.* Plumpton (Alfred), Ltd. (1935); **42.** *Str. Traf.* No. 232f
— *v.* R. (Can.); **39.** *Revenue*, p. 10
Cooke, *Re*, *Ex p.* Adam (1813); **4.** *Bkpcy.* No. 218b
Cooke *v.* Mocroft (Can.); **32.** *Lien*, p. 27
— *v.* Moore (Can.); **12.** *Contr.* p. 36
— *v.* R. (Can.); **39.** *Royal F.* p. 31
— *v.* Turner (1844); **42.** *Solrs.* No. 2807a
— *v.* Wallace (N.Z.); **1.** *Agcy.* p. 51
Cookson *v.* Harewood (1932); **32.** *Libel*, Nos. 167b, 1654a
— *v.* Mackie (Scot.); **39.** *Revenue*, p. 16
— *v.* Pountney (1937); **13.** *Coprt.* No. 369a
— *v.* Reay (1842); **20.** *Eqy.* No. 1290
Coolee, Ltd. *v.* Wing, Heath & Co. (1930); **29.** *Insce.* No. 3134a.
Cooley *v.* Walsh & Cooney (Ir.); **31.** *L. & T.* p. 94
Coolin *v.* Coolin (Can.); **39.** *S. Goods*, p. 33
Coombe *v.* Sansom (1822); **43.** *Trov.* No. 624a
Coombes, *Re*, *Ex p.* Official Receiver *v.* Trustee (1935); **4.** *Bkpcy.* No. 3003a
Coombs *v.* Mason (S. Af.); **36.** *Negl.* p. 26
Cooper, *Re*, *Ex p.* Hall (1882); **4.** *Bkpcy.* No. 4638a
— *v.* Cadwalader (Scot.); **28.** *Inc. T.* p. 24
— *v.* Collins Electrical, Ltd. (1926); **34.** *Mast. & S.* No. 3698b
— *v.* Conrad (Can.); **2.** *Animals*, p. 66
— *v.* Cooper (1936); **27.** *H. & W.* No. 4630a
— *v.* Cooper & Ford (1932); **27.** *H. & W.* No. 2178a
— *v.* Cooper-Gill (Aus.); **27.** *H. & W.* p. 55
— *v.* Dummett (1930); **42.** *Solrs.* No. 3970a
— *v.* London, Chatham & Dover Ry. Co. (1867); **11.** *Comp. Pche.* No. 1184a
— *v.* Micklefield Coal & Lime Co., Ltd. (1912); **12.** *Contr.* Nos. 4908a, 4931a
— *v.* Pennington (Can.); **44.** *Work*, p. 58

Cooper *v.* Rayner (1912); **12.** *Contr.* Nos. 4908a, 4931a
— *v.* Southern Ry. Co. (1935); **8.** *Carr.* No. 1510
— *v.* Swadling (1931); **36.** *Negl.* No. 731a
— *v.* Toronto Casualty Insurance Co. (Can.); **29.** *Insce.* p. 26
— *v.* Visser (S. Af.); **2.** *Animals*, p. 58
— *v.* Warburton (Can.); **32.** *Libel*, p. 5
— *v.* Wilson (1937); **30.** *Jdgmts.* No. 202c; **37.** *Police*, No. 25a
Cooper (Cuthbert) & Sons, Ltd., *Re* (1937); **10.** *Coys.* No. 5357c
Co-operative Hindusthan Bank, Ltd. *v.* Surendranath De (Ind.); **20.** *Eqy.* p. 20
Co-operative Music Supply Co. *v.* Gold Medal Furniture Manufacturing Co., *Re* Hughes Music Sales Co. (Can.); **5.** *Bkpcy.* p. 72
Co-operative Wholesale Society, Ltd. *v.* Lally (1930); **34.** *Mast. & S.* No. 3981a
Coore, *Re* (1883); **28.** *Infts.* No. 1113a
Coote *v.* Boyd (1789); **44.** *Wills*, No. 8712a
— *v.* Coote (1789); **44.** *Wills*, No. 8712a
— *v.* Sproule (Aus.); **43.** *Trade*, p. 6
Cope's Trusts, *Re* (1877); **24.** *Exors.* No. 5353a
Copeland *v.* Roberts (Can.); **42.** *Str. Traf.* p. 59
Copelin's Contract, *Re* (1937); **40.** *S. Land*, No. 1401b
Copestake *v.* West Sussex County Council (1911); **11.** *Comns.* No. 1012a
Copley *v.* Finkelstein (Can.); **17.** *Damgs.* p. 15; **43.** *Tresp.* p. 53
Copp, *Ex p.*, R. *v.* Murray (Can.); **33.** *Mags.* pp. 25, 26
Copp *v.* Williams (Can.); **5.** *Bkpcy.* p. 73
Copper Export Assocn. Incorporated *v.* Mersey Docks & Harbour Board (1932); **38.** *Pub. Auth.* No. 949a
Coppin *v.* Coppin (1725); **23.** *Exors.* No. 4972*a*
Corano, *Re* (Can.); **30.** *Intox.* p. 18
Corballis, *Re* (Ir.); **5.** *Bkpcy.* p. 55
Corbally *v.* Church Representative Body (Ir.); **8.** *Char.* p. 62
Corbett *v.* Burge, Warren & Ridgley, Ltd. (1932); **1.** *Action*, No. 274a
— *v.* Inland Revenue Comrs. (1938); **28.** *Inc. T.* No. 673e
— *v.* Jamieson (N.Z.); **3.** *Bailmt.* p. 6
Corcoran *v.* West (Ir.); **36.** *Negl.* p. 25
Cords & Cords Piston Ring Co. of Canada, Ltd. *v.* Steelcraft Piston Ring Co. of Canada (Can.); **36.** *Pats.* pp. 74, 75
Corfield *v.* Dolby (1935); **25.** *Gaming* No. 466d
Cork, *Ex p.*, *Re* Tabor (1920); **5.** *Bkpcy.* Nos. 6516a, 6881a, 6890a
Cork Electric Supply Co., Ltd. *v.* Concannon (Ir.); **10.** *Coys.* p. 86
Corkill *v.* Vancouver Recreation Parks, Ltd. (Can.); **36.** *Negl.* p. 34
Corkings *v.* Collins (Can.); **18.** *Descl.* p. 3
Corlet *v.* Isle of Man Bank, Ltd. (Can.); **44.** *Wills*, p. 12
Cormack, *Ex p.*, *Re* McMaster (Aus.); **27.** *H. & W.* p. 82
Cormack (Owner of S.S. Colinton) *v.* Dundee Harbour Trustees (Scot.); **41.** *Ship.* p. 74
Cormier *v.* Le Blanc (Can.); **22.** *Evid.* p. 15
Cornelius *v.* R. (Aus.); **14.** *Crim.* p. 39
Cornfoot *v.* Holdenson (Aus.); **26.** *Guar.* p. 7
Cornford *v.* Havant & Waterloo Urban District Council (1933); **36.** *Nuis.* No. 566a
Cornish Coast (Owners) *v.* Societa Nazionale di Navigazione, The Fagernes (1927); **11.** *Const. L.* No. 136a; **16.** *Courts*, No. 37a
Cornish Rose, The, Finland S.S. Owners *v.* Cornish Rose S.S. Owners (1936); **1.** *Adm.* No. 1152c; **22.** *Evid.* No. 1624a
Cornthwaite *v.* Frith (1851); **5.** *Bkpcy.* No. 9540a
Cornwall *v.* Williams (1701); **40.** *S. Land*, No. 2242a
Cornwall & Archibald *v.* Doyle Contracting Co., Ltd. (Can.); **42.** *Solrs.* p. 5
Corones, *Ex p.*, R. *v.* Charleville Town Council (Aus.); **33.** *L. G.* p. 7; **42.** *Theatres*, p. 70
Corporation Agencies, Ltd. *v.* Home Bank of Canada (1926); **16.** *Courts*, No. 388a
Corporation Agencies *v.* Home Bank of Canada (1927); **3.** *Bank.* No. 544a
Corporation Securities, Ltd. *v.* Royal Bank (Can.); **6.** *B. of Exch.* p. 14
Corrigal *v.* Boulton (Can.); **26.** *Guar.* p. 9
Corry *v.* Robinson (1934); **23.** *Inc. T.* Nos. 489c, 502c, 527b
Corsini *v.* Hamilton (Can.); **36.** *Negl.* p. 25
— *v.* Palm (Can.); **35.** *Mtge.* p. 48
Corson *v.* Morgan (Can.); **35.** *Mistake*, p. 10
Corson Shoe Co., *Re* (Can.); **4.** *Bkpcy.* p. 38
Corstar Owners *v.* Eurymedon Owners, The Eurymedon (1938); **41.** *Ship.* No. 6453a
Corsten *v.* Noblet (Aus.); **15.** *Crim.* p. 104
Cory (William) & Son, Ltd. *v.* Dorman, Long & Co., Ltd. (1936); **41.** *Ship.* Nos. 8083a, 8083b
Cory Lighterage, Ltd. *v.* Dalton (Owners), The Harlow (1922); **1.** *Adm.* No. 1536a
Coryton *v.* Helyar (1745); **44.** *Wills*, No. 7742a
Cosens *v.* McEwan (Can.); **22.** *Evid.* p. 21
Cosgrove *v.* Canadian National Rys. (Can.); **17.** *Damgs.* pp. 9, 10, 11, 21
— *v.* Corbell (Can.); **32.** *Limit. of A.* p. 37
Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929); **41.** *Ship.* Nos. 3059a, 3128a
Cossentine, *Re*, Philp *v.* Wesleyan Methodist Local Preachers' Mutual Aid Assocn. (1933); **44.** *Wills*, Nos. 7179b, 8538a
Cossor (A. C.) Ltd. *v.* Patents Comr. (Can.); **36.** *Pats.* p. 79
Costar *v.* Hetherington (1859); **21.** *Estpl.* No. 597a
Costen *v.* Tostovaryk (Can.); **29.** *Intpr.* p. 64
Costin *v.* Chappell (Can.); **11.** *Const. L.* p. 77
Cote *v.* Boucher (Can.); **30.** *Intox.* p. 18
— *v.* Canadian National Ry. Co. (Can.); **18.** *Discy.* p. 10
— *v.* Lampman Union Hospital Board (Can.); **36.** *Negl.* p. 5
— *v.* Quebec Liquor Commission (Can.); **17.** *Dep.* p. 59
Cottage Club Estates *v.* Woodside Estates Co. (Amersham) (1928); **7.** *Bldg. Conts.* No. 345a
Cotter *v.* National Union of Seamen (1929); **43.** *Trade*, No. 1122a
Cotterill *v.* Penn (1936); **14.** *Crim.* No. 72b
Cottingham *v.* Boulton (Can.); **35.** *Mistake*, p. 10
— *v.* Cottingham (Can.); **21.** *Exon.* p. 59
Cottingham's Exors. *v.* Inland Revenue Comrs. (1938); **28.** *Inc. T.* Nos. 569d, 576f
Cottle, *Ex p.*, *Re* Wolverhampton, Chester & Birkenhead Junction Ry. Co. (1850); **1.** *Agcy.* No. 646
Cotton *v.* Dempster (Can.); **21.** *Exon.* p. 43
— *v.* Frost (N.Z.); **13.** *Coprt.* p. 8
— *v.* Heyl (1930); **5.** *Bkpcy.* No. 8398a
— *v.* Lutton (1931); **34.** *Mast. & S.* Nos. 3668g, 3855a
Coubrough *v.* Royal Society of London, *Re* Tilden (1938); **44.** *Wills*, No. 2574a
Couch *v.* Western Trust Co. (Can.); **32.** *Limit. of A.* p. 39
Coughlan & Son, Ltd. *v.* R. (Can.); **16.** *Cr. Pract.* p. 24

Coughlin & Co., *Re, Ex p.* Guarantee Co. of North America (Can.); **4.** *Bkpcy.* pp. 26, 32
Couillard *v.* Provincial Bank of Canada (Can.); **4.** *Bkpcy.* p. 5
Coull, *Re* (Can.); **4.** *Bkpcy.* p. 5
— *v.* Fife Education Authority (Scot.); **19.** *Educ.* p. 44
Coulsdon & Purley Urban District Council *v.* Surrey County Council (1934); **38.** *Rates*, No. 1170a.
Coulson, *Re, Ex p.* Official Receiver (Trustee) (1934); **5.** *Bkpcy.* No. 5523a
— *v.* Austin Motor Co., Ltd. (1927); **9.** *Coys.* No. 3734a
— *v.* Gunn (Can.); **35.** *Mtge.* p. 43
— *v.* Gzowski (Can.); **41.** *Ship.* p. 46
Coulter *v.* Coulter (Aus.); **27.** *H. & W.* p. 78
— *v.* Readhead (Aus.); **1.** *Agcy.* p. 91
Coulter & Treffene *v.* R. (Aus.); **14.** *Crim.* pp. 29, 46
Counter's Petition, *Re*, Buckingham *v.* Counter (1938); **20.** *Elect.* No. 1598a
County Chemical Co., Ltd.'s Application to Register Trade Mark, *Re* (1937); **43.** *Trade Mks.* No. 417a
County Hotel & Wine Co. *v.* London & North Western Ry. Co. (1918); **1.** *Action*, No. 604a
— *v.* — (1921); **1.** *Action*, No. 604a
Coupland *v.* Elmore P. Burns & Co., Ltd. (Can.); **39.** *S. Goods*, p. 51
— *v.* Marr (Can.); **27.** *H. & W.* p. 21
Courage *v.* Courage (1931); **27.** *H. & W.* No. 4879a
Courcier *v.* Courcier (Can.); **28.** *Infts.* p. 132
Coursolles *v.* Fookes (Can.); **20.** *Eqy.* p. 31
Court, *Re* (Can.); **38.** *Real Prop.* p. 89
— *v.* Holland, *Ex p.* Holland & Walsh (Can.); **22.** *Evid.* p. 6
— *v.* Walsh (Can.); **32.** *Limit. of A.* p. 38
Court of Marine Inquiry, *Re, Ex p.* Evans (Aus.); **41.** *Ship.* p. 69
Courtaulds, Ltd. *v.* City of London Corpn. (1926); **11.** *Comp. Pchc.* No. 2286a
Courteis *v.* Johnson (1853); **10.** *Coys.* No. 7723a
Courtin *v.* Elder (Scot.); **27.** *H. & W.* p. 3
Courtney, *Ex p., Re* O'Donnell (Aus.); **25.** *Gaming*, p. 33
Cousen's Will Trusts, *Re*, Wright *v.* Killick (1937); **44.** *Wills*, No. 3217a
Cousens *v.* Minister of Health (1938); **44.** *Work*, No. 149a
Cousens' Appeal, *Re* (1938); **44.** *Work*, No. 149a
Cousin *v.* Edinburgh Assessor (Scot.); **38.** *Rates*, p. 74
Cousins *v.* Greaves (Can.); **2.** *Animals*, p. 60
— *v.* International Brick Co., Ltd. (1931); **9.** *Coys.* Nos. 3803a, 3847b
— *v.* National Flying Services, Ltd., *Re* National Flying Services, Ltd. (1936); **10.** *Coys.* No. 5036c
— *v.* Sun Life Assurance Society (1933); **27.** *H. & W.* 1226b
Coutre *v.* Quebec Liquor Commission (Can.); **30.** *Intox.* p. 15
Coutts *v.* Acme Manufacturing Co., Ltd. (Can.); **1.** *Agcy.* p. 75
Coutts & Co. *v.* Duchessa Dusmet de Smours, *Re* Horne's Settlement (1932); **27.** *H. & W.* No. 807a; **39.** *Rntchgs.* No. 221a
— *v.* Godwin, *Re* Godwin (1938); **39.** *Rntchgs.* Nos. 571b, 571c
— *v.* Somerville (1935); **35.** *Mtge.* No. 775a
Coutu *v.* James (Can.); **32.** *Lien*, p. 24
Couturier *v.* Ouellette (Can.); **7.** *Bounds. & F.* p. 15
Coventry *v.* Great Eastern Ry. Co. (1883); **21.** *Eccl.* No. 1610
Coventry Corpn. *v.* Surrey County Council (1935); **37.** *Poor L.* No. 504a
Covington, *Re* (Can.); **4.** *Bkpcy.* p. 46
Cowan, *Ex p., Re* Clerical Disabilities Act, 1870 (1927); **19.** *Eccl.* No. 1851a
— *v.* A.-G. (Can.); **21.** *E. D.* p. 19
— *v.* Cowan (1935); **21.** *Estpl.* No. 1081a
— *v.* Eisler (Can.); **34.** *Mast. & S.* p. 9
— *v.* Ennerdale Rural District Council (1936); **38.** *Rates*, No. 1426a
— *v.* Macaulay (Can.); **38.** *Real Prop.* p. 93
Cowan & Co. *v.* Edinburgh Assessor (Scot.); **38.** *Rates*, p. 76
— *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 76
Cowan Brothers, Ltd. & Rymer (Henry) & Co., *Re* (1919); **2.** *Arbn.* No. 1857c
Cowan Estate, *Re* (Can.); **38.** *Real Prop.* p. 91
Coward, Chance & Co., *Re* (1928); **35.** *Mtge.* No. 4061a
Cowasji Nusserwanji *v.* Shehra Cowasji (Ind.); **27.** *H. & W.* p. 25
Cowburn (W. H.) & Cowpar, Ltd. Appeals, *Re* (1933); **44.** *Work*, No. 139a
Cowcher *v.* Mills & Co., Ltd. (1927); **28.** *Inc. T.* No. 248b
Cowdenbeath Public-House Society, Ltd. *v.* Fife Assessor (Scot.); **38.** *Rates*, p. 82
Cowdray *v.* Ferries (Scot.); **2.** *Agric.* p. 7
— *v.* (Annie, Viscountess) *v.* Inland Revenue Comrs. (1930); **28.** *Inc. T.* No. 700a
Cowell *v.* Rosehill Racecourse Co., Ltd. (Aus.); **30.** *L. & T.* p. 45
Cowen & Cowen's Ideal Trading Stamp Co. (Glasgow), Ltd. *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 38
Cowie *v.* Official Assignee, *Re* McKay (N.Z.); **5.** *Bkpcy.* p. 62
— *v.* Robinson (Can.); **32.** *Libel*, p. 13
— *v.* Sawyer-Massey Co. (Can.); **1.** *Agcy.* p. 90
Cowley *v.* Cowley (Can.); **27.** *H. & W.* p. 60
Cowley (Earl) *v.* Wellesley (1866); **40.** *Sttlmts.* Nos. 2197a, 2205b
Cowlishaw *v.* Ponsford (Aus.); **19.** *Easmt.* p. 4
Cowne *v.* Cordery (1862); **18.** *Distr.* No. 1266a
Cowper, *Re*, *Re* Holl (Can.); **22.** *Evid.* p. 8
— *v.* Frankenberg (Aus.); **2.** *Aliens*, p. 35
— (N. L.) *v.* Paper Sacks Proprietary, Ltd. (Aus.); **36.** *Pats.* p. 84
Cox, *Re* (Can.); **11.** *Const. L.* p. 77; **23.** *Exors.* p. 6
—, *Re*, Public Trustee *v.* Eve (1938); **39.** *Rntchgs.* No. 196a
— *v.* Great Western Ry. Co. (1935); **8.** *Carr.* No. 1566
— *v.* Hart (1759); **16.** *Cr. Pract.* No. 3099a
— *v.* Hogan & Victoria Corpn. (Can.); **8.** *Char.* p. 67
— *v.* Kilsby, *Re* Pitts (1931); **13.** *Crnrs.* No. 403a; **18.** *Desct.* No. 283h
— *v.* Whieldon (Can.); **40.** *S. Land*, p. 11
Cox & Sons, Ltd. *v.* Sidery (1935); **42.** *Str. Traf.* No. 232o
Cox & Walsh *v.* Burton (N.Z.); **6.** *B. of Exch.* p. 12
Cox Bros. (Australia), Ltd. *v.* Waterworks Comr. (Aus.); **43.** *Wtr. Sply.* p. 76
Cox Towing Line *v.* Dunfield & Co. (Can.); **2.** *Arbn.* pp. 76, 81
Cox's Case, *Re* Tring, Reading & Basingstoke Ry. Co. (1850); **10.** *Coys.* No. 6058a
Coxe *v.* Basset (1796); **23.** *Exors.* No. 5839a
Coyle, *Ex p.* (Can.); **33.** *Mags.* p. 27
Coyle, *Re* (Can.); **38.** *Real. Prop.* p. 89
— *v.* Black (Can.); **16.** *Cr. Pract.* p. 24
Cozier, *Re*, Parker *v.* Glover (Can.); **24.** *Exors.* p. 41
Crabtree *v.* Thornber, *Re* Thornber (1937); **44.** *Wills*, No. 3260c

Crabtree & Sons, Ltd. *v.* Hoe & Co., Ltd. (1936); **36.** *Pats.* No. 796d
Craddock *v.* Davidson (Aus.); **43.** *Trade*, p. 9
— *v.* Greenwood (1934); **28.** *Inc. T.* No. 539b
Cragoe *v.* Goodman, *Re* Sleeman (1929); **44.** *Wills*, No. 7911a
Craig, *Re* (Can.); **21.** *Exon.* pp. 50, 51; **38.** *Real Prop.* p. 91
— *v.* Armaghdale (Lady), *Re* Armaghdale (Lord) (1928); **28.** *Inc. T.* No. 696a
— *v.* Canadian Northern Pacific Ry. Co. (Can.); **36.** *Negl.* p. 21
— *v.* Dalton (Can.); **36.** *Negl.* p. 26
— *v.* Dover Navigation Co., Ltd. (1938); **34.** *Mast. & S.* No. 2626b
— *v.* Kennedy (Can.); **5.** *Bkpcy.* p. 51
— *v.* McCreath (Can.); **1.** *Agcy.* p. 51
— *v.* Marsh (Aus.); **43.** *Trov.* p. 56
— *v.* University of Toronto (Governors) (Can.); **19.** *Educ.* p. 42
Craig & Co. *v.* Blackater (Scot.); **1.** *Agcy.* pp. 96, 102
Craig (W. G.) & Co., Ltd. *v.* Gillespie (Can.); **5.** *Bkpcy.* p. 73; **7.** *B. of Sale*, p. 8
Craigon *v.* R. (1924); **17.** *Dep.* No. 108a
Cramb *v.* Goodwin (1919); **1.** *Agcy.* No. 1829a
Crane *v.* Baird (William) & Co. (Scot.); **34.** *Mines*, p. 211
Crane Lumber Co. *v.* Brisson (Can.); **26.** *Hghys.* p. 20
Cranfield *v.* Lawrence (1938); **26.** *Hghys.* No. 1435k
Crang *v.* Rutherford (Can.); **35.** *Mtge.* p. 46
Crang & Co. *v.* Plotke & Co. (Can.); **42.** *Stk. Ex.* p. 33
Cranstoun, *Re*, National Provincial Bank *v.* Royal Society for the Encouragement of Arts, Manufactures & Commerce (1932); **3.** *Char.* No. 217a
Craske *v.* Craske (Aus.); **27.** *H. & W.* p. 26
Craven *v.* Blackpool Greyhound Stadium & Racecourse, Ltd. (1936); **10.** *Coys.* No. 7022a
— *v.* Lalonde (Can.); **21.** *Exon.* p. 56
Craven's Estate, *Re*, Lloyds Bank, Ltd. *v.* Cockburn (No. 1) (1937); **11.** *Confl.* No. 434a; **25.** *Gifts*, No. 386a; **28.** *Infts.* No. 1083a
—, *Re*, Lloyds Bank, Ltd. *v.* Cockburn (No. 2) (1937); **43.** *Trusts*, No. 3149a
—, *Re*, Lloyds Bank, Ltd. *v.* Craven (No. 1) (1937); **11.** *Confl.* No. 434a; **25.** *Gifts*, No. 386a; **28.** *Infts.* No. 1083a
—, *Re*, Lloyds Bank, Ltd. *v.* Craven (No. 2) (1937); **43.** *Trusts*, No. 3149a
Craven-Ellis *v.* Canons, Ltd. (1936); **9.** *Coys.* No. 3497a
Craw *v.* Forrest (Scot.); **34.** *Mast. & S.* p. 40
Crawford, *Re* (1847); **22.** *Evid.* No. 6092a
— *v.* College of Physicians & Surgeons (Can.); **34.** *Med.* p. 184
— *v.* Franklin Municipality (Can.); **26.** *Hghys.* p. 29
— *v.* Hudson (R. S.), Ltd. (1935); **28.** *Inc. T.* No. 16b
— *v.* Imperial Trust Co. of Canada (Can.); **1.** *Agcy.* p. 80
— *v.* Lundy (Can.); **20.** *Eqy.* p. 27
— *v.* Northern Lighthouses Comrs. (Scot.); **7.** *Bldg. Conts.* p. 31
— *v.* Western Assurance Co. (Can.); **29.** *Insce.* p. 4
— *v.* White City Rink (Newcastle-on-Tyne), Ltd. (1913); **12.** *Contr.* No. 845a
Crawford & Co. *v.* Hunters & Co. (Nfld.); **4.** *Bkpcy.* p. 40
Crawley *v.* Gibbin (William) & Son (1933); **34.** *Mast. & S.* No. 3283d
Crawley *v.* Laidlaw (Aus.); **22.** *Evid.* p. 9
— *v.* Martin (1930); **27.** *H. & W.* No. 5781d
Craythorne *v.* Jenkins (N.Z.); **12.** *Contr.* p. 54
Craze *v.* Meyer-Dumore Bottlers' Equipment Co., Ltd. (1936); **24.** *Fact.* No. 81b
Creagh *v.* Sutherland & Reade (Can.); **21.** *Exon.* p. 54
Creaghan Co., Ltd. *v.* Davidson (Can.); **42.** *Sp. Pfce.* p. 16
Creamer Estate, *Re* (Can.); **44.** *Wills*, pp. 32, 36
Creamette Co. *v.* Famous Foods, Ltd. (Can.); **2.** *Aliens*, p. 30; **17.** *Dep.* p. 66
Creaney *v.* Fairfield Shipbuilding Co. (Scot.); **34.** *Mast. & S.* p. 104
Creasey *v.* Creasey (Scot.); **27.** *H. & W.* p. 28
Credit Canadien Incorpe, *Re*, Sun Trust Co., Ltd. *v.* Begin (Can.); **9.** *Coys.* p. 34
Credit Foncier Franco-Canadien *v.* Ross & A.-G. for Alberta (Can.); **17.** *Dep.* p. 57
— *v.* Singer (Can.); **32.** *Limit. of A.* p. 36
Crediton Gas Co. *v.* Crediton Urban District Council (1928); **25.** *Gas*, No. 51a
Creed *v.* Wright (1932); **13.** *Cty. Cts.* No. 770a
Creelman *v.* Canadian Pacific Railway (Can.); **7.** *Bldg. Conts.* p. 26
Creelman & Verge *v.* R. (Can.); **11.** *Const. L.* p. 66
Creemer *v.* Englund (Can.); **36.** *Negl.* p. 38
Creighton *v.* Kuhn (Can.); **32.** *Limit. of A.* p. 37
— *v.* United Oils, Ltd. (Can.); **11.** *Const. L.* p. 77
Crellin *v.* Melling, *Re* Reade-Revell (1930); **23.** *Exors.* No. 5251b; **28.** *Infts.* No. 1058a
Cremidas *v.* British Columbia Electric Ry. Co. (Can.); **2.** *Aliens*, p. 42
Crepin *v.* Ottawa Electric Co. (Can.); **20.** *Electric*, p. 16
Crerar *v.* Bank of Scotland (Scot.); **3.** *Bank.* p. 42
Crerer & Patterson *v.* Braybrook (Can.); **1.** *Agcy.* p. 85
Crescent Sales Pty., Ltd. *v.* British Products Pty., Ltd. (Aus.); **32.** *Libel*, p. 17
Cresswell *v.* Cresswell (Ind.); **11.** *Confl.* p. 46
— *v.* Newcombe, *Re* Newcombe (N.Z.); **44.** *Wills*, p. 43
Crest Estate, *Re* (Can.); **23.** *Exors.* p. 20
Crete Shipping Co., Ltd. *v.* Chicago Tribune S.S. (Can.); **41.** *Ship.* p. 50
Creteforest, The (1920); **1.** *Adm.* Nos. 856a, 979a, 1001a
Crew (Doe d.) *v.* Clarke (Can.); **21.** *Exon.* p. 51
Crew *v.* Petit (1834); **1.** *Agcy.* No. 2658
Crewkerne United Breweries, Ltd. *v.* Slade, *Re* Slade (1921); **4.** *Bkpcy.* No. 4335a
Crichton, *Re* (1935); **28.** *Infts.* No. 1156b
Crichton Estate, *Re* (Can.); **37.** *Perps.* p. 4
Crichton (C. & H.) (1921), Ltd., *Re* (1932); **10.** *Coys.* Nos. 7169a, 7169b
Crieff Gas Light Co., Ltd. *v.* Perthshire Assessor (Scot.); **38.** *Rates.* p. 74
Crigglestone Coal Co., *Re*, Stewart *v.* Crigglestone Coal Co. (1906); **10.** *Coys.* No. 5105a
Crimdon, The (1918); **1.** *Adm.* Nos. 131a, 141a
Criminal Code, Sect. 498A, *Re*, A.-G. for British Columbia *v.* A.-G. for Canada (1937); **17.** *Dep.* No. 130m
Cripps *v.* Cooper (1936); **42.** *Str. Traf.* No. 232j
Cripps, Ross & Co., *Re*, *Ex p.* Ross (1888); **4.** *Bkpcy.* No. 997a
Crips, *Re*, Crips *v.* Todd (1906); **43.** *Trusts*, No. 3488a
— *v.* Todd, *Re* Crips (1906); **43.** *Trusts*, No. 3488a
Crisp *v.* South African Council of the Amalgamated Engineering Union (S. Af.); **8.** *Clubs*, p. 98
Crispin, *Re* (Can.); **2.** *Agric.* p. 25

Criss *v.* Alexander (Aus.); **39.** *S. Goods*, p. 39
Cristal *v.* Simovitch (Can.); **6.** *B. of Exch.* p. 21
Cristall & Rona Building, Ltd. *v.* T. Eaton Co. (Can.); **40.** *S. Land*, p. 19
Cristina, The (1938); **1.** *Adm.* No. 141e
Crocker, *Re*, *Re* Taxation of Costs (1936); **42.** *Solrs.* No. 3677a
— *v.* Hutchinson (Can.); **21.** *Estpl.* p. 39
Croft *v.* Dunphy (1933); **17.** *Dep.* No. 128e; **42.** *Stats.* No. 15a
— *v.* Dunphy (Can.); **33.** *Mal. Pros.* p. 41
— *v.* Mitchell (Can.); **42.** *Stk. Ex.* p. 33
— *v.* Ruck, *Re* Garrett (1934); **43.** *Trusts*, Nos. 2273b, 2273c
— *v.* Wambolt (Can.); **22.** *Evid.* p. 5
— *v.* Whiting (Can.); **38.** *Real Prop.* p. 95
Croft & Sons, Ltd., *Ex p.*, *Re* Gardner (Can.); **5.** *Bkpcy.* p. 92
Croft's Estate, *Re* (Can.); **23.** *Exors.* p. 2
Crofts *v.* Middleton (1852); **22.** *Evid.* No. 6633a
Croker *v.* Croker (1932); **27.** *H. & W.* No. 5199a; *Pract.* No. 3485a
— *v.* Martin (1827); **20.** *Eqy.* No. 1619a
— *v.* Penny, *Re* Walker (Aus.); **44.** *Wills*, p. 52
Cromarty *v.* Cromarty (Can.); **11.** *Confl.* pp. 46, 50, 51
Cromarty's Estate, *Re* (Can.); **18.** *Desct.* p. 4
Crombie *v.* R. (Can.); **16.** *Cr. Pract.* p. 26
Cromie *v.* Moore (1936); *Pract.* No. 613a
Crompton *v.* London, Midland & Scottish Ry. Co. (1935); **8.** *Carr.* No. 1619
Cromwell Property Investment Co., Ltd. *v.* Western (1934); **35.** *Mtge.* No. 1041a
Cromwell's (Lord) Case (1578); **22.** *Evid.* No. 1200a
Cronholm *v.* Cole (Can.); **40.** *S. Land.* p. 11
Cronin (T. W.) Shoe Pty., Ltd. *v.* Cronin (Aus.); **43.** *Trade*, p. 6
Cronk (John) & Sons, Ltd. *v.* Harrison (1935); **28.** *Inc. T.* No. 122c
Cronsberry *v.* Peterson (Can.); **2.** *Animals*, p. 58
Cronshaw *v.* Chapman (1862); **21.** *Exon.* No. 1231a
Crook, *Re* (Aus.); **11.** *Confl.* p. 30
— *v.* Royal National Lifeboat Institution, *Re* Beck (1926); **8.** *Char.* No. 1186a
— *v.* Seaford Corpn. (1871); **44.** *Waters*, No. 475a
— *v.* Seaham Harbour Dock Co. (1931); **28.** *Inc. T.* No. 104a
— *v.* Wilson (1855); **19.** *Easmt.* No. 1406a
Crooks & Co. *v.* Agricultural Co-operative Union, Ltd. (S. Af.); **1.** *Adm.* p. 48
Crookston *v.* Miller (Can.); **38.** *Pub. Hlth.* p. 16
Crop Payments Act, *Re*, *Re* Bills of Sale & Chattel Mortgage Act (Can.); **7.** *B. of Sale*, p. 1
Cropper *v.* Mellersh (1855); **35.** *Mtge.* No. 2897a
Crosbie *v.* Wilson & Langlois (Can.); **36.** *Negl.* p. 4
Crosby, *Re* (Aus.); **44.** *Wills*, p. 48
— *v.* Thomson (Can.); **11.** *Confl.* p. 25
Crosfield's Oil & Cake Co., Ltd. *v.* London, Midland & Scottish Ry. Co. (1925); **8.** *Carr.* No. 1377h
Croskill *v.* Wortman (Can.); **31.** *L. & T.* p. 47
Crosman & McLeod's Election, *Re*, *Ex p.* Howard (Can.); **16.** *Cr. Pract.* p. 36
Cross *v.* British Oak Insurance Co., Ltd. (1938); **29.** *Insce.* No. 3217mm
— *v.* Cross (1931); **27.** *H. & W.* No. 6255c
— *v.* Dares (Can.); **35.** *Mtge.* p. 41
— *v.* Gatineau Power Co. (Can.); **11.** *Comp. Pche.* p. 14
— *v.* Kennedy (Can.); **31.** *L. & T.* p. 54
— *v.* London & Provincial Trust, Ltd. (1938); **28.** *Inc. T.* No. 428c
— *v.* McCarthy (Can.); **39.** *Revenue*, p. 11
— *v.* Wood (Can.); **1.** *Agcy.* p. 80
Crosse, *Re*, Crosse *v.* Crosse (1933); **44.** *Wills*, No. 10,263a
— *v.* Crosse & Heath (Aus.); **27.** *H. & W.* p. 54
Crossingham *v.* Park (1928); **35.** *Money*, Nos. 377a, 379a
Crossley *v.* Beverley (1829); **36.** *Pats.* No. 3003a
— *v.* Derby Gas Light Co. (1829); **36.** *Pats.* No. 3003a
Crossman, *Re*, *Re* Paulin (1936); **21.** *E. D.* No. 136b
Croston *v.* Vaughan (1938); **42.** *Str. Traf.* No. 222p; **42.** *Tort*, No. 72a
Crosville Motor Services, Ltd. *v.* Jones (1938); **34.** *Mast. & S.* No. 3305a
Croteau & Clark Co., Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 16
Crothers *v.* Grant (Aus.); **29.** *Intpr.* p. 63
— *v.* Sheil (Aus.); **17.** *Dep.* p. 63
Croton *v.* Leonard & Johns (Can.); **34.** *Mast. & S.* p. 13
Crouch *v.* Appleby Iron Co., Ltd. (1930); **34.** *Mast. & S.* Nos. 2849a, 2925a
Crouse, *Re* (Can.); **39.** *S. Goods*, p. 56
Crow *v.* Raleigh Township (Can.); **41.** *Sewers*, p. 5
Crowder *v.* Coleman (Can.); **9.** *Coys.* p. 36; **21.** *Exon.* p. 49
Crowe, *Re* (Aus.); **44.** *Wills*, p. 55
— *v.* Crowe (1937); **11.** *Confl.* No. 951a
Crowell *v.* Williams (Can.); **42.** *Str. Traf.* p. 37
Crowley, *Ex p.*, *Ex p.* Kenneth Staples Drug Co. (Can.); **16.** *Cr. Pract.* p. 43; **30.** *Intox.* p. 6
— *v.* Feeney (Can.); **7.** *Bounds. & F.* p. 15
— *v.* Gardner (Can.); **2.** *Animals*, p. 58
Crown *v.* Dennehy (Ir.); **32.** *Limit. of A.* p. 33
Crown Bakery, Ltd. *v.* Preferred Accident Insce. Co. of New York (Can.); **17.** *Dep.* p. 71; **29.** *Insce.* p. 40
Crown Coal Co., Ltd. *v.* Swanson Lumber Co., Ltd. & Canadian Credit Men's Trust Assocn., Ltd. (Can.); **4.** *Bkpcy.* p. 31; **17.** *Dep.* p. 39
Crown Lumber Co. *v.* McKenzie, *Re* Canadian Pacific Ry. Co. (Can.); **21.** *Exon.* p. 47
— *v.* Saulsberry (Can.); **1.** *Agcy.* p. 51
Crown's Customs Duties Claim, *Re* (Can.); **4.** *Bkpcy.* p. 39
Crowther *v.* Beaven (Can.); **7.** *Bounds. & F.* p. 17
Crowther's Application for a Patent (No. 373,942), *Re* (1933); **36.** *Pats.* No. 613a
Croxford *v.* Universal Insurance Co., Ltd. (1935); **29.** *Insce.* No. 3217aa
— *v.* — (1936); **29.** *Insce.* No. 3217hh
Croxteth Hall, The (1931); **41.** *Ship.* Nos. 685a, 685b; **42.** *Stats.* Nos. 448a, 598a
Croydon Canal Co., *Re* (1839); **2.** *Arbn.* Nos. 1435a, 1516a
Croydon Corpn. *v.* Oldaker (1937); **26.** *Hghys.* No. 2322a
Croyston *v.* Banes (1702); **12.** *Contr.* No. 1184a
Crozier *v.* Gutheridge, *Re* Gage (1934); **44.** *Wills*, No. 1278a
— *v.* Wishart & Co., Ltd. & Western Printing Services, Ltd. (1936); **18.** *Discy.* No. 1564a
— *v.* Wishart Books, Ltd. (1936); **18.** *Discy.* No. 1564a
Crucible Steel Co. *v.* Ffolkes (Can.); **21.** *Exon.* p. 60
Cruikshank *v.* Willis, *Re* Bund (1929); **44.** *Wills*, Nos. 1707a, 2196a
Cruikshank & Brien *v.* Irving (Can.); **1.** *Agcy.* p. 89
Cruise *v.* Burke (Ir.); **33.** *Mal. Pros.* p. 40
— *v.* Riverside (Can.); **38.** *Rates*, p. 86
Crum *v.* Big 4 Transfer & Storage Co., Ltd. (Can.); **8.** *Carr.* pp. 1, 2

Cruse, *Re*, Gass *v.* Ingham (1930); **23.** *Exors.* 5917c; **44.** *Wills*, No. 5466a
— *v.* Mount (1933); **31.** *L. & T.* No. 3120b
Crush *v.* Crush (1605); **32.** *Libel*, No. 2528a
Crux, *Re*, Enfante *v.* Enfante (Can.); **42.** *Solrs.* p. 10
Crystal, *Re* (Can.); **4.** *Bkpcy.* p. 39
Crystal, Ltd. *v.* Willard Kitchen, Ltd. (Can.); **18.** *Distr.* p. 29
Crystal Springs Manufacturing Co., *Re* (Can.); **39.** *S. Goods*, p. 56
Crystalate Gramophone Record Manufacturing Co., Ltd. *v.* British Crystalite Co., Ltd. (1934); **9.** *Coys.* No. 240a
Crystall *v.* Olsen (Can.); **7.** *B. of Sale*, p. 12; **18.** *Distr.* p. 24
Cubbon *v.* White (Can.); **36.** *Nuis.* p. 44
Cubitt *v.* Smith (1864); **7.** *Bldg. Conts.* No. 273a
Cubitt & Terry *v.* Gower (1933); **42.** *Str. Traf.* No. 260j
Cudney, *Re* (Can.); **5.** *Bkpcy.* p. 70
Cudworth *v.* Eddy (Can.); **1.** *Agcy.* p. 89
Cuff & Thomson, Ltd., *Re* (N.Z.); **9.** *Coys*, p. 3
Cuff-Waldron Manufacturing Co., Ltd. *v.* Heald (Can.); **39.** *S. Goods*, p. 46
Cugny's Will Trusts, *Re*, Smith *v.* Freeman (1931); **40.** *Sttlmts.* No. 3143d
Cull *v.* Cowcher (1934); **28.** *Inc. T.* No. 317d
— *v.* Grand Trunk Ry. Co. (Can.); **16.** *Cr. Pract.* p. 44
— *v.* Green (Aus.); **26.** *Hghys.* p. 33
Cullen *v.* Cullen (1933); **27.** *H. & W.* No. 3445a
— *v.* — (Can.); **21.** *Exon.* p. 43
— *v.* Kemp (Can.); **28.** *Infts.* p. 136
— *v.* Stanley (Ir.); **20.** *Elect.* p. 2
— *v.* Westminster Bank, Ltd., *Re* Cohen's Will Trusts (1936); **44.** *Wills*, No. 7781a
Culme-Seymour *v.* Brand, *Re* Watson (1930); **44.** *Wills*, Nos. 2898a, 7034a
Culp *v.* Culp (Can.); **7.** *Bounds. & F.* p. 15
Culver *v.* Beard (1938); **13.** *Cty. Cts.* Nos. 341b, 352a
— *v.* Culver & Gammie (Can.); **27.** *H. & W.* p. 35
— *v.* — (No. 2) (Can.); **28.** *Infts.* p. 139
Culver & Culver *v.* Lloydminster (Can.); **18.** *Discy.* p. 22
Cumberland (City) *v.* Cumberland Electric Light Co., Ltd. (Can.); **11.** *Comp. Pche.* p. 6
Cumberland *v.* Lanarkshire Tramways Co. (Scot.); **34.** *Mast. & S.* p. 181
Cumberland Coal & Ry. Co. *v.* McDougall (Can.); **28.** *Injon.* p. 146
Cumberland Railway & Coal Co. *v.* McDougall (Can.); **16.** *Cntmpt.* p. 6
Cumming, *Re*, *Ex p.* Neilson & Craig *v.* Adamson (Trustee) (1929); **5.** *Bkpcy.* No. 7155a
Cumming *v.* Clyde, *Re* Neilson (1929); **44.** *Wills*, No. 5935a
Cumming & Emery *v.* Homestead Fire Insurance Co. (Can.); **29.** *Insce.* p. 25
Cumming & West, *Re*, *Ex p.* Neilson & Craig *v.* Trustee (1929); **4.** *Bkpcy.* No. 3832a; **5.** *Bkpcy.* No. 7155a
Cummings & Ellis *v.* O'Flynn (Can.); **25.** *Fraud. Conv.* p. 14
Cummins *v.* Bond (1927); **13.** *Coprt.* No. 197a
— *v.* Cummins (Can.); **42.** *Sp. Pfce.* p. 16
— *v.* Hall & Cummin's (Ir.); **43.** *Trusts*, p. 62
Cummiskey, *Ex p.* (Can.); **33.** *Mags.* p. 26
— *v.* R. (Can.); **33.** *Mags.* p. 26
Cumpson *v.* Cumpson (Can.); **27.** *H. & W.* p. 45
Cunard *v.* Antifyre, Ltd. (1933); **31.** *L. & T.* No. 4899a; **36.** *Nuis.* No. 9a
Cunard S.S. Co., Ltd. *v.* Moore (1935); **34.** *Mast. & S.* Nos. 3872a, 3893a, 3896c
Cunard's Lessee *v.* Irvine (Can.); **32.** *Limit. of A.* p. 37
Cuneen *v.* Van Heurck & Thomas, Ltd. (Aus.); **37.** *Press*, p. 32
Cunliffe *v.* A.-G. (1934); **3.** *Basty.* No. 130g
— *v.* Planta (Can.); **1.** *Agcy.* p. 106
Cunnard *v.* Plummer (Can.); **26.** *Guar.* p. 1
Cunningham, *Re*, Cunningham *v.* Cunningham (N.Z.); **44.** *Wills*, p. 55
— *v.* Cunningham (Aus.); **22.** *Evid.* p. 24
— *v.* — (Ir.); **18.** *Desct.* p. 3
— *v.* — (Scot.); **27.** *H. & W.* p. 75
— *v.* —, *Re* Cunningham (N.Z.); **44.** *Wills*, p. 55
— *v.* Insinger (Can.); **17.** *Damgs.* p. 8
— *v.* Northern Banking Co., Ltd. (Ir.); **3.** *Bank.* p. 20
— *v.* Shackleton (1935); **40.** *S. Land*, No. 1138b
— *v.* Sigfusson (Can.) (1928); **32.** *Lien*, p. 23
— *v.* Sigfusson & Sigfusson (Can.) (1930); **31.** *L. & T.* p. 61
— *v.* Talbot (Can.); **8.** *Char.* p. 68
Cunningham's Estate, *Re* (Can.); **8.** *Char.* p. 68
Cunningham's Trustees *v.* Cunningham (Scot.); **11.** *Confl.* p. 33
Cunnington, *Re*, Healing *v.* Webb (1924); **11.** *Confl.* No. 526a
Curator of Estates of Deceased Persons *v.* Williams, *Re* Williams (Aus.); **11.** *Confl.* p. 34
Curell *v.* Curell & Hansen (Can.); **27.** *H. & W.* p. 36
Curlew, The, Union Lighterage Co., Ltd. *v.* Curlew Sailing Barge Owners (1937); **41.** *Ship.* No. 6212b
Curlews *v.* Butts (1831); **19.** *Eccl.* No. 2496
Curley *v.* Briggs (Administrator of Drury Estate) (Can.); **3.** *Bank.* p. 31; **6.** *B. of Exch.* p. 1
— *v.* Sinser (Can.); **21.** *Exon.* p. 57
Curling *v.* Austin (1862); **23.** *Exors.* No. 3766a
— *v.* Johnson (1833); **33.** *L. G.* No. 105a
Curran (Edward) & Co. *v.* Kays (1928); **34.** *Mast. & S.* No. 3753a
Curran & Eastern Trust Co., *Re* (Can.); **33.** *Lunat.* p. 16
Currie *v.* Clarke (Aus.); **7.** *Bounds & F.* p. 19
— *v.* McKnight (1897); **30.** *Jdgmts.* No. 595a
— *v.* Milne & Milne (Can.); **42.** *Str. Traf.* p. 37
— *v.* Nicholson (Can.); **16.** *Courts*, p. 10
— *v.* Wardrop (Scot.); **17.** *Damgs.* p. 9
— *v.* Wreford Rural Municipality, No. 280, & Lasher (Can.); **1.** *Agcy.* p. 103
Currier *v.* Crosby (Can.); **3.** *Auct.* p. 2
Currimbhoy & Co., Ltd. *v.* Creet (Ind.) (1929); **12.** *Contr.* p. 7; **38.** *Real Prop.* p. 91
— *v.* Creet (Ind.) (1932); **12.** *Contr.* p. 8
Curryer's Will Trusts, *Re*, Wyly *v.* Curryer (1938); **37.** *Perps.* No. 397a
Curtis *v.* Buchanan-Wollaston, *Re* Buchanan-Wollaston's Conveyance (1938); **38.** *Real Prop.* No. 341a
— *v.* Cruickshank (Can.); **1.** *Agcy.* p. 108
— *v.* Curtis (1833); **18.** *Discy.* No. 555a
— *v.* Flindall (Can.); **12.** *Contr.* p. 51
— *v.* French (1929); **40.** *S. Land.* No. 771a
— *v.* Geeves (1930); **26.** *Hghys.* Nos. 641a, 1378a
— *v.* Harris (Can.); **32.** *Limit. of A.* p. 43
— *v.* Rickett, Cockerell & Co., Ltd. (1933); **34.** *Mast. & S.* No. 3083a
— *v.* Sheffield (1836); **5.** *Bkpcy.* No. 6390a
— *v.* Wheeler (1830); **22.** *Evid.* No. 198a
Curtis Brown, Ltd. *v.* Jarvis (1929); **28.** *Inc. T.* Nos. 991, 226b, 567a
Curtis Moffatt, Ltd. *v.* Wheeler (1929); **12.** *Contr.* No. 420a; **40.** *S. Land.* No. 2475a
Curwen, *Re*, Curwen *v.* Graham (1931); **40.** *Sttlmts.* No. 3074c
— *v.* Graham, *Re* Curwen (1931); **40.** *Sttlmts.* No. 3074c
Curzon Syndicate, Ltd., *Re* (1920); **8.** *Clubs*, Nos. 53a, 54a, 148a

Cusack *v.* Day (Can.); **3.** *Bank.* p. 39; **25.** *Gifts*, p. 52
Cushing *v.* Snaddon, *Re* Belyea Construction, Ltd. (Can.); **21.** *Estpl.* p. 37
Cushion *v.* Tredegar Iron & Coal Co., Ltd. (1927); **34.** *Mast. & S.* No. 3274a
Custodian, The *v.* Blucher (Can.); **17.** *Damgs.* p. 20; **35.** *Money*, p. 22
Custodian of Alien Enemy Property *v.* Passavant (Can.); **2.** *Aliens*, p. 40
Custom House Motor Co., Ltd., *Re* (Aus.); **9.** *Coys.* p. 13
Customs & Excise Comrs., *Ex p. R. v.* Lancashire JJ. (1934); **30.** *Intox.* Nos. 579a, 582b
— *v.* Curtis (1914); **30.** *Intox.* No. 270a
Customs Comr. *v.* Airton Timber Co., Ltd. (S. Af.); **17.** *Dep.* p. 35
Cuthbert, *Re*, *Ex p.* Monnoyer British Construction Co., Ltd. *v.* Trustee (1936); **4.** *Bkpcy.* No. 2419a
Cuthbert Cooper & Sons, Ltd., *Re* (1937); **10.** *Coys.* No. 5357c
Cuthbertson, *Ex p.*, *Re* Little Gaddesden Churchyard (1933); **7.** *Burial*, Nos. 140a, 140b
— *v.* Lethbridge (Can.); **22.** *Evid.* p. 16
— *v.* Little Gaddesden Parishioners (1933); **7.** *Burial*, Nos. 140a
Cutinha *v.* Salvadora Minazes (Ind.); **31.** *L. & T.* p. 75
Cutler *v.* Chiffey (Can.); **5.** *Bkpcy.* p. 88
— *v.* Law Society of Manitoba (Can.); **8.** *Clubs*, p. 98
— *v.* United Dairies (London), Ltd. (1933); **2.** *Animals*, No. 205a; **36.** *Negl.* No. 620a
Cutten *v.* Bickell (Can.); **1.** *Agcy.* p. 70
Cuvillier *v.* Thibodo (Can.); **22.** *Evid.* p. 21
Cybuliak *v.* Cybuliak (Can.); **27.** *H. & W.* p. 36
Cyr *v.* Dionne (Can.); **35.** *Mistake*, p. 11
— *v.* Dufault (Can.); **12.** *Contr.* p. 12
Cyril Andrade, Ltd. *v.* Sotheby & Co. (1931); **3.** *Auct.* No. 171a
Czarnikow *v.* Roth, Schmidt & Co. (1922); **2.** *Arbn.* No. 1036a
Czeczowiczka (Bracia) *v.* Markus (1935); **17.** *Dep.* No. 234e

D.

D. *v.* D. (Can.); **27.** *H. & W.* p. 49
D. B. *v.* W. B. (1935); **27.** *H. & W.* Nos. 6102a, 6102b
D. Simpson, Ltd. (Scot.); **9.** *Coys.* p. 11
Dabbs *v.* Humphries (1835); **29.** *Intpr.* No. 503b
Da Costa, *Ex p.*, R. *v.* Essex Justices (1938); **3.** *Basty.* No. 288a
—, *Ex p.*, R. *v.* Howard (1938); **3.** *Basty.* No. 288a
Dadoo *v.* Krugersdorp (S. Af.); **2.** *Aliens*, p. 30
Dadson *v.* Grest (Can.) (1927); **9.** *Coys.* p. 53
— *v.* Grest & Grest (Can.) (1928); **9.** *Coys.* p. 4; **20.** *Eqy.* p. 31
Dageland *v.* Catala S.S. (Can.); **34.** *Mast. & S.* p. 87
Daglish *v.* Daglish (1936); **27.** *H. & W.* No. 4753a
Dagmar, The (1929); **41.** *Ship.* No. 5608a
Dagsland *v.* Catala, S.S. (Can.); **34.** *Mast. & S.* p. 179
Dahl, *Re* (Can.); **2.** *Agric.* p. 25
Dahlberg *v.* Swanson (Can.); **27.** *H. & W.* pp. 4, 49
Daigle *v.* R. (Can.); **39.** *Revenue*, p. 11
Dailuaine-Talisker Distilleries *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 14
Daily Mirror Newspapers, Ltd. *v.* Exclusive News Agency (1937); **42.** *Tort*, No. 127a
Daily Telegraph Co., Ltd. *v.* Stuart (Aus.); **28.** *Injon.* p. 146; **36.** *Nuis.* p. 43
Dain *v.* Miller (1934); **28.** *Inc. T.* No. 545f
Dainton *v.* Chivers (Aus.); **1.** *Agcy.* p. 79
Dainty Confections, Ltd., *Re*, Canadian Credit Men's Trust Assocn. *v.* Hopper (Can.); **7.** *B. of Sale*, p. 12
Dairy Corpn. of Canada, Ltd., *Re* (Can.); **10.** *Coys.* p. 92
Dairy Proprietary Assocn. (Inc.) *v.* New Zealand Dairy Produce Control Board (N.Z.); **30.** *Jdgmts.* p. 23
Dalal *v.* Dalal (Ind.); **11.** *Confl.* p. 48
Dale, *Re*, Mayer *v.* Wood (1931); **44.** *Wills*, No. 8534a
— *v.* Dale (Can.); **27.** *H. & W.* p. 44
— *v.* Hatfield Chase Corpn. (1922); **2.** *Agric.* Nos. 265c, 266b, 266c, 266d
— *v.* Mitcalfe (1928); **28.** *Inc. T.* No. 545c
Dale & Carroll, *Re* (Can.); **5.** *Bkpcy.* p. 70
Dale (Charles), Ltd. (Scot.); **10.** *Coys.* p. 96
Dale, Reynolds & Co. *v.* General Newspaper Co. (1884); **37.** *Press*, No. 102a
Daley & Morin *v.* Fogel (Can.); **4.** *Bkpcy.* p. 32
Dalgetty *v.* Hamilton Radial Electric Ry. Co. (Can.); **36.** *Negl.* p. 24
Dalgety *v.* Gray (Aus.); **1.** *Agcy.* p. 74
Dalgety & Co., *Re* (N.Z.); **10** *Coys.* p. 61
Dalgety & Co., Ltd. *v.* Bradford (T. G.) & Co., Ltd. (1930); **39.** *S. Goods*, No. 1091a
Dalgleish Steam Shipping Co., Ltd. *v.* Williamson & Son, Ltd. (1935); **41.** *Ship.* No. 4395a
Dalhousie College Governors *v.* Boutilier (Can.); **12.** *Contr.* p. 4
Dalhousie Land Co., Ltd. *v.* Bearce (Can.); **26.** *Hghys.* p. 22
Dalhousie Mills Presbyterian Church, *Re* (Can.) **19.** *Eccl.* p. 31
Dalison *v.* Stark (1802); **22.** *Evid.* No. 1829a
Dallas *v.* Hinton & Home Oil Distributors, Ltd. (Can.); **34.** *Mast. & S.* p. 13
— *v.* Toronto General Trusts Corpn. (Can.); **35.** *Mtge.* p. 49
Dallas & Birke *v.* Dallas Oil Co., Ltd. & Webster (Can.); **9.** *Coys.* p. 15
Dalley, *Re* (1926); **23.** *Exors.* No. 2585a
Dalling *v.* McKendrick (Can.); **33.** *Mal. Pros.* p. 40
Dallyn *v.* Niagara Falls City (Can.); **7.** *Bldg. Conts.* p. 33
Dalphe *v.* Fairbanks, Gosselin & Co. (Can.); **5.** *Bkpcy.* p. 57
Dalrymple *v.* Melville (Aus.); **43.** *Trusts*, p. 72
Dalton *v.* Adelphi Club (1938); **25.** *Gaming*, No. 267b
— *v.* Ashfield (Township) (Can.); **41.** *Sewers*, p. 4
— *v.* Botts (Can.); **12.** *Contr.* p. 16
— *v.* Eaton (Can.); **7.** *B. of Sale*, p. 5
Dalton & MacDonald's Estate, *Re* (Can.); **44.** *Wills*, p. 57
Daly, *Re* (Can.); **23.** *Exors.* p. 21
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 80
— *v.* Irish Transport & General Workers' Union (Can.); **32.** *Libel*, p. 15
— *v.* Keliher (Can.); **1.** *Agcy.* p. 89
Dalye *v.* Robertson (Can.); **31.** *L. & T.* p. 84; **38.** *Real Prop.* p. 89
Dalziel *v.* Coulthurst's Exors. (Scot.); **11.** *Confl.* p. 23
Dalziel Co-operative Society *v.* Motherwell & Wishaw Assessor (Scot.); **38.** *Rates*, p. 55
Damodar Das *v.* Morgan & Co. (Ind.); **42.** *Solrs.* p. 9
Damodar Prasad Tewari *v.* Lachmi Prasad Singh (Ind.); **31.** *L. & T.* p. 78; **38.** *Real Prop.* p. 98

D'Amours *v.* Trois-Pistoles (Can.) : **7.** *Bldg. Conts.* p. 23
Dampney & Co., Ltd. & Reduced, *Re* (1924) ; **9.** *Coys.* No. 1019b
Dampselskab Svendborg *v.* London, Midland & Scottish Ry. Co. (1930) ; **41.** *Ship.* No. 3634a
Dampskibsselskabet Botnia A/S *v.* Bell (C. P.) & Co. (1932) ; **41.** *Ship.* Nos. 2736a, 3987a
Dampskibsselskabet " Heimdal " *v.* Russian Wood Agency, Ltd. (1933) ; **41.** *Ship.* No. 1879c
Dampskip Selskab Svendborg *v.* London Midland & Scottish Ry. Co. (1930) ; **41.** *Ship.* No. 3634a
Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1928) ; **8.** *Carr.* No. 1287a
Dan Smallman *v.* Woodside & Bryan (Can.) ; **20.** *Eqy.* p. 22
Danberg & Danberg *v.* Canwood Village (Can.) ; **26.** *Hghys.* p. 30
Danby *v.* Danby (1859), **22.** *Evid.* No. 1453a
— *v.* Wakaw (Village) & Kraus (Can.) ; **38.** *Pub. Hlth.* p. 18
Dando *v.* Bryce Bakeries, Ltd. (Can.) ; **30.** *Juries*, p. 31
Dangerfield *v.* Smith (Can.) ; **42.** *Str. Traf.* p. 36
Daniel *v.* Metropolitan Ry. Co. (1871) ; **22.** *Evid.* No. 55b
— *v.* Rickett, Cockerell & Co., Ltd. & Raymond (1938) ; **26.** *Hghys.* No. 1367a ; **42.** *Tort*, No. 108d
Daniel Adamson & Co., Ltd. & Kerfoot Application for a Patent No. 353,087, *Re* (1932) ; **36.** *Pats.* No. 1468a
Daniels, *Re*, London City & Midland Executor & Trustee Co., Ltd. *v.* Daniels (1918) ; **24.** *Exors.* No. 6281a
— *v.* Baker (Can.) ; **1.** *Agcy.* p. 102
— *v.* Pinks (1931) ; **8.** *Clubs*, No. 136a ; **25.** *Gaming*, Nos. 284a, 288a
— *v.* Vaux (1938) ; **29.** *Insce.* No. 3217y
Daniels & Daniels *v.* White & Sons, Ltd. & Tarbard (1938) ; **36.** *Negl.* No. 364h ; **39.** *S. Goods*, No. 715b
Danielson *v.* Thordarson (Can.) ; **3.** *Basty.* p. 64
Daniluk Estate, *Re* (Can.) ; **17.** *Dep.* p. 43
Danish Bacon Co., Ltd.'s Application to Register a Trade Mark (1933) ; **43.** *Trade Mks.* No. 249a
Danish Dairy Co., Ltd. *v.* Gillespie (Scot.) ; **1.** *Agcy.* p. 55
Danks *v.* Farley (1853) ; **21.** *Estpl.* No. 454a
Danneburg *v.* White Sea Timber Trust, Ltd. (1935) ; **41.** *Ship.* No. 1879f
Dannelly's Case (1816) ; **14.** *Crim.* No. 476a
Danroth *v.* Railway Passengers Assurance Co. (Can.) ; **43.** *Vlrs.* p. 74
Dansey *v.* Orcutt (Can.) ; **33.** *Mal. Pros.* p. 41
Daphne *v.* Shaw (1926) ; **28.** *Inc. T.* No. 268a
Darapale, etc. *v.* Nazir (Ind.) ; **17.** *Deeds*, p. 28
Darbey *v.* Winnipeg Electric Co. (Can.) ; **25.** *Gas*, p. 46
Darby *v.* Allen (1932) ; **34.** *Mast. & S.* No. 3753d
D'Arcy *v.* Land (Can.) ; **1.** *Agcy.* p. 74
Dare (Virginia), Ltd. *v.* Patents Comr. (Can.) ; **43.** *Trade Mks.* p. 14
Darling *v.* Burton (Scot.) ; **39.** *Revenue*, p. 17
— *v.* McLeon (Can.) ; **26.** *Guar.* p. 9
Darlow *v.* Sparks (1938) ; **25.** *Gifts*, Nos. 342a, 342b
Darnbrough *v.* Darnbrough (1929) ; **27.** *H. & W.* No. 5049a
Darnborough *v.* Darnborough & Smith (1926) ; **27.** *H. & W.* No. 4985b
Darracq Motor Engineering Co., Ltd. *v.* Seaward (1935) ; **34.** *Mast. & S.* No. 3288o
Darrock *v.* Burns (S. Af.) ; **6.** *B. of Exch.* p. 12
Darroll *v.* Tennant (S. Af.) ; **17.** *Dep.* p. 73
Dartford Brewery Co., Ltd. *v.* Freeman (No. 2) (1938) ; **31.** *L. & T.* No. 2306k
Darwen & Pearce, *Re* (1927) ; **26.** *Guar.* No. 1224a
Dash *v.* Faulkner (1886) ; **3.** *Bailmt.* No. 271a
Dasharathi Ghose *v.* Khondkar Abdul Hannan (Ind.) ; **12.** *Contr.* pp. 29, 45
Dashwood *v.* Dashwood (1927) ; **16.** *Cntmpt.* No. 429a
Da Silva *v.* Mercantile Bank of India, Ltd. (1931) ; **6.** *B. of Exch.* Nos. 826a, 843a
Dattatraya Krishna Rao Kane *v.* Secretary of State for India (1930) ; **17.** *Dep.* No. 31b
Daum & Plaetzer, *Re*, *Ex p.* Monroe (Can.) ; **4.** *Bkpcy.* p. 36
Dauncey *v.* Howlett (1926) ; **28.** *Inc. T.* Nos. 504a, 510
Dauphinee, *Re* (Can.), [1936] 4 D. L. R. 143 ; **33.** *Lunat.* p. 16
— *Re* (Can.) (1936) 10 M. P. R. 277 ; **16.** *Cr. Pract.* p. 29
— *v.* Dauphinee (Can.) (1924) ; **17.** *Deeds*, p. 30
— *v.* — (Can.) (1936) ; **42.** *Sp. Pfce.* pp. 17, 19
Davenport *v.* Johnston (1937) ; **43.** *Trade Mks.* No. 871a
— *v.* McNiven (Can.) ; **44.** *Work*, p. 60
Davey, *Re*, Public Trustee *v.* Wheeler (N.Z.) ; **11.** *Confl.* p. 34
— *v.* Christoff (Can.) ; **31.** *L. & T.* p. 61
— *v.* Cornwallis (Can.) ; **7.** *Burial*, p. 38
— *v.* Gibson (Can.) ; **10.** *Coys.* p. 78
— *v.* Robinson (1923) ; **13.** *Cty. Cts.* No. 373a
— *v.* Tallon (Can.) ; **1.** *Action*, p. 17
David, *Ex p.* (Can.) ; **14.** *Crim.* p. 12 ; **16.** *Cr. Pract.* p. 29
—, *Re* (Can.) (1925) ; **5.** *Bkpcy.* p. 75
—, *Re* (Can.) (1929) ; **33.** *Mags.* p. 26
David *v.* De Silva (Ceylon) ; **43.** *Trade Mks.* p. 34
David Healey & Son, Ltd., *Re*, District Bank, Ltd. *v.* Healey (1929) ; **10.** *Coys.* No. 6176a
David Jones, Ltd. *v.* Leventhal (Aus.) ; **31.** *L. & T.* pp. 54, 67
— *v.* Willis (Aus.) ; **39.** *S. Goods*, p. 38
David Lawson, Ltd. *v.* Torrance (Scot.) ; **38.** *Pub. Hlth.* p. 15
Davidge *v.* Johnson & McDonald, Ltd. (Can.) ; **36.** *Negl.* p. 30
Davidner *v.* Schuster (No. 2) (Can.) ; **36.** *Negl.* p. 31
— *v.* Schuster & Mrazek (Can.) ; **1.** *Action*, p. 11 ; **27.** *H. & W.* p. 16 ; **42.** *Stats.* p. 23
Davidson, *Ex p.*, R. *v.* Norfolk JJ. (1925) ; **16.** *Cr. Pract.* No. 2142a
—, *Re* (Can.) ; **27.** *H. & W.* p. 9
— *v.* Adair (Scot.) ; **42.** *Str. Traf.* p. 57
— *v.* Annesley, *Re* Annesley (1926) ; **11.** *Confl.* Nos. 249a, 251a
— *v.* Atlas Assurance Co., Ltd. & Daysh (N.Z.) ; **35.** *Mistake*, p. 8
— *v.* Davidson (Can.) ; **27.** *H. & W.* p. 49
— *v.* Scott's Shipbuilding & Engineering Co., Ltd. (Scot.) ; **33.** *Lunat.* p. 18
— *v.* Swanson, *Re* Saskatchewan Co-operative Elevator Co., Ltd. (Can.) ; **10.** *Coys.* p. 82 ; **21.** *Exon.* p. 59
Davidson & Smith, *Re*, *Ex p.* London Guarantee & Accident Co. (Can.) ; **21.** *Exon.* p. 59
Davidson & Vancouver Terminal Grain Co. *v.* North Western Dredging Co. & Vancouver Harbour Comrs. (Can.) ; **28.** *Injon.* p. 154
Davidson Co-operative Assocn., Ltd. *v.* Webber (Can.) ; **6.** *B. of Exch.* p. 19
Davidson's Patent, *Re* (1936) ; **36.** *Pats.* No. 1261c

Davie *v.* Hooper (1711); **37.** *Powers*, No. 1233a
Davies, *Re*, *Ex p.* Miles (1921); **5.** *Bkpcy.* No. 7339a
—, *Re*, *Ex p.* Trustee (1921); **5.** *Bkpcy.* No. 7339a
—, *Re*, Butson *v.* Davies (1888); **16.** *Cntmpt.* No. 98
—, *Re*, Davies *v.* Duggan (Can.); **30.** *Jdgmts.* p. 19
—, *Re*, Lloyds Bank, Ltd. *v.* Mostyn (1932); **8.** *Char.* No. 717d
— *v.* Abbott (1927); **28.** *Inc. T.* No. 25e
— *v.* Armstrong-Whitworth (Sir W. G.) Aircraft, Ltd. (1933); **34.** *Mast. & S.* No. 2675a
— *v.* Baldwins, Ltd. (1926); **34.** *Mast. & S.* No. 3801c
— *v.* Bennison (Aus.); **43.** *Tresp.* p. 50
— *v.* Beynon-Harris (1931); **28.** *Infts.* No. 557a
— *v.* Braithwaite (1931); **28.** *Inc. T.* Nos. 312a, 502b
— *v.* Braithwaite (1933); **28.** *Inc. T.* No. 315b
— *v.* Christakos (Can.); **43.** *Trusts*, p. 72
— *v.* Cowperthwaite (1938); **33.** *L. G.* No. 86b
— *v.* Davies (1928); **13.** *Cty. Cts.* No. 404b
— *v.* — (1929); **27.** *H. & W.* No. 5773a
— (otherwise Mason) *v.* Davies (1935); **27.** *H. & W.* No. 2342a
— *v.* Davies (Can.); **27.** *H. & W.* p. 53
— *v.* Daws (1930); **3.** *Auct.* No. 242a
— *v.* Donald (S. Af.); **1.** *Agcy.* p. 75
— *v.* Duggan, *Re* Davies (Can.); **30.** *Jdgmts.* p. 19
— *v.* Elmslie (1938); **27.** *H. & W.* No. 1936a
— *v.* Evans, *Re* Evans (1931); **4.** *Bkpcy.* No. 1274a
— *v.* Griffiths (1937); **33.** *Mags.* No. 631d
— *v.* Hosken (1937); **29.** *Insce.* No. 3289e
— *v.* Howe Bridge Spinning Co., Ltd. (1934); **34.** *Mast. & S.* No. 3834b
— *v.* Jenkins (1877); **27.** *H. & W.* No. 1491a
— *v.* Johnson (Richard) & Nephew, Ltd. (1934); **34.** *Mast. & S.* No. 744a
— *v.* Lowndes (1835); **22.** *Evid.* No. 2707a
— *v.* — (1838); **22.** *Evid.* No. 2707a
— *v.* May (1937); **34.** *Mines*, No. 1173a
— *v.* Mills (Can.); **20.** *Elect.* p. 9
— *v.* Nelson (Can.); **24.** *Exors.* p. 37; **43.** *Trusts*, p. 72
— *v.* Oakdale Navigation Collieries, Ltd. (1932); **34.** *Mast. & S.* No. 3811b
— *v.* Powell Duffryn Steam Coal Co. (1920); **17.** *Deeds*, No. 1307a
— *v.* Property & Reversionary Investments Corpn. (1939); **18.** *Distr.* No. 737a
— *v.* Richard Johnson & Nephew, Ltd. (1934); **34.** *Mast. & S.* No. 744a
— *v.* Ripon Corpn. (1928); **25.** *Gas*, No. 15a; **26.** *Hghys.* No. 1761a
— *v.* Schuilli (Can.); **34.** *Mines*, p. 200; **36.** *Prtnrs.* p. 57
— *v.* Shanly (M. W.) (Park Chairs No. 1), Ltd. (1936); **34.** *Mast. & S.* No. 1172a
— *v.* Vipond (John) & Co., Ltd. (1932); **34.** *Mast. & S.* No. 2710c
— *v.* Winstanley (1930); **34.** *Med.* Nos. 242b, 242c, 257b, 259a
Davies & Cody *v.* R. (Aus.); **14.** *Crim.* p. 34
Davies & Jones *v.* Western Australia (Aus.); **17.** *Dep.* p. 59
Davies Footwear Co., *Re*, Underhills, Ltd. *v.* Barber (Can.); **4.** *Bkpcy.* p. 23
Davies' Will Trusts, *Re*, Bevan *v.* Williams (1932); **40.** *Sttlmts.* No. 3143e
Davis, *Ex p.*, R. *v.* Minister of Health (1929); **38.** *Pub. Hlth.* No. 506a
—, *In the Estate of*, *In the Estate of* Caie (1927); **23.** *Exors.* No. 1371a
—, *Re* (Can.); **4.** *Bkpcy.* pp. 24, 39
—, *Re*, Douglass *v.* McPhee (Aus.); **44.** *Wills*, p. 40
Davis, *Re*, Thomas *v.* Davis (1923); **8.** *Char.* No. 724a
— *v.* Beggs (Can.); **1.** *Agcy.* p. 76
— *v.* Colchester County Hospital (Can.); **34.** *Med.* p. 187
— *v.* Davis (1930); **27.** *H. & W.* No. 4926a
— *v.* — (Can.) (1896); **20.** *Eqy.* p. 28
— *v.* — (Can.) (1926); **27.** *H. & W.* p. 19
— *v.* — (Can.) (1928); **27.** *H. & W.* p. 33; **40.** *Set-Off*, p. 23
— *v.* Davis & Helbing (1928); **27.** *H. & W.* Nos. 3635a, 4848b
— *v.* Delahunt (Ir.); **34.** *Mast. & S.* p. 119
— *v.* Elliot (Can.); **8.** *Carr.* p. 4
— *v.* Hall & David Hall Sign Co., Ltd. (Can.); **36.** *Negl.* p. 31
— *v.* Harrison (1927); **28.** *Inc. T.* No. 502a
— *v.* Holding (1836); **4.** *Bkpcy.* No. 1366a
— *v.* Lisle (1936); **15.** *Crim.* No. 7663b
— *v.* London Express Newspaper, Ltd. (1938); **32.** *Libel*, No. 1453a
— *v.* London, Midland & Scottish Ry. Co. (1930); **34.** *Mast. & S.* Nos. 3932a, 3976a
— *v.* Lowry (Can.); **36.** *Prtnrs.* p. 60
— *v.* McNamara & Co. (1921), Ltd. (1932); **34.** *Mast. & S.* No. 2710d
— *v.* Mater Misericordiae Hospital Superioress (Ir.); **28.** *Inc. T.* p. 24
— *v.* Mayhew, *In the Estate of* Musgrove (1927); **23.** *Exors.* No. 2979a
— *v.* Nuttall (N.Z.); **25.** *Gaming*, p. 35
— *v.* P. Pallesen Dairy & Creamery Co. (Can.); **9.** *Coys.* p. 36
— *v.* Parker (1931); **25.** *Gaming*, No. 284b
— *v.* R. (Can.); **14.** *Crim.* p. 58
— *v.* Ralls (Can.); **22.** *Evid.* p. 24
— *v.* Royal Trust Co. (Can.); **30.** *Jdgmts.* p. 19
— *v.* Samuel (Aus.); **37.** *Perps.* p. 6
— *v.* Shaughnessy (1932); **17.** *Dep.* Nos. 618a, 618b
— *v.* Symonds (1787); **17.** *Deeds*, No. 1177a
— *v.* Symons (1934); **35.** *Mtge.* No. 995a
— *v.* Wallis (1908); **38.** *Rates*, No. 675c
Davis & Co., Ltd. *v.* Brunswick (Australia), Ltd., Brunswicke-Balke-Collender Co. & Brunswick Radio Corpn. (1936); **10.** *Coys.* No. 5379a
Davis & Collett, Ltd., *Re* (1935); **10.** *Coys.* No. 5357b
Davis & Primrose, Ltd. *v.* Clyde Shipbuilding & Engineering Co., Ltd. (Scot.); **2.** *Aliens*, p. 45
Davis & Simmons, *Ex p.*, *Re* Continental Publishing Co. (Can.); **4.** *Bkpcy.* pp. 28, 38
Davis, Ltd. *v.* Tooth & Co., Ltd. (1937); **1.** *Agcy.* No. 1238a
Davis Log & Raft Patents Co. *v.* Gathels (Can.); **36.** *Pats.* pp. 65, 83, 108
Davison, *Re* (Can.) (1923); **5.** *Bkpcy.* p. 75
—, *Re* (Can.) (1936); **16.** *Cr. Pract.* p. 28
— *v.* Benjamin (Can.); **17.** *Deeds*, p. 33
— *v.* Conrad (Can.); **36.** *Negl.* p. 24
— *v.* Douglas (Can.); **35.** *Misrep.* p. 3
— *v.* Holmside & South Moor Collieries, Ltd. (1929); **34.** *Mast. & S.* Nos. 2512a, 3885a
— *v.* King (Ir.); **9.** *Coys.* p. 45
— *v.* Vickery's Motors, Ltd. (Aus.); **9.** *Coys.* p. 33
Davison (A. A.) Pty., Ltd. *v.* Seabrook (Aus.); **26.** *Guar.* p. 1
Davoren *v.* Commonwealth Comrs. of Taxation (Aus.); **17.** *Dep.* p. 59
Davy, *Re* (1935); **3.** *Basty.* No. 130f; **22.** *Evid.* No. 979a
— *v.* A.-G. (1935); **3.** *Basty.* No. 130f; **22.** *Evid.* No. 979a
— *v.* Hooper (1711); **37.** *Powers*, No. 1233a

Davy *v.* Magnus (1931); **13.** *Cty. Cts.* No. 535a
— *v.* Morrison (Can.); **34.** *Med.* p. 185; **36.** *Negl.* p. 34
Daw *v.* Inland Revenue Comrs (1928); **28.** *Inc. T.* No. 673c
Dawes *v.* Druitt, *Re* Fox's Estate (1937); **44.** *Wills*, No. 10,157a
— *v.* Executor Trustee & Agency Co. of South Australia, Ltd. (Aus.); **23.** *Exors.* p. 23
Dawn & Chatham Township, *Re* (Can.); **41.** *Sewers*, p. 4
Dawood Hashim Esoof *v.* Tuck Sein (1931); **44.** *Waters*, No. 46a
— *v.* Tuck Sein (Ind.); **44.** *Waters*, p. 5
Daws *v.* Davies (1930); **3.** *Auct.* No. 242a
— *v.* Nettleship, Ltd. (1929); **13.** *Cty. Cts.* No. 787a
Dawson *v.* Agwi Petroleum Corpn., Ltd. (1934); **34.** *Mast. & S.* No. 4045a
— *v.* Agwi Petroleum Corpn., Ltd. (No. 2) (1934); **34.** *Mast. & S.* No. 2647c
— *v.* Bankrupt, *Re* Burn (1932); **5.** *Bkpcy.* No. 6318a
— *v.* Cambridgeshire Rural Assessment Area Assessment Committee (1938); **38.** *Rates*, No. 234a
— *v.* Counsell (1938); **28.** *Inc. T.* Nos. 77b, 77c
— *v.* Dawson (1929); **27.** *H. & W.* No. 3010a
— *v.* — (Can.); **27.** *H. & W.* p. 23
— *v.* Great Central Ry. Co. (1919); **3.** *Barr.* No. 356a
— *v.* Hill (No. 1), Dawson *v.* Hill (No. 2) (1934); *Pract.* No. 3028a
— *v.* Hormasji (Ind.); **10.** *Coys.* p. 89
— *v.* Leach & Hazza (Can.); **8.** *Chos.* p. 88
— *v.* McClellan, *Re* Burn (No. 2) (1931); **4.** *Bkpcy.* Nos. 1966b, 4996a
— *v.* Paradise Mine & Canadian Pacific Ry. Co. (Can.); **2.** *Animals*, p. 58
— *v.* R. (Aus.); **15.** *Crim.* p. 97
— *v.* Rouhae Zamani Begum (Princess) (Ind.); **19.** *Easmt.* p. 6; **26.** *Hghys.* p. 19; **28.** *Injon.* p. 147
— *v.* Sinclair (N.Z.); **25.** *Gaming*, p. 30
— *v.* Spaul (1935); **36.** *Negl.* No. 953a; *Pract.* No. 1671a
— *v.* Winter (1932); **42.** *Str. Traf.* No. 232d
— *v.* Zammit, *Ex p.* Zammit (Aus.); **33.** *Mags.* p. 27
Dawson & London, Midland & Scottish Railway, *Re* (1929); **38.** *Rys.* No. 503b
Dawson (Clapham), Ltd. *v.* Dutfield (1936); **39.** *S. Goods*, No. 2421a
Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin (1932); **41.** *Ship.* No. 2502a
Dawson (E. W. de V.), McClellan (H. T.) & Trustee, *Ex p., Re* Burn (J.) (1932); **4.** *Bkpcy.* Nos. 1966a, 4808b, 6318a
Dawson's Settled Estates, *Re* (1928); **40.** *Sttlmts.* No. 3138
Dawsons Bank, Ltd. *v.* Japan Cotton Trading Co., Ltd. (1935); **39.** *S. Goods*, No. 1377a
Day, *Re*, *Ex. p.* Hammond (1902); **4.** *Bkpcy.* No. 1177b
Day *v.* Crown Grain Co. (Can.); **32.** *Lien*, p. 24
— *v.* Davies (1938); **18.** *Distr.* No. 934a
— *v.* Harrison, *Re* Harrison (1920); **3.** *Bank.* No. 391a
— *v.* Horton (Can.); **23.** *Exor.* p. 15
— *v.* Tuckett (1846); **18.** *Discy.* No. 539a
— *v.* Yates (Aus.); **41.** *Ship.* p. 12
Daya Shankar *v.* Bombay, Baroda & Central India Ry. Co. (Ind.); **38.** *Rys.* p. 38
Daye *v.* Denley, *Re* McGuire (Can.); **33.** *Lunat.* p. 13
Dayholos *v.* Kuniec (Can.); **21.** *Exon.* p. 46
Daysland Sisters of Charity of the Providence General Hospital *v.* Marty (Can.); **28.** *Infts.* p. 133; **38.** *Pub. Hlth.* p. 20
Deacon *v.* Central Manitoba Mines, Ltd. (Can.); **9.** *Coys.* p. 20
Deady *v.* Bruner & Adams (Can.); **42.** *Sp. Pfce.* p. 16
Dealers Finance Corpn., Ltd. *v.* Masterson Motors, Ltd. & Masterson (Can.); **1.** *Agcy.* p. 108
— *v.* Sedgwick (Can.); **6.** *B. of Exch.* p. 14
Dealler *v.* Bruce (1934); **28.** *Inc. T.* No. 540f
Dean (Henry) & Sons (Sydney), Ltd. *v.* P. O'Day Proprietary, Ltd. (Aus.); **39.** *S. Goods*, p. 47
Dean (W. & G.) Proprietary, Ltd., *Re* (Aus.); **9.** *Coys.* p. 24
Dean's Rag Book Co., Ltd. *v.* Pomerantz & Sons & *Re* Dean's Rag Book Co., Ltd. & Patents & Designs Acts, 1907 to 1928 (1930); **43.** *Trade Mks.* No. 910a
Deane *v.* Deane & Fay (Aus.); **27.** *H. & W.* pp. 37, 39
— *v.* De Valera, *Re* Fitzpatrick (1934); **44.** *Wills*, No. 5356a
— *v.* Rastron (1792); **25.** *Fraud. Conv.* No. 909a
Deans *v.* Orr (Can.); **1.** *Agcy.* p. 61
Dear *v.* Dear & Clark (1936); **3.** *Bastly.* No. 129a
Dearden *v.* Lilleyman (Aus.); **42.** *Str. Traf.* p. 37
Dearle, *Ex p., Re* Hastings (1884); **4.** *Bkpcy.* No. 1156a
De Armond *v.* De Armond (Can.); **27.** *H. & W.* p. 26
Dearne Valley Ry. Co. *v.* Great Northern Ry. Co. & Great Central Ry. Co. (1914); **8.** *Carr.* Nos. 1051a, 1058a
Dearsley *v.* Middleweek (1881); *Pract.* No. 4197a
Death *v.* New South Wales Railway Comrs. (Aus.); **38.** *Rys.* p. 44
De Bearn (Prince) *v.* La Compagnie D'Assurances La Federale De Zurich (1937); **36.** *Prtnrs.* No. 572a
De Beaujeu *v.* R. (Can.); **14.** *Crim.* p. 68
De Beeche *v.* South American Stores, Ltd. & Chilian Stores, Ltd. (1935); **6.** *B. of Exch.* No. 2819a; **11.** *Confl.* No. 738a; **22.** *Evid.* No. 6937a
Debenham's, Ltd. *v.* Perkins (1925); **21.** *Estpl.* No. 581a
Debenture Corpn., Ltd., *Re* (1931); **9.** *Coys.* No. 4369a
De Blois Bros. *v.* Chisholm (Can.); **26.** *Guar.* p. 8
De Borbon *v.* Westminster Bank, Ltd. (1933); **29.** *Intpr.* No. 414a
Debortoli *v.* R. (Can.); **15.** *Crim.* p. 92
Debret *v.* Debret (Can.); **2.** *Arbn.* p. 95
Debtor, A (No. 446 of 1918), *Re* (1920); **4.** *Bkpcy.* Nos. 1515a, 1519a
Debtor, A, *Re*, *Ex p.* The Debtor *v.* Petitioning Creditors & Official Receiver (1920); **4.** *Bkpcy.* No. 1515a
Debtor, A, *Re*, *Ex. p.* Petitioning Creditor (1920); **4.** *Bkpcy.* No. 1347a
Debtor, The *v.* Petitioning Creditors & Official Receiver, *Ex p., Re* A Debtor (1920); **4.** *Bkpcy.* No. 1515a
Debtor, *Re. Ex p.* Debtor (No. 718 of 1920) (1921); **4.** *Bkpcy.* No. 1548a
Debtor *v.* Official Receiver, *Ex p., Re* Kutner (1921); **4.** *Bkpcy.* No. 5264a
Debtor, A (No. 1507 of 1921), *Re* (1922); **4.** *Bkpcy.* Nos. 1367a, 1541a
Debtor, A (No. 4 of 1922), *Re*, *Ex p.* Petitioning Creditor (1922); **4.** *Bkpcy.* No. 1110a
Debtor, A (No. 16 of 1922), *Re*, *Ex p.* The Debtor (1922); **4.** *Bkpcy.* Nos. 875a, 4914a
Debtor, A (No. 199 of 1922), *Re* (1922); **4.** *Bkpcy.* Nos. 389a. 1545a

NOTE.—Cases entitled "Debtor" are arranged in chronological order.

Debtors (No. 807 of 1922), *Re, Ex p.* Debtor (1922); **4.** *Bkpcy.* Nos. 804a, 887a, 1500a
Debtor, A (No. 13 of 1922), *Re, Ex p.* The Debtor (1923); **4.** *Bkpcy.* No. 1483a
Debtor, The, *Ex p., Re* Bowen (1924); **4.** *Bkpcy.* No. 1357a
Debtor, A, *Re, Ex p.* The Debtor (No. 1088 of 1923) (1924); **4.** *Bkpcy.* No. 1552a
Debtor, A, *Re, Ex p.* Petitioning Creditors (No. 24 of 1924) (1924); **4.** *Bkpcy.* No. 1179a
Debtor, A, *Re, Ex p.* Newburys, Ltd. (1926); **4.** *Bkpcy.* No. 1177d
Debtor, A (No. 3 of 1926), *Re* (1926); **4.** *Bkpcy.* No. 274a
Debtors (No. 771 of 1926), *Re* (1926); **4.** *Bkpcy.* No. 923a; **5.** *Bkpcy.* No. 5760a
Debtor, A (No. 82 of 1926), *Re* (1927); **4.** *Bkpcy.* No. 3740a; **10.** *Coys.* No. 6442a
Debtors (No. 669 of 1926), *Re* (1927); **4.** *Bkpcy.* No. 1051a
Debtor, A (No. 229 of 1927), *Re* (1927); **1.** *Agcy.* No. 1640a; **4.** *Bkpcy.* No. 1047a
Debtor *v.* Petitioning Creditor, *Ex p.* Official Receiver, *Re*, Mumford (1927); **4.** *Bkpcy.* No. 3740a; **10.** *Coys.* No. 6442a
Debtor (No. 27 of 1927), *Re, Ex p.* Debtor *v.* Petitioning Creditor (1928); **4.** *Bkpcy.* No. 3052a
Debtor (No. 883 of 1927), *Re* (1928); **4.** *Bkpcy.* No. 1491a
Debtor (No. 21 of 1928), *Re, Ex p.* Petitioning Creditor *v.* Debtor (1928); **4.** *Bkpcy.* No. 1077a
Debtor, *Re, Ex p.* Lawrence (No. 21 of 1928) (1928); **4.** *Bkpcy.* No. 1077a
Debtor (No. 99 of 1928), *Re* (1928); **4.** *Bkpcy.* No. 1286a
Debtor, *Re* (1929); **4.** *Bkpcy.* No. 3052a
Debtor (No. 549 of 1928), *Re* (1929); **4.** *Bkpcy.* Nos. 1016a, 1498a
Debtor, A (No. 737 of 1928), *Re* (1929); **4.** *Bkpcy.* Nos. 390, 957a
Debtor, A (No. 76 of 1929), *Re* (1929); **4.** *Bkpcy.* Nos. 830, 1019a
Debtor *v.* Petitioning Creditors (1929); **4.** *Bkpcy.* No. 851a
Debtor, A (247 of 1930) *Re* (1930); **4.** *Bkpcy.* No. 851a
Debtor, *Ex p., Re* Blucher (Prince) (1931); **5.** *Bkpcy.* No. 8653a
Debtor *v.* Official Receiver, *Re* Blucher (Prince) (1931); **5.** *Bkpcy.* No. 8653a
Debtor, *Re* (1932); **4.** *Bkpcy.* No. 4907a; *Pract.* No. 1303a
Debtor, *Re, Ex p.* Petitioning Creditors (No. 5 of 1932) (1932); **4.** *Bkpcy.* No. 3355a
Debtor (No. 49 of 1932), *Re, Ex p.* Debtor *v.* Petitioning Creditor & Official Receiver (1933); **4.** *Bkpcy.* No. 1286b
Debtor *v.* Petitioning Creditor & Official Receiver, *Ex p., Re* Debtor (No. 49 of 1932) (1933); **4.** *Bkpcy.* No. 1286b
Debtor, *Re* (No. 29 of 1931) (1934); **13.** *Cty. Cts.* No. 257a; **42.** *Solrs.* No. 321a
Debtor (No. 29 of 1931), *Re*, Wild *v.* Petitioning Creditors & Debtor (1934); **42.** *Solrs.* No. 3302a
Debtor, *Re* (1935); **4.** *Bkpcy.* No. 4901a
Debtor (No. 415 of 1935), *Re*, (1935); **4.** *Bkpcy.* No. 1483b
Debtor, *Re, Ex p.* Debtor (No. 523 of 1934) (1935); **4.** *Bkpcy.* No. 940b
Debtor, *Re, Ex p.* Debtor (No. 591 of 1934) (1935); **4.** *Bkpcy.* No. 1287a
Debtor *v.* Petitioning Creditors & Official Receiver, *Ex p., Re* Debtor (No. 591 of 1934) (1935); **4.** *Bkpcy.* No. 1287a
Debtor (No. 5 of 1936), *Re* (1936); **4.** *Bkpcy.* No. 1177f
Debtor (No. 11 of 1935), *Re* (1936); **4.** *Bkpcy.* No. 1177e
Debtor (No. 24 of 1935), *Re* (1936); **4.** *Bkpcy.* No. 887b
Debtor (No. 490 of 1935), *Re, Ex p.* Debtor (1936); **4.** *Bkpcy.* Nos. 274c, 274g
Debtor, *Re, Ex p.* Debtor *v.* Petitioning Creditor & Official Receiver (No. 11 of 1935) (1936); **4.** *Bkpcy.* No. 1177e
Debtors (No. 836 of 1935), *Re* (1936); **4.** *Bkpcy.* No. 207a
Debtor, *Re, Ex p.* Cadbury Bros., Ltd. (1936); **4.** *Bkpcy.* No. 274e
Debtor (No. 994 of 1935), *Re*, Debtor *v.* Official Receiver (1936); **4.** *Bkpcy.* No. 1539a
— (No. 5 of 1936), *Re*, Debtor *v.* Petitioning Creditor & Official Receiver (1936); **4.** *Bkpcy.* No. 1177f
Debtor (No. 15 of 1936), *Re*, Debtor *v.* Petitioning Creditor & Official Receiver (1936); **4.** *Bkpcy.* No. 274d
Debtor (No. 231 of 1936), *Re*, Debtor *v.* Petitioning Creditors & Official Receiver (1936); **4.** *Bkpcy.* No. 1483c
Debtors (No. 836 of 1935), *Re*, Petitioning Creditor *v.* Debtors (1936); **4.** *Bkpcy.* No. 207a
— *v.* Petitioning Creditor & Official Receiver, *Re* Debtor (No. 5 of 1936) (1936); **4.** *Bkpcy.* No. 1177f
Debtor *v.* Petitioning Creditors & Official Receiver, *Re* Debtor (No. 231 of 1936) (1936); **4.** *Bkpcy.* No. 1483c
—, *Ex p., Re* Wilson (1937); **5.** *Bkpcy.* No. 5506a
— (No. 231 of 1936), *Re* (1937); **4.** *Bkpcy.* No. 1483c
—, *Re* (No. 490 of 1935) (1937); **5.** *Bkpcy.* No. 5769a
— (No. 627 of 1936), *Re* (1937); **4.** *Bkpcy.* No. 274f
—, *Re* (No. 5 of 1936), *Ex p.* Official Receiver (1937); **4.** *Bkpcy.* No. 1538a
— (No. 627 of 1936), *Re, Ex p.* Petitioning Creditor *v.* Debtor (1937); **4.** *Bkpcy.* No. 274f
— *v.* Petitioning Creditor & Official Receiver, *Re* De Cespedes (1937); **4.** *Bkpcy.* No. 889b
— (No. 18 of 1937), *Re* (1938); **35.** *Money*, No. 353cc
— (No. 21 of 1937), *Re* (1938); **4.** *Bkpcy.* No. 1049a
—, *Re, Ex p.* Debtor *v.* Official Receiver (No. 507 of 1937) (1938); **4.** *Bkpcy.* No. 1879b
—, *Re, Ex p.* Debtor *v.* Official Receiver (No. 549 of 1937) (1938); **4.** *Bkpcy.* No. 1879b
— (No. 441 of 1938), *Re, Ex p.* Petitioning Creditor *v.* Debtor (1938); **4.** *Bkpcy.* No. 1275a
— (No. 21 of 1937), *Re*, Debtor *v.* Petitioning Creditor & Official Receiver (1938); **4.** *Bkpcy.* No. 1049a
— (No. 38 of 1938), *Re*, Debtor *v.* Petitioning Creditors & Official Receiver (1938); **39.** *S. Goods*, No. 90a
— (No. 382 of 1938), *Re*, Debtor *v.* Petitioning Creditors & Official Receiver (1938); **4.** *Bkpcy.* No. 1177g
— (No. 975 of 1937), *Re*, Debtor *v.* Petitioning Creditor & Official Receiver (1938); **4.** *Bkpcy.* No. 1128a
— *v.* Official Receiver (No. 507 of 1937), *Ex p., Re* Debtor (1938); **4.** *Bkpcy.* No. 1879b
— *v.* — (No. 549 of 1937), *Ex p., Re* Debtor (1938); **4.** *Bkpcy.* No. 1879b
— *v.* Official Receiver, *Re* Shaw (1938); **4.** *Bkpcy.* No. 1879b
— *v.* —, *Re* Smith (1938); **4.** *Bkpcy.* No. 1879b

Debtor *v.* Petitioning Creditor & Official Receiver, *Re* Debtor (No. 21 of 1937) (1938); **4.** *Bkpcy.* No. 1049a
— *v.* — (No. 38 of 1938) (1938); **39.** *S. Goods*, No. 90a
— *v.* — (No. 382 of 1938) (1938); **4.** *Bkpcy.* No. 1177g
— *v.* — (No. 975 of 1937) (1938); **4.** *Bkpcy.* No. 1128a
De Bueger *v.* Ballantyne (J.) & Co., Ltd. (1938); **35.** *Money*, No. 171
De Bunsen *v.* Hardinge, *Re* Sturt (1922); **20.** *Eqy.* No. 1316a
De Burgh Whyte *v.* Clancy (1936); **28.** *Inc. T.* No. 114c
De Bury *v.* De Bury (Can.); **27.** *H. & W.* p. 11
De Carteret, *Re*, Forster *v.* De Carteret (1933); **8.** *Char.* No. 21a
Decatur *v.* Flexible Shaft Co., Ltd. (Can.); **43.** *Trade Mks.* p. 14
De Cespedes, *Re*, Debtor *v.* Petitioning Creditor & Official Receiver (1937); **4.** *Bkpcy.* No. 889b
De Chirton's Case (1558); **16.** *Cr. Pract.* No. 155a
De Choisy *v.* Hynes (1937); **5.** *Bkpcy.* No. 8590a
Decker's Delicatessen, *Re* (Can.); **4.** *Bkpcy.* p. 37
De Clercq *v.* Bellens (Can.); **28.** *Infts.* p. 133
De Clifford's (Lord) Trial (1936); **14.** *Crim.* No. 985a
Decock *v.* Barrager (Can.); **2.** *Agric.* p. 15
De Coteau *v.* Phillips (Can.); **35.** *Mtge.* p. 46
— *v.* — (No. 2) (Can.); **35.** *Mtge.* p. 45
De Courcey *v.* London Street Railway (Can.); **8.** *Carr.* p. 7
De Deschênes Corpn. *v.* Loveys & Betcherman (Can.); **21.** *Estpl.* pp. 28, 29
Dedford *v.* Boulton (Can.); **32.** *Limit. of A.* p. 39
Dee Conservancy Board *v.* McConnell (1928); **41.** *Ship.* No. 6809a
Deed *v.* Liddle (Aus.); **36.** *Negl.* p. 31
Deed of Arrangement, A (No. 9 of 1924), *Re* (1925); **5.** *Bkpcy.* No. 8645a
Deed of Indemnity, A, *Re*, *Re* Clay, Clay *v.* Booth (1919); **1.** *Action*, No. 153a
Deeks *v.* Wells (Can.); **13.** *Coprt.* p. 15
Deeley *v.* Dick (Aus.); **25.** *Gaming*, p. 35
— *v.* McEvoy (Aus.); **25.** *Gaming*, p. 39
Deeley & Green, *Re* (Can.); **44.** *Wills*, p. 17
Deen *v.* Davies (1935); **2.** *Animals*, No. 226a
Deeney, *Re*, Deeney *v.* Doherty & Deeney (Ir.); **32.** *Limit. of A.* p. 34
Deere (John) Plow Co., Ltd. *v.* Bowen (Can.); **27.** *H. & W.* p. 6
— *v.* McEachran (Can.); **21.** *Exon.* p. 46
— *v.* Maguss (Can.); **26.** *Guar.* p. 12
— *v.* Peters & Spohn (Can.); **17.** *Deeds*, p. 24; **25.** *Gifts*, p. 50
Deergarden, The (1747); **2.** *Aliens*, No. 419a
De Forest Phonofilm of Canada, Ltd. *v.* Famous Players Canadian Corpn. (Can.) (1929); **28.** *Injon.* p. 146
— *v.* Famous Players Canadian Corpn., Ltd. (Can.) (1931); **36.** *Pats.* p. 79
De Freville *v.* Dill (1927); **30.** *Juries*, Nos. 301a, 423a; **33.** *Lunat.* Nos. 1856b, 1856d
Degrow *v.* Union Bank of Canada (Can.); **3.** *Bank.* p. 41
Dehn's Patent, Petition for Revocation of, *Re* International Bitumen Emulsions, Ltd. (1932); **36.** *Pats.* Nos. 2260a, 2261a
De Hourmelin *v.* A.-G. (1839); **2.** *Aliens*, No. 119a
— *v.* Sheldon (1839); **2.** *Aliens*, No. 119a
Dehra Dun-Mussoorie Electric Tramway Co., Ltd., *Re*, *Re* Panna Lal (Ind.); **10.** *Coys.* p. 74
— *v.* Hansraj (Ind.); **23.** *Exors.* p. 15
Dejardin *v.* Dejardin (Can.); **11.** *Confl.* p. 45; **17.** *Dep.* pp. 71, 72; **27.** *H. & W.* p. 2
De Jetley Marks *v.* Greenwood (Lord) (1936); **42.** *Tort*, No. 167a
De Jong, *Re*, Public Trustee *v.* Goldsmid (1929); **8.** *Char.* No. 884a
De Keyser *v.* British Railway Traffic & Electric Co., Ltd. (1936); **39.** *Revenue*, No. 826a
— *v.* Harris (1936); **39.** *Revenue*, No. 826a
De Kock *v.* Fincham (S. Af.); **1.** *Agcy.* p. 69
De Lacy Smyth *v.* A.-G. (Ir.); **17.** *Dep.* p. 87
Delaere Estate & Royal Trust Co., *Re* (Can.); **24.** *Exors.* p. 41
Delafield *v.* Freeman (1829); **5.** *Bkpcy.* No. 7968a
De la Garde *v.* Worsnop & Co. (1928); **2.** *Arbn.* No. 237a
De la Giroday *v.* McCaffery (Can.); **18.** *Discy.* p. 12
Delahunt *v.* Moody (Ir.); **34.** *Mast. & S.* pp. 87, 95
Delaney *v.* Gant (Aus.); **30.** *Intox.* p. 9
— *v.* McDonald (Can.); **25.** *Fish.* p. 3
De Lanois & Johnson *v.* Flesh (Can.); **36.** *Negl.* p. 19
Delap *v.* Hayden (Can.); **17.** *Dep.* p. 74
Delaporte *v.* Delaporte (Can.); **11.** *Confl.* p. 55
De La Rue *v.* Hernu, Peron & Stockwell, Ltd. (1936); **27.** *H. & W.* No. 2291a
De Laurier *v.* Jackson (Can.); **28.** *Infts.* p. 140
De Laval Co., Ltd. *v.* Davies (Can.); **39.** *S. Goods*, p. 60
Delavenne *v.* Broadhurst (1931); **9.** *Coys.* No. 2585b
Delco Appliance Corpn. *v.* Selby (Can.); **31.** *L. & T.* p. 77
Delhi Cloth & General Mills Co., Ltd. *v.* Delhi Income Tax Comrs. (Ind.); **17.** *Dep.* p. 84
Delisle *v.* Dewitt (Can.); **21.** *Exon.* p. 51
— *v.* R. (Can.); **14.** *Crim.* p. 27
Dell *v.* Quilty (N.Z.); **2.** *Animals*, p. 67
Dellaca, *Ex p.* (Aus.); **34.** *Mines*, p. 213
Dellow *v.* Bell (N.Z.); **34.** *Mast. & S.* p. 30
Deloli, *Re* (Can.); **22.** *Evid.* p. 8
Delombre *v.* Fouquault (1909); **3.** *Basty.* No. 306a
Delory *v.* Guyett (Can.); **1.** *Agcy.* p. 60
Delta Finance Co., Ltd. *v.* Byers (Can.); **42.** *Solrs.* p. 10
Delta Mill (1919), Ltd. *v.* Blakemore (1935); **34.** *Mast. & S.* Nos. 3431a 3733a
Demand Drafts of Imperial Bank of India, *Re* (Ind.); **6.** *B. of Exch.* p. 25
Demchenko *v.* Fricke (Can.); **12.** *Contr.* p. 26
D'Emden *v.* Pedder (Aus.); **17.** *Dep.* p. 63
Demers *v.* Desrosier (No. 2) (Can.); **21.** *Exon.* p. 45
Demers, Garnishee, Morris *v.* Kline (Can.); **5.** *Bkpcy.* pp. 49, 80
Demery, *Re* (Can.); **5.** *Bkpcy.* p. 73
De Mille, *Re* (Can.); **22.** *Evid.* p. 8
Demings *v.* Bedell (Can.); **21.** *Estpl.* p. 38
De Monchy *v.* Phœnix Insurance Co. of Hartford (1928); **29.** *Insce.* No. 2404a
De Mott *v.* Clysdale (Can.); **42.** *Str. Traf.* p. 39
Dempsey *v.* Piper (N.Z.); **4.** *Bkpcy.* p. 3
Dempsey & Midland L. & S. Co., *Re* (Can.); **17.** *Deeds*, pp. 28, 31
Dempster *v.* Richardson (Aus.); **11.** *Const. L* p. 68
Demry & Demry, *Re*, Trustee *v.* Halland (Can.); **4.** *Bkpcy.* p. 30; **5.** *Bkpcy.* p. 73
Denby (William) & Sons, Ltd. *v.* Minister of Health (1936); **38.** *Pub. Hlth.* No. 502s
Dench *v.* Albertan Publishing Co. (Can.); **18.** *Discy.* p. 23
Denhert *v.* Denhert & Gamil (1934); **27.** *H. & W.* No. 4486a
Dening *v.* Ware (1856); **40.** *Stlmts.* No. 803b
Denis, *In the Will of* (Aus.); **18.** *Discy.* p. 17
Denis *v.* Morinville Corpn. (Can.); **3.** *Auct.* p. 2

Denison *v.* Union Bank of Canada, *Re* Raport (Can.); **8.** *Chos.* p. 96
Denman *v.* Tousaw, Hart & Anderson & Bell Telephone Co. (Can.); **5.** *Bkpcy.* p. 58
Denman Picture Houses *v.* Thompson & Collins Enterprises, *Re* King's Theatre, Sunderland (1929); **13.** *Cohlds.* Nos. 2032b, 2032c; **43.** *Trusts*, No 1434a
Dennehy *v.* Bellamy (1938); **2.** *Arbn.* No. 294b
Dennerley *v.* Prestwich Urban District Council (1930); **26.** *Highys.* No. 2439d
Dennis *v.* Hick (1935); **28.** *Inc. T.* No. 77d
— *v.* Independent Lands, Ltd. (Can.); **1.** *Agcy.* p. 96
— *v.* Ivey & Boyce (Can.); **6.** *B. of Exch.* p. 11
— *v.* Leonard (1929); **42.** *Str. Traf.* No. 185b
— *v.* Malcolm, *Re* Cheam Common School (1934); **19.** *Educ.* No. 259a; *Pract.* No. 3063a
— *v.* Willmore (1936); **26.** *Highys.* No. 1435h
Dennison, *Ex p.* (1797); **9.** *Coys.* No. 2667a
— *v.* Keiller, Ltd. (1926); **34.** *Mast. & S.* No. 2479a
Dennistoun *v.* Dennistoun (1925); **22.** *Evid.* No. 6876a
Denny *v.* Davies (1937); **28.** *Inc. T.* No. 595b
— *v.* Reed (1933); **28.** *Inc. T.* No. 496e
Denny & Dumface Magistrates *v.* Stirlingshire Assessor (Scot.); **38.** *Rates*, p. 73
Dennys Lascelles, Ltd. *v.* Borchard (Aus.); **11.** *Confl.* p. 38
De Normanville *v.* Hereford Times Ltd. (1935); **32.** *Libel*, No. 1729a
Denovich *v.* Hucal (Can.); **27.** *H. & W.* p. 16
Dent, *Re, Ex p.* Trustee (1923); **4.** *Bkpcy.* No. 2902a; **5.** *Bkpcy.* Nos. 7153a, 7161a
— *v.* Central Canada Ex. Assocn. (Can.); **36.** *Negl.* p. 6
— *v.* Usher (Can.); **36.** *Negl.* p. 30
Dental Board of Victoria *v.* Denison (Aus.); **34.** *Med.* pp. 190, 191
Denton *v.* Goodman (Can.); **1.** *Agcy.* p. 97
Denton Estate, *Re* (Can.); **23.** *Exors.* p. 2
Denver Hotel Co., Ltd. *v.* Andrews (1895); **28.** *Inc. T.* No. 142b
Denyer *v.* British American Oil Co. (Can.); **18.** *Distr.* p. 24
Deoraj Tewari *v.* Indrasan Tewari (Ind.); **32.** *Limit. of A.* p. 32
De Parrell *v.* Walker (1932); **12.** *Contr.* No. 1856a
Department of Agriculture for Scotland *v.* Goodfellow (Scot.); **2.** *Agric.* p. 1
De Pass' Case (1859); **9.** *Coys.* No. 2344b
Dependable Upholstery, Ltd., *Re* (1936); **10.** *Coys.* No. 6195a
— *v.* Brasted (1932); **38.** *Rates*, Nos. 226gg, 226hh
De Pret-Roose *v.* De Pret-Roose (1934); **27.** *H. & W.* No. 1999a
Deputy Federal Comr. of Taxation *v.* Adelaide Motor Wrecking Co., Ltd. & O'Donnell (Aus.); **39.** *Revenue*, p. 16
— *v.* Ellis & Clark, Ltd. (Aus.); **39.** *Revenue*, p. 16
Deputy Federal Comr. of Taxation for Tasmania *v.* Thomas (Aus.); **16.** *Courts*, p. 9
Deputy Federation Comr. of Taxation (Queensland) *v.* Stronach (Aus.); **39.** *Revenue*, p. 16
Derbach *v.* Shaw (Can.); **9.** *Coys.* p. 35
Derby (Earl) *v.* Athol (Duke) (1749); **11.** *Confl.* No. 352a
Derby (Lord) *v.* Bassom (1926); **28.** *Inc. T.* No. 99
Derby (Territorial Army Association) *v.* Derby (South Eastern Area) Assessment Committee (1935); **38.** *Rates*, No. 448a
Derby McIntyre & Co. *v.* Mitter & Co. (Ind.); **11.** *Confl.* p. 53
Derbyshire County Council *v.* Middlesex County Council (1936); **37.** *Poor L.* No. 486a
Deremore Estate, *Re* (Can.); **8.** *Char.* p. 78
Dermody *v.* Higgs & Hill, Ltd. (1937); **34.** *Mast. & S.* No. 2446a
De Robeck (Lady) *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 668a
Derry *v.* Great Western Ry. Co. (1926); **34.** *Mast. & S.* No. 2890a
— *v.* Inland Revenue (Scot.); **28.** *Inc. T.* p. 94
Derwa *v.* Rio De Janeiro Tramway, Light & Power Co. (Can.); **35.** *Money*, p. 15
Desabrais *v.* Desabrais (Can.); **27.** *H. & W.* p. 25
Desai *v.* Immigrants' Appeal Board (S. Af.); **2.** *Aliens*, p. 51
Desborough *v.* Portsmouth (1934); **13.** *Cty. Cts.* No. 578a; **34.** *Mast. & S.* No. 3153a; *Pract.* No. 2384a
Des Brisay *v.* Canadian Government Merchant Marine, Ltd. (Can.); **18.** *Discy.* p. 22
— *v.* Glencross (Can.); **17.** *Deeds*, p. 30
Descary *v.* Martinean (Can.); **29.** *Insce.* p. 38
Deschamps, *Re* (Can.); **2.** *Agric.* p. 26
Deschenes *v.* Loveys (Can.); **38.** *Rates*, p. 84
Descombes & Arondel *v.* Lestor & Parton (1931); **36.** *Pats.* No. 3130a
Desiderio *v.* Currus, Ltd. (1934); **36.** *Pats.* No. 3355a
Desjardine *v.* Callison (Can.); **25.** *Fraud. Conv.* p. 13
Desjardins *v.* Gatineau Power Co. (Can.); **36.** *Negl.* p. 20
Deslauriers *v.* Himmelman Shipping Co. (Can.); **2.** *Arbn.* p. 83
Des Olivaes, *Ex p.*, *Re* Pinto Leite & Nephews (1929); **4.** *Bkpcy.* No. 4353a; **8.** *Chos.* No. 601a
Desoutter Bros., Ltd. *v.* Hanger & Co., Ltd. & Artificial Limb Makers, Ltd. (1936); **28.** *Inc. T.* No. 252e
De Souza, *Ex p.* (S. Af.); **42.** *Solrs.* p. 2
— *v.* De Souza (Ind.); **11.** *Confl.* p. 48
Des Raj *v.* R. (Ind.); **17.** *Dep.* p. 35
Desrochers *v.* Quebec Liquor Commission & Simard (Can.); **22.** *Evid.* p. 18
— *v.* R. (Can.); **30.** *Intox.* p. 16
Des Roches *v.* Robinson (Can.); **44.** *Wills*, p. 27
Desroisers *v.* R. (Can.); **1.** *Agcy.* p. 95
Des Rosiers *v.* Balmoral & Dalhousie School Districts No. 1 (Can.); **19.** *Educ.* p. 36
Des Salles D'Epinoix *v.* Des Salles D'Epinoix & Orbach (1919); **2.** *Aliens*, No. 261a
De Stempel *v.* Dunkels (1938); **32.** *Libel*, No. 129a; **34.** *Mast. & S.* No. 401a
De Tchihatchef *v.* Salerni Coupling, Ltd. (1932); **21.** *Estpl.* No. 1054a
De Trafford *v.* A.-G. (1935); **21.** *E. D.* Nos. 27a, 42a, 666a
Detro *v.* Detro (Can.); **11.** *Confl.* p. 56
Detroit Rubber Products Inc. *v.* Republic Rubber Co. (Can.); **36.** *Pats.* p. 70
Deugau *v.* Kramer (Can.); **42.** *Str. Traf.* p. 60
Deutsche Bank (London Agency), *Re* (1921); **2.** *Aliens*, Nos. 198b, 219b
Deutsche Bank und Disconto Gesellschaft *v.* Banque des Marchands de Moscou (1931–32); *Pract.* Nos. 1003a, 3488a
Devall *v.* Gorman, Clancey & Grindley, Ltd. (Can.); **1.** *Agcy.* p. 87
— *v.* Wainwright Gas Co. (Can.); **9.** *Coys.* p. 45
De Veber *v.* Andrews (Can.); **44.** *Wills*, p. 23
— (Doe d.) *v.* Roe (Can.); **31.** *L. & T.* p. 85
Deveber *v.* Roop (Can.); **22.** *Evid.* p. 4
Devenish *v.* Connacher (Can.); **35.** *Mtge.* pp. 31, 38
— *v.* — (No. 2) (Can.); **40.** *S. Land.* p. 1; **43.** *Trov.* p. 58

Devenish & Devenish *v.* Connacher (Can.); **35.** *Mtge.* p. 38
Deverell *v.* Milne (1920); **13.** *Cty. Cts.* No. 722a
De Ville *v.* Gatti, *Re* Gatti's Voluntary Settlement Trusts (1936); **40.** *Stltmts.* No. 1094a
De Villiers *v.* O'Sullivan (S. Af.); **2.** *Agric.* p. 17
Devine *v.* Carson & Co. (Belfast) (Ir.); **41.** *Shrffs.* p. 7
— *v.* Devine & Queensland Insurance Co., Ltd. (Aus.); **29.** *Insce.* p. 42
— *v.* Somerville & Somerville (Can.); **34.** *Mines*, p. 206
Devlin *v.* Grand Trunk Ry. Co. of Canada (Can.); **8.** *Carr.* p. 3
— *v.* Moore's Mills Creamery, Ltd. (Can.); **6.** *B. of Exch.* p. 11
— *v.* Wilson (Can.); **35.** *Mtge.* p. 46
Devon Mutual Steamship Insurance Assocn. *v.* Ogg (1927); **28.** *Inc. T.* No. 307b
Devonish *v.* Porter (Aus.); **24.** *Fact.* p. 56
De Vries *v.* Smallridge (1928); **13.** *Cty. Cts.* Nos. 206a, 235a; **30.** *Jdgmts.* No. 642a
— *v.* Sparks (1927); **31.** *L. & T.* No. 7281a
Dew *v.* United British S.S. Co., Ltd. (1928); **30.** *Juries*, No. 571a; **41.** *Ship.* No. 614a
De Wall *v.* Ziervogel (S. Af.); **32.** *Libel*, p. 12
Dewan *v.* R. (Can.); **26.** *Hghys.* p. 29
Dewar *v.* Inland Revenue Comrs. (1931); **28.** *Inc. T.* No. 575a
— *v.* — (1935); **28.** *Inc. T.* No. 656b
Dewdney *v.* Matheson (Aus.); **1.** *Agcy.* p. 81
Dewdney Election Appeal, *Re*, Smith *v.* Cathcrwood (Can.); **20.** *Elect.* p. 4
Dewe *v.* Dewe (1928); **27.** *H. & W.* Nos. 595a, 2040a, 6124a
Dewees *v.* Morrow (Can.); **36.** *Negl.* p. 35
Dewey-Gardner Co., Ltd. *v.* Zachorecky & Moorhouse & Moorhouse (Can.); **32.** *Lien*, p. 24
Dewhurst *v.* Hunter (1932); **28.** *Inc. T.* No. 501b
— *v.* McCoppin (Can.); **18.** *Distr.* p. 30
Dewhurst, Ltd. *v.* Eddins (1935); **25.** *Food*, No. 515a
De Wolf *v.* Delmage (Can.); **1.** *Agcy.* p. 84
De Wolfe *v.* Twohig (Can.); **1.** *Agcy.* p. 93
Dewsbury Revenue Officer *v.* Burrows & Dewsbury Assessment Committee (1931); **38.** *Rates*, No. 226p
Dexter *v.* Cosford (Can.); **38.** *Real Prop.* p. 96
— *v.* Hayes (Ir.); **33.** *Mkts.* p. 42
Dexters, Ltd. *v.* Hill Crest Oil Co. (Bradford) (1926); **2.** *Arbn.* Nos. 1083b, 1851a
De Young *v.* Fraser (Can.); **36.** *Negl.* p. 24
Dhanal Soorma *v.* Rangoon Indian Telegraph Assocn., Ltd. (Ind.); **20.** *Electric.* p. 15
Dhanpat Pandey *v.* Pasput Pratap Singh (Ind.); **24.** *Ferries*, p. 62
Dhanrajgirji *v.* Payne & Co. (Ind.); **42.** *Solrs.* p. 11
Dharam Prakash *v.* Kalawati Deri (Ind.); **21.** *Estpl.* p. 35
Dharamal *v.* Holm Patrick (Lord) (Ir.); **11.** *Confl.* p. 53
Diamanti *v.* Martelli (N.Z.); **9.** *Coys.* p. 16
Diamantidi *v.* Grosvenor Securities, Ltd. & Guildhall Trust, Ltd. (1937); **9.** *Coys.* No. 2228a
Diamond *v.* Montgomery (Can.); **21.** *Estpl.* p. 36
— *v.* Western Realty Co. (Can.); **21.** *Estpl.* p. 24
Dibrugarh District Club, Ltd., *Re* (Ind.); **28.** *Inc. T.* p. 13
Dicas *v.* Brougham (Lord) (1833); **22.** *Evid.* No. 4869a
Dick *v.* Schwartz (Can.); **17.** *Deeds*, p. 31; **35.** *Mtge.* p. 47
Dickason *v.* Dickason (S. Af.); **27.** *H. & W.* p. 29
Dicken, *Re*, *Ex p.* Dicken (1817); **4.** *Bkpcy.* No. 3781a
Dickens, *Re*, Dickens *v.* Hawksley (1935); **13.** *Coprt.* Nos. 234a, 234b, 275a; **44.** *Wills*, No. 5951a
— *v.* Mitchell (Aus.); **42.** *Str. Traf.* p. 48
— *v.* Mulholland (Aus.); **42.** *Str. Traf.* p. 48
Dickenson *v.* Gapp (1821); **2.** *Animals*, No. 416a
— *v.* Gross (1927); **28.** *Inc. T.* No. 613a
Dickie *v.* Bridges (Can.); **36.** *Negl.* p. 11
— *v.* Dickie (Can.); **27.** *H. & W.* p. 53
— *v.* Spare (Can.); **2.** *Agric.* p. 4
Dickinson *v.* Del Solar (1930); **11.** *Const. L.* No. 465a; **29.** *Insce.* No. 3202a
— *v.* Dickinson (otherwise Phillips) (1913); **27.** *H. & W.* No. 2369
— *v.* Kitchen (1858); **21.** *Exon.* No. 680
— *v.* Phillips (1913); **27.** *H. & W.* No. 2369
— *v.* Stonehague Rural Municipality (Can.); **1.** *Agcy.* p. 91
Dickinson (John) & Co. *v.* Apsley Press, Ltd. (1937); **43.** *Trade Mks.* No. 1168b
Dickinson's Settlements, *Re*, Bickersteth *v.* Dickinson (1938); **28.** *Infls.* No. 844a
Dicks *v.* Barbour (Can.); **18.** *Distr.* p. 30
— *v.* Keays (Can.); **21.** *Exon.* p. 46
Dickson *v.* Chamberland (Can.); **25.** *Gifts*, p. 47
— *v.* Halesowen Steel Co. (1928); **9.** *Coys.* No. 3771a
— *v.* Hampstead Borough Council (1927); **28.** *Inc. T.* No. 393a
— *v.* Jacques (Can.); **12.** *Contr.* p. 12
— *v.* Monteith (Can.); **23.** *Exors.* p. 7
Dickson's Settled Estates, *Re* (1921); **20.** *Eqy.* No. 815a
Digby *v.* Alexander (1831); **37.** *Peer.* No. 89a
— *v.* Stirling (Lord) (1831); **37.** *Peer.* No. 89a
— *v.* Union Trustee Co. of Australia, Ltd., *Re* Chirnside (Aus.); **4.** *Bkpcy.* p. 23
Digby & Penny, *Re* (1932); **2.** *Agric.* No. 266q
Diggines *v.* Forestal Land, Timber & Railways Co., Ltd. (1931); **28.** *Inc. T.* No. 450a
Diggins *v.* Diggins (1927); **27.** *H. & W.* No. 6179a
Dignan *v.* Australian Steamships Pty., Ltd. (Aus.); **42.** *Stats.* p. 30
Digney *v.* Roberts (Can.); **40.** *S. Lond.* p. 21
Dikur *v.* Shavchook (Can.); **12.** *Contr.* p. 22
Dill *v.* Children's Aid Society of Catholic Archdiocese of Vancouver, *Re* Ward (Can.); **28.** *Infls.* p. 133
Dille *v.* Great West Life Assurance Co. (Can.); **2.** *Animals*, p. 57
Dillon, *Re* (Can.); **19.** *Educ.* p. 41
— *v.* Balfour (Ir.); **32.** *Libel*, p. 10
— *v.* Catelli Food Products (Can.); **19.** *Educ.* p. 41
— *v.* Wells (1934); **34.** *Mast. & S.* No. 3530e
Dillon (H. W.) & Sons, Ltd. *v.* William Thomas Shipping Co., Ltd., *Re* William Thomas Shipping Co., Ltd., *Re* Thomas (Sir Robert) (1930); **16.** *Cntmpt.* No. 224a
Dillon's Claim, *Re* Munster Bank, Ltd. (Ir.); **10.** *Coys.* p. 76
Di Lorenzo, *Re* (Can.); **14.** *Crim.* p. 12
Dimitroff *v.* Gonder (Can.); **1.** *Agcy.* p. 69
Dimmitt, *Re* (Can.); **2.** *Agric.* p. 25
Dimor, *Re* (Can.); **36.** *Prtnrs.* p. 61
Dinabandhu Jana *v.* Durgaprasad Jana (Ind.); **2.** *Arbn.* p. 82
Dinabandhu Saha *v.* Abdul Latif Molla (Ind.); **1.** *Agcy.* p. 97
Dindigul Municipal Council *v.* Bombay Co. (Ind.); **12.** *Contr.* p. 49
Dingley *v.* MacNulty (1937); **28.** *Inc. T.* No. 489f
Dinkel *v.* Union Government (S. Af.); **42.** *Stats.* p. 25
Dinning *v.* Dinning (Can.); **25.** *Gaming*, p. 40

Dinning *v.* Workmen's Compensation Board (Can.); **4.** *Bkpcy.* p. 37
Dinshaw, *In the Estate of* (1930); **23.** *Exors.* No. 2327a
Dinshaw *v.* Bombay Income Tax Comr. (1934); **28.** *Inc. T.* No. 254b
— *v.* Income Tax Comr. (Ind.); **28.** *Inc. T.* p. 47
Dinsmore *v.* Dinsmore (Can.); **44.** *Wills*, p. 31
— *v.* Philip (Can.); **1.** *Agcy.* p. 53
Diptford Parish Lands, *Re* (1934); **8.** *Char.* Nos. 2154a, 2154b
Direct Cable Co. *v.* Dominion Telegraph Co. (Can.); **11.** *Confl.* p. 39
Direct Transport Co. *v.* Detroit & Windsor Ferry Co. (Can.); **8.** *Carr.* p. 2
Direction der Disconto Gesellschaft, *Re*, *Re* Anglo-Austrian Bank, *Re* Dresdner Bank (1920); **2.** *Aliens*, Nos. 219c, 223e
Director of Child Welfare *v.* Cartier Rural Municipality (Can.); **37.** *Poor L.* p. 17
— *v.* St. Clements Rural Municipality (Can.); **33.** *Mags.* p. 26
Disallowance & Reservation Powers Reference, *Re* (Can.); **17.** *Dep.* p. 35
Disher *v.* Clarris (Can.); **12.** *Contr.* p. 10
Disintegration of Continued Exceptional Rates (1928); **8.** *Carr.* No. 1323f
Dismore *v.* Milton (1938); **32.** *Limit. of A.* No. 1935a
Disourdi *v.* Sullivan Group Mining Co. & Maryland Casualty Co. (Can.); **29.** *Insce.* p. 42
Disraeli Agreement, *Re*, Cleasby *v.* Park Estates (Hughenden), Ltd. (1938); **2.** *Agric.* No. 266ni
Distillers Co., Ltd. *v.* Edinburgh Assessor (Scot.) (1928); **38.** *Rates*, p. 76
— *v.* Edinburgh Assessor (Scot.) (1931); **38.** *Rates*, p. 53
— *v.* Glasgow Assessor (Scot.) (1929); **38.** *Rates*, p. 76
— *v.* Glasgow Assessor (Scot.) (1931); **38.** *Rates*, p. 53
— *v.* Inland Revenue (Scot.); **38.** *Rates*, p. 55
District Bank, Ltd. *v.* Healey, *Re* David Healey & Son, Ltd. (1929); **10.** *Coys.* No. 6176a
— *v.* Turner, *Re* Turner's Will Trusts (1937); **28.** *Infts.* No. 813b
Ditcham *v.* Miller (1931); **9.** *Coys.* Nos. 25a, 5959b, 6555a
Ditchburn Boats & Aircraft (1936), Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 22
Ditton, *Ex p.*, *Re* Woods (1879); **4.** *Bkpcy.* No. 4808a
Divarka Prasad Mithal, *Re* (Ind.); **3.** *Barr.* p. 51
Divers *v.* Burnett (Can.); **34.** *Mast. & S.* p. 18
Dixon *v.* Ayresome S.S. Owners (1930); **34.** *Mast. & S.* No. 2552d
— *v.* Dixon (Can.); **17.** *Dep.* p. 52
— *v.* Dutfield (1862); **23.** *Exors.* No. 5483a; **24.** *Exors.* No. 6014b
— *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 674oo
— *v.* Richelieo Navigation Co. (Can.); **8.** *Carr.* p. 13
— *v.* Seiler, *Ex p.* Seiler (Aus.); **25.** *Food.* p. 6
— *v.* Shave (S. Af.); **34.** *Mast. & S.* p. 181
— *v.* Sinclair (Can.); **42.** *Str. Traf.* p. 39
— *v.* South Australian Railways Comrs. (Aus.); **7.** *Bldg. Conts.* p. 22
— *v.* Sutton Heath & Lea Green Colliery, Ltd. (1929); **34.** *Mast. & S.* No. 3105a
— *v.* — (No. 2) (1930); **34.** *Mast. & S.* No. 2836c
Dixon (J.J.) *v.* Taylor & Cowells (trading as Pineexx Liquid & Disinfectant Soap Co.); **43.** *Trade Mks.* No. 1266b
Dixon *v.* Walsh (Can.); **25.** *Fraud. Conv.* p. 14
— *v.* Workmen's Compensation Board (Can.); **44.** *Work*, p. 65
Dixon (H. C.) & Son, Ltd. *v.* Richardson (George) & Co., Ltd. (1933); **43.** *Trade Mks.* No. 1350d
Dixon & Toronto Corpn., *Re* (Can.); **11.** *Comp. Pche.* p. 15
Dixon (T. & M.), Ltd. *v.* London, Midland & Scottish Ry. Co. (1924); **8.** *Carr.* No. 1337b
Dixon's Estate, *Re* (Can.); **44.** *Wills*, p. 32
Dobbel *v.* Loudoun (N. Z.); **24.** *Exors.* p. 33
Dobbin *v.* Ogden (1929); **31.** *L. & T.* No. 2306b
— *v.* Waldorf Toilet Saloons, Ltd. (1937); **36.** *Negl.* No. 89a
Dobbs & Co. *v.* Robert Crean & Co., Ltd. (Can.); **43.** *Trade Mks.* p. 22
Dobek *v.* Jennings (Can.); **38.** *Real Prop.* p. 98
Dobell (C. G.) & Co., Ltd. *v.* Barber & Garratt (1931); **2.** *Agric.* Nos. 978b, 978c, 978d
Dobie *v.* Canadian Pacific Railway (Can.); **38.** *Rys.* p. 40
Dobie (Doe d.) *v.* Vanderlip (Can.); **24.** *Exors.* p. 37
Dobie & Sons, Ltd., Trade Mark, *Re* (1935); **43.** *Trade Mks.* No. 429b
Dobing, *Ex p.*, R. *v.* Hartlepool Corpn. (1851); **20.** *Elect.* No. 146a
Dobree & Co., *Re* (1929); **4.** *Bkpcy.* No. 1378a, 1793a
Dobrolowski *v.* Danyluk (Can.); **2.** *Animals*, p. 59
Dobroski *v.* Mackay (Can.); **36.** *Negl.* p. 16
Dobrovitch, *Re*, Dobrovitch *v.* Canadian Credit Men's Trust Assocn., Ltd. (Can.); **5.** *Bkpcy.* p. 58
Dobson *v.* Adie Bros., Ltd. (1935); **36.** *Pats.* No. 1642a
Dobson Steam Fishing Co., Ltd. *v.* Lewis (1929); **34.** *Mast. & S.* No. 2970a
Docherty *v.* Baird (William) & Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 104
— *v.* Ross & Marshall, Ltd. (Scot.); **34.** *Mast. & S.* p. 137
Dockrell, *Ex p.*, *Re* Superannuation Board (Aus.); **39.** *Revenue*, p. 27
Doctors (Solomon) *v.* Warshawer & Son, Ltd. (1934); **36.** *Pats.* No. 308d
Dodd *v.* Amalgamated Marine Workers' Union (1923); **13.** *Corpns.* Nos. 340a, 345a
— *v.* Oceanic Steam Navigation Co., Ltd. (1928); **34.** *Mast. & S.* No. 3702b
— *v.* Wilcox (Can.); **3.** *Bastv.* p. 60
Dodds, *Re*, *Ex p.* Vaughan's Exors. (1890); **4.** *Bkpcy.* No. 2807
— *v.* Kemball Theatres, Ltd. (N. Z.); **36.** *Negl.* p. 6
Dodds Appeal, *Re*, *Re* McManus (1933); **44.** *Work*, No. 146a
Dodge Estate, *Re* (Can.); **24.** *Exors.* p. 38
Dodson, *Re* (Aus.); **8.** *Char.* p. 72
Dodsworth *v.* Leng, *Re* Leng (1938); **28.** *Infts.* No. 1058b
Dodworth *v.* Dale (1936); **28.** *Inc. T.* No. 592f
Doe d. McKay *v.* Allen (Can.); **38.** *Real Prop.* p. 89
— d. France *v.* Andrews (1850); **22.** *Evid.* Nos. 1413a, 1459a
— d. Rankin *v.* Andrews (Can.); **5.** *Bkpcy.* p. 81
— d. Galt Presbyterian Church Trustees *v.* Bain (Can.); **38.** *Real Prop.* p. 98
— d. Breakey *v.* Breakey (Can.); **22.** *Evid.* p. 15
— d. Fenton *v.* Butcher (1847); **22.** *Evid.* No. 3919a
— d. *v.* Cahill (Can.); **38.** *Real Prop.* p. 99
— d. Keogh *v.* Calhoun (Can.); **21.** *Exon.* p. 45
— d. Crew *v.* Clarke (Can.); **21.** *Exon.* p. 51
— d. Charles *v.* Cotton (Can.); **32.** *Limit. of A.* p. 37
— d. Austin *v.* Cowderoy (1837); **31.** *L. & T.* No. 5788a

Doe d. St. Julian, Shrewsbury (Parish) *v.* Cowley (1823); **26.** *Hghys.* No. 1717a
— d. Lyons *v.* Crawford (Can.); **32.** *Limit. of A.* p. 37
— d. McGregor *v.* Crow (Can.); **32.** *Limit. of A.* p. 38
— d. Sullivan *v.* Currey (Can.); **24.** *Exors.* p. 34
— d. Chipman *v.* Deveber (Can.); **32.** *Limit. of A.* p. 38
— d. McMackin *v.* Devine (Can.); **38.** *Real Prop.* p. 99
— d. Connel *v.* Dickinson (Can.); **17.** *Deeds*, p. 32
— d. Evans *v.* Doyle (Nfld.); **38.** *Real Prop.* p. 92
— d. French *v.* Dunn (Can.); **38.** *Real Prop.* p. 98
— d. Upper *v.* Edwards (Can.); **38.** *Rates*, p. 85
— d. McKinlay *v.* Elliott (Nfld.); **23.** *Exors.* p. 3
— d. Hoak *v.* Empey (Can.); **43.** *Tresp.* p. 51
— d. Lees *v.* Ford (1853); **40.** *Stllmts.* Nos. 134a, 1786a
— d. Bouter *v.* Frazer (Can.); **38.** *Real Prop.* p. 98
— d. Banning *v.* Griffin (1812); **22.** *Evid.* No. 1499a
— *v.* Hanson (Can.); **35.** *Mtge.* p. 38
— d. Munro *v.* Hanson (Can.); **38.** *Real Prop.* p. 98
— d. McGregor *v.* Hawke (Can.); **32.** *Limit. of A.* p. 38
— d. St. John *v.* Hore (1799); **22.** *Evid.* No. 2475a
— d. Hay *v.* Hunt (Can.); **38.** *Real Prop.* p. 99
— d. Wilt *v.* Jardine (Can.); **38.** *Real Prop.* p. 93
— d. Johnson *v.* Johnson (1818); **22.** *Evid.* No. 1998a
— d. Williams *v.* Leavitt (Can.); **38.** *Real Prop.* p. 98
— d. McBernie *v.* Lundy (Can.); **35.** *Mtge.* p. 35
— Proudfoot *v.* McCrae (Can.); **25.** *Fraud. Conv.* p. 16
— d. Tiffany *v.* McEwan (Can.); **21.** *Estpl.* p. 35
— d. Steel *v.* McGill (Can.); **25.** *Fraud. Conv.* p. 14
— d. Fields *v.* McKay (Can.); **38.** *Real Prop.* p. 98
— d. Peabody *v.* McKnight (Can.); **21.** *Exon.* p. 51
— d. Biggard *v.* Millard (Can.); **25.** *Fraud. Conv.* p. 14
— d. Ausman *v.* Minthorne (Can.); **21.** *Exon.* p. 45
— d. McKenzie *v.* Mosher (Can.); **32.** *Limit. of A.* p. 37
— d. Evans *v.* Page (1844); **32.** *Limit. of A.* No. 1190a
— d. Purdy *v.* Peters (Can.); **31.** *L. & T.* p. 46
— d. Simpson *v.* Privat (Can.); **21.** *Exon.* p. 45
— d. Beel *v.* Reaumore (Can.); **18.** *Distr.* p. 32
— d. Petit *v.* Renard (Can.); **22.** *Evid.* p. 1
— d. Harcourt *v.* Roe (1813); **21.** *Exon.* No. 1706a; **31.** *L. & T.* No. 6315a
— d. Kirk *v.* Roe (1838); **19.** *Eccl.* No. 4033a
— d. Smith (or Smythe) *v.* Roe (1840); **19.** *Eccl.* No. 4034b
— d. Bell *v.* Roe (Can.); **38.** *Real Prop.* p. 98
— d. De Veber *v.* Roe (Can.); **31.** *L. & T.* p. 85
— d. Peck *v.* Roe (Can.); **21.** *Exon.* p. 51
— d. St. John Corpn. *v.* Roe (Can.); **38.** *Real Prop.* p. 99
— d. Somers (Earl) *v.* Roe (1840); **19.** *Eccl.* No. 4034a
— d. White *v.* Roe (Can.); **38.** *Real Prop.* p. 98
— d. McKay *v.* Rykert (Can.); **11.** *Const. L.* p. 77
— d. Shore *v.* Saunders (Can.); **20.** *Eqy.* p. 30
— d. McGill *v.* Shea (Can.); **21.** *Estpl.* p. 34
— d. Smith *v.* Snarr (Can.); **38.** *Real Prop.* p. 99
— d. Blagg *v.* Steel (1832); **35.** *Mtge.* No. 3495a
— d. Tilt *v.* Stratton (1828); **31.** *L. & T.* No. 5776a
Doe d. Hagerman *v.* Strong (Can.); **21.** *Exon.* p. 52
— d. Campbell *v.* Thompson (Can.) (1843); **21.** *Exon.* p. 50
— *v.* Thompson (Can.) (1860); **24.** *Exors.* p. 34
— d. Moffatt *v.* Thompson (Can.) (1877); **38.** *Real Prop.* p. 98
— d. Dobie *v.* Vanderlip (Can.); **24.** *Exors.* p. 37
— d. Birtwhistle *v.* Vardill (1835); **3.** *Basty.* No. 144a
— d. Hastings *v.* Waters (1850); **30.** *L. & T.* No. 330a
— d. Roberts *v.* Watson (Can.); **21.** *Exon.* p. 52
— d. Stocking *v.* Watts (Can.); **22.** *Evid.* p. 12
— d. Gilmour *v.* Whitney (Can.); **22.** *Evid.* p. 10
— d. Nesmith *v.* Williston (Can.); **21.** *Exon.* p. 50
— d. Upton *v.* Witherwick (1825); **21.** *Exon.* No. 1658a
Doe & Roman Catholic Episcopal Corpn. of London Diocese in Ontario *v.* Canadian Surety Co. (Can.); **7.** *Bldg. Conts.* p. 26
Doherty, *Re* (Can.); **44.** *Wills*, p. 24
— *v.* Doherty (Can.); **44.** *Wills*, p. 24
— *v.* Hawthorne (Can.); **16.** *Cr. Pract.* p. 27
Dolan *v.* Dominion of Canada General Insurance Co. (1936); **29.** *Insce.* No. 3217jj
— *v.* Joyce & Kirwan (Ir.); **28.** *Inc. T.* p. 9
Dolby *v.* Halmshaw (1937); **25.** *Game*, No. 375a
Dole (James) & Co. *v.* Four Amalgamated Ry. Cos. & London Passenger Transport Board (1936); **8.** *Carr.* No. 1323c
Doll *v.* Howard (Can.); **9.** *Coys.* p. 21
Dollar (Robert) Co. *v.* Walker (Can.); **21.** *Exon.* p. 46
Dollar Taxi Co., *Re*, *Ex p.* Trustee (Can.); **5.** *Bkpcy.* p. 54
Dolsen, *Re* (Can.); **38.** *Real Prop.* p. 92
Domanisky *v.* Fitzgerald (Can.); **38.** *Rates*, p. 85
Domanski *v.* Wilson (Can.); **9.** *Coys.* p. 39
Dombrowski, *Re*, *Ex p.* Trustee (1923); **5.** *Bkpcy.* No. 5775b
Domendietti *v.* Ryan (1929); **31.** *L. & T.* Nos. 7041a, 7238a
Domestic Relations Act, 1927, *Re*, *Re* Pulkabrek (Can.); **28.** *Infts.* pp. 132, 141
Domestic Storage & Forwarding Co. & Forest Hill, *Re* (Can.); **38.** *Pub. Hlth.* p. 18
Domine *v.* Cohen & Co. (1936); **13.** *Cty. Cts.* No. 653a
— *v.* Grimsdall (1937); **21.** *Exon.* No. 1224a
Domingo *v.* De Souza (Ind.); **9.** *Coys.* p. 24; **39.** *S. Goods*, p. 32
Dominik *v.* Stryk (Can.); **21.** *Exon.* p. 44
Dominion Air Lines, Ltd. *v.* Strand (N.Z.); **42.** *Str. Traf.* p. 63
Dominion Art Co., Ltd. *v.* Murphy (Can.); **3.** *Barr.* p. 51; **17.** *Damgs.* p. 18
Dominion Bank *v.* Clark & Co. (Vancouver), Ltd.'s Trustee (Can.); **21.** *Exon.* p. 58
Dominion Bank of Canada *v.* Litster (Can.); **21.** *Exon.* p. 47
— *v.* Palitti (Can.); **36.** *Prtnrs.* p. 59
Dominion Building Corpn., Ltd. *v.* R. (1933); **17.** *Dep.* Nos. 385a, 385b
— *v.* — (Can.) (1927); **2.** *Arbn.* p. 75
— *v.* — (Can.) (1930); **11.** *Const. L.* p. 68
Dominion Chocolate Co., *Re* (Can.); **7.** *B. of Sale*, p. 3
Dominion Coal Co. *v.* Leyland & Co. (Can.); **42.** *Tort*, p. 77
— *v.* Lord Strathcona S.S. Co. (Can.); **12.** *Contr.* p. 38
Dominion Combing Mills, *Re* (Can.); **9.** *Coys.* p. 19
Dominion Distillery Products Co., Ltd. *v.* R. (Can.); **39.** *Revenue*, p. 16
Dominion Fire Insurance Co. *v.* Nakata (Can.); **12.** *Contr.* p. 25

Dominion Fire-Brick & Clay Products, Ltd. *v.* Pollock (Can.); **38.** *Real Prop.* p. 95
Dominion Gresham Guarantee & Casualty Co. *v.* Crooks (Can.); **29.** *Insce.* p. 8
Dominion Iron & Steel Co. *v.* Canadian Bank of Commerce (Can.); **10.** *Coys.* p. 58
Dominion Iron & Steel Co., Ltd. *v.* Invernairn (1927); **9.** *Coys.* No. 260a
Dominion Iron & Steel Co. *v.* R. (Can.); **12.** *Contr.* p 7
Dominion Lock Joint Pipe Co. *v.* York (Can.); **39.** *S. Goods*, p. 59
Dominion Loose Leaf Co. *v.* Manuel (Can.); **28.** *Injon.* p. 154
Dominion Lumber & Coal Co. *v.* Lord (Can.); **32.** *Lien*, p. 24
Dominion Lumber & Fuel Co. *v.* Knapp (Can.); **21.** *Exon.* p. 56
Dominion Lumber Co. *v.* Alberta Fish Co. (Can.); **7.** *B. of Sale*, p. 10
Dominion Manufacturers, Ltd. *v.* Electrolier Manufacturing Co., Ltd. (1933); **36.** *Pats.* p. 102
Dominion Meat Co. *v.* Jameson (Can.); **12.** *Contr.* p. 17
Dominion Millers' Assocn. *v.* Canadian National & Canadian Pacific Ry. Cos. (Can.); **38.** *Rys.* p. 36
Dominion Natural Gas Co., Ltd. *v.* United Gas & Fuel Co. of Hamilton, Ltd. (Can.); **2.** *Arbn.* p. 91
Dominion of Canada & Provinces of Ontario & Quebec, *Re* Indian Claims (Can.); **17.** *Dep.* p. 74
Dominion of Canada Guarantee & Accident Co., Ltd. *v.* Housing Commission of City of Halifax (Can.); **26.** *Guar.* p. 12
Dominion of Canada Guarantee & Accident Insurance Co. *v.* Mahoney (Can.); **29.** *Insce.* p. 37
Dominion Paper Co. *v.* N. Rattenbury, Ltd. (Can.); **21.** *Estpl.* p. 40
Dominion Press, Ltd. *v.* Customs & Excise Minister (Can.); **39.** *Revenue*, p. 13
Dominion Royalty Corpn., Ltd. *v.* Goffatt (Can.); **35.** *Misrep.* p. 6
Dominion Savings & Investment Society *v.* Kilroy (Can.); **27.** *H. & W.* p. 14
Dominion Securities *v.* Duncan (N.Z.); **9.** *Coys.* p. 20
Dominion Shipbuilding & Repair Co., Ltd., *Re* (Can.); **7.** *B. of Sale*, p. 1; **10.** *Coys.* p. 82
Dominion Shipping Co. *v.* Montrose S.S. (Can.); **41.** *Ship.* p. 57
Dominion Steel Corpn., *Re* (Can.); **10.** *Coys.* p. 68
Dominion Sugar Co. *v.* Warrell (Can.); **36.** *Prtnrs.* p. 63
Dominion Tar & Chemical Co., Ltd., *Re* (1929); **10.** *Coys.* No. 6988b
Dominion Textile Co. *v.* Skaife (Can.); **30.** *Jdgmts.* p. 20
Dominion Ticket, etc. Corpn., *Re, Ex p.* Aker (Can.); **5.** *Bkpcy.* p. 57
Dominion Trade & Industry Commission Act, *Re*, A.-G. for Ontario *v.* A.-G. for Canada (1937); **17.** *Dep.* No. 130s
Dominion Trust Co. *v.* Mutual Life Assurance Co. (Can.); **35.** *Mtge.* p. 33
Dominique *v.* Workman (Can.); **12.** *Contr.* p. 35
Donachie *v.* Whitehaven Colliery Co., Ltd. (1933); **34.** *Mast. & S.* No. 3283g
Donaghue *v.* Canadian Bank of Commerce (Can.); **21.** *Exon.* p. 58
Donald *v.* Donald (N.Z.); **11.** *Confl.* p. 27
— *v.* Jukes (Can.); **8.** *Chos.* p. 93
— *v.* Lewis (Can.); **30.** *Jdgmts.* p. 28
Donald Estate, *Re*, Baldwin *v.* Mooney (Can.); **18.** *Desct.* p. 3
Donald (M. D.), Ltd. *v.* Brown (Can.); **28.** *Inc. T.* p. 15
Donald Mason & Co., *Re* (Can.); **28.** *Inc. T.* p. 29; **38.** *Rates*, p. 49
Donaldson *v.* Alberta Foundry & Machine Co., Ltd. (Can.); **39.** *S. Goods*, p. 44
— *v.* Institute of Botano-Therapy, Ltd. (1937); **8.** *Clubs*, No. 39b
Donaldson's Executors *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 110
Donaldson's Hospital (Edinburgh) Trustees *v.* Esslemont (Scot.); **2.** *Agric.* pp. 1, 7
Doncaster *v.* Sudlow (R.) & Sons (1929); **34.** *Mast. & S.* No. 3811a
Donegal Tweed Co., Ltd. *v.* Stephenson (1929); **31.** *L. & T.* No. 2306a
Doner *v.* Loose (Can.); **1.** *Agcy.* p. 80
— *v.* Ross (Can.); **24.** *Exors.* p. 40
Donkin *v.* Donkin (1933); **27.** *H. & W.* Nos. 6165a, 6283b
Donnell, *Re* (Can.); **44.** *Wills*, p. 12
Donnelly, *Re* (Aus.); **44.** *Wills*, p. 56
— *v.* Donnelly (Can.); **27.** *H. & W.* p. 21
— *v.* Jesseau (Can.); **25.** *Fraud. Conv.* p. 17
— *v.* Morrissey (Can.); **25.** *Fraud. Conv.* p. 17
Donnithorne *v.* Donnithorne (Aus.); **27.** *H. & W.* p. 38
Donoghue *v.* Allied Newspapers, Ltd. (1938); **13.** *Coprt.* No. 24a
— *v.* Stevenson (1932); **36.** *Negl.* No. 364a; **39.** *S. Goods*, Nos. 715a, 856a
Donohoe *v.* Schroeder (Aus.); **2.** *Aliens*, p. 47
— *v.* Wong Sau (Aus.); **2.** *Aliens*, p. 48
Donovan *v.* Beliveau (Can.) (1929); **21.** *Exon.* p. 45
— *v.* Beliveau (Can.) (1931); **21.** *Exon.* p. 45
— *v.* Belleville (Can.); **13.** *Corpns.* p. 29
— *v.* Crofts (Ir.); **28.** *Inc. T.* p. 94
— *v.* Hanna (N.Z.); **35.** *Mtge.* p. 49
— *v.* Hogan (Can.); **38.** *Rafcs*, p. 85
— *v.* Union Cartage Co., Ltd. (1933); **36.** *Negl.* Nos. 420a, 440a
Donowa *v.* Webster (Aus.); **1.** *Agcy.* p. 88
Doolan *v.* Schaffer, Ltd. (Can.); **12.** *Contr.* p. 30
Dooley *v.* Burke & Hackett (Nfld.); **34.** *Mast. & S.* p. 9
— *v.* Dooley (Ir.); **21.** *Estpl.* p. 24
Dora, The, The Annette (1919); **1.** *Adm.* Nos. 141b, 170a
Doran *v.* McKinnon (Can.); **12.** *Contr.* pp. 14, 15
Dorenwends, Ltd., *Re* (Can.); **9.** *Coys.* pp. 19, 46
Dorey *v.* Gray (Can.); **17.** *Deeds*, p. 29
Dorey (Onesimus) & Sons, Ltd. *v.* Headley's Wharf, Ltd. & Ashby, Ltd. (1938); **44.** *Waters*, No. 831b
Dorf *v.* Neumann, Luebeck & Co. (1924); **1.** *Agcy.* No. 1426a
Dorin, S.S., *Re* (Can.); **29.** *Insce.* p. 9
D'Orio *v.* Leigh & Cuthbertson, Ltd. (Can.); **25.** *Gaming*, p. 29
Dority *v.* Ottawa Roman Catholic Separate Schools Trustees (Can.); **36.** *Negl.* p. 34
Dorizzi *v.* Mackey (Aus.); **34.** *Mast. & S.* p. 43
Dorman *v.* Crapper (Can.); **7.** *B. of Sale*, p. 11
Dorman, Long & Co., Ltd., *Re*, *Re* South Durham Steel & Iron Co., Ltd. (1934); **10.** *Coys.* Nos. 7373c, 7373d, 7377a, 7409b, 7411a; **30.** *Jdgmts.* No. 739c
— *v.* Durham District (Coal Mines) Scheme Executive Board (1934); **34.** *Mines*, No. 327x
Dormer *v.* Liddell-Grainger, *Re* Liddell-Grainger's Will Trusts (1936); **11.** *Confl.* No. 68c
Dornberg *v.* Somerville (Can.); **12.** *Contr.* p. 43
Dorrell *v.* Campbell (No. 2) (Can.); **38.** *Real Prop.* p. 99

Dorrett *v.* Meux (1854); **22.** *Evid.* No. 2345a
Dorrington's Case (1615); **1.** *Adm.* No. 12a
Dorset County Council *v.* Pethick Bros. (1898); *Pract.* No. 3341a
Dorsht *v.* Trans-Canada Insce. Co. (Can.); **21.** *Estpl.* p. 41
Dossor *v.* Monaghan (Ir.); **43.** *Trade*, p. 6
Dott *v.* Brown (1936); **28.** *Inc. T.* No. 350a
Doty *v.* Marks (Can.) (1924); **5.** *Bkpcy.* p. 70
Doty & Marks, *Re* (Can.) (1925); **21.** *Estpl.* p. 23
Doucet *v.* Sydney Lumbering Co. (Can.); **2.** *Agric.* p. 21
Doughty *v.* Braithwaite (H.) & Co., Ltd. (1930); **34.** *Mast. & S.* No. 3558a
— *v.* Taxes Comr. (N.Z.); **28.** *Inc. T.* p. 21
Douglas, *Re* (Aus.); **43.** *Trusts*, p. 69
—, *Re*, *Ex p.* Douglas' (James) Executors (1930); **4.** *Bkpcy.* No. 4186a; **36.** *Prtnrs.* No. 1899a
—, *Re*, Douglas & Hill *v.* Myers (J. E.) (1930); **4.** *Bkpcy.* No. 4186a; **36.** *Prtnrs.* No. 1899a
— *v.* Addie (Can.); **27.** *H. & W.* p. 9; **38.** *Real Prop.* p. 93
— *v.* Associated Newspapers, Ltd. (1922); **3.** *Barr.* No. 162a
— *v.* Carrington (Can.); **18.** *Distr.* p. 25
— *v.* Edinburgh Assessor (Scot.); **38.** *Rates*, p. 52
— *v.* Forrest (1828); **11.** *Confl.* Nos. 1044a, 1262a
— *v.* Maritime United Farmers Co-operative, Ltd. (Can.); **10.** *Coys.* p. 55
— *v.* Mutual Life Assurance Co. (Can.); **35.** *Mtge.* p. 44
— *v.* Rawding (Can.); **32.** *Limit. of A.* p. 42
— *v.* Smith (1849); **4.** *Bkpcy.* No. 5364a
— *v.* Tiernan (Aus.); **6.** *B. of Exch.* p. 12
Douglas & Hill *v.* Myers (J. E.), *Re* Douglas (1930); **4.** *Bkpcy.* No. 4186a; **36.** *Prtnrs.* No. 1899a
Douglas Packing Co. Incorporated, Douglas Pectin Corpn. & Postum Co. Incorporated *v.* Evans & Co. (Hereford & Devon), Ltd. (1929); **36.** *Pats.* No. 1205a
Douglas' Patent, *Re*, *Re* Wade's Patent (1929); **36.** *Pats.* No. 2044a
Douglass *v.* Lloyds Bank (1929); **3.** *Bank.* Nos. 342b, 403a, 1008a
— *v.* McPhee, *Re* Davis (Aus.); **44.** *Wills*, p. 40
Doulin *v.* Parcell (1926); **31.** *L. & T.* No. 7352b
Doull *v.* Keefe (Can.); **21.** *Exon.* p. 52
— *v.* McIlreith (Can.); **5.** *Bkpcy.* p. 95
Doust *v.* Doust (1929); **11.** *Confl.* No. 861b
Doutrebande *v.* Doutrebande (Aus.); **27.** *H. & W.* p. 36
Dover *v.* Mills (1831); **3.** *Bailmt.* No. 195a
Dover Case (1860); **20.** *Elect.* No. 626b
Dow *v.* Dayment (Can.); **5.** *Bkpcy.* p. 88
— *v.* Merchiston Castle School, Ltd. (Scot.); **28.** *Inc. T.* p. 37
Dowell *v.* Beningfield (1841); **15.** *Crim.* No. 11,642a
Dowglas *v.* Kendall (1610); **3.** *Bailmt.* No. 123a
Dowlin *v.* —— (1823); **1.** *Action*, No. 711a
Dowling *v.* Methven, Sons & Co., Ltd. (Scot.); **1.** *Agcy.* p. 92
Dowling *v.* Rae (Aus.); **12.** *Contr.* p. 33
Dowlinski *v.* Rawluk (Can.); **27.** *H. & W.* p. 29
Dowlow Lime & Stone Co., Ltd. *v.* London, Midland & Scottish Ry. Co. (1928); **8.** *Carr.* No. 1323b
Down *v.* Compston (1937); **28.** *Inc. T.* No. 116a
Down & Stinberg, *Re* (Can.); **24.** *Exors.* p. 34
Down County Council *v.* Stewart (Ir.); **26.** *Highys.* p. 37
Down's Agreement, *Re* (1938); **40.** *S. Land*, No. 330a
Downer *v.* Boughner (Can.); **10.** *Coys.* p. 66
Downes *v.* Freshney (Aus.); **25.** *Food*, p. 6
Downes *v.* Lobbs, *Re* Downes & Lobbs' Contract (1937); **40.** *S. Land*, No. 330a
Downes & Lobbs' Contract, *Re*, Downes *v.* Lobbs (1937); **40.** *S. Land*, No. 330a
Downey *v.* Hyslop (Can.); **42.** *Str. Traf.* p. 51
Downing *v.* Home Insurance Co. of New York (Can.); **29.** *Insce.* p. 25
Dowser *v.* Canadian National Railway (Can.); **38.** *Rys.* p. 38
Dowsett *v.* Edmunds (Can.); **17.** *Dep.* p. 42; **30.** *Jdgmts.* p. 28
Dowsley *v.* British Canadian Trust Co. (Can.); **42.** *Sp. Pfce.* p. 16
Doxford & Sons, Ltd. *v.* Furness Shipbuilding Co., Ltd. (1937); **34.** *Mast. & S.* No. 4096a
Doyle, *Ex p.*, *Re* Grantham (Can.); **4.** *Bkpcy.* pp. 33, 37
—, *Ex p.*, R. *v.* Lewes Prison Governor (1917); **16.** *Cr. Pract.* No. 696a
— *v.* A.-G. for New South Wales (1934); **17.** *Dep.* Nos. 191a, 191b, 191c
— *v.* Bartlett (Nfld.); **25.** *Gifts*, p. 47
— *v.* Byrne (Ir.); **25.** *Gifts*, p. 48
— *v.* Deady (Can.); **17.** *Dep.* p. 56
— *v.* Doyle (1850); **21.** *Estpl.* No. 1285a
— *v.* Foley-O'Brien, Ltd. (Can.); **34.** *Mines*, p. 213
— *v.* Gibbon (S. Af.); **1.** *Agcy.* p. 79
— *v.* McKinnon (Can.); **26.** *Guar.* p. 1
— *v.* Mersey Paper Co., Ltd. (Can.); **2.** *Agric.* p. 21
— *v.* White City Stadium, Ltd. (1935); **8.** *Clubs*, No. 21a; **34.** *Mast. & S.* No. 191a
Dozois *v.* Pure Spring Co., Ltd. & Ottawa Gas Co. (Can.); **36.** *Negl.* p. 11
Drabble Bros., *Re* (1930); **1.** *Agcy.* No. 2273a; **5.** *Bkpcy.* No. 7176a
Drabble (Harold), Ltd. *v.* Hycolite Manufacturing Co. (1928); **13.** *Copyt.* No. 229b
Drage (J.) & Sons, *Re*, Palmer & Roberts *v.* Knight (1926); **5.** *Bkpcy.* Nos. 7166a, 7237a
Drages, Ltd. *v.* Owen (1935); **18.** *Distr.* No. 424c
Drake, *Re*, Drake *v.* Wilson (1926); **21.** *E.D.* No. 244a
— *v.* Gray (1936); **40.** *S. Land*, No. 2665a
— *v.* Maclaren (Can.); **11.** *Confl.* p. 52
— *v.* Morgan (1858); **3.** *Barr.* No. 50a
— *v.* Preston (Can.); **38.** *Pub. Auth.* p. 8
Drake's Estate, *Re* (Ir.); **8.** *Char.* p. 81
Drake's Patent, *Re* (1933); **36.** *Pats.* No. 2055a
Drake's Settlement Trusts, *Re*, Wilson *v.* Drake (1938); **21.** *E. D.* No. 694a
Drakeley *v.* Manzoni (1938); **38.** *Pub. Hlth.* No. 259b
Dransfield *v.* British Insulated Cables, Ltd. (1937); **36.** *Negl.* Nos. 364c, 953f
Draper, *Re* (1888); **5.** *Bkpcy.* No. 5932a
— *v.* British Optical Assocn. (1938); **28.** *Injon.* No. 327a
— (B. E.) *v.* Hubert H. P. Trist & Tristbestos Brake Linings, Ltd. (1935); **43.** *Trade Mks.* No. 1419a
— *v.* Radenhurst (Can.); **40.** *S. Land.* p. 14
— *v.* South Australian Railways Comr. (Aus.); **11.** *Comp. Pche.* p. 13
Draper & Pratt, *Re* (Can.); **2.** *Agric.* p. 26
Drapers Co. *v.* London Passenger Transport Board (1937); **11.** *Comp. Pche.* No. 650b
Drayson (A. W.) & Sons, Ltd. *v.* Yallop (1929); **28.** *Inc. T.* No. 204j
Dreifus *v.* Royds (Can.). *See* Dreyfus *v.* Royds in Comprehensive Index
Drennan *v.* Beechey, Trustees of Transport & General Workers' Union & Magill (Ir.); **43.** *Trade*, p. 11
Dresdner Bank (London Agency), *Re* (1920); **2.** *Aliens*, No. 219a

Dresdner Bank, *Re*, *Re* Direction der Disconto Gesellschaft, *Re* Anglo-Austrian Bank (1920); **2.** *Aliens*, Nos. 219c, 223e
— *v.* Russo-Asiatic Bank (1923); **2.** *Aliens*, Nos. 221a, 223a
Dressler's Patents, *Re* (No. 2) (1928); **36.** *Pats.* No. 1687b
Drevon *v.* Drevon (1864); **11.** *Confl.* Nos. 52a, 64a, 67a, 243a
Drew, *Re* (Ir.); **31.** *L. & T.* pp. 82, 94
— *v.* Dingle (1934); **42.** *Str. Traf.* No. 76k
— *v.* Mack (Can.); **42.** *Str. Traf.* p. 61
Drew (Alexander) & Sons, Ltd., *Re* (1935); **10.** *Coys.* No. 6558a
— *v.* Inland Revenue Comrs. (1932); **28.** *Inc. T.* No. 674r
Drewe-Mercer *v.* Drewe-Mercer, *Re* Mercer (1889); **35.** *Name*, No. 62a
Drewitt *v.* Britannic Assurance Co., Ltd. (1927); **34.** *Mast. & S.* No. 3031a
Drewry *v.* Barnes (1826); **20.** *Eqy.* No. 258a
— *v.* Drewry (Can.); **27.** *H. & W.* p. 5
Dreyfus *v.* Inland Revenue Comrs. (1929); **28.** *Inc. T.* No. 206a
Dreyfus (Louis) & Co. *v.* Arunachala Ayya (1931); **16.** *Courts*, No. 701a
Dreyfus & Co. *v.* Atlantic Shipping & Trading Co. (1921); **2.** *Arbn.* No. 165a; **16.** *Courts*, No. 150
— *v.* Hochelaga S.S. Co. (1932); **41.** *Ship.* Nos. 6070a, 6104a
Dreyfus (Louis) & Co. *v.* National S.S. Co. (1935); **41.** *Ship.* No. 1933a
— *v.* Tempus Shipping Co. (1931); **41.** *Ship.* No. 3099a
Dreyfus (Louis) & Co. & Sir William Reardon Smith & Sons, Ltd., *Re* (Aus.); **41.** *Ship.* p. 38
Dreyfus (Louis) & South Australian Milling & Trading Co., *Re* (Aus.); **2.** *Arbn.* p. 93; **22.** *Evid.* p. 2
Dreyfus Application for a Patent (Nos. 285, 968), *Re*; **36.** *Pats.* No. 954c
Dried Milk Products, Ltd. *v.* Milk Marketing Board (1938); **25.** *Food*, No. 476k
Driedger *v.* Schmidt (Can.); **7.** *B. of Sale*, p. 11
Drinkwalter *v.* Morand (Can.); **36.** *Negl.* p. 8
Drinkwater *v.* London & North Eastern, London, Midland & Scottish & Great Western Ry. Cos. (1936); **8.** *Carr.* Nos. 1603, 1614
— *v.* London, Midland & Scottish Ry. Co. (1934); **8.** *Carr.* No. 1678
— *v.* National Sand & Material Co. (Can.); **28.** *Infts.* p. 141
Drinnen *v.* Douglas (Can.); **34.** *Med.* p. 190
Driscoll *v.* Colletti (Can.); **1.** *Agcy.* p. 99; **30.** *Jdgmts.* p. 28
Driver *v.* Simpson (1818); **11.** *Comns.* No. 939a
Drogheda & District Co-operative Society, Ltd., *Re* (Ir.); **10.** *Coys.* p. 81
Drought Area Relief Act, *Re*, Snowden *v.* Baker (Can.); **16.** *Cntmpt.* p. 7
Drown *v.* Gaumont-British Picture Corpn., Ltd. (1937); **9.** *Coys.* No. 3944a
Druce & Co., Ltd. *v.* Beaumont Property Trust, Ltd. (1935); **18.** *Distr.* No. 428a
Druet *v.* Groat (Can.); **33.** *Mags.* p. 37
Drughorn (F.), Ltd. *v.* Rederiakt. Trans-Atlantic (1919); **1.** *Agcy.* No. 2609a
Drulak *v.* Harvey & General Steel Wares, Ltd. (Can.); **34.** *Mast. & S.* p. 13
Drumm, *In the Goods of* (Ir.); **23.** *Exors.* p. 1
Drummond, *Re*, Benn *v.* Hawthorne (Can.); **21.** *Estpl.* p. 23
— *v.* Bell-Irving (Scot.); **11.** *Confl.* p. 52
— *v.* Hervey (1927); **13.** *Cty. Cts.* No. 962a
Drummond *v.* Peebles County Council (Scot.); **37.** *Police*, p. 11
Drummond Estate, *Re*, Minister of Finance *v.* Drummond (Can.); **21.** *E. D.* p. 21
Drummond's Trustees *v.* Peel's Trustees (Scot.); **28.** *Infts.* p. 142
Drury *v.* Appleby Iron Co., Ltd. (1935); **34.** *Mast. & S.* No. 3734b
— *v.* Johnston (Ir.); **31.** *L. & T.* p. 90
Dryden *v.* Orr (Aus.); **17.** *Damgs.* p. 21; **36.** *Negl.* p. 24
— *v.* Surrey County Council & Stewart (1936); **22.** *Evid.* No. 4831b; **34.** *Med.* Nos. 69b, 87c; *Pract.* No. 4194a
Drysdale, *Re* (Can.); **30.** *Intox.* p. 12
— *v.* Dugas (Can.); **2.** *Animals*, p. 66
— *v.* Reid (Can.); **2.** *Animals*, p. 57
Drysdale & Sidney Smith & Blyth, Ltd. *v.* Davey Paxman & Co. (Colchester), Ltd. & *Re* Letters Patent No. 274, 162 (1937); **36.** *Pats.* No. 796e
D/S, A/S Gulnes *v.* Imperial Chemical Industries, Ltd., The Gulnes (1938); **41.** *Ship.* No. 3909b
D'Souza *v.* Cassamilly (Ind.); **36.** *Negl.* p. 10
Dube *v.* Algoma Steel Corpn., Ltd. (Can.); **34.** *Mast. & S.* p. 20
— *v.* Morneault (Can.); **6.** *B. of Exch.* p. 9
Dubinski *v.* Stuyvesant Insurance Co. of New (Can.); **29.** *Insce.* p. 27
Dubois *v.* R. (Can.); **11.** *Const. L.* p. 67
Dubord *v.* Lambert (Can.); **32.** *Libel*, p. 5
Dubrofski *v.* Viger Co. & Perras (Can.); **4.** *Bkpcy.* p. 44
Dubuc *v.* Marston Corpn. (Can.); **21.** *Estpl.* p. 38; **42.** *Solrs.* p. 3
Ducat *v.* Sweeney (Can.); **12.** *Contr.* p. 51
Duce & Boots Cash Chemists (Southern), Ltd.'s Contract, *Re* (1937); **40.** *S. Land*, No. 1394a
Duchess Mill, Ltd. *v.* Bailey, *Re* Bailey (1832); **24.** *Exors.* Nos. 8520c, 8558a
Duchman *v.* Oakland Dairy Co. (Can.); **36.** *Nuis.* p. 44
Duck *v.* Braddyll (1824); **30.** *L. & T.* No. 1082a
Ducker *v.* Rees Roturbo Development Syndicate, Ltd. (1928); **28.** *Inc. T.* No. 96a
Duckett *v.* Imposts Collector (Aus.); **39.** *Revenue*, p. 20
Duckworth *v.* Fair, *Re* Clifton (1931); **23.** *Exors.* No. 134c
— *v.* Lowe (1937); **28.** *Inc. T.* No. 573b
Duckworth & Skinkle, *Re* (Can.); **3.** *Bastv.* p. 52
Ducondu *v.* Dupuy (Can.); **30.** *L. & T.* p. 44
Du Cros. *v.* Ryall (1935); **28.** *Inc. T.* No. 507c
Duddell, *Re*, Roundway *v.* Roundway (1932); **37.** *Powers*, No. 269a
Dudley & District Benefit Building Society *v.* Gordon (1929); **31.** *L. & T.* No. 6957a, **35.** *Mtge.* No. 732a
Dudley Revenue Officer *v.* Lloyds British Testing Co., Ltd. (1931); **38.** *Rates*, No. 226v
Duff *v.* Progress, The (Can.); **41.** *Ship.* p. 70
— *v.* Rudolph & Lunenburg Gas Co. (Can.); **9.** *Coys.* p. 21
Duff Development Co., Ltd. *v.* Kelantan Government (1923); **1.** *Action*, Nos. 392a, 393b, 407a; **2.** *Arbn.* No. 1644a; **22.** *Evid.* No. 3122a
— *v.* — (1924); **1.** *Action*, Nos. 387a, 393c, 407b; **22.** *Evid.* Nos. 1264a, 3122b
— *v.* — (1925); **2.** *Arbn.* No. 1051a
Duff-Dunbar *v.* Inland Revenue Comrs. (1928); **21.** *E. D.* No. 917; **23.** *Exors.* No. 5352a; **28.** *Inc. T.* No. 673c
Duffel, *Re*, *Ex p.* Turnbull (No. 2) (Aus.); **8.** *Clubs*, p. 101

Dufferin Construction Co. *v.* Thorold (Can.); **7.** *Bldg. Conts.* p. 24
Dufferin Paving Co., Ltd. *v.* G. A. Fuller Co. of Canada, Ltd. (Can.); **2.** *Arbn.* p. 83
Duffy, *Re*, Smith *v.* Duffy (Can.); **33.** *Lunat.* p. 13
— *v.* Graham (Can.); **23.** *Exors.* p. 8
— *v.* R. (N.Z.); **36.** *Negl.* p. 34
Dufresne Construction Co., Ltd. *v.* R. (Can.); **7.** *Bldg. Conts.* p. 22
Dufty *v.* Dufty (1931); **27.** *H. & W.* Nos. 5405b, 5406a, 5406b, 5411a, 5416a, 5529a
— *v.* — (1932); **27.** *H. & W.* No. 5411b
Dugal *v.* Lefebvre (Can.); **28.** *Infts.* p. 138
Dugdale *v.* Johnson & Phillips, Ltd. (1931); **34.** *Mast. & S.* No. 2566a
— *v.* Zouche (Baroness), *Re* Zouche (Baroness) (1919); **44.** *Wills*, No. 5897a
Duggan, *Re* (Can.); **5.** *Bkpcy.* p. 85
Duguenne, *Ex p.*, R. *v.* Roy (Can.); **26.** *Hghys.* p. 20
Duguid *v.* Muirhead (Scot.); **2.** *Agric.* p. 1
Duke *v.* Andler (Can.); **11.** *Confl.* p. 30
— *v.* Duke (Can.); **27.** *H. & W.* p. 42
Dukes *v.* Marthinusen (S. Af.); **34.** *Mast. & S.* p. 15
Dula Singh *v.* R. (Ind.); **15.** *Crim.* p. 107
Dulson, *Re* (1929); **43.** *Trusts*, No. 401a
Dumais, *Re* (Can.); **4.** *Bkpcy.* p. 32
Dumart Packing Co. *v.* Dumart (Can.); **9.** *Coys.* p. 54
Dumfermline Trading Co., *Re*, *Ex p.* Reliable Trading Co. (Can.); **4.** *Bkpcy.* pp. 29, 30
Dumont *v.* Landry (Can.); **7.** *Bldg. Conts.* p. 26
Dunbar *v.* Hunter (Can.); **42.** *Str. Traf.* p. 61
— *v.* R. (Can.); **14.** *Crim.* p. 69
Duncan *v.* Aberdeen County Council (1936); **37.** *Poor L.* No. 197a
— *v.* Adamson (1935); **28.** *Inc. T.* 576e
— *v.* Associated Scottish Newspapers, Ltd. (Scot.); **32.** *Libel*, p. 14
— *v.* Campbell (1842); **27.** *H. & W.* No. 757a
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 98
— *v.* Jones (1936); **15.** *Crim.* No. 7663a
— *v.* Ladysmith, Board School Trustees (Can.); **19.** *Educ.* p. 35
— *v.* M'Calmont (1841); **1.** *Adm.* No. 25
— *v.* Norton-Palmer Hotel Co. (Can.); **34.** *Mast. & S.* p. 21
Duncan & Gray, Ltd. *v.* Silver Spring Brewery (Can.); **10.** *Coys.* p. 83
Duncanson *v.* Atwell (Can.); **32.** *Limit. of A.* p. 37
Duncombe, *Re*, Wrixon-Becher *v.* Faversham (1932); **44.** *Wills*, No. 8032a
Dundee Aerated Water Manufacturing Co., *Re* (Scot.); **9.** *Coys.* p. 52
Dundee Assessor *v.* Caird Dundee, Ltd. (Scot.); **38.** *Rates*, p. 76
— *v.* Don Brothers Buist & Co., Ltd. (Scot.); **38.** *Rates*, p. 76
Dunderdale's Trustees *v.* Inland Revenue (Scot.); **21.** *E. D.* p. 1
Dunham *v.* Allied Sumatra Plantations, Ltd. (1929); **28.** *Inc. T.* No. 204d
— *v.* Bradner (Can.); **3.** *Basty.* p. 62
— *v.* Hoscote (Malaya) Rubber Estates, Ltd. (1929); **28.** *Inc. T.* No. 204d
Dunhill (Alfred), Ltd. *v.* Griffiths Bros. (1933); **36.** *Pats.* No. 1602a
Dunican *v.* Dunican (Ir.); **18.** *Desct.* p. 3
Dunkelman *v.* Lister (Can.); **31.** *L. & T.* 75
Dunkley *v.* Sullivan, *Re* Sullivan (1929); **44.** *Wills*, No. 299a
Dunlop, *Re* (Can.); **44.** *Wills*, p. 16
Dunlop & Douro (Township), *Re* (Can.); **38.** *Pub. Hlth.* p. 15
Dunlop Drug Depot *v.* Hartt Boot & Shoe Co. (Can.); **18.** *Discy.* pp. 18, 22
Dunlop Rubber Co., Ltd. *v.* Golf Ball Developments, Ltd. (1931); **43.** *Trade Mks.* No. 970a
— *v.* Haigh & Sons (1937); **5.** *Bkpcy.* No. 9204a
Dunn, *Ex p.*, *Re* Hutchinson's Settlement (1852); **37.** *Powers*, No. 133a
—, *Ex p.*, R. *v.* Keeper of King's County Gaol (Can.); **16.** *Cr. Pract.* p. 29
— *v.* Braybrook Shire (Aus.); **21.** *Estpl.* p. 41; **26.** *Hghys.* p. 45
— *v.* Campbell (1879); **36.** *Prtnrs.* No. 1407a
— *v.* Dorman, Long & Co., Ltd. (1933); **34.** *Mast. & S.* No. 3055a
— *v.* Dunn's Trustees (Scot.); **27.** *H. & W.* p. 3
— *v.* Graf (Can.); **1.** *Agcy.* p. 90
— *v.* Hanson (Can.); **12.** *Contr.* p. 29
— *v.* MacGregor (Can.); **24.** *Exors.* p. 35
— *v.* McLean (Can.); **18.** *Discy.* p. 16
— *v.* Ocean Accident & Guarantee Corpn., Ltd. (1933); **29.** *Insce.* No. 203b
— *v.* R. (Can.); **35.** *Money*, p. 21
— *v.* Sedziak (Can.); **32.** *Lien*, p. 23
— *v.* Shanks (Ir.); **21.** *Estpl.* p. 38
— *v.* Sinclair (Can.); **1.** *Agcy.* p. 82
— *v.* Thickett (Can.); **26.** *Guar.* p. 8
Dunn & Expropriation Act, *Re* (Can.); **38.** *Rates*, p. 85
Dunn & Morning Bulletin, Ltd., *Re* (Aus.); **16.** *Courts*, p. 11
Dunn (M.), Ltd. *v.* Jefferson (1925); **6.** *B. of Exch.* Nos. 577a, 2040a
Dunn Trust, Ltd. *v.* Asprey (1934); **35.** *Money*, No. 430a
Dunn's Trust, Ltd. *v.* Brown, *Re* Chetwynd's Estate (1938); **12.** *Contr.* No. 4440a
— *v.* Feetham (1936); **35.** *Money*, Nos. 353l, 353n
Dunne *v.* Clinton (Ir.); **43.** *Tresp.* p. 54
— *v.* Doyle (Ir.); **32.** *Limit. of A.* p. 34
— *v.* New Zealand Refrigerating Co., Ltd. (N.Z.); **36.** *Negl.* p. 19
Dunnet *v.* Nelson (Scot.); **32.** *Libel*, p. 15
Dunnett *v.* Whitewater Rural Municipality (Can.); **8.** *Chos.* p. 92
Dunning *v.* Binding (1932); **34.** *Mast. & S.* No. 2349a
— *v.* Binding (C. E.) (No. 2) (1932); **34.** *Mast. & S.* No. 2349b
Dunphy *v.* Phillips (Can.); **7.** *Bounds. & F.* p. 19
— *v.* Scottish Metropolitan Assurance Co. (Can.); **29.** *Insce.* p. 40
Dunsany, *Re* (1849); **22.** *Evid.* No. 6096a
Dunshea *v.* Kesteven (N.Z.); **6.** *B. of Exch.* p. 12
Dunsmuir *v.* MacKenzie (Can.); **17.** *Deeds*, p. 28
Dunstable (Prior) *v.* B. (1433); **33.** *Mkts.* No. 339a
Dunstable Portland Cement Co., Ltd. (1932); **10.** *Coys.* No. 6569a
Dunstan *v.* Benney (1938); **2.** *Agric.* No. 206m
Dunstone *v.* Ferrari (Aus.); **34.** *Mast. & S.* p. 120
Du Plessis *v.* Levy (S. Af.); **3.** *Basty.* p. 61
Duplessis *v.* R. (Can.); **15.** *Crim.* p. 105
Dupont & Cole, *Re* (Can.); **34.** *Mines*, p. 199
Dupré Quarries, Ltd. *v.* Dupré (Can.); **42.** *Sp. Pfce.* p. 16
Du Preez *v.* Laird (S. Af.); **1.** *Agcy.* p. 55
Dupuis Freres, Ltd. *v.* Customs & Excise Minister (Can.); **28.** *Inc. T.* p. 75
Durand *v.* Kingston (City) (Can.); **38.** *Real Prop.* p. 95
— *v.* Prejet (Can.); **33.** *Lunat.* p. 19
Durham *v.* Spence (1870); *Pract.* No. 626a
Durkee Attwood Co. *v.* Auger (Can.); **36.** *Pats.* p. 102
Durnford (James) & Sons, Ltd. *v.* Great Western Ry. Co. (1927); **26.** *Guar.* No. 1826a

Durnion *v.* Paterson (Scot.); **42.** *Str. Traf.* p. 50
Durost *v.* Home-Mixed Fertilizers, Ltd. (Can.); **9.** *Coys.* pp. 28, 31
Durrant *v.* British Fibrocement Works, Ltd. (1935); **34.** *Mast. & S.* No. 3846b
Durrant *v.* Port of London Authority (1929); **34.** *Metrop.* No. 29a
Durrant & Stoner, *Re* (1881); **40.** *S. Land*, No. 2379a
D'Usez *v.* Traffics & Discoveries, Ltd. (1924); **7.** *B. of Sale*, No. 213a; **12.** *Contr.* No. 3784b
Dussault *v.* R. (Can.); **11.** *Comp. Pche.* p. 6
Dusteor *v.* R. (Can.); **14.** *Crim.* p. 73
Dutch *v.* Dutch (1928); **27.** *H. & W.* No. 6250d
Duthie *v.* Gallagher & Duthie (Can.); **43.** *Trusts*, p. 70
Dutton *v.* Evans (Aus.); **2.** *Animals*, p. 72
Dutton, Massey & Co., *Re*, *Ex p.* Manchester & Liverpool District Banking Co. (1924); **4.** *Bkpcy.* Nos. 3375a, 3383a, 4102a
Dwijendra Nath Mullick *v.* Gopiram Gobindaram (Ind.); **12.** *Contr.* p. 22
Dwirnichuk *v.* Zaichuk (Can.); **19.** *Eccl.* p. 32
Dwyer, *Re* (Can.); **40.** *Stllmts.* p. 30
— *v.* Bulbeck (Can.); **3.** *Basty.* p. 64
— *v.* Dwyer (S. Af.); **22.** *Evid.* p. 13
— *v.* Hickey, *Re* Hickey (Aus.); **22.** *Evid.* p. 8
Dyament & Pzadkawolski *v.* Canadian Express Co. (Can.); **8.** *Carr.* p. 3
Dyck *v.* Dyck (Can.); **2.** *Agric.* p. 15
Dyer, *Re*, Dyer *v.* Trustees, Executors & Agency Co., Ltd. (Aus.); **8.** *Char.* p. 76
— *v.* Luckett (Aus.); **43.** *Trade*, p. 2
— *v.* Trustees, Executors & Agency Co., Ltd., *Re* Dyer (Aus.); **8.** *Char.* p. 76
Dyke *v.* Stephens (1885); **16.** *Courts*, No. 1014a
Dykes *v.* Baird (Scot.); **34.** *Mast. & S.* p. 119
— *v.* Mandeville (Can.); **5.** *Bkpcy.* p. 85
Dymond *v.* Wilson (Can.); **36.** *Negl.* p. 9
— *v.* — (No. 2) (Can.); **36.** *Negl.* p. 39
Dynes *v.* Bales (Can.); **17.** *Deeds*, p. 25
Dyrkach *v.* McAreavy (Can.); **42.** *Str. Traf.* p. 39
Dyrkacz *v.* Monarch Life Insurance Co. (Can.); **29.** *Insce.* p. 33
Dyson *v.* Vickers-Armstrong, Ltd. (1929); **34.** *Mast. & S.* No. 2419a
Dyster *v.* Randall & Sons (1926); **1.** *Agcy.* No. 2125a; **5.** *Bkpcy.* No. 8138a
Dytrych, *Re* (Aus.); **44.** *Wills*, p. 17
Dzydz, *Re*, *Re* Rozecki (Can.); **28.** *Infts.* p. 137

E.

E. *v.* C. (1934); **27.** *H. & W.* No. 5359a
— *v.* E. (otherwise C.) (1934); **27.** *H. & W.* No. 5359a
E. A., *Re* (1928); **33.** *Lunat.* No. 529b
E. A. Mamsa *v.* M. E. Majid (Ind.); **4.** *Bkpcy.* p. 45
E. B. M. Co., Ltd. *v.* Dominion Bank (1937); **10.** *Coys.* No. 4570a
E. E. L., *Re* (Ir.); **11.** *Confl.* p. 46
E. H. McGuire & H. J. Forester, Ltd. *v.* Cadzow (Can.); **9.** *Coys.* p. 42
E. J. Lane, Ltd., *Re*, *Ex p.* Milligan (Can.); **9.** *Coys.* p. 48
E. P. Mohamed Noordin *v.* S. E. S. Abdul Kareen & Co. (1931); **43.** *Trade Mks.* No. 629b
Eades *v.* Maxwell (Can.); **38.** *Real. Prop.* p. 99
Eagan & Dawson, *Re* (Can.); **7.** *Bonds*, p. 13
Eagle Insce. Co., *Ex p.*, *Re* Athenæum Life Assce. Society (1858); **9.** *Coys.* Nos. 3112a, 4094a
Eagle, Star & British Dominions Insurance Co. *v.* Dinanath (Ind.); **2.** *Arbn.* p. 75; **18.** *Discy.* p. 8
Eagle, Star & British Dominions Insurance Co., Ltd. *v.* Reiner (1927); **29.** *Insce.* No. 720b
Eagles *v.* Canadian Bank of Commerce (Can.); **22.** *Evid.* p. 2
— *v.* Levy (1934); **28.** *Inc. T.* No. 527c
Eames Estate, *Re* (Can.); **44.** *Wills*, p. 19
Earl *v.* Earl & Kyle, Earl *v.* Earl (1926); **27.** *H. & W.* No. 4985a
— *v.* Thomas W. Ward, Ltd. (1930); **34.** *Mast. & S.* No. 3301a
Earl of Auckland, The (1862); **1.** *Adm.* No. 39
Earle (G. & T.) (1925), Ltd. *v.* Hemsworth Rural District Council (1928); **7.** *Bldg. Conts.* No. 342a; **8.** *Chos.* Nos. 77a, 483a; **10.** *Coys.* No. 4739a
Earles Utilities, Ltd. *v.* Harrison (1934); **36.** *Pats.* No. 3348a
— *v.* Jacobs (1934); **22.** *Evid.* No. 5627a; **28.** *Injon.* No. 1104a; **36.** *Pats.* No. 3322b
Early (J. H.) Motor Co., Ltd. *v.* Sickawitch (Can.); **32.** *Lien*, p. 20
Early, Smith & Pavey, *Re*, *Ex p.* Trustee (1928); **5.** *Bkpcy.* No. 8645b
Easington Rural District Council *v.* Gibson (1929); **25.** *Food.* No. 476a
East *v.* Newman (1601); **24.** *Exors.* No. 3611a
East Asiatic Co., Ltd. *v.* Hansen (S. Af.); **39.** *S. Goods*, p. 52
East India Co. *v.* Oditchurn (1850); **17.** *Dep.* No. 315a
East India Distilleries *v.* Mathias (Ind.); **31.** *L. & T.* p. 70
East Kent Colliery Co. *v.* Heath (1926); **34.** *Mast. & S.* No. 3860a
East Midland Traffic Area Traffic Comrs. *v.* Tyler (1938); **42.** *Str. Traf.* No. 76m
East Riding of Yorkshire County Council *v.* Selby Bridge Co. of Proprietors (1925); **24.** *Ferries*, No. 8
East Tamari Co-operative Dairy Co. *v.* Nornen (N.Z.); **18.** *Discy.* p. 12
East Windsor *v.* Essex Co. (Can.); **33.** *L. G.* p. 6
East York Public School Board & Mackenzie, *Re* (Can.); **19.** *Educ.* p. 34
Eastbourne Corpn. *v.* A.-G., *Re*, Towner (1923); **8.** *Char.* No. 432a
Eastbourne County Borough *v.* Fuller & Sons (1928); **26.** *Hghys.* No. 1775a
Eastcheap Alimentary Products, Ltd., *Re* (1936); **18.** *Distr.* No. 802a
Easten *v.* Boyd, *Re* Rhagg (1938); **44.** *Wills*, No. 5350a
Easter *v.* Marvin (1930); **11.** *Contr.* No. 5168d
Easterbrook *v.* Hopkins (N.Z.); **1.** *Agcy.* p. 108
— *v.* R. (Can.); **17.** *Dep.* p. 74
Easterling *v.* Peck, Frean & Co., Ltd. (1938); **34.** *Mast. & S.* No. 3038c
Eastern Carrying Insurance Co. *v.* National Benefit Life & Property Assurance Co., Ltd. (1919); **2.** *Aliens.* No. 198c
Eastern Counties Farmers' Co-operative Assocn., Ltd. *v.* Ipswich Revenue Officer (1930); **38.** *Rates*, No. 226g
Eastern Development Co. *v.* McKay (Can.); **17.** *Dep.* p. 53
Eastern Fur Finance Corpn., Ltd., *Re* (Can.); **10.** *Coys.* p. 69
Eastern National Omnibus Co., Ltd. *v.* Inland Revenue Comrs. (1938); **39.** *Revenue*, No. 646a
Eastern Ontario Milk Products Co., *Re* (Can.); **4.** *Bkpcy.* p. 38

Eastern Realty Co. *v.* Woodworth (Can.); **1.** *Agcy.* p. 79
Eastern S.S. Co. *v.* Alice (Can.); **41.** *Ship.* p. 56
Eastern S.S. Co., Ltd. *v.* Canada Atlantic Transit Co. (Can.) (1928); **41.** *Ship.* p. 52
— *v.* — (Can.) (1929); **41.** *Ship.* p. 70
Eastern Townships Investments Co. *v.* McLennan (Can.); **6.** *B. of Exch.* p. 1
Eastern Trust Co. *v.* Bochners, Ltd. (Can.); **32.** *Lien*, p. 26
— *v.* Busch (Can.); **21.** *Estpl.* p. 30
— *v.* Calder, *Re* Bancroft (Can.); **44.** *Wills*, p. 47
— *v.* Lloyd Manufacturing Co. (Can.); **5.** *Bkpcy.* p. 82
— *v.* McAleer (Can.); **32.** *Limit. of A.* p. 38
— *v.* McSweeney, *Re* McSweeney (Can.); **23.** *Exors.* p. 20
— *v.* Nova Scotia Steel & Coal Co., Ltd. (Can.); **10.** *Coys.* p. 63; **35.** *Mtge.* p. 43
— *v.* Plummer (Can.); **21.** *E. D.* p. 17
Eastern United Assurance Corpn., *Re* (1928); **22.** *Evid.* Nos. 6056a, 6083a
Eastman *v.* Pacific Forwarding Co. (Can.); **18.** *Discy.* p. 22
Eastmans, Ltd. *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 252a
— *v.* Shaw (1928); **28.** *Inc. T.* No. 252a
Easton *v.* Johnson (1929); **33.** *Lunat.* No. 1896a
Easton *v.* Niddrie & Benhar Coal Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 178
— *v.* Potts (1929); **33.** *Lunat.* No. 1896a
Eastwood & Holt *v.* Studer (1926); **21.** *Estpl.* No. 214a
Eaton *v.* Brant (Can.); **21.** *Exon.* p. 60
— *v.* Donegal Tweed Co., Ltd. (1935); **31.** *L. & T.* No. 3829a
— *v.* Wimpey & Co., Ltd. (1938); **34.** *Mast. & S.* No. 3843b
Eaton (T.) Realty Co., Ltd., *Re* (Can.); **28.** *Inc. T.* p. 75
Eaton-Turner *v.* McKenna (1937); **28.** *Inc. T.* No. 489a
Ebbett Motors, Ltd. *v.* Western Federated Flying Club (Incorporated) (N.Z.); **42.** *Str. Traf.* p. 63
Ebbw Vale Steel, Iron & Coal Co. *v.* Lewis (1935); **34.** *Mast. & S.* No. 753a
— *v.* London, Midland & Scottish Ry. Co. (1927); **8.** *Carr.* No. 1377k
— *v.* Richards (1935); **34.** *Mast. & S.* No. 753a
— *v.* Tew (1935); **34.** *Mast. & S.* No. 753a
— *v.* Williams (1935); **34.** *Mast. & S.* No. 3932m
— *v.* — (1936); **34.** *Mast. & S.* No. 3291f
Ebers *v.* MacEachern (Can.); **2.** *Animals*, p. 56
Ebert *v.* Ebert (1930); **27.** *H. & W.* No. 6242b
Ebner *v.* Lascelles (1928); **31.** *L. & T.* Nos. 7067a, 7103c, 7302a
Ebrahim Mamoojee Parekh *v.* R. (Ind.); **22.** *Evid.* p. 18
Eby-Blain, Ltd. *v.* Matthews (Can.); **26.** *Guar.* p. 12
Eccles, *Re* (Can.); **16.** *Courts*, p. 19
—, *Re* (Ir.); **43.** *Trusts*, p. 65
— *v.* Merchants Bank of Canada (Can.); **6.** *B. of Exch.* p. 4
— *v.* Russell (Can.); **42.** *Solrs.* p. 3
Ecclesiastical Comrs. for England *v.* National Provincial Bank, Ltd. (1935); **2.** *Agric.* Nos. 227a, 979b
— *v.* Sackville Estates, Ltd. (1937); **28.** *Inc. T.* No. 607a
Ecclesiastical Comrs. for England's Conveyance, *Re* (1936); **40.** *S. Land*, No. 2658a; **44.** *Wghts.* Nos. 156a, 158a
Ecclestone *v.* Union Mining & Milling Co. (Can.); **1.** *Agcy.* p. 76
Echlin, *Re* (1932); **44.** *Work*, No. 179a
Eckersley, *Ex p.*, *Re* Byrom (1853); **4.** *Bkpcy.* No. 3134
Eckhardt *v.* Raby (Can.); **38.** *Real Prop.* p. 98
Edburton & Poynings (Chichester), Benefices of, *Re* (1934); **19.** *Eccl.* Nos. 2443f, 2443g
Eddie, *Re* (Can.); **23.** *Exors.* p. 29
Eddy *v.* Stewart (Can.); **21.** *Exon.* p. 43; **22.** *Evid.* p. 7
Edell *v.* Dulieu (1924); **2.** *Agric.* No. 24a
Edgar *v.* Mackay (Scot.); **15.** *Crim.* p. 101
Edgar, etc. *v.* Cassells (Scot.); **8.** *Char.* p. 69
Edge *v.* Edwards (1932); **33.** *Mags.* No. 1316a
Edgett *v.* Taylor (Can.); **28.** *Injon.* p. 146
Edgett, Ltd. *v.* Pacific Great Eastern Ry. Co. (Can.); **8.** *Carr.* p. 2
Edgeworth *v.* New York Central (Can.); **32.** *Libel*, p. 5
— *v.* R. (Can.); **26.** *Hghys.* p. 35
Edgington, Bishop & Withy *v.* Swindon Borough Council (1938); **38.** *Pub. Auth.* No. 114a
Edglie *v.* Woodward Stores, Ltd. (Can.); **36.** *Negl.* p. 8
Edie Creek Pty. *v.* Symes (Aus.); **17.** *Dep.* p. 67
Edinburgh & Dundee Investment Co., *Re* (Scot.); **9.** *Coys.* p. 19
Edinburgh Assessor *v.* Caira & Crolla (Scot.); **38.** *Rates*, p. 68
Edinburgh Entertainments, Ltd. *v.* Stevenson (Scot.); **10.** *Coys.* p. 55
Edinburgh Life Assurance Co. *v.* Allen (Can.); **25.** *Fraud. Conv.* p. 16
— *v.* Barnhart (Can.); **19.** *Easmt.* p. 3
Edinburgh Master Plumbers' Assocn. *v.* Munro (Scot.); **43.** *Trade*, p. 9
Edinburgh Parish Council *v.* Couper (Scot.); **23.** *Exors.* p. 19
Edinburgh, Perth & Dundee Ry. Co. *v.* Philip (1857); **38.** *Rys.* No. 31a
Edinburgh Railway Access & Property Co. *v.* Scottish Metropolitan Assurance Co. (Scot.); **10.** *Coys.* p. 94
Edinburgh Southern Cemetery Co., Ltd. (Scot.); **9.** *Coys.* p. 52
Edison, The (1933); **17.** *Damgs.* No. 114a; **41.** *Ship.* Nos. 6694a, 6694b
— (No. 2) (1934); *Pract.* No. 4845a
Edison Accumulators, Ltd. *v.* Edison Storage Batteries, Ltd. (1929); **43.** *Trade Mks.* No. 818a
Edison Storage Battery Co. *v.* Britannia Batteries, Ltd. (1931); **43.** *Trade Mks.* No. 1233a
Edmiston *v.* Scottish Temperance & General Assurance Co., Ltd. (1929); **29.** *Insce.* No. 3104a
Edmond, *Re*, *Ex p.* Neilson (1853); **9.** *Coys.* No. 2299a
Edmonds *v.* Armstrong Funeral Home, Ltd. (Can.); **1.** *Action*, p. 5; **7.** *Burial*, p. 38; **17.** *Damgs.* p. 8
Edmonds, Ltd. *v.* Self-Help, Ltd. (N.Z.); **43.** *Trade Mks.* p. 18
Edmondstone *v.* Greaves (Aus.); **34.** *Mast. & S.* p. 116
Edmonson *v.* Ropner & Co., Ltd. (1935); **34.** *Mast. & S.* No. 491a
Edmonton (Town) *v.* Brown & Curry (Can.); **26.** *Hghys.* p. 17
Edmonton (City) *v.* Evangelical Lutheran Synod of Missouri, Ohio, & other States (Can.); **38.** *Rates*, p. 63
— *v.* Macdonald (Can.); **33.** *Mkts.* p. 42
— *v.* Marty (Can.); **28.** *Infts.* p. 133; **38.** *Pub. Hlth.* p. 20
Edmonton & Jamieson Construction Co. (Can.); **2.** *Arbn.* p. 90

Edmonton Brewing & Malting Co., Ltd., *Re* (No. 2) (Can.); **3.** *Bank.* p. 41
Edmonton Charter, *Re*, Freeman Co., Ltd. *v.* Edmonton Corpn. (Can.); **11.** *Comp. Pche.* p. 9
—, *Re*, Michael Hrushevsky Ukrainian Institute *v.* Edmonton Corpn. (Can.); **11.** *Comp. Pche.* p. 7
—, *Re*, R. (Clarke) *v.* Bury (Can.); **33.** *L. G.* p. 8
Edmonton Dunvegan & British Columbia Ry. Co. & McLellan School District, *Re*, *Re* Mannix & Walgren & McLellan School District (Can.); **19.** *Educ.* p. 40; **38.** *Rates*, p. 66
Edmonton Hospital Board *v.* Municipal District of Liberty (Can.); **38.** *Pub. Hlth.* p. 21
Edmonton School Board Election, *Re* (Can.); **19.** *Educ.* p. 33
Edmonton Sheriff, *Re*, Kostynuk *v.* Parayko (Can.); **29.** *Intpr.* p. 64
Edmund Hind Lumber Co. *v.* Amalgamated Building Co. (Can.); **32.** *Lien*, p. 27
Edmunds *v.* Edmunds (1926); **27.** *H. & W.* No. 5410c
— *v.* Edmunds & Ayscough (Aus.); **27.** *H. & W.* p. 26
Edseall *v.* Hamell (Can.); **2.** *Agric.* p. 20
Education (Minister's of) Petition, *Re* (Can.); **19.** *Educ.* p. 37
Educational Book Depot *v.* Rabindra Nath Tagore (Ind.); **13.** *Coprt.* p. 15
Educational Supply Assocn., *Re* (1928); **36.** *Pats.* 2130b
Edward *v.* Wyvill (1885); **5.** *Bkpcy.* No. 8499a
Edward Airey & Sons, *Re*, *Ex p.* Airey (H. W.) & Airey (P. B.) (1931); **4.** *Bkpcy.* No. 2905a
Edward Curran & Co. *v.* Kays (1928); **34.** *Mast. & S.* No. 3753a
Edward Renneberg & Sons Co. *v.* Canadian Credit Men's Trust Assocn., *Re* Sechart Fisheries, Ltd. (Can.); **4.** *Bkpcy.* p. 23
Edward Renneburg & Sons Co. *v.* Albion Fisheries, Ltd. (Can.); **39.** *S. Goods*, p. 58
Edward Sutcliffe, Ltd. *v.* London, Midland & Scottish Ry. Co. (1936); **8.** *Carr.* No. 1589
Edwardes Square Garden Committee, *Re*, Smith *v.* Mitchell (1934); **36.** *Open Sp.* No. 24a
Edwards, *Ex p.* (1745); **4.** *Bkpcy.* No. 3566a
— *v.* A.-G. for Canada (1930); **17.** *Dep.* Nos. 52c, 90a; **36.** *Parl.* p. 55
— *v.* Bennett (Can.); **21.** *Exon.* p. 51
— *v.* Cowtan (1934); **27.** *H. & W.* Nos. 5359a, 5443a
— *v.* Edwards (1836); **13.** *Cohlds.* No. 798a
— *v.* — (otherwise Cowtan) (1934); **27.** *H. & W.* Nos. 5359a, 5443a
— *v.* — (Can.); **27.** *H. & W.* p. 59
— *v.* Freeman (1727); **18.** *Desct.* No. 165a
— *v.* Gattmann (Can.); **32.** *Libel*, p. 12
— *v.* Grosser & Glass, Ltd. (Can.); **1.** *Action*, p. 12
— *v.* Gwauncaegurwen Colliery Co. (1926); **34.** *Mast. & S.* No. 2492a
— *v.* Kilkenny & Great Southern & Western Ry. Co. (1863); **10.** *Coys.* No. 7904a
— *v.* London, Midland & Scottish Ry. Co. (1935); **8.** *Carr.* No. 1485
— *v.* — (Scot.); **36.** *Negl.* p. 22
— *v.* Mehaffey (N.Z.); **36.** *Negl.* p. 2
— *v.* Ocean Coal Co., Ltd. (1929); **34.** *Mast. & S.* No. 2512c
— *v.* "Old Bushmills" Distillery Co., Ltd. (In Liquidation) (1926); **21.** *Estpl.* No. 222a; **28.** *Inc. T.* No. 629a
— *v.* Ottawa River Navigation Co. (Can.); **22.** *Evid.* p. 3
— *v.* Pearson (Can.); **2.** *Animals*, p. 68
Edwards *v.* Penrhiceiber Navigation Colliery Co., Ltd. (1933); **34.** *Mast. & S.* No. 3832b
— *v.* Ransomes & Rapier, Ltd. (1930); **9.** *Coys.* No. 2427a
— *v.* Rawlins (N.Z.); **2.** *Animals*, p. 59
— *v.* Roberts (1935); **28.** *Inc. T.* No. 505a
— *v.* Scott Rural Municipality (Can.); **44.** *Waters*, p. 2
— *v.* Smith, *Re* Unite (1906); **8.** *Char.* No. 1382a
— *v.* Tatisich (Can.); **36.** *Negl.* p. 4
— *v.* Wanstall (1929); **42.** *Str. Traf.* Nos. 3a, 3b
— *v.* Young Women's Christian Assocn. & Tremblay (Can.); **32.** *Lien*, p. 24
Edwards (Rowland) & Co., Ltd. *v.* Three Star Accumulators, Ltd. (1933); **36.** *Pats.* No. 1208a
— *v.* Three Star Accumulators, Ltd. (1934); **36.** *Pats.* No. 1213c
Edwards' Appeal, *Re* (1934); **8.** *Carr.* Nos. 1663, 1672
Edwards' Will Trusts, *Re*, Brewer *v.* Gething (1937); **32.** *Limit. of A.* No. 901a
Edwin Riley Charities, *Re* (1930); **8.** *Char.* No. 1373a
Eenigheid, The (1795); **2.** *Aliens*, No. 419a
Effra, The (1936); **41.** *Ship.* No. 5490a
Egan *v.* A.-G. (1931); **38.** *Pub. Auth.* Nos. 1039a, 1048a
— *v.* Egan (Ir.); **11.** *Confl.* p. 47
— *v.* Langham Investments, Ltd. (1938); **35.** *Money*, No. 353bb
— *v.* Mizen (1934); **30.** *Intox.* Nos. 627a, 733b
Egbert *v.* National Crown Bank (1918); **3.** *Bank.* No. 932a & p. 46
Egg Fillers & Containers (Aust) Proprietary, Ltd. *v.* Holed-Tite Packing Corpn. & Packing Products Corpn. (1933); *Pract.* No. 668a
Eggar *v.* May, *Re* May (1932); **44.** *Wills*, No. 2961b
Eggington *v.* Lichfield Corpn. (1855); **13.** *Corpns.* No. 1262a
Egginton *v.* Reader (1936); **34.** *Mast. & S.* No. 75a
Eggleton *v.* Heamon (1937); **42.** *Str. Traf.* Nos. 232v, 232w
Egham-Staines Electricity Co., Ltd. *v.* Gas Light & Coke Co. (1937); **3.** *Bailmt.* No. 238a
Eglinton & Bedford Park Presbyterian Church, *Re* (Can.); **40.** *S. Land*, p. 18
Egton Settled Estate, *Re*, Foster *v.* Foster (1931); **40.** *Stlmts.* No. 2602a
Egyptian Delta Land & Investment Co., Ltd. *v.* Todd (1929); **28.** *Inc. T.* No. 144a
Egyptian House Properties *v.* Maynards, Ltd. (1934); **31.** *L. & T.* No. 4375b
Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn. (1931); **9.** *Coys.* No. 327a
Ehinger *v.* South-Eastern & Chatham Ry. Co. & Pullman Car Co., Ltd. (1922); **8.** *Carr.* Nos. 804a, 851a
Ehmka *v.* Border Cities Improvement Co. (Can.); **9.** *Coys.* p. 2; **11.** *Confl.* p. 42
Eighmie, *Re*, Colbourne *v.* Wilks (1935); **8.** *Char.* Nos. 78a, 80a; **21.** *E. D.* No. 861a; **35.** *Money*, 34a
Eisdell *v.* Hammersley (1862); **40.** *Stlmts.* No. 2399a
Eisenach, The (1936); **41.** *Ship.* No. 7621a
Eisenhauer *v.* Mackay (Can.); **2.** *Animals*, p. 68
— *v.* Whynacht (Can.); **19.** *Easmt.* p. 7
Eiser's Will Trusts, *Re*, Fogg *v.* Eastwood (1937); **5.** *Bkpcy.* No. 5838a; **23.** *Exors.* No. 5057a
Ekradeshwari Bahuasin *v.* Homeshwar Singh (Ind.); **16.** *Courts*, pp. 13, 16
Elcock *v.* Campbell (N.Z.); **44.** *Wills*, p. 26
Elder *v.* Northcott (1930); **32.** *Limit of A.* No. 111a
Elder Dempster Superannuation Fund Assocn., *Re* (1933); **9.** *Coys.* No. 3537a

Elder Estate, *Re* (Can.); **38.** *Real Prop.* p. 91
Elder's Trustee & Executor Co., Ltd. *v.* Kenny, *Re* Barrowcliff (Aus.); **37.** *Pers. Prop.* p. 9
— *v.* Morialta Protestant Children's Homes Incorporated, *Re* Turner (Aus.); **8.** *Char.* p. 72
Elderton *v.* United Kingdom Totalisator Co., Ltd. (1935); **25.** *Gaming*, No. 501a
Eldon (Lord) *v.* Hedley Bros. (1935); **2.** *Agric.* No. 299a
Eldorado Ice Cream Co., Ltd. *v.* Clark (1938); **24.** *Fact.* Nos. 197a, 197b, 197c
— *v.* Keating (1938); **24.** *Fact.* No. 197a
Eldridge *v.* Southampton (Can.); **20.** *Electric*, p. 19
Eldridge & Morris *v.* Taylor (1931); **35.** *Money*, Nos. 353b, 353e, 353f
Eldridge Estate & District of Sumas Corpn., *Re* (Can.); **11.** *Comp. Pche.* p. 16
Eleanor & Nancy, The (1837); **1.** *Adm.* No. 1300a
Electric & Musical Industries, Ltd. *v.* Lissen, Ltd. (1938); **36.** *Pats.* No. 1111a
Electric Arms & Ammunition Syndicate, *Re* (1891); **10.** *Coys.* No. 5364a
Electric Chain Co. *v.* Art Metal Works Inc. (Can.); **36.** *Pats.* p. 103
Electric Motor & Machinery Co., Ltd. *v.* Duclos & Bank of Montreal (Can.); **5.** *Bkpcy.* p. 93
Electric Telegraph Co. of Ireland, *Re*, *Ex p.* Bunn (1860); **9.** *Coys.* No. 1265a
—, *Re*, Bunn's Case (1860); **9.** *Coys.* No. 1265a
— *v.* Bunn (1860); **9.** *Coys.* No. 1265a
Electrical Development Co. *v.* Stamford (Can.); **38.** *Rates*, p. 52
Electrical Fittings & Foundry Co., Ltd., *Re* (Can.); **3.** *Bank.* p. 43
Electrical Trades Union *v.* Nippress (1937); **43.** *Trade*, No. 1087a
Electrolux, Ltd., *Ex p.*, *Re* Lewis (Aus.); **10.** *Courts*, p. 9; **33.** *Mags.* p. 23
Electrolytic Zinc Process Co. *v.* French's Complex Ore Reducing Co. of Canada, Ltd. (Can.); **36.** *Pats.* pp. 67, 70, 78, 81, 83
Eleniuk *v.* Turnbull (Can.); **14.** *Crim.* p. 60
Elford *v.* Dalton (Can.); **36.** *Negl.* p. 26
— *v.* Elford (Can.); **1.** *Agcy.* p. 53
Elfstone S.S. *v.* Chicago Tribune Transportation Co., Ltd. (Can.); **41.** *Ship.* p. 50
Elgeti *v.* Smith (Can.); **31.** *L. & T.* p. 72
Elgin *v.* Stubbs (Can.); **22.** *Evid.* p. 21
Elgin & Nairn Case (1895); **20.** *Elect.* Nos. 306a, 329b
Elias *v.* Duerksen & Duerksen (Can.); **21.** *Estpl.* p. 23
— *v.* Pasmore (1934); **14.** *Crim.* No. 1702a; **43.** *Tresp.* No. 448c; *Trov.* No. 147a
Eliasoph *v.* Steel Co. of Can. (Can.); **1.** *Adm.* pp. 24, 47
Elite Café, Ltd. *v.* Baloise Fire Insurance Co. & First National Insurance Co. of America (Can.); **29.** *Insce.* p. 6
Elizabeth, The (1749); **2.** *Aliens*, No. 419a
Elkington *v.* London Assocn. for Protection of Trade (1911); **32.** *Libel*, No. 1201a
— *v.* Wandsworth Corpn. (1924); **7.** *Bldg. Conts.* No. 452a
— *v.* Willett (Can.); **35.** *Mistake*, p. 11
— *v.* — (No. 2) (Can.); **35.** *Mtge.* p. 47
Elkington & Co., Ltd. *v.* Amery (1936); **28.** *Infts.* Nos. 315a, 315b
Elkowech *v.* Elkowech (Can.); **27.** *H. & W.* pp. 56, 57
Ellard *v.* Waterloo Manufacturing Co., Ltd. (Can.); **12.** *Contr.* p. 7
Ellen Street Estates, Ltd. *v.* Minister of Health (1934); **11.** *Comp. Pche.* No. 2225d; **36.** *Parl.* No. 2c; **38.** *Pub. Hlth.* No. 506d
Ellerbeck Collieries, Ltd. *v.* Cornhill Insurance Co., Ltd. (1932); **34.** *Mast. & S.* No. 3821e
Ellerby, *Re* (Can.); **33.** *Mags.* p. 26
Ellerman Lines, Ltd. *v.* Murray (1931); **41.** *Ship.* Nos. 685a, 685b; **42.** *Stats.* Nos. 448a, 598a
— *v.* Read (1927); **11.** *Confl.* Nos. 1135a, 1332a; **17.** *Damgs.* No. 141a; **21.** *Estpl.* No. 385a; **30.** *Jdgmts.* No. 260a
— *v.* — (1928); **11.** *Confl.* Nos. 1135a, 1332a; **17.** *Damgs.* No. 141a; **21.** *Estpl.* No. 385a; **30.** *Jdgmts.* No. 260a
Ellermans Wilson Line, Ltd. *v.* Northern Lighthouses Comrs. (Scot.); **1.** *Adm.* p. 38
Ellerslie Parish Trust Board *v.* Closey (N.Z.); **32.** *Lien*, p. 26
— *v.* Watkins (N.Z.); **32.** *Lien*, p. 26
Ellerton *v.* Ellerton (Can.); **27.** *H. & W.* p. 4
Ellesmere (Earl) *v.* Wallace (1929); **25.** *Gaming*, Nos. 15a, 15c
Ellins, *Re*, *Ex p.* Hickin (1850); **4.** *Bkpcy.* No. 4295a
Elliot *v.* Gow Harrison & Co. (Scot.); **34.** *Mast. & S.* p. 28
— *v.* Hunter (1909); **34.** *Mast. & S.* No. 244a
— *v.* Joicey (1935); **22.** *Evid.* No. 6852a; **44.** *Wills*, Nos. 6887a, 9748a
Elliott *v.* Albert (1934); **18.** *Discy.* No. 1703a
— *v.* Amphitheatre, Ltd. (Can.); **36.** *Negl.* p. 6
— *v.* Appleton (Aus.); **16.** *Cntmpt.* p. 7
— *v.* Baird (Can.); **44.** *Waters*, p. 5
— *v.* Bax-Ironside (1925); **6.** *B. of Exch.* No. 763a
— *v.* Brown (Can.); **27.** *H. & W.* p. 8
— *v.* Burn (1935); **28.** *Inc. T.* Nos. 28c, 116f
— *v.* Canadian Credit Men's Trust Assocn., Ltd. (Can.); **43.** *Trusts*, p. 65
— *v.* Dalgety & Co., Ltd. (Aus.); **35.** *Misrep.* p. 3
— *v.* Duchess Mill, Ltd. (1927); **28.** *Inc. T.* No. 212
— *v.* Elliott (Can.); **27.** *H. & W.* p. 55
— *v.* — (N.Z.) (1927); **27.** *H. & W.* p. 29
— *v.* — (N.Z.) (1932); **27.** *H. & W.* p. 50
— *v.* Elliott & Cook (Can.); **27.** *H. & W.* p. 47
— *v.* Johnson (Can.); **36.** *Negl.* p. 18
— *v.* Le Page (Can.); **8.** *Chos.* p. 94
— *v.* Nicklin (1818); *Pract.* No. 2286e
— *v.* St. Catharines Municipal Corpn. (Can.); **33.** *L. G.* p. 8
— *v.* Toronto Transportation Commission (Can.); **8.** *Carr.* p. 7
— *v.* Warburton (Can.); **1.** *Agcy.* p. 86
Elliott, Ltd. *v.* Hobbs (1929); **34.** *Mast. & S.* Nos. 3704b, 3769a
Elliott Smith's Estate, *Re* (Can.); **23.** *Exors.* p. 11
Ellis, *Ex p.* (Can.); **17.** *Dcp.* p. 53
—, *Re*, *Ex p.* Myttenacre (1925); **5.** *Bkpcy.* Nos. 8645a, 9311a
—, *Re*, Nettleton *v.* Crimmins (1935); **39.** *Rulchgs.* No. 62a
—, *Re*, Perpetual Trustee Co., Ltd. *v.* Ellis (Aus.); **44.** *Wills*, p. 25
— *v.* Atkinson (1792); **37.** *Powers*, No. 299a
— *v.* Cartwright & Edwards, Ltd. (1932); **34.** *Mast. & S.* No. 3811f
— *v.* Clemens (Can.); **44.** *Waters*, p. 1
— *v.* Ellis (1820); **6.** *B. of Exch.* No. 292b
— *v.* — (1929); **27.** *H. & W.* No. 6087a
— *v.* Fulham Borough Council (1938); **36.** *Negl.* No. 462a
— *v.* Mayhew (M.), Ltd. (1926); **36.** *Negl.* No. 842c
— *v.* Noakes (1932); **2.** *Agric.* Nos. 781a, 810b
— *v.* Northcote, Ltd. (Aus.); **24.** *Fact.* p. 59
— *v.* Steele (1855); **36.** *Prtnrs.* No. 556a
— *v.* Stenning (John) & Son (1932); **21.** *Estpl.* No. 1472a; **43.** *Trov.* No. 664a
— *v.* Torrington (1920); **1.** *Action*, No. 621a

Ellis *v.* Zimmerman (Can.); **36.** *Negl.* p. 17
Ellis & Co., *Re* (1924); **5.** *Bkpcy.* No. 7393a
Ellis & Co.'s Trustee *v.* Dixon-Johnson (1925); **4.** *Bkpcy.* No. 3696a
— *v.* Watsham (1923); **1.** *Agcy.* No. 1529a
Ellis Brown *v.* Van Rooyen (S. Af.); **1.** *Agcy.* p. 100
Ellis (Matthew), Ltd., *Re* (1933); **10.** *Coys.* No. 4707a
Ellis Sterling Book Keeping Machines, Ltd. *v.* Ellis Adding Typewriting Co. (1930); **1.** *Agcy.* No. 3041a
Ellison *v.* Calvert & Heald (1936); **34.** *Mast. & S.* No. 2948d
— *v.* Pickering (1803); **21.** *Exon.* No. 417a
Ellor *v.* Selfridge & Co., Ltd. (1930); **36.** *Negl.* Nos. 382a, 595b
Ellwell *v.* Birmingham Canal Navigation (Proprietors) (1852); **38.** *Rys.* No. 948a
Ellwood, *Re*, River Dee Drainage Board *v.* Hooson (1927); **4.** *Bkpcy.* No. 4281a
Elman *v.* Elman (Can.); **27.** *H. & W.* p. 54
Elmes *v.* Trembath (1934); **28.** *Inc. T.* No. 115b
Elmhirst, *Ex p.*, R. *v.* Income Tax Special Comrs. (1936); **28.** *Inc. T.* No. 597b
— *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 573c
Elms *v.* Mulgrave (Can.); **38.** *Rates*, p. 87
Elmsley *v.* Madden (Can.); **8.** *Char.* p. 65
Elof Hansson Agency, Ltd. *v.* Victoria Motor Haulage Co., Ltd. (1938); **41.** *Ship.* No. 3830a
El Oriente Fabrika de Tabacos. Incorporated Application, *Re* (1931); **43.** *Trade Mks.* No. 432a
El Oso, The (1925); **1.** *Adm.* No. 894a
Elston *v.* Purdy (Can.) (1929); **43.** *Tresp.* p. 54
— *v.* — (Can.) (1930); **22.** *Evid.* p. 23
Eltham Co-operative Dairy Factory Co., Ltd. *v.* Johnson (N.Z.); **9.** *Coys.* p. 42
Elton *v.* Jordan (1815); **2.** *Animals*, No. 430
Elvin *v.* Clough (Can.); **1.** *Agcy.* p. 78
— *v.* Nightingale, *Re* Pink (1927); **24.** *Exors.* No. 8484a
Elvin & Powell, Ltd. *v.* Plummer Roddis, Ltd. (1933); **3.** *Bailmt.* No. 333a
Elvington Tenants, Ltd. *v.* Hatton (1928); **31.** *L. & T.* No. 7181a
Elwell *v.* Crane Foundry Co. (1929); **34.** *Mast. & S.* No. 4034a
Elwood *v.* Belfast Corpn. (Ir.); **16.** *Cr. Pract.* p. 34
Elworthy Estate, Elworthy & Hale, *Re* (Can.); **44.** *Wills*, p. 54
Embleton *v.* Norwich Union Life Insurance Society (1927); **28.** *Inc. T.* Nos. 25b, 50a
Emden *v.* Burns (1894); **32.** *Libel*, No. 1318a
Emeny *v.* Emeny (Can.); **17.** *Dep.* p. 71; **27.** *H. & W.* p. 48
Emerson, *Ex p.* (1895); **3.** *Basty.* No. 204a
— *v.* Canniff (Can.); **24.** *Exors.* p. 40
Emery, *In the Goods of*, Emery *v.* Emery (1923); **1.** *Action*, No. 90b
—, *Re*, Emery *v.* Emery (1923); **1.** *Action*, No. 90b
— *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 41
— *v.* Emery & Barbour (Can.); **27.** *H. & W.* p. 54
Emery (John) & Sons *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 122d
Emett, *Re*, *Ex p.* Andrews (1816); **4.** *Bkpcy.* No. 3558
Emmerson *v.* Gee, Walker & Slater, Ltd. (1934); **34.** *Mast. & S.* No. 2985a
Emperor. See R. *v.*, etc.
Empire Brass Manufacturing Co., Ltd. *v.* Milligan & Milligan (Can.); **32.** *Lien*, p. 27
Empire Builders, Ltd., *Re*, *Re* Transvaal United Trust & Finance Co., Ltd. (1919); **10.** *Coys.* No. 7014a
Empire Fertilizers, Ltd. *v.* Cioci (Can.); **3.** *Bank.* p. 24
Empire Financiers, Ltd. *v.* Nance (Can.); **6.** *B. of Exch.* p. 25
Empire Marble & Tile Co., Ltd. *v.* Northwestern Utilities, Ltd. (Can.); **25.** *Gas*, p. 45
Empire of India Life Assurance Co., Bombay *v.* Nanu Ayyar (Ind.); **1.** *Agcy.* p. 88
Empire Stevedoring Co., Ltd. *v.* Empress of Japan, The (Can.); **1.** *Adm.* p. 47
Empire Theatres, Ltd., *Ex p.*, *Re*, Marlow Rolls Theatres, Ltd. (Aus.); **31.** *L. & T.* p. 83
Empire Traction Co., Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 32
Employers' Liability Assurance Co. *v.* Lefaivre (Can.); **29.** *Insce.* p. 41
Employers' Liability Assurance Corpn. *v.* Sedgwick Collins & Co. (1927); **10.** *Coys.* No. 8527a; **11.** *Confl.* No. 1307b; **21.** *Exon.* No. 2170a
Employment & Social Insurance Act, *Re*, A.-G. for Canada *v.* A.-G. for Ontario (1937); **17.** *Dep.* No. 130o
Emsley, *Re* (Can.); **18.** *Desct.* p. 3
— *v.* Haggas (J.) & Co., Ltd. (1931), 24 B. W. C. C. 243; **34.** *Mast. & S.* No. 4042c
— *v.* Haggas (J.) & Co., Ltd. (1931), 24 B. W. C. C. 332; **34.** *Mast. & S.* No. 3631a
Enderby *v.* Scott & Wanganui (City) (N.Z.); **36.** *Negl.* p. 23
Endowment Co., Ltd. *v.* Inland Revenue Comrs. (1929); **28.** *Inc. T.* No. 674h
Ene's Case (1627); **7.** *Bonds*, No. 701a
Energine Refining & Manufacturing Co. *v.* Irving (Can.); **43.** *Trade Mks.* p. 20
Enfante *v.* Enfante (Can.), [1932] 1 D. L. R. 788; **42.** *Solrs.* p. 10
— *v.* —, *Re* Crux (Can.), [1932] 1 W. W. R. 93; **42.** *Solrs.* p. 10
Enfield Cycle Co., Ltd. & Smith's Patent, *Re* (1927); **36.** *Pats.* No. 2090a
Enfield Realty Co. *v.* Peterson (Can.); **25.** *Fraud. Conv.* p. 14
Enfield Rural Municipality *v.* London Guarantee & Accident Co., Ltd. (Can.); **29.** *Insce.* p. 54
Eng Chow *v.* Balfour (Can.); **30.** *L. & T.* p. 41
Engel *v.* Gallant (Can.); **42.** *Stats.* p. 29
Engeland, *Re* (Can.); **4.** *Bkpcy.* p. 36
Engelke *v.* Musmann (1928); **11.** *Const. L.* Nos. 136b, 418a, 421a, 447a
Engineering Profession Act, *Re*, *Re* Johnson (Can.); **7.** *Bldg. Conts.* p. 32
Engineering Supplies, Ltd. *v.* Dhandhania & Co. (Ind.); **1.** *Action*, p. 3
Engl, *Ex p.*, R. *v.* Comptroller-General of Patents (1930); **36.** *Pats.* No. 1666a
England *v.* Dominion of Canada General Insurance Co. (Can.); **29.** *Insce.* p. 46
— *v.* Lavers (1866); **20.** *Eqy.* No. 1578a
— *v.* Penfold, *Ex p.* Penfold (Aus.); **42.** *Stats.* p. 30
Engleblom *v.* Blakeman (Can.); **12.** *Contr.* p. 29
Englefield Collieries, Ltd. *v.* Roberts (1932); **34.** *Mast. & S.* No. 3750a
English *v.* Bloom & London Passenger Transport Board (1936); *Pract.* Nos. 1019a, 1662a
— *v.* English (Can.); **27.** *H. & W.* p. 2
— *v.* Kern Agencies, Ltd. (Can.); **42.** *Stk. Ex.* p. 31
— *v.* O'Neill (Can.); **17.** *Dep.* p. 50
— *v.* Wilsons & Clyde Coal Co. (Scot.); **34.** *Mines*, p. 211
English Branch Council of General Medical Council *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 472g

English Crown Spelter Co., Ltd., *Ex p.*, R. *v.* Income Tax General Comrs. (1925); **16.** *Cr. Pract.* No. 2149a
English Crown Spelter Co., *Ex p.*, R. *v.* Swansea Income Tax Comrs. (1925); **16.** *Cr. Pract.* No. 2149a
English Dairies, Ltd. *v.* Inland Revenue Comrs. (1927); **28.** *Inc. T.* No. 99k
— *v.* Phillips (1927); **28.** *Inc. T.* No. 99k
English Electric Co., Ltd. (No. 777,313) Application for Registration of a Design (1933); **43.** *Trade Mks.* No. 943b
English Hop Growers *v.* Dering (1928); **17.** *Damgs.* No. 426a
English Insurance Co., *Ex p.*, *Re* National Benefit Assurance Co. (1928); **10.** *Coys.* No. 7612a
English Insurance Co., Ltd., *Ex p.*, *Re* National Benefit Assurance Co., Ltd. (1929); **29.** *Insce.* No. 252a
English Insurance Co *v.* National Benefit Assurance Co. (Official Receiver) (1929); **10.** *Coys.* No. 7612a; **29.** Insce. No. 252a
English, Scottish & Australian Bank, Ltd. *v.* Beatty (Aus.); **3.** *Bank.* p. 36
— *v.* Inland Revenue Comrs. (1932); **8.** *Chos.* No. 26a; **9.** *Coys.* No. 4389a; **39.** *Revenue*, No. 661a
Ennis Gold Mining Co. *v.* Henderson (Can.); **34.** *Mines*, p. 207
Ennos *v.* McLean (Can.); **1.** *Agcy.* p. 72
Enston & Co. *v.* London, Midland & Scottish Ry. Co. (1934); **8.** *Carr.* No. 1474
Ensworth *v.* Griffiths (1706); **35.** *Mtge.* No. 70a
Enterprise, The, Strong *v.* Taylor (1853); **34.** *Mast. & S.* No. 1145a
Entertainments Protection Assocn., Ltd., *Ex p.*, R. *v.* London County Council (1931); **16.** *Cr. Pract.* Nos. 925a, 2735a; **42.** *Theatres*, No. 164a
Enticknap & Enticknap Concrete Machines *v.* Humbys (1929); **36.** *Pats.* No. 3137a
Eolkin, *Ex p.*, McCulloch *v.* Eolkin (Aus.); **33.** *Mags.* p. 25
Eolo, The (Ir.); **1.** *Adm.* p. 19
Epp School District *v.* Park Rural Municipality (Can.); **19.** *Educ.* p. 41
Epsom Urban Council *v.* London County Council (1900); **26.** *Hghys.* No. 1858a
Epstein *v.* Lloyd (1933); **28.** *Infts.* No. 449a; **43.** *Trusts*, No. 1811a
— *v.* Trustee & Bankrupt, *Ex p.*, *Re* Potts (1935); **4.** *Bkpcy.* No. 4755a
Equal Guardianship of Infants Act, *Re*, *Re* S. (Can.); **3.** *Basty.* p. 59
Equitable Trust Co. of New York *v.* Henderson (1930); **11.** *Confl.* No. 705a
Equity, Trustees, Executors & Agency Co., Ltd. *v.* Moss (Aus.); **44.** *Wills*, p. 25
— *v.* Rudduck (Aus.); **44.** *Wills*, p. 45
Eraut *v.* Drumheller City (Can.); **38.** *Rates*, p. 81
Ereault *v.* Girls' Public Day School Trust, Ltd. (1931); **19.** *Educ.* No. 182a; **28.** *Inc. T.* No. 62a
Erickson *v.* Campbell's, Ltd. (Can.); **36.** *Negl.* p. 32
— *v.* Canadian Pacific Ry. Co. (Can.); **8.** *Carr.* p. 10; **36.** *Negl.* p. 23
— *v.* Klatt (Can.); **36.** *Negl.* p. 15
— *v.* Swim Bros., Ltd. (Can.); **34.** *Mast. & S.* p. 26
Erie & Niagara Ry. Co. *v.* Rousseau (Can.); **32.** *Limit. of A.* p. 37
Erie Beach Co., Ltd. *v.* A.-G. for Ontario (1930); **17.** *Dep.* No. 142a
Erie Beach Co. *v.* A.-G. for Ontario (Can.) (1929); **21.** *E. D.* p. 16
— *v.* A.-G. for Ontario (Can.) (1930); **21.** *E. D.* p. 18
Erik Boye, The (1929); **41.** *Ship*, Nos. 3059b, 3110a
Eriksen Brothers *v.* Maple Leaf, The (Can.); **1.** *Adm.* pp. 23, 29, 30
Ernest *v.* Metropolitan Police Comr. (1919); **2.** *Aliens*, No. 561a
Ernewein *v.* Welch (Can.); **31.** *L. & T.* pp. 78, 79
Ernewein & Welch, *Re* (Can.); **21.** *Estpl.* p. 29; **38.** *Real Prop.* p. 98
Ernst *v.* Christian (Can.); **12.** *Contr.* p. 25
Errington, *Ex p.*, *Re* Jarrow North Ward (No. 1) Clearance Order (1935); **38.** *Pub. Hlth.* No. 5021
— *v.* Aynesly (1788); **7.** *Bldg. Conts.* No. 265a
— *v.* Minister of Health (1935); **38.** *Pub. Hlth.* No. 5021
Erskine-Smith Co. *v.* Bordeleau (Can.); **26.** *Guar.* p. 1
Erson *v.* Gaults, Ltd. (Can.); **34.** *Mast. & S.* p. 9
Erwin *v.* Snelgrove (Can.); **12.** *Contr.* p. 11
Esaw *v.* Antoniades (Can.); **18.** *Distr.* p. 27
Esbjerg Owners *v.* Prinses Juliana Owners, The Prinses Juliana (1936); **1.** *Adm.* No. 1152d; **41.** *Ship.* Nos. 5379a, 6144a
Esdaile *v.* Inland Revenue Comrs. (1936); **28.** *Inc. T.* No. 328b
— *v.* Matthews Thompson, Ltd, Aus.); **43.** *Trade Mks* p. 42
Eshelby *v.* Federated European Bank, Ltd. (1932); **17.** *Deeds*, No. 1076a; **26.** *Guar.* No. 559a
Eshugbayi Eleko *v.* Nigeria Government (Administering Officer) (1928); **16.** *Cr. Pract.* No. 613a
— *v.* Nigeria Government (Administering Officer) (1931); **17.** *Dep.* Nos. 31c, 284a
Eskbridge, The (1931); **1.** *Adm.* No. 663a
Espanolteo, The (1920); **1.** *Adm.* Nos. 668a, 683a
Espir *v.* Basil Street Hotel, Ltd. (1936); **31.** *L. & T.* No. 4828a
— *v.* Millward (1929); **31.** *L. & T.* No. 6765a
Esplanade Theatre, Ltd. (In Liquidation), *Re* (Aus.); **10.** *Coys.* p. 78
Esquimalt & Nanaimo Ry. Co. *v.* Granby Consolidated Mining, Smelting & Power Co. (Can.); **18.** *Discy.* p. 22
— *v.* Treat (Can.); **44.** *Waters*, p. 3
Esquimalt Water Works Co. *v.* Leeming (Can.); **38.** *Rates*, p. 59
Esser *v.* Pritzker (Can.); **35.** *Mtge.* p. 48
Essery *v.* Cowlard (1884); **40.** *Stllmts.* No. 740b
Essex Envoy, The (1929); **41.** *Ship.* Nos. 2102a, 6736a
Essex Flour & Grain Co., Ltd., *Re*, Belcher's Appeal (1938); **44.** *Work*, No. 142a
Essex Land & Timber Co., *Re*, Trout's Case (Can.); **10.** *Coys.* p. 65
Estate & Trust Agencies (1927), Ltd. *v.* Singapore Improvement Trust (Straits Settlements); **38.** *Pub. Hlth.* p. 22
Estcourt Corpn. *v.* Union Government (S. Af.); **38.** *Rates*, p. 64
Esten *v.* Rosen (Can.); **42.** *Tort*, p. 77
Estlin, *Re*, Prichard *v.* Thomas (1903); **8.** *Char.* No. 47b
Etablissements Callot & De Schrijver *v.* Leonard Tubbs & Co. & Official Receiver, *Ex p.*, *Re* Potts (1934); **5.** *Bkpcy.* No. 8683a
Etchells, Congdon & Muir, Ltd. *v.* Eagle, Star & British Dominions Insurance Co., Ltd. (1928); **29.** *Insce.* No. 3203a
Eteson, *In the Will of* (Aus.); **44.** *Wills*, p. 22
Etheringham *v.* Etheringham (1646); **23.** *Exors.* No. 1031a
Etherington *v.* Carter (1937); **42.** *Str. Traf.* No. 33b
Ethier *v.* Nolle (Can.); **21.** *Exon.* p. 52

Etic, Ltd., *Re* (1928); **10.** *Coys.* Nos. 6150b, 6173b, 6183a
Eton College Stores, *Re* (1931); **44.** *Work*, Nos. 118a, 118b, 118c, 123a
Eton School Stores & Addaway, *Re* (1931); **44.** *Work*, No. 118a
Eton School Stores & Brampton, *Re* (1931); **44.** *Work*, No. 118a
Eton School Stores & Mitchell, *Re* (1931); **44.** *Work*, No. 118a
Eton School Stores & Parker, *Re* (1931); **44.** *Work*, No. 118a
Etterman *v.* London & Scottish Insurance Corpn., Ltd. (Can.); **29.** *Insce.* p. 27
— *v.* Wawanesa Mutual Insurance Co. (Can.); **29.** *Insce.* p. 27
Ettinger, *Re* (Can.); **30.** *Intox.* p. 18
Eurana S.S. *v.* Burrard Inlet Tunnel & Bridge Co. (Can.); **42.** *Stats.* p. 22
European & North American Ry. Co. *v.* Dunn (Can.); **9.** *Coys.* p. 20
European Assurance Society Arbitration Acts, 1872, 1873, & 1875, *Re*, *Re* Anglo-Australian & Universal Family Life Assurance Co., Harman's Case, Pratt's Case (1875); **12.** *Contr.* No. 4985
European Investment Trust Co., Ltd. *v.* Jackson (1932); **28.** *Inc. T.* No. 252b
Eurymedon, The (1938); **41.** *Ship.* No. 6453a
Eustace *v.* Eustace (1924); **11.** *Confl.* No. 918c
Eustace Miles Foods (1921), Ltd., *Re* (1934); **10.** *Coys.* No. 7136a
Eutrope & Sons Pty., Ltd., *Re* (Aus.); **10.** *Coys.* p. 77
Eva, The (1921); **1.** *Adm.* Nos. 1489a, 1497a
—, *Re* (N.Z.); **4.** *Bkpcy.* p. 8
— *v.* Johnson (Can.); **36.** *Negl.* p. 17
Eva (Joseph), Ltd. *v.* Reeves (1938); **42.** *Str. Traf.* No. 31f
Evanoff *v.* Winkler & Kelly (Can.); **1.** *Agcy.* p. 99
Evanovitch's Patent, *Re* (1928); **36.** *Pats.* No. 2077a
Evans, *Ex p.* (Aus.); **38.** *Pub. Auth.* p. 13
—, *Ex p.*, *Re* Court of Marine Inquiry (Aus.); **41.** *Ship.* p. 69
—, *In the Goods of* (1923); **23.** *Exors.* No. 17a
Evans, *Re*, Davies *v.* Evans (1931); **4.** *Bkpcy.* No. 1274a
—, *Re*, Public Trustee *v.* Evans (1920); **5.** *Bkpcy.* Nos. 5932b, 5936a
—, *Re*, Thomas *v.* Thomas (1908); **39.** *Rntchgs.* No. 336a
— *v.* Allan (Can.); **6.** *B. of Exch.* p. 14
— *v.* Amalgamated Anthracite Collieries, Ltd. (1935); **34.** *Mast. & S.* No. 3932l
— *v.* Bartlam (1937); *Pldg.* No. 1424a; *Pract.* No. 961a
— *v.* Baxter (1930); **31.** *L. & T.* No. 7149a
— *v.* Bierrum & Partners (1930); **34.** *Mast. & S.* No. 3200a
— *v.* Chandler (Can.); **16.** *Courts*, p. 10
— *v.* Cross (1938); **42.** *Str. Traf.* No. 31g
— *v.* Dann (Can.); **42.** *Str. Traf.* p. 38
— *v.* Dell (1937); **42.** *Str. Traf.* No. 76g
— *v.* Downer & Co., Ltd. (1933); **36.** *Negl.* No. 389b
— (Doe d.) *v.* Doyle (Nfld.); **38.** *Real Prop.* p. 92
— *v.* Draper (Can.); **7.** *Bldg. Conts.* pp. 24, 26
— *v.* Ebbw Vale Steel Iron & Coal Co., Ltd. (1929); **34.** *Mast. & S.* No. 3295a
— *v.* El Uruguayo S.S. Owners (1930); **34.** *Mast. & S.* No. 3702f
— *v.* Employer's Mutual Insurance Assocn., Ltd. (1936); **29.** *Insce.* No. 149a
— *v.* Exworth (1936); **25.** *Gaming*, No. 321a
— *v.* Fletcher (1926); **30.** *Intox.* No. 755a
Evans *v.* Hassan (1936): **42.** *Str. Traf.* No. 76o
— *v.* Hudson's Bay Co. (Can.); **36.** *Negl.* p. 24
— *v.* Hulton (E.) & Co., Ltd. (1924); **13.** *Cpyrt.* No. 394b
— *v.* James Webster & Brothers, Ltd. (1928); **41.** *Ship.* Nos. 2230a, 2257b, 2262b
— *v.* Lloyd's Furniture Palace, Ltd., *Re* Lloyd's Furniture Palace, Ltd. (1925); **10.** *Coys.* No. 4783a; **25.** *Fraud. Conv.* Nos. 422a, 428a
— *v.* Martyn (Can.); **32.** *Libel*, p. 7
— *v.* Monmouthshire & South Wales Employers' Mutual Indemnity Society, Ltd. (1937); **34.** *Mast. & S.* No. 3952a
— *v.* Morgan (1928); **37.** *Poor L.* No. 225b
— *v.* National Union of Printing, Bookbinding & Paper Workers (1938); **43.** *Trade*, No. 1043a
— *v.* New Masonic Co., Ltd. (N.Z.); **34.** *Mast. & S.* p. 58
— *v.* Nyland (Can.); **35.** *Mistake*, p. 10
— *v.* Oliver, *Re* Sutton (1934); **44.** *Wills*, No. 7347a
— (Doe d.) *v.* Page (1844); **32.** *Limit. of A.* No. 1190a
— *v.* Pen-Maen-Mawr & Welsh Granite Co., Ltd. (1931); **34.** *Mast. & S.* No. 2948a
— *v.* Piauneau (1927); **2.** *Aliens*, No. 558d
— *v.* Powell Duffryn Associated Collieries, Ltd. (1938); **34.** *Mast. & S.* No. 2522a
— *v.* Raglan Collieries, Ltd. (1933); **34.** *Mast. & S.* No. 2651a
— *v.* Simpson (James) & Son (1926); **34.** *Mast. & S.* Nos. 2856a, 2890b
— *v.* Thomas W. Ward, Ltd. (1930); **34.** *Mast. & S.* No. 3291b
— *v.* Triplex Safety Glass Co., Ltd. (1936); **36.** *Negl.* No. 364e
— *v.* Uriguayo S.S. Owners (1930); **34.** *Mast. & S.* No. 4042b
— *v.* Ward (Thomas W.), Ltd. (1930); **34.** *Mast. & S.* No. 3291b
— *v.* Webster (James) & Brothers, Ltd. (1928); **41.** *Ship.* Nos. 2230a, 2257b, 2262b
— *v.* Welsh Navigation Steam Coal Co. (1926); **34.** *Mast. & S.* No. 2120a
Evans & Baird *v.* O'Connor & Theaker (Can.); **19.** *Educ.* p. 44
Evans (Richard) & Co., Ltd. *v.* Gilbie (1926); **34.** *Mast. & S.* Nos. 3057a, 3541a
— *v.* Scahill (1927); **34.** *Mast. & S.* No. 3834
Evans, Coleman & Evans, Ltd. *v.* Roman Prince, The (Can.); **1.** *Adm.* p. 29
Evans' Patent, *Re* (1937); **36.** *Pats.* No. 1842a
Evans Sons Lescher & Webb, Ltd., Application for Registration of a Trade Mark, *Re* (1934); **43.** *Trade Mks.* No. 217a
Evenden *v.* Merchants Casualty Insurance Co. (No. 1) (Can.); **29.** *Insce.* p. 5
Eveno's Patent, *Re* (1932); **36.** *Pats.* Nos. 2222a, 2261b
Eve *v.* Garland, *Re* Garland (1934); **44.** *Wills*, No. 5239a
Everest *v.* Wood (1824); **43.** *Trov.* No. 653b
Everett *v.* Cambridge University & Town Waterworks Co. (1934); **34.** *Mast. & S.* No. 2686a
— *v.* Islington Guardians (1923); **13.** *Cty. Cts.* Nos. 499a, 890a
— *v.* Shand (1931); **25.** *Gaming*, Nos. 322a, 325a
Everitt, *Ex p.*, *Re* Moss (1923); **4.** *Bkpcy.* No. 3945a
Evershed *v.* Griffiths, *Re* Keen (1937); **43.** *Trusts*, No. 470a
Ewart *v.* Dryden (Can.); **35.** *Mtge.* p. 48
Ewart & Toronto Terminals Ry. Co., *Re* (Can.); **38.** *Rys.* p. 36

Ewen, *Re* (N.Z.); **23.** *Exors.* p. 5
Ewer *v.* National Employers' Mutual General Insurance Association, Ltd. (1937); **29.** *Insce.* No. 2650a
Ewers *v.* Curtis (1933); **34.** *Mast. & S.* No. 2796a
Ex-Army Transport, Ltd. *v.* Diamond & Co., Ltd. (1936); **8.** *Carr.* No. 1608
Excel Footwear Co., *Re*, *Ex p.* Nova Scotia Trust Co. (Can.); **9.** *Coys.* p. 42
Excelsior Electric Dairy Machinery, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 25; **16.** *Cr. Pract.* p. 23
Excelsior Wire Rope Co., Ltd. *v.* Callan (1930); **36.** *Negl.* Nos. 451a, 457b
Excess Insurance Co., Ltd. *v.* Mathews (1925); **2.** *Aliens*, No. 412a
Exchequer Court Jurisdiction, *Re* (Can.); **11.** *Comp. Pche.* p. 16
Excise Act, *Re* (Can.); **30.** *Intox.* p. 18; **42.** *Stats.* p. 21
Executor, Trustee & Agency Co. of South Australia, Ltd., *Ex p.*, *Re* Port Pirie Corpn. (Aus.); **16.** *Cr. Pract.* p. 33
— *v.* A.-G., *Re* White (Aus.); **8.** *Char.* p. 69
— *v.* Morris, *Re* Spicer (Aus.); **23.** *Exors.* p. 5
Executor Trustee & Agency Co. of South Australia, Ltd. & Liverpool & London & Globe Insurance Co., Ltd., *Re Arbitration between* (Aus.); **29.** *Insce.* p. 39
Exmouth's Annuity, *Re* (1925); **21.** *E. D.* No. 128a
Expedite van Roterdam, The (1782); **2.** *Aliens*, No. 419a
Export Brewing & Malting Co. *v.* Dominion Bank (Can.) (1932); **40.** *Set-off*, p. 23
Express Dairy Co. *v.* Jackson (1929); **43.** *Trade*, No. 498a
Extra-Judicial Seizures Act, *Re*, Rudder *v.* Lundin (Can.); **7.** *B. of Sale*, p. 11
Eyles *v.* Cary (1687); **23.** *Exors.* No. 5697a
Eyre *v.* Brumfield (1936); **25.** *Gaming*, No. 278c
— *v.* Eyre (1930); **27.** *H. & W.* No. 5821a
— *v.* Milton Proprietary, Ltd. (1936); **9.** *Coys.* No. 3455c
Eyres (J. & S.), Ltd. & John Eyres *v.* John Grundy, Ltd. (1938); **36.** *Pats.* No. 2944n
Ezekiel *v.* Reuben (Ind.); **27.** *H. & W.* p. 1
Ezrah, *In the Goods of* (Ind.); **17.** *Dep.* p. 69

F.

F. & E. Stanton, Ltd., *Re* (1928); **10.** *Coys.* Nos. 4709a, 5316a
—, *Re* (1929); **10.** *Coys.* No. 4709a
F. R. Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933); **2.** *Arbn.* No. 1603b; **7.** *Bldg. Conts.* No. 87a
Faas *v.* McManus (Can.); **21.** *Exon.* p. 55
Faber *v.* Inland Revenue Comrs. (1936); **39.** *Revenue*, No. 473a
Factor, *Ex p.*, R. *v.* Daily Mail (Editor) (1928); **16.** *Cntmpt.* No. 192a
Fada (Australia), Ltd., *Re*, *Ex p.* Brown (Aus.); **43.** *Trusts*, p. 62
Fada Radio, Ltd. *v.* Canadian General Electric Co., Ltd. (Can.); **36.** *Pats.* p. 104
Faddes *v.* M'Neish (Scot.); **3.** *Basty.* p. 62
Fafard *v.* Beaupre (Can.); **11.** *Confl.* p. 45
Fagan *v.* Green & Edwards, Ltd. (1926); **8.** *Carr.* Nos. 4b, 12b
Fagernes, The (1927); **11.** *Const. L.* No. 136a; **16.** *Courts*, No. 37a
—, The, Cornish Coast (Owners) *v.* Societa Nazionale di Navigazione (1927); **11.** *Const. L.* No. 136a; **16.** *Courts*, No. 37a
Fahey, *Ex p.* (Aus.); **3.** *Basty.* p. 60
Fair & Toronto, *Re* (Can.); **11.** *Comp. Pche.* p. 15
Fairbairn, *Ex p.* (Can.); **17.** *Dep.* p. 53
— *v.* Comptroller of Stamps for Victoria (Aus.); **39.** *Revenue*, p. 22
Fairbrass *v.* Canterbury Corpn. (1902); **26.** *Highys.* No. 2508b
Fairchild, *Re* (Aus.); **44.** *Wills*, p. 12
Fairclough (T. M.) & Sons, Ltd. *v.* Berliner (1931); **31.** *L. & T.* No. 6361a
Fairer's Will, *Re* (Aus.); **23.** *Exors.* p. 13
Fairey's Patent, *Re* (1937); **36.** *Pats.* No. 1808a
Fairfax (John) & Son, Ltd. & Smith's Newspapers, Ltd. *v.* New South Wales State (Aus.); **17.** *Dep.* p. 62
Fairfield Shipbuilding Co., Ltd. *v.* Harris (1931); **34.** *Mast. & S.* No. 3701d
Fairgrief *v.* Ellis (Can.); **12.** *Contr.* p. 19
Fairgrieve *v.* O'Mullin (Can.); **12.** *Contr.* p. 12
Fairhall *v.* Butler (Can.); **9.** *Coys.* p. 46
Fairholme *v.* Firth & Brown, Ltd. (1933); **34.** *Mast. & S.* No. 792a
Fairley, *Re*, *Ex p.* Low & Bonar, Ltd. (1922); **5.** *Bkpcy.* No. 6918a
—, *Re*, *Ex p.* Official Receiver (1922); **5.** *Bkpcy.* No. 6918a
Fairman *v.* Perpetual Investment Building Society (1923); **30.** *Jdgmts.* No. 739a
Fairplay XIV, The (1938); **1.** *Adm.* No. 969b
Fairview, *Re* (Can.); **30.** *Intox.* p. 15
Fairweathers, *Re*, *Ex p.* Montreal (City) (Can.); **4.** *Bkpcy.* p. 15
Fairweathers, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 33
Fakir Mahomed *v.* Emperor (Ind.); **22.** *Evid.* p. 22
Falcon, The (1931); **41.** *Ship.* No. 6212a
Falcon *v.* Famous Players Film Co., Ltd. (1926); **13.** *Coprt.* Nos. 16a, 180a, 180b, 308b, 394a, 510a; **22.** *Evid.* Nos. 580a, 624a, 3513a
Falcon Oils, Ltd. *v.* Winnipeg City (Can.); **38.** *Rates*, p. 49
Falconer *v.* Stearn (1932); **8.** *Char.* No. 2177a; **19.** *Educ.* No. 45a
Falk *v.* Haugh (Aus.); **12.** *Contr.* p. 45
Falkirk Parish Council *v.* Stirlingshire Assessor (Scot.); **7.** *Burial*, p. 42
Fall *v.* R. (1842); **16.** *Cr. Pract.* No. 1805a
Fallis *v.* Dalthaser (Can.); **17.** *Dep.* p. 52
Fallon's Estate *v.* Claret (S. Af.); **36.** *Negl.* p. 19
Falls *v.* Bloch (Can.); **43.** *Trade*, pp. 4, 7
— *v.* Sargent (Can.); **1.** *Agcy.* p. 101
Falmouth (Well Lane, Sedgmonds Court & Smithwick Hill) Clearance Order, 1936, *Re* Halse' Application (1937); **38.** *Pub. Hlth.* Nos. 502p, 524b
Falmouth Docks & Engineering Co., Ltd. *v.* Treloar (1933); **34.** *Mast. & S.* No. 2317c
Falmouth Rating Authority, *Ex p.*, R. *v.* Cornwall County Valuation Committee (1937); **38.** *Rates*, No. 1147a
Falsetto *v.* Brown (Can.); **36.** *Negl.* p. 16
Falzon *v.* Adelaide Development Co., Ltd. (Aus.); **40.** *S. Land*, p. 14
Famous Cloak & Suit Co. *v.* Phœnix Assce. Co. (Can.) (1931); **2.** *Arbn.* p. 78
— *v.* — (Can.) (1932); **29.** *Insce.* p. 59
Fane *v.* Goodall, *Re* Goodall's Settlement (1909); **40.** *Stllmts.* No. 2594a
Fann *v.* Winnipeg Electric Co. (Can.); **42.** *Str. Traf.* p. 36
Fanning *v.* Gough (Can.); **14.** *Crim.* p. 14
Fanshawe *v.* Fanshawe (1927); **27.** *H. & W.* Nos. 6006a, 6012a
Fanton *v.* Denville (1932); **34.** *Mast. & S.* No. 1824a
Faraday *v.* Auctioneers' & Estate Agents' Institute of United Kingdom (1936); **28.** *Injon.* No. 807a

Faraday, Rodgers & Eller *v.* Carter (1927); **28.** *Inc. T.* No. 210c
Farbenbloom *v.* Morel (Glasgow), Ltd., & Sherlock (Ir.); **30.** *Jdgmts.* p. 24
Fardon *v.* Harcourt-Rivington (1932); **2.** *Animals*, No. 219a
Fares *v.* R. (Can.); **17.** *Dep.* p. 69; **44.** *Waters*, p. 5
Fares for Provincial Police Case, Provinces of British Columbia & Alberta *v.* Canadian National & Canadian Pacific Ry. Cos. (Can.); **38.** *Rys.* p. 44
Farey *v.* Cooper (1927); **5.** *Bkpcy.* No. 9576a
— *v.* Welch (1929); **2.** *Animals*, No. 67a; **14.** *Crim.* No. 72a
Fargey *v.* Holyk (Can.); **22.** *Evid.* p. 16
Farleigh *v.* Parker & Lang (1930); **34.** *Mast. & S.* No. 2204a
Farley & Grant, *Re* (Can.); **4.** *Bkpcy.* p. 31
Farm Products, Ltd. *v.* Macleod Flouring Mills, Ltd. (Can.); **1.** *Agcy.* p. 59
Farman *v.* Farman (1924); **3.** *Basty.* No. 73a
Farmer, *Re* (Can.) (1926); 21 *E. D.* p. 21
—, *Re* (Can.) (1937); **30.** *Intox.* p. 12
—, *Re*, Nightingale *v.* Whybrow (1938); **23.** *Exors.* No. 4937b
— *v.* Grand Trunk Ry. Co. (Can.); **36.** *Negl.* p. 35
— *v.* Hyde (1937); **32.** *Libel*, No. 1668a
— *v.* Morning Post, Ltd. (1936); **32.** *Libel*, No. 1671a
— *v.* Upton (1930); **13.** *Cty. Cts.* No. 534a
Farmers Creditors Arrangement Act, *Re*, A.-G. for British Columbia *v.* A.-G. for Canada (1937); **17.** *Dep.* No. 130n
Farmers Creditors Arrangement Act, 1934 & Amending Act, 1935, *Re* (Can.); **2.** *Agric.* p. 25
Farmers Fertilizers Corpn., Ltd., *Re*, *Ex p.* Milk Board (Aus.); **25.** *Food*, p. 10
Farmers Mutual Hail Insurance Co. *v.* Foster (Can.); **29.** *Intpr.* p. 65
Farmers Pack Co., Ltd. *v.* Havers (Can.); **10.** *Coys.* p. 71
— *v.* Tully & Tully (Can.); **10.** *Coys.* p. 71
Farmers' Milking Machine Co., Ltd. *v.* Knapp (N.Z.); **36.** *Pats.* p. 83
Farnham *v.* Daniels (1937); **27.** *H. & W.* No. 2751a
— *v.* Farnham (otherwise Daniels) (1937); **27.** *H. & W.* No. 2751a
Farnham Union *v.* Cambridge Union (1929); **37.** *Poor L.* No. 482a
Farnworth *v.* Manchester Corpn. (1930); **20.** *Electric*, No. 65a; **38.** *Pub. Auth.* No. 263a; **42.** *Stats.* No. 1452a
Farquharson *v.* Colville (Lord) (1772); **20.** *Eqy.* No. 1424a
— *v.* Pearl Assurance Co., Ltd. (1937); **29.** *Insce.* No. 2920a
Farr *v.* Annable (Can.); **18.** *Distr.* p. 25
— *v.* Butters Bros. & Co. (1932); **36.** *Negl.* No. 364b; **39.** *S. Goods*, No. 856b
— *v.* Ginnings (1928); **31.** *L. & T.* No. 5282a
— *v.* Weatherhead & Harding (1932); **36.** *Pats.* No. 3414a
Farr, Smith & Co. *v.* Messers, Ltd. (1928); **12.** *Contr.* Nos. 859a, 900a
Farra *v.* Hetherington (1931); **29.** *Insce.* No. 3217f
Farrand *v.* Satterthwaite (1929); **28.** *Inc. T.* No. 629b
Farrell *v.* Magic Silver-Black Fox Co. (Can.); **9.** *Coys.* p. 54
— *v.* Murdostoun Colliery Co. (Scot.); **34.** *Mast. & S.* p. 116
Farrell *v.* Sawitski (Can.); **7.** *Bldg. Conts.* p. 24; **42.** *Time*, p. 73
Farrell & Sons *v.* Poupore Lumber Co. (Can.) **1.** *Agcy.* p. 65
Farrer & Gilbert's Contract, *Re* (1914); **30.** *Land Imp.* No. 216a
Farrer (T. N.), Ltd., *Re* (1937); **9.** *Coys.* No. 3532a
Farringdon Without in the City of London, *Re* Election of Common Councilmen of the Ward of (1925); **20.** *Elect.* No. 1038a
Farrow *v.* Massey-Harris Co., Ltd. (Can.); **18.** *Distr.* p. 32; **38.** *Rates*, p. 85
— *v.* Orttewell (1933); **2.** *Agric.* Nos. 252b, 266s
— *v.* Smith (1915); **18.** *Discy.* No. 254b
Farrow's Bank, Ltd., *Re* (1923); **3.** *Bank.* Nos. 274a, 479a
Farshind, etc. *v.* Bechely-Crundall (Scot.); **12.** *Contr.* p. 30
Fasbender *v.* A.-G. (1922); **2.** *Aliens*, Nos. 49d, 215i, 215j, 538a
Fassbender *v.* Fassbender (1938); **27.** *H. & W.* No. 2431a
Fassnidge *v.* Flint & Son (1892); **21.** *Exon.* No. 2086a
Fast *v.* Zarchekoff (Can.); **26.** *Guar.* p. 8
Fateh Ali *v.* Gehna (Ind.); **35.** *Mtge.* p. 41
Faulkner *v.* Faulkner (Can.); **17** *Deeds*, p. 25
— *v.* Hythe Corpn. (1927); **26.** *Hghys.* No. 2430b
— *v.* Johnson (1843); **22.** *Evid.* No. 348a
— *v.* Martens (No. 2) (Can.); **35.** *Mtge.* p. 51
Faulkner & Oliver *v.* Martens & Delichte, *Re* Hetherington Estate (Can.); **35.** *Mtge.* p. 51
Favorke *v.* Steinkopff, *Re* Steinkopff (1922); **2.** *Aliens*, No. 215f; **8.** *Chos.* No. 21
Favretto, *Re* (Can.); **30.** *Intox.* p. 12
Fawcett *v.* Fawcett (Can.) (1935); **42.** *Sp. Pfce.* p. 16
— *v.* — (Can.) (1936); **27.** *H. & W.* p. 42
— *v.* Petitcodiac Black Fox Co., Ltd. (Can.); **9.** *Coys.* p. 40
— *v.* Shafto, *Re* Shafto (1903); **20.** *Eqy.* No. 2075a
— *v.* Tingley (Can.); **42.** *Sp. Pfce.* p. 16
Fawell *v.* Andrew (Can.); **18.** *Distr.* p. 28
Fay *v.* Vincent (Aus.); **17.** *Dep.* p. 59
Fayne *v.* Martin (Ir.); **25.** *Gifts*, p. 51
Fazal Hussain *v.* Jiwan Shah (Ind.); **17.** *Deeds*, p. 24
Fearnley, *Ex p.*, R. *v.* Cumberland JJ. (1930); **30.** *Intox.* No. 588a
Feay *v.* Barnwell (1938); **36.** *Negl.* No. 953k
Federal Building Assurance Co., Ltd., *Re* (Aus.) (1932); **10.** *Coys.* p. 99
—, *Re* (Aus.) (1934); **10.** *Coys.* p. 100
Federal Capital Commission *v.* Laristan Building & Investment Co. Proprietary, Ltd. (Aus.); **17.** *Dep.* p. 35
Federal Comr. of Taxation *v.* Australian Tesselated Tile Co. Proprietary, Ltd. (Aus.); **28.** *Inc. T.* p. 101
— *v.* Clarke (Aus.); **28.** *Inc. T.* p. 101
— *v.* Fisher's Cooperage Pty., Ltd. (Aus.); **39.** *Revenue*, p. 16
Federal Comr. of Taxation *v.* Hipsleys, Ltd. (Aus.); **17.** *Dep.* p. 59
— *v.* Lewis Berger & Sons (Australia), Ltd. (Aus.); **28.** *Inc. T.* p. 104
— *v.* Munro (Aus.); **17.** *Dep.* p. 59; **28.** *Inc. T.* p. 101
— *v.* Reid (Aus.); **28.** *Inc. T.* p. 99
— *v.* Taylor (Aus.); **21.** *E.D.* p. 3
Federal District Commission *v.* Dagenais (Can.); **11.** *Comp. Pche.* p. 6
Federal Insurance Co. of New Jersey *v.* Westchester Fire Insurance Co. (Can.); **29.** *Insce.* p. 4

Federal Motor Co. *v.* Topham (Can.); **7.** *B. of Sale*, p. 11
Federal Taxation Comr. *v.* Rochester (Aus.); **39.** *Revenue*, p. 16
Federated Seamen's Union of Australasia *v.* Huon, Channel & Peninsular S.S. Co., Ltd. (Aus.); **17** *Deeds*, p. 28
Federated State School Teachers Assocn. of Australia *v.* Victoria (Aus.); **17.** *Dep.* p. 60
Fedoruk *v.* Black Poplar School District Board of Trustees (Can.); **19.** *Educ.* p. 46
Feeney *v.* Firbeck Main Collieries, Ltd. (1926); **12.** *Contr.* No. 4059a
Fefferman *v.* New Brunswick Fire Insurance Co. (Can.); **29.** *Insce.* p. 27
Fegan, *Re*, Fegan *v.* Fegan (1928); **23.** *Exors.* No. 5620a
— *v.* Department of Health (Scot.); **44.** *Work*, p. 63
— *v.* McLean (Can.); **17.** *Dep.* p. 74
Feiber *v.* Romanciewicz (Can.); **7.** *B. of Sale*, p. 5
Feigenbaum *v.* Mills (S. Af.); **31.** *L. & T.* p. 63
Feinstein *v.* Baleta (S. Af.); **33.** *Mkts.* p. 43
— *v.* Paulin-Chambers Co., Ltd. (Can.); **33.** *Mal. Pros.* p. 40
Feist *v.* Societe Intercommunale Belge D'Electricite, *Re* Societe Intercommunale Belge D'Electricite (1934); **35.** *Money*, No. 17a
Felgates Case, *Re* United Kingdom Ship Owning Co., Ltd. (1865); **9.** *Coys.* No. 582a
Fell *v.* Derby Leather Co., Ltd. (1931); **9.** *Coys.* No. 3684a; **42.** *Stats.* No. 905a
Fellowes, O'Brien, Gordon & Tootal (carrying on business as Ellis & Co.), *Re* (1924); **5.** *Bkpcy.* No. 7393a
Fellowes-Gordon *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 66
Fellows-Smith *v.* Shanks (S. Af.); **1.** *Action*, p. 14
Felston Tile Co., Ltd. *v.* Winget, Ltd. (1936); **3.** *Bailmt.* No. 244c
Fender *v.* Mildmay (1937); **12.** *Contr.* No. 2190b
— *v.* St. John-Mildmay (1938); **12.** *Contr.* No. 2190b
Fenerty *v.* Halifax County (Can.); **17.** *Damgs.* p. 22
Fenn *v.* Harrison (1791); **1.** *Agcy.* No. 845a
— *v.* Paul (Aus.); **33.** *Mal. Pros.* p. 39
Fennell *v.* East Ham Corpn. (1926); **19.** *Educ.* No. 302b
— *v.* Montreal S.S. Co. (Nfld.); **8.** *Carr.* p. 13
— *v.* Union Bank of Canada (Can.); **7.** *B. of Sale*, p. 5
Fenton, *Re* (1894); **42.** *Solrs.* No. 1823a
—, *Re*, *Ex p.* Fenton Textile Assocn., Ltd. (1931); **4.** *Bkpcy.* No. 3656a
— (No. 2), *Re*, *Ex p.* Fenton Textile Assocn., Ltd. (1932); **4.** *Bkpcy.* No. 3781b; **21.** *Estpl.* No. 253a
— (No. 2), *Re*, *Ex p.* Trustee under Deed of Arrangement *v.* Fenton Textile Assocn., Ltd. (1932); **4.** *Bkpcy.* No. 3781b; **21.** *Estpl.* No. 253a
— (Doe d.) *v.* Butcher (1847); **22.** *Evid.* No. 3919a
— *v.* Charlton (J. E.), Ltd. (1931); **34.** *Mast. & S.* No. 3377c
— *v.* East (1910); **21.** *Exon.* No. 2295a
— *v.* Haskamp (Can.); **44.** *Work*, p. 60
— *v.* Mewbinney, *Re* North Bruce Provincial Election (Can.); **20.** *Elect.* p. 3
Fenton Estate, *Re* (Can.); **8.** *Char.* p. 67
Fenton Textile Assocn., Ltd., *Ex p.*, *Re* Fenton (1931); **4.** *Bkpcy.* No. 3656a
—, *Ex p.*, *Re* Fenton (No. 2) (1932); **4.** *Bkpcy.* No. 3781b; **21.** *Estpl.* No. 253a
— *v.* Lodge (1928); **10.** *Coys.* Nos. 5067a, 5069a
— *v.* Thomas & Clark (1929); **9.** *Coys.* No. 432b; **12.** *Contr.* No. 4578a
Fenton's Trustee *v.* Inland Revenue Comrs. (1936); **28.** *Inc. T.* No. 394b
Fenwick, *Re* (Can.); **11.** *Confl.* p. 34
—, *Re*, Lloyds Bank, Ltd. *v.* Fenwick (1922); **21.** *E. D.* No. 234a
— *v.* Huntingdon Rural District Council (1928); **26.** *Hghys.* No. 322a
— *v.* Stewart, *Re* Fenwick's Will Trusts (1936); **23.** *Exors.* No. 5363a
Fenwick (France) & Co. *v.* R. (1927); **11.** *Const. L.* No. 58a
Fenwick's Will Trusts, *Re*, Fenwick *v.* Stewart (1936); **23.** *Exors.* No. 5363a
Ferdinand, Ex-Tsar of Bulgaria, *Re* (1921); **2.** *Aliens*, No. 208a
Fergus *v.* Toronto (City) (Can.); **38.** *Pub. Auth.* p. 12
Fergus & Glen Insolvent Estate (Nfld.); **4.** *Bkpcy.* p. 40
Ferguson, *Re* (Can.); **5.** *Bkpcy.* p. 67
—, *Re* (Ir.); **21.** *E. D.* p. 6
— *v.* Donovan (Ir.); **28.** *Inc. T.* p. 92
— *v.* Eyer (Can.); **3.** *Bailmt.* p. 6
— *v.* Ferguson (Can.); **21.** *Exon.* p. 52
— *v.* Innes (Can.); **19.** *Easmt.* p. 6
— *v.* Kinnoull (Earl) (1842); **1.** *Action*, No. 206a
— *v.* MacDonald (Can.); **20.** *Elect.* p. 2
— *v.* MacLean (Can.); **19.** *Eccl.* p. 32
— *v.* New Cumnock Collieries, Ltd. (Scot.); **34.** *Mast. & S.* p. 128
— *v.* Northwest Brick & Supply Co., Ltd. (Can.); **35.** *Misrep.* p. 5
— *v.* O'Gorman (Ir.); **43.** *Trade*, p. 10
— *v.* Shotts Iron Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 65
— *v.* Taylor (Can.); **3.** *Basty.* p. 64
— *v.* Wagner (Aus.); **1.** *Agcy.* p. 99
— *v.* Wallbridge (Can.) (1934); **9.** *Coys.* p. 53
— *v.* — (Can.) (1935); **9.** *Coys.* p. 54
— *v.* Western S. M. T. Co., Ltd. (1935); **8.** *Carr.* Nos. 1622, 1654
— *v.* Zinn (Can.); **35.** *Mtge.* p. 49
Ferguson & Co. *v.* Ferguson (Ir.); **31.** *L. & T.* p. 82
Ferguson Estate, *Re*, *Re* Testator's Family Maintenance Act (Can.); **44.** *Wills*, p. 55
Fergusson *v.* Fergusson (1931); **27.** *H. & W.* No. 5481a
Ferland *v.* Philie (Can.); **39.** *Revenue*, p. 16
Ferland Corset Co. *v.* Montreal (Can.); **16.** *Cr. Pract.* p. 38
— *v.* Recorder's Court (Can.); **17.** *Dep.* p. 57
Ferns (J. P.) *v.* Ingelby, The (Can.); **1.** *Adm.* p. 47
Feroze Din Khan *v.* Nawab Khan (Ind.); **17** *Dep.* p. 79
Ferrando *v.* Pearce (Aus.); **2.** *Aliens*, p. 52
Ferreira *v.* Gingell (S. Af.); **1.** *Agcy.* p. 69
Ferres *v.* Cope (Aus.); **2.** *Agric.* p. 16
Ferridge, *Ex p.*, R. *v.* Clements (Judge) (1932); **19.** *Eccl.* Nos. 3492a, 3492b
—, *Ex p.*, R. *v.* Kent County Court Judge (1932) **19.** *Eccl.* No. 3492a
Ferrie *v.* Atherton (1852); **20.** *Eqy.* No. 1049a
— *v.* Cleghorn (Can.); **21.** *Exon.* p. 48
Ferrier *v.* Scottish Milk Marketing Board (1937); **25.** *Food*, No. 476j
Ferries (Sydney), Ltd. *v.* Tahiti S.S. (Aus.) (1928); **22.** *Evid.* p. 24
— *v.* — (Aus.) (1929); **41.** *Ship.* p. 63
Ferris *v.* Wallis (Scot.); **20.** *Elect.* p. 1
Fess Oil Burners of Canada, Ltd. *v.* Hutchings (Can.); **1.** *Agcy.* p. 105
Fess Oil Burners, Ltd. *v.* Mutual Investments, Ltd. (Can.); **40.** *S. Land*, p. 13
Fester Fothergill & Hartung *v.* Russian Transport & Insurance Co. (1927); **13.** *Corpns.* No. 1544b

Feversham Settled Estate (1938); **30.** *Land Imp.* No. 147a
Few *v.* Goodchild (Arthur G.) & Sons, Ltd. (1932); **34.** *Mast & S.* No. 3748b
Ffrost *v.* Stevenson (Aus.); **24.** *Extrdn.* p. 46
Fialho *v.* Simond & Co., Ltd. (1937); **43.** *Trade Mks.* No. 676a
Fiat (England), Ltd. *v.* Williams (1932); **28.** *Inc. T.* No. 214b
Fickling *v.* MacFadyen (Can.); **32.** *Lien*, p. 26
Ficowich *v.* Maleshchak (Can.); **2.** *Animals*, pp. 56, 57
Fidelity Lumber Co. *v.* Roote (Can.); **7.** *B. of Sale*, p. 11
Fidelity Oil & Gas Co. *v.* Janse Drilling Co. (Can.) **3.** *Bank.* p. 30
Fidelity Phenix Fire Insurance Co. of New York *v.* McPherson (Can.); **17.** *Dep.* p. 83
Fidelity Trust Co. *v.* Terminal Land & Investment Co. (Can.); **6.** *B. of Exch.* p. 13
Fidelity Trust Co. of Ontario *v.* Purdom & Northern Life Assurance Co. of Canada (Can.); **20.** *Eqy.* p. 29
Fidler *v.* Barnes (Can.); **3.** *Bank.* p. 27
Field *v.* Allen (1842); **1.** *Agcy.* No. 1385a
— *v.* Canadian National Ry. Co. (Can.); **28.** *Injon.* p. 149
— *v.* David Spencer, Ltd. (Can.); **36.** *Negl.* p. 4
— *v.* London & Western Trusts Co., Ltd. (Can.); **44.** *Wills*, p. 42
— *v.* Peckett (No. 3) (1861); **24.** *Exors.* No. 7190a
— *v.* Poplar Borough (1929); **33.** *L. G.* No. 508a
— *v.* Sandwell Park Colliery Co., *Re* Sandwell Park Colliery Co. (1929); **10.** *Coys.* No. 5036b
Fielder *v.* Bannister (Can.); **19.** *Easmt.* p. 9; **30.** *L. & T.* p. 45
Fielding & North of Scotland Mortgage Co., *Re*, *Re* Land Titles Act (Can.); **35.** *Mtge.* p. 42
Fields *v.* Fields (Can.); **11.** *Confl.* p. 52
— *v.* Livingston & Wightman (Can.); **21** *Exon.* p. 52
— (Doe d.) *v.* McKay (Can.); **38.** *Real Prop.* p. 98
— *v.* Northland Co. (Can.); **21.** *Exon.* p. 44
Fife *v.* Hrapko & Lutzak (Can.); **40.** *S. Land*, p. 10
Fife & West Lothian County Councils *v.* London & North Eastern Ry. Co. & Anglo-Scottish Railways Assessment Authority (1933); **38.** *Rates*, No. 800b
Fife Assessor *v.* Dunfermline District Committee (Scot.); **38.** *Rates*, p. 73
— *v.* Wemyss's Trustees (Scot.); **38.** *Rates*, p. 52
Fife County Council *v.* Arbuckle (Scot.); **33.** *L. G.* p. 10
Filer *v.* Meyers & Canadian National Rys. (Can.) **21.** *Exon.* p. 43
Fillion *v.* New Brunswick International Paper Co. (Can.); **25.** *Fish*, p. 1
— *v.* O'Neill (Can.); **36.** *Negl.* p. 25
Filmer *v.* Burnby (1841); *Pract.* No. 2598a
Filteau & De Roussy *v.* Nesbitt (Can.); **1.** *Agcy.* p. 75
Finance Act (Northern Ireland), 1934, Sect. 3, *Re*, *Re* Government of Ireland Act, 1920, Reference Under (1936); **17.** *Dep.* No. 716d
Finance Minister *v.* Burke-Roche, *Re* Clapham (Can.); **21.** *E. D.* p. 21
Finance Minister *v.* Caledonian Insurance Co., *Re* Land Registry Act & Higginson (Can.); **21.** *E. D.* p. 21
— *v.* Smith (1927); **28.** *Inc. T.* No. 99g
Finch *v.* Martin, *Re* Jefferies (1936); **37.** *Perps.* No. 740a
— *v.* —, *Re* Jefferys (1938); **40.** *Sttlmts.* No. 2989a
— *v.* Risley (1593); **38.** *Pub. Auth.* No. 436a
Finch *v.* Stamp Duties Comrs. (N.Z.); **21.** *E. D.* p. 3
Findlay *v.* Beetar (S. Af.); **4.** *Bkpcy.* p. 16
— *v* Blaylock (Scot.); **42.** *Tort.* p. 79
— *v.* Knight (S. Af.); **32.** *Libel*, p. 10
— *v.* Menzies (Can.); **21.** *Exon.* pp. 46, 47
— *v.* Newman, Hender & Co., Ltd. (1937); **24.** *Fact.* No. 68b
— *v.* Rose (Can.); **11.** *Confl.* p. 30
Findley *v.* Elliott (Aus.); **20.** *Elect.* p. 4
Fingard *v.* Merchants Casualty Insurance Co. (Can.); **1.** *Agcy.* p. 88
Fingland & Mitchell *v.* Howie (Scot.); **31.** *L. & T.* p. 64
Finkelstein *v.* Billig (1930); **36.** *Pats.* No. 3351a
Finland S.S. Owners *v.* Cornish Rose S.S. Owners, The Cornish Rose (1936); **1.** *Adm.* No. 1152c; **22.** *Evid.* No. 1624a
Finlay *v.* Black (Can.); **1.** *Agcy.* p. 104; **8.** *Clubs*, p. 100
Finlay (James) & Co. *v.* N. V. Kwik Hoo Tong Handel Maatschappij (1928); **17.** *Damgs.* No. 347a
— *v.* — (1929); **17.** *Damgs.* No. 347a; **39.** *S. Goods*, Nos. 885a, 1814a, 2519b
Finlayson *v.* Balfour, White & Co., *Re* Thornton Davidson & Co. (Can.); **5.** *Bkpcy.* p. 83
— *v.* Copeland Flour Mills (Can.); **7.** *Bounds. & F.* p. 18
— *v.* Powell (Can.); **19.** *Educ.* p. 43
— *v.* Silzer (Can.); **32.** *Lien*, p. 22
Finn, *In the Estate of* (1935); **44.** *Wills*, No. 769a
— *v.* R. (N.Z.); **11.** *Const. L.* p. 64
Finn (Wimbledon Revenue Officer) *v.* Kerslake (1931); **38.** *Rates*, No. 226q
Finnemore *v.* Underwood (T.), Ltd. (Can.); **31.** *L. & T.* p. 51
Finney *v.* Birkenhead Corpn. (1936); **26.** *Hghys.* No. 2279a
Finnie *v.* Carroll (Aus.); **36.** *Negl.* p. 32
Finnigan *v.* Northwest S.S. (Can.); **1.** *Adm.* p. 22
Fino *v.* South African Railways & Harbours (S. Af.); **2.** *Arbn.* p. 84
Finsbury Borough Council, *Ex p.*, R. *v.* Minister of Health (1934); **38.** *Pub. Hlth.* No. 502q
Finsbury Case (1892); **20.** *Elect.* No. 1290a
Finska Angfartygs A/B *v.* Baring Bros. & Co., Ltd. (1938); **12.** *Contr.* No. 3869b; **22.** *Evid.* No. 6957b
Finucane *v.* Standard Bank of Canada (Can.); **3.** *Bank.* p. 31
Firbeck Main Collieries, Ltd. *v.* Hopewell (1932); **34.** *Mast. & S.* No. 3291c
Fireman's Fund Insurance Co. *v.* Western Australian Insurance Co., Ltd. (1927); **29.** *Insce.* No. 720a
Firmstone *v.* Wheeley (1844); **7.** *Bounds. & F.* No. 258a
First Co-operative Investment Trust, Ltd. *v.* General Radio Co., Ltd., *Re*, General Radio Co., Ltd. (1929); **10.** *Coys.* No. 6477a
First Garden City *v.* Bonham-Carter (1928); **9.** *Coys.* No. 3959a
First Mortgage Co. *v.* Noud (Can.); **1.** *Action*, p. 14
First Mortgage Co-operative Investment Trust, Ltd. *v.* Friendly Societies, Chief Registrar (1933); **28.** *Ind. Soc.* No. 27c
First National Bank of Minneapolis *v.* Mann & Conway (Can.); **7.** *B. of Sale*, pp. 5, 9, 11
First Russian Insurance Co. *v.* London & Lancashire Insurance Co. (1928); **29.** *Insce.* No. 712a
Firstbrook Boxes, Ltd., *Re* (Can.); **10.** *Coys.* p. 89

Firth, *Re*, Sykes *v.* Ball (1938); **40.** *Sttlmts.* No. 2149b
—, *Re*, — *v.* Hall (1938); **40.** *Sttlmts.* No. 2149b
— *v.* Halloran (Aus.); **34.** *Mines*, p. 207
Fischel & Co. & Mann & Cook, *Re* (1919); **2.** *Arbn.* No. 1822b
Fischer *v.* Kamala Naicker (1860); **30.** *L. & T* No. 845a
Fish *v.* Higgins (Can.); **7.** *B. of Sale*, p. 6
Fish Meal Co. *v.* Nickerson (Can.); **31.** *L. & T.* p. 62
Fishenden *v.* Higgs & Hill, Ltd. (1935); **19.** *Easmt.* No. 1444b
Fisher, *Re* (1850); **33.** *Lunat.* No. 1009a
— *Re*, *Ex p.* Brutton (1845); **4.** *Bkpcy.* No. 4704a
— *v.* Automobile Finance Co. of Australia, Ltd. (Aus.); **32.** *Lien*, pp. 20, 21
— *v.* Cox (Can.); **7.** *Bldg. Conts.* p. 24
— *v.* Dick & Co., Ltd. (1938); **34.** *Mast. & S.* No. 434a
— *v.* Johnston (Can.); **38.** *Real Prop.* p. 99
— *v.* Kowslowski (Can.); **25.** *Fraud. Conv.* p. 15
— *v.* Luke (Aus.); **35.** *Mistake*, p. 13
— *v.* Matson & Co. (N.Z.); **2.** *Arbn.* pp. 92, 97
— *v.* Oldham Corpn. (1930); **13.** *Corpns.* No. 1262b; **34.** *Mast. & S.* No. 155a; **38.** *Pub. Auth.* No. 298a
— *v.* St. John Lumber Co. (Can.); **1.** *Agcy.* p. 66
— *v.* St. John Opera House Co. (Can.); **9.** *Coys.* p. 54
— *v.* Wilkie, Ltd. (Can.); **4.** *Bkpcy.* p. 11
Fisher, Ltd. *v.* Eastwoods, Ltd. (1936); **12.** *Contr.* No. 2911a
Fisher, Simmons & Rodway (Ppty.), Ltd. *v.* Munesari (S. Af.); **35.** *Money*, p. 14
Fisheries Comrs. *v.* Button (Aus.); **25.** *Fish* p. 4
Fishleigh *v.* London & Western Trusts Co., Ltd. (1930); **44.** *Wills*, p. 42
Fismer *v.* Thornton (S. Af.); **21.** *Exon.* p. 44
Fitchell *v.* Lawton (Can.); **1.** *Agcy.* p. 81
Fitchett *v.* Fitchett (Aus.); **27.** *H. & W.* p. 71
— *v.* Holmes & Co., Ltd. (1937); **34.** *Mast. & S.* No. 3025e
Fitchitt *v.* Hreno (Can.); **33.** *Mags.* p. 35
— *v.* Soreck (Can.); **33.** *Mags.* p. 35
FitzGeorge *v.* FitzGeorge, *Re* Hamilton (1921); **5.** *Bkpcy.* No. 5909a
Fitzgerald, *Re* (Ir.); **18.** *Discy.* p. 12; **22.** *Evid.* p. 14
— *v.* Apperley (Can.); **32.** *Lien*, pp. 24, 25, 27
— *v.* Buckley (Can.); **1.** *Agcy.* p. 78
— *v.* Lona S.S. Owners (1932); **41.** *Ship.* Nos. 3623a, 3634b
— *v.* McMorrow (Can.); **5.** *Bkpcy.* pp. 61, 82
— *v.* National Bank (1929); **20.** *Eqy.* Nos. 2046a, 2057a
— *v.* White, *Re* Fitzgerald's Settlement (1887); **5.** *Bkpcy.* No. 9538b
Fitzgerald's Settlement, *Re*, Fitzgerald *v.* White (1887); **5.** *Bkpcy.* No. 9538b
Fitzgibbon, *Re* (Can.); **8.** *Char.* p. 79
— *v.* A.-G. of Irish Free State (Ir.); **17.** *Dep.* p. 87
— *v.* Duggan (Can.); **35.** *Mtge.* p. 36
Fitzpatrick, *Re*, Deane *v.* De Valera (1934); **44.** *Wills*, No. 5356a
— *v.* Bate (1934); **39.** *Revenue*, No. 114a
— *v.* Fitzpatrick (Can.); **27.** *H. & W.* p. 73
— *v.* Gilbert (Aus.); **20.** *Eqy.* p. 30
— *v.* Michel (Aus.); **35.** *Misrep.* p. 3
— *v.* R. (Can.); **16.** *Cr. Pract.* p. 26; **17.** *Dep.* p. 75
— *v.* Schram (Can.); **36.** *Negl.* p. 37
Fitzsimmons *v.* Glasgow Corpn. (Scot.); **34.** *Mast. & S.* p. 106
Fitzsimons *v.* Teskey (Can.); **13.** *Corpns.* p. 28
Fiumana Societa di Navigazione *v.* Bunge & Co., Ltd. (1930); **41.** *Ship.* Nos. 3099b, 4313a, 4313c
Fladgate *v.* Gore, *Re* Vander Byl (1931); **37.** *Powers*, No. 505a
Flanagan *v.* Ackers Whitley & Co. (1926); **34.** *Mast. & S.* No. 2317a
— *v.* Chapman (Can.); **1.** *Agcy.* p. 84
— *v.* England (Can.); **21.** *Exon.* p. 60
Flanaghan, *Re* (N.Z.); **24.** *Exors.* p. 40
Flannaghan *v.* Healy (Can.); **12.** *Contr.* p. 27
Flatau, Dick & Co. *v.* Keeping (1931); **1.** *Agcy.* No. 2546a
Flather *v.* Hood (1928); **2.** *Agric.* No. 24b
Flatman *v.* Oatey (1937); **42.** *Str. Traf.* No. 232p
— *v.* Poole (1937); **42.** *Str. Traf.* No. 232p
Flavell *v.* Lange (N.Z.); **19.** *Easmt.* p. 10
Fleck *v.* Workmen's Compensation Board (Can.); **34.** *Mast. & S.* p. 31
Fleetwood's Policy, *Re* (1926); **27.** *H. & W.* No. 1226a
Fleetwood-Hesketh *v.* Fleetwood-Hesketh (1929), **28.** *Inc. T.* No. 367a
— *v.* Inland Revenue Comrs. (1936); **39.** *Revenue*, No. 643a
Fleishman *v.* Allan & Sons (Can.); **21.** *Exon.* p. 43
Fleming *v.* Carmichael, *Re* Knox (1937); **8.** *Char.* No. 1395b
— *v.* Doig (J. S.) (Grimsby), Ltd. (1921); **2.** *Arbn.* No. 26b
— *v.* Duncan (Can.); **12.** *Contr.* p. 12
— *v.* Eclipse Laundry Co. (N.Z.); **9.** *Coys.* p. 16
— *v.* Fleming (Can.); **11.** *Confl.* p. 49
— *v.* Horniman (1928); **11.** *Confl.* Nos. 48a, 54a; **23.** *Exors.* No. 3171a
— *v.* Livingstone (Can.); **16.** *Courts*, p. 9
— *v.* McDougall (Can.); **35.** *Mtge.* p. 42
— *v.* McNair (1812); **6.** *B. of Exch.* No. 691b
— *v.* Sandwich Town (Can.); **38.** *Pub. Hlth.* p. 15
— *v.* Sisters of St. Joseph (Can.); **34.** *Med.* p. 187
— *v.* West (Can.); **21.** *Estpl.* p. 38
— *v.* Wilkinson (1925); **28.** *Inc. T.* Nos. 131a, 446a
Flemings Music House *v.* Wilkinson (Can.); **39.** *S. Goods*, p. 58
Fletcher, *Ex p.* (1848); **43.** *Trusts*, No. 2609a
—, *Ex p.*, *Re* Jobherns (1835); **38.** *Real. Prop.* No. 183a
—, *Re*, *Ex p.* Fletcher (1848); **43.** *Trusts*, No. 2609a
— *v.* Campbell (Can.); **1.** *Agcy.* p. 87
— *v.* Claggett (Can.); **32.** *Lien*, p. 22
— *v.* Fletcher (1928); **27.** *H. & W.* Nos. 6124c, 6300a
— *v.* — (Can.); **27.** *H. & W.* p. 43
— *v.* Hudson (1881); **33.** *L. G.* No. 27b
— *v.* Ilkeston Corpn. (1931); **38.** *Pub. Hlth.* Nos. 481a, 513a
— *v.* Intestate Estates Curator, *Re* Mallows (Aus.); **22.** *Evid.* p. 21
— *v.* Kondratiuk (Can.); **22.** *Evid.* p. 7
— *v.* Lyons (Can.); **2.** *Agric.* p. 2
— *v.* Mullen (Can.); **36.** *Negl.* p. 16
— *v.* Nahayowsky (Can.); **3.** *Basty.* p. 60
— *v.* Nott (Aus.); **37.** *Police*, p. 10
— *v.* Robertson (Scot.); **2.** *Arbn.* pp. 87, 98
— *v.* Sinclair Iron Co., Ltd. (1928); **34.** *Mast. & S.* Nos. 2668b, 2890d
— *v.* Thomas (Can.); **36.** *Negl.* p. 33
Fletcher & Fletcher, *Re* (Can.); **4.** *Bkpcy.* p. 16
Fletcher (W. & R.), Ltd. *v.* Geelong Harbour Trust Comrs. (Aus.); **44.** *Waters*, p. 6
Fletcher, Turney & Hanbury, Ltd. *v.* Colquhoun, De Wolf & Co., Ltd. (Can.); **18.** *Discy.* p. 22

Fletcher's Settlement Trusts, *Re*, Medley *v.* Fletcher (1936); **20.** *Eqy.* No. 1516a
Flexlume Sign Co. *v.* Macey Sign Co. (Can.); **16.** *Cr. Pract.* p. 26
Flexman *v.* Corbett (1930); **31.** L. & T. Nos. 2498a, 2501a, 2501b, 2501c, 2526a, 2537b
Flick *v.* Brisbin (Can.); **17.** *Dep.* p. 42
Flinders *v.* Jones (A. A.) & Shipman, Ltd. (1932); **34.** *Mast. & S.* No. 3033c
Flinn *v.* Canadian Surety Co. (Can.); **29.** *Insce.* p. 46
Flint *v.* Commonwealth, The (Aus.); **17.** *Dep.* p. 62
— *v.* Lovell (1935); **36.** *Negl.* No. 835a
Flockton *v.* Bunning (1868); **24.** *Exors.* No. 7169a
Flood, *Re* (Aus.); **11.** *Confl.* p. 36
— *v.* Monargo Mines, Ltd. (Can.); **34.** *Mines*, p. 199
— *v.* Moore (Can.); **43.** *Trov.* p. 56
— *v.* Pritchard (1879); **40.** *S. Land.* No. 1458a
Flora, La (1805); **2.** *Aliens*, No. 440a
Florence Mining Co., Ltd. *v.* Cobalt Lake Mining Co., Ltd. (Can.); **17.** *Dep.* p. 57
Flour & Grain Exchange, Ltd., *Re*, *Ex p.* Rix (Aus.); **10.** *Coys.* p. 75
Flower *v.* Ebbw Vale Steel, Iron & Coal Co. (1934); **30.** *Jdgmts.* No. 517b; **36.** *Negl.* No. 736b
— *v.* Ebbw Vale Steel, Iron & Coal Co., Ltd. (1935); **30.** *Jdgmts.* No. 517b; **36.** *Negl.* No. 736b
— *v.* Gardner (1857); **22.** *Evid.* No. 4521a
— *v.* Lyme Regis Corpn. (1921); **4.** *Bkpcy.* No. 1775a; **5.** *Bkpcy.* No. 8882a
— *v.* Prechtel (1934); **23.** *Exors.* No. 6850a
— *v.* Sanderson (Can.); **1.** *Agcy.* p. 76
Flowerday *v.* Auckland City Corpn. (N.Z.); **34.** *Mast. & S.* p. 39
Floyd *v.* Edmonton City Dairy, Ltd. (Can.) (1934); **42.** *Tort.* p. 79; **43.** *Trade*, p. 1
Flynn *v.* Flynn (Ir.); **38.** *Real Prop.* p. 91
— *v.* Irish Sugar Manufacturing Co. (Ir.); **36.** *Negl.* p. 37
Foam Lake (Town) *v.* Insinger Rural Municipality, *Re* Balasanovich (or Bailey) (Can.); **37.** *Poor L.* p. 18
Fogarty *v.* Heintzman & Co. (Can.); **39.** *S. Goods*, p. 58
Fogg *v.* Eastwood, *Re* Eiser's Will Trusts (1937); **5.** *Bkpcy.* No. 5838a; **23.** *Exors.* No. 5057a
Foggo *v.* Hill (Scot.); **25.** *Gaming*, p. 33
Fogo *v.* Fogo's Trustee (Scot.); **40.** *Sttlmts.* p. 38
Folan *v.* Lee (Ir.); **31.** *L. & T.* p. 94
Foley, *Ex p.*, *Re* Windeyer, Fawl & Co. (Aus.); **42.** *Solrs.* p. 8
— *v.* Cannon (Aus.); **40.** *Sttlmts.* p. 35
— *v.* Classique Coaches, Ltd. (1934); **39.** *S. Goods*, No. 446a; **40.** *S. Land*, No. 2764a
— *v.* Galvin (Ir.); **31.** *L. & T.* p. 89
— *v.* Moodie (Can.); **18.** *Distr.* p. 32
— *v.* Sangster (Can.); **30.** *Juries*, p. 31
Foley's Estate, *Re* (Ir.); **28.** *Inc. T.* p. 6
Folkes *v.* King (1923); **1.** *Agcy.* No. 495a
Folsetter *v.* Yorkshire & Canadian Trust Co. (Can.); **44.** *Wills*, p. 12
Fong, *Ex p.*, *Ex p.* You. *Ex p.* Chalifoux (Can.); **16.** *Cr. Pract.* p. 27; **17.** *Dep.* p. 56
Fong (Joe), *Re* (Can.); **2.** *Aliens*, p. 50
Fong *v.* Boehler (Can.); **43.** *Trade*, p. 5
— *v.* Kerwin (Can.); **12.** *Contr.* p. 39
Fong Young *v.* Shing Wah (Can.); **17.** *Damgs.* p. 21; **18.** *Discy.* p. 8
Fonseca *v.* Schultz (Can.); **38.** *Rates*, p. 86
Foong Tai & Co. *v.* Buchheister & Co. (1908); **1.** *Adm.* No. 352b
Foord's Case (1595); **19.** *Eccl.* Nos. 3614, 3615
Forbes, *Ex p.*, *Re* Milner (Can.); **4.** *Bkpcy.* p. 39
Forbes, *Re*, Harrison *v.* Commis. (Can.); **44.** *Wills*, p. 25
—, *Re*, Public Trustee *v.* Hadlow (1934); **44.** *Wills*, Nos. 7599a, 7601a
— *v.* A.-G. for Manitoba (1937); **17.** *Dep.* No. 135h
— *v.* Blakeny & Son (Can.); **41.** *Ship.* p. 51
— *v.* Matthew (Scot.); **3.** *Basty.* p. 63
— *v.* Public Trustee, *Re* Tollemache (1930); **21.** *E. D.* No. 166a
— *v.* Rafuse (Can.); **5.** *Bkpcy.* p. 85
— *v.* Ralli (Ind.); **21.** *Estpl.* p. 36
— *v.* Wasson (Can.); **16.** *Courts*, p. 11
Forbes & Toronto, *Re* (Can.); **11.** *Comp. Pche.* p. 6
Forby *v.* Laucke (Aus.); **36.** *Negl.* p. 15
Ford *Re*, *Ex p.* Hawkins (1929); **5.** *Bkpcy.* No. 6882a
—, *Re*, *Ex p.* Trustee *v.* Restell, Brown & Co. (1929); **5.** *Bkpcy.* No. 6882a
—, *Re*, *Ex p.* Trustee, Powell's Case (1929); **5.** *Bkpcy.* No. 6882b
—, *Re*, *Ex p.* Trustee, Restall, Brown & Clennell's Case (1929); **5.** *Bkpcy.* No. 6882a
—, *Re*, Trustee *v.* Powell (1929); **5.** *Bkpcy.* No. 6882b
— *v.* Dabbs (1843); **5.** *Bkpcy.* No. 8025a
— *v.* Radford (1920); **1.** *Action*, No. 599a; **12.** *Contr.* No. 2089a
— *v.* Wellerman Brothers (1930); **34.** *Mast. & S.* No. 3455c
Ford & Canadian Pacific Ry. Co., *Re* (Can.); **11.** *Comp. Pche.* p. 17
Ford (H.) & Co. *v.* Compagnie Furness (France) (1922); **2.** *Arbn.* No. 165b
Ford & Hardy, *Re* (Can.); **17.** *Deeds*, p. 28
Ford City *v.* Ford Motor Co. of Canada, Ltd. (Can.); **38.** *Rates*, p. 66
Ford Motor Co. *v.* Union S.S. Co. (Can.); **8.** *Carr.* p. 26
Ford's Estate, *Re* (Can.); **42.** *Time*, p. 75
Ford's Settled Estate, *Re* (1869); **40.** *Sttlmts.* No. 2900a
Forder, *Re*, Forder *v.* Forder (1927); **5.** *Bkpcy.* No. 5935a
Forder (J. C.) & Son, Ltd. *v.* Hartington (1929); **1.** *Agcy.* No. 589a
Fordham *v.* Webber, Cambridge County Council Case (1925); **20.** *Elect.* No. 1593a
Fordorchuk *v.* Car & General Insurance Corpn., Ltd. (Can.); **29.** *Insce.* p. 25
Fordree *v.* Barrell (1932); **31.** *L. & T.* No. 7103b
Fordyce *v.* Shott's Iron Co., Ltd. (1929); **34.** *Mast. & S.* No. 2999a
— *v.* — (Scot.); **34.** *Mast. & S.* p. 84
Foreglen Co-operative Agricultural Society, Ltd., *Re* (Ir.); **28.** *Ind. Soc.* p. 129
Foreign Insurance Cos. Act, 1932, *Re* (Can.) (1933); **29.** *Insce.* p. 62
—, *Re* (Can.) (1934); **9.** *Coys.* p. 3
Foreman *v.* McGowan (Can.); **32.** *Lien*, p. 26
— *v.* Smith (Aus.); **2.** *Animals*, p. 65
Foreman & Ellams, Ltd. *v.* Blackburn (1928); **39.** *S. Goods.* No. 1812a
Foren & Christian, *Re* (Can.); **30.** *Intox.* p. 12
Foreshew *v.* Public Trustee, *Re* Neuburger's Settlement (1923); **2.** *Aliens*, No. 215g
Forest of Dean District (Coal Mines) Scheme, 1930, *Re*, Cannop Colliery Co., Ltd. *v.* Executive Board (1937); **34.** *Mines*, No. 327v
Forest of Dean Freighters' Assocn. *v.* Great Western Ry. Co. (1928); **8.** *Carr.* Nos. 1237f, 1237g
Forestry Pulp & Paper Co. of Australia, Ltd., *Ex p.*, R. *v.* Registrar of Titles (Aus.); **38.** *Real Prop.* p. 93

Forewood *v.* Dicton (1615); **7.** *Bonds*, No. 456
Forman, *Re* (Can.); **37.** *Poor L.* p. 18
— *v.* Union Trust Co., Ltd. (Can.); **17.** *Deeds*, p. 29
Forman & Fowkes *v.* Minister of Finance, *Re*, Leiser (Can.); **21.** *E. D.* p. 20
Fornyade Rederiaktiebolaget Commercial *v.* Blake (1931); **41.** *Ship.* No. 4026a
Forrest, *Re*, Carr *v.* Forrest (1931); **44.** *Wills*, No. 2249a
Forrest *v.* Metropolitan Meat Industry Board (Aus.); **38.** *Pub. Hlth.* p. 32
— *v.* Solloway (Can.); **12.** *Contr.* p. 4
— *v.* Washing (Aus.); **18.** *Distr.* p. 29
Forrester *v.* Forrester (Ind.); **27.** *H. & W.* p. 54
— *v.* Great Western Ry. Co. (1935); **8.** *Carr.* Nos. 1509, 1602, 1651
— *v.* Torrensford Sand & Gravel Pits, Ltd. (Aus.); **34.** *Mast. & S.* p. 101
Forrester's Curator *v.* Ness & Co. (Scot.); **34.** *Mast. & S.* p. 116
Forsberg *v.* Uglum (Can.); **27.** *H. & W.* p. 14
Forshaw, *Re*, Wallace *v.* Middlesex Hospital (1934); **8.** *Char.* No. 1395b
Forsikringsakt National (of Copenhagen) *v.* A.-G. (1925); **10.** *Coys.* No. 7490b
Forster, *Re*, Gellatly *v.* Palmer (1938); **8.** *Char.* Nos. 30a, 105a
— *Re*, Somerville *v.* Oldham (1929); **40.** *Stllmts.* No. 3143c
— *v.* Blyth Shipbuilding & Dry Docks Co., *Re* Blyth Shipbuilding & Dry Docks Co. (1926); **7.** *Bldg. Conts.* No. 319a
— *v.* De Carteret, *Re* De Carteret (1933); **8.** *Char.* No. 21a
— *v.* Page (1929); **29.** *Insce.* No. 3217b
— *v.* Toronto Ry. Co. (Can.); **8.** *Carr.* p. 7
— *v.* Williams Deacon's Bank, Ltd. (1935); **43.** *Trusts*, No. 1422a
Forsyth, *Re* (Can.); **22.** *Evid.* p. 9
—, *Re*, Wyatt *v.* Forsyth (Aus.); **23.** *Exors.* p. 27
— *v.* Bury (Can.); **21.** *Estpl.* p. 27
Forsyth & Richardson *v.* Hall (Can.); **21.** *Exon.* p. 50; **24.** *Exors.* p. 40
Fort Erie Village & Buffalo & Fort Erie Public Bridge Co., *Re* (Can.); **38.** *Rates*, p. 76; **44.** *Waters*, p. 5
Fort Frances Pulp & Paper Co. *v.* Spanish River Pulp & Paper Co. (Can.) (1928); **1.** *Action*, p. 6; **42.** *Stats.* p. 28
— *v.* Spanish River Pulp & Paper Mills, Ltd. (Can.) (1931); **20.** *Eqy.* p. 21; **42.** *Stats.* pp. 28, 29
— *v.* Telegram Printing Co. (Can.); **21.** *Exon.* p. 46
Forth Conservancy Board *v.* Inland Revenue Comrs. (1931); **28.** *Inc. T.* No. 104b
Forth Shipbreaking Co., Ltd., Petitioners (Scot.); **10.** *Coys.* p. 91*
Fortier *v* Lambe (Can.); **17.** *Dep.* p. 53
— *v.* R. (Can.); **14.** *Crim.* p. 58
Fortin *v.* Caron (Can.); **19.** *Easmt.* p. 13
— *v.* Quebec Liquor Commission (Can.); **17.** *Dep.* p. 59
Fortin & Hearst Roman Catholic Separate School Trustees, *Re* (Can.); **19.** *Educ.* p. 39
Fortuna, The (1795); **2.** *Aliens*, No. 419a
Fortune *v.* Cockburn (Can.); **7.** *Bonds*, p. 13
Fosbroke-Hobbes *v.* Airwork, Ltd. & British American Air Services, Ltd. (1937); **42.** *Str. Traf.* Nos. 260g, 260h
Foscolo, Mango & Co., Ltd. *v.* Stag Line, Ltd. (1931); **41.** *Ship.* Nos. 3162a, 3179a, 3179b, 3193a, 3193b
Foshay *v.* Barnes (Can.); **31.** *L. & T.* p. 61
Foss *v.* Sterling Loan (Can.); **21.** *Exon.* p. 51
Foster, *Re* (N.Z.); **23.** *Exors.* p. 2
Foster,, *Re*, Hudson *v.* Foster (1938); **29.** *Insce.* No. 3289b
—, *Re*, Hudson *v.* Foster (No. 2) (1938); **29.** *Insce.* No. 3067a
— *v.* Birmingham, Wolverhampton & Dudley Ry. Co. & Birmingham & Oxford Junction Ry. Co. (1854); **28.** *Injon.* No. 738a
— *v.* Crabb (1852); **38.** *Real Prop.* No. 537a
— *v.* Damyon (Aus.); **20.** *Electric*, p. 16
— *v.* Driscoll (1929); **6.** *B. of Exch.* Nos. 568a, 2455a, 2462a, 3121a, ; **11.** *Confl.* No. 732a; **39.** *S. Goods*, No. 1376a
— *v.* Edwin Penfold & Co., Ltd. (1934); **34.** *Mast. & S.* No. 2349c
— *v.* Foster (Can.); **27.** *H. & W.* p. 22
— *v.* —, *Re* Egton Settled Estate (1931); **40.** *Stllmts.* No. 2602a
— *v.* Foster's Trustees (Scot.); **11.** *Confl.* p. 31
— *v.* H.M. Advocate (Scot.); **14.** *Crim.* p. 44
— *v.* Halifax (Can.); **33.** *L. G.* p. 8
— *v.* Heintzman & Co. (Can.); **12.** *Contr.* p. 28; **17.** *Damgs.* p. 14
— *v.* Lyons & Co. (1927); **19.** *Easmt.* No. 898a
— *v.* Morden (Can.); **35.** *Mtge.* p. 49
— *v.* Reaume (Can.); **1.** *Agcy.* p. 74; **2.** *Arbn.* p. 103; **21.** *Estpl.* p. 26
— *v.* Redgrave (Can.); **36.** *Negl.* p. 31
— *v.* Scunthorpe & District Billposting Co. (1932); **34.** *Mast. & S.* Nos. 3288j, 3288m
— *v.* Smith (1856); **2.** *Animals*, No. 476a
— *v.* Wyles, *Re* Wyles (1938); **23.** *Exors.* No. 4764c
Foster's Case (1585); **31.** *L. & T.* No. 4978a
Fotheringham *v.* Alloa Coal Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 139
Foucar & Co. *v.* Mudaliar (Ind.); **1.** *Agcy.* p. 85
Foulds *v.* Bowler (Can.); **22.** *Evid.* p. 10
— *v.* Chambers (Can.); **21.** *Exon.* p. 58
— *v.* Curtelett (Can.); **27.** *H. & W.* p. 14
Foulds Estate, *Re* (Can.); **44.** *Wills*, p. 16
Fountain, *Re* (Can.); **2.** *Agric.* p. 25
Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937); **8.** *Carr.* Nos. 1497, 1552
— *v.* Foster & Co., Ltd. (1936); **8.** *Carr.* Nos. 1516, 1697, 1700, 1705
Fournier *v.* Canadian National Ry. Co. (1927); **17.** *Damgs.* No. 592a
Fournier *v.* McKenna (Can.); **3.** *Bailmt.* p. 8
— *v.* R. (Can.); **15.** *Crim.* p. 102
Fowke *v.* Fowke (1938); **27.** *H. & W.* No. 1949a
Fowkes *v.* Leicestershire Colliery & Pipe Co., Ltd. (1931); **34.** *Mast. & S.* Nos. 3668d, 3852a
— *v.* Minister of Finance (Can.); **21.** *E. D.* p. 16
Fowler *v.* Carr (1936); **27.** *H. & W.* No. 175a
— *v.* Churchill (1843); **21.** *Exon.* No. 2311a
— *v.* Commercial Timber Co., Ltd. (1930); **9.** *Coys.* No. 3491a; **34.** *Mast. & S.* No. 739a
— *v.* Fowler (1864); **8.** *Char.* No. 769a
Fowler & Andrews *v.* Spallumcheen Township (Can.); **35.** *Mistake*, p. 7; **42.** *Stats.* p. 27
Fowler (B. P.), Ltd., *Re* (1938); **10.** *Coys.* No. 6442b
Fowlers (Aberdeen), Ltd. (Scot.); **9.** *Coys.* p. 11
Fox, *Re*, Lester *v.* Porter (Can.); **4.** *Bkpcy.* p. 10; **5.** *Bkpcy.* p. 70
— *v.* Allchurch (Aus.); **38.** *Pub. Hlth.* p. 16
— *v.* Charlton (1865); **30.** *Jdgmts.* No. 448a
— *v.* Equity Trustees, Executors & Agency Co., Ltd., *Re* Maybelle (Aus.); **44.** *Wills*, p. 51
— *v.* Great Western Sawmills (1932); **34.** *Mast. & S.* No. 3300b
— *v.* London, Midland & Scottish Ry. Co. (Ir.); **2.** *Animals*, p. 69
— *v.* Marshall (1938); **31.** *L. & T.* No. 7359g
— *v.* Nipissing Ry. Co. (Can.); **25.** *Fraud. Conv.* p. 15

Fox *v.* Price (1926); **34.** *Mast. & S.* No. 3162a
— *v.* Toronto General Trusts Corpn. (Can.); **6.** *B. of Exch.* p. 21
Fox & Consolidated Mining & Smelting Co. of Canada, *Re* (Can.); **2.** *Arbn.* p. 99
Fox & Son *v.* Morrish, Grant & Co. (1918); **1.** *Agcy.* No. 1243b
Fox & Windsor Corpn., *Re* (Can.); **28.** *Inc. T.* p. 27
Fox's Estate, *Re*, Dawes *v.* Druitt (1937); **44.** *Wills*, No. 10,157a
—, *ite*, Phœnix Assurance Co., Ltd. *v.* Fox (1937); **44.** *Wills*, No. 10,157a
Fox's Glacier Mints, Ltd. *v.* Joblings (1932); **43.** *Trade Mks.* No. 1427a
Foxall *v.* Shobrook (Can.); **43.** *Tresp.* p. 52
Foxcroft & London, *Re* (Can.); **38.** *Pub. Hlth.* p. 14
Foxton *v.* Hamilton Steel & Iron Co., Ltd. (Can.); **39.** *S. Goods*, p. 36
Foy, *In the Goods of* (1839); **11.** *Confl.* No. 580a
— *v.* Merrick (Can.); **3.** *Auct.* p. 2
Fraher *v.* Waterford County Council (Ir.); **26.** *Guar.* p. 10
Frame *v.* Farrand (1928); **28.** *Inc. T.* No. 540c
Franc-Strohmenger & Cowan (Inc.) *v.* Peter Robinson, Ltd. (1930); **36.** *Pats.* No. 459c
France (Doe d.) *v.* Andrews (1850); **22.** *Evid.* Nos. 1413a, 1459a
France *v.* Humphreys (Aus.); **22.** *Evid.* p. 7; **30.** *Intox.* p. 9
France Fenwick & Co. *v.* Mannheim Insurance Co. (1905); **17.** *Custom*, No. 729a
— *v.* R. (1927); **11.** *Const. L.* No. 58a
France Republic of (Minister of Finance) *v.* Perry & Co. (Bow), Ltd. (1929); **9.** *Coys.* No. 4064a
Francis *v.* Bocz (Can.); **7.** *B. of Sale*, p. 10
— *v.* Francis (Can.); **11.** *Confl.* p. 48
— *v.* London Public Omnibus Co., Ltd. (1933), **34.** *Mast. & S.* Nos. 3668h, 3694c
Francis Adams, Ltd. *v.* Fishwick (1928); **9.** *Coys.* No. 3335a
Francis, Day & Hunter, Ltd. *v.* Twentieth Century Fox Corpn. (Can.); **13.** *Coprt.* p. 9
Franco *v.* Dutto (1923); **5.** *Bkpcy.* No. 8290a
Franco-Belgium Investment Co. *v.* McNamara (Can.); **21.** *Exon.* p. 60
Franco-British Ship Store Co., Ltd. *v.* Compagnie des Chargeurs Francaise (1926); **12.** *Contr.* No. 923a; **17.** *Damgs.* No. 412a
Frankau (Ronald) Productions, Ltd. *v.* Bell (1927); **12.** *Contr.* No. 546c; **42.** *Theatres*, No. 64a
Frankland *v.* M'Gusty (1830); **6.** *B. of Exch.* No. 694b
Franklin *v.* Daily Mirror Newspapers, Ltd. (1933); **18.** *Discy.* No. 1523a
— *v.* Geddes (Can.); **42.** *Str. Traf.* p. 37
— *v.* Inland Revenue Comrs. (1930); **28.** *Inc. T.* No. 674f
— *v.* Reardon (Can.); **9.** *Coys.* p. 22
Franklin & Son, Ltd., *Re* (1937); **9.** *Coys.* No. 3345b
Franklin (Thomas) & Sons, Ltd. *v.* Cameron (Aus.); **10.** *Coys.* p. 83
Franklin & Swathling's Arbitration, *Re* (1929); **2.** *Arbn.* No. 626a; **36.** *Prtnrs.* No. 952a
Frankoski *v.* Frankoski (Can.); **27.** *H. & W.* p. 43
Fraser, *Re* (1928); **33.** *Lunat.* No. 529b
— *v.* Aztec S.S. (Can.); **1.** *Adm.* pp. 7, 45, 47
— *v.* Brennan (Aus.); **39.** *Revenue*, p. 23
— *v.* Campbell (Scot.); **3.** *Basty.* p. 63
— *v.* Children's Aid Society (Can.); **36.** *Negl.* pp. 18, 38
— *v.* Cummings & Leopold (Can.); **6.** *B. of Exch.* p. 18
Fraser *v.* Douglas (Can.); **27.** *H. & W.* p. 12
— *v.* Ekstron & Massey (Can.); **29.** *Intpr.* p. 63
— *v.* Fraser (Can.) (1936); **36.** *Negl.* p. 33
— *v.* — (Can.) (1937); **43.** *Trusts.* p. 64
— *v.* Fraser & Hubbard (Can.); **43.** *Trusts*, p. 71
— *v.* Harris & Kauffman (Can.); **42.** *Str. Traf.* p. 61
— *v.* Harrison (Can.); **1.** *Agcy.* p. 78
— *v.* Humboldt Oil & Refining Co., Ltd. (Can.); **32.** *Lien*, p. 27
— *v.* Locie (Can.); **12.** *Contr.* p. 45
— *v.* McGregor, Johnston & Thomas, Ltd. (Can.); **6.** *B. of Exch.* p. 10
— *v.* McLellan (Can.); **8.** *Char.* p. 73
— *v.* Pearce (Can.); **31.** *L. & T.* p. 69
— *v.* Provincial Secretary-Treasurer (Can.); **21.** *E. D.* p. 21
— *v.* R. (Can.) (1936) S. C. R. 1; **14.** *Crim.* p. 58
— *v.* — (Can.), [1936] S. C. R. 296; **14.** *Crim.* p. 64
— *v.* Simpsons (Piccadilly), Ltd. & Platinum Products, Ltd. (1937); **36.** *Pats.* No. 2944l
— *v.* — (No. 2) (1937); **36.** *Pats.* No. 2999a
— *v.* Thomas (1852); **13.** *Cohlds.* No. 1461a
Fraser *v.* Winnipeg Electric Co. (Can.); **8.** *Carr.* p. 8
Fraser & Halpin, *Re* (Can.); **16.** *Cr. Pract.* p. 37
Fraser & Minielly, *Re* (Can.); **2.** *Agric.* p. 25
Fraser Estate, *Re* (Can.) (1932); **33.** *Lunat.* p. 13
—, *Re* (Can.) (1934); **42.** *Solrs.* p. 10
Fraser River Mining Co. *v.* Gallagher (Can.); **21.** *Estpl.* p. 27
Fraser Valley Milk Producers' Assocn. *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 11
Fraser's Appeal, *Re*, *Re* Winnipeg Charter (Can.); **2.** *Arbn.* p. 74; **38.** *Rates*, p. 82
Frayes *v.* Worms (1861); **11.** *Confl.* No. 1098a
Frazer *v.* Mattice (Can.); **18.** *Distr.* p. 32
— *v.* Pate (Scot.); **2.** *Animals*, p. 62
Frederick A. Jones Inc. *v.* Toronto General Insurance Co. (Can.); **11.** *Confl.* pp. 53, 55
Fredericke & Whitworth, *Re*, *Ex p.* Hibbard (1927); **4.** *Bkpcy.* No. 923a
Fredericton School Trustees *v.* Kingsclear School Trustees (Can.); **19.** *Educ.* p. 41
Frederiksen *v.* Western Can. Inv. Co. (Can.); **35.** *Mtge.* p. 36
Fredman *v.* Minister of Health (1935); **38.** *Pub. Hlth.* No. 502v
Freeburg *v.* Farmers' Exchange Bankers (Can.); **32.** *Lien*, p. 22
Freeden, The (1795); **2.** *Aliens*, No. 419a
Freedman, *Re* (Can.); **4.** *Bkpcy.* p. 12
— *v.* French (Can.); **12.** *Contr.* p. 30
— *v.* Guaranty Trust Co. (Can.); **32.** *Lien*, p. 23
— *v.* Hart, *Re* Baittle (Can.); **5.** *Bkpcy.* p. 82
— *v.* Howard (Can.); **35.** *Mtge.* p. 51
— *v.* United States Fidelity & Guaranty Co. (Can.); **29.** *Insce.* p. 55
Freedman & Lesk *v.* Medicine Hat City (Can.); **38.** *Pub. Auth.* p. 12
Freeman, *In the Estate of* (1931); **23.** *Exors.* No. 181a
Freeman, *Re* (1927); **33.** *Lunat.* No. 529a
— *v.* Arscott, *Re* Hagger (1930); **44.** *Wills*, No. 108a
— *v.* Dartford Brewery Co., Ltd. (1938); *Pract.* No. 2987a
— *v.* Freeman (Can.); **27.** *H. & W.* p. 5
— *v.* Kenny (Nfld.); **30.** *L. & T.* p. 42
— *v.* Maxwell (Scot.); **40.** *S. Land.* p. 11
Freeman Co., Ltd. *v.* Edmonton Corpn., *Re* Edmonton Charter (Can.); **11.** *Comp. Pche.* p. 9
"Freeman's Journal" *v.* Fernstrom & Traesliberi (Ir.); **16.** *Courts*, p. 13; **17.** *Dep.* p. 85

Freemantle *v.* Taylor (1808); **28.** *Infts.* No. 1006a
Freer, *Exp.*, R. *v.* Davey (Aus.); **2.** *Aliens*, p. 48
Freeze *v.* Carey (Can.); **32.** *Lien*, p. 26
Freiya, The *v.* R. S., The (Can.); **1.** *Adm.* p. 29
French *v.* Archibald Russell, Ltd. (1934); **34.** *Mast. & S.* No. 3288d
— (Doe d.) *v.* Dunn (Can.); **38.** *Real Prop.* p. 98
French *v.* Gething (1922); **7.** *B. of Sale*, No. 673a
— *v.* McKendrick (Can.); **17.** *Dep.* p. 53
— *v.* Paris (Can.); **17.** *Damgs.* p. 6
French (L.) & Co. *v.* Leeston Shipping Co. (1922); **1.** *Agcy.* No. 1768a
French & Thomas French & Sons, Ltd. *v.* Chalco, Ltd. (1938); **36.** *Pats.* No. 2417a
French Government *v.* Tsurushima Maru (Owners) (1921); **2.** *Arbn.* Nos. 841b, 888a, 1022a
French Hairdressing Saloons, Ltd. *v.* National Employers Mutual General Insurance Association, Ltd. (S. Af.); **29.** *Insce.* p. 55
Frenette *v.* Taylor (Can.); **43.** *Tresp.* p. 50
Freney, *Re* (Aus.); **23.** *Exors.* p. 23
— *v.* Perpetual Trustees, Executors & Agency Co. of Tasmania, Ltd. (Aus.); **44.** *Wills*, p. 56
Frere *v.* Frere (1847); **11.** *Confl.* No. 594a
Fresh Wharf, Ltd. *v.* Nicholson's Wharves, Ltd. (1935); **44.** *Waters.* No. 819a
Freshwater *v.* Bulmer Rayon Co., Ltd. (1933); **21.** *Estpl.* No. 585a
— *v.* Western Australian Assurance Co., Ltd. (1933); **2.** *Arbn.* Nos. 294a, 294c
Freudenstein *v.* Portage La Prairie Mutual Insurance Co. (Can.); **29.** *Insce.* p. 7
Frew (Alexander) & Co., Ltd. *v.* Inland Revenue Comrs. (1931); **28.** *Inc. T.* No. 214a
Frey *v.* Herde (Can.); **38.** *Real Prop.* p. 93
Fried *v.* Georges (Can.); **17.** *Damgs.* p. 18
— *v.* German Property Administrator (1925); **2.** *Aliens*, No. 215o
Fried Krupp Akt. *v.* Orconera Iron Ore Co., Ltd. (1919); **2.** *Aliens*, No. 406
Friedman *v.* Friedman's Executors (S. Af.); **11.** *Confl.* p. 45
— *v.* Mayer (Can.); **12.** *Contr.* p. 15
Friendship, The (1814); **17.** *Dep.* No. 252a
Friern Barnet Urban Council *v.* Adams (1927); **26.** *Hghys.* Nos. 2351a, 2367a
Friesen *v.* Saskatchewan Mortgage & Trust Corpn. (Can.); **35.** *Mtge.* p. 50
Fright *v.* Scheck (Can.); **35.** *Misrep.* p. 1
Frinton & Walton Urban District Council *v.* Walton & District Sand & Mineral Co., Ltd. (1938); **9.** *Coys.* No. 4512a
Frisby *v.* Smith (Can.); **1.** *Action*, p. 11
Fritz *v.* Baker (Can.); **1.** *Agcy.* p. 102
Frodingham Ironstone Mines, Ltd. *v.* Stewart (1932); **28.** *Inc. T.* No. 204o
Frome United Breweries Co. *v.* Bath JJ. (1926); **30.** *Intox.* No. 381
Froment, *Re*, Alberta Lumber Co. *v.* Alberta Department of Agriculture (Can.); **4.** *Bkpcy.* p. 26
Frontenac Children's Aid Society *v.* Gananoque (Can.); **37.** *Poor L.* p. 17
Frontenac Loan Co. *v.* Morice (Can.); **23.** *Exors.* p. 18
Frost, *Ex p.*, *Re* Birkenhead, Cambridge Place, Clearance Order, 1934 (1935); **38.** *Pub. Hlth.* No. 502u
—, *Re* (1936); **33.** *Lunat.* No. 1896b
— *v.* Allen (Aus.); **3.** *Basty.* p. 61
— *v.* Caslon (1929); **20.** *Elect.* No. 96a; **43.** *Trade*, No. 10a
— *v.* Minister of Health (1935); **38.** *Pub. Hlth.* Nos. 502m, 502u
— *v.* Rochon & Verhelst (Can.); **21.** *Exon.* p. 57
Frost *v.* Wilkins (1929); **20.** *Elect.* No. 96a; **43.** *Trade*, No. 10a
Frost Brothers, *Re* (Can.); **11.** *Const. L.* p. 66
Frostad *v.* Libek (Can.); **27.** *H. & W.* p. 9; **38.** *Real Prop.* p. 90
Froy, *Re*, Froy *v.* Froy (1938); **44.** *Wills*, No. 8329a
Frozocas *v.* R. (Can.); **15.** *Crim.* p. 105
Fry *v.* Bevan (1937); **42.** *Str. Traf.* No. 2321
— *v.* Burma Corpn. (1930); **28.** *Inc. T.* No. 200b
— *v.* Byrne (Aus.); **1.** *Agcy.* p. 85
— *v.* Johnston & Griffith (Can.); **6.** *B. of Exch.* p. 15
— *v.* Russell (1858); **3.** *Bank.* No. 215a
— *v.* Salisbury House Estate, Ltd. (1930); **28.** *Inc. T.* No. 116b
Fry's Appeal, *Re* (1934); **8.** *Carr.* Nos. 1476, 1679
Fry-Cadbury (Ir.), Ltd. *v.* Lynnott (Ir.); **43.** *Trade Mks.* p. 13
Fryer *v.* Buttar (1837); **23.** *Exors.* No. 4712a
— *v.* Salford Corpn. (1937); **19.** *Educ.* No. 21a
Fryer & Hampson's Contract, *Re* (1929); **7.** *Bldg. Soc.* No. 285a
Fryers & Co., Ltd. *v.* Steeves (Can.); **6.** *B. of Exch.* p. 12; **27.** *H. & W.* p. 13
Fuataga *v.* Inspector of Police (N.Z.); **17.** *Dep.* p. 65
Fuel Economy Co., Ltd. *v.* Murray (1930); **36.** *Pats.* No. 2641a
Fuhr *v.* Fuhr (Can.); **27.** *H. & W.* p. 21
Fujita & Co., Ltd. *v.* Northern Fruit Co., Ltd. (Can.); **12.** *Contr.* p. 30
Fujiwara *v.* Osawa (Can.); **36.** *Negl.* p. 33
Fukukawa & Queen Charlotte Timber Holding Co., Ltd. *v.* American Timber Holding Co. (Can.); **2.** *Agric.* p. 21
Fulford, *Re*, Fulford *v.* Hyslop (1930); **40.** *Sttlmts.* No. 2131a
Fulford *v.* Hyslop, *Re* Fulford (1930); **40.** *Sttlmts.* No. 2131a
Fulham Metropolitan Borough Council *v.* Santilli (1933); **26.** *Hghys.* No. 1435g
Fuli Bibi *v.* Khokai Mondal (Ind.); **28.** *Infts.* p. 142
Fulker *v.* Fulker (1936); **27.** *H. & W.* No. 6217b
Fuller, *Ex p.*, *Re* Cleary (Aus.); **38.** *Rys.* p. 42
— *v.* Bruce (Can.); **9.** *Coys.* p. 44
— *v.* Cheveley (1853); **22.** *Evid.* No. 2477a
— *v.* Fuller (Aus.); **23.** *Exors.* p. 17
— *v.* Garneau (Can.); **11.** *Const. L.* p. 77
— *v.* Pattrick (1849); **7.** *Bldg. Conts.* No. 325a
— *v.* Stoltze (Can.); **12.** *Contr.* p. 22
Fuller & Co. *v.* Holland (Can.); **6.** *B. of Exch.* p. 9
Fuller's Contract, *Re* (1933); **40.** *Sttlmts.* No. 3143f
Fuller's Theatres, Ltd. *v.* Musgrove (Aus.); **12.** *Contr.* pp. 30, 31, 32, 33
Fullerton *v.* Blenkhorn (Can.); **32.** *Limit. of A.* p. 43
— *v.* Philadelphia Fire Assocn. (Can.); **29.** *Insce.* p. 30
Fullwood *v.* Hurley (1928); **1.** *Agcy.* No. 1608a
Fulton, *Re* (Can.); **4.** *Bkpcy.* p. 42; **5.** *Bkpcy.* p. 70
— *v.* Creelman (Can.); **22.** *Evid.* p. 14; **26.** *Hghys.* p. 18
— *v.* Randall, Gee & Mitchell, Ltd. (Can.); **2.** *Animals*, p. 57
— *v.* Wawanesa Mutual Insurance Co. (Can.); **29.** *Insce.* p. 27
Fulton (John) & Co., Ltd., *Re* (Ir.); **9.** *Coys.* p. 41; **10.** *Coys.* p. 72
Furber *v.* Sturmey (1859); **21.** *Exon.* No. 783a
Furey *v.* Eagle, Star & British Dominions Insurance Co. (Ir.); **2.** *Arbn.* p. 76

Furlong *v.* Reid (Can.); **29.** *Intpr.* p. 64
— *v.* Russell (Can.); **12.** *Contr.* p. 25
Furness *v.* Guarantee Savings & Loan Assocn. (Can.); **32.** *Loan Soc.* p. 45
Furness Shipbuilding Co. *v.* London & North Eastern Ry. (1934); **26.** *Guar.* No. 1826b
Furness Withy Co., Ltd. *v.* Ahlin (Can.); **3.** *Bailmt.* p. 10
— *v.* Duder (1936), **29.** *Insce.* No. 1702a
Furnishers, Ltd. *v.* Booth (Can.); **30.** *L. & T.* p. 38
Furphy *v.* Nixon (Aus.); **35.** *Money*, p. 22
Fusarelli *v.* Ioco Townsite Co. (Can.); **2.** *Arbn.* p. 101
Futcher *v.* Futcher (1881); **12.** *Contr.* No. 1263a
Fyfe *v.* Fife Coal Co., Ltd. (1927); **34.** *Mast. & S.* No. 2822a
Fyhri *v.* Burke (Can.); **31.** *L. & T.* p. 85

G.

G., *Re* (Can.); **3.** *Basty.* p. 56
— *v.* G. (1928); **3.** *Basty.* No. 130b; **27.** *H. & W.* Nos. 2484a, 5781b
— *v.* G. (1930); **27.** *H. & W.* Nos. 2479a, 2479b
— *v.* G. (Can.); **11.** *Confl.* p. 48
— *v.* G. (N.Z.) (1934); **3.** *Basty.* p. 54
— *v.* G. (N.Z.) (1936); **27.** *H. & W.* p. 24
— *v.* K. (1934); **27.** *H. & W.* No. 2384a
G. & T. Earle, Ltd. *v.* Hemsworth Rural District Council (1928); **7.** *Bldg. Conts.* No. 342a; **8.** *Chos.* Nos. 77a, 483a
G. B. Wood, Ltd., *Re*, Spivak *v.* Lee (Can.); **10.** *Coys.* p. 80
G. F. Tull & Ardern, Ltd. *v.* Shouldice (Can.); **42.** *Stk. Ex.* p. 35
G. H. L., etc., *Re* (Ir.); **33.** *Lunat.* p. 16
G.-M. *v.* G.-A. D. (1930); **27.** *H. & W.* No. 2479a
G. Stanley & Co., *Re* (1925); **5.** *Bkpcy.* No. 7361a; **10.** *Coys.* No. 6746a
Gabriel *v.* Ah Mook (Aus.); **2.** *Aliens*, p. 48
— *v.* Eliatamby (Ceylon); **27.** *H. & W.* p. 48
— *v.* Lenthall (Aus.); **14.** *Crim.* p. 55
Gabriel, Wade & English, Ltd. *v.* Arcos, Ltd. (1929); **39.** *S. Goods*, No. 1682a
Gaddar Mal *v.* Tata Industrial Bank, Ltd., Bombay (Ind.); **3.** *Bank.* p. 41
Gadigeppa Bhimappa *v.* Balanganda Bhimanganda (Ind.); **28.** *Infts.* p. 131
Gadlela *v.* Mountjoy (S. Af.); **1.** *Agcy.* p. 93
Gadsby, *Re*, *Ex p.* White & Elliott (Can.); **5.** *Bkpcy.* p. 59
Gaekwar Baroda State Railway *v.* Hafiz Habib-Ul Haq (1938); **17.** *Dep.* No. 228c
Gagara, The (1919); **1.** *Adm.* No. 142b
Gage, *Re* (Can.); **44.** *Wills*, p. 36
—, *Re*, Crozier *v.* Gutheridge (1934); **44.** *Wills*, No. 1278a
Gage & Roper *v.* Pigott & De Jenner (Ir.); **2.** *Agric.* p. 18
Gagen *v.* Gagen (Can.); **11.** *Confl.* p. 47; **17.** *Dep.* p. 56; **27.** *H. & W.* p. 75
Gagne *v.* Beland & Consolidated Fire & Casualty Co. (Can.); **29.** *Insce.* p. 7
— *v.* Finance Minister (Can.); **28.** *Inc. T.* p. 11
Gagnon *v.* Coulombe (Can.); **12.** *Contr.* p. 12
— *v.* Grain & Provision Co., *Re* Blouin (Can.); **5.** *Bkpcy.* p. 67
— *v.* Langis (Can.); **2.** *Animals*, p. 67
Gainer *v.* Cunyngham (1758); **20.** *Eqy.* No. 1428a
Gainers *v.* Canadian Northern Ry. Co. (Can.); **22.** *Evid.* p. 25
Gajadhar Mahton *v.* Ambika Prasad Tiwari (Ind.); **16.** *Courts*, pp. 15, 18
Galbraith *v.* Murray, Robertson & Thomas (Can.); **42.** *Solrs.* p. 6
Gale *v.* Denman Picture Houses, Ltd. (1930); **18.** *Discy.* No. 214a
— *v.* Motor Union Insurance Co., Ltd. (1928); **29.** *Insce.* No. 3217a
— *v.* New (1937); **39.** *S. Goods*, No. 1189a
Galibert *v.* Societe D'Administration Generale & Banque Nationale & Cie. General D'Entreprises Publiques (Can.); **25.** *Fraud. Conv.* p. 14
Gall *v.* Edwards & Tatisich (Can.); **36.** *Negl.* p. 4
Gall's Estate, *Re* (Can.); **18.** *Desct.* p. 3
Gallacher *v.* Baird (William) & Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 130
— *v.* Gallacher (Scot.); **27.** *H. & W.* p. 39
Gallagher *v.* Advocate, H.M. (Scot.); **14.** *Crim.* p. 51
— *v.* Kennedy (Ir.); **23.** *Exors.* p. 6
— *v.* Lynn (1937); **17.** *Dep.* No. 716c
— *v.* Murphy (Can.); **6.** *B. of Exch.* p. 3
Gallant *v.* Neilson (Can.); **39.** *S. Goods*, p. 49
Gallegher *v.* Waterloo Motors, Ltd. (Can.); **9.** *Coys.* p. 40
Gallen *v.* Lee (Ir.); **11.** *Confl.* p. 23
Gallenga Will Trusts, *Re*, Wood *v.* Gallenga (1938); **40.** *Stltmts.* No. 2664a
Gallivan *v.* Warman 1930); **13.** *Cty. Cts.* No. 420a
Galloway, *Re* (Can.); **38.** *Real Prop.* p. 94
— *v.* Anderson (Scot.); **38.** *Pub. Hlth.* p. 31
— *v.* Galloway (Scot.); **22.** *Evid.* p. 18
— *v.* Harris, *Re* Read (1892); **7.** *Burial*, No. 56a
— *v.* Watson (Aus.); **27.** *H. & W.* p. 66; **33.** *Mags.* p. 23
Galloway & Cleary, *Re*, Gibson *v.* Canada Permanent Trust Co. (Can.); **17.** *Custom.* p. 2
Gallway (Lord) *v.* Mathew & Smithson (1808); **6.** *B. of Exch.* No. 695a
Galt Art Metal Co. *v.* Pedlar People, Ltd. (Can.); **36.** *Pats.* p. 74
Galt Brothers & Burnaby Arbitration, *Re* (Can.); **22.** *Evid.* p. 18; **42.** *Solrs.* p. 7
Galt Presbyterian Church Trustees (Doe d.) *v.* Bain (Can.); **38.** *Real Prop.* p. 98
Galvin *v.* Minister for Industry & Commerce & Higginbotham (Ir.); **44.** *Work*, p. 63
Galway (Lord) *v.* Matthew & Smithson (1808); **6.** *B. of Exch.* No. 695a
Galway County Council *v.* Galway Board of Health (Ir.); **34.** *Mast. & S.* p. 181
Gamage (A. W.), Ltd. *v.* Payne (1925); **18.** *Distr.* No. 421a
Gamble, *Re* (Can.); **24.** *Exors.* p. 38
— *v.* Excelsior Life Assurance Co. (Can.); **1.** *Agcy.* p. 78
Gamblings, Ltd. *v.* Westons, Ltd. (Aus.); **32.** *Lien*, p. 20
Gammie *v.* Department of Health for Scotland (Scot.); **44.** *Work*, p. 65
Gammon *v.* Jodrey (Can.); **38.** *Real Prop.* p. 99
— *v.* Rita, *Re* Rita (1934); *Pract.* No. 4900a
Gammon Estate, *Re*, Payne *v.* Gammon (Can.); **23.** *Exors.* p. 2
Gamon *v.* Eastman (Can.); **42.** *Str. Traf.* p. 61
Ganapathy Pillay *v.* Alamaloo (1929); **44.** *Wills*, No. 9571a
Ganda Singh *v.* Bhag Singh-Bhagwan Singh, Mst. Bhani (Ind.); **32.** *Limit of A.* p. 31
Gangabai *v.* Fakirgowda (Ind.); **22.** *Evid.* p. 14
Gangadhar *v.* Kanhai (Ind.); **4.** *Bkpcy.* p. 47; **26.** *Guar.* p. 7
Ganga Prasad *v.* Ganeshi Lal (Ind.); **11.** *Confl.* pp. 53, 55
Gangaraju *v.* Madras Income Tax Comr. (Ind.); **28.** *Inc. T.* p. 22

Gangat *v.* Licences & General Insurance Co., Ltd. (S. Af.); **29.** *Insce.* p. 26
Gannon *v.* Farquhar Trading Co. (Can.); **31.** *L. & T.* p. 66
Gannow Engineering Co., Ltd. *v.* Richardson (N.Z.); **39.** *S. Goods*, p. 32
Ganong *v.* Gault (Can.); **26.** *Guar.* p. 1
Ganpat Tukaram Mali *v.* Sopana Tukaram Mali (Ind.); **6.** *B. of Exch.* p. 18
Gapes *v.* Fish (Aus.); **19.** *Easmt.* p. 1
Garber *v.* Union Bank of Canada (Can.); **3.** *Bank.* p. 21
Garbet, *In the Goods of* (1869); **23.** *Exors.* No. 1375a
Garbrey *v.* Brown (1588); **12.** *Contr.* No. 1828a
Garbutt, *Ex p.* (S. Af.); **4.** *Bkpcy.* p. 11
Gard *v.* Yates (Can.); **5.** *Bkpcy.* p. 71
Garden Estate, *Re* (Can.); **43.** *Trusts*, p. 59
Garden River Rural Municipality *v.* Montreuil (Can.); **35.** *Mistake*, p. 11
Gardiner, *Ex p.*, R. *v.* Slipp (Can.); **16.** *Cr. Pract.* p. 28
— *v.* Chapple (Can.); **1.** *Agcy.* p. 96
— *v.* Charlottetown (City) (Can.); **38.** *Real Prop.* p. 99
— *v.* Flux (N.Z.); **30.** *L. & T.* p. 42
— *v.* Gardiner (Can.) (1832); **23.** *Exors.* p. 28
— *v.* — (Can.) (1935); **27.** *H. & W.* p. 52
— *v.* — (Can.) (1936); **27.** *H. & W.* p. 42
— *v.* Heading (1928); **1.** *Agcy.* No. 2487a
— *v.* Walsh (1936); **40.** *S. Land*, No. 2683b
Gardner, *Re* (Can.); **44.** *Wills*, p. 20
—, *Re*, *Ex p.* Croft & Sons, Ltd. (Can.); **5.** *Bkpcy.* p. 92
—, *Re*, *Re* Maschek, *Re* Tyrrell (1938); **44.** *Work*, No. 139c
—, *Re*, Langlois *v.* Lemire (Can.); **4.** *Bkpcy.* p. 24
— *v.* Gorman (Can.); **32.** *Lien*, p. 27
— *v.* Guy Street Garage (Can.); **5.** *Bkpcy.* p. 81
— *v.* Hirawanu (N.Z.); **2.** *Agric.* p. 18
— *v.* Vickers, Ltd. (1928); **34.** *Mast. & S.* No. 3482a
Gardner (John) & Bowring, Hardy & Co., Ltd. *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 32
Gardner & Co. *v.* Cone (1928); **31.** *L. & T.* Nos. 5269a, 5295a
Gardner & Co., Ltd. *v.* Ludlow Bros. (1913), Ltd. (1938); **2.** *Arbn.* No. 618a
Gardner's Trusts, *Re* (1878); **33.** *Lunat.* No. 1336b
Gardner's Will Trusts, *Re*, Boucher *v.* Horn (1936) **22.** *Evid.* No. 730a
Garey *v.* Dominion Manufacturers, Ltd. (Can.); **6.** *B. of Exch.* p. 21
Gargan *v.* Ruttle (Ir.); **36.** *Prtnrs.* p. 62
Garland, *Re*, Eve *v.* Garland (1934); **44.** *Wills*, No. 5239a
— *v.* Archer-Shee (1931); **28.** *Inc. T.* No. 441a
— *v.* Newman (Can.); **1.** *Agcy.* p. 76
— *v.* O'Reilly (Can.); **25.** *Gifts*, p. 47
Garland & Toronto, *Re* (Can.); **11.** *Comp. Pche.* p. 7
Garlick & Co. *v.* Poynton (S. Af.); **2.** *Arbn.* p. 101
Garment (J. & G.) Mfg. Co., *Ex p.*, *Re* Morgan (J. R.), Ltd. (Can.); **9.** *Coys.* p. 50
Garner *v.* Garner (1860); **40.** *Sttlmts.* No. 86a
Garner's Motors, Ltd., *Re* (1937); **10.** *Coys.* No. 7415a
Garnett *v.* Enoch Rhodes & Son (1935); **34.** *Mast. & S.* No. 3822h
— *v.* Langford & Oswald (Can.); **20.** *Elect.* p. 4
— *v.* Pratt (1926); **11.** *Comns.* No. 939a
Garrard *v.* James (1925); **9.** *Coys.* No. 4050a
Garrett, *Re*, Croft *v.* Ruck (1934); **43.** *Trusts.* Nos. 2273b, 2273c
Garrett, *Re*, Official Receiver & Trustee *v.* Bankrupt, The (1930); **5.** *Bkpcy.* Nos. 6296a, 7607a, 7615a, 7615b
— *v.* Johnstone (Can.); **26.** *Guar.* p. 5
— *v.* Saunders (Can.); **35.** *Mtge.* p. 38
Garrioch *v.* Canadian Bank of Commerce (Can.); **3.** *Bank.* pp. 23, 31
Garrison *v.* Thomsen & Clarke Timber Co. (Can.); **12.** *Contr.* p. 29
Garrod *v.* Moor (1846); **40.** *Sttlmts.* No. 2358a
Garrold, *Ex p.*, *Re* Hereford Municipal Election Petition (1889); **20.** *Elect.* No. 1626
Garrow *v.* Baird (Can.); **18.** *Distr.* p. 27
Garry Cafeteria, *Re* (Can.); **4.** *Bkpcy.* p. 31
Garson *v.* Canadian Credit Men's Trust Assocn., Ltd. (Can.) (1928); **4.** *Bkpcy.* p. 44
— *v.* — (Can.) (1929); **39.** *S. Goods*, p. 56
Gartrell, *Re*, *Ex p.* Kearns (Can.); **4.** *Bkpcy.* p. 1
Gartside *v.* A.-G., *Re* Lawton (1936); **8.** *Char.* Nos. 1252c, 2562a
Gas Chambers & Coke Ovens, Ltd., Application for Revocation of Letters Patent (No. 366,656), *Re* (1934); **36.** *Pats.* No. 2174b
Gas Light & Coke Co. *v.* South Metropolitan Gas Co. (1889). *See* Vol. XXV., p. 491
— *v.* — (1890). *See* Vol. XXXV., p. 178
Gas Meter Co., Ltd. *v.* Diaphragm & General Leather Co., Ltd. (1925); **9.** *Coys.* No. 1814a
Gaskell *v.* St. Helens Colliery Co., Ltd. (1934); **34.** *Mast. & S.* No. 2557b
Gaskell & Chambers, Ltd., *Ex p.*, R. *v.* Hudson (1936); **16.** *Cntmpt.* No. 274a
— *v.* Hudson, Dodsworth & Co. (1936); **16.** *Cntmpt.* No. 274a
Gaskell, Ltd. *v.* Askwith (1929); **35.** *Money*, No. 353h
Gaskill *v.* Gaskill (1921); **3.** *Basty.* No. 43a
Gass *v.* Ingham, *Re* Cruse (1930); **23.** *Exors.* 5917c; **44.** *Wills*, Nos. 2684a, 5466a
Gastelu, The (1934); **41.** *Ship.* No. 5666a
Gaston, *Re* (Ir.); **5.** *Bkpcy.* p. 93
Gaston, Williams & Wigmore & Gaston, *Re*, Williams & Wigmore Steamship Corpn. *v.* R. (Can.); **11.** *Const. L.* p. 74
Gatehouse *v.* Merchants Casualty Co. (Can.); **29.** *Insce.* p. 57
Gates, *In the Goods of* (1928); **23.** *Exors.* No. 2056a
—, *Re*, Arnold *v.* Gates (1933); **42.** *Solrs.* No. 1148a
Gates, *Re*, Gates *v.* Cabell (1929); **44.** *Wills*, Nos. 5720a, 5734a
—, *Re* Gates *v.* Gates (1930); **18.** *Desct.* No. 283c; **23.** *Exors.* No. 4101a
— *v.* Cabell, *Re* Gates (1929); **44.** *Wills*, Nos. 5720a, 5734a
— *v.* Gates, *Re* Gates (1930); **18.** *Desct.* No. 283c; **23.** *Exors.* No. 4101a
— *v.* Williams (Aus.); **22.** *Evid.* p. 20
Gateshead County Borough (Barn Close) Clearance Order, 1931, *Re* (1933); **38.** *Pub. Hlth.* No. 502k
Gatti's Voluntary Settlement Trusts, *Re* De Ville *v.* Gatti (1936); **40.** *Sttlmts.* No. 1094a
Gatty *v.* Phillipson (1848); **35.** *Mtge.* No. 389b
Gaudet *v.* Brown, The Argos (Cargo Ex) (1873); **1.** *Adm.* No. 40
— *v.* Corneau (Can.); **6.** *B. of Exch.* p. 2
Gaudreau, *Re*, *Ex p.* Carruthers (Can.); **5.** *Bkpcy.* p. 82
—, *Re*, *Ex p.* Royal Bank of Canada (Can.); **7.** *B. of Sale*, pp. 6, 8
Gaul & Houlston's Contract, *Re* (1928); **40.** *Sttlmts.* No. 2597

Gauley *v.* Canadian Pacific Ry. (Can.); **38.** *Rys.* p. 38
Gaumont-British Picture Corpn., Ltd. *v.* Alexander (1936); **12.** *Contr.* No. 1643a; **42.** *Theatres*, Nos. 195b, 195d; **43.** *Trade*, No. 133a
Gauns *v.* R. (Ind.); **14.** *Crim.* p. 33
Gaussen *v.* Lower Bann Navigation Trustees (Ir.); **42.** *Stats.* p. 24; **44.** *Waters*, p. 8
Gaussen & French *v.* Ellis (Ir.); **40.** *Stlmts.* p. 29
Gauthier *v.* R. (Can.) (1916); **2.** *Arbn.* p. 84
— *v.* — (Can.) (1931); **14.** *Crim.* p. 58
Gautrean *v.* Westmorland (Can.); **37.** *Prsns.* p. 33
Gautreau, *Ex p.* (Can.); **16.** *Cr. Pract.* p. 40
Gavagan, *Re* (Ir.); **3.** *Basty.* p. 59
Gavazzi *v.* Inland Revenue Comrs. (1926); **28.** *Inc. T.* No. 179
— *v.* Mace (1926); **28.** *Inc. T.* No. 179
Gavel *v.* Canadian National Rys. (Can.); **38.** *Rys.* p. 38
Gaviller *v.* Beaton (Can.); **21.** *Exon.* p. 51
Gavin *v.* Mokler (Can.); **37.** *Pers. Prop.* p. 9
Gay, *Re* (Can.); **11.** *Confl.* p. 52
—, *Re*, Trustee *v.* Bennett (A. A.) & Georges Tiard (1931); **4.** *Bkpcy.* No. 4586a
— *v.* Johnston (Aus.); **35.** *Mtge.* p. 33
Gay Co., Ltd. *v.* Trick (Can.); **17.** *Damgs.* p. 21; **30.** *Juries*, p. 31
Gaylard *v.* Milne (Aus.); **36.** *Negl.* p. 26
Gayler & Pope, Ltd. *v.* Davies (B.) & Son, Ltd. (1924); **2.** *Animals*, Nos. 156b, 206a
Gaze (W. H.) & Sons, Ltd. *v.* Port Talbot Corpn. (1929); **7.** *Bldg. Conts.* Nos. 36a, 58a
Geall *v.* Richmond Township (Can.); **44.** *Waters*, p. 3
Gearhart *v.* Quaker Oats Co. (Can.); **1.** *Agcy.* p. 60
Geary *v.* Clifton Co. (Can.); **31.** *L. & T.* pp. 48, 58; **42.** *Sp. Pfce.* p. 16
— *v.* Mathew Brown & Co., Ltd. (1931); **34.** *Mast. & S.* No. 2731a
— *v.* Melrose Co-operative Dairy Co., Ltd. (N.Z.); **9.** *Coys.* p. 42
Gebbie *v.* Saskatoon (City) (Can.); **43.** *Tram.* p. 49
Gebbie & Forrest *v.* Kershaw (Can.); **27.** *H. & W.* p. 14
Gebler *v.* Palmason (Can.); **31.** *L. & T.* p. 86
Geddes *v.* Dunfermline District Committee (Scot.); **34.** *Mast. & S.* pp. 32, 181
Geddie *v.* Rink (Can.); **32.** *Libel*, p. 16
Gee, *Re* (Can.); **44.** *Wills*, p. 31
Gee *v.* Harwood (1933); **31.** *L. & T.* Nos. 6399a, 6399b, 6399c, 6399d
— *v.* Hazleton (1932); **31.** *L. & T.* Nos. 1653a, 7041b
Geelong City Buildings Pty., Ltd. *v.* Bennett (Aus.); **31.** *L. & T.* p. 63
Gehm, *Re*, Gehm *v.* Gatjens (Can.); **28.** *Infts.* p. 137
Geipel *v.* Cornforth, The Hewsons (1873); **1.** *Adm.* No. 40
Geldert *v.* Hoar, *Ex p.* Geldert (Can.); **21.** *Exon.* p. 53
Gellatly *v.* Palmer, *Re* Forster (1938); **8.** *Char.* Nos. 30a, 105a
Geller Brothers, *Re* (Can.); **5.** *Bkpcy.* p. 94
Gellibrand *v.* Carew, *Re* Carew's Trusts (1910); **5.** *Bkpcy.* No. 5902a
Gelman, *Ex p.*, *Re* Cohen & Sweigman (Can.); **4.** *Bkpcy.* p. 30
Gemmel *v.* Sinclair (Can.); **38.** *Rates*, p. 84
Gemmell & M'Fadyen *v.* MacNiven (Scot.); **14.** *Crim.* pp. 25, 44
Gemmell Power Farming Co., Ltd. *v.* Nies (Aus.); **39.** *S. Goods*, p. 38
Gemmill *v.* Grain (Can.); **36.** *Negl.* p. 18
Genders *v.* South Australian Railways Comr. (Aus.); **17.** *Damgs.* p. 21; **36.** *Negl.* p. 11
Gendron *v.* Provident Assurance Co. (Can.); **29.** *Insce.* p. 26
General Accident Assurance Co., *Re* (Can.); **29.** *Insce.* p. 61
General Accident Fire & Life Assurance Corpn., Ltd., *Re* (1933); **10.** *Coys.* Nos. 7493b, 7493c, 7493d
General Asphalt Co. *v.* Anglo-Saxon Petroleum Co., Ltd. (1932); **12.** *Contr.* No. 5168a
General Asphalt Co. & Barber Asphalt Co. *v.* Anglo-Saxon Petroleum Co., Ltd. (1931); **12.** *Contr.* No. 5168a
General Casualty Insurance Co. of Paris *v.* Lambert & Vance (Can.); **29.** *Insce.* p. 57
General Electric Co., Ltd. *v.* Pryce's Stores (1933); **43.** *Trade Mks.* No. 1436a
General Electric Co. (1900), Ltd. *v.* Safety Lift & Elevator Co. (1903); **18.** *Discy.* Nos. 1625a, 1626a
General Electric Trading Co. *v.* Siemans (India), Ltd. (Ind.); **2.** *Arbn.* p. 86
General Fireproofing Co. of Canada, Ltd., *Re* (Can.); **10.** *Coys.* p. 77
General Insurance Co. *v.* Descary (Can.); **29.** *Insce.* p. 25
General Medical Council *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 472g
— *v.* United Kingdom Dental Board (1936); **34.** *Med.* No. 201b
— *v.* Waring (1932); **34.** *Med.* No. 201a
General Motors Acceptance Corpn. & Williamson *v.* Johnson (Can.); **8.** *Chos.* p. 94
General Motors Products of Canada, Ltd. *v.* Montreal Sight Seeing Tours, Ltd. (Can.); **43.** *Trade*, p. 7
General Nursing Council for Scotland *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 75
General Preserving Co., Ltd., *Re* (1937); **12.** *Contr.* No. 4095a
General Radio Co., Ltd., *Re*, First Co-operative Investment Trust, Ltd. *v.* General Radio Co., Ltd. (1929); **10.** *Coys.* No. 6477a
General Supply Co. of Canada *v.* O'Neill Morkin Machinery Co. (Can.); **12.** *Contr.* p. 4; **17.** *Damgs.* p. 10
General Trust & Executor Corpn. *v.* Bishop (Can.); **35.** *Mtge.* p. 31
General Trust of Canada *v.* St. Jacques (Can.); **36.** *Negl.* p. 26
Genesee, The (1917); **37.** *Prsns.* No. 1302a
Genois *v.* R. (Can.); **11.** *Const. L.* p. 63
Gent One, *Re*, *Ex p.* Pratt (Aus.); **42.** *Solrs.* p. 8
Genua, The, Grainton S.S. Owners *v.* Genua S.S. Owners (1936); **41.** *Ship.* No. 6257a
Geoghegan *v.* Henry (Ir.); **19.** *Easmt.* p. 10
Geologists' Assocn. *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 476b
George *v.* Brayley (Can.); **26.** *Guar.* p. 4
— *v.* Canadian Northern Ry. Co. (Can.); **8.** *Carr.* p. 3
— *v.* Dental Board of South Australia (Aus.); **34.** *Med.* p. 191
George & Stamford Hotels, *Ex p.*, R. *v.* Huntingdon Confirming Authority (1929); **30.** *Intox.* Nos. 368a, 368b
George Hotel (Colchester), Ltd. *v.* Ball (1938); **24.** *Fact.* No. 193a
George Inglefield, Ltd., *Re* (1933); **10.** *Coys.* No. 4944a; **35.** *Mtge.* No. 20a
George W. Griffiths Co., *Re* (Can.); **9.** *Coys.* p. 5
Georges *v.* Charlottetown (Can.); **42.** *Time*, p. 74
Georgeson *v.* Dominion Bank (Can.); **3.** *Bank.* p. 42; **17.** *Damgs.* p. 15

Georgeson *v.* Urwin & Co. (N.Z.); **36.** *Pats.* p. 74
Georget Estates, *Re* (Can.); **18.** *Desct.* p. 3
Georgia Construction Co. *v.* Pacific Great Eastern Ry. Co. (Can.); **7.** *Bldg. Conts.* pp. 21, 25; **30.** *Jdgmts.* p. 27
Georgia Construction Co., Ltd. & Bank of Toronto *v.* Pacific Great Eastern Ry. Co. (Can.); **17.** *Dep.* p. 85
Georgia Investment Co., Ltd. *v.* London Building & Investment Co., Ltd. (Can.) (1935); **35.** *Mtge.* p. 51
— *v.* — (Can.) (1936); **21.** *Exon.* p. 43
— *v.* Stratford Realty Co., Ltd. & Nelson (Can.); **35.** *Mtge.* p. 43
Geraghty *v.* Ridge (Aus.); **35.** *Misrep.* p. 5
Gerard *v.* Hudson (Can.); **22.** *Evid.* p. 21
— *v.* Worth of Paris, Ltd. (1936); **10.** *Coys.* No. 7037a
Gerber *v.* Pines (1934); **34.** *Med.* No. 69a
Gerhardt *v.* British Empire Assurance Co., *Re* Gerhardt's Insurance (Can.); **29.** *Insce.* p. 29
Gerhardt's Insurance, *Re*, Gerhardt *v.* British Empire Assurance Co. (Can.); **29.** *Insce.* p. 29
Gerlach-Barklow Co. *v.* MacPherson (Can.); **43.** *Trade*, p. 4
Gerloff, *Re* (Aus.); **44.** *Wills*, p. 54
German *v.* Risley (1639); **38.** *Real Prop.* No. 761a
German Property Administrator *v.* Knoop (1933); **1.** *Agcy.* No. 91b; **2.** *Aliens*, No. 215v, 215w
Germantown Lake District Sewers Comrs., *Re*, *Ex p.* Calhoun (Can.); **38.** *Rates*, p. 78
Germany *v.* Germany (1938); **27.** *H. & W.* Nos. 3191a, 3235a
Germiston Municipality *v.* Angehrn & Piel (S. Af.); **17.** *Dep.* p. 65
Gerrard Industries, Ltd. *v.* Box Wiring Co., Ltd. (1933); **36.** *Pats.* No. 2633a
Gerrards Transport, Ltd. *v.* Norman E. Box, Ltd. (1936); **8.** *Carr.* Nos. 1624, 1711
Gertrud, The (1927); **1.** *Adm.* No. 682a
Gertzenstein, Ltd., *Re* (1937); **10.** *Coys.* No. 6875a
Gess, *Re* (Can.); **2.** *Agric.* p. 26
Gethin *v.* Gethin (1861); **27.** *H. & W.* No. 5078a
Ghamandi Lal-Narain Das *v.* Churanji Lal-Pokhar Mal (Ind.); **2.** *Arbn.* p. 92
Ghanshayam Das Jagnani *v.* Ramnarayan Ganeshnarayan (1935); **16.** *Courts*, No. 566a
Ghanshyam Singh *v.* R. (Ind.); **14.** *Crim.* p. 33
Gharib-Ul-Lah *v.* Khalak Singh (Ind.); **28.** *Infts.* p. 141
Ghasiram Goenka *v.* Haribux Gobardhandas (Ind.); **3.** *Barr.* p. 50
Ghee, *Re*, *Ex p.* Lowe King, Public Trustee *v.* Lowe King (N.Z.); **24.** *Exors.* p. 41
Ghishulal & Ganeshilal *v.* Gambhirinal Pandya (Ind.); **36.** *Prtnrs.* p. 60
Ghitterman *v.* Ralph (Can.); **14.** *Crim.* p. 59; **33.** *Mags.* p. 33
Ghosh *v.* R. (Ind.); **14.** *Crim.* p. 4
Gibaud *v.* Great Eastern Ry. Co. (1921); **3.** *Bailmt.* No. 192a
Gibb *v.* R. (Can.) (1918); **11.** *Comp. Pche.* p. 7
— *v.* — (Can.) (1938); **26.** *Hghys.* p. 36
— *v.* Sell (Aus.); **12.** *Contr.* p. 12
Gibbings, *In the Estates of* (1928); **23.** *Exors.* No. 2585c
Gibbons, *Ex p.* (Aus.); **39.** *Revenue*, p. 27
—, *Re* (Can.); **7.** *B. of Sale*, p. 8
— *v.* Duffell (Aus.); **32.** *Libel*, p. 11
— *v.* Gibbons (1932); **27.** *H. & W.* No. 6286c
— *v.* Riddle (Can.); **2.** *Agric.* p. 19
— *v.* Vanguard Motor Bus Co., Ltd. (1908); **26.** *Hghys.* No. 1513a
Gibbons & Carnes *v.* Royal Bank of Canada (Can.); **3.** *Bank.* p. 28
Gibbs, *Re*, Lyne *v.* Gibbs, *Re* Lyne's Settlement Trusts (1919); **11.** *Confl.* No. 511
—, *Re*, Nelson *v.* National Trustees, Executors & Agency Co. of Australasia, Ltd. (Aus.); **32.** *Limit. of A.* p. 39
— *v.* Barking Corpn. (1936); **19.** *Educ.* No. 23b
— *v.* Cann (Can.); **25.** *Gaming*, p. 27
— *v.* Flight (1853); **30.** *Jdgmts.* No. 366b
— *v.* Gibbon (1841); **5.** *Bkpcy.* No. 9538a
— *v.* Gibbs (Can.); **27.** *H. & W.* p. 45
— *v.* Glamis (1841); **5.** *Bkpcy.* No. 9538a
— *v.* Mersey Ry. Co., *Re* Mersey Ry. Co. (1895); **10.** *Coys.* No. 8412a
Gibbs & Co., *Ex p.*, *Re* Nautilus Steam Shipping Co., Ltd. (1936); **10.** *Coys.* No. 6056c
Giblin *v.* McMullen (1869); **22.** *Evid.* Nos. 55a, 59a
Gibson, *Re*, Gibson *v.* Public Trustees (N.Z.); **44.** *Wills*, p. 54
— *v.* A. C. Cossor, Ltd. (1934); **36.** *Pats.* No. 2944j
— *v.* A.-G., *Re* Bennett (1920); **8.** *Char.* No. 751a
— *v.* British Columbia District Telegraph & Delivery Co., Ltd. & Pettipiece (Can.); **34.** *Mast. & S.* p. 14
— *v.* Canada Permanent Trust Co., *Re* Galloway & Cleary (Can.); **17.** *Custom*, p. 2
— *v.* Fownes, Ltd. (Can.); **39.** *S. Goods*, p. 53
— *v.* Humphrey (1833); **5.** *Bkpcy.* No. 7008a
— *v.* Laird (Scot.); **25.** *Gaming*, p. 34
— *v.* McVeigh (No. 1) (Can.); **12.** *Contr.* pp. 18, 19
— *v.* Mitchell (Aus.); **42.** *Tele.* p. 66
— *v.* National Cash Register Co. (Scot.); **22.** *Evid.* pp. 3, 21
— *v.* O'Keeney (Ir.); **1.** *Agcy.* p. 99; **3.** *Bailmt.* p. 18
— *v.* Plumstead Burial Board (1897); **7.** *Bounds. & F.* No. 154a
— *v.* Public Trustees, *Re* Gibson (N.Z.); **44.** *Wills*, p. 54
— *v.* Reynolds (Ir.); **1.** *Agcy.* p. 99
— *v.* Roberts (1936); **25.** *Gaming*, No. 192a
— *v.* Sherret (Scot.); **2.** *Agric.* p. 6
— *v.* Wilson & Downer (Can.); **3.** *Bailmt.* p. 7
Gibson Estate, *Re* (Can.); **23.** *Exors.* p. 17
Gibson Estate, Pelican Lake Lumber Co., Ltd. & Traders Trust Co., *Re* (Can.); **9.** *Coys.* p. 19
Gibson's & Allen's Cases, Inland Revenue *v.* Edinburgh Assessor (Scot.); **38.** *Rates*, p. 54
Gidney *v.* Anglo-Indian & Domiciled European Federation (Ind.); **32.** *Libel*, p. 1
— *v.* Morgan (Can.); **32.** *Lien*, p. 27
Gier *v.* Van Aalst (Can.); **1.** *Agcy.* p. 49
Gieves *v.* O'Conor (Ir.); **11.** *Confl.* p. 56
Giffard *v.* Penderel-Brodhurst, *Re* Charles II, Kings Grant (1936); **39.** *Rntchgs.* No. 335a
Giffen *v.* Wedd, *Re* Monk (1927); **8.** *Char.* Nos. 34a, 1098a
Gifford (No. 2), *Re* (Can.); **24.** *Extrdn.* p. 44
Gifford *v.* Dent (1926); **31.** *L. & T.* No. 3026a
— *v.* Gifford & Freeman (1926); **27.** *H. & W.* No. 3092a
Gigliotti, *Re* (Can.); **16.** *Cr. Pract.* p. 29
Gilbert, *Ex p.* (Can.); **19.** *Educ.* p. 33
—, *Re* (Can.); **2.** *Agric.* p. 25
— *v.* Ching (1936); **17.** *Dep.* No. 688a
— *v.* Coles (No. 1) (1931); **34.** *Mast. & S.* No. 3961a
— *v.* — (No. 2) (1931); **34.** *Mast. & S.* No. 3932b
— *v.* Fitzpatrick (Aus.); **20.** *Eqy.* p. 30
— *v.* Gilbert (Aus.); **27.** *H. & W.* p. 29
— *v.* Gilbert & Boucher (1928); **27.** *H. & W.* No. 5583a
— *v.* Jarvis (Can.); **21.** *Exon.* p. 45; **24.** *Exors.* p. 41
— *v.* Sampson (N.Z.); **7.** *Bounds. & F.* p. 17
— *v.* Standard Trusts Co. (Can.); **11.** *Confl.* p. 52

Gilbert & Co. Opposition, *Re*, *Re* William Bailey (Birmingham), Ltd., Application to Register a Trade Mark (1935); **43.** *Trade Mks.* No. 214a
Gilbert & Foster's Contract, *Re* (1935); **40.** *S. Land*, No. 1401a
Gilbert (F.) (Bournemouth), Ltd. *v.* Mackay (1930); **12.** *Contr.* No. 231a
Gilbert Brothers, Ltd. *v.* Keiser (Can.); **1.** *Agcy.* p. 78
Gilbert Brothers *v.* McDill (Can.); **1.** *Agcy.* p. 77
Gilbert's Patents, *Re* (1927); **36.** *Pats.* No. 2062a
Gilbertson *v.* Department of Health for Scotland (Scot.); **44.** *Work*, pp. 64, 65
Gilbey *v.* Cossey (1912); **30.** *L. & T.* No. 470a
— *v.* Gilbey (1927); **27.** *H. & W.* No. 5382a
Gilchrist *v.* National Cash Register Co. (Scot.); **22.** *Evid.* p. 25
— *v.* Wiley (Can.); **21.** *Exon.* p. 56
Gilchrist & Sullivan Corpn., *Re* (Can.); **38.** *Pub. Hlth.* p. 15
Gilchrist Manufacturing Co., Ltd. *v.* International Junk Co., Ltd. (Can.); **36.** *Prtnrs.* p. 57
Gildart *v.* Gladstone (1809); **41.** *Ship.* No. 8594a
Gilders *v.* Denyar & Harwar (1935); **34.** *Mast. & S.* No. 3288s
Giles *v.* Nuttall, *Re* House Improvement Assocn. Ltd. (1885); **10.** *Coys.* No. 5011a
Gilford *v.* McLean (Aus.); **1.** *Agcy.* p. 85
Gilford Motor Co. *v.* Horne (1933); **43.** *Trade*, No. 146a
Gill *v.* Boniface Owners (1932); **34.** *Mast. & S.* No. 3008a
— *v.* Doey (Can.); **6.** *B. of Exch.* p. 20
— *v.* Perrott (1928); **34.** *Mast. & S.* Nos. 2668a, 2885a
— *v.* Power (Nfld.); **32.** *Lien*, p. 20
Gill's Application, *Re* (1935); **36.** *Pats.* No. 1013a
Gilleghan *v.* Minister of Health (1932); **1.** *Agcy.* No. 2726a; **16.** *Cr. Pract.* No. 322a; **38.** *Pub. Auth.* Nos. 343a, 365a
Gillespie *v.* Hamilton (Can.); **38.** *Rates*, p. 87
Gillespie Grain Co., Ltd. *v.* Kuproski & North Star Oil Co., Ltd., Hart, Colby & Wilkie (Can.); **34.** *Mast. & S.* p. 14
Gillespie Grain Co., Ltd. & Grain Insurance & Guarantee Co. *v.* Wacowich (Can.); **18.** *Discy.* p. 13
Gillett *v.* Abbott (1838); **21.** *Estpl.* No. 786a
— *v.* Kent Rivers Catchment Board (1938); **41.** *Sewers*, No. 399a
Gillette Safety Razor Co. *v.* Gamage (A. W.) & Co., Ltd. (1907); **16.** *Cntmpt.* No. 298a
— *v.* Pal Blade Corpn., Ltd. & Metropolitan Stores, Ltd. (Can.); **36.** *Pats.* p. 68
Gillette Safety Razor, Ltd. *v.* Pellett, Ltd. (1909); **28.** *Injon.* No. 923a
Gillies *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 122
— *v.* McConochie (Can.); **8.** *Char.* p. 74
Gillies Supply Co. *v.* Allan (Can.); **32.** *Lien*, p. 27
Gillingham *v.* Shiffer-Hillman (Can.); **31.** *L. & T.* p. 73
Gillingham *v.* Shiffer-Hillman Clothing Manufacturing Co., Ltd. (Can.); **30.** *Jdgmts.* p. 24
Gillis, *Re* (Can.); **23.** *Exors.* p. 17
— *v.* R. (Can.); **25.** *Fish.* p. 4
— *v.* Sounding Creek (Can.); **32.** *Lien*, p. 22
Gillmore *v.* London County Council (1938); **19.** *Educ.* No. 21b
Gillott's Settlement, *Re*, Chattock *v.* Reid (1934); **40.** *Sttlmts.* No. 1003a
Gilluley *v.* Moore (A. G.) & Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 162
Gilmer, *Re*, Public Trustee *v.* Stamp Duties Comr. (N.Z.); **21.** *E. D.* p. 1
Gilmore *v.* Callies (Can.); **21.** *Exon.* p. 46
— *v.* Frederick Boehm, Ltd. (1930); **34.** *Mast. & S.* No. 3801d
— *v.* Westminster (Can.); **26.** *Hghys.* p. 45
Gilmour *v.* Belfast Harbour Comrs. (Ir.); **36.** *Negl.* p. 27
— *v.* Gilmour (Aus.); **39.** *Rntchgs.* p. 3
— *v.* — (Can.); **23.** *Exors.* p. 18
— *v.* MacPhillamy (1930); **44.** *Wills*, No. 10,427a
Gilmour (Doe d.) *v.* Whitney (Can.); **22.** *Evid.* p. 10
Gilpinville, Ltd. *v.* Dumaresq (Can.); **28.** *Injon.* p. 147
Gilroy *v.* Brennan (Ir.); **14.** *Crim.* p. 52
— *v.* Burnaby Corpn. (Can.); **26.** *Hghys.* p. 27
— *v.* Stephens (1882); **24.** *Exors.* No. 7273a
Gilroy's Estate, *Re* (Can.); **8.** *Char.* p. 79
— (No. 2), *Re* (Can.); **8.** *Char.* p. 72
— (No. 3), *Re* (Can.); **39.** *Rntchgs.* p. 5
Gimson *v.* Inland Revenue Comrs. (1930); **28.** *Inc. T.* No. 674aa
Ginn *v.* Ginn (Aus.); **27.** *H. & W.* p. 27
Ginsberg *v.* New York Fire Insurance Co. (Can.); **29.** *Insce.* p. 27
Girard *v.* Gariepy (Can.); **1.** *Adm.* p. 19
Girgaway *v.* Strathern (Scot.); **15.** *Crim.* p. 86
Girls' Public Day School Trust *v.* Ereaut (1931); **19.** *Educ.* No. 182a; **28.** *Inc. T.* No. 62a
Giroux, *Ex p.* (Can.); **9.** *Coys.* p. 38
Girvin Estate, *Re* (Can.); **44.** *Wills*, p. 31
Gisborne Fire Board *v.* Lunken (N.Z.); **18.** *Discy.* pp. 14, 15
Gislason *v.* Foam Lake Rural Municipality & Ward (Can.); **18.** *Distr.* p. 32; **38.** *Rates*, p. 84
Gissing *v.* Eaton (T.) Co. (Can.); **12.** *Contr.* p. 19
— *v.* Liverpool Corpn. (1935); **37.** *Poor L.* No. 105b
Git *v.* Forbes (Can.); **7.** *Bldg. Conts.* p. 20
Giusti Patents & Engineering Works, Ltd. *v.* Maggs (1923); **13.** *Cty. Cts.* Nos. 980a, 1008a; **16.** *Cr. Pract.* Nos. 3131b, 3168b
Given, *Re* (Ir.); **44.** *Work*, p. 61
Gjesdal *v.* Bergh (Can.); **12.** *Contr.* pp. 44, 46
Gladitz, *Re*, Guaranty Executor & Trustee Co., Ltd. *v.* Gladitz (1937); **27.** *H. & W.* No. 1228a
Gladstone *v.* Tempest (1840); **44.** *Wills*, No. 3453a
Gladstone Spinning Co. *v.* Nangle (1928); **34.** *Mast. & S.* No. 3184a
Gladue *v.* Walch (Can.); **1.** *Agcy.* pp. 95, 102
Glagovsky *v.* National Fire Insurance Co. of Hartford (Can.); **29.** *Insce.* p. 28
Glamorgan (former Sheriff), *Ex p.*, Walter *v.* Davies (1858); **21.** *Exon.* No. 380
Glamorgan County Council *v.* Ayton (1936); **33.** *L. G.* No. 701a
— *v.* Barry Overseers (1912); **38.** *Rates*, No. 1392b
— *v.* Birmingham Corpn. (1933); **37.** *Poor L.* No. 1148a
Glamorgan County Mental Hospital (Committee of Visitors), R. *v.* Minister of Health (1938); **33.** *Lunat.* No. 1688c
Glamorgan County Valuation Committee *v.* Barry Area Assessment Committee (1931); **38.** *Rates*, Nos. 1321a, 1328a
Glanely (Lord) *v.* Wightman (1933); **28.** *Inc. T.* Nos. 99a, 118a
Glanford *v.* Ferris (Can.); **38.** *Rates*, p. 84
Glanville *v.* Sutton & Co., Ltd. (1928); **2.** *Animals*, No. 305a
Glasgow *v.* Hood (N.Z.); **1.** *Agcy.* pp. 51, 76, 101, 102
Glasgow & South Western Ry. Co. *v.* Greenock Corpn. (Scot.); **3.** *Barr.* p. 50
Glasgow Assessor *v.* Glasgow Corpn. (Scot.); **38.** *Rates*, p. 82

Glasgow Assessor *v.* Henderson & Co. (Scot.); **38.** *Rates*, p. 55
— *v.* Mathieson (Scot.); **38.** *Rates*, p. 54
— *v.* Scottish Tube Co., Ltd. (Scot.); **38.** *Rates*, p. 76
— *v.* Thornycroft (John I.) & Co. (Scot.); **38.** *Rates*, p. 54
— *v.* Wright, Bindley & Gell (Scot.); **38.** *Rates*, p. 54
Glasgow Corpn. *v.* Assessor of Public Undertakings (Scot.); **38.** *Rates*, pp. 64, 69
— *v.* Cameron (1936); *Pract.* No. 1369a
— *v.* Robertson (or Cameron) (1936); *Pract.* No. 1369a
— *v.* Strathern (Scot.); **42.** *Str. Traf.* p. 48; **43.** *Tram.* p. 48
Glasgow Dental Hospital (Incorporated) *v.* Lord Advocate (Scot.); **9.** *Coys.* p. 52
Glasgow Domestic Training School, *Re* (Scot.); **8.** *Char.* p. 81
Glasgow Lumber Co., Ltd. *v.* Fettes (Can.); **31.** *L. & T.* pp. 76, 77
Glasgow Navigation Co. *v.* Iron Ore Co. (1910); **16.** *Courts*, No. 33a
Glasgow Tramway & Omnibus Co., Ltd. *v.* Glasgow Magistrates (Scot.); **9.** *Coys.* p. 53
Glasgow Underwriters *v.* Smith (Can.); **2.** *Arbn.* p. 91
Glasier *v.* Cooke (1835); **29.** *Intpr.* No. 553a
Glaskie *v.* Watkins (1927); **30.** *Jdgmts.* No. 628a, 628b
Glass *v.* Hollander (Aus.); **43.** *Trov.* p. 57
Glass (Henry) & Co. *v.* Hampton Manufacturing Co., Ltd. (Can.); **43.** *Trade Mks.* p. 16
Glassbrook Bros., Ltd. *v.* Leyson (1933); **34.** *Mines*, Nos. 327f, 327g, 327h
Glatton, H.M.S. (1923); **1.** *Adm.* No. 130a
Glavasky *v.* Stadnick (Can.); **32.** *Lien*, p. 22
Glazed Kid, Ltd. *v.* Inland Revenue Comrs. (1939); **28.** *Inc. T.* No. 674k
Glebe Sugar Refining Co., Ltd. *v.* Greenock Port & Harbours Trustees (1921); **3.** *Barr.* No. 383a
Gledhall *v.* Dalton Main Collieries, Ltd. (1934); **34.** *Mast. & S.* No. 3811j
Gleed *v.* Gleed (1927); **27.** *H. & W.* No. 3825a
Glen *v.* Fulham Overseers (1884); **38.** *Rates*, No. 1530a
— *v.* Inland Revenue (Scot.); **21.** *E. D.* p. 8
Glen (John) & Sons Designs Nos. 308,957, 309,240, 308,956, 308,952, 308,955, 308,954, 309,241, & 308,953 (1932); **43.** *Trade Mks.* No. 1013a
Glen Bain Rural Municipality *v.* Haley (Can.); **22.** *Evid.* p. 10
Glen Line, Ltd. *v.* A.-G. (1930); **29.** *Insce.* No. 2463a
Glenavon Garw Collieries, Ltd. *v.* Rhondda & Swansea Bay Ry. Co., Great Western Ry. Co. & Barry Ry. Co. (1916); **8.** *Carr.* Nos. 1043a, 1060a
Glencross, *Re*, Jones *v.* Glencross (Can.); **5.** *Bkpcy.* p. 87
Glendinning, *Re*, Steel *v.* Glendinning (1918); **3.** *Bank.* No. 402a
Gleneagles, Ltd. *v.* Thomson (Can.); **42.** *Sp. Pfce.* p. 19
Glenluce, The (1930); **41.** *Ship.* No. 988a
Glenn & Babb *v.* Schofield (Can.); **2.** *Animals*, p. 57
Glennie *v.* Delmar (1850); **13.** *Cty. Cts.* No. 83
— *v.* Mc D & C Holdings, Ltd. (Can.); **42.** *Stk. Ex.* p. 31
— *v.* Rushton (Can.); **12.** *Contr.* p. 41
Glenross *v.* Canada S.S. Lines, Ltd. (Can.); **41.** *Ship.* p. 62
Glesby *v.* Mitchell (Can.); **6.** *B. of Exch.* p. 12
Glick *v.* Nova Scotia Tramways & Power Co. (Can.); **43.** *Tram.* p. 49
Gliksten (J.) & Son *v.* Green (1929); **28.** *Inc. T.* No. 204b
Globe & Rutgers Fire Insurance Co. *v.* Glace Bay Corpn. (Can.); **15.** *Crim.* p. 79
— *v.* Truedell (Can.); **29.** *Insce.* p. 25
Globe Financial Corpn., Ltd. *v.* Sterling Securities Corpn., Ltd. (Can.); **39.** *S. Goods*, p. 59
Globe Land Co. *v.* Heaslip (Can.); **31.** *L. & T.* p. 63
Globe Wine Co., *Re* (Can.); **21.** *Estpl.* p. 27
Globoff *v.* Canadian National Railways (Can.); **38.** *Rys.* p. 40
Gloeden *v.* Hicks Motor Co., Ltd. (Can.); **39.** *S. Goods.* p. 56
Glorious, H.M.S. (1932); **41.** *Ship.* Nos. 5686a, 5748d
Gloucester Billposting Co., Ltd. *v.* Hopkins (1932); **38.** *Pub. Hlth.* Nos. 204a, 204c
Glover *v.* Equitable Fire & Marine Insurance Co. (Can.); **29.** *Insce.* p. 4
Glyn Valley Tramway Co., *Re* (1937); **10.** *Coys.* No. 8420a
Glyncorrwg Colliery Co., *Re*, *Re* Railway Debenture & General Trust Co. (1926); **10.** *Coys.* No. 5149a
—, *Re*, Railway Debenture & General Trust Co. *v.* Glyncorrwg Colliery Co (1926); **10.** *Coys.* No. 5149a
Gnana Sundaram *v.* Vulcan Insurance Co. (Ind.); **29.** *Insce.* p. 25
Gnip *v.* Gnip (Can.); **27.** *H. & W.* p. 46
Goadby *v.* Bartlett. *Re* Rutherford's Conveyance (1938); **40.** *S. Land*, No. 2658b
— *v.* Orridge (1938); **13.** *Cty. Cts.* No. 403a
Gobey *v.* Moore (N.Z.); **27.** *H. & W.* p. 15
Gobindachandra Poddar *v.* Chandpur Subdivisional Officer (Ind.); **44.** *Waters*, p. 9
Gobinda Ramanuj Das Mohanta *v.* Ram Charan Das (Ind.); **21.** *Estpl.* pp. 39, 40
Godard *v.* Tuck (Can.); **2.** *Agric.* p. 19
Goddard *v.* Arnold (S. Af.); **1.** *Agcy.* p. 80
— *v.* Bainbridge Lumber Co. (Can.); **11.** *Comp. Pche.* p. 16
— *v.* Coulson (Can.); **32.** *Lien*, p. 23
— *v.* Goddard (1929); **27.** *H. & W.* No. 4909a
Godmanchester Free Grammar School, *Re* (1850); **19.** *Educ.* No. 342a
Godo *v.* Galbraith & Sons (Can.); **12.** *Contr.* p. 33
Godson *v.* A.-G. for British Columbia (Can.); **21.** *E. D.* p. 16
— *v.* Sanctuary (1832); **5.** *Bkpcy.* No. 7042a
Godson & Ray *v.* Pantages (Can.); **31.** *L. & T.* p. 80
Godstone Rural District Council *v.* Croydon Corpn. (1932); **33.** *L. G.* No. 129a
Godwin, *Re*, *Ex p.* Trustee *v.* British Reinforced Concrete Engineering Co. (1935); **5.** *Bkpcy.* No. 6920a
—, *Re*, *Ex p.* Trustee *v.* Morris (1935); **5.** *Bkpcy.* No. 6920a
—, *Re*, Coutts & Co. *v.* Godwin (1938); **39.** *Rntchgs.* Nos. 571b, 571c
Goebel *v.* Canadian Bank of Commerce (Can.); **3.** *Bank.* p. 43
Goff *v.* Barron (Nfld.); **34.** *Mast. & S.* p. 9
— *v.* Goff (1934); **27.** *H. & W.* Nos. 5751a, 5751b
— *v.* Strohm (Can.); **23.** *Exors.* 20
Goffin *v.* Houlder (1920); **12.** *Contr.* No. 429a; **17.** *Damgs.* No. 408a
Goforth *v.* Goforth (Can.); **11.** *Confl.* p. 53; **27.** *H. & W.* p. 71; **28.** *Infts.* p. 141
Gofton *v.* Shantz (Can.); **2.** *Agric.* p. 26

Goggin *v.* Young (N.Z.); **25.** *Gaming*, p. 33
Goggins *v.* Morrison (Can.); **25.** *Gaming*, p. 28
Gogi *v.* Wilson & Collins (S. Af.); **34.** *Mast. & S.* p. 7
Goguen, *Re* (Can.); **34.** *Mast & S.* p. 87
Gohl *v.* Hender (Aus.); **19.** *Easmt.* p. 11
Gohra *v.* Gohra (Aus.); **27.** *H. & W.* p. 77
Gokal Chand-Jagan Nath (Firm) *v.* Nand Ram Das-Atma Ram (Firm) (1938); **1.** *Agcy.* No. 770a
Gokul Das *v.* Nathu (Ind.); **12.** *Contr.* p. 43
Golaa, The (1926); **11.** *Confl.* No. 1379a
Gold *v.* Reinblatt (Can.); **22.** *Evid.* p. 27
— *v.* South Vancouver (Can.); **2.** *Arbn.* p. 84
Gold Brothers & Nash, Ltd. *v.* Fuller (1925); **13.** *Cty. Cts.* No. 404a
Gold Medal Camp Furniture Manufacturing Co. *v.* Gold Medal Manufacturing Co. (Can.); **43.** *Trade Mks.* p. 21
Gold Medal Furn. Mfg. Co., *Re*, *Ex p.* Scythes & Co. (Can.); **35.** *Mistake*, p. 10
Gold Seal, Ltd. *v.* Dominion Express Co. & A.-G. for Alberta Province (Can.); **17.** *Dep.* p. 40
Goldberg, *Ex p.*, *Re* Jacobson (Can.); **4.** *Bkpcy.* p. 40; **5.** *Bkpcy.* p. 82
—, *Re* (Can.); **5.** *Bkpcy.* p. 81
Goldblatt *v.* Hocken (1933); **18.** *Discy.* No. 1208a
Goldblum *v.* Goldblum (1938); **27.** *H. & W.* No. 3026a
Golden *v.* Canadian Consolidated Grain Co., Ltd. & Beaton (Can.); **36.** *Negl.* p. 24
Golden Horse Shoe (New), Ltd. *v.* Thurgood (1934); **28.** *Inc. T.* No. 21 d
Goldhammer *v.* R. (Can.); **14.** *Crim.* p. 60
Goldie *v.* Adam (1938); **44.** *Wills*, No. 2016a
Goldman *v.* Barnfield (Aus.); **1.** *Agcy.* p. 99
— *v.* Cox (1924); **6.** *B. of Exch.* No. 209a
— *v.* Goldman (Can.); **27.** *H. & W.* p. 21
— *v.* Harrison (Can.); **5.** *Bkpcy.* p. 73; **25.** *Fraud. Conv.* p. 15
— *v.* Kirby & Sons, Ltd. (Aus.); **17.** *Damgs.* p. 21
Goldsbrough, Mort & Co., Ltd. *v.* Black (Aus.); **12.** *Contr.* p. 22
Goldschmidt *v.* Constable & Co., Ltd. (1937); **32.** *Libel*, No. 1312a
Goldsmid *v.* South African Amalgamated Jewish Press, Ltd. (S. Af.); **28.** *Injon.* p. 150
Goldsmith *v.* Deakin (1933); **42.** *Str. Traf.* No. 761
— *v.* Harris (Can.); **21.** *Exon.* p. 46
Goldstein, *Ex p.*, *Re* Hersh (Can.); **4.** *Bkpcy.* p. 21; **5.** *Bkpcy.* p. 77
—, *Re* (Can.); **5.** *Bkpcy.* pp. 72, 73
— *v.* Craft (Aus.); **35.** *Money*, p. 23
Goldstone *v.* Goldstone (1922); **27.** *H. & W.* No. 2412a
— *v.* Smith (otherwise Goldstone) (1922); **27.** *H. & W.* No. 2412a
Golfing Amusements, Ltd. *v.* Everard & Ellis (1931); **39.** *S. Goods*, No. 180a
Gollan *v.* Sterling (Can.); **18.** *Distr.* p. 34
Gollan & Edmonton Credit Co., *Re* (Can.); **22.** *Evid.* p. 7; **32.** *Lien*, p. 22
Golomb & Porter (William) & Co.'s, Ltd. Arbitration, *Re* (1931); **34.** *Mast. & S.* Nos. 769a, 771a; **42.** *Theatres*, No. 89b
Goltz *v.* Ballarat Trustees, Executors & Agency Co., Ltd., *Re* Bones (Aus.); **8.** *Char.* p. 62
Goninan & Co., Ltd. *v.* South Australian Harbours Board (Aus.); **18.** *Discy.* p. 8
Gooch, *Re*, *Ex p.* Judd (1921); **6.** *B. of Exch.* Nos. 567a, 2096a
—, *Re*, Gooch *v.* Gooch (1929); **43.** *Trusts*, No. 493a
— *v.* New Zealand Financial Times (No. 2) (N.Z.); **32.** *Libel*, p. 15
— *v.* Stratman (1927); **31.** *L. & T.* No. 7298a
Good (John) & Sons, Ltd. *v.* London & North Eastern Ry. Co. (1927); **8.** *Carr.* No. 1377i
"Good Friday," etc. Mineral Claims, *Re* (Can.); **34.** *Mines*, p. 199
Good Humor Corpn. of America *v.* Good Humor Food Products, Ltd. & Bradley (Can.); **17.** *Dep.* p. 57
Good Shepherd Nuns *v.* Valuation Comr. (Ir.); **38.** *Rates*, p. 62
Goodal *v.* Goodal (Ind.); **27.** *H. & W.* p. 2
Goodall *v.* Cousins (Can.); **1.** *Agcy.* p. 89
— *v.* Hoogendoorn, Ltd. (S. Af.); **9.** *Coys.* p. 54
Goodall's Settlement, *Re*, Fane *v.* Goodall (1909); **40.** *Sttlmts.* No. 2594a
Goodbun *v.* Mitchell (Can.); **9.** *Coys.* p. 54; **18.** *Discy.* p. 22; **21.** *Estpl.* p. 30; **24.** *Exors.* p. 40
— *v.* — (No. 5) (Can.); **21.** *Exon.* pp. 45, 46
Goodchild *v.* Board of Trade (Solicitor) (1932); **9.** *Coys.* No. 3916a
— *v.* Fenton (1829); **23.** *Exors.* No. 3959a; **24.** *Exors.* No. 7256a
Goodenough, *Ex p.*, A.-G. *v.* Bristol Corpn. (1845); **8.** *Char.* Nos. 2330b, 2346a
Gooderham, *Re* (Can.); **29.** *Insce.* p. 31
— *v.* Nipissing Ry. Co. (Can.); **25.** *Fraud. Conv.* p. 15
— *v.* Toronto Corpn. (Can.); **17.** *Dep.* p. 48
Goodger, *Re* (Aus.); **44.** *Wills*, p. 51
Gooding *v.* Benfleet Urban District Council (1933); **38.** *Rates*, No. 385a
— *v.* Crocker (Can.); **32.** *Lien*, p. 26
Goodison Thresher Co. *v.* Doyle (Can.); **12.** *Contr.* p. 4
Goodison Threshing Machine Co. *v.* Lindsay (Can.); **39.** *S. Goods*, p. 57
Goodman *v.* Armstrong (S. Af.); **6.** *B. of Exch.* p. 21
— *v.* Goodman (1931); **27.** *H. & W.* No. 6180a
— *v.* Packer (1670); **31.** *L. & T.* No. 4116a
— *v.* Ruston & Hornsby, Ltd. (1932); **34.** *Mast. & S.* Nos. 3288g, 3288l, 3288n
Goodman & A.-G. for Canada *v.* Bank of Toronto (Can.); **39.** *Revenue*, p. 14
Goodman Brothers, Auto & Service Co., Ltd., *Re*, *Ex p.* Rose (Aus.); **9.** *Coys.* p. 19
Goodrich *v.* Ogle, *Re* Johnson (1893); **8.** *Char.* No. 894a
Goodrich Silvertown Stores *v.* McGuire Motors, Ltd. (Can.); **37.** *Pers. Prop.* p. 9
Goodson *v.* Hawera Lawn Tennis & Croquet Club Inc. (N.Z.); **32.** *Limit. of A.* p. 34
Goodwill *v.* Saulbrey (N.Z.); **42.** *Str. Traf.* p. 40
Goodwin *v.* Goodwin & Canadian Pacific Railway (Can.); **38.** *Rys.* p. 38
— *v.* Royal Trust Co. (Can.); **40.** *Sttlmts.* p. 26
Goodwin Ferreira & Co., Ltd. *v.* Lamport & Holt, Ltd. (1929); **41.** *Ship*, Nos. 2777a, 3649a
Goodwin Foster Brown, Ltd. *v.* Derby Corpn. (1934); **11.** *Comp. Pche.* Nos. 540a, 727a
Goodyear Tire & Rubber Co. *v.* Rubber Service Laboratories Co. (Can.); **36.** *Pats.* p. 114
Goold *v.* Goold (Scot.); **27.** *H. & W.* p. 30
Goole & Hull Steam Towing Co., Ltd. *v.* Ocean Marine Insurance Co., Ltd. (1928); **29.** *Insce.* No. 2010a
Goom *v.* West (1838); **4.** *Bkpcy.* No. 3750a
Goonewardene (M.) *v.* Goonewardene (E. M.) (Ceylon); **44.** *Wills*, p. 22
Gopalasami *v.* Secretary of State for India (Ind.); **42.** *Stats.* p. 27
Gopalchandra Chakravarti *v.* King Emperor (Ind.); **1.** *Action*, p. 12
Gopalchandra Singha, *Re* (Ind.); **3.** *Barr.* p. 49

Gopi Ram Bhotica *v.* Thakur Jagarnath Singh (Ind.); **32.** *Limit of A.* p. 37
Gopika Raman Roy *v.* Atal Singh (Ind.); **18.** *Discy.* p. 11; **32.** *Limit. of A.* p. 37
Gordanier *v.* C. N. R. (Can.); **18.** *Discy.* p. 17
Gordean Furniture Co., *Re*, *Ex p.* Sladden (Can.); **4.** *Bkpcy.* p. 38
Gordon (John), *Re* (1931); **6.** *B. of Exch.* No.
Gordon, *Re*, Stothart *v.* Weston (Can.); **44.** *Wills*, p. 52
Gordon *v.* Canadian Bank of Commerce (Can.); **36.** *Negl.* p. 6
— *v.* Dunlevy (Ir.); **25.** *Gaming*, p. 30
— *v.* Earle (Can.); **34.** *Mines*, p. 206
— *v.* Goldstein (1924); **7.** *B. of Sale*, No. 288a
— *v.* Gordon (1882); **40.** *Stllmts.* No. 140a
— *v.* — (1931); **27.** *H. & W.* No. 2479a
— *v.* — (Can.); **8.** *Chos.* p. 94
— *v.* Gordon & Watt (Can.); **27.** *H. & W.* p. 28
— *v.* Hebblewhite (Can.); **3.** *Bank.* p. 46
— *v.* Le Mesurier (1930); **27.** *H. & W.* No. 4773a
— *v.* Metropolitan Police Comr. (1935); **29.** *Intpr.* No. 436a
— *v.* Riseborough (Can.); **32.** *Limit. of A.* p. 30
— *v.* Smith's Newspapers, Ltd. (Aus.); **37.** *Press*, p. 31
— *v.* Snelgrove (Can.); **35.** *Mtge.* p. 40
— *v.* Somerville (Scot.); **24.** *Fact.* p. 56
— *v.* Wilhelm (Can.); **31.** *L. & T.* pp. 54, 80, 81
— *v.* Williamson (1892); **19.** *Eccl.* No. 482a
Gordon & Gordon *v.* Blakely (Can.); **36.** *Negl.* p. 7
Gordon & Saskatchewan Province (Can.); **2.** *Arbn.* p. 86
Gordon Brothers, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 43
Gordon, MacKay & Co., Ltd. *v.* Capital Trust Co., Ltd. (Can.); **7.** *B. of Sale*, p. 3
— *v.* Watson (1936); **25.** *Gaming*, No. 433d
Gordon Store, Ltd., *Re*, *Ex p.* Standard Bank (Can.); **5.** *Bkpcy.* p. 57
Gorfett's Trust, *Re*, *Ex p.* Price (1850); **35.** *Mtge.* No. 1324a
Gorham, *Re* (Ir.); **4.** *Bkpcy.* p. 8
Goring *v.* Barfield (1864); **26.** *Hghys.* No. 1380a
— *v.* Southern Ry. Co. (1938); **34.** *Mast. & S.* No. 2342b
Gorman *v.* Young (Can.); **1.** *Agcy.* p. 88
Gormerly, *Ex p.*, R. *v.* Palmer (Can.); **33.** *Mags.* p. 25
Gorrie (A. D.) Co., Ltd. *v.* Whitfield & Michaud (Can.); **6.** *B. of Exch.* p. 13
Gorringe & Braybons, Ltd.'s Contract, *Re* (1934); **43.** *Trusts*, No. 3639b
Gospodaryk *v.* Gospodaryk (Can.); **27.** *H. & W.* p. 46
Goss *v.* Webster, *Re* Webster (1937); **23.** *Exors.* No. 4587a
Gossage *v.* Gossage & Heaton (1934); **22.** *Evid.* No. 6904a
Gosse Millard *v.* Canadian Government Merchant Marine (1928); **30.** *Jdgmts.* No. 728a
Gosse Millerd, Ltd. *v.* Canadian Government Merchant Marine, Ltd., The Canadian Highlander (1929); **30.** *Jdgmts.* No. 728a; **41.** *Ship.* No. 2721
— *v.* Devine (Can.); **35.** *Misrep.* p. 5
Gottesman, *Re* (Can.); **2.** *Aliens*, pp. 43, 49
Gottliffe *v.* Edelston (1930); **27.** *H. & W.* No. 2294a
Gottschalck & Co. *v.* Velez & Co. (1936); **43.** *Trade Mks.* No. 908f
Goucher *v.* Clayton (1865); **36.** *Pats.* No. 1619a
Goudey & Gibbs, *Re* (Can.); **28.** *Infls.* p. 140
Goudge *v.* Broughton (1929); **31.** *L. & T.* Nos. 7037a, 7351a, 7352e, 7359a
Gouge's Estate, *Re* (Can.); **44.** *Wills*, p. 55
Gough, *Re*, Hanning *v.* Lowe (1927); **5.** *Bkpcy.* No. 7693a
— *v.* Chapman (N.Z.); **34.** *Mast. & S.* p. 24
— *v.* Goodwin (Can.); **26.** *Guar.* p. 6
— *v.* McBride (Can.); **22.** *Evid.* p. 10
— *v.* Rees (1929); **14.** *Crim.* No. 613a; **42.** *Str. Traf.* No. 117a
Gough's Garages, Ltd. *v.* Pugsley (1930); **10.** *Coys.* No. 5184b; **31.** L. & T. Nos. 2306c, 2300d
Gouin *v.* R. (Can.); **14.** *Crim.* p. 70
Gouin Boulevard Crossing Case, Montreal Corpn. *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 38
Gould, *Ex p.*, R. *v.* Lane (Can.); **17.** *Dep.* p. 57
— *v.* Ryan (Can.); **17.** *Dep.* p. 53
— *v.* Stamp Duties Comr. (N.Z.); **21.** *E. D.* p. 4
— *v.* Tanner & Tanner, *Re* Tanner Estate (Can.); **23.** *Exors.* p. 20
Goulding, *Ex p.*, *Re* O'Neill (1829); **6.** *B. of Exch.* No. 701b
—, *Ex p.*, R. *v.* Daily Worker (Proprietor, Printer & Publishers) (1934); **16.** *Cntmpt.* No. 204a
—, *Ex p.*, R. *v.* Star, Daily Telegraph & New Leader (Editors, Printers & Publishers) (1934); **16.** *Cntmpt.* No. 204a
— *v.* Rabinovitch (Can.); **12.** *Contr.* p. 20
— *v.* Shirtcliffe, *Re* Willey (1929); **44.** *Wills*, No. 5625a
Goulet *v.* Tardif (Can.); **25.** *Fraud. Conv.* p. 17
Goulette, *Ex p.*, R. *v.* McLatchy (Can.); **33.** *Mags.* p. 35
Goulin *v.* Caldwell (Can.); **2.** *Agric.* p. 18
Gourlay & Billings *v.* Canadian Department Stores, Ltd. (Can.); **31.** *L. & T.* p. 48
Gout *v.* Cimitian (1922); **2.** *Aliens*, No. 13a
Government Advocate, Burma *v.* Saya Sein (Ind.); **16.** *Cntmpt.* p. 5
Government of Ireland Act, 1920, Reference Under, *Re*, *Re* Finance Act (Northern Ireland), 1934, Sect. 3 (1936); **17.** *Dep.* No. 716d
Government Pleader *v.* Siddick (Ind.); **3.** *Barr.* p. 48
Govind Narayan *v.* Rangnath Gopal (Ind.); **9.** *Coys.* p. 29
Govind Singh *v.* Bijoy Bahadur Singh (Ind.); **6.** *B. of Exch.* p. 26
Gow & Downer, *Re* (Can.); **31.** *L. & T.* p. 85
Gowan *v.* Bowern (S. Af.); **1.** *Agcy.* p. 84; **12.** *Contr.* p. 57
Gowans *v.* Crocker Press Co. (Can.); **6.** *B. of Exch.* p. 18
Gowar *v.* Hales (1928); **36.** *Negl.* Nos. 421a, 842
Gowdy *v.* Gowdy (Can.); **27.** *H. & W.* p. 28
Gowenlock, *Re*, Public Trustee *v.* Gowenlock (1934); **44.** *Wills*, Nos. 4715a, 4834a
Gower *v.* Campbell (Can.); **33.** *Mkts.* p. 43
— *v.* Gower (1938); **27.** *H. & W.* No. 6053a
— *v.* Waples (Aus.); **21.** *Estpl.* p. 35
Gower's Settlement, *Re* (1934); **43.** *Trusts*, No. 1911a
Gowers *v.* Lloyds & National Provincial Foreign Bank, Ltd. (1938); **3.** *Bank.* No. 333b
— *v.* Walker (1930); **10.** *Coys.* No. 4982c
Gowland Brothers, *Re*, *Ex p.* Procter Shotton (1928); **4.** *Bkpcy.* No. 1451a
Gowr *v.* —— (1651); **3.** *Bailmt.* No. 90a
Gozzett, *Re* (1935); **30.** *Land Imp.* No. 67a
—, *Re*, *Ex p.* Messenger & Co., Ltd. *v.* Trustee (1936); **4.** *Bkpcy.* No. 1894c
Grabowsky, *Re* (Can.); **24.** *Extrdn.* p. 45
Grace Brothers, Ltd. *v.* Lawson (Aus.); **3.** *Bailmt.* p. 17

Gracey, *Re* (Can.); **23.** *Exors.* pp. 2, 26; **24.** *Exors.* p. 35
Grady *v.* Waite (Can.); **3.** *Barr.* p. 50; **41.** *Ship.* p. 8
Grady & Grady *v.* Devitt (Can.); **33.** *Mal. Pros.* p. 40
Graeff *v.* Graeff (1928); **27.** *H. & W.* No. 6094a
Graham, *Ex p., Re* Howard Graham & Co. (Can.); **5.** *Bkpcy.* p. 77
—, *Re* (Can.) (1911); **23.** *Exors.* p. 3
—, *Re* (Can.) (1928); **4.** *Bkpcy.* p. 3
— (No. 2), *Re* (Can.); **4.** *Bkpcy.* p. 3; **5.** *Bkpcy.* p. 55
—, *Re*, Graham *v.* Graham (1929); **44.** *Wills*, No. 3131a
— *v.* Canada Life Assurance Co. (Can.); **27.** *H. & W.* p. 9
— *v.* Carpenter (Aus.); **1.** *Agcy.* p. 59
— *v.* Chalmers (Can.); **38.** *Real Prop.* p. 93
— *v.* Glasgow Corpn. (Scot.); **13.** *Corpns.* p 31
— *v.* Graham (1923); **11.** *Confl.* No. 918a
— *v.* — (Can.); **12.** *Contr.* p. 9
— (otherwise Bruce) *v.* Graham (Can.); **17.** *Dep.* p. 56; **27.** *H. & W.* p. 3
— *v.* Graham, *Re* Graham (1929); **44.** *Wills*, No. 3131a
— *v.* Manders (Ir.); **1.** *Agcy.* p. 53
— *v.* Maskell & Smylie (Ir.); **34.** *Mast. & S.* p. 134
— *v.* Mencilly (Can.); **27.** *H. & W.* p. 8
— *v.* Minister for Industry & Commerce & Molloy (Ir.); **44.** *Work*, p. 61
— *v.* Powell (Can.); **1.** *Agcy.* p. 105
— *v.* Provident Life Assurance Co. (N.Z.); **2.** *Arbn.* pp. 76, 82
— *v.* St. Boniface City (Can.); **36.** *Nuis.* p. 46
— *v.* Stirling (Scot.); **2.** *Agric.* p. 1
Graham & Co. *v.* United Turkey Red, etc. Co., Ltd. (Scot.); **1.** *Agcy.* p. 90
Graham's Estate, *Re*, Nolan *v.* Graham (Can.); **11.** *Confl.* p. 50
Grahame *v.* A.-G. of Fiji (1936); **42.** *Solrs.* No. 4567a
Grahams' Morocco Co., *Re* (Scot.); **9.** *Coys.* p. 43
Graigola Merthyr Co., Ltd. *v.* Swansea Corpn. (1926); **22.** *Evid.* No. 5403c
— *v.* — (1928); **20.** *Eqy.* No. 2705a; **22.** *Evid.* Nos. 5403a, 5403c
— *v.* — (1929); **20.** *Eqy.* No. 2705a; **22.** *Evid.* No. 5403a
Grain Claims Bureau, Ltd. *v.* Canadian Pacific Ry. Co. (Can.); **18.** *Discy.* p. 18
— *v.* Canadian Surety Co. (Can.); **18.** *Discy* p. 13
— *v.* Canadian Surety Co. (No. 2) (Can.); **29.** *Insce.* p. 54
Grain Claims Bureau, Ltd. & Federal Grain, Ltd. *v.* Canadian Pacific Ry. Co. (Can.); **8.** *Carr.* p. 14
Grain Marketing Act, 1931, *Re* (Can.); **17.** *Dep.* p. 56
Grain Union Co. S/A Antwerp *v.* Hans Larsen A.S Aalborg (1933); **39.** *S. Goods*, No. 1092a
Grainger *v.* Grainger (Can.); **27.** *H. & W.* p. 39
— *v.* Singer (1927); **28.** *Inc. T.* No. 632a
Grainton S.S. Owners *v.* Genua S.S. Owners, The Genua (1936); **41.** *Ship.* No. 6257a
Gramophone Co., Ltd. *v.* Leo Feist Incorporated (Aus.); **13.** *Coprt.* p. 17
— *v.* Stephen Cawardine & Co. (1934); **13.** *Coprt.* No. 121a
Gramophone Records, Ltd. *Re* (1930); **17.** *Damgs.* No. 350a; **34.** *Mast. & S.* No. 739b
Grampian Realities Co. *v.* Montreal East (Can.); **38.** *Rates*, p. 68
Grams, *Re* (Can.); **2.** *Agric.* p. 25
Granby (Marquis) *v.* Bakewell Urban District Council (1923); **35.** *Fish.* No. 353a
Granby Consolidated Mining, Smelting & Power Co., Ltd. *v.* A.-G. for British Columbia (Can.); **28.** *Inc. T.* p. 88
— *v.* West Kootenay Power & Light Co., Ltd. (Can.); **28.** *Injon.* p. 146; **42.** *Stats.* p. 29
Granchuk *v.* Springfield Fire & Marine Insurance Co. (Can.); **2.** *Arbn.* p. 81
Grand River Motors, Ltd., *Re*, Commercial Finance Corpn., Ltd. *v.* Martin (Can.); **7.** *B. of Sale*, p. 10
Grand Theatre, Ltd. *v.* Royal Trust Co. (Can.); **30.** *L. & T.* p. 42
Grand Trunk Pacific Coast S.S. Co. *v.* B.B., The (Can.); **1.** *Adm.* p. 38
— *v.* Simpson (Can.); **8.** *Carr.* p. 10
— *v.* Victoria-Vancouver Stevedoring Co. (Can.); **26.** *Guar.* p. 14
Grand Trunk Ry. Co. *v.* Credit Valley Ry. Co. (Can.); **17.** *Dep.* p. 43
Grand Trunk Ry. Co. of Canada *v.* Murphy (Can.); **8.** *Carr.* p. 7
— *v.* R. (Can.); **38.** *Rys.* p. 35
Grand Union Canal Co. *v.* Dacorum Assessment Committee & Dacorum Revenue Officer (1933); **38.** *Rates*, No. 955a
Grandy *v.* McNicol (Can.); **32.** *Libel*, p. 9
— *v.* Zwicker & Co. (Can.); **41.** *Ship.* p. 11
Granger *v.* South Wales Electrical Power Distribution Co. (1931); **20.** *Electric*, No. 33a
Grant, *Re* (Can.); **5.** *Bkpcy.* p. 68; **18.** *Distr.* p. 32; **29.** *Insce.* p. 30
— *v.* Australian Knitting Mills, Ltd. (1933); **16.** *Courts*, No. 352b
— *v.* — (1936); **36.** *Negl.* No. 364d; **39.** *S. Goods*, No. 709a
— *v.* — (Aus.); **39.** *S. Goods*, p. 40
— *v.* Canadian Pacific Railway (Can.); **8.** p. 8
— *v.* Derwent (1928); **40.** *S. Land*, No. 2705a
— *v.* — (1929); **40.** *S. Land*, No. 2705a; **41.** *Sewers*, No. 319a
— *v.* Dominion Loose Leaf Co. (Can.); **9.** *Coys.* p. 53
— *v.* Edmondson (1931); **39.** *Rntchgs.* Nos. 85a, 912a
— *v.* Grant (Scot.); **11.** *Confl.* p. 29
— *v.* Imperial Trust (Can.); **6.** *B. of Exch.* p. 6
— *v.* Knaresborough Urban Council (1928); **30.** *Jdgmts.* No. 202a; **38.** *Rates*, No. 1158c
— *v.* McDonald (Can.); **23.** *Exors.* p. 18
— *v.* Morrison, *Re* Grant Estate (Can.); **18.** *Descr.* p. 4
— *v.* Southern Cross Assurance Co., Ltd. (Aus.); **29.** *Insce.* p. 39
— *v.* Travis (Can.); **8.** *Chos.* p. 91
— *v.* Van Norman (Can.); **5.** *Bkpcy.* p. 74
— *v.* Whitzman (Can.); **3.** *Auct.* p. 2
— *v.* Wolfe (Can.); **23.** *Exors.* p. 15
Grant & Dominion Coal Co. *v.* McDonald (Can.); **30.** *L. & T.* p. 38
Grant & Sons, Ltd.'s Application, *Re* (1936); **43.** *Trade Mks.* No. 67a
Grant Estate, *Re*, Grant *v.* Morrison (Can.); **18.** *Descr.* p. 4
Grant Estate, *Re*, Mullin & Mullin *v.* Annable (Can.); **8.** *Chos.* p. 89
Grantham, *Re*, *Ex p.* Doyle (Can.); **4.** *Bkpcy.* pp. 33, 37
Grantham & Tupper (Fraser Estate), *Re* (Can.); **38.** *Rates*, p. 82
Grasett *v.* Hutchinson (Can.); **26.** *Guar.* p. 1
Grass *v.* McClelland, *Re* Rowe (Aus.); **23.** *Exors.* p. 27

Grassick *v.* Grassick (Can.); **27.** *H. & W.* p. 48
Grauds *v.* Dearsley (1935); **29.** *Insce.* No. 1578b
Gravelbourg Town, *Ex p., Re* Noel (Can.); **4.** *Bkpcy.* pp. 37, 38
Graves *v.* Cohen (1929); **12.** *Contr.* Nos. 4929a, 4936b
— *v.* Griffith (1820); **20.** *Eqy.* No. 2667a
— *v.* McLean (Can.); **1.** *Agcy.* p. 79
— *v.* Pocket Publications, Ltd. (1938); **13.** *Coprt.* No. 575c
— *v.* Sprague (Can.); **21.** *Exon.* p. 50
— *v.* Waskesiu Mills, Ltd. (Can.); **7.** *B. of Sale*, p. 12
Gravesend Corpn. *v.* Kent County Council (1935); **19.** *Educ.* No. 121a
Grawbarger & Moyer, *Re* (Can.); **3.** *Basty.* p. 61
Gray, *Re* (Can.) (1895); **28.** *Infts.* p. 132
—, *Re* (Can.) (1925); **28.** *Infts.* p. 137
—, *Re* (Can.) (1933); **8.** *Char.* p. 73
—, *Re*, Todd *v.* Taylor (1925); **8.** *Char.* No. 199a
— *v.* Bhagu Mian (Ind.); **38.** *Real Prop.* p. 99
— *v.* Blackmore (1934); **29.** *Insce.* Nos. 3217s, 3217z
— *v.* Caldeira (Can.); **16.** *Courts*, p. 16
— *v.* Chadwick (Can.); **4C.** *S. Land*, p. 7
— *v.* Chamandy & Sons (Can.); **31.** *L. & T.* pp. 48, 83
— *v.* Chilman (Aus.); **32.** *Libel*, p. 12
— *v.* — (No. 2) (Aus.); **37.** *Police*, p. 10
— *v.* Ford (Can.); **25.** *Fraud. Conv.* p. 14
— *v.* Glasgow Corpn. (Scot.); **8.** *Carr.* p. 7
— *v.* Hackney Borough Council (1904); **34.** *Metrop.* No. 29c
— *v.* Johnston (Scot.); **12.** *Contr.* p. 4; **24.** *Exors.* p. 35
— *v.* London & North Eastern Ry. Co. (Scot.); **8.** *Carr.* p. 10
— *v.* Lount (Can.); **31.** *L. & T.* p. 62
— *v.* Murchison (Can.); **1.** *Agcy.* p. 107
— *v.* Nord & Nelson (Can.); **42.** *Str. Traf.* p. 61
— *v.* Paterson (Can.); **38.** *Pub. Auth.* p. 6
— *v.* Penrhyn (Lord) (1937); **28.** *Inc. T.* No. 204p
— *v.* Perpetual Trustee Co. (1928); **20.** *Eqy.* No. 1438a; **37.** *Powers*, No. 1105a
— *v.* Perpetual Trustee Co., Ltd. (Aus.); **44.** *Wills*, p. 13
— *v.* Sladden & Stewart (N.Z.); **42.** *Solrs.* p. 12
— *v.* Spyer (1921); **30.** *Jdgmts.* No. 213a
— *v.* — (1922); **30.** *Jdgmts.* No. 213a
— *v.* Wabash Ry. Co. (Can.); **38.** *Rys.* p. 38
— *v.* Warner, *Re* Biel's Estate (1873); **25.** *Fraud. Conv.* No. 895a
Gray & Dixon *v.* London, Midland & Scottish Ry. Co. & Palin (1936); **8.** *Carr.* Nos. 1657, 1710
Gray & Farr, Ltd. *v.* Carlile (Can.); **9.** *Coys.* p. 28
Gray Tractor Co. of Canada & Van Troyen, *Re* (Can.); **2.** *Arbn.* p. 79
Gray-Campbell, Ltd. *v.* Flynn (Can.); **1.** *Agcy.* p. 67
Grayson *v.* Grayson (1927); **27.** *H. & W.* No. 3449a
— *v.* Grayson & Sebright (1930); **27.** *H. & W.* No. 5162a
— *v.* Walsh (Can.); **23.** *Exors.* p. 27
Grayson, Rollo & Clover Docks, Ltd., *Re* (1930); **9.** *Coys.* No. 942a
Grazebrook, *Re*, Chase *v.* Layton (Aus.); **44.** *Wills*, p. 30
—, *Re*, Chase *v.* Layton (No. 2) (Aus.); **24.** *Exors.* p. 42
Great Britain Pharmaceutical Society *v.* Watkinson (1931); **34.** *Med.* No. 260a
Great Central Ry. Co. *v.* London & North Western Ry. Co. (1922); **8.** *Carr.* No. 1010a
— *v.* Swann (1913); **8.** *Carr.* No. 1316a
Great Eastern Ry. Co. & London County Council, *Re* (1907); **26.** *Hghys.* No. 1985a
Great Grimsby Street Tramways Co. *v.* Cleethorpes Urban District Council (1934); **42.** *Str. Traf.* No. 146a
Great Indian Peninsular Ry. Co., Ltd. *v.* Jesraj Patwari (Ind.); **8.** *Carr.* p. 2
— *v.* Jugal Kishore Mukat Lal (Ind.); **8.** *Carr.* p. 6
— *v.* Kashinath Chimaji (Ind.); **34.** *Mast. & S.* pp. 42, 48, 75
Great Lakes Petroleum Co. *v.* Border Cities Oil, Ltd. (Can.); **21.** *Exon.* p. 58
Great Massingham & Little Massingham, Benefices of, *Re* (1931); **19.** *Eccl.* No. 2443b
Great North Insurance Co., *Re*, Painter's Case (Can.); **9.** *Coys.* p. 16
Great Northern Railway *v.* Bradford Corpn. (1918); **43.** *Wtr. Sply.* No. 199a
Great Northern Ry. Co. *v.* L. E. P. Transport & Depository, Ltd. (1922); **8.** *Carr.* Nos. 5a, 90a, 234a, 896a
— *v.* Lancashire & Yorkshire Ry. Co. (1853); **28.** *Injon.* No. 568a
Great Orme Tramways Co., *Re* (1934); **10.** *Coys.* No. 6352a
Great Southern & Western Ry. Co. of Ireland *v.* R. (1924); **16.** *Cr. Pract.* No. 323a; **17.** *Dep.* No. 714
Great West Farms, Ltd. *v.* Hansberger (Can.); **1.** *Agcy.* p. 67
Great West Life Assurance Co., *Re*, *Re* Christie Estate (Can.); **35.** *Mtge.* p. 45
— *v.* Belfrey (Can.); **29.** *Insce.* p. 33
— *v.* Campbell (Can.); **7.** *Bonds*, p. 13; **35.** *Mtge.* p. 31
— *v.* Pollock (Can.); **35.** *Mtge.* p. 41
— *v.* Prairie Developments, Ltd. (Can.); **40.** *S. Land*, p. 11
— *v.* Sterling Municipal District (Can.); **38.** *Rates*, p. 86
— *v.* Stoutenburg & McDonald (Can.); **35.** *Mtge.* p. 51
— *v.* Wright (Can.); **21.** *Exon.* p. 60
Great West Life Assurance Co. & Appleby, *Re* (Can.); **29.** *Insce.* p. 35
Great West Life Assurance Co. & Lanskail, *Re* (Can.); **1.** *Action*, p. 11
Great West Permanent Loan Co., *Re*, *Re* Winding-Up Act (Can.); **10.** *Coys.* p. 69
Great West Permanent Loan Co. & Winding-Up Act, *Re* (Can.); **10.** *Coys.* p. 69; **30.** *Jdgmts.* p. 23
Great West Saddlery Co. *v.* Canadian Ingot Iron Co. (Can.); **21.** *Estpl.* p. 38
— *v.* Prime (Can.); **12.** *Contr.* p. 29; **39.** *S. Goods*, p. 58
Great Western & London, Midland & Scottish Ry. Cos. *v.* Butler (1936); **8.** *Carr.* Nos. 1519, 1635
— *v.* Fletcher (1938); **8.** *Carr.* Nos. 1577, 1670
— *v.* Smart (1936); **8.** *Carr.* Nos. 1518, 1677, 1706
Great Western Ry. Co., *Ex p., Re* Great Western Railway Act, 1911 (1922); **11.** *Comp. Pchc.* No. 1560b
—, *Ex p.*, R. *v.* West Midland Traffic Area Licensing Authority (1936); **8.** *Carr.* No. 1580; **16.** *Cr. Pract.* No. 3581a
— *v.* Birmingham & Gloucester Ry. Co. (1844); **28.** *Injon.* No. 105a
— *v.* Boon (1928); **8.** *Carr.* No. 1377o
— *v.* Bristol Grain Importers' Defence Assocn. (1933); **8.** *Carr.* No. 1323d

Great Western Ry. Co., *v.* Durnford (James) & Sons, Ltd. (1928); **26.** *Guar.* No. 1826a
— *v.* James & Sons, Ltd. (1936); **8.** *Carr.* No. 1323e
— *v.* Jones (Can.); **24.** *Exors.* p. 39
— *v.* Kassos Steam Navigation Co. (1930); **41.** *Ship.* No. 1599a
— *v.* Laing (J.) & Co., Ltd. (1922); **8.** *Carr.* No. 1331a
— *v.* Monmouthshire County Council (1930); **26.** *Hghys.* No. 2644a; **38.** *Rys.* No. 978a
— *v.* Mostyn (Owners), The Mostyn (1928); **30.** *Jgdmts.* Nos. 498a, 569c, 588b; **36.** *Negl.* No. 706
— *v.* Rupert Pedley, Ltd. (1937); **8.** *Carr.* Nos. 1525, 1653
— *v.* United Kingdom Chamber of Shipping (1937); **38.** *Rys.* No. 758a
— *v.* West Midland Traffic Licensing Authority Area (1936); **8.** *Carr.* Nos. 1579, 1580, 1587; **16.** *Cr. Pract.* No. 3581a
Great Western Ry. Co. & London, Midland & Scottish Ry. Co. *v.* Bristol Corpn. (1928); **38.** *Rys.* No. 761d
Great Western Ry. Co.'s Application, *Re* (1933); **8.** *Carr.* No. 1323d
Greater Britain Products Development Corpn. Ltd., *Re* (1924); **9.** *Coys.* No. 1411a
Greater Melbourne Realty Co., Pty., Ltd., *Re* (Aus.); **9.** *Coys.* p. 47
Greater Sydney Development Assocn., Ltd. *v.* Rivett (Aus.); **35.** *Misrep.* p. 3
Greavas *v.* Almas (Can.); **16.** *Cr. Pract.* p. 38
Greaves, *Ex p.*, *Re* Bulmer (1937); **4.** *Bkpcy.* No. 2293a
— *Re* (Can.); **8.** *Char.* p. 69
— *v.* Drysdale (1936); *Pract.* No. 3637a
— *v.* Inland Revenue Comrs., *Re* Bulmer (1937); **4.** *Bkpcy.* No. 2293a
— *v.* Salisbury (Can.); **1.** *Agcy.* p. 79
Greaves (J. W.) & Sons, Ltd. *v.* Roberts (1929); **34.** *Mast. & S.* No. 4014b
Grech *v.* Board of Trade (1923); **2.** *Arbn.* No. 1985b
Grecian, The (1902); **1.** *Adm.* No. 1603b
Green, *Re* (Can.); **23.** *Exors.* p. 18
Green (A Debtor), *Re* (N.Z.); **4.** *Bkpcy.* p. 7
Green, *Re*, Shears *v.* Lloyds Bank, Ltd. (1935); **43.** *Trusts*, No. 340a
— *v.* Arcos, Ltd. (1931); **39.** *S. Goods*, No. 1905a
— *v.* Berliner (1936); **15.** *Crim.* Nos. 8177c, 8177d, 8178b, 8178f, 8178g; **30.** *Jdgmts.* No. 658a
— *v.* Canadian National Railways Co. (Can.), [1931] 3 W. W. R. 448; **38.** *Rys.* p. 39
— *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 38
— *v.* Dynes (1938); **42.** *Str. Traf.* No. 76aa
— *v.* Favourite Cinemas, Ltd. (1930); **28.** *Inc. T.* No. 244a
— *v.* Fraser (Can.); **43.** *Trusts*, p. 68
— *v.* Gliksten (J.) & Son, Ltd. (1928); **28.** *Inc. T.* No. 204b
— *v.* Green (1913); **27.** *H. & W.* No. 2828a
— *v.* — (1929); **3.** *Basty.* No. 130b; **27.** *H. & W.* No. 5781b
— *v.* Hardy (Aus.); **36.** *Negl.* p. 15
— *v.* Harry (Can.); **33.** *Mal. Pros.* p. 40
— *v.* Kursaal (Southend-on-Sea) Estates, Ltd. (1937); **15.** *Crim.* Nos. 8178c, 8178d, 8178h
— *v.* Matthews & Co. (1930); **19.** *Easmt.* Nos. 361a, 1092a; **44.** *Waters*, No. 302a
— *v.* Mockett, *Re* Sangster (1894); **3.** *Bank.* No. 380a
— *v.* Premier Glynrhonwy Slate Co., Ltd. (1928); **34.** *Mast. & S.* No. 3359e
Green *v.* Tress (Can.); **31.** *L. & T.* p. 84
— *v.* Vandekar (1937); **23.** *Exors.* No. 2516a
— *v.* Watson (Can.); **36.** *Pats.* p. 90
— *v.* Weatherill (1929); **21.** *Estpl.* No. 529a; **43.** *Trusts*, No. 1499a
— *v.* Whitehead (1929); **1.** *Agcy.* No. 296a
Green & Cox *v.* Bradfield (1844); **5.** *Bkpcy.* No. 7261a
Green & Jamael, *Re* (Can.); **30.** *Intox.* p. 12
Green (R. & H.) & Silley Weir, Ltd. *v.* Ruapehu S. S. Owners (1929); **41.** *Ship.* No. 8104a
Green Star Shipping Co., Ltd. *v.* London Assurance (1933); **29.** *Insce.* No. 1870a
Greenan *v.* Minneapolis Threshing Machine Co. & Christiansen (Can.); **32.** *Libel*, p. 7
Greenaway *v.* Canadian Pacific Ry. Co. (Can.); **26.** *Hghys.* p. 24
— *v.* McIntosh (Can.); **43.** *Trade Mks.* p. 36
Greenberg *v.* Cooperstein (1926); **9.** *Coys.* No. 272a; **10.** *Coys.* No. 8581a
— *v.* Manitoba Hudson-Essex, Ltd. (Can.); **12.** *Contr.* p. 5
Greene, *Re*, *Re* Whitworth, *Re* E. A., *Re* Fraser, *Re* Wood (1928), **33.** *Lunat.* No. 529b
— *v.* Ruggles (Can.); **10.** *Coys.* p. 55
Greene's Estate, *Re* (Aus.); **44.** *Wills*, p. 56
Greenhalgh (W. P.) & Sons *v.* Union Bank of Manchester (1924); **3.** *Bank.* No. 289a
Greenham *v.* Watt (Can.); **12.** *Contr.* p. 19
Greenhill *v.* Federal Insurance Co. (1927); **29.** *Insce.* No. 1265a
Greening *v.* Queen Anne's Bounty (1932); **19.** *Eccl.* Nos. 3466a, 3466b
Greenlaw *v.* King (1841); **25.** *Fraud. Conv.* No. 844a
Greenlees *v.* Port of Manchester Insurance Co. (Scot.); **29.** *Insce.* p. 48
Greenock (Provost) *v.* Peters (Scot.); **19.** *Eccl.* p. 31
Greenock Case (1869); **20.** *Elect.* No. 442a
Greenock Corpn. *v.* Admiralty, The (Scot.); **38.** *Pub. Auth.* p. 6
Greenstein *v.* C. H. Dress Co. (Can.); **1.** *Action*, p. 16
Greenstreet, *In the Estate of* (1930); **44.** *Wills*, No. 1978a
Greenstreet *v.* Paris Hydraulic Co. (Can.); **9.** *Coys.* p. 32; **38.** *Rates*, pp. 84, 85, 86
Greenway *v.* A.-G. (1927); **3.** *Basty.* No. 130e; **16.** *Courts*, No. 280a
Greenwell *v.* Humphries, *Re* Williams' Settlement (1929); **40.** *Sttlmts.* No. 146b
— *v.* Johnston (Can.); **40.** *S. Land*, p. 21
Greenwich (Prince of Orange Lane) Housing Order, 1936, *Re*, Willey's Application (1937); **38.** *Pub. Hlth.* No. 502aa
Greenwood *v.* Atherton (1938); **19.** *Educ.* No. 52b; **38.** *Pub. Auth.* No. 760a
— *v.* Evans (1841); **31.** *L. & T.* No. 2287a
— *v.* Greenwood (1877); **44.** *Wills*, No. 4241a
— *v.* Greenwood (1937); **27.** *H. & W.* Nos. 3095a, 3315a
— *v.* Martins Bank, Ltd. (1933); **1.** *Agcy.* No. 995a; **3.** *Bank.* No. 634a; **21.** *Estpl.* No. 1477a
— *v.* Rothwell (1844); **18.** *Discy.* No. 1039a
— *v.* Waverley Municipality Council (Aus.); **3.** *Bailmt.* p. 7
Greenwood & Greenwood *v.* Welford (Can.); **1.** *Agcy.* pp. 86, 88
Greenwood Tileries, Ltd. *v.* Clapson (1937); **44.** *Waters*, No. 652
Greer, *Re* (1929); **23.** *Exors.* No. 3478a
— *v.* Downs Supply Co. (1927); **1.** *Agcy.* No. 2126a; **20.** *Egy.* No. 661a
— *v.* Godson (Can.) (1918); **1.** *Agcy.* p. 80
— *v.* — (Can.) (1921); **1.** *Agcy.* p. 80

Greer *v.* Kettle (1938); **21.** *Estpl.* No. 813a; **26.** *Guar.* No. 561a
— *v.* Mulmur (Township) (Can.); **26.** *Hghys.* p. 27
Greet, *Ex p.* (S. Af.); **16.** *Cr. Pract.* p. 34
Greg *v.* Planque (1936); **31.** *L. & T.* Nos. 4866a, 4866b
Gregg *v.* Coates (1856); **40.** *Sttlmts.* No. 1884a
— *v.* Palmer (Can.); **30.** *Jdgmts.* p. 23
— *v.* Richards (1926); **19.** *Easmt.* No. 186a
Gregory, *Re* (1934); **5.** *Bkpcy.* No. 5562a
— (Maundy), *Re, Ex p.* Norton (1935); **5.** *Bkpcy.* No. 5562a
—, *Re*, How *v.* Charrington (1935); **8.** *Char.* No. 1069a
— (Maundy) (No. 396 of 1933), *Re*, Trustee v. Jerusalem (Patriarch) (No. 2) (1934); **4.** *Bkpcy.* No. 395a
—, *Re*, Trustee *v.* Norton (1935); **4.** *Bkpcy.* No. 5562a
— *v.* Cochrane (Ind.); **24.** *Fam. Arr.* p. 61
— *v.* Waddington & Co. (1933); **34.** *Mast. & S.* No. 3429a
Gregson *v.* Swift (1936); **34.** *Mast. & S.* No. 3288r
Greig & Toronto, *Re* (Can.); **24.** *Fact.* p. 56
Grein *v.* Imperial Airways, Ltd. (1937); **42.** *Str. Traf.* Nos. 260e, 260f
Greisman *v.* Gillingham & Shiffer-Hillman Clothing Manufacturing Co. (Can.); **31.** *L. & T.* p. 73
Grenfell *v.* Hamilton, *Re* James (1932); **8.** *Char.* Nos. 47c, 1020a, 2289a
— *v.* Meyrowitz (E. B.), Ltd. (1936); **39.** *S. Goods*, No. 663a
Greswolde-Williams *v.* Newcastle-upon-Tyne Corpn. (1927); **11.** *Comp. Pche.* No. 595a
Grevas *v.* Almas (Can.); **16.** *Cr. Pract.* p. 37
Greville *v.* Attkins (1829); **17.** *Deeds*, No. 1235
Greville Trust Co. *v.* Grey, *Re* Warwick's Settlement Trusts (1938); **40.** *Sttlmts.* No. 2270a
Grey *v.* Coucher (Can.); **35.** *Mtge.* p. 32
— *v.* Tiley (1932); **28.** *Inc. T.* No. 462a
Grey's (Lord) Case (1541); **14.** *Crim.* No. 960a
Grey Coaches, Ltd., *Ex p.*, R. *v.* Minister of Transport (1933); **42.** *Str. Traf.* No. 76v
Grey County *v.* Grey Electric-Power Board (N.Z.); **20.** *Electric*, p. 16
Grey Goose Bus Lines, Ltd. & Liederbach Bus Lines, Incorporated, *Re* (Can.); **13.** *Corpns.* p. 29
Greyhound Racing Assocn. (Liverpool), Ltd. *v.* Cooper (1936); **28.** *Inc. T.* No. 252g
Gribble *v.* Gribble (1929); **27.** *H. & W.* No. 5050a
— *v.* Manitoba Free Press Co., Ltd. (Can.); **13.** *Coprt.* p. 14
Grice *v.* Bartram (Can.); **9.** *Coys.* p. 21
— *v.* R. (N.Z.); **36.** *Negl.* p. 26
Grice & Municipal Act Assessment Appeal, *Re* (Can.); **38.** *Rates*, p. 82
Grier *v.* Georgas (Can.); **7.** *Bldg. Conts.* p. 21
Grierson *v.* Osborne Stadium, Ltd. (Can.); **36.** *Nuis.* pp. 49, 50
Griese *v.* Walker (Can.); **21.** *Exon.* p. 52
Griesheim Elektron, Ltd., *Re* (1921); **2.** *Aliens*, Nos. 195a, 405a
Grieve *v.* Macpherson (Scot.); **26.** *Hghys.* p. 32
Grieve McGlory, Ltd. *v.* Dome Lumber Co., Ltd. & Thompson (Can.); **17.** *Deeds*, p. 26
Griffin *v.* Beattie (Can.); **31.** *L. & T.* p. 82
— *v.* Cape Breton Electric Co. (Can.); **8.** *Carr.* p. 7
— *v.* State of South Australia (Aus.); **17.** *Dep.* p. 61; **18.** *Discy.* p. 15
Griffith *v.* Frederickson (Can.); **1.** *Agcy.* p. 81
— *v.* Paget (1877); **10.** *Coys.* No. 6984a
— *v.* R. (Aus.); **14.** *Crim.* p. 36
— *v.* Williams & Portmadoc Urban District Council (1932); **34.** *Mast. & S.* No. 2112b
Griffiths, *Re*, Jones *v.* Jenkins (1926); **5.** *Bkpcy.* No. 5922a
— *v.* Anderson (Can.) (1925); **1.** *Agcy.* p. 79
— *v.* — (Can.) (1926); **1.** *Agcy.* p. 79
— *v.* Carleton (Aus.); **25.** *Gifts*, p. 47
— *v.* Fordyce Motors, Ltd. (Can.); **17.** *Damgs.* p. 14
— *v.* Fraser (Can.); **19.** *Eccl.* p. 31
— *v.* Hughes (1847); **30.** *Jdgmts.* No. 366a
— *v.* St. Clement's School, Liverpool (Managers) & Church of England Schools Society Trustees (1938); **19.** *Educ.* No. 52a; **38.** *Pub. Auth.* No. 760b
Griffiths (George W.) Co., *Re* (Can.); **9.** *Coys.* p. 5
Griggs *v.* Stevens (1909); **38.** *Rates*, No. 675b
Grimes, *Re*, Grimes *v.* Grimes (Ir.); **25.** *Gifts*, p. 48
Grimmer *v.* Merchants & Manufacturers Fire Insurance Co. (Can.); **1.** *Agcy.* p. 63
Grimsby & Lincoln County, *Re* (Can.); **19.** *Educ.* p. 40
Grimwood *v.* Aldenham (1928); **8.** *Clubs*, No. 20a
Grindell *v.* Bass (1920); **1.** *Agcy.* No. 164a
Grindlay, *Re* (Can.); **29.** *Insce.* p. 31
Grindley *v.* Blakie (Can.); **21.** *Exon.* p. 51
Grinham *v.* Davies (1929); **30.** *Juries*, No. 423b; **36.** *Negl.* No. 842b
Grinlinton, *Re*, Public Trustee *v.* Grinlinton (1933); **21.** *E. D.* No. 121a
Gripaios *v.* Kahl Wallis & Co., Ltd. (1928); **41.** *Ship.* No. 1723a
Grisewood & Smith's Case (1859); **9.** *Coys.* No. 2344b
Grissinger *v.* Victor Talking Machine Co. of Canada, Ltd. (Can.); **36.** *Pats.* p. 67
Grist *v.* Grist (1932); **27.** *H. & W.* No. 4836b, 4864c
Groat *v.* Hydro Electric Power Commission of Ontario (1929); **16.** *Courts*, No. 653b
— *v.* Ontario Hydro-Electric Power Commission (Can.); **16.** *Courts*, p. 17
Grobstein *v.* Kouri (Can.); **29.** *Insce.* p. 34
Grocery Specialty Co., *Re*, *Re* Shulman (Can.); **5.** *Bkpcy.* p. 77
Grocock *v.* Grocock (1920); **3.** *Basty.* No. 367a
Groebel *v.* Hungarian Property Administrator (1925); **2.** *Aliens*, No. 215s
Groedel *v.* Hungarian Property Administrator (1927); **2.** *Aliens*, Nos. 49h, 491
Grogan *v.* Bailey (Can.); **36.** *Negl.* p. 17
Groh *v.* Ritter (Can.); **42.** *Str. Traf.* p. 37
Groning *v.* Crockett (1811); **2.** *Aliens*, No. 493a
Groom, *Re* (1869); **22.** *Evid.* Nos. 6053a, 6066a
— *v.* Crocker (1938); **29.** *Insce.* No. 3217q; **32.** *Libel*, No. 109c; **42.** *Solrs.* No. 1035a
— *v.* West (1838); **4.** *Bkpcy.* No. 3750a
Grosch *v.* Loveridge (Can.); **1.** *Agcy.* p. 74; **36.** *Prtnrs.* p. 60
Grose *v.* Grose (Can.); **22.** *Evid.* p. 24
Gross, *Re* (Can.); **33.** *Mags.* p. 34
—, *Re, Ex p.* Adair (1871); **3.** *Bank.* No. 347
—, *Re*, R. *v.* Stubbs (Can.); **33.** *Mags.* p. 34
— *v.* Brodrecht (Can.); **22.** *Evid.* p. 3
Gross, Sherwood & Heald, Ltd. *v.* Essex County Council (1927); **11.** *Comp. Pche.* No. 702a
Grosvenor Estates, Ltd. *v.* Liverpool Corpn. (1932); **11.** *Comp. Pche.* No. 2225e
Grosvenor Settled Estates, *Re*, Westminster (Duke) *v.* McKenna (1932); **40.** *Sttlmts.* No. 2900b
—, *Re*, Westminster (Duke) *v.* McKenna (1933); **40.** *Sttlmts.* No. 2916a
Grothe *v.* Montreal Corpn. (Can.); **2.** *Arbn.* p. 79
Grothkop *v.* Grothkop (N.Z.); **11.** *Confl.* p. 25
Groundwater *v.* Groundwater (Can.); **24.** *Exors.* p. 37

Grove (Dudley Revenue Officer) *v.* Lloyd's British Testing Co., Ltd. (1931); **38.** *Rates*, No. 226v
Grove-Grady, *Re*, Plowden *v.* Lawrence (1929); **8.** *Char.* Nos. 4b, 208a
Grove-White *v.* Wilson, *Re* Wilson (Ir.); **25.** *Gifts*, p. 50
Grover *v.* Stirling Bonding Co. (Can.); **1.** *Agcy.* p. 76
Groves *v.* Hull (Can.); **40.** *S. Land*, p. 13
Grubb *v.* Grubb (1934); **27.** *H. & W.* No. 6286d
Grundy *v.* Broadbent (Ir.); **2.** *Aliens*, p. 44
— *v.* Hewson (1933); **2.** *Agric.* Nos. 266t, 266u
Grunnell Co. *v.* Warren (Can.); **36.** *Negl.* p. 4
Grunwaldt, *Ex p.*, *Re* Lee (1920); **5.** *Bkpcy.* Nos. 8778a, 9032a, 9109a, 9198a
Guaglieni *v.* Matthews (1865); **15.** *Crim.* No. 8154
Guarantee Co. of North America, *Ex p.*, *Re* Coughlin & Co. (Can.); **4.** *Bkpcy.* pp. 26, 32
Guaranteed Batteries, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 32
Guaranty Executor & Trustee Co., Ltd. *v.* Gladitz, *Re* Gladitz (1937); **27.** *H. & W.* No. 1228a
Guardian Assurance Co. *v.* Shiva Mangal Singh (Ind.); **1.** *Action*, p. 3
Guardian Realty Co. of Canada, Ltd. & Toronto City, *Re* (Can.); **38.** *Rates*, p. 82
Guardian, Trust & Executors Co., Ltd. *v.* Equitable Loan & Finance Co., Ltd. (N.Z.); **7.** *B. of Sale*, p. 11
Guatemala (Republica de) *v.* Nunez (1927); **8.** *Chos.* No. 27a
Gudivada Mangamma *v.* Maddi Manalakshmamma (1929); **17.** *Dep.* No. 482a
Guelph & Ontario Investment & Savings Society *v.* Lethbridge Northern Irrigation District Board of Trustees (Can.); **7.** *B. of Sale*, p. 12
Guelph Carpet Mills Co. *v.* Guelph Corpn. (Can.); **22.** *Evid.* p. 22
Guelph Worsted Spinning Co. *v.* Guelph Corpn. (Can.); **22.** *Evid.* p. 22
Guerin *v.* R. (Can.); **14.** *Crim.* p. 72
Guertin *v.* Fassett Lumber Co. (Can.); **36.** *Negl.* p. 5
Guest *v.* Cochlin (Can.); **40.** *S. Land*, p. 20
— *v.* Goddard (1937); **28.** *Inc. T.* No. 5401
— *v.* Linden (Can.); **32.** *Lien*, p. 26
Guettler *v.* Canadian International Paper Co. (Can.); **36.** *Pats.* pp. 67, 68
Guggisberg *v.* Weber (Can.); **6.** *B. of Exch.* p. 6
Guiborn *v.* Fellows (1717); **6.** *B. of Exch.* No. 946a; **12.** *Contr.* No. 2102a
Guilbault *v.* Brothier (Can.); **21.** *Estpl.* p. 23
Guilbert *v.* Cummings (Can.); **32.** *Limit. of A.* p. 33
Guilday *v.* Winnipeg Electric Ry. Co. (Can.); **8.** *Carr.* p. 7
Guildford Trust, Ltd. *v.* Goss (1927); **6.** *B. of Exch.* No. 588a
— *v.* Pohl & Maritch (1928); **6.** *B. of Exch.* No. 1054a
Guildhall Insce. Co. *v.* Denny (Can.); **29.** *Insce.* p. 48
Guilding *v.* Morel Brothers, Cobbett & Sons, Ltd. (1888); **28.** *Injon.* No. 929a
Guilfoil *v.* McAvity (T.) & Sons, Ltd. (Can.); **36.** *Negl.* p. 7
Guilfoyle *v.* Port of London Authority (1932); **26.** *Hghys.* Nos. 2708a, 2782a; **44.** *Waters*, No. 932a
Guillet *v.* Charlebois (Can.); **17.** *Damgs.* p. 14
Guinand *v.* Naish (1845); **37.** *Powers*, No. 637a
Guinee, *In the Estate of* (1929); **23.** *Exors.* No. 3478b
Guinness & Co. *v.* Inland Revenue Comrs. (Ir.); **28.** *Inc. T.* p. 13
Guisti Patents & Engineering Works, Ltd. *v.* Maggs (1923); **13.** *Cty. Cts.* No. 980a; **16.** *Cr. Pract.* Nos. 3131b, 3168b
Gujerat Ginning & Manufacturing Co. *v.* Motilal Hirabhai Spinning Co. (Ind.); **9.** *Coys.* p. 53
Gujranwala Municipal Committee *v.* Fazel Dun (Ind.); **13.** *Corpns.* p. 33
Gulab Ray Ghutghutia *v.* Mahendra Nath Sreemany (Ind.); **42.** *Sp. Pfce.* p. 16
Gulbenkian *v.* Gulbenkian (1927); **27.** *H. & W.* No. 5623b
— *v.* — (1937); **11.** *Confl.* No. 176a
Gulf & Southern S.S. Co. (Incorporated) *v.* British Traders Insurance Co., Ltd. (1930); **29.** *Insce.* No. 551a
Gulnes, The, (D/S A/S), Gulnes *v.* Imperial Chemical Industries, Ltd. (1938); **41.** *Ship.* No. 3909b
Gumbrell *v.* Swale Rural District Council (1936); **38.** *Pub. Hlth.* No. 265d
Gump, *Re* (Can.); **4.** *Bkpcy.* p. 24
Gundersen *v.* Miller (Aus.); **14.** *Crim.* p. 45
Gunderson *v.* Gunderson (Can.); **27.** *H. & W.* p. 46
Gunn *v.* Mackhenry (1750); **16.** *Cr. Pract.* No. 3185a
— *v.* Richardson, *Re* Winterstoke's Will Trusts (1938); **40.** *Stllmts.* No. 2149a
Gunn's Pure Foods, Ltd. *v.* Rae & Canadian Surety Co. (Can.); **41.** *Shrffs.* p. 7
Gunning, , *In the Estate of* (1936); **23.** *Exors.* No. 1464a
—, *In the Estate of* (Ir.); **19.** *Eccl.* p. 30
— *v.* Lusby (No. 1) (Can.); **1.** *Agcy.* p. 74
Gunns, Ltd. *v.* Wark (Can.); **6.** *B. of Exch.* p. 10
Gunsbourg, *Re*, *Ex p.* Cook (1920); **5.** *Bkpcy.* No. 5775a
—, *Re*, *Ex p.* Trustee (1920); **5.** *Bkpcy.* No. 5775a
Gunsolly *v.* Engstrom (Can.); **6.** *B. of Exch.* p. 15
Gunson *v.* Kay (1934); **27.** *H. & W.* No. 2384a
— *v.* Municipal Tramways Trust (Aus.); **11.** *Comp. Pche*, p. 6
Gunter *v.* Prince William School District No. 3 Trustees (Can.) [1934] 3 D. L. R.; **19.** *Educ.* p. 41
— *v.* — (Can.) (1934), 8 M. P. R. 15; **43.** *Tresp.* p. 53
Guntrip *v.* Cawood (N.Z.); **36.** *Negl.* p. 25
Guran Ditta *v.* Ram Ditta (Ind.); **27.** *H. & W.* p. 12
Gurbakhsh Singh *v.* R. (Ind.); **25.** *Gaming*, p. 39
Gurdas Maham Chand *v.* Guranditta Mal (Ind.); **22.** *Evid.* p. 12; **26.** *Guar.* p. 3
Gurdial Singh *v.* Srydarbar Sahib Amritsar Central Board Local Committee (Ind.); **42.** *Stats.* p. 20
Gurditta *v.* R. (Can.); **14.** *Crim.* p. 58
Gurdon, *Re*, Reynolds *v.* Ex-Services Welfare Society (1936); **8.** *Char.* No. 910a
Gurevitch *v.* Melchoir (Can.); **32.** *Lien*, p. 21
Gurmukh Rai *v.* Secretary of State for India (Ind.); **16.** *Courts*, p. 13
Gurney *v.* Grimmer (1932); **29.** *Insce.* No. 729b
— *v.* James (Can.); **21.** *Exon.* p. 48
Gurton *v.* Ewart (Can.); **30.** *Jdgmts.* p. 29
Guru Charan Prasad *v.* Baburao Vishnu Pararkar (Ind.); **16.** *Cntmpt.* p. 4
Gushowaty *v.* Gushowaty & Jones (Can.); **27.** *H. & W.* p. 44
Guss, *Re* (Aus.); **21.** *Exon.* p. 50
Gussage All Saints & Gussage St. Michael, Dorset, Parishes, *Re* (1925); **19.** *Eccl.* No. 2443a
Gustafson *v.* Gustafson (Can.); **27.** *H. & W.* p. 25
Guthrie *v.* Stewart (Scot.); **31.** *L. & T.* p. 92
Gutieres, *In the Goods of* (1869), **11.** *Confl.* No. 587b
Gutkin *v.* Winnipeg City (Can.); **28.** *Infts.* p. 141

Gutsell *v.* Reeve (1936); **32.** *Limit. of A.* No. 111b
Gutta Percha & Rubber (London), Ltd. (No. 789, 574) Application, *Re* (1935); **43.** *Trade Mks.* No. 943a
Gutta Percha Corpn., Ltd., *Re*, Thornton *v.* Gutta Percha Corpn., Ltd. (1899); **10.** *Coys.* No. 5134a
Guttierez, *In the Goods of* (1869); **11.** *Confl.* No. 587b
Guy *v.* Dormer (1677); **40.** *Sttlmts.* No. 913a
Guy St. Crossing Case, Canadian National Rys. *v.* Montreal Tramways (Can.); **38.** *Rys.* p. 38
Guy-Pell *v.* Foster (1930); **12.** *Contr.* No. 2877a; **26.** *Guar.* No. 1908a
Guyot & Vigouret & Award made by Gosselin, *Re*, *Re* Arbitration Act (Can.); **2.** *Arbn.* p. 92
Gwilym *v.* Aberbeeg Collieries, Ltd. (1936); **34.** *Mast. & S.* No. 3811p
Gwin *v.* Starrs (Can.); **18.** *Discy.* p. 23
Gwydyr Castle, *Re* (S. Af.); **1.** *Adm.* pp. 18, 21
Gwynne, *Re* (Can.); **21.** *E. D.* p. 16
Gwyon, *Re*, Public Trustee *v.* A.-G. (1930); **8.** *Char.* Nos. 266a, 691b, 1089a
Gyles *v.* Canadian Oil Cos., Ltd. (Can.); **34.** *Mast. & S.* p. 5

H.

H. *v.* B. (1901); **27.** *H. & W.* No. 2377
— *v.* H. (1928); **11.** *Confl.* Nos. 53a, 894a, 899b, 903b; **21.** *Estpl.* No. 10a
— *v.* — (otherwise N.) (1929); **27.** *H. & W.* No. 2345a
— *v.* — (Can.); **27.** *H. & W.* p. 47
H— *v.* H— (1938); **27.** *H. & W.* No. 3051a
H. & G. Kinemas, Ltd. *v.* Cook (1933); **28.** *Inc. T.* No. 200c
H. A. Metz Laboratories Inc. Application for a Patent (No. 311,382), *Re* (1933); **36.** *Pats.* No. 1474c
H. G. Hamilton Pty., Ltd. *v.* Rae (Aus.); **12.** *Contr.* p. 33
H. J. Webb & Co. (Smithfield, London), Ltd., *Re* (1922); **10.** *Coys.* Nos. 6460, 6936
H. M. (No. 2), *Re* (Ir.); **33.** *Lunat.* p. 15
H.M. Advocate. *See* Advocate, H.M.
H.M. Submarine Rainbow (1933); **41.** *Ship.* Nos. 5401a, 6433b
H. M. F. Humphrey, Ltd. *v.* Baxter, Hoare & Co., Ltd. (1933); **3.** *Bailmt.* No. 390a
H.M.S. Glorious (1932); **41.** *Ship.* Nos. 5686a, 5748d
H.M.S. Malaya (1937); **41.** *Ship.* No. 5779a
Haack *v.* Martin (Can.); **17.** *Damgs.* p. 15
Haage *v.* Pegson, Ltd. (1935); **36.** *Pats.* No. 2389b
Haberlack *v.* Burr (Can.); **30.** *Intox.* p. 1
Habib Rouji *v.* Standard Aluminium & Brass Works, Ltd. (Ind.); **9.** *Coys.* p. 27
Habit Ullah *v.* Atma Singh (Ind.); **33.** *Mal. Pros.* p. 41
Hachborn, *Re* (Can.); **4.** *Bkpcy.* p. 25
Hack, *Ex p.*, R. *v.* Minister of Health (1937); **38.** *Pub. Hlth.* No. 502cc
Hack (A.), *Re* (1930); **22.** *Exors.* No. 133a; **44.** *Wills*, No. 98a
Hack, *Re*, Beadman *v.* Beadman (1925); **13.** *Cohlds.* No. 1533a
— *v.* Tuck (1818); **39.** *Rntchgs.* No. 336b
Hackett *v.* Colchester South Municipal Corpn. (Can.); **32.** *Limit. of A.* p. 37; **38.** *Real Prop.* p. 98
Hacking *v.* British Columbia Motor Transportation, Ltd. (Can.); **36.** *Negl.* p. 25
Hackney *v.* Lyne (Can.); **1.** *Agcy.* p. 89
Hackney Pavilion, Ltd., *Re* (1924); **9.** *Coys.* No. 2389
Hackney Wick Stadium *v.* Piddlesden (1933); **42.** *Str. Traf.* Nos. 76c, 76f
Hackworth *v.* Baker (Can.); **38.** *Real Prop.* p. 95
— *v.* — (No. 2) (Can.); **16.** *Courts*, p. 13
Hadden, *Re*, Public Trustee *v.* More (1932); **8.** *Char.* No. 213b
—, *Re*, Public Trustee *v.* Ware (1932); **8.** *Char.* No. 213b
Haddock *v.* British Columbia Electric Ry. Co., Ltd. (Can.); **8.** *Carr.* p. 7
Haddon, *Re*, *Re* Administration Act (Can.); **28.** *Infts.* p. 141
— *v.* Fillmore (Can.); **17.** *Dep.* p. 48
Hadida *v.* Fordham & Sons (1893); *Pract.* No. 2604a
Hadley, *Ex p.*, R. *v.* North Worcestershire Assessment Committee (1929); **16.** *Cr. Pract.* No. 2287a; **38.** *Rates*, Nos. 1146a 1146b
Hadley (Felix) & Co. *v.* Hadley (1898); **12.** *Contr.* No. 3820
Hadley & Hadley *v.* Elliott & Burns & Co., Ltd. (Can.); **36.** *Negl.* p. 33
Hadlow *v.* Hadlow (1930); **27.** *H. & W.* No. 2753a
Hædwig, The (1853); **1.** *Adm.* No. 1351a
Haffize *v.* Jacobson (S. Af.); **1.** *Agcy.* p. 53
Haffner *v.* Northern Trusts Co. (Can.); **1.** *Agcy.* p. 77
— *v.* Weston & Detchon (Can.); **42.** *Stats.* p. 25
Hagan *v.* London Oil Storage Co., Ltd. (1932); **34.** *Mast. & S.* No. 3811q
Hagart & Burn-Murdoch *v.* Inland Revenue Comrs. (1929); **28.** *Inc. T.* No. 217a
Hagel *v.* Cana Rural Municipality (Can.); **38.** *Rates*, p. 87
Hagel & Law Society of British Columbia, *Re* (Can.); **3.** *Barr.* p. 48
Hagelberg (W.) Akt., *Re* (1916); **2.** *Aliens*, No. 219
Hagen, The (1908); **1.** *Adm.* No. 843a
Hagen *v.* Ferris (Can.); **40.** *S. Land*, p. 11
— *v.* National Provincial Bank, Ltd. (1938); **30.** *Juries*, No. 644a
Hagerbaum, *Re* (Ir.); **3.** *Basty.* p. 57
Hagerman (Doe d.) *v.* Strong (Can.); **21.** *Exon.* p. 52
Hagersville (Village) *v.* Hambleton (Can.); **21.** *Estpl.* p. 25; **38.** *Rates*, p. 84
Haggart *v.* Trusts & Guarantee Co. (Can.); **3.** *Bank.* p. 42
Hagger, *Re*, Freeman *v.* Arscott (1930); **44.** *Wills*, No. 108a
Haggerty *v.* McIntosh (Can.); **2.** *Animals*, p. 63
— *v.* Wilsons & Clyde Coal Co. (Scot.); **34.** *Mast. & S.* p. 2; *Mines*, p. 211
Haglund *v.* Derr (Can.); **32.** *Lien*, p. 23
Hague *v.* Hague (1937); **27.** *H. & W.* No. 6233d
— *v.* St. Boniface Hospital (Can.); **34.** *Mast. & S.* pp. 5, 7
Hahn *v.* Public Trustee (1925); **2.** *Aliens*, No. 49b
Haidari Begam *v.* Jawad Ali Shah (Ind.); **16.** *Cr. Pract.* p. 29
Haig, *Re* (1912); **35.** *Mtge.* No. 368a
— *v.* Thompson (Scot.); **38.** *Pub. Hlth.* p. 22
Haile Selassie *v.* Cable & Wireless, Ltd. (1938); **1.** *Action*, No. 395a
— *v.* — (No. 2) (1938); **1.** *Action*, No. 356a
Hain S.S. Co., Ltd. *v.* Sociedad Anónima Comercial de Exportacion y Importacion (Louis Dreyfus & Cia), Lda., of Buenos Aires (1934); **41.** *Ship.* No. 4046a
— *v.* Tate & Lyle, Ltd. (1936); **41.** *Ship.* Nos. 3162b, 3194a
Haines *v.* Brewster (Can.); **36.** *Negl.* p. 21

Haines *v.* Haines (1702); **23.** *Exors.* No. 1031d
Haines & Haines *v.* Williams (Can.), [1933] 1 W. W. R. 478; **42.** *Str. Traf.* p. 37
— *v.* — (Can.), [1933] 1 W. W. R. 644; **36.** *Negl.* p. 36
Haji Ah Jon *v.* Abdul Jalil Khan (Ind.); **2.** *Aliens*, pp. 31, 43
Haji Rahimbux Ashan Karim *v.* Central Bank of India (Ind.); **42.** *Stats.* p. 21
Hakim's Case, *Re* Smith, Knight & Co. (1869); **9.** *Coys.* No. 2473a
Haldane *v.* Sinclair (Scot.); **31.** *L. & T.* p. 88
Hale *v.* Jennings Bros. (1938); **36.** *Nuis.* No. 344d
Hales *v.* A.-G., *Re* Chapman (1922); **8.** *Char.* Nos. 740a, 1424a, 1449a
— *v.* Islington Borough Council (1909); **38.** *Rates*, No. 675d
— *v.* Thomson (Can.); **1.** *Agcy.* p. 86
Haley, *Re* (Can.); **16.** *Cr. Pract.* p. 28
Haley *v.* Comox S.S. (Can.); **1.** *Adm.* p. 23
Haley & Ennis, *Re* (Can.); **2.** *Arbn.* p. 92
Halifax *v.* Dill (Can.); **38.** *Rates*, p. 49
— *v.* Halifax Harbour Comrs. (Can.); **38.** *Rates*, p. 63
Halifax (City) *v.* Jones (Can.); **17.** *Dep.* p. 53
— *v.* King (Can.); **43.** *Wtr. Sply.* p. 77
— *v.* Nova Scotia Light & Power Co. (Can.); **43.** *Tram.* p. 48
— *v.* Read (Can.); **43.** *Wtr. Sply.* p. 77
Halifax & Cape Breton Coal & Ry. Co. *v.* Gregory (Can.); **12.** *Contr.* p. 40
Halifax Automobile Co. *v.* Drew (Can.); **3.** *Auct.* p. 2
Halifax Banking Co. *v.* Matthew (Can.); **25.** *Fraud. Conv.* p. 13
Halifax Building Society *v.* Keighley (1931); **35.** *Mtge.* Nos. 590a, 1357a
Halifax Corpn. *v.* Brown (Can.); **14.** *Crim.* p. 51
— *v.* Fairbanks' Estate (1928); **17.** *Dep.* No. 135c
— *v.* O'Connor (Can.); **14.** *Crim.* p. 64; **38.** *Pub. Hlth.* p. 17
Halifax (City) Corpn. *v.* Western Assurance Co. (Can.); **17.** *Dep.* p. 50
Halifax Graving Dock Co. *v.* R. (Can.); **12.** *Contr.* p. 5
Halifax Harbour Comrs.' Assessment, *Re* (Can.); **38.** *Rates*, p. 63
Halifax Power Co. *v.* Christie (Can.); **32.** *Limit. of A.* p. 37
Halifax School for Blind *v.* A.-G. (Can.); **8.** *Char.* p. 79
— *v.* Chipman (Can.); **8.** *Char.* p. 81
Halifax's (Lord) Case (undated); **22.** *Evid.* Nos. 1382a, 1526a
Halket *v.* Merchant Traders' Ship Loan & Insce. Assocn. (1849); **10.** *Coys.* No. 7485b
Hall. *Ex p.* (S. Af.); **3.** *Barr.* p. 48
—, *Ex p.*, *Re* Cooper (1882); **4.** *Bkpcy.* No. 4638a
—, *Re* (Aus.) (1929); **44.** *Wills*, p. 56
—, *Re* (Aus.) (1930); **23.** *Exors.* p. 13
—, *Re* (Can.); **16.** *Cr. Pract.* p. 33
—, *Re*, Hall *v.* Hall (1932); **44.** *Wills*, No. 6728a
— *v.* Ball (Can.); **3.** *Barr.* p. 48
— *v.* Begg (Scot.); **30.** *Intox.* p. 8
— *v.* British Oil & Cake Mills (1930); **34.** *Mast. & S.* No. 3165b
— *v.* Brooklands Auto-Racing Club (1933); **36.** *Negl.* No. 243c
— *v.* Bryce (1890); **32.** *Libel*, No. 2298a
— *v.* Connecticut Fire Insurance Co. (Can.); **29.** *Insce.* p. 26
— *v.* Doe d. Surtees (1822); **32.** *Limit. of A.* No. 1353a
— *v.* Dyson (1852); **4.** *Bkpcy.* No. 5035b
Hall *v.* Electric Comrs. of Lawrencetown (Can.); **2.** *Arbn.* p. 96
— *v.* Geiger (Can.); **32.** *Libel*, pp. 7, 9
— *v.* — (No. 2) (Can.); **33.** *Mal. Pros.* p. 41
— *v.* Goldstone (N.Z.); **12.** *Contr.* pp. 12, 15; **17.** *Deeds*, p. 29
— *v.* Hall (1850); **36.** *Prtnrs.* Nos. 1480a, 1496a
— *v.* — (1914); **27.** *H. & W.* No. 5330a
— *v.* —, *Re* Hall (1932); **44.** *Wills*, No. 6728a
— *v.* Hogg (Can.); **32.** *Lien*, pp. 24, 27
— *v.* Inland Revenue Comrs. (1926); **28.** *Inc. T.* No. 666
— *v.* Jenkinson (1813); **39.** *Recrs.* No. 451a
— *v.* King's Lynn Harbour Moorings Comrs. (1875); **28.** *Inc. T.* No. 266a
— *v.* Knox (Can.); **17.** *Damgs.* p. 15
— *v.* Macintyre & Sartorio (Can.); **24.** *Exors.* p. 40
— *v.* Marians (1933); **28.** *Inc. T.* No. 446e
— *v.* — (1935); **28.** *Inc. T.* No. 446f
— *v.* More (Can.); **43.** *Trade*, p. 6
— *v.* Padley (1923); **12.** *Contr.* No. 3784a
— *v.* Pelmadulla Valley Tea & Rubber Co. (Ceylon); **38.** *Real Prop.* p. 95; **43.** *Trusts*, p. 64
— *v.* Pilz (Can.); **32.** *Lien*, p. 27
— *v.* Smith (1808); **20.** *Eqy.* No. 719a
— *v.* Taylor (Can.); **33.** *Mags.* p. 27
— *v.* Tinck (Can.); **42.** *Str. Traf.* p. 36
— *v.* Toronto Guelph Express Co. & Hatch (Can.); **42.** *Str. Traf.* p. 55
— *v.* West Coast Charcoal & Wood Products Co., Ltd. (Can.); **36.** *Negl.* p. 17
— *v.* Wightman (Ir.); **2.** *Animals*, p. 62
— *v.* Wilkins (Aus.); **27.** *H. & W.* p. 16
— *v.* Yorkton District Registrar (Can.); **38.** *Real Prop.* p. 95
Hall Bros. S.S. Co., Ltd. *v.* Young, The Trident (1938); **29.** *Insce.* No. 1708b
Hall Coal Co. *v.* Bayusona, The (Can.); **1.** *Adm.* pp. 28, 29
Hall D'Ath *v.* British Provident Assocn. for Hospital & Additional Services (1932); **10.** *Coys.* No. 7490c
Hall (J. & E.), Ltd. *v.* Barclay (1937); **43.** *Trov.* No. 578a
Hall (R. & H.), Ltd. & Pim (W. H.) Junior & Co.'s Arbitration, *Re* (1928); **39.** *S. Goods*, No. 2612
Hall of Arts & Sciences Corpn. *v.* Hall (1934); **43** *Trade Mks.* No. 1033a
Hall's Settlement Trusts, *Re*, Samuell *v.* Lamont (1937); **44.** *Wills*, No. 3131b
Hallam *v.* Hallam (1930); **16.** *Courts*, No. 22c; **27.** *H. & W.* No. 2723a
Hallen *v.* Spaeth (1923); **2.** *Arbn.* No. 305a
Hallenstein, *Re*, Halsted *v.* Blank (1922); **2.** *Aliens*, Nos. 215d, 237c
Hallett *v.* Bank of Montreal (Can.); **22.** *Evid.* p. 9
Halliday Estate, *Re* (Can.); **8.** *Char.* p. 64
Halligan *v.* Lawson (Aus.); **2.** *Arbn.* p. 95
Hallisy, *Re* (Can.); **8.** *Char.* p. 61
Halliwell *v.* Venables (1930); **36.** *Negl.* No. 519a
Halls *v.* Halls & Lukover (1938); **27.** *H. & W.* No. 4306a
— *v.* Mitchell (Can.); **32.** *Libel*, pp. 6, 11, 16, 17
Halse *v.* Minister of Health (1937); **38.** *Pub. Hlth.* Nos. 502p, 524b
— *v.* Peters (1831); **35.** *Mtge.* No. 623a
Halse's Application, *Re* Falmouth (Well Lane, Sedgmonds Court & Smithwick Hill) Clearance Order, 1936 (1937); **38.** *Pub. Hlth.* No. 502p
Halsey *v.* Erith Oil Works (1930); **34.** *Mast. & S.* No. 3025b
Halsted *v.* Blank, *Re* Hallenstein (1922); **2.** *Aliens*, Nos. 215d, 237c

Halsted *v.* Halsted, *Re* Halsted's Will Trusts (1937); **43.** *Trusts*, No. 2280a
Halsted's Will Trusts, *Re*, Halsted *v.* Halsted (1937); **43.** *Trusts*, No. 2280a
Halton (County) *v.* Trafalgar (Township) (Can.); **13.** *Corpns.* p. 33
Hamar, *Re*, *Ex p.* McGuinty & Co. (Can.); **11.** *Confl.* p. 56
Hambourg *v.* T. Eaton Co., Ltd. (Can.); **36.** *Negl.* p. 9
Hambro *v.* Burnand (1903); **1.** *Agcy.* No. 2139a
— *v.* — (1904); **1.** *Agcy.* No. 2139a
Hambrook *v.* Stokes Brothers (1925); **1.** *Action*, No. 205b; **17.** *Damgs.* No. 146a
Hamburg *v.* Cape Breton Elec. Co. (Can.); **31.** *L. & T.* p. 47
Hamdorf, *Re* (Aus.); **44.** *Wills*, p. 46
Hamel *v.* Patenaude (Can.); **1.** *Agcy.* p. 77
Hamelin *v.* Phillips (Can.); **16.** *Courts*, p. 10
Hamer, *Re*, *Ex p.* Royal Bank of Canada (Can.); **5.** *Bkpcy.* p. 94
Hamer's Estate, *Re*, Public Trustee *v.* A.-G. (1937); **3.** *Basty.* No. 79b
Hamid *v.* Sudhirmohan (Ind.); **38.** *Rys.* p. 42
Hamid Ali Haldar *v.* R. (Ind.); **14.** *Crim.* p. 29
Hamilton, *Re* (Can.); **38.** *Pub. Hlth.* p. 31
—, *Re*, FitzGeorge *v.* FitzGeorge (1921); **5.** *Bkpcy.* No. 5909a
— *v.* Bennett (1930); **28.** *Infts.* No. 279a
— *v.* Branch (1933); *Pract.* No. 5143a
— *v.* Carter & Bell (1932); **42.** *Solrs.* No. 3544a
— *v.* Hamilton Steel Co. (Can.); **10.** *Coys.* p. 70
— *v.* Henderson (R. C.) & Co., Ltd. (Aus.); **34.** *Mast. & S.* p. 149
— *v.* Houghton (1820); **30.** *Jdgmts.* No. 407a
— *v.* Inland Revenue Comrs. (1931); **28.** *Inc. T.* Nos. 467a, 674dd
— (J.) *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 101
— *v.* Izard (N.Z.); **40.** *Sttlmts.* p. 26
— *v.* Kinneil Cannel & Coking Coal Co. (Scot.); **34.** *Mast. & S.* p. 88
— *v.* Lightbody (Can.); **38.** *Real Prop.* p. 99
— (Duke) *v.* Lord Advocate (1892); **21.** *E. D.* No. 384a
— *v.* Loughnan, *Re* Banks (N.Z.); **44.** *Wills*, p. 33
— *v.* Montreal Assurance Co. (Can.); **29.** *Insce.* p. 21
— *v.* Palliser Hotel Auto & Taxi Co., Ltd. (Can.); **36.** *Negl.* p. 31
— *v.* Phœnix Lumber Co., Ltd. & Bunn (Can.); **34.** *Mast. & S.* p. 11
— *v.* R. (Can.); **11.** *Const. L.* p. 66
— *v.* Railton (Can.); **8.** *Chos.* p. 95
— *v.* Street (Can.); **18.** *Discy.* p. 10
— *v.* Taylor (Can.); **40.** *S. Land*, p. 9
— *v.* Yates (N.Z.); **33.** *Mkts.* p. 43
— *v.* York & Baldry (Can.); **43.** *Trusts*, p. 68
Hamilton & Co., Ltd., *Re* (N.Z.); **10.** *Coys.* p. 88
Hamilton & Oakes, *Re* (Can.); **4.** *Bkpcy.* pp. 31, 32; **5.** *Bkpcy.* pp. 66, 81
Hamilton & Wragge *v.* Stokes (Can.); **38.** *Real Prop.* p. 94
Hamilton Estate, *Re* (Can.); **21.** *E. D.* p. 21
Hamilton Gear & Machine Co. *v.* Lewis Brothers (Can.); **12.** *Contr.* pp. 7, 32; **17.** *Damgs.* pp. 6, 10, 15
Hamilton Harbour Comrs., *Re* (Can.); **17.** *Dep.* p. 43; **44.** *Waters*, p. 6
Hamilton Magistrates *v.* Bent Colliery Co., Ltd. (Scot.); **44.** *Waters*, p. 5
Hamilton Methodist Church Trustees *v.* Jones (N.Z.); **31.** *L. & T.* p. 51
Hamilton Provident & Loan Society *v.* Campbell (Can.); **21.** *Exon.* p. 45
Hamilton Provident Loan & Investment Co. *v.* Smith (Can.); **32.** *Lien*, p. 25
Hamilton (H. G.) Pty., Ltd. *v.* Rae (Aus.); **12.** *Contr.* p. 33
Hamilton Trusts, *Re* (Can.); **26.** *Guar.* p. 5
Hamilton-Gell *v.* White (1922); **2.** *Agric.* No. 266i
Hamlyn *v.* Kaplan (Can.); **38.** *Real Prop.* p. 95
Hamm *v.* Hooper, *Re* Hooper (Can.); **44.** *Wills*, p. 30
— *v.* Krokback & Co. (Can.); **43.** *Tresp.* p. 50
Hammer *v.* Finkelstein (Can.); **25.** *Gaming*, p. 28
— *v.* Hoffnung (S.) & Co., Ltd. (Aus.); **22.** *Evid.* p. 21
Hammer & Luthmer *v.* Hammer & Luthmer (Can.); **1.** *Agcy.* p. 99
Hammermill Paper Co.'s Opposition, *Re*, *Re* Pirie (Alex.) & Sons, Ltd. (1932); **43.** *Trade Mks.* Nos. 277b, 285b, 397a
Hammersmith (Berghem Mews) Clearance Order, 1936, *Re*, Wilmot's Application (1937); **38.** *Pub. Hlth.* No. 502w
Hammett (R. C.), Ltd. *v.* Beldam (1931); **25.** *Food*, Nos. 439b, 439d, 439h
— *v.* Crabb (1931); **25.** *Food*, Nos. 439b, 439d, 439h
— *v.* London County Council (1933); **25.** *Food*, Nos. 439c, 439i
Hammond, *Ex p.*, *Re* Day (1902); **4.** *Bkpcy.* No. 1177b
—, *Re* (Can.) (1921); **8.** *Char.* pp. 62, 68, 75
—, *Re* (Can.) (1934); **44.** *Wills*, p. 50
—, *Re* (Can.) (1935); **18.** *Desct.* p. 1
—, *Re*, Hammond *v.* Treharne (1938); **44.** *Wills*, No. 4346a
— *v.* Hanlon (1935); **8.** *Clubs*, No. 125a; **30.** *Intox.* No. 678a
— *v.* London County Council (1931); **37.** *Poor L.* No. 100a
— *v.* R. (Can.) (1931); **15.** *Crim.* p. 99
— *v.* R. (Can.) (1934); **14.** *Crim.* p. 30
— *v.* Salisbury-Jones, *Re* Salisbury-Jones (1938); **27.** *H. & W.* No. 1320a
— *v.* Treharne, *Re* Hammond (1938); **44.** *Wills*, No. 4346a
— *v.* Westminster Guardians (1931); **37.** *Poor L.* No. 100a
— *v.* Wilkinson (Can.); **42.** *Str. Traf.* p. 40
Hampholm, The (Owners of) *v.* Princess Adelaide, The (Can.); **41.** *Ship.* p. 53
Hampholm S.S. *v.* Canadian Pacific Ry. Co. (Can.); **41.** *Ship.* pp. 52, 53
Hampshire (F. W.) & Co. (1927), Ltd. *v.* General Kaputine Syndicate, Ltd. (1930); **43.** *Trade Mks.* Nos. 1350b, 1448a
Hampshire Parliamentary County Registration Officer *v.* Ainslie (1933); **20.** *Elect.* No. 263a
Hampson *v.* Boulton (Can.); **22.** *Evid.* p. 14
Hampstead Garden Suburb Trust, Ltd. *v.* Denbow (1913); **43.** *Tresp.* No. 247a
Hampstead Guardians *v.* Barclays Bank, Ltd. (1923); **3.** *Bank.* No. 692b
Hampton *v.* West Cannock Colliery Co., Ltd. (1932); **34.** *Mines*, No. 1126a
Hampton Urban District Council, *Ex p.*, R. *v.* Minister of Health (1936); **33.** *L. G.* No. 110c
Hamsterley Ganister Co., Ltd., Application of, *Re* (1931); **34.** *Mines*, Nos. 325b, 327a
Hanbury, *Ex p.*, *Re* Wegg (1843); **5.** *Bkpcy.* No. 7735
— *v.* Hanbury (1892); **33.** *Lunat.* No. 186a
Hanbury's Settled Estates, *Re* (1913); **2.** *Agric.* No. 479a
Hancock, *Re* (N.Z.); **28.** *Infts.* p. 141
— *v.* Dutton, *Re* Ridge (1933); **44.** *Wills*, Nos. 4141a, 6754a

Hancock *v.* Midland Junction Municipality Corpn. (Aus.); **20.** *Electric*, p. 16
— *v.* Stewart (N.Z.); **36.** *Negl.* p. 16
Hancock & Co., Ltd. *v.* Johnstone (N.Z.); **6.** *B. of Exch.* p. 16
Hancock's Golden Crust Pty. Ltd.'s Trade Mark, *Re* (Aus.); **43.** *Trade Mks.* p. 21
Hancox *v.* Balfour, Beattie & Co., Ltd. (1932); **34.** *Mast. & S.* Nos. 3283h, 3896b
Handelman *v.* Davies (Ir.); **35.** *Money*, p. 23
Handley Page *v.* Butterworth (1935); **28.** *Inc. T.* No. 97c
Hands *v.* Great Western Colliery Co., Ltd. (1930); **34.** *Mast. & S.* No. 3819b
— *v.* Simpson, Fawcett & Co., Ltd. (1928); **34.** *Mast. & S.* Nos. 530a, 565a
Handy *v.* Carruthers (Can.); **2.** *Agric.* p. 15
Haney *v.* Canadian Northern Ry. Co. (Can.); **2.** *Arbn.* p. 96
Hankey & Co., Ltd. *v.* Vernon (Can.); **21.** *Exon.* p. 55
Hanks *v.* Coombes (1928); **36.** *Pats.* Nos. 308b, 804a
Hanlon, *Re*, Heads *v.* Hanlon (1933); **44.** *Wills*, No. 2837a
— *v.* Port of Liverpool Stevedoring Co., Ltd. (1937); **24.** *Fact.* No. 138d
Hanna *v.* Costerton (Can.); **1.** *Action*, p. 2
— *v.* Eagleson (Ir.); **34.** *Mast. & S.* p. 42
Hanna (M. A.) Co. *v.* Provincial Bank of Canada (Can.); **3.** *Bank.* p. 27
Hannaby *v.* Llay Main Collieries, Ltd. (1931); **34.** *Mast. & S.* Nos. 2512b, 3885b
Hannaford *v.* May (1935); **34.** *Mines*, No. 1212a
Hanning *v.* Lowe, *Re* Gough (1927); **5.** *Bkpcy.* No. 7693a
Hannon *v.* Mowlem & Co., Ltd. (1937); **34.** *Mast. & S.* No. 2731b
Hanrahan *v.* Bruer (Can.); **36.** *Negl.* p. 41
— *v.* McSween (Can.); **36.** *Negl.* p. 32
Hanratty *v.* Minister for Industry & Commerce & Irish Insurance Comrs. (Ir.); **44.** *Work*, p. 63
Hans C. Christensen, Ltd., *Re*, Thom *v.* Everett (Can.); **35.** *Mtge.* p. 31
Hans Ehrig & Ulrich Keilhauer Application for a Patent (No. 361,787), *Re* (1933); **36.** *Pats.* No. 1474a
Hans Lauritzen's Application, *Re* (1931); **43.** *Trade Mks.* Nos. 64a, 166a
Hanscombe *v.* Bedfordshire County Council (1938); **26.** *Highys.* No. 474a
Hansen *v.* Lechtzier (Can.); **1.** *Agcy.* p. 91
— *v.* Nugget Publishers, Ltd. (Can.); **32.** *Libel*, p. 14
— *v.* R. (Can.); **16.** *Cr. Pract.* p. 26
— *v.* Taylor (Can.); **38.** *Real Prop.* p. 93
Hansford *v.* London Express Newspaper, Ltd. (1928); **29.** *Insce.* No. 3157b
Hanson *v.* Collette (Can.); **11.** *Confl.* p. 38; **22.** *Evid.* p. 27
— *v.* Gleaner, Ltd. (Can.); **18.** *Discy.* p. 23; **22.** *Evid.* p. 21
— *v.* Lowe (Can.); **42.** *Str. Traf.* p. 39
— *v.* Newman (1934); **31.** *L. & T.* No. 4838a
— *v.* Parks (Can.); **7.** *Bldg. Conts.* p. 24
Hanton *v.* Royal Trust Co. (Can.); **1.** *Agcy.* p. 87
— *v.* Stedman (Can.); **1.** *Agcy.* pp. 50, 77
Hantsport Fruit Co., Ltd. *v.* Coldwell (Can.); **12.** *Contr.* p. 54
Hantsport Town *v.* Pulsifer (Can.); **3.** *Basty.* p. 61
Hapgood *v.* Martin & Son, Ltd. (1934); **19.** *Easmt.* No. 181a
Harbican *v.* Kennedy (Can.); **11.** *Confl.* p. 56
Harbin *v.* Masterman (1871); **8.** *Char.* No. 1115
— *v.* — (1894); **8.** *Char.* No. 1115
Harby *v.* Moore (1860); **43.** *Trusts*, No. 409a
Harcourt (Doe d.) *v.* Roe (1813); **21.** *Exon.* No. 1706a; **31.** *L. & T.* No. 6315a
Hardaker *v.* Boon (1934); **36.** *Pats.* No. 3161c
— *v.* Boucher & Co., Ltd. (1934); **36.** *Pats.* No. 2676a
— *v.* Tjabring (S. Af.); **32.** *Libel*, p. 2
Hardcastle *v.* Smithson (1933); **34.** *Mast. & S.* Nos. 2054a, 2206a
Harden *v.* London, Midland & Scottish Ry. Co. (1935); **8.** *Carr.* No. 1687
— *v.* Sterling Securities Corpn., Ltd. (Can.); **39.** *S. Goods*, p. 59
Harder *v.* Stevens (F. J.) & Son (Aus.); **34.** *Mast. & S.* p. 57
Hardie & Lane *v.* Chiltern (1927); **16.** *Courts*, Nos. 831a, 834a
Hardie & Lane, Ltd. *v.* Chiltern (1928); **12.** *Contr.* No. 4676a; **16.** *Courts*, Nos. 831a, 834a
Hardiman *v.* Yellow Cab, Ltd. (Can.); **36.** *Negl* p. 33
Harding, *Ex p.*, *Re* Lamplough (Clarkson) (1835); **5.** *Bkpcy.* No. 9034a
—, *Re* (Can.) (1871); **38.** *Real Prop.* p. 94
—, *Re* (Can.) (1929); **28.** *Infts.* pp. 136, 138
—, *Re*, Westminster Bank *v.* Laver (1934); **18.** *Descr.* No. 283d
— *v.* Edwards & Tatisich (Can.); **36.** *Negl.* p. 4
— *v.* Waters (H. & E.), Ltd. (1936); **34.** *Mast. & S.* Nos. 3701g, 3763a
Harding & Co. *v.* Hamilton (N.Z.); **9.** *Coys.* p. 19
Hardisty & Ribstone, *Re*, *Re* Local Option Provision of Government Liquor Control Act of Alberta (Can.); **30.** *Intox.* p. 15
Hardless *v.* Hardless (Ind.); **22.** *Evid.* p. 18; **27.** *H. & W.* p. 26
Hardman *v.* Causton (1936); **13.** *Cty. Cts.* No. 407a
— *v.* McLeod (Aus.); **17.** *Damgs.* p. 22; **35.** *Misrep.* p. 5
— *v.* Willis, *Re* Prince (1935); **23.** *Exors.* No. 4764a
Hardstaff *v.* Sherwood Colliery Co. (1931); **34.** *Mast. & S.* No. 3927e
Hardy, *Re* (Can.); **4.** *Bkpcy.* p. 37; **32.** *Lien*, p. 20; **42.** *Stats.* p. 22
—, *Re* (No. 2) (N.Z.); **5.** *Bkpcy.* p. 70
—, *Re*, Nelson *v.* A.-G. (Ir.); **8.** *Char.* p. 78
— *v.* Edmonton Corpn. (Can.); **38.** *Pub. Hlth.* p. 16
— *v.* Holmes & Sprinz (1913); **23.** *Exors.* No. 2518a
— *v.* Hopgood (Can.); **39.** *Revenue*, p. 10
— *v.* Walker, *Ex p.* M'Fee (1853); **13.** *Cty. Cts.* No. 1044
Hardy & Co., Ltd. *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 32
Hardy & Son, Ltd. *v.* Southern Ry. Co. (1935); **8.** *Carr.* Nos. 1551, 1684
Hardy's, Ltd. *v.* New South Wales Railway Comrs. (Aus.); **8.** *Carr.* p. 16; **38.** *Rys.* p. 45
Hare *v.* Taylor (1837); **2.** *Animals*, No. 486a
Hare & Chase, Ltd. *v.* Commercial Finance Corpn., Ltd. (Can.); **1.** *Agcy.* p. 50
Hargraft Estate, *Re* (Can.); **44.** *Wills*, p. 50
Hargraves' Trusts, *Re*, Leach *v.* Leach (1937); **40.** *Stlmts.* No. 1056a
Hargreaves *v.* Hargreaves (1926); **27.** *H. & W.* No. 5624a
— *v.* London, Midland & Scottish Ry. Co. (1937); **8.** *Carr.* No. 1554
— *v.* Shuttleworth, *Re* Nightingale (1927); **22.** *Evid.* No. 1489a
Hargreaves, Ltd.'s Executors *v.* Burnley Corpn. (1936); **11.** *Comp. Pche.* No. 356a

Hargrove *v.* Burn (1929); **36.** *Negl.* Nos. 4a, 59b, 131a, 580a, 770a, 781a, 784a
Hari Chandana Joga Deva *v.* Hindustan Co-Operative Insurance Society, Ltd. (Ind.); **9.** *Coys.* p. 41
Harichand Mancharam *v.* Govind Luxman Gokhale (Ind.); **12.** *Contr.* p. 7
Harihar Prasad *v.* Bansi Missir (Ind.); **13.** *Corpns.* p. 26
Harilal Dalsukhram *v.* Mulchand (Ind.); **40.** *S. Land*, p. 22
Hari Laxman Joshi *v.* Secretary of State for India (Ind.); **12.** *Contr.* p. 39
Harishankar Pal *v.* Saradaprasad Das (Ind.); **42.** *Sp. Pfce.* p. 19
Harkaway, The (1928); **41.** *Ship.* No. 5400a
Harker *v.* Bayliss, *Re* Harker's Will Trusts (1938); **2.** *Agric.* No. 603a
— *v.* Britannic Assurance Co., Ltd. (1928); **25.** *Fr. Soc.* No. 175a
Harker's Will Trusts, *Re*, Harker *v.* Bayliss (1938); **2.** *Agric.* No. 603a
Harkesh Singh *v.* Hardevi (Ind); **38.** *Real Prop.* p. 91
Harkies *v.* Lord Dufferin Hospital (Can.); **34.** *Med.* p. 186
Harkins *v.* Benson (Can.); **41.** *Ship*, p. 72
— *v.* Doney (Can.); **32.** *Libel*, p. 8
Harkishen Lal *v.* R. (Ind.); **16.** *Cntmpt.* p. 1
Harland & Wolff, Ltd. *v.* Burns & Laird Lines, Ltd. (Scot.); **41.** *Ship.* p. 29
Harley *v.* Bank of Toronto (Can.); **6.** *B. of Exch.* p. 2
— *v.* Barbers' Assocn. of British Columbia (Can.); **8.** *Clubs*, p. 98
— *v.* Sholl (1925); **16.** *Cntmpt.* Nos. 182a, 709a
Harlow, The (1922); **1.** *Adm.* No. 87a
Harlow, The, Cory Lighterage, Ltd. *v.* Dalton (Owners) (1922); **1.** *Adm.* No. 1536a
Harman, *Re*, Lloyd *v.* Tardy (1894); **11.** *Confl.* No. 626a
— *v.* Anderson (N.Z.); **44.** *Wills*, p. 23
— *v.* Bolt (1931); **17.** *Dep.* No. 712b
— *v.* Layton-Bennett (1935); **4.** *Bkpcy.* No. 1552c
— *v.* Official Receiver, Petitioning Creditors & Trustee (1934); **4.** *Bkpcy.* No. 1552b
Harman's Case (1875); **12.** *Contr.* No. 4985
Harmans, Ltd. & Toronto (City), *Re*. *Re* Porter & Toronto (City), *Re* Stewart & Toronto (City) (Can.); **11.** *Comp. Pche.* p. 14
Harmer *v.* Armstrong (1934); *Pract.* No. 1229a
Harmon *v.* Furber, *Re* Budd Estate (Can.); **18.** *Desct.* p. 3
— *v.* Travelers Insurance Co. (Can.); **29.** *Insce.* p. 39
Harmonic Resonator, Ltd. *v.* Walton (Aus.); **9.** *Coys.* p. 12
Harms Incorporated *v.* Embassy Club, Ltd. (1927); **13.** *Coprt.* No. 483a
Harms Incorporated & Chappell & Co. *v.* Martans Club (1927); **13.** *Coprt.* No. 483a
Harmsworth *v.* Smith (S. Af.); **17.** *Damgs.* p. 6
Harnam Singh *v.* Kapoor Singh (Can.) (1927); **18.** *Discy.* p. 8; **36.** *Prtnrs.* p. 61
— *v.* — (Can.) (1932); **36.** *Prtnrs.* p. 61
Harnett *v.* Fisher (1927); **32.** *Limit. of A.* No. 1901a; **33.** *Lunat.* Nos. 1856a, 1856c
Harney *v.* Harney (Can.); **27.** *H. & W.* p. 40
Harold Drabble, Ltd. *v.* Hycolite Manufacturing Co. (1928); **13.** *Coprt.* No. 229b
Harold Wood Brick Co., Ltd. *v.* Ferris (1935); **40.** *S. Land*, No. 2243a
Harper, *Re* (Can.); **29.** *Insce.* p. 31
— *v.* Associated Newspapers, Ltd. (1927); **29.** *Insce.* No. 3157a
Harper *v.* Canadian Order of Foresters (Can.); **29.** *Insce.* p. 31
— *v.* Haden & Sons, Ltd. (1933); **11.** *Comp. Pche.* No. 269a; **26.** *Hghys.* No. 1576a
— *v.* Harper (Can.); **23.** *Exors.* p. 22; **30.** *Jdgmts.* p. 24
— *v.* — (Scot.); **27.** *H. & W.* p. 21
— *v.* Hayton (1829); **33.** *Mags.* No. 958b
— *v.* King Edward's Hospital Fund for London, *Re* Hurst (1935); **8.** *Char.* No. 1252b
— *v.* McLean (Can.); **36.** *Negl.* p. 32
— *v.* Pearson (1861); **43.** *Trade Mks.* No. 1121a
Harper & East Flamborough Township, *Re* (Can.); **38.** *Pub. Hlth.* p. 15
Harper's Trustees *v.* Jacobs (Scot.); **8.** *Char.* p. 72
Harrap *v.* Harrap (Can.) (1935); **27.** *H. & W.* pp. 33, 42
— *v.* — (Can.) (1936); **27.** *H. & W.* p. 82
Harries, Hall & Kruse *v.* South Sarnia Properties, Ltd. (Can.); **7.** *Bldg. Conts.* p. 32
Harrington, *Ex p.*, R. *v.* Wilson (Can.); **14.** *Crim.* p. 14
— *v.* Bush (1709); **18.** *Distr.* No. 1732a
— *v.* Harrington (Can.); **27.** *H. & W.* p. 11
Harrington Motor Co., *Re*, *Ex p.* Chaplin (1928); **10.** *Coys.* No. 6056a
Harrington's Trusts, *Re* (1860), **11.** *Const. L.* No. 218a
Harris, *Re* (1931); **5.** *Bkpcy.* No. 6952a
—, *Re* (Can.) (1888); **38.** *Real Prop.* p. 95
—, *Re* (Can.) (1914); **18.** *Desct.* p. 2
— *v.* Alberta Law Society (Can.); **42.** *Solrs.* p. 2
— *v.* Associated Portland Cement Manufacturers, Ltd. (1937); **34.** *Mast. & S.* No. 2421a
— *v.* Bankers & Traders Insurance Co. (Can.); **29.** *Insce.* p. 6
— *v.* Burgess & Thorne (Can.); **36.** *Prtnrs.* p. 63
— *v.* Carnegie (Can.); **26.** *Guar.* p. 6
— *v.* Catchpool, *Re* Catchpool (1928); **40.** *Stlmts.* No. 3139a
— *v.* Chapman (1868); **22.** *Evid.* No. 2480a
— *v.* Dublin & South Eastern Ry. Co. (Ir.); **8.** *Carr.* p. 3
— *v.* Garson (Can.); **11.** *Confl.* p. 57
— *v.* Griffith, *Re* Anderson-Berry (1928); **20.** *Eqy.* No. 2702a; **23.** *Exors.* No. 2744a
— *v.* Harris (1931); **22.** *Evid.* Nos. 4237a, 4269a
— *v.* — (Aus.); **27.** *H. & W.* p. 30
— *v.* — (Can.) (1929); **11.** *Confl.* p. 25
— *v.* — (Can.) (1931); **27.** *H. & W.* p. 28
— *v.* — (Can.) (1932); **30.** *Jdgmts.* p. 20
— *v.* — (N.Z.); **27.** *H. & W.* pp. 60, 63
— *v.* Harris & Harris (Can.); **11.** *Confl.* p. 47
— *v.* Healing (A. G.) & Co., Pty., Ltd. (Aus.); **36.** *Negl.* p. 24
— *v.* Holler (1849); **22.** *Evid.* No. 4228a
— *v.* Howden (James) & Co. (Land), Ltd. (1938); **34.** *Mast. & S.* No. 3034a
— *v.* Howes & Chemical Distributors, Ltd. (Can.); **42.** *Str. Traf.* p. 39
— *v.* Lambert (Ir.); **22.** *Evid.* p. 5
— *v.* Law Society of Alberta (Can.); **42.** *Solrs.* p. 2
— *v.* Lerner (Can.); **6.** *B. of Exch.* p. 21
— *v.* Lindeborg (Can.); **34.** *Mines*, p. 205
— *v.* London & North Eastern Ry. Co. (1937); **34.** *Mast. & S.* Nos. 2021a, 3324b
— *v.* Lucas (1919); **2.** *Animals*, No. 563a
— *v.* McKinnon (N.Z.); **42.** *Str. Traf.* p. 41
— *v.* Manor Powis Coal Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 145
— *v.* Myers (Can.); **16.** *Cntmpt.* p. 7
— *v.* Norris (1930); **31.** *L. & T.* No. 7155a
— *v.* Phillips (1891); **13.** *Corpns.* No. 54a
— *v.* R. (S. Af.); **14.** *Crim.* pp. 6, 36, 42
— *v.* Richardson (N.Z.) **25.** *Fraud. Conv.* p. 18

Harris *v.* Shaw (1736); **1.** *Action*, No. 497a
— *v.* Smith (Can.); **42.** *Str. Traf.* p. 39
— *v.* Stacey (1929); **31.** *L. & T.* No. 7358c
— *v.* Tong (Can.); **39.** *S. Goods*, p. 57
Harris Abattoir Co. *v.* Aledo (Owners) (Can.); **1.** *Adm.* pp. 26, 30
Harris (B. F.) & Co., Ltd. *v.* Bjorkdale Rural Municipality (Can.); **38.** *Rates*, pp. 49, 66
Harris & Kauffman *v.* Bankers & Traders Insurance Co., Ltd. (Can.); **29.** *Insce.* p. 7
Harris (C. & T.) (Calne), Ltd. *v.* Harris (1934); **43.** *Trade Mks.* No. 1033b
Harris & Sons *v.* Plymouth Varnish & Colour Co., Ltd. (1933); **39.** *S. Goods*, No. 622b
Harris Investments, Ltd. *v.* Smith (Can.); **11.** *Confl.* p. 39
Harris Scarfe, Ltd., *Re* (Aus.); **8.** *Char.* p. 65
Harrison, *Ex p.*, *Re* Barley (1923); **4.** *Bkpcy.* No. 3152a
—, *Re* (Can.); **4.** *Bkpcy.* p. 38
—, *Re*, Day *v.* Harrison (1920); **3.** *Bank.* No. 391a
—, *Re*, Public Trustee *v.* Best (1934); **25.** *Gifts*, No. 369a
— *v.* Armstrong (Ir.); **2.** *Animals*, p. 60
— *v.* Carberry Elevator Co. (Can.); **7.** *B. of Sale*, p. 4
— *v.* Commis, *Re* Forbes (Can.); **44.** *Wills*, p. 25
— *v.* Cronk & Sons, Ltd. (1937); **28.** *Inc. T.* No. 122c
— *v.* Edwards, *Re* Smith's Mortgage (1931); **35.** *Mtge.* No. 4326a
— *v.* Forth (1695); **20.** *Eqy.* No. 239a
— *v.* Great Western Ry. Co. (1875); **8.** *Carr.* No. 833a
— *v.* Hamilton (Can.); **38.** *Real Prop.* p. 96
— *v.* Harbottle, *Re* Vulcaan Coal Co. (1922); **2.** *Aliens*, Nos. 223c, 223f
— *v.* Harrison (1824); **17.** *Damgs.* No. 404d
— *v.* — (Can.) (1918); **2.** *Arbn.* pp. 73, 75, 91
— *v.* — (Can.) (1932); **27.** *H. & W.* p. 51
— *v.* — (N.Z.); **11.** *Confl.* p. 29
— *v.* Hill (Scot.); **42.** *Str. Traf.* p. 51
— *v.* King (Can.); **18.** *Discy.* pp. 20, 21
— *v.* King (No. 2) (Can.); **18.** *Discy.* p. 23
— *v.* McGlashan (Can.); **24.** *Exors.* p. 38
— *v.* McSheehan (1885); **17.** *Damgs.* No. 260a
— *v.* Ridgway (1925); **2.** *Agric.* No. 29d
Harrison Bay Co., Ltd. *v.* Gauthier (Can.); **17.** *Dep.* p. 75
Harrison, etc. *v.* Crespin (Aus.); **2.** *Arbn.* p. 83
Harrison Mills, Ltd. *v.* Abbotsford Lumber Co., Ltd. (Can.); **18.** *Discy.* pp. 10, 22
Harrods (Buenos Aires), Ltd., *Re* (1936); **9.** *Coys.* No. 1012a
Harrods, Ltd. *v.* Geneen (1938); **1.** *Agcy.* No. 1755f
— *v.* Harrod (R.), Ltd. (1924); **9.** *Coys.* No. 228a
— *v.* Lemon (1931); **1.** *Agcy.* Nos. 1501c, 1853c
— *v.* Stanton (1923); **7.** *B. of Sale*, No. 710a
— *v.* Tester (1937); **27.** *H. & W.* No. 1311a
Harrods, Ltd.'s, Application to Register a Trade Mark in Part B of the Register, *Re* (1934); **43.** *Trade Mks.* No. 249b
Harrow School Governors & Murray's Contract, *Re* (1927); **8.** *Char.* No. 629a
Harrup *v.* Bayley (1856); **33.** *Mags.* No. 1015
Harry *v.* Harry (Can.); **27.** *H. & W.* p. 59
Harry Horne Co. *v.* Schwartz & Sons, Ltd. (Can.); **43.** *Trade Mks.* p. 42.
Har Swarup *v.* Muhammad Siraj (Ind.); **32.** *Libel*, p. 8; **37.** *Press.* p. 31
Hart, *Ex p.*, *Re* Wigzell (1921); **4.** *Bkpcy.* Nos. 1579a, 1893a
—, *Ex p.*, R. *v.* Police Magistrates at Blackall & Hart (Aus.); **7.** *Bounds. & F.* p. 17
Hart *v.* Barclays Bank, *Re* Wigzell (1921); **4.** *Bkpcy.* No. 1893a
— *v.* Bennett & Co. (1928); **34.** *Mast. & S.* No. 711a
— *v.* Hanson (Can.); **31.** *L. & T.* p. 78
— *v.* Nadeau (Can.); **31.** *L. & T.* p. 78
— *v.* Reynolds (Can.); **21.** *Exon.* p. 48
— *v.* Riversdale Mill Co. (1928); **24.** *Fact.* No. 264b; **30.** *Jdgmts.* No. 679a
— *v.* Ruttan (Can.); **21.** *Exon.* p. 45
— *v.* Rye (Can.); **21.** *Exon.* p. 46
— *v.* Yarwood (Can.); **18.** *Distr.* p. 28
Harte *v.* Williams (1934); **39.** *Revenue*, No. 767a
Hartin *v.* London County Council (1929); **38.** *Pub. Auth.* No. 777a
Hartlen, *Re*, *Re* Walker & Co. (Can.); **4.** *Bkpcy.* p. 40
Hartley, *Re* (Can.); **20.** *Elect.* p. 6
— *v.* Hindmarsh (1866); **21.** *Estpl.* No. 599a
— *v.* Humphris (Aus.); **35.** *Mtge.* p. 42
— *v.* Maycock (Can.); **27.** *H. & W.* p. 8
— *v.* Walsh (Aus.); **17.** *Dep.* p. 64
Hartman *v.* Gallagher (Can.); **18.** *Distr.* p. 30
Hartmann *v.* Konig (1933); **2.** *Aliens*, No. 215m; **11.** *Confl.* No. 689a
Harton, The (1884); **41.** *Ship.* No. 6437a
Harty, *Ex p.*, Callan *v.* Harty (Aus.); **3.** *Basty.* p. 62
Harvest Home, The (1905); **41.** *Ship.* No. 6594a
Harvey, *Re* (Aus.); **1.** *Action*, p. 2
— *v.* Canadian Pacific Ry. Co. (Can.); **22.** *Evid.* p. 20
— *v.* Collett (1846); **10.** *Coys.* No. 8576e
— *v.* Johnston (Nfld.); **31.** *L. & T.* p. 82
— *v.* Malanchuk (Can.); **40.** *S. Land*, p. 11
— *v.* Sylvia Court, Ltd. (Can.); **18.** *Discy.* p. 17
Harvey & Co. *v.* Herefordshire County Council (1920); **2.** *Agric.* No. 974a
Harvey & Mann, *Re* (1920); **2.** *Agric.* No. 268b
Harvey (Walton), Ltd. *v.* Walker & Homfrays, Ltd. (1931); **11.** *Comp. Pche.* No. 155a; **12.** *Contr.* No. 3099a
Harvie *v.* Canadian Pacific Ry. Co. & Hurst Engineering & Construction Co., Ltd. (Can.) (1928); **18.** *Discy.* pp. 16, 17
— *v.* — (Can.) (1929); **36.** *Negl.* p. 3
Harward, *Re*, Newton *v.* Bankes (1938); **44.** *Wills*, No. 3253b
Harwood, *Re*, Coleman *v.* Innes (1936); **8.** *Char.* No. 1373c
— *v.* Astley (1804); **32.** *Libel*, No. 525a
Harwood & Cooper *v.* Wilkinson (Can.); **12.** *Contr.* p. 25; **18.** *Discy.* p. 23
Hasan *v.* Zaman (Ind.); **26.** *Hghys.* p. 21
Hasan Ali *v.* Wali Ullah (Ind.); **26.** *Guar.* p. 3
Hascall *v.* Royal Bank of Canada (Can.); **7.** *B. of Sale*, p. 5
Haseldine *v.* Hosken (1933); **29.** *Insce.* No. 3289d
— *v.* Winstanley (1936); **6.** *B. of Exch.* Nos. 567c, 2493a
Hasiuk *v.* Oshanek (Can.); **34.** *Med.* p. 188
Haskell *v.* Marlow (1928); **31.** *L. & T.* No. 4739a
Haskins *v.* Lewis (1931); **31.** *L. & T.* Nos. 7063a 7103f, 7308c
Haslam *v.* Cron, Olivant's Claim (1871); **3.** *Basty.* No. 24a
— *v.* Diggles (1824); **7.** *Bonds*, No. 155a
— *v.* Selby Mill, Ltd. (1935); **34.** *Mast. & S.* No. 3816b
Haslam Foundry & Engineering Co., Ltd. *v.* Hall & Co. (1888); **36.** *Pats.* No. 3108a
Haslams, Ltd.'s Trade Mark No. 553,414, *Re*, Hollins (William) & Co., Ltd. *v.* Cotella, Ltd. (1936); **43.** *Trade Mks.* No. 601a
Haslett, *Re*, McKenna *v.* Haslett (Aus.); **24.** *Exors.* p. 39

Haslett *v.* Workmen's Compensation Board (Can.); **34.** *Mast. & S.* p. 24
Haspel *v.* Haspel (Can.); **11.** *Confl.* p. 30
Hassall *v.* Cholmondeley (1935); **2.** *Agric.* No. 268c
Hastie, *Re* (N.Z.); **4.** *Bkpcy.* p. 20
Hastings, *Re*, *Ex p.* Dearle (1884); **4.** *Bkpcy.* No. 1156a
Hastings (Lord) *v.* Astley (1861); **35.** *Mtge.* No. 505a
Hastings *v.* Hastings (N.Z.); **11.** *Confl.* p. 47
— *v.* Leonidas (Aus.); **31.** *L. & T.* p. 46
— *v.* Orde (1840); **28.** *Infts.* No. 657a
— *v.* Ostle (1930); **33.** *Mags.* No. 631a, 631c
Hastings (Lord) *v.* Walsingham Revenue Officer (1930); **38.** *Rates*, No. 552a
— (Doe d.) *v.* Waters (1850); **30.** *L. & T.* No. 330a
Hasting's Case (1869); **20.** *Elect.* No. 329a
Hastings Street Properties, Ltd., *Re* (Can.); **38.** *Rates*, p. 50
Haszard *v.* Winchester (Can.); **44.** *Wills*, p. 49
Hatch *v.* Fick (Can.); **2.** *Agric.* p. 19
Hate *v.* Hate (Can.); **27.** *H. & W.* p. 23
Hatfield & Co. *v.* Canadian Pacific Ry. (Can.) (1926); **8.** *Carr.* p. 2
— *v.* Cronkhite (Can.); **17.** *Damgs.* p. 15
Hatfield & Scott, Ltd. *v.* Canadian Pacific Ry. Co. (Can.) (1921); **8.** *Carr.* p. 3
Hatherton *v.* Inland Revenue Comrs. (1936); **39.** *Revenue*, No. 55b
Hatheway, *Re*, Wardroper *v.* Wood (Can.); **44.** *Wills*, p. 44
Hatimbhai Hassanally *v.* Eduljee Dinshaw (Ind.); **17.** *Dep.* p. 67
Hatry, *Ex p.* (1929); **14.** *Crim.* No. 1345a
Hatt *v.* Verdier (1770); **4.** *Bkpcy.* No. 5399a
Hatter *v.* Bowman's Bldrs. Supplies, *Re* Morris (Can.); **29.** *Insce.* p. 30
Hattingh *v.* R. (S. Af.); **15.** *Crim.* p. 81
Hatton *v.* Akt. Durban Hansen (Scot.); **1.** *Adm.* pp. 27, 38, 39
— *v.* Denison (1926); **5.** *Bkpcy.* No. 8281a
— *v.* Morton (Can.); **2.** *Animals*, p. 60
Hauck *v.* Schmaltz (Can.); **44.** *Wills*, p. 53
Hauck Estate, *Re* (Can.); **44.** *Wills*, p. 53
Haug *v.* Brown & B. & B. Transfer (Can.); **21.** *Exon.* p. 57
Haug & Sons, Ltd. *v.* Stack (Can.); **39.** *S. Goods*, pp. 59, 60
Haugen *v.* Haugen (Can.); **27.** *H. & W.* p. 15
Hauser *v.* McGuinness (Can.); **36.** *Negl.* p. 9
Hauxton Parochial Church Council *v.* Stevens (1929); **19.** *Eccl.* Nos. 472b, 472d
Havard *v.* Amalgamated Anthracite Collieries Ltd. (1936); **34.** *Mast. & S.* No. 3133a
— *v.* Corbett (1899); **32.** *Libel*, No. 1847a
Haw, *Re* (N.Z.); **5.** *Bkpcy.* p. 54
— *v.* Haw's Official Assignee (N.Z.); **4.** *Bkpcy.* p. 31
Hawes *v.* Hawes (1880); **38.** *Real Prop.* No. 297a
Hawke, *Re*, Hawke *v.* Public Trustee (N.Z.); **44.** *Wills*, p. 54
— *v.* Public Trustee, *Re* Hawke (N.Z.); **44.** *Wills*, p. 54
Hawke's Bay Electric-Power Board *v.* Thomas Borthwick & Sons (Australia), Ltd. (N.Z.); **12.** *Contr.* p. 35
Hawker *v.* Doncaster Amalgamated Collieries, Ltd. (1938); **34.** *Mast. & S.* No. 2475c
— *v.* Royal Bank of Canada (Can.); **3.** *Bank.* p. 43
Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (1935); **8.** *Carr.* Nos. 1504, 1536
— *v.* — (No. 2) (1936); **8.** *Carr.* No. 1520
Hawkes *v.* Torquay Corpn. (1938); **38.** *Pub. Auth.* No. 777c
Hawkes & Son (London), Ltd. *v.* Paramount Film Service, Ltd. (1934); **13.** *Coprt.* No. 489d
Hawkesworth *v.* Turner (1930); **12.** *Contr.* No. 837a
Hawkins, *Ex p.*, *Re* Ford (1929); **5.** *Bkpcy.* No. 6882a
—, *Re*, Hawkins *v.* Dew & Sons (1926); **19.** *Educ.* No. 293a
— *v.* Aglassinger (Can.); **24.** *Fam. Arr.* p. 61; **25.** *Fraud. Conv.* p. 14
— *v.* Gaden (Aus.); **1.** *Agcy.* p. 55
Hawkins *v.* Hawkins (1836); **40.** *Stllmts.* No. 2254a
— *v.* Monmouthshire & South Wales Mutual Indemnity Society, Ltd. (1938); **34.** *Mast. & S.* No. 3206a
— *v.* Thames Stevedore Co., Ltd. & Union Cold Storage Co., Ltd. (1936); **24.** *Fact.* No. 138b
— *v.* Woodgate (1844); **29.** *Insce.* No. 3052a
Hawksley's Settlements, *Re*, Black *v.* Tidy (1934); **43.** *Trusts*, No. 487a; **44.** *Wills*, Nos. 1613a, 1642a, 1967a, 3490a
Hawley *v.* Alexander (1930); **28.** *Infts.* No. 395a
— *v.* Wright (Can.); **23.** *Exors.* p. 15
Haworth *v.* Webb (Can.); **2.** *Animals*, p. 57
Hawrysh *v.* Repa (Can.); **3.** *Basty.* p. 60
Hawthorne, *Ex p.*, *Re* Nathan Crystal (Can.); **7.** *B. of Sale*, p. 9
Hay, *Re* (Ir.); **37.** *Perps.* p. 6
— *v.* Allen (Can.); **6.** *B. of Exch.* p. 11
— *v.* Bain (Can.); **22.** *Evid.* p. 22
— *v.* Carter (1935); **26.** *Guar.* No. 1112a
— *v.* Dundee Education Authority (Scot.); **19.** *Educ.* p. 39
— (Doe d.) *v.* Hunt (Can.); **38.** *Real Prop.* p. 99
— *v.* McCulloch's, Ltd. (Can.); **38.** *Real Prop.* p. 94
— *v.* Ontario Bricklayers Local Union No. 25 (Can.); **43.** *Trade*, p. 10
Hay & Sons, *Re* (Scot.); **9.** *Coys.* p. 11
Hayden, *Re*, Pask *v.* Perry (1931); **44.** *Wills*, No. 10,020a
Haydon *v.* Haydon & Canadian National Railways (Can.); **21.** *Exon.* p. 56
Hayes, *Re* (Can.); **21.** *Exon.* p. 47
— *v.* Bell (1924); **5.** *Bkpcy.* No. 8782b
— *v.* Dexter (Ir.); **33.** *Mkts.* p. 42
— *v.* Duggan (Ir.); **28.** *Inc. T.* p. 13
— *v.* Standard Bank (Can.); **3.** *Bank.* p. 30
— *v.* Wilson & Richardson (Can.); **32.** *Lien*, p. 27
Hayes & Harlington Urban District Council *v.* Williams' Trustee (1936); **35.** *Mtge.* No. 3140a
Hayes Bridge Estate *v.* Portman Building Society (1936); **7.** *Bldg. Soc.* No. 115a
Hayes, McKay & Sharp, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 26
Hayes Manufacturing Co. *v.* Perdue & Cope (Can.); **39.** *S. Goods*, p. 42
Hayes Williams, *Re* (Aus.); **22.** *Evid.* p. 20
Hayford *v.* Forrester-Paton (Scot.); **32.** *Libel*, p. 13
Haygarth *v.* Webb (Can.); **1.** *Agcy.* p. 76
Hayhurst *v.* Innisfail Motors, Ltd. (Can.); **42.** *Str. Traf.* p. 61
Hayle, The (1929); **41.** *Ship*, Nos. 8629a, 8688a, 8711a
Hayman *v.* City Property Investment Trust Corpn., Ltd. (Scot.) **26.** *Hghys.* p. 30; **36.** *Negl.* p. 20
— *v.* Pensford & Bromley Collieries (1921), Ltd. (1932); **34.** *Mast. & S.* No. 2647a
Hayne (Charles), *Re* (1865); **11.** *Comp. Pche.* No. 875
Haynen *v.* Mundle (Can.); **3.** *Bailmt.* p. 7

Haynes *v.* Davey (1937); **8.** *Carr.* No. 733a
— *v.* Harwood (1935); **2.** *Animals*, No. 205b; **36.** *Negl.* No. 620b
— *v.* Haynes (Can.); **27.** *H. & W.* p. 50
— *v.* Hayton (1827); **33.** *Mags.* No. 958a
— *v.* — (1828); **22.** *Evid.* No. 3802a; **33.** *Mags.* No. 958a
— *v.* Lear (1938); **19.** *Educ.* No. 89a
— *v.* Thompson (Can.); **36.** *Negl.* p. 30
— *v.* Turton (1938); **19.** *Educ.* No. 89a
Haynes Smith, *Ex p.*, R. *v.* Church Assembly Legislative Committee & Church Assembly (1928); **19.** *Eccl.* No. 1a
Hays *v.* O'Connor (Can.); **29.** *Intpr.* p. 63
Hayter, *Re*, Hayter *v.* Tranter (1937); **44.** *Wills*, No. 6036a
— *v.* Southern Ry. Co. (1931); **34.** *Mast. & S.* Nos. 3668a, 3668e, 3668k, 3694a
— *v.* Tranter, *Re* Hayter (1937); **44.** *Wills*, No. 6036a
Haythornthwaite & Sons, Ltd. *v.* Kelly (1927); **28.** *Inc. T.* No. 632f
Haythornthwaite Estate, *Re* (Can.); **44.** *Wills*, p. 24
Hayward, *Re* (Can.); **17.** *Dep.* p. 54
— *v.* British Columbia Lower Mainland Dairy Products Board (Can.); **17.** *Dep.* p. 57
— *v.* Hayward (1928); **3.** *Basty.* No. 90a
— *v.* Mitton (Can.); **36.** *Negl.* p. 23
Hayward Lumber Co., Ltd. *v.* McEachern (Can.); **32.** *Lien*, p. 26
Hazaree *v.* Kamaludin (S. Af.); **32.** *Libel*, p. 16
Hazell *v.* Southern Counties Road Transport Co., Ltd. (1937); **8.** *Carr.* No. 1613
Hazelton *v.* Hazelton (Can.); **27.** *H. & W.* p. 45
Hazelwood *v.* Webber (Aus.); **17.** *Dep.* p. 71
Hazlett *v.* Buttimore (No. 2) (N.Z.); **16.** *Courts*, p. 14
— *v.* Ross (Can.); **33.** *Mags.* p. 24
Head *v.* Linton (Can.); **2.** *Animals*, p. 69
Head Estate, *Re* (Can.); **36.** *Prtnrs.* p. 58
Headlam, *In the Will of* (Aus.); **44.** *Wills*, p. 53
Heads *v.* Hanlon, *Re* Hanlon (1933); **44.** *Wills*, No. 2837a
Heagle *v.* Great West Life Assurance Co. (Can.); **29.** *Insce.* p. 40
Heake *v.* City Securities Co., Ltd. (Can.); **31.** *L. & T.* p. 51
Healey *v.* Société Anonyme Francaise Rubastic (1917); **34.** *Mast. & S.* No. 565b
Healey (David) & Son, Ltd., *Re*, District Bank, Ltd. *v.* Healey (1929); **10.** *Coys.* No. 6176a
Healing *v.* Webb, *Re* Cunnington (1924); **11.** *Confl.* No. 526a
Healing (A. G.) & Co. Proprietary, Ltd. *v.* Harris (Aus.); **36.** *Negl.* p. 31
Healman *v.* Pryce (Can.); **39.** *S. Goods*, p. 57
Health Promotion, Ltd., *Re* (1932); **10.** *Coys.* No. 6409c
Healy *v.* Saunders (Aus.); **1.** *Agcy.* p. 78
Hean *v.* General Accident Fire & Life Assurance Corpn., Ltd. (S. Af.); **29.** *Insce.* p. 46
Heaney *v.* Lobley (Can.); **32.** *Lien*, p. 23
Heans *v.* Mitchell (Can.); **36.** *Negl.* p. 25
Heap *v.* Motorists' Advisory Agency, Ltd. (1923); **1.** *Agcy.* Nos. 483a, 495b, 505a, 507a
Heap & Son *v.* Bradford Dyers' Assocn., Ltd. (1929); **36.** *Pats.* No. 391a
Heaps *v.* Perrite, Ltd. (1937); **36.** *Negl.* No. 835c
Heard *v.* John Erzinger, Ltd. (Can.); **42.** *Str. Traf.* p. 38
Hearn *v.* R. (Can.); **39.** *Revenue*, p. 26
— *v.* Southern Ry. Co. (1925); **8.** *Carr.* No. 685b
Heart's Hill, Rural Municipality *v.* Helmer (Can.); **21.** *Estpl.* p. 37
Hearts of Oak Assurance Co., Ltd., *Re* (1936); **10.** *Coys.* No. 7500c
— *v.* A.-G. (1932); **16.** *Courts*, Nos. 260a, 285a; **25.** *Fr. Soc.* No. 223a
— *v.* Flower & Sons (1936); **9.** *Coys.* No. 3432a
Hearts of Oak Building Society *v.* Law Union & Rock Insurance Co., Ltd. (1936); **29.** *Insce.* No. 3234a
Heaslip *v.* Hasemer (1927); **28.** *Inc. T.* No. 540a
Heastie *v.* Veitch & Co. (1934); **28.** *Inc. T.* No. 229a
Heath, *Re*, Public Trustee *v.* Heath (1936); **44.** *Wills*, No. 9535a
— *v.* Parkinson (1926); **1.** *Agcy.* No. 1848a
— *v.* Portage La Prairie Corpn. (Can.); **22.** *Evid.* p. 13
Heathcote *v.* Maguire (Ir.); **31.** *L. & T.* p. 52
Heather *v.* Maddock, *Re* Municipal Act (Can.); **20.** *Elect.* p. 8
Heatherton Co-operative Co. *v.* Grant (Can.); **42.** *Stats.* p. 24
Heathorn *v.* Heathorn (Can.); **27.** *H. & W.* p. 12
Heaton *v.* Flater (Can.); **12.** *Contr.* p. 12
Heaton & Dugard, Ltd. *v.* Cutting Brothers, Ltd. (1925); **10.** *Coys.* No. 4716a
Heavyside *v.* Smith (Scot.); **44.** *Wills*, p. 47
Hebb *v.* Stoddard (Can.); **39.** *S. Goods*, p. 40
Hebert *v.* Calgary City (Can.); **18.** *Discy.* p. 8
— *v.* Gallien (Can.); **17.** *Deeds*, p. 24
— *v.* George (Can.); **30.** *L. & T.* p. 39
Hébert *v.* Martin (Can.); **15.** *Crim.* p. 92
Hecht, *Re*, *Re* Succession Duty Act (Can.); **21.** *E. D.* p. 20
Heck *v.* Braun & Marchuk (Can.); **36.** *Negl.* p. 2
Hector Whaling, Ltd., *Re* (1936); **9.** *Coys.* No. 3866a; **42.** *Timc*, No. 309a
Hedderwick, *Re*, Morten *v.* Brinsley (1933); **27.** *H. & W.* Nos. 4165a, 5902a
— *v.* Griffin (Scot.); **13.** *Coprt.* p. 6
— *v.* Hedderwick (1930); **27.** *H. & W.* No. 5163a
Heddle *v.* Bank of Hamilton (Can.); **3.** *Bailmt.* p. 8
Hedges' Trust Estate, *Re* (1874); **39.** *Rntchgs.* No. 511a
Hedley *v.* Scissons (Can.); **2.** *Agric.* p. 20
Hedwig, The (1853); **1.** *Adm.* No. 1351a
Hefferman *v.* Regina Daily Star (Can.); **32.** *Libel*, p. 14
Heffernan *v.* Hansford (Aus.); **1.** *Agcy.* p. 93
Heginbotham, *Re*, Peirce *v.* Harrison (1935); **35.** *Mtge.* No. 3104a
Heginbottam *v.* Watts (1936); **31.** *L. & T.* No. 7361c
Hegler *v.* MacNab (Can.); **18.** *Discy.* p. 17
Heidner & Co. *v.* Hanna Nielsen, The (Can.); **18.** *Discy.* p. 18
Heimann *v.* Commonwealth (Aus.); **18.** *Discy.* pp. 7, 8
Heinbigner *v.* Kinzel (Can.); **34.** *Mast. & S.* p. 8
Heisier *v.* Clarke (1709); **25.** *Fraud. Conv.* No. 619a
Heistein & Sons *v.* Polson Iron Works, Ltd. (Can.); **2.** *Arbn.* p. 83
Heitner *v.* Gillstrom (Can.); **17.** *Damgs.* p. 9; **42.** *Str. Traf.* p. 60
Heiwa Maru, The *v.* Bird & Co. (Ind.); **1.** *Adm.* p. 46
Hele-Shaw's Patents, *Re* (1938); **36.** *Pats.* No. 2005a
Hellet *v.* South African Railways & Harbours (S. Af.); **18.** *Discy.* p. 14
Helmore *v.* Smith, *Ex p.* Smith (1886); **39.** *Recrs.* No. 895a
Helpard *v.* Farmers, Ltd. (Can.); **30.** *Juries*, p. 33
Helps *v.* Natal Witness, Ltd. (S. Af.); **32.** *Libel*, p. 5
Heluska *v.* Heluska (Can.); **27.** *H. & W.* p. 74

Hem Singh *v.* Mahant Basant Das (1936); **17.** *Dep.* No. 641a
Hemayetuddin Ahmed *v.* Emperor (Ind.); **17.** *Dep.* p. 84
Hemmingsen *v.* Bergen (Can.); **43.** *Trade*, p. 11
Hempenstall Brothers, Ltd. *v.* Poulson (Aus.); **21.** *Estpl.* p. 38
Hemstreet *v.* North West Biscuit Co. (Can.); **9.** *Coys.* p. 53
Henaghan *v.* Rederiet Forangirene (1936); **24.** *Fact.* No. 138c
Hender *v.* Gohl (Aus.); **19.** *Easmt.* p. 10
Henderson, *In the Goods of* (1850); **11.** *Confl.* No. 563a
—, *Ex p.*, *Ex p.* Broder, *Ex p.* Stewart, *Ex p.* Joe Go Get (Can.); **16.** *Cr. Pract.* p. 27; **30.** *Intox.* pp. 6, 18
—, *Re* (Can.); **18.** *Desct.* p. 3; **38.** *Rates*, p. 85
— *v.* Bailleul (Can.); **33.** *Mal. Pros.* p. 40
— *v.* Cranmer, *Re* King (1931); **8.** *Char.* No. 691c
— *v.* Dickson (Can.); **40.** *S. Land*, p. 5
— *v.* Dosse (Can.); **42.** *Str. Traf.* p. 36
— *v.* Gesner (Can.); **6.** *B. of Exch.* p. 26
— *v.* Graves (Can.); **20.** *Eqy.* p. 23
— *v.* Hamilton (Can.); **1.** *Agcy.* p. 74
— *v.* Henderson & McKay (Can.); **27.** *H. & W.* p. 58
— *v.* Kane & Pioneer Club (N.Z.); **8.** *Clubs*, p. 99
— *v.* London, Midland & Scottish Ry. Co. (Scot.); **8.** *Carr.* p. 6
— *v.* Mair (Scot.); **36.** *Negl.* pp. 25, 26
— *v.* Minneapolis Steel & Machinery Co. of Canada, Ltd. (Can.); **28.** *Infts.* p. 130
— *v.* Porter, *Re* Ladd (1932); **18.** *Desct.* No. 328a; **37.** *Powers*, No. 671a
— *v.* Ross (Scot.); **30.** *Intox.* p. 9; **38.** *Pub. Hlth.* p. 15
— *v.* Shaw & Morton, *Re* Antrobus (N.Z.); **37.** *Perps.* p. 4
— *v.* Thompson (N.Z.); **32.** *Libel*, p. 5
— *v.* Toronto General Trusts Corpn. (Can.); **30.** *L. & T.* p. 41
— *v.* Tudhope (Can.); **34.** *Mast. & S.* p. 14; **42.** *Str. Traf.* p. 60
— *v.* Wardrope (Scot.); **2.** *Animals*, p. 72
Henderson (J. B.) & Co., *Ex p.*, *Re* Comforter & Cushion Manufacturing Co. (Can.); **7.** *B. of Sale*, p. 6
Henderson & Henderson *v.* McGugan, Thompson & Bennington, Ltd. (Can.); **18.** *Distr.* p. 25
Henderson & Rudd Estate, *Re* (Can.); **36.** *Prtnrs.* p. 61
Henderson (James) & Sons *v.* Russell House, Ltd. & Dartt (Can.); **32.** *Lien*, p. 26
Henderson's Estate, *Re* (Can.) (1914); **8.** *Char.* p. 72
—, *Re* (Can.) (1938); **44.** *Wills*, p. 27
Hendrick *v.* Revenue Comrs., *Re* O'Connor's Estate (Ir.); **21.** *E. D.* p. 9
Hendry, *Ex p.*, *Re* Von Weissenfeld (1892); **4.** *Bkpcy.* No. 4578a
—, *Re* (Can.); **38.** *Real Prop.* p. 90
— *v.* Walker (Scot.); **2.** *Agric.* p. 8
Hendsbee *v.* Sonora Timber Co., Ltd. (Can.); **8.** *Chos.* p. 93; **32.** *Lien*, p. 23
Heney Co., Ltd. *v.* Birmingham (Can.); **26.** *Guar.* p. 4
Henham *v.* Alston Rivers, Ltd. (1916); **10.** *Coys.* No. 6409b
Henke *v.* Henke (Can.); **27.** *H. & W.* p. 19
Henley *v.* Henley (Aus.); **27.** *H. & W.* p. 28
Henn *v.* Smith (Can.); **32.** *Libel*, p. 13
Hennebique *v.* Cowlin (William) & Sons (1909); **36.** *Pats.* No. 121
Hennell *v.* Inland Revenue Comrs. (1933); **39.** *Revenue*, No. 619a; **42.** *Stats.* No. 1611a
Hennessy, *Re* (Ir.); **4.** *Bkpcy.* p. 39
Hennessy *v.* Toronto City (Can.); **26.** *Hghys.* p. 28
Hennig *v.* Trautman (Can.); **19.** *Eccl.* p. 17
Hennigar *v.* Hennigar (Can.); **17.** *Damgs.* p. 21
Henry, *Ex p.*, R. *v.* Burgess (Aus.); **42.** *Str. Traf.* p. 62
— *v.* Dickie (Can.); **12.** *Contr.* p. 22
— *v.* Foster (1932); **28.** *Inc. T.* No. 501b
— *v.* Galloway (1933); **28.** *Inc. T.* No. 489d
— *v.* Gladstone (1933); **34.** *Mast. & S.* No. 3849b
— *v.* — (Scot.); **34.** *Mast. & S.* p. 146
— *v.* Sexsmith (Can.); **7.** *B. of Sale*, p. 9
— *v.* Sharp (Can.); **24.** *Exors.* p. 40
Henry Dean & Sons (Sydney), Ltd. *v.* P. O'Day Proprietary, Ltd. (Aus.); **39.** *S. Goods*, p. 47
Henry Glass & Co. *v.* Hampton Manufacturing Co., Ltd. (Can.); **43.** *Trade Mks.* p. 16
Henry K. Wampole & Co., Ltd. *v.* Hervay Chemical Co. of Canada, Ltd. (Can.); **43.** *Trade Mks.* pp. 24, 26
Henry, Ltd. *v.* M'Glade (Ir.); **30.** *L. & T.* p. 41
Henry (Thomas), Ltd. *v.* Trustee, *Re* Kern (P. E. & B. E.) (1932); **5.** *Bkpcy.* No. 6918c
Henry Lowson, Ltd., Application of, *Re* (1930); **34.** *Mines*, No. 327c
Henschel *v.* Hoffman Bank of Montreal & Henschel (Can.); **26.** *Guar.* p. 7
Henshall *v.* Fereday (1873); **25.** *Fraud. Conv.* No. 525b
— *v.* Widdison (1923); **7.** *B. of Sale*, No. 237a
Hensley *v.* Hensley & Nevin (1920); **27.** *H. & W.* No. 3448a
Henton *v.* International Harvester Co. (Can.); **7.** *B. of Sale*, pp. 5, 6
Hepenstal *v.* Merritt (Can.); **22.** *Evid.* p. 22
Heppells, Ltd. *v.* Eppels, Ltd. & Eppel (Isaac Jacob) (1928); **43.** *Trade Mks.* No. 1212a
Hepworth, *Ex p.*, R. *v.* Cumberland Justices (1931); **42.** *Str. Traf.* No. 188b
—, *Re*, Rastall *v.* Hepworth (1936); **3.** *Bastly.* No. 152c
Hepworth Coal Co. *v.* Barnes (1930); **34.** *Mast. & S.* No. 3880a
Herambachandra Maitra *v.* Jyotishchandra Singha (Ind.); **42.** *Sp. Pfce.* p. 19
Herbert, *Ex p.* (1934); **30.** *Intox.* No. 625a
—, *Ex p.*, R. *v.* Graham-Campbell (1935); **30.** *Intox.* Nos. 30a, 625a; **36.** *Parl.* No. 466a
—, *In the Goods of* (1926); **23.** *Exors.* No. 1883a
—, *Re* (1926); **23.** *Exors.* Nos. 1431a, 1883a
— *v.* Christopherson, *Re* Anyiani (1930); **8.** *Chos.* No. 27b
— *v.* Herbert (Can.); **27.** *H. & W.* p. 38
— *v.* Railway Passengers Assurance Co. (1938); **29.** *Insce.* No. 3217nn
Herbert Adams Proprietary, Ltd. *v.* Federal Comrs. of Taxation (Aus.); **39.** *Revenue*, p. 15
Herbert Clayton & Jack Waller, Ltd. *v.* Oliver (1930); **12.** *Contr.* No. 5122a; **17.** *Damgs.* No. 181b; **42.** *Theatres*, Nos. 68a, 89a
Herbert Morris, Ltd. *v.* Saxelby (1915); **34.** *Mast. & S.* No. 934a
Herbert Whitworth, Ltd. *v.* Jamnadas Lemchand Mehta (Ind.); **43.** *Trade Mks.* p. 42
Herbert Wilcox Productions, Ltd. *v.* First National Pictures, Ltd. (1930); **1.** *Agcy.* 1501b
Herbert's Trustee *v.* Higgins (1926), **5.** *Bkpcy.* No. 7546a; **7.** *B. of Sale*, No. 420a
Hercules Rubber Co., *Re*, *Ex p.* Allan (Can.); **4.** *Bkpcy.* p. 38
Herczeg *v.* Barsey (Can.); **27.** *H. & W.* p. 16
Herd *v.* Herd (1936); **11.** *Confl.* Nos. 173a, 894b
Hereford *v.* Devereux, *Re* Hereford's Settled Estates (1932); **40.** *Stltmts.* No. 3049a

Hereford Municipal Election Petition, *Re*, *Ex p.* Garrold (1889); **20.** *Elect.* No. 1626
Hereford's Settled Estates, *Re*, Hereford *v.* Devereux (1932); **40.** *Stlmts.* No. 3049a
Herefordshire Assessment Committee *v.* Watkins (1935); **38.** *Rates*, No. 345a
Heritable Securities & Mtge. Investment Assocn., Ltd. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 68
Herlihy *v.* Campbell (Scott.); **30.** *Intox.* p. 10
— *v.* Kelly (Scot.); **39.** *Revenue*, p. 16
Herman, *Re* (Can.); **5.** *Bkpcy.* p. 59
Herman Wedel, The (1870); **1.** *Adm.* No. 596a
Hernandez *v.* Bamfield, The (Can.); **1.** *Adm.* p. 40
Herniman *v.* Smith (1938); **33.** *Mal. Pros.* Nos. 455a, 479a
Hero (Owners) *v.* Lord High Admiral of United Kingdom (Comrs. for Executing the Office of) (1912); **1.** *Adm.* No. 1695
Herod *v.* Herod (1938); **27.** *H. & W.* No. 2977a
Heron & Co., *Re*, *Ex p.* Robertson (Can.); **42.** *Stk. Ex.* p. 34
Herr *v.* Weston (Can.); **38.** *Real Prop.* p. 99
Herrick's Settlement, *Re* (Can.); **28.** *Infts.* p. 144
Herriott *v.* Cronin (Can.); **35.** *Mtge.* p. 33
Herrmann *v.* Canadian Nickel Co. (Can.); **9.** *Coys.* p. 48
Herron *v.* Herron (Can.); **28.** *Infts.* p. 141
— *v.* Mayland (Can.); **17.** *Deeds*, p. 29; **35.** *Mtge.* p. 30
Hersh, *Re*, *Ex p.* Goldstein (Can.); **4.** *Bkpcy.* p. 21; **5.** *Bkpcy.* p. 77
Hertfordshire County Council *v.* Broxbourne Sand & Ballast Pits, Ltd. (1936); **34.** *Mines*, No. 327b
— *v.* Lea Sand, Ltd. (1933); **26.** *Hghys.* No. 626a
Hervey, *Re*, Stephens *v.* Marks & Hervey (Aus.); **44.** *Wills*, p. 45
— *v.* French (Can.); **26.** *Hghys.* p. 30
Heselwood *v.* Jones (Can.); **11.** *Const. L.* p. 77
Hesford *v.* Manchester Collieries, Ltd. (1935); **34.** *Mast. & S.* No. 2651b
Hesketh Estates, Southport, Ltd. *v.* Droitwich Brine Baths, Ltd. (1934); **43.** *Trade Mks.* No. 1171b
Hess *v.* Ross (Can.); **35.** *Misrep.* p. 6
Hessler *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 41
Hetherington *v.* Dublin & Blessington Steam Tramway Co. (Ir.); **34.** *Mast. & S.* p. 60
— *v.* Security Export Co., Ltd. (Can.); **16.** *Cr. Pract.* p. 40
Hetherington Estate, *Re*, Faulkner & Oliver *v.* Martens & Delichte (Can.); **35.** *Mtge.* p. 51
Hett, *In the Goods of* (1842); **23.** *Exors.* No. 931
—, *Re* (Can.); **34.** *Med.* p. 184
Hettihewage Siman Appu *v.* Queen's Advocate (1884); **17.** *Dep.* No. 270
Heubach *v.* Sprague (Can.); **32.** *Limit. of A.* p. 30
Heward, *Re* (1845); **16.** *Cr. Pract.* No. 926a
Hewer, *Re* (N.Z.); **14.** *Crim.* p. 10
Hewett *v.* Essex County Council (1928); **11.** *Comp. Pche.* Nos. 274a, 288a, 289a
— *v.* Hewett & Dupin (1929); **27.** *H. & W.* No. 4752a
— *v.* Jermyn (Can.); **24.** *Exors.* p. 35
— *v.* Smith (Aus.); **28.** *Infts.* p. 142
Hewitt *v.* Barnes & Keeble (Official Assignee) (N. Z.); **5.** *Bkpcy.* p. 56
— *v.* Biffen (1925); **22.** *Evid.* No. 5407a
— *v.* Essex County Council (1927); **11.** *Comp. Pche.* No. 727b
— *v.* Lenthall (Aus.); **14.** *Crim.* p. 43
Hewitt & Hewitt, *Re* (Can.); **11.** *Confl.* p. 41
Hewitt Bros., Ltd., *Re* (1931); **10.** *Coys.* No. 7647a
Hewson *v.* Ontario Power Co. (Can.); **17.** *Dep.* p. 37
Hewsons, The, Geipel *v.* Cornforth (1873); **1.** *Adm.* No. 40
Hewthorn & Co., Ltd., Application for Registration of a Trade Mark, *Re* (1934); **43.** *Trade Mks.* No. 113a
Hexham Case (1892); **20.** *Elect.* No. 771a
Hextall Estate, *Re* (Can.); **24.** *Exors.* p. 40
Hey *v.* Appleyard (1855); **40.** *S. Land*, No. 2623a
Heyden *v.* Castle (Can.); **38.** *Rates*, p. 84
Heyhoe *v.* Slough Theatre Co., Ltd. (1933); **28.** *Inc. T.* No. 276a
Heys-Jones *v.* Bannister, *Re* Bannister (1921); **43.** *Trusts*, No. 544a
Heyward, *Re* (1845); **16.** *Cr. Pract.* No. 926a
Heywood, *Ex p.*, *Re* Holmes (1815); **8.** *Chos.* No. 250a
— *v.* Waring (1815); **8.** *Chos.* No. 250a
Heywood's Conveyance, *Re*, Cheshire Lines Committee *v.* Liverpool Corpn. (1938); **11.** *Comp. Pche.* No. 4a
Hianson, *Ex p.*, *Ex p.* Moller, R. *v.* Bannstead (Can.); **2.** *Aliens*, pp. 48, 49
Hibbard, *Ex p.*, *Re* Fredericke & Whitworth (1927); **4.** *Bkpcy.* No. 923a
Hibberd *v.* Jamieson (Can.); **33.** *Lunat.* p. 20
Hibernian Bank, Ltd. *v.* Gysin & Hanson (1938); **6.** *B. of Exch.* No. 1293a
Hickerson *v.* Parrington (Can.); **5.** *Bkpcy.* p. 72
Hickey, *Re*, Dwyer *v.* Hickey (Aus.); **22.** *Evid.* p. 8
— *v.* Great West Life Assurance Co. (Can.); **22.** *Evid.* p. 8
— *v.* McGuinnes (Can.); **29.** *Insce.* p. 6
Hickin, *Ex p.*, *Re* Ellins (1850); **4.** *Bkpcy.* No. 4295a
Hickley *v.* Kingcome, *Re* Kingcome (1936); **39.** *Rntchgs.* No. 587b
Hickman *v.* Bacon (1793); **20.** *Eqy.* No. 775a
— *v.* Kent or Romney Marsh Sheepbreeders' Assocn. (1920); **1.** *Action*, Nos. 561b, 584a
— *v.* Moose Jaw (City) (Can.); **26.** *Hghys.* p. 36
Hickman (A. E.) & Co., Ltd. *v.* Ernst Shipbuilding Co., Ltd. (Can.); **41.** *Ship.* p. 14
Hickman Grain Co. *v.* Canadian Pacific Ry. Co. (Can.); **8.** *Carr.* p. 3
Hicks, *Re* (Can.); **23.** *Exors.* p. 23
—, *Re*, Bach *v.* Cockburn (1933); **21.** *E. D.* Nos. 227b, 531a
— *v.* Hill, *Re* Watt (1932); **8.** *Char.* No. 896a
— *v.* Snook (1928); **31.** *L. & T.* No. 7057a
Hickson, *Re* (Can.); **11.** *Confl.* pp. 30, 53; **33.** *Lunat.* p. 16
Hiddleston *v.* Wilson (Scot.); **19.** *Educ.* p. 38
Hiebert Estate, *Re* (Can.); **10.** *Coys.* p. 70
Higbid *v.* R. C. Hammett, Ltd. (1932); **34.** *Mast. & S.* No. 1082a
Higby *v.* Cummings (Can.); **26.** *Guar.* p. 4
Higgens' Case (1605); **12.** *Contr.* No. 4317a; **21.** *Estpl.* No. 569a
Higginbotham, *Re* (Can.); **16.** *Cr. Pract.* p. 43
Higgins, *Re*, Higgins *v.* Higgins (Can.); **24.** *Exors.* p. 34
— *v.* Cadzow Coal Co. (Scot.); **34.** *Mast. & S.* p. 162
— *v.* Cronk (John) & Sons, Ltd. (1932); **34.** *Mast. & S.* No. 3283c
— *v.* Ewing's Trustees (Scot.); **22.** *Evid.* p. 26
— *v.* Harrison (1932); **24.** *Fact.* Nos. 72b, 81a; **34.** *Mast. & S.* No. 4071a
— *v.* Higgins, *Re* Higgins (Can.); **24.** *Exors.* p. 34
— *v.* John Cronk & Sons, Ltd. (1932); **34.** *Mast. & S.* No. 3283c
— *v.* Macdonald (Can.); **14.** *Crim.* p. 11; **41.** *Shrffs.* p. 7

Higgins *v.* Mitchell (Can.); **1.** *Agcy.* p. 82
— *v.* Warren (Ir.); **31.** *L. & T.* p. 92
Higgins (W.), Ltd. *v.* Northampton Corpn. (1927); **13.** *Corpns.* No. 1127b
Higginson & Arundel *v.* Pyman, Higginson & Arundel *v.* Pyman (1926); **21.** *Estpl.* No. 265a
Higginson & Arundel's Patent, *Re* (1927); **36.** *Pats.* No. 2064a
Higgs, *Ex p.*, *Re* Smith's Newspapers, Ltd. (Aus.); **16.** *Cnimpt.* p. 2; **22.** *Evid.* p. 23
— *v.* Higgs (1934); **42.** *Solrs.* No. 3350a
— *v.* — (1935); **27.** *H. & W.* No. 6089a
High Standard Constructions, Ltd., *Ex p.* (Aus.); **40.** *S. Land*, p. 18
Higham, *Re*, Higham *v.* Higham (1937); **18.** *Desct.* No. 283f
— *v.* Higham, *Re* Higham (1937); **18.** *Desct.* No. 283f
Highland *v.* Sherry (Can.); **30.** *Land Imp.* p. 36
Highland Glen, The (1927); **1.** *Adm.* No. 914a
Highley *v.* Canadian Pacific Ry. (Can.); **38.** *Rys.* p. 38
Hignell *v.* Winnipeg (City) (Can.); **33.** *L. G.* p. 2
Hikayat Singh *v.* R. (Ind.); **14.** *Crim.* p. 10
Hilborn *v.* Johnson (Can.); **36.** *Negl.* p. 17
Hilditch *v.* Yott (Can.); **34.** *Mines*, p. 205
Hilger (Adam), Ltd., *Re*, Twyman & Green Patents (1931); **36.** *Pats.* No. 1750c
Hilkewich *v.* Laniwci School District (Can.); **19.** *Educ.* p. 44
Hill, *Ex p.*, *Re* Bye-Law made by Prospect District Council (Aus.); **22.** *Evid.* p. 7
—, *Ex p.*, R. *v.* Limerick (Can.); **33.** *Mags.* p. 35
—, *Ex p.*, R. *v.* Vizzard (Aus.); **17.** *Dep.* p. 63
—, *Re*, *Ex p.* Holt & Co. (1921); **4.** *Bkpcy.* No. 800a
—, *Re*, Claremont *v.* Hill (1934); **42.** *Solrs.* No. 1148b
Hill (Richard), *Re*, Hill *v.* Permanent Trustee Co. of New South Wales (1930); **9.** *Coys.* No. 3934b; **40.** *Stllmts.* No. 1998a
— *Re*, Permanent Trustee Co. *v.* Hill (Aus.); **40.** *Stllmts.* p. 32
— *v.* Aldershot Borough Council (1933); **41.** *Sewers*, No. 14a
— *v.* Baade (Can.); **36.** *Negl.* p. 27
— *v.* — (No. 2) (Can.); **21.** *Exon.* p. 43
— *v.* Booth (1930); **31.** *L. & T.* No. 2792a
— *v.* Grand Trunk Ry. Co. (Can.); **8.** *Carr.* p. 7
— *v.* Great Northern Ry. Co. (1854); **11.** *Comp. Pche.* No. 2033
— *v.* Greenwood (Can.); **38.** *Real Prop.* p. 90
— (otherwise Jones) *v.* Hill (1932); **33.** *Lunat.* No. 151a
— *v.* Hill (Can.); **17.** *Dep.* p. 56; **25.** *Fraud. Conv.* p. 13; **27.** *H. & W.* p. 21
— *v.* Hill & Johnston (Can.); **27.** *H. & W.* p. 43
— *v.* Hochelaga Bank (Can.); **3.** *Bank.* pp. 25, 26
— *v.* Ladyshore Coal Co. (1930), Ltd. (1936); **34.** *Mast. & S.* No. 3062a
— *v.* Macaulay (Can.); **38.** *Rates*, p. 85
— *v.* Mallach (Can.); **2.** *Animals*, p. 57
— *v.* Mathews (1925); **28.** *Inc. T.* No. 99b
— *v.* Moisan (Can.); **36.** *Pats.* p. 92
Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, Ltd. (1930); **9.** *Coys.* No. 3934b; **40.** *Stllmts.* No. 1998a
Hill *v.* Saskatoon City (Can.); **36.** *Negl.* p. 32
— *v.* Stephen Motor & Aero Co., Ltd. (Can.); **30.** *Jdgmts.* p. 19; **35.** *Misrep.* p. 4
— *v.* Stringer, *Re* Stringer (1899); **23.** *Exors.* No. 4613a
— *v.* Tasmanian Metals Extraction Co., Ltd. (Aus.); **34.** *Mines*, p. 207
— *v.* Thompson (Can.); **27.** *H. & W.* p. 15
Hill *v.* Tothill (1936); **33.** *Mags.* No. 631b
— *v.* Union Insurance Society, Canton, Ltd. (Can.); **29.** *Insce.* p. 15
— *v.* Warner (Can.); **18.** *Distr.* p. 30
— *v.* Yates (1810); **30.** *Juries*, No. 278a
Hillas (W. N.) & Co., Ltd. *v.* Arcos, Ltd. (1932); **39.** *S. Goods*, No. 28b
—*v.* Rederi Akt. Acolus (1926); **17.** *Custom*, No. 544a
Hillen & Pettigrew *v.* I. C. I. (Alkali), Ltd. (1936); **36.** *Negl.* No. 307a
Hiller *v.* Shamrock Rural Municipality (Can.); **40.** *S. Land*, p. 22
— *v.* United Dairies (London), Ltd. (1934); **31.** *L. & T.* No. 7103h
Hillerns & Fowler *v.* Murray (1932); **28.** *Inc. T.* No. 119a
Hillier *v.* Ebbw Vale Steel, Iron & Coal Co., Ltd. (1932); **34.** *Mast. & S.* No. 3932c
— *v.* Leitch (Aus.); **43.** *Tresp.* p. 50
— *v.* Regina (City) (Can.); **38.** *Rates*, p. 68
— *v.* Tungsten Manufacturing Co., Ltd. (1933); **34.** *Mast. & S.* No. 3880b
Hillman, *Re* (Can.); **16.** *Cr. Pract.* p. 41
— *v.* Imperial Bank of Canada (Can.); **18.** *Discy.* p. 20
Hillman's Airways, Ltd. *v.* Société Anonyme D'Editions Aéronautiques Internationales (1934); **18.** *Discy.* Nos. 1514a, 1516a
Hills *v.* Hills (S. Af.); **11.** *Confl.* p. 27
— *v.* London Freehold & Leasehold Property Co., Ltd. (1936); **28.** *Inc. T.* No. 592c
— *v.* London Passenger Transport Board (1937); *Pract.* No. 3743a
— *v.* Mitson (1853); **4.** *Bkpcy.* No. 5039b
— *v.* Swift Canadian Co. (Can.); **1.** *Agy.* p. 102
Hills & Grant, Ltd. *v.* Hodson (1934); **3.** *Auct.* Nos. 81a, 82b; *Pldg.* No. 1496a
Hills' Patent Glazing Co., Ltd. *v.* Douglas (1937); **34.** *Mast. & S.* No. 3926a
Hilton *v.* Billington & Newton, Ltd. (1936); **34.** *Mast. & S.* No. 3932b
— *v.* Bradbury, *Re* Tong (1931); **23.** *Exors.* Nos. 4040a, 5917b
— *v.* Westminster Bank, Ltd. (1926); **3.** *Bank.* No. 589a
Hilton (John) Patent, *Re* (1932); **36.** *Pats.* No. 2062c
Hiltz, *Re* (Can.); **33.** *Mags.* p. 30
Hime *v.* Coulthard (Can.); **21.** *Exon.* p. 54
Himley Estates, Ltd., and Humble Investments, Ltd. *v.* Inland Revenue Comrs. (1933); **28.** *Inc. T.* No. 674q
Hin *v.* Purshotumdas & Co. (1923); **12.** *Contr.* No. 3101a
Hinchcliffe *v.* Baird & Botterell (Can.); **1.** *Agcy.* p. 63
Hinchliffe, *Re* (1895); **33.** *Lunat.* No. 545b
Hinckes *v.* Harris (1921); **2.** *Animals*, No. 246a
Hincks *v.* Sowerby (Can.); **21.** *Exon.* p. 45
Hind, *Re*, Bernstone *v.* Montgomery (1933); **40.** *Stllmts.* Nos. 3143g, 3143h, 3143j
— *v.* Wesbrook (Can.); **40.** *S. Land*, p. 8
Hindley *v.* Burns (Can.); **34.** *Mast. & S.* p. 24
Hindmarch *v.* Carterthorne Colliery, Ltd. & Durham Colliery Owners' Mutual Protection Assocn. (1928); **29.** *Insce.* No. 3205b
Hindmarsh *v.* Edward Johns & Co., Ltd. (1930); **34.** *Mast. & S.* Nos. 3816a, 3835a
— *v.* Guthrie (N.Z.); **36.** *Negl.* p. 33
— *v.* Johns (Edward) & Co., Ltd. (1930); **34.** *Mast. & S.* Nos. 3816a, 3835a
Hinds *v.* McDonald (Can.); **11.** *Confl.* p. 48
Hinds & Diplock *v.* Breconshire County Council (1938); **26.** *Hghys.* No. 468a

Hindustan Assurance & Mutual Benefit Society, Ltd., Lahore *v.* Khalsa Bank, Ltd., Gujranwala (Ind.); **9.** *Coys.* p. 33 ; **10.** *Coys.* p. 97
Hindustan S.S. Co. *v.* Admiralty Comrs. (1921); **41.** *Ship.* No. 8763a
Hindusthan Co-operative Insurance Society, Ltd. *v.* Secretary of State for India in Council (Ind.); **21.** *Estpl.* p. 36
Hineiti Rirerire Arani *v.* New Zealand Public Trustee (N.Z.); **28.** *Infts.* p. 140
Hines (Ipswich Revenue Officer) *v.* Eastern Counties Farmers' Co-operative Assocn., Ltd. (1931); **38.** *Rates*, No. 226j
Hines *v.* Tousley (1926); **2.** *Animals*, No. 274a
Hingston-Smith, *Re*, *Ex p.* MacPherson Estate (Can.); **18.** *Distr.* p. 31
Hini *v.* Anderson (Can.); **9.** *Coys.* p. 54
Hinkey, *Ex p.*, *Re* Walker (N.Z.); **4.** *Bkpcy.* p. 1
Hinks *v.* Riscoe (James) & Sons (1927); **34.** *Mast. & S.* Nos. 2856b, 2890c
Hinshelwood *v.* Auld (Scot.); **22.** *Evid.* p. 18
Hinton *v.* Gilchrist (1930); **36.** *Negl.* No. 382b
— *v.* Hinton & Spillett (1930); **17.** *Damgs.* No. 557a; **27.** *H. & W.* No. 3751a
Hira Bibi *v.* Ram Hari Lal (Ind.); **17.** *Deeds*, p. 24
Hiram Walker & Sons, Ltd. *v.* Walkerville Corpn. (Can.); **38.** *Rates*, p. 76
Hiranand Khushiram *v.* Secretary of State for India (Ind.); **42.** *Stats.* p. 25
Hirawanu *v.* Gardner (N.Z.); **2.** *Agric.* p. 18
Hird *v.* Milne (Can.); **42.** *Str. Traf.* pp. 39, 61
Hirjee Devraj & Co. *v.* Maung Lyun Shein (Ind.); **12.** *Contr.* p. 26
Hirji Mulji *v.* Cheong Yue S.S. Co. (1926); **2.** *Arbn.* No. 565a; **12.** *Contr.* Nos. 3172a, 3199a
Hirsch *v.* Alton (Can.); **5.** *Bkpcy.* p. 93
— *v.* Anderson & Wedderspoon (Can.); **14.** *Crim.* p. 51
— *v.* Montreal Protestant Board School Comrs. (1928); **17.** *Dep.* No. 176a & p. 38
Hirschfield *v.* Hirschfield (Can.); **40.** *S. Land*, p. 2
Hirschorn *v.* Evans (1938); **3.** *Bank.* No. 321c
Hirst *v.* Liverpool Victoria Friendly Society (1929); **25.** *Fr. Soc.* No. 175b
— *v.* South African Medical Council (S. Af.); **34.** *Med.* p. 190
Hirst & Liverpool Victoria Friendly Society, *Re* (1929); **25.** *Fr. Soc.* No. 175b
His Majesty the King for the Canadian Government Railways, *Re* (Can.); **34.** *Mast. & S.* p. 37
Hiscott's Indenture, *Re*, (1937); **27.** *H. & W.* No. 2014a
Hitchcock *v.* Columbia Valley Land Co., Ltd. (Can.); **1.** *Agcy.* p. 95
Hitchens & Co., Ltd. *v.* Hart (1927); **34.** *Mast. & S.* Nos. 3559a, 3704a
Hitchins *v.* British Coal Refining Processes, Ltd. (1936); **2.** *Arbn.* Nos. 1139a, 1731a
— *v.* Umfolosi Co-operative Sugar Planters Assocn. (S. Af.); **22.** *Evid.* p. 3
Hives *v.* Dawson (1927); **13.** *Cty Cts.* No. 779a
Hivis, *Ex p.*, *Re* Michaelis (Aus.); **42.** *Str. Traf.* p. 49
Hjorth *v.* Smith (Can.); **17.** *Deeds*, p. 24
Hlibczuk *v.* Minuk (Can.); **12.** *Contr.* p. 22
Hniden *v.* Herr (Can.); **43.** *Trade*, p. 8
Hoak (Doe d.) *v.* Empey (Can.); **43.** *Tresp.* p. 51
Hoar *v.* Mills (No. 2) (Can.); **35.** *Mtge.* p. 36
Hoare, *Re* (Can.); **23.** *Exors.* p. 26
— *v.* Adam Smith (London), Ltd. (1938); **35.** *Money*, Nos. 353z, 353dd
— *v.* Bruce (1929); **28.** *Inc. T.* No. 204j
— *v.* Inverarity (Aus.); **36.** *Negl.* pp. 18, 32
Hoare & Co., Ltd., *Re* (1933); **10.** *Coys.* No. 7119a
— *v.* Collyer (1932); **28.** *Inc. T.* Nos. 116c, 292b
Hobbs, *Ex p.*, R. *v.* Evening News (1925); **16.** *Cntmpt.* No. 180a
—, *Re* (Can.); **44.** *Wills*, pp. 42, 44
— *v.* Australian Press Assocn. (1933); **36.** *Prtnrs.* No. 830a
— *v.* Nottingham Journal (1929); **30.** *Juries*, Nos. 295a, 304a; **32.** *Libel*, No. 2041a
— *v.* Royal Arsenal Co-operative Society, Ltd. (1930), 144 L. T. 10; **34.** *Mast. & S.* No. 2216a
— *v.* Royal Arsenal Co-operative Society (1930), 170 L. T. Jo. 159; **34.** *Mast. & S.* No. 3873a
— *v.* Taite (1738); **20.** *Eqy.* No. 2102a
— *v.* Tinling (1929); **30.** *Juries*, Nos. 295a, 304a; **32.** *Libel*, No. 2041a
— *v.* Ward (1929); **25.** *Gaming*, No. 504a
Hobrecker *v.* James (Can.); **36.** *Prtnrs.* p. 57
Hobrecker (A.), Ltd. *v.* Wilson (Can.); **27.** *H. & W.* p. 14
Hobrecker's Estate, *Re*, (Can.); **9.** *Coys.* p. 22
Hobson, Houghton & Co., *Re* (1929); **9.** *Coys.* Nos. 2283a, 2585a
Hoby *v.* Hoby (1828); **33.** *Lunat.* No. 265a
Hochbaum *v.* Pioneer Insurance Co. (Can.); **29.** *Insce.* p. 4
Hochelaga S.S. Co. *v.* Leopold L. D. S.S. (1932); **41.** *Ship.* Nos. 6070a, 6104a
— *v.* Louis Dreyfus & Co. (1932); **41.** *Ship.* Nos. 6070a, 6104a
Hocker *v.* Waller (1924); **1.** *Agcy.* No. 1746a
Hocking, The (1917); **37.** *Prsns.* No. 1302a
Hocking *v.* British Columbia Motor Transportation, Ltd. (Can.); **36.** *Negl.* p. 25
Hockley, *Re* (Can.); **2.** *Agric.* p. 25
Hodder & Tolley, Ltd. *v.* Cornes (N.Z.); **12.** *Contr.* p. 21
Hodder (W. W.) Co. Incorporated *v.* Strandhill (Can.); **41.** *Ship.* p. 12
Hoddesdon Urban District Council *v.* Broxbourne Sand & Ballast Pits, Ltd. (1936); **34.** *Mines*, No. 327b
Hodge *v.* McLean & Union Bank of Canada (Can.); **4.** *Bkpcy.* p. 31; **5.** *Bkpcy.* pp. 73, 75, 76
— *v.* Marsh (1936); **16.** *Courts*, No. 456a
— *v.* Wakefield Trinity Football Club (1937); **34.** *Mast. & S.* No. 2939a
Hodge & Sons *v.* Anglo-American Oil Co. (1922); **36.** *Negl.* No. 361a
Hodges *v.* Jones (1935); **38.** *Real Prop.* No. 910a
— *v.* Marks (1618); **21.** *Exon.* No. 556a
Hodgkins *v.* Harris Investors, Ltd. (Can.); **21** *Exon.* p. 54
Hodgkinson *v.* Hewitt (1928); **31.** *L. & T.* No. 7145a
— *v.* Martin (Can.); **17.** *Damgs.* p. 15; **43.** *Tresp.* p. 53
Hodgson, *Re*, Nowell *v.* Flannery (1936); **44.** *Wills*, No. 5764a
— *v.* Coates (1856); **40.** *Sttlmts.* No. 1884a
— *v.* Davies (1810); **1.** *Agcy.* No. 1104a
— *v.* McCreagh (1923); **11.** *Comns.* Nos. 323a, 347a
— *v.* Salt (1936); **32.** *Limit. of A.* No. 942a
— *v.* Towning (1837); **21.** *Exon.* No. 1577a
Hodson *v.* Glenhodson County Club & Whitby Township (Can.); **26.** *Hghys.* p. 38
— *v.* Star Paper Mills, Ltd. (1927); **34.** *Mast. & S.* No. 3251a
Hodson's Settlement, *Re*, Brookes *v.* A.-G. (1938); **21.** *E. D.* No. 67c
Hoepner *v.* Manning (Aus.); **15.** *Crim.* p. 105
Hoff Trading Co. *v.* Union Insurance Society of Canton (1929); **29.** *Insce.* No. 143a
Hoffman, *Re* (Can.); **44.** *Wills*, p. 54

Hoffman *v.* Cohen (Can.); **12.** *Contr.* p. 12
— *v.* Nielsen (Aus.); **36.** *Negl.* p. 25
Hoffstrom *v.* Stanley (Can.); **32.** *Lien*, p. 23
Hofley *v.* Radio Oil Refineries, Ltd. (Can.); **33.** *Mal. Pros.* p. 40
Hogan *v.* Regina City (Can.); **17.** *Damgs.* pp. 6, 7
Hogarth, *Re* (Aus.); **37.** *Powers*, p. 28
— *v.* R. (Can.); **3.** *Barr.* p. 50
Hogg *v.* Belfast Corpn. (Ir.); **2.** *Arbn.* pp. 82, 83
— *v.* Macpherson (Scot.); **26.** *Hghys.* p. 27
— *v.* Toye & Co., Ltd. (1935); **13.** *Coprt.* No. 564a
Hogg & Carr's Patents, *Re* (1927); **36.** *Pats.* No. 2130a
Hogg & Co., Ltd. *v.* Taxes Comr. (N.Z.); **28.** *Inc. T.* p. 47
Hoggan *v.* Esquimalt & Nanaimo Ry. Co. (Can.); **11.** *Const. L.* p. 77
Hoggett *v.* Hoggett (Aus.); **27.** *H. & W.* p. 31
Hogle *v.* Ernesttown Township (Can.); **2.** *Animals*, p. 58
Hogton *v.* Hogton (1933); **22.** *Evid.* No. 1437b
Hokanson *v.* Lample (Can.); **33.** *L. G.* p. 7
Holborough *v.* United Dairies (London), Ltd. (1937); **34.** *Mast. & S.* No. 2876b
Holden, *Ex p.* (Aus.); **27.** *H. & W.* p. 79
—, *Re*, Isaacson *v.* Holden (1935); **23.** *Exors.* No. 3973a
— *v.* Howard (1938); **31.** *L. & T.* No. 7356c
— *v.* Massey (1929); **34.** *Mast. & S.* No. 3963b
— *v.* Milburn (Can.); **21.** *Exon.* p. 49
— *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 93
— *v.* Premier Waterproof & Rubber Co., Ltd. (1930); **34.** *Mast. & S.* No. 2594b
— *v.* Ryan (Can.); **28.** *Injon.* p. 154
— *v.* Western Mutual Casualty Insurance Co. (Can.); **29.** *Insce.* p. 58
Holden National Co.'s Claim, *Re*, *Re* Progressive Farmers (Can.); **5.** *Bkpcy.* p. 59
Holder, *Ex p.*, *Ex p.* Williams, *Re* Madrid Bank, Ltd. (1866); **10.** *Coys.* No. 6368a
— *v.* Chambury (1734); **13.** *Cohlds.* No. 1272a
— *v.* Inland Revenue Comrs. (1932); **26.** *Guar.* No. 608a; **28.** *Inc. T.* No. 545h
Holding *v.* South Australian Railways Comr. (Aus.); **34.** *Mast. & S.* p. 38
— *v.* Wood (Can.); **1.** *Agcy.* p. 71
Holdsworth (I. W.), Ltd. *v.* Associated Newspapers, Ltd. (1937); **32.** *Libel*, No. 109d
Hole *v.* Garnsey (1930); **28.** *Ind. Soc.* No. 45a
Holeproof Hosiery Co. *v.* London (Can.); **26.** *Hghys.* p. 23
Holford *v.* Steel, Peech & Tozer, Ltd. (1934); **34.** *Mast. & S.* No. 3811r
Holgate *v.* Lancashire Mental Hospitals Board, Gill & Robertson (1937); **33.** *Lunat.* No. 1886a
Holl, *Re*, *Re* Cowper (Can.); **22.** *Evid.* p. 8
Holland, *Ex p.*, *Re* Holland (Aus.); **23.** *Exors.* p. 31; **29.** *Insce.* p. 35; **35.** *Mtge.* p. 47
—, *In the Estate of* (1936); **23.** *Exors.* No. 4a
—, *Re* (Can.) (1875); **16.** *Cr. Pract.* p. 33
—, *Re* (Can.) (1933); **5.** *Bkpcy.* p. 54
—, *Re*, *Ex p.* Holland (Aus.); **23.** *Exors.* p. 31; **29.** *Insce.* p. 35; **35.** *Mtge.* p. 47
— (Queen of) *v.* Drukker, *Re* Visser (1928); **11.** *Confl.* No. 6a
— *v.* German Property Administrator (1937); **2.** *Aliens*, No. 215x
— *v.* Gillam, *Re* Robins (1928); **40.** *Stllmts.* No. 1873
— *v.* Holland (1925); **3.** *Basty.* No. 65b
— *v.* Roberts (1938); **3.** *Basty.* No. 325d
— *v.* Toronto City (Can.) (1925); **26.** *Hghys.* p. 35
— *v.* — (Can.) (1927); **26.** *Hghys.* p. 35
Holland *v.* Woodman, *Re* Borwick (1937); **11.** *Confl.* No. 217a
Holland & Hannen & Cubitts, Ltd. *v.* Bright (1938); **34.** *Mast. & S.* No. 3726f
Holland & Humble's Assignees *v.* —— (1815); **8.** *Chos.* No. 250a
Holland & Walsh, *Ex p.*, Court *v.* Holland (Can.); **22.** *Evid.* p. 6
Holland & Webb, Ltd., *Re* (1936); **9.** *Coys.* No. 1012b
Holland-Canada Mortgage Co., Ltd. *v.* Hutchings (Can.); **35.** *Mtge.* p. 44
— *v.* — (No. 2) (Can.); **26.** *Guar.* p. 8
Hollander & Son, Ltd. *v.* R. (Can.); **39.** *Revenue*, p. 16
Hollandsche (N. V.) Glas-en Metaalbank *v.* Rockware Glass Syndicate, Ltd. (1931); **36.** *Pats.* Nos. 1213a, 1337a
— *v.* — (1932); **36.** *Pats.* No. 3165b
Hollenden *v.* Morley, *Re* Morley's Estate (1937); **23.** *Exors.* No. 4764b
Holliday *v.* Hogan (Can.); **26.** *Guar.* p. 10
— *v.* Petty, *Re* Petty (1929); **23.** *Exors.* No. 5917e
— *v.* Turner (Can.); **24.** *Exors.* p. 36
Holliday & Sons, Ltd. *v.* Executive Board, *Re* Midland (Amalgamated) District (Coal Mines) Scheme, 1930 (1934); **34.** *Mines*, No. 327z
— *v.* Midland (Amalgamated) District (Coal Mines) Scheme Executive Board (1934); **34.** *Mines*, No. 327z
Hollinger Consolidated Gold Mines, Ltd. *v.* Northern Canada Power Co., Ltd. (Can.); **20.** *Electric*, p. 11
Hollingsworth & Whitney, Ltd. *v.* Bridgewater (Can.); **38.** *Rates*, p. 66
— *v.* Wright (Can.); **43.** *Tresp.* p. 50
Hollins (William) & Co., Ltd. *v.* Cotella, Ltd., *Re* Haslams, Ltd.'s Trade Mark No. 553,414 (1936); **43.** *Trade Mks.* No. 601a
Hollis *v.* Kirkpatrick (Can.); **42.** *Str. Traf.* p. 37
Hollis Bros. & Co., Ltd. *v.* White Sea Timber Trust, Ltd. (1936); **39.** *S. Goods*, No. 1678a
Hollister, *Re* (Can.); **5.** *Bkpcy.* p. 54
Holloway, *Re*, *Re* Peterson (Can.); **4.** *Bkpcy.* p. 31
— *v.* Donaldson Line, Ltd. (1935); **34.** *Mast. & S.* No. 1729a
Hollum *v.* Robertson (Can.); **36.** *Negl.* p. 4
Hollywood Silver Fox Farm, Ltd. *v.* Emmett (1936); **36.** *Nuis.* No. 432a
Holmes, *Ex p.* (Aus.); **16.** *Cr. Pract.* p. 39
—, *Re*, *Ex p.* Heywood (1815); **8.** *Chos.* No. 250a
—, *Re*, McMaster *v.* Cuningham (N.Z.); **44.** *Wills*, p. 56
— *v.* Allchurch (Aus.); **25.** *Gaming*, p. 36, 37
— *v.* Fagan (Can.); **35.** *Mtge.* p. 37
— *v.* Holmes (Can.); **27.** *H. & W.* p. 5
— *v.* Kaye, Son & Co., Ltd. (1934); **34.** *Mast. & S.* No. 3532a
— *v.* Payne (1930); **29.** *Insce.* Nos. 160a, 3282a, 3282b
— *v.* Scottish Legal Life Assurance Society (1932); **29.** *Insce.* No. 2855a
— *v.* Stamp Duties Comr. (N.Z); **21.** *E. D.* p. 7
— *v.* Stiver (Can.); **19.** *Educ.* p. 41
— *v.* Watt (1935); **5.** *Bkpcy.* Nos. 7854a, 7854b
Holmes & Stiver, *Re* (Can.); **19.** *Educ.* p. 41
Holmes Estate, *Re* (Can.); **23.** *Exors.* p. 8
Holmes (Samuel), Ltd., *Re* (Ir.); **10.** *Coys.* p. 60
Holmes, Wilson & Co., Ltd. *v.* Bata Kristor De (Ind.); **17.** *Custom*, p. 1
Holmested *v.* Alberta Pacific Grain Co., Ltd. (Can.); **9.** *Coys.* p. 15

Holmstead *v.* Minister of Customs & Excise (Can.); **17.** *Dep.* p. 50
Holowachuk *v.* Holowachuk (Can.); **27.** *H. & W.* p. 19
Holstein, The (1936); **1.** *Adm.* No. 837b; *Pract.* No. 443b
Holstein, *Re* (Can.); **2.** *Agric.* p. 25
Holt *v.* Cadogan (1930); **31.** *L. & T.* No. 2306o
— *v.* Catterall (1931); **9.** *Coys.* No. 3455b
— *v.* Hobson (Andrew) & Sons (1930); **34.** *Mast. & S.* No. 3801b
— *v.* Markham (1923); **12.** *Contr.* No. 4534a
Holt & Co., *Ex p., Re* Hill (1921); **4.** *Bkpcy.* No. 800a
Holt Brewery Co., Ltd., *Ex p.*, R. *v.* Smethwick Confirming Authority (1929); **30.** *Intox.* Nos. 55a, 366a
Holt Bros. & Whitford *v.* Axbridge Rural District Council (1931); **11.** *Comp. Pche.* No. 2212a
Holt's Motors, Ltd. *v.* South East Lancashire Insurance Co., Ltd. (1930); **29.** *Insce.* Nos. 203a, 3279b
Holten *v.* Holten (Can.); **27.** *H. & W.* p. 19
Holy Law South Broughton Burial Board *v.* Failsworth Urban District Council (1928); **26.** *Hghys.* No. 2405a
Holyman (William) & Sons Pty., Ltd. *v.* Marine Board of Launceston (Aus.); **41.** *Ship.* p. 69
Homburg *v.* Public Trustee, *Re* Nickel (Aus.); **2.** *Aliens*, p. 35
Home *v.* Camden (Earl) (1795); **16.** *Cr. Pract.* No. 2187a
Home & Colonial Insurance Co., Ltd., *Re* (1928); **10.** *Coys.* Nos. 7174a, 7452a
—, *Re*, May *v.* Barham (1930); **9.** *Coys.* Nos. 355a; **10.** *Coys.* 6154a, 6180a, 6858a, 6858b; **12.** *Contr.* No. 4853a; **29.** *Insce.* No. 232a
Home & Colonial Insurance Co., Ltd., *v.* London Guarantee & Accident Co., Ltd. (1928); **35.** *Mistake*, No. 464a
Home Bank *v.* Hamona Farmers Assocn. (Can.); **3.** *Bank.* p. 20
Home Bank of Canada, *Re* (Can.) (1923); **3.** *Bank.* p. 20
—, *Re* (Can.) (1927); **3.** *Bank.* p. 20
—, *Re* (Can.) (1931); **3.** *Bank.* p. 45
Home Bank of Canada, *Re*, National Trust Co.'s Case (Can.); **3.** *Bank.* p. 20
Home Bank of Canada & Winding-Up Act, *Re* (Can.); **10.** *Coys.* p. 82
Home Grown Sugar, Ltd., *Re* (1938); **10.** *Coys.* No. 6988c
Home Insurance Co. of New York *v.* Gavel (Can.); **29.** *Insce.* p. 26
— *v.* M.S. Tex, The (Can.); **41.** *Ship.* p. 67
Home Insurance Co. of New York & United States Fidelity & Guaranty Co. *v.* Lindal & Beattie (Can.); **29.** *Insce.* p. 57
Home Investment & Savings Assocn. *v.* Lethbridge Northern Colonisation Manager (Can.); **33.** *L. G.* p. 3
Home Oil Distributors *v.* Bennett (Can.); **38.** *Real Prop.* p. 94
Homefire, The (1937); **41.** *Ship.* No. 6200b
Homer *v.* Donisthorpe Colliery Co., Ltd. (1936); **34.** *Mast. & S.* No. 3834c
Homes *v.* Newman (1931); **22.** *Evid.* Nos. 311b, 811a
Homes for Inebriates Association, *Re*, The Association *v.* A.-G. (1935); **8.** *Clubs*, No. 13a
Homfray & Kamloops Building Inspector, *Re* (Can.); **38.** *Pub. Hlth.* p. 15
Hone *v.* Thorpe & Edilson (N.Z.); **18.** *Distr.* p. 28
Honey Dew, Ltd. *v.* Rudd (Can.); **43.** *Trade Mks.* p. 22
Honey Dew, Ltd. *v.* Ryan (Can.); **43.** *Trade Mks.* p. 24
Honeyman, *Re* (Can.); **22.** *Evid.* p. 8
— *v.* Marryatt (1857); **12.** *Contr.* No. 501a
Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd. (1934); **34.** *Mast. & S.* No. 1268a
Hong Kong & Shanghai Bank *v.* Lo Lee Shi (1928); **6.** *B. of Exch.* No. 2485a
Honke *v.* Manitoba Eastern Ry. Co. (Can.); **36.** *Negl.* p. 21
Honourable Co. of Master Mariners *v.* Inland Revenue Comrs. (1932); **28.** *Inc. T.* No. 476g
Hontestroom, The, The Sagaporack (1927); **1.** *Adm.* No. 1642a
Hontestroom S.S. *v.* Durham Castle S.S. (1927); **1.** *Adm.* No. 1642a
— *v.* Sagaporack S.S. (1927); **1.** *Adm.* No. 1642a
Hood, *Re* (Can.); **14.** *Crim.* pp. 10, 51
—, *Re*, Public Trustee *v.* Hood (1931); **8.** *Char.* Nos. 68a, 217d
— *v.* Smith (1933); **37.** *Post Off.* No. 52a
Hood's Trustees *v.* Southern Union General Insurance Co. of Australasia (1928); **5.** *Bkpcy.* No. 5958a
Hooker *v.* Mulcahy (1934); **19.** *Eccl.* Nos. 3490b, 3490d, 3491a
Hoole *v.* Royal Trust Co. (Can.); **1.** *Agcy.* p. 64
Hooley *v.* Fountain, *Re* Potts (1884); **24.** *Exors.* No. 8841a
Hooper, *Re*, Hamm *v.* Hooper (Can.); **44.** *Wills*, p. 30
—, *Re*, Hooper *v.* Carpenter (1936); **44.** *Wills*, Nos. 7176a, 7179a
—, *Re*, Hooper *v.* Toronto General Trusts Corpn. (Can.); **44.** *Wills*, p. 30
—, *Re*, Parker *v.* Ward (1932); **8.** *Char.* No. 230a
— *v.* Anderson (Edward) & Co., Ltd. (N.Z.); **1.** *Agcy.* p. 76
— *v.* Anderson (Edward) & Co., Ltd. (No. 2) (N.Z.); **1.** *Agcy.* p. 76
— *v.* Carpenter, *Re* Hooper (1936); **44.** *Wills*, Nos. 7176a, 7179a
— *v.* Smith & Hamilton (Can.); **28.** *Injon.* p. 152
— *v.* Toronto General Trusts Corpn., *Re* Hooper (Can.); **44.** *Wills*, p. 30
Hoover *v.* Sabourin (Can.); **7.** *Bounds. & F.* p. 15
Hoover, Ltd. *v.* Air-Way, Ltd. (1936); **43.** *Trade Mks.* No. 613b
Hope *v.* Great Western Ry. Co. (1937); *Pract.* No. 1975a
— *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 11
— *v.* Thorp, *Re* Hope's Will Trust (1929); **44.** *Wills*, No. 239a
Hope (Henry) & Sons, Ltd. *v.* Canada Foundry Co. (Can.); **12** *Contr.* p. 28
Hope (Henry) & Sons, Ltd. *v.* Sheehy (Richard) & Sons (Can.); **7.** *Bldg. Conts.* p. 30
Hope's Will Trust, *Re*, Hope *v.* Thorp (1929); **44.** *Wills*, No. 239a
Hopgood *v.* Feener (Can.); **7.** *Bldg. Conts.* p. 24
— *v.* Willan (1938); *Pract.* No. 3374a
Hopkins *v.* Crowe (1836); **43.** *Tresp.* No. 733a
— *v.* Geoghegan (Ir.); **40.** *S. Land*, p. 8
— *v.* Hopkins (Aus.) (1935); **27.** *H. & W.* p. 41
— *v.* — (Aus.) (1936); **27.** *H. & W.* p. 33
— *v.* — (N.Z.); **27.** *H. & W.* p. 56
— *v.* Hopkins & Castle (1933); **27.** *H. & W.* Nos. 2828b, 2828c, 2828d
— *v.* Nightingale (1794); **21.** *Exon.* No. 1578c

Hopkinson *v.* Caunt (1885); **34.** *Mines*, No. 1119a
— *v.* Hopkinson (Can.); **21.** *Estpl.* p. 30
Hopp *v.* Dean, *Re* Letherbrow (1935); **23.** *Exors.* No. 3966a
Hoppe *v.* Manners (Can.); **39.** *S. Goods*, p. 58
Hopper No. 13, The (1925); **1.** *Adm.* No. 1062a; **18.** *Discy.* No. 891a
Hopper No. 21, The (1903); **1.** *Adm.* No. 1297a
Hopps *v.* Borowski (Can.); **35.** *Mtge.* p. 49
Hopps' Case, *Re* Acme Products, Ltd. (Can.); **9.** *Coys.* p. 17
Horder, *Re*, *Ex p.* Trustee (1936); **4.** *Bkpcy.* No. 371a
Hordern *v.* Federal Mutual Insurance Co. of Australia (Aus.); **35.** *Mtge.* p. 39
Hore *v.* General Steam Navigation Co. (1929); **34.** *Mast. & S.* No. 2735a
Horlick *v.* Scully (1927); **31.** *L. & T.* No. 4760a
Horlick's Settlement Trusts, *Re*, Colledge *v.* Horlick (1938); **39.** *Rntchgs.* No. 592b
Horlock *v* Smith (1853); **20.** *Eqy.* No. 2294a
Hormus Ardeshar Kandawala *v.* Ardeshar Cowashji Dustoor (Ind.); **43.** *Trade Mks.* p. 32
Horn, *Re* (Aus.); **22.** *Evid.* p. 8
— *v.* Dobson (Scot.); **39.** *Revenue*, p. 17
— *v.* Duckett (Scot.); **39.** *Revenue*, p. 25; **42.** *Str. Traf.* p. 48
— *v.* Horn (1929); **11.** *Confl.* Nos. 53a, 894a
— *v.* Minister of Health (1937); **38.** *Pub. Hlth.* No. 502o
— *v.* Sanford (Can.); **32.** *Lien*, p. 25
Hornbrook *v.* Toronto Casualty Fire & Marine Insurance Co. (Can.); **29.** *Insce.* p. 40
Hornby *v.* Hornby (Can.); **27.** *H. & W.* p. 53
— *v.* Paterson (Can.); **42.** *Str. Traf.* p. 37
— *v.* Silvester (1888); **11.** *Comns.* No. 929a
Hornchurch Urban District Council *v.* Allen (1938); **26.** *Hghys.* No. 2425a
— *v.* Standen (1934); **38.** *Pub. Hlth.* No. 259a
— *v.* Webber (1938); **26.** *Hghys.* No. 2413a
Horne, *Re* (N.Z.); **2.** *Aliens*, p. 48
— *v.* Barber (Aus.); **1.** *Agcy.* p. 89
— *v.* Moulds (Can.); **31.** *L. & T.* p. 73
— *v.* Munro (Can.); **11.** *Const. L.* p. 77
— *v.* Prudential Assurance Co., Ltd. (1934); **43.** *Trade*, No. 131b
Horne (Harry) Co. *v.* Schwartz & Sons, Ltd. (Can.); **43.** *Trade Mks.* p. 42
Horne's Settlement, *Re*, Coutts & Co. *v.* Dusmet de Smours (Duchessa) (1932); **27.** *H. & W.* No. 807a; **39.** *Rntchgs.* No. 221a
Horner, *Ex p.*, R. *v.* Income Tax Special Comrs. (1932); **28.** *Inc. T.* No. 548a
— *v.* Crew (1928); **42.** *Solrs.* No. 3451a
— *v.* Sayner (1838); **24.** *Exors.* No. 4738a
— *v.* Walker (1923); **12.** *Contr.* No. 1123a; **30.** *L. & T.* No. 396a
Hornidge *v.* Wilson (1840); **24.** *Exors.* No. 6667a
Horniman *v.* Horniman (1933); **27.** *H. & W.* No. 5383a
Horning *v.* Sycamore & Flexman (N.Z.); **36.** *Negl.* p. 33
Hornsby, Council of the Shire of *v.* Danglade (Aus.); **11.** *Const. L.* p. 77
Hornshaw *v.* Middleton Estate & Colliery Co., Ltd. (1933); **34.** *Mast. & S.* No. 3283l
Horowitz *v.* Greenberg, *Re* Joyce Dress Corpn., Ltd. (Can.); **10.** *Coys.* p. 82
— *v.* Wald (H.) & Co. (1930); **36.** *Pats.* No. 502b
Horrell *v.* St. John of Bletso (Lord) (1928); **2.** *Agric.* No. 266kk
Horseman *v.* Nairn (Aus.); **34.** *Med.* p. 189
Horsfall *v.* Garnett (1858); **12.** *Contr.* No. 339a
— *v.* South Kirkby, Featherstone & Hemsworth Collieries, Ltd. (1933); **34.** *Mast. & S.* No. 3288c
Horsfield *v.* Ashton (1856); **24.** *Exors.* No. 6014a
— *v.* Brown (1932); **14.** *Crim.* No. 1676a; **27.** *H. & W.* No. 6233a; **38.** *Pub. Auth.* No. 482a
— *v.* Cana Rural Municipality, No. 214 (Can.); **26.** *Hghys.* p. 30
— *v.* Sidebotham (1860); **24.** *Exors.* No. 6014a
Horst *v.* Livesley (Can.); **11.** *Confl.* p. 38
Horstmann & Edgar's Patent, *Re* (1928); **36.** *Pats.* No. 2023a
Hortness *v.* Fefchak (Can.); **7.** *B. of Sale*, p. 5
Horton *v.* Central Sheet Metal Works (Can.); **36.** *Pats.* p. 69
— *v.* Jones (Aus.); **44.** *Wills*, p. 12
— *v.* Moggridge (1816); **4.** *Bkpcy.* No. 5402a
— *v.* Thompson (1855); **32.** *Limit. of A.* No. 964a
Horton's Estate, Ltd. *v.* Beattie, Ltd. (1927); **19.** *Easmt.* No. 934a
Horwitz *v.* Loyal Protective Insurance Co. (Can.); **29.** *Insce.* p. 34
Horwood *v.* Canora Town (Can.); **43.** *Wtr. Sply.* p. 75
— *v.* Statesman Publishing Co. (1929); **32.** *Libel*, No. 2300a
Hosanna Arathoon Kerakoose *v.* Serle (1844); **16.** *Courts*, No. 949a
Hosier *v.* Read (1724); **12.** *Contr.* No. 1180a
Hosier Brothers *v.* Derby (Earl) (1918); **1.** *Agcy.* No. 2733a
Hoskins *v.* Minneapolis Threshing Machine Co. (Can.); **18.** *Discy.* p. 10
— *v.* Woodham (1938); **7.** *Bldg. Conts.* No. 36d
Hoskins-Abrahall *v.* Paignton Urban Council (1929); **7.** *Burial*, No. 262a
Hotel Dunlop, Ltd., *Re*, Quinn *v.* Guernsey (Can.); **4.** *Bkpcy.* p. 44
Hoth *v.* Cowan (Scot.); **2.** *Arbn.* p. 77
Houde (B.) Co., Ltd. *v.* Comr. of Patents (Can.); **43.** *Trade Mks.* p. 12
Hough *v.* Taylor (Aus.); **19.** *Easmt.* p. 6
Houghton *v.* Film Booking Offices, Ltd. (1931); **13.** *Coprt.* Nos. 523a, 670a
— *v.* Trust & Loan Co. of Canada (Can.); **35.** *Mtge.* p. 51
Houghton & Co. *v.* Nothard, Lowe & Wills (1927); **20.** *Eqy.* No. 649a
Houghton & Co. *v.* Nothard, Lowe & Wills (1928); **9.** *Coys.* Nos. 3157a, 3540a, 3567a, 4170a, 4267a; **20.** *Eqy.* No. 649a
Houlder, *Re* (1929); **4.** *Bkpcy.* No. 2514a
—, *Re*, Rabbidge *v.* Eagle Star Dominions Insurance Co. (1929); **4.** *Bkpcy.* No. 2514a
Houlding, *Re* (Can.); **5.** *Bkpcy.* p. 76
— *v.* Canadian Credit Men's Trust Assocn., Ltd. (Can.); **4.** *Bkpcy.* p. 42; **5.** *Bkpcy.* pp. 82, 92
Hourigan *v.* Trustees Executors & Agency Co., Ltd. (Aus.); **44.** *Wills*, p. 47
Hours of Labour, *Re*, *Re* Treaty of Versailles (Can.); **17.** *Dep.* p. 56
Hourston *v.* Brown-Holder Biscuits, Ltd. (Can.); **36.** *Nuis.* p. 44
House, *Re*, Westminster Bank *v.* Everett (1929); **40.** *Sttlmts.* No. 3151a; **43.** *Trusts*, No. 3475b
House & Property Investment Co., Ltd. *v.* Kneen (1938); **28.** *Inc. T.* No. 20a
House Improvement Assocn., Ltd., *Re*, Giles *v.* Nuttall (1885); **10.** *Coys.* No. 5011a
House Repair & Service Co., Ltd. *v.* Miller (Can.); **2.** *Arbn.* p. 102; **7.** *Bldg. Conts.* p. 21
Houston *v.* Buchanan (Scot.); **29.** *Insce.* p. 49
— *v.* Houston & Bateman (Can.); **27.** *H. & W.* p. 46
— *v.* Victoria Machinery Depot, Ltd. (Can.); **9.** *Coys.* pp. 37, 54

Houston *v.* Wittner's Pty., Ltd. (Aus.); **25.** *Food*, p. 12
Hovenden, *Re*, Westminster Bank, Ltd. *v.* Royal Hospital for Incurables (1938); **8.** *Char.* No. 948a
— *v.* Ellison (Can.); **32.** *Lien*, p. 27
Hovey *v.* Ferguson (Can.); **25.** *Gifts*, p. 50
How, *Re*, How *v.* How (1930); **8.** *Char.* No. 823a
— *v.* Carman (Aus.); **1.** *Agcy.* p. 69
— *v.* Charrington, *Re* Gregory (1935); **8.** *Char.* No. 1069a
— *v.* Mansfield (N.Z.); **31.** *L. & T.* p. 78
Howaldt, Ltd. *v.* Condrup, Ltd. (1936); **36.** *Pats.* No. 311a
Howard, *Ex p.*, *Re* Crosman & McLeod's Election (Can.); **16.** *Cr. Pract.* p. 36
— *v.* Bergin, O'Connor & Co. (Ir.); **2.** *Animals*, p. 64
— *v.* Burtonwood (1742); **27.** *H & W.*, No. 3224a
— *v.* Duncane (1823); **40.** *Sttlmt.* No. 2397a
— *v.* Farmer & Son, Ltd. (1938); **7.** *Bldg. Conts.* No. 373a
— *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd. (1936); **36.** *Negl.* No. 364m; *Nuis.* No. 315a
— *v.* Henderson (Can.); **1.** *Agcy.* p. 99
— *v.* High River Trading Co. (Can.); **21.** *Exon.* p. 45
— *v.* Kinnell (Charles P.) & Co., Ltd. (1938); **34.** *Mast. & S.* No. 3093a
— *v.* Miller (1915); **40.** *S. Land*, No. 1488a
— *v.* Odhams Press, Ltd. (1938); **12.** *Contr.* No. 2154a
— *v.* Okeover (1778); **12.** *Contr.* No. 1027a
— *v.* Pickfords, Ltd. (1934); **36.** *Negl.* No. 457e
Howard & Toronto Corpn., *Re*, *Re* Sweet & Toronto Corpn. (Can.); **33.** *L. G.* p. 7; **38.** *Pub. Hlth.* p. 15
Howard Graham & Co., *Re*, *Ex p.* Graham (Can.); **5.** *Bkpcy.* p. 77
Howard Houlder & Partners, Ltd. *v.* Manx Isles S.S. Co. (1923); **1.** *Agcy.* Nos. 1751a, 1791a
Howard-Flanders *v.* Maldon Corpn. (1926); **26.** *Hghys.* No. 1146a
Howard-Smith *v.* Comptroller of Stamps (Aus.); **39.** *Revenue*, p. 22
Howarth *v.* Forder (1903); **12.** *Contr.* No. 467b
— *v.* Singleton (J. E.) & Sons (1926) **34.** *Mast. & S.* No. 3698a
Howatson *v.* M'Clymont (Scot.); **2.** *Agric.* p. 1
Howden & Hyslop's Contract, *Re* (1928); **23.** *Exors.* No. 3111a
Howe, *Ex p.*, R. *v.* Carvery (Can.); **14.** *Crim.* p. 16
—, *Re* (Can.); **5.** *Bkpcy.* p. 92
— *v.* Howe (Can.); **27.** *H. & W.* p. 40
— *v.* Kipp (Can.); **18.** *Distr.* p. 32; **38.** *Rates*, p. 85
— *v.* Niagara, St. Catharines & Toronto Ry. Co. (Can.); **8.** *Carr.* p. 12
— *v.* Pt. Dalhousie (Can.); **38.** *Pub. Auth.* p. 5
— *v.* Teefy (Aus.); **17.** *Damgs.* p. 15
Howell, *Re*, *Re* Buckingham, Liggins *v.* Buckingham (1915); **30.** *Jdgmts.* No. 789a
— *v.* Evans (1926); **12.** *Contr.* No. 1213a
— *v.* Howell & Davidson (1926); **27.** *H. & W.* No. 4354a
— *v.* Stagg (Can.); **36.** *Negl.* p. 37
— *v.* Warner (Can.); **1.** *Action*, p. 3
— *v.* Wilton Rural Municipality, No. 472 (Can.); **2.** *Animals*, p. 57
Howell's Trusts, *Re* Barclays Bank, Ltd. *v.* Simmons (1937); **44.** *Wills*, No. 7620a
Howells *v.* Great Western Ry. Co. (1928); **34.** *Mast. & S.* No. 2342a
Howes, *Re* (1934); **4.** *Bkpcy.* No. 3866a
Howes, *Re*, Trustee *v.* Gill & Reigate, Ltd. (1934); **4.** *Bkpcy.* No. 3866a
— *v.* Vancouver City (Can.); **18.** *Discy.* p. 22
Howett *v.* Clements (1845); **2.** *Arbn.* No. 905a
Howgate *v.* Ralph (1929); **25.** *Gaming*, No. 464b
Howie *v.* Chatterton (N.Z.); **23.** *Exors.* p. 6
— *v.* Lawrence (Can.); **36.** *Negl.* p. 36
Howith *v.* McFarlane (Can.); **22.** *Evid.* p. 4
Howlett & Bell *v.* Doran & Gallant (Can.); **32.** *Lien*, pp. 26, 27
Howley *v.* Pieuze (Can.); **16.** *Cr. Pract.* p. 27
— *v.* R. (Can.); **14.** *Crim.* p. 58
Howson *v.* Buxton (1928); **2.** *Agric.* No. 266o
— *v.* Crow (Can.); **9.** *Coys.* p. 17
Howson's Policy Trusts, *Re* (1885); **27.** *H. & W.* No. 1233a
Hoy *v.* Auckland Harbour Board (N.Z.); **36.** *Negl.* p. 32
Hoyland & York, *Re* (Can.); **19.** *Educ.* p. 37
Hoyle, *Re*, *Ex p.* Trustee (1924); **5.** *Bkpcy.* Nos. 7172a, 7267a
Hoystead *v.* Taxation Comr. (1926); **21.** *Estpl.* No. 296b
Hoyt's Proprietary, Ltd. *v.* O'Connor (Aus.); **36.** *Negl.* p. 24
Hrabec *v.* Lucid (Can.); **42.** *Str. Traf.* p. 39
Hrynyk *v.* Hrynyk (Can.); **25.** *Fraud. Conv.* p. 16
Htin, Gyaw *v.* R. (Ind.); **14.** *Crim.* p. 36
Hubbard *v.* Messenger (1938); **42.** *Str. Traf.* No. 232s
Huber *v.* Szeles & Szeles (Can.); **28.** *Infts.* p. 141
Hubin *v.* R. (Can.); **14.** *Crim.* p. 70; **15.** *Crim.* p. 95
Huckell *v.* Saintey (1923); **2.** *Agric.* No. 237a
Hucknall *v.* Manchester Corpn. (1928); **34.** *Mast. & S.* No. 3896a
Hudd *v.* Matthews (1930); **31.** *L. & T.* Nos. 2306g, 2306n
— *v.* Wilson (Aus.); **42.** *Str. Traf.* p. 51
Huddart Parker, Ltd. *v.* Commonwealth (Aus.); **17.** *Dep.* p. 61
Huddersfield Fine Worsteds, Ltd. *v.* Todd (1925); **5.** *Bkpcy.* Nos. 8782d, 9198b, 9229a
Hudson *v.* Foster, *Re* Foster (1938); **29.** *Insce.* No. 3289b
— *v.* —, *Re* Foster (No. 2) (1938); **29.** *Insce.* No. 3067a
— *v.* Martin (1726); **23.** *Exors.* No. 3999a
— *v.* Silzer (Can.); **2.** *Animals*, p. 57
— *v.* Snellgar (1621); **18.** *Distr.* No. 234
— *v.* Turner, *Re* Turner (1932); **37.** *Powers*, Nos. 360a, 910a
— *v.* Watson Motor Co. (Can.); **39.** *S. Goods*, p. 43
Hudson & Hardy *v.* Biddulph Township (Can.); **2.** *Animals*, p. 58
Hudson Fashion Shoppe, Ltd., *Re*, *Ex p.* Royal Dress Co. (Can.); **4.** *Bkpcy.* p. 44
Hudson's Bay Co. *v.* A.-G. for Canada (Can.); **11.** *Const. L.* p. 77
— *v.* Bullock Farms, Ltd. (Can.); **21.** *Exon.* p. 45
— *v.* Campbell (Can.); **39.** *S. Goods*, p. 57
— *v.* Peters, *Re* Peters (Can.); **2.** *Agric.* p. 25
— *v.* Prince Albert (City) (Can.); **38.** *Rates*, p. 76
— *v.* Scott (Can.); **21.** *Estpl.* p. 31
Hudson's Bay Co. & Edmonton (City), *Re* (Can.); **38.** *Rates*, p. 68
Hudson's Bay Co. & Peters, *Re* (No. 2) (Can.); **2.** *Agric.* p. 26
Hudson-Mattagami Exploration Mining Co. *v.* Wettlaufer Brothers, Ltd. (Can.); **1.** *Agcy.* p. 104
Hue *v.* Whiteley (1929); **26.** *Hghys.* No. 298a
Huestis *v.* Huestis (Can.); **36.** *Partn.* p. 56
— *v.* Toronto (City) (Can.); **26.** *Hghys.* p. 25
Huffman *v.* Ross (Can.); **21.** *Estpl.* p. 37

Hugg *v.* Low (Can.); **1.** *Agcy.* p. 62; **21.** *Estpl.* p. 37
Huggard *v.* Ontario & Saskatchewan Land Corpn. (Can.); **17.** *Deeds*, p. 24
Huggett *v.* Help Yourself Stores, Ltd. (1934); **44.** *Wghts.* Nos. 119a, 119b
Huggins *v.* Bambridge (1740); **7.** *Bonds*, No. 119a
— *v.* Beale, *Re* Beale's Settlement Trusts (1932); **43.** *Trusts*, Nos. 3466a, 3469a
Hugh's Settlement, Ltd. *v.* Inland Revenue Comrs. (1938); **28.** *Inc. T.* No. 472k; *Ind. Soc.* No. 52a
Hughes, *Ex p.*, *Re* Petrie Manufacturing Co. (Can.); **9.** *Coys.* p. 38
—, *In the Will of* (Aus.); **44.** *Wills*, p. 56
—, *Re*, Thornton *v.* Church of England Trusts Corpn. (Melbourne Diocese) (Aus.); **8.** *Char.* p. 82
—, *Re*, Thornton *v.* Melbourne Church of England Trusts Corpn. (Aus.); **8.** *Char.* p. 82
— *v.* Bank of New Zealand (1938); **28.** *Inc. T.* Nos. 189a, 226d
— *v.* Beban Lumber Co. (Can.); **32.** *Limit. of A.* p. 43
— *v.* British Burmah Petroleum Co., Ltd. (1932); **28.** *Inc. T.* No. 218d
— *v.* Buckland (1846); **25.** *Fish.* No. 312a
— *v.* Davies (1929); **44.** *Work*, Nos. 68a, 70a
— *v.* Harrison & Cook (1931); **34.** *Mast. & S.* No. 3801f
— *v.* Hughes (1932); **11.** *Confl.* No. 952a
— *v.* Parker (1841); **40.** *S. Land*, No. 1100a
— *v.* Penmaenmawr & Welsh Granite Co., Ltd. (1933); **34.** *Mast. & S.* No. 3283f
— *v.* Pwll-Heli Granite Co., Ltd. (1929); **34.** *Mast. & S.* No. 3300a
— *v.* Quentin (1838); **2.** *Animals*, No. 136a
— *v.* Reed & Co. (1938); **34.** *Mast. & S.* No. 3927h
— *v.* Smyth (Ir.); **28.** *Inc. T.* p. 96
— *v.* Sun Publishing Co. (Can.); **32.** *Libel*, p. 14
— *v.* Union Cold Storage Co., Ltd. (1934); **9.** *Coys.* No. 1466a
— *v.* Watkins (J. H.) & Co. (Can.); **21.** *Estpl.* p. 42
Hughes (W.) & Son *v.* Satchell (1925); **13.** *Cty. Cts.* No. 691a
Hughes' Appeal, *Re* (1934); **8.** *Carr.* No. 1477
Hughes Music Sales Co., *Re*, Co-Operative Music Supply Co. *v.* Gold Medal Furniture Manufacturing Co. (Can.); **5.** *Bkpcy.* p. 72
Huhn *v.* Bogach (Can.); **21.** *Exon.* p. 57
Hulbert *v.* Bowden, *Re* Bowden (1936); **40.** *Stlmts.* No. 897a
— *v.* Thurston (1931); **28.** *Infts.* No. 1772a
Hull *v.* Johns, *Re* Bracey (1936); **24.** *Exors.* No. 6020a
— *v.* M'Kenna (Ir.); **16.** *Courts*, p. 13; **17.** *Dep.* p. 85
— *v.* Seneca Superior Silver Mines, Ltd. (Can.); **34.** *Mines*, p. 213
Hulls *v.* Farr (1937); **28.** *Injon.* No. 638b
Hulme *v.* Creelman (Can.); **36.** *Negl.* p. 17
Hulme-King *v.* De Silva (1936); **27.** *H. & W.* No. 5088a
Hulton, *Re*, Hulton *v.* Midland Bank Executor & Trustee, Ltd. (1931); **28.** *Inc. T.* No. 646a; **39.** *Rntchgs.* No. 593a
—, *Re*, Midland Bank Executor & Trustee Co., Ltd. *v.* Thompson (1936); **43.** *Trusts*, No. 2147a
— *v.* Hulton (1917); **27.** *H. & W.* No. 5380a
— *v.* Midland Bank Executor & Trustee, Ltd., *Re* Hulton (1931); **28.** *Inc. T.* No. 646a; **39.** *Rntchgs.* No. 593a
— *v.* Thompson (1938); **27.** *H. & W.* Nos. 3837a, 5178a
Humber *v.* Humber (Can.); **16.** *Cntmpt.* p. 6
Humber Conservancy Board *v.* Federated Coal & Shipping Co., Ltd. (1928); **13.** *Cty. Cts.* No. 206b
Humberstone Coal Co., Ltd., *Re*, *Ex p.* National Trust Co., Ltd. (Can.); **4.** *Bkpcy.* p. 39
Humbert, *Re* (Can.); **2.** *Agric.* p. 25
Hume *v.* Hume (Scot.); **27.** *H. & W.* p. 72
Hume & Croft, *Re*, *Re* Stephens & Branthwaite & Otway (1938); **44.** *Work*, No. 82a
Humeny *v.* Chaikowski (Can.); **36.** *Negl.* p. 21
Hummeltenberg, *Re*, Beatty *v.* London Spiritualistic Alliance (1923); **8.** *Char.* No. 4a
Humorous, The (1933); **41.** *Ship.* No. 203a
Humphery *v.* Bowers (1929); **41.** *Ship*, No. 8732a
— *v.* Wilson (1929); **25.** *Gaming*, No. 188a
Humphrey & Denman, Ltd. (In Liquidation) *v.* Kavanagh (1925); **9.** *Coys.* No. 1589a
Humphrey (H. M. F.), Ltd. *v.* Baxter, Hoare & Co., Ltd. (1933); **3.** *Bailmt.* No. 390a
Humphrey's Motors, Ltd. *v.* Ells (Can.); **39.** *S. Goods*, p. 58
Humphreys *v.* City of London (Can.); **34.** *Mast. & S.* p. 25; **36.** *Negl.* p. 37
— *v.* Dreamland (Margate), Ltd. (1930); **36.** *Negl.* No. 243a
— *v.* Taylor (N.Z.); **6.** *B. of Exch.* p. 3
— *v.* Welling (1862); **4.** *Bkpcy.* No. 5039c
Humphries *v.* Pictou County Power Board (Can.); **20.** *Electric*, p. 11
Humphries & Co. *v.* Cook (1934); **28.** *Inc. T.* No. 204n
Humphries Estate, *Re* (1934); **11.** *Confl.* No. 576a
Hungarian Property Administrator *v.* Finegold (1931); **2.** *Aliens*, No. 215t
Hunmantrao *v.* R. (Ind.); **17.** *Dep.* p. 80
Hunn *v.* Reynolds (Aus.); **24.** *Fact.* p. 56
Hunnings (H. E.) & Co., Ltd. *v.* Hall (Can.); **42.** *Stk. Ex.* p. 31
Hunsraj *v.* Bejoy Lal Seal (Ind.); **30.** *L. & T.* p. 42
Hunt, *Ex p.*, R. *v.* East Ham Borough Council (1930); **19.** *Educ.* No. 24a
—, *Re* (Can.); **23.** *Exors.* p. 30
— *v.* Balfour (Aus.); **21.** *Exon.* pp. 56, 58
— *v.* Brant School District Trustees (Can.); **19.** *Educ.* p. 45
— *v.* College of Physicians & Surgeons of Saskatchewan (Can.); **16.** *Courts*, p. 8; **17.** *Dep.* p. 54
— *v.* Colson (1833); **30.** *L. & T.* No. 1758a
— *v.* Cronin (1929); **39.** *Revenue*, No. 93b
— *v.* Damon (1930); **19.** *Educ.* No. 268a
— *v.* Danvers (1680); **31.** *L. & T.* No. 2727a
— *v.* Fortney (Can.); **33.** *L. G.* p. 9
— *v.* Morgan (Can.); **21.** *Estpl.* p. 37
— *v.* Rice & Son, Ltd. (No. 2) (1937); **34.** *Mast. & S.* No. 1881a; *Pldg.* No. 891a
— *v.* Weiberg (Can.); **2.** *Agric.* p. 4
Hunt & Co. *v.* Joly (1928); **28.** *Inc. T.* No. 595a
Hunt (Charles), Ltd. *v.* Palmer (1931); **3.** *Auct.* No. 191a; **40.** *S. Land*, Nos. 576a, 1220a
Hunter, *In the Estate of* (Aus.); **23.** *Exors.* p. 11
—, *Re*, Hunter *v.* Hunter & Hunter (N.Z.); **17.** *Dep.* p. 71
— *v.* Clarke (Can.); **36.** *Negl.* p. 37
— *v.* Damodar Das (Ind.); **10.** *Coys.* p. 90
— *v.* Dewhurst (1932); **28.** *Inc. T.* No. 501b
— *v.* Dublin, Etc. Ry. Co. (Ir.); **18.** *Discy.* p. 18
— *v.* Farrell (Can.); **38.** *Real Prop.* p. 89
— *v.* Hunter (1934); **27.** *H. & W.* No. 6041a
— *v.* — (1936); **9.** *Coys.* No. 1379a
— *v.* — (Can.); **7.** *Burial*, p. 38
— *v.* — (Scot.); **29.** *Insce.* p. 38
— *v.* Hunter & Hunter, *Re* Hunter (N.Z.); **17.** *Dep.* p. 71

Hunter *v.* Lawrie (Can.); **25.** *Fraud. Conv.* p. 14
— *v.* Thompson (Can.); **32.** *Limit. of A.* p. 31
— *v.* Trans-Canada Finance Corpn. (Can.); **39.** *S. Goods*, p. 44
— *v.* Walsh (Aus.); **33.** *Mags.* p. 37
— *v.* West Maitland Municipal Council (Aus.); **12.** *Contr.* p. 11
— *v.* Wright (1938); **36.** *Negl.* No. 382c
Hunter (Sir G. B.) (1922) "O" Trust (Trustees) *v.* Inland Revenue Comrs. (1929); **28.** *Inc. T.* No. 472h
Hunter's Case, Inland Revenue *v.* Edinburgh Assessor (Scot.); **38.** *Rates*, p. 53
Hunter's Trustees *v.* Mitchell (Scot.); **39.** *Rntchgs.* p. 8
Huntley, *Re*, *Ex p.* O'Regan (Aus.); **14.** *Crim.* p. 9
— *v.* Norwich (Bp.) (1931); **19.** *Eccl.* Nos. 2717a, 2719b
Huntoon Co. *v.* Kolynos (Incorporated) (1930), 1 Ch. 528; **36.** *Pats.* Nos. 1603a, 1603b
— *v.* — (1930) 47 T. L. R. 57; **36.** *Pats.* No. 2337a
Hurdle, *Re*, Blakeney *v.* Hurdle (1936); **44.** *Wills*, No. 712a
— *v.* O'Callaghan (Aus.); **42.** *Str. Traf.* p. 37
Hurley *v.* Boyce (Can.); **34.** *Mast. & S.* p. 19
— *v.* Stepney Borough Council (1923); **16.** *Cr. Pract.* No. 3722a
Hurlstone *v.* Steadman (N.Z.); **29.** *Insce.* p. 49
Hurnandrai Fulchand *v.* Pragdas Budhsen, *Ex p.* Pragdas Budhsen (1924); **16.** *Courts*, No. 535a
Huron (Synod of) *v.* Ferguson (Can.); **2.** *Arbn.* p. 84
Huron & Erie Corpn. *v.* Williams (Can.); **35.** *Mtge.* p. 47
Huron Diocese, Incorporated Synod of *v.* Lethbridge Northern Irrigation District Trustees (Can.); **18.** *Distr.* p. 25
Hurst, *Re*, Harper *v.* King Edward's Hospital Fund for London (1935); **8.** *Char.* No. 1252b
— *v.* Downard (Can.); **32.** *Lien.* p. 25
— *v.* Mersea (Can.); **38.** *Pub. Hlth.* p. 15
— *v.* Walter's Palm Toffee Co., Ltd. (1929); **34.** *Mast. & S.* No. 2612a
Hurt *v.* Bowmer (1937); **19.** *Easmt.* No. 687b
Hurtig *v.* Reiss (Can.); **15.** *Crim.* p. 88
Husain Bakhsh *v.* Briggen Shaw (Ind.); **21.** *Exon.* p. 57
Husband, *Re*, Neave *v.* Barnardo's Homes National Incorporated Assocn. (1923); **8.** *Char.* No. 891a
— *v.* Wife (S. Af.); **27.** *H. & W.* p. 49
Hussain *v.* Chin Chong (Ind.); **17.** *Deeds*, p. 32
Hussein (otherwise Blitz) *v.* Hussein (1938); **27.** *H. & W.* No. 148a
Hussey *v.* Fiddall (1699); **5.** *Bkpcy.* No. 7639a
Hutchings *v.* Amalgamated Anthracite Collieries, Ltd. (No. 1) (1933); **34.** *Mast. & S.* No. 3811k
— *v.* — (No. 2) (1935); **34.** *Mast. & S.* No. 3811h
— *v.* Browning (Can.); **11.** *Confl.* p. 49
— *v.* Campbell, Wilson & Horne, Ltd. (Can.); **19.** *Easmt.* p. 8
— *v.* Devon County Council (1931); **34.** *Mast. & S.* No. 2768c
— *v.* Hutchings (or Browning) (Can.); **11.** *Confl.* p. 49
Hutchinson, *Re*, *Ex p.* Hutchinson (1885); **21.** *Exon.* No. 2335
— *v.* Beatty (Can.); **2.** *Agric.* p. 20
— *v.* Irish Electrical Construction Co. (Ir.); **34.** *Mast. & S.* p. 49
— *v.* Morley (1839); **35.** *Misrep.* No. 434a
— *v.* Zive (S. Af.); **7.** *Bldg. Conts.* p. 32
Hutchinson & Dowding *v.* Bank of Toronto (No. 2) (Can.); **18.** *Discy.* p. 9
Hutchinson Brothers & Co., Ltd. *v.* Perkins (Can.); **21.** *Estpl.* p. 40
Hutchinson's Settlement, *Re*, *Ex p.* Dunn (1852); **37.** *Powers*, No. 133a
Hutchison *v.* Conn (Can.); **21.** *Exon.* p. 43
— *v.* Cumming (Scot.); **24.** *Fact.* p. 56
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 122
— *v.* Paxton (Can.); **21.** *Estpl.* p. 39
— *v.* Royal Institute for Advancement of Learning, *Re* Ross (Can.); **6.** *B. of Exch.* p. 9
Hutson *v.* Valliers (Can.); **32.** *Lien*, p. 27
Hutter, *Ex p.*, *Re* Barnes Corpn. (1933); **20.** *Elect.* Nos. 1104a, 1109a
Hutton *v.* A.-G. (1927); **11.** *Const. L.* Nos. 505a, 505b
— *v.* Dent (Can.); **11.** *Confl.* p. 55
— *v.* Mayne (Ir.); **28.** *Infts.* p. 142
— *v.* Niddrie & Benhar Coal Co. (Scot.); **34.** *Mast. & S.* p. 96
— *v.* Wey (1827); **12.** *Contr.* No. 2248a
Hutton, McLea & Co. *v.* Kelly (Nfld.); **16.** *Courts*, p. 9
Huxham *v.* Johnson (1926); **28.** *Inc. T.* No. 79e
Huxley *v.* Berg (1815); **43.** *Tresp.* No. 233a
Huxley's Appeal, *Re* (1934); **8.** *Carr.* No. 1674
Huycke *v.* Cobourg (Can.); **26.** *Hghys.* p. 35
Hvalfangerselskabet Globus Akieselshap *v.* Unilever, Ltd. (1933); **39.** *S. Goods*, No. 370a
Hvalfangerselskabet Polaris Akieselshap *v.* Unilever, Ltd. (1933); **39.** *S. Goods*, No. 370a
Hyam *v.* Inland Revenue Comrs (Scot.); **28.** *Inc. T.* pp. 37, 43
Hyams, *Re*, *Ex p.* Lindsay *v.* Hyams (1923); **5.** *Bkpcy.* No. 7778a
— *v.* Kelly (1932); **27.** *H. & W.* No. 140a
Hyatt *v.* Owens (Can.); **21.** *Exon.* p. 60
Hyatt Roller Bearing Co. & Delco Remy & Hyatt, Ltd. *v.* Frederick Pollard & Co. (Bearings), Ltd. (1934); **43.** *Trade Mks.* No. 1527a
Hyde, *Re*, Smith *v.* Jack (1932); **44.** *Wills*, No. 479a
— *v.* British Columbia Electric Ry. Co., Ltd. (Can.); **43.** *Tram.* p. 49
— *v.* Bryce, *Re* Hyde (William) Will Trusts (1930); **40.** *Stlmts.* No. 2140a
— *v.* Tyler (1926); **25.** *Gaming*, No. 64a
— *v.* White (1933); **42.** *Solrs.* No. 3307a
Hyde (William) Will Trusts, *Re*, Hyde *v.* Bryce (1930); **40.** *Stlmts.* No. 2140a
Hydro-Electric Power Commission *v.* Fidelity Insurance Co. (Can.); **26.** *Guar.* p. 9
Hydro-Electric Power Commission of Ontario *v.* Grey County (Can.); **20.** *Electric*, p. 11
Hydro-Electric Power Commission of Ontario & Thorold & Pelham (Townships), *Re* (Can.); **38.** *Rates*, p. 64
Hygienic Stores, Ltd. *v.* Coombes (1938); **34.** *Med.* No. 257a
Hyland *v.* Costerton (Can.); **1.** *Agcy.* p. 69
— *v.* Halifax (City) (Can.); **38.** *Rates*, p. 85
Hylton, *Re* (N.Z.); **28.** *Infts.* p. 137
Hyman *v.* Hyman (1929); **27.** *H. & W.* No. 2085a
— *v.* — (Can.); **27.** *H. & W.* p. 11
— *v.* Metropolitan Life Insurance Co. (Can.); **29.** *Insce.* p. 37
Hynes *v.* Alton (Can.) (1928); **3.** *Basty.* p. 64; **22.** *Evid.* p. 7
— *v.* — (Can.) (1929); **3.** *Basty.* p. 65
— *v.* Swartz (Can.); **7.** *Bldg. Conts.* p. 32
Hynes & Swartz, *Re* (Can.); **7.** *Bldg. Conts.* p. 32
Hyslop *v.* New Westminster Board of School Trustees (Can.); **18.** *Discy.* p. 10

I.

I. *v.* I. (otherwise J.) (1933); **27.** *H. & W.* No. 4331a
I. *v.* J. (1933); **27.** *H. & W.* No. 4331a
I. G. Farbenindustrie Akt. Application for a Patent, *Re* (1928); **36.** *Pats.* No. 128a
— *v.* — (No. 307,758) *Re* (1933); **36.** *Pats.* No. 1474b
I. G. Farbenindustrie Akt. Application for a Patent, *Re* (1934); **36.** *Pats.* No. 700a
I. G. Farbenindustrie Akt. Application for Revocation of Letters Patent No. 361,917 granted to Imperial Chemical Industries, Ltd., *Re* (1933); **36.** *Pats.* No. 642a
I. G. Farbenindustrie Akt. Application for Revocation of Letters Patent No. 376,746 Granted to O. F. Bloch & Ilford, Ltd. (1935); **36.** *Pats.* No. 613b
I. G. Farbenindustrie Akt. Letters Patent, *Re* (1937); **36.** *Pats.* No. 2038a
I. G. Farbenindustrie Patents, *Re* (1930); **36.** *Pats. Nos.* 351a, 1261a
I. M., *Re* (Can.); **28.** *Infts.* p. 144
Iberian Trust, Ltd. *v.* Founders Trust & Investment Co., Ltd. (1932); **13.** *Corpns.* No. 1493a; **16.** *Cntmpt.* Nos. 528a, 631a, 689a
Ibis VI., The (1921); **1.** *Adm.* No. 1520a
— (No. 2) (1922); **1.** *Adm.* No. 1520b
Ice Rinks, Ltd. *v.* Mathuen (1930); **9.** *Coys.* No. 1153a
Ideal Cleaners & Dyers, Ltd. *v.* West Middlesex Assessment Committee & Revenue Officer for West Middlesex (1930); **38.** *Rates,* No. 226z
Ideal Coal Co. *v.* Geddes (Can.); **36.** *Prtnrs.* p. 57
Ideal Werke A. G. *v.* Willesden & District Light Supply Co., Ltd. (1930); **43.** *Trade Mks.* No. 1266a
Idewu Inasa *v.* Sakariyawo Oshodi (1934); **17.** *Dep.* No. 283a
Ikala, The, Strathfillan (Owners) *v.* Ikala (Owners) (1929); **41.** *Ship.* No. 6677
Ilasewich *v.* Grapentine (Can.); **36.** *Negl.* p. 30
Ilchester (Earl), *Ex p.* (1803); **12.** *Contr.* No. 2938b
Iles *v.* Iles (1931); **27.** *H. & W.* No. 6179b
Ilford Corpn. *v.* Mallinson (1932); **26.** *Hghys.* No. 2405b
Illing *v.* Manne & Manne (S. Af.); **31.** *L. & T.* p. 79
Illingworth, *Ex p.*, R. *v.* Bradford Licensing JJ. (1938); **30.** *Intox.* No. 582e
— *v.* Coyle (Can.); **1.** *Action,* p. 12
Illsley, *Re* (Can.); **6.** *B. of Exch.* p. 19
Illustrated Newspapers, Ltd. *v.* Publicity Services (London), Ltd. (1938); **43.** *Trade Mks.* Nos. 1363a, 1534a
Imeson *v.* Lister (1920); **1.** *Agcy.* No. 1558a
Immigration Act, *Re*, *Re* Pong Fook Wing (Can.); **2.** *Aliens,* p. 49
—, *Re*, R. *v.* Jen Jang How (Can.); **2.** *Aliens,* p. 49
Immigration Act & Santa Singh, *Re* (Can.); **2.** *Aliens,* p. 49
Immigration Act & Wong Shee, *Re* (Can.); **2.** *Aliens,* p. 49
Imperial Bank of Canada *v.* Alley (Can.); **3.** *Bank.* p. 41; **26.** *Guar.* p. 8
— *v.* Barber (Can.); **4.** *Bkpcy.* p. 1
— *v.* Begley (1936); **3.** *Bank.* No. 545a
— *v.* Dennis (Can.); **6.** *B. of Exch.* p. 13; **9.** *Coys.* p. 16
— *v.* Hancock (Can.); **3.** *Bank.* p. 46
— *v.* Heisz (Can.); **6.** *B. of Exch.* pp. 6, 10
— *v.* Hundt (Can.); **6.** *B. of Exch.* pp. 6, 10
— *v.* Kuszko (Can.); **17.** *Dep.* p. 72; **32.** *Limit. of A.* p. 33
Imperial Bank of Canada *v.* McLellan (Can.); **17.** *Deeds,* p. 25
— *v.* Nixon (Can.); **26.** *Guar.* p. 3
— *v.* Reid (Can.); **28.** *Infts.* p. 130
— *v.* Simpson (Can.); **32.** *Limit. of A.* p. 30
— *v.* Trusts & Guarantee Co. (Can.); **6.** *B. of Exch.* p. 15
— *v.* Western Supply & Equipment Co. (Can.); **3.** *Bank.* p. 44
Imperial Bank of India Demand Drafts, *Re* (Ind.); **6.** *B. of Exch.* p. 25
Imperial Canadian Trust Co., Ltd. *v.* North American Lumber & Supply Co., Ltd., *Re* Stevens (Can.); **5.** *Bkpcy.* p. 76
Imperial Canadian Trust Co. & McKeague, *Re* (Can.); **10.** *Coys.* p. 74
Imperial Chemical Industries, Ltd., *Re*, [1936] 2 All E. R. 463; **9.** *Coys,* No. 1358a
—, *Re* (1937); **9.** *Coys.* No. 849a
Imperial Chemical Industries, Ltd., Eric William Fawcett & Eric Everard Walker's Application for a Patent, *Re* (1935); **36.** *Pats.* No. 2136d
Imperial Elevator & Lumber Co. *v.* Olive (Can.); **35.** *Mtge.* p. 31
Imperial Elevator Co. *v.* Welch (Can.); **32.** *Lien,* p. 27
Imperial Finance Corpn., Ltd. *v.* Fidelity Trust Co. (Can.); **20.** *Eqy.* p. 22
Imperial Loan & Investment Co. *v.* O'Sullivan (Can.); **35.** *Mtge.* p. 41
Imperial Lumber Co. *v.* Johnson (Can.); **4.** *Bkpcy.* p. 32
Imperial Lumber Yards, Ltd. *v.* Ferguson, Cockshutt Plow Co., Claimant (Can.); **7.** *B. of Sale,* pp. 7, 9
— *v.* McManus (Can.); **18.** *Discy.* p. 17; **32.** *Lien,* p. 27
Imperial Oil, Ltd. *v.* Listowel (Can.); **38.** *Rates,* p. 66
— *v.* Winnipeg City (Can.); **38.** *Rates,* p. 49
Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay (1936); **17.** *Damgs.* No. 452a
Imperial Tobacco Co. (of Canada), Ltd. & Wrigley Jr. Co., Ltd. *v.* Rock City Tobacco Co., Ltd. (Can.); **36.** *Pats.* p. 67
Imperial Trust Co., Ltd. *v.* Norma Municipal District (Can.); **33.** *L. G.* p. 6
Imperial Veterans in Canada *v.* Eastern Freighters, Ltd. (Can.); **41.** *Ship.* p. 11
Importers Co. *v.* Westminster Bank (1927); **3.** *Bank.* Nos. 292b, 672a, 680a
Incampe, *Re* (Can.); **24.** *Extrdn.* p. 44
Ince *v.* Pulling & Wolsey, Ltd. (1935); **34.** *Mast. & S.* No. 2948b
Inche Noriah *v.* Shaik Allie Bin Omar (1929); **25.** *Fraud. Conv.* No. 834a
Inches *v.* Fogg & Dowling (Can.); **17.** *Deeds,* p. 26
Income Tax Act (Manitoba), *Re* (Can.); **28.** *Inc. T.* p. 78
Income Tax Act of 1924 (No. 2), *Re* (Aus.); **28.** *Inc. T.* p. 23
Income Tax Act, 1932, *Re*, *Re* Constitutional Questions Act (Can.); **16.** *Courts,* p. 9
Income Tax Comr. *v.* Mercantile Bank of India, Ltd. (Ind.); **28.** *Inc. T.* p. 108
— *v.* P. R. A. L. Muthukaruppan Chettiar (Ind.); **28.** *Inc. T.* p. 27
— *v.* Phra Phraison Salarak (Ind.); **28.** *Inc. T.* p. 88
— *v.* Shaw, Wallace & Co. (Ind.); **30.** *Jdgmts.* p. 25; **42.** *Stats.* p. 27
— *v.* Western India Turf Club (Ind.); **28.** *Inc. T.* p. 106
Income Tax Comr., Madras *v.* Fletcher (Ind.); **28.** *Inc. T.* p. 80

Income Tax Comr. of Bombay Presidency & Aden *v.* Bombay Trust Corpn., Ltd. (Ind.); **28.** *Inc. T.* p. 110
— *v.* Chunial Mehta & Co. (Ind.); **28.** *Inc. T.* p. 26
Income Tax Comr., Punjab *v.* Nawal Kishore-Kharatai Lal (Ind.); **28.** *Inc. T.* p. 93
Income Tax Comr., United & Central Provinces *v.* Badridas Ramrai Shop (Ind.); **28.** *Inc. T.* p. 1
Incorporated Association of Purveyors of Light Refreshments, *Ex p.* R. *v.* Minister of Labour (1932); **44.** *Work*, No. 74a
Incorporated Glasgow Dental Hospital *v.* Lord Advocate (Scot.); **9.** *Coys.* p. 52
Incorporated Law Institute of New South Wales, *Ex p., Re* Solicitor (Aus.); **42.** *Solrs.* p. 13
Incorporated Law Society *v.* Poseman (S. Af.); **3.** *Barr.* p. 48
Incorporated Law Society of Natal *v.* Van Aardt (S. Af.); **17.** *Dep*, p. 65
Incorporated Synod of Huron Diocese *v* Lethbridge Northern Irrigation District Trustees (Can.); **18.** *Distr.* p. 25
Indar Singh *v.* Munshi (Ind.); **1.** *Action*, p. 14
Independent Lumber Co. *v.* Bocz (Can.); **32.** *Lien*, p. 26
Independent Milk Producers' Co-operative Assocn. *v.* British Columbia Lower Mainland Dairy Products Board (Can.); **35.** *Mistake*, p. 13
"Independent" Newspapers *v.* "Irish Press" (Ir.); **37.** *Press*, p. 31
Independent Oil Industries, Ltd. *v.* Shell Co. of Australia, Ltd. (Aus.); **42.** *Tort*, p. 79
Independent Order of Foresters *v.* Lethbridge Northern Irrigation District (Can.); **17.** *Dep.* p. 57
— *v.* — (No. 2) (Can.); **17.** *Dep.* p. 57
Independent Order of Oddfellows *v.* Independent Order of Oddfellows Bon Accord Lodge No. 11 (Aus.); **25.** *Fr. Soc.* p. 23
India Electric Co. *v.* General Electric Trading Co. (Ind.); **2.** *Arbn.* p. 76
India General Navigation & Ry. Co. *v.* Dekhari Tea Co. (1923); **8.** *Carr.* No. 92a
— *v.* — (Ind.); **8.** *Carr.* p. 2
India General Navigation & Ry. Co., Ltd. *v.* Giridharilal Goberdhone Das (Ind.); **8.** *Carr.* p. 3
India Rubber, Gutta Percha & Telegraph Works Co., Ltd. *v.* Chapman (1926); **22.** *Evid.* No. 3850a; **34.** *Mast. & S.* No. 2811a
Indian City, The, Reardon Smith Line, Ltd. *v.* Black Sea & Baltic General Insurance Co., Ltd. (1938); **41.** *Ship.* No. 4295a
Indian Claims, *Rc*, *Re* Dominion of Canada & Provinces of Ontario & Quebec (Can.); **17.** *Dep.* p. 74
Indian Companies Act, 1913, *Re* (Ind.); **10.** *Coys.* p. 101
Indian Immigration Trust Board of Natal *v.* Govindsamy (S. Af.); **2.** *Aliens*, p. 52
Indian Radio & Cable Communications Co., Ltd. *v.* Income Tax Comr., Bombay Presidency & Aden (Ind.); **28.** *Inc. T.* p. 38
Indian Sugar Mills Co., Ltd. *v.* Brij Lal, Jagannath, *Re* Union (Ind.); **4.** *Bkpcy.* p. 28
Indira Rani Ghose *v.* Akhoy Kumar Ghose (Ind.); **44.** *Wills*, p. 30
Indrajit Pratap Sahi *v.* Amar Singh (Ind.); **16.** *Courts*, p. 15
Industrial Acceptance Corpn., Ltd. *v.* Code (Can.); **39.** *S. Goods*, p. 57
— *v.* Doughan (Can.); **39.** *S. Goods*, p. 57
— *v.* Lunenberg Outfitting Co. (Can.); **6.** *B. of Exch.* p. 7
Industrial Acceptance Corpn., Ltd. & Canadian Acceptance Corpn., Ltd. *v.* Canada Permanent Trust Co., *Re* Smith & Hogan, Ltd. (Can.) (1931); **4.** *Bkpcy.* p. 45
— *v.* Canadian Permanent Trust Co., *Re* Smith & Hogan, Ltd. Estate (Can.) (1932); **39.** *S. Goods*, p. 59
Industrial Acceptance Corpn., Ltd., Service Garage, Ltd. & Thomas, *Re* (Can.); **1.** *Agcy.* p. 57
Industry & Commerce, Minister of *v.* Stewart & Lowry (Ir).; **44.** *Work*, p. 61
Industry S.S. Co., Ltd. *v.* James McGee S.S. (Can.); **41.** *Ship.* pp. 50, 57
Inecto Incorporated, *Re* (1930); **43.** *Trade Mks.* No. 152a
Ines *v.* Calgary General Hospital (Can.); **18.** *Discy.* p. 21
Infant, An, *Re* (Aus.) (1933); **28.** *Infts.* p. 137
Infant, An, *Re* (Aus.) (1934); **28.** *Infts.* p. 140
Infants Act, *Re*, *Re* Bergman & Waldron (Can.); **11.** *Confl.* p. 54
Infields, Ltd. *v.* Rosen & Son (1938); **18.** *Discy.* No. 1310a
Inge *v.* Lippingwell (1772); **12.** *Contr.* No. 2938a
Ingham *v.* Red Line Glico, Ltd. (1932); **34.** *Mast. & S.* No. 3283b
Ingham's Thornhill Collieries, Ltd. *v.* Barstow (1934); **34.** *Mast. & S.* No. 3291d
Inglefield (George), Ltd., *Re* (1933); **10.** *Coys.* No. 4944a; **35.** *Mtge.* No. 20a
Ingles *v.* Sun Life Assurance Co. (Can.); **29.** *Insce.* p. 38
Inglewood Pulp & Paper Co. *v.* New Brunswick Electric Power Commission (1928); **11.** *Comp. Pche.* No. 1205a
Inglewood Pulp & Paper Co., Ltd. & New Brunswick Electric Power Commission, *Re* (Can.); **11.** *Comp. Pche.* p. 16
Inglis, *Ex p.*, R. *v.* Brisbane Police Magistrate & Inglis (Aus.); **27.** *H. & W.* p. 75
— *v.* Queens Park Plaza Co. (Can.); **32.** *Lien*, p. 26
Ingram *v.* Crawshay Brothers (1928); **34.** *Mast. & S.* No. 3243a
— *v.* Fitzgerald (N.Z.); **34.** *Med.* p. 185
Ingram-Johnson *v.* Century Insurance Co. (Scot.); **29.** *Insce.* p. 34
Ingrebretsen *v.* Christensen (Can.); **32.** *Limit. of A.* p. 31
Inland Revenue *v.* Aberdeen Commercial Co. (Scot.); **38.** *Rates*, p. 55
— *v.* Adamson (Scot.); **28.** *Inc. T.* pp. 29, 42
— *v.* Ardross Estates Co. (Scot.); **38.** *Rates*, p. 52
— *v.* Avery (W. & T.) (Scot.); **38.** *Rates*, p. 54
— *v.* Banff Assessor (Scot.); **38.** *Rates*, p. 52
— *v.* Brewers Food Supply Co. (Scot.); **38.** *Rates*, p. 56
— *v.* — (No. 2) (Scot.); **38.** *Rates*, pp. 55, 56
— *v.* Caplan (Scot.); **38.** *Rates*, p. 53
— *v.* Clan Line Steamers (Scot.); **38.** *Rates*, p. 56
— *v.* Colin Turner, Ltd. (Scot.); **38.** *Rates*, pp. 53, 54
— *v.* Currie & Co. (Scot.); **38.** *Rates*, p. 53
— *v.* Dawson, Payne & Elliott (Scot.); **38.** *Rates*, p. 55
— *v.* Donaldson & Co. (Scot.); **38.** *Rates*, p. 55
— *v.* Easson Brothers (Scot.); **38.** *Rates*, p. 53
— *v.* Edinburgh Assessor (Gibson's & Allen's Cases) (Scot.); **38.** *Rates*, p. 54
— *v.* Edinburgh Assessor (Hunter's Case) (Scot.); **38.** *Rates*, p. 53
— *v.* Edinburgh Assessor (Sinclair's Case) (Scot.); **38.** *Rates*, p. 53

Inland Revenue *v.* Edinburgh Assessor (Slaughter-houses Case) (Scot.); **38.** *Rates*, pp. 53, 56
— *v.* Edinburgh Assessor (Waugh's Case) (Scot.); **38.** *Rates*, p. 53
— *v.* Falkirk Assessor (Scot.); **38.** *Rates*, p. 53
— *v.* Granite City S.S. Co. (Scot.); **28.** *Inc. T.* p. 43
— *v.* Gunn, Collie & Topping (Scot.); **38.** *Rates*, p. 54
— *v.* Hampton (Scot.); **38.** *Rates*, pp. 54, 56
— *v.* Hatrick & Co. (Scot.); **38.** *Rates*, p. 55
— *v.* Howietoun & Northern Fisheries Co. (Scot.); **38.** *Rates*, p. 53
— *v.* Hutcheon (Scot.); **38.** *Rates*, p. 55
— *v.* Johnnie Walker & Sons (Scot.); **38.** *Rates*, p. 55
— *v.* Kirkwall Assessor (Scot.); **38.** *Rates*, p. 56
— *v.* M'Intyre & Co. (Scot.); **38.** *Rates*, p. 53
— *v.* Maclachlans, Ltd. (Scot.); **38.** *Rates*, p. 55
— *v.* Malcolm (Scot.); **38.** *Rates*, p. 54
— *v.* Melville, Dundas & Whitson (Scot.); **38.** *Rates*, p. 56
— *v.* Moffat (Scot.); **38.** *Rates*, p. 54
— *v.* Morrison (Scot.); **28.** *Inc. T.* p. 29
— *v.* Oban Distillery Co. Liquidator (Scot.); **28.** *Inc. T.* p. 14
— *v.* Orkney Steam Navigation (Scot.); **38.** *Rates*, p. 56
— *v.* Paisley Provident Co-operative Society (Scot.); **38.** *Rates*, p. 53
— *v.* Perthshire Assessor (Scot.); **38.** *Rates*, p. 53
— *v.* Renfrewshire Assessor (Scot.); **38.** *Rates*, p. 52
— *v.* Ross & Cromarty (Scot.); **38.** *Rates*, p. 52
— *v.* Sharp & Co. (Scot.); **38.** *Rates*, p. 55
— *v.* Stephens, Sons & Co. (Scot.); **38.** *Rates*, p. 53
— *v.* Tranent Co-operative Society (Scot.); **38.** *Rates*, pp. 54, 55, 56
— *v.* Whitbread & Co. (Scot.); **38.** *Rates*, pp. 55, 56
— *v.* Wigtownshire Assessor (Scot.); **38.** *Rates*, p. 53
— *v.* William Younger & Co. (Scot.); **38.** *Rates*, p. 55
— *v.* Wilson's Exors. (Scot.); **28.** *Inc. T.* p. 5
Inland Revenue Comr. *v.* Royal Exchange Assurance Co. (S. Af.); **17.** *Dep.* p. 65
Inland Revenue Comrs. *v.* A. & B. (Scot.); **28.** *Inc. T.* p. 37
— *v.* Abbey (1938); **28.** *Inc. T.* No. 674pp
— *v.* Aberdeen Medico-Chirurgical Society (Scot.); **28.** *Inc. T.* p. 6
— *v.* Adam (Scot.); **28.** *Inc. T.* p. 43
— *v.* Aeolian Co., Ltd. (1936); **28.** *Inc. T.* No. 99p
— *v.* Allan (1925); **28.** *Inc. T.* No. 673a
— *v.* Anderson (A. & G.) (1931); **28.** *Inc. T.* No. 214a
— *v.* Anderstrom (Scot.); **28.** *Inc. T.* p. 66
— *v.* Baillie (Scot.); **28.** *Inc. T.* p. 22
— *v.* Barnato (1936); **28.** *Inc. T.* No. 373a
— *v.* Bilsland (1936); **28.** *Inc. T.* No. 656c
— *v.* Bone (Scot.); **28.** *Inc. T.* p. 88
— *v.* British Salmson Aero Engines, Ltd. (1938); **28.** *Inc. T.* No. 252f
— *v.* Broome's (Viscount) Exors. (1935); **28.** *Inc. T.* Nos. 380b, 592d
— *v.* Brown (1926); **28.** *Inc. T.* No. 131e
— *v.* Clarkson-Webb (1933); **28.** *Inc. T.* No. 691c
— *v.* Cohen (1937); **11.** *Confl.* No. 79a
— *v.* Coke (1926); **28.** *Inc. T.* No. 662a
— *v.* Combe (1932); **28.** *Inc. T.* No. 489f
— *v.* Crawshay (1935); **28.** *Inc. T.* No. 85a
— *v.* Crossman (1937); **21.** *E. D.* No. 136b
— *v.* Cull (1938); **28.** *Inc. T.* No. 674kk
Inland Revenue Comrs. *v.* Dalgety & Co. (1930); **28.** *Inc. T.* No. 557a, 557b
— *v.* Dewar (1931); **28.** *Inc. T.* No. 575a
— *v.* Dickson (Scot.); **28.** *Inc. T.* p. 2
— *v.* Drysdale Trustees (Scot.); **28.** *Inc. T.* p. 70
— *v.* Ezra, *Re* Sassoon (1933); **21.** *Estpl.* No. 404a
— *v.* —, *Re* Sassoon (1935); **17.** *Deeds*, No. 1737a; **21.** *E. D.* No. 272b; *Estpl.* No. 404a
— *v.* Falkirk Iron Co., Ltd. (Scot.); **28.** *Inc. T.* p. 37
— *v.* Falkirk Temperance Cafe Trust (Scot.); **28.** *Inc. T.* pp. 73, 75
— *v.* Fargus (1926); **28.** *Inc. T.* No. 674b
— *v.* Firth (1933); **28.** *Inc. T.* No. 689c
— *v.* Fleming (Scot.); **28.** *Inc. T.* p. 86
— *v.* Forster (1935); **28.** *Inc. T.* No. 674hh
— *v.* Forth Conservancy Board (1928); **28.** *Inc. T.* No. 36a
— *v.* Forth Conservancy Board (1931); **28.** *Inc. T.* No. 104b
— *v.* Forth Conservancy Board (Scot.); **28.** *Inc. T.* p. 4
— *v.* Glasgow Musical Festival Assocn. (Scot.); **28.** *Inc. T.* pp. 73, 75
— *v.* Glasgow Ornithological Assocn. (1938); **28.** *Inc. T.* No. 472f
— *v.* Gull (1937); **28.** *Inc. T.* No. 483c
— *v.* Hamilton (Lord) of Dalzell (Scot.); **28.** *Inc. T.* p. 110
— *v.* Hatherton (1936); **39.** *Revenue*, No. 55b
— *v.* Hawley (1928); **28.** *Inc. T.* No. 673b
— *v.* Henderson's Exors. (Scot.); **28.** *Inc. T.* p. 98
— *v.* Holder (1932); **3.** *Bank.* No. 818a; **26.** *Guar.* No. 608a; **28.** *Inc. T.* No. 545h
— *v.* Hope (Scot.); **28.** *Inc. T.* p. 110
— *v.* Hyndland Investment Co., Ltd. (Scot.); **28.** *Inc. T.* p. 23
— *v.* Kered, Ltd. (1938); **28.** *Inc. T.* No. 674w
— *v.* Kidston (1936); **28.** *Inc. T.* No. 674nn
— *v.* Lawrence, Graham & Co. (1937); **28.** *Inc. T.* No. 378a
— *v.* Ledgard (1937); **28.** *Inc. T.* No. 687b
— *v.* Leydenberg Platinum Ltd. (S. Af.); **28.** *Inc. T.* p. 14
— *v.* Livingston (Scot.); **28.** *Inc. T.* p. 21
— *v.* Longford (Countess) (1928); **28.** *Inc. T.* Nos. 691a, 691b
— *v.* Longmans, Green & Co., Ltd. (1932); **28.** *Inc. T.* No. 391b
— *v.* Lysaght (1928); **28.** *Inc. T.* No. 131c
— *v.* Mallaby-Deeley (Sir H.) (1938); **28.** *Inc. T.* No. 576c
— *v.* Mann (1937); **21.** *E. D.* No. 136b
— *v.* Marshall & Mitchell (Scot.); **28.** *Inc. T.* p. 37
— *v.* Medical Charitable Society for West Riding of Yorkshire (1926); **28.** *Inc. T.* No. 472a
— *v.* Melross (Scot.); **28.** *Inc. T.* p. 7
— *v.* Miller (1930); **28.** *Inc. T.* Nos. 674d, 674z
— *v.* Morgan-Grenville-Gavin (1936); **28.** *Inc. T.* No. 576b
— *v.* National Mortgage & Agency Co. of New Zealand (1938); **28.** *Inc. T.* Nos. 557d, 557g
— *v.* Nettlefold (1933); **28.** *Inc. T.* No. 689d
— *v.* New Sharlston Collieries Co., Ltd. (1937); **28.** *Inc. T.* No. 116g
— *v.* Paget (1938); **28.** *Inc. T.* No. 674mm
— *v.* Pakenham (1928); **28.** *Inc. T.* No. 691a, 691b
— *v.* Pearson (1936); **28.** *Inc. T.* No. 674jj
— *v.* Peeblesshire Nursing Assocn. (Scot.); **28.** *Inc. T.* p. 73
— *v.* Pratt (1936); **28.** *Inc. T.* No. 674jj
— *v.* Pyman (1937); **28.** *Inc. T.* No. 687b

Inland Revenue Comrs. *v.* Ramsay (1935); **28.** *Inc. T.* No. 667a
— *v.* Raphael, *Re* Sassoon (1933); **21.** *Estpl.* No. 404a
— *v.* —, *Re* Sassoon (1935); **17.** *Deeds*, No. 1737a; **21.** *E. D.* No. 272b; *Estpl.* No. 404a
— *v.* Rees Roturbo Development Syndicate (1928); **28.** *Inc. T.* No. 96a
— *v.* Roberts (1927); **28.** *Inc. T.* No. 662b
— *v.* Roberts Marine Mansions Trustees (1926); **28.** *Inc. T.* No. 472c
— *v.* St. Luke, Hostel Trustees, Registered (1930); **28.** *Inc. T.* No. 483b, 576a; **42.** *Time*, Nos. 324a, 324b
— *v.* Scottish Automobile & General Insurance Co. (Scot.); **28.** *Inc. T.* p. 22
— *v.* Scottish Central Electric Power Co. (1931); **28.** *Inc. T.* No. 228a
— *v.* Scottish Central Electric Power Co. (Scot.) (1928); **28.** *Inc. T.* p. 41
— *v.* Smith (1930); **28.** *Inc. T.* No. 673d
— *v.* Sneath (1932); **28.** *Inc. T.* Nos. 677a, 689a, 689b
— *v.* Society for Relief of Widows & Orphans of Medical Men (1926); **28.** *Inc. T.* No. 472a
— *v.* Stonehaven Recreation Ground Trustees (Scot.); **28.** *Inc. T.* p. 21
— *v.* Stott (S. Af.); **28.** *Inc. T.* p. 21
— *v.* Tayport Town Council (Scot.); **28.** *Inc. T.* p. 73
— *v.* Temperance Council of Christian Churches of England & Wales (1926); **28.** *Inc. T.* Nos. 472b, 476a
— *v.* Thompson (1937); **28.** *Inc. T.* No. 569e
— *v.* Urwick's Exors. (1935); **28.** *Inc. T.* Nos. 460c, 669a
— *v.* Wahl (1933); **28.** *Inc. T.* No. 674ee
— *v.* Westminster (Duke) (1936); **28.** *Inc. T.* No. 674ff
— *v.* Williamson (Scot.); **28.** *Inc. T.* p. 9
— *v.* Wilson (Scot.); **9.** *Coys.* p. 25
— *v.* Wright (1926); **28.** *Inc. T.* No. 662a
— *v.* — (1927); **28.** *Inc. T.* No. 662a
— *v.* Yorkshire Agricultural Society (1928); **28.** *Inc. T.* No. 472d
— *v.* Zorab (1926); **28.** *Inc. T.* No. 131d
Inland Revenue Comrs. & Trustee *v.* National Provincial Bank, Ltd., *Re* Bulmer (1936); **4.** *Bkpcy.* No. 4851a
Inlay Hardwood Floor Co. Ltd. *v.* Dierssen (Can.); **42.** *Solrs.* p. 9
Inman, *Re*, Inman *v.* Inman (1903); **30.** *Jdgmts.* No. 709a
Inna, The (1938); **41.** *Ship.* Nos. 7249a, 8305a
Innes *v.* Arundell, *Ex p.* Arundell (Aus.); **31.** *L. & T.* p. 78
— *v.* Ferguson (Can.); **19.** *Easmt.* p. 6
Innes & Griffith *v.* Cameron Valley Land Co. (Can.); **9.** *Coys.* p. 32
Innis *v.* Satchwell (Can.); **34.** *Med.* p. 185
Innisfail, The, The Secret (1876); **1.** *Adm.* No. 1280a
Inrig Shoe Co., *Re* (Can.); **9.** *Coys.* p. 47
Insole's Settled Estate, *Re* (1938); **30.** *Land Imp.* No. 143a
Institute of Chartered Accountants of England & Wales *v.* Hardwick (1919); **28.** *Injon.* No. 906c
Institute of Chartered Accountants of Manitoba *v.* Bellamy (Can.); **28.** *Injon.* p. 152
Institution of Civil Engineers *v.* Inland Revenue Comrs. (1932); **28.** *Inc. T.* No. 476d
Insull, *Re* (Can.); **22.** *Evid.* p. 24; **24.** *Extrdn.* p. 44
Insurance Act of Canada, *Re* (1932); **17.** *Dep.* Nos. 128b, 130h
Insurance Contracts, *Re* (Can.); **17.** *Dep.* pp. 40, 50
Intended Action of Knox *v.* Venning, *Re* (Can.); **35.** *Mtge.* p. 52
Interior Trust Co. *v.* Essex Border Utilities Commission (Can.); **8.** *Chos.* p. 89
— *v.* Mackenzie (Can.); **5.** *Bkpcy.* p. 93
International Bitumen Emulsions, Ltd., *Re*, Petition for Revocation of Dehn's Patent (1932); **36.** *Pats.* Nos. 2260a, 2261a
International Combustion, Ltd. *v.* Inland Revenue Comrs. (1932); **28.** *Inc. T.* No. 391a
International Fire Equipment Corpn. *v.* Firegas Service, Ltd. (Can.); **36.** *Pats.* p. 71
International Freight Shipment Charges, *Re* (Can.); **38.** *Rys.* p. 45
International Harvester Co., Ltd. *v.* Kirk (Can.); **21.** *Exon.* p. 59
International Laboratories, Ltd. *v.* Dewar (Can.); **9.** *Coys.* p. 41
International Loan Co. *v.* Kotniuk (Can.); **2.** *Agric.* p. 26
International Mercantile Marine Co. (Inc.) *v.* Oceanic Steam Navigation Co., Ltd. (1934); **9.** *Coys.* No. 4107a
International Metal Works, Ltd., *Re*, *Ex p.* R. (Can.); **4.** *Bkpcy.* p. 37; **10.** *Coys.* p. 78
International Petroleum & Land Trading Co., Ltd. *v.* Ross & Royal Bank of Canada (Can.); **21.** *Exon.* p. 59
International Press, Ltd. *v.* Tunnell (Can.); **13.** *Coprt.* p. 9
International Ry. Co. *v.* Niagara Parks Commission (Can.) (1936); **11.** *Comp. Pche.* p. 3; **16.** *Courts*, p. 13
— *v.* — (Can.) (1937); **43.** *Tram.* p. 48
International Ry. Co. & Niagara Parks Commission, *Re* (Can.); **38.** *Rys.* p. 35
International Sales, Ltd. *v.* Trans-Continental Trading Co., Ltd. & Benno Maisel (1934); **36.** *Pats.* No. 3353c
International Transportation Assocn. Incorporated *v.* Capital Storage Co. (Can.); **35.** *Misrep.* p. 1
International Transportation Co. *v.* Winnipeg Storage, Ltd. (Can.); **12.** *Contr.* p. 9
Interoven Stove Co., Ltd. *v.* British Broadcasting Corpn. (1935); **32.** *Libel*, No. 2609a
— *v.* Hibbard & Painter & Shepherd (1936); **18.** *Distr.* Nos. 71a, 1283a
Interprovincial Flour Mills, Ltd. *v.* Western Trust Co. (Can.); **4.** *Bkpcy.* p. 29
Interstate Investment Co., Ltd. *v.* Mobbs (Aus.); **8.** *Chos.* p. 94
Intract *v.* Intract (otherwise Jacobs) (1933); **27.** *H. & W.* No. 4331a
— *v.* Jacobs (1933); **27.** *H. & W.* No. 4331a
Inverarity *v.* Edinburgh Collieries, Ltd. (Scot.); **34.** *Mast. & S.* p. 100
Inverarity Estate, *Re* (Can.); **17.** *Dep.* p. 50
Inverclyde (otherwise Tripp) *v.* Inverclyde (1931); **11.** *Confl.* No. 926b; **27.** *H. & W.* No. 2328b; **30.** *Jdgmts.* No. 54a
Inverclyde's (Lord) Trustees *v.* Inland Revenue Comrs. (1924); **21.** *E. D.* No. 277a
— *v.* Millar (1924); **21.** *E. D.* No. 277a
Inverness Railway & Coal Co. *v.* McIsaac (Can.); **2.** *Arbn.* p. 84
Inverness-shire Assessor *v.* Mackay (Scot.); **38.** *Rates*, p. 52
Inverness-shire County Council *v.* Weir (Scot.); **26.** *Hghys.* p. 22
Investment Trust Corpn., Ltd. *v.* Singapore Traction Co., Ltd. (1935); **10.** *Coys.* No. 4785a
Investors Mortgage Security Co. *v.* McDonald & Henry (Can.); **32.** *Limit. of A.* p. 35
Inwald (Josef) Act. *v.* Pfeiffer (1927); **2.** *Aliens*, No. 280b
v. — (1928); **2.** *Aliens*, No. 280b

Inzievar Estates *v.* Lord Advocate (Scot.); **21.** *E. D.* p. 5
Ipswich Revenue Officer *v.* Eastern Counties Farmers' Co-operation Assocn., Ltd. (1931); **38.** *Rates*, No. 226j
Irby *v.* Irby (1857); **23.** *Exors.* No. 4368
Iredale *v.* Loudon (Can.); **32.** *Limit. of A.* p. 38
Ireland *v.* Ireland (Aus.); **11.** *Confl.* p. 46; **27.** *H. & W.* p. 43
— *v.* Noble (Can.); **31.** *L. & T.* p. 65
— *v.* Payne (Can.); **23.** *Exors.* p. 12, **28.** *Infts.* pp. 139, 140
— *v.* Quirke (Ir.); **25.** *Fish.* p. 3
— *v.* Wilson (1936); **38.** *Pub. Hlth.* Nos. 91a, 97a; **42.** *Str. Traf.* No. 146b
Irish Civil Servants *Re* (1929); **16.** *Courts*, No. 690b; **17.** *Dep.* No. 714c
Irish Free State *v.* Little (Ir.); **17.** *Dep.* p. 87; **24.** *Extrdn.* p. 46
Irish Land Commission & Board of Public Works *v.* Andrew (Ir.); **31.** *L. & T.* p. 68
Irish People's Assurance Society *v.* Dublin City Assurance Co., Ltd. (Ir.); **25.** *Fr. Soc.* p. 22; **32.** *Libel*, p. 9
Irma Co-operative Co., Ltd., *Re*, *Re* Love & Knudson (Can.); **10.** *Coys.* pp. 66, 74, 76
Iron Trades Employers' Insurance Assocn., Ltd. *v.* Union Land & House Investors, Ltd. (1937); **35.** *Mtge.* No. 768a
Ironmonger *v.* Vinter (1938); **34.** *Mast. & S.* No. 2620c
Ironmonger & Co. *v.* Dyne (1928); **3.** *Bank.* No. 1012b; **25.** *Gaming*, No. 15d
Ironsides *v.* Green (Can.); **38.** *Real Prop.* p. 89
Irvin *v.* Brookes (N.Z.); **25.** *Gifts*, p. 48
Irvine *Re* (Can.); **38.** *Real Prop.* p. 90
— *v.* Metropolitan Transport Co. (Can.); **36.** *Negl.* p. 18
— *v.* Mussallem (Can.); **36.** *Negl.* p. 37
Irvine Greyhound Racing Co. *v.* MacMillan (Scot.); **25.** *Gaming*, p. 32
Irving *v.* Askew (1870); **13.** *Cty. Cts.* No. 1135
— *v.* McLachlan (Can.); **19.** *Eccl.* p. 31
— *v.* Merygold (Can.); **35.** *Misrep.* p. 5
— *v.* Munro & Sons, Ltd. (Aus.); **39.** *Revenue*, p. 14
— *v.* South Eastern Ry. Co. (1857); **9.** *Coys.* No. 2332a
Irving's Yeast-Vite, Ltd. *v.* Horsenail (1934); **43.** *Trade Mks.* No. 594a
Irwin *v.* A.-G. for Ontario (Can.); **33.** *Mags.* p. 31
— *v.* Barker (1925); **15.** *Crim.* No. 12,169b
— *v.* Beynon (Can.); **32.** *Lien*, p. 24
— *v.* Boyd Bros. & Cotton (Can.); **29.** *Intpr.* p. 63
— *v.* Campbell (Can.); **2.** *Arbn.* p. 74
— *v.* Hamal (N.Z.); **31.** *L. & T.* p. 60
— *v.* Irwin (Can.); **27.** *H. & W.* p. 4
— *v.* Mariposa Corpn. (Can.); **26.** *Guar.* p. 12
Irwin & A.-G. for Ontario, *Re* (Can.); **33.** *Mags.* p. 31
Isaac Walton & Co., Ltd. *v.* Vanguard Motor Bus Co., Ltd. (1908); **26.** *Hghys.* No. 1513a
Isaacs *v.* Keech (1925); **14.** *Crim.* No. 1622a
Isaacson *v.* Holden, *Re* Holden (1935); **23.** *Exors.* No. 3973a
Isbell, *Re* (Can.); **16.** *Cr. Pract.* p. 28
Isherwood Foster & Stacey, Ltd. *v.* Miglio (1938); *Pract.* No. 3777a
Isipingo Health Committee *v.* Jadwat (S. Af.); **17.** *Dep.* p. 65
Isis Theatre, Ltd. *v.* Columbia Pictures of Canada, Ltd. (Can.); **42.** *Theatres*, p. 72
Isitt & Isitt *v.* Hammond & National Resources Sec. Co. (Can.); **18.** *Discy.* p. 9
Isle of Ely Justices, *Ex p.*, R. *v.* Judge (1931); **16** *Cntmpt.* No. 46a; **33.** *Mags.* No. 991a
Isles, *Re* (Aus.); **21.** *E. D.* p. 17
Ismail *v.* Skradling (S. Af.); **17.** *Dep.* p. 65
Ismail Hoosain Mamsa *v.* K. Purbhubhai (Ind.); **6.** *B. of Exch.* p. 18
Isman *v.* Widen (Can.); **26.** *Guar.* p. 10
Israelson *v.* Dawson (1933); **21.** *Exon.* No. 2087a
Istros S.S. Owners *v.* Dahlstroem (F. W.) & Co. (1931); **41.** *Ship.* No. 2059a
Italian Realty Co. *v.* Guardian Assurance Co. (Can.); **29.** *Insce.* p. 27
Italo-Canadian Corpn., Ltd. *v.* Sandiford, *Re* Sandiford (1934); **42.** *Solrs.* No. 4408a
— *v.* —, *Re* Sandiford (No. 2) (1935); **3.** *Barr.* No. 228a; **24.** *Exors.* No. 8492a
Ivan Franko Ukrainian Benevolent Assocn. of Brooklands & Maksymiw & Perchaluk, *Re* (Can.); **25.** *Fr. Soc.* p. 20
Iveagh *v.* Harris (1929); **40.** *S. Land*, No. 2807a
— *v.* Revenue Comrs. (Ir.); **28.** *Inc. T.* p. 102
Iverson & Greater Winnipeg Water District, *Re* (Can.); **2.** *Arbn.* p. 101
Iveson *v.* Wakefield, *Re* Roadley (1930); **8.** *Char.* No. 42a
Ivett *v.* Ivett (1930); **22.** *Evid.* No. 1437a
Ivey *v.* Smith (Can.); **22.** *Evid.* p. 3
Iwanchuk *v.* Iwanchuk (Can.); **25.** *Fraud. Conv.* p. 17
Izard *v.* Colbron (1824); **5.** *Bkpcy.* No. 8970a
Izzard *v.* Universal Insurance Co., Ltd. (1937); **29.** *Insce.* No. 3217ff

J.

J. to A., A. Mortgage, *Re* (N.Z.); **11.** *Confl.* p. 38
J. & E. Transport, Ltd. *v.* London, Midland & Scottish Ry. Co. (1937); **8.** *Carr.* Nos. 1527, 1709
J. & G. Garment Mfg. Co., *Ex p.*, *Re* J. R. Morgan, Ltd. (Can.); **9.** *Coys.* p. 50
J. B. Rogers, Ltd. *v.* Harry Lesnie, Ltd. (Aus.); **39.** *S. Goods.* p. 33
J. Brownlee & Co. *v.* Canadian National Rys. (Can.); **38.** *Rys.* p. 36
J. H. Chandler & Co., Ltd., *Re* (Ind.); **9.** *Coys.* p. 5
J. H. Coles Proprietary, Ltd. *v.* Need (Aus.); **43.** *Trade Mks.* p. 47
J. I. Case Threshing Machine Co. *v.* Dalton (Can.); **39.** *S. Goods*, p. 60
— *v.* General Motors Acceptance Corpn. (Can.); **8.** *Chos.* p. 94
— *v.* Mitten (Can.); **21.** *Estpl.* p. 42
J. J. D., etc., *Re* (Ir.); **33.** *Lunat.* p. 13
J. O. Ross Engineering Corpn. & C. L. W. Patents Corpn. *v.* Canada Paper Co. & Howard Smith Paper Mills, Ltd. (Can.); **36.** *Pats.* p. 102
J. O. Ross Engineering Corpn. & Ross Engineering of Canada, Ltd. *v.* Paper Machinery, Ltd. & Hellstrom (Can.); **36.** *Pats.* pp. 69, 75
J. P. *v.* Ordre des Forestiers Catholiques (Can.); **29.** *Insce.* p. 31
J. P. Ferns *v.* Ingelby, The (Can.); **1.** *Adm.* p. 47
J. R. Morgan, Ltd., *Re*, *Ex p.* J. & G. Garment Mfg. Co. (Can.); **9.** *Coys.* p. 50
J. Stanley Wedlock, Ltd., *Re* (Can.); **3.** *Bank.* p. 43; **4.** *Bkpcy.* p. 23
—, *Re*, *Ex p.* Royal Bank (Can.); **9.** *Coys.* p. 38
J. V. Boudrias Fils, Ltd. *v.* Boudrias Freres, Ltd. (Can.); **43.** *Trade Mks.* p. 33
Jabbar Ali Sardar *v.* Monmoham Pandey (Ind.); **22.** *Evid.* p. 8
Jack *v.* Dalbeattie Magistrates (Scot.); **38.** *Pub. Hlth.* p. 29

Jack *v.* Nanoose Wellington Collieries, Ltd. (Can.); **17.** *Deeds*, p. 25
Jackes *v.* St. Walburg Village (Can.); **38.** *Pub. Hlth.* p. 21
Jackett *v.* Deputy Federal Comr. of Taxation (Aus.); **39.** *Revenue*, p. 16
Jacks & Co. *v.* Joosab Mahomed (Ind.); **21.** *Estpl.* pp. 36, 37
Jacks (William) & Co. *v.* Palmer's Shipbuilding & Iron Co. (1928); **12.** *Contr.* No. 2861a; **39.** *S. Goods*, No. 430a
Jackson, *Ex p.*, R. *v.* Lewisham Corpn. (1929); **26.** *Hghys.* Nos. 1435a, 1435b, 1435c
—, *Re* (Can.); **4.** *Bkpcy.* p. 21
—, *Re*, Beattie *v.* Murphy (1933); **44.** *Wills*, Nos. 4653a, 6708a
—, *Re* Midland Bank Executor & Trustee Co., Ltd. *v.* Wales (Archbishop) (1930); **8.** *Char.* No. 718b
— *v.* Anglo-American Oil Co. (1923); **13.** *Cty. Cts.* No. 695a
— *v.* A.-G., *Re* Cockell (1932); **23.** *Exors.* Nos. 4428a, 4538a
— *v.* A.-G., *Re* Cockell (No. 2) (1932); **23.** *Exors.* No. 4163a
— *v.* Bennan (1893); **18.** *Distr.* No. 654a
— *v.* Black (Can.); **21.** *Exon.* p. 49
— *v.* Bridge (1702); **12.** *Contr.* No. 4936a
— *v.* Canham (1935); **34.** *Mast. & S.* No. 3932k
— *v.* Cooke (1937); **17.** *Dep.* No. 392c
— *v.* Digney (Can.); **6.** *B. of Exch.* p. 2
— *v.* Frost (1930); **34.** *Mast. & S.* No. 2737b
— *v.* Glasgow Corpn. (Scot.); **36.** *Negl.* p. 32
— *v.* Innes (1819); **35.** *Mtge.* No. 501a
— *v.* Jackson (1932); **27.** *H. & W.* No. 6124h
— *v.* — (N.Z.); **27.** *H. & W.* p. 69
— *v.* Jackson & Barwell (1936); **27.** *H. & W.* No. 5052a
— *v.* —, *Re* Jackson Estate (Can.) (1935); **38.** *Real Prop.* p. 90
— *v.* —, *Re* Jackson's Estate, (Can.) (1937); **23.** *Exors.* p. 17
— *v.* Newcastle Gas & Coke Co., Ltd. (Aus.); **34.** *Mast. & S.* p. 36
— *v.* Penfold (Can.); **7.** *B. of Sale*, p. 5; **35.** *Mtge.* p. 34
— *v.* Saskatchewan Co-operative Elevator Co., Ltd. (Can.); **1.** *Agcy.* p. 67
— *v.* Shell Oil Co. (Can.); **39.** *S. Goods*, p. 34
— *v.* Thompson (Aus.); **36.** *Negl.* p. 25
— *v.* Turquand (1869); **9.** *Coys.* No. 1681a
— *v.* Union Castle Mail S.S. Co. (1933); **34.** *Mast. & S.* No. 3455d
— *v.* White (Can.); **40.** *S. Land*, p. 1
Jackson & Co., Ltd. *v.* Co-operative Freezing Co. of South Canterbury, Ltd. (N.Z.); **12.** *Contr.*, pp. 28, 29
Jackson (John) & Co. (Iron Merchants), Ltd. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 76
Jackson & Muir & Co., Ltd., *Re* (Can.); **42.** *Stk. Ex.* p. 34
Jackson & Sons *v.* Municipal Comr. (Can.); **28.** *Inc. T.* p. 16
Jackson (Thomas) & Sons, Ltd., *Re* (Can.); **28.** *Inc. T.* p. 16
Jackson Bros. Grain Co., Ltd. *v.* United States Fidelity & Guaranty Co. (Can.); **29.** *Insce.* p. 55
Jackson (J. B.), Ltd. & Gettas, *Re* (Can.); **31.** *L. & T.* p. 82
Jackson Machines, Ltd. *v.* Michaluck (Can.); **6.** *B. of Exch.* p. 12
Jackson Water Supply Co. *v.* Bardeck (Can.); **32.** *Lien*, p. 24
Jackson's Estate, *Re* (Can.); **38.** *Real Prop.* p. 90
—, *Re*, Jackson *v.* Jackson (Can.) (1935); **38.** *Real Prop.* p. 90
Jackson's Estate, *Re*, Jackson *v.* Jackson (Can.) (1937); **23.** *Exors.* p. 17
Jackson's Trustees *v.* Inland Revenue (Scot.); **8.** *Char.* p. 69; **28.** *Inc. T.* p. 73
Jacob & Co. *v.* Rash Behari Ghose (Ind.); **3.** *Barr.* p. 50
Jacob Ochsner Letters Patent (No. 120,941), *Re* (1933); **36.** *Pats.* No. 1832a
Jacob's Estate, *Re*, Lancaster *v.* Gaselee, *Ex p.* Lancaster (1851); **29.** *Insce.* No. 3050
Jacobs, *Ex p.*, *Re* Carr (1901); **4.** *Bkpcy.* Nos. 1177a, 1178a, 1178c
— *v.* Aveling-Barford, Ltd. (1936); **30.** *Jdgmts.* No. 208a
— *v.* Batavia & General Plantations Trust (1924); **9.** *Coys.* Nos. 814a, 4652c
— *v.* Inland Revenue Comrs. (1925); **28.** *Inc. T.* No. 671a
— *v.* Jacobs & Solomon (1936); **27.** *H. & W.* No. 4409a
— *v.* London County Council (1935); **38.** *Pub. Auth.* No. 859a
— *v.* R. (Can.); **39.** *Revenue*, p. 25
— *v.* Seguin (Can.); **11.** *Const. L.* p. 65
— *v.* Seward (1872); **20.** *Eqy.* No. 293a
Jacobs Levitatz & Braude *v.* Kroonstad Roller Mills (S. Af.); **1.** *Agcy.* p. 50
Jacobson, *Re*, *Ex p.* Goldberg (Can.); **4.** *Bkpcy.* p. 40; **5.** *Bkpcy.* p. 82
— *v.* Fort Morgan (Can.); **1.** *Adm.* p. 24
— *v.* Frachon (1927); **11.** *Confl.* No. 1147a
— *v.* Municipal District Crown (Can.); **26.** *Hghys.* p. 29
— *v.* Schneider (Can.); **2.** *Animals*, p. 59
— *v.* Yorkshire Insurance Co., Ltd. (1933); **29.** *Insce.* No. 3269a
Jacobson, Brown & Atcheson Estates, *Re* (Can.); **23.** *Exors.* p. 17
Jacobson, etc. *v.* Jacobson, etc. (S. Af.); **5.** *Bkpcy.* p. 69
Jacques *v.* Hopkins & Hopkins (Can.); **25.** *Gifts*, p. 50
— *v.* Jacques (Can.); **22.** *Evid.* p. 24
Jacques Settled Estates, *Re* (1930); **30.** *Land Imp.* No. 79e
Jaeger Co. *v.* Connors (Can.); **26.** *Guar.* p. 3
Jaeger Co., Ltd. *v.* Jaeger (1929); **21.** *Estpl.* No. 521a; **43.** *Trade Mks.* No. 696a
Jaffarul Hossain *v.* Emperor (Ind.); **22.** *Evid.* p. 22
Jaffe (R.), Ltd. *v.* Jaffe (N.Z.); **10.** *Coys.* p. 59
Jagan Mohan Sarkar *v.* Brojendra Kumar Chakrabarti (Ind.); **31.** *L. & T.* p. 65
Jagannatha Mudali *v.* Chinnaswami Chetti (Ind.); **3.** *Basty.* p. 52
Jagger *v.* Doncaster Union Rural Sanitary Authority (1890); **26.** *Hghys.* No. 2508a
Jaggo Bai *v.* Utsava Lal (Ind.); **32.** *Limit. of A.* p. 38
Jai Dayal Madan Gopal, *Re* (Ind.); **36.** *Prtnrs.* p. 58
Jai Narain *v.* Jafar Beg (Ind.); **21.** *Estpl.* p. 39
Jai Narain Lachhmi Narain *v.* Great Indian Peninsular Ry. Co. (Ind.); **8.** *Carr.* p. 6
Jaipal Bhagat *v.* R. (Ind.); **24.** *Extrdn.* p. 46
Jamal *v.* Moolla Dawood, Sons & Co. (1916); **9.** *Coys.* No. 2269b
James, The, & The Champion (1934); **1.** *Adm.* No. 1724a
James, *In the Estate of* (1926); **23.** *Exors.* No. 2585b
—, *Re*, Grenfell *v.* Hamilton (1932); **8.** *Char.* Nos. 47c, 1020a, 2289a
—, *Re* James *v.* James (1935); **25.** *Gifts.* No. 280a
— *v.* Audigier (1932); **22.** *Evid.* Nos. 4859a, 4859b

James *v.* Beaver Consolidated Mines, Ltd. (Can.); **9.** *Coys.* pp. 45, 46
— *v.* Bell (Can.); **38.** *Rates*, p. 85
— *v.* British General Insurance Co. (1927); **29.** *Insce.* Nos. 3194a, 3214a, 3216a, 3216b
— *v.* Commonwealth of Australia (No. 1) (1935); **17.** *Dep.* No. 467a
— *v.* — (No. 2) (1936); **17.** *Dep.* No. 186b
— *v.* Cordey, *Re* Watkins (1889); **37.** *Perps.* No. 369a
— *v.* Cowan (1932); **17.** *Dep.* Nos. 188a, 610a
— *v.* —, *Re* Botten (Aus.); **22.** *Evid.* p. 18
— *v.* Federal Comr. of Taxation (Aus.); **28.** *Inc. T.* p. 11
— *v.* Ferris (Can.); **1.** *Agcy.* p. 63
— *v.* Grand Trunk Ry. Co. (Can.); **38.** *Rys.* p. 36
— *v.* Gwauncaegurwen Colliery Co. (1926); **34.** *Mast. & S.* No. 2492a
— *v.* James (1872); **43.** *Trade Mks.* No. 1226a
— *v.* —, *Re* James (1935); **25.** *Gifts*, No. 280a
— *v.* Mabin (No. 3), (N.Z.); **3.** *Bank.* p. 47
— *v.* Monmouthshire & South Wales Mutual Indemnity Society, Ltd. (1938); **34.** *Mast. & S.* No. 3206a
— *v.* Partridge Jones & John Paton, Ltd. (1932); **34.** *Mast. & S.* No. 3927d
— *v.* Partridge Jones & John Paton, Ltd. (1933); **34.** *Mast. & S.* No. 2322a
— *v.* Penderyn Limestone Quarries (Hirwain), Ltd. (1926); **34.** *Mast. & S.* No. 2494a
— *v.* Piegl (Can.); **36.** *Negl.* p. 18
— *v.* R. (S. Af.); **15.** *Crim.* p. 100
— *v.* Salter (1835); **22.** *Evid.* No. 198c.
— *v.* Smith (1921); **1.** *Agcy.* No. 1776b
— *v.* South Australia State (Aus.); **17.** *Dep.* pp. 62, 67
— *v.* Toronto (Can.); **26.** *Hghys.* p. 26
James (Arthur) & Co. *v.* John Weston & Co., Ltd. (1929); **1.** *Agcy.* No. 2482a
James & James *v.* Pieol (Can.); **42.** *Str. Traf.* p. 39
James (M. A.) & Sons, *Ex p.*, *Re* McMurtry & Co. (Can.); **4.** *Bkpcy.* p. 33
James (J. U.) & Sons, Ltd. *v.* Wafer Razor Co., Ltd. (1932); **43.** *Trade Mks.* No. 696b
James Finlay & Co. *v.* N. V. Kwik Hoo Tong Handel Maatschappij (1928); **17.** *Damgs.* No. 347a
— *v.* — (1929); **17.** *Damgs.* No. 347a; **39.** *S. Goods.* Nos. 885a, 1814a, 2519a
James Henderson & Sons *v.* Russell House, Ltd. & Dartt (Can.); **32.** *Lien*, p. 26
James Lumbers Co., Ltd., *Re* (Can.); **10.** *Coys.* pp. 67, 68
James Ross & Co. (Lime Wharf), Ltd. *v.* Stirlingshire Assessor (Scot.); **38.** *Rates*, p. 76
James Shipstone & Sons, Ltd. *v.* Morris (1929); **28.** *Inc. T.* No. 210g
James Smith & Sons (Norwood), Ltd. *v.* Goodman (1936); **10.** *Coys.* No. 6944a
James Steele, Ltd., *Re* (Can.); **3.** *Bank.* p. 43
James W. Elwell, The (1921); **1.** *Adm.* No. 700b
Jameson *v.* Cotter, *Re* Wheeler (1929); **21.** *E. D.* Nos. 147a, 209d, 271b
— *v.* Kinmell Bay Land Co., Ltd. (1931); **12.** *Contr.* No. 837b; **17.** *Deeds*, No. 1588a; **40.** *S. Land*, No. 73a
— *v.* Sinclair (Scot.); **25.** *Gaming*, p 36
Jamieson, *Ex p.*, *Re* Raper (Can.); **7.** *B. of Sale*, p. 8
—, *Re*, *Ex p.* Christian (Aus.); **38.** *Rates*, p. 84
— *v.* British Columbia Amusements Co. (Can.); **36.** *Negl.* p. 35
— *v.* Dobie (Scot.); **3.** *Basty.* p. 62
— *v.* Jamieson (Can.); **2.** *Arbn.* p. 103
— *v.* St. Flanan Coal Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 163
Jamieson *v.* Sherwood (Can.); **25.** *Gaming*, p. 27
Jamieson & Independent Order of Foresters, *Re* (Can.); **29.** *Insce.* p. 31
Jamieson, Austin & Mitchell, Ltd. *v.* Battrum (Can.); **9.** *Coys.* p. 41
Jamieson Construction Co., Ltd. *v.* Lacombe & North Western Ry. (Can.); **7.** *Bldg. Conts.* p. 24
Jamieson Construction Co., Ltd. & Edmonton City (Can.); **2.** *Arbn.* p. 88
Janera, The (1928); **11.** *Confl.* No. 1378a
Janion *v.* Janion (1926); **27.** *H. & W.* Nos. 5549, 5625a
Jankelson *v.* Canadian National Telegraphs (Can.); **42.** *Tele.* p. 68
Janki Prasad *v.* Karamat Husain (Ind.); **36.** *Nuis.* p. 44
Janoczka, *Re* (Can.); **2.** *Aliens*, p. 50
Janoo Hassan Sait *v.* Mahamad Ohuthu (Ind.); **11.** *Confl.* p. 54
Janvier *v.* Sweeney (1919); **1.** *Action*, No. 205a
Jaques *v.* Federal Comr. of Taxation (Aus.); **28.** *Inc. T.* p. 88
Jardine *v.* A.-G. for Newfoundland (Nfld.); **2.** *Agric.* p. 21
— *v.* Prescott Lumber Co., Ltd. (Can.); **1.** *Agcy.* p. 78
Jaremko *v.* Nelson & Fort Sheppard Ry. Co. & Great Northern Ry. Co. (Can.); **38.** *Rys.* p. 37
Jarman *v.* Walsh (Aus.); **42.** *Str. Traf.* p. 55
Jarrad *v.* Loader (Aus.); **26.** *Hghys.* p. 35
Jarrow North Ward (No. 1) Clearance Order, *Re*, *Ex p.* Errington (1935); **38.** *Pub. Hlth.* No. 5021
Jarvis *v.* Ashington Coal Co., Ltd. (1932); **34.** *Mast. & S.* No. 3284a
— *v.* Cambridgeshire Rural Assessment Area Assessment Committee (1938); **38.** *Rates*, No. 234a
— *v.* Curtis Brown, Ltd. (1929); **28.** *Inc. T.* Nos. 991, 226b, 567a
— *v.* International Nickel Co. (Can.); **34.** *Mast. & S.* p. 11; *Med.* p. 185
— *v.* Jarvis (Can.); **1.** *Agcy.* p. 73; **24.** *Exors.* p. 36; **25.** *Gifts*, p. 47
— *v.* Moy, Davies, Smith, Vandervell & Co. (1936); **42.** *Stk. Ex.* No. 30a; *Tort*, No. 28a
— *v.* Oshawa Hospital (Can.); **34.** *Mast. & S.* p. 24
— *v.* Southard Motors, Ltd. (Can.); **34.** *Mast. & S.* p. 14
Jasper *v.* Jasper (Can.); **27.** *H. & W.* p. 19
Jasperson *v.* Dominion Tobacco Co. (1923); **1.** *Agcy.* No. 1501a
Jatindranath Barat *v.* Calcutta Corpn. (Ind.); **26.** *Hghys.* p. 16
Jatondranath Chandhuri *v.* Udaykumar Das (Ind.); **17.** *Dep.* p. 85
Jawett, *Re* (1929); **5.** *Bkpcy.* No. 5499b
Jay's, Ltd. *v.* Jacobi (1933); **43.** *Trade Mks.* No. 1033c
Jeanette Dress Co. *v.* Henish (Can.); **21.** *Exon.* p. 47
Jeans *v.* Gatehouse, *Re* Rooke (1933); **23.** *Exors.* No. 5447a
Jebara *v.* Ottoman Bank (1927); **1.** *Agcy.* No. 215c; **2.** *Aliens*, No. 402a
Jefferies, *Re*, Finch *v.* Martin (1936); **37.** *Perps.* No. 740a
Jefferson *v.* Muise (Can.); **24.** *Exors.* p. 35
Jefferson Estate, *Re* (Can.); **8.** *Char.* p. 65
Jeffery *v.* Rangoon Official Assignee (Ind.); **4.** *Bkpcy.* p. 34
Jefferys, *Re*, Finch *v.* Martin (1938); **40.** *Stllmts.* No. 2989a

Jeffrey (F. W.) & Sons, Ltd. *v.* Copeland Flour Mills (Can.); **7.** *Bounds. & F.* p. 18
Jeffreys, *Re* (Aus.); **5.** *Bkpcy.* p. 67
Jelfs, *Re* (Can.); **22.** *Evid.* p. 8
Jenkins, *In the Goods of* (1869); **28.** *Infts.* No. 1441a
—, *Re*, Jenkins *v.* Davies (1931); **42.** *Stats.* No. 240a; **44.** *Wills*, No. 4921a
— *v.* Ash (1929); **2.** *Animals*, Nos. 587a, 587b
— *v.* Briant (1834); **39.** *Rntchgs.* No. 525a
— *v.* Davies, *Re* Jenkins (1931); **42.** *Stats.* No. 240a; **44.** *Wills*, No. 4921a
— *v.* Deane (1933); **29.** *Insce.* Nos. 3217k, 3217l, 3217m, 3217n
— *v.* Gwauncaegurwen Colliery Co. (1926); **34.** *Mast. & S.* No. 2492a
— *v.* Jenkins (1928); **6.** *B. of Exch.* Nos. 2393a, 2976a; **23.** *Exors.* Nos. 154a, 165b
— *v.* — (1930); **27.** *H. & W.* No. 5452a
— *v.* Levinson (Aus.); **12.** *Contr.* p. 57
— *v.* Ocean Coal Co., Ltd. (1934); **34.** *Mast. & S.* No. 3932e
Jenkins & Brash *v.* Vulcan Iron Works (Can.); **25.** *Gifts*, p. 50
Jenkins & Co. *v.* Simon (1926); **13.** *Cty. Cts.* Nos. 410a, 691b
Jenner *v.* Jenner (Aus.); **27.** *H. & W.* p. 57
Jennings, *Re*, Caldbeck *v.* Stafford & Lindemere (Ir.); **44.** *Wills*, p. 35
— *v.* Davies & Campbell, Wilson & Horne, Ltd. (Can.); **36.** *Negl.* p. 27
— *v.* Hemsley, *Re* Lewis (1938); **24.** *Exors.* No. 6386a
— *v.* Stephens (1936); **13.** *Coprt.* No. 508a
— *v.* Yet Ching (Aus.); **25.** *Gaming*, p. 33
Jenny Lind Candy Shops, Ltd. (Can.); **5.** *Bkpcy.* p. 81
Jensen, *Re* (Can.); **18.** *Desct.* pp. 1, 4
— *v.* Harrison (Can.); **1.** *Agcy.* p. 57
— *v.* Hollis Bros. & Co., Ltd. (1936); **41.** *Ship.* No. 2817a
— *v.* Jones (R. E.), Ltd. (1930); **34.** *Mast. & S.* No. 3291a
— *v.* Leach (Can.); **35.** *Misrep.* p. 5
Jenyns *v.* Jenyns (Aus.); **36.** *Pats.* p. 109
Jeremy & Jeremy *v.* Fontaine (Can.); **36.** *Negl.* p. 31
Jerger *v.* Pearce (Aus.); **2.** *Aliens*, pp. 47, 52
Jersey's (Lord) Executors *v.* Bassom (1926); **28.** *Inc. T.* No. 99
Jerusalem-Jaffa District Governor *v.* Suleiman Murra (1926); **17.** *Dep.* Nos. 20a, 398a
Jervis *v.* Howle & Talke Colliery Co., Ltd. (1937); **35.** *Mistake*, No. 17a
Jesner & Sons *v.* Waugh (Scot.); **42.** *Str. Traf.* p. 55
Jessie Mac, The *v.* Sea Lion, The (Can.); **1.** *Adm.* p. 38
Jesson *v.* Livingstone Rural Municipality (Can.); **26.** *Hghys.* p. 27; **36.** *Negl.* p. 28
Jessop *v.* Jessop (Aus.); **3.** *Basty.* p. 55
Jewan Lal Daga *v.* Nilmani Chaudhuri (Ind.); **22.** *Evid.* p. 20; **35.** *Mtge.* p. 31
Jewan Ram Khettry *v.* East Indian Ry. Co. (Ind.); **8.** *Carr.* p. 6
Jewson & Sons, Ltd. *v.* Arcos, Ltd. (1933); **39.** *S. Goods*, No. 2723a
Jex *v.* Hicks (Can.); **38.** *Real Prop.* p. 99
Jeyes Sanitary Compoinds Co., Ltd. *v.* Philadelphus Jeyes & Co., Ltd. (1929); **43.** *Trade Mks.* No. 1415a
Jhandoo Mal-Jagan Nath *v.* Puhl Chand-Faten Chand (Ind.); **12.** *Contr.* p. 32
Jinks *v.* Jinks (1936); **27.** *H. & W.* No. 5984a
Jitendranath Ghosh *v.* Bengal Government Chief Secretary (Ind.); **11.** *Confl.* p. 23; **14.** *Crim.* p. 2; **17.** *Dep.* pp. 66, 71; **42.** *Stats.* p. 20
Jiteswari Dasi *v.* Sudhakrishna Mukherji (Ind.); **39.** *Recrs.* p. 1
Jivanchand Gambhirmal, etc. *v.* Laxminarayan Ganeshram (Ind.); **25.** *Gaming*, p. 26
Jivangiri Guru Chamelgiri *v.* Gajanan Narayan Patkar (Ind.); **17.** *Dep.* p. 84
Jnauendra Nath Bagchi *v.* Sures Chandra Roy (Ind.); **2.** *Arbn.* p. 74
Joachimson *v.* Swiss Bank Corpn. (1921); **3.** *Bank.* No. 338b
Joannis Vatis, The (1922); **1.** *Adm.* No. 781f
— (No. 2) (1922); **1.** *Adm.* Nos. 706a, 781e
Job *v.* Job (1853); **37.** *Powers*, No. 351a
Jobherns, *Re*, *Ex p.* Fletcher (1835); **38.** *Real Prop.* No. 183a
Jobling (James A.) & Co., Ltd. *v.* McEwan (James) & Co. Pty., Ltd. (Aus.); **43.** *Trade Mks.* p. 34
Joe Fong, *Re* (Can.); **2.** *Aliens*, p. 50
Joe Go Get, *Ex p.*, *Ex p.* Henderson, *Ex p.* Broder, *Ex p.* Stewart (Can.); **16.** *Cr. Pract.* p. 27; **30.** *Intox.* pp. 6, 18
Joe Lee, Ltd. *v.* Dalmeny (Lord) (1927); **25.** *Gaming*, No. 15b
— *v.* Tattersall's Committee (1927); **25.** *Gaming*, No. 15b
Joel, *Re*, Johnson *v.* Joel (1936); **40.** *Stlmts.* No. 2026a
Joel *v.* Barclay (1937); **25.** *Gaming*, Nos. 408a, 416a
Joel (Barnett), Ltd. *v.* London and North Eastern Ry. Co. (1937); **8.** *Carr.* No. 1556
Joel's Lease, *Re*, Berwick *v.* Baird (1930); **2.** *Agric.* No. 30f
Jogendra Lal Sarkar *v.* Mohesh Chandra Sadhu (Ind.); **31.** *L. & T.* p. 64
Jogeshchandra Dhar *v.* Mahammad Ibrahim (Ind.); **6.** *B. of Exch.* p. 3
Jogesh Chandra Roy *v.* Annada Charan Chaudhury (Ind.); **31.** *L. & T.* p. 48
— *v.* Emdad Meah (Ind.); **17.** *Dep.* p. 79; **31.** *L. & T.* p. 65
Johannesburg Consolidated Investment Co., Ltd. *v.* Transvaal Provincial Administration (S. Af.); **17.** *Dep.* p. 65
Johannesburg Municipal Council *v.* Stewart (Scot.); **26.** *Guar.* p. 3
Johannesburg Municipality *v.* Maserowitz (S. Af.); **17.** *Dep.* p. 65
Johannson *v.* Berman (Can.); **31.** *L. & T.* p. 57
Johanson *v.* Winnipeg City (Can.); **30.** *Jdgmts.* p. 23
John, *Re*, Jones *v.* John (1933); **23.** *Exors.* No. 4101b
— *v.* Mendoza (1938); **4.** *Bkpcy.* No. 1795a
John Abell Engine & Machine Works Co. *v.* Scott (Can.); **21.** *Exon.* pp. 51, 52
John Batt & Co. (London) *v.* Kanoolal & Co. (Ind.); **2.** *Arbn.* p. 100
John Deere Plow Co. *v.* Bowen (Can.); **27.** *H. & W.* p. 6
— *v.* McEachran (Can.); **21.** *Exon.* p. 46
— *v.* Maguss (Can.); **26.** *Guar.* p. 12
— *v.* Peters & Spohn (Can.); **17.** *Deeds*, p. 24; **25.** *Gifts*, p. 50
John Dickinson & Co. *v.* Apsley Press, Ltd. (1937); **43.** *Trade Mks.* No. 1168b
John Dry Steam Tugs, Ltd. (1932); **10.** *Coys.* No. 6989c
John Fulton & Co., Ltd., *Re* (Ir.); **9.** *Coys.* p. 41; **10.** *Coys.* p. 72
John Gill Contractors, Ltd. *v.* Bromley Trading Co., Ltd. (1936); **2.** *Arbn.* No. 1139b
John Goodison Threshing Machine Co., Ltd. *v.* Lindsay (Can.); **39.** *S. Goods*, p. 57
John Jackson & Co. (Iron Merchants), Ltd. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 76

John Lane, Bodley Head, Ltd. *v.* Associated Newspapers, Ltd. (1936); **13.** *Coprt.* No. 394c
John, Sharp & Sons, Ltd. *v.* Katherine Mackall, The (Aus.); **1.** *Adm.* p. 48
John Sinclair, Ltd., Trade Mark, *Re* (1932); **43.** *Trade Mks.* Nos. 429a, 566a
John Walker & Sons, Ltd., *Ex p.*, R. *v.* Stepney Corpn. (1932); **16.** *Cr. Pract.* No. 925b; **38.** *Rates*, No. 1564a
— *v.* Kilmarnock Assessor (Scot.); **38.** *Rates*, p. 76
John Waterer Sons & Crisp, Ltd. *v.* Huggins (1931); **31.** *L. & T.* No. 6968a
John White's Trust, Ltd. *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 674u
John Wright & Eagle Range, Ltd. *v.* General Gas Appliances, Ltd. (1929); **36.** *Pats.* No. 308c
Johns, *Re*, Worrell *v.* Johns (1928); **5.** *Bkpcy* No. 5861a
— *v.* Berry & Dalton (Aus.); **25.** *Gaming*, p. 33
Johnson, *Ex p.*, *Re* Yates (Aus.); **17.** *Dep.* pp. 60, 61
—, *Ex p.*, R. *v.* Mahony (Aus.); **43.** *Trade*, p. 2
Johnson, *In the Goods of* (1865); **23.** *Exors.* No. 2603a
—, *Re* (Aus.); **43.** *Trusts*, p. 60
—, *Re* (Can.) (1931); **44.** *Wills*, p. 35
—, *Re* (Can.), [1932] O. R. 385; **43.** *Trusts*, p. 71
— (Walter), *Re* (Can.) (1932), 4 M. P. R. 446; **30.** *Intox.* p. 18
—, *Re*, *Re* Engineering Profession Act (Can.). **7.** *Bldg. Conts.* p. 32
—, *Re*, Goodrich *v.* Ogle (1893); **8.** *Char.* No. 894a
—, *Re*, Johnson *v.* Hall (Can.); **28.** *Infts.* p. 136
—, *Re*, Pearson *v.* Johnson (1938); **8.** *Char.* No. 1203a
—, *Re*, Wagg *v.* Shand (1885); **43.** *Trusts*, No. 2654a
— *v.* Anderson & Anderson (Can.); **44.** *Waters*, p. 1
— *v.* A.-G., *Re* Jones (1925); **23.** *Exors.* No. 5423a
— *v.* Beaver Dam Municipal District (Can.); **18.** *Distr.* p. 34
— *v.* Beecham, *Re* Beecham's Settlement (1934); **4.** *Bkpcy.* No. 2791a
— *v.* Berry (Can.); **22.** *Evid.* p. 21
— *v.* British Canadian Insurance Co. (Can.); **29.** *Insce.* p. 58
— *v.* Buchanan (Can.); **21.** *Exon.* p. 45
— *v.* Charles S. Neff, The (Can.), 21 Exch. C. R. 171; **1.** *Adm.* p. 47
— *v.* Clarke (1928); **31.** *L. & T.* No. 1978a
— *v.* Commonwealth (Aus.); **17.** *Damgs.* p. 9
— *v.* Eltham Co-operative Dairy Factory Co., Ltd. (N.Z.); **9.** *Coys.* p. 42
— *v.* Finlay (Nfld.); **12.** *Contr.* p. 57
— *v.* Forbes (Can.); **1.** *Agcy.* p. 76
— *v.* General Accident Insurance Co. (Can.); **23.** *Exors.* p. 3
— *v.* Giffen (Can.); **2.** *Animals*, p. 58
— *v.* Grant (Scot.); **16.** *Cntmpt.* p. 2
— *v.* Hall, *Re* Johnson (Can.); **28.** *Infts.* p. 136
— *v.* Hawkes (Can.); **18.** *Discy.* p. 17
— *v.* Herron Cartage Co. (Can.); **2.** *Arbn.* p. 83
— *v.* Hilborn (Can.); **36.** *Negl.* p. 31
— *v.* Joel, *Re* Joel (1936); **40.** *Stlmts.* No. 2026a
— (Doe d.) *v.* Johnson (1818); **22.** *Evid.* No. 1998a
— *v.* Johnson (1938); **27.** *H. & W.* No. 2999c
— *v.* — (Can.) (1928); **6.** *B. of Exch.* p. 10
— *v.* — (Can.) (1935); **27.** *H. & W.* p. 75
— *v.* — (S. Af.) (1931); **11.** *Confl.* p. 25
— *v.* — (S. Af.) (1933); **3.** *Basty.* p. 54
Johnson *v.* Johnson & Ericksen (Can.); **27.** *H. & W.* p. 53
— *v.* Johnson & Wood, *Re* Johnson Estate (Can.); **30.** *Jdgmts.* p. 19
— *v.* Leicester Corpn. (1934); **38.** *Pub. Hlth.* No. 485a
— *v.* Lineker (Can.); **18.** *Desct.* p. 3
— *v.* Mavromichali, *Re* Achillopoulos (1928); **23.** *Exors.* No. 2441a
— *v.* Medicine Hat Brewing Co., Ltd. (Can.); **1.** *Agcy.* p. 88
— *v.* Pratt (Can.); **35.** *Money*, p. 14
— *v.* Pritchard (1933); **3.** *Basty.* No. 325b
— *v.* R. (Can.) (1911); **22.** *Evid.* p. 12
— *v.* — (Can.) (1931); **11.** *Const. L.* p. 66
— *v.* Rand Daily Mails (S. Af.); **32.** *Libel*, p. 6
— *v.* Richardson (Can.); **6.** *B. of Exch.* p. 24
— *v.* Routh (1857); **20.** *Eqy.* No. 1040a
— *v.* St. James Rural Municipality (Can.); **26.** *Hghys.* p. 34
— *v.* Senft (Can.); **38.** *Real Prop.* p. 96
— *v.* Sharp Bros. & Knight, Ltd. (1932); **34.** *Mast. & S.* No. 3753b
— *v.* Sheills (Can.); **1.** *Action*, p. 12
— *v.* Smith (1584); **32.** *Libel*, No. 2582a
— *v.* Solloway (Can.); **9.** *Coys.* p. 33
— *v.* Solloway Mills & Co., Ltd. (Can.); **18.** *Discy.* p. 17
— *v.* Solway (Can.); **31.** *L. & T.* p. 78
— *v.* Stack (Can.); **33.** *Mal. Pros.* p. 40
— *v.* Ward (1806); **22.** *Evid.* No. 5639a
— *v.* Warner Bros. Pictures, Ltd. (1930); **36.** *Pats.* No. 459f
— *v.* Warren (F.) & Co. (1928); **34.** *Mast. & S.* No. 2836a
Johnson & Johnson, *Re* (Can.); **28.** *Infts.* p. 130
Johnson & Johnson (Great Britain), Ltd.'s Letters Patent No. 387,125 (1938); **36.** *Pats.* No. 842a
Johnson & Mackay *v.* Charles S. Neff, S.S. (Can.), 18 Exch. C. R. 168; **1.** *Adm.* p. 36
— *v.* — (No. 1) (Can.), 17 Exch. C. R. 155; **1.** *Adm.* p. 47
— *v.* — (No. 2) (Can.), 17 Exch. C. R. 158; **1.** *Adm.* p. 47
Johnson & Son (Loughborough), Ltd. *v.* Puffer (W.) & Co., Ltd. (1930); **43.** *Trade Mks.* No. 1462a
Johnson Bros. (Dyers), Ltd. *v.* Davison (1935); **26.** *Guar.* No. 1216a
Johnson Estate, *Re*, Johnson *v.* Johnson & Wood (Can.); **30.** *Jdgmts.* p. 19
Johnson Investments, Ltd. *v.* Pagritide (Can.); **17.** *Deeds*, p. 31
Johnson, Ltd. *v.* Victoria Mines, Ltd. (Can.); **5.** *Bkpcy.* pp. 63, 94
Johnson's Application for a Patent, *Re* (1934); **36.** *Pats.* No. 116b
Johnson-Ferguson *v.* Board of Agriculture (Scot.); **2.** *Agric.* p. 11
Johnston, *Ex p.* (Can.); **17.** *Dep.* p. 52
—, *Ex p.*, *Re* Noden, Hallett & Johnston (Can.); **4.** *Bkpcy.* p. 27
—, *Re* (Can.) (1925); **4.** *Bkpcy.* p. 24
—, *Re* (Can.) (1930); **33.** *Mags.* p. 36
—, *Re* (Can.) (1935); **4.** *Bkpcy.* p. 46
—, *Re* (Ir.); **4.** *Bkpcy.* p. 30
—, *Re*, Johnston *v.* Hogg (Can.); **23.** *Exors.* p. 17
— *v.* British American Insurance Co. (Can.); **29.** *Insce.* p. 5
— *v.* Canadian Credit Men's Trust Assocn. (Can.); **38.** *Pub. Auth.* p. 6
— *v.* Channell (Can.); **42.** *Stk. Ex.* p. 31
— *v.* Collins (Aus.); **34.** *Med.* p. 192
— *v.* Consolidated London Properties, Ltd. (1931); **28.** *Inc. T.* Nos. 16a, 25c

Johnston *v.* Davies, *Re* Chardon (1928); **8.** *Char.* No. 231a; **37.** *Perps.* No. 408a
— *v.* Dimond (Can.); **21.** *Exon.* p. 43
— *v.* Gopal Singh (Ind.); **21.** *Estpl.* p. 34; **28.** *Infts.* p. 135
— *v.* Hogg, *Re* Johnston (Can.); **23.** *Exors.* p. 17
— *v.* McCallum, *Re* South Bruce Provincial Election (Can.); **20.** *Elect.* pp. 3, 5, 9; **42** *Stats.* p. 27
— *v.* Mackey (Can.); **43.** *Trade*, p. 7
— *v.* McMorran (Can.); **36.** *Negl.* p. 29
— *v.* Smith & Nelson (Can.); **43.** *Trusts*, p. 71
— *v.* Steacy (Can.); **20.** *Eqy.* p. 22
Johnston & Little, *Re* (Can.); **31.** *L. & T.* p. 78
Johnston & Ward *v.* McCartney (Can.); **26.** *Guar* p. 9
Johnstone, *Ex p.*, *Re* Turnbull (Aus.); **42.** *Traf.* p. 57
— *v.* Bernard Jones Publications, Ltd. (1938); **13.** *Coprt.* No. 417a
— *v.* Goodson (N.Z.); **1.** *Agcy.* p. 89
— *v.* Johnstone (1929); **27.** *H. & W.* No. 4281
— *v.* Mappin (1891); **40.** *Sttlmts.* No. 204a
— *v.* Mount Vernon Colliery Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 162
— *v.* Pedlar (1921); **2.** *Aliens*, No. 65a
Johnstone Lumber Co. *v.* Hager (Can.); **25.** *Fraud. Conv.* pp. 14, 15
Johnstone Trust Settlement *v.* Chamberlain (1933); **28.** *Inc. T.* Nos. 540b, 597a
Johurmull Bhutra *v.* Kedar Nath Bhutra (Ind.); **3.** *Barr.* p. 50
Joicey, *Re*, Joicey *v.* Elliott (1935); **22.** *Evid.* No. 6852a; **44.** *Wills*, Nos. 6887a, 9748a
Joicey, *Re*, Thompson *v.* Duncan (1932); **37.** *Powers*, No. 256b
— *v.* Elliott, *Re* Joicey (1935); **22.** *Evid.* No. 6852a; **44.** *Wills*, Nos. 6887a, 9748a
Jokela *v.* R. (Can.); **11.** *Const. L.* p. 67
Jolley *v.* Mainka (Aus.) (1933); **35.** *Money*, p. 14
— *v.* — (Aus.) (1934); **17.** *Dep.* p. 62; **35.** *Money*, pp. 15, 18
Jolliffe, *In the Will of* (Aus.); **44.** *Wills*, p. 56
— *v.* Turner (S. Af.); **36.** *Negl.* p. 3
Jolly *v.* Virgo (Aus.); **30.** *Intox.* p. 10
— *v.* Wallman (Aus.); **36.** *Negl.* p. 19
Joly *v.* Pinhoe Nurseries, Ltd. (1936); **28.** *Inc. T.* No. 79c
Jonah *v.* Hitchcock (Can.); **21.** *Exon.* p. 59
Jonas *v.* Gilbert (Can.); **17.** *Dep.* p. 53
— *v.* Marshall (Can.); **17.** *Dep.* p. 53
Jonasson *v.* Dubinak (Can.); **39.** *S. Goods*, p. 54
— *v.* Royal Transportation, Ltd. (Can.); **28.** *Infts.* p. 142
Joncas *v.* Plotkins & Lion Refining Co. & Imperial Bank of Canada (Can.); **21.** *Exon.* p. 57
Jones, *Ex p.* (Can.); **16.** *Cr. Pract.* p. 41
—, *Ex p.*, R. *v.* Probert (1910); **38.** *Rates*, No. 675g
—, *In the Estate of* (1927); **23.** *Exors.* No. 911a
—, *In the Estate of*, Thomas *v.* Jones (1928); **23.** *Exors.* No. 3127b
—, *Re* (1876); **43.** *Trusts*, No. 2635a
—, *Re* (Can.); **8.** *Char.* p. 64
—, *Re* (N.Z.); **4.** *Bkpcy.* p. 45
— (John), *Re*, *Ex p.* National Provincial Bank (1932); **2.** *Agric.* No. 979a
—, *Re*, Johnson *v.* A.-G. (1925); **23.** *Exors.* No. 5423a
—, *Re*, Jones *v.* Baxter (Aus.); **23.** *Exors.* p. 17; **44.** *Wills*, p. 25
—, *Re*, Jones *v.* Cusack-Smith (1931); **43.** *Trusts*, No. 3162a
—, *Re*, Jones *v.* Jones (1933); **39.** *Rntchgs.* Nos. 587a, 587c
—, *Re*, — *v.* Pickett (1934); **43.** *Trusts*, No. 4728a
Jones, *Re*, Lambert *v.* Colbourn (1928); **21.** *E. D.* No. 238a
—, *Re*, Meacock *v.* Jones (1932); **23.** *Exors.* No. 5251c
—, *Re*, National Provincial Bank *v.* Official Receiver (1932); **2.** *Agric.* No. 979a
—, *Re*, Public Trustee *v.* Clarendon (Earl) (1929); **8.** *Char.* No. 217b
—, *Re*, Public Trustee *v.* Jones (1934); **44.** *Wills*, No. 239b
—, *Re*, Royal Trust Co. *v.* Jones (No. 2) (Can.); **44.** *Wills*, p. 24
— *v.* Bates (1938); **26.** *Hghys.* Nos. 333a, 345a
— *v.* Baxter, *Re* Jones (Aus.); **23.** *Exors.* p. 17; **44.** *Wills*, p. 25
— *v.* Bennett (1935); **44.** *Waters*, No. 84a
— *v.* Birch Bros., Ltd. (1933); **2.** *Arbn.* No. 294d
— *v.* Blaenavon Co., Ltd. (1931); **34.** *Mast. & S.* No. 3945a
— *v.* Boutillier (Can.); **4.** *Bkpcy.* p. 5
— *v.* Burgess (Can.); **1.** *Agcy.* p. 91
— *v.* Cannock (1850); **31.** *L. & T.* No. 4622a
— *v.* City of London Real Property Co., Ltd. (1930); **28.** *Inc. T.* No. 116a
— *v.* Collings, *Re* Collings (1933); **44.** *Wills*, No. 5731a
— *v.* Cooke, *Re* Tithe Act, 1891, Roberts *v.* Potts (1894); **12.** *Contr.* No. 4358a
— *v.* Cory Brothers & Co., Ltd. (1921); **1.** *Action*, No. 116a
— *v.* — (1926); **34.** *Mast. & S.* No. 3129a
— *v.* — (1934); **31.** *L. & T.* No. 2065a
— *v.* Crumlin Valley Collieries, Ltd. (1935); **34.** *Mast. & S.* No. 3291e
— *v.* Cusack-Smith, *Re* Jones (1931); **43.** *Trusts*, No. 3162a
— *v.* Cushing (Can.); **12.** *Contr.* p. 28
— *v.* Dorland (Can.); **19.** *Eccl.* p. 31
— *v.* Down (1936); **28.** *Inc. T.* No. 545b
— *v.* Eckley (Can.); **33.** *Mal. Pros.* p. 40
— *v.* Evans (1923); **2.** *Agric.* No. 266bb
— *v.* —, *Re* Rees (1920); **8.** *Char.* No. 702a
— *v.* Federal Taxation Comr. (Aus.); **28.** *Inc. T.* p. 22
— *v.* Garforth Collieries, Ltd. (1926); **34.** *Mast. & S.* No. 3226b
— *v.* Gibbons (Can.); **28.** *Infts.* p. 142
— *v.* Glencross, *Re* Glencross (Can.); **5.** *Bkpcy.* p. 87
— *v.* Gooday (1841); **43.** *Tresp.* No. 229a
— *v.* Great Western Ry. Co. (1930); **36.** *Negl.* No. 510a
— *v.* Hill (1932); **33.** *Lunat.* No. 151a
— *v.* Hutton (Can.); **32.** *Limit. of A.* p. 43
— *v.* Jenkins, *Re* Griffiths (1926); **5.** *Bkpcy.* No. 5922a
— *v.* John, *Re* John (1933); **23.** *Exors.* No. 4101b
— *v.* Jones (1929); **3.** *Basty.* No. 130c; **21.** *Estpl.* No. 153a; **27.** *H. & W.* Nos. 5781c, 6124d; **30.** *Jdgmts.* No. 14a
Jones (A.) *v.* Jones (D. L.) (1929); **27.** *H. & W.* Nos. 6137a, 6286a
Jones *v.* Jones (Aus.); **17.** *Dep.* p. 67; **21.** *Exon.* p. 54; **30.** *Jdgmts.* p. 28
— *v.* — (Can.); **21.** *Exon.* p. 51; **27.** *H. & W.* p. 25
— *v.* — (Ind.); **11.** *Confl.* p. 29
— *v.* —, *Re* Ball (1930); **43.** *Trusts*, No. 3491a
— *v.* —, *Re* Jones (1933); **39.** *Rntchgs.* Nos. 587a, 587b
— *v.* Kinnear (Can.); **25.** *Gifts*, p. 48
— *v.* Lamond (1935); **21.** *Estpl.* No. 600a
— *v.* Leeming (1930); **28.** *Inc. T.* No. 114b
— *v.* London County Council (1932); **19.** *Educ.* No. 23a
— *v.* — (1936); **37.** *Poor L.* No. 105d

Jones *v.* London, Midland & Scottish Ry. Co. (1935); **8.** *Carr.* No. 1496
— *v.* McClean (Can.); **38.** *Real Prop.* p. 93
— *v.* Mighall (1932); **30.** *Intox.* No. 626a
— *v.* Oceanic Steam Navigation Co., Ltd. (1924); **8.** *Carr.* No. 685c; **11.** *Confl.* No. 639a
— *v.* Pettifer (A. & E.), Ltd. (1929); **34.** *Mast. & S.* No. 2690b
— *v.* Pickering (1873); **20.** *Elect.* No. 859
— *v.* Pickett, *Re* Jones (1934); **43.** *Trusts*, No. 4728a
— *v.* Potts (1894); **12.** *Contr.* No. 4358a
— *v.* Roberts & Owen (1935); **8.** *Carr.* No. 1685
— *v.* — (No. 2) (1936); **8.** *Carr.* Nos. 1638, 1647
— *v.* Ryder (Can.) (1928); **21.** *Estpl.* p. 29
— *v.* — (Can.) (1931); **40.** *S. Land*, p. 1
— *v.* St. John (City) (Can.); **21.** *Estpl.* p. 26
— *v.* Smith (1936); **34.** *Mast. & S.* No. 3954d
— *v.* — (Can.) (1925); **11.** *Confl.* p. 56
— *v.* — (Can.) (1932); **32.** *Limit. of A.* p. 33
— *v.* South-West Lancashire Coal Owners' Assocn. (1927); **28.** *Inc. T.* No. 307a; **30.** *Jdgmts.* No. 569b
— *v.* Sutherland (Can.); **43.** *Trade*, p. 2
— *v.* Teichman (Can.); **43.** *Trade Mks.* p. 31
— *v.* Thomas (1934); **3.** *Basty.* No. 325c
— *v.* Thomas & Norman (Can.); **6.** *B. of Exch.* p. 1
— *v.* Titli (Ind.); **27.** *H. & W.* p. 3
— *v.* Treasury Solicitor (1932); **23.** *Exors.* No. 1650a; **44.** *Wills*, No. 1549a
— *v.* Uzelman (Can.); **12.** *Contr.* p. 45
— *v.* Vernon's Pools, Ltd. (1938); **12.** *Contr.* No. 4a
— *v.* Walker (Can.); **2.** *Animals*, p. 59
— *v.* Welsh Insurance Corpn., Ltd. (1937); **29.** *Insce.* Nos. 3217kk, 3217pp
— *v.* William Muirhead Macdonald Wilson & Co., Ltd. (1926); **34.** *Mast. & S.* No. 3829b
— *v.* Wright (1927); **28.** *Inc. T.* No. 313a
Jones & Carter's Arbitration, *Re* (1922); **2.** *Agric.* No. 266ff
Jones & Colquhoun *v.* Finch (Can.); **6.** *B. of Exch.* p. 12
Jones & James *v.* Provincial Insurance Co., Ltd. (1929); **29.** *Insce.* No. 3217d
Jones & Jones *v.* Nelson (1938); **31.** *L. & T.* No. 3160b
Jones Estate, *Re* (Can.); **44.** *Wills*, p. 54
—, *Re*, Rudd *v.* Aitken (Can.); **38.** *Rates*, p. 63
Jones Inc. *v.* Toronto General Insce. Co. (Can.); **11.** *Confl.* pp. 53, 55
Jones (R. E.), Ltd., *Re* (1933); **9.** *Coys.* No. 3858a
Jones (David), Ltd. *v.* Leventhal (Aus.); **31.** *L. & T.* pp. 54, 67
— *v.* Waring & Gillow, Ltd. (1926); **6.** *B. of Exch.* No. 896a
— *v.* Willis (Aus.); **39.** *S. Goods*, p. 38
Jonesco *v.* Evening Standard Co., Ltd., *Re* An Undertaking by Wingfields, Halse & Trustram (1932); **16.** *Courts*, No. 895a; **42.** *Solrs.* No. 1228a
Jordan *v.* Roberts (1862); **22.** *Evid.* No. 4461a
— *v.* Sanders (Aus.); **18.** *Discy.* p. 22
Jorgensen, *Re* (Can.); **2.** *Agric.* p. 25
Jorgenson, *Re* (Can.); **2.** *Animals*, p. 67
— *v.* Sitar & Ellor (Can.); **32.** *Lien*, p. 25
Josef Inwald Act. *v.* Pfeiffer (1927); **2.** *Aliens*, No. 280b
— *v.* Pfeiffer (1928); **2.** *Aliens*, No. 280b
Joseph *v.* East Ham Corpn. (1936); **20.** *Electric*, Nos. 54a, 56a
— *v.* Jenkins (B. J.), Ltd. (1929); **36.** *Pats.* No. 502c
— *v.* Joseph (Ind.); **32.** *Limit. of A.* p. 35
— *v.* Phillips (1934); **44.** *Wills*, No. 5362a
Joseph Eva, Ltd. *v.* Reeves (1938); **42.** *Str. Traf.* No. 31f
Josselson *v.* Borst & Gilksten (1938); **8.** *Chos.* No. 322a
Josselyn, *Re*, *Ex p.* Mick Simmons, Ltd. (Aus.); **34.** *Med.* p. 190
Jost, *Re* (Can.); **38.** *Rates*, p. 50
Joubert *v.* R. (Can.); **11.** *Const. L.* p. 66
Journal of Commerce Publishing Co., Ltd. *v.* Record Publishing Co., Ltd. (Can.); **43.** *Trade Mks.* p. 12
Journal Printing Co. *v.* McVicty (Can.); **13.** *Corpns.* p. 29
Journal Publishing Co., Ltd. *v.* R. (Can.); **31.** *L. & T.* p. 64
Journeay *v.* Railway Passengers Assurance Co. (Can.); **21.** *Estpl.* p. 33
Jowers *v.* Collins, *Re* Collins (1929); **40.** *Sttlmts.* No. 3138b
Jowett *v.* Federal Taxation Comr. (Aus.); **30.** *Land Tax*, p. 37
Joy Oil Co., Ltd. & Toronto, *Re* (Can.); **38.** *Pub. Hlth.* p. 16
Joyce & Scarry, *Re* (Can.); **24.** *Exors.* p. 10
Joyce Dress Corpn., Ltd., *Re*, Horowitz *v.* Greenberg (Can.); **10.** *Coys.* p. 82
Joyes *v.* National Insurance Co. of New Zealand, Ltd. (N.Z.); **29.** *Insce.* p. 45
Joylall & Co. *v.* Gopiram Bhotica (Ind.); **2.** *Arbn.* p. 83
Joyner *v.* Weeks (1891); **31.** *L. & T.* No. 4841a
Joynson's Exors. *v.* Liverpool Corpn. (1938); **38.** *Rates*, No. 1460a
Jubb *v.* Sheard, *Re* Talbot (1933); **8.** *Char.* Nos. 901a, 1102a
Jubilee Cotton Mills, Ltd., *Re* (1924); **9.** *Coys.* No. 75
Jubilee Cotton Mills, Ltd. (Official Receiver & Liquidator) *v.* Lewis (1924); **9.** *Coys.* No. 75
Judagi Mallah *v.* King-Emperor (Ind.); **15.** *Crim.* p. 90
Judd, *Ex p.*, *Re* Gooch (1921); **6.** *B. of Exch.* Nos. 567a, 2096a
— *v.* McKeon (Aus.); **17.** *Dep.* p. 60
— *v.* Sun Newspaper, Ltd. (Aus.); **22.** *Evid.* p. 19
Jude *v.* Archer & Goodman (Can.); **21.** *Estpl.* p. 33
Judges, The *v.* A.-G. for Saskatchewan (Can.); **28.** *Inc. T.* p. 78
Judges Act, *Re* (Can.); **17.** *Dep.* pp. 53, 66
Judgment Debtor (No. 171 of 1934), *Re* (1934); **4.** *Bkpcy.* No. 940a
—, *Re* (1935); **5.** *Bkpcy.* No. 8494b
— (No. 1539 of 1936), *Re* (1937); **4.** *Bkpcy.* No. 889a
— (No. 1539 of 1936), *Re*, Judgment Debtor *v.* Judgment Creditor (1937); **4.** *Bkpcy.* No. 889a
Judmaier *v.* Standard Bank of Canada (Can.); **6.** *B. of Exch.* p. 3
Juffrouw Louisa Margaretha, The (1781); **2.** *Aliens*, No. 419a
Jugendra Lal Sarkar *v.* Mohesh Chandra Sadhir (Ind.); **30.** *L. & T.* p. 38
Juggi Lal-Kamalapat *v.* Swadeshi Mills Co., Ltd. (Ind.); **43.** *Trade Mks.* p. 47
Juggi Lal-Kamlapat & Juggilal-Kamlapat Mills of Cawnpore *v.* Swadeshi Co., Ltd. (1928); **43.** *Trade Mks.* No. 1557a
Jukes *v.* Miskelly (Can.); **2.** *Animals*, p. 60
Julian *v.* Auckland (Mayor, etc.) (N.Z.); **35.** *Mistake*, p. 13
Jumna Khan *v.* Bankers & Traders Insurance Co., Ltd. (Aus.); **29.** *Insce.* p. 6
Jung Yin, *Re* (Can.); **2.** *Aliens*, p. 49
Jungo Lee *v.* R. (Can.); **2.** *Aliens*, p. 51

Junkers *v.* Ford Motor Co., Ltd. & Cooper (1932); **36.** *Pats.* Nos. 2944g, 3292a
Juno, The (1922); **11.** *Confl.* No. 1383a
Jupiter, The (1924); **1.** *Adm.* No. 142d
— (No. 2) (1925); **1.** *Adm.* Nos. 143a, 171a
— (No. 3) (1927); **11.** *Const. L.* No. 387d
Jupiter General Insurance Co., Ltd. *v.* Shroff (Ardeshir Bomanji) (1937); **34.** *Mast. & S.* No. 506a
Juram Mandal *v.* Ram Mandal (Ind.); **17.** *Deeds*, p. 26
Jure *v.* Vancouver Harbour Comrs. (Can.); **38.** *Rys.* p. 39
Jurszszyn *v.* Weidman Bros., Ltd. (Can.); **18.** *Discy.* p. 22
Jury *v.* North Island Motor Union Mutual Insurance Co. (N.Z.); **29.** *Insce.* p. 46
Jury Gold Mine Development Co., Ltd., *Re* (Can.); **10.** *Coys.* p. 68
Justice *v.* Justice (Aus.); **3.** *Basty.* p. 53; **27.** *H. & W.* p. 48
Jutras Estate, *Re* (Can.); **40.** *Sttlmts.* p. 25
Jutson *v.* Barrow (1936); **34.** *Med.* No. 132b
Jwaladutt R. Pillani *v.* Bansilal Motilal (Ind.); **36.** *Prtnrs.* p. 59
Jyotiprasad Singh Deo *v.* Low (H. V.) & Co. (Ind.); **30.** *L. & T.* p. 40

K.

K. (otherwise G.) *v.* K. (1934); **27.** *H. & W.* No. 2384a
— *v.* K. (Can.) (1925); **27.** *H. & W.* p. 19
— *v.* — (Can.) (1933); **27.** *H. & W.* p. 71
— *v.* — (Can.) (1937); **3.** *Basty.* p. 60
K. B. S., The (1928); **1.** *Adm.* No. 1237b
K. E. *v.* Maung Tu Saw (Ind.); **37.** *Press*, p. 31
Kadishewitz *v.* Laurentian Insurance Co. (Can.); **29.** *Insce.* p. 28
Kaemena *v.* Central Bank of London, Ltd. (1888); **20.** *Eqy.* No. 755a
Kafiristan, The (1937); **41.** *Ship.* No. 7678a
Kaft *v.* Star Publishing Co. (Can.); **18.** *Discy.* p. 17
Kahn *v.* Aircraft Industries Corpn., Ltd. (1937); **1.** *Agcy.* No. 1755e
Kaik *v.* Boraski (Can.); **13.** *Corpns.* p. 28
Kaikushroo Tal-Yar-Khan *v.* Bai Gulab (Ind.); **5.** *Bkpcy.* p. 54; **42.** *Stk. Ex.* p. 34
Kaituna, The (1933); **41.** *Ship.* Nos. 5891a, 5925a
Kajee *v.* R. (S. Af.); **2.** *Animals*, p. 71
Kajee Bros. *v.* Moosa (S. Af.); **17.** *Deeds*, p. 30
Kajes *v.* Immigrants' Appeal Board (S. Af.); **2.** *Aliens*, p. 51
Kajner *v.* Kovacz (Can.); **7.** *Bounds. & F.* p. 15
Kalachand Mukherji *v.* Jatindra Mohan Banerji (Ind.); **37.** *Perps.* p. 4
Kalibia Owners *v.* Wilson (Aus.); **17.** *Dep.* p. 59
Kalikumari Baishnabi *v.* Manomohinee Baishnabi (Ind.); **6.** *B. of Exch.* p. 11
Kalle & Co., Ltd., *Re* (1921); **2.** *Aliens*, Nos. 195a, 405a
Kalmakoff *v.* Strelaeff (Can.); **39.** *S. Goods*, p. 60
Kalyani *v.* Krishnan Nambiar (Ind.); **30.** *Jdgmts.* p. 25
Kalyani Pillai *v.* Thiruvenkadaswami Ayyangki (Ind.); **16.** *Courts*, p. 18
Kamakhya Dat Ram *v.* Kushal Chand (Ind.); **16.** *Courts*, p. 16
Kamala Book Depot, Ltd. *v.* Soureendranath Mukherji (Ind.); **13.** *Coprt.* p. 11
Kamala Prosad Sukul *v.* Kishori Mohan Pramanik (Ind.); **38.** *Real Prop.* p. 99
Kamalkrishna Sanyal *v.* Madhusudan Chaudhuri (Ind.); **2.** *Agric.* p. 18
Kamenetz Podolsk, The (1937); **41.** *Ship.* No. 6180a
Kamini Kumar Basu *v.* Birendra Nath Basu (Ind.); **2.** *Arbn.* p. 73
Kamloops Copper Co., *Re*, *Ex p.* Kamloops (Can.); **4.** *Bkpcy.* p. 31
Kamloops (City), *Re* (Can.); **38.** *Pub. Hlth.* p. 33
Kamta Singh *v.* Chaturbhuj Singh (Ind.); **35.** *Mtge.* p. 42
Kane Estate, *Re* (Can.); **44.** *Wills*, p. 47
Kaneen *v.* Mellish (Can.); **7.** *Bounds. & F.* p. 15
Kangol (Manufacturing), Ltd. *v.* Centrokomise (London), Ltd. (1937); **43.** *Trade Mks.* No. 939a
Kankakee, The, The Hocking, The Genesee (1917); **37.** *Prsns.* No. 1302a
Kannammal *v.* Kanakasabai (Ind.); **42.** *Stats.* p. 23
Kantel *v.* Grant, Nisbet & Auld, Ltd., Watson & Dominion Battery Co., Ltd. (Can.); **13.** *Coprt.* p. 8
Kanwar Bhan-Sukha Nand *v.* Ganpat Rai-Ram Jiwan (Ind.); **12.** *Contr.* p. 20; **25.** *Gaming*, p. 26
Kaplan, *Re*, McLean (J. J. H.) Estate Co. *v.* Newton (Can.); **4.** *Bkpcy.* p. 31
Kapoor Lumber Co., Ltd. *v.* Canadian Northern Pacific Ry. Co. (Can.); **18.** *Discy.* p. 10
— *v.* — (No. 2) (Can.); **36.** *Negl.* p. 24
Kapur *v.* Trentham (Percy), Ltd. (1938); **17.** *Damgs.* No. 833a
Kapurji Magniram *v.* Panaji Derichand (Ind.); **1.** *Agcy.* p. 102; **36.** *Prtnrs.* p. 59
Karberg *v.* Grantham Township (Can.); **26.** *Hghys.* p. 30
Karberg's Case, *Re* Metropolitan Coal Consumers' Assocn. (1892); **9.** *Coys.* No. 614a
Karflex, Ltd. *v.* Poole (1933); **3.** *Bailmt.* No. 268a
Karim Bakhsh *v.* R. (Ind.); **14.** *Crim.* p. 52
Karrar *v.* Schubert (Can.); **12.** *Contr.* p. 12
Karsgaard *v.* Bailey (Can.); **7.** *Bldg. Conts.* p. 25
Karst *v.* Berlinski (Can.); **3.** *Basty.* p. 60
Kartar Singh Giani *v.* Ladha Singh (Ind.); **13.** *Coprt.* p. 15
Kasler & Cohen *v.* Slavouski (1928); **17.** *Damgs.* No. 227a
Kaslo Municipal Voters' List, *Re* (Can.); **20.** *Elect.* p. 1
Kasofsky *v.* Kreegers (1937); **10.** *Coys.* No. 4767a
Kassler *v.* Byrne (N.Z.); **36.** *Negl.* p. 34
Kassop *v.* Evans (Nfld.); **21.** *Exon.* p. 46
Kastamonia Copper Syndicate, Ltd. *v.* Inland Revenue Comrs. (1938); **28.** *Inc. T.* No. 674v
Kastaniuk *v.* Sarsons (Can.); **2.** *Animals*, p. 70
Kaster *v.* Cowan (Can.); **2.** *Animals*, p. 68; **17.** *Deeds*, p. 29
Kate, The (1935); **41.** *Ship.* No. 8693a
Katherine et cie., Ltd., *Re* (1932); **10.** *Coys.* Nos. 5815a, 5959c
Kathleen, The (1925); **1.** *Adm.* No. 1553b
Katz *v.* Consolidated Motors, Ltd. & Thomson (Can.); **42.** *Str. Traf.* p. 39
Katzenstein *v.* Duvenhage (S. Af.); **36.** *Negl.* p. 25
Katzman *v.* Ownahome Realty Co. (Can.); **1.** *Agcy.* p. 103; **17.** *Deeds*, p. 29
Kaufield *v.* Kaufield (Can.); **27.** *H. & W.* p. 25
Kaufman *v.* British Surety Insurance Co., Ltd. (1929); **29.** *Insce.* Nos. 11a, 36a, 218a
Kaufman Segal & Domb, *Re*, *Ex p.* Trustee (1923); **5.** *Bkpcy.* Nos. 6802a, 6879a
Kaulbach *v.* Boylan (Can.); **28.** *Injon.* p. 145
— *v.* Cook (Can.); **32.** *Limit. of A.* p. 37
— *v.* Eichel (Can.); **12.** *Contr.* pp. 33, 45
— *v.* Lavender (Can.); **21.** *Exon.* p. 43

Kaulbach *v.* Taylor (Can.); **35.** *Mtge.* p. 45
Kavanagh *v.* Whittle (Ir.); **31.** *L. & T.* pp. 87, 94
Kavaner *v.* Bowhey (Can.); **9.** *Coys.* p. 50; **35.** *Misrep.* p. 1
Kawaluk *v.* Kawaluk (Can.); **27.** *H. & W.* p. 2
Kawasaki Kisen Kabushiki Kaisha *v.* Bantham S.S. Co., Ltd. (1938); **41.** *Ship.* No. 2073b
Kawasaki Kisen Kabushiki Kaisha of Kobe *v.* Bantham S.S. Co., Ltd. (No. 2) (1938); **41.** *Ship.* No. 2765a
Kawin *v.* Kawin (Can.); **27.** *H. & W.* p. 5
Kawula *v.* R. (S. Af.); **14.** *Crim.* p. 38
Kay *v.* Kay (1931); **27.** *H. & W.* No. 6255b
— (otherwise Gunson) *v.* — (1934); **27.** *H. & W.* No. 2384a
Kaye, *Re* (1822); **16.** *Cr. Pract.* No. 3352a
Kaye (Dewsbury Revenue Officer) *v.* Burrows & Dewsbury Assessment Committee (1931); **38.** *Rates*, No. 226p
Kaye (Barnsley Revenue Officer) *v.* Eyre Bros., Ltd. (1931); **38.** *Rates*, No. 226t
Kaye Steam Navigation Co., Ltd. *v.* Barnett (W. & R.), Ltd. (1932); **41.** *Ship.* No. 2931a
Kayley *v.* Hothersall (1925); **21.** *Exon.* No. 88a
Kazakewich *v.* Kazakewich & A.-G. for Alberta (Can.); **17.** *Dep.* p. 53
Kean *v.* Edwards (Can.); **2.** *Arbn.* p. 99
Kean & Bird, *Re* (Can.); **16.** *Cntmpt.* p. 7
Keane, *Re* (Ir.); **5.** *Bkpcy.* p. 80
—, *Re*, Lumley *v.* Desborough (1871); **28.** *Infts.* No. 42a
— *v.* Australian S.S. Pty., Ltd. (Aus.); **41.** *Ship.* p. 38
— *v.* Canadian Pacific Ry. Co. (Can.); **12.** *Contr.* p. 47
— *v.* Mount Vernon Colliery Co., Ltd. (1933); **34.** *Mast. & S.* No. 2113b
Kearl *v.* Wonnacott (Can.); **25.** *Fraud. Conv.* p. 13
Kearley *v.* Wiley (Can.); **42.** *Stats.* p. 25
Kearney *v.* Creelman (Can.); **38.** *Real Prop.* p. 99
— *v.* Kearney (Can.); **27.** *H. & W.* p. 58
Kearney's Estate, *Re*, Whitehurst, Appellant (Aus.); **21.** *Estpl.* p. 40
Kearns, *Ex p.*, *Re* Gartrell (Can.); **4.** *Bkpcy.* p. 1
— *v.* Bedford (1934); **31.** *L. & T.* No. 7356a
— *v.* Gee, Walker & Slater, Ltd. (1937); **24.** *Fact.* Nos. 153b, 180c
Kearry *v.* Pattinson (1938); **2.** *Animals*, No. 50a
Keating, *Re* (Can.); **40.** *Sttlmts.* p. 34
— *v.* Horwood (1926); **25.** *Food*, No. 414a
— *v.* Keating (Ir.); **33.** *Lunat.* p. 13
Keatley *v.* Spearing (Can.); **36.** *Negl.* p. 15
Keay *v.* Alberta Co-operative Wheat Producers, Ltd. & Alberta Pool Elevators, Ltd. (Can.); **2.** *Arbn.* p. 81
Keddy *v.* Daurey (Can.); **12.** *Contr.* p. 9
Keech *v.* Canadian Bank of Commerce. (Can.); **3.** *Bank*, p. 34
Keefe *v.* McLennan (Can.); **17.** *Dep.* p. 51
Keefer *v.* Wilks, *Re* Wilks (1935); **11.** *Confl.* No. 638a
Keegan *v.* Dawson (Ir.); **34.** *Mast. & S.* p. 30
Keeley *v.* English Electric Co., Ltd. (1935); **34.** *Mast. & S.* No. 2647d
Keeling *v.* Cook (1934); *Pract.* No. 2017a
Keeling & Sons *v.* London & North Eastern Ry. Co. (1937); **8.** *Carr.* No. 1616
Keen, *Re*, Evershed *v.* Griffiths (1937); **43.** *Trusts*, No. 470a
— *v.* Mear (1920); **1.** *Agcy.* Nos. 834b, 836a
Keenan *v.* Wallace (Ir.); **32.** *Libel*, p. 10
Keenan Brothers, Ltd. *v.* Langdon (Can.); **32.** *Lien*, p. 23
Keene, *Ex p.* (Aus.); **34.** *Med.* p. 190
—, *Re* (1922); **5.** *Bkpcy.* Nos. 5495b, 5811a
Keene *v.* Colley (Can.); **17.** *Dep.* p. 36
Keenleyside *v.* Partridge (Can.); **25.** *Fraud. Conv.* p. 13
Keep Brothers *v.* Birch & Bradshaw (N.Z.); **18.** *Discy.* pp. 7, 12
Keep, McPherson, Ltd., *Re* (Aus.); **39.** *Revenue*, p. 15
Keetch *v.* Johnson (Can.); **36.** *Negl.* p. 24
Keewatin Power Co., Ltd. *v.* Keewatin Flour Mills Co., Ltd. (Can.); **11.** *Const. L.* pp. 76, 77; **16.** *Cr. Pract.* p. 24; **17.** *Deeds*, p. 29
— *v.* Lake of the Woods Milling Co., Ltd. (1930); **19.** *Easmt.* Nos. 267a, 273a
— *v.* — (Can.); **11.** *Const. L.* pp. 76, 77; **16.** *Cr. Pract.* p. 24; **17.** *Deeds*, p. 29
Keifer *v.* Enders (Can.); **1.** *Agcy.* p. 79
Keighley Corpn. *v.* Yorkshire Theatres, Ltd. (1937); **42.** *Str. Traf.* No. 5c
Keill *v.* Hunter (Can.); **40.** *S. Land*, p. 9
Keily *v.* Edmonton (City) (Can.); **38.** *Pub. Hlth.* p. 15
Keir *v.* Robins (1838); **31.** *L. & T.* No. 2286a
Keith, *Re*, Keith *v.* Eastern Trust Co. (Can.); **43.** *Trusts*, p. 64
— *v.* Eastern Trust Co., *Re* Keith (Can.); **43.** *Trusts*, p. 64
— *v.* Keith, *Re* Keith Trusts (Ir.); **43.** *Trusts*, p. 59
— *v.* Lincoln Pulpwood Co. (Can.); **17.** *Damgs.* p. 8
Keith Trusts, *Re*, Keith *v.* Keith (Ir.); **43.** *Trusts*, p. 59
Kelantan Government *v.* Duff Development Co. (1923); **2.** *Arbn.* No. 1644a
Kelby & Vernon *v.* Steel (1805); **26.** *Guar.* No. 1062a
Kellett *v.* Kellett (Aus.); **27.** *H. & W.* p. 43
Kelleway, *Ex p.*, *Re* Southern Cross Motor Fuels, Ltd. (Aus.); **10.** *Coys.* p. 73
Kelley, *Re* (Can.); **8.** *Char.* p. 73
— *v.* Hart (Can.); **32.** *Libel*, p. 17
Kellie *v.* Industrial Loan & Finance Corpn. (Can.); **32.** *Loan Soc.* p. 45
Kellington *v.* Rosa (Can.); **29.** *Intpr.* p. 65
Kellogg *v.* Dappen (Can.); **2.** *Animals*, p. 57
Kellogg Co. of Great Britain, Ltd.'s Application, *Re*, *Re* Shredded Wheat Co., Ltd.'s Trade Mark No. 590, 671 "Shredded Wheat" (1937); **43.** *Trade Mks.* No. 113c
Kelly, *Ex p.*, R. *v.* Belfast Recorder (Ir.); **28.** *Inc. T.* p. 104
—, *Ex p.*, R. *v.* Dalby Licensing Authority (Aus.); **16.** *Cr. Pract.* p. 43; **30.** *Intox. L.* p. 6
—, *Re* (Can.); **37.** *Poor L.* p. 16
— *v.* Allen (1936); **15.** *Crim.* No. 8177b
— *v.* Brown (1836); *Pract.* No. 4458a
— *v.* Constitution Indemnity Co. of Philadelphia (Can.); **29.** *Insce.* p. 41
— *v.* Grimmer S. D. 25 (Can.); **19.** *Educ.* p. 47
— *v.* John Wallis & Son, Automatic Scale Co. (Ireland), Ltd. (Ir.); **34.** *Mast. & S.* p. 38
— (otherwise Hyams) *v.* Kelly (1932); **27.** *H. & W.* No. 140a
— *v.* Kelly (Can.); **22.** *Evid.* p. 25
— *v.* Kelly (Scot.); **27.** *H. & W.* p. 53
— *v.* O'Brian (Can.); **28.** *Infts.* p. 132
— *v.* Peacock (Scot.); **25.** *Fr. Soc.* p. 21
— *v.* Rae (Aus.); **12.** *Contr.* p. 33
— *v.* Rogers (1935); **28.** *Inc. T.* Nos. 1a, 568a
— *v.* Saint John River Power Co. (Can.); **38.** *Rates*, p. 50
— *v.* Sullivan (Can.); **17.** *Dep.* p. 66
— *v.* Wyld (1937); **8.** *Clubs*, No. 13b
— Brothers & Co. *v.* Tourist Hotel Co. (Can.); **32.** *Lien*, p. 20
Kelly Piano Co. *v.* Nash (Can.); **2.** *Agric.* p. 15

Kelowna Growers' Exchange & Okanagan United Growers *v.* De Caqueray (Can.); **28.** *Injon.* p. 149
Kelpon *v.* Stewart (Can.); **31.** *L. & T.* p. 60
Kelsall Parsons & Co. *v.* Inland Revenue (Scot.); **28.** *Inc. T.* p. 44
Kelsey *v.* Birmingham Corpn. (1927); **34.** *Mast. & S.* No. 628b
Kelsey *v.* Kelsey (1922); **23.** *Exors.* No. 425a
Kelso *v.* McLachlan (Aus.); **25.** *Gaming*, p. 41
— *v.* Roblin Rural Municipality (Can.); **26.** *Hghys.* p. 28
Kelty Gas Co. *v.* Fife Assessor (Scot.); **38.** *Rates*, p. 74
Kelvington Grain Growers' Co-operative Assocn., *Re* (Can.); **4.** *Bkpcy.* p. 25
Kemble, *Re*, Nash *v.* Lombardini (1931); **8.** *Char.* No. 692a
Kemish *v.* Betson (1732); **24.** *Exors.* No. 6861b
Kemp *v.* Ballachulish Estate Co. (Scot.); **31.** *L. & T.* p. 95
— *v.* Beattie (Can.); **17.** *Dep.* p. 72; **28.** *Infts.* pp. 132, 142
— *v.* Evans (1935); **28.** *Inc. T.* No. 507b
Kemp (Lady) *v.* Kemp (1671); **20.** *Eqy.* No. 2188a
Kemp *v.* Waddingham (1866); **23.** *Exors.* No. 4210a
Kemp & Toronto, *Re* (Can.); **38.** *Rates*, p. 50
Kempfert *v.* Continental Casualty Co. (Can.); **29.** *Insce.* p. 58
Kempthorne, *Re*, Charles *v.* Kempthorne (1930); **20.** *Eqy.* No. 817a; **23.** *Exors.* No. 5917f
Kempton *v.* Packham (1790); **31.** *L. & T.* No. 2282b
— *v.* Public Trustee (N.Z.); **27.** *H. & W.* p. 4
Kendall *v.* R. (Can.); **16.** *Cr. Pract.* p. 24
Kendrick *v.* Dominion Bank & Bownas (Can.); **3.** *Bank.* p. 31; **6.** *B. of Exch.* p. 1
Kendrick & Milk Control Board, *Re* (Can.); **25.** *Food.* p. 10
Kennedy *v.* Agricultural Development Board (Can.); **35.** *Mtge.* p. 34
— *v.* Berryman (N.Z.); **31.** *L. & T.* p. 48
— *v.* Haddow (Can.); **32.** *Lien*, p. 26
— *v.* Harris (Can.); **17.** *Damgs.* p. 19
— *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 75; **38.** *Rates*, p. 81
— *v.* R. (Can.); **15.** *Crim.* p. 99
— *v.* Shotts Iron Co. (Scot.); **34.** *Mast. & S.* p. 99
— *v.* Suydam (Can.); **23.** *Exors.* p. 34
— *v.* Thomassen (1929); **12.** *Contr.* Nos. 387a, 3081a; **39.** *Rntchgs.* No. 247a
— *v.* Victory Land & Timber Co. (Can.); **1.** *Agcy.* p. 78
Kennedy Estate, *Re*, Kennedy Estate Exors. *v.* Jickling (Can.); **44.** *Wills*, p. 34
Kennedy Lumber Co., Ltd. *v.* Porter (Can.); **42.** *Str. Traf.* p. 36
Kenneth Staples Drug Co., *Ex p.*, *Ex p.* Crowley (Can.); **16.** *Cr. Pract.* p. 43; **30.** *Intox.* p. 6
Kenney *v.* R. (Can.); **16.** *Cr. Pract.* p. 24
Kennington, *Ex p.* (1862); **16.** *Courts*, No. 365a
Kenny *v.* Electricity Supply Board (Ir.); **20.** *Electric*, p. 16
— *v.* Kenny (Can.); **35.** *Mtge.* p. 45
— *v.* Lockwood (Can.); **34.** *Med.* p. 186
Kensington, *Ex p.* (1862); **16.** *Courts*, No. 373
—, *Ex p.* (1863); **16.** *Courts*, No. 365a
Kent *v.* Abrahams (1928); **26.** *Guar.* No. 1115a
— *v.* Ellis (Can.); **12.** *Contr.* p. 17
— *v.* Mercer (Can.); **26.** *Guar.* p. 4
— *v.* R. (Can.); **28.** *Inc. T.* p. 6
Kent Coal Co., Ltd. *v.* Northwestern Utilities, Ltd. (Can.); **30.** *Jdgmts.* p. 22
Kenyon *v.* Darwen Cotton Manufacturing Co., Ltd. (1936); **24.** *Fact.* No. 275b
Kenyon *v.* Street (1931); **24.** *Fact.* No. 211b
Kenzie *v.* Hart (Can.); **36.** *Negl.* p. 29
Keogh (Doe d.) *v.* Calhoun (Can.); **21.** *Exon.* p. 45
Keogh *v.* Dalgety & Co. (Aus.); **1.** *Agcy.* p. 73
— *v.* Edinburgh Magistrates (Scot.); **26.** *Hghys.* p. 26
Keohane *v.* Dorman, Long & Co. (1934); **34.** *Mast. & S.* No. 3283n
— *v.* — (No. 2) (1935); **34.** *Mast. & S.* No. 3940a
Keough *v.* Price (Can.); **7.** *B. of Sale*, p. 8
Keppel *v.* Wheeler (1927); **1.** *Agcy.* Nos. 1263a, 1853a; **12.** *Contr.* No. 540a
Ker's Trustees *v.* Ker (Scot.); **28.** *Infts.* p. 135
Keratos, S.S. *v.* Fabian, S.S. (S. Af.); **1.** *Adm.* p. 30
Kered, Ltd. *v.* Inland Revenue Comrs. (1938); **28.** *Inc. T.* No. 674w
Keren Kayemeth Le Jisroel, Ltd. *v.* Inland Revenue Comrs. (1932); **19.** *Eccl.* No. 4047a; **28.** *Inc. T.* No. 476e
Kerley *v.* London & Lake Erie Ry. & Transportation Co. (Can.); **17.** *Dep.* p. 52
Kern (P. E. & B. E.), *Re* (1932); **5.** *Bkpcy.* No. 6918c
—, *Re*, Thomas Henry Ltd. *v.* Trustee (1932); **5.** *Bkpcy.* No. 6918c
Kern Agencies, Ltd., *Re* (Can.), [1931] 1 W. W. R. 304; **42.** *Stk. Ex.* p. 33
— *Re* (Can.), [1931] 1 W. W. R. 629; **5.** *Bkpcy.* p. 93
— (No. 2), *Re* (Can.); **5.** *Bkpcy.* p. 93
— (No. 3), *Re* (Can.); **42.** *Stk. Ex.* p. 34
— (No. 4), *Re* (Can.); **17.** *Custom*, p. 2
Kerr, *Re* (Can.); **44.** *Wills*, p. 28
Kerr, *Re*, *Ex p.* Martin (Can.); **7.** *B. of Sale*, p. 9
— *v.* Atlantic & North-West Ry. Co. (Can.); **32.** *Limit. of A.* p. 31
— *v.* Bradford (Can.); **36.** *Prtnrs.* p. 63
— *v.* Bradley, *Re* King (1923); **8.** *Char.* Nos. 3a, 238a, 1444a
— *v.* Bright (T. G.) & Co., Ltd. (Can.); **30.** *Intox.* p. 11
— *v.* Capital Grocery, Ltd. (Can.); **5.** *Bkpcy.* p. 80
— *v.* Connell (Can.); **2.** *Agric.* p. 21
— *v.* Department of Health for Scotland (Scot.); **44.** *Work*, p. 64
— *v.* Ferguson (Scot.); **11.** *Confl.* p. 44
— *v.* Haug Motors, Ltd. (No. 2) (Can.); **42.** *Str. Traf.* p. 60
— *v.* Hill (Scot.); **15.** *Crim.* p. 78
— *v.* Income Tax Superintendent & A.-G. for Alberta (Can.); **17.** *Dep.* p. 50
— *v.* Kerr (Can.), [1932] O. R. 289; **17.** *Dep.* p. 56
— *v.* — (Can.), [1932] O. R. 601; **27.** *H. & W.* p. 2
— *v.* Lloyd (Can.); **38.** *Pub. Hlth.* p. 31
— *v.* Louisson (N.Z.); **35.** *Money*, p. 22
— *v.* Marine Products, Ltd. (1928); **9.** *Coys.* No. 2965a
— *v.* Motor-car Loan Co., Ltd. (Can.); **39.** *S. Goods*, p. 59
— *v.* Scovil (Can.); **21.** *Exon.* p. 44
— *v.* Stephen (Can.); **36.** *Negl.* p. 33
— *v.* Wiens (Can.); **2.** *Agric.* p. 25
Kerr & London, Midland & Scottish Ry. Co. *v.* Brown (1936); **8.** *Carr.* No. 1530
Kerridge *v.* Girling-Butcher (N.Z.); **17.** *Dep.* p. 36
Kerschner *v.* Convention of Baptist Churches (Can.); **35.** *Mtge.* p. 48
Kershaw *v.* United Artists (Can.); **1.** *Agcy.* p. 55
Kershaw Theatres, Ltd. *v.* Reaney (Can.); **15.** *Crim.* p. 88

Kerston *v.* Tane, *Re* White (Can.); **12.** *Contr.* p. 10
Kesho Sahu *v.* Musammat Muktakiman (Ind.); **1.** Action, p. 7
Keslering *v.* Keslering (otherwise Neverka) & Neverka (Can.); **27.** *H. & W.* p. 33
Kessoram, Poddar & Co. *v.* Secretary of State for India (Ind.); **38.** *Pub. Auth.* p. 6
Kester *v.* Hamilton (Can.); **36.** *Negl.* p. 6
Kestos, Ltd. *v.* Kempat, Ltd. & Vivian Fitch Kemp, *Re* Kestos, Ltd. Registered Design (No. 725,716) (1935); **43.** *Trade Mks.* No. 948a
Keswick *v.* Keswick (1936); **44.** *Wills*, No. 8919a
— *v.* Wright (Scot.); **2.** *Agric.* p. 8
Ketchen *v.* R. (Can.); **16.** *Cr. Pract.* p. 24
Kettenbach Farms, Ltd. *v.* Henke (Can.); **2.** *Agric.* p. 26
Kettle *v.* Dunster & Wakefield (1927); **6.** *B. of Exch.* No. 763b; **10.** *Coys.* No. 5036a
Kettles & Gas Appliances, Ltd. *v.* Anthony Hordern & Sons, Ltd. (Aus.); **43.** *Trade Mks.* p. 42
Kevorkian *v.* Burney (1937); *Pract.* No. 3693a
— *v.* — (No. 2) (1937); *Pract.* No. 4516a
Kewene *v.* Buckland & Sons (N.Z.); **18.** *Distr.* p. 30
Key *v.* British Columbia Electric Ry. Co. (Can.); **36.** *Negl.* p. 31
— *v.* Key (Can.); **8.** *Carr.* p. 9; **22.** *Evid.* p. 26
Keyes Estate, *Re*, Keyes *v.* Grant (Can.); **43.** *Trusts*, p. 59
Khama *v.* Ratshosa (1931); **17.** *Dep.* No. 234b
Khambatta *v.* Khambatta (Ind.); **11.** *Confl.* p. 46
Khan Gul *v.* Lakha Singh (Ind.); **28.** *Infts.* p. 131
Khan's Estate, *Re*, Raymond *v.* Master of the Supreme Court (S. Af.); **44.** *Wills*, p. 19
Kharkharee Collieries, Ltd., *Re* (Ind.); **10.** *Coys.* p. 66
Khattar, *Re*, *Re* Thebault (Can.); **30.** *Intox.* p. 18
Khitish Chandra Deb Roy *v.* R. (Ind.); **15.** *Crim.* p. 100
Khondkar Mahammad Saleh *v.* Chandra Kumar Mukherji (Ind.); **32.** *Limit. of A.* p. 28
Khoo Hooi Leong *v.* Khoo Chong Yeok (Straits Settlements); **3.** *Basty.* p. 52
— *v.* Khoo Hean Kwee (1926); **3.** *Basty.* p. 52; **16.** *Courts*, No. 585a
Khoo Tek Keong *v.* Ch'ng Joo Tuan Neoh (Straits Settlements); **43.** *Trusts*, p. 72
Kibblewhite *v.* Garland (N.Z.); **40.** *S. Land.* p. 2
Kicul (or Kitziel or Kitzul) *v.* Bulycz & Spilchuk (Can.); **19.** *Eccl.* p. 32
Kidd *v.* Harden (Can.); **8.** *Chos.* p. 92
— *v.* R. (Can.); **39.** *Revenue*, p. 27
— *v.* Rawlinson (1800); **25.** *Fraud. Conv.* No. 339a
— *v.* Tallentire (1877); **21.** *Exon.* No. 1552a
Kidderminster Mutual Benefit Building Society *v.* Haddock (1936); **7.** *Bldg. Soc.* No. 158a
Kiddie *v.* Port of London Authority (1929); **34.** *Metrop.* No. 29a
Kidman *v.* Commonwealth of Australia (Aus.); **2.** *Arbn.* p. 101
Kidner, *Re*, Kidner *v.* Kidner (1929); **9.** *Coys.* No. 2224a; **10.** *Coys.* No. 4829a
Kidston (A. G.) & Co. *v.* Seth Brothers (Ind.); **6.** *B. of Exch.* p. 3
Kiehl *v.* Fussel (Can.); **5.** *Bkpcy.* p. 67
Kier & Co., Ltd. *v.* Whitehead Iron & Steel Co., Ltd. (1938); **39.** *S. Goods*, No. 1715a
Kijko *v.* Bacyzski (Can.); **3.** *Basty.* p. 53; **12.** *Contr.* p. 24
Kilbane *v.* Whitehaven Colliery Co., Ltd. (1933); **34.** *Mast. & S.* No. 2970b
Kilborn *v.* Forester (Can.); **12.** *Contr.* p. 11
Kilbride *v.* Cameron (Can.); **21.** *Exon.* p. 47
— *v.* William Harrison, Ltd. (1933); **34.** *Mast. & S.* No. 3811g
Kilgren *v.* Browning Rural Municipality (Can.); **34.** *Mast. & S.* p. 36
Killam *v.* McLeod (Can.); **18.** *Distr.* p. 24
Killeen *v.* Butler (Can.); **1.** *Agcy.* p. 74
Killen *v.* MacMillan (1931); **36.** *Pats.* Nos. 2570a, 2997a
— *v.* — (1932); **36.** *Pats.* Nos. 3314a, 3314b
Kilmer & Toronto, *Re* (Can.); **38.** *Rates*, p. 50
Kilners, Ltd. *v.* John Dawson Investment Trust, Ltd. (Aus.); **32.** *Lien*, p. 20
Kilpatrick *v.* Christchurch Tramway Board (N.Z.); **8.** *Carr.* p. 7
— *v.* Kilpatrick (Can.); **11.** *Confl.* p. 46
Kimber, *Re*, Vale *v.* Rockman (1928); **3.** *Bank.* No. 112c; **39.** *Revenue*, No. 843a
— *v.* Press Assocn. (1893); **16.** *Courts*, No. 289a
Kimber Coal Co. *v.* Stone & Rolfe, Ltd. (1926); **1.** *Agcy.* No. 2474a
Kimbers & Co. *v.* Inland Revenue Comrs. (1936); **39.** *Revenue*, No. 658a
Kime *v.* Hamilton Radial Electric Ry. Co. (Can.); **8.** *Carr.* p. 7
Kimmitt *v.* R. (Can.); **11.** *Const. L.* p. 67
Kimniak *v.* Anderson (Can.); **21.** *Exon.* p. 51
Kin Tye Loong *v.* Seth (1920); **4.** *Bkpcy.* No. 3264a
Kinch *v.* Walcott (1929); **21.** *Estpl.* No. 104a
Kinemas (H. & G.), Ltd. *v.* Cook (1933); **28.** *Inc. T.* No. 200c
King, *Re* (Can.); **38.** *Real Prop.* p. 91
—, *Re*, Henderson *v.* Cranmer (1931); **8.** *Char.* No. 691c
—, *Re*, Kerr *v.* Bradley (1923); **8.** *Char.* Nos. 3a, 238a, 1444a
—, *Re*, King *v.* King (Aus.); **44.** *Wills*, p. 38
—, *Re*, Public Trustee *v.* Aldridge (1928); **40.** *Stllmts.* No. 1059a
— *v.* Bird (1909); **35.** *Mtge.* No. 772a
— *v.* British Steel Corpn., Ltd. (1928); **34.** *Mast. & S.* No. 3745a
— *v.* Bull (1937); **42.** *Tele.* No. 61a
— *v.* Dominion Bank (Can.); **7.** *B. of Sale*, p. 8
— *v.* King (Can.); **17.** *Dep.* p. 53
— *v.* — (Ind.); **27.** *H. & W.* p. 38
— *v.* —, *In the Estate of* Uzking (Can.); **33.** *Lunat.* p. 13
— *v.* —, *Re* King (Aus.); **44.** *Wills*, p. 38
— *v.* —, *Re* King's Settlement (1931); **21.** *Estpl.* No. 828a
— *v.* King & Evans (1929); **27.** *H. & W.* No. 3077a
— *v.* Kuhn (Can.); **7.** *B. of Sale*, p. 12
— *v.* Lucas (1883); **27.** *H. & W.* No. 1489a
— *v.* Pennell (Aus.); **44.** *Waters*, p. 2
— *v.* Price (1816); **2.** *Animals*, No. 390b
— *v.* Riley (Can.); **26.** *Hghys.* p. 28
— *v.* Schon (Can.); **1.** *Agcy.* pp. 50, 78
— *v.* Terry, *Re* Burke (1919); **5.** *Bkpcy.* No. 6115a
— *v.* Travellers' Insurance Assocn., Ltd. (1931); **29.** *Insce.* No. 3282c
— *v.* Truro, Bishop (1937); **19.** *Eccl.* No. 627b
— *v.* Turner (1824); **40.** *S. Land*, No. 228a
King & Boyd *v.* Porter (Ir.); **6.** *B. of Exch.* p. 14
King & Scott, *Re* (N.Z.); **14.** *Crim.* p. 57
King Edward VII Welsh National Memorial Assocn. *v.* South-East Glamorgan Assessment Committee (1937); **38.** *Rates*, No. 1121a
King Line, Ltd. *v.* Westralian Farmers, Ltd. (1932); **35.** *Money*, No. 171

King Lumber Mills *v.* Canadian Pacific Ry. Co. (Can.); **18.** *Discy.* pp. 16, 17
King Orry S.S. Owners *v.* Rockabill S.S. Owners & Mersey Docks & Harbour Board (1937); **41.** *Ship.* No. 8632a
King's Hall Motor Co. *v.* Wickens & McNicol (S. Af.); **32.** *Lien*, p. 21
King's Settlement, *Re*, King *v.* King (1931); **21.** *Estpl.* No. 828a
King's Theatre, Sunderland, *Re*, Denman Picture Houses *v.* Thompson & Collins Enterprises (1929); **13.** *Cohlds.* Nos. 2032b, 2032c; **43.** *Trusts*, No. 1434a
Kingcome, *Re*, Hickley *v.* Kingcome (1936); **39.** *Rntchgs.* No. 587b
Kingdoc, The *v.* Canada S.S. Lines, Ltd. (Can.); **41.** *Ship.* p. 49
Kingham *v.* Seager (1938); **42.** *Str. Traf.* No. 222k
Kingman *v.* Seager (1938); **42.** *Str. Traf.* No. 222k
Kingsley *v.* Adler (1929); **31.** *L. & T.* No. 7359b
Kingston *v.* Highland (Can.); **7.** *Bounds. & F.* p. 15
Kingston Auto Wreckers, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 38
Kingston Light, Heat & Power Co. & Kingston Corpn., *Re* (Can.); **11.** *Comp. Pche.* p. 18
Kingston Mill, Stockport, Ltd. *v.* Owen (1928); **38.** *Rates*, No. 1184a
Kingstown, The (1929); **41.** *Ship.* No. 5566a
Kinlan *v.* Ulster Bank, Ltd. (Ir.); **3.** *Bank.* p. 31
Kinloch *v.* Inland Revenue Comrs. (1929); **28.** *Inc. T.* No. 614b
Kinneil Cannel & Coking Coal Co Ltd. *v.* Sneddon (or Waddell) (1931); **34.** *Mast. & S.* No. 4068b
— *v.* Waddell (1931); **34.** *Mast. & S.* No. 4068b
Kinney *v.* Dudman (Can.); **17.** *Dep.* p. 40
— *v.* Lockwood Clinic, Ltd. (Can.); **34.** *Med.* p. 185
Kinniburgh, *Re* (Can.); **5.** *Bkpcy.* p. 73
Kinning *v.* Buchanan (1849); **42.** *Solrs.* No. 4177a
Kinsella *v.* Gillis (Can.); **43.** *Trov.* p. 57
Kipp *v.* Simpson (Can.); **17.** *Deeds*, p. 33
Kippan *v.* McCaw (Can.); **7.** *B. of Sale*, pp. 8, 10
Kirby *v.* Clonmel Corpn. (Ir.); **28.** *Inc. T.* p. 17
— *v.* Palmer (Can.); **36.** *Negl.* p. 23
— *v.* Wilkins (1929); **9.** *Coys.* No. 2452a
Kirchhoffer *v.* Clement (Can.); **21.** *Exon.* p. 45
Kirchner *v.* United British S.S. Co. (Can.); **34.** *Mast. & S.* p. 19
Kirk *v.* Eustace (1937); **27.** *H. & W.* No. 2037a
— *v.* Greaves (N.Z.); **17.** *Deeds*, p. 31
— *v.* Harvey (Can.); **35.** *Mtge.* p. 41
— *v.* Kirk (Can.); **2.** *Arbn.* p. 101
— *v.* Kirk & Gundy (1934); **27.** *H. & W.* Nos. 4355b, 4355c
— *v.* Lee (Can.); **24.** *Exors.* p. 36
— (Doe d.) *v.* Roe (1838); **19.** *Eccl.* No. 4033a
Kirkby *v.* Canadian Indemnity Co. (Can.); **29.** *Insce.* p. 28
— *v.* Minty (1929); **39.** *Revenue*, No. 811a; **42.** *Str.* Traf. No. 117b
Kirke's Trustees *v.* Inland Revenue Comrs. (1926); **28.** *Inc. T.* No. 99d
Kirkham *v.* Kirkham (Can.); **21.** *Exon.* p. 56
— *v.* Webb & Corbett, Ltd. (1933); **34.** *Mast. & S.* No. 3821g
Kirkham & R., *Re* (Can.); **30.** *Intox.* p. 15
Kirkland *v.* Merrett & McLucas (N.Z.); **36.** *Negl.* p. 23
Kirkpatrick *v.* Bartlett (Aus.); **25.** *Food*, p. 10
— *v.* Canadian Pacific Ry. Co. (Can.); **18.** *Discy.* p. 22
Kirkpatrick & Moroughan, *Re* (Can.); **3.** *Basty.* p. 59
Kirlew *v.* Butts (1831); **21.** *Exon.* No. 1944
Kirpa Singh *v.* Ajaipal Singh (Ind.); **1.** *Action*, p. 2; **42.** *Stats.* p. 25
Kirwan *v.* Kirwan (1834); **36.** *Prtnrs.* No. 656a
Kisch, *Ex p.*, R. *v.* Carter (Aus.); **16.** *Cr. Pract.* p. 28; **17.** *Dep.* p. 62
—, *Ex p.* R. *v.* Fletcher (Aus.); **16.** *Cntmpt.* p. 2
—, *Ex p.*, R. *v.* Wilson (Aus.); **2.** *Aliens*, p. 48
— *v.* Hawes Bros., Ltd. (1935); **30.** *L. & T.* No. 1308a; **31.** *L. & T.* No. 6165a
Kishan Singh *v.* R. (Ind.); **14.** *Crim.* pp. 30, 63; **17.** *Dep.* p. 84
Kishori Prasad Bhakat *v.* Secretary of State for India in Council (Ind.); **12.** *Contr.* p. 22
Kitano Maru S.S. Owners *v.* Otranto S.S. Owners, The Otranto (1931); **41.** *Ship.* No. 5935c
Kitcat *v.* King (1930); **23.** *Exors.* No. 1351a; **44.** *Wills*, Nos. 717a, 1097a
Kitchen, *Ex p.*, R. *v.* News of the World, Editor, Printers & Publishers of (1932); **16.** *Cntmpt.* No. 180b
Kitchen *v.* Boon (Can.); **40.** *S. Land.* p. 2
— *v.* Koch (C.) & Co., Ltd. (1931); **34.** *Mast. & S.* Nos. 3038a, 3815a
Kitchen Overall & Shirt Co., Ltd. *v.* Elmira Shirt & Overall Co., Ltd. (Can.); **43.** *Trade Mks.* p. 43
Kitchener *v.* Evening Standard Co., Ltd. (1936); **15.** *Crim.* No. 8178a
Kitchener City *v.* Robe & Clothing Co. (Can.); **26.** *Hghys.* p. 35
Kite, The (1933); **41.** *Ship.* Nos. 4499b, 5124a
Kitsilano Indian Reserve, *Re*, Vancouver Harbour Comrs. *v.* R. (Can.); **11.** *Comp. Pche.* p. 15
Kitziel *v.* Bulycz & Spilchuk (Can.); **19.** *Eccl.* p. 32
Kitzul *v.* Bulycz & Spilchuk (Can.); **19.** *Eccl.* p. 32
Kivenko *v.* Yagod (Can.); **28.** *Infts.* p. 138
Kjellander & Kjellander, *Re* (Can.); **2.** *Agric.* p. 25
Klapischuk *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 41
Kleeman *v.* Walker (Aus.); **42.** *Str. Traf.* p. 36
Klein *v.* Jenoves & Varley (Can.); **43.** *Trade*, p. 10
— *v.* Sanderson (Can.); **12.** *Contr.* p. 34
Kleinberger *v.* Norris (1937); *Pldg.* No. 1643a
Kleinhans *v.* Usmar (S. Af.); **32.** *Libel*, p. 12
Kleinsang, *Re* (Aus.); **44.** *Wills*, p. 32
—, *Re* (No. 2) (Aus.); **23.** *Exors.* p. 12
Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1934); **9.** *Coys.* Nos. 2419a, 3549a
Kleisinger *v.* Diminyatz (Can.); **36.** *Negl.* p. 36
Klenman *v.* Isman (Can.); **18.** *Distr.* p. 24
Kleynhaus Brothers *v.* Wessels' Trustee (S. Af.); **35.** *Misrep.* p. 6
Kliman *v.* Stone (1936); **28.** *Inc. T.* No. 592e
— *v.* Winckworth (1933); **28.** *Inc. T.* No. 540g
Kline, *Re* (Can.); **21.** *Estpl.* p. 23
Klis *v.* Polish Society for Brotherly Aid of Coleman (Can.); **8.** *Clubs*, p. 99
Klock *v.* Varin, *Re* Nipissing Dominion Election (Can.); **20.** *Elect.* p. 8
Klose *v.* Duncan & Fraser, Ltd. (Aus.); **3.** *Bailmt.* p. 12
Klotz *v.* Jouan (Can.); **6.** *B. of Exch.* p. 11
Klyne, *Re* (Can.); **37.** *Poor L.* p. 18
Kmetiuk & Chichowski *v.* Lac Du Bonnet Rural Municipality (Can.); **41.** *Sewers*, p. 3
Knaggs *v.* Ledyard (Can.); **21.** *Exon.* p. 52
Knapman *v.* A.-G., *Re* Stratton (1931); **8.** *Char.* No. 717b
— *v.* Stratton, *Re* Stratton (1931); **8.** *Char.* No. 717b
Knapp, *Re*, Spreckley *v.* A.-G. (1929); **8.** *Char.* No. 1116a
— *v.* Farmers' Milking Machine Co., Ltd. (N.Z.); **36.** *Pats.* p. 109

Knapp *v.* McLeod (Can.); **32.** *Libel*, p. 12
Knapp-Fisher *v.* Crisp (1936); **35.** *Mtge.* No. 1499a; *Pract.* No. 197a
Knechtel Motor Co., Ltd. *v.* Worden (Can.); **9.** *Coys.* p. 48
Kneen *v.* Martin (1935); **28.** *Inc. T.* No. 446h
Kneeshaw *v.* Clay & Horsfall (1929); **28.** *Inc. T.* No. 212a
Knevit *v.* Poole (1601); **2.** *Agric.* No. 332a
Knight, *Re* (Can.) (1937); **8.** *Char.* p. 60
—, *Re* (Can.) (1938); **23.** *Exors.* p. 20
— *v.* Fairall (Can.); **43.** *Trade*, p. 7
— *v.* Findlay (S. Af.); **32.** *Libel*, p. 10
— *v.* Gordon (1931); *Pract.* No. 4181a
— *v.* Grand Trunk Pacific Development Co. (Can.); **29.** *Inns*, p. 1
— *v.* Howard Wall, Ltd. (1938); **34.** *Mast. & S.* No. 2384c
— *v.* Knight & Owens (Can.); **27.** *H. & W.* pp. 48, 53, 54
— *v.* Legh (1828); **21.** *Estpl.* No. 382a
— *v.* Sampson (1938); **42.** *Str. Traf.* No. 31c
— *v.* Saskatoon (City) (Can.); **26.** *Hghys.* p. 34
— *v.* Skinner (1928); **34.** *Mast. & S.* Nos. 3969c, 4042a
— *v.* T. S. Pattillo Co. (Can.); **7.** *B. of Sale*, p. 11
— *v.* Winnipeg (Can.); **26.** *Hghys.* p. 28
— *v.* World Barter & Trading Co., Ltd. (1935); **9.** *Coys.* No. 2988a
Knight, Frank & Rutley *v.* Gordon (1923); **1.** *Agcy.* No. 1776a
Knight Sugar Co., Ltd. *v.* Alberta Ry. & Irrigation Co. (1938); **38.** *Real Prop.* No. 907b
— *v.* — (Can.); **34.** *Mines*, p. 206
— *v.* Webster (Can.); **12.** *Contr.* p. 33; **40.** *S. Land*, p. 11
Knight-Watson Ranching Co. *v.* Canadian Pacific Ry. Co. (Can.); **2.** *Animals*, p. 69; **8.** *Carr.* p. 14
Knightsbridge Estates Trust, Ltd. *v.* Byrne (1938); **35.** *Mtge.* No. 995b
Knock *v.* Maxner (Can.); **36.** *Negl.* p. 18
Knott *v.* Cline & Beckwith (Can.); **32.** *Lien*, p. 24
— *v.* Knott (1935); **27.** *H. & W.* No. 6089b
— *v.* London County Council (1934); **2.** *Animals*, No. 254a
Knowles *v.* Jenkins (Can.); **39.** *Recrs.* p. 1
— *v.* R. (1930); **17.** *Dep.* Nos. 558a, 564a
— *v.* Southern Ry. Co. (1937); **34.** *Mast. & S.* No. 2475a
Knowlton *v.* Hydro Electric Power Commission of Ontario (Can.); **8.** *Carr.* p. 8
Knox, *Re* (Aus.); **21.** *E. D.* p. 21
—, *Re*, Fleming *v.* Carmichael (1937); **8.** *Char.* No. 1395b
— *v.* Baker (Can.); **37.** *Police*, p. 11
— *v.* Shaw (Can.); **25.** *Fraud. Conv.* p. 16; **29** *Intpr.* p. 65
Knox & Lewis *v.* Hall (Can.); **17.** *Damgs.* p. 15
Knust *v.* Abbot (N.Z.); **6.** *B. of Exch.* p. 5
Knyvett & Pratt *v.* Suisted (N.Z.); **1.** *Agcy.* p. 77
Kobina Foli *v.* Obeng Akesse (1934); **17.** *Dep.* No. 379a
Kobinski, *Re* (Can.); **38.** *Rates*, p. 50
Koch, *Re*, Koch *v.* Koch (Aus.); **44.** *Wills*, p. 18
— *v.* Dicks (1933); **6.** *B. of Exch.* No. 2462b
— *v.* Grand Trunk Pacific Branch Lines Co. (Can.); **2.** *Animals*, p. 59
— *v.* Koch, *Re* Koch (Aus.); **44.** *Wills*, p. 18
— *v.* Snyder (Can.); **2.** *Animals*, p. 62
Kodak, Ltd.'s Application for a Patent, *Re* (1936); **36.** *Pats.* No. 459o
Koechlin et Cie. *v.* Kestenbaum Brothers (1927); **6.** *B. of Exch.* No. 2791a
Koehmstedt *v.* Rural Municipality of Eye Hill, No. 382 (Can.); **11.** *Comp. Pche.* p. 15
Koeing *v.* Johnson & Co., Ltd. (S. Af.); **12.** *Contr.* p. 56
Koeppel *v.* Colonial Coach Lines, Ltd. (Can.); **36.** *Negl.* p. 31
Koerner's Patent, *Re* (1928); **36.** *Pats.* No. 2251a
Koffman, *Ex p.*, R. *v.* Lailey (1932); **13.** *Cty. Cts.* Nos. 143a, 244a, 244b
— *v.* Sunshine (1932); **13.** *Cty. Cts.* No. 1087a
Kogan *v.* Kogan (1930); **24.** *Exors.* No. 8516a
Kojo Pon *v.* Atta Fua (1927); **16.** *Courts*, No. 578a
Kok *v.* R. (S. Af.); **14.** *Crim.* p. 9, 10
Kolbin & Sons *v.* Kinnear & Co. (Scot.); **22.** *Evid.* p. 26; **41.** *Ship.* p. 35
Kolbin (A. S.) & Sons *v.* United Shipping Co., Ltd. (Scot.); **41.** *Ship.* p. 35
Kolega *v.* Genser (Can.); **21.** *Exon.* p. 58
Kolodzi & Detroit & Windsor Subway Co. (Can.); **11.** *Comp. Pche.* p. 4
Konkin *v.* Canadian Bank of Commerce (Can.); **35.** *Mtge.* p. 38
Konskier *v.* Goodman (B.), Ltd. (1928); **36.** *Negl.* No. 59a
Kooperman, *Re* (1928); **5.** *Bkpcy.* No. 6116a
Koos *v.* McVey (Can.); **34.** *Mast. & S.* p. 13
Korchinski *v.* National Trust Co. (Can.); **1.** *Agcy.* p. 80
Kornatzki *v.* Oppenheimer (1937); **35.** *Money*, No. 30b
Kornberger *v.* Provan (Can.); **42.** *Str. Traf.* p. 60
Korycki *v.* Korycki (Can.); **12.** *Contr.* p. 17
Koskas *v.* Standard Marine Insurance Co., Ltd. (1926); **29.** *Insce.* No. 18a
— *v.* Standard Marine Insurance Co., Ltd. (1927); **29.** *Insce.* No. 18a
Kosobuski *v.* Extension Mining Co. (Can.); **32.** *Lien*, p. 23
Kossekechatko *v.* A.-G. for Trinidad (1932); **24.** *Extrdn.* Nos. 74a, 121a
Kostynuk *v.* Parayko, *Re* Edmonton Sheriff (Can.); **29.** *Intpr.* p. 64
Kostzshyn *v.* Szczurko & Kostzshyn (Can.); **25.** *Fraud. Conv.* p. 13
Kotze *v.* Johnson (S. Af.); **21.** *Exon.* p. 48
Kotzias *v.* Tyser (1920); **11.** *Const. L.* No. 487a
Kouame *v.* Maplecourt S.S. (Can.); **1.** *Adm.* p. 47
Kouri *v.* Nemerovsky (Can.); **22.** *Evid.* p. 24
Kowalchuk *v.* Ukrainian Labor Farmer Temple Assocn. (Can.); **8.** *Clubs*, p. 98
Kowaliuk, *Re*, Children's Aid Society of Winnipeg *v.* Brooklands Village (Can.); **33.** *Mags.* p. 24
Kownatzki *v.* Bear Lake Municipal District (Can.); **32.** *Limit. of A.* p. 28; **38.** *Pub. Auth.* p. 11; *Rates*, p. 85
Kowpak *v.* Crop (Can.); **36.** *Negl.* p. 33
Koyl Securities, Ltd. *v.* Young (Can.); **17.** *Dep.* p. 57
Koza *v.* Sea Insurance Co. (Can.); **29.** *Insce.* p. 27
Kozak *v.* Misiura (Can.); **8.** *Chos.* p. 89
Kozlowski *v.* Workers' Benevolent Society of Canada (No. 2) (Can.); **1.** *Action*, p. 13
Kraft, Kraft Cheese Co. (Incorporated) & Kraft Walker Cheese Co. Proprietary, Ltd. *v.* McAnulty (1931); **36.** *Pats.* No. 789a
Krahn *v.* Bell (Can.); **3.** *Bailmt.* p. 17
Kramer, *Re*, *Ex p.* Official Receiver *v.* Gordon (1934–5); *Pract.* No. 2850a
— *v.* A.-G. (1922); **2.** *Aliens*, Nos. 49d, 215i, 215j, 538a
— *v.* — (1923); **2.** *Aliens*, Nos. 49e, 215j
Krassman *v.* Krassman & A.-G. for Saskatchewan (Can.); **17.** *Dep.* p. 53
Kraus *v.* Arnold (1822); **12.** *Contr.* No. 2693a
Krause *v.* Inland Revenue Comrs. (S. Af.); **28.** *Inc. T.* p. 78

Krause *v.* York (Can.); **21.** *Estpl.* p. 26
Krause Estate, *Re* (Can.); **23.** *Exors.* p. 8
Krauss (otherwise Des Salles D'Epinoix) *v.* Krauss (otherwise Des Salles D'Epinoix) & Orbach (1919); **2.** *Aliens*, No. 261a
Krauss *v.* Luciuk (Can.); **6.** *B. of Exch.* p. 11
Krauss Estate, *Re* (Can.); **24.** *Exors.* p. 39
Kreditbank Cassel G. m. b. H. *v.* Schenkers (1927); **9.** *Coys.* No. 3603a
Kreitman *v.* Vidofsky (1927); **31.** *L. & T.* No. 7027a
Kricorian *v.* Ottoman Bank (1932); **35.** *Money*, No. 17g
Krienke *v.* Schafter (Can.); **5.** *Bkpcy.* p. 84
Krige *v.* Van Dijk's Executors (S. Af.); **1.** *Agcy.* p. 70
Krill *v.* General Casualty Insurance Co. of Paris (Can.); **29.** *Insce.* p. 46
Krishna Chandra Jagati *v.* R. (Ind.); **14.** *Crim.* p. 10
Krishna Lal Sadhu *v.* Pramila Bala Dasi (Ind.); **27.** *H. & W.* p. 9
Krishna Maharana *v.* King-Emperor (Ind.); **15.** *Crim.* pp. 96, 98
Krishnama Naicken, *Re* (Ind.); **22.** *Evid.* p. 20
Krishnaswami Naidu *v.* Andi Chetti (Ind.); **10.** *Coys.* pp. 70, 82
Krishnayya Rao *v.* Pittapur, Raja (Ind.); **22.** *Evid.* p. 6
Krist-Janson *v.* Manitoba Co-operative Fisheries, Ltd. (Can.); **36.** *Prtnrs.* p. 60
Kristiansen *v.* Silverson (Can.); **7.** *Bounds. & F.* p. 15
Kristo *v.* Hollinger Consolidated Gold Mines, Ltd. (Can.); **2.** *Aliens*, p. 42
Kroch *v.* Rossell et Compagnie Société des Personnes a Responsibilite, Ltd. (1937); *Pract.* No. 667a
— *v.* Société en Commandite Par Actions le Petit Parisien (1937); *Pract.* No. 667a
Kroesing Estate, *Re* (Can.); **18.** *Desct.* p. 4
Krogman *v.* Dickson (Can.); **24.** *Exors.* p. 40
Kronprinz Olav, The (1921); **1.** *Adm.* Nos. 1493a, 1551a
Kronson, *Re* (Can.); **4.** *Bkpcy.* p. 10
Kronstein *v.* Korda (1937); **30.** *Jdgmts.* No. 129a; *Pract.* No. 2171a
Kropielnicki *v.* Kropielnicki (Can.); **27.** *H. & W.* p. 13
Krueger *v.* National Trust Co., Ltd. (Can.); **1.** *Agcy.* p. 89
Krumm *v.* Shepard (Can.); **38.** *Rates*, p. 78
Kruse *v.* Wright (Can.); **2.** *Agric.* p. 26
Krys *v.* Krys (Can.); **25.** *Fraud. Conv.* p. 17
Kshirodebihari Datta *v.* Mangobinda Panda (Ind.); **12.** *Contr.* p. 3
Ksionek *v.* Wallace (Can.); **42.** *Str. Traf.* p. 61
Kuala Muda Rubber Estates, Ltd. *v.* Todd (1930); **28.** *Inc. T.* No. 204k
Kubach *v.* Hollands (1937); **36.** *Negl.* No. 364f; **42.** *Tort*, No. 108b
Kuczerky *v.* Toronto Transportation Commission & Saracini (Can.); **43.** *Tram.* p. 49
Kugelman *v.* Lenthall (Aus.); **34.** *Med.* p. 189
Kuhl *v.* Maclagan Valley Co-operative Dairy Assocn., Ltd. (Aus.); **2.** *Arbn.* p. 79
Kuhmo & Laakso *v.* Helberg (Can.); **42.** *Str. Traf.* p. 61
Kulukundis *v.* Norwich Union Fire Insurance Society (1937); **29.** *Insce.* No. 2086a
Kulwant *v.* Dhan Raj Dutt (Ind.); **11.** *Confl.* p. 54
Kulyk *v.* Klein (Can.); **17.** *Dep.* p. 66
Kumar Ganganand Singh *v.* Maharajah Sir Rameshwar Singh Bahadur (Ind.); **21.** *Estpl.* p. 24; **28.** *Infts.* pp. 131, 142
Kunhardt *v.* Cox, *Re* Parshalle (Can.); **35.** *Mtge.* p. 49
Kunja Subudhi *v.* R. (Ind.); **14.** *Crim.* pp. 23, 41
Kuntz & Hodgins, *Re* (Can.); **38.** *Real Prop.* p. 90
Kupferschmidt *v.* Ammoneit & Russwurm (Can.); **6.** *B. of Exch.* p. 15
Kupina *v.* Aetna Life Insurance Co. (Can.); **29.** *Insce.* p. 34
Kuproski *v.* North Star Oil Co., Ltd. (Can.); **34.** *Mast. & S.* p. 14
Kuproski *v.* Royal Bank of Canada (Can.); **4.** *Bkpcy.* p. 32
Kursell *v.* Timber Operators & Contractors, Ltd. (1923); **2.** *Arbn.* No. 817a
— *v.* Timber Operators & Contractors (1927); **2.** *Agric.* No. 810a; **12.** *Contr.* No. 3225a
Kurylo Estate, *Re* (Can.); **23.** *Exors.* p. 17
Kusch *v.* Peat (Can.); **1.** *Agcy.* p. 56; **3.** *Bank* p. 20
Kushner *v.* Williams (Can.); **15.** *Crim.* p. 77
— *v.* Yasinka (Can.); **25.** *Fraud. Conv.* p. 16
Kuss *v.* Kuss (Can.); **27.** *H. & W.* pp. 74, 83
— *v.* — (No. 2) (Can.); **27.** *H. & W.* p. 82
Kutner, *Re*, *Ex p.* Debtor *v.* Official Receiver (1921); **4.** *Bkpcy.* No. 5264a
Kwara *v.* Piper (Can.); **40.** *S. Land*, p. 10
Kwasnica *v.* Porter & Mollier (Can.); **42.** *Str. Traf.* p. 61
Kwasnicki & Lamont, *Re* (Can.); **3.** *Basty.* p. 64
Kwik-Hoo-Tong Trading Society *v.* Royal Commission on Sugar Supply (1923); **2.** *Arbn.* No. 949c
Kwong Tai Chong Co.'s Assignment, *Re* (Can.); **4.** *Bkpcy.* p. 45; **5.** *Bkpcy.* p. 84
Kydd Bros. *v.* Taylor (Can.); **32.** *Lien*, p. 27
Kyle *v.* Barnes (Can.); **5.** *Bkpcy.* p. 88
— *v.* Sim (Scot.); **2.** *Animals*, p. 68
Kylsant & Morland, *Ex p.* (1931); **16.** *Cr. Pract.* No. 2699a
Kynaston, *Ex p.*, R. *v.* General Medical Council (1930); **34.** *Med.* No. 21a
— *v.* A.-G. (1933); **30.** *Jdgmts.* No. 254a; **39.** *Royal F.* No. 137a
Kyone Hoe Tsee *v.* Kyon Soon Sun (Ind.); **3.** *Barr.* p. 50; **23.** *Exors.* pp. 12, 14
Kyriakides, *Ex p.* (S. Af.); **39.** *Regn.* p. 2
Kyro River Improvement Co., *Re* (Can.); **42.** *Time*, p. 73

L.

L. (otherwise B.) *v.* L. (1919); **22.** *Evid.* No. 3437a
L. *v.* L. (1931); **27.** *H. & W* No. 3040a
— *v.* — (1934); **27.** *H. & W.* No. 5365b
— *v.* — (Can.); **27.** *H. & W.* p. 38
— *v.* — (Scot.); **27.** *H. & W.* p. 33
— *v.* R. (Can.); **34.** *Med.* p. 194
L. A. & B. F. M., *Re*, *Ex p.* Official Receiver *v.* Debtors (1926); **4.** *Bkpcy.* No. 226a
L. H. B., *Re* (1935); **33.** *Lunat.* No. 1373a
Labelle *v.* R. (Can.); **11.** *Const. L.* p. 67
Labor Papers, Ltd. & Buttons Contract, *Re* (Aus.) **40.** *S. Land*, p. 7
Labour & Industry Minister (N. S. W.) *v.* Mutual Life & Citizens Assurance Co., Ltd. (Aus.); **16.** *Cr. Pract.* p. 37
L'Académie de Musique de Québec *v.* Payment, Bernier & Piche (Can.); **8.** *Clubs*, p. 98
Lacaille *v.* Lacaille Corpn. (Can.); **6.** *B. of Exch.* p. 24
Lacerf *v.* Lacerf & Evans (Can.); **27.** *H. & W.* p. 35
Lacey *v.* Lacey (1931); **27.** *H. & W.* Nos. 2453a, 2487a

Lachance *v.* Rochon (Can.); **27.** *H. & W.* p. 39
Lachman *v.* Jarbandhan (Ind.); **21.** *Exon.* p. 56
Lachman Das *v.* Ram Prasad (Ind.); **17.** *Deeds*, p. 28
Lachmandas Khandelwal *v.* Raghumull (Ind.); **1.** *Agcy.* p. 93
Lachman Singh *v.* Surendra Bahadun Singh (Ind.); **17.** *Deeds*, p. 24
Lachmi Narain *v.* Sheonath Ponde (Ind.); **2.** *Arbn.* p. 87
Lack *v.* Lack (Aus.); **27.** *H. & W.* p. 50
Lacoste *v.* Cedars Rapids Manufacturing & Power Co. (Can.); **2.** *Arbn.* p. 97
Lacourse *v.* McLellan & De Graw (Can.); **19.** *Educ.* p. 34
La Croix Brothers & Co. *v.* Cook (Can.); **7.** *Bldg. Conts.* p. 24
Ladd, *Re*, Henderson *v.* Porter (1932); **18.** *Desct.* No. 328a; **37.** *Powers*, No. 671a
— *v.* Banque Canadienne Nationale (Can.); **1.** *Agcy.* p. 79
Lade, *In the Estate of* (Aus.); **44.** *Wills*, p. 55
Ladies' Hosiery & Underwear, Ltd. *v.* Parker (1930); **31.** *L. & T.* No. 2011a
— *v.* West Middlesex Assessment Committee (1932); **38.** *Rates*, No. 1158a
Lady Belle, The (1933); **1.** *Adm.* No. 899a; **41.** *Ship.* Nos. 5946b, 6112a
Lady Duncannon Owners *v.* Eisenach Owners (1936); **41.** *Ship.* No. 7621a
Lady Jane, The (1749); **2.** *Aliens*, No. 419a
Lafayette *v.* Vignon (Can.); **27.** *H. & W.* p. 1
Laffer *v.* Gillen (1927); **17.** *Dep.* No. 390b
— *v.* Gillen (Aus.); **11.** *Const. L.* p. 77
Lafferty *v.* Barrhead Co-operative Society (Scot.); **28.** *Ind. Soc.* p. 127
— *v.* Darngavil Coal Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 137
La Flora (1805); **2.** *Aliens*, No. 440a
Lafone *v.* Falklands Islands Co. (1857); **18.** *Discy.* No. 1311a
Lafreniere *v.* Bouffard (Can.); **1.** *Agcy.* p. 90
Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co. (1927); **13.** *Corpns.* No. 1235a
Laidlaw, *Re*, Wilkinson *v.* Lyde (1930), 21 *E. D.* No. 227a
— *v.* Crow's Nest Ry. Co. (Can.); **17.** *Dep.* p. 71
Laine *v.* Kennedy (Can.); **17.** *Deeds*, p. 30
Laing, *Re* (Can.); **4.** *Bkpcy.* p. 26
— *v.* Laing (1839); **40.** *Stlmts.* No. 17a
— *v.* Toronto General Trusts Corpn. (Can.); **16.** *Courts*, p. 17
Laing Estate, *Re* (Can.); **8.** *Char.* p. 64
Lainière de Roubaix *v.* Glen Glove & Hosiery Co., Ltd. (Scot.); **10.** *Coys.* pp. 92, 94, 95
Laird *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 13
— *v.* Laird (Can.); **27.** *H. & W.* p. 40
Laird & Co. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, pp. 55, 56
Lajimodiere *v.* Pritchard & Duff (Can.); **36.** *Negl.* p. 18
Lake *v.* Cronin (1929); **39.** *Revenue*, No. 93b
— *v.* Crosbie (Nfld.); **12.** *Contr.* p. 46
— *v.* Wilcox (Can.); **3.** *Bastv.* p. 63
Lake Erie & Northern Ry. Co. *v.* Brantford Golf & Country Club (Can.); **2.** *Arbn.* p. 95
— *v.* Muir (Can.); **2.** *Arbn.* p. 96
Lake of the Wood Milling Co. *v.* Vincent (Can.); **17.** *Deeds*, p. 29
Lake of the Woods Milling Co., Ltd. & Spillers' Canadian Milling Co., Ltd. *v.* Traders Trust Co. (Can.); **30.** *Jdgmts.* p. 23
Lake St. Joseph Hotel *v.* Grosleau (Can.); **4.** *Bkpcy.* p. 24
Lake View & Star, Ltd. *v.* Cominelli (Aus.); **34.** *Mines*, p. 207
Lake's Patents, *Re* (1928); **36.** *Pats.* No. 1883a
Lakefield Lumber & Manufacturing Co. *v.* Shairp (Can.); **2.** *Agric.* p. 21
Lakeman *v.* Chester Corpn. (1933); **20.** *Electric*, No. 3b
Lakeview Mining Co. *v.* Moore (Can.); **38.** *Real Prop.* p. 99
Lal Chand Marwari *v.* Mahant Ramrup Gir (1925); **22.** *Evid.* Nos. 1421a, 1445a
— *v.* Ramrup Gir (Ind.); **22.** *Evid.* p. 8
Lal Singh *v.* R. (Ind.); **14.** *Crim.* p. 34
Lala Hira Lal *v.* Munshi Jagatpati Sahai (Ind.); **35.** *Misrep.* p. 1
Lalandia, The (1933); **1.** *Adm.* No. 837a; **13.** *Corpns.* No. 1536a; *Pract.* No. 443a
Laleune *v.* Laleune (Can.); **27.** *H. & W.* p. 38
Lallubhai Pragji *v.* Bhimbai Dajibhai (Ind.); **17.** *Dep.* p. 79
Lallubhai Rupchand *v.* Chimanlal Manilal (Ind.); **40.** *S. Land*, p. 5
Lalman *v.* Chintamani (Ind.); **1.** *Agcy.* p. 71
Lalmohan Dhupi *v.* Ramlakshmi Dasee (Ind.); **21.** *Estpl.* p. 28
Lalonde, *Re* (Can.); **4.** *Bkpcy.* p. 18
Lamarre & Co *v.* R. (Can.); **11.** *Const. L.* p. 61; **12.** *Contr.* p. 14
Lamb, *Re* (Can.); **33.** *Mags.* p. 26
—, *Re*, Marston *v.* Chauvet (1933); **44.** *Wills*, No. 5532b
—, *Re*, Vipond *v.* Lamb (1929); **23.** *Exors.* No. 5917a
— *v.* Evans (1895); **13.** *Coprt.* Nos. 546a
— *v.* Lamb (Can.); **17.** *Dep.* p. 72
— *v.* McLeod (No. 1) (Can.); **20.** *Elect.* p. 8
— *v.* McLeod (No. 2) (Can.); **20.** *Elect.* p. 8
— *v.* — (No. 3) (Can.); **20.** *Elect.* p. 8
— *v.* — (No. 4) (Can.); **20.** *Elect.* p. 8
— *v.* — (No. 5) (Can.); **20.** *Elect.* p. 8
— *v.* Robinson, *Re* Robinson (1930); **44.** *Wills*, No. 1057a
— *v.* Walters (S. Af.); **35.** *Misrep.* p. 1
— *v.* Wilson (Can.); **12.** *Contr.* pp. 47, 50
— *v.* Wright & Co. (1924); **5.** *Bkpcy.* Nos. 6745a, 6751a
Lamb (W. T.) & Son *v.* Goring Brick Co., Ltd. (1932); **39.** *S. Goods*, No. 1399a
Lambard *v.* Grote (1832); **37.** *Powers*, No. 830a
Lambe *v.* Inland Revenue Comrs. (1934); **28.** *Inc. T.* No. 656a
— *v.* Manuel (Can.); **21.** *E. D.* p. 16
Lambell *v.* Moore (Aus.); **15.** *Crim.* p. 99
Lambert, *Ex p.* (Can.); **19.** *Educ.* p. 34
— *v.* Anglo-Scottish General Commercial Insurance Co. (Can.); **29.** *Insce.* pp. 25, 26
— *v.* Clement (Can.); **21.** *Exon.* p. 48
— *v.* Colbourn, *Re* Jones (1928); **21.** *E. D.* No. 238a
— *v.* De Forel (Can.); **29.** *Intpr.* p. 64
— *v.* Dillon (N.Z.); **27.** *H. & W.* p. 1
— *v.* Lambert (1936); **27.** *H. & W.* No. 5410b
— *v.* R. (Can.); **33.** *Mags.* p. 24
— *v.* Thomson (Can.); **32.** *Libel*, p. 1
— *v.* Woodham, *In the Estate of* Wright (1936); **30.** *Juries*, No. 386a
— *v.* Woolworth (F. W.) & Co., Ltd. (No. 2) (1938); **31.** *L. & T.* No. 2995f
Lambert & Lambert *v.* Roberts Drug Stores, Ltd. (Can.); **21.** *Estpl.* p. 32
— *v.* — (No. 2) (Can.); **32.** *Libel*, p. 17
Lamberton *v.* Thorpe (1929); **8.** *Clubs*, No. 46a
Lambeth Revenue Officer *v.* London County Council (1931); **38.** *Rates*, Nos. 226a, 226c
Lamkin *v.* Babb (1752); **23.** *Exors.* No. 1247a

La Moderne Co. of Mutual Fire Assocn. *v.* Black Lake (Can.); **38.** *Rates*, p. 78
Lamonby *v.* Foulds, Ltd. (Scot.); **32.** *Lien*, p. 21
Lamont *v.* Strathern (Scot.); **14.** *Crim.* p. 6
Lamontagne *v.* R. (Can.); **34.** *Med.* p. 192
Lampard *v.* West (Aus.); **25.** *Gaming*, p. 36
Lampel *v.* Berger (Can.); **2.** *Aliens*, p. 31
Lampert *v.* Lampert (1789); **40.** *Stilmts.* No. 938a
Lamplough (Clarkson), *Re*, *Ex p.* Harding (1835); **5.** *Bkpcy.* No. 9034a
Lamplugh Iron Ore Co., *Re* (1927); **9.** *Coys.* No. 3105a; **10.** *Coys.* Nos. 6465a, 6936b
Lamson Paragon Supply Co., Ltd. *v.* Carter-Davis, Ltd. (1930); **36.** *Pats.* Nos. 459e, 3161b
Lanarkshire Assessor *v.* Distillers Co., Ltd. (Scot.); **38.** *Rates*, p. 76
— *v.* Findlay Brothers (Scot.); **38.** *Rates*, p. 52
— *v.* Jeffray's Trustees (Scot.); **38.** *Rates*, p. 53
— *v.* Lanarkshire County Council (Scot.); **38.** *Rates*, p. 74
— *v.* O'Hara (Scot.); **38.** *Rates*, p. 82
Lanarkshire County Council *v.* Lord Advocate (Scot.); **43.** *Wtr. Sply.* p. 75
— *v.* Scottish Motor Traction Co., Ltd. (Scot.); **42.** *Str. Traf.* p. 43
Lancashire & Yorkshire Ry. Co. *v.* Great Northern Ry. Co. & Great Central Ry. Co. (1914); **8.** *Carr.* Nos. 1051a, 1058a
Lancashire County Council *v.* Birkenhead Borough Council (1934); **37.** *Poor L.* No. 473a
— *v.* Southport Borough Council (1935); **37.** *Poor L.* No. 1079a
Lancashire Loans, Ltd. *v.* Black (1934); **12.** *Contr.* No. 633a; **35.** *Money*, No. 353w
Lancaster, *Ex p.*, *Re* Jacob's Estate, Lancaster *v.* Gaselee (1851); **29.** *Insce.* No. 3050
— *v.* Lloyd (Aus.); **19.** *Easmt.* p. 3
— *v.* Vaughan (Can.); **18.** *Discy.* p. 17
— *v.* Vaughan (No. 2) (Can.); **3.** *Basty.* p. 60
Lancaster County Palatine Council *v.* Crowe (No. 1) (1929); **19.** *Educ.* No. 32a
— *v.* — (No. 2) (1929); **33.** *L. G.* Nos. 77a, 77b
Lancaster Gate (No. 108) & Law of Property Act, 1925 (Application for Discharge of Restriction), *Re* (1933); **40.** *S. Land*, No. 2807c
Lancaster (Parish), St. John, N.B. *v.* Dominion Express Co. & Canadian National Express Co. (Can.); **38.** *Rys.* p. 45
Lanctot *v.* St. Constant Corpn. (Can.); **26.** *Hghys.* p. 24
Land *v.* Burton (1935); **36.** *Prtnrs.* No. 313a
Land Development Co., Ltd. *v.* Provan (Aus.); **42.** *Time*, p. 74
Land Registry Act & Amending Acts, *Re*, *Re* Lot 5, Section 13, Spring Ridge Victoria City (Can.); **38.** *Real Prop.* p. 93
Land Registry Act & Higginson, *Re*, Minister of Finance *v.* Caledonian Insurance Co. (Can.); **21.** *E. D.* p. 21
Land Tax Acts, *Re*, Wilson's Case (Aus.); **30.** *Land Tax*, p. 37
Land Titles Act, *Re* (Can.) (1918); **38.** *Real Prop.* p. 94
—, *Re* (Can.) (1919), 1 W. W. R. 711; **35.** *Mtge.* p. 32
—, *Re* (Can.) (1919), 1 W. W. R. 713; **35.** *Mtge.* p. 31
—, *Re* (Can.) (1921); **35.** *Mtge.* p. 31
—, *Re*, *Re* Arrears of Taxes (Can.); **38.** *Rates*, p. 84
—, *Re*, *Re* City Garage & Machine Co., Ltd. (Can.) **5.** *Bkpcy.* p. 91
—, *Re*, *Re* Fielding & North of Scotland Mortgage Co. (Can.); **35.** *Mtge.* p. 42
—, *Re*, *Re* McCraney Rural Municipality Caveat (Can.); **38.** *Pub. Hlth.* p. 20
Land Titles Act, *Re*, *Re* Registration of a Power of Attorney (Can.); **1.** *Agcy.* p. 53
—, *Re*, *Re* Smith (Can.); **38.** *Rates*, p. 86
—, *Re*, Avelsgaard's Case (Can.); **38.** *Real Prop.* p. 93
—, *Re*, Canada Life Assurance Co.'s Case (Can.); **35.** *Mtge.* p. 31; **38.** *Real Prop.* p. 95
—, *Re*, Royal Trust Co.'s Case (Can.); **1.** *Agcy.* p. 53
—, *Re*, Saskatchewan General Trust Corpn., Ltd.'s Case (Can.); **5.** *Bkpcy.* p. 67
Landa *v.* Travelers Insurance Co. (Can.); **1.** *Action*, p. 11
Landau, *Re*, *Ex p.* Trustee (1934); **5.** *Bkpcy.* No. 7603b
—, *Re*, *Ex p.* Trustee *v.* Bankrupt (1934); **5.** *Bkpcy.* No. 7603b
Lander *v.* British United Shoe Machinery Co., Ltd. (1933); **34.** *Mast. & S.* No. 2620a
— *v.* Lander, Temple, Fox & Fox (1890); **27.** *H. & W.* No. 3429a
Landes Bros. *v.* Simpson (1934); **28.** *Inc. T.* No. 119d
Landreau *v.* Lachapelle (Can.); **11.** *Confl.* p. 31
Landreville *v.* Graham Nail Co. (Can.); **39.** *S. Goods*, p. 49
Landry *v.* Lachapelle (Can.); **11.** *Confl.* p. 31
Landry Pulpwood Co., Ltd. *v.* La Banque Canadienne Nationale (Can.); **3.** *Bank.* p. 44
Landsberg *v.* Mendel (1924); **5.** *Bkpcy.* No. 8782c
Landzick *v.* Robinson (Can.); **36.** *Nuis.* p. 49
Lane *v.* Giles (Aus.); **25.** *Gaming*, p. 32
— *v.* Kingsmill (Can.); **16.** *Cntmpt.* p. 7
— *v.* Krenkewich (Can.); **30.** *Intox.* p. 16; **33.** *Mags.* p. 25
— *v.* Lane (Can.); **12.** *Contr.* p. 36
— *v.* — (No. 2) (Can.); **25.** *Fraud. Conv.* p. 15
— *v.* — (No. 3) (Can.); **25.** *Fraud. Conv.* p. 15
— *v.* Mowlem & Co., Ltd. (1935); **34.** *Metrop.* No. 42a
— *v.* Norton (Aus.); **42.** *Str. Traf.* p. 59
— *v.* "Purewite" Laundry Service Co., Ltd. (1929); **34.** *Mast. & S.* Nos. 3887b, 3915a
— *v.* Williams (1692); **6.** *B. of Exch.* No. 694c; **36.** *Prtnrs.* No. 345a
— *v.* — (1693); **6.** *B. of Exch.* No. 694c
Lane (John), Bodley Head, Ltd. *v.* Associated Newspapers, Ltd. (1936); **13.** *Coprt.* No. 394c
Lane (E. J.), Ltd., *Re*, *Ex p.* Milligan (Can.); **9.** *Coys.* p. 48
Lanfranconi's (Frédéric Alexandre) Applications for Letters Patent, *Re* (1936); **36.** *Pats.* No. 1342a
Lang *v.* Davis (Can.); **3.** *Basty.* p. 60
— *v.* Hooey (Can.); **36.** *Negl.* p. 23
— *v.* Metropolitan Life Insurance Co. (Can.); **29.** *Insce.* p. 38
— *v.* Willis (Aus.); **32.** *Libel*, p. 12
Lang Propeller, Ltd., *Re* (1927); **10.** *Coys.* No. 6936a
Lang Shirt Co.'s Trustees *v.* London L. Insurance Co. (Can.); **29.** *Insce.* p. 33
Langbaurgh Revenue Officer *v.* Langbaurgh Assessment Committee & A. Bambridge, Ltd. (1931); **38.** *Rates*, No. 226o
— *v.* Langbaurgh Assessment Committee & Robert Cheyne & Co., Ltd. (1931); **38.** *Rates*, No. 226n
Langdale, The (1907); **41.** *Ship.* No. 8121a
Langdon *v.* Blake (1865); **43.** *Trusts*, No. 2273a
— *v.* Holtyrex Gold Mines, Ltd. (Can.); **38.** *Rates*, p. 86
— *v.* King (Can.); **32.** *Lien*, p. 23
Langer *v.* McTavish Bros., Ltd. (Can.); **25.** *Gifts*, p. 47

Langford *v.* Langford (Can.); **17.** *Dep.* p. 56
Langham *v.* Wellingborough School Governors & Fryer (1932); **19.** *Educ.* No. 315a
Langille *v.* Harris (Can.); **40.** *S. Land*, p. 2
Langley, *Ex p., Re* Bryant, Isard & Co. (Can.); **16.** *Cntmpt.* p. 6
— *v.* Canadian National Railways (Can.); **34.** *Mast. & S.* p. 19
— *v.* D'Arcy (Ind.); **22.** *Evid.* p. 18
— *v.* Fidelity Insurance Co. (Can.); **29.** *Insce.* p. 37
— *v.* Power (Ir.); **31.** *L. & T.* p. 92
Langley Cartage Co., Ltd. *v.* Jenks (1937); **42.** *Str. Traf.* No. 5e
Langley Estate, *Re, Re* Sherwin Estate (Can.); **28.** *Infts.* p. 140
Langley's, Ltd., *Re* (Can.); **10.** *Coys.* p. 92
Langlois *v.* Lemire, *Re* Gardner (Can.); **4.** *Bkpcy.* p. 24
Langmaid *v.* Mickle (Can.); **2.** *Agric.* p. 20
Langset *v.* Duff Flint & Co. (Can.); **36.** *Negl.* p. 31
Langslow *v.* John Lines & Sons, Ltd. (1935); **34.** *Mast. & S.* No. 3283o
Langstaff *v.* Squirrell (Can.); **21.** *Exon.* p. 59
Langton *v.* Bacon (Can.); **18.** *Distr.* p. 25
— *v.* Nicholson (Can.); **1.** *Agcy.* p. 77
Lanham *v.* Pirie (1857); **27.** *H. & W.* No. 1897a
Lanin *v.* Zawislak & Demosky (Can.); **21.** *Exon.* p. 54
Lankshear *v.* Fair (N.Z.); **2.** *Animals*, p. 60
Lansdown's (Lord) Case (*circa* 1786); **42.** *Sp. Pfce.* No. 314a
Lantzius, *Re* (Can.); **2.** *Agric.* p. 25
Lapierre *v.* Twin City Gravel & Concrete Co., Ltd. & Terwilleger (Can.); **7.** *B. of Sale*, p. 9
Lapin *v.* Heavener (Aus.); **35.** *Money*, p. 22
Laplante *v.* Court of Sessions of the Peace (Can.); **14.** *Crim.* p. 30
Laporte *v.* Wilson (Can.); **38.** *Real Prop.* p. 99
Lapp *v.* Lapp (Can.); **23.** *Exors.* p. 27
Lappet Manufacturing Co., Ltd., *Re, Re* Calder Vale Manufacturing Co., Ltd., Registered Design (1934); **43.** *Trade Mks.* No. 908d
Lapwing, The (1839); **1.** *Adm.* No. 595a
Larbonne *v.* Shore (Can.); **39.** *Recrs.* p. 1
Larcher *v.* Sudbury (Town) (Can.); **26.** *Hghys.* p. 38
Large *v.* Perkins (Can.); **22.** *Evid.* p. 4
Largo Law, The (1920); **1.** *Adm.* No. 700a
Larkin-Warren Refrigerating Corpn. *v.* Frigidaire Corpn. (Can.); **36.** *Pats.* p. 78
Larkins *v.* Summerside (Can.); **33.** *L. G.* p. 8; **38.** *Pub. Auth.* p. 13
La Roche Mines, Ltd. *v.* Northern Ontario Power Co., Ltd. (1938); **20.** *Electric*, No. 39c
Larochelle *v.* Marchand (Can.); **38.** *Real Prop.* p. 89; **40.** *S. Land*, p. 12
Larose *v.* R. (Can.); **11.** *Const. L.* p. 66
— *v.* White Packing Co. (Can.); **21.** *Exon.* p. 60
Larrinaga & Co. *v.* Societe Franco-Americaine des Phosphates de Medulla (1922); **2.** *Arbn.* Nos. 1067a, 1357b
Larry *v.* Baker (Can.); **23.** *Exors.* p. 3
Larsen, *Ex p.*, R. *v.* Hertfordshire JJ. (1926); **14.** *Crim.* No. 1704a
—, *Re* (Can.); **16.** *Cr. Pract.* p. 34
— *v.* Aubrey (N.Z.); **33.** *Mags.* p. 37
— *v.* Montgomery (Can.); **34.** *Mines*, p. 205
— *v.* Nelson & Fort Sheppard Ry. Co. (Can.); **32.** *Lien*, pp. 24, 25
Larson *v.* Coates (Can.); **23.** *Exors.* p. 3
La Salle Extension University *v.* Freeman (Can.); **10.** *Coys.* p. 104
Lasby *v.* Johnson & Sigmeth (Can.); **25.** *Fraud. Conv.* p. 17; **35.** *Misrep.* p. 5
Lascelles *v.* Rathbun (1919); **1.** *Agcy.* Nos. 704a, 2742a
Lasell *v.* Hannah (Can.); **9.** *Coys.* p. 38
Laseure Estate, *Re*, Random *v.* Laseure (Can.); **44.** *Wills*, p. 45
Lasham, *Re* (Can.); **23.** *Exors.* p. 20
Lasko *v.* Lasko & Miller (Can.); **27.** *H. & W.* p. 29
Lassen *v.* Inland Revenue Comrs. (1927); **28.** *Inc. T.* No. 674e
Latafat Ali Khan *v.* Muhammad Gar Khan (Ind.); **28.** *Infts.* p. 142
Latchford Premier Cinema, Ltd. *v.* Ennion (1931); **9.** *Coys.* No. 3451a; **34.** *Mast. & S.* No. 444a
La Terriere *v.* La Terriere & Grey (1920); **27.** *H. & W.* No. 5050a
Latham *v.* Foster's Australian Fibres, Ltd. (Aus.); **2.** *Arbn.* pp. 88, 95
— *v.* Goldsbury (1933); **5.** *Bkpcy.* No. 6858c
Latimer *v.* British Columbia College of Physicians & Surgeons (Can.); **34.** *Med.* p. 184
— *v.* Foster Tobacco Co., Ltd. (Can.); **1.** *Agcy.* p. 51; **21.** *Estpl.* p. 25
Latour *v.* Ste. Anne des Plaines (Can.); **36.** *Negl.* p. 26
Latter *v.* Colwill (1937); **12.** *Contr.* No. 3715a
— *v.* Juckes & Page (1927); **5.** *Bkpcy.* No. 6965a
Lauder *v.* Barr & Stroud (Scot.); **24.** *Fact.* p. 49
Lauer *v.* Briggs (Aus.); **34.** *Mast. & S.* pp. 122, 179
Laurance, *Re* (Can.); **4.** *Bkpcy.* p. 38
Laurence, *Ex p., Re* Debtor (1928); **4.** *Bkpcy.* No. 1077a
Laurence Scott & Electromotors, Ltd. *v.* General Electric Co., Ltd. (1938); **36.** *Pats.* No. 2636a
Laurenson *v.* Wellington (City) Corpn. (N.Z.); **18.** *Discy.* p. 13
Laurentian Insurance Co. *v.* Davidson (Can.); **29.** *Insce.* p. 28
Laurie *v.* Unit Construction Co., Ltd. (1933) **34.** *Mast. & S.* No. 3828b
Laurie & Morewood *v.* Dudin (John) & Sons (1925); **21.** *Estpl.* Nos. 1148a, 1435a
— *v.* Dudin (John) & Sons (1926); **3.** *Bailmt.* No. 304a; **21.** *Estpl.* Nos. 1148a, 1435a
Laurier *v.* Vallee (Can.); **35.** *Mtge.* p. 50
Laurin, *Re* (Can.); **28.** *Infts.* p. 140
Lautenschlager, *Re* (Can.); **7.** *B. of Sale*, p. 10
Lavallee *v.* Istar, The (Can.); **1.** *Adm.* p. 26
— *v.* R. (Can.); **34.** *Med.* p. 194
Lavell & Co., Ltd. *v.* O'Leary (A. & E.) (1933); **18.** *Distr.* Nos. 1069b, 1069c
Lavelle *v.* Glasgow Royal Infirmary (Scot.) (1931); **34.** *Med.* p. 186
— *v.* — (1932); **34.** *Med.* p. 187
Laverdure *v.* Du Tremblay (1937); **30.** *Jdgmts.* No. 730a
— *v.* — (Can.); **23.** *Exors.* p. 15
Lavey, *Re, Ex p.* Cohen & Cohen (1920); **5.** *Bkpcy.* No. 8104a
—, *Re, Ex p.* Cohen & Cohen (1921); **4.** *Bkpcy.* No. 2028a; **5.** *Bkpcy.* No. 8104a
—, *Re, Ex p.* Trustee (1920); **5.** *Bkpcy.* No. 7603a
Lavine, *Re* (Can.); **5.** *Bkpcy.* p. 73
— *v.* Independent Builders, Ltd. (Can.); **40.** *S. Land*, p. 4
Law *v.* Fenwick, *Re* Sivewright (1922); **23.** *Exors.* No. 5442a
— *v.* Garrett (1878); **2.** *Arbn.* No. 350a
— *v.* Newnes, Ltd. (Scot.); **29.** *Insce.* p. 38
— *v.* Ottawa City Public School Board (Can.); **28.** *Injon.* p. 145
— *v.* Toronto (City) (Can.); **2.** *Arbn.* pp. 78, 82
Law & Maclean *v.* Sawyer Massey Co. (Can.) **1.** *Agcy.* pp. 86, 90

Law Institute of Victoria, *Ex p.*, *Re* Berry & Gulliver (Aus.); **42.** *Solrs.* p. 15
Law Society, *Ex p.*, *Re* Solicitor (1934); **42.** *Solrs.* No. 4657a
— *v.* United Services Bureau, Ltd. (1934); **42.** *Solrs.* Nos. 9a, 4725a
Law Society of Upper Canada & Woods, *Re* (Can.); **42.** *Solrs.* p. 14
Law Union & Rock Insurance Co., Ltd. *v.* Keyriacou & Christofis (Aus.); **7.** *B. of Sale*, p. 7
Law Union & Rock Insurance Co. *v.* North West Commission Co. (Can.); **7.** *B. of Sale*, p. 5
Lawlor *v.* Grand Canal Co. (Ir.); **34.** *Mast. & S.* p. 54
— *v.* Murchison (Can.); **18.** *Discy.* p. 10
Lawrance *v.* Galsworthy (1857); **35.** *Mtge.* No. 2312a
Lawrence (No. 21 of 1928), *Ex p.*, *Re* Debtor (1928); **4.** *Bkpcy.* No. 1077a
Lawrence *v.* Cassel (1930); **40.** *S. Land*, No. 2922a
— *v.* Errington (Can.); **12.** *Contr.* p. 33
— *v.* Finch (Can.); **32.** *Libel*, p. 5
— *v.* George Matthews (1924), Ltd. (1929); **34.** *Mast. & S.*, No. 2619a
— *v.* Gourlay & De Vries (Can.); **36.** *Negl.* p. 1
— *v.* Hall (1928); **32.** *Libel*, No. 1594a
— *v.* Hayes (1927); **8.** *Chos.* No. 607a
— *v.* Huxtable, *Re* Phillips (1931); **37.** *Powers*, No. 256a
— *v.* Judge (Can.); **2.** *Agric.* p. 22
— *v.* Kitson, *Re* Smith (1918); **35.** *Mtge.* No. 196a
— *v.* Lawrence (Aus.); **27.** *H. & W.* p. 33
— *v.* Lloyd (Aus.); **43.** *Trade*, p. 5
— *v.* Martin (1928); **33.** *Mags.* No. 1229a
— *v.* Matthews (George) (1924), Ltd. (1929); **34.** *Mast. & S.* No. 2619a
— *v.* Pomeroy (Can.); **11.** *Const. L.* p. 76
— *v.* R. (1933); **17.** *Dep.* Nos. 554c, 554d, 554e
— *v.* Turner (Can.); **18.** *Distr.* p. 25
Lawry, *Re*, Andrew *v.* Coad (1938); **37.** *Powers*, No. 87a
Laws *v.* Rutherford (S. Af.); **12.** *Contr.* p. 5
Lawson, *Re*, *Ex p.* Shankey (Can.); **7.** *B. of Sale*, p. 8
— *v.* Farley (Can.); **12.** *Contr.* pp. 26, 51
— *v.* Interior Tree Fruit & Vegetable Committee of Direction (Can.); **17.** *Dep.* p. 48
— *v.* Intestate Estates Curator, *Re* McMahon (Aus.); **23.** *Exors.* p. 18
— *v.* Lawson (Scot.); **27.** *H. & W.* p. 49
— *v.* Whitman (Can.); **32.** *Limit. of A.* p. 37
Lawson (David), Ltd. *v.* Torrance (Scot.); **38.** *Pub. Hlth.* p. 15
Lawton, *Re*, Gartside *v.* A.-G. (1936); **8.** *Char.* Nos. 1252c, 2562a
— *v.* Winnipeg & Interurban Services, Ltd. (Can.); **42.** *Str. Traf.* p. 51
Lay, *Re* (Aus.); **44.** *Wills*, p. 33
Laycock *v.* Freeman, Hardy & Willis, Ltd. (1938); **28.** *Inc. T.* No. 2101
Layzell *v.* Thompson (1926); **24.** *Ferries*, Nos. 13a, 35a, 151a
— *v.* Thompson (1927); **24.** *Ferries*, Nos. 13a, 35a, 151a
Lazard Bros. & Co. *v.* Banque Industrielle de Moscou (1933); **10.** *Coys.* Nos. 8527b, 8527c; **21.** *Exon.* Nos. 2059a, 2220a; **22.** *Evid.* Nos. 6861a, 6880a
— *v.* Brooks (1932); **29.** *Insce.* No. 3259a
— *v.* Midland Bank, Ltd. (1933); **10.** *Coys.* Nos. 8527b, 8527c; **21.** *Exon.* Nos. 2059a, 2220a; **22.** *Evid.* Nos. 6861a, 6880a
— *v.* Union Bank of Canada (Can.); **3.** *Bank.* p. 45
Lazaruk *v.* Zelenko, *Re* Melnyk Estate (Can.); **44.** *Wills*, p. 37
Lazier *v.* McCullough (Can.); **9.** *Coys.* p. 15
Leach, *Re*, Milne *v.* Daubeny (1923); **23.** *Exors.* Nos. 4895a, 5442b
— *v.* Haultain (Can.); **5.** *Bkpcy.* p. 93
— *v.* Leach, *Re* Hargraves' Trusts (1937); **40.** *Sttlmts.* No. 1056a
— *v.* Mantario Rural Municipality No. 262 & Moir (Can.); **18.** *Distr.* pp. 33, 34
— *v.* Wyatt (Aus.); **43.** *Trade Mks.* p. 24
Leacroft *v.* McCannell (Can.); **26.** *Guar.* p. 10
Leadbetter *v.* Burgess (1937); **27.** *H. & W.* No. 2751b
Leader *v.* Moxen (1773); **16.** *Courts*, No. 137a
Leadley, *Ex. p.* (Can.); **16.** *Cr. Pract.* p. 30
Leaman *v.* Lawton (Can.); **1.** *Agcy.* p. 85
Lean *v.* Inland Revenue (Scot.); **28.** *Inc. T.* pp. 7, 21
Le Arrowsmith *v.* Le Arrowsmith (Can.); **27.** *H. & W.* p. 3
Leary *v.* Armstrong (Can.); **26.** *Ghgys.* p. 19
— *v.* Deptford S.S. Owners (1935); **34.** *Mast. & S.* No. 2737d
— *v.* Nakusp Development District Comrs. (Can.); **36.** *Negl.* p. 30
Leary & Dupperon *v.* McGhee (Can.); **33.** *Mal. Pros.* p. 39
Leatham *v.* Petone Central Bowling Club (N.Z.); **34.** *Mast. & S.* p. 121
Leather *v.* Doolittle Co., Ltd. (Can.); **38.** *Pub. Hlth.* p. 14
Leavens *v.* Great West Permanent Loan Co. (Can.); **9.** *Coys.* pp. 44, 54
Leavens & Canada National Fire Insurance Co. *v.* Great West Permanent Loan Co. (No. 2) (Can.); **9.** *Coys.* p. 43
Le Blanc, *Ex p.*, R. *v.* Belliveau (Can.); **26.** *Ghgys.* p. 38
—, *Re* (Can.); **4.** *Bkpcy.* p. 38
— *v.* Emilien Burke, The (Can.); **1.** *Adm.* p. 33
— *v.* Saulnier (Can.); **26.** *Ghgys.* p. 16
Leblanc *v.* R. (Can.); **14.** *Crim.* p. 29
Le Blanc *v.* Thomas (Can.); **17.** *Dep.* p. 71; **25.** *Gaming*, p. 28
Leboeuf *v.* Leboeuf & Germain (Can.); **27.** *H. & W.* p. 48
Le Cain *v.* Wieland (Can.); **31.** *L. & T.* p. 83
Lechmere *v.* Clamp (No. 2) (1861); **35.** *Mtge.* No. 3155a
Lechtzier *v.* Lechtzier (Can.); **36.** *Negl.* p. 8
Leckenby *v.* Wolman (1921); **1.** *Agcy.* Nos. 308a, 883a
Leckie *v.* Driver (Can.); **7.** *B. of Sale*, p. 8
Leclerc *v.* Perigord School District No. 850, Board of Trustees (Can.); **19.** *Educ.* p. 43
— *v.* R. (Can.); **8.** *Carr.* p. 3; **11.** *Cons. L.* p. 66
Lecomte *v.* Bell Telephone Co., Ltd. & Ottawa (Can.); **36.** *Negl.* p. 32
Ledger *v.* Mobbs, *Re* Pipe (1937); **8.** *Char.* No. 991c
Leduc *v.* Banque D'Hochelaga (Can.); **3.** *Bank.* p. 20; **6.** *B. of Exch.* p. 1
— *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 36
Ledwith *v.* Roberts (1937); **14.** *Crim.* Nos. 1622b, 1622c, 1622d
Lee, *Re*, *Ex p.* Grunwaldt (1920); **5.** *Bkpcy.* Nos. 8778a, 9032a, 9109a, 9198a
— *v.* Blake (Can.); **6.** *B. of Exch.* p. 16
— *v.* Branscombe (Can.); **18.** *Desct.* p. 1
— *v.* Breckman (S. & I.) & Co. (1928); **34.** *Mast. & S.* No. 2589a
— *v.* Canadian Mutual Loan Co. (Can.); **7.** *Bldg. Soc.* p. 35
— *v.* Craven (1935); **42.** *Time*, No. 107a
— *v.* Hill (Can.); **32.** *Lien*, p. 24
— *v.* Lee (Can.); **27.** *H. & W.* p. 30

Lee *v.* Luper (1936); **29.** *Inns*, No. 118a
— *v.* McGrath (1934); **33.** *L. G.* No. 86a
— *v.* Magrath (1934); **33.** *L. G.* No. 86a
— *v.* Morrow (Can.); **1.** *Agcy.* p. 53
— *v.* Munro (1928); **34.** *Mast. & S.* No. 2127a
— *v.* Pinkerton (1938); **34.** *Mast. & S.* No. 3753e
— *v.* Wilson & Mackinnon (Aus.); **32.** *Libel*, p. 1
Lee (A.) & Co., Ltd. *v.* Beatrice Stephenson, Ltd. (1932); **13.** *Cty. Cts.* No. 335a
Lee, Behrens & Co., Ltd., *Re* (1932); **9.** *Coys.* Nos. 3500a, 3536a
Lee Cheong, *Re* (Can.); **11.** *Confl.* p. 45; **21.** *E. D.* p. 19
Lee Conservancy Board *v.* R. (1931); **38.** *Rates*, No. 226rr
Lee Lai King, *Re* (Can.); **28.** *Infts.* p. 138
Lee Lim Ma Hock *v.* Saw Ma Hone (Ind.); **24.** *Exors.* p. 41
Lee (Joe), Ltd. *v.* Dalmeny (Lord) (1927); **25.** *Gaming*, No. 15b
— (Joe), Ltd. *v.* Tattersall's Committee (1927); **25.** *Gaming*, No. 15b
— (Sidney) (Exeter), Ltd. *v.* James (1928); **34.** *Mast. & S.* Nos. 3545a, 4012a
Leech *v.* Leader Publishing Co., Ltd. (Can.); **32.** *Libel*, pp. 14, 15
Leeds City Brewery, Ltd. *v.* Platts, *Re* Leeds City Brewery, Ltd.'s Trusts (1925); **10.** *Coys.* No. 4678b
Leeds City Brewery, Ltd.'s Trusts, *Re*, Leeds City Brewery, Ltd. *v.* Platts (1925); **10.** *Coys.* No. 4678b
Leeds Corpn. *v.* Jenkinson (1935); **38.** *Pub. Hlth.* No. 508a
Leeds Industrial Co-operative Society, Ltd. *v.* Slack (1924); **19.** *Easmt.* No. 1399
Leeds Shipping Co., Ltd. *v.* Duncan Fox & Co., Ltd. (1932); **41.** *Ship.* Nos. 3850a, 3887a, 3914a
Leeke's Settlement Trusts, *Re*, Borough *v.* Leeke (1937); **40.** *Sttlmts.* No. 1391a
Leeman *v.* Montagu (1936); **36.** *Nuis.* No. 98a
Leeming *v.* Esquimalt Water Works Co. (No. 2) (Can.); **38.** *Rates*, p. 50
— *v.* Jones (Inspector of Taxes) (1930); **28.** *Inc. T.* Nos. 114b, 452a, 459b
Leen *v.* Executive Council (President) (Ir.); **11.** *Const. L.* p. 62; **18.** *Discy.* p. 23
Leen & Dickson *v.* Ball (Scot.); **28.** *Inc. T.* pp. 7, 21
Lees (Doe d.) *v.* Ford (1853); **40.** *Sttlmts.* Nos. 134a, 1786a
Leeson, *In the Goods of* (Ir.); **23.** *Exors.* p. 1
— *v.* Leeson (1936); **12.** *Contr.* No. 3950a
Lefaivre *v.* Landry Pulpwood Co., Ltd. (Can.); **39.** *S. Goods*, p. 35
Lefaivre & Gagnon *v.* De Lisle (Can.); **5.** *Bkpcy.* p. 94
Lefeaux & Carlisle *v.* Pacific Great Eastern Ry. Co. (Can.); **11.** *Comp. Pche.* p. 9
Lefebvre *v.* Canadian Credit Men's Trust Assocn., Ltd. (Can.); **1.** *Agcy.* p. 72
— *v.* Major (Can.); **44.** *Wills*, p. 22
— *v.* Moreau (Can.); **12.** *Contr.* p. 5
Lefevre *v.* Andrews (Can.); **1.** *Agcy.* p. 72
— *v.* Hirst (1931); **13.** *Cty. Cts.* No. 797b; **31.** *L. & T.* Nos. 7091a, 7336c
Legace & Lepinay, *Re* (Can.); **4.** *Bkpcy.* p. 3
Legacy *v.* Davison (Can.); **1.** *Agcy.* p. 55
Legal Professions Act, *Re*, *Re* Constitutional Questions Determination Act (Can.); **17.** *Dep.* p. 51
— Canadian Bank of Commerce *v.* Annable (Can.); **42.** *Solrs.* p. 7
Legault *v.* Dufresne (Can.); **5.** *Bkpcy.* p. 49
Legault *v.* R. (Can.); **11.** *Const. L.* p. 66
Legg, *In the Goods of* (1848); **23.** *Exors.* No. 1031b
Legg & Co. *v.* Premier Tobacco Co. (S. Af.); **9.** *Coys.* p. 32
Legge *v.* Legge (1928); **27.** *H. & W.* No. 5487a
Legge (George) & Son, Ltd. *v.* Wenlock Corpn. (1938); **41.** *Sewers*, No. 52a
Leggo *v.* Brown (Aus.); **1.** *Agcy.* p. 105
Leggott (W. G.) & Son *v.* Normanton (C. H.) & Son (1928); **34.** *Mast. & S.* No. 25a
Legh *v.* Legh (1846); **40.** *Sttlmts.* No. 1526a
— *v.* — (1930); **20.** *Eqy.* No. 495a; **32.** *Limit. of A.* No. 1819a
Legh's Settlement Trusts, *Re*, Public Trustee *v.* Legh (1938); **37.** *Perps.* No. 334a
Leguia (A. B.), *In the Estate of* (1936); **23.** *Exors.* No. 3022a
Leguia, *In the Estate of*, *Ex p.* Ashworth, *Ex p.* Meinertzhagen (1934); **23.** *Exors.* No. 1675a
Leibrock *v.* Adams (Can.). **32.** *Lien*, p. 27
Leicester Guardians *v.* Trollope (1911); **13.** *Corpns.* No. 1134a
Leicester's Settled Estates, *Re*, Coke *v.* Leicester (1938); **40.** *Sttlmts.* No. 2297b
Leicestershire & Warwickshire Electric Power Co., *Ex p.*, R. *v.* Minister of Transport (1928); **20.** *Electric*, No. 3a
Leigh *v.* Adams, Wood & Weiller, Ltd. & O'Neil (Can.); **39.** *S. Goods*, p. 51
Leigh *v.* Inland Revenue Comrs. (1927); **28.** *Inc. T.* No. 672a
— *v.* Leigh (Can.); **11.** *Confl.* p. 49
— *v.* Lutz (Can.); **36.** *Negl.* p. 37
Leighton *v.* Hughes & A.-G. (1889); **32.** *Lit. Inst.* No. 10a
— *v.* Tailwaggers Club of New Zealand (N.Z.); **34.** *Med.* p. 192
Leighton's Conveyance, *Re* (1937); **35.** *Mtge.* No. 4326b; **38.** *Real Prop.* No. 911b
Leisemere *v.* Residuary Legatees & Burnet, *Re* McCaig Estate (Can.); **44.** *Wills*, p. 45
Leiser, *Re*, Forman & Fowkes *v.* Minister of Finance (Can.); **21.** *E. D.* p. 20
Leiserach *v.* Schalit (1934); **2.** *Arbn.* No. 1923a
Leitch *v.* Emmott (1929); **28.** *Inc. T.* No. 570a
Leitch (William) & Co., Ltd. *v.* Leydon (1931); **28.** *Injon.* No. 959a; **30.** *Jdgmts.* No. 705b; **43.** *Tresp.* Nos. 448a, 555a
Leitch & Co., Ltd. *v.* Leydon (Scot.); **28.** *Injon.* p. 151
Leitch (William C.) Bros., Ltd., *Re*, [1932] 2 Ch. 71; **9.** *Coys.* Nos. 3353a, 3353c, 3353d
—, *Re* (1933), 49 T. L. R. 74; **9.** *Coys.* Nos. 3353e, 6048a
Leitch Collieries, Ltd., *Re* (Can.); **10.** *Coys.* p. 81
Leith-Buchanan *v.* Hogg (Scot.); **44.** *Waters*, p. 8
Lektophone Corpn. *v.* Brown (S. G.), Ltd. (1929); **36.** *Pats.* No. 2606a
Lelaire, *Re* (Can.); **23.** *Exors.* p. 8
Lemaire *v.* Smith's Newspapers, Ltd. (Aus.); **32.** *Libel*, p. 16
Lemay *v.* R. (Can.); **11.** *Const. L.* p. 74
Lemcke *v.* Newlove (Can.); **24.** *Exors.* p. 34
Lemcke & Craik *v.* Newlove & Newlove (Can.); **24.** *Exors.* p. 37
Le Mesurier *v.* Connor (Aus.) (1927); **20.** *Eqy.* p. 21
— *v.* — (Aus.) (1930); **17.** *Dep.* p. 61
— *v.* LeMesurier (1930); **27.** *H. & W.* No. 4773a
Lemieux *v.* McDonald (Can.); **35.** *Mtge.* p. 50
Lemieux & Copping Motor Distributories, *Re* (Can.); **4.** *Bkpcy.* p. 23
Lemm *v.* Mitchell (Hong Kong); **42.** *Stats.* p. 25
Lemon *v.* Austin Friars Investment Trust, Ltd. (1926); **10.** *Coys.* Nos. 4637a, 4825a, 4928a

Leney (Alfred) & Co., Ltd. *v.* Whelan (1936); **28.** *Inc. T.* No. 116d
Leng, *Re*, Dodsworth *v.* Leng (1938); **28.** *Infts.* No. 1058b
— *v.* Dodgshon (1935); **2.** *Animals*, No. 254a
— *v.* Smith (Can.); **38.** *Real Prop.* p. 95
Leng (Sir W. C.) & Co., Ltd. *v.* Andrews. *See* Vol. 45.
Leng (J.) & Co., Ltd. *v.* Dundee Assessor (Scot.); **38.** *Rates*, p. 76
Leng (Sir W. C.) & Co. (Sheffield Telegraph), Ltd. *v.* Sillitoe (1929); **25.** *Gaming*, No. 415c
Lennard, *Re*, Lennard's Trustee *v.* Lennard (1934); **4.** *Bkpcy.* No. 3776a
Lennard's Trustee *v.* Lennard, *Re* Lennard (1934); **4.** *Bkpcy.* No. 3776a
Lennards Perfect Skill Control Co., Ltd. *v.* Holloway & Sampson Novelty Co., Ltd. (1929); **36.** *Pats.* No. 222a
Lennon, *Re* (Ir.); **38.** *Real Prop.* p. 93
— *v.* Gray, *In the Goods of* Tracey (Ir.); **23.** *Exors.* p. 4
Lennox & Toronto Board of Education, *Re* (Can.); **11.** *Comp. Pche.* pp. 5, 6
Leno *v.* Simpson-Hepworth Co., Ltd. (Can.); **1.** *Agcy.* p. 97
Lensen Shipping Co., Ltd. *v.* Anglo Soviet Shipping Co., Ltd. (1935); **41.** *Ship.* No. 2079a
Lenthall *v.* Mitchell (Aus.); **25.** *Gaming*, p. 31
Leo Axien's Application for a Patent, *Re* (1935); **36.** *Pats.* No. 549a
Leon *v.* Casey (1932); **18.** *Discy.* No. 451a
Leonard *v.* Baker (1813); **5.** *Bkpcy.* No. 8933a
— *v.* Kellett (Ir.); **24.** *Exors.* p. 42
— *v.* Redbrook Tinplate Co., Ltd. (1931); **34.** *Mast. & S.* No. 3801e
— *v.* St. Patrick's Parish (Can.); **19.** *Eccl.* p. 30
— *v.* Young (Can.); **22.** *Evid.* p. 10
Leonard McLaughlin Motors, Ltd. *v.* Barnes (Can.); **36.** *Negl.* p. 18
Leonard Stubbs & Co., Ltd. *v.* Jackson & Ellis (1935); **8.** *Carr.* Nos. 1508, 1666
Leong Hone Waing *v.* Leon Ah Foon (Ind.); **22.** *Evid.* p. 4
Leong Sow Nom *v.* Chin Yee You (Can.); **27.** *H. & W.* p. 4
Leopold *v.* Wile (Can.); **36.** *Negl.* p. 28
Leopold L. D. S.S. *v.* Hochelaga S.S. Co. (1932); **41.** *Ship.* Nos. 6070a, 6104a
Leopold Walford (London) *v.* Affréteurs Réunis Société Anonyme (1918); **1.** *Agcy.* No. 1786a
Lepine *v.* Laurent (Can.); **17.** *Dep.* p. 51
Le Rasoir Apollo Patent No. 239,112 (1931); **36.** *Pats.* No. 2171a
Lerik *v.* Zaferis (Can.); **43.** *Trade*, p. 5
Lerner *v.* Franco-Canadian Import Co., Ltd. (Can.); **6.** *B. of Exch.* p. 10
Leroux *v.* R. (Can.); **33.** *Mags.* p. 24
Lesage *v.* College of Physicians & Surgeons (Can.); **34.** *Med.* p. 189
Lesiuk *v.* Schneider (Can.); **40.** *S. Land*, p. 2
Losk *v.* Medicine Hat City (Can.); **38.** *Pub. Auth.* p. 10
Leslie, *Re* (Can.); **32.** *Limit. of A.* p. 39
— *v.* Buzza (Can.); **36.** *Negl.* p. 38
— *v.* Calvin (Can.); **24.** *Exors.* p. 36
— *v.* Canadian Credit Corpn., Ltd. (Can.); **30.** *Jdgmts.* p. 20
— *v.* Graham (Can.); **1.** *Agcy.* p. 87
— *v.* Leslie (1930); **27.** *H. & W.* No. 6188e
— *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1936); **8.** *Carr.* Nos. 1607, 1649
— *v.* Morrison (Can.); **1.** *Agcy.* p. 70
Leslie & Leslie *v.* Clarke & Buzza, Ltd. & Buzza (Can.); **36.** *Negl.* p. 23
Lesperance, *Re* (Can.); **38.** *Real Prop.* p. 89
— *v.* Leistikow (Can.); **11.** *Confl.* p. 56
Lesquendieu Trade Mark, *Re* (1934); **43.** *Trade Mks.* No. 515a
Lesser *v.* Jones (Can.); **3.** *Bailmt.* p. 6
Lesser (A.) & Co. Pty., Ltd., *Re* (Aus.); **9.** *Coys.* p. 11
Les Soeurs de Misericorde *v.* Tellier (Can.); **7.** *Bounds. & F.* p. 15
Lester *v.* Porter, *Re* Fox (Can.); **4.** *Bkpcy.* p. 10; **5.** *Bkpcy.* p. 70
L'Estrange *v.* Brisbane Gas Co. (Aus.); **36.** *Nuis.* p. 50
— *v.* Graucob (F.), Ltd. (1934); **12.** *Contr.* No. 379a
Letang *v.* Ottawa Electric Ry. Co. (1926); **8.** *Carr.* No. 598a
Letbe *v.* Letbe & Whitehead (1928); **27.** *H. & W.* No. 3183a
Lethbridge Northern Irrigation District Board Trustees *v.* Munsell (Can.); **17.** *Damgs.* p. 7
Letherbrow, *Re*, Hopp *v.* Dean (1935); **23.** *Exors.* No. 3966a
Letros & Toronto Corpn., *Re* (Can.); **11.** *Comp. Pche.* pp. 6, 15, 16
Letteney *v.* Dillon (Can.); **33.** *L. G.* p. 2
Letters Patent No. 139,207, *Re*, *Re* Carbonit Akt. (1924); **11.** *Const. L.* No. 348a
— No. 274,162, *Re*, Drysdale & Sidney Smith & Blyth, Ltd. *v.* Davey Paxman & Co. (Colchester), Ltd. (1937); **36.** *Pats.* No. 796e
Levasseur, *Ex p.* (Can.); **30.** *Intox.* p. 13
Level Estate, *Re* (Can.); **24.** *Exors.* p. 38
Leven Magistrates *v.* London & North Eastern Ry. Co. (Scot.); **26.** *Highys.* p. 49
Levene *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 131b
— *v.* Maton (1907); **21.** *Exon.* No. 2210a
Levenick *v.* Eddy & Eddy (Can.); **1.** *Agcy.* p. 77
— *v.* Turnbull (Can.); **1.** *Agcy.* p. 87
Lever, *Ex p.*, R. *v.* Manchester (1937); **14.** *Crim.* No. 3555a
—, *In the Estate of* (1935); **23.** *Exors.* No. 3431a
— *v.* Maguire (Aus.); **3.** *Bank*, p. 47; **18.** *Discy.* p. 11
Lever Brothers, Ltd. *v.* Bell (1931); **35.** *Misrep.* No. 138a; *Mistake*, No. 58a; *Pldg.* No. 1067a
— *v.* Inland Revenue Comrs. (1938); **9.** *Coys.* No. 2589b
— *v.* Kneale & Bagnall (1937); *Pract.* No. 3015a
— *v.* Pickard (Aus.); **17.** *Dep.* p. 63
— *v.* Umberto Pizzuti (Can.); **43.** *Trade Mks.* p. 18
— *v.* Wilson (Can.); **43.** *Trade Mks.* p. 18
Leverti, *Re* (Can.); **37.** *Poor L.* p. 17
Levesque *v.* Truchon (Can.); **16.** *Courts*, p. 15
Levesque & Graveline *v.* R. (Can.); **14.** *Crim.* p. 58
Levi *v.* British Columbia Distillery Co. (Can.); **18.** *Discy.* p. 20
— *v.* Cowan (Can.); **22.** *Evid.* p. 6
Levien, *Re*, Trustees Executors & Agency Co., Ltd. *v.* Levien (Aus.); **44.** *Wills*, p. 15
Levin *v.* Berg, etc. (S. Af.); **2.** *Arbn.* p. 77
— *v.* Levy (S. Af.); **1.** *Agcy.* pp. 74, 90
— *v.* Lukewiecki (Can.); **32.** *Lien*, p. 24
Levine *v.* O'Keefe (Aus.); **14.** *Crim.* p. 14
— *v.* Wanless (Can.); **14.** *Crim.* p. 51
Levine & Pyzer, *Re*, R. *v.* Holtzer (Can.); **14.** *Crim.* p. 56
Levinstein, *Re*, Levinstein *v.* Levinstein (1921); **2.** *Aliens*, No. 215e
Levitatz (Jacobs) & Braude *v.* Kroonstad Roller Mills (S. Af.); **1.** *Agcy.* p. 50

Levitt *v.* Inland Revenue (Scot.); **28.** *Inc. T.* p. 95
Levy, *Re, Ex p.* Official Receiver (1924); **5.** *Bkpcy.* No. 5475a
— *v.* Bookspan (Can.); **35.** *Mtge.* p. 50
— *v.* Lechtzier (Can.); **36.** *Negl.* p. 8
— *v.* Metropolitan Cab Co. (1854); **9.** *Coys.* No. 3568a
— *v.* Norton-Culhane (Aus.); **42.** *Sp. Pfce.* p. 19
Levy & Jacobs, *Re* (Can.); **16.** *Courts*, p. 10
Lew *v.* Wing Lee (Can.); **16.** *Courts*, p. 16
Lewcock *v.* Bromley (1920); **1.** *Agcy.* No. 834a
Lewington *v.* Raycroft (Can.); **35.** *Mtge.* p. 37
Lewis, *Ex p.* (Can.); **20.** *Electric*, p. 16
—, *Re* (Can.); **37.** *Poor L.* p. 17
—, *Re, Ex p.* Electrolux, Ltd. (Aus.); **16.** *Courts*, p. 9; **33.** *Mags.* p. 23
—, *Re*, Jennings *v.* Hemsley (1938); **24.** *Exors.* No. 6386a
—, *Re*, Meriden Britannia Co., Ltd. *v.* Walters (Can.); **16.** *Cntmpt.* p. 3
— *v.* Andover & Perth Elec. L. Comrs. (Can.); **12.** *Contr.* p. 50
— *v.* Balshaw (Aus.); **11.** *Confl.* p. 33
— *v.* Berrey, *Re* Berrey (1936); **18.** *Desct.* No. 283e
— *v.* Cammell, Laird & Co., Ltd. (1929); **34.** *Mast. & S.* No. 3580a
— *v.* Cattle (1938); **15.** *Crim.* No. 7106a
— *v.* Denye (1938); **24.** *Fact.* Nos. 68c, 81c
— *v.* Dobson Steam Fishing Co., Ltd. (1929); **34.** *Mast. & S.* No. 3172a
— *v.* Elgy (1927); **28.** *Inc. T.* No. 25g
— *v.* Godson (Can.); **31.** *L. & T.* p. 74
— *v.* Guest, Keen & Nettlefolds, Ltd. (1928); **34.** *Mast. & S.* No. 3243a
— *v.* Inland Revenue Comrs. (1933); **28.** *Inc. T.* No. 675a
— *v.* Jey (Can.); **40.** *S. Land.* p. 14
— *v.* King (1789); **20.** *Eqy.* No. 1643a
— *v.* Lewis (1928); **27.** *H. & W.* Nos. 6085a, 6217a
— *v.* Moses (Can.); **36.** *Negl.* p. 24
— *v.* Nesbit & Auld, Ltd. (Can.); **34.** *Mast. & S.* p. 23
— *v.* Plunket (1937); **35.** *Mtge.* No. 3477a
— *v.* Richardson (Aus.); **1.** *Agcy.* p. 56
— *v.* Southern Ry. Co. (1936); **8.** *Carr.* No. 1661
— *v.* Tredegar Iron & Coal Co. (1929); **34.** *Mast. & S.* No. 3061a
— *v.* Wakeling (Can.); **19.** *Easmt.* p. 10
Lewis & Barder *v.* Piczenick; **25.** *Gifts*, 88a
Lewis & Lewis *v.* Howson (Can.); **12.** *Contr.* p. 32
Lewis & Phalen, *Re* (Can.); **38.** *Rates*, p. 86
Lewis & Sills *v.* Hughes (Can.); **17.** *Deeds*, p. 30
Lewis & Sons, Ltd. *v.* Dawson (Can.); **44.** *Wills*, p. 33
Lewis & Towers, Ltd. *v.* Sembliz (1934); **34.** *Mast. & S.* No. 3822b
Lewis Estate, *Re* (Can.); **44.** *Wills*, p. 57
Lewis Merthyr Consolidated Collieries, Ltd., *Re*, Lloyds Bank, Ltd. *v.* Lewis Merthyr Consolidated Collieries, Ltd. (1929); **10.** *Coys.* No. 4982b
— *v.* — (No. 2) (1929); **34.** *Mast. & S.* No. 4137a
Lewis's Will Trusts, *Re* O'Sullivan *v.* Robbins (1937); **44.** *Wills*, No. 5286a
Lewis's Will Trusts, *Re*, Phillips *v.* Bowkett (1937) **44.** *Wills*, No. 6957a
Ley *v.* Hamilton (1935); **17.** *Damgs.* No. 762a; *Pract.* Nos. 3382a, 3454a
Leyland *v.* Tancred (1850); **18.** *Distr.* No. 731
Leyland Motors, Ltd. *v.* Napier Harbour Board (N.Z.); **32** *Lien*, p. 25
Leys *v.* Hollinghead (Can.); **35.** *Mtge.* p. 31
— *v.* Toronto General Trusts Co. (Can.); **38.** *Real Prop.* p. 90
Leyton Urban District Council *v.* Wilkinson (1927); **33.** *Mags.* Nos. 1229, 1713a
Lezetc *v.* Metheral (Can.); **34.** *Mast. & S.* p. 9
L'Hirondelle *v.* R. (Can.); **28.** *Infts.* p. 132
Liberty's Will Trusts, *Re*, Blackmore *v.* Liberty (Stewart) (1937); **40.** *Stllmts.* No. 1003b
Lichfield (Bp.) *v.* Lambert (1929); **19.** *Eccl.* No. 185a
Lichfield Cathedral Grant, *Re*, Chapel-en-le-Frith Church Council *v.* Bagshawe (1929); **19.** *Eccl.* No. 1981a
Liddell *v.* Strathern (Scot.); **14.** *Crim.* p. 11
Liddell's Settlement Trusts, *Re* (1936); **28.** *Infts.* No. 2068a
Liddell-Grainger's Will Trusts, *Re*, Dormer *v.* Liddell-Grainger (1936); **11.** *Confl.* No. 68c
Liddiard *v.* Waldron (1934); **19.** *Easmt.* No. 210a
Liddle *v.* North Riding of Yorkshire County Council (1934); **36.** *Negl.* No. 457d
Lidstone *v.* McWilliams (Can.); **23.** *Exors.* p. 6
Lieb *v.* Deacon (Can.); **34.** *Mast. & S.* p. 94
Liebenberg Estate *v.* Standard Bank of South Africa, Ltd. (S. Af.); **6.** *B. of Exch.* p. 21
Liebling *v.* R. (Can.); **14.** *Crim.* p. 58
Liesbosch, Dredger *v.* Edison S.S. (1933); **41.** *Ship.* No. 6694a
Lieutenant-Governors Salary, *Re* (Can.); **17.** *Dep.* p. 35; **28.** *Inc. T.* p. 85
Liggett (B.) (Liverpool), Ltd. *v.* Barclays Bank, Ltd. (1928); **3.** *Bank.* No. 546a; **9.** *Coys.* No. 4095a
Liggins *v.* Buckingham, *Re* Howell, *Re* Buckingham (1915); **30.** *Jdgmts.* No. 789a
Light *v.* West (William) & Sons, Ltd. (1926); **2.** *Arbn.* No. 2611a
Light & Fulton *v.* McVittie (1935); **42.** *Solrs.* No. 1563a
Lightfoot *v.* Hugh & G. K. Neill, Ltd. (N.Z.); **24.** *Fact.* p. 55
Lightheart *v.* Lightheart (Can.); **27.** *H. & W.* pp. 5, 47, 48
Lightning Fastener Co., Ltd. *v.* Canadian Goodrich Co., Ltd. (Can.); **43.** *Trade Mks.* p. 12
— *v.* Colonial Fastener Co., Ltd. (Can.), [1934] **36.** *Pats.* p. 76
— *v.* Colonial Fastener Co., Ltd. & G. E. Prentice Manufacturing Co. (No. 13,633) (Can.), [1932] Ex. C. R. 101; **36.** *Pats.* p. 68
— *v.* Colonial Fastener Co., Ltd. & G. E. Prentice Manufacturing Co. (Can.), [1932] Ex. C. R. 127; **36.** *Pats.* p. 68
— *v.* Colonial Fastener Co., Ltd. & G. E. Prentice Manufacturing Co. (Can.) (1933); **36.** *Pats.* p. 69
— *v.* Colonial Fastener Co., Ltd. & Prentice Manufacturing Co. (Can.) (1936); **36.** *Pats.* p. 110
Liladhar Chaturbhuj *v.* Harilal Jethabhai (Ind.); **1.** *Agcy.* p. 99
Lilley & Skinner, Ltd. *v.* Crump (1929); **31.** *L. & T.* No. 2995a
— *v.* Essex County Valuation Committee (1935); **38.** *Rates*, No. 1158b
Lillie *v.* Lillie (Can.); **27.** *H. & W.* p. 72
Lilly *v.* Pittman (Nfld.); **17.** *Deeds*, p. 29
Lilly Swaine *v.* Dennis Swaine (Ind.); **27.** *H. & W.* p. 40
Lim Cooie Foo, *Re* (Can.); **2.** *Aliens*, p. 49
Limb & Limb *v.* Stewart (Can.); **36.** *Negl.* p. 9
Limbert *v.* Grote (1832); **37.** *Powers*, No. 830a
Limerick County Council *v.* Irish Insurance Comrs. & Condon (Ir.); **44.** *Work*, p. 63
Limerick S.S. Co. *v.* Commonwealth of Australia (Aus.); **17.** *Dep.* pp. 60, 83
Limitation of Hours of Work Act, *Re*, A.-G. for Canada *v.* A.-G. for Ontario (1937); **17.** *Dep.* Nos. 110a, 130p, 130q, 130r

Limited Co., A, *Re* (Aus.); **10.** *Coys.* p. 61
Limprecht *v.* Franklin (Can.); **26.** *Hghys.* p. 29
Lincoln (County) *v.* South Grimsby (Township) (Can.); **26.** *Hghys.* p. 40
Lincoln County Corpn. *v.* Port Dalhousie Village Corpn. (Can.); **26.** *Hghys.* p. 27
Lincoln Pulpwood Co., Ltd. *v.* Rio Casma, The (Can.); **1.** *Adm.* pp. 25, 28
Lincolnshire Sugar Co., Ltd. *v.* Smart (1937); **28.** *Inc. T.* No. 990
Lind *v.* Johnson (1937); **34.** *Mast. & S.* No. 4063a
— *v.* Mitchell (1928); **29.** *Insce.* No. 1660a
— *v.* Spicer Brothers (Africa), Ltd. (S. Af.); **1.** *Agcy.* p. 52
Lindal *v.* United States Fidelity & Guaranty Co. & Home Insurance Co. of New York (Can.); **22.** *Evid.* p. 6
Lindeboom *v.* Camille, *Re* Caus (1934); **8.** *Char.* No. 106a
Lindfield *v.* New South Wales Ry. Comrs. (Aus.); **38.** *Rys.* p. 41
Lindners, Ltd., *Re* (Can.); **10.** *Coys.* p. 94
Lindsay, *Ex p.*, R. *v.* Barry (Can.); **16.** *Cr. Pract.* p. 41
—, *Re* (Ir.); **4.** *Bkpcy.* p. 39
— *v.* Attfield (1929); **6.** *B. of Exch.* Nos. 568a, 2455a, 2462a, 3121a; **11.** *Confl.* No. 732a; **39.** *S. Goods*, No. 1376a
— *v.* Craig (Scot.); **1.** *Agcy.* p. 103
— *v.* Driscoll (1929); **6.** *B. of Exch.* Nos. 568a, 2455a, 2462a, 3121a; **11.** *Confl.* No. 732a; **39.** *S. Goods*, No. 1376a
— *v.* Empy (Can.); **8.** *Char.* p. 83
— *v.* Gibboney (Can.); **40.** *S. L and*, p. 9
— *v.* Heagle (Can.); **42.** *Str. Traf.* p. 61
— *v.* Hyams, *Ex p.*, *Re* Hyams (1923); **5.** *Bkpcy.* No. 7778a
— *v.* Inland Revenue (Scot.); **28.** *Inc. T.* p. 13
— *v.* Lindsay (1934); **27.** *H. & W.* Nos. 4003a, 4776b, 5365b
— *v.* Robertson (Scot.); **29.** *Insce.* p. 45
— *v.* Taxation Comr. (Aus.); **28.** *Inc. T.* p. 36
Lindsay Blee Depots, Ltd. *v.* Motor Union Insurance Co., Ltd. (1930); **29.** *Insce.* No. 852a
Lindsey County Council *v.* Marshall (1937); **34.** *Med.* No. 87a; **38.** *Pub. Hlth.* No. 357a
Lindus & Hortin *v.* Inland Revenue Comrs. (1933); **28.** *Inc. T.* No. 349b
Lineham *v.* Holden (Can.); **27.** *H. & W.* p. 14
Lineker's Estate, *Re* (Can.); **18.** *Desct.* p. 3
Linen Industry Research Assocn., *Ex p.*, R. *v.* Belfast Deputy Recorder (Ir.); **28.** *Inc. T.* p. 103
Linet, *Re* (Can.); **32.** *Limit. of A.* p. 37
Ling, *Re* (Can.); **32.** *Limit. of A.* p. 34
Lingan S.S. Co., Ltd. *v.* Doric S.S. (Can.); **41.** *Ship.* p. 55
Lingangowda *v.* Basangowda (Ind.); **16.** *Courts*, p. 15
Lingrell *v.* Stocks Mun. Dist. (Can.); **26.** *Hghys.* p 27.
Lings *v.* Zbryski (Can.); **35.** *Mistake*, p. 11
Linkhart *v.* Linkhart (Can.); **27.** *H. & W.* p. 30
Linney (H.) & Co., Ltd., *Re* (N.Z.); **5.** *Bkpcy.* pp. 72, 73; **10.** *Coys.* p. 72
Linotype & Machinery, Ltd.'s Application, *Re* (1937); **36.** *Pats.* No. 1485a
Linstead *v.* Simpson (Scot.); **34.** *Med.* p. 194
L'Institute de Notre Dame des Missions & Brandon, Assessment Appeal of, *Re* (Can.); **19.** *Educ.* p. 41
Linton *v.* Flannigan (Can.); **21.** *Exon.* p. 58
— *v.* Guderian (Ind.); **11.** *Confl.* p. 29; **27.** *H. & W.* p. 36
— *v.* Inland Revenue Comrs. (Scot.); **25.** *Gifts*, p. 47
— *v.* Michie (Can.); **5.** *Bkpcy.* p. 82
Linton *v.* Newcastle-upon-Tyne Corpn. (1929); **26.** *Hghys.* Nos. 1894a, 1894b
— *v.* Western Assurance Co. (Can.); **29.** *Insce.* p. 38
Linton & Sinclair Co.'s Estate, *Re* (Can.); **4.** *Bkpcy.* p. 43
Linton Chalk & Whiting Co., Ltd. *v.* Linton Haulage Co. (1934); **8.** *Carr.* Nos. 1546, 1547
Lioni & Co., & Globe Rutgers Insurance Co., *Re* (Can.); **29.** *Insce.* p. 29
Lipman *v.* Clendinnen (Aus.); **31.** *L. & T.* p. 51
Lippard *v.* Ricketts (1872); **30.** *Jdgmts.* No. 419a
Lippert *v.* Ford Hotel of Toronto, Ltd. (Can.); **29.** *Inns*, p. 1
Lipson, *Re* (Can.); **4.** *Bkpcy.* p. 16; **5.** *Bkpcy.* pp. 58, 90
Lipstein, *Re* (Can.); **2.** *Aliens*, p. 48
Lipton, *Ex p.*, *Re* Armstrong (1926); **4.** *Bkpcy.* Nos. 3105a, 3173a
Lipton (B.), Ltd. *v.* Bell (1924); **5.** *Bkpcy.* No. 8782b
Lipton, Ltd. *v.* Burton (1932); **38.** *Rates.* No. 226g
— *v.* Mackintosh, *Re* Bush (1930); **24.** *Exors.* No. 8520b
— *v.* Shoreditch Assessment Committee (1934); **38.** *Rates*, Nos. 1162a, 1588a
Liquid Carbonic Co. *v.* Rountree (Can.); **7.** *B. of Sale*, p. 10
Lischinsky *v.* Auld (Can.); **22.** *Evid.* p. 15
Liscombe *v.* Maughan (Can.); **19.** *Easmt.* p. 7
Lishman's Claim, *Re* Colonial & General Gas Co. (1870); **10.** *Coys.* No. 4852a
Lisle, *Re*, *Ex p.* McCrohon (Aus.); **25.** *Gaming*, p. 29
Lisseden *v.* Bosch (C. A. V.), Ltd. (1938); **34.** *Mast. & S.* No. 3932s
Lister, *Re*, *Ex p.* Bradford Overseers & Bradford Corpn. (1926); **5.** *Bkpcy.* No. 7764a
—, *Re*, Bradford Overseers & Corpn. *v.* Durrance (1925); **5.** *Bkpcy.* No. 7764a
— *v.* Billy (Can.); **1.** *Agcy.* p. 52
— *v.* Burns & Co. (Can.); **22.** *Evid.* p. 6; **42.** *Time*, p. 73
— *v.* Gilbert (Can.); **44.** *Wills*, p. 46
— *v.* Humphries (Aus.); **38.** *Pub. Hlth.* p. 18
— *v.* Leather (1857); **28.** *Injon.* No. 1104b
Lister Brothers *v.* Thorp, Medley & Co. (1930); **36.** *Pats.* Nos. 2358a, 3165a
Liston *v.* Davies (Aus.); **16.** *Cr. Pract.* p. 36
Litchfield *v.* Saskatchewan & Battle River Land & Development Co. (Can.); **1.** *Agcy.* p. 102
Literary Recreations, Ltd. *v.* Sauve (Can.); **37.** *Post Off.* p. 22
Litowitz *v.* Canadian National Railways (Can.); **38.** *Rys.* p. 38
Litras *v.* Mattern (Can.); **30.** *L. & T.* p. 40
Littauer Glove Corpn. *v.* F. W. Millington (1920), Ltd. (1928); **9.** *Coys.* No. 26b
Little, *Re* (Can.); **4.** *Bkpcy.* p. 15
— *v.* A.-G. for British Columbia (Can.); **17.** *Dep.* p. 51
— *v.* Laing (Can.); **34.** *Mast. & S.* p. 6
— *v.* Little (1927); **27.** *H. & W.* No. 2763a
— *v.* — (Aus.); **27.** *H. & W.* pp. 30, 31
— *v.* — (Can.); **11.** *Confl.* p. 56
— *v.* Moylett (Ir.); **25.** *Fish.* pp. 1, 2
Little & Campbellford Lake Ontario & Western Ry. Co., *Re* (Can.); **11.** *Comp. Pche.* p. 15
Little Gaddesden Churchyard, *Re*, *Ex p.* Cuthbertson (1933); **7.** *Burial*, Nos. 140a, 140b
Little Hallingbury, Essex, *Re* (1837); **5.** *Bkpcy.* No. 5807a
Little Massingham, Benefices of, *Re* (1931); **19.** *Eccl.* No. 2443b
Littledale *v.* Dixon (1805); **29.** *Insce.* No. 1203a
Littlejohn *v.* London County Council (1938); **37.** *Poor L.* No. 88a

Littlewood, *Re*, Clark *v.* Littlewood (1931); **23.** *Exors.* No. 5908a
Littlewood *v.* Walker (Can.); **42.** *Str. Traf.* p. 36
Littley *v.* Brooks & Canadian National Ry. Co. (Can.) (1930); **38.** *Rys.* p. 39
— *v.* — (Can.) (1932); **36.** *Negl.* p. 37
Littridge, *Re* (Can.); **21.** *E. D.* p. 16
Litvenenko & Olenikoff *v.* Saskatchewan Municipal Hail Insurance Assocn. (Can.); **29.** *Insce.* p. 58
Litwin *v.* Great American Insurance Co. (Can.); **18.** *Discy.* p. 13
Litz, *Re* (Can.); **4.** *Bkpcy.* p. 46
Lively *v.* Shubenacadie Lumber Co. (Can.); **17.** *Deeds*, p. 29
Liver Alkali Co. *v.* Johnson (1874); **8.** *Carr.* Nos. 6a, 31
Livergant *v.* Capital Jobbers, Ltd. (Can.); **21.** *Exon.* p. 58
Livergood *v.* Home (Can.); **7.** *B. of Sale*, pp. 8, 9
— *v.* Taylor (Can.); **7.** *B. of Sale*, p. 8
Liverpool & London & Globe Insurance Co., Ltd. *v.* Hartley & Ford (Aus.); **8.** *Chos.* pp. 91, 92; **39.** *Revenue*, p. 19
Liverpool Corn Trade Assocn., Ltd. *v.* Hurst (1936); **26.** *Guar.* No. 1574a
Liverpool Corpn., *Ex p.*, *Re* Liverpool Education (Emmanuel School Purchase) Order, 1929 (1937); **19.** *Educ.* No. 120a
Liverpool Corpn., *Ex p.*, R. *v.* Liverpool JJ. (1934); **30.** *Intox.* Nos. 291a, 292b, 292c
— *v.* Arthur Maiden, Ltd. (1938); **38.** *Pub. Hlth.* No. 203a
— *v.* Hope (1938); **35.** *Mtge.* No. 2587a; **38.** *Rates*, No. 1448a
— *v.* Lancashire County Council (1937); **33.** *L. G.* No. 754a
— *v.* Maiden (Arthur), Ltd. (1938); **38.** *Pub. Hlth.* No. 203a
— *v.* Rose (1935); **11.** *Comp. Pchc.* No. 2225c
Liverpool Corpn. & Jackson, *Re* (1931); **44.** *Work*, No. 123b
Liverpool Education (Emmanuel School Purchase) Order, 1929, *Re*, *Ex p.* Liverpool Corpn. (1937); **19.** *Educ.* No. 120a
Liverpool Electric Cable Co. Ltd.'s Applications to Register Trade Marks, *Re* (1928); **43.** *Trade Mks.* No. 77a
Liverpool Grain Storage & Transit Co., Ltd. *v.* Charlton & Bagshaw (1918); **3.** *Bailmt.* No. 163a
Liverpool London & Globe Insce. Co. *v.* Agricultural Savings & Loan Co. (Can.); **29.** *Insce.* p. 25
Liverpool Victoria Friendly Society *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 68
Livesey *v.* Harding (1830); **30.** *Jdgmts.* No. 753a
— *v.* Livesey (1827); **23.** *Exors.* No. 5002a
Livesley *v.* Horst (Can.); **11.** *Confl.* p. 38
Livingston, *Ex p.*, R. *v.* Fitzhugh (1937); **16.** *Cntmpt.* No. 274b
Livingstone, *Re* (Can.); **32.** *Limit. of A.* p. 39
— *v.* Evans (Can.); **12.** *Contr.* p. 4
— *v.* Robinson (Can.); **34.** *Med.* p. 188
— *v.* Toronto Wine Manufacturing Co., Ltd. (Can.); **35.** *Mtge.* p. 48
Livingstonia S.S. Co., Ltd. *v.* Clyde Navigation Trustees (Scot.); **38.** *Pub. Auth.* p. 8
Livock *v.* Pearson Brothers (1928); **12.** *Contr.* No. 5041a
"Livron" of Boots Pure Drug Co., Ltd.'s Trade Mark, *Re*, *Re* Société des Usines Chimiques Rhône-Poulenc's Application (1937); **43.** *Trade Mks.* No. 15a
Llandovery Castle, The (1920); **1.** *Adm.* No. 766a
Llay Main Collieries, Ltd. *v.* Jones (1938); **34.** *Mast. & S.* No. 2970f
Lloyd, *Re* (Can.); **44.** *Wills*, p. 29
—, *Re*, Powell *v.* Richardson (Can.); **44.** *Wills*, p. 46
— *v.* Bowring (1920); **11.** *Const. L.* No. 487b
— *v.* Chune (1860); **6.** *B. of Exch.* No. 1254a
— *v.* Clark (Can.); **25.** *Gaming*, p. 37
— *v.* Conduit Collieries, Ltd. (1937); **34.** *Mast. & S.* No. 3834d
— *v.* Cook (1929); **31.** *L. & T.* Nos. 7037a, 7351a, 7352e, 7359a
— *v.* Francis (1937); **28.** *Ind. Soc.* No. 93a
— *v.* Hannafin (Can.); **42.** *Str. Traf.* p. 36
— *v.* Lloyd & Leggeri (1938); **27.** *H. & W.* Nos. 3060b, 3087a
— *v.* Milton & Derkson (No. 2); **36.** *Negl.* p. 1
— *v.* Sandilands (1818); **21.** *Econ.* No. 1584b
— *v.* Stoddart (1752); **23.** *Exors.* 5110a
— *v.* Sulley (Scot.); **28.** *Inc. T.* p. 24
— *v.* Tardy, *Re* Harman (1894); **11.** *Confl.* No. 626a
— *v.* Wallace (Can.); **21.** *Exon.* p. 47
Lloyd & Ancient Order of United Workmen, *Re* (Can.); **29.** *Insce.* p. 30
Lloyd Del Pacifico *v.* Board of Trade (1930); **2.** *Arbn.* No. 2187a
Lloyd George (Right Hon. David), Application of, *Re* (1932); **20.** *Elect.* No. 1191a
Lloyd's Furniture Palace, Ltd., *Re*, Evans *v.* Lloyd's Furniture Palace, Ltd. (1925); **10.** *Coys.* No. 4783a; **25.** *Fraud. Conv.* Nos. 422a, 428a
Lloyd-Owen *v.* Bull (Can.); **10.** *Coys.* p. 72
Lloyds Bank, Ltd., *Re*, Bomze *v.* Bomze (1931); **12.** *Contr.* No. 664a
— *v.* Bank of America National Trust & Savings Assocn. (1938); **1.** *Agcy.* No. 489c
— *v.* Barclays Bank, Ltd., *Re* Prevost (1930); **8.** *Char.* No. 251a
— *v.* Chartered Bank of India, Australia & China (1929); **3.** *Bank.* Nos. 687a, 930a
— *v.* Cockburn, *Re* Craven's Estate (No. 1) (1937); **11.** *Confl.* No. 434a; **25.** *Gifts*, No. 386a; **28.** *Infts.* No. 1083a
— *v.* Cockburn, *Re* Craven's Estate (No. 2) (1937); **43.** *Trusts*, No. 3149a
— *v.* Craven, *Re* Craven's Estate (No. 1) (1937); **11.** *Confl.* No. 434a; **25.** *Gifts*, No. 386a; **28.** *Infts.* No. 1083a
— *v.* Craven, *Re* Craven's Estate (No. 2) (1937); **43.** *Trusts*, No. 3149a
— *v.* Fenwick, *Re* Fenwick (1922); **21.** *E. D.* No. 234a
— *v.* Guzdar & Co. (Ind.); **35.** *Mtge.* p. 41
— *v.* Lewis Merthyr Consolidated Collieries, Ltd., *Re* Lewis Merthyr Consolidated Collieries, Ltd. (1929); **10.** *Coys.* No. 4982b
— *v.* Lewis Merthyr Consolidated Collieries, *Re* Lewis Merthyr Consolidated Collieries (No. 2) (1929); **34.** *Mast. & S.* No. 4137a
— *v.* Marsland, *Re* Marsland (1938); **44.** *Wills*, No. 83a
— *v.* Morrison & Son, Ltd. (Scot.); **9.** *Coys.* p. 2; **10.** *Coys.* p. 55
— *v.* Mostyn, *Re* Davies (1932); **8.** *Char.* No. 717d
— *v.* Savory & Co. (1933); **3.** *Bank.* Nos. 692d, 692e, 692f
— *v.* Spencer, *Re* Spencer (1935); **28.** *Infts.* No. 813a
Loane *v.* Black (Can.); **2.** *Arbn.* p. 74
Lobb *v.* Rockwood Rural Credits Society (Can.); **30.** *Jdgmts.* p. 27; **32.** *Lien*, p. 22
Lobel, *Re* (Can.); **4.** *Bkpcy.* p. 45
Loblaw, *Re* (Can.); **12.** *Contr.* p. 4
Loblaw Groceterias Co., Ltd. *v.* Toronto Corpn. (Can.); **38.** *Rates*, p. 49

Local Government Lands & Settlement Comr. *v.* Kaderbhai (1931); **16.** *Cr. Pract.* No. 894a; **17.** *Dep.* No. 392a
Local Option Provision of Government Liquor Control Act of Alberta, *Re*, *Re* Hardisty & Ribstone (Can.); **30.** *Intox.* p. 15
Loch *v.* Blackwood (John), Ltd. (1924); **10.** *Coys.* Nos. 5357a, 5397a
Lochgelley Iron & Coal Co., Ltd. *v.* Lindores (1929); **34.** *Mast. & S.* No. 2734a
— *v.* M'Mullan (1934); **34.** *Mast. & S.* No. 4071c; *Mines*, No. 1189a
— *v.* Walkenshaw (1935); **34.** *Mast. & S.* No. 2322b
Lock, *Re* (Aus.); **44.** *Wills*, p. 56
— *v.* Bell (1931); **17.** *Damgs.* No. 487a; **40.** *S. Land*, Nos. 880a, 903a
— *v.* Lock (1710); **18.** *Desct.* No. 133a
— *v.* Purdon (Can.); **12.** *Contr.* p. 57
Locke *v.* Hulett (Can.); **11.** *Confl.* p. 55
Locke, Lancaster & Johnson (W. W. & R.) & Sons, Ltd., *Ex p.*, R. *v.* London County JJ. (1929); **38.** *Rates*, No. 1616a
Locker & Woolf, Ltd. *v.* Western Australian Insurance Co., Ltd. (1936); **29.** *Insce.* No. 2660a
Lockett *v.* Charles, Ltd. (1938); **39.** *S. Goods*, No. 715c
— *v.* Norman-Wright (1925); **12.** *Contr.* No. 546a
— *v.* Solloway Mills & Co., Ltd. (Can.); **18.** *Discy.* p. 14; **42.** *Stk. Ex.* p. 31
— *v.* — (No. 2) (Can.); **18.** *Discy.* p. 14
Lockhart *v.* Harrison (1928); **32.** *Libel*, No. 1045b
Lockington *v.* Siegrist & Co. (Can.); **32.** *Libel*, p. 12
Lockwood & Elliott *v.* Midland (Coal Mines) Quota Committee (1934); **34.** *Mines*, Nos. 327n, 327o
Lockyer, *Re* (Can.); **30.** *Jdgmts.* p. 23
Loczka *v.* Ruthenian Farmers' Co-operative Co., Ltd. (Can.); **6.** *B. of Exch.* p. 8
Loder *v.* Chesleyn (1664); **1.** *Action*, No. 637b
Loders & Nucoline *v.* Bank of New Zealand (1929); **39.** *S. Goods*, No. 2699a
Lodge *v.* Anderson (Can.); **43.** *Trade*, p. 5
— *v.* Dowie (Aus.); **29.** *Insce.* p. 31
— *v.* Lancashire County Council (1934); **41.** *Sewers*, No. 466a
— *v.* Moncton (Can.); **26.** *Hghys.* p. 23
Loeppky *v.* Lang (Can.); **8.** *Chos.* p. 92
Loewe Radio Co. Ltd.'s Applications for Grant of Compulsory Licences, *Re* (1929); **36.** *Pats.* Nos. 1656a, 1665a
Loft *v.* Halliday (Can.); **34.** *Mast. & S.* p. 3
Lofthouse (Langbaurgh Revenue Officer) *v.* Langbaurgh Assessment Committee & A. Bainbridge, Ltd. (1931); **38.** *Rates*, No. 226o
Loftsome Bridge Co. of Proprietors *v.* East Yorkshire Motor Services, Ltd. (1933); **26.** *Hghys.* No. 779a
Logan, *Re* (Can.) (1927); **24.** *Exors.* p. 33
— *v.* Colchester County Hospital (Can.); **34.** *Med.* p. 186
— *v.* Waitaki Hospital Board (N. Z.); **34.** *Med.* p. 187
Logan (H. J.) Co., *Re* (Can.) (1926); **9.** *Coys.* p. 31; **12.** *Contr.* p. 45
Loggie, *Re* (Can.); **8.** *Char.* p. 73
— *v.* Chatham Municipality (Can.); **16.** *Cr. Pract.* p. 44
Loggie's Will, *Re* (Can.); **8.** *Char.* p. 72
Logue *v.* H.M. Advocate (Scot.); **15.** *Crim.* p. 79
— *v.* Pentland (Ir.); **34.** *Mast. & S.* p. 30
Lohmann *v.* Rougemont (1840); **6.** *B. of Exch.* No. 508a
Loisburg Land Co. *v.* Tutty (Can.); **21.** *Exon.* p. 51
Lomas *v.* Park Hall Colliery Co., Ltd. (1935); **34.** *Mast. & S.* No. 2948c
Lomax *v.* Love (Aus.); **31.** *L. & T.* p. 68
Lomer, *Re*, Public Trustee *v.* Victoria Hospital for Children (1929); **21.** *E. D.* No. 265a
Londesborough (Earl), *Re*, Spicer *v.* Londesborough (Earl) (1923); **2.** *Agric.* Nos. 652a, 661a
London, The (1931); **11.** *Confl.* Nos. 1315a, 1378b
London *v.* Vancouver City (Can.); **44.** *Waters*, p. 1
London (Bp.) *v.* Web (1718); **2.** *Agric.* No. 894a
London & Brown, *Re* (Can.); **38.** *Rates*, p. 50
London & Canadian Investment Co., Ltd. *v.* British Columbia Realty Development Corpn., Ltd. & Griffiths (Can.); **18.** *Discy.* p. 22
London & Canadian Loan & Agency Co. *v.* Everett (Can.); **28.** *Infts.* p. 142
London & Globe Finance Co., Ltd., *Re* (1902); **10.** *Coys.* No. 6111a
London & Lancashire Insurance Co., Ltd. *v.* Fisher (N.Z.); **5.** *Bkpcy.* p. 54
London & Montrose Shipbuilding & Repairing Co., Ltd. *v.* Barclays Bank (1926); **3.** *Bank.* No. 691c
London & North Eastern & London, Midland & Scottish Ry. Cos. *v.* Beazley (1936); **8.** *Carr.* No. 1511
— *v.* Roberts (1936); **8.** *Carr.* No. 1512
— *v.* Sheville (1936); **8.** *Carr.* No. 1688
— *v.* Smalley (1936); **8.** *Carr.* No. 1573
— *v.* — (1937); **8.** *Carr.* No. 1576
London & North Eastern Ry. Co. *v.* Aldridge (1935); **8.** *Carr.* No. 1645
— *v.* Allen (1936); **8.** *Carr.* Nos. 1542, 1691
— *v.* Anglo-Scottish Railways Assessment Authority (1933); **38.** *Rates*, No. 800a
— *v.* Assessor of Public Undertakings (Scot.); **38.** *Rates*, p. 70
— *v.* B. & C. L. Transporters (1937); **8.** *Carr.* No. 1558
— *v.* Blundy, Clark & Co., Ltd. (1931); **38.** *Rys.* No. 931a
— *v.* Blyth Transport Co., Ltd. (1937); **8.** *Carr.* No. 1558
— *v.* Brahams (1931); **8.** *Carr.* No. 1246a
— *v.* Brentnall (1933); **34.** *Mast. & S.* No. 2349c
— *v.* Briggs (1935); **8.** *Carr.* No. 1502
— *v.* British Trawlers' Federation, Ltd. (1934); **44.** *Waters*, Nos. 821b, 821d
— *v.* Brownbridge (1935); **8.** *Carr.* No. 1535
— *v.* Burgess (1935); **8.** *Carr.* Nos. 1629, 1642
— *v.* Butler & Marshall (1936); **8.** *Carr.* No. 1599
— *v.* Chester (J. W.) & Son (1932); **44.** *Waters*, Nos. 821a, 821c
— *v.* Fife Assessor (Scot.); **38.** *Rates*, p. 69
— *v.* Furness Shipbuilding Co., Ltd. (1934); **26.** *Guar.* No. 1826b
— *v.* Glasgow Assessor (Scot.) (1929); **38.** *Rates*, p. 76
— *v.* — (Scot.) (1937); **38.** *Rates*, p. 61
— *v.* Hagan (1935); **8.** *Carr.* Nos. 1621, 1630
— *v.* Hardwick Colliery Co., Ltd. (1935); **34.** *Mines*, No. 326a
— *v.* Hurd (1935); **8.** *Carr.* No. 1478
— *v.* Lyner (1937); **8.** *Carr.* Nos. 1524, 1695, 1708
— *v.* North Riding of Yorkshire County Council (1936); **26.** *Hghys.* No. 2778a
— *v.* Parker (1936); **8.** *Carr.* No. 1513
— *v.* Robson (Gateshead), Ltd. (1935); **8.** *Carr.* Nos. 1503, 1534, 1703
— *v.* Rupert Pedley, Ltd. (1937); **8.** *Carr.* Nos. 1525, 1653

London & North Eastern Ry. Co. *v.* Sanderson (1935); **8.** *Carr.* No. 1479
— *v.* Turnbull & Sons (Leeds), Ltd. (1937); **8.** *Carr.* No. 1586
— *v.* Young's Express Deliveries (1937); **8.** *Carr.* No. 1528
London & North Eastern Ry. Co. & London, Midland & Scottish Ry. Co. *v.* Gimson (1936); **8.** *Carr.* No. 1690
London & North Eastern Ry. Co. Valuation Roll *Re*, *Re* Cleethorpes Urban District Council (1935); **38.** *Rates*, No. 800f
—, *Re*, *Re* Newcastle-upon-Tyne & Gateshead Corpn. (1937); **38.** *Rates*, No. 800e
London & North Western Ry. Co. *v.* Neilson (1922); **8.** *Carr.* No. 454
London & Northern Estates Co., Ltd. *v.* Harris (1937); **28.** *Inc. T.* No. 283b
— *v.* Inland Revenue Comrs. (1931); **28.** *Inc. T.* No. 674o
London & Northern Trading Co., Ltd. *v.* Arcos, Ltd. (1933); **6.** *B. of Exch.* Nos. 502a, 2158a
London & South American Investment Trust, Ltd. *v.* British Tobacco Co. (Australia), Ltd. (1927); **9.** *Coys.* No. 3934a; **17.** *Dep.* No. 184a
London & Western Trust Co. *v.* Sale (Can.); **24.** *Exors.* p. 35
London & Westminster Bank *v.* Button (1907); **3.** *Bank.* No. 829; **12.** *Contr.* No. 3949a
London Assurance *v.* Clare (1937); **29.** *Insce.* No. 2771a
— *v.* Kidson (1935); *Pldg.* No. 212a
London Bank of Australia, Ltd. *v.* Kendall (Aus.) **3.** *Bank.* p. 36
London Bridge Acts, *Re*, *Ex p.* Tatham (1838); **11.** *Comp. Pche.* No. 1614a
London Bridge Works, Ltd., *Re* (Can.); **4.** *Bkcy.* p. 22
London Chartered Bank of Australasia *v.* White (1879); **3.** *Bank.* No. 878a
London City & Midland Executor & Trustee Co., Ltd. *v.* Daniels, *Re* Daniels (1918); **24.** *Exors.* No. 6281a
London Corporation, The (1935); **41.** *Ship.* No. 6671a
London (City) Corpn. *v.* Associated Newspapers, Ltd. (1915); **36.** *Parl.* No. 2b
London Corpn. *v.* Holeproof Hosiery Co. of Canada, Ltd. (Can.); **2.** *Arbn.* p. 89
London (City) Corpn. *v.* London County Council (1931); **37.** *Poor L.* No. 34a
London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd. (1936); **33.** *Mkts.* No. 59a
London County Council, *Ex p.*, R. *v.* Central Criminal Court JJ. (1925); **14.** *Crim.* No. 1016a; **16.** *Cr. Pract.* No. 2449a
—, *Ex p.*, R. *v.* Poplar Borough Council (1922); **16.** *Cr. Pract.* No. 1066
— *v.* Berkshire County Council (1935); **37.** *Poor L.* No. 1215a
— *v.* Betts (1936); **37.** *Poor L.* No. 289a
— *v.* Cambridgeshire County Council (1936); **33.** *Lunat.* No. 1902b
— *v.* Davis (1938); **24.** *Fact.* No. 211c
— *v.* Downes (1936); **37.** *Poor L.* No. 289a
— *v.* East London Waterworks Co. (1900); **43.** *Wtr. Sply.* No. 176a
— *v.* Greenwich Corpn. (1929); **7.** *Burial*, No. 294a
— *v.* Hackney Borough Council (1928); **18.** *Distr.* No. 1413a; **38.** *Rates*, Nos. 37a, 1477a
— *v.* Harling Street (1935); **38.** *Pub. Hlth.* No. 272a
— *v.* Maher (1929); **19.** *Educ.* No. 96a
— *v.* Montagu Burton, Ltd. (1934); **11.** *Comp. Pche.* No. 2211a
London County Council *v.* Owner of 14, Lee-street, Stepney (1926); **26.** *Hghys.* No. 2204a
— *v.* Royal Arsenal Co-operative Society, Ltd. (1936); **25.** *Food*, No. 445a
— *v.* Southern Ry. Co. (1936); **38.** *Rates*, Nos. 800c, 800d
— *v.* Stansell (1935); **19.** *Educ.* No. 104a
— *v.* Stilgoe (1932); **34.** *Metrop.* Nos. 87a, 116a
— *v.* Wiltshire County Council (1927); **19.** *Educ.* No. 137a
London County Council & Edwards, *Re* (1931); **44.** *Work*, No. 118a
London County Council & Satchell, *Re* (1931); **44.** *Work*, No. 118a
London County Freehold & Leasehold Properties, Ltd. *v.* Berkeley Property & Investment Co., Ltd. (1936); **1.** *Agcy.* No. 2258a
London County (Stoke Newington) Housing Order, 1936, *Re*, Stocker's Appeal (1937); **38.** *Pub. Hlth.* No. 502dd
London Electric Railway *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 369d
London Electricity Joint Committee Co. (1920), Ltd., *Ex p.*, R. *v.* Electricity Comrs. (1924); **16.** *Cr. Pract.* No. 2303
London Finance & Discount Co., Ltd. *v.* Butler (Ir.); **35.** *Money*, p. 23
London Finance Corpn. *v.* Banking Service Corpn. (Can.); **9.** *Coys.* p. 37
London General Insurance Co., Ltd., *Re* (1938); **10.** *Coys.* No. 7551b
London General Omnibus Co., Ltd. *v.* Pope (1922); **1.** *Agcy.* No. 2523a
London Guarantee & Accident Co., *Ex p.*, *Re* Davidson & Smith (Can.); **21.** *Exon.* p. 59
— *v.* Abrams & Kovsky (Can.); **1.** *Agcy.* p. 54
— *v.* Davidson (Can.); **21.** *Estpl.* p. 28
— *v.* Gibson (Can.); **17.** *Damgs.* p. 12
— *v.* Halifax (City) (Can.); **26.** *Guar.* p. 10; **29.** *Insce.* p. 55
— *v.* Northwestern Utilities, Ltd. (Can.); **18.** *Discy.* p. 20; **29.** *Insce.* p. 30; **36.** *Nuis.* p. 48
London Holeproof Hosiery Co., Ltd. *v.* Padmore (1928); **30.** *L. & T.* No. 1372a
London (Hammersmith) Housing Order, Land Development, Ltd.'s Application, *Re* (1936); **38.** *Pub. Hlth.* No. 502t
London India Rubber Co., *Re* (1866); **10.** *Coys.* No. 5580a
London Investment Co. *v.* Montefiore (Sir Moses) (1864); **29.** *Insce.* No. 2542a
London Jewellers, Ltd. *v.* Attenborough (1934); **30.** *Jdgmts.* No. 508a; **37.** *Pawns*, No. 172a; **39.** *S. Goods*, No. 1252a
— *v.* Robertsons (London), Ltd. (1934); **30.** *Jdgmts.* No. 508a; **37.** *Pawns*, No. 172a; **39.** *S. Goods*, No. 1252a
— *v.* Sutton (1934); **37.** *Pawns*, No. 172a; **39.** *S. Goods*, No. 1252a
London Life Insurance Co. *v.* Lang Shirt Co.'s Trustee (Can.); **29.** *Insce.* p. 33
London Loan & Savings Co. *v.* Osborn (Can.); **21.** *Estpl.* p. 28
London Loan & Savings Co. of Canada *v.* Brickenden (Can.) (1933); **42.** *Solrs.* p. 3
— *v.* — (Can.) (1934); **42.** *Solrs.* p. 4
— *v.* Meagher (Can.); **35.** *Mtge.* p. 50
London Loan Co. *v.* Smyth (Can.); **35.** *Mtge.* p. 44
London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Alexander (Charles) (1938); **8.** *Carr.* No. 1562
— *v.* Barr (Leeds), Ltd. (1934); **8.** *Carr.* Nos. 1532, 1538

London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Barton (1936); **8.** *Carr.* No. 1640
— *v.* Collier Daniels Transport, Ltd. (1936); **8.** *Carr.* Nos. 1516, 1637
— *v.* Collier Daniels Transport, Ltd. (No. 2) (1938); **8.** *Carr.* No. 1559
— *v.* Palmer (1935); **8.** *Carr.* Nos. 1486, 1544
— *v.* Richards, Ltd. (1936); **8.** *Carr.* No. 1521
— *v.* Stevenson Transport, Ltd. (1937); **8.** *Carr.* No. 1523
— *v.* Stuart (1937); **8.** *Carr.* Nos. 1553, 1626
— *v.* Williams (1935); **8.** *Carr.* Nos. 1487, 1618
London, Midland & Scottish, Great Western & London & North Eastern Ry. Cos. *v.* Motor Carriers (Liverpool), Ltd. (1935); **8.** *Carr.* Nos. 1631, 1675
London, Midland & Scottish Ry. Co., *Re* (1937); **8.** *Carr.* No. 1712
— *v.* Abram (1935); **8.** *Carr.* Nos. 1644, 1668
— *v.* Anglo-Scottish Railways Assessment Authority (1933); **38.** *Rates*, No. 800a
— *v.* Anton (1936); **8.** *Carr.* Nos. 1625, 1652
— *v.* Assessor of Public Undertakings (Scot.); **38.** *Rates*, p. 70
— *v.* Assessor of Railways & Canals for Scotland (Scot.); **38.** *Rates*, p. 70
— *v.* Botterill & Sons (1936); **8.** *Carr.* No. 1641
— *v.* Breeze (1936); **8.** *Carr.* No. 1584
— *v.* Greaver (1936); **8.** *Carr.* No. 753a
— *v.* Holden (1936); **8.** *Carr.* No. 1569
— *v.* Ince Wagon & Ironworks Co., Ltd. (1924); **8.** *Carr.* No. 1245a
— *v.* Ingleby (1936); **8.** *Carr.* Nos. 1570, 1633
— *v.* Inman (1935); **8.** *Carr.* No. 1480
— *v.* Lyner (1937); **8.** *Carr.* Nos. 1524, 1695, 1708
— *v.* M'Donald (Scot.); **24.** *Ferries*, p. 63
— *v.* Mitchell & Broadbent (1936); **8.** *Carr.* No. 1588
— *v.* Pennington (1935); **8.** *Carr.* No. 1489
— *v.* Ribble Hat Works, Ltd. (1936); **36.** *Nuis.* No. 300a; **38.** *Rys.* No. 314a
— *v.* Tait & MacConn (1935); **8.** *Carr.* No. 1481
— *v.* Woodruff (1935); **8.** *Carr.* Nos. 1550, 1704
— *v.* Young's Express Deliveries (1937); **8.** *Carr.* No. 1528
London, Midland & Scottish Ry. Co. & London & North Eastern Ry. Co. *v.* Dunnett (1935); **8.** *Carr.* No. 1491
London Passenger Transport Board *v.* Sumner (1935); **43.** *Tram.* No. 89a
— *v.* T. Walton (London), Ltd. (1934); **26.** *Guar.* No. 1826c
London Playing Fields Society *v.* Essex (S.W. Area) Assessment Committee (1930); **36.** *Open Sp.* No. 14a
London Power Co., Ltd. *v.* Lamb (1936); **43.** *Mast. & S.* No. 3726e
London (City) Sewers Comrs. *v.* Glass. *See* Vol. **18.** p. 193
London Steamship & Trading Corpn., Ltd. *v.* Russian Volunteer Fleet (1926); **2.** *Arbn.* No. 2580b
Londonderry County Council *v.* M'Glade (Ir.); **17.** *Dep.* p. 37; **19.** *Educ.* p. 37
Long, *In the Estate of* (1936); **44.** *Wills*, No. 839b
—, *Re* (Aus.); **42.** *Solrs.* p. 10
—, *Re* (Can.); **44.** *Wills*, p. 38
—, *Re, Ex p.* Moore (Can.); **21.** *Exon.* p. 44
— *v.* Belfield Poultry Products, Ltd. (1937); **28.** *Inc. T.* No. 77a
— *v.* Byers (Can.); **2.** *Animals*, pp. 68, 69
— *v.* Colonial Mutual Life Assurance Society, Ltd. (N.Z.); **29.** *Insce.* p. 39
— *v.* Kirk & Co., Ltd. (1938); **24.** *Fact.* No. 180d
— *v.* R. (Can.); **3.** *Bailmt.* p. 6
Long *v.* Simmons (Can.); **18.** *Distr.* p. 30
— *v.* Smithson (1918); **1.** *Action*, No. 257a
— *v.* Vancouver City (Can.); **26.** *Highys.* p. 30
— *v.* Zlatnick (Can.); **2.** *Animals*, p. 71
Long Acre Press, Ltd. *v.* Odhams Press, Ltd. (1930); **9.** *Coys.* No. 4016a
Longmore, *Re* (Can.); **5.** *Bkpcy.* pp. 70, 75, 76, 85
—, *Re, Ex p.* Royal Bank & Rider (Can.); **5.** *Bkpcy.* p. 50
Longobardi *v.* Larkin (Aus.); **40.** *S. Land*, p. 13
Lonnem Caveat, *Re* (Can.); **27.** *H. & W.* p. 58
Lonsberry *v.* Trans-Canada Insurance Co. (Can.); **29.** *Insce.* p. 26
Lonsdale *v.* A.-G. (Ir.); **17.** *Dep.* p. 87
Lonsdale Estate, *Re* (Can.); **26.** *Highys.* p. 46
Loo Len, *Re* (No. 1) (Can.); **2.** *Aliens*, pp. 50, 51
—, *Re* (No. 2) (Can.); **16.** *Cr. Pract.* p. 28
Looker *v.* Law Union & Rock Insurance Co., Ltd. (1928); **29.** *Insce.* No. 2907a
Loosberg *v.* Seguin (Can.); **24.** *Extrdn.* p. 45
Lopes, *Re*, Bence-Jones *v.* Zoological Society of London (1931); **8.** *Char.* No. 70a
Lorch *v.* Olson (Can.); **16.** *Courts*, pp. 10, 19
Lord *v.* Midland Ry. Co. (1867); **8.** *Carr.* Nos. 144a, 412
Lord (Owners) *v.* Newsum, Sons & Co., Ltd. (1920); **2.** *Arbn.* No. 1058a
Lord *v.* Wardle (1837); **21.** *Estpl.* No. 1297a
Lord Advocate *v.* Inzievar Estates (1938); **21.** *E. D.* No. 80a
Lord Advocate, Petitioner (Scot.); **22.** *Evid.* p. 25
Lord Advocate *v.* Warrender's Trustees (Scot.); **21.** *E. D.* p. 7
Lord Strathcona, The (1925); **1.** *Adm.* No. 254a
— (No. 2) (1926); **1.** *Adm.* No. 1492a
— (No. 3) (1926); **1.** *Adm.* No. 1519a; **22.** *Evid.* No. 4594a
Lord's Day Alliance of Canada *v.* A.-G. for Manitoba (1925); **17.** *Dep.* No. 164a
Lorden *v.* Brooke-Hitching (1927); **31.** *L. & T.* No. 2943a
Lorenzo *v.* Carey (Aus.); **17.** *Dep.* p. 60
Lorimer, *Re* (1851); **40.** *Sttlmts.* 2209a
Lot 5, Section 13, Spring Ridge Victoria City, *Re*, *Re* Land Registry Act & Amending Acts (Can.); **38.** *Real Prop.* p. 93
Lotbiniere Lbr. Co. *v.* Fortin (Can.); **36.** *Prtnrs.* p. 57
Lothian *v.* Epworth Press (1926); **36.** *Negl.* No. 421b
Lothian Chemical Co., Ltd. *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 43
— *v.* Rogers (Scot.); **28.** *Inc. T.* p. 43
Lothian Coal Co. *v.* Cassidy (Scot.); **34.** *Mast. & S.* p. 129
Louch, *Re* (1930); **42.** *Solrs.* No. 1582a
— *v.* Pape Avenue Land Co., Ltd. (Can.); **40.** *S. Land*, p. 4
Loudon *v.* MacFarlane (Walter) & Co. (1935); **34.** *Mast. & S.* No. 2349d
Loughborough Highway Board *v.* Curzon (1886); **14.** *Crim.* No. 6293a
Loughnan *v.* Hamilton, *Re* Banks (N.Z.); **44.** *Wills*, p. 33
Loughnan *v.* Marston's Dolphin Brewery, Ltd. (1936); **28.** *Inc. T.* No. 116d
Loughrey *v.* Doherty (Ir.); **33.** *Mkts.* p. 43
— *v.* Morrison (Ir.); **34.** *Mast. & S.* p. 47
Louis *v.* Louis & Stead (Aus.); **27.** *H. & W.* p. 38
Louis Dreyfus & Co. *v.* Arunachala Ayya (1931); **16.** *Courts*, No. 701a
— *v.* Hochelaga S.S. Co. (1932); **41.** *Ship.* Nos. 6070a, 6104a
— *v.* National S.S. Co. (1935); **41.** *Ship.* No. 1933a
— *v.* Tempus Shipping Co. (1931); **41.** *Ship.* No. 3099a

Louis Dreyfus & Co. & Sir William Reardon Smith & Sons, Ltd., *Re* (Aus.); **41.** *Ship.* p. 38
Lounsbury, *Re* (Can.); **5.** *Bkpcy.* p. 59
— *v.* Sutherland Motor Bus Co. (Can.); **28.** *Injon.* p. 148
Lount *v.* Smith (Can.); **38.** *Real Prop.* p. 98
— *v.* Walkington (Can.); **38.** *Rates*, p. 85
Loupides *v.* The Schooner Calimeris (Can.); **1.** *Adm.* p. 18
Love, *Re*, Naper *v.* Barlow (1932); **8.** *Char.* Nos. 2227a, 2246a; **17.** *Dep.* No. 716a
— *v.* Denny & Vincent (Can.); **33.** *Mal. Pros.* p. 40
— *v.* Motor Finance Co., Ltd. (Can.); **39.** *S. Goods*, p. 57
Love & Knudson, *Re*, *Re* Irma Co-operative Co., Ltd. (Can.); **10.** *Coys.* pp. 66, 74, 76
Lovegrove, *Re*, *Ex p.* Applestone *v.* Trustees (1935); **5.** *Bkpcy.* No. 6128a; **7.** *B. of Sale*, No. 55a
—, *Re*, *Ex p.* Lovegrove & Co. (Sales), Ltd. (1935); **5.** *Bkpcy.* No. 6128a; **7.** *B. of Sale*, No. 55a
—, *Re*, *Ex p.* Trustees (1935); **5.** *Bkpcy.* No. 6128a; **7.** *B. of Sale*, No. 55a
Lovegrove & Co. (Sales), Ltd., *Ex p.*, *Re* Lovegrove (1935); **5.** *Bkpcy.* No. 6128a; **7.** *B. of Sale*, No. 55a
Lovell (Shaw) & Sons, Ltd., *Re* (1937); **8.** *Carr.* No. 1578
Loverock *v.* Webb (Can.); **2.** *Agric.* p. 17
Lovibond *v.* Canada, Governor-General of (1930); **17.** *Dep.* No. 393a
— *v.* Grand Trunk Railway & Canadian National Railway (Can.); **17.** *Dep.* p. 83
— *v.* Grand Trunk Railway, Canadian National Railway & A.-G. for Canada (Can.); **16.** *Cr. Pract.* p. 24
— *v.* Grand Trunk Ry. Co. of Canada (Can.); **16.** *Cr. Pract.* p. 24
Lovibond (John) & Sons, Ltd. *v.* Vincent (1929); **31.** *L. & T.* No. 7254a
Low, *Re* (Can.); **24.** *Extrdn.* pp. 44, 45
— *v.* Fry (1935); **6.** *B. of Exch.* No. 1033a
— *v.* Hicks (Can.); **21.** *Exon.* p. 51
— *v.* Morrison (Can.); **38.** *Real Prop.* pp. 92, 94
— *v.* Sparks (Can.); **38.** *Real Prop.* p. 90
Low & Bonar, Ltd., *Ex p.*, *Re* Fairley (1922); **5.** *Bkpcy.* No. 6918a
Low Hong Hing, *Re* (Can.); **2.** *Aliens*, p. 49
Low Temperature Carbonisation, Ltd., Opposition by, *Re* (1931); **43.** *Trade Mks.* No. 166b
Lowe, *Ex p.* (1872); **33.** *Lunat.* No. 1670a
—, *Re*, Stewart *v.* Lowe (1929); **3.** *Basty.* No. 152b
— *v.* Bentley (1928); **32.** *Limit. of A.* No. 1976a
— *v.* Bruce (S. Af.); **34.** *Mast. & S.* pp. 24, 29
— *v.* Cawston Irrigation District (Can.); **38.** *Rates*, p. 85; **43.** *Wtr. Sply.* p. 77
— *v.* Essex County Council (1927); **34.** *Mast. & S.* No. 3701b
— *v.* Gilchrist (Ir.); **31.** *L. & T.* p. 93
— *v.* Peter Walker (Warrington) & Robert Cain & Sons, Ltd. (1935); **28.** *Inc. T.* No. 265a
— *v.* Wilsons & Clyde Coal Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 159
Lowe Chong *v.* Gilmore (Can.); **16.** *Cntmpt.* p. 7
Lowe King, *Ex p.*, *Re* Ghee, Public Trustee *v.* Lowe King (N.Z.); **24.** *Exors.* p. 41
Lowe's Estate, *Re*, Swann *v.* Rockley (1938); **44.** *Wills*, No. 5734b
Lowe-Martin Co., Ltd. *v.* Office Specialty Manufacturing Co., Ltd. (Can.); **36.** *Pats.* p. 70
Lower Mainland Dairy Products Sales Adjustment Committee *v.* Crystal Dairy, Ltd. (1933); **17.** *Dep.* No. 135f
Lower Umfolosi District War Memorial Hospital *v.* Lowe (S. Af.); **34.** *Med.* p. 187
Lowery *v.* Hull Corpn. (1930); **38.** *Rates*, No. 1525a
— *v.* Kingston-upon-Hull Corpn. (1930); **38.** *Rates*, No. 1525a
— *v.* Lamont (Can.); **30.** *Jdgmts.* p. 28; **32.** *Limit. of A.* p. 35
Lowndes, *Re*, *Ex p.* Trustee (1887); **4.** *Bkpcy.* No. 4578b
Lowndes' Patent, *Re* (1927); **36.** *Pats.* No. 2174a
Lowry *v.* Consolidated African Selection Trust, Ltd. (1938); **28.** *Inc. T.* No. 225b
— *v.* Field (1936); **28.** *Inc. T.* No. 114c
— *v.* Lowry (Can.); **11.** *Confl.* p. 27
— *v.* Reid (Ir.); **12.** *Contr.* p. 16
— *v.* Williams (1936); **28.** *Inc. T.* No. 114c
— *v.* — (Ir.); **30.** *Jdgmts.* p. 23
Lowson (Henry), Ltd., Application of, *Re* (1930); **34.** *Mines*, No. 327c
Lowther *v.* Clifford (1927); **2.** *Agric.* Nos. 252a, 267c
— *v.* Harris (1927); **1.** *Agcy.* No. 485a
— *v.* Moore (Can.); **28.** *Infts.* p. 141
Lowthorpe - Lutwidge *v.* Lowthorpe - Lutwidge (1935); **44.** *Wills*, No. 3457a
Loxton District Council *v.* Bruce (Aus.); **26.** *Highys.* p. 21; **38.** *Pub. Hlth.* p. 29
Loyst *v.* General Accident Fire & Life Assurance Corpn., Ltd. (1928); **29.** *Insce.* No. 3217a
Lubienski *v.* Silverman (Can.); **40.** *S. Land*, p. 7
Lubix *v.* Briskin (Can.); **21.** *Exon.* p. 57
Lubovich *v.* Cuckovich (Can.); **38.** *Real Prop.* p. 90
Lucas, *Ex p.*, *Re* Speal (Can.); **5.** *Bkpcy.* p. 72
—, *Re* Parr *v.* Blair (Ir.); **23.** *Exors.* p. 11
—, *Re*, Rhys *v.* A.-G. (1922); **8.** *Char.* No. 23b
— *v.* Hall (1899); **12.** *Contr.* No. 513a
— *v.* London, Midland & Scottish Ry. Co. (1934); **8.** *Carr.* No. 1669
— *v.* Moore Timber Co. & Gulf Logging Co. (Can.); **32.** *Lien*, p. 23
— *v.* Premier Motors, Ltd. (Can.); **34.** *Mast. & S.* p. 7
Lucas & Co. *v.* Moncton Supply Co. (Can.); **11.** *Confl.* p. 38
Luciani *v.* British America Assurance Co. (Can.); **29.** *Insce.* p. 27
Lucier *v.* Oullette (Can.); **3.** *Basty.* p. 61
Luciuk *v.* Kraus (Can.); **21.** *Exon.* p. 47
Luck *v.* Meyler (1928); **42.** *Solrs.* No. 904a
Lucknow (Bp.), *Re* (Ind.); **28.** *Inc. T.* p. 80
Lucks, Ltd., *Re* (Aus.); **31.** *L. & T.* p. 67
—, Ltd., *Re*, Serpell's Case (Aus.); **9.** *Coys.* p. 16; **35.** *Misrep.* p. 6
Lucullite, The *v.* R. Mackay, The (Scot.); **41.** *Ship.* p. 70
Lucy *v.* Moore (1730); **28.** *Infts.* No. 685a
Ludger Marcoux *v.* R. (Can.); **11.** *Const. L.* p. 67
Ludlow, *Re*, Bence-Jones *v.* A.-G. (1923); **8.** *Char.* No. 755a
Lugsdin *v.* Ball (Can.); **12.** *Contr.* p. 42
Luigi Ambrosini, Ltd. *v.* Bakaro Tinko (Can.); **16.** *Courts*, p. 15
Luipaards Vlei Estate & Gold Mining Co., Ltd. *v.* Inland Revenue Comrs. (1930); **28.** *Inc. T.* No. 369c
Lukey & A.-G. for Saskatchewan *v.* Ruthenian Farmers Elevator Co., Ltd. (Can.); **17.** *Dep.* p. 52
Lukis, Stewart & Co. *v.* Humphrey (Can.); **36.** *Prtnrs.* p. 61
Lumbers *v.* Fretz (Can.); **9.** *Coys.* pp. 28, 43
— *v.* Lumbers (Can.); **37.** *Pers. Prop.* p. 9
— *v.* Montgomery, *Re* Montgomery (Can.); **23.** *Exors.* p. 14

Lumiansky *v.* Myddleton (1934); **8.** *Clubs*, No. 46b
Lumley *v.* Broadway Coffee Co. & Unwin (Can.); **42.** *Stk. Ex.* p. 35
Lumley *v.* Desborough, *Re* Keane (1871); **28.** *Infts.* No. 42a
Luna Advertising Co., Ltd. *v.* Burnham & Co. (1928); **36.** *Pats.* No. 3343a
Lund *v.* Thames & Mersey Marine Insurance Co., Ltd. (1901); **29.** *Insce.* No. 1474a
Lundberg (A. P.) & Sons, Ltd. *v.* Letrik, Ltd., *Re* Lundberg & Sons, Ltd. Trade Marks Nos. 223,405 & 223,408 (1931); **43.** *Trade Mks.* No. 1243a
Lundquist *v.* Puls (Can.); **25.** *Fraud. Conv.* p. 16
Lundy *v.* Henderson (Can.); **32.** *Lien*, p. 25
Lundy & McLeod *v.* Powell (Can.); **17.** *Damgs.* p. 5
Lunenberg (Town) *v.* Lunenberg Municipality (Can.); **38.** *Real Prop.* p. 89
Lunenburg *v.* Boehner (Can.); **37.** *Prsns.* p. 33
Lung *v.* Lee (Can.); **11.** *Confl.* pp. 53, 54; **30.** *Jdgmts.* p. 24
Lunn Estate, *Re* (Can.); **21.** *E. D.* p. 17
Lurie *v.* Lurie (1938); **27.** *H. & W.* No. 1944a
Luscar Collieries *v.* McDonald (1927); **17.** *Dep.* No. 125a
Lussier, *Re* (Can.); **4.** *Bkpcy.* p. 36; **5.** *Bkpcy.* p. 58
— *v.* R. (Can.); **30.** *Intox.* p. 16
Lustre, The (1834): **39.** *Royal. F.* No. 33a
Lustre Hosiery, Ltd. *v.* York (Aus.); **22.** *Evid.* p. 4
Lusty (W.) & Sons *v.* Scott (G. W.) & Sons, Ltd. (1931); **36.** *Pats.* No. 2736a
— *v.* Scott (G. W.) & Sons, Ltd. (1932); **36.** *Pats.* No. 502d
Luthy *v.* St. Vital Rural Municipality (Can.); **38.** *Rates*, p. 61
Luton, Dunstable & District Coal Merchants' Assocn. *v.* London, Midland & Scottish Ry. Co. (1937); **8.** *Carr.* No. 977a
Luton Revenue Officer *v.* Deeley (1931); **38.** *Rates*, No. 226r
Lutz, *Re* (Can.); **22.** *Evid.* p. 21
Luxardo *v.* Public Trustee (1924); **2.** *Aliens*, No. 215*l*
Lyall *v.* Clark (Can.); **7.** *Bldg. Conts.* p. 24
— *v.* McAlinden (Aus.); **42.** *Str. Traf.* p. 37
Lyall & Sons Construction Co., Ltd. *v.* Baker (Can.); **10.** *Coys.* p. 70
Lye *v.* British Argentine & Meat Co. (1923), Ltd. (1927); **34.** *Mast. & S.* No. 2384a
Lyell *v.* Cormack (Can.); **42.** *Sp. Pfce.* p. 18
Lykiardopulo *v.* Bunge Y Born, Ltd. (1934); **41.** *Ship.* No. 1906a
Lyle (B. S.), Ltd. *v.* Chappell (1931); **35.** *Money*, Nos. 353q, 353r; **39.** *Revenue*, No. 548b
— *v.* Chappell (1932); **35.** *Money*, Nos. 353q, 353r, 353u; **39.** *Revenue*, No. 548b
Lyman Bros., *Re* (Can.); **38.** *Rates*, p. 49
Lyman's Trust & Trustee Relief Amendment Act, 1860, *Re* (1860); **23.** *Exors.* No. 4763a
Lymburn *v.* Mayland (1932); **17.** *Dep.* No. 178c
Lynch *v.* Limerick County Council (Ir.); **34.** *Mast. & S.* p. 24
— *v.* Lynch (1933); **27.** *H. & W.* No. 2477a
— *v.* —*Re* Lynch's Trusts (Ir.); **28.** *Infts.* p. 135
— *v.* Turney (Can.); **7.** *B. of Sale*, p. 5
Lynch's Trusts, *Re*, Lynch *v.* Lynch (Ir.); **28.** *Infts.* p. 135
Lynch-White, *Re*, Smith *v.* Lynch-White (1937); **36.** *Prtnrs.* No. 1162a
Lynde *v.* Nash (1929); **9.** *Coys.* No. 439a
Lyndon *v.* Lyndon (N.Z.); **44.** *Wills*, p. 33
Lyne *v.* Checker Stage Service, Ltd. (Can.); **8.** *Carr.* p. 1; **42.** *Stats.* p. 30
Lyne's Settlement Trusts, *Re*, *Re* Gibbs, Lyne *v.* Gibbs (1919); **11.** *Confl.* No. 511
Lynn *v.* Bamber (1930); **20.** *Eqy.* No. 495b; **30.** *Jdgmts.* No. 608a; **32.** *Limit of A.* No. 1819b
— *v.* Nathanson (Can.); **42.** *Theatres*, p. 70
Lyon, *Re*, Lyon *v.* Public Trustee (N.Z.); **5.** *Bkpcy.* p. 54
—, *Re*, Lyon *v.* Public Trustee (No. 2) (N.Z.); **16.** *Courts*, p. 14
— *v.* Public Trustee, *Re* Lyon (N.Z.); **5.** *Bkpcy.* p. 54
— *v.* Public Trustee, *Re* Lyon (No. 2) (N.Z.); **16.** *Courts*, p. 14
— *v.* Taylor Brothers (1928); **34.** *Mast. & S.* No. 3235a
Lyon (J. L.) & Co., Ltd. *v.* Haddock, Parker & Co. (1919); **2.** *Arbn.* No. 1361a
Lyon & Lyon *v.* Noble Farms, Ltd. (Can.); **42.** *Str. Traf.* p. 60
Lyons, *Ex p.* (Can.); **25.** *Fraud. Conv.* p. 14; **38.** *Real Prop.* p. 94
—, *Ex p.*, R. *v.* Muirhead (Aus.); **30.** *Intox.* p. 16
—, *Re* (Can.); **21.** *Exon.* p. 47
—, *Re*, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934); **5.** *Bkpcy.* No. 7185a
— *v.* Collins (1937); **28.** *Inc. T.* No. 632g
— *v.* Cowcher (1926); **28.** *Inc. T.* No. 457a
— (Doe d.) *v.* Crawford (Can.); **32.** *Limit. of A.* p. 37
— *v.* Ottawa (City) (Can.); **26.** *Hghys.* p. 26
— *v.* Smith (Can.); **6.** *B. of Exch.* p. 19
Lyons & Blennerhassett *v.* Chalmers (Ir.); **23.** *Exors.* p. 6
Lyons (J.) & Co., Ltd. *v.* Keating (1931); **25.** *Food*, No. 476c
— *v.* Lyons (J.) (1931); **43.** *Trade Mks.* No. 1163a
Lysaght *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No 131c
— *v.* Lysaght (1928); **27.** *H. & W.* No. 5393a
Lysenko *v.* Cooper (Can.); **15.** *Crim.* p. 77
Lyshar *v.* Gisborne Harbour Board (N.Z.); **13.** *Coprt.* p. 7
Lysnar *v.* National Bank of New Zealand, Ltd. (N.Z.); **12.** *Contr.* p. 18; **16.** *Courts*, p. 16; **17.** *Deeds*, p. 31; **22.** *Evid.* p. 4
Lysnar *v.* National Bank of New Zealand, Ltd. (No. 3) (N.Z.); **16.** *Courts*, p. 18
Lysol (Canada), Ltd. *v.* Solidol Chemical, Ltd. (Can.); **43.** *Trade Mks.* pp. 17, 36
Lyte *v.* Currey (Aus.); **18.** *Discy.* p. 18
Lytton (Earl) *v.* A.-G., *Re* Shakespeare Memorial Trust (1923); **8.** *Char.* Nos. 73a, 195a, 2146a
Lytton *v.* Great Northern Ry. Co. (1856); **38.** *Rys.* No. 197a
Lytton Canners, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 31
Lytton Gold Mines, Ltd. *v.* Munro (Can.); **9.** *Coys.* p. 36

M.

M., *Re* (1899); **33.** *Lunat.* No. 1336c
M., *Re* (Ir.); **3.** *Basty.* p. 57
—, *Re* (N.Z.); **42.** *Solrs.* p. 13
— *v.* M. (1928); **27.** *H. & W.* No. 4189a
— *v.* — (Can.); **27.** *H. & W.* p. 21
— *v.* — (Scot.); **28.** *Infts.* p. 129
M. & D. R. *v.* Dunn (Aus.); **14.** *Crim.* p. 5
M. A. Hanna Co. *v.* Provincial Bank of Canada (Can.); **3.** *Bank*, p. 27
M. A. Kader Zailany *v.* Secretary of State in Council (Ind.); **38.** *Pub. Auth.* p. 7
M. B. Rail Anchor, Ltd. *v.* Victorian Rys. Comrs. (Aus.); **38.** *Rys.* p. 46
M. Banerjee *v.* Anukul Chandra Mitra (Ind.); **3.** *Barr*, p. 51; **32.** *Libel*, p. 10

M. D. Donald, Ltd. *v.* Brown (Can.); **28.** *Inc. T.* p. 15
M. E. Moolla *v.* Collector of Rangoon (Ind.); **11.** *Comp. Pche.* p. 8
M. I. G. Trust, Ltd. (1934); **10.** *Coys.* Nos. 4967a, 4969a, 6746b
M. J. O'Brien, Ltd. *v.* Seaman Keni Co. (Can.); **2.** *Arbn.* p. 82
M. Jacobs Young & Co., Ltd. *v.* Harris (1926); **28.** *Inc. T.* No. 236a
M. M. & H. M., *Re* (Ir.); **15.** *Crim.* p. 80
M. P. M. Murugappa Chetti *v.* Madras Official Assignee (Ind.); **1.** *Agcy.* p. 62
M. Wheeler & Co., Ltd. *v.* Warren (1928); **10.** *Coys.* No. 5067b
M. S. M. M. Chettyar Firm *v.* P. Moodalrar (Ind.); **4.** *Bkpcy.* p. 10
Ma Mi *v.* Maung Aung Dun (Ind.); **17.** *Deeds*, p. 30
Ma Mya *v.* Ma Thein (Ind.); **30.** *Jdgmts.* pp. 25, 27, 28, 29
Ma Ngwe Naing *v.* Maung Tha Maung (Ind.); **52.** *Fraud. Conv.* p. 13
Ma Pan Nyun *v.* Maung Sit Phaung (Ind.); **21.** *Estpl.* p 28
Ma Sein Byu *v.* Khoo Soon Thye (Ind.); **11.** *Confl.* p. 34
Ma Sin *v.* Rangoon Collector (Ind.); **11.** *Comp. Pche.* p. 21
Maas *v.* McIntosh (Aus.); **9.** *Coys.* p. 54
Maass *v.* Seelheim (Can.); **32.** *Libel*, p. 13
Mabel Vera, The (1933); **41.** *Ship.* No. 203a
Maber, *Re*, Ward *v.* Maber (1928); **28.** *Infts.* No. 831a; **37.** *Perps.* No. 652a
Mabro *v.* Eagle, Star & British Dominions Insurance Co., Ltd. (1932); **32.** *Limit. of A.* No. 1879a
Mac Fisheries, Ltd. *v.* Harrison (1924); **1.** *Agcy.* No. 608a
Mac's Trade Mark No. 458, 654, *Re*, Macleans, Ltd. *v.* Lightbown & Sons, Ltd. (1937); **43** *Trade Mks.* No. 1245a
M'Adam *v.* Dublin United Tramways Co., Ltd. (Ir.); **42.** *Str. Traf.* p. 48
M'Alister (or Donoghue) *v.* Stevenson (1932); **36.** *Negl.* No. 364a; **39.** *S. Goods*, Nos. 715a, 856a
McAllister, *Re*, McAllister & Co. *v.* Orrock (Can.); **4.** *Bkpcy.* p. 25
— *v.* Bell Lumber & Pole Co., Ltd. (Can.); **34.** *Mast. & S.* p. 9
— *v.* Stewart (Ir.); **8.** *Char.* p. 75
McAllister & Co. *v.* Orrock, *Re* McAllister (Can.); **4.** *Bkpcy.* p. 25
McAllister & McAllister *v.* Bedard (Can.); **23.** *Exors.* p. 12
— *v.* Orrock (Can.); **4.** *Bkpcy.* p. 25
McAloney *v.* Mersey Paper Co., Ltd. (Can.); **14.** *Ship.* p. 41
McAlpine *v.* How (Can.); **17.** *Deeds*, p. 28
McAndrew *v.* Gray (Aus.); **1.** *Agcy.* p. 80
McArdle *v.* Egan (1934); **14.** *Crim.* No. 1562a
M'Ardle *v.* Howie (J. & R.), Ltd. (Scot.); **34.** *Mast. & S.* p. 177
Macarthur *v.* Campbell (1833); **2.** *Arbn.* No. 1125a
— *v.* — (1834); **2.** *Arbn.* No. 2092a
McArthur *v.* Good (Can.); **36.** *Negl.* p. 24
— *v.* McBurney (Can.); **44.** *Work*, p. 58
M'Arthur *v.* Seaforth, Lord (1810); **17.** *Damgs.* No. 404c
— *v.* Williams (Aus.); **24.** *Extrdn.* p. 46
McArthur & Co. *v.* Fagan (Can.); **32.** *Lien*, p. 24
Macarthur & Macleod Pty., Ltd. *v.* Carey (Aus.); **1.** *Agcy.* p. 80
M'Arthur (W. & A.), Ltd. *v.* Queensland (Aus.); **17.** *Dep.* p. 63
McArthur Lumber & Fuel Co., Ltd. (Can.); **10.** *Coys.* p. 66
Macartney, *Re*, Macfarlane *v.* Macartney (1921); **3.** *Basty.* Nos. 241a, 274a
Macartney Estate, *Re* (Ir.); **39.** *Revenue*, p. 22
McAskill *v.* North Western Trust Co., *Re* North Western Trust Co. (Can.); **9.** *Coys.* p. 17
— *v.* R. (Can.); **14.** *Crim.* p. 4
Macaulay, *Ex p.* (Aus.); **42.** *Solrs.* p. 14
— *v.* Glass (1902); **22.** *Evid.* No. 6362a
— *v.* Guaranty Trust Co. of New York (1927); **11.** *Confl.* No. 1285a
— *v.* William Baird & Co. (Scot.); **34.** *Mast. & S.* p. 136
Macaulay Nicolls & Maitland Co., Ltd. *v.* Burman (Can.); **1.** *Agcy.* p. 80
McAuliffe *v.* Hubbell (Can.); **36.** *Negl.* p. 11
Macaura *v.* Northern Assurance Co. (1925); **2.** *Arbn.* No. 1850a
McAvity (T.) & Sons, Ltd. *v.* Walsh (Can.); **32.** *Lien*, p. 24
M'Avoy *v.* Caledonia Stevedoring Co. (Scot.); **34.** *Mast. & S.* p. 115
McAvoy *v.* Interior Trust Co. (Can.); **38.** *Real Prop.* p. 94
— *v.* Royal Bank of Canada & Interior Trust Co. (Can.); **40.** *S. Land*, p. 17
MacBain *v.* MacBain (Scot.); **32.** *Limit. of A.* p. 32
M'Bain *v.* Mitchell (Scot.); **30.** *Intox.* p. 9
McBay *v.* Merritt (Can.); **27.** *H. & W.* p. 5
McBean *v.* Kinnear (Can.); **32.** *Lien*, p. 25; **42.** *Time*, p. 75
M'Beath's Trustees *v.* M'Beath (Scot.); **44.** *Wills*, p. 17
McBernie (Doe d.) *v.* Lundy (Can.); **35.** *Mtge.* p. 35
McBratney *v.* McBratney (Can.); **18.** *Desct.* p. 3
McBride, *Re* (Can.); **38.** *Rates*, p. 78
— *v.* Darrell (Can.); **1.** *Adm.* p. 18
— *v.* Ontario Jockey Club, Ltd. (Can.); **8.** *Chos.* p. 95; **17.** *Dep.* pp. 79, 83
McBride & Stewart, *Re* (Can.); **20.** *Elect.* p. 9
McCabe *v.* Coste (Can.); **7.** *B. of Sale*, p. 9
M'Cafferty *v.* MacAndrews & Co., Ltd. (1930); **34.** *Mast. & S.* Nos. 4072a, 4081a
— *v.* — (Scot.); **34.** *Mast. & S.* p. 181
McCaffery, *Re* (Can.); **44.** *Wills*, p. 55
McCaffrey *v.* McCaffrey (Can.); **25.** *Fraud. Conv.* p. 17
McCaig Estate, *Re*, Leisemere *v.* Residuary Legatees & Burnet (Can.); **44.** *Wills*, p. 45
McCall Bros., Ltd. *v.* Hargreaves (1932); **6.** *B. of Exch.* Nos. 564a, 2093b; **12.** *Contr.* No. 893a; **26.** *Guar.* No. 310a
M'Callum *v.* Brooks (Scot.); **25.** *Food.* p. 11
McCallum *v.* Central Manitoba Mines, Ltd. (Can.); **34.** *Mines*, p. 199
— *v.* Coboe (Can.); **1.** *Agcy.* p. 65
— *v.* Munton (Can.); **21.** *Exon.* p. 55
— *v.* Sagar & Lusty (Official Assignee) (N.Z.); **19.** *Educ.* p. 33
— *v.* Toronto General Trusts Corpn. (Can.); **24.** *Exors.* p. 31
— *v.* Urchak (Can.); **28.** *Infts.* p. 131
M'Callum & Son *v.* Adair (Scot.); **42.** *Str. Traf.* p. 56
McCallum, Smith & Co., Ltd. *v.* Betcherman (Can.); **28.** *Injon.* p. 146
McCalman *v.* Thorne (S. Af.); **27.** *H. & W.* p. 1
McCalmont *v.* Inland Revenue Comrs. (1938); **28.** *Inc. T.* No. 557f
McCammon *v.* Alliance Assurance Co., Ltd. (Can.); **29.** *Insce.* p. 55

McCandlish *v.* Services' Club Estate, *Re* Services' Club Estate Syndicate, Ltd. (1930); **10.** *Coys.* No. 5120a
McCann *v.* Scottish Co-operative Laundry Assocn., Ltd. (1936); **34.** *Mast. & S.* No. 2788a
M'Cann *v.* Scottish Co-operative Laundry Assocn., Ltd. (Scot.); **34.** *Mast. & S.* p. 102
McCannell *v.* Mabee McLaren Motors, Ltd. (Can.); **12.** *Contr.* p. 3
— *v.* Tyreman (Can.); **12.** *Contr.* p. 54
McCarron *v.* Noske Bros. Proprietary, Ltd. (Aus.); **26.** *Hghys.* p. 34
M'Cartan *v.* Belfast Harbour Comrs. (Ir.); **34.** *Mast. & S.* p. 21
McCarthy, *Re* (Can.); **23.** *Exors.* p. 8
MacCarthy *v.* Agard (1933); **27.** *H. & W.* No. 2223a; *Pract.* No. 1566a
McCarthy *v.* British Oak Insurance Co., Ltd. (1938); **29.** *Insce.* No. 3217oo
— *v.* Dee Valley School District (No. 2) (Can.); **19.** *Educ.* p. 46
— *v.* Hastings (Ir.); **27.** *H. & W.* p. 29
— *v.* Penrikyber Navigation Colliery Co., Ltd. (1937); **34.** *Mines*, No. 1129a
— *v.* South Australia Dental Board (Aus.); **34.** *Med.* p. 190
McCartney *v.* Miller (Can.); **36.** *Nuis.* p. 47
McCarty, *Re* (Can.); **1.** *Agcy.* p. 108
— *v.* McMurray (Can.); **25.** *Fraud. Conv.* p. 13
McCauley *v.* Huber (Can.); **2.** *Animals*, p. 66
McCausland *v.* McCausland (1927); **27.** *H. & W.* No. 3859a
McCausland (Samuel), Ltd. *v.* Railton (Aus.); **39.** *S. Goods*, p. 49
McCaw *v.* Ryczokoski (Can.); **18.** *Distr.* p. 33
McCawley *v.* R. (Aus.); **3.** *Barr.* p. 48
McClanaghan *v.* St. Ann's Mutual Building Society (Can.); **17.** *Dep.* p. 40
McClellan *v.* R. (Can.); **2.** *Agric.* p. 15; **31.** *L. & T.* p. 46
McClintock *v.* Noffke, *Ex p.* Noffke (Aus.); **22.** *Evid.* p. 3
— *v.* Winnipeg Electric Co. (Can.); **36.** *Negl.* p. 26
McClusky *v.* McClusky (Can.); **27.** *H. & W.* p. 73
M'Clymonts Trustees *v.* Ross (Scot.); **31.** *L. & T.* p. 87
McColl, *Re*, McColl *v.* McColl (Can.); **3.** *Auct.* p. 4
— *v.* Calgary Young Men's Christian Assocn. (Can.); **36.** *Negl.* p. 29
M'Coll *v.* Hyndman (Scot.); **39.** *Revenue*, p. 16
MacColl & Pollock, Ltd. *v.* Indemnity Mutual Marine Assurance Co., Ltd. (1930); **29.** *Insce.* No. 3289c
McComb *v.* Pleasantdale Rural Municipality (Can.); **26.** *Hghys.* p. 28
McConkey *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 16
McConkey's Arbitration, *Re* (Can.); **2.** *Arbn.* pp. 88, 98
McConnal *v.* Harden (Can.); **8.** *Chos.* p. 92
McConnell *v.* Detweiller (Can.); **12.** *Contr.* p. 19
— *v.* McCormick (N.Z.); **40.** *S. Land*, p. 19
McCord *v.* Sproat (Ir.); **43.** *Trade*, p. 9
MacCormac *v.* Bradford (Aus.); **1.** *Agcy.* p. 102
McCormack, *Re* (Can.); **4.** *Bkpcy.* p. 46
— *v.* Campbell (Aus.); **3.** *Bank.* p. 47
— *v.* Robinson (Can.); **12.** *Contr.* p. 32
M'Cormack *v.* Stewarts & Lloyds (Scot.); **34.** *Mast. & S.* p. 49
McCormack & Brockest Metal Wares, Ltd., *Re*, *Re* McMillan (Can.); **42.** *Solrs.* p. 9
McCormick *v.* Bennison (1938); **32.** *Libel*, No. 109a
M'Cormick *v.* Fife Coal Co. (Scot.); **34.** *Mines*, p. 208
McCormick *v.* Harworth (Can.); **39.** *S. Goods*, p. 57
— *v.* Haworth (Can.); **39.** *S. Goods*, p. 57
McCormick *v.* National Motor & Accident Insurance Union, Ltd. (1934); **10.** *Coys.* No. 6056d; **29** *Insce.* No. 3217w
— *v.* Park (Can.); **21.** *Exon.* p. 56
— *v.* Toronto (Can.); **38.** *Pub. Hlth.* p. 19
McCormick Harvesting Machine Co. *v.* Hunt (Can.); **21.** *Exon.* p. 52
M'Corquindale *v.* Carnbroe Coal Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 50
McCorquodale *v.* Shell Oil Co. of Australia, Ltd. (Aus.); **34.** *Mast. & S.* p. 13
— *v.* Theil (Can.); **42.** *Theatres*, p. 71
McCoubrey, *Re* (Can.); **4.** *Bkpcy.* p. 22
—, *Re*, *Re* Stratton & Greenshields, Ltd. (Can.) **4.** *Bkpcy.* p. 28; **5.** *Bkpcy.* p. 90
McCowan *v.* McCulloch (Can.); **3.** *Bailmt.* p. 7
M'Cowan *v.* Stewart (Scot.); **39.** *Revenue*, p. 17
McCoy, *Ex p.*, R. *v.* Palmer (Can.); **33.** *Mags.* p. 23
— *v.* Cork Corpn. (Ir.); **38.** *Pub. Hlth.* p. 14
McCracken *v.* Watson (Can.); **17.** *Dep.* p. 66
McCraney Rural Municipality Caveat, *Re*, *Re* Land Titles Act (Can.); **38.** *Pub. Hlth.* p. 20
McCrea *v.* Barhan-Jenkins Commission Co. & Raby (Can.); **1.** *Agcy.* p. 102
— *v.* Belanger (Can.); **1.** *Agcy.* p. 77
M'Crea & Bell *v.* A.-G. of the Duchy of Lancaster, *Re* Tomkinson (1929); **8.** *Char.* No. 728a
M'Creadie *v.* Doulton & Co. (Scot.); **34.** *Mast. & S.* p. 88
McCreagh *v.* Frearson (1921); **2.** *Agric.* No. 266gg
McCreanney *v.* McCreanney (1928); **27.** *H. & W.* No. 6124b
McCreath *v.* South Shields Corpn. & Baker (1932); **36.** *Pats.* No. 2944e
— *v.* — (1933); **36.** *Pats.* Nos. 3215a, 3243a
McCrindle *v.* London Scottish Canadian Investment Syndicate (Can.); **1.** *Agcy.* p. 99
McCrohan *v.* Edwards (Can.); **31.** *L. & T.* p. 77
McCrohon, *Ex p.*, *Re* Lisle (Aus.); **25.** *Gaming*, p. 29
McCrone *v.* Riding (1938); **42.** *Str. Traf.* No. 222b
McCuaig *v.* Barber (Can.); **35.** *Mtge.* p. 44
McCuaig & Bray, *Re* (Can.); **5.** *Bkpcy.* p. 71
McCulloch *v.* Eolkin, *Ex p.* Eolkin (Aus.); **33.** *Mags.* p. 25
— *v.* Star Construction Co. (Can.); **34.** *Mast. & S.* p. 16; **36.** *Negl.* pp. 3, 33
McCullough *v.* Robinson (Can.); **17.** *Damgs.* p. 22
— *v.* Samuel Marshall, The (Can.); **1.** *Adm.* pp. 24, 47
MacCullough & Graham, *Re* (Can.); **38.** *Real Prop.* p. 94
McCullum, *Ex p.*, *Re* Macdonald (1920); **5.** *Bkpcy.* No. 7122
— *v.* Northumbrian Shipping Co., Ltd. (1932); **34.** *Mast. & S.* No. 2354a
McCully *v.* Maritime United Farmers Co-operative (Can.); **12.** *Contr.* p. 54
McCurdy *v.* Bayham Township (Can.); **42.** *Stats.* p. 29
— *v.* McDaniel (Can.); **24.** *Exors.* p. 33
— *v.* Neve (Can.); **5.** *Bkpcy.* p. 67
McCutcheon *v.* Lightfoot (Can.) (1928); **38.** *Rates*, p. 85; *Real Prop.* p. 89; **40.** *S. Land*, p. 12
— *v.* — (Can.) (1930); **3.** *Bailmt.* p. 6; **43.** *Trov.* p. 56
— *v.* Registrar of Titles (Aus.); **1.** *Agcy.* p. 53
McCutcheon & Toronto Corpn., *Re* (Can.); **38.** *Pub. Hlth.* p. 14
McCutcheon Brick Co. *v.* Gardiner (Can.); **12.** *Contr.* p. 29
McDermid *v.* Bowen (No. 1) (Can.); **42.** *Str. Traf.* p. 51
— *v.* Wenzel (Can.); **7.** *B. of Sale*, p. 11
McDermott *v.* Hudson (Aus.); **2.** *Animals*, p. 60

McDermott *v.* Walker (Can.); **44.** *Wills*, p. 54
— *v.* — (No. 2) (Can.); **44.** *Wills*, p. 57
McDiarmid *v.* Elliott (No. 1) (Can.); **34.** *Med.* p. 189
— *v.* — (No. 2) (Can.); **34.** *Med.* p. 189
— *v.* McDiarmid (J.) Co., Ltd. (Can.); **35.** *Mtge.* p. 51
McDonagh, *Re* (Can.); **7.** *B. of Sale*, p. 8
M'Donagh *v.* Mulholland (Ir.); **19.** *Easmt.* p. 9
McDonald, *Ex p.* (Can.); **33.** *Mags.* p. 29
McDonald, *Ex p.*, R. *v.* Le Blanc (Can.); **16.** *Cr. Pract.* p. 40
Macdonald, *Re* (Can.) (1925); **35.** *Mtge.* p. 44; **38** *Real Prop.* p. 95
—, *Re* (Can.) (1931); **44.** *Wills*, p. 33
—, *Re* (Can.) (1933); **30.** *Intox.* p. 11
—, *Re* (Can.) (1935); **34.** *Mast. & S.* p. 87
—, *Re* (Can.) (1936); **28.** *Infts.* p. 143
—, *Re, Ex p.* McCullum (1920); **5.** *Bkpcy.* No. 7122
—, *Re*, R. *v.* Surrogate Court Judge (No. 2) (Can.); **23.** *Exors.* p. 7
McDonald *v.* Arbuckles (Can.); **30.** *L. & T.* p. 38
— *v.* Bailey (Can.); **42.** *Str. Traf.* p. 29
— *v.* Bezanson (Can.); **36.** *Negl.* p. 33
— *v.* Burr (Can.); **2.** *Animals*, p. 61
MacDonald *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 37
McDonald *v.* Carey (Can.); **7.** *B of Sale*, p. 9
Macdonald *v.* Casein, Ltd. (Can.); **1.** *Agcy.* p. 92
— *v.* Chisholm (Can.); **38.** *Real Prop.* p. 99
McDonald *v.* Cocos Island Treasures, Ltd. (Can.); **21.** *Exon.* p. 58
Macdonald *v.* Consolidated Gold Lake Co. (Can.); **32.** *Lien*, p. 26
— *v.* Creer, *Re* McRae (Aus.); **44.** *Wills*, p. 44
— *v.* Cummings (Can.); **18.** *Distr.* p. 28
— *v.* Dennys Lascelles, Ltd. (Aus.); **40.** *S. Land*, p. 11
— *v.* Denoon (Scot.); **3.** *Bastv.* p. 64
MacDonald *v.* Department of Health for Scotland (Scot.); **44.** *Work*, p. 65
McDonald *v.* Eldon School District (No. 3) (Can.); **19.** *Educ.* p. 33
Macdonald *v.* Georgiades (Can.); **38.** *Real Prop.* p. 99
— *v.* Great Western Ry. Co. (1930); **38.** *Rys.* No. 503a
MacDonald *v.* Guardian Assurance Co. (Can.); **29.** *Insce.* p. 58
M'Donald *v.* H.M. Advocate (Scot.); **14.** *Crim.* p. 54
McDonald *v.* Halifax Corpn. (Can.); **17.** *Deeds*, p. 27
MacDonald *v.* Hirsch (Can.); **26.** *Guar.* p. 10
Macdonald *v.* Hollister (1855); **21.** *Exon.* No. 2088
McDonald *v.* Howie (Can.); **18.** *Discy.* p. 10
— *v.* Jardine (Can.); **27.** *H. & W.* p. 15
— *v.* Knudsen (Can.); **38.** *Real Prop.* p. 99; **40.** *S. Land*, p. 13
— *v.* Lester (Can.); **27.** *H. & W.* p. 16
— *v.* Linton (Can.); **25.** *Fish.* p. 1
Macdonald *v.* McArthur (Can.); **18.** *Discy.* p. 20
McDonald *v.* McDonald (Can.); **17.** *Deeds*, p. 24
— *v.* — (No. 2) (Aus.); **44.** *Wills*, p. 12
— *v.* — (Scot.); **11.** *Confl.* p. 33
McDonald *v.* McIsaac (Can.); **38.** *Real Prop.* p. 99
— *v.* McKay (Can.); **33.** *L. G.* p. 8
— *v.* McKenzie (Can.); **32.** *Lien*, p. 24
— *v.* McNeil (Can.); **36.** *Negl.* p. 24
Macdonald *v.* Mitchell (Can.); **21.** *Exon.* p. 44
MacDonald *v.* Moran (Can.); **43.** *Trusts*, p. 60
— *v.* Nash (Can.); **11.** *Confl.* p. 49
Macdonald *v.* Normanby Co-operative Dairy Factory Co., Ltd. (N.Z.); **9.** *Coys.* p. 41
MacDonald *v.* North West Biscuit Co. (Can.); **7.** *Bldg. Conts.* p. 27
M'Donald *v.* Outram (George) & Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 117
McDonald *v.* Palmason (Can.); **31.** *L. & T.* p. 86
Macdonald *v.* Peddle (N.Z.); **8.** *Chos.* p. 89; **12.** *Contr.* p. 52; **19.** *Easmt.* p. 6
MacDonald *v.* R. (Can.) (1930); **38.** *Pub. Auth.* p.
— *v.* — (Can.) (1935); **14.** *Crim.* p. 45
McDonald *v.* Robillard (Can.); **38.** *Rates*, p. 85
— *v.* Royal Bank of Canada (Can.) (1929); **3.** *Bank.* p. 21
— *v.* — (Can.) (1933); **35.** *Mtge.* p. 41
MacDonald *v.* Royal Bank of Canada (Can.) (1934); **8.** *Chos.* p. 88
Macdonald *v.* Soulis (Can.); **9.** *Coys.* p. 21
MacDonald *v.* South Australia Ry. Comrs. (Aus.); **17.** *Dep.* p. 67
McDonald *v.* Stewart (Can.); **35.** *Mtge.* p. 48
— *v.* Swift Canadian Co. (Can.); **34.** *Mast. & S.* p. 5
Macdonald *v.* Thomas (Can.); **36.** *Negl.* p. 31
— *v.* Wairakei, Ltd. (N.Z.); **9.** *Coys.* p. 15
McDonald *v.* Wolverton (Can.); **44.** *Work*, p. 58
— *v.* Young (Can.), [1934] 4 D. L. R.; **24.** *Exors.* p. 39
MacDonald *v.* Young (Can.) (1934), 7 M. P. R.; **25.** *Gifts*, p. 48
McDonald & Cattanach, *Re* (Can.); **41.** *Sewers*, p. 4
McDonald (Gerald) & Co. *v.* Nash & Co. (1924); **6.** *B. of Exch.* Nos. 5671b, 2096b
Macdonald & Co. *v.* Teasdale (Can.); **21.** *Exon.* p. 51
McDonald (A. H.) & Co. Proprietary, Ltd. *v.* Wells (Aus.); **35.** *Money*, p. 20
McDonald & Listowel, *Re* (Can.); **16.** *Courts*, p. 10
Macdonald & Toronto Corpn., *Re* (Can.); **26.** *Hghys.* p. 40
MacDonald & Young *v.* Huggett & Huggett (Can.); **32.** *Lien*, p. 25
MacDonald Apartments, Ltd. *v.* False Creek Lumber Co., Ltd. (Can.); **35.** *Mtge.* p. 48
McDonald, Conter & O'Hearn *v.* R. (Can.); **14.** *Crim.* p. 24
Macdonald Estate, *Re* (Can.) (1928); **24.** *Exors.* p. 38
MacDonald Estate, *Re* (Can.) (1933); **42.** *Solrs.* p. 5
—, *Re* (Can.) (1937); **18.** *Descr.* p. 3
—, *Re, Re* Surrogate Courts Act (Can.); **16.** *Cr. Pract.* p. 33
MacDonald's (Lord) Curator (Scot.); **10.** *Coys.* p. 91
Macdonald's Settlement, *Re*, O'Callaghan *v.* O'Callaghan (Aus.); **40.** *Stllmts.* p. 25
MacDonald's Tutor *v.* Inverness County Council (Scot.); **19.** *Educ.* p. 35
Macdonald-Buchanan *v.* Coldstream (Can.); **33.** *L. G.* p. 9
— *v.* Johnson (Can.); **2.** *Animals*, p. 59
M'Donnell *v.* Stenson (Ir.); **18.** *Descr.* p. 1
MacDonnell & Jordan *v.* Pech & Lovette (Can.); **42.** *Tort*, p. 76
M'Dougal *v.* Singer Manufacturing Co. (Scot.); **34.** *Mast. & S.* p. 137
McDougal Segur Exploration Co. of Canada, Ltd. *v.* Solloway Mills & Co. (Can.); **9.** *Coys.* p. 15
McDougald *v.* Wilson (Can.); **9.** *Coys.* p. 26
MacDougall, *Re* (Can.); **17.** *Dep.* p. 72; **23.** *Exors.* p. 27
McDougall *v.* A.-G. (N.Z.); **30.** *Jdgmts.* p. 23
MacDougall *v.* Chitnavis (Scot.); **11.** *Confl.* p. 48; **27.** *H. & W.* p. 2
McDougall *v.* McDougall (Can.); **27.** *H. & W.* p. 9
— *v.* National Trust Co. (Can.); **1.** *Agcy.* p. 80

M'Dougall *v.* Paterson (Scot.); **42.** *Str. Traf.* p. 45
McDougall *v.* Scott & Eastern Trust Co. (Can.); **10.** *Coys.* p. 56
— *v.* Summerlee Iron Co., Ltd. (1927); **34.** *Mast. & S.* No. 3843c
McDougall & Secord, Ltd. *v.* Merchants Bank of Canada (Can.); **7.** *B. of Sale*, p. 8
McDowell Estate, *Re* (Can.); **44.** *Wills*, p. 52
McEachen Estate, *Re* (Can.); **21.** *Exon.* p. 47
— (No. 2), *Re* (Can.); **42.** *Solrs.* p. 8
McEachern *v.* Somerville (Can.); **25.** *Fraud. Conv.* p. 18
— *v.* White (Can.); **25.** *Fraud. Conv.* p. 18
McEachren & Sons, Ltd., *Re*, McGibbon *v.* Imperial Trust Co. (Can.); **9.** *Coys.* p. 50
McElhinney Estate, *Re*, Standard Trusts Co. *v.* McElhinney (Can.); **24.** *Exors.* p. 40
McElland's Estate, *Re* (Can.); **5.** *Bkpcy.* pp. 54, 68
McElwain. *Ex p.*, *Re* Cook (Aus.); **24.** *Extrdn.* p. 46
McEneaney *v.* Shevlin (Ir.); **8.** *Chos.* p. 92
McEvoy *v.* Belfast Banking Co. (1935); **25.** *Gifts*, No. 127a
M'Ewan *v.* Edinburgh & District Tramways Co. (Scot.); **34.** *Mast. & S.* p. 20
McEwan *v.* Johnstone (N.Z.); **1.** *Agcy.* p. 66
— *v.* Milne (Can.); **25.** *Fraud. Conv.* p 17
— *v.* Speckt (Can.); **24.** *Exors.* p. 40
MacEwan *v.* Toronto General Trusts Corpn. (Can.); **43.** *Trade*, p. 1
McEwen *v.* Armour (Can.); **36.** *Negl.* p. 23
— *v.* Bouck (Can.); **32.** *Lien*, p. 27
— *v.* McEwen (Can.); **27.** *H. & W.* p. 35
— *v.* North American Life Assurance Co. (Can.); **29.** *Insce.* p. 33
M'Fadzean *v.* Kilmalcolm School Board (Scot.); **19.** *Educ.* p. 36
McFarland *v.* London & Lancashire Guarantee & Accident Co. (Can.); **10.** *Coys.* p. 79
Macfarlane, *Re* (Can.) (1933); **21.** *E. D.* p. 18
McFarlane, *Re* (Can.) (1934); **44.** *Wills*, p. 50
Macfarlane *v.* Davis (Can.); **35.** *Misrep.* p. 2
McFarlane *v.* Fleming (Can.); **24.** *Exors.* p. 39
— *v.* Franklin (Can.); **21.** *Exon.* p. 59
MacFarlane *v.* Hubert (1935); **28.** *Inc. T.* No. 540j
McFarlane *v.* Hutton Brothers (Stevedores), Ltd. (1926); **34.** *Mast. & S.* No. 2317b
Macfarlane *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 86
— *v.* Macartney, *Re* Macartney (1921); **3.** *Basty.* Nos. 241a, 274a
MacFarlane *v.* Norris (1862); **11.** *Confl.* Nos. 1277a, 1306a
M'Fee, *Ex p.*, Hardy *v.* Walker (1853); **13.** *Cty. Cts.* No. 1044
McFee *v.* Dundar (Can.); **19.** *Educ.* p. 37
Macfie *v.* Cater (Can.); **5.** *Bkpcy.* p. 75
— *v.* Hunter (Can.); **21.** *Exon.* p. 48
McGahan & Ryan *v.* Valuation Comr. (Ir.); **38.** *Rates*, p. 61
McGarrity *v.* Condy (Aus.); **30.** *L. & T.* p. 42
McGarry *v.* Limerick Gas Committee (Ir.); **28.** *Inc. T.* p. 43
M'Geachy *v.* Department of Health for Scotland (Scot.); **44.** *Work*, p. 63
McGee *v.* Clarke (Can.); **17.** *Damgs.* pp. 5, 15; **34.** *Mines*, p. 206
— *v.* Cusack (Can.); **28.** *Infts.* p. 130
M'Gee *v.* M'Brayne (Scot.); **34.** *Mast. & S.* p. 137
McGee *v.* Muir (William) & Co., Ltd. (1929); **34.** *Mast. & S.* No. 3423b
— *v.* Pooley (Can.); **11.** *Const. L.* p. 64
McGee *v.* United Steel Companies, Ltd. (1930); **34.** *Mast. & S.* Nos. 3377b, 3449a
McGeer, McGeer & Wilson *v.* Fletcher (Can.); **42.** *Solrs.* p. 6
McGettigan *v.* Guardian Assurance Co., Ltd. (Can.); **29.** *Insce.* p. 26
McGibbon, *Re*, Royal Trust Co. *v.* Baxter (Can.); **44.** *Wills*, p. 19
— *v.* Imperial Trust Co., *Re* McEachren & Sons, Ltd. (Can.); **9.** *Coys.* p. 50
— *v.* Mooers (Can.); **36.** *Negl.* p. 17
MacGill *v.* Holmes (Can.); **36.** *Negl.* p. 16
McGill *v.* McGlashan (Can.); **17.** *Deeds*, p. 28
— (Doe d.) *v.* Shea (Can.); **21.** *Estpl.* p. 34
McGillis *v.* McDonald (Can.); **21.** *Exon.* p. 52
MacGillivray, *Re* (Can.); **33.** *Mags.* p. 22
— *v.* Arisaig Poor District No. 1 (Can.); **37.** *Poor L.* p. 14
— *v.* Hope (1935); **34.** *Mast. & S.* No. 3849b
— *v.* Melville Town (Can.); **11.** *Comp. Pche.* p. 15
McGilvray *v.* Queensboro Sawmills Co. (Can.); **32.** *Lien*, p. 27
M'Ginley *v.* Farme Coal Co. (Scot.); **34.** *Mast. & S.* p. 130
— *v.* Gallagher (Ir.); **24.** *Exors.* p. 35
M'Ginn *v.* Delbeke (Ir.); **11.** *Confl.* p. 33
McGinn *v.* Ellerton (Can.); **27.** *H. & W.* p. 4
MacGinn *v.* Fidelity & Casualty Co. of New York (Can.); **29.** *Insce.* p. 38
McGirr *v.* Belous (Can.); **7.** *B. of Sale*, p. 4
M'Glone *v.* Smith (Ir.); **17.** *Damgs.* p. 6
McGoldrick *v.* Eastern Express Co. (Can.); **12.** *Contr.* p. 4
McGougan *v.* MacDonald & Macaw (Can.); **36.** *Prtnrs.* p. 61
M'Govern *v.* James Nimmo & Co. (Scot.); **34.** *Mines*, p. 212
McGowan, *Ex p.*, *Re* Rosedale Produce Co. (Can.); **5.** *Bkpcy.* p. 73
M'Gowan *v.* Barr & Co., Ltd. (Scot.); **36.** *Negl.* p. 2
McGowan *v.* Langmuir (Scot.); **15.** *Crim.* p. 85
— *v.* Osgoldcross Assessment Committee, West Riding of Yorkshire (1936); **38.** *Rates*, No. 226cc
MacGowan *v.* St. Kilda (City) (Aus.); **26.** *Hghys.* p. 45
McGowan *v.* Stott (1923); **36.** *Negl.* No. 595a
McGrath, *Re* (1934); **33.** *L. G.* No. 86a
MacGrath *v.* Black (1926); **32.** *Libel*, No. 951
McGrath *v.* Day & Emery, Ltd. (1935); **34.** *Mast. & S.* No. 3846c
— *v.* Leckie & Co. (Can.); **36.** *Negl.* p. 6
McGregor, *Re* (Can.); **34.** *Mines*, p. 207
MacGregor, *Re*, Thompson *v.* Ashton (Aus.); **8.** *Char.* p. 68
McGregor *v.* Board of Agriculture for Scotland (Scot.); **2.** *Agric.* p. 8
Macgregor *v.* Canadian National Railways & Edmonton (City) (Can.); **26.** *Hghys.* p. 28; **36.** *Negl.* p. 1; **38.** *Rys.* p. 38
MacGregor *v.* Canadian Pacific Ry. Co. (Can.); **18.** *Discy.* p. 10
McGregor (Doe d.) *v.* Crow (Can.); **32.** *Limit. of A.* p. 38
McGregor *v.* Esquimalt & Nanaimo Ry. Co. (Can.); **17.** *Dep.* p. 53
— *v.* Gaulin (Can.); **12.** *Contr.* p. 45
McGregor (Doe d.) *v.* Hawke (Can.); **32.** *Limit. of A.* p. 38
McGregor *v.* Hoover Co., Ltd. (Can.); **44.** *Work*, p. 60
— *v.* Klotz (Can.); **21.** *Exon.* p. 53
Macgregor *v.* Lord Advocate (Scot.); **11.** *Const. L.* p. 66
McGregor *v.* R. (Can.); **26.** *Hghys.* p. 36; **38.** *Pub. Auth.* p. 12
McGroder *v.* New Zealand Shipping Co., Ltd. (1933); **34.** *Mast. & S.* No. 3531c

McGugan *v.* Smith (Can.); **24.** *Exors.* p. 35
M'Guickin *v.* Addie & Sons' Collieries, Ltd. (Scot.); **34.** *Mast. & S.* p. 80
McGuigan *v.* Campbell (Can.); **12.** *Contr.* p. 53
M'Guigan *v.* Moore (A. G.) & Co. (Scot.); **34.** *Mast. & S.* p. 162
McGuiness *v.* McGuiness (N.Z.); **28.** *Infts.* p. 133
McGuinness *v.* Hollingshead, *Re* Mackay (Ir.); **4.** *Bkpcy.* p. 23
McGuinty & Co., *Ex p.*, *Re* Hamar (Can.); **11.** *Confl.* p. 56
McGuire, *Ex p.*, *Re* Calcus Co., Ltd. (Can.); **4.** *Bkpcy.* p. 39
—, *Re*, Daye *v.* Denley (Can.); **33.** *Lunat.* p. 13
— *v.* Prosser (Can.); **20.** *Egy.* p. 20
McGuire (E. H.) & H. J. Forester, Ltd. *v.* Cadzow (Can.); **9.** *Coys.* p. 42
McGuire's Estate, *Re* (Can.); **33.** *Lunat.* p. 13
Machanjeeri Ahmed *v.* K. Govinda Prabhu (Ind.); **32.** *Limit. of A.* p. 30
M'Harg *v.* Speirs (Scot.); **2.** *Agric.* p. 8
Machell *v.* Ellis (1845); **3.** *Barr.* No. 347a
Machon *v.* McLoughlin (1926); **28.** *Inc. T.* Nos. 507a, 526a
McIlmurray & Jenkins, *Re* (Can.); **38.** *Real Prop.* p. 96
McIlrath Lumber Co., Ltd. *v.* Shore & Shore & Dennisson (Can.); **21.** *Exon.* p. 54
MacIlwaine's Patent, *Re* (Scot.); **36.** *Pats.* p. 95
M'Ilwraith *v.* Paton (Scot.); **34.** *Mast. & S.* p. 143
McInnerny *v.* McDougall (Can.); **42.** *Str. Traf.* p. 64
MacInnes, *Re* (Can.); **29.** *Insce.* p. 31
McInnes *v.* Bird (N.Z.); **20.** *Elect.* p. 5
MacInnes *v.* Cartwright & Crickmore, Ltd. (Can.); **42.** *Stk. Ex.* p. 31
M'Innes *v.* Inland Revenue (Scot.); **39.** *Revenue*, p. 21
McInnes *v.* Wardle (Aus.); **34.** *Mast. & S.* p. 15
McInnis, *Re* (Can.); **38.** *Real Prop.* p. 95
— *v.* Gray (Can.); **7.** *Bldg. Conts.* p. 22
McIntosh, *Re* (Aus.); **44.** *Wills*, p. 47
— *v.* Bell (Can.); **36.** *Negl.* p. 28
M'Intosh *v.* Cameron (Scot.); **34.** *Mast. & S.* p. 13
— *v.* Carmichael (Scot.); **34.** *Mast. & S.* p. 43
— *v.* Great Western Ry. Co. (1852); **18.** *Discy.* No. 594
McIntosh *v.* Hastings (Can.); **5.** *Bkpcy.* p. 49
MacIntosh *v.* Hotham (Can.); **12.** *Contr.* p. 12
McIntosh *v.* Layfield (Can.); **2.** *Arbn.* p. 83
MacIntosh *v.* MacIntosh (Can.); **27.** *H. & W.* p. 59
McIntosh *v.* McIntosh (N.Z.); **3.** *Bastly.* p. 52
— *v.* McNaughton (Can.); **6.** *B. of Exch.* p. 25
— *v.* Parent (Can.); **21.** *Estpl.* pp. 31, 33
— *v.* Peterson (Can.); **42.** *Str. Traf.* p. 40
— *v.* Scott (Can.); **32.** *Libel*, p. 12
McIntosh's Estate, *Re* (Can.); **24.** *Exors.* p. 34
MacIntyre, *Re* (Can.) (1906); **24.** *Exors.* p. 39
McIntyre, *Re* (Can.) (1925); **5.** *Bkpcy.* p. 58
—, *Re*, Trustee *v.* Canada Metal Co., Ltd. (Can.); **7.** *B. of Sale*, p. 3; **21.** *Estpl.* p. 39
— *v.* Brodie (Can.); **43.** *Trov.* p. 58
— *v.* McIntyre (Can.); **22.** *Evid.* p. 19
MacIntyre *v.* Miller (Can.); **1.** *Agcy.* p. 78
McIntyre *v.* Morton (Scot.); **37.** *Poor L.* p. 21
— *v.* Shaw (Can.); **21.** *Exon.* p. 51
— *v.* Silcox (Can.); **29.** *Insce.* p. 31
— *v.* Somers (Can.); **30.** *Intox.* p. 11
— *v.* Thompson (Can.); **31.** *L. & T.* p. 54
— *v.* Union Bank (Can.); **7.** *B. of Sale*, p. 9
McIntyre & Co. *v.* Law (Can.); **1.** *Agcy.* pp. 76, 84
McIntyre Estate, *Re* (Can.); **21.** *E. D.* p. 20
McIsaac *v.* Fraser Machine & Motor Co., Ltd. (Can.); **1.** *Agcy.* p. 67
— *v.* McDonald (Can.); **38.** *Real Prop.* p. 99
McIver *v.* Crown Point Mining Co. (Can.); **32.** *Lien*, p. 26
MacIver *v.* Rae, *Re* MacIver's Settlement (1936); **40.** *Sttlmts.* No. 1998d
MacIver's Settlement, *Re*, MacIver *v.* Rae (1936); **40.** *Sttlmts.* No. 1998d
McIvor *v.* Paterson (Can.); **35.** *Mtge.* p. 51
McK. *v.* McK. (Ir.); **27.** *H. & W.* p. 23
Mack *v.* McLeod (Can.); **1.** *Agcy.* p. 89
Mackaness *v.* Percival, *Re* Cockerill (1929); **21.** *E. D.* No. 265b; **44.** *Wills*, No. 2732a
Mackay, *Re* (Aus.); **3.** *Basty.* p. 55
McKay, *Re* (Can.) (1921); **4.** *Bkpcy.* pp. 1, 25, 27; **5.** *Bkpcy.* p. 78; **18.** *Descl.* p. 3
—, *Re* (Can.) (1938); **27.** *H. & W.* p. 12
—, *Re*, *Ex p.* Mason (Can.); **4.** *Bkpcy.* p. 47
—, *Re*, Cowie *v.* Official Assignee (N.Z.); **5.** *Bkpcy.* p. 62
Mackay, *Re*, McGuinness *v.* Hollingshead (Ir.); **4.** *Bkpcy.* p. 23
McKay (Doe d.) *v.* Allen (Can.); **38.** *Real Prop.* p. 89
Mackay *v.* A.-G. for British Columbia (Can.); **11.** *Comp. Pche.* p. 3
McKay *v.* Bank of Montreal (Can.); **21.** *Exon.* p. 56
— *v.* Campbell (Can.); **35.** *Misrep.* p. 2
— *v.* Carey (Can.); **32.** *Lien*, p. 26
Mackay *v.* Elias (Aus.); **22.** *Evid.* p. 16
— *v.* Kameshwar Singh (Ind.); **39.** *S. Goods*, p. 55
— *v.* Lamb (Scot.); **14.** *Crim.* pp. 51, 56
— *v.* London & Western Trusts Co., Ltd. (Can.); **40.** *Set-off*, p. 23
MacKay *v.* London General Insurance Co., Ltd. (1935); **29.** *Insce.* No. 3217h
McKay *v.* Loucks (Can.); **2.** *Animals*, p. 59
— *v.* McDougall (Can.); **38.** *Real Prop.* p. 95
— *v.* McKay (Can.); **5.** *Bkpcy.* p. 87
— *v.* — (Aus.); **27.** *H. & W.* p. 43
— *v.* Naidoo (S. Af.); **34.** *Mast. & S.* p. 7
— *v.* R. (Aus.); **14.** *Crim.* p. 39
Mackay *v.* R. (Can.); **1.** *Adm.* p. 29; **41.** *Ship.* p. 75
McKay (Doe d.) *v.* Rykert (Can.); **11.** *Const. L.* p. 77
McKay *v.* Sexsmith (Can.); **31.** *L. & T.* p. 85
— *v.* Tudhope Anderson Co., Ltd. (Can.); **1.** *Agcy.* p. 66
— *v.* Turgeon (Can.); **5.** *Bkpcy.* p. 58
McKay & Adams, *Re*, *Ex p.* Vest (Aus.); **18.** *Distr.* p. 29
MacKay (Gordon) & Co., Ltd. *v.* Capital Trust Co., Ltd. (Can.); **7.** *B. of Sale*, p. 3
McKay Oil Co., *Re* (Can.); **4.** *Bkpcy.* p. 14
MacKay's Estate, *Re* (Can.); **44.** *Wills*, p. 15
M'Kean *v.* Baird (William) & Co (Scot.); **34.** *Mast. & S.* p. 162
McKechnie *v.* Ray (Aus.); **17.** *Dep.* p. 63
McKechnie Bros., Ltd. for Compulsory Licence in respect of Certain Letters Patent, *Re* (1934); **36.** *Pats.* No. 1658a
McKee, *Re*, Public Trustee *v.* McKee (1931); **18.** *Descl.* Nos. 8a, 283b; **44.** *Wills*, No. 299b
— *v.* Archbold, *Re* Archbold (Ir.); **44.** *Wills*, p. 26
— *v.* Culross Mutual Fire Insce. Co. (Can.); **29.** *Insce.* p. 25
— *v.* Fisher (Can.); **18.** *Distr.* p. 30
— *v.* Halverson (Can.); **16.** *Cr. Pract.* p. 37
Mackee *v.* Solloway Mills & Co., Ltd. (Can.); **21.** *Exon.* p. 55
MacKee *v.* Solloway Mills & Co., Ltd. (No. 2) (Can.); **18.** *Discy.* p. 11
Mackee *v.* Solloway Mills & Co., Ltd. (No. 3) (Can.); **1.** *Action*, p. 13
M'Kee *v.* Weir (Scot.); **42.** *Str. Traf.* p. 42
McKee *v.* Winnipeg (City) (Can.); **26.** *Hghys.* p. 26
MacKeen, *Re* (Can.); **5.** *Bkpcy.* p. 38

McKeen *v.* McKay (Can.); **32.** *Limit. of A.* p. 38
— *v.* Pattillo (Can.); **24.** *Fish*, p. 1; **31.** *L. & T.* p. 74
McKeigan *v.* McQueen (Can.); **12.** *Contr.* p. 47
M'Kellar *v.* M'Master (Scot.); **31.** *L. & T.* p. 92
McKelvey *v.* Invercargill Milk Supply Co., Ltd. (N.Z.); **36.** *Nuis.* p. 44
McKenna *v.* Eaton-Turner (1937); **28.** *Inc. T.* No. 489a
— *v.* Haslett, *Re* Haslett (Aus.); **24.** *Exors.* p. 39
— *v.* Spooner Oils, Ltd. (Can.); **9.** *Coys.* p. 27
MacKenney *v.* Horne (Can.); **36.** *Negl.* p. 33
McKenny *v.* Drummond & Dvoretsky (Aus.); **17.** *Damgs.* p. 14; **39.** *S. Goods*, p. 43
McKenzie, *Re* (Can.) (1924); **4.** *Bkpcy.* pp. 38, 39
—, *Re* (Can.) (1926); **4.** *Bkpcy.* p. 45
MacKenzie, *Re* (Can.) (1927); **18.** *Desct.* p. 1
Mackenzie *v.* Abbott (1926); **26.** *Hghys.* No. 2592a
McKenzie *v.* Big Pond Overseers (Can.); **37.** *Poor L.* p. 16
— *v.* Cape Breton County Poor District No. 13 (Can.); **37.** *Poor L.* p. 14
— *v.* Grant (Can.); **24.** *Exors.* p. 34
Mackenzie *v.* Harbour & British Columbia Electric Ry. Co., Ltd. (Can.); **36.** *Negl.* p. 40
— *v.* Harvey & Blanchard (Can.); **2.** *Agric.* p. 15
— *v.* Huybers (Can.); **42.** *Stats.* p. 25
Mackenzie *v.* Jinks (Scot.); **25.** *Fish.* p. 3
— *v.* Joseph Azar, Ltd. (Can.); **12.** *Contr.* p. 17
— *v.* Lamont (Can.); **17.** *Deeds*, p. 24
— *v.* McDonald (Can.); **6.** *B. of Exch.* p. 19
— *v.* McDonnell (Can.); **39.** *S. Goods*, p. 35
— *v.* McEwin (Aus.); **36.** *Negl.* p. 18
— *v.* Macgillivray (Scot.); **2.** *Agric.* p. 6
— *v.* Mackenzie (1928); **27.** *H. & W.* No. 5068a
— *v.* — (Can.); **27.** *H. & W.* p. 46
— *v.* MacKenzie Estate (Can.); **35.** *Mtge.* p. 47
— *v.* Meyers (Can.); **36.** *Negl.* p. 8
McKenzie *v.* Miniota Municipal School District (Can.); **19.** *Educ.* p. 40
MacKenzie *v.* Moore's Taxi Co., Ltd. (Can.); **44.** *Work*, p. 60
McKenzie (Doe d.) *v.* Mosher (Can.); **32.** *Limit. of A.* p. 37
MacKenzie *v.* Royal Bank of Canada (1934); **26.** *Guar.* No. 1704a
— *v.* Royal Bank of Canada (Can.); **27.** *H. & W.* pp. 8, 15
McKenzie *v.* Smith (Scot.); **19.** *Educ.* p. 38
McKenzie Barge & Derrick Co. *v.* Navigazione Libera Triestina S.A. (Can.); **44.** *Waters*, p. 7
Mackenzie Brothers *v.* The Admiralty (Scot.); **11.** *Const. L.* p. 73
McKenzie (H. D.) Co., *Re* (Can.); **32.** *Lien*, p. 22; **38.** *Rates*, p. 86
McKenzie Estate, *Re* (Can.); **23.** *Exors.* p. 17
M'Kenzie's Executrix *v.* Morrison's Trustees (Scot.); **12.** *Contr.* p. 46
Mackenzie's Trustees *v.* Mackenzie (Scot.); **37.** *Powers*, p. 28
Mackenzie-Kennedy *v.* Air Council (1927); **11.** *Const. L.* No. 157a; **21.** *Estpl.* Nos. 498a, 508a
M'Keogh *v.* O'Brien Moran (Ir.); **32.** *Libel*, p. 12
M'Keown *v.* Roe (Ir.); **28.** *Inc. T.* p. 84
MacKeracher, *Re* (Can.); **2.** *Agric.* p. 25
McKercher *v.* Vancouver-Iowa Shingle Co., Ltd. (Can.); **18.** *Discy.* p. 12
McKesson & Robbins, Ltd. *v.* Biermans (Can.); **31.** *L. & T.* p. 68
Mackey *v.* Mackey (Can.); **28.** *Injon.* p. 154
— *v.* Mackey & Magur (Can.); **30.** *Jdgmts.* p. 19
Mackie (John V.), *Re* (Can.); **14.** *Crim.* p. 12
Mackie *v.* Crombie (Scot.); **25.** *Gaming*, p. 33
— *v.* Dumbartonshire County Council, Western District Committee (1927); **26.** *Hghys.* No. 1164a
— *v.* Ivanchuk (Can.); **35.** *Mtge.* p. 45
McKie *v.* McKie (Ir.); **11.** *Confl.* p. 53
McKiernan *v.* McKiernan (Can.); **27.** *H. & W.* p. 77
McKillop (Township) Corpn. *v.* Logan (Township) Corpn. (Can.); **41.** *Sewers*, p. 4
McKinlay (Doe d.) *v.* Elliott (Nfld.); **23.** *Exors.* pp. 2, 3
McKinlay *v.* Jenkins (H. T.) & Son, Ltd. (1926); **28.** *Inc. T.* No. 93a
— *v.* Rorvik (S. Af.); **7.** *Bldg. Conts.* p. 33
McKinnon, *Re* (Can.); **25.** *Fr. Soc.* p. 19
— *v.* Glen Afton Collieries, Ltd. (N.Z.); **34.** *Mines*, p. 204
— *v.* Johnston (Can.); **2.** *Agric.* p. 25
— *v.* McDonald (Can.); **40.** *S. Land*, p. 8
Mackinnon *v.* Mackinnon (Can.); **27.** *H. & W.* p. 59
— *v.* Peate (1936); **42.** *Str. Traf.* No. 232g
McKinnon *v.* R. (Aus.); **14.** *Crim.* p. 51
McKinnon's, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 30
— (No. 2), *Re* (Can.); **4.** *Bkpcy.* p. 45
Mackintosh, *Re*, Manley *v.* O'Brien (Can.); **21.** *Estpl.* p. 38
Mackintosh *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 670a
MacKintosh's Judicial Factor *v.* Lord Advocate (Scot.); **7.** *Burial*, p. 41
McKissick Alcorn, Magnus & Co. *v.* Hall (Can.); **12.** *Contr.* p. 47
McKittrick Estate, *Re* (Can.); **44.** *Wills*, p. 31
McKittrick Properties, Ltd., *Re* (Can.); **20.** *Electric*, p. 14
Mackley *v.* Alberta University Governors (Can.); **18.** *Desct.* p. 6
Macklin, *Re*, Tribune Newspaper Co. *v.* Fort Frances Pulp & Paper Co., Ltd. (Can.); **22.** *Evid.* p. 5
— *v.* Newbury Sanitary Laundry (1919); **2.** *Animals*, No. 390a
— *v.* Young (Can.); **36.** *Negl.* p. 32
McKnight *v.* General Casualty Insurance Co. of Paris (Can.); **29.** *Insce.* p. 57
— *v.* Titus (Can.); **25.** *Gifts*, p. 49
Macky, Logan Caldwell, Ltd., *Re* (N.Z.); **10.** *Coys.* p. 84
M'Lachlan, *Re* (Scot.); **43.** *Trade Mks.* p. 34
McLachlan *v.* Horner (Can.); **39.** *S. Goods*, p. 40
— *v.* McLachlan (Aus.); **27.** *H. & W.* p. 83
— *v.* Morgan & Co. (1935); **8.** *Carr.* Nos. 1537, 1620, 1632
— *v.* Nourse (Aus.); **44.** *Work*, p. 58
M'Lachlan *v.* Peveril S.S. Co., Ltd. & Macgregor & Ferguson (Scot.); **34.** *Mast. & S.* p. 23
McLachlin *v.* Dunwich Mutual Fire Insce. Co. (Can.); **22.** *Evid.* p. 6
Maclaren *v.* Maclaren (Can.); **11.** *Confl.* p. 52
McLaren *v.* Minister of National Revenue (Can.); **17.** *Dep.* p. 43; **28.** *Inc. T.* p. 88
M'Laren *v.* Smith (Scot.); **2.** *Animals*, p. 70
Maclaren *v.* Stainton (1867); **40.** *Stlmts.* No. 2157a
McLaren & Co. *v.* New Zealand Insurance Co. (N.Z.); **29.** *Insce.* p. 58
MacLaren Co. *v.* Elec. Reduction Co. (Can.); **30.** *L. & T.* p. 45
McLarty *v.* Prince Line, Ltd. (1933); **34.** *Mast. & S.* No. 2702b
McLatchie *v.* McLeod (Can.); **21.** *Exon.* p. 47
McLauchlan & College of Physicians & Surgeons, *Re* (Can.); **34.** *Med.* p. 184

McLaughlin *v.* Caledonia Stevedoring Co., Ltd. (1938); **34.** *Mast. & S.* No. 3283p
— *v.* Cliff (Can.); **35.** *Mtge.* p. 40
— *v.* Gentles (Can.); **1.** *Agcy.* p. 59
— *v.* Long (Can.); **36.** *Negl.* p. 29
McLaughlin & Co. *v.* Birks (Can.); **1.** *Agcy.* p. 76
McLaughlin & Cosgrove *v.* Northern Ireland Valuation Comr. (Ir.); **38.** *Rates*, p. 62
McLaughlin & Toronto (City), *Re* (Can.); **38.** *Rates*, p. 82
McLaughlin (Leonard) Motors, Ltd. *v.* Barnes (Can.); **36.** *Negl.* p. 18
McLaurin Legacy, *Re* (Can.); **8.** *Char.* p. 71
McLea *v.* Essex Lines, Ltd. (1933); **41.** *Ship.* No. 809a
McLean, *Ex p.* (Aus.); **17.** *Dep.* pp. 60, 63
—, *Re*, Perpetual Exors. & Trustees Assocn. of Australia, Ltd. *v.* Lawrence (Aus.); **37.** *Powers*, p. 28
— *v.* Ballantyne (Can.); **19.** *Eccl.* p. 31
— *v.* Bell (1932); **36.** *Negl.* No. 770b
— *v.* Bourcet (Can.); **36.** *Negl.* p. 27
— *v.* Brett (Can.); **2.** *Animals*, pp. 59, 60
— *v.* Cook (Can.); **42.** *Solrs.* p. 5
— *v.* Dun (Can.); **26.** *Guar.* p. 2
M'Lean *v.* Hardie (Scot.); **28.** *Infts.* p. 138
McLean *v.* Johnson (Can.); **17.** *Deeds*, p. 31
— *v.* McDougall (Can.); **6.** *B. of Exch.* p. 9
— *v.* McLean (N.Z.); **3.** *Basty.* p. 55
— *v.* Murch (N.Z.); **25.** *Gaming*, p. 39
— *v.* R. (Can.) (1926); **14.** *Crim.* p. 31
— *v.* — (Can.) (1934); **14.** *Crim.* p. 33; **30.** *Juries*, p. 31
— *v.* Ratekin (Can.); **25.** *Fraud. Conv.* pp. 15, 16; **42.** *Solrs.* p. 8
MacLean *v.* Reidrug, Ltd. (Can.); **9.** *Coys.* p. 17; **35.** *Misrep.* p. 5
McLean *v.* Standard Trusts Co. (Can.); **40.** *S. Land*, p. 11
— *v.* Vancouver Harbour Comrs. (Can.); **38.** *Pub. Auth.* p. 6
— *v.* Vessey (Can.); **27.** *H. & W.* p. 12
— *v.* Watson (Can.); **21.** *Exon.* p. 45
McLean & Cook, *Re* (Can.); **42.** *Solrs.* p. 5
Maclean & Graham *v.* Smith & Mackintosh (Ir.); **18.** *Desct.* p. 1
McLean (J. J. H.) Estate Co. *v.* Newton, *Re* Kaplan (Can.); **4.** *Bkpcy.* p. 31
McLean Gold Mines, Ltd. *v.* A.-G., *Re* (Can.); **17.** *Dep.* pp. 53, 66
McLean-Butorac Motors *v.* Campbell (Can.); **42.** *Str. Traf.* p. 43
Macleans, Ltd. *v.* Lightbown & Sons, Ltd., *Re* Trade Mark "Mac" No. 458,654 (1937); **43.** *Trade Mks.* No. 1245a
Macleay *v.* Treadwell (N.Z.); **44.** *Wills*, p. 42
McLelan, *Re* (Can.); **21.** *Exon.* p. 43
— *v.* Fletcher (Can.); **42.** *Solrs.* p. 6
McLellan *v.* Fraser (Can.); **8.** *Char.* p. 73
— *v.* Milne (Can.); **42.** *Solrs.* p. 13
M'Lellan *v.* Thorburn & Son (Scot.); **34.** *Mast. & S.* p. 90
McLellan *v.* Turner (Can.); **3.** *Basty.* p. 59
McLennan *v.* Carter (Can.); **4.** *Bkpcy.* p. 41
— *v.* France (N.Z.); **25.** *Gaming*, p. 35
— *v.* Grant (Can.); **38.** *Real Prop.* p. 90
— *v.* H.M. Advocate (Scot.); **14.** *Crim.* p. 45
— *v.* McLennan (Can.); **27.** *H. & W.* p. 19
— *v.* Newton (Can.); **43.** *Trusts*, p. 66
McLeod *v.* Black (1927); **34.** *Mast. & S.* Nos. 3315a, 3531b
— *v.* Boultbee & Atkins (Can.); **36.** *Negl.* p. 9
— *v.* Brazilian Traction Light & Power Co., Ltd. (Can.); **9.** *Coys.* p. 22
— *v.* Canadian Indemnity Co. (Can.) (1936); **17.** *Custom*, p. 2
McLeod *v.* Black (Can.) (1937); **17.** *Dep.* p. 43
— *v.* Customs & Excise Minister (Can.); **28.** *Inc. T.* p. 11
— *v.* Dowling (1927); **36.** *Prtnrs.* Nos. 1654a, 1670a
— *v.* Girvin Central Telephone Assocn. (Can.); **21.** *Exon.* p. 46
— *v.* Hastie & Sons (Scot.); **41.** *Ship.* p. 13
— *v.* Hughes (Can.); **35.** *Misrep.* p. 3
— *v.* Krysko (Can.); **42.** *Sp. Pfce.* p. 17
— *v.* Lane, Ltd. (1938); **24.** *Fact.* No. 294a
— *v.* McKenzie (Can.); **20.** *Elect.* p. 6
— *v.* McLeod (Can.), [1931] 2 D. L. R. 364; **27.** *H. & W.* p. 5
— *v.* — (Can.), [1931] 1 W. W. R. 811; **27.** *H. & W.* p. 44
— *v.* — (Can.) (1935); **27.** *H. & W.* p. 21
— *v.* —, *Re* McLeod Estate (Can.); **38.** *Real Prop.* p. 90
— *v.* Mercer (Can.); **35.** *Mtge.* p. 39
— *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 92
— *v.* Pearson (Can.); **22.** *Evid.* p. 15; **32.** *Limit. of A.* p. 38
— *v.* Royal Trust Co. (Can.); **43.** *Trusts*, p. 68
— *v.* Sydney (Can.); **26.** *Hghys.* p. 28
— *v.* Toronto General Hospital, *Re* Warwicker (Can.); **22.** *Evid.* p. 9
— *v.* United Canners, Ltd. (Can.); **9.** *Coys.* p. 39
— *v.* Winnipeg Supply & Fuel Co., Ltd. (Can.); **42.** *Solrs.* p. 3
McLeod & McLeod *v.* Consterdine (Can.); **42.** *Str. Traf.* p. 37
M'Leod & Sons *v.* Inland Revenue (Scot.); **38.** *Rates*, p. 55
McLeod & Windsor Corpn., *Re* (Can.); **28.** *Inc. T.* p. 92
McLeod Estate, *Re*, McLeod *v.* McLeod (Can.); **38.** *Real Prop.* p. 90
M'Lintock, *Ex p.*, *Re* Thomson (Scot.); **2.** *Aliens*, p. 39
McLoughlan *v.* Martin (Nfld.); **36.** *Nuis.* p. 49
McM. *v.* McM. (Ir.); **27.** *H. & W.* p. 23
McMackin (Doe d.) *v.* Devine (Can.); **38.** *Real Prop.* p. 99
McMahon, *Ex p.*, R. *v.* Hutchison (1936); **16.** *Cntmpt.* No. 183a
—, *Re*, Lawson *v.* Intestate Estates Curator (Aus.); **23.** *Exors.* p. 18
M'Mahon *v.* Gaffney (Ir.); **40.** *S. Land*, p. 12
McManus, *Re*, *Re* Dodds Appeal (1933); **44.** *Work*, No. 146a
— *v.* Bowes (1938); **33.** *Lunat.* Nos. 1688a, 1688b, 1688d
— *v.* Gravelbourg (Can.); **7.** *Bldg. Conts.* p. 22
McMartin *v.* Elliott & Burns & Co., Ltd. (Can.); **36.** *Negl.* p. 33
McMaster, *Re*, *Ex p.* Cormack (Aus.); **27.** *H. & W.* p. 82
— *v.* Cuningham, *Re* Holmes (N.Z.); **44.** *Wills*, p. 56
— *v.* McPherson (Can.); **21.** *Exon.* p. 48
McMenemy Estate, *Re*, *Re* Ryall Estate (Can.) **21.** *E. D.* p. 21
McMichael *v.* Goderich (Town) (Can.); **26.** *Hghys.* p. 30
McMillan, *Ex p.*, *Re* Aylward (Can.); **4.** *Bkpcy.* p. 31; **35.** *Mtge.* p. 31
—, *Re* (Can.); **23.** *Exors.* p. 1
—, *Re*, *Re* McCormack & Brockest Metal Wares, Ltd. (Can.); **42.** *Solrs.* p. 9
MacMillan *v.* Bohme (Can.); **30.** *Intox.* p. 17
McMillan *v.* Canadian Northern Ry. Co. (Can.); **11.** *Confl.* p. 44
— *v.* Colford (Can.); **22.** *Evid.* p. 11
MacMillan *v.* McDonald (Can.); **2.** *Agric.* p. 15

M'Millan *v.* Mackinlay (Scot.); **27.** *H. & W.* p. 20
MacMillan *v.* Mooney (Can.); **12.** *Contr.* p. 22
McMillan *v.* Murray (Can.); **42.** *Str. Traf.* p. 60
— *v.* National Trust Co. (Can.); **38.** *Real Prop.* p. 91
— *v.* Orient Steam Navigation Co., Ltd. (1935); **8.** *Carr.* No. 686a
— *v.* Southwest Boom Co. (Can.); **17.** *Dep.* p. 54
— *v.* Wallace (Can.); **2.** *Animals*, p. 62
Macmillan *v.* Western S. M. T. Co., Ltd. (Scot.); **42.** *Str. Traf.* p. 46
McMillan *v.* Williams (Can.); **12.** *Contr.* p. 16
Macmillan & Co. *v.* Cooper (1923); **13.** *Coprt.* Nos. 92a, 426a, 635a
MacMillan & MacMillan *v.* Brownlee (Can.); **34.** *Mast. & S.* p. 17
McMillan Estate & Calgary Brewing & Malting Co., Ltd. (Can.); **29.** *Insce.* p. 30
McMillan Grain Co. & Winding-Up Act, *Re* (Can.); **10.** *Coys.* p. 72
MacMillen *v.* Taylor (Can.); **42.** *Solrs.* p. 10
McMonagle *v.* Orton (Can.); **17.** *Damgs.* p. 21
McMordie *v.* Ford (Can.); **31.** *L. & T.* p. 69; **42.** *Theatres*, p. 71
McMorris *v.* Empress Theatre Co., Ltd. (Can.); **12.** *Contr.* p. 43
M'Mullan *v.* Mulhall & Farrell (Ir.); **32.** *Libel*, p. 5
McMurchy *v.* Harper (Can.); **6.** *B. of Exch.* p. 9
—*v.* Stewart (Can.); **25.** *Gifts*, p. 47
McMurdo, *Re* Penfield *v.* McMurdo (1902); **9.** *Coys.* No. 2689a
McMurtry *v.* Scarrow & Scarrow (Can.); **44.** *Wills*, p. 16
McMurtry & Co., *Re*, *Ex p.* James (M. A.) & Sons (Can.); **4.** *Bkpcy.* p. 33
McNab, *Re* (Can.); **8.** *Char.* p. 78
— *v.* Coward (Can.); **22.** *Evid.* p. 21
— *v.* Imperial Trust Co. (Can.); **6.** *B. of Exch.* p. 6
McNabb *v.* Landed Banking & Loan Co. (Can.); **38.** *Rates*, p. 85
McNabb & Jarnagin *v.* Findlay (Can.); **19.** *Educ.* p. 41
Macnaghten *v.* Douglas (1927); **34.** *Med.* No. 106
McNally *v.* McNally (Can.); **27.** *H. & W.* p. 39
— *v.* Sentner (Can.); **36.** *Negl.* p. 29
Macnamara, *Re*, Macnamara *v.* Macnamara (1936); **40.** *Stllmts.* No. 1956a
— *v.* Des Brisay (Can.); **17.** *Damgs.* p. 21
McNamara *v.* Flin Flon Municipal District (Can.); **26.** *Highys.* p. 29
MacNamara *v.* Hatteras S.S. (Ir.); **11.** *Confl.* p. 39
— *v.* India Tyre & Rubber Co. (Scot.); **34.** *Mast. & S.* p. 146
McNamara *v.* Langford (Aus.); **4.** *Bkpcy.* p. 15
M'Namara *v.* Scottish Catholic Insurance Society (Scot.); **44.** *Work*, p. 64
McNamara & Co. (1921), Ltd. *v.* London, Midland & Scottish & Great Western Ry. Cos. (1937); **8.** *Carr.* No. 1555
Macnaught *v.* Sievwright (Scot.); **4.** *Bkpcy.* p. 24; **5.** *Bkpcy.* p. 90
McNaught *v.* Stokes-Stephens Oil Co., Ltd. (Can.); **2.** *Arbn.* p. 92
McNaught & Stokes-Stephens Oil Co., *Re* (No. 2) (Can.); **2.** *Arbn.* pp. 85, 101
McNaught & Stokes-Stephens Oil Co., Ltd., *Re* (No. 3) (Can.); **2.** *Arbn.* p. 95
Macnaughton *v.* Wigg (Can.); **31.** *L. & T.* p. 67
McNavin *v.* Western Assurance Co. (Can.); **29.** *Insce.* p. 30
McNeil *v.* Howe (Can.); **17.** *Dep.* p. 56
— *v.* R. (Can.); **15.** *Crim.* p. 103
McNeil & Hingley, Ltd. *v.* Hill (Can.); **7.** *Bounds. & F.* p. 19
MacNeil (James H.) & Sons *v.* Wright (Can.); **4.** *Bkpcy.* p. 89
McNeil's Exors. & De Bernales *v.* R. & Pendergast (Aus.); **16.** *Cr. Pract.*, p. 26
M'Neilie *v.* H.M. Advocate (Scot.); **14.** *Crim.* p. 25
McNeill, *Re* (Can.); **16.** *Cr. Pract.* p. 28
— *v.* Cairns (Can.); **25.** *Fraud. Conv.* p. 16
— *v.* Hill (Can.); **43.** *Tresp.* p. 53
— *v.* Motor Service Co. (Can.); **39.** *S. Goods*, p. 38
— *v.* Short (Can.); **26.** *Guar.* p. 7
— *v.* Stewart (Can.); **6.** *B. of Exch.* p. 6
M'Neilly *v.* Archibald Russell, Ltd. (Scot.); **34.** *Mast. & S.* p. 88
McNichol *v.* Dominion Motors, Ltd. (Can.); **39.** *S. Goods*, p. 43
McNicholas *v.* West Leigh Colliery Co., Ltd. (1933); **34.** *Mast. & S.* No. 3545d
McNish *v.* Munro (Can.); **32.** *Limit. of A.* p. 37
M'Nulty *v.* Hanratty (Ir.); **3.** *Auct.* p. 4
McNutt *v.* Cree (Can.); **11.** *Confl.* p. 49
Macomish's Exors. *v.* Jones (Scot.); **22.** *Evid.* p. 28
Maconchy *v.* Trower (Ir.); **12.** *Contr.* p. 6
McParland *v.* Coulson (Ir.); **23.** *Exors.* p. 12
— *v.* Seymour (Can.); **21.** *Exon.* p. 57
— *v.* Sparks (N.Z.); **30.** *Intox.* p. 8
MacPhadyen *v.* Employers Liability Assurance Co. (Can.); **29.** *Insce.* p. 40
McPhail *v.* McKinnon (Can.); **21.** *Exon.* p. 48
— *v.* Winslow (Can.); **5.** *Bkpcy.* p. 87
McPhedran & Cleland *v.* Toronto (Can.); **31.** *L. & T.* p. 67
McPhee & Pointer *v.* Box (Can.); **34.** *Mines*, p. 199
McPherson, *Re*, Trusts & Guarantee Co., Ltd. *v.* Bradford (Can.); **25.** *Fraud. Conv.* p. 16
— *v.* Credit Foncier Franco Canadien (Can.); **31.** *L. & T.* p. 52
— *v.* Dominion Bank (Can.); **3.** *Bank.* p. 42
— *v.* Forlong (Can.); **26.** *Guar.* pp. 1, 2
— *v.* Gedge (Can.); **32.** *Lien*, p. 27
MacPherson *v.* Lees (Andrew), Ltd. (N.Z.); **8.** *Chos.* p. 95
— *v.* London Loan Assets, Ltd. (Can.); **3.** *Bank.* p. 43; **35.** *Mtge.* p. 42
McPherson *v.* McBain (Can.); **32.** *Limit. of A.* p. 35
— *v.* McPherson (1936); **16.** *Courts*, No. 277b
— *v.* — (Can.) (1883); **21.** *Exon.* p. 50
MacPherson *v.* MacPherson (Can.), [1933] 1 W. W. R. 199; **27.** *H. & W.* p. 73
MacPherson *v.* MacPherson (No. 2) (Can.), [1933] 1 W. W. R. 464; **27.** *H. & W.* p. 73
McPherson *v.* McPherson (No. 2) (Can.), [1933] 2 W. W. R. 513; **27.** *H. & W.* p. 75
— *v.* — (Can.) (1936); **27.** *H. & W.* p. 58
— *v.* Mehring (Can.); **38.** *Pub. Hlth.* p. 15
Macpherson *v.* Taxation Comr. (Aus.); **28.** *Inc. T.* p. 11
MacPherson Estate, *Ex p.*, *Re* Hingston-Smith (Can.); **18.** *Distr.* p 31
McPherson, Thom & Co., *Re*, Sandhurst & Northern District Trustees, etc., Co., Ltd. *v.* Coombie Pastoral Co. Pty., Ltd. (Aus.); **8.** *Chos.* p. 92
MacPherson's Executrix *v.* Mackay (Scot.); **25.** *Gifts*, p. 51
Macphillamy (Charles), *Re*, Gilmour *v.* Macphillamy (1930); **44.** *Wills*, No. 10,427a
MacPhillamy *v.* Fox (Aus.); **44.** *Wills*, p. 52
M'Quade *v.* India Tyre & Rubber Co. (Scot.); **34.** *Mast. & S.* p. 153
McQuade *v.* Morgan (Aus.); **5.** *Bkpcy.* p. 51
McQuade & Clark *v.* Moncrieff & Vistaunet (Can.); **8.** *Chos.* p. 90
McQuaid *v.* Cooper (Can.); **16.** *Courts*, p. 10
McQuarrie *v.* Eastern Trust Co. (Can.); **44.** *Wills*, p. 44

Macqueen *v.* Frackleton (Aus.); **19.** *Eccl.* p. 31
McQueen *v.* Vancouver Island Power Co., Ltd. (Can.); **2.** *Arbn.* p. 101
McQuillan, *Re*, *Ex p.* Royal Bank (Can.); **5.** *Bkpcy.* p. 70
— *v.* Ryan (Can.); **7.** *Bounds. & F.* p. 18
McRae, *Re*, McDonald *v.* Creer (Aus.); **44.** *Wills*, p. 44
— *v.* Corbett (Can.); **38.** *Rates*, p 85
— *v.* Drummie, *Re* Walker's Estate (Can.); **24.** *Exors.* p. 33
— *v.* Law (Can.); **9.** *Coys.* p. 22
— *v.* McLaughlin Motor Car Co., Ltd. (Can.); **30.** *Intox.* p. 10; **33.** *Mal. Pros.* p. 40
Macrae *v.* Walsh (Aus.); **22.** *Evid.* p. 9
Macroom, The (1927); **1.** *Adm.* No. 897a
McRury *v.* Dominion Coal Co., Ltd. (Can.); **36.** *Negl.* p. 11
McSorley *v.* Murphy (Can.); **30.** *L. & T.* p. 42; **42.** *Sp. Pfce.* p. 16
— *v.* St. John Corpn. (Can.); **38.** *Pub. Auth.* p. 5
McStravick *v.* Ottawa (Can.); **36.** *Negl.* p. 6
McSweeney, *Ex p.* (Can.), [1935] 3 D. L. R. 780; **16.** *Cr. Pract.* p. 34
—, *Ex p.* (Can.), [1935] 4 D. L. R. 237; **16.** *Cr. Pract.* p. 34
—, *Re*, Eastern Trust Co. *v.* McSweeney (Can.); **23.** *Exors.* p. 20
M'Sweeney *v.* Clan Line Steamers, Ltd. (Scot.); **34.** *Mast. & S.* p. 94
McTaggart *v.* Powers (Can.); **34.** *Med.* p. 190; **36.** *Negl.* p. 25
McTavish *v.* Cotswold School District (Can.); **6.** *B. of Exch.* p. 12
McTavish Brothers *v.* Langer (Can.) (1929); **30.** *Juries*, p. 33
— *v.* — (Can.) (1932); **9.** *Coys.* p. 21
McVeigh *v.* Smith Transport, Ltd. (Can.); **26.** *Hghys.* p. 30
McVittie, *Ex p.*, R. *v.* Jones (1931); **16.** *Cntmpt.* No. 341a; **41.** *Shrffs.* No. 274a
— *v.* Bolton JJ. (1924); **14.** *Crim.* No. 6298c
McWatters *v.* Maxwell (Ir.); **36.** *Negl.* p. 39
McWey, *Re*, Ryan *v.* Cashin & Costello (Ir.); **25.** *Gifts*, p. 51
McWhirter *v.* Creber (Can.); **36.** *Prtnrs.* p. 59
M'Whirter & Sons *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 54
McWilliams, *Re* (Can.); **23.** *Exors.* p. 6
— *v.* Carleton Royalties, Ltd. (Can.); **36.** *Nuis.* p. 47
MacWilliams *v.* Higgins (Can.); **6.** *B. of Exch.* p. 11
Macy *v.* Cork Manufacturing Co., Ltd. (1928); **34.** *Mast. & S.* Nos. 3818a, 3834a
Maczewski, *Re* (Can.); **19.** *Educ.* p. 34
Madame Tussaud & Sons, Ltd., *Re* (1927); **10.** *Coys.* No. 6989a
Madan Gopal *v.* Peoples Bank of Northern India (Ind.); **10.** *Coys.* p. 92
Madder *v.* McKenzie (A. E.) & Co., Ltd. (Can.); **36.** *Nuis.* p. 47
Maddison *v.* Donald H. Bain, Ltd. (Can.); **39.** *S. Goods*, p. 53
— *v.* Prudential Insce. Co. (Can.); **29.** *Insce.* p. 59
Madeira House Co., Ltd. *v.* Madeira House (London), Ltd. (1930); **43.** *Trade Mks.* No. 1212b
Mader *v.* Jones (Can.); **39.** *S. Goods*, p. 36
— *v.* Sun Life Assurance Co. (Can.); **29.** *Insce.* p. 33
Madge, *Re*, Pridie (or Pudee) *v.* Bellamy (1928); **23.** *Exors.* No. 3517a
Madhavji Visram *v.* Ramniklal Vadilal (Ind.); **17.** *Damgs.* p 20
Madho Ram *v.* Secretary of State (Ind.); **39.** *S. Goods*, p. 34
Madhoram Hurdeo Das *v.* Sett (Ind.); **2.** *Aliens*, p. 45
Madore Estate, *Re* (S. Af.); **44.** *Wills*, p. 25
Madras & Southern Mahratta Ry. Co., Ltd. *v.* Pithapuram, Maharaja (Ind.); **44.** *Waters*, p. 2
Madras Corpn. *v.* Madras Electric Tramways, Ltd. (Ind.); **20.** *Electric*, p. 10
Madras Income Tax Comr. *v.* P. R. A. L. Muthukaruppam Chettiar (1935); **28.** *Inc. T.* No. 207b
— *v.* T. S. Firm, Tanjore at Negapatam (Ind.); **28.** *Inc. T.* p. 25
Madras Official Assignee *v.* Krishnaji Bhat (1933); **5.** *Bkpcy.* No. 6138a
— *v.* Mercantile Bank of India, Ltd. (Ind.); **5.** *Bkpcy.* p. 60
— *v.* Minakshi Vidyasalai Sangam (Ind.); **43.** *Trusts*, p. 72
Madrid, The (1937); **11.** *Confl.* No. 1325a; *Pract.* No. 448a
Madrid Bank, Ltd., *Re*, *Ex p.* Holder, *Ex p.* Williams (1866); **10.** *Coys.* No. 6368a
Madsen *v.* Anderson (Can.); **39.** *S. Goods*, p. 40
Maeburn *v.* Leckie (1822); **29.** *Insce.* No. 2110a
Magadi Soda Co., Ltd., *Re* (1925); **10** *Coys.* Nos. 4678a, 4688a, 7409a
Magdalena Securities, Ltd., Application for Registration of a Trade Mark, *Re* (1931); **43.** *Trade Mks.* No. 166b
Magee *v.* Magee (1936); **44.** *Wills*, No. 4375a
— *v.* Storey (Ir.); **21.** *Estpl.* p. 33
Magee Estate, *Re* (Can.); **44.** *Wills*, p. 51
Maggi, *Ex p.* (Aus.); **2.** *Aliens*, p. 52
Maggie A., The (1922); **1.** *Adm.* No. 328a
— (1923); **1.** *Adm.* No. 1497b
Magi Estate, *Re* (Can.); **18.** *Desct.* p. 3
Magnay *v.* Burt (1843); **33.** *Mal. Pros.* No. 14
Magnet Advertising Co., Ltd. *v.* Arrowsmith (1938); **12.** *Contr.* No. 5149a
Magrath, *Re* (1934); **33.** *L. C.* Nos. 48b, 86a 86c
Magraw *v.* Lewis (1933); **28.** *Inc. T.* No. 535a
Maguire, *Ex p.*, R. *v.* Maidstone Prison (Governor) (1925); **16.** *Cr. Pract.* Nos. 660a, 797a
—, *Re* (Can.); **4.** *Bkpcy.* pp. 11, 16, 19
—, *Re* (Ir.); **4.** *Bkpcy.* p. 40
— *v.* Day (Ir.); **31.** *L. & T.* p. 52
— *v.* Maguire (Can.); **11.** *Confl.* p. 54
— *v.* Northland Drug Co., Ltd. (Can.); **43.** *Trade*, p. 6
Magurn *v.* Magurn (Can.); **32.** *Lien*, p. 24
Mah Fung, *Re* (Can.); **2.** *Aliens*, p. 50
Mah Shin Shong, *Re*, *Re* Sing Yim Hong (Can.); **2.** *Aliens*, p. 51
Mahabalee Prasad *v.* Palmer (Ind.); **3.** *Bailmt.* p. 12
Mahadeo *v.* R. (1936); **14.** *Crim.* No. 2990a; **15.** *Crim.* No. 8541a
Mahammad Hosain *v.* Jamini Nath Bhattacharjya (Ind.); **42.** *Stats.* p. 25
Mahammad Raza Saheb Belgami *v.* Sadasiva Rao (Ind.); **16.** *Cr. Pract.* p. 40
Mahan *v.* Manness (Can.); **1.** *Agcy.* p. 55
Mahant Shantanand Gir *v.* Mahant Basudevanand Gir (Ind.); **3.** *Barr.* p. 48; **16.** *Cntmpt.* p. 1; **17.** *Dep.* p. 67
Maharajadhiraja Sir Rameshwar Singh Bahadur *v.* Secretary of State for India in Council (Ind.); **11.** *Comp. Pche.* p. 6
Mahendra Nath Srimani *v.* Kailash Nath Das (Ind.); **28.** *Infts.* p. 133
Maher *v.* Lumbermen's Mutual Casualty Co. (Can.); **29.** *Insce.* p. 57
Mahler *v.* Barker (Can.); **12.** *Contr.* p. 14
Mahomed *v.* Principal Immigration Officer (S. Af.) (1921); **2.** *Aliens*, p. 51

Mahomed *v.* Principal Immigration Officer (S. Af.) (1929); **2.** *Aliens*, p. 51
Mahomed Abdul Cader *v.* Kaufman (1928); **17.** *Dep.* No. 462a
Mahomed & Son *v.* Immigrants' Appeal Board (S. Af.); **2.** *Aliens*, p. 27
Mahomed Auzam Ismail *v.* Jaganath Jamnadas (Ind.); **19.** *Easmt.* p. 16
Mahomed Yusuf *v.* Badsha Sahib (Ind.); **36.** *Prtnrs.* p. 59
Mahomedalli Allabux *v.* Ismailji Abdulali & Sardar Syedna Taher Saifuddin Mullaji Saheb (Ind.); **16.** *Cr. Pract.* p. 28
Mahomedalli Ibrahimji *v.* Laxmibai (Ind.); **26.** *Guar.* p. 10
Mahon, *Re* (Can.); **4.** *Bkpcy.* p. 38
— *v.* Crowe (Can.); **21.** *Exon.* p. 49
— *v.* McLean (Can.); **35.** *Mistake*, p. 10
Mahone Bay *v.* Blockhouse Overseers (Can.); **30.** *Jdgmts.* p. 23
Mahood, *Re* (Can.); **33.** *Mags.* p. 35
— *v.* Geange (N.Z.); **1.** *Agcy.* p. 109
Maidment *v.* Norris (1938); **42.** *Str. Traf.* No. 232h
Maille & Toronto, *Re* (Can.); **44.** *Waters*, p. 5
Mailman, *Re* (Can.); **28.** *Infts.* p. 139
— *v.* Gillette Safety Razor Co. of Canada (Can.); **36.** *Pats.* p. 67
Main Cloak Co., *Re* (Can.); **4.** *Bkpcy.* p. 18
Main's Settlement, *Re* (Can.); **37.** *Poor L.* p. 18
Main's Will Trusts, *Re* (Can.); **8.** *Char.* p. 64
Maindonald *v.* Marlborough Aero Club & New Zealand Airways, Ltd. (N.Z.); **42.** *Str. Traf.* p. 63
Maine & New Brunswick Electrical Power Co. *v.* Hart (1929); **30.** *Jdgmts.* Nos. 618a, 630a
Maine & New Brunswick Electrical Power Co. *v.* Hart (Can.); **35.** *Money*, p. 22
Mainfroid *v.* Mainfroid (Can.); **2.** *Arbn.* p. 102; **21.** *Estpl.* p. 38
Mainland Portland Cement Co., *Re* (Can.); **32.** *Lien*, p. 27
Mainland Potato Committee of Direction *v.* Tom Yee (Can.); **30.** *Jdgmts.* p. 19
Mainwaring, *Re*, Mainwaring *v.* Verden (1937); **35.** *Mtge.* No. 3384a
Mair, *Re*, Richards *v.* Doxat (1935); **40.** *Sttlmts.* No. 1008b
— *v.* Duncan Lumber Co. (Can.); **30.** *Jdgmts.* p. 19
— *v.* — (No. 2) (Can.); **42.** *Solrs.* p. 8
Mairis *v.* Mandeville, *Re* Brouncker (1938); **23.** *Exors.* No. 4914a
Maisol S.S. Owners *v.* Exportles, Ltd. (1938); **41.** *Ship.* No. 1878b
Maitland *v.* Pembroke (Can.); **26.** *Hghys.* p. 26
— *v.* Public Trustee (N.Z.); **24.** *Exors.* p. 42
Maitland Tennant *v.* Edinburgh Accountant (Scot.); **38.** *Rates*, p. 66
Majestic Mines, Ltd. *v.* Royal Trust Co. (Can.); **34.** *Mines*, p. 206
— *v.* Royal Trust Co., Ltd. (No. 2) (Can.); **34.** *Mines*, p. 206
Major *v.* Bruer (Can.); **36.** *Negl.* p. 41
— *v.* Canadian Pacific Ry. Co. (Can.); **8.** *Carr.* p. 3
— *v.* Major (1848); *Pract.* No. 3879a
Makin *v.* Needham, Veall & Tyzack, Ltd. (1929); **34.** *Mast. & S.* No. 3801a
Makins *v.* Robinson (Can.); **32.** *Lien*, p. 23
Makowecki *v.* Yachimyc (Can.); **44.** *Waters*, p. 2
Makower, McBeath & Co., Proprietary, Ltd. *v.* Dalgety & Co., Ltd. (Aus.); **3.** *Bailmt.* pp. 6, 9
Malatsky, *Ex p.* (Can.); **14.** *Crim.* p. 11
Malawski *v.* Walton (Can.); **42.** *Str. Traf.* p. 39
Malaya, H.M.S. (1937); **41.** *Ship.* No. 5779a
Malayalam Plantations, Ltd. *v.* Clark (1935); **28.** *Inc. T.* No. 210j
Malcolm *v.* Barber, Walker & Co., Ltd (1927); **34.** *Mast. & S.* Nos. 3359d, 3891a, 3954b
— *v.* South Garesfield Colliery Co., Ltd. (1930); **34.** *Mast. & S.* No. 2112a
— *v.* Western Canadian Magic Silver Black Fox & Fur Co. (Can.); **34.** *Mast. & S.* p. 5
Malcomess *v.* Durban Town Council (S. Af.), **2.** *Aliens*, p. 31
Maldon Corpn. *v.* Laurie (1933); *Pract.* No. 4162a; **44.** *Waters*, No. 696a
Male Minimum Wage Act, *Re* (Can.); **44.** *Work*, p. 60
Maleverer *v.* Spinke (1537); **21.** *Exon.* No. 1578a
Maley *v.* Cadwell (Can.); **17.** *Dep.* p. 57
Malfroot *v.* Noxal, Ltd. (1935); **36.** *Negl.* No. 3641
Maling, *Ex p.*, R. *v.* Gates (Aus.); **17.** *Dep.* p. 63
— *v.* Bennett (S.), Ltd. (Aus.); **32.** *Libel*, p. 9
Malkin (W. H.) Co., Ltd. *v.* Sherman (Can.); **26.** *Guar.* p. 10
Malkowich *v.* Genik (Can.); **35.** *Mtge.* p. 37
Mallaby-Deeley (Sir. H.) *v.* Inland Revenue Comrs. (1938); **28.** *Inc. T.* No. 576c
Mallandain *v.* Hill (1934); **34.** *Mast. & S.* No. 3701e
Mallards, Ltd. *v.* Gibbons Bros. "Rotary," Co., Ltd., *Re* Registered Design No. 742,187 of Mallards, Ltd. (1931); **43.** *Trade Mks.* Nos. 949a, 958a
Mallett *v.* Kovar (Can.); **32.** *Lien*, p. 23
— *v.* Lumbermen's Mutual Casualty Co. (Can.); **29.** *Insce.* p. 40
— *v.* Staveley Coal & Iron Co., Ltd. (1928); **28.** *Inc. T.* No. 248a
Mallough *v.* Dick (Can.); **6.** *B. of Exch.* p. 25
Mallows, *Re*, Fletcher *v.* Intestate Estates Curator (Aus.); **22.** *Evid.* p. 21
Malone *v.* Currie & Co. (Scot.); **34.** *Mast. & S.* p. 81
— *v.* James, *Re* Veale's Will & Codicils (1931); **39.** *Rntchgs.* No. 592c
Maloney, *Re* (Ir.); **4.** *Bkpcy.* pp. 39, 43; **17.** *Dep.* p. 87
— *v.* Fildes (Can.); **14.** *Crim.* p. 16; **32.** *Libel.* p. 19
— *v.* Hamilton St. R. Co. (Can.); **43.** *Tram.* p. 49
— *v.* St. Helens Industrial Co-operative Society, Ltd. (1933); **34.** *Mast. & S.* No. 640a
Maloof *v.* Bickell (Can.); **1.** *Agcy.* p. 61
Malouf *v.* Mintz, *Re* Mintz (Can.); **4.** *Bkpcy.* p. 18; **22.** *Evid.* p. 23
Malowany *v.* Pasemko (Can.); **1.** *Agcy.* p. 93
Malumiar & Co. *v.* Finlay & Co. (Ind.); **43.** *Trade Mks.* p. 25
Mama *v.* Sassoon (Ind.); **42.** *Sp. Pfce.* p. 19
Management Chas. L. Wagner *v.* Bourdon (Can.); **12.** *Contr.* p. 39
Managh *v.* Managh & Goodger (N.Z.); **42.** *Stats.* p. 30
Manasseh Giragos Sevag's Application, *Re* (1938); **36.** *Pats.* No. 981a
Manbré & Garton, Ltd. *v.* Albion Sugar Co., Ltd. (1937); **36.** *Pats.* No. 459n
Manchersha Soragji *v.* Virjivallabhdas Jekisondas (Ind.); **19.** *Easmt.* p. 10
Manchester & County Bank, Ltd. *v.* Monk (1929); **35.** *Mtge.* No. 2019a
Manchester & Liverpool District Banking Co., *Ex p.*, *Re* Dutton, Massey & Co. (1924); **4.** *Bkpcy.*, Nos. 3375a, 3383a, 4102a
Manchester City (Ringway Airport) Compulsory Purchase Order, 1934 (1935); **11.** *Comp. Pche.* Nos. 2300e, 2300f
Manchester Corpn. *v.* Audenshaw Urban Council & Denton Urban Council (1928); **26.** *Hghys.* No. 786a

Manchester Corpn. *v.* Bolton Area Assessment Committee & Little Hulton Urban District Council (1931); **38.** *Rates*, No. 903a
— *v.* Bolton Area Assessment Committee & Westhoughton Urban District Council (1930); **38.** *Rates*, No. 928a
— *v.* Buttle (1929); **43.** *Wtr. Sply.* No. 165
— *v.* Farnworth (1930); **20.** *Electric*, No. 65a, 70a; **88.** *Pub. Auth.* No. 263a; **42.** *Stats.* No. 1452a
— *v.* Markland (1936); **43.** *Wtr. Sply.* No. 289a
Manchester Corpn. & Welsby, *Re* (1931); **44.** *Work*, No. 123b
Manchester Regiment, The (1938); **41.** *Ship.* No. 6044a
Manchester Ship Canal Co. *v.* Director of Public Prosecutions (1930); **24.** *Fact.* No. 138a
Manchester Ship Canal Co.'s & Dock & Harbour Authorities Assocn.'s Applications (1927); **38.** *Rys.* No. 756a
Mancho *v.* South African Rys. & Harbours (S. Af.); **38.** *Rys.* p. 38
Mancomunidad Del Vapor Frumiz *v.* Royal Exchange Assurance (1927); **29.** *Insce.* No. 1708a
Mandakinee Debee *v.* Basantakumaree Debee (Ind.); **26.** *Hghys.* p. 36
Mandelberg *v.* Adams (Aus.); **36.** *Prtnrs.* p. 58
Mander *v.* O'Brien (Aus.); **13.** *Coprt.* p. 7
Mandeville *v.* Mandeville (Ir.); **24.** *Exors.* p. 40
Manekji Rustomji *v.* Nanabhai Cursetji (Ind.); **44.** *Wills*, p. 49
Mangal-Singh *v.* King Emperor (Ind.); **16.** *Courts*, p. 13
Manganna *v.* Mahalakshmamma (Ind.); **17.** *Dep.* p. 79
Mangena *v.* Moyatusi (S. Af.); **1.** *Agcy.* p. 70
Manghi *v.* Dial Chand (Ind.); **35.** *Mtge.* p. 49
Mangtulal Bagaria *v.* Upendra Mohan Pal Chaudhuri (Ind.); **35.** *Mtge.* p. 49
Manihot Rubber Plantations, Ltd., *Re* (1919); **2.** *Aliens*, No. 239a
Mani Ram *v.* R. (Ind.); **14.** *Crim.* p. 3
Manisty *v.* Jameson (Ind.); **12.** *Contr.* p. 45
Manitoba Avenue Bus Service, *Re*, Winnipeg (City) *v.* Winnipeg Electric Co. (Can.); **42.** *Str. Traf.* p. 41
Manitoba Election Act, *Re*, *Re* Winnipeg Electoral District (Can.); **20.** *Elect.* p. 5
Manitoba Farm Loans Assocn. *v.* Walach (Can.); **40.** *S. Land*, p. 9
— *v.* Winnipeg Land Titles Office, District Registrar (Can.); **2.** *Agric.* p. 25
— *v.* Zalondek (Can.); **31.** *L. & T.* p. 85
Manitoba Income Tax Act, *Re* (Can.); **28.** *Inc. T* p. 78
Manitoba Institute of Chartered Accountants *v.* Bellamy (Can.); **28.** *Injon.* p. 152
Manitoba Metal & Heating Co., *Re* (Can.); **4.** *Bkpcy.* p. 29
Manitoba Oil Products, Ltd. *v.* Langenburg Village (Can.); **18.** *Distr.* p. 32
Manitoba Old Age Pensions Branch of Workmen's Compensation Board *v.* Jacobs (Can.); **44.** *Work*, p. 65
Manitoba Provincial Treasurer *v.* Bennett, *Re* Bennett Estate (Can.); **21.** *E. D.* p. 19
Manitoba University *v.* Portage La Prairie Rural Municipality (Can.); **38.** *Rates*, p. 63
— *v.* Winnipeg City (Can.); **38.** *Rates*, p. 63
Manitoba Wheat Pool *v.* Tracey (Can.); **17.** *Custom*, p. 2
Manitoulin Quartzite, Ltd., *Re* (Can.); **9.** *Coys.* p. 17
Manley *v.* Greengate Woodturning Co. (1933); **34.** *Mast. & S.* No. 2571a
Manley (Owners) *v.* Hector (Owners) & Northern Construction Co. (Can.); **41.** *Ship.* p. 61
— *v.* O'Brien, *Re* Mackintosh (Can.); **21.** *Estpl.* p. 38
Manley *v.* Openshaw (trading as Greengate Woodturning Co.) (1933); **34.** *Mast. & S.* No. 2571a
Mann, *Ex p.*, Mungall *v.* Mann (Aus.); **35.** *Mtge.* p. 39
—, *Ex p.*, R. *v.* Ely JJ. (1928); **33.** *Mags.* No. 811a
— *v.* Adelaide Stevedoring Co., Ltd. (Aus.); **34.** *Mast. & S.* p. 28
— *v.* American Automobile Insurance Co. (Can.); **18.** *Discy.* p. 13
— *v.* Cleaver (1930); **28.** *Inc. T.* No. 638a
— *v.* Mann (1922); **27.** *H. & W.* No. 2452a
— *v.* — (1936); **21.** *Estpl.* No. 296a; **27.** *H. & W.* No. 5480a
— *v.* Nash (1932); **28.** *Inc. T.* No. 99h
— *v.* Rasmussen (Can.); **43.** *Tresp.* p. 53
— *v.* Sharp (Can.); **36.** *Negl.* p. 3
— *v.* Strugnell & Johnston (Can.); **42.** *Str. Traf.* p. 38
Mann & Harvey, *Re* (1920); **2.** *Agric.* No. 268b
Mann, Taylor & Co., Ltd. *v.* Royal Bank of Canada (1935); **26.** *Guar.* No. 665a
Manners *v.* Cain (Can.); **32.** *Lien*, p. 26
— *v.* Manners & Fortescue (1936); **27.** *H. & W.* No. 5224a
Manning *v.* Carrique (Can.); **12.** *Contr.* p. 4
— *v.* Federal Comr. of Taxation (Aus.); **28.** *Inc. T.* p. 92
— *v.* Hall (Can.); **7.** *B. of Sale*, p. 7
— *v.* Nickerson (Can.); **33.** *Mal. Pros.* p. 40
— *v.* Wasdale (1836); **19.** *Easmt.* No. 997a
Mannington *v.* Clifford (Aus.); **12.** *Contr.* p. 30
Mannix & Walgren & McLellan School District, *Re*, *Re* Edmonton Dunvegan & British Columbia Ry. Co. & McLellan School District (Can.); **19.** *Educ.* p. 40; **38.** *Rates*, p. 66
Manolopoulos *v.* Pnaiffe (Can.); **11.** *Consl.* p. 55
Manseau *v.* R. (Can.); **11.** *Const. L.* p. 66
Mansel, *Re*, Smith *v.* Mansel (1930); **44.** *Wills*, No. 10,767a
Mansell *v.* R. (1857); **30.** *Juries*, No. 87a
— *v.* Smith (Can.); **40.** *S. Land*, p. 8
— *v.* Star Printing & Publishing Co. of Toronto, Ltd. (1937); **13.** *Coprt.* No. 389b
Mansfield *v.* Robinson (1928); **2.** *Agric.* No. 266ll
Manson *v.* Perrys (Ealing), Ltd. (1931); **28.** *Inc. T.* No. 210a
— *v.* Wesley (1932); **28.** *Inc. T.* No. 204e
Mansookhlal Dolatchand & Co. *v.* Nagardass Moolchand (Ind.); **5.** *Bkpcy.* p. 71
Mantei *v.* Himour (Can.); **44.** *Work*, p. 58
Mantle Lamp Co. of America *v.* Nixon (Can.); **21.** *Estpl.* p. 39
Manton *v.* Brocklebank (1923); **2.** *Animals*, Nos. 156a, 258a, 270a
Manton's (Lord) Trustees *v.* Steele (1927); **28.** *Inc. T.* Nos. 430a, 444a
Manuel, *Re* (Can.); **33.** *Mags.* p. 29
Manufacturers Life Insurance Co. *v.* David Spencer, Ltd. (Can.); **35.** *Mtge.* p. 43
— *v.* Flowery Plains (No. 33) (Can.); **38.** *Pub. Hlth.* p. 20
— *v.* Swinney (Can.); **17.** *Deeds*, p. 26
Manufacturers' Mutual Insurance, Ltd., *Re*, *Ex p.* Anlezark (Aus.); **16.** *Cr. Pract.* p. 34
Manufacturing Confectioners' Alliance, Incorporated *v.* Caledonian Ry. Co. (1922); **8.** *Carr.* No. 1377b

Manvers Main Collieries, Ltd., *Ex p.*, R. *v.* Midland (Amalgamated) District (Coal Mines) Scheme, 1930 (Trustees of Executive Board) (1935); **34.** *Mines*, No. 327t
Maple City Oil & Gas Co. *v.* Tilbury Town Gas Co. (Can.); **34.** *Mines*, p. 206
Maple Flock Co., Ltd. *v.* Universal Furniture Products (Wembley), Ltd. (1934); **39.** *S. Goods*, No. 1762a
Maple Leaf Fruit Co., Ltd. *v.* Macumber (Can.); **24.** *Exors.* p. 40
Maple Leaf Mllg. Co., *Ex p.*, *Re* Blair (Can.); **7.** *B. of Sale*, p. 8
Maple Leaf Milling Co., Ltd. *v.* Weyburn City (Can.); **38.** *Rates*, p. 51
Maple Ridge Corpn. *v.* Western Power Co. of Canada (Can.); **20.** *Electric*, p. 11
Maple Valley Case (Can.); **20.** *Elect.* p. 4
Maple Valley Presbyterian Church, *Re* (Can.); **19.** *Eccl.* p. 31
Mara *v.* Hartley (Can.); **36.** *Negl.* p. 33
Marano & Marano *v.* Lett (Can.); **42.** *Str. Traf.* pp. 56, 60
Marbé *v.* George Edwardes (Daly's Theatre), Ltd. (1928); **17.** *Damgs.* No. 181a; **32.** *Libel*, No. 1948a
Marcelin Village *v.* Debenture Co. of Canada, Ltd. (Can.); **38.** *Rates*, p. 86
Marcelino Gonzalez y Compania S. en C. *v.* James Nourse, Ltd. (1936); **41.** *Ship.* No. 3634c
March (Lady) *v.* Fowke (1679); **23.** *Exors.* No. 5641a
Marchant *v.* Char Steam Trawling Co., Ltd. (1929); **34.** *Mast. & S.* No. 3493a
— *v.* Ford (1936); **32.** *Libel*, No. 1199a; *Pldg.* No. 662a
— *v.* Ford, Peter Davies, Ltd., Guernsey Star & Gazette Co., Ltd. & McLegan & Cumming (1936); **32.** *Libel*, No. 2300b
Marchant Manufacturing Co., Ltd. *v.* Leonard D. Ford & Teller, Ltd. (1936); **36.** *Nuis.* No. 331
Marchesseault *v.* Canadian National Rys. (Can.); **8.** *Carr.* p. 6
Marchyshyn *v.* Fane Auto Works, Ltd. (Can.); **22.** *Evid.* p. 22; **36.** *Nuis.* p. 48
Marcille *v.* Donnelly (Can.); **31.** *L. & T.* p. 74
Marconi's Wireless Telegraph Co., Ltd. *v.* Cramer (J. B.) & Co., Ltd. (1932); **36.** *Pats.* No. 2668a
— *v.* David Jones, Ltd. (Aus.); **36.** *Pats.* p. 114
— *v.* Newman (1930); **1.** *Agcy.* Nos. 188a, 2476a; **5.** *Bkpcy.* No. 9025a
— *v.* Philips Lamps, Ltd. (1933); **36.** *Pats.* No. 2456a
Marcoux (Ludger) *v.* R. (Can.); **11.** *Const. L.* p. 67
Marcovitch *v.* Marcovitch (1934); **27.** *H. & W.* No. 6124i
Marcq *v.* Bertholet (Can.); **7.** *B. of Sale*, p. 10; **39.** *S. Goods*, p. 44
Marcus, *Re* (Can.); **4.** *Bkpcy.* p. 10
Marcus Clark (Australia), Ltd. *v.* Brown (Aus.); **3.** *Bailmt.* p. 12; **39.** *S. Goods*, p. 43
Margerison, *Ex p.*, R. *v.* Haslewood (1926); **13.** *Crnrs.* No. 156a
Marginson *v* Blackburn Borough Council (1938); **21.** *Estpl.* No. 253b
Margolin's Registered Design, *Re* (1936); *Pract.* No. 4006a
Margolinsky *v.* Allen (1931); **28.** *Inc. T.* No. 204h
Margolius *v.* Diesbourg (Can.); **12.** *Contr.* p. 3
Margrett *v.* Lowestoft Water & Gas Co. (1935); **28.** *Inc. T.* No. 252d, 268b
Mariam & Mahomed *v.* Immigrants' Appeal Board (S. Af.); **2.** *Aliens*, p. 51
Marie Celeste Samaritan Society of London Hospital *v.* Inland Revenue Comrs. (1926); **28.** *Inc. T.* No. 483a
Marie Gartz, The (1920); **2.** *Aliens*, No. 215a
Marine Insurance Club, *Ex p.*, *Re* Tucker (Nfld.); **29.** *Insce.* p. 62
Marine Insurance Policies, *Re* (Ind.); **39.** *Revenue*, p. 18
Marine Mansions Co., *Re* (1867); **10.** *Coys.* No. 6549a
Marine Trust Co. *v.* Weinig (Can.); **5.** *Bkpcy.* p. 56
Marino & Yipp *v.* R. (Can.); **34.** *Med.* p. 192
Marion *v.* Campbell (Can.); **42.** *Solrs.* p. 14
— *v.* Hebert (Can.); **20.** *Elect.* p. 2
Maris *v.* London Assurance (1935); **29.** *Insce.* No. 1573a
Maritime Education Co., *Re*, American Hydro Carbon Co. *v.* Clayton-Kennedy (Can.); **4.** *Bkpcy.* p. 29
—, *Re*, Powell & Mersereau *v.* American Hydro Carbon Co. (Can.); **4.** *Bkpcy.* p. 29
Maritime Electric Co., Ltd. *v.* General Dairies, Ltd. (Can.); **20.** *Electric*, p. 14
Maritime Finance, Ltd., *Re* (Can.); **8.** *Chos.* p. 90
Maritime Fish Corpn. *v.* Cohoon (Can.); **34.** *Mast. & S.* p. 119
Maritime Freight Rates Act, 1927, *Re* (Can.); **38.** *Rys.* p. 45
Maritime Insurance Co., Ltd. *v.* Union Von Assecuranz 1865 (1935); **11.** *Confl.* No. 702b
Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd. (1935); **12.** *Contr.* No. 2885a
Maritime Radio Corpn., Ltd., *Re* (Can.); **5.** *Bkpcy.* p. 70
Maritime United Farmers Co-operative, Ltd. *v.* Dickie (Can.); **9.** *Coys.* p. 15
Marjoribanks *v.* Askew, *Re* Askew (1930); **3.** *Basty.* Nos. 141a, 152a
Mark *v.* Barkla (N.Z.); **2.** *Animals*, p. 63
Markadonis *v.* R. (Can.); **14.** *Crim.* p. 40
Markham *v.* Derby Corpn. (1935); **38.** *Pub. Hlth.* No. 503a
Markland *v.* Manchester Corpn. (1936); **43.** *Wtr. Sply.* No. 289a
Markle *v.* Sulland & Ludgate (Can.); **21.** *Exon.* p. 51
— *v.* Thomas (Sheriff) (Can.); **21.** *Exon.* p. 52
Markovitch *v.* Markovitch (1934); **27.** *H. & W.* No. 6124i
Marks, *Re* (Can.); **20** *Eqy.* p. 29
—, *Re*, *Ex p.* Vann (1923); **5.** *Bkpcy.* No. 8104b
— *v.* Board (1930); **12.** *Contr.* No. 422b; **40.** *S. Land*, No. 32a
— *v.* Forests Commission (Aus.); **38.** *Pub. Auth.* p. 6
— *v.* Portsmouth Corpn. (1937); **22.** *Evid.* No. 496a
Markwald *v.* A.-G. (1920); **2.** *Aliens*, No. 520a
Markweth *v.* Reynolds (1733); **34.** *Mast. & S.* No. 1539
Marland *v.* Inland Revenue Comrs. (1934); **28.** *Inc. T.* No. 688b
Marlborough (Duke) *v.* Osborn (1864); **2.** *Agric.* No. 166a
Marlborough Hill, Ship *v.* Cowan & Sons (1921); **1.** *Adm.* Nos. 541a, 1644a
Marlow Rolls Theatres, Ltd., *Re*, *Ex p.* Empire Theatres, Ltd. (Aus.); **31.** *L. & T.* p. 83
Marmora Foundry Co. *v.* Murney (Can.); **10.** *Coys.* p. 108
Marnell *v.* Pickmore (1796); **28.** *Infts.* No. 1961a
Marquardt *v.* Gorr (Can.); **17.** *Dep.* p. 56
Marquett *v.* Walsh (Aus.); **43.** *Trade*, p. 5
Marquis *v.* Astoria, The (Can.); **41.** *Ship.* p. 71
Marr's Will Trusts, *Re*, Walker *v.* A.-G. (1936); **8.** *Char.* No. 1265a
Marriaggi *v.* Marriaggi (Can.); **11.** *Confl.* p. 47
Marriott *v.* Kirkham (1862); **35.** *Mtge.* No. 2928a
— *v.* Mills, *Re* Mills' Will Trusts (1936); **44.** *Wills*, No. 5899a
— *v.* Minister of Health (1937); **38.** *Pub. Hlth.* No. 502r

Marris *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1937); **8.** *Carr.* No. 1707
Marsden, *Re*, *Ex p.* Sellers (E. H.) & Sons, Ltd. (1921); **4.** *Bkpcy.* No. 1253a
— *v.* Edward Heyes, Ltd. (1927); **31.** *L. & T.* No. 1975a
— *v.* Moore & Day (1859); **34.** *Mines*, No. 654a
Marsden Manufacturing Co., Ltd. *v.* Vono Co., *Re* Marsden Manufacturing Co.,Ltd., Registered Design No. 744,647 (1934); **43.** *Trade Mks.* No. 908b
Marsden Urban District Council *v.* Sharp (1931); **7.** *Bldg. Conts.* No. 225b
Marsh, *Ex p.*, R. *v.* Markham (1923); **3.** *Basty.* No. 403a
— *v.* Great Eastern & Great Western Ry. Cos. (1922); **8.** *Carr.* No. 1377d
— *v.* Kavenford (1587); **12.** *Contr.* No. 1740a
— *v.* Marsh (1858); **27.** *H. & W.* Nos. 2602, 4785a
— *v.* — (Can.); **27.** *H. & W.* p. 44
— *v.* Parker (Robert), Ltd. (1932); **34.** *Mast. & S.* No. 3288k
— *v.* Queens Insurance Co. of America (Can.); **29.** *Insce.* p. 46
— *v.* Robert Parker, Ltd. (1932); **34.** *Mast. & S.* No. 3288k
— *v.* Robinson (1802); **22.** *Evid.* No. 3483a
— *v.* Royal Bank of Canada (Can.); **3.** *Bank.* p. 40
— *v.* Simpson (Can.); **39.** *S. Goods*, p. 57
Marsh & Rainsford's Case (1587); **12.** *Contr.* No. 1740a
Marshal *v.* Tweedy (Scot.); **28.** *Inc. T.* p. 13
Marshal Shipping Co. *v.* Board of Trade (1923); **11.** *Const. L.* No. 526d
Marshal Shipping Co. (In Liquidation) *v.* R. (1925); **11.** *Const. L.* No. 526c
Marshall, *Ex p.*, R. *v.* Webster (1931); **11.** *Comp. Pche.* No. 2225a
— *v.* Adamson (Can.); **29.** *Insce.* p. 48
— *v.* Blackpool Corpn. (1935); **26.** *Hghys.* No. 642a
— *v.* Curry (Can.); **34.** *Med.* p. 186
— *v.* Fournelle (Can.); **28.** *Infts.* p. 137
— *v.* Grinbaum (1921); **3.** *Bank.* No. 230a
— *v.* Hett & Sibbald, Ltd. (Can.); **43.** *Trusts*, p. 62
— *v.* Houghton (Can.); **11.** *Confl.* p. 56
— *v.* Hutton (Can.); **36.** *Negl.* p. 11
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 50
— *v.* Kiddle (1927); **34.** *Mast. & S.* No. 3969a
— *v.* Lindsey County Council (1937); **34.** *Med.* No. 87a; **38.** *Pub. Hlth.* No. 357a
— *v.* London Passenger Transport Board (1936); **32.** *Limit. of A.* No. 1894a
— *v.* Marshall (Can.) (1931); **27.** *H. & W.* p. 15
— *v.* — (Can.) (1937); **24.** *Exors.* p. 41
— *v.* Munroe (Can.); **2.** *Animals*, p. 70
— *v.* Rogers (Can.); **6.** *B. of Exch.* p. 10
— *v.* Tinnelly (1937); **15.** *Crim.* No. 9135a
— *v.* Wigtownshire Assessor (Scot.); **38.** *Rates*, p. 68
Marshall & Hood's Executors & Rogers *v.* Joly (1936); **28.** *Inc. T.* No. 119c
Marshall & Lace Web Spring Co. *v.* Crown Bedding Co. (1929); **36.** *Pats.* No. 2848a
Marshall & Snelgrove, Ltd. *v.* Gower (1923); **7.** *B. of Sale*, No. 830a
Marshall Bros., Ltd., *Re* (Can.); **2.** *Agric.* p. 25
Marshman *v.* Breadin, Christie, Scott & Peden (Can.); **21.** *Exon.* p. 55
— *v.* McDowell (Aus.); **36.** *Negl.* p. 24
— *v.* Scott & Peden (Can.); **29.** *Intpr.* p. 64
Marsland, *Re*, Lloyds Bank, Ltd. *v.* Marsland (1938); **44.** *Wills*, No. 83a
— *v.* Taggart (1928); **33.** *Mags.* No. 1236a
Marston *v.* Chauvet, *Re* Lamb (1933); **44.** *Wills*, No. 5532b
— *v.* Roe d. Fox (1838); **17.** *Deeds*, No. 1329a
Marston's Dolphin Brewery, Ltd. *v.* Loughnan (1936); **28.** *Inc. T.* No. 116d
Marstrand Fishing Co., Ltd. *v.* Beer (1937); **29.** *Insce.* Nos. 2152a, 2220a
Mart *v.* Mart (1926); **3.** *Basty.* No. 22c
Marte, The (1933); **1.** *Adm.* No. 1402a
Martel *v.* Chartier (Can.); **36.** *Negl.* p. 37; **42.** *Str. Traf.* p. 60
— *v.* Dominion Motors, Ltd. (Can.); **42.** *Str. Traf.* p. 61
Martell *v.* Pringle (Can.); **2.** *Animals*, p. 68
— *v.* Whittem (Nfld.); **12.** *Contr.* p. 47
Marthews *v.* Marthews (1938); **27.** *H. & W.* No. 2987a
Martin, *Ex p.* (Can.); **16.** *Cr. Pract.* p. 28
—, *Ex. p.*, *Re* Kerr (Can.); **7.** *B. of Sale*, p. 9
—, *Ex p.*, *Re* Matthews Sheet Metal & Roofing Co., Ltd. (Can.); **8.** *Chos.* p. 91
—, *Re* (Can.); **2.** *Agric.* p. 25
—, *Re* (No. 2) (Can.); **24.** *Extrdn.* pp. 44, 45
— *v.* Benson (1927); **32.** *Libel*, Nos. 2198a, 2203a
— *v.* Carpenter (Aus.); **2.** *Animals*, p. 70
— *v.* Clarkson (Can.) (1925); **10.** *Coys.* pp. 56, 66
— *v.* — (Can.) (1926); **10.** *Coys.* pp. 55, 56
— *v.* Currie (S. Af.); **1.** *Agcy.* p. 78
— *v.* Douglas (Ir.); **21.** *Estpl.* p. 37
— *v.* Finch (1937); **34.** *Mast. & S.* No. 2620b
— *v.* Fowler (Can.); **5.** *Bkpcy.* p. 63
— *v.* Green (1664); **1.** *Adm.* No. 12b
— *v.* Hogan (N.Z.); **15.** *Crim.* p. 86
— *v.* Kellog (Can.); **7.** *Bounds. & F.* p. 15
— *v.* Kennedy (Can.); **16.** *Courts*, p. 19
— *v.* Martin (1930); **27.** *H. & W.* No. 5781d
— *v.* — (Aus.); **27.** *H. & W.* p. 13
— *v.* — (Can.) (1932); **28.** *Infts.* p. 136
— *v.* — (Can.), [1937] 3 D. L. R. 418; **21.** *Exon.* p. 17
— *v.* — (Can.), [1937] 1 W. W. R. 95; **27.** *H. & W.* p. 23
— *v.* Martin & May (1928); **11.** *Confl.* No. 861a
— *v.* Northern Hotel Co., Ltd. (Can.); **10.** *Coys.* p. 55
— *v.* Passarini (Can.); **18.** *Distr.* p. 30
— *v.* Perry & Daw (1931); **1.** *Agcy.* No. 1776c
— *v.* Port of Manchester Insurance Co. (Scot.); **10.** *Coys.* p. 80
— *v.* Powell (Can.); **36.** *Negl.* p. 15
— *v.* R. (Aus.); **37.** *Police*, p. 11
— *v.* Riman (Can.); **5.** *Bkpcy.* pp. 92, 96
— *v.* Russell & Jobson & British Columbia Paper Manufacturing Co., Ltd. (Can.); **32.** *Lien*, p. 26
— *v.* Sea Foam, The (Can.); **1.** *Adm.* p. 23
— *v.* Stout (1925); **16.** *Courts*, No. 956b
— *v.* Western District of Australasian Coal & Shale Employees' Federation, Workers' Industrial Union of Australia (Mining Department) (Aus.); **43.** *Trade*, p. 8
— *v.* Woodgate (1691); **23.** *Exors.* No. 4086a
Martin Milk Products, *Re* (Can.); **4.** *Bkpcy.* p. 32
Martin's Bank, Ltd. *v.* Burradon & Coxlodge Coal Co., Ltd., *Re* Burradon & Coxlodge Coal Co., Ltd. (1930); **29.** *Insce.* No. 3212b; **30.** *Jdgmts.* No. 517a
— *v.* Trustee, *Re* Barnard (1932); **36.** *Prtnrs.* No. 1909a
Martin's Patents, *Re* (1936); **36.** *Pats.* No. 2703a
Martineau & Sons, Ltd. *v.* Montreal (City) (1932); **17.** *Dep.* Nos. 178b, 181b
Martins *v.* Fowler (Nigeria); **18.** *Desct.* p. 1
Martins Bank *v.* Trustee, *Re* Barnard (1932); **4.** *Bkpcy.* No. 2721a
Martins, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 25

Martley, *Re*, Simpson *v.* Bourne (Cardinal) (1931); **8.** *Char.* No. 717c
Marvin *v.* Curtis (Can.); **22.** *Evid.* p. 11
— *v.* Maynard (1595); **32.** *Libel*, No. 2536a
Marwood *v.* Canadian Credit Corpn. (Can.); **34.** *Mast. & S.* p. 8
Mascall *v.* Bowlby (1933); **34.** *Mast. & S.* No. 2626a
Mascarenhas *v.* Mercantile Bank of India, Ltd. (1931); **6.** *B. of Exch.* Nos. 826a, 843a
Maschek, *Re*. *Re* Gardner, *Re* Tyrrell (1938); **44.** *Work*, No. 139c
Maschinenfabrik Augsburg-Nürnberg A. G. Patents, *Re* (1929); **36.** *Pats.* Nos. 1956a, 1959a, 2005b, 2027a, 2136a, 2136b, 2136c
Masecar *v.* McKenzie & Son (Can.); **9.** *Coys.* p. 16; **10.** *Coys.* p. 74
Maserowitz *v.* Johannesburg Town Council (S. Af.); **17.** *Dep.* p. 65
Masny *v.* Carter-Halls-Aldinger Co., Ltd. (Can.); **36.** *Negl.* p. 34
Mason, *Ex p.*, *Re* McKay (Can.); **4.** *Bkpcy.* p. 47
—, *Re* (1875); **33.** *Lunat.* No. 1336a
—, *Re* (1928); **16.** *Cr. Pract.* Nos. 363a, 374b; **18.** *Desct.* No 336b
—, *Re* (1929); **16.** *Cr. Pract.* Nos. 363a, 374b; **18.** *Desct.* No. 336a; **32.** *Limit. of A.* No. 1761a
—, *Re* (1934); **38.** *Pub. Hlth.* No. 524c
— *v.* Brewis Bros., Ltd. (1938); **32.** *Libel*, No. 1347b
— *v.* Campbell (Can.); **33.** *Lunat.* p. 12
— *v.* Canadian Bank of Commerce (Can.); **4.** *Bkpcy.* p. 46
— *v.* Coffin (Can.); **39.** *Revenue*, p. 9
— *v.* Davies (1935); **27.** *H. & W.* No. 2342a
— *v.* Foster (1931); **34.** *Mast. & S.* Nos. 3821f, 3843a
— *v.* Lack (1929); **6.** *B. of Exch.* No. 240a
— *v.* Livingstone (Can.) (1928); **9.** *Coys.* p. 54
— *v.* Livingston (Can.) (1929); **9.** *Coys.* p. 54
— *v.* McLeod & Foster (Can.); **21.** *Exon.* p. 55
— *v.* Mason (1724); **28.** *Infts.* No. 538a
— *v.* Mason & Cottrell (1933); **27.** *H. & W.* Nos. 4864a, 4864b, 4963a
— *v.* Peterborough (Town) (Can.); **23.** *Exors.* p. 15
— *v.* R. (Can.); **25.** *Fish.* p. 3; **34.** *Mast. & S.* p. 1
— *v.* Savings Bank of South Australia (Aus.); **3.** *Bank.* p. 36
— *v.* Scott (Can.); **12.** *Contr.* p. 32
— *v.* South Norfolk Ry. Co. (Can.); **17.** *Damgs.* p. 22
Mason (Donald) & Co., *Re* (Can.); **28.** *Inc. T.* p. 29; **38.** *Rates*, p. 49
Mason & Davy *v.* Dixon (1627); **23.** *Exors.* No. 3617
Mason & Dean, Ltd. *v.* Udovin (Can.); **1.** *Agcy.* p. 55
Mason & Risch Piano Co. *v.* Canadian Pacific Ry. Co. (Can.); **8.** *Carr.* p. 6
Mason & Wood, Ltd. *v.* Greene (1936); **35.** *Money*, No. 353m
Masotti *v.* Acme Products, Ltd. (Can.); **32.** *Libel*, p. 2
Massein *v.* R. (Can.); **39.** *Revenue*, pp. 10, 26
Massereene & Ferrard *v.* Murphy (Ir.); **44.** *Waters*, p. 1
Massey *v.* McClellard (Can.); **21.** *Exon.* p. 46
Massey Manufacturing Co. *v.* Hunt (Can.); **21.** *Exon.* p. 52
Massey-Harris *v.* Moore (Can.); **21.** *Exon.* p. 47
Massey-Harris Co., Ltd. *v.* Board of Review, *Re* Miller (Can.); **39.** *S. Goods*, p. 60
— *v.* Bond (Can.); **39.** *S. Goods*, p. 60
— *v.* Manley (Can.); **35.** *Mtge.* pp. 34, 39
— *v.* Schram (Can.); **21.** *Exon.* p. 46
Massey-Harris Co. Ltd. *v.* Skelding (Can.); **39.** *S. Goods*, p. 42
Massie & Renwick, Ltd. *v.* Underwriters' Survey Bureau, Ltd. (Can.); **13.** *Coprt.* p. 20
Massilia, The (1926); **1.** *Adm.* No. 1520c
Massino *v.* De Basil (1937); **13.** *Coprt.* No. 232a
Masson Seeley & Co., Ltd. *v.* Embosotype Manufacturing Co. (1924); **13.** *Coprt.* No. 77a
Master *v.* Phipps (Can.); **35.** *Mistake*, p. 9
Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933); **8.** *Carr.* No. 1166b; *Pldg.* No. 409a
— *v.* — (No. 2) (1934); **8.** *Carr.* Nos. 1123a, 1149a, 1166c; **38.** *Rys.* No. 702a
Master Mariners, Honourable Co. of *v.* Inland Revenue Comrs. (1932); **28.** *Inc. T.* No. 476g
Masters *v.* Crouch (1927); **35.** *Mtge.* No. 2578a
— *v.* Fraser (1901); **18.** *Distr.* No. 714a
— *v.* McLellan (Can.); **35.** *Mtge.* p. 40
Masters & Duveen, *Re* (1923); **2.** *Agric.* Nos. 242a, 267a
Masters & McDougall *v.* Stephen (Can.); **2.** *Arbn.* pp. 75, 91
Matakana Co-operative Dairy Co., Ltd. (N.Z.); **9.** *Coys.* p. 52
Matania *v.* National Provincial Bank, Ltd. & Elevenist Syndicate, Ltd. (1936); **31.** *L. & T.* No. 2666a; **34.** *Mast. & S.* No. 1278a
Matchett Estate, *Re* (Can.); **38.** *Real Prop.* p. 91
Matergio *v.* Canada Accident & Fire Assurance Co. (Can.); **29.** *Insce.* p. 29
Mateychuk *v.* Kuchernowski (Can.); **32.** *Lien*, p. 22
Mathein Nwe *v.* Maung Kha (Ind.); **27.** *H. & W.* pp. 24, 29
Mather *v.* Canadian Credit Men's Trust Assocn., Ltd., *Re* Buck Estate (Can.); **4.** *Bkpcy.* p. 31
— *v.* Rhodes (1934); **12.** *Contr.* No. 2185a
Mathers, *Re* (Can.); **38.** *Rates*, p. 63
— *v.* Royal Bank of Canada (Can.); **9.** *Coys.* p. 22
Matheson, *Re*, *Ex p.* Prince Albert (City) (Can.) **4.** *Bkpcy.* pp. 37, 38
— *v.* Calkin (Can.); **18.** *Distr.* p. 28
— *v.* Matheson (1935); **27.** *H. & W.* No. 5653a
— *v.* Smiley (Can.); **34.** *Med.* p. 188
— *v.* Stuckey (Aus.); **2.** *Animals*, p. 64
Mathews *v.* Donegan & Cooke (Ir.); **18.** *Desct.* p. 3
— *v.* National Trust Co. (Can.); **27.** *H. & W.* p. 12
— *v.* Ward (Aus.); **42.** *Str. Traf.* p. 38
— *v.* Williams, Brown & Co. (1894); **3.** *Bank.* No. 671
Mathewson *v.* Mitchell (Can.); **8.** *Carr.* p. 1
— *v.* Ramsay (Scot.); **42.** *Str. Traf.* p. 52
Mathieson, *Re*, *Ex p.* Trustee (1927); **5.** *Bkpcy.* No. 7096a
—, *Re*. Moore (Trustee) *v.* Mathieson (1927); **5.** *Bkpcy.* No. 7096a
— *v.* Gronon (1929); **9.** *Coys.* No. 2183a
— *v.* Hall (N.Z.); **35.** *Mtge.* p. 41
— *v.* Pitman (Sir Isaac) & Sons, Ltd. (1930); **37.** *Press*, No. 115a
— *v.* Wahlen (Aus.); **10.** *Coys.* p. 59; **28.** *Injon.* p. 146
Mathieson's Trustee *v.* Burrup, Mathieson & Co. (1927); **4.** *Bkpcy.* No. 3637a
Mathra Das-Jagan Nath *v.* Jiwan Mal-Gian Chand (Ind.); **1.** *Agcy.* p. 74
Mathura, Kurmi *v.* Jagdeo Singh (Ind.); **17.** *Dep.* p 84
Mathurdas Canji Matani *v.* Ebhrahim Fazalbhoy (Ind.); **36.** *Prtnrs.* p. 60
Mathys *v.* R. (Can.); **11.** *Comp. Pche.* pp. 6, 7

Matson & Co. *v.* Fisher (N.Z.); **2.** *Arbn.* pp. 92, 97
Matsoukis *v.* Priestman & Co. (1915); **7.** *Bldg. Conts.* No. 65a
Matte *v.* Vancouver (City) (Can.); **2.** *Arbn.* p. 85
Mattern *v.* Welch (Can.); **31.** *L. & T.* p. 81
Matthew *v.* Crasse (1613); **2.** *Agric.* No. 884a
Matthew Ellis, Ltd., *Re* (1933); **10.** *Coys.* No. 4707a
Matthews *v.* Amalgamated Anthracite Collieries, Ltd. (1935); **34.** *Mines*, No. 1116a
— *v.* Continental Casualty Co. (Can.); **29.** *Insce.* p. 38
— *v.* Dickinson (1817); **5.** *Bkpcy.* No. 8168a
— *v.* Forgie (N.Z.); **2.** *Agric.* p. 17
— *v.* Goode (Can.); **7.** *Bounds. & F.* p. 19
— *v.* Hanscombe (1936); **12.** *Contr.* 5042a
— *v.* Harland & Wolff, Ltd. (1932); **34.** *Mast. & S.* No. 3383b
— *v.* King (1934); **15.** *Crim.* No. 7095a
— *v.* McKinnon (Can.); **36.** *Negl.* p. 33
— *v.* Matthews (1930); **22.** *Evid.* No. 3435a
— *v.* — (1932); **27.** *H. & W.* No. 6179c
— *v.* Victoria Spinning Co. (Rochdale), Ltd. (1936); **34.** *Mast. & S.* Nos. 2471a, 2535a
Matthews Sheet Metal & Roofing Co., Ltd., *Re*, *Ex p.* Martin (Can.); **8.** *Chos.* p. 91
Matthewson *v.* Stredicke (Can.); **21.** *Exon.* p. 60
— *v.* Thompson (Can.); **12.** *Contr.* p. 45
Matthewson Brothers & Mather *v.* Good (Can.); **35.** *Mtge.* p. 34
Mattin *v.* Currie (Aus.); **25.** *Gaming*, p. 33
Mattock *v.* Mattock & Jamieson (Can.); **27.** *H. & W.* p. 52
Matura Subbarao *v.* Surendranath Sahu (Ind.); **35.** *Mtge.* p. 36
Maturin *v.* A.-G. (1938); **3.** *Basty.* No. 142d
Mauck *v.* Dominion Chain Co., Ltd. (Can.); **36.** *Pats.* p. 67
Maughan *v.* Casci (Can.); **19.** *Easmt.* p. 5
— *v.* Free Church of Scotland (Scot.); **28.** *Inc. T.* p. 6
Maulson *v.* Moore (Can.); **35.** *Mtge.* p. 44
— *v.* Shklov (Can.); **42.** *Solrs.* p. 7
Maunder *v.* Wanganui Sash & Door Factory & Timber Co., Ltd. (N.Z.); **36.** *Pats.* p. 75
Maundy Gregory, *Re*, *Ex p.* Norton (1934); **5.** *Bkpcy.* No. 5562a
— (No. 396 of 1933), *Re*, Trustee *v.* Jerusalem (Patriarch) (No. 2) (1934); **4.** *Bkpcy.* No. 395a
Maung Ba. Oh *v.* Motor House Co. (Ind.); **3.** *Bailmt.* p. 12; **20.** *Eqy.* p. 32
Maung Ba Thaw *v.* Ma Pin (Ind.); **17.** *Dep.* p. 84
Maung Ba. Than. *v.* Pegu District Council (Ind.); **17.** *Dep.* p. 85
Maung Chit Tay *v.* Maung Tun Nyun (Ind.); **13.** *Corpns.* p. 34
Maung Kyan, *Re* (Ind.); **34.** *Mast. & S.* p. 26
Maung Law Phyu *v.* Ma Bau (Ind.); **25.** *Gifts*, p. 49
Maung Po Thaung *v.* Ma Gyi (Ind.); **2.** *Agric.* p. 17
Maung Sein Gyi *v.* Maneckjee (Ind.); **3.** Barr. p. 49
Maung Shwe An *v.* Ma The Mu (Ind.); **16.** *Courts*, p. 14
Maung Shwe Phoo *v.* Maung Tun Shin (Ind.); **17.** *Deeds*, p. 29; **35.** *Mtge.* p. 30
Maung Tha Nyo *v.* Ma Un Ma Pru (Ind.); **43.** *Trade Mks.* p. 34
Maung Thein Pe *v.* Desouza (Ind.); **19.** *Educ.* p. 46
Maunsell *v.* Campbell Security Fireproof Storage & Moving Co., Ltd. (Can.); **3.** *Bailmt.* p. 10
— *v.* R. (Can.); **16.** *Cr. Pract.* p. 24
Maurat Estate, *Re* (Can.); **23.** *Exors.* pp. 1, 6
Maurig Shwe Hpu *v.* U Min Nyun (Ind.); **2.** *Arbn.* p. 97
Maver *v.* Salon Ship Owners (1929); **34.** *Mast. & S.* No. 2067a
Maville Hose, Ltd., *Re* (1938); **10.** *Coys.* Nos. 6916a, 6916b
Maxwell, *Ex p.*, R. *v.* White (Can.); **43.** *Wtr. Sply.* p. 77
—, *Re* (1929); **23.** *Exors.* No. 1369a
— *v.* Keun (1928); **30.** *Jdgmts.* No. 30a
— *v.* Public Prosecutions Director (1935); **14.** *Crim.* No. 4729a
— *v.* Union Bank of Canada (Can.); **3.** *Bank.* pp. 21, 28
Maxwell (E. J.), Ltd. *v.* Bank of Nova Scotia (Can.); **35.** *Mistake*, p. 11
Maxwell Radio Co. *v.* Blontrock (Can.); **39.** *S. Goods*, p. 57
— *v.* De Wilde (Can.); **39.** *S. Goods*, p. 57
May, *Re* (1883); *Pract.* No. 3778a
—, *Re*, Eggar *v.* May (1932); **44.** *Wills*, No. 2961b
— *v.* Barham, *Re* Home & Colonial Insurance Co., Ltd. (1930); **10.** *Coys.* No. 6858b; **12.** *Contr.* No. 4853a; **29.** *Insce.* No. 232a
— *v.* Bowering (Aus.); **18.** *Discy.* p. 20
— *v.* Daly (Aus.); **17.** *Dep.* p. 75; **38.** *Real Prop.* p. 93
— *v.* Falk (1932); **28.** *Inc. T.* No. 512a
— *v.* Howland, Fitch & Webb (Can.); **21.** *Exon.* p. 50
— *v.* McAlpine & Sons (London), Ltd. (1938); **36.** *Negl.* No. 953l
— *v.* May (1929); **27.** *H. & W.* No. 2039a
— *v.* May & McKinlay (Can.); **27.** *H. & W.* p. 22
— *v.* Morris (Aus.); **18.** *Distr.* p. 29
May, The *v.* R. (Can.); **25.** *Fish.* p. 4
— *v.* Roberts (No. 2) (Can.); **18.** *Discy.* p. 22
— *v.* Thomas (1934); **25.** *Gaming*, No. 466c
May & Butcher *v.* R. (1929); **36.** *S. Goods*, No. 28a
May Bros., Ltd., *Re* (Aus.); **31.** *L. & T.* p. 61
Maya Das Bhagat *v.* Commercial Union Assurance Co., Ltd. (Ind.); **1.** *Action*, p. 2
Mayandi Asari *v.* Sami Asari (Ind.); **3.** *Basty.* p. 53
Maybelle, *Re*, Fox *v.* Equity Trustees, Executors & Agency Co., Ltd. (Aus.); **44.** *Wills*, p. 51
Mayer *v.* Wood, *Re* Dale (1931); **44.** *Wills*, No. 8534a
Mayer & Lage Inc. *v.* Atlantic Sugar Refineries, Ltd. (Can.); **12.** *Contr.* p. 39
Mayer (F.) Boot & Shoe Co. *v.* Moellendorf (Can.); **27.** *H. & W.* p. 6
Mayer Finance Co. *v.* Ross (N.Z.); **27.** *H. & W.* p. 20
Mayes Case *v.* Prescott (Can.); **30.** *Juries*, p. 33
Mayfield Rural Municipality No. 406 *v.* London & Lancashire Guaranty & Accident Co. of Canada (Can.); **22.** *Evid.* p. 21; **26.** *Guar.* p. 12
Maygard *v.* Canadian Pacific Ry. Co. (Can.), [1929] 2 D. L. R. 953; **18.** *Discy.* p. 13
— *v.* Canadian Pacific Railway (Can.), [1929] 4 D. L. R. 1064; **38.** *Rys.* p. 38
Mayhew *v.* Adams (Can.); **35.** *Mtge.* p. 50
Mayland *v.* Dicks (Can.); **21.** *Exon.* p. 48
Maynard, *Re*, Pearce *v.* Pearce (1930); **44.** *Wills*, No. 3354a
— *v.* Bercovitch (1932); **34.** *Mast. & S.* No. 3019a
Mayne, *Re* (Aus.); **43.** *Trusts*, p. 63
Mayo *v.* Leitovski (Can.); **38.** *Rates*, p. 84
Mayo & Toronto City, *Re* (Can.); **11.** *Comp. Pche.* p. 16; **17.** *Dep.* p. 71
Mayor, *Re*, *Ex p.* Whitworth (1841); **26.** *Guar.* No. 1165a
Mayor & Aldermen (Qualification for) Reference, *Re* (Can.); **33.** *L. G.* p. 8

Mays *v.* Degerness (Can.); **32.** *Libel*, p. 9
— *v.* Roberts (Aus.); **7.** *Bldg. Conts.* p. 20
Maytag *v.* Hanover Rural Municipality (Can.); **41.** *Sewers*, p. 3
Mayville Local Administration & Health Board *v.* Gielink (S. Af.); **33.** *L. G.* p. 2; **38.** *Pub. Hlth.* p. 14
Maywald *v.* Riedel (Aus.); **21.** *Exon.* p. 55
Mazatti (or Masotti) *v.* Acme Products, Ltd. (Can.); **32.** *Libel*, p. 2
Mazok, *Re*, *Ex p.* Rees, Sachs & Co. (Aus.); **5.** *Bkpcy.* p. 72
Meacham *v.* Draper (Can.); **24.** *Exors.* p. 38
Meacock *v.* Jones, *Re* Jones (1932); **23.** *Exors.* No. 5251c
Mead *v.* Clarke (S. Af.); **1.** *Agcy.* p. 69
— *v.* Marquis Rural Municipality (Can.); **34.** *Mast. & S.* p. 3; **38.** *Pub. Auth.* pp. 5, 7
— *v.* Mead (Can.); **29.** *Intpr.* p. 63
Meade *v.* Deschene (Can.); **7.** *B. of Sale*, p. 8
Meade-King *v.* Usher's Wiltshire Brewery, Ltd. (1928); **10.** *Coys.* No. 4872a
Meagher *v.* Ætna Insurance Co. & Home Insurance Co. (Can.); **29.** *Insce.* p. 19
— *v.* Canadian Pacific Ry. Co. (Can.); **19.** *Easmt.* p. 5
Meakin *v.* Lomas (1932); **34.** *Mast. & S.* Nos. 3927c, 3976c
— *v.* Samson (Can.); **21.** *Exon.* p. 47
Meandros, The (1925); **1.** *Adm.* No. 147a
Meara *v.* King Edward's Hospital Fund for London, *Re* Boringer (1931); **8.** *Char.* No. 876a
Mears Brothers *v.* Davies (1929); **34.** *Mast. & S.* No. 3881a
Measner *v.* Bengert (Can.); **38.** *Rates*, p. 84
Measrock *v.* New Scotland Land Co., Ltd., Liquidator (S. Af.); **1.** *Agcy.* p. 53
Mechanical & General Inventions Co., Ltd. & Lehwess *v.* Austin & Austin Motor Co., Ltd. (1935); **12.** *Contr.* No. 1354a; *Pract.* No. 2405a
Mecklenburg *v.* Canadian Pacific Ry. Co. (Can.); **33.** *Mal. Pros.* p. 40
Medaini Estate, *Re* (Can.); **18.** *Desct.* p. 1
Medalta Potteries, Ltd. *v.* Medicine Hat City (Can.); **42.** *Sp. Pfce.* p. 19
Medcalf *v.* Strawbridge, Ltd. (1937); **26.** *Hghys.* No. 1707a
Medical Battery Co., *Re* (1894); **10.** *Coys.* No. 7203a
Medler *v.* Medler (1931); **34.** *Mast. & S.* No. 2367a
Medley *v.* Fletcher, *Re* Fletcher's Settlement Trusts (1936); **20.** *Eqy.* No. 1516a
Medlicott *v.* Emery (1933); **42.** *Solrs.* No. 3440a
Medway Oil & Storage Co. *v.* Continental Contractors (1929); **40.** *Set-off*, No. 562
Medway Oil & Storage Co., Ltd. *v.* Russian Oil Products, Ltd. (1931); **39.** *S. Goods*, No. 877a
— *v.* Silica Gel Corpn. (1928); **39.** *S. Goods*, No. 744a
Meechan *v.* Baird (William) & Co. (Scot.); **34.** *Mast. & S.* p. 81
Meek *v.* Meek (1930); **27.** *H. & W.* No. 6109a
Meghraj *v.* Krishna Chandra Bhattacharji (Ind.); **23.** *Exors.* p. 2
Mehr Singh *v.* Ishar Singh (Ind.); **11.** *Confl.* p. 55
Mehrban Khan *v.* Makhna (1930); **35.** *Mtge.* No. 971a
Meier *v.* Elder (Can.); **33.** *Mal. Pros.* p. 40
— *v.* Franklin (Can.); **26.** *Hghys.* p. 29
— *v.* Klotz (Can.); **32.** *Libel*, p. 6
Meikle Co., Ltd. *v.* Birkett & Son, Ltd. (Can.); **31.** *L. & T.* p. 63
Meiklejohn *v.* Hugo (Can.); **20.** *Eqy.* p. 32
Meincke *v.* City Dairy, Ltd. (No. 2) (Can.); **7.** *B. of Sale*, p. 11
Meinertzhagen *Ex p.*, *Ex p.* Ashworth, *In the Estate of* Leguia (1934); **23.** *Exors.* No. 1675a
Meisner *v.* Mason (Can.); **30.** *Jdgmts.* p. 23
Meister Lucius & Bruning, Ltd., *Re* (1921); **2.** *Aliens*, Nos. 195a, 405a
Melancthon Township *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 46
Melanie (Owners) *v.* San Onofre (Owners) (1919); **1.** *Adm.* No. 1620a
— *v.* — (1925); **1.** *Adm.* No. 1620a
Melanson *v.* Dominion of Canada General Insurance Co. (Can.); **29.** *Insce.* p. 40
Melbourne Harbour Trust Comrs. *v.* Hancock (Aus.); **2.** *Arbn.* p. 93
Melbourne Parking Station, Ltd. (In Liquidation), *Re* (Aus.); **42.** *Solrs.* p. 8
Melbourne Roman Catholic Archbishop *v.* Lawlor (Aus.); **8.** *Char.* p. 62
Melenius, *Re* (Can.); **2.** *Agric.* p. 26
Melhuish *v.* Morris (1938); **42.** *Str. Traf.* No. 199b
Melksham Urban District Council *v.* Wiltshire County Council (1937); **26.** *Hghys.* No. 645a
Mellars *v.* Mellars (1931); **27.** *H. & W.* No. 6250e
Mellen *v.* Dobenko (Can.); **27.** *H. & W.* p. 3
Mellersh *v.* Bridger (1853); **23.** *Exors.* No. 5540
Mellinger's Patent, *Re*, *Re* Automatic Telephone Manufacturing Co., Ltd. (1928); **36.** *Pats.* No. 2127a
Melliniuk *v.* Morrison & Kelly, Ltd. (Can.); **1.** *Agcy.* p. 66
Mellish, *Re* Clark *v.* Buchanan (1927); **21.** *E. D.* Nos. 209a, 271a
— *v.* Motteux (1792); **39.** *S. Goods*, No. 643a
Mello-Creme Products *v.* Ewan's Bread, Ltd. (Can.); **43.** *Trade Mks.* p. 24
Mellor, *Re* (Can.); **27.** *H. & W.* p. 15
—, *Re*, Porter *v.* Hindsley (1929); **44.** *Wills*, No. 5708a
Melnyk Estate, *Re*, Lazaruk *v.* Zelenko (Can.); **44.** *Wills*, p. 37
Melvill *v.* Melvill & Woodward (1930); **27.** *H. & W.* No. 5624b
Melville *v.* Department of Health for Scotland (Scot.); **44.** *Work*, p. 64
Melville Island, Ltd. *v.* Richards (Aus.); **3.** *Bank*, p. 24
Melvin *v.* British American Assurance Co. (Can.); **29.** *Insce.* p. 27
Melynk *v.* Sydney (Can.); **38.** *Rates*, p. 87
Men's Attire Registered *v.* Hart (Can.); **4.** *Bkpcy* p. 24
Menard *v.* R. (Can.); **14.** *Crim.* p. 32; **21.** *Estpl.* p. 29
Mennonite Mutual Fire Insurance Co. *v.* Heinrichs & Heinrichs (Can.); **21.** *Exon.* p. 60
Menon *v.* Menon & Warth (1936); **27.** *H. & W.* No. 4719a
Menzies *v.* Mackay (Scot.); **31.** *L. & T.* p. 87
— *v.* Marcotte (Can.); **33.** *Mags.* p. 37
— *v.* Tyndall Quarries Co. (Can.); **9.** *Coys.* p. 40
Menzies (John) & Co. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 70
Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd. (1938); **3.** *Bank.* No. 865b
— *v.* Chartered Bank of India, Australia & China & Strauss & Co., Ltd. (1937); **9.** *Coys.* No. 4129a
— *v.* — (No. 2) (1938); **3.** *Bank.* No. 865c
— *v.* Mascurenhas (Ind.); **6.** *B. of Exch.* p. 24
Mercantile Finance Corpn., Ltd. *v.* Francis & Taylor, Ltd. (N.Z.); **9.** *Coys.* p. 38

Mercantile Trust *v.* Campbell (Can.); **34.** *Mast. & S.* p. 8
Mercantile Union Guarantee Corpn., Ltd. *v.* Ball (1937); **28.** *Infts.* No. 298a
— *v.* Wheatley (1938); **3.** *Bailmt.* No. 268b
Mercer, *Re*, Drewe-Mercer *v.* Drewe-Mercer (1889); **35.** *Name*, No. 62a
— *v.* British Columbia Electric Ry. Co. (Can.); **43.** *Tram.* p. 49
— *v.* Homuth (Can.); **20.** *Elect.* pp. 2, 3, 4, 5
— *v.* Reid (1931); **2.** *Arbn.* No. 962a
Mercer Estate, *Re* (Can.); **21.** *E. D.* p. 21
Mercereau *v.* Hock (Can.); **32.** *Libel*, p. 16
Mercers' Co., *Ex p.* (1879); **11.** *Comp. Pche.* No. 1560a
Merchant Traders' Ship, Loan & Insurance Assocn., *Re*, *Ex p.* Chappell (1852); **4.** *Bkpcy.* No. 5367
Merchants & Manufacturers' Insurance Co., Ltd. *v.* Davies (1938); **18.** *Discy.* No. 532a
Merchants Bank of Canada *v.* Angers (Can.); **5.** *Bkpcy.* p. 85
— *v.* Brett (Can.); **6.** *B. of Exch.* p. 14
— *v.* Bush (Can.); **3.** *Bank.* p. 46
— *v.* Greenlees (Can.); **8.** *Chos.* pp. 90, 92, 93, 95
— *v.* Hancock (Can.); **0.** *Coys.* p. 55
— *v.* Ken McClary & Co. (Can.); **5.** *Bkpcy.* p. 76
— *v.* Moffatt (Can.); **18.** *Discy.* p. 12
Merchants Bank of Halifax *v.* Winter (Nfld.); **6.** *B. of Exch.* p. 10
Merchants Casualty Insce. Co. *v.* Waterloo Trust & Savings Co. (Can.); **29.** *Insce.* p. 48
Merchants' Marine Insurance Co. *v.* Liverpool Marine & General Insurance Co. (1928); **29.** *Insce.* No. 720c
— *v.* North of England Protecting & Indemnity Assocn. (1926); **29.** *Insce.* No. 505a
Merchants' Trust & New British Iron Co., *Re* (1891); **34.** *Mines*, No. 335a
Mercier *v.* Campbell (Can.); **12.** *Contr.* p. 12
Mercovich *v.* Mullaney (Aus.); **36.** *Negl.* p. 25
Mercury Oils, Ltd. & Hartell, *Re* (Can.); **11.** *Comp. Pche.* p. 5
Meredith, *Ex p.*, R. *v.* Joyce (Aus.); **16.** *Cr. Pract.* p. 37
— *v.* Abdulla (Sahib) (Ind.); **1.** *Agcy.* p. 91
— *v.* Clarke, *Re* Meredith's Trusts (1938); **27.** *H. & W.* No. 982a
Meredith's Trusts, *Re*, Meredith *v.* Clarke (1938); **27.** *H. & W.* No. 982a
Meriden Britannia Co., Ltd. *v.* Walters, *Re* Lewis (Can.); **16.** *Cntmpt.* p. 3
Merin *v.* Ross (Can.); **43.** *Tresp.* p. 53
Merkel *v.* McKendry (Can.); **12.** *Contr.* p. 25
Merkoff *v.* Pawluk (Can.); **32.** *Libel*, p. 5
Merrifield *v.* Wallpaper Manufacturers, Ltd. (1931); **28.** *Inc. T.* No. 317b
Merrifield, Ziegler & Co. *v.* Liverpool Cotton Assocn., Ltd. (1911); **2.** *Arbn.* No. 1981
Merrill Ring Wilson, Ltd. *v.* Workmen's Compensation Board (Can.); **34.** *Mast. & S.* p. 87
Merritt *v.* Doherty (Can.); **1.** *Agcy.* p. 79
Merritt Realty Co., Ltd. *v.* Brown (Can.); **38.** *Rates*, p. 49
Merritton *v.* Niagara, St. Catherines & Toronto Ry. Co. (Can.); **43.** *Tram.* p. 49
Merry *v.* Machin (S. Af.); **22.** *Evid.* p. 15
Merryfield & Dack *v.* Male Minimum Wage Board (Can.); **44.** *Work*, p. 60
Mersereau *v.* Scott (Can.); **44.** *Wills*, p. 50
Mersereau's Will, *Re* (Can.); **44.** *Wills*, p. 50
Mersey Docks & Harbour Board *v.* West Derby Assessment Committee & Bottomley (1932); **1.** *Action*, No. 18a; **16.** *Courts*. No. 11a; **38.** *Rates*, Nos. 226jj, 1297b; **42.** *Stats.* Nos. 545a, 764a
Mersey Docks & Harbour Board *v.* West Derby Revenue Officer (1931); **1.** *Action*, No. 18a
Mersey Docks & Harbour Board & Liverpool Rating Authority, *Ex p.*, R. *v.* West Derby Assessment Committee (1938); **38.** *Rates*, No. 1169a
Mersey Hydraulic Co., *Re* (Can.); **2.** *Arbn.* p. 85
Mersey Ry. Co., *Re*, Gibbs *v.* Mersey Ry. Co. (1895); **10.** *Coys.* No. 8412a
Merson *v.* Department of Health for Scotland (Scot.); **44.** *Work*, p. 65
Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council (1937); **26.** *Hghys.* Nos. 278a, 278b, 278c
Mertens *v.* Home Freeholds Co. (1921); **7.** *Bldg. Conts.* Nos. 230a, 285a
Merwin Pastoral Co. Proprietary, Ltd. *v.* Moolpa Pastoral Co. Proprietary, Ltd. (Aus.); **11.** *Confl.* p. 38
Merz *v.* South Wales Equitable Money Society, Ltd. (1927); **35.** *Money*, No. 346a
Mess *v.* Calver (Can.); **42.** *Str. Traf.* p. 36
Messager *v.* British Broadcasting Co. (1927); **13.** *Coprt.* No. 483b
— *v.* — (1928); **13.** *Corpt.* No. 483b
— *v.* — (1929); **12.** *Contr.* No. 4922a; **13.** *Coprt.* Nos. 305a, 483b
Messenger *v.* Greene (Can.); **39.** *S. Goods*, p. 32
— *v.* Parker (Can.); **33.** *Mags.* p. 27
Messenger & Co., Ltd. *v.* Trustee, *Ex p.*, *Re* Gozzett (1936); **4.** *Bkpcy.* No. 1894c
Messenger's Estate, *Re*, Chaplin *v.* Ruane (1937); **44.** *Wills*, No. 4385a
Messer *v.* Barrett Co. (Can.); **34.** *Mast. & S.* p. 5
Messers, Ltd. *v.* Morrison's Export Co., Ltd. (1938); **39.** *S. Goods*, No. 675b
Messervey *v.* Central Canada Canning Co. (Can.); **2.** *Agric.* p. 15
Messerveys, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 23
Meston, *Re*, Meston *v.* Gray (Can.); **12.** *Contr.* p. 16
Metallgesellschaft Aktiengesellschaft Application for a Patent (No. 359,868), *Re* (1934); **36.** *Pats.* No. 1508a
Metals, Ltd. *v.* Diamond (Can.); **39.** *S. Goods*, p. 51
Metcalfe *v.* Adair (Can.); **6.** *B. of Exch.* p. 24
— *v.* Boyce (1927); **31.** *L. & T.* No. 6674a
— *v.* General Accident Assurance Co. (Can.); **29.** *Insce.* p. 26
— *v.* London Passenger Transport Board (1938); **34.** *Mast. & S.* No. 1757a
— *v.* Moose Jaw Public School District (Can.); **19.** *Educ.* p. 46
— *v.* Stewart (Can.); **33.** *Mal. Pros.* p. 40
— *v.* Wiseman (1888); **15.** *Crim.* No. 8236a
Metcalfe (William) & Sons, Ltd., *Re* (1933); **10.** *Coys.* No. 6989d
Metro Oil, Ltd. & Toronto, *Re* (Can.); **16.** *Cr. Pract.* p. 32; **26.** *Hghys.* p. 35
Metropolitan Abattoirs Board *v.* Schole (Aus.); **16.** *Courts*, p. 12; **42.** *Stats.* p. 25
Metropolitan Asylums Board, *Ex p.*, R. *v.* Poplar Borough Council (1922); **16.** *Cr. Pract.* No. 1066
Metropolitan Cemetery Co., *Re* (Scot.); **9.** *Coys.* p. 9
Metropolitan Coal Co., Ltd. *v.* Pye (Aus.); **34.** *Mast. & S.* p. 149
Metropolitan Coal Consumers' Assocn., *Re*, Karberg's Case (1892); **9.** *Coys.* No. 614a
Metropolitan Electric Supply Co., Ltd. *v.* Marylebone Corpn. (1903); **20.** *Electric.* No. 106a
Metropolitan Gas Co. *v.* Melbourne Corpn. (Aus.); **25.** *Gas*, p. 45
Metropolitan Life Assurance Co. *v.* McQueen (Can.); **19.** *Easmt.* pp. 14, 15

Metropolitan Loan Co. *v.* Canada Security Assurance Co., Ltd. (Can.); **12.** *Contr.* p. 3
Metropolitan Meat Industry Board *v.* Sheedy (Aus.); **10.** *Coys.* p. 78
Metropolitan Police Comr., *Ex p.*, R. *v.* Kent JJ. (1936); **33.** *Mags.* Nos. 1115a, 1115b, 1129a
— *v.* London County Justices (1932); **30.** *Intox.* No. 455a
Metropolitan Properties Co., Ltd. *v.* Dunham (1929); **28.** *Inc. T.* No. 50b
Metropolitan Ry. Co. *v.* Great Western Ry. Co. (1886); **8.** *Carr.* No. 703a
Metropolitan Railway *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 369d
Metropolitan Reversions, Ltd. (Scot.); **9.** *Coys.* p. 52
Metropolitan Theatres, Ltd. *v.* Harris (Aus.); **21.** *Exon.* p. 60
Metropolitan Transport Supply Co., Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (1937); **8.** *Carr.* No. 1660
Metropolitan Tunnel & Public Works *v.* London Electric Ry. Co. (1926); **2.** *Arbn.* No. 372a
Metropolitan Water Board *v.* Minister of Transport (1925); **20.** *Electric*, No. 6c
— *v.* Watkins (1937); **26.** *Highys.* No. 2630a
Metropolitan-Vickers Electrical Co., Ltd. *v.* British Thomson-Houston Co., Ltd. (1925); **36.** *Pats.* No. 472a
Metters, Ltd. & Lever Brothers, Ltd. *v.* Pickard (Aus.); **17.** *Dep.* p. 63
Metx *v.* Marshall (Can.); **2.** *Animals*, p. 66
Metzler, *Re* (Can.); **16.** *Cr. Pract.* p. 40
Meunier *v.* Doray (Can.); **21.** *Exon.* p. 46; **25.** *Fraud. Conv.* p. 13
Meux's Brewery Co., Ltd. *v.* Newington Licensing JJ. (1926); **30.** *Intox.* No. 141a
Mewburn's Settlement, *Re*, Perks *v.* Wood (1934); **37.** *Powers*, No. 187a
Mexican & South American Co., *Re*, Grisewood & Smith's Case, De Pass' Case (1859); **9.** *Coys.* No. 2344b
Meyer *v.* Poynton (Aus.); **2.** *Aliens*, pp. 48, 52
Meyer & Co. *v.* Elder (1923); **2.** *Aliens*, No. 223d
— *v.* Faber (1921); **2.** *Aliens*, No. 223b
— *v.* — (No. 2) (1923); **2.** *Aliens*, No. 223d
Meyer & Toronto, *Re* (Can.); **11.** *Comp. Pche.* p. 6
Meyer (Montague), Ltd. *v.* Kivisto (1929); **39.** *S. Goods*, No. 527a
— *v.* Osakeyhtio Carelia Timber Co., Ltd. (1930); **39.** *S. Goods*, Nos. 622a, 1887a
— *v.* Travaru A/BH Cornelius of Gamleby (1930); **39.** *S. Goods*, No. 674a
Meyer Malt & Grain Corpn. *v.* Coombs (Can.); **17.** *Dep.* p. 43
Meyer's Patent, *Re* (1933); **36.** *Pats.* Nos. 1825a, 1947a
Meyers & Paddington Motor Service, Ltd. *v.* Dalgety & Co., Ltd. (Aus.); **29.** *Insce.* p. 57
Meynell *v.* Garraway (1662); **20.** *Eqy.* No. 760b
Meyrick *v.* Dyson (1925); **12.** *Contr.* No. 2899a
Mezger *v.* Mezger (1937); **11.** *Confl.* No. 949a; **27.** *H. & W.* No. 6242a
Mezzine *v.* Mezzine (Aus.); **27.** *H. & W.* p. 19
Micas *v.* A.-G. of Saskatchewan (Can.); **17.** *Dep.* pp. 53, 54
— *v.* Moose Jaw (City) & A.-G. for Saskatchewan (Can.); **17.** Dep. p. 54
Michael Hrushevsky Ukrainian Institute *v.* Edmonton Corpn., *Re* Edmonton Charter (Can.); **11.** *Comp. Pche.* p. 7
Michaelis, *Re* (Can.); **11.** *Comp. Pche.* p. 9; **20.** *Eqy.* p. 20
— (No. 2), *Re* (Can.); **11.** *Comp. Pche.* p. 9
—, *Re*, *Ex p.* Hivis (Aus.); **42.** *Str. Traf.* p. 49
— *v.* Ryan Motors (Can.); **32.** *Lien*, p. 23
Michaelson *v.* Crisp (1927); **23.** *Exors.* No. 3518a
Michail *v.* Savings Bank of South Australia (Aus.); **3.** *Bank.* p. 19
Michalick *v.* McGregor (N.Z.); **34.** *Mast. & S.* p. 31
Michalinski *v.* Canadian Pacific Ry. Co. (Can.); **36.** *Negl.* p. 31; **38.** *Rys.* p. 38
Michaud *v.* Montreal (City) (1923); **25.** *Gifts*, No. 26a
Michelham's Trustees *v.* Inland Revenue Comrs. (1931); **28.** *Inc. T.* No. 681a
Michell, *Re*, Thomas *v.* Hoskins (1929); **44.** *Wills*, No. 8698a
— *v.* Booth (Aus.); **10.** *Coys.* p. 81
Michigan Central Ry. Co. (Employees) *v.* Michigan Central Ry. Co. (Can.); **38.** *Rys.* p. 46
Mick Simmons, Ltd., *Ex p.*, *Re* Josselyn (Aus.); **34.** *Med.* p. 190
Mickelson *v.* Nash-Simington Co. (Can.); **7.** *B. of Sale*, p. 9
Mico Products, Ltd. *v.* Acetol Products Inc. (Can.); **36.** *Pats.* p. 81
Mid-Lakes Timber Co. *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 41
Mid-North Electricity Co., Ltd. *v.* Rutherford (Aus.); **22.** *Evid.* p. 12
Mid-West Collieries, Ltd. *v.* McEwen (Can.); **9.** *Coys.* pp. 32, 38
Mid-West Glass Co., Ltd., *Re* (Can.); **10.** *Coys.* p. 69; **42.** *Stats.* p. 23
Middlesbrough Revenue Officer *v.* Middlesbrough Assessment Committee (1930); **38.** *Rates*, No. 226p
Middlesex County Council *v.* Hall (1929); **31.** *L. & T.* No. 7322a
— *v.* Nathan (1937); **38.** *Pub. Hlth.* No. 335b
Middlesex County Valuation Committee *v.* West Middlesex Assessment Committee (1937); **38.** *Rates*, No. 1146c
Middleton *v.* McMillan (Can.); **17.** *Damgs.* p. 21
Middleton & Goderich, *Re* (Can.); **38.** *Pub. Hlth.* p. 14
Middleton & Young's Contract, *Re* (1929); **40.** *S. Land*, No. 1016a
Middleton Estate & Colliery Co., Ltd. *v.* Finan (1926); **34.** *Mast. & S.* No. 4014a
Middleweek *v.* Dearsby (1881); *Pract.* No. 4197a
Midgley *v.* London, Midland & Scottish Ry. Co. (1938); **8.** *Carr.* No. 1673
— *v.* Midgley (Can.); **16.** *Cntmpt.* p. 6
Midland Bank Executor & Trustee Co., Ltd. *v.* Sandbrook, *Re* Ricarde-Seaver's Will Trusts (1936); **23.** *Exors.* No. 5251d
— *v.* Thompson, *Re* Hulton (1936); **43.** *Trusts*, No. 2147a
v. Wales (Archbishop), *Re* Jackson (1930); **8.** *Char.* No. 718b
— *v.* Yarners Coffee, Ltd. (1937); **44.** *Wills*, No. 5913a
Midland Bank, Ltd. *v.* Inland Revenue Comrs. (1927); **6.** *B. of Exch.* No. 3146a
— *v.* Reckitt (1933); **1.** *Agcy.* No. 300a; **3.** *Bank.* No. 687b
Midland Counties Institution of Engineers *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 476c
Midland (Amalgamated) District (Coal Mines) Scheme, 1930, *Re*, Mitchell Main Colliery Co., Ltd. *v.* Executive Board (1934); **34.** *Mines*, No. 327y
Midland (Amalgamated) District (Coal Mines) Scheme, 1930, Executive Board *v.* Shipley Collieries, Ltd. (1933); **34.** *Mines*, No. 327l
Midland (Amalgamated) District (Coal Mines, Scheme, 1930, Holliday (Robert) & Sons) Ltd. *v.* Executive Board (1934); **34.** *Mines*, No. 327z

Midland (Amalgamated) District (Coal Mines) Scheme, 1930, Oakes (James) & Co. (Riddings Colliery), Ltd. *v.* Executive Board (1935); **34.** *Mines*, No. 327w
Midland Employers' Mutual Assurance, Ltd. *v.* Lewis (1930); **34.** *Mast. & S.* No. 4014c
Midland Junction Municipality *v.* Kent (Aus.); **35.** *Mistake*, p. 13
Midland Motor Showrooms, Ltd. *v.* Newman (1929), **26.** *Guar.* Nos. 1200a, 1345a, 1379a
Midland Ry. Co. & Kettering, Thrapston & Huntingdon Ry. Co. *v.* Robinson (1889); **11.** *Comp. Pche.* No. 336a
Midland Ry. of Canada *v.* Young (Can.); **38.** *Rys.* p. 36
Midlothian County Council *v.* Albert (Scot.); **33.** *L. G.* p. 10
Midnapore Zamindari Co., Ltd. *v.* Muktakeshi Patrani (Ind.); **17.** *Deeds*, p. 26
Midnapur Zamindari Co., Ltd. *v.* Ram Kanai Singh Deo Darpa Saha (Ind.); **28.** *Injon.* p. 153
Mikenas *v.* Burley (Can.); **36.** *Negl.* p. 28
Mikkelsen *v.* Duff (Can.); **44.** *Work*, p. 58
Mildmay *v.* Standish (1584); **17.** *Deeds*, No. 1471; **32.** *Libel*, No. 2560a
Mildmay's Case (1584); **17.** *Deeds*, No. 1471; **32.** *Libel*, No. 2560a
Mildura Co-operative Fruit Co., Ltd. *v.* Noyce, *Re* Noyce, *Ex p.* Minister of Agriculture (Aus.); **21.** *Exon.* p. 56; **38.** *Pub. Auth.* p. 6
Miles, *Ex p.*, *Re* Davies (1921); **5.** *Bkpcy.* No. 7339a
— *v.* Easter, *Re* Union of London & Smith's Bank, Ltd.'s Conveyance (1933); **40.** *S. Land*, No. 2605a
— *v.* Zuckerman (Can.); **26.** *Guar.* p. 1
Miles' Claim, *Re* Adansonia Fibre Co. (1874); **6.** *B. of Exch.* No. 691a
Miles' Will, *Re* (1859); **35.** *Mtge.* No. 389a
Milestone & Sons, Ltd. *v.* Yates Castle Brewery, Ltd. (1938); **7.** *Bldg. Conts.* No. 365a
Miley *v.* Carty & Miley (Ir.); **20.** *Eqy.* p. 25
Milford *v.* Milford (1869); **27.** *H. & W.* No. 5327a
Milk Board, *Ex p.*, *Re* Farmers' Fertilizers Corpn., Ltd. (Aus.); **25.** *Food*, p. 10
Milk Marketing Board *v.* Warman & Sons (1937); **25.** *Food*, No. 476l
— *v.* Williams (1935); **25.** *Food*, No 476i
Milk Rate Case, National Dairy Council *v.* Grand Trunk & Canadian Pacific Ry. Cos. (Can.); **8.** *Carr.* p. 23
Mill Lane Land, Everton, *Re*, *Re* Liverpool Education (Emmanuel School Purchase) Order, 1929, *Ex p.* Liverpool Corpn. (1937); **19.** *Educ.* No. 120a
Millane *v.* Heidelberg Shire (President, etc.) (Aus.); **5.** *Bkpcy.* p. 85
Millar, *Re* (Can.) (1927); **23.** *Exors.* p. 20
—, *Re* (Can.) (1937); **44.** *Wills*, p. 24
—, *Re* (Can.) (1938); **3.** *Basty.* p. 55; **39.** *Regn* p. 2; **44.** *Wills*, p. 24
— *v.* B. C. Rapid Transit Co., Ltd. (Can.); **22.** *Evid.* p. 19
— *v.* Coltness Iron Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 33
— *v.* Ellard (Can.); **12.** *Contr.* p. 9
— *v.* R. (Can.); **1.** *Action*, p. 2
— *v.* Woolworth (F. W.) Co., Ltd. (Can.); **31.** *L. & T.* p. 59
Millar's Machinery Co., Ltd. *v.* Way & Son (1935); **39.** *S. Goods*, No. 2519a
Millard *v.* Bevan Lumber & Shingle Co., Ltd. (Can.); **27.** *H. & W.* p. 6
— *v.* Lucas (Aus.); **25.** *Gifts*, p. 48
Millensted *v.* Grosvenor House (Park Lane), Ltd. (1937); *Pract.* No. 1735a
Miller, *Ex p.*, R. *v.* Foley (Aus.); **16.** *Cr. Pract.* p. 34
—, *Re* (Can.) (1921); **16.** *Cntmpt.* p. 2
—, *Re* (Can.) (1929); **27.** *H. & W.* p. 9; **38.** *Real Prop.* pp. 90, 93
—, *Re* (Can.) (1935); **42** *Solrs.* p. 7
—, *Re*, Massey-Harris Co., Ltd. *v.* Board of Review (Can.); **39.** *S. Goods*, p. 60
— *v.* Aikins (Can.); **16.** *Courts*, p. 9
— *v.* Amalgamated Engineering Union (1938); **43.** *Trade*, No. 1105a
— *v.* Anderson (Scot.); **28.** *Inc. T.* p. 7
— *v.* Brighton (City) (Aus.); **13.** *Corpns.* p. 27; **38.** *Pub. Hlth.* p. 14
— *v.* Cameron (Aus.); **43.** *Trusts*, p. 65
— *v.* Canadian Pacific Ry. Co. (Can.); **36.** *Negl.* p. 38
— *v.* Cannon Hill Estates, Ltd. (1931); **7.** *Bldg. Conts.* Nos. 36b, 36e, 36f; **17.** *Deeds*, No. 1576a; **40.** *S. Land*, No. 2922b
— *v.* Carntyne Steel Castings Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 67
— *v.* Cecil Film, Ltd. (1937); **17.** *Damgs.* No. 181e; **42.** *Theatres*, No. 195h
— *v.* Charleswood Rural Municipality (Can.); **38.** *Pub. Hlth.* p. 15
— *v.* Corkum (Can.); **23.** *Exors.* p. 15
— *v.* Great West Natural Gas Corpn. (Can.); **18.** *Discy.* p. 18
Miller (Lady) *v.* Inland Revenue Comrs. (1930); **28.** *Inc. T.* No. 674d
Miller *v.* Krawitz (Can.); **36.** *Nuis.* p. 44
— *v.* London County Council (1934); **7.** *Bldg. Conts.* Nos. 45a, 55a
— *v.* McDonnell (Can.); **2.** *Arbn.* pp. 99, 100
— *v.* Miller (1928); **27.** *H. & W.* Nos. 5271a, 5271b
— *v.* — (Can.); **11.** *Confl.* p. 48
— *v.* — (Ind.); **11.** *Confl.* p. 46
— *v.* Millward (N.Z.); **34.** *Med.* p. 189
— *v.* Morgan (1935); **34.** *Mast. & S.* No. 2170a
— *v.* Penfolds Wines, Ltd. (Aus.); **38.** *Pub. Hlth.* p. 17
— *v.* Osier (Can.); **25.** *Fraud. Conv.* p. 15
— *v.* Pill (1933); **42.** *Str. Traf.* No. 76q
— *v.* Portage la Prairie Mutual Insurance Co. (Can.); **29.** *Insce.* p. 26
— *v.* R. (Can.) (1927); **21.** *Estpl.* p. 39; **32.** *Limit. of A.* p. 29
— *v.* — (Can.), [1931] 3 D. L. R. 795; **25.** *Gaming*, p. 32
— *v.* — (Can.), [1931] Ex. C. R. 22; **39.** *Revenue*, p. 27
— *v.* Robert Addie & Son's Collieries (Scot.); **25.** *Gas*, p. 46
— *v.* St. Lina Municipal District (Can.); **18.** *Distr.* p. 33
— *v.* Smith (Nfld.); **11.** *Const. L.* p. 76
— *v.* Taylor & Son (1931); **34.** *Mast. & S.* No. 3754a
— *v.* Wall (Can.); **12.** *Contr.* p. 26
— *v.* Winch & Winch & Co. (Can.); **42** *Tele.* p. 68
— *v.* Wollaston (Can.); **42.** *Solrs.* p. 9
Miller & Co. *v.* Halifax Power Co. (Can.); **43.** *Trusts*, p. 59
— *v.* London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Great Western Ry. Co., Coast Lines, Ltd. & Bowker (1937); **8.** *Carr.* No. 1662
Miller & Mutch *v.* Loreburn & Kelly Rural Municipality (Can.); **18.** *Distr.* p. 34
Miller & Pickersgill's Contract, *Re* (1931); **40.** *S. Land*, No. 2596a

Miller (Roger) & Sons, Ltd. *v.* R. (Can.); **7.** *Bldg. Conts.* p. 20
Millichamp *v.* Millichamp (1931); **27.** *H. & W.* No. 6124g
Milligan, *Ex p.*, *Re* E. J. Lane, Ltd. (Can.); **9.** *Coys.* p. 48
Milligan *v.* Thorn (Can.); **34.** *Mast. & S.* p. 19
— *v.* Crown Life Insurance Co. (Can.); **29.** *Insce.* p. 34
Milligan Estate, *Re*, Campbell *v.* Gallant, Crockett & Royal Bank of Canada (Can.); **5.** *Bkpcy.* p. 75
Milligan, Petitioner (Scot.); **19.** *Eccl.* p. 30
Milliken *v.* Young (Can.); **40.** *S. Land*, p. 17
Millimumul, The (Aus.); **1.** *Adm.* p. 43; **41.** *Ship.* p. 70
Millin *v.* Inland Revenue Comr. (S. Af.); **28.** *Inc. T.* p. 94
Millingen's, Ltd., *Re* (Aus.); **10.** *Coys.* pp. 76, 78
Millman *v.* Pratt (1824); **32.** *Libel*, No. 2560b
Mills, *Re* (Can.); **27.** *H. & W.* p. 22
— *Re* (N.Z.); **28.** *Infts.* p. 138
—, *Re*, Mills *v.* Lawrence (1930); **37.** *Powers*, No. 1101a
—, *Re*, Owen *v.* Campbell (Can.); **28.** *Infts.* p. 132
— *v.* Angus (Can.); **22.** *Evid.* p. 7
— *v.* Brooker (1919); **2.** *Agric.* No. 406a
— *v.* Canadian Pacific Steamships, Ltd. (Can.); **8.** *Carr.* p. 6
— *v.* Chapman (1930); **43.** *Trade Mks.* No. 1137b
— *v.* Davis (Can.); **28.** *Infts.* p. 132
— *v.* Drummond (1934); **20.** *Elect.* No. 1038c
— *v.* Duckworth (1938); *Pract.* No. 3270a
— *v.* Glace Bay Housing Commission (Can.); **12.** *Contr.* p. 36
— *v.* Graham (1804); **43.** *Trov.* No. 653a
— *v.* Jennings (1880); **30.** *Jdgmts.* No. 615a
— *v.* Jones (1929); **28.** *Inc. T.* No. 97a
— *v.* Lawrence, *Re* Mills (1930); **37.** *Powers*, No. 1101a
— *v.* Lethbridge (City) (Can.); **38.** *Pub. Auth.* p. 12
— *v.* Mercer Co., Ltd. (Can.); **18.** *Discy.* p. 14
— *v.* Rose (1923); **2.** *Agric.* No. 266f
Mills & Morris, Letters Patent No. 105,857, *Re* (1932); **36.** *Pats.* No. 2019a
Mills Conduit Investments, Ltd. *v.* Leslie (1932); **35.** *Money*, Nos. 410d, 438c
Mills (E. W.), Ltd., *Re* (N.Z.); **9.** *Coys.* p. 11
Mills' Estate, *Re* (Can.); **21.** *E. D.* p. 1
Mills' Will Trusts, *Re*, Marriott *v.* Mills (1936); **44.** *Wills*, No. 5899a
Milltown (Town), *Ex p.*, R. *v.* Public Utilities Board of Comrs. (Can.); **12.** *Contr.* p. 57
Miln-Bingham Printing Co., Ltd. *v.* R. (Can.); **39.** *Revenue*, p. 14
Milne *v.* Daubeny, *Re* Leach (1923); **23.** *Exors.* Nos. 4895a, 5442b
— *v.* Durham Hosiery Mills, Ltd. (Can.); **9.** *Coys.* p. 15
— *v.* Peterson (Can.); **12.** *Contr.* p. 24
— *v.* Yorkshire Guarantee & Securities Corpn. (Can.); **26.** *Guar.* p. 10
Milne (Alexander) & Son *v.* Maclean & Son (Scot.); **34.** *Mast. & S.* p. 148
Milne (William), Ltd. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 76
Milne's Trustees, *Re* (Scot.); **39.** *Rntchgs.* p. 8
Milner, *Re*, *Ex p.* Forbes (Can.); **4.** *Bkpcy.* p. 39
— *v.* Allen (1933); **42.** *Str. Traf.* No. 245b
— *v.* Ringwood (Can.); **38.** *Real Prop.* p. 99
Milnes *v.* Cowley (1817); **32.** *Limit. of A.* No. 1588a
Milo Wheat Co., Ltd., *Re* (Can.); **10.** *Coys.* p. 67
Milsted (W. H.) & Son, Ltd. *v.* Hamp & Ross & Glendinning, Ltd. (1927); **34.** *Mast. & S.* No. 262a
Milton *v.* Milton & Cook (Can.); **27.** *H. & W.* p. 45
— *v.* — (No. 2) (Can.); **27.** *H. & W.* p. 54
Milton *v.* Vacuum Oil Co. of South Africa, Ltd. (S. Af.); **42.** *Str. Traf.* p. 40
Milton (A.) & Co. *v.* Ojha Automobile Engineering Co. (Ind.); **11.** *Confl.* p. 59
Milvain *v.* Mather (1850); **10.** *Coys.* No. 7462a
Milward *v.* Lysons (1836); **29.** *Insce.* No. 3052b
Minahan's Petition of Right, *Re*, *Re* Blake (1932); **32.** *Limit. of A.* No. 1761b
Minaker *v.* Hadden (Can.); **2.** *Animals*, p. 56
— *v.* Sanderson, *Re* Rural Municipality Act, *Re* Carrot River Rural Municipality (Can.); **20.** *Elect.* p. 6
Minden *v.* R. (Can.); **14.** *Crim.* p. 58
Mineral Products Co. *v.* Continental Trust Co. (Can.); **21.** *Exon.* p. 51; **30.** *Jdgmts.* p. 24
Minerva, The (1933); **1.** *Adm.* No. 486a
Minervini *v.* Walsh (Aus.); **42.** *Str. Traf.* p. 39
Minifie, *Re* (N.Z.); **11.** *Confl.* p. 36
Minimax, Ltd. *v.* Moffat (trading as L. & G. Fire Appliance Co.) (1935); **43.** *Trade Mks.* No. 655a
Minimum Wages Act, *Re*, A.-G. for Canada *v.* A.-G. for Ontario (1937); **17.** *Dep.* Nos. 110a, 130p, 130q, 130r
Mining Assocn. of Great Britain *v.* London, Midland & Scottish, London & North Eastern, Great Western, & Southern Ry. Cos., & Cheshire Lines Committee (1924); **8.** *Carr.* Nos. 1377f, 1377j
Minister for Labour & Industry (N.S.W.) *v.* Mutual Life & Citizens Assurance Co., Ltd. (Aus.); **16.** *Cr. Pract.* p. 37
Minister of Agriculture, *Ex p.*, *Re* Noyce, Mildura Co-operative Fruit Co., Ltd. *v.* Noyce (Aus.); **21.** *Exon.* p. 56; **38.** *Pub. Auth.* p. 6
Minister of Agriculture & Fisheries *v.* Dean (1924); **2.** *Agric.* No. 266g
Minister of Defence for Union Government *v.* Van Zyl (S. Af.); **18.** *Discy.* p. 8
Minister of Education Petition, *Re* (Can.); **19.** *Educ.* p. 37
Minister of Finance *v.* Burke-Roche, *Re* Clapham (Can.); **21.** *E. D.* p. 21
— *v.* Caledonian Insurance Co., *Re* Land Registry Act & Higginson (Can.); **21.** *E. D.* p. 21
— *v.* Drummond, *Re* Drummond Estate (Can.); **21.** *E. D.* p. 21
— *v.* Smith (1927); **28.** *Inc. T.* No. 99g
Minister of Health *v.* R., *Ex p.* Yaffe (1931); **38.** *Pub. Hlth.* Nos. 10a, 506c; **42.** *Stats.* No. 142a
Minister of Industry & Commerce *v.* Stewart & Lowry (Ir.); **44.** Work, p. 61
Minister of Interior for Canada *v.* Nelson (Can.); **7.** *Bounds. & F.* p. 17
Minister of Justice, *Ex p.*, *Re* R. *v.* Jacobson & Levy (S. Af.); **42.** *Stats.* p. 22
Minister of Justice of Canada *v.* Martin, *Re* Barcauckas (Can.); **33.** *Lunat.* p. 18
Minister of Labour, *Re*, *Re* Blackpool Corpn. & Barritt (1931); **44.** *Work*, Nos. 123b, 123c, 123d
—, *Re*, *Re* Eton School Stores & Parker (1931); **44.** *Work*, No. 118a
— *v.* Stephens (1938); **44.** *Work*, No. 82a
Ministry of Labour for Northern Ireland *v.* Cowdy & Sons (Ir.); **24.** *Fact.* p. 50
Minister of National Revenue *v.* Ogulnik & Co., Ltd. (Can.) (1932); **39.** *Revenue*, p. 15
— *v.* Ogulnik & Co. (Can.) (1935); **39.** *Revenue*, p. 14
— *v.* Royal Trust Co. (Can.); **28.** *Inc. T.* pp. 11, 92
— *v.* Spooner (Can.); **28.** *Inc. T.* p. 15

Minister of Pensions, *Ex p.*, R. *v.* Whytt (1931); **39.** *Royal F.* No. 266a
Minister of Public Works of British Columbia & Tipping (Can.); **2.** *Arbn.* p. 98
Minister of Railways & Canals *v.* Hereford Ry. Co., *Re* Bond & Mackinnon & Minister of Railways & Canals (Can.); **38.** *Rys.* p. 36
Minister of Railways, Union Government *v.* Lee (S. Af.); **36.** *Negl.* p. 37
Minister of Transport *v.* Pitt (1932); **20.** *Electric*, Nos. 17a, 30a, 63a
— *v.* Railway Clearing House (1933); **38.** *Rates*, No. 226ll
Minneapolis Steel & Machinery Co. *v.* Baxter (Can.); **39.** *S. Goods*, p. 60
— *v.* Eberle (Can.); **39.** *S. Goods*, p. 60
— *v.* Paulerrou (No. 2) (Can.); **39.** *S. Goods*, p. 57
Minneapolis Threshing Machine Co. *v.* Johnson & Johnson (Can.); **39.** *S. Goods*, p. 60
— *v.* Mooney (Can.); **2.** *Agric.* p. 25
Minnedosa (Town) By-Law No. 304, *Re*, Wong Sing *v.* Minnedosa (Can.); **38.** *Pub. Hlth.* p. 16
Minnevitch *v.* Café de Paris (Londres), Ltd. (1936); **12.** *Contr.* No. 3166a
Minor's Trusts, *Re* (1860); **40.** *Sttlmts.* No. 1081a
Mint, The (1938); **41.** *Salvage*, No. 8098a
Minter *v.* Priest (1930); **22.** *Evid.* Nos. 4213a, 4218a; **32.** *Libel*, Nos. 1466b, 1943a
Mintz, *Re*, Malouf *v.* Mintz (Can.); **4.** *Bkpcy.* p. 18; **22.** *Evid.* p. 23
Mir Anwarrudin *v.* Fathim Bai Abidin (Ind.); **32.** *Libel*, p. 10
Miranda *v.* Miranda (1931); **27.** *H. & W.* No. 3067a
Miss, *Re* (Ind.); **17.** *Dep.* p. 84
Missiquoi & Rouville Mutual Fire Insurance Co. *v.* Eastern Townships Telephone Co. (Can.); **29.** *Insce.* p. 26
Mistry Goa Petha *v.* N. H. Moos (Ind.); **30.** *Prtnrs.* p. 61
Mit Singh *v.* Gill (Can.); **5.** *Bkpcy.* p. 85
Mitcham Golf Course Trustees *v.* Ereaut (1937); **28.** *Inc. T.* No. 79d
Mitcham Urban District Council *v.* Seale (1933); **38.** *Pub. Hlth.* Nos. 265b, 265c, 266a, 266b
Mitchell, *Re*, Ballarat Trustees, Executors & Agency Co., Ltd. *v.* National Trustees, Executors & Agency Co. of Australasia, Ltd. (Aus.); **44.** *Wills*, p. 39
— *v.* Adlam (Can.); **42.** *Str. Traf.* p. 37
— *v.* Alexander (1935); **20.** *Eqy.* No. 2478a
— *v.* Campbell (Can.); **36.** *Negl.* p. 25
— *v.* Davis (1920); **3.** *Bailmt.* No. 319a
— *v.* Gard (1863); **23.** *Exors.* No. 1301a
— *v.* Gormley (Can.); **36.** *Prtnrs.* p. 61
— *v.* Greenwood (Can.); **21.** *Exon.* p. 50
— *v.* Hirst, Kidd & Rennie, Ltd. (1936); **32.** *Libel*, No. 1700a
— *v.* Inland Revenue Comrs. (Ir.); **28.** *Inc. T.* p. 56
— *v.* Macrae & Dick (Scot.); **34.** *Mast. & S.* p. 108
— *v.* Mitchell (S. Af.); **1.** *Action*, p. 2
— *v.* Mitchell & Croome (Can.); **17.** *Dep.* p. 56; **27.** *H. & W.* p. 50
— *v.* Morrison (Scot.); **42.** *Str. Traf.* p. 56
— *v.* Noble (B. W.), Ltd. (1927); **28.** *Inc. T.* No. 222a
— *v.* Page (1934); **39.** *Revenue*, No. 114a
— *v.* Palmer & Co. (1934); **34.** *Mast. & S.* No. 2777a
— *v.* Saylor (Can.); **12.** *Contr.* p. 45
— *v.* Smith, *Re* Patterson (1864); **25.** *Gifts*, No. 337a
— *v.* Tennent (Ind.); **25.** *Gaming*, p. 32
— *v.* West's Gas Improvement Co., Ltd. (1934); **36.** *Pats.* No. 2358c
Mitchell *v.* Wormworth (Can.); **29.** *Insce.* p. 5
Mitchell & Union Bank of Canada, *Re* (Can.); **6.** *B. of Exch.* p. 1
Mitchell Brothers *v.* Inland Revenue (Scot.); **38.** *Rates*, p. 53
Mitchell Co. *v.* Atlas Systems (Can.); **36.** *Pats.* p. 92
Mitchell Main Colliery Co., Ltd. *v.* Executive Board, *Re* Midland (Amalgamated) District (Coal Mines) Scheme, 1930 (1934); **34.** *Mines*, No. 327y
Mitchell's Estate, *Re*, National Trust Co., Ltd. *v.* Carson (Can.); **40.** *Sttlmts.* p. 35
Mitchell-Gill *v.* Buchan (Scot.); **2.** *Agric.* p. 12
Mitchener *v.* Equitable Investment Co., Ltd. (1938); **35.** *Money*, No. 353y
Mitchner, *Re* (Aus.); **2.** *Aliens*, p. 35; **8.** *Char.* p. 78
Mitchner, *Re*, Union Trustee Co. of Australia, Ltd. *v.* A.-G. for Commonwealth of Australia (Aus.); **2.** *Aliens*, p. 35
Mitford *v.* Mitford & Von Kuhlmann (1923); **11.** *Confl.* No. 944a
Mitton *v.* Lock (R. G.) & Co., Ltd. (Aus.); **25.** *Food*, p. 5
Mittun *v.* Christian Salvesen & Co. (Scot.); **34.** *Mast. & S.* p. 35
Mizen *v.* Old Florida, Ltd. (1934); **30.** *Intox.* Nos. 627a, 733b
Mizza *v.* McKay-Massey Harris Pty., Ltd. (Aus.); **3.** *Bailmt.* p. 14
Moberly *v.* Baines & Shortis (Can.); **12.** *Contr.* p. 18
Mockbill *v.* Homer City S.S. Owners (1929); **34.** *Mast. & S.* No. 3927a
Model Dairy Pty., Ltd. *v.* White (Aus.); **28.** *Injon.* p. 153
Modern Construction Co. *v.* Shaw (Can.); **7.** *Bldg. Conts.* p. 23
Modern Haulage Services, Ltd. *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1937); **8.** *Carr.* Nos. 1553, 1626
Modern Light Cars, Ltd. *v.* Seals (1934); **3.** *Bailmt.* No. 247a
Modern Realty Co. *v.* Shantz (Can.); **32.** *Limit. of A.* p. 38; **35.** *Mtge.* p. 39
Modern Road Construction Co. Pty., Ltd. *v.* Melbourne Harbour Trust Comrs. (Aus.); **7.** *Bldg. Conts.* p. 31
Modiano (Isaac) Bros. & Son *v.* Bailey (F. D.) & Sons, Ltd. (1933); **41.** *Ship.* No. 4569a
Modica, The (1926); **1.** *Adm.* No. 1284a
Moffat *v.* Grover (Can.); **21.** *Exon.* p. 51
Moffat Hydropathic Co., Ltd. *v.* Secretary of State for War (1924); **11.** *Const. L.* No. 499b
Moffatt, *Ex p.*, *Re* Blackburn (Can.); **7.** *B. of Sale*, p. 9
— *v.* Hangar (N.Z.); **18.** *Discy.* pp. 12, 13
Moffatt (Doe d.) *v.* Thompson (Can.); **38.** *Real Prop.* p. 98
Moffatt & Hamilton, *Re* (Can.); **38.** *Rates*, p. 50
Moffett *v.* Gough (Ir.); **40.** *Sttlmts.* p. 38
Mogileff, The (1921); **1.** *Adm.* Nos. 338a, 352c
Mohabbat Ali Khan *v.* Mahomed Ibrahim Khan (Ind.); **3.** *Basty.* p. 52
Mohamed Noordin (E. P.) *v.* S. E. S. Abdul Kareem & Co. (1931); **43.** *Trade Mks.* No. 629b
Mohamet Ali, *Ex p.* (Can.); **16.** *Cr. Pract.* p. 28
Mohammad Farid-Mohammad Shafi *v.* Lahore Income Tax Comr. (Ind.); **16.** *Cr. Pract.* p. 32; **28.** *Inc. T.* p. 103
Mohammad Haroon *v.* Asghar Hussain (Ind.); **33.** *Mal. Pros.* p. 41
Mohan Lal Mehta, *Re*, *Re* Sri Yogashram Pharmacy, Ltd. (In Liquidation) (Ind.); **10.** *Coys.* p. 89

Mohan Singh *v.* Kirpa (Can.); **6.** *B. of Exch.* p. 18
— *v.* Shand (Can.); **6.** *B. of Exch.* p. 18
Mohindar Singh *v.* R. (1932); **16.** *Courts*, No. 532a
— *v.* R. (Ind.); **17.** *Dep.* p. 80
Mohring *v.* Glen Falls Insurance Co. (Can.); **29** *Insce.* p. 58
Moiler *v.* Forge (Aus.); **1.** *Agcy.* p. 89
Moir *v.* Hill (Aus.); **36.** *Negl.* p. 19
— *v.* White (N.Z.); **2.** *Arbn.* 101
Molaippa Goundan, *Re* (Ind.); **26.** *Hghys.* p. 33
Mold *v.* Wheatcroft (1859); **11.** *Comp. Pche.* No. 2017a
Mole *v.* Trustee, *Ex p.*, *Re* Wise (1934); **34.** *Mast. & S.* No. 3591a
Molière, The (1925); **1.** *Adm.* Nos. 518a, 518b, 523a
Molins *v.* Industrial Machinery Co., Ltd. (1937); **36.** *Pats.* No. 642b
Molins Machine Co., Ltd. *v.* London County Council (1932); **26.** *Hghys.* No. 2087a
Moller, *Ex p.*, *Ex p.* Hianson, R. *v.* Bannstead (Can.); **2.** *Aliens*, pp. 48, 49
Molloy, *Re* (Aus.); **44.** *Wills*, p. 55
— *v.* Molloy (Aus.); **27.** *H. & W.* p. 64
— *v.* Molloy & Burg (Aus.); **27.** *H. & W.* p. 75
Moloney *v.* Moloney & Conden (Can.); **23.** *Exors.* p. 20
Molony *v.* Nicholson, *Re* Nicholson's Settlement (1938); **37.** *Powers*, No. 1036a
— *v.* Wilson (Aus.); **18.** *Distr.* p. 33
Moloughney *v.* Wellington Racing Club (N.Z.); **36.** *Negl.* p. 6
Molson & National Trust Co., Ltd. *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 95
Mombroquette, *Re* (Can.) (1928); **16.** *Courts*, p. 10
—, *Re* (Can.) (1929); **28.** *Infts.* p. 140
Momple *v.* Momple (S. Af.); **36.** *Prtnrs.* p. 61
Monaco *v.* Monaco (1937); **28.** *Infts.* No. 1252a
Monaghan, *Re* (Can.); **16.** *Cr. Pract.* p. 33
Monaghan *v.* Elswick Coal Co. (1933); **34.** *Mast. & S.* No. 3822f
— *v.* Monaghan (Can.); **27.** *H. & W.* p. 48
Monahan, *Ex p.* (Can.); **39.** *Revenue*, p. 25
— *v.* Monahan (Scot.); **27.** *H. & W.* p. 38
Monarch Dress Co. *v.* Aaronson, *Re* (Can.); **16.** *Cr. Pract.* p. 38
Monarch Lumber Co. *v.* Garrison (Can.); **32.** *Lien*, p. 25
Monarch Lumber Co., Ltd. *v.* Perry (Can.); **22.** *Evid.* p. 10
Monckton *v.* Tarr (1930); **34.** *Mast. & S.* No. 2113a
Moncrieff *v.* Official Receiver, *Ex p.*, *Re* Boulton Brothers & Co. (1927); **4.** *Bkpcy.* Nos. 1657a, 5093a
Moncton, *Re*, Rodenhizer *v.* Steeves (Can.); **3.** *Basty.* p. 61
Moncton Tramway Electricity & Gas Co., *Ex p.* (Can.); **13.** *Corpns.* p. 31; **33.** *L. G.* p. 2
—, *Ex p.*, R. *v.* Anderson (Can.); **38.** *Rate*, p. 77
Moncton Tramways *v.* Moncton (Can.); **42.** *Time*, p. 73
Mond Staffordshire Refining Co., Ltd. *v.* Ellis Harlem (Aus.); **43.** *Trade Mks.* p. 41
Mondor *v.* Willets (Can.); **17.** *Damgs.* p. 11
Money *v.* Money & Turner (1927); **22.** *Evid.* No. 3419a
Monk, *Re*, Giffen *v.* Wedd (1927); **8.** *Char.* Nos. 34a, 1098a
— *v.* Monk (Ind.); **27.** *H. & W.* p. 34
— *v.* Warbey (1935); **29.** *Insce.* No. 3217x
Monkley, *Re*, Bank of Nova Scotia *v.* Wright (Can.); **35.** *Mistake*, p. 9
Monks *v.* Fox's Executors (1928); **28.** *Inc. T.* No. 321a
Monkswell *v.* Thompson (1898); **20.** *Elect.* No. 1052a
Monmouthshire & South Wales Coal Owners' Assocn. *v.* Amalgamated Ry. Co.'s (1932); **38.** *Rates*, Nos. 226mm, 226nn
— *v.* Great Western Ry. Co. (1923); **8.** *Carr.* No. 1377e
Monmouthshire & South Wales Coke Ovens & Bye-Products Works Assocn. *v.* Great Western Ry. Co. (1923); **8.** *Carr.* No. 1377e
Monnington *v.* White (Can.); **36.** *Negl.* p. 3
Monnoyer British Construction Co., Ltd. *v.* Trustee, *Ex p.*, *Re* Cuthbert (1936); **4.** *Bkpcy.* No. 2419a
Monro *v.* Hill, *Re* Monro's Settlement (1933); **27.** *H. & W.* No. 755b
Monro (G.) & Cobley (R. S.) *v.* Bailey (1933); **28.** *Inc. T.* No. 83a
Monro's Settlement, *Re*, Monro *v.* Hill (1933); **27.** *H. & W.* No. 755b
Monroe, *Ex p.*, *Re* Daum & Plaetzer (Can.); **4.** *Bkpcy.* p. 36
— *v.* Mews (Can.); **42.** *Time*, p. 75
Monroe Bros., Ltd. *v.* Ryan (1935); **41.** *Ship.* No. 1878a
Mons, The (1932); **41.** *Ship.* Nos. 8406a, 8406b, 8437a
Montagu Stanley & Co. *v.* Solomon (J. S.), Ltd. (1932); **26.** *Guar.* Nos. 1745a, 1895a; **42.** *Stk. Ex.* No. 217a
Montague Burton, Ltd. *v.* Inland Revenue Comrs. (1936); **28.** *Inc. T.* No. 674p
Montague L. Meyer, Ltd. *v.* Kivisto (1929); **39.** *S. Goods*, No. 527a
— *v.* Osakeyhtio Carelia Timber Co., Ltd. (1930); **39.** *S. Goods*, Nos. 622a, 1887a
— *v.* Travaru A/B H. Cornelius of Gamleby (1930); **39.** *S. Goods*, No. 674a
Montesanto *v.* Di Ubaldo (Can.); **28.** *Infts.* p. 132
Montgomery, *Re*, Lumbers *v.* Montgomery (Can.); **23.** *Exors.* p. 14
— *v.* Assiniboia Rural Municipality (Can.); **41.** *Sewers*, p. 3
— *v.* Diamond (Can.); **21.** *Estpl.* p. 36
— *v.* General Steam Navigation Co., Ltd. (1929); **34.** *Mast. & S.* No. 3057c
— *v.* Gray (Scot.); **14.** *Crim.* p. 56
— *v.* Lee Steere (Aus.); **8.** *Clubs*, p. 99; **25.** *Gaming*, p. 42
Monticello State Bank *v.* Guest (Can.); **2.** *Animals*, p. 68
— *v.* Killoran (Can.); **6.** *B. of Exch.* p. 11
Montjoy *v.* Heward School District Corpn. (Can.); **32.** *Lien*, p. 23
Montreal (City), *Ex p.*, *Re* Fairweathers (Can.); **4.** *Bkpcy.* p. 15
— *v.* Jacobs (Can.); **38.** *Rates*, p. 50
— *v.* McAnulty Realty Co. (Can.); **11.** *Comp. Pche.* p. 8
— *v.* Montreal Industrial Land Co., Ltd. (Can.); **26.** *Hghys.* p. 45
Montreal Bank, *Ex p.*, *Re* Sawtell (Can.); **4.** *Bkpcy.* p. 41
Montreal Bar *v.* Better Business Bureau of Montreal (Can.); **42.** *Solrs.* p. 14
Montreal Corpn. *v.* Canadian National Rys. (Can.); **38.** *Rys.* p. 38
— *v.* Canadian Pacific Ry. Co. (Gouin Boulevard Crossing Case) (Can.); **38.** *Rys.* p. 38
— *v.* Montreal Harbour Comrs. (1926); **17.** *Dep.* No. 378a
Montreal Dry Docks & Ship Repairing Co., Ltd. *v.* Halifax Shipyards, Ltd. (Can.); **1.** *Adm.* p. 29

Montreal Island Power Co. *v.* Laval des Rapides Town (Can.); **38.** *Rates*, p. 63
Montreal Light, Heat & Power Co. *v.* Montreal (City) (1924); **16.** *Courts*, No. 483a
— *v.* Quinlan & Robertson, Ltd. (Can.); **1.** *Agcy.* p. 105
Montreal Light, Heat & Power Consolidated *v.* Canadian National Railways (Can.); **38.** *Rys.* p. 46
— *v.* Outremont (Can.); **38.** *Rates*, p. 74
Montreal Tramways Co. *v.* Dupere (Can.); **36.** *Negl.* p. 4
— *v.* Leveille (Can.); **36.** *Negl.* p. 36
— *v.* Montréal-Nord Ville (Can.); **19.** *Easmt.* p. 1
— *v.* Yervant (Can.); **43.** *Tram.* p. 49
Montreal Tramways Co. & Montreal Tramways Commission *v.* Canadian National Railways (Can.); **38.** *Rys.* p. 46
Montreal Transportation Co. *v.* Buckeye State, The (Can.); **1.** *Adm.* p. 33
— *v.* R. (Can.); **16.** *Courts*, p. 17; *Cr. Pract.* p. 26
Montreal Trust Co. *v.* Abitibi Power & Paper Co. (Can.) (1937); **10.** *Coys.* p. 70
— *v.* — (Can.) (1938); **17.** *Dep.* p. 40
— *v.* Alliance Assurance Co. (Can.); **29.** *Insce.* p. 25
— *v.* Baillie, *Re* Baillie Estate (Can.); **22.** *Evid.* p. 8
— *v.* Caledonian Insurance Co. (Can.); **29.** *Insce.* p. 25
— *v.* Canadian Lumber Yards, Ltd. (Can.); **32.** *Lien*, p. 23
— *v.* Canadian Pacific Ry. Co. (Can.); **22.** *Evid.* p. 1
— *v.* Crosby (Can.); **32.** *Limit. of A.* p. 37
— *v.* McDougall (Can.); **10.** *Coys.* p. 71
— *v.* R. (Can.); **11.** *Const. L.* p. 68
Montrose (Duke) *v.* Hart (Scot.); **2.** *Agric.* p. 52
Montrose Co-operative Society *v.* Marr (Scot.); **25.** *Food*, p. 7
Monzoli *v.* Smith (S. Af.); **1.** *Agcy.* p. 100
Moodie *v.* Dempster (Scot.); **28.** *Infts.* p. 141
— *v.* Mackenzie (Can.); **12.** *Contr.* p. 47
Moodley *v.* R. (S. Af.); **25.** *Food*, p. 5
Moolji Sikka & Co. *v.* Bengal Nagpur Ry. Co., Ltd. (Ind.); **8.** *Carr.* p. 6
Moolla (M. E.) *v.* Collector of Rangoon (Ind.); **11.** *Comp. Pche.* p. 8
Moolla *v.* Official Liquidator (Ind.); **10.** *Coys.* p. 82
Moolla (M. E.) Sons, Ltd. *v.* Burjorjee (1932); **16.** *Courts*, No. 548a
Moolpa Pastoral Co. Proprietary, Ltd. *v.* McKindlay (Aus.); **11.** *Confl.* p. 38
Moon (Lambeth Revenue Officer) *v.* London County Council (1931); **38.** *Rates*, Nos. 226a, 226c
Mooney *v.* William Baird & Co. (Scot.); **34.** *Mast. & S.* p. 88
Moonta Prospecting Syndicate, Ltd. *v.* Neill (Aus.); **34.** *Mines*, p. 205
Moor Line, Ltd. *v.* Manganexport G.m.b.H. (1936); **41.** *Ship.* No. 3957a
Moore, *Ex p.*, *Re* Long (Can.); **21.** *Exon.* p. 44
—, *Re* (Can.) (1925); **44.** *Wills*, p. 47
—, *Re* (Can.) (1931); **44.** *Wills*, p. 50
—, *Re* (Can.) (1937); **21.** *E. D.* p. 19
— *v.* A.-G. (Ir.) (1929); **25.** *Fish.* pp. 1, 2
— *v.* — (Ir.) (1930); **16.** *Cr. Pract.* p. 44; **17.** *Dep.* p. 88; **28.** *Injon.* p. 149
— *v.* A.-G. for Irish Free State (1935); **17.** Nos. 60a, 447a, 716b, 716c
— *v.* Beamont (1795); **21.** *Exon.* No. 417b
— *v.* Cunard S.S. Co., Ltd. (1935); **34.** *Mast. & S.* Nos. 3872a
— *v.* — (No. 2) (1935); **34.** *Mast. & S.* No. 3932o
— *v.* Davy (Ir.); **31.** *L. & T.* p. 91
Moore *v.* Federal District Commission & Ottawa City (Can.); **38.** *Pub. Auth.* p. 6
— *v.* Harland & Wolff, Ltd. (Scot.); **34.** *Mast. & S.* p. 104
— *v.* Irwin (Can.); **17.** *Deeds*, p. 24
— *v.* Johnston (Can.); **1.** *Agcy.* p. 75
— *v.* Lambeth Waterworks Co. (1886); **26.** *Hghys.* No. 1369a
— *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1937); **8.** *Carr.* Nos. 1610, 1615
— *v.* McLaren (Can.); **10.** *Coys.* p. 102
— *v.* Manor Powis Coal Co. (Scot.); **34.** *Mast. & S.* p. 162
Moore (Trustee) *v.* Mathieson, *Re* Mathieson (1927); **5.** *Bkpcy.* No. 7096a
— *v.* National Cash Register Co. (Can.); **7.** *B. of Sale*, p. 1
— *v.* Nimmo (Scot.); **34.** *Mast. & S.* p. 98
— *v.* Nyland (Can.); **21.** *Exon.* p. 55
— *v.* Peachey (1891); **18.** *Discy.* No. 575a
— *v.* R. (Aus.); **15.** *Crim.* p. 91
— *v.* Shinners (Can.); **35.** *Mtge.* p. 45
— *v.* Terrell (1833); **32.** *Libel*, No. 1302a
— *v.* Todd (1903); **26.** *Hghys.* No. 2285a
— *v.* Tweedale (1935); **24.** *Fact.* No. 211a
— *v.* Wallsend & Hepburn Coal Co., Ltd. (1935); **34.** *Mast. & S.* No. 3056e
— *v.* Williams (A. R.) Machinery Co., Ltd. (Can.); **4.** *Bkpcy.* p. 32
Moore & Moore *v.* Large (Can.); **34.** *Med.* p. 185
Moore (D.) Co., Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 39
Moore, etc. *v.* A.-G. (Ir.); **28.** *Injon.* p. 146
Moore, McLeod & Co., Ltd. *v.* Jardine (Can.); **27.** *H. & W.* p. 14
Moore's Claim, *Re* Unity Manufacturing Co. (Can.); **5.** *Bkpcy.* p. 70
Moorhouse *v.* Linney (1885); **20.** *Elect.* No. 1025a
Moorwood *v.* Dickens (1616); **7.** *Bonds*, No. 413
Moosbrugger *v.* Moosbrugger & Martin (1913); **16.** *Courts*, No. 277a
Moose Jaw (City) *v.* British American Oil Co., Ltd. (Can.); **38.** *Rates*, p. 49
Moose Jaw *v.* Taylor (Can.); **3.** *Auct.* p. 1
Moose Jaw (City) *v.* Terrell Rural Municipality (Can.); **38.** *Pub. Hlth.* p. 21
Moose Jaw Electric Ry. Co., *Re* (Can.); **38.** *Rys.* p. 35
Moquin *v.* Fong (Can.); **17.** *Dep.* p. 56
Moran, *Re*, Clay *v.* Eastern Trust Co. (Can.); **44.** *Wills*, p. 45
— *v.* Chapman (No. 2) (Aus.); **32.** *Libel*, pp. 11, 12
— *v.* Lipscombe (Aus.); **3.** *Bailmt.* p. 15
— *v.* Patton (Can.); **21.** *Exon.* p. 51
— *v.* Schermerhorn (Can.); **42.** *Solrs.* p. 3
— *v.* Vancouver (City) (Can.); **26.** *Hghys.* p. 28
Morant, *Re*, *Ex p.* Trustees (1924); **5.** *Bkpcy.* Nos. 7183a, 7414a
Morarji *v.* Madras Administrator General (Ind.); **17.** *Dep.* p. 73
Morash *v.* Dartmouth (Can.); **38.** *Pub. Auth.* p. 7
Moraw *v.* Maginnis (Can.); **40.** *S. Land*, p. 1
Morawitski *v.* Kostuchenko (Can.); **36.** *Negl.* p. 37
Morden, *Re* (Can.) (1922); **4.** *Bkpcy.* p. 46
—, *Re* (Can.) (1936); **28.** *Infts.* p. 144
More, *Ex p.*, R. *v.* Joint Stock Companies Registrar (1931); **10.** *Coys.* No. 8574a; **25.** *Gaming*, No. 451a; **42.** *Stats.* No. 3a
— *v.* Edwards & Lamb (Aus.); **36.** *Negl.* p. 10
— *v.* Weaver (1928); **32.** *Libel*, No. 1579a
Moreau *v.* Federal Taxation Comr. (Aus.); **28.** *Inc. T.* pp. 99, 104
Moreland *v.* Richardson (1856); **7.** *Burial*, No. 279a

Morell *v.* New London Discount Co. (1902); **12.** *Contr.* No. 5047a
Morelli *v.* Fitch & Gibbons (1928); **39.** *S. Goods*, Nos. 619a, 780a
— *v.* R. (Can.); **34.** *Med.* p. 193
Moren, *Re* (Can.); **23.** *Exors.* p. 14
Morency *v.* R. (Can.); **16.** *Cr. Pract.* p. 26
Morewood *v.* Wood (1791); **22.** *Evid.* No. 1726a
Morey *v.* Totten (Can.); **25.** *Fraud. Conv.* p. 18
Morf's Patent, *Re* (1929); **36.** *Pats.* No. 2029a
Morgan, *Re* (Aus.); **44.** *Wills*, p. 17
—, *Re*, Brown *v.* Jones (1927); **3.** *Barr.* No. 191a
— *v.* Amalgamated Anthracite Collieries, Ltd. (No. 1) (1933); **34.** *Mast. & S.* No. 3811k
— *v.* — (No. 2) (1935); **34.** *Mast. & S.* No. 3811h
— *v.* Ashcroft (1938); **35.** *Mistake*, No. 463a
— *v.* Baker (1838); **5.** *Bkpcy.* No. 7323
— *v.* British Columbia Electric Ry. Co. (Can.); **43.** *Tram.* p. 49
— *v.* Cullen (1936); **13.** *Cty. Cts.* No. 526a
— *v.* Girl's Friendly Society (Incorporated Central Council) (1936); **31.** *L. & T.* No. 2396a
— *v.* Hardy (1886); **4.** *Bkpcy.* Nos. 2385, 2463
— *v.* — (1887); **4.** *Bkpcy.* Nos. 2385, 2463
— *v.* Hudson Bay Mining & Smelting Co. (Can.); **12.** *Contr.* p. 55; **35.** *Misrep.* p. 4
— *v.* Liverpool Corpn. (1927); **31.** *L. & T.* Nos. 3160a, 4569a, 4588a
— *v.* Morgan (Aus.); **27.** *H. & W.* p. 78
— *v.* — (Can.); **27.** *H. & W.* p. 17
— *v.* Provincial Insurance Co., Ltd. (1932); **29.** *Insce.* No. 3141a
— *v.* Roe (Ir.); **3.** *Bank.* p. 41
— *v.* Rutson (1848); **40.** *Sttlmts.* No. 2399b
— *v.* Scoulding (1938); **36.** *Negl.* No. 953h
— *v.* Shaw (Can.); **6.** *B. of Exch.* p. 14
— *v.* Tareni Colliery Co., Ltd. (1938); **34.** *Mast. & S.* No. 3479a
— *v.* Zimmerman (Can.); **36.** *Negl.* p. 17
Morgan & Co. *v.* Thomas (1938); **34.** *Mast. & S.* No. 3057f
Morgan & Provincial Insurance Co., Ltd., *Re* (1932); **29.** *Insce.* No. 3141a
Morgan Crucible Co., Ltd. *v.* Inland Revenue Comrs. (1932); **28.** *Inc. T.* No. 263a
Morgan (J. R.), Ltd., *Re*, *Ex p.* J. & G. Garment Mfg. Co. (Can.); 9. *Coys.* p. 50
Morgan Lumber Co. *v.* Scott, *Re* Mount Royal Lumber & Flooring Co. (Can.); **5.** *Bkpcy.* p. 85
Morgana, The (1920); **39.** *Royal F.* No. 56a
Morgans (W. A.), *Re* (1931); **23.** *Exors.* No. 1463a
Morie & Campbell, Wilson & Horne, Ltd. *v.* World Fire & Marine Insurance Co. (Can.); **29.** *Insce.* p. 29
Morin *v.* Anger (Can.); **35.** *Misrep.* p. 6
— *v.* Perron (Can.); **16.** *Cr. Pract.* p. 32
— *v.* R. (Can.); **39.** *Revenue*, p. 11
Morland *v.* Chitty (1833); **29.** *Intpr.* No. 503a
Morley *v.* Lawford & Co. (1928); **28.** *Inc. T.* No. 224b
— *v.* Moore (1936); **29.** *Insce.* No. 3217o
— *v.* Patrick (Can.); **18.** *Discy.* p. 18
— *v.* Tattersall (1938); **28.** *Inc. T.* No. 99r
Morley's Estate, *Re*, Hollenden *v.* Morley (1937); **23.** *Exors.* No. 4764b
Mornane *v.* All Red Carrying Co. Pty., Ltd. (Aus.); **31.** *L. & T.* p. 78
Moroney, *In the Will of* (Aus.); **44.** *Wills*, p. 17
Moroschan *v.* Moroschan (Can.); **5.** *Bkpcy.* p. 66
Moroz *v.* Kildonan Ice & Fuel Co. (Can.); **9.** *Coys.* p. 21
Morpeth *v.* Williamson (N.Z.); **23.** *Exors.* p. 21
Morris, *Re* (Can.); **4.** *Bkpcy.* p. 40
—, *Re*, *Ex p.* Brown (Aus.); **3.** *Basty.* p. 61
—, *Re*, *Re* Shaughnessey (Can.); **4.** *Bkpcy.* p. 29
—, *Re*, Coneys *v.* Morris (Ir.); **3.** *Bank.* pp. 44, 45
—, *Re*, Hatter *v.* Bowman's Bldrs. Supplies (Can.); **29.** *Insce.* p. 30
—, *Re*, Skinner *v.* Sanders (1927); **21.** *E. D.* No. 209b
— *v.* Britannic Assurance Co., Ltd. (1931); **25.** *Fr. Soc.* No. 175d
— *v.* Cameron (Can.); **16.** *Courts*, p. 9
— *v.* Darby (Aus.); **43.** *Tresp.* p. 52
— *v.* Dunstone (Aus.); **31.** *L. & T.* p. 48
— *v.* Harris (1927); **10.** *Coys.* No. 7177a
— *v.* Kline, Demers, Garnishee (Can.); **5.** *Bkpcy.* pp. 50, 82
— *v.* Langmuir (Scot.); **25.** *Gaming*, p. 37
— *v.* Morris (Can.); **38.** *Real Prop.* p. 96
— *v.* Morris & French (Can.); **27.** *H. & W.* p. 9
— *v.* Mount Vernon Colliery Co. (Scot.); **34.** *Mast. & S.* p. 123
— *v.* Mynyddislwyn Urban District Council (1917); **41.** *Sewers*, No. 197a
— *v.* Ritchie (N.Z.); **35.** *Money*, p. 14
— *v.* Sandford (1851); **33.** *Lunat.* No. 498a
— *v.* Walton (Can.); **1.** *Agcy.* p. 76
— *v.* Whiting (Can.); **40.** *S. Land*, p. 2
— *v.* Winsbury-White (1937); **34.** *Med.* No. 85a
Morris & Jones, Ltd. Application for a Trade Mark, *Re* (1934); **43.** *Trade Mks.* No. 195a
Morris (D.) & Sons, Ltd. *v.* Jeffreys (1932); **5.** *Bkpcy.* No. 7793a; **26.** *Guar.* No. 1522a
Morris Estate, *Re* (Can.); **23.** *Exors.* p. 40
Morris Leventhal *v.* David Jones, Ltd. (Aus.); **31.** *L. & T.* p. 67
Morris (Herbert), Ltd. *v.* Saxelby (1915); **34.** *Mast. & S.* No. 934a
Morrison *v.* Aboukir (Owners) (1928); **34.** *Mast. & S.* No. 2552b
— *v.* Bentall (No. 2) (Can.); **32.** *Limit. of A.* p. 42
— *v.* Cassell Hill School District Trustees (Can.); **19.** *Educ.* p. 47
— *v.* Customs & Excise (Minister) (Can.); **28.** *Inc. T.* p. 11
— *v.* East Kootenay Ruby Co., Ltd. (Can.); **34.** *Mines*, p. 199
— *v.* Ferguson (Can.); **36.** *Negl.* p. 17
— *v.* Gale (Can.); **12.** *Contr.* p. 53
— *v.* Kingston (Can.); **38.** *Pub. Hlth.* p. 15
— *v.* Kramer (Can.); **42.** *Str. Traf.* p. 60
— *v.* London Midland & Scottish Ry. Co. (Scot.); **7.** *Bounds & F.* p. 16; **26.** *Hghys.* p. 26
— *v.* McTurk (Can.); **43.** *Trade*, p. 5
— *v.* Morrison (Can.); **27.** *H. & W.* p. 77
— *v.* Mulry (Can.) (1934); **5.** *Bkpcy.* p. 48
— *v.* — (Can.) (1935); **5.** *Bkpcy.* p. 87
— *v.* Standard Building Society (S. Af.); **13.** *Corpns.* p. 29
— *v.* Taylor (Aus.); **3.** *Basty.* p. 61
— *v.* Thompson (Can.); **8.** *Carr.* p. 3
Morrison & Kingston City, *Re* (Can.); **38.** *Pub. Hlth.* p. 15
Morriss *v.* Baines & Co., Ltd. (1933); **32.** *Libel*, Nos. 2191a, 2297a, 2297b, 2297c; *Pract.* Nos. 1646a, 1649a, 1649b, 1658a
— *v.* Morriss (1930); **27.** *H. & W.* No. 5760b
— *v.* Winter (1930); **15.** *Crim.* No. 9154a; **37.** *Prsns.* Nos. 8a, 34a, 34b; **38.** *Pub. Auth.* 402a, 940a
Morrissey, *Re* (Can.); **34.** *Mast. & S.* p. 29
Morrow *v.* Western Empire Life Assurance Co., Ltd. (Can.); **21.** *Exon.* p. 49
Morse *v.* Ouse Drainage Board (1931); **18.** *Distr.* No. 1584a
— *v.* Stedeford (1934); **28.** *Inc. T.* No. 289a

Mort *v.* Barnes (Aus.); **21.** *Estpl.* p. 41; **21.** *Exon.* p. 50; **43.** *Trov.* p. 55
Morten *v.* Brinsley, *Re* Hedderwick (1933); **27.** *H. & W.* Nos. 4165a, 5902a
— *v.* Hilton Gibbes & Smith (1937); **42.** *Stk. Ex.* No. 147a
Mortess *v.* Fry (Aus.); **36.** *Negl.* p. 30
Mortgage Corpn. of Nova Scotia *v.* Allen (Can.); **35.** *Mtge.* p. 47
— *v.* Law Union & Rock Insce. Co. (Can.); **29.** *Insce.* p. 27
— *v.* Muir (Can.); **38.** *Real Prop.* p. 96
Mortgage Insurance Corpn., Ltd. *v.* Inland Revenue Comrs. (1887); **29.** *Insce.* No. 3218a
Mortimer, *Re* (Can.); **24.** *Exors.* p. 34
Mortimer Co., Ltd. *v.* Frontenac Breweries, Ltd. (Can.); **37.** *Press*, p. 31
Mortimers (London), Ltd., *Re* (1937); **10.** *Coys.* No. 6878a
Mortleman *v.* Public Trustee (N.Z.); **35.** *Mtge.* pp. 44, 50
Mortlock *v.* Buller (1804); **21.** *Estpl.* No. 1132a
Morton, *Re*, Morton *v.* Morton (1932); **17.** *Deeds*, No. 370a; **24.** *Fam. Arr.* No. 39a
— *v.* Bartlett (Can.); **38.** *Pub. Auth.* p. 6
— *v.* Brighouse (Can.); **25.** *Gifts.* p. 50
— *v.* Canadian Credit Men's Assocn. (Can.); **39.** *S. Goods*, p. 56
— *v.* Colville (David) & Sons (Scot.); **34.** *Mast. & S.* p. 178
— *v.* David Colville & Sons (Scot.); **34.** *Mast. & S.* p. 178
— *v.* McLeod (Can.); **12.** *Contr.* p. 49
— *v.* Marchanton, *Re* Murphy (Elijah) Estate (1930); **24.** *Exors.* No. 6016a
— *v.* Morton, *Re* Morton (1932); **17.** *Deeds*, No. 370a; **24.** *Fam. Arr.* No. 39a
— *v.* Morton, Daly & McNaught (1937); **27.** *H. & W.* No. 4398a
— *v.* National Taxi, Ltd. & Toronto Transportation Commission (Can.); **43.** *Tram.* p. 49
— *v.* South Kirkby, Featherstone & Hemsworth Collieries, Ltd. (1933); **34.** *Mast. & S.* No. 3288b
Morton & Cowell *v.* Hoffert (Can.); **21.** *Exon.* p. 51
Morton Estate, *Re* (Can.); **44.** *Wills*, p. 54
Morwick *v.* Provincial Contracting Co., Ltd. (Can.) **36.** *Negl.* p. 26
Moscovitz *v.* R. (Can.); **11.** *Const. L.* p. 67
Mosdell *v.* Jardine (Can.); **9.** *Coys.* p. 22
Moseley, *Re* (Can.); **24.** *Exors.* p. 39
Moses, *Re* (Aus.); **23.** *Exors.* p. 9
Mosley *v.* Kitson (1912); **13.** *Cly. Cts.* No. 739a
Mosman Municipal Council *v.* Spain (Aus.); **38.** *Rates*, p. 64
Moss, *Ex p.*, R. *v.* Registrar of Titles (Aus.); **16.** *Cr. Pract.* pp. 31, 34; **38.** *Real Prop.* p. 95
—, *Re, Ex p.* Everitt (1923); **4.** *Bkpcy.* No. 3945a
—, *Re*, Westminster Corpn. *v.* Reubens (1935); **5.** *Bkpcy.* No. 9028a
— *v.* Christchurch Rural District Council (1925); **17.** *Damgs.* No. 29a
— *v.* Henry Robb, Ltd. (Scot.); **34.** *Mast. & S.* p. 96
— *v.* Salford Corpn. (1908); **38.** *Pub. Auth.* No. 739a
Moss Bros. *v.* Southern Ry. Co. (1936); **8.** *Carr.* Nos. 1515, 1636
Moss' Empires, Ltd. *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 345b
— *v.* Olympia (Liverpool), Ltd. (1938); **31.** *L. & T.* No. 4828b
Moss's Trustees *v.* Branwell (Scot.); **37.** *Perps.* p. 6
Mossay, Jacoby & Enclosed Motor Co., Ltd. Patents, *Re* (1933); **36.** *Pats.* No. 2027c
Mostyn, The, Great Western Ry. Co. *v.* Mostyn (Owners) (1928); **30.** *Jdgmts.* Nos. 498a, 569c, 588b; **36.** *Negl.* No. 706
Motchall *v.* Massoud (Aus.); **22.** *Evid.* p. 1
Mote *v.* Gould (1935); **1.** *Agcy.* No. 1752a
Mothersdale *v.* Cleveland Bridge & Engineering Co. (1930); **34.** *Mast. & S.* No. 3299a
Moti & Co. *v.* Cassim's Trustee (S. Af.); **6.** *B. of Exch.* p. 18
Motishaw & Co. *v.* Mercantile Bank of India (Ind.); **2.** *Aliens*, p. 44
Motor & Cash Orders, Ltd. *v.* O'Mara (Aus.); **9.** *Coys.* p. 20
Motor Bodies, Ltd., *Re*, Workmen's Compensation Board *v.* Canadian Credit Men's Trust Asscon. (Can.); **4.** *Bkpcy.* p. 37
Motor Car Loan Co. *v.* Bonser (Can.); **39.** *S. Goods*, p. 57
Motor Credits, Ltd. *v.* W. F. Wollaston, Ltd. (In Liquidation) (Aus.); **7.** *B. of Sale*, p. 4
Motor Dealers Credit Corpn., Ltd. *v.* Overland (Sydney), Ltd. (Aus.); **43.** *Trov.* p. 55
Motor Farming & Development Co. & Davidson *v.* Smith (Can.); **1.** *Agcy.* p. 85
Motor Finance Co. *v.* Harms (Can.); **6.** *B. of Exch.* p. 2
Motor Fuels Corpn., etc. (In Liquidation) *v.* Linder Brothers (S. Af.); **9.** *Coys.* p. 19
Motor Manufacturers' & Traders' Society *v.* Motor Manufacturers' & Traders' Mutual Insurance Co. (1925); **9.** *Coys.* No. 228b
Motor Traders Guarantee Corpn., Ltd. *v.* Midland Bank, Ltd. (1937); **3.** *Bank*, No. 691c
Motor Union Insurance Co., Ltd. *v.* Mannheimer Versicherungs-Gesellschaft (1933); **12.** *Contr.* No. 4853b; **29.** *Insce.* Nos. 234a, 252c
Motorcar Loan Co., Ltd. *v.* Adams (Can.); **39** *S. Goods*, p. 59
Motorola Distributing Co. *v.* Marconi's Wireless Telegraph Co., Ltd. (1934); **36.** *Pats.* No. 3353b
Mott & Roemer, *Re*, *Re* Roemer Estate (Can.); **24.** *Exors.* p. 38; **42.** *Solrs.* p. 8
Mouat Bros. & Co. *v.* Warnier (Can.); **8.** *Chos.* p. 95
Moubray *v.* Syfret (S. Af.); **2.** *Animals*, p. 62
Moubray's Trustees *v.* Moubray (Scot.); **37.** *Powers*, p. 28
Mould *v.* Mould (1933); **27.** *H. & W.* No. 5365a
Moule *v.* Marmite Food Extract Co. (1927); **34.** *Mast. & S.* No. 2384b
Moulton *v.* Poulter (1930); **36.** *Negl.* No. 309a
Mounson *v.* Lyster (1632); **11.** *Const. L.* No. 785a
Mount Albert Borough Council *v.* Australasian Temperance & General Mutual Life Assurance Society, Ltd. (1938); **11.** *Const.* No. 762a
Mount Hope Rural Municipality *v.* Findlay (Can.); **1.** *Agcy.* p. 100; **25.** *Fraud. Conv.* p. 15
Mount Royal Assurance Co. *v.* Cameron Lumber Co., Ltd. (Can.); **29.** *Insce.* p. 29
Mount Royal Lumber & Flooring Co., *Re*, Morgan Lumber Co. *v.* Scott (Can.); **5.** *Bkpcy.* p. 85
Mountain *v.* Bates, *Re* Bates (1928); **40.** *Stlmts.* No. 2009a
— *v.* Edmonton (City) (Can.); **36.** *Negl.* p. 24
— *v.* Mountain (Can.); **33.** *Lunat.* p. 16
— *v.* —, *Re* Shaw (1929); **44.** *Wills*, No. 5724a
Mountain's Will, *Re* (Can.); **8.** *Char.* p. 76
Mountford *v.* London County Council (1935); **37.** *Poor L.* No. 75a
Mountjoy *v.* R. (Can.); **26.** *Hghys.* p. 17
Mourton *v.* Poulter (1930); **36.** *Negl.* Nos. 309a, 310a, 457c
Mowat *v.* Clement (Can.); **7.** *B. of Sale*, p. 6

Mowbray (Lord) *v.* Weld-Blundell, *Re* Weld-Blundell Estate (1929); **30.** *Land. Imp.* No. 79d; **40.** *Sttlmts.* No. 2950a
Mowchenko, *Re* (Can.); **24.** *Exors.* p. 40
Mowlem (John) & Co., Ltd. *v.* Lane (1935); **34.** *Metrop.* No. 42a
— *v.* Mudge (1934); **34.** *Mast. & S.* No. 2820a
Moyer *v.* Holland (Can.); **43.** *Trade Mks.* p. 24
Moyer & Co. *v.* Smith & Goldberg, Ltd. (Can.); **39.** *S. Goods*, p. 33
Moyes *v.* Magnus Motors, Ltd. (N.Z.); **32.** *Lien*, p. 21
Moynihan, *Re*, *Ex p.* Trustee (1930); **4.** *Bkcpy.* No. 4612a
— *v.* Great Southern Rys. Co. (Ir.); **38.** *Rys.* p. 37
Moyse *v.* Moyse & Crick (1929); **27.** *H. & W.* No. 3445b
Mozelle, *Re* (Can.); **33.** *Mags.* p. 29
Mudge, *Re* (1914); **8.** *Chos.* No. 110a
Muffatt *v.* Parsons (1814); **12.** *Contr.* No. 2652
Muhammad Inayat Ali *v.* Emperor (Ind.); **3.** *Barr.* p. 50
Muhammad Jalil Khan *v.* Ram Nath Khan (Ind.) **26.** *Hghys.* p. 16
Muhammad Khan *v.* R. (Ind.); **25.** *Gaming*, p. 33
Muhammad Moideen *v.* Chinthamani Chettar (Ind.); **8.** *Chos.* p. 88; **11.** *Confl.* p. 54
Muhammad Zafar *v.* Zahur Husain (Ind.); **7.** *Bonds*, p. 14
Muir *v.* Sarnia Bridge Co. (Can.); **22.** *Evid.* p. 4; **34.** *Mast. & S.* p. 13
Muir & Gray *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 55
Muirhead *v.* Borland (Scot.); **10.** *Coys.* p. 101
— *v.* Newman (Can.); **30.** *Jdgmts.* p. 24
— *v.* Spruce Creek Power Co., Ltd. (Can.); **16.** *Courts*, p. 10
Mujibar Rahman *v.* Isub Surati (Ind.); **30.** *L. & T.* p. 38
Mukhdeo Singh *v.* Harakh Narayan Singh (Ind.); **30.** *Jdgmts.* p. 26
Mukherjee *v.* King-Emperor (Ind.); **14.** *Crim.* p. 18
Mukhlal Singh *v.* Kishuni Singh (1930); **16.** *Courts*, No. 590a
Mulbera, The (1937); **41.** *Ship.* No. 8618a
Mulcahy, *Re*, Butler *v.* Meagher (Ir.); **8.** *Char.* p. 78
Muldoon *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 45
Mulgrave *v.* Clancey (Can.); **3.** *Basty.* p. 64
Mulholland *v.* Holmes (Can.); **34.** *Mines*, p. 199
— *v.* Williamson (Can.); **25.** *Fraud. Conv.* p. 13
Mull Chand *v.* Buga Singh (Ind.); **32.** *Libel*, p. 10
Mullard Radio Valve Co., Ltd. *v.* British Belmont Radio, Ltd. & Juviler, *Re* Mullard Radio Valve Co., Ltd.'s Patent No. 287,958 (1938); **36.** *Pats.* No. 796f
— *v.* Philco Radio & Television Corpn. of Great Britain, Ltd. (1936); **36.** *Pats.* No. 4591
— *v.* Rothermel Corpn., Ltd. (1933); **16.** *Cntmpt.* No. 267a
— *v.* Tungsram Electric Lamp Works (Great Britain), Ltd. (1932); **36.** *Pats.* No. 2601a
Mullen *v.* Barr & Co., Ltd. (Scot.); **36.** *Negl.* p. 2
— *v.* Dunbarton County Council (Scot.) **31.** *L. & T.* p. 73
— *v.* Kerr (Can.); **12.** *Contr.* p. 21
— *v.* Millar (Can.); **9.** *Coys.* p. 35
Mullens *v.* Mullens (Aus.); **27.** *H. & W.* p. 74
Muller *v.* Chennells (S. Af.); **1.** *Agcy.* p. 93
— *v.* Shibley (Can.); **32.** *Lien*, p. 23
Muller (W. H.) & Co. (London) *v.* Inland Revenue Comrs. [1928] A. C. 34; **28.** *Inc. T.* Nos. 168a, 186a, 193a, 567, 632c, 632e
Muller & Co. (London), Ltd. *v.* Inland Revenue Comrs. (1928); 14 Tax Cas. 116; **28.** *Inc. T.* No. 585b
Muller (W. H.) & Co. (London) *v.* Lethem (1928); **28.** *Inc. T.* Nos. 168a, 186a, 193a, 567, 632c, 632e
Muller & Co. Algemeene, etc. *v.* Ebbw Vale Steel, Iron & Coal Co., Ltd. (1936); *Pract.* No. 2228b
Muller & Co. N. V., etc. *v.* Ebbw Vale Steel, Iron & Coal Co., Ltd. (Consolidated) (1936); *Pract.* No. 2228b
Muller & Williams, *Re* (Aus.); **43.** *Trade.* p. 10
Mullett *v.* United States Fidelity & Guaranty Co. (Can.); **29.** *Insce.* p. 55
Mulligan *v.* Lancaster (Can.); **9.** *Coys*, p. 38
Mullin & Mullin *v.* Annable, *Re* Grant Estate (Can.); **8.** *Chos.* p. 89
Mulliner *v.* Florence (1878); **32.** *Lien*, No. 27a
Mulliss, *Re* (Can.); **20.** *Egy.* p. 28
Mulloy *v.* Hop Sang (Can.); **34.** *Med.* p. 186
Mulrennan *v.* Offaly Board of Health (Ir.); **34.** *Med.* p. 186
Multiple Utilities Co., Ltd. *v.* Souch (1929); **36.** *Pats.* No. 3312a
Mulvenna *v.* The Admiralty (Scot.); **21.** *Exon.* p. 56
Mulvey *v.* Barge Neosho, The (Can.); **1.** *Adm.* pp. 25, 30
— *v.* General Accident Assurance Co. (Can.); **4.** *Bkpcy.* p. 25
— *v.* Kieran (Ir.); **28.** *Inc. T.* p. 94
Muma *v.* Niagara District Mutual Insurance Co. (Can.); **29.** *Insce.* p. 5
Mumby *v.* Volp (1930); **24.** *Fact.* Nos. 36a, 98a
Mumford, *Re*, Debtor *v.* Petitioning Creditor, *Ex p.* Official Receiver (1927); **4.** *Bkpcy.* No. 3740a; **10.** *Coys.* No. 6442a
— *v.* Northern Trusts Co. (Can.); **3.** *Bailmt.* p. 7
Munday *v.* Maiden (1875); **15.** *Crim.* No. 9364a
Mundy *v.* Butterley Co., Ltd. (1932); *Pract.* No. 1738a
Munetaka Samejima, *Re* (Can.); **2.** *Aliens*, p. 50
— *v.* R. (Can.); **2.** *Aliens*, p. 50
Mungall *v.* Mann, *Ex p.* Mann (Aus.); **35.** *Mtge.* p. 39
Mungana, The, Nestor S.S. Owners *v.* Mungana S.S. Owners (1936); **41.** *Ship.* No. 7739a
Municipal Act, *Re*, Heather *v.* Maddock (Can.); **20.** *Elect.* p. 8
Municipal Board of Shahjahanpur *v.* Sukha Singh (Ind.); **11.** *Const. L.* p. 64
Municipal Elections Act & Tomsett, *Re* (Can.); **20.** *Elect.* p. 5
Municipal Mutual Insurance, Ltd. *v.* Hills (1932); **28.** *Inc. T.* No. 295a
Munn *v.* Haahti (Can.); **27.** *H. & W.* p. 1
Munni Bibi *v.* Tirloki Nath (1931); **21.** *Estpl.* No. 339a
— *v.* — (Ind.); **30.** *Jdgmts.* p. 25
Munnion *v.* Winch (Can.); **28.** *Injon.* p. 149
Munns *v.* Watson (Aus.); **40.** *S. Land*, p. 17
Munro, *Re* (N.Z.); **24.** *Extrdn.* p. 46
Munro (Doe d.) *v.* Hanson (Can.); **38.** *Real Prop.* p. 98
Munro *v.* Krause (Can.); **3.** *Basty.* p. 62
— *v.* Leedham (Can.); **3.** *Basty.* p. 60
— *v.* Mallow Urban District Council (Ir.); **13.** *Corpns.* p. 33
— *v.* Pinder Lumber & Milling Co. (Can.); **43.** *Tresp.* p. 52
— *v.* Stamp Duties Comr. (Aus.); **21.** *E. D.* p. 4

Munro & Campbell, *Re* (N.Z.); **24.** *Extrdn.* p. 46
Munro (Robert A.) & Co., Ltd. *v.* Meyer (1930); **39.** *S. Goods*, Nos. 645a, 675a, 1745a, 1769a
Munro & Sons Pty., Ltd. *v.* Sheehy (Aus.); **17.** *Dep.* p. 61
Munshi Ram, *Re* (Ind.); **34.** *Mast. & S.* p. 26
Münster, *Re* (1920); **2.** *Aliens*, No. 237d
Munster & Leinster Bank, Ltd. *v.* Barry (Ir.); **28.** *Ind. Soc.* p. 128
— *v.* Hollinshead (Ir.); **31.** *L. & T.* p. 65
— *v.* McGlashan (Ir.); **32.** *Lien*, p. 26
Munster Bank, Ltd., *Re*, Dillon's Claim (Ir.); **10.** *Coys.* p. 76
Munt *v.* R. (N.Z.); **8.** *Carr.* p. 7
Munton *v.* Edmonton (City) & Findley (Can.); **42.** *Str. Traf.* p. 38
Muranyi *v.* Vallance Coal & Cartage Co. & Smith Bros. & Wilson, Ltd. (Can.); **34.** *Mast. & S.* p. 1
Murat Singh *v.* Pheku Singh (Ind.); **20.** *Eqy.* p. 21
Murdoch *v.* Consolidated Mining Smelting & Power Co. (Can.); **34.** *Mast. & S.* p. 12
— *v.* West (Can.); **24.** *Exors.* p. 35
— *v.* Windsor & Annapolis Ry. Co. (Can.); **17.** *Dep.* p. 47
Murdock *v.* Lawson (Can.); **35.** *Mtge.* p. 47
Murex, Ltd. *v.* Inland Revenue Comrs. (1933); **10.** *Coys.* No. 7155b
Murex Welding Processes, Ltd. *v.* Weldrics (1922), Ltd. (1933); **36.** *Pats.* No. 2627a
Murli Manohar Prasad, *Re* (Ind.); **16.** *Cntmpt.* p. 1
Murnane *v.* Steere (Aus.); **7.** *Bldg. Conts.* p. 32
Murne *v.* Morrison (Can.); **17.** *Dep.* p. 53
Murphy, *Re* (Aus.); **21.** *Exon.* p. 48; **23.** *Exors.* p. 23
—, *Re* (Can.) (1895); **24.** *Extrdn.* p. 44
—, *Re* (Can.) (1926); **29.** *Insce.* p. 34
—, *Re* (Can.) (1930); **34.** *Med.* p. 184
—, *Re* (Can.) (1931), 55 Can. C. C. 113; **34.** *Med.* p. 184
—, *Re* (Can.) (1931), 2 M. P. R. 440; **33.** *Mags.* p. 36
—, *Re* (Can.) (1932); **29.** *Insce.* p. 30
—, *Re* (Ir.); **38.** *Real Prop.* pp. 93, 95
— *v.* Bacon (Can.); **36.** *Nuis.* p. 50
— *v.* Hart (Can.); **3.** *Bailmt.* pp. 8, 9
— *v.* Henderson & Glass (1930), **34.** *Mast. & S.* No. 2234a
— *v.* Horn (Can.); **17.** *Deeds*, p. 33
— *v.* Liesfield (Aus.); **42.** *Solrs.* p. 3
— *v.* McSorley & Prince Edward Hotels, Ltd. (Can.); **30.** *L. & T.* p. 42; **42.** *Sp. Pfce.* p. 16
— *v.* Metropolitan Life Insce. Co. (Can.); **29.** *Insce.* p. 5
— *v.* Murphy (Ind.); **11.** *Confl.* p. 46
— *v.* Nicholson (Ir.); **25.** *Food*, p. 12
— *v.* Northern Ireland Road Transport Board (Ir.); **42.** *Str. Traf.* p. 43
— *v.* Ottawa City (Can.); **26.** *Highys.* p. 35
— *v.* Paxton (Aus.); **44.** *Wills*, p. 52
— *v.* R. (Can.); **17.** *Dep.* p. 75
— *v.* Robertson (Can.); **43.** *Trade*, p. 11
— *v.* Synnott (Ir.); **8.** *Clubs*, p. 99
— *v.* Wexford County Council (Ir.); **43.** *Tresp.* p. 51
Murphy & Co. *v.* Marren (Ir.); **35.** *Mtge.* p. 34
Murphy (Elijah) Estate, Re, Morton *v.* Marchanton (1930); **24.** *Exors.* No. 6016a
Murphy Wall Bed Co. of Detroit *v.* Levin (Can.); **39.** *S. Goods*, p. 58
Murray, *Re* (Can.); **24.** *Exors.* p. 38
— *v.* Britz (S. Af.); **42.** *Str. Traf.* p. 36
— *v.* Collins (Can.); **2.** *Animals*, p. 67
Murray *v.* Comptroller-General of Patents (Scot.); **36.** *Pats.* p. 96
— *v.* Crossland (Can.); **21.** *Estpl.* p. 35
— *v.* Dalton (1920); **2.** *Agric.* No. 266y
— *v.* Dawson (Can.); **41.** *Sewers*, p. 4
— *v.* Delta Copper Co., Ltd. (Can.); **1.** *Agcy.* p. 96; **12.** *Contr.* p. 32
— *v.* Duff (Can.); **22.** *Evid.* p. 15
— *v.* Haylow (Can.); **23.** *Exors.* p. 6
— *v.* Hopkins (N.Z.); **1.** *Agcy.* p. 102
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 86
— *v.* Jenkins (Can.); **1.** *Agcy.* p. 100
— *v.* M'Guire (Scot.); **35.** *Money*, p. 29
— *v.* Macmillan (Scot.); **14.** *Crim.* p. 1
— *v.* Murray, Smith & Hodgens (Aus.); **27.** *H. & W* 42
— *v.* Nova Scotia Marine Insurance Co. (Can.); **29.** *Insce.* p. 15
— *v.* Ponoka School District Board of Trustees (Can.); **19.** *Educ.* p. 45
— *v.* Redpath, Brown & Co., Ltd. (1938); **13.** *Cty. Cts.* No. 734a
— *v.* Reeves (1828); **4.** *Bkpcy.* Nos. 5035a, 9115a
— *v.* Reeves Supply Co. (Can.); **39.** *S. Goods*, p. 37
— *v.* Reid (1828); **4.** *Bkpcy.* Nos. 5035a, 9115a
— *v.* Robertson (Scot.); **14.** *Crim.* p. 1
— *v.* Schwachman, Ltd. (1938); **24.** *Facl.* No. 76c
— *v.* Scottish Automobile & General Insurance Co., Ltd. (Scot.); **29.** *Insce.* p. 57
— *v.* Secretary of State for India in Council (1931); **11.** *Confl.* No. 334a
— *v.* Thomas (1938); **8.** *Char.* No. 239a
— *v.* Thompson (Can.); **26.** *Guar.* p. 4
— *v.* West Vancouver (Can.); **42.** *Stats.* p. 21
Murray (G. W.) & Co., Ltd., *Re* (Can.); **5.** *Bkpcy.* p. 81
Murray's Estate, *Re* (Can.); **11.** *Confl.* pp. 24, 27
Murray's Patent, *Re* (Scot.); **36.** *Pats.* p. 96
Murshidabad Nawab *v.* Bilas Roy Choudhuri (Ind.); **12.** *Contr.* p. 24; **21.** *Estpl.* p. 34; **42.** *Stats.* p. 22
Murton *v.* Aldis (1929); **31.** *L. & T.* Nos. 7235b, 7318b
Murugappa Chettiar, *Re* (Ind.); **28.** *Inc. T.* p. 13
Muscovitch, *Re*, *Ex p.* Muscovitch *v.* Official Receiver (1938); **4.** *Bkpcy.* No. 4878a
— *v.* Official Receiver, *Ex p.*, *Re* Muscovitch (1938); **4.** *Bkpcy.* No. 4878a
Muscroft *v.* Stewarts & Lloyds, Ltd. (1928); **34.** *Mast. & S.* No. 2710a
Musgrave *v.* Dundee Royal Lunatic Asylum (Scot.); **28.** *Inc. T.* p. 75
Musgrove, *In the Estate of*, Davis *v.* Mayhew (1927); **23.** *Exors.* No. 2979a
Musial, *Re* (Can.); **33.** *Mags.* p. 26
Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930); **13.** *Coprt.* No. 700a; **30.** *Jdgmts.* No. 226a; **33.** *Mags.* No. 793a
Musman *v.* Musman (Aus.); **27.** *H. & W.* p. 11
Musmann *v.* Engelke (1928); **11.** *Const. L.* No. 418a
Mussammat Guljania *v.* R. (Ind.); **15.** *Crim.* p. 105
Mussammat Moti Bai *v.* Agent, North-Western Railway (Ind.); **34.** *Mast. & S.* p. 29
Musselman *v.* Zimmerman (Can.); **2.** *Animals*, p. 58
Mussen *v.* Van Diemen's Land Co. (1938); **20.** *Eqy.* No. 2440a
Mussett *v.* Standen (1935); **40.** *S. Land*, No. 2608a
Musson *v.* Head (Can.); **1.** *Agcy.* p. 51
— *v.* Moxley (1936); **1.** *Agcy.* No. 1755c
Mustard, *Re* (Can.); **4.** *Bkpcy.* p. 31; **7.** *B. of Sale*, p. 10
Musurus, *In the Estate of* (1936); **11.** *Confl.* No. 490a

Mutch *v.* Sleeman (Aus.); **32.** *Libel*, p. 9
Muteham *v.* Gentle (F. W.) & Son (1931); **34.** *Mast. & S.* No. 2544a
Muthiah Chettiar *v.* Muthu K. R. A. Karoppan Chetti (Ind.); **3.** *Barr.* p. 50
Muthiah Chetty *v.* Alagappa Chetty (Ind.); **1.** *Agcy.* p. 73
Muthu Reddi, *Re* (Ind.); **24.** *Extrdn.* p. 44
Mutrie *v.* Alexander (Can.); **23.** *Exors.* p. 4
Mutual Acceptance Corpn. *v.* McDermid (Can.); **39.** *S. Goods*, p. 58
— *v.* Schielke (Can.); **39.** *S. Goods*, p. 59
Mutual Finance Corpn., Ltd. *v.* Ganley (Can.); **7.** *B. of Sale*, p. 11
Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd. (1937); **12.** *Contr.* No. 567a
Mutual Investments, Ltd., *Re* (Can.); **9.** *Coys.* p. 48
Mutual Investment Society, Ltd. *v.* Johns (1934); **42.** *Sp. Pfce.* No. 1109a
Mutual Life Assurance Co. *v.* Douglas (Can.); **35.** *Mtge.* p. 44
— *v.* Halifax (Can.); **38.** *Rates*, p. 82
Mutual Loan Fund Association, Ltd. *v.* Sanderson (1937); **35.** *Money*, Nos. 353gg, 353hh
Mutual Property Insurance Co., Ltd., *Re* (Scot.); **9.** *Coys.* p. 5
— *v.* Inland Revenue Comrs. (1926); **35.** *Mtge.* No. 625a
Myanduk *v.* Myanduk (Can.); **11.** *Confl.* p. 46
Myers *v.* Cook (Can.); **42.** *Sp. Pfce.* p. 17
— *v.* Rothfield (1938); **42.** *Solrs* No. 3879a
— *v.* Union Natural Gas Co. (Can.); **9.** *Coys.* p. 40; **11.** *Confl.* pp. 42, 43; **17.** *Deeds*, p. 30; **21.** *Estpl.* p. 39
— *v.* Walker (1935); **42.** *Str. Traf.* Nos. 254a, 254b
Myers (G. H.) & Co. *v.* Brent Cross Service Co. (1934); **3.** *Bailmt.* No. 274a
Myerson *v.* Green & Homes (Can.); **4.** *Bkpcy.* p. 40
Myingyan Municipality *v.* Maung Po Nyun (Ind.); **26.** *Guar.* p. 11; **42.** *Stats.* p. 23
Myklebust *v.* Galey (Can.); **2.** *Animals*, p. 68
Mylius *v.* Royal Insurance Co., Ltd. (Aus.); **29.** *Insce.* p. 29
Myllymaki *v.* Arnold (Can.); **3.** *Basty.* p. 65
Myrhe *v.* Burns Philp & Co., Ltd. (Aus.); **41.** *Ship.* p. 9
Myrlowysz *v.* Myrlowysz (Can.); **27.** *H. & W.* p. 48
Myttenaere, *Ex p.*, *Re* Ellis (1925); **5.** *Bkpcy.* Nos. 8645a, 9311a

N.

N. *v.* N. (1928); **27.** *H. & W.* Nos. 5382b, 5414a
N. P. A. Chetliar Firm *v.* Sharma (Ind.); **7.** *Bldg. Conts.* p. 28
N. V. Philips' Gloeilampenfabrieken Applications for a Patent (1934); **36.** *Pats.* No. 3433c
N. V. "Splendor" Gloeilampen Fabrieken *v.* Omega Lampworks, Ltd. (1933); **36.** *Pats.* No. 1638a
Naamlooze Vennootschap Fabriek van Instrumenten en Electrische Apparaten "Inventum" *v.* Schneider (1931); **36.** *Pats.* No. 589a
Naamlooze Vennootschap Handels-en-Transport Maatschappij "Vulcaan" *v.* A/S Ludwig Mowinckels Rederi (1938); **32.** *Limit. of A.* No. 16a
Nabakumar Singh Dudhuria *v.* Fateh Singh Nahar (Ind.); **20.** *Eqy.* p. 20
Nabarro *v.* Cope (Frederick) & Co., Ltd. (1938); **36.** *Negl.* No. 287a
Nachimson *v.* Nachimson (1930); **11.** *Confl.* No. 803a
Nachtigal *v.* Premier Motors, Ltd. (Can.); **39.** *S. Goods*, p. 46
Nada Shah *v.* Sleeman (Aus.); **2.** *Animals*, p. 56
Nadan *v.* R. (1926); **17.** *Dep.* Nos. 91a, 526a, 549a
Nadean *v.* Workmen's Compensation Board (Can.); **34.** *Mast. & S.* p. 87
Naftalin *v.* London, Midland & Scottish Ry. Co. (Scot.); **8.** *Carr.* p. 11
Naftolin *v.* Skene (Can.); **32.** *Lien*, p. 23
Naganna *v.* Venkatappayya (Ind.); **12.** *Contr.* p. 50
Nagel, *Re* (Can.); **23.** *Exors.* p. 27
— *v.* Hough (Aus.); **23.** *Exors.* p. 2
Nagel & Nagel *v.* Canadian Northern Ry. Co. (Can.); **38.** *Rys.* p. 38
Nagendranath Banerji *v.* Ambikacharan Chakravarti (Ind.); **21.** *Exon.* p. 44
Nagendra Nath Ray *v.* Basanta Das Bairagya (Ind.); **33.** *Mal. Pros.* p. 39
Nageshwar Bux Roy. *v.* Bengal Coal Co. (1931); **34.** *Mines*, No. 173a
Nagoremull *v.* Triton Insurance Co., Ltd. (1924); **12.** *Contr.* Nos. 2084a, 2292a
Nagy, *Re*, Nagy *v.* Gall (Can.); **16.** *Cr. Pract.* p. 43
— *v.* Webb (Can.); **32.** *Libel*, p. 8
— *v.* Workman's Compensation Board (Can.); **34.** *Mast. & S.* p. 167
Naidoo *v.* Karodian Supply Stores (S. Af.); **42.** *Time*, p. 73
Naish *v.* Tatlock (1794); **5.** *Bkpcy.* No. 7801a
Nakauchi Estate, *Re* (Can.); **23.** *Exors.* p. 23; **28.** *Infts.* p. 140
Nalty *v.* Howell (Aus.); **43.** *Tresp.* p. 54
Nance *v.* Naylor (1928); **31.** *L. & T.* No. 6307a
Nanchappa Goundan *v.* Ittichathara Mannadiar (Ind.); **35.** *Money*, p. 22
Nandkishore Lal *v.* Pasupati Nath Sahu (Ind.); **23.** *Exors.* p. 3
Nani Lal Mandal *v.* Priya Nath Ray (Ind.); **25.** *Fish.* p. 2
Nantais *v.* Pazner (Can.); **19.** *Easmt.* pp. 3, 7
Nanton, *Re* (Can.); **28.** *Inc. T.* p. 86
— *v.* Villeneuve (Can.); **38.** *Rates*, p. 85,
Naper *v.* Barlow, *Re* Love (1932); **8.** *Char.* Nos. 2227a, 2246a; **17.** *Dep.* No. 716a
Napier Borough Council *v.* Napier Harbour Board (N.Z.); **38.** *Rates*, p. 63
Napier Star, The (1933); **1.** *Adm.* No. 1487a; *Pract.* No. 1549a
Napper *v.* Lambton, Hetton & Joicey Collieries, Ltd. (1929); **34.** *Mast. & S.* Nos. 2512a, 3885a
Narainsamy *v.* Principal Immigration Officer (S. Af.); **2.** *Aliens*, p. 51
Narasimhulu *v.* Nagur Sahib (Ind.); **36.** *Nuis.* p. 49
Narayan Balwant *v.* Shankar Waman Goveikai (Ind.); **19.** *Easmt.* p. 11
Narayan Mudlagin *v.* Emperor (Ind.); **27.** *H. & W.* p. 2
Narayana Sah *v.* Kannamma Bai (Ind.); **1.** *Action*, p. 4; **32.** *Libel*, p. 6
Narayona Gajapatiraju *v.* Ratnayammaji (Ind.); **19.** *Easmt.* p. 4
Narendra Nath Dutta *v.* Abdul Hakim (Ind.); **16.** *Courts*, p. 17
Nariman Rustomji Mehta *v.* Hasham Ismayal valad Haji Khamisa (Ind.); **16.** *Courts*, p. 13; **17.** *Dep.* p. 79
Narramore *v.* Fuller, Hall & Foulsham (1932); **3.** *Auct.* No. 82a
Nash *v.* Giles (1926); **26.** *Hghys.* No. 2282a
— *v.* Lombardini, *Re* Kemble (1931); **8.** *Char.* No. 692a
— *v.* Lynde (1929); **9.** *Coys.* No. 439a
— *v.* Nani (1932); **34.** *Mast. & S.* No. 3145a

Nash *v.* Nani (No. 2) (1932); **34.** *Mast. & S.* No. 2204b
— *v.* Shepheard (1931); **1.** *Agcy.* No. 1699a
— *v.* Stevenson Transport, Ltd. (1926); **8.** *Carr.* No. 1650
Nash & Williams *v.* Edmonton, Dunvegan & British Columbia Ry. Co. (Can.); **11.** *Comp. Pche.* p. 15
Nash-Simington Co., Ltd. *v.* Caldwell (Can.); **12.** *Contr.* p. 46
— *v.* Thomas (Can.); **26.** *Guar.* p. 8
Nasionale Pers *v.* Long (S. Af.); **32.** *Libel*, p. 1
Nason *v.* Bickford (Can.); **36.** *Negl.* p. 30
— *v.* Hodne (Can.); **36.** *Negl.* p. 29
Natal (Bishop), *Re* (1864); **17.** *Dep.* No. 349
Natal Incorporated Law Society *v.* Van Aardt (S. Af.); **17.** *Dep.* p. 65
Natal Provincial Administration *v.* South African Railways & Harbours (S. Af.); **11.** *Const. L.* p. 65
Natborny *v.* Natborny (1933); **27.** *H. & W.* No. 6250f
Natesa Vanniyan *v.* Gopolaswami Mudaliar (Ind.); **40.** *S. Land*, p. 20
Nathan *v.* Gulkoff & Levy, Ltd. (1933); **44.** *Work*, No. 73a
Nathan Crystal, *Re*, *Ex p.* Hawthorne (Can.); **7.** *B. of Sale*, p. 9
Nathoo *v.* Immigrants' Appeal Board (S. Af.); **2.** *Aliens*, p. 51
Nathu Ram *v.* Chand Kuar (Ind.); **36.** *Negl.* p. 37
National Assocn. of Coke & Bye-Product Plant (Owners) *v.* London, Midland & Scottish, London & North Eastern, Great Western & Southern Ry. Cos. & Cheshire Lines Committee (1924); **8.** *Carr.* Nos. 1377f, 1377j
National Assocn. of Corn & Agricultural Merchants *v.* London, Midland & Scottish Ry. Co. (1925); **8.** *Carr.* No. 1377h
National Assocn. of Local Government Officers *v.* Watkins (1934); **28.** *Inc. T.* No. 91a
National Bank *v.* Keegan (Ir.); **35.** *Mtge.* p. 40
National Bank für Deutschland, *Re*, *Re* Anglo-Austrian Bank (1921); **2.** *Aliens*, No. 236b
National Bank of Australasia, Ltd. *v.* Joseph (Can.); **20.** *Eqy.* p. 23
— *v.* Norris (Aus.); **3.** *Bank*, p. 24
National Bank of New Zealand *v.* Dalgety & Co. (N.Z.); **7.** *B. of Sale*, p. 7
National Bank of Upper India *v.* Bansidhar (Ind.); **6.** *B. of Exch.* p. 9
National Benefit Assurance Co., Ltd., *Re* (1924); **10.** *Coys.* No. 7627a
—, *Re* (1930); **29.** *Insce.* No. 252b
—, *Re* (1931); **12.** *Contr.* No. 2359a; **29.** *Insce.* No. 2527a
—, *Re* (1932); **29.** *Insce.* No. 711a
—, *Re*, *Ex p.* English Insurance Co. (1928); **10.** *Coys.* No. 7612a
—, *Re*, *Ex p.* English Insurance Co., Ltd. (1929); **29.** *Insce.* No. 252a
—, *Re*, Pacific Great Eastern Ry. Co.'s Case (Can.); **10.** *Coys.* pp. 98, 106
National Breweries *v.* Paradis (Can.); **13.** *Coprt.* p. 22
National Carbon Co., *Re* (Ind.); **16.** *Cr. Pract.* p. 39
National Carbonising Co., Ltd. *v.* British Coal Distillation, Ltd. (1936); **36.** *Pats.* No. 1585a
National Cash Register Co. *v.* Lovett (Can.); **7.** *B. of Sale*, p. 1
— *v.* Stanley (1921); **3.** *Bailmt.* No. 252b
National Dairy Council *v.* Grand Trunk & Canadian Pacific Ry. Cos. (Milk Rate Case) (Can.); **8.** *Carr.* p. 23
National Discount Corpn. *v.* Frech & Jackson (Can.); **39.** *S. Goods*, p. 56
National Dock & Dredging Corpn., Ltd. *v.* R. (Can.); **11.** *Const. L.* p. 64
National Employers' Mutual General Insurance Assocn., Ltd. *v.* Elphinstone (1929); **1.** *Agcy.* No. 980a
National Flying Services, Ltd., *Re*, Cousins *v.* National Flying Services, Ltd. (1936); **10.** *Coys.* No. 5036c
National Gas Council of Great Britain & Ireland's Appeal, *Re* (1927); **8.** *Carr.* No. 1245c
National Grocers Co., Ltd., *Re* (Can.); **10.** *Coys.* p. 92
National Guarantee & Suretyship Assocn., Ltd. *v.* Maidment, *Re* Strickland's Will Trusts (1937); **8.** *Char.* No. 81a
National Health Insurance Act, 1924, *Re*, *Re* Professional Players of Association Football (1934); **44.** *Work*, No. 146b
National Insurance Co., Ltd. *v.* Nissim Abraham Gubbay (Ind.); **24.** *Exors.* p. 43
National Life Insurance Co. *v.* McCoubray (Can.); **29.** *Insce.* p. 35; **30.** *Jdgmts.* p. 20
National Manufacturing Co. *v.* Stepa (Can.); **6.** *B. of Exch.* p. 6
National Mortgage & Agency Co., Ltd. *v.* Braid & Co. (N.Z.); **2.** *Arbn.* p. 95
National Mortgage & Agency Co. of New Zealand, Ltd. *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* Nos. 557d, 557g
— *v.* Stalker (N.Z.); **26.** *Guar.* p. 12
National Pari-Mutuel Assocn., Ltd. *v.* R. (1930); **35.** *Mistake*, No. 36a
National Piano Co., *Re* (Can.); **5.** *Bkpcy.* p. 81
National Pole & Treating Co. *v.* Blue River Pole & Tie Co. (Can.); **26.** *Guar.* p. 1
National Portland Cement Co., Ltd. *Re* (N.Z.); **10.** *Coys.* p. 68
National Provincial & Union Bank of England *v.* Charnley (1924); **10.** *Coys.* No. 4933
— *v.* Lindsell (1922); **7.** *B. of Sale*, No. 98a
— *v.* Tetley, *Re* Tetley (1923); **8.** *Char.* No. 740b
National Provincial Bank, *Ex p.*, *Re* Jones (John) (1932); **2.** *Agric.* No. 979a
— *v.* Official Receiver, *Re* Jones (1932); **2.** *Agric.* No. 979a
— *v.* Royal Society for the Encouragement of Arts, Manufactures & Commerce, *Re* Cranstoun (1932); **8.** *Char.* No. 217a
National Revenue, Minister of *v.* Ogulnik & Co., Ltd. (Can.) (1932); **39.** *Revenue*, p. 15
National Revenue Minister *v.* Ogulnik & Co. (Can.) (1935), **39.** *Revenue*, p. 15
— Royal Trust Co. (Can.); **28.** *Inc. T.* pp. 11, 92
— *v.* Spooner (Can.); **28.** *Inc. T.* p. 15
National Sales Corpn., Ltd. *v.* Bernardi (1931); **6.** *B. of Exch.* No. 2093a; **26.** *Guar.* No. 312a
National Sanatorium Assocn. *v.* Bracebridge (Can.); **38.** *Pub. Hlth.* p. 20
National Securities, Ltd. *v.* Darling (Can.); **27.** *H. & W.* p. 14
National S.S. Co., Ltd. *v.* Sociedad Anónima Comercial de Exportacion y Importacion (Louis Dreyfus y Cia), Ltd. (1932); **41.** *Ship.* No. 2979a
National Stadium, Ltd., *Re* (Can.); **9.** *Coys.* p. 16; **10.** *Coys.* p. 74
National Standard Life Assce. Corpn., *Re* (1918); **10.** *Coys.* No. 7490a
National Stores, Ltd., *Re* (1898); **10.** *Coys.* No. 7044a
National Surety Co. *v.* Larsen (Can.); **11.** *Consl.* p. 42

National Trade Defence Association, *Ex p.*, R. *v.* Minister of Labour (1932); **44.** *Work*, No. 74a
National Trust Co., Ltd., *Ex p.*, *Re* Humberstone Coal Co., Ltd. (Can.); **4.** *Bkpcy.* p. 39
— *v.* Ashton (Can.); **40.** *Sttlmts.* p. 26
— *v.* Ayton (Can.); **25.** *Gifts*, p. 50
— *v.* Barker (Can.); **38.** *Rates*, p. 86
— *v.* Battell (Can.); **32.** *Lien*, p. 26
— *v.* Bell (Can.); **27.** *H. & W.* p. 20
— *v.* Carson, *Re* Mitchell's Estate (Can.); **40.** *Sttlmts.* p. 35
— *v.* Dominion Iron & Steel Co. (Can.); **10.** *Coys.* p. 64; **39.** *Recrs.* p. 1
— *v.* Great Lakes Paper Co. (Can.); **10.** *Coys.* p. 65
— *v.* Greengard (Can.); **38.** *Real Prop.* p. 90
— *v.* Hanson (Can.); **34.** *Mast. & S.* p. 15
— *v.* Holowaychuk (Can.); **27.** *H. & W.* p. 11
— *v.* Larson (Can.); **23.** *Exors.* p. 3; **39.** *S. Goods*, p. 59
— *v.* Maritime Coal Railway & Power Co. (Can.); **10.** *Coys.* p. 60
— *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 15
— *v.* Palace Theatre, Ltd. (Can.); **31.** *L. & T.* p. 63
— *v.* Porterfield (Can.); **22.** *Evid.* p. 24
— *v.* Powers (Can.); **2.** *Agric.* p. 25
— *v.* Toronto, *Re* (Can.); **38.** *Rates*, p. 50
— *v.* Vancouver Kraft Co., Ltd. (Can.); **10.** *Coys.* p. 56
— *v.* Western Trust Co. (Can.); **19.** *Easmt.* p. 4
— *v.* Winnipeg City (Can.); **38.** *Rates*, p. 49
National Trust Co. & Municipal District of Vale, *Re* (Can.); **2.** *Arbn.* p. 91
National Trust Co. & Toronto, *Re* (Can.); **38.** *Rates*, p. 50
National Trust Co.'s Case, *Re* Home Bank of Canada (Can.); **3.** *Bank.* p. 20
National Union Fire Insurance Co. of Pittsburg *v.* Martin (Can.); **1.** *Agcy.* p. 96
National Whole Meal Bread & Biscuit Co., *Re* (1892); **10.** *Coys.* No. 6517a
Natural Products Marketing Act, *Re*, A.-G. for British Columbia *v.* A.-G. for Canada (1937); **17.** *Dep.* No. 1301
Natural Products Marketing (British Columbia) Act, Reference, *Re* (Can.); **17.** *Dep.* p. 55
Natural Resources (Saskatchewan), *Re* (1932); **17.** *Dep.* No. 372a
Naughton *v.* Limerick County Council (Ir.); **38.** *Pub. Auth.* p. 13
Naugle Pole & Tie Co. of Canada, Ltd. *v.* Wilson (Can.); **39.** *S. Goods*, p. 44
Naugler *v.* Jenkins (Can.); **21.** *Estpl.* p. 39
Naumiec, *Re* (Can.); **2.** *Aliens*, p. 50
Nautilus Steam Shipping Co., Ltd., *Re*, *Ex p.* Gibbs & Co. (1936); **10.** *Coys.* No. 6056c
Navilla Ice Cream Co., Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 39
Navy, Army & Air Force Institutes *v.* Lindsey (1930); **34.** *Mast. & S.* No. 2912a
Navy League of Canada (Assessment of Halifax Branch of), *Re* (Can.); **38.** *Rates*, p. 62
Nayanah *v.* R. (S. Af.); **42.** *Str. Traf.* p. 48
Naylor *v.* Canterbury Park Racecourse Co., Ltd. (Aus.); **30.** *L. & T.* p. 45
— *v.* Peacehaven Electric Light & Power Co., Ltd. (1931); **20.** *Electric*, Nos. 103a, 103b
— *v.* Stephen (Aus.); **25.** *Gaming*, p. 41
Nazir Ahmad *v.* King-Emperor (1936); **17.** *Dep.* No. 540a
Nazzareno *v.* Algoma Eastern Ry. Co. (Can.); **8.** *Carr.* p. 4
Ndlwana *v.* Hofmeyr N.O. (S. Af.); **42.** *Stats.* p. 20
Neal *v.* Denston (1932); **44.** *Wills*, No. 1158a
— *v.* Eaton (T.) Co., Ltd. (Can.); **36.** *Negl.* p. 26
— *v.* Hanbury (1701); **39.** *Rntchgs.* No. 292a
— *v.* Levitson (Can.); **34.** *Mast. & S.* p. 15
— *v.* T. Eaton Co., Ltd. (Can.); **36.** *Negl.* p. 26
Neal & Fough, *Ex p.*, *Re* Yurong Street Motors, Ltd. (Aus.); **34.** *Mast. & S.* p. 182
Neale *v.* Merrett (1930); **12.** *Contr.* No. 422a; **40.** *S. Land*, No. 32b
— *v.* Richardson (1938); **7.** *Bldg. Conts.* No. 84a
Neame *v.* A.-G., *Re* Chaplin (1933); **8.** *Char.* No. 47d
Near, *Re* (Can.); **43.** *Trusts*, p. 59
Near East Relief *v.* King, Chasseur & Co., Ltd. (1930); **29.** *Insce.* No. 432a
Neare *v.* Walker (1842); **18.** *Distr.* No. 1582
Nearly *v.* Credit Service Exchange (Can.); **16.** *Cr. Pract.* p. 38
Neary *v.* Robert Boby, Ltd. (1932); **34.** *Mast. & S.* No. 3236a
Neathercoat *v.* Lawrence, *Re* Boyer (1935); **44.** *Wills*, No. 7255b
Neave, *Re*, Neave *v.* Neave (1938); **37.** *Powers*, No. 857a
— *v.* Barnardo's Homes National Incorporated Assocn., *Re* Husband (1923); **8.** *Char.* No. 891a
— *v.* Neave, *Re* Neave (1938); **37.** *Powers*, No. 857a
Nedenes, The (1924); **1.** *Adm.* No. 1047a; **18.** *Discy.* No. 1462a
Need *v.* Coles Pty., Ltd. (Aus.); **43.** *Trade Mks.* p. 39
Needham *v.* Ace Mill, Ltd. (1928); **34.** *Mast. & S.* No. 3821c
Needler *v.* Guest (1647); **12.** *Contr.* No. 755a
Needles *v.* Slovarp (Can.); **6.** *B. of Exch.* p. 25
Nees *v.* Botting (N.Z.); **6.** *B. of Exch.* p. 15
Neff & College of Dental Surgeons, *Re* (Can.); **34.** *Med.* p. 191
Negrich (Negrych) *v.* Werner (Can.); **42.** *Tort.* p. 77
Negro *v.* Pietro's Bread Co., Ltd. (Can.); **17.** *Damgs.* p. 9
Neighbour *v.* Brown (1857); **13.** *Cty. Cts.* No. 240a
Neilsen *v.* Neilsen & Christensen (Can.); **27.** *H. & W.* p. 42
Neilson, *Ex p.*, *Re* Edmond (1853); **9.** *Coys.* No. 2299a
—, *Re*, Cumming *v.* Clyde (1929); **44.** *Wills*, No. 5935a
— *v.* Neilson (Can.); **27.** *H. & W.* p. 77
— *v.* Richard (Can.); **42.** *Str. Traf.* p. 60
Neilson (otherwise Underwood) *v.* Underwood (Can.); **17.** *Dep.* p. 56
Neilson & Craig *v.* Adamson (Trustee), *Ex p.*, *Re* Cumming (1929); **5.** *Bkpcy.* No. 7155a
— *v.* Trustee, *Ex p.*, *Re* Cumming & West (1929); **4.** *Bkpcy.* No. 3832a; **5.** *Bkpcy.* No. 7155a
Neilson Magann Lumber Co. *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 36
Neily *v.* Brooklyn Fruit Co. (Can.); **9.** *Coys.* p. 47
Nelson (No. 1), *Ex p.* (Aus.); **17.** *Dep.* p. 62
— (No. 2), *Ex p.* (Aus.); **17.** *Dep.* p. 83
—, *Re* (Can.); **33.** *Mags.* p. 36
— *v.* A.-G., *Re* Hardy (Ir.); **8.** *Char.* p. 78
— *v.* Baird & Botterell (Can.); **17.** *Damgs.* p. 20
— *v.* Blackford (1936); **42.** *Str. Traf.* No. 76r
— *v.* Braisby (No. 2) (N.Z.); **17.** *Dep.* p. 65
— *v.* — (No. 3) (N.Z.); **17.** *Dep.* p. 85
— *v.* Brewster (Can.); **32.** *Lien*, p. 27
— *v.* Campbell (Aus.); **22.** *Evid.* p. 2; **35.** *Money*, p. 28

Nelson *v.* Coventry Swaging Co., Ltd. (1936); **42.** *Str. Traf.* No. 232q
— *v.* Crosby (N.Z.); **1.** *Agcy.* p. 89
— *v.* Dennis (Can.); **36.** *Negl.* p. 31; **42.** *Str. Traf.* p. 61
— *v.* Dominion Natural Gas Co., Ltd. (Can.); **25.** *Gas*, p. 44
— *v.* Grand Trunk Pacific Ry. Co. (Can.); **2.** *Animals*, p. 57
— *v.* Hirschborn (S. Af.); **1.** *Agcy.* p. 79
— *v.* Mighall (1932); **30.** *Intox.* No. 626a
— *v.* National Trustees, Executors & Agency Co. of Australasia, Ltd., *Re* Gibbs (Aus.); **32.** *Limit. of A.* p. 39
— *v.* Nelson (Can.); **11.** *Confl.* p. 24
— *v.* Nelson & Andrews (Can.); **11.** *Confl.* p. 47
— *v.* Pacific Great Eastern Ry. Co. (Can.); **11.** *Comp. Pche.* p. 9
— *v.* Person (Can.); **32.** *Lien*, p. 23
— *v.* Prudential Assurance Co., Ltd. (Ir.); **25.** *Gifts*, p. 51
— *v.* R. (1928); **2.** *Aliens*, No. 375a; **17.** *Dep.* No. 662a
— *v.* Union Bank of Canada (Can.); **3.** *Bank.* p. 23
— *v.* Wainwright (Can.); **42.** *Str. Traf.* p. 40
Nelson (O. F.) & Co., Ltd. *v.* Police (N.Z.); **13.** *Corpns.* p. 29
Nelson (City) Corpn. *v.* Busbridge (N.Z.); **20.** *Electric*, p. 14; **25.** *Gas*, p. 44
Nelson Murdoch & Co. *v.* Wood (1921); **3.** *Bailmt.* No. 262a
— *v.* — (1922); **3.** *Bailmt.* No. 262a
Nelson's Estate, *Re* (Can.); **30.** *Jdgmts.* p. 23
Nelsons (N.Z.), Ltd. *v.* Prendergast (N.Z.); **34.** *Mast. & S.* p. 58
Nemerovsky *v.* McBride (No. 2) (Can.); **18.** *Discy.* p. 18
Neon Products of Western Canada, Ltd. *v.* Bancroft (Can.); **21.** *Exon.* p. 57
Neon Tube Lights, Ltd. *v.* Alliance Insurance Co. (Can.); **29.** *Insce.* p. 58
Neptun, The (1938); **44.** *Waters*, No. 676a
Neptune, The. *See* Neptunus, The, Vol. 37, p. 628, No. 779
Neptune, The (1919); **1.** *Adm.* No. 1027a
Neptune Meter Co. *v.* Halifax (City) (Can.); **33.** *L. G.* p. 8
Neri *v.* Benham (Can.); **32.** *Lien*, p. 27
Nerland *v.* Crossfield School District (Can.); **25.** *Fraud. Conv.* p. 13
Nesbitt *v.* Carney (Can.); **36.** *Negl.* p. 16
— *v.* Conacher (Can.); **20.** *Elect.* p. 6
— *v.* McCartney (Can.); **9.** *Coys.* p. 21
Nesbitt & Conacher, *Re* (Can.); **20.** *Elect.* p. 6
Nesbitt Estate, *Re* (Can.); **44.** *Wills*, p. 17
Nesbitt (A. & W.), Ltd. *v.* Mitchell (1926); **28.** *Inc. T.* No. 99c
Nesmith (Doe d.) *v.* Williston (Can.); **21.** *Exon.* p. 50
Nesom *v.* Metcalfe (1921); **5.** *Bkpcy.* No. 8496a
Nestle & Anglo-Swiss Condensed Milk Co. *v.* London, Midland & Scottish Ry. Co. (1934); **8.** *Carr.* Nos. 1246b, 1323h, 1377m
Nestor S.S. Owners *v.* Mungana S.S. Owners, The Mungana (1936); **41.** *Ship.* No. 7739a
Nethaway *v.* Brewer (1931); **2.** *Animals*, No. 688a
Netherlands Investment Co. *v.* Des Brisay (Can.); **24.** *Exors.* p. 35
— *v.* Trusts & Guarantee Co. (Can.); **35.** *Mtge.* p. 45
Netherlands Investment Co. of Canada, Ltd. *v.* Fife & A.-G. for Alberta (Can.); **17.** *Dep.* p. 57
v. Lasher (Can.); **35.** *Mtge.* p. 52
Nettlefold *v.* Inland Revenue Comrs. (1933); **28.** *Inc. T.* No. 689d
Nettleton, *Re* (Can.); **16.** *Cr. Pract.* p. 29
Nettleton *v.* Crimmins, *Re* Ellis (1935); **39.** *Rntchgs.* No. 62a
Neuburger's Settlement, *Re*, Foreshew *v.* Public Trustee (1923); **2.** *Aliens*, No. 215g
Neufeld & Neufeld *v.* Fehr (Can.); **19.** *Eccl.* p. 31
Neufeldt & Kuhnke G.m.b.H. Patents, *Re* (1930); **36.** *Pats.* No. 1750a
Neugebauer & Co., Ltd. *v* Hermann (S. Af.); **3.** *Auct.* p. 2
Neuman *v.* Bradshaw (Can.); **2.** *Aliens*, p. 48
Neumann *v.* Inland Revenue Comrs. (1934); **28.** *Inc. T.* No. 674bb
Neuschild *v.* British Equatorial Oil Co. (1925); **9.** *Coys.* No. 3874a
Neve *v.* Leeson (Can.); **1.** *Agcy.* p. 80
Neve, Ranaghan & Cope, Ltd. *v.* Motley & Motley (Can.); **21.** *Exon.* p. 47
Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated (1926); **12.** *Contr.* No. 2832a
Neville *v.* London "Express" Newspaper, Ltd. (1919); **1.** *Action*, Nos. 556, 560, 561a, 719a, 725
— *v.* Ross (Township) Corpn. (Can.); **38.** *Pub. Auth.* p. 6
Neville & Green, *Re* (Can.); **4.** *Bkpcy.* p. 43
Neville Canneries, Ltd. *v.* Santa Maria (Can.); **1.** *Adm.* p. 19
New Brilliant Freehold Gold Mining Co., Ltd. *v.* Mills (Aus.); **10.** *Coys.* p. 70
New Brunswick (Receiver General of) *v.* Rosborough (Can.); **21.** *E. D.* pp. 19, 20
New Brunswick & Nova Scotia Land Co. *v.* Kirk (Can.); **30.** *L. & T.* p. 44
New Brunswick Electric Power Commission *v.* Quinton (Can.); **2.** *Arbn.* p. 101
New Brunswick Gas & Oilfields, Ltd. & New Brunswick Electric Power Committee, *Re* (Can.); **2.** *Arbn.* p. 99
New Brunswick Land & Investment Co. *v.* Sime (Can.); **38.** *Rates*, p. 86
New Brunswick Power Commission & Inglewood Pulp & Paper Co., *Re* (Can.); **11.** *Comp. Pche.* pp. 5, 6
New Brunswick Power Co., *Ex p.* (Can.) (1926); **20.** *Electric*, p. 10; **43.** *Tram.* p. 49
—, *Ex p.* (Can.) (1928); **12.** *Contr.* p. 3
— *v.* Maritime Transit, Ltd. (Can.); **28.** *Injon.* p. 150
— *v.* Price Hatt (Can.); **17.** *Deeds*, p. 26
New Brunswick Ry. Co. *v.* British & French Trust Corpn. (1938); **21.** *Estpl.* No. 229a
New College, Oxford Warden & Scholars *v.* Davison (1933); **19.** *Eccl.* No. 3490c
New England Dressed Meat & Wool Co. *v.* Patrick Brothers (Can.); **1.** *Agcy.* p. 84
New Federal Oils, Ltd. *v.* Rowland (Can.); **37.** *Perps.* p. 4
New Glasgow *v.* Milligan (Can.); **11.** *Comp. Pche.* p. 15
New Hucknall Colliery Co., Ltd. *v.* Standard Tonnage Committee & Executive Board of Midland (Amalgamated) District (Coal Mines) Scheme, 1930 (1933); **34.** *Mines*, Nos. 327q, 327r, 327s
New Jersey Federal Insurance Co. *v.* Westchester Fire Insurance Co. (Can.); **29.** *Insce.* p. 4
New Liverpool Eastham Ferry & Hotel Co., Ltd. *v.* Ocean Accident & Guarantee Corpn., Ltd. (1929); **29.** *Insce.* No. 519a
New Nimrod Co., Ltd. *v.* Peruvian Pacific Ry., Ltd., International Construction & Finance Syndicate, Ltd. & Crankshaw (1907); **28.** *Injon.* Nos. 113a, 835a
New Plymouth Borough Council *v.* Taranaki Electric Power Board (N.Z.); **20.** *Electric*, p. 10; **42.** *Stats.* p. 21

Newton *v.* Finesilver, *Re* Black & White Hat Shop, Ltd. (Can.); **5.** *Bkpcy.* p. 73
— *v.* Guest, Keen & Nettlefolds, Ltd. (1926); **30.** *Jdgmts.* No. 569a
— *v.* Hamilton, *Re* Thompson, Sons & Co. (Can.); **5.** *Bkpcy.* p. 50
— *v.* Hardy (1933); **27.** *H. & W.* Nos. 645a, 1852a
— *v.* Harland (1840); **17.** *Damgs.* No. 574a
— *v.* Lambton Hetton & Joicey Collieries, Ltd. (1937); **26.** *Highys.* No. 2386a
— *v.* Macklin (Can.); **2.** *Agric.* p. 26
— *v.* Manitoba Pulp & Paper Co., Ltd., *Re* Western Canada Pulpwood & Lumber Co., Ltd. (Can.); **39.** *S. Goods*, p. 55
— *v.* Newton (Can.); **27.** *H. & W.* p. 59
— *v.* St. Jean Baptiste Parish (Can.); **5.** *Bkpcy.* p. 85
— *v.* Vancouver City (Can.); **32.** *Libel*, p. 13
— *v.* White (Can.); **17.** *Custom*, p. 2
Newton Abbot Development Co., Ltd. *v.* Stockman Bros. (1931); **7.** *Bldg. Conts.* Nos. 225a, 230b
Newton (W. S.) & Co. *v.* Winnipeg City (Can.); **38.** *Rates*, p. 49
Newton & Co. *v.* Wolvin (Can.); **17.** *Custom*, p. 2
Newton Chambers & Co., Ltd. *v.* Neptune Waterproof Paper Co., Ltd. (1935); **43.** *Trade Mks.* No. 740b
Ng Aun Thye *v.* Ewe Keok Neoh (Straits Settlements); **23.** *Exors.* p. 25
Ngcobo *v.* Ngcobo (S. Af.); **22.** *Evid.* p. 6
Niagara Hats, Ltd., *Re*, Trustee *v.* Bank of Montreal (Can.); **5.** *Bkpcy.* p. 72
Niagara Public School Board *v.* Queenston Women's Institute (Can.); **19.** *Educ.* p. 39; **20.** *Eqy.* p. 20
Niagara Town & Kirby, *Re* (Can.); **38.** *Rates*, p. 32
Niaz Ahmad Khan *v.* Parshotam Chandra (Ind.); **42.** *Stats.* p. 20
Niccum *v.* Ostevik, *Re*, Ostevik *v.* Pioneer Grain Co., Ltd. (Can.); **32.** *Lien*, p. 22
Nichol *v.* General Casualty Insurance Co. of Paris (Can.); **29.** *Insce.* p. 46
— *v.* Scott (Can.); **42.** *Str. Traf.* p. 61
— *v.* Sugarman (Can.); **29.** *Intpr.* p. 63
Nichol's Estate, *Re* (Can.); **40.** *Stllmts.* p. 34
Nicholas *v.* Dumoulin (Can.); **1.** *Agcy.* p. 76
— *v.* Ruf (Can.); **38.** *Real Prop.* p. 95
Nicholas & Barnett *v.* New Zealand Insurance Co. (N.Z.); **29.** *Insce.* p. 27
Nicholl *v.* Llantwit Major Parish Council (1924); **7.** *Burial*, Nos. 228a, 291a
Nicholle *v.* Paddick (Aus.); **3.** *Basty.* p. 62
Nicholls *v.* Ely Beet Sugar Factory (1931); **36.** *Nuis.* No. 598a; **43.** *Tresp.* No. 308a
— *v.* — (1936); **25.** *Fish.* No. 343a
Nichols, *Ex p.* (Can.); **33.** *Mags.* p. 22
— *v.* Graham (Can.); **33.** *Mags.* p. 22
— *v.* Hart, *Re* Worthington (1933); **23.** *Exors.* No. 5917d
— *v.* Kamsack Town (Can.); **38.** *Pub. Auth.* p. 12
— *v.* North Metropolitan Railway & Canal Co. (1894); **12.** *Contr.* No. 3520
— *v.* T. T. C. (Can.); **18.** *Discy.* p. 7
Nicholson, *Re*, Chadwyck-Healey *v.* Crawford (1938); **23.** *Exors.* No. 4937a
— *v.* Black & White Cabs, Ltd. (N.Z.); **17.** *Dep.* p. 79; **21.** *Estpl.* p. 40
— *v.* Cooper (1858); **4.** *Bkpcy.* No. 160a
— *v.* Debuse (Can.); **1.** *Agcy.* p. 79
— *v.* Inverforth (1935); *Pract.* No. 3781a
— *v.* Norton (1844); **24.** *Exors.* No. 8758a
— *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council (1935); **7.** *Bounds. & F.* No. 137a; **26.** *Highys.* No. 1290a
Nicholson *v.* Southern Star Fire Insurance Co., Ltd. (Aus.); **29.** *Insce.* p. 26
— *v.* Vaux, *Re* Vaux (1938); **20.** *Eqy.* No. 1788a; **37.** *Perps.* No. 115a
Nicholson & Shaw *v.* Joyland, The (Can.); **41.** *Ship.* p. 70
Nicholson & Sons, Ltd. Application, *Re* (1931); **43.** *Trade Mks.* No. 386a
—, *Re* (1932); **43.** *Trade Mks.* No. 277a
Nicholson Sales & Service Corpn., *Re* (Can.); **4.** *Bkpcy.* p. 38
Nicholson's Settlement, *Re*, Molony *v.* Nicholson (1938); **37.** *Powers*, No. 1036a
Nicholson's Will Trusts, *Re*, Ortmans *v.* Burke (1936); **43.** *Trusts*, No. 3592a
Nickel, *Re*, Homburg *v.* Public Trustee (Aus.); **2.** *Aliens*, p. 35
Nickell *v.* Windsor (City) (Can.); **13.** *Corpns.* p. 34; **36.** *Negl.* p. 8
Nickerson *v.* Manning (Can.); **33.** *Mal. Pros.* p. 40
Nicol *v.* Kincaid & Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 91
Nicoll *v.* Austin (1935); **28.** *Inc. T.* Nos. 501d, 527d
Nieblo Manufacturing Co. *v.* Standard Co. (Can.); **36.** *Pats.* pp. 70, 105
Nielsen *v.* Doraty (Can.); **34.** *Mast. & S.* p. 24
Nielsen, Andersen & Co. *v.* Collins (1928); **28.** *Inc. T.* Nos. 168a, 186a, 193a, 567, 632c, 632e
Nier's Patent, *Re* (1937); **36.** *Pats.* No. 1219b
Nierhaus, *Re* (1921); **2.** *Aliens*, No. 236a
Nigel Gold Mining Co., Ltd. *v.* Hoade (1901); **29.** *Insce.* No. 3284a
Nightingale, *Re*, Hargreaves *v.* Shuttleworth (1927); **22.** *Evid.* No. 1489a
— *v.* Biffen (1925); **22.** *Evid.* No. 5407a
— *v.* Ferrers (Earl) (1733); **28.** *Infts.* No. 669a
— *v.* Whybrow, *Re* Farmer (1938); **23.** *Exors.* No. 4937b
Nigro *v.* Wilson (N.Z.); **1.** *Agcy.* p. 80
Nihal Chand *v.* Bhagwan Dei (Ind.); **22.** *Evid.* p. 6
Nihalchand Navalchand *v.* McMullan (1934); *Pldg.* Nos. 1229a; *Pract.* No. 947a
Nihal Chand Shastri *v.* Dilawar Khan (Ind.); **3.** *Barr.* p. 49
Nilkanth Balwant Natu *v.* Shri Satchidanand Vidya Narsinha Bharati (Ind.); **16.** *Courts*, p. 14
Nilmone Chaudhuri *v.* Kedar Nath Daga (Ind.); **3.** *Barr.* p. 50
Nimmo *v.* Coltness Iron Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 102
— *v.* Thomas Jones (Estates), Ltd. (1929); **34.** *Mast. & S.* Nos. 2227a, 2232a
90th Battalion, Winnipeg Rifles, *Re* (Can.); **11.** *Const. L.* p. 72
Ningappa Marbasappa Arleshvar *v.* Gyanaji Pouraji Marwadi (Ind.); **30.** *Jdgmts.* p. 27
Nipissing Dominion Election, *Re*, Klock *v.* Varin (Can.); **20.** *Elect.* p. 8
Nippon Kinyn Sha, Ltd., *Re*, *Ex p.* Totaro Fujino (Can.); **10.** *Coys.* p. 90
Nippon Yusen Kaisha *v.* China Navigation Co., Ltd. (1935); **41.** *Ship.* No. 5748a
— *v.* Marienfels, The (Ind.); **41.** *Ship.* p. 63
— *v.* Ramjiban Serowgee (1938); **41.** *Ship.* No. 2211a
Nirso Narayan Singh *v.* R. (Ind.); **32.** *Libel*, p. 10
Nix *v.* Godfrey (Can.); **36.** *Negl.* p. 1
Nixon *v.* Ashenhurst (Can.); **38.** *Real Prop.* p. 90
— *v.* A.-G. (1931); **39.** *Revenue*, No. 841a; **42.** *Stats.* Nos. 78a, 649a
— *v.* Erith Urban Council (1924); **13.** *Corpns.* No. 1127a
— *v.* Lofts (Aus.); **40.** *S. Land*, p. 4

Nixon *v.* O'Callaghan (Can.); **32.** *Libel*, p. 10
v. Ottawa Electric Ry. Co. (Can.); **43.** *Tram.* p. 49
— *v.* Sumner (Can.); **32.** *Lien*, p. 27
Njegos, The (1936); **2.** *Arbn.* No. 141a
Njegos Cargo Owners *v.* Njegos Owners (1936); **2.** *Arbn.* No. 141a
Noack *v.* Lanark County Mutual Fire Insce. Co. (Can.); **29.** *Insce.* p. 25
Noble, *Re* (Can.); **17.** *Dep.* p. 71; **22.** *Evid.* p. 12; **23.** *Exors.* p. 9
— *v.* Bath, Bristol & Florenceville Hydro Electric District Comrs. (Can.); **36.** *Negl.* p. 37
— *v.* — (No. 2) (Can.); **36.** *Negl.* p. 37
— *v.* Bromiley (Can.); **42.** *Solrs.* p. 8
— *v.* Campbellford, Lake Ontario & Western Ry. Co. (Can.); **2.** *Arbn.* p. 92
— *v.* Cass (1828); **23.** *Exors.* No. 3572a
— *v.* Cline (Can.); **16.** *Courts*, p. 9
— *v.* Esquesing (Township) (Can.); **2.** *Animals*, p. 58
— *v.* Harrison (1926); **2.** *Agric.* No. 970b
— *v.* Newfoundland Government (Nfld.); **11.** *Const. L.* p. 63
— *v.* Noble (Can.); **32.** *Limit. of A.* p. 37
Noble & Province of Ontario, *Re*, *Re* Parkdale Boulevard, Ltd., & Province of Ontario, *Re* Torrance & Province of Ontario (Can.); **11.** *Comp. Pche.* p. 5
Noble (B. W.), Ltd. *v.* Mitchell (1926); **28.** *Inc. T.* No. 142a
— *v.* — (1927); **28.** *Inc. T.* No. 2?2a
Noblet *v.* Condon (Aus.); **42.** *Str. Traf.* p. 55
Nodder, *Ex p.*, R. *v.* Lawson (1937); **16.** *Cntmpt.* No. 283b
Noden, Hallett & Johnston, *Re*, *Ex p.* Johnston (Can.); **4.** *Bkpcy.* p. 27
Noel, *Re*, *Ex p.* Gravelbourg (Town) (Can.); **4.** *Bkpcy.* pp. 37, 38
— *v.* Isaac (1835); **41.** *Shrffs.* No. 639a
— *v.* Trust & Agency Co. of Australasia, Ltd. (1937); **28.** *Inc. T.* No. 417a
Noffke, *Ex p.*, McClintock *v.* Noffke (Aus.); **22.** *Evid.* p. 3
No-Fume, Ltd. *v.* Frank Pitchford & Co., Ltd. (1935); **36.** *Pats.* Nos. 518a, 2175a
Noiseaux *v.* R. (Can.); **30.** *Intox.* p. 16
Nokes *v.* Doncaster Amalgamated Collieries, Ltd. (1938); **10.** *Coys.* No. 7415b
— *v.* Strong (1909); **38.** *Rates*, No. 675e
Nolan *v.* Graham, *Re* Graham's Estate (Can.); **11.** *Confl.* p. 50
— *v.* Graves (Ir.); **31.** *L. & T.* p. 92
— *v.* McAssey (Can.); **42.** *Tele.* p. 67
— *v.* McKinnon (Can.); **41.** *Ship.* p. 13
— *v.* Russel Haverside, S.S. (S. Af.); **1.** *Adm.* pp. 18, 24, 48
— *v.* Sharp (Can.); **42.** *Tele.* p. 67
— *v.* Thompson (Aus.); **38.** *Real Prop.* p. 92
Nolder *v.* Walters (1930); **28.** *Inc. T.* 527a
Nomeracsky *v.* Canterbury Dressing Works (1928); **34.** *Mast. & S.* No. 3140a
Nomikos (Petros M.), Ltd. *v.* Robertson (1938); **29.** *Insce.* No. 2261a
Nonmus (Alfred), *Re* (Aus.); **4.** *Bkpcy.* p. 41
Noordin (E. P. Mohamed) *v.* S. E. S. Abdul Kareem & Co. (1931); **43.** *Trade Mks.* No. 629b
Nordborg S.S. Owners *v.* Sherwood & Co. (1938); **41.** *Ship.* No. 3829a
Nordtomme Estate, *Re* (Can.); **24.** *Exors.* p. 38
Norfolk *v.* Gifford (1690); **20.** *Eqy.* No. 2367a
Norfolk Coast, The (1922); **1.** *Adm.* No. 1723a
Norfolk Co-operative Dairy Co., Ltd. *v.* Allen (N.Z.); **2.** *Animals*, p. 67
Norfolk Ry. Co., *Ex p.* (1860); **11.** *Comp. Pche.* No. 1686a
Norfolk Ry. Co. *v.* Bayes (1849); **11.** *Comp. Pche.* No. 2035a
Norfor *v.* Aberdeenshire Education Authority (Scot.); **19.** *Educ.* p. 36
Norman *v.* Great Western Ry. Co. (1935); **8.** *Carr.* No. 1548
— *v.* Gresham Fire & Accident Insurance Society, Ltd. (1936); **29.** *Insce.* No. 3217hh
Norman's Trusts, *Re* (Can.); **21.** *E. D.* p. 16
Normandy *v.* Ind Coope & Co., Ltd. (1908); **9.** *Coys.* No. 3526a
Normanstar, The (1929); **1.** *Adm.* No. 1521b
Norris *v.* McKenzie (Can.); **39.** *S. Goods*, p. 56
— *v.* Meadows (Can.); **35.** *Mtge.* p. 42
— *v.* Norris (1930); **27.** *H. & W.* No. 6250a
Norske Atlas Insurance Co., Ltd. *v.* London General Insurance Co., Ltd. (1927); **2.** *Arbn.* No. 1981a
Norske Lloyd Insurance Co., Ltd., *Re* (1928); **10.** *Coys.* No. 7612b
North, *Ex p.*, R. *v.* Milk Marketing Board (1934); **16.** *Cr. Pract.* No. 2458a; **25.** *Food*, No. 476g
— *v.* Lauweryssen (Can.); **40.** *S. Land.* p. 20
— *v.* Martin (1833); **38.** *Real Prop.* No. 592a
— *v.* North & Ogden (1936); **22.** *Evid.* No. 3451a
North Alberta Land Registration District, Registrar *v.* Northern Agency, Ltd. (Can.); **38.** *Real Prop.* p. 93
North American Finance Co. *v.* Western Elevator Co. (Can.); **1.** *Agcy.* p. 100
North American Lumber Co., Ltd. *v.* Bank of Montreal (Can.); **3.** *Bank.* p. 43; **7.** *B. of Sale*, pp. 4, 5, 8
North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd. (1936); **6.** *B. of Exch.* No. 178a
North Bay City *v.* Gordon (Can.); **38.** *Rates*, p. 84
North British & Mercantile Insurance Co. *v.* McLellan (Can.); **29.** *Insce.* p. 25
North British Artificial Silk, Ltd., *Ex p.*, *Re* Bolton (1930); **4.** *Bkpcy.* No. 2851a; **9.** *Coys.* Nos. 2798a, 2820a
North British Ry. Co. *v.* Newburgh & North Fife Ry. Co. (Scot.); **2.** *Arbn.* p. 75
— *v.* Steel Co. of Scotland, Ltd. (Scot.); **8.** *Carr.* p. 22
North Brookfield Overseers *v.* Meisner (Can.); **3.** *Basty.* p. 65
North Bruce Provincial Election, *Re*, Fenton *v.* Mewbinney (Can.); **20.** *Elect.* p. 3
North Charterland Exploration Co. (1910), Ltd. *v.* R. (1931); **17.** *Dep.* No. 4a; **22.** *Evid.* No. 3122c
North Cowichan Corpn. *v.* Gore-Langton (Can.); **11.** *Comp. Pche.* pp. 5, 15
North Eastern Ry. Co. *v.* Spark (1877); **5.** *Bkpcy.* No. 8933c
North Fraser Harbour Comr. *v.* British Columbia Electric Ry. Co. & Canadian Pacific Ry. (Can.); **38.** *Rys.* p. 44
North Huron Election, *Re* (Can.); **20.** *Elect.* p. 8
North Lethbridge Garage, Ltd. *v.* Continental Casualty Co. (Can.); **29.** *Insce.* pp. 46, 47
North Level Comrs. *v.* River Welland Catchment Board (1938); **41.** *Sewers*, No. 399b
North Norfolk Case (1869); **20.** *Elect.* Nos. 390a, 478a, 626a
North of England Protecting & Indemnity Assocn., *Re* (1929); **9.** *Coys.* No. 4297a
North of Scotland Bank *v.* Inland Revenue Comrs. (Scot.); **39.** *Revenue*, p. 19
North of Scotland Canadian Mortgage Co., Ltd. *v.* Bak & Stobbe (Can.); **2.** *Agric.* p. 25
— *v.* Campkin (Can.); **32.** *Limit. of A.* p. 36
North Pacific Lumber Co. *v.* British American Trust Co. (Can.); **38.** *Real Prop.* p. 99

North Pacific Lumber Co. *v.* National Revenue Minister (Can.); **28.** *Inc. T.* p. 88
— *v.* Sayward (Can.); **17.** *Deeds*, p. 28
North Pole Ice Co., Ltd., & Reduced, *Re* (1924); **9.** *Coys.* Nos. 1019a, 1036a
North Shore Trading Co., *Re*, Providence Washington Assurance Co. *v.* Gagnon & Cloutier (Can.); **4.** *Bkpcy.* p. 45
North Sydney Investment & Tramway Co. *v.* Higgins (Aus.); **9.** *Coys.* p. 19
North Vancouver *v.* Stewart (F. R.) & Co. (Can.); **38.** *Pub. Hlth.* pp. 15, 16; **39.** *Revenue*, p. 17; **42.** *Str. Traf.* p. 43
North Wales Produce & Supply Society, *Re* (1922); **7.** *B. of Sale*, Nos. 144a, 302a
North Western Trust Co., *Re*, *Ex p.* Pure Oil Co., Ltd. (Can.); **10.** *Coys.* p. 103
—, *Re*, McAskill *v.* North Western Trust Co. (Can.); **9.** *Coys.* p. 17
North York Public School Board & Duff, *Re* (Can.); **19.** *Educ.* p. 40
North's Navigation Co. (1889), Ltd. *v.* Batten (1933); **34.** *Mast. & S.* No. 2839a
Northage, *Re* (Can.); **27.** *H. & W.* p. 11
Northard & Lowe Co. *v.* Durno (Can.); **35.** *Mtge.* p. 41
Northcliffe, *Re*, Arnholz *v.* Hudson (1929); **21.** *E. D.* No. 137a
Northcliffe's Settlements, *Re* (1937); **43.** *Trusts*, No. 1185a
Northern Aerial Mineral Exploration, Ltd. *v.* Bankers Indemnity Insurance Co. (Can.); **29.** *Insce.* p. 37
Northern Assurance Co. *v.* Manitoba Pool Elevators (Can.); **29.** *Insce.* p. 5
Northern Banking Co., Ltd. *v.* Newman & Calton (Ir.); **26.** *Guar.* p. 10
Northern Cartage & Contracting Co., Ltd., *Re* (Can.); **7.** *Bldg. Conts.* p. 23
Northern Construction Co. *v.* R. (Can.); **7.** *Bldg. Conts.* p. 22; **16.** *Cr. Pract.* p. 26
Northern Crown Bank *v.* Woodcrafts, Ltd. (Can.); **3.** *Bank.* p. 46
Northern Electric & Manufacturing Co., Ltd. *v.* Cordova Mines, Ltd. (Can.); **9.** *Coys.* p. 32
Northern Electric Co., Ltd. *v.* Canadian Pacific Ry. Co. & Fillmore Rural Telephone Co., Ltd. & Wiberg (Can.); **8.** *Carr.* pp. 3, 4
— *v.* Kelly (Can.); **36.** *Negl.* p. 16
Northern Electric Co., Ltd. & Western Electric Co. Inc. *v.* Burkholder, Kelley & Burkholder & Kelley, Ltd. (Can.); **36.** *Pats.* p. 75
— *v.* Photo Sound Corpn. & Perkins (Can.); **36.** *Pats.* p. 81
Northern Fish Co. *v.* Winnipeg Cold Storage, Ltd. (Can.); **18.** *Distr.* p. 30
Northern Grain Co. *v.* Canadian National Rys. & Grand Trunk Pacific Ry. (Can.); **8.** *Carr.* p. 2
— *v.* Goderich Elevator & Transit Co., Ltd. (Can.); **3.** *Bailmt.* p. 10
Northern Ireland Ministry of Labour *v.* Cowdy & Sons (Ir.); **24.** *Fact.* p. 50
Northern Life Assurance Co. & Fawcett, *Re* (Can.); **29.** *Insce.* p. 35
Northern Life Assurance Co. of Canada *v.* McMaster (Can.); **9.** *Coys.* p. 54; **42.** *Solrs.* p. 3
Northern Lumber Co., Ltd. *v.* Bleich, Nichols & Shepard (Can.); **6.** *B. of Exch.* p. 3
Northern Ontario Power Co., Ltd. *v.* La Roche Mines, Ltd. (1938); **20.** *Electric*, No. 39c
Northern Pipe Line Co. *v.* Canadian Gas Co. (Can.); **12.** *Contr.* p. 40
Northern Ry. Co. *v.* Lister (Can.); **12.** *Contr.* p. 11
Northern Securities Co. *v.* R. (Can.); **28.** *Inc. T.* p. 72
Northern Trust Co. *v.* Turner (Can.); **11.** *Const. L.* p. 76
Northern Trusts Co. *v.* McLean (Can.); **22.** *Evid.* p. 14
— *v.* Rasmussen (Can.); **17.** *Damgs.* p. 19
Northumbrian Shipping Co., Ltd. *v.* McCullum (1932); **34.** *Mast. & S.* No. 2354a
Northwest Co., Ltd. *v.* Merland Oil Co. of Canada, Ltd. & Gas & Oil Products, Ltd. (Can.); **34.** *Mines*, p. 206
Northwest Thresher Co. *v.* Bourdin (Can.); **35.** *Mtge.* p. 49
Northwestern Utilities, Ltd. *v.* Century Indemnity Co. (Can.); **18.** *Discy.* p. 12
— *v.* Edmonton (City) (Can.); **38.** *Pub. Auth.* p. 5
— *v.* London Guarantee & Accident Co., Ltd. (1936); **25.** *Gas*, No. 80a
Northwood *v.* London County Council (1926); **11.** *Comp. Pche.* No. 2222a
— *v.* London County Council (No. 2) (1927); **11.** *Comp. Pche.* Nos. 761a, 2222a
Norton, *Ex p.*, *Re* Gregory (Maundy) (1935); **5.** *Bkpcy.* No. 5562a
—, *Re*, Pinney *v.* Beauchamp (1929); **40.** *Sttlmts.* No. 3047a
— *v.* Fitzgerald (Can.); **2.** *Animals*, p. 63
— *v.* Nicholis (1858); **28.** *Injon.* No. 205a
— *v.* Taylor (Aus.); **17.** *Dep.* p. 67
— *v.* Trustee, *Ex p.*, *Re* Gregory (1935); **4.** *Bkpcy.* No. 5562a
Norton & Gregory, Ltd. *v.* Jacobs (1933); **36.** *Pats.* No. 2538a
— *v.* — (1937); **36.** *Pats.* No. 680d
Norval *v.* Noblett (Aus.); **25.** *Gaming*, p. 32
Norwich (Bp.), *Ex p.*, R. *v.* Daily Herald, Editor, Printers & Publishers of (1932); **16.** *Cntmpt.* No. 54a
Norwich Union Fire Insurance Society, Ltd. *v.* Leong (Can.); **29.** *Insce.* p. 6
Norwich Union Fire Insurance Society, Ltd. *v.* Price, Ltd. (1934); **29.** *Insce.* Nos. 2338a, 2468a
Norwich Union Life Insurance Society *v.* Embleton (1927); **28.** *Inc. T.* Nos. 25b, 50a
— *v.* Oke (Can.); **35.** *Mtge.* p. 46
Noseworthy *v.* Campbell (Can.); **21.** *Exon.* p. 45
Notes of Official Rulings 1928 (B) (1928); **36.** *Pats.* No. 700b
— 1929 (B) (1929); **36.** *Pats.* No. 1505b
— 1929 (A) (1929); **43.** *Trade Mks.* No. 285a
— 1932 (A) (1932); **36.** *Pats.* Nos. 1503a, 1505a
Notley *v.* Birmingham (Bp.) (1930); **19.** *Eccl.* No. 2355a
— *v.* — (No. 2) (1931); **19.** *Eccl.* Nos. 2355b, 2355c
Notox, Ltd., Application by, for a Trade Mark, *Re* (1930); **43.** *Trade Mks.* No. 152a
Nott Brothers & Co., Ltd. *v.* Barkley (Aus.); **17.** *Dep.* p. 59
Nottingham Corpn. *v.* Midland Ry. Co. (1922); **8.** *Carr.* No. 954a
Nottingham County Council *v.* Middlesex County Council (1936); **37.** *Poor L.* No. 778a
Nourse *v.* Canadian Canners, Ltd. (Can.); **7.** *B. of Sale*, p. 5
Nouvelles Huileries Anversoises S.A. *v.* Mann (H. C.) & Co. (1924); **1.** *Agcy.* No. 127a
Nova Sales Co. *v.* Canadian Pacific Ry. (Can.); **8.** *Carr.* p. 3
Nova Scotia Acceptance Corpn. *v.* Canada General Insce. Co. (Can.); **29.** *Insce.* p. 47
Nova Scotia Construction Co., Ltd. *v.* Quebec Streams Commission & Royal Bank of Canada (Can.); **35.** *Misrep.* pp. 5, 6

Nova Scotia Dredging Co., Ltd. *v.* Musgrave & Co. (Can.); **1.** *Agcy.* p. 102
Nova Scotia Fertilizer Co., Ltd. *v.* Nidar S.S. (Can.); **41.** *Ship.* p. 35
Nova Scotia Legislative Council, *Re* (No. 2) (Can.); **17.** *Dep.* p. 83
Nova Scotia Mining Co. *v.* Greener (Can.); **21.** *Exon.* p. 60
Nova Scotia, Mortgage Corpn. of *v.* Allen (Can.); **35.** *Mtge.* p. 47
Nova Scotia Power Commission & Bank of Nova Scotia, *Re* (Can.); **20.** *Electric*, p. 16
Nova Scotia Province *v.* Canadian National Railways (Can.); **38.** *Rys.* p. 45
Nova Scotia Steel & Coal Co., Ltd. *v.* Finance & Customs Minister (Can.); **28.** *Inc. T.* p. 75
Nova Scotia Trust Co., *Ex p.*, *Re* Excel Footwear Co. (Can.); **9.** *Coys.* p. 42
— *v.* Bishop, *Re* Steeves (Can.); **5.** *Bkpcy.* p. 73
— *v.* Smith (Can.); **44.** *Wills*, p. 45
— *v.* —, *Re* Smith's Estate (Can.); **44.** *Wills*, p. 47
— *v.* Starr Manufacturing Co. (Can.); **38.** *Rates*, p. 86
— *v.* United States Fidelity & Guarantee Co. (Can.); **24.** *Exors.* p. 42
Nowasad, *Re* (Can.); **38.** *Rates*, p. 86
Nowell *v.* Flannery, *Re* Hodgson (1936); **44.** *Wills*, No. 5764a
— *v.* Yellow Cab. Co., Ltd. (Can.); **36.** *Negl.* p. 16
Nowlin *v.* Anderson (Can.); **21.** *Exon.* p. 48
Nowroji Rustomji Wadia *v.* Bombay Government (Ind.); **17.** *Dep.* p. 84
Noyce, *Re*, *Ex p.* Minister of Agriculture, Mildura Co-operative Fruit Co., Ltd. *v.* Noyce (Aus.); **21.** *Exon.* p. 56; **38.** *Pub. Auth.* p. 6
Noyes *v.* Huron & Erie Mortgage Corpn. (Can.); **36.** *Nuis.* p. 47
Noyes Bros., Ltd. *v.* Oates (Aus.); **6.** *B. of Exch.* p. 15
Nuagin Car Service *v.* Reo Motors (Britain), Ltd. (1934); **43.** *Tresp.* Nos. 448b, 496a
Nugent *v.* Davies (Can.); **12.** *Contr.* p. 33
— *v.* Londonderry Collieries (1930); **34.** *Mast. & S.* No. 2128a
— *v.* McLellan (Can.); **31.** *L. & T.* p. 48
— *v.* Moore (Can.); **38.** *Real Prop.* p. 96
— *v.* Nugent (Ind.); **21.** *Exon.* p. 57
Number 108 Lancaster Gate & Law of Property Act, 1925 (Application for Discharge of Restriction), *Re* (1933); **40.** *S. Land*, No. 2807c
Nunan *v.* Southern Ry. Co. (1924); **8.** *Carr.* No. 685a
Nune Sivayya *v.* Maddu Ranganayakulu (Ind.); **39.** *S. Goods*, p. 52
Nunn, *In the Estate of* (1936); **44.** *Wills*, No. 1801a
— *v.* Hancock (1871); **39.** *S. Goods*, No. 334a
Nunneley *v.* Blatt (Can.); **1.** *Agcy.* p. 75
Nunnelly *v.* Onsum (Can.); **1.** *Agcy.* p. 78
Nur Ali *v.* R. (Ind.); **14.** *Crim.* p. 38
Nurse *v.* Pounford (1629); **32.** *Libel*, No. 2555a
Nuttall, *Re*, R. *v.* Sherrard (1888); **30.** *Intox.* No. 543
Nuttall & Tomchuk, *Re*, Tsang *v.* Local No. 816, Hotel & Restaurant Employees International Alliance (Can.); **16.** *Contmpt.* p. 6
Nyberg *v.* Provost Municipal Hospital Board (Can.); **13.** *Corpns.* p. 34; **34.** *Mast. & S.* pp. 1, 15; *Med.* p. 186; **36.** *Negl.* p. 29
Nykiforuk & Nykiforuk *v.* Conroy (Can.); **17.** *Deeds*, p. 33
Nyokana *v.* Nyokana (S. Af.); **27.** *H. & W.* p. 4

O.

O. K. Ladies' Garment Co. *v.* Edgecombe (Can.); **1.** *Agcy.* p. 94
Oakes *v.* Chalfont (1674); **37.** *Perps.* No. 166a
— *v.* Hindman (Can.); **34.** *Mast. & S.* p. 17
— *v.* Holliday (N.Z.); **34.** *Mast. & S.* p. 62
— *v.* Uzzell (1932); **22.** *Evid.* Nos. 4815a, 4834a, 5388a; **23.** *Exors.* Nos. 956a, 968a
Oakes (James) & Co. (Riddings Collieries), Ltd. *v.* Executive Board & Standard Tonnage Committee of Midland (Amalgamated) Scheme, 1930 (1935); **34.** *Mines*, No. 327w
Oakeshott *v.* Hawkins, *Re* Acklom (1929); **40.** *Stlmts.* No. 2739a
Oakey, *Ex p.*, R. *v.* North (1927); **19.** *Eccl.* No. 1280a
Oakhill *v.* Cowen (1934); **1.** *Agcy.* No. 1705b
Oakley *v.* Lyster (1931); **43.** *Trov.* No. 105a
— *v.* Whitehouse & Co. (Aus.); **8.** *Carr.* p. 3
— *v.* Wilson (1927); **31.** *L. & T.* No. 7352a
Oaks *v.* British North Western Fire Insurance Co. (Can.); **40.** *Set-off*, p. 23
Oakshott *v.* Hawkins, *Re* Adelom (1928); **40.** *Stlmts.* No. 2739a
Oamaru (Mayor) *v.* Clarke (N.Z.); **26.** *Hghys.* p. 26
Oates *v.* Union Government (S. Af.); **36.** *Negl.* p. 34
Oath before Justices Case (1611); **33.** *Mags.* No. 448a
Obalski Chibougamau Mining Co. *v.* Aero Insurance Co. (Can.); **29.** *Insce.* p. 58; **42.** *Str. Traf.* p. 62
Oberg *v.* Merchants Casualty Insurance Co. (Can.); **29.** *Insce.* p. 46
Oberth & Hospital Aid Act, *Re* (Can.); **38.** *Pub. Hlth.* p. 21
Obirek *v.* Bifrost Rural Municipality (Can.); **38.** *Pub. Auth.* p. 4
— *v.* Bifrost Rural Municipality & Coleman (No. 2) (Can.); **42.** *Solrs.* p. 5
Oblate Order of Mary Immaculate *v.* Pacific Great Eastern Ry. Co. (Can.); **11.** *Comp. Pche.* p. 9
O'Boyle & Rodgers *v.* A.-G. & General O'Duffy (Ir.); **17.** *Dep.* p. 88
O'Brian, Bell-Irving, Stone & Rook, Ltd. *v.* Bentham (Can.); **42.** *Stk. Ex.* p. 35
O'Brien, *Ex p.*, R. *v.* Secretary of State for Home Affairs (1923); **16.** *Cr. Pract.* Nos. 601, 801
— *v.* Dauphin Town (Can.); **26.** *Hghys.* p. 29
— *v.* Irving (Can.); **16.** *Courts*, p. 10
— *v.* McCoig (Can.); **32.** *Lien*, p. 26
— *v.* Mackintosh (Can.); **2.** *Agric.* p. 20
— *v.* Midland Loan & Savings Co. (Can.); **35.** *Mtge.* p. 42
— *v.* O'Brien (Can.); **22.** *Evid.* p. 20
— *v.* R. (Can.); **30.** *L. & T.* p. 44
— *v.* Royal George Co., Ltd. (Can.); **17.** *Dep.* p. 42
— *v.* Secretary of State for Home Affairs (1923); **16.** *Cr. Pract.* No. 470
— *v.* Stebbins & Mullen (Can.); **7.** *B. of Sales* p. 3; **12.** *Contr.* p. 18
— *v.* Wallace (Ir.); **31.** *L. & T.* p. 89
— *v.* Wellington (City) Corpn. (N.Z.); **38.** *Pub. Auth.* p. 5
O'Brien & Doheny *v.* R. (Can.); **16.** *Cr. Pract.* p. 26
O'Brien (M. J.), Ltd. *v.* Seaman Keni Co. (Can.); **2.** *Arbn.* p. 82
O'Broin *v.* Cox (Ir.); **33.** *Mkts.* p. 43
O'Callaghan *v.* O'Callaghan, *Re* MacDonald's Settlement (Aus.); **40.** *Stlmts.* p. 25

Ogden *v.* Medway Cinemas, Ltd. (1934); **28.** *Inc. T.* No. 225a
Ogilvie *v.* Barron (1925); **28.** *Inc. T.* No. 200a
— *v.* Finley (Can.); **3.** *Basty.* p. 65; **14.** *Crim.* p. 60
— *v.* McLeod (Can.); **26.** *Guar.* p. 4
Ogilvie & Sons of Scotland Benevolent Assocn., *Re* (Can.); **29.** *Insce.* p. 35
Ogilvie Flour Mills Co., Ltd. *v.* Becker (Can.); **21.** *Exon.* p. 48
— *v.* Canadian Credit Men's Trust Assocn., Ltd. (Can.); **5.** *Bkpcy.* p. 58
— *v.* Empire Bakery, Ltd. (Can.); **39.** *S. Goods*, p. 56
Ogilvie Flour Mills Co., Ltd. & Winnipeg (City), *Re* (Can.); **11.** *Comp. Pche.* p. 8
O'Gorman *v.* Paramount Film Service, Ltd. (1937); **13.** *Coprt.* No. 523c
O'Grady *v.* Bullcroft Main Collieries, Ltd. (1932); **28.** *Inc. T.* Nos. 248c, 248e
— *v.* McCaffray (Can.); **38.** *Rates*, p. 63
— *v.* Markham Main Colliery, Ltd. (1932); **28.** *Inc. T.* Nos. 248c, 248e
Ogston *v.* Reynolds, Sons & Co., Ltd. (1930); **28.** *Inc. T.* No. 217f
Ogus, *Re* (1936); **4.** *Bkpcy.* No. 2299a
O'Hagan, *Re*, O'Hagan *v.* Lloyds Bank, Ltd. (1932); **37.** *Perps.* No. 726a
O'Hanlon *v.* Cockx & Hughes (Can.); **39.** *S. Goods*, p. 56
O'Hearn, *Ex p.* (Can.); **30.** *Intox.* p. 8
Ohene Moore *v.* Akesseh Tayee (1935); **17.** *Dep.* No. 234d
Ohlson *v.* Weiss (Can.); **34.** *Mines*, p. 207
Oil Products Trading Co., Ltd. *v.* Société Anonyme Société de Gestion D'Entreprises Coloniales (1934); **2.** *Arbn.* No. 1802a
Okalta Oils, Ltd., *Re* (Can.); **34.** *Mines*, p. 208
Okanagan Loan & Investment Trust Co. *v.* McDonald & Royal Bank of Canada (Can.); **35.** *Mtge.* p. 41
O'Kane *v.* Mullan (Ir.); **22.** *Evid.* p. 11
O'Keefe *v.* London & Edinburgh Insurance Co., Ltd. (Ir.); **29.** *Insce.* p. 7
O'Keefe & Lynch of Canada, Ltd. *v.* Toronto Insurance & Vessel Agency, Ltd. (Can.); **17.** *Dep.* p. 69; **29.** *Insce.* p. 9
Okell Morris & Co. *v.* Dickson (Can.); **8.** *Chos.* p. 93
O'Kelly *v.* Harvey (Ir.); **15.** *Crim.* p. 78
Okrey *v.* Spangler (Can.); **16.** *Cr. Pract.* p. 42
Old *v.* Furness, Withy & Co., Ltd. (1934); **34.** *Mast. & S.* No. 2777b
Old Age Pensions Branch of Workmen's Compensation Board of Manitoba *v.* Jacobs (Can.); **44.** *Work*, p. 65
Old Kilpatrick Parish Council *v.* Kilmarnock Parish Council (Scot.); **37.** *Poor L.* p. 18
Oldfield *v.* Cobbett (1849); **16.** *Cntmpt.* No. 950a
Oldfield Estate, *Re*, *Re* Succession Duty Act (Can.); **21.** *E. D.* p. 21
Oldham, *Re*, Oldham *v.* Myles (1927); **23.** *Exors.* No. 5363b
— *v.* Sheffield Corpn. (1927); **26.** *Hghys.* No. 1191a
Olding *v.* Olding (1930); **27.** *H. & W.* No. 5452b
— *v.* — (1936); **27.** *H. & W.* No. 6184b; **33.** *Mags.* No. 435a
Oldright *v.* Grand Trunk Ry. Co. of Canada (Can.); **8.** *Carr.* p. 8
Oldroyd *v.* Turner (1935); **34.** *Mast. & S.* No. 2220b
Olds Discount Co., Ltd. *v.* Cohen (1937); **35.** *Money*, No. 290a
— *v.* John Playfair, Ltd. (1938); **35.** *Money*, No. 290b
O'Leary *v.* Smith (Can.); **7.** *Bounds. & F.* p. 18
Olivant's Claim, Haslam *v.* Cron (1871); **3.** *Basty.* No. 24a
Olive, *Re* (1863); **28.** *Infts.* No. 2167a
— *v.* Paynter (1932); **2.** *Agric.* Nos. 264b, 266dd
Olive & Partington, Ltd. *v.* Rose (1929); **28.** *Inc. T.* No. 99e
Olivegrove S.S. Owners *v.* Schuylkill Owners (1936); **41.** *Ship.* No. 6253b
Oliver, *Re* (Can.); **21.** *E. D.* p. 21
—, *Re*, Theobald *v.* Oliver (1927); **32.** *Limit. of A.* Nos. 1568a, 1584a
— *v.* Belik (Can.); **17.** *Damgs.* p. 19
— *v.* Birmingham & Midland Motor Omnibus Co., Ltd. (1933); **36.** *Negl.* No. 471a
— *v.* Chuter (1934); **28.** *Inc. T.* No. 489e
— *v.* Dickin (1936); **13.** *Coprt.* Nos. 603a, 652a
— *v.* Dickinson (N.Z.); **1.** *Agcy.* p. 51
— *v.* Kemp (Can.); **1.** *Agcy.* p. 74
— *v.* Oliver (Can.); **27.** *H. & W.* p. 51
— *v.* Saddler & Co. (1929); **36.** *Negl.* No. 662a
— *v.* United Colliers, Ltd. (Scot.); **34.** *Mast. & S.* p. 123
Oliver & Cook *v.* Nord & Nelson (Can.); **42.** *Str. Traf.* p. 61
Oliver, Ltd. *v.* Tavender (Can.); **39.** *S. Goods*, p. 60
Olivier *v.* Solloway, Mills & Co. (Can.); **30.** *L. & T.* p. 38
Olley *v.* Brown (1933); **28.** *Inc. T.* No. 25f
Olmstead *v.* E. A. Pierce & Co. (Can.); **42.** *Stk. Ex.* p. 31
— *v.* Scott (Can.); **1.** *Action*, p. 3
O'Loghlen, *Re*, *Ex p.* O'Loghlen (1871); **16.** *Courts*, No. 22d
O'Louchlin *v.* Grandjean (Can.); **33.** *Mal. Pros.* p. 40
Olsen *v.* Corry & Gravesend Aviation, Ltd. (1936); **34.** *Mast. & S.* Nos. 200a, 1733a
— *v.* Pearson (Can.); **1.** *Agcy.* p. 79
Olsen & Co. (Owners of The Hampholm) *v.* Princess Adelaide, The (Can.); **41.** *Ship.* pp. 52, 53
Olshansky *v.* Dominion Motor Co. (Can.); **1.** *Agcy.* p. 97
Olson *v.* Pollard (Can.); **3.** *Basty.* p. 64
Olstead *v.* Coal Valley School District No. 1053 (Can.); **19.** *Educ.* p. 40
Olympia Cafe Co., Ltd., *Re*, *Ex p.* Bedali (Can.); **4.** *Bkpcy.* pp. 24, 38
Olympia (Liverpool), Ltd. *v.* Moss' Empires, Ltd. (1938); **31.** *L. & T.* No. 4828b
Olympic Reinsurance Co., *Re*, Pole's Case (1920); **1.** *Agcy.* No. 3040a
Olynyk *v.* Olynyk (Can.); **27.** *H. & W.* p. 64
O'Malley *v.* Gorman (Aus.); **25.** *Gaming*, p. 27
O'Mealey *v.* Swartz (Can.); **2.** *Animals*, p. 71
O'Neil *v.* Dominion Coal Co. (Can.); **17.** *Damgs.* p. 5
— *v.* M'Kerracher (Scot.); **34.** *Mast. & S.* p. 53
O'Neill, *Re*, *Ex p.* Goulding (1829); **6.** *B. of Exch.* No. 701b
— *v.* Bradley (Ir.); **36.** *Pats.* p. 114
— *v.* Ford Shapland & Co., Ltd. (1932); **34.** *Mast. & S.* No. 3541b
— *v.* Great Western Ry. Co. (Can.); **8.** *Carr.* p. 3
— *v.* Lye (N.Z.); **6.** *B. of Exch.* p. 19
— *v.* Murphy (Ir.); **12.** *Contr.* p. 18
— *v.* Pupuke Golf Club, Incorporated (N.Z.); **8.** *Clubs*, p. 98
— *v.* Transport & General Workers' Union (Ir.); **43.** *Trade*, p. 9
O'Neill, etc., *Re* (N.Z.); **11.** *Confl.* p. 33
Ontario & Minnesota Power Co. *v.* Fort Frances, *Re* (Can.); **38.** *Rates*, p. 76
Ontario Co-operative Stone Cutters' Assocn. *v.* Clarke (Can.); **13.** *Corpns.* p. 32

Ontario Equitable Law & Accident Insurance Co. *v.* Baker (Can.); **12.** *Contr.* p. 46; **21.** *Estpl.* p. 36
Ontario Fidelity Trust Co. *v.* Purdom & Northern Life Assurance Co. of Canada (Can.); **20.** *Eqy.* p. 29
Ontario Jockey Club, Ltd. *v.* McBride (Can.); **9.** *Coys.* p. 21
Ontario Jockey Club *v.* Toronto (Can.) (1932); **38.** *Rates*, p. 49
— *v.* Toronto (Can.) (1935); **38.** *Rates*, p. 82
Ontario Power Co. *v.* Stamford (Can.); **38.** *Rates*, p. 52
Ontario Wind Engine & Pump Co. *v.* Bobo (Can.); **25.** *Fraud. Conv.* p. 14
Oppenheim & Co. *v.* Mahomed Haneef (1922); **2.** *Arbn.* Nos. 1857a, 1912a, 1950a, 1960b, 2056a
— *v.* — (Ind.); **2.** *Arbn.* p. 100; **11.** *Confl.* p. 53
Oppenheimer *v.* Louis Rosenthal & Co., A.-G. (1937); *Pract.* No. 626b
— *v.* Moola (Ind.); **10.** *Coys.* p. 79
Oram, *Re*, *Ex p.* Brady (Aus.); **13.** *Crnrs.* p. 24
— *v.* Oram (S. Af.); **27.** *H. & W.* p. 20
Orange Crush (Australia), Ltd. *v.* Gartrell (Aus.) (1928), 41 C. L. R. 282; **43.** *Trade Mks.* p. 44
— *v.* — (Aus.) (1928), 28 S. R. N. S. W. 392; **43.** *Trade Mks.* p. 19
Orange, Ltd. *v.* Jennings (1935); **8.** *Carr.* No. 1495
Orchard *v.* Connaught Club (1930); **8.** Clubs, No. 91a
Orchardson *v.* Dominion Bank (Can.); **35.** *Misrep.* p. 4
Orchiston *v.* Schlaepfer (N.Z.); **26.** *Guar.* p. 10
Ord, *Re*, Wilkins *v.* National Drug & Chemical Co. (Can.); **7.** *B. of Sale*, p. 8
— *v.* Burkus (1843); **34.** *Mast. & S.* No. 2124a
— *v.* Public Utilities Commission of Mitchell (Can.); **31.** *L. & T.* p. 85
O'Regan, *Ex p.*, *Re* Huntley (Aus.); **14.** *Crim.* p. 9
O'Reilly *v.* Canadian Accident & Fire Assurance Co. (Can.); **29.** *Insce.* p. 57
— *v.* Doherty (Ir.); **31.** *L. & T.* p. 74
— *v.* O'Reilly (Can.); **23.** *Exors.* p. 18
— *v.* Prudential Assurance Co., Ltd. (1934); **29.** *Insce.* No. 3104b
O'Reilly & Belanger, Ltd. *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 36
O'Reilly (T. E.), Ltd., *Re* (Can.); **9.** *Coys.* p. 5
O'Reilly's Will, *Re* (Aus.); **23.** *Exors.* p. 7
Orenczuk *v.* Dolinsky (Can.); **25.** *Gifts*, p. 50
Orient Steam Navigation Co., Ltd. *v.* Gleeson (Aus.); **17.** *Dep.* p. 61
Oriental Holdings Pty., *Re* (Aus.); **10.** *Coys.* p. 78
Orlando *v.* Orlando (Can.); **27.** *H. & W.* p. 58
Orleans *v.* Leeston Shipping Co., Ltd. (1919); **41.** *Ship.* No. 1764a
Orlebar, *Re*, Orlebar *v.* Orlebar (1936); **40.** *Sttlmts.* No. 2739b
Orloff *v.* Kippan (Can.); **6.** *B. of Exch.* p. 25
Ormond *v.* Holmes & Co., Ltd. (1937); **34.** *Mast. & S.* No. 2314a
Ormond Engineering Co., Ltd. *v.* Knopf (1932); **43.** *Trade Mks.* No. 1109a
Ormond Investment Co. *v.* Betts (1928); **28.** *Inc. T.* No. 450b; **42.** *Stats.* No. 766a
Ormonde *v.* Brown (1932); **28.** *Inc. T.* No. 576d
Ormonoids Roofing & Asphalts, Ltd. *v.* Bitumenoids, Ltd. (Aus.); **34.** *Mast. & S.* p. 11
Ormrod's Settled Estate, *Re* (1892); **40.** *Sttlmts.* No. 2243b
Ornen, The (1900); **41.** *Ship.* No. 5935b
Orpen, *Re*, *Re* British Provident Life & Fire Assurance Society (1863); **9.** *Coys.* No. 2299b
— *v.* Dyer (Can.); **7.** *B. of Sale*, p. 5
— *v.* Haymarket Capitol, Ltd. (1931); **13.** *Corpns.* No. 903b; **15.** *Crim.* No. 8177a
— *v.* New Empire, Ltd. (1931); **42.** *Time*, No. 127a
Orpen's Case, *Re* British Provident Life & Fire Assurance Co. (1863); **9.** *Coys.* No. 2299b
Orpheum Theatrical Co. *v.* Vulcan Engineering Construction Co. (Can.); **12.** *Contr.* p. 20
Orpington Urban District Council *v.* Brooker (1934); **26.** *Highys.* No. 2367c
Orr, *Re* (Can.); **28.** *Infts.* p. 137
—, *Re* (Ir.); **4.** *Bkpcy.* p. 38
— *v.* Bennett & White Construction Co., Ltd. (Can.); **34.** *Mast. & S.* p. 8
— *v.* Krepsky (Can.); **16.** *Cr. Pract.* p. 39
— *v.* Strathern (Scot.); **42.** *Str. Traf.* p. 48
Ortmans *v.* Burke, *Re* Nicholson's Will Trusts (1936); **43.** *Trusts*, No. 3592a
Ortner *v.* Automobile Insurance Co. of Australia, Ltd. (Aus.); **29.** *Insce.* p. 57
Orton *v.* Pangman Rural Telephone Co., Ltd. (Can.); **34.** *Mast. & S.* p. 117
Orzy, *Re* (Can.); **4.** *Bkpcy.* p. 31
Osadchuk *v.* Russniak (Can.); **2.** *Animals*, pp. 59, 63
Osborn, *Re*, *Ex p.* Trustee (1932); **5.** *Bkpcy.* No. 6116b
— *v.* Boulter (Thomas) & Son (1930); **32.** *Libel*, Nos. 26a, 1084a
— *v.* Osborn (otherwise Ivil) (1926); **27.** *H. & W.* No. 6026a
— *v.* Swyer (1934); **28.** *Inc. T.* No. 526b
Osborne, *In the Goods of* (1855); **11.** *Confl.* No. 587a
—, *Re* (Aus.); **44.** *Wills*, p. 53
— *v.* Automatic Bottle Makers, *Re* Automatic Bottle Makers (1926); **10.** *Coys.* No. 4730a
— *v.* Martin (1927); **19.** *Educ.* No. 88a
— *v.* Osborne (*circa* 1814); **2.** *Agric.* No. 846a
— *v.* Richards (1933); **42.** *Str. Traf.* Nos. 76c, 76h
Osbourne *v.* Dent (J. M.) & Sons, Ltd. (1925); **13.** *Coprt.* No. 325c
Osburn *v.* Leggett (Aus.); **7.** *Bldg. Conts.* p. 30
Ose Gesellschaft, etc. *v.* Jewish Colonial Trust (1927); **3.** *Bank.* No. 298a
O'Shaughnessy *v.* Quick Service Stations, Ltd. (Aus.); **2.** *Arbn.* p. 83
Osler *v.* Hall & Co. (1932); **28.** *Inc. T.* Nos. 204m, 210b
Osman, *Re* (S. Af.); **1.** *Agcy.* p. 53; **4.** *Bkpcy.* p. 11
Osman Jamal & Sons *v.* Gopal Purshattam (Ind.); **5.** *Bkpcy.* p. 54; **26.** *Guar.* p. 15
Osmond *v.* Woolley (1917); **2.** *Arbn.* Nos. 1825a, 1839b
Osram Lamp Works *v.* Pope's Electric Lamp Co., Ltd. (1914); **18.** *Discy.* No. 1631b
Osry *v.* Hirsch (S. Af.); **1.** *Agcy.* p. 73
Ossemsley Estates, Ltd., *Re* (1937); **40.** *S. Land*, No. 567a
Ostapowicz's Estate, *Re* (Can.); **38.** *Real Prop.* p. 90
Ostevik *v.* Pioneer Grain Co., Ltd., *Re* Niccum *v.* Ostevik (Can.); **32.** *Lien*, p. 22
Ostrander *v.* Michigan Central Railroad Co. & Pere Marquette Ry. Co. (Can.); **38.** *Rys.* pp. 37, 38
Ostrander & Co., Ltd. *v.* Canadian Credit Men's Trust Assocn., *Re* Badger's Estate (Can.); **4.** *Bkpcy.* p. 29
Ostrom *v.* Benjamin (Can.); **16.** *Courts*, p. 10

Ostrom *v.* Miyako, The (Can.); **1.** *Adm.* p. 24
O'Sullivan *v.* Great Western Ry. Co. (1937); **8.** *Carr.* No. 1557
— *v.* Harty (Can.); **24.** *Exors.* p. 40
— *v.* Limerick County Council (Ir.); **38.** *Pub. Auth.* p. 13
— *v.* Loughnan (Ir.); **35.** *Mtge.* p. 33
— *v.* Robbins, *Re* Lewis's Will Trusts (1937); **44.** *Wills*, No. 5286a
O'Sullivan State *v.* Circuit Court Judge of Cork (Ir.); **25.** *Fish*, p. 4
Oswald Tillotson, Ltd. *v.* Inland Revenue Comrs. (1933); **9.** *Coys.* No. 2589a
Oswalt *v.* King (Can.); **1.** *Agcy.* p. 70
Osway *v.* Bristow (1711); **18.** *Distr.* No. 1732b
Otago Farmers Co-operative Assocn. of New Zealand, Ltd. *v.* McGowan (N.Z.); **7.** *B. of Sale*, p. 8
O'Toole *v.* O'Toole (1926); **27.** *H. & W.* No. 2765a
Otranto, The, Kitano Maru S.S. Owners *v.* Otranto S.S. Owners (1931); **1.** *Adm.* No. 1198d; **41.** *Ship.* No. 5935c
Ottawa (City) *v.* Canadian National Rys. (Can.); **38.** *Rates*, p. 68
— *v.* Grand Trunk Ry. Co. (Can.); **17.** *Dep.* p. 75
— *v.* Kemp (Can.); **38.** *Rates*, p. 76
— *v.* Ottawa & New York Ry. Co. (Can.); **17.** *Dep.* p. 75
— *v.* Ottawa Electric Co. (Can.); **43.** *Tram.* p. 48
— *v.* Ottawa Electric Ry. Co. (Can.), [1936] 3 D. L. R. 301; **43.** *Tram.* p. 48
— *v.* — (Can.), [1936] 4 D. L. R. 558; **30.** *Jdgmts.* p. 24
— *v.* Trew, *Re* Zimmon (Can.); **4.** *Bkpcy.* p. 38
— *v.* Wilson (Can.); **38.** *Rates*, p. 50
Ottawa & Gloucester Road Co. & County of Carleton, *Re* (Can.); **11.** *Comp. Pche.* p. 5
Ottawa Collegiate Institute, *Re* (Can.); **21.** *Estpl.* p. 23
Ottawa Corpn. *v.* Ottawa Public School Board (Can.); **38.** *Rates*, p. 50
Ottawa Electric Ry. Co. *v.* Federal District Commission (Can.); **19.** *Easmt.* p. 1
— *v.* Ottawa (Can.); **35.** *Mistake*, p. 13; **43.** *Tram.* p. 48
Ottawa Gas Co. *v.* Ottawa City (Can.); **38.** *Pub. Auth.* p. 2
Ottawa Valley Power Co. *v.* A.-G. for Ontario (Can.); **17.** *Dep.* p. 57
— *v.* Hydro-Electric Power Commission (Can.); **17.** *Dep.* p. 57
Ottawa Valley Ry. Co. *v.* Central Ry. Co., Ltd. (Can.); **38.** *Rys.* p. 35
Otte *v.* R. (1924); **17.** *Dep.* No. 108a
Ottewill *v.* Alaska Ice Cream Co., Ltd. (Aus.); **2.** *Animals*, p. 61
Otto *v.* Bolton & Norris (1936); **7.** *Bldg. Conts.* Nos. 36g, 36h; **40.** *S. Land*, No. 2922d
Ottokar, The (1921); **1.** *Adm.* No. 1613a
Ottoman Bank *v.* Chakarian (1930); **34.** *Mast. & S.* Nos. 470b, 481b; **35.** *Money*, No. 52a
— *v.* Jebara (1928); **1.** *Agcy.* No. 215c; **2.** *Aliens*, No. 402a; **35.** *Money*, No. 17c
Ottoman Bank of Nicosia *v.* Chakarian (1938); **35.** *Money*, No. 52b
— *v.* Dascalopoulos (1934); **35.** *Money*, No. 15a
Otway *v.* Braithwaite (1679); **40.** *Stllmts.* 386a
Ouderkirk *v.* Ouderkirk & Ouderkirk (Can.); *Lunat.* p. 13
Ouellette *v.* Comr. of Excise (Can.); **30.** *Intox.* p. 16
Oughton *v.* Osepreghy (Can.); **40.** *S. Land*, p. 10
Outen *v.* Stewart, Grant & Winnipeg (City) (Can.); **17.** *Dep.* p. 43; **42.** *Stats.* p. 28
Outerbridge *v.* Outerbridge (1927); **27.** *H. & W.* Nos. 6230a, 6242c
Outhouse & Himmelman *v.* Thorshavn, The (Can.); **1.** *Adm.* p. 25
Outram & Co. *v.* Inland Revenue (Scot.); **38.** *Rates*, p. 53
Overby *v.* McLean (Can.); **21.** *Exon.* p. 48
Overend, Gurney & Co. *v.* Gibb (1872); **24.** *Exors.* No. 6770a
— *v.* Gurney (1869); **24.** *Exors.* No. 6770a
Overn *v.* Strand (Can.); **21.** *Exon.* p. 43
— *v.* — (No. 2) (Can.); **16.** *Cntmpt.* p. 7
Overseers of the Poor *v.* Cameron (Can.); **3.** *Basty.* p. 65
— *v.* Marryatt (Can.); **14.** *Crim.* p. 13
— *v.* Rondeau (Can.); **3.** *Basty.* p. 63
Overton *v.* Gerrity (Can.); **21.** *Exon.* p. 46
Overy *v.* Ashford, Dunn & Co., Ltd. (1933); **28.** *Inc. T.* No. 222b
Owen *v.* Beecher (Aus.); **31.** *L. & T.* p. 66
— *v.* Benson, *Re* Turkington (1937); **8.** *Char.* No. 1085a
— *v.* Burrell (N.Z.); **34.** *Mast. & S.* p. 41
— *v.* Campbell, *Re* Mills (Can.); **28.** *Infts.* p. 132
— *v.* John Baker & Bessemer, Ltd. (1932); **34.** *Mast. & S.* No. 2951b
— *v.* Lavery (1900); **5.** *Bkpcy.* No. 8172a
— *v.* Lynch (Can.); **21.** *Exon.* p. 51
— *v.* Owen (1831); **21.** *Exon.* No. 1576e
— *v.* — (N.Z.); **11.** *Confl.* p. 52
— *v.* Pritchard (1876); **16.** *Cntmpt.* No. 406a
— *v.* Robinson (otherwise Owen) (N.Z.); **11.** *Confl.* p. 52
— *v.* Routh & Ogle (1854); **17.** *Damgs.* No. 404e
— *v.* Sykes (1936); **17.** *Damgs.* No. 648a
Owen & Smith (trading as Nuagin Car Service) *v.* Reo Motors (Britain), Ltd. (1934); **43.** *Tresp.* Nos. 448b, 496a
Owen Sound Building & Savings Society *v.* Meir (Can.); **32.** *Libel.* p. 6
Owen Sound Transportation Co. *v.* Tackaberry (Can.); **17.** *Dep.* p. 74
Owen's Patent, *Re* (1928); **36.** *Pats.* No. 1687e
Owens *v.* Cranston (Can.); **42.** *Str. Traf.* p. 39
— *v.* Dobson (Can.); **33.** *Lunat.* p. 20
— *v.* Green (Ir.); **25.** *Gifts*, p. 48
— *v.* Inglis (1933); **28.** *Inc. T.* No. 496d
— *v.* Liverpool Corpn. (1938); **17.** *Damgs.* No. 152a
— *v.* Llay Main Collieries, Ltd. (1932); **34.** *Mast. & S.* Nos. 2855b, 3283j
— *v.* Martindale (Can.); **30.** *Juries*, p. 33; **33.** *Mal. Pros.* p. 41
Oxenham, *Re* (Can.); **24.** *Exors.* p. 34
— *v.* Collins (1860); **42.** *Solrs.* No. 626a
Oxford (Bp.), *Ex p.*, *Re* Sneyd (1883); **30.** *Jdgmts.* No. 337
Oxford & Worcester Extension & Chester Junction Ry. Co., *Re*, Potter's Case (1849); **10.** *Coys.* No. 6137a
Oxford Corpn. *v.* Oxford Electric Co., Ltd. (1930); **20.** *Electric*, No. 106b
Oxfordshire County Council, *Ex p.*, R. *v.* Radcliffe (Judge) (1915); **33.** *Lunat.* No. 1900a
— *v.* Oxford City Council (1938); **33.** *L.G.* No. 117a
Oxlade *v.* Great Western Ry. Co. (1937); **8.** *Carr.* No. 1560
Oxley, *Re* (1932); **43.** *Trade Mks.* No. 1054a
O'Young & Lum *v.* Reid & Co., Ltd. (Aus.); **26.** *Guar.* p. 2

P.

P., *Re* (Can.); **3.** *Basty.* p. 59
—, *Re* (Ir.); **33.** *Lunat.* p. 16

P. *v.* P. (1927); **27.** *H. & W.* No. 4354b
— *v.* P. (1929); **27.** *H. & W.* No. 4873a
— *v.* —, *Re* (Can.); **27.** *H. & W.* p. 44
P. E. I. Agricultural Mutual Fire Insurance Co. *v.* Cairns (Can.); **35.** *Mtge.* p. 42
P. L. T. A. R. Chettyar Firm *v.* Maung Kyaing (Ind.); **38.** *Real Prop.* p. 96
P. R. M. P. R. Chettyar *v.* Muniyandi Servai (Ind.); **1.** *Agcy.* p. 104
Pacey, *Re* (Can.); **38.** *Real Prop.* p. 94
Pachal *v.* Markham (Can.); **25.** *Fraud. Conv.* p. 13
Pacheco de Cespedes *v.* McCandlish (1935); **27.** *H. & W.* No. 643c
Pachkowsky *v.* Andrews (Can.); **43.** *Tresp.* p. 50
Pacific Berry Growers, Ltd. *v.* Western Packing Corpn., Ltd. (Can.); **9.** *Coys.* p. 48
Pacific Coast Coal Freighters, Ltd. *v.* Westchester Fire Insurance Co. of New York (Can.); **29.** *Insce.* pp. 15, 24
— *v.* Western Assurance Co. (Can.); **29.** *Insce.* pp. 15, 24
Pacific Coast Coal Mines, Ltd. *v.* Arbuthnot (Can.); **9.** *Coys.* p. 40
Pacific Coast Coal Mines, Ltd. & Hodges, *Re* (Can.); **9.** *Coys.* pp. 32, 48
Pacific Finance Co., Ltd. *v.* Freeman Co., Ltd. (Can.); **35.** *Mistake*, p. 12
— *v.* Ireland (Can.); **39.** *S. Goods*, p. 57
Pacific Great Eastern Ry. Co. *v.* Clinton, The (Can.); **1.** *Adm.* p. 22
Pacific Great Eastern Ry. Co.'s Case, *Re* National Benefit Assurance Co., Ltd. (Can.); **10.** *Coys.* pp. 98, 106
Pacific Salvage Co., Ltd., & Vancouver Drydock & Salvage Co., Ltd. *v.* M.S. Tex, The (Can.); **41.** *Ship.* p. 67
Pacific Stages, Ltd. *v.* Jones (Can.); **36.** *Negl.* p. 3
Pacific Steam Navigation Co. (Bogota *v.* Anglo Newfoundland Development Co., Ltd. (Alconda (Owners)) (Scot.); **1.** *Adm.* p. 37
Pacifico, The *v.* Winslow Marine Railway & Shipbuilding Co. (Can.); **1.** *Adm.* pp. 23, 40
Packe *v.* Clifton (1936); **27.** *H. & W.* No. 5399b
Packer, *Re* (Can.); **5.** *Bkpcy.* p. 83
— *v.* Clayton (1932); **3.** *Basty.* No. 337a
Pacy *v.* Field (1937); **2.** *Animals*, No. 209a
Paddington Borough Council *v.* Finucane (1928); **38.** *Pub. Hlth.* No. 502b
Paddington Vestry *v.* Bramwell (1880); **26.** *Hghys.* No. 2170a
Paddon *v.* McFarland & McFarland & Goldberg (Can.); **39.** *S. Goods*, p. 56
Padstow Total Loss & Collision Assurance Assocn., *Re* (1882); **10.** *Coys.* No. 6756a
Paffard *v.* Cavotti (Can.); **17.** *Damgs.* pp. 5, 17
Page *v.* Australasian Temperance & General Mutual Life Assurance Society, Ltd. (Aus.); **34.** *Mast. & S.* p. 24
— (Handley) *v.* Butterworth (1935); **28.** *Inc. T.* No. 97c
— *v.* Commonwealth Life Assurance Society, Ltd. (Aus.); **10.** *Coys.* p. 88
— *v.* Godden (1818); **5.** *Bkpcy.* No. 7653a
— *v.* Liverpool Victoria Friendly Society (1927); **25.** *Fr. Soc.* No. 109a
— *v.* Proctor (Can.); **39.** *S. Goods*, p. 33
— *v.* Richards & Draper (1920); **36.** *Negl.* No. 389a
— *v.* St. John's Corpn. (Can.); **3.** *Auct.* p. 1
— *v.* Scottish Insurance Corpn. (1929); **29.** *Insce.* No. 3217c
— *v.* Sully (1918); **3.** *Auct.* Nos. 293a, 301a
Page Hersey Iron Tube & Lead Co. *v.* Great West Natural Gas Corpn. (Can.); **18.** *Discy.* p. 18
Paget, *Re*, *Ex p.* Official Receiver (1927); **5.** *Bkpcy.* No. 5495a
— *v.* Inland Revenue Comrs. (1938); **28.** *Inc. T.* No. 674mm
Pahiatua County Council *v.* Akitio County Council (N.Z.); **41.** *Sewers*, p. 2
Pain *v.* Cobb (1931); **31.** *L. & T.* No. 7107c
Paine *v.* Colne Valley Electricity Supply Co., Ltd., & British Insulated Cables, Ltd. (1938); **24.** *Fact.* No. 74a
Paine & Co., Ltd. *v.* St. Neots Gas & Coke Co. (1938); **19.** *Easmt.* No. 1339a
Painter *v.* City & South London Ry. Co. (1926); **34.** *Mast. & S.* No. 2448a
— *v.* Hodgkin (No. 2) (Can.); **23.** *Exors.* p. 6
— *v.* McCabe (Can.); **28.** *Infts.* p. 139
— *v.* O'Connell (Aus.); **38.** *Pub. Hlth.* p. 32
— *v.* Reed (Aus.); **36.** *Nuis.* p. 44
Painter's Case, *Re* Great North Insurance Co. (Can.); **9.** *Coys.* p. 16
Paisley, *Re* (Can.); **16.** *Cr. Pract.* p. 30; **28.** *Infts.* p. 138
Paisley Assessor *v.* Inland Revenue (Scot.); **38.** *Rates*, p. 56
Pakenham *v.* Pakenham (1937); **27.** *H. & W.* No. 5071a
Pakenham Upper Fruit Co., Ltd. *v.* Crosby (Aus.); **28.** *Injon.* p. 149
Palaniandi Chetti *v.* Adaikalam Chetti (Ind.); **2.** *Arbn.* p. 74
Palembang, The (1929); **41.** *Ship. No.* 5648a
Paleokas (or Pollock) *v.* Mount Vernon Colliery Co., Ltd. (1931); **34.** *Mast. & S.* No. 2499a
Paley (Princess Olga) *v.* Weisz (1929); **11.** *Const. L.* No. 387c; **38.** *Pub. Auth.* No. 66a
Palfrey *v.* Brown (Can.); **32.** *Lien*, p. 27
Palin *v.* Gathercole (1844); **13.** *Corpt.* No. 367a
— *v.* Ponting (1930); **22.** *Evid.* Nos. 1060a, 5309a, 5571a; **44.** *Wills*, No. 839a
Paling *v.* Ponting (1930); **44.** *Wills*, No. 839a
Paliuk *v.* Masoruk & Masoruk (Can.); **27.** *H. & W.* p. 16
Pallone *v.* Chickowski (Can.); **30.** *L. & T.* p. 42
Palmer *v.* Carey (1926); **8.** *Chos.* No. 258a
— *v.* Cattermole (1937); **28.** *Inc. T.* No. 569c
— *v.* Christie (Can.); **1.** *Agcy.* p. 73
— *v.* Crone (1927); **18.** *Distr.* No. 1419a
— *v.* Harvey (Can.); **1.** *Agcy.* p. 81
— *v.* Hendrie (No. 2) (1860); **35.** *Mtge.* No. 2665
— *v.* Watts, Watts & Co. (1937); **34.** *Mast. & S.* No. 3283q
Palmer & Co. *v.* Dimor, Marcus & Dimor (Can.); **36.** *Prtnrs.* p. 59
Palmer & Co., Ltd. *v.* Pilot Trading Co., Ltd. (1929); **2.** *Arbn.* No. 1722a; **17.** *Custom*, No. 703a
Palmer & Roberts *v.* Knight, *Re* Drage (J.) & Sons (1926); **5.** *Bkpcy.* Nos. 7166a, 7237a
Palmolive Manufacturing Co. (Ontario), Ltd. *v.* R. & Solgate-Palmolive-Peet Co., Ltd. (Can.); **39.** *Revenue*, p. 14
Palmolive Trade Mark, *Re* (1931); **43.** *Trade Mks.* No. 25a
Palter *v.* Great West Life Assurance Co. (Can.); **29.** *Insce.* p. 31
Palter Cap Co. *v.* Great West Life Assce. Co. (Can.); **22.** *Evid.* p. 5
Paludina, The (1925); **1.** *Adm.* No. 1114a
Paludina, The, Singleton Abbey S.S. Owners *v.* Paludina S.S. Owners (1927); **17.** *Damgs.* No. 287a
Panagos Lyras S.S. Owners *v.* Joint Danube & Black Sea Shipping Agencies of Braila (1931); **41.** *Ship.* No. 4048a
Panapa Warhopi, *Re* (N.Z.); **43.** *Trusts*, p. 64

Pandit Durgamissa *v.* Baljnathsaran (Ind.); **35.** *Mtge.* p. 49
Panicali & Brenni's Patent, *Re* (1927); **36.** *Pats.* No. 1997a
Panna Lal, *Re*, *Re* Dehra Dun-Mussoorie Electric Tramway Co., Ltd. (Ind.); **10.** *Coys.* p. 74
Pannill Door Co., Ltd. *v.* Stephenson (Can.); **32.** *Lien*, p. 26
Pap-Wee-In *v.* Beaudry (Can.); **43.** *Tresp.* p. 51
Papadopoulos *v.* Papadopoulos (1930); **11.** *Confl.* Nos. 828a, 946b, 954a, 1122a
— *v.* — (1936); **27.** *H. & W.* No. 2973a
Paper Sacks Pty., Ltd. *v.* Cowper (Aus.); **36.** *Pats.* p. 76
Papineau *v.* Guard (Can.); **17.** *Deeds*, p. 28
Pappas, *Re* (Can.); **2.** *Aliens*, p. 49
Paquet Co., *Ex p.*, *Re* Vogue Fur Shop, Ltd. (Can.); **5.** *Bkpcy.* p. 70
Paquet Co., Ltd. *v.* Wiese & Krant (Can.); **21.** *Exon.* p. 58
Paquin, Ltd. *v.* John Barker & Co., Ltd. (1934); **43.** *Trade Mks.* No. 1238a
Paradis *v.* Federal Grain Co., Ltd. (Can.); **17.** *Damgs.* p. 13
— *v.* R. (Can.); **14.** *Crim.* p. 37
Paradis & Sons *v.* Silesse (Can.); **12.** *Contr.* p. 46
Parak *v.* R. (S. Af.); **5.** *Bkpcy.* p. 88
Paramount Theatres, Ltd. *v.* Brandenberger (Can.); **20.** *Eqy.* p. 20; **30.** *L. & T.* p. 41; **38.** *Real Prop.* p. 95
Parashuram Dattaram Sham-Dasani *v.* Tata Industrial Bank, Ltd. (Ind.) **10.** *Coys.* p. 83
Parashuran Dataram *v.* Cocke (Ind.); **33.** *Mags.* p. 23
Parbati Charanmukherjee *v.* Amarendra Nath Bhattacharjee (Ind.); **12.** *Contr.* p. 33
Pardee *v.* Humberstone Summer Resort Co. of Ontario, Ltd. (Can.); **9.** *Coys.* p. 49
Parent Trust & Finance Co., Ltd., *Re* (1936); **21.** *Estpl.* No. 813a; **26.** *Guar.* No. 561a
—, *Re*, Greer *v.* Kettle (1937); **26.** *Guar.* No. 561a
Parenteau *v.* Harris (Can.); **21.** *Exon.* p. 45
Paris, *Re* (Can.); **33.** *Mags.* p. 29
— *v.* Ledingham (Can.); **36.** *Pats.* p. 103
Park, *Re*, Bott *v.* Chester (1921); **3.** *Barr.* No. 220a
—, *Re*, Public Trustee *v.* Armstrong (1932); **37.** *Powers*, No. 1151a
— *v.* Austin, *Re* Saunders (N.Z.); **22.** *Evid.* p. 9
— *v.* Berkery (Aus.); **29.** *Inns.* p. 3
— *v.* Wilsons & Clyde Coal Co. (Scot.); **34.** *Mast. & S.* p. 2; *Mines*, p. 211
Park & Percival *v.* Evans (1615); **21.** *Exon.* No. 582a
Park Ward & Co., Ltd., *Re* (1926); **10.** *Coys.* Nos. 5186b, 5841a, 6823a
Parkdale Boulevard, Ltd. & Province of Ontario, *Re*, *Re* Torrance & Province of Ontario, *Re* Noble & Province of Ontario (Can.); **11.** *Comp. Pche.* p. 5
Parke *v.* Riley (Can.); **21.** *Exon.* p. 50
Parke & Percival *v.* Evans (1615); **21.** *Exon.* No. 1579a
Parke, Lacey, Hardie, Ltd. *v.* Clan Macfadyen, The (Aus.); **1.** *Adm.* p. 48; **41.** *Ship.* pp. 21, 26
Parken *v.* Cole (Can.); **2.** *Animals*, p. 64
Parker, *Ex p.*, *Ex p.* Wright (Can.); **14.** *Crim.* p. 18
—, *Re* (Can.); **21.** *E. D.* p. 18
— *v.* Bloxam (1855); **24.** *Exors.* No. 7311a
— *v.* Chapman (1928); **28.** *Inc. T.* No. 501a
— *v.* Davis (1931); **25.** *Gaming*, No. 284b
— *v.* Glover, *Re* Cozier (Can.); **24.** *Exors.* p. 41
— *v.* Jackson (1936); **35.** *Mtge.* No. 1242a
Parker *v.* Judkin (1931); **20.** *Eqy.* Nos. 688a, 688b, 688c, 688d; **39.** *Rntchgs.* No. 254b
— *v.* Lion's Head Public School Board (Can.); **19.** *Educ.* p. 39
— *v.* London Brick Co. & Forders, Ltd. (1927); **34.** *Mast. & S.* No. 3098a
— *v.* London, Midland & Scottish Ry. Co. (Scot.); **8.** *Carr.* p. 13
— *v.* McIlwain (Can.); **21.** *Exon.* p. 56
— *v.* Maxwell (Can.); **2.** *Agric.* p. 21
— *v.* New Docks Steam Trawling Co. (Fleetwood), Ltd. (1936); **34.** *Mast. & S.* No. 3885e
— *v.* Oloxo, Ltd. & Senior (1937); **36.** *Negl.* Nos. 364g, 364j, 364k; **39.** *S. Goods*, No. 856c
— *v.* Parker (Scot.); **27.** *H. & W.* p. 32
— *v.* R. (Can.); **39.** *Revenue*, p. 11
— *v.* Ward, *Re* Hooper (1932); **8.** *Char.* No. 230a
— *v.* Wilcox (1723); **23.** *Exors.* No. 5697c
Parker & Cooper, Ltd. *v.* Reading (1926); **9.** *Coys.* Nos. 3160a, 4037a, 4117a
Parker & Son *v.* Amalgamated Society of Engineers (Aus.); **44.** *Work*, p. 60
Parker, Gaines & Co. *v.* Turpin (1918); **2.** *Arbn.* No. 402a
Parker Wood & Co., Ltd. *v.* Richards (S. Af.); **6.** *B. of Exch.* p. 17
Parker-Eakins Co. *v.* Royal Bank of Canada (Can.); **4.** *Bkpcy.* p. 31
Parkes (or Keswick) *v.* Parkes (or Keswick) (1936); **44.** *Wills*, No. 8919a
Parkes & Co., Ltd. *v.* Cocker Brothers, Ltd. (1929); **36.** *Pats.* No. 680c
Parkes Garage (Swadlincote), Ltd., *Re* (1929); **10.** *Coys.* Nos. 4699a, 6756a
Parkes Property & Stock Co., Ltd. *v.* Perpetual Trustee Co., Ltd. (Aus.); **23.** *Exors.* p. 19
Parkfield Trust, Ltd. *v.* Curtis (1934); **35.** *Money*, No. 353k
— *v.* Dent (1931); **35.** *Money*, Nos. 353s, 353t, 410c, 438b; **39.** *Revenue*, No. 548a
Parkfield Trust (1935), Ltd. *v.* Portman (1937); **35.** *Money*, No. 389a
Parkins *v.* Coulee (Can.); **26.** *Hghys.* p. 28
Parkinson *v.* College of Ambulance, Ltd., & Harrison (1925); **12.** *Contr.* Nos. 2011a, 2329a, 2350a
— *v.* Noel (1923); **5.** *Bkpcy.* Nos. 7681a, 7782b
— *v.* St. John Horticulture Assocn. (Can.); **34.** *Mast. & S.* p. 15
Parkman *v.* Benoit (Can.); **30.** *Intox.* p. 18
Parlov *v.* Lozina & Raolovich (Can.); **36.** *Negl.* p. 4
Parmley *v.* Enfield Rolling Mills, Ltd. (1938); **34.** *Mast. & S.* No. 2475b
Parnall, *In the Estate of* (1936); **23.** *Exors.* No. 1873a
Parnell (Archie) & Alfred Zeitlin, Ltd. *v.* Theatre Royal (Drury Lane), Ltd. (1936); **42.** *Theatres*, No. 195a
Parnis *v.* Agius (1930); **17.** *Dep.* No. 394a
Parr *v.* A.-G. (1926); **21.** *E. D.* No. 131
— *v.* Blair, *Re* Lucas (Ir.); **23.** *Exors.* p. 11
Parren, *Re*, *Ex p.* Trustee (1933); **5.** *Bkpcy.* Nos. 5591a, 5591b
Parry *v.* Duncan (Can.); **11.** *Const. L.* p. 72
— *v.* Parry (Can.); **22.** *Evid.* p. 16; **27.** *H. & W.* p. 37
— *v.* Roberts (1835); **1.** *Agcy.* No. 1386; **3.** *Bailmt.* No. 103a
Parshalle, *Re*, Kunhardt *v.* Cox (Can.); **35.** *Mtge.* p. 49
Parshalle Estate, *Re*, Shaw *v.* Cox (Can.), [1930] 1 W. W. R. 767; **18.** *Desct.* p. 4
—, *Re*, Shaw *v.* Cox (Can.), [1930] 2 W. W. R. 802; **35.** *Mtge.* p. 49

Parsharam Yeshwantshet *v.* Laxmibai (Ind.); **35.** *Mtge.* p. 36
Parslow *v.* Moore (Can.); **35.** *Mtge.* p. 32
Parsons, *Ex p., Re* Till (1871); **22.** *Evid.* No. 4472a
—, *Re* (Aus.); **5.** *Bkpcy.* p. 82; **17.** *Dep.* p. 61
—, *Re*, Parsons *v.* Parsons (Can.); **44.** *Wills*, p. 22
— *v.* Brixham Fishing Smack Insurance Co., Ltd. (1918); **2.** *Arbn.* No. 1598a
— *v.* Burgess (1927); **13.** *Cty. Cts.* No. 70a
— *v.* Parsons (N.Z.); **28.** *Infts.* p. 136
— *v.* —, *Re* Parsons (Can.); **44.** *Wills*, p. 22
— *v.* Queen Insurance Co. (Can.); **29.** *Insce.* p. 7
Parsotim *v.* Lal Mohar (1931); **16.** *Courts*, No. 503a
Partab Narain *v.* Jute Mills (Ind.); **1.** *Agcy.* p. 96
Partington *v.* Partington (Can.); **27.** *H. & W.* p. 44
Partridge *v.* Dunham (Can.); **32.** *Lien*, p. 23
— *v.* Langenburg Rural Municipality (Can.); **26.** *Hghys.* p. 28
— *v.* McIntosh & Sons, Ltd. (Aus.); **18.** *Distr.* p. 25
— *v.* Monmouthshire County Council (1935); **34.** *Med.* Nos. 234a, 234b
Partridge, Jones & John Paton, Ltd. *v.* James (1933); **34.** *Mast. & S.* No. 2322a
— *v.* Sulway (1928); **34.** *Mast. & S.* No. 3734a
Pas Construction Co., Ltd. *v.* Olensky (Can.); **7.** *Bldg. Conts.* p. 23
Paschena, The *v.* Griff, The (Can.); **1.** *Adm.* pp. 34, 38, 42
Pascoe *v.* Pascoe (Can.); **27.** *H. & W.* p. 46
Pasickniak *v.* Dojacek (Can.); **13.** *Coprt.* p. 6
Pask *v.* Perry, *Re* Hayden (1931); **44.** *Wills*, No. 10,020a
Pass *v.* British Tobacco Co. (Australia), Ltd. (1926); **9.** *Coys.* No. 3934a; **17.** *Dep.* No. 184a
Pass of Leny, The (1936); **41.** *Ship.* Nos. 1879j, 8692b
Passarini *v.* Martin (Can.); **18.** *Distr.* p. 30
Passey *v.* Oxford Local Board (1879); **36.** *Nuis.* No. 134b
Passmore *v.* Vulcan Boiler & General Insurance Co., Ltd. (1935); **29.** *Insce.* No. 3217p
Pastre *v.* Pastre (1930); **27.** *H. & W.* Nos. 5275a, 5320b
Pat *v.* Illinois Publishing & Printing Co. (Can.); **17.** *Damgs.* p. 22
Patching *v.* Howarth (Can.); **32.** *Libel*, p. 8
Patel *v.* Keeler & Co. (S. Af.); **1.** *Agcy.* p. 91; **8.** *Carr.* p. 4
Patents & Designs Acts, 1907 to 1928, *Re* (1930); **43.** *Trade Mks.* No. 910a
Patents & Designs Acts, 1907–1932, *Re*, *Re* Vredenburg's Registered Design (No. 788,451) (1934); **43.** *Trade Mks.* No. 953a
Pateras *v.* Royal Exchange Assurance (1934); **29.** *Insce.* No. 1578a
Paterson, *Re* (N.Z.); **23.** *Exors.* p. 13
— *v.* Aird (Scot.); **25.** *Food*, p. 10
— *v.* McCallum (N.Z.); **1.** *Agcy.* pp. 61, 89
— *v.* McGugan (Can.); **18.** *Distr.* p. 25
— *v.* McKay (Can.); **16.** *Cr. Pract.* p. 27
— *v.* MacPherson (Scot.); **25.** *Gaming*, p. 36
— *v.* Miller (Aus.); **3.** *Bailmt.* p. 16
— *v.* Ritchie (Scot.); **44.** *Work*, p. 65
Paterson & Barr, Ltd. *v.* Otago University (N.Z.); **19.** *Easmt.* p. 9
Paterson (D. S.) & Co., *Re* (Can.) (1931); **5.** *Bkpcy.* p. 81
—, *Re* (Can.) (1932); **4.** *Bkpcy.* p. 38
Paterson & Sons *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 55
Paterson Engineering Co., Ltd. *v.* Candy Filter Co., Ltd. (1932); **36.** *Pats.* No. 459g
Paterson (A. & G.), Ltd. *v.* Highland Ry. Co. (Scot.); **12.** *Contr.* p. 4
Paterson S.S. Co. *v.* Continental Grain Co. (Can.); **41.** *Ship.* p. 35
Paterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd. (Can.) (1934); **41.** *Ship.* p. 32
— *v.* — (Can.) (1935); **41.** *Ship.* p. 69
— *v.* Oxford, The (Can.); **41.** *Ship.* p. 49
Pathe Frères Phonograph Co. of Canada, *Re* (Can.); **4.** *Bkpcy.* p. 39
Pathescope Union of South Africa, Ltd. *v.* Mallinick (S. Af.); **9.** *Coys.* p. 15
Patlansky *v.* Brown (S. Af.); **43.** *Trade Mks.* p. 18
Patmore *v.* Boon (Aus.); **32.** *Libel*, p. 15
Paton *v.* Inland Revenue Comrs. (1938); **28.** *Inc. T.* No. 394b
Patricia Appliance Shops, Ltd., *Re* (Can.); **10.** *Coys.* p. 71
Patrick, *Re* (Aus.); **44.** *Wills*, p. 57
— *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 32
— *v.* Royal Bank of Canada (Can.); **3.** *Bank.* p. 42
Patrick & Co. *v.* Russo-British Grain Export Co., Ltd. (1927); **2.** *Arbn.* No. 1071a
Patrick & Lyon, Ltd., *Re* (1933); **9.** *Coys.* No. 3353b; **10.** *Coys.* Nos. 4705a, 6731a
Patriotic Assurance Co., Ltd. *v.* Siddall (Can.); **29.** *Intpr.* p. 63
Patriquin, *Re* (Can.); **8.** *Char.* p. 73
Patten, *Re*, Official Receiver *v.* Patten (1936); **23.** *Exors.* No. 4485a
— *Re*, Westminster Bank *v.* Carlyon (1929); **8.** *Char.* Nos. 267a, 267c; **40.** *Sttlmts.* Nos. 2738a, 2747a
— *v.* Laidlaw (Can.); **32.** *Lien*, p. 25
— *v.* Silberschein (Can.); **36.** *Negl.* p. 35
Pattenden *v.* McIntosh (No. 1) (1934); **34.** *Mast. & S.* No. 2650a
— *v.* — (No. 2) (1934); **34.** *Mast. & S.* No. 3977a
Pattendon *v.* Beney (1934); **36.** *Negl.* No. 361c
Patterson, *Ex p.*, R. *v.* South Eastern Essex Assessment Committee (1935); **38.** *Rates*, No. 1161a
—, *Re* (Can.); **23.** *Exors.* p. 2
—, *Re*, Mitchell *v.* Smith (1864); **25.** *Gifts*, No. 337a
— *v.* Board of School Trustees of North Vancouver (Can.); **19.** *Educ.* p. 35; **36.** *Negl.* p. 10
— *v.* Bowmaster (Can.); **32.** *Lien*, p. 23
— *v.* Branson Brown & Co., Ltd. (Can.); **17.** *Custom*, p. 2
— *v.* Canadian Robert Dollar Co. (Can.); **19.** *Educ.* p. 35; **36.** *Negl.* p. 10
— *v.* Continental Insurance Co. (Can.); **11.** *Confl.* p. 40
— *v.* Fatouh (Can.); **42.** *Str. Traf.* p. 60
— *v.* Findlay (Scot.); **25.** *Food*, p. 5
— *v.* Gooderham (Can.); **36.** *Negl.* p. 33
— *v.* Hale & Pugh (Can.); **36.** *Negl.* p. 32
— *v.* McPherson (Can.); **32.** *Limit. of A.* p. 37
— *v.* Okalta Oils, Ltd. & Culbert (Can.); **9.** *Coys.* p. 49
— *v.* Patterson (Can.); **27.** *H. & W.* pp. 59, 60
— *v.* Robinson (1929); **41.** *Ship.* No. 935a
— *v.* Saskatchewan Creamery Co., Ltd. (Can.); **30.** *Juries*, p. 33
— *v.* Smith (Can.); **21.** *Estpl.* p. 38
— *v.* Vulcan Iron Works, Ltd. (Can.); **9.** *Coys.* pp. 10, 27
Patterson (N. M.) & Co., Ltd. *v.* Carnduff (Can.); **1.** *Agcy.* p. 69
Patton, *Re* (Can.) (1929); **44.** *Wills*, p. 29
—, *Re* (Can.) (1931); **24.** *Exors.* p. 39
—, *Re* (Can.) (1938); **44.** *Wills*, p. 25

Patton, *Re*, Caughey *v.* Copeland (Ir.); **23.** *Exors.* p. 26
—, *Re*, Patton *v.* Toronto General Trusts Corpn. (1930); **44.** *Wills*, No. 2961a
— *v.* Mould (Aus.); **25.** *Food*, p. 6
— *v.* Patton (Can.); **27.** *H. & W.* p. 2
Patton (W. R.) *v.* Toronto General Trusts Corpn. (1930); **44.** *Wills*, No. 2961a
Patton *v.* Yukon Consolidated Gold Corpn., Ltd. (Can.); **9.** *Coys.* p. 53
Paul *v.* Amy Turner, The (Aus.); **1.** *Adm.* pp. 24, 35
— *v.* Bates (Can.); **44.** *Waters*, p. 3
— *v.* Dines (Can.); **42.** *Str. Traf.* p. 37
— *v.* Inland Revenue (Scot.); **39.** *Revenue*, p. 22
— *v.* Myles (Can.); **22.** *Evid.* p. 21
— *v.* Nathaniel Gopal Nath (Ind.); **27.** *H. & W.* p. 12
— *v.* Paul (1936); **11.** *Confl.* No. 926c
Paul de Flondor *v.* R. (Ind.); **14.** *Crim.* p. 9
Paul (R. & W.), Ltd. *v.* London & North Eastern Ry. Co. (1927); **3.** *Carr.* No. 1237d
— *v.* National S.S. Co., Ltd. (1937); **41.** *Ship.* No. 2414a
— *v.* Wheat Commission (1937); **2.** *Agric.* Nos. 979g, 979h, 979j
Pauley *v.* Custodian (S. Af.); **2.** *Aliens*, pp. 27, 28
Paulin, *Re*, *Re* Crossman (1936); **21.** *E. D.* No. 136b
Paulin *v.* Paulin & Martin (Can.) (1936); **27.** *H. & W.* p. 74
— *v.* — (Can.) (1937); **27.** *H. & W.* p. 26
Paulley *v.* Aveling & Porter, Ltd. (1932); **34.** *Mast. & S.* No. 3288p
Pauls *v.* National Union Fire Insurance Co. (Can.); **29.** *Insce.* p. 26
Paulson *v.* Bakken (Can.); **38.** *Real Prop.* p. 96
— *v.* Clements (Can.); **33.** *Mal. Pros.* p. 40
Pavich *v.* Tulameen Coal Mines, Ltd. (Can.); **32.** *Lien*, 23
Pavyer, *Re*, *Ex p.* Brown, Son & Vardy *v.* Trustee (1936); **4.** *Bkpcy.* No. 4377a
—, *Re*, Brown, Son & Vardy *v.* Trustee (1936); **4.** *Bkpcy.* No. 4377a
Pawle *v.* Gunn (1838); **9.** *Coys.* No. 2211a
Pawluk *v.* Friesen (Can.); **2.** *Animals*, p. 58
Pawson *v.* Pawson (1930); **22.** *Evid.* Nos. 3428a, 3428b
Payn *v.* Payn (Can.); **11.** *Confl.* p. 47
Payne, *Ex p.*, R. *v.* Wisbech, Isle of Ely, Licensing Justices (1937); **30.** *Intox.* No. 582d
— *v.* Allcock (1932); **39.** *Revenue*, No. 140b
— *v.* Cardiff Rural District Council (1932); **26.** *Highys.* No. 2440a; **35.** *Mtge.* Nos. 2291a, 2291b
— *v.* Deputy Federal Comr. of Taxation (Aus.) (1936); **35.** *Money*, p. 19
— *v.* Esdaile (1888); **19.** *Eccl.* No. 3455c
— *v.* Federal Comr. of Taxation (Aus.) (1935); **35.** *Money*, p. 15
— *v.* Fredericton Ry. Co. (Can.); **34.** *Mast. & S.* p. 15
— *v.* Gammon, *Re* Gammon Estate (Can.); **23.** *Exors.* p. 2
— *v.* London, Midland & Scottish, London & North Eastern & Great Western Ry. Cos. (1937); **8.** *Carr.* Nos. 1522, 1658
— *v.* Minister of Health (1938); **11.** *Comp. Pchc.* No. 2225h
— *v.* New South Wales Coal & Intercolonial Steam Navigation Co. (1854); **12.** *Contr.* No. 1285b
— *v.* Taxation Comr. (Aus.); **35.** *Money*, p. 19
Payne's Application, *Re* Newhill Compulsory Purchase Order, 1937 (1938); **11.** *Comp. Pchc.* No. 2225h
Payne's Estate, *Re* (Can.); **23.** *Exors.* p. 12
Peabody (Doe d.) *v.* McKnight (Can.); **21.** *Exon.* p. 51
Peachy *v.* Young (1929); **30.** *L. & T.* No. 1526a
Peacock, *Re*, Public Trustee *v.* Birchenough (1929); **44.** *Wills*, No. 7637a
— *v.* Ewen, *Re* Campbell (N.Z.); **8.** *Char.* p. 56
— *v.* Griffiths (1927); **8.** *Clubs*, No. 111b
— *v.* Gyproc Products, Ltd. (1935); **24.** *Fact.* No 71a
— *v.* Lucas, *Re* Whitehead (1894); **23.** *Exors.* No. 5360a; **40.** *Sttlmts.* Nos. 1960a, 2297a
— *v.* Stephens (Can.); **36.** *Negl.* p. 29
— *v.* Tarleton (Aus.); **1.** *Agcy.* p. 84
Peagram *v.* Peagram (1926); **27.** *H. & W.* Nos. 6233b, 6275a
Peake's Settled Estates, *Re* (1894); **43.** *Trusts*, No. 1226b
Peakin *v.* Peakin (Ir.); **32.** *Limit. of A.* p. 38
Peal *v.* Peal (1931); **11.** *Confl.* No. 858a
Pearce, *Re*, Pearce *v.* Pearce (Aus.); **44.** *Wills*, p. 47
— *v.* Brain (1929); **28.** *Infts.* No. 160a; **37.** *Pers. Prop.* No. 121a
— *v.* County of London Electric Supply Co., Ltd. (1935); **20.** *Electric*, No. 64a, 64b
— *v.* Maryon-Wilson (1935); **31.** *L. & T.* No. 3070a
— *v.* Pearce (1929); **27.** *H. & W.* Nos. 6192a, 6283a
— *v.* —, *Re* Maynard (1930); **44.** *Wills*, No. 3354a
— *v.* —, *Re* Pearce (Aus.); **44.** *Wills*, p. 47
— *v.* Wright (Aus.); **39.** *Rntchgs.* p. 3
Pearen *v.* Black & Armstrong (Can.); **27.** *H. & W.* p. 13
— *v.* Saskatchewan Livestock Co-operative Marketing Assocn., Ltd. (Can.); **1.** *Agcy.* p. 49
Pearl Assurance Co., Ltd. *v.* Bromley (1933); **25.** *Fr. Soc.* Nos. 145a, 174a
— *v.* Union of South Africa Government (S. Af.); **17.** *Damgs.* p. 17
Pearman *v.* Charlton (1928); **3.** *Bank.* No. 112b
— *v.* Dyer (1935); **31.** *L. & T.* No. 7358e
Pearn *v.* Miller (1927); **28.** *Inc. T.* No. 460a
Pearse & Edworthy Brothers *v.* Bjorkdale Rural Municipality (Can.); **38.** *Rates*, pp. 49, 66
Pearson, *Re* (Aus.); **44.** *Wills*, p. 54
— *v.* Arcadia Stores, Guyra, Ltd. (No. 1) (Aus.); **28.** *Injon.* p. 148
— *v.* Carpenter & Son (Can.); **25.** *Gaming* p. 28
— *v.* Drake (Can.); **21.** *Estpl.* p. 41
— *v.* Duke (Can.); **43.** *Tresp.* p. 50
— *v.* Fremantle Harbour Trust (Aus.); **34.** *Mast. & S.* p. 56
— *v.* Gee & Braceborough Spa, Ltd. (1934); **31.** *L. & T.* No. 6399a
— *v.* Harris (Can.); **32.** *Libel.* p. 12
— *v.* John Walton of Collyhurst, Ltd. (1934); **34.** *Mast. & S.* No. 3530c
— *v.* Johnson, *Re* Johnson (1938); **8.** *Char.* No. 1203a
— *v.* Whitfield (1888); **33.** *Mags.* No. 503a
— *v.* Wilson (Aus.); **1.** *Agcy.* p. 59
Pearson, Kingsland Estate, *Ex p.*, R. *v.* Kingsland Parish Inspector of Taxes (1922); **16.** *Cr. Pract.* Nos. 1141a, 2132a, 2422a
Pearson-Burleigh, Ltd. *v.* Pioneer Grain Co., Ltd. (Can.); **7.** *Bldg. Conts.* p. 26; **35.** *Money*, p. 22
Pease *v.* How (1922); **8.** *Char.* No. 691a
— *v.* Simms (W. J.) Son & Cooke, Ltd. (1932); **24.** *Fact.* No. 180b
Peat (Sir William Henry) *v.* Gresham Trust, Ltd. (1934); **10.** *Coys.* Nos. 4967a, 6746b
Peccin *v.* Lonegan (Can.); **11.** *Const. L.* p. 67

Pêcheries Ostendaises (Soc. Anon.) *v.* Merchants' Marine Insurance Co. (1928); **18.** *Discy.* No. 462a
Peck, *Re* (Can.); **2.** *Agric.* p. 25
— *v.* Hull & East Coast Stevedoring Co., Ltd. (1938); **24.** *Fact.* No. 138f
— *v.* La Valley (Can.); **32.** *Libel*, p. 9
— *v.* Parrot (1749); **40.** *Sttlmts.* No. 1071a
— *v.* R. (Can.); **11.** *Const. L.* p. 65
Peck (Doe d.) *v.* Roe (Can.); **21.** *Exon.* p. 51
Peck's Estate, *Re* (Can.); **24.** *Exors.* p. 41
Peckham & East Dulwich Tramways Co. (1911); **36.** *Parl.* No. 291a
Pederson *v.* Empire Home Benefit Assocn. (Can.); **25.** *Fr. Soc.* p. 20
— *v.* Paterson (Can.); **26.** *Hghys.* p. 34
Pedlar Estate, *Re* (Can.); **44.** *Wills*, pp. 56, 57
Pedley, *Re*, Wallace *v.* Wallace (1927); **24.** *Exors.* No. 6341a
— *v.* Davison & Son, Ltd. (1937); **34.** *Mast. & S.* No. 2799b
Pedlow *v.* Canadian National Ry. Co. (Can.); **36.** *Negl.* p. 24
Peech *v.* Best (1931); **25.** *Game*, No. 92a
Peek *v.* Shields (Can.); **17.** *Dep.* p. 40
Peel, *Re*, Tattersall *v.* Peel (1936); **43.** *Trusts*, No. 2289b
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 75
Peermain *v.* MacKay (1845); *Pract.* No. 2345a
Peggy Sage Inc. & Northam-Warren, Ltd. (No. 15240) *v.* Siegel Kahn Co. of Canada, Ltd. (Can.); **43.** *Trade Mks.* p. 25
Pegler, *Ex p.*, R. *v.* Customs & Excise Comrs. (1928); **31.** *L. & T.* No. 4534a
Peidl *v.* Bonas (Can.); **34.** *Mast. & S.* p. 6
Peikoff *v.* Brightwell (No. 2) (Can.); **40.** *S. Land*, p. 13
— *v.* Paisner (Can.); **40.** *S. Land*, p. 14
Peile, *Re*, Shea *v.* Boschetti (1858); **4.** *Bkpcy.* No. 4772b
Peimer *v.* Finbro Furnishers (Pty.), Ltd. (S. Af.); **6.** *B. of Exch.* p. 16
Peirce *v.* Harrison, *Re* Heginbotham (1935); **35.** *Mtge.* No. 3104a
Pejepscot Paper Co. *v.* Farren (Can.); **22.** *Evid.* p.5
Pelham *v.* Homes (Aus.); **42.** *Str. Traf.* p. 51
Pellatt & Pellatt, Ltd. *v.* McLean (Can.); **5.** *Bkpcy.* p. 73
Pelle *v.* Bersca (Can.); **36.** *Negl.* p. 4
Pelletier *v.* Minneapolis Threshing Machine Co. (Can.); **39.** *S. Goods*, p. 60
— *v.* Opal Municipal District (Can.); **38.** *Rates*, No. 85
Pellow *v.* Ivey (1933); **43.** *Trade*, Nos. 774a, 808a
Pelster *v.* Pelster & Samuel (1936); **27.** *H. & W.* No. 5884a
Pembrokeshire, The (1936); **41.** *Ship.* No. 6212d
Penarth Harbour, Dock & Ry. Co. *v.* Cardiff Waterworks Co. (1860); **18.** *Discy.* No. 1087b
Pendleton *v.* Pendleton (Can.); **27.** *H. & W.* p. 9; **38.** *Real Prop.* p. 95
Pendred *v.* Chambers (1591); **16.** *Courts*, No. 1024a
Penedo (Baron) *v.* Johnson (1873); **1.** *Action*, No. 366c
Penell *v.* Elgin (Scot.); **5.** *Bkpcy.* p. 58
Penelope, The (1928); **12.** *Contr.* No. 3178b
Penetanguishene Town, *Ex p.*, *Re* Adams Shoe Co. (Can.); **4.** *Bkpcy.* pp. 24, 38
Penfield *v.* McMurdo, *Re* McMurdo (1902); **9.** *Coys.* No. 2689a
Penfold, *Ex p.*, England *v.* Penfold (Aus.); **42.** Stats. p. 30
Penge Urban District Council *v.* Lewisham Corpn. (1930); **41.** *Sewers*, No. 262a
Penlington *v.* Brownlee (Can.); **38.** *Real Prop.* p. 99
Penman *v.* Fife Coal Co., Ltd. (1936); **24.** *Fact.* No. 275a
— *v.* Winnipeg Electric Ry. Co. (Can.); **17.** *Damgs.* p. 9
Penman Manufacturing Co. *v.* Broadhead (Can.); **12.** *Contr.* p. 29
Penn, *Ex p.*, R. *v.* Davies (1932); **33.** *L. G.* No. 14a
Pennell's Trustee (Scot.); **5.** *Bkpcy.* p. 81
Penney *v.* Clyde (Scot.); **2.** *Aliens*, p. 40
Pennington & Owen, Ltd., *Re* (1925); **10.** *Coys.* No. 6455a
Pennock, *Re* (Can.); **44.** *Wills*, p. 51
Pennsylvania Shipping Co. *v.* Compagnie Nationale de Navigation (1936); **41.** *Ship.* No. 1828a
Penny *v.* Hunt (Can.); **27.** *H. & W.* p. 13
Penrikyber Navigation Colliery Co., Ltd. *v.* Edwards (1933); **34.** *Mast. & S.* Nos. 3822a, 3832b, 3978a
Penrose, *Re*, Penrose *v.* Penrose (1933); **21.** *E. D.* No. 117a; **37.** *Powers*, No. 1005a
— *v.* Barr (Can.); **36.** *Negl.* p. 31
Pensford & Bromley Collieries (1921), Ltd. *v.* Filer (1938); **34.** *Mast. & S.* No. 3932r
Penticton Corpn. *v.* Sutherland (Can.); **43.** *Wtr. Sply.* p. 76
Penticton District *v.* London Guarantee & Accident Co., Ltd. (Can.); **26.** *Guar.* p. 8
Penticton Hotel Co., Ltd., *Re* (Can.); **5.** *Bkpcy.* p. 84
Pentland *v.* Godin (Can.); **43.** *Tresp.* p. 53
Penton *v.* Southern Ry. (1931); **8.** *Carr.* No. 695d
— *v.* Waters, *Re* Reddish (1934); **8.** *Char.* No. 2414a
Pentreath *v.* Home Assurance Co. (Can.); **29.** *Insce.* p. 31
Pentz *v.* R. (Can.); **42.** *Str. Traf.* p. 62
Penwarden *v.* Ching (1829); **19.** *Easmt.* No. 1330a
People of California State *v.* Skinner (Can.); **15.** *Crim.* p. 94
People's Bank *v.* Marrow (Can.); **24.** *Exors.* p. 41
People's Bank of Northern India *v.* Hargopal (Ind.); **24.** *Exors.* p. 36
People's Credit Jewellers, Ltd. *v.* Melvin (Can.); **1.** *Agcy.* p. 56
People's Holding Co., Ltd. *v.* A.-G. of Quebec (Can.); **11.** *Const. L.* p. 64; **16.** *Cr. Pract.* p. 44
People's Hostels, Ltd. *v.* Turley (1938); **38.** *Pub. Hlth.* No. 455a
Peppard *v.* Cameron (Can.); **21.** *Estpl.* p. 39
— *v.* Wood (Can.); **21.** *Estpl.* p. 39
Pepper *v.* Butler (Can.); **31.** *L. & T.* p. 64
— *v.* London Life Insce. Co. (Can.); **29.** *Insce.* p. 4
— *v.* Pepper & Baker (1926); **27.** *H. & W.* Nos. 3783a, 4848a
Pepperill *v.* Kemball Bishop & Co., Ltd. (1932); **34.** *Mast. & S.* No. 3659b
Percival *v.* Ball (1937); **42.** *Str. Traf.* No. 245c
Percy *v.* Ashford Union (1876); **38.** *Rates*, No. 632a
— *v.* Canadian Guarantee & Trust Co. (Can.); **38.** *Real Prop.* p. 91
— *v.* Glasgow Corpn. (1922); **8.** *Carr.* No. 781a
Percy's Case (1609); **2.** *Agric.* No. 944a
Perdriau Rubber Co., Ltd. *v.* Sadek (Aus.); **18.** *Distr.* p. 25
Perdue *v.* Epstein (Can.); **36.** *Negl.* p. 30
Perera *v.* Perera (1901); **33.** *Lunat.* No. 264a
Perfect *v.* Poynter (1884); **1.** *Adm.* No. 1717
Performing Right Society, Ltd. *v.* Bray Urban District Council (1930); **13.** *Coprt.* Nos. 389a, 483g, 489c

Performing Right Society, Ltd. *v.* Camelo (1936); **13.** *Coprt.* No. 483e
— *v.* Ciryl Theatrical Syndicate (1924); **13.** *Coprt.* No. 489a
— *v.* George (1936); **13.** *Coprt.* No. 483d
— *v.* Hammond's Bradford Brewery Co., Ltd. (1934); **13.** *Coprt.* Nos. 323a, 483c
— *v.* Hawthorns Hotel (Bournemouth), Ltd. (1933); **13.** *Coprt.* No. 483f
— *v.* Mitchell & Booker (Palais de Danse), Ltd. (1924); **13.** *Coprt.* No. 489b
— *v.* Thompson (1918); **1.** *Action*, No. 637a
Perkins, *Ex p.*, R. *v.* Essex JJ. (1927); **33.** *Mags.* Nos. 97a, 150a
— *v.* Perkins (1938); **27.** *H. & W.* No. 5416b
— *v.* — (Aus.); **11.** *Confl.* p. 27
Perkins' Executor *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 687a
Perks *v.* Wood, *Re* Mewburn's Settlement (1934); **37.** *Powers*, No. 187a
Perlman *v.* Piche (Can.); **2.** *Aliens*, p. 43
Permanent Trustee Co. *v.* Hill, *Re* Hill (Aus.); **40.** *Stlmts.* p. 32
Permanent Trustee Co. of New South Wales, Ltd. *v.* Bridgewater (1936); **25.** *Fraud. Conv.* No. 962a
— *v.* R. (Aus.); **44.** *Wills*, p. 38
Perozek *v.* Sinclair (Can.); **2.** *Animals*, p. 58
Perpetual Exors. & Trustees Assocn. of Australia, Ltd. *v.* Lawrence, *Re* McLean (Aus.); **37.** *Powers*, p. 28
— *v.* Russell (Aus.); **40.** *Set-off*, p. 23
Perpetual Trustee Co., Ltd. *v.* Crawshaw, *Re* Plaister (Aus.); **18.** *Desct.* p. 1
— *v.* Ellis, *Re* Ellis (Aus.); **44.** *Wills*, p. 25
— *v.* Hogg (Aus.); **44.** *Wills*, p. 25
— *v.* Shelley (Aus.); **8.** *Char.* p. 55
— *v.* Stamp Duties Comr. (Aus.); **21.** *E. D.* p. 3
— *v.* — (Sargood's Case) (Aus.); **21.** *E. D.* p. 22
— *v.* Taxation Comr. (Aus.); **21.** *E. D.* p. 8
— *v.* Tindal, *Re* Tindal (Aus.); **40.** *Stlmts.* p. 34
— *v.* Union Trustee Co. (Aus.); **8.** *Chos.* p. 90; **23.** *Exors.* p. 14; **40.** *S. Land*, p. 10
— *v.* Watson (No. 1) (Aus.); **43.** *Trusts*, p. 72
— *v.* — (No. 2) (Aus.); **43.** *Trusts*, p. 71
— *v.* Williamson (Aus.); **23.** *Exors.* p. 6
Perpetual Trustees, Estate & Agency Co., Ltd. of New Zealand *v.* Stamp Duties Comr. (N.Z.); **21.** *E. D.* p. 17
Perrett & Bennett-Stanford, *Re* (1922); **2.** *Agric.* No. 266e
Perrin *v.* Dickson (1930); **28.** *Inc. T.* No. 345a
Perro *v.* Antigonish (Can.); **21.** *Exon.* p. 52
Perron *v.* Corporation du Village du Sacre-Cœur de Jesus (Can.); **16.** *Cr. Pract.* pp. 31, 34
Perrott & Perrott, Ltd. *v.* Stephenson (1934); **9.** *Coys.* No. 2833a; **13.** *Corpns.* No. 819a
Perry, *Re* (Can.); **23.** *Exors.* p. 6
— *v.* Croydon Borough Council (1938); *Pract.* No. 5142a
— *v.* Downs (Can.); **35.** *Misrep.* p. 5
— *v.* Equitable Life Assurance Society of U.S.A. (1929); **11.** *Confl.* Nos. 640b, 709a
— *v.* Espley (Can.); **17.** *Deeds*, p. 31
— *v.* Feilding Club (N.Z.); **8.** *Clubs*, p. 99
— *v.* Kidd (Can.); **2.** *Animals*, p. 67
— *v.* Perry (Can.); **11.** *Confl.* p. 54
— *v.* Piquott (Can.); **38.** *Real Prop.* p. 99
— *v.* Sharon Development Co., Ltd. (1937); **7.** *Bldg. Conts.* No. 36c
— *v.* Woodwards, Ltd. (Can.); **33.** *Mal. Pros.* p. 41
Perry & Brown's Patents, *Re* (1930); **36.** *Pats.* No. 1750b
Perth Trades Hall *v.* Stadium (Perth), Ltd. (Aus.); **30.** *L. & T.* p. 44
Pertreis *v.* Tondear (1790); **11.** *Confl.* No. 859a
Pesca, *In the Estate of* (1930); **8.** *Char.* No. 991b
Pestonji (H.) & Co. *v.* Cox & Co. (Ind.); **6.** *B. of Exch.* p. 19
Petch *v.* Petch (1936); **27.** *H. & W.* No. 4753b
Peter *v.* Yorkshire & Pacific Securities, Ltd. (Can.); **7.** *Bounds. & F.* p. 17
Peter Birtwistle Trust *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 75
Peterborough Royal Foxhound Show Society *v.* Inland Revenue Comrs. (1936); **28.** *Inc. T.* No. 472e
Peterborough Trust, Ltd. *v.* Steel Industries of Great Britain, Ltd. (1934); **9.** *Coys.* No. 1668a
Peters, *Re* (1929); **23.** *Exors.* No. 1773a; **37.** *Poor L.* No. 63a
—, *Re* (Can.), [1931] 3 D. L. R. 89; **26.** *Hghys.* p. 17
—, *Re* (Can.), [1931] 3 M. P. R. 252; **34.** *Mast. & S.* p. 166
—, *Re* (Can.) (1936); **2.** *Agric.* p. 26
—, *Re*, Hudson's Bay Co. *v.* Peters (Can.); **2.** *Agric.* p. 25
— *v.* Confederation Land Corpn. (Can.); **31.** *L. & T.* p. 66
— *v.* Devinney (Can.); **1.** *Action*, p. 4
— *v.* General Accident, Fire & Life Assurance Corpn., Ltd. (1938); **29.** *Insce.* No. 3217ll
— *v.* Overhead, Ltd. (1934); **34.** *Mast. & S.* No. 2143a
— *v.* Perry & Co. (1894); **22.** *Evid.* No. 55c
Peterson, *Re* (1909); **36.** *Parl.* No. 261
—, *Re*, *Re* Holloway (Can.); **4.** *Bkpcy.* p. 31
— *v.* Cushman Motor Works (Can.); **1.** *Agcy.* p. 101
— *v.* Flack (Can.); **12.** *Contr.* p. 44
— *v.* Homes (Aus.); **42.** *Str. Traf.* p. 51
— *v.* McIntosh (Can.); **17.** *Damgs.* p. 21
— *v.* Millerd Packing Co. (Can.); **41.** *Ship.* p. 20
— *v.* Montreal (Can.); **16.** *Cr. Pract.* p. 31
— *v.* Youngstown School District Trustees (Can.); **19.** *Educ.* p. 44
Petherick & Petherick *v.* Waters & N. I. M. U. Insurance Co. (No. 1) (N.Z.); **36.** *Negl.* p. 41
— *v.* — (No. 2) (N.Z.); **29.** *Insce.* p. 49
Petipas *v.* Myette (Can.); **19.** *Easmt.* p. 6
Petit *v.* Girard (Can.); **4.** *Bkpcy.* p. 1
— (Doe d.) *v.* Renard (Can.); **22.** *Evid.* p. 1
Petitioning Creditor, *Ex p.*, *Re* A Debtor (1920); **4.** *Bkpcy.* No. 1347a
—, *Ex p.*, *Re* A Debtor (No. 4 of 1922) (1922); **4.** *Bkpcy.* No. 1110a
— *v.* Debtor, *Ex p.*, *Re* Debtor (No. 627 of 1936) (1937); **4.** *Bkpcy.* No. 274f
— *v.* —, *Ex p.*, *Re* Debtor (No. 411 of 1938) (1938); **4.** *Bkpcy.* No. 1275a
— *v.* —, *Re* Debtor (No. 21 of 1928) (1928); **4.** *Bkpcy.* No. 1077a
— *v.* Debtors, *Re* Debtors (No. 836 of 1935) (1936); **4.** *Bkpcy.* No. 207a
Petitioning Creditors (No. 5 of 1932), *Ex p.*, *Re* Debtor (1932); **4.** *Bkpcy.* No. 3355a
Petitioning Creditors (No. 24 of 1924), *Ex p.*, *Re* A Debtor (1924); **4.** *Bkpcy.* No. 1179a
Petitioning Creditors *v.* Debtor, *Ex p.*, *Re* A Bankruptcy Notice (No. 62 of 1924) (1924); **4.** *Bkpcy.* No. 797a; **12.** *Contr.* No. 1178a
Petreas & Co. *v.* London Guarantee & Accident Co., Ltd. (S. Af.); **29.** *Insce.* p. 7
Petreny *v.* Porteous (Can.); **39.** *S. Goods*, p. 60
Petrich & Erickson & Debt Adjustment Comr., *Re* (Can.); **35.** *Mtge.* p. 51
Petrie *v.* Brown & Love (Can.); **9.** *Coys.* p. 44
— *v.* Great Western Ry. Co. (1934); **8.** *Carr.* No. 1475

Petrie *v.* Red Bank Manufacturing Co., Ltd. (1935); **34.** *Mast. & S.* No. 2057c
— *v.* Rideout (Can.); **18.** *Distr.* p. 30
Petrie (H. W.), Ltd., *Re*, *Ex p.* Barber (Can.); **4.** *Bkpcy.* p. 41
Petrie (L.), Ltd. *v.* Frizzle (Can.); **12.** *Contr.* p. 45
Petrie Manufacturing Co., *Re*, *Ex p.* Hughes (Can.); **9.** *Coys.* p. 38
Petrofina S.A. of Brussels *v.* Compagnia Italiana Transporto Olii Minerali of Genoa (1937); **41.** *Ship.* No. 3110b
Petroleum Heat & Power, Ltd. *v.* British Columbia Electric Ry. Co. (Can.); **43.** *Tram.* p. 49
Petropolis *v.* Clarke (Can.); **31.** *L. & T.* p. 84
Petros M. Nomikos, Ltd. *v.* Robertson (1938); **29.** *Insce.* No. 2261a
Petrotite & Challenge Heaters, Ltd. *v.* Bodley (N.Z.); **9.** *Coys.* pp. 5, 16
Petschl *v.* Buchi (Can.); **27.** *H. & W.* p. 3
Pett *v.* Sims Paving & Road Construction Co., Pty., Ltd. (Aus.); **36.** *Nuis.* p. 48
Pettiet *v.* Sydney Municipal Council (Aus.); **36.** *Negl.* p. 9
— *v.* — (No. 2) (Aus.); **36.** *Negl.* p. 9
Pettigrew *v.* Doyle (Can.); **38.** *Real Prop.* p. 98
— *v.* Thomas (Can.); **21.** *Exon.* p. 47
Pettit *v.* Cox (Can.); **36.** *Prtnrs.* p. 63
— *v.* Pettit & Antweiler (Can.); **27.** *H. & W.* p. 43
Petty, *Re*, Holliday *v.* Petty (1929); **23.** *Exors.* No. 5917e
Pettypiece *v.* Holden (Can.); **1.** *Agcy.* p. 79
Peuchen Co. *v.* City Mutual Fire Insurance Co. (Can.); **36.** *Prtnrs.* p. 59
Peyrae *v.* Wilkinson (1924); **17.** *Damgs.* No. 612
Pfrimmer Estate, *Re* (Can.); **44.** *Wills*, p. 12
Phair *v.* Venning (Can.); **24.** *Fish.* pp. 2, 3
Phan Tiyok *v.* Lim Kyin Kauk (Ind.); **11.** *Conft.* p. 34
Phaninda Krishna Dolt *v.* Pramatha Nath Malia (Ind.); **22.** *Evid.* p. 25
Phanindrachandra Set, *Re* (Ind.); **17.** *Dep.* p. 67
Pharmaceutical Society of Great Britain *v.* Brown (1932); **34.** *Med.* No. 272a
— *v.* Fuller (1932); **34.** *Med.* No. 260b
— *v.* Watkinson (1931); **34.** *Med.* No. 260a
Pharmaceutical Society of Ireland *v.* Income Tax Special Comrs. (Ir.); **28.** *Inc. T.* p. 75
Pheasey *v.* Edmonton (Can.); **26.** *Highys.* p. 25
— *v.* Pheasey (1932); **27.** *H. & W.* No. 6282a
Phelan *v.* Main Roads Board (Aus.); **34.** *Mast. & S.* p. 2
Pherrill *v.* Pherrill (Can.); **36.** *Partn.* p. 56
Philadelphia National Bank *v.* Price (1938); **29.** *Insce.* No. 3289f
Philip *v.* Wilson (Scot.); **10.** *Coys.* p. 79
Philip T. Dodge S.S. *v.* Dominion Bridge Co., Ltd., Dufresne Construction Co., Ltd. & La Compagnie du Pont de Gaspe Limitee (Can.); **16.** *Courts*, p. 15; **41.** *Ship.* p. 66
Philipps *v.* A.-G. (1932); **8.** *Char.* Nos. 1418a, 2423a
Philippson *v.* Imperial Airways, Ltd. (1938); **42.** *Str. Traf.* No. 260d
Philips *v.* William Whiteley, Ltd. (1938); **36.** *Negl.* No. 90b
Philipson *v.* Philipson (1933); **27.** *H. & W.* No. 5409a
Phillipps & Scarth *v.* London Guarantee & Accident Co., Ltd. (Can.); **21.** *Exon.* p. 46
Phillips, *Re* (Aus.); **44.** *Wills*, p. 55
—, *Re*, *Ex p.* Phillips (1900); **4.** *Bkpcy.* No. 428
—, *Re*, Lawrence *v.* Huxtable (1931); **37.** *Powers*, No. 256a
—, *Re*, Public Trustee *v.* Meyer (1931); **24.** *Exors.* No. 7812a
Phillips, *Re*, Public Trustee *v.* Phillips (1938); **24.** *Exors.* No. 8860a
— *v.* Barns (Ind.); **1.** *Agcy.* p. 67
— *v.* Bowkett, *Re* Lewis's Will Trusts (1937); **44.** *Wills.* No. 6957a
— *v.* Canham (No. 1) (1872); **33.** *Mags.* No. 503b
— *v.* Coderre (Can.); **33.** *Mal. Pros.* p. 40
— *v.* Copping (1935); **31.** *L. & T.* No. 7140a
— *v.* Im Thurn (1865); **6.** *B. of Exch.* No. 2032a
— *v.* Joseph (Can.); **44.** *Wills*, p. 37
— *v.* Lloyd & Sons, Ltd. (1938); **13.** *Cly. Cls.* No. 341c
— *v.* McKay (Can.); **36.** *Negl.* p. 3
— *v.* Mitchell (Ind.); **26.** *Guar.* p. 4
— *v.* Murray (Can.); **37.** *Pers. Prop.* p. 9
— *v.* Parnaby (1934); **44.** *Wghts.* Nos. 110a, 110b
— *v.* Phillips (1900); **38.** *Real Prop.* No. 1042a
— *v.* — (Can.); **27.** *H. & W.* p. 39
— *v.* Reid (Nfld.); **2.** *Agric.* p. 21
— *v.* Ross (Can.); **19.** *Easmt.* p. 5
— *v.* Sidebottom & Co., Ltd. (1934); **34.** *Mast. & S.* No. 2930a
Phillips & La Paloma Sweets, Ltd., *Re* (Can.); **9.** *Coys.* p. 23
Phillips Estate, *Re* (Can.); **38.** *Rates*, p. 77
Phillipson *v.* Gatty (1848); **35.** *Mtge.* No. 389b
— *v.* Kerry (1863); **25.** *Fraud. Conv.* No. 831a
Phillpotts *v.* Phillpotts (1850); **18.** *Desct.* No. 102a
Philp *v.* Wesleyan Methodist Local Preachers' Mutual Aid Assocn., *Re* Cossentine (1933); **44.** *Wills*, Nos. 7179b, 8538a
Philpott *v.* Dairy Supply & Cold Storage Co. (S. Af.); **36.** *Negl.* p. 25
Philpotts d. Philpotts *v.* James (1784); **18.** *Desct.* No. 113a
Phinney *v.* Halifax (Can.); **37.** *Police*, p. 10
Phœnix Assurance Co., Ltd. *v.* Fox, *Re* Fox's Estate (1937); **44.** *Wills*, No. 10,157a
Phœnix Insurance Co. of Hartford *v.* De Monchy (1929); **29.** *Insce.* Nos. 1611a, 2404a
Phœnix Life Assurance Co., *Re*, Burges & Stock's Case (1862); **10.** *Coys.* No. 6922a
Phul Singh *v.* Bhojraj (Ind.); **32.** *Limit. of A.* p. 32
Physicians & Surgeons, College of *v.* Hebert (Can.); **34.** *Med.* p. 189
Physicians & Surgeons, College of, & Mahood, *Re* (Can.); **33.** *Mags.* p. 35
Pianta *v.* Macrow & Sons Pty., Ltd. (Aus.); **27.** *H. & W.* p. 14
Pick *v.* Paling (1936); **34.** *Mast. & S.* No. 3771a
Pickard *v.* Kernick (Can.); **19.** *Easmt.* p. 10
Pickering *v.* Appleby (1720); **9.** *Coys.* No. 2210a
Pickering & Ontario, *Re* (Can.); **26.** *Highys.* p. 47
Pickerings, Ltd's Application, *Re* Athey (1926); **34.** *Mast. & S.* No. 3359a
Pickervance *v.* Evans (Richard) & Co., Ltd. (1935); **34.** *Mast. & S.* No. 3887a
Pickett *v.* Butler (1844); **2.** *Agric.* No. 310a
Pickford *v.* Inland Revenue Comrs. (1927); **28.** *Inc. T.* Nos. 114a, 591a
— *v.* Quirke (1927); **28.** *Inc. T.* Nos. 114a, 591a
— *v.* Thompson (Can.); **35.** *Misrep.* p. 1
Pickin (Langbaurgh Revenue Officer) *v.* Langbaurgh Assessment Committee & Robert Cheyne & Co., Ltd. (1931); **38.** *Rates*, No. 226n
Pickup *v.* Dental Board of the United Kingdom (1928); **34.** *Med.* No. 205b
Picton, The (Can.); **17.** *Dep.* p. 43
Picton, *Re*, Picton *v.* Picton (1931); **28.** *Infts.* No. 1772b
— *v.* Picton, *Re* Picton (1931); **28.** *Infts.* No. 1772b
Pictou Foundry & Machine Co. *v.* Dicks (Can.); **29.** *Intpr.* p. 64

Piddington *v.* A.-G. (Aus.); **17.** *Dep.* p. 63
— *v.* Co-operation Insurance Society, Ltd. (1934); **29.** *Insce.* No. 3217j
Pidgeon *v.* Holman (Can.); **33.** *Mal. Pros.* p. 41
— *v.* Milligan (Can.); **7.** *B. of Sale*, p. 12
Pidington *v.* Hastings (1932); **36.** *Negl.* No. 243b
Pieper *v.* Zinkann (Can.); **22.** *Evid.* p. 21
Pierce *v.* Mylor School District (Can.); **34.** *Mast. & S.* pp. 6, 10
— *v.* Winchester Rural Municipality (Can.); **41.** *Sewers*, p. 3
Pierce (Wirral Revenue Officer) *v.* Wirral Assessment Committee & Spillers, Ltd. (1931); **38.** *Rates*, No. 226ff
Piercy Lumber Co., Ltd. *v.* Oppenheimer Bros. & Wood, Ltd. (Can.); **17.** *Custom*, p. 3
Piers *v.* Whiting (Can.); **7.** *Bounds. & F.* p. 15
Pierson & Pierson *v.* Lay (Can.); **17.** *Damgs.* p. 19
Piesse *v.* Tasmanian, etc. Co-operative Assocn., Ltd. (Aus.); **1.** *Agcy.* p. 49
Pietrzak *v.* Rocheleau (Can.); **38.** *Pub. Hlth.* p. 31
Piggott *v.* Middlesex County Council (1909); **38.** *Pub. Auth.* No. 84a
— *v.* Townsend (Aus.); **7.** *Bldg. Conts.* p. 23
Pigott *v.* Nesbitt, Thomson & Co. (Can.); **9.** *Coys.* p. 15
Pigs Marketing Board 1936 Bonus Scheme, *Re*, Pigs Marketing Board *v.* Bailey & Sons, Ltd. (1937); **2.** *Agric.* No. 979f
Pike *v.* R. (Can.); **15.** *Crim.* p. 101
— *v.* Walker (Can.); **16.** *Courts*, p. 9
Pike's Will, *Re* (Nfld.); **22.** *Evid.* p. 11
Pilbarra Copper Fields, Ltd. *v.* Neilsen (Aus.); **24.** *Fact.* p. 58
Pilkington *v.* Harrison, *Re* Pilkington's Will Trusts (1937); **5.** *Bkpcy.* Nos. 5936b, 8782f
— *v.* United Railways of the Havana & Regla Warehouses, Ltd. (1930); **9.** *Coys.* No. 1448a
— *v.* Wright, *Re* Pilkington's Settlement (1923); **27.** *H. & W.* No. 755a
Pilkington Bros. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 55
— *v.* Inland Revenue (Scot.); **38.** *Rates*, p. 55
Pilkington's Settlement, *Re*, Pilkington *v.* Wright (1923); **27.** *H. & W.* No. 755a
Pilkington's Will Trusts, *Re*, Pilkington *v.* Harrison (1937); **5.** *Bkpcy.* Nos. 5936b, 8782f
Pill *v.* Furse (1933); **42.** *Str. Traf.* No. 76q
— *v.* Mutton (J.) & Son (1933); **42.** *Str. Traf.* No. 76q
Pilliterri *v.* Northern Construction Co. (Can.); **38.** *Pub. Auth.* p. 4
Pillsworth *v.* Cobourg (Can.); **12.** *Contr.* p. 51
Pilot *v.* Gainfort (1931); **44.** *Wills*, No. 1522a
Pince *v.* Beattie (1863); **35.** *Mtge.* No. 385a
Pinchbeck *v.* Gleeson (Aus.); **25.** *Gaming*, p. 36
Pincke *v.* Curteis (1793); **40.** *S. Land.* No. 1597a
Pincott *v.* Moorstons, Ltd. (1937); **40.** *S. Land*, No. 2087a
Pinder *v.* Coqui (1866); **5.** *Bkpcy.* No. 9181a
Pineo *v.* Harris (Can.); **36.** *Negl.* p. 18
Ping Lee *v.* Paul Wise (Can.); **5.** *Bkpcy.* p. 85
Pink, *Re*, Elvin *v.* Nightingale (1927); **24.** *Exors.* No. 8484a
— *v.* Pink (1930); **27.** *H. & W.* No. 3778a
Pinkas & Pinkas *v.* Canadian Pacific Ry. Co. (Can.); **36.** *Negl.* pp. 20, 21
Pinney *v.* Beauchamp, *Re* Norton (1929); **40.** *Stlmts.* No. 3047a
Pinnock Brothers *v.* Lewis & Peat, Ltd. (1923); **2.** *Arbn.* No. 165c
Pinsent *v.* Boyd & McDougall (Nfld.); **16.** *Cr. Pract.* p. 40
Pinsent (Plymouth Revenue Officer) *v.* Plymouth Assessment Committee & Octagon Brewery Co. (1931); **38.** *Rates*, No. 226ff
Pinto Leite & Nephews, *Re*, *Ex p.* Des Olivaes (1929); **4.** *Bkpcy.* No. 4353a; **8.** *Chos.* No. 601a
Pioneer Alkali Works, Ltd. *v.* Amiruddin Shalebhoy Tyebji (Ind.); **9.** *Coys.* p. 19
Pioneer Bank *v.* Canadian Bank of Commerce (Can.); **12.** *Contr.* p. 54
Pioneer Laundry & Dry Cleaners, Ltd. *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 49
Pioneer Savings & Loan Society, *Re*, *Re* Registrar of Companies (Can.); **16.** *Cr. Pract.* p. 31; **32.** *Loan Soc.* p. 45
Pipe, *Re*, Ledger *v.* Mobbs (1937); **8.** *Char.* No. 991c
— *v.* Holliday (Can.); **42.** *Str. Traf.* pp. 36, 40
Piper, *Re* (Can.); **33.** *Lunat.* p. 16
— *v.* Canadian Bank of Commerce (Can.); **3.** *Bank.* p. 43
— *v.* De'ath Brothers (1929); **34.** *Mast. & S.* No. 2618a
— *v.* St. Marylebone Licensing JJ. (1928); **30.** *Intox.* No. 553a
— *v.* Stevenson (Can.); **32.** *Limit. of A.* p. 37
— *v.* Unverzagt (Can.); **27.** *H. & W.* p. 10
Piper & Piper *v.* Bussey & Emerson (Can.); **17.** *Damgs.* p. 9
Piracy Jure Gentium (1934); **15.** *Crim.* No. 7851b
Pirie *v.* Carroll (Can.); **32.** *Libel*, p. 7
— *v.* Richardson (1927); **12.** *Contr.* No. 163a
Pirie (Alex.) & Sons, Ltd., *Re*, *Re* Hammermill Paper Co.'s Opposition (1932); **43.** *Trade Mks.* Nos. 277b, 285b, 397a
Pirie (Alexander) & Sons' Trade Mark Application, *Re* (1932); **43.** *Trade Mks.* No. 277b 397a
Pirojshaw *v.* Bandeali Ismail & Co. (Ind.); **11.** *Confl.* p. 39
Pirrie *v.* McFarlane (Aus.); **17.** *Dep.* pp. 59, 60
Pisani *v.* A.-G. for Gibraltar (1874); **2.** *Arbn.* No. 44a
Pitcher *v.* Martin (1937); **2.** *Animals*, No. 219c
Pitchford, *Re*, *Ex p.* Official Receiver *v.* Hall (1924); **4.** *Bkpcy.* No. 2978a
Pitman *v.* Brown (Can.); **2.** *Animals*, p. 57
— *v.* Nickerson (Can.); **38.** *Real Prop.* p. 89
— *v.* Pitman (No. 1) (Can.); **27.** *H. & W.* p. 45
— *v.* — (No. 2) (Can.); **27.** *H. & W.* p. 49
— *v.* White, *Re* White (1930); **43.** *Trusts*, No. 3489a
Pitre *v.* R. (Can.); **14.** *Crim.* pp. 65, 70
Pitt, *Ex p.* (1834); **42.** *Solrs.* No. 4636a
—, *Ex p.* (1923); **1.** *Agcy.* No. 2205a
— *v.* Durham County Water Board, *Re* Salvin's Indenture (1938); **43.** *Wtr. Sply.* No. 33a
— *v.* Stretford & District Gas Board (1936); **34.** *Mast. & S.* No. 2647e
Pitt, Ltd. *v.* Glenelg (Town) Corpn. (Aus.); **32.** *Lien*, p. 25
Pitt-Cross *v.* Malnick (Can.); **31.** *L. & T.* p. 66
Pitt-Rivers *v.* Queen Anne's Bounty (1936); **19.** *Eccl.* No. 3494a
Pittevil & Co. *v.* Brackelsberg Melting Processes, Ltd. (1931), 49 R. P. C. 73; **36.** *Pats.* No. 3413a
— *v.* Brackelsberg Melting Processes, Ltd., [1932] 1 Ch. 189; **36.** *Pats.* Nos. 2274a, 3317a
— *v.* — (1932), 49 R. P. C. 327; **36.** *Pats.* No. 3413a
Pittman *v.* Byrne (Aus.); **3.** *Basty.* p. 61
— *v.* Prudential Deposit Bank, Ltd. (1896); **1.** *Action*, No. 713a

Pitts, *Re*, Cox *v.* Kilsby (1931); **13.** *Crnrs.* No. 403a; **18.** *Desct.* No. 283h
Pittsburg Coal Co. *v.* Belchers S.S. (Can.); **1.** *Adm.* p. 23
Pittzen *v.* Shokluk (Can.); **2.** *Animals*, p. 57
Pixley *v.* Bedford (Can.); **2.** *Animals*, p. 60
Place *v.* Searle (1932); **27.** *H. & W.* No. 643b
— *v.* Spawn (Can.); **35.** *Mtge.* p. 32
Plaetzer *v.* Raymond (Can.); **25.** *Fraud. Conv.* p. 17
Plain, Ltd. *v.* Kenley & Royal Trust Co. (Can.); **9.** *Coys.* p. 28
Plaister, *Re*, Perpetual Trustee Co. *v.* Crawshaw (Aus.); **18.** *Desct.* p. 1
Plant, *In the Estate of*, Wild *v.* Plant (1926); **23.** *Exors.* No. 3127a
—, *Re*, Wild *v.* Plant (1926); **23.** *Exors.* No. 3127a
Planta *v.* Greenshields (Can.); **8.** *Char.* p. 72
— *v.* Greenshields (No. 2) (Can.); **23.** *Exors.* p. 21
Plante *v.* Forest (Can.); **16.** *Cr. Pract.* p. 37
Platman *v.* Frohman (1929); **31.** *L. & T.* No. 7188a
Platt *v.* McFaul (Can.); **12.** *Contr.* p. 43
Platz *v.* Lear & Lear (Can.); **28.** *Infts.* p. 137
Pleader, A, *Re* (Ind. (1929); **3.** *Barr.* p. 49
—, *Re* (Ind.) (1932); **17.** *Dep.* p. 84
Pleader Ramgobind Sinha, *Re* (Ind.); **3.** *Barr.* p. 49
Pleasants, *Re*, Pleasants *v.* A.-G. (1923); **8.** *Char.* Nos. 73b, 213a
Plein & Co. *v.* Jacobson & Son (S. Af.); **1.** *Agcy.* p. 77
Plenty *v.* Great Western Ry. Co. (1934); **8.** *Carr.* Nos. 1582, 1681
Plimmer, *Re*, *Ex p.* Speller (1853); **5.** *Bkpcy.* Nos. 6449, 6647
Plischke & Sohne G.m.b.H. *v.* Allison Bros., Ltd. (1936); **39.** *S. Goods*, No. 2218a
Plowden *v.* Lawrence, *Re* Grove-Grady (1929); **8.** *Char.* Nos. 4b, 208a
Plowman Tractor Co. *v.* Andrews (Can.); **32.** *Lien*, p. 25; **39.** *S. Goods*, p. 60
Plows *v.* Plows (1928); **27.** *H. & W.* No. 3436a
Plumb, *Re* (Can.); **40.** *Sttlmts.* p. 37
— *v.* Raleigh Cycle Co. (1928); **34.** *Mast. & S.* No. 3904a
— *v.* W. C. MacDonald Registered (Can.); **1.** *Agcy.* p. 51; **21.** *Estpl.* p. 25
Plumb & Orr *v.* Fermanagh County Council (Ir.); **17.** *Dep.* p. 66
Plumer *v.* Simonton (Can.); **7.** *Bonds*, p. 13
Plummer, *Re*, *Ex p.* Trustee (1900); **5.** *Bkpcy.* No. 7079
— *v.* Mack & Timms (Can.); **42.** *Stk. Ex.* p. 31
— *v.* Ramsey (1934); **31.** *L. & T.* Nos. 4614a, 4614b
Plummer Wagon Co. *v.* Wilson (Can.); **17.** *Dep.* p. 48
Plummer's Estate, *Re* (Can.); **21.** *E. D.* p. 17
Plunket *v.* Gilmore (1725); **32.** *Libel*, No. 672a
Plunkett *v.* Barclays Bank, Ltd. (1936); **3.** *Bank.* Nos. 321b, 567a
— *v.* Kroemer (Aus.); **15.** *Crim.* p. 82
— *v.* Mills Bros., Ltd. (Can.); **36.** *Negl.* p. 3
— *v.* Plunkett (1937); **27.** *H. & W.* No. 6251b
Plymouth Election Case (1929); **20.** *Elect.* Nos. 361a, 624a, 1627a
Plymouth Revenue Officer *v.* Plymouth Assessment Committee & Octagon Brewery Co. (1931); **38.** *Rates*, No. 226ff
Pochrebny, *Ex p.* (Can.); **16.** *Cr. Pract.* p. 35
Pockney *v.* Atkinson (1930); **44.** *Work*, Nos. 63a, 64a
Pocock *v.* Toronto City Corpn. (Can.), **38.** *Pub. Hlth.* p. 15
Pocock *v.* Wasey (1936); **8.** *Carr.* Nos. 1585, 1639
Pogson *v.* Tunnacliffe (1931); **34.** *Mast. & S.* No. 2710b
Point *v.* Dibblee Construction Co. (Can.); **17.** *Dep.* p. 74
Point Abino Ass'n. *v.* Bertie (Township) (Can.); **26.** *Hghys.* p. 17
Point Anne Quarries *v.* M. F. Whalen S.S. (Can.); **1.** *Adm.* p. 35
Point Breeze, The (1928); **1.** *Adm.* Nos. 706b, 781j
Pointer *v.* Kenn's Service Garage, Ltd. (Can.); **34.** *Mast. & S.* p. 14
Pointing *v.* Wilson (1926); **15.** *Crim.* No. 7685a
Pointon *v.* Cox (1926); **25.** *Gaming*, No. 424a
Poirier *v.* North American Life Assurance Co. (Can.); **2.** *Agric.* p. 25
Poirier Estate, *Re* (Can.); **11.** *Confl.* p. 35
Poisson & Woods *v.* Robertson & Turvey (1902); **18.** *Discy.* No 254a
Polakoff *v.* Winters Garment Co. (Can.); **43.** *Trade*, p. 7
Polar Aerated Water Works *v.* Winnikoff (Can.); **17.** *Dep.* p. 66
Pole's Case, *Re* Olympic Reinsurance Co. (1920); **1.** *Agcy.* No. 3040a
Pole-Carew *v.* Western Counties & General Manure Co., Ltd. (1920); *Pract.* No. 3583a
Policansky Bros., Ltd. *v.* Policansky (S. Af.); **43.** *Trade Mks.* p. 34
Police *v.* Nixon (N.Z.); **42.** *Time*, p. 73
— *v.* Wellington Film Society (N.Z.); **42.** *Theatres*, p. 71
Polkinghorn *v.* Lambeth Borough Council (1938); **26.** *Hghys.* No. 1384b
Polkinghorne *v.* Holland (Aus.); **42.** *Solrs.* p. 4
Poll, *Re* (Can.); **2.** *Aliens*, p. 50
Pollack *v.* Pollack, Deane & M'Namara (1863); **27.** *H. & W.* No. 5138a
Pollard, *Re* (Can.); **4.** *Bkpcy.* p. 36
— *v.* Gibson (Can.); **1.** *Agcy.* p. 108; **12.** *Contr.* p. 55
Pollock, *Re*, Official Receiver *v.* Haslip, Jackson (1936); **4.** *Bkpcy.* No. 5766a
— *v.* Baird (William) & Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 116
— *v.* Glasgow Corpn. (Scot.); **25.** *Gas*, p. 46
— *v.* Milligan (Can.); **31.** *L. & T.* p. 67
— *v.* Mount Vernon Colliery Co., Ltd. (1931); **34.** *Mast. & S.* No. 2490a
— *v.* Shapera (Can.); **35.** *Mtge.* p. 38
— *v.* Williamson (J. C.), Ltd. (Aus.); **13.** *Coprt.* p. 5
Pollok *v.* Fisher (Can.); **2.** *Agric.* p. 20
Polovnikoff *v.* Polovnikoff (Can.); **27.** *H. & W.* p. 24
Polson, *Re*, Trustee *v.* Thompson & Sutherland, Ltd. (Can.); **5.** *Bkpcy.* p. 93
— *v.* Parrott, *Re* Belliss (1929); **33.** *Lunat.* No. 204a
Polson Iron Works *v.* Munns (Can.); **17.** *Dep.* p. 66
Pomfret *v.* Morie & Imperial Bank of Canada (Can.); **21.** *Exon.* p. 57
Pommier, *Re* (Can.); **5.** *Bkpcy.* p. 71
Ponder *v.* Ponder (Scot.); **11.** *Confl.* p. 53
Pondicherry Ry. Co., Ltd. *v.* Income Tax Comrs. (Ind.); **28.** *Inc. T.* p. 37
Pong *v.* Quong (Can.); **31.** *L. & T.* p. 48
Pong Fook Wing, *Re*, *Re* Immigration Act (Can.); **2.** *Aliens*, p. 49
Ponomoroff *v.* Ponomoroff (Can.); **22.** *Evid.* p. 19
Ponser *v.* McDiarmid Co., Ltd. & Foster & McQuarrie (Can.); **42.** *Solrs.* p. 5
Pontardawe Rural District Council *v.* Moore-Gwyn (1929); **36.** *Nuis.* Nos. 232a, 364a
Pontin *v.* Price (1933); **42.** *Str. Traf.* No. 5d

Pontius *v.* Smith & Connaughty (Can.); **21.** *Exon.* pp. 57, 58
Pontypridd Union *v.* Drew (1927); **1.** *Agcy.* No. 215b; **12.** *Contr.* No. 743a; **26.** *Guar.* No. 1790a; **30.** *Jdgmts.* No. 525a
Pool Elevators, Ltd. *v.* McPherson (Can.); **32.** *Lien*, p. 22
Poole, *Re*, Stewart *v.* Poole (Can.); **44.** *Wills*, p. 16
— *v.* Poole (1871); **23.** *Exors.* No. 4687a
Poole & Thompson *v.* London & Lancashire Guarantee & Accident Co. (Can.); **29.** *Insce.* pp. 48, 49
— *v.* McNally (Can.); **42.** *Str. Traf.* p. 60
Pooler *v.* Patricia Municipal District (Can.); **13.** *Corpns.* p. 32
Pooley *v.* Mitchell (Can.); **8.** *Carr.* p. 1
— *v.* Pooley (N.Z.); **27.** *H. & W.* p. 66
— *v.* Royal Alexandra Hospital for Children (Aus.); **8.** *Char.* p. 71
Poozundaung Bazaar Co., Ltd. *v.* Ellerman's Arracan Rice & Trading Co., Ltd. (Ind.); **28.** *Injon.* p. 145
Pope *v.* Fraser (Can.); **6.** *B. of Exch.* p. 6
— *v.* National Trustees, Executors & Agency Co. of Australasia, Ltd. (Aus.); **8.** *Char.* p. 62
— *v.* Paul (Can.); **21.** *Exon.* p. 47
— *v.* Pictou Steamboat Co. (Can.); **1.** *Agcy.* p. 96
Pope Alliance Corpn., Ltd., *Re* (Can.); **28.** *Inc. T.* p. 27
Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, Ltd. (1929); **17.** *Dep.* No. 466a; **36.** *Pats.* p. 74
Popham *v.* Bertrand, *Re* Skaleski (Can.); **28.** *Infts.* p. 140
Poplar Revenue Officer *v.* Poplar Assessment Committee (1930); **38.** *Rates*, No. 226w
— *v.* Union Lighterage Co., Ltd. (1931); **38.** *Rates*, No. 226e
Poplar Valley Rural Municipality *v.* Moyer (Can.); **38.** *Rates*, p. 50
Popoff *v.* Cail (Can.); **12.** *Contr.* p. 25
— *v.* Dootoff (Can.); **25.** *Fraud. Conv.* p. 13
Popovich *v.* Lobay (Can.); **18.** *Discy.* p. 19
— *v.* — (No. 2) (Can.); **32.** *Libel*, p. 1
Popular Catering Association, Ltd. *v.* Romagnoli (1937); **31.** *L. & T.* No. 3906a
Port *v.* Griffith (1938); **31.** *L. & T.* No. 3019a
Port Adelaide (City) Corpn. *v.* South Australian Railways Comr. (Aus.); **38.** *Rys.* p. 37
Port Colborne & St. Lawrence Navigation Co., Ltd. *v.* The Lafayette (Can.); **41.** *Ship.* p. 52
Port Credit Realty, Ltd. *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 96
Port Huon Fruitgrowers' Co-operative Assocn., Ltd. *v.* Larkinson (Samuel), Ltd. (Aus.); **13.** *Corpns.* p. 37
Port of London Authority *v.* Canvey Island Comrs. & Canvey Island U.D.C. (1932); **42.** *Stats.* No. 706b; **44.** *Waters*, No. 568a
— *v.* Clan Colquhoun S.S. Owners (1936); **41.** *Ship.* No. 5140a
Port of Manchester Warehouses, Ltd. *v.* Cheshire Lines Committee, Great Central Ry. Co. & Great Northern Ry. Co. (1922), 17 Ry. & Can. Tr. Cas. 54; **8.** *Carr.* Nos. 1096a, 1219a
— *v.* — (1922), 17 Ry. & Can. Tr. Cas. 95; **8.** *Carr.* Nos. 1175a, 1377a, 1377c
— *v.* London, Midland & Scottish Ry. Co. (1925); **8.** *Carr.* No. 1377g
Port Perry Board of Education *v.* Ontario County (Can.); **19.** *Educ.* p. 41
Port Pirie Corpn., *Ex p.*, R. *v.* Joyce (Aus.); **16.** *Cntmpt.* p. 7
Port Pirie Corpn., *Re*, *Ex p.* Executor, Trustee & Agency Co. of South Australia, Ltd. (Aus.); **16.** *Cr. Pract.* p. 33
Port Rowan High School Trustees & Walsingham (Township) Corpn., *Re* (Can.); **19.** *Educ.* p. 41
Portage Avenue Development Co., Ltd. *v.* Diamond (Can.); **29.** *Insce.* p. 31
Portage la Prairie Rural Municipality *v.* Cartier Rural Municipality (Can.); **26.** *Hghys.* p. 49
Portage Milling & Transfer Co. *v.* Grand Trunk Pacific Ry. Co. (Can.); **8.** *Carr.* p. 4
Portarlington Electric Light & Power Co., Ltd., *Re* (Ir.); **17.** *Dep.* p. 88
Portarlington's Estates, *Re* (Ir.); **40.** *Sttlmts.* p. 39
Porteous, *Ex p.*, R. *v.* Dixon, Southampton Justices (1929); **14.** *Crim.* No. 1032a; **33.** *Mags.* No. 334a
—, *Ex p.*, R. *v.* Hampshire Justices (1929); **14.** *Crim.* No. 1032a; **33.** *Mags.* No. 334a
— *v.* North Vancouver Board of School Trustees (Can.); **1.** *Action*, p. 4
— *v.* Papineau (Can.); **28.** *Infts.* p. 136
— *v.* Porteous (Can.); **3.** *Bank.* p. 28
Porter, *Ex p.*, R. *v.* Norfolk JJ. (1926); **18.** *Distr.* No. 1588a
—, *Ex p.*, R. *v.* Smith (1927); **18.** *Distr.* No. 1588a
—, *Re*, Porter *v.* Porter (1925); **8.** *Char.* No. 769b
—, *Re*, — *v.* — (Aus.); **40.** *Sttlmts.* p. 34
— *v.* Fleming School District (Can.); **19.** *Educ.* p. 44
— *v.* Hindsley, *Re* Mellor (1929); **44.** *Wills*, No. 5708a
— *v.* Porter (1928); **27.** *H. & W.* No. 4028a
— *v.* — (Ir.); **2.** *Arbn.* p. 92
— *v.* —, *Re* Porter (Aus.); **40.** *Sttlmts.* p. 34
— *v.* R., *Ex p.* Chin Man Yee (Aus.); **16.** *Cntmpt.* p. 2; **17.** *Dep.* p. 61
— *v.* Solloway, Mills & Co., Ltd. (Can.); **1.** *Action*, pp. 12, 13
— *v.* Whitbys, Ltd. (1926); **34.** *Mast. & S.* No. 3530a
— *v.* Wyles, *Re* Wyles (1938); **23.** *Exors.* No. 4764c
Porter & Canadian Bank of Commerce, *Re* (Can.); **4.** *Bkpcy.* p. 39
Porter (William) & Co., Ltd., *Re* (1937); **9.** *Coys.* No. 3025a
Porter & MacGlashen *v.* Toronto Corpn., Foundation Co. of Ontario, Ltd. & Toronto Iron Works, Ltd. (Can.); **36.** *Pats.* p. 67
Porter & Son., Ltd. *v.* Western Assurance Co. (Can.); **29.** *Insce.* p. 15
Porter & Sons *v.* Muir Bros. Dry Dock Co. (Can.); **3.** *Bailmt.* p. 9
Porter (J. P.) & Sons, Ltd. *v.* Warren (Can.); **41.** *Ship.* p. 56
Porter & Toronto (City), *Re*, *Re* Stewart & Toronto (City), *Re* Harmans, Ltd. & Toronto (City) (Can.); **11.** *Comp. Pche.* p. 14
Portia, The (1932); **41.** *Ship.* No. 5239a
Portland (Duke) *v.* Wood's Trustees (Scot.); **36.** *Parl.* p. 54
Portman (Viscount), *Re* (No. 2) (1925); **21** *E. D.* No. 161a
Portman *v.* Lyons (J.) & Co., Ltd. (1937); **31.** *L. & T.* No. 2537a
Porto Alexandre, The (1920); **1.** *Adm.* Nos. 141c, 142a
Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934); **41.** *Ship.* No. 3909a
Portrush Urban District Council *v.* Mairs (Ir.); **43.** *Wtr. Sply.* p. 75

Portrush Urban District Council *v.* Sloan (Ir.); **43.** *Wtr. Sply.* p. 75
Portstewart Urban District Council *v.* Hamill (Ir.); **38.** *Pub. Hlth.* p. 19
Portvale S.S. Co., Ltd. *v.* Royal Exchange Assurance Corpn. (1932); **29.** *Insce.* No. 912a
Post *v.* Jones (Can.); **32.** *Lien*, p. 26
Postmaster-General *v.* Birmingham Corpn. (1936); **42.** *Tele.* No. 28a
— *v.* Southgate Corpn. (1935); **42.** *Tele.* No. 18a
Poswa *v.* Christie (S. Af.); **22.** *Evid.* p. 3
Potato Marketing Board *v.* Harlow (1936); **2.** *Agric.* No. 979e
Poteliakhoff *v.* Teakle (1938); **25.** *Gaming*, No. 66a
Potratz *v.* Potratz (Can.); **11.** *Confl.* p. 49
Pott *v.* Stuteley (1935); **16.** *Cntmpt.* No. 882a
Potter *v.* Landen (Can.); **1.** *Agcy.* p. 75
— *v.* Silverwood (Can.); **44.** *Waters*, p. 2
— *v.* Sydney Mines (Can.); **26.** *Hghys.* p. 35
Potter's Case, *Re* Oxford & Worcester Extension & Chester Junction Ry. Co. (1849); **10.** *Coys.* No. 6137a
Potteries Electric Traction Co., Ltd. *v.* Bailey (1931); **38.** *Rates*, Nos. 226a, 226d
— *v.* Stoke-on-Trent Revenue Officer (1931); **38.** *Rates*, Nos. 226a, 226d
Potticary, *In the Estate of* (1927); **23.** *Exors.* Nos. 924a, 931a
Potts, *Ex p.*, *Re* Ayre (1840); **4.** *Bkpcy.* No. 1007a
—, *Re*, *Ex p.* Epstein *v.* Trustee & Bankrupt (1935); **4.** *Bkpcy.* No. 4755a
—, *Re*, *Ex p.* Etablissements Callot & De Schrijver *v.* Leonard Tubbs & Co. & Official Receiver (1934); **5.** *Bkpcy.* No. 8683a
—, *Re*, Hooley *v.* Fountain (1884); **24.** *Exors.* No. 8841a
— *v.* Potts (1934); **27.** *H. & W.* No. 6188a
— *v.* Smail (Can.); **2.** *Animals*, p. 66
Potvin *v.* Gatineau Electric Light Co. (Can.); **20.** *Electric*, p. 15
— *v.* Glen Falls Insurance Co. (Can.); **29.** *Insce.* p. 6
Poulden *v.* Poulden (1938); **27.** *H. & W.* Nos. 3060a, 3097a
Poulin & L'Original Village, *Re* (Can.); **38.** *Pub. Hlth.* p. 14
Poundall, *Re*, *Ex p.* Williams (Aus.); **24.** *Extrdn.* p. 46
Pounder *v.* London County Council (1934); **37.** *Poor L.* No. 105a
Poushay *v.* Wells (Can.); **21.** *Exon.* p. 56
Powell, *Ex p.*, R. *v.* Weston-Super-Mare Licensing JJ. (1938); **30.** *Intox.* No. 343a
—, *In the Estate of* (1935); **23.** *Exors.* No. 2585d
— *v.* Cauldon Potteries, Ltd. (1926); **34.** *Mast. & S.* No. 3819a
— *v.* Edmunds (1810); **22.** *Evid.* No. 2544a
— *v.* Jessopp (1856); **9.** *Coys.* No. 2269a
— *v.* Martin (Can.); **36.** *Negl.* p. 15
— *v.* Richardson, *Re* Lloyd (Can.); **44.** *Wills*, p. 46
— *v.* Sheffield Corpn. (1936); **39.** *Revenue*, Nos. 841c, 841d
— *v.* Streatham Manor Nursing Home (1935); *Pract.* No. 3357a
— *v.* Thomas (1848); **21.** *Estpl.* No. 1456a
— *v.* —, *Re* Thomas's Will Trusts (1930); **44.** *Wills*, No. 2665a
Powell & Mersereau *v.* American Hydro Carbon Co., *Re* Maritime Education Co. (Can.); **4.** *Bkpcy.* p. 29
Powell & Toronto Corpn., *Re* (Can.); **11.** *Comp. Pche.* pp. 5, 7
Powell Duffryn Steam Coal Co., Ltd. *v.* Edwards (1935); **43.** *Trade*, No. 1297a
Powell Duffryn Steam Coal Co., Ltd. *v.* Great Western Ry. Co. (1935); **8.** *Carr.* Nos. 1237b, 1237h, 1237j
Powell Dyffryn Steam Coal Co. *v.* Griffiths (1934); **34.** *Mast. & S.* No. 3828c
Powell Lane Manufacturing Co., Ltd. *v.* Putnam (1928); **39.** *Revenue*, No. 93c
Powell's Case, *Re* Ford, *Ex p.* Trustee (1929); **5.** *Bkpcy.* No. 6882b
Power *v.* Ahern (Aus.); **26.** *Guar.* p. 1
— *v.* British India Steam Navigation Co., Ltd. (1930); **34.** *Mast. & S.* Nos. 396a, 396b, 414a; **41.** *Ship.* Nos. 551a, 560a
— *v.* Canniff (Can.); **25.** *Gaming*, p. 37
— *v.* Edmonton Lumber Exchange (Can.); **9.** *Coys.* p. 50
— *v.* Grace (Can.); **38.** *Real Prop.* p. 91
— *v.* London, Midland & Scottish Ry. Co. (1934); **8.** *Carr.* Nos. 1545, 1699
— *v.* Nova Scotia Trust Co. (Can.); **35.** *Mtge.* p. 44
— *v.* R. (N.Z.); **37.** *Police*, p. 10
Power & Power *v.* Hughes (Can.); **31.** *L. & T.* p. 73
Power Commission Act, *Re* (Can.); **11.** *Comp. Pche.* p. 5
Powers *v.* Nashwaak Pulp & Paper Co. (Can.); **1.** *Agcy.* p. 79
— *v.* R. (Can.); **11.** *Const. L.* p. 73
Powers of Advocates, *Re* (Ind.); **3.** *Barr.* p. 48
Powers to Wharfage Charges, *Re* (Can.); **38.** *Rys.* p. 45
Powis *v.* Butler (1858); **3.** *Bank.* No. 215a
— *v.* Vancouver (City) (Can.); **2.** *Arbn.* p. 98
Powlett & Powlett *v.* Alberta University (Can.) **19.** *Educ.* p. 42
Powszechny Bank Zwiazkowy W. Polsce *v.* Paros (1932); **6.** *B. of Exch.* No. 3019a
Powys *v.* Blagrave (1854); **40.** *Stldmts.* No. 2243a
Prabodhchandra Mitra *v.* Road Oils (India), Ltd. (Ind.); **35.** *Mtge.* p. 31
Practice Direction (1937); **23.** *Exors.* No. 8166a
Practice Note (1899); **4.** *Bkpcy.* No. 4613a
— (1920); **3.** *Barr.* No. 408a
— (1922); **16.** *Courts*, No. 684a
—, [1925] W. N. 164; **16.** *Courts*, No. 352a
— (1925), 159 L. T. Jo. 95; **27.** *H. & W.* No. 4447a
— [1926] W. N. 8; **27.** *H. & W.* No. 2189a; **28.** *Infts.* No. 1563a
—, [1926] W. N. 250; **28.** *Inc. T.* Nos. 632b, 632d
—, [1926] W. N. 308; **13.** *Cty. Cts.* No. 928a; **16.** *Cr. Pract.* Nos. 1433a, 2046a, 2326a, 3142a, 3209a, 3456a
— (1927); **2.** *Arbn.* No. 1069a
—, [1928] W. N. 209; **21.** *Exon.* No. 2547a
— (1928); **20.** Cr. App. Rep. 185; **30.** *Jdgmts.* No. 629a
—, [1929] W. N. 66; **10.** *Coys.* No. 5590a
— (1929), 45 T. L. R. 476; **35.** *Money*, No. 353ee
— (1930), 69 L. Jo. 80; **36.** *Pats.* No. 2254a
— (1930), 69 L. Jo. 252; **9.** *Coys.* No. 834a
— (1930), 69 L. Jo. 268; **10.** *Coys.* No. 5654a
— (1930), 169 L. T. Jo. 123; **18.** *Discy.* No. 1316a
— (1930), 47 T. L. R. 88; **4.** *Bkpcy.* No. 4714a
— (1930), 47 T. L. R. 168; **33.** *Mags.* No. 1622a
—, [1930] W. N. 254; **4.** *Bkpcy.* No. 4790a
—, [1931] W. N. 121; **30.** *Jdgmts.* No. 739b
—, [1931] W. N. 184; **5.** *Bkpcy.* No. 8445a
—, [1931] W. N. 199; **10.** *Coys.* No. 7452b
— (1932), 48 T. L. R. 300; **16.** *Courts*, No. 532a
—, [1932] W. N. 6; **35.** *Mtge.* No. 2997a; **38.** *Real Prop.* No. 907a
—, [1932] W. N. 22; **36.** *Pats.* No. 2944f
—, [1932] W. N. 61; **36.** *Parl.* No. 54a
—, [1932] W. N. 79; **10.** *Coys.* No. 4987a
—, [1932] W. N. 172; **4.** *Bkpcy.* No. 4970a

Practice Note [1932] W. N. 252; *Pract.* No. 1924a
—, [1933] W. N. 148; **17.** *Dep.* No. 631a
—, [1933] W. N. 190; **42.** *Solrs.* No. 1849a
—, [1933] W. N. 284; **10.** *Coys.* No. 6198a
— (1934), 27 B. W. C. C.; **34.** *Mast. & S.* No. 3968a
— (1934), 32 L. G. R. 368; **27.** *H. & W.* No. 6188c
—, [1934] W. N. 11; **4.** *Bkpcy.* No. 3029b
—, [1934] W. N. 72; **5.** *Bkpcy.* Nos. 8451a, 8484a 8484b, 8484c, 8496b
—, [1934] W. N. 86 (Note 1); **27.** *H. & W.* Nos. 5343a, 5487b
—, [1934] W. N. 86 (Note 2); **27.** *H. & W.* No. 4355e
—, [1934] W. N. 112; **27.** *H. & W.* No. 3920a
—, [1934] W. N. 142; **10.** *Coys.* No. 7404b
—, [1934] W. N. 198; **22.** *Evid.* No. 5627a; **28.** *Injon.* No. 1104a
—, [1934] W. N. 228; *Pract.* No. 870a
— (1935), 80 L. Jo. 148; **36.** *Parl.* No. 77a
—, [1935] W. N. 54; **33.** *Lunat.* No. 545a
—, [1935] W. N. 167; **16.** *Courts*, No. 355a
— (1936), 26 Cr. App. Rep. 13; **15.** *Crim* No. 6434b
—, [1936] W. N. 54; *Pract.* No. 1298a
—, [1936] W. N. 160; **4.** *Bkpcy.* No. 2299a
— (1937), 184 L. T. Jo. 402; **9.** *Coys.* No. 839b
—, [1937] W. N. 298; **23.** *Exors.* No. 2459a
—, [1937] W. N. 350; **10.** *Coys.* No. 5634a
—, [1938] W. N. 136; **11.** *Const. L.* No. 474b
—, [1938] W. N. 232; **27.** *H. & W.* No. 5760c
—, [1938] W. N. 249; **5.** *Bkpcy.* No. 8514a
—, [1938] W. N. 339; **16.** *Courts*, No. 352c
Practitioner of Supreme Court, *Re* (Aus.); **42.** *Solrs.* p. 13
Prafullakumar Basu *v.* Emperor (Ind.); **15.** *Crim.* p. 96
Prafulla Ranjan Das *v.* Patna High Court Judges (Ind.); **3.** *Barr.* p. 48
Pragdas Budhsen, *Ex p.*, Hurnandrai Fulchand *v.* Pragdas Budhsen (1924); **16.** *Courts*, No. 535a
Prager *v.* Blatspiel, Stamp & Heacock, Ltd. (1924); **1.** *Agcy.* No. 215a
Pramathanath Malia *v.* Low & Co. (Ind.); **21.** *Exon.* p. 59
Pramatha Nath Sanyal *v.* Kali Kumar Dutt (Ind.); **9.** *Coys.* p. 6
Pramathanath Sarkar *v.* Suprakash Ghosh (Ind.); **44.** *Wills*, p. 30
Prannath Kundu *v.* Emperor (Ind.); **16.** *Custom*, p. 1
Prasannakumar Datta *v.* Secretary of State for India in Council (Ind.); **11.** *Comp. Pche.* p. 10
Prat *v.* Hitchcock (Can.); **21.** *Exon.* p. 59
Pratt, *Ex p.*, *Re* Gent One (Aus.); **42.** *Solrs.* p. 8
— *v.* A. A. Sites, Ltd. (1938); **33.** *Mags.* No. 1180a
— *v.* British Medical Assocn. (1919); **1.** *Action*, No. 249a
— *v.* Cook, Son & Co. (St. Paul's), Ltd. (1938); **24.** *Fact.* Nos. 239a, 266a, 284a
— *v.* Grand Trunk Ry. Co. (Can.); **38.** *Rys.* p. 36
— *v.* London Passenger Transport Board (1937); **23.** *Exors.* No. 2516a
— *v.* Patrick (1924); **1.** *Agcy.* No. 2318a
— *v.* Pratt (1927); **27.** *H. & W.* Nos. 6251c, 6255a
— *v.* — (1938); **27.** *H. & W.* No. 2928a
— *v.* Scheveck (Can.); **28.** *Injon.* pp. 145, 146, 147
— *v.* Strick (1932); **28.** *Inc. T.* No. 210d; **36.** *Prtnrs.* No. 129a
Pratt's Case (1875); **12.** *Contr.* No. 4985
Pratt's Trustee *v.* Pratt (1936); **26.** *Guar.* No. 792a
Pratten *v.* Labour Daily, Ltd. (Aus.); **32.** *Libel* p. 5
Precision Mach. & Fdry., Ltd. *v.* Industrial Securities, Ltd. (Can.); **1.** *Agcy.* p. 87
Premchand Hira *v.* Bai Galal (Ind.); **27.** *H. & W.* p. 37
Premier Confectionery (London) Co., Ltd. *v.* London Commercial Sale Rooms, Ltd. (1933); **31.** *L. & T.* No. 5287a
Premier Dairies *v.* Garlick (1920); **2.** *Agric.* No. 268a
Premier Lumber Co. *v.* Grand Trunk Pacific Ry. Co. (Can.); **8.** *Carr.* pp. 3, 4
Premier Trust Co. *v.* Haxwell (Can.); **35.** *Mtge.* p. 34
— *v.* McAlister (Can.); **9.** *Coys.* p. 36
Premier Trust Co. & Hawell, *Re* (Can.); **35.** *Mtge.* p. 34
Premsukhdas Singhania *v.* N. C. Bural & Pyne (Ind.); **42.** *Solrs.* p. 9
Prendergast *v.* Cameron (1938); **28.** *Inc. T.* No. 501c
— *v.* O'Gorman (Ir.); **23.** *Exor.* p. 18
Prentice *v.* Dominion Rubber Co., Ltd. (Can.); **36.** *Pats.* p. 78
— *v.* Merrick (Can.); **1.** *Agcy.* p. 81
— *v.* Sault Ste. Marie (Can.); **38.** *Pub. Auth.* p. 12
Prentice Brothers, Ltd. *v.* London & North Eastern Ry. Co. (1925); **8.** *Carr.* Nos. 1166d, 1337a
Prentice Manufacturing Co. *v.* Kenny (Can.); **36.** *Pats.* p. 67
Prescott, Ltd. *v.* Perpetual Trustee Co., Ltd. (Aus.); **16.** *Courts*, p. 11
Press *v.* Mathers (Aus.); **21.** *Estpl.* p. 38
Pressler (A.) & Co., Ltd. *v.* Gartside & Co. (of Manchester), Ltd., & Widd & Owen, Ltd., *Re* Pressler & Co., Ltd. Registered Design No. 272,672 (1933); **43.** *Trade Mks.* No. 940a
Prestige & Co., Ltd. *v.* Brettell (1938); **7.** *Bldg. Conts.* No. 397a
Preston *v.* Jackson (1928); **25.** *Food*, No. 169a
— *v.* Preston & Moxley (Can.); **27.** *H. & W.* p. 54
— *v.* Public Trustee, *Re* Roper (N.Z.); **44.** *Wills*, p. 56
— *v.* Raphael Tuck & Sons (1926); **13.** *Coprt.* No. 694a
— *v.* Strutton (1792); **12.** *Contr.* No. 4770a
Preston Corpn. *v.* Pyke (1929); **7.** *Burial*, Nos. 237a, 237c, 237d, 237e
Prete *v.* Lauzon & Fensom (Can.); **7.** *B. of Sale*, p. 4
Pretyman *v.* Pretyman, *Re* Tomline's Will Trusts (1931); **44.** *Wills*, Nos. 5332a, 5897b
Prevedoros *v.* Prevedoros (Can.); **28.** *Injon.* p. 146
Previté, *Re*, Sturges *v.* Previté (1931); **21.** *E. D.* Nos. 209c, 243a
Prevost, *Re*, Lloyds Bank, Ltd. *v.* Barclays Bank, Ltd. (1930); **8.** *Char.* No. 251a
Pribag *v.* Dworshik (Can.); **5.** *Bkpcy.* p. 85
Price, *Ex p.*, *Re* Gorfett's Trust (1850); **35.** *Mtge.* No. 1324a
—, *Ex p.*, R. *v.* Bedwellty Urban District Council (1934); **33.** *L. G.* Nos. 215a, 215b
—, *Ex p.*, R. *v.* West Monmouthshire Omnibus Board (1938); **33.** *L. G.* No. 84b
—, *Re* (1928); **13.** *Cohlds.* No. 2032a; **18.** *Desct.* No. 150a
—, *Re* (1931); **23.** *Exors.* Nos. 1431c, 2398a
—, *Re* (Can.); **21.** *Exon.* p. 52
—, *Re*, Price *v.* Price (1879); **23.** *Exors.* No. 165a
—, *Re*, Price *v.* Price (1929); **40.** *Sttlmts.* Nos. 3143a, 3143b
—, *Re*, Trumper *v.* Price (1932); **44.** *Wills*, No. 5532a

Price *v.* Amalgamated Anthracite Collieries, Ltd. (1932); **34.** *Mast. & S.* No. 3811c
— *v.* British Columbia Motor Transport, Ltd. & Ledbury (Can.); **36.** *Negl.* p. 30
— *v.* Dewhurst (1837); **11.** *Confl.* No. 1033
— *v.* — (1838); **11.** *Confl.* No. 1033
— *v.* Dominion of Canada General Insurance Co. (Can.); **29.** *Insce.* p. 39
— *v.* Fraser Valley Milk Producers Assocn. (Can.); **36.** *Negl.* p. 32
— *v.* Gould (1930); **31.** *L. & T.* Nos. 7097a, 7107b
— *v.* Groom (1848); **3.** *Bailmt.* No. 125a
— *v.* Haberman (Can.); **1.** *Agcy.* p. 87
— *v.* Hilditch (1930); **19.** *Easmt.* No. 934b, 1433a
— *v.* Indiana-Alberta Oil Co. (Can.); **9.** *Coys.* p. 50
— *v.* Parsons (Aus.); **17.** *Dep.* p. 64
— *v.* Price (1927); **27.** *H. & W.* No. 6164a
— *v.* —, *Re* Price (1879); **23.** *Exors.* No. 165a
— *v.* —, *Re* — (1929); **40.** *Sttlmts.* Nos. 3143a, 3143b
— *v.* R. (1925); **16.** *Cr. Pract.* No. 353a
— *v.* Representative Body of The Church in Wales (1938); **19.** *Eccl.* No. 4055b
— *v.* Swift Canadian Co., Ltd. (Can.); **7.** *Bldg. Conts.* p. 25
Price Brothers & Co., Ltd. *v.* R. (Can.); **17.** *Deeds*, p. 28
Price, Davies & Co. *v.* Smith (1929); **1.** *Agcy.* Nos. 1746b, 1780a
Price's Trust Deed, *Re* (1868); **5.** *Bkpcy.* No. 8965a
Priceville Fox Co. *v.* Jordan (Can.); **9.** *Coys.* p. 44
Prichard *v.* Thomas, *Re* Estlin (1903); **8.** *Char.* No. 47b
Prichard & Constance (Wholesale), Ltd. *v.* Amata, Ltd. (1924); **9.** *Coys.* No. 3327b
Pridie *v.* Bellamy, *Re*, Madge (1928); **23.** *Exors.* No. 3517a
Pridmore Estate, *Re* (Can.); **44.** *Wills*, p. 56
Priest *v.* Uppleby, *Re* Salmon (1889); **35.** *Mtge.* No. 415a
Priestman (Alfred) & Co. (1929), Ltd., *Re* (1936); **10.** *Coys.* Nos. 4651a, 7007a
Prilutsky *v.* Anderson (Can.); **28.** *Injon.* p. 154
Primary Producers Bank of Australia, Ltd. *v.* Hughes (Aus.); **10.** *Coys.* p. 104
Primeau & Imperial Lumber Yards, Ltd. *v.* Meagher (Can.); **12.** *Contr.* p. 33
Prince, *Re*, Hardman *v.* Willis (1935); **23.** *Exors.* No. 4764a
— *v.* Moore (Can.); **31.** *L. & T.* p. 46
— *v.* Toronto (Can.); **11.** *Comp. Pche.* p. 14
Prince Albert (City), *Ex p.*, *Re* Matheson (Can.); **4.** *Bkpcy.* p. 37
—*v.* Canwood Rural Municipality (Can.); **38.** *Pub. Hlth.* p. 20
Prince Edward Island Mutual Fire Insce. Co. *v.* Best (Can.); **25.** *Fraud. Conv.* p. 14
Princess, The (1929); **41.** *Ship.* Nos. 5608b, 6377a
Princess Adelaide (Owners of) *v.* Hampholm, The (Can.); **41.** *Ship.* p. 53
Princess Alice, The *v.* West Vancouver Corpn. (Can.); **41.** *Ship.* p. 61
Principal Immigration Officer *v.* Bhula (S. Af.); **42.** *Stats.* pp. 23, 25
— *v.* Purshotam (S. Af.); **2.** *Aliens*, pp. 51, 52
Principal Secretary of State for War *v.* Toronto Corpn. (Can.); **38.** *Rates*, p. 64
Pringle *v.* Hales (1925); **13.** *Cty. Cts.* Nos. 139a, 327a
— *v.* Hutson (Can.); **35.** *Mtge.* p. 44
— *v.* McKay (N.Z.); **1.** *Agcy.* pp. 60, 66
Prins Hendrik, The (1899); **41.** *Ship.* No. 8044a
Prinsep *v.* Prinsep (1930); **27.** *H. & W.* Nos. 5596a, 5625b, 5718a
Prinses Juliana, The, Esbjerg Owners *v.* Prinses Juliana Owners (1936); **1.** *Adm.* No. 1152d; **41.** *Ship.* Nos. 5379a, 6144a
Prior, *Re*, *Ex p.* Prior (1921); **4.** *Bkpcy.* Nos. 40a, 1548a
—, *Re*, *Ex p.* Trustee (1922); **4.** *Bkpcy.* No. 454a
Pritchard, *Re* (Can.); **28.** *Injts.* p. 141
— *v.* Dyke (1933); **42.** *Str. Traf.* No. 232e
— *v.* James Clay (Wellington), Ltd. (1926); **24.** *Fact.* No. 264a
— (Cardiff Revenue Officer) *v.* Lewis (William) & Sons (1931); **38.** *Rates*, No. 226k
— *v.* Pritchard (1920); **22.** *Evid.* No. 3422a
Private Co., *Re* (N.Z.); **10.** *Coys.* p. 69
Privett *v.* Darracq Motor Engineering Co., Ltd. (1934); **34.** *Mast. & S.* No. 2557c
Procter Shotton, *Ex p.*, *Re* Gowland Brothers (1928); **4.** *Bkpcy.* No. 1451a
Proctor, *Re* (Can.); **2.** *Agric.* p. 25
— *v.* Anderson & Northern Elevator Co., Ltd., Ekman & Proctor & Mallery (Can.); **7.** *B. of Sale*, pp. 5, 8
— *v.* Bentley (Can.); **43.** *Trusts*, p. 66
— *v.* British Northrop Co., Ltd. (1937); **36.** *Negl.* No. 457f
— *v.* Graham (Can.); **27.** *H. & W.* p. 9
— *v.* Parker (Can.); **21.** *Exon.* p. 52
— *v.* Ryall (1928); **28.** *Inc. T.* Nos. 489b, 516a
Proctor & Gamble Co. of Canada, Ltd., *Re* (Can.); **17.** *Dep.* p. 50
Proctor & Gamble Co.'s Petition, *Re*, Proctor & Gamble Co. *v.* Pugsley Dingman & Co., Ltd. (Can.); **43.** *Trade Mks.* p. 21
Produce Brokers, Ltd. *v.* Blyth, Greene, Jourdain & Co., Ltd. (1918); **2.** *Arbn.* Nos. 1799a, 1960a
Producers Real Estate & Finance Co., Ltd., *Re* (Aus.); **10.** *Coys.* p. 67
Professional Players of Association Football, *Re*, *Re* National Health Insurance Act, 1924 (1934); **44.** *Work*, No. 146b
Profits & Income Insurance Co., *Re* (1929); **10.** *Coys.* No. 7611a
Progressive Agency *v.* Bennett (N.Z.); **1.** *Agcy.* p. 85
Progressive Farmers, *Re*, *Re* Holden National Co.'s Claim (Can.); **5.** *Bkpcy.* p. 59
Progressive Farmers Co., Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 16
—, *Re*, *Ex p.* Brown Brothers & Burnstad, Ltd. (Can.); **5.** *Bkpcy.* p. 73
Promis & Frank Estate, *Re*, Col *v.* A.-G. for British Columbia (Can.); **17.** *Dep.* p. 50
Pronek *v.* Winnipeg Selkirk & Lake Winnipeg Ry. Co. (Can.); **43.** *Tram.* p. 49
Proniuk *v.* Petryk (Can.); **32.** *Libel*, p. 17
Proprietary Articles Trade Assocn. *v.* A.-G. for Canada (1931); **17.** *Dep.* No. 130f
Propsting, *Ex p.*, *Re* Coleman (Aus.); **1.** *Agcy.* p. 109
Prospect District Council Bye-law, *Re*, *Ex p.* Hill (Aus.); **22.** *Evid.* p. 7
Prosperity, Ltd. *v.* Lloyds Bank, Ltd. (1923); **3.** *Bank.* No. 342a
Prosser, *Re*, Prosser *v.* Griffith (1929); **23.** *Exors.* No. 2555a; **44.** *Wills*, No. 8553a
— *v.* Mountain Ash Urban District Council (1931); **25.** *Food*, No. 476b
— *v.* Richings (1936); **42.** *Str. Traf.* No. 232f
Proter Estate, *Re* (Can.); **44.** *Wills*, p. 37
Prothero *v.* Watson (1931); **25.** *Gaming*, No. 466a
Proudfoot (Doe) *v.* McCrae (Can.); **25.** *Fraud. Conv.* p. 16
Proudlock *v.* Canadian Bank of Commerce (Can.); **3.** *Bank.* p. 46

Providence Washington Assce. Co. *v.* Gagnon & Cloutier, *Re* North Shore Trading Co. (Can.); **4.** *Bkpcy.* p. 45
Provident Accident & White Cross Insurance Co., Ltd. *v.* Dahne & White (1937); **7.** *Bldg. Conts.* No. 383b
Provincial Apartments, Ltd., *Re* (Can.); **10.** *Coys.* p. 94
Provincial Bank *v.* Bellefleur (Can.); **6.** *B. of Exch.* p. 14
Provincial Elections Act, *Re*, Smith *v.* Catherwood (Can.); **20.** *Elect.* p. 4
Provincial Insurance Co. *v.* Morgan & Foxon (1933); **29.** *Insce.* No. 3141a
Provincial Insurance Co. of Canada *v.* Connolly (Can.); **29.** *Insce.* p. 15
Provincial Sanatorium *v.* McArthur (Can.); **12.** *Contr.* p. 4
Provincial Secretary-Treasurer *v.* Schofield (Can.); **21.** *E. D.* p. 17
Provincial Transport Co. *v.* Montreal Sight Seeing Tours, Ltd. (Can.); **43.** *Trade*, p. 7
Provincial Treasurer's Claim, *Re* (Can.); **39.** *Revenue*, p. 25
Pruce *v.* Davey (1926); **34.** *Mast. & S.* Nos. 2340a, 2460b
Pruden *v.* Foxon (Can.); **36.** *Negl.* p. 30
Prudential Assurance Co., Ltd. *v.* Inland Revenue Comrs. (1935); **29.** *Insce.* No. 2780a
Prudential Assurance Co.'s Trust Deed, *Re*, Horne *v.* Prudential Assurance Co. (1934); **43.** *Trade*, No. 131b
Prudential Exchange Co., Ltd. *v.* Edwards (Can.); **6.** *B. of Exch.* p. 11
Pruss *v.* Pruss (Can.); **27.** *H. & W.* p. 55
Pryor *v.* R. (Can.); **30.** *Intox.* p. 16
Ptolemy *v.* Saskatchewan Municipal Hail Insurance Assocn. (Can.); **29.** *Insce.* p. 58
Public Health Commission, *Ex p.*, R. *v.* Rochestershire Council (Aus.); **16.** *Cr. Pract.* p. 31
Public Highways Dept., Ontario *v.* Canadian Pacific Ry. Co. (Clappison Bridge Case) (Can.); **26.** *Hghys.* p. 49
Public Property Trustees *v.* Gillis (Can.); **21.** *Estpl.* p. 40
Public Prosecutions Director, *Ex p.*, R. *v.* Daily Express (1924); **16.** *Cntmpt.* No. 179b
—, *Ex p.*, R. *v.* Devon JJ. (1924); **14.** *Crim.* Nos. 1022a, 1138
—, *Ex p.*, R. *v.* Evening Standard (1924); **16.** *Cntmpt.* No. 179b
—, *Ex p.* R. *v.* Lewis (1936); **16.** *Cr. Pract.* No. 2533a
—, *Ex p.*, R. *v.* Manchester Guardian (1924); **16.** *Cntmpt.* No. 179b
—, *Ex p.*, R. *v.* New Statesman (Editor) (1928); **16.** *Cntmpt.* Nos. 164a, 165a
—, *Ex p.* R. *v.* Valentine (1936); **16.** *Cr. Pract.* No. 2533a
—, *Ex p.*, R. *v.* Williams (1936); **16.** *Cr. Pract.* No. 2533a
— *v.* Phillips (1935); **25.** *Gaming*, No. 433a
Public Trustee *v.* Abercrombie, *Re* Abercrombie's Will Trusts (1931); **24.** *Exors.* No. 8757a
— *v.* Aldridge, *Re* King (1928); **40.** *Sttlmts.* No. 1059a
— *v.* Armstrong, *Re Park* (1932); **37.** *Powers*, No. 1151a
— *v.* A.-G., *Re* Cammell (1925); **8.** *Char.* No. 657a
— *v.* —, *Re* Gwyon (1930); **8.** *Char.* Nos. 266a, 691b, 1089a
— *v.* —, *Re* Hamer's Estate (1937); **3.** *Basty.* No. 79b
— *v.* B. F. H., *Re* S. B. H. (N.Z.); **44.** *Wills*, p. 13
— *v.* Barry, *Re* Ray's Will Trusts (1936); **44.** *Wills*, No. 1075a
Public Trustee *v.* Bate, *Re* Bate (1938); **20.** *Eqy.* No. 414a; **44.** *Wills*, No. 373a
— *v.* Best, *Re* Harrison (1934); **25.** *Gifts*, No. 369a
— *v.* Birchenough, *Re* Peacock (1929); **44.** *Wills*, No. 7637a
— *v.* Bishop, *Re* Bishop (Aus.); **44.** *Wills*, p. 45
— *v.* Bowyen (N.Z.); **44.** *Wills*, p. 50
— *v.* Bryant, *Re* Tegg (1936); **44.** *Wills*, Nos. 2825b, 2825c
— *v.* Canterbury, *Re* Walpole (1933); **20.** *Eqy.* No. 1187a
— *v.* Catling, *Re* Catling (1931); **40.** *Sttlmts.* No. 2633a
— *v.* Clarendon (Earl), *Re* Jones (1929); **8.** *Char.* No. 217b
— *v.* Coleman, *Re* Coleman (1936); **37.** *Perps.* No. 493b
— *v.* Cuthbert, *Re* Bromage (1935); **3.** *Basty.* No. 22d
— *v.* Davidson (Scot.); **2.** *Aliens*, p. 33
— *v.* Elder (1926); **2.** *Aliens*, No. 235a
— *v.* Evans, *Re* Evans (1920); **5.** *Bkpcy.* Nos. 5932b, 5936a
— *v.* Eve, *Re* Cox (1938); **39.** *Rntchgs.* No. 196a
— *v.* Gladstone (N.Z.); **6.** *B. of Exch.* p. 18
— *v.* Goldsmid, *Re* De Jong (1929); **8.** *Char.* No. 884a
— *v.* Gowenlock, *Re* Gowenlock (1934); **44.** *Wills*, Nos. 4715a, 4834a
— *v.* Gray, *Re* Westerton (1919); **3.** *Bank.* No. 409a
— *v.* Grinlinton, *Re* Grinlinton (1933); **21.** *E. D.* No. 121a
— *v.* Hadlow, *Re* Forbes (1934); **44.** *Wills*, Nos. 7599a, 7601a
— *v.* Heath, *Re* Heath (1936); **44.** *Wills*, No. 9535a
— *v.* Hood, *Re* Caire (Aus.); **29.** *Insce.* p. 38
— *v.* —, *Re* Hood (1931); **8.** *Char.* Nos. 68a, 217d
— *v.* Horton (N.Z.); **44.** *Wills*, p. 35
— *v.* Husband, *Re* Thompson (1936); **23.** *Exors.* No. 5762a
— *v.* Ingle, *Re* Binns (1929); **20.** *Eqy.* No. 2006a
— *v.* Jones, *Re* Jones (1934); **44.** *Wills*, No. 239b
— *v.* Kidd (N.Z.); **44.** *Wills*, p. 56
— *v.* Kohlbeck, *Re* Bloomfield (1933); **8.** *Char.* No. 841b
— *v.* Lancaster Duchy (1927); **19.** *Eccl.* No. 3465a
— *v.* Legh, *Re* Legh's Settlement Trusts (1938); **37.** *Perps.* No. 334a
— *v.* Leitch (Aus.); **23.** *Exors.* p. 17; **44.** *Wills*, p. 36
— *v.* Lloyd, *Re* Thompson (1934); **43.** *Trusts*, No. 561a
— *v.* Lowe King, *Re* Ghee, *Ex p.* Lowe King (N.Z.); **24.** *Exors.* p. 41
— *v.* Lyon (N.Z.); **5.** *Bkpcy.* p. 54
— *v.* McKee, *Re* McKee (1931); **18.** *Desct.* Nos. 8a. 283b; **44.** *Wills*, No. 299b
— *v.* Meyer, *Re* Phillips (1931); **24.** *Exors.* No. 7812a
— *v.* More, *Re* Hadden (1932); **8.** *Char.* No. 213b
— *v.* Mortleman (N.Z.); **35.** *Mtge.* p. 44
— *v.* Mountbatten, *Re* Cassel (1927); **21.** *E. D.* Nos. 22a, 136c, 254a
Official Receiver, *Re* Balfour's Settlement (1938); **5.** *Bkpcy.* No. 5894a
— *v.* Phillips, *Re* Phillips (1938); **24.** *Exors.* No. 8860a
— *v.* Polson (N.Z.); **21.** *Exon.* p. 55
— *v.* Registrar-General of Land (N.Z.); **23.** *Exors.* p. 2; **38.** *Real Prop.* p. 94
— *v.* Riddell, *Re* Riddell (1936); **23.** *Exors.* No. 5565a; **39.** *Rntchgs.* No. 571a; **43.** *Trusts*, No. 4761a

Public Trustee *v.* Roberts-Gawen, *Re* Borough (1938); **21.** *E. D.* No. 541a
— *v.* Ross, *Re* Bain (1929); **8.** *Char.* No. 717a
— *v.* Saunders, *Re* Saunders (1929); **18.** *Desct.* No. 283a
— *v.* Shaw, *Re* Symm's Will Trusts (1936); **37.** *Perps.* No. 412a; **43.** *Trusts*, No. 3191a
— *v.* Sherwood (Aus.); **2.** *Aliens*, p. 34
— *v.* Silber, *Re* Silber's Settlement (1920); **5.** *Bkpcy.* Nos. 5821a, 6295a
— *v.* Smith, *Re* Smith (1931); **8.** *Char.* Nos. 217c, 1980a
— *v.* Stamp Duties Comr., *Re* Gilmer (N.Z.); **21.** *E. D.* p. 1
— *v.* Steele, *Re* Vosz (Aus.); **8.** *Char.* pp. 65, 72
— *v.* Stone, *Re* Simmonds (N.Z.); **8.** *Char.* p. 56
— *v.* Taylor, *Re* Taylor's Settlement Trusts (1929); **5.** *Bkpcy.* No. 6401a
— *v.* Thompson (N.Z.); **31.** *L. & T.* p. 60
— *v.* Topham, *Re* Topham (1938); **8.** *Char.* No. 267b
— *v.* Trollope, *Re* Trollope's Will Trusts (1927); **24.** *Exors.* Nos. 6053a, 6138a
— *v.* Tuffill, *Re* Ragdale (1934); **44.** *Wills*, No. 3822a
— *v.* Victoria Hospital for Children, *Re* Lomer (1929); **21.** *E. D.* No. 265a
— *v.* Villar, *Re* Villar (1929); **37.** *Perps.* No. 66a
— *v.* Walsh, *Re* Walsh (1936); **44.** *Wills*, No. 7347b
— *v.* Ware, *Re* Hadden (1932); **8.** *Char.* No. 213b
— *v.* Weir (N.Z.); **44.** *Wills*, p. 47
— *v.* Wellington Society for Prevention of Cruelty to Animals Inc., *Re* Buckley (N.Z.); **8.** *Char.* p. 72
— *v.* Wheeler, *Re* Davey (N.Z.); **11.** *Confl.* p. 34
— *v.* Williams, *Re* Williams (1927); **3.** *Char.* Nos. 75a, 718a
— *v.* Wolf (1923); **2.** *Aliens*, No. 215k; **27.** *H. & W.* No. 906
— *v.* Wright, *Re* Wright (1937); **44.** *Wills*, No. 2825d
— *v.* Young, *Re* Brooker (1934); **43.** *Trusts*, No. 3639c
Public Utility Comrs. Board *v.* Model Dairies (Can.); **17.** *Dep.* p. 66
Publix Oil & Gas, Ltd., *Re*, *Re* Canadian Credit Men's Trust Assocn., Ltd. & Merland Oil Co. of Canada, Ltd. (1936); **7.** *B. of Sale*, p. 3
Publix Oil & Gas, Ltd. *v.* Hinds (Can.); **31.** *L. & T.* p. 79
Puccini (A.) & Co., *Re* (Can.); **4.** *Bkpcy.* p. 39
Puddicombe *v.* Bythesea (1823); **40.** *S. Land*, No. 1509a
Pudee *v.* Bellamy, *Re* Madge (1928); **23.** *Exors.* No. 3517a
Pugh *v.* Ashutosh Sen (Ind.); **32.** *Limit. of A.* p. 41
Pugsley *v.* Garson (Can.); **11.** *Const. L.* pp. 64, 72
Pulkabrek, *Re*, *Re* Domestic Relations Act, 1927 (Can.); **28.** *Infts.* pp. 132, 141
Pulker *v.* Evans (Can.); **38.** *Real Prop.* p. 90
Pulkrabek *v.* Pulkrabek (Can.); **22.** *Evid.* p. 22
Pullan *v.* Taylor, *Re* Taylor (1931); **18.** *Desct.* No. 283g
Pullen *v.* Enthoven & Son (1927); **34.** *Mast. & S.* Nos. 3056a, 3701a
Pulling *v.* Lidbetter, Ltd. (1924); **2.** *Agric.* No. 971a
Puls *v.* Bulman Bros., Ltd. (Can.); **32.** *Limit. of A.* p. 28
Pulsifer *v.* King (Can.); **32.** *Limit. of A.* p. 43
Punjab Cotton Press Co. *v.* Secretary of State (Ind.); **38.** *Rys.* p. 47
Punjab Industrial Agency, Ltd. *v.* Mercantile Bank of India, Ltd. (Ind.); **3.** *Bank.* p. 31
Puran Das *v.* East Indian Ry. Co. (Ind.); **8.** *Carr.* p. 6
Puran Mal *v.* Ford, Macdonald & Co., Ltd. (Ind.); **1.** *Agcy.* p. 70
Purcell *v.* Deputy Federal Taxation Comr. (Aus.); **7.** *B. of Sale*, p. 1
— *v.* Henderson (Ir.); **1.** *Agcy.* p. 65
— *v.* Hendricks & Marks (Can.); **11.** *Confl.* p. 35
— *v.* Wallace (Can.); **42.** *Str. Traf.* p. 61
Purdom *v.* Doherty (Can.); **9.** *Coys.* p. 40
— *v.* Northern Life Assurance Co. of Canada (Can.); **20.** *Eqy.* p. 29; **35.** *Mtge.* p. 32
Purdy *v.* Colton (Can.); **21.** *Exon.* p. 46
— (Doe d.) *v.* Peters (Can.); **31.** *L. & T.* p. 46
— *v.* Purdy (Can.); **11.** *Confl.* p. 49
— *v.* Woznesensky (Can.); **17.** *Damgs.* p. 9
Purdy & Henderson Co., Ltd. *v.* St. Patrick Parish Corpn. (Can.); **13.** *Corpns.* p. 33
Pure Oil Co., Ltd., *Ex p.*, *Re* North Western Trust Co. (Can.); **10.** *Coys.* p. 103
Purfleet Urban District Council, *Ex p.*, R. *v.* Minister of Health (1935); **33.** *L. G.* No. 112a
— *v.* Minister of Health & Essex County Council (1935); **33.** *L. G.* Nos. 110b, 112a
Purity Ice Cream Co. *v.* O'Connell (Can.); **22.** *Evid.* p. 18
Purkin *v.* Miller (Can.); **39.** *S. Goods*, p. 36
Purkis *v.* Walthamstow Borough Council (1934); **36.** *Negl.* No. 437a
Purna Chandra Dutt *v.* Indra Chandra Roy (Ind.); **1.** *Agcy.* p. 61
Purnell *v.* Roche (1927); **32.** *Limit. of A.* Nos. 1286a, 1369a
Purves, *Ex p.*, R. *v.* Paterson (Aus.); **11.** *Const. L.* p. 72
Purvis *v.* Goole Steam Shipping (London, Midland & Scottish Railway) (1937); **34.** *Mast. & S.* No. 2809a
Putnam *v.* Macneill (Can.); **36.** *Negl.* p. 31
Putner, *Re*, Putner *v.* Brooke (1929); **44.** *Wills*, No. 5696a
Putsman *v.* Taylor (1927); **12.** *Contr.* No. 2391a
Puttock *v.* Daintry (1894); **5.** *Bkpcy.* No. 8276a
Putz *v.* Registrar of Titles (Aus.); **35.** *Mtge.* p. 31; **38.** *Real Prop.* p. 95
Pyatt *v.* Lloyd (1932); **25.** *Food*, No. 476d
— *v.* McKee (Can.); **38.** *Real Prop.* p. 91
Pyda Satyarazu *v.* Guntur Cotton & Paper Mills Co., Ltd. (Ind.); **10.** *Coys.* p. 69
Pyke *v.* Day (1844); **1.** *Agcy.* No. 1670a
Pym *v.* Great Northern Ry. Co. (1861); **8.** *Carr.* No. 631a
— *v.* Great Northern Ry. Co. (1862); **8.** *Carr.* No. 631a
— *v.* — (1863); **8.** *Carr.* No. 631a
Pyrmont, Ltd. *v.* Schott (1938); **35.** *Money*, No. 17m
Pytram, Ltd. *v.* Models (Leicester), Ltd. (1930); **13.** *Coprt.* No. 111a; **43.** *Trade Mks.* No. 893a

Q.

Q. (An Arranging Debtor), *Re* (Ir.); **5.** *Bkpcy.* p. 93
Q. R. S. Canadian Corpn., Ltd. *v.* Coleman (Can.); **31.** *L. & T.* p. 59
Quaife (A. E.), *Ex p.*, *Re* Simms (1930; **4.** *Bkpcy.* No. 4714a
Qualley *v.* Day (Can.); **36.** *Nuis.* p. 46; **44.** *Water*, p. 1
Quance *v.* Brown (Can.); **26.** *Guar.* p. 1
Quarrell *v.* Lamport & Holt (1928); **34.** *Mast. & S.* No. 3659a

Quay *v.* Sculthorpe (Can.); **26.** *Guar.* p. 5
Quebec (Province of) *v.* Canada (Dominion of), *Re* Canada (Dominion of) & Provinces of Ontario & Quebec, *Re* Indian Claims (Can.); **17.** *Dep.* p. 74
Quebec *v.* Dumont (Can.); **7.** *Bldg. Conts.* p. 25
Quebec Asbestos Corpn. *v.* Couture (Can.); **34.** *Mast. & S.* p. 2
Quebec Bank *v.* Phillips (Can.); **3.** *Bank.* p. 41
— *v.* Royal Bank (Can.); **38.** *Real Prop.* p. 94
Quebec Central Ry. Co. *v.* R. (Can.); **38.** *Rys.* p. 35
Quebec Federated Co-op. Co. *v.* Farmers Fence Co. (Can.); **1.** *Agcy.* p. 100
Quebec Liquor Commission *v.* Bastien (Can.); **22.** *Evid.* p. 18
— *v.* Dubois (Can.); **14.** *Crim.* p. 31
— *v.* Goulet (Can.); **14.** *Crim.* p. 24
— *v.* Thibaudeau (Can.); **30.** *Intox.* p. 15
Quebec, Montreal & Southern Ry. Co. *v.* R. (Can.); **11.** *Const. L.* p. 64
Quebec Municipal Commission *v.* Aylmer Town (Can.); **17.** *Dep.* p. 56
Quebec North Shore Turnpike Road Trustees *v.* Vezina (Can.); **26.** *Hghys.* p. 25
Quebec Pharmaceutical Assocn. *v.* Eaton (T.) Co. (Can.); **34.** *Med.* p. 192
— *v.* Woolworth Co. (Can.); **34.** *Med.* p. 192
Quebec Railway, Light & Power Co. *v.* Montcalm Land Co. (Can.); **38.** *Rys.* p. 44; **43.** *Tram.* p. 48
— *v.* Quebec (Can.); **43.** *Tram.* p. 48
Quebec Timber Co., *Re* (Can.); **17.** *Dep.* p. 40
Queen, *Ex p.*, R. *v.* Henderson (Can.); **17.** *Dep.* p. 52
Queen Anne's Bounty *v.* A.-G., *Re* Burton's Charity (1938); **8.** *Char.* No. 1418c
— *v.* Blacklocks' Exors. (1934); **19.** *Eccl.* No. 3492e
— *v.* Cooke (1934); **19.** *Eccl.* No. 3492f
— *v.* Pitt-Rivers (1936); **19.** *Eccl.* Nos. 3494a, 3494b
— *v.* Thorne (1934); **19.** *Eccl.* Nos. 3490a, 3490e
— *v.* Tithe Redemption Commission (1938); **19.** *Eccl.* No. 3494c
— *v.* — (No. 2) (1938); **19.** *Eccl.* No. 3494d
Queen City, The *v.* R. (Can.); **25.** *Fish.* p. 4
Queen Insurance Co. of America *v.* British Traders Insurance Co. (Can.); **29.** *Insce.* p. 4
— *v.* Hoffar-Beeching Shipyards, Ltd. (Can.); **29.** *Insce.* p. 10
Queen of the Thames, The (1872); **11.** *Confl.* No. 1205a
Queen Victoria Memorial Hospital *v.* Booth, Ltd. (Can.); **38.** *Pub. Hlth.* p. 20
Queen Victoria Niagara Falls Park Comrs. *v.* International Ry. Co. (Can.); **38.** *Rys.* p. 35
Queen's Case (1820); **14.** *Crim.* No. 912a
Queen's College, Oxford *v.* Sutton (1842); **13.** *Corpns.* No. 133a
Queen's Royal Hotel, Ltd. *v.* Watts (Can.); **42.** *Solrs.* p. 9
Queens County, *Ex p.*, R. *v.* Limerick (Can.); **33.** *Mags.* p. 35
Queensland Brewery, Ltd. *v.* Baker (Aus.); **35.** *Mtge.* p. 35
Queensland Dairy Products Stabilisation Board *v.* Munro (A. C.) & Sons Pty., Ltd. (Aus.); **17.** *Dep.* p. 63
Queensland Deposit Bank, Ltd. *v.* Brisbane City Council (Aus.); **38.** *Rates*, p. 75
Queensland Insurance Co., Ltd. *v.* Subiaco Municipality (Aus.); **33.** *L. G.* p. 7; **38.** *Pub. Auth.* p. 6
Queensland Mercantile & Agency Co., *Re*, *Ex p.* Australasian Investment Co., *Ex p.* Union Bank of Australia (1892); **11.** *Confl.* No. 417a
Quick *v.* Winter (N.Z.); **1.** *Agcy.* p. 55
Quickfall *v.* London & North-Eastern Ry. Co. (1929); **34.** *Mast. & S.* No. 2439b
Quickstad *v.* McNeill (Can.); **11.** *Confl.* p. 56
Quinlan, *Re* (Ir.); **28.** *Inc. T.* p. 101
— *v.* Avis (1933); **31.** *L. & T.* Nos. 7359d, 7359e
— *v.* Wellington Corpn. (N.Z.); **11.** *Comp. Pche.* p. 21; **38.** *Pub. Auth.* p. 5
Quinn, *Re* (Can.); **30.** *Intox.* p. 11
— *v.* Dundee Education Authority (Scot.); **19.** *Educ.* p. 39
— *v.* Guernsey, *Re* Hotel Dunlop, Ltd. (Can.); **4.** *Bkpcy.* p. 44
— *v.* Huel (Can.); **30.** *Intox.* p. 14
— *v.* Mount Vernon Colliery Co. (Scot.); **34.** *Mast. & S.* p. 142
— *v.* Salmon Arm (Can.); **38.** *Rates*, p. 82
Quirk *v.* Sydney Mines Town (Can.); **7.** *Bldg. Conts.* p. 32
Qun *v.* R. (Can.); **14.** *Crim.* p. 14
Quon *v.* British & European Insurance Co., Ltd. (Can.); **29.** *Insce.* p. 28
Qurban *v.* A.-G. & Brighton Corpn. (Aus.); **28.** *Injon.* p. 153

R.

R. *v.* A. D. Murray Tailoring, Ltd. (Can.); **25.** *Gaming*, p. 37
— *v.* Abbott (Can.); **30.** *Intox.* p. 12
— *v.* Abdy (1884); **1.** *Adm.* No. 1717
— *v.* Abrahams & Gerstein (1928); **14.** *Crim.* No. 3283a
— *v.* Abrahamson (S. Af.); **5.** *Bkpcy.* p. 88
— *v.* Acker (Can.); **30.** *Intox.* p. 12
— *v.* Adams (1931); **14.** *Crim.* No. 6169j
— *v.* — (Aus.); **42.** *Stats.* p. 27
— *v.* — (Can.); **16.** *Cr. Pract.* p. 36
— *v.* Adams & Hollick (Can.); **30.** *Intox.* p. 16
— *v.* Adkin (Can.); **29.** *Insce.* p. 6
— *v.* Adore (Can.) (1930); **14.** *Crim.* p. 63
— *v.* — (Can.) (1931); **30.** *Intox.* p. 11
— *v.* Advent (Can.); **25.** *Game*, p. 24
— *v.* Adventurers of England, Governor & Co. (Can.); **44.** *Waters*, p. 6
— *v.* Ah Jim (Can.); **14.** *Crim.* p. 46
— *v.* Ah Sing (Can.); **33.** *Mags.* p. 25
— *v.* Ah Tom (Can.); **14.** *Crim.* p. 22
— *v.* Ahilya (Ind.); **22.** *Evid.* p. 12
— *v.* Ainoko, The (Can.); **1.** *Adm.* p. 35
— *v.* Alamazoff (Can.); **2.** *Aliens*, p. 49
— *v.* Albert (Can.); **39.** *Revenue*, p. 26
— *v.* Alberts (Can.); **14.** *Crim.* p. 14
— *v.* Alexander (1912); **15.** *Crim.* No. 9439a
— *v.* — (1924); **14.** *Crim.* No. 3151c
— *v.* Alexander, Ltd. (Can.); **43.** *Trade*, p. 1
— *v.* Alexandra (1937); **15.** *Crim.* No. 11069a
— *v.* Allaway (1922); **22.** *Evid.* No. 4884a
— *v.* Allen (Can.); **15.** *Crim.* p. 80
— (Perrin) *v.* Altobelli (Can.); **42.** *Str. Traf.* p. 50
— *v.* Altomare (Can.); **14.** *Crim.* p. 74
— *v.* Ambler (Can.); **14.** *Crim.* p. 46
— *v.* Ambrey (Can.); **25.** *Gaming*, p. 30; **30.** *Jdgmts.* p. 28
— *v.* Ames (1938); **14.** *Crim.* No. 5192a
— *v.* Anderson (1924); **14.** *Crim.* No. 5870a
— *v.* — (1929); **22.** *Evid.* No. 4886a; **30.** *Juries*, No. 292a
— *v.* — (Can.) (1924); **9.** *Coys.* p. 8
— *v.* — (Can.) (1930); **42.** *Str. Traf.* p. 51
— *v.* — (Can.) (1931); **18.** *Distr.* p.

R. *v.* Anderson (Can.) (1933); **14.** *Crim.* p. 33
— *v.* — (Can.) (1935); **14.** *Crim.* p. 36
— *v.* — (Can.) (1938); **14.** *Crim.* p. 65
— *v.* —, *Ex p.* Moncton Tramways Electricity & Gas Co., Ltd. (Can.); **38.** *Rates*, p. 77
— *v.* Andrews (1927); **14.** *Crim.* Nos. 5028a, 5065a
— *v.* — (1937); **42.** *Str. Traf.* No. 222g
— *v.* — (1938); **14.** *Crim.* No. 5290f
— *v.* — (Can.); **15.** *Crim.* pp. 100, 105
— *v.* Ansell (1934); **14.** *Crim.* No. 6072c
— *v.* Aranovitch (Can.); **34.** *Med.* p. 194
— *v.* Arcadia Coal Co., Ltd. (Can.); **17.** *Dep.* p. 52
— *v.* Archdall & Roskruge, *Ex p.* Carrigan, *Ex p.* Brown (Aus.); **43.** *Trade*, p. 9
— *v.* Archer (Can.); **11.** *Comp. Pche.* p. 5
— *v.* Argyllshire, The (Aus.); **1.** *Adm.* p. 38
— *v.* Arjun Singh (Ind.); **15.** *Crim.* p. 80
— (Greenaway) *v.* Armagh JJ. (Ir.) (1924); **16.** *Cr. Pract.* p. 42
— (McConville) *v.* Armagh County Justices (Ir.); **39.** *Revenue*, p. 25
— (Mackin) *v.* Armagh County Justices (Ir.); **33.** *Mags.* p. 25
— (U.D.C. of Portadown) *v.* Armagh Chairman & Justices (Ir.); **26.** *Hghys.* p. 32
— *v.* Armagh JJ. (Ir.) (1929); **30.** *Intox.* p. 10
— *v.* Armstrong (Can.) (1922); **16.** *Cr. Pract.* p. 41
— *v.* — (Can.) (1933); **14.** *Crim.* p. 26
— (McDougall) *v.* Army & Navy Veterans Assocn. of Regina (Can.); **30.** *Intox.* p. 14
— *v.* Arneson (Can.); **14.** *Crim.* p. 44
— *v.* Arnold (Can.); **25.** *Gaming*, p. 29
— *v.* Artu Rantra (Ind.); **2.** *Animals*, p. 56
— *v.* Ascoli (1927); **14.** *Crim.* No. 5211a
— *v.* Aseruddin (Ind.); **14.** *Crim.* p. 68
— *v.* Associated Growers of British Columbia, Ltd. (Can.); **17.** *Dep.* p. 53
— *v.* Associated Newspapers, Ltd., *Ex p.* Beyers (1936); **16.** *Cntmpt.* No. 197a
— *v.* Atherton & Watson (Can.); **33.** *Mags.* p. 27
— *v.* Athonas (Can.); **25.** *Gaming*, p. 29
— *v.* Atkinson (1929); **14.** *Crim.* No. 5024b
— *v.* — (1934); **15.** *Crim.* No. 7430a
— *v.* — (Can.); **14.** *Crim.* p. 57
— *v.* Atlantic Distilling Co., Ltd. (Can.); **39.** *Revenue*, p. 24
— *v.* A.-G. of British Columbia (1924); **17.** *Dep.* No. 98
— *v.* A.-G. of Ontario (Can.); **14.** *Crim.* p. 52
— *v.* A.-G. of Ontario & Forrest (Can.); **17.** *Dep.* p. 74
— *v.* Auger (Can.) (1929), 52 Can. C. C. 80; **14.** *Crim.* p. 10
— *v.* —, *Re* (Can.) (1929), 52 Can. C. C. 281; **14.** *Crim.* p. 10
— *v.* — (Can.), [1929] 4 D. L. R. 864; **14.** *Crim.* p. 71
— *v.* — (Can.) (1930); **15.** *Crim.* p. 96
— *v.* Aulenbach (Can.) (1929); **33.** *Mags.* p. 37
— *v.* — (Can.) (1930); **14.** *Crim.* p. 75
— *v.* Aumuller (Can.); **14.** *Crim.* p. 61
— *v.* Aune (Can.); **33.** *Mkts.* p. 43
— *v.* Auxiliary Fishing Schooner Natalie S. (Can.); **17.** *Dep.* p. 40; **25.** *Fish.* p. 4
— *v.* Averill (Can.); **14.** *Crim.* p. 66
— *v.* Awad (Can.); **17.** *Dep.* p. 57
— *v.* Awalt (Can.); **33.** *Mags.* p. 37
— *v.* Axler (Can.); **30.** *Intox.* p. 10
— *v.* Aylesbury with Walton Inhabitants (1846); **38.** *Rates*, No. 403a
— *v.* Ayton, *Ex p.* Cardiff Corpn. (1935); **37.** *Poor L.* No. 91a
— *v.* B. C. Brick & Tile Co., Ltd. (Can.); **39.** *Revenue*, p. 15
— *v.* Bachiu (Can.); **14.** *Crim.* p. 70
— *v.* Bachynski (Can.); **42.** *Time*, p. 74
R. *v.* Badie (Can.); **15.** *Crim.* p. 86; **33.** *Mags.* p. 24
— *v.* Badiuk (Can.); **30.** *Intox.* p. 15
— *v.* — (No. 2) (Can.); **14.** *Crim.* p. 31
— *v.* Baer (Can.); **33.** *Mags.* p. 36
— *v.* Baggott (1927); **14.** *Crim.* No. 3090a
— *v.* Bagley (Can.); **14.** *Crim.* p. 34
— *v.* Baguley (1925); **15.** *Crim.* No. 10, 906a
— *v.* Bahrey (Can.); **14.** *Crim.* p. 39
— *v.* Baig (Can.); **30.** *Intox.* p. 15
— *v.* Baijnath (Ind.); **15.** *Crim.* p. 96
— *v.* Bailey (1924); **14.** *Crim* No. 3156b
— *v.* — (Can.); **15.** *Crim.* p. 106
— *v.* Baker (Can.); **15.** *Crim.* p. 94
— *v.* Bakewell (1802); **15.** *Crim.* No. 10,279a
— (McDougall) *v.* Balbar (Can.); **30.** *Intox.* p. 14
— *v.* Baldassari (Can.); **15.** *Crim.* p. 88
— *v.* Baldessare (1930); **15.** *Crim.* No. 8652a
— *v.* Baldwin (1925); **14.** *Crim.* Nos. 3820b, 4711a
— *v.* — (1931); **14.** *Crim.* No. 4254a
— *v.* Ball (1924); **14.** *Crim.* No. 3174a
— *v.* — (Can.); **18.** *Distr.* p. 24
— *v.* Ballard (Can.) (1932); **14.** *Crim.* p. 58
— *v.* — (Can.) (1933); **39.** *Revenue*, p. 25
— *v.* Bampton (Can.); **8.** *Clubs*, p. 102
— *v.* Bandel (Can.); **14.** *Crim.* p. 45
— *v.* Bandura (Can.); **30.** *Intox.* p. 18
— *v.* Bank of Nova Scotia (Can.); **39.** *Revenue*, p. 15
— *v.* Banks (1821); **15.** *Crim.* No. 9702a
— *v.* Banks (Aus.); **37.** *Press*, p. 31
— *v.* Bannister (Arthur) (Can.); **14.** *Crim.* p. 5
— *v.* — (Daniel) (Can.); **14.** *Crim.* p. 5
— *v.* — (No. 2) (Can.); **15.** *Crim.* p. 90
— *v.* Banniti (Can.); **16.** *Cr. Pract.* p. 28
— *v.* Bannstead, *Ex p.* Hianson, *Ex p.* Moller (Can.); **2.** *Aliens*, pp. 48, 49
— *v.* Banque Canadienne Nationale (Can.); **39.** *Revenue*, p. 15
— *v.* Barclay (Can.); **14.** *Crim.* p. 64
— *v.* Barger (Aus.); **17.** *Dep.* p. 59
— *v.* Barilko (Can.); **14.** *Crim.* pp. 10, 13
— *v.* Barker (1927); **14.** *Crim.* No. 3120a
— *v.* — (1937); **14.** *Crim.* No. 6178c
— *v.* Barlin (S. Af.); **14.** *Crim.* p. 40
— *v.* Barmania (S. Af.); **17.** *Dep.* p. 65
— *v.* Barnard (Can.); **3.** *Bank.* p. 20; **14.** *Crim.* p. 10
— *v.* Barnard Castle Inhabitants (1863); **38.** *Rates*, No. 630a
— *v.* Barnes Borough Council, *Ex p.* Conlan (1938); **16.** *Cr. Pract.* No. 1290a
— *v.* Barnstaple Justices, *Ex p.* Carder (1938); **33.** *Mags.* Nos. 1433a, 1461a; **42.** *Theatres*, No. 159a
— *v.* Barrow (1934); **15.** *Crim.* No. 10,779b
— *v.* Barry (Can.); **33.** *Mags.* p. 28
— *v.* —, *Ex p.* Lindsay (Can.); **16.** *Cr. Pract.* p. 41
— *v.* Baschuk (Can.); **14.** *Crim.* p. 40
— *v.* Basire (1926); **14.** *Crim.* No. 5217b
— *v.* Baskerville (1916); **14.** *Crim.* No. 4919a
— *v.* Bassey (1931); **3.** *Barr.* No. 16a; **14.** *Crim.* No. 862a; **15.** *Crim.* Nos. 12,061a, 12,123a
— (Metcalfe) *v.* Bat (Can.); **30.** *Intox.* p. 15
— *v.* Bateman (1925); **15.** *Crim.* No. 8672a
— *v.* Bates (1930); **14.** *Crim.* Nos. 5a, 5466a
— *v.* Bath Compensation Authority (1925); **30.** *Intox.* No. 381
— *v.* Batters (Can.); **28.** *Inc. T.* p. 105
— *v.* Baum (Aus.); **30.** *Jurics*, p. 31
— *v.* Bawn (1843); **14.** *Crim.* No. 788a
— *v.* Baxter (1924); **14.** *Crim.* No. 5303a
— *v.* — (Aus.); **22.** *Evid.* p. 21
— *v.* Bayn (Can.); **14.** *Crim.* p. 32
— *v.* Beacall (1824); **15.** *Crim.* No. 10,200a
— *v.* Beadell (1933); **14.** *Crim.* Nos. 5279b, 5290e

R. *v.* Beadon (1933); **2.** *Aliens*, No. 558k; **22.** *Evid.* No. 6957a
— *v.* Beale (Can.); **14.** *Crim.* p. 46; **30.** *Intox.* p. 14
— *v.* Bean, *Ex p.* Schofield (Can.); **20.** *Elect.* p. 7
— *v.* Beard (1927); **14.** *Crim.* No. 5385a
— *v.* Beasley (Can.); **25.** *Gaming*, p. 39
— *v.* Beattie (1924); **14.** *Crim.* No. 5607a
— *v.* — (Can.); **15.** *Crim.* p. 78
— *v.* Beauchamp (1909); **14.** *Crim.* No. 6257
— *v.* Beauchesne (Can.); **14.** *Crim.* p. 69
— *v.* Becker (S. Af.); **3.** *Barr.* p. 50; **14.** *Crim.* p. 39; **22.** *Evid.* p. 16
— *v.* Beckett (Can.); **14.** *Crim.* p. 26
— *v.* Bedford Corpn. (1800); **16.** *Cr. Pract.* No. 1269a
— *v.* Bedwellty Urban District Council, *Ex p.* Price (1934); **33.** *L. G.* Nos. 215a, 215b
— *v.* Beebe (1925); **14.** *Crim.* Nos. 4972b, 6066b
— *v.* Beech (Can.); **38.** *Rys.* p. 35
— *v.* Beech, Pollitt & Strudwick (1928); **11.** *Confl.* No. 1033a
— *v.* Beekman (Can.); **25.** *Food*, p. 12
— *v.* Begin, *Ex p.* Caron (Can.); **16.** *Cr. Pract.* p. 43; **30.** *Intox.* p. 6
— *v.* Beland (Can.); **25.** *Gaming*, p. 30
— *v.* Belfast Deputy Recorder, *Ex p.* Linen Industry Research Assocn. (Ir.); **28.** *Inc. T.* p. 103
— *v.* Belfast Recorder, *Ex p.* Kelly (Ir.); **28.** *Inc. T.* p. 104
— *v.* Bell (Can.) (1925); **28.** *Inc. T* p. 105
— *v.* — (Can.), [1929] 3 D. L. R. 931; **5.** *Bkpcy.* p. 88
— *v.* — (Can.), [1929] 2 W. W. R. 337; **38.** *Pub. Hlth.* p. 32
— *v.* — (Can.), [1930] 1 W. W. R. 433; **14.** *Crim.* p. 35
— *v.* — (Can.), [1930] 2 D. L. R. 647; **14.** *Crim.* p. 24
— *v.* Bell Lumber Co. (Can.); **44.** *Waters*, p. 9
— *v.* Belliveau, *Ex p.* Le Blanc (Can.); **26.** *Hghys.* p. 38
— *v.* Bellman (Can.); **33.** *Mags.* p. 36
— *v.* Bellos (Can.); **14.** *Crim.* p. 40
— *v.* Bennett (Aus.); **14.** *Crim.* pp. 42, 90
— *v.* — (Can.) (1825); **26.** *Hghys.* p. 30
— (Harding) *v.* Bennett (Can.) (1896); **33.** *L. G.* pp. 7, 8
— *v.* Bennett (1928); **33.** *Mags.* No. 1002a
— *v.* — (Can.) (1930); **30.** *Intox.* p. 16
— *v.* — (Can.) (1936); **30.** *Intox.* p. 12
— *v.* Benson (Can.); **15.** *Crim.* p. 78; **37.** *Poor L.* p. 20
— *v.* Bent (Can.); **39.** *Revenue*, p. 25
— *v.* Berelovitch (Can.); **15.** *Crim.* p. 105
— *v.* Berg, Britt, Carré & Lummies (1927); **14.** *Crim.* No. 4222a; **15.** *Crim.* No. 8128a
— *v.* Berger (Can.); **14.** *Crim.* p. 64
— *v.* Berkofsky (1935); **14.** *Crim.* No. 5089a
— *v.* Bernard (Can.); **15.** *Crim.* p. 98
— *v.* Bernhard (1938); **15.** *Crim.* No. 10,487b
— *v.* Bernier (Can.); **25.** *Gaming*, p. 30
— *v.* Berry (1924); **15.** *Crim.* No. 9320a
— *v.* — (1926); **14.** *Crim.* No. 5856c
— *v.* — (1928); **14.** *Crim.* No. 5046c
— *v.* Beru (Can.) (1934); **34.** *Med.* p. 194
— *v.* — (Can.) (1936); **21.** *Exon.* p. 43
— *v.* Berube (Can.); **11.** *Comp. Pche.* p. 6
— *v.* Best (Can.); **38.** *Pub. Hlth.* p. 16
— *v.* Betts & Ridley (1930); **14.** *Crim.* No. 528a
— *v.* Betts, Quint, & Cresset Trust, Ltd. (1931); **14.** *Crim.* No. 5125j
— *v.* Beuth (N.Z.); **15.** *Crim.* p. 94
— *v.* Bevis (Can.); **15.** *Crim.* p. 89
— *v.* Bias (Can.); **30.** *Intox.* p. 13
R. *v.* Bibby (1936); **14.** *Crim.* Nos. 1720a, 5802d
— *v.* Bickerdike (1935); **14.** *Crim.* No. 5560a
— *v.* Biljan (Can.); **42.** *Str. Traf.* p. 42
— *v.* Biller (1938); **14.** *Crim.* No. 5239f
— *v.* Bilowus (Can.); **30.** *Intox.* p. 13
— *v.* Biltrite Tyre Co. (Can.); **39.** *Revenue*, p. 15
— *v.* Bingley (Can.); **39.** *Revenue*, p. 26
— *v.* Binney (1935); **14.** *Crim.* No. 5792a
— *v.* Birch (1924); **14.** *Crim.* No. 2730a
— *v.* Bishirgian (1936); **15.** *Crim.* No. 10,352b
— *v.* Bishop (1930); **14.** *Crim.* No. 6169b
— *v.* Bixel (Can.); **33.** *Mags.* p. 24
— *v.* Black (Can.); **26.** *Guar.* p. 1
— *v.* Blackall Police Magistrate & Hart, *Ex p.* Hart (Aus.); **7.** *Bounds & F.* p. 17
— *v.* Blackburn (Can.); **30.** *Intox.* p. 12
— *v.* Blackman (1929); **14.** *Crim.* No. 5012b
— *v.* Blackman & Smith (Can.); **14.** *Crim.* p. 48
— *v.* Blair (Can.); **30.** *Intox.* p. 16
— *v.* Blake & Hines (1931); **14.** *Crim.* No. 6169k
— *v.* Blanchet (Can.); **14.** *Crim.* p. 47
— *v.* Blank (Can.); **30.** *Intox.* p. 15
— *v.* Bliss (Can.); **14.** *Crim.* p. 22
— *v.* Bloom (Can.); **30.** *Intox.* p. 13
— *v.* Blunt (1828); **21.** *Exon.* No. 1281a
— *v.* Boak (Can.); **14.** *Crim.* pp. 27, 58, 59, 73
— *v.* Board of Control, *Ex p.* Winterflood (1938); **33.** *Lunat.* No. 1900b
— *v.* Boddy (Can.); **20.** *Elect.* p. 5
— *v.* Bodenham (1938); **15.** *Crim.* No. 9351a
— *v.* Boguslavsky (Can.) (1932); **30.** *Intox.* p. 17
— *v.* — (Can.) (1935); **30.** *Intox.* p. 16
— *v.* Bohun (Can.); **14.** *Crim.* p. 11
— *v.* — (No. 2) (Can.); **14.** *Crim.* p. 40
— *v.* Bolkis (1932); **42.** *Str. Traf.* No. 245a
— *v.* Boltolph (1928); **15.** *Crim.* No. 6209c
— *v.* Bond (Can.); **14.** *Crim.* p. 52
— *v.* Bonner (Can.); **30.** *Intox.* p. 11
— *v.* Bonnis (Can.); **33.** *Mags.* p. 24
— *v.* Bonter (Can.); **16.** *Cr. Pract.* p. 23
— *v.* Booher (Can.); **14.** *Crim.* p. 39
— *v.* Bookbinder (1931); **14.** *Crim.* No. 5840d
— *v.* Booker (1924); **14.** *Crim.* No. 4351a; **15.** *Crim.* No. 8793a
— *v.* Bookhalter & Lanin (Can); **14.** *Crim.* p. 6
— *v.* Boone (Can.); **30.** *Intox.* p. 17
— *v.* Boothby (1933); **14.** *Crim.* No. 4064a
— *v.* Boreham (1928); **14.** *Crim.* No. 4998c
— *v.* Borkowski (Can.); **39.** *Revenue*, p. 11
— *v.* Bortnick (Can.); **42.** *Time*, p. 74
— *v.* Boseley (1937); **14.** *Crim.* No. 5528a
— *v.* Bosworth (Can.); **30.** *Intox.* p. 11
— *v.* Bottley (Can.); **14.** *Crim.* p. 12
— *v.* Boudreau (Can.) **39.** *Revenue*, p. 11
— *v.* Boughner (Can.); **14.** *Crim.* p. 14
— *v.* Boulton (1871); **14.** *Crim.* Nos. 1513a, 1536a
— *v.* Bourdajis (Can.); **30.** *Intox.* p. 18
— *v.* Bourgeois (Can.); **14.** *Crim.* p. 59
— *v.* Bourget (Can.); **30.** *Intox.* p. 11
— (Minister of Agriculture for Saskatchewan) *v.* Bourke (Can.); **2.** *Animals*, p. 68; **11.** *Const. L.* p. 68
— *v.* Bourne (1925); **14.** *Crim.* No. 5049b
— *v.* — (1938); **15.** *Crim.* No. 9207a
— *v.* Boutilier (Can.) (1928); **14.** *Crim.* pp. 60, 62; **33.** *Mags.* pp. 23, 34, 36; **39.** *Revenue*, p. 24
— *v.* — (Can.) (1929); **17.** *Dep.* p. 43
— *v.* Bowen (Can.); **9.** *Coys.* p. 33
— *v.* Boyd (Can.); **15.** *Crim.* p. 106
— *v.* Boyko (Can.); **30.** *Intox.* p. 17
— *v.* Boynton (Can.); **14.** *Crim.* p. 35
— *v.* Bradford Licensing JJ., *Ex p.* Illingworth (1938); **30.** *Intox.* No. 582e
— *v.* Brady (Can.); **2.** *Animals*, p. 59
— *v.* Bramhill (1933); **14.** *Crim.* No. 5926b
— *v.* Brand (Can.); **14.** *Crim.* 28

R. *v.* Brandelina (Can.); **16.** *Cr. Pract.* p. 43
— *v.* Brandolini (Can.); **30.** *Intox.* p. 15
— *v.* Braun (Can.); **14.** *Crim.* p. 19
— *v.* Brawn (1843); **14.** *Crim.* No. 788a
— *v.* Bray (1931); **14.** *Crim.* No. 5046f
— *v.* Brayden (Can.); **14.** *Crim.* p. 29
— *v.* Brearley (Can.) (1930); **44.** *Work*, p. 60
— *v.* — (Can.) (1935); **44.** *Work*, p. 60
— *v.* Breed (1931); **14.** *Crim.* No. 5915a
— *v.* Brennan (Can.); **33.** *Mags.* p. 30
— *v.* Brennan & Newlands (Can.); **25.** *Gaming*, p. 33
— *v.* Brennand (1930); **25.** *Gaming*, Nos. 278b, 399a
— *v.* Brewerton (Can.); **25.** *Gaming*, p. 39
— *v.* Brewin (1926); **5.** *Bkpcy.* No. 8633a
— *v.* Bridger (1930); **14.** *Crim.* No. 5992c
— *v.* Bridgnorth Corpn. (1839); **16.** *Cr. Pract.* No. 1745a
— *v.* Brierley (1924); **14.** *Crim.* No. 5932d
— *v.* Briggs (1930); **14.** *Crim.* Nos. 4693a, 6034a
— *v.* — (1938); **14.** *Crim.* No. 2571b
— *v.* — (Can.); **14.** *Crim.* p. 9
— *v.* Brinda (Can.); **16.** *Cr. Pract.* p. 33
— *v.* Brine (Can.); **15.** *Crim.* p. 105
— *v.* Brisbane Licensing Co. (Aus.); **17.** *Dep.* p. 61
— *v.* Brisbane Police Magistrate & Inglis, *Ex p.* Inglis (Aus.); **27.** *H. & W.* p. 75
— *v.* Brislan, *Ex p.* Williams (Aus.); **17.** *Dep.* p. 62; **42.** *Tele.* p. 67
— *v.* Bristol (Can.); **14.** *Crim.* p. 35
— *v.* Bristol Dock Co. (1810); **44.** *Waters*, No. 363a
— *v.* British American Bank Note Co. (Can.); **11.** *Const. L.* p. 68
— *v.* British Columbia Fir & Cedar Lumber Co. (Can.) (1930); **38.** *Rates*, p. 50
— *v.* — (Can.) (1932); **38.** *Rates*, p. 49
— *v.* Brixton Prison (Governor), *Ex p.* Bidwell (1937); **24.** *Extrdn.* No. 159a
— *v.* Brixton Prison (Governor), *Ex p.* Bloom (1920); **2.** *Aliens*, No. 553a
— *v.* —, *Ex p.* Shure (1926); **5.** *Bkpcy.* No. 8534a; **16.** *Cr. Pract.* No. 585a
— *v.* Brixton Prison (Governor), *Ex p.* Sugarman (1922); **2.** *Aliens*, No. 553b
— *v.* Brockenshire & Clarkson (Can.); **14.** *Crim.* p. 3
— *v.* Brodsky (Can.); **17.** *Dep.* p. 39
— *v.* Brogan (N.Z.); **14.** *Crim.* p. 29
— *v.* Brombilla (1930); **14.** *Crim.* No. 6169a
— *v.* Bronfman (Can.); **14.** *Crim.* p. 9
— *v.* — (No. 2) (Can.); **30.** *Juries*, p. 31
— *v.* Brooks (1929); **14.** *Crim.* No. 3165e
— *v.* — (1931); **14.** *Crim.* No. 6169g
— *v.* Broome (Can.); **15.** *Crim.* p. 92
— *v.* Brotman (Can.); **30.** *Intox.* p. 17
— *v.* Brown (1929); **15.** *Crim.* No. 9340a
— *v.* — (1930); **14.** *Crim.* No. 6034c
— *v.* — (1931), 23 Cr. App. Rep. 18; **14.** *Crim.* No. 5943b
— *v.* — (1931), 23 Cr. App. Rep. 38; **14.** *Crim.* No. 5148m
— *v.* — (1931), 23 Cr. App. Rep. 48; **14.** *Crim.* No. 6169e
— *v.* — (Can.) (1920); **11.** *Const. L.* p. 73
— (Nuttall) *v.* Brown (Can.) (1923); **16.** *Cr. Pract.* p. 36
— *v.* Brown (Can.) (1925); **30.** *Intox.* p. 14
— (Aldridge) *v.* Brown (Can.) (1927); **14.** *Crim.* p. 37; **33.** *Mags.* p. 27
— *v.* Brown (Can.) (1928); **15.** *Crim.* p. 95
— *v.* — (Can.) (1929); **33.** *Mags.* p. 23
— *v.* — (Can.) (1930); **30.** *Intox.* p. 16
— *v.* — (Can.) (1931); **14.** *Crim.* p. 41
— *v.* — (Can.) (1933); **34.** *Med.* p. 195
R. *v.* Brown (Can.) (1934); **14.** *Crim.* p. 46
— *v.* — (Can.) (1936); **15.** *Crim.* p. 104
— (McDougall) *v.* Brown (Can.) (1936); **24.** *Fact.* p. 57
— *v.* Brown & Bruce (1931); **14.** *Crim.* Nos. 2404a, 2986b, 4351c
— *v.* Browne (Can.); **30.** *Juries*, p. 31
— *v.* Brownell (1834); **16.** *Cntmpt.* No. 46
— *v.* Brownlee (Can.); **33.** *Mags.* p. 30
— *v.* Brunt (Can.); **30.** *Intox.* p. 12
— *v.* Bryant (Can.); **14.** *Crim.* p. 41
— *v.* Bryga (Can.); **14.** *Crim.* p. 40
— *v.* Bryson (Can.); **14.** *Crim.* p. 73
— *v.* Buchan (Can.); **14.** *Crim.* p. 40
— *v.* Buck (Can.); **15.** *Crim.* p. 78
— *v.* Budd (1805); **38.** *Pub. Auth.* No. 1015a
— *v.* Budnarski (Can.); **30.** *Intox.* p. 13
— *v.* Buggs (1910); **14.** *Crim.* No. 4974c
— *v.* Buhay (Can.); **37.** *Poor L.* p. 20
— *v.* Bunting (Can.); **15.** *Crim.* p. 99
— *v.* Burdick, *Re* (Can.); **43.** *Trade*, p. 2
— *v.* Burdon (1927); **30.** *Intox.* No. 764b
— (Jones) *v.* Burgess (Can.); **16.** *Cr. Pract.* p. 36
— *v.* Burgess, *Ex p.* Henry (Aus.); **42.** *Str. Traf.* p. 62
— *v.* Burgess & McKenzie (Can.); **14.** *Crim.* p. 28; **15.** *Crim.* p. 89
— *v.* Burke (Can.) (1900); **33.** *Mags.* p. 23
— *v.* — (Can.) (1925); **14.** *Crim.* pp. 2, 62
— *v.* Burke-Roche (Can.); **21.** *E. D.* p. 21
— *v.* Burnett (Can.); **17.** *Dep.* p. 53
— *v.* Burns (Can.) (1929); **14.** *Crim.* p. 74
— *v.* — (Can.), [1931] 2 W. W. R. 58; **15.** *Crim.* p. 106
— *v.* — (Can.), [1931] 4 M. P. R. 85; **14.** *Crim.* p. 74
— *v.* — (Can.) (1938); **14.** *Crim.* p. 71
— *v.* Burt (Can.); **39.** *Revenue*, p. 26
— (Clarke) *v.* Bury, *Re* Edmonton Charter (Can.); **33.** *L. G.* p. 8
— *v.* Bush (Can.) (1930); **30.** *Intox.* p. 11
— *v.* — (Can.) (1932); **30.** *Intox.* p. 11
— (Johnston) *v.* Busikiewicz (Can.); **30.** *Intox.* p. 1
— *v.* Butelezi (S. Af.); **15.** *Crim.* p. 89
— *v.* Butler (1926); **14.** *Crim.* No. 1810c
— *v.* Cadieux & Seguin (Can.); **43.** *Trade Mks.* p. 28
— *v.* Cadwell (1927); **14.** *Crim.* No. 5536b
— *v.* Cahill (Can.); **15.** *Crim.* p. 98
— *v.* Cain (1936); **14.** *Crim.* No. 4697a
— *v.* — (Can.); **14.** *Crim.* p. 41
— *v.* Cairns (1927); **14.** *Crim.* No. 5577a
— *v.* Caledonian Collieries (1928); **17.** *Dep.* No. 135d
— *v.* Caledonian Insurance Co. (Can.); **24.** *Exors.* p. 33
— *v.* Calgary Club (Can.) (1931); **33.** *Mags.* p. 24
— *v.* Calgary 1500 Club (Can.) (1926); **29.** *Insce.* p. 61
— *v.* Camane (S. Af.); **14.** *Crim.* p. 39
— *v.* Cambridge County Council, *Ex p.* River Great Ouse Catchment Board (1937); **41.** *Sewers*, No. 469c
— *v.* Cameron (Can.); **14.** *Crim.* p. 6
— *v.* Campbell (Can.) (1924); **16.** *Cr. Pract.* p. 28
— *v.* — (Can.) (1926); **15.** *Crim.* p. 101
— *v.* — (Can.) (1931); **15.** *Crim.* p. 78
— (Bretherton) *v.* Campbell & Thomson (Can.); **30.** *Intox.* p. 16
— *v.* Canada Mint Co. (Can.); **25.** *Gaming*, p. 30
— *v.* Canada Steamship Lines, Ltd. (Can.); **16.** *Cr. Pract.* p. 24
— *v.* Canadian Allis-Chalmers, Ltd. (Can.); **14.** *Crim.* pp. 1, 17

R. *v.* Canadian Bakeries, Ltd. (Can.); **43.** *Trade Mks.* p. 28
— *v.* Canadian Import Co. (Can.); **43.** *Trade*, p. 1
— *v.* Canadian National Rys. & Canadian Pacific Rys. (Can.); **39.** *Revenue*, p. 16
— *v.* Canadian Northern Ry. Co. (Can.); **32.** *Limit. of A.* p. 42
— *v.* Canadian Pacific Railway (Can.); **21.** *Estpl.* p. 39
— *v.* Canadian Pacific Ry. Co. & Canadian National Ry. (Can.); **37.** *Police*, p. 10; **38.** *Rys.* p. 37
— *v.* Canadian Robert Dollar Co., Ltd. (Can.); **33.** *Mags.* p. 36
— *v.* Canadian Surety Co. (Can.); **26.** *Guar.* p. 10
— *v.* Canadian Tug Boat Co., Ltd. (Can.); **36.** *Negl.* p. 25
— *v.* Cancilla (Can.); **14.** *Crim.* p. 42
— *v.* Canham (1925); **14.** *Crim.* No. 5073a
— *v.* Canham & Cushing (1929); **14.** *Crim.* No. 6169c
— *v.* Canterbury Farmers Co-operative Assocn., Ltd. (N.Z.); **7.** *B. of Sale*, p. 12
— *v.* Capuano & Pasquale Co. (Can.); **39.** *Revenue*, p. 14
— *v.* Cardarelli (Can.); **33.** *Mags.* p. 24
— *v.* Cardiff Corpn., *Ex p.* Westlan Productions, Ltd., New Theatre (Cardiff), Ltd. & Moss Empires, Ltd. (1929); **42.** *Theatres*, No. 11a
— *v.* Carey (1938); **14.** *Crim.* No. 5192a
— *v.* Carless (1934); **14.** *Crim.* No. 2115b
— *v.* Carmichael (1930); **14.** *Crim* No. 5110a
— *v.* Carr (1932); **14.** *Crim.* No. 6159q
— *v.* — (1934); **42.** *Str. Traf.* Nos. 222n, 222o
— *v.* — (Can.); **14.** *Crim.* p. 50
— *v.* Carrier (Can.); **14.** *Crim.* p. 22
— *v.* Carswell (N.Z.); **15.** *Crim.* p. 85
— *v.* Carter (1931); **14.** *Crim.* No. 5840e
— *v.* — (Can.); **14.** *Crim.* p. 19
— *v.* —, *Ex p.* Kisch (Aus.); **16.** *Cr. Pract.* p. 28; **17.** *Dep.* p. 62
— (Johannesson) *v.* Cartier Rural Municipality (Can.); **16.** *Cr. Pract.* p. 32
— *v.* Cartworth Inhabitants (1843); **16.** *Cr. Pract.* No. 3427
— *v.* Carver (1927); **14.** *Crim.* No. 1913e
— *v.* Carvery, *Ex p.* Howe (Can.); **14.** *Crim.* p. 16
— *v.* Casey (1932); **33.** *Mags.* No. 1001a
— *v.* Caskie (Can.); **11.** *Const. L.* p. 69
— *v.* Cass (Can.); **33.** *Mags.* p. 36
— (Nelson) *v.* Cassandra (Can.); **22.** *Evid.* p. 7
— *v.* Cassidy (Can.); **14.** *Crim.* p. 19
— *v.* Cassils (Can.); **15.** *Crim.* p. 100
— *v.* Castle (Can.); **15.** *Crim.* p. 105
— *v.* Caton (Can.); **33.** *Mkts.* p. 43
— *v.* Cawthorne (Can.); **20.** *Elect.* p. 1
— *v.* Ceal (Can.); **30.** *Intox.* p. 17
— *v.* Central Criminal Court JJ., *Ex p.* London County Council (1925); **14.** *Crim.* No. 1016a; **16.** *Cr. Pract.* No. 2449a
— *v.* Central Railway Signal Co., Incorp. & Canadian National Chemical Works (Can.); **18.** *Distr.* p. 25
— *v.* Chadwick (1934); **14.** *Crim.* No. 4314a
— *v.* Chadwicke (1932); **14.** *Crim.* No. 5542b
— *v.* Chamandy (Can.); **14.** *Crim.* p. 19
— *v.* Chan (Henry) (Can.); **34.** *Med.* p. 193
— *v.* Chan Sam (Can.); **34.** *Med.* p. 194
— *v.* Chanappa Shantirappa (Ind.); **17.** *Dep.* p. 35
— *v.* Chandai (Ind.); **38.** *Rys.* p. 40
— *v.* Chang Song (Can.); **2.** *Aliens*, p. 51
— *v.* Chapman (1931), 23 Cr. App. Rep. 45; **14.** *Crim.* No. 5605a
— *v.* —, [1931] 2 K. B. 606; **15.** *Crim.* No. 9323f
— *v.* —(Can.); **30.** *Intox.* p. 12
R. *v.* Chapman, *Ex p.* Arlidge (1918); **1.** *Agcy.* No. 1033a
— *v.* Charavanmuttu (1929); **14.** *Crim.* No. 1443a
— *v.* — (1930); **14.** *Crim.* Nos. 4943a, 6072b, 6073a
— *v.* Charles (1927); **14.** *Crim.* No. 4994h
— *v.* Charleville Town Council, *Ex p.* Corones (Aus.); **33.** *L. G.* p. 7; **42.** *Theatres*, p. 70
— *v.* Charlie Sam (Can.) (1929); **25.** *Gaming*, p. 31
— *v.* — (Can.) (1930); **34.** *Med.* p. 193
— *v.* Chastakoff (Can.); **15.** *Crim.* p. 80
— *v.* Chateau Restigouche (Can.); **30.** *Intox.* p. 13
— *v.* Cheng Tong Seng (Can.); **33.** *Mags.* p. 29; **39.** *Revenue*, p. 24
— *v.* Cherer (Can.); **15.** *Crim.* p. 80
— *v.* Cherry (Can.) (1927); **30.** *Intox.* p. 12
— *v.* — (Can.) (1938); **17.** *Dep.* p. 57
— *v.* Chesshire, Lucas & Bottom (1927); **14.** *Crim.* No. 4216a
— *v.* Cheverie (Can.); **39.** *Revenue*, p. 24
— *v.* Chew (1926); **14.** *Crim.* No. 5927c
— *v.* Chew Deb (Can.) (1928), 41 B. C. R. 403; **33.** *Mags.* p. 26
— *v.* — (Can.), [1928] 1 W. W. R. 966; **14.** *Crim.* p. 33
— *v.* Chick (1925); **14.** *Crim.* Nos. 5125d, 5148b
— *v.* Chin Chong (Can.); **14.** *Crim.* p. 64
— *v.* Chin Hong (Can.); **33.** *Mags.* p. 36
— *v.* Chin Jung & Tong Nin (Can.); **25.** *Gaming*, p. 32
— *v.* Chin Sack (Can.); **2.** *Aliens*, p. 49
— *v.* Chin Yow Hing (Can.); **16.** *Cr. Pract.* p. 29
— *v.* Chiswell (1930); **14.** *Crim.* No. 5014b
— *v.* Chomicki (Can.); **16.** *Cr. Pract.* p. 29
— *v.* Chotem (Can.); **15.** *Crim.* p. 92
— (Felker) *v.* Chouinard (Can.); **30.** *Intox.* p. 14
— *v.* Chow (Harry) (Can.); **14.** *Crim.* p. 60
— *v.* Chow (Henry) (Can.); **34.** *Med.* p. 193
— *v.* Chow Ben (Can.); **33.** *Mags.* p. 25
— *v.* Chow Duck Yuet (Can.); **34.** *Med.* p. 193
— *v.* Chow Kee (Can.); **14.** *Crim.* p. 62
— *v.* Chow Tong (Can.); **2.** *Aliens*, p. 51
— *v.* Chow Wai Yam (Can.) (1936); **14.** *Crim.* p. 60
— *v.* — (Can.) (1937); **14.** *Crim.* p. 7
— *v.* Christian (S. Af.); **15.** *Crim.* p. 77
— *v.* Christian Community Universal Brotherhood, Ltd. (Can.); **42.** *Time*, p. 75
— *v.* Christie (Can.); **20.** *Electric*, p. 10
— *v.* Christopher (Can.); **33.** *Mags.* p. 37
— *v.* Chue (Can.); **14.** *Crim.* p. 18
— *v.* Chung Chuck (Can.); **17.** *Dep.* p. 53; **43.** *Trade*, p. 2
— *v.* Chung Yi Miao (1928); **14.** *Crim.* No. 5595a
— *v.* Church Assembly Legislative Committee, *Ex p.* Haynes Smith (1928); **19.** *Eccl.* No. 1a
— *v.* Cieslenski (Can.); **14.** *Crim.* pp. 39, 64
— *v.* Cippola (Can.); **14.** *Crim.* p. 25
— *v.* Claremont (Can.); **33.** *Mags.* p. 26
— *v.* Clark (1818); **14.** *Crim.* No. 1991a
— *v.* — (1929); **15.** *Crim.* No. 6097a
— *v.* — (Can.) (1879); **30.** *Intox.* p. 18
— *v.* — (Can.) (1926); **30.** *Intox.* p. 1
— *v.* Clarke (1925); **14.** *Crim.* Nos. 1913b, 2115a
— *v.* — (1930); **14.** *Crim.* Nos. 4662a, 6144b
— *v.* — (Aus.); **12.** *Contr.* p. 6
— *v.* — (Can.); **37.** *Prsns.* p. 33
— (Nevin) *v.* Clarke (Ir.); **25.** *Game*, p. 25
— *v.* — (S. Af.); **42.** *Time*, p. 74
— *v.* Claydon (1859); **3.** *Basty.* No. 210a
— *v.* Cleaver, *Re* Rafter (Can.); **3.** *Basty.* p. 65
— *v.* Cleghorn (1938); **14.** *Crim.* No. 2222a
— *v.* Clements (Judge), *Ex p.* Ferridge (1932); **19.** *Eccl.* Nos. 3492a, 3492c
— *v.* Clifton-upon-Dunsmore (Inhabitants) (1772); **34.** *Mast. & S.* No. 4230b

R. *v.* Climans & Ellenburg (Can.); **35.** *Money*, p. 29
— *v.* Clive (1930); **14.** *Crim.* No. 6072a
— *v.* Clue (1928); **15.** *Crim.* No. 6199a
— *v.* Coates (Can.); **8.** *Clubs*, p. 102
— *v.* Coffee (Can.); **30.** *Intox.* p. 11
— *v.* Coffey (Can.); **42.** *Stats.* p. 21
— *v.* Cohen (1938); **14.** *Crim.* No. 4712b
— *v.* Cole (1698); **4.** *Bkpcy.* No. 218a
— *v.* Coleman (1925); **14.** *Crim.* No. 5049b
— *v.* — (Can.) (1926); **11.** *Comp. Pche.* p. 6
— *v.* — (Can.) (1927); **14.** *Crim.* p. 51
— *v.* — (Can.) (1935); **2.** *Aliens*, p. 50
— *v.* Colgate-Palmolive-Peet Co., Ltd. & Palmolive Manufacturing Co. (Ontario), Ltd. (Can.); **39.** *Revenue*, p. 14
— *v.* Collicott (1812); **15.** *Crim.* No. 12,083a
— *v.* Collins (1938); **14.** *Crim.* No. 2808a
— *v.* — (Can.); **17.** *Dep.* p. 41
— *v.* Collinson (1931); **42.** *Str. Traf.* No. 2221
— (Sheppard) *v.* Collisson (Can.); **20.** *Elect.* p. 5
— *v.* Colman (Can.); **11.** *Const. L.* p. 64
— *v.* Colpe (Can.); **33.** *Mags.* p. 36
— *v.* Comba (Can.); **14.** *Crim.* p. 64
— *v.* Comptroller-General of Patents, *Ex p.* Engl. (1930); **36.** *Pats.* No. 1666a
— *v.* Connell & Irvine (1930); **14.** *Crim.* No. 5239b
— *v.* Connors (Can.); **15.** *Crim.* p. 101
— *v.* Conrad (Can.); **41.** *Ship.* p. 8
— *v.* Consolidated Lithographic Manufacturing Co., Ltd. (Can.); **39.** *Revenue*, p. 14
— *v.* Constable (Can.); **15.** *Crim.* p. 90
— *v.* Continental Salvage Corpn., Ltd. (Can.); **33.** *Mkts.* p. 43
— *v.* Conway (Can.); **11.** *Const. L.* p. 68; **30.** *Intox.* p. 18
— *v.* Coodin (Can.); **14.** *Crim.* p. 7
— *v.* Cook (1931); **14.** *Crim.* No. 5148f
— *v.* Cook (Can.) (1931); **42.** *Solrs.* p. 14
— *v.* — (Can.) (1938); **25.** *Gaming*, p. 30
— *v.* Cooke (Can.); **14.** *Crim.* p. 59
— *v.* Cooper (Can.); **14.** *Crim.* p. 66
— *v.* — (N.Z.); **14.** *Crim* p. 35
— *v.* Co-operative Press, Ltd., *Ex p.* Beyers (1936); **16.** *Cntmpt.* No. 197a
— *v.* Cooperbloom (Can.); **14.** *Crim.* p. 9
— *v.* Coote (Can.); **14.** *Crim.* p. 39
— *v.* Cope (1925); **14.** *Crim.* No. 1798a
— *v.* Copestake, *Ex p.* Wilkinson (1927); **3.** *Basty.* No. 366b
— *v.* Corbell (Can.); **30.** *Intox.* p. 14
— *v.* Corkum (Can.); **19.** *Educ.* p. 43
— *v.* Cornet (Can.); **39.** *Revenue*, p. 10
— *v.* Cornwall County Valuation Committee, *Ex p.* Falmouth Rating Authority (1937); **38.** *Rates*, No. 1147a
— *v.* Corrigan (1931); **24.** *Extrdn.* Nos. 146a, 146b
— (Taylor) *v.* Corry (Can.); **17.** *Dep.* p. 51
— *v.* Cory Brothers & Co. (1927); **13.** *Corpns.* Nos. 1292a, 1303a
— *v.* Cosby (Can.); **7.** *Bounds & F.* p. 15
— *v.* Cosgrave Export Brewing Co., Ltd. (Can.); **16.** *Cr. Pract.* p. 44; **40.** *Set-off*, p. 23
— *v.* Costello (Can.); **15.** *Crim.* p. 91
— *v.* Coulman (1927); **14.** *Crim.* No. 3156e, 4712a
— *v.* Coulter (Can.); **30.** *Intox.* p. 12
— *v.* Coulthread (1933); **14.** *Crim.* No. 6054a
— *v.* Counter (1931); **14.** *Crim.* No. 5965b
— (Meehan) *v.* County Tyrone, Chairman & Justices (Ir.); **39.** *Revenue*, p. 25
— *v.* Coupland (Can.); **15.** *Crim.* p. 91
— *v.* Cowan (Can.); **30.** *Intox.* p. 11
— *v.* Cowell (Can.); **14.** *Crim.* p. 59; **33.** *Mags.* p. 34
— *v.* Cox (1924); **14.** *Crim.* No. 5125a
R. *v.* Cox (Can.) (1898); **17.** *Dep.* p. 53
— *v.* — (Can.) (1929); **33.** *Mags.* p. 35
— *v.* Coy (Can.) (1925); **25.** *Gaming*, p. 30
— *v.* — (Can.) (1938); **38.** *Pub. Hlth.* p. 15
— *v.* Coyle (Ir.); **14.** *Crim.* p. 45
— *v.* Crabbs (Can.); **39.** *Revenue*, p. 24
— *v.* Cracknell (Can.); **14.** *Crim.* p. 69
— *v.* Cramer (Can.); **30.** *Intox.* p. 15
— *v.* Cramgly (Can.); **15.** *Crim.* p. 105
— *v.* Cravitz (1931); **14.** *Crim.* No. 4712c
— *v.* Crawford (Can.); **14.** *Crim.* p. 1; **30.** *Intox.* p. 17
— *v.* Creaser (Can.); **30.** *Intox.* p. 16
— *v.* Crew (Can.); **5.** *Bkpcy.* p. 88
— *v.* Crockett (1929); **14.** *Crim.* No. 5629b
— *v.* Cronan (Can.); **14.** *Crim.* p. 62
— *v.* Crosby (*alias* Philips) (1695); **11.** *Const. L.* No. 214a
— *v.* Cross (1931); **14.** *Crim.* No. 6230b
— *v.* — (Can.); **14.** *Crim.* pp. 19, 47
— *v.* Crovi (Can.); **14.** *Crim.* p. 20
— *v.* Crowe (Can.), [1938] 1 W. W. R. 806; **33.** *Mags.* p. 37
— *v.* — (No. 1) (Can.); **33.** *Mags.* p. 37
— *v.* — (No. 2) (Can.); **33.** *Mags.* p. 37
— *v.* — (No. 3) (Can.); **33.** *Mags.* p. 37
— *v.* Crucil (Can.); **30.** *Intox.* p. 9
— *v.* Cruikshanks (Can.); **33.** *Mags.* p. 37
— *v.* Cruit (Can.); **14.** *Crim.* p. 72; **30.** *Intox.* pp. 1, 14
— *v.* Crystal Dairy, Ltd. (Can.); **14.** *Crim.* p. 32
— *v.* Cuddihy (Nfld.); **17.** *Dep.* p. 75
— *v.* Cullian, *Re* (Can.); **38.** *Pub. Hlth.* p. 16
— *v.* Cumberland JJ. (*Ex p.* Fearnley) (1930); **30.** *Intox.* No. 588a
— *v.* Cumberland Justices, *Ex p.* Hepworth (1931); **42.** *Str. Traf.* No. 188b
— *v.* Cummins (Can.); **14.** *Crim.* p. 7
— *v.* Cumminskey (Can.); **33.** *Mags.* p. 35
— *v.* Cumyow (Can.); **33.** *Mags.* p. 37
— *v.* Cunningham (Can.); **25.** *Gaming*, p. 35
— *v.* Curlett (Can.); **14.** *Crim.* p. 59
— *v.* Curran (1930); **14.** *Crim.* No. 5240a
— *v.* Currell (1935); **14.** *Crim.* No. 5926c
— (Dart) *v.* Curry (Can.); **33.** *L. G.* p. 1
— *v.* Curtis (1932); **14.** *Crim.* No. 5110b
— *v.* Curtiss (1925); **14.** *Crim.* No. 3180c
— *v.* Customs & Excise Comrs., *Ex p.* Pegler (1928); **31.** *L. & T.* No. 4534a
— *v.* Cutler (Can.); **8.** *Char.* p. 78
— *v.* Cutt (Can.); **14.** *Crim.* p. 6
— *v.* Cutting (Can.); **21.** *E. D.* p. 19
— *v.* Cyr (Can.) (1928); **30.** *Intox.* p. 13
— *v.* — (Can.) (1929); **11.** *Comp. Pche.* p. 7
— *v.* Czegledi (Can.); **15.** *Crim.* p. 79
— *v.* Dahl (Can.); **15.** *Crim.* p. 91
— *v.* Dahu Raut (1935); **17.** *Dep.* No. 564b
— *v.* Daily Express, *Ex p.* Public Prosecutions Director (1924); **16.** *Cntmpt.* No. 179b
— *v.* Daily Herald, *Ex p.* Norwich (Bp.) (1932); **16.** *Cntmpt.* No. 54a
— *v.* —, *Ex p.* Rouse (1931); **16.** *Cntmpt.* No. 177a
— *v.* Daily Mail (Editor), *Ex p.* Factor (1928); **16.** *Cntmpt.* No. 192a
— *v.* "Daily Mail" (Editor & Proprietors), *Ex p.* Smith (1927); **16.** *Cntmpt.* No. 283a
— *v.* "Daily Mirror" (Editor & Proprietors) (1927); **16.** *Cntmpt.* No. 283a
— *v.* "Daily Mirror," *Ex p.* Smith (1927); **16.** *Cntmpt.* No. 283a
— *v.* "Daily Sketch" & "Sunday Graphic," *Ex p.* Beyers (1936); **16.** *Cntmpt.* No. 197a
— *v.* Daily Worker (Proprietor, Printer & Publishers), *Ex p.* Goulding (1934); **16.** *Cntmpt.* No. 204a

R. *v.* Dalbergh (Can.); **30.** *Intox.* p. 15
— *v.* Dalby Licensing Authority, *Ex p.* Kelly (Aus.); **16.** *Cr. Pract.* p. 43; **30.** *Intox.* p. 6
— *v.* Dale (otherwise Manders) (1929); **15.** *Crim.* No. 6187d
— *v.* Dalton (Can.); **14.** *Crim.* p. 43
— *v.* Dandridge (1931); **5.** *Bkpcy.* No. 8557a
— *v.* D'Angelo (Can.); **15.** *Crim.* p. 90
— *v.* Daniels (1927); **14.** *Crim.* No. 5840a
— *v.* Dannelly & Vaughan (1816); **14.** *Crim.* No. 476a
— (Larsen) *v.* Danson (Can.); **16.** *Cr. Pract.* p. 34
— *v.* D'Arcy (1926); **14.** *Crim.* No. 4994g
— *v.* Darke (1937); **30.** *Juries*, No. 265a
— *v.* Darling (Can.); **14.** *Crim.* p. 60
— *v.* Dauphinee (Can.) (1930); **30.** *Intox.* p. 11
— *v.* — (Can.) (1935); **33.** *Mags.* p. 24
— *v.* — (Can.) (1936); **30.** *Intox.* p. 12
— *v.* Davenport (Can.); **2.** *Animals*, p. 69; **16.** *Cr. Pract.* p. 45; **17.** *Dep.* 43
— *v.* Davey, *Ex p.* Freer (Aus.); **2.** *Aliens*, p. 48
— *v.* Davidson (1927); **14.** *Crim.* Nos. 1446a, 3129b, 5850b
— *v.* — (1934); **14.** *Crim.* No. 4564a
— *v* — (Can.) (1925); **14.** *Crim.* pp. 46, 63
— *v.* — (Can.) (1931); **15.** *Crim.* p. 85
— *v.* — (Can.) (1933); **15.** *Crim.* p. 81
— *v.* Davies (1930), 22 Cr. App. Rep. 24; **14.** *Crim.* No. 5992b
— *v.* — (1930), 22 Cr. App. Rep. 33; **14.** *Crim.* No. 6078a
— *v.* — (Can.); **14.** *Crim.* p. 63
— *v.* —, *Ex p.* Penn (1932); **33.** *L. G.* No. 14a
— *v.* Davis (John) (1937); **30.** *Juries*, No. 412a
— *v.* — (Philip) (1937); **14.** *Crim.* No. 2147a
— *v.* — (Can.); **34.** *Med.* p. 194
— *v.* — (S. Af.); **14.** *Crim.* p. 38
— (Larson) *v.* Davison & Calgary City (Can.); **16.** *Cr. Pract.* p. 34
— *v.* Dawson (1924); **14.** *Crim.* No. 5542c
— *v.* — (1926); **15.** *Crim.* No. 10,878a
— *v.* Dealer (1929); **14.** *Crim.* No. 5018a
— *v.* Dean (1924); **14.** *Crim.* Nos. 3165a, 5261a, 5536a
— *v.* — (Can.) (1931); **33.** *Mags.* p. 23
— *v.* — (Can.) (1932); **33.** *L. G.* p. 8
— *v.* — (Can.) (1938); **33.** *Mags.* p. 23
— *v.* Dean & Baroni (Can.); **11.** *Comp. Pche.* p. 6
— *v.* De Bertoli (Can.); **14.** *Crim.* pp. 58, 73
— *v.* De Bruge (Can.); **14.** *Crim.* pp. 9, 62
— *v.* De Caux (1815); **16.** *Cr. Pract.* No. 246a
— *v.* Dee (Can.); **16.** *Cr. Pract.* p. 37; **30.** *Intox.* p. 12
— *v.* Defillipi (Can.); **22.** *Evid.* p. 18
— *v.* De'Georgio & Servello (Can.); **22.** *Evid.* p. 22
— *v.* De Grassio (Can.); **30.** *Intox.* p. 15
— *v.* De La Gorgendierre (Can.) **33.**; *Mags.* pp. 29, 30
— *v.* De La Motte (1781); **2.** *Aliens*, No. 336
— *v.* Dell 'Ospedale (Can.); **14.** *Crim.* p. 68
— *v.* Delorey (Can.); **15.** *Crim.* p. 103
— *v.* Delory & Richardson (Can.); **15.** *Crim.* p. 103
— *v.* Demers (Can.); **16.** *Cr. Pract.* p. 26
— *v.* Demetrio (Can.); **14.** *Crim.* p. 33
— *v.* De Montalk (1932); **14.** *Crim.* Nos. 181a, 8070a, 8087a, 8087b
— *v.* Dempsey (Can.); **39.** *Revenue*, p. 24
— *v.* Denaburg (Can.); **33.** *Mags.* p. 36
— *v.* Dendy (1852); **13.** *Cohlds.* No. 1354
— *v.* — (1853); **13.** *Cohlds.* No. 1354
— *v.* Denis (Can.); **14.** *Crim.* p. 21; **33.** *Mags.* p. 24
— *v.* Dennis (1924); **14.** *Crim.* No. 2365a
— *v.* Denny (Can.); **16.** *Cr. Pract.* p. 39
— *v.* Dent (1925); **14.** *Crim.* No. 4994e
R. *v.* D'Entremont (Can.); **15.** *Crim.* p. 82
— *v.* Denyer (1926); **15.** *Crim.* No. 10,487a
— *v.* Deo Dat (Ind.); **14.** *Crim.* p. 39
— *v.* Derby (Can.); **14.** *Crim.* p. 41
— *v.* Desjarlais (Can.); **14.** *Crim.* p. 10
— *v.* Deverell (1854); **38.** *Pub. Hlth.* No. 534
— *v.* Devon JJ., *Ex p.* Public Prosecutions Director (1924); **14.** *Crim.* Nos. 1022a, 1138
— *v.* D'Eyncourt (1888); **15.** *Crim.* No. 6496a
— *v.* De Young (Can.); **14.** *Crim.* p. 60
— *v.* Dhanjibhai Edulji (Ind.); **15.** *Crim.* p. 104
— *v.* Diamond (Can.); **14.** *Crim.* pp. 14, 32; **15.** *Crim.* p. 82
— *v.* Diederich & Liberty (Can.); **14.** *Crim.* p. 7; **24.** *Extrdn.* p. 45
— *v.* Dietsch (Can.); **30.** *Intox.* p. 1
— *v.* Digerness (Can.); **30.** *Intox.* p. 1
— *v.* Dinsdale (1926); **14.** *Crim.* No. 5290c
— *v.* Dipenta (Can.); **14.** *Crim.* p. 14
— *v.* Disney (1933); **14.** *Crim.* No. 2076a; **25.** *Game*, No. 265a
— *v.* Divine, *Ex p.* Walton (1930); **13.** *Crnrs.* Nos. 152a, 165a, 165b, 165c, 171a, 308b, 320a
— *v.* Dixon (1925); **14.** *Crim.* No. 6069a
— *v.* —, Southampton Justices, *Ex p.* Porteous (1929); **14.** *Crim.* No. 1032a; **33.** *Mags.* No. 334a
— (Maxson) *v.* Dobbin (Can.); **2.** *Animals*, p. 58
— *v.* Dobson (1930); **14.** *Crim.* No. 5046d
— *v.* Dodds (Can.); **25.** *Gaming*, p. 30
— *v.* Dolynchuk (Can.); **15.** *Crim.* p. 91
— *v.* Dominion Bank (Can.); **39.** *Revenue*, pp. 13, 14
— *v.* Dominion Building Corpn., Ltd. & Forgie (Can.); **40.** *S. Land*, p. 12
— *v.* Dominion Coal Co. (Can.); **34.** *Mines*, p. 210
— *v.* Dominion Corpn., Ltd. & Forgie (Can.); **12.** *Contr.* p. 5
— *v.* Dominion Distillery Products Co. (Can.); **39.** *Revenue*, p. 14
— *v.* Dominion General Jobbers, Ltd. (Can.); **33.** *Mkts.* p. 43
— *v.* Dominion of Canada Postage Stamp Vending Co., Ltd. (Can.); **37.** *Post Off.* p. 23
— *v.* Dominion Press Co. (Can.); **39.** *Revenue*, p. 15
— *v.* Dominion Winegrowers, Ltd. (Can.); **30.** *Intox.* p. 11
— *v.* Donald (Can.); **25.** *Gaming*, p. 31
— *v.* Donegal (Marchioness) (Can.); **17.** *Dep.* p. 50
— *v.* Donen (Can.); **28.** *Inc. T.* p. 105
— *v.* Donovan (1925); **14.** *Crim.* No. 5290a
— *v.* — (1934); **15.** *Crim.* Nos. 9025a, 9030a
— *v.* Dorgan (Can.); **8.** *Clubs*, p. 102
— *v.* Dorrington (1927); **5.** *Bkpcy.* No. 8565a
— (McArthur) *v.* Doucet (Can.); **16.** *Cr. Pract.* p. 36
— *v.* Douglas (1842); **22.** *Evid.* No. 6649a
— *v.* — (1846); **22.** *Evid.* No. 1900
— *v.* — (1926); **14.** *Crim.* No. 1978a
— *v.* Doull (Can.); **39.** *Revenue*, p. 25
— *v.* Dow (Can.); **14.** *Crim.* p. 47
— *v.* Dowdell (Can.); **17.** *Dep.* p. 54
— (Desmarais) *v.* Dowen (Can.); **34.** *Med.* p. 191
— (Peter Magee & Bernard Magee) *v.* Down Justices (Ir.); **16.** *Cr. Pract.* p. 42
— *v.* Doyle (Can.) (1928); **14.** *Crim.* p. 2; **42.** *Str. Traf.* p. 59
— *v.* — (Can.) (1934); **14.** *Crim.* p. 30
— *v.* Dragani (Can.); **30.** *Intox.* p. 15
— *v.* Drake (1850); **14.** *Crim.* No. 1992a
— *v.* Dransfield (1936); **25.** *Gaming*, No. 278a
— *v.* Draper (1929); **15.** *Crim.* Nos. 6068b, 9361a

R. *v.* Drashcovich (Can.); **30.** *Intox.* p. 1
— *v.* Drew (Can.); **15.** *Crim.* p. 97
— *v.* — (No. 2) (Can.); **14.** *Crim.* p. 20; **15.** *Crim.* p. 95
— *v.* Driscoll (1925); **14.** *Crim.* No. 5312a
— *v.* Driscoll & Rowlands (1928); **14.** *Crim.* Nos. 2839c, 5802c
— *v.* Driver (1926); **14.** *Crim.* No. 5046a
— *v.* Droux (Can.); **14.** *Crim.* p. 72
— *v.* Druz (Can.); **30.** *Intox.* p. 17
— *v.* Drysdale (Can.); **30.** *Intox.* p. 11
— *v.* Dublin Town Clerk (Ir.); **20.** *Elect.* p. 6
— *v.* Duff (Can.); **14.** *Crim.* pp. 7, 19, 33
— *v.* Duffy (Can.); **14.** *Crim.* p. 6
— *v.* Du Quay (Can.) (1928); **14.** *Crim.* p. 15
— *v.* Duguay (Can.) (1933); **15.** *Crim.* p. 98
— *v.* Dumont (1930); **15.** *Crim.* No. 9323d
— *v.* Dumont (Can.); **25.** *Gaming*, p. 29
— *v.* Dunbar (1928); **14.** *Crim.* No. 6169f
— *v.* — (Can.); **14.** *Crim.* p. 69
— *v.* Dunkley (1927); **14.** *Crim.* Nos. 4705b, 4734a
— *v.* Dunn (Can.) (1928); **16.** *Cr. Pract.* p. 30; **33.** *Mags.* p. 27
— *v.* — (Can.) (1933); **30.** *Intox.* p. 11
— *v.* Dunne (1929); **22.** *Evid.* No. 3980a
— *v.* Dunnico (1931); **14.** *Crim.* No. 5873b
— *v.* Dunscombe (1936); **14.** *Crim.* Nos. 1720a, 5802d
— *v.* Dupras, Ltd. (Can.); **33.** *Mags.* p. 27
— *v.* Durand (1924); **14.** *Crim.* No. 4994c
— *v.* — (Can.); **42.** *Str. Traf.* p. 52
— *v.* Dureault (Can.); **33.** *Mags.* p. 37
— *v.* Durling (Can.); **33.** *Mags.* p. 22
— *v.* Duroussel (Can.); **30.** *Intox.* p. 16
— *v.* Dusenberg (Can.); **14.** *Crim.* p. 8
— *v.* Dutchak (Can.); **14.** *Crim.* p. 68
— *v.* Dwyer (1925); **14.** *Crim.* Nos. 3801a, 3801c
— *v.* — (1932); **14.** *Crim.* No. 4351d
— *v.* Dziwra (Can.); **14.** *Crim.* p. 35; **30.** *Intox.* p. 7
— *v.* Earsman (Aus.); **14.** *Crim.* p. 29
— *v.* East Ham Borough Council, *Ex p.* Hunt (1930); **19.** *Educ.* No. 24a
— *v.* Easterbrook (Can.); **2.** *Agric.* p. 5
— *v.* Eastern Terminal Elevator Co. (Can.); **17.** *Dep.* p. 42
— *v.* Eastman (Can.); **28.** *Infts.* p. 143
— *v.* Ebbage (1930); **14.** *Crim.* No. 6034b
— (Galloway) *v.* Eckel (Can.); **20.** *Elect.* pp. 5, 6
— *v.* Ecker, *Re* (Can.); **14.** *Crim.* p. 32
— *v.* Ed (Can.); **28.** *Inc. T.* p. 105
— *v.* Eddy (Can.); **15.** *Crim.* p. 85
— *v.* Edgerly (Can.); **30.** *Intox.* p. 15
— *v.* Edmonton Income Tax Comrs., *Ex p.* — Thompson (1929); **28.** *Inc. T.* No. 631a
v. Edmundson (1859); **15.** *Crim.* No. 10,815a
— *v.* Edwards (1853); **5.** *Bkpcy.* No. 7030
— *v.* — (1924); **14.** *Crim.* No. 3318a
— *v.* — (1930); **14.** *Crim.* No. 4994m
— *v.* — (Can.) (1936); **25.** *Gaming*, p. 34
— *v.* — (Can.) (1938); **33.** *Mags.* p. 25
— *v.* —, *Ex p.* Welsh Church Temporalities Comrs. (1933); **16.** *Cntmpt.* Nos. 54b, 343a
— *v.* Eidinow (1932); **14.** *Crim.* No. 4754a
— *v.* Eisenhauer (Can.) (1936); **33.** *Mags.* p. 37
— *v.* — (Can.) (1937); **42.** *Str. Traf.* p. 51
— *v.* Elasz (Can.); **25.** *Gaming*, p. 31
— *v.* Elchuk (Hallchuk) (Can.); **14.** *Crim.* p. 15; **33.** *Mags.* p. 27
— *v.* Elder (Can.); **15.** *Crim.* p. 90; **22.** *Evid.* p. 20
— *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), Ltd. (1924); **16.** *Cr. Pract.* No. 2303
— *v.* —, *Ex p.* Yorkshire Electric Power Co. (1927); **20.** *Electric*, No. 111a
R. *v.* Elite Cafe, Ltd. (Can.); **11.** *Comp. Pche.* p. 18
— *v.* Ellerton (Can.); **14.** *Crim.* p. 71
— *v.* Elliot, Hollis & Valentine (1630); **14.** *Crim.* No. 989
— *v.* — (1668); **14.** *Crim.* No. 989
— *v.* Elliott (Can.); **15.** *Crim.* p. 85
— *v.* Ellis (Can.); **16.** *Cr. Pract.* p. 36
— *v.* Ellis, *Ex p.* Amalgamated Engineering Union (1921); **42.** *Stats.* No. 1344b
— *v.* Ellison (Can.); **33.** *Mags.* p. 32
— *v.* Ely JJ. (1855); **33.** *Mags.* No. 958d
— *v.* —, *Ex p.* Mann (1928); **33.** *Mags.* No. 811a
— *v.* Emma K., The (Can.); **41.** *Ship.* p. 9
— *v.* Emmett (1925); **14.** *Crim.* No. 5148a
— *v.* Emmott (1928); **14.** *Crim.* No. 5198a
— *v.* Empire News, Editor, Printers & Publishers of *v.* Norwich (Bp.) (1932); **16.** *Cntmpt.* No. 54a
— *v.* Emryk (Can.); **33.** *Mags.* p. 34
— *v.* Endler (Can.); **22.** *Evid.* p. 20
— *v.* England (Can.); **14.** *Crim.* p. 51; **15.** *Crim.* p. 107
— *v.* Epstein (Can.) (1925); **14.** *Crim.* p. 64
— *v.* — (Can.) (1931); **42.** *Time*, p. 74
— *v.* Erasmus (S. Af.); **15.** *Crim.* p. 77
— *v.* Erickson (Can.); **14.** *Crim.* p. 71
— (Hanna) *v.* Ernest (Can.); **30.** *Intox.* p. 15
— *v.* Errington (1926); **15.** *Crim.* No. 10,754b
— *v.* Essex County Court Judge (1884); **1.** *Adm.* No. 1717
— *v.* Essex JJ., *Ex p.* Churchill (1933); **15.** *Crim.* No. 6434a
— *v.* —, *Ex p.* Da Costa (1938); **3.** *Basty.* No. 288a
— *v.* —, *Ex p.* Perkins (1927); **33.** *Mags.* Nos. 97a, 150a
— *v.* Ettridge (1927); **14.** *Crim.* No. 5049d
— *v.* Evans (1924); **14.** *Crim.* No. 4826a
— *v.* — (Can.); **15.** *Crim.* p. 78
— *v.* Evans & Pritchard (1920); **14.** *Crim.* No. 3324
— *v.* Evening News, *Ex p.* Hobbs (1925); **16.** *Cntmpt.* No. 180a
— *v.* Evening Standard, *Ex p.* Public Prosecutions Director (1924); **16.** *Cntmpt.* No. 179b
— *v.* Evens (1930); **15.** *Crim.* No. 10,762a
— *v.* Exchange Printing Co. (Can.); **39.** *Revenue*, p. 15
— *v.* Exeter (Mayor) (1838); **20.** *Elect.* No. 1089
— *v.* Fairbank (1850); **2.** *Animals*, No. 328a
— *v.* Fakenham (Inhabitants) (1835); **34.** *Mast. & S.* No. 4230c
— *v.* Fall (1842); **16.** *Cr. Pract.* No. 1805a
— *v.* Famous Players (Can.); **43.** *Trade*, p. 1
— *v.* Fanning (Can.); **42.** *Str. Traf.* p. 57
— *v.* Farby & Dworkin (Can.); **15.** *Crim.* p. 78
— *v.* Faulds (Can.); **15.** *Crim.* p. 101
— *v.* Faulkner (Ir.); **15.** *Crim.* p. 106
— *v.* Feldman (Can.); **5.** *Bkpcy.* p. 89
— *v.* Ferguson (1925); **14.** *Crim.* Nos. 3801a, 3801c
— *v.* Ferguson (Can.); **17.** *Dep.* p. 51
— *v.* Ferrier (Can.); **14.** *Crim.* p. 29
— *v.* Ferrish & De Vasse (Can.); **15.** *Crim.* p. 80
— *v.* Fialka (Can.) (1934); **14.** *Crim.* p. 68; **33.** *Mag.* p. 27
— *v.* — (Can.) (1935); **14.** *Crim.* p. 28
— *v.* Fidelity Insurance Co. (Can.); **7.** *Bonds*, p. 13
— *v.* Field (Can.); **15.** *Crim.* pp. 91, 92
— *v.* Fielder (1926); **14.** *Crim.* No. 6177a
— *v.* Fielding (1938); **14.** *Crim.* No. 5577b
— *v.* Fiesel (Can.); **14.** *Crim.* p. 24
— *v.* 1500 Club of Calgary (Can.); **29.** *Insce.* p. 61
— (Pioneer Gold Mines of B. C., Ltd.) *v.* Finance Minister (Can.); **28.** *Inc. T.* p. 100

R. *v.* Finden (1926); **14.** *Crim.* No. 4129a
— *v.* Finlay (Can.); **14.** *Crim.* p. 73
— *v.* Finney (1924); **14.** *Crim.* No. 2879a
— *v.* Firth (1938); **14.** *Crim.* No. 3856a
— *v.* Fish, *Ex p.* Sobey (Can.); **7.** *Bounds. & F.* p. 15
— *v.* Fisher (1926); **14.** *Crim.* No. 3180d
— *v.* — (1931); **14.** *Crim.* Nos. 5125g, 5148h
— *v.* Fitt (1928); **14.** *Crim.* No. 5208b
— *v.* Fitzgerald (Can.); **26.** *Hghys.* p. 36
— *v.* Fitzhugh, *Ex p.* Livingston (1937); **16.** *Cntmpt.* No. 274b
— *v.* Fitzpatrick (1926); **14.** *Crim.* Nos. 40a, 708a, 732a
— *v.* — (Can.), [1929] 1 D. L. R. 806; **22.** *Evid.* p. 16
— *v.* — (Can.), [1929] 4 D. L. R. 95; **14.** *Crim.* p. 32
— *v.* Flahaut (Can.); **14.** *Crim.* p. 8
— *v.* Flavell (1926); **14.** *Crim.* No. 230a
— *v.* Fleming (1929); **14.** *Crim.* Nos. 5870d, 6106a
— *v.* Fletcher, *Ex p.* Kisch (Aus.); **16.** *Cntmpt.* p. 2
— *v.* Fletcher & Pinel (Can.); **14.** *Crim.* p. 59
— *v.* Fleury (Can.); **37.** *Poor L.* p. 20
— *v.* Flood (Can.); **17.** *Dep.* p. 51
— *v.* — (Ir.); **14.** *Crim.* pp. 25, 29, 39
— *v.* Fodor (Can.); **16.** *Cr. Pract.* p. 37
— *v.* Foley, *Ex p.* Miller (Aus.); **16.** *Cr. Pract.* p. 34
— *v.* Fong (Harry) (Can.); **33.** *Mags.* p. 22
— *v.* Fong Soon (Can.); **2.** *Aliens*, p. 48
— *v.* Fontaine & Lacasse (Can.); **14.** *Crim.* p. 72
— *v.* Foran (Can.); **39.** *Revenue*, p. 25
— *v.* Forbes (Can.); **34.** *Med.* p. 194
— *v.* Forde (1923); **15.** *Crim.* No. 9323c
— *v.* Forder (Can.); **25.** *Gaming*, p. 31
— *v.* Fordham (1873); **18.** *Distr.* No. 1870
— *v.* Forhan (Can.); **17.** *Dep.* p. 51
— *v.* Foster (Can.); **27.** *H. & W.* p. 25
— *v.* Foulkes (Can.); **14.** *Crim.* p. 21
— *v.* Fournier (Can.); **15.** *Crim.* p. 97
— *v.* Fowler (1937); **42.** *Str. Traf.* Nos. 188c, 254c, 254d
— *v.* — (Can.); **20.** *Elect.* p. 1
— *v.* Fox (1925); **14.** *Crim.* No. 5194a
— *v.* — (Can.); **14.** *Crim.* p. 73
— *v.* Frampton (1928); **14.** *Crim.* No. 2988a
— *v.* Francis & Barber (Can.); **14.** *Crim.* p. 28
— *v.* Frank A. Gillis Co., Ltd. (Can.); **8.** *Carr.* p. 22
— *v.* Franke (Aus.); **37.** *Poor L.* p. 21; **42.** *Stats.* p. 27
— *v.* Franklin (1704); **32.** *Limit. of A.* No. 1837a
— *v.* Fraser (Can.) (1928); **14.** *Crim.* p. 60; **33.** *Mags.* p. 36
— (Jones) *v.* Fraser (Can.) (1937); **34.** *Med.* p. 195
— *v.* Fraser Companies, Ltd. (Can.); **39.** *Revenue*, p. 15
— *v.* Fratson (1930); **15.** *Crim.* No. 6249b
— *v.* Fray (Can.); **33.** *Mags.* p. 23
— *v.* Frederick (Can.); **14.** *Crim.* p. 75
— *v.* Freebody (1935); **14.** *Crim.* No. 6067d
— *v.* Freedman (1930); **14.** *Crim.* Nos. 751c, 10,779a
— *v.* — (Can.) (1931); **25.** *Gaming*, p. 29
— *v.* — (Can.) (1936); **15.** *Crim.* p. 105
— *v.* Fresco (Can.); **34.** *Mines*, p. 199
— *v.* Friederiksen (1927); **14.** *Crim.* No. 2585a
— *v.* Friedman (Can.); **15.** *Crim.* p. 86
— *v.* Friend (1924); **14.** *Crim.* No. 5607a
— *v.* — (1930); **14.** *Crim.* No. 3389a
— *v.* Frier (1927); **14.** *Crim.* No. 5246b
— *v.* Frost (Can.); **11.** *Comp. Pche.* p. 7
— *v.* Frowde, Ltd. (Can.); **39.** *Revenue*, p. 14
R. *v.* Fry, *Re* (Can.); **14.** *Crim.* p. 32
— *v.* Furuzawa (No. 1) (Can.); **14.** *Crim.* p. 24
— *v.* — (No. 2) (Can.); **14.** *Crim.* p. 8
— *v.* Galbraith (Can.); **30.** *Intox.* p. 13
— *v.* Gallagher (1929); **14.** *Crim.* No. 6228a
— *v.* Gallagher (1937); **17.** *Dep.* No. 716e
— *v.* — (Can.); **14.** *Crim.* pp. 6, 45, 47, 62, 70, 73
— *v.* Gallant (Can.); **15.** *Crim.* p. 82; **17.** *Dep.* p. 54
— *v.* Gallen (Can.); **14.** *Crim.* p. 26
— *v.* Gallivan (Can.); **14.** *Crim.* p. 9
— *v.* Galsky (Can.) (1930); **15.** *Crim.* p. 95
— *v.* — (Can.) (1931); **33.** *Mags.* p. 37
— *v.* — (Can.) (1936); **15.** *Crim.* p. 105
— *v.* — (No. 2) (Can.); **15.** *Crim.* p. 95
— *v.* Galway JJ. (Ir.); **33.** *Mags.* p. 36
— *v.* Gan (Can.); **2.** *Aliens*, p. 50
— *v.* Ganesh Chandra Goldar (Ind.); **14.** *Crim.* p. 41
— *v.* Gans (1928); **14.** *Crim.* No. 6203a
— *v.* Gardner (Can.); **17.** *Dep.* p. 51; **27.** *H. & W.* p. 77
— *v.* Garrigan (Can.); **14.** *Crim.* p. 4
— *v.* Gasco (Can.); **14.** *Crim.* p. 74
— *v.* Gaskell (1929); **15.** *Crim.* No. 6144a
— *v.* Gaspard (Can.); **30.** *Intox.* p. 12
— (King) *v.* Gass (Ir.); **39.** *Revenue*, p. 12
— *v.* Gasselle (Can.); **15.** *Crim.* p. 96
— *v.* Gates, *Ex p.* Maling (Aus.); **17.** *Dep.* p. 63
— *v.* Gatto & Tonellatto (Can.); **14.** *Crim.* p. 19
— *v.* Gaum (Can.); **14.** *Crim.* p. 70
— *v.* Gautschi (Can.); **44.** *Work*, p. 60
— (Sinclair) *v.* Gebhardt (Can.); **17.** *Dep.* p. 50
— *v.* Gee (1936); **14.** *Crim.* Nos. 1720a, 5802d
— *v.* Gee Dew (No. 1) (Can.); **16.** *Cr. Pract.* p. 28
— *v.* — (No. 3) (Can.); **2.** *Aliens*, p. 51
— *v.* Gee Duck Lim (Can.); **33.** *Mags.* p. 24
— *v.* Geiger (Can.); **14.** *Crim.* p. 31
— *v.* Gemmill (Can.); **14.** *Crim.* p. 44
— *v.* General Medical Council, *Ex p.* Kynaston (1930); **34.** *Med.* No. 21a
— *v.* General News Bureau Incorporated (Can.); **42.** *Tele.* p. 67
— *v.* George (Can.); **15.** *Crim.* p. 90
— *v.* — (No. 2) (Can.); **14.** *Crim.* p. 75
— *v.* — (No. 3) (Can.); **15.** *Crim.* p. 89
— *v.* Gertler (Can.); **30.** *Intox.* p. 17
— *v.* Gerwin (Can.); **30.** *Intox.* p. 15
— *v.* Gething (1926); **14.** *Crim.* No. 5148d
— *v.* Getlin (Can.); **14.** *Crim.* p. 9
— *v.* Gibb (Can.); **33.** *Mkts.* p. 43
— *v.* Gibbs (Can.); **30.** *Intox.* p. 13
— *v.* Gibson (1930); **14.** *Crim.* No. 5108a
— *v.* Gidney (Can.); **30.** *Intox.* p. 13
— *v.* Gifford (Can.); **14.** *Crim.* p. 10
— *v.* Gignac (Can.); **42.** *Tele.* p. 67
— *v.* Gilbert (1921); **2.** *Aliens*, No. 543b
— *v.* — (Can.); **26.** *Hghys.* p. 28
— *v.* Gilbertson & Fuller (Can.); **15.** *Crim.* p. 98
— *v.* Gilchrist (Can.); **30.** *Intox.* p. 14
— *v.* — (Ir.); **14.** *Crim.* p. 24
— *v.* Giles (Can.) (1930), 55 Can. C. C. 76; **33.** *Mags.* p. 37
— *v.* — (Can.), [1930] 3 D. L. R. 273; **33.** *Mags.* p. 37
— *v.* Gilkes (1827); **15.** *Crim.* No. 7584a
— *v.* Gillis (Frank A.) Co., Ltd. (Can.); **8.** *Carr.* p. 22
— *v.* Gilmet (Can.); **30.** *Intox.* p. 11
— *v.* Gilmore (Can.); **14.** *Crim.* p. 1
— *v.* Ging (Can.); **14.** *Crim.* p. 63
— *v.* Girone (Can.); **14.** *Crim.* pp. 63, 75
— *v.* Glamorganshire County Council, *Ex p.* Collier (1936); **33.** *L. G.* No. 758a
— *v.* Glasgow (Can.); **14.** *Crim.* p. 57
— *v.* Glen (1935); **14.** *Crim.* No. 5560a

R. *v.* Glenfield (Can.); **25.** *Gaming*, p. 30; **30.** *Jdgmts.* p. 28
— *v.* Gloucester (Mayor) (1838); **20.** *Elect.* No. 1090
— *v.* Glover (Aus.); **14.** *Crim.* pp. 24, 47
— *v.* — (Can.); **33.** *Mags.* p. 36
— *v.* Gobind Singh (Ind.); **15.** *Crim.* p. 107
— *v.* Godbout (Can.); **30.** *Intox.* p. 17
— *v.* Gold Comr. of Victoria District (Can.); **17.** *Dep.* p. 52
— *v.* Golden (Can.); **15.** *Crim.* p. 82
— *v.* Goldfarb (1936); **2.** *Aliens*, No. 553e
— *v.* Goldhammer (Can.); **4.** *Bkpcy.* p. 3
— *v.* Goldsmid (Can.); **17.** *Dep.* p. 42
— *v.* Goldstein (Can.); **11.** *Comp. Pche.* p. 6
— (Mackay) *v.* Good (Can.); **16.** *Cr. Pract.* p. 36
— *v.* Gooderham & Worts, Ltd. (Can.); **39.** *Revenue*, p. 14
— *v.* Goodfellow (Can.); **14.** *Crim.* p. 75
— *v.* Gooding (1938); **15.** *Crim.* No. 9323b
— *v.* Gordon (1925); **14.** *Crim.* No. 3318b
— *v.* — (Can.); **14.** *Crim.* p. 1; **17.** *Dep.* p. 43; **34.** *Med.* p. 195
— *v.* Gordon & Gordon (Can.); **14.** *Crim.* p. 6
— *v.* Gore (1929); **14.** *Crim.* No. 5244a
— *v.* — (1930); **14.** *Crim.* No. 5448b
— *v.* Gosling (Can.); **15.** *Crim.* p. 94
— *v.* Gosper (Aus.); **14.** *Crim.* p. 74
— *v.* Gosselin (Can.); **14.** *Crim.* p. 32; **15.** *Crim.* p. 95; **21.** *Estpl.* p. 33
— *v.* Gough (Can.); **3.** *Bank.* p. 20
— *v.* Graham (1924); **14.** *Crim.* No. 5870a
— *v.* — (Can.); **30.** *Intox.* p. 16
— *v.* Graham Campbell, *Ex p.* Ahmed Hamid Moussa (1921); **2.** *Aliens*, Nos. 553d, 558h, 558i
— *v.* Graham-Campbell, *Ex p.* Herbert (1935); **30.** *Intox.* Nos. 30a, 625a; **36.** *Parl.* No. 466a
— *v.* Grampound Corpn. (1795); **13.** *Corpns.* No. 578a
— *v.* Grant (1936); **14.** *Crim.* No. 3570b
— *v.* — (Can.); **16.** *Cr. Pract.* p. 41; **30.** *Intox.* p. 14
— *v.* Gratton (Can.); **25.** *Gaming*, p. 38
— *v.* Graveline (Can.); **15.** *Crim.* p. 83
— *v.* Green (1930), 22 Cr. App. Rep. 46; **14.** *Crim.* No. 3136b, 3180b, 3180f
— *v.* — (1930), 22 Cr. App. Rep. 94; **14.** *Crim.* No. 5057f
— *v.* — (Can.); **25.** *Gaming*, p. 32
— *v.* Green-Emmott (1931); **14.** *Crim.* No. 5414a
— *v.* Greenberg (Can.); **25.** *Food*, p. 12
— *v.* Greenwood (1929); **14.** *Crim.* Nos. 5125e, 5148e
— *v.* — (1931); **14.** *Crim.* No. 5239c
— *v.* Gregg (1932); **14.** *Crim.* No. 6078c
— *v.* Gregoire (Can.); **14.** *Crim.* p. 25
— *v.* Gregory (1928); **14.** *Crim.* No. 1411a
— *v.* Greisman (Can.); **15.** *Crim.* p. 91
— *v.* Greville (1929); **14.** *Crim.* No. 5570b; **42.** *Time*, No. 330a
— *v.* Griffin (Can.); **39.** *Revenue*, p. 10
— *v.* Griffiths (1932); **14.** *Crim.* Nos. 5035a, 5046g, 5542a
— *v.* Grigg (N.Z.); **14.** *Crim.* p. 37
— *v.* Griss (Can.); **25.** *Gaming*, p. 36
— (Eddie) *v.* Grosney (Can.); **30.** *Intox.* p. 1
— *v.* Grotsky (Can.); **14.** *Crim.* p. 59
— *v.* Gudmondson (Can.); **14.** *Crim.* p. 67
— *v.* Guerin (1931); **14.** *Crim.* Nos. 2840a, 5870c
— *v.* Gullberg (Can.); **43.** *Trade*, p. 2
— *v.* Gumbs (1926); **14.** *Crim.* No. 4994f
— *v.* Gun Ying (Can.); **34.** *Med.* p. 193
— *v.* Guntrip (1925); **14.** *Crim.* No. 5057c
— *v.* Gurditta (Can.); **15.** *Crim.* p. 80
R. *v.* Gurski (Can.); **18.** *Distr.* p. 34
— *v.* Gustafson (Can.); **33.** *Mags.* p. 35
— *v.* Guyot (Can.); **22.** *Evid.* p. 23
— *v.* H. (Can.); **33.** *Mags.* p. 24
— *v.* Hackman (Can.); **2.** *Aliens*, p. 53
— *v.* Haddad (Can.); **14.** *Crim.* p. 63
— *v.* Haddon (1935); **14.** *Crim.* No. 1810d
— *v.* Hagerup (Can.); **14.** *Crim.* p. 39; **30.** *Intox.* p. 14
— *v.* Hahn (Can.); **30.** *Intox.* p. 11
— *v.* Hailwood, R. *v.* Hailwood & Ackroyd, Ltd. (1928); **20.** *Elect.* No. 774a
— *v.* Hale (Can.); **14.** *Crim.* p. 74; **30.** *Intox.* p. 12
— *v.* Halifax Electric Tramway Co. (Can.); **17.** *Dep.* p. 54
— *v.* Hall (1928); **14.** *Crim.* No. 3179c; **15.** *Crim.* No. 8338a
— *v.* — (Can.) (1927); **14.** *Crim.* p. 68; **30.** *Intox.* p. 17
— *v.* — (Can.) (1930); **15.** *Crim.* p. 106
— *v.* Hallchuk (Elchuk) (Can.); **14.** *Crim.* p. 15; **33.** *Mags.* p. 27
— *v.* Hallinan, *Re* (Can.); **25.** *Gaming*, p. 32
— *v.* Halpin (Can.); **22.** *Evid.* p. 17
— (Fraser) *v.* Halpin (Can.); **16.** *Cr. Pract.* p. 37
— *v.* Hamelin (Can.); **30.** *Intox.* p. 13
— *v.* Hamilton (Aus.); **16.** *Courts*, p. 11
— *v.* — (Can.) (1925); **14.** *Crim.* p. 50
— *v.* — (Can.) (1931); **15.** *Crim.* p. 106
— *v.* Hamlin (Can.); **14.** *Crim.* p. 70; **15.** *Crim.* p. 95
— (Thompson) *v.* Hammatt (Can.); **11.** *Const. L.* p. 64; **30.** *Intox.* p. 12
— *v.* Hammer (1923); **1.** *Action*, No. 35a
— *v.* Hampshire Justices, *Ex p.* Porteous (1929); **14.** *Crim.* No. 1032a; **33.** *Mags.* No. 334a
— *v.* Hancock (1839); **16.** *Cr. Pract.* No. 1486a
— *v.* — (1931), 23 Cr. App. Rep. 16; **3.** *Barr.* No. 148a
— *v.* — (1931), 100 L. J. K. B. 419; **14.** *Crim.* Nos. 3287a, 6237c
— *v.* Hancox (1913); **14.** *Crim.* No. 5845a
— *v.* Hand (Can.); **30.** *Intox.* p. 17
— *v.* Handsbee (Can.); **15.** *Crim.* p. 100
— *v.* Hanel (Can.); **17.** *Dep.* p. 38
— *v.* Haney (Can.); **14.** *Crim.* p. 21
— *v.* Hanslow (1932); **14.** *Crim.* No. 5148o
— *v.* Hanson (Can.); **30.** *Intox.* p. 13
— *v.* Harcourt (Can.) (1929); **9.** *Coys.* p. 8
— *v.* — (Can.), [1930] 1 D. L. R. 736; **15.** *Crim.* p. 102
— *v.* — (Can.), [1930] 3 D. L. R. 59; **22.** *Evid.* p. 17
— *v.* Harding (1929); **15.** *Crim.* No. 10,060a
— *v.* — (1936); **14.** *Crim.* No. 5783b
— *v.* Harding, Turner & King (1931); **14.** *Crim.* No. 1443e
— *v.* Hardy (*alias* Emmett) (1925); **14.** *Crim.* No. 5148a
— *v.* Hardy (1936), 25 Cr. App. Rep. 167; **14.** *Crim.* No. 1442b
— *v.* — (1936); 25 Cr. App. Rep. 176; **15.** *Crim.* No. 10,352b
— *v.* — (Can.); **39.** *Revenue*, p. 26
— *v.* Hare (1934); **15.** *Crim.* Nos. 8121a, 9370a; **42.** *Stats.* Nos. 64a, 634a
— (O'Connell) *v.* Hare Park Camp (Military Governor) (Ir.); **17.** *Dep.* p. 88
— *v.* Harenslak (Can.); **27.** *H. & W.* p. 5
— *v.* Harkness (Can.); **25.** *Gaming*, p. 30
— *v.* Harling (1938); **15.** *Crim.* No. 9287a
— *v.* Harlton (Can.) (1929), 52 Can. Crim. Cas. 310; **14.** *Crim.* p. 60
— *v.* — (Can.), [1929] 3 D. L. R. 688; **15.** *Crim.* p. 89
— *v.* Harms (Can.); **14.** *Crim.* p. 67

R. *v.* Harran (Can.); **25.** *Fish.* p. 4
— *v.* Harris (1924); **14.** *Crim.* No. 5478a; **15.** *Crim.* Nos. 10,725a, 10,731a
— *v.* — (1927); **14.** *Crim.* Nos. 2731a, 3172a
— *v.* — (1937); **14.** *Crim.* No. 6215c
— *v.* Harrison (1930); **15.** *Crim.* No. 10,410a
— *v.* — (1938); **15.** *Crim.* No. 9323b
— *v.* — (Can.) (1928); **14.** *Crim.* p. 34
— *v.* — (Can.) (1931); **25.** *Gaming*, p. 38
— *v.* Harross (1856); **33.** *Mags.* No. 1015
— *v.* Harry (1928); **14.** *Crim.* No. 5355b
— *v.* Harry Chow (Can.); **14.** *Crim.* p. 60
— *v.* Harry Fong (Can.); **33.** *Mags.* p. 22
— *v.* Hart (1932); **14.** *Crim.* No. 2119b; **22.** *Evid.* No. 4816a
— *v.* — (Can.) (1891); **14.** *Crim.* p. 42
— *v.* — (Can.) (1929); **14.** *Crim.* p. 21
— *v.* Hartie (1863); **7.** *Bldg. Soc.* No. 65a
— *v.* Hartlepool Corpn., *Ex p.* Dobing (1851); **20.** *Elect.* No. 146a
— *v.* Harvey (1927); **14.** *Crim.* No. 5190a
— *v.* Haskins (Can.); **14.** *Crim.* p. 75
— *v.* Haslam (1925); **14.** *Crim.* Nos. 2839a, 5194b, 5873a
— *v.* — (1926); **14.** *Crim.* No. 2995a
— *v.* Haslewood, *Ex p.* Margerison (1926); **13.** *Crnrs.* No. 156a
— (MacGinnis) *v.* Hassell (Can.); **16.** *Cr. Pract.* p. 43
— *v.* Hastie (1863); **7.** *Bldg. Soc.* No. 65a
— *v.* Hastings Poor Law Union Guardians (1865); **30.** *L. & T.* No. 1295
— *v.* Hatch (1930); **14.** *Crim.* No. 5629c
— *v.* — (1933); **15.** *Crim.* No. 10,732a
— *v.* Hatch & Smith (1928); **14.** *Crim.* No. 5739a
— *v.* Hatskin (Can.); **44.** *Work*, p. 60
— *v.* Hatton (1925); **15.** *Crim.* No. 9023a
— *v.* Hauberg (Can.); **15.** *Crim.* p. 95
— (Emerson) *v.* Haughey (Ir.); **39.** *Revenue*, p. 12
— *v.* Hawkes (1931); **14.** *Crim.* No. 6088a; **42.** *Str. Traf.* No. 222m
— *v.* Hawkins (Can.); **14.** *Crim.* p. 38
— *v.* Hawryliuk (Can.); **33.** *Mags.* p. 29
— *v.* Hay Halkett, *Ex p.* Rush (1929); **33.** *Mags.* No. 433a
— *v.* Hayduk (Can.); **14.** *Crim.* p. 64
— *v.* Hayes (1926); **14.** *Crim.* No. 5352a
— *v.* Hayman (Can.); **14.** *Crim.* p. 70
— *v.* Hayton (1925); **14.** *Crim.* No. 3129a
— *v.* Hayward (1927); **14.** *Crim.* Nos. 5308a, 5319a
— *v.* Haywood (1931); **14.** *Crim.* No. 5148l
— *v.* Hazzard (Can.) (1931); **42.** *Stk. Ex.* p. 34
— *v.* — (Can.) (1932); **17.** *Dep.* p. 52
— *v.* Healey (Can.); **30.** *Intox.* p. 10
— *v.* Heighton (1) (Can.); **2.** *Aliens*, p. 30
— *v.* — (2) (Can.); **2.** *Aliens*, p. 30
— *v.* Heise (Can.); **25.** *Gaming*, p. 39
— *v.* Heisler (Can.) (1928); **14.** *Crim.* p. 8; **17.** *Dep.* p. 74; **33.** *Mags.* p. 23
— *v.* — (Can.) (1936); **30.** *Intox.* p. 12
— *v.* Heit (Can.); **25.** *Gaming*, p. 30
— *v.* Helfrick (Can.); **42.** *Str. Traf.* p. 43
— *v.* Hemingway (1929); **14.** *Crim.* No. 6228a
— *v.* Henderson (Can.) (1926); **30.** *Intox.* p. 1
— *v.* — (Can.) (1928); **33.** *Mags.* p. 35; **39.** *Revenue*, p. 25
— *v.* — (Can.) (1929); **14.** *Crim.* p. 63
— *v.* —, *Ex p.* Brindle (Can.); **33.** *Mags.* p. 27
— *v.* —, *Ex p.* Queen (Can.); **17.** *Dep.* p. 52
— *v.* Hendon Rural District Council, *Ex p.* Chorley (1933); **16.** *Cr. Pract.* No. 2736b; **38.** *Pub. Hlth.* No. 524d
— *v.* Henneberry (Can.); **30.** *Intox.* p. 17
— *v.* Hennick (Can.); **30.** *Intox.* p. 11
R. *v.* Henry (1927); **14.** *Crim.* No. 5373b
— *v.* — (Can.); **42.** *Str. Traf.* p. 57
— *v.* Henry Chan (Can.); **34.** *Med.* p. 193
— *v.* Henry Chow (Can.); **34.** *Med.* p. 193
— *v.* Henry K. Wampole & Co., Ltd. (Can.); **39.** *Revenue*, p. 15
— *v.* Hepworth (S. Af.); **14.** *Crim.* p. 23
— *v.* Herbert (1931); **14.** *Crim.* No. 5303e
— *v.* Herman (Can.); **34.** *Mines*, p. 199
— *v.* Heron & Royal Hotel (Can.); **30.** *Intox.* p. 12
— *v.* Hertfordshire JJ., *Ex p.* Larsen (1926); **14.** *Crim.* No. 1704a
— *v.* Heseltine (1873); **15.** *Crim.* No. 11,503a
— *v.* Hewitt (1925); **14.** *Crim.* No. 4009a
— *v.* Hewston & Goddard (Can.); **14.** *Crim.* p. 4
— *v.* Hibbert (1924); **14.** *Crim.* No. 1416a
— *v.* Hicks (1924); **14.** *Crim.* No. 5092a
— *v.* — (Can.); **14.** *Crim.* p. 73; **33.** *Mags.* p. 36
— *v.* Higgins (Can.); **14.** *Crim.* p. 64; **42.** *Str. Traf.* p. 57
— *v.* Hildebrand & Hildebrand (1930); **14.** *Crim.* No. 6178b
— *v.* Hilder (1924); **14.** *Crim.* No. 2102a
— *v.* Hill (1818); **16.** *Cr. Pract.* No. 246b
— *v.* — (1825); **30.** *Juries*, No. 256a
— *v.* — (1928); **14.** *Crim.* No. 5049f
— *v.* — (1930); **14.** *Crim.* No. 2119c, 5863a
— *v.* — (Can.) (1929); **14.** *Crim.* p. 38; **16.** *Cr. Pract.* pp. 28, 29; **33.** *Mags.* p. 34
— *v.* — (Can.) (1930); **33.** *Mags.* p. 37
— *v.* Hillman (1931); **14.** *Crim.* No. 5855a
— *v.* — (Can.); **30.** *Intox.* p. 11
— (Gagan) *v.* Hillmer (Can.); **2.** *Animals*, p. 59
— *v.* Hills (Can.); **14.** *Crim.* p. 12
— *v.* Hinds (A. G.) (1933); **14.** *Crim.* No. 6049b
— *v.* Hing Hop (Can.); **16.** *Cr. Pract.* p. 42
— *v.* Hinks (1927); **14.** *Crim.* No. 5049e
— *v.* Hirsch (Can.); **14.** *Crim.* pp. 51, 52
— *v.* Hiscock (Can.); **25.** *Gaming*, p. 29
— *v.* Hislop (Can.); **14.** *Crim.* p. 26
— *v.* Hitchcock (1926); **14.** *Crim.* No. 5802a
— *v.* Hnatiuk (Can.); **15.** *Crim.* p. 82
— *v.* Hoare (Can.); **30.** *Intox.* p. 16
— *v.* Hobbs (1928); **14.** *Crim.* No. 5238a
— *v.* — (Can.) (1935); **30.** *Intox.* p. 17
— *v.* — (Can.) (1936); **33.** *Mags.* p. 34
— *v.* Hobday (1933); **14.** *Crim.* No. 3919a
— *v.* Hobern (1924); **14.** *Crim.* No. 5584a
— (Kelly) *v.* Hobinsky (Can.); **30.** *Intox.* p. 17
— *v.* Hochglick (1929); **14.** *Crim.* No. 5816b
— *v.* Hodges (Can.); **5.** *Bkpcy.* p. 84
— *v.* Hodgson (1924); **14.** *Crim.* No. 5574a
— *v.* — (Can.); **30.** *Intox.* p. 18
— *v.* Hodson (1927); **14.** *Crim.* No. 5116a
— *v.* Hogg (1841); **14.** *Crim.* No. 1991b
— *v.* Holaychuk (Can.); **33.** *Mags.* p. 37
— *v.* Holborn Licensing JJ., *Ex p.* Stratford Catering Co., Ltd. (1926); **30.** *Intox.* No. 299a
— *v.* Holding (1934); **37.** *Poor L.* Nos. 1664a, 1667a
— *v.* Holmes (1931); **14.** *Crim.* No. 5129a
— *v.* — (Can.) (1931); **15.** *Crim.* p. 105
— (Wilson) *v.* Holmes (Can.) (1931); **36.** *Nuis.* p. 45
— *v.* — (or Chomicki) (Can.) (1932); **16.** *Cr. Pract.* p. 29
— *v.* Holowaskawe (Can.); **43.** *Trade*, p. 10
— *v.* Holt (Can.); **33.** *Mags.* p. 36
— *v.* Holtum (Can.); **34.** *Med.* p. 189
— *v.* Holtzer, *Re* Levine & Pyner (Can.); **14.** *Crim.* p. 56
— *v.* Holz (Can.); **20.** *Elect.* pp. 1, 9
— *v.* Home Secretary, *Ex p.* Bressler (1924); **2.** *Aliens*, No. 553c

R. *v.* Homer (1926); **14.** *Crim.* No. 5877a
— *v.* Hominuik (Can.); **30.** *Intox.* p. 16
— *v.* Hopper & Glaveen (Can.); **14.** *Crim.* p. 50
— *v.* Horsham & Worthing Assessment Committee, *Ex p.* Burgess (1937); **38.** *Rates*, No. 1158d
— *v.* Hoshem (Can.); **30.** *Intox.* p. 8
— *v.* Hoskins (Can.) (1929); **14.** *Crim.* p. 30
— *v.* — (Can.) (1930); **14.** *Crim.* p. 30
— *v.* How (Can.) (1923); **2.** *Aliens*, p. 50
— *v.* — (Can.) (1936); **25.** *Gaming*, p. 39
— *v.* Howard, *Ex p.* Da Costa (1938); **3.** *Basty.* No. 288a
— *v.* Howarth (1926); **14.** *Crim.* Nos. 5856b 5926a
— *v.* Howe (Can.); **17.** *Dep.* p. 56
— *v.* Howeson (1936); 25 Cr. App. Rep. 167; **14.** *Crim.* No. 1442b
— *v.* — (1936), 25 Cr. App. Rep. 176; **15.** *Crim.* No. 10,352b
— *v.* Howlett, *Re* Wiggins & Globe Mortgage & Loan Co., Ltd. (Can.); **30.** *Intox.* p. 18
— *v.* Hube (1792); **22.** *Evid.* No. 2960a
— (Matheson) *v.* Huber (Can.); **16.** *Cr. Pract.* p. 36
— *v.* Hubin (Can.); **30.** *Intox.* p. 1
— *v.* Hubley (Can.); **14.** *Crim.* pp. 63, 64; **22.** *Evid.* p. 18
— *v.* Hudson, *Ex p.* Gaskell & Chambers, Ltd. (1936); **16.** *Cntmpt.* No. 274a
— *v.* Hudson's Bay Co. (Can.); **11.** *Comp. Pche.* p. 18
— *v.* Hughes (1927); **14.** *Crim.* Nos. 2219a, 3391a; **15.** *Crim.* No. 9614a
— *v.* Hughes (1933); **14.** *Crim.* No. 5910c
— *v.* — (Can.) (1924); **14.** *Crim.* pp. 31, 51
— *v.* — (Can.) (1934); **25.** *Gaming*, p. 36; **30.** *Jdgmts.* p. 28
— *v.* Hughes & Adams (1930); **14.** *Crim.* No. 5148g
— *v.* Hull JJ. (1850); **2.** *Animals*, No. 328a
— *v.* Hum King (Can.); **14.** *Crim.* p. 66
— *v.* Hummelman (Can.); **33.** *Mags.* p. 37
— *v.* Hunt (1820); **22.** *Evid.* No. 1877
— *v.* — (1847); **14.** *Crim.* No. 2895a
— *v.* Hunter (1817); **16.** *Cr. Pract.* No. 240a
— *v.* — (Can.); **15.** *Crim.* p. 93
— *v.* Huntingdon Confirming Authority, *Ex p.* George & Stamford Hotels (1929); **30.** *Intox.* No. 368a, 368b
— *v.* Hurrell (1926); **14.** *Crim.* Nos. 5125b, 5155a
— *v.* Hurt (Can.); **14.** *Crim.* p. 1; **15.** *Crim.* p. 90
— *v.* Hussey (1924), 18 Cr. App. Rep. 121; **14.** *Crim.* No. 6237b
— *v.* — (1924), 89 J. P. 28; **15.** *Crim.* No. 9103a
— (Jackson) *v.* Hutchinson (Can.); **14.** *Crim.* p. 2
— *v.* Hutchison, *Ex p.* McMahon (1936); **16.** *Cntmpt.* No. 183a
— *v.* Hyde (1934); **15.** *Crim.* No. 11,591a
— *v.* — (Can.); **14.** *Crim.* p. 2; **30.** *Intox.* p. 17; **39.** *Revenue*, p. 14
— *v.* Hye (Can.); **1.** *Action*, p. 16; **8.** *Chos.* p. 89; **11.** *Comp. Pche.* p. 5
— *v.* Hyman (1926); **15.** *Crim.* No. 10,754a
— *v.* Iaci (Can.); **14.** *Crim.* p. 9; **16.** *Cr. Pract.* p. 28
— *v.* Ibrahim Meer Shikar (Ind.); **2.** *Animals*, p. 70
— *v.* Ilich (N.Z.); **22.** *Evid.* pp. 13, 27
— *v.* Imperial Bank of Canada (Can.); **11.** *Comp. Pche.* pp. 3, 6
— *v.* Income Tax Comrs. & Kingsland Parish Inspector of Taxes (1922); **16.** *Cr. Pract.* Nos. 1141a, 2132a, 2422a
R. *v.* Income Tax General Comrs., *Ex p.* English Crown Spelter Co., Ltd. (1925); **16.** *Cr. Pract.* No. 2149a
— *v.* Income Tax Special Comrs., *Ex p.* Elmhirst (1936); **28.** *Inc. T.* No. 597b
— *v.* —, *Ex p.* Horner (1932); **28.** *Inc. T.* No. 548a
— *v.* Ing Yick Ing (Can.); **14.** *Crim.* p. 31
— *v.* Inman (1929); **14.** *Crim.* No. 5595b
— *v.* Innes (Can.); **22.** *Evid.* p. 13
— *v.* International Trustee for Protection of Bondholders Akt. (1937); **35.** *Money*, No. 17b
— *v.* Investors' Review, Ltd., *Ex p.* Wheeler (1928); **22.** *Evid.* No. 4428a
— *v.* Irving (1920); **2.** *Aliens*, No. 548a
— *v.* — (1927); **14.** *Crim.* No. 6187b
— *v.* Irwin (Can.); **25.** *Gaming*, p. 37
— *v.* Isbell (Can.); **33.** *Mags.* pp. 25, 26, 34
— *v.* Ismail (S. Af.); **5.** *Bkpcy.* p. 88
— *v.* Ivan (Can.); **30.** *Intox.* p. 10
— *v.* Iwanchuk (Can.) (1927); **14.** *Crim.* p. 21
— *v.* — (Can.) (1929); **14.** *Crim.* p. 39; **15.** *Crim.* p. 100
— *v.* J. (Can.); **14.** *Crim.* p. 64
— *v.* — (Ir.); **28.** *Inc. T.* p. 105
— *v.* Jack Pine Lumber Co., Ltd. & Canadian Bank of Commerce (Can.); **32.** *Lien*, p. 22; **39.** *Revenue*, p. 14
— *v.* Jackow (Can.); **15.** *Crim.* p. 77
— *v.* Jackson (1926); **14.** *Crim.* No. 6187a
— *v.* — (1927); **14.** *Crim.* No. 6209a
— *v.* — (1936); **14.** *Crim.* No. 4548b
— *v.* — (Can.) (1924); **16.** *Cr. Pract.* p. 43
— *v.* — (Can.) (1927); **20.** *Elect.* p. 5
— *v.* — (Can.) (1933); **14.** *Crim.* p. 66
— *v.* — (Can.) (1937), 68 Can. C. C. 134; **25.** *Game*, p. 25
— *v.* — (Can.), [1937] 1 D. L. R. 32; **15.** *Crim.* p. 98
— *v.* Jacobs (Can.); **30.** *Intox.* p. 10
— *v.* Jacobson & Levy *Re*, *Ex p.* Minister of Justice (S. Af.); **42.** *Stats.* p. 22
— *v.* Jaeger Co. (Can.); **16.** *Cr. Pract.* p. 38
— *v.* Jalbert (1938); **17.** *Dep.* No. 374a
— *v.* James (Can.) (1915); **15.** *Crim.* p. 86
— *v.* — (Can.) (1932); **15.** *Crim.* p. 106
— *v.* — (Can.) (1938); **15.** *Crim.* p. 97
— *v.* Jarvis (Can.) (1936); **14.** *Crim.* p. 62
— *v.* — (Can.) (1937); **14.** *Crim.* p. 75
— *v.* Jeanotte (Can.); **14.** *Crim.* p. 3; **42.** *Stats.* p. 22
— *v.* Jen Jang How, *Re* Immigration Act (Can.); **2.** *Aliens*, p. 49
— *v.* Jenkins (Can.); **14.** *Crim.* p. 18
— *v.* Jensen (Can.); **30.** *Intox.* p. 13
— *v.* Jerry Petite (Can.); **1.** *Adm.* p. 47; **41.** *Ship.* p. 65
— *v.* Jhabwala (Ind.); **15.** *Crim.* p. 77
— *v.* Jim Sing (Can.); **33.** *Mags.* p. 23
— *v.* Jobes (Can.); **14.** *Crim.* p. 75; **15.** *Crim.* p. 83
— *v.* Joe (Can.); **15.** *Crim.* p. 98
— *v.* Johansick (Can.); **20.** *Elect.* p. 2
— *v.* John Labatt, Ltd. (Can.); **16.** *Cr. Pract.* p. 44; **40.** *Set-Off*, p. 23
— *v.* Johnson (1928); **14.** *Crim.* No. 5816a
— *v.* — (Can.) (1924); **14.** *Crim.* p. 14
— *v.* — (Can.) (1925); **14.** *Crim.* p. 48
— *v.* — (Can.) (1927); **14.** *Crim.* p. 73
— *v.* — (Can.) (1932); **30.** *Intox.* p. 18
— *v.* — McKenzie (Can.); **33.** *Mags.* pp. 24, 28
— *v.* Johnson Matthey & Co. (Canada), Ltd. (Can.); **28.** *Inc. T.* p. 17
— *v.* Johnston (Can.) (1876); **38.** *Pub. Hlth.* p. 16
— (Boudrot) *v.* Johnston (Can.) (1923); **16.** *Cr Pract.* p. 36

R. *v.* Johnston (Can.) (1926); **30.** *Intox.* p. 18
— *v.* — (Can.) (1931); **42.** *Str. Traf.* p. 49
— *v.* — (Can.) (1932); **15.** *Crim.* p. 106
— *v.* Joint Stock Companies Registrar, *Ex p.* More (1931); **10.** *Coys.* No. 8574a; **25.** *Gaming*, No. 451a; **42.** *Stats.* No. 3a
— *v.* Jolly (Can.) (1929); **30.** *Intox.* p. 11
— *v.* — (Can.) (1935); **18.** *Distr.* p. 33
— *v.* Jones (1809); **14.** *Crim.* No. 4359a
— *v.* — (1924); **14.** *Crim.* No. 4974a
— *v.* — (1925); **14.** *Crim.* Nos. 5929a, 6067b
— *v.* — (1928); **14.** *Crim.* No. 2986a
— *v.* — (1929); **14.** *Crim.* No. 5554a; **15.** *Crim.* No. 6446a
— *v.* — (1931), 22 Cr. App. Rep. 165; **14.** *Crim.* No. 6169h
— *v.* — (1931), 23 Cr. App. Rep. 69; **14.** *Crim.* No. 4994n
— *v.* — (1932), 23 Cr. App. Rep. 162; **14.** *Crim.* No. 5148n
— *v.* — (1932), 23 Cr. App. Rep. 208; **14** *Crim.* No. 6181a
— *v.* — (1933); **15.** *Crim.* No. 9362a
— *v.* — (Can.) (1927); **14.** *Crim.* p. 24; **15.** *Crim.* pp. 100, 105
— *v.* — (Can.) (1931); **30.** *Intox.* p. 15
— *v.* — (Can.) (1933), 47 B. C. R.; **14.** *Crim.* p. 33
— *v.* — (Can.), [1933] 3 W. W. R.; **33.** *Mags.* p. 23
— *v.* — (Can.) (1934); **30.** *Intox.* p. 13
— *v.* — (Can.) (1935); **15.** *Crim.* p. 96
— *v.* — (Can.) (1937); **17.** *Dep.* p. 40
— *v.* —, *Ex p.* McVittie (1931); **16.** *Cntmpt.* No. 341a; **41.** *Shrffs.* No. 274a
— *v.* —, *Ex p.* Thomas (1921); **15.** *Crim.* No. 9480a
— *v.* Jones & Manlove (Can.); **15.** *Crim.* p. 106
— *v.* Jones & Sheinin (Can.); **15.** *Crim.* p. 78
— *v.* Joti Prasad Gupta (Ind.); **17.** *Dep.* p. 69
— *v.* Joudrey (Can.); **15.** *Crim.* p. 97
— *v.* Joyce, *Ex p.* Meredith (Aus.); **16.** *Cr. Pract.* p. 37
— *v.* —, *Ex p.* Port Pirie Corpn. (Aus.); **16.** *Cntmpt.* p. 7
— *v.* Judge, *Ex p.* Isle of Ely Justices (1931); **16.** *Cntmpt.* No. 46a; **33.** *Mags.* No. 991a
— *v.* Jung Quon Chong (Can.); **34.** *Med.* p. 193
— *v.* Jung Suey Mee (Can.); **2.** *Aliens*, p. 49
— *v.* Jungo Lee (Can.); **2.** *Aliens*, p. 51
— *v.* — (No. 2) (Can.); **16.** *Cr. Pract.* p. 28
— *v.* Jwala (Ind.); **15.** *Crim.* p. 83
— *v.* Kadin (Can.); **15.** *Crim.* p. 81
— *v.* Kadishevitz (Can.); **14.** *Crim.* p. 19
— *v.* Kakelo (1923); **2.** *Aliens*, Nos. 558e, 558f, 558g
— *v.* Kalwa (Ind.); **14.** *Crim.* p. 46
— *v.* Kalyn (Can.); **30.** *Intox.* p. 16
— *v.* Kamway (Can.); **14.** *Crim.* p. 59
— *v.* Karminos (Can.); **17.** *Deps.* p. 57
— *v.* Kay (1925); **14.** *Crim.* No. 5938b
— *v.* Keech (1929); **14.** *Crim.* 5012a
— *v.* Keeper of King's County Gaol, *Ex p.* Dunn (Can.); **16.** *Cr. Pract.* p. 29
— *v.* Kellas (Can.); **33.** *Mags.* p. 26
— *v.* Kelly (1929); **14.** *Crim.* No. 2401a
— *v.* — (Aus.); **5.** *Bkpcy.* p. 89
— *v.* — (Can.) (1921); **11.** *Comp. Pche.* p. 6
— *v.* — (Can.) (1933); **37.** *Poor L.* p. 20
— *v.* — (Ir.); **14.** *Crim.* pp. 25, 29, 39
— *v.* Kendall & Pitton (Can.); **14.** *Crim.* p. 29
— *v.* Kendrick & Smith (1931); **14.** *Crim.* No. 3608a
— *v.* Kenneally (1930); **14.** *Crim.* No. 6178a
— *v.* Kennedy (Aus.); **14.** *Crim.* p. 66; **15.** *Crim.* p. 85
— *v.* — (Can.) (1902); **17.** *Dep.* p. 43
R. *v.* Kennedy (Can.) (1933); **30.** *Intox.* p. 14
— *v.* — (Can.) (1936); **14.** *Crim.* p. 30
— *v.* Kennewell (Aus.); **14.** *Crim.* pp. 45, 47, 71
— *v.* Kenney (Can.); **15.** *Crim.* p. 108
— *v.* Kenny (1929); **15.** *Crim.* No. 6209a
— *v.* Kent County Court Judge, *Ex p.* Ferridge (1932); **19.** *Eccl.* No. 3492a
— *v.* Kent JJ. (Can.); **11.** *Comp. Pche.* p. 7
— *v.* —, *Ex p.* Metropolitan Police Comr. (1936); **33.** *Mags.* Nos. 1115a, 1115b, 1129a
— *v.* — *Ex p.* Smith (1928); **16.** *Cr. Pract.* Nos. 1466a, 3433a
— *v.* — *Ex p.* Triplow (1927); **33.** *Mags.* No. 1393a
— *v.* Kerr (Can.); **30.** *Intox.* p. 17
— *v.* Kervin (Can.); **14.** *Crim.* p. 69
— *v.* Kerwin (Can.); **30.** *Intox.* p. 11
— *v.* Kessler (Can.); **8.** *Clubs*, p. 102
— (Gardiner) *v.* Ketcheson (Can.); **33.** *L. G.* p. 1
— *v.* Ketteringham (1926); **15.** *Crim.* No. 10,878b
— *v.* Kidd (Can.); **30.** *Intox.* p. 17
— (Mitchell) *v.* Kiehl (Can.); **30.** *Intox.* p. 14
— *v.* Kiewel Brewing Co. (Can.); **30.** *Intox.* p. 17
— *v.* Kilbride (1931); **14.** *Crim.* Nos. 5947b, 6222a
— *v.* Killick (1924); **14.** *Crim.* No. 6067a
— *v.* King (1925); **14.** *Crim.* No. 4764a
— *v.* — (1927); **14.** *Crim.* No. 5870b
— *v.* — (1938); **15.** *Crim.* No. 10,751a
— *v.* King's County Gaol, Keeper of, *Ex p.* Dunn (Can.); **16.** *Cr. Pract.* p. 29
— *v.* Kingsland Parish, Inspector of Taxes, *Ex p.* Pearson, Kingsland Estate (1922); **16.** *Cr. Pract.* Nos. 1141a, 2132a, 2422a
— *v.* Kingston-upon-Thames Confirming Authority, *Ex p.* Scales (1933); **30.** *Intox.* No. 63a
— *v.* Kinney (Can.); **14.** *Crim.* p. 45
— *v.* Kirby, Parker & Patrick (1927); **25.** *Gaming*, No. 255a
— *v.* Kirk (Can.); **14.** *Crim.* p. 66
— *v.* Kirkham (Can.); **14.** *Crim.* p. 58
— *v.* Kissell (Can.); **30.** *Intox.* p. 15
— *v.* Kissick (Can.); **15.** *Crim.* p. 94
— *v.* Kitchen (Can.); **14.** *Crim.* p. 26
— *v.* Kitchener (1873); **42.** *Str. Traf.* No. 180a
— *v.* Kitching (1929); **14.** *Crim.* Nos. 2295a, 3647a
— *v.* Klein (1926); **14.** *Crim.* No. 3407a
— *v.* — (1932), 23 Cr. App. Rep. 173; **14.** *Crim.* No. 1442a
— *v.* — (1932), 23 Cr. App. Rep. 185; **15.** *Crim.* No. 10,752a
— *v.* — (Can.); **43.** *Trade Mks.* p. 27
— (Connell) *v.* Klein (Can.); **27.** *H. & W.* p. 78
— *v.* Kline (Can.); **15.** *Crim.* p. 80
— *v.* Knapp (Can.); **14.** *Crim.* p. 31
— *v.* Kneale (1931); **14.** *Crim.* No. 5244d
— *v.* Knell (1926); **14.** *Crim.* No. 5208a
— *v.* Knight (1912); **14.** *Crim.* No. 5014a
— *v.* — (1929); **14.** *Crim.* No. 5312b
— *v.* Knighton (1927); **14.** *Crim.* No. 6249a
— *v.* Knott (Can.); **42.** *Str. Traf.* p. 51
— *v.* Knowles, *Re* (Can.); **33.** *Mags.* p. 37; **37.** *Poor L.* p. 21
— *v.* Knyvett, *Ex p.* Weber (Aus.); **16.** *Cr. Pract.* p. 37; **30.** *Intox.* p. 2
— *v.* Kobold (Can.); **15.** *Crim.* p. 80
— *v.* Kohel (Can.); **15.** *Crim.* p. 80
— *v.* Kolberg (Can.); **15.** *Crim.* p. 104
— *v.* Kolkiczka (Can.); **30.** *Intox.* p. 16
— *v.* Kolomrjyc (Can.); **14.** *Crim.* p. 25
— *v.* Kolyk (Can.); **39.** *Revenue*, p. 25
— *v.* — (No. 2) (Can.); **14.** *Crim.* p. 31
— *v.* Kooten (Can.); **14.** *Crim.* pp. 39, 40
— *v.* Kopsch (1925); **14.** *Crim.* No. 244a
— *v.* Koriney (Can.); **15.** *Crim.* p. 101
— *v.* Kostachuk (Can.); **30.** *Intox.* p. 16

R. *v.* Kostyniuk (Can.); **30.** *Intox.* p. 15
— *v.* Kough (Nfld.); **32.** *Limit. of A.* p. 37
— *v.* Kovach (Can.); **14.** *Crim.* p. 4
— *v.* Kozaruk (Can.); **14.** *Crim.* p. 21
— *v.* Krakowec, Dahlberg & Eklund & Continental Guaranty Corpn. of Canada, Ltd. (Can.); **30.** *Intox.* p. 18; **39.** *Revenue*, p. 11; **42.** *Stats.* p. 27
— *v.* Krathy (Can.); **15.** *Crim.* p. 99
— *v.* Kruschkovski (Can.); **15.** *Crim.* p. 80
— *v.* Krutzel (Can.); **15.** *Crim.* p. 107
— *v.* Kumalo (S. Af.); **14.** *Crim.* p. 22
— *v.* Kumera (Ind.); **14.** *Crim.* p. 35
— *v.* Kumps (Can.); **42.** *Stats.* p. 27
— *v.* Kurasch (1937); **14.** *Crim.* No. 4222b
— *v.* Kusi (Can.); **30.** *Intox.* p. 18
— *v.* Kussner & Kussner (Can.); **9.** *Coys.* p. 34
— *v.* Kuzyck (Can.); **16.** *Cr. Pract.* p. 29
— *v.* Kyle (Ir.); **15.** *Crim.* p. 107
— *v.* Kylsant (Lord) (1932); **15.** *Crim.* No. 10,352a
— *v.* Kynaston (1926); **34.** *Med.* No. 242a
— *v.* Labatt (John), Ltd. (Can.); **16.** *Cr. Pract.* p. 44; **40.** *Set-off*, p. 23
— *v.* Labine (Can.); **14.** *Crim.* p. 68
— *v.* Labovitch (Can.); **33.** *Mags.* p. 37
— *v.* Ladbrooke (S. Af.); **16.** *Courts*, p. 11
— *v.* Ladli Prasad Zutshi (Ind.); **14.** *Crim.* p. 31
— *v.* Lafond (Can.); **11.** *Comp. Pche.* pp. 6, 10
— *v.* Lahay (Can.); **33.** *Mags.* p. 27
— *v.* Lailey, *Ex p.* Koffman (1932); **13.** *Cty. Cts.* Nos. 143a, 244a, 244b
— *v.* Lakeside Orchards, Ltd. (Can.); **43.** *Trade*, p. 2; **44.** *Waters*, p. 5
— *v.* Lamb (1934); **15.** *Crim.* No. 7971a; **27.** *H. & W.* No. 342a
— *v.* Lambassi (Aus.); **15.** *Crim.* p. 105
— *v.* Lambert (1926), 19 Cr. App. Rep. 131; **14.** *Crim.* No. 5549a
— *v.* — (Can.), [1926] 2 D. L. R. 362; **30.** *Intox.* p. 10
— *v.* Lambton (Can.); **16.** *Cr. Pract.* p. 37; **26.** *Hghys.* p. 25
— *v.* Lamond (Can.); **14.** *Crim.* p. 45
— *v.* Lancashire JJ., *Ex p.* Customs & Excise Comrs. (1934); **30.** *Intox.* Nos. 579a, 582b
— *v.* —, *Ex p.* Tyrer (1925); **3.** *Basty* Nos. 278a, 372a
— *v.* Landry (Can.) (1930); **30.** *Intox.* p. 17
— *v.* — (Can.) (1935); **15.** *Crim.* p. 94
— *v.* Lane, *Ex p.* Gould (Can.); **17.** *Dep.* p. 57
— *v.* Langille (Can.); **39.** *Revenue*, p. 10
— *v.* Langley (Can.); **14.** *Crim.* p. 16; **33.** *Mkts.* p. 43
— *v.* Lantalum, *Ex p.* Offman (Can.); **2.** *Aliens*, p. 49
— *v.* Lanteigne (Can.); **30.** *Intox.* p. 14
— *v.* Lapham (Can.); **15.** *Crim.* p. 102
— *v.* Lapierre (Can.); **15.** *Crim.* p. 107
— *v.* Laplante (Can.); **20.** *Elect.* p. 3
— *v.* Lapointe (Can.); **33.** *Mags.* p. 27
— *v.* Laporte (Can.) (1931); 56 C. C. C. 158; **15.** *Crim.* p. 86
— *v.* — (Can.) (1931), 57 C. C. C. 280; **34.** *Med.* p. 194
— *v.* — (Can.) (1934); **34.** *Med.* p. 194
— *v.* Lapworth (1931); **14.** *Crim.* No. 4771a
— *v.* Larcenaire (Can.); **30.** *Intox.* p. 17
— *v.* Larsonneur (1933); **2.** *Aliens*, No. 541a
— *v.* Latraverse (Can.); **33.** *Mags.* p. 27
— *v.* Laubscher (S. Af.); **14.** *Crim.* p. 25
— *v.* Laudie (Can.); **34.** *Med.* p. 189
— *v.* Laughton (S. Af.); **2.** *Aliens*, p. 51
— *v.* Lauriente (Can.); **14.** *Crim.* p. 59; **33.** *Mags.* p. 37
— *v.* Lavender (1927); **14.** *Crim.* No. 5355c
R. *v.* Lawrence (1927); **14.** *Crim.* No. 5308a
— *v.* — (Can.) (1930); **33.** *Mags.* p. 37
— *v.* — (Can.) (1933); **14.** *Crim.* p. 31
— *v.* Laws (1928); **15.** *Crim.* No. 9367a
— *v.* Lawson (Can.); **15.** *Crim.* p. 90
— *v.* —, *Ex p.* Nodder (1937); **16.** *Contmpt.* No. 283b
— *v.* Laxman Bala (Ind.); **15.** *Crim.* p. 95
— *v.* Leach (1937); **42.** *Str. Traf.* No. 222b
— *v.* Leadbetter (Can.); **14.** *Crim.* p. 12
— *v.* Leaf (1931); **14.** *Crim.* No. 6209e
— *v.* — (Can.); **14.** *Crim.* p. 47
— *v.* Leatherland (1926); **14.** *Crim.* No. 5148c
— *v.* Lebansky (Can.); **15.** *Crim.* p. 77
— *v.* LeBlanc (Can.) (1928); **14.** *Crim.* p. 60; **15.** *Crim.* p. 83; **25.** *Gaming*, p. 39; **30.** *Intox.* p. 15
— *v.* — (Can.) (1930); **38.** *Pub. Hlth.* p. 31
— *v.* —, *Ex p.* McDonald (Can.); **16.** *Cr. Pract.* p. 40
— *v.* Le Breton (Can.); **33.** *Mags.* p. 37
— *v.* Le Court (Can.); **14.** *Crim.* p. 61
— *v.* Lee (1927); **14.** *Crim.* No. 3157a
— *v.* — (1930); **14.** *Crim.* Nos. 5628b, 5947c
— *v.* — (Can.) (1911); **17.** *Dep.* p. 43
— *v.* — (Can.) (1925); **33.** *Mags.* p. 28
— *v.* — (Can.) (1926); **16.** *Cr. Pract.* p. 28
— *v.* — (Can.) (1928); **30.** *Intox.* p. 7
— *v.* — (Can.) (1930); **30.** *Intox.* p. 18
— *v.* Lee Chow Ying (Can.); **2.** *Aliens*, p. 49
— *v.* Lee Fong Shee (Can.); **34.** *Med.* p. 193
— *v.* Lee Foon (Can.); **14.** *Crim.* p. 75
— *v.* Lee Hai (Can.); **25.** *Gaming*, p. 32
— *v.* Lee Kam Way (Can.); **30.** *Intox.* p. 14
— *v.* Lee Kim (Can.); **34.** *Med.* p. 193
— *v.* Lee Moon Koo (Can.); **2.** *Aliens*, p. 49
— *v.* Lee Park (Can.); **2.** *Aliens*, p. 50
— *v.* Lee Po (Can.); **34.** *Med.* p. 193
— *v.* Lee Sam (Can.); **34.** *Med.* p. 193
— *v.* Lee Sow (Can.); **33.** *Mags.* p. 24
— *v.* Lee Wah Dai (Can.); **16.** *Cr. Pract.* p. 41
— *v.* Lee Wah Yuen (Can.); **34.** *Med.* p. 193
— *v.* Leffler (Can.); **15.** *Crim.* p. 78
— *v.* Legge (Can.) (1929); **39.** *Revenue*, p. 24
— *v.* — (Can.) (1936); **30.** *Intox.* p. 12
— *v.* Leicester, Deputies of Freemen (1850); **16.** *Cr. Pract.* No. 1228
— *v.* Leicester JJ., *Ex p.* Allbrighton (1927); **30.** *Intox.* No. 381a
— *v.* Leicester JJ., *Ex p.* Walker, Myers *v.* Walker (1935); **42.** *Str. Traf.* Nos. 254a, 254b
— *v.* Leinster (Duke) (1924); **5.** *Bkpcy.* No. 8587a
— *v.* Lemaire (Can.); **25.** *Gaming*, p. 31
— *v.* Leman Street Police Station Inspector, *Ex p.* Venicoff (1920); **2.** *Aliens*, No. 551a
— *v.* Lenett (Can.); **30.** *Juries*, p. 31
— *v.* Leonard (1927); **15.** *Crim.* No. 10,505a
— *v.* — (Can.); **16.** *Cr. Pract.* p. 39
— *v.* Lepicki (Can.); **14.** *Crim.* p. 16
— *v.* Leresche (1887); **27.** *H. & W.* No. 6081a
— *v.* Leroux (Can.); **14.** *Crim.* p. 63; **15.** *Crim.* p. 100
— *v.* Leschiutta (Can.); **30.** *Intox.* p. 16
— *v.* Lester (1927); **14.** *Crim.* No. 3855b
— *v.* Letendre (Can.); **33.** *Mags.* p. 23
— *v.* Lever (1746); **34.** *Mast. & S.* Nos. 970a, 1173a
— *v.* Levine (Can.); **30.** *Intox.* p. 1
— *v.* Levy (S. Af.); **14.** *Crim.* pp. 7, 42
— *v.* Lew Hing Loy (Can.); **33.** *Mags.* p. 24
— *v.* Lew Hoi (S. Af.); **25.** *Gaming*, p. 39
— *v.* Lewes Prison Governor, *Ex p.* Doyle (1917); **16.** *Cr. Pract.* No. 696a
— *v.* Lewin (S. Af.); **37.** *Press*, p. 31
— *v.* Lewis (1937); **14.** *Crim.* No. 4972c
— *v.* — (Can.) (1929); **30.** *Intox.* p. 18

R. *v.* Lewis (Can.) (1935); **42.** *Str. Traf.* p. 49
— *v.* —, *Ex p.* Director of Public Prosecutions (1936); **16.** *Cr. Pract.* No. 2533a
— *v.* Lewisham Corpn., *Ex p.* Jackson (1929); **26.** *Hghys.* Nos. 1435a, 1435b, 1435c
— *v.* Lexier (Can.); **15.** *Crim.* p. 106
— *v.* L'Heureux (Can.); **30.** *Intox.* p. 16
— *v.* Lichtman (Can.); **17.** *Dep.* p. 59
— *v.* Licklider (Can.); **30.** *Intox.* p. 13
— *v.* Liddiard (Can.); **14.** *Crim.* p. 60
— *v.* Liddle (1928); **14.** *Crim.* No. 2731b
— *v.* Lim Cooie Foo (Can.); **2.** *Aliens*, p. 49
— *v.* Lim Gim (Can.); **14.** *Crim.* p. 74
— *v.* Limerick, *Ex p.* Hill (Can.); **33.** *Mags.* p. 35
— *v.* —, *Ex p.* Queens County (Can.); **33.** *Mags.* p. 35
— *v.* Lincolnshire JJ., *Ex p.* Brett (1926); **3.** *Basty.* No. 403b
— *v.* Linder (Can.); **14.** *Crim.* p. 13
— *v.* Lindsey, Parts of, Lincolnshire JJ., *Ex p.* Bower (1912); **18.** *Distr.* No. 1604
— *v.* Lines (1929); **14.** *Crim.* No. 6203b
— *v.* Lipman (Can.); **15.** *Crim.* p. 100
— *v.* Liptrot (Can.); **25.** *Gaming*, p. 30
— *v.* Lithwick & Cole (Can.); **4.** *Bkpcy.* p. 38
— *v.* Little (Can.) (1898); **34.** *Mines*, p. 213
— *v.* — (Can.) (1931); **33.** *L. G.* p. 1
— *v.* —, R. *v.* Miller (Can.); **13.** *Crnrs.* p. 24
— (Glover) *v.* Little & Armstrong (Can.); **20.** *Elect.* p. 6
— *v.* Littleboy (1934); **14.** *Crim.* No. 6047c
— *v.* Liverpool JJ., *Ex p.* Liverpool Corpn. (1934); **30.** *Intox.* Nos. 291a, 292 *a*, 292c
— *v.* Lizowyj (Can.); **15.** *Crim.* p. 95
— *v.* Llewellyn (1924); **14.** *Crim.* No. 5607a
— *v.* Lloyd (1923); **14.** *Crim.* Nos. 2567a, 5074a, 6237a
— *v.* — (1924); **14.** *Crim.* Nos. 2839b, 3158a, 5932c
— *v.* — (1927); **14.** *Crim.* Nos. 3398a, 6219a
— *v.* Lockerby (Can.); **33.** *Mags.* p. 36
— *v.* Loftus (Can.); **14.** *Crim.* pp. 9, 20
— (Crump) *v.* Lombardo & Wright (Can.); *Mags.* p. 37
— *v.* London & Lancashire Guarantee & Accident Co. (Can.); **21.** *E. D.* p. 20
— *v.* London Corpn. & Brown (1887); **41.** *Sewers*, No. 469a
— *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd. (1931); **16.** *Cr. Pract.* Nos. 925a, 2735a; **42.** *Theatres*, No. 164a
— *v.* —, *Ex p.* Swan & Edgar (1927), Ltd. (1929); **38.** *Pub. Auth.* No. 882a
— *v.* London County JJ., *Ex p.* Locke, Lancaster & Johnson (W. W. & R.) & Sons, Ltd. (1929); **38.** *Rates*, No. 1616a
— *v.* London County Justices, *Ex p.* Metropolitan Police Comr. (1932); **30.** *Intox.* No. 455a
— (A.-G. of Canada) *v.* London Guarantee & Accident Co., Ltd. (Can.); **17.** *Damgs.* p. 18
— *v.* London Justices, *Ex p.* Shoreditch Assessment Committee (1932); **38.** *Rates*, No. 1617a
— (Stewart) *v.* Londonderry Recorder & JJ. (Ir.); **25.** *Fish.* p. 3
— *v.* Long (1831); **15.** *Crim.* No. 8074a
— *v.* — (1927); **14.** *Crim* No. 5201a
— *v.* — (Can.) (1928); **25.** *Gaming*, p. 37
— *v.* — (Can.) (1933); **30.** *Intox.* p. 14
— *v.* — (1934); **37.** *Poor L.* Nos. 1664a, 1667a
— *v.* Long Branch Racing Assocn. (Can.); **25.** *Gaming*, p. 34
— *v.* Lonsdale (1931); **14.** *Crim.* No. 5289a
— *v.* Loo Yip Yen (Can.); **33.** *Mags.* p. 35
R. *v.* Loonan (Can.); **11.** *Comp. Pche.* p. 7
— *v.* Lopen (Inhabitants) (1788); **12.** *Contr.* No. 1822a
— *v.* Lorang (1931); **9.** *Coys.* No. 4052a
— *v.* Lore Yip (Can.); **17.** *Dep.* p. 43
— *v.* Lorette (Can.); **30.** *Intox.* p. 13
— *v.* Lougheed (Can.); **15.** *Crim.* p. 95
— *v.* Louie How (Can.); **25.** *Gaming*, p. 39
— *v.* Louie Yee (Can.); **33.** *Mags.* p. 28
— *v.* Lount (Can.); **20.** *Elect.* p. 5, 6
— *v.* Low Kee (Can.); **2.** *Aliens*, p. 50
— *v.* Low Quong (Can.); **14.** *Crim.* p. 74
— *v.* Lowery (Can.); **39.** *Revenue*, p. 25
— *v.* Lowrie (Can.); **34.** *Med.* p. 195
— *v.* Luberg (1926); **14.** *Crim.* Nos. 2155a, 3156d
— *v.* Luciuk (Can.); **15.** *Crim.* pp. 100, 101
— *v.* Luffe (1807); **3.** *Basty.* No. 358a
— *v.* Lum Pie (Can.); **25.** *Gaming*, p. 32
— *v.* Lyle (1924); **14.** *Crim.* No. 1079a
— *v.* Lyme Regis Corpn. (1779); **16.** *Cr. Pract.* No. 1580a
— *v.* Lynch (Can.); **30.** *Intox.* p. 15
— *v.* Lynch's, Ltd. & Cozzolino (Can.); **11.** *Comp. Pche.* p. 7
— *v.* M. (Can.) (1926); **14.** *Crim.* p. 63
— *v.* — (Can.) (1936); **15.** *Crim.* p. 81
— *v.* McAdam (Can.); **16.** *Cr. Pract.* pp. 30, 43 **22.** *Evid.* p. 18
— *v.* McArthur's Bail (Can.); **14.** *Crim.* p. 16
— *v.* McAskill (Can.) (1930); **14.** *Crim.* p. 4
— *v.* — (Can.) (1931); **14.** *Crim.* p. 4
— *v.* McAuliffe (Can.); **14.** *Crim.* p. 13
— *v.* McBeth (Can.); **15.** *Crim.* p. 81
— *v.* McCaffrey (Can.); **15.** *Crim.* p. 100
— *v.* McCann (Can.); **25.** *Gaming*, p. 35
— *v.* McCarthy (1910); **14.** *Crim.* No. 5373a
— *v.* McCartney & Hansen (1928); **14.** *Crim.* No. 3790a; **22.** *Evid.* No. 1664a
— *v.* McCathern (Can.); **14.** *Crim.* p. 73
— *v.* Macchione (Can.); **14.** *Crim.* pp. 33, 60; **42.** *Time*, p. 74
— *v.* McCormick (Can.); **30.** *Intox.* p. 16
— *v.* McCorriston (Can.); **24.** *Exors.* p. 35
— *v.* McCorry (Can.); **28.** *Infts.* p. 144
— *v.* McCoskey (Can.); **14.** *Crim.* pp. 3, 22
— *v.* McCowan (Can.); **15.** *Crim.* p. 94
— *v.* McCoy & Brown (Can.); **14.** *Crim.* p. 16
— *v.* McCraig (1925); **14.** *Crim.* No. 3850a
— *v.* — (Can.); **30.** *Intox.* p. 14
— *v.* McCrory (Can.); **15.** *Crim.* p. 85
— *v.* MacDonald (1928); **14.** *Crim.* Nos. 1445a, 3165d
— *v.* — (Can.) (1925), 43 Can. Crim. Cas. 381; **14.** *Crim.* p. 16
— *v.* — (Can.), [1925] 2 W. W. R. 643; **14.** *Crim.* p. 10
— *v.* — (Can.) (1927), 49 Can. Crim. Cas. 35; **14.** *Crim.* p. 75
— *v.* — (Can.), [1927] 1 W. W. R. 867; **30.** *Intox.* p. 14
— *v.* — (Can.) (1928); **14.** *Crim.* p. 18; **33.** *Mags.* p. 26
— *v.* Macdonald (Can.) (1931); **14.** *Crim.* p. 32
— *v.* McDonald (Can.) (1932); **15.** *Crim.* p. 93
— *v.* MacDonald (Can.) (1933); **33.** *Mags.* p. 37
— *v.* McDonald (Can.) (1935); **14.** *Crim.* p. 46; **38.** *Pub. Hlth.* p. 16
— *v.* MacDonald (Can.) (1936); **28.** *Infts.* p. 143
— *v.* — (Can.) (1937); **30.** *Intox.* p. 12
— *v.* McDonald (Can.) (1938); **15.** *Crim.* p. 104
— *v.* — (S. Af.); **14.** *Crim.* p. 24
— *v.* McDonnell (1928); **14.** *Crim.* No. 2365b
— *v.* — (Can.) (1934); **14.** *Crim.* p. 9
— *v.* — (Can.) (1935); **33.** *Mags.* p. 33; **42.** *Stk. Ex.* p. 34

R. (Davies) *v.* McDougall (F. W.) Construction Co., Ltd. (Can.); **34.** *Mast. & S.* p. 87
— *v.* McEachern (Can.); **30.** *Intox.* p. 11
— (Kingsett) *v.* McElhinney (Can.); **33.** *Mags.* p. 22
— *v.* McEwan & Lee (Can.); **15.** *Crim.* p. 86
— *v.* McFarlane (Can.); **30.** *Intox.* p. 16
— *v.* McGill (Can.); **33.** *Mags.* p. 37
— *v.* MacGowan (Can.); **30.** *Intox.* p. 12
— *v.* McGrath (1932); **14.** *Crim.* No. 6169p
— *v.* — (Can.); **15.** *Crim.* p. 89
— *v.* McGuire (1930); **14.** *Crim.* No. 5943a
— *v.* — (Can.); **30.** *Intox.* p. 16
— *v.* McHale (Can.); **30.** *Intox.* p. 13
— *v.* McIlwain (Can.); **30.** *Intox.* p. 12
— *v.* M'Inerney (Ir.); **25.** *Fish.* p. 3
— *v.* McInroy, *Re* Whiteside (Can.); **16.** *Cntmpt.* p. 3
— *v.* McIntosh (Can.); **15.** *Crim.* p. 92
— *v.* McIntyre (Can.); **14.** *Crim.* p. 6; **22.** *Evid.* p. 17
— *v.* McIsaac (Can.); **15.** *Crim.* p. 95
— *v.* McIver (Aus.); **15.** *Crim.* p. 92
— *v.* — (Aus.); **14.** *Crim.* p. 10
— *v.* — (Can.); **14.** *Crim.* p. 15
— *v.* Mack (Can.); **14.** *Crim.* p. 1
— *v.* McKator (Can.); **30.** *Intox.* p. 13
— *v.* MacKay (Can.) (1930); **41.** *Ship.* p. 75
— *v.* — (Can.) (1934); **14.** *Crim.* p. 73
— *v.* McKay (Can.) (1935); **14.** *Crim.* p. 45
— *v.* McKechie (N.Z.); **14.** *Crim.* p. 6
— (Lockhart) *v.* McKenna (Ir.); **25.** *Gaming*, p. 37
— *v.* McKenzie (Can.) (1851); **16.** *Cr. Pract.* p. 36
— *v.* — (Can.) (1890); **11.** *Comp. Pchc.* p. 17
— *v.* — (Can.) (1926); **14.** *Crim.* p. 63; **15.** *Crim.* p. 83; **30.** *Intox.* pp. 1, 10, 15
— *v.* — (Can.) (1927); **30.** *Intox.* p. 10
— *v.* — (Can.) (1929); **14.** *Crim.* p. 9
— *v.* — (Can.) (1930); **15.** *Crim.* p. 80
— *v.* — (Can.) (1932), 58 C. C. C. 106; **14.** *Crim.* p. 28
— *v.* — (Can.) (1932), 4 D. L. R. 586; **39.** *Revenue*, p. 26
— *v.* Mackenzie (Can.) (1936); **30.** *Intox*, p. 12
— (Stamford) *v.* McKeown (Can.); **13.** *Corpns.* p. 31
— *v.* McKevitt (Can.); **14.** *Crim.* p. 37
— *v.* Mackeys Bread, Ltd. (Can.); **33.** *Mkts.* p. 43
— *v.* Mackie (Can.); **14.** *Crim.* p. 67
— *v.* McKinley (Can.); **14.** *Crim.* p. 45
— *v.* Mackinnon (Can.); **14.** *Crim.* p. 24
— *v.* Macklin (Can.); **30.** *Intox.* p. 1
— *v.* McLachlan (Can.); **14.** *Crim.* pp. 17, 25, 38, 42, 68, 72; **17.** *Dep.* p. 80
— *v.* McLane (Can.); **11.** *Const. L.* p. 69
— *v.* McLaren (1933); **14.** *Crim.* No. 5593b
— *v.* — (Can.); **14.** *Crim.* p. 35
— *v.* McLatchey, *Ex p.* Stewart (Can.); **33.** *Mags.* p. 36
— *v.* McLatchy, *Ex p.* Goulette (Can.); **33.** *Mags.* p. 35
— *v.* McLaughlin (Aus.); **14.** *Crim.* p. 75
— *v.* McLean (1926); **14.** *Crim.* No. 4705a
— *v.* — (Can.); **14.** *Crim.* p. 29
— *v.* Maclennan (1925); **14.** *Crim.* No. 3156c
— *v.* McLeod (Can.), [1930] 4 D. L. R. 226; **42.** *Str. Traf.* p. 61
— *v.* — (Can.), [1930] 2 W. W. R. 37; **25.** *Game*, p. 24
— *v.* — (Can.) (1933); **39.** *Revenue*, p. 26
— *v.* — (Can.) (1934); **34.** *Med.* p. 189
— *v.* — (Can.) (1935); **39.** *Revenue*, p. 25
— *v.* McLocklin (1930); **14.** *Crim.* No. 5927d
R. *v.* McMahon (1933); **32.** *Libel*, No. 2489a
— *v.* McManus (Can.); **14.** *Crim.* p. 75; **15.** *Crim.* p. 106
— *v.* McMaster (Can.); **17.** *Dep.* p. 74
— *v.* MacMillan (1921); **14.** *Crim.* No. 5089b
— *v.* McMillan (Can.) (1873); **17.** *Dep.* p. 51
— *v.* — (Can.) (1927); **30.** *Intox.* p. 7
— *v.* MacMillan (Can.) (1932); **22.** *Evid.* p. 7
— *v.* McMonagle (Can.); **33.** *Mags.* p. 22
— *v.* McNamara (Can.); **14.** *Crim.* p. 73
— *v.* McNeil (Aus.); **35.** *Money*, p. 22
— *v.* — (Can.) (1931); **14.** *Crim.* p. 20
— *v.* — (Can.) (1933); **14.** *Crim.* p. 22; **33.** *Mags.* p. 37
— *v.* McPherson (Can.) (1914); **11.** *Comp. Pchc.* p. 6; **22.** *Evid.* p. 7
— *v.* — (Can.) (1929); **25.** *Fish.* p. 3
— *v.* McPherson & Quigley & Union Bank of Canada (Can.); **20.** *Eqy.* p. 23
— *v.* McReynolds (Can.); **28.** *Infts.* p. 144
— *v.* McTavish, *Ex p.* Brown (Can.); **14.** *Crim.* p. 16
— *v.* MacTemple (Frank) (Can.); **14.** *Crim.* p. 75
— *v.* — (Fred) (Can.); **14.** *Crim.* p. 42
— *v.* MacWilliam (1928); **14.** *Crim.* No. 5570a
— *v.* Maeder, *Re* News, Ltd. & Bonney (Aus.); **16.** *Cntmpt.* p. 4
— (Wilbur) *v.* Magee (Can.); **17.** *Dep.* p. 51
— *v.* Magid (Can.); **17.** *Dep.* p. 57
— *v.* Magistrates' Court & Esmond, *Ex p.* Beagley (Aus.); **7.** *Bounds. & F.* p. 17; **16.** *Cr. Pract.* p. 38
— (Kelly) *v.* Maguire & O'Sheil (Ir.); **16.** *Cr. Pract.* pp. 38, 40
— *v.* Mah Poy (Can.); **34.** *Med.* p. 193
— *v.* Mah Qun Non (Can.); **34.** *Med.* p. 194
— *v.* Mahomed (S. Af.); **14.** *Crim.* p. 1
— *v.* Mahony, *Ex p.* Johnson (Aus.); **43.** *Trade*, p. 2
— *v.* Maidstone Prison (Governor), *Ex p.* Maguire (1925); **16.** *Cr. Pract.* Nos. 660a, 797a
— *v.* Mainfroid (Can.); **30.** *Intox.* p. 15
— *v.* Malian (Can.); **25.** *Food*, p. 12
— *v.* Malt (1931); **14.** *Crim.* No. 5148k
— *v.* Manchester Guardian, *Ex p.* Public Prosecutions Director (1924); **16.** *Cntmpt.* No. 179b
— *v.* Manchester JJ., *Ex p.* Lever (1937); **14.** *Crim.* No. 3555a
— *v.* Manchuk (Can.); **15.** *Crim.* p. 89
— *v.* Mangold (S. Af.); **14.** *Crim.* p. 31
— *v.* Manley (1933); **15.** *Crim.* No. 6735a
— *v.* Manning (Aus.); **14.** *Crim.* p. 37
— *v.* Mansa Singh (Ind.); **42.** *Str. Traf.* p. 39
— *v.* Manser (1934); **14.** *Crim.* No. 4824b
— *v.* Manson (Can.); **15.** *Crim.* p. 91
— *v.* Manuel (Can.); **33.** *Mags.* p. 23; **39.** *Revenue*, p. 24
— *v.* Maples (1927); **15.** *Crim.* No. 10,505a
— *v.* Marchant (Can.); **20.** *Elect.* p. 5
— *v.* Marck (1928); **14.** *Crim.* No. 3180a
— (Leslie) *v.* Marcovich (Can.); **16.** *Cr. Pract.* p. 43
— *v.* Marcovitz & Applebaum (Can.); **5.** *Bkpcy.* p. 89
— *v.* Marcus & Richmond (Can.); **14.** *Crim.* p. 30
— *v.* Marin (Can.); **25.** *Gaming*, p. 35
— *v.* Marino & Crisofi (Can.); **14.** *Crim.* p. 6
— *v.* Mark (Can.); **25.** *Gaming*, p. 31
— *v.* Markham, *Ex p.* Marsh (1923); **3.** *Bankg.* No. 403a
— *v.* Markoff (Can.); **14.** *Crim.* p. 50
— *v.* Markuss (1864); **15.** *Crim.* Nos. 8666a, 8667a
— *v.* Marquis (Can.); **30.** *Intox.* p. 17
— *v.* Marriott (1924); **14.** *Crim.* No. 3145a
— *v.* — (Can.); **14.** *Crim.* p. 16
— *v.* Marsh (1925); **15.** *Crim.* No. 9320b

R. *v.* Marsh (1935); **14.** *Crim.* No. 5560a
— *v.* Marshall (1925); **14.** *Crim.* Nos. 3136a, 6072d
— *v.* — (Can.) (1925); **22.** *Evid.* p. 7
— *v.* — (Can.) (1930); **15.** *Crim.* p. 106
— *v.* Martch (Can.); **30.** *Intox.* p. 10
— *v.* Martin (1927); **14.** *Crim.* No. 5596a
— *v.* — (1928); **14.** *Crim.* No. 6215b
— *v.* — (1931); **14.** *Crim.* No. 5116c
— *v.* — (1934); **14.** *Crim.* No. 6072c
— *v.* — (Can.) (1929); **14.** *Crim.* p. 13
— *v.* — (Can.) (1930); **14.** *Crim.* p. 14
— *v.* — (Can.) (1931); **33.** *Mags.* p. 37
— *v.* — (Can.) (1932); **15.** *Crim.* p. 101
— *v.* — (Can.) (1936); **30.** *Intox.* p. 13
— *v.* Martinello (Can.); **33.** *Mags.* p. 36
— *v.* Marvo System of Dry Cleaning, Ltd. (Can.); **38.** *Pub. Hlth.* p. 16
— *v.* Mary C. Fischer (Can.); **39.** *Revenue*, p. 26
— *v.* Masharign (S. Af.); **14.** *Crim.* p. 42; **15.** *Crim.* p. 107
— *v.* Mason (1924); **14.** *Crim.* No. 3133a
— *v.* — (Can.) (1931); **25.** *Game*, p. 25
— *v.* — (Can.) (1935); **39.** *Revenue*, p. 11
— (Desrochers) *v.* Massicotte (Can.); **33.** *Mags.* p. 33
— *v.* Matheson & Mader (Can.); **33.** *Mags.* p. 37
— *v.* Matsqui (Can.); **38.** *Rates*, p. 66
— *v.* Mattens (Can.); **33.** *Mags.* p. 21
— *v.* Maughan (1933); **15.** *Crim.* No. 9367b
— *v.* — (1934); **15.** *Crim.* No. 9367c
— *v.* Maung Ba Thaung (Ind.); **19.** *Educ.* p. 43
— *v.* Maung Tin Saw (Ind.); **18.** *Cntmpt.* pp. 3, 4
— *v.* May (Can.); **14.** *Crim.* p. 64
— *v.* Mayall (Can.); **15.** *Crim.* p. 83
— (McArthur) *v.* Maycock (Can.); **16.** *Cr. Pract.* p. 36
— *v.* Mbande (S. Af.); **14.** *Crim.* p. 4
— *v.* Mbombela (S. Af.); **14.** *Crim.* p. 2
— *v.* Mechanical Dentistry School (Can.); **34.** *Med.* p. 191
— *v.* Medcraft (1931); **14.** *Crim.* Nos. 5628c, 5783a, 6078b
— *v.* Meehan (Can.); **16.** *Cr. Pract.* p. 41; **28.** *Inc. T.* p. 105
— *v.* Meggitt (Can.); **39.** *Revenue*, p. 18
— *v.* Megill (Can.); **14.** *Crim.* p. 69
— *v.* Meibach (Can.); **21.** *E. D.* p. 21
— (A.-G. for Saskatchewan) *v.* Meilicke (No. 2) (Can.); **17.** *Dep.* p. 71; **21** *E. D.* p. 20
— (A.-G. for Saskatchewan) *v.* Meilicke (No. 3) (Can.); **17.** *Dep.* p. 79
— *v.* Meiring (S. Af.); **15.** *Crim.* p. 91
— *v.* Melanson (Can.); **30.** *Intox.* p. 12
— *v.* Melany (1924); **14.** *Crim.* No. 3801b
— *v.* Meloche (Can.); **30.** *Intox.* p. 18
— *v.* Melyniuk & Humeniuk (Can.); **14.** *Crim.* p. 26
— *v.* Merritt (Can.) (1927); **30.** *Intox.* p. 14
— *v.* — (Can.) (1933); **14.** *Crim.* p. 66
— *v.* — (Can.) (1934); **14.** *Crim.* p. 73
— *v.* Metcalfe (1934); **14.** *Crim.* No. 4789a
— *v.* — (Can.); **15.** *Crim.* p. 93; **19.** *Educ.* p. 43
— *v.* Meyers (Can.); **44.** *Work*, p. 60
— *v.* Meyrick (1929); **14.** *Crim.* Nos. 933a, 5629d
— *v.* Michas (Can.); **33.** *Mags.* p. 36
— *v.* Michaud (Can.); **30.** *Intox.* p. 17
— *v.* Middlesex JJ., *Ex p.* Bond (1933); **27.** *H. & W.* Nos. 4776a, 4813a, 5781f
— *v.* —, *Re* Bowman (1834); **33.** *Mags.* No. 995a
— *v.* Middleton Church Trustees (Can.); **7.** *Burial*, p. 40
— *v.* Midland (Amalgamated) District (Coal Mines) Scheme, 1930 (Trustees of Executive Board), *Ex p.* Manvers Main Collieries, Ltd. (1935); **34.** *Mines*, No. 327t
R. *v.* Midland, etc. Ry. Co., *Ex p.* Brown (1867); **11.** *Comp. Pchs.* No. 160
— *v.* Miket (Can.); **15.** *Crim.* p. 86
— *v.* Miles (Can.) (1931); **15.** *Crim.* p. 101
— *v.* — (Can.) (1935); **25.** *Gaming*, p. 32
— *v.* — (Can.) (1936); **25.** *Gaming*, p. 32
— *v.* Milk Marketing Board, *Ex p.* North (1934); **16.** *Cr. Pract.* No. 2458a; **25.** *Food*, No. 476g
— *v.* Milkha Singh (Can.); **11.** *Confl.* p. 24
— *v.* Miller (1823); **1.** *Adm.* No. 642a
— *v.* — (1926); **14.** *Crim.* No. 3122a
— *v.* — (Can.); **15.** *Crim.* p. 108; **25.** *Gaming*, p. 31
— *v.* —, R. *v.* Little (Can.); **13.** *Crnrs.* p. 24
— *v.* Miller Court & Co. (Can.); **17.** *Dep.* p. 43
— *v.* Millichamp (1929); **14.** *Crim.* Nos. 5356a, 6187c
— *v.* Milligan (Can.); **14.** *Crim.* p. 46
— *v.* Mills (1932); **33.** *Mags.* No. 643b; **42.** *Str. Traf.* No. 222c
— *v.* — (1935); **14.** *Crim.* No. 5965d
— *v.* — (Can.); **33.** *Mags.* p. 27
— *v.* Millward (1931); **14.** *Crim.* Nos. 3286a, 8384a
— *v.* Miln-Bingham Printing Co., Ltd. (Can.); **39.** *Revenue*, p. 14; **42.** *Stats.* p. 23
— *v.* Minden (Can.); **5.** *Bkpcy.* p. 88
— *v.* Minighan (1935); **14.** *Crim.* No. 6261b
— *v.* Minister of Agriculture & Fisheries, *Ex p.* Berry (1932); **2.** *Agric.* No. 979c
— (Pioneer Gold Mines of B. C., Ltd.) *v.* Minister of Finance (Can.); **28.** *Inc. T.* p. 100
— (Andler) *v.* Minister of Finance (Can.); **38.** *Real Prop.* p. 97
— *v.* Minister of Finance of British Columbia (Can.); **38.** *Real Prop.* p. 97
— *v.* Minister of Health, *Ex p.* Davis (1929); **38.** *Pub. Hlth.* No. 506a
— *v.* —, *Ex p.* Finsbury Borough Council (1934); **38.** *Pub. Hlth.* No. 502q
— *v.* —, *Ex p.* Glamorgan County Mental Hospital (Committee of Visitors) (1938); **33.** *Lunat.* No. 1688e
— *v.* —, *Ex p.* Hack (1937); **38.** *Pub. Hlth.* No. 502cc
— *v.* —, *Ex p.* Hampton Urban District Council (1936); **33.** *L. G.* No. 110c
— *v.* —, *Ex p.* Newhaven Urban District Council (1933); **33.** *L. G.* No. 110a
— *v.* —, *Ex p.* Purfleet Urban District Council (1935); **33.** *L. G.* No. 112a
— *v.* —, *Ex p.* Villiers (1936); **11.** *Comp. Pchs.* Nos. 2225f, 2225g
— *v.* —, *Ex p.* Yaffe (1931); **38.** *Pub. Hlth.* No. 506c
— *v.* Minister of Labour, *Ex p.* National Trade Defence Association, *Ex p.* Incorporated Assocn. of Purveyors of Light Refreshments, *Ex p.* Strand Hotel, Ltd. (1932); **44.** *Work*, No. 74a
— *v.* Minister of Lands (Can.); **16.** *Cr. Pract.* p. 35
— *v.* Minister of Transport, *Ex p.* Grey Coaches, Ltd. (1933); **42.** *Str. Traf.* No. 76v
— *v.* —, *Ex p.* Leicestershire & Warwickshire Electric Power Co. (1928); **20.** *Electric*, No. 3a
— *v.* —, *Ex p.* Skylark Motor Coach Co., Ltd. (1931); **42.** *Str. Traf.* No. 33a
— *v.* —, *Ex p.* Upminster Services, Ltd. (1934); **42.** *Str. Traf.* No. 76w
— *v.* —, *Ex p.* Valliant Direct Coaches, Ltd. (1937); **42.** *Str. Traf.* Nos. 76x, 76y, 76z
— *v.* Minness & Moran (Can.); **14.** *Crim.* p. 72
— *v.* Minogue (Can.); **14.** *Crim.* p. 40

R. *v.* **Minshull & Rhind (Can.); 16.** *Cr. Pract.* p. 32
— *v.* **Miramichi Lumber Co., Ltd. (Can.); 39.** *Revenue*, p. 15
— *v.* **Missell (1926); 15.** *Crim.* No. 10,754b
— **(Jacques)** *v.* **Mitchell (Can.) (1924); 20.** *Elect.* pp. 7, 9
— *v.* **Mitchell (Can.) (1937); 15.** *Crim.* p. 94
— *v.* **Mitchell & McLean (Can.); 15.** *Crim.* p. 103
— *v.* **Mlaker (Can.); 14.** *Crim.* p. 14; **16.** *Cr. Pract.* pp. 42, 43
— *v.* **Mofokeng (S. Af.); 14.** *Crim.* p. 26
— *v.* **Mohr (Can.); 17.** *Dep.* p. 53
— *v.* **Mokbul Khan (Ind.); 14.** *Crim.* p. 23
— *v.* **Moldon (1926); 14.** *Crim.* No. 5036a
— *v.* **Molland (Can.); 14.** *Crim.* p. 60
— *v.* **Mondshein (Can.); 14.** *Crim.* p. 51
— *v.* **Mondt (Can.); 15.** *Crim.* p. 98
— *v.* **Monmouthshire County Council,** *Ex p.* **Smith (1935); 33.** *L. G.* No. 84a
— *v.* **Montemurro (Can.); 16.** *Cr. Pract.* p. 29
— *v.* **Montreal Stock Exchange (Can.); 39.** *Revenue*, p. 15
— *v.* **Montreal Telegraph Co. & Great North Western Telegraph Co. of Canada (Can.); 28.** *Inc. T.* p. 96
— *v.* **Moore (1924); 14.** *Crim.* Nos. 3007a, 5932a
— *v.* — **(1931); 14.** *Crim.* No. 3277a
— *v.* — **(Can.); 3.** *Basty.* p. 61; **14.** *Crim.* p. 9; **16.** *Cr. Pract.* p. 28
— *v.* **Moore's Taxi Co., Ltd. (Can.); 42.** *Str. Traf.* p. 43
— *v.* **Moors (1801); 22.** *Evid.* No. 2282
— *v.* **Mordecai (1930); 14.** *Crim.* No. 3151a
— *v.* **Moreau (Can.); 11.** *Comp. Pche.* p. 7
— **(Lesley)** *v.* **Morel (Can.); 14.** *Crim.* p. 45
— *v.* **Morelle (Can.); 14.** *Crim.* p. 75
— *v.* **Morelli (Can.); 34.** *Med.* p. 193
— *v.* **Morgan (1925); 14.** *Crim.* No. 1910a; **22.** *Evid.* No. 2129a
— *v.* — **(1931); 14.** *Crim.* No. 5148j
— *v.* **Morley (Can.); 17.** *Dep.* p. 56
— *v.* **Morrell (Can.); 33.** *Mags.* p. 23
— *v.* **Morris (1933); 15.** *Crim.* No. 10,326b
— *v.* — **(Can.); 33.** *Mags.* p. 36
— *v.* **Morrison (1911); 14.** *Crim.* No. 5802b
— *v.* — **(1938); 15.** *Crim.* No. 7991a
— *v.* — **(Can.) (1923); 14.** *Crim.* p. 35
— *v.* **Morrison (Can.) (1929); 30.** *Intox.* p. 11
— *v.* **Morriss (1926); 14.** *Crim.* No. 5175a
— *v.* **Morrissey (1932); 14.** *Crim.* No. 4717b
— *v.* **Morter (1927); 15.** *Crim.* No. 10,315c
— *v.* **Mortimer (1936); 14.** *Crim.* No. 3959a
— *v.* **Morton (Can.); 14.** *Crim.* p. 68
— *v.* **Moscovitch (1924); 22.** *Evid.* No. 3975a
— *v.* — **(1927); 15.** *Crim.* No. 7989a
— **(Corey)** *v.* **Moser (Can.); 30.** *Intox.* p. 14
— *v.* **Mosley (1924); 14.** *Crim.* No. 1937a
— *v.* **Moss (1931); 14.** *Crim.* No. 5938e
— *v.* **Mould (Can.); 2.** *Animals*, p. 72
— *v.* **Mount (1934); 14.** *Crim.* No. 4789a
— *v.* **Mourant (Can.); 30.** *Intox.* p. 18
— *v.* **Moxley (Can.); 30.** *Intox.* p. 13
— *v.* **Moyle (Can.); 14.** *Crim.* p. 60; **15.** *Crim.* p. 83; **39.** *Revenue*, p. 25
— *v.* **Mudge (Can.); 14.** *Crim.* p. 71
— *v.* **Mudry (Can.); 15.** *Crim.* p. 99
— *v.* **Muir (1938); 14.** *Crim.* No. 2140a
— *v.* **Muirhead,** *Ex p.* **Lyons (Aus.); 30.** *Intox.* p. 16
— *v.* **Mullins (Can.); 33.** *Mags.* p. 35
— *v.* **Munn (N.Z.); 14.** *Crim.* p. 35
— *v.* **Munro (Can.); 30.** *Intox.* p. 12
— *v.* **Murdock (Can.); 15.** *Crim.* p. 81
— *v.* **Murphy (1833); 15.** *Crim.* No. 8398a
R. *v.* **Murphy, Kitchen & Sleen (Can.); 15.** *Crim.* p. 101
— *v.* **Murray (1932); 14.** *Crim.* Nos. 5279a, 5309a
— *v.* — **(1935); 14.** *Crim.* No. 1790b
— *v.* — **(Can.); 14.** *Crim.* p. 9; **33.** *Mkts.* p. 43
— *v.* —, *Ex p.* **Copp (Can.); 33.** *Mags.* pp. 25, 26
— *v.* — **(A. D.) Tailoring, Ltd. (Can.); 25.** *Gaming*, p. 37
— *v.* **Murrell (Can.); 16.** *Cr. Pract.* p 28
— *v.* **Musgrave (Can.); 11.** *Comp. Pche.* p. 19; **14.** *Crim.* p. 63
— *v.* **Mutual Fire Assocn. of Canada, Ltd. (Can.); 39.** *Revenue*, p. 24
— *v.* **Myers (Can.); 14.** *Crim.* p. 41
— *v.* **Myers Canadian Aircraft Co., Ltd. (Can.); 36.** *Pats.* p. 98
— *v.* **Nadon (Can.); 30.** *Intox.* p. 17
— *v.* **Nahirniak (Can.); 14.** *Crim.* p. 64
— *v.* **Nall (1927); 14.** *Crim.* No. 5190b
— *v.* **Narbada Prasad (Ind.); 22.** *Evid.* p. 15
— *v.* **Nash (1927); 14.** *Crim.* No. 5285a
— *v.* **Nat Bell Liquors, Ltd. (Can.); 16.** *Cr. Pract.* p. 30
— *v.* **Natanson (Can.); 15.** *Crim.* p. 80
— *v.* — **(No. 2) (Can.); 15.** *Crim.* p. 80
— *v.* **National Fish Co., Ltd. (Can.); 25.** *Fish.* p. 3
— *v.* **National Trust Co. (Can.); 17.** *Dep.* p. 50; **21.** *E. D.* p. 19
— **(Butler)** *v.* **Navan Urban District Council (Ir.); 16.** *Cr. Pract.* p. 31
— *v.* **Naylor (1933); 14.** *Crim.* No. 6047a
— *v.* — **(1937); 14.** *Crim.* No. 5252a
— *v.* **Nazir Wazir (Ind.); 2.** *Animals*, p. 70
— *v.* **Ndobe (S. Af.); 17.** *Dep.* p. 65
— *v.* **Necember (Can.); 14.** *Crim.* p. 19
— *v.* — **(No. 2) (Can.); 14.** *Crim.* p. 19
— *v.* **Nedelec (Can.); 30.** *Intox.* p. 13
— *v.* **Needham (Can.); 33.** *Mags.* p. 25
— *v.* **Neilson (William), Ltd. (Can.); 39.** *Revenue*, p. 15
— *v.* **Nelson (Can.) (1901); 33.** *Mags.* p. 21
— *v.* — **(Can.) (1916); 2.** *Animals*, p. 71
— *v.* — **(Can.) (1929); 25.** *Gaming*, p. 31
— *v.* **Nelson Price (Can.); 14.** *Crim.* p. 39
— *v.* **Nepp (Can.); 30.** *Intox.* p. 12
— **(Onishenko)** *v.* **Nesdoly (Can.); 20.** *Elect.* p. 8
— *v.* **Neville (1931); 14.** *Crim.* No. 5932b
— *v.* **New Brunswick Liquor Control Board (Can.); 30.** *Intox.* p. 13
— *v.* **New Dominion Club (Can.); 30.** *Intox.* p. 14
— *v.* **New England Co. (Can.); 11.** *Const. L.* p. 76
— *v.* **New Statesman (Editor),** *Ex p.* **Public Prosecutions Director (1928); 16.** *Cntempt.* Nos. 164a, 165a
— *v.* **Newbery & Elman (1931), 23 Cr. App. Rep. 66; 14.** *Crim.* No. 1443c
— *v.* — **(1931), 23 Cr. App. Rep. 105; 14.** *Crim.* Nos. 3165g, 5939a
— *v.* **Newcastle JJ. (Can.); 33.** *L. G.* p. 9
— *v.* **Newes (Can.); 14.** *Crim.* p. 41; **15.** *Crim.* p. 95
— *v.* **Newport (Salop) JJ.,** *Ex p.* **Wright (1929); 15.** *Crim.* No. 9042a; **19.** *Educ.* No. 275a; **33.** *Mags.* No. 1175a
— *v.* **News of the World, Editor, Printers & Publishers of,** *Ex p.* **Kitchen (1932); 16.** *Cntmpt.* No. 180b
— *v.* **Nga Ba Shein (Ind.); 14.** *Crim.* p. 48
— *v.* **Nga San Htwa (Ind.); 14.** *Crim.* p. 10
— *v.* **Nga Tin Gyi (Ind.); 14.** *Crim.* p. 26
— *v.* **Ngcobo (S. Af.); 15.** *Crim.* p. 92
— *v.* **Nicholls (S. Af.); 14.** *Crim.* p. 38
— *v.* **Nicholson (Can.) (1926); 14.** *Crim.* pp. 63, 64
— *v.* — **(Can.) (1927); 14.** *Crim.* p. 66

R. *v.* Nickerson, *Ex p.* Weston (Can.); **14.** *Crim.* p. 14
— *v.* Ninos (Can.); **42.** *Time*, p. 73
— *v.* Nip Gar (Can.); **34.** *Med.* p. 192
— *v.* Nitschke (Aus.); **2.** *Animals*, p. 56
— *v.* Noble (1928); **14.** *Crim.* No. 3834a
— *v.* Nolan (Can.); **14.** *Crim.* p. 17
— *v.* Nolte (S. Af.); **17.** *Dep.* p. 75; **34.** *Mines*, p. 199
— *v.* Noon (Can.); **11.** *Const. L.* p. 69
— *v.* Norfolk JJ., *Ex p.* Davidson (1925); **16.** *Cr. Pract.* No. 2142a
— *v.* —, *Ex p.* Porter (1926); **18.** *Distr.* No. 1588a
— *v.* Norman (1924); **14.** *Crim.* No. 5359a
— *v.* — (Can.); **14.** *Crim.* p. 60; **33.** *Mags.* p. 36
— *v.* North, *Ex p.* Oakey (1927); **19.** *Eccl.* No. 1280a
— *v.* North London Ry. Co. & Wilson (1881); **11.** *Comp. Pche.* Nos. 930, 948
— *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley (1929); **16.** *Cr. Pract.* No. 2287a; **38.** *Rates*, Nos. 1146a, 1146b
— *v.* Northeastern Lunch Co., Ltd. (Can.); **11.** *Comp. Pche.* p. 18
— *v.* Northumberland & Durham Counties (Can.); **38.** *Real Prop.* p. 95
— *v.* Northup (Can.); **14.** *Crim.* p. 74
— *v.* Nozaki (Can.); **14.** *Crim.* p. 39
— *v.* Nykolaichuk (Can.); **30.** *Intox.* p. 16
— *v.* O.K. Social & Whist Club (1929); **8.** *Clubs*, No. 140a
— *v.* Oadby (Inhabitants) (1818); **34.** *Mast. & S.* No. 4421a
— (Kowalski) *v.* Oak Bluff School District (Can.); **19.** *Educ.* p. 34
— *v.* Oakes (Can.); **16.** *Cr. Pract.* p. 43
— *v.* O'Brien (1930); **14.** *Crim.* No. 6169d
— *v.* — (Can.) (1924); **21.** *Exon.* p. 47
— *v.* — (Can.) (1926); **14.** *Crim.* p. 30
— *v.* — (Can.) (1929); **14.** *Crim.* p. 30
— *v.* —, *Ex p.* Theriault (Can.); **16.** *Cr. Pract.* p. 40
— *v.* O'Connell (1931); **14.** *Crim.* Nos. 6049a, 6112b
— *v.* O'Dare, Davis & Morton (1927); **14.** *Crim.* No. 5111a
— *v.* O'Donnell (Can.) (1923); **3.** *Basty.* p. 59
— *v.* — (Can.) (1936); **22.** *Evid.* p. 15
— *v.* O'Donoghue (1927); **14.** *Crim.* No. 4357a; **15.** *Crim.* No. 8266a
— *v.* Oeullette (Can.); **42.** *Str. Traf.* p. 56
— *v.* Ogal (Can.); **15.** *Crim.* p. 93
— *v.* Ogden (1702); **26.** *Hghys.* No. 1330a
— *v.* Ogilvie, *Re* Ogilvie *v.* Finley (Can.); **3.** *Basty.* p. 65; **14.** *Crim.* p. 60
— *v.* Ogle (Can.); **33.** *Mkts.* p. 43
— *v.* O'Halloran (Can.) (1928); **39.** *Revenue*, p. 25
— *v.* — (Can.) (1934); **11.** *Comp. Pche*, p. 8
— (Moore) *v.* O'Hanrahan (Ir.); **25.** *Fish.* p. 4
— *v.* O'Hara (Can.); **22.** *Evid.* p. 9; **33.** *Mags.* p. 25
— *v.* Oickle (Can.); **30.** *Intox.* p. 11; **33.** *Mags.* p. 37
— *v.* Oiseberg (Can.); **37.** *Poor L.* p. 20
— *v.* O'Keefe's Beverages, Ltd. (Can.); **30.** *Intox.* p. 10
— *v.* Okrainetz (Can.); **28.** *Infts.* p. 143
— *v.* Oldaker (Can.); **14.** *Crim.* pp. 48, 51
— *v.* Olholm & McPherson (Aus.); **14.** *Crim.* pp. 26, 45
— *v.* Ollassoff (Can.); **30.** *Intox.* p. 16
— *v.* Ollech (Can.); **33.** *Mags.* p. 25
— *v.* Olney (Can.); **33.** *Mags.* p. 37
— *v.* Olsen (Can.); **16.** *Cr. Pract.* p. 40
— *v.* Olson (Can.); **14.** *Crim.* p. 25
— (Goodman) *v.* Olson (Can.); **11.** *Const. L.* p. 64
R. *v.* O'More (1926); **14.** *Crim.* No. 5046b
— *v.* O'Neil & Smith (Can.); **33.** *Mags.* p. 36
— *v.* On Sing (Can.); **16.** *Cr. Pract.* p. 42
— *v.* Oram (1938); **14.** *Crim.* No. 4514a
— *v.* Orde (Can.); **33.** *Mags.* p. 35
— *v.* Ormesher (1932); **14.** *Crim.* No. 5125l
— *v.* O'Rourke (Can.); **17.** *Dep.* p. 43
— *v.* Orton (1878); **15.** *Crim.* No. 6839a
— *v.* Ortynsky (Can.); **14.** *Crim.* p. 64
— *v.* Oshanek (Can.); **34.** *Med.* p. 189
— *v.* Osjorm (Can.); **30.** *Intox.* p. 10
— *v.* O'Sullivan (Aus.); **14.** *Crim.* p. 28; **15.** *Crim.* p. 105
— (Kendall) *v.* O'Sullivan (Can.); **15.** *Crim.* p. 98
— *v.* Ottawa Electric Ry. Co. (Can.); **17.** *Dep.* p. 35; **43.** *Tram.* p. 48
— *v.* Ottaway (1933); **14.** *Crim.* No. 2076b
— *v.* Ottenson (Can.); **17.** *Dep.* p. 54
— *v.* Otty, *Ex p.* Roberts (Can.); **16.** *Cntmpt.* p. 6
— *v.* Oullette (Can.); **30.** *Intox.* p. 14
— *v.* Packer (Aus.); **15.** *Crim.* p. 85
— *v.* Page (Aus.); **14.** *Crim.* p. 5
— *v.* — (Can.); **16.** *Cr. Pract.* p. 29
— *v.* Palangio (Can.); **2.** *Aliens*, p. 49
— *v.* Palmer (1935); **14.** *Crim.* No. 5877b
— *v.* — (Can.); **15.** *Crim.* p. 85
— *v.* —, *Ex p.* Gormerly (Can.); **33.** *Mags.* p. 25
— *v.* —, *Ex p.* McCoy (Can.); **33.** *Mags.* p. 23
— *v.* Pang Dat & Gin Bo (Can.); **25.** *Gaming*, p. 31
— *v.* Papiah (S. Af.); **14.** *Crim.* p. 30
— *v.* Paris (Town) (Can.); **26.** *Hghys.* p. 25
— *v.* Park (Can.); **15.** *Crim.* p. 106
— *v.* Parker (1924), 18 Cr. App. Rep. 14; **14.** *Crim.* No. 3820a
— *v.* — (1924), 18 Cr. App. Rep. 103; **14.** *Crim.* No. 4903a
— *v.* — (1933); **14.** *Crim.* No. 6047b
— *v.* Parker, R. *v.* Dennis (1924); **14.** *Crim.* No. 2365a
— *v.* Parkin (1928); **14.** *Crim.* No. 5528b
— (Minister of Natural Resources) *v.* Parkinson (Can.); **34.** *Mines*, p. 201
— *v.* Patenaude (Can.); **30.** *Intox.* p. 7
— *v.* Paterson, *Ex p.* Purves (Aus.); **11.** *Const. L.* p. 72
— *v.* Paterson & Campbell (Can.); **22.** *Evid.* p. 15
— *v.* Patry (Can.); **42.** *Str. Traf.* p. 60
— *v.* Patterson (Can.); **15.** *Crim.* p. 78
— *v.* Pattison (1929); **14.** *Crim.* No. 4317a
— *v.* Paul (1925); **14.** *Crim.* Nos. 5361a, 5372a
— *v.* — (Aus.); **14.** *Crim.* p. 73
— *v.* Pauwels (Can.); **22.** *Evid.* p. 11; **30.** *Intox.* p. 13
— *v.* Pavletich (Can.); **15.** *Crim.* p. 78
— *v.* Pawlett (Can.); **15.** *Crim.* p. 105
— *v.* Payette (Can.); **14.** *Crim.* pp. 59, 63, 68; **15.** *Crim.* p. 89
— *v.* Payn (1837); **16.** *Cr. Pract.* No. 1644a
— *v.* Payne (1872); **14.** *Crim.* No. 4867a
— *v.* Peace (1925); **14.** *Crim.* No. 5097a
— *v.* Pearce (1929); **25.** *Game*, No. 247a
— *v.* Pearcy (1929); **14.** *Crim.* No. 5057e
— *v.* Pearn (Can.); **30.** *Intox.* p. 15
— *v.* Peat Fuels, Ltd. (Can.); **17.** *Deeds*, p. 26
— *v.* Peckham (1927); **14.** *Crim.* No. 3165c; **15.** *Crim.* No. 10,927a
— *v.* — (1936); **14.** *Crim.* Nos. 2822a, 5876a
— *v.* Pedersen (Can.); **14.** *Crim.* p. 32
— *v.* Pegelo (Can.); **14.** *Crim.* p. 36
— *v.* Pelissiers, Ltd. (Can.); **13.** *Corpns.* p. 26
— *v.* Pelkey (Can.); **15.** *Crim.* p. 78
— *v.* Pelletier (Can.); **30.** *Intox.* p. 14
— *v.* Pelletier & Eld (Can.); **33.** *Mags.* p. 35

R. (Read) *v.* Pembina Municipal District No. 552 (Can.); **13.** *Corpns.* p. 36; **16.** *Cr. Pract.* p. 34
— *v.* Penchard (Can.); **34.** *Med.* p. 195
— (Rankin) *v.* Pendray (Can.); **25.** *Game*, p. 21
— *v.* Penner (Can.); **38.** *Pub. Hlth.* p. 14
— *v.* Penny (Can.); **15.** *Crim.* p. 106
— *v.* Pepper (Can.); **14.** *Crim.* p. 7
— *v.* Perreault (Can.); **1.** *Adm.* p. 47; **11.** *Const. L.* p. 67
— (Anderson) *v.* Perri (Can.); **30.** *Intox.* p. 14
— *v.* Perry (1936); **25.** *Gaming*, No. 278a
— *v.* — (Can.); **14.** *Crim.* p. 42
— *v.* Petch (Can.); **14.** *Crim.* p. 73
— *v.* Peters (Can.); **17.** *Dep.* p. 42
— *v.* Peterson (Can.); **2.** *Animals*, p. 59; **15.** *Crim.* p. 107
— *v.* Petheran (Can.); **30.** *Intox.* p. 15
— *v.* Petit (Can.) (1931); **39.** *Revenue*, p. 25
— *v.* — (Can.) (1932); **16.** *Cr. Pract.* p. 28
— *v.* Petite (Jerry) (Can.); **1.** *Adm.* p. 47; **41.** *Ship.* p. 65
— *v.* Petley (Can.); **42.** *Time*, p. 74
— *v.* Petrisor (Can.); **14.** *Crim.* p. 37
— *v.* Phelps & Roberts (1931); **14.** *Crim.* No. 5244c
— *v.* Philips (1695); **11.** *Const. L.* No. 214a
— *v.* — (1938); **14.** *Crim.* No. 1727a
— *v.* Phillips (1891); **41.** *Ship.* No. 932b
— *v.* — (1921); **5.** *Bkpcy.* No. 5499a
— *v.* — (1924), 18 Cr. App. Rep. 115; **14.** *Crim.* No. 5915b
— *v.* — (1924), 89 J. P. 16; **14.** *Crim.* No. 5927a
— *v.* — (1931); **14.** *Crim.* No. 5116d
— *v.* — (1936); **14.** *Crim.* No. 5910b
— *v.* — (Can.) (1928); **20.** *Elect.* p. 7
— *v.* — (Can.) (1931); **15.** *Crim.* p. 103
— *v.* — (Can.) (1934); **30.** *Intox.* p. 11
— *v.* Picard (Can.); **15.** *Crim.* p. 81
— *v.* Picken (Can.); **15.** *Crim.* p. 90
— *v.* Pickleman (Can.); **11.** *Comp. Pche.* p. 15
— *v.* Pickup (1931); **14.** *Crim.* No. 5938d
— *v.* Pidgeon (Can.); **25.** *Gaming*, p. 32
— *v.* Pierce & Gifford (Can.); **11.** *Comp. Pche.* p. 18
— (Grindey) *v.* Piggly Wiggly Canadian, Ltd. (Can.); **14.** *Crim.* p. 1
— *v.* Pilley (1926); **14.** *Crim.* No. 6186a
— *v.* Piluk (John) (Can.); **14.** *Crim.* p. 50
— *v.* Piluk (Mike) (Can.); **14.** *Crim.* p. 50
— *v.* Pimmett (Can.); **42.** *Tele.* p. 67
— *v.* Pine (1932); **14.** *Crim.* No. 3009a
— *v.* Pinno (Can.); **22.** *Evid.* p. 9
— *v.* Pinsk (Can.); **14.** *Crim.* p. 37
— *v.* Plummer (Can.); **14.** *Crim.* p. 14; **33.** *Mags.* p. 22
— *v.* Pochrebny (Can.), [1930] 1 W. W. R. 139; **33.** *Mags.* p. 35
— *v.* — (Can.), [1930] 3 W. W. R. 48; **16.** *Cr. Pract.* p. 35
— *v.* Pocock (Can.); **33.** *Mags.* p. 32; **34.** *Med.* p. 189
— *v.* Podmore (1930); **22.** *Evid.* No. 311a
— *v.* Pokitruski (Can.); **15.** *Crim.* p. 82
— *v.* Police Magistrates at Blackall & Hart, *Ex p.* Hart (Aus.); **7.** *Bounds. & F.* p. 17
— *v.* Pollard (Can.); **14.** *Crim.* p. 57; **30.** *Intox.* p. 8
— *v.* Pollinger (1930); **14.** *Crim.* No. 4751a
— *v.* Pollock (Can.); **30.** *Intox.* p. 16
— *v.* Pomeroy (1935); **42.** *Str. Traf.* No. 222j
— *v.* — (Can.); **15.** *Crim.* p. 105
— *v.* Pomfret (1931); **14.** *Crim.* No. 5116b
— *v.* Ponsford (Can.); **16.** *Cr. Pract.* p. 36
— *v.* Poole (1924); **14.** *Crim.* No. 4974a
— *v.* Popatlal Bhaichand (Ind.); **8.** *Carr.* p. 11
— *v.* Poplar Borough Council, *Ex p.* London County Council (1922); **16.** *Cr. Pract.* No. 1066
R. *v.* Poplar Borough Council, *Ex p.* Metropolitan Asylums Board (1922); **16.** *Cr. Pract.* No. 1066
— *v.* Portage la Prairie Rural Municipality (Can.); **26.** *Hghys.* p. 25
— *v.* Porter (1926); **14.** *Crim.* No. 5057b
— *v.* — (1927); **14.** *Crim.* Nos. 3137a, 5577c
— *v.* — (1935); **14.** *Crim.* No. 3947a
— *v.* Porter & Marks (Can.); **14.** *Crim.* p. 6
— *v.* Porter & Sons, Ltd. (Can.); **42.** *Time*, p. 74
— (Beaumont) *v.* Posternak (Can.); **30.** *Intox.* p. 15; **42.** *Time*, p. 74
— *v.* Postmaster-General, *Ex p.* Carmichael (1928); **16.** *Cr. Pract.* No. 2736a
— *v.* Potter (Can.); **15.** *Crim.* p. 102
— (Warman) *v.* Poulain (Can.); **20.** *Elect.* p. 7
— *v.* Poulin (Can.); **17.** *Dep.* p. 42
— *v.* Powell (1928); **14.** *Crim.* No. 5024a
— *v.* — (1933); **14.** *Crim.* No. 5190d
— *v.* — (Can.); **32.** *Libel*, p. 18
— *v.* —, *Ex p.* Camden (Marquis) (1925); **2.** *Agric* Nos. 29b, 29c
— *v.* Powers (Can.); **17.** *Dep.* p. 41
— *v.* Prairie Drug Co., Ltd. (Can.); **17.** *Dep.* p. 51
— *v.* Preeper (Can.); **22.** *Evid.* p. 22
— *v.* Presdee (1927); **30.** *Intox.* No. 764a
— *v.* Preston (Can.); **20.** *Elect.* p. 5
— (Armstrong) *v.* Preston (Can.); **42.** *Str. Traf.* p. 61
— *v.* Pretorius (S. Af.); **22.** *Evid.* p. 15
— *v.* Preusantanz (Can.); **14.** *Crim.* p. 30
— *v.* Price (1924); **14.** *Crim.* No. 4994b
— *v.* — (Can.); **14.** *Crim.* p. 39
— *v.* Price (Nelson) (Can.); **14.** *Crim.* p. 39
— *v.* Price Brothers & Co. (Can.); **22.** *Evid.* p. 16
— *v.* Primak (Can.); **14.** *Crim.* p. 1
— *v.* Pritchard (1929); **14.** *Crim.* No. 5170a
— *v.* Probert, *Ex p.* Jones (1910); **38.** *Rates*, No. 675g
— *v.* Propert (1911); **38.** *Rates*, No. 675g
— *v.* Proteau (Can.); **14.** *Crim.* p. 38
— *v.* Proud (Can.); **27.** *H. & W.* p. 4
— *v.* Public Utilities Board of Comrs., *Ex p.* Milltown (Town) (Can.); **12.** *Contr.* p. 57
— *v.* Public Utilities Comrs. (Can.) (1926); **42.** *Stats.* p. 22
— *v.* — (Can.) (1935); **20.** *Electric*, p. 14
— *v.* Publicover (Can.); **14.** *Crim.* p. 36
— *v.* Punch (1927); **14.** *Crim.* No. 751a
— *v.* Purcell (Can.); **14.** *Crim.* p. 32
— *v.* Purcy (1933); **13.** *Crnrs.* No. 417a
— *v.* Purdy (Can.); **30.** *Intox.* p. 14
— *v.* Purvis (Can.); **15.** *Crim.* p. 92
— *v.* Pyke (Can.); **30.** *Intox.* p. 10; **33.** *Mags.* p. 34; **39.** *Revenue*, p. 25
— *v.* Quayle (1938); **14.** *Crim.* No. 1727a
— *v.* Quebec Skating Club (Can.); **11.** *Comp. Pche.* p. 5
— *v.* Quinn (1932); **14.** *Crim.* No. 4985a
— *v.* — (Can.); **30.** *Intox.* p. 11
— *v.* —, *Ex p.* Schofield (Can.); **20.** *Elect.* p. 7
— *v.* Quintner (1934); **14.** *Crim.* No. 2040a
— *v.* Quong Wong (Can.); **34.** *Med.* p. 193
— *v.* R. (1932); **27.** *H. & W.* No. 2833c
— *v.* — (Can.); **17.** *Dep.* p. 83
— *v.* Rabbitt (1931); **14.** *Crim.* Nos. 3151b, 6114a
— *v.* Rabiuk (Can.); **16.** *Cr. Pract.* p. 30; **33.** *Mags.* p. 30
— *v.* Radcliffe (Judge), *Ex p.* Oxfordshire County Council (1915); **33.** *Lunat.* No. 1900a
— *v.* Radinsky (Can.); **25.** *Gaming*, p. 31
— *v.* Raghubar Dayal (Ind.); **39.** *Revenue*, p. 20
— *v.* Rahard (Can.); **15.** *Crim.* p. 84
— *v.* Railway Assessment Authority, *Ex p.* Southampton Corpn. (1937); **38.** *Rates*, No. 800k
— *v.* Railway Comrs. (1881); **8.** *Carr.* No. 1025

R. *v.* Ram Lal (Ind.); **14.** *Crim.* p. 34
— *v.* Ram Tahal Singh (Ind.); **42.** *Str. Traf.* p. 48
— *v.* Rankin (1932); **14.** *Crim.* No. 5241b
— *v.* — (Can.); **20.** *Elect.* p. 5
— *v.* Ransome (Can.); **16.** *Cr. Pract.* p. 29
— *v.* — (No. 1) (Can.); **30.** *Intox.* p. 11
— *v.* — (No. 2) (Can.); **30.** *Intox.* p. 11
— *v.* Rash (Can.); **15.** *Crim.* p. 106
— *v.* Rasmussen (Can.); **14.** *Crim.* p. 39
— *v.* Rasmussen & Spiegel-Glass (Aus.); **15.** *Crim.* p. 102
— *v.* Rasool (S. Af.); **14.** *Crim.* p. 4
— *v.* Rathmines Urban District Council (Ir.); **16.** *Cr. Pract.* p. 34
— *v.* Reade (1927); **14.** *Crim.* No. 6215a
— *v.* Reardon (Can.); **30.** *Intox.* p. 13
— *v.* Recalla (Can.); **15.** *Crim.* p. 93
— *v.* Red Line, Ltd. (Can.) (1930), 54 Can. C. C. 271; **17.** *Dep.* p. 43
— *v.* — (Can.), [1930] 2 D. L. R. 149; **33.** *Mags.* p. 37
— *v.* — (Can.), [1930] 3 D. L. R. 747; **42.** *Str. Traf.* p. 49
— *v.* Rees (1928); **14.** *Crim.* No. 3129c
— *v.* Reeve & Hancock (1872); **14.** *Crim.* No. 4394a
— *v.* Regina Agricultural & Industrial Exhibition Assocn., Ltd. (Can.); **25.** *Gaming*, p. 42
— *v.* Regina Wine & Spirit, Ltd. (Can.); **17.** *Dep.* p. 51
— *v.* — (No. 2) (Can.); **17.** *Dep.* p. 79
— *v.* Registrar of Companies (No. 1) (Can.); **9.** *Coys.* p. 4
— *v.* Registrar of Joint Stock Companies, *Ex p.* More (1931); **10.** *Coys.* No. 8574a; **25.** *Gaming*, No. 451a; **42.** *Stats.* No. 3a
— *v.* Registrar of Titles, *Ex p.* Forestry Pulp & Paper Co. of Australia, Ltd. (Aus.); **38.** *Real Prop.* p. 93
— *v.* —, *Ex p.* Moss (Aus.); **16.** *Cr. Pract.* pp. 31, 34; **38.** *Real Prop.* p. 95
— *v.* Reid (Can.) (1928); **20.** *Elect.* p. 5
— *v.* — (Can.) (1932); **39.** *Revenue*, p. 25
— *v.* — (Can.) (1935); **33.** *Mags.* p. 25
— *v.* Rekush (Can.); **33.** *Mags.* p. 36
— *v.* Relf (Can.); **14.** *Crim.* p. 21
— *v.* Renton (1925); **14.** *Crim.* No. 5938a
— *v.* Revill (1925); **14.** *Crim.* No. 5246a
— *v.* Reynolds (1927); **15.** *Crim.* No. 10,905a
— *v.* — (1932); **14.** *Crim.* No. 5190c
— *v.* — (Aus.); **14.** *Crim.* p. 37; **15.** *Crim.* p. 106
— *v.* Reznek (Can.); **41.** *Shrffs.* p. 7
— *v.* Rhodenbizer (No. 1) (Can.); **33.** *Mags.* p. 25
— *v.* — (No. 2) (Can.); **33.** *Mags.* p. 37
— *v.* Rhodes (Can.); **42.** *Str. Traf.* p. 51
— *v.* Ribuffi (1929); **14.** *Crim.* Nos. 933a, 5629d
— *v.* Ricard (Can.); **30.** *Intox.* p. 12
— *v.* Rice (1927); **14.** *Crim.* No. 5850a
— *v.* — (Can.) (1929); **30.** *Intox.* p. 11
— *v.* — (Can.) (1930); **14.** *Crim.* p. 75
— *v.* — (Can.) (1936); **14.** *Crim.* p. 4
— *v.* Riceberg (Can.); **14.** *Crim.* p. 57; **30.** *Intox.* p. 13
— *v.* Richard (Can.); **15.** *Crim.* p. 97
— *v.* Richards (1924); **14.** *Crim.* Nos. 5856a, 6230a
— *v.* — (Can.) (1930); **11.** *Const. L.* p. 77; **17.** *Dep.* p. 43
— *v.* — (Can.) (1932); **25.** *Gaming*, p. 29
— *v.* — (No. 2) (Can.); **25.** *Gaming*, p. 29
— *v.* — (Can.), [1938] 1 D. L. R. 362; **14.** *Crim.* p. 72
— *v.* — (Can.), [1938] 2 D. L. R. 480; **15.** *Crim.* p. 86
— *v.* Richards & Woolridge (Can.); **15.** *Crim.* p. 88
— *v.* Richardson (1861); **14.** *Crim.* No. 3943a
R. *v.* Richardson (Can.); **30.** *Intox.* p. 9
— *v.* Riesy (Can.); **16.** *Cr. Pract.* p. 27
— *v.* Rigby (1923); **14.** *Crim.* No. 5565a
— *v.* Riley (Can.) (1905); **18.** *Distr.* p. 33
— (Lithgoe) *v.* Riley (Can.) (1926); **30.** *Intox.* p. 14
— *v.* Ringle (1926); **15.** *Crim.* No. 10,754b
— *v.* Riordan (1937); **33.** *Mags.* No. 960a
— *v.* Ritchie (Can.); **30.** *Intox.* p. 11
— *v.* Ritholz Optical Co., Ltd. (Can.); **33.** *Mags.* p. 37; **34.** *Med.* p. 195
— *v.* Riwmy (Can.); **14.** *Crim.* p. 63
— (Chutskoff) *v.* Riwny & Pesechnick (Can.); **19.** *Educ.* p. 34
— *v.* Roach (Can.); **14.** *Crim.* p. 12
— *v.* Roadhouse (Can.); **14.** *Crim.* p. 41
— *v.* Roath (1927); **14.** *Crim.* No. 4998a
— *v.* Robbins (Can.); **14.** *Crim.* p. 32
— *v.* Roberts (1929); **14.** *Crim.* No. 5629a; **38.** *Rates*, No. 675f
— *v.* — (1936); **14.** *Crim.* No. 4756a
— *v.* — (Can.) (1928); **14.** *Crim.* p. 8; **33.** *Mags.* p. 26
— *v.* — (Can.) (1936); **25.** *Gaming*, p. 31
— *v.* Roberts (Harry) (Can.); **30.** *Intox.* p. 17
— *v.* Roberts (Hubert) (Can.); **30.** *Intox.* p. 18
— *v.* Roberts, *Ex p.* Battersea Borough Council (1914); **38.** *Rates*, No. 675f
— *v.* Roberts & Morriss (1926); **14.** *Crim.* No. 5175a
— *v.* Robertson (1936); **14.** *Crim.* No. 2064a
— *v.* — (Can.) (1928); **15.** *Crim.* p. 106
— *v.* — (Can.) (1931); **25.** *Gaming*, p. 29
— *v.* — (Can.) (1936); **14.** *Crim.* p. 46
— *v.* — (Can.) (1937); **30.** *Intox.* p. 12
— *v.* — (S. Af.); **34.** *Med.* p. 191
— *v.* Robertson's Bakeries, Ltd. (Can.); **13.** *Corpns.* p. 35
— *v.* Robinson (1840); **15.** *Crim.* No. 9773a
— *v.* — (1938); **15.** *Crim.* No. 7996a
— *v.* — (Can.) (1917); **25.** *Gaming*, p. 38
— *v.* — (Can.) (1930); **14.** *Crim.* p. 74
— *v.* Rocco (Can.) (1924); **14.** *Crim.* p. 16
— *v.* — (Can.) (1931); **25.** *Gaming*, p. 30
— *v.* Roche (1931); **14.** *Crim.* No. 5057g
— *v.* — (Can. (1927)); **30.** *Intox.* p. 15
— *v.* — (Can.) (1931); **33.** *Mags.* p. 26
— *v.* — (Can.) (1934) 62 Can. C. C. 11; **17.** *Dep.* p. 51
— *v.* — (Can.) (1934) 62 Can. C. C. 18; **30.** *Intox.* p. 12
— *v.* — (Can.) (1936); **33.** *Mags.* p. 37
— *v.* Rochestershire Council, *Ex p.* Public Health Commission (Aus.); **16.** *Cr. Pract.* p. 34
— *v.* Rock (Can.); **8.** *Clubs*, p. 101
— *v.* Roderick (Can.); **25.** *Gaming*, p. 38
— *v.* Rodgers (Can.) (1923); **14.** *Crim.* p. 16
— *v.* — (Can.) (1926); **14.** *Crim.* pp. 45, 46; **33.** *Mags.* p. 28
— *v.* Rogoff (1924); **2.** *Aliens*, No. 544a
— *v.* Rogzinski (Can.); **39.** *Revenue*, p. 25
— *v.* Romanchuk (Can.); **16.** *Cr. Pract.* pp. 28, 29, 30
— *v.* Ronan (Can.); **17.** *Dep.* p. 51
— *v.* Ronans (Can.); **15.** *Crim.* p. 96
— *v.* Rookwood (1696); **11.** *Const. L.* No. 175a
— *v.* Roop (Can.); **14.** *Crim.* p. 16; **15.** *Crim.* p. 84
— *v.* Roos (Can.); **33.** *Mags.* p. 24
— *v.* Roscommon JJ. (Ir.); **33.** *Mags.* p. 36
— *v.* Rose (1924); **14.** *Crim.* No. 5607a
— *v.* — (1928); **15.** *Crim.* No. 8640a
— *v.* Rosen (1931); **14.** *Crim.* No. 3145b
— *v.* Rosenfeld (Can.); **37.** *Poor L.* p. 21
— *v.* Ross (Can.) (1884); **15.** *Crim.* p. 80
— *v.* — (1924); **14.** *Crim.* Nos. 3156a
— *v.* — (1934); **14.** *Crim.* No. 6072c

R. *v.* Ross (Can.) (1927); **14.** *Crim.* p. 17; **15.** *Crim.* p. 103
— *v.* — (Can.) (1929); **14.** *Crim.* p. 29
— *v.* — (Can.) (1934); **14.** *Crim.* p. 32
— *v.* Rossignol (Can.); **30.** *Intox.* p. 17
— *v.* Roteliuk (Can.); **14.** *Crim.* p. 42
— *v.* Rothfield (1937); **14.** *Crim.* No. 1914a
— *v.* Rotterman (Can.); **30.** *Intox.* p. 1
— *v.* Rouble (Can.); **30.** *Intox.* p. 18
— (Workman) *v.* Roulet (Can.); **38.** *Pub. Hlth.* p. 16
— *v.* Rouse (Can.); **25.** *Food*, p. 10
— *v.* Rousseau (Can.); **30.** *Intox.* p. 16
— *v.* Rovonelli (Can.); **14.** *Crim.* p. 22
— *v.* Rowan (Can.); **30.** *Intox.* p. 15
— *v.* Roy (Can.), [1923] 2 D. L. R. 1182; **5.** *Bkpcy.* p. 88
— (Emery) *v.* Roy (Can.), [1923] 2 W. W. R. 400; **5.** *Bkpcy.* p. 89
— *v.* Roy (Can.) (1931); **30.** *Intox.* p. 17
— *v.* —, *Ex p.* Duguenne (Can.); **26.** *Hghys.* p. 20
— *v.* Royal Bank of Canada (Can.); **1.** *Agcy.* p. 60; **3.** *Bank.* p. 30
— *v.* Royal Nova Scotia Yacht Squadron (Can.); **11.** *Comp. Pche.* p. 5
— *v.* Rozonowski (Can.); **15.** *Crim.* p. 86; **16.** *Cr. Pract.* p. 43
— *v.* Ruddick (Can.); **17.** *Dep.* p. 51; **30.** *Intox.* p. 10; **42.** *Stats.* p. 30
— *v.* Rule (1937); **32.** *Libel*, No. 1630a
— *v.* Rump (Can.); **14.** *Crim.* p. 5
— *v.* Rumsey & Morthen No. 551 Municipal District (Can.); **38.** *Real Prop.* p. 94
— *v.* Runions (Can.); **14.** *Crim.* p. 32
— *v.* Runner (Can.); **14.** *Crim.* p. 56
— *v.* Russell (1925); **14.** *Crim.* No. 4994d
— *v.* — (Aus.); **14.** *Crim.* p. 4
— *v.* — (Can.); **14.** *Crim.* p. 69
— *v.* Rutherford (Can.); **33.** *Mags.* p. 24
— *v.* Rutt (1928); **14.** *Crim.* No. 5285b
— *v.* Ryall (Can.); **30.** *Intox.* p. 1
— *v.* Ryan (Aus.); **14.** *Crim.* p. 10
— *v.* — (Can.); **16.** *Cr. Pract.* p. 42
— *v.* — (Nfld.); **17.** *Dep.* p. 75
— *v.* Rye (Mayor) (1759); **13.** *Corpns.* No. 866
— *v.* Sacco (Can.); **14.** *Crim.* p. 32
— *v.* Safeway Stores, Ltd. (No. 1) (Can.); **33.** *Mags.* p. 25
— *v.* — (No. 2) (Can.); **33.** *Mags.* p. 38
— *v.* — (No. 3) (Can.); **44.** *Wghts.* p. 10
— *v.* Safroniuk (Can.); **14.** *Crim.* p. 68
— *v.* Safruk (Can.); **16.** *Cr. Pract.* p. 42
— *v.* Saigal (Ind.); **15.** *Crim.* p. 78
— *v.* St. Elmo Hotel Co., Ltd. (Can.); **30.** *Intox.* p. 15
— *v.* St. Eloi (Can.); **30.** *Intox.* p. 18
— *v.* St. Kilda City, *Ex p.* Rodd (Aus.); **38.** *Pub. Hlth.* p. 19
— *v.* St. Mary, Newington (Governors) (1848); **20.** *Elect.* No. 1154a
— *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928); **28.** *Inc. T.* No. 625a
— *v.* St. Matthew's, Bethnal Green (1767); **34.** *Mast. & S.* No. 4230a
— *v.* St. Peters (Can.); **19.** *Educ.* p. 41
— *v.* Sales Services, Ltd. (Can.); **17.** *Dep.* p. 53
— *v.* Salford Assessment Committee, *Ex p.* Ogden (1937); **38.** *Rates*, No. 1146d
— *v.* Salman (1924); **14.** *Crim.* No. 6068a
— *v.* Salt (Can.); **42.** *Str. Traf.* p. 57
— *v.* Sam (Charlie) (Can.); **34.** *Med.* p. 193
— *v.* Sam Chin (Can.); **14.** *Crim.* p. 75
— *v.* Sam Chow (Can.); **25.** *Gaming*, p. 39
— *v.* Sam Hing (Can.); **33.** *Mags.* p. 24
— *v.* Sampson (Can.); **14.** *Crim.* p. 39
— *v.* — (No. 2) (Can.); **15.** *Crim.* p. 89
R. *v.* Sandbach, *Ex p.* Williams (1935); **14.** *Crim.* No. 5420a; **33.** *Mags.* No. 744a
— *v.* Sanford (Can.); **14.** *Crim.* p. 72
— *v.* Sankey (1830); **13.** *Corpns.* No. 865
— *v.* — (Can.); **14.** *Crim.* p. 9
— *v.* Sansome (Can.); **14.** *Crim.* p. 73
— *v.* Satish Chandra Singha (Ind.); **14.** *Crim.* p. 46
— *v.* Satya Ranjan Bakshi (Ind.); **15.** *Crim.* p. 78
— *v.* Saunders (1924); **14.** *Crim.* Nos. 1913a, 5081a
— *v.* — (1931); **14.** *Crim.* No. 6178c
— *v.* Savich (Can.); **14.** *Crim.* p. 2; **30.** *Intox.* p. 18
— *v.* Sawyer (Aus.); **15.** *Crim.* p. 106
— *v.* Sayward Trading & Ranching Co., Ltd. (Can.); **11.** *Const. L.* p. 68
— *v.* Sayyad Habib (Ind.); **16.** *Cntmpt.* p. 2
— *v.* Scharf (Can.); **16.** *Cr. Pract.* p. 28
— *v.* Scheer (Can.); **14.** *Crim.* p. 34
— *v.* Schellman (Can.); **30.** *Intox.* p. 9; *Juries*, p. 31
— *v.* Schemmer (Can.); **15.** *Crim.* p. 95
— *v.* Schier (Can.); **14.** *Crim.* p. 48
— *v.* Schmidt & Edlung (Can.); **15.** *Crim.* p. 99
— *v.* Schneider (Can.); **14.** *Crim.* pp. 3, 9
— *v.* Schofield (1931); **14.** *Crim.* No. 5057h
— *v.* Scholes (1932); **14.** *Crim.* No. 5148q
— *v.* Schoppelrei (Can.); **2.** *Aliens.* p. 49
— *v.* Schram (Can.); **14.** *Crim.* p. 16
— *v.* Schwanbeck (Can.); **33.** *Mags.* pp. 29, 30
— *v.* Schwartz (Can.); **15.** *Crim.* p. 105
— *v.* Schwarz (Aus.); **22.** *Evid.* pp. 2, 4, 5
— *v.* Schweller (1924); **14.** *Crim.* No 1900a
— *v.* Scoffin (1930); **14.** *Crim.* No. 5240b
— *v.* Scott (1924); **14.** *Crim.* No. 5581a
— *v.* — (Can.) (1851); **16.** *Cr. Pract.* p. 36
— *v.* — (Can.) (1925); **15.** *Crim.* p. 97
— *v.* — (Can.), [1929] 1 D. L. R. 842; **14.** *Crim.* p. 60
— *v.* — (Can.), [1929] 3 W. W. R. 70; **33.** *Mags.* p. 30
— *v.* — (Can.) (1932); **15.** *Crim.* p. 96
— *v.* — (No. 2) (Can.); **17.** *Dep.* p. 80
— *v.* —, *Ex p.* Scott (Aus.); **25.** *Gaming*, p. 32
— *v.* Scott & Killick (Can.); **14.** *Crim.* p. 5
— *v.* Scott & Williamson (Can.); **14.** *Crim.* p. 59
— *v.* Seabrooke (Can.); **14.** *Crim.* p. 40
— *v.* Seaman (Can.); **11.** *Const. L.* p. 76
— *v.* Searle (1922); **14.** *Crim.* No. 5373c
— *v.* — (Can.); **15.** *Crim.* p. 104
— *v.* Seaton (N.Z.); **15.** *Crim.* p. 97; **30.** *Jdgmts.* p. 27
— *v.* Seaton & Flanagan (1928); **14.** *Crim.* No. 5119a
— *v.* Secretary of State for Home Affairs, *Ex p.* O'Brien (1923); **16.** *Cr. Pract.* Nos. 601, 801
— *v.* —, *Ex p.* Venicoff (1920); **2.** *Aliens*, No. 551a
— *v.* See Lun & Welsh (Aus.); **14.** *Crim.* p. 5
— *v.* Seely (1928); **15.** *Crim.* No. 11,038a
— *v.* Segal (Can.) (1925); **14.** *Crim.* p. 6
— *v.* — (Can.) (1930); **14.** *Crim.* p. 70
— *v.* Seguire (Can.); **14.** *Crim.* p. 6
— *v.* Seilke (Can.); **30.** *Intox.* p. 13
— *v.* Selkirk (1925); **14.** *Crim.* No. 1436a
— *v.* Selock (Can.); **14.** *Crim.* p. 12; **25.** *Gaming*, p. 31
— *v.* Servetnyk (Can.); **33.** *Mags.* p. 30
— *v.* Settle (Can.); **14.** *Crim.* pp. 61, 62
— *v.* Sevick (Can.); **15.** *Crim.* p. 81
— *v.* Seymour (1927); **14.** *Crim.* No. 2105a
— *v.* — (Can.); **15.** *Crim.* p. 95
— *v.* Shaffner (1920); **2.** *Aliens*, No. 543a
— *v.* Shaid (Can.); **14.** *Crim.* p. 6
— *v.* Shannon (Can.); **16.** *Cr. Pract.* p. 36
— *v.* Sharman (1925); **14.** *Crim.* No. 6183a
— *v.* Sharp 1931); **14.** *Crim.* No. 6169n
— *v.* Sharpe (1938); **15.** *Crim.* No. 7548a

R. (Lamson) *v.* Sharpe & Inglis (Can.); **16.** *Cr. Pract.* p. 38
— *v.* Shaw (Can.); **15.** *Crim.* p. 98
— *v.* Shawra (Can.); **13.** *Corpns.* p. 28; **38.** *Pub. Hlth.* p. 16
— *v.* Shea's Winnipeg Brewery, Ltd. (Can.); **30.** *Intox.* p. 12
— *v.* Sheaf (1925); **15.** *Crim.* Nos. 10,315a, 10,326a
— *v.* Shearwater Co., Ltd. (Can.); **39.** *Revenue*, p. 11
— *v.* Sheffield Confirming Authority, *Ex p.* Truswell's Brewery Co., Ltd. (1937); **33.** *Mags.* No. 112a
— *v.* Sheffield J.J., *Ex p.* Rawson (T.) & Co., Ltd. (1927); **30.** *Intox.* Nos. 202a, 381b
— *v.* Shellman (Can.); **30.** *Intox.* p. 9; *Juries*, p. 31
— *v.* Shelly (Can.); **39.** *Revenue*, p. 15
— *v.* Shemit (Can.); **14.** *Crim.* p. 47
— *v.* Shendan (Can.); **17.** *Dep.* p. 39
— *v.* Shenowski (Can.); **42.** *Time*, p. 75
— *v.* Shepherd (Can.); **15.** *Crim.* p. 86
— *v.* Sherbrooke (Can.); **44.** *Waters*, p. 8
— *v.* Sheridan (1937); **14.** *Crim.* No. 3570a; **33.** *Mags.* No. 331a
— *v.* Sherrard, *Re* Nuttall (1888); **30.** *Intox.* No. 543
— *v.* Shewbrooks (Can.); **7.** *Bldg. Conts.* p. 32
— *v.* Shin Shim (Can.); **2.** *Aliens*, p. 50
— *v.* Shirland (1314); **11.** *Comns.* No. 349a
— *v.* Shoreditch County Court Registrar, *Ex p.* Saxon Finance Corpn., Ltd. (1938); **13.** *Cty. Cts.* No. 138a
— *v.* Short (1932); **14.** *Crim.* No. 572a
— *v.* — (Can.); **30.** *Intox.* p. 17
— *v.* Short, Grealey & Plint (Aus.); **14.** *Crim.* p. 66
— *v.* Shul (Can.); **30.** *Intox.* p. 18
— *v.* Shumarin (Can.); **14.** *Crim.* p. 62
— *v.* Silverman (1935); **14.** *Crim.* No. 5376a
— *v.* Silverstone (Can.) (1931); **14.** *Crim.* p. 4
— *v.* — (Can.) (1934); **14.** *Crim.* p. 45
— *v.* Simard (Can.); **15.** *Crim.* p. 84
— *v.* Simington (Can.); **14.** *Crim.* p. 6
— *v.* Simmonds (1835); **37.** *Prsns.* No. 32a
— *v.* Simmons (1931); **15.** *Crim.* No. 9323a
— *v.* — (Can.) (1934); **34.** *Med.* p. 191
— *v.* — (Can.) (1936); **30.** *Intox.* p. 12
— *v.* — (Can.) (1937); **30.** *Intox.* p. 12
— *v.* — (Can.) (1938); **30.** *Intox.* p. 12
— *v.* Simms (Can.); **14.** *Crim.* p. 70
— *v.* Simon (Can.); **30.** *Intox.* p. 17
— (Weeks) *v.* Simon (Can.); **39.** *Revenue*, p. 26
— *v.* Simoneau (Can.); **17.** *Dep.* p. 57
— *v.* Simovitch (Can.); **30.** *Intox.* p. 13
— (Thom) *v.* Simpkin (No. 2) (Can.); **42.** *Str. Traf.* p. 43
— *v.* Sinclair (Can.); **11.** *Const. L.* p. 76
— *v.* Sing (Can.); **14.** *Crim.* p. 24
— *v.* Singer (Can.); **43.** *Trade*, p. 1
— *v.* Sipes (Can.); **14.** *Crim.* p. 9
— *v.* Sirkis (Can.); **17.** *Dep.* p. 54
— *v.* Siroy (Can.); **33.** *Mags.* p. 28
— *v.* Skelly (Can.); **14.** *Crim.* p. 46
— *v.* Skibo (Can.); **33.** *Mags.* p. 37
— *v.* Skilling (Can.); **37.** *Poor L.* p. 17
— *v.* Slaughenwhite (Can.) (1930); **14.** *Crim.* p. 32
— *v.* — (Can.) (1934); **17.** *Dep.* p. 51
— *v.* Slee (Can.); **14.** *Crim.* p. 70
— *v.* Slender (1931); **14.** *Crim.* No. 6169m
— *v.* — (1938); **14.** *Crim.* No. 4066a
— *v.* Slinn (Can.); **14.** *Crim.* p. 56
— *v.* Slipp, *Ex p.* Basque (Can.); **33.** *Mags.* p. 37
— *v.* —, *Ex p.* Gardiner (Can.); **16.** *Cr. Pract.* p. 28
— *v.* Sliworski (Can.); **30.** *Intox.* p. 16
R. *v.* Sloane (Can.); **14.** *Crim.* p. 75
— *v.* Sluggett (Can.); **20.** *Elect.* p. 6
— *v.* Slusar (Can.); **15.** *Crim.* p. 107
— *v.* Smart (Can.); **14.** *Crim.* p. 41; **15.** *Crim.* p. 92
— *v.* Smart & Young (Can.); **22.** *Evid.* p. 15
— *v.* Smee (1928); **14.** *Crim.* No. 5243a
— *v.* Smethwick Confirming Authority, *Ex p.* Holt Brewery Co., Ltd. (1929); **30.** *Intox.* Nos. 55a, 366a
— *v.* Smith (1814); **13.** *Corpns.* No. 596a
— *v.* — (1886); **3.** *Basty.* No. 384
— *v.* — (1924); **14.** *Crim.* Nos. 4878a, 4972a, 5927b, 6066a; **15.** *Crim.* No. 10,315b
— *v.* — (1925); **14.** *Crim.* Nos. 1810b, 5550a
— *v.* — (1926); **14.** *Crim.* No. 1913d
— *v.* — (1929); **14.** *Crim.* No. 4994k
— *v.* — (1931), 22 Cr. App. Rep. 180; **14.** *Crim.* No. 5938c
— *v.* — (1931), 23 Cr. App. Rep. 135; **14.** *Crim.* Nos. 3165f, 5965c
— *v.* — (1935); **14.** *Crim.* Nos. 6034d, 6047d
— *v.* — (Bermuda); **14.** *Crim.* p. 29
— *v.* — (Can.) (1878); **38.** *Rys.* p. 37
— *v.* — (Can.) (1924), 43 Can. Crim. Cas. 24; **14.** *Crim.* p. 10
— *v.* — (Can.), [1924] 4 D. L. R. 427; **34.** *Med.* p. 193
— *v.* — (Can.) (1925); **3.** *Bank.* p. 20
— *v.* — (Can.) (1926), 37 B. C. R. 248; **25.** *Gaming*, p. 37
— *v.* — (Can.), [1926] 3 D. L. R. 419; **30.** *Intox.* p. 15
— *v.* — (Can.) (1927); **14.** *Crim.* p. 13; **30.** *Intox.* p. 12
— *v.* — (Can.) (1929), 52 Can. Crim. Cas. 193; **14.** *Crim.* p. 41
— *v.* — (Can.), [1929] 3 W. W. R. 387; **14.** *Crim.* p. 64; **30.** *Intox.* p. 17
— *v.* — (Can.) (1930); **15.** *Crim.* p. 82
— *v.* — (Can.) (1931); **14.** *Crim.* p. 39
— *v.* — (Can.) (1932); **33.** *Mags.* p. 27
— *v.* — (Can.) (1935); **25.** *Game*, p. 24
— *v.* — (Can.) (1936); **14.** *Crim.* p. 62
— (Parker) *v.* Smith (Can.); **33.** *Mags.* p. 27
— (Provincial Treasurer of Alberta) *v.* Smith (Can.); **18.** *Discy.* p. 17
— *v.* Smith, *Ex p.* Porter (1927); **18.** *Distr.* No. 1588a
— (Threlkeld) *v.* Smith & Stewart (Can.); **2.** *Animals*, p. 65
— *v.* Smith Incubator Co. & Buckeye Incubator Co. (Can.); **36.** *Pats.* p. 67
— *v.* Smothers (Can.); **14.** *Crim.* p. 18
— *v.* Smuck (Can.); **33.** *L. G.* p. 1
— *v.* Snare (Can.); **30.** *Intox.* p. 12
— *v.* Snyder, *Re* (Can.); **30.** *Intox.* p. 15
— *v.* Soanes (1931); **14.** *Crim.* No. 6178d
— *v.* Solloway (Can.) (1930); **33.** *Mags.* p. 27
— *v.* — (Can.) (1934); **14.** *Crim.* p. 9
— *v.* —, *Re, Ex p.* Chalmers (Can.); **16.** *Cntmpt.* p. 4
— *v.* Solloway & Mills, *Re* (Can.) (1930); 54 Can. C. C. 214; **14.** *Crim.* p. 14; **17.** *Dep.* p. 43
— *v.* — (Can.) (1930), 54 Can. C. C. 248; **14.** *Crim.* p. 14
— *v.* — (Can.), [1930] 3 D. L. R. 770; **14.** *Crim.* p. 14
— *v.* — (Can.), [1930] 2 W. W. R. 516; **42.** *Stk. Ex.* p. 31
— *v.* Solomon (Can.); **14.** *Crim.* p. 20
— *v.* Somers (Can.); **14.** *Crim.* p. 32
— *v.* Somerville Cannery Co., Ltd. (Can.); **17.** *Dep.* p. 40
— *v.* Soo Gong (Can.); **34.** *Med.* p. 193
— *v.* Soo Kit Sang (Can.); **25.** *Gaming*, p. 32

R. *v.* Sorvari (Can.); **15.** *Crim.* p. 86
— *v.* South-Eastern Essex Assessment Committee, *Ex p.* Patterson (1935); **38.** *Rates*, No. 1161a
— *v.* South-Eastern Traffic Comrs., *Ex p.* Valliant Direct Coaches, Ltd. (1937); **42.** *Str. Traf.* No. 76x
— *v.* Southampton County Confirming Committee, *Ex p.* Slade (1929); **30.** *Intox.* Nos. 292a, 293a
— *v.* Southampton Justices, *Ex p.* Tweedie (1932); **42.** *Str. Traf.* No. 222c
— *v.* Southern (1929); **14.** *Crim.* Nos. 3156f, 4816a, 4823a, 6067c, 6078d
— *v.* Southern Canada Power Co., Ltd. (1937); **38.** *Pub. Auth.* No. 291a
— *v.* — (Can.); **38.** *Rys.* p. 35
— *v.* Spears (Can.); **30.** *Intox.* p. 11
— *v.* Speidel (Can.); **14.** *Crim.* p. 7; **30.** *Juries*, p. 31
— *v.* Speigal (Can.); **1.** *Agcy.* p. 107
— *v.* Speirs (Can.); **16.** *Cr. Pract.* p. 33
— *v.* Spellen (1931); **14.** *Crim.* Nos. 3156g, 6169o
— *v.* Speron (Can.); **14.** *Crim.* p. 64
— (Symons) *v.* Springer (Can.); **42.** *Stk. Ex.* p. 34
— *v.* Spruce Grove Municipal District (Can.); **41.** *Sewers*, p. 3
— *v.* Stachow (Can.); **2.** *Aliens*, p. 50
— *v.* Stacpoole (Can.); **30.** *Intox.* p. 16
— (Cleaver) *v.* Stacpoole, *Re* Rafter (Can.); **3.** *Basty.* p. 65
— *v.* Stacpoole & Stubbs (Can.); **16.** *Cr. Pract.* p. 35
— *v.* Stagg (Can.); **14.** *Crim.* p. 10
— *v.* Staines, *Ex p.* O'Connor (Aus.); **13.** *Crnrs.* p. 24
— *v.* Stamford Township & McKeowr (Can.); **17.** *Dep.* p. 57
— *v.* Standard Finance Corpn., Ltd. (Can.); **30.** *Intox.* p. 18
— (Canadian Pacific Ry. Co. & Miller) *v.* Standell (Can.); **8.** *Carr.* p. 16
— *v.* Stanley (1927); **14.** *Crim.* No. 4826b
— *v.* — (Can.); **17.** *Dep.* p. 57
— *v.* Stapley (1934); **14.** *Crim.* No. 2115b
— *v.* Star, Daily Telegraph & New Leader (Editors, Printers & Publishers), *Ex p.* Goulding (1934); **16.** *Cntmpt.* No. 204a
— *v.* Stark (Can.); **15.** *Crim.* p. 92
— *v.* Starkie (1932), 24 Cr. App. Rep. 1; **14.** *Crim.* No. 1443f
— *v.* — (1932), 76 Sol. Jo. 780; **14.** *Crim.* No. 4717d
— *v.* Stasiuk (Can.); **14.** *Crim.* p. 46
— *v.* Stawycznuj (Can.); **14.** *Crim.* p. 35
— *v.* Steele (Can.); **30.** *Intox.* p. 12
— *v.* Stein (Can.); **25.** *Gaming*, p. 30; **30.** *Jdgmts.* p. 28
— *v.* Steinburg (Can.); **14.** *Crim.* p. 31
— *v.* Stenson & Winterbottom (1930); **14.** *Crim.* No. 5239a
— *v.* Stephens (Can.); **33.** *Mags.* p. 27
— *v.* Stephenson (Can.); **16.** *Cr. Pract.* p. 36; **20.** *Elect.* p. 1
— *v.* Stepney Corpn., *Ex p.* Walker (John) & Sons, Ltd. (1934); **16.** *Cr. Pract.* No. 925b; **38.** *Rates*, No. 1564a
— *v.* Stern (Can.); **15.** *Crim.* p. 95
— *v.* Stevens (1913); **14.** *Crim.* No. 4824a
— *v.* — (1933); **14.** *Crim.* No. 3391b
— *v.* Stevenson (Can.); **27.** *H. & W.* p. 78
— *v.* Stewart (1931), 23 Cr. App. Rep. 61; **14.** *Crim.* No. 5239d
— *v.* — (1931), 23 Cr. App. Rep. 68; **14.** *Crim.* No. 1443d
— *v.* — (1931), 23 Cr. App. Rep. 82; **14.** *Crim.* No. 1334a
R. *v.* Stewart (1932); **15.** *Crim.* No. 10,729a
— *v.* — (Aus.); **15.** *Crim.* p. 100
— *v.* — (Can.) (1929); **33.** *Mkts.* p. 43
— *v.* — (Can.) (1930), 57 C. C. C. 169; **14.** *Crim.* p. 68
— *v.* — (Can.) (1930), 2 M. P. R. 400; **14.** *Crim.* p. 63
— *v.* — (Can.), [1930] 1 W. W. R. 941; **30.** *Intox.* p. 15
— *v.* — (Can.) (1932); **14.** *Crim.* p. 72
— *v.* — (Can.) (1934); **15.** *Crim.* p. 79
— (Steel) *v.* Stewart (Can.); **2.** *Animals*, p. 56
— (Morris) *v.* Stimmel (Can.); **3.** *Auct.* p. 1
— *v.* Stinson (Can.); **15.** *Crim.* p. 95
— *v.* Stobie & Forlong (Can.); **22.** *Evid.* p. 15
— *v.* Stokell (1924); **14.** *Crim.* No. 5303b
— *v.* Stokes (1925); **14.** *Crim.* No. 3362a
— *v.* Stone (1937); **15.** *Crim.* No. 8498a
— *v.* — (Can.) (1892); **17.** *Dep.* p. 40
— *v.* — (Can.) (1932); **14.** *Crim.* p. 22
— (Orme) *v.* Stonehouse (Can.); **25.** *Food*, p. 12
— *v.* Stonehouse & Pasquale (Can.); **14.** *Crim.* p. 38
— *v.* Storie (Can.); **42.** *Str. Traf.* p. 49
— *v.* Strickson (1936); **14.** *Crim.* No. 6261a
— *v.* Stricky (Can.); **15.** *Crim.* p. 98
— *v.* Stringer (1933); **42.** *Str. Traf.* No. 222f
— *v.* — (1938); **15.** *Crim.* No. 7548a
— *v.* Strong & Stannard (Aus.); **14.** *Crim.* p. 10
— *v.* Stroud, *Ex p.* Stroud (1928); **14.** *Crim.* No. 1790a
— *v.* Stuart (1927); **15.** *Crim.* No. 10,505a
— *v* — (Can.); **17.** *Dep.* p. 41
— *v.* Stubbs (1913); **14.** *Crim.* No. 5010a
— *v.* —, *Re* Gross (Can.); **33.** *Mags.* p. 34
— *v.* Sue Sun Poy (No. 1) (Can.); **2.** *Aliens*, p. 51
— *v.* Sugarman (1935); **14.** *Crim.* No. 4717c
— *v.* Sukh Dev (Ind.); **14.** *Crim.* p. 22; **42.** *Stats.* p. 26
— *v.* Sullivan (Can.) (1914); **14.** *Crim.* p. 16
— *v.* — (Can.) (1924); **18.** *Distr.* p. 27
— *v.* — (Can.) (1930); **8.** *Clubs*, p. 102
— *v.* — (Can.) (1935); **14.** *Crim.* p. 61
— *v.* Sunderland & Sunderland (Aus.); **14.** *Crim.* p. 60
— *v.* Surrey Comet, *Ex p.* Baldwin (1931); **16.** *Cntmpt.* No. 179a
— *v.* Surrey County Assessment Committee, North-Eastern Area, *Ex p.* Woolworth & Co. (1933); **38.** *Rates*, No. 1168a
— *v.* Surrey Justices, *Ex p.* Witherick (1932); **33.** *Mags.* No. 643a; **42.** *Str. Traf.* No. 222a
— *v.* Surrogate Court Judge, *Re* Macdonald (No. 2) (Can.); **23.** *Exors.* p. 7
— *v.* Sussex Confirming Authority, *Ex p.* Tamplin & Sons' Brewery (Brighton), Ltd. (1937); **30.** *Intox.* No. 308c
— *v.* Sussex JJ. (1850); **4.** *Bkpcy.* No. 3001
— *v.* —, *Ex p.* Bubb (1933); **30.** *Intox.* No. 582a
— *v.* —, *Ex p.* Bubb (1934); **30.** *Intox.* No. 582c
— *v.* Sutcliffe (Can.); **34.** *Med.* p. 191
— *v.* Sutherland (Can.) (1928); **33.** *Mags.* p. 38
— *v.* — (Can.) (1930); **43.** *Trade*, p. 2
— *v.* — (Can.) (1933); **36.** *Negl.* p. 30
— *v.* — (S. Af.); **14.** *Crim.* p. 26
— *v.* Sutton (Aus.); **17.** *Dep.* p. 60
— *v.* Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co. (1925); **16.** *Cr. Pract.* No. 2149a
— *v.* Swanson (Can.); **30.** *Intox.* p. 14
— *v.* Swanstrom (Can.); **2.** *Agric.* p. 23
— *v.* Swityk (Can.); **15.** *Crim.* p. 102
— *v.* Switzer (Can.); **14.** *Crim.* p. 46
— *v.* Switzki (Can.); **33.** *Mags.* p. 30
— *v.* Sydorik & Zowatski (Can.); **14.** *Crim.* p. 74
— *v.* Sykes (1930); **14.** *Crim.* No. 5624a
— *v.* Syliboy (Can.); **25.** *Game*, p. 21

R. *v.* Symonds (1924); **14.** *Crim.* No. 3010a
— *v.* Synowizswa (Can.); **14.** *Crim.* p. 45
— *v.* Szczenslive (1936); **2.** *Aliens*, No. 553e
— *v.* Takagishi (Can.); **14.** *Crim.* p. 21
— *v.* Takhar (Can.); **2.** *Aliens*, p. 50
— *v.* Talbot (Can.); **33.** *Mags.* p. 36
— *v.* Tanchuk (Can.); **30.** *Intox.* p. 17
— *v.* Tannen (1927); **15.** *Crim.* No. 10,505a
— *v.* Tanner (1910); **14.** *Crim.* No. 5156a
— *v.* Tarchuk (Can.); **37.** *Prsns.* p. 33
— *v.* Tauman (1931), 23 Cr. App. Rep. 44; **14.** *Crim.* No. 5840b
— *v.* — (1931), 23 Cr. App. Rep. 125; **14.** *Crim.* No. 5628d
— *v.* Tavener & Tobitt (1928); **14.** *Crim.* No. 5992a
— *v.* Taylor (1924); **14.** *Crim.* Nos. 3165b, 4994a, 5806a
— *v.* — (*alias* Saunders, *alias* Wallace) (1924); **14.** *Crim.* Nos. 1913a, 5081a
— *v.* — (1926); **14.** *Crim.* Nos. 5092b, 5314a
— *v.* — (1927); **15.** *Crim.* No. 10,505a
— *v.* — (1934); **14.** *Crim.* No. 3855a
— *v.* — (Can.) (1932); **42.** *Str. Traf.* p. 43
— *v.* — (Can.) (1936); **15.** *Crim.* p. 95
— *v.* Taylor & Young (Can.); **14.** *Crim.* p. 59
— *v.* Taylor, Weaver & Donovan (1928); **14.** *Crim.* No. 3792a
— *v.* Teape-White (1930); **14.** *Crim.* No. 2119a
— *v.* Tearne (1930); **14.** *Crim.* No. 5003b
— *v.* Tebbitt (1912); **14.** *Crim.* No. 2571a
— *v.* Teesdale (1927); **14.** *Crim.* No. 1031a
— *v.* Ten Chinamen (Can.); **16.** *Cr. Pract.* p. 30
— *v.* Teneyck (Can.); **14.** *Crim.* p. 72
— *v.* Terry (1924); **14.** *Crim.* No. 4974a
— *v.* Tessier (Can.); **4.** *Bkpcy.* p. 5; **11.** *Const. L.* p. 68
— *v.* Tews (Can.); **14.** *Crim.* p. 59
— *v.* Thavarmal Rupchand (Ind.); **25.** *Gaming*, pp. 31, 32
— *v.* Theale. *See* Theal *v.* R., Vol. 15, p. 774
— *v.* Theil (Can.); **42.** *Theatres*, p. 71
— *v.* Theirlynck (Can.); **15.** *Crim.* p. 85
— *v.* Theirlyock (Can.); **14.** *Crim.* p. 21
— *v.* Thernes (Can.); **15.** *Crim.* p. 78
— *v.* Thibault (Can.); **16.** *Cr. Pract.* p. 36
— *v.* Thibeault (Can.); **14.** *Crim.* p. 66
— *v.* Thoem (Can.); **15.** *Crim.* p. 77
— *v.* Thomas (otherwise Williams) (1928); **14.** *Crim.* No. 5369b
— *v.* Thomas (1931), 23 Cr. App. Rep. 21; **14.** *Crim.* No. 1981a
— *v.* — (1931), 23 Cr. App. Rep. 36; **14.** *Crim.* Nos. 4062b, 5910a
— *v.* — (1933); **30.** *Jurics*, No. 640a
— *v.* — (Aus.); **14.** *Crim.* p. 63
— *v.* — (Can.) (1928); **15.** *Crim.* p. 99
— *v.* — (Can.) (1934); **8.** *Clubs*, p. 102
— *v.* — (Can.) (1938); **15.** *Crim.* p. 86
— *v.* Thompson (1925); **14.** *Crim.* No. 5585a
— *v.* — (1931); **14.** *Crim.* No. 5244b
— *v.* — (Aus.); **15.** *Crim.* p. 97
— *v.* — (Can.) (1928); **14.** *Crim.* pp. 17, 63; **33.** *Mags.* p. 25
— *v.* — (Can.) (1929); **30.** *Intox.* p. 18
— *v.* — (Can.) (1931); **30.** *Jdgmts.* p. 28; **42.** *Time*, p. 73
— (Donald) *v.* Thompson (Can.); **33.** *Mags.* p. 34
— *v.* — (No. 1) (Can.); **38.** *Pub. Hlth.* p. 14
— *v.* Thompson, R. *v.* Foulkes (Can.); **14.** *Crim.* p. 21
— *v.* Thomson (Can.); **15.** *Crim.* p. 101
— *v.* Thorn (1841); **15.** *Crim.* No. 11,946a
— *v.* Thornbert (Can.); **33.** *Mkts.* p. 43
— *v.* Thorne (1925); **14.** *Crim.* No. 5800a
R. *v.* Thorne (Can.) (1926); **19.** *Educ.* p. 47
— *v.* Thornton (Can.); **14.** *Crim.* p. 6
— *v.* Thorpe (1925); **14.** *Crim.* Nos. 3146a, 3179a
— *v.* Thorsby Traders, Ltd. (Can.); **25.** *Food*, p. 12
— *v.* Tidmarsh (1931); **3.** *Barr.* No. 155a; **14.** *Crim.* No. 3925a
— *v.* Tilbury (Can.); **30.** *Intox.* p. 13
— *v.* Tilford (Can.); **14.** *Crim.* p. 36
— (Eustace) *v.* Tipperary County District Justice (Ir.); **16.** *Cr. Pract.* p. 42
— *v.* Titles Registrar, *Ex p.* Moss (Aus.); **16.** *Cr. Pract.* pp. 31, 33; **38.** *Real Prop.* p. 86
— *v.* Tivnan (1864); **15.** *Crim.* Nos. 7850, 7851a
— *v.* Todorek (Can.); **14.** *Crim.* p. 70
— *v.* Tokarchuk (Can.); **30.** *Intox.* p. 13
— *v.* Tolhurst (Can.); **27.** *H. & W.* p. 25
— *v.* Tomasso (1934); **14.** *Crim.* No. 4717e; **15.** *Crim.* No. 7800a
— *v.* Tomasson (Can.); **17.** *Dep.* p. 40
— *v.* Tommy (Can.); **14.** *Crim.* p. 45
— *v.* Tong Wah (Can.); **14.** *Crim.* p. 28
— *v.* Toronto Transportation Commission (Can.); **42.** *Str. Traf.* p. 59
— *v.* Towers (1929); **14.** *Crim.* 5616a
— *v.* Townsend (1924); **14.** *Crim.* Nos. 2102a, 5049a, 5217a
— *v.* Tracey (Can.); **15.** *Crim.* p. 79
— *v.* Trachuk (Can.); **14.** *Crim.* p. 31
— *v.* Traffic Comrs. for South Eastern Traffic Area, *Ex p.* Valliant Direct Coaches, Ltd. (1937); **42.** *Str. Traf.* Nos. 76x, 76y, 76z
— *v.* Trainmen's Club (Can.); **25.** *Gaming*, p. 30
— (Isman) *v.* Tran (Can.); **20.** *Elec.* p. 5; **33** *L. G.* p. 1
— *v.* Treanor (Ir.); **14.** *Crim.* pp. 25, 29, 39
— *v.* Tremayne (1932); **14.** *Crim.* No. 6186b
— *v.* Tresegne (Can.); **15.** *Crim.* p. 92
— *v.* Triffitt (1938); **14.** *Crim.* No. 5274a
— *v.* Tronson (Can.); **11.** *Const. L.* p. 68
— *v.* Trott (1927); **14.** *Crim.* No. 5049c
— *v.* Trowbridge (1932); **14.** *Crim.* No. 5148p
— *v.* Trucker (Can.); **33.** *Mags.* p. 35
— *v.* Truro (Bishop) (1937); **19.** *Eccl.* No. 627b
— *v.* Tuddenham (Can.); **30.** *Intox.* p. 15
— *v.* Tulshi Das (Ind.); **25.** *Gaming*, p. 33
— *v.* Turcotte (Can.); **30.** *Intox.* p. 11
— *v.* Turkington (1930); **14.** *Crim.* Nos. 5643a, 5965a
— *v.* Turnbull (1926); **14.** *Crim.* No. 5369a
— *v.* Turner (1924); **14.** *Crim.* No. 5039a
— *v.* — (1926); **14.** *Crim.* Nos. 4129b, 4351b
— *v.* — (1932); **14.** *Crim.* No. 6209f
— *v.* — (Can.), [1938] 1 W. W. R. 494; **43.** *Trade*, p. 2
— *v.* — (Can.), [1938] 2 W. W. R. 162; **14.** *Crim.* p. 59
— *v.* Tuttle (1929); **4.** *Bkpcy.* No. 4637a; **14.** *Crim.* Nos. 2204a, 4275a; **15.** *Crim.* Nos. 10345a, 10345b
— *v.* Twardowski (Can.); **30.** *Intox.* p. 13
— *v.* Twicker (Can.); **15.** *Crim.* p. 78
— *v.* Tymko (Can.); **14.** *Crim.* p. 33
— *v.* Tyreman (1925); **14.** *Crim.* Nos. 1913b, 5283a, 5303c, 5359b
— (Meehan) *v.* Tyrone County Chairman & Justices (Ir.); **39.** *Revenue*, p. 25
— *v.* Tyrone County JJ. (Ir.); **38.** *Pub. Hlth.* p. 18
— (McCaughey) *v.* Tyrone County JJ. (Ir.); **39.** *Revenue*, p. 25
— *v.* Ujagar (Ind.); **22.** *Evid.* pp. 10, 19
— (Brooks) *v.* Ulmer (Can.); **17.** *Dep.* pp. 39, 52
— *v.* Umed (Ind.); **14.** *Crim.* p. 4
— *v.* United Profit Sharing System, Ltd. (Can.); **25.** *Gaming*, p. 38
— *v.* Unwin (Can.); **32.** *Libel*, p. 19
— *v.* Upton (1929); **14.** *Crim.* No. 5003a

R. *v.* Uridge (Can.); **14.** *Crim.* p. 59
— *v.* Uridge (No. 2) (Can.); **33.** *Mags.* p. 37
— *v.* Usher (1927); **14.** *Crim.* No. 6209b
— *v.* Vahey (Can.); **28.** *Infts.* p. 143
— *v.* Valade (Can.); **34.** *Med.* p. 194
— *v.* Vale (1938); **14.** *Crim.* No. 5284a
— *v.* Valens (Can.); **42.** *Str. Traf.* p. 49
— *v.* Valentine, *Ex p.* Director of Public Prosecutions (1936); **16.** *Cr. Pract.* No. 2533a
— *v.* Van Bros., Ltd. (Can.); **30.** *Intox.* p. 17
— *v.* Van Dyn (1932); **14.** *Crim.* No. 5581b
— *v.* Van Oudenal (Can.); **15.** *Crim.* p. 102
— *v.* Vancouver Breweries, Ltd. (Can.); **7.** *Bonds*, p. 13
— *v.* Vancouver City (Can.); **11.** *Comp. Pche.* p. 15
— *v.* Vandeweghe, Ltd. (Can.); **39.** *Revenue*, p. 14
— *v.* Vaquier (1924); **14.** *Crim.* No. 6234a
— *v.* Varbeff (Can.); **15.** *Crim.* p. 102
— *v.* Varley (Can.); **14.** *Dep.* p. 51
— *v.* Varlow (1931); **14.** *Crim.* No. 5125h
— *v.* Vayle (1844); **16.** *Cr. Pract.* No. 1749a
— *v.* Vazirally (Ind.); **25.** *Gaming*, p. 37
— *v.* Vent (1935); **14.** *Crim.* No. 2458a
— *v.* Verge (Can.) (1929) 52 Can. Crim. Cas. 146; **30.** *Intox.* p. 17
— *v.* — (Can.) (1936) 52 Can. Crim. Cas. 406; **30.** *Intox.* p. 11
— *v.* Verigin (No. 1) (Can.); **14.** *Crim.* p. 10
— *v.* — (No. 2) (Can.); **14.** *Crim.* p. 66
— *v.* Vesey, *Ex p.* Verhille (Can.); **17.** *Dep.* p. 56
— *v.* Vessey (Can.); **30.** *Intox.* p. 16
— *v.* Victoria District Gold Comr. (Can.); **17.** *Dep.* p. 52
— *v.* Victoria Unit (Army & Navy Veterans) (Can.); **13.** *Corpns.* p. 29
— *v.* Villars (1927); **14.** *Crim.* No. 3120b
— *v.* Vine (Can.); **14.** *Crim.* p. 74
— *v.* — (No. 2) (Can.); **14.** *Crim.* p. 33
— *v.* Vinegratsky (*alias* Vine) (Can.); **14.** *Crim.* p. 74
— *v.* — (otherwise Vine) (No. 2) (Can.); **14.** *Crim.* p. 33
— *v.* Vizzard, *Ex p.* Hill (Aus.); **17.** *Dep.* p. 63
— *v.* Vye (Can.); **14.** *Crim.* p. 62
— *v.* Waddingham (1936); **14.** *Crim.* No. 3179b
— *v.* Wadey (1935); **14.** *Crim.* No. 4729c
— *v.* Wagner (Can.); **22.** *Evid.* p. 6
— *v.* — (No. 2) (Can.); **17.** *Dep.* p. 51
— *v.* Wah Lung (*alias* Wong Wa) (Can.); **14.** *Crim.* p. 56
— *v.* Wah Sing Chow (Can.); **14.** *Crim.* p. 64
— *v.* Wahid Ullah Ahrari (Ind.); **32.** *Libel*, p. 1
— *v.* Wainwright (1925); **14.** *Crim.* No. 3817a
— *v.* Wakabayashi (Can.); **17.** *Dep.* p. 43
— *v.* Walchuk (Can.); **30.** *Intox.* p. 14
— *v.* Walding (1931); **14.** *Crim.* No. 5239e
— *v.* Waldman (1934); **14.** *Crim.* No. 4729b
— *v.* Walker (1927); **14.** *Crim.* No. 3820c
— *v.* — (1934); **14.** *Crim.* Nos. 1985a, 6026a
— *v.* — (Can.) (1925); **14.** *Crim.* p. 64
— *v.* — (Can.) (1931); **14.** *Crim.* p. 63
— *v.* Wall (1890); **41.** *Ship*, No. 932a
— *v.* — (Aus.); **15.** *Crim.* p. 100
— *v.* — (Ir.); **15.** *Crim.* p. 88
— *v.* Wallace (1841); **15.** *Crim.* No. 11,612a
— *v.* — (1924); **14.** *Crim.* Nos. 1913a, 5081a
— *v.* — (1929); **14.** *Crim.* No. 5290b
— *v.* — (1931); **14.** *Crim.* No. 5840c
— *v.* Wallbridge (Can.); **16.** *Cntmpt.* p. 3
— *v.* Wallis (1938); **15.** *Crim.* No. 9323b
— *v.* Walls (*alias* Russell) (1925); **14.** *Crim.* No. 4994d
— *v.* Walsh (Can.) (1903); **17.** *Dep.* p. 59
— *v.* — (Can.) (1936); **37.** *Police*, p. 10
— *v.* Walters (Can.); **14.** *Crim.* pp. 29, 30
— *v.* Wampole (Henry K.) & Co., Ltd. (Can.); **39.** *Revenue*, p. 15
R. *v.* Wandsworth Licensing Justices, *Ex p.* Rogers (1937); **30.** *Intox.* No. 144a
— *v.* War Pensions Entitlement Appeal Tribunal, *Ex p.* Bott (Aus.); **16.** *Cr. Pract.* p. 31
— *v.* Warblington Overseers (1854); **38.** *Pub. Hlth.* No. 533
— *v.* Ward (1926); **14.** *Crim.* No. 5125c
— *v.* — (1928); **14.** *Crim.* No. 3180e
— *v.* — (1938); **15.** *Crim.* No. 9323b
— *v.* — (Can.) (1923); **14.** *Crim.* p. 13
— *v.* — (Can.) (1924); **14.** *Crim.* p. 39
— *v.* Warn (1937); **14.** *Crim.* No. 5089c
— *v.* Warner (Can.); **14.** *Crim.* p. 72
— *v.* Washington (Can.) (1881); **33.** *Mags.* p. 32
— *v.* — (Can.) (1935); **37.** *Poor L.* p. 21
— *v.* Wason (Can.); **17.** *Dep.* p. 54
— *v.* Waterford JJ. (Ir.); **33.** *Mags.* p. 32
— *v.* Watford Licensing JJ., *Ex p.* Trust Houses, Ltd. (1929); **30.** *Intox.* No. 340a
— *v.* Watkinson (1739); **14.** *Crim.* No. 4536a
— *v.* Watson (1927); **14.** *Crim.* No. 4998b
— *v.* — (Can.) (1828); **16.** *Cr. Pract.* p. 23
— *v.* — (Can.) (1936); **15.** *Crim.* p. 91
— *v.* Waugh (Aus.); **15.** *Crim.* p. 79
— *v.* Waxman (1930); **14.** *Crim.* No. 1443b
— *v.* Waye (1928); **14.** *Crim.* No. 5049g
— *v.* Wealdstone News & Harrow News (Editor, Printer & Publisher) (1925); **16.** *Cntmpt.* Nos. 182a, 709a
— *v.* Weale (1927); **14.** *Crim.* No. 5290d
— *v.* Webb (Can.) (1933); **14.** *Crim.* p. 48
— *v.* — (Can.) (1937); **42.** *Time*, p. 74
— *v.* — (S. Af.); **15.** *Crim.* p. 84
— *v.* Webber (Can.); **5.** *Bkpcy.* p. 89
— *v.* Webster, *Ex p.* Marshall (1931); **11.** *Comp. Pche.* No. 2225a
— *v.* —, *Ex p.* Young (1934); **38.** *Pub. Hlth.* No. 670a
— *v.* Weedmark (Can.); **33.** *Mags.* p. 29
— *v.* Weeks (1928); **14.** *Crim.* No. 6112a
— *v.* Weir (Can.); **32.** *Libel*, p. 19
— *v.* Weiss (S. Af.); **15.** *Crim.* p. 102
— *v.* Welch (Can.); **15.** *Crim.* p. 85
— *v.* Wellings (1824); **15.** *Crim.* No. 10,200a
— *v.* Wenn (Can.); **14.** *Crim.* p. 60; **32.** *Mags.* p. 36
— *v.* Werb (Can.); **15.** *Crim.* p. 105
— *v.* Wesley (Can.); **25.** *Game*, p. 24
— *v.* West (Can.); **14.** *Crim.* p. 25
— *v.* West Derby Assessment Committee, *Ex p.* Mersey Docks & Harbour Board & Liverpool Rating Authority (1938); **38.** *Rates*, No. 1169a
— *v.* West Gorton General Comrs., *Ex p.* Brooks & Doxey (1920), Ltd. (1931); **28.** *Inc. T.* No. 620a
— *v.* West Midland Traffic Area Licensing Authority, *Ex p.* Great Western Rly. Co. (1936); **8.** *Carr.* No. 1580; **16.** *Cr. Pract.* No. 3581a
— *v.* West Monmouthshire Omnibus Board, *Ex p.* Price (1938); **33.** *L. G.* No. 84b
— *v.* West Norfolk Assessment Committee, *Ex p.* Ward (F. B.) (1930); **16.** *Cr. Pract.* No. 1230a
— *v.* West Riding of Yorkshire JJ., *Ex p.* Thornton (1837); **33.** *Mags.* No. 958c
— *v.* —, *Re* Thornton (1837); **33.** *Mags.* No. 958c
— (Arnold) *v.* Westerland (Can.); **15.** *Crim.* p. 77; **33.** *Mags.* pp. 28, 36
— *v.* Western Automobile Club, Ltd. (Can.); **17.** *Dep.* p. 43
— *v.* Western Trust Co., A.-G. of Province of Saskatchewan & Shulze (Can.); **17.** *Dep.* p. 38
— *v.* Western Wine & Liquor Co. (Can.); **30.** *Intox.* p. 15

R. *v.* Westfall (1928); **14.** *Crim.* No. 5481a
— *v.* Westgate (1931); **14.** *Crim.* No. 5046e
— *v.* — (Can.); **14.** *Crim.* p. 72
— *v.* Westhaver (Can.); **30.** *Intox.* p. 12
— *v.* Westlake (1920); **14.** *Crim.* No. 5628a
— *v.* — (Can.); **30.** *Intox.* p. 14
— *v.* Westminster Assessment Committee, *Ex p.* Black (1934); **38.** *Rates*, No. 1611a
— *v.* Weston (Aus.); **15.** *Crim.* p. 99
— *v.* Weston-Super-Mare Licensing JJ., *Ex p.* Powell (1938); **30.** *Intox.* No. 343a
— (Christensen) *v.* Wheatley (Can.); **20.** *Elect.* p. 5
— *v.* Whelan (1934); **14.** *Crim.* No. 5279c
— *v.* — (Can.); **25.** *Gaming*, p. 32
— *v.* Whepdale (Can.); **14.** *Crim.* pp. 23, 47, 51
— *v.* Whibley (1938); **15.** *Crim.* No. 9405a
— *v.* Whistle Co. (of Canada), Ltd. (Can.); **39.** *Revenue*, p. 14
— *v.* Whitby (1926); **14.** *Crim.* No. 5057d
— *v.* White (Can.) (1926); **14.** *Crim.* p. 33
— *v.* — (Can.) (1928); **30.** *Intox.* p. 1
— *v.* — (Can.) (1929); **15.** *Crim.* p. 81
— *v.* — (Can.) (1930); **30.** *Intox.* p. 11
— *v.* — (Can.) (1934); **14.** *Crim.* p. 67
— *v.* —, *Ex p.* Maxwell (Can.); **43.** *Wtr. Sply.* p. 77
— *v.* —, *Ex p.* Roberts (Can.); **16.** *Cntmpt.* p. 6
— *v.* White & Shelton (1927); **14.** *Crim.* Nos. 5331a, 5341a
— *v.* Whitehaven County Court Registrar, *Ex p.* Wellington Colliery Representative Committee (1933); **34.** *Mast. & S.* Nos. 3632a, 3641a, 3641b
— *v.* Whitehead (1929); **15.** *Crim.* No. 9307a
— *v.* Whittaker (Aus.); **14.** *Crim.* p. 74
— *v.* — (Can.); **14.** *Crim.* p. 42
— *v.* Whittal (Can.); **30.** *Intox.* p. 9
— *v.* Whynot (Can.); **30.** *Intox.* p. 12
— *v.* Whytt, *Ex p.* Minister of Pensions (1931); **39.** *Royal F.* No. 266a
— *v.* Wicklow County Court Judge (Ir.); **17.** *Dep.* p. 87
— *v.* Wicks (1936); **32.** *Libel*, No. 2301a
— *v.* Wiggins (Can.); **14.** *Crim.* p. 59; **33.** *Mags.* p. 34
— *v.* Wiggs (Can.); **15.** *Crim.* p. 93
— *v.* Wilde (1933); **14.** *Crim.* No. 2365c; **15.** *Crim.* No. 6238a
— *v.* Wilder (Can.); **14.** *Crim.* p. 36
— *v.* Wilkes (Can.); **25.** *Gaming*, p. 29
— *v.* Wilkinson (Can.); **14.** *Crim.* p. 38
— (Armstrong) *v.* Wilkinson (Can.); **33.** *L. G.* p. 1
— *v.* William Neilson, Ltd. (Can.); **39.** *Revenue*, p. 15
— *v.* Williams (1925); **14.** *Crim.* No. 6234b
— *v.* — (1928); **14.** *Crim.* No. 5369b
— *v.* — (1929); **14.** *Crim.* No. 5304a
— *v.* — (1930), 22 Cr. App. Rep. 78; **14.** *Crim.* No. 49941
— *v.* — (1930), 22 Cr. App. Rep. 137; **14.** *Crim.* No. 61691
— *v.* — (1931); **14.** *Crim.* No. 5057j
— *v.* — (Aus.) (1928); **14.** *Crim.* p. 75
— *v.* — (Aus.) (1932); **14.** *Crim.* pp. 5, 19
— *v.* — (Can.) (1929); **14.** *Crim.* p. 62
— *v.* — (Can.), [1935] 2 D. L. R. 651; **14.** *Crim.* p. 70
— *v.* — (Can.), [1935] 2 W. W. R. 640; **15.** *Crim.* p. 97
— (Bigrigg) *v.* Williams (Can.); **2.** *Animals*, p. 64
— *v.* Williams (S. Af.); **17.** *Dep.* p. 65
— *v.* —, *Ex p.* Director of Public Prosecutions (1936); **16.** *Cr. Pract.* No. 2533a
— *v.* Williamson (Can.); **8.** *Clubs*, p. 102
— *v.* Willis (1845); **14.** *Crim.* No. 1991c
R. *v.* Willis (Can.); **15.** *Crim.* p. 98
— *v.* Willmott (1933); **14.** *Crim.* No. 5593a
— *v.* Wilmot (1933); **14.** *Crim.* No. 5680a; **42.** *Str. Traf.* No. 222d
— *v.* Wilmot (Can.); **15.** *Crim.* p. 98
— *v.* Wilson (1924); **14.** *Crim.* No. 3011a; **22.** *Evid.* No. 4729a
— *v.* — (1931); **14.** *Crim.* No. 5125k
— *v.* — (Can.) (1888); **20.** *Elect.* p. 1
— *v.* — (Can.) (1924); **15.** *Crim.* p. 100
— *v.* — (Can.) (1933); **30.** *Intox.* p. 11
— *v.* — (Can.) (1934); **27.** *H. & W.* p. 78
— *v.* — (Can.) (1936); **15.** *Crim.* p. 101
— *v.* —, *Ex p.* Harrington (Can.); **14.** *Crim.* p. 14
— *v.* —, *Ex p.* Kisch (Aus.); **2.** *Aliens*, p. 48
— *v.* Wimbledon Local Board (1882); **38.** *Pub. Hlth.* No. 584b
— *v.* Winberg (Can.); **38.** *Rys.* p. 40
— *v.* Wing (1825); **26.** *Hghys.* No. 1979a
— *v.* Wing Hem (Can.); **30.** *Intox.* p. 16
— *v.* Winn (1925); **14.** *Crim.* Nos. 5304b, 5355a
— *v.* Winnipeg (Can.); **16.** *Cr. Pract.* p. 31
— *v.* Winsor (1866); **14.** *Crim.* No. 4867
— *v.* Winter (1924); **14.** *Crim.* No. 5057a
— *v.* Wisbech, Isle of Ely, Licensing Justices, *Ex p.* Payne (1937); **30.** *Intox.* No. 582d
— *v.* Wiser & McCreight (Can.); **14.** *Crim.* p. 18
— *v.* Wiswell (Can.); **14.** *Crim.* p. 34
— *v.* Withers (1935); **14.** *Crim.* No. 6169r
— *v.* Witsiewicz (Can.); **14.** *Crim.* p. 33; **39.** *Revenue*, p. 25
— *v.* Wolchuk (Can.); **30.** *Intox.* p. 10
— *v.* Wolfe (Can.); **25.** *Gaming*, p. 30
— (McCorquodale) *v.* Wong (Can.); **38.** *Pub. Hlth.* p. 16
— *v.* Wong Cheun Ben (Can.); **14.** *Crim.* p. 7
— *v.* Wong Chew (Can.); **25.** *Gaming*, p. 30; **30.** *Jdgmts.* p. 28
— *v.* Wong Gai (Can.); **25.** *Gaming*, p. 32
— *v.* Wong Kit (Can.); **17.** *Dep.* p. 53
— *v.* Wong Kit Chow (Can.); **2.** *Aliens*, p. 50
— *v.* Wong Loon (Can.); **34.** *Med.* p. 191
— (Waugh) *v.* Wong Mah (Can.); **33.** *Mags.* p. 29
— *v.* Wong O. Sang (Can.); **14.** *Crim.* p. 30
— *v.* Wong Sack Joe (Can.); **34.** *Med.* p. 193
— *v.* Wong Sam (Can.); **24.** *Fact.* p. 48
— *v.* Wong Sim (Can.) (1929); **25.** *Gaming*, p. 38
— *v.* — (Can.) (1934); **35.** *Mags.* p. 27
— *v.* Wong Wa (Can.); **14.** *Crim.* p. 56
— *v.* Wong Yip Lan & Lee Lung (Can.); **34.** *Med.* p. 193
— *v.* Wong York (Can.); **33.** *Mags.* p. 36
— *v.* Wong Yuen (Can.); **16.** *Cr. Pract.* p. 28
— *v.* Woo Fong Toy (Can.); **2.** *Aliens*, p. 50
— *v.* Woo Tuck (Can.); **14.** *Crim.* p. 16
— *v.* Wood (1930); **14.** *Crim.* Nos. 5125f, 5448a
— *v.* — (Can.) (1924); **16.** *Cr. Pract.* p. 40
— *v.* — (Can.) (1934); **2.** *Animals*, p. 56
— *v.* —, *Ex p.* Anderson (1928); **13.** *Crnrs.* No. 308a
— *v.* Woods (1930); **14.** *Crim.* Nos. 751b, 5947a; **15.** *Crim.* No. 8123a
— *v.* Woods (Can.) (1926); **30.** *Intox.* p. 17
— *v.* Woods & May (1853); **14.** *Crim.* No. 2978
— *v.* Woodstock Town Assessors, *Ex p.* Bank of Nova Scotia (Can.); **16.** *Cr. Pract.* p. 39
— *v.* Woodward (1929); **14.** *Crim.* No. 4994j
— *v.* Woolland (Can.); **39.** *Revenue*, p. 26
— *v.* Woolley (1931); **15.** *Crim.* No. 9323c
— *v.* Woolmington (1935); **14.** *Crim.* No. 4543a; **30.** *Jdgmts.* No. 763a
— *v.* Wootten (Can.); **30.** *Intox.* p. 15
— *v.* Worcester Corpn. (1903); **16.** *Cr. Pract.* No. 1726a

R. *v.* Workmen's Compensation Board (Can.); **34.** *Mast. & S.* p. 36
— *v.* Woroniuk (Can.); **14.** *Crim.* p. 50
— *v.* Worthing Borough Council & Horsham & Worthing Assessment Committee, *Ex p.* Burgess (1937); **38.** *Rates*, No. 1158d
— *v.* Wright (1925); **14.** *Crim.* No. 4974b
— *v.* — (1931); **43.** *Trade Mks.* No. 1055a
— *v.* — (1934); **14.** *Crim.* No. 6148a
— *v.* — (Can.) (1928); **42.** *Stats.* p. 30
— *v.* — (Can.) (1929); **30.** *Intox.* p. 15; **42.** *Time*, p. 74
— *v.* — (Can.) (1931); **28.** *Infts.* p. 133
— *v.* — (Can.) (1937); **27.** *H. & W.* p. 25
— *v.* Wu (alias Wu Chuck) (Can.); **14.** *Crim.* p. 69
— *v.* Wurch (Can.); **14.** *Crim.* p. 46
— *v.* Wyman (1918); **14.** *Crim.* No. 5576
— *v.* Wysochan (Can.); **14.** *Crim.* p. 37
— (Williams) *v.* Yarish (Can.); **30.** *Intox.* pp. 10, 15
— *v.* Yarwood (1928); **14.** *Crim.* No. 5303d
— *v.* Yaskowitch (Can.); **15.** *Crim.* p. 78
— *v.* Yates (1841); **15.** *Crim.* No. 7304a
— *v.* Yaum (Can.); **14.** *Crim.* p. 70
— *v.* Yeaman (Can.); **15.** *Crim.* p. 104
— (Eley) *v.* Yee Chin & Yee Low (Can.); **22.** *Evid.* p. 13
— *v.* Yee Jam Hong (Can.); **14.** *Crim.* pp. 6, 7
— *v.* Yelds (N.Z.); **15.** *Crim.* p. 95
— *v.* Yelle (Can.); **17.** *Dep.* p. 38
— *v.* Yok Yuen (Can.); **14.** *Crim.* pp. 33, 64
— *v.* Yong Jong (Can.); **34.** *Med.* p. 194
— *v.* Yorczyszyn (Can.); **30.** *Intox.* pp. 11, 17
— *v.* Young (1924); **14.** *Crim.* No. 5607a
— *v.* — (Aus.); **14.** *Crim.* p. 25
— *v.* — (Can.) (1928); **14.** *Crim.* p. 17
— *v.* — (Can.) (1931); **14.** *Crim.* p. 67
— *v.* —(No. 1) (Can.) (1935); **33.** *Mags.* p. 27
— *v.* — (No. 2) (Can.) (1935); **33.** *Mags.* p. 57
— (Reid) *v.* Yourechuk (Can.); **33.** *Mags.* p. 26
— *v.* Yuen Wong (Can.); **30.** *Intox.* p. 14
— *v.* Yuen Yick Jun (Can.); **14.** *Crim.* p. 23
— *v.* Zamphier (Can.); **30.** *Intox.* p. 12
— *v.* Zanine (Can.); **33.** *Mags.* p. 24
— *v.* Zarelli & Newell (Can.); **33.** *Mags.* p. 37
— *v.* Zarichney (Can.); **14.** *Crim.* p. 34
— *v.* Zaslavsky (Can.); **17.** *Dep.* p. 39; **25.** p. 12; **42.** *Stats.* p. 29
— *v.* Zawada (Can.); **30.** *Intox.* p. 15
— *v.* Zeitlin (1932); **5.** *Bkpcy.* No. 8593a
— *v.* Zenick (Can.); **14.** *Crim.* p. 12; **30.** *Intox.* p. 12
— *v.* Zerebko (Can.); **14.** *Crim.* p. 63
— *v.* Zicari (Can.); **14.** *Crim.* p. 29
— *v.* Zimmer & Zimmer (Can.); **25.** *Game*, p. 24
— *v.* Zimmerman (Can.); **14.** *Crim.* p. 75
— *v.* Zizu Natanson (Can.); **15.** *Crim.* p. 80
— *v.* — (No. 1) (Can.); **22.** *Evid.* p. 3
— *v.* — (No. 2) (Can.); **14.** *Crim.* pp. 48, 74
R., *Ex p.*, *Re* Beamish (N.Z.); **5.** *Bkpcy.* p. 58
—, *Ex p.*, *Re* International Metal Works, Ltd. (Can.); **4.** *Bkpcy.* p. 37; **10.** *Coys.* p. 78
—, *Re* (No. 2) (Aus.); **42.** *Solrs.* p. 13
R. & P. Properties, Ltd. *v.* Baldwin (1938); **31.** *L. & T.* No. 7361a
R. & Solloway Mills & Co., Ltd., *Re* (Can.); **14.** *Crim.* p. 14
R. &. W. Paul, Ltd. *v.* London & North Eastern Ry. Co. (1927); **8.** *Carr.* No. 1237d
R. & W. Paul, Ltd. *v.* National S. S. Co., Ltd. (1937); **41.** *Ship.* No. 2414a
— *v.* Wheat Commission (1935); **2.** *Agric.* Nos. 979e, 979f; **38.** *Pub. Auth.* No. 760a
R. & Whittaker, *Re* (Can.); **30.** *Intox.* p. 16
R. C. A. Photophone, Ltd. *v.* Gaumont-British Picture Corpn., Ltd., & British Acoustic Films, Ltd. (1935); **36.** *Pats.* No. 2358d
R. C. Hammett, Ltd. *v.* Beldam (1931); **25.** *Food*, Nos. 439b, 439d, 439h
— *v.* Crabb (1931); **25.** *Food*, Nos. 439b, 439d, 439h
— *v.* London County Council (1933); **25.** *Food*, Nos. 439c, 439i
R. E. Jones, Ltd., *Re* (1933); **9.** *Coys.* No. 3858a
R. G. *v.* R. G. & A. (1931); **27.** *H. & W.* No. 4640a
R. M. Buchanan Co., Ltd. *v.* Eby (Can.); **1.** *Agcy.* p. 79
R. M. Buchanan-Sumner Co., Ltd. *v.* Scottish Co-operative Wholesale Society, Ltd. (Can.); **10.** *Coys.* p. 55
R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of) (1926); **21.** *Estpl.* Nos. 575a, 577a
R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926); **21.** *Estpl.* No. 575a
Raahe O Y Osakeytio *v.* Goddard (1935); **39.** *S. Goods*, No. 1728a
Rabbidge *v.* Eagle Star Dominions Insurance Co., *Re* Houlder (1929); **4.** *Bkpcy* No. 2514a
Rabenfels, The (Ind.); **41.** *Ship.* p. 62
Rabett *v.* Stamp Duties Comr. (1929); **21.** *E. D.* p. 4
Rabia *v.* Great India Peninsular Ry. Agent (Ind.); **34.** *Mast. & S.* p. 32
Rabindra Nath Das *v.* Jogendra Nath Deb (Ind.); **33.** *Mal. Pros.* pp. 39, 40
Rabinovitch *v.* Feist (Can.); **21.** *Exon.* p. 58
Race *v.* Postmaster-General (1932); **34.** *Mast. & S.* No. 2439c
— *v.* Wardsend Steel Co. (1927); **34.** *Mast. & S.* No. 2079a
Racecourse Betting Control Board *v.* Mount (1938); **25.** *Gaming*, No. 480c; **35.** *Mistake*, No. 484b
— *v.* Wild (1938); **28.** *Inc. T.* No. 252j
Rachotappa Ishwarappa *v.* Konher Annarao (Ind.); **31.** *L. & T.* p. 79
Radcliffe *v.* Bank of Montreal (Can.); **3.** *Bank.* p. 25
— *v.* Holt (1927); **28.** *Inc. T.* No. 496a
— *v.* Readett (1852); **28.** *Infts.* No. 1272a
— *v.* Ribble Motor Services, Ltd. (1938); **34.** *Mast. & S.* No. 1753a
Rader *v.* McLellan (Can.); **1.** *Agcy.* p. 99
Radermacher *v.* Radermacher (Can.); **35.** *Mtge.* p. 45
— *v.* — (No. 2) (Can.); **35.** *Mtge.* p. 46
Radha Kanta Das *v.* Baerlien Brothers (Ind.); **2.** *Arbn.* p. 73
Radha Kishan *v.* Kedar Nath (Ind.); **22.** *Evid.* p. 2
Radhanath Sugracharji *v.* Baidonath Seal (Ind.); **19.** *Easmt.* p. 8
Radio Communication in Canada, *Re*, A.-G. of Quebec *v.* A.-G. of Canada, A.-G. of Ontario, A.-G. of New Brunswick, A.-G. of Manitoba, A.-G. of Saskatchewan, A.-G. of Alberta & Canadian Radio League (1932); **17.** *Dep.* No. 130k; **42.** *Tele.* No. 4a
Radio Corpn. Pty., Ltd. *v.* Disney (Aus.); **43.** *Trade Mks.* p. 16
Radio Publicity (Universal), Ltd. *v.* Compagnie Luxembourgeoise de Radiodifusion (1936); **2.** *Arbn.* Nos. 2619a, 2619b
Radio Rentals, Ltd. *v.* Rentals, Ltd. (1934); **43.** *Trade Mks.* No. 1495a
Radio Taxicab Co., Ltd. *v.* Averback (Can.); **42.** *Str. Traf.* p. 37
Radisson Town *v.* Amson (Can.); **11.** *Comp. Pche.* p. 15
Radley *v.* Radley (N.Z.); **27.** *H. & W.* p. 57

Radnall's Registered Design (No. 778,735), *Re* (1934); **43.** *Trade Mks.* No. 1002a
Radoyevitch *v.* Radoyevitch (Scot.); **11.** *Confl.* p. 53
Radway & Shortt *v.* Radway (Can.); **25.** *Gifts*, p. 48
Rae *v.* Dunlop & Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 91
— *v.* Rankin (Can.); **2.** *Agric.* p. 20
Raeburn *v.* H.M. Advocate (Scot.); **14.** *Crim.* p. 54
— *v.* Lochgelly Iron & Coal Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 35
— *v.* Raeburn (1928); **11.** *Confl.* No. 918b
Rafael *v.* Verelst (1776); **1.** *Agcy.* No. 2337a
Rafelman *v.* Kiproff (Can.); **35.** *Mtge.* p. 46
Rafter, *Re*, R. *v.* Cleaver (Can.); **3.** *Basty*, p. 65
—, *Re*, R. (Cleaver) *v.* Stackpoole (Can.); **3.** *Basty.* p. 65
Rafuse, *Re* (Can.); **4.** *Bkpcy.* p. 46
Ragdale, *Re*, Public Trustee *v.* Tuffill (1934); **44.** *Wills*, No. 3822a
Raghbir Das *v.* Sundar Lal (Ind.); **12.** *Contr.* p. 28
Raghunandan Nanu Kothare *v.* Hornasjee Bezonjee Bamjee (Ind.); **36.** *Prtnrs.* p. 57
Raghunandan Prasad Singh *v.* Income Tax Comrs. (Ind.); **28.** *Inc. T.* p. 58
Raghunath Prasad *v.* Sarju Prasad (Ind.); **12.** *Contr.* pp. 10, 11
Raghunath Prasad Singh *v.* Partabgash Deputy Comrs. (Ind.); **17.** *Dep.* p 84
Ragusz *v.* Montreal Harbour Comrs. (Can.); **2.** *Aliens*, p. 31
Rahal *v.* Burnett (Can.); **42.** *Str. Traf.* p. 36
— *v.* Rahal (Can.); **42.** *Tort*, p. 79
Rahha Kishun Marwari *v.* R. (Ind.); **14.** *Crim.* p. 40
Rahim *v.* Low (Ind.); **1.** *Agcy.* p. 70; **20.** *Eqy.* p. 21
Rahim Bakhsh *v.* Bachcha Lal (Ind.); **32.** *Libel*, p. 5
Rai Bahadur Bansilal Abirchand *v.* Ghulan Mahbub Khan (1925); **17.** *Dep.* No. 234a
Rai Bahadur Radha Kishun *v.* Shyam Das (Ind.); **22.** *Evid.* p. 15
Rai Jatindra Nath Chowdhury *v.* Uday Kumar Das (1931); **16.** *Courts*, No. 685a
Railway Act, *Re* Arbitration under, British Columbia Permanent Loan Co. *v.* Canadian Northern Ry. Co. (No. 1) (Can.); **11.** *Comp. Pche.* p. 15
Railway Assessment Authority *v.* Southern Ry. Co., [1936] A. C. 266; **38.** *Rates*, Nos. 800c. 800d
— *v.* — (1936), 24 Ry. & Can. Tr. Cas. 168; **38.** *Rys.* No. 685a
Railway Assessment Authority's Application, *Re* (1936); **38.** *Rys.* No. 685a
Railway Assocn. of Canada & Slow Orders, *Re* (Can.); **38.** *Rys.* p. 38
Railway Debenture & General Trust Co., *Re*, *Re* Glyncorrwg Colliery Co. (1926); **10.** *Coys.* No. 5149a
— *v.* Glyncorrwg Colliery Co., *Re* Glyncorrwg Colliery Co. (1926); **10.** *Coys.* No. 5149a
Railway Freight Rates in Canada (Board of Railway Comrs. Order No. 448) (Can.); **38.** *Rys.* p. 45
Railway Freight Rebates Scheme (1936); **8.** *Carr.* No. 1237k
Railway Freights in Canada, *Re* (Can.); **38.** *Rys.*, p. 46
Railway Grade Crossing Fund (S. 262 of Railway Act), *Re* (Can.); **38.** *Rys.* p. 46
Railways & Canals, Minister of *v.* Hereford Ry. Co., *Re* Bond & Mackinnon & Minister of Railways & Canals (Can.); **38.** *Rys.* p. 36
Railways Comr. *v.* Skinner (Aus.); **36.** *Negl.* p. 32
Raine, *Re*, Tyerman *v.* Stansfield (1929); **23.** *Exors.* No. 5251a
Raines *v.* British Columbia Electric Ry. Co. (Can.); **8.** *Carr.* p. 12
Raingold *v.* Bromley (1931); **12.** *Contr.* No. 419a; **30.** *L. & T.* No. 370a
Raitblat, *Re* (Can.); **4.** *Bkpcy.* p. 10
Rajah *v.* Suliman (S. Af.); **12.** *Contr.* p. 40
— *v.* Witherington (Ind.); **16.** *Cntmpt.* p. 1
Raja Joyti Prasad Singh Des Bahadur *v.* Chota Nagpur Banking Assocn. (Ind.); **3.** *Bank*, p. 30
Raja Raghunandan Prashad Singh *v.* Income Tax Comr., Bihar & Orissa (Ind.); **28.** *Inc. T.* p. 58
Rajbari Ice Factory, Ltd., *Re* (Ind.); **10.** *Coys.* p. 89
Rajendra Prasad Bose *v.* Gopal Prasad Sen (1930); **16.** *Courts*, No. 513a
Rake's Estate, *Re* (Can.); **44.** *Wills*, p. 27
Ralli Brothers *v.* Perumal (Ind.); **34.** *Mast. & S.* p. 36
Ralphs *v.* Swithenbank, *Re* Carrington (1932); **20.** *Eqy.* No. 956a
Ralston *v.* Hughson (Can.); **38.** *Real Prop.* p. 99
— *v.* Ralston (1930); **27.** *H. & W.* Nos. 580a, 2287a, 2293a; **32.** *Libel*, No. 866b
Ram Bahadur Sen *v.* Mahanath Ganesh Bhagat (Ind.); **2.** *Arbn.* p. 73
Ram Gopal *v.* Tulshi Ram (Ind.); **24.** *Fam. Arr.* p. 60
Ram Krishna Kulasi *v.* Heramba Chandra Ray (Ind.); **35.** *Mtge.* p. 50
Ram Prasad Ojha *v.* Bakshi Bindeshwari Prasad Sinha (Ind.); **37.** *Pers. Prop.* p. 9
Ram Saran Das *v.* Bhagwat Prasad (Ind.); **42.** *Stats.* p. 23
Ram Saran Das *v.* Pearey Lal (Ind.); **17.** *Custom*, p. 1
Ram Sarup *v.* Hardho Prasad (Ind.); **6.** *B. of Exch.* p. 14
Ram Singh *v.* Century Insurance Co., Ltd. (Ind.); **29.** *Insce.* p. 26
Rama Patter *v.* Lingappa Gounder (Ind.); **25.** *Fraud. Conv.* p. 18
Rama Row *v.* Somasundaram Asary (Ind.); **33.** *Mal. Pros.* p. 39
Ramage *v.* Vancouver (City) (Can.); **2.** *Arbn.* p. 98
Ramanatham *v.* R. (Ind.); **24.** *Fact.* p. 48
Ramathan Chettiar *v.* Muthiah Chetty (Ind.); **1.** *Agcy.* p. 70
Ramathula *v.* R. (S. Af.); **36.** *Nuis.* p. 43
Ramauandi Kuer *v.* Kalawati Kuer (Ind.); **23.** *Exors.* p. 12
Ramdas Khatan & Co. *v.* Atlas Mills Co. (Ind.); **2.** *Arbn.* p. 83
Ramdin Hazari Lal *v.* Mansaram Murlidhar (Ind.); **25.** *Gaming*, p. 26
Ramdutt Ramkissendass *v.* Sassoon (E. D.) & Co. (Ind.); **2.** *Arbn.* No. 254b & p. 86; **32.** *Limit. of A.* p. 28
Rameshwar Lal *v.* Butto Kristo Rai (Ind.); **31.** *L. & T.* p. 64
Rameshwar Prasad Verma *v.* R. (Ind.); **37.** *Press*, p. 32
Ramgopal, etc. *v.* Dhanji Jadhavji Bhatia (Ind.); **17.** *Damgs.* p. 6
Ramji *v.* Rao Kishoresingh (Ind.); **42.** *Sp. Pfce.* p. 16
Ramlal Hargopal *v.* Kishanchand (1923); **17.** *Dep.* No. 640b
Rampton *v.* Morley (1928); **42.** *Sp. Pfce.* No. 1519a

Ramsay *v.* Gramophone Co., Ltd. (1936); **34.** *Mast. & S.* No. 3716b
— *v.* Hartford Live Stock Insurance Co. (Can.); **29.** *Insce.* p. 56
— *v.* Hildred (Can.); **31.** *L. & T.* p. 80
— *v.* Liverpool Royal Infirmary (1930); **11.** *Confl.* Nos. 88a, 236a
— *v.* Ramsay (Scot.); **11.** *Confl.* p. 48
Ramsay & Ramsay *v.* Rickard & Rickard (No. 1) (Can.); **36.** *Negl.* p. 20
Ramsay Glass Co. *v.* Royal Bank of Canada (Can.); **4.** *Bkpcy.* p. 21
Ramsdell *v.* Elliott & United States Fidelity & Guaranty Co. (Can.); **26.** *Guar.* p. 6
Ramsden *v.* Sharratt (David) & Sons, Ltd. (1930); **9.** *Coys.* Nos. 3560a, 3560b
Ramsden (W.) & Co. *v.* Jacobs (1922); **2.** *Arbn.* No. 949b
Ramsey's Estate, *Re* (Can.); **44.** *Wills*, p. 56
Randall, *Re* (Aus.); **23.** *Exors.* p. 9
— *v.* London, Midland & Scottish Ry. Co. (1935); **8.** *Carr.* Nos. 1594, 1595, 1596
— *v.* Randall (1938); **27.** *H. & W.* No. 3015b
Randfontein Estates Gold Mining Co., Ltd. *v.* Custodian of Enemy Property (S. Af.); **2.** *Aliens*, p. 34
Randir Singh *v.* R. (Ind.); **17.** *Dep.* p. 80
Randoll *v.* Bell (1813); **12.** *Contr.* No. 4569a
Random *v.* Laseure, *Re* Laseure Estate (Can.); **44.** *Wills*, p. 45
Rands *v.* Hiram Walker, G. & W., Ltd. (Can.); **6.** *B. of Exch.* p. 16
Randwick Municipal Council, *Re*, *Ex p.* Bowser & Co. (Aus.); **16.** *Cr. Pract.* p. 34
Ranee Gunge Coal Assocn., Ltd. *v.* Tata Iron & Steel Co., Ltd. (Ind.); **2.** *Arbn.* pp. 82, 83
Ranga *v.* R. (Ind.); **15.** *Crim.* p. 92
Rangappa *v.* Rangappa (Ind.); **21.** *Estpl.* p. 33
Rangatira, T. E. V., *Re* (N.Z.); **41.** *Ship.* p. 8
Rangoon (City) Corpn. *v.* Dawoodjee (Ind.); **38.** *Rates*, p. 68
Rangoon Electric Tramway & Supply Co., Ltd. *v.* King-Emperor (Ind.); **20.** *Electric*, p. 16
Rangoon Turf Club *v.* Rangoon Corpn. (Ind.); **38.** *Rates*, p. 68
Ranjit Singh (Prince) *v.* Jhori Singh (Ind.); **38.** *Real Prop.* p. 99
Ranken *v.* Pearce (Aus.); **22.** *Evid.* p. 25
Rankin (Doe d.) *v.* Andrews (Can.); **5.** *Bkpcy.* p. 81
Rankin *v.* Mitchell (Can.); **43.** *Trov.* p. 57
— *v.* Richards (Aus.); **36.** *Negl.* p. 15
Rankin & Shiliday, *Re* (Ir.); **3.** *Bailmt.* p. 13
Rannard *v.* Winnipeg City (Can.); **38.** *Pub. Hlth.* p. 14
Ransom *v.* Boyd (1877); **16.** *Cntmpt.* No. 406b
— *v.* Fulham Football & Athletic Co., Ltd. (1928); **34.** *Mast. & S.* No. 3901a
Ransome, *Re* (Can.); **14.** *Crim.* p. 13; **16.** *Cr. Pract.* p. 27
Ranson *v.* Burgess (1927); **25.** *Gaming*, No. 464a
Rant & Ker, Ltd., *Re* (Can.); **10.** *Coys.* p. 70
Ranza, The (1898); **41.** *Ship.* No. 5935a
Rapelje (Sheriff) *v.* Finch (Can.); **21.** *Exon.* p. 48
Raper, *Re*, *Ex p.* Jamieson (Can.); **7.** *B. of Sale*, p. 8
Raphael's Trust Estate, *Re* (1870); **14.** *Bkpcy.* No. 1961a
Rapley *v.* Rapley (Aus.); **33.** *Mal. Pros.* p. 40
Raport, *Re*, Denison *v.* Union Bank of Canada (Can.); **8.** *Chos.* p. 96
Rarewell, The (Can.); **17.** *Dep.* p. 37
Ras Behari Lal *v.* R. (1933); **17.** *Dep.* Nos. 534a, 554f; **30.** *Juries*, No. 640b
Rasch *v.* Horne (Can.); **40.** *S. Land*, p. 11
Rasoir Apollo Patent No. 239,112 (Le) (1931); **36.** *Pats.* No. 2171a
Raspberry *v.* Canadian National Ry. Co. (Can.); **38.** *Rys.* p. 39
Rastall *v.* Hepworth, *Re* Hepworth (1936); **3.** *Basty.* No. 152c
Rat Portage Lumber Co., Ltd. *v.* Watson & Rogers (Can.); **32.** *Lien*, p. 25
Ratcliff *v.* Davis (1610); **35.** *Mtge.* No. 72a
Ratcliffe *v.* Ratcliffe (1938); **27.** *H. & W.* No. 2952a
— *v.* Whitehead (Can.); **36.** *Negl.* p. 2
Rathbone, *In the Estate of* (N.Z.); **24.** *Exors.* p. 34
Rathbun *v.* Culbertson (Can.); **21.** *Exon.* pp. 45, 52
Rathwell *v.* Shankoff (Can.); **2.** *Animals*, p. 66
Ratkinsky *v.* Jacobs (1929); **30.** *Jdgmts.* No. 642b; **31.** *L. & T.* No. 7358a
Rattenbury *v.* Land Settlement Board (Can.); **11.** *Const. L.* p. 65; **17.** *Dep.* p. 48; **38.** *Pub. Auth.* p. 6
— *v.* Royal Trust Co. (Can.); **24.** *Exors.* p. 41
Rattenbury's Estate, *Re* (Can.); **44.** *Wills*, p. 54
Rattigan *v.* Regan (Ir.); **38.** *Real Prop.* p. 96
Rau G. m. b. H. Patent, *Re* (1935); **36.** *Pats.* No. 116a
Raulin *v.* Fischer (1911); **11.** *Confl.* No. 1241a
Ravene Plantations, Ltd. *v.* Estate Abrey (S. Af.); **1.** *Agcy.* p. 62; **9.** *Coys.* p. 40
Ravenhead Brick Co., Ltd. *v.* Ruabon Brick & Terra Cotta Co., Ltd. (1937); **43.** *Trade Mks.* No. 834a
Rawlence & Squarey *v.* Spicer (1935); **19.** *Eccl.* Nos. 3492b, 3492d, 3492g
Rawlings, *In the Estate of* (1935); **23.** *Exors.* No. 1369b
— *v.* General Trading Co. (1921); **3.** *Auct.* No. 151a
— *v.* Smith (1938); **37.** *Poor L.* No. 1659a
Rawlins *v.* Desborough (1837); **22.** *Evid.* No. 220a
— *v.* Gillingham Corpn. (1932); **38.** *Pub. Auth.* No. 955a
Rawlinson, *Re*, Wilson *v.* Banks (1934); **18.** *Desct.* Nos. 298a, 329a
— *v.* Montague (Duchess) (1710); **18.** *Descl.* No. 132a
Rawlyk *v.* Burdega, Melnyk & Kostiuk (Can.); **21** *Exon.* p. 58
Rawson (T.) & Co., Ltd., *Ex p.*, R. *v.* Sheffield JJ. (1927); **30.** *Intox.* Nos. 202a, 381b
Rawsthorne *v.* Ottley (1937); **19.** *Educ.* No. 315b; **36.** *Negl.* No. 449b
Ray, *In the Goods of* (1926); **23.** *Exors.* No. 931b
— *v.* Hou (Can.); **42.** *Solrs.* p. 9
— *v.* Ruby Hou (Can.); **31.** *L. & T.* p. 86
Ray & Christian, *Re* (Can.); **28.** *Infts.* p. 137
Ray's Will Trusts, *Re*, *Re* Ray's Estate, Public Trustee *v.* Barry (1936); **44.** *Wills*, No. 1075a
Raymond *v.* Master of the Supreme Court, *Re* Khan's Estate (S. Af.); **44.** *Wills*, p. 19
— *v.* Wooten (1931); **1.** *Agcy.* Nos. 1705a, 1947b
Raymond (Willis C.), Ltd. (In Liquidation), *Re* (N.Z.); **10.** *Coys.* p. 85
Rayner, *In the Will of* (Aus.); **44.** *Wills*, p. 35
—, *Re* (Can.); **4.** *Bkpcy.* p. 14
—, *Re*, *Ex p.* Rayner (1877); **27.** *H. & W.* No. 5174a
—, *Re*, Cloutman *v.* Regnart (1920); **8.** *Char.* No. 27a
— *v.* Neurauter (Can.); **21.** *Exon.* p. 56
— *v.* R. (N.Z.); **16.** *Cr. Pract.* p. 26
Raynes *v.* Crowder (Can.); **3.** *Auct.* p. 2
Razansoff *v.* Brounstein (Can.); **21.** *Estpl.* p. 36
Rea *v.* Minto Municipality (Can.); **26.** *Hghys.* pp. 24, 28
Read, *Re*, Galloway *v.* Harris (1892); **7.** *Burial*, No. 56a
— *v.* Brookman (1789); **22.** *Evid.* No. 1955a

Read *v.* Croydon Corpn. (1938); **43.** *Wtr. Sply.* Nos. 138a, 138b
— *v.* Dubua, *Re* Stone (Aus.); **24.** *Exors.* p. 43
— *v.* Kent County (Can.); **38.** *Real Prop.* p. 95
— *v.* McLean (Can.); **26.** *Guar.* p. 7
— *v.* Wedge (Can.); **16.** *Courts*, p. 10
Read (W. H.) & Co., Ltd. *v.* Walter (1931); **31.** *L. & T.* No. 4406a
Reade, *Re* (Ir.); **4.** *Bkpcy.* p. 29
— *v.* Brearley (1933); **28.** *Inc. T.* No. 488a
— *v.* Royal Bank of Ireland, Ltd. (Ir.); **3.** *Bank.* p. 31
Reade & George *v.* Northwestern Utilities, Ltd. (Can.); **34.** *Mines*, p. 200
Reade-Revell, *Re*, Crellin *v.* Melling (1930); **23.** *Exors.* No. 5251b; **28.** *Infts.* No. 1058a
Reader *v.* Moose Jaw Cartage Co. (Can.); **34.** *Mast. & S.* p. 24
Reading Trust, Ltd. *v.* Spero (1930); **35.** *Money*, Nos. 353a, 410b, 438a
Ready & Cass, *Re* (Can.); **5.** *Bkpcy.* p. 70
Real Estate Institute of N.S.W. *v.* Wood (Aus.); **13.** *Coprt.* p. 6
Reaney *v.* Co-operative Wholesale Society, Ltd. (1932); **17.** *Damgs.* No. 576a
Rear *v.* McCullough (Can.); **39.** *S. Goods*, p. 59
Reardon Smith Line, Ltd. *v.* Black Sea & Baltic General Insurance Co., Ltd., The Indian City (1938); **41.** *Ship.* No. 4295a
— *v.* East Asiatic Co., Ltd. (1938); **41.** *Ship.* No. 2839a
Reavis *v.* Clan Line Steamers, Ltd. & Laird Line, Ltd. (Scot.); **17.** *Damgs.* p. 10
Rebati Mohan Chakavarty *v.* R. (Ind.); **14.** *Crim.* p. 45; **30.** *Juries*, p. 33
Reberio *v.* Reberio (Ind.); **27.** *H. & W.* p. 41
Receiver General of New Brunswick *v.* Rosborough (Can.); **21.** *E. D.* pp. 19, 20
Recher & Co. *v.* North British & Mercantile Insurance Co. (1915); **2.** *Arbn.* No. 1701a
Reckitt, *Re*, Reckitt *v.* Reckitt (1932); **39.** *Rntchgs.* No. 592a
— *v.* Barnett, Pembroke & Slater, Ltd. (1929); **1.** *Agcy.* No. 332a
— *v.* Nunburnholme (1929); **1.** *Agcy.* No. 332b
Recknell, *Re*, White *v.* Carter (1936); **44.** *Wills*, No. 4186a
Record Foundry & Machine Co. *v.* Garson (Can.); **17.** *Damgs.* p. 15
Recsey *v.* Reiche (S. Af.); **35.** *Mistake*, p. 10
Red Barge Line, Ltd. *v.* Poplarbay S.S. & Poplarbay S.S. Co., Ltd. (Can.); **41.** *Ship.* p. 50
Red Deer (City) *v.* Western General Electric Co. (Can.); **20.** *Electric*, p. 17
Red Deer Milling & Elevator Co., *Re*, Stratford Mill Building Co.'s Claim (Can.); **9.** *Coys.* p. 50
Red Star Laboratories Co. *v.* Pabst (Can.); **5.** *Bkpcy.* p. 88
Reddaway (F.) & Co. *v.* Hartley (1928); **18.** *Discy.* No. 437a
Reddaway (F.) & Co., Ltd. *v.* Hartley (1930), 48 R. P. C. 10; **18.** *Discy.* No. 437b; **43.** *Trade Mks.* No. 1100a
— *v.* — (1931), 47 T. L. R. 226; **43.** *Trade Mks.* No. 1100b
Reddiar & San Chien *v.* Secretary of State for India in Council & Collector of Rangoon (Ind.); **11.** *Comp. Pchc.* p. 5
Reddick *v.* Reddick (Can.); **27.** *H. & W.* p. 46
Reddish, *Re*, Penton *v.* Waters (1934); **8.** *Char.* No. 2414a
Reddy *v.* Johnson (S. Af.); **18.** *Distr.* p. 29
Rederi Akt. Acolus *v.* Hillas & Co., Ltd. (1926); **17.** *Custom*, No. 544a
Rederiakt. Argonaut *v.* Hani (1918); **1.** *Agcy.* No. 2609
Rederi Aktiebolag Byigia *v.* Anglo-Soviet Shipping Co. (1932); **41.** *Ship.* No. 2826a
Rederiaktiebolaget Macedonia *v.* Slaughter (1935); **41.** *Ship.* No. 3624a
Rederi Aktiebolaget Unda *v.* Burdon & Co., Ltd. (1937); **41.** *Ship.* No. 3125a
Rederi Akt. Transatlantic *v.* Drughorn (1918); **1.** *Agcy.* No. 2609a
Redhead *v.* Redhead & Crothers (N.Z.); **11.** *Confl.* p. 56
Redman *v.* Sunderland Corpn. (1934); **34.** *Mast. & S.* No. 3932f
Redmond *v.* A.-G. for British Columbia (Can.); **28.** *Infts.* p. 140
— *v.* Bouey (Can.); **25.** *Fraud. Conv.* p. 18
— *v.* Canadian Credit Men's Trust Assocn., Ltd. (Can.); **35.** *Mtge.* p. 46
Rednall *v.* Beamish (1926); **19.** *Educ.* No. 79a
Reece *v.* Glen Afton Collieries, Ltd. (N.Z.); **34.** *Mast. & S.* p. 58
Reece, Ltd. *v.* Four Amalgamated Ry. Cos. (1935); **8.** *Carr.* Nos. 1514, 1541
Reed *v.* Cattermole (1937); **28.** *Inc. T.* No. 503a
— *v.* James (1815); **22.** *Evid.* No. 4815b
— *v.* Lawson & Givens (Can.); **42.** *Str. Traf.* p. 36
— *v.* McVeigh (Can.); **9.** *Coys.* p. 21
— *v.* Renton & Pettinger (Can.); **21.** *Exon.* p. 55
— *v.* Seymour (1927); **28.** *Inc. T.* No. 502
— *v.* Smith (Can.); **38.** *Rates*, p. 85
— *v.* Thiel (Can.); **32.** *Limit. of A.* p. 32; **40.** *Set-off*, p. 23
Reed (H. K.) & Co., Ltd. (No. 1), *Re Estate of* (Can.); **4.** *Bkpcy.* p. 21
— (No. 2), *Re Estate of* (Can.); **4.** *Bkpcy.* p. 23
Reed & Keast *v.* McKenzie Co., Ltd. (Can.); **1.** *Agcy.* p. 59
Reed & Roberts (*alias* McLean) *v.* R. (Can.); **14.** *Crim.* p. 31
Reed & Sons *v.* Bristol Co-operative Society, Ltd. (1937); **8.** *Carr.* No. 1574
Reed (Austin), Ltd. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 70
Rederei Kirchner & Co. *v.* Hugo Stinnes G.m.b.H. (1924); **41.** *Ship.* No. 2800a
Reekie *v.* M'Kinven (Scot.); **3.** *Barr.* p. 51
Reeman *v.* Knapp (1925); **25.** *Food*, No. 218a
Rees, *Re* (1933); **42.** *Solrs.* No. 4056a
—, *Re*, Jones *v.* Evans (1920); **8.** *Char.* No. 702a
— *v.* A.-G. (Can.); **11.** *Const. L.* p. 77
— *v.* Canadian National Railways (Can.); **34.** *Mast. & S.* p. 66
— *v.* Imperial Navigation Coal Co., Ltd. (1927); **34.** *Mast. & S.* No. 3571a
— *v.* Pentre Mawr Colliery Co., Ltd. (1933); **34.** *Mast. & S.* No. 2791a
— *v.* Powell Duffryn Associated Collieries, Ltd. (1938); **34.** *Mast. & S.* No. 3842a
Rees Roturbo Development Syndicate, Ltd. *v.* Ducker (1928); **28.** *Inc. T.* No. 96a
— *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 96a
Rees, Sachs & Co., *Ex p.*, *Re* Mazok (Aus.); **5.** *Bkpcy.* p. 72
Reeve, *Re*, Reeve *v.* Reeve (1935); **20.** *Eqy.* No. 1894a
— *v.* Walker (1932); **37.** *Poor L.* No. 1607a
— *v.* Wilson (1936); **43.** *Trade*, No. 117a
Reeve Dobie Mines, *Re*, Wage-Earners Claim (Can.); **4.** *Bkpcy.* p. 31
Reeves *v.* Davies (1921); **5.** *Bkpcy.* No. 7782a
— *v.* Hawkes (1862); **4.** *Bkpcy.* No. 5038a
Reevie *v.* White Co., Ltd. (Can.); **39.** *S. Goods*, p. 50
Reference, *Re*, Troops in Cape Breton (Can.); **11.** *Const. L.* p. 73

Refrigerating Equipment, Ltd. *v.* Drummond & Qaltham System, Incorporated (Can.); **36.** *Pats.* p. 98
Refuge Assurance Co., Ltd. *v.* Pearlberg (1938); **35.** *Mtge.* No. 2611a
Regal Distributors, Ltd. *v.* Freele (Can.); **21.** *Exon.* p. 47
Regal Oil & Refining Co., Ltd. & Regal Distributors, Ltd. *v.* Campbell (Can.); **34.** *Mast. & S.* p. 19
Regal Phonograph Co., *Re*, *Ex p.* Trustee (Can.); **5.** *Bkpcy.* p. 76; **20.** *Eqy.* p. 20
Rege *v.* Vasantras Ganpatras (Ind.); **42.** *Solrs.* p. 6
Regent Finance & Guarantee Corpn., Ltd. (1930); **10.** *Coys.* No. 5959a
Regent Park Syndicate, Ltd., *Re* (Ind.); **10.** *Coys.* p. 72
Regent Tailors, Ltd. *v.* McArthur (Can.); **30.** *L. & T.* p. 41
Regina Brokerage & Investment Co. *v.* Kistner (Can.); **1.** *Agcy.* p. 82
Regina Plumbing & Heating Co., Ltd. *v.* Bruce Robinson Electric, Ltd. (Can.); **31.** *L. & T.* p. 84
Registered Design No. 742,187 of Mallards, Ltd., *Re*, Mallards, Ltd. *v.* Gibbons Bros. "Rotary" Co., Ltd. (1931); **43.** *Trade Mks.* Nos. 949a, 958a
Registered Title No. 213,437, *Re* (1927); **38.** *Real Prop.* No. 902
Registrar of Companies, *Re*, *Re* Pioneer Savings & Loan Society (Can.); **16.** *Cr. Pract.* p. 31; **32.** *Loan Soc.* p. 45
Registration of a Power of Attorney, *Re*, *Re* Land Titles Act (Can.); **1.** *Agcy.* p. 53
Rehearo, The (1933); **41.** *Ship.* No. 8683a
Reid, *Re* (Can.) (1935); **33.** *Mags.* p. 25
—, *Re* (Can.) (1937); **2.** *Agric.* p. 26
— *v.* Acorn & McDonald (Can.); **21.** *Exon.* p. 43; **42.** *Tort*, p. 77
— *v.* Canadian Farm Loan Board (Can.); **35.** *Mtge.* p. 51
— *v.* Christie (Can.); **20.** *Electric*, p. 10
— *v.* Drake (Can.); **16.** *Cr. Pract.* p. 27
— *v.* Fitzgerald (Aus.); **17.** *Dep.* p. 71
— *v.* Francis (Can.); **11.** *Confl.* p. 48
— *v.* Galbraith (Can.); **35.** *Mtge.* p. 34
— *v.* Hill (Scot.); **25.** *Gaming*, p. 35
— *v.* Home Insurance Co. (Can.); **29.** *Insce.* p. 29
— *v.* Inland Revenue (Scot.); **28.** *Inc. T.* p. 75
— *v.* Medicine Hat City (Can.); **25.** *Gas*, p. 45
— *v.* Miller (Can.); **21.** *Exon.* p. 50
— *v.* — (Ir.); **21.** *Exon.* p. 51
— *v.* Mimico (Can.); **31.** *L. & T.* p. 45; **36.** *Negl.* p. 27
— *v.* Mitchell (Scot.); **36.** *Negl.* p. 27
— *v.* Purity Farms, Ltd. (Can.); **10.** *Coys.* p. 55
— *v.* Stevenston (or Stevenson) (Scot.); **34.** *Mast. & S.* p. 181
—*v.* Vancouver Tug Boat Co., Ltd. (Can.); **18.** *Discy.* p. 9
Reid & Canadian Farm Loan Board, *Re* (Can.); **35.** *Mtge.* p. 51
Reid & Sigrist, Ltd. *v.* Moss & Mechanism, Ltd. (1932); **36.** *Pats.* No. 49b
Reid's Trustees *v.* Cattanach's Trustees (Scot.); **8.** *Char.* p. 71
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 92
Reid-Welch Furniture Co. *v.* Macdonald (Can.); **27.** *H. & W.* p. 14
Reider *v.* National Trust Co., Ltd. (Can.); **35.** *Mtge.* p. 51
Reidford *v.* Aberdeen Magistrates (Scot.); **34.** *Med.* p. 187
Reidy *v.* Walker (1933); **31.** *L. & T.* No. 7103g
Reigate *v.* Union Manufacturing Co. (Ramsbottom) (1918); **1.** *Agcy.* No. 1951a
Reigate Corpn. *v.* Surrey County Council (1928); **26** *Highys.* No. 1002a
Reilly *v.* Lewin, *Re* Wells (Can.); **43.** *Trusts*, p. 60; **44.** *Wills*, p. 47
— *v.* Moore (Ir.); **24.** *Fact.* p. 56
— *v.* R. (1934); **11.** *Const. L.* No. 83a; **12.** *Contr.* No. 3100a
— *v.* — (Can.); **11.** *Const. L.* p. 63; **17.** *Dep.* p. 43
— *v.* Woodworth (Can.); **25.** *Gifts*, p. 50
Reilly Brothers *v.* Mercantile Mutual Insurance Co., Ltd. (Aus.); **29.** *Insce.* p. 57
Reily *v.* London Corpn. (Can.); **22.** *Evid.* p. 9
Reimer *v.* Rosen (Can.); **1.** *Agcy.* p. 65
Reinblatt *v.* R. (Can.); **14.** *Crim.* p. 58
Reinhart *v.* Shutt (Can.); **32.** *Lien*, p. 26
Reinseth *v.* Campbell (Can.); **2.** *Animals*, p. 67
— *v.* Nicola Pine Mills, Ltd. & McDougall (Can.); **2.** *Agric.* p. 19
Reith *v.* Safeway Stores, Ltd. (Can.); **36.** *Negl.* p. 7
Reitzes De Marienwert *v.* Austrian Property Administrator (1924); **2.** *Aliens*, No. 49k
Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank of Russian Trade, Ltd. (1933); **3.** *Bank.* Nos. 277a, 277b, 321a; **21.** *Exon.* No. 2140a
Reliable Trading Co., *Ex p.*, *Re* Dumfermline Trading Co. (Can.); **4.** *Bkpcy.* pp. 29, 30
Rellie *v.* Pyke (1936); **31.** *L. & T.* No. 5057a
Reloomal *v.* Receiver of Revenue (S. Af.); **17.** *Dep.* p. 65
Relu Mal *v.* Ahmad (Ind.); **12.** *Contr.* p. 45
Renahan *v.* Vancouver (City) (Can.); **38.** *Pub. Auth.* p. 2
Renaud *v.* Canadian National Ry. Co. (Can.); **11.** *Comp. Pche.* p. 8
— *v.* Roman Catholic Separate School (Tilbury North), Board Trustees of (Can.); **19.** *Educ.* p. 36
Rendal (A/S) *v.* Arcos, Ltd. (1936); **22.** *Evid.* No. 1273a
— *v.* — (1937); **22.** *Evid.* No. 1273a; **41.** *Ship.* Nos. 1879g, 1879h
Rene *v.* Carling Export Brewing & Malting Co. (Can.) (1928); **22.** *Evid.* p. 24
— *v.* — (Can.) (1929); **17.** *Deeds*, p. 32; **31.** *L. & T.* p. 74
Renewal of Execution, *Re* (Can.); **21.** *Exon.* p. 43
Renfrew County *v.* United States Fidelity & Guarantee Co. (Can.); **29.** *Insce.* p. 54
Renfrew Flour Mills *v.* Sanschagrin (Can.); **11.** *Confl.* p. 38
Renfrew Machinery Co. *v.* Illsley (Can.); **39.** *S. Goods*, p. 43
Renfrew Town Council *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* pp. 47, 48
Renneberg (Edward) & Sons Co. *v.* Canadian Credit Men's Trust Assocn., *Re* Sechart Fisheries, Ltd. (Can.); **4.** *Bkpcy.* p. 23
Renneburg (Edward) & Sons Co. *v.* Albion Fisheries, Ltd. (Can.); **39.** *S. Goods*, p. 58
Rennie *v.* Dalgleish Steamshipping Co., Ltd. (1930); **34.** *Mast. & S.* No. 2589b
— *v.* Fremantle Municipal Tramways & Electric Light Board (Aus.); **42.** *Str. Traf.* p. 37
— *v.* Quebec Bank (Can.); **21.** *Exon.* p. 45
Renouf *v.* A.-G. for Jersey (1936); **17.** *Dep.* Nos. 442b, 549c, 659a
Rentit, Ltd. *v.* Duffield (1937); **21.** *Estpl.* No. 315a
Renton *v.* Renton (Can.); **12.** *Contr.* p. 12
Renton (G. H.) & Co., Ltd. *v.* Cornhill Insurance Co., Ltd. (1933); **29.** *Insce.* No. 1931a

Rentz *v.* Chausse (Can.); **5.** *Bkpcy.* p. 85
Reopel *v.* Ross (Can.); **36.** *Negl.* p. 32
Replogle's Letters Patent No. 139,892, *Re* (1934); *Pldg.* No. 1372a
Republic Fire Insurance Co. *v.* G. M. Strong, Ltd. (Can.); **29.** *Insce.* p. 27
Republica de Guatemala *v.* Nunez (1927); **8.** *Chos.* No. 27a; **29.** *Intpr.* No. 462a
Republic of France (Minister of Finance) *v.* Perry & Co. (Bow), Ltd. (1929); **9.** *Coys.* No. 4064a
Reser *v.* Bewley (Can.); **7.** *B. of Sale*, p. 8
Restall (otherwise Love) *v.* Restall (1929); **27.** *H. & W.* No. 217a
Restall *v.* Restall (1930); **27.** *H. & W.* No. 5376a
Restall, Brown & Clennell's Case, *Ex p.* Trustee, *Re* Ford (1929); **5.** *Bkpcy.* No. 6882a
Retail Credit Co. Incorporated *v.* Commercial Finance Corpn., Ltd. & Merchant's Casualty Insurance Co. (Can.); **26.** *Guar.* p. 14
— *v.* Commercial Finance Corpn., Ltd. & Western Assurance Co. (Can.); **26.** *Guar.* p. 14
Retailers' Trust Co., Ltd. *v.* Dominion Bank (Can.); **3.** *Bank*, pp. 25, 42
Reuter's Telegram Co., Ltd. *v.* International Guide Syndicate & International Express, Ltd. (1893); **13.** *Coprt.* No. 135a
Revell *v.* London General Insurance Co., Ltd. (1934); **29.** *Insce.* Nos. 3217g, 3217t
Revelstoke Sawmill Co., Ltd. *v.* Stratford (Can.); **25.** *Fraud. Conv.* p. 14
Reventlow-Criminil *v.* Streamstown Rural Municipality, No. 511 (Can.); **2** *Aliens*, pp. 31, 42, 43
Revenue Comrs. *v.* Iveagh (Ir.); **28.** *Inc. T.* p. 102
— *v.* O'Donohoe (Ir.); **21.** *E. D.* p. 6
— *v.* Shirley & Brown (Ir.); **21.** *E. D.* p. 15
— *v.* Stapleton & O'Brien (Ir.); **21.** *E. D.* p. 15
Revere Trust, Ltd. *v.* Wellington Handkerchief Works, Ltd. (Ir.); **10.** *Coys.* p. 57
Revillon Wholesale, Ltd. *v.* Gaults, Ltd. (Can.); **39.** *S. Goods*, p. 34
— *v.* Nemirsky (Can.); **26.** *Guar.* p. 5
Rex Co. & Rex Research Corpn. *v.* Muirhead & Comptroller-General of Patents (1926); **28.** *Injon.* Nos. 585a, 842a; **36.** *Pats.* No. 727
Rex Grocery *v.* Higgs & Keen (Can.); **1.** *Agcy.* pp. 49, 67
Reynolds, *Re* (Can.); **4.** *Bkpcy.* pp. 3, 47
—, *Re*, Reynolds *v.* Victoria Comr. of Taxes (Aus.); **27.** *H. & W.* p. 9
— *v.* Betson (Can.); **27.** *H. & W.* p. 11
— *v.* Boston Deep Sea Fishing & Ice Co., Ltd. (1922); **3.** *Bailmt.* No. 140b
— *v.* Brown (1852); **43.** *Trusts*, No. 3118a
— *v.* Ex-Services Welfare Society, *Re* Gurdon (1936); **8.** *Char.* No. 910a
— *v.* Gemmell (Aus.); **24.** *Fact.* p. 59
— *v.* Godlee (1858); **18.** *Discy.* No. 599a
— *v.* Vancouver (City) (Can.); **26.** *Highys.* p. 28
— *v.* Victoria Comr. of Taxes, *Re* Reynolds (Aus.); **27.** *H. & W.* p. 9
Reynolds, Sons & Co., Ltd. *v.* Ogston (1930); **28.** *Inc. T.* No. 217f
Rhagg, *Re*, Easten *v.* Boyd (1938); **44.** *Wills*, No. 5350a
Rheostatic Co., Ltd. *v.* Robert Maclaren & Co., Ltd. (Scot.); **36.** *Pats.* p. 110
Rhinelander *v.* Mont (Can.); **29.** *Insce.* p. 30
Rhodenizer Estate & Nova Scotia Trust Co., *Re* (Can.), **5.** *Bkpcy.* p. 49
Rhodes *v.* London, Midland & Scottish Ry. Co. (1935); **9.** *Carr.* No. 1484
Rhodes *v.* Macalister (1923); **1.** *Agcy.* No. 1852a
Rhodes-Moorhouse *v.* Stamp Duties Comr. (No. 2) (N.Z.); **17.** *Dep.* p. 85
Rhodesia Rys. *v.* Taxes Comr. (S. Af.); **17.** *Dep.* p. 65; **28.** *Inc. T.* pp. 26, 43, 49
Rhodesia Railways, Ltd. *v.* Bechuanaland Income Tax Collector (Bechuanaland); **28.** *Inc. T.* pp. 42, 49
— *v.* Bechuanaland Treasurer (Bechuanaland); **28.** *Inc. T.* p. 98
Rhodesian Corpn., Ltd. *v.* Globe & Phœnix Gold Mining Co., Ltd. (S. Af.), [1934] A. D. 293; **22.** *Evid.* p. 4
— *v.* — (S. Af.), [1934] A. D. 313; **34.** *Mines*, p. 198
Rhodesian Manufacturing Co., Ltd., *Re* (Aus.); **9.** *Coys.* p. 43
Rhokana Corpn., Ltd. *v.* Inland Revenue Comrs. (1938); **28.** *Inc. T.* No. 467b
Rhuda Baksh *v.* R. (Ind.); **17.** *Dep.* p. 80
Rhys *v.* A.-G., *Re* Lucas (1922); **8.** *Char.* No. 23b
Riach *v.* Ferris (Can.); **23.** *Exors.* p. 6
— *v.* Lord Advocate (Scot.); **39.** *Revenue*, p. 10
Ribeiro *v.* Siqueira E Facho (1936); **16.** *Courts*, No. 363a
Ricard *v.* Crete & A.-G. for Quebec (Can.); **17.** *Dep.* p. 57
Ricarde-Seaver's Will Trusts, *Re*, Midland Bank Executor & Trustee Co., Ltd. *v.* Sandbrook (1936); **23.** *Exors.* No. 5251d
Ricardo & Ricardo & Co., Engineers (1927), Ltd. *v.* Rootes, Ltd. & Hillman Motor Car Co., Ltd. (1933); **36.** *Pats.* No. 796c
Rice *Re*, (Can.); **25.** *Fraud. Conv.* p. 14
— *v.* Burckhardt (Can.); **12.** *Contr.* p. 11
— *v.* Christiani (Can.); **36.** *Pats.* p. 75
— *v.* Fletcher (Can.); **11.** *Confl.* p. 57
— *v.* Gunn (Can.); **25.** *Gaming*, p. 26
— *v.* Messenger (Can.); **17.** *Dep.* p. 42
— *v.* Oxford (Bp.) (1917); **19.** *Eccl.* No. 2719a
— *v.* Rice & Prescott (Can.); **27.** *H. & W.* p. 49
Rice & Sons *v.* Toronto Harbour Commission (Can.); **1.** *Agcy.* p. 77
Rich *v.* Forman (Aus.); **33.** *Mal. Pros.* p. 40
— *v.* London Passenger Transport Board (1936); **38.** *Pub. Auth.* No. 1049a
— *v.* Partridge Jones & John Paton, Ltd. (1932); **34.** *Mast. & S.* No. 3307a
— *v.* Sydenham (1671); **20.** *Eqy.* No. 140a
Richards, *Re*, Richards *v.* Richards (N.Z.); **39.** *Rntchgs.* p. 8
— *v.* Athabasca School District Trustees (Can.); **19.** *Educ.* p. 46
— *v.* Australasian Temperance & General Mutual Life Assurance Society, Ltd. (N.Z.); **32.** *Libel*, p. 13
— *v.* Brown (1919); *Pract.* No. 4086c
— *v.* Chamberlain (Can.); **32.** *Lien*, p. 26
— *v.* Davies (1921); **2.** *Agric.* No. 164a; *Animals*, No. 342a
— *v.* Doxat, *Re* Mair (1935); **40.** *Sttlmts.* No. 1008b
— *v.* Goskar (1937); **34.** *Mast. & S.* No. 3846d
— *v.* Hanson & Hanson (Can.); **7.** *B. of Sale*, p. 11
— *v.* Hayward (1841); **12.** *Contr.* No. 487a
— *v.* Johnston (1859); **29.** *Intpr.* No. 433b
— *v.* Kidderminster Corpn. (1896); **10.** *Coys.* No. 5064a
— *v.* Kidderminster Overseers (1896); **10.** *Coys.* No. 5064a
— *v.* Port of Manchester Insurance Co., Ltd. (1934); **29.** *Insce.* No. 3217bb
— *v.* Price (1931); **25.** *Gaming*, No. 319a
— *v.* Pryse (1927); **2.** *Agric.* No. 266n
— *v.* Richards, *Re* Richards (N.Z.); **39.** *Rntchgs.* p. 8
— *v.* Syms (1740); **35.** *Mtge.* No. 3453b

Richards *v.* Taylor (Can.); **12.** *Contr.* p. 50
— *v.* Trottier (Can.); **16.** *Courts*, p. 10
— *v.* United National Collieries, Ltd. (1927); **34.** *Mast. & S.* No. 4032a
— *v.* Williams, *Re* Williams (1930); **23.** *Exors.* No. 4353a
Richards & Co.'s Trustee *v.* Coulson (Can.); **9.** *Coys.* p. 29
Richardson, *Re*, *Ex p.* Richardson (1839); **5.** *Bkpcy.* No. 6708a
—, *Re*, Richardson *v.* Nicholson (1933); **23** *Exors.* No. 7531a; **40.** *Set-off*, No. 331a
— *v.* Abertillery Urban District Council (1928) **19.** *Educ.* Nos. 14a, 302c
— *v.* Army, Navy & General Assurance Assocn., Ltd. (Ir.); **2.** *Arbn.* pp. 76, 83
— *v.* Canadian National Rys. (Can.); **7.** *Bounds. & F.* p. 16; **36.** *Negl.* pp. 19, 26
— *v.* Collins (Aus.); **42.** *Str. Traf.* p. 36
— *v.* Dorn (Can.); **2.** *Animals*, p. 62
— *v.* Edge (Can.); **31.** *L. & T.* p. 85
— *v.* Hardie (Can.); **31.** *L. & T.* p. 60; **38.** *Real Prop.* p. 89
— *v.* Lohn (Can.); **32.** *Lien*, p. 27
— *v.* Mellish (1824); **17.** *Damgs.* No. 83a
— *v.* Moncrieffe (1926); **25.** *Gaming*, No. 205a
— *v.* Nicholson. *Re* Richardson (1933); **23.** *Exors.* No. 7531a; **40.** *Set-off*, No. 331a
— *v.* Richardson (1927); **3.** *Bank.* No. 276a; **21.** *Exon.* Nos. 2084a, 2124a
— *v.* Royal Trust Co. (Can.); **35.** *Mtge.* p. 48
— *v.* Roylance (1933); **29.** *Insce.* No. 3272a
— *v.* Stormont, Todd & Co. (1900); **1.** *Agcy.* No. 2147a
— *v.* Sturton (1844); **20.** *Eqy.* No. 292a
— *v.* Toronto City (Can.); **36.** *Negl.* p. 10
— *v.* Weiner (Ir.); **43.** *Trade Mks.* p. 13
Richardson (J.) & Sons, Ltd. *v.* Burlington S.S. (Can.); **11.** *Confl.* p. 39
Richardson (James) & Sons, Ltd. *v.* Gilbertson (Can.); **17.** *Custom*, p. 2
— *v.* Paisley S.S. (Can.); **41.** *Ship.* p. 49
— *v.* Standard Marine Insurance Co., Ltd. (Can.); **29.** *Insce.* p. 19
— *v.* Unus Shipping Co., Ltd. (Can.); **41.** *Ship.* p. 32
Richardson's Estate, *Re* (Can.) (1890); **24.** *Exors.* p. 40
— *Re* (Can.) (1936); **29.** *Insce.* p. 31
Richardsons & Bradley & Co. *v.* Bernhard (1925); **2.** *Arbn.* No. 630a
Richert Co. *v.* Larkin (Can.); **32.** *Lien*, pp. 24, 25
Richert Co., Ltd., *Re* (Can.); **35.** *Mtge.* p. 31
— *v.* Registrar of Land Titles for South Alberta (Can.); **32.** *Lien*, p. 25; **38.** *Real Prop.* p. 97
Riches *v.* Moose Jaw (City) (Can.); **17.** *Dep.* p. 78; **21.** *Estpl.* p. 42
— *v.* Richmond Township (Can.); **11.** *Comp. Pche.* p. 3
Richland Farm, Ltd. *v.* Vermette (Can.); **7.** *B. of Sale*, p. 5
Richmond *v.* Dyck, *Re* (Can.); **35.** *Mtge.* p. 51
Richmond's Trustees *v.* Richmond (Scot.); **39.** *Rntchgs.* p. 8
Richmond Hill Presbyterian Church, *Re* (Can.); **19.** *Eccl.* p. 31
Richter, *Re* (N.Z.); **5.** *Bkpcy.* p. 83
— *v.* Bartley & Mikelson (Can.); **6.** *B. of Exch.* p. 18
Rici Lake Fur Co., Ltd. *v.* McAllister (Can.); **19.** *Easmt.* p. 5
Ricker *v* Ricker (Can.); **23.** *Exors.* p. 27
Rickerd & Powell *v.* Weber & Weber (Can.); **10.** *Coys.* p. 76
Ricketts *v.* Gurney (1819); **2.** *Arbn.* No. 830a
Riddell, *Re*, Public Trustee *v.* Riddell (1936); **23.** *Exors.* No. 5565a; **39.** *Rntchgs.* No. 571a; **43.** *Trusts*, No. 4761a
— *v.* Carr, *Re* Carr's Settlement (1933); **40.** *Sttlmts.* No. 1979a
— *v.* Johnston (Can.); **17.** *Deeds*, p. 24
— *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 80
Riddiford, etc. *v.* Lysaght (N.Z.); **31.** *L. & T.* p. 70
Riddle *v.* Playle (1930); **13.** *Cty. Cts.* No. 750b
Rideau Lawn Tennis Club *v.* Ottawa (Can.); **38.** *Pub. Auth.* p. 4
Rider *v.* Rider (Can.); **27.** *H. & W.* p. 50
Ridge, *Re*, Hancock *v.* Dutton (1933); **44.** *Wills*, Nos. 4141a, 6754a
Ridgewell & Co. *v.* Southern Ry. Co. (1934); **8.** *Carr.* Nos. 1501, 1529, 1543
Ridgway *v.* Security Mutual Life Assurance Society (1856); **10.** *Coys.* No. 7484a
Ridgway Co. *v.* Hutchinson (1923); **13.** *Coprt.* No. 513a
Ridings *v.* Elmhurst School District No. 3665 Board of Trustees (No. 2) (Can.); **19.** *Educ.* p. 39
— *v.* Elmhurst School Trustees (Can.); **16.** *Cr. Pract.* p. 34
Ridler, *Re* (Can.); **33.** *Lunat.* p. 15
Ridley *v.* Lee (1935); **40.** *S. Land*, No. 2633a
— *v.* McGregor & Canadian Bank of Commerce (Can.); **7.** *B. of Sale*, p. 8
— *v.* Taylor (1810); **6.** *B. of Exch.* Nos. 694a, 713b
— *v.* Whipp (Aus.); **3.** *Bastly.* pp. 61, 62
Ridley & Ridley *v.* Barclay (Can.); **2.** *Agric.* p. 20
Riedel *v.* Official Receiver, *Re* Rohrlach (Aus.); **7.** *B. of Sale*, p. 7
Riedell *v.* Commercial Bank of Australia, Ltd. (Aus.); **3.** *Bank.* p. 31
Riedle Brewery, Ltd. *v.* Merchants Fire Assurance Corpn. of New York (Can.); **29.** *Insce.* p. 26
Riera *v.* Riera (1914); **27.** *H. & W.* No. 3955a
— *v.* Schuster (No. 2) (Can.); **36.** *Negl.* p. 31
— *v.* Schuster & Mrazek (Can.); **1.** *Action*, p. 11; **27.** *H. & W.* p. 16; **42.** *Stats.* p. 23
Rieva *v.* Rieva (1914); **27.** *H. & W.* No. 3955a
Rigby *v.* Nova Scotia Trust Co. (Can.); **22.** *Evid.* p. 21
— *v.* Waugh's Exors. (1931); **2.** *Agric.* No. 30g
Rigden *v.* Inland Revenue Comrs. (1935); **28.** *Inc. T.* Nos. 460c, 669a
Rigden's Executors *v.* Inland Revenue Comrs. (1934); **28.** *Inc. T.* No. 688c
Rignuette *v.* Hebert (Can.); **18.** *Distr.* p. 30
Rikhab Kumar *v.* Trivedi & Co. (Ind.); **2.** *Arbn.* p. 84
Riley *v.* Bickershaw Collieries, Ltd. (1937); **34.** *Mast. & S.* No. 3057d
— *v.* Brown (1929); **24.** *Exors.* No. 6713a; **27.** *H. & W.* No. 40a
— *v.* Niagara District Bank (Can.); **21.** *Exon.* p. 50
— *v.* Reed (Can.); **6.** *B. of Exch.* p. 13
Riley & Children's Aid Society *v.* Mission Village (Can.); **37.** *Poor L.* p. 17
Riley Brothers (Halifax), Ltd. *v.* Hallimond (1927); **25.** *Food*, No. 243a
Rimalt *v.* Cartwright (1924); **6.** *B. of Exch.* No. 2416a
Rimmer *v.* Hannon (Can.); **17.** *Dep.* p. 66
— *v.* Rimmer (1930); **3.** *Bastly.* No. 79a
Rinehart *v.* Inland Ice & Cold Storage Co. (Can.); **3.** *Bailmt.* p. 9
Rinfret *v.* Canadian S.S. Lines, Ltd. (Can.); **41.** *Ship.* p. 55

Ring, The (1931); **1.** *Adm.* Nos. 768b, 781d
Ring *v.* Hyde (1850); **21.** *Exon.* No. 1581a
Ringende Jacob, The (1750); **2.** *Aliens*, No. 419a
Ringland *v.* Ward, *Re* Ward's Will Trusts (1936); **40.** *Stlmts.* No. 1998b
Ringrose *v.* Hunter (S. Af.); **1.** *Agcy.* p. 99
Ringstad *v.* Gollin & Co. Proprietary, Ltd (Aus.); **12.** *Contr.* p. 39
Rink *v.* Milos (Can.); **2.** *Agric.* p. 2
Rinn, *Re* (Can.); **7.** *B. of Sale*, p. 7
Riordan *v.* Dufferin Rural Municipality (Can.) **41.** *Sewers*, p. 3
Rioux *v.* Cote (Can.); **36.** *Prtnrs.* p. 63
Ripon Press & Sugar Mill Co. *v.* Gopal Chetti (Ind.); **10.** *Coys.* p. 67
Ripstein Estate, *Re* (Can.); **38.** *Real Prop.* pp. 89, 90
Rise *v.* Canadian Pacific Ry. Co. (Can.); **2.** *Animals*, p. 69
Risser, *Re* (Can.); **33.** *Mags.* p. 35
Rissik, *Re* (1936); **5.** *Bkpcy.* No. 9313a
—, *Re*, *Ex p.* Trustee Under Deed of Assignment *v.* Debtor & Schweder & Co. Administrators (1936); **5.** *Bkpcy.* No. 9313a
Risvold & Mallory *v.* Scott & Granville Oils, Ltd. (Can.); **34.** *Mines*, p. 207
Rita, *Re*, Gamon *v.* Rita (1934); *Pract.* No. 4900a
Ritchie *v.* Gale & Vancouver Board of School Trustees (Can.); **19.** *Educ.* p. 35
— *v.* New York Life Insurance Co. (Can.); **29.** *Insce.* p. 32
— *v.* Rayner (Can.) (1932); **25.** *Fraud. Conv.* p. 15
— *v.* Rayner (Can.) (1933); **34.** *Mast. & S.* p. 1
Rithet (R. P.) & Co. *v.* Scarff (Can.); **7.** *B. of Sale*, p. 2
Ritz Cleaners, Ltd. *v.* West Middlesex Assessment Committee (1937); **38.** *Rates*, No. 226aa
River Dee Drainage Board *v.* Hooson, *Re* Ellwood (1927); **4.** *Bkpcy.* No. 4281a
River Fisher, The (1923); **1.** *Adm.* Nos. 1152b, 1200a
River Great Ouse Catchment Board, *Ex p.*, R. *v.* Cambridge County Council (1937); **41.** *Sewers*, No. 469c
River Steam Navigation Co., Ltd. *v.* Jamunadas Ramkumar (Ind.); **8.** *Carr.* p. 5
Riverdale Garage, Ltd. *v.* Barrett Bros. (Can.); **3.** *Bailmt.* p. 8
Riverin & Belanger *v.* Price Bros., Ltd. (Can.); **19.** *Easmt.* p. 13
Riversdale Mill Co., Ltd. *v.* Hart (1927); **24.** *Fact.* No. 264b; **30.** *Jdgmts.* No. 679a
Rivest *v.* R. (Can.); **5.** *Bkpcy.* p. 89
Rivet *v.* La Corporation du Village de St. Joseph (Can.); **7.** *Bldg. Conts.* p. 27
Rivoli *v.* Dudley, Earl (1936); **34.** *Mast. & S.* No. 3932q
— *v.* — (No. 2) (1937); **34.** *Mast. & S.* No. 3877a
Rix, *Ex p.*, *Re* Flour & Grain Exchange, Ltd. (Aus.); **10.** *Coys.* p. 75
— *Re* (Can.); **19.** *Educ.* p. 39
Rixon *v.* Ashford Hospital Trustees (1931); **34.** *Mast. & S.* No. 3058a
Rjukan, The (1866); **1.** *Adm.* No. 1112a
Roach *v.* Hough (Aus.); **1.** *Agcy.* p. 50
— *v.* Lappas (Can.); **18.** *Distr.* p. 27
— *v.* R. (Can.); **29.** *Insce.* p. 32
— *v.* Roach (Can.); **44.** *Wills*, p. 50
— *v.* Wright (1841); **29.** *Intpr.* No. 178a
— *v.* Yates (1938); **36.** *Negl.* Nos. 835b, 838a, 838b
Roadhouse *v.* Winnipeg Electric Co. (Can.); **8.** *Carr.* p. 7
Roadley, *Re*, Iveson *v.* Wakefield (1930); **8.** *Char.* No. 42a
Roan *v.* Kronsbein (Can.); **32.** *Limit. of A.* p. 37
Roast *v.* Roast (1938); **27.** *H. & W.* No. 2749a
Robb *v.* M'Kechnie (Scot.); **29.** *Insce.* p. 45
Robbins, *Re*, *Ex p.* Root (Can.); **5.** *Bkpcy.* p. 77
Roberson, *Re* (Can.), [1936] 1 D. L. R. 53; **23.** *Exors.* p. 6
—, *Re* (Can.), [1936] 4 D. L. R. 443; **44.** *Wills*, p. 49
—, *Re* (Can.) (1937); **33.** *Lunat.* p. 13
—, *Re*, Cameron *v.* Haszard (Can.); **44.** *Wills*, p. 49
Robert *v.* Canadian National Railway (Can.); **8.** *Carr.* p. 6
Robert A. Munro & Co., Ltd. *v.* Meyer (1930); **39.** *S. Goods*, Nos. 645a, 675a, 1745a, 1769a
Robert Addie & Sons (Collieries), Ltd. *v.* Dumbreck (1929); **36.** *Negl.* No. 457a
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 43
— *v.* McAllister (1937); **34.** *Mast. & S.* No. 2970e
— *v.* McCracken (1936); **34.** *Mast. & S.* No. 3288t
Robert Baird, Ltd. *v.* Glasgow Corpn. (1936); **38.** *Pub. Hlth.* No. 530a
Robert Bell Engine & Thresher Co. *v.* Farquharson (Can.); **1.** *Agcy.* p. 62
Robert Bosch Aktiengesellschaft *v.* Cook (R. H.) & Co. (1930); **43.** *Trade Mks.* No. 1442a
Robert Dollar Co. *v.* Walker (Can.); **21.** *Exon.* p. 46
Robert Elder Carriage Works, Ltd. *v.* Snow Motors Incorporated (Can.); **39.** *S. Goods*, p. 52
Robert Koeppen, The (1926); **1.** *Adm.* No. 1284b
Robert Simpson & Co., Ltd. *v.* Ruggles (Can.); **27.** *H. & W.* p. 14
Robert Simpson Western, Ltd. *v.* Goldman & Goldman (Can.); **42.** *Str. Traf.* p. 38
Roberta, The (1937); **41.** *Ship.* No. 3099c
— (1938); **1.** *Adm.* No. 812a
Roberts, *Ex p.*, R. *v.* Otty (Can.); **16.** *Cntmpt.* p. 6
—, *Ex p.*, R. *v.* White (Can.); **16.** *Cntmpt.* p. 6
—, *In the Estate of* (1934); **44.** *Wills*, No. 801a
—, *Re* (Can.); **5.** *Bkpcy.* p. 61
— *v.* Anglo-Saxon Insurance Assocn. (1927); **29.** *Insce.* No. 3279a
— *v.* Arnott Co. (Can.); **9.** *Coys.* p. 15
— *v.* Bank of Toronto (Can.); **32.** *Lien*, p. 21
— *v.* Battersea Metropolitan Borough (1914); **38.** *Rates*, No. 675f
— *v.* Bennet (1690); **20.** *Eqy.* No. 2047a
— *v.* Colwell (Can.); **40.** *S. Land*, p. 2
— *v.* Denaby & Cadeby Main Collieries, Ltd. (1935); **34.** *Mast. & S.* No. 3821j
— *v.* Dolby (1935); **33.** *Mags.* No. 329a
— *v.* English Steel Corpn., Ltd. (1932); **34.** *Mast. & S.* No. 3811o
— *v.* Gardner (William) & Sons (1928); **34.** *Mast. & S.* No. 3423a
— *v.* Gray, *Re* Van Oppen (1935); **24.** *Exors.* No. 8351a
— *v.* Gregson (1931); **34.** *Mast. & S.* No. 3226d
— *v.* Hanks (1926); **28.** *Inc. T.* No. 545a
— *v.* Hayward (1828); **31.** *L. & T.* No. 5924a
— *v.* Jones (Aus.); **34.** *Mast. & S.* p. 166
— *v.* McMannis (Can.); **30.** *L. & T.* pp. 39, 75
— *v.* Malouf (Aus.); **6.** *B. of Exch.* p. 11
— *v.* Potts, Jones *v.* Cooke, *Re* Tithe Act, 1891 (1894); **12.** *Contr.* No. 4358a
— *v.* R. (Can.); **25.** *Gaming*, p. 29
— *v.* Roberts (Can.); **12.** *Contr.* p 16; **27.** *H. & W.* p. 26
— *v.* Robinson, *Re* Allan (1933); **44.** *Wills*, No. 5811b

Roberts (H. Staveley) *v.* Snodgrass (Scot.); **42.** *Solrs.* p. 9
— (Doe d.) *v.* Watson (Can.); **21.** *Exon.* p. 52
Roberts & Cooper, Ltd., *Re* (1929); **10.** *Coys.* No. 6988a
Roberts Numbering Machine Co. *v.* Davis (1935); **43.** *Trade Mks.* Nos. 1145a, 1399a
Roberts' (C. J.) Will, *Re* (Aus.); **44.** *Wills*, p. 42
Roberts's Will Trusts, *Re*, Younger *v.* Lewins (1937); **43.** *Trusts*, No. 2147b
Robertson, *Ex p.*, *Re* Heron & Co. (Can.); **42.** *Stk. Ex.* p. 34
—, *Re*, *Re* Weatherhead (Can.); **4.** *Bkpcy.* p. 27
—, *Re*, Colin *v.* Chamberlin (1930); **8.** *Char.* No. 1444b
— *v.* Abrahams (1930); **19.** *Easmt.* No. 700a
— *v.* Adams (1930); **19.** *Easmt.* No. 700a
— *v.* Amazon Tug & Lighterage Co. (1881); **3.** *Bailmt.* No. 216a
— *v.* Antoniuk (Can.); **36.** *Negl.* p. 30
— *v.* Appalachee (Owners) (1926); **34.** *Mast. & S.* Nos. 2370a, 2552a
— *v.* Batchelor (No. 2) (Can.); **27.** *H. & W.* p. 12
— *v.* Daley (Can.); **21.** *Estpl.* p. 34
— *v.* Duthie Steel Casement Co., Ltd. (N.Z.); **36.** *Nuis.* p. 51
— *v.* Holland (Can.); **5.** *Bkpcy.* p. 76
— *v.* Keith (Scot.); **1.** *Action*, p. 5
— *v.* Kinneil Cannel & Coking Coal Co. (1931); **34.** *Mast. & S.* Nos. 1892a, 1892b
— *v.* Larocque (Can.); **27.** *H. & W.* p. 14
— *v.* McBride (Can.); **32.** *Libel*, p. 12
— *v.* Quebec Liquor Commission (Can.); **39.** *Revenue*, p. 26
— *v.* Robertson (Can.) (1932); **32.** *Libel*, p. 5
— *v.* — (Can.) (1933); **24.** *Fam. Arr.* p. 60
— *v.* Robertson & Butt, Robertson *v.* Robertson (1928); **27.** *H. & W.* No. 5760a
— *v.* Robertson's Executors (Scot.); **23.** p. 24
— *v.* Robinson (Can.); **21.** *Exon.* p. 48
— *v.* Taxes Comr. (Aus.); **28.** *Inc. T.* p. 49
— *v.* Toronto (Can.); **33.** *L. G.* p. 9
— *v.* Vivian (Can.); **43.** *Tresp.* p. 53
Robertson & Hackett Sawmills, Ltd. *v.* Metropolitan Tabernacle (Can.) (1932); **32.** *Lien*, p. 25
— *v.* Metropolitan Tabernacle & Falls (Can.) (1933); **32.** *Lien*, p. 24
Robertson (John) & Son, Ltd. *v.* Canadian Bank of Commerce (Can.); **3.** *Bank.* p. 44
Robertson's Application for Letters Patent, *Re* (1930); **36.** *Pats.* No. 1496a
Robertson's Trustees *v.* Robertson's Trustees (Scot.); **37.** *Perps.* p. 6
Robey *v.* Vladinier (1935); **41.** *Ship.* No. 11a
Robillard *v.* McCullough (Can.); **7.** *B. of Sale*, p. 8
— *v.* St. Roch, The, & Charland (Can.); **1.** *Adm.* p. 47
Robin, Collas & Co., Ltd. *v.* Theriault (Can.); **38.** *Real Prop.* p. 96
Robin Hood Mills, Ltd. *v.* Paterson S.S., Ltd. (1937); **41.** *Ship.* No. 8090a
Robin Line S.S. Co. *v.* Canadian Stevedoring Co. (Can.); **1.** *Agcy.* p. 51; **41.** *Ship.* p. 28
Robinet *v.* Pickering (Can.); **38.** *Real Prop.* p. 91
Robins, *Re*, Holland *v.* Gillam (1928); **40.** *Sttlmts.* No. 1873
— *v.* Andrews (Can.); **2.** *Arbn.* p. 99
— *v.* Kennedy & Columb (N.Z.); **2.** *Animals*, p. 63; **22.** *Evid.* p. 7
— *v.* National Trust Co. (1927); **16.** *Courts*, No. 653a; **30.** *Jdgmts.* Nos. 588a, 614a, 631a
Robins & Sons, Ltd. *v.* Minister of Health (1938); **38.** *Pub. Hlth.* No. 502bb
Robins & Son, Ltd.'s Application, *Re* Brighton (Everton Place Area) Housing Order 1937 (1938); **38.** *Pub. Hlth.* No. 502bb
Robinson, *Ex p.* (S. Af.); **3.** *Barr.* p. 48
—, *Re*, Besant *v.* German Reich (1931); **8.** *Char.* Nos. 23c, 272b, 864a, 1246a, 1273a, 1373b
—, *Re*, Lamb *v.* Robinson (1930); **44.** *Wills*, No. 1657a
—, *Re*, Wright *v.* Tugwell (1923); **8.** *Char.* No. 1041a
— *v.* Assiniboia (Town) (Can.); **22.** *Evid.* p. 1; **26.** *Hghys.* p. 26
— *v.* Bank of Toronto & Clark & Co. (Can.); **3.** *Bank.* p. 42
— *v.* Burns (R.) & Co., Ltd. & Church (Can.); **22.** *Evid.* p. 16
— *v.* Corry (1934); **28.** *Inc. T.* Nos. 489c, 502c, 527b
— *v.* Dolan (Ir.); **28.** *Inc. T.* p. 16
— *v.* English Steel Corpn., Ltd. (1932); **34.** *Mast. & S.* No. 3288h
— *v.* Eves (Aus.); **1.** *Agcy.* p. 81
— *v.* Graves (1935); **39.** *S. Goods*, No. 10a
— *v.* Grigg, *Re* Casse (1937); **5.** *Bkpcy.* No. 8869a
— *v.* Hall (Can.); **17.** *Damgs.* p. 22
— *v.* Hammett (R. C.), Ltd. (1938); **43.** *Trade Mks.* No. 871b
— *v.* Long (Can.); **1.** *Agcy.* p. 63; **2.** *Agric.* p. 15
— *v.* McCauley (Can.); **5.** *Bkpcy.* p. 73
— *v.* McIntosh (Can.); **21.** *Exon.* p. 48
— *v.* Midland Bank, Ltd. (1925); **3.** *Bank.* No. 282a
— *v.* Nesbitt (1920); **2.** *Agric.* Nos. 30a, 30b
— *v.* Peters (Can.); **5.** *Bkpcy.* p. 70; **7.** *B. of Sale*, p. 8; **12.** *Contr.* p. 30
— *v.* Randfontein Estates Gold Mining Co., Ltd. (S. Af.); **1.** *Agcy.* pp. 73, 74; **9.** *Coys.* p. 34
— *v.* Robinson (1929); **11.** *Confl.* No. 350a
— *v.* Royal Trust Co. (Can.); **37.** *Powers*, p. 24
— *v.* South Australia State (Aus.); **11.** *Const. L.* p. 66; **38.** *Pub. Auth.* p. 4
— *v.* — (No. 2) (Aus.); **18.** *Discy.* p. 16
— *v.* Speakman (1929); **11.** *Confl.* No. 350a
— *v.* Sugarman (Can.); **32.** *Libel*, p. 7
— *v.* Trustee, *Re* Casse (1937); **5.** *Bkpcy.* No. 8869a
— *v.* Trustees Executors & Agency Co., Ltd. (Aus.); **22.** *Evid.* p. 4
— *v.* Vickers-Armstrong, Ltd. (1929); **34.** *Mast. & S.* No. 3701f
— *v.* Waters (Aus.); **2.** *Animals*, p. 66
Robinson (J.) & Co. *v.* R. (1921); **1.** *Action*, No. 90a
Robinson & McBride *v.* Johnson (Can.); **29.** *Intpr.* p. 63
Robinson (R. S.) & Son, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 11
Robinson Brothers *v.* Henderson (S. Af.); **36.** *Negl.* p. 31
Robinson Bros. (Brewers), Ltd. *v.* Durham County Assessment Committee (Area No. 7) (1938); **30.** *Jdgmts.* No. 562a; **38.** *Rates*, No. 1054a
— *v.* Houghton & Chester-Le-Street Assessment Committee (1938); **30.** *Jdgmts.* No. 562a; **38.** *Rates*, No. 1054a
Robinson Estate, *Re* (Can.), [1930] 2 W. W. R. 609; **44.** *Wills*, p. 45
—, *Re* (Can.), [1930] 2 W. W. R. 673; **44.** *Wills*, p. 20
Robinson, Fisher & Harding *v.* Behar (1927); **3.** *Auct.* No. 280a
Robinson (E. S. & A.), Ltd. *v.* Wayagamack Pulp & Paper Co. (Can.); **39.** *S. Goods*, p. 53

Robinson, Little & Co., *Ex p.*, *Re* Allan Grain Growers' Co-operative Assocn. (Can.); **4.** *Bkpcy.* p. 28
Robison & Davidson *v.* Corncockle Quarries (Scot.); **34.** *Mast. & S.* p. 165
Roblin Rural Credits Society *v.* Newton (Can.); **28.** *Ind. Soc.* p. 128
Robotham *v.* Dominion Motor Co. & Kickley (Can.); **1.** *Agcy.* p. 87
Robson, *Ex p.*, *Re* Saffron Walden Election (1886); **20.** *Elect.* No. 1075
—, *Ex p.*, *Re* Sun Ray Manufacturing Co. (Can.); **9.** *Coys.* p. 39
— *v.* Graham (Can.); **38.** *Rates*, p. 84
— *v.* Sykes (1938); **41.** *Ship.* No. 892a
— *v.* Waddell (Can.); **35.** *Mtge.* p. 41
Rocco *v.* Northwestern National Insurance Co. (Can.); **29.** *Insce.* p. 7
Roch *v.* Roch (1926); **27.** *H. & W.* No. 6042a
Rochdale Corpn. *v.* Lancashire County Council (1937); **37.** *Poor L.* No. 1123a
Roche *v.* Grant (Can.), [1935] 1 D. L. R. 78; **18.** *Discy.* p. 16
— *v.* — (Can.), [1935] 2 D. L. R. 553; **42.** *Solrs.* p. 11
— *v.* Roche (Aus.); **11.** *Confl.* p. 47
— *v.* — (Can.); **44.** *Wills*, p. 45
— *v.* Willis (1934); **42.** *Str. Traf.* Nos. 154a, 154b
Rochester *v.* Solloway Mills (Can.); **42.** *Stk. Ex.* p. 31
Rochester & Chatham Joint Sewerage Board *v.* Clinch (1925); **2.** *Agric.* No. 30e
Rochon *v.* R. (Can.); **11.** *Const. L.* p. 67
Rockabill, The (1937); **41.** *Ship.* No. 8632a
Rockabill S.S. Owners *v.* Mersey Docks & Harbour Board, The Rockabill (1937); **41.** *Ship.* No. 8632a
Rockcliffe Park Village & Carleton County, *Re* (Can.); **38.** *Rates.* p. 68
Rockingham Sisters of Charity *v.* R. (1922); **11.** *Comp. Pche.* Nos. 216a, 323a
Rockland Cocoa & Chocolate Co., *Re* (Can.); **4.** *Bkpcy.* p. 25
Rockola *v.* Nova Scotia Trust Co. (Can.); **22.** *Evid.* p. 21
Rodd, *Ex p.*, R. *v.* St. Kilda City (Aus.); **38.** *Pub. Hlth.* p. 19
— *v.* Cronin (Can.); **40.** *S. Land*, p. 7
Rodda *v.* Godfrey (1926); **2.** *Aliens*, No. 558a
— *v.* Lunken (N.Z.); **18.** *Discy.* p. 15
Rodden *v.* Goodman (Can.); **4.** *Bkpcy.* pp. 38, 40
Roddick *v.* Graham (Can.); **32.** *Lien*, p. 23
Roden *v.* Brett (1936); **25.** *Gaming.* No. 302a
Rodenhiser & Typert *v.* Nova Mac Mines & Power Corpn. (Can.); **32.** *Lien*, p. 23
Rodenhizer *v.* Steeves, *Re* Moncton (Can.); **3.** *Basty.* p. 61
Rodenhurst Estates, Ltd. *v.* Barnes, Ltd. (1936); **31.** *L. & T.* No. 5522a
Rodger *v.* Moran (Can.); **24.** *Exors.* p. 35
Rodgers *v.* Wainwright (Can.); **42.** *Str. Traf.* p. 40
Rodney Case (Can.); **19.** *Eccl.* p. 31
Rodrigue *v.* Dostie & Vachon (Can.); **27.** *H. & W.* p. 8
Rodriguez *v.* Speyer Brothers (1919); **2.** *Aliens*, No. 306
Rodriques *v.* Bakewell & Salmon (1934); *Pract.* Nos. 1314a, 1321a
Roe, *Re*, Roe *v.* Squire (Ir.); **24.** *Exors.* pp. 40, 41
— *v.* McNeil (Can.); **21.** *Exon.* p. 52
— *v.* Russell (1928); **31.** *L. & T.* No. 7254c
— *v.* Squire, *Re* Roe (Ir.); **24.** *Exors.* pp. 40 41
Roebank Printing Co., Ltd. *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 47
Roemer, *Re* (Can.); **24.** *Exors.* p. 38
Roemer Estate, *Re*, *Re* Mott & Roemer (Can.); **24.** *Exors.* p. 38; **42.** *Solrs.* p. 8
Roenisch (C. W.) *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 90
Rofe *v.* Grant (Aus.); **17.** *Dep.* p. 62
— *v.* Kevorkian (1936); **18.** *Discy.* Nos. 1379a, 1470a
— *v.* Smith's Newspapers, Ltd. (Aus.); **32.** *Libel*, p. 9
Roff *v.* British & French Chemical Manufacturing Co. & Gibson (1918); **2.** *Arbn.* No. 841a
— *v.* Krecker (Can.); **7.** *B. of Sale*, p. 12
Roger *v.* Hutcheson (Scot.); **2.** *Agric.* pp. 6, 7
Roger Miller & Sons, Ltd. *v.* R. (Can.); **7.** *Bldg. Conts.* p. 20
Rogers, *Ex p.*, R. *v.* Wandsworth Licensing Justices (1937); **30.** *Intox.* No. 144a
—, *Re* (Aus.); **5.** *Bkpcy.* p. 79; **28.** *Infts.* p. 138
—, *Re* (Can.) (1929); **24.** *Exors.* p. 41; **43.** *Trusts*, p. 68
—, *Re* (Can.) (1935); **29.** *Insce.* p. 31
—, *Re* (Can.) (1936); **39.** *Rntchgs.* p. 8
—, *Re*, *Ex p.* Sussex Sheriff (1911); **29.** *Intpr.* No. 530
— *v.* Bathurst School District No. 2 (Trustees) (Can.); **19.** *Educ.* p. 36
— *v.* Beley (Can.); **18.** *Discy.* p. 22
— *v.* Booth (1937); **34.** *Mast. & S.* No. 2057d
— *v.* Christchurch Rural District Council (1925); **17.** *Damgs.* No. 29a
— *v.* Cicnyk (Can.); **38.** *Rates*, p. 86
— *v.* Dan Wuille & Co., Ltd. (1935); **34.** *Mast. & S.* No. 2270b
— *v.* Davis (Can.); **33.** *Lunat.* p. 13
— *v.* Fredericton (Can.); **42.** *Time*, p. 73
— *v.* Inland Revenue (Scot.); **28.** *Inc. T.* p. 24
— *v.* Kingston (1825); **4.** *Bkpcy.* No. 5039a
— *v.* Labow (Can.); **35.** *Mtge.* p. 50
— *v.* London, Midland & Scottish Ry. Co. (1930); **8.** *Carr.* No. 681a
— *v.* Lowthian (Can.); **11.** *Const. L.* p. 76
— *v.* Nanaimo Motors, Ltd. (Can.); **3.** *Bailmt.* p. 13
— *v.* Ontario Bank (Can.); **31.** *L. & T.* p. 62
— *v.* Rogers (Can.); **27.** *H. & W.* p. 18
— *v.* Weir (Can.); **22.** *Evid.* pp. 2, 4
Rogers & Brown *v.* Hazelhurst (Can.); **40.** *S. Land*, p. 10
Rogers Estate, *Re* (Can.); **23.** *Exors.* p. 17
Rogers (J. B.), Ltd. *v.* Harry Lesnie, Ltd. (Aus.); **39.** *S. Goods*, p. 33
Rogers Hardware Co. *v.* Rogers (Can.); **9.** *Coys.* p. 29
Rogers Lumber Co. *v.* Gray & Hosmer (Can.); **32.** *Lien*, p. 27
Rogers Lumber Yards, Ltd. *v.* Jacobs (Can.); **32.** *Lien*, p. 26
Rogers Will, *Re* (Can.); **44.** *Wills*, p. 45
Rogerson *v.* Reid (1830); **32.** *Lien*, No. 208a
— *v.* Scottish Automobile & General Insurance Co., Ltd. (1931); **29.** *Insce.* No. 3217e
Rohl *v.* Pfaffenroth (Can.); **32.** *Lien*, p. 23
Rohrlach, *Re*, Riedel *v.* Official Receiver (Aus.); **7.** *B. of Sale*, p. 7
Rolland *v.* Warsaba (Can.); **42.** *Str. Traf.* p. 39
Rolup *v.* Jenkins (Can.); **2.** *Arbn.* p. 102
Roman *v.* Motorcar Loan Co., Ltd., & Burns (Can.); **43.** *Tresp.* p. 53
Roman Catholic Archbp. of Sydney *v.* Metropolitan Water Sewerage & Drainage Board (Aus.); **38.** *Rates*, p. 62
Roman Catholic Episcopal Corpn. of London & Sandwich (Town) (Can.); **11.** *Comp. Pche.* p. 10
Roman Catholic Separate School Trustees *v.* R. (1928); **17.** *Dep.* Nos. 177a, 177c
Romanko & Romanko *v.* Hawrysh & Sametz (Can.); **33.** *Lunat.* p. 13

Romano *v.* Columbia Motors, Ltd. (Can.); **3.** *Bailmt.* p. 9
— *v.* Maggiora (Can.); **11.** *Confl.* p. 54
— *v.* — (No. 2) (Can.); **22.** *Evid.* p. 24
— *v.* — (No. 3) (Can.); **11.** *Confl.* p. 54
Rombough Estate, *Re* (Can.); **4.** *Bkpcy.* p. 3
Romilly *v.* Romilly (1934); **27.** *H. & W.* No. 6188b
Ronaasen (E. A.) & Son *v.* Arcos, Ltd. (1932); **1.** *Action*, No. 303a; **39.** *S. Goods*, No. 1887b
Ronald *v.* Gilmartin (Scot.); **34.** *Mast. & S.* p. 23
Ronald Frankau Productions, Ltd. *v.* Bell (1927); **12.** *Contr.* No. 546c; **42.** *Theatres*, No. 64a
Ronald West, The (1937); **41.** *Ship.* No. 8684a
Ronalds' Trustees *v.* Lyle (Scot.); **44.** *Wills*, p. 17
Rondeau, *Re* (Can.); **3.** *Basty.* p. 63
Rondo Co., Ltd. *v.* Gramophone Co., Ltd. (1929); **36.** *Pats.* No. 210a
Roodepoort-Maraisburg Town Council *v.* Eastern Properties (Prop.), Ltd. (S. Af.); **42.** *Stats.* p. 29
Rooke, *Re*, Jeans *v.* Gatehouse (1933); **23.** *Exors.* No. 5447a
— *v.* Rooke (Ind.); **11.** *Confl.* p. 46
— *v.* Rooke & Dalmage (Can.); **27.** *H. & W.* p. 26
— *v.* Whitaker, *Re* Whitaker (1929); **40.** *Sttlmts.* No. 1878a
Rookewood's Case (1696); **11.** *Const. L.* No. 175a
Rooney *v.* London & North Eastern Ry. Co. (Scot.); **34.** *Mast. & S.* p. 43
Roopji & Sons *v.* Dyer Meaker & Co. (Ind.); **1.** *Agcy.* p. 80
Root, *Ex p.*, *Re* Robbins (Can.); **5.** *Bkpcy.* p. 77
— *v.* McKinney (Can.); **36.** *Negl.* p. 30
Roper, *Re* (N.Z.); **11.** *Confl.* p. 35
—, *Re*, Preston *v.* Public Trustee (N.Z.); **44.** *Wills*, p. 56
— *v.* Collingridge (Aus.); **43.** *Trade*, p. 9
Ropner S.S. Co., Ltd. *v.* Morgan (1935); **34.** *Mast. & S.* No. 2170a
Roray *v.* Nimpkish Lake Logging Co., Ltd. & Garland (Can.); **1.** *Agcy.* p. 81
Rosa *v.* Kellington (Can.); **42.** *Time*, p. 75
Rosalind, The (1920); **1.** *Adm.* No. 1483a; **3.** *Bailmt.* No. 374b
Rosamund *v.* Forgie (Can.); **40.** *S. Land*, p. 15
Rosborough *v.* Regina City (Can.); **38.** *Rates*, p. 77
— *v.* St. Andrew's Church, Trustees (Can.); **20.** *Eqy.* p. 28
Roscoe *v.* Bozyk (Can.); **25.** *Fraud. Conv.* p. 15
Rose, *Ex p.*, *Re* Goodman Brothers Auto & Service Co., Ltd. (Aus.); **9.** *Coys.* p. 19
— *v.* Blaine Lake Rural Municipality (Can.); **38.** *Pub. Hlth.* p. 21
— *v.* Briscoe (Can.); **12.** *Contr.* p. 26
— *v.* Comr. of Patents & Carson Co., Ltd. (Can.); **43.** *Trade Mks.* p. 20
— *v.* Dilke Village (Can.); **16.** *Courts*, p. 10
— *v.* Donaldson (Can.); **12.** *Contr.* p. 26
— *v.* Ford (1937); **36.** *Negl.* Nos. 953c, 953e
— *v.* Rose (Can.); **27.** *H. & W.* p. 75
— *v.* Sydenham Local Administration & Health Board (S. Af.); **26.** *Hghys.* p. 45; **38.** *Pub. Hlth.* p. 15
— *v.* Yates (Can.); **12.** *Contr.* p. 26
Rose & Frank Co. *v.* Crompton (J. R.) & Brothers, Ltd. (1925); **12.** *Contr.* Nos. 4, 297a, 2829a
Rose & Laflamme, Ltd. *v.* Campbell, Wilson & Strathdee, Ltd. & Grand Trunk Pacific Ry. Co. (Can.); **8.** *Carr.* p. 3
Rose Bros. (Wigmore), Ltd. *v.* London & North Eastern Ry. Co. (1935); **8.** *Carr.* No. 307a
Rose Smith & Co., Ltd. *v.* Inland Revenue Comrs. (1933); **28.** *Inc. T.* No. 585c
Rose Street Foundry & Engineering Co., Ltd. *v.* India Rubber Gutta Percha & Telegraph Works Co., Ltd. (1929); **36.** *Pats.* Nos. 688a, 796a
Roseberry-Surprise Mining Co. *v.* R. (Can.); **28.** *Inc. T.* p. 43
Rosedale Produce Co., *Re*, *Ex p.* McGowan (Can.); **5.** *Bkpcy.* p. 73
Rosemergey, *Re* (Can.); **25.** *Gifts*, p. 52
Rosen, *Re* (Can.); **24.** *Extrdn.* p. 44
— *v.* Kitchener (Can.); **26.** *Hghys.* p. 30
— *v.* Quercus S.S. Owners (1933); **34.** *Mast. & S.* No. 2702a
Rosenberg, *Ex p.*, *Re* Cohen & Sweigman (Can.); **4.** *Bkpcy.* p. 4
— *v.* The Maccabees (Can.); **16.** *Cr. Pract.* pp. 37, 38, 39
Rosenblat Estate, *Re* (Can.); **22.** *Evid.* p. 4
Rosenblum, *Re*, Rosenblum *v.* Rosenblum (1924); **8.** *Char.* Nos. 215a, 265a
Rosenhain & Co. *v.* Commonwealth Bank of Australia (Aus.); **6.** *B. of Exch.* pp. 1, 2
Rosenthal *v.* Hess (Can.); **2.** *Animals*, p. 63
— *v.* Hope & Hart (Can.); **5.** *Bkpcy.* p. 93
— *v.* London County Council (1924); **8.** *Carr.* No. 14a
Rosentzweig *v.* Swartz (Can.); **12.** *Contr.* p. 23
Rosher, *Re*, Rosher *v.* Rosher (1884); **17.** *Custom*, No. 740a
— *v.* Rosher, *Re* Rosher (1884); **17.** *Custom*, No. 740a
Roshko & Winnipeg School District No. 1, *Re*, *Re* Arbitration Act (Can.); **11.** *Comp. Pchc.* p. 17
Roskiwich *v.* Roskiwich (Can.); **27.** *H. & W.* p. 76
— *v.* — (No. 2) (Can.); **17.** *Dep.* p. 56
Rosknow, *Ex p.* (1885); **39.** *Revenue*, No. 880a
Rosman, *Ex p.*, *Re* Williams (Aus.); **41.** *Ship.* p. 68
Rosmus *v.* Bazay (Can.); **21.** *Exon.* p. 46
Ross, *Ex p.*, *Re* Cripps, Ross & Co. (1888); **4.** *Bkpcy.* No. 997a
—, *Re*, Hutchison *v.* Royal Institute for Advancement of Learning (Can.); **6.** *B. of Exch.* p. 9
—, *Re*, Ross *v.* McNeill & McNeill (Can.); **28.** *Infls.* p. 136
—, *Re*, Ross *v.* Waterfield (1930); **11.** *Confl.* No. 457a
— *v.* Bank of New South Wales (Aus.); **3.** *Bank.* p. 46
— *v.* Canadian Bank of Commerce (Can.); **1.** *Agcy.* p. 53
— *v.* Canadian National Rys. (Can.); **28.** *Injon.* p. 149
— *v.* Creighton (Can.); **21.** *Exon.* p. 49
— *v.* Department of Health for Scotland (Scot.); **44.** *Work*, p. 65
— *v.* Electrical Trades Union (1937); **43.** *Trade*, No. 1046a
— *v.* Ellison (or Ross) (1930); **11.** *Confl.* Nos. 68a, 68d; **27.** *H. & W.* No 2737a
— *v.* Empire Construction & Investment Co., Ltd. (Can.); **6.** *B. of Exch.* p. 1
— *v.* Fiset (Can.); **21.** *Exon.* p. 49; **30.** *Jdgmts.* p. 29
— *v.* Fossum & Toronto General Trusts Co. (Can.); **20.** *Eqy.* p. 30
— *v.* Gorman (Can.); **32.** *Lien.* pp. 23, 27
— *v.* Gray Coach Lines, Ltd. (Can.); **42.** *Str. Traf.* p. 60
— *v.* Imperial Life Assurance Co., Ltd. (Can.); **29.** *Insce.* pp. 32, 33
— *v.* Kobold (Can.); **1.** *Agcy.* p. 91
— *v.* Laughton (1813); **18.** *Discy.* No. 650a
— *v.* London County, Westminster & Parr's Bank (1919); **3.** *Bank.* No. 691a

Ross *v.* McNeill & McNeill, *Re* Ross (Can.); **28.** *Infts.* p. 136
— *v.* Manor Powis Coal Co. (Scot.); **34.** *Mast. & S.* p. 91
— *v.* Mason (Can.); **24.** *Exors.* p. 41
— *v.* Orr (Can.); **25.** *Gaming*, p. 42
— *v.* Perrault (Can.); **12.** *Contr.* p. 45
— *v.* Reopel (Can.); **36.** *Negl.* p. 32
— *v.* Rogers & Canadian National Rys. (Can.); **21.** *Exon.* p. 54
— *v.* Ross (1930); **11.** *Confl.* Nos. 68a, 68c; **27.** *H. & W.* No. 2737a
— *v.* — (Can.) (1872); **23.** *Exors.* p. 20
— *v.* — (Can.) (1930); **20.** *Eqy.* p. 30
— *v.* — (Can.) (1931); **27.** *H. & W.* p. 79
— *v.* — (Scot.) (1926); **11.** *Confl.* p. 27
— *v.* — (Scot.) (1927); **36.** *Parl.* p. 54
— *v.* — (Scot.) (1928); **27.** *H. & W.* p. 48
— *v.* Scott (Can.); **1.** *Agcy.* p. 72
— *v.* Simpson (Can.); **21.** *Exon.* p. 48
— *v.* Waterfield, *Re* Ross (1930); **11.** *Confl.* No. 457a
— *v.* Willards Chocolates, Ltd. (Can.); **34.** *Mast. & S.* p. 6
Ross (James) & Co. (Lime Wharf), Ltd. *v.* Stirlingshire Assessor (Scot.); **38.** *Rates*, p. 76
Ross & Leicester Corpn., *Re* (1932); **38.** *Pub. Hlth.* No. 502g
Ross (J. O.) Engineering Corpn. & C. L. W. Patents Corpn. *v.* Canada Paper Co. & Howard Smith Paper Mills, Ltd. (Can.); **36.** *Pats.* p. 102
Ross (J. O.) Engineering Corpn. & Ross Engineering of Canada, Ltd. *v.* Paper Machinery, Ltd. & Hellstrom (Can.); **36.** *Pats.* pp. 69, 75
Ross Johnson, Ltd. *v.* Victoria Mines, Ltd. (Can.); **5.** *Bkpcy.* pp. 63, 94
Ross Leaf Tobacco Co., Ltd. *v.* Canadian Freight Assocn. (Can.); **38.** *Rys.* p. 45
Rosse, *In the Goods of* (1934); **23.** *Exors.* Nos. 2314a, 2321a
Rossetti (Owners) *v.* Dampskibsselskabet Magnus (Scot.); **1.** *Adm.* p. 37
Rossi *v.* Blunden (1934); **28.** *Inc. T.* No. 540h
Rossiter *v.* Constable Hart & Co., Ltd. (1936); **34.** *Mast. & S.* No. 2438a
Rossouw, etc. *v.* Hodgson (S. Af.); **4.** *Bkpcy.* p. 26
Rostein *v.* Canadian National S.S. Co., Ltd. (Can.); **1.** *Agcy.* p. 84
Rosyth Canadian Fund Trustees (Scot.); **8.** *Char.* p. 80
Roth (L.) & Co., Ltd. *v.* Taysen, Townsend & Co. & Grant & Grahame (1896); **12.** *Contr.* No. 467a
Rothes Parish Council *v.* Elgin Parish Council (Scot.); **37.** *Poor L.* p. 18
Rothman & Allanswick, *Re*, *Ex p.* Rubens *v.* Board of Trade (1934–5); **4.** *Bkpcy.* No. 2264a
Rothschild *v.* Austrian Property Administrator (1923); **2.** *Aliens.* No. 49f
Rothstein *v.* Sentinel Fire Insce. Co. (Can.); **29.** *Insce.* p. 27
Rothwell *v.* Attwood (Can.); **1.** *Agcy.* p. 97
Rotorua, The (1936); **41.** *Ship.* Nos. 6187a, 6455b
Rouch *v.* Wright (1841); **29.** *Intpr.* No. 178a
Roughley *v.* State of New South Wales, *Ex p.* Beavis (Aus.); **17.** *Dep.* p. 62
Rouleau *v.* Aledo S.S. (Can.); **1.** *Adm.* p. 24
Roundway *v.* Roundway. *Re* Duddell (1932); **37.** *Powers*, No. 269a
Rountree *v.* Wood (Can.); **12.** *Contr.* p. 28
Roupell *v.* Haws (1863); **22.** *Evid.* No. 1933a
Rourke *v.* McCullough (Can.); **21.** *Estpl.* p. 31
Rouse, *Ex p.*, R. *v.* Daily Herald (1931); **16.** *Cntmpt.* No. 177a
—, *Re*, *Re* Ware, Ware *v.* Rouse (1926); **20.** *Eqy.* Nos. 1873b, 2030a
Rousseau *v.* Lynch & Fournier (Can.); **34.** *Mast. & S.* p. 15; **36.** *Negl.* p. 34
— *v.* Rousseau (Can.); **27.** *H. & W.* p. 46
Routley *v.* Gorman & Coran (Can.); **6.** *B. of Exch.* p. 21
Rovira *v.* Appalachee (Owners) (1926); **34.** *Mast. & S.* Nos. 2370a, 2552a
Rowan, *Ex p.* (Can.); **30.** *Intox.* p. 15
— *v.* Atlas Assurance Co., Ltd. (1928); **29.** *Insce.* No. 2937a
— *v.* Costello (Can.); **18.** *Distr.* p. 30
— & Eaton, *Re* (Can.); **38.** *Real Prop.* p. 96
Rowan S.S. *v.* Clan Malcolm S.S. (Scot.); **1.** *Adm.* p. 37
Rowbottom *v.* Bellis School District Trustees (Can.); **19.** *Educ.* p. 44
Rowe, *Ex p.*, *Re* Atkinson (Aus.); **34.** *Mast. & S.* p. 95
—, *Re* (Can.); **33.** *L. G.* p. 1
—, *Re*, Grass *v.* McClelland (Aus.); **23.** *Exors.* p. 27
— *v.* Butler (N.Z.); **1.** *Agcy.* p. 80
— *v.* Johnson (Aus.); **35.** *Mtge.* p. 48
— *v.* Prospect District Council (Aus.); **26.** *Hghys.* p. 40
Rowe & Brown *v.* Public Trustee (N.Z.); **8.** *Char.* p. 81
Rowe Brothers & Co., Ltd. *v.* Lindgens (1920); **2.** *Aliens*, No. 409a
Rowell *v.* Pratt (1938); **22.** *Evid.* No. 4085a
Rowland *v.* Air Council (1923); **11.** *Const. L.* No. 348b; **30.** *Jdgmts.* No. 187a
Rowland & Mackenzie-Kennedy *v.* Air Council (1927); **30.** *Jdgmts.* No. 187b; **36.** *Pats.* No. 1673a
Rowland Edwards & Co., Ltd. *v.* Three Star Accumulators, Ltd. (1933); **36.** *Pats.* No. 1208a
— *v.* — (1934); **36.** *Pats.* No. 1213c
Rowlands & Johnstone *v.* Holland (Can.); **1.** *Agcy.* p. 76
Rowlatt *v.* Garment (J. & G.) Manufacturing Co. (Can.); **5.** *Bkpcy.* p. 75; **6.** *B. of Exch.* p. 16
Rowley *v.* Cook (Can.); **7.** *Bldg. Conts.* p. 32
Rowlls *v.* Bebb, *Re* Rowlls, Walters *v.* Treasury Solicitor (1900); **20.** *Eqy.* No. 1068a
Rownson, Drew & Clydesdale *v.* Great Western, London, Midland & Scottish, London & North Eastern & Southern Ry. Cos. (1928); **8.** *Carr.* No. 1245b
Rowntree (Alfred) & Sons, Ltd. *v.* Allen (Frederick) & Sons (Poplar), Ltd. (1935); **21.** *Estpl.* No. 447b
Rowson *v.* Inland Revenue Comrs. (1929); **28.** *Inc. T.* No. 173a
— *v.* Stephen (1929); **28.** *Inc. T.* No. 173a
Roxburgh *v.* Crosby & Co. (Aus.); **1.** *Agcy.* p. 84
Roxburghe's, Duke Executors *v.* Inland Revenue Comrs. (1936); **28.** *Inc. T.* No. 446g
Roy *v.* Canadian Bank of Commerce (Can.); **3.** *Bank.* p. 45
— *v.* R. (Can.); **37.** *Post Off.* p. 22
— *v.* St. John Lumber Co. (Can.); **1.** *Agcy.* p. 66
Roy Wolf Brewing Co., *Re* (Can.); **31.** *L. & T.* p. 62
Royal Academy of Dramatic Art, *Ex p.* (1930); **38.** *Rates*, No. 501a
Royal Agricultural Hall Co. *v.* Islington Assessment Committee (1918); **1.** *Action*, No. 11
Royal Antediluvian Order of Buffaloes *v.* Owens (1928); **28.** *Inc. T.* No. 58a

Royal Bank of Canada, *Ex p.*, *Re* Gaudreau (Can.); **7.** *B. of Sale*, pp. 6, 8
—, *Ex p.*, *Re* Hamer (Can.); **5.** *Bkpcy.* p. 94
—, *Ex p.*, *Re* J. Stanley Wedlock, Ltd. (Can.); **9.** *Coys.* p. 38
—, *Ex p.*, *Re* McQuillan (Can.); **5.** *Bkpcy.* p. 70
— *v.* Allen (Can.); **6.** *B. of Exch.* p. 14
— *v.* Bendiksen & Ireland (Can.); **43.** *Tresp.* p. 52
— *v.* Diamond (Can.) (1929); **17.** *Dep.* p. 56; **26.** *Guar.* p. 12
— *v.* — (Can.) (1930); **5.** *Bkpcy.* p. 86
— *v.* Doten (Can.); **3.** *Bank.* p. 41
— *v.* Dufferin Rural Municipality (Can.); **18.** *Distr.* p. 31
— *v.* Dumart (Can.); **29.** *Insce.* p. 31
— *v.* Dwigans (Can.); **6.** *B. of Exch.* p. 4
— *v.* Eastern Trust Co. (Can.); **5.** *Bkpcy.* p. 57
— *v.* Fleming (Can.); **26.** *Guar.* p. 8
— *v.* Frank (Can.); **12.** *Contr.* p. 33
— *v.* Gold (Can.); **3.** *Bank.* p. 41
— *v.* Green (Can.); **21.** *Estpl.* p. 38
— *v.* Grobe & Walbridge (Can.); **6.** *B. of Exch.* pp. 9, 10, 11
— *v.* Gustafson (Can.); **8.** *Chos.* p. 95
— *v.* Heyler & Ayling, *Re* Ayling (Can.); **7.** *B. of Sale*, p. 1
— *v.* Hodges (Can.); **3.** *Bank.* p. 43
— *v.* Hogg (Can.); **6.** *B. of Exch.* p. 21
— *v.* Izen (Can.); **20.** *Eqy.* p. 31
— *v.* Kenward (Can.); **21.** *Exon.* p. 55
— *v.* Larue (Can.); **5.** *Bkpcy.* p. 90; **17.** *Dep.* p. 40
— *v.* Lee & W. B. Moffatt & Co. (Can.); **21.** *Exon.* p. 55
— *v.* McBride (Can.); **3.** *Bank.* p. 41
— *v.* McEachern (Can.); **6.** *B. of Exch.* p. 15
— *v.* Mack (Can.); **3.** *Bank.* p. 20
— *v.* Mackenzie (Can.); **3.** *Bank.* p. 44; **7.** *B. of Sale*, p. 7
— *v.* McLennan (Can.); **3.** *Bank.* p. 43
— *v.* McNaughton (Can.); **3.** *Bank.* p. 32; **6.** *B. of Exch.* p. 15
— *v.* Mars (No. 2) (Can.); **42.** *Solrs.* p. 8
— *v.* — (No. 3), *Re* (Can.); **42.** *Solrs.* p. 5
— *v.* Mills (Can.); **3.** *Bank.* p. 46
— *v.* Pischke & Trader's Finance Corpn. (Can.); **29.** *Insce.* p. 29
— *v.* Pope (Can.); **3.** *Bank*, p. 43
— *v.* Port Royal Pulp & Paper Co. (Can.); **3.** *Bank*, p. 44
— *v.* R. (Can.) (1921); **30.** *L. & T.* p. 44
— *v.* — (Can.) (1931); **35.** *Mistake*, p. 12
— *v.* Salvatori (Can.); **3.** *Bank.* p. 45
— *v.* Talbot (Can.); **3.** *Bank*, p. 41; **37.** *Pawns*, p. 1
— *v.* Van Buren & McKay (Can.); **21.** *Exon.* p. 54
— *v.* Wannamaker (Can.); **6.** *B. of Exch.* p. 11
— *v.* Wye (Can.); **3.** *Bank.* p. 43
Royal Bank of Canada & Rider, *Ex p.*, *Re* Longmore (Can.); **5.** *Bkpcy.* p. 50
Royal Commission of Wheat Supplies *v.* Usher & Co., Ltd. (Ir.); **2.** *Arbn.* p. 97
Royal Commission on Sugar Supplies *v.* Kwik-Hoo-Tong Trading Society (1922); **2.** *Arbn.* No. 949c
Royal Dress Co., *Ex p.*, *Re* Hudson Fashion Shoppe, Ltd. (Can.); **4.** *Bkpcy.* p. 44
Royal Exchange Assurance *v.* Conquest, *Re* Conquest (1929); **40.** *Stlmts.* No. 1873b
— *v.* Hope (1928); **29.** *Insce.* No. 2993a
— *v.* Royal Trust Co. of Canada, *Re* Bullock-Webster (1936); **21.** *E. D.* 272a
Royal Exchange Assurance Co. *v.* Grimshaw Brothers, Ltd. (Can.); **8.** *Chos.* p. 89; **29.** *Insce.* p. 25
Royal Exchange Assurance Corpn. *v.* Walker, *Re* Walker's Settlement (1935); **43.** *Trusts*, No. 3703a
Royal Financial Insurance, Ltd. *v.* National Biscuit & Confection Co., Ltd. (Can.); **12.** *Contr.* p. 53
Royal Insurance Co., Ltd. *v.* Mylius (Aus.); **29.** *Insce.* p. 29
— *v.* Stephen (1928); **28.** *Inc. T.* Nos. 95a, 309a
Royal London Mutual Insurance Society *v.* Barrett (1928); **29.** *Insce.* No. 2962a
Royal Prerogative of Mercy in Deportation Proceedings, *Re* (Can.); **2.** *Aliens*, p. 50; **11.** *Const. L.* p. 65
Royal Star, The (1928); **1.** *Adm.* No. 1597a
— (No. 2) (1928); **1.** *Adm.* Nos. 1507a, 1604a
Royal Trust Co. *v.* Allen (Can.); **33.** *Lunat.* p. 13
— *v.* A.-G. for Alberta (Can.) (1930); **21.** *E. D.* p. 18
— (Executor of Cochrane Estate) *v.* A.-G. for Alberta (No. 1) (Can.) (1934); **21.** *E. D.* p. 16
— *v.* — (No. 2) (Can.) (1934); **21.** *E. D.* p. 16
— *v.* — (No. 3) (Can.) (1936); **16.** *Cr. Pract.* p. 24
— *v.* — (Can.) (1937); **17.** *Dep.* p. 57
— *v.* Bainbridge Lumber Co. (Can.); **10.** *Coys.* p. 65
— *v.* Baxter, *Re* McGibbon (Can.); **44.** *Wills*, p. 19
— *v.* Bonsall (Can.); **28.** *Infts.* p. 142
— *v.* Canadian Pacific Ry. Co. (Can.); **18.** *Discy.* p. 12
— *v.* Great Northern Elevator Co. (Can.); **10.** *Coys.* p. 55
— *v.* Jones (Can.); **25.** *Gifts*, p. 48
— *v.* —, *Re* Jones (No. 2) (Can.); **44** *Wills*, p. 24
— *v.* Kennedy (Can.); **40.** *S. Land*, p. 9
— *v.* Kritzwiser (Can.); **21.** *Exon.* p. 60
— *v.* Leach (Can.); **30.** *L. & T.* p. 42
— *v.* Oak Bay Corpn. (Can.); **35.** *Money*, p. 15
— *v.* Provincial Secretary, Treasurer of New Brunswick (Can.); **21.** *E. D.* p. 19
— *v.* Shimmin (Can.); **44.** *Wills*, p. 22, 29
— *v.* Spillers Canadian Milling Co. (Can.); **9.** *Coys.* p. 54
— *v.* Toronto Transportation Commission (Can.); **42.** *Str. Traf.* p. 38
— *v.* Warter, *Re* Bullen Estate (Can.); **28.** *Infts.* p. 141
Royal Trust Co. & Rattenbury, *Re* (Can.); **24.** *Exors.* p. 41
Royal Trust Co.'s Case, *Re* Land Titles Act (Can.); **1.** *Agcy.* p. 53
Royal Victoria Hospital *v.* London Guarantee & Accident Corpn., Ltd. (Ir.); **29.** *Insce.* p. 48
Royal Warrant Holders' Assocn. *v.* Lipman (1933); **43.** *Trade Mks.* No. 1589a
— *v.* Sloan, Ltd. (1931); **43.** *Trade Mks.* No. 1586a
Royalite Oil Co., Ltd., *Re* (Can.) (1929); **38.** *Rates*, p. 66
—, *Re* (Can.) (1931); **17.** *Dep.* p. 52
Royds *v.* Douglas, *Re* Sandbach (1933); **40.** *Stlmts.* No. 1998c
Royle *v.* Orme (1932); **38.** *Pub. Hlth.* Nos. 204b, 204d
Royston *v.* Hankey (1833); **25.** *Gifts*, No. 26a
Royxel *v.* Royal Bank of Canada (Can.); **3.** *Bank.* pp. 21, 45
Rozecki, *Re*, *Re* Dzydz (Can.); **28.** *Infts.* p. 137
Ruapehu, The (1927); **1.** *Adm.* No. 579b
— (No. 2) (1929); **1.** *Adm.* No. 579b; **41.** *Ship.* No. 8104a
Ruapehu (Owners) *v.* Green (R. & H.) & Silley Weir, Ltd., The Ruapehu (1927); **1.** *Adm.* No. 579b
Rubas *v.* Parkinson (Can.); **9.** *Coys.* p. 14

Rubbernus *v.* Downard (Can.); **36.** *Negl.* p. 16
Rubens *v.* Board of Trade, *Ex p.*, *Re* Rothman & Allanswick (1934–5); **4.** *Bkpcy.* No. 2264a
Rubinstein *v.* Malkin (Can.); **42.** *Str. Traf.* p. 38
Ruby S.S. Corpn., Ltd. *v.* Commercial Union Assurance Co. (1933); **11.** *Confl.* No. 702a
Ruchcha Saithwar *v.* Hansrani (Ind.); **17.** *Dep.* p. 78
Ruckmaboye *v.* Lulloobhoy Mottichund (1853); **17.** *Dep.* No. 315b
— *v.* Lulloobhoy Mottichund (Ind.); **17.** *Dep.* p. 72
Rudd *v.* Aitken, *Re* Jones Estate (Can.); **38.** *Rates*, p. 63
— *v.* Elder Dempster & Co., Ltd. (1933); **34.** *Mast. & S.* No. 4071b
— *v.* Rea (Ir.); **2.** *Agric.* p. 20
— *v.* Rudd (1924); **11.** *Confl.* Nos. 55a, 903a, 935a, 1090a
Ruddell *v.* Georgeson (Can.); **38.** *Rates*, p. 63
Ruddell Grain Growers Assocn., Ltd. *v.* Cleator & Saskatchewan Co-operative Elevator Co., Ltd. (Can.); **21.** *Exon.* p. 54
Rudder *v.* Lundin, *Re* Extra-Judicial Seizures Act (Can.); **7.** *B. of Sale*, p. 11
Rudduck, *Re*, Equity Trustees Executors & Agency Co., Ltd. *v.* Rudduck (Aus.); **44.** *Wills*, p. 45
Ruddy *v.* London, Midland & Scottish Ry. Co. (1929); **34.** *Mast. & S.* Nos. 2823a, 3541c
Rudge *v.* Haddington Island Quarry Co., Ltd. (Can.); **35.** *Mtge.* p. 31
— *v.* Stauffer (Can.); **2.** *Animals*, p. 66
— *v.* Winnall (1849); **23.** *Exors.* No. 5273b
Rudlen *v.* Bridgeman (Can.); **36.** *Negl.* p. 8
Rudyard's Case (1670); **16.** *Cr. Pract.* No. 656a
Ruf (T. A.) & Co. *v.* Pauwels (1919); **2.** *Arbn.* Nos. 1152a, 1937a
Ruff *v.* Sutherland & Moss (Can.); **42.** *Str. Traf.* p. 60
Rufus Riddlesbarger's Patent, *Re* (1935); **36.** *Pats.* No. 1352b
Rugby School *v.* Tannahill (1935); **31.** *L. & T.* Nos. 6329a, 6333a
Rugg-Gunn *v.* Rugg-Gunn & Archer (1931); **27.** *H. & W.* No. 4640a
Ruislip-Northwood Urban District Council *v.* Lee (1931); **30.** *Jdgmts.* Nos. 219a, 231a, 262a; **38.** *Pub. Hlth.* No. 265a
Rule *v.* Bradner (Can.); **12.** *Contr.* p. 20
— *v.* Pals (Can.); **35.** *Misrep.* p. 1
Rumble *v.* Rowlin (Can.); **40.** *S. Land*, p. 15
— *v.* Wilson (Can.); **16.** *Courts*, p. 10
Rumely Thresher Co. Incorporated *v.* Stahl (Can.); **39.** *S. Goods*, p. 60
Rumney's Estate, *Re* (Aus.); **44.** *Wills*. p. 29
Rumsey *v.* Hare (Can.); **17.** *Dep.* p. 39
Runcorn Guardians *v.* Worrall (1930); **38.** *Pub. Auth.* No. 860a
Rundel, *Re* (Can.); **38.** *Real Prop.* p. 94
Rung, *Re* (Can.); **5.** *Bkpcy.* p. 59
Rungasamy Chetty, *Re* (S. Af.); **2.** *Aliens*, p. 51
Runner, *Re* (Can.); **4.** *Bkpcy.* p. 46
Running *v.* Marshall (Can.); **31.** *L. & T.* p. 54
Rupan Singh *v.* Akhaj Singh (Ind.); **17.** *Dep.* p. 76
Rural Municipality Act, *Re*, *Re* Carrot River Rural Municipality, Minaker *v.* Sanderson (Can.); **20.** *Elect.* p. 6
Rural Municipality of Heart's Hill *v.* Helmer (Can.); **21.** *Estpl.* p. 37
Rush, *Ex p.*, R. *v.* Hay Halkett (1929); **33.** *Mags.* No. 433a
—, *Re* (1870); **21.** *Exon.* No. 1882a
—, *Re*, Warre *v.* Rush (1923); **2.** *Aliens*, No. 215k
— *v.* Pembina (Can.); **38.** *Rates*, p. 85
Rushbrooke *v.* O'Sullivan & Hibernian Fire Insurance Co., Ltd. (Ir.); **18.** *Discy.* p. 9
Ruskin *v.* Wasserman (S. Af.); **1.** *Agcy.* p. 70
Russ, *Re* (Aus.); **42.** *Solrs.* p. 8
Russ & Brown's Contract, *Re* (1934); **40.** *S. Land*, No. 1138a
Russel *v.* Prat (1584); **23.** *Exors.* No. 427
— *v.* — (1589); **23.** *Exors.* No. 427
Russell *v.* Arnold (Can.); **6.** *B. of Exch.* p. 21
— *v.* Bates (Aus.); **33.** *Mags.* p. 29
— *v.* Beesley (1937); **42.** *Str. Trfic.* No. 199a
— *v.* Canada West Grain Co. (Can.); **1.** *Agcy* p. 54
— *v.* Criterion Film Productions, Ltd. (1936); **36.** *Negl.* No. 83b; **42.** *Theatres*, No. 195e, 195f
— *v.* Davey (Can.); **35.** *Mtge.* p. 47
— *v.* Gale (Aus.); **30.** *Intox.* p. 1
— (Duke of Bedford) *v.* Murphy & Caron (Can.); **25.** *Fraud. Conv.* p. 15
— *v.* Naylor (Aus.); **25.** *Gaming*, p. 39
— *v.* Ontario Foundation & Engineering Co. (Can.); **32.** *Lien*, p. 24
— *v.* R. (Can.); **14.** *Crim.* p. 69
— *v.* Reid (Can.); **21.** *Exon.* p. 48; **39.** *S. Goods*, p. 59
— *v.* Russell (1924); **3.** *Basty.* No. 70a
— *v.* — (1935); **27.** *H. & W.* No. 5117b
— (Marchioness of Tavistock) *v.* — (Marquis of Tavistock) (1935); **27.** *H. & W.* No. 2484a
— *v.* — (Aus.); **11.** *Confl.* pp. 27, 46; **27.** *H. & W.* pp. 30, 38
— *v.* — (Can.) (1881); **21.** *Exon.* p. 50
— *v.* Russell & McKenna (Can.) (1927); **27.** *H. & W.* p. 47
— *v.* Scott (Aus.); **25.** *Gifts*, p. 49
— *v.* Smith (1848); **13.** *Coprt.* Nos. 99a, 506a
Russell & Harding, *Re* (1922); **2.** *Agric.* No. 266z
Russell (Archibald), Ltd. *v.* McNeilly (1934); **34.** *Mast. & S.* No. 2970d
— *v.* Nether Pollok, Ltd. (Scot.); **34.** *Mines*, p. 201
Russell School District *v.* Shellmouth Rural Municipality (Can.); **38.** *Pub. Auth.* p. 2
Russian & English Bank, *Re* (1932); **10.** *Coys.* Nos. 5454a, 8548b
— *v.* Baring Bros. & Co., Ltd. (1932); **10.** *Coys.* Nos. 8523a, 8548a
— *v.* — (1934); **10.** *Coys.* No. 8523b
— *v.* — (1938); **12.** *Contr.* No. 3869c
Russian & English Bank & Florance Montefiore Guedalla *v.* Baring Bros. & Co., Ltd. (1936); **10.** *Coys.* No. 8523c
Russian Bank for Foreign Trade, *Re* (1933); **10.** *Coys.* No. 8548c
—, *Re*, *Re* Russo-Asiatic Bank (1934); **6.** *B. of Exch.* No. 2816b; **10.** *Coys.* No. 6384a
Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse (1925); **10.** *Coys.* No. 8523
Russian Commercial & Industrial Trade *v.* Kogan, *Re* Sagar (1930); **24.** *Exors.* No. 8516a
Russian Mercantile Co., Ltd. *v.* Sloboda & Sloboda (Can.); **25.** *Fraud. Conv.* p. 14
Russian Wood Agency, Ltd. *v.* Dampskibsselskabet "Heimdal" (1934); **41.** *Ship.* No. 1879c
Russland, The (1924); **1.** *Adm.* No. 781g
Russo-Asiatic Bank, *Re*, *Re* Russian Bank for Foreign Trade (1934); **6.** *B. of Exch.* No. 2816b; **10.** *Coys.* No. 6384a
Rust *v.* Rust (Can.); **27.** *H. & W.* p. 19
Rustin *v.* Bradley (Can.); **16.** *Courts*, p. 10
Rustom *v.* R. (Ind.); **17.** *Dep.* p. 80
Ruston *v.* Ryburn (1931); **34.** *Mast. & S.* No. 3754b

Ruston & Hornsby, Ltd. *v.* Goodman (1933); **34.** *Mast. & S.* No. 3288g
Ruta *v.* Ruta & Samuliak (Can.); **11.** *Confl.* p. 47
Ruth & Estevan (Town), *Re* (Can.); **38.** *Pub. Auth.* p. 11
Ruth-Aldo Co. (Incorporated) Applications for Patents (Nos. 282,788, 303,135 & 305,096), *Re* (1933); **36.** *Pats.* No. 1168a
Ruth-Aldo Co. (Inc.) Application for a Patent (Nos. 282,791 & 303,099), *Re* (1933); **36.** *Pats.* No. 1526a
Ruth's Patent, *Re* (1931); **36.** *Pats.* No. 2027b
Ruthenian Catholic Mission of the Order of St. Basil the Great in Canada *v.* Mundare School District No. 1603 (Can.); **38.** *Rates*, p. 62
Ruthenian Farmers Elevator Co. *v.* Gniazdoski (Can.); **6.** *B. of Exch.* p. 6
Ruthenian Sisters of the Immaculate Conception *v.* Saskatoon City (Can.); **38.** *Rates*, p. 61
Rutherford, *Re* (Can.); **20.** *Eqy.* p. 26
Rutherford *v.* Consolidated Plate Glass Co., Ltd. (Can.); **18.** *Discy.* p. 8
— *v.* Hall-Walker, *Re* Wavertree of Delamere (Baron) (1933); **44.** *Wills*, Nos. 412a, 5598a, 5598b, 5601a, 5602a
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 121
— *v.* Lord Advocate (Scot.); **18.** *Distr.* p. 33
— *v.* Royal Bank of Canada (Can.); **3.** *Bank.* p. 30
— *v.* Rutherford (1922); **27.** *H. & W.* No. 5196
— *v.* Stovel (Can.); **26.** *Guar.* p. 14
— *v.* Trust Houses, Ltd. (1926); **24.** *Fact.* No. 206a
Rutherford & McDonald's Orpheum Garage *v.* Stewart-Warner Sales Co., Ltd. (Can.); **3.** *Bailmt.* p. 15
Rutherford's Conveyance, *Re*, Goadby *v.* Bartlett (1938); **40.** *S. Land*, No. 2658b
Ruthig *v.* Stuart Bros., Ltd. (Can.); **28.** *Injun.* p. 145
Ruthning *v.* Ferguson (Aus.); **36.** *Nuis.* p. 44
Rutledge *v.* Anderson (Can.); **35.** *Misrep.* p. 6
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 11
Ruttan *v.* O'Connor-Fenton (Can.); **36.** *Negl.* p. 16
— *v.* R. (Can.); **26.** *Hghys.* p. 28
— *v.* Weller (Can.); **21.** *Exon.* p. 48
Rutten *v.* Rutten & Cutler (Can.); **27.** *H. & W.* p. 53
Rutter *v.* Linton (Aus.); **1.** *Agcy.* p. 102
— *v.* Orde (Can.); **30.** *L. & T.* p. 44
— *v.* Palmer (1922); **3.** *Bailmt.* No. 140a
Ryall *v.* Du Bois Co., Ltd. (1933); **28.** *Inc. T.* No. 446d
— *v.* Proctor (1928); **28.** *Inc. T.* Nos. 489b, 516a
Ryall Estate, *Re*, *Re* McMenemy Estate (Can.); **21.** *E. D.* p. 21
Ryan *v.* Cashin & Costello, *Re* McWey (Ir.); **25.** *Gifts*, p. 51
— *v.* Charlesworth (Can.); **25.** *Fraud. Conv.* p. 15
— *v.* Fildes (1938); **19.** *Educ.* Nos. 49a, 277a; **42.** *Tort*, No. 108c
— *v.* Newsome (Aus.); **34.** *Mast. & S.* p. 67
— *v.* Thomas (1911); **12.** *Contr.* No. 5b
— *v.* Trask (Can.); **28.** *Infts.* p. 141
— *v.* Youngs (1938); **26.** *Hghys.* No. 1514a
— & Vancouver District Registrar of Titles, *Re* (Can.); **38.** *Real Prop.* p. 95
Ryckman *v.* Trusts & Guar. Co. (Can.); **24.** *Exors.* p. 36
Ryder *v.* Taylor (Aus.); **12.** *Contr.* p. 3
Rye & Eyre *v.* Inland Revenue Comrs. (1935); **28.** *Inc. T.* No. 391c
Rye Farm Co. *v.* British Oak Insurance Co., Ltd. (Can.); **2.** *Arbn.* p. 91
Rygus *v.* Zawitkowski & Ross (Can.); **29.** *Intpr.* pp. 63, 65; **35.** *Mistake*, p. 9
Rymer *v.* Liverpool Corpn. (1932); **11.** *Comp. Pche.* No. 2225c
Ryson, *Re* (Can.); **2.** *Agric.* p. 26
Ryz *v.* Nash-Simington Co., Ltd. (Can.); **42.** *Str. Traf.* p. 36

S.

S., *Re* (Can.); **3.** *Basty.* p. 59
—, *Re*, *Re* Equal Guardianship of Infants Act (Can.); **3.** *Basty.* p. 59
— (otherwise U.) *v.* A.-G. (1931); **3.** *Basty.* No. 142c
— *v.* S. (Aus.); **27.** *H. & W.* pp. 23, 45
— *v.* S. & M. (Can.); **27.** *H. & W.* p. 26
— *v.* S. & P. (1928); **27.** *H. & W.* No. 4280a
S. & R. Steamships, Ltd. *v.* London County Council (1938); **26.** *Hghys.* No. 1412a
S. B. H., *Re*, Public Trustee *v.* B. F. H. (N.Z.); **44.** *Wills*, p. 13
S. O. S. Motors, Ltd. *v.* Foxton & Metro Goldwyn-Mayer, Ltd. Corpn. (N.Z.); **8.** *Carr.* p. 5
S. P., *Re*, *Ex p.* Official Receiver (1936); **23.** *Exors.* No. 4485a
Sabapathi *v.* Huntley (Ceylon); **34.** *Med.* p. 185
Sabatier *v.* Trading Co (1927); **13.** *Corpns.* No. 1544a
Sabine *v.* Wood (Can.); **38.** *Real Prop.* p. 90
Sabjan Bibi *v.* Ashanulla Bepari (Ind.); **36.** *Partn.* p. 56
Saccharin Corpn. *v.* National Saccharin Co., Ltd. (1910); **36.** *Pats.* No. 2723a
Sack *v.* Jones (1925); **7.** *Bounds. & F.* No. 251a; **19.** *Easmt.* No. 1226a
Sadar Ali *v.* Dalimuddin (Ind.); **17.** *Dep.* p. 85
Sadler *v.* Auckland Co-operative Society, Ltd. (N.Z.); **28.** *Ind. Soc.* p. 128
Sadler (A. L.) & Son *v.* Thorpe (1927); **34.** *Mast. & S.* No. 3702a
Saffron Walden Election, *Re*, *Ex p.* Robson (1886); **20.** *Elect.* No. 1675
Sagan *v.* Patan (Can.); **18.** *Discy.* p. 8
Sagaporack, The, The Hontestroom (1927); **1.** *Adm.* No. 1642a
Sagar, *Re*, Russian Commercial & Industrial Trade *v.* Kogan, Kogan *v.* Kogan (1930); **24.** *Exors.* No. 8516a
— *v.* Closer Settlement, Ltd. (Aus.); **35.** *Misrep.* p. 3
— *v.* Ridehalgh (H.) & Son, Ltd. (1931); **17.** *Custom*, No. 635a; **24.** *Fact.* No. 264c
Saheebolay *v.* Woolfson (S. Af.); **31.** *L. & T.* p. 56
Said *v.* Butt (1920); **35.** *Misrep.* No. 445a
Said-un-nissa Bibi *v.* Ruqaiya Bibi (Ind.); **22.** *Evid.* p. 16
Saint *v.* Hockley (1925); **39.** *Revenue*, Nos. 302a, 302b
St. Andrew's Church Trustees & Great Western Ry. Co., *Re* (Can.); **38.** *Rys.* p. 36
St. Andrew's College Trustees *v.* Griffin (Can.); **13.** *Corpns.* p. 32
Saint Angus, The (1938); **41.** *Ship.* No. 6285a
St. Anne's Well Brewery Co. *v.* Roberts (1928); **30.** *Jdgmts.* No. 506b; **36.** *Nuis.* Nos. 316a, 344a, 349a
St. Anthony's Hospital *v.* Flin Flon Town (Can.); **38.** *Pub. Hlth.* p. 21
St. Aubyn Estates, Ltd. *v.* Strick (1932); **28.** *Inc. T.* No. 122a
St. Bartholomew's Hospital (Governors), *Ex p.* (1928); **8.** *Char.* No. 2353a
St. Boniface School District *v.* Macdonald (Can.); **2.** *Arbn.* p. 86

St. Brigids (Parish), Iberville (County), P. Q. *v.* Canadian National Rys. (Can.); **38.** *Rys.* p. 44
St. Catharines *v.* Hulse (Can.); **26.** *Hghys.* p. 17
St. Catherines Corpn. *v.* Ontario Hydro-Electric Power Commission (Can.); **33.** *L. G.* p. 3; **42.** *Stats.* p. 25
St. Charles, The (1927); **1.** *Adm.* Nos. 1406a, 1422a
St. Clair *v.* Audney (Scot.); **1.** *Adm.* p. 39
St. Cuthbert's Co-operative Assocn. *v.* Edinburgh Assessor (Scot.) (1931); **38.** *Rates*, p. 54
— *v.* — (1932); **38.** *Rates*, p. 54
St. Davids (Lord) *v.* Union Castle Mail S.S. Co., Ltd. (1934); **9.** *Coys.* No. 3696a
St. Denis *v.* Thibodeau (Can.); **36.** *Notar.* p. 42
— *v.* Western Products, Ltd. (Can.); **12.** *Contr.* p. 7
St. Dunstan's, Stepney, *Re* (1937); **7.** *Burial*, No. 315a
St. Eloi *v.* Eno (Can.); **27.** *H. & W.* p. 13
St. Eugene de Guigues *v.* Canadian Pacific Railway (Can.); **38.** *Rys.* p. 35
St. Francis Hydro Electric Co., Ltd. *v.* R. (1937); **16.** *Courts*, No. 671a
— *v.* R. (Can.); **17.** *Dep.* p. 74
St. Germans (Earl) *v.* Barker (1936); **30.** *L. & T.* No. 1526b
St. Gervais *v.* Goulet (Can.); **38.** *Pub. Hlth.* p. 15
St. Gregor Mercantile Co. *v.* Halbach & Bank of Montreal (Can.); **25.** *Fraud. Conv.* p. 16
St. Helens Tramways Co. *v.* Wood (1891); **13.** *Corpns.* No. 907a
St. Hilary, Cornwall, *Re* (1938); **19.** *Eccl.* No. 3105a
St. Hyacinthe (Œuvre du Patronage de) *v.* St. Hyacinthe (City) (Can.); **38.** *Rates*, p. 81
St. James & Pall Mall Electric Light Co., Ltd. *v.* Westminster (City) Assessment Committee (1934); **20.** *Electric*, No. 88a
St. James Rural Municipality *v.* Bourke (Can.); **38.** *Rates*, p. 86
St. Jean *v.* R. (Can.); **15.** *Crim.* p. 81
St. John *v.* Fraser (Can.); **42.** *Stk.Ex.* p. 34
— (Doe d.) *v.* Hore (1799); **22.** *Evid.* No. 2475a
St. John (City) *v.* R. (Can.); **26.** *Hghys.* p. 24
St. John *v.* Zerfing (Can.); **33.** *L. G.* p. 8
St. John & Quebec Ry. Co. *v.* Bank of British North America & Hibbard Co. (Can.); **8.** *Chos.* p. 93
St. John Corpn. (Doe d.) *v.* Roe (Can.); **38.** *Real Prop.* p. 99
St. John County Hospital *v.* Peck (Can.); **21.** *Estpl.* p. 37
St. John Harbour Comrs. *v.* Eastern Coal Docks, Ltd. (Can.); **44.** *Waters*, p. 1
St. John Power Commission *v.* New System Laundry, Ltd. (Can.); **13.** *Corpns.* p. 26
St. John River Log Driving Co., *Re* (Can.); **10.** *Coys.* p. 79
St. John's Church, *Re* (Can.); **19.** *Eccl.* p. 30
St. Joseph, The (1933); **11.** *Confl.* No. 697a
St. Joseph de Coleraine (La Corpn. de la Paroisse de) *v.* Colonial Chrome Co., Ltd. (Can.); **38.** *Rates*, p. 86
St. Julian Shrewsbury (Parish) (Doe d.) *v.* Cowley (1823); **26.** *Hghys.* No. 1717a
St. Ledger *v.* Brennan (Aus.); **32.** *Libel*, p. 7
St. Louis *v.* Canadian Bank of Commerce (Can.); **24.** *Exors.* p. 41
St. Louis Rural Municipality *v.* Markham (Can.); **1.** *Action*, p. 3
St. Lucia Usines & Estates Co., Ltd. *v.* St. Lucia (Colonial Treasurer) (St. Lucia); **28.** *Inc. T.* p. 57
St. Luke's Presbyterian Congregation of Saltsprings Trustees *v.* Cameron (1930); **17.** *Dep.* No. 345a
St. Luke's Salt Springs (Trustees) *v.* Cameron (Can.); **19.** *Eccl.* p. 31
St. Magnus the Martyr, London Bridge (1925); **19.** *Eccl.* No. 2831
Ste. Marie *v.* Ste. Marie (Can.); **12.** *Contr.* p. 12; **37.** *Poor L.* p. 17
St. Mary Magdalen, Oxford, *Re* (1898); **11.** *Comp. Pche.* No. 1279a
St. Michaels College *v.* Toronto City Corpn. (Can.); **11.** *Comp. Pche.* p. 6
St. Michaels College & Toronto, *Re* (Can.); **38.** *Pub. Hlth.* p. 17
St. Nedeport (Prior) *v.* Weston (1443); **1.** *Action*, No. 243a
St. Nicholas Acons (Rector & Churchwardens) *v.* London County Council (1928); **7.** *Burial*, Nos. 300c, 309a
St. Pancras Metropolitan Borough Council & Journeymen Tailors' Benevolent Institution (1937); **19.** *Eccl.* No. 3081a
St. Paul's Warden, etc. *v.* Kettle (1813); **19.** *Eccl.* No. 3455b
St. Philip, The (1747); **2.** *Aliens*, No. 419a
St. Pierre *v.* O'Hearn (Can.); **42.** *Stk. Ex.* p. 31
— *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382; **11.** *Confl.* Nos. 336a, 1319a
— *v.* South American Stores (Gath & Chaves), Ltd., & Chilean Stores (Gath & Chaves), Ltd. (1937); **11.** *Confl.* Nos. 707a, 756a
St. Regis Pastry Shop *v.* Continental Casualty Co. (Can.); **29.** *Insce.* p. 6
St. Rose Rural Municipality *v.* Royal Bank of Canada (Can.); **35.** *Mistake*, p. 12
St. Saviour's, Hampstead, *Re* (1932); **19.** *Eccl.* Nos. 2816a, 2893a
St. Stephen (Rector) *v.* Tortelott (Can.); **19.** *Eccl.* p. 30
St. Tudno, The (1918); **1.** *Adm.* Nos. 648a, 650b
St. Vincent de Paul Children's Aid Society of Toronto *v.* Spence (Can.); **28.** *Infts.* p. 137
St. Vital Rural Municipality & Municipal & Public Utility Board (Can.); **33.** *L. G.* p. 9
Sainthill, *Re* (Can.); **24.** *Exors.* p. 32; **44.** *Wills*, p. 35
Sakaliuk *v.* Corry (Can.); **32.** *Lien*, p. 25
Sakariyawo Oshodi *v.* Brimah Balogun & Scottish Nigerian Mortgage & Trust Co., Ltd. (1936); **17.** *Dep.* No. 392b
— *v.* Moriamo Dakolo (1930); **17.** *Dep.* No. 391a
Saker & Saker *v.* Canadian Credit Men's Trust Assocn. (Can.); **4.** *Bkpcy.* p. 29
Salaman (Trustee), *Ex p.*, *Re* Collins (1925); **5.** *Bkpcy.* No. 6659a
Salaman, *Ex p.*, *Re* Wilson (1926); **4.** *Bkpcy.* No. 1894b
Salaman's Trustee, *Ex p.*, *Re* Wethered, Trustee *v.* Bance (1926); **5.** *Bkpcy.* Nos. 6858b, 7483a; **12.** *Contr.* No. 1459a
Saldanha *v.* Saldanha (Ind.); **27.** *H. & W.* p. 3; **42.** *Stats.* p. 30
Sale *v.* East Kootenay Power Co., Ltd. (No. 2) (Can.); **20.** *Electric*, p. 16
— *v.* Kitson (1853); **35.** *Mtge.* No. 2943a
Sale & Sale *v.* McMillan (Can.); **42.** *Solrs.* p. 2
Sale of Shares Act, *Re*, United Grain Growers, Ltd.'s Case (Can.); **10.** *Coys.* p. 59
Sale of Shares Act & Municipal & Public Utility Board Act, *Re* (Can.); **17.** *Dep.* p. 52
Saleh Mahomed Umer Doosal *v.* Nathoomal Kessamal (Ind.); **2.** *Arbn.* p. 93
Sales *v.* Calgory Stock Exchange (Can.); **22.** *Evid.* p. 2
Salisbury House Estates, Ltd. *v.* Fry (Inspector of Taxes) (1930); **28.** *Inc. T.* No. 116a

Salisbury-Jones, *Re*, Hammond *v.* Salisbury-Jones (1938); **27.** *H. & W.* No. 1320a
Salle Extension University, La *v.* Freeman (Can.); 10. *Coys.* p. 104
Salles' Application, *Re* (1927); **36.** *Pats.* No. 709a
Sallis *v.* Jones (1935); **44.** *Wills*, No. 1522b
Salmon, *Re*, Priest *v.* Uppleby (1889); **35.** *Mtge.* No. 415a
— *v.* Weight (1935); **28.** *Inc. T.* No. 501c
Salo *v.* Anglo British Columbia Packing Co., Ltd. (Can.); 39. *S. Goods*, p. 32
Saloway *v.* Strawbridge (1855); **35.** *Mtge.* No. 2299a
Salsbury *v.* Bagott (1677); **28.** *Infts.* No. 454a
Salsette (Assistant Collector) *v.* Damodardas Trithuvandas (Ind.); **11.** *Comp. Pche.* p. 16
Salt *v.* Power Plant Co., Ltd. (1936); **34.** *Mast. & S.* No. 262b
Salter *v.* Farey (1843); **8.** *Char.* No. 843a
— *v.* Lask (1924); **13.** *Cty. Cts.* Nos. 472a, 797a; **31.** *L. & T.* Nos. 7336a, 7336b
— *v.* Ogilvie (Can.); **14.** *Crim.* p. 9
Salter & Arnold, Ltd. *v.* Dillman (Can.); **21.** *Exon.* p. 47
— *v.* Dominion Bank (Can.) (1922); **5.** *Bkpcy.* pp. 50, 82, 8[illegible]
— *v.* — (Can.) (192[illegible]); **1.** *Agcy.* p. 93; **5.** *Bkpcy.* pp. 58, 70
— *v.* — (Can.) (1926); **5.** *Bkpcy.* p. 73
— *v.* Neepawa Town (Can.); **38.** *Rates*, p. 87
Salters (Joseph) Sons, Ltd. *v.* Bank of Nova Scotia (Can.); **3.** *Bank.* p. 43
Salti et Fils *v.* Procurator-General (1919); **2.** *Aliens*, No 392a
Salting, *Re* Baillie-Hamilton *v.* Morgan (1932); **40.** *Sttlmts.* No. 1008a
Salvalene Lubricants, Ltd. *v.* Darby (1938); *Pract.* No. 2035a
Salvesen (or von Lorang) *v.* Austrian Property Administrator (1927); **11.** *Confl.* Nos. 926a, 944b
Salvin's Indenture, *Re*, Pitt *v.* Durham County Water Board (1938); **43.** *Wtr. Sply.* No. 33a
Salway *v.* Salway (1770); **8.** *Chos.* No. 12a
Sam Sick Hong *v.* Mah Pon (Can.); **7.** *B. of Sale*, p. 5
Saminathan Chetty *v.* Poorten (Ceylon); **35.** *Mtge.* p. 35
Sammel *v.* Jacobs & Co. (S. Af.); **1.** *Agcy.* p. 81
Sammon *v.* Byrne (Ir.); **31.** *L. & T.* p. 92
Sammut *v.* Strickland (1938); **17.** *Dep.* No. 248a
Samoan Guardian Newspaper & Printing Co. *v.* McCarthy (N.Z.); **32.** *Libel*, p. 14
Sampson *v.* Brokensha & Shaw, Ltd. (Aus.); **13.** *Coprt.* p. 7
— *v.* Robertson (Can.); **26.** *Hghys.* p. 36
— *v.* Thomas (Can.); **27.** *H. & W.* p. 20
— *v.* Union & Rhodesia Wholesale, Ltd. (S. Af.); **21.** *Estpl.* p. 36
Samson *v.* Baird (W.) & Co. (Scot.); 34. *Mast. & S.* p. 68
— *v.* Butt (N.Z.); **35.** *Mistake*, p. 10
— *v.* Champion (Can.); **37.** *Pers. Prop.* p. 9
— *v.* Frazier, Jelke & Co. (1937); **42.** *Stk. Ex.* No. 147b
— *v.* McKay (N.Z.); **1.** *Agcy.* p. 86
— *v.* Raynor (Scot.); **44.** *Wills*, p. 37
Samuel *v.* Adelaide Club, Ltd. (1934); **25.** *Gaming*, No. 399b
Samuel McCausland, Ltd. *v.* Railton (Aus.); 39. *S. Goods*, p. 49
Samuel West, Ltd. *v.* Wright's (Colchester), Ltd. (1935); **44.** *Waters*, No. 831c
Samuel Williams & Sons, Ltd. *v.* Port of London Authority (1933); 44. *Waters*, No. 927a
Samuell *v.* Lamont, *Re* Hall's Settlement Trusts (1937); **44.** *Wills*, No. 3131b
Samuels, *Re*, *Ex p.* Trustee *v.* Tee (1935); **5.** *Bkpcy.* No. 6920b
— *v.* Brandon, *Re* Brandon (1932); **43.** *Trusts*, No. 2289a
Samuelson *v.* Producers Distributing Co., Ltd. (1932); **13.** *Coprt.* No. 523b
— *v.* Schwandt (Can.); **24.** *Exors.* p. 33
San Onofre, The (1917); **1.** *Adm.* Nos. 780a, 780b
Sanborn *v.* Sanborn (Can.); **27.** *H. & W.* pp. 28, 36
Sanchar's (Lord) Case (1612); **14.** *Crim.* No. 961a
Sandbach, *Re*, Royds *v.* Douglas (1933); **40.** *Sttlmts.* No. 1998c
Sandeman *v.* Hayne, *Re* Sandeman's Will Trusts (1937); **43.** *Trusts*, No. 2015a
Sandeman's Will Trusts, *Re*, Sandeman *v.* Hayne (1937); **43.** *Trusts*, No. 2015a
Sanders *v.* Kentish (1799); **17.** *Damgs.* No. 404a
— *v.* Miller (1858); **24.** *Exors.* No. 8790a
Sanders' (Thomas) Patent, *Re* (1931); **36.** *Pats.* No. 1925a
Sanderson, *Ex p.* (Aus.); **15.** *Crim.* p. 81
— *v.* Bowes (1811), **3.** *Bank.* No. 425; **6.** *B. of Exch.* No. 1531
— *v.* Heap (Can.); **17.** *Dep.* p. 74
— *v.* Hudson (1923); **27.** *H. & W.* No. 643a
Sanderson & Son *v.* Armour & Co., Ltd. (Scot.); **2.** *Arbn.* p. 76
Sandgate, The (1930); **41.** *Ship*, No. 3920a
Sandgate Urban District Council *v.* Kent County Council (1898); **26.** *Hghys.* No. 1228a
Sandham *v.* Sandham Bros. (Can.); **36.** *Prtnrs.* p. 61
Sandhurst & Northern District Trustees, etc., Co., Ltd. *v.* Coombie Pastoral Co., Pty., Ltd., *Re* McPherson, Thom & Co. (Aus.); **8.** *Chos.* p. 92
Sandiford, *Re*, Italo-Canadian Corpn., Ltd. *v.* Sandiford (1934); **42.** *Solrs.* No. 4408a
—, *Re*, — *v.* — (No. 2) (1935); **3.** *Barr.* No. 228a; **24.** *Exors.* No. 8492a
Sandilands *v.* London, Midland & Scottish Ry. Co. (1927); **38.** *Rys.* Nos. 631a, 691b
Sandison *v.* Order of Elks (Can.); **31.** *L. & T.* p. 79
Sandler *v.* Sandler (1934); **27.** *H. & W.* Nos. 3132a, 3670a, 3670b, 4585a
Sandness *v.* R. (Can.); **39.** *Revenue*, p. 11
Sandringham Corpn. *v.* Rayment (Aus.); **21.** *Estpl.* p. 41; **26.** *Hghys.* p. 45
Sands *v.* Greer (Can.); **42.** *Str. Traf.* p. 38
Sandusk Creek Bridge, *Re* (Can.); **26.** *Hghys.* p. 47
Sandwell Park Colliery Co., *Re*, Field *v.* Sandwell Park Colliery Co. (1929); **10.** *Coys.* No. 5036b
Sandwich *v.* Union Natural Gas Co. (Can.); **25.** *Gas*, p. 44
Sandwich (Town) School Trustees & Sandwich (Town) Corpn., *Re* (Can.); **19.** *Educ.* p. 40
Sanfason *v.* Altice (Can.); **35.** *Mtge.* p. 47
Sanford *v.* Canadian Fire Insurance Co. (Can.); **29.** *Insce.* p. 46
— *v.* Crossley (Can.); **36.** *Negl.* p. 36
— *v.* Hemphill Diesel Engineering Schools, Ltd. (Can.); **34.** *Mast. & S.* p. 15
— *v.* Sanford (Can.); **2.** *Arbn.* p. 95
Sanger, *Re*, Taylor *v.* North (1938); **23.** *Exors.* No. 5917g
Sangster, *Re*, Green *v.* Mockett (1894); **3.** *Bank.* No. 380a
— *v.* Durban Corpn. (S. Af.); **36.** *Negl.* p. 6
— *v.* Eaton (T.) & Co., Ltd. (Can.); **36** *Negl.* p. 22

Sanguineti (Andrea), Fu Davide of Genoa *v.* Ugleexport of Moscow (1934); **41.** *Ship.* No. 1879b
Sankey *v.* R. (Can.); **14.** *Crim.* p. 40; **22.** *Evid.* p. 16
Sanquire's (Lord) Case (1612); **14.** *Crim.* No. 961a
Sansar Chand *v.* Karam Chand (Ind.); **10.** *Coys.* p. 92
Santa Singh, *Re* (Can.); **2.** *Aliens*, p. 49
Santokhi Beldar *v.* R. (Ind.); **14.** *Crim.* p. 41
Sap *v.* Picard (Can.); **2.** *Aliens*, p. 42
Saper *v.* Rotstein (Can.); **1.** *Agcy.* p. 77
Sapera Tobacco Co. *v.* Royal Bank of Canada (Can.); **5.** *Bkpcy.* p. 57
Sapiro *v.* Leader Publishing Co. (Can.); **32.** *Libel*, pp. 11, 13
Sarat Chandra Basu *v.* Bijoy Chand Mahatab Maharajadhiraj Bahadur (Ind.); **16.** *Courts*, p. 15
Sarat Chandra Chakravarti *v.* Tarah Chandra Chatterjee (Ind.); **9.** *Coys.* p. 29
Sarat Kumar Ray *v.* Nabin Chandra Ram Chandra Shaka (Ind.); **4.** *Bkpcy.* pp. 42, 44
Sarat Kumari Debi *v.* Sakhi Chand (Ind.); **23.** *Exors.* p. 4
Sargant (W. J.) & Sons *v.* Paterson (Eric) & Co. (1923); **12.** *Contr.* Nos. 3090a, 3094a
Sargent *v.* Nicholson (Can.); **12.** *Contr.* p. 4
Sargeson *v.* Mullett (Can.); **2.** *Agric.* p. 25
Sargood's Case, Perpetual Trustee Co., Ltd. *v.* Stamp Duties Comr. (Aus.); **21.** *E. D.* p. 22
Sarjeant, *Re*, *Ex p.* Official Receiver (1923); **4.** *Bkpcy.* Nos. 1808a, 4559a
Sarrazin *v.* Les Curé Marguilliers de L'Œuvre et Fabrique de La Paroisse de St. Gabriel de Brandon (Can.); **4.** *Bkpcy.* p. 3
Sartori *v.* Reynolds, Ltd. (Aus.); **2.** *Animals*, p. 61
Sasha, Ltd. *v.* Stoenesco (1929); **13.** *Coprt.* No. 206a
Saskatchewan Co-operative Elevator Co., Ltd., *Re* (Can.); **28.** *Inc. T.* p. 96
—, *Re*, *Re* Companies Winding Up Act (Can.); **2.** *Agric.* p. 1
—, *Re*, Davidson *v.* Swanson (Can.); **10.** *Coys.* p. 82; **21.** *Exon.* p. 59
— *v.* Canadian Pacific Ry. Co. (Can.); **7.** *B. of Sale*, p. 12
Saskatchewan Co-Operative Wheat Producers, Ltd., *Re*, *Re* Senger & Houck (Can.); **2.** *Agric.* p. 16
— *v.* Luciuk (Can.); **17.** *Custom*, p. 2
— *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 14
— *v.* Zurowski (Can.); **17.** *Damgs.* p. 18
Saskatchewan Elbow Wheat Land Co. *v.* Gombar (Can.); **2.** *Agric.* p. 14
Saskatchewan Farm Loan Board *v.* Morgan (Can.); **35.** *Mtge.* p. 44
Saskatchewan General Trusts Corpn., *Re* (Can.); **43.** *Trusts*, p. 63
Saskatchewan General Trusts Corpn., Ltd. *v.* McCarthy (Can.); **35.** *Mtge.* p. 44
Saskatchewan General Trust Corpn., Ltd.'s Case, *Re* Land Titles Act (Can.); **5.** *Bkpcy.* p. 67
Saskatchewan Highways Department *v.* Canadian National Rys. (Can.); **38.** *Rys.* p. 45
Saskatchewan Mutual Fire Insurance Co. & Benner, *Re* (Can.); **29.** *Insce.* p. 30
Saskatoon (City) *v.* London & Western Trusts Co., Ltd. (Can.); **35.** *Money*, p. 15
Saskatoon Episcopal Corpn. *v.* Saskatoon (City) (Can.) (1935); **38.** *Rates*, p. 62
— *v.* — (Can.) (1936); **38.** *Rates*, p. 62
Saskatoon Hardware Co. *v.* McManus (Can.); **21.** *Exon.* p. 60
Sass *v.* St. Nicholas Mutual Benefit Assocn. of Winnipeg (Can.) (1936); **13.** *Corpns.* p. 35
— *v.* — (Can.) (1937); **25.** *Fr. Soc.* p. 19
Sasson *v.* Sasson (1924); **16.** *Courts*, No. 956a
Sassoon, *Re*, Inland Revenue Comrs. *v.* Ezra (1933); **21.** *Estpl.* No. 404a
—, *Re*, — *v.* — (1935); **17.** *Deeds*, No. 1737a; **21.** *E. D.* No. 272b; *Estpl.* No. 404a
—, *Re*, — *v.* Raphael (1933); **21.** *Estpl.* No. 404a
—, *Re*, — *v.* — (1935); **17.** *Deeds*, No. 1737a; **21.** *E. D.* No. 272b; *Estpl.* No. 404a
Sassoon (M. A.) & Sons, Ltd. *v.* International Banking Corpn. (1927); **6.** *B. of Exch.* No. 2049a; **17.** *Deeds*, No. 1678a
Satchidananda Dutt *v.* Nritya Nath Mitter (Ind.); **1.** *Agcy.* p. 80
Satisfaction Stores, *Re* (Can.); **7.** *B. of Sale*, p. 1
Satkarhi Bhattacharya *v.* Hazarilal Khanna (Ind.); **8.** *Char.* p. 72
Saudry *v.* Hampton (N.Z.); **24.** *Exors.* p. 35
Saunders, *Re*, Park *v.* Austin (N. Z.); **22.** *Evid.* p. 9
—, *Re*, Public Trustee *v.* Saunders (1929); **18.** *Descd.* No. 283a
— *v.* Automotive Spares, Ltd., *Re* Registered Design No. 747,128 of Albert Saunders (1932); **43.** *Trade Mks.* No. 934a
— *v.* Goodwin (Can.); **42.** *Str. Traf.* p. 64
— *v.* Mollison (Can.); **25.** *Gaming*, p. 40
— *v.* Vautier (1841); **21.** *Estpl.* No. 259a
Saunders Alberta Collieries, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 19
Saunders' (Albert) Registered Design No. 747,128, *Re*, Saunders *v.* Automotive Spares, Ltd. (1932); **43.** *Trade Mks.* No. 934a
Saunders-Jacob *v.* Yates (1933); **2.** *Agric.* No. 267d
Saunderson *v.* Gregg (1821); **5.** *Bkpcy.* No. 5776a
Sausage Manufacturers' Assocn. *v.* London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Great Western Ry. Co., Southern Ry. Co., & Cheshire Lines Committee (1924); **8.** *Carr.* No. 1323k
Savage *v.* British India Steam Navigation Co., Ltd. (1930); **34.** *Mast. & S.* Nos. 396a, 396b, 414a; **41.** *Ship.* Nos. 551a, 560a
— *v.* Nightingale (1937); **34.** *Mast. & S.* No. 3821h
Savage South Africa, Ltd. *v.* London Exhibitions, Ltd. (1899); **28.** *Injon.* No. 638a
Savard *v.* Tremblay (Can.); **6.** *B. of Exch.* p. 10
Savidan *v.* Laplante (Can.); **12.** *Contr.* p. 11
Savidant *v.* Day (Can.); **32.** *Libel*, p. 12
Savige *v.* News, Ltd. (Aus.); **32.** *Libel*, p. 15
Savignac, *Re* (Can.); **42.** *Solrs.* p. 7
Savile *v.* Savile, *Re* Savile Settled Estates (1931); **31.** *L. & T.* Nos. 6606a, 6628a; **34.** *Mines*, No. 396a; **40.** *Sttlmts.* No. 2889a
Savile Settled Estates, *Re*, Savile *v.* Savile (1931); **31.** *L. & T.* Nos. 6606a, 6628a; **34.** *Mines*, No. 396a; **40.** *Sttlmts.* No. 2889a
Savord *v.* Desjardins (Can.); **21.** *Exon.* p. 57
Savory & Co. *v.* Lloyds Bank, Ltd. (1933); **3.** *Bank.* No. 692d
Sawczuk *v.* Padgett (Can.); **30.** *Intox.* p. 10
Sawdon *v.* Dale (Aus.); **27.** *H. & W.* p. 1
Sawtell, *Re*, *Ex p.* Montreal Bank (Can.); **4.** *Bkpcy.* p. 41
Sawyer *v.* Amalgamated Electrical & Battery Engineers, Ltd. (Aus.); **34.** *Mast. & S.* p. 25
Sawyer-Massey *v.* Schley (Can.); **36.** *Prtnrs.* p. 60
Sawyer-Massey Co., Ltd. *v.* Sturgill (Can.); **39.** *S. Goods*, p. 60
Saxicava, The (1924); 1. *Adm.* No. 969a

Saxon Finance Corpn., Ltd., *Ex p.*, R. *v.* Shoreditch County Court Registrar (1938); **13.** *Cty. Cts.* No. 138a
Saxone Shoe Co., Ltd. *v.* Somers (Scot.); **26.** *Hghys.* p. 34
Saxton *v.* Nicholson & Co., Ltd. (1935); **39.** *S. Goods*, No. 2552a
Sayers *v.* Sayers (1929); **27.** *H. & W.* No. 2999a
Sayre *v.* Gilfoy (Can.); **21.** *Exon.* p. 45
Sayward, *Re* (Can.); **21.** *E. D.* p. 22
Saywell *v.* Saywell (Aus.); **44.** *Wills*, p. 25
Sbrocchi *v.* Moss (Can.); **1.** *Agcy.* p. 102
Scadding, *Re* (Can.); **23.** *Exors.* p. 21
Scaffolding (Great Britain), Ltd. *v.* Strathern (Scot.); **24.** *Fact.* p. 54
Scaife *v.* Public Trustee, *Re* Bradford City Premises (1928); **40.** *Sttlmts.* No. 3151b
Scales, *Ex p.*, R. *v.* Kingston-upon-Thames Confirming Authority (1933); **30.** *Intox.* No. 63a
— *v.* Charleston (Aus.); **30.** *Intox.* p. 8
— *v.* Clarke S.S. Co. (Can.); **8.** *Carr.* p. 2
— *v.* Thompson (George) & Co., Ltd. (1927); **28.** *Inc. T.* No. 112a
— *v.* Young (N.Z.) (1930); **17.** *Dep.* p. 79
— *v.* — (N.Z.) (1931); **30.** *Intox.* p. 2
Scammell (G.) & Nephew, Ltd. *v.* Attlee (1929); **38.** *Pub. Auth.* No. 854a
— *v.* Hurley (1929); **20.** *Electric*, No. 38a; **38.** *Pub. Auth.* No. 854a
— *v.* Rowles (1938); **28.** *Inc. T.* Nos. 217c, 585a
Scanes *v.* Johnston (Can.); **38.** *Pub. Hlth.* p. 16
Scanlon *v.* Hartlepool Seatonia S.S. Co., Ltd. (No. 1) (Ir.); **34.** *Mast. & S.* pp. 31, 94
— *v.* — (No. 2) (Ir.); **34.** *Mast. & S.* p. 24
Scarfe (Harris), Ltd., *Re* (Aus.); **8.** *Char.* p. 65
Scarlett & Co. *v.* Stephenson (H. A.) & Son, Ltd. (Aus.); **39.** *S. Goods*, p. 42
Scarrow *v.* McMurtry (Can.); **33.** *Lunat.* p. 5
Sceats & Murray *v.* Young (Can.); **35.** *Misrcp.* p. 5
Sceptre Hardware Co., *Re* (Can.); **4.** *Bkpcy.* pp. 45, 46
Schache *v.* Schache & Streeter (Aus.); **11.** *Confl.* p. 26
Schaffer *v.* Tubby, Smith & Co., Ltd. (Can.); **6.** *B. of Exch.* p. 8
Schaffer, Ltd. *v.* Vickers (Can.); **12.** *Contr.* p. 12
Schaler *v.* Winnipeg (City) (Can.); **26.** *Hghys.* p. 27
— *v.* — (No. 2) (Can.); **26.** *Hghys.* p. 28
Schalit *v.* Joseph Nadler, Ltd. (1933); **31.** *L. & T.* No. 4141a
— *v.* Leiserach (1934); **2.** *Arbn.* No. 1923a
Schatz *v.* McEntyre (Can.); **11.** *Confl.* p. 44
— *v.* Steinhauer (Can.); **35.** *Mtgc.* p. 40
Schaverien *v.* Morris (1921); **6.** *B. of Exch.* No. 441a
Schecter *v.* Schnier (Can.); **17.** *Deeds*, p. 29
Scheer *v.* Winnipeg Electric Co. (Can.); **25.** *Gas*, p. 45
Scheerer *v.* Scheerer (Can.); **27.** *H. & W.* p. 42; **40.** *Set-off*, p. 23
Scheff *v.* Columbia Pictures Corpn., Ltd. (1938); *Pract.* No. 1753a
Scherbanuk *v.* Skorodoumov (Can.); **19.** *Eccl.* p. 32
Schidrowitz's Patent, *Re* (1937); **36.** *Pats.* No. 1695b
Schiell & Hunt *v.* Morrison & Morrison (Can.); **42.** *Stats.* p. 22
Schierhout *v.* Union Government (S. Af.); **11.** *Const. L.* p. 62; **17.** *Dep.* p. 35
Schiess *v.* Chatenay (Can.); **40.** *Set-off*, p. 23
Schill *v.* Balfour (Can.); **21.** *Estpl.* p. 33
Schilling *v.* Melbourne (City) (Aus.); **38.** *Pub. Hlth.* p. 16; **42.** *Str. Traf.* p. 36
Schlarb *v.* London & North Eastern Ry. Co. (1936); **8.** *Carr.* No. 592a
Schlesinger, *Ex p.*, R. *v.* St. Marylebone Income Tax Comrs. (1928); **28.** *Inc. T.* No. 625a
— *v.* Flersheim (1845); **16.** *Cntmpt.* No. 351a
Schlesinger & Joseph *v.* Mostyn (1932); **40.** *Sttlmts.* Nos. 3260a, 3260b, 3260c
Schmidt *v.* Alberta Provincial Treasurer & A.-G. for Alberta (Can.); **21.** *E. D.* p. 19
— *v.* Home Insurance Co. of New York (Can.); **29.** *Insce.* pp. 26, 29
— *v.* Miller (Can.); **27.** *H. & W.* p. 9
— *v.* Stuckey & Pearse (Can.); **32.** *Lien*, p. 23
Schmuland *v.* Lucas (Can.); **36.** *Negl.* p. 30
Schnapper, *Re* (1928); **11.** *Confl.* No. 548a
—, *Re*, Westminster Bank, Ltd. *v.* Schnapper (1936); **35.** *Money*, No. 30a
Schnare, *Re* (Can.); **37.** *Poor L.* p. 17
Schneider *v.* Heath (1813); **39.** *S. Goods*, No. 643c
— *v.* Hee Fong (Can.); **2.** *Animals*, p. 57
— *v.* Lizardi (1846); **1.** *Action*, No. 366b
Schnier *v.* Schecter (Can.); **17.** *Deeds*, p. 29
Schoales, *Re*, Schoales *v.* Schoales (1930); **8.** *Char.* No. 981c
Schoenfeld *v.* Pilot Automobile & Accident Insurance Co. (Can.); **29.** *Insce.* p. 44
Schofield, *Ex p.*, R. *v.* Bean (Can.); **20.** *Elect.* p. 7
—, *Ex p.*, R. *v.* Quinn (Can.); **20.** *Elect.* p. 7
— *v.* Glenn & Babb (Can.); **2.** *Animals*, p. 58
— *v.* Tummonds (Can.); **12.** *Contr.* p. 9
Schohl *v.* Kay (Can.); **1.** *Action*, p. 12
Schonberner *v.* Barron (Can.); **36.** *Negl.* p. 15
Schonemeier *v.* King & Jardine (Can.); **6.** *B. of Exch.* p. 14
Schoof *v.* Schoof (Can.); **27.** *H. & W.* p. 40
School Section 16 Trustees *v.* Cameron (Can.); **13.** *Corpns.* p. 27; **19.** *Educ.* p. 34
School Trustees of Fredericton *v.* School Trustees of Kingsclear (Can.); **19.** *Educ.* p. 41
Schopperle's Trusts, *Re* (Ir.); **40.** *Sttlmts.* p. 32
Schostall *v.* Johnson (1919); **1.** *Agcy.* No. 3027a
Schroder *v.* Ward (1863); **3.** *Bailmt.* No. 224
Schubert *v.* Koch (Can.); **25.** *Fraud. Conv.* p. 14
Schulte-United, Ltd., *Re* (Can.), [1934] 4 D. L. R. 51; **4.** *Bkpcy.* p. 25
—, *Re* (Can.), [1934] 4 D. L. R. 252; **4.** *Bkpcy.* p. 44
Schultz *v.* Alloway (Can.); **38.** *Rates*, pp. 85, 86
— *v.* Can. Surety Co. (Can.); **26.** *Guar.* p. 6
— *v.* Grasswold School District Trustees (Can.); **19.** *Educ.* p. 34
Schumacher *v.* Moore (Can.); **17.** *Dep.* p. 43
Schuman *v.* Vancouver City (Can.); **38.** *Pub. Auth.* p. 12
Schumland *v.* Saskatchewan Life Insurance Co (Can.); **29.** *Insce.* p. 30
Schurr, *Re* (Aus.); **2.** *Aliens*, p. 40
Schuster *v.* Hine Parker & Co., Ltd. (1935); **36.** *Pats.* No. 2270a
Schwab *v.* Schwab (Can.); **27.** *H. & W.* p. 76
Schwartzenhauer *v.* R. (Can.); **15.** *Crim.* p. 92
Schweyer Electric & Manufacturing Co. *v.* New York Central Ry. Co. (Can.); **36.** *Pats.* p. 89
Scientific Poultry Breeders' Assocn., Ltd., *Re* (1933); **9.** *Coys.* No. 4321b
Scindia Steamships (London), Ltd. *v.* London Assurance (1937); **29.** *Insce.* No. 1830a
Scoble *v.* Woodward (Can.); **17.** *Damgs.* p. 11
Scollick *v.* Scollick (1927); **27.** *H. & W.* No. 5588b
Scophony, Ltd. *v.* Traub (1937); **20.** *Eqy.* No. 2713a
Scotia Construction Co., Ltd. *v.* Halifax City (Can.); **2.** *Arbn.* p. 98
Scotia Flour & Feed Co. *v.* Strong (Can.); **39** *S. Goods*, p. 49
Scotland General Nursing Council *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 75

Scotland Woollen Mills Co., *Re* (Can.): **4.** *Bkpcy.* p. 25
Scott, *Ex p.*, R. *v.* Scott (Aus.); **25.** *Gaming*, p. 32
—, *Re* (Aus.); **4.** *Bkpcy.* p. 2
—, *Re, Ex p.* Official Receiver (1921); **5.** *Bkpcy.* No. 8435a
—, *Re*, Scott *v.* Scott (1926); **24.** *Exors.* No. 8270a
— *v.* Angus (Can.); **21.** *Exon.* p. 49
— *v.* A.-G. for Canada (1923); **17.** *Dep.* No. 200b
— *v.* Berkeley (1847); **10.** *Coys.* No. 8595a
— *v.* Calgary & Riddock (Can.); **26.** *Highys.* p. 34
— *v.* Ferguson (Can.); **6.** *B. of Exch.* p. 14
— *v.* Imperial Loan Co. (Can.); **38.** *Rates*, p. 85
— *v.* McCabe (Can.); **18.** *Distr.* p. 30
— *v.* M'Carthy (Ir.); **39.** *Revenue*, p. 16
— *v.* M'Donald (Can.); **26.** *Guar.* p. 5
— *v.* M'Intosh (Scot.); **36.** *Negl.* p. 16
— *v.* Mitchell (Scot.); **34.** *Mast. & S.* p. 166
— *v.* Montgomery (Can.); **17.** *Deeds*, p. 27
— *v.* Moose Jaw Motors, Ltd. & J. Hanna, Ltd. (Can.); **7.** *B. of Sale*, p. 12
— *v.* Pearson & Dorman, Long & Co., Ltd. (1933); **34.** *Mast. & S.* No. 3922b
— *v.* Rogers Fruit Co. (Can.); **39.** *S. Goods*, p. 49
— *v.* Saskatchewan Co-operative Wheat Producers, Ltd. (Can.); **28.** *Injon.* p. 150
— *v.* Scott (Can.) (1930); **16.** *Courts*, p. 9; **27.** *H. & W.* pp. 5, 58
— *v.* — (Can.) (1937); **27.** *H. & W.* p. 33
— *v.* — (Ir.); **20.** *Eqy.* p. 22
— *v.* —, *Re* Scott (1926); **24.** *Exors.* No. 8270a
— *v.* Smith (Can.); **21.** *Exon.* p. 44
— *v.* Spearin (Can.); **35.** *Mistake*, p. 13
— *v.* Summerlee Iron Co. (1931); **34.** *Mast. & S.* No. 3837a
— *v.* — (Scot.); **34.** *Mast. & S.* p. 162
— *v.* Supple (Can.); **23.** *Exors.* p. 27
— *v.* Tilley (1937); **33.** *Mags.* No. 1301a
— *v.* Watkins (N.Z.); **34.** *Med.* p. 191
— *v.* Winnipeg Electric Co. (Can.); **38.** *Rys.* p. 37
— *v.* Woodford Municipal District (Can.); **18.** *Distr.* p. 32
Scott & Beard's Patent, *Re*, *Re* Beard & Scott's Patent (1927); **36.** *Pats.* Nos. 1557b, 1687a, 1706a
Scott & Coutts & Co. *v.* Inland Revenue Comrs. (1937); **21.** *E. D.* No. 27b
Scott (Donald H.) & Co., Ltd. *v.* Barclays Bank, Ltd. (1923); **3.** *Bank.* No. 756a
Scott (Laurence) & Electromotors, Ltd. *v.* General Electric Co., Ltd. (1938); **36.** *Pats.* No. 2636a
Scott & Oshawa Town, *Re* (Can.); **2.** *Arbn.* p. 95; **11.** *Comp. Pche.* pp. 5, 15
Scott & Peden *v.* Elliott (Can.); **12.** *Contr.* p. 46
— *v.* Marshman (Can.); **29.** *Intpr.* p. 64
Scott & Sons *v.* Del Sel (Scot.): **2.** *Arbn.* p. 76
Scott Estate, *Re* (Can.) (1928); **18.** *Desct.* p. 3; **28.** *Inft.* p. 139
Scott Estate, *Re* (Can.) (1935); **21.** *Exon.* p. 47; **38.** *Real Prop.* p. 90
Scott Estate, *Re* (Can.); **44.** *Wills*, p. 45
Scott Paper Co. *v.* Drayton Paper Works, Ltd. (1927); **22.** *Evid.* No. 535a
Scottish American Investment Co. *v.* Hope (Can.); **43.** *Vlrs.* p. 74
— *v.* Inland Revenue (Scot.); **28.** *Inc. T.* p. 66
Scottish Canadian Asbestos Co., *Re*, Allen *v.* Hanson (Can.); **10.** *Coys.* p. 106
Scottish Cinema & Variety Theatres, Ltd. *v.* Ritchie (Scot.); **42.** *Theatres*, p. 69
Scottish Flying Club, Ltd. *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 75
Scottish Greyhound Racing Co., Ltd. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 76
Scottish Life Co. *v.* Donald (Scot.); **27.** *H. & W.* p. 9
Scottish Malt Distillers, Ltd. *v.* Inland Revenue (Scot.); **38.** *Rates*, p. 55
Scottish Metropolitan Assurance Co., Ltd. *v.* Canada Steamship Lines, Ltd. (Can.); **41.** *Ship.* p. 25
— *v.* Groom (1924); **29.** *Insce.* No. 735a
Scottish Milk Marketing Board *v.* Ferguson (Scot.); **25.** *Food*, p. 10
— *v.* Paris (Scot.); **25.** *Food*, p. 10
Scottish Motor Traction Co. *v.* Edinburgh Assessor (Scot.); **38.** *Rates*, p. 53
Scottish Motor Traction Co., Ltd. *v.* Lanarkshire County Council (Scot.); **38.** *Pub. Hlth.* p. 16; **42.** *Str. Traf.* p. 43
Scottish National Trust Co., *Re* (Scot.); **9.** *Coys.* p. 15
Scottish Provident Institution *v.* Farmer (Scot.); **28.** *Inc. T.* p. 66
Scottish Stamping & Engineering Co., Ltd., *Re* (Scot.); **9.** *Coys.* p. 11
Scottish Widows' Fund & Life Assurance Society *v.* Canada Permanent Mtge. Corpn. (Can.); **10.** *Coys.* p. 60
Scottish Woollen Technical College *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 5
Scotton *v.* Bridge & Co., Ltd. (Aus.); **3.** *Bailmt.* p. 16
Scragg, *Re* (Can.); **7.** *B. of Sale*, p. 9
Scranton's Trustee *v.* Pearse (1922); **4.** *Bkpcy.* No. 1894a
Scrimaglio *v.* Thornett & Fehr (1924); **2.** *Arbn.* Nos. 135a, 1857b, 1912b
Scrimgeour *v.* Stoke-on-Trent & North Staffordshire Billposting Co., Ltd. (1936); **38.** *Pub. Hlth.* No. 204e
Scriven *v.* Great Boulder Proprietary Gold Mines, Ltd. (Aus.); **34.** *Mines*, p. 199
— *v.* Jescott (Leeds), Ltd. (1908); **9.** *Coys.* No. 4513a
Scruttons, Ltd. *v.* Radonicich (1937); **34.** *Mast. & S.* No. 3061b
Scuilli *v.* Planta (Can.); **21.** *Exon.* p. 44
Scully *v.* South (N.Z.); **2.** *Agric.* p. 15
Sculthorpe, *Re* (Can.); **23.** *Exors.* p. 18
Scythes *v.* Gibsons, Ltd. (Can.); **31.** *L. & T.* p. 52.
Scythes & Co., *Ex p.*, *Re* Gold Medal Furn. Mfg. Co. (Can.); **35.** *Mistake*, p. 10
Seabourne *v.* Powel (1686); **21.** *Estpl.* No. 993a
Seabrook & Sons *v.* Jones (1929); **44.** *Work*, No. 64
Seager *v.* Seager (1925); **16.** *Courts*, No. 969a
Seaham Harbour Dock Co. *v.* Crook (1931); **28.** *Inc. T.* No. 104a
Seal *v.* Turner (1915); *Pract.* No. 4086b
Seale *v.* Gray (Can.); **21.** *Exon.* p. 47
Seaman, *Re* (1808); **33.** *Lunat.* No. 827b
— *v.* Ingram (J. G.) & Son, Ltd. (1929); **34.** *Mast. & S.* No. 3969b
— *v.* Seaman (Aus.); **27.** *H. & W.* p. 30
— *v.* South Australia Dental Board (Aus.); **34** *Med.* p. 190
Seapool, The (1934); **41.** *Ship.* No. 4208a
Searle *v.* Alliance Insurance Co. (Can.); **2.** *Arbn.* pp. 73, 74
— *v.* Alliance Insurance Co. (No. 3) (Can.); **29.** *Insce.* p. 57
Searle, Hoare & Co., *Re*, *Ex p.* Trustee (1924); **4.** *Bkpcy.* Nos. 3210a, 4484a
Searls, Ltd., *Re* (Aus.); **39.** *Revenue*, p. 13
Sears *v.* Canadian Fire Insurance Co. (Can.); **29.** *Insce.* p. 46
Seas Shipping Co. *v.* Canadian Stevedoring Co. (Can.); **1.** *Agcy.* p. 51; **41.** *Ship*, p. 28
Seaton, *Re* (1928); **33.** *Lunat.* No. 1882a
— *v.* London General Insurance Co., Ltd. (1932); **29.** *Insce.* No. 3279d

Seaton *v.* Slama (1932); **26.** *Hghys.* Nos. 9a, 1683a
Seay *v.* Somerville Hardware Co., Ltd. (Can.); **21.** *Exon.* p. 46
Sechart Fisheries, Ltd., *Re*, Edward Renneberg & Sons Co. *v.* Canadian Credit Men's Trust Assocn. (Can.); **4.** *Bkpcy.* p. 23
Second Standard Royalties, Ltd., *Re* (Can.); **9.** *Coys.* p. 12
Secret, The, The Innisfail (1876); **1.** *Adm.* No. 1280a
Secretary of State for Home Affairs *v.* O'Brien (1923); **16.** *Cr. Pract.* Nos. 470, 601, 682a, 801
Secretary of State for India *v.* Alladin (Ind.); **38.** *Pub. Auth.* p. 4
— *v.* Bank of India, Ltd. (1938); **26.** *Guar.* No. 1758a
— *v.* Dedji Shivji & Co. (Ind.); **8.** *Carr.* p. 8
— *v.* Foucar & Co. (Ind.); **44.** *Waters*, p. 5
— *v.* Ghanaya Lal-Sri Kishan (Ind.); **8.** *Carr.* p. 6; **36.** *Negl.* p. 23
— *v.* Har Charan Das (Ind.); **21.** *Exon.* p. 56
— *v.* Har Kishan Das-Kura Mal (Ind.); **8.** *Carr.* p. 3
— *v.* Harbans Prasad (Ind.); **8.** *Carr.* p. 6
— *v.* Harnarain Bengalchand (Ind.); **37.** *Press*, p. 31
— *v.* Hindusthan Co-operative Insurance Society (1931); **17.** *Dep.* No. 640d; **42.** *Stats.* Nos. 772a, 1928a
— *v.* Jamuna Das (Ind.); **5.** *Bkpcy.* p. 54
— *v.* Madho Ram (Ind.); **12.** *Contr.* p. 57
— *v.* Maurice (Ind.); **11.** *Const. L.* p. 63
— *v.* Murti Manohar (Ind.); **8.** *Carr.* p. 9
— *v.* Raja Jyoti Prashad Singh (Ind.); **16.** *Courts*, p. 15
— *v.* Raja Parthasarathy Appa Rao (Ind.); **17.** *Dep.* pp. 66, 75
— *v.* Ramanujachariar (Ind.); **38.** *Rates*, p. 76
— *v.* Rangoon Municipal Corpn. (Ind.); **38.** *Rates*, p. 70
— *v.* Sarin & Co. (Ind.); **1.** *Agcy.* p. 105; **12.** *Contr.* p. 11
— *v.* Shreegobinda Chaudhuri (Ind.); **38.** *Pub. Auth.* p. 6
— *v.* Subbarayndu (Ind.); **44.** *Waters*, p. 1
— *v.* Sunderji Shivji & Co. (Ind.); **8.** *Carr.* p. 6
— *v.* Volkart Brothers (Ind.) (1926); **30.** *L. & T.* p. 48
— *v.* — (Ind.) (1928); **30.** *L. & T.* p. 48
— *v.* Yadavgir (Ind.); **11.** *Const. L.* p. 63
Secretary of State for War *v.* Middlesex County Council (1923); **11.** *Const. L.* No. 515a
— *v.* Midland Great Western Ry. Co. of Ireland (Ir.); **8.** *Carr.* p. 3
Secretary of State of Canada *v.* Alien Property Custodian for the United States & Toronto Power Co., Ltd. (Can.); **2.** *Aliens*, p. 35
— *v.* Greenshields, Ltd. (Can.); **2.** *Aliens*, p. 35
— *v.* Neitzke (Can.); **2.** *Aliens*, p. 33
— *v.* Wiehmayer (Can.); **2.** *Aliens*, p. 33
Secretary of State of Canada as Custodian of Enemy Property *v.* Alien Property Custodian for United States & Montreal (City) (Can.); **2.** *Aliens*, p. 35
Sect. 24 of British North America Act, *Re* (Can.); **42.** *Stats.* p. 22
Secunderabad Official Receiver *v.* Lakshminareyana (Ind.); **17.** *Dep.* p. 67
Securities Act, *Re*, *Re* Amalgamated Business Men's Club, Ltd. (Can.); **42.** *Stk. Ex.* p. 34
Securities Development Co., Ltd. *v.* Noble & Hodgins (Can.); **36.** *Prtnrs.* p. 58
Security Frauds Prevention Board *v.* Conroy (Can.); **17.** *Dep.* p. 52
Security Lumber Co., Ltd. *v.* Acme Plumbing Shop, Ltd. (Can.); **32.** *Lien*, p. 26
— *v.* Anaka (Can.); **32.** *Lien*, p. 24
— *v.* Koskie (Can.); **32.** *Limit. of A.* p. 34
— *v.* Lyons (Can.); **32.** *Lien*, p. 26
— *v.* Rolick & Rolick Plaxin (Can.); **21.** *Exon.* p. 58
Security Trust Co., Ltd. *v.* Sayre & Gilfoy (Can.); **35.** *Mtge.* p. 42
Seddon *v.* Cocker (1861); **24.** *Fact.* No. 229a
— *v.* Commercial Salt Co., Ltd. (1925); **18.** *Discy.* No. 127a
Sedgwick (Camberwell Revenue Officer) *v.* Camberwell Assessment Committee & Watney Combe, Reid & Co. (1931); **38.** *Rates*, No. 226u
Sedgwick *v.* Leeds Forge Co., Ltd. (1930); **34.** *Mast. & S.* No. 3668b
Sedgwick Collins & Co. *v.* Rossia Insurance Co. of Petrograd (1926); **10.** *Coys.* No. 8527a; **11.** *Confl.* No. 1307b; **21.** *Exon.* No. 2170a
Sedgwick Collins & Co., Ltd. *v.* Rossia Insurance Co. of Petrograd (1927); **10.** *Coys.* No. 8527a
Sedgwick Estate, *Re* (Can.); **44.** *Wills*, p. 20
Sedleigh-Denfield *v.* St. Joseph's Society for Foreign Missions & Hillman (1938); **36.** *Nuis.* No. 575a
Sedziak *v.* Polish Workers' Assocn. (Can.); **37.** *Press*, p. 31
— *v.* — (No. 2) (Can.); **21.** *Estpl.* p. 24
See *v.* Scott-Paine (1932); **36.** *Pats.* No. 3158a
Seeberg Bros. *v.* Russian Wood Agency, Ltd. (1934); **41.** *Ship.* No. 2755a
Seeley & Co. *v.* Brown (Can.); **28.** *Inc. T.* p. 80
Seery, *Re*, *Ex p.* Williams (Aus.); **24.** *Extrdn.* p. 46
Seethayya *v.* Subramanya Somayajula (Ind.); **22.** *Evid.* p. 11
Segal *v.* Jeannotte (Can.); **39.** *S. Goods*, p. 34
— *v.* Montreal (City) (Can.); **17.** *Dep.* p. 53
Seguier *v.* Dufresne (Can.); **5.** *Bkpcy.* pp. 79, 80
Seguin *v.* Randall & Dominion Bank (Can.); **21.** *Exon.* p. 59
Seib, *Re* (Can.); **2.** *Agric.* p. 25
Seibel Estate, *Re* (Can.); **40.** *Sttlmts.* p. 35
Seider *v.* Ray (Can.); **31.** *L. & T.* p. 52
Seidler & Mackie, *Re* (Can.); **17.** *Dep.* p. 71; **27.** *H. & W.* pp. 2, 3
Seignior & Wolmer's Case (1623); **34.** *Mast. & S.* No. 962a
Seiler, *Ex p.*, Dixon *v.* Seiler (Aus.); **25.** *Food*, p. 6
Seitz *v.* Bank of Montreal (Can.); **21.** *Exon.* p. 47
Selby *v.* Bannigan (Aus.); **24.** *Fact.* p. 48
Seldon (F. E.) *v.* Bruce Thomas (1932); **3.** *Barr.* No. 173a; **28.** *Inc. T.* No. 315a
— *v.* Croom-Johnson (1932); **3.** *Barr.* No. 173a; **28.** *Inc. T.* No. 315a
Seldon *v.* Zambawski (Can.); **27.** *H. & W.* p. 14
Sell, *Re* (Can.); **22.** *Evid.* p. 8
Selleck *v.* Hellens (1928); **2.** *Agric.* No. 266p
Seller *v.* Work (1801); **1.** *Agcy.* No. 981a
Sellers (E. H.) & Sons, Ltd., *Ex p.*, *Re* Marsden (1921); **4.** *Bkpcy.* No. 1253a
Selsdon *v.* Selsdon (Scot.); **27.** *H. & W.* pp. 7, 59
Selway *v.* Selway (Aus.); **27.** *H. & W.* p. 30
Selzler *v.* Kary (Can.); **1.** *Action*, p. 11
Semet-Solvay Co. *v.* Comr. of Patents (Can.); **36.** *Pats.* pp. 75, 83
Semkow *v.* Merchants Casualty Insurance Co. (Can.); **29.** *Insce.* p. 39
Semple *v.* Holland (1863); **35.** *Name*, No. 64a
— *v.* Sawyer-Massey Co. (Can.); **32.** *Lien*, p. 22
— *v.* Sharp (Can.); **1.** *Agcy.* p. 90; **27.** *H. & W.* p. 9

Sendall *v.* Land Tax Federal Comr. (Aus.); **17** *Dep.* p. 36
Seneca, Ship *v.* Macdonald (Can.); **1.** *Adm.* p. 45
Senecal *v.* Quebec Paving Co. (Can.); **33.** *L. G.* p. 5
Seneviratne *v.* R. (1936); **17.** *Dep.* Nos. 554b, 562a
Seng Djit Hin *v.* Nagurdas Purshotumdas & Co. (1923); **12.** *Contr.* No. 3101a
Senger & Houck, *Re*, *Re* Saskatchewan Co-Operative Wheat Producers, Ltd. (Can.); **2.** *Agric.* p. 16
Senior, *Re*, Senior *v.* Wood (1936); **28.** *Infts.* No. 889a
— *v.* Wilson, *Re* Whitwell (1890); **20.** *Eqy.* No. 1552a
— *v.* Wolmer (1623); **34.** *Mast. & S.* No. 962a
— *v.* Wood, *Re* Senior (1936); **28.** *Infts.* No. 889a
Sennett *v.* Rendell (1934); **40.** *S. Land*, No. 2091a
Sentinel-Review Co. *v.* Robinson (Can.); **32.** *Libel*, pp. 8, 14
Sérandat *v.* Saisse (1866); **17.** *Dep.* No. 281a
Sereda *v.* Consolidated Fire & Casualty Co. (Can.); **29.** *Insce.* p. 58
Serediuk *v.* Posner (Can.); **36.** *Negl.* p. 25
Seredowicz *v.* Seredowicz (Can.); **27.** *H. & W.* p. 21
Sergeant, *In the Goods of* (1872); **22.** *Evid.* No. 1418a; **23.** *Exors.* No. 734a
Serjeant, *In the Goods of* (1872); **22.** *Evid.* No. 1418a; **23.** *Exors.* No. 734a
— *v.* Nash, Field & Co. (1903); **30.** *L. & T.* No. 140
Sero *v.* Gault (Can.); **11.** *Const. L.* p. 77; **17.** *Dep.* p. 40; **25.** *Fish.* p. 3; **38.** *Pub. Auth.* p. 12
Serpell's Case, *Re* Lucks, Ltd. (Aus.); **9.** *Coys.* p. 16; **35.** *Misrep.* p. 6
Servais *v.* Shear (Can.); **32.** *Limit. of A.* p. 36; **35.** *Mtge.* p. 41
Service *v.* Sundell (1929); **30.** *Jdgmts*, No. 603a; **36.** *Negl.* No. 736a
Services' Club Estate Syndicate, Ltd., *Re* McCandlish *v.* Services' Club Estate (1930); **10.** *Coys.* No. 5120a
Seshgiri Shambhulingam *v.* Manjayya (Ind.); **17.** *Dep.* p. 79
Sessions, *Ex p.* (Can.); **36.** *Prtnrs.* p. 63
Sethu *v.* Palain (Ind.); **3.** *Bastv.* p. 52
Sevenoaks Urban District Council *v.* Twynam (1929); **42.** *Str. Traf.* No. 5a
Severn *v.* R. (Can.); **17.** *Dep.* p. 59
Sevich *v.* Canadian National Railways (Can.) (1933); **36.** *Negl.* pp. 25, 36, 37, 39
— *v.* — (Can.) (1934); **36.** *Negl.* p. 38
Sewai Jaipur *v.* Arjun Lal (Ind.); **26.** *Hghys.* p. 21
Sewdayal Ramjeedas *v.* Bengal Official Trustee (Ind.); **37.** *Perps.* p. 4
Sewell *v.* Agricultural Bank of Western Australia (Aus.); **35.** *Mtge.* p. 42
— *v.* Hnatiw & Hnatiw (Can.); **35.** *Mtge.* p. 42
— *v.* Urquhart (Can.); **22.** *Evid.* pp. 5, 9
— *v.* Woodfield, *Re* Tanqueray (1924); **21.** *E. D.* No. 576a
Sewers Comrs. *v.* Chellings (1935); **41.** *Sewers*, No. 469b
Sexsmith, *Re* (Can.); **20.** *Eqy.* p. 28
Sexton, *Re* (Can.); **4.** *Bkpcy.* p. 38
— *v.* Smith (Can.); **2.** *Agric.* p. 26
Seymour, *Re*, *Ex p.* Trustee (1937); **5.** *Bkpcy.* No. 7411a
—, *Re*, Trustee *v.* Barclays Bank, Ltd. (1937); **5.** *Bkpcy.* No. 7411a
— *v.* Arrowsmith (Can.); **42.** *Str. Traf.* p. 51
— *v.* Hobart Corpn. (Aus.); **43.** *Tram.* p. 48
Seymour *v.* Pratt (Can.); **23.** *Exors.* p. 20
— *v.* Reed (1927); **28.** *Inc. T.* No. 502
— *v.* Seymour & Dalaney (Aus.); **27.** *H. & W.* p. 45
Sforza *v.* Ottoman Bank of Nicosia (1938); **35.** *Money*, No. 52c
Shackleton *v.* Olds Town (Can.); **42.** *Stats.* p. 25
Shacklock *v.* Ethorpe, Ltd. (1937); **29.** *Inns*, No. 208a
Shadin *v.* David Spencer, Ltd. & McMichael (Can.); **41.** *Shrffs.* p. 7
Shaerf (Recenia R.), Ltd. *v.* Smyth (1936); *Pract.* No. 277a
Shafto, *Re*, Fawcett *v.* Shafto (1903); **20.** *Eqy.* No. 2075a
Shah Sankalchand *v.* Ambalal Nagindas (Ind.); **1.** *Action*, p. 3
Shahjahanpur Municipal Board *v.* Sukha Singh (Ind.); **11.** *Const. L.* p. 64
Shaik Abdool *v.* Juma Musjid Trust (S. Af.); **1.** *Agcy.* p. 55
Shaik Abdul Karim *v.* Thakurdas Thakur (Ind.); **28.** *Infts.* p. 142
Shaik Sahied Bin Abdullah Bajerai *v.* Sockalingham Chettiar (1933); **17.** *Dep.* No. 310a
Shaikh Shukrullah *v.* Musammat Zohra Bibi (1936); **16.** *Courts*, No. 649a
Shakespeare Memorial Trust, *Re*, Lytton (Earl) *v.* A.-G. (1923); **8.** *Char.* Nos. 73a, 195a, 2146a
Shakool & Co. *v.* Finlay Fleming & Co. (Ind.); **17.** *Damgs.* p. 20
Shales *v.* Seignoret (1699); **12.** *Contr.* No. 3103a
— *v.* Shales (1701); **25.** *Gifts*, No. 73b
Shallis *v.* Freeman & Stirling Press, Ltd. (1931); **43.** *Trade Mks.* No. 1233b
Shanagan *v.* Shanagan (Can.); **25.** *Fraud. Conv.* p. 17
Shanahan *v.* Toole Peet Trust Co., Ltd. (Can.); **42.** *Str. Traf.* p. 60
Shand, *Re* (Can.); **28.** *Infts.* p. 138
Shandloff *v.* City Dairy (Can.); **36.** *Negl.* p. 12
Shandly *v.* Herndon (Can.); **18.** *Discy.* p. 17
Shankey, *Ex p.*, *Re* Lawson (Can.); **7.** *B. of Sale*, p. 8
Shanklin *v.* Smith (Can.); **22.** *Evid.* p. 20
Shanks *v.* Inland Revenue Comrs. (1929); **28.** *Inc. T.* Nos. 11a, 24a, 674c; **30.** *Jdgmts.* No. 705a
Shannon, *Re* (Aus.); **44.** *Wills*, p. 57
— *v.* King (Can.); **32.** *Libel*, p. 7
— *v.* — (No 2) (Can.); **18.** *Discy.* p. 23
— *v.* Lower Mainland Dairy Products Board (1938); **17.** *Dep.* No. 179b
Shannon (H. S.) & Co., Ltd., *Re*, Canadian Credit Men's Trust Assocn. *v.* Snider & Duncan (Can.); **5.** *Bkpcy.* p. 71
Shantz & Hallman, *Re* (Can.); **32.** *Limit. of A.* p. 38; **35.** *Mtge.* p. 39
Shapiro *v.* Inland Revenue Comr. (S. Af.); **28.** *Inc. T.* p. 47
Sharman *v.* White (Can.); **7.** *B. of Sale*, p. 5
Sharman & Meade's Contract, *Re* (1936); **40.** *S. Land*, No. 2413a
Sharp *v.* Avery & Kerwood (1938); **36.** *Negl.* No. 59c
— *v.* Coltness Iron Co. (Scot.); **34.** *Mines*, p. 212
— *v.* Sparkes (1926); **30.** *Intox.* Nos. 9a, 607a
Sharp (John) & Sons, Ltd. *v.* Katherine Mackall, The (Aus.); **1.** *Adm.* p. 48
Sharp Construction Co. *v.* Begin (Can.); **34.** *Mast. & S.* p. 20
Sharpe (William T.) *v.* Dickinson (Can.); **2.** *Agric.* p. 26
— *v.* Fox, *Re* Sharpe's Deed of Release (1938); **40.** *Sttlmts.* No. 3047b

Sharpe *v.* Southern Ry. Co. (1925); **8.** *Carr.* No. 560a
— *v.* Tophams, Ltd. (1938); **9.** *Coys.* No. 1782a
Sharpe & Dohme Incorporated *v.* Boots Pure Drug Co., Ltd. (1927); **18.** *Discy.* No. 1631a
Sharpe & Fox *v.* Gullick, *Re* Sharpe's Deed of Release (1938); **40.** *Sttlmts.* No. 3017b
Sharpe's Deed of Release, *Re*, Sharpe *v.* Fox (1938); **40.** *Sttlmts.* No. 3047b
Sharrod *v.* Warwickshire Coal Co., Ltd. (1929); **34.** *Mast. & S.* No. 2941a
Shatford *v.* B. C. Wine Growers, Ltd. (Can.); **12.** *Contr.* p. 5
Shatilla *v.* Feinstein (Can.); **17.** *Damgs.* p. 18
— *v.* Nash-Simington Co., Ltd. (Can.); **29.** *Intpr.* p. 64
Shaughnessey, *Re*, *Re* Morris (Can.); **4.** *Bkpcy.* p. 29
Shaunavon Butchers, Ltd. *v.* Burness (Can.); **10.** *Coys.* p. 69
Shaver *v.* Goldhar (Can.); **25.** *Fraud. Conv.* p. 14
— *v.* Great Western Ry. Co. (Can.); **17.** *Damgs.* p. 19
— *v.* Hamilton Co-operative Creameries, Ltd. (Can.); **12.** *Contr.* p. 12
Shaw, *Re* (Can.) (19[illegible]0); **5.** *Bkpcy.* p. 94
—, *Re* (Can.) (1925); **3.** *Bank.* p. 44
—, *Re* (Can.) (1929); **33.** *Mags.* p. 29
—, *Re*, *Ex p.* Official Receiver (1920); **4.** *Bkpcy.* No. 434a; **5.** *Bkpcy.* No. 8771a
—, *Re*, Debtor *v.* Official Receiver (1938); **4.** *Bkpcy.* No. 1879b
—, *Re*, Mountain *v.* Mountain (1929); **44.** *Wills*, No. 5724a
— *v.* Cox, *Re* Parshalle Estate (Can.), [1930] 1 W. W. R. 767; **18.** *Descr.* p. 4
— *v.* —, *Re* Parshalle Estate (Can.), [1330] 2 W. W. R. 802; **35.** *Mtge.* p. 49
— *v.* Glen Falls Insurance Co. (Can.); **22.** *Evid.* p. 21
— *v.* Goodberry (Can.); **18.** *Distr.* p. 34
— *v.* Jones (N.Z.); **12.** *Contr.* p. 4
— *v.* London County Council (1935); **38.** *Pub. Auth.* No. 859a
— *v.* Mutual Life Co. (Can.); **29.** *Insce.* p. 32
— *v.* Neale (1855); **30.** *Jdgmts.* No. 368a
— *v.* — (1858); **30.** *Jdgmts.* No. 368a
— *v.* Pope (1831); **13.** *Corpns.* No. 707a
— *v.* Public Trustee (1929); **44.** *Wills*, No. 5520
— *v.* Robinson (Can.); **34.** *Mines*, p. 207
— *v.* Shaw (Can.); **37.** *Powers*, p. 24
— *v.* Wainwell Oils, Ltd. (Can.); **9.** *Coys.* p. 54
— *v.* Youngstown (Can.); **38.** *Real Prop.* p. 91
Shaw (John) & Sons (Salford), Ltd. *v.* Shaw (1935); **9.** *Coys.* No. 3150a; **12.** *Contr.* No. 4824a; *Fraud.* No. 1010a
Shaw (Walter W.) Co., Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 22
Shaw (Connolly), Ltd. *v.* Nordenfjeldske S.S. Co. (1934); **41.** *Ship.* No. 3179c
Shaw Lovell & Sons, Ltd., *Re* (1937); **8.** *Carr.* No. 1578
Shaw Wallace & Co. *v.* Amritsar National Bank (In Liquidation) (Ind.); **3.** *Bank.* p. 46
Shawdon Estates Settlement, *Re* (1930); **40.** *Sttlmts.* Nos. 2727a, 2727b, 2727c, 3074a
Shawinigan Engineering Co. *v.* Naud (Can.); **22.** *Evid.* p. 22
Shawinigan Water & Power Co. *v.* Gagnon (Can.); **11.** *Comp. Pche.* p. 8
Shea *v.* Boschetti, *Re* Peile (1858); **4.** *Bkpcy.* No. 4772b
— *v.* Canadian National Rys. (Can.); **38.** *Rys.* p. 41
— *v.* McDonald (Can.); **38.** *Rys.* p. 40
Sheady & Smith *v.* John Gillespie & Co., Ltd. (Can.); **12.** *Contr.* p. 5
Sheaf Brook, The (1926); **1.** *Adm.* Nos. 565a, 874a, 876a
Sheaf Steamship Co. *v.* Compania Transmediterranea (Scot.); **1.** *Adm.* p. 46
Shearer *v.* Smoky Lake Municipal District (Can.); **38.** *Rates*, p. 85
Shearn *v.* Shearn (1931); **27.** *H. & W.* Nos. 5469a, 5513c, 5513d; **28.** *Inc. T.* No. 354a
Shears *v.* Lloyds Bank, Ltd., *Re* Green (1935); **43.** *Trusts*, No. 340a
— *v.* Mendeloff (1914); **22.** *Evid.* No. 55d
— *v.* Wells (1936); **31.** *L. & T.* No. 3076a
Shears & Sons, Ltd. *v.* Jones (1922); **7.** *B. of Sale*, No. 110a
Sheaser *v.* Sheaser (Can.); **11.** *Confl.* p. 49
Sheay *v.* Tite (B. W.) & Sons (1927); **34.** *Mast. & S.* No. 3530d
Shecomb *v.* Hawkins (1612); **30.** *L. & T.* No. 1197a
Shedden *v.* A.-G. (1860); **27.** *H. & W.* No. 508a
— *v.* Patrick & A.-G. (1869); **27.** *H. & W.* No. 508a
Shee, *Re*, Taylor *v.* Stoger (1934); **40.** *Sttlmts.* No. 1958a
— *v.* Baker (1927); **28.** *Inc. T.* No. 442
Sheehan *v.* Public Trustee (N.Z.); **44.** *Wills*, p. 56
— *v.* Shaw (Can.); **17.** *Dep.* p. 51; **30.** *Intox.* p. 16
Sheepwash *v.* Deer Mountain Lumber Co. (Can.); **32.** *Lien*, p. 23
Sheffield Burgesses *v.* Minister of Health (1935); **38.** *Pub. Hlth.* No. 502z
Sheffield Corpn. *v.* Kitson (1929); **38.** *Pub. Hlth.* No. 137a; **42.** *Str. Traf.* No. 34a
— *v.* Luxford (1929); **13.** *Cty. Cls.* Nos. 198a, 198b; **42.** *Stats.* No. 1364a
— *v.* Morrell (1929); **13.** *Cty. Cls.* Nos. 198a, 198b; **42.** *Stats.* No. 1364a
Sheffield Masonic Hall Co., Ltd. *v.* Sheffield Corpn. (1932); **19.** *Easmt.* No. 934d
Sheils *v.* Bait (1849); **13.** *Cty. Cls.* No. 92
Sheldon *v.* Sheldon (1937); **27.** *H. & W.* No. 3502a
Shelfontuck *v.* Le Page (Can.); **34.** *Mast. & S.* p. 19
Shell Co. of Australia, Ltd. *v.* Federal Comr. of Taxation (1931); **16.** *Courts*, No. 17b; **17.** *Dep.* Nos. 186a, 205a
Shell Co. of New Zealand *v.* Guthrie (N.Z.); **36.** *Negl.* p. 33
Shell-Mex & B. P., Ltd. & Aladdin Industries, Ltd. *v.* Holmes (R. & W.) (1937); **43.** *Trade Mks.* No. 1431c
Shell-Mex, Ltd. *v.* Elton Cop Dyeing Co., Ltd. (1928); **39.** *S. Goods*, No. 1089a
Shellbrook Store, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 10
Shelley, *Re*, Shelley *v.* Public Trustee (N.Z.); **44.** *Wills*, p. 57
— *v.* Public Trustee, *Re* Shelley (N.Z.); **44.** *Wills*, p. 57
Shelton Iron, Steel & Coal Co., Ltd. *v.* Franklin (1934); **34.** *Mast. & S.* No. 2815b
Shenstone *v.* Hewson (Aus.); **40.** *S. Land*, p. 4
— *v.* — (No. 2) (Aus.); **40.** *S. Land*, p. 1
— *v.* — (No. 3) (Aus.); **40.** *S. Land*, p. 11
Shenton, *Re* (1935); **5.** *Bkpcy.* No. 8977a
—, *Re*, Bates *v.* Harris (1935); **5.** *Bkpcy.* No. 8977a
— *v.* Tyler (1938); **22.** *Evid.* No. 4309a
Sheo Narain *v.* East Indian Ry. (Ind.); **8.** *Carr.* p. 6
Sheo Raj Chamar *v.* Mudeer Khan (Ind.); **19.** *Easmt.* p. 14
Sheo Swarup *v.* King-Emperor (1934); **17.** *Dep.* No. 228a
— *v.* — (Ind.); **14.** *Crim.* p. 59
Sheonarain Singh *v.* R. (Ind.); **14.** *Crim.* p. 39
Shepard *v.* Bruner (Can.); **28.** *Infts.* p. 130

Shepard & Morse Lumber Co. Incorporated *v.* Mathers (I. H.) & Son (Can.); **1.** *Agcy.* p. 104
Shephard *v.* London, Midland & Scottish Railway (1930); **34.** *Mast. & S.* No. 2417a
— *v.* Shephard (Can.); **25.** *Fraud. Conv.* p. 15
Shepherd, *Re*, Smithem *v.* Shepherd (1921); **8.** *Char.* No. 12a
— *v.* Houston (Aus.); **35.** *Mtge.* p. 40; **38.** *Real Prop.* p. 94
— *v.* Hunter (1938); **36.** *Negl.* No. 953p
— *v.* Johnson (1802); **17.** *Damgs.* No. 404b
— *v.* Livingston (Can.); **8.** *Chos.* p. 95
— *v.* London, Midland & Scottish Ry. Co. (1935); **8.** *Carr.* No. 1549
— *v.* Robinson (1919); **3.** *Barr.* No. 323a
Shepherd's Application for Revocation of Letters Patent No. 450,457 (1938); **36.** *Pats.* No. 2189a
Sheppard *v.* Dry (1840); **6.** *B. of Exch.* No. 709a
— *v.* First International Bank of Sweet Grass (Can.); **3.** *Bank.* p. 21
— *v.* McCabe (Can.); **28.** *Infts.* p. 139
— *v.* Robinson (Can.); **25.** *Gifts*, p. 49; **28.** *Infts.* p. 143
— *v.* Toronto General Trusts Corpn. (Can.); **22.** *Evid.* p. 21
Sher Singh *v.* Jitendranath Sen (Ind.); **14.** *Crim.* p. 21
Sherally *v.* R. (S. Af.); **15.** *Crim.* p. 98
Sheraton *v.* United Automobile Services, Ltd. (1936); **8.** *Carr.* Nos. 1627, 1686
Sherborne Gas & Coke Co., Ltd., *Re* (1935); **9.** *Coys.* No. 313a
Sherborne's (Lord) Settled Estate, *Re* (1929); **30** *Land Imp.* Nos. 72a, 79a, 79c
Sherbrooke Corpn. *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 38
Sherbrooke Machinery Co., Ltd. *v.* Hydraulic Co. Ltd. (Can.); **36.** *Pals.* p. 68
Sheriff, The, *Ex p., Re* Arnott (Aus.); **41.** *Shrffs.* p. 7
Sheriff *v.* McKeen (Can.); **7.** *B. of Sale*, p. 9
— *v.* Sheriff (Aus.); **27.** *H. & W.* p. 44
Sherlock *v.* Powell (Can.); **32.** *Lien*, p. 27; **44.** *Work*, p. 58
Sherman *v.* American Insurance Co. (Can.); **29.** *Insce.* p. 27
— *v.* King's Proctor (Can.); **27.** *H. & W.* p. 39
— *v.* Sherman (Can.); **27.** *H. & W.* p. 39
Sherrard *v.* Barron (Ir.); **1.** *Agcy.* p. 75
Sherren *v.* Pearson (Can.); **32.** *Limit. of A.* p. 37
Sherrer, *Re* (Can.); **28.** *Infts.* p. 141
Sherrett & Grey, *Re* (Can.); **38.** *Real Prop.* p. 91
Sherrill *v.* King Edward Hotel Co. (Can.); **29.** *Inns*, p. 2
Sherrin *v.* Wiggins (Can.); **40.** *S. Land*, p. 5
Sherring (J. H.) & Co. *v.* Hinton (Aus.); **18.** *Discy.* p. 23
Sherritt *v.* McCallum (Can.); **32.** *Lien*, p. 24
Sheru & Gama *v.* R. (Ind.); **14.** *Crim.* p. 3
Sherwin *v.* Barnes (1931); **28.** *Inc. T.* No. 457b
Sherwin Estate, *Re*, *Re* Langley Estate (Can.); **28.** *Infts.* p. 140
Sherwin Williams Co. of Canada, Ltd. *v.* Patents Comr. (Can.); **43.** *Trade Mks.* p. 12
Sherwood *v.* Dealey (1931); **35.** *Money*, Nos. 353i, 353p
— *v.* Hannan (Ir.); **32.** *Limit of A.* p. 34
— *v.* Sherwood (1929); **27.** *H. & W.* Nos. 5396a, 5497a, 5498a
Shewchuk *v.* Seafred (Can.); **2.** *Agric.* p. 15; **38.** *Rates*, p. 86
Shiach *v.* Farquhar (Scot.); **24.** *Fish.* p. 3
Shiesel *v.* Kirsch (Can.); **9.** *Coys.* p. 34
Shiffman *v.* Venerable Order of the Hospital of St. John of Jerusalem (1936); **36.** *Negl.* No. 449a
Shilloto Drug Co. *v.* Hanna (Can.); **33.** *L. G.* p. 2
Shimmin *v.* Clark, *Re* Clark (R. P.) & Co. (Can.); **9** *Coys.* p. 24
Shimoski *v.* Cronin (Can.); **44.** *Work*, p. 60
Shinbane *v.* Minuk (Can.); **38.** *Real Prop.* p. 94
Shine *v.* Archdeacon (Ir.); **34.** *Mast. & S.* p. 17
Shingler *v.* Williams (P.) & Sons (1933); **28.** *Inc. T.* Nos. 28b, 119b
Shipley Urban District Council *v.* Bradford Corpn. (1936); **17.** *Deeds*, No. 812a; **35.** *Mistake*, No. 312a
Shipman *v.* Shipman (1938); **27.** *H. & W.* No. 3015e
Shipstone (James) & Sons, Ltd. *v.* Morris (1929); **28.** *Inc. T.* No. 210g
Shipton, Anderson & Co. (1927), Ltd. *v.* Micks, Lambert & Co. (1936); **39.** *S. Goods*, No. 2516a
Shipway *v.* Skidmore (1932); **28.** *Inc. T.* No. 498a
Shipway Iron Bell & Wire Manufacturing Co., Ltd., *Re* (Can.); **10.** *Coys.* pp. 68, 69
Shir Dayal *v.* Puttu Lal (Ind.); **35.** *Mtge.* p. 30
Shirley, *Re* (Can.); **4.** *Bkpcy.* p. 10
— *v.* MacDougall & Royal Insurance Co., Ltd. (N.Z.); **29.** *Insce.* p. 45
Shirtcliffe *v.* Lemon (Can.); **32.** *Limit. of A.* p. 37
Shirvell *v.* Hackwood Estates Co., Ltd. (1938); **2.** *Agric.* No. 410a; **34.** *Mast. & S.* No. 4095a
Shiva Narain Jafa *v.* Allahabad High Court Judges (Ind.); **17.** *Dep.* p. 84
Shivaprasad Singh *v.* Prayagkumari Debee (Ind.); **23.** *Exors.* p. 3
Shivramdas *v.* Nerurkar (Ind.); **8.** *Char.* p. 55
Shoal Lake Village By-Law 192, *Re* (Can.); **2.** *Animals*, p. 65
Shoesmith, *Re* (1938); *Pract.* No. 3028b
— *v.* Lancashire Mental Hospital Board (1938); *Pract.* No. 3028b
Shone *v.* Walthamstow Borough Council, *Re* Carville (1937); **23.** *Exors.* No. 5408b
Shook, *Re* (Can.); **27.** *H. & W.* p. 3
Shooter *v.* Gaitley (1935); **31.** *L. & T.* No. 7052a
Shore *v.* Morgan (Ind.); **11.** *Confl.* p. 29
Shore (Doe d.) *v.* Saunders (Can.); **20.** *Eqy.* p. 30
Shoreditch Assessment Committee, *Ex p.*, R *v.* London Justices (1932); **38.** *Rates*, No. 1617a
— *v.* Lipton, Ltd. (1934); **38.** *Rates*, No. 1162a
Shorey *v.* L. & Winnipeg District Registrar (Can.); **38.** *Real Prop.* p. 97
Short, *Re* (Can.); **44.** *Wills*, p. 45
—, *Re*, Short *v.* Registrar of Probates (Aus.); **21.** *E. D.* p. 21
— *v.* Camm, *Re* Arden (1935); **20.** *Eqy.* No. 63a; **37.** *Powers*, No. 171a
— *v.* Edwards (1795); **22.** *Evid.* No. 301a
— *v.* Guelph & Ontario Investment & Savings Society (Can.); **22.** *Evid.* p. 25
— *v.* Lambe (Ir.); **1.** *Agcy.* p. 70
— *v.* Page (1937); *Pract.* No. 3812a
— *v.* Poole Corpn. (1926); **19.** *Educ.* No. 302a
— *v.* Registrar of Probates, *Re* Short (Aus.); **21.** *E. D.* p. 21
— *v.* Taylor (1709); **36.** *Nuis.* No. 567a
Shortal *v.* Buchanan (N.Z.); **1.** *Agcy.* p. 61
Shortt *v.* Rush & British American Oil Co., Ltd. (Can.); **36.** *Negl.* p. 1
— *v.* Wong (Can.); **1.** *Agcy.* p. 99
— *v.* Yallop (1936); **28.** *Inc. T.* No. 573d
Shotts Iron Co., Ltd. *v.* Curran (1929); **34.** *Mast. & S.* No. 3359a
— *v.* Fordyce (1930); **34.** *Mast. & S.* Nos. 2999a, 3033a

Showler *v.* MacInnes (Can.); **32.** *Libel*, p. 12
Shredded Wheat Co., Ltd.'s Trade Mark No. 500,671 "Shredded Wheat" *Re*, *Re* Kellogg Co. of Great Britain, Ltd.'s Application (1937); **43.** *Trade Mks.* No. 113c
Shrewsbury & Talbot *v.* Inland Revenue Comrs. (1936); **28.** *Inc. T.* No. 407a
Shrigley *v.* Taylor (Can.); **20.** *Elect.* p. 9
Shrives & McKenzie Pty., Ltd., *Re* (Aus.); **10.** *Coys.* p. 77
Shtitz *v.* Canadian National Rys. (Can.); **1.** *Action*, p. 3; **36.** *Negl.* pp. 36, 37
Shubratan *v.* Dhanpat Gadariya (Ind.); **35.** *Mtge.* p. 35
Shubrati *v.* Shams-Uddin (Ind.); **33.** *Mal. Pros.* p. 41
Shuckett *v.* Lockhart & Kyle (Can.); **22.** *Evid.* p. 9; **36.** *Prtnrs.* p. 57
Shuker's Estate, *Re*, Bromley *v.* Reed (1937); **37.** *Powers*, No. 87b
Shukin *v.* Demosky (Can.); **17.** *Deeds*, p. 27
Shulman, *Re*, *Re* Grocery Specialty Co. (Can.); **5.** *Bkpcy.* p. 77
Shupe *v.* Langenburg Rural Municipality (Can.); **7.** *Bounds. & F.* p. 19
— *v.* Pleasantdale Rural Municipality (Can.); **26.** *Highys.* p. 28
Shure, *Ex p.*, R. *v.* Brixton Prison (Governor) (1926); **5.** *Bkpcy.* No. 8534a; **16.** *Cr. Pract.* No. 585a
Shust *v.* Harris (Can.); **36.** *Negl.* p. 16
Shuter *v.* Graham (Can.); **21.** *Exon.* p. 49
— *v.* Ridgway (S. Af.); **6.** *B. of Exch.* p. 17
Shutt *v.* Sterling Food Markets, Ltd. (Can.); **43.** *Trade Mks.* p. 32
Shuttleworth *v.* Cox Brothers & Co. (Maidenhead), Ltd. (1927); **9.** *Coys.* No. 3704a
— *v.* Leeds Greyhound Association (1933); **25.** *Gaming*, No. 358a
— *v.* Vancouver General Hospital (Can.); **36.** *Nuis.* pp. 44, 51
Sibbald *v.* Grand Trunk Ry. Co. (Can.); **17.** *Damgs.* p. 22
Sibisi *v.* Hermansberg Mission Society (S. Af.); **2.** *Aliens*, pp. 31, 42
Sichewsky *v.* Miller (Can.); **36.** *Negl.* p. 33
Sickles *v.* Asselstine (Can.); **23.** *Exors.* p. 17
Sidcup Building Estates, Ltd. *v.* Sidery (1936); **42.** *Str. Traf.* No. 232m
Sidebotham *v.* Barrington (1841); **5.** *Bkpcy.* No. 7931a
Sidery *v.* Evans & Peters (1938); **42.** *Str. Traf.* No. 76s
Sidh Gopal *v.* Bihari Lal (Ind.); **24.** *Fam. Arr.* p. 60
Sidney Lee (Exeter), Ltd. *v.* James (1928); **34.** *Mast. & S.* Nos. 3545a, 4012a
Siegel *v.* O'Brien (Can.); **35.** *Money*, p. 29
Siegel Kahn Co. of Canada, Ltd. *v.* Peggy Sage Inc. (Can.); **43.** *Trade Mks.* p. 22
Siegenberg *v.* Bloom & London Passenger Transport Board (1936); *Pract.* Nos. 1019a, 1662a
Siegerist *v.* Pain (Can.); **40.** *S. Land*, p. 22
Sieman, *Re* (Can.); **24.** *Extrdn.* p. 44
—, *Re* (No. 2) (Can.); **24.** *Extrdn.* p. 44
—, *Re* (No. 3) (Can.); **34.** *Mines*, p. 205
Siemens-Schuckertwerke Akt.' Application, *Re* (1937); **36.** *Pats.* No. 1375a
Sier *v.* Ashton, *Re* Ashton (1934); **18.** *Desct.* No. 221a; **20.** *Egy.* Nos. 1895a, 2280a; **21.** *E. D.* No. 173a
Sievewright *v.* Kronevitt (Can.); **3.** *Bastv.* p. 62
Sievwright *v.* Ward (N.Z.); **1.** *Action*, p. 17
Sifton *v.* Sifton (1938); **44.** *Wills*, No. 2067a
— *v.* Sweezey (Can.); **12.** *Contr.* p. 53
— *v.* Toronto City (Can.); **38.** *Rates*, p. 76
Sigerseth *v.* Pedersen (Can.); **34.** *Mast. & S.* pp. 19, 20
Sigley *v.* Hale (1938); *Pract.* No. 1615a
Signal Hill Oils Co., Ltd. *v.* London Oil Securities, Ltd. (Can.); **9.** *Coys.* p. 19
Sigsworth, *Re*, Bedford *v.* Bedford (1935); **18.** *Desct.* No. 283j; **44.** *Wills*, No. 506a
Sigurdson *v.* Robinson (William) Co., Ltd. (Can.); **2.** *Arbn.* p. 81
Sigurdson Estate, *Re*, Sigurdson *v.* Sigurdson (Can.); **44.** *Wills*, p. 20
Sikorski *v.* Continental Insurance Co. (Can.); **29.** *Insce.* p. 6
— *v.* Kobrinski (Can.); **43.** *Tresp.* p. 53
Silber's Settlement, *Re*, Public Trustee *v.* Silber (1920); **5.** *Bkpcy.* Nos. 5821a, 6295a
Silbert *v.* David (Can.); **2.** *Arbn.* p. 91
Silcock & Sons *v.* Green (1936); **11.** *Comp. Pchc.* Nos. 2268a, 2269a
Silliker *v.* Fraser (Can.); **27.** *H. & W.* p. 20
Silliphant *v.* St. John Harbour Comrs. (Can.); **28.** *Injon.* p. 149
Sills *v.* Bickford (Can.); **32.** *Lien*, p. 22
Silva, *Re*, Silva *v.* Silva (1929); **20.** *Egy.* No. 1007a
Silver *v.* Ocean S.S. Co., Ltd. (1930); **41.** *Ship.* Nos. 2257a, 2777b
Silver Bros., Ltd., *Re*, A.-G. for Quebec *v.* A.-G. for Canada (1932); **17.** *Dep.* Nos. 130i, 130j
Silverberg, *Re* (Can.); **43.** *Trade*, p. 2
Silverman *v.* Imperial London Hotels, Ltd. (1927); **12.** *Contr.* No. 5168c; **36.** *Negl.* No. 267a
— *v.* Legree (Can.); **1.** *Agcy.* pp. 59, 70
Silvester *v.* Jarman (1822); **35.** *Mtge.* No. 1326a
Sim *v.* Good (Can.); **2.** *Animals*, p. 72
— *v.* Stretch (1936); **32.** *Libel*, No. 171a
Simard's Exors. *v.* Victoor's Exors. (Can.); **40.** *S. Land*, p. 14
Simback *v.* Saga, The (Can.); **1.** *Adm.* p. 38
Simbro Trading Co. *v.* Posograph (Parent) Corpn., (1929); **2.** *Arbn.* No. 523a
Simcock *v.* Simcock (1932); **27.** *H. & W.* No. 6123a
Simcoe (County) *v.* Sanderson (Can.); **38.** *Real Prop.* p. 95
Simcovitch *v.* R. (Can.); **5.** *Bkpcy.* p. 88
Simeon, *Re* (1935); **11.** *Comp. Pchc.* Nos. 2300a, 2300b, 2300c, 2300d
— *v.* Minister of Health (1935); **11.** *Comp. Pchc.* No. 2300a
Simeon & Isle of Wight Rural District Council, *Re* (1937); **11.** *Comp. Pchc.* No. 281a
Simeons (C.) & Co. *v.* Durand's Trustee (1928); **5.** *Bkpcy.* No. 6507a
Simmonds, *Re*, Public Trustee *v.* Stone (N.Z.); **8.** *Char.* p. 56
Simmonds & Osborne, Ltd. *v.* Bigham (N.Z.); **43.** *Trade*, p. 5
Simmons *v.* Huntingdon Corpn. (1936); **36.** *Negl.* No. 246b
— *v.* Russell Financiers, Ltd. (1934); **35.** *Money*, No. 353x
Simmons & Son, Ltd. *v.* Wiltshire (1938); **13.** *Cty. Cts.* No. 420b
Simms, *Re* (1930); **4.** *Bkpcy.* Nos. 471a, 596a; **5.** *Bkpcy.* Nos. 5786a, 7503a
—, *Re*, *Ex p.* Quaife (A. E.) (1930); **4.** *Bkpcy.* No. 4714a
—, *Re*, *Ex p.* Trustee (1930); **4.** *Bkpcy.* No. 596a
—, *Re*, *Ex p.* Trustee (1934); **5.** *Bkpcy.* No. 8024a
—, *Re*, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett (1934); **5.** *Bkpcy.* No. 8024a
— *v.* Chernenkoff (Can.); **11.** *Confl.* p. 43
— *v.* Cox (1824); **25.** *Gifts*, No. 399a
— *v.* Hoddern (Nfld.); **1.** *Adm.* p. 32
Simon *v.* Gastonguay (Can.); **21.** *Estpl.* p. 42; **33.** *L. G.* p. 2; **43.** *Tresp.* p. 51

Simon *v.* Pawson & Leafs, Ltd. (1932); **17.** *Damgs.* No. 176a
— *v.* Simon, Hogarth, Preston & Shaw (1936); **22.** *Evid.* No. 864a
Simon-Carves, Ltd. & Robinson's Patent, *Re* (1928); **36.** *Pats.* No. 412a
Simon Lakra *v.* Mussammat Sugan Bakhla (Ind); **27.** *H. & W.* p. 27
Simonin *v.* Philion (Can.); **6.** *B. of Exch.* pp. 13, 15
Simonite *v.* Moxam (Can.); **1.** *Agcy.* p. 79
Simons *v.* Associated Furnishers, Ltd. (1931); **31.** *L. & T.* No. 6838a
— *v.* Simons (1938); **11.** *Confl.* No. 953a
— *v.* Winslade (1938); **36.** *Negl.* No. 260a
Simonson, *Re*, Simonson *v.* Slaaten (Can.); **28.** *Infts.* p. 137
— *v.* Simonson (Can.); **21.** *Exon.* p. 58
Simplex Machine Co. *v.* McLellan, McFeeley & Co. (Can.); **44.** *Work*, p. 58
Simpson, *In the Estate of* (1936); **23.** *Exors.* No. 1464a
—, *Re* (Can.); **23.** *Exors.* p. 27
— *v.* Bannerman (Aus.); **2.** *Animals*, p. 65
— *v.* Barnes, *Re* Barnes (1922); **8.** *Char.* No. 981b
— *v.* Batey (1924); **2.** *Agric.* No. 29a
— *v.* Bourne (Cardinal), *Re* Martley (1931); **8.** *Char.* No. 717c
— *v.* Chamberlain (Can.); **29.** *Insce.* p. 34
— *v.* Charrington & Co., Ltd. (1934); **31.** *L. & T.* Nos. 2306e, 2306j, 2306m, 2306p, 2306q, 2306r, 2306s
— *v.* Finlayson (Aus.); **34.** *Mast. & S.* p. 35
— *v.* Geoghegan (1934); **35.** *Ji tge.* No. 3514a
— *v.* Grange Trust, Ltd. (1935); **28.** *Inc. T.* No. 283a
— *v.* London, Midland & Scottish Ry. Co. (1931); **34.** *Mast. & S.* Nos. 2619b, 2693a
— *v.* Maurice's Executors (1929); **28.** *Inc. T.* No. 428a
— *v.* Oakes (Can.); **32.** *Lien*, p. 22
— *v.* O'Sullivan (1840); **35.** *Mtge.* No. 1279a
— (Doe d.) *v.* Privat (Can.); **21.** *Exon.* p. 45
— *v.* Simpson (1931); **27.** *H. & W.* No. 2792a
— *v.* — (1937); *Pract.* No. 2292a
— *v.* — (Can.); **21.** *Exon.* p. 60
— *v.* Weber (1925); **19.** *Easmt.* Nos. 204a, 1322a, 1322b
— (Robert) & Co. *v.* Godson (Can.); **27.** *H. & W.* p. 14
— *v.* Ruggles (Can.); **27.** *H. & W.* p. 14
Simpson & Ors *v.* Cousins (Can.); **12.** *Contr.* p. 54
Simpson Estate, *Re* (Can.); **17.** *Dep.* p. 69
Simpson (D.), Ltd. (Scot.); **9.** *Coys.* p. 11
Simpson's Trustees *v.* Simpson (Scot.); **39.** *Revenue*, p. 22
Sims *v.* Roscoe & Sons, Ltd. (1938); **34.** *Mast. & S.* No. 3025g
— *v.* Seller (Can.); **2.** *Arbn.* p. 84
Simson *v.* Miatt (1929); **31.** *L. & T.* Nos. 7037a, 7351a, 7352e, 7359a
Simson & Goliath Owners *v.* Eisenach Owners (1936); **41.** *Ship.* No. 7621a
Sin MacLines, Ltd. *v.* Hartford Fire Insurance Co. (Can.); **29.** *Insce.* p. 26
— *v.* Huron, The (Can.); **1.** *Adm.* p. 47
Sinanide *v* Maison Kosmeo (1928); **13.** *Coprt.* Nos. 43b, 91a, 408a
Sincennes-McNaughton Line, Ltd. *v.* Brulin S.S. (Can.); **41.** *Ship.* p. 61
Sincennes-McNaughton Lines *v.* Steel Chemist (Can.); **41.** *Ship.* p. 58
Sinclair *v.* Kennedy (Can.); **2.** *Animals*, p. 59
— *v.* Land Settlement Board (Can.); **7.** *Bldg. Conts.* p. 32
— *v.* Rankin (Scot.); **3.** *Bastv.* p. 62
— *v.* Walker (Can.); **2.** *Animals*, pp. 67, 72
Sinclair (John), Ltd., Trade Mark, *Re* (1932); **43.** *Trade Mks.* Nos. 429a, 566a
Sinclair, Scott & Co., Ltd. *v.* Naughton (Aus.); **40.** *S. Land*, p. 2
Sinclair's Case, Inland Revenue *v.* Edinburgh Assessor (Scot.); **38.** *Rates*, p. 53
Sinclair's Life Policy (1938); **29.** *Insce.* No. 3289a
Sing Yim Hong, *Re*, *Re* Mah Shin Shong (Can.); **2.** *Aliens*, p. 51
Singer, *Re* (Can.); **16.** *Cr. Pract.* p. 28
— *v.* Garrett (Can.); **40.** *S. Land*, p. 10
— *v.* R. (Can.); **42.** *Stats.* p. 25
— *v.* Singer (Can.); **44.** *Wills*, p. 49
Singer & Co., Ltd. *v.* Foulkes & Co., Ltd. (1931); **3.** *Bailmt.* No. 318a
Singh (Raja Sarda Mahesh Prasad) *v.* Badri Lal Sahu (1936); **17.** *Dep.* No. 446a
Singha (Dr. R. N.) *v.* Secretary of State for India in Council (Ind.); **17.** *Dep.* p. 66; **28.** *Inc. T.* p. 104
Singleton, *Re*, *Ex p.* Williams (Aus.); **33.** *Mags.* p. 27
— *v.* Drake (D.) & Sons (1931); **34.** *Mast. & S.* No. 3932d
Singleton Abbey, S.S. *v.* Paludina, S.S. (1927); **1.** *Adm.* No. 1114a; **17.** *Damgs.* No. 287a
Sinwick *v.* Elfros (Can.); **18.** *Distr.* p. 34
Siqueira *v.* Noronha (1934); **12.** *Contr.* No. 4766a; **32.** *Limit. of A.* No. 672a
Sir Currimbhoy Ebrahim Baronetcy Trust, Trustees *v.* Income Tax Comr., Bombay Presidency (1934); **28.** *Inc. T.* No. 569a
Sir G. B. Hunter (1922) "C." Trust Trustees *v.* Inland Revenue Comrs. (1929); **28.** *Inc. T.* No. 472h
Sir W. C. Leng & Co. (Sheffield Telegraph), Ltd. *v.* Sillitoe (1929); **25.** *Gaming*, No. 415c
Sir William Reardon Smith & Sons, Ltd., & Louis Dreyfus & Co., *Re* (Aus.); **41.** *Ship.* p. 38
Sirajganj Local Board (Chairman) *v.* Budhiswar Patni (Ind.); **24.** *Ferries*, p. 62
Siscoe Gold Mines, Ltd. *v.* Bijakowski (Can.); **17.** *Deeds*, p. 28
Sisk *v.* Cromin (Ir.); **31.** *L. & T.* p. 94
Siskin *v.* Bogoch & Hochman, *Re* Siskin Estate (Can.); **23.** *Exors.* p. 29
Siskin Estate, *Re*, Siskin *v.* Bogoch & Hochman (Can.); **23.** *Exors.* p. 29
Sissons *v.* Hassard (Can.); **9.** *Coys.* p. 22
Sisters of Charity of the Providence General Hospital of Daysland *v.* Marty (Can.); **28.** *Infts.* p. 133; **38.** *Pub. Hlth.* p. 20
Sisters of Mercy *v.* Tellier (Can.); **7.** *Bounds. & F.* p. 15
Sisters of Sion (Society) *v.* Saskatoon (City) (Can.); **38.** *Rates*, p. 61
Sisters of the Holy Names of Jesus & Mary Community, *Re*, *Re* Winnipeg Charter (Can.); **16.** *Courts.* p. 12
Sitaram Krishna Padhye *v.* Chinandas Fatehchand (Ind.); **6.** *B. of Exch.* p. 8
Sitaram Syam Narain *v.* Isuari Charan Sarangi (Ind.); **43.** *Trov.* p. 56
Sittingbourne Urban District Council *v.* Lipton, Ltd. (1931); **26.** *Hghys.* Nos. 2592c, 2592d
Sitwell *v.* Sun Engraving Co., Ltd. (1937); **13.** *Coprt.* No. 656a
Sivayya *v.* Ranganayakulu (Ind.); **39.** *S. Goods*, p. 47
Sivewright, *Re*, Law *v.* Fenwick (1922); **23.** *Exors.* No. 5442a
Siveyer *v.* Allison (1935); **1.** *Action*, No. 328a **12.** *Contr.* No. 2190c
Sivier *v.* Harris (1876); **18.** *Discy.* No. 1677a
Siviour *v.* Napolitano (1931); **15.** *Crim.* No. 8143a

Skaith *v.* Skaith (Can.); **27.** *H. & W.* p. 45
Skale *v.* Becker (Can.); **6.** *B. of Exch.* p. 11
Skaleski, *Re*, Popham *v.* Bertrand (Can.); **28.** *Infts.* p. 140
Skarp, The (1935); **41.** *Ship.* Nos. 2262a, 2288a
Skeahon *v.* Whelan (Can.); **38.** *Real Prop.* p. 99
Skeate *v.* Slaters, Ltd. (1914); **22.** *Evid.* No. 55e
Skeats, *Re*, Thain *v.* Gibbs (1936); **23.** *Exors.* No. 5408a
Skeele, *Re* (Can.); **5.** *Bkpcy.* p. 58
Skidmore *v.* Birmingham Corpn. (1932); **34.** *Mast. & S.* No. 3540c
— *v.* Bullock, Lade & Co., Ltd. (1928); **34.** *Mast. & S.* No. 2179a
Skilton *v.* Epsom & Ewell Urban District Council (1937); **26.** *Highys.* No. 1266a
Skinner, *Re* (Can.); **44.** *Wills*, p. 41
— *v.* A.-G., *Re* White (1938); **21.** *E. D.* No. 94a
— *v.* Bank of Upper Canada, Ltd. (Ind.); **16.** *Courts*, p. 15
— *v.* Geary (1931); **23.** *Exors.* No. 3692a; **31.** *L. & T.* Nos. 7103c, 7105a, 7106a
— *v.* James Syphonic Visible Measures, Ltd. (Aus.); **35.** *Money*, p. 22; **40.** *S. Land*, p. 10
— *v.* Naunihal Singh (Ind.); **32.** *Limit. of A.* p. 39
— *v.* Sanders, *Re* Morris (1927); **21.** *E. D.* No. 209b
Skipp *v.* Kelly (1926); **12.** *Contr.* No. 2190a
— *v.* Wyatt (1787); **35.** *Mtge.* No. 4127a
Skipper *v.* Syrmis (Aus.); **1.** *Agcy.* p. 50
Skipwith (Sir Grey) *v.* Homewoods Sawmills, Ltd. (1938); **2.** *Agric.* No. 807a
Skipwith *v.* Skipwith (1929); **27.** *H. & W.* Nos. 5531a, 5537a
Skitch, *Re* (Can.); **16.** *Courts*, p. 10
— *v.* Minister of Pensions & National Health (Can.); **39.** *Royal F.* p. 31
Skogman *v.* Ellergodt & Wiseman (Can.); **25.** *Fraud. Conv.* p. 13
Skondras *v.* Skondras & Pripp (Can.); **27.** *H. & W.* p. 35
Skov Lumber Co. *v.* Clark (Can.); **17.** *Deeds*, p. 32
Skremilka *v.* Winnipeg City (Can.); **26.** *Highys.* p. 44
Skues *v.* Lyon, *Re* Canning's Will Trusts (1936); **37.** *Perps.* No. 493a
Skwarchuk *v.* Skwarchuk (Can.); **40.** *S. Land*, p. 9
Skylark Motor Coach Co., Ltd., R. *v.* Minister of Transport (1931); **42.** *Str. Traf.* No. 33a
Slack *v.* Leeds Industrial Co-operative Society, Ltd. (1923); **19.** *Easmt.* No. 1399
— *v.* Leeds Industrial Co-operative Society, Ltd. (1924); **19.** *Easmt.* Nos. 1399, 1399a, 1444a
Sladden, *Ex p.*, *Re* Gordean Furniture Co. (Can.); **4.** *Bkpcy.* p. 38
Slade, *Ex p.*, R. *v.* Southampton County Confirming Committee (1929); **30.** *Intox.* Nos. 292a, 293a
—, *Re*, Crewkerne United Breweries, Ltd. *v.* Slade (1921); **4.** *Bkpcy.* No. 4335a
— *v.* Pattison (1835); **38.** *Real Prop.* No. 159a
Slanec *v.* Grimstead (Can.); **17.** *Dep.* p. 53
Slaney *v.* Starkey (Rev. E. S.) (1931); **28.** *Inc. T.* No. 495a
Slater *v.* Advocate, H.M. (Scot.); **14.** *Crim.* pp. 63, 69
— *v.* Newman, *Re* Newman (1930); **20.** *Eqy.* No. 817b
— *v.* Slater (Aus.); **11.** *Confl.* p. 47
— *v.* Spreag (1936); **36.** *Negl.* Nos. 953b, 953d
Slaughterhouses Case, Inland Revenue *v.* Edinburgh Assessor (Scot.); **38.** *Rates*, pp. 53, 56
Slaunwhite *v.* Smith (Can.); **42.** *Str. Traf.* p. 60
Slavonski *v.* Pelleterie de Roubaix Societe Anonyme (1927); **17.** *Damgs.* No. 227a
Sleeman, *Re*, Cragoe *v.* Sleeman (1929); **44.** *Wills*, No. 7911a
Sletto *v.* Adams (Can.); **1.** *Agcy.* p. 90
Slingerland *v.* Massey Manufacturing Co. (Can.); **21.** *Exon.* p. 45
Slingsby *v.* District Bank, Ltd. (1932); **1.** *Agcy.* No. 2287a; **3.** *Bank.* Nos. 629a, 647b; **6.** *B. of Exch.* No. 2475b
— *v.* Westminster Bank, Ltd. (1931); **3.** *Bank.* Nos. 527a, 691d; **6.** *B. of Exch.* Nos. 242a, 2901a
— *v.* — (No. 2) (1931); **3.** *Bank.* Nos. 647a, 692c; **6.** *B. of Exch.* No. 2475a
Slipper *v.* Braisby (No. 2) (N.Z.); **17.** *Dep.* p. 85
Sloan *v.* Ottawa Car Manufacturing Co. (Can.); **7.** *B. of Sale*, p. 9
Sloan's Estate, *Re*, Bull *v.* Sloan (Can.); **44.** *Wills*, p. 38
Sloane *v.* Cadogan (1808); **8.** *Chos.* No. 624a
— *v.* Flood (Ir.); **32.** *Limit. of A.* p. 38
Sloboda *v.* Continental Casualty Co. (Can.); **29.** *Insce.* p. 39
Slocan Municipal Election, *Re* (Can.); **20.** *Elect.* p. 8
Slocock *v.* Official Receiver, *Re* Walter (1929); **4.** *Bkpcy.* No. 4555a; **5.** *Bkpcy.* No. 6353a
Slocomb *v.* Hawkins (1612); **30.** *L. & T.* No. 1197a
Sloggett *v.* Sloggett (1928); **27.** *H. & W.* No. 5076a
Smale *v.* Takapuna Borough Council (N.Z.); **44.** *Waters*, p. 4
Small, *Re*, Westminster Bank *v.* Trustee (1934); **4.** *Bkpcy.* No. 3220a
— *v.* Packard (Can.); **23.** *Exors.* p. 2
— *v.* Small (Aus.); **27.** *H. & W.* p. 54
Small & Sons, Ltd. *v.* Middlesex Real Estates, Ltd. (1912); **7.** *Bldg. Conts.* Nos. 129a, 147a
Smalley, *Re*, Smalley *v.* Scotton (1929); **44.** *Wills*, No. 7307a
Smart, *Re* (Can.); **16.** *Cr. Pract.* p. 30
— *v.* Lincolnshire Sugar Co., Ltd. (1937); **28.** *Inc. T.* No. 990
— *v.* Maxwell (Aus.); **11.** *Confl.* p. 49
— *v.* Perthshire Education Authority (Scot.); **19.** *Educ.* p. 41
— *v.* Preston (N.Z.); **39.** *S. Goods*, p. 40
— *v.* Sandars (1846); **1.** *Agcy.* No. 838a
— *v.* Smart (Scot.); **23.** *Exors.* p. 1
— *v.* South African Rys. & Harbours (S. Af.); **36.** *Negl.* p. 37; **38.** *Rys.* p. 38
— *v.* Wilkinson (Scot.); **35.** *Misrep.* p. 6; **40.** *Set-off*, p. 23
Smart Brothers, Ltd. *v.* Holt (1929); **18.** *Distr.* No. 424a
Smeaton & Sons, Ltd. *v.* Taylor (1933); **34.** *Mast. & S.* No. 3726c
Smeaton & Shoal Lake Village By-Law 192, *Re*; **2.** *Animals*, p. 65
Smeetons, Ltd. (In Liquidation), *Re* (N.Z.); **10.** *Coys.* p. 80
Smellie's Executrix *v.* Smellie (Scot.); **35.** *Money*, p. 22
Smiles *v.* Belford (Can.); **17.** *Dep.* p. 40
Smiley *v.* Evans (Can.); **20.** *Elect.* p. 5
Smillie *v.* Rangitikei Co-operative Dairy Co., Ltd. (N.Z.); **34.** *Mast. & S.* p. 29
Smith, *Ex p.*, *Re* Smith (1812); **5.** *Bkpcy.* No. 7089a
—, *Ex p.*, Helmore *v.* Smith (1886); **39.** *Recrs.* No. 895a
—, *Ex p.*, R. *v.* "Daily Mail" (Editor & Proprietors) (1927); **16.** *Cntmpt.* No. 283a
—, *Ex p.*, R. *v.* "Daily Mirror" (1927); **16.** *Cntmpt.* No. 283a
—, *Ex p.*, R. *v.* Kent JJ. (1928); **16.** *Cr. Pract.* Nos. 1466a, 3433a

Smith, *Ex p.*, R. *v.* Monmouthshire County Council (1935); **33.** *L. G.* No. 84a
—, *In the Goods of* (1931); **44.** *Wills*, No. 831a
—, *Re* (Aus.); **44.** *Wills*, p. 56
—, *Re* (Can.) (1912); **8.** *Char.* p. 71; **44.** *Wills*, p. 52
—, *Re* (Can.) (1938), **18.** *Desct.* p. 1
—, *Re, Ex p.* Smith (1812); **5.** *Bkpcy.* No. 7089a
—, *Re*, *Re* Land Titles Act (Can.); **38.** *Rates*, p. 86
—, *Re*, Blyth *v.* A.-G. (1920); **8.** *Char.* Nos. 703a, 841a
—, *Re*, Bull *v.* Smith (1933); **13.** *Cohlds.* No. 1533b; **44.** *Wills*, No. 7171a
—, *Re*, Debtor *v.* Official Receiver (1938); **4.** *Bkpcy.* No. 1879b
—, *Re*, Lawrence *v.* Kitson (1918); **35.** *Mtge.* No. 196a
—, *Re*, Public Trustee *v.* Smith (1931); **8.** *Char.* Nos. 217c, 1980a
—, *Re*, Trevor *v.* Goodhall (1934); **8.** *Char.* No. 894b
—, *Re*, Vincent *v.* Smith (1930); **30.** *Jdgmts.* No. 669a; **40.** *Sttlmts.* Nos. 1873a, 1878b
—, *Re*, Walker *v.* Battersea General Hospital (1938); **8.** *Char.* Nos. 91a, 91b
— *v.* Acton (No. 2) (1859); *Pract.* No. 3894a
— *v.* Adam (Scot.); **39.** *Revenue*, p. 12
— *v.* American Equitable Assurance Co. (Can.); **29.** *Insce.* p. 27
— *v.* A.-G. for Ontario (Can.); **16.** *Cr. Pract.* p. 24
— *v.* Baily (1727); **6.** *B. of Exch.* No 694d
— *v.* Bason (N.Z.); **1.** *Agcy.* pp. 70, 77
— *v.* Benabo (1937); **26.** *Hghys.* Nos. 2195a, 2196a; **42.** *Stats.* No. 1939a
— *v.* Benor (Can.); **12.** *Contr.* p. 16; **43.** *Trusts*, p. 59
— *v.* Benton (Can.); **12.** *Contr.* p. 25
— *v.* Bernhart (Can.); **32.** *Lien*, p. 24
— *v.* Birch (1840); **24.** *Exors.* No. 8342a
— *v.* Bird (S. Af.); **23.** *Exors.* p. 4
— *v.* Birkenhead Corpn. (1938); **26.** *Hghys.* No. 2471a
— *v.* Blenheim Borough Council (N.Z.); **38.** *Pub. Hlth.* p. 32
— *v.* Bridger (1853); **23.** *Exors.* No. 5540
— *v.* Britannic Assurance Co., Ltd. (1933); **25.** *Fr. Soc.* No. 175c
— *v.* Burn (Can.); **26.** *Guar.* p. 6
— *v.* Cammell, Laird & Co., Ltd. (1938); **24.** *Fact.* No. 1385c
— *v.* Canadian National Rys. (Can.); **18.** *Discy.* p. 13
— *v.* Caspar, Edgar & Co., Ltd. (1934); **8.** *Chos.* No. 437a
— *v.* Catherwood, *Re* Dewdney Election Appeal (Can.); **20.** *Elect.* p. 4
— *v.* —, *Re* Provincial Elections Act (Can.); **20.** *Elect.* p. 4
— *v.* Cawdle Fen, Ely (Cambridge) Comrs. (1938); **38.** *Pub. Auth.* No. 207a
— *v.* Chadwick (1882); **9.** *Coys.* No. 556a
— *v.* — (1884); **9.** *Coys.* No. 556a
— *v.* Chatham Trustees, Home of the Friendless, *Re* Tyhurst (Can.); **44.** *Wills*, p. 45
— *v.* Comtois (Can.); **1.** *Agcy.* p. 74
— *v.* Cornhill Insurance Co., Ltd. (1938); **29.** *Insce.* No. 3180a
— *v.* Curry (Can.); **7.** *Bounds. & F.* p. 17
— *v.* Cutler (Samuel) & Sons, Ltd. (1932); **34.** *Mast. & S.* No. 3718a
— *v.* Dawson (Can.); **12.** *Contr.* p. 19
— *v.* Dickinson (1844); **21.** *Exon.* No. 146a
— *v.* Drewry's, Ltd. & Stephenson (Can.); **42.** *Str. Traf.* p. 60
— *v.* Duffy, *Re* Duffy (Can.); **33.** *Lunat.* p. 13
v. Eden (1934); **28.** *Inc. T.* No. 540e
Smith *v.* Elrose Rural Telephone Co., Ltd. (Can.); **10.** *Coys.* p. 55
— *v.* Evangelization Society Incorporated Trust (1933); **19.** *Easmt.* No. 934c
— *v.* Everett (1792); **8.** *Chos.* No. 214a
— *v.* Fecampois (Can.); **1.** *Adm.* p. 48
— *v.* Federal Comr. of Taxation (Aus.); **20.** *E. D.* p. 9
— *v.* Finch (Can.); **43.** *Trade Mks.* p. 34
— *v.* Fralick (Can.); **6.** *B. of Exch.* p. 10
— *v.* Freeman, *Re* Cugny's Will Trusts (1931); **40.** *Sttlmts.* No. 3143d
— *v.* Gautsche (Can.); **3.** *Bank.* p. 24
— *v.* Gibson (1871); **33.** *Jdgmts.* No. 176a
— *v.* Glasgow Education Authority (Scot.); **38.** *Pub. Auth.* p. 11
— *v.* Gordon (Can.); **16.** *Courts*, p. 10
— *v.* Henderson (Can.); **9.** *Coys.* p. 34
— *v.* Horlor (N.Z.); **5.** *Bkpcy.* p. 54
— *v.* Hughes (1930); **31.** *L. & T.* No. 6955a
— *v.* Jack, *Re* Hyde (1932); **44.** *Wills*, No. 479a
— *v.* Jerves & Baily (1727); **6.** *B. of Exch.* No. 694d
— *v.* Kelliher Village (Can.); **38.** *Pub. Auth.* p. 3
— *v.* Kinsey (1936); **31.** *L. & T.* No. 5979a
— *v.* Lawrence (S. Af.); **32.** *Libel*, p. 2
— *v.* London City (Can.); **17.** *Dep.* p. 53
— *v.* London, Midland & Scottish Ry. Co. (1935); **8.** *Carr.* Nos. 1483, 1604
— *v.* Loveridge (Can.); **1.** *Agcy.* p. 74; **36.** *Prtnrs.* p. 60
— *v.* Lubbock, *Re* New Zealand Midland Ry. Co. (1901); **10.** *Coys.* No. 5095a
— *v.* Lynch-White, *Re* Lynch-White (1937); **36.** *Prtnrs.* No. 1162a
— *v.* McCutcheon (Can.); **7.** *Bldg. Conts.* p. 24
— *v.* MacGowan (1938); **12.** *Contr.* No. 1033a
— *v.* McLean (Can.); **22.** *Evid.* p. 9
— *v.* Mansel, *Re* Mansel (1930); **44.** *Wills*, No. 10,767a
— *v.* Martin (1925); **7.** *Bldg. Conts.* No. 388a
— *v.* Melville, *Re* Smith's Will Trusts (1936); **40.** *Sttlmts.* No. 1998c
— *v.* Metropolitan Properties Co., Ltd. (1932); **31.** *L. & T.* No. 23061
— *v.* Mitchell, *Re* Edwardes Square Garden Committee (1934); **36.** *Open Sp.* No. 24a
— *v.* Moats (Can.); **3.** *Bailmt.* p. 8
— *v.* Morris (Can.); **19.** *Easmt.* p. 10
— *v.* Mulcahy (1934); **19.** *Eccl.* Nos. 3490b 3490d, 3491a
— *v.* National Guarantee Co. (Can.); **29.** *Insce.*, p. 25
— *v.* Nevilles (Can.); **22.** *Evid.* p. 10
— *v.* Oborn (Can.); **42.** *Sp. Pfce.* p. 19
— *v.* O'Grady (1870); **24.** *Exors.* No. 7492a
— *v.* Pawson (1855); **35.** *Mistake*, No. 414a
— *v.* R. (Can.); **16.** *Cr. Pract.* p. 27
— *v.* — (Ind.); **15.** *Crim.* p. 91
— *v.* Race Rock, The (Can.); **1.** *Adm.* p. 36; **41.** *Ship.* p. 67
— (Judge) *v.* Renfrey (Aus.); **1.** *Agcy.* p. 88
— *v.* Risley (1639); **38.** *Real Prop.* No. 761a
— *v.* Robertson (Can.); **25.** *Fraud. Conv.* p. 14
— (Doe d.) *v.* Roe (1840); **19.** *Eccl.* No. 4034a
— *v.* Ross (Scot.); **25.** *Fish.* p. 4
— *v.* Samuel Cutler & Sons, Ltd. (1932); **34.** *Mast. & S.* No. 3718a
— *v.* Schilling (1928); **17.** *Damgs.* Nos. 721a, 751a, 784a, 832a; **30.** *Jdgmts.* No. 628c
— *v.* Smith (1854); **24.** *Exors.* No. 6388a
— *v.* — (1857); **38.** *Real Prop.* No. 285a
— *v.* — (1925); **13.** *Cty. Cts.* No. 147a
— *v.* — (1930); **27.** *H. & W.* Nos. 6133a, 6151a
— *v.* — (1931); **27.** *H. & W.* No. 5410a
— *v.* — (Can.) (1884); **21.** *Estpl.* p. 38

Smith *v.* Smith (Can.) (1915), 19 D. L. R. 192; **44.** *Wills*, p. 20
— *v.* — (Can.) (1915) 21 D. L. R. 861; **25.** *Gifts*, p. 51
— *v.* — (Can.) (1923); **11.** *Confl.* p. 54
— *v.* — (N.Z.); **27.** *H. & W.* p. 30
— *v.* — (Scot.); **27.** *H. & W.* p. 26
— *v.* — (S. Af.); **11.** *Confl.* p. 48
— (Doe d.) *v.* Snarr (Can.); **38.** *Real Prop.* p. 99
— *v.* Stepney Corpn. (1929); **34.** *Mast. & S.* No. 2594a
— *v.* Sterling Securities Corpn., Ltd. (Can.); **39.** *S. Goods*, p. 59
— *v.* Stevens (1929); **15.** *Crim.* No. 7657a
— *v.* Stirlingshire Education Authority (Scot.); **19.** *Educ.* p. 37
— *v.* Thompson (1931); **44.** *Wills*, No. 3459a
— *v.* Torr (1862); **3.** *Bailmt.* No. 131a
— *v.* Trocadero Dansant, Ltd. (Aus.); **13.** *Corpns.* p. 29
— *v.* Trustee, *Re* Allied Oil & Gas Co. (Can.); **4.** *Bkpcy.* p. 24
— *v.* Tsakyris (1929); **21.** *Exon.* No. 1334a
— *v.* Union Castle S.S. Co., Ltd. (1932); **34.** *Mast. & S.* Nos. 3076a, 3716a
— *v.* Union Government (S. Af.); **38.** *Pub. Auth.* p. 6
— *v.* Union S.S. Co. (Can.); **8.** *Carr.* p. 12
— *v.* Upper Canada College (Can.); **1.** *Agcy.* pp. 76, 84
— *v.* Vancouver City (Can.); **28.** *Injon.* p. 146
— *v.* Ward (Can.); **1.** *Action*, p. 5; **39.** *S. Goods*, p. 43
— *v.* Weguelin (1869); **11.** *Confl.* No. 650a
— *v.* Wemyss Coal Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 50
— *v.* Wilkins (1833); **22.** *Evid.* No. 421a
— *v.* Wilson (1832); **30.** *L. & T.* No. 1161a
— *v.* Winter (1838); **18.** *Discy.* No. 528a
— *v.* Wood (1929); **26.** *Guar.* No. 1223a
— *v.* Wright (Can.); **1.** *Agcy.* p. 81
— *v.* York Race Committee (1934); **28.** *Inc. T.* No. 75a
— *v.* Zigurds S.S. Owners & E. A. Casper, Edgar & Co., Ltd. (1934); **8.** *Chos.* No. 437a
Smith & Britannic Assurance Co.'s Arbitration, *Re* (1933); **25.** *Fr. Soc.* No. 175c
Smith (Rose) & Co., Ltd. *v.* Inland Revenue Comrs. (1933); **28.** *Inc. T.* No. 585c
Smith & Dale, *Re* (Can.); **38.** *Real Prop.* p. 93
Smith & Hogan, Ltd., *Re* Industrial Acceptance Corpn., Ltd. & Canadian Acceptance Corpn., Ltd. *v.* Canada Permanent Trust Co. (Can.) (1931); **4.** *Bkpcy.* p. 45
Smith & Hogan, Ltd., Estate, *Re*, Industrial Acceptance Corpn., Ltd. & Canadian Acceptance Corpn., Ltd. *v.* Canadian Permanent Trust Co. (Can.) (1932); **39.** *S. Goods*, p. 59
Smith & Lonsdale's Contract, *Re* (1934); **40.** *Sttlmts.* No. 2602b
Smith & Plympton (Township), *Re* (Can.); **2.** *Arbn.* p. 87
Smith & Smith *v.* Dingle & Holmes (Can.); **1.** *Agcy.* p. 82
Smith (R.) & Son *v.* Eagle Star & British Dominions Insurance Co., Ltd. (1934); **29.** *Insce.* No. 3195a
Smith (John) & Son *v.* Moore (1921); **30.** *Jdgmts.* No. 559a
Smith (James) & Sons (Norwood), Ltd. *v.* Goodman (1936); **10.** *Coys.* No. 6944a
Smith & Tatchell *v.* Hanson Tire & Supply Co., Ltd. (Can.); **9.** *Coys.* p. 18
Smith, Bartlet & Co. *v.* British Pure Oil Grease & Carbide Co., Ltd. (1933); **43.** *Trade Mks.* No. 739a
Smith, etc. *v.* Sunday Times (Aus.); **18.** *Discy.* p. 9
Smith Hogg & Co., Ltd. *v.* Black Sea & Baltic General Insurance Co., Ltd. (1938); **41.** *Ship.* No. 3099d
Smith Incubator Co. *v.* Seiling (Can.); **36.** *Pats.* p. 83
Smith, Knight & Co., *Re*, Hakim's Case (1869); **9.** *Coys.* No. 2473a
Smith, Ltd. *v.* Vancouver Cremation Society (Can.); **21.** *Exon.* p. 48
Smith Lumber Co., Ltd., *Ex p.* (Can.); **16.** *Cr. Pract.* p. 41
Smith Transportation Co., *Re* (Can.); **10.** *Coys.* p. 60
Smith's Appeal, *Re* (1934); **8.** *Carr.* No. 1698
Smith's Coasters (Proprietary), Ltd. *v.* South African Railways & Harbours (S. Af.); **41.** *Ship.* p. 72
Smith's Estate, *Re* (Can.); **44.** *Wills*, p. 12
—, *Re*, Bilham *v.* Smith (1937); **27.** *H. & W.* No. 1226c
—, *Re*, Canadian Guarantee Trust Co. *v.* Delisle (Can.); **21.** *Exon.* p. 48
—, *Re*, Nova Scotia Trust Co. *v.* Smith (Can.); **44.** *Wills*, p. 47
Smith's Mortgage, *Re*, Harrison *v.* Edwards (1931); **35.** *Mtge.* No. 4326a
Smith's Newspapers, Ltd., *Re*, *Ex p.* Higgs (Aus.); **16.** *Cntmpt.* p. 2; **22.** *Evid.* p. 23
— *v.* Becker (Aus.); **34.** *Med.* p. 189
Smith's (H. E.) Patent, *Re* (1929); **36.** *Pats.* No. 1522a
Smith's (E. J.) Patents, *Re* (1928); **36.** *Pats.* No. 1687c
Smith's Settlement, *Re*, Wilkins *v.* Smith (1902); **30.** *Jdgmts.* No. 787a
Smith's Trustees *v.* Gaydon (Scot.); **37.** *Perps.* p. 6
— *v.* Macpherson (Scot.); **11.** *Confl.* p. 33
Smith's Weekly Publishing Co. *v.* Myerson (Aus.); **17.** *Dep.* p. 67
Smith's Will Trusts, *Re*, Smith *v.* Melville (1936); **40.** *Sttlmts.* No. 1998c
Smithem *v.* Shepherd, *Re* Shepherd (1921); **8.** *Char.* No. 12a
Smithfield Cold Storage & Export Co. of South Africa, Ltd. *v.* Lever (S. Af.); **10.** *Coys.* p. 69
Smitle *v.* Slattard (Aus.); **1.** *Agcy.* pp. 49, 73
S.M.T. Gramophone Co., Ltd. *v.* Itonia Gramophones, Ltd. (1931); **43.** *Trade Mks.* No. 27a
Smyth *v.* Byrne (Ir.); **32.** *Limit. of A.* p. 31
— *v.* Revenue Comrs. (Ir.); **21.** *E. D.* p. 10
Smyth & Smyth *v.* Dublin Theatre Co., Ltd. (Ir.); **19.** *Easmt.* p. 12
Smythe *v.* Campbell (Can.); **36.** *Negl.* p. 32
Smythe (Doe d.) *v.* Roe (1840); **19.** *Eccl.* No. 4034a
Snape *v.* Mellowes & Co., Ltd. (1931); **34.** *Mast. & S.* No. 3301b
Snare *v.* Baker (1849), **39.** *Recrs.* No. 233b
Snarr *v.* Waddell (Can.); **21.** *Exon.* p. 45
Snell *v.* Miettienen (Can.); **43.** *Trade*, p. 6
Snelling, *Re*, Snelling *v.* Hanna (N.Z.); **24.** *Fam. Arr.* p. 60
Snelling *v.* Hanna, *Re* Snelling (N.Z.); **24.** *Fam. Arr.* p. 60
Sneyd, *Re*, *Ex p.* Oxford (Bp.) (1883); **30.** *Jdgmts.* No. 337
— *v.* Sneyd & Burgess (1926); **27.** *H. & W.* Nos. 3179a, 3182a
Snia Viscosa Societa, etc. *v.* S.S. Yuri Maru (1927); **1.** *Adm.* No. 1794a
Snider *v.* Miller (Can.); **2.** *Arbn.* p. 97
Snider & Miller's Arbitration, *Re* (Can.); **2.** *Arbn.* p. 87
Snook *v.* Brantford Town Council (Can.); **26.** *Hghys.* p. 29

Snow *v.* Firebrass (1700); **12.** *Contr.* No. 5a
— *v.* Harris (Can.); **39.** *S. Goods*, p. 35
— *v.* Leatham (1826); **3.** *Bank*, No. 67a
— *v.* R. (Can.); **25.** *Fish.* p. 4
— *v.* Snow (1932); **27.** *H. & W.* No. 6124e
— *v.* Teed (1870); **43.** *Trusts*, No. 2777a
Snow (W. R.) & Co., Ltd., *Re* (1930); **10.** *Coys.* No. 6924a
Snow & Toronto, *Re* (Can.); **11.** *Comp. Pche.* p. 8
Snow Estate, *Re* (Can.); **44.** *Wills*, p. 20
Snowball *v.* Ritchie (Can.); **7** *Bounds. & F.* p. 15
Snowden *v.* Baker, *Re* Drought Area Relief Act (Can.); **16.** *Cntmpt.* p. 7
Snowdon *v.* Ecclesiastical Comrs. (1935); **34.** *Mines*, No. 976a
— *v.* Snowdon (1928); **27.** *H. & W.* Nos. 505a, 2040a, 6124a
Snowman (otherwise Bensinger) *v.* Snowman (1934); **27.** *H. & W.* No. 2351a
Snyder, *Re*, Snyder *v.* Snyder (Can.); **11.** *Confl.* p. 52
— *v.* Moncton Electricity & Gas Co., Ltd. (Can.); **25.** *Gas*, p. 46
Snyder's, Ltd. *v.* Furniture Finance Corpn., Ltd. (Can.); **8.** *Chos.* p. 96
Soapless Foam, Ltd. *v.* Physical Treatment Institutes, Ltd. (1935); **36.** *Pats.* No. 2629a
Soares *v.* Simpson (N.Z.); **12.** *Contr.* p. 5
Sobey, *Ex p.*, R. *v.* Fish (Can.); **7.** *Bounds. & F.* p. 15
Sobha Ram *v.* Tika Ram (Ind.); **27.** *H. & W.* p. 5
Sobhuza II *v.* Miller (1926); **17.** *Dep.* No. 10a
Sobkow *v.* Andruchow (Can.); **18.** *Discy.* p. 23
Sobush *v.* Sobush (Can.); **27.** *H. & W.* p. 2
Sociedad Anónima Comercial de Exportacion y Importacion (Louis Dreyfus y Cia), Limitada *v.* National S.S. Co., Ltd. (1932); **41.** *Ship.* No. 2979a
Sociedad Anonima Commercial de Esportacion E Importacion (Dreyfus (Louis) & Co.) *v.* National S.S. Co. (1935); **41.** *Ship.* No. 1933a
Societa Anonima Matteo Morandi *v.* Horner (1935); *Pract.* Nos. 2765a, 2993a
Societa Anonima Per L'Industria E Il Commercio Maritimo *v.* Older S.S. (Can.); **1.** *Adm.* p. 36
Societa Ligure Di Armamenti *v.* Joint Danube & Black Sea Shipping Agencies of Braila (1931); **41.** *Ship.* No. 3996a
Société Anonyme des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927); **11.** *Confl.* No. 752a; **25.** *Gaming*, No. 245a
Société Anonyme Des Manufactures De Glaces *v.* Tilghman's Patent Sand Blast Co. (1883); **32.** *Libel*, No. 2591a
Societe Anonyme Metallurgique de Prayon, Trooz, Belgium *v.* Koppel (1933); **6.** *B. of Exch*, No. 2816a; **11.** *Confl.* No. 1395a
Société Anonyme Servo-Frein Dewandre *v.* Citroen Cars, Ltd. (1929); **36.** *Pats.* No. 3301a
Societe Belge d'Enterprises Industrielles Immobilieres *v.* Webster & Mill (Can.); **32.** *Limit. of A.* p. 35
Société Belge des Betons Société Anonyme *v.* London & Lancashire Insurance Co., Ltd. (1938); **29.** *Insce.* No. 1740a
Societe de la caisse de retraite de la Banque National, *Re*, Trudel *v.* Lemoine (Can.); **3.** *Bank.* p. 20
Societe Des Hotels Du Touquet-Paris-Plage *v.* Cumming (1921); **35.** *Money*, No. 45a
— *v.* — (1922); **35.** *Money*, No. 45a
Société des Usines Chimiques Rhone-Poulenc Patent (No. 340,445), *Re* (1933); **36.** *Pats.* No. 954b
Société des Usines Chimiques Rhone-Poulenc's Application, *Re*, *Re* Boots Pure Drug Co., Ltd.'s Trade Mark "Livron" (1938); **43.** *Trade Mks.* No. 15a
Société du Gaz de Paris *v.* Société Anonyme de Navigation "Les Armateurs Français" (Scot.); **1.** *Adm.* p. 46
Société Générale De Paris *v.* Tramways Union Co., Ltd. (1884); **21.** *Exon.* No. 2438a
— *v.* Walker (1885); **21.** *Exon.* No. 2438a
Societe Intercommunale Belge D'Electricite, *Re*, Feist *v.* Societe Intercommunale Belge D'Electricite (1934); **35.** *Money*, No. 17a
Société La Parfumerie Nildé *v.* Erualdé, Ltd. & Fryer (1929); **43.** *Trade Mks.* Nos. 629a, 1215a
Société Les Affréteurs Réunis & Shipping Controller, *Re* (1921); **2.** *Arbn.* No. 816a
Society for Promoting Employment of Women, *Re* (1927); **9.** *Coys.* No. 4321a
Society of Accountants & Auditors *v.* Goodway & London Assocn. of Accountants, Ltd. (1907); **28.** *Injon.* No. 906b
Society of Architects *v.* Kendrick (1910); **28.** *Injon.* No. 906a
Society of Motor Manufacturers & Traders *v.* Motor Manufacturers' & Traders' Mutual Insurance Co. (1925); **9.** *Coys.* No. 228b
Society of Sisters of Sion *v.* Saskatoon (City) (Can.); **38.** *Rates*, p. 61
Society Shirt Co., Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 11
Sockalingham Chettiar *v.* Ramanayake (Ind.); **35.** *Money*, p. 28
Socony Proprietary, Ltd. *v.* Begg (N.Z.); **41.** *Ship.* p. 23
Sodeman *v.* R. (1936); **14.** *Crim.* Nos. 237a, 260a
Sohan Bibi *v.* Baijnath Das (Ind.); **16.** *Courts*, p. 18
Sohan Lal *v.* Mohan Lal (Ind.); **38.** *Real Prop.* p. 98
Sokil *v.* Zawidowski (Can.); **25.** *Fr. Soc.* p. 20
Sokol *v.* Pacific Forwarding Co., Ltd., Reifel & Royal Bank of Canada (Can.); **21.** *Exon.* p. 57
Sokoloski *v.* Winiski (Can.); **21.** *Estpl.* p. 30
Sokolov *v.* Kachmark (Can.); **35.** *Mtge.* p. 38
Solaflex Signs Amalgamated, Ltd. *v.* Allan Manufacturing Co., Ltd. (1931); **36.** *Pats.* No. 2944d
Solanite Signs, Ltd. *v.* Wood (1933); **36.** *Pats.* No. 3422a
Soldiers Memorial Hospital *v.* Sanford (Can.); **38.** *Pub. Hlth.* p. 20
Soleman Bibi *v.* East Indian Railway (Ind.); **34.** *Mast. & S.* p. 28
Solicitor, A, *Re* (1892); **16.** *Cntmpt.* No. 776a
—, *Re* (1895); **16.** *Cntmpt.* No. 1039a
—, *Re* (1928); **42.** *Solrs.* No. 4437a
—, *Re* (1903); **42.** *Solrs.* No. 4636b
—, *Re* (1929); **42.** *Solrs.* No. 4660a
—, *Re* (Can.), [1931] 1 D. L. R. 315; **42.** *Solrs.* p. 7
—, *Re* (Can.) (1932); **42.** *Solrs.* p. 12
—, *Re* (Can.) (1934); **24.** *Exors.* p. 38
—, *Re* (Can.) (1935); **42.** *Solrs.* p. 13
—, *Re*, *Ex p.* Incorporated Law Institute of New South Wales (Aus.); **42.** *Solrs.* p. 13
—, *Re*, *Ex p.* Law Society (1934); **42.** *Solrs.* No. 4657a
—, *Re*, *Re* Taxation of Costs (1936); **42.** *Solrs.* Nos. 1563b, 2467a
Solicitor-General *v.* Bydder, *Re* Brewer (N.Z.); **8.** *Char.* pp. 61, 62
Solicitors, *Re* (1934); **42.** *Solrs.* No. 2151a
—, *Re* (Can.) (1928); **42.** *Solrs.* p. 3
—, *Re* (Can.), [1931] 1 D. L. R. 819; **42.** *Solrs.* p. 5
—, *Re*, *Re* Taxation of Costs (1935); **42.** *Solrs.* No. 1715a

Solicitors Act & O'Connor, *Re* (Ir.); **42.** *Solrs.* p. 2
Solicitors, Two, *Re* (1938); **42.** *Solrs.* No. 4651a
Solihull Rural District Council *v.* Ford (1931); **41.** *Sewers*, No. 125a
Sollas *v.* Stamp Duties Comr. (Aus.); **21.** *E. D.* p. 10
Solloway, *Re*, *Re* Solloway Mills Co. (Can.); **10.** *Coys.* p. 82
v. Blumberger (Can.); **42.** *Stk. Ex.* p. 31
— *v.* Johnson (1934); **42.** *Stk. Ex.* No. 384a
— *v.* McLaughlin (1938); **43.** *Trov.* No. 628a
Solloway Mills & Co., *Re* (Can.) [1935] 1 D. L. R. 340; **10.** *Coys.* p. 73
—, *Re* (Can.), [1935] 2 D. L. R. 459; **10** *Coys.* p. 72
—, *Re* (Can.) (1937); **17.** *Dep.* p. 40
—, *Re*, *Re* Solloway (Can.); **10.** *Coys.* p. 82
— *v.* A.-G. (Can.); **14.** *Crim.* p. 14
— *v.* Frawley (Can.); **14.** *Crim.* p. 14
— *v.* Williams (Can.); **38.** *Pub. Auth.* p. 7
Solomon *v.* Dartmouth (Can.); **38.** *Pub. Auth.* p. 4
— *v.* Inland Revenue Comrs. (1933); **28.** *Inc. T.* No. 689e
— *v.* Mussett & Bright, Ltd. (S. Af.); **36.** *Negl.* p. 15
— *v.* Robinson & Co., Ltd. (S. Af.); **32.** *Libel*, p. 17
— *v.* Solomon (1859); **2.** *Arbn.* No. 1839a
Solomons *v.* Medex (1816); **32.** *Libel*, No. 53a
Solomons Bochner Fur Co., *Re* (Can.); **4.** *Bkpcy.* p. 39
Solvang, *Re* (Can.); **2.** *Aliens*, p. 47
Somerlite, Ltd. *v.* Brown & *Re* Somerlite, Ltd.'s Trade Mark (No. 520,004) (1934); **43.** *Trade Mks.* Nos. 613a, 624a
Somers, *Re* (Ir.); **4.** *Bkpcy.* p. 2
— *v.* Liberty School District (Can.); **19.** *Educ.* pp. 33, 44
Somers (Earl) (Doe d.) *v.* Roe (1840); **19.** *Eccl.* No. 4034a
Somerset (Duke), *Re*, Thynne *v.* St. Maur (1886); **23.** *Exors.* No. 5654a
Somerset Estate, *Re* (Can.); **23.** *Exors.* p. 2
Somerset's (Duke) Case (1551); **14.** *Crim.* No. 975a
Somerville *Re*, *Ex p.* Southon (Aus.); **30.** *Intox.* p. 4
— *v.* Chapman (1779); **8.** *Char.* No. 1609a
— *v.* Oldham, *Re* Forster (1929); **40.** *Sttlmts.* No. 3143c
— *v.* Prudential Insurance Co. of America (Can.); **29.** *Insce.* p. 39
Somerville & Barr, Ltd. *v.* Chalmers (Scot.); **25.** *Food*, p. 8
Somerville (T. Ryan) & Co., Ltd.'s Application, *Re*; **34.** *Mines*, No. 327c
Somes, *Re*, Stewart *v.* Somes (1895); **5.** *Bkpcy.* No. 8306
Someshwar Dutt *v.* Tirbhawan Dutt (Ind.); **16.** *Courts*, p. 15
Sommerville *v.* Langmuir (Scot.); **25.** *Food*, p. 8
Sonachalam Pillai *v.* Kumaravelu Chettiar (Ind.); **21.** *Estpl.* p. 29
Sonaton Pal *v.* Galstaun (1927); **16.** *Courts*, No. 427a
Sons of Temperance Friendly Society (Scot.); **25.** *Fr. Soc.* p. 23
Sopwith Aviation & Engineering Co., Ltd. *v.* Magnus Motors, Ltd. (N.Z.); **21.** *Estpl.* p. 39; **22.** *Evid.* p. 25
Sorbo Rubber Sponge Products, Ltd. *v.* Defries (1930); **28.** *Injon.* No. 839a
Sorby *v.* Parker (Can.); **24.** *Exors.* p. 41
Sorlie *v.* McKee (Can.); **2.** *Animals*, p. 58
Sorrell *v.* Carpenter (1728); **20.** *Eqy.* No. 193a
Sottomayor *v.* De Barros (1877); **11.** *Confl.* No. 828b
Souch, *Re* (Can.); **44.** *Wills*, p. 15
Souchette, Ltd. *v.* London County, Westminster & Parr's Bank, Ltd. (1920); **3.** *Bank.* No. 668a
Soulis *v.* Armstrong (Can.); **32.** *Limit. of A.* p. 37
Sound Fisher, The (1937); **41.** *Ship.* No. 8692a
Source Research Bureau *v.* Foster (Can.); **17.** *Deeds*, p. 29
Sourendra Nath Mitra *v.* Tarubala Dasi (Ind.); **3.** *Barr.* p. 50
South African Rys. *v.* Conradie (S. Af.); **8.** *Carr.* p. 4
— *v.* Stegmann (S. Af.); **36.** *Negl.* p. 30
— *v.* Symington (S. Af.); **38.** *Rys.* p. 38
— *v.* Van der Merwe (S. Af.); **38.** *Rys.* p. 38
South African Railways & Harbours *v.* Smith's Coasters (Pty.), Ltd. (S. Af.); **41.** *Ship.* p. 69
South African Republic *v.* Compagnie Franco-Belge du Chemin de Fer du Nord (1898); **1.** *Action*, No. 376a
South American Stores (Gath & Chaves), Ltd. *v.* Inland Revenue Comrs. (1926); **28.** *Inc. T.* No. 416a
South Australia *v.* Victoria (Aus.); **17.** *Dep.* p. 67
South Australia, Ltd., Executor Trustee & Agency Co. of *v.* A.-G., *Re* White (Aus.); **8.** *Char.* p. 69
South Australian Railways Comrs. *v.* Barnes (Aus.); **43.** *Tram.* p. 49
South Bedfordshire Electrical Finance, Ltd. *v.* Bryant (1938); **3.** *Bailmt.* No. 256a
South British Insurance Co., Ltd. *v.* Barclay Nicol (Aus.); **29.** *Insce.* p. 38
— *v.* Feely & Soteros (N.Z.); **29.** *Insce.* p. 45
— *v.* Gauci Brothers & Co. (1928); **2.** *Arbn.* No. 310a & p. 85
— *v.* Stenson (Ind.); **29.** *Insce.* p. 57
South Bruce Provincial Election, *Re*, Johnston *v.* McCallum (Can.); **20.** *Elect.* pp. 3, 5, 9; **42.** *Stats.* p. 27
South Carolina Bank *v.* Case (1828); **6.** *B. of Exch.* Nos. 696a, 713c
South Durham Steel & Iron Co., Ltd., *Re*, *Re* Dorman, Long & Co., Ltd. (1934); **10.** *Coys.* Nos. 7373c, 7373d, 7377a, 7409b, 7411a; **30.** *Jgdmts.* No. 739c
South East Lancashire Insurance Co., Ltd., *Re* (1932); **10.** *Coys.* No. 7500a
—, *Re* (1935); **10.** *Coys.* No. 7500b
South Grimsby (Township) *v.* Lincoln (County) & North Grimsby (Township) (Can.); **26.** *Highys.* p. 40
South Island Motors, Ltd. *v.* Thacker (N.Z.); **3.** *Bailmt.* p. 11
South London Greyhound Racecourses, Ltd. *v.* Wake (1931); **9.** *Coys.* Nos. 1783a, 1794a; **13.** *Corpns.* No. 182a
South Metropolitan Gas Co. *v.* Dadd (1927); **28.** *Inc. T.* No. 276c
South Metropolitan Gas Co. Trade Mark (No. 321,951) (1933); **43.** *Trade Mks.* No. 516a
South Rhondda Colliery Co. (1898), Ltd., *Re* (1928); **10.** *Coys.* No. 7043a
South Sarnia Properties, Ltd. *v.* Baird & Baird (Can.); **7.** *Bldg. Conts.* p. 32
South Shields (Thames Street) Clearance Order, 1931, *Re* (1932); **16.** *Cntmpt.* No. 224b
South Shields (Thames Street) Clearance Order, 1931, *Re*, *Re* Bowman (1932); **38.** *Pub. Hlth.* Nos. 502h, 502j, 524a
South Suburban Co-operative Society, Ltd. *v.* Orum (1937); **18.** *Discy.* No. 1571a
South Wales Patent Fuel Manufacturers' Assocn. *v.* Great Western Ry. Co. (1923); **8.** *Carr.* No. 1377e
Southampton Corpn., *Ex p.*, R. *v.* Railway Assessment Authority (1937); **38.** *Rates*, No. 800k
Southby *v.* Southby (Can.); **27.** *H. & W.* p. 12
Southend Corpn. *v.* London Midland & Scottish Ry. Co. (1927); **8.** *Carr.* Nos. 683b, 1237a, 1237e

Southern (S.) *v.* A. B., Ltd. (1933); **28.** *Inc. T.* No. 99j
Southern Canada Power Co., Ltd. *v.* R. (1937); **38.** *Pub. Auth.* No. 291a
Southern Counties Road Transport Co., Ltd. *v.* Hazell (1936); **8.** *Carr.* Nos. 1643, 1667
Southern Cross Motor Fuels, Ltd., *Re*, *Ex p.* Kelleway (Aus.); **10.** *Coys.* p. 73
Southern Essex Assessment Committee *v.* Betty & Tom, Ltd. (1937); **38.** *Rates*, No. 226tt
Southern Ry. Co., *Re* (1935); **38.** *Rates*, Nos. 163a, 226qq
— *v.* Barnes (1935); **8** *Carr.* No. 1507
— *v.* Boots Pure Drug Co., Ltd. (1935); **8.** *Carr.* No. 896b
— *v.* Coleman (1937); **8.** *Carr.* Nos. 1553, 1626
— *v.* Gosport Corpn. (1926); **26.** *Highys.* No. 2719a
— *v.* — (1927); **26.** *Highys.* No. 2719a
— *v.* Hardy & Son, Ltd. (1935); **8.** *Carr.* Nos. 1551, 1684
— *v.* Lambert (1936); **8.** *Carr.* No. 1571
— *v.* Owen (1935); **8.** *Carr.* No. 1492
— *v.* Railway Assessment Authority (1935), 22 Ry. & Can. Tr. Cas. 269; **38.** *Rates*, No. 226qq
— *v.* Wilkinson (1937); **8.** *Carr.* No. 1564
Southern Ry. Co. Appeals, *Re* (1935); **38.** *Rates*, Nos. 800c, 800d, 800h
—, *Re* (1936), 100 J. P. 313; **38.** *Rys.* No. 685a
—, *Re* (1936), 155 L. T. 33; **38.** *Rates*, No. 800g
Southland Woollen Mills, Ltd., *Re* (N.Z.); **10.** *Coys.* p. 67
Southon, *Ex p.*, *Re* Somerville (Aus.); **30.** *Intox.* p. 4
Southport Borough Council *v.* Lancashire County Council (1935); **37.** *Poor L.* No. 1079a
Southport Corpn. *v.* Birkdale District Electric Supply Co. (1925); **20.** *Electric*, No. 52
— *v.* Lancashire County Council (1937); **28.** *Inc. T.* No. 328a
Southstrand Estate Development Co., Ltd. *v.* East Preston Rural District Council (1933); **41.** *Sewers*, Nos. 121a, 125b, 137a
— *v.* Worthing Rural District Council (1933); **41.** *Sewers*, No. 125b
Southwark Revenue Officer *v.* Hoe (R.) & Co. (1930); **33.** *Mags.* No. 1676a; **38.** *Rates*, No. 226ee
Sovereign Life Assurance Co. *v.* Dodd (1892); **10.** *Coys.* No. 7404a.
Sovereign Oil Co., Ltd., *Re* (Can.); **10.** *Coys.* p. 68
Soviet Republics Union *v.* Belaiew (1925); **1.** *Action*, No. 376b
Soviet Socialist Republics Union *v.* Onou (1925); **1.** *Action*, No. 360a
Sowards *v.* Elmbay, The (Can.); **41.** *Ship.* p. 61
Sowash *v.* R. (Can.); **14.** *Crim.* p. 36
Sowerby *v.* Lindsay (1928); **31.** *L. & T.* No 4457a
Sowter *v.* Steel Barrel Co., Ltd. (1935); **24.** *Fact.* No. 76a
Sowton *v.* Cutler & Clerke (1675); **16.** *Cr. Pract.* Nos. 3131a, 3168a
Soyer *v.* Johnson, Matthey & Co. (1927); **34.** *Mast. & S.* No. 3033b
Spaidal, *Re* (Can.); **28.** *Infts.* p. 137
Spain, *Re* (1915); **23.** *Exors.* No. 1019a
Span *v.* Inland Revenue (Scot.); **39.** *Revenue*, p. 22
Spanish Govt. *v.* North of England S.S. Co., Ltd. (1938); **41.** *Ship.* No. 4038a
Sparey *v.* Bath Rural District Council (1931); **34.** *Mast. & S.* No. 2355a
Sparkes *v.* Sparkes (N.Z.); **27.** *H. & W.* p. 43
Sparks *v.* Canadian National Rys. (Can.); **2.** *Arbn.* p. 95
— *v.* Hamilton (Can.); **6.** *B. of Exch.* p. 15
— *v.* Joseph (Can.); **43.** *Tresp.* p. 53
Sparks & McKay *v.* Lord (Can.); **32.** *Lien*, p. 24
Sparling *v.* Ward (Can.); **2.** *Animals*, p. 67
Sparrow *v.* Oxford, Worcester & Wolverhampton Ry. Co. (1851); **11.** *Comp. Pche.* No. 484
— *v.* Royal Trust Co. (Can.) (1932); **20.** *Eqy.* p. 30
— *v.* — (Can.) (1938); **24.** *Exors.* p. 41
Spat *v.* Hogson (Can.); **2.** *Animals*, p. 62
Speak *v.* Powell (1873); **4.** *Bkpcy.* Nos. 79b, 190a
Speal, *Re*, *Ex p.* Lucas (Can.); **5.** *Bkpcy.* p. 72
Spear *v.* Bodmin Union Guardians (1880); **38.** *Rates*, No. 632b
— *v.* Rowlatt (N.Z.); **19.** *Easmt.* pp. 9, 10
Spear's Glass Works (Ltd.) *v.* Spear (1902); **38.** *Real Prop.* No. 1040a
Spears *v.* Miller (Can.); **38.** *Real Prop.* p. 93
Speciality Bags, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 38
Speedway, The (Can.); **1.** *Adm.* p. 41
Speirs, Ltd. *v.* Petersen (Scot.); **7.** *Bldg. Conts.* p. 24
Speller, *Ex p.*, *Re* Plimmer (1853); **5.** *Bkpcy.* Nos. 6449, 6647
Spence, *Re*, Barclays Bank, Ltd. *v.* Stockton-on-Tees Corpn. (1938); **8.** *Char.* Nos. 183a, 183b
Spence Estate, *Re* (Can.); **21.** *E. D.* p. 20
Spencer, *Re*, Lloyds Bank, Ltd. *v.* Spencer (1935); **28.** *Infts.* No. 813a
— *v.* Ashworth Partington & Co. (1925); **9.** *Coys.* Nos. 2070a, 2087a, 2343a
— *v.* Grant (Can.); **17.** *Damgs.* p. 14; **43.** *Tres.* p. 51
— *v.* Hooton (1920); **42.** *Stats.* No. 1344a
— *v.* Kennedy (1926); **9.** *Coys.* Nos. 2879a, 2895a, 3455a, 3882a
— *v.* McKenzie (Aus.); **43.** *Trade*, p. 3
— *v.* Mason (1931); **35.** *Mtge.* No. 1408a
— *v.* Vancouver (City) (Can.); **2.** *Arbn.* p. 85
Spencer & Hauser's Contract, *Re* (1928); **40.** *S. Land*, No. 1104a
Spencer Flats, Ltd., *Re* (1937); **40.** *S. Land*, No. 2807d
Spengler's Patent, *Re* (1928); **36.** *Pats.* No. 2105a
Speppard *v.* Kennedy (Can.); **38.** *Real Prop.* p. 93
Sperling *v.* Germanic Fire Insurance Co. (Can.); **29.** *Insce.* p. 27
Spero *v.* Reading Trust, Ltd. (1930); **35.** *Money*, Nos. 353a, 410b, 438a
Speyer *v.* R. (Can.); **22.** *Evid.* p. 25
Spicer, *Re*, Executor Trustee & Agency Co. of South Australia, Ltd. *v.* Morris (Aus.); **23.** *Exors.* p. 5
Spicer *v.* Londesborough (Earl), *Re* Londesborough (Earl) (1923); **2.** *Agric.* Nos. 652a, 661a
Spiers *v.* Mackinnon (1929); **28.** *Inc. T.* No. 131f, 446b
Spiers & Son, Ltd. *v.* Ogden (1932); **28.** *Inc. T.* No. 122c
Spigelman *v.* Hocken (1933); **18.** *Discy.* No. 1208a
Spiller *v.* Mayo (Rhodesia) Development Co. (1908), Ltd. (1926); **9.** *Coys.* Nos. 3841a, 3881a
Spillers & Co., Ltd. *v.* Amalgamated Ry. Co.'s (1933); **38.** *Rates*, No. 226oo
Spillers, Ltd. *v.* Cardiff Assessment Committee & Pritchard (Cardiff Revenue Officer) (1931); **38.** *Rates*, No. 226ff
Spilsbury *v.* Spofforth (1937); **28.** *Inc. T.* No. 362a
Spink (Bournemouth), Ltd. *v.* Spink (1936); **9.** *Coys*, No. 2456a; **43.** *Trade*, No. 134a
Spittle *v.* Thames Grit & Aggregates, Ltd. (1937); **8.** *Carr.* No. 1591
Spivack *v.* Spivack (1930); **27.** *H. & W.* Nos. 453a, 568a, 4378a
Spivak *v.* Lee, *Re* G. B. Wood, Ltd. (Can.); **10.** *Coys.* p. 80

Splan, *Re* (Can.); **44.** *Wills*, pp. 30, 36
— *v.* Barrett-Lennard (Can.); **12.** *Contr.* p. 48
Spollon & Long's Contract, *Re* (1936); **12.** *Contr.* No. 3042a; **40.** *S. Land*, No. 1347a
Spooner *v.* Juddow (1850); **38.** *Pub. Auth.* No. 808a
— *v.* Spooner Oils, Ltd. (Can.); **9.** *Coys*, p. 19
— *v.* Starkman (Can.); **3.** *Bailmt.* p. 9
— *v.* Taylor (Aus.); **22.** *Evid.* p. 16
Spooner Oils, Ltd. & Spooner *v.* Turner Valley Gas Conservation Board & A.-G. for Alberta (Can.); **17.** *Dep.* p. 53
— *v.* — (No. 2) (Can.); **28.** *Injon.* p. 146
Sporle *v.* Great Northern Ry. Co. (Can.); **8.** *Carr.* pp. 4, 5
Spracklan's Estate, *Re* (1938); **44.** *Wills*, No. 1776a
Spray *v.* St. Clair (Can.); **41.** *Ship.* p. 63
Spreckley *v.* A.-G., *Re* Knapp (1929); **8.** *Char.* No. 1116a
— *v.* Leicestershire County Council (1934); **2.** *Agric.* No. 266ee
Spring *v.* Kinnee (Can.); **27.** *H. & W.* p. 7
— *v.* Spring (Can.); **27.** *H. & W.* p. 38
— *v.* Young (Aus.); **2.** *Animals*, p. 66
Spring Ridge, Victoria City, Lot 5, Section 13, *Re*, *Re* Land Registry Act & Amending Acts (Can.); **38.** *Real Prop.* p. 93
Springbank Municipal District *v.* Calgary City (Can.); **38.** *Rates*, p. 64
— *v.* Render (Can.); **38.** *Pub. Hlth.* p. 19
Springbank Municipality *v.* Walker (Can.); **18.** *Distr.* p. 32
Springfield (Village) *v.* Michigan Central Ry. Co. (Can.); **38.** *Rys.* p. 38
Springhill *v.* McLeod (Can.); **41.** *Sewers*, p. 5
Springs, Town Council of *v.* Moosa (S. Af.); **42.** *Stats.* p. 24
Sproule *v.* Clements (Can.); **38.** *Real Prop.* p. 81
Spruhs *v.* Gregoryk (Can.); **21.** *Exon.* p. 46
Spurgeon *v.* Spurgeon (1930); **27.** *H. & W.* No. 3019a
Spurling *v.* Pugh (1926); **31.** *L. & T.* No. 7103a
Spyer *v.* Phillipson (1931); **31.** *L. & T.* Nos. 3219a, 3251b, 3251c
Square *v.* Bewicke (1935); **21.** *Estpl.* No. 1081a
— *v.* Model Farm Dairies (Bournemouth), Ltd. (1938); **25.** *Food*, No. 476n
— *v.* Square (1935); **21.** *Estpl.* No. 1081a
Squires Brothers, *Re* (Can.); **5.** *Bkpcy.* p. 91
Sragali *v.* Capital Life Assurance Co. of Canada (Can.); **29.** *Insce.* p. 7
Sri Yogashram Pharmacy, Ltd. (In Liquidation), *Re*, *Re* Mohan Lal Mehta (Ind.); **10.** *Coys.* p. 89
Srimati Jugal Kishore Debi *v.* Deva Prasanna Mukherji (Ind.); **39.** *Recrs.* p. 1
Srimati Premila Devi *v.* Peoples Bank of Northern India, Ltd. (1938); **9.** *Coys.* No. 2748a
Srischandra Nandy *v.* Baijnath Jugal Kishore (Ind.); **34.** *Mines*, p. 207
Stacey *v.* Stacey (Can.); **27.** *H. & W.* p. 26
Stack *v.* Barge Leopold, The (Can.); **1.** *Adm.* pp. 23, 24, 28, 47
Stadacona Fire & Life Insurance Co. *v.* Mackenzie (Can.); **10.** *Coys.* p. 102
Stadder *v.* Canadian Bank Commerce (Can.); **27.** *H. & W.* p. 12; **44.** *Wills*, p. 46
Stadnick *v.* Bifrost Municipality (Can.); **26.** *Hghys.* p. 29
Staff *v.* Freeguard Bros. (1937); **34.** *Mast & S.* No. 3057e
Stafford *v.* Kidd (1937); **3.** *Bastly.* No. 22e
— *v.* Mackenzie (Can.); **18.** *Discy.* p. 23
Staffordshire Quarter Sessions (Chairman), *Ex p.* (1889); **38.** *Rates*, No. 115a
Staffs Motor Guarantee, Ltd. *v.* British Wagon Co., Ltd. (1934); **1.** *Agcy.* No. 489a; **7.** *B. of Sale*, No. 15a; **39.** *S. Goods*, No. 1461a
Stag Line, Ltd. *v.* Foscolo, Mango & Co., Ltd. (1932); **41.** *Ship.* No. 3162a
Stahn *v.* Peutert (Can.); **18.** *Distr.* p. 33
Staincross Revenue Officer *v.* Staincross Assessment Committee & Whitehead (1930); **38.** *Rates*, No. 226x
Staines *v.* Wainwright (1839); **4.** *Bkpcy.* No. 4366a
Staines Reservoirs Joint Committee, *Ex p.*, *Ex p.* Sunbury-on-Thames Urban District Council (1922); **11.** *Comp. Pche.* No. 1997a
Stainsleigh *v.* Fisher (Can.); **12.** *Contr.* p. 48
Staley *v.* British Columbia Electric Ry. Co. (Can.); **36.** *Negl.* p. 18
Stalley *v.* Haigh (Aus.); **18.** *Distr.* p. 25
Stalman, *Re*, Stalman *v.* Jones (1931); **44.** *Wills*, No. 802a
— *v.* Jones, *Re* Stalman (1931); **44.** *Wills*, No. 802a
Stamford & Warrington's (Earl) Trusts, *Re*, *Re* Trustee Act, 1893 (1896); **34.** *Mines*, No. 335c
Stamp Duties Comr. (Queensland) *v.* Donaldson (Aus.); **21.** *E. D.* p. 17
— *v.* Lansdowne (Aus.); **21.** *E. D.* p. 20
Stamp Duties Comr. (New South Wales) *v.* Yeend (Aus.); **39.** *Revenue*, p. 20
Stamp Duties Comr. for New South Wales *v.* Thomson (Aus.); **39.** *Revenue*, p. 22
Stamper *v.* Sunderland Overseers (1868); **38.** *Rates*, No. 675a
Stamps Comr. (Q.) *v.* Counsell (Aus.); **17.** *Dep.* p. 64
Stamps Comr. *v.* Skinner (Aus.); **21.** *E. D.* p. 22
— *v.* Todd (N.Z.); **9.** *Coys.* p. 26
Stamps Comr. for Straits Settlements *v.* Oei Tjong Swan (Straits Settlements); **21.** *E. D.* p. 5
Standard & Exceptional Charges (First Review) (1929); **38.** *Rys.* No. 756c
Standard & Exceptional Charges (Second Review) (1930); **38.** *Rys.* Nos. 756d, 756h
— (Fourth Review) (1932); **38.** *Rys.* No. 756e
— (Fifth Review) (1933); **38.** *Rys.* No. 756g
Standard Bank, *Ex p.*, *Re* Gordon Store, Ltd. (Can.); **5.** *Bkpcy.* p. 57
— *v.* Boulton (Can.); **27.** *H. & W.* p. 6
— *v.* Van Rhyn Estate (S. Af.); **3.** *Bank.* p. 25
Standard Bank of Canada *v.* Alberta Engineering Co., Ltd. (Can.); **3.** *Bank.* pp. 41, 46
— *v.* Shuen Wah (Can.); **1.** *Action*, p. 12
Standard Bank of Canada & Canadian Bank of Commerce *v.* Raby (Can.); **21.** *Exon.* p. 60
Standard Charges (Collection & Delivery—Warehousing) (1925); **38.** *Rys.* No. 756b
Standard Charges (Docks, Harbours & Piers) (1927); **38.** *Rys.* No. 756a
Standard Charges (Ninth Annual Review), *Re* (1937); **38.** *Rys.* No. 756f
Standard Charges Schedules, *Re* (1923); **8.** *Carr.* Nos. 683a, 1015a, 1323a
—, *Re* (1925); **10.** *Coys.* No. 7843a
Standard Cooperage Co., *Re* (Can.); **4.** *Bkpcy.* p. 5
Standard Fuel Co. *v.* Toronto Terminals Ry. Co. (Can.); **11.** *Comp. Pche.* p. 6
Standard Hardwood Lumber Co. *v.* Canadian Pacific Ry. Co. & Canadian National Rys. (Coal & Coke Rates Case) (Can.); **38.** *Rys.* p. 45
Standard Imports, Ltd., *Re*, *Ex p.* Canadian Express Co. (Can.); **5.** *Bkpcy.* p. 57
Standard Insurance Co. *v.* Scandrett (Aus.); **2.** *Arbn.* p. 76
Standard Oil Co. of New Jersey *v.* Ikala S.S. (Can.); **41.** *Ship.* pp. 50, 57

Standard Pharmacy, Ltd., *Re*, *Re* Alberta Province's Claim (Can.); **4.** *Bkpcy.* pp. 37, 38, 39
Standard Sausage Co., Ltd. *v.* Lee (Can.); **17.** *Dep.* p. 42
Standard Telephones & Cables, Ltd.'s Patent, *Re* (1928); **36.** *Pats.* No. 894a
Standard Trusts Co. *v.* Briggs (Can.); **21.** *Exon.* p. 45
— *v.* Hiram Municipality (Can.); **18.** *Distr.* p. 32
— *v.* La Valley (Can.); **6.** *B. of Exch.* p. 1; **35.** *Mtge.* p. 38
— *v.* Little (Can.); **21.** *Estpl.* p. 40
— *v.* McElhinney, *Re* McElhinney Estate (Can.); **24.** *Exors.* p. 40
— *v.* Stewart (Can.); **38.** *Rates*, p. 86
— *v.* Walter (Can.); **21.** *Exon.* p. 60
Standen *v.* Smith (1927); **34.** *Mast. & S.* No. 2460a
— *v.* South Essex Records, Ltd. (1934); **32.** *Libel*, No. 1637a
Stander *v.* Stander (S. Af.); **27.** *H. & W.* p. 22
Standfield *v.* Byrne (Aus.); **3.** *Basty.* p. 61
— *v.* Gibbon (1925); **9.** *Coys.* No. 4104a
— *v.* Staffe (1849); **5.** *Bkpcy.* No. 8040a
Standish *v.* Newton Chambers & Co., Ltd. (1933); **34.** *Mast. & S.* No. 3580b
Standley *v.* Chapman (J.) & Sons, Ltd. (1932); **34.** *Mast. & S.* No. 2689a
Stanford, *Re*, Cambridge University *v.* A.-G. (1924); **8.** *Char.* No. 1457a
—, *v.* Flinn & Son, Ltd. (1936); **34.** *Mast. & S.* No. 3811s
Stanger, *Re* (Can.); **28.** *Infts.* p. 137
Staniloff *v.* Larson (Can.); **18.** *Distr.* p. 27
Stanlake *v.* Ringhand (Can.); **12.** *Contr.* p. 32
Stanley *v.* National Fruit Co. (Can.); **36.** *Negl.* p. 17; **42.** *Str. Traf.* p. 60
Stanley & Bunting, *Re* (Can.); **20.** *Eqy.* p. 32
Stanley (G.) & Co., *Re* (1925); **5.** *Bkpcy.* No. 7361a; **10.** *Coys.* No. 6746a
Stanley (Montagu) & Co. *v.* Solomon (J. S.), Ltd. (1932); **26.** *Guar.* Nos. 1745a, 1895a; **42.** *Stk. Ex.* No. 217a
Stanley Mills Co., *Re* (Can.); **4.** *Bkpcy.* p. 39
Stanley Works *v.* Stanley Ironworks, Ltd. (N.Z.); **43.** *Trade Mks.* p. 39
Stanton, *Ex p.* (Aus.); **33.** *Mags.* p. 37
— *v.* Allport (S. Af.); **1.** *Agcy.* p. 54
— *v.* Humphrey (S. Af.); **1.** *Agcy.* p. 74
— *v.* Johnston (Can.); **18.** *Distr.* p. 28; **21.** *Exon.* p. 48
— *v.* Laws (1934), 78 Sol. Jo. 802; **31.** *L. & T.* No. 7088a
— *v.* —, [1934] W. N. 130; *Pract.* No. 3696a
— *v.* Newton (Aus.); **27.** *H. & W.* p. 64
— *v.* Windeat (Can.); **7.** *Bounds. & F.* p. 15
Stanton & Gordon, *Re* (Can.); **38.** *Pub. Auth.* p. 8
Stanton (F. & E.), Ltd., *Re* (1928); **10.** *Coys.* No. 5316a
—, *Re* (1929); **10.** *Coys.* No. 4709a
Stanyforth *v.* Inland Revenue Comrs. (1930); **39.** *Revenue*, No. 669a
Staples *v.* Miloff (Can.); **22.** *Evid.* p. 25
Staples & Co. *v.* Berryman (N.Z.); **31.** *L. & T.* p. 70
Staples Bell Inc., *Ex p.*, *Re* Canadian Coal Supply (Can.); **4.** *Bkpcy.* pp. 20, 21
Stapleton *v.* Shelburne (1725); **9.** *Coys.* No. 2250a
Stapley *v.* Read Brothers, Ltd. (1924); **9.** *Coys.* No. 4023b
Star Flooring Co., *Re* (Can.); **4.** *Bkpcy.* p. 3
Star Tea Co., *Re* (1930); **10.** *Coys.* No. 7374a
Stark *v.* Batchelor (Can.); **40.** *Set-Off*, p. 23
— *v.* Shepherd (Can.); **7.** *Bldg. Soc.* p. 35
Stark & Trim, *Re* (Can.); **44.** *Wills*, p. 45
Starkey *v.* Hall (1936); **29.** *Insce.* No. 3217ee
— *v.* Starkey (1938); **27.** *H. & W.* No. 2952b
Starley *v.* New McDougall-Segur Oil Co. (Can.); **11.** *Const. L.* p. 64
— *v.* New McDougall-Segur Oil Co. (No. 2) (Can.); **11.** *Const. L.* p. 77
Starr *v.* Muncey (Can.); **21.** *Exon.* p. 48
— *v.* Starr (Aus.); **25.** *Gifts*, p. 48
Starr Co. of Canada, Ltd. *v.* Merrill (Can.); **8.** *Chos.* p. 92
State (Bradley) *v.* Bray District Justice (Ir.); **27.** *H. & W.* p. 82
— (O'Sullivan) *v.* Circuit Court Judge of Cork (Ir.); **25.** *Fish.* p. 4
State, The (Colquhoun) *v.* D'Arcy (Ir.); **19.** *Eccl.* p. 32
State, The *v.* Purcell (Ir.); **14.** *Crim.* p. 10
State Advances Superintendent *v.* Harwood (N.Z.); **38.** *Real Prop.* p. 99
State of New South Wales, *Re*, *Ex p.* A.-G. for Commonwealth (Aus.); **17.** *Dep.* p. 62
— *v.* Commonwealth (Aus.); **16.** *Courts*, p. 18; **17.** *Dep.* p. 76
— *v.* — (Aus.) (1932), 46 C. L. R. 155; **17.** *Dep.* p. 61
— *v.* — (Aus.) (1932), 46 C. L. R. 235; **17.** *Dep.* p. 62
— *v.* — (Aus.) (1932), 46 C. L. R. 246; **17.** *Dep.* p. 62
State of Victoria *v.* Commonwealth (Aus.); **17.** *Dep.* p. 61
Statham *v.* Oxcroft Colliery Co., Ltd. (1922); **34.** *Mast. & S.* No. 3558b
— *v.* — (1929); **34.** *Mast. & S.* No. 3269a
— *v.* Statham (1929); **27.** *H. & W.* Nos. 2518a, 2830a, 2833a, 2833b, 3163a
Staviss & Greenwood & Kahn, Ltd. & Charette & Labelle, *Re* (Can.); **31.** *L. & T.* p. 84
Stawell *v.* Austin (1677); **40.** *Sttlmts.* No. 1604a
Stead *v.* Gascoigne (1818); **5.** *Bkpcy.* No. 7006a
— *v.* Stead (1927); **27.** *H. & W.* No. 2718a
Stead, Hazel & Co. *v.* Cooper (1933); **10.** *Coys.* Nos. 5948a, 5959d
Steadfast, The (1922); **1.** *Adm.* No. 1405a
Steadman *v.* Administration & Trust Co., *Re* Sun Life Assurance Co. of Canada (Can.); **29.** *Insce.* p. 34
— *v.* Dicksee, *Re* Baker (1934); **44.** *Wills*, No. 3143a
Steam Saw Mills Co. *v.* Baring Brothers & Co. (1922); **1.** *Agcy.* No. 2814a
Steans *v.* Maling & Co., Ltd. (N.Z.); **2.** *Arbn.* p. 95
Stearn *v.* Prentice Brothers, Ltd. (1919); **1.** *Action*, No. 259a; **2.** *Animals*, No. 325a
Stearns *v.* Neys (Can.); **39.** *S. Goods*, p. 59
Stebbe *v.* Laird (Can.); **36.** *Negl.* p. 40
Stedeford *v.* Beloe (1932); **28.** *Inc. T.* No. 496c
Steedman *v.* Dominion Lumber & Coal Co., Ltd. & Lord (Can.); **32.** *Lien*, p. 24
— *v.* Frigidaire Corpn. (1932); **35.** *Misrep.* No. 751a
— *v.* Sparks & McKay & Lord (Can.); **32.** *Lien*, p. 24
Steedsman *v.* Chrunik (Can.); **32.** *Lien*, p. 22
Steel *v.* Glendinning, *Re* Glendinning (1918); **3.** *Bank.* No. 402a
Steel (Doe d.) *v.* McGill (Can.); **25.** *Fraud. Conv.* p. 14
Steel Bros. & Co., Ltd. *v.* Tokersee Mooljee (Ind.); **17.** *Custom*, p. 3
Steel Co. of Canada, Ltd. *v.* Ramsay (Can.); **9.** *Coys.* p. 46
Steel Peech & Tozer, Ltd. *v.* Lambert (1933); **34.** *Mast. & S.* No. 3726d
Steele, *Re* (Can.); **28.** *Infts.* p. 141
— *v.* Belfast Corpn. (Ir.); **3.** *Barr.* p. 51

v. Ferguson (Can.); **36.** *Negl.* p. 32
— *v.* Manton's (Lord) Trustees (1927); **28.** *Inc. T.* Nos. 430a, 444a
— *v.* R. (Can.); **14.** *Crim.* pp. 10. 68; **15.** *Crim.* p. 95
— *v.* Steele (Can.); **27.** *H. & W.* p. 35
Steele (James), Ltd., *Re* (Can.); **3.** *Bank.* p. 43
Steele-Smith *v.* Acme Village School District (Can.); **19.** *Educ.* p. 45
Steen *v.* Wallace (Can.); **17.** *Dep.* p. 36
Steeves, *Re*, Nova Scotia Trust Co. *v.* Bishop (Can.); **5.** *Bkpcy.* p. 73
— *v.* Dufferin Rural Municipality (Can.); **41.** *Sewers*, p. 3
— *v.* Layton (Can.); **35.** *Mistake*, p. 10
Steffs *v.* Smith (Can.); **2.** *Agric.* p. 4
Stefura *v.* Ridge (Can.); **36.** *Negl.* p. 17
Stein *v.* Anderson (N.Z.); **7.** *Bldg. Conts.* p. 26
— *v.* Gates (1935); **36.** *Negl.* No. 83a
— *v.* Hauser (Can.); **19.** *Eccl.* p. 31
— *v.* Kileel (Can.); **12.** *Contr.* p. 30
— *v.* R. (Can.); **14.** *Crim.* p. 37
Stein (John G.) & Co., Ltd. *v.* Stirling County Council Eastern District Committee (1927); **38.** *Pub. Hlth.* No. 509a
Steinberg *v.* Cohen (Can.); **12.** *Contr.* p. 22
— *v.* R. (Can.); **14.** *Crim.* p. 58
Steine *v.* Mathieu (Can.); **17.** *Deeds*, p. 29
Steinhoff *v.* Kent Corpn. (Can.); **26.** *Hghys.* p. 26
Steinkopff, *Re*, Favorke *v.* Steinkopff (1922); **2.** *Aliens*, No. 215f; **8.** *Chos.* No. 21
Stelos Re-Knit, Ltd. *v.* Ladda-Mend Co., Ltd. (1931); **36.** *Pats.* No. 2281a
Stelzer *v.* Domm (Can.); **32.** *Libel*, p. 5
Stenhouse *v.* General Casualty Insurance Co. of Paris (Can.); **29.** *Insce.* p. 46
Stening *v.* Abrahams (1931); **31.** *L. & T.* Nos. 5186a, 5192a
Stenning *v.* Southern Ry. Co. (1937); **34.** *Mast. & S.* No. 3025f
Stentor, The (1934); **1.** *Adm.* No. 1697a
Stephen *v.* Black (Can.); **26.** *Guar.* p. 9
— *v.* Cooper (1929); **34.** *Mast. & S.* No. 2439a
— *v.* McNeill (Can.); **36.** *Negl.* p. 4
— *v.* Masters & McDougall (Can.); **2.** *Arbn.* pp. 75, 91
— *v.* Stephen (1931); **27.** *H. & W.* Nos. 5459a, 5463a, 5513b
— *v.* — (Can.); **27.** *H. & W.* p. 26
Stephen & Stephen *v.* Trans-Canada Finance Corpn., Ltd. (Can.); **35.** *Mtge.* p. 35
Stephens, *Ex p.* (1848); **22.** *Evid.* Nos. 5676a, 6081b
—, *Re*, Anderson *v.* United Church of Canada (Can.); **8.** *Char.* p. 73
— *v.* Barltrop (N.Z.); **44.** *Wills*, p. 56
v. Falchi (Can.); **11.** *Confl.* p. 50
— *v.* Gem Consolidated School District No. 60, Trustees (Can.); **19.** *Educ.* p. 44
— *v.* Marks & Hervey, *Re* Hervey (Aus.); **44.** *Wills*, p. 45
— *v.* R. (Aus.); **15.** *Crim.* p. 98
— *v.* Reynolds (1860); **6.** *B. of Exch.* No. 702a
Stephens & Branthwaite & Otway, *Re*, *Re* Hume & Croft (1938); **44.** *Work*, No. 82a
Stephens (G. F.) & Co., Ltd. *v.* Perdue (Can.); **8.** *Chos.* p. 95
Stephens' Application, *Re* (1938); **44.** *Work* No. 82a
Stephenson, *Re* (Can.) (1936); **20.** *Elect.* p. 5
—, *Re* (Can.) (1937); 68 Can. C. C. 143; **30.** *Intox.* p. 12
—, *Re* (Can.), [1937] 1 D. L. R. 796; **33.** *Mags.* p. 27
— *v.* British Insulated Cables, Ltd. (1930); **34.** *Mast. & S.* No. 2425a
— *v.* Bromley (Can.); **40.** *S. Land*, p. 11
Stephenson *v.* E. D. & B. C. R. (Can.); **18.** *Discy.* p. 13
— *v.* Sagar & Son (1935); **8.** *Carr.* Nos. 1488, 1683
— *v.* Stephenson (Aus.); **27.** *H. & W.* p. 30
— *v.* Thompson (1924); **7.** *B. of Sale*, Nos. 138b, 196a
— *v.* Waller (1927); **28.** *Inc. T.* No. 79f
Stepney Borough Council *v.* Walker (John) & Sons, Ltd. (1934); **16.** *Cr. Pract.* No. 925b; **38.** *Rates*, No. 1564a
Stepney Borough Council & Smart's Contract, *Re* (1902); **11.** *Comp. Pchc.* No. 558a
Stepney Case (1886); **20.** *Elect.* Nos. 817a, 1172a, 1290c, 1410a
Stepney Corpn. *v.* Osofsky (1937); **12.** *Contr.* No. 3883a
Stepney Revenue Officer *v.* Twining (R.) & Co., Ltd. (1931); **38.** *Rates*, No. 226f
Sterling Clothing Co. *v.* Men's Attire Registered (Can.); **4.** *Bkpcy.* p. 30
Sterling Lumber Co. *v.* Jones (Can.); **32.** *Lien*, p. 26
Sterling Securities Corpn. *v.* Hicks Motor Co. (Can.); **32.** *Lien*, p. 21
Sterling Securities Corpn., Ltd. *v.* Waffle (Can.); **39.** *S. Goods*, p. 58
Sterling Trusts Corpn. *v.* Melnechuk (Can.); **22.** *Evid.* p. 20
Sterling Wharfage Co., Ltd. *v.* Peek Bros. & Winch, Ltd. (1935); **36.** *Nuis.* No. 328a
Stern *v.* Inland Revenue Comrs. (1929); **28.** *Inc. T.* No. 668b
Sternberg, *Re* (Can.); **5.** *Bkpcy.* p. 77
—, *Re*, *Ex p.* Triefus & Stripp, Ltd. (Can.); **5.** *Bkpcy.* p. 76
Steuart *v.* Barclay, Gardner *v.* Barclay, *Re* Barclay (1929); **8.** *Char.* Nos. 79a, 128a,
Steven *v.* Broady Norman & Co. (Scot.); **21.** *Estpl.* p. 31
Stevens, *Re* (1912); **20.** *Eqy.* No. 1581a
—, *Re*, Imperial Canadian Trust Co., Ltd. *v.* North American Lumber & Supply Co., Ltd. (Can.); **5.** *Bkpcy.* p. 76
— *v.* Abbotsford Lumber Co. (Can.); **17.** *Damgs.* p. 5
— *v.* Aldershot Gas, Water & District Lighting Co. (now Mid-Southern District Utility Co.) (1932); **20.** *Electric*, No. 39b
— *v.* Birmingham Corpn. (1929); **34.** *Mast. & S.* Nos. 3269b, 3371a, 3155a, 3155b
— *v.* Downham, Isle of Ely (Feoffees of Poor Lands) (1926); **2.** *Agric.* Nos. 266hh, 266jj
— *v.* Economic House Builders, Ltd. (1938); *Pract.* No. 4670a
— *v.* Hampstead Borough Council (1929); **34.** *Mast. & S.* No. 628c
— *v.* Jackson (1815); **28.** *Infts.* No. 63a
— *v.* Lawton (1588); **31.** *L. & T.* No. 2150a
— *v.* Merchants Bank of Canada (Can.); **1.** *Agcy.* p. 51; **3.** *Bank.* p. 21
— *v.* Robinson (William) Co., Ltd. (Can.); **2.** *Arbn.* p. 81
— *v.* Skidmore (Can.); **38.** *Real Prop.* p. 98
— *v.* Spencer (Can.); **9.** *Coys.* pp. 36, 38
— *v.* Stevens (1929); **27.** *H. & W.* No. 6099a; **33.** *Mags.* No. 82a
— *v.* — (Can.); **36.** *Partn.* p. 56
— *v.* Walker (1936); **13.** *Cty. Cts.* Nos. 341a, 349a
— *v.* Willing & Co. (1929); **40.** *S. Land*, No. 2683a
Stevens & Dunsby's Contract, *Re* (1928); **40.** *Stllmts.* No. 2679a
Stevens & Mitchell, *Re* (Can.); **6.** *B. of Exch.* p. 1
Stevens & Sons *v.* Timber & General Mutual Accident Insurance Assocn., Ltd. (1933); **2.** *Arbn.* No. 147b
Stevens-Willson *v.* Chatham City & Chatham Public Utilities Commission (Can.); **38.** *Pub. Auth.* p. 3

Stevenson *v.* Bagham (N.Z.); **17.** *Damgs.* p. 9
— *v.* British Columbia Leather Co., Ltd. (Can.) **44.** *Work*, p. 60
— *v.* Continental Casualty Co. (Can.); **29.** *Insce.* p. 36
— *v.* Donaldson (Scot.); **19.** *Easmt.* p. 7
— *v.* Edinburgh Magistrates (Scot.); **26.** *Hghys.* p. 34
— *v.* Florant (Can.); **17.** *Dep.* pp. 79, 83; **28.** *Infts.* p. 138
— *v.* Fulton (1936); **37.** *Post Off.* No. 75a
— *v.* Green (Can.); **32.** *Lien*, p. 26
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 3
— *v.* Myers (Aus.); **40.** *Stlmts.* p. 39
— *v.* Taylor, *Re* Canadian Cap Co., Ltd. (Can.); **5.** *Bkpcy.* p. 70
— *v.* Toronto Board of Education (Can.); **3.** *Bailmt.* p. 7
— *v.* Williams (1936); **25.** *Gaming*, No. 433c
Stevenson & Sons *v.* Maule & Son (Scot.); **3.** *Bailmt.* p. 15
Stevenson (Hugh) & Sons, Ltd. *v.* Akt. fü. Cartonnagen-Industrie (1918); **1.** *Agcyr* Nos. 1833, 3028
Stewards & Co., Ltd. *v.* R. (1900); **7.** *Bldg. Conts.* No. 9
Stewart, *Ex p.*, *Ex p.* Joe Go Get, *Ex p.* Henderson, *Ex p.* Broder (Can.); **16.** *Cr. Pract.* p. 27; **30.** *Intox.* pp. 6, 18
—, *Ex p.*, R. *v.* McLatchey (Can.); **33.** *Mags.* p. 36
—, *Re* (Can.) (1926); **5.** *Bkpcy.* p. 67
—, *Re* (Can.) (1929); **36.** *Notar.* p. 42
— *v.* Adams (Scot.); **2.** *Animals*, p. 58
— *v.* Beverly Town (Can.); **33.** *L. G.* pp. 2, 3
— *v.* Boulton, *Re* Boulton's Settlement Trust (1928); **37.** *Powers*, Nos. 187b, 872a
— *v.* Braun (Can.); **26.** *Guar.* p. 7
— *v.* Clark (Can.); **26.** *Guar.* p. 10
— *v.* Cocciolone (Can.); **7.** *B. of Sale*, p. 11
— *v.* Crigglestone Coal Co., *Re* Crigglestone Coal Co. (1906); **10.** *Coys.* No. 5105a
— *v.* Currie (Can.); **21.** *Exon.* p. 47
— *v.* Goss (Can.); **43.** *Tresp.* p. 50
— *v.* Grand Trunk Pacific Ry. Co. (Can.); **8.** *Carr.* p. 9
— *v.* Hodge (Scot.); **27.** *H. & W.* p. 9
— *v.* Jones (Can.); **11.** *Const. L.* p. 64
— *v.* Lowe, *Re* Lowe (1929); **3.** *Basty.* No. 152b
— *v.* Lyons (1934); **28.** *Inc. T.* No. 602a
— *v.* M'Cowan (Scot.); **39.** *Revenue*, p. 17
— *v.* Moncton (Can.); **26.** *Hghys.* p. 30
— *v.* Normanby Estate Co., Ltd. (1933); **28.** *Inc. T.* No. 28a
— *v.* O'Brien (N.Z.); **17.** *Damgs.* p. 21
— *v.* Poole, *Re* Poole (Can.); **44.** *Wills*, p. 16
— *v.* Richardson Sons & Co., Ltd. (Can.); **1.** *Agcy.* p. 59
— *v.* Royal Bank of Canada & Fraser (Can.); **3.** *Bank.* p. 23
— *v.* Sashalite, Ltd. (1936); **9.** *Coys.* No. 3536b
— *v.* Sherstobitoff (Can.); **1.** *Action*, p. 11
— *v.* Smith (Can.); **36.** *Negl.* p. 35
— *v.* Somes, *Re* Somes (1895); **5.** *Bkpcy.* No. 8306
— *v.* Springfield & Tache Rural Municipalities (Can.); **38.** *Pub. Auth.* p. 4
— *v.* Stewart (1932); **3.** *Basty.* Nos. 22b, 65e
— *v.* — (Can.); **17.** *Dep.* p. 56
— *v.* Traders Trust Co. (Can.); **43.** *Tresp.* p. 51
— *v.* Wetherdair, Ltd. (Scot.); **4.** *Bkpcy.* p. 15
Stewart & Co., Ltd. *v.* Amla, The (Can.); **1.** *Adm.* p. 29
Stewart (Alexander) & Son of Dundee, Ltd. *v.* Westminster Bank, Ltd. (1926); **9.** *Coys.* No 3506a
Stewart & Toronto (City), *Re*, *Re* Harmans, Ltd. & Toronto (City), *Re* Porter & Toronto (City) (Can.); **11.** *Comp. Pche.* p. 14
Stewart & Young *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 36
Stewart Mercantile Co., Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 11
Stewart Municipal District *v.* Bliesner (Can.); **11.** *Comp. Pche.* p. 15
Stewkley *v.* Butler (1615); **2.** *Agric.* No. 736
Stibbe *v.* Stibbe (1931); **27.** *H. & W.* No. 5410d
Stillwater Lumber & Shingle Co. *v.* Canada Lumber & Timber Co. (Can.); **5.** *Bkpcy.* p. 82
Stillwell, *Re*, Stillwell *v.* Stillwell (1936); **33.** *Lunat.* No. 1242a
Stillwell *v.* New Windsor Corpn. (1932); **26.** *Hghys.* Nos. 443a, 605a, 616a, 1464a, 1657a
— *v.* Stillwell, *Re* Stillwell (1936); **33.** *Lunat.* No. 1242a
Stimpson *v.* Stimpson, *Re* Stimpson's Trusts (1931); **43.** *Trusts*, Nos. 2283a, 2285a
Stimpson's Trusts, *Re*, Stimpson *v.* Stimpson (1931); **43.** *Trusts*, Nos. 2283a, 2285a
Stimson *v.* Gray (1929); **42.** *Sp. Pfce.* Nos. 282a, 285a
Stinson *v.* Edmonton (City) (Can.); **26.** *Hghys.* p. 35
— *v.* Moore (Can.); **35.** *Mistake*, p. 9
Stinson-Reeb Builders Supply Co. *v.* R. (Can.); **43.** *Trade*, p. 1
Stirling & Schmidt's Superheating Co. (1910) Ltd.'s Patent, *Re*, *Re* Stirling's Patent (1928); **36.** *Pats.* No. 1684a
Stirling Collieries, Ltd. *v.* Jones (Can.); **8.** *Chos.* p. 92
Stirling's Patent, *Re*, *Re* Stirling & Schmidt's Superheating Co. (1910), Ltd.'s Patent (1928); **36.** *Pats.* No. 1684a
Stirn *v.* Vancouver Arena Co., Ltd. (Can.); **32.** *Lien*, p. 23
Stirrett & Sons, Ltd. *v.* Kaministiquia Power Co., Ltd. (Can.); **38.** *Pub. Auth.* p. 4
Stobie-Forlong & Co., *Re*, *Re* Colwell's Claim (Can.); **4.** *Bkpcy.* p. 30
Stobie-Forlong Assets, Ltd. *v.* Barker (Can.); **42.** *Stk. Ex.* p. 34
— *v.* Beck (Can.); **4.** *Bkpcy.* p. 4
Stobie-Forlong-Matthews, Ltd., *Re* (Can.); **42.** *Stk. Ex.* p. 33
Stobie-Forlong's Trustee *v.* Colwell (Can.); **4.** *Bkpcy.* p. 30
Stock *v.* Great Western Ry. Co. (Can.); **17.** *Damgs.* p. 22; **21.** *Estpl.* p. 40
Stockbridge & Co., Ltd., *Re* (N.Z.); **10.** *Coys.* p. 92
Stockdale *v.* Hansard (1840); *Pract.* No. 2286d
Stocker *v.* Minister of Health (1938); **36.** *Pub. Hlth.* No. 502dd
Stocker's Appeal, *Re* London County (Stoke Newington) Housing Order, 1936 (1937); **38.** *Pub. Hlth.* No. 502dd
Stockholder *v.* Stockholder (Can.); **27.** *H. & W.* pp. 3, 4
Stocking (Doe d.) *v.* Watts (Can.); **22.** *Evid.* p. 12
Stocksbridge Ry. Co. *v.* Great Central Ry. Co. (1909); **8.** *Carr.* No. 1049a
Stockton *v.* Webb (Can.); **28.** *Infts.* p. 141
Stockwell *v.* Southgate Corpn. (1936); **26.** *Hghys.* No. 1988a
Stoddart *v.* Stoddart (Can.); **35.** *Mtge.* pp. 31, 48
Stoeck *v.* Public Trustee (1921); **2.** *Aliens*, Nos. 49a, 49i
Stoehr & McPherson *v.* Morgan (Can.); **21.** *Exon.* p. 60
Stoke Newington Corpn. *v.* Richards (1930); **34.** *Metrop.* No. 29b

Stoke-on-Trent Revenue Officer *v.* Potteries Electric Traction Co., Ltd., (1931); **30.** *Jdgmts.* No. 707a; **38.** *Rates*, No. 226d
Stokes, *Re* (Aus.); **23.** *Exors.* p. 12
—, *Re*, Bowen *v.* Davidson (1928); **23.** *Exors.* No. 5273a
— *v.* Fox (1932); **34.** *Mast. & S.* No. 2348a
— *v.* Little (1935); **31.** *L. & T.* No. 7358d
— *v.* London, Midland & Scottish Ry. Co. (1932); **8.** *Carr.* No. 973a; **38.** *Rys.* No. 727a
— *v.* Stokes (Aus.); **27.** *H. & W.* p. 66
Stokes-Stephens Oil Co. *v.* McNaught (Can.); **2.** *Arbn.* p. 83
Stokoe *v.* Mickley Coal Co., Ltd. (1928); **34.** *Mast. & S.* No. 2506a
— *v.* Robson (1814); **35.** *Mtge.* No. 3081a
Stollery, *Re*, Weir *v.* Treasury Solicitor (1926); **22.** *Evid.* Nos. 3165a, 3177a
Stolp & Co. *v.* Browne & Co. (Can.); **11.** *Confl.* p. 54
Stone, *Re* (Can.); **4.** *Bkpcy.* pp. 2 16
—, *Re*, Read *v.* Dubua (Aus.); **24.** *Exors.* p. 43
— *v.* Knapp (Can.); **27.** *H. & W.* p. 16
— *v.* Theed (1787); **31.** *L. & T.* No. 2282a
— *v.* Vulcan Municipal Hospital District (Can.); **17.** *Damgs.* p. 19
— *v.* Walter (1649); **27.** *H. & W.* No. 1576a
Stone & Balmain, *Re* (Can.); **28.** *Infts.* p. 141
Stone & Reynolds, *Re* (Can.); **3.** *Basty.* p. 62
Stoneberg, *Re* (Can.); **4.** *Bkpcy.* p. 23
Stonehouse *v.* Masson (1921); **15.** *Crim.* No. 12,169a
Stoneman *v.* Halifax (Can.); **26.** *Hghys.* p. 29
Stoney *v.* Eastbourne Rural Council (1927); **26.** *Hghys.* No. 355a; **40.** *S. Land*, No. 2458
— *v.* Stoney (Ind.); **23.** *Exors.* p. 8
Stop & Shop, Ltd. *v.* Independent Builders, Ltd. & Koury (Can.); **31.** *L. & T.* p. 56
Stopp *v.* Hill & Sons (1928); **39.** *S. Goods*, No. 539a
Storaker *v.* Southouse & Long, Ltd. (Aus.); **1.** *Agcy.* p. 101
Storer *v.* Morris (1929); **34.** *Mast. & S.* No. 3927b
Story *v.* Dunlop (Can.); **24.** *Exors.* p. 35
Stothart *v.* Weston, *Re* Gordon (Can.); **44.** *Wills*, p. 52
Stott *v.* Green (1936); **43.** *Trade Mks.* No. 860
— *v.* Heninger (Can.); **18.** *Distr.* p. 25
— *v.* Henshaw (1936); **43.** *Trade Mks.* No. 860
— *v.* Inland Revenue Comr. (S. Af.); **28.** *Inc. T.* p. 13
— *v.* Raby (Can.); **18.** *Distr.* p. 25
— *v.* Shaw & Lee, Ltd. (1928); **7.** *B. of Sale*, Nos. 228a, 439a
Stout & Toronto (City), *Re* (Can.); **28.** *Inc. T.* p. 56; **38.** *Rates*, p. 49
Stover *v.* Drysdale (Can.); **19.** *Eccl.* p. 19
— *v.* Marchand (Can.); **32.** *Limit. of A.* p. 38
Stracey *v.* Urquhart (1930); **9.** *Coys.* No. 770a; **17.** *Damgs.* No. 1a
Strachan *v.* McGinn (Can.); **22.** *Evid.* p. 16
— *v.* Nel (S. Af.); **39.** *S. Goods*, p. 44
Stradling *v.* Higgins (1932); **19.** *Eccl.* Nos. 2a, 2b, 4017a
Straits Settlements Comr. of Stamps *v.* Oei Tjong Swan (1933); **17.** *Dep.* No. 665a
—*v.* — (Straits Settlements); **21.** *E. D.* p. 6
Straker *v.* North of Scotland Canadian Mortgage Co., Ltd. (Can.); **7.** *B. of Sale*, p. 10
Strand Hotel, Ltd., *Ex p.*, R. *v.* Minister of Labour (1932); **44.** *Work*, No. 74a
Strandhill *v.* Walter W. Hodder Co. (Can.); **1.** *Adm.* p. 23
Strang *v.* Adair (Scot.); **25.** *Gaming*, p. 40
— *v.* Beal (Can.); **21.** *Exon.* p. 59
Strangways-Lesmere *v.* Clayton (1936); **34.** *Med.* No. 87b
Stranna, The (1938); **41.** *Ship.* No. 2606a
Stratchuk *v.* Montreal Trust Co. (Can.); **44.** *Wills*, p. 12
Stratford Baptist Church Property, *Re* (Can.); **8.** *Char.* p. 67
Stratford Catering Co., Ltd., *Ex p.*, R. *v.* Holborn Licensing JJ. (1926); **30.** *Intox.* No. 299a
Stratford Mill Building Co.'s Claim, *Re* Red Deer Milling & Elevator Co. (Can.); **9.** *Coys.* p. 50
Strathcona (Lord) *v.* Inland Revenue Comrs. (Scot.); **21.** *E. D.* p. 10
Strathcona Cemetery Co. *v.* Taylor (Can.); **7.** *Burial*, p. 39
Strathern *v.* Albion Greyhounds (Glasgow), Ltd. (Scot.); **25.** *Gaming*, p. 34
— *v.* Benson (Scot.); **25.** *Gaming*, p. 36
— *v.* Caisley (Scot.); **14.** *Crim.* p. 19
— *v.* Gladstone (Scot.); **42.** *Str. Traf.* p. 48
— *v.* Padden (Scot.); **14.** *Crim.* p. 1
— *v.* Ross (Scot.); **34.** *Med.* p. 192
— *v.* Russell (Scot.); **25.** *Gaming*, p. 34
— *v.* Scottish Greyhound Racing Co. (Scot.); **25.** *Gaming*, p. 34
— *v.* Stuart (Scot.); **19.** *Eccl.* p. 31
Strathfillan (Owners) *v.* Ikala (Owners), The Ikala (1929); **41.** *Ship.* No. 6677
Strathlorne S.S. Co., Ltd. *v.* Andrew Weir & Co. (1934); **41.** *Ship.* No. 2329a
Strathspey Public Assembly & Agricultural Hall Co. *v.* Anderson's Trustees (Scot.); **9.** *Coys.* p. 5
Stratton, *Re*. Knapman *v.* A.-G. (1931); **8.** *Char.* No. 717b
— *Re*. — *v.* Stratton (1931); **8.** *Char.* No. 717b
—, *Re*, Stratton *v.* A.-G. (1931); **8.** *Char.* No. 717b
— *v.* A.-G., *Re* Stratton (1931); **8.** *Char.* No. 717b
— *v.* Stratton & Parkyn (Aus.); **27.** *H. & W.* p. 54
Stratton & Greenshields, Ltd., *Re*, *Re* McCoubrey (Can.); **4.** *Bkpcy.* p. 28; **5.** *Bkpcy.* p. 90
Stream Fisher, The (1927); **1.** *Adm.* No. 1497c
Streatham Cinema, Ltd. *v.* John McLauchlan, Ltd. (1933); **8.** *Clubs*, No. 134a; **12.** *Contr.* No. 2269a
Street, *Re* (1845); **22.** *Evid.* No. 6081a
— *v.* Craig (Can.); **2.** *Animals*, p. 63
— *v.* Glass (Can.); **21.** *Exon.* p. 48
Streich *v.* Franklin (Can.); **26.** *Hghys.* p. 29
Strelioff *v.* First National Bank of Joliet (Can.); **24.** *Exors.* p. 39
Strelitz Brothers *v.* Britnall (Aus.); **1.** *Action*, p. 2
Stretch *v.* Sim (1936); **32.** *Libel*, No. 171a
Stretton Estate, *Re*, Cay & Hill *v.* Marcotte (Can.); **24.** *Exors.* p. 35
Strickland *v.* Bonnici (1934); **32.** *Libel*, Nos. 109a, 944a
— (Lord) *v.* Grima (1930); **17.** *Dep.* Nos. 394a, 444a
Strickland's Will Trusts, *Re*, National Guarantee & Suretyship Assocn., Ltd. *v.* Maidment (1937); **8.** *Char.* No. 81a
Stringer, *Re*, Hill *v.* Stringer (1899); **23.** *Exors.* No. 4613a
— *v.* Platnauer (R.), Ltd. (1932); **36.** *Pats.* No. 3384a
Strohmenger *v.* Attenborough (1894); **1.** *Agcy.* No. 481a
Strom, *Re* (Can.); **28.** *Infts.* p. 143
Stromme *v.* Woodward Stores, Ltd. (Can.); **36.** *Negl.* p. 28
Stronach, *Re* (Can.); **38.** *Pub. Hlth.* p. 16
Strong, *Re*, Strong *v.* Meissner (1925); **11.** *Confl.* No. 621a
— *v.* Arran (Can.); **26.** *Hghys.* p. 25
— *v.* Taylor, The Enterprise (1853); **34.** *Mast. & S.* No. 1145a

Strood Estates Co., Ltd. *v.* Gregory (1938); **31.** *L. & T.* Nos. 7115a, 7139a
Stroud, *Ex p.*, R. *v.* Stroud (1928); **14.** *Crim.* No. 1790a
— *v.* Bath Gas Light & Coke Co. (1927); **34.** *Mast. & S.* No. 2653a
— *v.* DesBrisay & Colgan (Can.); **17.** *Damgs.* p. 23
— *v.* Stroud (otherwise Grantham) (1929); **27.** *H. & W.* No. 4342a
Stroud & Mandell, *Re* (Can.); **36.** *Partn.* p. 56
Strute *v.* Southwark & Vauxhall Water Co. (1889) **43.** *Wtr. Sply.* No. 283
Stuart *v.* Andrews (Can.); **22.** *Evid.* p. 12
— *v.* Bute (Lord) (1841); **18.** *Discy.* No. 1742
— *v.* Calgary & Edmonton Ry. Co. (Can.); **34.** *Mines*, p. 206
— *v.* Columbia River (Aus.); **1.** *Adm.* p. 38
— *v.* Haughley Parochial Church Council (1936); **19.** *Eccl.* No. 627a
— *v.* Pennant School District (Can.); **13.** *Corpns.* p. 33
— *v.* R. (Can.); **11.** *Comp. Pche.* p. 10
— *v.* Stuart (Ind.); **27.** *H. & W.* p. 25
— *v.* Stuart & Holden (1930); **27.** *H. & W.* No. 5121a
Stuart & Sinclair, Ltd. *v.* Biltmore Park Estates. (Can.); **32.** *Lien*, p. 23
Stuart & Sutterby, *Re* (Can.); **4.** *Bkpcy.* p. 1
Stuart-Robertson *v.* Lloyd (Aus.); **5.** *Bkpcy.* p. 77
Stubbard *v.* Baxter (Can.); **2.** *Animals*, p. 59
Stubbert *v.* Scott & Temple (Can.); **7.** *B. o.* p. 7
Stubbs *v.* Imperial & Queen Laundries, Ltd. (1933); **34.** *Mast. & S.* Nos. 3662a, 3668m
Stubbs (Leonard) & Co., Ltd. *v.* Jackson & Ellis (1935); **8.** *Carr.* Nos. 1508, 1666
Studdy *v.* Sanders (1826); **12.** *Contr.* No. 2310a
Studebaker Distributors, Ltd. *v.* Charlton Steam Shipping Co., Ltd. (1938); **41.** *Ship.* No. 3030a
Stuffco *v.* Fahn (Can.); **40.** *S. Land.* p. 14
Stumbles *v.* Whitley (1930); **25.** *Fish.* No 176a; **31.** *L. & T.* No. 2306f
Stump *v.* Batzold & Zion United Church (Can.); **21.** *Exon.* p. 55
Sturdee *v.* Merritt (Can.); **31.** *L. & T.* p. 47
Sturge *v.* Philpotts (1839); **39.** *S. Goods*, No. 2493a
Sturge & Co. *v.* Excess Insurance Co., Ltd. (1938); **29.** *Insce.* No. 3243a
Sturges *v.* Beresford, *Re* Beresford's Will Trusts (1938); **37.** *Powers*, No. 587a
— *v.* Previté, *Re* Previté (1931); **21.** *E. D.* Nos. 209c, 243a
Sturgion *v.* Painter (1608); **12.** *Contr.* No. 504a
Sturley *v.* Powell (1930); **13.** *Cty. Cts.* No. 315a; **25.** *Fish.* Nos. 497a, 497b
Sturrock *v.* Keiller (James) & Son (Scot.); **34.** *Mast. & S.* p. 96
Sturt, *Re*, De Bunsen *v.* Hardinge (1922); **20.** *Eqy.* No. 1316a
Sturtevant Engineering Co., Ltd. *v.* Sturtevant Mill Co. of U.S.A., Ltd. (1936); **43.** *Trade Mks.* Nos. 1041a, 1212c
Sturton *v.* Richardson (1844); **20.** *Eqy.* No. 292a
Style & Mantle, Ltd.'s Liquidator *v.* Prices Tailors, Ltd. (Scot.); **10.** *Coys.* p. 74
Suarez, *Re*, Suarez *v.* Suarez (1917); **11.** *Const. L.* No. 462a
Suart & Steamship Alleghany of London, Ltd. *v.* Merchants' Marine Insurance Co., Ltd. (1898); **29.** *Insce.* No. 2341a
Subbaraju *v.* Venkatramaraju (Ind.); **2.** *Arbn.* p. 101
Subba Rao *v.* Lakshmana Rao (Ind.); **19.** *Easmt.* p. 6
Subhan *v.* Baburam Singh (Ind.); **17.** *Dep.* p. 78
Subhas Chandra Bose *v.* Knight & Sons (Ind.); **32.** *Libel*, p. 7
Submarine Rainbow, H.M. (1933); **41.** *Ship.* Nos. 5401a, 6433b
Submarine Signal Co. *v.* Hughes (Henry) & Son, Ltd. (1931); **36.** *Pats.* No. 2997b
Subodh Chandra Roy Chowdhry *v.* R. (Ind.); **14.** *Crim.* p. 11
Suburban Rapid Transit Co., Winnipeg Electric Co. & Assiniboia Rural Municipality, *Re* (Can.); **9.** *Coys.* p. 13
Succession Duty Act, *Re*, *Re* Hecht (Can.); **21.** *E. D.* p. 20
—, *Re*, *Re* Oldfield Estate (Can.); **21.** *E. D.* p. 21
—, *Re*, A.-G. for British Columbia *v.* Wilson (Can.); **21.** *E. D.* p. 18
Succession Duty Act & Sproule, *Re* (Can.); **21.** *E. D.* p. 21
Sud, The (1937); **41.** *Ship.* No. 6212e
Sudbury Rand Mines & Gordon, *Re* (Can.); **34.** *Mines*, p. 200
Sue Sun Poy, *Re* (No. 2) (Can.); **2.** *Aliens*, p. 50
Suffling *v.* Malcolm (J.) & Co. (1933); **34.** *Mast. & S.* No. 3676a
Sugar Supply, Royal Commission on *v.* Kwik-Hoo-Tong Trading Society (1922); **2.** *Arbn.* No. 949c
Sugarman, *Ex p.*, R. *v.* Brixton Prison (Governor) (1922); **2.** *Aliens*, No. 553b
Sugden *v.* Advocate, H.M. (Scot.); **14.** *Crim.* p. 9
— *v.* Lolley (1812); **11.** *Confl.* No. 947; **15.** *Crim.* No. 8035
— *v.* Urban Fire Insurance Co., Ltd. (1931); **9.** *Coys.* No. 3704b
Suhr (R. F. H.) *v.* Crofts (Engineers), Ltd. (1932); **36.** *Pats.* No. 1619b
Suisse, *Re* (1842); **21.** *Exon.* No. 2430a
Sukhamal Bansidhar *v.* Babn Lal Kedin & Co. (Ind.); **2.** *Arbn.* p. 73
Suleman *v.* Abdul Latif (1930); **36.** *Prtnrs.* Nos. 1192a, 1199a
Sulhag Chamar *v.* Nand Lal Sahu (Ind.); **33.** *Mal. Pros.* p. 39
Sulis *v.* Ferguson (Can.); **21.** *Estpl.* p. 28
Sullivan, *Re*, Dunkley *v.* Sullivan (1929); **44.** *Wills*, No. 299a
— *v.* Constable (1932); **21.** *Estpl.* No. 1224a; **39.** *S. Goods*, No. 928a
— (Doe d.) *v.* Currey (Can.); **24.** *Exors.* p. 34
— *v.* Home Bank of Canada (Can.); **3.** *Bank.* p. 46
— *v.* Sullivan (1860); **39.** *Rntchgs.* No. 254a
Sullivan & Bertie (Township), *Re* (Can.); **11.** *Comp. Pche.* p. 15
Sullivan & State of California, *Re* (Can.); **24.** *Extrdn.* p. 45
Sum *v.* Teed (1870); **43.** *Trusts*, No. 2777a
Summerland Development Co., Ltd. *v.* Summerland (Can.); **38.** *Rates*, p. 85
Summers *v.* Cocks (Aus.), [1928] A. L. R. 107; **42.** *Sp. Pfce.* p. 18
— *v.* — (Aus.), [1928] W. A. L. R. 115; **40.** *S. Land*, p. 12
— *v.* Hamilton (Can.); **26.** *Guar.* p. 4
— *v.* O'Neill (Aus.); **42.** *Str. Traf.* p. 37
— *v.* Rhondda Urban District Council (1938); **34.** *Mast. & S.* No. 3502a
— *v.* Summers (Aus.); **27.** *H. & W.* p. 51
Summers & Co., Ltd. *v.* Boyce & Kinmond & Co. (1907); **28.** *Injon.* No. 829a
Sun Building Society *v.* Western Suburban & Harrow Road Building Society (1921); **7.** *Bldg. Soc.* Nos. 110a, 187a, 230a

Sun Insurance Office *v.* Roy (Can.); **29.** *Insce.* p. 26
Sun Life Assurance Co., *Re* (Can.); **10.** *Coys.* p. 97
Sun Life Assurance Co. of Canada, *Re*, Steadman *v.* Administration & Trust Co. (Can.); **29.** *Insce.* p. 34
— *v.* Rioux & Albert (Can.); **29.** *Insce.* p. 36
— *v.* Smith (W. H.) & Son, Ltd. (1933); **32.** *Libel*, No. 1124b
— *v.* Superintendent of Insurance (Can.); **29.** *Insce.* p. 61
— *v.* Tuxedo Town (Can.); **38.** *Rates*, p. 81
Sun Newspapers. Ltd. *v.* Whippie (Aus.); **13.** *Coprt.* p. 10
Sun Ray Manufacturing Co., *Re*, *Ex p.* Birkett & Sons, Ltd. (Can.); **9.** *Coys.* p. 17
—, *Re*, *Ex p.* Robson (Can.); **9.** *Coys.* p. 39
Sun Trust Co., Ltd. *v.* Begin, *Re* Credit Canadien Incorpe (Can.); **9.** *Coys.* p. 34
Sunbury-on-Thames Urban District Council, *Ex p.*, *Ex p.* Staines Reservoirs Joint Committee (1922); **11.** *Comp. Pche.* No. 1997a
Sunder Mull *v.* Satya Kinker Sahana (1927); **16.** *Courts*, No. 611a; **35.** *Money*, p. 22
Sunder Singh *v.* Ram Saran Das (Ind.); **31.** *L. & T.* p. 85
Sunderland *v.* Sollowa[illegible] Mills & Co., Ltd. (Can.); **42.** *Stk. Ex.* p. 33
Sunderland Corpn. *v.* Gray (1928); **26.** *Hghys.* Nos. 2244a, 2252a, 2254a
— *v.* Priestman (1927); **21.** *Estpl.* No. 1228a; **26.** *Hghys.* No. 2367b
Sunnyfield, *Re* (1932); **40.** *S. Land*, No. 2807b
Sunrise, The *v.* R. (Can.); **25.** *Fish.* p. 4
Super Sites, Ltd. *v.* Keen (1938); **38.** *Pub. Hlth.* No. 214a
Superannuation Act, *Re*, *Ex p.* New South Wales Comrs. of the Government Savings Bank (Aus.); **39.** *Revenue*, p. 27
Superannuation Board, *Re*, *Ex p.* Dockrell (Aus.); **39.** *Revenue*, p. 27
Superintendent & Remembrancer of Legal Affairs, Bengal *v.* Jnanendra Nath Ghosh (Ind.); **14.** *Crim.* pp. 22, 59
— *v.* Raisalee (Ind.); **14.** *Crim.* p. 8
Superintendent of State Advances Department *v.* Auckland Corpn. (N.Z.); **43.** *Wtr. Sply.* p. 77
Superior Builders, Ltd. *v.* Scott & Shore (Can.); **38.** *Real Prop.* p. 96
Superior Motors, Ltd. *v.* Cade (Can.); **42.** *Time*, p. 73
Supplies, Ltd., *Re*, Canadian Credit Men's Trust Assocn. *v.* Caldwell (Can.); **9.** *Coys.* p. 18
Supreme Court Practitioner, *Re* (Aus.); **42.** *Solrs.* p. 13
Surajmull Brijlal *v.* Income Tax Comr., Bihar & Orissa (Ind.); **16.** *Cr. Pract.* p. 31
Suraj Narain *v.* Sukhu Ahir (Ind.); **7.** *Bonds*, p. 13
Suratee Bara Bazaar Co., Ltd. *v.* Rangoon Municipal Corpn. (Ind.); **38.** *Pub. Auth.* p. 4
Surendra Kumar Roy Chowdhury *v.* Sushil Kumar Roy Chowdhury (Ind.); **2.** *Arbn.* pp. 75, 82
Surendra Nath Chatterji *v.* Jahnavi Charan Mukherji (Ind.); **23.** *Exors.* p. 6; **33.** *Lunat.* p. 13
Surendramohan Ray Chandhuri *v.* Mahendranath Banerji (Ind.); **17.** *Dep.* p. 69
Surmon *v.* Surmon (S. Af.); **3.** *Basty.* p. 53
Surrey County Council *v.* Caterham Entertainments, Ltd. (1930); **26.** *Hghys.* No. 2592b
Surrey District Corpn. *v.* Caine (Can.); **11.** *Comp. Pche.* p. 3
Surridge's Patents, Ltd. *v.* Trico-Folberth, Ltd. (1936); **36.** *Pats.* No. 3243b
Surrogate Courts Act, *Re*, *Re* MacDonald Estate (Can.); **16.** *Cr. Pract.* p. 33
Surtees *v.* Lister (1861); **12.** *Contr.* No. 1421a
Susil Kumar Biswas *v.* Rasani Kanta Chakravarti (Ind.); **31.** *L. & T.* p. 64
Sussex (Countess) *v.* Wroth (1582); **30.** *L. & T.* No. 1195a
Sussex (Countess) & Worths Case (1582); **30.** *L. & T.* No. 1195a
Sussex Carriers' Assocn., *Re* (1935); **8.** *Carr.* No. 1676
Sussex Sheriff, *Ex p.*, *Re* Rogers (1911); **29.** *Intpr.* No. 530
Sutcliffe, *Re*, Alison *v.* Alison (1934); **44.** *Wills*, Nos. 6239a, 7086a
—, *Re*, Sutcliffe *v.* Robertshaw (1929); **44.** *Wills*, No. 7347
— *v.* Robertshaw, *Re* Sutcliffe (1929); **44.** *Wills*, No. 7347
— *v.* Sutcliffe (Can.); **28.** *Infts.* p. 136
Sutcliffe & Sons, Ltd., *Re* (Can.); **5.** *Bkpcy.* p. 71
Sutcliffe (Lionel), Ltd. *v.* Inland Revenue Comrs. (1928); **28.** *Inc. T.* No. 674g
Sutcliffe (Edward), Ltd. *v.* London, Midland & Scottish Ry. Co. (1936); **8.** *Carr.* No. 1589
Sutherland (Duchess), *Re*, Bechoff & Co. *v.* Bubna (1921); **2.** *Aliens*, Nos. 156b, 166
Sutherland (Duke) *v.* British Dominions Land Settlement Corpn., Ltd. (1926); **13.** *Discy.* No. 1705a
Sutherland *v.* Devereux (N.Z.); **31.** *L. & T.* p. 58
— *v.* German Property Administrator (1934); **2.** *Aliens*, No. 215p; **8.** *Chos.* No. 21a
— *v.* James Mills, Ltd., Executors (1938); **24.** *Fact.* No. 72a
— *v.* R. (S. Af.); **42.** *Stats.* p. 24
— *v.* Shiach (Scot.); **33.** *Mags.* p. 31
— *v.* Sutherland (Can.); **27.** *H. & W.* p. 42
— *v.* Young (Can.); **22.** *Evid.* p. 13; **23.** *Exors.* p. 12
Sutherland & Co. *v.* Hannevig Brothers, Ltd. (1921); **2.** *Arbn.* No. 1668a
Sutherland-Innes Co. *v.* Grand Trunk Ry. Co. (Can.); **8.** *Carr.* p. 19
Sutherland Publishing Co., Ltd. *v.* Caxton Publishing Co., Ltd. (1936); **13.** *Coprt.* Nos. 575a, 577a
— *v.* — (No. 2) (1938); **13.** *Coprt.* Nos. 575d, 577c
Sutter *v.* Brown (S. Af.); **32.** *Libel*, p. 6
— *v.* Scheepers (S. Af.); **1.** *Agcy.* p. 53
Suttle *v.* Cresswell (1926); **25.** *Gaming*, No. 415a
Sutton, *Re* (Can.); **4.** *Bkpcy.* p. 11
—, *Re*, Evans *v.* Oliver (1934); **44.** *Wills*, No. 7347a
— *v.* Dorf (1932); **5.** *Bkpcy.* Nos. 7681b, 7782c
— *v.* Featherley, *Re* Swinburne (1926); **3.** *Bank.* No. 538a; **6.** *B. of Exch.* No. 14a; **25.** *Gifts*, No. 228
— *v.* Forst (Can.); **1.** *Agcy.* p. 49
— *v.* Gregory (1797); **6.** *B. of Exch.* No. 693a
— *v.* Hinch (Can.); **26.** *Guar.* p. 6
— *v.* Inland Revenue Comrs. (1929); **28.** *Inc. T.* No. 674y
— *v.* R. (1932); **14.** *Crim.* No. 1410a
— *v.* R. (Cyprus); **14.** *Crim.* p. 38
— *v.* Smith (Can.); **30.** *Juries*, p. 33
— *v.* Soudak & Soudak (George) Fur Co. (Can.); **23.** *Exors.* p. 12
Sutton Harbour Improvement Co. *v.* Hitchens (1851); **11.** *Comp. Pche.* No. 702b
Suttor (Emily), *Re* (1860); **28.** *Infts.* No. 1237a
Suwalksy, *Re*, Suwalsky *v.* Trustee & Official Receiver (1928); **5.** *Bkpcy.* No. 5738a; **11.** *Const. L.* No. 474a
Svein Jarl, The (1923); **1.** *Adm.* Nos. 1237a, 1298a

Svendborg *v.* London, Midland & Scottish Ry. Co. (1930); **41.** *Ship.* No. 3034a
Svenssons (C. Wilh) Travaruaktiebolag *v.* Cliffe S.S. Co. (1932); **41.** *Ship.* Nos. 2727a, 2974b, 3070b, 3114a
Swabey *v.* Palmer (Can.); **34.** *Mast. & S.* p. 12
Swadling *v.* Cooper (1931); **36.** *Negl.* No. 731a
Swaffer *v.* Mulcahy (1934); **19.** *Eccl.* Nos. 3490b, 3490d, 3491a
Swain *v.* Southern Ry. Co. (1938); **26.** *Hghys.* No. 2719b; **38.** *Pub. Auth.* No. 741a
— *v.* West (Butchers), Ltd. (1936); **34.** *Mast. & S.* No. 903a
Swaits *v.* Entwistle (1929); **42.** *Str. Traf.* No. 55a
Swaizie *v.* Swaizie (Can.); **11.** *Confl.* p. 46
Swan *v.* Coltness Iron Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 116
— *v.* Dorman, Long & Co., Ltd. (Ir.); **34.** *Mast. & S.* p. 35
— *v.* Miller (Ir.); **1.** *Agcy.* p. 100
— *v.* Pure Ice Co., Ltd. (1935); **34.** *Mast. & S.* No. 3324a
— *v.* Sinclair (1925); **19.** *Easmt.* Nos. 147a, 515
— *v.* Swan (Can.); **40.** *S. Land*, p. 2
Swan & Edgar (1927), Ltd., *Ex p.*, R. *v.* London County Council (1929); **38.** *Pub. Auth.* No. 882a
Swan Brewery Co., Ltd. *v.* R. (Aus.); **9.** *Coys.* p. 44
Swan, Hunter & Wigham Richardson, Ltd. *v.* Glenledi (Can.); **41.** *Ship.* p. 62
Swanepoel *v.* Van Heerden (S. Af.); **5.** *Bkpcy.* p. 95
Swann *v.* Rockley, *Re* Lowe's Estate (1938); **44.** *Wills*, No. 5734b
Swanson *v.* Board of Land & Works (Aus.); **2.** *Arbn.* p. 84
Swarna Manjuri Dassi *v.* Secretary of State for India (Ind.); **11.** *Comp. Pche.* p. 5
Swart *v.* R. (S. Af.); **14.** *Crim.* p. 9
Swartz *v.* Ontario Assocn. of Architects Registration Board (Can.); **7.** *Bldg. Conts.* p. 32
— *v.* Shragge (Can.); **1.** *Agcy.* p. 88
Swaythling's Exors. *v.* Inland Revenue Comrs. (1930); **28.** *Inc. T.* No. 674f
Sweeney *v.* Gallagher (Ir.); **24.** *Exors.* p. 40
— *v.* Lisnaskea Rural District Council (Ir.); **41.** *Sewers*, p. 1
— *v.* Starrat (Can.); **37.** *Pers. Prop.* p. 9
— *v.* Sweeney (Ind.); **27.** *H. & W.* p. 26
Sweeny *v.* Manufacturers Holding Corpn. (Can.); **18.** *Discy.* p. 16
Sweet & Toronto Corpn., *Re*, *Re* Howard & Toronto Corpn. (Can.); **33.** *L. G.* p. 7; **38.** *Pub. Hlth.* p. 15
Sweetland *v.* Smith (1833); **35.** *Money*, No. 101a
Sweetnam *v.* Sweetnam (Can.); **35.** *Mtge.* p. 31
Sweinsson *v.* Charleswood Rural Municipality (Can.), [1917] 3 W. W. R. 201; **2.** *Arbn.* p. 101
Sweinsson & Charleswood Municipality, *Re* (Can.), [1917] 1 W. W. R. 293; **2.** *Arbn.* pp. 91, 98
Sweitzer *v.* Granger (Can.); **12.** *Contr.* p. 14
Swenson *v.* McIlmoyle (Can.); **2.** *Agric.* p. 17; **18.** *Distr.* p. 27
Swettenham *v.* Swettenham (1938); **27.** *H. & W.* No. 3015a
Swift *v.* Ambrose (1931); **31.** *L. & T.* No. 2042a
— *v.* New Zealand Insurance Co., Ltd. (Aus.); **29.** *Insce.* p. 29
— *v.* Swift (1890); **27.** *H. & W.* No. 5541a
Swift & Co. *v.* Board of Trade (1925); **25.** *Food*, No. 558a
— *v.* — (1926); **11.** *Const. L.* No. 373a; **25.** *Food*, No. 558a
Swift Current (City) *v.* Leslie (Can.); **2.** *Arbn.* p. 93
Swim, *Ex p.* (Can.); **16.** *Cr. Pract.* p. 31
Swinburne, *Re*, Sutton *v.* Featherley (1926); **3.** *Bank.* No. 538a; **6.** *B. of Exch.* No. 14a; **25.** *Gifts*, No. 228
— *v.* Andrews (1923); **2.** *Agric.* No. 266h
Swinburne-Hanham *v.* Howard, *Re* Wells (1933); **10.** *Coys.* Nos. 7169c, 7169d; **13.** *Corpns.* No. 1603a; **35.** *Mtge.* Nos. 866a, 1017a
Swindell *v.* Northern Elevator Co., Ltd. (Can.); **36.** *Negl.* p. 38
Swindle *v.* Knibb (Aus.); **40.** *S. Land*, p. 10
Swinson (John) Co., Ltd. *v.* Crystal Palace, Ltd. (N.Z.); **12.** *Contr.* pp. 52, 54
Swiss Bank Corpn. *v.* Boehmische Industrial Bank (1923); **11.** *Confl.* Nos. 1272a, 1307a
Switzer *v.* Kahn (Can.); **42.** *Time*, p. 74
— *v.* Ottawa (Can.); **34.** *Mast. & S.* p. 21
Swords Estate *Re* (Can.); **44.** *Wills*, p. 12
Swyripa *v.* Vaculchik (Can.); **27.** *H. & W.* p. 1
Sycamore *v.* Ley (1932); **2.** *Animals*, No. 219b
Sydney *v.* Dominion (Can.); **38.** *Pub. Hlth.* p. 21
— (City) *v.* Glace Bay (Town) (Can.); **38.** *Pub. Hlth.* p. 20
— *v.* North Sydney (Can.); **38.** *Pub. Hlth.* p. 21
Sydney, Cape Breton & Montreal S.S. Co. *v.* Montreal Harbour Comrs. (Can.); **38.** *Pub. Auth.* p. 10
Sydney Cheese & Butter Factory Assocn. *v.* Brower (Can.); **18.** *Discy.* p. 14
Sydney Ferries, Ltd. *v.* Tahiti S.S. (Aus.) (1928); **22.** *Evid.* p. 25
— *v.* — (Aus.) (1929); **41.** *Ship.* p. 33
Sydney Municipal Council *v.* Australian Metal Co., Ltd. (Aus.); **2.** *Aliens*, p. 46
— *v.* Campbell (1925); **11.** *Comp. Pche.* No. 116a
— *v.* Hughes Motor Service, Ltd. (1925); **11.** *Comp. Pche.* No. 116a
— *v.* Prince Alfred Hospital (Aus.); **38.** *Rates*, p. 62
— *v.* Salvation Army (N.S.W. Property Trust) (Aus.); **38.** *Rates*, p. 62
— *v.* Troy (Aus.); **11.** *Comp. Pche.* p. 17
Sydney Roman Catholic Archbp. *v.* Metropolitan Water Sewerage & Drainage Board (Aus.); **38.** *Rates*, p. 62
Syed Khan *v.* Syed Ebrahim (Ind.); **17.** *Dep.* p. 84
Syed Shah Mohamad Kazim *v.* Syed Abi Saghir (Ind.); **8.** *Char.* p. 59
Syer, *Re*, *Ex p.* Workmen's Compensation Board (Can.); **4.** *Bkpcy.* p. 37
Sygnatowicz *v.* Sygnatowicz (Can.); **18.** *Discy.* p. 23
Sykes, *Re*, Cloghran Stud Farm Co. *v.* Trustee (1932); **5.** *Bkpcy.* No. 6098a
— *v.* Ball, *Re* Firth (1938); **40.** *Sttlmts.* No. 2149b
— *v.* Geck (Can.); **6.** *B. of Exch.* p. 26
— *v.* Hall, *Re* Firth (1938); **40.** *Sttlmts.* No. 2149b
— *v.* One Big Union (Can.); **43.** *Trade*, p. 11
— *v.* Williams (1933); **32.** *Limit. of A.* No. 864a
Sylvan Arrow, The (1923); **1.** *Adm.* Nos. 141d, 668b
Sylvester *v.* Chapman, Ltd. (1935); **2.** *Animals*, No. 244a; **36.** *Negl.* No. 620c
Syme *v.* New Zealand University (N.Z.); **19.** *Educ.* p. 42
Symes & Jaywick Associated Properties, Ltd. *v.* Essex Rivers Catchment Board (1937); **44.** *Waters*, No. 626a
Symington *v.* Vancouver Breweries, Ltd. & Riefel (Can.); **1.** *Action*, p. 8
Symington & Co. *v.* Union Insurance Society of Canton (1927); **2.** *Arbn.* No. 1071b
— *v.* — (1928); **29.** *Insce.* Nos. 237a, 855a, 1719a

Symm's Will Trusts, *Re*, Public Trustee *v.* Shaw (1936); **37.** *Perps.* No. 412a; **43.** *Trusts*, No. 3191a
Symon *v.* Hay (Aus.); **42.** *Solrs.* p. 6
Symons *v.* Callil (Aus.); **1.** *Agcy.* p. 78
— *v.* Southern Ry. Co. (1935); **38.** *Rys.* No. 231a
— *v.* Winnipeg Electric Co. (Can.); **36.** *Negl.* p. 18; **43.** *Tram.* p. 48
Symons (Walter), Ltd., *Re* (1934); **10.** *Coys.* No. 6988c
Synod of Huron *v.* Ferguson (Can.); **2.** *Arbn.* p. 84
Synthetic Drug Co., *Re* (Can.); **2.** *Aliens*, p. 33
Syrja *v.* Syrja (Can.); **25.** *Fraud. Conv.* p. 17
Syston & Thurmaston Gas, Light & Coke Co., Ltd., *Re* (1937); **10.** *Coys.* No. 8481c
Sywack *v.* Hrubeniuk (Can.); **3.** *Bastv.* p. 65
Szewczyk *v.* Gilbert Plains Rural Municipality (Can.); **38.** *Rates*, p. 85
Szrejher *v.* Szrejher (Can.); **27.** *H. & W.* p. 23

T.

T. *v.* J. (1931); **27.** *H. & W.* Nos. 3358a, 3360a
T. *v.* T. (otherwise J.) (1931); **27.** *H. & W.* Nos. 3358a, 3360a
— *v.* — (Aus.); **27.** *H. & W.* p. 59
T. & C. Associated Industries, Ltd. *v.* Victoria Wagon Works, Ltd. (1930); **43.** *Trade Mks.* No. 1099a
T. A. M., *Re*, *Re* Taxation of Costs (1937); *Pract.* No. 4651a
T. E. O'Reilly, Ltd., *Re* (Can.); **9.** *Coys.* p. 5
T. E. V. Rangatira, *Re* (N.Z.); **41.** *Ship.* p. 7
T. M. Ball Lumber Co., Ltd. *v.* Bunting (Can.) **35.** *Mtge.* p. 45
T. R. M., *Re* (1938); **33.** *Lunat.* No. 1768a
T. T. C. *v.* Swansea (Can.); **26.** *Hghys.* p. 22
T. W. Cronin Shoe Pty., Ltd. *v.* Cronin (Aus. **43.** *Trade*, p. 6
T. Eaton Realty Co., Ltd., *Re* (Can.); **28.** *Inc. T.* p. 75
T. McAvity & Sons, Ltd. *v.* Walsh (Can.); **32** *Lien*, p. 24
Taare Waitara, *Re*, Beere *v.* Bates (N.Z.); **43** *Trusts*, p. 59
Taba Singh *v.* R. (Ind.); **17.** *Dep.* p. 80
Tabata & Co., *Re* (Can.); **4.** *Bkpcy.* p. 31
Tabor, *Re*, *Ex p.* Cork (1920); **5.** *Bkpcy.* Nos. 6516a, 6881a, 6890a
—, *Re*, *Ex p.* Trustee (1920); **5.** *Bkpcy.* No. 6516a
Tabram *v.* Freeman (1834); **4.** *Bkpcy.* No. 5352a
Tache Rural Municipality *v.* Marcoux (Can.); **33.** *L. G.* p. 7
Tagaloa *v.* Inspector of Police (N.Z.); **17.** *Dep.* p. 65
Tagart *v.* Tagart & White (1934); **27.** *H. & W.* No. 5588c
Taintor *v.* Thompson (Can.); **28.** *Injon.* p. 152
Tait *v.* Odhams Press, Ltd. (1937); **8.** *Carr.* No. 1592
Tait Estate, *Re* (Can.); **44.** *Wills*, p. 28
Taja Singh & Nutta Singh, *Re* (Can.); **42.** *Solrs.* p. 5
Talbot, *Re* (Ir.); **35.** *Name*, p. 53
—, *Re*, Jubb *v.* Sheard (1933); **8.** *Char.* Nos. 901a, 1102a
— *v.* Ackers, Whitley & Abrams Coal Co., Ltd. (1934); **34.** *Mast. & S.* No. 2407b
— *v.* Associated Newspapers, Ltd. (1933); **1.** *Agcy.* No. 2755a; **12.** *Contr.* No. 3593a; *Pract.* No. 4036a
— *v.* Radnor (Earl) (1834); **44.** *Wills*, No. 2330a
Talbot-Ponsonby's Estate, *Re*, Talbot-Ponsonby *v.* Talbot-Ponsonby (1937); **44.** *Wills*, No. 2666a
Tallack *v.* Tallack & Broekema (1927); **11.** *Confl.* No. 873a; **27.** *H. & W.* Nos. 5542a, 5543a, 5543b, 5543c
Tallent *v.* Coldwell (1938); *Pract.* No. 1591a
Tallon *v.* Ennis (Ir.); **19.** *Easmt.* p. 5
Talmage *v.* Talmage (Can.); **27.** *H. & W.* p. 6
Tamahau Mahupuku, *Re*, Thompson *v.* Mahupuku (N.Z.); **44.** *Wills*, p. 31
Tamara Te Angiangi *v.* Treadwell (N.Z.); **22.** *Evid.* p. 21
Tamboli *v.* Great Indian Peninsula Ry. Co. (Ind.); **8.** *Carr.* p. 5
Tamluk Trading & Manufacturing Co., Ltd. *v.* Nabadwipchandra Nandi (Ind.); **19.** *Easmt.* p. 14
Tamplin & Sons' Brewery (Brighton), Ltd., *Ex p.*, R. *v.* Sussex Confirming Authority (1937); **30.** *Intox.* No. 368c
Tamson *v.* Palatine Insurance Co. (Can.); **29.** *Insce.* p. 28
Tamvaco *v.* Lucas (1859); **39.** *S. Goods*, No. 1686a
Tan Chew Hoe Noe *v.* Chee Swee Cheng (Ind.); **38.** *Real Prop.* p. 91
Tan Ma Shwe Zin *v.* Tan Ma Ngwe Zin (Ind.); **17.** *Dep.* p. 73
Tan Waing *v.* Bo Hein (Ind.); **9.** *Coys.* p. 4
Tangney *v.* County of Kerry District Justice (Ir.); **14.** *Crim.* p. 63; **22.** *Evid.* p. 12; **25.** *Fish.* p. 4; **33.** *Mags.* p. 28
Tangye & Smith, Ltd. & Pelican Carbon Co., *Re* (Can.); **11.** *Confl.* p. 57
Tannahill *v.* Glasgow Corpn. (Scot.); **19.** *Educ.* p. 45
Tannas *v.* Bank of Montreal (Can.); **21.** *Exon.* p. 47
Tanner *v.* Carter (1856); **23.** *Exors.* No. 4154a
Tanner Estate, *Re* Gould *v.* Tanner & Tanner (Can.); **23.** *Exors.* p. 20
Tannock *v.* Brownieside Coal Co., Ltd. (1929); **34.** *Mast. & S.* No. 3289a
Tanqueray, *Re*, Sewell *v.* Woodfield (1924); **21.** *E. D.* No. 576a
— *v.* Bowles (1872); **25.** *Fraud. Conv.* No. 525a
Tansey *v.* Wilcock & Co. (1936); **34.** *Mast. & S.* No. 3887c
Taplin, *Re*, Watson *v.* Tate (1937); **27.** *H. & W.* No. 548a
Tarakeswar Das Gupta *v.* Ambica Charan Bhattacharjee (Ind.); **24.** *Exors.* p. 33
Taranaki Amusements (Hawera), Ltd., *Re* (N.Z.); **10.** *Coys.* p. 67
Tarasoff *v.* Zielinsky (Can.); **2.** *Animals*, p. 63
Tariff Board of Canada Jurisdiction Reference, *Re* (Can.); **39.** *Revenue*, p. 10
Tarling *v.* Rome (1936); **15.** *Crim.* No. 8178e
Tarn *v.* Scanlan (1928); **28.** *Inc. T.* Nos. 168a, 186a, 193a, 567, 632c, 632e
— *v.* Tarn (Can.); **27.** *H. & W.* p. 52
Tarrant *v.* Roberts (1930); **28.** *Inc. T.* No. 99f
Tarry *v.* Chandler (1934); **36.** *Nuis.* Nos. 98c, 98d, 98e
Tart *v.* Chitty (G. W.) & Co., Ltd. (1933); **36.** *Negl.* No. 389c
Tarunchandra Ghosh, *Re* (Ind.); **28.** *Infts.* p. 141
Tasker *v.* Algar (N.Z.); **18.** *Discy.* p. 8
Tasman Fruit Packing Assocn., Ltd. *v.* R. (N.Z.); **10.** *Coys.* p. 84
Tasmania Deputy Federal Comr. of Taxation *v.* Thomas (Aus.); **16.** *Courts*, p. 9
Tassie *v.* Kennedy (1848); **16.** *Cr. Pract.* No. 3201a

Tata Hydro-Electric Agencies, Ltd. (Bombay) *v.* Income Tax Comr. Bombay Presidency & Aden (Ind.); **28.** *Inc. T.* p. 48
Tata Iron & Steel Co. *v.* Bombay Chief Revenue Authority (1923); **17.** *Dep.* No. 640a
Tataurangi, Tairuakena *v.* Mua Carr (N.Z.); **13.** *Corpns.* p. 32
Tate *v.* Barry (Aus.); **36.** *Prtnrs.* p. 62
— *v.* Crewdson (1938); **26.** *Guar.* No. 903a; **35.** *Mtge.* No. 2645a
— *v.* Tate (1938); **27.** *H. & W.* No. 2942a
Tate & Lyle, Ltd. *v.* London & North Eastern Ry. Co. & London Midland & Scottish Ry. Co. (1926); **8.** *Carr.* No. 1377l, 1377o
Tatem, Ltd. *v.* Gamboa (1938); **12.** *Contr.* No. 3188a
Tatham, *Ex p.*, *Re* London Bridge Acts (1888); **11.** *Comp. Pche.* No. 1614a
Tatisich *v.* Edwards (Can.); **36.** *Negl.* p. 17
Tatroff *v.* Ray (Can.); **35.** *Mtge.* p. 45
Tattersall *v.* Drysdale (1935); **29.** *Insce.* Nos. 3217cc, 3217dd
— *v.* Peel, *Re* Peel (1936); **43.** *Trusts*, No. 2289b
— *v.* Sladen (1928); **34.** *Med.* No. 205a
Tattrie *v.* Dykins (Can.); **35.** *Mistake*, p. 9
Taubman *v.* Pacific Steam Navigation Co. (1872); **8.** *Carr.* No. 851b
Taunton Revenue Officer *v.* Sibley & Donovan (1932); **1.** *Action*, No. 18b; **30.** *Jdgmts.* Nos. 573a, 573b, 588c, 588d; **38.** *Rates*, No. 226y
Tauranga Borough Corpn. *v.* A.-G. (N.Z.); **13.** *Corpns.* p. 31
Tawny *v.* Winnipeg City (Can.); **39.** *Revenue*, p. 27
Taxation Comr. *v.* Beard, Watson & Co., Ltd. (Aus.); **39.** *Revenue*, p. 15
— *v.* Commercial Banking Co. of Sydney (Aus.); **28.** *Inc. T.* p. 42
Taxation Comrs. *v.* English, Scottish & Australian Bank (1920); **3.** *Bank.* Nos. 292a, 692a
— *v.* Victorian Hardware Club (Aus.); **39.** *Revenue*, p. 23
Taxation Federal Comr. *v.* Australian Tesselated Tile Co. Proprietary, Ltd. (Aus.); **28.** *Inc. T.* p. 101
— *v.* Clarke (Aus.); **28.** *Inc. T.* p. 101
— *v.* Fisher's Cooperage Pty., Ltd. (Aus.); **39.** *Revenue*, p. 16
— *v.* Reid (Aus.); **28.** *Inc. T.* p. 99
— *v.* Rochester (Aus.); **39.** *Revenue*, p. 16
Taxation of Costs, *Re*, *Re* Crocker (1936); **42.** *Solrs.* No. 3677a
—, *Re*, *Re* Solicitor (1936); **42.** *Solrs.* Nos. 1563b, 2467a
—, *Re*, *Re* Solicitors (1935); **42.** *Solrs.* No. 1715a
—, *Re*, *Re* T. A. M. (1937); *Pract.* No. 4651a
Taxes Comr. *v.* British Australian Wool Realization Assocn., Ltd. (Aus.); **28.** *Inc. T.* p. 27
— *v.* Camphin (Aus.); **12.** *Contr.* p. 4
— *v.* Union Trustee Co. of Australia, Ltd. (Aus.); **28.** *Inc. T.* p. 27
Tay Salmon Co. *v.* Speedie (Scot.); **30.** *L. & T.* p. 42
Taylder *v.* Lambton, Hetton & Joicey Collieries, Ltd. (1928); **34.** *Mast. & S.* No. 3056c
Taylor, *In the Estate of* (1929); **23.** *Exors.* No. 3819d
—, *Re* (Can.); **5.** *Bkpcy.* p. 76
—, *Re*, Pullan *v.* Taylor (1931); **18.** *Desct.* No. 283g
—, *Re*, Taylor *v.* Baker (N.Z.); **44.** *Wills*, p. 32
—, *Re*, — *v.* Taylor (1931); **44.** *Wills*, No. 3253a
— *v.* Addems & Addems (Can.); **36.** *Negl.* p. 34
— *v.* Ainslie (Can.); **36.** *Negl.* p. 17
— *v.* Alexander (Can.); **2.** *Animals*, p. 64
— *v.* Allen (1741); **39.** *Recrs.* No. 233a
— *v.* Arrol (Sir William) & Co., Ltd. (1937); **34.** *Mast. & S.* No. 4068a
Taylor *v.* Baker, *Re* Taylor (N.Z.); **44.** *Wills*, p. 32
— *v.* British Legal Life Assurance Co. (1925); **31.** *L. & T.* No. 1810a
— *v.* Brodie (Can.); **24.** *Exors.* p. 42
— *v.* Burpee (Can.); **18.** *Distr.* p. 30
— *v.* Church Union (Incorporating English Church Union) (1935); **34.** *Mast. & S.* No. 3110a
— *v.* Danks (Edwin) & Co. (Oldbury), Ltd. (1934); **34.** *Mast. & S.* No. 3299b
— *v.* Foran (Can.); **32.** *Lien*, p. 23
— *v.* Gifford (Can.); **44.** *Work*, p. 58
— *v.* Gray (Can.); **36.** *Negl.* p. 25
— *v.* Hamilton (Aus.); **32.** *Libel*, p. 5
— *v.* Horn (Scot.); **42.** *Str. Traf.* p. 50
— *v.* Hudson's Bay Co. (Can.); **34.** *Mast. & S.* p. 19
— *v.* Kinnon (Can.); **36.** *Negl.* p. 3
— *v.* Leveys (Can.); **4.** *Bkpcy.* p. 36; **5.** *Bkpcy.* p. 84
— *v.* Lock (1930); **34.** *Mast. & S.* No. 2340c
— *v.* — (No. 2) (1930); **34.** *Mast. & S.* No. 2437a
— *v.* London Assurance Co. (Can.); **29.** *Insce.* p. 28
— *v.* London Life Insurance Co. (Can.); **35.** *Mtge.* p. 51
— *v.* Mackintosh (Can.); **1.** *Action*, p. 17; **17.** *Dep.* pp. 51, 54
— *v.* Main Roads Board (Aus.); **36.** *Negl.* p. 17
— *v.* Minister of Health (1928); **37.** *Poor L.* No. 1672b
— *v.* North, *Re* Sanger (1938); **23.** *Exors.* No. 5917g
— *v.* People's Loan & Savings Corpn. (Can.); **31.** *L. & T.* p. 61
— *v.* R. (Aus.); **14.** *Crim.* p. 34
— *v.* Rabbitts (Can.); **1.** *Agcy.* p. 78
— *v.* Reed (1815); **7.** *Bounds. & F.* No. 271a
— *v.* Regis (Can.); **24.** *Exors.* p. 39
— *v.* Richardson (1938); **42.** *Solrs.* No. 4737b
— *v.* Ritchie (Can.); **37.** *Police*, p. 10
— *v.* Robinson (Can.); **26.** *Hghys.* p. 35
— *v.* Smith (Aus.); **1.** *Agcy.* p. 87
— *v.* Stendall (1845); **43.** *Tresp.* No. 362a
— *v.* Stoger, *Re* Shee (1934); **40.** *Stllmts.* No. 1958a
— *v.* Taylor (1926); **27.** *H. & W.* No. 5730a
— *v.* — (1938); **28.** *Inc. T.* No. 391d
— *v.* — (Can.); **11.** *Confl.* p. 24
— *v.* —, *Re* Taylor (1931); **44.** *Wills*, No. 3253a
— *v.* —, *Re* Wilford's Estate (1879); **37.** *Pers. Prop.* No. 94a
— *v.* Taylor & Barclays Bank, Ltd. (1933); **17.** *Deeds*, No. 824a
— *v.* Thompson (1930); **3.** *Bailmt.* No. 244b
— *v.* Thorn (Aus.); **37.** *Post Off.* p. 22
— *v.* Townend (1938); **26.** *Hghys.* No. 1435f
— *v.* Turner (Can.); **17.** *Damgs.* p. 15
— *v.* Twinberrow (1930); **32.** *Limit. of A.* No. 1486a
— *v.* Webb (1937); **31.** *L. & T.* Nos. 4161a, 4575b, 4580a
— *v.* Wenkenbach (Ind.); **11.** *Confl.* p. 48
— *v.* Wood (1935); **34.** *Mast. & S.* No. 2990a
Taylor (J.) & Sons, Ltd. *v.* Union-Castle Mail S.S. Co., Ltd. (1932); **36.** *Negl.* No. 361b
Taylor Estate *Re*, *Re* Bannatyne & Assiniboia Rural Municipality (No. 2) (Can.); **11.** *Comp. Pche.* p. 10
Taylor Estate & Assiniboia Rural Municipality, *Re* (Can.); **11.** *Comp. Pche.* p. 15
— (No. 2), *Re* (Can.); **11.** *Comp. Pche.* p. 15
Taylor Hardware, Ltd. *v.* Canadian Associated Gold Fields, Ltd. (Can.); **32.** *Lien*, p. 24
Taylor's Appeal, *Re* (1934); **8.** *Carr.* Nos. 1664, 1680
Taylor's Estate, *Re*, Goldie *v.* Adam (1938); **44.** *Wills*, No. 2016a

Taylor's Settlement Trusts, *Re*, Public Trustee *v.* Taylor (1929); **5.** *Bkpcy.* No. 6401a
Tayside Floorcloth Co., Ltd., *Re* (Scot.); **9.** *Coys.* p. 52
Tea Financing Syndicate, Ltd. *v.* Chandra Kamal Bezboruate (Ind.); **32.** *Limit. of A.* p. 28
Tea Trading Co. K. & C. Popoff Bros., *Re* (1933); **10.** *Coys.* No. 8548d; *Pract.* No. 5021a
Teahon *v.* Leamey (Can.); **24.** *Exors.* p. 34
Teall *v.* Teall (1938); **27.** *H. & W.* Nos. 6102c, 6168a
Teasdall *v.* Sun Life Assurance Co. of Canada (Can.); **29.** *Insce.* p. 33
Teather *v.* Turner (1863); **39.** *Royal F.* No. 261a
Tebbutt *v.* Holt (1844); **21.** *Exon.* No. 392a
Tecalemit, Ltd. *v.* Ewarts, Ltd. (1927); **36.** *Pats.* Nos. 3120b, 3212a
— *v.* Wakefield (C. C.) & Co., Ltd. (1927); **36.** *Pats.* No. 3120a
Teck *v.* Hayward (Can.); **38.** *Rates*, p. 50
Tecumseh Public Utilities Commission & McPhee, *Re* (Can.); **43.** *Trusts*, p. 66
Tedlock *v.* McKelvie (Can.); **36.** *Negl.* p. 32
Tees *v.* Tees (Ir.); **27.** *H. & W.* p. 73
Tees Conservancy Comrs. *v.* James (1935); **30.** *Jdgmts.* No. 432a; **32.** *Limit. of A.* No. 56a; **33.** *L. G.* No. 662a
Tegg, *Re*, Public Trustee *v.* Bryant (1936); **44.** *Wills*, Nos. 2825b, 2825c
Tegler Estate, *Re* (Can.); **44.** *Wills*, p. 49
Teilo Tinplate Co., Ltd. *v.* Griffiths (1935); **34.** *Mast. & S.* No. 3927g
Telephone Manufacturing Co., Ltd. *v.* Abel (1928); **34.** *Mast. & S.* No. 2968a
— *v.* — (No. 2) (1929); **34.** *Mast. & S.* Nos. 2968a, 2968b
Tellier *v.* La Cité de St. Hyacinthe (Can.); **38.** *Rates*, p. 77
Telsen Electric Co., Ltd. *v.* Eastick & Sons **10.** *Coys.* No. 5042a
— *v.* — (No. 2) (1938); **2.** *Arbn.* No. 2464a
Temperance Loan Fund *v.* Erwood (1927); **35.** *Money*, No. 442a
Temperance Loan Fund, Ltd. *v.* Rose (1932); **35.** *Money*, Nos. 353c, 353g, 353o, 353v, 380a
Tempest *v.* Kilner (1846); **9.** *Coys.* No. 2274a
Temple, *Re*, *Ex p.* Temple (1814); **5.** *Bkpcy.* No. 5482
— *v.* Elvery (Can.); **2.** *Animals*, p. 63
Temple Terrace Assets Co. *v.* Whynot (Can.); **6.** *B. of Exch.* p. 2
Templeton *v.* Coupe (E. & J.) & Sons, Ltd. (1932); **34.** *Mast. & S.* No. 3025c
Templeton *v.* Parkin (William) & Co., Ltd. (1929); **34.** *Mast. & S.* No. 2220a
— *v.* Royal Trust Co., *Re* Templeton Estate (Can.); **37.** *Powers*, p. 24
— *v.* Waddington (Can.); **3.** *Bailmt.* p. 8
Templeton Estate, *Re*, Templeton *v.* Royal Trust Co. (Can.); **37.** *Powers*, p. 24
Tempus Shipping Co., Ltd. *v.* Dreyfus, Louis & Co., Ltd. (1930); **41.** *Ship.* Nos. 3099a, 4202a, 8103a
— *v.* Trott (1929); **34.** *Mast. & S.* No. 3698c
Tenasse, *Ex p.* (Can.); **5.** *Bkpcy.* p. 85
Tenenbein, *Re*, *Re* Bankruptcy Act (Can.); **4.** *Bkpcy.* p. 10
Tennant *v.* St. John City (Can.); **38.** *Rates*, p. 49
— *v.* Turner, *Re* Turner (1938); **23.** *Exors.* No. 5571a
Tennant's Trustees *v.* Lord Advocate (Scot.); **21.** *E. D.* p. 6
Tennent *v.* Moore (A.-G.) & Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 155
Tenold & Tannas *v.* Canadian Pacific Ry. Co. (Can.); **22.** *Evid.* p. 16
Tereza (Titli) *v.* Jones (Ind.); **27.** *H. & W.* p. 22; **33.** *Lunat.* p. 12
Terminal Grain Co. *v.* Soderberg (Can.); **21.** *Exon.* p. 49
Ternan, *Re* (1864); **15.** *Crim.* No. 7851a
Terneuzen, The (1938); **41.** *Ship.* No. 685d
Terrene, Ltd. *v.* Nelson (1937); **40.** *S. Land*, No. 2922e
Terrill, *Ex p.*, *Re* Consolidated Press, Ltd. (Aus.); **16.** *Cntmpt.* p. 3
Terroni & Necchi *v.* Corsini (1931); **31.** *L. & T.* No. 4841b
Terry, *Re*, Terry *v.* Terry (1929); **24.** *Exors.* No. 8280a
— *v.* Automobile Owners Assocn. (Can.); **8.** *Carr.* pp. 1, 26
— *v.* MacDonald (Can.); **42.** *Solrs.* p. 9
— *v.* Sham's Garage (S. Af.); **37.** *Pers. Prop.* p. 9
— *v.* Terry, *Re* Terry (1929); **24.** *Exors.* No. 8280a
Terry & Rowley *v.* Spencer & Beattie (1935); **36.** *Pats.* No. 2389a
Tervaete, The (1922); **1.** *Adm.* No. 142c
Tesoski, *Re* (Can.); **30.** *Intox.* p. 10
Testator's Family Maintenance Act, *Re*, *Re* Ferguson Estate (Can.); **44.** *Wills*, p. 55
Tetarenko *v.* Tetarenko (Can.); **28.** *Injon.* p. 146
Tetley, *Re*, A.-G. *v.* National Provincial & Union Bank of England (1924); **8.** *Char.* No. 740b
—, *Re*, National Provincial & Union Bank of England, Ltd. *v.* Tetley (1923); **8.** *Char.* No. 740b
Tetrault *v.* Vaughan (Can.); **38.** *Rates*, pp. 84, 85
Tetreault *v.* Montreal Harbour Comrs. (1926); **17.** *Dep.* No. 378a
Teur *v.* London Life Insurance Co. (Can.); **29.** *Insce.* p. 38
Tevlin *v.* Gilsenan (Ir.); **24.** *Exors.* p. 40
Tewkesbury Gas Co., *Re*, Tysol *v.* Tewkesbury Gas Co. (1911); **10.** *Coys.* No. 4652b
— *v.* — (1912); **10.** *Coys.* No. 4652b
Texas Co. *v.* Bombay Banking Co., Ltd. (Ind.); **1.** *Agcy.* p. 100
Texas Co. (S. A.), Ltd. *v.* Webb & Tomlinson (S. Af.); **26.** *Guar.* p. 8
Thacker *v.* Smoky Lake Municipal District (Can.); **38.** *Rates*, p. 85
Thacker Estate, *Re* (Can.); **21.** *E. D.* p. 17
Thain, *Re*, Thain *v.* Taylor (1926); **28.** *Infls.* No. 1156a
— *v.* Gibbs, *Re* Skeats (1936); **23.** *Exors.* No. 5408a
Thakar Das *v.* Malik Chand (Ind.); **8.** *Chos.* p. 91
Thakarsingh *v.* Uttamkaur (Ind.); **1.** *Action*, p. 14; **21.** *Estpl.* p. 28
Thakur Jamuna Prasad Singh *v.* Jagarnath Prasad Singh (Ind.); **17.** *Dep.* p. 84
Thames Steam Tug & Lighterage Co. *v.* Ingram (1927); **34.** *Mast. & S.* No. 3766a
Thames III, The (1928); **1.** *Adm.* No. 1237b
Thangammal Ayiyar *v.* Krishnan (Ind.); **3.** *Barr.* p. 49
Thanmul Sowcar *v.* Nattu Ramadoss Reddiai (Ind.); **35.** *Mtge.* p. 42
Thatcher *v.* Bowman (Can.); **30.** *L. & T.* p. 39
Thebault, *Re*, *Re* Khattar (Can.); **30.** *Intox.* p. 18
Theebridge *v.* Kilburne (1751); **40.** *Stlmts.* No. 74a
Theems, The (1938); **41.** *Ship.* No. 8065a
Thellusson *v.* Woodford (1799); **18.** *Desct.* No. 165c
— *v.* Woodford (1805); **18.** *Desct.* No. 165c
Thelnetham & Hinderclay (St. Edmundsbury & Ipswich), Benefices of, *Re* (1934); **19.** *Eccl.* Nos. 2443d, 2443e
Theobald *v.* Oliver, *Re* Oliver (1927); **32.** *Limit. of A.* Nos. 1568a, 1584a
Theobald *v.* Winnipeg Musicians Assocn. (Can.); **25.** *Fr. Soc.* p. 20

Theosophical Broadcasting Station, Ltd. *v.* Parks (Aus.); **43.** *Trade*, p. 5
Theriault, *Ex p.*, R. *v.* O Brien (Can.); **16.** *Cr. Pract.* p. 40
— *v.* R. (Can.); **11.** *Const. L.* p. 66
Thiboutot *v.* R. (Can.); **34.** *Mast. & S.* p. 22
Thien *v.* Bank of British North America (Can.); **3.** *Bank*, p. 44
Thiessen, *Re* (Can.); **4.** *Bkpcy.* p. 46
Thiffault *v.* R. (Can.), [1933] S. C. R. 242; **14.** *Crim.* p. 58
— *v.* — (Can.), [1933] S. C. R. 509; **14.** *Crim.* p. 40
Thiselton *v.* Commercial Union Assurance Co. (1926); **10.** *Coys.* No. 7482a
Thom *v.* Everett, *Re* Christensen (Hans C.), Ltd. (Can.); **35.** *Mtge.* p. 31
— *v.* Monmouthshire County Council (1935); **34.** *Med.* Nos. 234a, 234b
Thom *v.* Simpkin (Can.); **42.** *Str. Traf.* p. 46
Thom & Lamont *v.* Walker (Can.); **21.** *Estpl.* p. 34
Thomas, *Ex p.* (Can.); **15.** *Crim.* p. 86
—, *Ex p.*, R. *v.* Jones (1921); **15.** *Crim.* No. 9480a
—, *Re* (Aus.); **16.** *Cntmpt.* p. 2
—, *Re* (Can.); **43.** *Trusts*, p. 59
Thomas (Sir Robert), *Re*, *Re* William Thomas Shipping Co., Ltd., Dillon (H. W.) & Sons, Ltd. *v.* William Thomas Shipping Co., Ltd. (1930); **16.** *Cntmpt.* No. 224a
Thomas, *Re*, Thomas *v.* Thompson (1930); **43.** *Trusts*, Nos. 3639a, 3639d
— *v.* Abertillery Urban District Council (1928); **19.** *Educ.* Nos. 14a, 30?c
— *v.* Alderton, Ltd. (1928); **16.** *Courts*, No. 840a
— *v.* A.-G. (1937); **30.** *Jdgmts.* No. 202b
— *v.* Baglan Engineering Co. (1919), Ltd. (1934); **34.** *Mast. & S.* No. 2849b
— *v.* Bolton (Thomas) & Son, Ltd. (1928); **24.** *Fact.* No. 68a
— *v.* Davies (Aus.); **42.** *Stats.* p. 30
— *v.* Davis, *Re* Davis (1923); **8.** *Char.* No. 724a
— *v.* Day (Can.); **1.** *Action*, p. 3
— *v.* Evans (Richard) & Co. (1927); **28.** *Inc. T.* No. 307a; **30.** *Jdgmts.* No. 569b
— *v.* Gale (Can.); **1.** *Agcy.* p. 81; **9.** *Coys.* p. 34
— *v.* Galloway (Scot.); **42.** *Str. Traf.* p. 49
— *v.* Great Mountain Collieries Co., Ltd. (1921); **1.** *Action*, No. 116a
— *v.* Guay (Can.); **38.** *Real Prop.* p. 95
— *v.* Haliburton (Can.); **17.** *Dep.* p. 53
— *v.* Hammersmith Borough Council (1938); **7.** *Bldg. Conts.* No. 443a
— *v.* Hoskins, *Re* Michell (1929); **44.** *Wills*, No. 8698a
— *v.* Hughes (1929); **19.** *Educ.* No. 78a
— *v.* Jacobs (1935); **31.** *L. & T.* No. 7352c
— *v.* Jones (1921); **3.** *Basty.* No. 325a
— *v.* Jones (1928); **23.** *Exors.* No. 3127b; **33.** *Lunat.* No. 206a
— *v.* —, *In the Estate of* Jones (1928); **23.** *Exors.* No. 3127b
— *v.* Lawson, *Re* Alberni Pacific Lumber Co. (Can.); **10.** *Coys.* p. 82
— *v.* Lewis (1937); **31.** *L. & T.* No. 2741a
— *v.* Marine Insurance Co. (Nfld.); **17.** *Deeds*, p. 30
— *v.* Metropolitan Housing Corpn., Ltd. (1936); **31.** *L. & T.* No. 7356b
— *v.* Morgan (1835); **2.** *Animals*, No. 301a
— *v.* Newington Licensing JJ. (1926); **30.** *Intox.* No. 141a
— *v.* Ocean Coal Co., Ltd. (1933); **34.** *Mast. & S.* No. 2511a
— *v.* Parley (Can.); **25.** *Gaming*, p. 28
— *v.* Pemberton (1816); **5.** *Bkpcy.* No. 7648a
— *v.* R. (Can.); **39.** *Royal F.* p. 31
— *v.* Ryan (Can.); **3.** *Basty.* p. 54
Thomas *v.* Sawkins (1935); **14.** *Crim.* No. 5448c
— *v.* Thomas (1923); **27.** *H. & W.* No. 6133b
— *v.* — (Aus.) (1926); **27.** *H. & W.* p. 44
— *v.* — (Aus.) (1931); **22.** *Evid.* p. 15
— *v.* — (No. 2) (Aus.); **27.** *H. & W.* p. 41
— *v.* —, *Re* Evans (1908); **39.** *Rntchgs.* No. 336a
— *v.* Thompson, *Re* Thomas (1930); **43.** *Trusts*, Nos. 3639a, 3639d
— *v.* Todd (1926); **10.** *Coys.* Nos. 4979a, 5184a, 6904a
— *v.* Winnipeg City (Can.); **36.** *Negl.* p. 35
— *v.* Worden (Can.); **40.** *Set-Off*, p. 23
Thomas Allen, Ltd. *v.* Hagger (No. 1) (1931); **34.** *Mast. & S.* No. 3762a
— *v.* — (No. 2) (1931); **34.** *Mast. & S.* No. 4043a
— *v.* — (No. 3) (1931); **34.** *Mast. & S.* No. 3762b
Thomas & Hamilton City, *Re* (Can.); **38.** *Pub. Hlth.* p. 15
Thomas Bear & Sons, Ltd. *v.* Prayag Narain (Ind.); **43.** *Trade Mks.* p. 36
Thomas Garage, Ltd. *v.* Prozanowski (Can.); **39.** *S. Goods*, p. 57
Thomas Henry, Ltd. *v.* Trustee, *Re* Kern (P. E. & B. E.) (1932); **5.** *Bkpcy.* No. 6918c
Thomas Merthyr Colliery Co., Ltd. *v.* Davis (1932); **28.** *Inc. T.* No. 223a
Thomas Sanders' Patent, *Re* (1931); **36.** *Pats.* No. 1925a
Thomas (William) Shipping Co., Ltd., *Re*, Dillon (H. W.) & Sons, Ltd. *v.* William Thomas Shipping Co., Ltd., *Re* Thomas (Sir Robert) (1930); **16.** *Cntmpt.* No. 224a
Thomas W. Ward, Ltd. *v.* Waugh (Scot.); **38.** *Pub. Hlth.* p. 31
Thomas Withers & Sons, Ltd. *v.* Samuel Withers & Co., Ltd. (1926); **32.** *Libel*, No. 1638a
Thomas' Trusts, *Re* (1895); **34.** *Mines*, No. 335b
Thomas's Will Trusts, *Re*, Powell *v.* Thomas (1930); **44.** *Wills*, No. 2665a
Thompson, *Ex p.*, R. *v.* Edmonton Income Tax Comrs. (1929); **28.** *Inc. T.* No. 631a
—, *Re* (Can.) (1926); **24.** *Exors.* p. 40
—, *Re* (Can.) (1931); **6.** *B. of Exch.* p. 21
—, *Re* (Can.) (1934); **19.** *Eccl.* p. 24
—, *Re* (Can.) (1935); **28.** *Infts.* p. 137
—, *Re* (Can.) (1936); **44.** *Wills*, p. 53
—, *Re*, *Ex p.* Trustees (Can.); **5.** *Bkpcy.* pp. 70, 77
—, *Re*, Public Trustee *v.* Husband (1936); **23.** *Exors.* No. 5762a
—, *Re*, Public Trustee *v.* Lloyd (1934); **43.** *Trusts*, No. 561a
—, *Re*, Thompson *v.* Thompson (Can.); **28.** *Infts.* p. 136
— *v.* Ashton, *Re* MacGregor (Aus.); **8.** *Char.* p. 68
— *v.* Barclay (1828); **11.** *Const. L.* No. 388
— *v.* — (1831); **11.** *Const. L.* No. 388
— *v.* Barry (Can.); **34.** *Med.* p. 186
— *v.* Bettinger (No. 2) (1928); **36.** *Pats.* No. 3442a
— *v.* Bourchier (Can.); **42.** *Str. Traf.* p. 61
— *v.* Bruce (1927); **28.** *Inc. T.* No. 539a
— *v.* Canadian Pacific Ry. Co. (Can.); **8.** *Carr.* p. 5
— *v.* Crawford (Can.); **27.** *H. & W.* p. 5
— *v.* Donlands Properties, Ltd. (Can.); **32.** *Limit. of A.* p. 34
— *v.* Duncan, *Re* Joicey (1932); **37.** *Powers*, No. 256b
— *v.* Ellis (Can.); **21.** *Exon.* p. 47
— *v.* Fraser (Can.); **21.** *Exon.* p. 54
— *v.* Fraser Companies, Ltd. (Can.); **11.** *Const. L.* p. 77
— *v.* Inland Revenue Comrs. (Scot.); **28.** *Inc. T.* p. 3
— *v.* Jefferson (1928); **36.** *Pats.* No. 1534b
— *v.* London & North Eastern Ry. Co. (1935); **34.** *Mast. & S.* No. 3362a

Thompson *v.* London, Midland & Scottish Ry. Co. (1930); **8.** *Carr.* No. 695a, 695b, 695c
— *v.* Lynne (Can.); **1.** *Agcy.* pp. 55, 66, 67
— *v.* McCaig (Can.); **42.** *Str. Traf.* p. 38
— *v.* Mahupuku, *Re* Tamahau Mahupuku (N.Z.); **44.** *Wills*, p. 31
— *v.* Milliken (Can.); **35.** *Mtge.* p. 45
— *v.* North Battleford (Can.); **17.** *Deeds*, p. 28
— *v.* Pearson (Can.); **16.** *Courts*, p. 10
— *v.* Reynolds (Ir.); **1.** *Agcy.* p. 99
— *v.* Royal Bank of Canada (Can.); **33.** *Lunat.* p. 13
— *v.* Ryall & Cunningham (Can.); **1.** *Action*, p. 6
— *v.* Schneider (Can.); **12.** *Contr.* p. 9; **22.** *Evid.* p. 18
— *v.* Scollard (Can.) (1929); **40.** *Set-off*, p. 23
— *v.* — (Can.) (1930); **5.** *Bkpcy.* p. 85
— *v.* Sholinder (Can.); **39.** *S. Goods*, p. 57
— *v.* Thompson (1934); **27.** *H. & W.* No. 6251a
— (otherwise Hulton) *v.* Thompson (1938); **27** *H. & W.* Nos. 3837a, 5178a
— *v.* — (Can.) (1933); **27.** *H. & W.* p. 73
— *v.* — (Can.) (1935); **27.** *H. & W.* p. 74
— *v.* — (Can.) (1936); **27.** *H. & W.* p. 53
— *v.* —, *Re* Thompson (Can.); **28.** *Infts.* p. 136
— *v.* Trust & Loan Co. of Canada (1932); **28.** *Inc. T.* No. 99m
— *v.* Truth & Sportsman, Ltd. (Aus.); **32.** *Libel*, p. 14
— *v.* Ward (1858); **7.** *B. of Sale*, No. 761a
— *v.* Warner Brothers, Pictures, Ltd. (1929); **13.** *Coprt.* No. 290a
— *v.* Wood (Can.); **36.** *Negl.* p. 16
Thompson & Alix, Ltd. *v.* Smith (Can.) (1929); **39.** *S. Goods*, p. 49
— *v.* Smith (Can.) (1933); **39.** *S. Goods*, p. 48
Thompson & Co. *v.* Ferraro (1913); **34.** *Mast. & S.* No. 3671
Thompson & Jenkins, *Re* (Can.); **40.** *S. Land*, p. 5
Thompson & Norris Manufacturing Co., Ltd. *v.* Ardley (P. H.) & Co. (1929); **41.** *Ship.* No. 3070a
Thompson & Toronto, *Re* (Can.); **30.** *Jdgmts.* p. 20
Thompson Estate, *Re* (Ir.); **25.** *Gifts*, p. 52
Thompson, Meggitt & Co., Ltd. *v.* Moody (Aus.); **2.** *Arbn* pp. 92, 93
Thompson Powder Co., *Re*, *Re* Winding-up Act (Can.); **4.** *Bkpcy.* p. 3
Thompson Sons & Co., *Re*, Newton *v.* Hamilton (Can.); **5.** *Bkpcy.* p. 50
Thomsett, *Re*, Thomsett *v.* Thomsett (1936); **28.** *Infts.* No. 1253a
Thomson, *Ex p.*, R. *v.* Edmonton Income Tax Comrs. (1929); **28.** *Inc. T.* No. 631a
—, *Re* (Can.); **26.** *Guar.* pp. 1, 5
—, *Re*, *Ex p.* M'Lintock (Scot.); **2.** *Aliens*, p. 39
—, *Re*, Thomson *v.* Allen (1930); **24.** *Exors.* No. 5977a
—, *Re*, Thomson *v.* Thomson (N.Z.); **44.** *Wills*, p. 55
— *v.* Allen, *Re* Thomson (1930); **24.** *Exors.* No. 5977a
— *v.* Bruty, *Re* Thomson's Mortgage Trusts (1920); **1.** *Action*, Nos. 48a, 64a
— *v.* Cushing (Can.); **21.** *Exon.* p. 60
— *v.* Delaney (Can.); **40.** *S. Lands*, p. 9
— *v.* Dreyfus (Louis) & Co. (1936); **41.** *Ship.* No. 2510a
— *v.* Drysdale (Scot.); **10.** *Coys.* p. 68
— *v.* Galloway (Scot.); **2.** *Agric.* p. 7
— *v.* Hamilton (N.Z.); **34.** *Mast. & S.* p. 14
— *v.* Harrison (Can.); **32.** *Lien*, p. 26; **35.** *Mtge.* p. 40
— *v.* Louis Dreyfus & Co. (1936); **41.** *Ship.* No. 2510a
Thomson *v.* Micks Lambert & Co. (1933); **41.** *Ship.* No. 4304a
— *v.* Richardson (Aus.); **42.** *Sp. Pfce.* p. 19
— *v.* Stamp Duties Comr. (1929); **20.** *E. D.* p. 3
— *v.* Tait (J.), Ltd. (N.Z.); **28.** *Injon.* p. 154
— *v.* Thomson (Can.); **27.** *H. & W.* p. 18
— *v.* —, *Re* Thomson (N.Z.); **44.** *Wills*, p. 55
— *v.* Walsh (Can.); **35.** *Mtge.* p. 35
Thomson & Co. *v.* McNulty (Scot.); **32.** *Libel*, p. 1
Thomson's Mortgage Trusts. *Re*, Thomson *v.* Bruty (1920); **1.** *Action*, Nos. 48a, 64a
Thomson's Patent, *Re* (1934); **36.** *Pats.* No. 1261b
Thoreson *v.* Blairmore School District Board of Trustees (Can.); **12.** *Contr.* p. 9; **19.** *Educ.* p. 45; **21.** *Exon.* pp. 55, 57
— *v.* Coulee (Can.); **26.** *Highys.* p. 27
Thornber, *Re*, Crabtree *v.* Thornber (1937); **44.** *Wills*, No. 299c
Thornber Bros., Ltd. *v.* Macinnes (1937); **28.** *Inc. T.* No. 77a
Thornbury Case (1886); **20.** *Elect.* Nos. 482a, 1539a
Thorndyke-Trenholme Realty Co. *v.* Lyall Shipbuilding Co. (Can.); **1.** *Agcy.* p. 87
Thorne, *Re* (Can.); **8.** *Char.* p. 73
— *v.* Canadian Steering Wheel Co. (Can.); **5.** *Bkpcy.* p. 84
— *v.* Columbia Power Co., Ltd. (Can.); **30.** *Jdgmts.* p. 19
— *v.* Motor Trade Assocn. (1937); **43.** *Trade*, No. 1235a
— *v.* Neal (1842); *Pract.* No. 2578a
— *v.* Watkins (1750); **11.** *Confl.* No. 468a
— *v.* Williams (Can.); **12.** *Contr.* p. 33
Thorneloe *v.* Stirling (Can.); **28.** *Infts.* p. 132
Thornley *v.* Brown (1929); **28.** *Inc. T.* No. 628a
Thornley & Son *v.* London, Midland & Scottish Ry. Co. (1935); **8.** *Carr.* No. 1567
Thornton, *Ex p.*, R. *v.* West Riding of Yorkshire JJ. (1837); **33.** *Mags.* No. 958c
—, *Re*, R. *v.* West Riding of Yorkshire JJ. (1837); **33.** *Mags.* No. 958c
— *v.* Church of England Trusts Corpn. (Melbourne Diocese), *Re* Hughes (Aus.); **8.** *Char.* p. 82
— *v.* Cochran-Carr (William), Ltd. (1931); **34.** *Mast. & S.* No. 2557a
— *v.* Fisher (S. Af.); **36.** *Negl.* p. 33
— *v.* Gutta Percha Corpn., Ltd., *Re* Gutta Percha Corpn., Ltd. (1899); **10.** *Coys.* No. 5134a
— *v.* Melbourne Church of England Trusts Corpn., *Re* Hughes (Aus.); **8.** *Char.* p. 82
— *v.* Thompson (Aus.); **31.** *L. & T.* p. 77
— *v.* William Cochran-Carr, Ltd. (1931); **34.** *Mast. & S.* No. 2557a
Thornton Davidson & Co., *Re*, Finlayson *v.* Balfour, White & Co. (Can.); **5.** *Bkpcy.* p. 83
Thornton's Executrix *v.* Angus & Sons' Trustee (Scot.); **34.** *Mast. & S.* p. 132
Thornycroft (J. I.) & Co., Ltd. *v.* Thornycroft (1927); **9.** *Coys.* No. 3988a
Thorpe (J. W.), *Re* (1932); **42.** *Solrs.* No. 4737a
Thorpe *v.* Gisbourne (1825); **16.** *Cntmpt.* No. 698
— *v.* Linney (1885); **20.** *Elect.* No. 1025a
— *v.* Sadler (A. L.) & Son (1927); **34.** *Mast. & S.* No. 3702a
Thorpe's Case (1918); **14.** *Crim.* No. 5241a
Thos. W. Ward, Ltd. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, pp. 54, 56
Thoun, *Re* (Can.); **5.** *Bkpcy.* p. 95
Throstlegarth, The (1899); **1.** *Adm.* No. 1603a
Thurgood *v.* Vigneau (Can.); **19.** *Educ.* p. 36
Thurrock, Grays & Tilbury Joint Sewerage Board *v.* Thames Land Co., Ltd. (1925); **11.** *Comp. Pche.* Nos. 650a, 2203a
Thynne *v.* St. Maur, *Re* Somerset (Duke) (1886); **23.** *Exors.* No. 5654a

Tibbals *v.* Port of London Authority (1937); **39.** *Revenue*, No. 841b
Tibbits *v.* Tibbits (Can.); **27.** *H. & W.* p. 55
Tibo Products Co., Ltd. *v.* Salt (1929); **36.** *Pats.* No. 3343a
Tice *v.* Tice (Can.); **27.** *H. & W.* p. 23
Ticehurst's Settlement, *Re*, Wyatt *v.* Ticehurst (1930); **21.** *E. D.* No. 272c
Tickle *v.* London, Midland & Scottish, Great Western, & London & North Eastern Ry. Cos. (1935); **8.** *Carr.* Nos. 1617, 1628
Tickner *v.* Clifton (1929); **31.** *L. & T.* Nos. 7107a, 7225a
Ticonderoga Pulp & Paper Co. *v.* Cowans (Can.); **9.** *Coys.* p. 39
Tidy *v.* Battman (1934); **36.** *Negl.* No. 389c
Tieman *v.* McKenzie (Can.); **17.** *Damgs.* p. 10
Tierney, *Re* (1855); **22.** *Evid.* Nos. 5873a, 5880a, 6561a
—, *Re* (Can.); **38.** *Real Prop.* p. 89
Tiffany (Doe d.) *v.* McEwan (Can.); **21.** *Estpl.* p. 35
Tigon Mining & Finance Corpn., Ltd. *v.* South Tigon Mining Co., Ltd. (1931); **43.** *Trade Mks.* Nos. 1168a, 1243b
Tilbury Town Gas Co. *v.* Maple City Oil & Gas Co. (Can.); **34.** *Mines*, p. 206
Tilden, *Re*, Coubrough *v.* Royal Society of London (1938); **44.** *Wills*, No. 2574a
Tildesley *v.* Lodge (1857); **20.** *Eqy.* No. 760a
Till, *Re*, *Ex p.* Parsons (1871); **22.** *Evid.* No. 4472a
Tillam Boehme & Tickle Pty., Ltd., *Re* (Aus.); **35.** *Money*, p. 20
Tillard *v.* Taxes Comr. (N.Z.); **28.** *Inc. T.* p. 88
Tillet *v.* Carlson & Britton (Can.); **35.** *Mtge.* p. 45
Tillie M., The *v.* R. (Can.); **25.** *Fish.* p. 4
Tilley *v.* Cleary & Henderson (Nfld.); **12.** *Contr.* p. 16
— *v.* Wilson (Can.); **36.** *Negl.* p. 30
Tillicum Athletic Club *v.* Burick (Can.); **21.** *Exon.* p. 57
Tilling-Stevens Motors *v.* Kent County Council (1929); **39.** *Revenue*, No. 140a
Tillings *v.* Lancasters Steam Coal Collieries, Ltd. (1937); **34.** *Mast. & S.* No. 3541c
Tillotson (Oswald), Ltd. *v.* Inland Revenue Comrs. (1933); **9.** *Coys.* No. 2589a
Tilmanstone (Kent) Collieries, Ltd., *Re* (1928); **34.** *Mines*, No. 325a
Tilt (Doe d.) *v.* Stratton (1828); **31.** *L. & T.* No. 5776a
Tilt Estate, *Re* (Can.); **21.** *E. D.* p. 20
Tilton *v.* McKay (Can.); **22.** *Evid.* p. 27
Timaru Borough Council *v.* Boulton (N.Z.); **3.** *Bailmt.* p. 7
Timber Regulations (Refund of Dues) Reference, *Re* (1935); **17.** *Dep.* No. 385c
Timberlands Woodpulp, Ltd. *v.* A.-G. (N.Z.); **16.** *Courts*, p. 8
Times Furnishing Co., Ltd. *v.* Hutchings (1938); **18.** *Distr.* No. 424b
Timins *v.* Timins (1938); **27.** *H. & W.* No. 3015d
Timm & Son, Ltd. *v.* Northumbrian Shipping Co., Ltd. (1938); **41.** *Ship.* Nos. 3073a, 3099c
Timmings *v.* Treadgold (N.Z.); **5.** *Bkpcy.* p. 84
Timmins *v.* Brodsworth Main Colliery Co., Ltd. (1934); **34.** *Mast. & S.* No. 3846a
— *v.* Surples (Can.); **12.** *Contr.* p. 17
Timms *v.* Williams (1842); **25.** *Fr. Soc.* No. 224a
Timoney *v.* Timoney (Ir.); **27.** *H. & W.* p. 76
Timpson's Executors *v.* Yerbury (1936); **28.** *Inc. T.* No. 425a
Tinant *v.* Simon (Can.); **7.** *B. of Sale*, p. 12
Tindal, *Re*, Perpetual Trustee Co., Ltd. *v.* Tindal (Aus.); **40.** *Sttlmts.* p. 34
Tindall *v.* Barnetts & Hoare (1887); **3.** *Bank*, No. 846a
— *v.* Wright (1922); **16.** *Courts*, No. 33b
Tinkler *v.* Goebel (Can.); **36.** *Negl.* p. 17
Tinkler's Estate, *Re* (1875); **40.** *Sttlmts.* No. 2157b
Tinkowri, etc. *v.* Ram, etc. (Ind.); **19.** *Easmt.* pp. 5, 6, 8, 13
Tinn *v.* Cunningham (1938); **24.** *Fact.* No. 207a
Tiny Separate School Trustees *v.* R. (Can.); **17.** *Dep.* p. 38
Tirnan, *Ex p.* (1864); **15.** *Crim.* No. 7851a
Tisdale *v.* Tisdale (Can.); **31.** *L. & T.* p. 46
Tisdale Township *v.* Hollinger Consolidated Gold Mines, Ltd. (Can.); **38.** *Rates*, p. 63
Titcomb *v.* Clancy (1936); **28.** *Inc. T.* No. 114c
Tithe Act, 1891, *Re*, Roberts *v.* Potts, Jones *v* Cooke (1894); **12.** *Contr.* No. 4358a
Titli (Tereza) *v.* Jones (Ind.); **27.** *H. & W.* p. 22; **33.** *Lunat.* p. 12
Titus *v.* Kinch (Can.); **15.** *Crim.* p. 82
Tivnan, *Re* (1864); **15.** *Crim.* Nos. 7850, 7851a
Tjerstrom, *Re* (Can.); **22.** *Evid.* p. 8
Toates *v.* Toates (1926); **23.** *Exors.* No 3818a
Tober *v.* Lampman (Can.); **14.** *Crim.* p. 33
Tobias *v.* Dick & Eaton Co. (Can.); **12.** *Contr.* p. 2
Tobin *v.* Tobin (1930); **27.** *H. & W.* No. 6099b
Tobin & Co. *v.* Smith (Can.); **27.** *H. & W.* p. 14
Tobin's Estate, *Re* (Can.); **23.** *Exors.* p. 2
Tocher *v.* Johnson (Can.); **2.** *Agric.* pp. 4, 15
Tocker *v.* Ayre (1821); **22.** *Evid.* No. 1602a
Tocock *v.* Honyman (1602); **21.** *Exon.* No. 817a
Tod, *Re* (Can.); **5.** *Bkpcy.* p. 77
Todd, *In the Estate of* (1926); **23.** *Exors.* Nos. 1388a, 1398a, 1410a
—, *Re* (Can.); **44.** *Wills*, p. 23
— *v.* Cochrane (Scot.); **25.** *Food*, p. 5
— *v.* De Paola (Can.); **21.** *Exon.* p. 57
— *v.* Egyptian Delta Land & Investment Co., Ltd. (1929); **28.** *Inc. T.* No. 144a
— *v.* H.M. Advocate (Scot.); **14.** *Crim.* p. 45
— *v.* Jones Brothers, Ltd. (1930); **12.** *Contr.* No. 511a; **28.** *Inc. T.* No. 210e
— *v.* MacCallum (Ir.); **34.** *Mast. & S.* p. 54
— *v.* Potvin (Can.); **1.** *Agcy.* p. 76
— *v.* Taylor, *Re* Gray (1925); **8.** *Char.* No. 199a
Todd & North Riding of Yorkshire Agricultural Executive Committee, *Re* (1921); **2.** *Agric.* Nos. 266r, 266w, 266x
Todrick *v.* Halliday (Scot.); **34.** *Mines*, p. 212
— *v.* Western National Omnibus Co., Ltd. (1934); **19.** *Easmt.* Nos. 571a, 688a
Toews *v.* Isaac (Can.); **8.** *Clubs*, p. 100
— *v.* — (No. 2) (Can.); **1.** *Action*, p. 7
Toku Nishi, *Re* (Can.); **2.** *Aliens*, p. 49
Tola Ram *v.* R. (Ind.); **14.** *Crim.* p. 3
Tole, *Re*, *Ex p.* Tole (Aus.); **16.** *Cntmpt.* p. 5
Tolerton *v.* Cunard S.S. Co. (Can.); **8.** *Carr.* p. 13
Tolhurst *v.* Webster (1936); **42.** *Str. Traf.* No. 31b
Tollemache, *Re*, Forbes *v.* Public Trustee (1930); **21.** *E. D.* No. 166a
— *v.* Inland Revenue Comrs. (1926); **28.** *Inc. T.* No. 674a
Toller *v.* Law Accident Insurance Society, Ltd. (1936); **2.** *Arbn.* No. 386a
Tolley *v.* Fry (J. S.) & Sons, Ltd. (1931); **32.** *Libel*, No. 167a
— *v.* Guerin (Can.); **32.** *Lien*, p. 26
Tolley & Co. *v.* Skuce (Can.); **1.** *Agcy.* p. 76
Tollpash *v.* Canadian National Ry. (Can.); **38.** *Rys.* p. 39
Tolnay *v.* Criterion Film Productions, Ltd. (1936); **17.** *Damgs.* No. 181d; **42.** *Theatres*, No. 195g
Tom Youck *v.* R. (Can.); **34.** *Med.* p. 193
Toman *v.* R. (Can.); **11.** *Const. L.* p. 67

Tombs *v.* Turvey (1923); **2.** *Agric.* No. 266aa
Tomes, *Re* (Can.); **22.** *Evid.* p. 8
Tomkinson, *Re*, M'Crea & Bell *v.* A.-G. of the Duchy of Lancaster (1929); **8.** *Char.* No. 728a
Tomley *v.* Shreeve (1937); **25.** *Fr. Soc.* No. 363a
Tomlin *v.* Acme Engineering Co., Ltd. (1933); **36.** *Pats.* No. 459k
Tomline's Will Trusts, *Re*, Pretyman *v.* Pretyman (1931); **44.** *Wills*, Nos. 5332a, 5897b
Tomlinson *v.* Brittlebank (1833); **32.** *Libel*, No. 771a
— *v.* Scottish Amalgamated Silks, Ltd., Liquidators of (Scot.) (1934); **9.** *Coys.* p. 31
— *v.* — (Scot.) (1935); **9.** *Coys.* p. 31
Tomoch *v.* North British Canadian Investment Co., Ltd. (Can.); **40.** *S. Land*, p. 4
Tomson *v.* Judge (1854); **23.** *Exors.* No. 2777a
Tone's (Wolfe) Case (1798); **11.** *Const. L.* No. 384a
Tong, *Re*, Hilton *v.* Bradbury (1931); **23.** *Exors.* Nos. 4040a, 5917b
Tong Street Local Board *v.* Sced (1874); **2.** *Animals*, No. 332a
Tonkin *v.* Tonkin (Aus.); **27.** *H. & W.* p. 30
Tonner *v.* William Baird & Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 150
Toogood & Sons, Ltd. *v.* Green (1932); **33.** *Mags.* Nos. 1622b, 1622c; **38.** *Rates*, No. 2261
Toohey *v.* Gunther (Aus.); **35.** *Mtge.* p. 35
Toohey's, Ltd., *Ex p.*, *Re* Butler (Aus.); **42.** *Stats.* p. 26
— *v.* Sydney Municipal Council (Aus.); **35.** *Mistake*, p. 11
Tooke Bros. *v.* Walters, Ltd. (Can.); **26.** *Guar.* p. 8
Tookey, *In the Goods of* (1847); **23.** *Exors.* No. 17b
Toole *v.* Henneberry (Can.); **5.** *Bkpcy.* p. 88; **21.** *Exon.* p. 53
Toole Peet Trust Co. *v.* London Life Insurance Co. (Can.); **32.** *Lien*, p. 22
Toomey *v.* Bhupendra Nath Bose (Ind.); **21.** *Exon.* p. 51; **24.** *Exors.* p. 33; **35.** *Mtge.* p. 31
Toomy, *In the Goods of* (1864); **25.** *Gifts*, No. 294a
Tooth, *Re*, Trustee *v.* Tooth (1934); **7.** *B. of Sale*, No. 613a
— *v.* Brisbane City Council (Aus.); **8.** *Chos.* p. 89
Tooth & Co., Ltd. *v.* Lapin (Aus.); **26.** *Guar.* p. 10
Toovey *v.* Brock & Brock (Can.); **26.** *Guar.* p. 8
Topham, *Re*, Public Trustee *v.* Topham (1938); **8.** *Char.* No. 267b
— *v.* Constantine (1829); **32.** *Lien*, No. 553a
— *v.* Edmonton (City) (Can.); **38.** *Pub. Auth.* p. 4
— *v.* Motor Securities Co. (Can.); **7.** *B. of Sale*, p. 10
Topper Grain Co. *v.* Mantz (Can.); **1.** *Agcy.* p. 91
Toppin *v.* Buckerfield & Cross (1883); **21.** *Exon.* No. 1244a
Topping *v.* Oshawa Street Ry. Co. (Can.); **42.** *Tort*, p. 77
Tormey, *Re*, Tormey *v.* Tormey (Aus.); **44.** *Wills*, p. 35
— *v.* R. (Can.); **31.** *L. & T.* p. 47
— *v.* Tormey, *Re* Tormey (Aus.); **44.** *Wills*, p. 35
Torni, The (1932); **11.** *Confl.* No. 640a; **22.** *Evid.* No. 6894a; **42.** *Stats.* No. 1777a
Toronto (City) *v.* Consumers' Gas Co. (Can.); **9.** *Coys.* p. 9
Toronto *v.* Mandelbaum (Can.); **38.** *Pub. Hlth.* pp. 15, 16
— *v.* Powell (Can.); **38.** *Rates*, p. 50
— *v.* Thompson (Can.); **30.** *Jdgmts.* p. 20
— *v.* Toronto Transportation Commission (Can.); **38.** *Rates*, p. 64
Toronto *v.* York Township (Can.); **17.** *Dep.* p. 53
Toronto & Hamilton Navigation Co. *v.* Silcox (Can.); **12.** *Contr.* p. 2
Toronto & Saunders, *Re* (Can.); **26.** p. 45
Toronto (City) & Toronto Electric Comrs. *v.* Wade (Can.); **10.** *Coys.* p. 78
Toronto (City) & Toronto Hydro Electric Commission *v.* Wade (Can.); **10.** *Coys.* p. 70
Toronto Board of Education & Doughty, *Re* (Can.); **19.** *Educ.* p. 33
Toronto Carton Co. *v.* Manchester, McGregor, Ltd. (Can.); **13.** *Coprt.* p. 9
Toronto Corpn. *v.* Famous Players' Canadian Corpn., Ltd. (Can.); **38.** *Rates*, p. 49
— *v.* Forest Hill Village, York Township & Canadian National Railways (Can.); **38.** *Rys.* p. 46
Toronto (City) Corpn. *v.* R. (1932); **17.** *Dep.* Nos. 130a, 130e
— *v.* Roman Catholic Separate Schools Trustees (1926); **17.** *Dep.* No. 177e; **19.** *Educ.* p. 40
Toronto (City) Corpn. *v.* Thompson (Can.); **30.** *Jdgmts.* p. 19
— *v.* Toronto Railway Corpn. (Can.); **2.** *Arbn.* p. 92; **11.** *Comp. Pchc.* p. 6
Toronto Corpn. *v.* York Corpn. & A.-G. for Ontario (1938); **17.** *Dep.* No. 179c
Toronto Electric Comrs. *v.* Snider (1925); **17.** *Dep.* Nos. 130a, 179a
Toronto Finance Corpn., *Re* (Can.); **10.** *Coys.* p. 68, 69
Toronto General Trusts *v.* A.-G. for British Columbia, *Re* Collins (Can.); **21.** *Ex. D.* p. 22
Toronto General Trusts Co. *v.* Hogg (Can.); **43.** *Trusts*, p. 72
Toronto General Trusts Corpn. *v.* A.-G. for British Columbia & Collins, *Re* Collins Estate (Can.); **18.** *Desct.* p. 3
— *v.* Canadian National Railway (Can.); **38.** *Rys.* p. 40
— *v.* Carlile (Can.); **9.** *Coys.* p. 32
— *v.* Dallas (Can.); **35.** *Mtge.* p. 49
— *v.* Gooderham (Can.); **29.** *Insce.* p. 31
— *v.* Great West Life Assurance Co. (Can.); **29.** *Insce.* p. 31
— *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 58
— *v.* Ottawa City (Can.); **38.** *Rates*, p. 50
— *v.* R. (Can.); **21.** *Ex. D.* p. 18
— *v.* Sheppard (Can.); **29.** *Insce.* p. 37
— *v.* Turton (Can.); **35.** *Mtge.* p. 46
Toronto General Trusts Corpn. & Crowley, *Re* (Can.); **40.** *S. Land*, p. 17
Toronto General Trusts Corpn. & McConkey, *Re* (Can.); **2.** *Arbn.* p. 88
Toronto Hamilton & Buffalo Ry. Co. *v.* Steel Co. of Canada (Can.); **8.** *Carr.* p. 22
Toronto Hockey Club *v.* Arena Gardens, Ltd. (Can.); **17.** *Damgs.* pp. 6, 7
Toronto Hospital for Consumptives *v.* Fort William City & O'Connor Township (Can.); **38.** *Pub. Hlth.* p. 21
Toronto Incorporated Synod *v.* Fisken (Can.); **38.** *Real Prop.* p. 98
Toronto Metal & Waste Co., *Re* (Can.); **4.** *Bkpcy.* pp. 21, 37, 40
Toronto Radiator Manufacturing Co. *v.* Alexander (Can.); **7.** *Bldg. Conts.* p. 23
Toronto Ry. Co. *v.* Grinsted (Can.); **17.** *Damgs.* p. 9
— *v.* King (1908); **36.** *Negl.* No. 765a
Toronto Terminals Ry. Co. *v.* Standard Fuel Co. of Toronto, Ltd. (Can.); **38.** *Rys.* p. 35
Toronto Transportation Commission *v.* Canadian National Railways (Can.); **38.** *Rys.* pp. 41, 46

Toronto Transportation Commission *v.* Swansea Village Corpn. (Can.); **26.** *Hghys.* p. 22
Torrance & Province of Ontario, *Re*, *Re* Noble & Province of Ontario, *Re* Parkdale Boulevard, Ltd. & Province of Ontario (Can.); **11.** *Comp. Pche.* p. 5
Torrens, *Re* (Ir.); **5.** *Bkpcy.* p. 63
— *v.* Inland Revenue Comrs. (Ir.); **28.** *Inc. T.* p. 88
Totaro Fujino, *Ex p.*, *Re* Nippon Kinyn Sha, Ltd. (Can.); **10.** *Coys.* p. 96
Toth & J. I. Case Threshing Machine Co., *Re* (Can.); **35.** *Mtge.* p. 41
Totten *v.* Truax (Can.); **38.** *Rates*, p. 84
Tourangeau *v.* Sandwich West Township (Can.); **2.** *Arbn.* p. 100
Tournier *v.* National Provincial & Union Bank of England (1924); **3.** *Bank.* Nos. 986a, 990a
Tovarisch, The, Alcantara S.S. Owners *v.* Tovarisch S.S. Owners (1931); **1.** *Adm.* No. 1198c; **41.** *Ship.* No. 5630a
Tower, *Ex p.* (Can.); **16.** *Courts*, p. 10
Tower Bridge, The (1936); **41.** *Ship.* Nos. 6849b, 6851a
Tower's Contract, *Re* (1924); **2.** *Agric.* No. 352a
Towers *v.* Collins, *Re* Collins (1929); **40.** *Sttlmts.* No. 3138b
— *v.* Solomon (Can.); **5.** *Bkpcy.* pp. 66, 91
Towle *v.* Improved Industrial Dwellings Co., Ltd. (1931); **28.** *Inc. T.* No. 25c
— *v.* Russell Timber Co. (Can.); **39.** *S. Goods*, p. 44
Towler *v.* Chatterton (1829) **32.** *Limit. of A.* No. 400a
— *v.* Thetford Rural Council (1929); **38.** *Rates*, Nos. 139a, 552b
Townend *v.* Askern Coal & Iron Co., Ltd. (1934); **34.** *Mines*, Nos. 546a, 922a
— *v.* Townend (1928); **27.** *H. & W.* No. 3124a
Towner, *Re*, Eastbourne Corpn. *v.* A.-G. (1923); **8.** *Char.* No. 432a
Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee (1937); **38.** *Rates*, No. 794a
Townsend, *Re*, Townsend *v.* Townsend (1930); **40.** *Sttlmts.* No. 3151c
— *v.* Elliott (Can.); **38.** *Rates*, p. 85
— *v.* Grundy (1933); **28.** *Inc. T.* Nos. 113a, 459a
— *v.* Moon Motor Co. (Can.); **12.** *Contr.* p. 30
— *v.* Townsend, *Re* Townsend (1930); **40.** *Sttlmts.* No. 3151c
Townshend *v.* Child (1933); **27.** *H. & W.* 1053a
Townsley *v.* Baldwin (Can.); **32.** *Lien*, p. 27
Towriss *v.* Marshall, Knott & Barker, Ltd. (1938); **34.** *Mast. & S.* No. 2651c
Tracey, *In the Goods of*, Lennon *v.* Gray (Ir.); **23.** *Exors.* p. 4
— *v.* Allen (Can.); **32.** *Lien*, p. 25
— *v.* Kelly (Ir.); **34.** *Mast. & S.* p. 65
Trach *v.* Matiashyn (Can.); **3.** *Bastv.* p. 61
Trache *v.* Canadian Northern Ry. Co. (Can.); **34.** *Mast. & S.* p. 19; **36.** *Negl.* p. 34
Trade Indemnity Co., Ltd. *v.* Workington Harbour & Dock Board (1937); **7.** *Bldg. Conts.* No. 383a; **26.** *Guar.* No. 1656a
Traders Trust Co. *v.* Cohen (Can.); **5.** *Bkpcy.* pp. 58, 67
— *v.* Crawford (Can.); **7.** *B. of Sale*, p. 12
Trafford *v.* Thrower (1929); **44.** *Waters*, No. 479
Trafton *v.* Grimmer (Can.); **6.** *B. of Exch.* p. 15
Trainor *v.* Holcombe (Can.); **16.** *Courts*, p. 10
Tramway's Case (No. 1) (Aus.); **17.** *Dep.* p. 60
Transferred Civil Servants (Ireland) Compensation, *Re* (1929); **16.** *Courts*, No. 690b; **17.** *Dep.* No. 714c
Transport Comrs. of New South Wales *v.* Barton (Aus.); **2.** *Animals*, p. 57
Transport Minister *v.* Railway Clearing House (1933); **38.** *Rates*, No. 226jj
Transport Mutual & General Insurance Co., Ltd. *v.* Webber (N.Z.); **17.** *Dep.* p. 78
Transport Oil Co. *v.* Imperial Oil Co. (Can.); **42.** *Stats.* p. 29
Transvaal Consolidated Land & Exploration Co., Ltd. *v.* Black (S. Af.); **40.** *S. Land*, p. 18
Transvaal Provincial Administration *v.* Coley (S. Af.); **19.** *Educ.* p. 34
Transvaal United Trust & Finance Co., Ltd., *Re*, *Re* Empire Builders, Ltd. (1919); **10.** *Coys.* No. 7014a
Tranter *v.* Tranter & Lamb (N.Z.); **27.** *H. & W.* p. 50
Traver's & Spratt's Claims, *Re* Wiggins, Ltd. (Can.); **42.** *Stk. Ex.* p. 34
Travis *v.* Breckenbridge-Lund Lumber & Coal Co. (Can.); **32.** *Lien*, p. 23
— *v.* Glasier (Can.); **6.** *B. of Exch.* p. 26
— *v.* Smith (Can.); **18.** *Distr.* p. 30
Travis Investment Co. *v.* Power (Can.); **19.** *Easmt.* pp. 8, 9
Travis-Barker *v.* Reed (Can.); **38.** *Real Prop.* p. 89
Treasure Trove Diamonds, Ltd. *v.* Hyman (S. Af.); **9.** *Coys.* p. 18
Treasury, The *v.* Hanf (S. Af.); **2.** *Aliens*, p. 31
Treaty of Versailles, *Re*, *Re* Hours of Labour (Can.); **17.** *Dep.* p. 56
Tredegar *v.* Harwood (1929); **31.** *L. & T.* No. 5069a
Tredinnick *v.* Browne (1921); **1.** *Agcy.* No. 2083c
Treffiae *v.* Willow Range School District (Can.); **19.** *Educ.* p. 45
Tregaskes *v.* Meikle (S. Af.); **1.** *Agcy.* p. 79
Treherbert, The (1934); **41.** *Ship.* Nos. 5946a, 5958a
Treloar *v.* Falmouth Docks & Engineering Co., Ltd. (1933); **34.** *Mast. & S.* No. 2317c
Tremain *v.* Manawatee Drainage Board (N.Z.); **17.** *Dep.* p. 85
Tremayne *v.* Grand Trunk Ry. Co. (Can.); **17.** *Damgs.* p. 22
Tremblay, *Re* (Can.); **44.** *Wills*, p. 40
— *v.* Banque Canadienne Nationale (Can.); **26.** *Guar.* p. 8
— *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 38
— *v.* Duke-Price Power Co. (Can.); **11.** *Comp. Pche.* p. 8
— *v.* Proulx (Can.); **34.** *Mast. & S.* p. 19
— *v.* R. (Can.); **15.** *Crim.* p. 100
Trenchard *v.* Bennet (1933); **28.** *Inc. T.* No. 462b
Trenholm *v.* McCarthy (Can.); **17.** *Dep.* p. 43
Trent, *Re* (Can.); **33.** *Lunat.* p. 15
Trentino, The (1937); **41.** *Ship.* No. 6212c
Trenton School Trustees & Trenton Village Corpn., *Re* (Can.); **19.** *Educ.* p. 41
Trenwith, *Re* (Can.) (1922); **5.** *Bkpcy.* p. 58
—, *Re* (Can.) (1934); **5.** *Bkpcy.* p. 70
— *v.* International Harvester Co. (Can.); **1.** *Agcy.* p. 79
Trenwith, Ltd. *v.* Jarvis Electric Co., Ltd. (Can.); **1.** *Agcy.* p. 77
Treorchy *v.* Jones, United National Collieries, Ltd. (1934); **34.** *Mast. & S.* No. 3822g
Tres, The (1936); **41.** *Ship.* No. 6849a
Treuttel *v.* Barandon (1817); **43.** *Trov.* No. 200a
Trevelyan *v.* Trevelyan (1810); **23.** *Exors.* No. 1031f
Trevor *v.* Goodhall, *Re* Smith (1934); **8.** *Char.* No. 894b
Trevor-Smith *v.* Walters (S. Af.); **36.** *Negl.* p. 31
Trew *v.* Burton (1833); **2.** *Arbn.* No. 1674a
Trewin *v.* Wawanesa Mutual Insurance Co. (Can.); **18.** *Discy.* p. 10; **29.** *Insce.* p. 7

Tribe's Patent, *Re* (1936); **36.** *Pats.* Nos. 1721a, 2004a
Tribune Newspaper Co. *v.* Fort Frances Pulp & Paper Co., Ltd., *Re* Macklin (Can.); **22.** *Evid.* p. 6
Trichmopoly Tenmore Hindu Permanent Fund, Ltd. *v.* Income Tax Comr. (Ind.); **21.** *Estpl.* p. 23
Trickett *v.* Queensland Insurance Co., Ltd. (1936); **29.** *Insce.* Nos. 3202c, 3202d
Trico Products Corpn. & Trico-Folberth, Ltd. *v.* Romac Motor Accessories, Ltd. (1933); **36.** *Pats.* No. 2537a
— *v.* — (1935); **36.** *Pats.* No. 3137b
Trident, The, Hall Bros. S.S. Co., Ltd. *v.* Young (1938); **29.** *Insce.* No. 1708b
Triefus & Stripp, Ltd., *Ex p.*, *Re* Sternberg (Can.); **5.** *Bkpcy.* p. 76
Triggs *v.* English (Can.); **6.** *B. of Exch.* p. 17
Trim *v.* Gillett (1933); **34.** *Mast. & S.* No. 2189a
— *v.* Sturminister Rural District Council (1938); **38.** *Pub. Hlth.* No. 485b
Trimble, *Re*, Wilson *v.* Turton (1931); **21.** *E. D.* No. 777a
— *v.* Capling (Can.); **17.** *Dep.* p. 43
Trinder *v.* Great Western Ry. Co. (1919); **2.** *Agric.* No. 970c
— *v.* Smith (1857); **38.** *Real Prop.* No. 285a
— *v.* Trinder & Midwinter (1935); **27.** *H. & W.* No. 4638a
Trinea *v.* Duleba (Can.); **1.** *Action*, p. 3
Tring, Reading & Basingstoke Ry. Co., *Re*, Cox's Case (1850); **10.** *Coys.* No. 6058a
Trinidad Petroleum Development Co., Ltd. *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 397a
Trinity Church, Liverpool, *Re* (Can.); **38.** *Real Prop.* p. 95
Trinity College *v.* Levinter (Can.); **18.** *Discy.* pp. 17, 22
Trinity College, Cambridge, *Ex p.* (1897); **11.** *Comp. Pche.* No. 1275a
Trinity House Corpn. *v.* Cedar Branch S.S. Owners (1930); **41.** *Ship.* No. 8511a
Triplex Safety Glass Co., Ltd. *v.* Scorah (1938); **43.** *Trade*, No. 1461b
Triplow, *Ex p.*, R. *v.* Kent JJ. (1927); **33.** *Mags.* No. 1393a
Tripp *v.* Inverclyde (1931); **11.** *Confl.* No. 926b; **27.** *H. & W.* No. 2328b; **30.** *Jdgmts.* No. 54a
Trollope (George) & Sons *v.* Caplan (1936); **1.** *Agcy.* No. 1755b
— *v.* Martyn Bros. (1934); **1.** *Agcy.* Nos. 1755a, 1947c; **30.** *Jdgmts.* No. 736a
Trollope's Will Trusts, *Re*, Public Trustee *v.* Trollope (1927); **24.** *Exors.* Nos. 6053a, 6138a
Troner *v.* Hassold (1670); **11.** *Const. L.* No. 487c
Troop & Lewis *v.* Merchants' Marine Insurance Co. (Can.); **29.** *Insce.* p. 21
Troops in Cape Breton, *Re*, Reference (Can.); **11.** *Const. L.* p. 73
Trotter *v.* Louth (1931); **34.** *Metrop.* No. 119a
— *v.* Pedlar (Can.); **5.** *Bkpcy.* p. 73
Trout's Case, *Re* Essex Land & Timber Co. (Can.); **10.** *Coys.* p. 65
Trower *v.* The Commonwealth (Aus.); **11.** *Const. L.* p. 63
Troyan *v.* Park (Can.); **1.** *Action*, p. 11
Trubyfield *v.* Great Western Ry. Co. (1937); **36.** *Negl.* No. 953g
Trudeau *v.* R. (Can.); **15.** *Crim.* p. 84
Trudel *v.* Lemoine, *Re* Societe de la caisse de retraite de la Banque Nationale (Can.); **3.** *Bank.* p. 20
Trueb *v.* Trueb & Blake (Can.); **27.** *H. & W.* p. 72
Trueman *v.* R. (Can.); **26.** *Highys.* p. 29
Truen *v.* Bozynski (Can.); **28.** *Infts.* p. 142
Truman *v.* Ford Motor Co. of Canada, Ltd. (Can.); **12.** *Contr.* p. 40
Trumper *v.* Price, *Re* Price (1932); **44.** *Wills*, No. 5532a
Trussler *v.* Kitchener (Can.); **38.** *Pub. Auth.* p. 12
Trust & Loan Co. *v.* Clarke (Can.); **38.** *Real Prop.* p. 89
— *v.* Lindquist (Can.); **16.** *Courts*, p. 9
— *v.* Monk (Can.); **13.** *Corpns.* p. 32
Trust Houses, Ltd., *Ex p.*, R. *v.* Watford Licensing JJ. (1929); **30.** *Intox.* No. 340a
Trustee, *Ex p.*, *Re* Bower Williams (1927); **5.** *Bkpcy.* No. 7096b
—, *Ex p.*, *Re* Bueb (1927); **4.** *Bkpcy.* No. 3365a
—, *Ex p.*, *Re* Canadian Cap Co. (Can.); **4.** *Bkpcy.* p. 10
—, *Ex p.*, *Re* Charters (1923); **5.** *Bkpcy.* No. 7119a
—, *Ex p.*, *Re* Chiandetti (1921); **5.** *Bkpcy.* Nos. 6912a, 6916a, 7113a
—, *Ex p.*, *Re* Cohen (1924); **4.** *Bkpcy.* No. 4665a; **5.** *Bkpcy.* No. 7225a
—, *Ex p.*, *Re* Davies (1921); **5.** *Bkpcy.* No. 7339a
—, *Ex p.*, *Re* Dent (1923); **4.** *Bkpcy.* No. 2902a; **5.** *Bkpcy.* Nos. 7153a, 7161a
—, *Ex p.*, *Re* Dollar Taxi Co. (Can.), **5.** *Bkpcy.* p. 51
—, *Ex p.*, *Re* Dombrowski (1925); **5.** *Bkpcy.* No. 5775b
—, *Ex p.*, *Re* Early, Smith & Pavey (1928); **5.** *Bkpcy.* No. 8645b
—, *Ex p.*, *Re* Gunsbourg (1920); **5.** *Bkpcy.* No. 5775a
—, *Ex p.*, *Re* Horder (1936); **4.** *Bkpcy.* No. 371a
—, *Ex p.*, *Re* Howes (1933); **4.** *Bkpcy.* No. 3866a
—, *Ex p.*, *Re* Hoyle (1924); **5.** *Bkpcy.* Nos. 7172a, 7267a
—, *Ex p.*, *Re* Kaufman Segal & Domb (1923); **5.** *Bkpcy.* Nos. 6802a, 6879a
—, *Ex p.*, *Re* Landau (1934); **5.** *Bkpcy.* No. 7603b
—, *Ex p.*, *Re* Lavey (1920); **5.** *Bkpcy.* No. 7603a
—, *Ex p.*, *Re* Lowndes (1887); **4.** *Bkpcy.* No. 4578b
—, *Ex p.*, *Re* Mathieson (1927); **5.** *Bkpcy.* No. 7096a
— *Ex p.*, *Re* Osborn (1932); **5.** *Bkpcy.* No. 6116b
—, *Ex p.*, *Re* Parren (1933); **5.** *Bkpcy.* Nos. 5591a, 5591b
—, *Ex p.*, *Re* Plummer (1900); **5.** *Bkpcy.* No. 7079
—, *Ex p.*, *Re* Prior (1922); **4.** *Bkpcy.* No. 454a
—, *Ex p.*, *Re* Regal Phonograph Co. (Can.); **5.** *Bkpcy.* p. 76; **20.** *Egy.* p. 20
—, *Ex p.*, *Re* Searle, Hoare & Co. (1924); **4.** *Bkpcy.* Nos. 3210a, 4484a
—, *Ex p.*, *Re* Seymour (1937); **5.** *Bkpcy.* No. 7111a
—, *Ex p.*, *Re* Simms (1930); **4.** *Bkpcy.* No. 596a
—, *Ex p.*, *Re* — (1934); **5.** *Bkpcy.* No. 8024a
—, *Ex p.*, *Re* Tabor (1920); **5.** *Bkpcy.* No. 6516a
—, *Ex p.*, *Re* Wigzell (1921); **4.** *Bkpcy.* No. 1893a
—, *Ex p.*, *Re* Wiskemann (1923); **2.** *Aliens*, No. 237a
—, *Ex p.*, *Re* Wombwell (1921); **5.** *Bkpcy.* No. 5859a
—, *Ex p.*, Powell's Case, *Re* Ford (1929); **5.** *Bkpcy.* No. 6882b
—, *Ex p.*, Restall, Brown & Clemell's Case, *Re* Ford (1929); **5.** *Bkpcy.* No. 6882a
—, *Re*, *Ex p.* Moynihan (1930); **4.** *Bkpcy.* No. 4612a
— *v.* Baker & Arnold, *Ex p.*, *Re* Baker (1936); **5.** *Bkpcy.* No. 7149a; **25.** *Fraud. Conv.* No. 408a

Trustee, *v.* Bance, *Re* Wethered, *Ex p.* Salaman's Trustee (1926); **5.** *Bkpcy.* No. 6858a; **12.** *Contr.* No. 1459a
— *v.* Bank of Montreal, *Re* Niagara Hats, Ltd. (Can.); **5.** *Bkpcy.* p. 72
— *v.* Bankrupt, *Re* Bowden (Lady) (1937); **5.** *Bkpcy.* No. 6092a
— *v.* —, *Ex p.*, *Re* Landau (1934); **5.** *Bkpcy.* No. 7603b
— *v.* Barclays Bank, Ltd., *Re* Conley (1938); **5.** *Bkpcy.* No. 7183b
— *v.* —, *Re* Seymour (1937); **5.** *Bkpcy.* No. 7411a
— *v.* —, *Ex p.*, *Re* Wigzell (1921); **4.** *Bkpcy.* No. 1893a
— *v.* Bennett (A. A.) & Georges Tiard, *Re* Gay (1931); **4.** *Bkpcy.* No. 4586a
— *v.* British Reinforced Concrete Engineering Co., *Ex p.*, *Re* Godwin (1935); **5.** *Bkpcy.* No. 6920a
— *v.* Canada Metal Co., Ltd., *Re* McIntyre (Can.); **7.** *B. of Sale*, p. 3; **21.** *Estpl.* p. 39
— *v.* Gill & Reigate, Ltd., *Re* Howes (1934); **4.** *Bkpcy.* No. 3866a
— *v.* Halland, *Re* Demry & Demry (Can.); **4.** *Bkpcy.* p. 30; **5.** *Bkpcy.* p. 73
— *v.* Jerusalem (Patriarch) (No. 2), *Re* Gregory (Maundy) (No. 396 of 1933) (1934); **4.** *Bkpcy.* No. 395a
— *v.* Kirby & Grainger, *Re* Wheeler & Co. (No. 389 of 1931) (1933); **42.** *Stk. Ex.* No. 403a
— *v.* Lloyds Bank, Ltd., *Re* Conley (1938); **5.** *Bkpcy.* No. 7183b
— *v.* Morris, *Ex p.*, *Re* Godwin (1935); **5.** *Bkpcy.* No. 6920a
— *v.* Norton, *Re* Gregory (1935); **4.** *Bkpcy.* No. 5562a
— *v.* Powell, *Re* Ford (1929); **5.** *Bkpcy.* No. 6882b
— *v.* Restell, Brown & Co., *Re* Ford (1929); **5.** *Bkpcy.* No. 6882a
— *v.* Royal Bank, *Re* Cadwell's, Ltd. (Can.); **3.** *Bank*, p. 42
— *v.* Snow (W. R.) & Co., *Ex p.*, *Re* Cohen (1924); **4.** *Bkpcy.* No. 4665a; **5.** *Bkpcy.* No. 7225a
— *v.* Tee, *Ex p.*, *Re* Samuels (1935); **5.** *Bkpcy.* No. 6920b
— *v.* Thompson & Sutherland, Ltd., *Re* Polson (Can.); **5.** *Bkpcy.* p. 93
— *v.* Tooth, *Re* Tooth (1934); **7.** *B. of Sale*, No. 613a
— *v.* William Simms, Ltd. & Gillett, *Ex p.*, *Re*, Simms (1934); **5.** *Bkpcy.* No. 8024a
Trustee Act, 1894, *Re*, *Re* Stamford & Warrington (Earl) Trusts (1896); **34.** *Mines*, No. 335c
Trustee, etc. *v.* Paruk (S. Af.); **5.** *Bkpcy.* p. 83
Trustee in Bankruptcy *v.* Public Trustee, *Re* Cole (1931); **5.** *Bkpcy.* Nos. 7104a, 7121a
Trustee under Deed of Arrangement *v.* Fenton Textile Assocn., Ltd., *Ex p.*, *Re* Fenton (No. 2) (1932); **4.** *Bkpcy.* No. 3781b; **21.** *Estpl.* No. 253a
Trustee under Deed of Assignment *v.* Debtor & Schweder & Co. Administrators, *Ex p.*, *Re* Rissir (1936); **5.** *Bkpcy.* No. 9313a
Trustees, *Ex p.*, *Re* Lovegrove (1935); **5.** *Bkpcy.* No. 6128a; **7.** *B. of Sale*, No. 55a
Trustees, *Ex p.*, *Re* Morant (1924); **5.** *Bkpcy.* Nos. 7183a, 7414a
—, *Ex p.*, *Re* Thompson (Can.); **5.** *Bkpcy.* pp. 70, 77
— *v.* Inland Revenue Comrs., Sir G. B. Hunter (1922) "C." Trust (Trustees) (1929); **28.** *Inc. T.* No. 472f
Trustees Corpn. (India), Ltd. *v.* Income Tax Comrs. (Ind.); **28.** *Inc. T.* p. 122
Trustees Executors & Agency Co., Ltd. *v.* Federal Comr. of Taxation (Aus.); **17.** *Dep.* p. 62
Tustees Executors & Agency Co., Ltd. *v.* Levien, *Re* Levien (Aus.); **44.** *Wills*, p. 15
Trusts & Guarantee Co., Ltd. *v.* Bradford, *Re* McPherson (Can.); **25.** *Fraud. Conv.* p. 16
— *v.* Brenner (Can.); **43.** *Trov.* p. 56
— *v.* Buxton (Can.); **32.** *Limit. of A.* p. 35
— *v.* Continental Supply Co., Ltd. (Can.); **10.** *Coys.* p. 66
— *v.* Drumheller Power Co. (Can.); **10.** *Coys.* pp. 63, 66
— *v.* Nelson (Can.); **23.** *Exors.* p. 3
— *v.* Royal Bank of Canada (Can.); **3.** *Bank.* p. 45
— *v.* Schooley (Can.); **35.** *Misrep.* p. 6
— *v.* Smith (Can.); **9.** *Coys.* p. 16
Truswell's Brewery Co., Ltd., *Ex p.*, R. *v.* Sheffield Confirming Authority (1937); **33.** *Mags.* No. 112a
Truth & Sportsman, Ltd., *Re*, *Ex p.* Bread Manufacturers, Ltd. (Aus.); **9.** *Coys.* p. 4
Tryon *v.* Peer (Can.); **18.** *Desct.* p. 1
Tsang *v.* Local No. 816, Hotel & Restaurant Employees International Alliance, *Re* Nuttall & Tomchuk (Can.); **16.** *Contmpt.* p. 6
Tsang Chuen *v.* Li Po Kwai (Hong Kong); **17.** *Deeds*, p. 33
Tshabalala *v.* Van Der Merwe (S. Af.); **31.** *L. & T.* p. 78
Tshoba Colliery (Natal), Ltd. *v.* Tshoba Coal Syndicate, Ltd. (S. Af.); **35.** *Mistake*, p. 10
Tubantia, The (1924); **1.** *Adm.* Nos. 82a, 594a, 650a
Tubb *v.* Lief & Gordon (Can.); **36.** *Negl.* p. 34
Tuck *v.* Robinson (Can.); **28.** *Infts.* p. 140
— *v.* — (No. 2) (Can.); **28.** *Infts.* p. 140
Tucker, *Re*, *Ex p.* Marine Insurance Club (Nfld.); **29.** *Insce.* p. 62
— *v.* Bennett (Can.); **26.** *Guar.* p. 7
— *v.* Guest, Keen & Nettlefolds, Ltd. (1928); **34.** *Mast. & S.* No. 3243a
— *v.* Hennessey (Aus.); **2.** *Animals*, p. 61
— *v.* Powell (Can.); **19.** *Educ.* p. 43
Tucknott *v.* East Sussex County Council (1935); **34.** *Mast. & S.* No. 2439e
Tudhope *v.* Henderson (Can.); **34.** *Mast. & S.* p. 14; **42.** *Str. Traf.* p. 60
Tudor, *Re* (Aus.); **23.** *Exors.* p. 23
Tudor-Hart *v.* British Union for Abolition of Vivisection (1938); **32.** *Libel*, No. 1847b
Tufts *v.* Thomson (Can.); **16.** *Cr. Pract.* p. 38; **31.** *L. & T.* pp. 85, 86
Tull (G. F.) & Ardern, Ltd. *v.* Shouldice (Can.); **42.** *Stk. Ex.* p. 35
Tully *v.* Andrews (Can.); **7.** *B. of Sale*, p. 11
— *v.* Bradbury (Can.); **35.** *Mtge.* p. 44
— *v.* Genbey & Bank of Toronto (Can.); **34.** *Mast. & S.* p. 14
Tunley *v.* Federal Comr. of Taxation (Aus.); **8.** *Char.* p. 67
Tunnell, Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 27
—, *Re*, *Ex p.* Wills & Anderson (Can.); **4.** *Bkpcy.* p. 11
Tupper *v.* Crowe (Can.); **26.** *Guar.* p. 2
— *v.* Newton (1853); **33.** *L. G.* No. 27a
Turbyfield *v.* Great Western Ry. Co. (1937); **36.** *Negl.* No. 953g
Turf Publishers, Ltd. *v.* Davies (1927); **14.** *Crim.* No. 1467a; **25.** *Gaming*, No. 415b
Turgeon *v.* Dominion Bank (Can.); **3.** *Bank.* p. 44; **5.** *Bkpcy.* p. 71
— *v.* Quebec (Can.); **32.** *Limit. of A.* p. 31
Turid, The (1921); **17.** *Custom*, No. 543
Turk *v.* Turk (1931); **27.** *H. & W.* Nos. 5405b, 5406a, 5406b, 5411a, 5416a, 5529a
Turketine's Estate, *Re* (Ir.); **4.** *Bkpcy.* p. 32
Turkington, *Re*, Owen *v.* Benson (1937); **8.** *Char.* No. 1085a

Turnan, *Re* (1864); **15.** *Crim.* Nos. 7850, 7851a
Turnbull, *Ex p.*, *Re* Duffel (No. 2) (Aus.); **8.** *Clubs*, p. 101
—, *Re*, *Ex p.* Johnstone (Aus.); **42.** *Str. Traf.* p. 57
— *v.* Eden (Can.); **34.** *Mines*, p. 205
— *v.* Turnbull (Scot.); **21.** *E. D.* p. 14
— *v.* Wilsons & Clyde Coal Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 95
Turnbull (C.) Co. *v.* Dominion Woollens & Worsteds, Ltd. (Can.); **43.** *Trade Mks.* p. 22
Turnbull & Co. *v.* Mackay (N.Z.); **26.** *Guar.* p. 2
Turnbull (C.) Co., Ltd.'s Petition, *Re* (Can.); **43.** *Trade Mks.* p. 20
Turnbull Real Estate Co. *v.* Sewell (Can.); **21.** *Estpl.* p. 38
Turnbull's Estate (Official Assignee) *v.* Goldstein (Aus.); **5.** *Bkpcy.* p. 50
Turner, *Re* (Can.); **4.** *Bkpcy.* p. 30
—, *Re*, Elder's Trustee & Executor Co., Ltd. *v.* Morialta Protestant Children's Homes Incorporated (Aus.); **8.** *Char.* p. 72
—, *Re*, Hudson *v.* Turner (1932); **37.** *Powers*, Nos. 360a, 910a
—, *Re*, Tennant *v.* Turner (1938); **23.** *Exors.* No. 5571a
— *v.* Alberta Pacific Grain Co., Ltd. (Can.); **17.** *Custom.* p. 2
— *v.* Beaton (Can.); **1.** *Agcy.* p. 51
— *v.* British Columbia Mutual Benefit Assocn. (Can.), **29.** *Insce.* p. 31
— *v.* Cameron's Coalbrook Steam Coal Co. (1850); **35.** *Mtge.* No. 1362a
— *v.* Canadian Pacific Ry. Co. (Can.); **2.** *Animals*, p. 69; **8.** *Carr.* p. 14
— *v.* Civil Service Supply Assocn., Ltd. (1926); **8.** *Carr.* Nos. 4a, 12a
— *v.* Courtaulds, Ltd. (1937); **24.** *Fact.* No. 43a
— *v.* Richardson (1806); **5.** *Bkpcy.* No. 7643a
— *v.* Schomberg (1745); **4.** *Bkpcy.* No. 5424a
— *v.* Vidette Gold Mines, Ltd. (Can.); **34.** *Mines*, p. 199
— *v.* Waterloo Manufacturing Co. (Can.); **21.** *Exon.* p. 56
— *v.* Watts (1927); **31.** *L. & T.* Nos. 4167a, 6636a, 7037c
Turner & Canadian Order of Foresters, *Re* (Can.); **29.** *Insce.* p. 35
Turner & Jones *v.* Curran (Can.); **12.** *Contr.* p. 26
Turner & Turner *v.* Koren (Can.); **36.** *Negl.* p. 23
Turner & Winnipeg City (Can.); **38.** *Pub. Hlth.* p. 14
Turner, Meakin & Co. *v.* Caledonia & British Columbia Mortgage Co., Ltd. (Can.); **1.** *Agcy.* p. 82
— *v.* Field (Can.); **1.** *Agcy.* p. 80
Turner Morrison & Co., Ltd., *Re* (Ind.); **28.** *Inc. T.* p. 13
Turner's Will Trusts, *Re*, District Bank, Ltd. *v.* Turner (1937); **28.** *Infts.* No. 813b
Turpin *v.* Middlesbrough Assessment Committee & Bailey (1931); **38.** *Rates*, No. 226s
Turrell *v.* Days' Transport & Removal Service, Ltd., Child & Sons, Ltd., Orwell Transport, Nice Bros., London & North Eastern Ry. Co. (1938); **8.** *Carr.* Nos. 1500, 1561
Turrill *v.* Turrill (Can.); **38.** *Rates*, p. 86
Turton *v.* Mitchell (1927); **28.** *Inc. T.* No. 317a
— *v.* Turnbull (1934); **2.** *Agric.* No. 266r
Turville *v.* Malloy (Can.); **21.** *Exon.* p. 58
Tusharkanti Ghosh, *Re* (Ind.); **16.** *Cntmpt.* pp. 1, 7
Tussaud (Madame) & Sons, Ltd., *Re* (1927); **10.** *Coys.* No. 6989a
Tutt *v.* Tutt & Wood (1928); **27.** *H. & W.* No. 4406a
Tuttle, *Ex p.* (Can.); **20.** *Elect.* p. 6
Tuxedo Holding Co., Ltd. *v.* Manitoba University & A.-G. for Manitoba (Can.); **11.** *Const. L.* p. 68
Twaites *v.* Morrison (Can.); **2.** *Animals*, p. 67
Tweedie, *Ex p.*, R. *v.* Southampton Justices (1932); **42.** *Str. Traf.* No. 222e
Twerdochlib *v.* Hanns (Can.); **34.** *Mast. & S.* p. 12
Twitchin *v.* Alton Union (1924); **38.** *Rates*, No. 1097a
251 Bars of Silver *v.* Canadian Salvage Assocn. (No. 2) (Can.); **1.** *Adm.* p. 30
251 Bars of Silver & Sea Insurance Co. *v.* Canadian Salvage Assocn. (Can.); **1.** *Adm.* p. 47
Twomey *v.* Cronin (Ir.); **31.** *L. & T.* p. 93
Twyman & Green Patents, *Re* Adam Hilger, Ltd. (1931); **36.** *Pats.* No. 1750c
Twynham *v.* Badcock (1932); **25.** *Food*, No. 261a
Tycholitz *v.* Crop (Can.); **36.** *Negl.* p. 33
Tyerman *v.* Stansfield, *Re* Raine (1929); **23.** *Exors.* No. 5251a
Tyers *v.* Barmera Packing Co., Ltd. (Aus.); **34.** *Mast. & S.* p. 5
Tyhurst, *Re*, Smith *v.* Chatham Trustees, Home of the Friendless (Can.); **44.** *Wills*, p. 45
Tyler, *Re* (1901); **8.** *Char.* No. 981a
— *v.* Cork County Council (Ir.); **1.** *Action*, p. 12
Tyler & Tyler *v.* Ardath School District (Can.); **19.** *Educ.* p. 35
Tyley *v.* Dougherty (Aus.); **32.** *Limit. of A.* p. 31
Tylors (Australia), Ltd. *v.* Macgroarty (Aus.); **2.** *Arbn.* p. 102
Tynan *v.* A'Beckett (Aus.); **1.** *Agcy.* pp. 86, 108
— *v.* Forbes (N.Z.); **2.** *Arbn.* p. 101
Tynedale Steam Shipping Co., Ltd. *v.* Anglo-Soviet Shipping Co., Ltd. (1936); **41.** *Ship.* No. 2099a
Tyrer, *Ex p.*, R. *v.* Lancashire JJ. (1925); **3.** *Basty.* Nos. 278a, 372a
Tyrer Co., *Re* (Can.); **4.** *Bkpcy.* p. 39
— *v.* Eureka Lumber Co. (Can.); **6.** *B. of Exch.* p. 19
Tyrone County Council *v.* Northern Ireland Valuation Comr. (Ir.); **38.** *Rates*, p. 64
—ll, *Re*, *Re* Gardner, *Re* Maschek (1938); **44.** *Wills*, No. 139c
— *v.* Tyrrell (1928); **27.** *H. & W.* Nos. 6085b, 6188d
Tyser *v.* A.-G. (1938); **21.** *E. D.*, No. 137b
Tysol *v.* Tewkesbury Gas Co., *Re* Tewkesbury Gas Co. (1911); **10.** *Coys.* No. 4652b
— *v.* — (1912); **10.** *Coys.* No. 4652b
Tyson *v.* Abercrombie (Can.); **17.** *Deeds*, p. 29
— *v.* Kendall (1850); **23.** *Exors.* No. 7617a
Tytler *v.* Jamieson (Can.); **27.** *H. & W.* p. 22

U.

U. *v.* A.-G. (1931); **3.** *Basty.* No. 142c
U Gunawa *v.* U Pyinnyadipa (Ind.); **2.** *Arbn.* p. 98
U. K. Advertising Co. *v.* Glasgow Bag-Wash Laundry (Scot.); **30.** *L. & T.* p. 44
U Ko Ko Gyi *v.* U San Mya (Ind.); **3.** *Barr.* p. 49
U Po Naing *v.* Burma Oil Co., Ltd. (Ind.); **34.** *Mines*, p. 207
U Po U *v.* Matok Gyi (Ind.); **27.** *H. & W.* p. 9
U Pyinnya *v.* Maung Law (Ind.); **12.** *Contr.* p. 3
U Pyinnya Thiha *v.* U Ottama (Ind.); **17.** *Dep.* p. 67
U.S.A. *v.* Mammoth Oil Co. (Can.); **18.** *Discy.* p. 23
— *v.* Motor Trucks, Ltd. (1924); **12.** *Contr.* No. 900b

Udaichand Panna Lall *v.* Debibux Jewanram (Ind.); **2.** *Arbn.* p. 87
Udoychand Pannalal *v.* Guzdar (P. E.) & Co. (1925); **17.** *Dep.* No. 485a
Ugleexport Charkow *v.* Anastasia S.S. Owners (1934); **41.** *Ship.* No. 1879a
Ugleexport of Moscow *v.* Sanguineti (Andrea) Davide of Genoa (1935); **41.** *Ship.* No. 1879b
Uglum *v.* Torkelson (Can.); **17.** *Damgs.* p. 15; *Dep.* p. 71
Uhle *v.* Kroeker (Can.); **39.** *S. Goods*, p. 42
Ulivi *v.* Miller (Scot.); **25.** *Gaming*, p. 30
Ullstrom *v.* Naar (1938); *Pract.* No. 2257a
Ulmarra Municipal Council *v.* Notaras (Aus.); **26.** *Hghys.* p. 41
Ulster Society for Prevention of Cruelty to Animals (Incorporated) & Companies Act (Northern Ireland), 1932 (Ir.); **9.** *Coys.* p. 5
Ultra Electric, Ltd. *v.* John Barnes & Co., Ltd. (1937); **36.** *Pats.* No. 2944p; **43.** *Trade*, No. 77a
Umar Bakhsh *v.* Punjab Comr. of Income Tax (Ind.); **42.** *Stats.* p. 27
Umar Hajee *v.* R. (Ind.); **14.** *Crim.* p. 29
Umra *v.* R. (1924); **17.** *Dep.* No. 549b
Umtali, The (1938); **41.** *Ship.* No. 6186a
Underhills, Ltd. *v.* Barber, *Re* Davies Footwear Co. (Can.); **4.** *Bkpcy.* p. 23
Underwood *v.* Cox (Can.); **12.** *Contr.* p. 11
— *v.* Dawson (Can.); **44.** *Wills*, p. 37
— *v.* Underwood (Can.); **17.** *Disp.* p. 56
Underwood (A. L.), Ltd. *v.* Bank of Liverpool (1924); **3.** *Bank.* Nos. 387a, 479b, 691b; **6.** *B. of Exch.* No. 2846a
— *v.* Barclays Bank (1924); **3.** *Bank.* Nos. 387a, 479b, 691b; **6.** *B. of Exch.* No. 2846a
Underwriters Survey Bureau, Ltd. *v.* Clement (J. E.) Incorporated (Can.); **13.** *Coprt.* p. 21
— *v.* Massie & Renwick, Ltd. (Can.) (1936); **13.** *Coprt.* p. 21
— *v.* — (Can.) (1937); **43.** *Trade*, p. 1
— *v.* — (Can.) (1938); **13.** *Coprt.* p. 6
— *v.* Shaw & Begg, Ltd. (Can.); **13.** *Coprt.* p. 21
— *v.* Willis, Faber & Co. of Canada, Ltd. (Can.); **13.** *Coprt.* p. 21
Uniacke, *Re* (Can.); **44.** *Wills*, p. 50
Unifruitco S.S. Co., *Re* (Scot.); **9.** *Coys.* p. 9
Union, The (1928); **41.** *Ship.* No. 5748b
Union, *Re*, Indian Sugar Mills Co., Ltd. *v.* Brij Lal, Jagannath (Ind.); **4.** *Bkpcy.* p. 27
Union Bank of Australia, *Ex p.*, *Re* Queensland Mercantile & Agency Co., *Ex p.* Australasian Investment Co. (1892); **11.** *Confl.* No. 417a
— *v.* Lohmann (Aus.); **2.** *Aliens*, p. 43
— *v.* McClintock (1922); **1.** *Agcy.* No. 989a
Union Bank of Canada *v.* Antoniou (Can.); **6.** *B. of Exch.* p. 10
— *v.* Benedict (Can.); **27.** *H. & W.* p. 8
— *v.* Clark (Can.); **26.** *Guar.* p. 5
— *v.* Dutczak (Can.); **8.** *Chos.* pp. 94, 95
— *v.* Farmer (Can.); **3.** *Bank.* pp. 41, 44
— *v.* Makepeace (Can.); **5.** *Bkpcy.* p. 96
— *v.* Nettleton (Can.); **3.** *Bank.* p. 28
— *v.* Tattersall (Can.); **6.** *B. of Exch.* pp. 11, 13
— *v.* Wood (Can.); **3.** *Bank.* p. 38
Union Bank of Scotland *v.* Campbell (Scot.); **37.** *Perps.* p. 6; **39.** *Rntchgs.* p. 6
— *v.* Taylor (Scot.); **3.** *Bank.* p. 21
Union Cartage Co., Ltd. *v.* Heamon (1937); **42.** *Str. Traf.* Nos. 232v, 232w
Union Cold Storage Co., Ltd. *v.* Adamson (1931); **28.** *Inc. T.* No. 217b
— *v.* Bancroft (Manchester Revenue Officer) (1931); **38.** *Rates*, No. 226h
Union Cold Storage Co., Ltd. *v.* Ellerker (1938); **28.** *Inc. T.* No. 225c
— *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 76
— *v.* Inland Revenue (Scot.); **38.** *Rates*, p. 55
— *v.* Manchester Revenue Officer (1931); **38.** *Rates*, No. 226h
— *v.* Moon (1932); **38.** *Rates*, No. 226ss
— *v.* Poole (1932); **34.** *Mast. & S.* No. 3562b
— *v.* Simpson (1938); **28.** *Inc. T.* No. 269a
Union Drilling & Development Co., Ltd. *v.* Capital Oil & Natural Gas Co., Ltd. (Can.); **7.** *Bldg. Conts.* p. 27; **32.** *Lien*, p. 24
Union Foundry & Machinery Works, Ltd., & St. John Harbour Comrs. (Can.); **11.** *Comp. Pche.* p. 18
Union Government (Minister of Justice) *v.* Bolam (S. Af.); **21.** *Exon.* p. 50
Union Government *v.* Chappell (S. Af.); **1.** *Agcy.* p. 74
— *v.* Fakir (S. Af.); **2.** *Aliens*, p. 51
Union Government (Minister of Railways) *v.* Lee (S. Af.); **36.** *Negl.* p. 37
Union Government *v.* Lovemore (S. Af.); **17.** *Deeds*, p. 33
— *v.* Thorne (S. Af.); **11.** *Const. L.* p. 67
Union Government (Minister of Defence) *v.* Van Zyl (S. Af.); **18.** *Discy.* p. 8
Union Insurance Society of Canton, Ltd. *v.* Wills (George) & Co. (1916); **29.** *Insce.* No. 1434a
Union Lighterage Co., Ltd. *v.* Curlew Sailing Barge Owners, The Curlew (1936); **41.** *Ship.* No. 6212b
Union of London & Smith's Bank Ltd.'s Conveyance, *Re*, Miles *v.* Easter (1933); **40.** *S. Land*, No. 2605a
Union Share Agency (Liquidators) *v.* Hatton (S. Af.); **9.** *Coys.* p. 25
Union Share Agency & Investment, Ltd. (Liquidators) *v.* Spain (S. Af.); **12.** *Contr.* p. 41
Union S.S. Co. of New Zealand *v.* Caradale, The (Aus.); **1.** *Admr.* p. 48
— *v.* Commonwealth (Aus.); **17.** *Dep.* p. 37
Union S.S. Co. of New Zealand, Ltd. *v.* Federal Comr. of Taxation (Aus.); **28.** *Inc. T.* p. 29
Union Stock Yards of Toronto, Ltd., *Re* (Can.); **19.** *Educ.* p. 41
Union Transport Finance, Ltd. *v.* Ballardie (1937); **1.** *Agcy.* No. 490a; **39.** *S. Goods*, No. 1461d
Union Trustee Co. of Australia, Ltd. *v.* A.-G. for Commonwealth of Australia, *Re* Mitchner (Aus.); **2.** *Aliens*, p. 35
— *v.* Eckford (Aus.); **40.** *Sttlmts.* p. 34
— *v.* Graham (Aus.); **40.** *Sttlmts.* p. 34
— *v.* Greater Melbourne Realty Co. Proprietary, Ltd. (Aus.); **9.** *Coys.* p. 47
— *v.* Taxes Comr. (Aus.); **11.** *Confl.* p. 32
— *v.* Watson (Aus.); **40.** *Sttlmts.* p. 34
Unique Properties, Ltd. *v.* Endean (N.Z.); **10.** *Coys.* p. 55
Unite, *Re*, Edwards *v.* Smith (1906); **8.** *Char.* No. 1382a
United British Insurance Co., *Re* (1929); **10.** *Coys.* Nos. 7508a, 7526a
United Building Society *v.* Lennon, Ltd. (S. Af.); **19.** *Easmt.* p. 14
United Church, *Re* (Can.); **19.** *Eccl.* p. 31
— *v.* Murphy (Can.); **8.** *Char.* p. 73; **44.** *Wills* p. 49
United Church of Canada *v.* Presbyterian Church in Canada (Can.); **8.** *Char.* p. 73
United Cigar Stores, Ltd. *v.* Buller & Hughes (Can.); **31.** *L. & T.* p. 63
United Citizens' Investment Trust, Ltd., *Re* (1932); **28.** *Ind. Soc.* Nos. 27a, 27b
United Collieries *v.* Robert Addie & Sons' Collieries (Scot.); **34.** *Mast. & S.* p. 165

United Dairies (London), Ltd. *v.* Hackney Borough Council (1934); **25.** *Food*, Nos. 476e, 476f
United Dairies (London), Ltd. *v.* Stirling (1937); **34.** *Mast. & S.* No. 3708b
United Dairies (Wholesale), Ltd. *v.* Lemon (1937); **25.** *Food*, No. 476m
United Exhibitors, *Re* (Can.); **5.** *Bkpcy.* p. 54
United Fruit Co. *v.* Frederick Leyland & Co., Ltd. (1930); **28.** *Injon.* Nos. 853a, 1163a
United Gas & Fuel Co. of Hamilton, Ltd. *v.* Dominion Natural Gas Co. (Can.); **25.** *Gas*, p. 44
United General Commercial Insurance Corpn., *Re* (1927); **10.** *Coys.* No. 7485a
United Grain Growers, Ltd. *v.* Mabey (Can.); **1.** *Agcy.* p. 68
United Grain Growers, Ltd.'s Case, *Re* Sale of Shares Act (Can.); **10.** *Coys.* p. 59
United Indigo Chemical Co., Ltd. *v.* Robinson (1931); **28.** *Injon.* No. 839b; **34.** *Mast. & S.* No. 934b
United Insurance Co. *v.* Arthur (N.Z.); **2.** *Arbn.* p. 80
United Kingdom Advertising Co., Ltd. *v.* Whiting (1931); **9.** *Coys.* No. 2344a
United Kingdom Ship Owning Co., Ltd., *Re*, Felgates Case (1865); **9.** *Coys.* No. 582a
United Kingdom Tobacco Co. (1929), Ltd. *v.* Malayan Tobacco Distributors, Ltd. (1933); **16.** *Courts*, No. 679a
United Manufacturing Co. *v.* St. Maurice Power Co. (1926); **17.** *Dep.* No. 24a
United Molasses Co., Ltd. *v.* Amalgamated Ry. Co.'s (1932); **38.** *Rates*, No. 226pp
— *v.* National Petroleum Co. (1934); **41.** *Ship.* No. 2289a
United Motor Finance Co. *v.* Addison & Co., Ltd. (1937); **35.** *Misrep.* No. 293a
United Motors Service Inc. *v.* Hutson (Can.), **36.** *Negl.* p. 25
United National Collieries, Ltd., Treorchy *v.* Jones (1934); **34.** *Mast. & S.* No. 3822g
United States *v.* Snyder (Can.); **15.** *Crim.* pp. 80 81
United States Government *v.* Gifford (Can.); **24.** *Extrdn.* p. 45
United States Shipping Board *v.* St. Albans, Ship (Aus.); **41.** *Ship.* p. 57
— *v.* St. Albans, The (1931); **1.** *Adm.* No. 1185a; **22.** *Evid.* Nos. 1338a, 3935a
United Steel Cos., Ltd. *v.* Cullington (1938); **28.** *Inc. T.* No. 210k
Unity Manufacturing Co., *Re*, Moore's Claim (Can.); **5.** *Bkpcy.* p. 70
Universal Button Fastening & Button Co. of Canada, Ltd. *v.* Christensen (Can.); **36.** *Pats.* p. 71
Universal Film Manufacturing Co. (Australasia), Ltd. *v.* New South Wales State (Aus.); **28.** *Inc. T.* p. 92
Universal Motors, Ltd. *v.* Wurch (Can.); **27.** *H. & W.* p. 6
Universal Mutual Aid & Poor Houses Assocn., Ltd. *v.* Thoppa Naidu (Ind.); **10.** *Coys.* p. 108
Universal Negro Improvement Assocn. Incorporated *v.* Morter (1928); **8.** *Char.* No. 272a
Universal Steam Navigation Co. *v.* McKelvie (J.) & Co. (1923); **1.** *Agcy.* No. 2549a
University College, Oxford (Master & Fellows) *v.* Garton (1847); **19.** *Eccl.* No. 3475a
— *v.* Secretary of State for Air (1938); **11.** *Const. L.* No. 501a
University of Manitoba *v.* Winnipeg City (Can.); **38.** *Rates*, p. 63
Unrau *v.* Martens (Can.); **32.** *Lien*, p. 22
Unsworth *v.* Pease & Partners, Ltd. (1937); **34.** *Mast. & S.* Nos. 3472a, 3473a
Untermeyer Estate *v.* A.-G. for British Columbia (Can.); **17.** *Dep.* p. 50; **21.** *E. D.* p. 20
Untermeyer Estate, *Re* (Can.); **21.** *E. D.* p. 20
Unus Shipping Co., *Re* (Can.); **41.** *Ship.* p. 32
Upendrakumar Mitra *v.* Calcutta Corpn. (Ind.); **42.** *Theatres*, p. 69
Upham *v.* Bardebs (N.Z.); **40.** *S. Land*, p. 11
— *v.* Goulstone (1843); **3.** *Bailmt.* No. 329a
Upjohn *v.* Illingworth (Aus.); **1.** *Agcy.* p. 79
— *v.* Seymour Estates, Ltd. (1938); **7.** *Bounds. & F.* No. 251b
— *v.* Simmons (1936); *Pract.* No. 991a
Upminster Services, Ltd., *Ex. p.*, R. *v.* Minister of Transport (1934); **42.** *Str. Traf.* No. 76w
Upper (Doe d.) *v.* Edwards (Can.); **38.** *Rates*, p. 85
Upper *v.* Upper (Can.); **27.** *H. & W.* p. 22
Upper Canada Estates & MacNicol, *Re* (Can.); **38.** *Pub. Hlth.* p. 19
Upper Canada Law Society & Woods, *Re* (Can.); **42.** *Solrs.* p. 14
Uppington *v.* Tarrant (Ir.); **32.** *Limit. of A.* p. 36
Upton, *Re* (Can.); **8.** *Char.* p. 74
— *v.* Farmer (1930); **13.** *Cty. Cts.* No. 534a, 534b
Upton Castle, The (1912); **1.** *Adm.* No. 979b
Upton (Doe d.) *v.* Witherwick (1825); **21.** *Exon.* No. 1658a
Uranienborg, The (1936); **41.** *Ship.* No. 5133a
Urmila Dasi *v.* Tata Iron Co. (Ind.); **34.** *Mast. & S.* p. 68
Urquhart *v.* Butterfield (1887); **25.** *Fr. Soc.* No. 155a
— *v.* Stracey (Ir.); **9.** *Coys.* p. 8
Urquhart Lindsay & Co. *v.* Eastern Bank, Ltd. (1922); **3.** *Bank.* No. 756b
Usher *v.* Dolby (1935); **33.** *Mags.* No. 329a
— *v.* Usher & Carmichael (Can.); **27.** *H. & W.* p. 58
Ussan Kasim Sait *v.* Secretary of State for India (Ind.); **19.** *Easmt.* pp. 1, 5, 16
Utah State *v.* Jones (Can.); **24.** *Extrdn.* p. 45
— *v.* Peters (Can.); **24.** *Extrdn.* p. 44
Uttam Chand Saligram *v.* Jewa Mamooji (Ind.); **2.** *Arbn.* p. 76
Utting & Co., Ltd. *v.* Hughes (1938); **28.** *Inc. T.* No. 122g
Uttley *v.* Hooper & Co. (1935); **1.** *Action*, 593a
Uxbridge Hardware Co. *v.* Musselman (Can.); **21.** *Exon.* p. 58
dge Permanent Benefit Building Society *v.* Pickard (1938); **34.** *Mast. & S.* No. 1062a
Uys *v.* Uys (S. Af.); **36.** *Negl.* p. 16
Uzking, *In the Estate of*, King *v.* King (Can.); **33.** *Lunat.* p. 13

V.

V. A. S. M. Chettyar Firm *v.* King Emperor (Ind.); **37.** *Pawns*, p. 1
V. D., Ltd. *v.* Boston Deep Sea Fishing & Ice Co., Ltd. (1934); **36.** *Pats.* No. 2633b
— *v.* — (1935); **36.** *Pats.* Nos. 518b, 613d
— *v.* —, *Re* Vigneron Dahl et cie Petition for Revocation of Letters Patent, *Re* Vigneron's Application for Letters Patent (No. 175,824) (1935); **36.** *Pats.* Nos. 604a, 897a, 2302a, 2641b
V. E. R. M. Chettyar *v.* Hormasji (Ind.); **10.** *Coys.* p. 101
Vaaro & Worozcyt *v.* R. (Can.); **2.** *Aliens*, p. 50
Vacuum Oil Co. *v.* Union Insurance Society of Canton, Ltd. (1926); **29.** *Insce.* No. 2286a
Vacuum Oil Co. Proprietary, Ltd. *v.* State of Queensland (Aus.); **17.** *Dep.* p. 63

Vahey & Carleton County, *Re* (Can.); **2.** *Arbn.* p. 99
Vaile Bros. *v.* Hobson, Ltd. (1933); **17.** *Damgs.* No. 132a; **36.** *Negl.* No. 90a
Vaillancourt *v.* R. (Can.); **34.** *Mast. & S.* p. 6
Vair, *Re* (Can.); **24.** *Exors.* p. 34
Vajesingji Joravarsingji *v.* Secretary of State for India (1924); **17.** *Dep.* No. 265a
Vakil of Azamgarh, A, *Re* (Ind.); **3.** *Barr.* p. 49
Valade *v.* McEwen (Can.); **35.** *Money*, p. 21
Valayathan *v.* Five Roses Tea & Coffee Works (S. Af.); **6.** *B. of Exch.* p. 11
Vale *v.* Gnani (Aus.); **30.** *Intox.* p. 17
— *v.* Godwin (Thomas) & Sons (1933); **34.** *Mast. & S.* No. 3811n
— *v.* Rockman, *Re* Kimber (1928); **3.** *Bank.* No. 112c; **39.** *Revenue*, No. 843a
Vale (J.) & Co. *v.* Van Oppen & Co., Ltd. (1921); **1.** *Agcy.* No. 1208a
Valencourt *v.* R. (Can.); **11.** *Comp. Pche.* p. 19
Valentine *v.* Bell (Scot.); **30.** *Intox.* p. 9
Valiantes *v.* Bell (Can.); **20.** *Elect.* p. 8
Valinsky, *Ex p.*, *Re* Webber (Can.); **35.** *Mtge.* p. 30
— *v.* Bacon, *Re* Webber (Can.); **4.** *Bkpcy.* p. 45
Vallabhdas Naranji *v.* Bandra Development Officer (Ind.); **11.** *Comp. Pche.* p. 7
Valli Mahomed Abu *v.* Berthold Reif (Ind.); **2.** *Aliens*, p. 46
Valliant Direct Coaches, Ltd., *Ex p.*, R. *v.* Minister of Transport (1937); **42.** *Str. Traf.* Nos. 76x, 76y, 76z
—, *Ex p.*, R. *v.* South-Eastern Traffic Comrs. (1937); **42.** *Str. Traf.* No. 76x
—, *Ex p.*, R. *v.* Traffic Comrs. for South Eastern Traffic Area (1937); **42.** *Str. Traf.* Nos. 76x, 76y, 76z
Vallieres *v.* R. (Can.); **15.** *Crim.* p. 107
Valois *v.* Boucherville (Can.); **16.** *Cr. Pract.* p. 44
Valuation Comr. *v.* Londonderry County Council (Ir.); **38.** *Rates*, p. 64
— *v.* Macausland (Ir.); **38.** *Rates*, p. 64
Vamvakidis *v.* Kirkoff (Can.) (1929); **11.** *Confl.* p. 49
— *v.* — (Can.) (1930); **27.** *H. & W.* p. 22
Vanbergen *v.* St. Edmunds Properties, Ltd. (1933); **12.** *Contr.* No. 3869a; **17.** *Damgs.* No. 393a
Van Berkel *v.* De Foort (Can.); **2.** *Agric.* p. 15
Van Camp *v.* Carter & Anderson (Can.); **36.** *Negl.* p. 33
Vance, *Re* (Can.); **34.** *Mast. & S.* p. 39
Vancouver (City) *v.* Richmond (Can.); **42.** *Stats.* p. 28
Vancouver Dress Co., Ltd. (Can.); **4.** *Bkpcy.* p. 38
Vancouver General Hospital *v.* McDaniel (1934); **34.** *Med.* No. 87d
Vancouver Growers, Ltd. *v.* British Columbia Coast Vegetable Marketing Board (Can.); **17.** *Dep.* p. 44
— *v.* McLenan (Can.); **17.** *Dep.* p. 44
— *v.* Snow, Ltd. (Can.); **17.** *Dep.* p. 44
Vancouver Harbour Comrs. *v.* R., *Re* Kitsilano Indian Reserve (Can.); **11.** *Comp. Pche.* p. 15
Vancouver Ice & Storage Co. *v.* British Columbia Electric Ry. Co. (Can.); **36.** *Negl.* p. 15
Vancouver Incorporation Act & Canadian Pacific Ry. (Can.); **38.** *Rates*, p. 82
Vancouver Island Coach Lines, Ltd. *v.* Le Bus (E.) & Co., Ltd. (Can.); **36.** *Negl.* p. 32
Vancouver Malt & Sake Brewing Co., Ltd. *v.* Vancouver Breweries, Ltd. (1934); **43.** *Trade*, No. 611a
Vancouver Milling & Grain Co. *v.* Perkins & McLeod (Can.); **1.** *Agcy.* p. 95
Vancouver Orient Export Co., Ltd. *v.* Anglo-Peruvian, The (Can.); **1.** *Adm.* p. 36
Vancouver Waterfront, Ltd. *v.* Vancouver City (Can.); **38.** *Rates*, p. 75
— *v.* Vancouver Harbour Comrs. (Can.); **28.** *Injon.* p. 147
Van den Berghs, Ltd. *v.* Clark (1935); **28.** *Inc. T.* No. 249b
Vandepitte *v.* Preferred Accident Insurance Corpn. of New York (Can.); **29.** *Insce.* p. 40
Vanderburgh *v.* Oneida Farmers' Mutual Fire Insurance Co. (Can.); **29.** *Insce.* p. 29
— *v.* Vanalstine (Can.); **40.** *S. Land*, p. 20
Van der Byl, *Re*, Fladgate *v.* Gore (1931); **37.** *Powers*, No. 505a
Van Der Byl Estate *v.* Swanepoel (S. Af.); **34.** *Mast. & S.* p. 12
Vanderpant *v.* Mayfair Hotel Co. (1930); **26.** *Hghys.* No. 1680a; **36.** *Nuis.* Nos. 98b, 121a
Van der Walt *v.* Hofmeyr (S. Af.); **1.** *Agcy.* p. 80
Van Dieman's Land Co. *v.* Cockerell (1857); **10.** *Coys.* No. 8615
Van Dusen *v.* Kritz (1936); **13.** *Coprt.* No. 561a
Vandyk *v.* Berton, *Re* Berton (1938); **44.** *Wills*, No. 299d
Vanevery *v.* Buffalo & Lake Huron Ry. Co. (Can.); **1.** *Agcy.* p. 69
Van Every *v.* Grant (Can.); **21.** *Exon.* p. 46
Van Geel *v.* Warrington (Can.); **3.** *Bailmt.* pp. 8, 15; **34.** *Mast. & S.* p. 12
Van Hemelryck *v.* New Westminster Construction & Engineering Co. (Can.); **1.** *Agcy.* p. 94
— *v.* New Westminster Construction & Engineering Co. (No. 2) (Can.); **16.** *Courts*, p. 14
— *v.* Northern Construction Co. (Can.); **1.** *Agcy.* p. 94
— *v.* Pacific Construction Co. (Can.); **1.** *Agcy.* p. 94
Van Heusen, Products Inc. *v.* Tooke Brothers, Ltd. (Can.); **36.** *Pats.* p. 67
Vanity Fair Silk Mills *v.* Patents Comr. (Can.); **36.** *Pats.* p. 71
Van Koughnet *v.* Quaife & Rogers (Can.); **32.** *Lien*, p. 23
Vann, *Ex p.*, *Re* Marks (1923); **5.** *Bkpcy.* No. 8104b
— *v.* Eatough (1935); **28.** *Infts.* No. 2192a
Van Neck *v.* Van Neck (Can.); **7.** *Bounds. & F.* p. 16
Van Oppen, *Re*, Roberts *v.* Gray (1935); **24.** *Exors.* No. 8351a
Van Ruyven *v.* Blatchford (Can.); **27.** *H. & W.* p. 58
Vansickle *v.* Kelly (Can.); **19.** *Easmt.* p. 1
Van Staden *v.* Stocks (S. Af.); **36.** *Negl.* p. 18
Vanston *v.* Frost (S. Af.); **1.** *Action*, p. 7
Van Volkenberg *v.* Western Canada Ranching Co. (Can.); **35.** *Mtge.* p. 49
Vanvolkinburg *v.* Gommer (Can.); **33.** *Mal. Pros.* p. 41
Van Wassenaer *v.* Adams (Can.); **21.** *Exon.* p. 57
Van Weyenbergh (E.) *v.* British Acetate Silk Corpn., Ltd. (1930); **34.** *Mast. & S.* No. 491b
Van Zijl *v.* Pienaar (S. Af.); **2.** *Aliens*, pp. 33, 44
Varadaraja Perumal Koil *v.* Muniappa Pillai (Ind.); **31.** *L. & T.* p. 63
Varaja Lal & Co. *v.* Ranadaprasad Shaha (Ind.); **41.** *Ship.* p. 18
Vardini *v.* McLennan (Can.); **33.** *Mal. Pros.* p. 40
Vardon, *Re*, Brown *v.* Vardon (1938); **39.** *Rntchgs.* No. 196b
Vardy *v.* Smith (otherwise Vardy) (1932); **11.** *Confl.* No. 943a
— *v.* Vardy (1932); **11.** *Confl.* No. 943a

Varey *v.* **Muirhead (Can.)**; **21.** *Exon.* p. 52
Varin *v.* Cormier (Can.); **2.** *Aliens*, p. 50
Varing, The (1931); **41.** *Ship.* No. 4026a
Varshno Ditti *v.* Rameshri (Ind.); **17.** *Custom*, p. 1
Varson *v.* Vegreville (Town) (Can.); **38.** *Rates*, p. 78
Vasauji Moolji *v.* Karsondas Tejpal (Ind.); **1.** *Agcy.* p. 80
Vaselenak *v.* Vaselenak (Can.); **1.** *Agcy.* p. 51
Vasenolwerke Dr. Köpp Aktiengesellschaft *v.* Comr. of Patents & Chesebrough Manufacturing Co. (Can.); **43.** *Trade Mks.* p. 17
Vasilatos *v.* Victoria Corpn. (Can.); **39.** *Revenue*, p. 17
Vasudeva Mudali, *Re* (Ind.); **14.** *Crim.* p. 1
Vater *v.* Styles & Metropolitan Life Insurance Co. (Can.); **21.** *Exon.* p. 55
Vatsavaya Venkata Jagapati *v.* Poosapati Venkatapati (Ind.); **8.** *Chos.* p. 89
Vaughan *v.* Grindell (1921); **2.** *Agric.* No. 975a
Vaughan's Exors., *Ex p., Re* Dodds (1890); **4.** *Bkpcy.* No. 2807
Vaughn *v.* A.-G. for Alberta (Can.); **21.** *E. D.* p. 18
Vaux, *Re*, Nicholson *v.* Vaux (1938); **20.** *Eqy.* No. 1788a; **37** *Perps.* No. 115a
Vaux's Case (1590). *See* Vol. 14, p. 330
Vauxhall Estates, Ltd. *v.* Liverpool Corpn. (1932); **11.** *Comp. Pche.* No. 2225c
Vavasseur & Co., Ltd. *v.* Port of London Authority (1920); **41.** *Ship.* No. 4502a
Veal *v.* Heard (1930); **32.** *Libel*, No. 1596a
Veale *v.* Reid (1904); **32.** *Libel*, No. 2273a
Veale's Will & Codicils, *Re*, Malone *v.* James (1931); **39.** *Rntchgs.* No. 592c
Veasey *v.* Denver Rock Drill & Machinery Co., Ltd. (S. Af.); **36.** *Pats.* p. 75
Vectis, The (1929); **41.** *Ship.* No. 6433a
Veerabadra Pillai, *Re* (Ind.); **15.** *Crim.* p. 78
Veerappa Chetty *v.* Muthiah Chetty (Ind.); **35.** *Money*, p. 19; **36.** *Prtnrs.* p. 61
Veith *v.* Veith (1929); **11.** *Confl.* No. 65a
Velasco *v.* Coney (1934); **11.** *Confl.* No. 621b
Vellasawmy Servai *v.* Sivaraman Servai (1929); **17.** *Dep.* No. 640c; **23.** *Exors.* No. 1320a
— *v.* — (Ind.); **17.** *Dep.* p. 84
Venables *v.* Scotland Agriculture Department (Scot.); **11.** *Comp. Pche.* p. 18
Venicoff, *Ex p.*, R. *v.* Leman Street Police Station Inspector (1920); **2.** *Aliens*, No. 551a
—, *Ex p.*, R. *v.* Secretary of State for Home Affairs (1920); **2.** *Aliens*, No. 551a
Venidas Nemchand *v.* Bai Champatavi (Ind.); **23.** *Exors.* p. 15
Veniot *v.* Black (Can.); **36.** *Negl.* p. 31
Venkata Rao *v.* Secretary of State for India (1937); **11.** *Const. L.* No. 79a
Venkatappayya *v.* Venkata Ranga Rao (Ind.); **28.** *Infts.* p. 139
Venkatarami *v.* Gadwal (Raja) (Ind.); **22.** *Evid.* p. 6
Venkataratnam *v.* Secretary of State for India (Ind.); **16.** *Cr. Pract.* p. 40
Venkatasoneswara Rao *v.* Lakshmanaswami (Ind.); **28.** *Infts.* p. 142
Venkatasubba Reddi, *Re* (Ind.); **22.** *Evid.* p. 4
Venkatathirisami *v.* Appaswami (Ind.); **17.** *Dep.* p. 79
Venkatrama Ayyar *v.* Gopalakrishna Pillai (Ind.); **12.** *Contr.* p. 29
Venkat Rao *v.* Namdeo (Ind.); **23.** *Exors.* p. 6
Venter *v.* Venter (S. Af.); **27.** *H. & W.* p. 26
Verco *v.* Crafter (Aus.); **15.** *Crim.* p. 100
Verebioff *v.* Moojelski (Can.); **3.** *Basty.* p. 61
Veregin, *Re* (Can.); **2.** *Aliens*, p. 50
— *v.* **Smith** (Can.); **2.** *Aliens*, p. 50
Verein Für Schutzgebietsanleihen E. V. *v.* Conradie, N. O. (S. Af.); **17.** *Dep.* p. 65
Verge *v.* **Somerville (1924)**; **8.** *Char.* Nos. 1a, 199b, 1252a
Verhille, *Ex p.* R. *v.* Vesey (Can.); **17.** *Dep.* p. 56
Vermont Loan & Trust Co. *v.* Ennis (Can.); **10.** *Coys.* p. 56
Vernazza *v.* Barburriza & Co., Ltd. (1937); *Pract.* No. 3029a
Verner-Jeffreys *v.* Pinto (1929); **35.** *Money*, Nos. 381a, 410a, 456a
Verney *v.* **Verney (1920)**; **22.** *Evid.* No. 2757a
Vernon *v.* Findlay (1938); **12.** *Contr.* No. 824a
Vernon & Barlee *v.* Small (Ir.); **31.** *L. & T.* p. 57
Vernon Hardware Co. *v.* Reid & Reinhard (Can.); **8.** *Chos.* p. 96; **21.** *Exon.* p. 58
Vernon Heaton Co., Ltd., *Re* (1936); **10.** *Coys.* No. 6717a
Vernon Jubilee Hospital *v.* Pound (Can.); **38.** *Pub. Hlth.* p. 20
Verratt *v.* McAulay (Can.); **26.** *Guar.* pp. 3, 5
Verrault *v.* Lachance (Can.); **16.** *Cr. Pract.* p. 28
Verren *v.* Anglo-Dutch Brick Co. (1927), Ltd. (1929); **41.** *Ship*, No. 3665a
Versailles Treaty, *Re*, *Re* Hours of Labour (Can.); **17.** *Dep.* p. 56
Versicherungs Und Transport A. G. Daugava *v.* Campbell (1934); **29.** *Insce.* Nos. 733a, 735b
— *v.* Henderson (1934); **29.** *Insce.* Nos. 733a, 735b
Vertannes *v.* Robinson (Ind.); **30.** *L. & T.* p. 38
Vessey, *Re*, McLean *v.* Vessey (Can.); **27.** *H. & W.* p. 12
— *v.* Vessey (Can.); **27.** *H. & W.* p. 12
Vest, *Ex p.*, *Re* McKay & Adams (Aus.); **18.** *Distr.* p. 29
Vetter *v.* Schreiber (1888); **18.** *Discy.* No. 1311b
Viau *v.* Otis (Can.); **33.** *Mags.* p. 24; **34.** *Med.* p. 194
Vickers, *Re* (Can.); **40.** *Sttlmts.* p. 34
— *v.* Cumberland Coal Owners' Mutual Indemnity Co., Ltd. & Whitehaven Colliery Co., Ltd. (1934); **29.** *Insce.* No. 3206a
Vickers-Armstrong, Ltd. *v.* Regan (1933); **34.** *Mast. & S.* Nos. 3708a, 3753c
Vickers, Ltd. *v.* Miners (1927); **34.** *Mast. & S.* No. 3766a
Vickery, *Re*, Vickery *v.* Stephens (1931); **24.** *Exors.* No. 6915a
Vickery *v.* Stephens, *Re* Vickery (1931); **24.** *Exors.* No. 6915a
Victor *v.* Gallen (Can.); **6.** *B. of Exch.* p. 9
Victoria (State of) *v.* Commonwealth (Aus.); **17.** *Dep.* p. 61
Victoria (Bishop) *v.* Victoria (City) (Can.); **38.** *Rates*, p. 76
Victoria City Temple's Application, *Re* (Can.); **19.** *Eccl.* p. 24
Victoria Cold Storage & Terminal Warehouse Co., Ltd. & Porter *v.* Victoria City (Can.); **13.** *Corpn.* p. 33
Victoria Dental Board *v.* Denison (Aus.); **34.** *Med.* pp. 190, 191
Victoria Insurance Co., Ltd. *v.* Harrison-Wilkie (N.Z.); **29.** *Insce.* p. 46
Victoria Lumber & Manufacturing Co., Ltd. *v.* Thomsen & Clark (Can.); **21.** *Estpl.* p. 33
Victoria Park Racing & Recreation Grounds Co., Ltd. *v.* Taylor (Aus.); **42.** *Tele.* p. 67
Victoria School Trustees *v.* Muirhead & Mann (Can.); **1.** *Agcy.* p. 90
Victoria Spinning Co. (Rochdale), Ltd. *v.* Matthews (1936); **34.** *Mast. & S.* Nos. 2471a, 2535a
Victoria Street Properties, Ltd. (In Voluntary Liquidation), *Re* (N.Z.); **10.** *Coys.* p. 85
Victoria U Drive Yourself Auto Livery *v.* Wood & Wood (Can.); **28.** *Infts.* p. 132

Victorian Railways Comrs. *v.* Speed (Aus.); **38.** *Rys.* p. 41
Victorian Stevedoring & General Contracting Pty.. Ltd. *v.* Dignan (Aus.); **17.** *Dep.* p. 61
Victors, Ltd. *v.* Lingard (1927); **9.** *Coys.* No. 3419a
Victory *v.* Saskatchewan Guarantee & Fidelity Co., Ltd. (Can.); **29.** *Insce.* p. 54
Victory Rural Municipality *v.* Saskatchewan Guarantee & Fidelity Co., Ltd. (Can.); **29.** *Insce.* p. 54
Vidal *v.* Robinson (William) Co., Ltd. (Can.); **2.** *Arbn.* p. 81
Vigeant *v.* R. (Can.) (1930); **14.** *Crim.* p. 70
— *v.* — (Can.) (1931); **14.** *Crim.* p. 70
Vigneron & Vigneron, Dahl et cie Petition for Revocation of Five Letters Patent, *Re* (1934); **36.** *Pats.* No. 2944k
Vigneron Dahl et cie Petition for Revocation of Letters Patent, *Re*, *Re* Vigneron's Application for Letters Patent (No. 175,824), V. D., Ltd. *v.* Boston Deep Sea Fishing & Ice Co., Ltd. (1935); **36.** *Pats.* Nos. 604a, 897a, 2302a, 2641b
Vigneron-Dahl (British & Colonial), Ltd. *v.* Pettit (1925); **18.** *Discy.* No. 805a
Vignitch *v.* Bond & Canadian Pacific Ry. Co. (Can.); **9.** *Coys.* p. 50; **15.** *Crim.* p. 82; **34.** *Mast. & S.* p. 14
Vigon *v.* Vigon & Kuttner (1929); **27.** *H. & W.* Nos. 5781e, 5802a
Viking Municipal Hospital District No. 10, *Re* (Can.); **16.** *Cr. Pract.* p. 32
Villar, *Re*, Public Trustee *v.* Villar (1929); **37.** *Perps.* No. 66a
Villeneuve *v.* Kelvington Rural Municipal (Can.); **38.** *Pub. Hlth.* p. 16; **41.** *Sewers*, p. 4
Villiers, *Ex p.*, R. *v.* Minister of Health (1936); **11.** *Comp. Pchc.* Nos. 2225f, 2225g
— *v* A.-G., *Re* Child Villiers' Application (1922); **8.** *Char.* No. 2137
Vince *v.* Abel & Imray (1928); **34.** *Mast. & S.* No. 2768a
Vincent *v.* St. Magnus the Martyr, etc. (Rector & Churchwardens) (1925); **19.** *Eccl.* Nos. 2764a, 2825, 2831, 2873, 2896, 2906, 2916, 3113a
— *v.* Smith, *Re* Smith (1930); **30.** *Jdgmts.* No. 669a; **40.** *Stllmts.* No. 1873a, 1878b
— *v.* Southern Ry. Co. (1927); **38.** *Rys.* No. 598a
— *v.* Tauranga Electric-Power Board (N.Z.); **20.** *Electric*, p. 15
Vincents of Reading *v.* Fogden (1932); **43.** *Trade*, No. 791a
Vinnicombe Estate, *Re* (Can.); **24.** *Exors.* p. 34
Vinogradoff, *Re*, Allen *v.* Jackson (1935); **43.** *Trusts*, No. 863a
Vipond *v.* Lamb, *Re* Lamb (1929); **23.** *Exors.* No. 5017a
— *v.* Ramsay (Can.); **12.** *Contr.* p. 3
— *v.* Sisco (Can.); **39.** *S. Goods*, p. 52
Virginia Dare, Ltd. *v.* Patents Comr. (Can.); **43.** *Trade Mks.* p. 14
Viscount Grain Growers Co-Operative Assocn.'s Trustee *v.* Brumwell & Royal Bank (Can.); **5.** *Bkpcy.* p. 82
Vishnu Jagannath Joshi *v.* Vasudep Raghunath Oka (Ind.); **2.** *Agric.* p. 17
Vishwanath *v.* Rankrishna (Ind.); **31.** *L. & T.* p. 64
Visser, *Re*, Queen of Holland *v.* Drukker (1928); **11.** *Confl.* No. 6a
Vita Food Products Inc. *v.* Unus Shipping Co. (Can.); **41.** *Ship.* p. 13
Vitaly *v.* Bryan (Can.); **12.** *Contr.* p. 8
Vitomen Cereal, Ltd. *v.* Manitoba Grain Co. (Can.); **9.** *Coys.* p. 2
Vivian *v.* British Columbia Electric Ry. Co. (Can.); **8.** *Carr.* p. 6
v. Cochrane (1855); **19.** *Eccl.* No. 3455a
Vizagapatam Municipal Council *v.* Tea Districts Labour Assocn. (Ind.); **25.** *Fr. Soc.* p. 22
Vlassopoulos *v.* British & Foreign Marine Insurance Co., Ltd. (1929); **41.** *Ship.* Nos. 4248a, 4253a, 4260a, 4283a
Vocalion (Foreign), Ltd., *Re* (1932); **10.** *Coys.* No. 6579a
Voge *v.* Kerr (Aus.); **1.** *Agcy.* p. 55
Vogue Fur Shop, Ltd., *Re*, *Ex p.* Paquet Co. (Can.); **5.** *Bkpcy.* p. 70
Vokes Hardware Co. *v.* Grand Trunk Ry. Co. (Can.); **32.** *Lien*, p. 24
Vokes (C. G.), Ltd. *v.* Evans & Marble Arch Motor Supplies, Ltd. (1931); **43.** *Trade Mks.* Nos. 1516a, 1516b, 1516c
Volhoffer *v.* Volhoffer (Can.); **27.** *H. & W.* p. 45
Volkers *v.* Volkers (1935); **27.** *H. & W.* No. 4540a
Von Lorang *v.* Austrian Property Administrator (1927); **11.** *Confl.* Nos. 926a, 944b
Von Weissenfeld, *Re*, *Ex p.* Hendry (1892); **4.** *Bkpcy.* No. 4578a
Vosper *v.* Great Western Ry. Co. (1928); **8.** *Carr.* No. 827a
Vosz, *Re*, Public Trustee *v.* Steele (Aus.); **8.** *Char.* pp. 65, 72
Vowles *v.* Armstrong Siddeley Motors, Ltd. (1938); **24.** *Fact.* No. 76d
Vranch *v.* Tredegar (Southern) Colliers, Ltd. (1935); **34.** *Mast. & S.* No. 3932n
Vredenburg's Registered Design (No. 788,451), *Re*, *Re* Patents & Designs Acts, 1907–1932 (1934); **43.** *Trade Mks.* No. 953a
Vrouw Dorothea, The (1754); **1.** *Adm.* No. 1799a
Vrouw Henrietta, The (1803); **37.** *Prize L.* No. 1189a
Vsesojwzoje Objedinenije "Exportles" *v.* Allen & Sons, Ltd. (1938); **39.** *S. Goods*, Nos. 1884a, 2522b
Vuchar *v.* Toronto General Hospital Trustees (Can.); **34.** *Med.* p. 187
Vulcaan Coal Co., *Re*, Harrison *v.* Harbottle (1922); **2.** *Aliens.* Nos. 223c, 223f
Vulcan Insurance Co. *v.* Dawsons Bank (Ind.); **29.** *Insce.* p. 27
Vulcan Town *v.* Elves (Can.); **38.** *Rates*, p. 84

W.

W., *Re* (Can.); **3.** *Bastv.* pp. 57, 58
W. an Arranging Debtor, *Re* (Ir.); **4.** *Bkpcy.* p. 39
W. *v.* W. (1926); **27.** *H. & W.* No. 5792a
— *v.* — (Aus.); **27.** *H. & W.* p. 48
— *v.* — (Can.); **11.** *Confl.* p. 49
— *v.* W. & M. (Can.); **27.** *H. & W.* p. 35
W. & A. M'Arthur, Ltd. *v.* Queensland (Aus.); **17.** *Dep.* p. 63
W. & G. Dean Proprietary, Ltd., *Re* (Aus.); **9.** *Coys.* p. 24
W. D. J., *Re* (1934); **33.** *Lunat.* Nos. 1419a, 1419b, 1419c
W. H. Cowburn & Cowpar, Ltd. Appeals, *Re* (1933); **44.** *Work*, No. 139a
W. H. Randall, The (1928); **1.** *Adm.* No. 672a
W—— M. J. *v.* W—— H. R. W. (1936); **27.** *H. & W.* No. 5185a
Wachnow *v.* Myers (No. 2) (Can.); **32.** *Lien*, p. 22
Wacker *v.* Bullock (N.Z.); **44.** *Wills*, p. 24
Wackrow *v.* Takapuna Jockey Club (N.Z.); **2.** *Animals*, p. 57

Waddell *v.* Gray-Campbell, Ltd. & Scarrow (Can.); **40.** *S. Land*, p. 8; **42.** *Solrs.* p. 3
— *v.* Howat (Scot.); **2.** *Agric.* p. 5
— *v.* Kinneil Cannel & Coking Coal Co., Ltd. (1930); **34.** *Mast. & S.* No. 4068b
Waddell's Trustees *v.* Crawford (Scot.); **23.** *Exors.* p. 21
Waddington *v.* Esquimalt & Nanaimo Ry. Co. (Can.); **11.** *Const. L.* p. 77
— *v.* O'Callaghan (1931); **28.** *Inc. T.* No. 207a
Wade, *Re* (Can.); **14.** *Crim.* p. 13
— *v.* Adair (Scot.); **24.** *Fact.* p. 56
— *v.* Alderman (Aus.); **3.** *Bastv.* p. 62
— (or Anderson) *v.* Egan (Can.); **2.** *Aliens*, p. 50
— *v.* Hardley (No. 2) (N.Z.); **2.** *Arbn.* p. 99
— *v.* Municipal District of Golden Centre (Can.); **7.** *B. of Sale*, p. 4
— *v.* Trotter (Aus.); **14.** *Crim.* p. 61
— *v.* Walker (Can.); **39.** *S. Goods*, p. 32
Wade & English, Ltd. *v.* Dixon & Cardus, Ltd. (1937); **19.** *Easmt.* No. 467a
Wade's Patent, *Re*, *Re* Douglas' Patent (1929); **36.** *Pats.* No. 2044a
Wadgery *v.* Fall (Can.); **12.** *Contr.* pp. 21, 22
Wadham *v.* Wadham (1938); **27.** *H. & W.* No. 5684a
Wadia *v.* Secretary of State for India (Ind.); **17.** *Deeds*, p. 36
Wadman *v.* Calcraft (1804); **31.** *L. & T.* No. 6308a
Wadsley, *Re*, Bettinson's Representative *v.* Trustee (1925); **2.** *Agric.* No. 226a; **5.** *Bkpcy.* No. 7756a
Wadsworth *v.* Minister of Health (1927); **37.** *Poor L.* No. 1672a
Wadsworth Lighterage & Coaling Co., Ltd. *v.* Sea Insce. Co., Ltd. (1929); **29.** *Insce.* No. 1608a
Wage-Earners Claim, *Re* Reeve Debis Mines (Can.); **4.** *Bkpcy.* p. 31
— *v.* Craig & Charmbury (Can.); **38.** *Negl.* p. 32
Wagg *v.* Shand, *Re* Johnson (1885); **43.** *Trusts*, No. 2654a
Wagner, *Re* (Can.); **24.** *Extrdn.* p. 45
— *v.* Hartows (Can.); **5.** *Bkpcy.* p. 70
— *v.* Heidt (Can.); **44.** *Work*, p. 58
— *v.* O'Donnell (Can.); **32.** *Lien*, p. 27
— *v.* Pine Lake Municipal District (Can.); **38.** *Pub. Hlth.* p. 21
Wagner, Chas. L. Management *v.* Bourdon (Can.); **12.** *Contr.* p. 39; **42.** *Theatres*, p. 70
Wagstaff, *Re*, Wagstaff *v.* Jalland (1907); **22.** *Evid.* No. 4831a
—, *Re* Wagstaff *v.* Jalland (1908); **22.** *Evid.* No. 4831a
— *v.* Clinton (1883); **2.** *Agric.* No. 175a
— *v.* Gutta Percha Co. (1927); **34.** *Mast. & S.* No. 3226a
— *v.* Jalland, *Re* Wagstaff (1907); **22.** *Evid.* No. 4831a
— *v.* —, *Re* Wagstaff (1908); **22.** *Evid.* No. 4831a
Wah Kie *v.* Cuddy (Can.); **14.** *Crim.* p. 14
Wahl *v.* A.-G. (1932); **11.** *Confl.* No. 120a
— *v.* Inland Revenue Comrs. (1933); **28.** *Inc. T.* No. 674cc
— *v.* Nugent (Can.); **21.** *Estpl.* p. 30
Wahn Estate, *Re* (Can.); **32.** *Limit. of A.* p. 32
Wainio *v.* Beaudreault (Can.); **1.** *Agcy.* p. 99; **3.** *Bailmt.* p. 18
Wainwright *v.* Clement (1838); **5.** *Bkpcy.* No. 7220a
Wainwright Gas Co., Ltd. *v.* Wainwright (Town) & Board of Public Utility Comrs. of Alberta (Can.); **38.** *Pub. Auth.* p. 5
Wainwright Town & Wainwright Gas Co., Ltd., *Re* (Can.); **25.** *Gas.* p. 44
Wairakei, Ltd. *v.* Cleave (N.Z.); **9.** *Coys.* pp. 24, 33
Wairoa Farmers Co-operative Meat Co., Ltd., & Bank of New Zealand *v.* New Zealand Insurance Co., Ltd. (N.Z.); **29.** *Insce.* p. 27
Wait & James *v.* Midland Bank (1926); **3.** *Bailmt.* No. 304b
Waite's Auto Transfer, Ltd. *v.* Waite (Can.); **28.** *Injon.* p. 151
Waitemata County Council *v.* Waitemata Electric-Power Board (N.Z.); **20.** *Electric*, p. 11
Waithman, Donegan & Co. *v.* Ramirez (1932); **42.** *Stk. Ex.* No. 223a
Waitomo County Council *v.* Miles (N.Z.); **38.** *Rates*, p. 66
Wakaruk *v.* Wakaruk (Can.); **27.** *H. & W.* p. 20
Wake-Walker *v.* Steamer Colin W., Ltd. & St. Lawrence Tankers, Ltd. (Can.); **41.** *Ship.* p. 61
Wakefield & Co., Ltd. *v.* Board (trading as J. P. Board & Co.) (1928); **18.** *Discy.* No. 87a
Wakefield (C. C.) & Co., Ltd. *v.* Purser (1934); **43.** *Trade Mks.* No. 1431b
— *v.* Russell (1930); **43.** *Trade Mks.* No. 1431a
Wakefield Local Board *v.* West Riding Ry. Co. (1866); **33.** *Mags.* No. 1180
Wakely *v.* Triumph Cycle Co. (1924); **11.** *Confl.* No. 1243a
Waker *v.* Snowe (1622); **38.** *Real Prop.* No. 628a
Wakim *v.* Equitable Agency Co. & Beyea (Can.); **30.** *Jdgmts.* p. 23
Walch *v.* Nordquist (Can.); **24.** *Exors.* p. 37
Walden *v.* Gramophone Co., Ltd. (1927); **34.** *Mast. & S.* No. 3954a
— *v.* Haney Garage, Ltd. (Can.); **3.** *Bailmt.* p. 15
Waldron *v.* Hogan (Can.); **9.** *Coys.* p. 13
Wales *v.* Iron Trades Employers' Assocn., Ltd. (1928); **29.** *Insce.* Nos. 3205a, 3213a
Walford (Leopold) (London) *v.* Affréteurs Réunis Société Anonyme (1918); **1.** *Agcy.* No. 1786a
Walkeam, *Re* (Can.); **4.** *Bkpcy.* p. 37
Walker, *Ex p.*, R. *v.* Leicester J.J. (1935); **42.** *Str. Traf.* Nos. 254a, 255
—, *Re* (Can.); **2.** *Aliens*, p. 40
—, *Re*, *Ex p.* Hinkey (N.Z.); **4.** *Bkpcy.* p. 2
—, *Re*, Croker *v.* Penny (Aus.); **44.** *Wills*, p. 52
—, *Re*, Walker *v.* Patterson (1934); **40.** *Stllmts.* No. 2146a
—, *Re*, — *v.* Walker (1936); **44.** *Wills*, No. 6527a
— *v.* A.-G., *Re* Marr's Will Trusts (1936); **8.** *Char.* No. 1265a
— *v.* Bairds & Dalmellington, Ltd. (1935); **34.** *Mast. & S.* No. 2737c
— *v.* Battersea General Hospital, *Re* Smith (1938); **8.** *Char.* Nos. 91a, 91b
— *v.* Bletchley Flettons, Ltd. (1937); **24.** *Fact.* No. 72c
— *v.* Bothwell (S. Af.); **17.** *Deeds*, p. 31
— *v.* Brander (Scot.); **2.** *Animals*, p. 65
— *v.* Broadhurst (1853); **17.** *Damgs.* No. 527a
— *v.* Brown (John) & Co., Ltd. (1932); **34.** *Mast. & S.* No. 3922a
— *v.* Cornell (Can.); **36.** *Prtnrs.* p. 61
— *v.* Elliott (Can.); **40.** *S. Land*, p. 11
— *v.* Hendry (Scot.); **1.** *Agcy.* p. 51
— *v.* Hennigar (Can.); **19.** *Easmt.* p. 5
— *v.* Howard (1927); **28.** *Inc. T.* No. 317c
— *v.* Hyman (Can.); **21.** *Estpl.* p. 38
— *v.* Kelly (Can.); **30.** *L. & T.* p. 40
— *v.* Kenns, Ltd. (1937); **9.** *Coys.* No. 3455d
— *v.* McDermott (Can.) (1930); **44.** *Wills*, p. 54
— *v.* — (Can.) (1931); **44.** *Wills*, p. 54
— *v.* — (No. 2) (Can.); **44.** *Wills*, p. 57
— *v.* Oram (Can.); **31.** *L. & T.* p. 78
— *v.* Patterson, *Re* Walker (1934); **40.** *Stllmts.* No. 2146a
— *v.* Petrie (Aus.); **44.** *Wills*, p. 37

Walker *v.* Pitlochry Motor Co. (Scot.); **17.** *Damgs.* p. 9; **36.** *Negl.* p. 34
— *v.* Randwick Municipality Council (Aus.); **7.** *Bldg. Conts.* p. 25
— *v.* St. John, Roman Catholic Bishop of (Can.); **43.** *Trusts*, pp. 68, 71
— *v.* Scott (Can.); **42.** *Str. Traf.* p. 61
— *v.* Solloway Mills & Co. (Can.); **18.** *Discy.* p. 15
— *v.* Walker (Can.) (1932); **27.** *H. & W.* p. 51
— *v.* — (Can.) (1934); **27.** *H. & W.* p. 79
— *v.* —, *Re* Walker (1930); **44.** *Wills*, No. 6527a
— *v.* Walker & Walker (1937); **27.** *H. & W.* No. 5042a
— *v.* Whitewater Rural Municipality (Can.); **26.** *Highys.* p. 29
— *v.* Woodyatt (Can.); **39.** *S. Goods*, p. 45
Walker & Co., *Re*, *Re* Hartlen (Can.); **4.** *Bkpcy.* p. 40
Walker & Roberts *v.* Silk (Can.); **27.** *H. & W.* p. 13
Walker (John) & Sons, Ltd., *Ex p.*, R. *v.* Stepney Corpn. (1933); **16.** *Cr. Pract.* No. 925b; **38.** *Rates*, No. 1564a
—*v.* Kilmarnock Assessor (Scot.); **38.** *Rates*, p. 76
Walker (Hiram) & Sons, Ltd. *v.* Walkerville Corpn. (Can.); **38.** *Rates*, p. 76
Walker's Estate, *Re*, MacRae *v.* Drummie (Can.); **24.** *Exors.* p. 33
Walker's Settlement, *Re*, Royal Exchange Assurance Corpn. *v.* Walker (1935); **43.** *Trusts*, No. 3703a
Walker's Settlement Trusts, *Re*, Watson *v.* Walker (1936); **40.** *Stlmts.* No. 2329a
Walkerville Brewery, Ltd. *v.* R. (Can.); **16.** *Cr. Pract.* p. 25
Walkerville Brewing Co. *v.* Mayrand (Can.); **12.** *Contr.* p. 25; **22.** *Evid.* p. 26
Walkingshaw *v.* Woodhall Coal Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 167
Walkinshaw *v.* Drew (Can.); **32.** *Libel*, p. 5
Walkling, Ltd. *v.* Robinson (1930); **25.** *Food*, Nos. 439a, 439e, 439g
Wall *v.* Cooper (1929); **28.** *Inc. T.* No. 614a
— *v.* Exchange Investment Corpn. (1926); **9.** *Coys.* Nos. 3787a, 3811a, 3847a
— *v.* London & Provincial Trust, Ltd. (1920); **9.** *Coys.* No. 3943a
— *v.* Porter (Can.); **3.** *Bailmt.* p. 17
— *v.* Southern Cross Assurance Co., Ltd. (N.Z.); **29.** *Insce.* p. 32
— *v.* Wall (1930); **27.** *H. & W.* No. 6177b
Wallace, *Re*, Wallace *v.* Wallace (N.Z.); **44.** *Wills*, p. 47
— *v.* Dauphin Town (Can.); **38.** *Pub. Hlth.* p. 15
— *v.* Durban Inspector of Police (S. Af.); **42.** *Str. Traf.* p. 51
— *v.* Fogarty (Ir.); **31.** *L. & T.* pp. 86, 87
— *v.* McGirr (N.Z.); **35.** *Mistake*, p. 8
— *v.* McMaster (Can.); **35.** *Mtge.* p. 46
— *v.* Middlesex Hospital, *Re* Forshaw (1934); **8.** *Char.* No. 1395a
— *v.* Wallace, *Re* Pedley (1927); **24.** *Exors.* No. 6341a
— *v.* —, *Re* Wallace (N.Z.); **44.** *Wills*, p. 47
— *v.* Westerman (Can.); **1.** *Agcy.* p. 80
Wallace Huestis Grey Stone Co., *Re* (Can.); **17.** *Dep.* p. 47
Wallace Realty Co. & Ottawa, *Re* (Can.); **38.** *Rates*, p. 76
Wallach's Printing & Publishing Co., Ltd. *v.* Wallach (S. Af.); **34.** *Mast. & S.* p. 5
Wallbridge *v.* Brown (Can.); **16.** *Courts*, p. 10
— *v.* Follett (Can.); **6.** *B. of Exch.* p. 10
— *v.* Gilmour (Can.); **32.** *Limit. of A.* p. 37
Wallbridge & Land Titles Registrar, *Re* (Can.); **38.** *Rates*, p. 68
Wallen, *Re* (N.Z.); **23.** *Exors.* p. 4
Waller *v.* Drakeford (1816); **12.** *Contr.* No. 4725a
— *v.* St. Boniface City (Can.); **26.** *Hghys.* p. 35
— *v.* Waller (1927); **27.** *H. & W.* No. 6250c
Waller & Petty *v.* Sands (1632); **2.** *Agric.* No. 633a
Waller & Son, Ltd. *v.* Thomas (1921); **13.** *Cty. Cts.* No. 812a
Walley *v.* United Dairies (Wholesale), Ltd. (1933); **39.** *S. Goods*, No. 417a
Wallinder *v.* Imperial Bank of Canada (Can.); **3.** *Bank.* p. 22
Wallis *v.* Burton (Can.); **27.** *H. & W.* p. 9
— *v.* Hodson (1740); **18.** *Desct.* No. 165b
— *v.* United French Polishers (1905); **36.** *Nuis.* No. 223a
— *v.* Wallis & Grant (Can.); **28.** *Infts.* p. 139
Walliss *v.* Broadbent (1836); **22.** *Evid.* No. 2476a
Walpole, *Re*, Public Trustee *v.* Canterbury (1933); **20.** *Eqy.* No. 1187a
— *v.* Canadian Northern Ry. Co. (Can.); **11.** *Confl.* p. 44
— *v.* Conway (Lord) (1740); **20.** *Eqy.* No. 1772a
Walpool's Case (1349); **8.** *Char.* No. 110a
Walsh, *Ex p.*, *Re* Yates (Aus.); **17.** *Dep.* pp. 60, 61
—, *Re*, Public Trustee *v.* Walsh (1936); **44.** *Wills*, No. 7347b
— *v.* Albert Baker & Co. (1898), Ltd. (1930); **36.** *Pats.* No. 1257a
— *v.* Ballina Urban District Council (Ir.); **36.** *Negl.* p. 36
— *v.* Bardsley (1931); **9.** *Coys.* No. 3092a
— *v.* Brown (Can.); **12.** *Contr.* p. 41
— *v.* Eastern Trust Co. (Can.) (1932); **24.** *Exors.* p. 40
— *v.* — (Can.) (1936); **44.** *Wills*, p. 51
— *v.* Excelsior Life Insurance Co. (Can.); **29.** *Insce.* p. 33
Fairweather (N.Z.); **42.** *Tort*, p. 77
George Kemp, Ltd. (1938); **28.** *Infts.* No. 1972a
— *v.* Local Government & Public Health Minister (Ir.); **33.** *L. G.* p. 3
— *v.* Mackerras (Aus.); **30.** *Intox.* p. 9
— *v.* McMichael (Aus.); **17.** *Damgs.* p. 20
— *v.* Peat (Can.); **36.** *Negl.* p. 35
— *v.* R. (Aus.); **19.** *Educ.* p. 11
— *v.* Walsh & Kirkland (Can.); **27.** *H. & W.* p. 31
— *v.* Wightman (Ir.); **31.** *L. & T.* p. 80
Walstead *v.* Canadian Pacific Ry. Co. (Can.); **8.** *Carr.* p. 10
Walter, *Re*, Slocock *v.* Official Receiver (1929); **4.** *Bkpcy.* No. 4555a; **5.** *Bkpcy.* No. 6353a
— *v.* Culbertson (Scot.); **3.** *Bailmt.* p. 59
— *v.* Davies, *Ex p.* Glamorgan (former Sheriff) (1858); **21.** *Exon.* No. 380
— *v.* Maunde (1815); **37.** *Powers*, No. 1135
— *v.* Seibel (Can.); **17.** *Damgs.* p. 11
— *v.* Walter (Ind.); **28.** *Infts.* pp. 133, 137, 141
Walter Symons, Ltd., *Re* (1934); **10.** *Coys.* No. 6988c
Walters, *Re* (Can.); **23.** *Exors.* p. 17
— *v.* Allison (S. Af.); **2.** *Arbn.* p. 78
— *v.* Mitton (Aus.); **25.** *Food*, p. 5
— *v.* Ocean Accident & Guarantee Corpn., Ltd. (Can.); **29.** *Insce.* p. 47
— *v.* Treasury Solicitor, Rowlls *v.* Bebb, *Re* Rowlls (1900); **20.** *Eqy.* No. 1068a
— *v.* Wright (1938); **44.** *Wo* , 64b
Walters (Stephen) & Sons, Ltd., *Re* (1926); **9.** *Coys.* Nos. 839a, 1080a; **10.** *Coys.* No. 7382a
Walters' Deed of Guarantee, *Re*, Walters' "Palm" Toffee, Ltd. *v.* Walters (1933); **26.** *Guar.* No. 931a

Walters' "Palm" Toffee, Ltd. *v.* Walters, *Re* Walters' Deed of Guarantee (1933); **26.** *Guar.* No. 931a
Walton, *Ex p.*, R. *v.* Divine (1930); **13.** *Crnrs.* Nos. 152a, 165a, 165b, 165c, 171a, 308b, 320a
—, *Re* (Can.); **5.** *Bkpcy.* p. 57
— *v.* Deaton (Aus.); **22.** *Evid.* p. 20
— *v.* Jacob (1938); **36.** *Negl.* No. 953n
— *v.* Rikof (1937); *Pract.* No. 3583b
— *v.* Vancouver Board of School Trustees (Can.); **19.** *Educ.* p. 34
— *v.* Walton (1938); **27.** *H. & W.* No. 2987b
— *v.* Walton (Can.); **27.** *H. & W.* p. 24
— *v.* York County Corpn. (Can.); **26.** *Hghys.* p. 28
Walton (Isaac) & Co., Ltd. *v.* Vanguard Motor Bus Co., Ltd. (1908); **26.** *Hghys.* No. 1513a
Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd. (1931); **11.** *Comp. Pchc.* No. 155a; **12.** *Contr.* No. 3099a
Walton's Trust, *Re* (1856); **44.** *Wills*, No. 7255a
Walwyn *v.* Awberry (1677); **19.** *Eccl.* Nos. 472a, 2599a
Wambolt *v.* Arenburg (Can.); **26.** *Guar.* p. 2
Wampole (Henry K.) & Co., Ltd. *v.* Hervay Chemical Co. of Canada, Ltd. (Can.); **43.** *Trade Mks.* pp. 24, 26
Wandeleer *v.* Dawson (Can.); **36.** *Negl.* p. 18
Wanek *v.* Thols (Can.); **38.** *Real Prop.* p. 94; **40.** *S. Land*, p. 17
Wanganui Herald Newspaper Co. *v.* Coastal Shipping Co. (N.Z.); **41.** *Ship.* p. 24
Wanty *v.* Robins (Can.); **32.** *Lien*, p. 24
Wapnah *v.* London, Midland & Scottish Ry. Co. (1934); **8.** *Carr.* No. 1323l
Warblington Overseers, *Ex p.* (1854); **38.** *Pub. Hlth.* No. 533
Ward, *Ex p.*, Collinson *v.* Ward (Aus.); **39.** *Revenue*, p. 22
Ward (F. B.), *Ex p.*, R. *v.* West Norfolk Assessment Committee (1930); **16.** *Cr. Pract.* No. 1230a
Ward, *Re*, Dill *v.* Children's Aid Society of Catholic Archdiocese of Vancouver (Can.); **28.** *Infts.* p. 133
— *v.* Anglo-American Oil Co., Ltd. (1934); **28.** *Inc. T.* No. 252c
— *v.* Archer (Can.); **21.** *Exon.* p. 51
— *v.* British American Oil Co., Ltd. (Can.); **11.** *Confl.* p. 44
— *v.* British Oak Insurance Co., Ltd. (1932); **10.** *Coys.* No. 6056b
— *v.* Devlin (Ir.); **34.** *Mast. & S.* p. 181
— *v.* Dorman, Long & Co., Ltd. (1933); **34.** *Mast. & S.* No. 2086a
— *v.* Edmonton (City) (Can.); **33.** *L. G.* p. 9
— *v.* Griffiths Brothers, Ltd. (Aus.); **12.** *Contr.* p. 16; **34.** *Mast. & S.* p. 4; **44.** *Work*, p. 58
— *v.* London County Council (1938); **38.** *Pub. Hlth.* No. 573a
— *v.* London, Midland & Scottish, London & North Eastern & Great Western Ry. Cos. (1934); **8.** *Carr.* No. 1531
— *v.* Maber, *Re* Maber (1928); **28.** *Infts.* No. 831a; **37.** *Perps.* No. 652a
— *v.* O'Leary (Can.); **42.** *Sp. Pfce.* p. 17
— *v.* Paterson (1929); **40.** *S. Land*, No. 2701a
— *v.* Pukemiro Land Co., Ltd. & Pukemiro Collieries, Ltd. (N.Z.); **34.** *Mines*, p. 208
— *v.* Rosser (Can.); **2.** *Animals*, p. 69
— *v.* Sneiman (1925); **13.** *Cty. Cts.* No. 776a
— *v.* Stocking (Can.); **21.** *Exon.* p. 52
— *v.* Tibbatts (1936); **32.** *Limit. of A.* No. 506a
— *v.* Ward (1923); **11.** *Confl.* No. 100a
— *v.* — (Can.) (1932); **27.** *H. & W.* p. 6
— *v.* — (Can.) (1937); **27.** *H. & W.* p. 39
— *v.* —, *Re* Ward's Estate (1937); **8.** *Char.* No. 70b
Ward (Robert) & Co., Ltd. *v.* Wilson (Can.); **21.** *Exon.* p. 59
Ward (Thos. W.), Ltd. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, pp. 54, 56
— *v.* Waugh (Scot.); **38.** *Pub. Hlth.* p. 31
Ward's Estate, *Re*, Ward *v.* Ward (1937); **8.** *Char.* No. 70b
Ward's Will Trusts, *Re*, Ringland *v.* Ward (1936); **40.** *Sttlmts.* No. 1998b
Wardell *v.* Kent County Council (1938); **34.** *Mast. & S.* No. 2057e
Wardfold Manufacturing Co., *Re* (Can.); **4.** *Bkpcy.* p. 30
Wardrop *v.* Whitemouth School District (Can.); **19.** *Educ.* p. 33
Wardroper *v.* Wood, *Re* Hatheway (Can.); **44.** *Wills*, p. 44
Ware, *Re*, *Re* Rouse, Ware *v.* Rouse (1926); **20.** *Eqy.* Nos. 1873b, 2030a
— *v.* Davies (1931); **2.** *Agric.* No. 237b
Waring *v.* Booth Crushed Gravel Co., Ltd. (1932); **34.** *Mines*, Nos. 39a, 43a, 55a, 59a, 59b, 74a, 77a, 651a
— *v.* Foden (1932); **34.** *Mines*, Nos. 39a, 43a, 55a, 59a, 59b, 74a, 77a, 651a
— *v.* Kenyon & Co. (1927); **36.** *Negl.* No. 389f
— *v.* London & Manchester Assurance Co., Ltd. (1935); **35.** *Mtge.* Nos. 2378a, 2479a
Warman *v.* Seaman (1675); **40.** *Sttlmts.* No. 1779a
— *v.* — (1677); **38.** *Real Prop.* No. 584a
Warmingtons *v.* McMurray (1937); **42.** *Solrs.* No. 449a
Warner *v.* Doran (Can.); **7.** *B. of Sale*, p. 11
— *v.* Foster (Can.); **39.** *S. Goods*, p. 57
— *v.* Linahan (Can.); **2.** *Agric.* p. 3
— *v.* Meisner (Can.); **32.** *Limit. of A.* p. 32
— *v.* Minister of Industry & Commerce (Ir.); **44.** *Work*, p. 62
— *v.* Mosses (1880); **22.** *Evid.* No. 5547a
Warner Brothers Pictures Inc. *v.* Nelson (1937); **28.** *Injon.* No. 663a; **42.** *Theatres*, No. 195c
Warner Quinlan Asphalt Co. *v.* R. (Can.); **11.** *Const. L.* p. 74
Warnock *v.* Foster (Can.); **14.** *Crim.* p. 11
Warre *v.* Rush, *Re* Rush (1923); **2.** *Aliens*, No. 215k
Warren, *Re* (Can.); **28.** *Infts.* p. 139
—, *Re*, *Ex p.* Wheeler *v.* Trustee in Bankruptcy (1938); **4.** *Bkpcy.* No. 1571a; **42.** *Time*, No. 392a
—, *Re*, Warren *v.* Warren (1932); **20.** *Eqy.* No. 817c
—, *Re*, Wheeler *v.* Mills (1938); **4.** *Bkpcy.* No. 1571a; **42.** *Time*, No. 392a
— *v.* Excel Petroleum, Ltd. (Can.); **43.** *Trade Mks.* p. 22
— *v.* Heslop (S. Af.); **12.** *Contr.* p. 28
— *v.* National Surety Co. (Can.); **26.** *Guar.* p. 4
— *v.* Warren (1925); **3.** *Bastv.* No. 65c
— *v.* —, *Re* Warren (1932); **20.** *Eqy.* No. 817c
Warren & Co. *v.* Agdeshman (1922); **1.** *Agcy.* No. 1947a
Warren Gzowski & Co. *v.* Forst & Co. (Can.); **22.** *Evid.* p. 10
Warren Tea Co., Ltd. *v.* Reinglass (Aus.); **28.** *Injon.* p. 154; **43.** *Trade*, p. 5
Warren's Trustees *v.* Inland Revenue (Scot.); **21.** *E. D.* p. 8
Warrick *v.* Queen's College, Oxford (No. 2) (1867); **18.** *Discy.* No. 551a
Warsawa *v.* Watsness (Owners) (1921); **34.** *Mast. & S.* No. 2690a
Wartling Tithe Redemption, *Re* (1924); **19.** *Eccl.* Nos. 3513a, 3513b
Wartnaby *v.* Shuttleworth & Taylor (1837); **36.** *Prtnrs.* No. 945a

Warwick *v.* Butler & Lauritzen (1925); **13.** *Cty. Cts.* Nos. 750a, 763a
— *v.* Warwick (1928); **27.** *H. & W.* No. 5493a
Warwick's Settlement Trusts, *Re*, Greville Trust Co. *v.* Grey (1938); **40.** *Sttlmts.* No. 2270a
Warwicker, *Re*, McLeod *v.* Toronto General Hospital (Can.); **22.** *Evid.* p. 9
Warwickshire Coal Co., Ltd. *v.* Coventry Corpn. (1934); **34.** *Mines*, No. 944a
Waryam Singh *v.* R. (Ind.); **14.** *Crim.* p. 3
Waschysyn *v.* Kildonan Ice & Fuel Co. (Can.); **9.** *Coys.* p. 19
Wasel Bros. *v.* Laskin (Can.); **12.** *Contr.* p. 24
Wasey *v.* Borwick (1937); **8.** *Carr.* No. 1498
Washington & Great Northern Townsite Co. *v.* Holbrook (Can.); **38.** *Real Prop.* p. 94
Washington State *v.* Fletcher (Can.); **24.** *Extrdn.* p. 45
Wasilenko *v.* Wasilenko (Can.); **3.** *Bastly.* p. 60
Wasney *v.* Jurazsky (Can.); **36.** *Negl.* p. 22
Wasserman *v.* Blackburn (1926); **29.** *Insce.* No. 3260a
— *v.* Union Government (S. Af.); **2.** *Animals*, p. 66
Waterer (John) Sons & Crisp, Ltd. *v.* Huggins (1931); **31.** *L. & T.* No. 6908a
Waterfield *v.* Waterfield & Pretorius (1929); **22.** *Evid.* No. 3436a
Waterhouse *v.* Barker (1924); **3.** *Bank.* No. 1012a
— *v.* Clout, *Ex p.* Booker (1871); **23.** *Exors.* No. 5864a
— *v.* Reid (1938); *Pldg.* No. 1158a; *Pract.* No. 632a
Waterhouse (Thomas) & Co., *Re* (Can.); **4.** *Bkpcy.* p. 16
Waterhouse's Policy, *Re* (1937); **29.** *Insce.* Nos. 3110a, 3125a
Waterloo *v.* Barnard (Can.); **38.** *Real Prop.* p. 93
Waterloo Insurance Co. *v.* Hind (1862); **24.** *Exors.* No. 6074a
Waterloo Manufacturing Co., Ltd. *v.* Woeppell (Can.); **39.** *S. Goods*, p. 60
Waterloo Motors, Ltd. *v.* Flood (Can.); **29.** *Insce.* p. 4; **39.** *S. Goods*, p. 42
Waterlow & Sons, Ltd. *v.* Banco de Portugal (1932); **3.** *Bank.* No. 456b; **17.** *Damgs.* Nos. 347b, 411a
Waterman, *Re* (Can.); **35.** *Mtge.* p. 52
Waterman-Waterbury Manufacturing Co., Ltd. *v.* Slavanka School District Trustees (Can.); **19.** *Educ.* pp. 33, 39
— *v.* South Arcola School District (Can.); **19.** *Educ.* p. 33
Waterous *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 56
Waters *v.* Groom (1844); **43.** *Trusts*, No. 769a
Waters & Water Powers Reference, *Re* (Can.); **17.** *Dep.* pp. 43, 56; **44.** *Waters*, p. 8
Waterside Workers Federation *v.* Alexander (Aus.); **17.** *Dep.* p. 60
Waterside Workers' Federation of Australia *v.* Gilchrist, Watt & Sanderson, Ltd. (Aus.); **16.** *Cr. Pract.* p. 38
Waterson *v.* Low (N.Z.); **30.** *Intox.* p. 9
Waterton *v.* Burt (1870); **11.** *Const. L.* No. 507a
Wath-upon-Dearne Urban District Council *v.* Brown (John) & Co., Ltd. (1936); **11.** *Comp. Clse.* No. 355a
Watkins, *Re*, James *v.* Cordey (1889); **37.** *Perps.* No. 369a
— *v.* Adamson (Can.); **35.** *Mtge.* p. 40
— *v.* Coombes (Aus.); **25.** *Fraud. Conv.* p. 17
— *v.* Guest, Keen & Nettlefolds, Ltd. (1928); **34.** *Mast. & S.* No. 3243a
— *v.* Herefordshire Assessment Committee (1935); **38.** *Rates*, No. 345a
Watkins *v.* Jones (1928); **28.** *Inc. T.* No. 548b
— *v.* Washburn (Can.); **23.** *Exors.* p. 18
— *v.* Watkins (Can.); **27.** *H. & W.* p. 45
Watkins (J. R.) Co. *v.* Cafferky (Can.); **22.** *Evid.* p. 25
— *v.* Hannah (Can.); **26.** *Guar.* p. 12
— *v.* Minke (Can.); **26.** *Guar.* p. 12; **35.** *Misrep.* p. 1
— *v.* Nobert (Can.); **26.** *Guar.* p. 1; **27.** *H. & W.* p. 14
— *v.* Robertson (Can.); **26.** *Guar.* p. 4
Watkins Garage, Ltd. *v.* McKoryk (Can.); **39.** *S. Goods*, p. 57
Watkyns *v.* Watkyns (1740); **7.** *Bonds*, No. 950a
Watling Trust, Ltd. *v.* Briffault Range Co., Ltd. (1938); **3.** *Bailmt.* No. 268c
Watson, *Re* (Can.); **4.** *Bkpcy.* p. 24
—, *Re*, Brand *v.* Culme-Seymour (1928); **40.** *Sttlmts.* Nos. 3032a, 3032b, 3032c
—, *Re*, Culme-Seymour *v.* Brand (1930); **44.** *Wills*, Nos. 2898a, 7034a
— *v.* Aleppo (Owners) (1927); **34.** *Mast. & S.* No. 2602a
— *v.* Barrett (Can.); **9.** *Coys.* p. 49
— *v.* Birmingham Government Instructional Centre (1926); **34.** *Mast. & S.* No. 2057a
— *v.* Cadillac Motor Sales Co., Ltd. (Can.); **1.** *Agcy.* p. 60
— *v.* Cully (1926); **8.** *Clubs*, No. 111a
— *v.* Davies (1931); **1.** *Agcy.* Nos. 1001a, 2775a; **40.** *S. Land.* No. 26a; **42.** *Sp. Pfce.* No. 107a
— *v.* Dowser (Can.); **35.** *Mtge.* p. 41
— *v.* Edmonton, *Re* (Can.); **13.** *Corpns.* p. 33
— *v.* Government Instructional Centre, Birmingham (1926); **34.** *Mast. & S.* No. 2057a
— *v.* Guillaume (Can.); **2.** *Animals*, p. 57
— *v.* Haggitt (1928); **17.** *Deeds*, No. 815a; **36.** *Prtnrs.* No. 1841a
— *v.* Howard (Can.); **11.** *Const. L.* p. 69
— *v.* Ketchum (Can.); **38.** *Real Prop.* p. 99
— *v.* London & North Eastern Ry. Co. (1937); **34.** *Mast. & S.* Nos. 2021a, 3324b
— *v.* Motor Livery Co. (Can.); **18.** *Discy.* p. 17
— *v.* Pacific Stages, Ltd. (Can.); **8.** *Carr.* p. 9
— *v.* Powell (Can.); **1.** *Agcy.* p. 100
— *v.* Severn (Can.); **16.** *Courts*, p. 10
— *v.* Tate, *Re* Taplin (1937); **27.** *H. & W.* No. 548a
— *v.* Walker, *Re* Walker's Settlement Trusts (1936); **40.** *Sttlmts.* No. 2329a
— *v.* Watson (1938); **27.** *H. & W.* No. 2952c
— *v.* — (Scot.); **27.** *H. & W.* p. 28
Watson & Cobourg Town, *Re* (Can.); **16.** *Cr. Pract.* p. 31
Watson & Everitt *v.* Blunden (1934); **28.** *Inc. T.* No. 313b
Watson & Godfrey *v.* Cameron (Aus.); **17.** *Dep.* p. 67
Watson Bros. *v.* Lothian (Scot.); **28.** *Inc. T.* p. 36
Watson's Trustees *v.* Wiggins (1934); **28.** *Inc. T.* No. 575b
Watt, *Re*, Hicks *v.* Hill (1932); **8.** *Char.* No. 896a
— *v.* Adams Brothers Harness Manufacturing Co. (Can.); **31.** *L. & T.* p. 51
— *v.* Longsdon (1930); **32.** *Libel*, Nos. 1446a, 1457a, 1466a
— *v.* MacLaughlin (Ir.); **8.** *Clubs*, p. 91
— *v.* Reid (Can.); **36.** *Negl.* p. 30
— *v.* Watt, *Re* Watt's Will Trusts (1936); **37.** *Perps.* No. 648a
— *v* Westhoven (Aus.); **39.** *S. Goods*, p. 56
Watt's Will Trusts, Watt *v.* Watt (1936); **37.** *Perps.* No. 648a
Watters *v.* Hunter (Scot.); **2.** *Agric.* p. 1
Watts, *Re*, Coffey *v.* Watts (1931); **37.** *Powers*, No. 256c

Watts *v.* Battersea Corpn. (1929); **38.** *Pub. Hlth* No. 502a
— *v.* Burnaby District (Can.); **26.** *Hghys.* p. 29
— *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937); **8.** *Carr.* Nos. 1565, 1646, 1671
— *v.* Official Solicitor (1936); **42.** *Solrs.* No. 483a
Watts & A.-G. for British Columbia *v.* Watts (Can.); **27.** *H. & W.* p. 22
Watts' Estate, *Re* (Can.); **33.** *Lunat.* p. 13
Watts, Watts & Co., Ltd. *v.* Hole (1930); **34.** *Mast. & S.* No. 3541d
Waudby *v.* Waudby & Bowland (1901); **27.** *H. & W.* Nos. 4750a, 4836a
Waugh's Case, Inland Revenue *v.* Edinburgh Assessor (Scot.); **38.** *Rates*, p. 53
Wavertree of Delamere (Baron), *Re*, Rutherford *v.* Hall-Walker (1933); **44.** *Wills*, Nos. 412a, 5598a, 5598b, 5601a, 5602a
Waxed Papers, Ltd., *Re* (1937); **10.** *Coys.* No. 7409c
Way, *In the Goods of* (1901); **23.** *Exors.* No. 63a
— *v.* Leland Hotel Co., Ltd. (Can.); **22.** *Evid.* p. 2; **29.** *Inns*, p. 1
— *v.* Latilla (1937); **34.** *Mast. & S.* No. 613a
— *v.* Way (Aus.); **33.** *Juries*, p. 32
Wearmouth *v.* Macpherson (Can.); **36.** *Prtnrs.* p. 57
Wearne Brothers *v.* Russa Engineering Works (Ind.); **1.** *Agcy.* p. 104; **8.** *Chos.* p. 89
Weatherall *v.* Weatheral (Can.); **27.** *H. & W.* p. 45
Weatherby *v.* Weatherby (Can.); **8.** *Char.* p. 73
Weathered *v.* Fitzgibbon (N.Z.); **25.** *Gaming*, p. 31
Weatherell *v.* Watson (1822); **14.** *Crim.* No. 1678b
Weatherhead, *Re*, *Re* Robertson (Can.); **4.** *Bkpcy.* p. 27
Weatherhead (Bradford Revenue Officer) Bradford Assessment Committee & Laycock, Son & Co., Ltd. (1931); **38.** *Rates*, No. 226m
Weatherley *v.* Weatherley (1929); **27.** *H. & W.* No. 6147a
Weaver, *Ex p.*, *Re* Cobourg Felt Co. (Can.); **5.** *Bkpcy.* p. 93
— *v.* Baird (Can.); **38.** *Real Prop.* p. 91
— *v.* Dixson (Can.); **1.** *Agcy.* p. 81
Weaving *v.* Malmken (Aus.); **25.** *Gaming*, p. 33
Webb, *Re* (1846); **33.** *Lunat.* No. 778a
—, *Re* (Can.); **5.** *Bkpcy.* pp. 73, 77
— *v.* H.M. Advocate (Scot.); **14.** *Crim.* p. 63
— *v.* Maidstone & District Motor Services, Ltd. (1934); **42.** *Str. Traf.* No. 76u
— *v.* Newport & South Wales Tube Co., Ltd. (1938); **34.** *Mast. & S.* No. 3515c
— *v.* Queensland Insurance Co., Ltd. (N.Z.); **2.** *Arbn.* p. 79
— *v.* Southern Ry. Co. (1932); **34.** *Mast. & S.* No. 3756a
— *v.* Webb (1929); **27.** *H. & W.* No. 5688a
Webb (H. J.) & Co. (Smithfield, London), Ltd., *Re* (1922); **10.** *Coys.* Nos. 6460, 6936
Webb & Henderson *v.* Cupples (Aus.); **39.** *S Goods*, p. 47
Webber, *Re* (Can.); **4.** *Bkpcy.* p. 21
— (No. 2), *Re* (Can.); **4.** *Bkpcy.* p. 45
—, *Re*, *Ex p.* Valinsky (Can.); **35.** *Mtge.* p. 30
—, *Re*, Valinsky *v.* Bacon (Can.); **4.** *Bkpcy.* p. 45
— *v.* Copeman (Can.); **12.** *Contr.* p. 28
— *v.* Fifth Avenue, Ltd. (Can.); **34.** *Mast. & S.* p. 48
— *v.* Hazelwood (Aus.); **36.** *Nuis.* p. 48
Weber, *Ex p.*, R. *v.* Knyvett (Aus.); **16.** *Cr. Pract.* p. 37; **30.** *Intox.* p. 2
— *v.* Xetal Products, Ltd. (1933); **36.** *Pats.* No. 2933a
Webster, *Re*, Goss *v.* Webster (1937); **23.** *Exors.* No. 4587a
—, *Re*, Webster *v.* Troubridge (1933); **40.** *Sttlmts.* No. 1878c
— *v.* Connors Bros., Ltd. (Can.); **11.** *Confl.* p. 53
— *v.* General Accident Assurance Co. of Canada (Can.); **29.** *Insce.* p. 54
— *v.* McIntosh (Can.); **7.** *Bldg. Conts.* pp. 24, 25
— *v.* Solloway Mills & Co., Ltd. (Can.); **18.** *Discy.* p. 16
— *v.* Toronto Corpn. (Can.); **18.** *Discy.* p. 17
— *v.* Troubridge, *Re* Battle Abbey Settled Estate (1933); **40.** *Sttlmts.* No. 1878c
— *v.* —, *Re* Webster (1933); **40.** *Sttlmts.* No. 1878c
— *v.* Walter, *Re* Atkinson (1929); **23.** *Exors.* No. 5919a
— *v.* Webster (1862); **21.** *Exon.* No. 2236a
— *v.* Webster & Williamson (1926); **27.** *H. & W.* No. 5588a
— *v.* Western Australia Taxation Deputy Comr. (Aus.); **28.** *Inc. T.* p. 43
Webster & Kirkness *v.* Solloway Mills & Co., Ltd. (No. 2) (Can.); **18.** *Discy.* p. 14; **42.** *Stk. Ex.* p. 35
Webster (A. G.) & Sons, Ltd. *v.* Cotton (Aus.); **1.** *Agcy.* p. 79
Webster McLanchlan Co. *v.* Connors Bros. (Can.); **11.** *Confl.* p. 53
Weddall *v.* Nixon (1853); **18.** *Eccl.* No. 2105a
Weddell *v.* Road Transport & General Insurance Co., Ltd. (1932); **29.** *Insce.* No. 3217b
Wedden, *Re* (Can.); **28.** *Infts.* p. 114
Wedick *v.* Osmond & Son (Jr.); **34.** *Med.* p. 194
Wedin *v.* Robertson (Can.); **18.** *Discy.* p. 18
Wedley *v.* Wedley (Can.); **27.** *H. & W.* pp. 58, 59
Wedlock (J. Stanley), Ltd., *Re* (Can.); **3.** *Bank.* p. 43; **4.** *Bkpcy.* p. 23
—, *Re*, *Ex p.* Royal Bank (Can.); **9.** *Coys.* p. 5
Weed *v.* Simpson (Can.); **30.** *L. & T.* p. 38
Weeden *v.* Turner (Can.); **1.** *Agcy.* pp. 76, 86
Weegan *v.* McDiarmid (Can.); **38.**
Weekly Rest in Industrial Undertakings Act, *Re*, A.-G. for Canada *v.* A.-G. for Ontario (1937); **17.** *Dep.* Nos. 130a, 130p, 130q, 130r
Weeks *v.* Cumberland Farmers' Mutual Fire Insurance Co. (Can.); **29.** *Insce.* p. 29
Weeks *v.* Powell Dyffryn Steam Coal Co., Ltd. (1935); **34.** *Mast. & S.* No. 3828d
Weerasekera *v.* Peiris (Ceylon); **25.** *Gifts*, p. 47
Weese, *Re* (Can.); **2.** *Aaric.* p. 25
Wege's Estate *v.* Strauss (S. Af.); **42.** *Stats.* p. 23
Wegener *v.* Matoff & Fur Sales, Ltd. (Can.); **36.** *Negl.* p. 32
Wegg, *Re*, *Ex p.* Banbury (1843); **5.** *Bkpcy.* No. 7735
—, *Re*, *Ex p.* Hanbury (1843); **5** *Bkpcy.* No. 7735
Weicker *v.* Mortimer (Can.); **6.** *B. of Exch.* p. 10
Weidman *v.* McClary (Can.); **21.** *Econ.* p. 46
Weigall *v.* Westminster Hospital (1936); **36.** *Negl.* No. 246a
Weight *v.* Salmon (1935); **28.** *Inc. T.* 501c
Weiler Brothers & Victoria (City) Corpn., *Re* (Can.); **2.** *Arbn.* p. 85
Weinbaum *v.* Weinbaum (Can.); **27.** *H. & W.* p. 73
Weinberger *v.* Inglis (1919); **2.** *Aliens*, No. 140a
Weiner *v.* Ustav (1927); **2.** *Aliens*, No. 215r
Weingarden, *Re* (Can.); **22.** *Evid.* p. 25
Weinraub *v.* R. (Can.); **43.** *Trade*, p. 1
Weir *v.* Grand (Can.); **1.** *Agcy.* p. 81
— *v.* Treasury Solicitor, *Re* Stollery (1926); **22.** *Evid.* Nos. 3165a, 3177a
— *v.* Turnberry (Can.); **38.** *Pub. Auth.* p. 12
— *v.* Turnberry & Halliday Township (Can.); **26.** *Hghys.* p. 28

Weir *v.* Weir (Can.); **12.** *Contr.* p. 10
Weir & Son *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 54
Weis, *Re* (Can.); **2.** *Agric.* p. 25
Weiss *v.* R. (Can.); **15.** *Crim.* p. 83; **39.** *Revenue*, p. 25
— *v.* Schiescel (Can.); **18.** *Discy.* p. 17
— *v.* State Life Insce. Co. (Can.); **35.** *Money*, p. 51
— *v.* Weiss (1908); **27.** *H. & W.* No. 5320a
Weist *v.* Smith (Can.); **2.** *Agric.* p. 3
Weitzel *v.* Weitzel (Can.); **27.** *H. & W.* p. 5
Wekusko Mines, Ltd. *v.* May (Can.); **34.** *Mines*, p. 199
Welch *v.* Ernewein (Can.); **31.** *L. & T.* p. 86
— *v.* General Refrigeration, Ltd. (Can.); **39.** *S. Goods*, p. 57
— *v.* Myers (1816); **5.** *Bkpcy.* No. 7648b
— *v.* Royal Exchange Assurance (1938); **29.** *Insce.* No. 2704a
Welch & Downie *v.* Grant (Can.); **42.** *Str. Traf.* p. 37
Weld *v.* Petre (1929); **32.** *Limit. of A.* No. 1709a; **35.** *Mtge.* No. 1091a
Weld-Blundell *v.* Stephens (1920); **1.** *Agcy.* No. 1243a
Weld-Blundell Estate, *Re*, Mowbray (Lord) *v.* Weld-Blundell (1929); **30.** *Land Imp.* 79d; **40.** *Stlmts.* No. 2950a
Welden *v.* Smith (Aus.); **11.** *Const. L.* p. 66
Weldon *v.* Steeves (Can.); **36.** *Negl.* p. 31
Well *v.* Morgan (Can.); **34.** *Mast. & S.* p. 36
Welland (City) *v.* Electric Steel & Metals Co., Ltd. (Can.); **20.** *Electric.* p. 14
Wellaway *v.* Courtier (1918); **2.** *Agric.* No. 311b
Wellband *v.* Walker (Can.); **21.** *Estpl.* p. 40
Weller *v.* Shupe (Can.); **32.** *Lien*, p. 24
Welles *v.* Trustee, *Re* Beecham (1934); **4.** *Bkpcy.* No. 4372a
Wellington Building Corpn., Ltd., *Re* (Can.); **10.** *Coys.* p. 60
Wellington Cinema *v.* Performing Right Society, Ltd. (Ind.); **13.** *Coprt.* p. 9
Wellington Colliery Representative Committee, *Ex p.*, R. *v.* Whitehaven County Court Registrar (1933); **34.** *Mast. & S.* Nos. 3632a, 3641a, 3641b
Wellington Cooks & Stewards Union Award, *Re* (N.Z.); **17.** *Dep.* p. 37
Wellington Corpn. *v.* Dealy (N.Z.); **26.** *Hghys.* p. 40
Wellington County Corpn. *v.* Wilson (Can.); **33.** *L. G.* p. 11
Wellington Oil & Gas Co. *v.* Alberta Pipe Line Co. (Can.); **12.** *Contr.* p. 33
Wellington Racing Club *v.* Symons (N.Z.); **3.** *Bailmt.* p. 7
Wellington Waterside Workers' Industrial Union of Workers *v.* Hargreaves (Aus.); **43.** *Trade*, p. 8
Wells, *Re* (1929); **5.** *Bkpcy.* No. 7869a; **24.** *Exors.* No. 8520a
—, *Re*, Reilly *v.* Lewin (Can.); **43.** *Trusts*, p. 60; **44.** *Wills*, p. 47
—, *Re*, Swinburne-Hanham *v.* Howard (1933); **10.** *Coys.* Nos 7169c, 7169d; **13.** *Corpns.* No. 1603a; **35.** *Mtge.* Nos. 866a, 1017a
— *v.* Attache Case Manufacturing Co., Ltd. (1931); **43.** *Trade Mks.* No. 908a
— *v.* Blain (Can.); **12.** *Contr.* p. 55
— *v.* Cottam (falsely called Wells) (1863); **27.** *H. & W.* No. 4300
— *v.* Masterman (1799); **6.** *B. of Exch.* No. 701a
— *v.* Metropolitan Water Board (1937); **43.** *Wtr. Sply.* No. 290a
— *v.* Morgan (Can.); **34.** *Mast. & S.* p. 36
— *v.* Myddleton (1935); **8.** *Clubs*, No. 33a
Wells *v.* Ross (1817); **12.** *Contr.* No. 4558a
— *v.* Wells (1863); **27.** *H. & W.* No. 4300
Wellwood *v.* King (Alexander), Ltd. (Ir.); **3.** *Bailmt.* p. 17
Welsh & Son *v.* West Ham Corpn. (1900); **38.** *Pub. Hlth.* No. 329a
Welsh Church Temporalities Comrs., *Ex p.*, R. *v.* Edwards (1933); **16.** *Cntmpt.* Nos. 54b, 343a
Welsh Navigation Steam Coal Co. *v.* Evans (1927); **34.** *Mast. & S.* No. 2120a
Welton *v.* Welton (1927); **27.** *H. & W.* Nos. 4063a, 4098a
Welzel *v.* Kain (Aus.); **36.** *Prtnrs.* p. 60
Wembley Corpn. *v.* Sherren (1938); **2.** *Agric.* No. 27a
Wemyss Coal Co., Ltd. *v.* Haig (1933); **34.** *Mast. & S.* No. 3828a
— *v.* Walker (1929); **34.** *Mast. & S.* No. 3290a
Wenchita, The *v.* Beechbay, The (Can.); **41.** *Ship.* p. 56
Wendel *v.* Wall (Can.); **34.** *Mast. & S.* p. 20
Wendy II. Motor Boat Owner *v.* Solace Motor Boat Owner (1936); **41.** *Ship.* No. 6253a
Wenham, *Ex p.* (1934); **16.** *Cr. Pract.* No. 2309a; **25.** *Food*, No. 476h
Wenn *v.* Watney, Combe, Reid & Co., Ltd. (1938); **34.** *Mast. & S.* No. 3288u
Wenner *v.* Morris (1935); **25.** *Game*, No. 100a
Wentworth Orchard Co., Ltd. *v.* Merchants Consolidated, Ltd. (Can.); **39.** *S. Goods*, p. 50
Wentzall *v.* Perks (Can.); **2.** *Animals*, p. 58
Werchola *v.* Formaliuk (Can.); **3.** *Bailty.* p. 64
Werley *v.* Rowe (Can.); **17.** *Dep.* p. 53
Werner *v.* Perdue & Eaton (Can.); **8.** *Chos.* p. 95
Wernham *v.* M'Lean, Baird & Neilson (Scot.); **1.** *Agcy.* p. 68
Wernher's Charitable Trust *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 472j
Werrin *v.* United National Collieries, Ltd. (1926); **34.** *Mast. & S.* No. 2331a
Wesley *v.* Manson (1932); **28.** *Inc. T.* Nos. 204e, 204l, 592a
Wesleyan & General Assurance Society *v.* A.-G. (1933); **10.** *Coys.* No. 7510a
Wessels *v.* Carscallen (Can.); **24.** *Exors.* p. 33; **43.** *Trusts*, p. 69
Wessex Dairies, Ltd. *v.* Smith (1935); **34.** *Mast. & S.* No. 893a
West, *Re* (Can.); **35.** *Mtge.* p. 47; **38.** *Real Prop.* p. 95
—, *Re*, *Ex p.* Bentley (1842); **5.** *Bkpcy.* No. 6444a
— *v.* Accidental Fire Insurance Co. (Can.); **12.** *Contr.* p. 42; **35.** *Mtge.* p. 48
— *v.* Automatic Salesman, Ltd. (1937); **29.** *Intpr.* No. 595a
— *v.* Commercial Bank of Australia, Ltd. (Aus.); **21.** *Estpl.* p. 40
— *v.* Conway (Aus.); **18.** *Discy.* pp. 18, 20
— *v.* Dillican (N.Z.); **1.** *Agcy.* pp. 66, 102
— *v.* O'Leary (Can.); **21.** *Estpl.* p. 38
— *v.* Rotherham (1836); **29.** *Intpr.* No. 503c
— *v.* Taxation Comr. (Aus.); **30.** *Jdgmts.* p. 29
West (F. E.) & Co., *Re* (Can.); **4.** *Bkpcy.* pp. 37, 38, 39
West & West *v.* MacDonald's Consolidated, Ltd., & Malcolm (Can.); **34.** *Mast. & S.* p. 14
West Australian Pottery Co., Ltd. *v.* Neil (Aus.); **34.** *Mast. & S.* p. 30
West Bromwich Building Society *v.* Bullock (1936); **7.** *Bldg. Soc.* No. 174a
West Canadian Collieries, Ltd. *v.* Rinaldi (Can.); **38.** *Rys.* p. 36
West Derby Revenue Officer *v.* Liverpool Grain Storage & Transit Co., Ltd. (1931); **1.** *Action*, No. 18a

Western Derby Revenue Officer *v.* Mersey Docks & Harbour Board (1931); **1.** *Action*, No. 18a
— *v.* West Derby Assessment Committee & Tate & Lyle, Ltd. (1931); **38.** *Rates*, No. 226ff
West Flamborough *v.* Pretuski (Can.); **19.** *Easmt.* p. 13
West Friesland, The (1859); **1.** *Adm.* No. 352a
— (1860); **1.** *Adm.* Nos. 336, 352a
West Ham Corpn. *v.* Benabo (Charles) & Sons (1934); **38.** *Pub. Hlth.* Nos. 502d, 502e, 502f
West Ham Union *v.* Edmonton Union (1908); **30.** *Jdgmts.* No. 526a
West Leigh Colliery Co., Ltd. *v.* McNeil (1929); **34.** *Mast. & S.* No. 3530b
West (Samuel), Ltd. *v.* Wright's (Colchester), Ltd. (1935); **44.** *Waters*, No. 831c
West Midlands Joint Electricity Authority *v.* Pitt (1932); **20.** *Electric*, Nos. 17a, 30a, 63a
West of England Road Metal Co., Ltd., *Re* (1936); **34.** *Mines*, No. 325c
West Rand Estates, Ltd. *v.* New Zealand Insurance Co., Ltd. (S. Af.); **29.** *Insce.* p. 26
West Riding Cleaning Co., Ltd. *v.* Jowett (1938); **42.** *Str. Traf.* No. 50b
West Riding County Council, *Ex p.* (1935); **7.** *Burial*, No. 335a
West Riding of Yorkshire County Council *v.* Middleton Parish Council (1906); **38.** *Rates*, No. 1392a
West Wales, The (1932); **41.** *Ship.* Nos. 6653a, 6736b
West Wales Joint Board for Mentally Defective *v.* Evans (1928); **31.** *L. & T.* Nos. 7103d, 7301a
West Yorkshire Partial Amalgamation (Coal Mines) Scheme (1935); **34.** *Mines*, Nos. 327k, 327aa
Westby, *Re* (Ir.); **43.** *Trusts*, p. 71
Westcombe *v.* Hadnock Quarries, Ltd. (1931); **28.** *Inc. T.* No. 220a
Westcott *v.* Luther (Can.); **6.** *B. of Exch.* p. 1
Westen *v.* Fairbridge (1923); **7.** *B. of Sale*, Nos. 708a, 723a
Westerman *v.* Pantlin (1900); **40.** *S. Land*, No. 1944a
Western Assurance Co. *v.* Taylor (Can.); **13.** *Corpns.* p. 30
Western Australian Insurance Co., Ltd. *v.* A.-G. & Minister for Industry & Commerce (Ir.); **10.** *Coys.* p. 97
Western Canada Auto Tractor Co., Ltd. *v.* Bjarnason (Can.); **1.** *Action*, p. 3
Western Canada Flour Mills Co., Ltd. *v.* White Bakery (Can.); **5.** *Bkpcy.* p. 94
Western Canada Loan & Savings Co. *v.* Court (Can.); **29.** *Intpr.* p. 63
Western Canada Loan Co. *v.* Garrison (Can.); **32.** *Limit. of A.* p. 37
Western Canada Power Co. *v.* Bergklint (Can.); **34.** *Mast. & S.* p. 20
Western Canada Pulpwood & Lumber Co., Ltd., *Re*, Newton *v.* Manitoba Pulp & Paper Co., Ltd. (Can.); **39.** *S. Goods*, p. 55
Western Clock Co. *v.* Oris Watch Co., Ltd. (Can.); **43.** *Trade Mks.* p. 16
Western Colonizers, Ltd. *v.* Bursaw (Can.); **1.** *Agcy.* p. 87
Western Dominion Investment Co. *v.* MacMillan (Can.), [1925] 4 D. L. R. 562; **7.** *Bonds*, p. 14
— *v.* McMillan (Can.), [1925] 1 W. W. R. 566; **7.** *Bonds*, p. 14
Western Electric Co., Incorporated & Northern Electric Co., Ltd. *v.* Baldwin International Radio of Canada, Ltd. (Can.); **36.** *Pats.* pp. 69, 83
Western Electric Co., Ltd. *v.* Bell (Can.); **36.** *Pats.* p. 103
Western Electric Co., Ltd. Letters Patent No. 195,589, *Re* (1932); **36.** *Pats.* No. 1205b
Western Electric Co.'s Patent, *Re* (1931); **36.** *Pats.* No. 1687f
Western Electric Co., Ltd.'s Patents, *Re* (1927); **36.** *Pats.* No. 2062b
Western Electric Co., Ltd.'s Patent (No. 275 of 1915), *Re* (1931); **36.** *Pats.* No. 2113a
Western Electric Co., Ltd.'s Patent No. 103,188 & 107,007, *Re* (1932); **36.** *Pats.* Nos. 1690a, 2123a
Western Electric Co., Ltd.'s Patent (No. 259,664), *Re* (1935); **36.** *Pats.* No. 1219a
Western Engraving Co. *v.* Film Laboratories, Ltd. (1936); **36.** *Nuis.* No. 330b
Western Finance Corpn., Ltd. *v.* London & Lancashire Guarantee & Accident Co. of Canada (Can.); **29.** *Insce.* pp. 4, 38
Western Grocers, Ltd., *Re* (Can.); **10.** *Coys.* p. 94
— *v.* Kay (Can.); **21.** *Eron.* p. 46
Western Life Assurance Co. *v.* Armstrong (Can.); **28.** *Infts.* p. 130
Western Power Co. of Canada, Ltd. *v.* Matsqui Corpn. (Can.); **20.** *Electric*, p. 14
Western Producers Mutual Hail Insurance Co. *v.* Stewart (Can.); **9.** *Coys.* p. 53
Western Trust Co. (Milniczuk Estate) *v.* Stuart (Can.); **36.** *Negl.* pp. 38, 39
Western Vinegars, Ltd. *v.* Minister of National Revenue (Can.); **28.** *Inc. T.* p. 1
Westerton, *Re*, Public Trustee *v.* Gray (1919); **3.** *Bank.* No. 409a
Westfal-Larsen & Co. Aktieselskabet *v.* Russo Norwegian Transport Co., Ltd. (1931); **41.** *Ship.* No. 3988a
Westfall *v.* Bonner (Can.); **3.** *Bastv.* p. 61
Westgate *v.* Harris (Can.); **12.** *Contr.* p. 25; **22.** *Evid.* p. 26
Westhill Crossing Case, Canadian National Rys. *v.* Hydro Electric Power Commission & Department of Highways for Ontario (Can.); **38.** *Rys.* p. 38
Westinghouse Brake & Saxby Signal Co., Ltd. *v.* Varsity Eliminator Co., Ltd. (1935); **43.** *Trade Mks.* No. 1527b
Westlake *v.* Adams (1858); **22.** *Evid.* No. 2583a
— *v.* Martin (Can.); **8.** *Chos.* p. 96
— *v.* Page (1926); **2.** *Agric.* Nos. 266j, 266k
Westlan Productions, Ltd., New Theatre (Cardiff), Ltd., & Moss Empires, Ltd., *Ex p.*, R. *v.* Cardiff Corpn. (1929); **42.** *Theatres*, No. 11a
Westminster (Duke) *v.* Inland Revenue Comrs. (1936); **28.** *Inc. T.* No. 674ff
— *v.* McKenna, *Re* Grosvenor Settled Estates (1932); **40.** *Stllmts.* No. 2900b
— *v.* —, *Re* Grosvenor Settled Estates (1933); **40.** *Stllmts.* No. 2916a
Westminster Bank *v.* Carlyon, *Re* Patten (1929); **8.** *Char.* Nos. 267a, 267c; **40.** *Stllmts.* Nos. 2738a, 2747a
— *v.* Everett, *Re* House (1929); **40.** *Stllmts.* No. 3151a; **43.** *Trusts*, No. 3175b
— *v.* Farley, *Re* Ashton (1938); **8.** *Char.* No. 702b
— *v.* Laver, *Re* Harding (1934); **18.** *Desct.* No 283d
— *v.* Trustee, *Re* Small (1934); **4.** *Bkpcy.* No. 3220a
Westminster Bank, Ltd. *v.* A.-G., *Re* Banham (1931); **44.** *Wills*, No. 5881a
— *v.* Farley, *Re* Ashton (1938); **8.** *Char.* No. 702b
— *v.* Hilton (1926); **3.** *Bank.* No. 589a
— *v.* Imperial Airways, Ltd. (1936); **42.** *Str. Traf.* No. 260c
— *v.* Osler (1933); **28.** *Inc. T.* No. 95b

Westminster Bank, Ltd. *v.* Residential Properties Improvement Co., Ltd. (1938); **10.** *Coys.* No. 5117a
— *v.* Royal Hospital for Incurables, *Re* Hovenden (1938); **8.** *Char.* No. 948a
— *v.* Schnapper, *Re* Schnapper (1936); **35.** *Money*, No. 30a
— *v.* Shaftesbury Society & Ragged School Union, *Re* Backhouse (1931); **44.** *Wills*, No. 2511a
— *v.* Wilson (1938); **17.** *Deeds*, No. 150a
Westminster City Council *v.* Royal United Service Institution (1938); **38.** *Rates*, No. 495a
— *v.* Treby (1936); **10.** *Coys.* No. 4982a
Westminster Coaching Services, Ltd. *v.* Piddlesden (1933); **42.** *Str. Traf.* Nos. 76c, 76f
Westminster Corpn. *v.* Armstrong (1929); **26.** *Hghys.* No. 1435j
— *v.* Reubens, *Re* Moss (1935); **5.** *Bkpcy.* No. 9028a
— *v.* Southern Ry. Co., Railway Assessment Authority & Smith & Son, Ltd. (1936); **38.** *Rates*, Nos. 229a, 800g
Westminster Corpn. & Kent Valuation Committee *v.* Southern Ry. Co., Railway Assessment Authority & Pullman Car Co., Ltd. (1936); **38.** *Rates*, Nos. 229a, 800g
Westminster Corpn. & United Travellers Club Co., Ltd. *v.* Chapman (1916); **10.** *Coys.* No. 5186a
Westminster Mortgage Corpn. *v.* Adair (Can.); **35.** *Mtge.* p. 43
Westminster Revenue Officer *v.* Daily Mirror Newspapers, Ltd. (1931); **38.** *Rates*, No. 226bb
Weston, *Ex p.*, R. *v.* Nickerson (Can.); **14.** *Crim.* p. 11
— *v.* Empire Assurance Corpn., Ltd. (1868); **26.** *Guar.* No. 638a
— *v.* Lott & Christopherson (Can.); **43.** *Tresp.* p. 53
— *v.* Weston (Aus.); **43.** *Trusts*, p. 59
Weston (G.), Ltd. *v.* Baird (Can.); **43.** *Trade*, p. 6
Weston (Victor) (Fabrics), Ltd. *v.* Morgensterns (1937); **5.** *Bkpcy.* No. 9231a
Westover Garage, Ltd. *v.* Deacon (1931); **42.** *Str. Traf.* No. 188a
Westralian Farmers, Ltd. *v.* King Line, Ltd. (1931); **35.** *Money*, No. 171
— *v.* Tyneside Line (1920), Ltd. (Aus.); **41.** *Ship.* p. 27
Westralian Wheat Farmers, Ltd. *v.* Westfal-Larsen & Co. (Aus.); **41.** *Ship.* p. 28
Westripp *v.* Baldock (1938); **40.** *S. Land*, No. 2724a; **43.** *Tresp.* No. 61a
Westropp *v.* Bruce (Ir.); **29.** *Insce.* p. 7
Westwood *v.* Barnett (Scot.); **2.** *Agric.* p. 4
— *v.* McMillan (Can.); **2.** *Animals*, p. 69
Wetherall (J. H.) & Co., Ltd. *v.* London Assurance (1931); **41.** *Ship.* No. 4247a
Wethered, *Re*, *Ex p.* Salaman's Trustee, Trustee *v.* Bance (1926); **5.** *Bkpcy.* Nos. 6858b, 7183a; **12.** *Contr.* No. 1459a
Wetmon *v.* Bayne (Can.); **19.** *Eccl.* p. 31
Wetmore, *Re*, *Ex p.* Baird & Peters (Can.); **5.** *Bkpcy.* p. 73
Wettlaufer Brothers, Ltd. *v.* Robert Elder Carriage Works, Ltd. (Can.); **39.** *S. Goods*, p. 52
Weyerhaeuser *v.* Evans (1932); **29.** *Insce.* No. No. 3175a
Weyerman *v.* Fageol Motor Sales Co. (Can.); **35.** *Misrep.* p. 6
Weymberg *v.* Touch (1669); **11.** *Const. L.* No. 487d
Weymouth *v.* Shackcloth (Aus.); **24.** *Fact.* p. 56
Whaley, *Re*, *Ex p.* Official Receiver (1921); **5.** *Bkpcy.* No. 8435a
— *v.* Kelsey (Can.); **26.** *Hghys.* p. 35
Whalley *v.* Vandergrand (Can.); **2.** *Animals*, pp. 59, 60
Whalley *v.* Whalley (1860); **20.** *Eqy.* No. 2489a
— *v.* Williamson (1836); **21.** *Exon.* No. 1580a
— *v.* — (1843); **4.** *Bkpcy.* No. 4772a
Wharfage Charges, Powers to, *Re* (Can.); **38.** *Rys.* p. 45
Wharton *v.* Wharton & Young (Aus.); **27.** *H. & W.* p. 53
Whatmough *v.* Morris Motors, Ltd. (1938); **36.** *Pats.* No. 29440
Wheat, *Re* (1932); **27.** *H. & W.* Nos. 6119a, 6233c
Wheat Supplies Royal Commission *v.* Usher & Co., Ltd. (Ir.); **2.** *Arbn.* p. 97
Wheater, *Re* (1928); **33.** *Lunat.* Nos. 1378a, 1391a
Wheatland Municipal District *v.* Iron Creek Municipal District (Can.); **37.** *Poor L.* p. 18
Wheatley *v.* Anderson & Miller (Scot.); **32.** *Libel*, p. 15
— *v.* Howard (Can.); **3.** *Bastv.* p. 64
— *v.* Lambton, Hetton & Joicey Collieries, Ltd. (1937); **34.** *Mast. & S.* No. 2801a
Wheeler, *Ex p.*, R. *v.* Investors' Review, Ltd. (1928); **22.** *Evid.* No. 4428a
—, *Re*, Jameson *v.* Cotter (1929); **21.** *E. D.* Nos. 147a, 209d, 271b
— *v.* Atkinson (Aus.); **35.** *Misrep.* p. 5
— *v.* Bramah (1813); **5.** *Bkpcy.* Nos. 7649c, 7652a
— *v.* Fradd (1898); **9.** *Coys.* No. 1644a
— *v.* Hisey (Can.); **1.** *Agcy.* p. 66
— *v.* Mills, *Re* Warren (1938); **4.** *Bkpcy.* No. 1571a; **42.** *Time*, No. 392a
— *v.* New Merton Board Mills, Ltd. (1933); **34.** *Mast. & S.* No. 4071d; **36.** *Negl.* No. 650a
— *v.* Public Works Comrs. (Ir.); **38.** *Pub. Auth.* p. 7
— *v.* Trustee in Bankruptcy, *Ex p.*, *Re* Warren (1938); **4.** *Bkpcy.* No. 1571a; **42.** *Time*, No. 392a
— *v.* United Gas & Fuel Co. (Can.); **17.** *Damgs.* p. 10
— *v.* Wirral Estates, Ltd. (1935); **31.** *L. & T.* Nos. 7028c, 7118a, 7174a
Wheeler (Arthur) & Co. (No. 389 of 1931), *Re*, Trustee *v.* Kirby & Grainger (1933); **42.** *Stk. Ex.* No. 403a
Wheeler (M.) & Co., Ltd. *v.* Warren (1928); **10.** *Coys.* No. 5067b
Wheelhouse *v.* Ladbrooke (1858); **7.** *Bonds*, No. 604a
Whelan *v.* Billingham Urban District Council (1937); **38.** *Pub. Hlth.* No. 581a
— *v.* Dover Harbour Board (1934); **28.** *Inc. T.* No. 611b
— *v.* Leney (Alfred) & Co., Ltd. (1936); **28.** *Inc. T.* No. 116d
Whelpdale's Case (1604); **17.** *Deeds*, No. 501a
Wheton, *Re* (Can.); **33.** *Mags.* p. 29
Whieldon *v.* Fraser Valley Milk Producers Assocn. (No. 2) (Can.); **18.** *Discy.* p. 18
— *v.* Morrison (Can.); **18.** *Discy.* p. 17
While, *Re*, Wilford *v.* While (1928); **25.** *Gifts*, No. 330a
Whimbey *v.* Hyde (Can.); **38.** *Real Prop.* p. 90
Whimster *v.* Crow's Nest Pass Coal Co. (Can.); **32.** *Lien.* p. 24
Whipp *v.* Mackey (Ir.); **19.** *Easmt.* p. 1
Whistle Co., *Re* (Can.); **4.** *Bkpcy.* p. 11
Whitaker, *Re*, Rooke *v.* Whitaker (1929); **40.** *Sttlmts.* No. 1878a
Whitbread & Co., Ltd. *v.* Edinburgh Assessor (Scot.); **38.** *Rates*, p. 76
Whitchurch *v.* Hide (1742); **1.** *Action*, No. 187a
White, *Re* (1928); **23.** *Exors.* No. 1431b
—, *Re* (1933); **42.** *Solrs.* No. 3307a
—, *Re* (Aus.); **44.** *Wills*, p. 57
—, *Re* (Can.); **4.** *Bkpcy.* p. 25; **38.** *Real Prop.* p. 91

White, *Re*, Executor Trustee & Agency Co. of South Australia, Ltd. *v.* A.-G. (Aus.); **8.** *Char.* p. 69
—, *Re*, Kerston *v.* Tane (Can.); **12.** *Contr.* p. 10
—, *Re*, Pitman *v.* White (1929); **43.** *Trusts*, No. 3489a
—, *Re*, Skinner *v.* A.-G. (1938); **21.** *E. D.* No. 94a
— *v.* Altrincham Urban District Council (1936); **34.** *Mast. & S.* No. 4035a
— *v.* Baird (William) & Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 134
— *v.* Bembridge (1935); **31.** *L. & T.* Nos. 7092a, 7361b
— *v.* Bijou Mansions, Ltd. (1938); **38.** *Real Prop.* No. 898a
— *v.* Carlton Main Colliery Co., Ltd. (1934); **34.** *Mast. & S.* No. 2970c
— *v.* Carter, *Re* Rechnell (1936); **44.** *Wills*, No. 4186a
— *v.* Cubitt (1930); **42.** *Str. Traf.* No. 94a
— *v.* Dominion Bank (Can.); **3.** *Bank.* p. 42
— *v.* Elder, Smith & Co., Ltd. (Aus.); **43.** *Trov.* p. 56
— *v.* Fox & Dawes (1932); **2.** *Animals*, No. 602a
— *v.* Gardner (1835); **1.** *Action*, No. 617a
— *v.* Henton (Can.); **36.** *Negl.* p. 36
— *v.* Hyde (1933); **42.** *Solrs.* No. 3307a
— *v.* Inga & Pidgeon, Municipal District of (Can.); **38.** *Rates*, p. 85
— *v.* Jackson (Can.); **27.** *H. & W.* p. 16
— *v.* Jeans (Scot.); **14.** *Crim.* p. 56
— *v.* Leicester Colliery & Pipe Co., Ltd. (1932); **34.** *Mast. & S.* Nos. 2900a, 2951a
— *v.* London & North-Eastern Railway (1931); **34.** *Mast. & S.* Nos. 3243c, 3383a
— *v.* Miller (Can.); **22.** *Evid.* p. 15
— *v.* Piggly Wiggly (Canadian), Ltd. (Can.); **31.** *L. & T.* p. 54
— *v.* Proctor (Can.); **27.** *H. & W.* p. 21
— (Doe d.) *v.* Roe (Can.); **38.** *Real Prop.* p. 98
— *v.* Royal Bank of Canada (Can.); **3.** *Bank.* pp. 23, 29
— *v.* Ryan (Ir.); **31.** *L. & T.* p. 55
— *v.* Smith (1927); **35.** *Money*, No. 434a
— *v.* Taylor (1801); **14.** *Crim.* No. 1555a
— *v.* Todd Oil Burners, Ltd. (1929); **36.** *Pats.* No. 459a
— *v.* Whitcher (1928); **28.** *Inc. T.* No. 545d
— (otherwise Bennett) *v.* White (1937); **11.** *Confl.* No. 926d
— *v.* White (Can.); **27.** *H. & W.* p. 51
— *v.* Winterton Pottery (Longton), Ltd. (1932); **34.** *Mast. & S.* Nos. 3822c, 3822d
White & Co., Ltd. *v.* Ionia, The (Can.); **4.** *Bkpcy.* pp. 31, 32; **5.** *Bkpcy.* pp. 49, 83
White & Elliott, *Ex p.*, *Re* Gadsby (Can.); **5.** *Bkpcy.* p. 59
White & Gray's Patent, *Re* (1927); **36.** *Pats.* No. 1681a
White & Hales *v.* Islington Corpn. (1909); **38.** *Rates*, No. 675d
White & Liquor Control Board, *Re* (Can.); **30.** *Intox.* p. 11
White & Toronto (City), *Re* (Can.); **2.** *Arbn.* p. 95
White, Child & Beney, Ltd. *v.* Eagle Star & British Dominions Insurance Co. (1922); **11.** *Confl.* No. 17a
— *v.* Simmons (1922); **11.** *Confl.* No. 17a
White Horse Distillers *v.* Inland Revenue (Scot.); **38.** *Rates*, p. 55
White Sea Timber Trust, Ltd. *v.* W. W. North, Ltd. (1932); **39.** *S. Goods*, No. 1887c
White Star Line, Ltd., *Re* (1938); **9.** *Coys.* No. 2136a
White Star Line of Royal & United States Mail Steamers Oceanic Steam Navigation Co., Ltd. *v.* Comerford (1931); **41.** *Ship.* Nos. 685a, 685b; **42.** *Stats.* No. 448a, 598a
White, Tomkins & Courage, Ltd. *v.* United Confectionery Co., Ltd. (1914); **22.** *Evid.* No. 6269a
White's Settlement, *Re*, Pitman *v.* White (1930); **43.** *Trusts*, No. 3489a
White's (John) Trust, Ltd. *v.* Inland Revenue Comrs. (1937); **28.** *Inc. T.* No. 674u
White-Popham Settled Estates, *Re* (1936); **40.** *Sttlmts.* No. 2763a
Whitechapel Estates, Ltd. *v.* Liverpool Corpn. (1932); **11.** *Comp. Pchc.* No. 2225c
Whiteford *v.* McLeod (Can.); **12.** *Contr.* p. 41
Whitehaven Colliery Co., Ltd., *Re* (1935); **10.** *Coys.* No. 6457a
— *v.* McMaster, *Re* (1933); **34.** *Mast. & S.* Nos. 3632a, 3641a, 3641b
Whitehead, *Re*, Peacock *v.* Lucas (1894); **23.** *Exors.* No. 5360a; **40.** *Sttlmts.* Nos. 1960a, 2297a
— *v.* Bridger Hevenor & Co. (Can.); **9.** *Coys.* p. 24
— *v.* Whitehead (Can.); **27.** *H. & W.* p. 10
Whitehouse *v.* Midland Ry. Co. (1866); **8.** *Carr.* No. 579a
Whitehurst, Appellant, *Re* Kearney's Estate (Aus.); **21.** *Estpl.* p. 40
Whitelaw *v.* Wilson (Can.); **44.** *Wills*, p. 16
Whiteman Smith Motor Co., Ltd. *v.* Chaplin (1934); **31.** *L. & T.* No. 2306h
Whiterock Quarries, Ltd., *Re* (Ir.); **10.** *Coys.* p. 79
Whiteside, *Re*, R. *v.* McInroy (Can.); **16.** *Cntmpt.* p. 3
— *v.* Wallace Shipyards, Ltd. (Can.); **1.** *Agcy.* p. 84
Whiting *v.* Cavendish, *Re* Baillie (Aus.); **43.** *Trusts*, p. 63
— *v.* Whiting & Watson (Can.); **33.** *Lunat.* p. 18
Whitla *v.* Phair (Can.); **12.** *Contr.* p. 45
Whitley *v.* Stumbles (1930); **25.** *Fish.* No. 176a; **31.** *L. & T.* No. 2306f
Whitlock *v.* Whitlock (1924); **18.** *Desct.* No. 134a
Whitlock's Case (1725); **4.** *Bkpcy.* No. 223a
Whitman *v.* Harvey (Can.); **32.** *Lien*, p. 27
Whitmore *v.* Bedford (1843); **20.** *Elect.* No. 263b
— *v.* Inland Revenue Comrs. (1925); **28.** *Inc. T.* No. 661a
Whitney, *Re* (Can.); **21.** *E. D.* p. 20
— *v.* MacLean (Can.); **17.** *Deeds*, p. 29; **35.** *Misrep.* p. 3
Whitrod, *Re*, Burrows *v.* Base (1926); **23.** *Exors.* No. 5340a
Whittaker *v.* Rozelle Wood Products, Ltd. (Aus.); **42.** *Stats.* p. 28
— *v.* Taylor (Can.); **1.** *Agcy.* p. 51
Whitten & Co. *v.* Cowper (Can.); **5.** *Bkpcy.* p. 85
Whittingham *v.* Chesters, *Re* Chesters (1935); **20.** *Eqy.* No. 2399a; **35.** *Mtge.* No. 3587a
— *v.* Railways (W. A.) Comr. (Aus.); **34.** *Mast. & S.* p. 41
Whittle *v.* Ebbw Vale, Steel, Iron & Coal Co., Ltd. (1936); **34.** *Mast. & S.* No. 2714a
— *v.* Henley (S. Af.); **9.** *Coys.* p. 17
Whitwell, *Re*, Senior *v.* Wilson (1890); **20.** *Eqy.* No. 1552a
— *v.* Shakesby (1932); **34.** *Med.* No. 132a
Whitworth, *Ex p.*, *Re* Mayor (1841); **26.** *Guar.* No. 1165a
—, *Re* (1928); **33.** *Lunat.* No. 529b
— *v.* Dunlop (Can.); **14.** *Crim.* p. 12
Whitworth (Herbert), Ltd. *v.* Jamnadas Lemchand Mehta (Ind.); **43.** *Trade Mks.* p. 42
Whitzman *v.* Deitcher (Can.); **39.** *S. Goods*, p. 44

Wholesale Grocers, Ltd., *Re* (Can.); **5.** *Bkpcy.* p. 89
Whyatt *v.* Marsh (Can.); **24.** *Exors.* p. 35
Whynot, *Ex p.* (Can.); **16.** *Cr. Pract.* p. 30
Whytall *v.* Kay (1833); **20.** *Egy.* No. 817a
Whyte *v.* Leslie (Can.); **42.** *Tort*, p. 77
Wiarton Lumber Co., *Re*, *Ex p.* Bank of Commerce (Can.); **3.** *Bank.* p. 44
Wick Case (Can.); **19.** *Eccl.* p. 31
Wickes *v.* Tanner (1848); **22.** *Evid.* No. 2513a
Wickett *v.* Port of London Authority (1929); **41.** *Ship.* No. 8715a
Wickhambrook Parochial Church Council *v.* Croxford (1935); **19.** *Eccl.* Nos. 472c, 472e
Wicklow County Council *v.* Hibernian Fire & General Insce. Co. (Ir.); **26.** *Guar.* p. 10
Wicks, *Re* (Can.); **20.** *Elect.* p. 6
— *v.* King & Co. (1934); **34.** *Mast. & S.* No. 3283m
— *v.* Wood (1878); **29.** *Intpr.* No. 541a
Wicks & Armstrong, *Re* (Can.); **3.** *Basty.* p. 61; **42.** *Stats.* p. 25
Widdicombe, *Re* (S. Af.); **22.** *Evid.* p. 8
Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., Ltd. (1931); **17.** *Damgs.* No. 426b
Wiebe *v.* Garvey (Can.); **1.** *Agcy.* p. 78
Wieting & Richter, Ltd. *v.* Braid Tuck & Co., Ltd. (Can.); **21.** *Estpl.* p. 36
Wigg *v.* A.-G. of Irish Free State (1927); **17.** *Dep.* No. 714b; **30.** *Jdgmts.* No. 185a; **38.** *Pub. Auth.* p. 13
Wiggins *v.* Lavy (1928); **1.** *Action*, No. 689a
— *v.* Watson's Trustees (1934) **28.** *Inc. T.* No. 575b
Wiggins & Globe Mortgage & Loan Co., Ltd., *Re*, R. *v.* Howlett (Can.); **30.** *Intox.* p. 18
Wiggins, Ltd., *Re* (Can.); **42.** *Stk. Ex.* p. 31
—, *Re*, Travers' & Spratt's Claims (Can.); **42.** *Stk. Ex.* p. 34
Wight & Best's Brewery Co.'s Contract, *Re* (1929); **40.** *S. Land*, No. 2530a
Wightman *v.* Cousins (Ir.); **23.** *Exors.* p. 3
— *v.* Wightman (Can.); **27.** *H. & W.* p. 74
Wigzell, *Re*, *Ex p.* Hart (1921); **4.** *Bkpcy.* Nos. 1579a, 1893a
—, *Re*, *Ex p.* Trustee *v.* Barclays Bank, Ltd. (1921); **4.** *Bkpcy.* No. 1893a
—, *Re*, Hart *v.* Barclays Bank (1921); **4.** *Bkpcy.* No. 1893a
Wijeyewardene *v.* Jayawardene (1924); **17.** *Dep.* No. 271a
Wikstrand & Mannix *v.* Cavanaugh & Dillon (Can.); **36.** *Partn.* p. 56
Wilberforce Educational Institute *v.* Holden (Can.); **19.** *Educ.* p. 34
Wilchick *v.* Marks & Silverstone (1934); **31.** *L. & T.* Nos. 4869a, 4891a
Wilcock *v.* Pinto & Co. (in the name of Kummer) (1925); **28.** *Inc. T.* No. 633a
Wilcox *v.* Jewell (Can.); **40.** *S. Land*, p. 11
Wild *v.* Madame Tussaud's (1926), Ltd. (1932); **28.** *Inc. T.* No. 210h
— *v.* Petitioning Creditors & Debtor, *Re* Debtor (No. 29 of 1931) (1934); **42.** *Solrs.* No. 3302a
— *v.* Plant, *In the Estate of* Plant (1926); **23.** *Exors.* No. 3127a
— *v.* Plant, *Re* Plant (1926); **23.** *Exors.* No. 3127a
— *v.* Simpson (1919); **1.** *Action*, No. 598a
Wildbore, *Re* (1903); **36.** *Parl.* No. 288a
Wilde *v.* Crow (Can.); **22.** *Evid.* p. 23
Wilderman *v.* Berk (F. W.) & Co. (1925); **2.** *Aliens*, No. 280a
Wildey & White's Manufacturing Co., Ltd. *v.* Freeman (H.) & Letrik, Ltd. (1931); **36.** *Pats.* Nos. 459d; 3161a
Wilensko Slaski Towarzystwo Drewno *v.* Fenwick & Co. (West Hartlepool), Ltd. (1938); **39.** *S. Goods*, No. 1906a
Wiles *v.* Ellerman's Wilson Line (1928); **34.** *Mast. & S.* Nos. 2849c, 2949a
— *v.* Gresham (1853); **43.** *Trusts*, No. 4626a
Wiley, *Re*, *Re* Anthony Salt Co., *Re* Crown's Customs Duties Claim (Can.); **4.** *Bkpcy.* p. 39
— *v.* Booker (Can.); **18.** *Distr.* p. 34
Wilford *v.* While, *Re* While (1928); **25.** *Gifts*, No. 330a
Wilford's Estate, *Re*, Taylor *v.* Taylor (1879); **37.** *Pers. Prop.* No. 94a
Wilgress *v.* Ritchie (Can.); **2.** *Animals*, p. 58
Wilguzki & Wilguzki *v.* Miazga (Can.); **27.** *H. & W.* p. 9
Wilhelm *v.* Wilhelm (Can.); **27.** *H. & W.* p. 37
Wilhelm Schmidt, The (1871); **11.** *Confl.* Nos. 645a, 691a
Wilkes *v.* Allington (1931); **25.** *Gifts*, No. 356a; **35.** *Mtge.* No. 3453a
Wilkie *v.* Wilkie (N.Z.); **27.** *H. & W.* p. 28
Wilkin *v.* Brown (Can.); **40.** *S. Land*, p. 10
Wilkins *v.* Carlton Shoe Co., Ltd. (1930); **31.** *L. & T.* No. 7254b
— *v.* Cauty (1842); *Pract.* No. 2512a
— *v.* Dodds (Can.); **36.** *Negl.* p. 33
— *v.* Leighton (1932); **36.** *Nuis.* Nos. 344b, 349b
— *v.* Miner (Can.); **21.** *Exon.* p. 47; **32.** *Limit. of A.* p. 31
— *v.* National Drug & Chemical Co., *Re* Ord (Can.); **7.** *B. of Sale*, p. 8
— *v.* New Saville Securities, Ltd. & Hawkings (G. F.) & Son (1922); **7.** *B. of Sale*, No. 283a
— *v.* Reeves (1855); **35.** *Mtge.* No. 2897b
— *v.* Smith, *Re* Smith's Settlement (1902); **30.** *Jdgmts.* No. 787a
— *v.* Wilkins (1932); **11.** *Confl.* No. 878a
Wilkinson, *Ex p.*, R. *v.* Copestake (1927); **3.** *Basty.* No. 366b
— *v.* Harwood & Cooper (Can.); **35.** *Mtge.* p. 44
— *v.* Inland Revenue Comrs. (1931); **28.** *Inc. T.* No. 666b
— *v.* Lyde, *Re* Laidlaw (1930); **21.** *E. D.* No. 227a
— *v.* Oshawa Corpn. (Can.); **17.** *Damgs.* p. 19
— *v.* Shackleton (Can.); **38.** *Real Prop.* p. 95
— (Taunton Revenue Officer) *v.* Sibley & Donovan (1932); **1.** *Action*, No. 18b; **30.** *Jdgmts.* Nos. 573a, 573b, 588c, 588d; **38.** *Rates*, No. 226y
— *v.* Sporting Life Publications, Ltd. (Aus.); **32.** *Libel*, p. 3
— *v.* Thomas (Can.); **19.** *Educ.* pp. 33, 38
Wilkison, *Re* (Can.); **11.** *Confl.* p. 35
Wilks, *Re*, Keefer *v.* Wilks (1935); **11.** *Confl.* No. 638a
Will *v.* Bank of Montreal (Can.); **3.** *Bank.* p. 23; **30.** *Jdgmts.* p. 27
Willan *v.* Lancaster (1826); **23.** *Exors.* No. 5697d
Willard, *Re*, *Ex p.* British Products Proprietary, Ltd. (Aus.); **25.** *Gaming*, p. 38
— *v.* McNab (Can.); **17.** *Deeds*, p. 28
— *v.* Rawson (Aus.); **17.** *Dep.* p. 63
— *v.* Whiteley, Ltd. (1938); **34.** *Mast. & S.* No. 25b
Willasey *v.* Mashiter (1834); **4.** *Bkpcy.* No. 4771a
Willcocks *v.* New Zealand Insurance Co. (N.Z.); **29.** *Insce.* p. 57
Willcocks & Barnes *v.* Paignton Co-operative Society, Ltd. (1930); **7.** *Bldg. Conts.* No. 11a
Willcox, *Re* (N.Z.); **23.** *Exors.* p. 13

Willcox *v.* Kettell (1937); **43.** *Tresp.* No. 327a: *Pract.* No. 1674a
Willem III, The (1871); **1.** *Adm.* No. 1107a
Willes *v.* Greenhill (No. 1) (1860); **8.** *Chos.* No. 338a
— *v.* — (No. 1) (1861); **8.** *Chos.* No. 338a
Willesden *v.* Webb (Aus.); **12.** *Contr.* p. 2
Willetts *v.* Chaplin & Co. (1923); **3.** *Bailmt.* No. 339a
Willey, *Ex p.*, *Re* Wright (1883); **30.** *Jdgmts.* p. 685a
—, *Re*, Goulding *v.* Shirtcliffe (1929); **44.** *Wills*, No. 5625a
— *v.* Minister of Health (1937); **38.** *Pub. Hlth.* No. 502aa
Willey's Application, *Re* Greenwich (Prince of Orange Lane) Housing Order, 1936 (1937); **38.** *Pub. Hlth.* No. 502aa
William, The (1795); **2.** *Aliens*, No. 419a
William Bailey (Birmingham), Ltd., Application to Register a Trade Mark, *Re*, *Re* Gilbert & Co. Opposition (1935); **43.** *Trade Mks.* No. 214a
William Baird & Co., Ltd. *v.* Campbell (Scot.); **21.** *Exon.* pp. 54, 59; **34.** *Mast. & S.* p. 133
William Bean & Sons, Ltd. *v.* Flaxton Rural District Council (1929); **38.** *Pub. Hlth.* Nos. 121a, 333a, 509b
William C. Leitch Bros., Ltd., *Re*, [1932] 2 Ch. 71; **9.** *Coys.* Nos. 3353a, 3353c, 3353d
—, *Re* (1933), 49 T. L. R. 74; **9.** *Coys.* Nos. 3353c, 6048a
William Denby & Sons, Ltd. *v.* Minister of Health (1936); **38.** *Pub. Hlth.* No. 502s
William Hamilton Manufacturing Co. *v.* Victoria Lumbering & Manufacturing Co. (Can.); **22.** *Evid.* p. 22
William Metcalfe & Sons, Ltd., *Re* (1933); **10.** *Coys.* No. 6989d
William Milne, Ltd. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 76
William Thomas Shipping Co., Ltd., *Re*, Dillon (H. W.) & Sons, Ltd. *v.* William Thomas Shipping Co., Ltd., *Re* Thomas (Sir Robert) (1930); **16.** *Cntmpt.* No. 224a
Williams, *Ex p.*, *Ex p.* Holder, *Re* Madrid Bank, Ltd. (1866); **10.** *Coys.* No. 6368a
—, *Ex p.*, *Re* Poundall (Aus.); **24.** *Extrdn.* p. 46
—, *Ex p.*, *Re* Seery (Aus.); **24.** *Extrdn.* p. 46
—, *Ex p.*, *Re* Singleton (Aus.); **33.** *Mags.* p. 27
—, *Ex p.*, *Re* Winter (1927); **5.** *Bkpcy.* No. 8448a
—, *Ex p.*, R. *v.* Brislan (Aus.); **17.** *Dep.* p. 62; **42.** *Tele.* p. 67
—, *Ex p.*, R. *v.* Sandbach (1935); **14.** *Crim.* No. 5420a; **33.** *Mags.* No. 744a
—, *Re* (Aus.); **44.** *Wills*, p. 56
—, *Re* (Can.); **24.** *Exors.* p. 35; **38.** *Real Prop.* p. 89
—, *Re*, *Ex p.* Rosman (Aus.); **41.** *Ship.* p. 68
—, *Re*, Curator of Estates of Deceased Persons *v.* Williams (Aus.); **11.** *Confl.* p. 34
—, *Re*, Public Trustee *v.* Williams (1927); **8.** *Char.* Nos. 75a, 718a
—, *Re*, Richards *v.* Williams (1930); **23.** *Exors.* No. 4353a
—, *Re*, Williams *v.* All Souls, Hastings (Parochial Church Council) (1933); **43.** *Trusts*, No. 451a
—, *Re*, Williams *v.* Templeton (1936); **39.** *Rntchgs.* No. 586a
— *v.* Admiralty Comrs. (1851); **11.** *Const. L.* Nos. 153a, 153b
— *v.* All Souls, Hastings (Parochial Church Council), *Re* Williams (1933); **43.** *Trusts*, No. 451a
— *v.* Allen (No. 2) (1863); **43.** *Trusts*, No. 2546a
Williams *v.* Amalgamated Anthracite Collieries, Ltd. (1932); **34.** *Mast. & S.* No. 3811d
— *v.* Associated Newspapers, Ltd. (1938); **32.** *Libel*, No. 109f
— *v.* Atlantic Assurance Co., Ltd. (1933); **8.** *Chos.* No. 67a; **29.** *Insce.* Nos. 491a, 491b, 1891a
— *v.* Brown (Can.); **32.** *Libel*, p. 6
— *v.* Cadbury (1867); **5.** *Bkpcy.* No. 7867a
— *v.* Clark (Aus.); **28.** *Infts.* p. 133
— *v.* Columbia Airways (Can.); **5.** *Bkpcy.* p. 88
— *v.* Crawshay Brothers (Cyfarthfa), Ltd. (1929); **34.** *Mast. & S.* No. 3710a
— *v.* Curzon Syndicate, Ltd. (1919); **3.** *Bailmt.* No. 50a
— *v.* Cwmaman Coal Co., Ltd. (1927); **34.** *Mast. & S.* No. 3239a
— *v.* Deptford Urban District Council (1924); **26.** *Hghys.* No. 2178a
— *v.* Dorothea Slate Quarry Co., Ltd. (1936); **34.** *Mast. & S.* No. 3995a
— *v.* Englefield Collieries, Ltd. (1929); **34.** *Mast. & S.* No. 3377a
— *v.* Frith (1779); *Pract.* No. 2286c
— *v.* Gesse (1837); **3.** *Bailmt.* No. 69a
— *v.* Goodwin (Aus.); **34.** *Mast. & S.* p. 24
— *v.* Grundy Trustees (1934); **28.** *Inc. T.* No. 592c
— *v.* Hughes (1857); **23.** *Exors.* No. 5723a
— *v.* Hughes (1936); **44.** *Work*, No. 68c
— *v.* Johannesburg Municipality (S. Af.), [1915] T. P. D. 106; **17.** *Dep.* p. 65
— *v.* — (S. Af.), [1915] T. P. D. 362; **17.** *Dep.* p. 65
— *v.* Johnson (1937); **25.** *Fraud. Conv.* No. 889a
— *v.* Jones (1928); **2.** *Aliens*, No. 558b
— *v.* Jones (Stanley) & Co. (1926); **2.** *Arbn.* No. 2355a
— *v.* Larsen, Ltd. (1928); **34.** *Mast. & S.* No. 2213a
— (Doe d.) *v.* Leavitt (Can.); **38.** *Real Prop.* p. 98
— *v.* London Guarantee & Accident Co., Ltd. (Can.); **18.** *Discy.* p. 11
— *v.* Manissalian Frères (1923); **2.** *Arbn.* No. 1039a
— *v.* Moody Bible Institute of Chicago (Can.); **18.** *Descl.* p. 3
— *v.* Mountain View Irrigation District (Can.); **44.** *Waters*, p. 5
— *v.* Neath Assessment Committee (1935); **37.** *Post Off.* No. 81a
— *v.* New British Rhondda Colliery Co., Ltd. (1932); **34.** *Mast. & S.* Nos. 3038b, 3288f, 3815b
— *v.* Oakdale Navigation Collieries, Ltd. (1937); **34.** *Mast. & S.* No. 3811m
— *v.* Rapelje (Can.); **25.** *Fraud. Conv.* p. 14
— *v.* Rice (Can.); **5.** *Bkpcy.* p. 56
— *v.* Richards (Can.); **13.** *Crnrs.* p. 23
— *v.* Road Transport & Tramways Comr. (New South Wales) (Aus.); **36.** *Negl.* p. 25
— *v.* Robinson, *Re* Williams Estate (Can.); **23.** *Exors.* p. 14
— *v.* Rodgers (Can.); **21.** *Estpl.* p. 31
— *v.* Russell (1933); **22.** *Evid.* No. 2285a; **42.** *Str. Traf.* No. 250a
— *v.* Sanders (1927); **28.** *Inc. T.* No. 25a
— *v.* Sautner (Can.); **32.** *Limit of A.* p. 31
— *v.* Smith (1934); **44.** *Work*, No. 68b
— *v.* Snowden (1880); **34.** *May. Ct.* No. 21a
— *v.* Stewart & Cameron, Ltd. (Can.); **7.** *Bldg. Conts.* p. 24
— *v.* Tang & Mitchell (Can.); **1.** *Agcy.* p. 99
— *v.* Templeton, *Re* Williams (1936); **39.** *Rntchgs.* No. 586a
— *v.* Thomas (1830); **22.** *Evid.* No. 198b

Williams *v* Tredegar Iron & Coal Co., Ltd. (1927); **34.** *Mast. & S.* No. 3531a
— *v.* — (1935); **34.** *Mast. & S.* No. 3927f
— *v.* Waters (1845); **38.** *Real Prop.* No. 509a
— *v.* Watkins (1933); **33.** *Mags.* No. 1246a
— *v.* Watson (H. J. & S. A.) (1930); **34.** *Mast. & S.* No. 3295b
— *v.* West (S. Af.); **1.** *Agcy.* p. 100
— *v.* Williams (1817); **28.** *Injon.* No. 730a
— *v.* — (1929); **27.** *H. & W.* Nos. 4278a, 6191a
— *v.* — (1932); **27.** *H. & W.* No. 6191b
— *v.* — (1937); **25.** *Fraud. Conv.* No. 889a
— *v.* — (1938); **27.** *H. & W.* No. 2975a
— *v.* — (N.Z.); **27.** *H. & W.* p. 19
— *v.* Williams & Nathan (1937); **21.** *Exon.* Nos. 1667a, 1667b
Williams & Evans *v.* London, Midland & Scottish Ry. Co. (1935); **8.** *Carr.* No. 1601
Williams & Mordey *v.* Muller (W. H.) & Co. (London), Ltd. (1924); **2.** *Arbn.* No. 302a
Williams & Regimbal, *Re* (Can.); **38.** *Rates*, p. 78
Williams & Sears *v.* Richards (Can.); **21.** *Estpl.* p. 30
Williams (Samuel) & Sons, Ltd. *v.* Port of London Authority (1933); **44.** *Waters*, No. 927a
Williams & Wigmore Steamship Corpn. *v.* R., *Re* Gaston, Williams & Wigmore & Gaston (Can.); **11.** *Const. L.* p. 74
Williams & Williams *v.* Fraser (Can.); **22.** *Evid.* p. 24
— *v.* Haines (Can.), [1933] 1 W. W. R. 478; **42.** *Str. Traf.* p. 37
— *v.* — (Can.), [1933] 1 W. W. R. 644; **36.** *Negl.* p. 36
Williams Estate, *Re*, Williams *v.* Robinson (Can.); **23.** *Exors.* p. 14
Williams, Evans & Llewellyn *v.* Crumlin Valley Collieries, Ltd. (1936); **34.** *Mines*, No. 327p
Williams Machine Co. of Winnipeg, Ltd. *v.* Winnipeg Storage, Ltd. (Can.); **30.** *L. & T.* p. 41
Williams (A. R.) Machinery Co., Ltd. *v.* Moore (Can.); **8.** *Chos.* p. 92
Williams' Settlement, *Re*, Greenwell *v.* Humphries (1929); **40.** *Sttlmts.* No. 146b
Williams-Ellis *v.* Cobb (1935); **13.** *Cty. Cts.* No. 824a; **26.** *Hghys.* Nos. 52a, 201a, 247a; **30.** *Jdgmts.* No. 501a
Williamson, *Re* (Can.); **5.** *Bkpcy.* p. 81
— *v.* Ah On (Aus.); **17.** *Dep.* p. 61
— *v.* North of Scotland, etc. Navigation Co. (Scot.); **8.** *Carr.* p. 10
— *v.* Ough (1936); **28.** *Inc. T.* No. 321b
Williamson (J. C.), Ltd. *v.* Metro-Goldwyn-Mayer Theatres, Ltd. (Aus.); **13.** *Coprt.* p. 13
Willie *v.* Delisle (Can.); **32.** *Lien*, p. 26
Willis *v.* Baggs & Salt (1925); **12.** *Contr.* Nos. 418a, 448a
— *v.* Coca Cola Co. of Canada, Ltd. (Can.); **36.** *Negl.* p. 12
— *v.* Howie (1931); **34.** *Mast. & S.* No. 3708c
— *v.* Willis (1928); **27.** *H. & W.* No. 2061a
Willis C. Raymond, Ltd. (In Liquidation), *Re* (N.Z.); **10.** *Coys.* p. 85
Williston & Clarke Assessment & Dartmouth (Can.); **38.** *Rates*, p. 68
Willoughby *v.* Eckstein (1936); **19.** *Easmt.* No. 1247a; *Pldg.* No. 687a
— *v.* — (No. 2) (1937); **19.** *Easmt.* No. 898b
Wills *v.* Swartz Bros., Ltd. & Hudson (Can.); **42.** *Str. Traf.* p. 37
Wills & Anderson, *Ex p.*, *Re* Tunnell, Ltd. (Can.); **4.** *Bkpcy.* p. 11
Wills (George) & Sons, Ltd. *v.* Cunningham (R. S.) Son & Co. (1924); **12.** *Contr.* No. 2505a
Willson & Alberta Assessment Commission (Can.); **38.** *Rates*, p. 82
Wilmot *v.* Maitland (Can.); **28.** *Injon.* p. 154
— *v.* Minister of Health (1937); **38.** *Pub. Hlth.* No. 502w
— *v.* Wilkinson (1827); **19.** *Eccl.* No. 2104a
Wilmot's Application, *Re* Hammersmith (Berghem Mews) Clearance Order, 1936 (1937); **38.** *Pub. Hlth.* No. 502w
Wilneff, *Re* (Can.); **14.** *Crim.* p. 31; **30.** *Intox.* p. 11
Wilner, *Re* (Can.); **4.** *Bkpcy.* pp. 24, 39; **29.** *Insce.* p. 30; **32.** *Lien*, p. 22; **39.** *Revenue*, p. 15
Wilshin *v.* Wilshin (S. Af.); **17.** *Dep.* p. 37
Wilson, *In the Goods of* (Aus.); **23.** *Exors.* p. 3
—, *Re* (1916); **5.** *Bkpcy.* Nos. 8772a, 8782e
—, *Re* (Can.); **5.** *Bkpcy.* p. 57
—, *Re, Ex p.* Debtor (1937); **5.** *Bkpcy.* No. 5506a
—, *Re, Ex p.* Salaman (1926); **4.** *Bkpcy.* No. 1894b
—, *Re, Ex p.* Wilson *v.* Trustee of a Deed of Arrangement (1937); **32.** *Limit. of A.* Nos. 650a
—, *Re*, Capital Trust Corpn. *v.* Wilson (Can.); **43.** *Trusts*, p. 63
—, *Re*, Grove-White *v.* Wilson (Ir.); **25.** *Gifts*, p. 50
—, *Re*, Wilson *v.* Bland (1937); **32.** *Limit. of A.* Nos. 650a
— *v.* Atlas Coal Co., Ltd. (Can.); **1.** *Agcy.* p. 88
— *v.* Balfour (1929); **12.** *Contr.* No. 539a
— *v.* Banks, *Re* Rawlinson (1934); **18.** *Desct.* Nos. 298a, 329a
— *v.* Bland, *Re* Wilson (1937); **32.** *Limit. of A.* Nos. 650a
— *v.* Brisbane City Council (Aus.); **35.** *Misrep.* p. 5
— *v.* Brown (Can.); **32.** *Limit. of A.* p. 32
— *v.* Cameron (Can.); **21.** *Estpl.* p. 26
— *v.* Chanton (1862); **21.** *Exon.* No. 1677
— *v.* Church (1878); **9.** *Coys.* No. 4501a
— *v.* Codyre (Can.) (1866); **17** *Dep.* p. 42; **21.** *Estpl.* p. 32
— *v.* Codyre & Allingham (Can.) (1888); **25.** *Fish.* p. 1
— *v.* Currie & Thomson, Ltd. (Scot.); **34.** *Mast. & S.* p. 82
— *v.* Douglas (Can.); **21.** *Exon.* p. 57
— *v.* Drake, *Re* Drake's Settlement Trusts (1938); **21.** *E. D.* No. 694a
— *v.* Fleming (Can.); **13.** *Corpns.* p. 36; **21.** *Exon.* p. 58
— *v.* Gannaway & Co., Ltd. (N.Z.); **34.** *Mast. & S.* p. 83
— *v.* Hicks (Can.); **29.** *Insce.* p. 34
— *v.* Hogarth (N.Z.); **25.** *Gaming*, p. 26
— *v.* Kemp (1815); **4.** *Bkpcy.* No. 5424b
— *v.* Kent (George) & Sons, Ltd. (N.Z.); **36.** *Negl.* p. 35
— *v.* Leslie (1857); **23.** *Exors.* No. 5160a
— *v.* Mainland (Can.); **17.** *Damgs.* p. 14
— *v.* Mannarn (Scot.); **37.** *Poor L.* p. 20
— *v.* Mannooch (1937); **28.** *Inc. T.* No. 94a
— *v.* Maritime United Farmers Co-Op., Ltd. (Can.); **10.** *Coys.* p. 55
— *v.* Mason (Can.); **12.** *Contr.* pp. 47, 50
— *v.* Matthewson Brothers & Magernin (Can.); **21.** *Exon.* p. 49
— *v.* Metropolitan Life Insurance Co. (Can.); **29.** *Insce.* p. 40
— *v.* Minister of Finance (Can.); **21.** *E. D.* p. 21
— *v.* Morris (N.Z.); **27.** *H. & W.* p. 63
— *v.* Murphy (1937); **25.** *Gaming*, No. 415d
— *v.* New Zealand Express Co., Ltd. (N.Z.), [1923] N. Z. L. R. 201; **8.** *Carr.* p. 1
— *v.* — (No. 2) (N.Z.), [1924] N. Z. L. R. 465; **8.** *Carr.* p. 2
— *v.* — (No. 3) (N.Z.), [1924] N. Z. L. R. 890; **8.** *Carr.* p. 2

Wilson *v.* Niddrie & Benhar Coal Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 73
— *v.* Pelletier (Can.); **6.** *B. of Exch.* p. 1
— *v.* R. (Can.) (1926); **17.** *Deeds*, p. 28
— *v.* — (Can.) (1937); **33.** *Lunat.* p. 12
— *v.* Rebotoy (Can.); **36.** *Negl.* p. 30
— *v.* Shorrock, *Re* Wilson Syndicate Conveyance (1938); **34.** *Mines*, No. 1002a
— *v.* Simpson (1926); **28.** *Inc. T.* No. 549a
— *v.* Summerlee Iron Co. (Scot.); **34.** *Mast. & S.* p. 96
— *v.* Trustee of a Deed of Arrangement, *Ex p., Re* Wilson (1937); **32.** *Limit. of A.* Nos. 650a
— *v.* Turton, *Re* Trimble (1931); **21.** *E. D.* No. 777a
— *v.* Ucelli (1929); **34.** *Mast. & S.* No. 414b
— *v.* Ward (Can.); **35.** *Mtge.* p. 30
— *v.* Whelpley (Can.); **40.** *Sttlmts.* p. 30
— *v.* Willoughby (Can.); **21.** *Estpl.* p. 40
— *v.* Wilson (1847); **17.** *Deeds*, No. 1622a
— *v.* — (1872); **27.** *H. & W.* No. 3369a
— *v.* — (1895); **11.** *Confl.* No. 1348a
— *v.* — (Can.); **38.** *Real Prop.* p. 90
— *v.* Wilson & Berry (1929); **27.** *H. & W.* No. 4481a
— *v.* Winn (W.) & Co., Ltd. (Aus.); **34.** *Mast. & S.* p. 68
— *v.* Winnipeg Electric Ry. Co. (Can.); **8.** *Carr.* p. 7
— *v.* Woollatt (Can.); **9.** *Coys.* p. 39
— *v.* Wright (1937); **39.** *S. Goods*, No. 581a
— *v.* Yates (1927); **2.** *Animals*, No. 705a
— *v.* York (Can.); **33.** *L. G.* p. 8
Wilson & Barlow *v.* Chibbett (1929); **28.** *Inc. T.* No. 210f
Wilson & Co., Ltd. *v.* Farquharson (Can.); **12.** *Contr.* p. 5
Wilson & Sarnia, *Re*, *Re* Bright & Sarnia (Can.); **41.** *Sewers*, p. 4
Wilson-Barkworth, *Re*, Burstall *v.* Deck (1932); **8.** *Char.* No. 1248a
Wilson Box (Foreign Rights), Ltd. *v.* Brice (1936); **28.** *Inc. T.* No. 99q
Wilson Bros., Bobbin Co., Ltd. *v.* Green (1915); **29.** *Insce.* No. 2213a
Wilson Co. *v.* Mayflower Bottling Co. (Can.); **6.** *B. of Exch.* p. 11
Wilson Syndicate Conveyance, *Re*, Wilson *v.* Shorrock (1938); **34.** *Mines*, No. 1002a
Wilson-de-Roze *v.* Wilson-de-Roze (Ind.); **27.** *H. & W.* p. 42
Wilson's & Mathieson's, Ltd. *v.* Meynell & Sons, Ltd., *Re* Wilson's & Mathieson's, Ltd. Application (1929); **43.** *Trade Mks.* Nos. 1121c, 1350a
Wilson's (Carus) Case (1845); **16.** *Cr. Pract.* No. 650a
Wilson's Case, *Re* Land Tax Acts (Aus.); **30.** *Land Tax*, p. 37
Wilson's Estate, *Re* (Can.) (1937); **18.** *Descd.* p. 3
—, *Re* (Can.) (1938); **18.** *Descd.* p. 2
Wilson's Patent, *Re* (Scot.); **36.** *Pats.* p. 95
Wilson's Will, *Re*, Wood *v.* Wilson (Can.); **44.** *Wills*, p. 37
Wilsons & Clyde Coal Co., Ltd. *v.* Burrows (1929); **34.** *Mast. & S.* No. 3056d
— *v.* English (1938); **34.** *Mast. & S.* No. 1824b; *Mines*, No. 1148a
— *v.* Flynn (1930); **34.** *Mast. & S.* Nos. 3821d, 3832a
Wilt (Doe d.) *v.* Jardine (Can.); **38.** *Real Prop.* p. 93
Wilton Farmers' Co-operative Assocn. *v.* Burgess (Can.); **16.** *Cr. Pract.* p. 37
Wilts & Somerset Farmers, Ltd., *Re* (1929); **28.** *Ind. Soc.* No. 45a
Wiltshire Bacon Co., Ltd. *v.* Associated Cinema Properties, Ltd. (1938); *Pract.* No. 1701a
Wimble (F. T.) & Co., Ltd. *v.* Guillesser (Aus.); **42.** *Str. Traf.* p. 36
Wimbledon & Putney Commons Conservators *v.* Tuely (1931); **13.** *Corpns.* No. 1000a; **25.** *Gifts*, No. 19a
Wimbledon Rating Authority *v.* Kerslake (1930); **38.** *Rates*, No. 226q
Wimbledon Revenue Officer *v.* Kerslake (1931); **38.** *Rates*, No. 226q
— *v.* Surrey North-Eastern Assessment Committee (1930); **38.** *Rates*, No. 226n
Wimbush *v.* Garner (1936); **34.** *Mast. & S.* No. 3932g
Wimpey & Co., Ltd. *v.* Middlesex County Council (1938); **38.** *Pub. Hlth.* No. 670e
Windermere District Gas & Water Co. *v.* Whitehead (1931); **10.** *Coys.* Nos. 7953a, 8481a, 8481b
Windeyer, Fawl & Co., *Re*, *Ex p.* Foley (Aus.); **42.** *Solrs.* p. 8
Winding-up Act, *Re*, *Re* Great West Permanent Loan Co. (Can.); **10.** *Coys.* p. 69
—, *Re*, *Re* Thompson Powder Co. (Can.); **4.** *Bkpcy.* p. 3
Winding-up Act & Franco-Canadian Mortgage Co., Ltd., *Re*, *Re* Bank of Montreal (Can.); **26.** *Guar.* p. 12
Windover & Great West Life Assurance Co., *Re* (Can.); **35.** *Mtge.* p. 41
Windridge *v.* Ancient Order of Foresters' Friendly Society (1933); **25.** *Fr. Soc.* No. 329a
Windrum *v.* Windrum (Can.); **27.** *H. & W.* p. 43
Windsor *v.* A.-G. of Ontario (Can.); **14.** *Crim.* p. 52
— *v.* Chalcraft (1938); *Pract.* No. 950a
— *v.* Commercial Bank of Windsor (Can.); **17.** *Dep.* p. 50
— *v.* Turner (Can.); **19.** *Educ.* p. 40
Windsor & Annapolis Ry. Co., *Re* (Can.); **17.** *Dep.* p. 51
Windsor Auto Sales Agency *v.* Martin (Can.); **25.** *Fraud. Conv.* p. 14
Windsor Corpn. *v.* Canadian Pacific Ry. Co. (Wyandotte Street Bridge Case) (Can.); **38.** *Rys.* p. 36
Windsor (City) Corpn. *v.* McLeod (Can.); **17.** *Dep.* p. 48
Windsor Corpn. *v.* Walkerville Corpn. (Can.); **38.** *Rys.* p. 46
Windsor Hotel Co. *v.* Silverman (Can.); **17.** *Dep.* p. 71; **25.** *Gaming*, pp. 27, 32
Windsor Playhouse, Ltd. *v.* Heyhoe (1933); **28.** *Inc. T.* No. 116c
Windsor Steam Coal Co. (1901), Ltd., *Re* (1928); **10.** *Coys.* No. 6857a
Windsor Steam Coal Co. (1901), Ltd., *Re* (1929); **39.** *Revenue*, No. 55a; **43.** *Trusts*, Nos. 2033a, 3906a
Windsor Terminal Warehouse & Transport Co., Ltd., *Re* (Can.); **30.** *Intox.* p. 11; **33.** *Mags.* p. 35
Windsor's Case (1869); **20.** *Elect.* No. 595a
Winfield *v.* London, Midland & Scottish Railway (1931); **34.** *Mast. & S.* Nos. 3668f, 3668l, 3694b
Wing *v.* Burn (1928); **8.** *Clubs*, No. 39a; **28.** *Injon.* No. 808a
Wing *v.* O'Connell (Ir.); **28.** *Inc. T.* p. 13
— *v.* Soar (1926); **34.** *Mines*, No. 1181a
Wing Kee *v.* Butt (Can.); **34.** *Mast. & S.* p. 12
Wingate's Patent, *Re* (1931); **16.** *Cr. Pract.* Nos. 2310a, 2310b; **36.** *Pats.* Nos. 709b, 724a
Wingate's Registered Design (No. 768,611), *Re* (1934); **43.** *Trade Mks.* No. 882a

Wingfields, Halse & Trustram, Undertaking by, *Re*, Jonesco *v.* Evening Standard Co., Ltd. (1932); **16.** *Courts*, No. 895a; **42.** *Solrs.* No. 1228a
Wingrove *v.* Fraser (Aus.); **27.** *H. & W.* p. 14
— *v.* Morgan (1934); **19.** *Eccl.* No. 4055a
Winkler & Martin *v.* Hutton (Can.); **12.** *Contr.* p. 11
Winkworth *v.* Raven (1931); **29.** *Inns*, Nos. 138a, 169a
Winmill *v.* Winmill (1934); **22.** *Evid.* No. 3437b
Winmill & Thomas *v.* Collins (Can.) **2.** *Animals*, p. 58
Winn *v.* London County Council (1923); **13.** *Cty. Cts.* No. 497a
— *v.* Winn & Fisher (Can.); **27.** *H. & W.* p. 51
Winning *v.* Torrance (Scot.); **14.** *Crim.* p. 65
Winnipeg *v.* Cross (Can.); **11.** *Comp. Pche.* pp. 6, 15; **17.** *Dep.* p. 41
Winnipeg (City) *v.* Barrett (1892); **17.** *Dep.* No. 177d
— *v.* Crescent Creamery Co. (Can.); **39.** *Revenue*, p. 18; **42.** *Str. Traf.* p. 50
— *v.* Logan (1892); **17.** *Dep.* No. 177d
— *v.* Rannard Yale Shoe, Ltd. (Can.); **38.** *Pub. Hlth.* p. 15
— *v.* Winnipeg Electric Co., *Re* Manitoba Avenue Bus Service (Can.); **42.** *Str. Traf* p. 41
Winnipeg By-Law No. 14272, *Re* (Can.); **42.** *Str. Traf.* pp. 43, 50
Winnipeg Charter, 1918, *Re* (Can.); **20.** *Elect.* p. 7
—, *Re* (Can.); **38.** *Rates*, p. 82
—, *Re*, *Re* Community of Sisters of the Holy Names of Jesus & Mary (Can.); **16.** *Courts*, p. 12
Winnipeg Charter, *Re*, *Re* Fraser's Appeal (Can.); **2.** *Arbn.* p. 74; **38.** *Rates*, p. 82
Winnipeg, Children's Aid Society *v.* Brooklands Village, *Re* Kowaliuk (Can.); **33.** *Mags.* p. 24
Winnipeg Cold Storage Co., Ltd. & Winnipeg City, *Re* (Can.); **11.** *Comp. Pche.* p. 9
Winnipeg Corpn. *v.* Toronto General Trusts Corpn. (Can.); **11.** *Comp. Pche.* p. 21
Winnipeg Electoral District, *Re*, *Re* Manitoba Election Act (Can.); **20.** *Elect.* p. 5
Winnipeg Electric Co. *v.* Geel (Can.); **42.** *Str. Traf.* p. 60
— *v.* Odegaard (Can.); **43.** *Tram.* p. 49
— *v.* Scott (Can.); **43.** *Tram.* p. 49
— *v.* Symons (Can.); **36.** *Negl.* p. 18; **43.** *Tram.* p. 48
— *v.* Winnipeg & St. Boniface City (Can.); **43.** *Tram.* p. 48
— *v.* Zeidel (Can.); **36.** *Negl.* p. 3; **43.** *Tram.* p. 49
Winnipeg Golf Club *v.* Hutchings (Can.) (1926); **2.** *Arbn.* p. 81
Winnipeg Golf Club & Hutchings, *Re* (Can.) (1928); **2.** *Arbn.* pp. 88, 91
Winnipeg Laundry *v.* Caverley (Can.); **28.** *Injon.* p. 154
Winnipeg Merchandisers, Ltd. *v.* Winnipeg City (Can.); **24.** *Fact.* p. 56
Winnipeg Piano Co., Ltd. *v.* Wawryshyn (Can.); **27.** *H. & W.* p. 14
Winnipeg Rifles, 90th Battalion, *Re* (Can.); **11.** *Const. L.* p. 72
Winnipeg Saddlery Co., Ltd., *Re* (Can.); **10.** *Coys.* p. 69; **17.** *Dep.* p. 72
Winnipeg Savings Bank (Trustee) *v.* Kenny (Can.); **3.** *Bank.* p. 31
Winnipeg, Selkirk & Lake Winnipeg Ry. Co. & West Kildonan Rural Municipality (Can.); **38.** *Rates*, p. 82
Winnipeg Trustee Co. *v.* Wolfman (Can.); **23.** *Exors.* p. 40
Winsett & Canadian National Railway, *Re* (Can.); **11.** *Comp. Pche.* p. 14
Winsford Urban District Council *v.* Cheshire Lines Committee (1931); **8.** *Carr.* No. 991a
Winsley Brothers *v.* Woodfield Importing Co. (N.Z.); **39.** *S. Goods*, p. 40
Winslow *v.* Verner (Can.); **26.** *Guar.* p. 8
— *v.* Wilson (No. 2) (Aus.); **42.** *Tort.* p. 77
Winslow Marine Railway & Shipbuilding Co. *v.* Pacifico, The (Can.); **1.** *Adm.* pp. 23, 40
Winsor *v.* R. (1866); **14.** *Crim.* No. 4867
Winston *v.* Nelles (Can.); **36.** *Negl.* p. 36
— *v.* Pinkney (1672); **31.** *L. & T.* No. 3590
Wintemute *v.* Taylor (Can.); **5.** *Bkpcy.* p. 79
Winter, *Re*, *Ex p.* Williams (1927); **5.** *Bkpcy.* No. 8448a
— *v.* Capilano Timber Co. (Can.); **4.** *Bkpcy.* p. 44; **31.** *L. & T.* p. 80
— *v.* Charter (1829); **1.** *Agcy.* No. 2339a
— *v.* Dewar & Co. (Can.); **21.** *Estpl.* p. 30
— *v.* Dibdin (1844); **11.** *Const. L.* No. 266a
— *v.* South African Rys. & Harbours (S. Af.); **31.** *L. & T.* p. 80; **41.** *Ship.* p. 71
— *v.* Toronto (City) (Can.); **11.** *Comp. Pche.* p. 15
— *v.* Trans-Canada Insurance Co. (Can.); **29.** *Insce.* p. 47
— *v.* Woolfe (1931); **15.** *Crim.* No. 8143b
Winterbottom *v.* Appleton (1922); **22.** *Evid.* No. 3414a
— *v.* Winterbottom (otherwise Appleton) (1922); **22.** *Evid.* No. 3414a
Winterbottom (Leeds), Ltd., *Re* (1937); **10.** *Cys.* No. 7043b
Winterflood, *Ex p.*, R. *v.* Board of Control (1938); **33.** *Lunat.* No. 1900b
Wintermute *v.* Moulton (Can.); **1.** *Agcy.* pp. 98, 108
Winterstoke's Will Trusts, *Re*, Gunn *v.* Richardson (1938); **40.** *Sttlmts.* No. 2149a
Winthrop *v.* Winthrop (1845); **33.** *Lunat.* No. 26a
Winthrop Chemical Co. Incorporated *v.* Comr. of Patents (Can.); **36.** *Pats.* p. 83
Wirral Estates, Ltd. *v.* Shaw (1932); **31.** *L. & T.* No. 7028c
Wirral Highway Board *v.* Newell (1895); **26.** *Hghys.* No. 1852a
Wirral Revenue Officer *v.* Wirral Assessment Committee & Spillers, Ltd. (1931); **38.** *Rates*, No. 226ff
Wisbech Rural District Council *v.* Ward (1928); **7.** *Bldg. Conts.* No. 425a
Wise, *Re*, *Ex p.* Mole *v.* Trustee (1934); **34.** *Mast. & S.* No. 3591a
— *v.* Kerr (Can.); **1.** *Agcy.* p. 101
— *v.* Lansdell (1921); **5.** *Bkpcy.* Nos. 7689a, 7789a
— *v.* Toronto Transportation Commission (Can.); **26.** *Hghys.* p. 26
Wiseman *v.* Wiseman (1866); **23.** *Exors.* No. 3130a
Wishart *v.* Mason (S. Af.); **22.** *Evid.* p. 3
Wishney *v.* Archibald Russell, Ltd. (Scot.); **34.** *Mast. & S.* p. 106
Wiskemann, *Re*, *Ex p.* Trustee (1923); **2.** *Aliens*, No. 237a
Wiskin *v.* Terdich Brothers Pty, Ltd. (Aus.); **39.** *S. Goods*, p. 33
Witcomb *v.* Toronto General Trusts Corpn. (Can.); **9.** *Coys.* p. 17
With *v.* O'Flanagan (1936); **35.** *Misrep.* No. 229a
Withall, *Re*, Withall *v.* Cobb (1932); **8.** *Char.* No. 912a
— *v.* Cobb, *Re* Withall (1932); **8.** *Char.* No. 912a
Witherick, *Ex p.*, R. *v.* Surrey Justices (1932); **33.** *Mags.* No. 643a; **42.** *Str. Traf.* No. 222a
Withers *v.* General Theatre Corpn., Ltd. (1933); **17.** *Damgs.* Nos. 181c, 391a; **42.** *Theatres*, No. 89c
— *v.* Spicer (1935); **19.** *Eccl.* Nos. 3492b, 3492d, 3492g

Withers *v.* Wynyard (1938); **28.** *Inc. T.* No. 315c
Withers & Co. *Re* (1930); **42.** *Solrs.* No. 1391a
Withers (Thomas) & Sons, Ltd. *v.* Samuel Withers & Co., Ltd. (1926); **32.** *Libel*, No. 1638a
Withers, Bensons, Currie, Williams & Co. *v.* Cawston (1928); **27.** *H. & W.* No. 1803a
Withington *v.* Bolton Borough Council (1937); **43.** *Wtr. Sply.* No. 269a
Withrow *v.* Nova Scotia Board of Optometry (Can.); **34.** *Med.* p. 195
Witt *v.* David Spencer, Ltd. (Can.); **36.** *Negl.* p. 6
Witts *v.* Mackay (1927); **19.** *Educ.* No. 288a
Witty *v.* World Service, Ltd. (1936); **25.** *Gaming*, No. 506a
Wivell *v.* Stapleton (1725); **9.** *Coys.* No. 2250a
Wix, *Re*, *Ex p.* Chatterby (1881); **5.** *Bkpcy.* No. 7601
Wiznoski *v.* Peteroff (Can.); **34.** *Mast. & S.* p. 24
Wladyslaw Dzurman's Estate, *Re* (Can.); **23.** *Exors.* p. 9
Wodell *v.* Potter (Can.); **19.** *Eccl.* 31
Woffington *v.* Sparks (1754); **7.** *Bonds*, No. 796a
Woking Urban District Council (Basingstoke Canal) Act, 1911, *Re* (1914); **2.** *Arbn.* No. 1049
Wolf *v.* Dadyba (Ind.); **2.** *Aliens*, p. 39
Wolfe *v.* Canadian National Railways (Can.); **34.** *Mast. & S.* p. 167
— *v.* Clearpool, S.S. (Can.); **1.** *Adm.* p. 47
— *v.* Croft (Can.); **17.** *Deeds*, p. 33
— *v.* Smith & Bruer (Can.); **5.** *Bkpcy.* p. 70
Wolfe & Wolfe *v.* Edmonton (City) (Can.); **26.** *Hghys.* p. 35
Wolfe Co. *v.* R. (Can.); **11.** *Const. L.* p. 73
Wolfe Tone's Trial (1798); **11.** *Const. L.* No. 384a
Wolff, *Ex p.* (1863); **14.** *Crim.* No. 3751a
— *v.* The Treasury (S. Af.); **2.** *Aliens*, p. 27
Wolfinden *v.* Oliver (1932); **25.** *Food*, No. 439f
Wollaston *v.* Hakewill (1841); **38.** *Real Prop.* No. 885a
Wolowidnyk *v.* Swideskie (Can.); **42.** *Str. Traf.* p. 38
Wolseley *v.* Associated Newspapers, Ltd. (1934); *Pract.* Nos. 1649c, 3968a
Wolsely Tool & Motor Car Co. *v.* Jackson Potts & Co. (Can.); **1.** *Agcy.* p. 68
Wolsey *v.* Pethick Brothers (1927); **34.** *Mast. & S.* No. 3129b
Wolstanton, Ltd., *Re* (1934); **34.** *Mines*, No. 327u
Wolverhampton, Chester & Birkenhead Junction Ry. Co., *Re*, *Ex p.* Cottle (1850); **1.** *Agcy.* No. 646
Wolverine S.S. Co. *v.* Canadian Dredging Co (Can.); **43.** *Tresp.* p. 52
Wolverton (Lord) *v.* Inland Revenue Comrs. (1931); **28.** *Inc. T.* No. 684a
Wombwell, *Re*, *Ex p.* Trustee (1921); **5.** *Bkpcy.* No. 5859a
Wong *v.* Hou (Can.); **12.** *Contr.* p. 12; **36.** *Prtnrs.* p. 61
Wong Doo *v.* Kana Bhana (N.Z.); **22.** *Evid.* p. 25
Wong Fon Hong *v.* Chansee Wong Fong (Can.); **31.** *L. & T.* p. 83
Wong Kit *v.* R. (1930); **17.** *Dep.* No. 621a
Wong Sing *v.* Minnedosa, *Re* By-law No. 304 of Minnedosa (Town) (Can.); **38.** *Pub. Hlth.* p. 16
Wong Sit Kit, *Re* (Can.); **2.** *Aliens*, p. 49
Wong Soon *v.* Gareb (Can.); **2.** *Arbn.* p. 101
Wong Suey Mong, *Re* (Can.); **2.** *Aliens*, pp. 48, 49
Won Lai, *Ex p.* (Can.); **16.** *Cr. Pract.* p. 29
Wood, *Re* (1928); **33.** *Lunat.* No. 529b
—, *Re* (Can.); **16.** *Cr. Pract.* p. 30
— *v.* Allan (Can.); **8.** *Carr.* p. 13
— *v.* Armstrong (Can.); **29.** *Insce.* p. 5
— *v.* Birtle (Can.); **38.** *Rates*, p. 85
Wood *v.* Canadian Indemnity Co., Ltd. (Can.); **29.** *Insce.* p. 46
— *v.* Corrigan (Aus.); **28.** *Injon.* p. 147; **39.** *S. Goods*, p. 55
— *v.* Freeman (Can.); **42.** *Str. Traf.* p. 60
— *v.* Gallenga, *Re* Gallenga Will Trusts (1938); **40.** *Stlmts.* No. 2664a
— *v.* Garscube Colliery Co., Ltd. (Scot.); **34.** *Mast. & S.* p. 50
— *v.* Leeming (Can.); **21.** *Exon.* p. 52
— *v.* Little (Aus.); **1.** *Agcy.* p. 89; **12.** *Contr.* p. 22
— *v.* MacKay's Trustee (Scot.); **4.** *Bkpcy.* p. 32
— *v.* Powell (Can.); **42.** *Str. Traf.* p. 38
— *v.* Richmond (Can.); **32.** *Limit. of A.* p. 34
— *v.* Taranaki Electric-Power Board (N.Z.); **20.** *Electric*, p. 15
— *v.* Vaughan (Can.); **2.** *Animals*, p. 64
— *v.* Wilson, *Re* Wilson's Will (Can.); **44.** *Wills*, p. 37
— *v.* Wood (Can.); **27.** *H. & W.* p. 49
— *v.* Wood & Stanger (1868); **27.** *H. & W.* No. 4969a
Wood (Albert) & Amcolite, Ltd. *v.* Gowshall Ltd. (1936); **36.** *Pats.* No. 2268b
Wood & McMillan *v.* Canadian Indemnity Co. Ltd. (Can.); **29.** *Insce.* p. 6
Wood & Malkin Co., Ltd., *Re* (Can.); **2.** *Arbn.* pp. 93, 97
Wood (G. B.), Ltd., *Re*, Spivak *v.* Lee (Can.); **10.** *Coys.* p. 80
Wood, Weiller & McCarthy, Ltd. *v.* Valcour (Can.); **2.** *Animals*, p. 71
Wood's Appeal, *Re* (1935); **8.** *Carr.* No. 1539
Wood's Trusts, *Re* (1870); **40.** *Stlmts.* No. 2222
Woodall *v.* Pearl Assurance Co. (1919); **2.** *Arbn.* No. 147a
Woodarra, The (1921); **1.** *Adm.* No. 1152a
Woodcock *v.* Eames (1925); **6.** *B. of Exch.* No. 2318a
— *v.* Tydesley Coal Co. (1929); **34.** *Mast. & S.* No. 3231a
— *v.* Vancouver (City) (Can.); **26.** *Hghys.* p. 28
Wooderman *v.* Baldock (1819); **5.** *Bkpcy.* No. 8933b; **21.** *Exon.* No. 718a
Woodfield Steam Shipping Co., Ltd. *v.* Bunge y Born Industrial of Buenos Ayres (1933); **41.** *Ship.* No. 1898a
Woodforde *v.* Burn (1834); **33.** *Lunat.* No. 469a
Woodham *v.* Baldock (1819); **5.** *Bkpcy.* No. 8933b
Woodhouse *v.* Hooney (Ir.); **31.** *L. & T.* p. 46
— *v.* Inland Revenue Comrs. (1936); **28.** *Inc. T.* No. 656d
— *v.* Turnerising Roofing Co., Ltd. (1933); **34.** *Mast. & S.* No. 3486a
Wooding *v.* Monmouthshire & South Wales Mutual Indemnity Society, Ltd. (1938); **34.** *Mast. & S.* No. 3206a
Woodland *v.* Woodland (otherwise Belin or Barton) (1928); **27.** *H. & W.* No. 4767a
Woodlands *v* Woodlands (Aus.); **27.** *H. & W.* p. 24
Woodman *v.* Richardson & Concrete, Ltd. (1937); **36.** *Negl.* No. 277a
Woodman Estate, *Re* (Can.); **44.** *Wills*, p. 38
Woodroof, *Re* (Can.); **16.** *Cr. Pract.* p. 37
Woodrow *v.* Long, Humphreys & Co., Ltd. (1933); **36.** *Pats.* No. 459j
— *v.* Trawlers (White Sea & Grimsby), Ltd. (1930); **34.** *Mast. & S.* No. 3702e
Woods, *Ex p.* (Can.); **14.** *Crim.* p. 57; **30.** *Iniox.* p. 11
—, *Re*, *Ex p.* Ditton (1879); **4.** *Bkpcy.* No. 4808a
—, *Re*, *Re* Arbitration Act (Can.); **11.** *Comp. Pche.* p. 15
—, *Re*, Woods *v.* Creagh (1931); **44.** *Wills*, No. 3336a

Woods *v.* Aboukir (Owners) (1928); **34.** *Mast. & S.* No. 2552b
— *v.* Creagh, *Re* Woods (1931); **44.** *Wills*, No. 3336a
— *v.* Tonkin (Aus.); **25.** *Gaming*, p. 32
— *v.* Woods (1937); **27.** *H. & W.* No. 3135b
— *v.* — (Can.); **27.** *H. & W.* p. 17
Woods (Bristol), Ltd., *Re* (1931); **10.** *Coys.* No. 6624a
Woodside's Estate, *Re* (Ir.); **34.** *Mines*, p. 198
Woodstock Electric Railway, Light & Power Co. *v.* Dominion Tanneries, Ltd. (Can.); **8.** *Chos.* p. 93
Woodward *v.* Cummings (Can.); **38.** *Real Prop.* p. 98
— *v.* North Western Traffic Area Licensing Authority, *Re* Woodward's Application (1938); **8.** *Carr.* No. 1609
— *v.* Oldfield (1928); **19.** *Educ.* No. 99a
— *v.* Wolfe (1936); **17.** *Custom*, No. 635b
Woodward & Co., Ltd. *v.* Kocfoed (Can.); **25.** *Gaming*, p. 28
Woodward's Application, *Re*, Woodward *v.* North Western Traffic Area Licensing Authority (1938); **8.** *Carr.* No. 1609
Woodward's, Ltd. *v.* United States Fidelity & Guarantee Co. (Can.); **29.** *Insce.* p. 55
Woodworth, *Re* (Can.); **33.** *Mags.* p. 29
Wool Trading Co., Ltd., *Re* (No. 2) (Aus.); **10.** *Coys.* p. 73
Woolf *v.* Freeman (1937); **25.** *Gaming*, No. 192b
— *v.* Snipe (S. L.) Pty., Ltd. (Aus.); **9.** *Coys.* p. 51
— *v.* Woolf (1931); **27.** *H. & W.* Nos. 2722a, 2770c
Woollard's Trust, *Re* (1854); **23.** *Exors.* No. 5737a
Woollatt *v.* Stanley (1928); **6.** *B. of Exch.* No. 2513a
Woolley *v.* Idle (1766); **13.** *Corpns.* No. 700a
— *v.* Jennings (1826); **26.** *Guar.* No. 657a
Woolliscroft *v.* Stoke-on-Trent Corpn. (1928); **38.** *Pub. Hlth.* No. 556a
Woolmington *v.* Public Prosecutions Director (1935); **14.** *Crim.* Nos. 4543a, 4548a, 6141a; **30.** *Jdgmts.* No. 763a
Woolston, The (1916); **37.** *Prize L.* No. 29a
Woolwich Borough Council *v.* Roberts (1927); **33.** *L. G.* No. 84
Woolwich Equitable Building Society *v.* Oriston (1938); **7.** *Bldg. Soc.* No. 123a
v. Preston (1938); **7.** *Bldg. Soc.* No. 123a
Woolworth & Co., *Ex p.*, R. *v.* Surrey County Assessment Committee, North-Eastern Area (1933); **38.** *Rates*, No. 1168a
Woolworth & Co. *v.* Amalgamated Ry. Cos. (1930); **8.** *Carr.* No. 1245h
Woolworth (F. W.) & Co., Ltd. *v.* Lambert (1937); **31.** *L. & T.* Nos. 2995c, 2995d, 2995e
— *v.* Pooley (Can.); **1.** *Agcy.* p. 74; **18.** *Discy.* p. 17
Woolworth & Co., Ltd. *v.* Pottier (1935); **25.** *Food*, No. 217a
— *v.* Woolworths (Australia), Ltd. (1930); **43.** *Trade Mks.* No. 1137a
Woolworth's Agreed Charge, *Re* (1934); **8.** *Carr.* No. 1377q
Worcester Corsetry, Ltd. *v.* Witting (1932); **9.** *Coys.* No. 2841a
Worcestershire County Council *v.* Warwickshire County Council (1934); **33.** *Lunat.* No. 1902a
Worddington *v.* Bush (Can.); **12.** *Contr.* p. 15
Wordie *v.* Inland Revenue (No. 2) (Scot.); **38.** *Rates*, p. 46
Wordie & Co. *v.* Inland Revenue (Scot.); **38.** *Rates*, pp. 53, 55, 56
Work & Day Estate, *Re* (Can.); **5.** *Bkpcy.* p. 81
Workers Benevolent Society of Canada & Harrison, *Re* (Can.); **25.** *Fr. Soc.* p. 22
Workington Harbour & Dock Board *v.* Trade Indemnity Co., Ltd. (No. 2) (1938); **17.** *Damgs.* No. 66a
Workmen's Compensation Act, *Re* (Can.); **34.** *Mast. & S.* p. 36
Workmen's Compensation Act, (Accident Fund), *Re* (Can.); **29.** *Insce.* p. 40
Workmen's Compensation Board, *Ex p.*, *Re* Syer (Can.); **4.** *Bkpcy.* p. 37
— *v.* Bathurst Lumber Co. (Can.); **16.** *Cr. Pract.* p. 40
— *v.* Canadian Credit Men's Trust Assocn., *Re* Motor Bodies, Ltd. (Can.); **4.** *Bkpcy.* p. 37
— *v.* Edgar (Can.); **4.** *Bkpcy.* p. 37
— *v.* Royal Bank (Can.); **34.** *Mast. & S.* p. 31
— *v.* St. John Tugboat Co. (Can.); **34.** *Mast. & S.* p. 167
— *v.* Sumas Oil & Gas Co., Ltd. (Can.); **7.** *B. of Sale*, p. 12
Workmen's Compensation Board & Dinning *v.* Nichols (Can.); **4.** *Bkpcy.* p. 37
Workmen's Compensation Board & Jeffers, *Ex p.*, *Re* Bolus (Can.); **4.** *Bkpcy.* p. 39
World Transport Co. *v.* Tealing & Co. (1936); **8.** *Carr.* No. 1380a
Woron, The, The Yuri Maru (1927); **1.** *Adm.* Nos. 1794a, 1811a
Worrell *v.* Johns, *Re* Johns (1928); **5.** *Bkpcy.* No. 5861a
Worth, *Re* (Can.); **4.** *Bkpcy.* p. 34
— *v.* Davie (Can.); **21.** *Exon.* p. 45
— *v.* Worth (N.Z.); **11.** *Confl.* p. 46; **17.** *Dep.* p. 65
Worthington, *Re*, Nichols *v.* Hart (1933); **23.** *Exors.* No. 5917d
— *v.* Forest Hill Village (Can.); **38.** *Pub. Hlth.* p. 14
— *v.* Hargood (1873); **13.** *Corpns.* No. 861a
— *v.* Tipperary County Council (Ir.); **2.** *Animals*, p. 67
Wossidlo *v.* Catt (Aus.); **32.** *Lien*, p. 25
Would *v.* Herrington (Can.); **13.** *Corpns.* p. 28
Wozciechowiecz Estate, *Re* (Can.); **44.** *Wills*, p. 18
Wragg *v.* Fox (Samuel) & Co., Ltd. (1937); **34.** *Mast. & S.* No. 3811l
Wragge *v.* Sims Cooper & Co. (Australia) Proprietary, Ltd. (Aus.); **6.** *B. of Exch.* p. 22
Wrangell *v.* Steel Scientist, The (Can.); **1.** *Adm.* p. 35
Wrathall *v.* Ripstein & Manitowan Exploration Co., Ltd. (Can.); **9.** *Coys.* p. 38
Wray *v.* Essex County Council (1936); **19.** *Educ.* No. 23c
— *v.* Morrison (Can.); **28.** *Injon.* p. 153
Wrench *v.* Lord (1837); **19.** *Eccl.* No. 3579a
Wright, *Ex p.* (Can.); **25.** *Fraud. Conv.* p. 14
—, *Ex p.*, *Ex p.* Parker (Can.); **14.** *Crim.* p. 18
—, *Ex p.*, R. *v.* Newport (Salop) JJ. (1929); **15.** *Crim.* No. 9042a; **19.** *Educ.* No. 275a; **33.** *Mags.* No. 1175a
Wright, *In the Estate of*, Lambert *v.* Woodham (1936); **30.** *Juries*, No. 386a
—, *In the Goods of* (Ir.); **23.** *Exors.* p. 4
—, *Re* (Can.) (1923); **8.** *Char.* p. 78
—, *Re* (Can.) (1936); **2.** *Agric.* p. 25
—, *Re* (Can.) (1938); **37.** *Poor L.* p. 18
—, *Re. Ex p.* Willey (1883); **30.** *Jdgmts.* No. 685a
—, *Re*, Public Trustee *v.* Wright (1937); **44.** *Wills*, No. 2825d
— *v.* Air Council, President (1929); **11.** *Comp. Pchc.* No. 263a
— *v.* Anderson (No. 2) (N.Z.); **36.** *Negl.* p. 1
— *v.* Bassetts, Ltd. (1936); **39.** *S. Goods*, No. 370b

Wright *v.* Battley (Can.); **8.** *Chos.* p. 90
— *v.* Bell Telephone Co. (Can.); **36.** *Pats.* p. 98
— *v.* Calgary Herald, Ltd. (Can.); **34.** *Mast. & S.* p. 10
— *v.* Canadian Credit Men's Trust Assocn., Ltd. (Can.); **4.** *Bkpcy.* p. 29
— *v.* Canadian National Rys. (Can.); **42.** *Str. Traf.* p. 60
— *v.* Cedzich (Aus.); **27.** *H. & W.* p. 6
— *v.* Curless (Can.); **12.** *Contr.* p. 49
— *v.* Deputy Comr. of Taxes (Aus.); **28.** *Inc. T.* p. 23
— *v.* Embassy Hotel (1934); **29.** *Inns.* No. 186b
— *v.* Garden (Can.); **27.** *H. & W.* p. 13
— *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 52
— *v.* Greenroyd (1861); **34.** *Mod.* No. 103a
— (otherwise Harrison) *v.* Harrison (Can.); **27.** *H. & W.* p. 51
— *v.* Jeffrey (Can.); **34.** *Mast. & S.* p. 13
— *v.* Killick, *Re* Cousen's Will Trusts (1937); **44.** *Wills*, No. 3217a
— *v.* New Zealand Farmers' Co-operative Assocn. of Canterbury, Ltd. (N.Z.); **35.** *Mtge.* p. 42
— *v.* Fulham (1816); **6.** *B. of Exch.* No. 698a
— *v.* Ritchie (Can.); **9.** *Coys.* p. 38
— *v.* Simpson (1802); **11.** *Confl.* No. 1292a
— *v.* Tugwell, *Re* Robinson (1923); **8.** *Char.* No. 1041a
— *v.* Wright (Can.); **27.** *H. & W.* pp. 27, 40
— *v.* — (Ind.); **11.** *Confl.* p. 29
— *v.* — (N.Z.); **23.** *Exors.* p. 29
Wright (F. G.) & Co., Ltd., *Re* (Can.); **4.** *Bkpcy.* p. 17
Wright (John) & Eagle Range, Ltd. *v.* General Gas Appliances, Ltd. (1929); **36.** *Pats.* No. 308c
Wright & Son *v.* Burdon (1932); **34.** *Mast. & S.* No. 3726b
Wright (H. S.) & Webb *v.* Annandale (1930); **27.** *H. & W.* Nos. 1753a, 1800b, 1800c
Wright (E. T.), Ltd. *v.* Adams & Westlake Co. (Can.); **36.** *Pats.* p. 67
Wright, Stephenson & Co., Ltd. *v.* Holmes (N.Z.); **29.** *Insce.* p. 58
Wright's Estate, *Re*, Burrows *v.* Honeysette (Can.); **44.** *Wills*, p. 23
Wright's Ropes, Ltd. *v.* Broderick & Bascom Rope Co. (Can.); **43.** *Trade Mks.* p. 14
Wrighton, *Re* (N.Z.); **23.** *Exors.* p. 1
Wrightson *v.* McArthur & Hutchisons (1921); **7.** *B. of Sale*, No. 93a
Wrightson *v.* Pullan (1816); **6.** *B. of Exch.* No. 698a
Wrigley's (Australasia), Ltd. *v.* Life Savers Australasia, Ltd. (Aus.); **43.** *Trade Mks.* p. 26
Writs of Assistance, *Re* (Can.); **30.** *Intox.* p. 11
Wrixon-Becher *v.* Faversham, *Re* Duncombe (1932); **44.** *Wills*, No. 8032a
Wroblewski *v.* McLaren (Aus.); **38.** *Pub. Hlth.* p. 17
Wroot, *Re* (1935); **44.** *Work*, No. 128a
Wrubleski *v.* Loff (Can.); **2.** *Animals*, p. 57
Wunderlich Bros. *v.* Northwestern Mutual Fire Assocn. (Can.); **29.** *Insce.* p. 62
Wurm *v.* Richardson (Aus.); **7.** *B. of Sale*, p. 7
Wurzal *v.* Atkinson, (1937); **8.** *Carr.* No. 1590
— *v.* Houghton Main Home Coal Delivery Service, Ltd. (1937); **8.** *Carr.* No. 1590
Wyandotte Street Bridge Case, Windsor Corpn. *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 36
Wyatt *v.* Forsyth, *Re* Forsyth (Aus.); **23.** *Exors.* p. 27
— *v.* Guildhall Insurance Co., Ltd. (1937); **29.** *Insce.* No. 3217gg
Wyatt *v.* Kreglinger & Fernau (1933); **43.** *Trade*, No. 131a
— *v.* Metropolitan Board of Works (1862); **36.** *Parl.* Nos. 256a, 263a
— *v.* Rochfort (1837); **22.** *Evid.* No. 1633a
— *v.* Ticehurst, *Re* Ticehurst's Settlement (1930); **21.** *E. D.* No. 272c
— *v.* Wyatt (1937); **27.** *H. & W.* No. 3135a
Wydrick *v.* Saltfleet & Binbrook Mutual Fire Insurance Co. (Can.); **29.** *Insce.* p. 28
Wyles, *Re*, Foster *v.* Wyles (1938); **23.** *Exors.* No. 4764c
—, *Re*, Porter *v.* Wyles (1938); **23.** *Exors.* No. 4764c
Wylie *v.* Department of Health for Scotland (Scot.); **44.** *Work*, p. 64
— *v.* Eccott (Scot.); **28.** *Inc. T.* p. 37
— *v.* Lawrence Wright Music Co. (1932); **12.** *Contr.* No. 2301a
Wylie (otherwise Patton) *v.* Patton (Can.); **27.** *H. & W.* p. 2
Wylie's Letters Patent, *Re* (1934); **36.** *Pats.* No. 1750d
Wylies, Ltd. *v.* Glasgow Assessor (Scot.); **38.** *Rates*, p. 53
Wyllie *v.* Martin (Can.); **11.** *Confl.* p. 50
Wyly *v.* Curryer, *Re* Curryer's Will Trusts (1938); **37.** *Perps.* No. 397a
Wyman *v.* Dominion of Canada General Insurance Co. (Can.); **29.** *Insce.* p. 39
Wyndham *v.* Jackson (1938); **2.** *Arbn.* No. 44b
— *v.* Toronto General Hospital Trustees (Can.); **34.** *Med.* p. 187
Wyrzykowski *v.* Hudson's Bay Co. (Can.); **36.** *Negl.* p. 24
Wythe, *Re* (Can.); **29.** *Insce.* p. 31

X.

X., *Re* (Can.) (1920); **4.** *Bkpcy.* p. 14
—, *Re* (Can.) (1930); **28.** *Infls.* p. 140
— *v.* X. (Can.); **27.** *H. & W.* p. 19
X. Y., *Re* (1937); **33.** *Lunat.* No. 1119d

Y.

Y. P. Barley Producers, Ltd. *v.* E. C. Robertson Pty., Ltd. (Aus.); **12.** *Contr.* p. 29
Yaffe, *Ex p.*, Minister of Health *v.* R. (1931); **38.** *Pub. Hlth.* Nos. 10a, 506c; **42.** *Stats.* No. 142a
Yagerphone, Ltd., *Re* (1935); **10.** *Coys.* No. 6727a
Yale, *Re* (Can.); **44.** *Wills*, p. 50
Yamike Kweku *v.* Annor Adjaye (Gold Coast); **2.** *Arbn.* p. 97
Yardy *v.* Greenwood (1935); **1.** *Action*, No. 505a
Yarmie *v.* Yarmie (Can.); **28.** *Injon.* p. 154
Yarmouth (Earl) *v.* Darrel (1685); **13.** *Coprt.* No. 343a
Yarrows *v.* Frowde, Ltd. (Can.); **30.** *Intox.* p. 11
Yates, *Re*, *Ex p.* Johnson (Aus.); **17.** *Dep.* pp. 60, 61
—, *Re*, *Ex p.* Walsh (Aus.); **17.** *Dep.* pp. 60, 61
—, (Revenue Officer for Burnley Assessment Area) *v.* Burnley Rating Authority (1933); **38.** *Rates*, No. 226b
— *v.* Hemsworth Rural District Council (1929); **34.** *Mast. & S.* No. 3401b
— *v.* R. (Can.); **11.** *Comp. Pche.* p. 8; *Const. L.* p. 66
— *v.* Yates (Can.); **11.** *Confl.* p. 50
Yawoski, *Re* (Can.); **4.** *Bkpcy.* p. 40
Yearsley *v.* Great Western Ry. Co. (1935); **8.** *Carr.* No. 1482

Yeates *v.* Barrett (Can.); **17.** *Custom*, p. 1
Yeats *v.* Dickinson (Ind.); **13.** *Coprt.* p. 11
Yee Clun *v.* Regina Corpn. (Can.); **17.** *Dep.* p. 53
Yee Foo, *Re* (Can.); **2.** *Aliens*, p. 49
Yendall *v.* Allan (Scot.); **2.** *Agric.* p. 23
Yeo *v.* Clemow, *Re* Clemow (1900); **23.** *Exors.* No. 5448a
Yeok Kuk *v.* R. (Ind.); **14.** *Crim.* p. 31
Yeoman *v.* Great Western Colliery Co., Ltd. (1929); **34.** *Mast. & S.* No. 3390a
Yershemsky *v.* Moquin (Can.); **2.** *Aliens*, p. 49
Yeudall *v.* M'Quilkie (Scot.); **25.** *Gaming*, p. 42
Yew *v.* A.-G. for British Columbia (Can.); **11.** *Confl.* p. 45; **21.** *E. D.* p. 19
Yip Sing *v.* R. (Can.); **14.** *Crim.* p. 58
Yonker *v.* Servant (Can.); **42.** *Str. Traf.* p. 60
Yool *v.* Great Western Ry. Co. (1869); **9.** *Coys.* No. 3976a
York, The (1929); **41.** *Ship*, No. 6628a
York (Township) & North York (Township), *Re* (Can.); **33.** *L. G.* p. 5
York Corpn. *v.* Leetham (Henry) & Sons, Ltd. (1924); **13.** *Corpns.* No. 935a
York County Registrar, *Re* (Can.); **17.** *Deeds*, p. 24
York Public School Board *v.* Toronto Board of Education (Can.); **19.** *Educ.* p. 41
Yorke *v.* Continental Casualty Co. of Canada (Can.); **17.** *Dep.* p. 50
— *v.* Michas (Can.); **33.** *Mags.* p. 36
Yorkshire & Pacific Securities, Ltd. *v.* Fiorenza (Can.); **35.** *Mtge.* p. 52
Yorkshire, East Riding, County Council *v.* Selby Bridge Co. of Proprietors (1925); **24.** *Ferries*, No. 8
Yorkshire Electric Power Co., *Ex p.*, R. *v.* Electricity Comrs. (1927); **20.** *Electric*, No. 111a
Yorkshire Guarantee & Securities Corpn. *v.* Edmonds (Can.); **30.** *Jdgmts.* p. 23
Yorkshire Insurance Co. *v.* Bank of Toronto (Can.); **4.** *Bkpcy.* p. 3
Yost *v.* Adams (Can.); **24.** *Exors.* p. 33
You, *Ex p.*, *Ex p.* Chalifoux, *Ex p.* Fong (Can.); **16.** *Cr. Pract.* p. 27; **17.** *Dep.* p. 56
Youck (Tom) *v.* R. (Can.); **34.** *Med.* p. 193
Youell *v.* Cowan (1935); **21.** *Estpl.* No. 1081a
Young, *Ex p.* (1855); **28.** *Infts.* No. 1151a
—, *Ex p.*, R. *v.* Webster (1934); **38.** *Pub. Hlth.* No. 670a
—, *In the Estates of* (1934); **23.** *Exors.* No. 6326a
—, *Re* (Can.); **28.** *Infts.* p. 137; **44.** *Wills*, p. 43
— *v.* Adams (Aus.); **11.** *Const. L.* p. 63
— *v.* Alberta Petroleum Consolidated (Can.); **9.** *Coys.* p. 49
— *v.* Allchurch (Aus.); **30.** *Intox.* p. 7
— *v.* Baby (Sheriff) (Can.); **21.** *Exon.* p. 50
— *v.* Bernstein (1932); **28.** *Inc. T.* No. 204e
— *v.* Campbell (Scot.); **31.** *L. & T.* p. 51
— *v.* Canadian Northern Ry. Co. (Can.) (1929); **34.** *Mast. & S.* p. 4; **43.** *Trade*, p. 8
— *v.* — (Can.) (1930); **17.** *Dep.* p. 82
— *v.* Canadian Northern Ry. Co. (Can.) (1931); **34.** *Mast. & S.* p. 9
— *v.* Canadian Pacific Ry. Co. (No. 2) (Can.); **36.** *Negl.* p. 37
— *v.* Darrah (Scot.); **25.** *Gaming*, p. 33
— *v.* Dencher (Can.); **3.** *Bank.* p. 43
— *v.* Denton (Can.); **22.** *Evid.* p. 20
— *v.* Docherty (Scot.); **41.** *Ship*, p. 47
— *v.* Gravenhurst (Can.); **20.** *Electric*, p. 16
— *v.* H.M. Advocate (Scot.); **14.** *Crim.* p. 45
— *v.* Keeble, Ltd. (1928); **34.** *Mast. & S.* No. 3821b
— *v.* Kyle (Scot.); **41.** *Ship*, p. 47
— *v.* Magee (Can.); **7.** *B. of Sale*, p. 10
Young *v.* Merchants' Marine Insurance Co., Ltd. (1932); **29.** *Insce.* No. 2369a
— *v.* Public Trustee, *Re* Brooker (1934); **43.** *Trusts*, No. 3639c
— *v.* Rankin (Scot.); **28.** *Infts.* p. 132
— *v.* Tassell (N.Z.); **1.** *Agcy.* p. 67
— *v.* Tregear (1873); **39.** *S. Goods*, No. 420a
— *v.* Uchiyama (Can.); **15.** *Crim.* p. 77
— *v.* Vickers (Can.); **35.** *Misrep.* p. 2
Young & Young *v.* Canadian Pacific Ry. Co. (Can.); **38.** *Rys.* p. 41
Young Estate, *Re* (Can.); **28.** *Infts.* p. 140
Young Men's Christian Assocn. *v.* Rankin (Can.); **12.** *Contr.* p. 4
Young Men's Christian Assocn. of Melbourne *v.* Federal Comr. of Taxation (Aus.); **28.** *Inc. T.* p. 73
Young Sid, The (1928); **1.** *Adm.* Nos. 1611a, 1696a
Young Sue Hing, *Re* (Can.); **2.** *Aliens*, p. 49
Young Women's Christian Assocn. *v.* Halifax (Can.); **38.** *Rates*, p. 61
Young Women's Christian Assocn. Extension Campaign Fund (Can.); **8.** *Char.* p. 81
Younger *v.* Lewins, *Re* Roberts's Will Trusts (1937); **43.** *Trusts*, No. 2147b
Younghusband, Ltd. *v.* Campbell (Aus.); **7.** *B. of Sale*, p. 4
Youngs, Crawshay & Youngs, Ltd. *v.* Brooke (1912); **28.** *Inc. T.* No. 292a
Youssoupoff *v.* Metro-Goldwyn-Mayer Pictures, Ltd. (1934); **32.** *Libel*, Nos. 24b, 866c
Yukon Consolidated Gold Corpn., Ltd. *v.* Clark (1938); **11.** *Confl.* No. 1252a
Yukon Gold Co. & Moreau, *Re* (Can.); **2.** *Arbn.* p. 88
Yukon Hardware Co. *v.* McLennan (Can.); **7.** *B. of Sale*, p. 11
Yurong Street Motors, Ltd., *Re*, *Ex p.* Neal & Fough (Aus.); **34.** *Mast. & S.* p. 182
Yuri Maru, The, The Woron (1927); **1.** *Adm.* Nos. 1794a, 1811a
Yusaf Ali *v.* Alibhoy (Ind.); **17.** *Deeds*, p. 27

Z.

Z. Steamship Co., Ltd. *v.* Amtorg New York (1938); **41.** *Ship.* No. 4046b
Zahid Husain *v.* Mohammad Ismail (1929); **16.** *Courts*, No. 453a
Zajachowski *v.* Worebetz (Can.); **35.** *Misrep.* p. 5
Zambaco *v.* Cassavetti (1871); **28.** *Infts.* No. 731a
Zammit, *Ex p.*, Dawson *v.* Zammit (Aus.); **33.** *Mags.* p. 27
Zavaglia *v.* Rogers (Can.); **12.** *Contr.* p. 30
Zawidoski *v.* Ruthenian Greek Catholic Parish of St. Vladimir & Olga (Can.); **19.** *Eccl.* p. 32
Zawojowska *v.* Zawojowska (Can.); **14.** *Crim.* p. 57
Zeagman, *Re* (Can.); **8.** *Char.* p. 61
Zeidel *v.* Winnipeg Electric Co. (Can.); **36.** *Negl.* p. 3; **43.** *Tram.* p. 49
Zeidman & Lamarre *v.* American Furniture Co. & Lavery (Can.); **5.** *Bkpcy.* p. 63
Zeigler *v.* Victoria (City) Can.); **33.** *L. G.* p. 8
Zelenisky *v.* Isfield (Can.); **21.** *Exon.* p. 46
Zerebesky *v.* Powell (Can.); **1.** *Agcy.* p. 66
Zetland (Marquess) *v.* Driver (1938); **40.** *S. Land*, No. 2665b
Zetland (Earl) *v.* Tennents' Trustees (Scot.); **25.** *Fish.* pp. 1, 2
Ziemer *v.* Columbus Hall Assocn., Ltd. (Can.); **36.** *Negl.* p. 10
Ziger *v.* Shiffer & Hillman (Can.); **12.** *Contr.* p. 57

Zigurds, The (1931); **8.** *Chos.* No. 204a; **41.** *Ship.* No. 4539a
Zigurds (No. 1), The (1932); **11.** *Confl.* No. 1309b
Zigurds (No. 2), The (1932); **8.** *Chos.* No. 204b
Zigurds (No. 3), The (1932); **8.** *Chos.* No. 204c
Zigurds (No. 3), The (1934); **8.** *Chos.* No. 437a
Zigurds (No. 4), The (1932); **41.** *Ship.* No. 4714a
Zikking *v.* Swift (Thomas) & Co., Ltd. (1933); **34.** *Mast. & S.* No. 2815a
Zillah, The (1929); **41.** *Ship*, Nos. 6050a, 6064a
Zimmerman *v.* Andrew Motherwell of Can., Ltd. (Trustee) (Can.); **10.** *Coys.* p. 55
— *v.* Archer (Can.); **2.** *Animals*, p. 67
— *v.* Northern Life Assurance Co. of Canada (Can.); **29.** *Insce.* p. 31
— *v.* Sproat (Can.); **35.** *Mtge.* p. 31
Zimmon, *Re*, Ottawa *v.* Trew (Can.); **4.** *Bkpcy.* p. 38
Zodiack, The (Can.); **37.** *Prize L.* p. 34
Zornes *v.* R. (Can.); **11.** *Const. L.* p. 66
Zouche (Baroness), *Re*, Dugdale *v.* Zouche (Baroness) (1919); **44.** *Wills*, No. 5897a
Zululand Motor Co. *v.* Boswell (Liquidator) (S. Af.); **9.** *Coys.* p. 40
— *v.* Short (Liquidator) (S. Af.); **9.** *Coys.* p. 39
Zurouvinski *v.* Duke (Can.); **18.** *Distr.* pp. 29, 30
Zurowski, *Re* (Can.); **44.** *Wills*, p. 31
Zwick *v.* Parkdale Rural Municipality (Can.); **38.** *Real Prop.* p. 95
Zwicker, *Re* (Can.) (1932); **16.** *Cr. Pract.* p. 27
—, *Re* (Can.) (1938); **28.** *Infts.* p. 114
— *v.* Pettingill (Can.); **29.** *Insce.* p. 31
— *v.* Young (Can.); **22.** *Evid.* p. 19

ACTION.

Part I.—Definitions.

1. Before this case add :—
See, now, Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 225.

10. *Add. Annotation :*—**Consd.** De La Rue *v.* Hernu, Peron & Stockwell, Ltd., [1936] 2 K. B. 164.
After this case add :—
——.]—*See* HUSBAND & WIFE, No. 2291a, *post.*

11. *Add. Citation :—on appeal, sub nom.* ROYAL AGRICULTURAL HALL CO. *v.* ISLINGTON ASSESSMENT COMMITTEE, [1918] A. C. 525, H. L.
Add. Annotation :—**Consd.** Bottomley *v.* West Derby Assessment Committee, etc. (1931), 47 T. L. R. 468.

18. *Add. Annotation :*—**Refd.** Dennerley *v.* Prestwick U. D. C., [1938] 1 K. B. 334.

18a. **Appeal from Divisional Court—On case stated by quarter sessions—Derating appeal.**]—By Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 225, an action is defined as a civil proceeding begun by writ, " or in such other manner as may be prescribed by rules of Court." By R. S. C., Ord. 58, r. 15, an appeal from any order, whether final or interlocutory, in any matter not being an action, shall be brought within 14 days after perfecting :—*Held :* as an appeal from the decision of a Div. Ct., on a case stated by quarter sessions on an appeal from an assessment committee on a question of derating, is an appeal in a matter which is not an " action " as above defined, the time for bringing the appeal is limited to 14 days.—BOTTOMLEY *v.* WEST DERBY ASSESSMENT COMMITTEE, MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY ASSESSMENT COMMITTEE, BOTTOMLEY *v.* MERSEY DOCKS & HARBOUR BOARD, BOTTOMLEY *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., [1932] 1 K. B. 40 ; 101 L. J. K. B. 8 ; 145 L. T. 592 ; 95 J. P. 186 ; 47 T. L. R. 468 ; 29 L. G. R. 576 ; (1926-31), 2 B. R. A. 846, C. A. ; *on appeal from* S. C. *sub nom.* WEST DERBY REVENUE OFFICER *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY REVENUE OFFICER, WEST DERBY REVENUE OFFICER *v.* MERSEY DOCKS & HARBOUR BOARD (1931), 47 T. L. R. 237, D. C.

Annotation :—**Folld.** Wilkinson (Taunton Revenue Officer) *v.* Sibley & Donovan (1931), 101 L. J. K. B. 26.

18b. —— —— ——.]—The appeal began with a preliminary objection by counsel for resps. that the appeal was out of time, because fourteen days' notice had not been given. In the Mersey Docks cases (No. 18a, *ante*) that we have just concluded, we unfortunately spent two or three hours in considering whether the time was fourteen days or six weeks. The reasons for our decision will appear when at some later time we give the considered judgment in the Mersey Docks case, but I have the authority of my brothers for stating that at present, for reasons which will appear in the Mersey Docks judgment, the majority of the ct. is of opinion that the time, is fourteen days (SCRUTTON, L.J.).—WILKINSON (TAUNTON REVENUE OFFICER) *v.* SIBLEY & DONOVAN, [1932] 1 K. B. 194 ; 101 L. J. K. B. 26 ; 146 L. T. 1 ; 95 J. P. 208 ; 29 L. G. R. 633 ; 2 B. R. A. 926, C. A.

27. *Add. Annotation :*—**Consd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927), Ltd. (1929), 141 L. T. 590.

29. *Add. Annotation :*—**Apprvd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

30. *Add. Annotations :*—**Apprvd.** Craigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344. **Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

31. *Add. Annotations :*—**Consd.** Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40. **Apprvd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

35a. **Criminal prosecution — Administration of Justice Act, 1920 (c. 81), s. 15.**]—By above sect., " where, for the purpose of disposing of any action or other matter which is being tried by a judge with a jury in any ct. in England or Wales, it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge alone " :—*Held :* the words " any action or other matter " include a criminal prosecution.—R. *v.* HAMMER, [1923] 2 K. B. 786 ; 92 L. J. K. B. 1045 ; 129 L. T. 479 ; 87 J. P. 194 ; 39 T. L. R. 670 ; 68 Sol. Jo. 120 ; 17 Cr. App. Rep. 142 ; 27 Cox, C. C. 458, C. C. A.

36. *Add. Annotation :—As to* (1) **Apld.** *Re* Debtor, [1929] 2 Ch. 146.

42. *Add. Annotation :*—**Dbtd.** *Re* Thomson's Mortgage Trusts, Thomson *v.* Bruty, [1920] 1 Ch. 508.

48a. **Summons—Real Property Limitation Act, 1833 (c. 27).**]—A summons by a second mtgee. against the first mtgee. & other persons interested in the surplus proceeds of sale to have it determined whether he is entitled to repayment of the principal moneys owing on the second mtge. & all arrears of interest & costs, & to obtain payment accordingly, is in substance an action by a beneficiary for execution of the trusts of the surplus proceeds & is not an " action or suit " for the recovery of " interest in respect of money charged upon or payable out of land " within sect. 42 of the above Act.—*Re* THOMSON'S MORTGAGE

TRUSTS, THOMSON *v.* BRUTY, [1920] 1 Ch. 508; 89 L. J. Ch. 213; 123 L. T. 138; 64 Sol. Jo. 375.

61. *Add. Annotation :*—**Refd.** *Re* Warren, Wheeler *v.* Mills, [1938] 2 All E. R. 331.

64. *Add. Annotation :*—**Refd.** Thomson's Mortgage Trusts, Thomson *v.* Bruty, [1920] 1 Ch. 508.

64a. Summons—Real Property Limitation Act, 1833 (c. 27).]—*Re* THOMSON'S MORTGAGE TRUSTS, THOMSON *v.* BRUTY, No. 48a, *ante*.

71. *Add. Annotation :*—**Consd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

74. *Add. Annotation :*—**Consd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

82. *Add. Annotations :*—**Consd.** *Re* Jauncey, Bird *v.* Arnold, [1926] Ch. 471. **Refd.** Dennerley *v.* Prestwich U. D. C. [1930] 1 K. B. 334; Weld *v.* Petre, [1929] 1 Ch. 33.

87. *Annotations :*—**Consd.** Robinson *v.* R., [1921] 3 K. B. 183. **Refd.** Chester *v.* Bateson, [1920] 1 K. B. 829; R. *v.* Hammer, [1923] 2 K. B. 786.

89. *Annotation :*—**Refd.** First National Reinsurance *v.* Greenfield, [1921] 2 K. B. 260.

90. For "under the above sect." read "under Married Women's Property Act, 1893 (c. 63), s. 2."

Add. Annotation :—**Apld.** *Re* Emery, Emery *v.* Emery, [1923] P. 184.

90a. —— ——.]—The Food Controller requisitioned certain cattle feeding stuffs under Defence of the Realm Regulations, but whether under reg. 2 B. or reg. 2 F. was doubtful. By reg. 2 B. the price to be paid for goods taken thereunder was to be determined by the tribunal by which claims for compensation under Defence of the Realm Regulations were determined, but was not to exceed a certain maximum price fixed by an Ord. in Council. By reg. 2 F. compensation for goods taken thereunder was to be paid as determined by an arbitrator, taking into account the cost of production of the goods & a reasonable profit. The maximum price fixed by the Ord. in Council has been paid. The Defence of the Realm Losses Commission having refused to entertain a claim for compensation, the owners of the goods presented a petition of right, claiming that the Food Controller had acted under reg. 2 F., & that they were entitled to compensation fixed by arbn. thereunder. At the trial the judge held that the Controller had acted under reg. 2 B., & dismissed the petition. On July 22, 1920, suppliants gave notice of appeal. On Aug. 16, 1920, Indemnity Act, 1920 (c. 48), was passed :—*Held :* (1) the appeal was not a "proceeding instituted" within sect. 1 of the Act; (2) those words do not include a final judgment given before the passing of the Act, & therefore the appeal well lay.—ROBINSON (J.) & Co. *v.* R., [1921] 3 K. B. 183; 90 L. J. K. B. 1177; 125 L. T. 675; 37 T. L. R. 698, C. A.

Annotation :—*As to* (1) **Refd.** Bowling *v.* Camp (1922), 128 L. T. 342.

90b. —— ——.]—A person who has lodged a caveat against probate of a will is not, though his action compels the exors. to take proceedings, so much the actor in the proceedings as to be liable to give security for costs.—*Re* EMERY, EMERY *v.* EMERY, [1923] P. 184; 92 L. J. P. 138; 39 T. L. R. 713; *sub nom. In the Goods of* EMERY, EMERY *v.* EMERY, 130 L. T. 127.

104. *Add. Annotation :*—**Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180.

PART I. SECT. 1, SUB-SECT. 5.

sa. *Action—Claim for damages & injunction—Transfer of Land Act,* 1893 (*No.* 14), *s.* 117.]—The term "action at law" in the above sect. embraces an action of the nature of a suit in equity, *e.g.* a claim for an injunction & damages in respect of trespass to & interference with a right of way.—STRELITZ BROTHERS *v.* BRITNALL (1912), 15 W. A. L. R. 12.—**AUS.**

sb. —— *Divorce petition—Insolvency Act,* 1915 (*No.* 2671), *s.* 174.]—The word "action" in the above sect. does not include a proceeding by petition in divorce.—*Re* HARVEY, [1920] V. L. R. 142.—**AUS.**

sc. —— *Petition of right.*]—A petition of right is not an "action." The definitions of "actions" in Judicature Act & rules are merely a conventional method of interpreting the statute & rules, adopted for the sake of brevity & simplicity, & not for the purpose of changing the true nature of things.—MILLAR *v.* R., [1921] 49 O. L. R. 93; 19 O. W. N. 458; 58 D. L. R. 585.—**CAN.**

sp. —— *In insurance policy—Suit in India.*]—The word "action" contained in a policy of insurance issued by an English co. corresponds in meaning to the word "suit" in India.—MAYA DAS BHAGAT *v.* COMMERCIAL UNION ASSURANCE CO., LTD., I. L. R., [1937] 1 Cal. 541.—**IND.**

sd. *Proceeding in action—Application for relief against distraint—War Relief Act.*]—The above Act empowers a judge of the Supreme Ct. to dispense with the restrictions therein contained. Applt. distrained against resp. under a mtge. notwithstanding that resp. was within the protection of the Act. Resp. applied to a county ct. judge as "local judge" of the Supreme Ct. for relief, who made an order against resp. dispensing with the restrictions of the Act :—*Held :* the local judge had no jurisdiction, as the proceeding was not a proceeding in an "action," as required under the wording of the Ord. in Council, June 16, 1906. Resp.'s proper remedy against applt. was by injunction to restrain applt. from invading his rights under the Act.—HANNA *v.* COSTERTON, [1919] 1 W.W.R. 930; 44 D. L. R. 478.—**CAN.**

se. *Proceeding — Canadian National Railways Act, s.* 15.]—A writ of garnishment attaching moneys owed by the Canadian National Railway Corpn. to therefore issue "without a flat" from the Crown.—CANADIAN NATIONAL RY. Co. *v.* CROTEAU & CLICHE, [1925] S. C. R. 384.—**CAN.**

sf. *Suit or proceeding—Meaning dependent on context of statute.*]—The words "suits" & "proceedings" have different meanings in different statutes, & it is not possible to lay down a general rule which would be applicable to all cases. In each particular case the question has to be examined in reference to the context, & that meaning is to be preferred which will best fit in with it.—KIRPA SINGH *v.* AJAIPAL SINGH (1928), I. L. R. 10 Lah. 165.—**IND.**

sg. *Suit or action—Application by curator bonis.*]—An application by the curator *bonis* of a person who has been declared incapable of managing his affairs for the appointment of a curator *ad litem* & for leave to institute proceedings to set aside the marriage of such a person is a civil suit or action within South Africa Act, s. 103.—MITCHELL *v.* MITCHELL, [1930] App. D. 217.—**S. AF.**

sh. ——.]—The essential feature of a "suit or action" under sect. 50 of the Charter of Justice or under sect. 39 of Transvaal Proclamation 14 of 1902, or of a "suit" under sect. 24 of Cape Act 35 of 1896, is that it is a proceeding in which one party sues for or claims something from another, & no proceeding which lacks this feature, such as requestration proceedings or an application for the winding up of a co., can be properly described as a "suit or action" or as a "suit" under any of these sects.—COLLETT *v.* PRIEST, [1931] A. D. 290.—**S. AF.**

sk. *Case.*]—The word "case" in Civil Procedure Code, s. 115, does not necessarily mean a suit, but can mean a proceeding.—BHOLA NATH *v.* RAGHUNATH DAS MITHAN LAL (1929), I. L. R. 51 All. 1010.—**IND.**

PART I. SECT. 2, SUB-SECT. 1.

104 ii. ——.]—The expression "a cause of action" in Supreme Ct. Act, 1915 (No. 2733), s. 141, means the particular act or omission occasioning the injury complained of, & so giving rise to pltf.'s claim, not every fact material to be proved in order to entitle pltf. to succeed.—CHIDZEY *v.* BRECKLER, [1920] V. L. R. 558.—**AUS.**

104 iii. ——.]—The "cause of action" in District Cts. Act, R. S. S., 1920 (c. 40), s. 29, means the whole cause of action, including every material fact which pltf. must allege & prove to give him a right to judgment, & therefore if the whole cause of

106. *Add. Annotations :*—**Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Cheshire County Council *v.* Hopley (1923), 130 L. T. 123; The Koursk, [1924] P. 140; Venn *v.* Tedesco, [1926] 2 K. B. 227.

107. *Add. Annotations :*—**Apld.** Cheshire County Council *v.* Hopley (1923), 130 L. T. 123. **Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; The Koursk, [1924] P. 140; Venn *v.* Tedesco, [1926] 2 K. B. 227.

114. *Add. Annotation :*—**Refd.** Huyton & Roby Gas Co. *v.* Liverpool Corpn., [1926] 1 K. B. 146.

116a. —— **Claim for damages—Right to prior general declaration.**]—Where the substantial object of an action is damages & not the ascertainment of a common right for future guidance, pltfs. ought not to be allowed to split up a cause of action & first obtain a declaration, & then in a second action work out its result.—JONES *v.* CORY BROTHERS & CO., LTD., THOMAS *v.* GREAT MOUNTAIN COLLIERIES CO., LTD. (1921), as reported in 152 L. T. Jo. 70, C. A.

117. For "**new subsidence**" read "**recurring tort.**"

118. *Add. Annotations :*—*As to* (1) **Refd.** Boynton *v.* Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Kennard *v.* Cory, [1922] 1 Ch. 265; Huyton & Roby Gas Co. *v.* Liverpool Corpn. (1925), 42 T. L. R. 116. *Generally*, **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

122. *Add. Annotations :*—**Apld.** Wilson *v.* United Counties Bank, [1920] A. C. 102. **Consd.** Ord *v.* Ord, [1923] 2 K. B. 432. **Apld.** The Koursk, [1924] P. 140. **Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336. **Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Debenham *v.* Perkins (1925), 133 L. T. 252; British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13; Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90.

125. *Add. Annotation :*—*Generally*, **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

129. *Add. Annotations :*—*As to* (1) **Refd.** Ord *v.* Ord, [1923] 2 K. B. 432. *As to* (2) **Refd.** Mackenzie Kennedy *v.* Air Council, [1927] 2 K. B. 517.

136. *Add. Annotations :*—**Refd.** Ord *v.* Ord (1923), 92 L. J. K. B. 859; British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co. [1936] 1 All E. R. 13.

144. *Add. Annotation :*—**Consd.** Fishwick *v.* Gyani, [1925] 1 K. B. 617.

145. *Add. Annotation :*—**Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180.

147. *Add. Annotations :*—*As to* (1) **Expld.** Courtenay *v.* Earle (1850), 10 C. B. 73. **Refd.** Jarvis *v.* Moy, Davies, Smith, Vandervell & Co., [1936] 1 K. B. 399.

a district ct. action did not arise in one judicial district the action should be brought in that district where deft. or one of several defts. resides or carries on business. Notwithstanding sect. 2, sub-sect. 2 (2), of the Act providing that in the Act unless there is something in the subject or context repugnant thereto the expressions "cause" & "action" shall respectively have the same meaning as the same expressions have in King's Bench Act, the words "the cause of action" in sect. 29 should not be construed in the same way as in King's Bench Act, s. 35, because in sect. 29 "there is something in the subject or context repugnant thereto," namely, the fact that sect. 29 confers jurisdiction on an inferior ct. & therefore must be strictly construed, jurisdiction not being assumed beyond what is clearly conferred, whereas a different principle applies in sect. 35 which does not affect to deal with jurisdiction but simply deals with practice & procedure in a superior ct.—HOWELL *v.* WARNER, [1921] 3 W. W. R. 587.—**CAN.**

106 iii. *S. P.* SHTITZ *v.* CANADIAN NATIONAL RY. CO., [1927] 1 D. L. R. 951; [1927] 1 W. W. R. 193; 21 Sask. L. R. 345.—**CAN.**

106 iv. ——.]—The only definition of "cause of action" that will work, if it has to be applied to cases of all kinds, is the entire set of facts that gives rise to an enforceable claim.—ENGINEERING SUPPLIES, LTD. *v.* DHANDHANIA & CO. (1930), I. L. R. 58 Calc. 539.—**IND.**

106v. ——.]—The meaning of the phrase "cause of action" as defined in the English cts. & accepted in India, is that it comprises every fact which it would be necessary for pltf. to prove, if traversed, in order to support his right to the judgment of the ct.; everything which, if not proved, renders pltf. unable to sustain his action must be part of the cause of action.—GUARDIAN ASSURANCE CO. *v.* SHIVA MANGAL SINGH I. L. R., [1937] All. 234.—**IND.**

PART I. SECT. 2, SUB-SECT. 2.—A.

sj. *Sale of goods—To be delivered at place named—Payment to be made elsewhere.*]—Deft., in Perth, gave to B., who was agent for pltf., a written order for certain goods at a price. This order B. transmitted to his principal in Melbourne, who declined it, but authorised B. to inform deft. that pltf. would accept the order at increased prices, added in ink on the original order. These new prices were subsequently submitted by B. to deft., who agreed to take certain of the goods at the increased prices. By the contract the goods were to be delivered f.o.b. Melbourne, payment to be by draft payable at Perth, cost of exchange to be added. Pltf. shipped the goods to deft. in Perth, who refused to accept the draft, alleging inferiority of the goods :—*Held :* the contract was made in Perth; & the only breach of the contract took place in Perth; & although delivery had to be made f.o.b. Melbourne, there was not a cause of action arising within Victoria.—CHIDZEY *v.* BRECKLER, [1920] V. L. R. 558.—**AUS.**

sk. —— —— ——.]—A "cause of action" on a breach of contract includes the contract & its breach. If a purchaser of machinery promises to pay the purchase price to the vendor at M., but signs the agreement & receives the machinery at W. the vendor's cause of action for the purchaser's failure to pay cannot be said to arise at M.—WESTERN CANADA AUTO TRACTOR CO., LTD. *v.* BJARNASON, [1920] 1 W. W. R. 621.—**CAN.**

sl. —— —— ——.]—Pltf. sold & delivered a motor car to deft. at Prince Albert, & deft. gave lien notes therefor signed at Prince Albert but payable at Saskatoon :—*Held :* the suit for balance due thereon was properly entered in the Saskatoon judicial district as the "cause of action" arose there.—OLMSTEAD *v.* SCOTT, [1921] 1 W. W. R. 1033.—**CAN.**

sm. *Contract—Where act or omission giving cause of complaint occurs.*]—A "cause of action" as applied to actions in the Ct. of King's Bench & for the purposes of King's Bench Act, R. S., 1920 (c. 39), s. 35, arises where, with regard to a contract, the act or omission of deft. occurs which gives pltf. his cause of complaint, although the term may have a different construction in cases involving the local jurisdiction of inferior cts.—ST. LOUIS RURAL MUNICIPALITY *v.* MARKHAM, [1921] 1 W. W. R. 950.—**CAN.**

PART I. SECT. 2, SUB-SECT. 4.—B.

sn. *Breach of trust—Failure to account.*]—The wrong of a sale of land in breach of trust & the wrong of a failure to account are entirely different things; & in this case there was a joinder of different causes of action, in which the different defts. were not all interested. An order was made requiring pltf. to elect upon which cause of action he would proceed.—THOMAS *v.* DAY (Alta.) (1912), 21 W. L. R. 244; 2 W. W. R. 133; 4 D. L. R. 238.—**CAN.**

PART I. SECT. 2, SUB-SECT. 4.—C.

wi. —— *Account by agent.*]—In a suit based upon an alleged agency, responsible for accounts & refund, it is the general agency with liability to account & refund the balance which is the cause of action, & not each separate act of payment or collection. Any individual act of collection cannot therefore be said to be a part of the cause of action so as to confer jurisdiction on the ct.—SHAH SANKALCHAND *v.* AMBALAL NAGINDAS (1929), I. L. R. Bom. 102.—**IND.**

PART I. SECT. 2, SUB-SECT. 5.—B.

141 ii. —— ——.]—Though deft. on conviction for a common assault, instead of being fined or imprisoned, was merely bound over to keep the peace, under the magistrates' powers under Criminal Code, s. 748 :—*Held :* deft. was under s. 734 of the Code released from any subsequent civil proceedings for the same cause.—TRINEA *v.* DULEBA, [1924] 3 D. L. R. 636; 2 W. W. R. 1177; 20 Alta. L. R. 493.—**CAN.**

153a. —— ——.]—In the ordinary case of possible controversy between parties, but where no specific right has been asserted & no claim formulated, it is not open to one of the parties, because he apprehends a claim against him, to serve a writ or other process upon the other party in order to obtain a determination that such claim cannot be made.

Where the sole exor. under a will never made any claim against the beneficiaries for repayment of certain costs which he had been ordered to pay to them, all he did having been to reserve his right to claim such repayment under a deed of indemnity that the beneficiaries had executed in his favour:—*Held:* the ct. had no jurisdiction to make a declaratory judgment under R. S. C., Ord. 25, r. 5, & Ord. 54A, r. 1, on the application of the beneficiaries, their duty being to wait until they were attacked & then to raise their defence.—*Re* CLAY, CLAY *v.* BOOTH, *Re* A DEED OF INDEMNITY, [1919] 1 Ch. 66; 88 L. J. Ch. 40; 119 L. T. 754; 63 Sol. Jo. 23, C. A.

Annotations:—**Consd.** Jaeger *v.* Jaeger Co. (1927), 44 R. P. C. 437. **Refd.** Ruislip-Northwood U. D. C. *v.* Lee (1931), 145 L. T. 208; Thomas *v.* A.-G., [1936] 2 All E. R. 1325.

Declaratory judgments generally, *see* JUDGMENTS.

157. *Add. Annotation:*—**Consd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

176. *Add. Annotations:*—**Refd.** Aksionairnoye Obschestvo, A. M. Luther *v.* Sagor, [1921] 1 K. B. 456; London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206.

179. *Add. Annotations:*—**Consd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388; Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

180. *Add. Annotation:*—**Consd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

Part II.—In respect of what Acts and Omissions an Action will Lie.

187. *Add. Annotations:*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Distd.** Everett *v.* Ryder (1926), 135 L. T. 302. **Consd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343. **Refd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956; Simmonds *v.* Newport Abercarn Black Vein Steam Coal Co., [1921] 1 K. B. 616; Manton *v.* Brocklebank, [1923] 2 K. B. 212.

187a. ——.]—Where a person has a sole exclusive right, which is infringed upon, if an action of trespass will not lie, he may have an action of the case, for the law will not permit a man who has a right to be without a remedy.—WHITCHURCH *v.* HIDE (1742), 2 Atk. 391; 26 E. R. 636, L. C.

191. *Add. Annotations:*—**Refd.** Manton *v.* Brocklebank, [1923] 1 K. B. 406; Place *v.* Searle, [1932] 2 K. B. 497.

194. *Add. Annotations:*—**Consd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626. **Refd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316.

197. *Add. Annotations:*—**Apld.** R. *v.* Poplar B. C. (No. 1), [1922] 1 K. B. 72. **Consd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 148 L. T. 180.

198. *Add. Annotations:*—**Refd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254; Layzell *v.* Thompson (1926), 43 T. L. R. 58.

199. *Add. Annotation:*—**Consd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

205. *Add. Annotations:*—**Folld.** Janvier *v.* Sweeney, [1919] 2 K. B. 316. **Consd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125. **Refd.** Shapiro *v.* La Morta (1923), 130 L. T. 622.

205a. Injury to health caused by false statement.]—The wilful making of a false statement with the knowledge that it is calculated to cause injury to the health of the person to whom it is made constitutes a good cause of action, if in fact such injury is thereby caused.—JANVIER *v.* SWEENEY, [1919] 2 K. B. 316; 88 L. J. K. B. 1231; 121 L. T. 179; 35 T. L. R. 360; 63 Sol. Jo. 430, C. A.

Annotation:—**Consd.** Hambrook *v.* Stokes, [1925] 1 K. B. 141.

205b. Mental shock caused by negligence.]—Defts.' servant had a motor lorry at the top of an incline in a street, with the handbrake on, the engine running, & the wheels straight. The lorry began to run down the incline & it struck & injured pltf.'s daughter, a child, & pltf.'s wife suffered a severe shock & died in hospital about ten days later. Pltf. claimed damages under Fatal Accidents Act, 1846 (c. 93), for negligence causing the death of his wife:—*Held:* pltf. would establish a cause of action if he established that the death of his wife resulted from the shock occasioned by negligence involved in the running away of the lorry, that the shock resulted from what pltf.'s wife either saw or realised by her unaided senses & not from something which some one told her, & that the shock was due to a reasonable fear of immediate personal injury either to herself or to her children.—HAMBROOK *v.* STOKES

PART I. SECT. 2, SUB-SECT. 6.—C.

sq. *Cause of action deemed to exist by statute.*]—If the Legislature, acting within the ambit of its authority, has decreed that a person who in law had no cause of action at the time he issued a writ shall nevertheless be deemed to have had a cause of action at that time, the ct. must give effect to the legislation by holding that the action is properly founded.—PORTEOUS *v.* NORTH VANCOUVER BOARD OF SCHOOL TRUSTEES, [1935] 2 W. W. R. 280; 50 B. C. R. 78.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.

sn. *Act per se injurious—Lawful act on own land.*]—Where the unavoidable consequence of a lawful act done by a person on his own land, such as the erection of a mill dam, is to injure his neighbour, an action lies for such injury: but not if such act *per se* would not be necessarily or probably injurious, but becomes so from a cause not under the control of either party.—PETERS *v.* DEVINNEY (1857), 6 C. P. 389.—**CAN.**

so. *Expulsion from caste.*]—A wrongful expulsion from caste gives rise to a cause of action for damages.—NARAYANA SAH *v.* KANNAMMA BAI (1931), I. L. R. 65 Mad. 727.—**IND.**

BROTHERS, [1925] 1 K. B. 141; 94 L. J. K. B. 435; 132 L. T. 707; 41 T. L. R. 125, C. A.

206a. —— ——.]—If the law casts any public duty upon a person which he refuses or fails to perform, he is answerable in damages to those whom his refusal or failure injures.—FERGUSON *v.* KINNOULL (EARL) (1842), 9 Cl. & Fin. 251; 4 State Tr. N. S. 785; 8 E. R. 412, H. L.

Annotations :—**Refd.** Heriots Hospital, Feoffees *v.* Ross (1846), 12 Cl. & Fin. 507; Rogers *v.* Rajendro Dutt (1860), 8 Moo. Ind. App. 103; Sinclair *v.* Broughton & Government of India (1882), 47 L. T. 170; Allen *v.* Flood, [1898] A. C. 1.

215. *Add. Annotations :*—**Refd.** Turpin *v.* Victoria Palace, [1918] 2 K. B. 539; Neville *v.* London "Express" Newspaper, [1919] A. C. 368; Wilson *v.* United Counties Bank, [1920] A. C. 102.

217. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper Ltd., [1919] A. C. 368.

220. *Add Annotation :*—**Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

221. *Add. Annotation :* —**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

224. *Add. Annotations :*—**Refd.** Boynton *v.* Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Kennard *v.* Cory, [1922] 1 Ch. 265; Huyton & Roby Gas Co. *v.* Liverpool Corpn., [1926] 1 K. B. 146.

231. *Annotation :*—**Distd.** The Zelo, [1922] P. 9.

235. *Add. Annotation :*—**Apld.** Sorrell *v.* Smith, [1925] A. C. 700

238. *Add. Annotation :* — **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey (1930), 99 L. J. Ch. 337.

239. *Add. Annotations :*—**Refd.** Everett *v.* Griffiths, [1920] 3 K. B. 163; More *v.* Weaver, [1928] 2 K. B. 520.

240. *Add. Annotation :*—**Refd.** Ilford U. D. C. *v.* Beal, [1925] 1 K. B. 671.

241. *Add. Annotations :*—**Refd.** Valentine *v.* Hyde, [1919] 2 Ch. 129; Sorrell *v.* Smith, [1925] A. C. 700.

242. *Add. Annotations :*—**Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40; Farr *v.* Butters Bros. & Co., [1932] 2 K. B. 606; Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

243a. —— —— ——.]—ST. NEDEPORT (PRIOR) *v.* WESTON (1443), Y. B. 22 Hen. 6, fo. 14, pl. 23.

Annotations :—**Consd.** Huzzey *v.* Field (1835), 5 Tyr. 855; Hammerton *v.* Dysart, [1916] 1 A. C. 57. **Refd.** Churchman *v.* Tunstal (1659), Hard. 162; Pain *v.* Partridge (1691), Holt, K. B. 6; Newton *v.* Cubitt (1862), 12 C. B. N. S. 32; Hopkins *v.* G. N. Ry. (1877), 2 Q. B. D. 224; Cowes U. C. *v.* Southampton Isle of Wight & South of England Royal Mail Steam Packet Co., [1905] 2 K. B. 287; General Estates Co. *v.* Beaver, [1914] 3 K. B. 918.

246. *Add. Annotations :*—**Consd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254. **Refd.** Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686.

247. *Add. Annotations :*—**Refd.** Goddard *v.* Watford Co-op. Soc. (1924), 41 R. P. C. 218; Lyons (J.) & Co., Ltd. *v.* Lyons (J.) (1931), 49 R. P. C. 188.

249. *Add. Annotations :*—**Consd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Valentine *v.* Hyde, [1919] 2 Ch. 129; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40; Sorrell *v.* Smith, [1924] 1 Ch. 506. **Apld.** Reynolds *v.* Shipping Federation, [1924] 1 Ch. 28; Thompson *v.* British Medical Assocn. (N.S.W. Branch), [1924] A. C. 764. **Apld.** Sorrell *v.* Smith, [1925] A. C. 700. **Consd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157. **Refd.** Evans *v.* Heathcote, [1918] 1 K. B. 418; Thomas *v.* Moore, [1918] 1 K. B. 555; Davies *v.* Thomas, [1920] 2 Ch. 189; Rawlings *v.* General Trading Co., [1921] 1 K. B. 635; Brimelow *v.* Casson, [1924] 1 Ch. 302; British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383; Fender *v.* Mildmay, [1937] 3 All E. R. 402.

249a. —— —— **Unlawful means used.**]—A single person or a body of persons commits an actionable wrong if he or they inflict actual

PART II. SECT. 1, SUB-SECT. 4.

216 iii. —— ——.]—An action for damages for a misrepresentation on a sale of goods was dismissed on the ground that there was no evidence on which damages could be assessed On appeal the trial judge's view, as to the absence of evidence of damages, was sustained, but it was held that as a breach of warranty had been shown pltf. was entitled to a judgment for nominal damages, but that since the action was one for the recovery of substantial damages & not merely to assert a legal right there should be no costs of the trial or appeal to either party.—SMITH *v.* WARD, [1928] 4 D. L. R. 850; [1928] 3 W. W. R. 341; 37 Man. L. R. 528.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.

237 iii. ——.]—Pltfs. complained that defts. dug holes in the beach upon their lands on the shore of a lake, where the sand met the grass-covered bank, that sand swept from pltfs.' lands by storms was carried by the wind across defts.' beach, & came to rest in these holes, & that, when the next storm came, the sand remained in the holes & was not blown back to pltfs.' lands. Pltfs. contended that it was wrongfully detained by defts.:—*Held :* pltfs. had no cause of action, as the sand could not be considered a chattel upon its severance by the wind from its original situs, if shifting sand could be said to have a situs.—BREMNER *v.* BLEAKLEY, [1924] 2 D. L. R. 202; 54 O. L. R. 243; *revsg.*, [1923] 2 D. L. R. 576; 52 O. L. R. 124.—**CAN.**

so. *Mental suffering insufficient.*]—Mental suffering caused by a deft. will not support an action for damages in the absence of some *injuria* to pltf.—EDMONDS *v.* ARMSTRONG FUNERAL HOME, LTD., [1930] 3 W. W. R. 649; 25 Alta. L. R. 173; [1931] 1 D. L. R. 676.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—A.

sq. *Police watch on business premises.*]—In an action brought by a woman against a chief constable, to recover damages for injury to her reputation & business resulting from defender's alleged illegal actings, it appeared that defender, after endeavouring without success to communicate with one of his inspectors who, having gone on holiday, had, in breach of police regulations, not left his proper address, had received information regarding the movements of pursuer & the inspector which led him to suspect that the latter was sheltering in pursuer's house. As pursuer refused to answer any question regarding the inspector, defender directed a watch for the inspector to be kept on pursuer's house. This watch was maintained day & night for five days by police constables stationed in private property & in a lane adjacent to pursuer's house & grounds. Pursuer's property was not entered, & the movements of pursuer & callers at her house were not, except on rare occasions, interfered with :—*Held :* the protection given by law to police & other public officials while acting in the exercise of their duty extended to cases where, as here, a chief constable was acting under powers vested in him for the maintenance of discipline within his police force; &, accordingly, as defender's actings here were privileged, pursuer was bound, but had failed, to prove that defender had acted maliciously & without probable cause.—ROBERTSON *v.* KEITH, [1936] S. C. 29.—**SCOT.**

st. *False statement causing injury to business.*]—An injury to business resulting from a false statement that only deft.'s brand of corn syrup was used to feed the famous Dionne quintuplets, whereas pltf.'s make was also used, is a good cause of action.—CANADIAN STARCH CO. *v.* ST. LAWRENCE STARCH CO., [1936] 2 D. L. R. 142; O. R. 261; 65 Can. C. C. 270.—**CAN.**

pecuniary damage upon another by the intentional employment of unlawful means, such as threats of coercive action, to injure that person's business, even though the unlawful means may not comprise any specific act which is *per se* actionable & actual malice is not proved. The element of conspiracy in a case of this kind is of importance only in considering the weight of the acts alleged & the extent of the damage resulting therefrom.

Defts., the British Medical Association, a body incorporated for the purpose of maintaining "the honour & interests of the medical profession," & other defts., who were members of the Association, instituted & pursued a system of professional & social ostracism or boycott against pltfs., who were medical men, by means of threats & widely extended coercive action. Defts. sought to justify the boycott on the ground that the conduct of pltfs. in acting as the medical officers of a certain medical dispensary was detrimental to the honour & interests of the profession. As a result of the boycott pltfs. suffered pecuniary loss in the exercise of their profession:—*Held:* pltfs. had a good cause of action against all defts. for damages.—PRATT *v.* BRITISH MEDICAL ASSOCN., [1919] 1 K. B. 244; 88 L. J. K. B. 628; 120 L. T. 41; 35 T. L. R. 14; 63 Sol. Jo. 84.

Annotations:—**Consd.** Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40. **Refd.** Valentine *v.* Hyde, [1919] 2 Ch. 129; Davies *v.* Thomas, [1920] 1 Ch. 217; Hodges *v.* Webb, [1920] 2 Ch. 70; Said *v.* Butt, [1920] 3 K. B. 497; Sorrell *v.* Smith, [1925] A. C. 700; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

250. *Annotations:*—**Consd.** Valentine *v.* Hyde, [1919] 2 Ch. 129. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40.

251. *Add. Annotation:*—**Refd.** Spalding *v.* Gamage (1918), 35 R. P. C. 101.

253. *Add. Annotations:*—**Consd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Valentine *v.* Hyde, [1919] 2 Ch. 129. **Apld.** Davies *v.* Thomas, [1920] 2 Ch. 189. **Consd.** Hodges *v.* Webb, [1920] 2 Ch. 70; Ware & De Freville *v.* Motor Trade Asssocn., [1921] 3 K. B. 40; White *v.* Riley, [1921] 1 Ch. 1; Sorrell *v.* Smith, [1923] 2 Ch. 32. **Apld.** Sorrell *v.* Smith, [1925] A. C. 700. **Consd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. **Refd.** Wolstenholme *v.* Ariss, [1920] 2 Ch. 403; Sorrell *v.* Smith, [1924] 1 Ch. 506; Hampton *v.* West Cannock Colliery Co., [1932] 2 K. B. 293; Place *v.* Searle, [1932] 2 K. B. 497; Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825. **Refd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

255. *Annotation:*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

256. *Add. Annotations:*—**Distd.** The Zelo, [1922] P. 9. **Apld.** Federated Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42. **Consd.** McColl *v.* Canadian Pacific Ry., [1923] A. C. 126. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127.

257a. ——.]—A number of discharged sailors entered into a partnership according to the terms of which the sailors were to perform together at certain music halls & were not to appear during the terms of the partnership in any other theatre or music hall. Pltfs., who were members of the co., complained that the deft. had induced certain of the sailors to break the contract by promising to get them employment & by obtaining other engagements for them. By amendment it was further alleged that deft. had wrongfully continued persons in her employment with the knowledge that by being in her employment those persons were breaking a contract with pltfs.:—*Held:* assuming an action lies to recover damages on the latter ground, the foundation of this action is that there shall be notice to deft. of a subsisting contract which one party, at all events, is still willing & able to perform; & there being sufficient evidence before the county ct. judge that the partnership had for all practical purposes come to an end, no action lay.—LONG *v.* SMITHSON (1918), 88 L. J. K. B. 223; 118 L. T. 678; 62 Sol. Jo. 472, D. C.

Annotation:—**Refd.** Said *v.* Butt, [1920] 3 K. B. 497.

258. *Annotations:*—**Consd.** Pontardawe R.D.C. *v.* Moore-Gwyn, [1929] 1 Ch. 656. **Refd.** Stearn *v.* Prentice, [1919] 1 K. B. 394; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

PART II. SECT. 3, SUB-SECT. 2.—B.

253 ii. ——.]—If a person who, by virtue of his position or influence, has power to carry out his design, attempts, without justification, to prevent, & succeeds in preventing by threats to or special influence upon a workman's employers, or would-be employers, such workman from obtaining or holding employment in his calling, & such workman suffers damage thereby, then that person is liable to the workman for such damage.—THOMPSON *v.* RYALL & CUNNINGHAM, [1924] 4 D. L. R. 778; 3 W. W. R. 524.—**CAN.**

256 ii. ——.]—Pltf. co., a manufacturer of newsprint, brought this action against other manufacturers of the same articles for a declaration that such of defts. as supplied less than their proper share of newsprint to Canadian publishers during the years 1918 & 1919, were liable to pay to pltf. co. the loss suffered by it in supplying more than its proper share during the two years & asked for an account & payment. The claim was based upon an alleged agreement between the parties & also upon orders alleged to have been made by the Paper Comptroller appointed by the Canadian Government in Nov. 1917:—*Held:* although pltf. co. sustained a substantial loss of profit by reason of its having been compelled by the Government to supply the Western Canadian publishers with newsprint at prices fixed by the Comptroller when it could have been sold to limited states customers at higher prices, & was thus compelled to bear the burden, which should have been shared by some of defts. the ct. had no jurisdiction to compel an adjustment of pltf. co.'s claim by those defts. who shirked their fair share of the burden.—FORT FRANCES PULP CO. *v.* SPANISH RIVER PULP CO., [1928] 1 D. L. R. 753; 61 O. L. R. 512; *affd.*, [1929] 4 D. L. R. 192; 64 O. L. R. 148; *revsd.*, [1931] 2 D. L. R. 97, P. C.—**CAN.**

257 i. ——.]—Where a workman who has been suspended by his employers suffers damage as a result of two or more persons conspiring without justification, to induce the employers not to reinstate him, he has a right of action against them.—THOMPSON *v.* RYALL & CUNNINGHAM, [1924] 4 D. L. R. 778; 3 W. W. R. 524.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—C.

258 ii. —— *Heightened fence.*]—Applt. & resp. owned & resided upon adjoining properties. In 1925 resp. erected an 8 ft. iron fence or hoarding on the boundary between the properties. In 1929 resp. raised the fence to a height of 18 ft. in order to shield his lavatory from the view of an attic window which applt. had erected. On the day the work of heightening was started applt. notified resp. that, as the fence could not be erected without a trespass being committed, he would sue for damages if the work were proceeded with. A few days later applt. obtained an interdict restraining resp. from trespassing on his land. Applt. then instituted the present action, claiming damages on the ground that resp. had maliciously by himself, his servants and/or workmen trespassed upon the land for the purpose of erecting a hoarding on the boundary. It was proved that on one occasion a

259a. —— **Damage by rats.**]—A firm of artificial manure manufacturers had on their premises, for the purposes of their business, a heap of bones which attracted rats. The occupier of adjoining premises was a farmer. The rats made runs between the factory & the fields & entered the farmer's land, & damaged his crops. The business had been carried on for at least thirty years, & there was no evidence to show that the bone heap had been increased beyond what it had been in past years, or anything to show that an increase which had actually taken place in the numbers of the rats was due to anything done by the manufacturers. In an action by the farmer against the manufacturers:—*Held:* in the absence of evidence showing that there had been an unusual & excessive collection of bones on the factory premises, or of anything unusual or excessive done by defts., or of any duty neglected by defts., pltf. could not maintain an action for damages.—STEARN *v.* PRENTICE BROTHERS, LTD., [1919] 1 K. B. 394; 88 L. J. K. B. 422; 120 L. T. 445; 35 T. L. R. 207; 63 Sol. Jo. 229; 17 L. G. R. 142, D. C.

261. *Add. Annotations:*—**Refd.** Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40; Bleachers Assocn., Ltd. & Bennett & Jackson, Ltd. *v.* Chapel-en-le-Frith Rural District Council, [1933] Ch. 356.

262. *Add. Annotations:*—**Apld.** The Molière (1924), 41 T. L. R. 154. **Consd.** Flint *v.* Lovell, [1935] 1 K. B. 354. **Distd.** Rose *v.* Ford, [1937] 3 All E. R. 359. **Refd.** Kent *v.* Atkinson, [1923] P. 142; Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

263. *Add. Annotations:*—**Refd.** Kent *v.* Atkinson, [1923] P. 142; Rose *v.* Ford, [1937] 3 All E. R. 359.

264. *Add. Annotations:*—**Refd.** Barnett *v.* Cohen, [1921] 2 K. B. 461; Kent *v.* Atkinson, [1923] P. 142.

265. *Add. Annotations:*—**Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223; The Minerva (1933), 49 T. L. R. 563; Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

266. *Add. Annotations:*—**Consd.** Bradford Corpn. *v.* Webster, [1920] 2 K. B. 135. **Apld.** The Molière (1924), 41 T. L. R. 154. **Consd.** Flint *v.* Lovell, [1935] 1 K. B. 354; Rose *v.* Ford, [1937] 3 All E. R. 359. **Refd.** Baker *v.* Dalgleish S.S. Co., [1922] 1 K. B. 36; The Edison, [1932] P. 52; A.-G. *v.* Valle-Jones, [1935] 2 K. B. 209; Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

267. *Add. Annotation:*—**Consd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

268. *Annotations:*—**Consd.** Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520. **Refd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

274a. Procuring judgment for debt already paid—No malice.]—Pltf., a chemist, owed defts. a debt of £3 11*s.* 4*d.*, & paid it. Defts. overlooked the fact of this payment & issued civil process against pltf. who, when served, pointed out to defts. their mistake. Defts. apologised & wrote: "We are immediately communicating with our agency." On the day of trial defts., the then pltfs., appeared by a solr. & obtained judgment for £3 11*s.* 4*d.* Pltf., the then deft., did not attend or appear. The fact of the judgment was published in a county newspaper. About eight months later the judgment, at the instance of the present pltf. was set aside. Pltf. brought an action claiming (*inter alia*) damages in tort against defts. for procuring this judgment. Pltf. in his evidence stated that his profits during the year following the judgment were diminished by £95, & during the next year by £105. He attributed this falling off to the judgment & its publication:—*Held:* the cause of action in tort, if any, was the malicious issue of civil process against pltf. There was no evidence of malice, & the supposed damages were irrecoverable.—CORBETT *v.* BURGE, WARREN & RIDGLEY, LTD. (1932), 48 T. L. R. 626.

274b. Injurious falsehood detrimental to business—No malice.]—An action for injurious falsehood does not lie without proof of actual malice in the sense of a wrongful intention to injure pltf.

A statement false in fact, & detrimental to pltf.'s business though not defamatory, will therefore not support such an action if it was made in the belief, even a careless belief, that it was true, & without any indirect motive of hostility to pltf.—BALDEN *v.* SHORTER, [1933] 1 Ch. 427; 102 L. J. Ch. 191; 148 L. T. 471; 77 Sol. Jo. 138.

283. *Add. Annotation:*—**Refd.** Friern Barnet U. C. *v.* Adams, [1927] 2 Ch. 25.

296. *Annotation:*—**Apld.** Webster *v.* Harrison, Townsend (1920), 89 L. J. K. B. 1077.

303. *Add. Annotation:*—**Refd.** *Re* Wavertree, Rutherford *v.* Walker, [1933] Ch. 837.

303a. Breach of contract—Onus of proof.]—The burden of proving that a breach of contract falls within the principle of *de minimis non curat lex* is on the party seeking to excuse the breach.—RONAASEN (E. A.) & SON *v.* ARCOS, LTD. (1932), 48 T. L. R. 356; 37 Com. Cas. 291, C. A.; *affd. sub nom.* ARCOS, LTD. *v.* RONAASEN (E. A.) & SON, [1933] A. C. 470, H. L.

304. *Add. Annotation:*—**Refd.** Everett *v.* Ryder (1926), 135 L. T. 302.

310. *Annotations:*—*Generally*, **Refd.** A.-G. *v.* Sewell (1918), 88 L. J. K. B. 425; Boultwood *v.* Paignton U. D. C. (1928), 92 J. P. 98; Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765.

---

piece of timber fell upon applt.'s land & was immediately removed by the workmen:—*Held:* (1) although the heightening of the fence depreciated the value of applt.'s property, applt. could not recover damages, even if the work had been done maliciously; (2) as resp. had not trespassed under a claim of right & had not insolently or defiantly insisted upon going on applt.'s land, applt. was not entitled to succeed.—VANSTON *v.* FROST, [1930] W. L. R. 121.—S. AF.

PART II. SECT. 3, SUB-SECT. 2.—E.

n1. —— —— *Expulsion from membership of Church.*]—TOEWS *v.* ISAAC (No. 2), [1931] 2 W. W. R. 48; 39 Man. L. R. 436; 2 D. L. R. 819.—CAN.

sp. *Goods claimed from tenant—Refusal of access by landlord.*]—BONNELL *v.* FERRIS, [1929] 1 D. L. R. 540; 60 N. S. R. 297.—CAN.

sq. *Interference with privacy.*]—A right to privacy is not an inherent right of a party & can arise only by express usage, by grant or by special permission. Where, therefore, pltf. brought a suit for the closing of certain windows opened by deft. in a newly constructed second storey of his house which was adjoining pltf.'s on the ground that the female apartments of pltf.'s house were overlooked & his privacy was destroyed:—*Held:* pltf.'s claim could not succeed.—KESHO SAHU *v.* MUBAMMAT MUKTAKIMAN (1931), I. L. R. 10 Pat. 280.—IND.

320. *Add. Annotations :*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546. **Apld.** *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89. **Consd.** Beresford *v.* Royal Insurance Co., [1938] A. C. 586. **Refd.** James *v.* British General Insce., [1927] 2 K. B. 311 ; Royal Exchange Assce. *v.* Hope, [1928] Ch. 179 ; *Re* Collier, [1930] 2 Ch. 37 ; Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126.

321. *Add. Annotation :*—**Consd.** Beresford *v.* Royal Insurance Co., [1938] A. C. 586.

322. *Add. Annotation :*—**Consd.** Beresford *v.* Royal Insurance Co., [1938] A. C. 586.

323. *Add. Annotations :*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546 ; *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89.

325. *Add. Annotations :*—**Consd.** Wylie *v.* Lawrence Wright Music Co. (1932), 96 J. P. 156. **Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470 ; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158 ; Howard *v.* Odhams Press, Ltd., [1938] 1 K. B. 1.

326. *Add. Annotations :*—**Apld.** Wild *v.* Simpson, [1919] 2 K. B. 544. **Consd.** Lipton *v.* Powell, [1921] 2 K. B. 51. **Apld.** Alexander *v.* Rayson, [1936] 1 K. B. 169. **Refd.** Haseldine *v.* Hosken, [1933] 1 K. B. 822 ; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

328. *Add. Annotation :*—**Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

328a. —— **Immoral relationship continued in reliance on fraudulent misrepresentation.**]—*Semble :* an agreement between a married man & an unmarried woman, who knows that he is married, that they will marry if & when he obtains a decree of nullity of his marriage, is illegal & void as being contrary to public policy.

Semble : where an unmarried woman, in reliance on representations by a married man that he can obtain a decree of nullity of his marriage & will marry her thereafter, enters into an immoral association with him & thereby suffers damage, she cannot, on the representations proving to have been false, maintain against him an action for deceit, being herself a party to the immoral association.—SIVEYER *v.* ALLISON, [1935] 2 K. B. 403 ; 104 L. J. K. B. 597 ; 153 L. T. 239 ; 51 T. L. R. 534 ; 79 Sol. Jo. 479.

332. *Add. Annotation :*—**Refd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

333. *Add. Annotation :*—**Refd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

335. *Add. Annotations :*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169. **Refd.** Berg. *v.* Sadler & Moore, [1937] 2 K. B. 158.

Part III.—Who may Sue and be Sued.

338. *Add. Annotation :*—**Refd.** Rex Co. & Rex Research Corpn. *v.* Muirhead & Comptroller-General of Patents (1926), 44 R. P. C. 38.

340. *Add. Annotations :*—**Refd.** The Coaster (1922), 91 L. J. P. 145 ; Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308 ; Allgemeine Versicherungs-Gesellschaft Helvertia *v.* German Property Administrator, [1931] 1 K. B. 672 ; Ellerbeck Collieries, Ltd. *v.* Cornhill Insurance Co., [1932] 1 K. B. 401.

344. *Add. Annotation :*—**Refd.** Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402.

345. *Add. Annotations :*—**Refd.** *Re* Phillips, Public Trustee *v.* Mayer (1931), 76 Sol. Jo. 10 ; Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402 ; Ridley *v.* Lee, [1935] Ch. 591.

354. *Add. Annotation :*—**Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

356a. **Sovereign de jure but not de facto.**]—During 1934 & 1935, certain moneys became due to pltf. as part of the public revenue of Ethiopia under a contract made between the Director-General of Posts, Telegraphs & Telephones of that country & defts., an English co. At that time pltf. was both the *de facto* & the *de jure* government of Ethiopia. In May, 1936, the Italian Govt. by proclamation annexed the Empire of Ethiopia, & in Dec., 1936, the British Govt. recognised the Italian Govt. as the *de facto* govt. of Ethiopia, but pltf. was still recognised by the British Govt. as the *de jure* govt. of that country. The writ in the present action, claiming the moneys which were admittedly due under the above contract to the govt. of Ethiopia, was issued on Jan. 4, 1937. The only question for decision was whether in the circumstances pltf., as the *de jure* sovereign of Ethiopia, had still a right to recover the moneys :—*Held :* as it was a question of title to property in England, the enforcing of the right in no way depended on *de facto* authority in Ethiopia, and pltf., as the *de jure* sovereign, was the proper person to enforce such a right in the English cts.—HAILE SELASSIE *v.* CABLE & WIRELESS, LTD. (No. 2), [1938] 3 All E. R. 677 ; 107 L. J. Ch. 419 ; 54 T. L. R. 1087 ; 82 Sol. Jo. 645 ; *revsd.* 55 T. L. R. 209, C. A.

357. *Add. Annotation :*—**Consd.** Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 677.

360. *Add. Annotation :* — **Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456.

PART II. SECT. 5.

325 iv. —— *Agreement to prosecute third party.*]—Pltf. was in a position to give evidence that one B. was implicated with him in the illegal manufacture of alcohol. Deft. L., who was alleged to be acting not only on his own behalf but also on behalf of his co-defts., all of whom were said to have reasons for wishing to be revenged on B., agreed with pltf. to pay him for said evidence on the conviction of B., the remuneration to be on a sliding scale in accordance with the severity of the sentence obtained by pltf.'s evidence. Part payment was made under the contract & pltf. sued for the balance ; B. having been convicted :—*Held :* the contract was unlawful as against public policy, &, therefore, unenforceable.—SYMINGTON *v.* VANCOUVER BREWERIES, LTD. & RIEFEL, [1931] 1 W. W. R. 410 ; 43 B. C. R. 388 ; 1 D. L. R. 935 ; *affg.*, [1930] 3 W. W. R. 19 ; 4 D. L. R. 1023.—CAN.

360a. Recognised, if acknowledged here.]—Where a revolution has taken place in a foreign country & the new Govt. has been recognised as the *de jure* Sovereign of that country by our Govt., that new Govt. is entitled to the possession & custody in England of records & State archives deposited here before the revolution by the old Govt.—SOVIET SOCIALIST REPUBLICS UNION *v.* ONOU (1925), 69 Sol. Jo. 676.

363. *Add. Annotation :*—**Consd.** Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 677. **Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456; Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

366a. —— Action by procurator—Validity of appointment.]—Pltf., the Spanish ambassador, brought an action, as procurator for all the King of Spain's subjects, to recover two ships & other goods seized by deft. :—*Held :* (1) no man can make a procurator for another; therefore the King could not make a procurator for all or any of his subjects; (2) the office of ambassador did not include a procuration private, but public for the King, nor for any several subject, otherwise than as it concerned the King.—ACUNA *v.* BINGLEY (1616), Hob. 78, 113; 80 E. R. 263.

Annotations :—*As to* (2) **Consd.** Hullett *v.* Spain (1828), 2 Bli. N. S. 31. **Folld.** Penedo *v.* Johnson (1873), 22 W. R. 103. *Generally*, **Refd.** Brunswick *v.* Hanover (1844), 13 L. J. Ch. 107.

366b. —— Action by minister plenipotentiary.]—A demurrer allowed to a bill filed by the agent duly authorised, & minister plenipotentiary of a foreign state, in respect of rights of such state, on the ground that the state was not properly represented.—SCHNEIDER *v.* LIZARDI (1846), 9 Beav. 461; 15 L. J. Ch. 435; 50 E. R. 421.

Annotation :—**Folld.** Penedo (Baron) *v.* Johnson (1873), 29 L. T. 452.

366c. —— Claim under unregistered bill of sale.]—To a bill filed by the Chargé d'Affaires of the Brazilian Govt. in this country, in his own name, to restrain judgment creditors from issuing execution against certain furniture, etc., upon which a sum of money had been advanced, as was alleged, by the Brazilian Govt. secured by an unregistered bill of sale of the furniture, etc., a demurrer on the ground that the minister could not sue in his own name was allowed.—PENEDO (BARON) *v.* JOHNSON (1873), 29 L. T. 452; 22 W. R. 103.

368. *Annotation :*—**Consd.** Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385.

372. *Add. Annotation :*—**Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

375. *Annotations :*—**Refd.** The Tervaete (1922), 128 L. T. 176; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673.

376. *Add. Annotation :*—*As to* (2) **Folld.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

376a. —— ——.]—A foreign Sovereign suing in the cts. of this country submits to the jurisdiction to the extent only that he must give discovery, & cross proceedings in mitigation of the relief claimed by him can be taken against him.

A foreign State sued to restrain dealing with, & for the appointment of a new trustee of, funds lodged in England in the names of a trustee for pltfs. & a trustee for defts. who held a concession from pltfs. for the construction of a railway in their territory. A counterclaim for damages in respect of alleged breaches of the terms of the concession was struck out.—SOUTH AFRICAN REPUBLIC *v.* COMPAGNIE FRANCO-BELGE DU CHEMIN DE FER DU NORD, [1898] 1 Ch. 190; 77 L. T. 555; 46 W. R. 151; 14 T. L. R. 65; 42 Sol. Jo. 66.

Annotations :—**Consd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797. **Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Tervaete, [1922] P. 259; Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

376b. —— ——.]—In 1916 a Russian Govt. Committee, of which deft. was a member, was set up in London by the Imperial Russian Govt. & continued by its successor, the Russian Provisional Govt., & the committee, which incurred large financial obligations, had possession of certain documents, which related to those obligations & were the property of those Govts. The committee ceased to operate in 1918, & the documents were handed over to a board of trustees appointed by the Chargé d'Affaires of the Russian Provincial Govt., & deft. became president of the board. The documents had become the property of pltfs., the present Russian Govt., whose sovereignty had been recognised by the British Govt., but they were still in the possession of deft. Certain actions were pending against deft. as a member of the Russian Govt. Committee with regard to the transactions to which the documents related. Pltfs. claimed the delivery up of the documents, & deft. contended that he was entitled to a lien on the documents until he had received an indemnity in respect of the other actions, & he set up the contention by way of defence & counterclaim :—*Held :* although where a sovereign state was a pltf. a counterclaim could be maintained against it, yet the counterclaim must be in respect of matters immediately connected with the claim, & as the indemnity sought by deft. was not in respect of any liability incurred by him in & about the custody of the documents, & was not in respect of matters immediately connected with the claim, the action succeeded & the counterclaim failed.—SOVIET REPUBLICS UNION *v.* BELAIEW (1925), 134 L. T. 64; 42 T. L. R. 21.

383. *Add. Annotations :*—**Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21; Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 677.

387. *Add. Annotations :*—**Consd.** Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816. **Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. *v.* Kelantan Government & Colonies Crown Agents (1922), 39 T. L. R. 96; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

387a. —— Notwithstanding restrictions on exercise of sovereign rights.]—(1) It is the settled

practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State; & the information so received is conclusive.

(2) A Govt. recognised as sovereign by His Majesty's Govt. is not the less exempt from the jurisdiction of our cts. because it has agreed to restrictions on the exercise of its sovereign rights.

By a deed dated in July, 1912, the Govt. of Kelantan granted to applt. co. certain mining & other rights to be exercised in that State, & the deed contained an arbn. clause, which incorporated Arbn. Act, 1889 (c. 49), so far as applicable. Disputes having arisen as to the effect of the deed, they were referred to an arbitrator, who made an award in favour of the co. & directed the Govt. to pay the costs of the arbn. In Dec. 1921, the Govt. applied to the Ch. Div., under Arbn. Act, 1889, s. 11, to set aside the award, but the application was refused. In June, 1922, the co. obtained from the K. B. Div., under sect. 12 of the Act, an order giving leave to enforce the award, but the order was set aside, on the application of the Govt., on the ground that Kelantan was a sovereign independent State. Before setting aside the order the master asked the Secretary of State for the Colonies for information as to the status of Kelantan, & received in reply an official letter stating that Kelantan was an independent State & its Sultan the sovereign ruler thereof, & that the King did not exercise or claim any rights of sovereignty over Kelantan, & enclosing an agreement regulating the relations between the Sultan & the King. By this agreement the Sultan agreed to have no political relations with any foreign power except through the medium of the King, & in all matters of administration, other than those touching the Mohammedan religion & Malay custom, to follow the advice of an adviser appointed by the King:—*Held:* (1) the statement in the letter as to the sovereignty of Kelantan & its rulers was not intended to be qualified by the terms of the agreement, & the letter was conclusive; (3) the Govt. of Kelantan had not submitted to the jurisdiction of the ct. for the purpose of the proceedings to enforce the award, either by assenting to the arbn. clause or by applying to the ct. to set aside the award.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1924] A. C. 797; 93 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.

Annotations:—As to (1) **Apld.** Engelke *v.* Musmann, [1928] A. C. 433. **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824; Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485. *As to* (3) **Refd.** Dickinson *v.* Del Solar (1929), 45 T. L. R. 637.

388. *Annotation:*—**Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

389. *Add. Annotation:*—**Consd.** Soviet Republic Union *v.* Belaiew (1925), 42 T. L. R. 21.

390. *Add. Annotations:*—**Consd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745. **Refd.** The Tervaete, [1922] P. 259; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485; Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 384.

392. *Add. Annotations:*—**Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 3 K. B. 532; The Tervaete, [1922] P. 259; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; The Jupiter (1924), 93 L. J. P. 156; The Jupiter (No. 3) (1927), 137 L. T. 333.

392a. —— ——.]—(1) In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a communication from the Crown &, therefore, conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.

In an arbn. in this country between pltf. co. & the Govt. of Kelantan an award was made in favour of the co. with costs The Govt. of Kelantan then moved to set aside the award & this motion was dismissed with costs. An appeal from this decision was also dismissed with costs. No portion of these costs had been paid. The co. obtained a garnishee order *nisi* to attach money in the hands of the Crown agents of the Colonies on behalf of the Govt. of Kelantan. Upon an application by the co. for payment by the garnishees the Govt. of Kelantan & the Crown agents appeared together & contended that Kelantan was an independent sovereign State & the ct. had no jurisdiction to execute the orders for costs by a levy on the property of that State:—*Held:* (2) although the Govt. of Kelantan had, by initiating proceedings to set aside the award of the arbitrator, submitted to the jurisdiction of the ct., (3) that submission had not the effect of rendering liable to execution any property belonging to the Govt. within the jurisdiction.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385; 92 L. J. Ch. 273; 129 L. T. 290; 39 T. L. R. 187; 67 Sol. Jo. 260, C. A.

393. *Add. Annotations:*—**Refd.** The Porto Alexandre (1919), 89 L. J. P. 97; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816.

393a. —— ——.]—A sovereign independent State does not, by entering into a trading contract with a foreigner, lose its immunity from process in foreign cts. as regards matters arising out of the contract; nor does a sovereign independent State, by making a submission to arbn. in a foreign country, lose its immunity from being impleaded in the cts. of the foreign country.—COMPANIA MERCANTIL ARGENTINA *v.* UNITED STATES SHIPPING BOARD (1924), 93 L. J. K. B. 816; 131 L. T. 388; 40 T. L. R. 601; 68 Sol. Jo. 666, C. A.

393b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 392a, *ante*.

393c. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 387a, *ante*.

394. *Add. Annotations:*—**Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. *v.* Kelantan Government (1922), 39 T. L. R. 96; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; Compania Mercantil Argentina *v.* United States Shipping Board

(1924), 93 L. J. K. B. 816 ; Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485.

395. *Add. Annotation :*—**Refd.** Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485.

395a. Claim to property subject of litigation.]—The *de jure* sovereign of a foreign country having brought an action to recover from an English co. a sum of money due under a contract, the ambassador of the *de facto* sovereign of that country gave notice to the co. by letter that his Govt. claimed to be entitled to the sum in question :—*Held :* the rights of pltf. could be adjudicated upon without directly or indirectly impleading a foreign sovereign, & accordingly, notwithstanding the claim intimated, the ct. had jurisdiction to hear & determine the action.—HAILE SELASSIE *v.* CABLE & WIRELESS, LTD., [1938] Ch. 839 ; [1938] 3 All E. R. 384 ; 107 L. J. (CH.) 380 ; 159 L. T. 385 ; 54 T. L. R. 996 ; 82 Sol. Jo. 505, C. A.

403. *Add. Annotation :*—*Generally*, **Refd.** Soviet Republics Union *v.* Belaiew (1925), 134 L. T. 64.

406. *Add. Annotations :*—**Consd.** Duff Development Co. *v.* Kelantan Government, [1924 A. C. 797. **Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176 ; The Gagara, [1919] P. 95 ; The Porto Alexandre, [1920] P. 30 ; Duff Development Co. *v.* Kelantan Government (1922), 39 T. L. R. 96 ; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816.

407a. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 392a, *ante*.

407b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 387a, *ante*.

409. *Add. Annotations :*—**Refd.** Aksionairnove Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456 ; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385 ; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

Part IV.—Conditions Precedent to Action.

412. *Add. Annotation :*—**Apld.** Cipriani *v.* Burnett, [1933] A. C. 83.

412a. —— ——.]—A contract may make the award of a specified tribunal a condition precedent to an action at law without doing so in terms.

The tickets sold for a sweepstake in connection with a race meeting in Trinidad stated : " This ticket is sold subject to the condition that in the event of any dispute arising with respect to any matters connected with the drawing of the sweepstake, or the awarding of the prizes, the decision of the stewards of the Trinidad Turf Club thereon shall be accepted as final " :—*Held :* the terms of the ticket, having regard to the circumstances belonging to it, made a decision by the stewards a condition precedent to any action to recover the stakes.—CIPRIANI *v.* BURNETT, [1933] A. C. 83 ; 102 L. J. P. C. 118 ; 148 L. T. 148, P. C.

PART IV. SECT. 2.

so. *Consent of supervisors—Construction of local Act—Action by " creditor "—Who is.*]—Sect. 4 of c. 73, 1927, an Act respecting the City of Swift Current, provides that during a certain period no " creditor " shall commence a " suit, action or other proceeding " against the city without the written consent of the " supervisors," & sect. 2 defines " creditor " as a person, firm, etc., " now having, or who may hereafter have, any action, cause of action, debt, account, covenant, contract, claim or demand whatsoever, against the city " :—*Held :* definition of " creditor " is wide enough to include a person having a cause of action founded only on tort. —BEISWANGER *v.* SWIFT CURRENT, [1930] 3 W. W. R. 519 ; [1931] 1 D. L. R. 407 ; 25 S. L. R. 141 ; 12 C. B. R. 133 ; *affd.*, [1930] 4 D. L. R. 1031 ; 2 W. W. R. 59 ; 24 S. L. R. 453.—**CAN.**

st. *Debt Adjustment Board—Action founded on tort—Action to set aside conveyance on ground of fraud.*]—An action to set aside a transfer of property on the ground that it was obtained by undue influence, duress & fraud is not one founded upon a tort, &, therefore, does not fall within sect. 11 (2) of Debt Adjustment Act, 1933, which excludes an action founded on tort from the operation of the Act.—CLARK *v.* CAYEN, [1935] 2 W. W. R. 18.—**CAN.**

sv. —— —— *Action for recovery of possession.*]—*Held :* no permit necessary.—FRISBY *v.* SMITH, [1934] 1 W. W. R. 834.—**CAN.**

sw. —— —— —— *Who is " resident home owner."*]—TROYAN *v.* PARK, [1936] 3 W. W. R. 258.—**CAN.**

sx. —— —— —— *Under Landlord & Tenant Act, R.S.S., 1930.*]—Proceedings under Landlord & Tenant Act, R.S.S., 1930, against an overholding tenant are proceedings for " recovery of possession of land " within sect. 7 (1) of Debt Adjustment Act, 1934. Such proceedings are not an " action or suit," & therefore the application of sect. 7 (1) is not excluded by the exception in sect. 7 (2) of any " action or suit which is founded on tort." Therefore, compliance with sect. 7 (1) is a condition precedent to the initiation of such proceedings.—SELZLER *v.* KARY, [1935] 2 W. W. R. 25 ; 5 F. L. J. (Can.) 21.—**CAN.**

sy. —— —— ——.]—In proceedings under Landlord & Tenant Act, R.S.S., 1930, for a writ of possession held that the tenant had the right to have the issues tried whether the landlord having discontinued its first action for foreclosure, had the right to proceed in a second action for foreclosure without obtaining a new permit from the Debt Adjustment Board & whether the permit for the first action was of any value to the landlord ; and these matters should not be tried in a summary way & that, in the exercise of the discretion conferred by sect. 53 (3) of said Act, the writ of possession should be refused.—*Re* GREAT-WEST LIFE ASSURANCE CO. & LANSKAIL, [1937] 1 W. W. R. 77.—**CAN.**

sz. —— —— *Action for negligence under Vehicles Act, 1935.*]—An action against the owner of a motor car based on the liability imposed on him by sect. 72 of Vehicles Act, 1932, is an action " founded on tort," within sect. 7 (2) (*b*) of Debt Adjustment Act, 1934.

An action against a husband who is sued jointly with his wife for her negligence in driving a motor car is, also, an action " founded on tort."—DAVIDNER *v.* SCHUSTER & MRAZEK, RIESENBERG *v.* SCHUSTER & MRAZEK, [1936] 1 W. W. R. 45 ; 1 D. L. R. 560. —**CAN.**

sa. —— —— *Action for trespass.*]—Actions for damages for trespass to land, for the removal of a granary and for waste by cutting timber are actions " founded upon tort " &, therefore, are proceedings which by sect. 7 (2) of Debt Adjustment Act, 1934, are excepted from the application of sect. 7 (1) thereof.—STEWART *v.* SHERSTOBITOFF, [1938] 1 W. W. R. 280 ; 1 D. L. R. 578.—**CAN.**

sb. —— *Action for statutory claim—Action against insurer.*]—An action brought under sect. 222*d* of Saskatchewan Insurance Act, as amended by 1933, c. 22, by an injured person against the insurer on an automobile policy, is an " action for a statutory claim," within the meaning of sect. 7 (1) of Debt Adjustment Act, 1934, & not a " proceeding on a contract made or entered into by the debtor." within sect. 7 (2) (*b*) thereof, &, is, therefore, one which cannot be brought without the consent of the Debt Adjustment Board or the notice required by sect. 7. —LANDA *v.* TRAVELERS INSURANCE CO., [1936] 2 W. W. R. 100 ; 2 D. L. R. 732.—**CAN.**

sd. —— *Consent to anything done—Relation back.*]—Debt Adjustment Act, 1933, s. 6 (2), provides that " the consent of the Board under this section whenever given shall relate back to anything done in the action or other proceedings in respect to which the permit is given " :—*Held :* this pro-

425. *Add. Annotations :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

428. *Add. Annotation :*—**Refd.** Bradford Old Bank, Ltd. *v.* Sutcliffe (1918), 34 T. L. R. 619.

430. *Add. Annotations :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

434. *Add. Annotations :*—**Consd.** Tate *v.* Crewdson, [1938] 3 All E. R. 43. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833 ; Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

436. *Add. Citation :*—11 L. J. Q. B. 87.

448. *Add. Annotation :*—**Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

461. *Add. Annotations :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

462. *Add. Annotations :*—*As to* (1) **Consd.** Tate *v.* Crewdson, [1938] 3 All E. R. 43. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

462. *Add. Annotation :*—*As to* (1) **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

463. *Add. Annotation :*—**Consd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

480. Add "For full anns., *see* S. C., No. 176, *ante*."

Part V.—Suspension of Right of Action.

491. *Add. Annotation :*—**Dbtd.** Flint *v.* Lovell, [1935] 1 K. B. 354.

496. *Add. Annotations :*—**Refd.** Admiralty Comrs. *v.* S.S. Amerika, [1917] A. C. 38 ; Flint *v.* Lovell, [1935] 1 K. B. 354.

497. *Add. Annotation :*—**Refd.** Flint *v.* Lovell, [1935] 1 K. B. 354.

497a. —— ——.]—If the party know that he has been robbed of the goods, he must, in order to obtain restitution, first prosecute the felon.—HARRIS *v.* SHAW (1736), Lee *temp.* Hard. 349 ; 95 E. R. 226.

Annotation :—**Refd.** Wells *v.* Abrahams (1872), L. R. 7 Q. B. 554.

vision is not restricted to actions begun before the Act came into force ; &, therefore, the plea that the permit in this case was not given until after the defence was filed was not sustained.—BOW ISLAND *v.* HALPIN, [1936] 1 W. W. R. 401 ; 2 D. L. R. 237.—**CAN.**

sf. —— *Non-compliance with Act—Effect on proceedings.*]—The effect of Debt Adjustment Act, 1934, is that where its provisions as to the steps to be taken before bringing action are not complied with the proceedings are null & void.—EDWARDS *v.* GROSSER & GLASS, LTD., [1936] 3 W. W. R. 670.—**CAN.**

PART V. SECT. 4, SUB-SECT. 1.

498 ii. —— —— *Claim under Criminal Injuries Code of Ireland.*]—The rule or doctrine that no civil remedy will lie against the perpetrators of a felonious act until they have been prosecuted to conviction is not applicable to a claim for compensation under Criminal Injuries Code of Ireland for goods stolen in the course of rioting.—TYLER *v.* CORK COUNTY COUNCIL, [1921] 2 I. R. 8.—**IR.**

499 i. —— ——.]—A criminal charge was laid by pltf. bank against deft. In respect of $1,800 which the bank alleged it had overpaid deft. Before decision in the criminal trial had been given, pltfs. instituted an action to recover the money. It was contended on behalf of deft. that immediately the evidence disclosed a criminal offence on the part of deft., which had not been prosecuted to conviction or acquittal, pltfs. should not have been allowed to proceed with the action, but should have been non-suited :—*Held :* as a criminal prosecution had actually been carried through, even though the decision was under advisement, the action could be maintained.—STANDARD BANK OF CANADA *v.* SHUEN WAH, [1919] 1 W. W. R. 586 ; 26 B. C. R. 441.—**CAN.**

499 ii. —— ——.]—Where, in an action for assault & battery, pltf. proves that the injury caused grievous bodily harm, pltf. will be nonsuited unless it appears that proceedings have been taken against deft. for the criminal offence.—SCHOHL *v.* KAY (1862), 10 N. B. R. (5 All.) 244.—**CAN.**

504 iii. —— —— —— ——.]—No hard & fast rule can be laid down to indicate the considerations by which a ct. ought to be guided in considering the question of the stay of a criminal proceeding, pending the disposal of a civil suit, & each case must be determined upon its own facts. Even if some or all the matters materially in issue are the same, that in itself cannot be a reason for staying the criminal proceedings. One test is whether the prosecution is public or private. Where it is public the ct. as a rule would not stay criminal proceedings.—GOPALCHANDRA CHAKRAVARTI *v.* KING EMPEROR (1929), I. L. R. 57 ; Calc. 558.—**IND.**

504 iv. —— —— ——.]—The rule that where pltf. sues in respect of a wrong which is a tort & also a felony, deft. should be prosecuted in respect of the felony before the civil action is heard, does not make such criminal prosecution an indispensable condition precedent to the right to maintain the civil action. In its modern application the rule is merely suspensory of the civil rights, & is subject to the exercise of judicial discretion. In exercising such discretion the ct may consider circumstances, such as the infancy, ignorance, or poverty of pltf., which may afford excuse for the failure to prosecute in respect of the felony. Where pltf. has obtained a verdict in the civil action, the ct., on motion for a new trial or for judgment, may consider the circumstance that between verdict & motion deft. has been prosecuted in respect of the felony.—CARLISLE *v.* ORR (No. 2), [1918] 2 I. R. 442.—**IR.**

504 v. —— —— ——.]—On Aug. 12, 1920, an information for theft was laid by defts. against pltf. On Aug. 23, 1920, pltf. began an action in a division ct. against defts. to recover $99 for wages ; on Aug. 30, defts. counterclaimed in the division ct. action for money & tickets a mounting to $202.74, "fraudulently & without colour of right" converted by pltf. to his own use, the subject of conversion being the same as that in respect of which the criminal charge was made : on Sept. 22 pltf. was committed for trial on the criminal charge, & on Sept. 30, a true bill was found against him in the sessions. On a subsequent day the judge of the division ct. heard argument as to whether the action should be proceeded with before the criminal charge was taken up ; he decided that it should, & fixed a day for trial, but on Dec. 10, 1920, neither the action nor the criminal proceeding having been tried, an order was made by a judge of the Supreme Ct. of Ontario, upon the application of defts., prohibiting the judge of the division court from proceeding in the action until after the final disposition of the criminal prosecution. Pltf. appealed from this order, & before the completion of the argument of the appeal pltf. was tried upon the criminal charge & acquitted :—*Held :* the division ct. judge had the right, the claim & counterclaim being within the jurisdiction of the ct., to stay proceedings or otherwise deal with the case ; & prohibition did not lie, even if the judge erred in the conclusion to which he came.—*Re* BRYANT *v.* CITY DAIRY Co. (1921), 64 D. L. R. 283 ; 37 Can. Crim. Cas. 405 ; 50 O. L. R. 40.—**CAN.**

504 vi. —— —— ——.]—The rule that where an injury constitutes both a civil wrong & a felony the civil remedy is suspended until after prosecution does not apply where the offences disclosed by the civil action are offences under the Code, or, if only common law offences, are offences which could not at any time have been classified as felonies.—PORTER *v.* SOLLOWAY MILLS & Co., LTD., [1930] 1 W. W. R. 680 ; 3 D. L. R. 758 ; 26 Alta. L. R. 150 ; 54 Can. C. C. 181.—**CAN.**

504 vii. —— —— ——.]—ILLINGWORTH *v.* COYLE, [1933] 3 W. W. R. 607 ; 48 B. C. R. 81.—**CAN.**

504 viii. —— —— ——.]—Stay of civil proceedings for criminal negligence pending criminal proceedings is a matter of discretion, not of right.—JOHNSON *v.* SHEILLS, [1935] 2 D. L. R. 806.—**CAN.**

505a. —— —— —— **Felony depending upon intent—Intent not proved.**]—YARDY *v.* GREENWOOD (1935), 79 Sol. Jo. 363.

507. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* S.S. Amerika, [1917] A. C. 38.

516. *Add. Annotations :*—**Consd.** Yardy *v.* Greenwood (1935), 79 Sol. Jo. 363. **Refd.** Canvey Island Comrs. *v.* Preedy (1921), 91 L. J. Ch. 203.

523. *Add. Annotation :*—**Refd.** Flint *v.* Lovell, [1935] 1 K. B. 354.

526. *Add. Annotation :*—**Refd.** Flint *v.* Lovell, [1935] 1 K. B. 354.

540. *Add. Annotations :*—**Refd.** Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520; Samuel *v.* Dumas, [1924] A. C. 431; Pailin *v.* Northern Employers Mutual Indemnity Co., [1925] 2 K. B. 73.

Part VIII.—Maintenance and Champerty.

549. *Add. Annotations :*—**Expld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Refd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

551. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

552. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

556. *Add. Citation :*—After "[1917] 2 K. B. 564, C. A." add "*On appeal*, [1919] A. C. 368, H. L.," & after "560" add "561a, 719a." *Add Annotation :*—**Refd.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721.

557. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

558. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

559. *Add. Annotations :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Refd.** Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520; Hickman *v.* Kent or Romney Marsh Sheepbreeders' Assocn. (1920), 36 T. L. R. 528.

560. For the existing paragraph substitute the following paragraph :—

—— ——.]—(1) The success of the maintained litigation, whether an action or a defence, is not a bar to the right of action for maintenance.

(2) An action for damages for maintenance will not lie in the absence of proof of special damage.—NEVILLE *v.* LONDON "EXPRESS" NEWSPAPER, LTD., [1919] A. C. 368; 88 L. J. K. B. 282; 120 L. T. 299; 35 T. L. R. 167; 63 Sol. Jo. 213, H. L.

Annotations :—As to (2) **Folld.** Hickman *v.* Kent or Romney Marsh Sheepbreeders Assocn. (1920), 37 T. L. R. 163. **Apld.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721. *Generally*, **Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544; Ellis *v.* Torrington, [1920] 1 K. B. 399; Haseldine *v.* Hosken, [1933] 1 K. B. 822; Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

561. *Annotation :—As to* (2) **Refd.** Mackey *v.* Monks (Preston), [1918] A. C. 59.

561a. **Special damage—Necessity to prove.**]—NEVILLE *v.* LONDON "EXPRESS" NEWSPAPER, LTD., No. 560, *ante*.

561b. —— ——.]—Pltf., a member of deft. assocn., brought an action against C., the secretary, & W., the president, of the assocn., for libel in the conduct of the business of the assocn., & in the same action C. counterclaimed against pltf. for damages for libel in respect of the same business. The action resulted in judgment for defts. on the claim, with damages for £75 for C. on the counterclaim. The assocn. before the hearing of the action had passed resolutions to indemnify C. & W. against any liability or costs arising from the action against them, & that the indemnity should extend to the costs of any counterclaim that counsel might advise should be made, provided that any costs of the action for which the assocn. would be liable should be paid *pro tanto* out of any moneys recovered in the action. Pltf. then brought an action against the assocn. for maintenance & champerty, & other relief :—*Held :* (1) champerty being a form of maintenance, a decision which applies to the *genus* must also apply to the *species ;* (2) pltf. had not proved any special damage, & his claim in champerty failed equally with his claim in maintenance.—HICKMAN *v.* KENT OR ROMNEY MARSH SHEEPBREEDERS' ASSOCN. (1920), as reported in 151 L. T. Jo. 5, C. A.

PART V. SECT. 4, SUB-SECT. 2.

sm. *Injury incidental to felony.*]—*Held :* the rule, that civil proceedings based upon felonious acts of deft. should be stayed until deft. had been prosecuted, did not apply where injury resulted to a person only incidentally to the felony, &, in any event, the rule did not apply to actions based upon sect. 3 of Compensation to Relatives Act, 1897.—CARR *v.* BAKER (1936), 36 S. R. N. S. W. 301; 53 N. S. W. W. N. 110.—**AUS.**

PART V. SECT. 4, SUB-SECT. 3.—C.

sp. *Civil action against company—Prosecution of directors.*]—On appeal from an order staying a civil action against an incorporated co. until a criminal prosecution against certain officers thereof should be disposed of: —*Held :* the appeal should be allowed. —MACKEE *v.* SOLLOWAY, MILLS & CO., LTD. (No. 3), [1931] 2 W. W. R. 926; 4 D. L. R. 417; 44 B. C. R. 401; 57 C. C. C. 103.—**CAN.**

sr. *Civil action against society—Prosecution of trustees.*]—*Held :* civil action should not be stayed.—KOZLOWSKI *v.* WORKERS' BENEVOLENT SOCIETY OF CANADA (No. 2), [1933] 3 W. W. R. 566; [1934] 1 D. L. R. 237; 41 Man. L. R. 488.—**CAN.**

PART V. SECT. 4, SUB-SECT. 3.—D.

sz. *Abolition of distinction between felonies & misdemeanors—Action against company—Prosecution of directors.*]—Even if the rule, that where an injury constitutes both a civil wrong & a felony the civil remedy is suspended or may be stayed until the person who committed the injury has been prosecuted, is in force in Alberta, it is inapplicable where the civil action is against an incorporated company & a stay thereof is asked for on the ground that criminal proceedings are pending against directors of the co. on charges identical with those which might be based on the facts which may be disclosed in the civil action, but there is nothing alleged in the latter action to show that said directors are individually connected with or have a knowledge of the facts alleged in that action. Since said rule under the law of England was applicable where the prosecution was for a felony but not where it was for a misdemeanor, & the distinction between felonies & misdemeanors has been abolished with respect to offences against the Criminal Code, the rule does not apply where the offences disclosed by the civil action are offences under the Code or, if only common-law offences, are offences which could not at any time have been classified as felonies.—PORTER *v.* SOLLOWAY, MILLS & CO., LTD., [1930] 1 W. W. R. 680; 3 D. L. R. 758; 26 Alta. L. R. 150; 54 Can. C. C. 181.—**CAN.**

566. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

569. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

576. *Annotations :*—For "For full anns., *see*" read "**Mentd.** Williams *v.* Page (No. 4) (1859), 28 Beav. 148."

577. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

583. *Add. Annotations :*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Ford *v.* Radford (1920), 36 T. L. R. 658.

584a. Special damage—Necessity to prove.]—HICKMAN *v.* KENT OR ROMNEY MARSH SHEEP-BREEDERS' ASSOCN., No. 561b, *ante*.

585. *Add. Annotation :*—**Refd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

589. *Add. Annotation :*—**Refd.** Parkinson *v.* College of Ambulance & Harrison, [1925] 2 K. B. 1.

590. *Add. Annotations :*—**Apld.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

592. *Add. Annotation :*—**Refd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

593a. —— ——.]—UTTLEY *v.* HOOPER & Co. (1935), 79 Sol. Jo. 542.

594. *Add. Annotation :*—**Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

598a. —— —— **Percentage.**]—Pltf. was retained by deft. to act as his solr. in an action brought against him. Deft. had a counterclaim, &, while the action was proceeding, an agreement was made that in the event of deft.'s recovering more than sufficient to pay his creditors in full & all legal expenses he would pay his solr. a percentage on the amount, the solr. agreeing to conduct the counterclaim on the above terms, & not to look to deft. for any costs of the counterclaim except out-of-pocket expenses in the event of the success of pltf. in that action. Deft. lost the action, & his solr. sued him for the costs :—*Held :* pltf. could not recover as (1) (BANKES, L.J.) the agreement was champertous, & its effect was to make it an essential part of pltf.'s cause of action on his original retainer that he should negative the event in which he was to get no costs, namely, the event of the success of pltf. in the previous action; (2) (ATKIN, L.J.) the champertous nature of the agreement prevented pltf. from completing his services lawfully, & consequently he could not recover on a *quantum meruit*.—WILD *v.* SIMPSON, [1919] 2 K. B. 544; 88 L. J. K. B. 1085; 121 L. T. 326; 35 T. L. R. 576; 63 Sol. Jo. 625, C. A.

599a. —— ——.]—Pltf. carried on business as the "Turf Register," which in a prospectus issued by him was called a "society"; but he was the sole proprietor of the business, though he described himself in the prospectus as secretary. In consideration of a subscription, & of a commission on the amount recovered, he undertook to collect for the subscribers betting debts which, under the provisions of Gaming Acts, were not recoverable. It was agreed between him & deft. in the terms of the prospectus, that in consideration of pltf. "putting up all the necessary disbursements for the institution & conduct of legal or other proceedings, the net profits accruing directly or indirectly is to be equally divided between claimant & the society." Pltf. brought an action to recover the amounts of debts alleged to have been wrongfully collected by deft. in breach of the agreement :—*Held :* the agreement was illegal & void, being contrary to public policy, & champertous, as there was no community of interest between the parties, except such as was created by the agreement itself, & pltf. could not recover.—FORD *v.* RADFORD (1920), 36 T. L. R. 658; 64 Sol. Jo. 571.

601. *Add. Annotations :*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Neville *v.* London "Express" Newspaper, [1919] A. C. 368; Ellis *v.* Torrington, [1920] 1 K. B. 399.

602. *Add. Annotations :*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Ellis *v.* Torrington, [1920] 1 K. B. 399; Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

603. *Annotation :*—*As to* (1) **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

604. *Annotations :*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Marsden *v.* Heyes, [1927] 2 K. B. 1. **Refd.** Gottliffe *v.* Edelston (1930), 99 L. J. K. B. 547.

604a. —— —— **Assignment of option to take lease.**]—In 1853 the L. & C. Ry. Co., the predecessors of deft. co., leased land adjacent to the station at Carlisle to H. for 999 years, for the purpose of erecting an hotel thereon. The lease contained a covenant by the co. with H., his exors., administrators & limited assigns that "the co. & their successors & assigns shall permit the tenant or occupier of the hotel for the time being & his servants to have access to the platforms of the station & that the tenant or occupier of the hotel shall have the option of renting the refreshment rooms" at a rent to be fixed as there

---

PART VIII. SECT. 1, SUB-SECT. 3.

581 ix. —— ——.]—One, D., died sonless in 1843, leaving him surviving three widows, the last of whom died in 1894. The widows had from time to time made numerous alienations of portions of their husband's estate to defts., most of the transactions being evidenced by registered deeds. In 1906, the present suit for possession was brought by A., a collateral of D. & certain assignees from A., to whom he, after the death of the last surviving widow, had transferred a share in the property in consideration of their agreeing to supply funds for the litigation to recover back the land from the alienees :—*Held :* the English rules against champerty & maintenance are not in force in India, & agreements to finance litigation on condition of a promise to share in its fruits are not against public policy or void & can be enforced, unless they are extortionate or otherwise inequitable.—THAKAR SINGH *v.* UTTAM KAUR (1929), I. L. R. 10 Lah. 613.—**IND.**

594 vii. —— —— ——.]—The English law of champerty is not in force in India & fair agreements to share property in litigation with others in consideration of their supplying the funds for carrying on suits are not opposed to public policy, & such agreements should receive effect except when extortionate or inequitable.—INDAR SINGH *v.* MUNSHI (1919), I. L. R. 1 Lah. 124.—**IND.**

594 viii. — ——.]—An agreement to contribute towards the costs of a law suit in consideration of receiving a share in the result of the suit :—*Held :* on the facts to be not champertous.—FELLOWS-SMITH *v.* SHANKS (1925), 46 N. L. R. 168.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 1.

601 ii. —— *Payment of consideration dependent on success of action—Assignment void.*]—FIRST MORTGAGE CO. *v.* NOUD, [1925] 4 D. L. R. 221.—**CAN.**

mentioned, "in preference to any other party." In 1860 H. granted a sub-lease of the hotel premises to B. for 21 years, & the co. also granted to B. a lease of the refreshment rooms for 21 years. In 1866 pltf. co. obtained an assignment from B. of his interest under these two documents, & an assignment from H. of the land comprised in the lease of 1853 & "All & singular other premises comprised in & demised by the said recited indenture of lease of Aug. 1, 1853." From 1866 onwards pltfs. managed & conducted both hotel & refreshment rooms, & after the expiration of the 21 years' term granted by the sub-lease of 1860 to B., they continued in occupation of the rooms upon such terms of that sub-lease as were applicable. In 1879 defts. succeeded by statute to the contracts of the L. & C. Ry. Co. On April 2, 1891, defts. & the Caledonian Ry. Co. demised to pltfs. a plot of land adjacent to the hotel for 962 years. The deed recited the lease of 1853, & referred to it as the "principal indenture"; & it also provided that "these presents are without prejudice to any of the covenants conditions & agreements contained in the principal indenture," which were to remain & be in full force. On Mar. 24, 1916, defts. gave six months' notice to pltfs. to determine their occupation of the refreshment rooms. Pltfs. gave up possession, & then served a written notice on defts. stating their desire to exercise the option contained in the lease of 1853, & requesting to be informed as to terms. Defts. having ignored the notice, pltfs., on Oct. 16, 1916, obtained an express assignment from the personal representatives of H., who had died in 1876, of "all that the benefit right title & interest, if any, now remaining outstanding of or otherwise vested in them or any or either of them of & in the railway obligations." Pltfs. claimed (*a*) a declaration that defts. by the lease of 1853 were under an obligation to put & keep the occupier of pltfs.' hotel in occupation of the refreshment rooms, upon the terms of paying therefor a fixed market rent; (*b*) to have such rent fixed under the direction of the ct.; (*c*) damages for the breach of such obligation by defts.:—*Held:* (1) the option clause did not run with the land, & pass *ipso facto* by the assignment of the lease of 1853, as it did not touch or concern the thing demised; (2) the option clause was assignable, & was not a covenant merely personal to the covenantee; (3) the benefit of this clause was not assigned by the deed of 1866, inasmuch as the word "premises" therein referred to the land & buildings demised, & not to the option clause; (4) the deed of 1891 was not a fresh grant of the option rights to pltfs., & did not constitute a binding recognition of pltfs. as the assignees of the option clause; (5) the assignment of Oct. 16, 1916, by the personal representatives of H., of the option clause in the lease of 1853, being an assignment of a right of property, was not invalid for champerty; (6) the option clause was void for uncertainty; (7) the option clause was *ultra vires* of the railway co., as it fettered injuriously & gravely their obligations of performing efficiently their public duties.—COUNTY HOTEL & WINE CO. *v.* LONDON & NORTH WESTERN RY. CO., [1918] 2 K. B. 251; 87 L. J. K. B. 849; 119 L. T. 38; 34 T. L. R. 393; 17 L. G. R. 274; *affd.* on other grounds, [1921] 1 A. C. 85, H. L.

607. *Add. Annotations:—As to* (1) **Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

615. *Annotation:*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

617. *Add. Annotations:*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Ellis *v.* Torrington, [1920] 1 K. B. 399.

617a. Lease of tithes—With covenant to take legal proceedings for recovery of tithes.]—Agreement to lease the rectorial tithes of a parish, including the tithes of ninety acres supposed to be within the parish, but which had not paid tithes to the lessor during his incumbency with a stipulation that the intended lessee would, within a given time, take such legal proceedings for the recovery of the tithes of the ninety acres as his counsel should advise:—*Held:* not to be within Statute of Maintenance, 1540 (c. 9).—WHITE *v.* GARDNER (1835), 1 Y. & C. Ex. 385; 160 E. R. 157.

621. *Add. Annotations:*—**Consd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251. **Apld.** Ellis *v.* Torrington, [1920] 1 K. B. 399.

621a. —— —— **Dilapidations.**]—A freehold messuage & tenement were the subject of the following leases: (*a*) a head lease which expired on Dec. 25, 1917; (*b*) an underlease which expired on Dec. 18, 1917; (*c*) a sub-underlease which expired on Dec. 15, 1917. All three leases contained onerous covenants to repair the premises & to keep them & yield them up in good repair. The sub-underlease became vested by assignment in deft. On Dec. 18, 1917, pltf. who had been a tenant to deft. of the same premises, & was liable to him under a covenant to repair less onerous than those in the three leases above mentioned, agreed to purchase, & on May 1, 1918, took a conveyance of the fee simple of the premises together with the benefit of the covenants in the head lease. At the expiration of all the leases the premises were out of repair & deft. was threatening pltf. with an action on his covenant. Thereupon pltf. obtained an assignment of the full benefit of the lessee's covenants to repair contained in the sub-underlease, & commenced an action against deft. as assignee of the sub-underlease for breaches of the

---

PART VIII. SECT. 2, SUB-SECT. 3.

620 i. *Purchase of lands in litigation—Pending actions relating to property purchased — Specific performance.*]—Pltfs. having filed a bill for specific performance of a contract by one R. to sell a certain mine to them, it was agreed between pltfs. & T., one of the now defts., pending such suit, that certain persons should purchase said mine from pltfs.; that they should deposit the money required for the security for costs which pltfs. had been ordered to give in said suit & pay all costs incurred or to be incurred therein, or in any other suit brought or defended by them respecting said mine, & pay all moneys due for the purchase thereof, & allot to each of pltfs. a twentieth share therein, if they should succeed in getting a title through the suit; & that they would settle all claims of Messrs. E. & G. against pltfs. Pltfs. having sued defts. on the last-mentioned covenant:—*Held:* the agreement was void for champerty & maintenance, & they therefore could not recover.—CARR *v.* TANNAHILL (1870), 30 U. C. R. 217.—CAN.

lessee's covenants therein :—*Held :* the assignment was free from objection on the ground of maintenance or champerty, the right of action on the covenants being so connected with the enjoyment of property as to be more than a bare right to litigate.—ELLIS *v.* TORRINGTON, [1920] 1 K. B. 399 ; 89 L. J. K. B. 369 ; 122 L. T. 361 ; 36 T. L. R. 82, C. A.

Annotation :—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

634. *Add. Annotation :*—**Consd.** Ellis *v.* Torrington, [1920] 1 K. B. 399.

635. *Add. Annotations :—As to* (1) **Refd.** Ellis *v.* Torrington, [1920] 1 K. B. 399. *As to* (2) **Consd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251. **Refd.** Earle (1925), Ltd. *v.* Hemsworth R. D. C. (1928), 140 L. T. 69. *Generally*, **Refd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 758.

636. *Add. Annotations :*—**Apld.** Ellis *v.* Torrington, [1920] 1 K. B. 399. **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

637. *Add. Annotations :—As to* (1) **Apld.** Ellis *v.* Torrington, [1920] 1 K. B. 399. **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

637a. —— Actions for infringement of copyright—Society for protection of copyright interests of members.]—Pltf. society was formed as a limited co. to protect the copyright interests of members, who assigned their copyrights to the society. By the rules of the society fees & damages recovered were pooled, & the fund so formed was divided among the members after the deduction of expenses. The assignments were real & substantial transactions, & the provision as to the division of the damages was only subsidiary. In an action by the society for the infringement of copyrights which had been assigned to the society by two members :—*Held :* the arrangement between the society & its members was made for legitimate business reasons & was not champertous, & pltfs. were entitled to succeed.—PERFORMING RIGHTS SOCIETY, LTD. *v.* THOMPSON (1918), 34 T. L. R. 351.

637b. Assignment of judgment.]—In an action of assumpsit to pay money in consideration of the assignment of a judgment :—*Held :* this was good consideration & might be assigned without maintenance.—LODER *v.* CHESLEYN (1664), 1 Sid. 212 ; 82 E. R. 1063.

640. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

641. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

642. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

644. *Add. Annotations :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

645. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

646. *Add. Annotations :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368 ; Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520 ; Hickman *v.* Kent or Romney Marsh Sheepbreeders' Assocn. (1920), 36 T. L. R. 528.

648. *Add. Annotations :—As to* (1) **Apld.** Ford *v.* Radford (1920), 36 T. L. R. 658. *Generally*, **Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

655. *Add. Annotations :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368 ; Ford *v.* Radford (1920), 36 T. L. R. 658.

661. *Add. Annotations :*—**Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

665. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

669. *Add. Annotations :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368 ; Ford *v.* Radford (1920), 36 T. L. R. 658.

671. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

679. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

681. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

683. *Add. Annotations :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368 ; Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520 ; Hickman *v.* Kent or Romney Marsh Sheepbreeders' Assocn. (1920), 36 T. L. R. 528.

685. *Add. Annotations :—As to* (1) **Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. *Generally*, **Refd.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721.

687. *Add. Annotation :—As to* (2) **Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

689a. —— ——.]—Observations as to the circumstances in which a solr. may take up a speculative case on behalf of a poor client, & as to the terms on which he may do so.—WIGGINS *v.* LAVY (1928), 44 T. L. R. 721, C. A.

692. *Add. Annotations :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368 ; Ford *v.* Radford (1920), 36 T. L. R. 658.

694. *Add. Annotation :*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

PART VIII. SECT. 2, SUB-SECT. 4.

627 ii. ——.]—By an absolute assignment of a debt in writing & under seal the assignor, alleging that deft. was indebted to him in a sum in excess of $1,000, agreed to assign &. did assign the claim absolutely to pltf. in consideration of the payment of $200, & mutual covenants were entered into to the effect that if the debt owing to the assignor did not amount to $1,000 the assignor would give to the assignee, pltf. in the present action, a rebate *pro rata*, & if the claim exceeded the sum of $1,000, in that event, the assignee would pay to the assignor the same proportion of such excess :—*Held :* the assignment in question was not champertous.—GREENSTEIN *v.* C. H. DRESS CO., [1933] O. R. 41 ; 1 D. L. R. 411 ; 59 C. C. C. 155.—**CAN.**

634 ii. —— *Subject to litigation—Conveyance valid.*]—By reason of the erection of the Quinze Lake Dam, & the consequent raising of the level of the water in the lake, parts of certain properties in the neighbourhood were flooded. The Crown expropriated the right so to flood these properties including the one in question herein, which at the time of the expropriation belonged to V. Subsequently V. sold the property to H. together with V.'s right to recover the compensation from the Crown for all damages caused him by the flooding & expropriation. The Crown exhibited an information acknowledging liability & seeking to have the amount of the compensation fixed, & made H. deft. :—*Held :* the assignment from V. to H. was not an assignment of litigious rights.—R. *v.* HYE (1921), 21 Exch. C. R. 76.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

643 ii. ——.]—ARPIN *v.* LECLAIRE, [1930] 2 D. L. R. 427.—**CAN.**

695. *Annotation :*—**Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

696. *Add. Annotation :*—**Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

699. *Add. Annotation :—As to* (2) **Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

702. *Add. Annotation :*—**Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

703. After this case add :—
Payment of damages for champerty—Whether recoverable under solicitor's indemnity policy.] —*See* HAZELDINE *v.* HOSKEN, INSURANCE, No. 3289b, *post.*

711a. —— ——.]—A solr. will never be permitted to deal with his client for the property in question in the cause.—DOWLIN *v.* —— (1823), as reported in 1 L. J. O. S. Ch. 169.

713a. —— ——.]—PITTMAN *v.* PRUDENTIAL DEPOSIT BANK, LTD. (1896), 13 T. L. R. 110 ; 41 Sol. Jo. 129, C. A.

716. *Add. Annotation :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

719. *Add. Annotation :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

719a —— **Necessity of proving special damage.**]—NEVILLE *v.* LONDON " EXPRESS " NEWSPAPER, LTD., No. 560, *ante.*

720. *Add. Annotation :*—**Consd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

725. This paragraph was in effect reversed by the House of Lords, *see* NEVILLE *v.* LONDON " EXPRESS " NEWSPAPER, LTD., No. 560, *ante.*

726. *Annotation :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

731. *Add. Annotations :*—**Apld.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

PART VIII. SECT. 4, SUB-SECT. 2.—A.

695 lii. —— —— *Legal Professions Act,* 1911 (c. 136), *s.* 97.—An agreement between pltf. & deft. made under the above sect., as to payment for deft.'s services as solr., was rescinded on the ground that the provincial statute authorising such an agreement was *ultra vires.*—TAYLOR *v.* MACKINTOSH, [1924] 3 D. L. R. 926 ; 3 W. W. R. 97 ; 34 B. C. R. 56 ; *affg.,* [1924] 1 D. L. R. 877 ; 1 W. W. R. 859 ; 33 B. C. R. 383.—**CAN.**

r i. —— ——.]—A solr. who has honestly investigated a client's case & come to the conclusion that the client has a good cause of action or a good defence to an action, so long as he makes no bargain with his client to take a share of the proceeds, does not by advancing money for disbursements & by conducting the case without having received any payment on account of his costs commit the wrong of champerty or maintenance. Whether he does this without any prior agreement with his client, or whether he makes a prior agreement either that in any case he shall be repaid such costs & disbursements or that he shall be paid only out of the proceeds of the suit, & that, if there are no proceeds, the solr. will bear the loss, the solr. is guilty of no wrong. The legal liability imposed on pltf. for the amount of a judgment against him, or for costs which he has been ordered to pay, or for costs incurred by him in unsuccessfully defending the action, are not such damage as will support an action for maintenance.—SIEVWRIGHT *v.* WARD, [1935] N. Z. L. R. 43.—**N.Z.**

PART VIII. SECT. 5, SUB-SECT. 2.—B.

sa. *Defence of champerty—Action must be based on agreement.*]—Where a statement of claim shows a good cause of action which if established at the trial will entitle the pltf. to succeed, deft. cannot by setting up a champertous agreement between pltf. & strangers to the action deprive pltf. of his right to prosecute the action. The defence of champerty & maintenance is confined to actions on the champertous contracts themselves.—DAVEY *v.* TALLON (MAN.), [1928] 3 W. W. R. 215 ; *affd.,* [1929] 1 W. W. R. 171.—**CAN.**

ADMIRALTY.

Part I.—Origin and General Characteristics of the Jurisdiction of the Admiralty Division of the High Court of Justice.

1. *Add. Annotation :*—**Consd.** The Fagernes, [1926] P. 185.

12a. —— ——.]—DORRINGTON'S CASE (1615), Moore, K. B. 916 ; 72 E. R. 995.

12b. —— ——.]—MARTIN *v.* GREEN (1664), 1 Keb. 730 ; 83 E. R. 1210.

25. *Citations :*—For "THE LORD COCHRANE" read "DUNCAN *v.* M'CALMONT."

38. *Annotations :*—For "For full anns., *see* SHIPPING & NAVIGATION" read "**Mentd.** The Hanna (1866), L. R. 1 A. & E. 283 ; General Steam Navigation Co. *v.* British & Colonial Navigation Co. (1869), L. R. 4 Exch. 238 ; The Warsaw, [1898] P. 127."

39. *Add. Citations :*—(1862), 15 Moo. P. C. C. 304 ; 5 L. T. 558 ; 10 W. R. 124 ; 1 Mar. L. C. 177 ; 15 E. R. 509, P. C.

Annotations :—For "For full anns., *see* SHIPPING & NAVIGATION" read "**Mentd.** The Stettin (1863), Brown. & Lush. 199 ; The Hanna (1866), L. R. 1 A. & E. 283 ; General Steam Navigation Co. *v.* British & Colonial Steam Navigation Co. (1869), L. R. 4 Exch. 238 ; The Moselle (1874), 32 L. T. 570 ; The Vesta (1882), 7 P. D. 240 ; The Bristol City, [1902] P. 10 ; The Cayo Bonito, [1903] P. 203."

40. *Citations :*—Add after the words "on another point" "*sub nom.* THE ARGOS (CARGO EX), GAUDET *v.* BROWN, THE HEWSONS, GEIPEL *v.* CORNFORTH."

Annotations :—For "For full anns., *see* SHIPPING & NAVIGATION" read "**Mentd.** Purkis *v.* Flower (1873), 43 L. J. Q. B. 33 ; Flower *v.* Bradley (1874), 44 L. J. Ex. 1 ; G. N. Ry. *v.* Swaffield (1874), L. R. 9 Exch. 132 ; Gunnestad *v.* Price, Fullmore *v.* Wait (1875), L. R. 10 Exch. 65 ; The Alina (1880), 5 Ex. D. 227 ; Allen *v.* Garbutt (1880), 6 Q. B. D. 165 ; The Rona (1882), 7 P. D. 247 ; R. *v.* Southend County Court Judge (1884), 13 Q. B. D. 142 ; The County of Durham, [1891] P. 1 ; R. *v.* City of London Court Judge, [1892] 1 Q. B. 273 ; The Theodora, [1897] P. 279 ; Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470."

41. *Add. Annotations :*—**Refd.** Ellerman Lines *v.* Grayson, [1919] 2 K. B. 514 ; Admiralty Comrs. *v.* S.S. Volute, [1922] 1 A. C. 129 ; Dew *v.* United British S.S. Co. (1928), 98 L. J. K. B. 88 ; Service *v.* Sundell (1929), 45 T. L. R. 569 ; The Eurymedon, [1938] P. 41.

46. *Add. Annotation :*—**Refd.** The Fagernes, [1926] P. 185.

59. *Add. Annotation :*—**Refd.** The Beldis, [1936] P. 51.

65. *Add. Annotations :*—**N.F.** The Beldis, [1936] P. 51. **Refd.** The Minerva (1933), 49 T. L. R. 563.

66. *Add. Annotations :*—**Refd.** The Llandovery Castle, [1920] P. 119 ; The Jupiter, [1924] P. 236.

66a. —— ——.]—An action *in rem* was brought in a county ct. having Admiralty jurisdiction by pltfs. against defts. the owners of the Norwegian S.S. *Beldis*, for £27 4*s.* 6*d.* payable by defts. to pltfs. under an arbitrator's award in respect of overpayment of chartered freight. The arbn. was held by virtue of a clause in a charterparty relating, not to the *Beldis*, but to the S.S. *Belfri*, another ship belonging to defts. Defts. failed to appear & judgment was entered against them by default. Thereupon the present applts., who held a mtge. on the *Beldis*, intervened, & by agreement an issue was submitted to the county ct. judge as to "whether pltfs.' action *in rem* against the S.S. *Beldis* is maintainable in view of the fact that pltfs.' claim in this action arose out of a charterparty of the

PART I. SECT. 4, SUB-SECT. 1.

sa. *Equitable jurisdiction.*]—M. obtained judgment for wages, etc., against the *A.*, the owners having made default to appear. D. & Co., the owners of the cargo, intervened. The vessel was duly seized, sold at auction by the sheriff, & purchased by D. & Co., who made the necessary deposit. Money had been wired by applt. to discharge pltf.'s claim, but arrived too late to stop the sale. D. & Co. afterwards tendered the balance of the price, which was refused on account of an application to set aside the sale, & to redeem the vessel. D. & Co., on purchasing the vessel, made arrangements for repairs thereto, & at the time the application was originally made, they were negotiating for the sale thereof. The application was refused : —*Held :* while the Admlty. Ct. exercised an unquestionable equitable jurisdiction, inasmuch as applt. had failed to show a superior equity to those arising in favour of the purchasers, the order refusing the application should not be interfered with.—MCBRIDE *v.* DARRELL (1920), 20 Exch. C. R. 274.—**CAN.**

PART I. SECT. 5.

sb. *Action in rem—Tort committed by master—Recovery of damages.*]—No maritime lien attaches in the case of an assault by the captain on a seaman on board ship, & an action *in rem* does not lie against the vessel to recover damages due to such assault. —LOUPIDES *v.* THE SCHOONER CALIMERIS (1921), 69 D. L. R. 138 ; 20 Exch. C. R. 331.—**CAN.**

sc.—— —— ——.]—If a tort is committed within the jurisdiction of the ct. by the master of a ship, being a *peregrinus*, against a member of his crew, also a *peregrinus*, the ct. has jurisdiction to arrest the tortfeasor or his goods, & to try an action based upon the tort ; but the commission of such a tort is not a ground for attaching the ship to found jurisdiction unless the master has an interest in the ship.—NOLAN *v.* S.S. RUSSEL HAVERSIDE, [1921] C. P. D. 136.—**S. AF.**

sd. —— *Master's claim for damages —& interest on wages in arrear— Whether enforceable by action in rem.*]—A British ship was attached to satisfy various creditors *in rem*, including the master of the vessel. She was subsequently sold, any liens of the creditors being transferred to the proceeds. The master's claim included damages against the owners for wrongful dismissal calculated from a date subsequent to the sale :—*Held :* (1) the master was entitled to damages *pari passu* with his claim for wages, which he could enforce by an action *in rem ;* (2) the master was not entitled to claim *in rem* for interest upon arrear wages.—*Re* GWYDYR CASTLE (1920), 41 N. L. R. 231.—**S. AF.**

S.S. *Belfri* belonging to the same owners." The county ct. judge decided in favour of pltfs. upon a dictum of the Ct. of Appeal in regard to procedure *in rem* in *The Henrich Björn*, No. 65, that "the arrest need not be of the ship in question, but may be of any property of deft. within the realm." The interveners appealed. On appeal, the ct. raised the question whether, apart from the point for decision in the agreed issue, the issue itself was not based on a misconception, as it asserted that pltfs.' action arose out of a charterparty, whereas it appeared to be based upon an award. By County Cts. Admlty. Jurisdiction Amendment Act, 1869 (c. 51), s. 2 (1), any county ct. appointed to have Admlty. jurisdiction "shall have jurisdiction . . . to try . . . any claim arising out of any agreement made in relation to the use or hire of any ship . . ." :—*Held :* (1) the cause of action alleged was an ordinary common law claim for payment of money under an award & was not within the jurisdiction conferred by the Act of 1869; but (in case the ct.'s interpretation of the words "arising out of any agreement," etc., should be held by the House of Lords to be wrong); (2) the dictum in *The Henrich Björn* was *obiter*, was not therefore binding, and was erroneous; the procedure *in rem* either in the Admlty. Ct. or in the county ct. does not permit the arrest of a ship or other property of a deft. unconnected with the cause of action; & on both grounds the appeal must be allowed.—THE BELDIS, [1936] P. 51; 106 L. J. P. 22; 154 L. T. 680; 52 T. L. R. 195; 18 Asp. M. L. C. 598, C. A.

70. *Add. Annotations :*—**Consd.** The St. George, [1926] P. 217. **Refd.** The Tervaete, [1922] P. 259; The Colorado, [1923] P. 102; The Sylvan Arrow, [1923] P. 220; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

82a. ——.]—THE TUBANTIA, No. 594a, *post*.

87a. ——.]—*Held :* barges, fitted with rudders & not propelled by oars, were "ships" within M. S. Act, 1894 (c. 60), ss. 503, 742.—THE HARLOW, [1922] P. 175; 91 L. J. P. 119; 126 L. T. 763; 38 T. L. R. 375; 15 Asp. M. L. C. 498.

Annotations :—**Consd.** Merchants' Marine Insce. *v.* North of England Protecting & Indemnity Assocn. (1926), 42 T. L. R. 724; The Champion, [1934] P. 1.

89. *Add. Annotations :—As to* (1) **Apld.** The Harlow, [1922] P. 175. **Distd.** Merchants' Marine Insce. *v.* North of England Protecting & Indemnity Assocn. (1926), 42 T. L. R. 724. **Consd.** The Champion, [1934] P. 1.

115. *Add. Annotation :*—**Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

125. *Add. Annotations :*—**Refd.** The Fagernes, [1926] P. 185; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

126. *Add. Annotation :*—**Refd.** The Fagernes, [1926] P. 185.

130. *Add. Annotations :*—**Apld.** The Porto Alexandre (1919), 89 L. J. P. 97. **Refd.** Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485.

130a. Yacht authorised to fly White Ensign.]—By the Dockyard Port of Dover Order in Council of June 10, 1912, Sched. 1, reg. 9, all vessels other than His Majesty's ships are forbidden to use the eastern entrance to the Admlty. Harbour between one hour after sunset & one hour before sunrise, without the special authority of the King's Harbour Master. While using the entrance during the prohibited hours without the authority of the King's Harbour Master pltf.'s yacht ran upon a wreck, which was said to have been unlighted at the time :—*Held :* the fact that a yacht of the Royal Yacht Squadron is authorised to fly the White Ensign does not confer upon her the status of one of His Majesty's ships within reg. 9.—H.M.S. GLATTON, [1923] P. 215; 93 L. J. P. 12; 39 T. L. R. 690.

131. *Add. Annotations :*—**Apld.** The Crimdon (1918), 35 T. L. R. 81. **Consd.** Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485. **Refd.** The Gagara, [1919] P. 95; The Porto Alexandre (1919), 89 L. J. P. 97; The Tervaete, [1922] P. 197; France Fenwick *v.* R. (1926), 43 T. L. R. 18.

131a. ——.]—A privately owned vessel used by a sovereign State for public purposes is immune from arrest in a collision action.—THE CRIMDON (1918), 35 T. L. R. 81.

Annotations :—**Consd.** The Porto Alexandre (1919), 89 L. J. P. 97. **Refd.** Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485.

134. *Add. Annotation :*—**Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

135. *Add. Annotation :*—**Refd.** The Tervaete, [1922] P. 197.

140. *Add. Annotations :*—**Apld.** The Crimdon, (1918), 35 T. L. R. 81; The Gagara, [1919] P. 95. **Folld.** The Porto Alexandre, [1920] P. 30. **Apld.** The Tervaete, [1922] P. 259. **Consd.** Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485. **Refd.** Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; The Jupiter (1923), 93 L. J. P. 156; The Sylvan Arrow, [1923] P. 220; *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; The Jupiter (No. 3) (1927), 137 L. T. 333; Engelke *v.* Musmann, [1928] A. C. 433; The Kafiristan, [1937] P. 63; Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 384.

141. *Add. Annotations :*—**Refd.** The Crimdon (1918), 35 T. L. R. 81; The Porto Alexandre (1919), 89 L. J. P. 97.

141a. ——.]—THE CRIMDON, No. 131a, *ante*.

141b. —— **Government not formally recognised.**]—Pltfs., Esthonian subjects, the owners of two

---

PART I. SECT. 6, SUB-SECT. 1.—B. (b).

82 i. *Torts committed on high seas.*]—The Exch. Ct. of Canada in Admlty. has jurisdiction to entertain an action against a ship arrested in Canadian waters for a tort committed on the high seas.—COMMERCIAL PACIFIC CABLE CO. *v.* THE PRINCE ALBERT (B.C.), [1926] 4 D. L. R. 543; [1926] 3 W. W. R. 309.—CAN.

PART I. SECT. 6, SUB-SECT. 1.—C.

sf. *Vessel built for show.*]—A vessel built for show & not for transportation is a "ship" within admlty. law & is subject to seizure for towage.—NEVILLE CANNERIES, LTD. *v.* SANTA MARIA (1917), 16 Exch. C. R. 481; 36 D. L. R. 619.—CAN.

sg. *Conservatory attachment of barge—Concurrent jurisdictions of Superior Court & Admiralty Court.*]—GIRARD *v.* GARIEPY (1916), Q. R. 49 S. C. 284.—CAN.

PART I. SECT. 6, SUB-SECT. 3.—B.

141 i. *Ship requisitioned by foreign Government.*]—*Held :* not liable to arrest.—THE EOLO, [1918] 2 I. R. 78.—IR.

sailing vessels, with the approval & support of the Esthonian Govt., issued writs *in rem* claiming possession of the vessels, which had been requisitioned or sequestered by the Provisional Govt. of Northern Russia, & by them hired to a partnership assocn. for the purposes of trading, subject to the control of the director of naval transports. The Provisional Govt. entered appearances under protest, & motions were set down to set aside the writs & all subsequent proceedings on the grounds (*inter alia*) that the vessels were in the service of the Provisional Govt. & therefore immune from arrest; & that the dispute was between foreigners as to the possession of foreign ships, & therefore that, even if the ct. had jurisdiction, it should decline to exercise it. The judge invited the assistance of the Foreign Office as to the status of the Provisional Govt. of Northern Russia, & was informed by the Secretary of State for Foreign Affairs that, while the Allied Powers were co-operating with the Provisional Govt. in the opposition which that Govt. was making to the forces of the Russian Soviet Govt., the Provisional Govt. had not been " formally recognised either by H.M. Govt. or by the Allied Powers as the Govt. of a sovereign independent State :— *Held :* (1) although under the control of an official of the Provisional Govt. the vessels were not in the possession or service of the Govt.; (2) even under the older decisions, the ct. in its discretion would entertain a possession suit between foreigners if the representative of the foreign State to which the vessel belonged requested the intervention of the ct.—THE ANNETTE, THE DORA, [1919] P. 105; 88 L. J. P. 107; 35 T. L. R. 288.

Annotations :—As to (1) **Refd.** Compania Naviera Vascongada *v.* Cristina S.S., [1937] 4 All E. R. 313. *As to* (2) **Refd.** The Jupiter, [1924] P. 236; The Jupiter (No. 2), [1925] P. 69.

141c. —— Trading.]—A vessel owned or requisitioned by a sovereign independent State & earning freight for the State, is not deprived of the privilege, decreed by international comity, of immunity from the process of arrest, by reason of the fact that she is being employed in ordinary trading voyages carrying cargoes for private individuals.—THE PORTO ALEXANDRE, [1920] P. 30; 89 L. J. P. 97; 122 L. T. 661; 36 T. L. R. 66; 15 Asp. M. L. C. 1, C. A.

Annotations :—**Dbtd.** Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485. **Refd.** The Tervaete, [1922] P. 259; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

141d. ——.]—While under requisition by, & manned & operated by, the United States Govt., defts.' steamship was in collision with & did damage to pltfs.' steamship. After the vessel had been released from requisition pltfs. commenced an action *in rem* for their collision damage. In that action defts. pleaded (*inter alia*) that " at the time when the collision is alleged to have taken place the *Sylvan Arrow* was under requisition by & under the sole control & management of the Govt. of the United States & was being navigated by persons who were the servants of the Govt. & for whose negligence defts. were & are in no wise responsible. . . . Defts. say that the action is not maintainable *in rem* by reason of the facts set out " above. On the hearing of this question as a preliminary point of law :—*Held :* defts. had surrendered their vessel to the United States Govt. under compulsion; in no sense could it be said that the master & crew derived their authority from defts., & in the circumstances no maritime lien attached to the vessel by reason of the collision, & her owners were not, either through their vessel or otherwise, liable to pltfs.—THE SYLVAN ARROW, [1923] P. 220; 92 L. J. P. 119; 130 L. T. 157; 39 T. L. R. 655; 16 Asp. M. L. C. 244.

141e. ——.]—A ship, called the *C.*, belonging to applts., a Spanish co., & registered at the port of Bilbao, was lying in the port of Cardiff. Shortly before her arrival there, but after she had left Spain, a decree was made by the Spanish Govt. requisitioning all vessels registered at the port of Bilbao, & in view of this, & acting on the instructions of the Spanish Govt., the Spanish consul at Cardiff went on board the *C.*, stated that she had been requisitioned, dismissed the master & put a new master in charge. Thereupon applts. issued a writ *in rem* claiming possession of the *C.* as their property. The Spanish Govt. entered a conditional appearance, & gave notice of motion for an order that the writ should be set aside inasmuch as it impleaded a foreign sovereign State :— *Held :* the cts. of this country will not allow the arrest of a ship, including a trading ship, which is in the possession of, & which has been requisitioned for public purposes by, a foreign sovereign State, inasmuch as to do so would be an infraction of the rule well established in international law that a sovereign State cannot, directly or indirectly, be impleaded without its consent, &, therefore, that the writ & all subsequent proceedings must be set aside.—COMPANIA NAVIERA VASCONGADO *v.* CRISTINA S.S., [1938] A. C. 485; [1938] 1 All E. R. 719; 107 L. J. P. 1; 159 L. T. 394; *sub nom.* The Cristina, 54 T. L. R. 512; 82 Sol. Jo. 253, H. L.

Annotations :—**Consd.** The Arantzazu Mendi, [1938] 3 All E. R. 333; Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 384.

141f. —— De facto government.]—A Spanish ship registered at Bilbao, after that port had been captured by General Franco's forces, was requisitioned by the Republican Govt. The vessel was not then in Spanish territorial waters. Subsequently, when in the Surrey Commercial Docks, she was requisitioned by the Nationalist Govt., & the managing director of the owners made a declaration that he held the vessel at the disposal of the Nationalist Govt. Thereupon, the Republican Govt. issued a writ *in rem* claiming possession of the vessel & served a warrant of arrest on her. The Nationalist Govt. entered an appearance under protest & moved to set aside the writ & arrest on the ground that the action impleaded a foreign sovereign state, namely, the Nationalist Govt. of Spain. The Foreign Office stated that no other govt. except the Govt. of the Spanish Republic was recognised by His Majesty's Govt. as the *de jure* Govt. of Spain, but that His Majesty's Govt. recognised the Nationalist Govt. as a govt. which exercised *de facto* administrative control over the larger

portion of Spain, & that the Nationalist Govt. was not a govt. subordinate to any other govt. in Spain :—*Held :* the Nationalist Govt. of Spain in law was for the purposes of the present case a foreign sovereign state, & the writ & warrant of arrest must be set aside.—THE ARANTZAZU MENDI, [1938] P. 233 ; [1938] 3 All E. R. 333 ; 107 L. J. P. 128 ; 159 L. T. 495 ; 54 T. L. R. 981 ; *affd.*, [1938] 4 All E. R. 267, C. A.

142. *Add. Annotations :*—**Refd.** The Porto Alexandre (1919), 89 L. J. P. 97 ; Companía Mercantil Argentina *v.* United States Shipping Board (1924), 92 L. J. K. B. 816 ; The Beldis, [1936] P. 51.

142a. —— ——.]—THE PORTO ALEXANDRE, No. 141c, *ante.*

142b. ——.]—On a motion to set aside a writ *in rem* claiming possession of a vessel in the possession of the Esthonian Govt. the ct. invited the assistance of the Foreign Office as to the status of the Esthonian National Council. The A.-G. on behalf of the Foreign Office stated that His Majesty's Govt. had, for the time being, & with all necessary reservations as to the future, recognised the Esthonian National Council as a *de facto* independent body & had received an informal diplomatic representative of the Provisional Govt. :—*Held :* to permit the arrest of the vessel would be contrary to principles of international comity, as it would compel the Esthonian Govt., whose sovereignty was entitled to be respected, to submit to the jurisdiction of the British cts. ; & the writ & all subsequent proceedings must be set aside.—THE GAGARA, [1919] P. 95 ; 88 L. J. P. 101 ; 122 L. T. 498 ; 35 T. L. R. 259 ; 63 Sol. Jo. 301 ; 14 Asp. M. L. C. 547, C. A.

Annotations :—**Folld.** The Jupiter, [1924] P. 236. **Consd.** The Arantzazu Mendi, [1938] 3 All E. R. 333. **Apld.** Companía Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485. **Refd.** The Annette, The Dora, [1919] P. 105.

142c. —— **Subsequent sale to private owner.**]—Damage occasioned by collision with a foreign state-owned vessel does not impose a maritime lien upon the vessel, & if the vessel be subsequently sold into private ownership she is not then liable to arrest in an action *in rem.*—THE TERVAETE, [1922] P. 259 ; 91 L. J. P. 213 ; 128 L. T. 176 ; 38 T. L. R. 825 ; 67 Sol. Jo. 98 ; 16 Asp. M. L. C. 48, C. A.

Annotations :—**Refd.** The Colorado, [1923] P. 102 ; The Meandros, [1925] P. 61 ; The Stream Fisher, [1927] P. 73.

142d. ——.]—Pltfs., a foreign co., issued a writ *in rem* claiming possession of the steamship *J.* The writ was directed against "the steamship *J.* & all persons claiming any right or interest in the said steamship." The Union of Socialist Soviet Republics entered an appearance under protest & moved to set the writ aside on the ground that the ship was the property of the Union, a recognised independent sovereign State :—*Held :* the issue of a writ *in rem* against a vessel in which a foreign sovereign State claimed an interest was in effect impleading the sovereign State, &, although the right of the sovereign State to possession of the vessel was in dispute, the ct. could not investigate the facts, & the writ must be set aside.—THE JUPITER, [1924] P. 236 ; 93 L. J. P. 156 ; 132 L. T. 624 ; 40 T. L. R. 815 ; 16 Asp. M. L. C. 447, C. A.

Annotation :—**Apld.** Companía Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485.

143a. Vessel alleged to belong to foreign Government under decree of nationalisation.]—THE JUPITER (No. 2), No. 171a, *post.*

144. *Add. Annotation :*—**Refd.** Companía Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485.

147. *Add. Annotations :—As to* (1) **Apld.** The Meandros, [1925] P. 61. **Consd.** The Castor (1932), 48 T. L. R. 604. **Refd.** Admiralty Comrs. *v.* Valverda Owners, [1938] A. C. 173.

147a. —— **Owners liable though possession of vessel transferred—Ship requisitioned.**]—A Greek steamship owned by defts., a Greek co., was requisitioned by the Greek Govt. during the war in 1922 between Greece & Turkey. Under the terms of requisition the possession or control of the vessel passed to the Greek Govt., & the master & crew ceased to be employed by defts. & were conscripted into the Greek forces. At the end of the period of requisition the vessel had to be returned to defts. in the same condition as at the beginning of the period. While under requisition the vessel stranded, & was saved from possible total loss by the services of pltfs.' salvage ship. After the vessel had been returned to her owners she was arrested by pltfs. in an action *in rem :—Held :* the terms of requisition did not dispossess defts. of their property in the vessel ; the services were of benefit to defts., as thereby they had their vessel instead of merely a claim against the Greek Govt. ; as the services were not those of the crew of the Greek vessel, it was immaterial that the crew were the servants of the Greek Govt., & defts. were liable to pltfs. for salvage.—THE MEANDROS, [1925] P. 61 ; 94 L. J. P. 37 ; 132 L. T. 750 ; 41 T. L. R. 236 ; 16 Asp. M. L. C. 476.

Annotation :—**Refd.** France Fenwick *v.* R., [1927] 1 K. B. 458.

149. *Add. Annotation :—As to* (1) & (2) **Apld.** The Meandros, [1925] P. 61.

150. *Add. Annotation :*—**Refd.** The Sylvan Arrow, [1923] P. 220.

159. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* Valverda Owners, [1937] 1 K. B. 745.

142i. *Vessel of foreign Sovereign—Trading.*]—The *I.* was the property of the Govt. of Indo-China, a French possession, administered by a Governor-General for & in the name of the French Republic. Her officers & crew were in the service & pay of that Govt., & at the time of the accident she was on a voyage in the interest of the Govt. of Indo-China :—*Held :* the *I.* could not be lawfully arrested. *Semble :* a sovereign State cannot be impleaded indirectly by proceedings *in rem* against its property. That immunity from arrest of a foreign state-owned ship is not affected by the vessel being used for trading purposes & as a cargo carrier, nor does it matter how the vessel is being employed.—BROWN, JR. *v.* S.S. INDO-CHINE (1921), 21 Exch. C. R. 406.—**CAN.**

Part II.—Jurisdiction in Particular Cases.

170. *Add. Annotation :*—**Refd.** The Annette, The Dora, [1919] P. 105.

170a. —— ——.]—THE ANNETTE, THE DORA, No. 141b, *ante.*

171. *Add. Annotation :*—**Refd.** The Annette, The Dora, [1919] P. 105.

171a. —— ——.]—By a contract of sale made in London, an English co. on behalf of the Soviet Govt. purported to sell the *J.* to defts., an Italian co. The vessel had belonged to a Russian co., but the Soviet Govt. asserted that by a decree of nationalisation all vessels of the Russian mercantile marine had become State property, & that the co. had ceased to exist. The Russian co. had moved its business to France, & an action *in rem* was brought in its French name, & in the name of the persons appointed by the French cts. to administer its affairs, against "the *J.*," claiming possession. The Italian co. entered an appearance & moved to set aside the writ :—*Held :* (1) there is no established rule that the Admlty. Ct. will not entertain possession suits in respect of foreign vessels except at the request of both parties or with the consent of the accredited representative of the country to which the vessel belongs ; the matter is one for the discretion of the ct. ; (2) the proceedings did not implead the Soviet Govt. directly or indirectly ; (3) the question of authority to institute the action was a matter which should be referred to the judge at the trial ; (4) the motion to set aside the writ failed.—THE JUPITER (No. 2), [1925] P. 69 ; 94 L. J. P. 59 ; 133 L. T. 85 ; 16 Asp. M. L. C. 491, C. A.

213. *Add. Annotation :*—**Refd.** The Annette, The Dora, [1919] P. 105.

248a. ——.]—(1) The Admlty. Ct. has jurisdiction, under sect. 3 of the above Act, to take cognisance of mtge. claims relating to a ship if the ship or proceeds are under arrest of the ct. at the time when the proceedings are instituted, notwithstanding that the mtge. is not a legal mtge.

(2) A party who intervenes in, & defends, an action *in rem* cannot set up defences which the owners of the ship could not have set up had they appeared & defended.—THE BYZANTION (1922), 127 L. T. 756 ; 38 T. L. R. 744 ; 16 Asp. M. L. C. 19.

254. *Add. Annotation :*—*As to* (2) **Consd.** The Lord Strathcona, [1925] P. 143.

254a. —— **Right of charterer—To dispute validity of mortgage.**]—Pltfs. were mtgees. of a vessel which had been chartered by her owners, the mtgors., for a succession of seasons with options for a renewal which did not expire until 1932. Pltfs. brought an action *in rem* against the shipowners, claiming judgment for the validity of the mtges. & an order for sale of the vessel by the marshal. No appearance was entered by defts. & judgment was given condemning the vessel & ordering her sale. Thereupon the charterers intervened & claimed (a) a declaration that the charterparty was binding on the mtgees., who had notice of its existence when the mtges. were executed, & (b) an injunction to restrain pltfs. from exercising their right to an order for sale of the vessel except subject to the terms of the charterparty. The interveners also alleged that the mtges. were invalid :—*Held :* the interveners had no *locus standi* to dispute the validity of the mtges., but were only entitled to be heard on the question whether pltfs. ought to be restrained from exercising their rights in such a way as to interfere with the interveners' contractual rights under the charterparty.—THE LORD STRATHCONA, [1925] P. 143 ; 95 L. J. P. 5 ; 133 L. T. 765 ; 41 T. L. R. 638 ; 69 Sol. Jo. 762 ; 16 Asp. M. L. C. 536.

262. *Add. Annotation :*—**Refd.** The St. George, [1926] P. 217.

267. *Add. Annotation :*—**Refd.** The James W. Elwell, [1921] P. 351.

269. *Add. Annotation :*—**Consd.** The St. George, [1926] P. 217.

276. *Add. Annotation :*—**Refd.** The James W. Elwell, [1921] P. 351.

277. *Add. Annotation :*—**Refd.** The St. George, [1926] P. 217.

278. *Add. Annotation :*—**Refd.** The James W. Elwell, [1921] P. 351.

283. *Add. Annotation :*—**Refd.** The James W. Elwell, [1921] P. 351.

286. *Add. Annotation :*—**Refd.** The James W. Elwell, [1921] P. 351.

288. *Add. Annotation :*—**Refd.** The James W. Elwell, [1921] P. 351.

289. *Add. Annotation :*—**Refd.** The St. George, [1926] P. 217.

291. *Add. Annotation : — Generally,* **Refd.** The St. George, [1926] P. 217.

300. *Add. Annotation :*—**Refd.** The St. George, [1926] P. 217.

304. *Add. Citation :*—166 E. R. 973 ; *on appeal* (1851), 8 Moo. P. C. C. 459, P. C.

Add. Annotations :—**Folld.** The Hamburg (1864), 2 Moo. P. C. C. N. S. 289. **Consd.** The Gaetano & Maria (1881), 7 P. D. 1. **Refd.** Segredo (otherwise Eliza Cornish) (1853), 1 Ecc. & Ad. 36 ; The Rajah of Cochin (1859), Sw. 473 ; Lloyd *v.* Guibert (1865), L. R. 1 Q. B. 115 ; The St. George, [1926] P. 217.

PART II. SECT. 1, SUB-SECT. 2.

182 i. *Wrongdoer.*]—Where a ship has been wrongfully seized by her crew the ct. will order the marshal to deliver possession of it to the owner upon giving security.—PACIFIC GREAT EASTERN RY. CO. *v.* THE CLINTON (1918), 21 Exch. C. R. 169 ; 27 B. C. R. 400 ; [1919] 1 W. W. R. 947.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—A.

250 i. *Admiralty Court Act,* 1861 (c. 10)—*Mortgage registered abroad.*]—Action *in rem,* to recover the balance due on a deed of mtge., executed at Buffalo & registered there according to the law & regulations of the State of New York. The ship was arrested & released on bail. Defts. moved for an order to set aside the writ of summons, etc., for want of jurisdiction. On the hearing F. moved to amend, which amendment was in substance an allegation that defts. undertook to have the ship placed under Canadian register & to mtge. the ship, which he failed to do. The ship was not under arrest or seizure at the time of the institution of the action :—*Held :* (1) the ct. was without jurisdiction to entertain the claim ; (2) the amendment could not be allowed.—FINNIGAN *v.* S.S. NORTHWEST (1920), 20 Exch. C. R. 180.—CAN.

315. *Add. Annotations:*—**Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604; Broken Hill Proprietary Co. *v.* Latham (1932), 49 T. L. R. 137; Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171; The Njegos, [1936] P. 90; R. *v.* International Trustee for Protection of Bondholders Akt., [1937] A. C. 500.

322. *Add. Annotation:*—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

328a. —— —— **Default of appearance.**]—A firm of ship repairers commenced an action *in rem* against the owners of a vessel which they had repaired. It appeared from the statement of claim that the ship was registered in an English port. No appearance was entered:—*Held:* it not being shown to the satisfaction of the ct. that at the time of the institution of the cause any owner or part owner of the ship was domiciled in England or Wales, the ct. would not refuse jurisdiction under sect. 5 of the above Act.—THE MAGGIE A. (1922), 128 L. T. 480; 16 Asp. M. L. C. 117.

329. *Add. Annotation:*—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

331. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

334. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

335. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

336. *Add. Citation: — sub nom.* THE WEST FRIESLAND, Sw. 456, P. C.

Add. Annotations:—**Refd.** Laws *v.* Smith, The Rio Tinto (1884), 9 App. Cas. 556; Northcote *v.* Henrich Bjorn, The Henrich Bjorn (1886), 11 App. Cas. 270; The Mogileff, [1921] P. 236.

337. *Add. Annotation: — As to* (5) **Refd.** The Mogileff, [1921] P. 236.

338. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

338a. —— —— ——.]—THE MOGILEFF, No. 352c, *post.*

343. *Add. Annotations:*—**Consd.** The Minerva (1933), 49 T. L. R. 563. **Refd.** The Mogileff, [1921] P. 236; The Ambatielos, The Cephalonia, [1923] P. 68.

346. *Add. Annotations:*—**Refd.** The Colorado, [1923] P. 102; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

347. *Add. Annotations:*—**Consd.** The British Trade, [1924] P. 104; The Minerva (1933), 49 T. L. R. 563.

352. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

352a. —— —— ——.]—The agent for a foreign ship, being also part owner, may recover against the ship for necessaries supplied.—THE WEST FRIESLAND (1859), Sw. 454; 5 Jur. N. S. 658; 166 E. R. 1213; *on appeal* (1860), Sw. 456, P. C.

Annotations:—**Apld.** The Underwriter (1868), 25 L. T. 279. **Consd.** Laws *v.* Smith, The Rio Tinto (1884), 9 App. Cas. 356. **Dbtd.** Northcote *v.* The Henrich Björn, The Henrich Björn (1886), 11 App. Cas. 270. **Consd.** The Mogileff, [1921] P. 236. **Refd.** The Riga (1872), L. R. 3 A. & E. 516; The El Salto (1908), 25 T. L. R. 99; Foong Tai *v.* Buchheister, [1908] A. C. 458; The Stream Fisher, [1927] P. 73.

352b. —— ——.]—A person who has made advances in order to supply necessaries to a ship on the credit of the ship may sue *in rem* to recover those advances, although the *res* may belong to a person or persons who are not liable *in personam* as debtor or debtors for the sum so sought to be recovered.

An agent may sue for necessaries supplied under Admlty. Ct. Act, 1861 (c. 10), s. 5, & does not lose his right so to sue by giving credit in the account furnished to his principal for sums received.—FOONG TAI & CO. *v.* BUCHHEISTER & CO., [1908] A. C. 458; 78 L. J. P. C. 31; 99 L. T. 526; 11 Asp. M. L. C. 122, P. C.

Annotations:—**Consd.** The Mogileff, [1921] P. 236. **Refd.** El Salto (1908), 25 T. L. R. 99.

PART II. SECT. 5, SUB-SECT. 1.—A.

327 i a. —— ——.]—A vessel was seized by a mtgee. when it was being repaired by pltf. in pltf.'s yard. Pltf. brought action in the Admlty. Ct. claiming a lien for repairs done at the time the vessel was in possession & repairs previously executed on her last trip:—*Held:* the ct. had no jurisdiction to entertain the action, as the vessel was not "under arrest" at the time the writ was issued.—MARTIN *v.* THE SEA FOAM (1921), 68 D. L. R. 750; 30 B. C. R. 398; [1922] 2 W. W. R. 1181.—**CAN.**

327 i b. —— ——.]—THE PACIFICO *v.* WINSLOW MARINE RAILWAY & SHIPBUILDING CO., [1925] 2 D. L. R. 162; [1925] Exch. C. R. 32; *affg.* S. C. *sub nom.* WINSLOW MARINE RY. & SHIPBUILDING CO. *v.* THE PACIFICO, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; [1924] 1 W. W. R. 930; 34 B. C. R. 1.—**CAN.**

327 i c. —— ——.]—STACK *v.* THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—**CAN.**

327 iii. —— ——.]—*Held:* work done in making alterations in & addition to the pilot-house, rig, spars, sails, tanks, etc., of a gasoline boat necessitated by her intended new employment in outside waters, was for the "building" or "equipping" of a ship within s. 4 of the above Act.—ERIKSEN BROTHERS *v.* THE MAPLE LEAF, [1923] 4 D. L. R. 1201; [1923] Exch. C. R. 39; 31 B. C. R. 443; [1923] 1 W. W. R. 76.—**CAN.**

327 iv. —— "*Building*" *any ship.*]—ERIKSEN BROTHERS *v.* THE MAPLE LEAF, No. 327 iii., *ante.*—**CAN.**

329 ii. —— —— *Ship on colonial register—Actual owner foreigner.*]—The *C.* was registered at Vancouver, B.C., & was owned by a co., having its head office at the same port. The co. was practically A., who was domiciled in San Francisco, U.S.A., being the owner of 995 shares of a total of 1,000 shares, capital stock of the co. In an action for the price of necessaries:—*Held:* as the home port of the *C.* was really San Francisco where the true owner was domiciled, she was a foreign vessel, & the ct. had jurisdiction.—HALEY *v.* S.S. COMOX, [1920] 3 W. W. R. 325; 20 Exch. C. R. 86.—**CAN.**

a i. —— ——.]—Pltf. claimed $1,562.99 for work done & materials furnished for the *S.* while at Amos, P.Q. The vessel was arrested, & J., of Amos, who had an interest therein under an agreement to purchase, filed an appearance under reserve. The vessel was registered at the Port of Montreal, & at the date of institution of the action the registered owner was S., of Smiths Falls, Ont. The vessel was not under arrest of the ct. at the time of the institution of the cause:—*Held:* the ct. had no jurisdiction to entertain the claim.—CIE DES BOIS-DU NORD *v.* S.S. ST. LOUIS (1920), 20 Exch. C. R. 232.—**CAN.**

a ii. —— —— *Ship under arrest.*]—THE PACIFICO *v.* WINSLOW MARINE RAILWAY & SHIPBUILDING CO., [1925] 2 D. L. R. 162; [1925] Exch. C. R. 32; *affg.*, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; [1924] 1 W. W. R. 930; 34 B. C. R. 1.—**CAN.**

a iii. —— ——.]—*Held:* the ship not being a foreign vessel & its owner being domiciled in Canada, the ct. had no jurisdiction on a claim for necessaries.—PITTSBURG COAL CO. *v.* S.S. BELCHERS, [1926] Exch. C. R. 24.—**CAN.**

PART II, SECT. 5. SUB-SECT. 1.—B.

343 i. *No maritime lien.*]—A claim for the supply of necessaries to a ship does not constitute a maritime lien thereon.—CIE DES BOIS DU NORD *v.* S.S. ST. LOUIS (1920), 20 Exch. C. R. 232.—**CAN.**

348 i. *Maritime lien — Created by foreign law—Whether enforceable in Exchequer Court of Canada.*]—PITTSBURG COAL CO. *v.* S.S. BELCHERS, [1926] Exch. C. R. 24.—**CAN.**

348 ii. —— —— ——.]—STRANDHILL *v.* WALTER W. HODDER CO., [1926] 4 D. L. R. 801.—**CAN.**

348 iii. —— —— ——.]—BAKER, CARVER & MORELL INC. *v.* ASTORIA, [1927] 4 D. L. R. 1022.—**CAN.**

352c. —— ——.]—*Primâ facie*, persons who have advanced money for necessaries on behalf of a foreign ship are entitled to sue *in rem*; &, although it may be inferred from the course of business between the principal & agent that the agent has agreed to look to the personal liability of the principal, & that the advances must be treated as items of a mercantile account to be adjusted in accordance with the terms of the agency agreement between the parties, the mere fact that pltfs. are the shipowners' regular agents does not deprive them of their rights *in rem* under Admlty. Ct. Acts, 1840 (c. 65), & 1861 (c. 10). The test to apply in each case is whether at the date of the suit pltf. could maintain an independent action in *assumpsit* in the subject-matter of the claim.—THE MOGILEFF, [1921] P. 236; 90 L. J. P. 329; 37 T. L. R. 549; 65 Sol. Jo. 581.

Annotation:—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

368a. Wrongful dismissal.]—(1) A shipmaster or seaman suing under Admlty. Ct. Act, 1861 (c. 10), on a special contract of service has no maritime lien in respect of damages for wrongful dismissal, inasmuch as such a suit could not have been brought under the ancient jurisdiction of the High Ct. of Admlty.

(2) *Semble:* the maritime lien which a seaman suing under the ordinary mariner's contract has in respect of wages is not limited to the wages earned while actually on board the ship, but extends to wages due after a wrongful determination of the contract of service.—THE BRITISH TRADE, [1924] P. 104; 93 L. J. P. 33; 130 L. T. 827; 40 T. L. R. 292; 16 Asp. M. L. C. 296.

398. *Add. Annotation:*—**Refd.** *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

401. *Add. Annotation:*—**Refd.** The British Trade, [1924] P. 104.

415. *Add. Annotation:*—**Refd.** The British Trade, [1924] P. 104.

417a. ——.]—THE BRITISH TRADE, No. 368a, *ante*.

429. *Add. Annotation:*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

430. *Add. Annotation:*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

430a. —— **Pilotage Act, 1913 (c. 31), s. 49.**]—The High Ct. of Admlty. & its successor, the present Admlty. Div. of the High Ct., have always had jurisdiction to entertain an action *in rem* for pilotage dues, & the pilot is not restricted to his right under the above sect., of taking proceedings in a ct. of summary jurisdiction. *Qu.:* whether there is a maritime lien in respect of pilotage dues.—THE AMBATIELOS, THE CEPHALONIA, [1923] P. 68; 92 L. J. P. 45; 128 L. T. 699; 39 T. L. R. 183; 16 Asp. M. L. C. 120.

433. *Add. Annotation:*—**Refd.** The Ambatielos. The Cephalonia, [1923] P. 68.

435. *Add. Annotation:*—**Refd.** *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

437. *Add. Annotation:*—**Refd.** *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

449. *Add. Annotation:*—**Refd.** The Stream Fisher, [1927] P. 73.

459. *Add. Annotation:*—*As to* (1) **Consd.** The Colorado, [1923] P. 102.

460. *Add. Annotation:*—*As to* (1) **Refd.** The Colorado, [1923] P. 102.

468. *Add. Annotation:*—**Consd.** The Minerva (1933), 49 T. L. R. 563.

470. *Add. Annotation:*—**Refd.** The Sylvan Arrow, [1923] P. 220.

471. *Add. Annotation:*—**Refd.** The Sylvan Arrow, [1923] P. 220.

PART II. SECT. 5, SUB-SECT. 2.

357 i. *Action by default—Proof of claim—Right to proceed ex parte.*]—PAUL *v.* THE AMY TURNER, [1922] V. L. R. 740.—**AUS.**

PART II. SECT. 6.

358 i. *Extent of jurisdiction—Towage performed in connection with repairs—Not at owner's special request.*]—Towage performed in connection with repairs, not at the owner's special request, is not within the purview of "claims & demands for services in the nature of towage" within Admlty. Ct. Act, 1840 (c. 65), s. 6, as would give the ct. jurisdiction over the claim; neither a claim for towage nor for necessaries is the subject of a maritime lien.—STACK *v.* THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325. —**CAN.**

PART II. SECT. 7, SUB-SECT. 1.—C

386 ii. —— *Claim by master for wages & damages—Payable pari passu.*]—A British ship was attached to satisfy various creditors *in rem* including the master of the vessel. She was subsequently sold, any liens of the creditors being transferred to the proceeds. The master's claim included damages against the owners for wrongful dismissal calculated from a date subsequent to the sale:—*Held:* the master was entitled to damages *pari passu* with his claim for wages, which he could enforce by an action *in rem*.—*Re* GWYDYR CASTLE (1920), 41 N. L. R. 231.—**S. AF.**

PART II. SECT. 7, SUB-SECT 2.—A (b).

sk. *Shipping Act*, 1906, *s.* 191—*Limits of jurisdiction.*]—A seaman sued for $134:—*Held:* this being under $200, the action must be dismissed under the above sect., with costs.—OSTROM *v.* THE MIYAKO, [1924] 2 D. L. R. 200; [1924] Exch. C. R. 96; 1 W. W. R. 1098; 34 B. C. R. 4.—**CAN.**

PART II. SECT. 7, SUB-SECT. 2.—B.

sl. *Assignee of wages.*]—The maritime lien attaching to a seaman's wages is personal to the seaman & not transferable.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—**CAN.**

sm. *Person not having signed articles —Nor having lived on board.*]—*Held:* claimant not having signed the ship's articles, not having lived on board, & the sum sued for not having been earned on board, he was not a seaman.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—**CAN.**

sn. *Person voluntarily paying wages.*]—No one voluntarily paying the wages of one or more of the crew can claim a lien against the ship for the amount so paid.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—**CAN.**

PART II. SECT. 7, SUB-SECT. 3.—A.

452 iii. —— *Contract made abroad.*]—The ct. will not interfere in a dispute as to wages arising out of a contract made abroad between the master of a foreign ship & the members of his crew.—NOLAN *v.* S.S. RUSSEL HAVERSIDE, [1921] C. P. D. 136.—**S. AF.**

454 vi. —— —— ——.]—A seaman who had signed on an American ship instituted an action in Quebec against the ship for wages. No notice of the institution of the action was given by him to the United States consul, & the affidavit to lead to warrant omitted to state the national character of the ship. Deft. moved to dismiss for defects in the affidavit, & the consul filed a protest against the action being allowed to proceed:—*Held:* (1) the protest of the American consul did not deprive the ct. of its jurisdiction; (2) the ct., in proper circumstances, might exercise its discretion to decline to proceed with such an action.—ROULEAU *v.* S.S. ALEDO, [1923] Exch. C. R. 10.—**CAN.**

PART II. SECT. 7, SUB-SECT. 3.—B.

458 i. *Conflict of laws—Application of law of litigants' country.*]—Admlty. Ct. Act, 1861 (c. 10), s. 10, permits the application by the ct. of the law of the country of the litigants.—JACOBSON *v.* FORT MORGAN (1919), 19 Exch. C. R. 165; 49 D. L. R. 123.—**CAN.**

480. *Add. Annotations :—As to* (1) **Consd.** The Minerva (1933), 49 T. L. R. 563; The Champion, [1934] P. 1; The Beldis, [1936] P. 51.

481. *Add. Annotation :*—**Refd.** The Beldis, [1936] P. 51.

483. *Add. Annotations :*—**Consd.** The Rosalind (1920), 90 L. J. P. 126; The Joannis Vatis, [1922] P. 92. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127; G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; The Zelo, [1922] P. 9.

484a. —— —— **Obstruction in dock.**]—Defts.' steamship, a Norwegian vessel, while docking in the Stalbridge Dock, Garston, came into collision with & sank a barge. Pltfs., as owners of the dock, took steps to raise & remove the wreck, & by a writ *in rem* in the present action claimed to recover from defts. the expenses which they had incurred " in & about the lighting, buoying, removal, & destruction of the barge." The owners of the barge had given notice that they abandoned their vessel. On a motion by defts. to set aside the service of the writ :—*Held :* the claim was for " damage done by a ship," namely, damage done by defts.' ship to pltfs.' dock by putting an obstruction in it, within Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (1) (*a*) (iv), & was properly commenced by a writ *in rem*.—THE CHR. KNUDSEN, [1932] P. 153; 101 L. J. P. 72; 148 L. T. 60; 48 T. L. R. 619; 18 Asp. M. L. C. 347.

Annotation :—**Consd.** The Minerva (1933), 49 T. L. R. 563.

486a. Damage by part of ship—Derrick.]—After pltfs.' grain elevator, which had been used to discharge a cargo of grain from defts.' steamship *M.*, had been dismantled, & while the half of the elevator which remained on board the steamship was being hoisted, by means of the steamship's derrick & tackle, back on board pltfs.' elevator barge *New Perseverance*, the wire span of the derrick broke & the half-elevator fell on to the deck of the barge, whereby both barge and half-elevator sustained damage. Pltfs. proceeded *in rem* against the *M.* for the damage, but the Liverpool District Registrar ordered the writ in the action to be set aside & the action dismissed on the ground that there was no jurisdiction to arrest defts.' ship in the circumstances. On appeal by pltfs. :—*Held :* the operation of Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (1) (iii), was not confined to cases where the damage received by a ship was also done by a ship, with the ship as the operating cause, & pltfs. were entitled to prosecute their claim *in rem* or *in personam* as for damage received by a ship; damage done by part of a ship—*i.e.*, a derrick—was sufficient to satisfy the words of para. (iv) & pltfs. were also entitled to proceed *in rem* or *in personam* as for damage done by a ship; & the order of the District Registrar must be set aside.—THE MINERVA, [1933] P. 224; 102 L. J. P. 129; 149 L. T. 567; 49 T. L. R. 563; 18 Asp. M. L. C. 426.

489. *Add. Annotations :*—**Consd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345. **Refd.** The Stream Fisher, [1927] P. 73.

490. *Add. Annotation :—Generally*, **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

491. *Add. Annotation :*—**Refd.** G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57.

493. *Add. Annotation :*—**Consd.** The Minerva (1933), 49 T. L. R. 563.

494. *Add. Annotation :*—**Refd.** The Sylvan Arrow, [1923] P. 220.

504. *Add. Annotation :*—**Refd.** The Tervaete, [1922] P. 259.

510. *Add. Annotation :—As to* (2) **Apld.** The Goulandris, [1927] P. 182.

512. *Add. Annotation :*—**Consd.** The Minerva (1933), 49 T. L. R. 563.

518. *Add. Annotations :*—**Consd.** The Minerva (1933), 49 T. L. R. 563. **Refd.** McColl *v.* Canadian Pacific Ry., [1923] A. C. 126; The Molière (1924), 41 T. L. R. 154.

After this case add :—*See, now*, Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (2).

518a. —— —— ——.]—In a collision between Swedish & British steamships, for which both ships were held to blame, a seaman on the former vessel was drowned. Under Swedish law the Swedish shipowners paid compensation to the relatives of the seaman. At the reference to assess the collision damage the Swedish shipowners claimed to recover from the owners of the British vessel a moiety of the compensation so paid. The registrar allowed the item. On appeal :—*Held :* the decision of the registrar was wrong for apart from Maritime Conventions Act, 1911 (c. 57), the Ct. of Admlty. had no jurisdiction to entertain an action *in rem* for loss of life, & the Admlty. rules as to division of loss had no application to such a claim, & sect. 3 of that Act, which provided for contribution between the owners of wrongdoing vessels in respect of (*inter alia*) damages for loss of life or personal injuries, only applied to damages

---

PART II. SECT. 8, SUB-SECT. 1.—D.

b 1. —— *Oil pumped from ship.*]—Pltfs. were the owners of a large number of live lobsters lying in crates in the waters of the Strait of Canso, N.S., for refreshment purposes, while being transferred from Magdalene Islands, P.Q., to Gloucester, Mass. Deft. steamer ran aground in the Strait of Canso & in order to lighten the ship a large part of its cargo of oil was pumped into the waters of the strait. Pltf. claimed this was carried by the winds & tide to the resting place of the lobsters, causing damage to the lobsters, crates & connecting lines. Pltf. Outhouse also claimed for loss of freight. Deft. contended that the ct. was without jurisdiction to entertain the action : —*Held :* damage by a ship means damage done by those in charge of a ship, with the ship as the noxious instrument.—OUTHOUSE & HIMMELMAN *v.* THE THORSHAVN, [1935] Ex. C. R. 120; 4 D. L. R. 628.—**CAN.**

sc. *Removal of barge.*]—Pltfs.' barge, with no one on board, was lying at a berth next to a pier & moored to it. The crew of deft. ship removed the barge from her berth, which was then occupied by the ship, the barge being placed outside the ship in a foul berth, as a result of which the barge suffered damage. Pltf. brought an action *in rem* to recover the amount of the damage : —*Held :* the improper navigation of deft. ship carried out by her master's orders made her the instrument causing the damage to the barge, & the claim for such damage may be enforced by an action *in rem*.—LINCOLN PULPWOOD CO., LTD. *v.* THE HO CASMA, [1935] Ex. C. R. 123; 2 D. L. R. 41.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.—A.

512 v. —— ——.]—Pltf., a seaman, brought an action *in rem* for damages against a barge for bodily injuries sustained by him in an accident alleged to have been occasioned by negligence for which the ship was liable :—*Held :* the damage done was not " by " the barge, but " on " the barge, & was not such damage as gave pltf. a remedy *in rem*.—MULVEY *v.* THE BARGE NEOSHO (1919), 19 Exch. C. R. 1; 47 D. L. R. 437.—**CAN.**

recoverable by action, & not to claims for compensation arising out of some statute & independently of fault on the part of the shipowner.—THE MOLIÈRE, [1925] P. 27; 94 L. J. P. 28; 132 L. T. 733; 41 T. L. R. 154; 16 Asp. M. L. C. 470.

518b. **Application of Maritime Conventions Act, 1911 (c. 57).**]—THE MOLIÈRE, No. 518a, *ante*.

519. *Add. Annotations :—As to* (1) **Consd.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540. **Refd.** The Koursk, [1924] P. 140. *As to* (2) **Refd.** The Molière (1924), 41 T. L. R. 154. *Generally*, **Refd.** The Vectis, [1929] P. 204.

521. *Add. Citation :*—[1909] P. 176.
Add. Annotation :—As to (2) **Refd.** The Molière (1924), 41 T. L. R. 154.

523. *Add. Annotation :—As to* (2) **Refd.** The Molière (1924), 41 T. L. R. 154.

523a. —— ——.]—THE MOLIÈRE, No. 518a, *ante*.

528. *Add. Annotation :*—**Refd.** The Sheaf Brook, [1926] P. 61.

536. *Add. Annotations :—Generally*, **Refd.** Ireland *v.* Southdown S.S. Co. (1926), 136 L. T. 412; Lewis *v.* Dreyfus (1926), 31 Com. Cas. 239.

541a. —— —— —— **Indorsee of document acknowledging receipt of goods for shipment.**]—A document whereby the receipt of goods is acknowledged for shipment on board a named ship, or on some other ship for carriage by sea & delivery to the shipper's order, the document being signed on behalf of the master, is a bill of lading for the purposes of Bills of Lading Act, 1855 (c 111), & the above sect.

Parcels of goods were accepted in N. for delivery at S. to the shippers' order, there being given to each shipper a document of the above-mentioned character. Upon the named ship arriving at S. the goods were not delivered. Resps., twenty firms, each being indorsees of one of the documents, issued a joint writ *in rem* claiming severally to recover damages. The writ stated that pltfs. claimed as consignees or indorsees of bills of lading for non-delivery of goods agréed to be carried by the named ship, or agreed to be shipped within a reasonable time by some other vessel of the same line. On affidavits sworn separately by pltfs., alleging that the goods were either lost or not shipped on any other vessel within a reasonable time, the ship was arrested. The owners of the ship took out a summons to set aside the writ & all proceedings thereunder :—*Held :* (1) the documents in question were bills of lading within the above sect., & the proceedings being to set aside the writ & it not being denied that some of the goods were received on board, the action should proceed; (2) the action being *in rem* & the joinder of pltfs. convenient, the view of the full Bench of the Supreme Ct. that pltfs. could properly be joined under the rules locally applicable should not be interfered with.—MARLBOROUGH HILL, SHIP *v.* COWAN & SONS, [1921] 1 A. C. 444; 90 L. J. P. C. 87; 124 L. T. 645; 37 T. L. R. 190; 15 Asp. M. L. C. 163; 26 Com. Cas. 121, P. C.

Annotation :—As to (1) **Distd.** Diamond Alkali Export Corpn. *v.* Bourgeois, [1921] 3 K. B. 443.

546. *Add. Annotation :*—**Refd.** Marlborough Hill, Ship *v.* Cowan, [1921] 1 A. C. 444.

560. After this case add :—*See* Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), ss. 22 (1) (*a*) (xii), 33 (2).

562. *Add. Annotation :*—**Refd.** The Sheaf Brook, [1926] P. 61.

565a. **Judicature (Consolidation) Act, 1925 (c. 49), ss. 22, 58 (2)—Owner domiciled in England—Application to transfer action to King's Bench Division.**]—(1) Pltfs., as owners of cargo on board defts.' ship, brought an action *in personam* in the Admlty. Div. for damages for breach of the contract of carriage. Defts. were domiciled in England. On an application by them to transfer the cause to the King's Bench Div., the judge held that he had a discretion to retain it in the Admlty. Div. :—*Held :* s. 58 (2) of the above Act did not give the ct. discretion to retain a cause in respect of which the Act expressly provided that the Div. had no jurisdiction, & the action must be transferred to the King's Bench Div.

(2) The note to R. S. C., Ord. 49, r. 3, that the Ct. of Appeal cannot order a transfer without the consent of the presidents of both the Divs. from & to which the transfer is proposed to be made, does not apply to cases where the Ct. of Appeal has held that the one Div. has no discretion to retain the cause in that Div. In such cases the transfer is made subject only to the consent of the president of the Div. to which the cause is to be transferred (ATKIN, L.J.).—THE SHEAF BROOK, [1926] P. 61; 95 L. J. P. 113; 134 L. T. 534; 17 Asp. M. L. C. 14, C. A.

Annotation :—As to (1) **Distd.** The Eskbridge, [1931] P. 51.

571. *Add. Annotations :*—**Refd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449; The Napier Star, [1933] P. 136.

578. *Add. Annotation :*—**Refd.** The Wilhelmina, [1923] P. 112.

579a. **Ship injured in dock—Dockowners repairing ship—In dock belonging to others.**]—By the negligence of pltfs.' servants while engaged on work on a steamship in the Hornby Dock, belonging to the Mersey Docks & Harbour Board, the vessel & her cargo were damaged by fire, & pltfs. were held liable in damages. Pltfs. sought to limit their liability under M. S. Act, 1900 (c. 32), s. 2, on the ground that they were the owners of a dry dock at Garston :—*Held :* the liability being in no way connected with the fact that pltfs. were

---

PART II. SECT. 9, SUB-SECT. 1.—B.

564 i. *Admiralty Court Act*, 1861 (c. 10), s. 6—*No breach of duty—Contract with shippers imposing no obligation on ship.*]—Pltfs. agreed to purchase goods, the shippers to deliver same at an agreed point. The contract did not purport to be made by or on behalf of the ship, but by the shippers, with pltfs., who claimed damages for breach of contract for non-delivery, & at their request a warrant to arrest the ship & her cargo was issued :—*Held :* (1) pltfs. not having been shown to be "the owners, or consignees or assignees" of the bill of lading of the cargo, the ct. had no jurisdiction in the matter, & the warrant of arrest should be set aside: (2) the contract referred to in the above sect. contemplated an obligation on the part of the ship, & the contract sued on imposed no such obligation.—LAVALLEE *v.* THE ISTAR, [1923] Exch. C. R. 212.—CAN.

564 ii. —— *Goods shipped from Canadian port.*]—The jurisdiction the above sect. confers upon the ct. is clearly confined to cases of damage to goods carried by ships into a Canadian port, & does not extend to the case of goods shipped from Canada to foreign ports.—HARRIS ABATTOIR CO. *v.* ALEDO (OWNERS), [1923] 4 D. L. R. 1196; [1923] Exch. C. R. 217.—CAN.

dockowners, they were not entitled to a decree of limitation of liability.—THE CITY OF EDINBURGH, [1921] P. 274; 90 L. J. P. 304; 125 L. T. 375; 37 T. L. R. 468; 15 Asp. M. L. C. 234, C. A.

Annotations:—**Distd.** The Ruapehu (1926), 42 T. L. R. 708. **Expld.** S.S. Ruapehu *v.* Green & Silley Weir, [1927] A.C. 523.

579b. —— ——.]—Pltfs., owners of a dry dock sought to limit their liability under M. S. Act, 1900 (c. 32), s. 2, in respect of damage caused by a fire which broke out on defts.' vessel owing to the negligence of pltfs.' servants while the vessel was being repaired by them in the dry dock:—*Held:* while some limitation must be put upon the general language of the sect., which, if applied in its strict literal sense would lead to an absurdity, the limitation to be put was not in respect of the nature of the act done but in respect of area, *i.e.*, the damage must be in some way connected with the ownership of the dock.—THE RUAPEHU, [1927] P. 47; 96 L. J. P. 18; 136 L. T. 146; 42 T. L. R. 708; 17 Asp. M. L. C. 138, C. A.; *affd. sub nom.* RUAPEHU (OWNERS) *v.* GREEN (R. & H.) & SILLEY WEIR, LTD., THE RUAPEHU, [1927] A. C. 523; 96 L. J. P. 99; 137 L. T. 353; 43 T. L. R. 402; 71 Sol. Jo. 330; 32 Com. Cas. 323; 17 Asp. M. L. C. 270, H. L.; *subsequent proceedings* (1929), 45 T. L. R. 657.

Annotations:—**Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Same (1927), 97 L. J. K. B. 193; The Ruapehu (No. 2), [1929] P. 305.

593. *Citations:*—For "36 L. T. 361" read "6 L. T. 361."

594a. —— —— **Rival salvors—Injunction to restrain act on high seas.**]—In 1922 pltfs fitted out an expedition to salve cargo from the wreck of a Dutch steamship which had sunk in 1916 in the North Sea in over one hundred feet of water. Pltfs. worked at the scene of the wreck whenever the weather & tides permitted during the summer of 1922 & from Apr. to July, 1923. During that time they had succeeded in cutting a hole into No. 4 hold, had buoyed the wreck, & had extracted some portions of cargo of little value at a cost of over £40,000. In July, 1923, defts., British subjects & partners in a rival salvage co., arrived on the scene in a British registered ship, & by sending down their own divers & interfering with pltfs.' diving operations, tried to secure possession of the wreck & cargo, & either prevent further work on the part of pltfs. or establish themselves with pltfs. in concurrent occupation:—*Held:* (1) an action in respect of injurious acts done on the high seas had always been within the jurisdiction of the High Ct. of Admlty.; (2) pltfs. were sufficiently in occupation of the wreck to exclude third parties from interfering with the property; (3) as defts.' interference was high-handed & deliberate they would be restrained until further order from doing any acts at or near the wreck whereby pltfs. might be prevented or hindered in the carrying on of their salvage operations.—THE TUBANTIA, [1924] P. 78; 93 L. J. P. 148; 131 L. T. 570; 40 T. L. R. 335; 16 Asp. M. L. C. 346.

595a. —— **Services on land.**] — THE LAPWING (1839), 8 L. T. 440.

596a. ——.]—Two causes of salvage against a vessel were consolidated upon motion by defts., & with the consent of all parties. On a petition being subsequently filed, defts. moved for its dismissal, with costs & damages, on the ground that the value of the property salved was under £1,000:—*Held:* the proceedings of defts. in reference to the consolidation must be construed as an agreement which gave the ct. jurisdiction under Admlty. Jurisdiction Act, 1868 (c. 71), s. 9.

Semble: under Admlty. Jurisdiction Act, 1868 (c. 71), s. 6, the ct. of Admlty. has discretion to take cognisance of cases of salvage, though the value of the property salved be under £1,000.—THE HERMAN WEDEL (1870), 39 L. J. Adm. 30; 23 L. T. 876; 3 Mar. L. C. 530.

598. After this case insert, "Prize salvage, *see* PRIZE LAW."

603. *Add. Annotation:*—**Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

606. *Add. Annotations:*—**Consd.** The Meandros, [1925] P. 61. **Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

611. *Add. Annotation:*—**Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

613. *Add. Annotations:*—**Consd.** The Meandros, [1925] P. 61. **Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

617. *Add. Annotation:*—**Consd.** Bradley *v.* Newsom, [1919] A. C. 16.

619. *Add. Annotation:*—*As to* (1) **Refd.** Bradley *v.* Newsom, [1919] A. C. 16.

621. *Add. Annotation:*—**Consd.** The Inna, [1938] P. 148.

622. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

642a. ——.]—R. *v.* MILLER (1823), 1 Hag. Adm. 197; 166 E. R. 71.

648a. Ship not entitled to be registered as British ship—Ship under jurisdiction of Prize Court.] —A ship registered as a British ship, & nominally owned by a duly registered British co., was in fact owned & controlled by the Hamburg-Amerika Line, of Hamburg, which, in the person of its nominees, owned all the shares in the British co. & appointed its directors. Accordingly, after the outbreak of war with Germany, the ship was seized as prize, & on July 28, 1916, the Prize Ct. pronounced her to have belonged at the time of seizure to enemies of the Crown, & ordered her to be detained by the marshal until further order. Meanwhile on Jan. 11, 1916, under Prize Ct. Rules, Ord. 29, the ship had been requisitioned by the Lords Comrs. of the Admlty., & she remained in their possession. On Apr. 5, 1917, the writ in the present action was issued claiming a declaration under M. S. Acts, 1891 (c. 60), & 1906 (c. 48), that the ship was forfeited to the Crown on the ground that she was not entitled to be registered as a British ship:—*Held:* as the Lords Comrs. of the Admlty. had merely temporary possession of the

ship & had to return her into the custody of the Prize Ct. which had at some time to make a final decree either of condemnation or release, the Admlty. Ct. had no jurisdiction to entertain the forfeiture action & to make the usual order for appraisement & sale, & the action must be dismissed.—THE ST. TUDNO, [1918] P. 174; 87 L. J. P. 105; 34 T. L. R. 357; 62 Sol. Jo. 521.

649. *Add. Annotation:*—**Refd.** The Champion, [1934] P. 1.

650a. —— **Injunction.**]—THE TUBANTIA, No. 594a, *ante*.

650b. Res under jurisdiction of Prize Court.]—THE ST. TUDNO, No. 648a, *ante*.

657. *Add. Annotation:*—**Refd.** The Inna, [1938] P. 148.

663a. No jurisdiction—Judicature (Consolidation) Act, 1925 (c. 49), s. 22—Action for freight—Owner domiciled in England.]—Pltfs., shipowners domiciled in England, instituted an action *in rem* against cargo owners for freight in respect of the carriage of the cargo in the ship. By Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (1) (*a*) (xii), the High Court shall in Admiralty matters have jurisdiction in respect of any claim arising out of an agreement relating to the carriage of goods in a ship, "unless it is shown to the ct. that at the time of the institution of the proceedings any owner or part owner of the ship was domiciled in England":—*Held:* although under the sect. pltfs. who are British shipowners domiciled in this country are in a less favourable position than foreign shipowners, the sect. was general in its scope & could not be construed as applicable only to deft. shipowners against whom a claim is made, & the ct. had no jurisdiction to entertain the action.—THE ESKBRIDGE, [1931] P. 51; 100 L. J. P. 50; 144 L. T. 624; 47 T. L. R. 235; 18 Asp. M. L. C. 207.

Part III.—Present and Former Practice of the Admiralty Division of the High Court of Justice and of Courts other than English County and local Courts.

668a. —— **Issue—Res not within jurisdiction.**]—(1) It is not necessary that, at the time of the issue of a writ *in rem*, the *res* should be within the jurisdiction of the ct.; & Maritime Conventions Act, 1911 (c. 57), s. 8, which provides that in the case of collision or salvage actions the proceedings must be commenced within two years of the cause of action, is complied with if the writ is issued within two years; the sect. does not contemplate that the arrest of the *res* constitutes the commencement of the proceedings.

(2) In general, the ct. will not grant an extension of time for the renewal of an unserved writ, which has not been renewed within the period of one year as provided by R. S. C., Ord. 8, r. 1, if, but for the extension of time, the claim would be barred by a statute of limitation. But, inasmuch as Maritime Conventions Act, 1911 (c. 57), s. 8, contains provisos for extension of time unknown to any other statutes of limitation, the application to renew a writ in an action which comes within the operation of sect. 8 must be considered on its merits, & if, under the circumstances, the ct. would give leave to issue a writ notwithstanding the lapse of two years, the ct. will allow an extension of time for the renewal of a writ, the time for the renewal of which has expired.—THE ESPANOLETO, [1920] P. 223; 90 L. J. P. 32; 125 L. T. 121; 36 T. L. R. 554; 15 Asp. M. L. C. 287.

668b. —— **Motion to set aside—Facts in dispute.**]—In an action *in rem* for damage by collision defts. moved to set aside the writ & all subsequent proceedings on the ground that their vessel at the time of the collision was under requisition to, & in the sole control & possession of, the United States Navy Department, & that accordingly no maritime lien attached to her. Pltfs. did not admit the facts set out in defts.' affidavit in support of the motion:—*Held:* the facts being in dispute the ct. could not try the issue on motion by affidavit & the motion must be dismissed, but without prejudice to the right of defts. to apply, when the issues were defined by pleadings, for the question of law to be tried as a preliminary point.—THE SYLVAN ARROW, [1923] P. 14; 92 L. J. P. 23; 128 L. T. 448; 39 T. L. R. 25; 16 Asp. M. L. C. 115.

669. *Add. Annotation:*—*As to* (1) **Consd.** The Joannis Vatis, [1922] P. 92.

672a. —— —— **Defendant blaming another ship.**]—Pltfs. claimed damages from defts., owners of the *W.*, in respect of a collision between the *W.* & barges belonging to pltfs. The owners of the *W.* denied liability, alleging by letter to pltfs. that the collision was caused by the negligence of the *A.* An action was commenced between the owners of the *W.* & the

PART II. SECT. 16.

654 i. *Exception to jurisdiction—Made after trial.*]—An objection to the jurisdiction will hold good even if made after the trial.—STACK v. THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—**CAN.**

sf. *Forcible possession of berth.*]—An action *in rem* lies against a ship for forcibly taking possession of another's berth.—LINCOLN PULPWOOD CO. v. THE RIO CASMA, [1935] Ex. C. R. 123; 2 D. L. R. 41.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—A. (a).

668 i. —— *Amendment—Increase of amount.*]—Pltfs. claimed $4.000 damages, by reason of a collision between one of their barges & the *B.* The *B.* was arrested & the bail fixed at $4,000, the then estimated cost of repairs. Before the trial of the action, it was found that the actual cost of the repairs amounted to $5,512.94. Pltfs. moved to amend their writ by adding to the amount claimed:—*Held:* the ct. might direct measures to be taken to do full justice to pltfs., & to that end permit the amendment.—HALL COAL CO. v. THE BAYUBONA, [1923] Exch. C. R. 128.—**CAN.**

owners of the *A.*, in which the owners of the *A.* admitted liability for the collision. The owners of the *A.* agreed pltfs.' damages, but refused to pay the costs of the action by pltfs. against the *W.*, which had then been prosecuted to the stage of filing pltfs.' preliminary act:—*Held:* pltfs. were entitled to amend their writ by adding the owners of the *A.* as defts. The case came within the principle of R. S. C., Ord. 16, r. 11, that no cause should be defeated by the non-joinder of parties, & in the circumstances it would have been a misuse of the discretion of the ct. to refuse to allow a party to exercise that right. The proper course would have been for pltfs. to have added both parties as defts. in the alternative.—THE W. H. RANDALL, [1928] P. 41; 97 L. J. P. 42; 138 L. T. 459; 17 Asp. M. L. C. 397, C. A.

673. *Add. Annotations:*—**Consd.** The Creteforest, [1920] P. 111; Marlborough Hill, Ship *v.* Cowan, [1921] 1 A. C. 444.

682a. —— **Motion to set aside acceptance & undertaking to appear & put in bail—Mistake as to authority.**]—Motion dismissed.—THE GERTRUD (1927), 138 L. T. 239; 44 T. L. R. 1; 17 Asp. M. L. C. 343.

683a. **Renewal of writ—Extension of time for—Maritime Conventions Act, 1911 (c. 57), s. 8.**]—THE ESPANOLETO, No. 668a, *ante*.

697. *Add. Annotation:*—**Refd.** The Point Breeze, [1928] P. 135.

700a. **Right to arrest—Ship under requisition.**]—Pltfs.' steamship & defts.' steamship, the *L.L.*, collided in Sept. 1917. The *L.L.* was at the time under requisition:—*Held:* there could be no effective arrest of the vessel while she was under requisition.—THE LARGO LAW (1920), 123 L. T. 560; 15 Asp. M. L. C. 104.

700b. —— **Ship seized under writ of fieri facias.**]—A foreign ship was seized under a sheriff's writ of *fi. fa.* in execution of a judgment obtained by the charterers of the ship against the owners of fifty-six sixty-fourth shares in the ship. Subsequently the ship was arrested by the Admlty. marshal in an action *in rem* for necessaries. Various other writs *in rem* were issued against the ship, including a writ by the master in respect of wages. The sheriff was unable to effect a sale, & the ship was sold by the marshal without prejudice to the rights of the various claimants:—*Held:* the fact that the sheriff was in possession did not deprive the marshal of his power to arrest the ship in actions *in rem*.—THE JAMES W. ELWELL, [1921] P. 351; 90 L. J. P. 132; 37 T. L. R. 178.

701. *Add. Annotation:*—**Consd.** The James W. Elwell, [1921] P. 351.

706. *Add. Annotation:*—**Refd.** Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485.

706a. **Re-arrest—Damage in excess of bail—Second action—Right to bring action in personam.**]—In an action *in rem* in respect of damage by collision defts. gave bail in the sum of £100,000 as representing the full value of their vessel & the limit of their liability according to French law. In the Admlty. Ct. both pltfs.' & defts.' vessels were held to blame, but the Ct. of Appeal held defts.' vessel alone to blame & this decision was upheld by the House of Lords. The

---

673 i. *Parties—Joinder of plaintiffs—After judgment.*]—In the course of a trial in the Admlty. Ct. pltf. was allowed to amend by adding a party pltf., but failed to amend formally pursuant to the order & entered the formal judgment with only the original pltf. named therein, & proceeded to assess damages before the registrar:—*Held:* in the circumstances pltf. had not elected to abandon the order for amendment & should be allowed to have the judgment & prior proceedings amended in accordance therewith.—EVANS, COLEMAN & EVANS, LTD. *v.* THE ROMAN PRINCE, [1924] 3 D. L. R. 95; [1924] Exch. C. R. 133; 2 W. W. R. 465; 34 B. C. R. 155.—**CAN.**

673 ii. —— *Nonjoinder.*]—There being no special rule in this Ct. dealing with the joinder of parties, the practice & procedure of the High Court of Justice, in England, obtains, & the claimant herein was entitled to bring the present action in his own name alone, without joining his co-owners or their assignees. Misjoinder or non-joinder cannot now defeat a claim.—MACKAY *v.* R., [1928] Exch. C. R. 149; *on appeal*, [1930] S. C. R. 130; 1 D. L. R. 1005.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—A. (b).

sg. *Effect of delay.*]—Action *in rem* for negligent navigation, in which no service was perfected until seven years after the collision, held barred by laches.—CANADA STEAMSHIP LINES, LTD. *v.* THE "BLUE CROSS," [1937] 4 D. L. R. 289.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A. (a).

701 iii. —— *Creditor's action—Claim for building, equipping or repairing.*]—As soon as a creditor finds a ship under arrest of the ct., he may bring his action for, & the Admlty. Ct. acquires immediate & irrevocable jurisdiction over, any claim for building, equipping or repairing the ship. That jurisdiction is established without the litigant having to show that the original action under which the ship was arrested must eventually succeed, & notwithstanding that the arrest was made without particulars being given to prove without doubt the status of pltf. in that original action.—ERIKSEN BROTHERS *v.* THE MAPLE LEAF (1922), 67 D. L. R. 261; [1922] 3 W. W. R. 41.—**CAN.**

701 iv. —— *Repairs continued after arrest.*]—Resps. contracted with the owner of a ship to do certain repairs, & it was delivered to them for the purpose. When the repairs were going on the ship was arrested at the suit of applts., who claimed for earlier repairs & necessaries. After the arrest the ship was left in the actual possession of resps., who continued to do the repair work contracted for without the sanction of the ct. but in good faith:—*Held:* resps. should have priority for repairs made after the arrest so far as the selling value of the ship was thereby increased.—MONTREAL DRY DOCKS & SHIP REPAIRING CO., LTD. *v.* HALIFAX SHIPYARDS, LTD., [1920] 3 W. W. R. 25; 54 D. L. R. 185; 60 S. C. R. 359.—**CAN.**

d. Read now "**706a i.**"

706a ii. —— —— *Mistake in sum claimed—Cost of repairs exceeding estimate.*]—Pltfs. claimed $4,000 damages, by reason of a collision between one of their barges & the *B.* The *B.* was arrested & the bail fixed at $4,000, the then estimated cost of repairs. Before the trial of the action, it was found that the actual cost of the repairs amounted to $5,512.94. Pltfs. moved to amend their writ by adding to the amount claimed & for the issue of a warrant to re-arrest the *B.*:—*Held:* the ct. might direct measures to be taken to do full justice to pltfs., & to that end permit the issue of a warrant for the re-arrest of the ship, but with costs of the motion & of the re-arrest against pltfs.—HALL COAL CO. *v.* THE BAYUSONA, [1923] Exch. C. R. 128.—**CAN.**

706a iii. —— —— *Dismissal of claim for salvage—Appeal.*]—Where a claim for salvage against a ship has been dismissed, there is no general right, in case of appeal, to hold the bail bond or after its cancellation to re-arrest the ship, nor will such right be granted without good reason therefor, such as that it appears to the ct. that the ship will not be within the jurisdiction to answer the appeal should it go against it.—THE FREIYA *v.* THE R. S. (1921), 63 D. L. R. 687; 21 Exch. C. R. 147; 30 B. C. R. 132; [1921] 2 W. W. R. 749.—**CAN.**

706a iv. —— *Unnecessary where ship already under arrest.*]—The *A.* was under arrest by process of the ct., in a joint action for master's & seaman's wages, when she was re-arrested by pltfs., under three separate warrants, in actions for necessaries & supplies furnished to the *A.* in the port of C., to which she belonged, & the owners of which were domiciled in Canada:—*Held:* the ship being under arrest of the ct., this ct. had jurisdiction in the matter, but the issuing of warrants & the re-arrest was unnecessary.—STEWART & CO., LTD. *v.* THE AMLA, [1929] 4 D. L. R. 719; Ex. C. R. 192.—**CAN.**

sp. *Attachment to found jurisdiction—Both parties domiciled outside jurisdiction—Res within jurisdiction.*]—Where a co. alleged that it intended to

£100,000 being insufficient to satisfy pltfs.' judgment, pltfs. who admitted that *quâ* damages they could not recover more than the £100,000, threatened to arrest defts.' vessel in respect of interest & costs ; & under protest, defts. provided bail in a further sum to avoid arrest :—*Held :* having received bail in the full value of defts.' vessel, pltfs. could not arrest her *in rem*, but could proceed *in personam*, & were entitled to a declaration that the amounts due in respect of interest & costs were enforceable by seizure & sale of the vessel by a sheriff under a writ of *fi. fa.* —THE JOANNIS VATIS (No. 2), [1922] P. 213 ; 91 L. J. P. 196 ; 127 L. T. 494 ; 38 T. L. R. 566 ; 16 Asp. M. L. C. 13.

Annotations :—**Consd.** The Napier Star, [1933] P. 136. **Refd.** The Point Breeze, [1928] P. 135 ; The Beldis, [1936] P. 51.

706b. —— ——.]—In a damage action *in rem* pltfs. demanded & obtained bail from defts. in the sum of £3,500. After judgment had been given pronouncing defts.' ship alone to blame, pltfs. demanded further bail in the sum of £3,000, on the ground that the original sum demanded was insufficient to cover their damages. On the refusal of defts.' solrs. to give an undertaking to provide additional bail, pltfs. extracted a warrant of arrest from the Admlty. registry under which defts.' ship was arrested. On a motion to set aside the warrant of arrest :—*Held :* the effect of taking bail was to release the ship altogether, & the warrant of arrest must be set aside.—THE POINT BREEZE, [1928] P. 135 ; 97 L. J. P. 88 ; 139 L. T. 48 ; 44 T. L. R. 390 ; 17 Asp. M. L. C. 462.

742. *Add. Annotations :*—**Consd.** The Point Breeze, [1928] P. 135. **Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

746. *Add. Annotation :*—**Consd.** The Joannis Vatis (No. 2), [1922] P. 213.

747. *Add. Annotation :*—**Apld.** The Point Breeze, [1928] P. 135.

760. *Add. Annotation :*—**Refd.** Melanie S.S. *v.* San Onofre S.S., [1925] A. C. 246.

764. *Add. Annotation :*—**Refd.** The Annette, The Dora, [1919] P. 105.

766a. —— **Waiver of right to plead Maritime Conventions Act, 1911 (c. 57), s. 8.**]—By entering an unconditional appearance to a writ issued more than two years after the date of salvage services, defts. do not waive the right of pleading the protection of the above Act in their defence & raising it at the trial of the action.—THE LLANDOVERY CASTLE, [1920] P. 119 ; 89 L. J. P. 141 ; 124 L. T. 383 ; 15 Asp. M. L. C. 153.

Effect of Maritime Conventions Act, 1911 (c. 57), *see, generally*, SHIPPING.

768a. Appearance by person interested—Position of intervener.]—THE BYZANTION, No. 248a, *ante*.

768b. Undertaking to appear—Sale of ship—Effect on undertaking.]—THE RING, No. 781d, *post*.

780. *Add. Annotations :*—**Refd.** The Consul Olsson, [1920] P. 43 ; The Castor (1932), 48 T. L. R. 604.

780a. —— —— ——.]—THE SAN ONOFRE, No. 780b, *post*.

780b. —— —— **Effect of contractual arrangement between owner & charterer.**] — (1) The Admlty. marshal appraised a salved steamship at the sum of £369,841. On an application to vary or set aside the appraisement on the ground that the ship had been appraised at her market value instead of at her value to her owners, which, owing to the fact that she had been chartered to time charterers at a low rate of hire in 1914 for a period which did not expire until 1930, was less than £160,000 :—*Held :* for purposes of appraisement of a salved vessel contractual arrangements between the owners & charterers are immaterial, & the marshal's valuation was properly arrived at & was based on the right principle.

(2) The general rule is that an appraisement by the marshal is conclusive, & it is only in very exceptional cases that an application to vary or set aside the appraisement will be allowed.—THE SAN ONOFRE, [1917] P. 96 ; 86 L. J. P. 103 ; 116 L. T. 800 ; 14 Asp. M. L. C. 74.

Annotations :—*As to* (2) **Consd.** The Consul Olsson, [1920] P. 43. *Generally*, **Refd.** The Castor (1932), 48 T. L. R. 604.

781a. Nature of bail.]—THE BORRE, No. 781b, *post*.

---

bring an Admlty. action *in rem* for damage occasioned to its vessel through the negligent handling of resp. co. whilst in the territorial waters of the Union, & it appeared that both the cos. were domiciled outside the Union, the attachment of the vessel was ordered, such order to be suspended on security being provided in an amount greater than the sum claimed as damages.—S.S. KERATOS *v.* S.S. FABIAN, [1921] C. P. D. 148.—**S. AF.**

st. *Effect of delay.*]—Action *in rem* for damage by tug to tow, in which there has been a delay of over three years in effecting seizure, cannot be prosecuted against a subsequent *bona fide* purchaser & mtgee. of the vessel.—CANADA STEAMSHIP LINES, LTD. *v.* THE "RIVAL," [1937] 3 D. L. R. 148.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A. (b).

st. *Mala fide arrest—Abuse of process of court—Rights of other claimants.*]—A ship was arrested at the suit of a member of a firm. His independent claim for wages as a "ship's carpenter on board the ship," was in fact only a part of his firm's claim, & immediately after the ship was arrested his firm's action was instituted :—*Held :* these facts so obviously disclosed *mala fides* & an abuse of the process of the ct. that the arrest could be viewed as a sham proceeding & as not having any legal existence as regards the firm, but other claimants could support their suits on its existence in fact, because in good faith they instituted their suits relying upon the records of the ct. which on their face showed that its jurisdiction could be invoked.—ERIKSEN BROTHERS *v.* THE MAPLE LEAF, [1923] 4 D. L. R. 1201 ; [1923] Exch. C. R. 39 ; 31 B. C. R. 443 ; [1923] 1 W. W. R. 76.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—A.

a i. —— —— *Court without jurisdiction.*]—In the absence of jurisdiction existing by law, the filing of an appearance & the giving of bail by deft. do not give jurisdiction to the ct. in a proceeding *in rem*. Jurisdiction is not a matter of procedure & cannot be derived from the consent of parties.—MULVEY *v.* THE BARGE NEOSHO (1919), 19 Exch. C. R. 1 ; 47 D. L. R. 437.—**CAN.**

a ii. —— —— ——.]—A mere technical objection to an informality or irregularity in procedure may be waived by appearance, by the giving of bail or by taking a step in the action ; but if, in fact, the ct. has no jurisdiction over the subject-matter of the claim, no delay on the part of deft. & no step in the action taken by him can give the ct. jurisdiction.—HARRIS ABATTOIR CO. *v.* ALEDO (OWNERS), [1923] 4 D. L. R. 1196 ; [1923] Exch. C. R. 217.—**CAN.**

764 iii. ——.]—In Admlty. where deft. wishes to raise an objection to the jurisdiction of the ct. in a case where the ct. has jurisdiction over the subject-matter, he should appear under protest whether the action be *in rem*, or *in personam*.—BURKE *v.* THE AMLA (1929), 4 D. L. R. 873 ; Ex. C. R. 194. —**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—A.

sw. *Bail—Who accepted as bail—Company carrying on business of suretyship.*]—*Re* 251 BARS OF SILVER *v.* CANADIAN SALVAGE ASSOCN. (No. 2) (1915), 15 Exch. C. R. 370.—**CAN.**

781b. Undertaking to put in bail—Afterwards withdrawn—Effect of subsequent arrest of vessel.]—On June 22, 1920, defts.' solrs. gave an undertaking to enter an appearance & put in bail in respect of a writ *in rem* claiming damages in respect of loss by collision. In consequence defts.' vessel was not arrested. On Feb. 17, 1921, defts.' solrs. wrote to pltfs.' solrs. that their clients were unable to make arrangements for bail, that accordingly the undertaking for bail was withdrawn, & that, as the vessel was within the jurisdiction of the ct., pltfs. could arrest her. Pltfs.' solrs. arrested the vessel, but wrote to defts.' solrs. that they reserved all their clients' rights under the undertaking for bail. On Mar. 16, 1921, the vessel was appraised as being at that time of a value of £600. Defts. provided bail in that sum & the vessel was released. On Apr. 12, pltfs. applied for an order that defts.' solrs. should forthwith provide good & sufficient bail, pursuant to their undertaking. It appeared that in June, 1920, the value of the vessel was much in excess of £600, & pltfs. estimated her value at £4,500 :—*Held :* (1) the undertaking to give bail could not be withdrawn by substituting the vessel for the bail ; (2) pltfs. had not waived their rights under the undertaking by arresting the vessel ; (3) defts.' solrs. must complete their undertaking by putting in bail to the value of the vessel as on June 22, 1920 ; (4) nature of bail discussed.—THE BORRE, [1921] P. 390 ; 91 L. J. P. 1 ; 125 L. T. 576 ; 37 T. L. R. 068 ; 55 Sol. Jo. 715 ; 15 Asp. M. L. C. 331.

781c. —— When value of ship ascertained.]—THE BORRE, No. 781b, *ante*.

781d. —— Sale of ship—Effect on undertaking.]—In June, 1930, a firm of Norwegian shipowners, being threatened with an action *in rem* by cargo owners in respect of damage & short delivery, to avoid arrest of the ship, instructed their solrs. to give an undertaking to accept service, appear & provide bail. No writ was issued, the ship left the jurisdiction, & when she returned several months later she was encumbered with liens. On Jan. 6, 1931, she was sold by order of the ct. On Mar. 2 the solrs. took out an originating summons, & moved the ct. for an order that they were no longer bound by their undertaking. On Mar. 14 the cargo owners issued their writ *in rem*, but the solrs. refused to accept service pending the hearing of the motion :—*Held :* the undertaking, which was plain in its terms, enabled the ship to leave the jurisdiction without being arrested, & the fact that she was subsequently sold was immaterial ; there had not been undue delay in issuing the writ having regard to all the circumstances ; & the solrs. remained bound by their undertaking.—THE RING, [1931] P. 58 ; 100 L. J. P. 118 ; 145 L. T. 166 ; 47 T. L. R. 384 ; 18 Asp. M. L. C. 238.

781e. Liability limited to amount of bail—No second action if bail insufficient—Action in personam — For interest & costs.] — THE JOANNIS VATIS (No. 2), No. 706a, *ante*.

781f. Benefit of bail—Action in name of cargo owners—Some owners not joining in proceedings.]—The steamships *W.* & *J.* came into collision & the *W.* & her cargo were damaged. Before the issue of the writ an undertaking to put in bail to the amount of £100,000, had been given on behalf of the owners of the *J.* The writ was in the names of "The owners of the steamship *W.* & cargo *v.* the owners of the steamship *J.*," but at that time no authority from any of the cargo owners had been received. While the litigation was proceeding the owners of the *W.* asked the various underwriters on the cargo, subrogated to the rights of the respective cargo owners, to join in the proceedings or share in the costs. Some assented & some declined. The litigation proceeded to the House of Lords, where the *J.* was held alone to blame. The sum of £100,000 being insufficient to satisfy all the claims, the owners of the *W.* contended that having sued as owners of the ship & bailees of the cargo they were entitled to receive the whole of the bail for which the undertaking had been given, pay themselves the amount of their own damage as shipowners in priority to all other claimants, & that the non-assenting cargo owners had no right to share in the fund :—*Held :* (1) although, as bailees of the cargo, the shipowners were entitled to recover the full value of the damage to the cargo, represented by the bail, they must account to all the owners of the damaged parcels of cargo for their share ; (2) it was the duty of the ct., when the bail was recovered, to see that all persons having a claim on the fund, including the non-assenting cargo owners, shared in the distribution.—THE JOANNIS VATIS, [1922] P. 92 ; 91 L. J. P. 182 ; 126 L. T. 718 ; 15 Asp. M. L. C. 506, C. A.

Annotation :—**Refd.** The Roberta, [1938] P. 1.

781g. —— Several salvage actions.]—A vessel which had stranded on rocks & sustained heavy damage got off with the assistance of various salvors & was placed in dock for temporary repairs. In respect of these services various salvage actions & an action by the ship repairers for salvage &/or necessaries were instituted. No defence was put in, but in the first action an appearance was entered & an undertaking given to put in bail for ship, cargo & freight in the sum of £1,000. The cargo & freight were valued at £327. Before the other actions were instituted the cargo had been landed & dispersed. After some temporary repairs had been effected the vessel was sold by the marshal. She only realised £889 :—*Held :* the bail for cargo & freight did not constitute a fund in which all the salvors could share ; the undertaking was given in one action only, & pltfs. in that action, in which the total values were £1,217, could treat $\frac{327}{1217}$ of £1,000 as bail representing the cargo & freight.—THE RUSSLAND, [1924] P. 55 ; 93 L. J. P. 18 ; 130 L. T. 763 ; 40 T. L. R. 232 ; 68 Sol. Jo. 324 ; 16 Asp. M. L. C. 288.

Annotation :—**Refd.** The Roberta, [1938] P. 1.

781h. Amount of bail—Value of ship & freight—Limit of liability—Facts disputed by plaintiffs.]—If, in an action of damage by collision, the amount for which the action is brought exceeds the statutory limit provided by M. S. Act, 1894 (c. 60), s. 503, deft. shipowners on filing an affidavit in the damage action stating the tonnage of their ship &

that the collision happened without their actual fault or privity, will, if these facts are not denied by pltf. shipowners, be entitled to have the ship released on bail being given to an amount sufficient to cover the statutory limit, together with interest & costs. But if pltfs. dispute the facts on which the right to limit liability depends, bail must be given to the full value of defts.' ship.—THE CHARLOTTE, [1920] P. 78; 89 L. J. P. 62; 123 L. T. 685; 36 T. L. R. 204; 64 Sol. Jo. 276; 15 Asp. M. L. C. 98.

781j. Effect of bail — Release of ship.] — THE POINT BREEZE, No. 706b, *ante*.

796. *Add. Annotation:*—**Refd.** The Consul Olsson, [1920] P. 43.

806. *Add. Annotation:*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

808. *Add. Annotation:*—**Consd.** The Joannis Vatis (No. 2), [1922] P. 213.

810. *Add. Annotation:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

812a. —— —— **Position of third party.**]—Pltfs. brought an action *in rem* in respect of damage to their cargo against the shipowners & arrested the ship, which was released on bail. Subsequently the charterers of the ship were added as second defts. Pltfs.' right of action was held to be against the charterers & not against the shipowners; but in third-party proceedings the charterers succeeded in obtaining an indemnity against the shipowners for the damages which they (the charterers) would have to pay to pltfs. The charterers applied that the bail might be made available to meet the claim under the indemnity:—*Held:* the proper course for the second defts. to have taken would have been to sue out a warrant of arrest on their own claim for an indemnity, when the question whether such cause of action gave a right to arrest could have been challenged. In the absence of such action there appeared to be no precedent for the suggestion that pltfs. in third-party proceedings had any right, after judgment delivered, to an order that bail, put in to answer another party's claim, should be made available to answer their own.—THE ROBERTA, [1938] P. 1; 107 L. J. P. 40; 158 L. T. 391; 53 T. L. R. 1048; 82 Sol. Jo. 193, C. A.

829. *Add. Annotation:—As to* (1) **Distd.** Bradley *v.* Newsom, [1919] A. C. 16.

831. *Add. Annotation:*—**Refd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

834. *Add. Annotation:—As to* (1) **Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.

836. *Add. Annotation:*—**Apld.** The Lalandia, [1933] P. 56.

837. *Add. Annotations:—As to* (1) **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255. *As to* (2) **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101.

837a. —— —— —— ——.]—Pltfs., the owners of a vessel damaged in collision with a vessel owned by defts., a foreign corpn., served a writ upon a member of an English firm, E. M. & Co., who acted as defts.' agents. The writ was served at E. M. & Co.'s London offices. Defts. moved to set aside the writ & services on the ground that they were not resident within the jurisdiction. It appeared that E. M. & Co. were one of deft.'s agents in this country for the booking of freight, issue of passenger tickets, & the ordinary purposes for which ship's brokers are employed. The only remuneration received by them was the customary agents' commission, & they had no concern with the management of deft. corpn. The only name appearing on the door of E. M. & Co.'s offices was their own name, but upon the window of the ground floor their name was exhibited as agents for deft. corpn. together with the names of other foreign shipping cos. for whom E. M. & Co. acted:—*Held:* E. M. & Co. were a firm who "sold" & did not "make" contracts on behalf of defts., & that defts. did their business in this country "through" E. M. & Co. & not "by" them; defts., accordingly, were not resident within the jurisdiction & that the writ & service must be set aside.—THE LALANDIA, [1933] P. 56; 102 L. J. P. 11; 148 L. T. 97; 49 T. L. R. 69; 18 Asp. M. L. C. 351.

Annotation:—**Folld.** The Holstein, [1936] 2 All. E. R. 1660.

837b. —— —— —— ——.]—In a collision case where the procedure *in rem* was not available it was sought in an action brought *in personam* against a foreign shipping co. to effect service of the writ through London agents. The agents were general agents for shipping cos. & the foreign co. in question had no financial interest in the firm nor was any of their staff assigned exclusively to the business of the foreign co. The remuneration was wholly by commission:—*Held:* service on such general agents was bad.—THE HOLSTEIN, [1936] 2 All E. R. 1660; 155 L. T. 466; 19 Asp. M. L. C. 71.

839. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

840. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

842. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

843. *Add. Annotations:—As to* (1) **Refd.** Reading Trust *v.* Spero, Spero *v.* Reading Trust, [1930] 1 K. B. 492. *As to* (2) **Refd.** Johnson *v.* Taylor, [1920] A. C. 144.

843a. —— —— —— ——.]—A British ship, coming down the Elbe, came into collision with another British ship, which, in turn, came into collision with a German vessel. The agents at Hamburg of the first British ship & the owners of the German vessel exchanged letters of guarantee; but the owners of the German vessel did not commence legal proceedings in Germany against the owners of the two British ships until after the owners of the first British ship had commenced an action *in personam* in this country against the owners of the other British ship & the owners of the German vessel. On an application to discharge an order giving the owners of the first British ship leave under R. S. C., Ord. 11, r. 1 (*g*), to serve notice of the writ on the owners of the German vessel

out of the jurisdiction:—*Held:* the order ought not to have been made, for there had not been any unreasonable delay on the part of the owners of the German vessel in following up, by legal proceedings, the original cross letters of guarantee.—THE HAGEN, [1908] P. 189; 77 L. J. P. 124; 98 L. T. 891; 24 T. L. R. 411; 52 Sol. Jo. 335; 11 Asp. M. L. C. 66, C. A.

Annotations:—**Refd.** The Fagernes, [1926] P. 185: Schintz, *Re*, Schintz *v.* Warr, [1926] Ch. 710; Kroch *v.* Rossell et Compagnie Societe des Personnes a Responsibilite, Ltd., Kroch *v.* Societe en Commandite Par Actions Le Petit Parisien, [1937] 1 All E. R. 725.

855. *Add. Annotation:*—**Refd.** The Creteforest, [1920] P. 111.

856a. ——.]—(1) In a consolidated salvage action the tender by defts. of a lump sum to answer several claims of salvors is a valid tender; but, where defts. have adopted this course, they run the risk that the ct. may hold that it was reasonable for pltfs. to proceed to trial although the tender is upheld.

In a consolidated salvage suit where the owners of two tugs, separately owned, joined in one writ, & the masters & crews in another, defts. tendered a lump sum which the ct. upheld, but as defts.' affidavit of values was only handed to pltfs. on the day of the trial:—*Held:* (2) pltfs., the tug owners, who had been given the conduct of the consolidated action, were entitled to their costs; (3) the interests of the masters & crews being identical with those of the owners, the masters & crews were not entitled to be separately represented at the expense of defts. Observations on the desirability, except in very special circumstances, of masters & crews joining in one action with the owners.—THE CRETEFOREST, [1920] P. 111; 89 L. J. P. 136; 123 L. T. 591; 36 T. L. R. 367; 15 Asp. M. L. C. 48.

857. *Add. Annotation:*—**Refd.** The Creteforest, [1920] P. 111.

864. *Add. Annotation:*—**Refd.** The Creteforest, [1920] P. 111.

874a. —— —— ——.]—THE SHEAF BROOK, No. 565a, *ante*.

876. After this case add:—

Exercise of jurisdiction by all Divisions.]—*See, now*, Administration of Justice Act, 1928 (c. 26), s. 6.

876a. Transfer by Court of Appeal—Necessity for consent of Presidents of both Divisions.]—THE SHEAF BROOK, No. 565a, *ante*.

890. *Add. Annotation:*—*As to* (1) & (2) **Consd.** The El Oso (1925), 133 L. T. 269.

892. *Add. Annotation:*—*As to* (1) & (2) **Expld.** The El Oso (1925), 133 L. T. 269.

893. *Add. Annotation:*—**Refd.** The El Oso (1925), 133 L. T. 269.

894a. —— Action between parties whose vessels have not been in collision with each other.]—Where the parties to a damage action are the owners of vessels which have not been in collision with each other the practice as to requiring preliminary acts under R. S. C., Ord. 19, r. 28, is a matter for the discretion of the ct. In such cases the proper course is that there should be the communication between the solrs. which commonly takes place in admlty. cases, & that the solrs. should ascertain whether the parties are ready to file preliminary acts under Ord. 19, r. 28. If both parties are not ready to deliver preliminary acts, or one of them declares himself unable or unwilling, then the matter should be raised by summons. If in such a case an order is made for preliminary acts to be filed, such order is not properly complied with by the party whose vessel has not been in collision filing a blank preliminary act.—THE EL OSO (1925), 133 L. T. 269; 16 Asp. M. L. C. 530.

Annotation:—**Consd.** The Carlston & The Balcombe, [1926] P. 82.

894b. Who entitled to — Co-defendant.] — A collision took place between the *C.* & the *B.*, & subsequently the *C.* collided with pltfs.' vessel. Pltfs. issued a writ *in rem* against the owners of the *C.*, & the usual preliminary acts were filed by both parties. In their defence the owners of the *C.* blamed the *B.*, & pltfs. added the owners of the *B.* as second defts. Thereupon the owners of the *C.* obtained an order that the owners of the *B.* should forthwith file a preliminary act:—*Held:* (1) the only parties entitled as against second defts. to a preliminary act were pltfs., & they would be so entitled when they had filed a preliminary act against second defts.; first defts. were not entitled to require second defts. to file a preliminary act unless they chose to become pltfs. & issue a writ against second defts., & the order must be set aside; (2) if it were a matter of discretion, the guiding principle, that of mutuality, would be infringed by the order made, as second defts. would be bound by a preliminary act which they had filed, & the parties at whose instance it had been filed would not be bound, as against second defts., by the judgment in the present action.—THE CARLSTON, THE BALCOMBE, [1926] P. 82; 95 L. J. P. 51; 134 L. T. 766; 42 T. L. R. 312; 17 Asp. M. L. C. 33.

897a. —— Course & speed of vessel.]—In cases of collisions between ships at anchor it is not sufficient in answer to par. 7 of the preliminary act, which asks the course & speed of the vessel when the other was first seen, to reply "at anchor." The heading of the vessel should also be given.—THE MACROOM (1927), 137 L. T. 418; 71 Sol. Jo. 472; 17 Asp. M. L. C. 288.

898. *Add. Annotation:*—**Consd.** The Lady Belle (1933), 49 T. L. R. 595.

899a. Admissibility—Against party making.]—Two steamships came into collision in fine, clear weather. They had been on crossing courses, involving risk of collision, & pltfs.' vessel, having the other ship on her own starboard side, had a duty under art. 19 of the collision regulations to keep out of the way. Under art. 21 of the regulations there was

PART III. SECT. 3, SUB-SECT. 1.

sz. *Joinder of actions in rem & in personam—Propriety of.*]—ATLANTIC COAST S.S. CO. *v.* MONTREAL TRANSPORTATION CO. & THE MARY ELLEN, MONTREAL TRANSPORTATION CO. *v.* THE BUCKEYE STATE (1909), 12 Exch. C. R. 429.—CAN.

sc. *Salvage actions in rem & in personam.*]—Salvage action *in rem* & *in personam* may be joined in one action.—BRUCE LINDSAY BROS. *v.* "BRUCE HUDSON," [1937] Ex. C. R. 81; 1 D. L. R. 84.—CAN.

PART III. SECT. 5, SUB-SECT. 1.

sa. *Object.*]—The object of a preliminary act is to obtain a statement *recento facto* of the circumstances, to prevent parties shaping their case to meet the one put forward by the other at trial.—LE BLANC *v.* THE EMILIEN BURKE (1919), 19 Exch. C. R. 24; 46 D. L. R. 59.—CAN.

a corresponding duty on defts.' vessel to keep her course & speed, but a note to art. 21 provides that, when for any reason the "stand-on" vessel finds herself so close that collision cannot be avoided by the action of the "giving-way" vessel, she also shall take such action as will best aid to avert collision. Pltfs. admitted that their ship took no action at all to keep out of the way & was partly to blame, but they contended that deft. vessel was also to blame for breach of the note to art. 21. In their preliminary act defts. stated that their vessel kept her course & speed up to the collision, & in their defence & counterclaim they added that they so acted "as the best means of avoiding collision or minimising its effect." At the trial pltfs. called no evidence & the defts. submitted there was no case for them to answer: —*Held:* the admissions in defts.' preliminary act were evidence which could rightly be used against them, although the point was not, perhaps, of very great importance, because the same admissions were made in the ship's logs, which were indisputably evidence.—THE LADY BELLE, [1933] P. 275; 102 L. J. P. 134; 150 L. T. 117; 49 T. L. R. 595; 18 Asp. M. L. C. 451.

908. *Add. Annotation:—As to* (1) **Distd.** The Woodarra *v.* Admiralty (1921), 66 Sol. Jo. 183.

914a. —— **Raising new claim—Effect of.**]—THE HIGHLAND GLEN (1927), 164 L. T. Jo. 480, C. A.

916. *Add. Annotations:*—**Distd.** The Woodarra *v.* Admiralty (1921), 66 Sol. Jo. 183. **Consd.** Finland S.S. Owners *v.* Cornish Rose Owners, The Cornish Rose, [1936] 2 All E. R. 805.

936. *Add. Citation:—on appeal* (1853), 8 Moo. P. C. C. 482, P. C.

952. *Add. Annotation:*—**Refd.** The San Onofre (1922), 92 L. J. P. 17.

969. *Add. Annotation:*—**Refd.** The Saxicava, [1924] P. 131.

969a. —— **Action stayed, discontinued or dismissed—Counterclaim raised in correspondence.**]—A notice of counterclaim contained in correspondence passing between pltf.'s & deft.'s solrs. is not sufficient to "set up" a counterclaim within R. S. C., Ord. 21, r. 16, so that the counterclaim may be proceeded with if pltf.'s action is stayed, discontinued or dismissed.

The counterclaim must at least be set up by some proceeding which is either directed by or recognised by the rules & in respect of which there is a record on the files of the ct.—THE SAXICAVA, [1924] P. 131; 93 L. J. P. 66; 131 L. T. 342; 40 T. L. R. 334; 68 Sol. Jo. 666; 16 Asp. M. L. C. 324, C. A.

969b. Application under Admiralty Court Act, 1861 (c. 10), s. 34—Effect of Maritime Conventions Act, 1911 (c. 57), s. 8.]—THE FAIRPLAY XIV (1938), 55 T. L. R. 80.

970a. —— ——.]—Two foreign vessels, a barque & a ship, came into collision, when the barque was sunk. The ship was arrested in a cause of damage by the owners of the barque, & when the cause was ready for hearing, the owners of the ship commenced a cross action against them, to which they gave no appearance. On a motion to dismiss the original action unless an appearance & bail were given by the owners of the barque:—*Held:* the barque being sunk, the ct. had no jurisdiction to compel the owners to give bail, & must reject the motion.—THE CARLYLE (1858), 30 L. T. O. S. 278; 6 W. R. 197.

Annotation:—**Refd.** Chapman *v.* Royal Netherlands Steam Navigation Co. (1879), 4 P. D. 157.

979. *Add. Annotation:*—**Refd.** The Baarn, [1933] P. 251.

979a. —— —— **Consolidated salvage action.**]—THE CRETEFOREST, No. 856a, *ante*.

979b. —— ——.]—I had occasion, recently, when trying a salvage action in which there had been a tender, to express my view that the fact that the amount of the tender was made known to the ct. before it had determined its award hampered the ct. in its judicial capacity; & that it was better, if a tender were made, that the amount of the tender should not be made known to the ct. until it had exercised its judicial discretion in arriving at what would be a reasonable sum to award, because the question of costs, a serious one, depends upon whether the amount of the award is or is not in excess of the tender. . . . Having expressed my view as to what I thought to be advisable, namely, that the amount should not be stated in the defence, the case of the *U. C.* has arisen, a salvage case, & is now before me on summons; & I thought it desirable, in view of what has taken place, that my view upon this question should be stated publicly, so that it might be recorded for the information of all concerned. I have thought it right, as I have suggested a variation of what has apparently been the custom & practice of this ct., to speak to the President about it, & he agreed with my view of the case, that putting the amount into the defence in a salvage action was embarrassing to the judge. Upon inquiry, however, it appears that this is such a very old practice, that in the President's view it is not advisable to alter it. The result is that I make no alteration in the existing practice, & dismiss the appeal summons (BARGRAVE DEANE, J.).—THE UPTON CASTLE, [1912] W. N. 84.

1001. *Add. Annotation:*—**Refd.** The Creteforest, [1920] P. 111.

1001a. —— **Tender of lump sum—Consolidated salvage action.**]—THE CRETEFOREST, No. 856a, *ante*.

PART III. SECT. 8, SUB-SECT. 2.—A.

998 ii. —— *Rejection of tender—Acceptance of increased tender after amendment of claim at trial.*]—In an action for salvage services, pltf. claimed $20,000 & in his statement of claim such amount of salvage remuneration as to the ct. might seem meet. The defence was delivered on Mar. 17, when deft. paid into ct. $3,000 & tendered it to pltf., who rejected it. Pltf. at the trial applied for leave to amend to set up an additional claim. The amendment was made, & deft. increased his tender to $4,000, which was accepted: —*Held:* (1) deft. should in any event have the costs of & consequent upon the amendment granted at the trial; (2) as to the accepted tender, the increased tender must be regarded as having been made & accepted on Mar. 17, & all the costs subsequent to that tender should be borne by pltf.; (3) the circumstances were not quite sufficient to deprive pltf. of costs before tender.—THE PASCHENA *v.* THE GRIFF, [1925] 2 W. W. R. 676.—CAN.

PART III. SECT. 9, SUB-SECT. 1.

sb. *Plaintiff resident out of jurisdiction—Foreign ship.*]—Where pltf. is resident out of the jurisdiction & his ship is a foreign one, security for costs may be ordered, even at an advanced stage of the action & though the delaying in

1023. *Add. Annotations :*—**Apld.** *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673. **Refd.** The Tervaete (1922), 128 L. T. 176; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

1027a. —— —— ——.]—Pltfs.' & defts.' vessels came into collision & both received damage. Pltfs. brought an action *in rem* against defts., "the owners of the steamship *N.*" Defts. counterclaimed, & applied to pltfs. for security to answer the counterclaim. Security was given, but on pltfs. making a similar application defts. refused to give security on the ground that the *N.* was owned by the French Govt., & was not subject to arrest :—*Held :* the ct. had no power to order security to be given or, in default thereof, to stay defts.' counterclaim.—THE NEPTUNE, [1919] P. 17; 88 L. J. P. 94.

1032. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1046. *Add. Annotation :*—**Refd.** The Shropshire (1922), 127 L. T. 487.

1047a. —— **For disposing fairly of cause—For saving costs.**]—The owners of the steamship *N.*, one of two ships found jointly to blame in a collision action, limited their liability & paid the amount into ct. Claims against the fund were in due course filed by the owners of the *N.* & the owners of the other ship, the *S.*, & also by the owners of cargo on the *S.* The same solrs. presented the claims on behalf of the owners of both ships. The owners of cargo on the *S.*, who were not parties to the collision action, then sought leave to administer four interrogatories to the owners of the *S.* Nos. 1 & 2 asked whether there had been, as between the owners of the two ships, a mutual abandonment of claim or a settlement on other terms. No. 3 inquired whether there had been any assignment of the claim of the owners, master, & crew of the *S.*; & No. 4 asked by whom the particular solrs. were instructed to present the claim of the owners of the *S.* The registrar allowed Nos. 1 & 2, but disallowed Nos. 3 & 4. On appeal by both sides :—*Held :* the first three interrogatories were necessary either for disposing fairly of the cause or matter or for saving costs, within R. S. C., Ord. 31, r. 2, & must be allowed. No. 4 was not pressed.—THE NEDENES (1924), 41 T. L. R. 243.

1062a. —— **Confidential report by master.**]—Defts., the Port of London Authority, arranged with their underwriters that, in all cases of claims for collision in which their vessels were concerned, the management of the claim should be put in the hands of certain solrs. Defts. directed that a report on a printed form headed "Confidential report for the information of the Authority's solr." should be made by the master of the vessel. The report was subsequently passed through various departments in defts.' offices until it reached the solr.'s hands. It was then dealt with by the solr. in the course of his professional conduct. A report was made in these circumstances by the master of a vessel belonging to defts. in respect of a collision with pltfs.' vessel. Pltfs. claimed to have this report produced to them :—*Held :* the report having been obtained for the solr., in the sense of being procured as materials upon which professional advice should be taken in proceedings pending or threatened or anticipated, it was privileged from production.—THE HOPPER NO. 13, [1925] P. 52; 94 L. J. P. 45; 132 L. T. 736; 41 T. L. R. 189; 16 Asp. M. L. C. 473, D. C.

Annotations :—**Distd.** The City of Baroda (1926), 134 L. T. 576. **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

1062b. —— **Officers' reports.**]—Pltfs. claimed for short delivery of certain parcels of bristles, in respect of which they were holders of bills of lading, loaded at Shanghai upon defts.' steamship. Defts. denied liability alleging that the loss was due to pilferage by an organised band of thieves. Defts. had called for reports from the first, second, third, & fourth officers of the steamer, in order to investigate the question of the management of the vessel & the conduct of their officers in the prevention of theft, which reports were in due course obtained through defts.' agents in China. Defts. claimed that these reports were privileged from discovery :—*Held :* (1) the reports were not privileged. (2) Observations upon the form & contents of an affidavit claiming privilege from discovery for deponent's documents.—THE CITY OF BARODA (1926), 134 L. T. 576; 70 Sol. Jo. 1044; 17 Asp. M. L. C. 27.

Annotation :—**Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

1075. For "For full anns., *see* PRACTICE & PROCEDURE," read "*Add. Annotation :*—*As to* (1) **Refd.** Dawson *v.* Shepherd (1880), 42 L. T. 611."

1078a. Taking evidence on commission—Discouraged.]—THE AUGUSTA (1909), 26 T. L. R. 98.

1107a. —— —— ——.]—Where suits of rival salvors come on for hearing at the same time the right to begin must depend upon the circumstances of each case.—THE WILLEM III. (1871), L. R. 3 A. & E. 487; 25 L. T. 386; 1 Asp. M. L. C. N. S. 129.

1112a. Right of reply.]—Allowed in all cases.—THE RJUKAN (1866), 14 W. R. 973.

---

applying therefor is unaccounted for, in the absence of any prejudice to the other side occasioned by such delay.—WRANGELL *v.* THE STEEL SCIENTIST, [1924] 3 D. L. R. 49; [1924] Exch. C. R. 136; 2 W. W. R. 493; 34 B. C. R. 114.—**CAN.**

PART III. SECT. 10, SUB-SECT. 1.—A. (a).

ss. *Examination for discovery—In lieu of interrogatories—When ordered—Use of.*]—While an examination for discovery may be ordered by the judge as a matter of convenience, in place of the delivery of interrogatories, especially where the opposite party is in ignorance of the facts, such examination cannot be read as evidence at the trial.—POINT ANNE QUARRIES *v.* S.S. M. F. WHALEN (1921), 68 D. L. R. 627; 20 Exch. C. R. 483.—**CAN.**

PART III. SECT. 11, SUB-SECT. 1.

sd. *Proof of claim—Right to proceed ex parte—Order for sale of res.*]—PAUL *v.* THE AMY TURNER, [1922] V. L. R. 740.—**AUS.**

PART III. SECT. 14, SUB-SECT. 3.—A

se. *Log books—Independent log kept by mate.*]—*Held :* not admissible.—R. *v.* THE AINOKO (1894), 4 Exch. C. R. 195.—**CAN.**

sf. *Manuscript notes made by master.*]—In the circumstances rejected as evidence as part of the ship's log.—THE ANDREW KELLY *v.* THE COMMODORE, [1919] 1 W. W. R. 1059; 19 Exch. C. R. 70; 48 D. L. R. 213.—**CAN.**

sk. *Salvage action—Attendance of*

1114a. —— Damage due to collision.] — In an action of damage by collision the *onus* of proving that damage directly flows from deft.'s negligence causing the collision is on pltf.; & the dicta in *The Mellona* (1847), 3 Wm. Rob. 7, 13; *The Pensher* (1857), Sw. 211, & similar cases, to the effect that where damage follows a collision the presumption is that the damage is the result of the collision, unless deft. proves the contrary, must not be taken as laying down a principle, but as having reference only to the particular circumstances of those cases, where the damage, stranding, so obviously followed on the collision that it *primâ facie* was to be regarded as a consequence of the negligence causing the collision.—THE PALUDINA, [1925] P. 40; 132 L. T. 724; 16 Asp. M. L. C. 453, C. A.; *affd. sub nom.* S.S. SINGLETON ABBEY *v.* S.S. PALUDINA, [1927] A. C. 16; 17 Asp. M. L. C. 117, H. L.

Annotations:—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; The Kite, [1933] P. 154; The Stranna, [1937] P. 130.

1130. *Add. Annotation:*—**Apld.** The Saint Angus (1938), 54 T. L. R. 947.

1152a. Log of defendants' vessel—Right of plaintiffs to put in—After admission of facts by defendants.]—Defts. to an action of salvage by their defence admitted that all pltfs. had rendered salvage services & that the allegations of the facts of such services set out in the respective statements of claim were in substance correct, but they denied that the various inferences sought to be drawn from those facts were accurate or well founded, & that their vessel was ever in any real danger. They also pleaded certain soundings which differed from those pleaded by certain of pltfs. Pltfs. by their reply joined issue upon the defence save in so far as the same consisted of admissions:—*Held:* pltfs. were entitled to put in the logs of defts.' vessel with a view to proving that the ship was in real danger, & also a graphic representation of the soundings based on sketches in defts.' log, but not to call evidence as to the facts, *e.g.* the displacement of certain tugs.—THE WOODARRA (1921), 38 T. L. R. 160; 66 Sol. Jo. 183.

Annotation:—**Consd.** Finland S.S. Owners *v.* Cornish Rose Owners, The Cornish Rose, [1936] 2 All E. R. 805.

1152b. Oral evidence dispensed with—Salvage—Amount in dispute small—Discretion of court.]—In a case where salvage services had been requisitioned & the amount in dispute was small, by agreement the case was tried on the pleadings & statements of the witnesses, no oral evidence being called & the attendance of the Elder Brethren being dispensed with:—*Held:* the course taken was a mode of procedure useful to the shipping world, & one for which the ct. would endeavour to give proper facilities, the power of the ct. being, of course, discretionary.—THE RIVER FISHER (1923), 39 T. L. R. 233.

1152c. Lighthouse log — Admissible — Although facts admitted.]—The *Cornish Rose* was in the English Channel, unable to steam or to steer & in danger of becoming even more helpless. The *Finland* brought her into safety after twenty-two hours hard work. The facts were admitted upon the pleadings & pltfs. sought to put in defts.' log in support of the inferences which they desired to draw as to the nature of the services. On the other side it was desirable to check these inferences by the entries in the logs of the Lizard & Land's End lighthouses:—*Held:* although the facts were admitted there was no objection to the admission of the logs for this purpose.—FINLAND S.S. OWNERS *v.* CORNISH ROSE S.S. OWNERS, THE CORNISH ROSE, [1936] P. 174; [1936] 2 All E. R. 805; 105 L. J. P. 114; 52 T. L. R. 648.

1152d. Report of pilot.] — The *Esbjerg* was leaving & the *Prinses Juliana* was arriving at Harwich Harbour, both vessels being in charge of a pilot, when a collision occurred. The pilot of the *Prinses Juliana* was not called as a witness, although he had been subpœnaed by the owners of the *Esbjerg*. The owners of the *Esbjerg*, sought to put in the report of that pilot made to Trinity House after the accident:—*Held:* such report was inadmissible.—THE PRINSES JULIANA, ESBJERG OWNERS *v.* PRINSES JULIANA OWNERS, [1936] P. 139; [1936] 1 All E. R. 685; 105 L. J. P. 58; 155 L. T. 261; 52 T. L. R. 296; 18 Asp. M. L. C. 614.

1167. Before this case insert "*See, further,* EVIDENCE, Vol. XXII., p. 94."

1185a. —— Photographs — Calculation as to locality of collision—Absence of expert evidence.]—In an action arising out of a collision in Sydney harbour between the ships *C. & St. A.*, there were in evidence three photographs, taken from a third moving ship, showing the colliding ships just before, during, & after the collision, with the frontage of the harbour as background. The point in the harbour at which collision occurred was material. The trial judge, basing his judgment solely upon the other evidence in the case, held that the *St. A.* was to blame. The appellate ct. gave the owners of that ship leave to adduce upon an appeal by them the evidence of three land surveyors based upon the photographs. They used the alignment of pairs of objects which they identified in the backgrounds to fix the

---

master & crew.]—It is proper to have the master & crew before the ct. in an action for salvage.—JOHNSON & MACKAY *v.* S.S. CHARLES S. NEFF (1918), 18 Exch. C. R. 168.—**CAN.**

PART III. SECT. 14, SUB-SECT. 3.—B. (a).

sl. *Journal of lighthouse keeper—Evidence as to weather.*]—The diary or journal of a lighthouse keeper, duly returned to the agent of the National Dept. of Marine at Victoria, allowed in evidence as "an official book kept under competent authority" to show the conditions of sea weather in the locality.—SMITH *v.* THE RACE ROCK (1932), 45 B. C. R. 522.—**CAN.**

PART III. SECT. 14, SUB-SECT. 3.—B. (e).

sm. *Evidence of persons on boom—Collision.*]—Action by pltf. to recover damages suffered by it by reason of deft.'s ship coming into collision with one of its booms of logs:—*Held:* it is next to impossible for one on a moving vessel, unless he is in a position to see her from stem to stern & at the same time maintain a complete & commanding view of the shore, to follow the course, speed or evolutions in the manœuvres of a vessel; & pltf.'s witnesses being some on the boom & some on land overlooking the *locus* of the accident were in a better position to follow the course of the vessel than were those on board the same.—VANCOUVER ORIENT EXPORT CO., LTD. *v.* THE ANGLO-PERUVIAN, [1931] Ex. C. R. 127.—**CAN.**

sn. *Evidence of navigators—Collision—Greater weight than evidence of outsiders.*]—ODFJELL A/S *v.* S.S. VESUVIO & SOCIETA ANONIMA PER L'INDUSTRIA E IL COMMERCIO MARITIMO *v.* S.S. OLDER, [1930] Ex. C. R. 207; [1931] 2 D. L. R. 34.—**CAN.**

position of the camera when each photograph was taken, & then by reference to the background localised the collision. These results were shown by a diagram. The appellate ct., accepting the result so arrived at, reversed the decision of the trial judge, stating, however, that apart from the new evidence they agreed with it:—*Held:* the skill or science needed to produce an accurate result by the process adopted was not that of a land surveyor, & in the absence of expert evidence the reversal of the decision of the trial judge was not warranted.—UNITED STATES SHIPPING BOARD *v.* THE ST. ALBANS, [1931] A. C. 632; 100 L. J. P. C. 73; 144 L. T. 601; 47 T. L. R. 245; 18 Asp. M. L. C. 196, P. C.

1187. For "For full anns., *see* PLEADING," read "For full anns., *see* EVIDENCE."

1196. *Add. Annotation:* — **Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1198a. —— —— Between assessors advising lower court & appellate court—Duty of appellate court.]—In a case in which there has been a difference of opinion between the nautical assessors advising the respective cts., the Ct. of Appeal is not bound to pay more attention to the opinion of its own assessors than to that of those who advised the ct. below. The assessors occupy much the same position as do skilled witnesses, & if they differ the ct. must make its own choice. In every case the responsibility is with the ct., which has to make up its mind alike on questions of nautical skill & on the value of the advice given upon them.—AUSTRALIA (OWNERS) *v.* NAUTILUS (OWNERS),, THE AUSTRALIA. [1972] A. C. 145; 95 L. J. P. 145; 135 L. T. 576; 42 T. L. R. 614; 32 Com. Cas. 82; 17 Asp. M. L. C. 86, H. L.

Annotations:—**Folld.** The Tovarisch, [1930] P. 1; The Otranto, [1930] P. 110. **Refd.** Hall *v.* British Oil & Cake Mills (1930), 23 B. W. C. C. 529.

1198b. —— —— —— ——.] — ARTEMISIA (OWNERS) *v.* DOUGLAS (OWNERS) (1925), [1927] A. C. 164, H. L.

Annotation:—**Consd.** Australia (Owners) *v.* Nautilus (Cargo Owners), [1927] A. C. 145.

1198c. —— —— —— ——.]—We are the judges, & we are to regard the gentlemen who assist us, & the gentlemen who assisted the judge below, as witnesses, & we are to form our opinion, as judges, on the combined evidence of the four witnesses, & not take the view that because the two witnesses whom we see contradict the two witnesses whom we have not seen; we should follow the witnesses whom we see rather than the witnesses whom we do not see (SCRUTTON, L.J.).—THE TOVARISCH, [1930] P. 1; 99 L. J. P. 23; 142 L. T. 372; 46 T. L. R. 125; 18 Asp. M. L. C. 58, C. A.; *affd. on other grounds*, [1931] A. C. 121, H. L.

1198d. —— —— —— ——.]—My duty is to exercise my own judgment, paying due regard to the advice given by the Elder Brethren in the ct. below as well as to that given to us by our assessors (LAWRENCE, L.J.).—THE OTRANTO, [1930] P. 110; 99 L. J. P. 82; 142 L. T. 544, C. A.; *revsd. on other grounds*, [1931] A. C. 194, H. L.

1199. *Add. Annotation:* — **Consd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1200a. Presence of — Dispensed with — Salvage action — Amount in dispute small.] — THE RIVER FISHER, No. 1152b, *ante*.

1201. *Add. Annotation:* — **Refd.** Australia (Owners) *v.* Nautilus (Owners), [1927] A. C. 145.

1204. *Add. Annotation:*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1206. *Add. Annotation:*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1223a. —— —— Admission of liability & agreement to refer.]—THE BAARN, No. 1403a, *post*.

1224. *Add. Annotation:—As to* (2) **Refd.** The Disperser, [1920] P. 228.

1237a. —— Action against two separate parties—One party only held to blame—Costs of plaintiff.]—(1) A pltf. who, being in reasonable doubt as to which of two parties has been negligent, sues both parties & fails against one, is entitled to add the costs which he has to pay to the successful deft. to his costs against the unsuccessful deft., notwithstanding that the unsuccessful deft. has not put the blame upon the other. But if he brings separate actions, unless he acts reasonably in so doing, he will not be allowed the costs of two actions. (2) Similarly, if one of defts. sets up a counterclaim against pltf. & the other deft. & fails against pltf., he is entitled to recover from deft. against whom he succeeds the costs which he has to pay pltf.—THE SVEIN JARL (1923), 129 L. T. 255; 16 Asp. M. L. C. 159.

Annotation:—**Distd.** The W. H. Randall, [1928] P. 41.

PART III. SECT. 14, SUB-SECT. 4.—A.

1196 iii. —— ——.]—Two ships collided on a very bad night. The collision was caused by the *M.*, which was light, dragging her anchors, & coming down on the *R.*, which was holding to her moorings. When the *M.* was dragging her anchors she had steam up but did not use it, by which failure she omitted to take a reasonable measure which might have avoided the accident. In an action for damages by the *R.* against the *M.* there was uncontradicted evidence to the effect that the steam had not been used because those in charge of the *M.* did not & could not know owing to the darkness & the weather that they were dragging their anchors. The Lord Ordinary, without expressing any opinion as to whether he credited that evidence or not, accepted an opinion expressed by the nautical assessor to the effect that it would not have been difficult for those on the *M.* to know that they were dragging their anchors: —*Held:* it was for the Lord Ordinary & not for the nautical assessor to pronounce upon the trustworthiness of that evidence, & to say whether or not the master of the *M.* ought to have known when his anchor began to drag, &, on the ground that the evidence did not establish the fault, the *M.* assoilzied.—CAMBO SHIPPING CO., LTD. (ROSSETTI (OWNERS)) *v.* DAMPSKIBSSELSKABET MAGNUS, [1920] S. C. 26; 57 Sc. L. R. 59.—**SCOT.**

1201 iii. ——.]—*Held:* evidence of experiments with water in a lock without any steamer being in it was of the nature of expert evidence, & as the ct. had the assistance of a nautical assessor to advise upon any matters requiring nautical or other professional knowledge, such expert evidence was inadmissible.—FRASER *v.* S.S. AZTEC (1920), 20 Exch. C. R. 39.—**CAN.**

1201 iv. ——.]—In Admlty. cases where the ct. has the assistance of nautical assessors, evidence involving questions of nautical skill & experience is not admissible.—PACIFIC STEAM NAVIGATION CO. (BOGOTA (OWNERS)) *v.* ANGLO NEWFOUNDLAND DEVELOPMENT CO., LTD. (ALCONDA (OWNERS)), [1923] S. C. 526; 60 Sc. L. R. 333.—**SCOT.**

sl. *Duty of judge to keep note of questions submitted to & answers given by nautical assessor—Nautical Assessors (Scotland) Act*, 1894 (*c.* 40), *s.* 3.]—S.S. ROWAN *v.* S.S. CLAN MALCOLM, [1923] S. C. 317.—**SCOT.**

1237b. —— —— —— ——.]—THE THAMES III. & THE K. B. S. (1928), 166 L. T. Jo. 52.

1258. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1261. *Add. Annotation :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

1262. For "*see* S. C. No. 1266, *post*," read "*see* S. C. No. 131, *ante*."

1267a. Unnecessary intervention in mortgagees' action—Liability for costs.]—THE ATHENIC (1931), 48 T. L. R. 158.

1277. *Add. Citation :—sub nom.* THE COMMODORE, 1 Ecc. & Ad. 175, n.

1280a. —— ——.]—THE INNISFAIL, THE SECRET (1876), 35 L. T. 819 ; 3 Asp. M. L. C. 337.

1283. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

1284. *Add. Annotation :*—**Consd.** The Modica, [1926] P. 72.

1284a. —— —— —— ——.] — Although it has been the practice since the above Act to make no order as to costs in collision cases in which both vessels have been held to blame in unequal degrees, the ct. must be guided by the circumstances in each case. In a proper case it will feel itself at liberty to give to the party which is held to blame in the smaller degree such a proportion of that party's costs as on the particular facts appears just.—THE MODICA, [1926] P. 72 ; 95 L. J. P. 100 ; 135 L. T. 61 ; 17 Asp. M. L. C. 30.

Annotation :—**Refd.** The Young Sid, [1929] P. 109.

1284b. —— —— —— ——.]—Where defts. were three-fourths to blame & pltfs. one-fourth to blame, the ct. ordered defts. to pay one-half of pltfs.' costs.—THE ROBERT KOEPPEN, [1926] P. 81, n.

Annotation :—**Refd.** The Modica, [1926] P. 72.

1286. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

1286a. Neither to blame—Delay in commencing proceedings—Costs of claim to defendants—Costs of counterclaim to plaintiffs.]—Pltfs. & defts.' vessels, navigating without lights in accordance with Admlty. directions, came into collision & both received damage. The ct. held that there was no negligence on the part of either vessel, & gave judgment for defts. on the claim & for pltfs. on the counterclaim. On the question of costs :—*Held :* as nearly eighteen months had elapsed before pltfs. commenced proceedings, during which time defts. had taken no steps to recover their damages from pltfs., it appeared that there would have been no litigation if pltfs. had not issued their writ, &, therefore, there must be judgment for defts. on the claim with costs, & for pltfs. with costs on the counterclaim, & not, as contended by pltfs., no costs on either side.—THE CARDIFF HALL, [1918] P. 56 ; 87 L. J. P. 113 ; 119 L. T. 156 ; 14 Asp. M. L. C. 328.

1297a. —— ——.]—THE HOPPER No. 21, [1903] W. N. 114.

1298a. —— —— **Unsuccessful counterclaim.**]—THE SVEIN JARL, No. 1237a, *ante*.

1298b. Costs of separate issues.]—In an action for damage by collision, in which defts. filed a defence & counterclaim, the question of negligence was first tried, & was decided against defts. Subsequently the question whether pltfs. had suffered any damage by reason of the collision was determined in favour of defts., for whom judgment was entered on the claim, judgment being entered for pltfs. on the counterclaim :—*Held :* although defts. were entitled to the general costs of the action, pltfs. must have the costs relating to the question of negligence, & the costs, if any, occasioned by the unsuccessful counterclaim.—THE ADAMS (1919), 88 L. J. P. 129.

1299. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

1300a. *S. P.* THE ELEANOR & NANCY (1837), 5 L. T. 241.

1304a. *S.P.* THE ARGO *v.* THE EMMA HEYN (1856), 5 L. T. 122.

1309. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

PART III. SECT. 16, SUB-SECT. 1.

1239 ii. —— —— ——.]—A master suing for wages & disbursements is bound to furnish accounts before bringing his action, otherwise he will not be entitled to his costs.—BURKE *v.* THE AMLA (1929), 4 D. L. R. 873 ; Ex. C. R. 194.—**CAN.**

PART III. SECT. 16, SUB-SECT. 3.—A.

hi. ——.]—GRAND TRUNK PACIFIC COAST S.S. CO. *v.* THE B.B. (1914), 17 D. L. R. 757 ; 15 Exch. C. R. 389 ; 6 W. W. R. 711.—**CAN.**

sm. *Expenses of bail bond—Not recoverable as costs.*]—The expense of procuring a bail bond incurred by an arrestee in order to liberate his ship, which had been arrested as a preliminary to an unsuccessful action *in rem*, cannot be charged against the opposite party, such expense not being part of the expenses of process.—ELLERMANS WILSON LINE, LTD. *v.* NORTHERN LIGHTHOUSES COMRS. (1920), 58 Sc. L. R. 29.—**SCOT.**

sn. *Awarded to salvors.*]—Where salvors of a ship arrested her as an initiatory step in an action *in rem* to recover the salvage due, they were allowed to recover the expenses of arresting the ship from her ow ers.—HATTON *v.* AKT. DURBAN HANSEN, [1919] S. C. 154 ; 56 Sc. L. R. 100.—**SCOT.**

so. *Fees of appraiser acting as marshal's substitute—Special arrangement.*]—THE PASCHENA *v.* THE GRIFF (1925), 36 B. C. R. 30.—**CAN.**

sb. *Possession fees—Marshal in possession under several warrants.*]—Where a marshal is in possession of a ship simultaneously under warrants issued in different actions, more than one set of possession fees will not be allowed.—SIMBACK *v.* THE SAGA, CARLSSON *v.* THE SAGA (1899), 6 B. C. R. 522.—**CAN.**

PART III. SECT. 16, SUB-SECT. 4.—A.

1279 i. *Inevitable accident—Costs follow event.*]—The rule as to costs is the same in the Exchequer Ct. of Canada in Admlty. as it is in the Admlty. Div. of the High Ct. in England, & costs follow the event, even in cases of inevitable accident, where no special circumstances require a departure from such rule.—THE JESSIE MAC *v.* THE SEA LION, [1919] 2 W. W. R. 411.—**CAN.**

1283 iii. —— ——.]—Where two vessels came into collision & both vessels were held to blame, no costs were granted to either party.—R. r. THE ARGYLLSHIRE, [1922] St. R. Qd. 186.—**AUS.**

1283 iv. —— ——.]—Where the ct. found that both parties were to blame :—*Held :* each delinquent should bear his own costs.—B. W. B. NAVIGATION CO. *v.* THE KILTUISH, BARNET LIGHTERAGE CO. *v.* THE KILTUISH (1922), 67 D. L. R. 525 : [1922] 2 W. W. R. 959.—**CAN.**

PART III. SECT. 16, SUB-SECT. 5.—A. (a).

1322 i. *General costs — Excessive claim.*]—In a suit claiming remuneration for salvage services rendered, the claim was excessive & the case was such as to warrant a small award only. The ct. made an award of £25 in favour of pltfs., & ordered defts. to pay the costs of the suit. On a subsequent application for directions, the ct. refused to exercise its discretion & to make a special order for costs.—STUART *v.* COLUMBIA RIVER (1921), 21 S. R. N. S. W. 674.—**AUS.**

1323 iii. —— ——.]—Salvors arrested a ship against which they were claiming salvage amounting to £47,500, & they refused to release the ship except upon obtaining security to the extent of £37,500. The arresters

1351a. —— Judgment for less than amount of offer refused by salvors.]—THE HEDWIG (1853), 1 Ecc. & Ad. 19; 164 E. R. 11; *sub nom.* THE HÆDWIG, 17 Jur. 977.

1377. *Add. Annotations:*—**Refd.** The Minerva (1933), 49 T. L. R. 563; The Champion, [1934] P. 1; The Beldis, [1936] P. 51.

1402a. Failure to file vouchers—Damage action by Soviet Government.]—The Russian Govt., pltfs. in an action for damage by collision, were ordered by the ct. to file vouchers in support of their claim within a specified time, "otherwise, they be precluded from giving evidence in support thereof." Thereupon, pltfs. filed a bundle of documents, which referred only to a few of the items of their claim, & at the reference the registrar ruled that only those items which were supported by vouchers should be allowed to be the subject of proof in the claim, & that no evidence should be allowed to be given in support of the other items. On an appeal from this decision:—*Held:* the ct. had to bear in mind that the Russian nation had elected to carry on their businessi n a method entirely different from that in which business was conducted by the rest of the civilised world, with the result that when they came into that ct. they were handicapped to an unusual degree in supporting their claim; &, therefore, although the documents which, in the present case, they had produced in the way of vouchers fell immensely short of being a fair & full notice to the defts. of the case which pltfs. sought to make, in the circumstances justice would be done by allowing pltfs. to give evidence in support of all items of which, in the judgment of the registrar, they gave fair & full particulars to defts. as to the nature of their claim.—THE MARTE (1933), 149 L. T. 383; 49 T. L. R. 363; 18 Asp. M. L. C. 402.

1403a. Agreement for reference to Registrar—Effect of subsequent payment out of jurisdiction—In foreign currency.]—In proceedings for collision damage instituted by the owners of a Chilean steamship against the owners of a Dutch steamship the latter, through their solrs., undertook to appear, & in due course gave bail in an agreed sum. Later defts. made a formal admission of liability, & that admission, signed by the respective solrs. for the parties, was filed in the Admiralty Registry, together with a consent to a reference to assess pltfs.' claim. Pltfs., in compliance with an order to that effect, duly filed their claim & vouchers, but before a date had been fixed for the reference defts. obtained in the Chilean cts. an order permitting them to make payment by depositing in a named Chilean bank a sum in pesos considerably in excess of pltfs.' claim quantified in pesos. This payment was refused by pltfs., the Chilean currency having fallen heavily & the export of pesos being prohibited by Chilean law. On a motion by defts. for an order dismissing the action on the ground that they had satisfied the claim by payment:—*Held:* there was no final decision by the Chilean cts. that the payment in depreciated pesos was sufficient while proceedings were pending in England, & therefore the motion failed.—THE BAARN, [1933] P. 251; 102 L. J. P. 120; 150 L. T. 50; 49 T. L. R. 554; 18 Asp. M. L. C. 434, C. A.

1403b. —— —— ——.]—A Chilean vessel owned by pltfs. received damage through being run into by a Dutch vessel owned by defts. The Dutch vessel was arrested in England, & her owners put in bail, admitted liability, & consented to a reference to assess the damages. The admission & consent were filed in the registry & became an Order of Ct. The Chilean vessel was repaired in Chile, & pltfs. filed their claim & vouchers comprising (*inter alia*) some 70,000 Chilean pesos in respect of repairs & detention, quantified into sterling for the purposes of the claim at a little over £1,500. Defts. alleged that under Chilean law a debtor could make a valid payment, even against the will of the creditor, by depositing the amount owed in a Chilean bank in the name of the creditor, &, the exchange value of the peso having fallen, defts. deposited in a bank in Chile 80,000 pesos in pltfs.' name, an amount which defts. alleged was sufficient to cover the whole claim with interest.

LANGTON, J., held that the deposit, so far as it related to the claim in respect of repairs & detention, was a good discharge, & that the reference in respect of these items must be stayed. On appeal, SCRUTTON & ROMER, L.JJ., held that the deposit was not a good payment in satisfaction of the damages & that the reference must proceed; but GREER, L.J., said that in his opinion the registrar should treat the deposit as a payment on account of the sums expended & lost in pesos. The damages in question were agreed at £1,581, & it was further agreed at the reference (*a*) that the deposit, on the rate of exchange applicable at the time the pesos were expended & lost, was equivalent to £1,409 3*s.* 11*d.*, but (*b*) that owing to the action of the Chilean Exchange Control Commission it was impossible to purchase sterling, & (*c*) that defts. could at any time obtain possession of the pesos from the bank in Chile & that pltfs. did not claim them. The registrar held that a foreign deft. sued for damages in this country could not satisfy the claim by offering to pay in foreign currency; that the deposit did not affect the proceedings instituted here; & that pltfs. were entitled to £1,581 & interest. Defts. moved in objection to the report.

BATESON, J., confirmed the report, not only for the reasons given by the registrar, but also because, on the view he took of the judgments of SCRUTTON & ROMER, L.JJ., the question whether the deposit could be taken into account had already been decided. Defts. appealed:—*Held:* the appeal failed; (*per* CUR.) on the ground that on the previous judgments of the majority of the Ct. of Appeal defts. were precluded from raising the question that the deposit was to be treated as a sum

---

ultimately obtained decree for £4,800 as salvage, with modified expenses against defenders, but they were found liable in the expense incurred by defenders in obtaining security in excess of £8,000:—*Held:* the arresters were rightly found liable for the expense of obtaining security in excess of £8,000.—ST. CLAIR *v.* AUDNEY. [1922] S. C. 85.—**SCOT.**

sl. *Costs of arrest.*]—Where salvors of a ship arrested her as an initiatory step in an action *in rem* to recover the salvage due, they were allowed to recover the expenses of arresting the ship from her owners.—HATTON *v.* AKT. DURBAN HANSEN, [1919] S. C. 154; 56 Sc. L. R. 100.—**SCOT.**

paid on account of the damages in this country; (*per* SCRUTTON & MAUGHAM, L.JJ.) on the additional ground that a deposit which could not be converted into sterling could not satisfy or reduce damages payable in sterling; (*per* MAUGHAM, L.J.) on the ground that procedure in an action brought in this country must be governed by the *lex fori* & that the deposit in pesos was not a valid payment according to English law.—THE BAARN (No. 2), [1934] P. 171; 103 L. J. P. 149; 152 L. T. 439; 18 Asp. M. L. C. 506, C. A.

1405a. —— —— —— **Expert evidence.**]—On a reference to assess the damage arising out of a collision the registrar & merchants are not bound to accept the opinions of experts, even though they be all one way, but are entitled to test those opinions by their own experience & bring their own judgment to bear upon the evidence.—THE STEADFAST (1922), 39 T. L. R. 96.

1406a. Reasons should be stated.]—(1) In cases of collisions in which foreign ships are involved, the report of the registrar should state the reasons which have actuated the tribunal in allowing or disallowing large amounts, in order that the foreign interests concerned may appreciate what has been done. (2) The registrar & merchants are in very much the same position as a jury except that they give their reasons. So far as their reasons involve legal considerations they can be questioned. So far as they are findings of fact it takes a strong case to disturb them, but where it is clear that they have made mistakes or that the evidence does not support their conclusions, the ct. has always retained the power to alter their report, & it is obviously right that the ct. should maintain such a control (SCRUTTON, L.J.).—THE ST. CHARLES (1927), 138 L. T. 456; 17 Asp. M. L. C. 399, C. A.

1413. *Add. Annotation :*—**Refd.** The Kingsway. [1918] P. 344.

1422a. —— ——.]—THE ST. CHARLES, No. 1406a, *ante*.

1428. *Add. Citations :*—Brown. & Lush. 436; 34 L. J. P. M. & A. 113; 12 L. T. 619; 2 Mar. L. C. 221.

Add. Annotations :—**Consd.** The Thuringia (1871), 41 L. J. Adm. 20. **Refd.** The Kingsway, [1918] P. 344; Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

1433. *Add. Annotations :*—**Refd.** The Kingsway, [1918] P. 344; *Re* Mersey Docks & Admiralty Comrs., [1920] 3 K. B. 223; Admiralty Comrs. *v.* S.S. Valeria, [1922] 2 A. C. 242; Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655; The West Wales, [1932] P. 165.

1439. *Citation :*—For "[1916] A. C. 38," read "[1917] A. C. 38."

Add. Annotation :—**Consd.** The Aizkarai Mendi, [1938] 3 All E. R. 483.

1440. *Add. Annotation :*—**Refd.** The Baarn (1933), 150 L. T. 50.

1447. *Add. Annotation :*—**Apld.** The Young Sid, [1929] P. 190.

1452. *Add. Annotation :*—*As to* (1) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1471. *Add. Annotation :*—**Refd.** The Young Sid, [1929] P. 190.

1478. *Add. Annotations :*—**Refd.** The Glenfinlas, [1918] P. 363, n.; The London Corpn., [1935] P. 70.

1482. *Add. Annotations :*—**Consd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449; The Napier Star, [1933] P. 136. **Refd.** The Rosalind (1920), 90 L. J. P. 126.

1483a. ——.]—While on hire by the Admlty. a steam trawler was sunk through a collision with the *R.* The value of the trawler was agreed between the parties, but the Admlty. claimed, as bailees in possession, to recover as part of their damages interest from the date of the loss. The owners of the *R.* contended that interest was only payable from the date when the Admlty. paid the value of the trawler to her owners :—*Held :* under the Admlty. rule a bailee in possession was entitled to recover from a wrongdoer a complete equivalent of the chattel deteriorated or lost, namely, its value at the time of the deterioration or loss, with interest from that date; but, inasmuch as there was an agreement between the parties that defts. should pay what the Admlty. had to pay to the owners of the trawler, interest on that payment only ran from the date of payment.—THE ROSALIND (1920), 90 L. J. P. 126; 37 T. L. R. 116.

1484. *Add. Annotations :*—**Apld.** The Theems, [1938] P. 197. **Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1487a. No expenditure or loss incurred.]—On a reference to assess damages by collision interest is not awarded upon the sums allowed in respect of estimated repairs & estimated demurrage which will be incurred *in futuro : i.e.*, upon items of the claim in respect of which no expenditure or loss has been incurred at the date of the reference.—THE NAPIER STAR, [1933] P. 136; 102 L. J. P. 57; 149 L. T. 389; 49 T. L. R. 342; 18 Asp. M. L. C. 400.

PART III. SECT. 17, SUB-SECT. 2.—C. (o).

1437i. *Correction of report—Registrar proceeding on wrong principle.*]—CANADIAN VICKERS CO., LTD. *v.* THE SUSQUEHANNA (1919), 18 Exch. C. R. 210; 44 D. L. R. 716.—**CAN.**

PART III. SECT. 18, SUB-SECT. 2.

1480i. *Awarded from date of loss.*]—Interest in Admlty. cases will be calculated on the damages allowed from the date of the collision; & on payments made in respect of wages, & payments made by reason of the collision, from the dates of such payments.—CANADIAN DREDGING CO. *v.* NORTHERN NAVIGATION CO. (Ont.), [1924] Exch. C. R. 163.—**CAN.**

sq. *Work done—From date of rendering bill.*]—In the Admlty. Ct., in an action to recover for work done & material supplied, the ct. will allow interest from the time of rendering of the bill after completion, in the absence of legal excuse for non-payment.—WINSLOW MARINE RY. & SHIPBUILDING CO. *v.* THE PACIFICO, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; 1 W. W. R. 930; 34 B. C. R. 1; *on appeal, sub nom.* THE PACIFICO *v.* WINSLOW MARINE RAILWAY & SHIPBUILDING CO., [1925] 2 D. L. R. 162.—**CAN.**

PART III. SECT. 18, SUB-SECT. 3.

st. *Sale of ship—By marshal—Not licensed as auctioneer—Right to fees.*]—The marshal, though not licensed as an auctioneer, is entitled to a double fee on the gross proceeds in selling a vessel at auction by order of ct.—HERNANDEZ *v.* THE BAMFIELD (1921), 21 Exch. C. R. 166; 30 B. C. R. 161; [1921] 3 W. W. R. 69.—**CAN.**

1489a. —— —— **Claim by foreign Government.**]—(1) By Finnish law 2½ per cent. of the sale price of a Finnish vessel sold out of Finnish nationality is taken by the Finnish Govt. :—*Held :* the Finnish Govt. had no claim upon the proceeds of sale of a Finnish ship sold by the marshal under the powers of the ct. in a default action *in rem.*

(2) A party moving for payment out in a default action *in rem* must give notice to all persons who have intervened or entered *caveats*, & if persons wish to resist an application for payment out they must intervene or enter *caveats*, otherwise they are not entitled to be heard.—THE EVA, [1921] P. 454 ; 91 L. J. P. 17 ; 126 L. T. 223 ; 37 T. L. R. 920 ; 15 Asp. M. L. C. 424.

1492. *Add. Annotations :—Generally,* **Refd.** The Stream Fisher, [1927] P. 73 ; The Beldis, [1936] P. 51 ; The Roberta, [1938] P. 1.

1492a. —— **After postponement—Decrease in value of ship—Liability of intervener causing postponement to give further security.**]—In a mtge action *in rem* pltfs., mtgees., in Jan. 1925, recovered judgment by default condemning the ship & ordering her sale by the marshal. Thereupon certain charterers, to whom the mtgors. had chartered the ship for a term of years, intervened, claiming a declaration that the charterparty was binding on the mtgees. ; & by an order of Mar. 3 the sale of the ship stood over pending the trial of the issue, upon the interveners giving security in an amount satisfactory to the registrar for loss arising from delay & any loss on sale due to a fall in shipping values. On July 15 the ct. gave judgment that pltfs. were not bound by the charterparty, that they were entitled to the judgment they had obtained, & that the costs of & occasioned by the intervention should be paid by the interveners. On Oct. 14 the ship was sold by the marshal for £20,000 less than she had been valued at nine months previously. Pltfs. took out a summons for further security :—*Held :* although judgment had been given against the interveners & they were not appealing against that decision, the matter was still at large, as they were contesting pltfs.' claims before the registrar, & the interveners could be ordered to give further security in respect of possible loss of capital & interest & for the marshal's expenses ; the case must be referred to the registrar to find what amount should be given & what was the amount of pltfs.' damages under each head.—THE LORD STRATHCONA (No. 2), [1926] P. 18 ; 95 L. J. P. 168 ; 134 L. T. 511 ; 17 Asp. M. L. C. 24.

1493. *Add. Annotations :*—**Consd.** The Kronprinz Olav, [1921] P. 52. **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1493a. —— **Unascertained liability—Right of court to delay distribution.**]—THE KRONPRINZ OLAV, No. 1551a, *post.*

1496. *Add. Annotation:*—**Consd.** The Stream Fisher, [1927] P. 73.

1497a. —— **Motion for payment in default action—Necessity for notice.**]—THE EVA, No. 1489a, *ante.*

1497b. —— **Damage to ship whilst under arrest—Payment of damages into court—Cross-claim for damages for breach of charterparty.**]—A vessel whilst under arrest in a necessaries action was damaged by the negligent navigation of another vessel belonging to a party who had recovered judgment for damages for breach of charterparty in an action in the county ct. Liability for the damage to the extent of £21 12*s.* was admitted. On a motion by pltfs. in the necessaries action for payment out of the proceeds, the owners of the vessel which had caused the damage claimed to deduct £21 12*s.* by way of set-off for such damage from their claim in respect of the judgment recovered in the county ct. :—*Held :* claimants could not credit themselves with £21 12*s.*, but must pay that sum into the fund in ct.—THE MAGGIE A. (1923), 155 L. T. Jo. 191.

1497c. —— **Priorities—Several collisions.**]—Where there has been more than one collision with the same vessel the maritime liens arising thereout, apart from laches, rank *pari passu* & not in the order of the dates of the respective collisions.—THE STREAM FISHER, [1927] P. 73 ; 96 L. J. P. 29 ; 136 L. T. 189 ; 17 Asp. M. L. C. 159.

Maritime liens generally, *see* SHIPPING.

1499. *Add. Annotations :—As to* (2) **Consd.** The Beldis, [1936] P. 51. **Refd.** The Joannis Vatis (No. 2), [1922] P. 213 ; The Point Breeze, [1928] P. 135 ; The Roberta, [1938] P. 1.

1500. *Add. Annotations :—As to* (2) **Consd.** The Beldis, [1936] P. 51. **Refd.** The Joannis Vatis (No. 2), [1922] P. 213 ; The Point Breeze, [1928] P. 135 ; The Roberta, [1938] P. 1.

1501. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1502. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1504. *Add. Annotations :*—**N.F.** The Volant (1842), 1 Wm. Rob. 383. **Consd.** The Mary Caroline (1848), 6 Notes of Cases, 536. **Refd.** The Mellona (1848), 3 Wm. Rob. 16 ; The Benares (1850), 14 Jur. 581 ; The Milan (1861), 5 L. T. 590.

1505. *Add. Annotation :*—**Refd.** The Point Breeze, [1928] P. 135.

1507. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1508. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1519a. Expenses of witnesses—Though not called.]—Where a charge for the attendance of such a witness was allowed, because counsel in advising on evidence thought that the witness was necessary :—*Held :* that was a dangerous ground on which to proceed, & one upon which an allowance or disallowance ought not to be founded.—THE LORD STRATHCONA (No. 3), [1926] W. N. 270, C. A.

PART III. SECT. 18, SUB-SECT. 4.

1495 iv. —— *Claim by assignee of foreign shipowner.*]—After sale of a ship & payment of all costs & charges there remained in ct. a balance to the credit of the ship. On an application for payment out by a resident of Vancouver, who claimed to be the assignee of the reputed owner who lived in California :—*Held :* the application should be adjourned & published in Victoria & Vancouver by notice & advertisement for one month, the notice to be posted in the registry & served upon the collector of customs & the American Consul at Vancouver.—THE SPEEDWAY (1925), 35 B. C. R. 319.—CAN.

1520a. —— Measure of compensation.]—While it has always been the practice, owing to the nature of their calling, to allow seafaring witnesses to be detained on shore to give evidence, & to allow them reasonable compensation for their detention, it is a question for the taxing master whether a party who seeks to charge his opponent with the cost of detaining an expensive witness has acted reasonably in incurring the expense or whether he ought not to have examined the witness on commission.

A taxing master should bear in mind that a witness duly summoned is bound to attend, & the witness is not entitled to receive, as the measure of his compensation, the exact sum he may prove he has lost by reason of the detention. He is, however, entitled to some compensation, & not merely to the conduct money given him with his *subpœna*; & the wages he is earning may afford an important indication of what is fair compensation. But although this is correct in the case of seamen, as regards captains & other officers, as in the case of professional witnesses, their earnings cannot be taken as a fair criterion on which to base the allowance.—THE IBIS VI, [1921] P. 255; 90 L. J. P. 289; 125 L. T. 378; 37 T. L. R. 557; 65 Sol. Jo. 514; 15 Asp. M. L. C. 237, C. A.

Annotation:—**Expld.** The Ibis VI (No. 2) [1922] P. 4.

1520b. —— ——.]—The mate of pltfs.' fishing vessel, through being detained ashore for twenty-five days to give evidence at the trial of a collision action, was prevented from sailing on a voyage on which he would have earned £280 as his share of the catch. Pltfs., who were successful in the action, paid the witness the £280, &, on taxation, the assistant-registrar allowed the item in pltfs.' bill of costs as chargeable against defts. Defts. appealed, & the matter ultimately went to the Ct. of Appeal, which laid down certain guiding principles as to allowances to witnesses & sent the case back for reassessment. On reconsideration the assistant-registrar allowed the sum of £250, & defts. again appealed:—*Held*: the assistant-registrar had properly applied the directions given by LORD STERNDALE, M.R., in which WARRINGTON, L.J., concurred, namely, that the amount to be awarded should be "the reasonable compensation to a person of the class of the witness, taking into account all the circumstances & considering the wages which the witness was earning about the time of detention not as an absolute measure, but an important indication & guide of what is fair. The fact that all persons are under an obligation to give evidence when called upon should also not be ignored." The appeal therefore failed.—THE IBIS VI (No. 2), [1922] P. 4; 91 L. J. P. 44; 126 L. T. 256; 38 T. L. R. 55; 15 Asp. M. L. C. 427.

1520c. Substitute for witness.]—The expenses of a substitute to join a vessel from which a witness is necessarily taken are not allowable on taxation as a matter of course.—THE MASSILIA, [1926] P. 180; 95 L. J. P. 109; 135 L. T. 671; 42 T. L. R. 551; 17 Asp. M. L. C. 109.

1521a. Costs of obtaining statements from independent witnesses—Discontinuance of action.]—In a collision action, before pltfs. had filed their preliminary act or statement of claim, defts. took statements from independent witnesses on other vessels. Pltfs. shortly afterwards discontinued the action. On the taxation of defts.' bill of costs the assistant registrar disallowed the costs of obtaining these statements, on the ground that there was "a well-settled principle of taxation that a party is only entitled as against his opponent to incur such costs or expenses as will enable him to conduct his case at the stage which the proceedings have reached, & not incur expenses in anticipation of matter, which, as events turn out, never arise":—*Held*: R. S. C., Ord. 65, r. 27 (29), was not limited in the way stated by the assistant registrar; if solrs. could compel the discontinuance of an action by collecting the necessary evidence, they were entitled to do so, & the costs in question were not prematurely incurred, & defts. were entitled to recover them from pltfs. on taxation.—THE CHANNEL QUEEN, [1928] P. 157; 97 L. J. P. 97; 139 L. T. 336; 44 T. L. R. 505; 17 Asp. M L. C. 484.

1521b. Fee of average adjusters — Numerous claims.]—On a reference to assess damages arising out of a collision, the claims of cargo owners against the fund paid into ct. by the owners of the wrongdoing ship, who had limited their liability, were presented to the registrar in the form of an average statement. On taxation, a fee of £1,000 was allowed to the average adjusters in respect of the preparation of the claims. On a summons to review this item:—*Held*: where, as in the present case, there were a number of claims to be dealt with, an average statement was a method of proof to which there was no objection in principle, involving as it did less expense than would be incurred in the preparation of many affidavits or in calling a number of witnesses from overseas; it was irrevelant that the claimants had employed the same adjusters to prepare their claims in general average against underwriters; & the fee of £1,000 was rightly allowed.—THE NORMANSTAR, [1929] P. 283; 98 L. J. P. 152; 141 L. T. 463; 45 T. L. R. 554; 18 Asp. M. L. C. 53.

1526. *Add. Annotation*:—**Expld.** The Ibis VI, [1921] P. 255.

1527. *Add. Annotation*:—**Expld.** The Ibis VI, [1921] P. 255.

1536a. —— "To persons claiming to have sustained damage"—Appearance at trial—Right to be heard.]—In an action of limitation of liability pltfs., the owners of the steam tug *H.*, addressed their writ in the usual manner: "To the owners of the steamship *D.* & all other persons claiming to have sustained damage by reason of the collision or collisions between the *H.* & her tow & the *D.* on the morning of Jan. 2, 1921." Notice of the action was inserted in the press. At

the trial the owners of the steamship *T.*, who claimed to have sustained damage by reason of the collision or collisions between the *H.* & her tow & the *D.*, appeared by counsel & claimed to be heard. The owners of the *T.* had commenced an action against pltfs., but had taken no step other than appearance at the trial in the limitation suit:—*Held:* the writ made the owners of the *T.* parties to the action, & was served upon them by insertion in the press.—CORY LIGHTERAGE, LTD. *v.* DALTON (OWNERS), THE HARLOW (1922), 153 L. T. Jo. 121.

1538. *Add. Citation:*—4 Asp. M. L. C. 27, n. *Add. Annotation:*—**Refd.** The Vigilant, [1921] P. 312.

1541a. —— —— **Waiver of.**]—In an action of limitation of liability under M. S. Act, 1894 (c. 60), s. 503, pltfs. did not file the usual affidavit verifying their statement of claim. The owners & crew of the vessel injured in the collision, in respect of which judgment had been given against pltfs. in the previous action, & some cargo owners appeared by counsel at the trial & consented to a decree of limitation:—*Held:* a decree might be granted without requiring pltf. to file the usual affidavit.—THE COIMBRA (1923), 130 L. T. 512; 16 Asp. M. L. C. 288.

1544. *Add. Annotation:*—*As to* (2) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1547. *Add. Annotation:*—*As to* (2) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1548. *Add. Annotation:*—*As to* (2) **Consd.** The Coaster (1922), 91 L. J. P. 145.

1548a. —— —— ——.]—Pltf. in an action of limitation of liability, who has paid to claimants a sum in satisfaction of a liability arising out of the collision, is under M. S. Act, 1894 (c. 60), s. 503, entitled, in respect of such payment, to share ratably with other claimants in the distribution of the limitation fund, even though such payment has been enforced by action in a foreign ct.—THE COASTER (1922), 91 L. J. P. 145; 127 L. T. 153; 38 T. L. R. 511; 15 Asp. M. L. C. 560.

1551a. —— **Unascertained liability — Right of plaintiffs in limitation suit to claim against fund.**]—In Feb. 1917, two Norwegian vessels, the *C.* & the *O.*, came into collision & the *C.* sank. In Mar. 1917, the owners of the cargo laden on board the *C.* began an action against the owners of the *O.* in the Admlty. Ct. The action was heard in May, 1919, when both vessels were pronounced to blame, & accordingly it was adjudged that pltfs. were entitled to receive a moiety of the amount of their damage from defts. Thereupon defts., the owners of the *O.*, commenced a limitation action against the owners of the *C.*, the owners of her cargo, & all persons claiming to have received damage by reason of the collision. This action was heard in Feb. 1920, when a decree was pronounced limiting the liability of the owners of the *O.* to £8 per ton on the registered tonnage of the *O.* calculated in accordance with M. S. Act, 1894 (c. 60). The decree provided that all claims were to be brought in within three months & that claims not so brought in would be excluded from sharing in the limitation fund. Claims were filed by the owners of the cargo on the *C.*, but although the owners of the *C.* entered an appearance they took no further steps in the limitation proceedings. Meanwhile, however, in Feb. 1919, the owners of the *C.* had commenced an action in Norway against the owners of the *O.* & in June, 1920, when the reference was held in the limitation proceedings & the registrar made his report, the trial of the Norwegian action was still pending. The owners of the *O.* accordingly took out a summons asking that the report be not confirmed & that they might have leave to file a claim against the fund in respect of any liability they might incur under the Norwegian proceedings. The judge declined to postpone the distribution of the fund & dismissed the summons. Pltfs., the owners of the *O.*, appealed:—*Held:* (1) pltfs. had no absolute right under the limitation sects. of M. S. Act, 1894 (c. 60), to have the distribution of the fund stayed & to bring forward a claim when ascertained; (2) limitation proceedings do not contemplate claims by pltfs., & the owners of the *O.* could not file a claim against the fund in their own right; (3) had an application been made in proper form the ct. would have had a discretion to extend the time before distributing the fund, in order to allow pltfs. to ascertain their liability under the pending Norwegian judgment & to apply to the ct. to adjust the distribution of the fund so that pltfs. might obtain credit for the amount payable under the Norwegian judgment; but, having regard to the lapse of time & to the fact that limitation proceedings contemplate that claims shall be brought in promptly & the distribution of the fund not be unreasonably delayed, the ct. had rightly exercised its discretion in refusing to postpone the distribution of the fund.—THE KRONPRINZ OLAV, [1921] P. 52; 90 L. J. P. 398; 125 L. T. 684; 15 Asp. M. L. C. 312, C. A.

Annotation:—*As to* (3) **Consd.** The Coaster (1922), 91 L. J. P. 145.

1553a. —— ——.]—The usual rule by which the successful pltfs. in a limitation suit are required to pay the costs should not be departed from, notwithstanding that the litigation has been much more expensive than is usual in limitation actions by reason of the issues raised by defts. Nor ought pltfs. to recover their costs of giving bail in excess of the amount of their statutory liability.—CHARLOTTE (OWNERS) *v.* THEORY (LATE) (OWNERS), THE CHARLOTTE (1921), 153 L. T. Jo. 69.

1553b. *S. P.* THE KATHLEEN (1925), [1927] P. 63, n.; 69 Sol. Jo. 574.

1554. Delete "For full anns., *see* PRACTICE & PROCEDURE."

PART III. SECT. 20, SUB-SECT. 1.

sx. *Rate of interest.*]—In the absence of any rule in this State governing the rate of interest in cases to which Merchant Shipping Act, 1894, s. 503, apply, the practice of the Admlty. Ct. in England must be followed.—THE MILLIMUMUL (1929), 30 S. R. N. S. W. 461; 47 N. S. W. W. N. 170, 191.—AUS.

Part IV.—Appeals.

SUB-SECT. 1.—FROM COUNTY COURTS AND THE CITY OF LONDON COURT (p. 230).

See, now, Administration of Justice (Appeals) Act, 1934 (c. 40), s. 2 (1).

1581. *Citations :*—For " (1878) " read " (1877)."

1593. For "**No appeal**" read "**Right of appeal.**" *Add. Annotation :*—**Consd.** The Royal Star (1927), 97 L. J. P. 49.

1597a. —— **Master censured but certificate not dealt with.**]—A master, who has been censured in respect of a casualty to his ship by a colonial ct. of inquiry, but has not had his certificate (British) cancelled or suspended, probably has a right of appeal under M. S. Act, 1894 (c. 60), s. 478, but certainly has the right under M. S. Act, 1906 (c. 48), s. 66, as being " a person having an interest " in the inquiry, who has appeared at the hearing, & is " affected by the decision of the ct."—THE ROYAL STAR, [1928] P. 48 ; 97 L. J. P. 49 ; 138 L. T. 558 ; 44 T. L. R. 163 ; 17 Asp. M. L. C. 417, D. C. ; *subsequent proceedings,* [1928] P. 144, D. C.

1599. After this case add :—

——.]—*See* Shipping Casualties & Appeals & Re-hearing Rules, 1923, r. 20H.

1600a. ——.]—A British master holding a Board of Trade certificate received a notice of investigation calling upon him to appear before a Wreck Comr.'s Ct. appointed " to inquire into the causes which led to the casualty [the stranding of his vessel] & into all the facts connected therewith." The notice contained no other statement of the questions intended to be raised, & no charges were specifically formulated against the master before or at the inquiry that he was in fault in connection with any of the matters on which he was examined. The ct. found the master guilty of an error of judgment in taking wrong helm action & in failing to stop & take soundings, & suspended his certificate for three months. The master appealed :—*Held :* the master, having had no notice of the charges on which he had been found in fault, had not had an opportunity of making his defence, & the decision of the Wreck Comr.'s Ct. must be quashed & the certificate restored free from suspension. — THE CHELSTON, [1920] P. 400 ; 90 L. J. P. 77 ; 124 L. T. 223 ; 36 T. L. R. 688 ; 15 Asp. M. L. C. 158, D. C.

1603a. —— ——.]—THE THROSTLEGARTH (1899), cited, [1906] P. at p. 312.

Annotation :—**Consd.** The Carlisle, [1906] P. 301.

1603b. —— ——.]—THE GRECIAN (1902), [1928] P. 146, n., D. C.

1604a. —— —— **Preliminary motion—As to right of appeal.**]—The governor of a colony ordered an inquiry to be held into the stranding of a British ship. The ct. found the master guilty of negligence & severely censured him, but did not deem it necessary to deal with his certificate. The master served notice of appeal on the Board of Trade, but the Board took the view that no appeal lay unless the officer's certificate had been suspended or cancelled. A motion to determine, as a preliminary point, the question of the right to appeal was decided by the Div. Ct. in the master's favour, & at the subsequent hearing of the appeal the master was held not to have been guilty of the acts of negligence attributed to him :—*Held :* (1) as a matter of principle, as the Board of Trade had not ordered the inquiry, & merely appeared on the appeal in discharge of a public duty, costs ought not to be awarded against the Board ; (2) the question of the right to appeal, contested by the Board, raised a matter of public interest, & the master was entitled to the costs of the preliminary motion.—THE ROYAL STAR (No. 2), [1928] P. 144 ; 97 L. J. P. 107 ; 44 T. L. R. 408 ; 17 Asp. M. L. C. 417, D. C.

1610. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

1611a. —— —— **Costs.**]—THE YOUNG SID, No. 1696a, *post.*

1613a. —— **Appeal out of time—Discretion of court to extend time—Objection that appeal out of time not taken promptly.**]—Where an appeal from a decision confirming the report of the registrar & merchants in an action of damage by collision was out of time :—*Held :* as the objection that the appeal was out of time had not been taken at the earliest possible moment, the ct. would, in its discretion, hear the appeal.—THE OTTOKAR, [1921] W. N. 266, C. A.

Annotation :—**Apld.** London S.S. & Trading Corpn. *v.* Russian Volunteer Fleet (1926), 135 L. T. 607.

1620a. —— —— **Advice to be in writing.**]—Where the Ct. of Appeal sits with nautical assessors it is convenient that the advice of the assessors should be elicited by written questions, so that these questions & the answers may be available in the House of Lords.—MELANIE (OWNERS) *v.* SAN ONOFRE (OWNERS) (1919), 35 T. L. R. 507 ; 63 Sol. Jo. 552 ; [1927] A. C. 162, n. ; *subsequent proceedings,* [1925] A. C. 246, H. L.

1622. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1635. *Add. Annotations :*—**Consd.** *Re* Article X of Articles of Agreement for Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57 ; *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

PART IV. SECT. 2, SUB-SECT. 1.

1612 i. *Who can appeal—Collision—Both vessels to blame.*]—*Held :* where a judgment holds both vessels to blame for a collision, & where each party is actively claiming against the other for damages, it is open to each to appeal from such judgment by a separate & distinct appeal. In such a case each must serve notice of appeal & give security to the other for costs of his appeal.—CANADA ATLANTIC TRANSIT CO. *v.* EASTERN SS. CO., LTD. (Ont. Adm.), [1928] Ex. C. R. 60.—**CAN.**

PART IV. SECT. 4, SUB-SECT. 1.

sa. *In estimating weight of evidence—Witnesses not heard in court below.*]—Where the trial judge did not hear or see the witnesses, an appellate ct. is as competent to appreciate the facts & estimate the credibility of the evidence as the ct. of first instance.—CANADIAN VICKERS CO., LTD. *v.* THE SUSQUEHANNA (1919), 19 Exch. C. R. 116 ; 48 D. L. R. 461.—**CAN.**

sb. —— *Witnesses heard in court below.*]—Where the local judge in Admlty. has seen & heard the witnesses & was assisted by two assessors, the Exchequer Ct. of Canada, sitting as a ct. of appeal, should not interfere with the

1640. *Add. Annotation :*—**Refd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1642. *Add. Annotation :*—**Refd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1642a. —— ——.]—Observations of LORD SUMNER on the practice of the Ct. of Appeal in reviewing decisions of the Admlty. Ct. depending on the credibility of witnesses.—S.S. HONTESTROOM *v.* S.S. SAGAPORACK, S.S. HONTESTROOM *v.* S.S. DURHAM CASTLE, [1927] A. C. 37 ; 95 L. J. P. 153 ; 136 L. T. 33 ; 17 Asp. M. L. C. 123 ; *sub nom.* THE SAGAPORACK, THE HONTESTROOM, 42 T. L. R. 741, H. L.

Annotations :—**Consd.** Hoff Trading Co. *v.* De Rougemont (1929), 34 Com. Cas. 291. **Refd.** The Backworth, [1927] P. 256; Powell *v.* Streatham Manor Nursing Home, [1935] A. C. 243.

1644a. Decision of court below not interfered with —Joinder of plaintiffs convenient—& within rules locally applicable—Action in rem.]—MARLBOROUGH HILL, SHIP *v.* COWAN & SONS, No. 541a, *ante*.

1646. *Add. Annotations :*—**Apld.** The Kingsway, [1918] P. 344. **Refd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655.

1648. *Add. Annotations :*—**Refd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1649. *Add. Annotations :*—**Consd.** S.S. Hontestroom *v.* S.S. Sagaporack, S.S. Hontestroom *v.* S.S. Durham Castle, [1927] A. C. 37. **Refd.** Powell *v.* Streatham Manor Nursing Home, [1935] A. C. 243.

1655a. —— **Failure to consider important matter —Maritime Conventions Act, 1911 (c. 57).**]—Where a judge sitting in Admlty. has apportioned the blame between two wrongdoing vessels in accordance with sect. 1 of the above Act, the Ct. of Appeal, if it finds that he has not taken into consideration at all an obviously important matter, is bound to review his decision as to the apportionment of blame in the same way as it would if it had differed with him on the facts & had found that one of the vessels was more blameworthy as regards matters in respect of which she was not held to blame in the ct. below.—THE CLARA CAMUS (1925), 134 L. T. 50 ; 16 Asp. M. L. C. 570, C. A.; *revsd.* on other grounds (1926), 136 L. T. 291 ; 17 Asp. M. L. C. 171, H. L.

1682. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

1687. *Add. Annotation :*—**Refd.** The Stentor, [1934] P. 133.

1691. *Add. Annotation :—As to* (1) **Refd.** The Modica, [1926] P. 72.

1694. *Citations :*—For " P. D. 218 " read " S P. D. 218."

Add. Annotation :—**Refd.** The Modica, [1926] P. 72.

1695. *Citation :*—For " 27 T. L. R. 1 " read " 27 T. L. R. 398."

Add. Citation :—on appeal, sub nom. HERO (OWNERS) *v.* LORD HIGH ADMIRAL OF UNITED KINGDOM (COMRS. FOR EXECUTING THE OFFICE OF), [1912] A. C. 300, H. L.

1695a. —— —— —— ——.]—CANTON (OWNERS) *v.* RHESUS (OWNERS), [1928] W. N. 214 ; 31 Lloyd, L. R. 289, H. L.

Annotation :—**Expld.** The Young Sid, [1929] P. 190.

1696. *Add. Annotation :*—**Consd.** S.S. Canton *v.* S.S. Rhesus, [1928] W. N. 214.

1696a. —— —— —— ——.]—On appeal from a judgment in a collision action in which the judge of the county ct. had found both vessels to blame in the proportions of two-thirds & one-third, the Div. Ct. reversed the judgment to the extent of holding the vessels to blame in equal degrees, & applts. were given the costs of the appeal. Resps. in the Div. Ct. appealed on the question of costs :—*Held :* by R. S. C., 1883, Ord. 65, r. 1, the question of costs is left in the unfettered discretion of the ct. or judge, & unless the judge can be shown to have taken into consideration matters which are immaterial to the issue his decision is unappealable.—THE YOUNG SID, [1929] P. 190 ; 98 L. J. P. 97 ; 141 L. T. 234 ; 45 T. L. R. 389 ; 18 Asp. M. L. C. 22, C. A.

Annotation :—**Refd.** The Stentor, [1934] P. 133.

1697a. —— **Appeal & cross-appeal dismissed—No apportionment.**]—In an action of damage by collision pltfs.' vessel was held four-fifths to blame & defts.' vessel one-fifth to blame. Defts. appealed & pltfs. cross-appealed. The Ct. of Appeal dismissed both appeal & cross-appeal with costs. On taxation pltfs.' bill of costs of £802 14*s.* 6*d.* was taxed down to £755 17*s.* 9*d.* The bill of costs of defts., the unsuccessful applts., lodged for taxation at £1,935 10*s.* 1*d.*, of which a moiety was claimed from pltfs., was taxed down to £91 4*s.* 11*d.* on the ground that, beyond a possible slight prolongation of the hearing & a few small items in connection with the notice of the cross-appeal, defts.' costs had not been increased by reason of the cross-appeal. On a summons for a review of the taxation of the bills, BATESON, J., held that the bills must go back to the assistant registrar for apportionment of the costs of each side between the appeal & the cross-appeal, with reference to the actual course taken & the time properly occupied on the hearing of the appeals. Pltfs. appealed :—*Held :* the learned judge was wrong in applying the principle of apportionment ; in the absence of a special order the principle of no apportionment laid down as to claim & counterclaim cases in *Medway Oil & Storage Co.* v. *Continental Contractors, Ltd.*, [1929] A. C. 88, applied ; & defts. (resps. to the cross-appeal) were only entitled to the extra costs which they had incurred by reason of the cross-appeal.—THE STENTOR, [1934] P. 133 ; 103 L. J. P. 105 ; 152 L. T. 450 ; 18 Asp. M. L. C. 490, C. A.

decision of the judge of first instance as regards pure questions of fact, unless it is firmly of the opinion that such decision is clearly erroneous.—FRASER *v.* S.S. AZTEC (1920), 20 Exch. C. R. 39 ; 56 D. L. R. 440 ; (1921), 29 Exch. C. R. 450 ; 63 D. L. R. 543.—CAN.

PART IV. SECT. 4, SUB-SECT. 3.—A.

1660 ii. —— —— ——.]—**The amount of salvage reward is in the** discretion of the ct., &, unless the same is excessive, an appellate tribunal ought not to interfere.—SHIP SENECA *v.* MACDONALD, [1923] Exch. C. R. 177 ; *affd.*, [1923] Exch. C. R. 13.—CAN.

1698. *Add. Annotation :*—**Refd.** Nestor S.S. Owners *v.* Mungana S.S. Owners, The Mungana, [1936] 3 All E. R. 670.

1708. *Add. Annotations :*—**Apld.** The Young Sid (1928), 45 T. L. R. 138. **Refd.** The Young Sid, [1929] P. 190.

Part V.—Jurisdiction and Practice of other Courts having Admiralty Jurisdiction.

1710. *Add. Citation :*—14 Asp. M. L. C. 21.

1715. *Add. Annotation :*—**Consd.** The Beldis, [1936] P. 51.

1717. *Add. Citations :—sub nom. Re* PERFECT *v.* POYNTER, R. *v.* ESSEX COUNTY COURT JUDGE, 53 L. J. Q. B. 423 ; *sub nom.* R. *v.* ABDY, 32 W. R. 754.

1720a. —— **Action on arbitration award relating to freight.**]—THE BELDIS, No. 66a, *ante*.

1722. *Add. Annotations :*—**Apld.** The Norfolk Coast (1922), 153 L. T. Jo. 450. **Consd.** The Champion, [1934] P. 1.

1723a. —— ——.]—A collision took place in the Thames between the dumb barge *H.* & the steamer *C.* Proceedings were commenced by the owners of *H.* in the High Ct., but the action was subsequently settled, the owners of the *H.* accepting £48 10*s.* in satisfaction of their claim. Defts. objected to payment of pltfs.' costs on the High Ct. scale, on the ground that the matter was within the Admlty. jurisdiction of the county ct., where the action should have been commenced :—*Held :* pltfs. were warranted in commencing proceedings in the High Ct. & were entitled to have their costs taxed on the High Ct. scale.—THE NORFOLK COAST (1922), 153 L. T. Jo. 450.

Annotation :—**Consd.** The Champion, [1934] P. 1.

1724a. —— **Between ship & dumb barge in tow.**]—While in tow of a tug, pltfs.' dumb barge, which was fitted with rowing chocks & a rudder, was brought into collision with defts.' tug. Pltfs. brought an action in respect of the damage on the Admiralty side of the City of London Ct., & defts. moved to set aside the proceedings on the ground that the barge was not a ship & accordingly the ct. had no jurisdiction to entertain the action. The judge held that as at the material time the barge was not being propelled by oars she was to be regarded as a ship & that accordingly the ct. had jurisdiction to entertain the claim. Defts. appealed :—*Held :* the appeal failed ; (*a*) *per* BATESON, J., on the ground that the decision of the ct. below that the barge was to be regarded as a ship was right ; but (*b*) (*per* CUR.), even if the barge was not to be regarded as a ship, the decision could be supported on a ground not argued in the ct. below, viz., that the old Ct. of Admlty. would have had jurisdiction to try a case of collision between two vessels in which one of the vessels involved was a ship ; subject to a pecuniary limitation the same jurisdiction was conferred on county cts. by County Cts. Admlty. Jurisdiction Act, 1868 (c. 71), & County Cts. Admlty. Jurisdiction Amendment Act, 1869 (c. 51), merely enlarged the jurisdiction to include cases of damage to ships caused otherwise than by collision & did not restrict the words of sect. 3 of the earlier Act.—THE CHAMPION, [1934] P. 1 ; 103 L. J. P. 9 ; 150 L. T. 318 ; 18 Asp. M. L. C. 453 ; *sub nom.* THE JAMES AND THE CHAMPION, 50 T. L. R. 39, D. C.

Annotation :—**Consd.** The Beldis, [1936] P. 51.

1725. *Add. Annotations :*—**Consd.** The Champion, [1934] P. 1 ; The Beldis, [1936] P. 51.

1727. *Add. Annotation :*—**Consd.** The Champion, [1934] P. 1.

1728. *Add. Annotations :—As to* (1) **Consd.** The Minerva (1933), 49 T. L. R. 563 ; The Champion, [1934] P. 1 ; The Beldis, [1936] P. 51.

1732. *Add. Annotation :*—**Apld.** The Norfolk Coast (1922), 153 L. T. Jo. 450.

1737. *Add. Annotation :*—**Refd.** The Champion, [1934] P. 1.

1738. *Add. Annotation :*—**Refd.** The Champion, [1934] P. 1.

1750. *Add. Annotation :*—**Refd.** The British Trade, [1924] P. 104.

1751. *Add. Annotation :—As to* (2) **Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

1752. *Add. Annotation :*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

1757. After this case add :—
See, now, County Courts Act, 1919 (c. 73), s. 13, Sched.

1766. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1789. After this case add :—
See, now, Liverpool Corporation Act, 1921 (c. lxxiv.), s. 260 ; Liverpool Ct. of Passage Rules, 1934, r. 36.

1794. *Add. Citation :*—13 Moo. P. C. C. 132 ; 15 E. R. 50.
Add. Annotation :—**Refd.** The Yuri Maru, The Woron [1927] A. C. 906.

PART V. SECT. 5.

a i. —— *Plea of forum non conveniens.*]—Circumstances in which plea sustained.—SOCIÉTÉ DU GAZ DE PARIS *v.* SOCIÉTÉ ANONYME DE NAVIGATION "LES ARMATEURS FRANÇAIS," [1926] S. C. (H. L.) 13.—SCOT.

a ii. —— ——.]—SHEAF STEAMSHIP CO. *v.* COMPANIA TRANSMEDITERRANEA, [1930] S. C. 660.—SCOT.

sc. *Jurisdiction of Sheriff Court—Sheriff Courts (Scotland) Act,* 1907 (c. 51), *ss.* 4, 6.]—SHEAF STEAMSHIP CO. *v.* COMPANIA TRANSMEDITERRANEA, [1930] S. C. 660.—SCOT.

PART V. SECT. 7, SUB-SECT. 1.

c i. —— *Necessaries.*]—A claim for necessaries can be enforced in a colonial admiralty ct. by a suit *in rem.*—THE HEIWA MARU *v.* BIRD & CO. (1923), I. L. R. 1 Ran. 78.—IND.

1794a. —— That of High Court before 1890.]—(1) The effect of Colonial Cts. of Admlty. Act, 1890 (c. 27), s. 2 (2), is to limit the jurisdiction of colonial cts. of admlty. established under the Act to the admlty. jurisdiction of the High Ct. of England, as it existed at the passing of the Act; the extension of the admlty. jurisdiction of the High Ct. by Jud. (Consolidation) Act, 1925 (c. 49), s. 22, does not apply to colonial cts. of admlty.

(2) The Exch. Ct. of Canada has not, under sect. 22 (1) (xii) of the above Act of 1925, jurisdiction *in rem* to try an action for damages for breach of a charterparty.—THE YURI MARU, THE WORON, [1927] A. C. 906; 43 T. L. R. 698; *sub nom.* SNIA VISCOSA SOCIETA, ETC. *v.* S.S. YURI MARU, CANADIAN AMERICAN SHIPPING CO. *v.* S.S. WORAN, 96 L. J. P. C. 137; 137 L. T. 747; 71 Sol. Jo. 649; 17 Asp. M. L. C. 322, P. C.

1795. *Add. Annotation:*—**Refd.** The Yuri Maru, The Woron, [1927] A. C. 906.

1798. *Add. Annotations:*—*As to* (2) **Refd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401; Freshwater *v.* Bulmer Rayon Co., [1933] 1 Ch. 162.

1799a. ——.]—THE VROUW DOROTHEA (1754), cited 2 Ch. Rob. at p. 246; 165 E. R. at p. 304.

1802. After this case add:—

——.]—*See* Colonial Courts of Admiralty Act, 1890 (c. 27), ss. 4, 7, *&c, now*, Statute of Westminster, 1931, s. 6.

1811a. —— Action in rem for damages for breach of charterparty.]—THE YURI MARU, THE WORON, No. 1794a, *ante*.

PART V. SECT. 7, SUB-SECT. 2.

c (p. 253) **i.** —— ——.]—Although the Exch. Ct. of Canada on its Admlty. side sits in Canada, it administers the maritime law of England in like manner as if the cause of action were being tried & disposed of in the English Ct. of Admlty.—ROBILLARD *v.* THE ST. ROCH & CHARLAND (1921), 62 D. L. R. 145; 21 Exch. C. R. 132.—**CAN.**

c (p. 253) **ii.** —— —— *Necessaries—Ship not "under arrest."*]—Where a ship is not under arrest & its owner is domiciled in Canada, the Exch. Ct. of Canada has no jurisdiction over an action for repairs or necessaries supplied to the ship.—STACK *v.* THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—**CAN.**

c (p. 253) **iii.** —— —— *Claim for damages for death of husband—Effect of Maritime Conventions Act*, 1914.]—Pltf.'s husband was killed in a collision between the *C.* & a boat in which he, with another man, was engaged in fishing. Pltf. took action *in rem* in the Exchequer Ct. in Admiralty to recover damages:—*Held:* the Exchequer Ct. had no jurisdiction to hear & determine the present action, & the Maritime Conventions Act, 1914, did not so enlarge the jurisdiction of the Exchequer Ct. in Admiralty, as existing under the Admiralty Court Act, 1861, as to give jurisdiction in actions like the present.—THE CATALA *v.* DAGSLAND (B. C.), [1928] 3 D. L. R. 334; [1928] Exch. C. R. 83.—**CAN.**

c (p. 253) **iv.** —— —— *Collision—Damages to cruiser.*]—The action is one for damages resulting from a collision between pltf.'s boat & that of deft. The ct. found that the collision was due to the negligence of deft.:—*Held:* the Exchequer Ct. has original jurisdiction in such a case by virtue of Exchequer Court Act, 1927, s. 30 (*d*).—R. *v.* JERRY PETITE, [1933] Ex. C. R. 186.—**CAN.**

f (p. 253) **i.** —— —— —— ——.]—Subject to the exceptions mentioned in Canada Shipping Act, 1906 (c. 113), s. 191, in an action for seaman's wages earned on a ship registered in Canada, where the amount of recovery is less, although the amount sued on is more than $200, the Exch. Ct. in Admlty. is without jurisdiction.—KOUAME *v.* S.S. MAPLECOURT (1921), 21 Exch. C. R. 226.—**CAN.**

f (p. 253) **ii.** —— —— —— ——.]—*Held:* subject to the exceptions mentioned in R. S. C., 1927, c. 186, s. 349, no suit or proceedings for recovery of wages under the sum of $200 can be instituted by seamen or apprentices in the Exchequer Ct. of Canada on its Admiralty side.—COFFIN & O'FLYNN *v.* THE PROTOCO, [1930] Ex. C. R. 153; 2 D. L. R. 421; 1 W. W. R. 558; 42 B. C. R. 347.—**CAN.**

sd. —— —— *Stevedores's claim.*]—Pltfs., stevedores, entered into a contract to load a vessel on its arrival at Montreal. The captain of the ship refused to allow them to load the vessel, & thereupon the ship was arrested on a claim for damages arising out of breach of the contract:—*Held:* (1) the admlty. jurisdiction of the ct. was no greater than the admlty. jurisdiction of the High Ct. of England; (2) upon the facts the ct. had no jurisdiction to entertain the action.—WOLFE *v.* S.S. CLEARPOOL (1920), 20 Exch. C. R. 153.—**CAN.**

se. —— —— ——.]—The Exch. Ct. of Canada has jurisdiction over stevedores claims.—J. P. FERNS *v.* THE INGELBY, [1923] Exch. C. R. 208.—**CAN.**

—— —— *Maritime lien—Created by foreign law.*]—*See* Nos. 348 i-iii, *ante*.

sf. —— —— *Appellate jurisdiction—Necessity for leave to appeal—Interlocutory judgment.*]—The Exch. Ct., sitting in appeal, cannot entertain an appeal from an interlocutory decree without leave having previously been obtained from either the local judge in admlty. or from the Judge of the Exch. Ct.—JOHNSON & MACKAY *v.* S.S. CHARLES S. NEFF (No. 1) (1918), 17 Exch. C. R. 155.—**CAN.**

sg. *S. P. Re* 251 BARS OF SILVER & SEA INSURANCE CO. *v.* CANADIAN SALVAGE ASSOCN. (1915), 15 Exch. C. R. 367.—**CAN.**

sk. —— —— —— ——.]—(1) Where by statute an appeal is given to the Exch. Ct. of Canada from an interlocutory judgment or order, upon permission so to appeal having been previously obtained, & when no such permission has been obtained, the ct. has no jurisdiction to hear the appeal.

(2) The judgment of a local judge of admlty. confirming a taxation by the district registrar of the marshal's bill for services, etc., relating to the care of the ship whilst in his custody is an interlocutory judgment.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.) (1922), 68 D. L. R. 729; 21 Exch. C. R. 351.—**CAN.**

sl. —— —— —— *Appeal as to costs.*]—*Semble:* appeals involving merely a question of costs should not be entertained, more particularly when the appeal is from the decision of the trial judge confirming the findings of the taxing master, or when the matter is only one of *quantum* involving the exercise of his discretion.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.) (1922), 68 D. L. R. 729; 21 Exch. C. R. 351.—**CAN.**

sm. —— —— —— *No jurisdiction to hear appeal from Commissioner's Court under Canada Shipping Act.*]—R. *v.* PERREAULT (1922), 66 D. L. R. 671; 21 Exch. C. R. 355.—**CAN.**

—— —— *Transfer of action from one admiralty district to another.*]—*See* cases t i, w i, *post*.

sk. —— —— *Salvage.*]—Exchequer Ct. sitting in admiralty is a Ct. of Record & has jurisdiction *in rem* in salvage claims where the *res* was within the jurisdiction when the action was begun.—SIN-MAC LINES *v.* THE "HURON," [1936] 3 D. L. R. 189.—**CAN.**

sn. —— *Exercise of jurisdiction—Appellate jurisdiction—Questions of fact.*]—Where the local judge in admlty. has seen & heard the witnesses & was assisted by two assessors, the Exch. Ct. of Canada, sitting as a ct. of appeal, should not interfere with the decision of the judge of first instance as regards pure questions of fact, unless it is firmly of opinion that such decision is erroneous.—FRASER *v.* S.S. AZTEC (1920), 20 Exch. C. R. 39; 56 D. L. R. 440; (1921), 20 Exch. C. R. 450; 63 D. L. R. 543.—**CAN.**

sp. —— —— —— *Dismissal of appeal for want of prosecution.*]—There is no distinction in principle to be drawn between the inherent authority of the ct. to order the dismissal of a case on appeal for want of prosecution, & the dismissal of one at first instance.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.) (1922), 70 D. L. R. 16; 21 Exch. C. R. 426.—**CAN.**

sr. —— —— —— *Application for retention of bail bond in court or for re-arrest of ship.*]—Application dismissed.—EMPIRE STEVEDORING CO., LTD. *v.* THE EMPRESS OF JAPAN, [1927] 2 D. L. R. 985; 38 B. C. R. 438.—**CAN.**

ti. —— —— *Transfer of action—Convenience.*]—(1) It is in the discretion of the ct. to order the removal of a suit from one district to another upon cause shown.

(2) The determining factor in granting such an order is that of general convenience to the parties.—JOHNSON *v.* THE CHARLES S. NEFF (1918), 21 Exch. C. R. 171.—**CAN.**

wi. ——.]—On the ground of comity, the Exch. Ct. will not entertain an application for the transfer of a cause from one admlty. district to another without the application having first been made before the local judge.—JOHNSON & MACKAY *v.* S.S. CHARLES S. NEFF (NO. 2) (1918), 17 Exch. C. R. 158.—**CAN.**

sv. *Nova Scotia—Supreme Court of—Collision in harbour in province.*]—

SMITH *v.* FECAMPOIS (N. S.), [1929] 2 D. L. R. 925.—**CAN.**

PART V. SECT. 7, SUB-SECT. 3.

ki. ——.]—Two ships collided in Hobson's Bay & both were damaged. The owner of one ship commenced an action for damages against the owner of the other in the Supreme Ct. of Victoria before a jury. Shortly afterwards, the owner of the latter ship commenced an action for damages against the former ship in the High Ct. in its Admiralty jurisdiction. Deft. in the High Ct. sought to stay that action to enable the responsibility for the damage caused by the collision to be decided in the Supreme Ct.:—*Held:* pltf. in the High Ct. was entitled to proceed *in rem*, & was not obliged to assert its claim by counterclaim in the action in the Supreme Ct., & that the application should be refused. The right of the Supreme Ct. to exercise Admiralty jurisdiction considered.—UNION S.S. CO. OF NEW ZEALAND *v.* THE CARADALE (1937), 56 C. L. R. 277; 43 Argus L. R. 142 10 A. L. J. 467.—**AUS.**

sw. *High Court.*]—The High Ct. is a colonial ct. of Admlty. & has jurisdiction in an action by consignees against a ship, the owner of which is not domiciled in Australia, for delivery in a damaged condition of goods for which the consignees hold a bill of lading issued by the master of the ship.—SHARP (JOHN) & SONS, LTD. *v.* THE KATHERINE MACKALL (1924), 34 C. L. R. 420.—**AUS.**

sx. *Application of Carriage of Goods by Sea Act*, 1924.]—In an action on a bill of lading in the Admlty. jurisdiction of the Supreme Court under Admiralty Courts Act, 1861, s. 6, for damage to goods in transit from the United Kingdom, the rights of the parties are governed by the rules contained in the Sched. to the Carriage of Goods by Sea Act, 1924.—PARKE, LACEY, HARDIE, LTD. *v.* THE CLAN MACFADYEN (1929), 30 S. R. N. S. W. 438; 47 N. S. W. W. N. 160.—**AUS.**

PART V. SECT. 7, SUB-SECT. 5.

ri. —— —— *Tort of master within jurisdiction.*]—If a tort is committed within the jurisdiction of the ct. by the master of a ship, being a *peregrinus*, against a member of his crew, also a *peregrinus*, the ct. has jurisdiction to arrest the tort feasor or his goods, & to try an action based upon the tort; but the commission of such a tort is not a ground for attaching the ship to found jurisdiction unless the master has an interest in the ship.—NOLAN *v.* S.S. RUSSEL HAVERSIDE, [1921] C. P. D. 136.—**S. AF.**

sz. —— *Action in rem—Necessaries—What law applicable.*]—In a claim *in rem* against the proceeds of a vessel for a sum of money alleged to have been expended for repairs & necessaries in priority to prior mtgees. of the vessel the law to be applied is English admlty. law & not Roman-Dutch Law.—CROOKS & CO. *v.* AGRICULTURAL CO-OPERATIVE UNION, LTD., [1922] App. D. 423; 42 N. L. R. 216.—**S. AF.**

AERIAL NAVIGATION.

See STREET AND AERIAL TRAFFIC.

AFFRAY.

See CRIMINAL LAW.

AGENCY.

Part I.—The Relation of Agency.

1. *Add. Annotation :*—**Consd.** Clayton-Greene *v.* De Courville (1920), 36 T. L. R. 790.
2. *Add. Annotation :*—**Refd.** Petrie *v.* Red Bank Manufacturing Co. (1935), 28 B. W. C. C. 423.
5. *Add. Annotation :*—**Consd.** Verner-Jeffreys *v.* Pinto, [1929] 1 Ch. 401.
15. *Add. Annotation :*—**Refd.** Wisbech R. C. *v.* Ward, [1927] 2 K. B. 556.
16. *Add. Annotations :*—**Consd.** Wisbech R. D. C. *v.* Ward (1927), 91 J. P. 200. **Refd.** Brightman *v.* Tate, [1919] 1 K. B. 463; Boynton *v.* Richardson (1924), 69 Sol. Jo. 107; Wisbech R. C. *v.* Ward, [1928] 2 K. B. 1.
19. *Add. Annotation :*—*As to* (2) **Refd.** A.-G. *v.* De Keyser's Royal Hotel, [1920] A. C. 508.
21. *Add Citation :*—8 T. L. R. 194.
Add. Annotation :—**Refd.** Taylor *v.* Davies, [1920] A. C. 636.
27. *Add. Annotation :*—**Refd.** Petrie *v.* Red Bank Manufacturing Co. (1935), 28 B. W. C. C. 423.
28. *Add. Annotation :*—**Refd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.
29. *Add. Annotations :*—**Consd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66. **Refd.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

Part II.—Competency of Parties—Acts which can be done by an Agent.

37. *Add. Annotation :*—**Refd.** Dodd *v.* Amalgamated Marine Workers' Union, [1924] 1 Ch. 116.
40. *Add. Annotation :*—**Refd.** Dodd *v.* Amalgamated Marine Workers' Union, [1924] 1 Ch. 116.
42. After this case add :—*See, now,* Law of Property Act, 1922 (c. 16), s. 128 (3).
68. *Add. Annotations :*—*Generally,* **Refd.** *Re* Ellis, [1925] 1 Ch. 564; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.
69. For "**Dramatic Copyright Act, 1888,**" read "**Dramatic Copyright Act, 1833.**"
86. *Add. Annotation :*—**Apld.** *Re* Blucher (Prince), *Ex p.* Debtor, [1931] 2 Ch. 70.
88. *Add. Annotation :*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626.
90. *Add. Annotation :*—**Refd.** R. *v.* North Worcestershire Assmt. Com., *Ex p.* Hadley, [1929] 2 K. B. 397.
91. *Add. Annotations :*—**Apprvd.** Civilian War Claimants Assocn. *v.* R., [1932] A. C. 14 **Consd.** Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383. **Apld.** German Property Administrator *v* Knoop (1932), 49 T. L. R. 109. **Refd.** Wigg *v.* A.-G. of the Irish Free State (1927), 96 L. J. P. C. 88.

91a. ——.]—By the Treaty of Versailles Germany undertook to make compensation for all damage done to the civilian population of the Allied & Associated Powers & to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by the aggression of Germany & her allies, & moneys were received by the Crown under this article. By a petition of right the suppliants, as assignees of civilian claimants who had suffered loss or damage by German aggression during the War, claimed on their behalf payment of compensation out of the moneys paid or payable as reparations under the above article. The case made by the petition was that the claimants had sent particulars of their claims, first, to the Foreign Claims Office &, afterwards, to the Reparation Claims Department in accordance with the instructions of His Majesty's Govt., that these claims had been duly verified by the Govt., & were included in the agreed total of claims for reparations which Germany was required to pay under the treaty, & that the Crown in inviting the claimants to submit their claims

---

PART I.

1 ii. —— ——.]—The relation of principal & agent only arises when the person called the agent has authority expressed or implied to act on behalf of the other called the principal, & consents so to act.—SMITLE *v.* SLATTARD (1919), 21 W. A. L. R. 19.—**AUS.**

2 i. ——.]—*Held :* in the circumstances despite the designation of deft. as agent by pltf., the real relationship between the parties was that of purchaser & seller.—BRIDGEFORD *v.* DIXON, [1918] E. D. L. 156.—**S. AF.**

5 i. For "**AUS.**" read "**S. AF.**"

8a. ***Agent distinguished from—Joint adventurer.***]—The distinction between the position of a joint adventurer & an ordinary agent buying for his principal with the understanding that he is to be remunerated for his services, pointed out.—SUTTON *v.* FORST (1924), 55 O. L. R. 281.—**CAN.**

8i. —— ——.]—Where a consignee of goods for sale is authorised to sell them at a certain minimum price & told that whatever amount he obtains above that price will be his commission, the relationship between consignor & consignee is that of principal & agent.—REX GROCERY *v.* HIGGS & KEEN, [1925] 3 D. L. R. 565; [1925] 2 W. W. R. 402; 19 Sask. L. R. 492.—**CAN.**

26 iv. —— ——.]—GIER *v.* VAN AALST (Alta.) (1914), 28 W. L. R. 876.—**CAN.**

27 viii. For "**AUS.**" read "**S. AF**"

27 xii. —— ——.]—Defts. gave to pltf. a written order to ship goods from England on account of defts., & pltf. ordered goods from a manufacturer in England to be shipped in performance of this order :—*Held :* the relationship between the parties was that of principal & agent, not of vendor & purchaser.—BULTERS *v.* ROOPE, [1922] N. Z. L. R. 549.—**N.Z.**

27 xiii. —— ——.]—PIESSE *v.* TASMANIAN, ETC. CO-OPERATIVE ASSOCN., LTD. (1919), 15 Tas. L. R. 67.—**AUS.**

h i. —— *Shipping manager to marketing association.*]—PEAREN *v.* SASKATCHEWAN LIVESTOCK CO-OPERATIVE MARKETING ASSOCN., LTD., [1930] 2 D. L. R. 63.—**CAN.**

had constituted itself an agent or a trustee for the claimants in respect of any money received by it from Germany on account of reparations, & that any such money was money had & received by the Crown to the use of the claimants:—*Held:* on demurrer by the Crown, the petition afforded no ground for the contention that the money received under the treaty was received by the Crown as an agent or a trustee for the claimants, or as money had & received to their use, & was bad as disclosing no ground of claim cognisable by the ct.—CIVILIAN WAR CLAIMANTS ASSOCN., LTD. *v.* R., [1932] A. C. 14; 101 L. J. K. B. 105; 146 L. T. 169; 48 T. L. R. 83; 75 Sol. Jo. 813, H. L.

Annotation:—**Apld.** German Property Administrator *v.* Knoop (1932), 49 T. L. R. 109.

91b. Foreign sovereign power.]—In the agreement dated Dec. 28, 1929, between the British & German Govts. as to the liquidation of German properties, & the agreement concluded with Germany at the Hague Conference, both ratified in May, 1930, there is nothing to show that the German Govt. was thereby expressly or by necessary implication purporting to act as agent or trustee on behalf of its nationals so as to give its nationals a right of action.

The relation of trustee or agent which is alleged to exist between a Sovereign Power & the subjects of that Sovereign Power in the negotiation & conclusion of a treaty is one which cannot exist in any State like ours &, I may add, in any State like that which now exists in Germany (MAUGHAM, J.).—GERMAN PROPERTY ADMINISTRATOR *v.* KNOOP, [1933] 1 Ch. 439; 102 L. J. Ch. 156; 148 L. T. 468; 49 T. L. R. 109; 76 Sol. Jo. 919.

Part III.—Classes of Agents.

127. *Add. Annotation:*—**Consd.** Stanley (Montagu) & Co. *v.* Solomon (J. C.), Ltd., [1932] 2 K. B. 287.

127a. ——.]—Pltfs. bought from the first defts. a quantity of seed under a written contract, which stated that the first defts., through the agency of the second defts., acting as *del credere* agents, sold the seed to pltfs. The second defts. were paid a commission by the first defts., & received nothing from pltfs. The first defts. were unable to deliver the goods. In an action for damages:—*Held:* as the second defts. were not in fact the agents of pltfs. but only of the first defts., & as the mere description of the second defts. as *del credere* agents, without any further words making them *del credere* agents of either party in particular, did not make them agents of pltfs., the action failed as against the second defts.—NOUVELLES HUILERIES ANVERSOISES S. A. *v.* MANN (H. C.) & Co. (1924), 40 T. L. R. 804.

Part IV.—Formation and Evidence of the Contract of Agency.

133. *Add. Annotation:*—*As to* (1) **Apld.** *Re* Blucher (Prince), *Ex p.* Debtor, [1931] 2 Ch. 70. **Refd.** Pratt *v.* Cook Son & Co. (St. Paul's), Ltd., [1938] 2 K. B. 51.

147. *Add. Annotation:*—*Generally*, **Consd.** Stanley (Montagu) & Co. *v.* Solomon (J. C.), Ltd., [1932] 2 K. B. 287.

PART III.

sb. *Mercantile agent—Automobile dealer.*]—HARE & CHASE, LTD. *v.* COMMERCIAL FINANCE CORPN., LTD. (1928), 62 O. L. R. 601.—**CAN.**

108 i. *Broker.*]—A broker is an agent of a special kind. A broker who approaches a buyer or seller acts in the first instance as agent of the person who employs him, but directly the other party is aware of the fact that he is a broker, he becomes the agent of both parties, not with a plenary power to bind both parties as he chooses, but to communicate between them until they are *ad idem*.—JACOBS LEVITATZ & BRAUDE *v.* KROONSTAD ROLLER MILLS, [1921] O. P. D. 38.—**S. AF.**

PART IV. SECT. 2, SUB-SECT. 1.

149 iii. —— —— *Statute of Alberta*, 1906 (*c.* 27).]—It is merely the terms of the agency agreement, whether they may be meagre or detailed, that must be in writing under the above Act. The price & the other terms of the proposed sale may or may not be mentioned. If they are, in the circumstances, an essential part of the agency agreement they ought to be in writing. But it is a question of interpretation, even since the statute, whether the terms mentioned as those of the proposed sale are intended merely as a basis on which the agent may negotiate or are intended to bind the agent strictly to a sale on; he named terms before he can claim his commission.—KING *v.* SCHON, [1918] 3 W. W. R. 892; 44 D. L. R. 111.—**CAN.**

149 iv. —— —— *Real Estate Commission Act, R.S.A.*, 1922 (*c.* 139), *s.* 2.]—The fact that a written instrument evidencing an agreement for the sale of land does not contain all the terms of the agreement does not prevent it being sufficient to satisfy the proviso to the above sect., if it is one which the ct. will order to be rectified to include the terms agreed on but omitted by mutual mistake, & which when so rectified will be enforceable by the parties thereto subject to such legal or equitable defences available to either of them as the agent who effected the agreement cannot be held accountable for.—HANTON *v.* STEDMAN, [1925] 1 W. W. R. 642.—**CAN.**

149 v. —— *Auctioneers & Commission Agents' Act*, 1922, *s.* 23—*Sufficiency of agency contract.*]—So long as the relationship of principal & agent in respect of the transaction is evidenced in writing, the mischief aimed at by the above sect. has been duly met & the requirements of the sect. satisfied, & the other terms of the agency contract may be effectively made & effectively varied verbally.—CANNIFFE *v.* HOWIE, [1925] S. R. Q. 121; 19 Q. J. P. 57.—**AUS.**

149 vi. —— —— ——.]—So long as the relation of principal & agent in respect of the transaction in question has been evidenced in writing, the requirements of the above sect. have been complied with, & any document signed by pltf. at any time before action brought, which evidences the essential fact, the existence of the relationship in respect of the transaction in question, is sufficient to comply with the Act. It is sufficient if the writing manifests a present intention of engaging or appointing the agent in respect of a transaction by any suitable words, whether contained in one document signed by deft., or in several documents, sufficiently interconnected by internal reference, either direct or inferential, one or more of which are signed by deft., manifesting such intention on his part.—SKIPPER *v.* SYRMIS, [1925] S. R. Q. 129; 19 Q. J. P. 47.—**AUS.**

149 vii. —— —— ——.]—ROACH *v.* HOUGH, [1926] S. R. Q. 24; 20 Q. J. P. 113.—**AUS.**

Necessity for contract to pay commission for services in reference to the sale of land to be in writing, *see* Nos. 1664 xiv a—1664 xiv l, *post*.

g i. —— *Land Agents Act*, 1912—*When applicable.*]—Deft. intimated to pltf. that he had been instructed to sell a property by private sale. Pltf., an accountant, told deft. that he could introduce a probable purchaser, & would do so if deft. would pay pltf. half the commission payable by the

156. *Add. Annotation :*—**Refd.** Thirkell *v.* Cambi, [1919] 2 K. B. 590.

157. *Add. Annotations :*—**Apld.** Grindell *v.* Bass, [1920] 2 Ch. 487. **Refd.** Thirkell *v.* Cambi, [1919] 2 K. B. 590 ; Raingold *v.* Bromley, [1931] 2 Ch. 307.

164a. Counsel — Signing pleadings.] — B., the owner of freehold premises, agreed to sell them to E., but there was no memorandum in writing to satisfy Stat. Frauds. B. then agreed to sell the premises to G., & a valid contract was executed, which B. did not perform. G. brought an action for specific performance against B., who by her defence signed by counsel pleaded the contract with E. in terms that made the pleading a valid memorandum within the statute. G. added E. as a deft. to the action ; & E., by a counterclaim, claimed specific performance of his agreement :—*Held :* counsel was the duly authorised agent of B. to sign the pleading & to plead the contract with E., & although the signing of a memorandum within Stat. Frauds was not in the minds of either counsel or client, the pleading, as signed by counsel before E. was a party to the action, was a valid memorandum to satisfy the statute, & E. was entitled to judgment on his counterclaim, & G.'s action against B. must be dismissed.—GRINDELL *v.* BASS, [1920] 2 Ch. 487 ; 89 L. J. Ch. 591 ; 124 L. T. 211 ; 36 T. L. R. 867.

Annotation :—**Consd.** Farr, Smith *v.* Messers (1927), 44 T. L. R. 48.

165. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Distd.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

166. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

176a. ——.]—CHANDLER & CO. *v.* WINCHESTER (1930), 74 Sol. Jo. 353.

179. *Add. Annotation :*—**Consd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

182. *Add. Annotation :*—*As to* (1) **Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

184. *Add. Annotation :*—**Refd.** *Re* Wilson, Wilson *v.* Bland, [1937] 3 All E. R. 297.

188. *Add. Annotation :*—**Folld.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

188a. —— —— ——.]—N. & B. were the holders by novation of a licence from pltf. co., to use & exercise certain inventions relating to wireless apparatus which were the subject of letters patent owned or controlled by pltf., co., subject to the payment of certain royalties by N. & B. to pltf. co. N. & B. got into difficulties, & were unable to meet their obligations as they became due owing to overtrading, but they claimed to be still solvent. At a meeting of the trade creditors it was agreed that a committee of inspection should be appointed & that N. & B. should execute a deed of inspectorship. The deed, which was executed on May 6, 1928, was in the usual form, & in all material particulars the same as that considered by the ct. in *Easterbrook* v. *Barker*, No. 188. By the deed N. & B., the debtors, in consideration of a release of their indebtedness to the assenting creditors, assigned their real & personal estates to C. as inspector upon trust to allow N. & B. " henceforth to manage & carry on their said business " subject to the covenants & conditions of the deed. N. & B. undertook to carry on the business or wind it up as the inspector & committee should think best. In a circular which was sent out by C., the inspector, on Sept. 10, 1928, announcing that the deed of inspectorship had been executed, it was stated that " all

owner of the property to deft. in the event of a sale being effected. Deft. agreed, & on the same day pltf. introduced B. to deft. with whom a sale was arranged. Pltf. in his evidence stated that he was not a land agent, & for the preceding five years had had no transactions for the sale of land except the one in question :—*Held :* the arrangement between the parties was not one of a series nor the commencement of a series of transactions, but a solitary transaction, & pltf. was not a land agent within the above Act.—COOKE *v.* WALLACE (1914), 33 N. Z. L. R. 1054.—**N.Z.**

g ii. —— —— ——.]—Land Agents Act, 1912, s. 13, applies only to persons carrying on land agency as a business, & does not extend to casual agency outside the scope of the agent's business.—CLIFTON *v.* JOHNSTONE, [1921] N. Z. L. R. 35.—**N.Z.**

g iii. —— —— *Effect of.*]—The effect of Land Agents Act, 1912, s. 13, is not to make the contract of agency illegal by reason of the want of written authority, but merely to prevent the agent from recovering his commission by action.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

g iv. —— —— *Form of appointment.*]—An appointment of a land agent under s. 13 of the above Act must be signed by the principal himself & is not sufficient if signed by an agent on his behalf.—BUCHANAN *v.* SAMSON, [1922] N. Z. L. R. 558.—**N.Z.**

g v. —— *Land Agents Act*, 1921—*Form of appointment—Need not be in writing.*]—OLIVER *v.* DICKINSON, [1927] N. Z. L. R. 411.—**N.Z.**

Necessity for contract to pay commission for services in reference to the sale of land to be in writing, *see* Nos. 1664 xiva–1664 xivl, *post*.

PART IV. SECT. 3, SUB-SECT. 1.

171 iv. ——.]—The *onus* of establishing the authority of an agent is upon the person who seeks to bind the principal.—STEVENS *v.* MERCHANTS BANK OF CANADA, [1920] 1 W. W. R. 52 ; 49 D. L. R. 528 ; 30 Man. L. R. 16.—**CAN.**

176 iv. For "AUS" read "S. AF."

176 v. —— *Claim to goods of principal—In possession of third party.*]—If a person other than the owner makes a demand for return of goods in possession of a third party, he should present credentials or some written authority to show that he is acting as agent of the owner.—CRAIG *v.* MCCREATH, [1922] 2 W. W. R. 1276.—**CAN.**

176 vi. ——.]—PLUMB *v.* W. C. MACDONALD REGISTERED. LATIMER *v.* FOSTER TOBACCO CO., LTD. (1924), 27 O. W. N. 365.—**CAN.**

176 vii. ——.]—When actual authority of an alleged agent has been negatived, a pltf. seeking to hold the alleged principal liable on the basis of ostensible authority either must show a holding out by the principal of the alleged agent as such or must give proof of some custom on which ostensible agency can be predicated.—ROBIN LINE S.S. CO. *v.* CANADIAN STEVEDORING CO., SEAS SHIPPING CO. *v.* CANADIAN STEVEDORING CO., [1928] 3 D. L. R. 856 ; [1928] S. C. R. 423.—**CAN.**

pi. —— ——.]—Possession solely cannot be evidence of both agency & authority, & the fact that one man is with another does not necessarily make one the agent for the other.—TURNER *v.* BEATON (P. E. I.) (1908), 4 E. L. R. 325.—**CAN.**

177 v. ——]—If A. has entered into a contract to purchase land it is open to B. to show by parol evidence that A. did so as his agent & to ask for a declaration of that agency.—VASELENAK *v.* VASELENAK, [1921] 1 W. W. R. 889 ; 57 D. L. R. 37 ; 16 Alta. L. R. 256.—**CAN.**

177 vi. ——.]—A husband obtained from his wife authority to act on her behalf :—*Held :* it was competent to prove the authority by parol evidence.—WALKER *v.* HENDRY, [1925] S. C. 855.—**SCOT.**

177 vii. ——.]—Where a contract is entered into by a person in his own name, but as agent of another, if in the contract itself there is no special description or assertion of property the agency may be proved by parol.—MUSSON *v.* HEAD, [1926] 1 D. L. R. 965 ; 58 O. L. R. 210.—**CAN.**

q i. ——.]—ANDERSON *v.* CAMERON (1857), 6 Gr. 285.—**CAN.**

q ii. ——.]—WHITTAKER *v.* TAYLOR (Alta.) (1911), 19 W. L. R. 662 ; 1 W. W. R. 259.—**CAN.**

q iii. ——.]—CROWN LUMBER CO. *v.* SAULSBERRY (Alta.) (1913), 23 W. L. R. 877 ; 11 D. L. R. 17 ; 4 W. W. R. 168.—**CAN.**

orders for goods required for the purpose of carrying on the business will be issued on my official order forms in the usual way & will be paid for by me." The inspector & the committee of inspection left the conduct of the business subsequent to the execution of the deed of inspectorship to N. & B. Pltfs. brought an action by which they claimed royalties upon wireless sets constructed & sold by N. & B. since Sept. 6, 1928. The action was brought against N. & B. & also against the inspector & the members of the committee of inspection personally :—*Held :* N. & B. did not become the agents of the inspector or of the committee to carry on the business, but the business remained the business of N. & B., & therefore pltfs.' claim for royalties against the inspector & committee of inspection failed.—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* NEWMAN, [1930] 2 K. B. 292 ; 99 L. J. K. B. 687 ; 143 L. T. 471 ; [1929-30] B. & C. R. 223.

189. *Add. Citation :*—21 J. P. 4.

Add. Annotations :—As to (1) **Consd.** Kemp *v.* Elisha, [1918] 1 K. B. 228. *As to* (2) **Refd.** Bygraves *v.* Dicker, [1923] 2 K. B. 585.

192. *Add. Annotations :—As to* (1) **Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1. **Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

196. *Add. Annotations :*—**Distd.** K eling *v.* Pearl Assce. (1923), 129 L. T. 573. **Consd.** Paxman *v.* Union Assce. Soc. (1923), 39 T. L. R. 424. **Apprvd.** Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

203. *Add. Annotations :*—**Consd.** Brooke *v.* Bool, [1928] 2 K. B. 578. **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

SECT. 4.—**AGENCY OF NECESSITY** (Vol. I., p. 293).

For "*See* HUSBAND & WIFE ; SHIPPING & NAVIGATION," substitute as follows :—

215a. Extent of doctrine.]—An agency of necessity can arise in other cases than that of carriers by land or sea or the acceptor of a bill of exchange for the honour of the drawer. Extraordinary circumstances, such as war conditions, which make it impossible for a buyer of goods on behalf of a principal abroad either to despatch them or to communicate with him, would entitle the buyer to sell the goods as an agent of necessity. But in order to establish an agency of necessity the agent must prove that there was an actual & definite commercial necessity for the sale, & that the transaction was *bonâ fide* in the interest of the principal.

Where an agent in London bought skins in 1915 & 1916 to be forwarded to his principal in Roumania as the principal might direct, & in consequence of the occupation of Roumania by the Germans in 1916, the agent was unable to send the skins to his principal or communicate with him, & the agent thereupon sold the skins without authority :—*Held :* the agent had failed to establish agency of necessity because (*a*) the deterioration of the furs might have been prevented by putting them in cold storage at a comparatively small expense, &, moreover, they had steadily increased in value, & (*b*) the agent had not acted *bonâ fide* in selling the skins.—PRAGER *v.* BLATSPIEL, STAMP & HEACOCK, LTD., [1924] 1 K. B. 566 ; 93 L. J. K. B. 410 ; 130 L. T. 672 ; 40 T. L. R. 287 ; 68 Sol. Jo. 460.

Annotation :—**Consd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

See, also, original volume, p. 319, No. 390.

215b. —— Repayment to agent of necessity.]—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214 ; 95 L. J. K. B. 1030 ; 136 L. T. 83 ; 90 J. P. 169 ; 42 T. L. R. 677 ; 70 Sol. Jo. 795 ; 24 L. G. R. 405, C. A.

215c. ——.]—Observations by SCRUTTON, L.J., on the limits of the doctrine.—JEBARA *v.* OTTOMAN BANK, [1927] 2 K. B. 254 ; 96 L. J. K. B. 581 ; 137 L. T. 101 ; 43 T. L. R. 369 ; 32 Com. Cas. 228, C. A. ; *on appeal, sub nom.* OTTOMAN BANK *v.* JEBARA, [1928] A. C. 269, H. L.

Power to delegate in cases of supervening necessity.]—*See* original volume, pp. 390, 391, Nos. 939-942.

Authority of carrier of goods—Land carrier.]—*See* CARRIERS, Vol. VIII., pp. 26, 35, Nos. 151, 201.

—— **Master of ship.**]—*See* SHIPPING & NAVIGATION.

Authority of wife to pledge husband's credit.]—*See* HUSBAND & WIFE.

Acceptance of bill of exchange for honour of drawer.]—*See* BILLS OF EXCHANGE, Vol. VI., pp. 415, 416.

Part V.—Authority of the Agent.

246. *Add. Annotations :*—**Refd.** Ralli *v.* Compañia Naviera Sota y Aznar, [1920] 2 K. B. 287 ; Broken Hill Proprietary Co. *v.* Latham (1932), 49 T. L. R. 137 ; Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122 ; R. *v.* International Trustee for Protection of Bondholders Akt., [1937] A. C. 500 ; St. Pierre *v.* South American Stores (Gath & Chaves), Ltd. & Chilean Stores (Gath & Chaves), Ltd., [1937] 3 All E. R. 349.

PART IV. SECT. 3, SUB-SECT. 2.

200 iii. ——.]—LISTER *v.* BILLY, [1930] 1 W. W. R. 828 ; 3 D. L. R. 635 ; 38 Man. L. R. 610.—**CAN.**

sc. *Person entering into contract "acting on behalf of another."*]—To say that a man entered into a contract "acting on behalf of another" is to allege in the absence of any qualifying statement, that he entered into it as the agent of that other.—LIND *v.* SPICER BROTHERS (AFRICA), LTD., [1917] App. D. 147.—**S. AF.**

PART V. SECT. 2, SUB-SECT. 1.

240 v. ——. *Effect of ratification clause.*]—Where the whole object of a ratification clause is to carry on business in the principal's name, & the acts to be ratified, even when excessive, are specifically said to be acts done in the principal's name, the clause cannot be construed to change the whole nature of the power by making the attorney the universal agent of his principal.—BANK OF TORONTO *v.* MATHESON, [1927] 4 D. L. R. 328 ; 3 W. W. R. 10.—**CAN.**

272. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

281. *Add. Annotations :*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

288. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

294. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

296a. —— —— **Property held on trust for sale.**]—The two pltfs. having, as joint tenants, bought land which by Law of Property Act, 1925 (c. 20), s. 36, became vested in them on the statutory trusts for sale, agreed to sell it to deft., & the conveyance was executed by one pltf. in person & by an attorney on behalf of the other pltf. The power of attorney was expressed to give "the sole & absolute control of all my property real & personal of every description situate & being at Bury & elsewhere in the County of Lancaster & whether owned by me solely or jointly with any other person or persons." Deft. declined to accept the conveyance on the ground that a trustee for sale could not delegate the execution of the trust to his attorney. In an action for specific performance :—*Held :* the words used in the power of attorney applied only to property held in beneficial ownership & not to property

247 i. *General powers—Limited by recital.*]—A power of attorney enabling an agent to grant a lease is not revoked by the return of the landlord to the United Kingdom, even though the document containing the power of attorney states that it is granted owing to the grantor being about to depart from the United Kingdom.—GRAHAM *v.* MANDERS (1918), 53 I. L. T. 5.—**IR.**

248 ix. —— ——.]—ARPIN *v.* LECLAIRE, [1930] 2 D. L. R. 427.—**CAN.**

258 iii. —— ——.]—There is no power in an agent, acting under general power of attorney, to present an insolvency petition on behalf of his principal, unless the power expressly authorises such act.—*Re* OSMAN (1919), 40 N. L. R. 17.—**S. AF.**

t. (p. 301) For "(1886)" read "(1873)."

277 iv. —— —— ——.]—Power to borrow money & secure its repayment by mtge. is not to be inferred merely from general powers added to an enumeration of specific powers in a power of attorney, unless the exercise of such a power is strictly necessary to carry out the express purpose of the instrument or the acts specifically authorised thereby.—ANDREWS *v.* SINCLAIR, [1923] 2 D. L. R. 903; 2 W. W. R. 166.—**CAN.**

277 v. —— —— ——.]—A bare power of attorney to make & indorse notes, cheques, etc., does not authorise the attorney to raise loans on his principal's credit for the principal himself or for the attorney's own accommodation or for a third party; nor is such authority conferred by a general power given the attorney to do all "other acts & things for the purpose of carrying on any business in my name." The power to borrow money must be conferred in express terms, & when this power is alleged to be based on a power of attorney, the document must be read strictly.—BANK OF TORONTO *v.* MATHESON (Sask.), [1927] 4 D. L. R. 328; [1927] 3 W. W. R. 10.—**CAN.**

283 ii. —— —— ——.]—Applt. co. gave to H., customs broker, a power of attorney "to transact all business which" applt. co. "may have with the Collector of the Port of Montreal or relating to the Department of the Customs of the said Port . . . ratifying & confirming all that . . . said attorney & agent shall do. . . ." Cheques to the order of the collector of Customs were given to H. on his requisition for the payment of duties on goods imported by applt. co., these cheques being made by the latter for fixed amounts corresponding to the invoices. Afterwards, through fraudulent devices, H., having succeeded in passing entries for much smaller sums than the quantity of goods required, induced the Customs House cashier to take the cheques thus issued by applt. co. for a higher amount than the one apparently due, & either to apply the surplus in payment of duties owing by third parties or to reimburse him in cash :—*Held :* (1) it was within the scope of the power of attorney given to H. by applt. co. that he should receive, in cash from the custom officials, balances of cheques delivered by him to them, after deducting the duties payable in respect of entries made by H. on behalf of applt. co.; (2) it was not within the scope of the power of attorney that he should direct the application of balances of applt. co.'s cheques in payment of duties owing by H.'s other customers.—CANADIAN PACIFIC RY. CO. *v.* R. (1917), 55 S. C. R. 374; 37 D. L. R. 719.—**CAN.**

283 iii. —— —— *Power to withdraw from bank.*]—A joint savings account with a bank was opened in the names of pltf. & her husband. After the death of the husband pltf. gave her solr. a power of attorney by which he was authorised to withdraw money from banks or individuals & to deposit same in any other bank or other place. In pursuance of the oral instructions of the solr., & on production of the power of attorney & a certified copy of letters probate of the husband's will, the bank paid over the balance of the account to the husband's exors. :—*Held :* the bank had acted rightly.—ROSS *v.* CANADIAN BANK OF COMMERCE (Alta.), [1927] 3 D. L. R. 1056; [1927] 3 W. W. R. 182.—**CAN.**

287 i. *See, also,* No. 287 vi., *post.*

287 iv. —— —— *Power to discharge.*]—A power of attorney appointed the grantor's wife his agent for the purpose of all dealings with his property, real or personal, in Canada. In the specific clause granting the power to execute instruments in connection with his real property, a discharge of mtge. was not named as one of the instruments :—*Held :* the very general words used in the power of attorney covered the right of the agent to execute a discharge of mtge.—*Re* LAND TITLES ACT, *Re* REGISTRATION OF A POWER OF ATTORNEY, [1918] 2 W. W. R. 947.—**CAN.**

287 v. —— —— ——.]—The discharge of a mtge. was executed under a power which, after authorising the attorney to sell the principal's lands & give receipts for the consideration money, gave power, upon payment of all or any debts, to give proper & sufficient acquittances & discharges for same :—*Held :* sufficient authority to sign the statutory certificate.—LEE *v.* MORROW (1866), 25 U. C. R. 604.—**CAN.**

287 vi. —— —— *Power to give—To secure unpaid purchase-money.*]—A transaction whereby an agent purchased land for cash on behalf of his principal & subsequently gave a mtge. on the land & a conveyance of other lands in satisfaction of the amount remaining unpaid :—*Held :* authorised by the agent's power of attorney.—DINSMORE *v.* PHILIP, [1918] 3 W. W. R. 457.—**CAN.**

287 vii. —— —— *Power to invest on second mortgage.*]—A power of attorney authorised the attorney "to lend on mtge., charge or lien of real estate any money belonging to" the principal :—*Held :* the attorney was authorised by the power to lend money on the security of a second mtge.—MCCUTCHEON *v.* REGISTRAR OF TITLES, [1927] V. L. R. 93; 48 A. L. T. 137.—**AUS.**

sd. —— *Property—Power to transfer to himself.*]—A husband had certain property put in his wife's name. He held a general power of attorney from her. Subsequently the husband, as his wife's attorney, had the property transferred into his own name :—*Held :* the wife was entitled to have the transfer to her husband set aside.—ELFORD *v.* ELFORD (1922), 69 D. L. R. 284; 64 S. C. R. 125; [1922] 3 W. W. R. 339; *affg.* 61 D. L. R. 40; 14 Sask. L. R. 363.—**CAN.**

295 vii. —— —— *Power to sign contract.*]—Resp. co. having sold land to applt. gave to its agent in the Transvaal a general power of attorney conferring upon him "full power to act on our behalf in all matters & things that do or may affect or concern us in S. Africa." The power then proceeded in the following words "& in particular but without prejudice to the foregoing generality" to give particular instances of acts that the agent was empowered to perform :—*Held :* under the power the agent was authorised to sign the written contract of sale.—MEASROCK *v.* NEW SCOTLAND LAND CO., LTD., LIQUIDATOR, [1922] App. D. 237.—**S. AF.**

se. —— *Trading licence—Power to apply for.*]—A., a storekeeper, by general power of attorney appointed H. to manage & transact his business in Natal. At the date of appointment A. was trading under a licence *ex facie* good, but which later was declared void. H. applied for a new licence, but it was objected that he had no authority to make the application :—*Held :* the power of attorney was sufficient authority to H. for the purpose.—HAFFIZE *v.* JACOBSON (1919), 40 N. L. R. 322.—**S. AF.**

sf. *Power granted by corporation to officials for time being—Registrar entitled to require proof that persons executing power hold office.*]—*Re* LAND TITLES ACT, ROYAL TRUST CO.'S CASE, [1921] 3 W. W. R. 246.—**CAN.**

sh. *Power in blank—Authority to fill in terms—Estoppel of grantor.*]—The grantor of a power of attorney signed in blank is estopped in proceedings between himself & a third party from denying the grantee's authority to fill in the terms appearing in the completed power & subsequently acted upon by such third party.—SUTTER *v.* SCHEEPERS, [1932] App. D. 165.—**S. AF.**

held on a trust for sale, & the action failed.—GREEN *v.* WHITEHEAD, [1930] 1 Ch. 38; 99 L. J. Ch. 153; 142 L. T. 1; 46 T. L. R. 11, C. A.

300a. Effect of notice that powers exceeded.]—A power of attorney contained a provision that "the principal ratifies & confirms & agrees to ratify & confirm whatsoever the attorney shall do or purports to do by virtue of these presents":—*Held:* this provision did not preclude the principal from objecting to a dealing with his property by a person who had notice in ordinary circumstances that the agent was exceeding his authority, actual & ostensible.—MIDLAND BANK, LTD. *v.* RECKITT, [1933] A. C. 1; 102 L. J. K. B. 297; 148 L. T. 374; 48 T. L. R. 271; 76 Sol. Jo. 165; 37 Com. Cas. 202, H. L.

308a. Salesman—Authority to cancel sale.]—A salesman employed at a salary of £3 a week & 1¼ per cent. on sales effected by him is not authorised to cancel sales made on behalf of his principal.—LECKENBY *v.* WOLMAN, [1921] W. N. 100.

315. *Add. Annotation:*—**Refd.** Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

323. *Add. Annotation:*—**Refd.** Solloway *v.* Johnson, [1934] A. C. 193.

332a. —— ——.]—Pltf. gave a power of attorney to T. & authorised him, in relation to pltf.'s affairs, to draw cheques on pltf.'s account at the bank without restriction. T. in fraud of pltf. drew a cheque on pltf.'s account, in favour of defts. in part-payment for a motor-car which T. had obtained from them for his own purposes on the hire-purchase system. Defts. knew that the cheque was drawn by T. as agent for pltf. In an action by pltf. to recover from defts. the proceeds of the cheque:—*Held:* as defts. knew that T. was paying his own debt to them with pltf.'s money, & as T. had no authority to pay his own debts therewith, pltf. was entitled to recover.—RECKITT *v.* BARNETT, PEMBROKE & SLATER, LTD., [1929] A. C. 176; 98 L. J. K. B. 136; 140 L. T. 208; 45 T. L. R. 36; 34 Com. Cas. 126, H. L.

Annotations:—**Apld.** Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Slingsby *v.* District Bank, Ltd., [1932] 1 K. B. 544.

332b. —— ——.]—Pltf. gave to one T., who was a solr., a power of attorney & authorised him to draw cheques on his, pltf.'s, behalf. T. was also acting as solr. for deft. & obtained from her a cheque for nearly £5,000 for the discharge of certain liabilities of which T. had informed her. At that time deft.'s banking account was, though deft. was not aware of it, about £1,500 short of the amount of the cheque & T. drew a bearer cheque for £1,500 on pltf.'s account & paid it into deft.'s account, the cheque showing on its face that it was drawn by T. as attorney for pltf. T. was thus enabled to cash deft.'s cheque. Pltf., on ascertaining the facts, brought this action against deft. for a declaration that he was entitled to recover from her the proceeds of the £1,500 cheque:—*Held:* as deft.'s bank had notice on the face of the £1,500 cheque that it represented money belonging to pltf., & as they had received it as agents for deft. & had credited it to her account, pltf. was entitled to succeed.—RECKITT *v.* NUNBURNHOLME (1929), 45 T. L. R. 629.

338. *Add. Annotation:*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

338a. —— Authority to sign for business purposes.]—Resps. had two accounts with applt. bank at Sydney in connection with a business which they there carried on. They informed the bank in writing that the two managers of their business had authority together to sign & indorse cheques, to draw & indorse promissory notes & bills of exchange, & to transact on their behalf all business connected with the accounts. Banks in Australia frequently issue to a customer, in exchange for a cheque in favour of the bank, a cheque, described as a "bank cheque," drawn by the bank on itself in favour of a person designated by him, or to bearer. In exchange for cheques drawn in favour of applt. bank by the managers, the bank issued to one of the managers bank cheques payable to a name designated by him; these cheques he fraudulently appropriated:—*Held:* applt. bank was not entitled to debit the bank cheques against resps. The manager had not implied authority to receive bank cheques, & the circumstances in which on certain previous occasions the manager had been allowed to give instructions as to the application of the amount of cheques drawn, made the evidence fall far short of the strong case needed to show an ostensible authority prevailing over written instructions.—AUSTRALIAN BANK OF COMMERCE *v.* PEREL, [1926] A. C. 737; 95 L. J. P. C. 185; 135 L. T. 586, P. C.

370. *Add. Annotations:*—*As to* (1) **Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

371. *Add. Annotations:*—*As to* (1) **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777; Guildford Trust *v.* Goss (1927), 136 L. T. 725.

373. *Add. Annotation:*—*As to* (1) **Consd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

PART V. SECT. 3, SUB-SECT. 1.

a1. *Agent obtaining transfer of property to principal—Authority to transfer property to third party.*]—Applt. sold to D. land, a portion of which he had not obtained transfer. Applt. instructed resp., an attorney, to put the matter through; resp. thereupon obtained transfer of the piece of land in question into applt.'s name, & then gave transfer of the whole to D.:—*Held:* resp.'s authority was wide enough to cover the costs incurred by him in obtaining transfer of the piece of land into applt.'s name.—STANTON *v.* ALLPORT, [1923] E. D. L. 155.—**S. AF.**

PART V. SECT. 3, SUB-SECT. 2.

s0. *Grain market usage—Right of broker to close out customer.*]—RUSSELL *v.* CANADA WEST GRAIN CO., [1925] 3 W. W. R. 508.—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.—A.

340 iii. —— *Authority to draw cheques in principal's name—Agent drawing cheques to repay personal losses.*]—If a co.'s branch manager, whose powers include receiving money, depositing it in a bank in the co.'s name, & drawing cheques against such funds in the co.'s name for the purposes of its business but not for his own personal business, misappropriates its funds by drawing cheques in the co.'s name to repay his own personal loans, the co. can recover the sums thus paid from those to whom they were paid, although the latter received them honestly & believing, as told them by the person paying them, that he had money coming to him from the co. for commission & that he was authorised to draw cheques for these commissions.—LONDON GUARANTEE, ETC., CO. *v.* ABRAMS & KOVSKY, [1923] 2 W. W. R. 1006.—**CAN.**

379. *Add. Annotations :*—**Consd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1928] A. C. 777. **Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

382. *Add. Annotation :*—**Refd.** Underwood *v.* Liverpool Bank, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

386. *Add. Annotations :—As to* (2) **Distd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292. *As to* (3) **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

387. *Add. Annotations :*—**Distd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclay's Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

388. *Add. Annotations :*—**Distd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

390. *Add. Annotations :*—**Consd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566. **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

399. For "bought note" in catchwords read "sold note."

406. *Add. Annotation :—As to* (1) **Apprvd.** Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

426. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Apld.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

427. *Add. Annotation :*—**Refd.** Thirkell *v.* Cambi, [1919] 2 K. B. 590.

433. *Add. Annotation :*—**Consd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

434. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

436. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

PART V. SECT. 3, SUB-SECT. 5.

379 ii. —— —— ——.]—Where a principal entrusts an agent with indicia of title & a signed transfer, the transferee's name being left blank, for the purpose of raising a certain sum on such securities, & the agent borrows a larger sum & fraudulently appropriates the difference, the lender being in ignorance of the amount specified by the principal, the principal cannot redeem the securities without paying the lender the amount lent. The fact that the transfer states a certain sum as consideration does not necessarily impose upon the lender the duty of inquiring as to the limitations of the agent's authority.—MAHAN *v.* MANNESS, [1918] 2 W. W. R. 191; 28 Man. L. R. 470; 40 D. L. R. 136.—**CAN.**

PART V. SECT. 3, SUB-SECT. 6.—A.

397 ii. —— *Authority as such—Contract not completed.*]—KERSHAW *v.* UNITED ARTISTS (Man.), [1926] 1 D. L. R. 738.—**CAN.**

398 ii. —— *Authority to sign contract—Contract providing for payment of price by instalments.*]—Defts. signed & gave to an agent a document in the following terms:—"We hereby agree to sell the property for £6,700 nett, provided a sale takes place within fourteen days from date hereof. The above price to be clear of all commission charges." The agent, within the fourteen days, signed a contract of sale by which the property was sold to pltf. for £6,700, payable £1,000 deposit (£50 preliminary deposit, to be increased to £1,000 within one month), £2,250 within three months, & £3,450 within six months, possession to be given after the second payment £2,250 at the end of the three months. There was no provision for interest on the balance:—*Held :* the document signed by defts. was not an authority to the agent to sign a contract containing the above terms as to payment.—BOYD *v.* O'CONNOR, [1923] V. L. R. 603.—**AUS.**

398 iii. —— —— *Contract containing penalty clause.*]—*Held :* the existence of the penalty clause, which was not covered by the agent's instructions, & was not separable from the remainder of the contract, justified the principal in repudiating the agent's action, & the contract must be set aside.—DU PREEZ *v.* LAIRD, [1927] App. D. 21.—**S. AF.**

q i. —— *General authority.*]—Pltf. contracted with defts. to purchase & deliver potatoes at an agreed price per bushel. The farmers from whom the potatoes were to be purchased required cash payments, & defts. agreed to make advances to put pltf. in funds for this purpose. Defts. were not prompt in providing funds, & pltf. complained of the delay which hampered him in buying, &, in order to induce him to carry out the contract, defts.' agent offered an advance of 25 cents per bushel on the contract price for four carloads of potatoes:—*Held :* the agent on the spot, looking after defts.' interests, had a general authority sufficiently broad to cover the making of the contract for the advanced price.—LEGACY *v.* DAVISON (1919), 52 N. S. R. 543.—**CAN.**

r. This case was reversed (1916), 22 C. L. R. 307. Delete the words "no actual or apparent" in the sentence, "*Held :* O. had no actual or apparent authority to vary the written contract by substituting a later date for delivery."

sk. *Agent agreeing to payment of compensation to purchaser if transaction not completed—Authority to sell.*]—A claim by a proposed purchaser for damages on the ground of an agreement by the vendor's agent for compensation to the purchaser should the contract not be made by the vendor, disallowed in the absence of any authority from the vendor to make such an agreement.—THOMPSON *v.* LYNNE, [1921] 1 W. W. R. 238; 56 D. L. R. 729.—**CAN.**

sl. *Salesman making reduction in price.*]—*Held :* principal not bound.—MASON & DEAN, LTD. *v.* UDOVIN, [1925] 1 D. L. R. 353; 57 N. S. R. 445.—**CAN.**

sm. *Solicitor's clerk giving undertaking as to withdrawal of Registrar-General's caveat—Authority as such.*]—*Held :* the solr. was personally bound by the undertaking.—HAWKINS *v.* GADEN (1925), 37 C. L. R. 183; 26 S. R. N. S. W. 382; [1926] Argus L. R. 109.—**AUS.**

PART V. SECT. 3, SUB-SECT. 8.—A.

423 iv. —— *Express authority to let on weekly tenancy—Lease granted for long term.*]—Pltf. was the owner of premises let to a weekly tenant. When the tenant left she recommended deft. to pltf. as a tenant. Pltf. never saw deft., but pltf.'s husband arranged some form of lease with him, & thereafter collected the rent, which was paid monthly, on behalf of pltf. & with her authority. In an action of ejectment deft. alleged that pltf.'s husband had given him a lease for four years from Dec. 1913, & that he was a tenant from year to year. Pltf. denied any knowledge of a lease for a term, or that she had given authority to her husband to make such a lease:—*Held :* the fact that pltf.'s husband had collected her rent was no evidence that he had authority to make a lease for four years on her behalf.—VOGE *v.* KERR (1919), 19 N. S. W. L. R. 34; 36 N. S. W. W. N. 19.—**AUS.**

427 ii. —— *Authority to find purchaser or tenant.*]—Deft. wrote to a land agent as follows:—"Re sale of hotel. I will take £2,500 for the freehold, & stock & furniture at valuation, or will lease for a term of five years, rent £5 per week. £1,000 walk in, walk out." The agent submitted the property to pltf., who elected to take a lease. The agent drew up an agreement to lease the property upon the terms mentioned by deft., & signed it on deft.'s behalf:—*Held :* deft.'s letter did not authorise the agent to bind him by a concluded contract, but merely amounted to an authority to find a purchaser.—QUICK *v.* WINTER, [1920] N. Z. L. R. 98.—**N.Z.**

sn. *Law agent—Authority to collect rents & manage property.*]—A law agent, even though he may be employed to collect the rents & attend to the repairs of a property has no general authority to grant leases on behalf of his employer. The existence of such an authority must be proved by the person who requires to found upon it.—DANISH DAIRY CO. *v.* GILLESPIE, [1922] S. C. 656.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 8.—B.

433 i. *Agent—Without authority—Notice ratified.*]—A notice to quit must be such that the tenant may safely act on it at the time of receiving it. A notice by an unauthorised agent, therefore, cannot be made good by an adoption of it by the principal after the proper time for giving it.—SHAIK ABDOOL *v.* JUMA MUSJID TRUST (1929), 50 N. L. R. 75.—**S. AF.**

442. *Add. Annotation :*—**Refd.** *Re* Knight & Hubbard's Underlease, Hubbard *v.* Highton, [1923] 1 Ch. 130.

464. *Add. Annotation :—As to* (1) **Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

465. *Add. Annotation :—As to* (1) **Refd.** Savill *v.* Harben (1919), 89 L. J. K. B. 47.

467. *Add. Annotation :*—**Refd.** Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

468. *Add. Annotation :*—**Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

469. *Add. Annotations :—As to* (1) **Consd.** Folkes *v.* King, [1923] 1 K. B. 282. **Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

472. *Add. Annotation :—As to* (1) **Refd.** Lowther *v.* Harris, [1927] 1 K. B. 393.

476. *Add. Annotation :*—**Refd.** Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., A. C. 287.

477. *Add. Annotations :*—**Consd.** Folkes *v.* King, [1923] 1 K. B. 282; Lowther *v.* Harris (1926), 43 T. L. R. 24. **Refd.** Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

481a. —— **Person living in house of hirer of goods.**]—STROHMENGER *v.* ATTENBOROUGH (1894), 11 T. L. R. 7, D. C.

483a. —— **Agent intrusted with motor car—To sell to specified person.**]—HARP *v.* MOTORISTS' ADVISORY AGENCY, LTD., No. 495b, *post.*

484. *Add. Annotation :—As to* (1) **Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

485. *Add. Annotation :—As to* (2) **Consd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

485a. —— —— —— **Improper sale.**]—Pltf. was the owner of the A. tapestry & the L. tapestry, & he gave to P., a dealer in antiques, a limited authority to obtain & submit offers from possible purchasers. P. falsely represented to pltf. that he could obtain £525 for the A. tapestry, & pltf. allowed him to take it away for delivery to a purchaser, who in fact did not exist. P. then sold the A. tapestry to deft. for £250. Subsequently P. who never had authority to sell the L. tapestry, stole it from pltf. & sold it to deft. In an action for conversion deft. contended that P. had been in possession of the tapestries as a mercantile agent within the Act of 1889, & that as he had bought them from P. in good faith he had acquired the property in them. He also contended that pltf. had held out P. as a person with authority to sell & was estopped from saying that P. had no such authority in fact :—*Held :* (1) although P.'s authority was limited, & although he was not acting for any principal other than pltf., yet these facts did not prevent him from being a mercantile agent & in the circumstances he was a mercantile agent & in possession of the A. tapestry with the consent of pltf., & as to that tapestry the defence under the Act of 1889 was established; (2) as to the L. tapestry, as P. was never in possession of it with pltf.'s consent, the defence under the Act failed, &, as pltf. had never represented to deft. that P. had authority to sell it, there was no estoppel, & pltf. was entitled to recover the value of the L. tapestry alone.—LOWTHER *v.* HARRIS, [1927] 1 K. B. 393; 96 L. J. K. B. 170; 136 L. T. 377; 43 T. L. R. 24.

Annotations :—As to (1) **Distd.** Budberg *v.* Jerwood & Ward (1934), 51 T. L. R. 99. **Refd.** Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

487. *Add. Annotations :—As to* (1) **Distd.** Kempler *v.* Bravingtons (1925), 133 L. T. 680. **Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24. *As to* (2) **Distd.** Kempler *v.* Bravingtons (1925), 133 L. T. 680.

488. *Add. Annotation :*—**Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

489. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

489a. —— **Purchaser under hire-purchase agreement.**]—H., a dealer in motor vehicles, & defts., a finance co., entered into a transaction for the sale of a motor lorry by H. to defts. & the letting of the lorry by defts. to H. on an agreement in the form of a hire-purchase agreement. The transaction was carried out by means of the printed forms used by defts. in their business, which were more appropriate to a case in which they bought a vehicle & let it on hire-purchase to a third party, than to the present case. H. being in possession of the lorry then fraudulently sold it to pltfs., who were not aware of the previous transaction between H. & defts. The payments due from H. to defts. under the hire-purchase agreement between them having fallen into arrear, defts. resumed possession of the lorry & refused to deliver it to pltfs. at their request. Pltfs. thereupon brought an action against defts. claiming delivery up of the lorry or damages for its detention :—*Held :* H. was not in possession of the lorry as a "mercantile agent" within Factors Act, 1889 (c. 45), s. 2 (1), but as a bailee, & therefore the sale of the lorry by him to pltfs. was not rendered valid as against defts. by that sub-sect.—STAFFS MOTOR GUARANTEE,

PART V. SECT. 3, SUB-SECT. 9.

80. *Bank manager consenting to addition of bank as plaintiff—General authority as such.*]—A local manager of a bank has authority to give consent in writing for the adding of pltf. If there be any reasonable doubt whether the signature to the consent is in reality his signature, the order should be that the bank be added as a party pltf. on filing the necessary consent.—KUSCH *v.* PEAT (1922), 63 D. L. R. 408; 15 Sask. L. R. at p. 326; [1922] 2 W. W. R. 174; *revsg.* 15 Sask. L. R. 324.—**CAN.**

PART V. SECT. 3, SUB-SECT. 10.—A. (a) i.

468 i. *Acts of* 1825 1842—*Innocent purchaser.*]—Resp. entrusted B. with her motor-car to sell for a certain price. B. fraudulently agreed to sell the motor-car for less than the price to applt. Part of the price was satisfied by the delivery of a buckboard to B., & the balance was paid in instalments by applt. to B. under a hire-purchase agreement entered into with B.'s son, as owner of the motor-car, who was party to the fraud. B. had no authority so to sell the motor-car. Applt. had no notice of any limitation on B.'s authority & was throughout ignorant of the fraud perpetrated on resp. Apart from the fraud the sale was made by B. in the usual and ordinary course of his business which included that of an agent for sale of motor vehicles :—*Held :* the provisions of sect. 4 of the Statute 6 Geo. IV. c. 94, operated to protect applt. in buying from & paying the purchase-price to B. & he was entitled as an innocent purchaser from resp.'s agent, to the ownership of the motor-car.—LEWIS *v.* RICHARDSON, [1936] S. A. S. R. 502.—**AUS.**

sg. *Factors Act, R. S. O.,* 1927—*Agent for sale of jewellery company.*]—The agent of a jewellery co. to whom jewellery is entrusted to sell for cash or under a conditional sale agreement, is a "mercantile agent" within Factors Act, R. S. O., 1927.—PEOPLES' CREDIT JEWELLERS, LTD. *v.* MELVIN, [1933] 1 D. L. R. 598; 59 C. C. C. 161.—**CAN.**

LTD. *v.* BRITISH WAGON CO., LTD., [1934] 2 K. B. 305; 103 L. J. K. B. 613; 151 L. T. 396.

Annotation :—**Distd.** Union Transport Finance, Ltd. *v.* Ballardie, [1937] 1 K. B. 510.

489b. —— One customer—Necessity for business relationship.]—A person may be a "mercantile agent" although he has only one customer. To come within that designation he must act in the particular transaction in a business capacity & not simply as a friend of the owner of the goods.—BUDBERG *v.* JERWOOD & WARD (1934), 51 T. L. R. 99; 78 Sol. Jo. 878.

489c. —— Pledge of documents—Surrender of documents to pledgor on trust for sale.]—Pltfs. advanced money to S. & Co. & received by way of security documents relating to merchandise on the terms set out in a letter of hypothecation & two agreements which conferred on pltfs. an immediate right of sale. Pltfs. then surrendered the documents to S. & Co. to enable them to sell the merchandise on S. & Co. signing trust receipts constituting themselves trustees for pltfs. S. & Co., unknown to pltfs., pledged the documents with defts., who acted in good faith & without knowing that the transaction was not in order. S. & Co. having gone into liquidation, pltfs. sued defts. for the return of the documents or damages for their detention or conversion :—*Held :* pltfs. were "owners" of the goods represented by the documents within Factors Act, 1889 (c. 45), s. 2 (1), as being the persons who could authorise a sale of the goods & S. & Co. were mercantile agents within the sub-sect., so that the pledge of the documents by S. & Co. to defts. in the ordinary course of their business was valid. Even if pltfs. had not had an immediate power of sale, the result would have been the same, as pltfs. & S. & Co. would together have been the "owners" in that event.—LLOYDS BANK, LTD. *v.* BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCN., [1938] 2 K. B. 147; [1938] 2 All E. R. 63; 107 L. J. K. B. 538; 158 L. T. 301; 54 T. L. R. 599; 82 Sol. Jo. 312; 43 Com. Cas. 209, C. A.

490a. Act of 1889—Goods let on hire to employee of seller.—On May 17, 1935, T., a branch manager of pltf. co., bought for & on behalf of the co. from C. a motor-car which was forthwith let on hire under a hire-purchase agreement to F., an employee of C., who was not in a financial position to buy a car on any terms. C. T. & F. all knew that the hire-purchase transaction was not genuine in the sense that it was never intended that F.'s part in it should be a real one or that the car should be delivered to F., either by its physical transfer to his custody or by C. submitting to hold it as his bailee. C. made such payments to pltf. co. as were made under the agreement between the co. & F., &, although F. had agreed not to change the permanent garage of the vehicle, which was expressed to be at his mother's residence, nor to part with its possession or control, & had signed a document acknowledging that he had received delivery of the car, the car remained in C.'s garage, in his possession, & under his control. On Aug. 9, 1935, C. let the car on hire under a further hire-purchase agreement to deft., who took it in good faith & without notice of the transaction between C. & T. In an action by pltf. co. to recover the car from deft. :—*Held :* that C., having sold the car to pltf. co., had continued in possession of it within Factors Act, 1889 (c. 45), s. 8, with the result that the delivery or transfer by C. of the car to deft. had the same effect as if C. had been expressly authorised by pltf. co. to make the same, & pltf. co. could not, therefore, succeed in the action.—UNION TRANSPORT FINANCE, LTD. *v.* BALLARDIE, [1937] 1 K. B. 510; [1937] 1 All E. R. 420; 106 L. J. K. B. 268; 156 L. T. 142; 53 T. L. R. 240; 81 Sol. Jo. 159.

492. *Add. Annotation :—As to* (1) **Distd.** Laurie & Morewood *v.* Dudin, [1925] 2 K. B. 383.

494. *Add. Annotation :—As to* (3) **Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

495. *Add. Annotations :—As to* (1) **Consd.** Folkes *v.* King, [1923] 1 K. B. 282; Lake *v.* Simmons, [1926] 2 K. B. 51. **Refd.** Heap *v.* Motorists' Advisory Agency, [1923] 1 K. B. 577; Lowther *v.* Harris (1926), 43 T. L. R. 24. *Generally*, **Consd.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576; London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206. **Refd.** Staffs Motor Guarantee, Ltd. *v.* British Wagon Co., [1934] 2 K. B. 305.

495a. Act of 1889—Agent obtaining possession by trick—Authority to sell—At specified price.]—The owner of a motor car delivered it to a mercantile agent for sale. The owner stipulated & the agent agreed that the car should not be sold at less than a specified price without the owner's permission. The agent intended from the beginning to sell the car

---

PART V. SECT. 3, SUB-SECT. 10.—A. (a) vi.

sp. *Dealer in possession of goods—Course of business to sell.*]—Pltf., a financing co., took an assignment of an agreement between motor car dealers & their manager for the conditional sale of a motor car. The agreement & the assignment were duly registered. Pltf. left the car in the possession of the dealers knowing that it would be on the latter's premises for the purpose of re-sale. The manager effected a sale of the car to deft., who paid the dealers therefor knowing nothing of pltf.'s claim & believing he was buying from the dealers :—*Held :* deft. was protected by sect. 60 (1) of Sale of Goods Act, R. S. B. C., 1924, c. 225, & had a good title to the car.—COMMERCIAL SECURITIES (BRITISH COLUMBIA), LTD. *v* JOHNSON, [1930] 2 W. W. R. 444; 4 D. L. R. 509; 43 B. C. R. 61; *affd.*, [1931] 1 W. W. R. 420; 1 D. L. R. 861; 43 B. C. R. 381.—**CAN.**

sq. —— ——.]—The purchaser of a car from a mercantile agent, gets a good title, if he purchases in good faith & without knowledge that the owner of the car took a chattel mtge. from the agent.—JENSEN *v.* HARRISON, [1933] 3 D. L. R. 319; 3 W. W. R. 369; 47 B. C. R. 43.—**CAN.**

sr. —— *Purchase by salesman.*]—After a salesman, employed by a co. which sold motor cars at retail, had used one of its cars for demonstration purposes, he was induced by the president & manager of the company to buy the car. The co. when it purchased the car had been "financed" by an acceptance corpn. to which it gave as security a lien note & a chattel mtge. On an interpleader issue following the seizure of the car by the acceptance corpn. the salesman attacked the mtge. on the ground that it was not executed under the seal of the co. &, in the alternative, claimed to be a *bonâ fide* purchaser without notice of the mtge. or lien agreement registered against the car :—*Held :* the mtge. was not invalidated by the lack of seal but the claimant was entitled to succeed on his alternative claim, under the principle embodied in sect. 3 of Factors Act, R. S. A., 1922.—*Re* INDUSTRIAL ACCEPTANCE CORPN., LTD., SERVICE GARAGE, LTD. & THOMAS, [1933] 1 W. W. R. 24; 2 D. L. R. 798.—**CAN.**

immediately for the best price he could get & to use the proceeds for his own purposes. On the day on which he got the car he sold it for less than the specified price to a purchaser who bought it in good faith & without notice of the agent's fraud. The agent misappropriated the proceeds. The car was subsequently purchased by deft. In an action of detinue by the owner of the car against deft. :—*Held:* (1) deft. acquired a good title by virtue of 1889 Act, s. 2; (2) the mercantile agent had not rendered himself liable to be convicted of larceny by a trick, inasmuch as he was authorised by pltf. to pass the property in the car to a purchaser; (3) as pltf. in fact consented to the mercantile agent having possession of the car, it was immaterial whether the latter committed larceny by a trick.—FOLKES *v.* KING, [1923] 1 K. B. 282; 92 L. J. K. B. 125; 128 L. T. 405; 39 T. L. R. 77; 67 Sol. Jo. 227; 28 Com. Cas. 110; 86 J. P. Jo. 552, C. A.

Annotations:—As to (1) **Apld.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206. *As to* (2) **Distd.** Heap *v.* Motorists' Advisory Agency, [1923] 1 K. B. 577. **Consd.** Lake *v.* Simmons, [1926] 2 K. B. 51; Lowther *v.* Harris, [1927] 1 K. B. 393. *As to* (3) **Consd.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

495b. —— —— —— To specified person—Sale to third party.]—Pltf., desiring to sell his motor car for £210, & being informed by N. that he had a friend H., who would probably buy it for that price, allowed N. to have possession of the car for the sole purpose of showing it & endeavouring to sell it to H. There was no such person as H., & N. represented that there was with the intention of obtaining the car for his own benefit. N. afterwards through an intermediary sold the car to defts. for £110. Before N. got possession of the car he had been convicted of theft & other offences, but that was not known to any of the parties. While N. was in possession of the car he obtained an appointment as car salesman to a firm of motor engineers. In an action by pltf. against defts. for the return of the car or its value & damages for its detention:—*Held:* (1) N. had obtained the car from pltf. by larceny by a trick, pltf. never having given any real consent to his having or passing the property therein, & pltf. should succeed in the action unless defts. had some valid defence thereto; (2) defts. could not rely upon the defence that under 1889 Act, s. 2 (1), the sale to them was as valid as if the seller had been expressly authorised by pltf. to make the same, inasmuch as N. was not a "mercantile agent," &, if he was, the sale by him was not a sale in the ordinary course of his business as a mercantile agent, within that sub-section; &, further, because defts. had failed to satisfy the proviso to that sub-section by showing that they had not at the time of the disposition notice that N. had not authority to sell the car; & defts. had no defence to the action.

(3) Under 1889 Act, s. 2 (1), proviso, the *onus* is on the person taking under the disposition of the goods made by the mercantile agent of proving that he acted in good faith & without notice of the agent's want of authority, & is not upon the person whose goods have been disposed of by the agent of proving the contrary.—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., [1923] 1 K. B. 577; 92 L. J. K. B. 553; 129 L. T. 146; 39 T. L. R. 150; 67 Sol. Jo. 300.

Annotations:—As to (1) **Consd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586. **Reld.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

Annotation:—As to (1) **Reld.** Lake *v.* Simmons, [1926] 2 K. B. 51.

500. *Add. Annotation:*—**Consd.** Folkes *v.* King, [1923] 1 K. B. 282.

502. *Add. Annotation:*—**Reld.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd. (1934), 151 L. T. 124.

505a. —— Agent intrusted with motor car to sell to specified person—Sale to third party.]—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., No. 495b, *ante.*

507a. —— Onus of proof.]—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., No. 495b, *ante.*

517. *Add. Annotation:—Generally,* **Reld.** Lake *v.* Simmons, [1926] 2 K. B. 51.

520. *Add. Annotation:—As to* (1) **Reld.** Folkes *v.* King, [1923] 1 K. B. 282.

529. *Add. Annotation:*—**Reld.** Lake *v.* Simmons, [1926] 2 K. B. 51.

530. *Add. Annotations:*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Reld.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

561. *Add. Annotation:*—**Reld.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd. & Chilean Stores (Gath & Chaves), Ltd., [1937] 3 All E. R. 349.

PART V. SECT. 3, SUB-SECT. 10.—A. (a) vii.

sv. *Act of* 1889—"*When acting in ordinary course of business*" *defined.*]—The expression "when acting in the ordinary course of business of a mercantile agent," means when acting within business hours, at a proper place of business, & in other respects in the ordinary way in which a mercantile agent would act, so that there is nothing to lead the pledgee to suppose that anything wrong is being done, or to give him notice that the disposition is one which the mercantile agent had no authority to make.—ACME STEEL GOODS CO. OF CANADA, LTD. *v.* WALSH CONSTRUCTION CO., LTD., [1922] 1 W. W. R. 689; 63 D. L. R. 529; 30 B. C. R. 539.—**CAN.**

PART V. SECT. 3, SUB-SECT. 10.—A. (a) viii.

st. *Act of* 1889—*Necessity for proof of mala fides of purchaser.*]—Where an owner of goods, who has placed them with a mercantile agent, sues an alleged purchaser thereof from the agent for wrongful conversion, & deft. relies on [the above Act] the actual payment of money by deft. to the agent will not destroy the fact of *mala fides*, but the fact that the transaction is found not to have been an ordinary sale, *i.e.* a sale to one desirous of either using the goods or disposing of them to advantage, can of itself have a bearing only on the question of good faith, & proof of the dishonesty of the agent is not sufficient; it must be shown that deft. acted in bad faith, & the evidence should be such as to prove to the hilt the *mala fides* of the alleged sale.—ACME STEEL GOODS CO. OF CANADA, LTD. *v.* WALSH CONSTRUCTION CO., LTD., [1922] 1 W. W. R. 689; 63 D. L. R. 529; 30 B. C. R. 539.—**CAN.**

PART V. SECT. 3, SUB-SECT. 11.

573 i. *Agent—Authority to buy at discretion—Secret limitations.*]—If a person desiring to buy grain arms his agent with contract forms for the purpose & sends him out to have these forms executed by vendors & with authority to sign them on his behalf subject to the verbal condition that the agent must stipulate that the contracts are not to come into effect until his principal has approved of the samples, this is a holding out that the agent has authority to make the con-

582. *Add. Annotation :*—**Refd.** Pearl Mill Co. *v.* Ivy Tannery Co., [1919] 1 K. B. 78.

586. *Add. Annotation :—As to* (1) **Refd.** Clayton-Greene *v.* De Courville (1920), 36 T. L. R. 790.

589a. Caretaker.]—FORDER (J. C.) & SON, LTD. *v.* HARTINGTON (1929), 73 Sol. Jo. 850.

590. *Add. Annotation :*—**Refd.** Coldingham Parish Council *v.* Smith, [1918] 2 K. B. 90.

591. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

605. *Add. Annotation :*—**Refd.** Miss Gray, Ltd. *v.* Cathcart (1922), 38 T. L. R. 562.

608a. Tenant of public-house—Not being licensee—Holding out.]—Deft. was the licensee of a public-house at which meals were served. In 1917, an agreement was entered into between deft. & the general manager of the owners & a third person, whereby the latter became the tenant of the licensed premises & deft. was released from all obligations under the tenancy. The licence, however, was not transferred, & deft.'s name remained painted up over the doorway. During the continuance of the new tenancy liquor as well as food was sold on the premises. Pltfs., during this period, supplied fish, fruit & vegetables to the tenant. The accounts were not fully met, & pltfs., on discovering that deft. was the licensee, which discovery was made after the goods had been supplied, sought to make him liable for the price on the ground that the tenant was either the agent of deft. by operation of law, or that deft. was estopped from denying such agency : —*Held :* where two people agreed that one should illegally & improperly occupy a position which could only be lawfully occupied by the other, that did not necessarily make the person occupying the position the agent for all purposes of the person who ought to be occupying it ; the tenant was not in fact deft.'s agent ; & as between himself & pltfs., deft. was not estopped from setting up the true state of affairs, because, whatever misrepresentations were made, they did not reach pltfs. nor cause them to act to their detriment.—MACFISHERIES, LTD. *v.* HARRISON (1924), 93 L. J. K. B. 811 ; 132 L. T. 22 ; 88 J. P. 154 ; 40 T. L. R. 709 ; 69 Sol. Jo. 89.

627. *Add. Annotation :*—**Refd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

645a. ——.]—BEALE *v.* MOULS (1847), 10 Q. B. 976 ; 5 Ry. & Can. Cas. 105 ; 16 L. J. Q. B. 410 ; 11 Jur. 845 ; 116 E. R. 370.

Annotation :—**Refd.** Newton *v.* Belcher (1848), 6 Ry. & Can. Cas. 38.

646. *Add. Citation :—sub nom. Re* WOLVERHAMPTON, CHESTER & BIRKENHEAD JUNCTION RY. CO., *Ex p.* COTTLE, 14 Jur. 703.

Add. Annotation :—**Apld.** *Re* Direct Exeter, Plymouth & Devenport Ry. Co., *Ex p.* Roberts (1850), 2 H. & Tw. 392.

656. After this case insert " *See, also,* COMPANIES, Vol. IX., p. 53, Nos. 110 *et seq.*"

664. After this case insert " *See, also,* COMPANIES, Vol. IX., pp. 44, 53, Nos. 61-63, 110."

704a. Mess committee—Goods ordered by secretary.]—Pltf. supplied goods to the officers' mess of a brigade of which deft. was at the time commanding officer, the orders for the goods being given by the secretary of the mess committee. Pltf. sued deft. for the price, alleging that under the King's Regulations deft. was liable or that he was liable as principal for the acts of the mess secretary : —*Held :* the Regulations did not create any liability between the commanding officer & tradesmen, & as deft. neither gave nor authorised the orders, & pltf. did not give deft. credit, the action failed.—LASCELLES *v.* RATHBUN (1919), 35 T. L. R. 347 ; 63 Sol. Jo. 410, C. A.

710a. *S.P.* BONHAM *v.* MAYCOCK (1928), 138 L. T. 736 ; 44 T. L. R. 387 ; 72 Sol. Jo. 254.

711. *Add. Annotation :*—**Dbtd.** Butwick *v.* Grant, [1924] 2 K. B. 483.

tracts, & the principal is bound thereby though no such stipulation is made therein & no samples approved by the principal, if the vendors have no notice of such limitation of the agent's authority.—REED & KEAST *v.* MCKENZIE CO., LTD., [1921] 3 W. W. R. 72.—**CAN.**

8a. *Manager of branch office—Authority as such.*]—When a co. so conducts its business that a person who sells & delivers goods to a branch office thereof on an order received from such office is reasonably led to suppose that the branch has authority to give the order, the co. will not be permitted to escape liability for the purchase price on the ground that such branch office had no authority to buy the goods.—FARM PRODUCTS, LTD. *v.* MACLEOD FLOURING MILLS, LTD., [1918] 3 W. W. R. 1035 ; 14 Alta. L. R. 128 ; 43 D. L. R. 770.—**CAN.**

PART V. SECT. 3, SUB-SECT. 12.—A.

8b. *Member of syndicate acting for syndicate.*]—Pltf. sought to recover from defts., members of a syndicate formed for the purpose of exploring & testing certain mining properties, the price of goods supplied upon the order of one of the defts., C., & upon his credit. At the time the goods were supplied, pltf. did not know that C. was a member of a syndicate or was acting for others :—*Held :* defts. other than C. were not liable to pltf.—MCLAUGHLIN *v.* GENTLES (1920), 46 O. L. R. 477 ; 51 D. L. R. 383 ; 17 O. W. N. 245.—**CAN.**

PART V. SECT. 3, SUB-SECT. 12.—B. (c).

8c. *Committee of unincorporated association—Employment by.*]—*Held :* the committee were under no personal liability to the employee for his salary. —GRAHAM *v.* CARPENTER (1926), 28 W. A. L. R. 66.—**AUS.**

PART V. SECT. 3, SUB-SECT. 13.—A.

8d. *Agent—Holding out.*]—If a debtor gives money to another to pay to his, the debtor's, creditor, but the third party fails to pay the same over, the debtor is liable for the amount, unless the third party was the creditor's agent. The *onus* is on the debtor to prove either that there was an express agency, or to show, by the acts of the creditor, that these were sufficient to establish agency by holding out or estoppel.—CARR *v.* FRY & MCCUNE, [1924] 4 D. L. R. 735.—**CAN.**

711 v. —— —— *Right to receive deposit.*]—An agent for sale has no implied authority as such to receive a deposit.—PEARSON *v.* WILSON (1917), Q. W. N. 49 ; 11 Q. J. P. 105.—**AUS.**

711 vi. —— —— ——.]—Pltf. made an offer to D., as agent for L., to purchase land of L. for $5,000, & with the offer paid $200 to D. as a deposit. In an action for return of the $200, the offer not having been accepted, the trial judge found that L. when approached by pltf. sent him to D. & told him to make an offer through D. ; that D. procured from pltf. a written offer to purchase at $5,000, paying part only in cash, & that offer was refused by L. ; that D. obtained from pltf. a second offer to pay all cash, & this L. also refused :—*Held :* D. had authority to receive an offer, &, as the making of a deposit was a part of that offer, D. was not going beyond his authority in receiving it.—SILVERMAN *v.* LEGREE (1919), 45 O. L. R. 107 ; 47 D. L. R. 713 ; 15 O. W. N. 278.—**CAN.**

8e. *Person obtaining possession of bill of lading—Intervention between shipper & consignee.*]—Mere possession of a bill of lading in the hands of a person who has intervened between the original shipper & the consignee & is in no way identified with the transaction except by possession of the document, does not give him any authority to give a valid discharge of the money payable by the consignee.—STEWART *v.* RICHARDSON SONS & CO., LTD., [1920] 3 W. W. R. 134 ; 53 D. L. R 625 ; 30 Man. L. R. 481.—**CAN.**

712. *Add. Annotation :*—**Expld.** Butwick *v.* Grant, [1924] 2 K. B. 483.

714. *Add. Annotation :*—**Consd.** Butwick *v.* Grant, [1924] 2 K. B. 483.

714a. —— ——.]—Authority to an agent to sell goods does not of necessity imply authority to receive payment of the price.—BUTWICK *v.* GRANT, [1924] 2 K. B. 483 ; 93 L. J. K. B. 972 ; 131 L. T. 476, D. C.

718. *Add. Annotation :*—**Apld.** Bonham *v.* Maycock (1928), 138 L. T. 736.

732. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

740. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

741. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

744. *Add. Annotations :*—**Apld.** Bradford *v.* Price (1923), 92 L. J. K. B. 871. **Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

747a. —— **Authority to receive cash for goods—Notice to purchaser to draw cheques to seller's order**].—Pltfs., who were coal factors, engaged W. to manage a branch business for them. W. was authorised to receive payment in cash for coal supplied by pltfs. to their customers. Pltfs. had notified their customers, including defts., that all cheques must be made payable to pltfs.' order, & not to that of W. Defts. nevertheless paid for coal supplied to them by pltfs. by cheques made payable to W. or order. All these cheques were duly honoured on presentation. W. paid seven of defts.' cheques into his own private account & embezzled the proceeds : —*Held :* as W. was authorised by pltfs. to receive payment in cash for coal supplied. & defts. had paid W. by cheques payable to his order, & the cheques were duly honoured, defts. were discharged, notwithstanding that pltfs. had notified them that all cheques must be made payable to pltfs.' order.—BRADFORD & SONS *v.* PRICE BROTHERS (1923), 92 L. J. K. B. 871 ; 129 L. T. 408 ; 39 T. L. R. 272.

750. *Add. Annotation :*—**Consd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

751. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

752. *Add. Annotations :—As to* (3) **Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640 ; Bradford *v.* Price (1923), 92 L. J. K. B. 871.

754. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

768. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

769. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

770a. —— ——.]—GOKAL CHAND-JAGAN NATH (FIRM) *v.* NAND RAM DAS-ATMA RAM (FIRM), [1938] 4 All E. R. 407 ; 55 T. L. R. 15 ; 82 Sol. Jo. 888, P. C.

773. *Add. Annotation :—As to* (1) **Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

778. *Add. Annotation :—As to* (2) **Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

781. *Add. Annotations :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871 ; Butwick *v.* Grant, [1924] 2 K. B. 483.

786. *Add. Annotation :*—**Refd.** Fettes *v.* Robertson (1921), 37 T. L. R. 581.

798. *Add. Annotations :*—**Consd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240 ; Maskell *v.* Hill, [1921] 3 K. B. 157.

809. *Annotations :*—For "For full anns., *see* LANDLORD & TENANT," read "For full anns., *see* SALE OF LAND."
Add. Annotation :—As to (3) **Refd.** Chillingworth *v.* Esche (1923), 92 L. J. Ch. 461.

810. *Annotations :*—For full anns., *see* S. C. No. 1192, *post.*

PART V. SECT. 3, SUB-SECT. 13.—B.

746 i. *Agent.*]—An agent authorised to receive money for his principal may not receive anything but money ; but, if he receives a cheque on a bank, & the amount of the cheque is paid to the agent before his authority is revoked, that is a good payment to his principal.—DELORY *v.* GUYETT (1920), 47 O. L. R. 137 ; 52 D. L. R. 506 17 O. W. N. 474.—**CAN.**

746 ii. ——.]—If one is authorised to sell anything for another, the presumption is that he is to sell for cash, unless there is something to show to the contrary.—WATSON *v.* CADILLAC MOTOR SALES CO., LTD., [1920] 3 W. W. R. 107.—**CAN.**

s1. —— *Authority to collect debts—Cashing cheques received.*]—A clerk employed in the business of the Canadian Govt. elevators, whose express duties were to collect amounts due from grain dealers for freight charges, etc., & on presentation of bills of lading & payment of charges to hand out warehouse receipts, & deposit all money collected to the credit of the Receiver-General in a designated bank & at certain intervals to remit by draft to the head office of the business, & which charges were almost always paid to him by accepted cheque, although they might have been received in cash if so tendered :—*Held :* to have no authority to cash any cheques paid to him or any ostensible authority justifying any bank giving him the cash for any such cheque.—R. *v.* ROYAL BANK OF CANADA, [1920] 1 W. W. R. 198 ; 50 D. L. R. 293 ; 30 Man. L. R. 104.—**CAN.**

PART V. SECT. 3, SUB-SECT. 15.

804 i. *Agent—Implied authority from circumstances—Husband authorised to purchase stock for wife.*]—The fact that a husband was authorised to act, & has acted, as his wife's agent in the purchase of stock through brokers does not in itself justify the brokers in assuming that he is her agent to direct a sale of it ; & even assuming that the rules of the stock exchange subject to which the order to purchase was placed confer on the husband authority to direct such sale, the brokers' responsibility to the wife for the proceeds of the sale is not discharged by payment to the husband unless they show that he had authority, either express or implied, to receive the money.—AIKMAN *v.* BURDICK BROTHERS, [1923] 4 D. L. R. 852 ; 3 W. W. R. 785 ; *varying*, [1923] 1 D. L. R. 1165 ; 31 B. C. R. 478.—**CAN.**

808 v. —— —— *Break in market.*]—Instructions by an owner of wheat to his agent to "sell" without more means "sell as soon as possible," unless there is something in the circumstances or the custom of a particular trade known to both parties to give the words a different meaning. Where instructions to sell, without stipulating any price, were given after the close of the market on May 3 :—*Held :* the agent was justified in selling without further instructions at the opening of the market on May 4, though the market had broken by reason of the Grain Exchange having withdrawn option trading & the possibility of the Govt. fixing the price.—GEARHART *v.* QUAKER OATS CO., [1919] 3 W. W. R. 888.—**CAN.**

809 ii a. —— —— ——.]—Deft. wired to S., a land agent : "Bed-rock, £13,250 net, £400 down, stock & furniture at valuation." S. replied, "Your wire says £400 down ; suppose you mean £4,000, wire us giving authority to sell if we can get your net price." Deft. then wired, "Four thousand down. Sell if you can get my net price." S. replied, "Have sold in accordance with your wire, freehold for £13,750, stock & furniture at valuation, showing you £13,250 net, £4,000 to be paid down, balance to be arranged on mtge. by you. Possession as soon as license granted, not later than Aug. 20, £500 deposit paid" : —*Held :* S. had no authority to sell on the terms on which he did sell.—PRINGLE *v.* MCKAY, [1922] N. Z. L. R. 818.—**N.Z.**

815 iii a. —— —— —— ——.]—GEARHART *v.* QUAKER OATS CO. (1918), 42 D. L. R. 791.—**CAN.**

815 iii b. —— —— —— ——.]—A land agent, whom pltf. had informed of his willingness to sell a property for £900, obtained an offer of £825 & telegraphed it to pltf., but through a mistake in transmission the message as delivered to pltf. mentioned £925 as the amount of offer. Pltf. telegraphed his acceptance without naming an amount. The offer having been withdrawn, the agent agreed to sell the property to deft. for £825, & let him into possession. On the tender of the formal contract to pltf. for execution a month later he learned about the mistake in the telegram for the first time & refused to complete :—*Held :* the specific authority originally given to the agent did not authorise

823. *Add. Annotations :*—**Consd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715 ; Abigail *v.* Lapin, [1934] A. C. 491.

824. *Add. Annotation :*—**Refd.** Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

828. *Add. Annotations :*—*As to* (1) **Distd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167. **Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. *Generally*, **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670 ; Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

829. *Add. Annotation :*—**Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

833. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Apld.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

834. *Add. Annotation :*—*As to* (1) **Consd.** Keen *v.* Mear, [1920] 2 Ch. 574.

834a. —— ——.]—A general authority to an agent to find a purchaser of a house does not authorise the agent to sign a contract binding on the vendor. There must, to justify such a signing, be a special & express authority to sign.—LEWCOCK *v.* BROMLEY (1920), 127 L. T. 116 ; 37 T. L. R. 48 ; 65 Sol. Jo. 75.

834b. —— ——.]—The mere employment of an estate agent by an owner to dispose of a house confers no authority to make a contract. The agent is solely employed to find some one to negotiate with the owner. But if the agent is definitely instructed to sell at a certain price, those instructions involve authority to make a binding contract & to sign an agreement.

But the authority is limited to signing an open contract & does not authorise the agent to sign a contract with special conditions, *e.g.* as to title with which it is no part of an estate agent's duty to deal.—KEEN *v.* MEAR, [1920] 2 Ch. 574 ; 89 L. J. Ch. 513 ; 124 L. T. 19.

836. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Distd.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

836a. —— ——.]—KEEN *v.* MEAR, No. 834b, *ante*.

836b. —— —— **Authority alleged to be limited to state price.**]—Action for specific performance of a contract alleged to have been entered into by letters between pltfs. & H. & R., estate agents, whom pltfs. alleged were agents for the first deft. for the sale to pltfs. of freehold premises. The defence was that the agents had a limited authority to state a price only. The premises had been offered for sale by auction by order of the mtgees. under particulars & conditions of sale referred to in the correspondence on Jan. 18. H. & R. inclosed plan & auction particulars to pltfs. stating in their letter that their client would be willing to sell the freehold at £550. On Jan. 27, pltfs. offered £400. On the 28th H. & R. submitted that offer to the first deft., & asked for her instructions. On Feb. 8, the first deft.'s husband communicated with H. & R. over the telephone, & on Feb. 10, they wrote to pltfs. stating that their client would not accept £400, & that "we are now authorised to close with you if you will increase your offer to £450." Pltfs., on Feb. 14, wrote to H. & R. referring to the letter of Feb. 10, & stating "we are prepared to accept your offer of this property agreeing to the price of £450. Kindly forward the contract in due course." On Feb. 17, H. & R. wrote informing the first

---

the sale of pltf.'s property for less than £900, & no land agent as such is held out as having a general authority on behalf of his client to sell on any terms or at any price.—SHORTAL *v.* BUCHANAN, [1920] N. Z. L. R. 103.—**N.Z.**

815 v. —— —— ——.]—Pltfs., an incorporated co., owning lots of land, appointed C. their general manager to supervise the sale of the lots. In the agreement between pltfs. & C. it was provided that he had no authority to make any representation as to pltfs.' properties other than those contained in their printed matter, & that he should have authority to accept offers for the purchase of lots according to pltfs.' price-list. Pltfs. employed G. to sell their lots. G., in Mar. 1914, telephoned to deft. from pltfs.' office & induced deft. to buy two of the lots, upon the express agreement that pltfs. would resell the lots not later than Aug. 1914, at a profit of $100 on each lot ; G. informed deft. that he was authorised by C. to make this arrangement. C. was present when G. was telephoning, & heard what G. said ; C. told G. that he should not have said that pltfs. would resell the lots ; but, according to the testimony of G., C. himself was not called as a witness, C. ratified the representation made in his name & ostensibly by his authority :—*Held :* C., as general manager, had ostensible authority to make or ratify the collateral agreement, & any secret restriction of his authority would not affect deft., who relied upon his being the general manager.—CANADIAN GENERAL SECURITIES CO., LTD. *v.* GEORGE (1918), 42 O. L. R. 560 ; 13 O. W. N. 355 ; 14 O. W. N. 71 ; 43 D. L. R. 20.—**CAN.**

817 ii. —— *Implied authority.*]—A broker who had purchased corn on margin for a customer :—*Held :* justified in selling on the customer failing to forward margin money when a slump occurred in the market-price, a general condition of the broker transacting such business being that he reserved the right to close transactions without further notice when margins were unsatisfactory, which condition the ct. inferred must have been known to the customer who had been for some time a "room trader" & dealer on a larger scale in the broker's office.—MALOOF *v.* BICKELL, [1920] 1 W. W. R. 407 ; 50 D. L. R. 590 ; 17 O. W. N. 294 ; 59 S. C. R. 429.—**CAN.**

817 iii. —— *Authority to find purchaser.*]—On Jan. 20, 1920, deft. handed to his brokers a letter in these terms : "I authorise you to procure a buyer of the above premises for Rs. 45,000 & on your sending same, I shall pay you as remuneration at 1 per cent. on the purchase-money. The same will be paid at the registration of the conveyance, otherwise not." The offer contained in the letter was accepted by pltf. & thereupon the fact of such acceptance was communicated on the same day to deft. :—*Held :* the offer contained in the letter amounted only to an offer to be put into touch with intending buyers of the premises & it was in no sense an authority to the brokers to sell deft.'s property or an offer on the part of the vendor to sell the premises to whoever might be brought in touch with the vendor by the brokers.—PURNA CHANDRA DUTT *v.* INDRA CHANDRA ROY (1921), I. L. R. 49 Calc. 389.—**IND.**

821 i. —— *General authority—Sale in own name.*]—*Held :* position of pltfs. being that of brokers, in selling in their own name they acted beyond the scope of their authority.—PATERSON *v.* MCCALLUM, [1921] N. Z. L. R. 869.—**N.Z.**

833 xiii a. —— *Instructions to procure purchaser at specified sum.*]—In negotiations for the sale of property a notification by a principal to his agent that he will accept a purchaser at a specified sum will not authorise the agent to conclude a contract.—CARNEY *v.* FAIR (1920), 54 I. L. T. 61.—**IR.**

ak. *Solicitor — Authority to receive tenders—Tenders to be sent either to agent or principal.*]—Exors. gave instructions to solrs. to advertise for tenders for a property & they told the solrs. to insert in the advertisement a notice to the effect that tenders might be sent either to the solrs. or to either of the exors. ; this latter the solrs. did not do. A tender was received by the solrs. & forwarded by them to the exors. & they wrote acknowledging the receipt thereof. Some days later the tenant of the property forwarded a tender to one of the exors., who did not communicate with his co-exor. or the solrs. about it. The solrs., having heard no more from the exors. entered into a contract to sell the property to the person who made the first tender :—*Held :* the solrs. had no authority to give notice to the person making the first offer that his tender was accepted.—DEANS *v.* ORR (1922), 63 D. L. R. 720.—**CAN**

deft. that, as instructed by her husband, they had offered the property to pltfs. for £450, & that pltfs. had agreed to buy. The second deft. was prepared to purchase the property from the mtgees. at a price more than £450 :—*Held :* the agents had authority to conclude the contract, & pltfs. were entitled to judgment for specific performance of it.—ALLEN & Co., LTD. *v.* WHITEMAN (1920), 89 L. J. Ch. 534 ; 123 L. T. 773 ; 64 Sol. Jo. 727.

837. *Add. Annotation :*—**Refd.** Banque Belge Pour L'Etranger *v.* Hambrouck (1920), 37 T. L. R. 76.

838a. —— ——.]—The mere relation of principal & factor confers, ordinarily, an authority to sell at such times & for such prices as the factor may, in the exercise of his discretion, think best for his employer ; but if he receive the goods subject to any special instructions, he is bound to obey them.—SMART *v.* SANDARS (1846), 3 C. B. 380 ; 16 L. J. C. P. 39 ; 7 L. T. O. S. 339 ; 10 Jur. 841 ; 136 E. R. 152.

Annotations :—**Refd.** Campanari *v.* Woodburn (1854), 15 C. B. 400 ; Siebel *v.* Springfield (1863), 3 New Rep. 36 ; Donald *v.* Suckling (1866), L. R. 1 Q. B. 585.

840. For existing citations read "(1848), 5 C. B. 895 ; 17 L. J. C. P. 258 ; 11 L. T. O. S. 178 ; 12 Jur. 751 ; 136 E. R. 1132."

845a. —— **Authority to discount bill.**]—If an agent employed by the indorsees of a bill to get it discounted warrant it to be a good one, his employers are bound by his act, & are liable to refund if the bill be afterwards dishonoured by the acceptor.—FENN *v.* HARRISON (1791), 4 Term Rep. 177 ; 100 E. R. 959.

Annotations :—**Refd.** Fydell *v.* Clark (1796), 1 Esp. 447 ; Lyon *v.* Mells (1804), 1 Smith, K. B. 478 ; *Re* Acraman, *Ex p.* Bushell (1844), 3 Mont. D. & De G. 615 ; Royal Albert Hall Corpn. *v.* Winchelsea (1891), 7 T. L. R. 362.

850. *Add. Annotation :*—**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

860. *Add. Annotation :*—**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

872. *Add. Citations :*—*affd.*, [1918] A. C. 626 ; 87 L. J. K. B. 1158 ; 119 L. T. 446 ; 34 T. L. R. 518 ; 62 Sol. Jo. 665, H. L.

Add. Annotations :—**Refd.** Mechanical & General Inventions Co. *v.* Austin & Austin Motor Co., [1935] A. C. 346 ; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

883a. Salesman — Authority to cancel sale.]—LECKENBY *v.* WOLMAN, No. 308a, *ante*.

885a. Grant of sole selling agency—Power of grantee to extend privilege—Extension to company controlled by agent.] — The firm of R. & Co., one of applts., were the sole agents in the Island of Mauritius of the F. Co. of Canada for the sale of F. motor cars & F. spare parts. With the concurrence of said F. co. R. & Co. entered into an identical agreement with each of three garages under which said garages were given the exclusive right to sell F. spare parts in the Island. The agreements reserved, however, to R. & Co. the right to extend the same privileges to two other garages to be chosen by R. & Co. One of said three garage cos., a co. of which the three partners of R. & Co. were directors, went into voluntary liquidation ; &, at the instance of R. & Co., a new co., to wit, resp., was formed, independent entirely of R. & Co. The new co. took over the stock-in-trade of the co. in liquidation & its sub-agency business in F. spare parts. Later, R. & Co. formed another co., the F. Service Station Co., Ltd., one of applts., & conceded to it the privilege of selling F. spare parts within the Island. In the shares of this new co., the then four members of R. & Co., took & retained a controlling interest, the remaining shares being held by their relatives or employees. To this co. the firm of R. & Co. gave the right, in effect, to be & represent itself as being the F. retail distributor in the Island, not only for the sale of F. parts but also for F. cars :—*Held :* R. & Co. were not entitled under the agreement to choose themselves as one of the garages to whom the privileges of the agreement might be extended, &, consequently, what the firm could not do itself it could not do through a co. controlled by it, & the course adopted by the firm in forming applt. co. was not less damaging to the three other garages than would have been the similar activities of the firm itself. An injunction was granted to the resp. restraining R. & Co. from conceding to the F. Service Station Co., Ltd., the privilege of selling F. spare parts within the Island.—AUTO CAR & SPORT EQUIPMENT CO., LTD. *v.* FORD SERVICE STATION CO., LTD., [1931] 3 W. W. R. 363, P. C.

897. For "For full anns., *see* ESTOPPEL," read "For full anns., *see* DEEDS, Vol. XVII., p. 216, No. 285."

PART V. SECT. 3, SUB-SECT. 16.

a. Transpose lines 5 & 6 of this paragraph.

PART V. SECT. 3, SUB-SECT. 17.

al. *Agent forbidding purchaser to use machinery only partly paid for—Authority as such.*]—Where a letter, sent to a buyer of a farm machine under a conditional sale contract before he is in default, forbidding him, under a threat of serious consequences, to use the machine, is written by an agent of the seller, with authority to sell & collect the purchase-money & make settlements therefor, as an assertion of a right which is to continue until the buyer makes a settlement, it will be held to be written within the apparent scope of such agent's authority. —ROBERT BELL ENGINE & THRESHER CO. *v.* FARQUHARSON, [1918] 1 W. W. R. 924 ; 11 Sask. L. R. 81 ; 39 D. L. R. 625. —**CAN.**

am. *Real estate agent—Authority to describe property.*]—A real estate agent employed to find a purchaser has implied authority to describe to an intending purchaser the property offered for sale & to state any facts or circumstances which may affect its value.—HUGG *v.* LOW (Sask.), [1928] 4 D. L. R. 315 ; [1928] 2 W. W. R. 710 ; *on appeal*, [1929] 3 D. L. R. 725 ; 2 W. W. R. 55 ; 23 S. L. R. 592.—**CAN.**

an. *Manager of farm—Authority to engage labour—& sell produce.*]—A manager of a farm or estate may engage labour to do the necessary work thereon, or he may sell the produce, & then the owner will be bound by the representations made by the manager as to such produce.—RAVENE PLANTATIONS, LTD. *v.* ESTATE ABREY, [1928] App. D. 143.—**S. AF.**

ap. *Authority to invest funds—Funds used in own business.*]—M. P. M. MURUGAPPA CHETTI *v.* MADRAS OFFICIAL ASSIGNEE (1937), 81 Sol. Jo. 785, P. C.—**IND.**

Part VI.—Delegation.

906. *Add. Annotations:*—**Apld.** Tarn *v* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. I. R. 53. **Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

918. *Add. Annotation:*—**Refd.** Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

922. *Add. Annotations:*—**Apld.** Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53. **Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

926. *Add. Annotations:*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

941. *Add. Annotation:*—*As to* (1) **Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

942. *Add. Annotation:*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

944. *Add. Annotations:*—**Refd.** Prager *v.* Blatspiel, Stamp *v.* Heacock, [1924] 1 K. B. 566; Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

945a. ——.]—Pltfs., who were financially interested in goods to be shipped to B., employed defts., B. Bank, who, in turn, employed sub-agents to collect the proceeds. Pltfs. wrote to defts.: "We beg to send you herewith the undermentioned bills for collection, subject to the deduction of commission & expenses & to the condition mentioned." That condition was: "Collections are undertaken at depositor's risk only on the understanding that no liability whatever attaches to the bank in connection therewith or with the storage and insurance of the relative goods." In the margin of the document under the heading "Instructions" was the following: "Documents to be surrendered against payment: if goods are not taken up, please do your best on our behalf to warehouse & insure them against fire." This document was received by the deft. bank, who acted upon it. Goods to which the bills related were destroyed by fire at the Customs House, B., when uninsured. Pltfs. alleged that their loss was due to negligence on the part of the deft. bank & (or) their sub-agents in omitting to insure the goods. It was contended for pltfs. that the clause providing that no liability should attach to deft. bank must be disregarded, as being repugnant to the contractual duty undertaken by the defts. to do their best to warehouse & insure the goods against fire. The action was brought by the C. P. Assocn. against B. Bank & the A.-P. Co., their sub-agents:—*Held:* although in certain cases where the employment of a sub-agent was authorised the agent might be impliedly authorised to create privity of contract between the principal & the sub-agent, there was no general rule of English law that such authority should be implied when a sub-agency was authorised. In the present case no such authority was to be implied & the claim against the sub-agents failed.—CALICO PRINTERS' ASSOCN., LTD. *v.* BARCLAYS BANK (1931), 145 L. T. 51; 36 Com. Cas. 197, C. A.

955. *Add. Annotations:*—*As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. *Generally*, **Refd.** Muller (London) *v.* Lethem, Same *v.* I. R. Comrs., [1927] 1 K. B. 780.

957. *Add. Annotation:*—*As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

964. *Add. Annotation:*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

966. *Add. Annotations:*—**Consd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110. **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

975. *Add. Annotation:*—**Consd.** Belvedere Fish Guano Co. *v.* Rainham Chemical Works, Feldman & Partridge, Ind, Coope *v.* Same, [1920] 2 K. B. 487.

PART VI. SECT. 1.

906 iii. —— ——.]—GRIMMER *v.* MERCHANTS & MANUFACTURERS FIRE INSURANCE CO., [1932] 2 D. L. R. 621; 4 M. P. R. 582.—**CAN.**

906 iv. —— *Mother managing daughter's property.*]—Where a person employs another relying upon his peculiar aptitude for the work entrusted to him, it is not competent for that person to delegate the trust to another.

Where the authority which a mother had to manage her daughter's property involved a certain trust or discretion for the exercise of which she was selected:—*Held:* she could not delegate that trust & appoint her husband to perform the duties of her agency.—ROBINSON *v.* LONG, [1923] 3 D. L. R. 918.—**CAN.**

906 v. —— *Manager of property.*]—A lease is invalid if it is granted by a person as attorney for one who is a manager of the property leased, & who did not negotiate or consider the lease or know of it until after its execution.—BONNERJI *v.* SITANATH DAS (1921), 49 L. R. Ind. App. 46; I. L. R. 49 Calc. 325.—**IND.**

so. *Agreement to assist agent—Remuneration—Construction of contract.*]—Deft., a real-estate agent, with whom a printing & lithographing business had been listed for sale, asked pltf. who had practical knowledge of the latter class of business, to assist him in finding a purchaser, & said to pltf.: "If this deal comes off we will split a nice piece of change":—*Held:* there was a contract between the parties that the commission if earned by their joint efforts would be divided; in the absence of any local or trade meaning to the contrary, the meaning of the words quoted was that the division would be an equal one; &, therefore, pltf. having rendered assistance in bringing about the sale which was made was entitled to judgment for half the commission.—JAMES *v.* FERRIS, [1932] 1 W. W. R. 250; 1 D. L. R. 472; 44 B. C. R. 522.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

943 iii. —— ——.]—If an agent for sale of grain to whom the goods are consigned or delivered, consigns the same to a sub-agent for sale, & the bill of lading & such other documents & circumstances as there are support the inference of the agent's right to deal with the goods, then in the absence of anything showing a contrary intention the sub-agent has only to account in respect of the proceeds to the first agent & not to the original principal.—HINCHCLIFFE *v.* BAIRD & BOTTERELL, [1920] 3 W. W. R. 159; 53 D. L. R. 451; 30 Man. L. R. 520.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.

964 v. —— —— *Contract with sub-agent approved by principal.*]—Where a co. had engaged an agent to sell its shares, had intended him to employ sub-agents, & had approved of the contract made by the agent on its behalf with a sub-agent:—*Held:* the co. was liable to the sub-agent for commission due under his contract.—BERGMAN *v.* CANADIAN FARM IMP. CO., [1924] 1 D. L. R. 350.—**CAN.**

977. *Add. Annotation :—As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

980a. —— ——.] — NATIONAL EMPLOYERS' MUTUAL GENERAL INSURANCE ASSOCN., LTD. *v.* ELPHINSTONE, [1929] W. N. 135.

981a. —— **Failure to give proper instructions to sub-agent.**]—SELLER *v.* WORK (1801), Marshall on Marine Insurance, 4th ed., p. 243.

Part VII.—Ratification.

987. *Add. Annotation :*—**Consd.** *Re* Becket, Purnell *v.* Paine, [1918] 2 Ch. 72.

989. *Add. Annotation :*—**Refd.** The Zigurds (No. 4), 48 T. L. R. 563.

989a. —— ——.]—Resps.' manager, without their authority & fraudulently, obtained from their bankers, in exchange for cheques drawn by resps. upon the bankers, drafts for equivalent amounts drawn by the bankers upon themselves, payable to bearer, & crossed "not negotiable." These drafts the manager paid to an account which he had with applts., & they collected the amounts. Resps. sued applts. for damages for conversion of the drafts :—*Held :* the action failed, since resps. could not ratify the act of their manager in obtaining the drafts, so as to have a title to sue, without also ratifying his subsequent dealing with the drafts, the form of which made collection through a bank necessary.—UNION BANK OF AUSTRALIA *v.* MCCLINTOCK, [1922] 1 A. C. 240 ; 91 L. J. P. C. 108 ; 126 L. T. 588, P. C.

Annotation :—**Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

Compare No. 338a, *ante.*

994. *Add. Annotation :—As to* (3) & (4) **Apprvd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

995. *Add. Annotations :*—**Consd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Bow's Emporium *v.* Brett (1927), 44 T. L. R. 194.

995a. —— ——.] Pltf. had an account with deft. bank, & his wife forged his signature on cheques & thereby drew out all the money left in the account, & she lent it to her sister. Pltf., on discovering the facts, did not at once inform the bank, but about nine months later, when his wife told him that she wanted more money for her sister, he stated his intention of going to the bank, & that night his wife committed suicide. Pltf. then went to the bank & told the manager about the forged cheques. In an action by pltf., claiming to be credited by deft. bank with the amount of the forged cheques, the bank pleaded (*a*) adoption & ratification, & (*b*) that pltf. was estopped by his silence from alleging that the signatures were forgeries. The tribunal of first instance found that the forged cheques were honoured through the carelessness of the bank officials. There was no evidence that the pltf. had ever adopted the forged cheques as his own :—*Held :* ratification had no applicability to a forged signature, but pltf. was estopped from alleging the forgeries because his silence until after his wife's death had caused the bank to lose their right of action against the forger, & therefore the action failed.—GREENWOOD *v.* MARTINS BANK, LTD., [1933] A. C. 51 ; 101 L. J. K. B. 623 ; 147 L. T. 441 ; 48 T. L. R. 601 ; 76 Sol. Jo. 544 ; 38 Com. Cas. 54, H. L.

Annotations :—**Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367 ; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85.

998. *Add. Annotations :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586 ; Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

1001a. **Offer accepted by agent subject to ratification—Withdrawal before ratification.**]—Pltf. was chairman of the board of management of a charity. Deft. wrote a letter to the board saying that he would sell certain property to the board for £6,500. At a full meeting of the board instructions were given to arrange for an inspection of the property by members of the board on a specified date. A deputation, consisting of pltf. & twelve other members of the board, viewed the property & had an interview with deft. The price of £6,500 was again mentioned, & deft. was told that all the members of the board present had resolved to buy the property, & that they could carry the necessary resolution, & they purported to accept deft.'s offer subject to a formal meeting. The secretary of the charity stated that the deputation was not a quorum & could not act as a properly constituted board. On the next day deft. wrote to the secretary promising that the deeds of the property should be left to be inspected by the solr. to the charity, & that his own solr. would forward a form of contract ; & the secretary thereupon sent out a notice to members of the board of a special meeting to be held two days later "to receive the report & recommendation of the deputation." On the day of that meeting deft. telegraphed to the secretary cancelling all negotiations. The meeting, however, passed resolutions to ratify the deputation's acceptance of deft.'s offer to sell for £6,500, & to instruct the solr. to the charity to require deft. to complete. In an action by pltf. on behalf of himself & of all other members of the board for specific performance of an agreement to sell the property to the charity for £6,500 :—*Held :* on the facts the members of the deputation did not warrant their

PART VI. SECT. 4.

976 vii. —— *Funds received by sub-agent.*]—Every agent who employs a sub-agent is liable to the principal for money received by the sub-agent to the principal's use, & is responsible to the principal for the negligence & other breaches of duty of the sub-agent in the course of his employment.—HOOLE *v.* ROYAL TRUST CO., [1931] 3 D. L. R. 426.—**CAN.**

PART VII. SECT. 2.

990 i a. —— ——.]—In a contract for sale of land, if the seller fraudulently simulates his wife's signature this vitiates the contract, & she cannot ratify her signature.—BECKMAN *v.* WALLACE (1913), 13 D. L. R. 540.—**CAN.**

authority to bind the board, & their acceptance of deft.'s offer was subject to ratification by the board; (2) where an offer is accepted by an agent subject to ratification by the principal there is no contract or contractual relation until ratification, & at any time before ratification the offer may be withdrawn.—WATSON *v.* DAVIES, [1931] 1 Ch. 455; 100 L. J. Ch. 87; 144 L. T. 545.

1005. *Add. Annotation :*—**Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.

1009. *Add. Annotations :*—**Refd.** Drughorn *v.* Rederiaktiebolaget Trans-Atlantic, [1919] A. C. 203; The Joannis Vatis (1921), 91 L. J. P. 182; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775; Robinson *v.* Midland Bank (1925), 41 T. L. R. 402; Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1013. *Add. Annotation :*—**Refd.** Ruby S.S. Corpn., Ltd. *v.* Commercial Union Assurance Co. (1933), 150 L. T. 38.

1018. *Add. Annotation :*—**Refd.** Ruby S.S. Corpn., Ltd. *v.* Commercial Union Assurance Co. (1933), 150 L. T 38.

1019. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1022. *Add. Annotations :*—**Expld. & Distd.** Watson *v.* Davies, [1931] 1 Ch. 455. **Consd.** Reynolds *v.* Atherton (1921), 125 L. T. 690.

1026. *Add. Annotation :*—**Refd.** Reynolds *v.* Atherton (1921), 125 L. T. 690.

1027. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1028. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1029. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1033. *Add. Annotation :*—**Refd.** Bowyer, Philpott & Payne *v.* Mather, [1919] 1 K. B. 419.

1033a. —— After issue of notice to abate—Before institution of proceedings.] — By a bye-law of the city council of W., which was the sanitary authority of W., it was provided that whenever the council was in vacation the mayor & the chairmen of the respective committees of the council might give such instructions as were requisite with respect to any matter of an urgent nature, provided that all such acts were in due course reported to the council. The council of W. held no meeting between July 26, 1917, & Oct. 18, 1917—the summer vacation, & the public health committee of the council did not sit between July 17, 1917, & Oct. 9, 1917. On July 17, 1917, the public health committee passed a resolution appointing its chairman, & in his absence the acting vice-chairman, to deal with all urgent matters on behalf of the committee during the summer vacation. This resolution was reported to the council & approved by them on July 26, 1917. About the middle of Sept. 1917, the medical officer of health, being satisfied that a nuisance existed upon certain premises in the district of the council & city of W., caused a written notice of the fact of its existence to be served on the owner of the premises under Public Health London Act, 1891 (c. 76), s. 3. As the nuisance was not abated, the matter was reported by the medical officer to the chairman of the public health committee, & the latter, considering that the matter was urgent, & acting under the authority conferred upon him by the resolution of the public health committee, which had been confirmed by the council, as before stated, directed that a notice should be served upon the owner of the premises requiring him to abate the nuisance in accordance with the provisions of sect. 4 of the Act. This notice, which was issued in due form, was served upon the owner on Sept. 25, 1917. This action of the chairman was reported to the public health committee at their first meeting after the summer vacation,

---

PART VII. SECT. 3.

1002 ii. ——.]—FARRELL & SONS *v.* POUPORE LUMBER CO., [1935] 4 D. L. R. 783.—**CAN.**

1006 v a. —— ——.] — H. was tenant to P. of lands held under a lease which expired on Sept. 29, 1880. P. brought an ejectment to recover possession of the lands, & for mesne rates, & after he was in a position to mark judgment, an agreement was entered into in Nov. 1884, between H. & P., by which P. agreed to grant a lease to H. for 31 years from Sept. 29, 1884, H. paying £860 on or before Dec. 15, as & for mesne rates up to that date, & for costs, & that H. should be at liberty to sell subject to the landlord's approval. H. not having paid such sum of £860, judgment for possession was entered on Dec. 16. After the entry of the judgment negotiations took place between P. & D. who had taken the lands temporarily for grazing from H. for a lease of the said lands to D., & on Jan. 2, 1885, D. paid P. £860, & the following day signed a proposal for a lease for 35 years from Sept. 29, 1884, at the yearly rent of £200. P. was only tenant for life of the lands, & could not take a fine, & there was no mention in the agreement with D. of the payment by him of the £860. On Jan. 6, 1885, the writ in the present action was issued by P. against H. claiming £1,000 damages for mesne profits from the expiration of the lease on Sept. 29, 1880, & in the alternative £1,000 for use & occupation. H. by his defence claimed the benefit of the payment by D. of the £860, & by leave of the judge at the trial paid 6*d.* into ct. on the count in trespass. At the trial P.'s agent deposed that he told D. that whoever gave him £860 would get the land. D., who was examined for H., deposed that he knew £860 was claimed from H. for arrears of rent & costs, & that he was willing to pay that sum on getting a good lease. The question left to the jury was "whether the £860 was paid by D. & received by P. as for the rent of the farm due by H." They found that it was, & that the 6*d.* lodged in ct. was sufficient :—*Held :* there was evidence proper to be submitted to the jury that the £860 was paid by D. & received by H. as & for the arrears of rent & costs, & that it was competent for H. to adopt & claim the benefit of the payment as a defence to the present action.—PURCELL *v.* HENDERSON (1885), L. R. 16 Ir. 213, 466.—**IR.**

1006 v b. —— ——.]—A contract made on behalf of a person, but without his authority, by a person who does not profess to be acting for a principal cannot be ratified.—REIMER *v.* ROSEN, [1918] 1 W. W. R. 425.—**CAN.**

1006 v c. —— ——.]—A person does not become a principal by any act of so-called ratification, unless at the time of the contract the so-called agent was not acting for himself but was intending to bind an ascertainable principal; even if it is intended that some unnamed principal shall benefit, if the so-called agent purports to be acting for himself & not for another, the rule applies.—MCCALLUM *v.* COHOE (1918), 44 O. L. R. 497; 46 D. L. R. 733; 15 O. W. N. 262.—**CAN.**

1006 v d. —— ——.]—Pltf. & F. were customers of defts.' bank & F. was, unknown to pltf., largely indebted to the bank. K., a branch manager, drew up a promissory note for $2,500 which was signed by F. & made payable to the order of pltf. on demand. Pltf. was induced to advance the $2,500 before the undertaking by K., written on the note, "this note will be paid when demanded," but K. did not sign this statement as branch manager. The bank received the money by pltf.'s cheque payable to order of F. & indorsed by him, which sum was then used to liquidate F.'s debt to the bank. Pltf. claimed that deft. bank had ratified the acts of K. & were liable :—*Held :* it was not the intention of K. as shown by the evidence to act as agent of defts. in the transactions.—BRASSETH *v.* ROYAL BANK OF CANADA (1922), 67 D. L. R. 740.—**CAN.**

on Oct. 9, 1917, & approved by them, & the matter was later on, on Oct. 18, 1917, reported to & approved by the council. As the nuisance still continued, proceedings were taken against the owner by the sanitary inspector, & on Dec. 5, 1917, an order was made for its abatement by the magistrate who heard the complaint. The owner thereupon applied for & was granted a rule *nisi* for *certiorari* to quash the order of the magistrate on the ground that the same was made without jurisdiction, the notice of Sept. 25, 1917, not having been given by the authority or direction of the council or of the public health committee, or after consideration by them in pursuance of Public Health London Act, 1891 (c. 76), s. 4 (1):—*Held:* as the act of the duly authorised agent of the council, namely, the chairman of the public health committee, appointed to act in urgent matters during the vacation under the bye-law & in pursuance of the resolution of the committee subsequently ratified by the council, was reported to & approved & ratified by the council prior to the institution of proceedings against the owner of the premises, the ratification related back to the time of the doing of the act in question, namely, the serving of the notice of Sept. 25, 1917, & the magistrate had jurisdiction to make the order of Dec. 5, 1917.—R. *v.* CHAPMAN, *Ex p.* ARLIDGE, [1918] 2 K. B. 298; 87 L. J. K. B. 1142; 119 L. T. 59; 82 J. P. 229; 16 L. G. R. 525, D. C.

Annotation:—**Refd.** Bowyer, Philpott & Payne *v.* Mather, [1919] 1 K. B. 419.

1040. *Add. Annotations:*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

1046. *Add. Annotation:*—**Refd.** Burnham-on-Sea Urban District Council *v.* Channing, [1933] W. N. 61.

1079. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1098. *Add. Annotation:*—**Apld.** Bonham *v.* Maycock (1928), 138 L. T. 736.

1102. *Add. Annotations:*—**Consd.** *Re* Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

1104a. —— ——.]—If goods in the city of London are sold by a broker, to be paid by a bill of exchange, the vendor has a right, within a reasonable time, if he is not satisfied with the sufficiency of the purchaser, to annul the contract. But the vendor must intimate his dissent as soon as he has had an opportunity to inquire into the solvency of the purchaser. Five days considered too long a period for

PART VII. SECT. 5.

1037 vii. ——.]—In order that a person may be deemed to have ratified an act done without his authority, it is necessary that at the time of the ratification he should have full knowledge of all the material circumstances in which the act was done, unless he intends to ratify the act & take the risk whatever the circumstances may have been.—WHEELER *v.* HISEY (1918), 42 O. L. R. 654; 14 O. W. N. 150; 43 D. L. R. 92.—**CAN.**

1037 viii. ——.]—The agent of defts. hired pltfs., but exceeded his authority in regard to the terms of hire:—*Held:* defts. were not estopped, by accepting pltfs.' services, from disputing pltfs.' claim for wages, defts. having repudiated the agent's authority as soon as the terms of the contract were brought to their attention.—ROY *v.* ST. JOHN LUMBER CO., FISHER *v.* ST. JOHN LUMBER CO. (1919), 46 N. B. R. 120.—**CAN.**

1037 ix. ——.]—The burden of proving ratification rests on the person alleging it, who must prove full knowledge of the facts.—THOMPSON *v.* LYNNE, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—**CAN.**

1037 x. ——.]—A grain broker placed, according to his practice, a written confirmation of a purchase of grain made for a customer in a rack which was in the broker's office & had been pointed out to the customer, & the confirmation remained there for a month. The broker knew the customer's street address. The customer had not instructed the broker to make the purchase in question:—*Held:* the confirmation did not affect the customer with notice of or liability for the transaction.—MELLINIUK *v.* MORRISON & KELLY, LTD., [1930] 1 W. W. R. 602; 1 D. L. R. 984.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 1.

1044 vii. ——.] — In considering whether a person is bound by the acts of an ostensible agent which are alleged to have been ratified, the distinction is to be observed between a ratification to be implied from conduct showing an intention to ratify & an estoppel to deny ratification, the case, that is, where, without a conscious intention to ratify, the so-called principal is estopped from denying that his conduct must be treated as a ratification.—MCKAY *v.* TUDHOPE ANDERSON CO., LTD., [1918] 3 W. W. R. 994; 44 D. L. R. 100; 14 Alta. L. R. 131.—**CAN.**

1044 viii. ——.]—Ratification by a principal of the acts of an alleged agent must be evidenced either by clear adoptive acts or by acquiescence equivalent thereto, & the act or acts of adoption or acquiescence must be accompanied by full knowledge of all the essential facts.—THOMPSON *v.* LYNNE, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—**CAN.**

1044 ix. ——.]—If an agent executes on behalf of a former principal a contract for the sale of land, although his authority to execute such contracts has terminated, then if the purchaser seeks to hold the principal liable thereunder he must show that the principal has placed himself by some act or omission of his own in a position which compels him to accept the contract & carry out its terms; & this is not shown where there does not appear to have been any holding out of such agent by the principal either to the purchaser directly or by circumstances of publicity which reached him & upon which he acted.—ZEREBESKY *v.* POWELL, [1921] 3 W. W. R. 528.—**CAN.**

1044 x. ——.]—ABBOTT *v.* MCDOUGALL & COWANS (Man.), [1928] 1 D. L. R. 295; [1927] 3 W. W. R. 816.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 2.

1086 i. *Purchase — Acceptance of goods bought.*]—Where an agent, authorised to buy goods of a certain kind, buys goods of a different kind, if the principal for whom they are bought, though repudiating the contract & returning most of the goods, keeps part of them, he thereby does an act in relation to the goods which is inconsistent with the ownership of the seller, & so accepts them, & in so doing ratifies the purchase.—BONTEX IMPORTING CO. *v.* PANAR (1922), 63 D. L. R. 200; [1922] 1 W. W. R. 128.—**CAN.**

1100 iv. —— —— *Paid by cheque of unauthorised agent.*]—S. took part in the negotiations for the sale of an engine by applt. to resp., but was not applt.'s agent either to effect the sale or to collect the purchase-money. After the sale resp. paid the money to S., thinking that he was applt.'s agent, & a few days later S. told applt. that he had received the money but could not pay it over then, & offered to pay interest on it, to which applt. agreed. After several applications from applt. S. handed him a cheque for the balance shown to be due in an accompanying statement, in which S. debited himself with interest & took credit for commission. Applt. accepted the cheque & paid it into his account, but it was dishonoured & he then sued resp. for the purchase-money:—*Held:* applt.'s acceptance of the cheque was a clear adoptive act evidencing his ratification of S.'s unauthorised act in receiving the money.—MCEWAN *v.* JOHNSTONE, [1918] N. Z. L. R. 49.—**N.Z.**

so. —— *Demand for payment over of deposit.*]—Where an agent had no authority to sell on the terms on which he did sell:—*Held:* a letter of the principal, demanding payment of the money received by the agent as a deposit, did not ratify the action of the agent in selling.—PRINGLE *v.* M'KAY, [1922] N. Z. L. R. 818.—**N.Z.**

1104 iii a. —— ——.]—Where a principal, knowing the full circumstances of the signing of an agreement for sale & purchase of land by an agent on his behalf, does not notify the purchaser of his repudiation for nearly three years he is estopped by his acts & conduct from objecting to the agreement.—WEST *v.* DILLICAN, [1921] N. Z. L. R. 617.—**N.Z.**

this purpose.—HODGSON *v.* DAVIES (1810), 2 Camp. 530; 170 E. R. 1241, N. P.

Annotations :—**Refd.** Maxwell *v.* Deare (1854), 23 L. T. O. S. 1; Humfrey *v.* Dale (1857), 7 E. & B. 266.

1105. *Add. Annotation :*—**Refd.** The Yuri Maru, The Woron, [1927] A. C. 906.

1109. *Add. Annotation :*—*As o* (2) **Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1123. *Add. Annotation :*—**Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436.

1128. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1129. *Add. Annotation :*—**Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1138. *Add. Annotation :*—*As to* (2) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

1145. *Add. Annotation :*—**Refd.** Consolidated Entertainment, Ltd. *v.* Taylor, [1937] 4 All E. R. 432.

1146. *Add. Annotation :*—**Expld. & Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

1153. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1160. *Add. Annotation :*—*As to* (1) **Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.

Part VIII.—Relations between Principal and Agent.

1175. *Add. Annotation :*—**Refd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240.

1176. *Add. Annotations :*—**Refd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240; Maskell *v.* Hill, [1921] 3 K. B. 157.

1192. *Add. Annotation :*—*As to* (3) **Refd.** Jarvis *v.* Moy, Davies, Smith, Vandervell & Co., [1936] 1 K. B. 399.

1196. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1206. *Add. Annotations :*—**Consd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186. **Apld.** Finn *v.* Shelton Iron, Steel & Coal Co. (1924), 131 L. T. 213; Westminster Bank *v.* Hilton (1926), 136 L. T. 315. **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51. **Refd.** Weigall *v.* Runciman (1916), 85 L. J. K. B. 1187; Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226; Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330; Strathlorne S.S. Co. *v.* Andrew Weir & Co. (1934), 40 Com. Cas. 168.

1208. *Add. Citation :*—13 Asp. M. L. C. 463.

1208a. —— ——.]—VALE (J.) & Co. *v.* VAN OPPEN & Co., LTD. (1921), 37 T. L. R. 367.

1211. *Add. Annotations :*—**Apld.** Weigall *v.* Runciman (1916), 13 Asp. M. L. C. 463. **Refd.** Finn *v.* Shelton Iron, Steel & Coal Co. (1921), 131 L. T. 213.

1218. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

1231. *Add. Annotation :*—**Refd.** Vaile Bros. *v.* Hobson, Ltd. (1933), 149 L. T. 283.

1238a. Duties of sole agent.]—Pltf. co., who had the sole export agency for a certain brand of whisky in Australasia, made a contract with

---

sk. *Acknowledgment of order.*]—An acknowledgment of an order given to an agent who is acting in excess of his authority is not ratification.—MCISAAC *v.* FRASER MACHINE & MOTOR CO., LTD. (1910), 44 N. S. R. 290.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.

1127 i. *On person alleging ratification.*]—The burden of proving ratification rests on the person alleging it, who must prove full knowledge of the facts.—THOMPSON *v.* LYNNE, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 1.

1122 iii. ——.]—An act done by a person on behalf of another person, but without that other person's authority or knowledge, & subsequently ratified by that other creates the relationship of principal & agent between the parties in respect of that act.—GREAT WEST FARMS, LTD. *v.* HANSBERGER, [1924] 1 D. L. R. 185.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 2.

si. *Trading goods—Agent for sale.*]—If an agent for sale of goods trades them for other goods & the principal ratifies the transaction, the goods received in exchange become the principal's property.—REX GROCERY *v.* HIGGS & KEEN, [1925] 3 D. L. R. 565; [1925] 2 W. W. R. 402; 19 Sask. L. R. 492.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.—A.

1134 v. —— —— *Goods not in accordance with order.*]—Defts. gave to pltf. a written order to ship from England on account of defts. one thousand two-gallon & two hundred & fifty three-gallon stoneware jars. Pltf. ordered jars from a manufacturer in England to be shipped in performance of this order. Two lots were shipped & delivered to defts. who paid for them. Delivery of the last lot, which comprised thirty-nine three-gallon & three hundred & forty-two two-gallon jars, was refused by defts. on the ground that there were twenty-three more of the three-gallon jars & twenty-five less of the two-gallon jars than had been ordered, & also that the mouths of a large number of the jars were not of the specified size :—*Held :* pltf. was under a duty to purchase goods for defts. of the description ordered, & his failure to do so amounted to a breach of duty.—BULTERS *v.* ROOPE, [1922] N. Z. L. R. 549.—**N.Z.**

1138 ii. —— ——.]—Wheat held by defts. for pltfs. was on pltfs.' order shipped by defts. from M. to A. Pltfs. telegraphed instructing defts. to sell at once. Defts. wrote saying that until the cars arrived at A. they were unable to sell. They at once, however, tried to sell & after ten days did so :—*Held :* they were justified in selling at the price then obtainable & without receiving further instructions.—JACKSON *v.* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD., [1919] 3 W. W. R. 572.—**CAN.**

sw. *Failure to read contract of agency.*]—A person signing a contract of agency by which he takes over goods is bound by a term requiring him to insure, whether he reads the contract or not.—GRAY-CAMPBELL, LTD. *v.* FLYNN, [1923] 1 D. C. R. 51.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—A. (a).

1214 iv. —— *Negligent misrepresentation.*]—An agent who in breach of his duty to his principal induces him by negligent misrepresentation to enter into a contract is liable to make good to his principal the loss arising therefrom.

In such a case the principal may recover either in tort or in contract, & it is no answer to his claim that he is also entitled to recover from the other party to the contract induced by his agent.—YOUNG *v.* TASSELL, [1918] N. Z. L. R. 924.—**N.Z.**

1214 v. ——.]—The duty of a paid agent to his principal is to exercise care, skill, & honesty, & if he takes on himself to convey information which he considers it material that his principal should know, & which he recommends & intends his principal to adopt, it is his duty to use reasonable care & skill in ensuring the accuracy of that information.—BROWN *v.* THORNES, [1920] N. Z. L. R. 306.—**N.Z.**

PART VIII. SECT. 2, SUB-SECT. 2.—A. (b).

sb. *Agent liable for failure to give information.*]—PHILLIPS *v.* BARNS (1937), 81 Sol. Jo. 814, P. C.—**IND.**

deft. co., whereby the latter became the sole agent in New South Wales for the sale of that whisky. By a clause in this contract, deft. co. agreed to devote the principal part of their energies, so far as Scotch whisky was concerned, by means of themselves, their travellers, & others, to pushing the sale of this whisky in bulk throughout New South Wales. They were, however, not precluded from selling proprietary brands of whisky in response to orders therefor, nor from disposing of their stocks of such whiskies. Pltf. co. became dissatisfied with the volume of orders received from deft. co., & sued them for breach of contract. It was also a term of the contract that pltf. co. should supply, *inter alia*, all corks for the bottling of the whisky, but, by a substituted agreement, deft. co. used a form of stopper which had a lead liner, & a quantity of whisky was thereby rendered unfit for sale:—*Held:* (1) deft. co. was under an obligation vigorously to promote the sale of the whisky exported by pltf. co., & to sell as much of that whisky as they could throughout the whole period of the contract, such obligation being subject to their rights under the contract to sell their existing stocks of whisky, & to supply proprietary brands in response to orders therefor. The obligation under the contract was not satisfied by inaction & merely not preferring other brands; (2) deft. co. had broken their contract, in that they had not made a steady effort to sell the whisky supplied by pltf. co., nor had they done their best to promote its sales in their tied & managed houses. Further, their travellers had solicited orders for other brands; (3) it was a breach of the contract to allow the exhibition of advertisements, in tied & managed houses, of competing proprietary brands; though they would be permitted to stock such brands, & to include them in their lists of brands stocked; (4) there was no implied warranty on the part of deft. co. that the stoppers were free from defect, but, from the relationship between the parties, who were both concerned with the reputation & success of this particular whisky, there was an obligation upon deft. co. to use reasonable care in the matter, & this they had not done.—DAVIS (B.), LTD. *v.* TOOTH & CO., LTD., [1937] 4 All E. R. 118; 81 Sol. Jo. 881, P. C.

1243a. —— Extent of liability.]—Pltf. employed deft., a chartered accountant, to investigate the affairs of a co. in which he was interested. In a letter of instructions to deft. pltf. inserted libellous statements concerning two officials of the co. Deft. handed the letter to his partner, who negligently left it at the co.'s office. The manager found it, read it, & communicated its contents to the two persons defamed, each of whom sued pltf. for libel & obtained judgment against him for damages & costs. Pltf. then sought to recover from deft. the amount which he had paid for damages & costs in the libel actions as damages for breach of an implied duty to keep secret the letter of instructions:—*Held:* pltf.'s liability for damages in the libel actions did not result from deft.'s breach of duty, & deft. was liable for nominal damages only.—WELD-BLUNDELL *v.* STEPHENS, [1920] A. C. 956; 89 L. J. K. B. 705; 123 L. T. 593; 36 T. L. R. 640; 64 Sol. Jo. 529, H. L.

Annotations:—**Consd.** *Re* Polemis & Furness Withy, [1921] 3 K. B. 560; A. & B. Taxis *v.* Secretary of State for Air, [1922] 2 K. B. 328; Harnett *v.* Bond, [1924] 2 K. B. 517; Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670. **Refd.** Proops *v.* Chaplin (1920), 37 T. L. R. 112; Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127; The San Onofre, [1922] P. 243; Adelaide S.S. Co. *v.* R., [1923] 1 K. B. 59; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Hambrook *v.* Stokes, [1925] 1 K. B. 141; Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

1243b. —— ——.]—Accountants, employed to prepare balance-sheets from the books of a firm, stated the amount of "cash at the bank" as it appeared in the books, without examining the bank pass-book, or obtaining any statement in reference thereto from the bank, or informing the firm that they had not done so. The entries in the books were falsely made by a fraudulent clerk, whose defalcations were not discovered, as they would have been if the entries in the books had been checked by reference to the pass-book:—*Held:* (1) the accountants were negligent; (2) they were liable in damages for the amount of the defalcations of each year which would have been discovered if the proper steps had been taken as to the pass-book.—FOX & SON *v.* MORRISH, GRANT & CO. (1918), 35 T. L. R. 126; 63 Sol. Jo. 193.

1250. *Add. Annotation:*—**Apld.** *Re* City Equitable Fire Insce, [1925] Ch. 407.

1251. *Add. Annotation:*—**Apld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

After this case add "*See, generally*, COMPANIES, Vol. IX., pp. 553 *et seq.*"

PART VIII. SECT. 2, SUB-SECT. 2.—B. (b).

1245 iv. —— ——.]—A law-agent, to whom a client entrusted money for investment on heritable security to yield 5 per cent., invested £1,000 of the amount in 1903 on a heritable bond which bore to be secured over tenement property, & £200 on a postponed bond over other subjects. These properties both belonged to another client of the agent's firm, who, in 1905, died insolvent, & heavily indebted to the firm. He had granted an *ex facie* absolute disposition of the tenement property in favour of the firm prior in date to the bond for £1,000, which loan was accordingly not validly secured; & the postponed bond for £200 was worthless, as the prior bond exhausted the value of the security subjects. None of these facts were communicated to the lender:—*Held:* while the agents were not guilty of negligence in investing the money as they did in 1903, in view of the fact that they were called upon to obtain a 5 per cent. investment, they were guilty of negligence upon the death of the borrower in 1905, in respect that, a conflict of interest having then arisen between them & the lender in connection with the £1,000 bond, they failed to inform their client of the position, failed to realise her investments, & failed to advise her to seek independent legal advice.—WERNHAM *v.* M'LEAN, BAIRD & NEILSON, [1925] S. C. 407.—**SCOT.**

sv. *Customs broker.*]—WOLSELY TOOL & MOTOR CAR CO. *v.* JACKSON POTTS & CO. (1915), 7 O. W. N. 617; 8 O. W. N. 311; 33 O. L. R. 96, 587.—**CAN.**

1260 i. *Factor.*]—Where advances are made by a factor on the security of a world commodity, such as grain, consigned to him for sale, it is his duty to deal with the goods in such a way as to guard, not only himself, but the principal also, against loss. There is implied in every such transaction a right on the part of the factor to realise on his security whenever the exigency of the case demands it.—UNITED GRAIN GROWERS, LTD. *v.* MABEY, [1925] 1 D. L. R. 301; [1925] 1 W. W. R. 19.—**CAN.**

1260 ii. ——.]—Where an elevator company advances money on the security of grain delivered to it in storage which it is authorised by the contract between it & the borrower to sell without notice at any time it deems itself unsecure, the co. is not, in the absence of an express agreement to that effect, restricted to resorting to the pledged grain to obtain repayment, but can sue on the implied

1263a. ——.]—Agents employed to sell land are generally employed to obtain the best purchase price reasonably obtainable. Their duty to their principal does not cease when they have procured an offer to purchase which he accepts subject to contract. It is still their duty to inform him of any offer which they receive at a higher price than that so accepted, & they remain subject to this duty until final contracts of sale & purchase have been signed & exchanged.

The owner of house property employed a firm of house agents to sell the property. They gave particulars to a tenant of the property, among other persons, & procured an offer from a prospective purchaser. They communicated this offer to the owner, & he accepted it subject to contract. The tenant then made an offer to the agents to purchase the property from the prospective purchaser at an increased price. In the *bonâ fide* belief that they had performed their duty as agents to the owner when he had accepted the offer of the prospective purchaser subject to contract, they omitted to inform the owner of the offer of the tenant. Afterwards final contracts for the sale & purchase of the property were signed & exchanged by & between the owner & the prospective purchaser. The owner then brought an action against the agents for damages for breach of duty in not disclosing to him the offer of the tenant before the contracts were signed & exchanged. The agents counterclaimed for commission on the sale of the property:—*Held:* the obligation of the agents to the owner was not fully performed when he had accepted the offer subject to contract but continued until final contracts were exchanged; this obligation involved a duty to communicate to him the offer of the tenant; having committed a breach of this duty they were liable in an action for damages, & the measure of damages was the difference between the price named in the contracts & the price offered by the tenant; also in the circumstances the agents were entitled to their commission.

There may well be breaches of duty which do not go to the whole contract, & which would not prevent the agent from recovering his remuneration; & as in this case it is found that the agents acted in good faith, & as the transaction was completed & applt. has had the benefit of it, he must pay the commission (ATKIN, L.J.). — KEPPEL *v.* WHEELER, [1927] 1 K. B. 577; 96 L. J. K. B. 433; 136 L. T. 203, C. A.

Annotations:—**Folld.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157. **Apld.** Raymond *v.* Wooten (1931), 47 T. L. R. 606. **Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436; Musson *v.* Moxley, [1936] 1 All E. R. 64.

1263b. —— **Valuation.**]—BAXTER *v.* GAPP & Co., LTD., [1938] 4 All E. R. 457; 159 L. T. 586; 55 T. L. R. 131; 82 Sol. Jo. 1032.

1265. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1267. *Add. Annotations:*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626; Everett *v.* Griffiths, [1920] 3 K. B. 163.

1269. *Add. Annotations:*—**Apld.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626; Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42; Pratt *v.* Patrick, [1924] 1 K. B. 488.

---

promise to repay which is ordinarily incident to a loan; &, moreover, the co. is not obliged to sell the grain &, if it does sell it, cannot be held to have been negligent &, therefore, liable to the borrower merely because it did not sell at a time when it could have received a higher price than it did receive.—PATTERSON (N. M.) & Co., LTD. *v.* CARNDUFF, [1931] 2 W. W. R. 221.—**CAN.**

1262 ii. —— *Extent of duties.*]—If a local agent is entrusted by an absent owner with looking after & renting a furnished house, then, although he is not an insurer of the safety of the property, he must use reasonable care & diligence in its protection & preservation, & if he fails to do so he will be liable for the resulting loss. If furniture disappears or is damaged beyond reasonable wear & tear, he is *primâ facie* liable to account for it. Evidence sufficient to excuse him from liability would in some instances be quite light, in others more burdensome, depending on such questions as the checking over or not of the articles of the furniture, the character of the tenants & the constituents of the tenant's family, the value & nature of the missing articles, etc.

When the owner claims damages against the agent for lost or damaged articles the question of liability may be directly involved in regard to each article, & that liability is a question for the judge, & in such case the value of any article or the damage done to it can be most conveniently determined by the judge when deciding the question of liability, rather than by a referee.—CARLILE *v.* NORTHERN TRUSTS Co., [1924] 2 W. W. R. 961.—**CAN.**

1262 iii. —— ——.]—A house agent, employed to look after the renting of a furnished house, must keep a proper inventory of the furniture & check it over carefully with each incoming & outgoing tenant, & he must exercise care in seeing that tenants to whom he rents the house are the proper sort of persons to occupy it; but, in the absence of a special contract, the agent is not a guarantor of the rent, or bound to pay the taxes, or to notify the owner so as to prevent a sale of the house for non-payment thereof.—HYLAND *v.* COSTERTON (B. C.), [1927] 1 D. L. R. 1166; [1927] 1 W. W. R. 340.—**CAN.**

1264 ii. —— *Acting for vendor & purchaser—Payment of rents to vendor after notice of claim by purchaser.*]—Where an agent who acted for both parties in connection with a sale of immovable property on the terms of "cash against transfer," received the rents &, after notice that they were claimed by the purchaser, paid them over to the seller as having, in his opinion, the better title thereto:—*Held:* he was personally liable to the purchaser therefor.—DE KOCK *v.* FINCHAM (1902), 19 S. C. 136.—**S. AF.**

1264 iii. —— *Advice as to values.*]—Pltf. employed defts. who were land agents, to dispose of certain land, & they induced him to exchange his property for certain other lands which were less in value than those of pltf. Pltf. was in humble circumstances & of little business experience:—*Held:* it was the duty of defts. to see that an inadequate consideration was not accepted for the disposal of pltf.'s property without advising him as to values. This duty obtains, notwithstanding that the agent may be acting as agent for both parties to the exchange transaction.—HOW *v.* CARMAN, [1931] S. A. S. R. 413.—**AUS.**

sw. *Wool broker.*]—A wool broker, in cases where he receives wool from a customer upon which a limit has been placed, is not in law bound to indicate to the customer the state of the market from time to time, so as to be liable in damages if he fails to do so.—FERREIRA *v.* GINGELL, [1921] E. D. L. 374.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 2.—C

1269 vii. ——.]—Deft., an insurance broker, gratuitously procured policies from American cos.:—*Held:* as it was not shown that deft. was in any way negligent, or that he knew or ought to have known of the invalidity of the policies, deft. was not liable.—DIMITROFF *v.* GONDER (1924), 56 O. L. R. 119.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 3.—A. (a).

ti. —— *Purser employed on ship by railway company—Money advanced by company to enable ship to be procured.*]—*Held:* the co. were not liable to account to the shipowner for money received by the purser & not paid over, for he was accountable to the shipowner.—VANEVERY *v.* BUFFALO & LAKE HURON RY. Co. (1861), 20 U. C. R. 630.—**CAN.**

1276 i. *Failure to keep accounts—Liability for charges of accountant preparing accounts.*]—Deft., employed by pltf. to administer his affairs, exhibited gross negligence in carrying out his trust. He failed to keep proper books or records of pltf.'s affairs or to render accounts. Pltf. was compelled to employ accountants to prepare accounts between the parties:—*Held:* pltf. was entitled to claim the charges of two accountants for preparing accounts between the parties as damages due to deft.'s negligence, which deft. should have contemplated as the natural result of such negligence.—MEAD *v.* CLARKE, [1922] E. D. L. 49.—**S. AF.**

1279. For "For full anns., *see* PRACTICE & PROCEDURE," read "For full anns., *see* EXECUTORS, p. 745, No. 7745."

1288. Delete "For full anns., *see* EQUITY."

1304. *Add. Annotation :*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1311. *Add. Annotations :*—**Apld.** Holt *v.* Markham, [1923] 1 K. B. 504. **Distd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

1315. *Add. Annotation :*—**Refd.** Camillo Tank S.S. Co. *v.* Alexandria Engineering Works (1921), 38 T. L. R. 134.

1316. *Add. Annotation :*—**Consd.** The Mogiliff, [1921] P. 236.

1318. *Add. Annotations :*—*As to* (1) **Refd.** Anderson *v.* Equitable Assce. Soc. of United States (1926), 134 L. T. 557; Bartlam *v.* Evans, [1936] 1 K. B. 202.

1346. *Add. Annotation :*—**Consd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1352. *Add. Annotation :*—**Refd.** Firm Bishun Chand *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

1356. *Add. Annotation :*—*As to* (1) **Refd.** Yourell *v.* Hibernian Bank, [1918] A. C. 372.

1360. *Add. Annotation :*—**Refd.** Namlooze Vennootschap Handels-en-Transport Maatschappij Vulcaan *v.* Ludwig Mowinckels Rederi A/S. (1937), 42 Com. Cas. 200.

1385a. ——.]—FIELD *v.* ALLEN (1842), 9 M. & W. 694; 152 E. R. 294.

1385b. Whether agent may set up jus tertii.]—An engagement of marriage having been entered into between pltf. & the daughter of one J., the engaged parties chose a house in which to live after they were married, & J. handed to pltf. a cheque for the deposit on the price of the house as a gift conditional upon the marriage taking place. Pltf. paid that cheque into his own bank account & handed his own cheque for the same amount to the house agent of the vendor. Pltf. engaged deft., who was J.'s son-in-law, to act as his solr. in the purchase of the house. The engagement having afterwards been broken off, & the negotiations for the house discontinued, the house agent of the vendor sent a cheque to deft. for the amount of the repaid deposit. J. requested deft. to account for the sum to him as being his property, & on that ground the deft. declined to pay it to pltf. J. then made a gift of the sum to deft. In an action by pltf. against deft. claiming the sum as money had & received by deft. to the use of pltf., deft. by way of defence relied with the consent & authority of J. upon the latter's claim & right to the sum :—*Held :* in the circumstances the *jus tertii* of J. did not avail deft. as a defence to the action.

---

sx. *No duty to account to minor—Agent appointed by guardian.*]—An agent appointed by the guardian of a minor is not liable to account to the minor for his acts, even though he received properties belonging to the minor.—RAMATHAN CHETTIAR *v.* MUTHIAH CHETTY (1919), I. L. R. 43 Mad. 429.—**IND.**

sy. *Accounts framed on wrong basis—& containing incorrect items.*]—Deft. was employed by pltfs., the exors. of an estate, to administer the estate on their behalf. Pltfs. having sued deft. for an account :—*Held :* as the accounts rendered by deft. were framed on a wrong basis as between principal & agent & were incorrect in certain particulars, deft. must render an account within fourteen days.—KRIGE *v.* VAN DIJK'S EXECUTORS, [1918] App. D. 110.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 3.—A. (e).

1326 i. *Agent for sale—Principal's intention to defraud creditors known to agent.*]—Where goods were delivered to agents for sale, & the principal, to the knowledge of the agents, intended to defraud his creditors by making away with the proceeds of the sale :—*Held :* (1) the principal in suing the agents for an account of the goods so delivered to them was not relying on an illegal contract & was entitled to succeed; (2) the agents were not absolved from the duty of accounting to the principal by the fact that the goods had been delivered to the agents on a Sunday.—RUSKIN *v.* WASSERMAN, [1917] W. L. D. 174.—**S. AF.**

1326 ii. —— *Goods delivered to agent on Sunday.*]—RUSKIN *v.* WASSERMAN, No. 1326 i., *ante*.—**S. AF.**

1326 iii. ——.]—LESLIE *v.* MORRISON (1858), 16 U. C. R. 318.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 3.—A. (f).

gi. —— *Particulars.*]—In an action which was substantially one claiming a general account in reality on the basis of agency :—*Held :* an application by the agent for particulars of sums alleged to have been converted should be refused.—SHORT *v.* LAMBE, [1925] 1 I. R. 135.—**IR.**

PART VIII. SECT. 2, SUB-SECT. 3.—B. (b).

1352 ii. —— ——.]—Where fiduciary relations have subsisted between the parties, a ct. will not re-open accounts which have long been settled between the parties, unless pltf. can show definitely at least one fraudulent omission or insertion in the accounts.—PURAN MAL *v.* FORD, MACDONALD & CO., LTD. (1919), I. L. R. 41 All. 635.—**IND.**

1352 iii. —— ——.]—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 3.—C.

1361 i. *Circumstances in which right arises.*]—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 4.—A. (a).

1379 i. *Deposit on purchase paid to land agent.*]—A licensed land agent who does not hold from his principal a written authority to sell, & who, having effected a sale of his principal's land, has received from the purchaser, without his principal's knowledge, a deposit, is not entitled to retain thereout his commission, but must account to his principal for the whole of such deposit.—SMITH *v.* BASON, [1921] N. Z. L. R. 467.—**N.Z.**

1379 ii. ——.]—Where a deposit on a sale of land is paid to a land agent he holds it, unless otherwise stipulated as agreed, for the vendor, & must pay it over to him on demand, subject to the agent's right to apply the same in payment of expenses, commission, or other charges incidental to the sale; but the commission does not include commission which is made irrecoverable by law.—BUCHANAN *v.* SAMSON, [1922] N. Z. L. R. 558.—**N.Z.**

sz. *Money paid to agent by members of syndicate for purchase of land—Claim by one member of syndicate for return of subscription on rescission of sale.*]—Pltf., who had joined with a number of other persons in the purchase of a farm, subscribed £50 which was, with other subscriptions, deposited with deft. to be by him paid out in reduction of the purchase-price. The sale of the farm having been cancelled, to a claim by pltf. for the return of his subscription deft. raised the defence that he had been instructed by the syndicate not to pay over the money received by him but to hold it for another purpose :—*Held :* the defence raised could not succeed.—MANGENA *v.* MOYATUSI, [1918] App. D. 650.—**S. AF.**

sa. *Profits received in foreign currency—Rate of exchange in favour of principal.*]—CUTTEN *v.* BICKELL (1925), 57 O. L. R. 113; *affd.*, [1926] 1 D. L. R. 353.—**CAN.**

sb. *Commission received by sub-agent from principal—Right of agent to recover from sub-agent.*]—Pltf. listed with deft. as a sub-agent the lands of a certain principal, agreeing to pay deft. 25 cents an acre for finding a purchaser. Deft. unknown to pltf. communicated directly with the principal, obtained a listing of the lands from him & effected a sale thereof, deducting the commission :—*Held :* pltf. was entitled to recover from deft. the commission less the sum of 25 cents per acre.—OSWALT *v.* KING, [1919] 3 W. W. R. 72.—**CAN.**

sc. *Venue.*]—It is settled law that a suit by a principal against a commission agent who has agreed to execute an order placed with him by correspondence must be instituted at the place where the commission agent carries on his business & that a principal cannot sue him at the place from where he sent his order.—BHAMBOO MAL *v.* RAM NARAIN (1928), I. L. R. 9 Lah. 455.—**IND.**

In the case of *Biddle* v. *Bond* (1865), 6 B. & S. 225, it was decided that to an action by a bailor of goods, which had been wrongfully though not fraudulently acquired by him, against the bailee for the proceeds of sale of the goods, the bailee was entitled to set up the *jus tertii* of the true owner of the goods as an answer to the action:—*Held:* the principle of that case is limited to actions for the recovery of property bailed, & apparently to actions of that kind in which the bailor has wrongfully obtained the property, & cannot be extended to enable an agent, in an action against him by his principal for the recovery of money held by him on behalf of the latter, to set up by way of defence the *jus tertii* of the true owner of the money.—BLAUSTEIN *v.* MALTZ, MITCHELL & Co., [1937] 2 K. B. 142; [1937] 1 All E. R. 497; 106 L. J. K. B. 471; 156 L. T. 316; 53 T. L. R. 397; 81 Sol. Jo. 177, C. A.

1386. *Add. Citations:—sub nom.* PARRY *v.* ROBERTS, 3 Ad. & El. 118; 5 Nev. & M. K. B. 669; 4 L. J. K. B. 189.

1396. *Annotations:*—For "Bridger *v.* Savage (1885), 12 Q. B. D. 363" read "Bridger *v.* Savage (1885), 15 Q. B. D. 363."

Add. Annotation:—**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

1422. *Add. Annotation:—As to* (1) **Refd.** Baker *v.* Lloyd's Bank, [1920] 8 K. B. 322.

1425. *Add. Annotation:—As to* (2) **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

1426a. Proceeds of sale of goods—Goods consigned by commission agents for principal—Right of agent to set off claims against consignors.]—In 1917 pltf. & F., merchants at Odessa in the Russian Ukraine, consigned large quantities of pigs' bristles to a Russian bank at Odessa, as commission agents, to send the goods to England for sale & remit the proceeds to the consignors. The bank, as principals, sent the goods to defts., as their agents, who knew that pltf. & F. were the original consignors. Afterwards the revolution broke out in Russia, & in Dec. 1917, all private banks in Russia were abolished by decree of the Govt., & in 1918 their assets & liabilities were taken over by the People's Bank of the Russian Socialist Federal Soviet Republic. In 1920 the People's Bank was by further decree abolished & its assets & liabilities were transferred to the Central Budget & Accounts Administration of the Russian Socialist Federal Soviet Republic. One result of this legislation was that the head office of the Odessa bank in Petrograd was raided & its shares were confiscated, but the Odessa bank was allowed to carry on its business as usual until 1920, when it was closed by a local soviet. This permission was the result of the establishment of an independent republican Govt. over the Ukraine—the Ukrainian Soviet Govt., over which the Russian Soviet Govt. claimed neither a *de facto* nor *de jure* jurisdiction, & which was also recognised by foreign powers as an independent Govt. Later on a full federation was entered into between the Ukraine Republic & the Russian Soviet Republic & recognised as a *de facto* &, recently, as a *de jure* Govt. by the Govt. of this country. During transit of the goods to England some of the goods respectively consigned by pltf. & by F. became inextricably mixed, with the result that F. assigned all his rights in his consignment to pltf., & notice of the assignment was given to defts. Before the closing of the bank at Odessa the bank ceded all their rights in the bristles consigned to them to pltf. & F. The bristles consigned to defts. were sold by them in 1920, & pltf. demanded payment of the amount of the proceeds, less the amount of defts.' commission, but defts. refused payment, alleging (*inter alia*) that the goods belonged to the bank at Odessa & that defts. were entitled to set off against pltf.'s claim a debt due to them from the People's Bank in Russia & the Russian Soviet Govt., & pltf. in 1923 brought this action:—*Held:* (1) assuming that the bank at Odessa was an effective bank up to the time when the bank was closed, the bank's instructions to defts., followed by the transfer of the bank's rights to pltf. & F. & the transfer of F.'s rights to pltf., made it clear that the bank's title to the bristles had gone; (2) assuming that the bank was non-existent & that some other person or persons had given the instructions to sell, the sale by defts. was without the authority of the bank, & in that case the bank's title had gone. In either case pltf. as a disclosed or undisclosed principal was entitled to the proceeds, less defts.' commission with interest from the date of the demand.—DORF *v.* NEUMANN, LUEBECK & Co. (1924), 40 T. L. R. 405.

1430. *Add. Annotation:*—**Consd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

1431. *Add. Annotation:*—**Consd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

1437. *Add. Annotation:*—**Refd.** *Re* Achillopoulos, Johnson *v.* Mavromichali, [1928] Ch. 433.

1438a. —— Unless jus tertii set up.]—An agent entrusted with money or goods by a principal to be applied on his principal's account cannot dispute his principal's title, unless he proves a better title in a third person &

PART VIII. SECT. 2, SUB-SECT. 4.—A. (c).

1396 ii. ——.]—Assuming a transaction between brokers & their principal was an illegal one, & the brokers paid the proceeds to a person as being the agent of their principal to receive it:—*Held:* the principal could recover such proceeds from the agent.—AIKMAN *v.* BURDICK BROTHERS, [1923] 4 D. L. R. 852; 3 W. W. R. 785; *varying*, [1923] 1 D. L. R. 1165; 31 B. C. R. 478.—**CAN.**

1396 iii. —— *Dealings on grain exchange.*]—In an action against an agent to recover money received by him from a third party on behalf of his principal he cannot resist the principal's claim on the ground of illegality or criminality in the transaction on account of which the payment was made to him as agent, if the alleged invalidity or illegality did not enter into the relations between him & his principal. Applying the above principle:—*Held:* pltf. was entitled to recover moneys in the hands of deft. which had been received by the latter, as agent for pltf., from grain brokers through whom deft. had conducted buying & selling transactions on a grain exchange on behalf of pltf.—HOLDING *v.* WOOD, [1932] 1 W. W. R. 612.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 5.

sd. *General rule.*]—Where money is recoverable by a principal from an agent as having been received by the agent on the principal's behalf, the agent is not as a rule liable for interest unless by virtue of an express agreement or of some mercantile usage.—LALMAN *v.* CHINTAMANI (1918), I. L. R. 41 All. 254.—**IND.**

that he is defending on behalf, & with the authority, of that third person.—BHAWANI SINGH (RAJA) *v.* MAULVI MISBAH-UD-DIN (1929), 56 L. R. Ind. App. 170, P. C.

1452. *Add. Annotation :*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1459. *Add. Annotations :—Generally,* **Refd.** Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132.

1460. *Add. Annotation :*—**Refd.** Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132.

1467. *Add. Annotation :*—**Refd.** Rawlings *v.* General Trading Co., [1920] 3 K. B. 30.

1482. *Add. Annotations :*—**Apld.** Mortimer *v.* Beckett, [1920] 1 Ch. 571; Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372. **Consd.** Rely-A-Bell Burglar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609.

1484. *Add. Annotation :*—**Refd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

1486. *Add. Annotation :*—**Consd.** Davey *v.* Robinson, [1923] 1 K. B. 563.

1490. *Add. Annotations :*—**Refd.** Dutton, Massey (Liverpool) *v.* Dutton, Massey (1923), 40 R. P. C. 413; Harrods *v.* Harrod (1924), 40 T. L. R. 195; Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers' & Traders' Mutual Insce., [1925] Ch. 675.

1491. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

1492. *Add. Annotation :*—**Refd.** Reid & Sigrist, Ltd. *v.* Moss & Mechanism, Ltd. (1932), 49 R. P. C. 461.

1494. *Add. Annotation :*—**Refd.** Reid & Sigrist, Ltd. *v.* Moss & Mechanism, Ltd. (1932), 49 R. P. C. 461.

1495. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

1501a. Agent wrongfully acting for other principals —Liability of party inducing agent to commit breach of duty.] — Resps. employed D. as their agent to buy tobacco from growers, the total bought not to exceed 300,000 lbs., & supplied him with forms of contract bearing their firm name as buyers. D. agreed not to act as buying agent for anybody except resps. & another firm. Applt., who knew the position as between D. & resps., induced him to buy in the names of the two firms a total of 1,100,000 lbs., arranging with him to take over the surplus not required for them. Out of that total weight D. handed 300,000 lbs. to resps., & tendered the balance to applt., but he repudiated the arrangement, the market having fallen heavily. Resps. having also repudiated liability, one of the vendors, with whom D. had contracted upon resps.' form, was held to be entitled to damages from resps. as having held out D. as their agent. Resps. claimed to recover over from applt. :—*Held :* resps. were so entitled, applt. having knowingly induced D. to commit a breach of his duty to them, whereby they had suffered the damage.—JASPERSON *v.* DOMINION TOBACCO CO., [1923] A. C. 709; 92 L. J. P. C. 190; 129 L. T. 771, P. C.

1501b. Distributing agent for film producers—Block-booking film with others—Sum for hire thereby reduced.]—HERBERT WILCOX PRODUCTIONS, LTD. *v.* FIRST NATIONAL PICTURES, LTD. (1930), 74 Sol. Jo. 353.

1501c. Agent acting for both parties—Company with separate departments as agent.] — Pltfs., a trading co., carried on an estate agency & a building business in separate buildings. Deft. employed pltfs., through their estate agency, to find a purchaser for real property, & they found C., who agreed to purchase the property subject to contract & a surveyor's report. C. employed pltfs., through their building department, to inspect the drains of the property & to make an estimate for putting them in order. As a result of the report C. claimed a reduction in the purchase-price. Subsequently after complaint by deft., pltfs. discovered that they had been acting in this way for both the potential vendor & purchaser, &, by their solrs., offered deft. to invite the purchaser to obtain an independent survey of the drains. Deft. did not accept the offer, but completed the sale at a reduction of the agreed price, the reduction being due to the work required to be done upon the drains. Pltfs. sued deft. for commission on the sale :—*Held :* (1) pltfs. had acted in good faith, & deft. had in fact suffered no damage, as C. would in any event have secured a report on the drains, & any competent person would have recommended an expenditure on the drains of more than the reduction in the purchase-price; (2) pltfs. constituted one person in law, however, many businesses they might carry on, & in acting as they did they committed a breach of their duty as agents of their principal, but as deft. with full knowledge of the breach of duty on the part of pltfs. had completed the contract at the reduced price, pltfs. were entitled to commission. Vendor, with full knowledge of their action on behalf of the purchaser, had refused the offer of pltfs. to stand aside that C. might have the drains tested by another firm, & had concluded the sale at the reduced price.—HARRODS, LTD. *v.* LEMON, [1931] 2 K. B. 157; 100 L. J. K. B. 219; 144 L. T. 657; 47 T. L. R. 248; 75 Sol. Jo. 119, C. A.

PART VIII. SECT. 2, SUB-SECT. 7.—A.

1463 i. *Agent purchasing for himself—Specific performance granted.*]—Where it was shown by evidence that deft. had agreed to attend & buy in a property offered for sale by auction, as the agent of pltf. & for his benefit :—*Held :* notwithstanding that the Statute of Frauds had been set up as a defence, & there was not any writing evidencing the agreement, pltf. was entitled to a decree to carry out the agreement.—ROSS *v.* SCOTT (1875), 22 Gr. 29.—**CAN.**

1464 v a. ——— ———.]—Pltf. supplied money for the purchase of land of which deft. took the deed in his own name. In an action to have deft. declared a trustee & for the recovery of mesne profits the defence was that the purchase price was furnished by pltf. with the intention that the land should be deft.'s & that pltf. should have a home with deft. during her lifetime :—*Held :* pltf. was entitled to judgment.—ENNOS *v.* MCLEAN (1919), 52 N. S. R. 485.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 7.—B.

sa. *Investment — Mortgage — Failure to inquire as to discharge of liens.*]—*Held :* agent liable for negligence.—LEFEVRE *v.* ANDREWS, [1932] 1 W. W. R. 122; 1 D. L. R. 805; 44 B. C. R. 516.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 8.—D.

sa. *Settlement with insurance company for specified sum.*]—LEFEBVRE *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1938] 2 W. W. R. 20.—**CAN.**

1504. *Add. Annotations :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72 ; Legh *v.* Legh (1930), 143 L. T. 151.

1505. *Add. Annotation :—As to* (1) **Refd.** Spencer *v.* Hemmerde, [1922] 2 A. C. 507.

1506. *Add. Annotation :*—**Refd.** Namlooze Vennootschap Handels-en-Transport Maatschappij Vulcaan *v.* Ludwig Mowinckels Rederi A/S. (1937), 42 Com. Cas. 200.

1508. *Add. Annotations :*—**Refd.** *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423 ; Taylor *v.* Davies, [1920] A. C. 636 ; *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

1509. *Add. Annotations :*—**Refd.** Taylor *v.* Davies, [1920] A. C. 636 ; *Re* Claridge's Patent Asphalte Co., [1921] 1 Ch. 543.

1513. *Add. Annotations :*—**Refd.** *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423 ; Taylor *v.* Davies, [1920] A. C. 636 ; *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

1517. *Citations :*—For "[1894] 1 Ch. 416" read "[1894] 1 Ch. 616."

Add. Annotation :—**Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd., [1928] Ch. 609.

1518. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

1520. *Add. Annotations :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72 ; Legh *v.* Legh (1930), 143 L. T. 151.

1526. *Add. Annotations :—As to* (1) **Apld.** *Re* Thomson, Thomson *v.* Allen, [1930] 1 Ch. 203. *As to* (2) **Refd.** Wright *v.* **Morgan, [1926] A. C. 788.**

1529a. —— Unless full disclosure—Sufficiency of disclosure.]—Deft. bought shares in the B. Co. on the recommendation of T., who was in the office of E. & Co., stockbrokers. E. & Co. carried through the transaction & sent deft. two contract notes, on which were the words "bought of ourselves as principals," & no commission was charged. By arrangement deft. paid 25 per cent. of the price of the shares, the balance being carried over. E. & Co. subsequently became bkpt. & their trustee in bkpcy. claimed the balance then due on the account from deft. :—*Held :* E. & Co. had made a sufficiently full & accurate disclosure to deft. that they were selling as principals & deft. with full knowledge gave his assent to their position, & the trustee's claim succeeded —ELLIS & Co.'s TRUSTEE *v.* WATSHAM (1923), 155 L. T. Jo. 363.

1533. *Add. Annotations :*—**Refd.** *Re* Jubilee Cotton Mills, [1922] 1 Ch. 100; *Re* Etic, [1928] Ch. 861.

1550a. —— Broker.]—Applt. employed a broker to make speculative purchases of cotton for him, & became heavily indebted to him owing to the fall of prices in the cotton market. The broker, as he was entitled to do by the terms of his agency, closed the account by selling the cotton which he had bought for applt. He sold (*inter alia*) two lots of foreign cotton to different jobbers at the respective market prices of the day & immediately bought back from the same jobbers at the same prices equivalent amounts of cotton of the same description. The broker having assigned his property for the benefit of his creditors, resp. as trustee of the deed of assignment, sued applt. to enforce the broker's claim to be indemnified. The trial judge found that there was a real sale & a real purchase of the cottons in question, & the Ct. of Appeal accepted this finding :—*Held :* the simultaneous re-sale to the broker did not vitiate the sale by the broker & the account was effectually closed.—CHRISTOFORIDES *v.* TERRY, [1924] A. C. 566 ; 93 L. J. K. B. 481 ; 131 L. T. 84 ; 40 T. L. R. 485, H. L.

1552. *Add. Annotations :—Generally,* **Consd.** Solloway *v.* Johnson, [1934] A. C. 193. **Refd.** Christoforides *v.* Terry, [1934] A. C. 566.

1553. *Add. Annotation :*—**Apld.** Christoforides *v.* Terry, [1924] A. C. 566.

1558a. —— ——.]—IMESON *v.* LISTER (1920), 149 L. T. Jo. 446.

1561. *Add. Annotations :—As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566. *Generally,* **Refd.** Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

1571. *Add. Annotation :*—**Refd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

PART VIII. SECT. 2, SUB-SECT. 9.—A.

1i. —— *Agent lending money to persons to whom agent not authorised to lend.*]—A suit by a principal against an agent for the recovery of money lent to persons to whom the agent was not authorised to lend, is a suit for an ordinary money account & is governed by art. 89 & not art. 90 of Limitation Act (ix. of 1908.)—MUTHIAH CHETTY *v.* ALAGAPPA CHETTY (1917), I. L. R. 41 Mad. 1.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 10.

1530 i. —— *Remedies of principal—Principal may repudiate or adopt transaction.*]—A principal who discovers that he has purchased his agent's own property may elect either to repudiate the contract or to affirm it. If he wishes it to stand & also claims the resulting profit, he must show that such profit arises from transactions completely covered by the prohibitive operation of the relationship between him & the agent.—ROBINSON *v.* RANDFONTEIN, ETC., [1921] App. D. 168.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 11.

1542 vi. ——.]—An agent employed to sell goods cannot himself purchase such goods at a sale by public auction. —OSBY *v.* HIRSCH, [1922] C. P. D. 531.—**S. AF.**

1542 vii. ——.]—JARVIS *v.* JARVIS, [1926] 3 D. L. R. 897.—**CAN.**

1550 ii. —— ——.]—PALMER *v.* CHRISTIE (Y. T.) (1905), 2 W. L. R. 561.—**CAN.**

1565 i. —— —— —— *No confirmation without knowledge.*]—In order to establish acquiescence or ratification on the part of pltf. it must be shown that he has, either by word or deed, & with a full knowledge of the circstances abandoned his rights.—OSBY *v.* HIRSCH, [1922] C. P. D. 531.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 13.

1572 ii. ——.]—In pursuance of an agreement defts. obtained for pltf. a mtge. of £100,000 at 5 per cent., but without pltf.'s knowledge entered into an agreement with the mtgee. by which, in consideration of a commission of ½ per cent. per annum to be paid to them by the mtgee. out of the interest payable by pltf., they agreed to guarantee the payment of principal & interest, & under that agreement defts. were paid by the mtgee. £2,500, being £250 each half-year during the term of the mtge. In an action by pltf. against defts. to recover the £2,500 as being a secret profit made by them while acting as his agent :—*Held :* pltf. was entitled to payment to him of the £2,500.—KEOGH *v.* DALGETY & Co. (1916), 22 C. L. R. 402.—**AUS.**

1572 iii. ——.]—An agent has no right to receive remuneration other than from his principal, unless there is a contract express or implied to that effect.—SMITLE *v.* SLATTARD (1919), 21 W. A. L. R. 19.—**AUS.**

1572 iv. ——.]—Where one man stands to another in a position of confidence involving a duty to protect the interests of that other, he is not permitted to make a secret profit at the other's expense or to place himself in a position where his interests con-

1580. *Add. Annotation :*—**Refd.** Hocker *v.* Waller (1924), 29 Com. Cas. 296.

1584. *Add. Annotations : — Generally,* **Mentd.** London County & Westminster Bank *v.* Tompkins, [1918] 1 K. B. 515; Ellis' Trustee *v.* Dixon-Johnson, [1924] 1 Ch. 342.

1603. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1927] 2 Ch. 367.

1607. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1927] 2 Ch. 367.

1608a. —— ——.]—A hotel broker, who is acting as the vendor's agent for reward, is not entitled to enter into a second agency of the like kind on behalf of the purchaser, unless this arrangement is assented to with full knowledge by the original principal.—FULLWOOD *v.* HURLEY, [1928] 1 K. B. 498; 96 L. J. K. B. 976; 138 L. T. 49; 43 T. L. R. 745, C. A.

Annotation :—**Refd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

1608b. —— Although no pecuniary loss to employer.]—(1) An English information will lie against a servant employed by the Crown in making confidential inquiries, in respect to

flict with his duty.—ROBINSON *v.* RANDFONTEIN, ETC., [1921] App. D. 168.—**S. AF.**

1572 v. ——.]—A. authorised B., his agent, to sell property for a certain sum, A. agreeing to take a portion of the purchase price in cash & a mtge. bond on the property for the balance. B. sold the property for the stipulated amount, but without the knowledge or consent of A. obtained & retained a commission from the purchaser for raising the bond :—*Held :* such commission was a secret profit, & B. in concealing it had acted dishonestly towards A.—LEVIN *v.* LEVY, [1917] T. P. D. 702.—**S. AF.**

se. —— *Agent receiving present.*]—Disclosure, after completion of a sale of land, by the vendor to certain directors of a purchasing co., who were concerned in the negotiations for the purchase, of his intention, afterwards carried out, to make a money present to the purchaser's manager & agent, who took the principal part in the negotiations, & assent thereto by such directors, is not effective to prevent rescission on the basis of secret profit to the agent if the vendor has, prior to the completion, secretly led the agent to expect that he would receive a substantial sum in the event of the sale being completed, & it is immaterial that the vendor's motive was to a large extent to recoup the agent for out-of-pocket expenses.—BENDIGO, ETC. CO. *v.* CUNNINGHAM, [1919] V. L. R. 387.—**AUS.**

sf. —— *Agent entering into contract with principal.*]—If an agent, without disclosing that he is the person dealing, himself enters into a contract with his principal, the latter on discovering the fact can have the transaction set aside, & it is immaterial whether there has been fraud or not, or whether the transaction is advantageous or otherwise to the principal.—ACHUTHA, NAIDU *v.* OAKLEY, BOWDEN & CO. (1922), I. L. R. 45 Mad. 1005.—**IND.**

sg. —— *Agent for sale artificially inflating rates.*]—An agent for sale of goods cannot, while actually selling or making settlements on foot of such transactions, make any secret profit for himself, or for persons with whom he is associated, by artificially inflating the rates & then settling on the basis of those rates.—MATHRA DAS-JAGAN NATH *v.* JIWAN MAL-GIAN CHAND (1927), 1 L. R. 9 Lah. 7.—**IND.**

1581 iii. ——.]—There are cases where an agent is entitled to retain profits, such as (1) where the connection between the agency & the profit is accidental, (2) where the transaction producing the profits is outside the scope of the agency & no conflict between duty & interest arises, (3) where the principal on account of his clear knowledge is deemed to waive his right to profits by his implied consent.—UNION GOVERNMENT *v.* CHAPPELL, [1918] C. P. D. 462.—**S. AF.**

1581 iv. —— ——.]—Pltf. signed a written agreement by which he agreed to pay deft. 2½ per cent. on £2,500 if deft. sold property for that sum, & authorised deft. to keep any amount paid for the property in excess of that sum. Pltf. claimed a refund of the commission retained by the agent on the ground that he had secretly obtained a commission from the purchaser. The commission obtained by deft. from the purchaser, who had to pay cash to pltf., was for raising loans to enable her to pay the seller :—*Held :* as the commission obtained from the purchaser by deft. was not a commission on the price, but in respect of an entirely different transaction, his conduct was perfectly honest, & he had not forfeited his right to be paid a commission by pltf.—STANTON *v.* HUMPHREY, [1923] E. D. L. 419.—**S. AF.**

1589 i. —— *Remedies of principal—Principal may repudiate transaction—Not after affirming transaction.*]—UNION GOVERNMENT *v.* CHAPPELL, [1918] C. P. D. 462.—**S. AF.**

1590 vi. —— —— ——.]—KILLEEN *v.* BUTLER (N. S.), [1929] 1 D. L. R. 52.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 14

1594 iii. ——.]—*Held :* pltf. could not recover any commission, because he was in a position where his interest was opposed to that of his principal, so that he had a temptation not to perform faithfully his duty, & failed to disclose the facts.—D'ARCY *v.* LAND (1920), 47 N. B. R. 203; 52 D. L. R. 660.—**CAN.**

1594 iv. ——.]—Pltfs. sued to recover five Victory Bonds, or the proceeds thereof, handed by them to deft. H., a real-estate agent, in payment of the purchase-price of property owned jointly by the defts. Pltfs. alleged that H., knowing that they were relying, because of inexperience, on his advice had induced them to give him the bonds for investment in the property without disclosing his interest therein, & the ground pressed on the ct. for their return was that a fiduciary relationship arising from agency existed between them & H. which put him under the burden of establishing the perfect fairness of the transaction, although it was nowhere distinctly alleged that they had employed him as their agent to buy the property :—*Held :* H. never was pltf.'s agent, &, moreover, that he had fully disclosed his interest in the property before the sale. The dismissal of the action was, therefore, upheld.—HENDERSON *v.* HAMILTON, [1929] 1 D. L. R. 721; 1 W. W. R. 336; 38 Man. L. R. 67.—**CAN.**

1594 v. ——.]—The rule that where an agent for the sale of land is, without the knowledge of his principal, to receive a commission from the purchaser he cannot recover a commission from his principal applies to the case of an exchange of properties even though the two owners have listed them with the same agent.—OLIVER *v.* KEMP, [1929] 4 D. L. R. 1045; 3 W. W. R. 369; 38 Man. L. R. 310.—**CAN.**

si. —— *Agent to raise money advancing sum himself.*]—Under a contract between a principal & a financial agent, by which the agent agrees to raise sums of money for the principal upon first & second mtges., at stated rates of interest, of the principal's land, it is not illegal for the agent to find the money himself, unless there is a special stipulation to the contrary; the fact of the rates of interest being specified prevents a conflict of interest & duty in the agent.—DALGETY *v.* GRAY, [1919] V. L. R. 586.—**AUS.**

m i. —— ——.]—The rules applicable to agents for the sale of land do not apply to a middleman employed merely to bring the vendor & purchaser together to enable them to make their own bargain; neither such a middleman nor the vendor is obliged to inform the purchaser of the payment by the vendor of a commission for introducing the purchaser.—CLARK *v.* HEPWORTH, [1918] 1 W. W. R. 147; 39 D. L. R. 395; 55 S. C. R. 614.—**CAN.**

m ii. —— ——.]—SMITH *v.* COMTOIS, [1927] 4 D. L. R. 832; [1927] S. C. R. 590.—**CAN.**

m iii. —— ——.]—The fact that an agent employed by one person to effect an exchange of properties is, after bringing it about, rewarded by the other party for doing so does not in itself constitute him the agent of the latter, though it may be some evidence that he was.—BROVEY *v.* BULL (Alta.), [1927] 4 D. L. R. 992; [1927] 3 W. W. R. 513.—**CAN.**

sk. —— *Agent having option to purchase.*]—GUNNING *v.* LUSBY (No. 1) (1922), 68 D. L. R. 89; 55 N. S. R. 84; *affd.*, [1925] 1 D. L. R. 101.—**CAN.**

sl. *Partner of agent to buy one of trustee vendors—Purchaser suffering no damage.*]—WOOLWORTH (F. W.) CO., LTD. *v.* POOLEY (1925), 35 B. C. R. 386.—**CAN.**

1599 i. *Joint adventurers.*]—GROSCH *v.* LOVERIDGE, SMITH *v.* LOVERIDGE (Ont.), [1930] 1 D. L. R. 309.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 15.—A.

1601 i a. ——.]—If the agent for the vendor in a sale of real property receives commission from the purchaser also, the vendor is entitled to recover the amount of such commission from the agent, notwithstanding that the sale of the property has been completed.—FOSTER *v.* REAUME, [1924] 2 D. L. R. 951; *revsg.*, [1923] 4 D. L. R. 51; 54 O. L. R. 245.—**CAN.**

1608 vi. —— ——.]—Where an agent accepted commission from both parties & in consideration thereof his principal, since deceased, signed an agreement to pay the agent a reduced commission :—*Held :* the making of the agreement being proved & corroborated by its production, Evidence Act, R. S. O., 1927, does not require corroboration of the disclosure.—BAYLEY *v.* TRUSTS & GUARANTEE CO., LTD., [1931] 1 D. L. R. 500; 66 O. L. R. 254; *affg.*, [1930] 3 D. L. R. 625; 65 O. L. R. 315.—**CAN.**

secret profits alleged to have been made in the course of his employment. (2) The rule as to secret profits is applicable in spite of the fact that no pecuniary interest of the employer is involved.—A.-G. *v.* GODDARD (1929), 98 L. J. K. B. 743; 45 T. L. R. 609; 73 Sol. Jo. 514.

1616. *Add. Annotation :—As to* (2) **Consd.** Harrods, LTD. *v.* LEMON, [1931] 2 K. B. 157.

1621. *Add. Annotation :—Generally,* **Consd.** A.-G *v.* Goddard (1929), 98 L. J. K. B. 743.

1623. *Add. Annotation :—As to* (2) **Apld.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1626. *Add. Annotations :*—**Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264. **Refd.** *Re* Hall & Pim (1927), 137 L. T. 585.

1626a. —— **Crown servant.**]—A.-G. *v.* GODDARD, No. 1608b, *ante.*

1627. *Add. Annotation :—As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

1632. *Add. Annotations :—As to* (1) **Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19. **Refd.** Taylor *v.* Oakes, Roncoroni (1922), 127 L. T. 267. *As to* (2) **Consd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743. **Refd.** Adams *v.* Morgan, [1923] 2 K. B. 234. *As to* (3) **Refd.** Ramsden *v.* David Sharratt & Sons (1930), 35 Com. Cas. 314. *Generally,* **Refd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

1635. *Add. Annotations :*—**Apld.** Alexander *v.* Webber, [1922] 1 K. B. 642; *Re* A Debtor, [1927] 2 Ch. 367.

1636. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1927] 2 Ch. 367.

1638. *Add. Annotation :—Generally,* **Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

1638a. —— ——.]—Pltf. agreed to purchase a motor car from deft., & in accordance with the agreement he paid a deposit. Pltf. afterwards purported to repudiate the contract, wrongfully, as the judge found. During the pendency of an action by him for the recovery of the deposit pltf. died, & his exors. were substituted as pltfs., & they then discovered that at the time the contract was entered into deft. had promised, without the knowledge of pltf., to give pltf.'s chauffeur a share of the profit on the sale of the car if pltf. bought it. On the ground of that secret arrangement the exors. now sought to avoid the contract & to recover the deposit :—*Held :* the surreptitious dealing between deft. & pltf.'s chauffeur was a fraud on pltf.; the fact that pltf., when he purported to repudiate the contract, was not aware of the fraud, did not prevent his exors. from now relying upon it; & they were entitled on the ground of the fraud to avoid the contract & to recover the deposit.—ALEXANDER *v.* WEBBER, [1922] 1 K. B. 642; 91 L. J. K. B. 320; 126 L. T. 512; 38 T. L. R. 42.

1640. *Citation :*—For "BARTRAM *v.* LLOYD, No. 1607, *ante,*" read "BARTRAM *v.* LLOYD (1904), 90 L. T. 357, C. A."

Add. Annotation :—Generally, **Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

1640a. ——.]—A. employed L. as his agent to negotiate a loan for him with a money-lender. B., a money-lender, lent A. £60 on his promissory note for £100, &, without the knowledge or consent of A., paid L. a commission; —*Held :* the payment of the commission to L. by B. rendered the contract voidable, if not void, against A.—*Re* A DEBTOR (No. 229 of 1927), [1927] 2 Ch. 367; 96 L. J. Ch. 381; 137 L. T. 507; [1927] B. & C. R. 127, C. A.

1643. *Add. Annotations :*—**Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19. **Refd.** *Re* Hall & Pim (1927), 137 L. T. 585.

1649. *Add. Annotation :—As to* (1) **Refd.** Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226.

1662. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

1664. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

PART VIII. SECT. 2, SUB-SECT. 15.—B.

sm. *Agent to do repairs—Agent doing work himself.*]—Defts., house-agents, acted as agents for pltf. to collect the rents & to do the necessary repairs to her property. Defts. were originally appointed in 1908, & up to 1911 had the repairs executed by outside contractors. In 1911 defts. opened their own repairs yard, did the repairs themselves, & charged the "usual trade prices," which included a profit. Quarterly statements of account were regularly furnished by defts. to pltf. from the commencement of the agency. Pltf. claimed to have the accounts reopened on the ground that she had been charged a secret profit by defts. on the repairs executed by them in addition to their commission :—*Held :* as pltf. knew & approved of the repair work being executed by defts., & defts. had made sufficient disclosure to pltf. that they were charging a profit, & the charges were not shown to have been unfair or unusual, pltf. was not entitled to have the accounts reopened.—SHERRARD *v.* BARRON, [1923] 1 I. R. 21.—**IR.**

PART VIII. SECT. 2, SUB-SECT. 15.—D.

1635 iii. ——.]—Any secret benefit given by one contracting party to the agent of another with the intention of influencing his mind in favour of the donor is a bribe, which entitles the other contracting party to claim to set aside the contract.—DAVIES *v.* DONALD, [1923] C. P. D. 295.—**S. AF.**

1635 iv. ——.]—A private arrangement between an agent on a commission basis & an employee of his principal whereunder the agent is to give the employee a rebate on certain of his commissions is ground for repudiating the contract; unless, possibly, where it can be shown that the arrangement did not conflict with the principal's interests.—COUTTS *v.* ACME MANUFACTURING CO., LTD., [1931] 3 D. L. R. 440; *affd.,* [1931] 3 W. W. R. 273; 4 D. L. R. 803; 40 Man. L. R. 9.—**CAN.**

q i. —— *Defendant ignorant that commission payable by plaintiff.*]—On appeal from a judgment decreeing specific performance of an agreement for the exchange of lands, which had been brought about by agents, who acted for both parties, applt. relied especially on the defence that the agents had, without her knowledge, received a commission from both parties :—*Held :* the evidence failed to show that deft. knew that a commission was payable by pltf. to the agents, what evidence there was being to the contrary, & the appeal was allowed & the action dismissed.—MOORE *v.* JOHNSTON, [1934] 1 W. W. R. 815; 2 D. L. R. 679.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—A.

1664 xiv a. ——.]—Pltf. not allowed to recover commission on exchange of deft.'s land, as there was no agreement in writing to pay such commission as required by Alberta Stat. 1906, c. 27.—NUNNELEY *v.* BLATT, [1919] 2 W. W. R. 699; 47 D. L. R. 254.—**CAN.**

1664 xiv b. ——.]—Alberta Stat. 1906, c. 27, applies only to the case of a vendor's agent & does not apply to a commission or other remuneration claimed by a purchaser's agent.—POTTER *v.* LANDEN, [1920] 3 W. W. R. 1075.—**CAN.**

1664 xiv c. ——.]—Under an ora agency agreement an agent claimed commission for selling at a lump sum certain property. Shortly before the trial, Alberta Stat. 1906, c. 27, was amended :—*Held :* (1) the amending Act did not apply to an agreement made before its passing; (2) the agent was entitled to compensation, fixed at the commission rate on the fair proportionate value of the goods, for sale of the chattels.—FILTEAU & DE ROUSSY *v.* NESBITT, [1920] 2 W. W. R. 892; 53 D. L. R. 514; 15 Alta. L. R. 522.—**CAN.**

1664 xiv d. ——.]—An agreement for the exchange of lands was on a principal form on one side of a sheet of paper, but in two parts, the one called the

1669. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1670. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1670a. —— ——.]—PYKE *v.* DAY (1844), 2 L. T. O. S. 286.

1683. *Add. Annotation :*—**Expld. & Distd.** Patent Castings Syndicate *v.* Etherington, [1919] 2 Ch. 254.

---

offer & the other the acceptance, the one being placed immediately above the other; the lower part only was signed by deft., & the upper was signed only by the person with whom deft. was making the exchange. The upper part contained a clause by which the person signing was to pay "the regular commission"; & the lower part, signed by deft., contained the words: "I agree to pay a commission on $26,000 at 2½ per cent." on execution of the agreement to pltf.:—*Held:* the agreement to pay pltf. a commission did not satisfy Stat. Frauds, s. 13, as enacted by 6 Geo. 5, c. 24, s. 19, & amended by 8 Geo. 5, c. 20, s. 58, for the agreement was not in writing separate from the sale agreement, & an action for the commission could not be maintained.—DAVIS *v.* BEGGS (1919), 46 O. L. R. 169; 17 O. W. N. 63.—**CAN.**

1664 xiv e. ——.]—*Held:* the agreement to pay a commission, in order to be separate from the sale-agreement, need not be on a separate piece of paper.—HAYGARTH *v.* WEBB (1923), 54 O. L. R. 172.—**CAN.**

1664 xiv f. ——.]—SILVERMAN *v.* LEGREE (1919), 45 O. L. R. 107; 47 D. L. R. 713; 15 O. W. N. 278.—**CAN.**

1664 xiv g. ——.]—*Held:* an addition to Stat. Frauds was not retrospective, & was no bar to an action based upon an agreement not in writing entered into before its enactment.

An Act which is a bar to an action to recover an agent's commission unless the agreement therefor be in writing is also a bar, where such agreement is not in writing, to an action by him to recover damages from his principal for preventing him from earning the commission.—SMITH *v.* UPPER CANADA COLLEGE, [1921] 1 W. W. R. 1154; 57 D. L. R. 648; 61 S. C. R. 413.—**CAN.**

1664 xiv h. —— *Construction of agreement.*]—MCINTYRE & CO. *v.* LAW, [1918] 2 W. W. R. 359; 13 Alta. L. R. 273; 40 D. L. R. 231.—**CAN.**

1664 xiv j. ——.]—Land Agents Act, 1912, s. 13, prevents a land agent from recovering commission under an oral agreement extending the period fixed for his authority by the document creating it.—HOOPER *v.* ANDERSON (EDWARD) & CO., LTD., [1918] N. Z. L. R. 119.—**N.Z.**

1664 xiv k. ——.]—Land Agents Act, 1912, s. 13, covers every action for remuneration for or in respect of the sale of land; & the fact that an agent is not employed to sell land but only to find a purchaser does not exclude the operation of the sect.—HOOPER *v.* ANDERSON (EDWARD) & CO., LTD. (NO. 2), [1919] N. Z. L. R. 65.—**N.Z.**

1664 xiv l. ——.]—The effect of Land Agents Act, 1912, s. 13, is to prevent the agent from recovering his commission by action.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

1664 xvi a. —— ——.]—MCLAUGHLIN & CO. *v.* BIRKS, [1925] 3 D. L. R. 968; [1925] S. L. R. 690.—**CAN.**

1664 xxi. —— *Agent acting for syndicate—Also member of syndicate.*]—Where an agent is interested himself, along with others, in a transaction which is being carried through by him, he *primâ facie* is not entitled to charge his co-adventurers any commission.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

1664 xxii. —— *Soldier Settlement Act,* 1919 (c. 71), *s.* 61.]—A real estate agent entitled to his commission on a sale made before the coming into operation of the above Act.—ROWLANDS & JOHNSTONE *v.* HOLLAND (1920), 53 D. L. R. 652.—**CAN.**

1664 xxiii. —— ——.]—Deft. listed lands with pltf. for sale, & pltf. negotiated with three soldiers, although, apparently, pltf. did not get into touch with the soldiers until after July 7, 1919, when the above Act came into force. Eventually the land was sold direct by the Soldier Settlement Board to the soldiers & pltf. claimed commission from deft.:—*Held:* pltf. not entitled to commission.—TODD *v.* POTVIN, [1922] 1 W. W. R. 479; 63 D. L. R. 233; 17 Alta. L. R. 226.—**CAN.**

1664 xxiv. —— ——.]—Lands were listed with the Soldier Settlement Board at the specified price of $3,800. Deft. agreed to purchase at $3,800. The Board refused to pay more than $3,200. Deft. then arranged with the owner that the latter should transfer the lands to the Board for $3,200, which was subsequently done, & he agreed to give, & did give, his promissory notes for the difference as part of the consideration & as in increase in price:—*Held:* the above sect. did not apply.—FLOWER *v.* SANDERSON, [1922] 3 W. W. R. 464.—**CAN.**

1664 xxv. ——.]—In order to found a legal claim for commission there must not only be a causal, but also a contractual, relation between the introduction & the ultimate transaction of sale. Where there is no employment to sell express or implied, there can be no claim to remuneration.—WEEDEN *v.* TURNER (1922), 68 D. L. R. 748; [1922] 3 W. W. R. 623.—**CAN.**

1664 xxvi. ——.]—MORRIS *v.* WALTON (1914). 28 W. L. R. 547; 18 D. L. R. 655; 24 Man. L. R. 361.—**CAN.**

1664 xxvii. ——.]—ECCLESTONE *v.* UNION MINING & MILLING CO., [1932] 3 D. L. R. 514; 45 B. C. R. 297.—**CAN.**

1664 xxviii. ——.]—An agent is not entitled to receive commission after he has ceased to be an agent unless the principal has so agreed.—GROVER *v.* STIRLING BONDING CO., [1935] 3 D. L. R. 481.—**CAN.**

1669 i. —— *Contract may be express or implied.*]—In an action to recover remuneration on a *quantum meruit* basis for procuring a purchaser for deft.'s oil leases:—*Held:* although pltf. had at first acted as a volunteer on his own initiative, the benefit of pltf.'s introduction of the purchaser had been completed at deft.'s implied request, & since deft. had accepted the purchaser & profited by pltf.'s services, pltf. was entitled to be remunerated on the ground of an implied contract to pay therefor.—JOHNSON *v.* FORBES, [1931] 2 W. W. R. 819; 2 D. L. R. 940; *revsd.* (1932), 1 D. L. R. 219; [1931] 3 W. W. R. 757; 26 Alta. L. R. 268.—**CAN.**

1671 viii. —— —— ——.]—In the absence of an express contract as to the commission which a real estate agent is to receive, he is entitled to a reasonable remuneration having regard to the circumstances of the particular case. The fact that the agents in a certain town have established a custom among themselves as to the rate of commission, does not render such custom binding upon those who do business with them in the absence of notice, express or implied, that the charges for their services are to be based on such custom.—GARLAND *v.* NEWMAN (1922), 66 D. L. R. 770; 32 Man. L. R. 1; [1922] 1 W. W. R. 867.—**CAN.**

1671 ix. —— —— *When implied contract negatived.*]—Deft. advertised his business for sale in a local newspaper. The following day pltfs., having seen the advertisement, called on deft. & inquired the price. Pltfs. then entered into communication with A., who ultimately bought the business:—*Held:* deft. had never considered that he was employing pltfs. to act as his agents, & pltfs. had failed to prove any implied contract by deft. to remunerate them.—CHAPPLE *v.* MOSS, [1920] 22 W. A. L. R. 74.—**AUS.**

1671 x. —— —— ——.]—Pltf. was asked by defts. to find a purchaser for a wagon, & he succeeded in introducing to defts. H., who bought the wagon from them. Defts. denied that it was agreed that pltf. should be paid a commission, but it was admitted that they knew that he received commission for wagons sold by him. H. stated that he was sent to defts. by pltf. & would not have bought the wagon if he had not been persuaded by pltf. to do so:—*Held:* an agreement to pay commission was implied.—NICHOLAS *v.* DUMOULIN (1919), 46 D. L. R. 687.—**CAN.**

1671 xi. —— —— ——.]—An implied contract to pay a real estate agent a commission for his services if he found a purchaser for a property is negatived by the fact that the owner refused to list the property with him, although she gave him the terms upon which she was willing to sell.—TOLLEY & CO. *v.* SKUCE (1922), 63 D. L. R. 602.—**CAN.**

1671 xii. —— —— *——.]—It is not a general principle of law that whenever a man, having found out from the owner of property the terms upon which it can be sold or leased, produces a third party who will buy or lease on those terms, he thereby & without more entitles himself to payment of a commission by such owner. There must be, in addition to this, an intimation to the owner that a commission would be expected from him in the event of a sale or lease being effected upon the terms stated. The intimation of expectancy of a commission not negatived by the owner who permits the other to go to the trouble of finding a customer in the expectation of earning a commission, may well be a fact from which a promiseto pay a commission may be inferred. A mere volunteer who acts as a go-between between buyer & seller & ultimately produces a sale cannot upon that fact alone found a legal claim for commission, nor can a third party, who acting for a possible purchaser, obtains from a property owner terms of sale or lease, & thus brings about a completed transaction upon those identical terms, legally claim a commission from the owner in the absence of some promise to pay a commission, either express or implied.—CHAMBERLIN *v.* MAW (1922), 68 D. L. R. 754; [1922] 1 W. W. R. 299.—**CAN.**

1679 iv. —— *Out of what fund payable.*]—The agent is entitled to pay himself his commission out of any money paid to him by his principal, without any appropriation by the latter. The right, however, does not extend to any sum paid to the agent by some third person on behalf of the principal.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

1687. *Add. Annotation :*—**Refd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

1687a. —— Commission on sale.]—(1) Although commissions on sales are usually paid by the vendor, an express bargain may throw the commission upon the purchaser.

(2) Where an agent is employed to make inquiries about a particular business with a view to his employer's acquiring it, on the terms of his being paid by the purchaser a commission on the purchase price if business is transacted, & where the parties are brought together through his agency, he is entitled to commission, even where the actual purchase is ultimately effected through the intervention of another agent, provided that his services are really instrumental in bringing about the transaction.—BOW'S EMPORIUM LTD. *v.* BRETT (A. R.) & CO., LTD. (1927), 44 T. L. R. 194, H. L.

1679 v. —— —— *Deposit on sale of land.*]—A licensed land agent, who does not hold from his principal a written authority to sell, & who, having effected a sale of his principal's land, has received from the purchaser, without his principal's knowledge, a deposit, is not entitled to retain thereout his commission.—SMITH *v.* BASON, [1921] N. Z. L. R. 467.—**N.Z.**

1679 vi. —— —— ——.]—When a deposit on a sale of land is paid to a land agent he must pay it over to him on demand, subject to the agent's right to apply the same in payment of expenses, commission, or other charges incidental to the sale; but commission which is made irrecoverable by law is not a just allowance deductible by the agent.—BUCHANAN *v.* SAMSON, [1922] N. Z. L. R. 558.—**N.Z.**

sn. *Amount of remuneration—Sale of mortgaged property—As if free from incumbrances.*]—Resp. placed a farm in the hands of applts. for sale or exchange & undertook, should a sale or exchange be effected by them, to pay commission at specified rates. Applts. found a purchaser for the property & an agreement was executed whereby resp. agreed to sell the property "as if free from incumbrances." Applts. sued for commission on the full value of resp.'s property unincumbered, but the magistrate held them entitled only to commission on the value of the equity of redemption :—*Held :* commission was payable on the gross price of the property sold.—KNYVETT & PRATT *v.* SUISTED, [1918] N. Z. L. R. 53.—**N.Z.**

so. *Necessity for compliance with Land Agents Act,* 1922.]—Pltf., who was a land agent, received instructions from deft. to sell deft.'s property, & obtained a buyer at the price authorised, who paid pltf. a deposit of £200. On the same day that pltf. sold the property deft. sold it to another buyer & in effect repudiated the contract of sale effected by pltf. on his behalf. On the repudiation of the contract pltf. utilised the deposit of £200 received from his purchaser in the purchase of another property by the first buyer. Pltf. notwithstanding that he did not forward the deposit, with the signed contract to deft., less his commission, sued deft. for commission on the sale. Deft. applied for a nonsuit on the ground that pltf. had not complied with the provisions of Land Agents Act, 1922, s. 8, deducting his commission from the deposit, & handing the balance to deft. The magistrate having nonsuited pltf. :—*Held :* sect. 8 deals with the application of trust moneys & if the deal was going through it was the duty of pltf. as agent to act in compliance with it, but if the deal was not going through, if there had been repudiation as the magistrate found sect. 8 had no application. Pltf. was accordingly entitled to payment of his commission. —BALLANTYNE *v.* CLOUTT (1927), 29 W. A. L. R. 93.—**AUS.**

1684 ia. —— ——.] —HAMEL *v.* PATENAUDE, [1925] 4 D. L. R. 1071; [1925] S. C. R. 493; *revsg.*, [1925] 4 D. L. R. 577; Q. R. 35 K. B. 333.—**CAN.**

1684 vi. —— ——.]—A distributor of machinery wrote its agent with reference to a prospective sale at $1,200 as follows : "Your commission 10 per cent. if we finance, 25 per cent. if you handle cash basis" :—*Held :* the phrase "handle cash basis" could not be given an alleged trade meaning that the agent should buy from his principal & resell to the prospective purchaser & assume full responsibility to him.—TRENWITH, LTD. *v.* JARVIS ELECTRIC CO., LTD. (B. C.), [1929] 4 D. L. R. 400; 2 W. W. R. 489.—**CAN.**

1684 vii. —— ——.]—A real-estate agent having earned a commission for procuring a purchaser of farm lands entered into an agreement with the vendors by which they undertook to pay him part of the commission in cash and a percentage of the balance each year "as it is paid off by the purchaser on the contract." Nothing was stated as to what would happen should the purchaser fail to make his payments or if the vendors should determine the contract. The vendors, having become dissatisfied with the purchaser, determined the contract of sale by agreement with the purchaser :—*Held :* the agent was entitled to recover the full amount of the commission.—LEVENICK *v.* EDDY & EDDY, [1931] 2 W. W. R. 771.—**CAN.**

1684 viii. —— ——.]—Pltf. who as agent for defts. had procured a purchaser on the crop-payment plan for two sections of land owned by defts. agreed in writing to accept $1,280 as his commission, payable, as to $500 thereof, on Nov. 1, 1930, "if N. (the purchaser) farms under said purchase agreement, & delivers your grain," &, as to the remaining $780 "in the fall of 1931 under the same conditions of N. farming, & delivering the crop to you the same as 1930." Pltf. had recommended N. to defts. as a man fit & competent to perform his contract with them, but in the fall of 1930 his position was such that he was unable to carry on &, in consideration of a quit-claim deed, he was released from his contract. He had farmed the land in 1930, & delivered one-half share of the crop harvested by him to defts., but he did not summerfallow according to the terms of the contract, or pay the taxes or the interest on the unpaid purchase-money, & he negligently allowed 125 acres of standing crop to go to waste :—*Held :* the condition of pltf.'s right to the commission was, not merely the purchaser's delivery of deft.'s share of the grain grown on the land; but also his farming the land in accordance with the terms of his purchase agreement, &, as he had not done so in 1930, pltf. was not entitled to the $500, nor to the additional $750.—BROATCH *v.* VERMONT LOAN & TRUST CO., [1931] 2 W. W. R. 775.—**CAN.**

1684 ix. —— *Sufficiency of—Statute of Frauds—Commission on sale of land.*] —RICE & SONS *v.* TORONTO HARBOUR COMMISSION (1935), 2 D. L. R. 481; O. R. 243.—**CAN.**

sp. *Action for commission on sale—Defence denying sale—Effect.*]—When in an action for commission on a sale the principal's pleadings deny the agreement for sale, such denial indicates his repudiation of the agreement to pay the agent, &, under the doctrine of anticipatory breach, the latter, on proving his right to the commission, is entitled to judgment for the whole amount thereof, even though under the agreement it was to be paid in instalments at dates which are yet *in futuro.*—HANTON *v.* STEDMAN, [1925] 1 W. W. R. 642.—**CAN.**

sq. —— *Tariff rate of Estate Agents Institute.*]—PLEIN & CO. *v.* JACOBSON & SON, [1928] App. D. 25.—**S. AF.**

sr. *Commission—Meaning of.*]—The word "commission" may quite properly, both from a legal & commercial point of view, be employed as denoting a lump sum which represents no percentage on anything.—CAMPBELL *v.* NATIONAL TRUST CO., LTD., [1931] 1 W. W. R. 465; 1 D. L. R. 705.—**CAN.**

st. *Voluntary agent.*]—A voluntary agent is not entitled to commission although he brings about a sale, if there is no employment as agent & no ratification.—HAFFNER *v.* NORTHERN TRUSTS CO. (1910), 14 W. L. R. 403.—**CAN.**

sv. *Solicitor acting as real estate broker.*]—SAPER *v.* ROTSTEIN, [1937] 3 W. W. R. 332; [1938] 1 D. L. R. 58; 7 F. L. J. (Can.) 133.—**CAN.**

sw. *Registration—When necessary.*]—The fact that a real estate agent who is required by sect. 32 of The Security Frauds Prevention Act, 1929, as amended, to be registered thereunder, becomes registered before bringing an action to recover a commission on a transaction which took place before he was registered, does not enable him to maintain the action.—MCCREA *v.* BELANGER, [1936] 2 W. W. R. 202; 3 D. L. R. 65; 66 Can. C. C. 293; 44 Man. L. R. 197.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1. B. (a).

1693 vii. ——.]—A sale of land directly by the owner, after it had been listed for sale with a broker, does not entitle the latter to his commission, merely because it happened to be sold to a purchaser with whom he had negotiated in a previous transaction.—GILBERT BROTHERS *v.* MCDILL (1917), 36 D. L. R. 324.—**CAN.**

1693 viii. ——.]—Where a person discovers that another is considering the purchase of a piece of land & then ascertains from the owner that he will sell & pay a commission, but does not afterwards communicate with the prospective buyer, & the latter & the owner complete the sale themselves, there is no commission payable by the owner.—LANGTON *v.* NICHOLSON, [1918] 1 W. W. R. 908.—**CAN.**

1693 ix. ——.]—An agent for the sale of coal who had merely interviewed a customer & notified his principal that he had done so :—*Held :* not entitled to a commission on an order given about two months later direct to the principal, & after an inspection of the coal by the customer. —BOND *v.* STURGEON CONSOLIDATED COLLIERIES, LTD., [1918] 2 W. W. R. 912; 41 D. L. R. 147.—**CAN.**

1699a. Agent for sale of lottery ticket—Sale by principal.]—NASH *v.* SHEPHEARD (1931), 75 Sol. Jo. 331.

1693 x. ——.]—In the absence of a special agreement that he is to be remunerated if he does not find a purchaser, the agent is not entitled to a commission where the owner sells to a purchaser whom he himself has found. Where the owner found the person who subsequently purchased, although the agent subsequently spoke to the same person, the agent was not allowed the commission.—BARAGER *v.* WALLACE, [1919] 2 W. W. R. 858; 48 D. L. R. 158; 12 Sask. L. R. 301.—**CAN.**

1693 xi. ——.]—Where an agent spoke to one about certain land & the latter refused to buy, but some time afterwards, hearing through another channel that the land could be rented, went to the owner's place for the purpose of renting it & was induced by the owner to buy it:—*Held:* the agent was not entitled to commission.—TAYLOR *v.* RABBITTS, [1920] 1 W. W. R. 1024; 53 D. L. R. 59; 13 Sask. L. R. 198.—**CAN.**

1693 xii. ——.]—Deft. desired to acquire or gain control of certain shares in a co. Pltf. outlined to him a plan, & for carrying out the arrangement one-third of the shares were to be given to pltf. Pltf. worked on the undertaking & made considerable progress, but before the scheme was carried out deft. obtained what he wanted in other ways & without making use of pltf.'s services:—*Held:* pltf. could not recover the agreed commission.—MACINTYRE *v.* MILLER (1922), 70 D. L. R. 218; [1922] 3 W. W. R. 529.—**CAN.**

1693 xiii. ——.]—As a general rule & in the absence of any stipulation to the contrary a principal, who employs a house agent on commission to find a purchaser for a house, retains the right as against the house agent of selling the house to a third party, who has not been introduced by the house agent directly or through another agent at any time before a proper offer is brought to him by the house agent. If by so selling he prevents the house agent from earning his proper commission he is not liable in damages, for the act of selling is a rightful act as against the house agent.—BOOSE *v.* ZEEDERBERG & DUNCAN, [1918] C. P. D. 283.—**S. AF.**

1693 xiv. ——.]—An auctioneer was employed to sell property by auction on condition that if the reserve price was not reached no commission was to be charged. The reserve price not being reached, the property was not sold. A prospective purchaser, who was present at the auction & who knew who the owner of the property was, was about to approach the owner after the conclusion of the auction with a view to negotiating for the purchase of the property when the auctioneer formally introduced them. After protracted negotiations the prospective purchaser bought the property:—*Held:* the auctioneer's agency terminated the moment he failed to sell by auction.—MARTIN *v.* CURRIE, [1921] T. P. D. 50.—**S. AF.**

1693 xv. ——.]—Deft. listed his property with pltfs., real estate agents, for sale at a fixed price & on named terms. Pltfs. mentioned the property to one F., who thereafter negotiated with deft. for the purchase of the property, & concealed from him the fact that pltfs. had sent him. Deft., then, without any knowledge of pltfs.' intervention, sold to F., on terms less advantageous to himself than those contemplated in the agreement between pltfs. & himself. There was nothing in the circumstances to put deft. upon his inquiry as to whether pltfs. had sent F. to him:—*Held:* pltfs. could recover neither a commission on the sale nor anything for their services by way of *quantum meruit*.—ELVIN *v.* CLOUGH (1908), 7 W. L. R. 762; 8 W. L. R. 590.—**CAN.**

1693 xvi. ——.]—In an action for an agent's commission on the sale of a farm by deft. to one C. held that pltf. could not recover; because he had not been instrumental in bringing the parties together, C. having been discovered by deft., & because pltf.'s employment with respect to C. was of a special character under the terms of which he was not to be entitled to a commission unless he succeed in selling the land to C. on the terms stated; he failed to secure an offer from C. & deft. sold to C. direct.—WIEBE *v.* GARVEY, [1930] 2 W. W. R. 468; 3 D. L. R. 992; 24 S. L. R. 554.—**CAN.**

1700 iv. ——.]—If the seller has opened negotiations with a proposed buyer, but the negotiations are broken off, & later the buyer renews the same through an agent, the agent is entitled to commission.—FITZGERALD *v.* BUCKLEY, [1924] 4 D. L. R. 38; *affg.* 25 O. W. N. 538.—**CAN.**

1702 xxxix. ——.]—H. agreed with S., who had certain properties in his hands for sale, that he should receive half of the commission if he effected a sale. At the time a likely purchaser, C., was known to both parties. H. pressed C. to purchase, but after a time, as a matter of policy, let the matter drop, intending to approach C. again on a fitting occasion. In the meantime a member of S.'s staff indirectly approached C., who decided to purchase:—*Held:* H. had established a chain of causation between his efforts & the result, & he was entitled to half the commission.—HEALY *v.* SAUNDERS (1921), 17 Tas. L. R. 32.—**AUS.**

1702 xl. ——.]—Pltf. as agent for the owner of certain property introduced it to A. The owner was asking £17 17*s.* per week. Pltf. gave A. the key, on which was a label bearing only the name of the owner. A. told pltf. the property was unsuitable, & returned the key. About a fortnight later A., through seeing the owner's name on the label & consulting the telephone directory, discovered the owner's address, & met him to discuss the letting of the property, but did not tell him that she had seen pltf. After negotiations between A. & the owner extending over some days the owner agreed to let the property to A. for twelve months at £13 13*s.* per week:—*Held:* pltf. was entitled to commission.—SYMONS *v.* CALLIL, [1923] V. L. R. 49.—**AUS.**

1702 xli. ——.]—Deft. gave to pltfs. written authority to sell her land on terms, one of which was "price, very lowest, £10,000." Pltfs. brought the property under the notice of A., who got into personal communication with deft. & decided that it would suit him in every way, except as to price. After a delay of some weeks deft. & A. resumed negotiations, which led to a sale of the property to A. for £7,300:—*Held:* the relation of buyer & seller was really brought about by pltfs., who were entitled to commission.—BIRTCHNELL *v.* MORRIS, [1913] V. L. R. 201.—**AUS.**

1702 xlii. ——.]—Agent:—*Held:* entitled to recover commission.—GAMBLE *v.* EXCELSIOR LIFE ASSURANCE CO. (1917), 36 D. L. R. 592.—**CAN**

1702 xliii. ——.]—In 1913, deft. co. employed pltfs., brokers, to sell its lumber property at a minimum price of $110,000.00, & agreed to pay a commission on the purchase price. During the remainder of that year & the whole of 1914, pltfs. were working on this proposition, but failed to effect a sale. In 1915 the selling price was reduced to $75.000.00. In 1916, deft. co. sold to a purchaser introduced by pltfs. for $65,000.00:—*Held:* pltfs. were entitled to commission on the purchase price.—JARDINE *v.* PRESCOTT LUMBER CO., LTD., (1917), 44 N. B. R. 505.—**CAN.**

1705a. ——.]—Where an agent is instructed, but not as sole agent, to sell a house, & he procures an offer to purchase "subject to

1702 xliv. ——.]—Where land is listed with a real estate agent for sale & is afterwards sold by the vendor directly to a purchaser introduced by the agent, the latter is entitled to his commission, even though the terms of sale given in the listing as the basis on which the agent is to negotiate are not strictly adhered to.—KING *v.* SCHON, [1918] 3 W. W. R. 892; 44 D. L. R. 111.—**CAN.**

1702 xlv. ——.]—NUNNELLY *v.* ONSUM, [1921] 1 W. W. R. 506; 56 D. L. R. 599; 16 Alta. L. R. 455.—**CAN.**

1702 xlvi. ——.]—Deft. agreed to pay pltfs. commission on the sale of certain land, & agreed that it was an exclusive listing, subject to notice of withdrawal, which was not given. Pltfs. submitted the land to P. on terms of the listing & introduced P. to deft., who later, without pltfs.' knowledge or consent, entered into an agreement with P. for sale of the land & of certain chattels used in farming it. The price of the land was somewhat less, & the cash payment considerably less, than as given in the listing:—*Held:* pltf. was wrongfully deprived of the right which the listing gave him to earn his commission.—GILBERT BROTHERS, LTD. *v.* KEISER (1922), 69 D. L. R. 713; [1922] 2 W. W. R. 1228.—**CAN.**

1702 xlvii. ——.]—Agent:—*Held:* not entitled to recover commission.—KENNEDY *v.* VICTORY LAND & TIMBER CO., [1922] 3 W. W. R. 145; 68 D. L. R. 201; *revsd.*, [1922] 3 W. W. R. 683; 70 D. L. R. 868.—**CAN.**

1702 xlviii. ——.]—If the relation of buyer & seller is really brought about by the act of the agent, he is entitled to a commission although the actual sale has not been effected by him, but he must show that some act of his was the *causa causans* or the efficient cause of the sale.—BUNTING *v.* HOVLAND & WATKINS (1923), 33 B. C. R. 291.—**CAN.**

1702 xlix. ——.]—Deft. wishing to sell his house placed it in an agent's hands, fixing a net price. The agent introduced P. but negotiations falling, deft. cancelled the agent's instruction to sell. Some time later deft. & P. agreed upon terms & a sale resulted:—*Held:* commission was payable on the amount P. first offered through the agent.—FRASER *v.* HARRISON, [1924] 1 D. L. R. 765; 56 N. S. R. 431.—**CAN.**

1702 l. ——.]—Pltf. procured A., B., & C. to enter into an agreement to purchase deft.'s mineral claims on certain terms of payment, upon which pltf. was to receive a commission as payments were made from time to time. Under this agreement a portion of the purchase price was paid & pltf. got his commission, but the agreement was afterwards cancelled. Subsequently E., who had advanced to A. a considerable part of the money paid by him under the agreement, entered into an agreement direct with deft. to purchase the claims paying $10,000 down, & pltf. sought to recover commission on that sum:—*Held:* pltf. was not the effective cause of the

contract," & that offer is accepted by the vendor "subject to contract," but the sale subsequently goes off owing to the vendor's obtaining a better offer through another person, the agent cannot recover commission from the vendor as there is no binding contract of sale, & he cannot recover damages from the vendor, as the vendor has not committed any breach of contract whereby the agent was prevented from earning his commission.—RAYMOND *v.* WOOTEN (1931), 47 T. L. R. 606; 75 Sol. Jo. 645, D. C.

Annotations:—**Dbtd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Apld.** Musson *v.* Moxley, [1936] 1 All E. R. 64.

1705b. ——.]—OAKHILL *v.* COWEN (1934), 78 Sol. Jo. 337.

1706a. —— ——.]—BOW'S EMPORIUM, LTD. *v.* BRETT (A. R.) & Co., LTD., No. 1687a, *ante*.

---

sale.—OLSEN *v.* PEARSON, [1924] 1 D. L. R. 1097.—**CAN.**

1702 li. ——.]—R. M. BUCHANAN Co., LTD. *v.* EBY, [1927] 2 D. L. R. 819; [1927] 1 W. W. R. 929; 21 Sask. L. R. 438.—**CAN.**

1702 lii. ——.]—NICHOLSON *v.* DEBUSE (Alta.), [1927] 3 W. W. R. 799.—**CAN.**

1702 liii. ——.]—An agent gave G. a card to view certain property. After inspection G. decided not to buy as the price was too high. Some months later G. saw a "for sale" notice on the property which reminded him that he had previously inspected the property. He then, without further communication with the agent, negotiated with the owner direct & purchased for a smaller amount:—*Held:* the *causa causans* of the sale was the previous introduction through the agent who was entitled to his commission on the lower purchase price.—DOYLE *v.* GIBBON, [1919] T. P. D. 220.—**S. AF.**

1702 liv. ——.]—Certain property given for sale by the owner to an auctioneer at a fixed commission was not sold, the reserve not being reached, & was thereafter given to the auctioneer for sale privately. L., on passing the property, saw a notice up referring intending purchasers to R., but being aware of the fact that the auctioneer had been selling the property went to the auctioneer, who referred him to the owner. L. thereupon went direct to the owner & bought the property after having told him that he came on his own behalf & not at the instance of any agent:—*Held:* the auctioneer was entitled to his commission.—TREGASKES *v.* MEIKLE, [1922] T. P. D. 317.—**S. AF.**

1702 lv. ——.]—Where a vendor concludes a contract of sale with a party with whom his real estate agent has been negotiating in ignorance that he is such a party, the agent is entitled to his commission if the circumstances are such that the vendor ought to have made inquiries which would at once have revealed the facts.—GRIFFITHS *v.* ANDERSON, [1925] 4 D. L. R. 976.—**CAN.**

1702 lvi. ——.]—NELSON *v.* HIRSCHBORN, [1927] App. D. 190.—**S AF.**

1702 lvii. ——.] — TRENWITH *v.* INTERNATIONAL HARVESTER CO. (B.C.), [1928] 2 D. L. R. 121.—**CAN.**

1702 lviii. ——.]—A real estate agent who brings his principal into relations with the actual purchaser is the effective cause of the sale & entitled to his commission, although the principal sells behind his back & the price paid by the purchaser is less than the sum at first demanded by the principal. In the present case wherein the purchase-money was paid into deft. bank, a creditor of the vendors, under an arrangement under which it undertook to pay the agent his commission out of the sums paid in, held that the fact that the property was first transferred to the bank's manager who afterwards transferred it to the purchaser introduced by the agent did not take away the agent's right to the commission, since the transfer to the manager was taken merely to secure, in the interests of the bank & the other creditors of the vendors, a sale to said purchaser; &, moreover, the agent was entitled to succeed against the bank on the ground that, whether the sale originally contemplated, *i.e.* that from the vendors direct to said purchaser, was or was not called off, the bank's manager had agreed that the bank would pay the agent the commission if the transfer from the manager to said purchaser went through.—LADD *v.* BANQUE CANADIENNE NATIONALE (Man.), [1928] 2 W. W. R. 272.—**CAN.**

1702 lix. ——.]—The agent is entitled to commission if he has been the means of bringing the parties together, although he may not actually have introduced them to each other, & although the actual sale has not been effected by him.—BRETT & Co., LTD. *v.* BOW'S EMPORIUM, LTD., [1928] S. C. (H. L.) 19.—**SCOT.**

1702 lx. ——.]—The owner of a property of 1,698 acres, put it into the hands of an estate agent with the following instructions: "Price £1 per acre, or lease for a term of three years with option of purchase at 2*s.* per acre. I hereby authorise you to sell the above property." The agent obtained a lessee for three years, with an option of purchase at £1,682. Shortly before the expiration of the lease, the lessee asked the agent to try & get an extension of the option for twelve months, &, on the latter's advice, visited the owner for that purpose, the agent at the same time writing to the owner informing him of the proposed visit. An extension of the lease was granted, but the price of the option was increased to £1,800. The lessee exercised this option, & became the purchaser of the property:—*Held:* there was evidence sufficient to justify a finding that the agent was the efficient cause of the sale, & that therefore he was entitled to commission thereon.—UPJOHN *v.* ILLINGWORTH (1928), 29 S. R. N. S. W. 4; 46 N. S. W. W. N. 5. —**AUS.**

1702 lxi. ——.]—GREAVES *v.* SALISBURY (Sask.), [1929] 3 D. L. R. 289.—**CAN.**

1702 lxii. ——.]—SIMONITE *v.* MOXAM, [1929] 1 D. L. R. 825; 1 W. W. R. 513; 38 Man. L. R. 113; *affd.*, [1930] S. C. R. 334; 2 D. L. R. 991.—**CAN.**

1702 lxiii. ——.]—If an owner has contracted to pay a commission to an agent if the latter finds a purchaser, & the relation of buyer & seller is really brought about by some act of the agent, he is entitled to the commission although the actual sale has not been effected by him.—GRAVES *v.* MCLEAN, [1931] 2 W. W. R. 895.—**CAN.**

1702 lxiv. ——.]—KEIFER *v.* ENDERS, [1931] 3 D. L. R. 189.—**CAN.**

1702 lxv. ——.]—EASTERN REALTY Co. *v.* WOODWORTH (1932), 5 M. P. R. 511.—**CAN.**

1702 lxvi. ——.]—POWERS *v.* NASHWAAK PULP & PAPER CO., [1937] 4 D. L. R. 631; 12 M. P. R. 231; 7 F. L. J. (Can.) 101.—**CAN.**

sr. —— *Purchaser acting behind agent's back.*]—*Held:* principal liable to pay full commission on conclusion of a contract of sale with the purchaser. —MERRITT *v.* DOHERTY, [1925] 3 D. L. R. 797.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—B. (b).

1703 x. ——.]—One of two real estate agents with whom property was listed for sale:—*Held:* entitled to commission on a sale initiated by him but completed by the other agent, to whom the purchaser made known his wish to buy the property after it had been brought to his attention by pltf.—GRIFFITHS *v.* ANDERSON, [1926] 2 D. L. R. 657; [1926] 1 W. W. R. 950; 35 Man. L. R. 480.—**CAN.**

1703 xi. ——.]—Deft. placed a property in the hands of several agents, including pltf., for sale. Pltf. found a purchaser who was willing to pay the price as ultimately fixed for the property, & despatched a telegram stating that fact to deft. Before deft. received the telegram, however, he had in fact sold the property to another person through another agent. In an action by pltf. for commission:—*Held:* he had not complied with the implied condition attached to the promise to pay commission, namely, that he should find an able & willing purchaser & introduce him to the vendor before the vendor had in fact sold the property to some other person, & was therefore not entitled to recover commission.—DAINTON *v.* CHIVERS, [1928] V. L. R. 555; 49 A. L. T. 299; [1928] Argus L. R. 394.—**AUS.**

1706 ix. Delete the words "& entitled to commission."

1706 xiii. —— ——.]—Pltf. introduced to deft. A., who wished to purchase a property for his son, B. Deft.'s house was eventually transferred to the trustees of C.'s estate, in which A.'s family was interested, & the purchase-money was paid by the trustees at the instance of A. Deft. alleged that another agent, though aware of A.'s inspection of the house, obtained B.'s signature to the contract of sale:—*Held:* the verdict should be entered for pltf.—WEBSTER (A. G.) & SONS, LTD. *v.* COTTON (1919), 15 Tas. L. R. 17.—**AUS.**

1706 xiv. —— ——.]—An agent is entitled to commission on a sale brought about by his action in putting the purchaser in touch with the principal, even though the purchase is subsequently completed through another agent.—PETTYPIECE *v.* HOLDEN (1920), 40 D. L. R. 386.—**CAN.**

1706 xv. —— ——.]—The commission on a sale of real estate was given by the ct. to the agent who found the purchaser & put the vendor in motion to meet him, rather than to another who performed services in connection with the effecting & carrying out of the sale.—BATEMAN *v.* SNELGROVE & GARDEN, [1921] 1 W. W. R. 305; 14 Sask. L. R. 69; 57 D. L. R. 283.—**CAN.**

1706 xvi. —— ——.]—A. promised B. a commission if B. sold a ship. B. employed a broker as sub-agent, who mentioned the matter to another agent, & it was passed on through others until, about nine months after the agreement with B., a broker to whom the matter was mentioned came to A. & made an arrangement directly

1711. *Add. Annotation :—As to* (1) **Consd.** Price, Davis *v.* Smith (1929), 141 L. T. 490.

1718. *Add. Annotations :—As to* (2) **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110. *Generally,* **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1726. *Add. Annotations :*—**Refd.** Houlder Howard *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

with him resulting in a purchaser being obtained. B. continued his services, which were accepted by A., up to the time of sale, & was of assistance in procuring the Govt.'s consent to a transfer of the ship to a foreign registry :—*Held :* B. entitled to commission.—GREER *v.* GODSON, [1921] 2 W. W. R. 209 ; 60 S. C. R. 653 ; 56 D. L. R. 696.—**CAN.**

1706 xvii. —— ——.]—Pltf. endeavoured to effect a sale of deft.'s land to a co., of which H. was a director, & introduced H. to deft. The parties failed to agree upon terms & the negotiations ended, & pltf. made no further effort to sell the land. Subsequently deft. through another agent sold the land to H., who purchased it on behalf of another co. :—*Held :* pltf. was not entitled to commission.—NEVE *v.* LEESON, [1921] 1 W. W. R. 904.—**CAN.**

1706 xviii. —— ——.]—After pltfs., with whom a house had been listed, introduced a prospective purchaser to the vendor, the purchaser endeavoured to induce the vendor to reduce the price. The vendor was unwilling to fix a figure agreable to the purchaser, & the latter then negotiated through other agents, with whom the house had also been listed, & finally bought it :—*Held :* pltfs. were entitled to commission.—BROOK & ALLISON *v.* HENDRICKS (1922), 66 D. L. R. 825 ; 15 Sask. L. R. 439 ; [1922] 2 W. W. R. 580.—**CAN.**

1706 xix. —— ——.]—Deft. listed a property with pltfs. with instructions to find a purchaser at the price of $5,000. A month later deft. listed the property with another broker at $4,750, the second broker having his offices across the hall from pltfs.' offices in the same building. Pltfs. interested S. in the property & brought her to view it. Shortly after S. went to pltfs.' offices with a view to purchasing, & when about to enter the offices saw a picture of the property in the window across the hall marked for sale at $4,750. She went into pltfs.' offices, discussed the sale but went out without making the purchase, crossed the hall & purchased the property from the second broker at $4,750 :—*Held :* pltfs. were entitled to their commission.—TURNER, MEAKIN & CO. *v.* FIELD (1923), 33 B. C. R. 56.—**CAN.**

1706 xx. —— ——.]—CARR *v.* LA DRECHE, [1927] 2 D. L. R. 480 ; [1927] 1 W. W. R. 574 ; 38 B. C. R. 97.—**CAN.**

1706 xxi. —— ——.]—Pltf. received written authority from deft. to enter into a contract with a purchaser for the sale of his farm & stock. The rate of remuneration was stated to be a certain percentage on the value of the land sold. Pltf. introduced the property to a prospective buyer, who ultimately purchased the property, but through the instrumentality of another agent. Pltf. claimed from deft. £171 19s. in respect of the land sold, & £65 in respect of the stock & implements. The jury found that the sale had resulted from the introduction of the purchaser from pltf. :—*Held :* pltf.'s right to commission depended on the terms of his authority, & this did not authorise any commission on the sale of the stock.—ROWE *v.* BUTLER, [1921] N. Z. L. R. 437.—**N.Z.**

1706 xxii. —— ——.]—Deft. agreed to pay pltf. commission if a sale of deft.'s house to X., who was introduced by pltf., went through. Deft. also agreed to let pltf. know should he be prepared to sell his house for a smaller amount than he had mentioned to pltf. Deft. subsequently instructed another attorney to offer the house to X. at a reduced price, & a sale was thereupon concluded :—*Held :* pltf. was entitled to the commission agreed upon.—VAN DER WALT *v.* HOFMEYR, [1920] C. P. D. 50.—**S. AF.**

1706 xxiii. —— ——.]—A. agreed to give B. a commission in case of a sale of certain premises. B. introduced C., but no sale resulted. C., of his own motion & not as an agent of B., subsequently introduced D., & A. sold the premises to D. :—*Held :* B. was not entitled to commission.—GODDARD *v.* ARNOLD, [1922] T. P. D. 167.—**S. AF.**

1706 xxiv. —— ——.]—WALLACE *v.* WESTERMAN (B. C.), [1928] 3 D. L. R. 939.—**CAN.**

1706 xxv. —— ——.]—KORCHINSKI *v.* NATIONAL TRUST CO., MCDOUGALL *v.* NATIONAL TRUST CO. (Alta.), [1929] 1 D. L. R. 268.—**CAN.**

1706 xxvi. —— ——.]—BELL-IRVING *v.* MACAULAY NICOLLS, LTD., [1931] S. C. R. 276 ; [1931] 1 D. L. R. 381 ; *revg.*, [1930] 2 D. L. R. 326, 42 B. C. R. 140.—**CAN.**

1706 xxvii. —— ——.]—MACAULAY NICOLLS & MAITLAND CO., LTD. *v.* BURMAN (1937), 52 B. C. R. 9.—**CAN.**

1707 ii. ——.]—In a dispute as to which of two real-estate agents was entitled to the commission on a sale :—*Held :* the one who first through his advertisement attracted & interviewed the purchaser & directed him to the owner was the efficient cause of the sale & entitled to the commission, rather than the other who subsequently discussed the property with the purchaser & whose agent first showed it to him.—BUFFET *v.* WALLER & LAZARNICK, [1920] 2 W. W. R. 404 ; 52 D. L. R. 499 ; 30 Man. L. R. 437.—**CAN.**

1707 iii. —— *Loan broker.*]—The office of a loan broker is to bring together the borrower & the lender who is willing to open negotiations on a reasonable basis, & when he has done that, he has done all that is necessary for him to do & earn his commission.—VASAUJI MOOLJI *v.* KARSONDAS TEJPAL (1927), I. L. R. 52 Bom. 627.—**IND.**

1716 vii. ——.]—A broker, employed by a house owner to find a purchaser for the house, is entitled to receive the remuneration agreed upon, when the sale takes place in favour of a purchaser introduced by the broker, although the actual negotiation or completion of the sale may not have taken place through the direct intervention of the broker.—ROOPJI & SONS *v.* DYER MEAKER & CO. (1930), I. L. R. 52 All. 688.—**IND.**

PART VIII. SECT. 3, SUB-SECT. 1.—B. (c).

t. i. *S. P.* SATCHIDINANDA DUTT *v.* NRITYA NATH MITTER (1923), I. L. R. 50 Calc. 878.—**IND.**

t ii. ——.]—Where a land agent is employed to sell or exchange the property of his client, & commission is to be paid to him when he has "effected" a sale or exchange of such property, his right to commission accrues when he procures a valid contract for the sale or exchange of such property.—NIGRO *v.* WILSON, [1924] N. Z. L. R. 834.—**N.Z.**

1722 i. *Completion of entire contract.*]—GREER *v.* GODSON (1918), 40 D. L. R. 218.—**CAN.**

c i. —— ——.]—Pltf. found a purchaser for deft.'s land, the amount of commission was agreed on, & an agreement of sale executed. The purchaser subsequently refused to carry out the sale :—*Held :* pltf. was entitled to the commission.—DONER *v.* LOOSE, [1920] 2 W. W. R. 388 : 53 D. L. R. 39 ; 30 Man. L. R. 350.—**CAN.**

c ii. —— ——.]—When an estate agent is employed on the ordinary terms as to commission to find a purchaser of land, & he introduces a purchaser with whom the principal enters into a contract of sale, the agent is *primâ facie* entitled to his commission.—MACARTHUR & MACLEOD PTY., LTD. *v.* CAREY, [1931] V. L. R. 269 : Argus L. R. 261.—**AUS.**

st. —— *Commission payable on receipt of purchase-money—Payment by promissory notes.*]—An agreement provided that commission was "to become due & payable when the purchase-money or any part thereof has been paid".—*Held :* defts. having accepted promissory notes in lieu of a cash payment, the promissory notes must be treated as a cash payment so far as pltf. was concerned.—CROSS *v.* WOOD (1921), 64 D. L. R. 105 ; 50 O. L. R. 15.—**CAN.**

sa. —— *Commission payable for services already rendered.*]—When it has been definitely agreed to pay an agent commission for his services in negotiating a sale, & the payment was to be made for services already rendered & was not to be dependent upon the payment of the purchase price, the agent can recover the commission under the agreement, although the purchaser has failed to make any payment after the first one.—CARMICHAEL *v.* BOWERS (1922), 67 D. L. R. 515.—**CAN.**

sb. ——.]—*Held :* pltf.'s claim was not affected by changes made in the agreement between purchaser & defts, If defts. saw fit to vary the terms of the agreement & accept property in lieu of cash, that should not prevent pltf. from obtaining payment of his commission, which he earned when he procured a binding agreement for he sale of the property.—CRAWFORD *v.* IMPERIAL TRUST CO. OF CAN., [1929] 4 D. L. R. 913 ; 64 O. L. R. 433.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—C. (a).

1729 iii. —— *Sale of remainder of land.*]—Pltf. employed deft. to sell a house & portion of the block of land on which it stood. Deft. found a purchaser & a contract of sale was signed under which pltf. gave the purchaser certain provisional rights over the unsold portion. Afterwards pltf. endeavoured to obtain from the purchaser a modification of the contract with regard to the rights over the unsold portion, & deft. did considerable work in trying to induce the purchaser to vary the contract in this respect. During the negotiations deft. repeatedly urged pltf. to sell the whole of the land. Negotiations having failed pltf. behind the back of deft. sold the remainder of the land to the original purchaser & the whole was included in a single transfer :—*Held :* deft. was not entitled to commission on the sale.—MCANDREW *v.* GRAY (1920), 20 S. R. N. S. W. 635.—**AUS.**

1738. *Add. Annotation :*—**Consd.** Bow's Emporium *v.* Brett (1927), 44 T. L. R. 194.

1739. *Citations :*—For the existing citations substitute as follows :—

(1887), as reported in 58 L. T. 96; 3 T. L. R. 836, H. L.

Annotations :—For "**Mentd.** Barnett *v.* Isaacson (1888), 4 T. L. R. 595," read "**Refd.** Barnett *v.* Isaacson (1888), 4 T. L. R. 595."

Add. Annotations :—*As to* (2) **Consd.** Price, Davies *v.* Smith (1929), 141 L. T. 490. **Distd.** Mote *v.* Gould (1935), 152 L. T. 347. *Generally*, **Refd.** Keppel *v.* Wheeler, [1927] 1 K. B. 577.

1740. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1741. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1746. *Add. Annotations :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1746a. Agent to sell property—Agent himself buying property—With consent of principal.]—Where an agent has been instructed to sell property on commission &, after failing to find a purchaser, agrees with his principal to buy the property himself, he is not entitled

---

PART VIII. SECT. 3, SUB-SECT. 1.—C. (b).

sw. *Transaction similar — Further sale.*]—A. in 1911 employed pltf. to sell a Crown lease, & an agreement was entered into which provided that if pltf. sold the lease for £25,000 he was to receive £5,000. In 1914 through the instrumentality of pltf. the lease was transferred to S. &, on payment by S. of £5,000, pltf. received £1,000 as commission. In 1919 A. & S. sold the lease to T. for £14,000. Some years prior to this sale pltf. had submitted full particulars of the lease to T., who would not then buy. L., who was employed for that purpose by A. & S., had brought about the sale to T. Pltf. claimed commission in respect of the sale to T. :—*Held :* pltf. was not entitled to commission.—DEWDNEY *v.* MATHESON, [1923] S. A. S. R. 105.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—D.

sa. *Agent to obtain money for project—Expansion & modification of proposal.*]—*Held :* the agent was entitled to recover commission.—THOMAS *v.* GALE, [1927] 1 D. L. R. 593; S. C. R. 314; *varying*, [1925] 3 D. L. R. 757.—**CAN.**

sb. *Agent to procure loan to third party—Loan raised by third party.*]—Pltf. claimed a commission of 1 per cent. from deft. on the ground that the latter had requested him to raise a loan of £27,500, subsequently increased to £35,000, not on behalf of deft. but on behalf of one F. It was admitted that deft. had sold a certain property to F. for a sum of £45,000, £10,000 to be paid in cash & the balance to be secured by a bond over the property; through pltf.'s efforts the manager of a certain insurance co. was prepared to advance £27,500 to F. on a first mtge. over the property & that thereafter a sum of £35,000 was in fact advanced by the insurance co. upon that security, together with certain additional securities. Deft. denied that he had made the contract alleged with pltf. & stated that the real arrangement between them was that pltf. should raise a loan of £27,500 on behalf of deft. himself & not for F., & further, that if F. paid off the whole amount of the purchase price in cash pltf. was not entitled to any commission whatever, & that F. had personally raised on his own behalf a loan of £35,000 not on the security of the property alone but on additional securities belonging to him. At the trial pltf. applied for leave to amend his declaration so as to base his claim on a mandate to raise a loan of £27,000 only. The trial ct. refused to grant the amendment & held pltf. had earned commission on £35,000, the sum actually advanced to F., but as pltf. had declared himself satisfied with £275 awarded the latter amount. Deft. having appealed :—*Held :* commission of 1 per cent. was promised pltf. by deft. if the former was instrumental in obtaining a loan of £27,500 from the insurance co. to F.; further, in view of application for amendment, which should have been granted, it was unnecessary to consider whether pltf. was entitled to commission on the whole sum advanced, &, as on the facts, it was clear that £27,500 would have been advanced on the property alone, the fact that £35,000 had been lent upon the property, together with additional security, did not debar pltf. from recovering commission on £27,500.—SAMMEL *v.* JACOBS & Co., [1928] App. D. 353.—**S. AF.**

sc. *Agent to sell—Third party entering into partnership with principal.*]—A., an agent employed by P. to obtain a purchaser for a mill, introduced M. to P. The sale did not go through. P. eventually entered into a contract of partnership to work the mill, the partners being P., M. & C. :—*Held :* as the transaction resulting from the agency differed substantially from that which A. had been employed to procure, he was not entitled to any remuneration.—BORDER *v.* EDLEY, [1926] C. P. D. 19.—**S. AF.**

p i. —— ——.]—Pltfs. claimed for commission on sale of timber holdings of deft. co. The shareholders had passed a resolution authorising a sale at a fixed minimum price upon terms agreeable to the directors, & a letter from the co.'s managing director to pltfs. offered $35,000 commission should pltfs. make a sale at a certain named price, which price would net the co. such minimum price. A sale was made through other agents, not for a lump sum, but for a price based on board measurement to be paid for as the timber was taken, with an additional sum to be paid when the timber had been logged :—*Held :* the sale was not a sale within the contract.—RORAY *v.* NIMPKISH LAKE LOGGING CO., LTD., & GARLAND, [1919] 2 W. W. R. 105.—**CAN.**

y i. —— ——.]—E. requested S., a servant of pltf., to obtain a buyer for his property. E. told S. that he wanted £850, & would pay commission. S. then asked E. if he would consider an offer. E. replied he wanted £800 clear. S. introduced K. to E., but the price offered was too low, & after various negotiations no sale took place. Six months later E. sold the property to K. for £600 :—*Held :* as the buyer offered less than £800, pltf. was not entitled to commission.—ROBINSON *v.* EVES, [1917] S. A. L. R. 71.—**AUS.**

y ii. —— ——.]—*Held :* as the employment was a general one, the price mentioned being intended not as a hard & fast one, but as a basis of negotiations, pltf. was entitled to the agreed commission on the price obtained.—PRENTICE *v.* MERRICK, [1917] 3 W. W. R. 1060; 24 B. C. R. 432; 38 D. L. R. 388.—**CAN.**

y iii. —— ——.]—An owner in Apr. listed with an agent certain land for sale at $35 an acre with a fixed cash payment, the price to include the crop. In Nov., after the owner had taken off & sold the crop, the agent sold the land for $30 an acre on a small cash payment :—*Held :* in order to earn his commission the agent had to obtain a purchaser for the land & crop at $35 per acre.—FITCHELL *v.* LAWTON, [1919] 3 W. W. R. 728; 49 D. L. R. 185.—**CAN.**

y iv. —— ——.]—Deft. listed his farm with pltfs. for sale at $38 an acre. Deft. sold the land at $37 an acre to one introduced by pltfs. :—*Held :* pltfs. were entitled to commission.—SMITH *v.* WRIGHT, [1919] 3 W. W. R. 1094; 49 D. L. R. 408; 12 Sask. L. R. 491.—**CAN.**

y v. —— ——.]—When a proprietor goes to an agent & requests him to find a purchaser, naming at the same time the sum which he is willing to accept, that will constitute a general employment, & should the estate be eventually sold to a purchaser introduced by the agent, the latter will be entitled to his commission, although the price paid should be less than the sum named at the time the employment was given. The mention of a specific sum prevents the agent from selling at a lower price without the consent of his employer, but it is given merely as the basis of future negotiations, leaving the actual price to be settled in the course of those negotiations.—PALMER *v.* HARVEY (1922), 65 D. L. R. 769; 15 Sask. L. R. 152; 1 W. W. R. 231; *affg.* (1920), 55 D. L. R. 703; 14 Sask. L. R. 19.—**CAN.**

y vi. —— ——.]—Where the contract is that the agent is not to be paid a commission unless he procures a purchaser at a specified figure, the fact that a sale is made by the owner at a lower price does not entitle the agent to remuneration by way of *quantum meruit*.—GRIFFITH *v.* FREDERICKSON, [1926] 4 D. L. R. 50; [1926] 2 W. W. R. 680; 36 Man. L. R. 54.—**CAN.**

y vii. —— ——.]—WEAVER *v.* DIXSON, [1928] 4 D. L. R. 226; 62 O. L. R. 419.—**CAN.**

y viii. —— ——.]—WEIR *v.* GRAND, [1931] 1 D. L. R. 581; 66 O. L. R. 245.—**CAN.**

sd. —— *Third party taking land in a trade.*]—Agents who had been promised a commission should they obtain a purchaser for land at a certain price :—*Held :* not entitled to commission, as they only introduced a party who took the land in a trade & with whom the principal had previously discussed a trade.—BROWN *v.* PATCHELL, [1919] 3 W. W. R. 701; 49 D. L. R. 158.—**CAN.**

se. *Agent to exchange—Exchange of other properties.*]—A real estate agent is entitled to his commission on an exchange of properties where he brings the parties together & engages actively in negotiating the exchange, which eventually falls through owing to the objection of his principal to include certain stock & implements

to commission on the purchase by himself unless his principal has expressly agreed that such commission shall be payable.—HOCKER *v.* WALLER (1924), 29 Com. Cas. 296.

1746b. —— At stated price—Sale at lower price—With consent of principal.]—PRICE, DAVIES & Co. *v.* SMITH, No. 1780a, *post.*

1748. *Add. Annotation :*—**Distd.** Mote *v.* Gould (1935), 152 L. T. 347.

1751. *Add. Annotation :—As to* (2) **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1751a. ——.]—Pltfs., who were shipbrokers, negotiated on behalf of defts., the owners of a steamship, a charterparty of the steamship which was to be in force from Oct. 1920 for five years, & which contained a clause providing that the charterers should have the option of purchasing the steamship at any time between the signing of the charter & the completion of the charter period for £125,000. On the day when the charterparty was signed defts. signed & gave to pltfs. a commission note in these terms: " We hereby agree to pay you . . . 5 per cent. brokerage on hire. . . . Should the option of purchase contained in the charter be availed of, the brokerage on purchase to be 3½ per cent. . . ." The charterparty was acted upon until June, 1921, when defts. sold the steamship to the charterers for £65,000. Pltfs. brought an action against defts., claiming (*inter alia*) 3½ per cent. commission on £65,000, the price paid by the charterers for the steamship, &, in the alternative, a *quantum meruit* for their alleged services in effecting the same :—*Held :* (1) the former of these claims failed, the option of purchase mentioned in the commission note never having been exercised, & the sale effected being a sale at a different price from that upon which alone the brokerage of 3½ per cent. was to become payable ; (2) the latter claim also failed inasmuch as the parties having reduced their bargain into writing in the commission note, there was no scope for the operation of the principle of *quantum meruit*.—HOWARD-HOULDER & PARTNERS, LTD. *v.* MANX ISLES S.S. Co., [1923] 1 K. B. 110 ; 92 L. J. K. B. 233 ; 128 L. T. 347 ; 38 T. L. R. 757 ; 66 Sol. Jo. 682 ; 16 Asp. M. L. C. 95 ; 28 Com. Cas. 15.

Annotations :—**Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99 ; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544 ; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 1 All E. R. 757.

1752a. Commission payable on sale—Long lease effected—No general employment.]—Pltf., who was not an estate agent, but occasionally acted as such, informed deft. he & some friends (including one S.) might purchase certain property which deft. was offering for sale, & deft. named a price of £25,000. Later pltf. told deft. that he was not going on as a principal, & in Dec. 1933, deft.'s solrs. wrote to pltf. : " Our client instructs us to say that if S. or the people he represents purchase this property at the price of £25,000 he will be quite willing to pay you the usual scale commission." The property was not sold, but in Oct. 1934, a building lease for 99 years was entered into between deft. & a co. represented by S. at a ground rent of £1,250 *per annum*, which was worth twenty to twenty-three years' purchase, namely, £25,000 to £28,750. Pltf. brought an action in which he claimed scale commission from deft. :—*Held :* as there had been no general employment of pltf., nor had deft. promised to pay pltf. something for any purchaser he might introduce, pltf., who had done no more than bring deft. & S. together, was not entitled to recover.—MOTE *v.* GOULD (1935), 152 L. T. 347.

1754. *Add. Annotations :*—**Expld. & Apld.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Consd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All. E. R. 1066 ; Trollope & Sons *v.* Caplan, [1936] 2 All E. R. 842. **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99 ; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476.

1755. *Add. Annotations :*—**Consd.** Caney *v.* Leith, [1937] 2 All E. R. 532. **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110 ; Bental, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1755a. ——.]—Pltfs., who were estate agents, were instructed by defts. to find a purchaser for certain property " subject to contract." Pltfs. later wrote to defts. in these terms :

in the transaction, the principal soon afterwards completing the exchange without the stock & implements but with the same purchaser for other property owned by him.—DUNN *v.* SINCLAIR, [1923] 1 D. L. R. 426.—**CAN.**

s1. *Agent to obtain signature of wife—Obtaining signature of husband.*]—Defts. agreed with pltfs. that if the latter obtained Mrs. M. to sign a building contract for a house they would pay pltfs. the usual commission as on a sale of land. Pltfs. obtained the signature of the husband :—*Held :* as it was immaterial to defts. whether the contract was signed by Mrs. M. or by the husband, pltfs. were entitled to the commission agreed to.—SMITH & SMITH *v.* DINGLE & HOLMES, [1923] 3 D. L. R. 68 ; 3 W. W. R. 49.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (a).

1754 xix. —— *Principal altering date for giving possession.*]—An agent with whom and has been listed for sale has earned his commission when he has introduced to the owner a purchaser who is ready, willing & able to buy at the price & terms stated by the owner, though the sale does not go through by reason of the owner insisting on a date for giving of possession later than that at first stated.—HIGGINS *v.* MITCHELL, [1921] 1 W. W. R. 252 ; 57 D. L. R. 288 ; 31 Man. L. R. 60.—**CAN.**

1754 xx. ——.]—Deft. :—*Held :* liable to pltf. for an agreed commission for a sale of land procured by pltf. & which was not carried out because of deft.'s refusal, without sufficient reason, to carry it out.—BALLS *v.* MCGREGOR (1922), 68 D. L. R. 718 ; 32 Man. L. R. 196 ; [1922] 2 W. W. R. 1247 ; *affd.*, 66 D. L. R. 696.—**CAN.**

1754 xxi. ——.]—Where a real-estate agent had found a purchaser who had accepted the seller's proposition for the sale or exchange of his land, & the acceptance was made within the time limited by the seller, but the seller refused to complete the transaction & alleged that the purchaser was not ready, willing or able to complete the transaction :—*Held :* the *onus* of proof was on the agent suing for commission.—REGINA BROKERAGE & INVESTMENT CO. *v.* KISTNER (1922), 70 D. L. R. 75 ; [1922] 3 W. W. R. 657.—**CAN.**

1754 xxii. —— *Agent taking undue advantage of principal.*]—A real estate dealer, who acted for a foreigner with an imperfect knowledge of English, took an undue advantage of his principal in representing an improvident transaction to be a very desirable one, which he should enter into in substitution for an exchange which had fallen through. The principal having repudiated the second transaction, the ct. refused to allow the agent the commission he would have obtained thereunder had it been completed, but allowed him commission on a *quantum meruit* based on the amount of commission contemplated by the first transaction. — BURNS *v.* MINCHAU (Alta.), [1926] 3 W. W. R. 791.—**CAN.**

1754 xxiii. ——.]—TURNER MEAKIN & Co. *v.* CALEDONIA & BRITISH COLUMBIA MORTGAGE CO., LTD., [1927] 2 D. L. R. 395 ; 38 B. C. R. 103.—**CAN.**

"With reference to our conversation . . . we confirm your acceptance of the offer made by . . . Major H., to purchase the freehold of this property subject to contract. . . . We take this opportunity of confirming that in the event of the sale materialising we shall look to you for payment of the usual scale commission." Defts. replied as follows: "We have to acknowledge receipt of your letter . . . & confirm our telephone conversation with you . . . to accept the offer . . . for this property, subject to contract. . . . We also confirm that, in the event of this sale being satisfactorily completed, we shall pay you the usual scale of commission." An engrossment of the contract was signed by Major H., but defts. then refused to proceed, whereupon pltfs. claimed commission or, alternatively, damages for breach of an implied term that defts. would do nothing to prevent pltfs. earning their commission. It was found as a fact that Major H. was ready & willing to buy the property:—*Held:* although in an agreement "subject to contract," the matter, as between vendor & purchaser, must be deemed to remain in negotiation until contracts are exchanged, there must, as between pltfs. & defts., be implied a term that if the purchaser introduced by pltfs. was ready & able to complete the contract, defts. would not by refusing to complete prevent pltfs. from earning their commission, & as defts. had without just excuse refused to complete, they were liable to pltfs. in damages, the proper measure of which in the circumstances was the amount of commission pltfs. would have earned had the transaction been completed.—TROLLOPE (GEORGE) & SONS *v.* MARTYN BROS., [1934] 2 K. B. 436; 103 L. J. K. B. 634; 152 L. T. 88; 50 T. L. R. 544; 78 Sol. Jo. 568; 40 Com. Cas. 53, C. A.

Annotations:—**Consd.** Oakhill *v.* Cowan (1931), 78 Sol. Jo. 337; Musson *v.* Moxley, [1936] 1 All E. R. 64; Trollope & Sons *v.* Caplan, [1936] 2 All E. R. 842; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476. **Refd.** Bampton (Ronald) & Partners *v.* Garner & Sons, Ltd., [1937] 3 All E. R. 438.

1755b. ——.]—Pltfs., who were estate agents' were instructed by deft. to find a purchaser for certain property belonging to him, part of which he informed them was let to a tenant at £180 *per annum*. Pltfs. found an intending purchaser "subject to contract," but after negotiations had proceeded for some time deft. informed pltfs. that although the lease of the part of the premises referred to stated the rent to be £180, he had verbally allowed the tenant to pay £145 only, & would decline to go back on this arrangement. On becoming aware of this the intending purchasers declined to proceed unless the purchase-price was reduced, & as this was not agreed to by deft. the transaction went off. On a claim by pltfs. to recover commission or damages for breach of contract the county ct. judge gave judgment in their favour for the full amount they would have earned as commission if the transaction had gone through. On appeal:—*Held:* before an award of damages could be made equal to the commission pltfs. would have earned had the transaction gone through, it must be found as a fact that but for the action of deft. a binding contract with the purchaser would have been entered into; on the facts of this case this could not be said inasmuch as, except as to the price, none of the terms had been agreed; & therefore there must be a new trial to ascertain what damage pltfs. had actually suffered by being deprived of the chance of earning their commission.—TROLLOPE (GEORGE) & SONS *v.* CAPLAN, [1936] 2 K. B. 382; [1936] 2 All E. R. 842; 105 L. J. K. B. 819; 155 L. T. 365; 52 T. L. R. 630; 41 Com. Cas. 325, C. A.

Annotations:—**Consd.** Bampton (Ronald) & Partners *v.* Garner & Sons, Ltd., [1937] 3 All E. R. 438; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 1 All E. R. 757.

1755c. ——.]—Deft. verbally agreed to employ pltf., an estate agent, to sell certain property. On July 14, 1935, pltf. obtained an offer from W. & Co. to purchase the property & he communicated this offer to deft., who accepted it by letter on July 6, 1935, subject to a contract being signed & a deposit being paid within "say 10 days." W. & Co. wrote on July 18, 1935, expressing willingness to pay a deposit, but only upon the contract being signed. No deposit was paid & on July 30, 1935, deft. repudiated the contract. In an action for commission alleged to be payable on the introduction of a willing purchaser:—*Held:* (1) on the evidence the condition as to the payment of a deposit within ten days had not been waived by deft.; (2) deft. was entitled to repudiate the sale upon the failure of the intended purchaser to pay the deposit within 10 days; (3) if the condition had been waived pltf.'s claim would have succeeded on the principle that where an agreement is "subject to contract" an agent is entitled to damages in lieu of commission in the event of non-completion of the contract due to default on the part of the vendor. —MUSSON *v.* MOXLEY, [1936] 1 All E. R. 64; 80 Sol. Jo. 128.

1755d. ——.]—An agent for the sale of 3 shops in course of erection by builders secured an agreement for the purchase of the same upon certain terms agreed to by the builders who were in fact the vendors. When the agreement was mentioned to the solr. for the persons financing the builders, he refused to allow the sale to go on, upon the ground that it was completely one-sided & too advantageous to the buyer. The builders then refused to go on with the sale & the agent sued for his commission:—*Held:* the fact that upon further consideration the bargain is far too favourable for the purchaser is not a just excuse for refusing to proceed with the sale, & the agents were entitled to damages for the loss of the opportunity of earning their commission, & such damages ought to be assessed at half the amount of the commission.—BAMPTON (RONALD) & PARTNERS *v.* GARNER & SONS, LTD., [1937] 3 All E. R. 438; 81 Sol. Jo. 749.

1755e. ——.]—An agent procured an agreement for the sale of shares for the sum of £200,000, upon which he was entitled to £16,000 commission. The condition of his agreement with deft. co. was: "in the event of our making the purchase." The negotiations were continued up to the day for completion, when the purchase was not completed by reason of the purchasers requiring certain further arrangements which the vendor was held entitled to refuse to consider:—*Held:* (1) there was an implied term in the agree-

ment with the agent that the purchasers would not by their wilful default prevent him from earning the commission, & the purchasers had made such wilful default; (2) the measure of damages was the full amount of the commission, as the agreement to purchase was complete in every respect, & was not the subject of any further negotiation or inquiry into title.—KAHN *v.* AIRCRAFT INDUSTRIES CORPN., LTD., [1937] 3 All E. R. 476; 81 Sol. Jo. 610, C. A.

1755f. —— **Whether contract varied.**]—HARRODS, LTD. *v.* GENEEN, [1938] 4 All E. R. 493; 55 T. L. R. 139; 82 Sol. Jo. 1009, C. A.

1759. *Add. Annotations:*—**Consd.** Price, Davies *v.* Smith (1929), 141 L. T. 490; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544; Trollope & Sons *v.* Caplan, [1936] 2 All E. R. 842. **Refd.** Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 1 All E. R. 757.

1761. *Add. Annotations:*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n. **Refd.** Bampton (Ronald) & Partners *v.* Garner & Sons, Ltd., [1937] 3 All E. R. 438.

1763. *Add. Annotation:*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1764. *Add. Annotation:*—**Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

1767. *Add. Annotation:*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1768. *Add. Annotations:*—**Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Refd.** Trollope & Sons *v.* Caplan, [1936] 2 All E. R. 842.

1768a. Principal selling ship to charterers—During currency of charter.]—Shipbrokers employed to effect a charter of a steamship procured a charter for eighteen months, but after four months of the charter had run the owner sold the vessel to the charterers & the charterparty was cancelled. The charterparty provided for payment of a commission of 2½ per cent. on the hire paid & earned under the charterparty & on any continuation thereof. In an action by the brokers to recover commission for the remainder of the charter period:—*Held:* it was not an implied term of the contract that the shipowners should not agree to put an end to the charterparty by the sale of the ship to the charterers, & the action failed.—FRENCH (L.) & Co. *v.* LEESTON SHIPPING CO., [1922] A. C. 451; 91 L. J. K. B. 655; 127 L. T. 169; 38 T. L. R. 459; 15 Asp. M. L. C. 544; 27 Com. Cas. 257, H. L.

Annotations:—**Folld.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110. **Expld.** Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476. **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1769. *Add. Annotations:*—**Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

1770. *Add. Annotation:*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1758 viii. ——.]—Deft. having a property for sale, gave an authority to pltf. in the following terms: "I hereby authorise you to sell my property, for the price of £2,600 nett. Any amount over & above this figure to be paid to you as commission on the sale." Pltf. found a purchaser who entered into a contract to purchase for £2,750. The bargain went off, however, owing to the purchaser's insistence on the removal of some restrictive covenants, which deft. was unable to effect:—*Held:* pltf. having found a purchaser, & having brought about a contract for sale at a price of £2,750, was entitled to the sum of £150 by way of commission, & the subsequent failure of the transaction, through no default on his part, did not deprive him of his right to recover that amount from deft.—PEACOCK *v.* TARLETON (1928), 28 S. R. N. S. W. 561; 45 N. S. W. W. N. 164.—**AUS.**

sk. *Principal refusing to compete with other buyers.*]—Pltfs. engaged deft. to purchase lambs in a large specified area. He was to receive a commission on all lambs bought by him, the price to be the highest market price at the time of delivery. Deft. proceeded to canvass farmers & secure options on the lambs they had for sale. When the time for taking the delivery was at hand pltfs. advanced deft. $2,000 to buy lambs. When the time for taking delivery of the lambs arrived, pltfs. refused to advance the price to the level of that of competing buyers & deft. was unable to procure the lambs which he had agreed for:—*Held:* pltfs. had defaulted & were estopped from saying that deft. did not complete his contract.—NEW ENGLAND DRESSED MEAT & WOOL CO. *v.* PATRICK BROTHERS, [1923] 1 D. L. R. 153.—**CAN.**

1763 i. *Principal declining to accept loan.*]—Where an agent performed his part in obtaining a loan, & was in no way responsible for the non-payment of the money under the loan:—*Held:* he was entitled to his commission.—WHITESIDE *v.* WALLACE SHIPYARDS, LTD. (1919), 27 B. C. R. 40; 45 O. L. R. 434.—**CAN.**

1766 v. ——.]—SMITH *v.* UPPER CANADA COLLEGE (1920), 48 O. L. R. 120; 54 D. L. R. 548; 18 O. W. N. 370.—**CAN.**

1766 vi. ——.]—Pltf., a ship & general broker, sold to N. a ship on deft.'s behalf. The purchase price was £140,000 payable by N. to deft. in instalments, & deft. agreed to pay pltf. £20,000 of the purchase price when he received the second instalment. Before that instalment was paid N., with deft.'s consent, cancelled the contract:—*Held:* upon the cancellation of the contract of sale, pltf.'s right under his special contract with deft. was determined & his claim for commission failed.—GOWAN *v.* BOWERN, [1924] App. D. 550.—**S. AF.**

sl. *Principal not negotiating in good faith.*]—Where under an agreement to pay an agent commission on a sale of real estate, the agent is to be entitled to the commission only when the principal concludes a sale to a purchaser found by the agent, the law implies an agreement by the principal to negotiate in good faith with the purchaser proposed & to demand only such terms as, considering all the circumstances, might be conceivably demanded in perfect good faith. Where the principal does not negotiate in good faith & the sale is thereby prevented, the agent is entitled to damages.—MCINTYRE & Co. *v.* LAW, [1918] 2 W. W. R. 359; 13 Alta. L. R. 273; 40 D. L. R. 231.—**CAN.**

sm. *Principal selling ship to charterers—Commission payable under charter.*]—Pltfs. negotiated a charterparty, which contained a clause providing for payment of commission on the estimated gross amount of hire as earned & paid. Subsequently the owners & the charterers entered into a contract of sale, which contained a clause cancelling the charter & so cancelling the clause therein providing for the commission:—*Held:* pltfs. were entitled to the amount of commission which would have been payable if the charterparty had not been cancelled, but, especially having regard to the fact that the action was brought before the period of hiring under the charterparty had expired, subject to a fair deduction in view of the risk of the hire ceasing apart from any voluntary action by the owners.—ROXBURGH *v.* CROSBY & Co., [1918] V. L. R. 118.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (b).

1770 iii. ——.]—ROSTEIN *v.* CANADIAN NATIONAL STEAMSHIP CO., LTD. (1934), 49 B. C. R. 105.—**CAN.**

bi. ——.]—*Held:* the agent was not entitled to commission.—FLANAGAN *v.* CHAPMAN, [1926] 1 D. L. R. 159; 58 O. L. R. 94.—**CAN.**

ei. ——.]—Deft., who was authorised to procure a purchaser & accept a deposit & retain from the deposit his commission for procuring a purchaser then ready & willing & apparently able to fulfil his obligations to the extent at least of making the down payment, procured a purchaser, who made the agent a deposit of $250, & the vendor entered into a written memorandum to sell to him. The principals afterwards by arrangements between themselves cancelled the contract on the ground that the purchaser found himself unable to make the first payment, & the purchaser agreed to forfeit the $250:—*Held:* deft. was entitled to retain the $250, but was not entitled to anything further.—DE WOLF *v.* DELMAGE (1922), 65 D. L. R. 42; 17 Alta. L. R. 441; [1922] 1 W. W. R. 1129.—**CAN.**

eii. ——.]—A broker, commissioned to obtain a purchaser for a piece of land, found a purchaser, who failed to complete the sale within a fixed period owing to his inability to pay ready money. The principal entered into a new arrangement direct with the purchaser, & such new arrangement was subsequently rescinded by the

1771. *Add. Annotations :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1775. *Add. Annotations :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n.; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 1 All E. R. 757.

1776. *Add. Annotation :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1776a. —— **" Private treaty " sale.**]—Where an estate agent is employed to find a purchaser of an estate, the terms of the agent's employment being that commission is payable to him on the purchase price on sales by " private treaty," his principals are liable for his remuneration only when a sale has been completed & the purchase price has been paid on completion, except where the non-completion is due to some default or omission on the part of his principals. When, therefore, the agent has been employed simply on the above terms he is not entitled to commission on the purchase price if he has merely brought about a purchase agreement which, without default or omission on the part of his principals, has not been completed.—KNIGHT, FRANK & RUTLEY *v.* GORDON (1923), 39 T. L. R. 399.

1776b. ——.]—JAMES *v.* SMITH (1921), [1931] 2 K. B. 317, n.; 100 L. J. K. B. 585, n.; 145 L. T. 457, n., C. A.

Annotations :—**Consd.** Martin *v.* Perry & Daw (1931), 47 T. L. R. 377. **Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 140 L. T. 376; Bampton (Ronald) & Partners *v.* Garner & Sons, Ltd., [1937] 3 All E. R. 438.

1776c. —— **Onus of proof.**]—Pltf. put his business in the hands of defts., estate agents, to find a purchaser, commission being payable " on a sale being effected." Defts. found a purchaser R., who paid a deposit to defts. as agents for pltf., & entered into a binding contract with pltf. to purchase the business. For reasons, of which no evidence was given by defts., R. did not complete. Pltf. thereupon claimed the above deposit from defts. Defts. admitted the claim, but counterclaimed a larger sum as commission :—*Held :* defts., to be entitled to commission, were bound to introduce a purchaser ready, willing & able to complete; the onus of showing that R. was such a purchaser lay on them, & they had failed to discharge that onus, & were consequently not entitled to commission.—MARTIN *v.* PERRY & DAW, [1931] 2 K. B. 310; 100 L. J. K. B. 582; 145 L. T. 455; 47 T. L. R. 377; 75 Sol. Jo. 259.

Annotation :—**Refd.** Bampton (Ronald) & Partners *v.* Garner & Sons, Ltd., [1937] 3 All E. R. 438.

1780a. ——.]—Pltfs. D. & Co., who were partnership agents, claimed to recover from deft. the sum of £92 10s., being the balance of commission on the sale of deft.'s business

principal :—*Held :* the broker was not entitled to commission.—FOUCAR & Co. *v.* MUDALIAR (1923), I. L. R. 2 Ran. 45.—**IND.**

e iii. ——.]—M. placed a property in the hands of G., a commission agent, for sale or exchange. G. obtained a person who was willing to buy provided M. would accept as part payment of the price certain properties owned by him. There was a restrictive covenant upon one of the latter properties which the other party was unable to remove when called upon to do so by M. As a result thereof the contract was mutually rescinded :—*Held :* although the purchaser was willing, he was not able to pay the contract price, & therefore that G. was not entitled to recover commission from M.—GILFORD *v.* MCLEAN (1929), 29 S. R. N. S. W. 336; 46 N. S. W. W. N. 132.—**AUS.**

f i. ——.]—W., having agreed to sell shares to a co., entered into a contract to pay C. a commission for services in effecting the sale. The purchase price of the shares was to be paid by instalments & the commission was to be paid out of the respective instalments. The contract provided that if the payments were not made by the purchasers W. would be under no liability to pay the commission. The initial payment was made & the commission thereon paid to C. When the next payment fell due the purchasers defaulted & shortly after the co. was placed in liquidation. The liquidator offered the assets for sale & accepted the tender of W. & H. The successful tenderers received all the assets of the estate including the stock sold by C. There was no evidence that the assets had a cash value equivalent to the amount of the unpaid purchase price of the shares :—*Held :* W. had not received payment for the shares, & the commission was not earned.—CECIL *v.* WETTLAUFER, [1923] S. C. R. 69; 1 D. L. R. 352; *affg.* 20 O. W. N. 260.—**CAN.**

li. ——.]—PROGRESSIVE AGENCY *v.* BENNETT, [1928] N. Z. L. R. 100.—**N.Z.**

sn. *Third party repudiating contract.*]—Where a contract for sale was entered into between A. & B., & A. accepted B. as the purchaser, but B. did not pay any portion of the purchase-money, & subsequently repudiated the contract :—*Held :* the agent who negotiated the contract was entitled to commission on the sale.—BOND *v.* DAWSON, [1923] St. R. Qd. 63.—**AUS.**

sp. ——.]—Where a purchaser repudiated the agreement of sale, the vendor acquiescing :—*Held :* pltfs. as agents were not entitled to commission.—MOTOR FARMING & DEVELOPMENT CO. & DAVIDSON *v.* SMITH, [1923] 2 D. L. R. 1178; 1 W. W. R. 1469.—**CAN.**

sr. ——.]—Pltf. employed deft. to find a purchaser for certain land, & agreed to pay him commission if he succeeded. Deft. found persons willing to take an option, & he prepared an option agreement which was entered into by the parties. The purchase price was $3,000, & the cash payment was $300 which was to be forfeited if the purchasers failed to go further in the purchase. They paid this $300 to deft., who paid pltf. $150, retaining the balance, $150, as his commission on the whole purchase price. The purchasers refused to carry out the purchase :—*Held :* pltf. was entitled to the $150 retained by deft. as commission.—CARLSON *v.* THOMPSON, [1923] 3 W. W. R. 869.—**CAN.**

ss. ——.]—Pltf. entered into the following sale agreement with deft. :—" I hereby authorise you to negotiate a sale, & agree to pay you commission provided you sell or furnish me either directly or indirectly with the name of a party to whom I may sell. Commission to be due & payable when sale is made." Deft. found a purchaser, entered into an agreement of sale with him, & a deposit of $200 was paid by the purchaser to deft. The purchaser subsequently refused to complete the purchase, & the sale was never completed :—*Held :* the sale never having been completed, deft. was not entitled to any commission.—LEAMAN *v.* LAWTON (1923), 51 N. B. R. 110.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (c).

sb. *Agent himself paying deposit—To prevent sale of land until definite purchaser secured.*]—Where an agent for sale of land paid his principal $200, leading the principal to believe it was paid as a deposit on behalf of P., whereas it was really paid to hold the land until a definite purchaser could be secured :—*Held :* the agent was not entitled to any commission.—CRERER & PATTERSON *v.* BRAYBROOK, [1919] 3 W. W. R. 422.—**CAN.**

1780 ix. —— *Agreement to pay commission on work done.*]—Pltf., who was employed by deft. to sell a station property & to find a lease for another, found A., who was ready & willing to purchase the one & to lease the other, & with him deft. entered into a contract. Subsequently the contract having fallen through, pltf. was employed by deft. to raise money for him which it was hoped would enable the purchase & lease by A. to be carried through, & a written agreement was entered into between pltf. & deft., by which it was provided that in the event of the completion of the sale & lease deft. should pay to pltf. a certain sum " representing commission due to " pltf. " on these transactions." The sale & leasing were never completed. In an action to recover the sum mentioned in the agreement, the trial judge found that when the agreement was entered into pltf. had a right to recover a reasonable sum for commission in respect of the work he had then done, & that the contract did not deprive him of that right :—*Held :* pltf. was entitled to recover a sum made up of 1 per cent. of the purchase-money & 5 per cent. of a year's rent.—FRY *v.* BYRNE (1917), 23 C. L. R. 589.—**AUS.**

premises at T., effected by pltfs. Deft. had advertised the property for sale, & pltfs. had sent him a " particular form " which was in blank, except the words: " I hereby instruct you to sell my business premises as per particulars above, which I declare to be correct, & agree to pay you a commission 5 per cent. on the total price paid by the purchaser & appoint you agents," which, as pltfs. alleged, they had inserted on the form before sending it to deft. On July 8, 1928, deft. filled in the form & returned it to pltfs., but he subsequently denied that the above words were on the form when he signed it. A firm of G. & Co., estate agents, believing that they had secured a likely customer for the property, communicated with pltfs. & sent their representative, P., to them, & pltfs. introduced P. to deft. Deft. alleged that P. had been introduced to him as a purchaser, but pltfs. contended that he had been introduced to deft. as another agent who would be likely to find a purchaser. Ultimately P. found a purchaser in one T., who agreed to pay £4,000 for deft.'s property. In the " particulars form " deft. had stated: " Lowest price for goodwill, fixtures, & fittings, £4,500," but he eventually accepted £4,000. Meanwhile pltfs. & G. & Co. had agreed to share the commission. Deft. subsequently paid commission amounting to £107 10*s.* to G. & Co. As this amount was £92 10*s* short of £200, the 5 per cent. commission on £4,000, pltfs. on Nov. 2, 1928, issued a writ claiming the balance from deft. The completion of the purchase did not take place until Nov. 15, 1928, & deft. contended (*inter alia*) that he was not liable to pay commission until he had received the purchase price. The jury found (*a*) that the words in relation to the 5 per cent. commission were in the particulars form of July 8, 1928, when deft. signed it, (*b*) that the property was sold to T. through the instrumentality of pltfs., & (*c*) that G. & Co. were not acting as sub-agents for pltfs.:—*Held:* (1) pltfs. were not to be deprived of their commission by reason of the fact that the property was ultimately sold for £4,000 instead of the £4,500 asked by deft. in the particulars form; (2) the jury's findings that the words about 5 per cent. commissions were in the document when deft. signed it, the property was sold through the instrumentality of the pltfs., & that G. & Co. were acting as sub-agents for pltfs., could not be interfered with; & (3) although pltfs. had done all the work required to entitle them to their commission, they were not in a position to claim payment of their commission until the purchase was completed, & as the writ was issued thirteen days before the date of the actual completion of the purchase, it was issued too soon & the action failed.—PRICE, DAVIES & CO. *v.* SMITH (1929), 141 L. T. 490; 45 T. L. R. 542; 73 Sol. Jo. 401, C. A.

1782. *Add. Annotation:—Generally,* **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1783. *Add. Annotations:*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1784. *Add. Annotation:*—**Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

1785. *Add. Annotations:*—**Apprvd. & Apld.** French *v.* Leeston Shipping Co., [1922] 1 A. C. 451. **Refd.** Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476.

1786. *Add. Citation:*—23 Com. Cas. 121.
Add. Annotation:—**Consd.** Affréteurs Réunis Soc. Anon. *v.* Leopold Walford (London), [1919] A. C. 801.

1786a. —— **No hire earned—Special clause in charterparty.**]—A clause in a time charterparty provided that " a commission of 3 per cent. on the estimated gross amount of hire is due to L. on signing this charter ship lost or not lost." No hire was in fact earned under the charterparty:—*Held:* (1) the charterers, as trustees for the brokers, could enforce the clause against the shipowners; (2) a custom by which commission was payable only if hire was earned under the charterparty could not be set up by the shipowners as an answer to the brokers' claim, inasmuch as it was inconsistent with the terms of the clause.—AFFRÉTEURS RÉUNIS SOCIÉTÉ ANONYME *v.* LEOPOLD WALFORD (LONDON), LTD., [1919] A. C. 801; 88 L. J. K. B. 861; 121 L. T. 393; 35 T. L. R. 542; 14 Asp. M. L. C. 451; 24 Com. Cas. 268, H. L.; *affg.* S. C. *sub nom.* LEOPOLD WALFORD (LONDON) *v.* AFFRÉTEURS RÉUNIS SOCIÉTÉ ANONYME, [1918] 2 K. B. 498, C. A.

Annotations:—As to (1) **Consd.** French *v.* Leeston Shipping Co. (1921), 37 T. L. R. 453. **Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York [1933] A. C. 70.

1784 iv. ——.]—Deft. placed a property in the hands of pltf., a commission agent, for sale upon prescribed conditions. Pltf. found A., who was ready & willing to purchase upon all the prescribed conditions except two, to which at all material times he expressed his unwillingness to agree. Deft. thinking that A. had agreed to all the prescribed conditions, submitted to A.'s solr. a contract of sale containing all the prescribed conditions. A. refused to sign the contract unless the two prescribed conditions were struck out:—*Held:* pltf. was not entitled to any commission or other remuneration from deft.—TYNAN *v.* A'BECKETT, [1923] V. L. R. 412.—**AUS.**

1784 v. ——.]—In the absence of an exclusive listing, or of a special arrangement that he is to be remunerated if he does not find a purchaser, the agent is not entitled to anything if he does not find the purchaser.—GREENWOOD & GREENWOOD *v.* WELFORD (1922), 70 D. C. R. 107; [1922] 3 W. W. R. 388.—**CAN.**

sc. *Agent abandoning negotiations.*]—*Held:* not entitled to commission.—HALES *v.* THOMSON (Man.), [1927] 3 W. W. R. 156; *affd.*, [1928] 1 W. W. R. 127.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (d).

1787 ii. ——.]—A claim upon a *quantum meruit* for services as agent in respect of certain properties disallowed on the ground that it was not the understanding of the parties that payment should be made except as commission on a sale being effected; in suing upon a *quantum meruit*, in order to rely upon the acceptance by deft. of something pltf. has done he must have done it in circumstances which led deft. to know that if he accepted what had been done it was on the terms he must pay for it.—WEEDEN *v.* TURNER (1922), 68 D. L. R. 748; [1922] 3 W. W. R. 623.—**CAN.**

1789 i. *No right where express contract.*]—Where a contract of agency stipulates the circumstances in which the agent will be entitled to a commission, compensation by way of *quantum meruit* will not be allowed in circumstances where no commission can be claimed; so to allow it would be to declare a contract existing between the parties different from the one they have made themselves.—LAW & MACLEAN *v.* SAWYER MASSEY CO., [1918] 1 W. W. R. 727; 13 Alta. L. R. 126; 38 D. L. R. 333.—**CAN.**

1789 ii. —— *Claim based on usage.*]—Where an agent's claim was based on a usage:—*Held:* a special contract arose between the parties, & a *quantum meruit* was excluded.—SAMSON *v.* MCKAY, [1923] N. Z. L. R. 40.—**N.Z.**

1789 iii. ——.]—ELLIOTT *v.* WARBURTON, [1925] 4 D. L. R. 1070.—**CAN.**

1790. *Add. Annotations :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n. **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bental, Horsley & Baldry *v.* Vicary (1930), 47 L. T. R. 99; Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436.

1791a. ——.]—HOWARD HOULDER & PARTNERS, LTD. *v.* MANX ISLES S.S. Co., No. 1751a, *ante*.

1793. *Add. Annotations :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1812. *Add. Annotations :*—**Consd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All E. R. 1066; Trollope & Sons *v.* Caplan, [1936] 2 All E. R. 842.

1789 iv. ——.]—A writing was signed by deft. agreeing to pay pltf. $200 upon the "due completion of the exchange." An agreement for an exchange was obtained by pltf., but there was no "due completion of the exchange":—*Held :* as the special agreement made the commission payable upon an event which did not happen, no recovery as upon a *quantum meruit* could be had.—PRICE *v.* HABERMAN, [1931] 4 D. L. R. 251; O. R. 421.—**CAN.**

1793 ii. ——.]—Deft. employed pltf. as agent to sell land & equipment of cattle, horses, implements, etc., & furniture, at a price on a basis of $80 an acre with a certain cash payment. Pltf. found a purchaser who wanted the land alone, but could not make a cash payment. Deft. & the purchaser came to an agreement for sale on crop payments at $60 an acre, & signed an agreement prepared by pltf., which was crude & improvident but one from which the rights of the parties could be defined. Subsequently a more elaborate agreement was drawn by deft.'s solr., which because of certain onerous additions therein for the protection of deft. the purchaser refused to sign, & the transaction was broken off:—*Held :* there was in effect a sale of which pltf. was the *causa causans*, & he was entitled to payment for his services, on a *quantum meruit* basis.—BANNERMANN *v.* BRADLEY, [1919] 3 W. W. R. 952.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—F.

1802 ii. ——.]—FLETCHER *v.* CAMPBELL (1913), 29 O. L. R. 501.—**CAN.**

1802 iii. ——.]—Where the agent is to be paid out of the purchase money & the sale falls through, the only money the principal receives being the deposit, the agent cannot recover. The deposit is merely a guarantee of performance.—FLETCHER *v.* CAMPBELL (1913), 29 O. L. R. 501.—**CAN.**

w i. ——.]—Where an agreement as to commission is that the agent is to receive all over & above a certain figure, but nothing is said as to when the commission is to be paid, the agent is not entitled to his commission until the vendor has received in full the amount stipulated, & a promise made by the principal after the sale to pay the commission at once does not render him liable to make immediate payment.—CLAVELLE *v.* RUSSELL. [1918] 1 W. W. R. 900; 40 D. L. R. 61; 11 Sask. L. R. 111.—**CAN.**

w ii. —— *Agreement as to payment of commission obtained by agent by misrepresentation as to nature of document.*] —*Held :* the principal was not bound by such agreement.—TAYLOR *v.* SMITH, [1926] V. L. R. 100; 47 A. L. T. 122; *affd.*, [1926] V. L. R. 271.—**AUS.**

sd. *Commission payable out of purchase-money — Total purchase-money paid into bank—Disclaimer by seller of interest in sum agreed to be paid to agent.*] —An agent for the sale of goods was authorised to ask a price which would give him a certain amount for his own benefit. The buyer paid the total purchase price into a bank to be paid over to the seller, & the latter disclaimed any interest in the amount which he had agreed to let the agent have. The buyer then claimed that amount as his:—*Held :* the money belonged to the agent.—DEVALL *v.* GORMAN, CLANCEY & GRINDLEY, LTD., [1918] 3 W. W. R. 221; 42 D. L. R. 573.—**CAN.**

se. —— *No purchase-money paid.*] —Where a principal incurred no contractual obligation to pay commission except out of the purchase-money as received, & no part of the purchase-money had been received:—*Held :* the principal was not liable.—THORNDYKE-TRENHOLME REALTY CO. *v.* LYALL SHIPBUILDING CO., [1921] 3 W. W. R. 333; 59 D. L. R. 490.—**CAN.**

sf. —— *Purchase-money payable in instalments—Failure to keep up instalments.*] —An agreement between vendors of land & their agents stated that, whereas the agents had procured purchasers for certain parcels of the vendor's land, the vendor agrees to pay the agents a commission of a specified amount & interest in instalments, said instalments of principal & interest to be made out of, & to be a certain percentage of, the moneys to be collected annually from the purchasers. No provision was made as to what was to happen if the purchasers should default in their payments before the agents had received the full amount of their commission. This contingency occurred, owing to the fact that the purchasers, who abandoned their contract, were financially worthless:—*Held :* in the absence of a provision providing for said contingency, the agents were entitled to recover the full commission agreed upon.—WESTERN COLONIZERS, LTD. *v.* BURSAW, [1931] 2 D. L. R. 379; 25 S. L. R. 243; 1 W. W. R. 188.—**CAN.**

sg. —— —— ——.]—Deft. gave a written listing to pltf., a real-estate agent, for the sale of his farm at a certain price, the terms to be a certain cash payment & the balance on half-crop payments. The commission was stated to be "five per cent. on all sales." Pltf. being unable to find a purchaser willing to make the cash payment, then introduced a father & son to whom deft. agreed to sell the farm for a certain price to be paid by yearly payments of principal & interest "out of a half-share of the crop." Deft. then agreed in writing to pay the plaintiff a commission of a certain amount payable partly in cash within two weeks, "the balance by paying 25 per cent. of all money paid by said purchaser on principal as soon as the same are received." Deft. made the cash payment to pltf., & also other payments which amounted to 25 per cent. of all he ever received from the purchasers on principal. The purchasers being unable to meet their obligations, deft. took proceedings against them & the land reverted to him, nothing having been paid by the purchasers on the principal within the preceding three years. Pltf. then sued for the balance due him on the basis of a 5 per cent. commission:—*Held :* the meaning of the second agreement was that it was a condition precedent to deft.'s liability to pay any commission, over & above the cash payment, that instalments of capital should first be paid by the purchasers.—LEVENICK *v.* TURNBULL, [1932] 1 W. W. R. 74; 1 D. L. R. 620; 40 Man. L. R. 134.—**CAN.**

sh. ——.]—PRECISION MACH. & FDRY., LTD. *v.* INDUSTRIAL SECURITIES, LTD. (Alta.), [1929] 4 D. L. R. 241.—**CAN.**

sj. *Commission payable out of profit on resale—Resale at large nominal profit—No part of purchase-money paid.*]—B. & C. through pltf. purchased certain land, agreeing to pay pltf. a commission of $1 per acre, which was to be paid, however, only out of a profit on a resale. B. & C. assumed to make a sale at a purchase price showing a large nominal profit, which purchase price was to be paid by crop payments. The purchasers had three crop failures, paid nothing on account of principal, interest or taxes, & finally abandoned the agreement of purchase & went out of possession of the land:—*Held :* the sale was a resale at a profit within the contemplation of the parties, & pltf. was entitled to commission.—HANTON *v.* ROYAL TRUST CO. [1923] 3 D. L. R. 809; 2 W. W. R. 1046.—**CAN.**

sk. *Commission payable out of specified instalment—Instalment not paid.*]—Where it was an express stipulation of a contract as to commission that the balance of commission due was to be paid out of a specified instalment of the purchase price payable on a specified date:—*Held :* the instalment not having been paid by the purchaser, who had abandoned the land, no commission was payable.—BILODEAU *v.* MCLEAN, [1924] 3 D. L. R. 410; 2 W. W. R. 631; 34 Man. L. R. 239.—**CAN.**

sm. *Sale of land on crop payment plan — Commission payable out of vendor's share of crop—Provision for cesser of right to commission on termination of agreement.*]—LESLIE *v.* GRAHAM, [1929] 3 D. L. R. 712; W. W. R. 65; 23 S. L. R. 605.—**CAN.**

sn. *Agent working under commission & drawing account arrangement.*]—*Semble :* unless an agreement between the parties provides otherwise, where an agent is working on a commission basis & his employer allows him a drawing account against his commissions the employer cannot, after the relationship is terminated, collect from the agent anything beyond the commissions he has earned.—ROBOTHAM *v.* DOMINION MOTOR CO. & KICKLEY. [1931] 1 W. W. R. 373.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—G.

1808 viii. —— *Option to purchase.*]—A. held an option for the sale of land, his remuneration to be the excess of the price obtained over $29,000. After the option had lapsed he introduced to the owner a purchaser of the land at $35,000:—*Held :* A. was not entitled to the excess over $29,000, but could only recover *quantum meruit*.—ACKLES *v.* BEATTY (1919), 59 S. C. R. 640; 52 D. L. R. 691.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—K.

1i. —— ——.]—An agent has no right to remuneration unless he succeeds in obtaining a tenant or purchaser, as the case may be, on the appointed terms, for the property put in his hands for the purpose of

1813. *Add. Annotation :*—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1813a. —— —— **Contract of sole agency—Property to be left in agent's hands for specified period.**]—CHAMBERLAIN & WILLOWS *v.* ROSE (1924), cited 47 T. L. R. at p. 101, D. C.

Annotation :—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1813b. —— —— ——.]—Deft., the owner of property, appointed pltfs., who were estate agents, his "sole agents for the sale of the property" for a stipulated period, it being agreed that, if pltfs. introduced a purchaser, they should receive a commission of 5 per cent. on the purchase price. During the period of the agency deft. negotiated personally & quite apart from pltfs. with a purchaser who had never had any communication with pltfs. & whom pltfs. did not know. The result of the negotiations was that the property was sold to this purchaser. Pltfs. thereupon claimed from deft. damages for breach of contract on the ground that, in selling the property direct to the purchaser, he had acted in breach of his contract with them & had thereby deprived them of their commission :—*Held :* (1) pltfs. were not entitled to damages, as the contract contained no express prohibition against a sale by deft. himself, & the implication of such a prohibition was not necessary to give business efficacy to the transaction ; (2) on the terms of the contract, pltfs. could not recover commission at the agreed rate on the purchase price received by deft., as they had failed to introduce the purchaser, nor could they recover on a *quantum meruit*.—BENTALL, HORSLEY & BALDRY *v.* VICARY, [1931] 1 K. B. 253 ; 100 L. J. K. B. 201 ; 144 L. T. 365 ; 47 T. L. R. 99 ; 74 Sol. Jo. 862.

Annotations :—*As to* (1) **Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. *Generally*, **Refd.** Lamb (W. T.) & Sons *v.* Goring Brick Co. (1931), 48 T. L. R. 160.

1820. *Add. Citation :*—*affd.* C. A. "*Times*," Jan. 16, 1890.

Add. Annotation :—**Consd.** Cramb *v.* Goodwin (1919), 35 T. L. R. 314.

1829. *Add. Annotation :*—*As to* (2) **Follid.** Cramb *v.* Goodwin (1919), 35 T. L. R. 314.

1829a. —— ——.]—Deft. engaged pltf. as a commercial traveller on a salary & commission on all business obtained by pltf., including repeat orders from all firms in the

being sold or let. The contract is revocable at the will of the principal at any time before the agent has actually procured a person ready to take or to purchase on the terms arranged.—SMITH (JUDGE) *v.* RENFREY, [1920] 22 W. A. L. R. 61.—**AUS.**

l ii. —— ——.]—Where a real estate agent receives an exclusive listing of land it may be revoked by the sale of the property by the owner, in which case the real estate agent will only be entitled to recover on a *quantum meruit*.—GREENWOOD & GREENWOOD *v.* WELFORD (1922), 70 D. L. R. 107 ; [1922] 3 W. W. R. 388.—**CAN.**

m i. —— *Principal's implied right to sell himself.*]—Where the owner of property puts it in the hands of an agent for sale upon commission, there is, in default of stipulations to the contrary in the contract of agency, a right in the owner to deal with his property, without liability to the agent, so long as the agent's mandate is not performed.—DONOWA *v.* WEBSTER (1929), 29 S. R. N. S. W. 318 ; 46 N. S. W. W. N. 124. —**AUS.**

m ii. —— ——.]—An agency agreement for the sale of a farm contained the following clause : "Your agency to hold until one month after being notified in writing by me that it shall cease, but for not less than a year from date. If a sale is made through any person during your acting as such agent, you are to be paid the aforesaid commission." Two years elapsed but no purchaser was found. Without giving any notice to terminate the agreement, deft. then sold the farm, without the intervention of any other agent or person :—*Held :* as the sale was not made "through any person" pltf. was not entitled to commission.—BARKLEY *v.* BUSH, [1929] 3 D. L. R. 360 ; 63 O. L. R. 678.—**CAN.**

n i. ——.]—Pltf., by writing signed by deft. on Sept. 16, 1919, was authorised "from this date until withdrawn by me in writing," to offer for sale land for $7,500, & deft. thereby agreed to pay pltf. a commission "on this or the selling price, should you effect a sale." Later on the same day, deft. himself sold the property to M. for $7,000. On Sept. 18, pltf. obtained a written offer under seal from B. to buy the property for $7,500 cash, & the offer was accompanied by a cheque for $1,000 ; the offer & cheque reached deft. on Sept. 19. No notice in writing of the sale to M. was given to pltf. until Sept. 20, when deft. wrote advising pltf. of that sale & returning the B. offer & cheque :—*Held :* pltf. was entitled to recover the agreed payment for his services.—GORMAN *v.* YOUNG (1921), 64 D. L. R. 51 ; 49 O. L. R. 162.—**CAN.**

sp. *Sub-agent—Appointed by person expecting appointment as agent.*]—A co. which expected to be appointed agents for the Govt. of Western Australia, agreed to employ W. as sub-agent. The co. failed to secure the appointment & terminated W.'s employment : —*Held :* the co. warranted that they would be appointed govt. agents, & they were liable to W.—OCKERBY & CO., LTD. *v.* WATSON (1918), 25 C. L. R. 431.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—L. (a).

1818 i. *Insurance agent—Commission on premiums paid after termination of agency.*]—In the absence of a definite agreement to that effect, an agent of an insurance co., who has secured policy-holders for the co. & whose duties as agent do not cease with the first introduction of the customer, has no right to commission on subsequent premiums paid in by such policy-holders, after he ceased to be agent.—EMPIRE OF INDIA LIFE ASSURANCE CO., BOMBAY *v.* NANU AYYAR (1920), I. L. R. 44 Mad. 170.—**IND.**

1818 ii. —— ——.]—The question whether an insurance agent, who is compensated by commissions on renewal premiums, is entitled to commissions on such premiums paid after the termination of his agency, depends to a great extent on the language of his contract with his employer. If such contract contains no provisions on the subject & the agency is terminated without his fault, the agent is entitled to commissions on renewal premiums paid thereafter ; if, however, the agent voluntarily resigns his agency, or is discharged for good acuse, the rule seems to be otherwise.—BERRY *v.* CONFEDERATION LIFE ASSOCN. (Can.), [1927] 3 D. L. R. 945.—**CAN.**

1818 iii. —— ——.]—The question whether an insurance agent is entitled to commissions on renewal premiums paid after the termination of his employment is governed by the terms of the contract between him & his co. If the contract between the agent & the insurance co. contains no provision on the subject, the agent is entitled, in case the agency is terminated by the co. without fault on his part, to the commissions on renewal premiums which the contract secures to him, as part of his compensation, although such premiums may be paid after the termination of the agency.—FINGARD *v.* MERCHANTS CASUALTY INSCE. CO., [1928] 2 W. W. R. 609.—**CAN.**

u i. —— *Commission on sales made before termination of agency—Deliveries & payments made after termination.*]—Under an agreement pltf. was appointed defts.' sole & exclusive salesman for the sale of coal, at a commission "on the gross amount of all sales made by" defts. "under this agreement" :—*Held :* pltf. was entitled to commission upon sales contracted before termination of the agreement, but in respect of which deliveries of coal were made & paid for after it.—WILSON *v.* ATLAS COAL CO., LTD., [1923] 2 W. W. R. 890.—**CAN.**

sq. *Agent to obtain permit to sell beer in certain area—Entitled to commission on subsequent sales in area.*]—JOHNSON *v.* MEDICINE HAT BREWING CO., LTD., [1927] 2 D. L. R. 231 ; [1927] 1 W. W. R. 486 ; 22 Alta. L. R. 476.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—L. (c).

sr. *Agent leaving employment voluntarily.*]—Pltf. was employed by a collection agency in soliciting business on a commission basis ; the commission which it was agreed he was to receive being 50 per cent. of that earned by his employers on any business which he introduced. No period of employment was mentioned when he was engaged ; the evidence of the manager of the employers was that pltf. was to be paid said commission "just while he was in our employment." The employers furnished the office accommodation & paid the staff :—*Held :* pltf. was not entitled to the commission on moneys coming in after he had left deft.'s employment.—SWARTZ *v.* SHRAGGE, [1932] 1 W. W. R. 797 ; 2 D. L. R. 724 ; 40 Man. L. R. 242.—**CAN.**

ground allotted to pltf., it being stipulated that pltf. was to have the commission on all accounts that he opened, including all repeat orders, whether they were actually handed to pltf. or posted direct to deft. :—*Held :* the intention of the parties was that commission should be paid only on orders obtained during the engagement, & pltf. was not entitled to commission on repeat orders received after the termination of his engagements.—CRAMB *v.* GOODWIN (1919), 35 T. L. R. 477 ; 63 Sol. Jo. 496, C. A.

1832. *Add. Annotation :*—**Folld.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

1833. *Add. Citations :*—*Affd.*, [1918] A. C. 239 ; 87 L. J. K. B. 416 ; 118 L. T. 126 ; 34 T. L. R. 206 ; 62 Sol. Jo. 290, H. L.

Add. Annotations :—**Refd.** Ertel Bieber *v.* Rio Tinto Co., [1918] A. C. 260 ; Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331 ; Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304 ; Rodriguez *v.* Speyer, [1919] A. C. 59.

1834. *Add. Annotation :*—**Distd.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

1835. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

PART VIII. SECT. 3, SUB-SECT. 1.—M. (a).

st. *Land agent—Land Agents Act*, 1912.]—A person who, not being licensed as a land agent, obtains an appointment from a vendor to act as such is guilty of an offence under s. 14 of the above Act, & cannot maintain an action against his principal for commission ; & the defect is not cured either by the expiry of the period of limitation or by the fact that the agent has obtained a licence before performing the services in respect of which the commission is claimed.— NELSON *v.* CROSBY, [1919] N. Z. L. R. 369.—**N.Z.**

sv. —— ——.]—Land Agents Act, 1912, s. 13 (*a*), ought to be construed as meaning that the land agent must possess a licence at the time the work is done, & the fact that after the work is done the land agent fails to take out a further licence does not destroy a right to bring an action for commission, where the cause of action arose at the time the agent was in possession of a licence.—JOHNSTONE *v.* GOODSON, [1920] N. Z. L. R. 883.—**N.Z.**

x i. —— *Real Estate Agents Licensing Act.*]—Pltf., a store-keeper, brought about the sale of deft.'s land to another person. In an action for commission : —*Held :* s. 21 of the above Act did not apply to individual transactions.— GOODALL *v.* COUSINS, [1923] 3 D. L. R. 718 : 32 B. C. R. 440.—**CAN.**

x ii. —— —— *Licence obtained before completion of sale.*]—Agent entitled to commission.—CUDWORTH *v.* EDDY, [1927] 1 W. W. R. 583 ; 37 B. C. R. 407.—**CAN.**

x iii. —— —— *Unlicenced employee.*] —Pltf., a real estate agent, sued for a commission on a sale, which had resulted from the introduction of the buyer to the seller by pltf.'s employee, who was found to be the efficient cause of the sale, although deft. completed it through agent. Pltf. had been duly licenced under above Act, at & from the time of the listing ; his employee, however, was not licenced under above Act when he introduced the buyer & conducted the negotiations although he obtained his licence before the sale was made :—*Held :* under above Act his employee's lack of a licence while he was doing the work rendered the work illegal & prevented pltf. from recovering the commission.— ANDERSON *v.* LAKE (B. C.), [1928] 4 D. L. R. 220 ; [1928] 3 W. W. R. 136.—**CAN.**

sa. *Agent not registered—Security Frauds Prevention Act.*]—In an action to recover compensation for obtaining a buyer for deft.'s farm :—*Held :* since all that pltf. did in the matter within Winnipeg was to secure from deft. the information & authority which enabled him to assure the persons who afterwards bought the farm that a purchase was within their reach, his claim was not barred by the amendment of 1930 to Security Frauds Prevention Act, 1929, although he was registered as a real-estate agent thereunder.—KRUEGER *v.* NATIONAL TRUST CO., LTD., [1931] 1 W. W. R. 725.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (b).

sb. *Member of Parliament effecting sale—Sale to Government.*]—Pltfs., land agents, were employed by deft. to bring about a sale of deft.'s property to the Govt. of Victoria. Services were to be rendered by D., a member of the Parliament of Victoria, who was employed by pltfs. as their representative on the terms that he should receive a share of their commission on the sale. D.'s services were an effective cause of the sale. In an action by pltfs. against deft. to recover commission on the sale :— *Held :* the transaction was contrary to public policy, & pltfs.' action failed.—HORNE *v.* BARBER (1920), 27 C. L. R. 493.—**AUS.**

sc. —— *Consent of Government necessary.*]—A member of the Dominion Parliament brought about a sale, it being his duty under agreement with the vendor to use his influence with the minister in charge to secure the Govt.'s consent which was necessary to complete the sale :—*Held :* he was not entitled to a commission for his services, the agreement being void on the ground of public policy.— CLEMENTS *v.* COUGHLAN (1924), 34 B. C. R. 401.—**CAN.**

sd. *Sale under Discharged Soldiers Settlement Act*, 1919 (*No.* 3039)—*Member of advisory committee agent of vendor.*]—A land agent, who was also a member of an advisory committee, constituted under s. 35 of the above Act, to the Lands Purchase & Management Board, entered into a contract with the owner for effecting the sale to the board of certain land, as to which the committee had certain powers & duties to advise the board. The contract did not refer to the use by the agent of any influence as a member of the committee in effectuating the sale ; the agent took no part in the discussion by the committee of the report of a sub-committee as to the expediency of the purchase by the board of such land, & acted throughout *bonâ fide* & without concealment of the fact of his agency, & he was not at any time a member of any valuation sub-committee :—*Held :* the contract was void as being against public policy, & the agent's claim for commission failed.—WOOD *v.* LITTLE, [1922] V. L. R. 11.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (c).

se. *Agent returning deposit to purchaser.*]—Resps. were employed as agents to sell property belonging to applt. They found a purchaser but applt. failed to complete the sale on the day fixed, & resps., on the application of purchaser, paid him back the deposit without communicating with applt. :— *Held :* resps. had been guilty of a wilful breach of the duty which, under Land Agents Act, 1912, s. 8, they owed to applt., & such breach deprived them of their right to recover any commission at all.—BUCHANAN *v.* NEALE, [1920] N. Z. L. R. 889.— **N.Z.**

sf. *Failure to make binding contract.*]— Where pltfs., acting as brokers, failed to make a contract binding on both parties :—*Held :* they were not entitled to commission.—PATERSON *v.* MCCALLUM, [1921] N. Z. L. R. 869.— **N.Z.**

sh. *Failure to subdivide land as agreed.*]—In an action for a share of profits, where agent has failed to subdivide the land as agreed, the onus is on him to show that deft. relieved him of this duty.—CRUIKSHANK & BRIEN *v.* IRVING (1913), 6 D. L. R. 237.— **CAN.**

1841 iva. —— ——.]—MACK *v.* MCLEOD, [1925] 2 D. L. R. 1201.— **CAN.**

1841 vi. —— *Secret agreement to pool commissions.*]—On a proposed exchange of properties, if the agents, unknown to either of the principals, agree to pool their respective commissions & to divide equally, so that under such pooling agreement one agent receives more than the commission payable by his principal, that agent cannot recover any commission from his principal, as such an agreement gave him an interest adverse to the interest of his principal.—DALY *v.* KELLIHER, [1921] 2 W. W. R. 192.— **CAN.**

1841 vii. —— *Agent acting for both parties—Rules of Real Estate Exchange.*] —Where the owner of property listed with a real estate agent for sale exchanged the property with the assistance of the agent for other property listed, to the knowledge of the owner, with the agent for exchange, but had not agreed to pay him a commission on the exchange & had not been informed by him that he still intended to act as her agent & to charge her a commission :—*Held :* (1) she was not liable for commission ; (2) a rule of a Real Estate Exchange to which the agent belonged, that an agent who acted for both parties in an exchange could collect from each one-half the usual commission on a sale, did not legally entitle the agent to recover such half from her.—HACKNEY *v.* LYNE, [1925] 4 D. L. R. 861 ; [1925] 3 W. W. R. 614.—**CAN.**

1841 viii. —— ——.]—If a vendor with full knowledge of the facts agrees to pay commission to a purchaser's agent, he will be bound by his contract, but the *onus* is on the agent to show clearly that the vendor knew that he was acting in a dual capacity & assented to that state of affairs.— MOILER *v.* FORGE (1927), 27 S. R. N. S. W. 69 ; 44 N. S. W. W. N. 42.— **AUS.**

1848a. ——.]—Pltf. was employed by deft., a music seller, to find a purchaser of the lease of deft.'s business premises, which were held under a covenant against carrying on any other business. Several tailors expressed to deft. their willingness to buy the lease for £2,500, but deft., believing that the landlords would not consent to the carrying on of a tailoring business, did not approach the landlords. Pltf., however, having found a tailoring co. who wanted to purchase the lease, received an assurance from the landlords that they would consent to a tailoring business, & he, by concealing this fact from deft., induced him to agree to sell the lease to the tailoring co. for £2,250 in ignorance of the fact that the proposed purchasers carried on a tailoring business. In an action for commission for finding a purchaser:—*Held:* as pltf. had taken advantage of the false position to persuade deft. to agree to take a lower price than deft. could have got elsewhere, the action failed.—HEATH *v.* PARKINSON (1926), 136 L. T. 128; 42 T. L. R. 693; 70 Sol. Jo. 798.

1852. *Add. Annotation:*—**Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19.

1852a. ——.]—Pltfs., a firm of mining engineers, were employed by defts. to negotiate the purchase of mining properties. Defts. were willing to give £9,000 for the properties, & agreed with pltfs. that if they made a bargain for less than £9,000, the difference between the £9,000 & the lesser sum could be taken by pltfs. as remuneration. Before the purchase was effected, pltfs. had arranged with the vendors to take commission from them on the sale:—*Held:* pltfs. had committed a breach of duty as agents for defts. & were not entitled to any remuneration from defts. —RHODES *v.* MACALISTER (1923), 29 Com. Cas. 19, C. A.

1853a. Agent acting in good faith.]—KEPPEL *v.* WHEELER, No. 1263a, *ante*.

1853b. No damage suffered by principal.]—HARRODS, LTD. *v.* LEMON, No. 1501c, *ante*.

1853c. Waiver of breach.]—HARRODS, LTD. *v.* LEMON, No. 1501c, *ante*.

1862. *Add. Annotations:*—**Apld.** Adams *v.* Morgan, [1933] 2 K. B. 234. **Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

1872a. Promise to indemnify vendor of business to company—Vendor retained as agent for limited period—Assessment of vendor to super-tax on profits made within period.]—Pltf., who was the owner of a stationery business, sold it in Aug. 1919, to defts., a limited co. One of the terms on which the business was sold was that as from Dec. 31, 1918, until Sept. 15, 1919, pltf. should be deemed to have been carrying on the business on account of & for the benefit of the purchasers, & that pltf. should account & be entitled to be indemnified accordingly. For his services until the date of completion pltf. was to be paid a fixed sum monthly. Pltf. was assessed for super-tax on the profits of the business from Apr. 6, 1919, to Aug. 22, 1919. He paid the amount demanded & claimed to recover an indemnity from defts.:—*Held:* pltf., as agent of defts., was entitled to be indemnified by them in respect of the amount of super-tax paid by him, although defts. as a limited co. would not be liable to pay super-tax.—ADAMS *v.* MORGAN & CO., [1924] 1 K. B. 751; 93 L. J. K. B. 382; 130 L. T. 792; 40 T. L. R. 70; 68 Sol. Jo. 348, C. A.

1850 iiia. —— —— *Fraudulent representations inducing listing.*]—Agent not entitled to commission.—SLETTO *v.* ADAMS, [1927] 1 D. L. R. 547; [1927] 1 W. W. R. 12; 22 Alta. L. R. 333.—**CAN.**

1850 vii. —— *Agent to sell acting for other principals—Breach of contract.*]—A contract, entered into in Feb. 1914, between a firm & a commission agent, whereby the latter was appointed agent for the sale of certain cotton goods dealt in by the firm, contained a clause prohibiting the agent from selling such goods supplied by others than his principals. From July 10, 1916, onwards the agent regularly sold goods of that class on behalf of another firm, & he also bought & sold such goods on his own account:—*Held:* the agent was not entitled to an accounting for the period subsequent to July 10, 1916, as he was then in material breach of his contract, but he was entitled to an accounting for the period prior to that date during which he had duly obtempered the contract.—GRAHAM & CO. *v.* UNITED TURKEY RED., ETC. CO., LTD., [1922] S. C. 533; 59 Sc. L. R. 420.—**SCOT.**

1850 viii. —— *Inducing principal to sell at undervalue.*]—Where an owner of land requests an agent to find a purchaser at a price not less than a stated amount the agency is a general one & the agent stands in a fiduciary relation to his principal; & if he endeavours to get the latter to sell at a price less than that which he knows the purchaser found by him is willing to pay he is acting in bad faith &, therefore, disentitles himself to a commission even though the sale is finally made at the full price which said purchaser was willing to pay.—LAFRENIERE *v.* BOUFFARD (Sask.), [1929] 4 D. L. R. 183; 2 W. W. R. 602.—**CAN.**

1852 vii. ——.]—Where an agent acts improperly & unfaithfully in the performance of his duties towards his principal, he forfeits any remuneration or commission to which he would otherwise have been entitled if his improper or unfaithful conduct is connected with the duty he had to perform. The mere fact of an agent receiving & retaining a secret profit or commission arising out of & in connection with the performance of his duty constitutes unfaithfulness & dishonesty, & disentitles him to any remuneration or commission.—LEVIN *v.* LEVY, [1917] T. P. D. 702.—**S. AF.**

1852 viii. ——.]—Where an agent effects a sale by way of exchange, he cannot recover the commission his principal has agreed to pay if he has failed to disclose to his principal that he is also acting as agent for & is to be remunerated by the other party in the same transaction, notwithstanding that the non-disclosure was without fraudulent intent.—BARNETT (C. M.) & SON *v.* BOYLE BROS., [1932] N. Z. L. R. 1087.—**N.Z.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (d).

sj. *Agent selling at less than listed price.*]—An agent for the sale of goods is not entitled to a commission for introducing a purchaser where the goods are sold at a reduction from the listed price greater than the commission, & the agency contract provides that if any goods are sold for less than the current price list by the agent, the acceptance of such sale shall not entitle the agent to the commissions set forth, but such reduction in price shall be deducted from the agent's commission.—LAW & MACLEAN *v.* SAWYER MASSEY CO., [1918] 1 W. W. R. 727; 13 Alta. L. R. 126; 38 D. L. R. 333.—**CAN.**

sk. *No commission on land not sold.*]—Deft.'s land having been listed with pltf., an estate agent, the latter claimed commission on the proceeds of a subsequent sale, but failed to show that he brought about a sale of deft.'s land, or that deft. made a sale thereof to a person introduced to him by pltf.:—*Held:* pltf. had not shown the performance of any services which entitled him to commission.—DUNN *v.* GRAF (1922), 66 D. L. R. 713.—**CAN.**

sl. *No commission on goods "taken back."*]—*Held:* goods "taken back" included goods "repossessed" on default.—COWIE *v.* SAWYER-MASSEY CO. (1916), 34 W. L. R. 274; 10 W. W. R. 254.—**CAN.**

sm. *Sale of homestead—Necessity for wife's consent.*]—SEMPLE *v.* SHARP, [1927] 1 W. W. R. 965; 21 Sask. L. R. 435.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—C. (a).

1873 i. *In general.*]—Where an act is innocently done under the express direction of another, which occasions an injury to the rights of a third party, the principal must indemnify the innocent agent.—VICTORIA SCHOOL TRUSTEES *v.* MUIRHEAD & MANN (1895), 4 B. C. R. 148.—**CAN.**

bl. —— *Loss through delay in delivery.*]—E. & Co., commission

1875. *Add. Annotation :*—**Consd.** Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321.

1878. *Add. Annotation :*—*As to* (2) **Refd.** Weld-Blundell *v.* Stephens, [1919] 1. K. B. 520.

1886. *Add. Annotations :*—**Refd.** Adams *v.* Morgan, [1923] 2 K. B. 234; Britannia Hygienic Laundry Co. *v.* Thornycroft (1925), 94 L. J. K. B. 858.

1908. *Add. Annotation :*—**Consd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455.

1914. *Add. Annotation :*—*Generally,* **Refd.** The Zigurds (No. 4) (1932), 48 T. L. R. 563.

1941. *Add. Annotation :*—**Refd.** Christoforides *v.* Terry, [1924] A. C. 566.

1944. *Add. Annotations :*—**Distd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592. **Consd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588. **Distd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476.

1945. *Add. Annotations :*—**Apld.** French *v.* Leeston Shipping Co. (1921), 37 T. L. R. 453. **Distd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592.

1946. *Add. Annotations :*—*As to* (2) **Consd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588. **Refd.** Turpin *v.* Victoria Palace, [1918] 2 K. B. 539. *Generally,* **Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592; *Re* Rubel Bronze & Metal Co. & Vos, [1918] 1 K. B. 315; *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

1947. *Add. Annotation :*—**Refd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1947a. ——.]—By a contract in writing deft. appointed pltfs. to be sole agents for the United Kingdom, with certain exceptions, for a period of three years. Pltfs. were to be paid a commission at the rate of 22 per cent. on all goods sold throughout the United Kingdom, with the exceptions above referred to, whether the goods were sold through the instrumentality of pltfs. or not, & deft. agreed with pltfs. that he would keep them fully supplied with samples, & would execute all orders with due diligence, & would not, directly or indirectly, canvass orders or in any manner approach or solicit any of the customers, or potential customers, of pltfs. in respect of the sales of his goods. Before the expiry of the three years deft. broke these undertakings & then wrote to pltfs. cancelling the agreement :—*Held :* as it was a necessary implication from the terms of the contract that pltfs. would not decline reasonably to introduce customers, the agreement was not void for lack of mutuality, & although the mere appointment of an agent on commission for a term of years does not carry with it the necessary implication that the business shall be carried on for that term, yet, as deft. had undertaken certain obligations to facilitate the earning of the commission & had broken his undertakings, he could not, by a purported cancellation of the contract, limit his liability for damages to the period prior to

---

agents, entered into a contract with defts. under which they undertook to purchase & ship goods " on account & risk " of defts., & E. & Co. shipped the goods under a c.i.f. contract on board a German ship. Owing to the outbreak of war during transit the goods did not arrive at their destination until long after due time. On defts.' refusal to accept the goods they were sold :—*Held :* E. & Co. were entitled to recover damages for breach of contract.—MEREDITH *v.* ABDULLA (SAHIB) (1918), I. L. R. 41 Mad. 1060.—**IND.**

sn. *Broker buying wheat to meet deliveries.*]—Brokers were instructed by their principal to sell wheat for future delivery :—*Held :* when the principal could not deliver the wheat he instructed the brokers to buy the wheat necessary to cover his contracts, which they did, & he must repay to them the amount so expended.—CANADIAN GRAIN CO., LTD. *v.* NICHOL, [1920] 3 W. W. R. 127; 53 D. L. R. 375; 13 Sask. L. R. 30.—**CAN.**

so. *Dealings in grain futures—Broker with knowledge of illegality of transactions—Broker not entitled to recover balance due from customer.*]—TOPPER GRAIN CO. *v.* MANTZ (Alta.), [1926] 2 D. L. R. 712; [1926] 2 W. W. R. 140. —**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—C. (b).

1905 ii. —— —— ——.]—JONES *v.* BURGESS (1914), 43 N. B. R. 126.—**CAN.**

sp. *Forwarding agent acting in accordance with ordinary duty.*]—Defts., forwarding agents in Durban, who acted as the agents of pltf. in clearing & forwarding goods consigned to him from India, on Oct. 21, received a letter from a firm in India informing them that they had shipped a consignment of goods on behalf of pltf. The goods arrived on Oct. 20, & on Oct. 22 defts. cleared & trucked the goods to Johannesburg & sent pltf. a consignment note which he received on Oct. 26. Immediately on receipt of the note pltf. telegraphed to defts. instructing them to keep the goods for sale in Durban. Defts. on the instructions of pltf. had the trucks stopped & returned to Durban. Defts. in order to obtain delivery of the goods paid the railway charges & upon pltf.'s refusal to reimburse them declined to hand the goods over to pltf. :—*Held :* defts. in railing the goods without awaiting special instructions had acted in accordance with their ordinary duty as forwarding agents, & in the absence of special instructions to the contrary defts. were justified in so railing the goods.—PATEL *v.* KEELER & Co., [1923] App. D. 506.—**S. AF.**

PART VIII. SECT. 3, SUB-SECT. 2.—C. (e).

sq. *Contract for delivery of grain—Actual delivery necessary—Duty of broker to prove contract not illegal.*]—HANSEN *v.* LECHTZIER, [1925] 4 D. L. R. 1008.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—D. (a).

sr. *Agent assuming liability to third party.*]—Where a superintendent of road construction for a municipality ordered supplies on its behalf, & which were charged to it:—*Held :* as he was not legally liable on the accounts he had no cause of action against the municipality in respect thereof whether for payment or indemnity, although he had paid one of the accounts & judgment had been obtained against him for another.—DICKINSON *v.* RURAL MUNICIPALITY OF STONEHAGUE, [1920] 1 W. W. R. 235; 50 D. L. R. 383; 13 Sask. L. R. 1.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 3.—A. (a).

1946 i. *Principal bound to enable agent to earn commission.*]—By agreement dated Aug. 17, 1929, R. appointed C. his sole agent to sell a certain publication in Australia on a commission basis. The agreement provided, *inter alia,* that the agency should commence on the date C. & R. arrived in Australia, & that it could be determined by either R. or C. on the happening of certain specified events. None of those events in fact happened. The parties came to Australia & the business of the agency was embarked upon. In Jan. 1930, R. went into partnership with S. in the business of booksellers. On Mar. 15, 1930, R. gave C. six months' notice of the termination of the agency agreement of Aug. 17, 1929. On Aug. 1, 1930, R. & S. entered into an agreement with a co. for the sale to it of the goodwill & assets of their business including the agency rights. After Aug. 1, 1930, R. did not accept any new orders from C. under the agreement of Aug. 17, 1929. C. did not know of the agreement of Aug. 1, 1930, until after Sept. 15, 1930, up to which date he regarded himself as still employed by R. He took orders for the co. & received commission from it. From Sept. 15, 1930, he was refused further employment by R. He thereupon sought to recover damages from R. for his wrongful determination of the agreement :—*Held :* a term could not be implied into the agency agreement that R. could terminate the agency at any time by ceasing to carry on his business, & C. was entitled to recover from R. such damages as he sustained by reason of the wrongful determination of the agreement.—COULTER *v.* READHEAD (1931), 31 S. R. N. S. W. 432; 48 N. S. W. W. N. 161.—**AUS.**

such purported cancellation.—WARREN & CO. *v.* AGDESHMAN (1922), 38 T. L. R. 588.

1947b. ——.]—RAYMOND *v.* WOOTEN, No. 1705a, *ante.*

1947c. ——.]—TROLLOPE (GEO.) & SONS *v.* MARTYN BROS., No. 1755a, *ante.*

1948. *Add. Annotation :*—**Apld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

1950. *Add. Annotation :—As to* (2) **Refd.** Payzu *v.* Saunders, [1919] 2 K. B. 581.

1951a. ——.]—By an agreement made between pltf. & a limited co., which carried on business in Lancashire, in consideration of pltf. subscribing for £1,000 in shares of the co., & of introducing to the co. certain new classes of goods to be manufactured by them, the co. appointed him their sole agent in the United Kingdom, India, & the Colonies for the sale of those goods for the term of seven years, if the agent should so long live, & thereafter until the agreement should be determined by six months' notice on either side. The agent was to use his best endeavours to obtain orders for the co.'s goods at prices to be from time to time agreed upon, & all orders obtained by the agent were at once to be communicated to the co., who upon approving or rejecting the same were to inform the agent thereof & who were to carry out such orders as were accepted without undue delay ; & the agent was not definitely to accept orders for the co., but only subject to confirmation & acceptance by the co., such confirmation or acceptance not to be unreasonably withheld. The co. were to pay the agent a commission upon the invoiced prices of all goods delivered by the co., & duly paid for by the respective purchasers. A few months afterwards the co. required fresh capital, & they applied to pltf. to assist them in finding it, telling him that otherwise they would have to close down. Pltf. tried to do so, but failed. The co. then asked pltf. to give up the agency for the Manchester district, telling him that he would have to stand down so far as that district was concerned, in which case they thought that they could find the necessary capital, but he refused. The co. thereupon being insolvent passed resolutions for voluntary winding up & ceased to do business through pltf. & eventually sold their business. In an action to recover damages for breach of the agreement to employ pltf. as their agent for the seven years :—*Held :* the agreement was to employ pltf. as agent for the seven years & a term could not be implied to the effect that the co. could terminate the agency at any time by ceasing to carry on their business ; & the circumstances coupled with the voluntary winding up showed a repudiation by the co. of the agreement, & they were therefore liable in damages for the breach.—REIGATE *v.* UNION MANUFACTURING CO. (RAMSBOTTOM), [1918] 1 K. B. 592 ; 87 L. J. K. B. 724 ; 118 L. T. 479, C. A.

Annotations :—**Apld.** Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1 ; *Re* Gramophone Records, Ltd. (1930), 69 L. Jo. 201. **Refd.** Thomas *v.* Todd, [1926] 2 K. B. 511; Livock *v.* Pearson (1928), 33 Com. Cas. 188.

1952. *Add. Annotations :*—**Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. Trollope & Sons *v.* Caplan, [1936] 2 All E. R. 842 ; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476. **Refd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1953. *Add. Annotations :*—**Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592 ; Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1957. *Add. Annotations :*—**Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592 ; Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1961. *Add. Annotation :*—**Refd.** Taylor *v.* Oakes, Roncoroni (1922), 127 L. T. 267.

1974. *Add. Annotations :—As to* (1) **Consd.** Mortimer *v.* Beckett, [1920] 1 Ch. 571. *As to* (2) **Apld.** Mortimer *v.* Beckett, [1920] 1 Ch. 571.

1980. *Add. Annotations :—As to* (2) **Consd.** Martin *v.* Stout, [1925] A. C. 359. **Refd.** Oppenheimer *v.* Louis Rosenthal & Co., A. G., [1937] 1 All E. R. 23.

2005. *Add. Annotation :—As to* (2) **Refd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807.

2025. *Add. Annotation :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2029. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, *Ex p.* Trustee (1920), 89 L. J. K. B. 725.

2050. *Add. Annotation :*—**Refd.** Nippon Yusen Kaisha *v.* Ramjiban Serowgee, [1938] A. C. 429.

2052. *Add. Annotation :*—**Refd.** Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

2056. *Add. Annotation :*—**Refd.** Booth S.S. Co. *v.* Cargo Fleet Iron Co. (1916), 13 Asp. M. L. C. 451.

PART VIII. SECT. 3, SUB-SECT 3. —B.

1959 ii. For this number read "1967 i."

1967 ii. —— ——.]—In a five years' agreement between a selling agent & a firm of merchants it was provided that, if at the end of the first three years the agent had not realised a certain turnover, the merchants should be entitled to terminate the agreement. The agreement further provided that the merchants undertook to supply goods to the agent, who was bound to buy exclusively from them. At the end of the three years the value of the goods sold & delivered by the agent failed to reach the stipulated turnover, & the merchants terminated the agreement. The value of the sales effected by the agent had in fact materially exceeded the stipulated figure, but the value of the goods actually delivered by him fell short of it, owing to the failure of the merchants to supply him with the full amount of goods ordered by him. The merchants, who were not manufacturers, were dependent on delivery to themselves by the manufacturers, &, owing to war conditions, they were themselves unable to obtain the full supplies they required. They had, however, obtained sufficient goods to have implemented the agent's orders, but they preferred to distribute these goods ratably among all their agents & customers, the agent in question receiving his full share. In an action by the agent against the merchants concluding for damages for unjustifiable termination of the agreement :—*Held :* defts. were not entitled to terminate the agreement.—DOWLING *v.* METHVEN, SONS & CO., LTD., [1921] S. C. 948 ; 59 Sc. L. R. 7.—**SCOT.**

1978 iii. —— ——.]—Pltf. & defts., an English business house, entered into an agreement by correspondence by which pltf. was to be the selling agent of defts.' goods in British Columbia. In the letter from defts. setting out the proposed terms of agreement were the words " this offer to be firm for one year." Defts. broke the agency agreement during the first year:— *Held :* pltf. was entitled to damages on the basis of loss of profits on two years contract, as being reasonable in all the circumstances.—MACDONALD *v.* CASEIN, LTD., [1919] 1 W. W. R. 293.—**CAN.**

1978 iv. —— ——.]—In 1911 resps. agreed to employ applts. as underbrokers for the business of a co. during the subsistence of an agreement which they themselves had as brokers to the co. ; the latter agreement was for five years. In Aug. 1912, resps.

2082. *Add. Annotations :*—**Dbtd. & Expld.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99. **Consd.** Lamb (W. T.) & Sons *v.* Goring Brick Co. (1931), 48 T. L. R. 160.

2083. *Add. Annotation :*—**Distd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

2083a. —— —— **Sale by principal himself.**]—CHAMBERLAIN & WILLOWS *v.* ROSE (1924), cited 47 T. L. R. at p. 101, D. C.

Annotation :—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

2083b. —— —— ——.]—BENTALL, HORSLEY & BALDRY *v.* VICARY, No. 1813b, *ante*.

Compare SALE OF GOODS, No. 1399a, *post*.

2083c. Agreement for commission although transaction not completed.] — TREDINNICK *v.* BROWNE (1921), cited 47 T. L. R. at p. 101.

Annotation :—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

Part IX.—Relations between Principal and Third Parties.

2096. *Add. Annotations :*—**Refd.** Banque Belge Pour L'Etranger *v.* Hambrouck, [1921] 1 K. B. 321; Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

2098. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

2106. *Add. Annotations :*—**Refd.** *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189; Banque Belge Pour L'Etranger *v.* Hambrouck, [1921] 1 K. B. 321; *Re* Wait, [1927] 1 Ch. 606; Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

2109. *Add. Annotation :*—*As to* (1) **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

2118. *Add. Annotations :*—**Refd.** Muller (London) *v.* Lethem, Same *v.* I. R. Comrs., [1927] 1 K. B. 780; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

2120. *Add. Annotation :*—**Consd.** Rederi Akt. Transatlantic *v.* Drughorn, [1918] 1 K. B. 394.

wrongfully determined the agreement with applts. On Dec. 2, 1912, resps., *bonâ fide* & not as a means of limiting the damages, made a new agreement with the co., the terms of which were inconsistent with, & thus put an end to, the original agreement between resps. & the co. In Jan. 1913, applts. sued resps. for damages: — *Held :* the damages recoverable were limited to the amount which applts. would have earned as under-brokers down to Dec. 2, 1912.—LACHMANDAS, KHANDELWAL *v.* RAGHUMULL (1919), L. R. 46 Ind. App. 314; 24 C. W. N. 577.—**IND.**

PART VIII. SECT. 3, SUB-SECT. 8.

2083 ii. —— *Breach of covenant.*]—By an instrument by way of security the grantor transferred to the grantee by way of mtge. (*a*) certain stock specifically described in the sched.; (*b*) all stock depasturing on the lands of the grantor; (*c*) "all stock which may now or shall at any time hereafter during the continuance of this security belong to the grantor, wherever the same may be depasturing or kept, & all the natural increase of such stock," but did not expressly mention the natural increase of stock in (*a*) or (*b*). The grantee was by the instrument appointed sole agent of the grantor to effect all sales of produce, stock, & chattels which the grantor might require or desire to sell. The grantor, without obtaining the grantee's consent, sold to deft. in the ordinary course of business certain lambs the natural increase of the stock specifically described in the sched., & the grantee (pltf.) sought to recover possession of the same or their value :—*Held :* the appointment of the grantee as sole agent to sell did not negative the implied power of sale, & the sale, although it might be a breach of covenant, gave to the purchaser a good title to the lambs, & the sole agent's remedy was for damages for breach of contract.—NEW ZEALAND FARMERS' CO-OPERATIVE ASSOCN. OF CANTERBURY, LTD. *v.* CANTERBURY FROZEN MEAT & DAIRY-PRODUCE EXPORT CO., LTD., [1932] N. Z. L. R. 381.—**N.Z.**

2083a i. —— *Sale by principal himself.*]—A sole agent for a definite period is entitled to his commission on sale within the period, notwithstanding a prior sale by the principal of which the agent had no notice.—DE WOLFE *v.* TWOHIG (1932), 6 M. P. R. 505.—**CAN.**

sm. *Sale by principal.*]—A declaration alleged that deft. was possessed of a certain property & entered into an agreement under his hand with pltf. wherein, for valuable consideration, he gave pltf. "the sole selling agency" of the property, "such option to expire at" a certain time: & in breach of this agreement, deft. sold the property "otherwise than through the agency of pltf." On demurrer to this declaration :—*Held :* as the declaration did not allege that the sale of the property was by an agent other than pltf., there should be judgment for deft. on the demurrer.—HEFFERNAN *v.* HANSFORD (1936), 53 N. S. W. W. N. 76.—**AUS.**

PART VIII. SECT. 4, SUB-SECT. 2.

si. *Liability of principals to indemnify agent—Release of co-principal.*]—The release of one co-principal does not release another co-principal from his obligation to exonerate & contribute to the extent to which he would have been ultimately liable had the one co-principal not been released.—MALOWANY *v.* PASEMKO, [1919] 1 W. W. R. 553.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

b i. —— *Goods sold—Knowledge of purchaser.*]—M. left two hundred & fifty cattle with B., a cattle dealer. He gave B. written authority to sell forty-eight, & B. was to graze the rest. B. sold one hundred cattle to C., purporting to act as M.'s agent, showing the written authority & alleging further oral authority. At B.'s request C. made a cheque for the purchase price payable to him. C. bought in good faith & for value. M. repudiated the sale & sued to vindicate the cattle sold without authority :—*Held :* the written authority & the request for personal payment should have put the purchaser upon inquiry.—MULLER *v.* CHENNELLS (1923), 44 N. L. R. 69.—**S. AF.**

2105 ii. —— ——.]—Where an agent is entrusted by his principal with money to buy goods, the money will be considered trust funds in his hands & the principal has the same interest in the goods when bought as he had in the funds producing them. If the goods so bought are mixed with those of the agent, the principal has an equitable title to a quantity to be taken from the mass, equivalent to the money advanced which has been used in the purchase.—*Re* CLARK (R. P.) & CO. (VANCOUVER), LTD., [1931] 3 W. W. R. 79.—**CAN.**

2106 i. *Agent holding principal's funds—Money paid into agent's banking account—Agent in fiduciary character.*]—Money received by a commission agent from sales of his customers' property, is, after deduction therefrom of the agent's commission & expenses, money held by him in a fiduciary capacity, & if it is mixed by the agent with his own money in his general banking account & he becomes bkpt., the money can be followed if it is still traceable.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK (1923), 4 C. B. R. 379; [1923] 3 W. W. R. 257.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 1.—A.

2120 viii. ——.]—J., as agent of pltf., advanced sums to deft. in consideration of deft.'s going to work on a sugar estate, on behalf of K., who supplied money for the advance, to whom J. had to account, & to whom J. stated that he had accounted. Deft. stated that J. had recruited him to work for some person whose name was not given. Deft. contended in an action for refund of the advance that pltf. could not sue without cession of action from K. :—*Held :* pltf. had a right of action against deft.—GADLELA *v.* MOUNTJOY, [1921] E. D. L. 151.—**S. AF.**

sa. *Action for money paid under contract.*]—Pltf., desiring to have ten vessels constructed in Canada, entered into a preliminary agreement with A., whereby A. was to enter into contracts with three builders for the construction of the vessels, called "building contracts," & at the same time into

2125a. Action for specific performance—Effect of non-disclosure of principal.]—Pltf. procured C. to enter into an agreement to purchase land from defts. C. never disclosed to defts. that he was acting as the agent of pltf. Subsequently C. explained to defts. that he was acting as agent for pltf., & at his request the agreement was cancelled. In an action for specific performance :—*Held :* the agreement not being one in which any personal qualification by C. was a material factor, the mere non-disclosure of the person actually entitled to the benefit of the contract for the sale of real estate did not amount to misrepresentation.—DYSTER *v.* RANDALL & SONS, [1926] Ch. 932 ; 95 L. J. Ch. 504 ; 135 L. T. 596 ; 70 Sol. Jo. 797 ; [1926] B. & C. R. 113, C. A.

2126a. —— Sold by agent—Effect of misrepresentation as to being principal.]—G., employed as a traveller by a firm of builders, owed deft. £17 for goods sold. He asked deft. to buy timber from him, telling him that he had left the employment of the builders & had set up as a timber merchant on his own account, & deft. agreed to order timber from him on the terms that G.'s debt of £17 should be set off against the price. G. had not set up in business on his own account, but was employed by pltf. as an agent for sale on commission. Timber was delivered to deft. with invoices & letters bearing the name, address, & description of pltf., which G. told deft. were his own trade name, address, & description. Pltf. brought an action in the county ct. for the price of the timber, & the county ct. judge found that deft. honestly believed that the name, address, & description on the invoices & letters were those of G., but that deft. was put upon inquiry by the invoices & letters, & had notice that G. was not selling as a principal but only as an agent for pltf., & he gave judgment for pltf. for the price of the timber :—*Held :* deft. had no more than constructive notice that pltf. was the principal of G., & in the circumstances constructive notice was not equivalent to actual notice ; deft. had made no contract with pltf., & was entitled to judgment.—GREER *v.* DOWNS SUPPLY CO., [1927] 2 K. B. 28 ; 96 L. J. K. B. 534 ; 137 L. T. 174, C. A.

2130a. —— —— Sub-underwriting agreement.]—Pltf., at the suggestion of M., who was a director of E. co. in Nov. 1927, was minded to underwrite shares in deft. co. about to be offered for public subscription. It had not then been started, but its object was to acquire & carry on as going concerns eight greyhound racecourses. An underwriting agreement was entered into by trustees for deft. co. & B. co. & a draft prospectus was prepared therein referred to. On the following day M. & O. offered to sub-underwrite 12,000 shares, & sent a cheque for £600 to B. co., which was accepted by them on Dec. 8. On Dec. 12, the co. was incorporated, the underwriting agreement ratified, & a similar prospectus signed by the directors, which, on Dec. 19, was issued to the public. The response not being sufficient, the balance of shares was issued to the underwriters or sub-underwriters. One of such allotments was for 8,160 to M. & O. as sub-underwriters. A number of sub-underwriters had repudiated their agreements on Dec. 16, but this was not known to the directors when they went to allotment on Dec. 17. Subsequently these 8,160 were renounced in favour of pltf. The consequence of the failure of some of the underwriting agreements was that two of the racecourses, representing about two-fifths of the estimated profits, could not be acquired. In these circumstances, this action was brought for rescission on the ground of material misrepresentations in the prospectus. Defts. denied these, & claimed for the balance due. They submitted that, the contract having been made with agents for an undisclosed principal, he could not recover :—*Held :* pltf. could not establish his case on the basis of principal & agent, as in such a case as this an undisclosed principal could not be substituted for the persons contracting ; all the rights of the agents under the contract with the co. did not pass to pltf. by virtue of the agents' renunciation & nomination of pltf., & though there was a contract between pltf. & the co. it was not a contract based on the prospectus.—COLLINS *v.* ASSOCIATED GREYHOUNDS RACECOURSES, LTD., [1930] 1 Ch. 1 ; 99 L. J. Ch. 52 ; 141 L. T. 529 ; 45 T. L. R. 519.

2139a. Agent acting in his own interest.]—Where an agent, in contracting on behalf of his

contracts with pltf., called the "vessels contracts" providing for the payment for vessels, the nature of their construction & due delivery thereof. The "building contract" & the "vessel contract" each expressly stated that a copy of the other was attached to & made a part of it. By the "building contract" deft. covenanted to build the vessels according to the terms of the "vessel contract," & this contract was expressed to be made with pltf. as well as with A., & deft. also confirmed provisions of the "vessel contract" for payment of the instalments of the purchase price to A. & appointed A. his agent to receive payments. Upon the signing of the contracts a first payment made by pltf. to A. was distributed by A. between the three "builders," who proceeded with the construction of the vessels. Upon pltf.'s failure to make the next deposit as provided for in the "vessel" contract, deft. gave notice terminating the contract. Pltf. having brought action for repayment by deft. of money paid on account of the vessels, less such expenses as deft. had incurred by virtue of the contract :—*Held :* pltf. had no right of action.—VAN HEMELRYCK *v.* NEW WESTMINSTER CONSTRUCTION & ENGINEERING CO., VAN HEMELRYCK *v.* NORTHERN CONSTRUCTION CO., VAN HEMELRYCK *v.* PACIFIC CONSTRUCTION CO. (1920), 29 B. C. R. 39 ; 55 D. L. R. 589.—CAN.

PART IX. SECT. 3, SUB-SECT. 1.—B.

2134 i. *General rule.*]—BOLUS & CO., LTD. *v.* INGLIS BROTHERS, LTD., [1924] N. Z. L. R. 164.—N.Z.

2134 ii. ——.]—Principal is bound by the act of the agent within the scope of his authority.—O.K. LADIES' GARMENT CO. *v.* EDGECOMBE (1934), 9 M. P. R. 27.—CAN.

2135 ii. ——.]—Deft., owner of a theatre, entered into a contract with W., an advertising manager, under which W. was to conduct an advertising campaign relative to the theatre. The campaign was to take the form of a contest for prizes to be offered for selling tickets of admission to the theatre. Pltf. was assignee for value of a prize-winner's rights :—*Held :* the agent's promises to the contestants were the promises of deft. as principal, & deft. was liable as principal.—ROSS *v.* KOBOLD, [1924] 1 D. L. R. 750 ; 1 W. W. R. 428 ; 34 Man. L. R. 111.—CAN.

sb. *Contract in agent's name—Under seal.*]—Defts. made an agreement with B. for conditional sale to him of a large quantity of land, the intention of the parties being for its subdivision & sale for fruit-farming purposes. All surveys & sales were to be approved by defts., a minimum price per acre in selling was stipulated, & the proceeds of sales were to be paid into a bank to defts.' credit, & title to be retained by defts. until the full purchase price of the sale to B. was realised. On certain amounts of sales being made, defts. agreed to do certain clearing, irrigating & tree-planting, B. acting as their agent in the supervision thereof. B. was to receive commission on sales made, should he

principal, has acted within the terms of a written authority given to him by the principal, but the existence of which was not known to the other party to the contract, the principal cannot, if the other party has acted *bonâ fide*, repudiate liability on the contract on the ground that the agent, in making it, acted in his own interests, & not in those of his principal.—HAMBRO *v.* BURNAND, [1904] 2 K. B. 10; 73 L. J. K. B. 669; 90 L. T. 803; 52 W. R. 583; 20 T. L. R. 398; 48 Sol. Jo. 369; 9 Com. Cas. 251, C. A.; *revsg.*, [1903] 2 K. B. 399.

Annotations :—**Consd.** Willis, Faber *v.* Joyce (1911), 104 L. T. 576; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Distd.** Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176. **Refd.** British Marine Mutual Insce. Assocn. *v.* Draffen, Read & Morgan (1903), 47 Sol. Jo. 672; Ruben *v.* Great Fingall Consolidated, [1904] 2 K. B. 712; Malcolm, Brunker *v.* Waterhouse (1908), 24 T. L. R. 854; Lloyd *v.* Grace, Smith, [1912] A. C. 716; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2139b. Account stated & signed by agent.]—In Mar. 1918, a tank steamer was damaged by fire & her repairs were entrusted to a firm of ship repairers at A. The steamer was insured. The owners sent out an agent from L. to expedite the repairs & authorised him to sign the repair account with the Lloyds' surveyor as "approved subject to adjustment & conditions of insurances." In Jan. 1919, the repairers delivered to the owners an account of the repairs signed by the owners' agent & by Lloyds' surveyor in the above form after a detailed examination of the account. The owners paid part of the amount due on this account but declined to pay the balance on the ground that the charges were excessive. The repairers sued the owners for the balance of amount due for work & labour done by pltfs. & materials supplied at the request of defts., &, in the alternative, claimed the balance as being the amount found due from defts. to pltfs. on accounts stated between them & contained in an account signed by defts. by their agent, less the sums since paid by defts. in respect thereof. Defts. denied that the agent was authorised to agree the amounts due from defts. to pltfs., or that he in fact purported to agree such amount, or that the account constituted an account stated :—*Held :* the signature of defts.' agent was an agreement by him, with their authority, that the amount charged for the repairs was correct, &, there being no ground for re-opening the account, pltfs. were entitled to judgment. —CAMILLO TANK S.S. CO., LTD. *v.* ALEXANDRIA ENGINEERING WORKS (1921), 38 T. L. R. 134, H. L.

Annotations :—**Consd.** Firm Bishun Chand *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465; Siqueira *v.* Noronha, [1934] A. C. 332.

2147a. —— ——.]—A member of the Stock Exchange was indebted to defts. He became a defaulter on the Stock Exchange, & the liquidation of his affairs was undertaken by pltf. as official assignee. For the purposes of the liquidation he was authorised by pltf. to sell, & accordingly sold, certain shares standing in his name to defts., who were not members of the Stock Exchange, but who knew his position & that of pltf. as official assignee. Pltf. having sued defts. for the price of the shares :—*Held :* the action was maintainable, & defts. were not entitled to a set-off in respect of their debt.—RICHARDSON *v.* STORMONT, TODD & CO., [1900] 1 Q. B. 701; 69 L. J. Q. B. 369; 82 L. T. 316; 48 W. R. 451; 16 T. L. R. 224; 5 Com. Cas. 134, C. A.

Annotations :—**Apld.** Lomas *v.* Graves, [1904] 2 K. B. 557. **Refd.** *Re* Halstead, *Ex p.* Richardson, [1917] 1 K. B. 695.

2168. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

2172. *Add. Annotations :*—**Refd.** Norbury Natzio *v.* Griffiths, [1918] 2 K. B. 369; Rodriguez *v.* Speyer, [1919] A. C. 59; Bennett *v.* Whitehead, [1926] 2 K. B. 380; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761.

2177. *Add. Annotation :*—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

2182. *Add. Annotation :*—**Consd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

2183. *Add. Annotations :*—**Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761.

2184. *Add. Annotation :*—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of). R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

2188. *Add. Annotation :*—*As to* (3) **Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

2193. *Add. Annotation* :—**Consd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

2194. *Add. Annotation :*—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761.

---

not succeed in carrying out the agreement. B. made an approved agreement with pltf. for sale of a lot to be selected by pltf. who sought to recover from defts. the amount of payments made by him :—*Held :* the fact that pltf.'s agreement was with B., in B.'s own name & under seal, did not prevent recovery from defts. as for money had & received.—HITCHCOCK *v.* COLUMBIA VALLEY LAND CO., LTD., [1919] 2 W. W. R. 969; 48 D. L. R. 737.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 2.—F. (a).

2172 ii. ——.]—GLADUE *v.* WALCH, **No. 2510 xiv.,** *post.*—**CAN.**

PART IX. SECT. 3, SUB-SECT. 2.—F. (c).

q i. —— ——.]—P., acting as agent, purchased food for M.'s poultry farm from pltf. with whom he had a running account upon which from time to time he made payments. Pltf. brought action against P. for the balance of the account, but before entering judgment obtained an order adding M. as a party deft. :—*Held :* the agent not having been sued on to judgment, pltf. may pursue the principal.—VANCOUVER MILLING & GRAIN CO. *v.* PERKINS & MCLEOD (1930), 42 B. C. R. 557.—**CAN.**

2194 v. ——.]—M., without disclosing the fact that he was acting as agent for the Crown, purchased hay from A., & was sued for a balance of the purchase price. At the trial that fact became known to A., but he nevertheless proceeded with the case & recovered judgment against M. :—*Held :* A., having elected to proceed to judgment against M., could not afterwards sue the Crown.—DESROISERS *v.* R. (1919), 18 Exch. C. R. 461.—**CAN.**

2194 vi. ——.]—Engineers brought an action against shipowners for payment of the balance of the contract price of two boilers for a steamship. The shipowners denied liability, & also brought a counter-action for damages in respect of breach of contract. The actions were conjoined & a proof was led, in the course of which it transpired that the shipowners were not the registered owners of the steam-

2195. *Add. Annotations :*—**Apld.** Parr *v.* Snell, [1923] 1 K. B. 1; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761. **Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Moore *v.* Flanagan, [1920] 1 K. B. 919; Clarkson *v.* Davies, [1923] A. C. 100: Duffner *v.* Bowyer (1924), 40 T. L. R. 700; The Koursk, [1924] P 140; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023; Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

2197. *Add. Annotations :*—**Folld.** Moore *v.* Flanagan & Wife, [1920] 1 K. B. 919. **Apld.** London General Omnibus Co. *v.* Pope (1922), 38 T. L. R. 270. **Refd.** Duffner *v.* Bowyer (1924), 40 T. L. R. 700; Debenham *v.* Perkins (1925), 133 L. T. 252; Bennett *v.* Whitehead, [1926] 2 K. B. 380; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197; Christopher (Hove), Ltd. *v.* Williams, [1936] 3 All E. R. 68.

2198. *Add. Annotation :—As to* (1) **Distd.** Debenham *v.* Perkins (1925), 133 L. T. 252.

2199. *Add. Annotations :—As to* (1) **Refd.** Moore *v.* Flanagan & Wife, [1920] 1 K. B. 919; Parr *v.* Snell, [1923] 1 K. B. 1; Pirie *v.* Richardson, [1927] 1 K. B. 448.

2201. After this case insert "Res judicata generally, *see* ESTOPPEL, Vol. XXI., pp. 159 *et seq.*, 198 *et seq.*"

2205a. —— Acceptance of payment from principal —After receiving order against agent.]—Resp. was employed by the debtor, who was acting for a co., but who was himself personally liable on the contract. While the contract was running, a receiving order was made against the debtor, but he was not adjudicated bkpt., the receiving order being discharged & an order being made approving a composition of 20*s.* in the pound. After the breach of contract by the debtor resp. took the salary offered to him by the co., & a proof put in by resp. for damages for the breach was rejected by the trustee of the composition on the ground that resp. had elected to look to the co. for the fulfilment of the contract :—*Held :* resp. had not, by his conduct, finally elected in law to look to the co. for the fulfilment of the contract, & the proof ought to be allowed.—*Ex p.* PITT (1923), 40 T. L. R. 5, C. A.

2233. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

2245. *Add. Annotations :—As to* (1) **Refd.** Jewson & Sons, Ltd. *v.* Arcos, Ltd. (1933), 39 Com. Cas. 59. *As to* (2) **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12. **Consd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335. **Refd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316; Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Sun Life Assurance Co. of Canada *v.* Smith (W. H.) & Son, Ltd. (1934), 150 L. T. 211. *Generally*, **Refd.** Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826; Reckitt *v.* Barnett, Pembroke & Salter, [1928] 2 K. B. 244; Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128; London County Freehold & Leasehold Properties, Ltd. *v.* Berkeley Property & Investment Co., [1936] 2 All E. R. 1039.

2246. *Add. Annotations :*—**Consd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Rand *v.* Craig, [1919] 1 Ch. 1; Mintz *v.* Silverton (1920), 36 T. L. R. 399; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12. **Refd.** Pratt *v.*

---

ship, as had up to that time been assumed, but merely acted as managers for a co. which owned her. Both parties thereupon amended their records; the shipowners averring in both actions that they had contracted, & were litigating, as agents for the limited co.; & the engineers, as defenders in the counter-action, pleading "no title to sue" :—*Held :* by prosecuting their own action to decree, the engineers had elected to treat defts. as their debtors in the contract.—CRAIG & CO. *v.* BLACKATER, [1923] S. C. 472.—**SCOT.**

sg. *Action for wages against husband & wife—Consent judgment against husband—Subsequent action for later wages against wife.*]—*Held :* election was conclusive & the remedy against the wife not available.—GARDINER *v.* CHAPPLE, [1932] 4 D. L. R. 804.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 2.—F. (d).

2206 i. *Election to sue one discharges other.*]—MURRAY *v.* DELTA COPPER CO., LTD., [1925] 4 D. L. R. 1061.—**CAN.**

2206 ii. ——.]—Deft. co., owner of certain lands, gave an option to purchase to one M., one of the terms of the sale being that he should immediately have the lands ploughed. Deft. H., who was president of deft. co., got in touch with pltf. with reference to the ploughing, & after they had taken a view of the land with M. pltf. entered into an agreement with H. to plough the land for $9 per acre. Pltf. proceeded with the work & received money from M. on account of the ploughing, although he knew nothing as to M. having an option to purchase. While the work was in progress M. threw up the option. Pltf. continued his work to completion. Pltf. recovered judgment against the co. & H. for the balance due :—*Held :* the judgment against H. should stand, but it should be dismissed as against the co.—DENNIS *v.* INDEPENDENT LANDS, LTD. (1930), 43 B. C. R. 65.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—A.

2245 v. ——.]—Resp. had taken fire insurance policies in several cos., amongst which were applt. co. & the F. Co., both represented by D. as their agent. The property insured having been destroyed by fire, resp. received from the adjuster a memorandum showing him entitled to $2,864.45 as against the F. Co., & to $1,841.45 & $2,861.60, as against applt. co., under two policies. Later on, the F. Co., sent to D. their cheque payable to resp., & D. appropriated its proceeds by forging the signature of resp. The latter, pressing D. for a settlement, accepted as an accommodation D.'s personal cheque for the amount of his claim against the F. Co. On the afternoon of the same day, D. informed resp. that the cheque of the F. Co. had arrived. At that time, D. had also received from applt. co. two drafts, payable to the order of resp. D. obtained resp.'s indorsement on the larger one of the drafts on the representation that it was the cheque of the F. Co., which he would use to reimburse himself for his personal cheque, & also secured resp.'s signature on the other draft on the representation that it was a receipt, the execution of which was a formality required by the F. Co. D. indorsed both drafts & deposited them to his own credit, & they were later paid & charged to applt. co.'s account by the bank. Resp. having sued applt. co. :—*Held :* in the fraud practised upon resp., D. was acting within the scope of his agency so as to make his fraud that of his principals, applt. co.; & the indorsements on the drafts of applt. co. were not binding on resp. in the circumstances in which they were given.—NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURG *v.* MARTIN, [1924] 3 D. L. R. 1012; S. C. R. 348; *affg.*, [1923] 4 D. L. R. 574; 3 W. W. R. 897; 19 Alta. L. R. 786; *affg.*, [1923] 3 D. L. R. 220.—**CAN.**

2245 vi. ——.]—POPE *v.* PICTOU STEAMBOAT CO. (1865), 6 N. S. R. (2 Old.) 18.—**CAN.**

2245 vii. ——.]—PARTAB NARAIN *v.* JUTE MILLS (1927), I. L. R. 50 All. 29.—**IND.**

2246 ii. —— ——.]—Pltf., believing Z. to be agent of defts., arranged with him for the shipment of two carloads of grain to defts., & signed the bills of lading, on which his name appeared as shipper & defts.' name as consignees. The documents were signed

British Medical Assocn., [1919] 1 K. B. 244; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Underwood *v.* Bank of Liverpool. Same *v.* Barclays Bank, [1924] 1 K. B. 775; Sun Life Assurance Co. of Canada *v.* Smith (W. H.) & Son, Ltd. (1934) 150 L. T. 211; Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

2248. *Add. Annotation :*—**Refd.** Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

2253. *Add. Annotations :*—**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

2254. *Add. Annotation :*—**Refd.** London County Freehold & Leasehold Properties, Ltd. *v.* Berkeley Property & Investment Co., [1936] 2 All E. R. 1039.

2255. *Add. Annotations :*—**Refd.** London County Freehold & Leasehold Properties, Ltd. *v.* Berkeley Property & Investment Co., [1936] 2 All E. R. 1039; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

2258a. ——.]—Upon a draft agreement for the sale of certain blocks of flats the intending purchasers asked: "Are all the tenants' rents paid punctually & without dispute?" Reply was made upon the draft under the signature of one D., the managing director & solr. to the vendor co.: "There are no disputes & rents are paid promptly with very few immaterial exceptions." The reply had in fact been made by R., managing conveyancing clerk to D. in his professional capacity, on information obtained from A., property manager to the vendors. The representation as to the punctuality of rents was not incorporated in the agreement which was duly completed. In eleven cases the rents were not paid promptly. In an action by the purchasers for damages for fraudulent misrepresentation or alternatively for breach of warranty the learned judge found that there was no fraud, but he found that there had been a breach of warranty. On appeal: —*Held :* (1) in the absence of evidence that the parties entered into, or intended to enter into a collateral contract, there was no warranty of which there could be a breach; (2) the statement to R. by A. of that which was untrue to his knowledge, & the innocent use by R. of such untrue information to induce the purchasers to act to their detriment, amounted to fraudulent misrepresentation on the part of the vendor co.—LONDON COUNTY FREEHOLD & LEASEHOLD PROPERTIES, LTD. *v.* BERKELEY PROPERTY & INVESTMENT CO., LTD., [1936] 2 All E. R. 1039; 155 L. T. 190; 80 Sol. Jo. 652, C. A.

Annotation :—As to (2) **Consd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

2267. *Add. Annotation :*—**Refd.** *Re* Jubilee Cotton Mills, [1923] 1 Ch. 1.

2268. *Add. Annotations :*—**Consd.** Rand *v.* Craig, [1919] 1 Ch. 1; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826.

2272. *Add. Annotation :*—**Refd.** Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

2273a. Liability for fraudulent preference by agent.]—If a principal leaves the control of his business in the hands of an agent so that the agent is employed to determine which of the creditors of the principal shall be paid, when they shall be paid, & why they shall be paid, a payment made by such an agent with an intention to prefer a creditor of his principal is, in the event of the bkpcy. of the principal, a fraudulent preference by the principal within 1914 Act, s. 44. It makes no difference that the agent had not authority to sign the cheques he drew & presented to his principal, nor that the principal when signing them had no intention to prefer any creditor, but honestly believed the payments so made to be proper & in the ordinary course of business.

A firm of builders, having contracted to erect houses at S., employed T. as their salaried agent to control & manage the purchase of & payment for building materials, & generally to supervise & advise the firm on financial matters in relation to the contract. The partners had no knowledge as to the terms upon which the materials supplied had in fact been purchased, nor were they aware of any of the circumstances

partly in blank, certain particulars being left to be filled in by Z. Z. used the documents for his own purposes, borrowed money upon them from the bank, signed his own name to them, crossed out defts.' name as consignees & substituted that of the bank. Defts., being notified of shipment, paid the bank, procured the bills of lading, disposed of the grain & settled with Z. for the proceeds :—*Held :* defts. were liable to pltf. for conversion for the value of the grain.—LENO *v.* SIMPSON-HEPWORTH CO., LTD., [1919] 1 W. W. R. 721; 45 D. L. R. 285.—**CAN.**

2246 iii. —— ——.]—A principal is liable for the fraud of his agent acting within the scope of his authority, whether the fraud is committed for the benefit of the principal or for the benefit of the agent.—DINABANDHU SAHA *v.* ABDUL LATIF MOLLA (1912), I. L. R. 50 Calc. 258.—**IND.**

2246 iv. —— ——.]—Pltf., after negotiations with a sales agent of deft. co., signed at the co.'s office a contract form for the purchase of a motor-car & paid to the agent the purchase price in full. The receipt therefore, expressed to be for "held cash," was signed by the agent personally. The contract form contained the words "Not binding until accepted by management," & the space for the manager's signature was not filled in. Pltf. did not want immediate delivery of the car, & the agent wrote on the form, "The agreement to be held until car wanted." In purported compliance with said offer to purchase, the agent delivered to pltf. a car belonging to the agent subject to a lien under which it was afterwards seized & sold. The agent had meanwhile disappeared with pltf.'s money, & the co. refused pltf.'s demand for a car, the manager saying that he knew nothing of the transaction. Pltf. then sued the co. to recover the money paid to the agent :—*Held :* pltf. was entitled to judgment.—OLSHANSKY *v.* DOMINION MOTOR CO., [1929] 1 D. L. R. 854; 1 W. W. R. 404; 38 Man. L. R. 56.—**CAN.**

2253 iv. —— ——.]—Pltfs., who resided in England, were the owners of a sub-division in Calgary & were represented there by agents. L. obtained from the agents a listing of parcels of lots & authority to obtain purchasers. L. induced deft. to purchase lots for $3,400 under an agreement made by a fictitious person as vendor, which L. delivered to deft. & received from him $1,500 as the cash payment. L. brought in to pltfs.' agents an agreement for sale of the lots to a fictitious person for $3,000 of which $1,000 was payable in cash, which sum only be paid in. He also subsequently collected from deft., but never paid in, the deferred payments under deft.'s agreement. Pltfs. had no knowledge of L.'s fraud until after all the money had been paid to him :—*Held :* pltfs. were liable for the additional $500 of cash payment fraudulently contracted for & received by L.—DENTON *v.* GOODMAN, [1922] 1 W. W. R. 117; 62 D. L. R. 559.—**CAN.**

2253 v. —— *Agent added as co-defendant.*]—The agent of pltf., the vendor, made false representations without the knowledge of his principal in order to induce deft. to purchase property belonging to pltf. Deft., on discovering that the representations were false, refused to complete the transaction &, on being sued by pltf. for such non-performance, brought a counterclaim for rescission & damage, & joined the agent as co-defendant :—*Held :* the agent was rightly made co-defendant.—ROTHWELL *v.* ATTWOOD, [1923] 4 D. L. R. 734; *revsd.*, [1924] 1 D. L. R. 43.—**CAN.**

relating to any payments they in fact made. They signed cheques drawn by the agent as & when he prepared & presented them, but the agent had no right to make any payment except by cheques signed by his principals. The partners having become bkpts., it appeared in the bkpcy. proceedings that less than three months before the date of the receiving order, T., intending to prefer S. & Co., creditors of his principals & then well aware of his principals' insolvency, presented to F., the managing partner, two cheques which T. had drawn & which F. signed without inquiry in the honest belief that T. intended thereby to make proper payments but which were in fact intended & devoted by T., one to the extent of £100 in payment of a debt due by his principals under a contract other than the S. contract, & the other to the extent of £647 in payment of goods delivered by S. & Co. on credit terms not then expired:—*Held:* the partners as principals were bound by the acts of their agent T. when he, acting within the scope of his employment & as their agent, made the payments in question, & the act of the agent in making the payments with knowledge of the principals' insolvency & with a view of giving a preference must be treated as the act of the principals.—*Re* DRABBLE BROS., [1930] 2 Ch. 211; 99 L. J. Ch. 345; 143 L. T. 337; 74 Sol. Jo. 464; [1931] B. & C. R. 200, C. A.

2280. *Add. Annotations:*—**Dist.** Dyster *v.* Randall, [1926] Ch. 932. **Refd.** Said *v.* Butt, [1920] 3 K. B. 497.

2282. *Add. Annotations:*—**Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12. **Refd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316; Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826; Sun Life Assurance Co. of Canada *v.* Smith (W. H.) & Son, Ltd. (1934), 150 L. T. 211; Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128; London County Freehold & Leasehold Properties, Ltd. *v.* Berkeley Property & Investment Co., [1936] 2 All E. R. 1039.

2284. *Add. Annotations:*—**Consd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Rand *v.* Craig, [1919] 1 Ch. 1; Mintz *v.* Silverton (1920), 36 T. L. R. 399; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826; Britt *v.* Galmoye & Nevill (1928), 44 T. L. R. 294; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Distd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12. **Consd.** Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Sun Life Assurance Co. of Canada *v.* Smith (W. H.) & Son, Ltd. (1934), 150 L. T. 211; Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

2286. *Add. Annotations:*—**Consd.** Rand *v.* Craig, [1919] 1 Ch. 1; Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762. **Refd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Soanes *v.* L. & S. W. Ry. (1919), 88 L. J. K. B. 524; Sun Life Assurance Co. of Canada *v.* Smith (W. H.) & Son, Ltd. (1934), 150 L. T. 211.

2287. *Add. Annotation:*—**Refd.** The Sylvan Arrow, [1923] P. 220.

2287a. —— **Forgery.**]—Pltfs., exors. of a will, kept an exors.' account with defts., & retained a firm of solrs., Messrs. C. & P., who used to assist them in matters connected with their testator's estate. The acting member of the firm was one J. C. Pltfs. in conference with J. C. decided to invest through Messrs. J. P. & Co., stockbrokers, a sum of £5,000, part of the estate lodged on deposit with defts. J. C. accordingly drew out a form of cheque for signature by pltfs. It was in the form "Pay J. P. & Co. or order" & was drawn on pltfs.' deposit account with defts. The cheque was signed by pltfs. & left with J. C. to be posted to J. P. & Co. with instructions to invest the money. J. C., instead of posting the cheque to J. P. & Co., fraudulently inserted the words "per C. & P." in the blank space between the payees' name & the words "or order"; he then indorsed the document with the names C. & P. & paid it so altered & indorsed into the W. Bank to the credit of a co. in which he was interested & which had an account at that bank. The document was accepted without question by the W. Bank & passed through the clearing house, & the account of pltfs. with defts. was debited, & that of the co. with the W. Bank was credited, with the amount on the face of the document. In an action by pltfs. against defts. for conversion, negligence & breach of duty:—*Held:* pltfs. had not held out J. C. as having authority to draw cheques on their behalf so as to estop them from asserting the fact that a document drawn by him & purporting to be a cheque signed by them had been materially altered by him after signature without their authority & was a forgery.—SLINGSBY *v.* DISTRICT BANK, LTD., [1932] 1 K. B. 544; 101 L. J. K. B. 281; 146 L. T. 377; 48 T. L. R. 114; 37 Com. Cas. 39, C. A.

Annotation:—**Refd.** Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

2292. *Add. Annotations:*—**Consd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Rand *v.* Craig, [1919] 1 Ch. 1; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826, Slingsby *v.* District Bank, Ltd. (1931), 4o

---

PART IX. SECT. 4, SUB-SECT. 1.—A.

2282 vii. —— —— *Negligence of agent's employee.*]—An agent is not personally responsible for damage done by the negligence of those employed by him in the service of his principal, but the principal or those actually employed only are liable.—WINTERMUTE *v.* MOULTON (1922), 65 D. L. R. 653.—CAN.

2282 viii. —— ——.]—Deft. agreed to provide teams & men to cart goods for pltf., & in performing such contract caused damage to certain roads. The county council took proceedings, & obtained judgment against pltf. for recovery of the expenses incurred by the council by reason of the damage caused by the extraordinary traffic carried on by deft. On a claim by pltf. to be indemnified by deft. for the amount of the judgment:—*Held:* deft. was pltf.'s agent to do the carting, & the liability to pay for the damage rested on pltf.—BEGG *v.* HAGAN, [1921] N. Z. L. R. 220.—N.Z.

T. L. R. 114. **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Mintz *v.* Silverton (1920), 36 T. L. R. 399; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775; Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

2294. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

2295. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452.

2309. *Add. Annotation :*—*As to* (1) **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

2317. *Add. Annotations :*—**Apld.** Pratt *v.* Patrick, [1924] 1 K. B. 488. **Consd.** Parker *v.* Miller (1926), 42 T. L. R. 408; Brooke *v.* Bool, [1928] 2 K. B. 578.

2318. *Add. Annotations :*—*As to* (1) **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488. *As to* (2) **Consd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

2318a. —— ——.]—Deft. was in his motor car, with him, on his invitation, being two friends, E. & P. E. drove the car, & owing to his negligence it collided with another vehicle, & P. sustained injuries from which he died. P.'s widow sued deft. under Fatal Accidents Act, 1846 (c. 93), for damages :—*Held :* as deft. was in the car, & there was no evidence that he had abandoned his right of control, he was liable notwithstanding that by a casual delegation he had entrusted its actual physical management & mechanical control to E.—PRATT *v.* PATRICK, [1924] 1 K. B. 488; 93 L. J. K. B. 174; 130 L. T.

PART IX. SECT. 4, SUB-SECT. 1.—B.

2299 i. *Funds received for investment—By local manager of bank—Improvident investment.*]—Two persons who formed the local advisory board of deft. co. purchased on defts.' behalf for $7,000 the balance unpaid under an agreement for sale of subdivided property, which amounted to about $7,500 taking the assignment in their own name "as trustees." One of these persons, the local manager of deft. co., had an individual private client, pltf., for whom he had invested money. Having $5,000 of pltf.'s money on hand he invested it by buying a part interest in the assignment of agreement for sale, & a declaration of trust was made by the trustees in pltf.'s favour to the extent of $5,000 & interest. The investment turned out badly & pltf. sued deft. co. for recovery of his money :—*Held :* pltf. was entitled to recover.—MCCRINDLE *v.* LONDON SCOTTISH CANADIAN INVESTMENT SYNDICATE, [1922] 3 W. W. R. 977; 70 D. L. R. 612.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 1.—C.

2317 ii a. —— ——.]—A motor bicycle, the property of deft., which was ridden by R., deft.'s brother, injured pltfs. Deft.'s brother had general permission to ride the motor bicycle for himself or for deft., but he was never in deft.'s employment. The jury found that the rider was acting as the agent or servant of deft. in the management of the motor bicycle at the time of the accident :—*Held :* the jury's findings & verdict must stand.—THOMPSON *v.* REYNOLDS, GIBSON *v.* REYNOLDS, [1926] N. 131.—**IR.**

2317 ii b. —— ——.]—DRISCOLL *v.* COLLETTI, [1926] 2 D. L. R. 428; 58 O. L. R. 444.—**CAN.**

2317 ii c. —— ——.]—A man was knocked down & killed by a motor car owned by deft. whilst it was being driven by his son. The car was kept in a garage on deft.'s property which adjoined the son's home. Deft. was not licensed to drive & had never been seen driving the car, which on many occasions was driven by the son, who worked with his father. The accident took place whilst the car was proceeding in the direction of the homes of deft. & his son :—*Held :* the evidence was not sufficient to establish as between deft. & his son the relationship of principal & agent.—GOLDMAN *v.* BARNFIELD (1927), 27 S. R. N. S. W. 405; 44 N. S. W. W. N. 147.—**AUS.**

2317 ii d. —— ——.]—Pltf. collided with deft.'s motor car, which was driven by J., a son of deft., & sustained serious injuries. In answers to interrogatories deft. admitted that she was the registered owner of the motor car; that her son C. & her daughter H. were licensed drivers; that she had purchased the car for pleasure; that she paid for all the petrol & oil; that her son J. resided with her; that she paid the rent for a lock-up garage, the key of which was kept by her son C. A witness stated that he saw J. driving his mother's car more than once prior to the day of the accident. Deft. denied that she knew that J. had a key of the garage in his possession on the day of the accident, or that she knew he had access to the key, & stated that she never at any time gave J. permission to drive her car, & that he never drove it to her knowledge :—*Held :* if the answer of the jury that J. at the time of the accident was driving the car with the implied authority of deft., amounted to a finding of agency, it must be set aside, on the ground that there was no evidence to support it.—GIBSON *v.* O'KEENEY, [1928] N. I. 66.—**IR.**

2317 ii e. —— ——.]—A motor car owned by deft. was, at the time of an accident, being driven by a person to whom it had been lent by him :—*Held :* the mere proof of deft.'s ownership of the car was not of itself sufficient to establish a *primâ facie* case of liability on his part.—FERGUSON *v.* WAGNER (1926), 27 S. R. N. S. W. 9; 44 N. S. W. W. N. 22.—**AUS.**

2317 ii f. —— ——.]—EVANOFF *v.* WINKLER & KELLY, [1931] 2 W. W. R. 576; 2 D. L. R. 932; *affd.*, [1931] 3 W. W. R. 177; 4 D. L. R. 919; 26 Alta. L. R. 40.—**CAN.**

2317 ii g. —— —— *Allowing third party to drive contrary to instructions—Principal not liable.*]—WAINIO *v.* BEAUDREAULT (Ont.), [1927] 4 D. L. R. 1131.—**CAN.**

2317 ii h. —— —— *Liability of person in control of driver.*]—If there is some one in a motor car who, although not driving it, has the right to control the driver he is under a duty to exercise that right & his failure to do so may render him equally liable with the driver for damages caused by the latter's negligence, even though said person is not the owner of the car.—RADER *v.* MCLELLAN (Alta.), [1929] 1 D. L. R. 577; 1 W. W. R. 64.—**CAN.**

2317 ii j. —— —— *Wife of owner.*]—SHORTT *v.* WONG (Sask.), [1929] 4 D. L. R. 677; 3 W. W. R. 72.—**CAN.**

2317 ii k. —— ——.]—When a mere licence is given to another to drive one's car, & that other in driving it injures some person, the owner, apart from legislation, is not responsible for damages.—HOWARD *v.* HENDERSON (1929), 41 B. C. R. 441.—**CAN.**

2317 ii l. —— ——.]—In an action resulting from a motor-car accident in the state of Washington when deft. T.'s car was being driven by the deft. M. :—*Held :* the accident was due to the utter recklessness of M.; he was under T.'s control although T. was asleep at the time of the accident; the relationship between T. & pltfs. who were passengers in the car was a "host-guest" relationship, *i.e.*, that of invitor & invitee; under the law of Washington, as well as of British Columbia, pltfs. had on said findings a *primâ facie* right to recover against both defts.; & therefore, since neither the defence that pltfs. & defts. were engaged in a joint adventure nor the defence of contributory negligence was sustained, pltfs. were entitled to damages against both defts.—WILLIAMS *v.* TANG & MITCHELL, BAKER *v.* TANG & MITCHELL, [1933] 2 W. W. R. 113; 47 B. C. R. 81.—**CAN.**

2317 ii m. —— —— *Vehicle driven by co-owner.*]—One of two joint-owners of a motor car was guilty of negligent driving whereby pltf., who were guests in the car, were injured. At the time of the accident the other joint owner was seated on the front seat beside the driver. During the journey they had been driving alternately, & the one not driving assisted the driver occasionally by applying the emergency brake when necessary :—*Held :* the co-owners were jointly liable to pltfs.—HAMMER & LUTHMER *v.* HAMMER & LUTHMER, [1929] 3 D. L. R. 273; 2 W. W. R. 130; 41 B. C. E. 55.—**CAN.**

2317 ii n. —— ——.]—When a motor car is being driven by the owner's friend & the owner is in the car, the owner is in control, & in the absence of proof that he has abandoned his rights & duties of control by contract or otherwise he is liable as principal for damage caused by the negligence of the driver.—RINGROSE *v.* HUNTER (1933), N. L. R. 442.—**S. AF.**

2317 ii o. —— ——.]—When a motor-car is being driven by the owner's friend & the owner is in the car, the owner is in control, & in the absence of proof that he has abandoned his rights & duties of control by contract or otherwise he is liable as principal for damage caused by the negligence of the driver.—RINGROSE *v.* HUNTER, [1933] N. L. R. 442.—**S. AF.**

2317 ii p. —— ——.]—In an action to recover damages caused by the negligent driving of a motor car, where it is proved that at the time of the accident the car belonged to deft., a presumption arises that the person who drove the car was either deft., his servant or agent. It is open to deft. to displace that presumption by proving that at the material time the car was not under his control.—LILADHAR CHATURBHUJ *v.* HARILAL JETHABHAI, I. L. R. [1937] Bom. 268.—**IND.**

735; 40 T. L. R. 227; 68 Sol. Jo. 387; 22 L. G. R. 185.

2318b. —— **Search for escape of gas.**]—A landlord of a lock-up shop, occupied by a tenant, had the tenant's authority to visit the premises at night. The landlord occupied the adjoining premises, & a lodger, who had no authority to enter the shop himself, complained to him of a smell of escaping gas coming from the shop. The landlord & the lodger went into the shop together, & the landlord commenced a search for the escape of gas with a naked light, which the lodger continued. Owing to the lodger's negligent conduct, an explosion was caused, resulting in damage to the tenant's goods on the premises:—*Held:* the landlord was liable for the damage on the ground (*inter alia*) of agency.—BROOKE *v.* BOOL, [1928] 2 K. B. 578; 97 L. J. K. B. 511; 139 L. T. 376; 44 T. L. R. 531; 72 Sol. Jo. 354, D. C.

Annotation:—**Apld.** Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

2326. *Add. Annotation:*—*Generally*, **Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

2331. *Add. Annotation:*—**Distd.** Goh Choon Seng *v.* Lee Kim Soo, [1925] A. C. 550.

2336. *Add. Annotations:*—*As to* (1) **Refd.** Britt *v.* Galmoye & Nevill (1928), 44 T. L. R. 294. *Generally*, **Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

2337a. Imprisonment by foreign sovereign—Procured by principal.]—Trespass lies for procuring by awe, fear, & influence, & contrary to his own inclination, a sovereign independent absolute prince to imprison pltf.—RAFAEL *v.* VERELST (1776), 2 Wm. Bl. 1055; 96 E. R. 621.

Annotations:—**Refd.** West *v.* Smallwood (1838), 6 Dowl. 580; Companhia de Mocambique *v.* British South Africa Co., De Sousa *v.* Same, [1892] 2 Q. B. 358.

2339. *Add. Annotations:*—*As to* (1) **Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1; Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

2339a. Fence—Omission to.]—Where, upon the diversion of a turnpike road after the new road had been completed, but before the old road was stopped up, the trustees, by the permission of B., broke down his fence to make a passage from the new road to the close of A., but did not put up a gate or fence to protect the latter close:—*Held:* the trustees were wrong-doers, & B. was responsible for their acts.—WINTER *v.* CHARTER (1829), 3 Y. & J. 308; 2 Man. & Ry. M. C. 177; 148 E. R. 1197.

2405. *Add. Annotation:*—**Refd.** Crozier *v.* Wishart & Co. & Western Printing Services, Ltd., [1936] 1 All E. R. 1.

2415. *Add. Annotation:*—**Refd.** Newsholme *v.* Road Transport & General Insce. (1928), 45 T. L. R. 123.

2436. *Add. Annotation:*—*Generally*, **Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

2446. *Add. Annotation:*—**Refd.** Clayton-Greene *v.* De Courville (1920), 36 T. L. R. 790.

2319 i. Add "*revsd., sub nom.* MURRAY *v.* JENKINS (1898), 28 S. C. R. 565.—**CAN.**," and delete the word "**AUS.**"

PART IX. SECT. 5, SUB-SECT. 2.—B.

2384 i. —— ——.]—A letter from an agent to his principal which is merely a narrative of an interview between the agent & a third party, if admissible in evidence at all, is not evidence against the principal of a parol acceptance by the third party of an offer made to him.—SWAN *v.* MILLER, [1919] 1 I. R. 151.—**IR.**

PART IX. SECT. 6, SUB-SECT. 1.—B.

2396 ii. —— *Not to agent's interest to disclose.*]—Knowledge communicated to an agent of a fact which it was not the agent's interest to disclose & which he did not disclose to the principal cannot be imputed to the principal.—TEXAS CO. *v.* BOMBAY BANKING CO., LTD. (1919), 24 C. W. N. 469.—**IND.**

2408 ii. —— ——.]—MOUNT HOPE RURAL MUNICIPALITY *v.* FINDLAY, [1921] 3 W. W. R. 658.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B.

2428 iv. ——.]—QUEBEC FEDERATED CO-OP. CO. *v.* FARMERS FENCE CO., [1925] 2 D. L. R. 574; *affg.* Q. R. 37 K. B. 345.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 3.

sc. *In general.*] — By conferring authority upon his agent the principal gives third persons the right to assume that they can deal with the agent in the matters covered by that authority until they receive notice of his authority having been revoked, or at least until some circumstance arises which in all reason should put them upon inquiry, & this rule applies especially in favour of third parties who began to deal with the agent while his authority did in fact exist.—WATSON *v.* POWELL, [1921] 2 W. W. R. 128; 14 Sask. L. R. 424; 58 D. L. R. 615.—**CAN.**

sd. *Owner leasing arm to former manager.*]—When an owner of land has permitted his employee to manage a farm & to dispose of the crop, from year to year, to an elevator co. & account for the proceeds, & the owner changes his course of dealing, & leases the land to the former employee on a crop-payment rental, the owner is not entitled to relief against the elevator co. for the loss of his share by the lessee, unless notice of the change of relationship has been given to the co.—NORTH AMERICAN FINANCE CO. *v.* WESTERN ELEVATOR CO. (1922), 66 D. L. R. 467; 32 Man. L. R. 76; [1922] 2 W. W. R. 162.—**CAN.**

sf. *Agent accepting goods after revocation.*]—Applts., a Durban firm, entered through V. into contracts with farmers in Alexandria for the supply of chicory. In 1917 V. had authority to accept chicory on behalf of applts., but when applts. entered into a contract with resps. for the 1918–1919 crop of chicory, this authority of V. had been withdrawn. Resps. tendered a consignment of chicory, which was accepted at Alexandria after examination by V., & sent to applts. at Durban; but it was rejected by applts. as being unsound in terms of the contract. Prior to the sending off of this consignment, applts. had notified all the farmers by circular that they would reject any chicory not "tip-top," & charge railage & storage to the senders:—*Held:* the circulars should have put resps. on inquiry as to V.'s authority.—ELLIS BROWN *v.* VAN ROOYEN, [1920] E. D. L. 81.—**S. AF.**

sg. *Agent contracting after revocation.*]—Deft. authorised his wife to sell land, but before the contract with pltf. was concluded he revoked his wife's authority. The revocation was not communicated to pltf.:—*Held:* deft. was bound by the contract entered into by his agent with pltf.—WILLIAMS *v.* WEST, [1921] E. D. L. 352.—**S. AF.**

sh. *Lapse of time putting third party on inquiry.*]—Applt., a contractor, had obtained a contract to work the O. quarry for a municipality, one of the terms being that he should not transfer any of the work to other persons without the consent of the engineer of the municipality. During the period June to Sept. 1926, resp., in response to orders given over the telephone from the quarry, supplied applt. at the quarry with coal to the value of £35, which amount was duly paid by applt. Thereafter no further coal was ordered until Jan. 1928, when certain further orders were received by resp. over the telephone for coal to be delivered at the quarry. The coal was delivered & the delivery notes were signed on behalf of the O. quarry. At this time applt. was no longer at the quarry, but had sublet the contract to S. & G. Applt. had not given notice in any form of this fact. After delivery of portion of the coal, resp. inquired from the municipal engineer whether the contract had been sublet, & upon receiving an answer in the negative supplied further coal to the quarry, making no attempt to communicate with applt. It was not disputed that orders had been given for the coal by S. & G., & that as between themselves & applt. they had no authority to bind the latter's credit:—*Held:* assuming S. & G. professed to act on applt.'s behalf, applt. could not have reasonably foreseen that a tradesman from whom he had ordered goods some eighteen months before over the telephone would act upon further telephone orders without communicating with him, & he was therefore not estopped from denying the authority of S. & G. to find his credit.—MONZOLI *v.* SMITH, [1929] A. D. 382.—**S. AF.**

2448. *Add. Annotation :*—**Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

2455. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

Part X.—Relations between Agent and Third Parties.

2457. *Add. Annotations :—As to* (1) **Follid.** Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243. **Refd.** Churchill & Sim *v.* Goddard, [1936] 1 All E. R. 675.

2461a. ——.]—Applts., acting as *del credere* agents on behalf of a firm of timber exporters in Finland sold a cargo of timber to resp. Thereupon applts., in accordance with the contract of agency, paid the exporters the price of the timber, less their commission. In accordance with the contract of sale resp. accepted two bills of exchange drawn by applts. for the price of the timber. Subsequently resp. rightfully rejected the timber. On presentation of the bills of exchange resp. dishonoured his acceptances & applts. then brought this action to recover upon the bills of exchange :—*Held :* (1) applts. were not trustees or agents of the exporters in any way that would prevent them recovering on the bills of exchange ; (2) the handing over of the shipping documents was good consideration for resp.'s acceptance of the bills ; (3) there was no failure of consideration for the bills which were not affected by the failure of the consideration under the contract for the sale of timber & applts. were entitled to recover.—CHURCHILL & SIM *v.* GODDARD, [1937] 1 K. B. 92 ; [1936] 1 All E. R. 675 ; 154 L. T. 586 ; 52 T. L. R. 356 ; 80 Sol. Jo. 285 ; 41 Com. Cas. 309, C. A.

2473. *Add. Annotation :*—**Refd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2474a. ——.]—The owners of a chartered ship sued the K. Coal Co. for demurrage at the port of loading under a charterparty expressed to be entered into " between G. T. G. & Co., owners' agents, & A. B. Co., Copenhagen, charterers." The charterparty, which was on a printed form, provided for payment of demurrage by " the charterers," & at the end of the charterparty the following stipulation was added in writing : " Freight & demurrage (if any in loading) to be paid in Glasgow by the K. Coal Co., Ltd." The charterparty was signed as follows : " For the A. B. Co., Copenhagen, J. B. J., of the K. Coal Co., Ltd. For & by telegraphic authority of owners, for G. T. G. & Co., J. M., as agents only." It was admitted that J. B. J. signed on behalf of the K. Coal Co. :—*Held :* (1) the K. Coal Co. were not by reason of the form of the signature made liable upon the charterparty ; (2) the clause in writing did not import a promise of liability sufficient to rebut any inference to the contrary from the form of the signature.—KIMBER COAL CO. *v.* STONE & ROLFE, LTD., [1926] A. C. 414 ; 95 L. J. K. B. 601 ; 135 L. T. 161 ; 42 T. L. R. 430 ; 31 Com. Cas. 333 ; 17 Asp. M. L. C. 37, H. L.

2476a. ——.]—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* NEWMAN, No. 188a, *ante*.

2482a. Person selling " as agent for " named principal.]—JAMES (ARTHUR) & CO. *v.* JOHN WESTON & CO., LTD. (1929), 73 Sol. Jo. 484.

2487a. ——.]—Pltf., a builder, did work on the order of H., a director of a co. for which pltf. had previously done work on H.'s order. As the work proceeded pltf. prepared estimates & addressed them to the co. whose name he had entered in his books. When the work was finished he was paid a sum on account, but when trying to get payment of the balance he was told that the work had not been ordered on behalf of the co., but for other principals. Thereupon he sued H. The judge found that H. impliedly undertook personal liability for the work, that pltf. gave credit to the co. up to a certain date, but did so under a mistaken impression, & that he never gave exclusive credit to them

---

PART X. SECT. 1, SUB-SECT. 1.—A. (a) i.

2457 i. *Agent cannot sue.*]—Pltf. sent to defts. a quotation for goods, written on paper headed, " Niels Storaker, Representative for Alliance Export & Import Co., Christiania, Norway. All orders & contracts are subject to the suppliers' terms of contract. No order or contract is firmly accepted until the suppliers have consented to book it." In the letter he wrote : " All orders are booked on the understanding that my principals are given the option of shipping by steamer or sailing vessel." Defts. gave pltf. an order. Pltf. wrote to defts. saying : " I have cabled the order over to-day & I hope soon to be able to give upon cable acceptance." Subsequently he wrote : " I am glad in being able to inform you that the above-mentioned order has been booked by my principals & will send you official confirmation in due course." Pltf.'s letters were all signed " Niels Storaker " without any qualification :—*Held :* pltf. was contracting merely as agent, not as principal, & was not entitled to sue on the contract.—STORAKER *v.* SOUTHOUSE & LONG, LTD. (1920), 20 S. R. N. S. W. 190.—**AUS.**

2457 ii. ——.]—An order for books, addressed to the publishers on a form apparently supplied by them, requested delivery through " your distributors," contained an agreement to pay them (the distributors) at their office & provided that " this order to be binding shall be accepted by them." The distributors supplied the books, & sued for the price :—*Held :* the action was not maintainable.—WISE *v.* KERR, [1925] 1 W. W. R. 849 ; 35 B. C. R. 161.—**CAN.**

2457 iii. ——.—BARKLEY *v.* WINNYCHUK (Alta.), [1926] 4 D. L. R. 538 ; [1926] 3 W. W. R. 327.—**CAN.**

2467 i. *Agent real principal.*]—Where an agent names his principal & makes the contract as agent on his behalf, he cannot enforce it, even though he is the real principal, unless the other party has affirmed the contract with knowledge of the fact.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

PART X. SECT. 1, SUB-SECT. 1.—A. (a) ii.

2471 vi. —— *Father & son.*]—A person acting for a disclosed principal in a contract is not liable thereon, unless there be circumstances to show that he intended to render himself liable. The fact that a son residing with his father telephones for a physician to come & attend his father's servant who is ill, raises no presumption that the son agrees to pay for such services.—BLEECKER *v.* STUTSMAN, [1920] 3 W. W. R. 644 ; 54 D. L. R. 662.—**CAN.**

2483 i. *Agent real principal.*]—Pltf. signed an order for the purchase of a tractor addressed to a co., for whom deft. claimed to have made the sale as agent only :—*Held :* deft. was liable as the real vendor.—PETERSON *v.* CUSHMAN MOTOR WORKS, [1922] 2 W. W. R. 1041 ; 67 D. L. R. 38.—**CAN.**

sk. *Contract for work & labour.*]—After judgment by default on common counts for work & labour, etc., deft. may show on the execution of writ of inquiry that he contracted merely as agent of the person to whom the credit was given.—FALLS *v.* SARGENT (1846), 3 Kerr. 248.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—A. (b) ii.

e i. ——.]—Every person who in making a contract discloses the existence, but not the name, of the

in such a way as to bind himself to look to them, & that he never gave credit to H. before the work was completed:—*Held:* H. was liable for the balance.—GARDINER *v.* HEADING, [1928] 2 K. B. 284; 97 L. J. K. B. 766; 139 L. T. 449, C. A.

2501. *Add. Annotations:*—**Refd.** Phillips *v.* Brooks, [1919] 2 K. B. 243; Said *v.* Butt, [1920] 3 K. B. 497; Lake *v.* Simmons, [1927] A. C. 487.

2502. *Add. Annotation:*—**Consd.** Dyster *v.* Randall, [1926] Ch. 932.

2504. *Add. Annotation:*—**Consd.** Rederi Akt. Transatlantic *v.* Drughorn, [1918] 1 K. B. 394.

2523a. Judgment obtained against undisclosed principal — Judgment unsatisfied.] — A person making a contract with an agent, who is acting on behalf of an undisclosed principal, cannot sue the agent on the contract after having obtained judgment upon it against the undisclosed principal, even though such judgment is still unsatisfied. — LONDON GENERAL OMNIBUS CO., LTD. *v.* POPE (1922), 38 T. L. R. 270.

2531. *Add. Annotations:*—*As to* (1) **Refd.** Ariadne S.S. Co. *v.* KcKelvie, [1922] 1 K. B. 518. *As to* (2) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2537. *Add. Annotations:*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2542. *Add. Annotation:*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2543. *Add. Annotations:*—**Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2544. *Add. Annotation:*—**Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2545. *Add. Annotations:*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2546. *Add. Annotations:*—*As to* (1) **Consd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 5118; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492; Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. *As to* (2) **Apprvd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2546a. —— —— **Unnamed principal.**]—Appelts., pltfs. in the action, were English timber brokers. In Oct. 1929, they, as brokers acting on behalf of a foreign seller, sold to resp., an English buyer, a quantity of timber. The contract of sale was signed by applts. as brokers & was expressed to be made "on account of our principals," but the name of the seller was not disclosed. Delivery was to be made by instalments, & the first instalment was accepted & paid for by resp. without question. The second instalment was then delivered, but before paying for it resp. discovered that the seller was a merchant at D. with whom he had previously

---

principal on whose behalf he is acting, is personally liable on the contract to the other contracting party.—GLADUE *v.* WALCH, [1918] 3 W. W. R. 975; 43 D. L. R. 757.—**CAN.**

e ii. ——.]—An agent who buys as agent to the knowledge of the seller, cannot be made personally liable for the price.—DANIELS *v.* BAKER, FRITZ *v.* BAKER, [1937] 3 D. L. R. 115.—**CAN.**

e iii. *Name disclosed by third party.*]—Under Indian Contract Act, s. 230, pltfs. as agents for an undisclosed principal, could personally enforce the contract. The expression "where the agent does not disclose the name of the principal" does not apply to a case where the name of the principal is disclosed not by the agent, but by a third party.—KAPURJI MAGNIRAM *v.* PANAJI DERICHAND (1928), I. L. R. 53 Bom. 110.—**IND.**

2492 i. *Agent real principal.*]—Where the owner in equity signs a contract for the sale of land "as agent for the owner" evidence is admissible to show that the person so contracting is the owner, & he is entitled to sue the purchaser without having given him notice prior to action brought that he was the principal, & not the agent.—MACCORMAC *v.* BRADFORD, [1927] S. A. S. R. 152.—**AUS.**

si. *Person contracting for "buyer."*]—In pursuance of authority given by deft. his agents purchased sheep for pltf. In none of the telegrams between pltf. & deft.'s agents by which the purchase was arranged was deft. named, but the last telegram from the agents contained the words "Buyer confirms sale":—*Held:* the words "Buyer confirms sale" showed that deft.'s agents were contracting as agents, & relieved them from personal liability on the contract.—MURRAY *v.* HOPKINS, [1919] N. Z. L. R. 689.—**N.Z.**

PART X. SECT. 1, SUB-SECT. 1.—A. (c) i.

2497 v. ——.]—Where an agent for an undisclosed principal contracts on such terms as import that he is the real & only principal, the undisclosed principal cannot sue or be sued on the contract.—WEST *v.* DILLICAN, [1921] N. Z. L. R. 617.—**N.Z.**

2497 vi. —— *Agent real principal.*]—Where a person who purports to contract as agent for an undisclosed principal is in fact the principal in the transaction, it is not clear whether or not he is entitled to sue on the contract as principal.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

2497 vii. —— *Damage suffered by principal.*]—In an action against shipowners for payment of the balance of the contract price of goods for a ship, the shipowners counterclaimed for damages for breach of contract. In the course of the action it appeared that the shipowners were not the registered owners of the ship, but merely acted as managers for a co. which owned her:—*Held:* as pltfs. had in the circumstances elected to treat defts. as their debtors, defts. were entitled to counterclaim for damages although the damages had been suffered by the principals whom they represented, & not by themselves.—CRAIG & Co. *v.* BLACKATER, [1923] S. C. 472.—**SCOT.**

PART X. SECT. 1, SUB-SECT. 1.—A. (c) ii.

2510 xiv. ——.]—Where a person makes a contract in his own name without disclosing either the name or existence of a principal, he is primarily liable on the contract to the other contracting party.—GLADUE *v.* WALCH, [1918] 3 W. W. R. 975; 43 D. L. R. 757.—**CAN.**

2510 xv. ——.]—In an action for the hire of a dredge obtained by deft. M. from pltf., relief was sought against deft. J. as undisclosed principal:—*Held:* suspicious circumstances in the relations between M. & J. were not sufficient to support the judgment against J., in the face of the denial of defts. that any such relation existed.—NOVA SCOTIA DREDGING CO., LTD. *v.* MUSGRAVE & Co. (1918), 52 N. S. R. 71; 40 D. L. R. 589.—**CAN.**

2510 xvi. ——.]—An agent, who does not clearly indicate to the third party that he is acting as an agent, is personally liable.—HILLS *v.* SWIFT CANADIAN CO., [1923] 3 D. L. R. 997.—**CAN.**

2510 xvii. ——.]—LITCHFIELD *v.* SASKATCHEWAN & BATTLE RIVER LAND & DEVELOPING CO. (Sask.) (1908), 7 W. L. R. 475.—**CAN.**

2510 xviii. ——.]—WEST *v.* DILLICAN, No. 2497 v., *ante*.—**N.Z.**

2510 xix. ——.]—MCCREA *v.* BARHAN-JENKINS COMMISSION CO. & RABY, [1930] 2 W. W. R. 52; 3 D. L. R. 481; 24 Alta. L. R. 521.—**CAN.**

2510 xx. ——.]—Agent is personally liable for the price of goods unless he can prove that the vendor knew he was the agent of someone else.—SBROCCHI *v.* MOSS, [1934] 4 D. L. R. 80; 7 M. P. R. 485.—**CAN.**

2510 xxi. ——.]—R., a shorthand writer, supplied L., a solr., with notes of evidence taken at the hearing of an inquiry before a certain commission. L., who, at the inquiry, was acting for several clients, ordered the notes verbally but, when doing so, did not state specifically that he was ordering them on behalf of any of his clients. R. sued L. for the price of the notes. At the hearing the presiding judge held that he was not satisfied that a custom, under which, in the circumstances, L. would be liable, had been proved, & granted a non-suit. On appeal:—*Held:* the true question for determination was whether the contract between the parties was such that deft., when ordering the notes, made it clear that he was not to be personally liable. Therefore, the non-suit should be set aside.—RUTTER *v.* LINTON (1935), 35. S. R. N. S. W. 132; 52 N. S. W. W. N. 13.—**AUS.**

been in litigation & against whom he had a judgment which was still unsatisfied. Resp. thereupon refused to pay for the second instalment but offered to set off the price against so much of his unsatisfied judgment. Applts. had meanwhile paid the foreign seller themselves & had obtained the documents from him, and they brought this action in their own name to recover the price from resp.:—*Held:* dismissing the appeal (1) as applts. had only signed the contract in their capacity as brokers they had not themselves either rights or liabilities under it; & (2) on the evidence there was no custom in the trade under which the ct. could imply an independent contract by the buyer to become liable to pay the brokers instead of their principals.—FLATAU, DICK & Co. *v.* KEEPING (1931), 36 Com. Cas. 243, C. A.

Annotation:—As to (2) **Refd.** Churchill & Sim *v.* Goddard, [1936] 1 All E. R. 675.

2549. *Add. Annotation:—As to* (2) **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2549a. —— —— **Agents also described as charterers.**]—A charterparty was expressed to be made "between T. H. S. & Co., agents for the owners" of a steamer, "& J. McK. & Co., charterers," & was signed "For & on behalf of J. McK. & Co. (as agents), J. A. McK." The steamer was to load a cargo of coal on the Tyne & proceed to a foreign port, & provision was made for the payment by the charterers of demurrage in the event of the steamer being detained beyond the stipulated time either at the port of loading or at the port of discharge. The charterparty contained numerous other provisions imposing obligations on the charterers. The owners were aware at the time when the charterparty was signed that J. McK. & Co. were acting for other persons. In an action by the owners against J. McK. & Co. for demurrage at the port of discharge:—*Held:* defts. having signed as agents were not liable as principals to pay demurrage, notwithstanding that they were described as charterers in the body of the charterparty.—UNIVERSAL STEAM NAVIGATION Co. *v.* MCKELVIE (J.) & Co., [1923] A. C. 492; 92 L. J. K. B. 647; 129 L. T. 395; 39 T. L. R. 480; 67 Sol. Jo. 593; 16 Asp. M. L. C. 184; 28 Com. Cas. 353, H. L.; *affg.* S. C. *sub nom.* ARIADNE S.S. Co., LTD. *v.* MCKELVIE (J.) & Co., [1922] 1 K. B. 518, C. A.

Annotations:—**Consd.** Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243. **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2553. *Add. Annotation:*—**Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2559. For "2 C. & P. 145" read "2 C. & P. 124."

2563. *Add. Annotations:—As to* (1) **Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. *As to* (3) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2564. *Add. Annotations:—As to* (1) **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. *As to* (2) **Refd.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

2566. *Add. Annotations:*— **Consd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2567. *Add. Annotations:*—**Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2571. *Add. Annotations:*—**Overd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492. **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2575. *Add. Annotation:*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

2576. *Add. Annotation:*—**Expld.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2577. *Add. Annotation:—As to* (1) **Refd.** Westacott *v.* Hahn, [1918] 1 K. B. 495.

2583. *Add Annotation:—As to* (2) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2584. *Add. Annotation:*—**Refd.** The Lizzie, [1916] P. 22.

2585. *Add. Annotation:—As to* (1) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2591. *Add. Annotation:*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2594. *Add. Annotation:—As to* (2) **Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

2595. *Add. Annotation:*—**Distd.** Drughorn *v* Rederiakt. Trans-Atlantic, [1919] A. C. 203

2597. *Add. Annotation:—As to* (1) **Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2599. *Add. Annotation:*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2606. *Add. Annotations:*—**Distd.** Drughorn *v.* Rederiakt. Trans-Atlantic, [1919] A. C. 203. **Refd.** Rederiakt. Argonaut *v.* Hani, [1918] 2 K. B. 247; Collins *v.* Associated Greyhound Raccourses, [1930] 1 Ch. 1.

2608. *Add. Annotations:—Generally,* **Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70; Harmer *v.* Armstrong, [1934] Ch. 65.

PART X. SECT. 1, SUB-SECT. 1.—B. (c) i.

2591 iii. ——.}—Where a wife contracting for the sale of a house signed a document in her own name without any indication that she was acting as agent for her husband, & expressly purported as owner to contract for payment to pltf. of the commission on the sale thereof:—*Held:* parol evidence was not admissible in an action against the husband to show that she was in fact acting as agent.—KATZMAN *v.* OWNAHOME REALTY Co., [1924] 1 D. L. R. 201; 25 O. W. N. 333.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—B. (c) ii.

2598 ii. ——.}—Where a contract is entered into by an agent in his own name & the terms thereof clearly indicate personal liability the agent is personally bound by the contract, regardless of his intention, unless it can be shown by extrinsic evidence that there was an express agreement that the agent should not be liable & that the contract rendering him liable was so drawn by mistake.—CURRIE *v.* RURAL MUNICIPALITY OF WREFORD, No. 280, & LASHER, [1918] 1 W. W. R. 315; 39 D. L. R. 516; 11 Sask. L. R. 22.—**CAN.**

sm. —— *Sale of shares.*}—An investor purchased from a chartered accountant 150 shares in a co., paid the price therefor, & received from the chartered accountant a receipt, which acknowledged payment of the price of 150 shares & concluded with these words: "the transfer for which will be sent you for signature in due course." In an action at the instance of the purchaser against the chartered accountant for transfer of the shares or repayment of the price deft. denied liability, averring that his position in the transaction was merely that of an agent for a disclosed principal:—*Held:* on the terms of the receipt deft. was personally liable to implement the contract of sale, & it was incompetent for him to adduce parol evidence to show, in contradiction of its terms, that he was merely an agent.—LINDSAY *v.* CRAIG, [1919] S. C. 139; 56 Sc. L. R. 93; [1918] 2 S. L. T. 321.—**SCOT.**

2609. *Add. Citations :* — REDERIAKTIEBOLAGET ARGONAUT *v.* HANI, [1918] 2 K. B. 247 ; 87 L. J. K. B. 999 ; *sub nom.* ARGONAUT *v.* HANI, 14 Asp. M. L. C. 310.

Add. Annotation :—**Refd.** Drughorn *v.* Rederiaktiebolaget Trans-Atlantic, [1919] A. C. 203.

2609a. ——.]—The description in a charterparty of one of the contracting parties as " charterer " does not, of itself, designate him as the only person to fill that position.

An action for breach of charterparty was brought by persons claiming to be the undisclosed principals of a party described in the contract as " charterer," & objection was taken to the admission of evidence that pltfs. were in fact the charterers, on the ground that such evidence would contradict the written contract :—*Held :* the evidence was admissible.—DRUGHORN (F.), LTD. *v.* REDERIAKTIEBOLAGET TRANS-ATLANTIC, [1919] A. C. 203 ; 88 L. J. K. B. 233 ; 120 L. T. 70 ; 35 T. L. R. 73 ; 63 Sol. Jo. 99 ; 14 Asp. M. L. C. 400 ; 24 Com. Cas. 45, H. L. ; *affg.* S. C. *sub nom.* REDERI AKT. TRANSATLANTIC *v.* DRUGHORN, [1918] 1 K. B. 394, C. A.

Annotation :—**Consd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2610. *Add. Annotation :—As to* (2) **Refd.** Keen *v.* Mear (1920), 124 L. T. 19.

2613. *Add. Annotations :*—**Refd** Wilson *v.* United Counties Bank, [1920] A. C. 102 ; Harmer *v.* Armstrong, [1934] Ch. 65.

2620. *Add. Annotation :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2629. *Add. Annotation :*—**Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

2634. Before this case, after " *See, now,* Bills of Exchange Act, 1882 (c. 61), s. 26," add " *&, generally,* BILLS OF EXCHANGE, Vol. VI., pp. 112–114."

2635. *Add. Annotations :*—**Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301 ; Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414 ; Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

2639. *Add. Annotation :*—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

2655. *Add. Annotations :*—**Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301 ; Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

2658. *Add. Citations :—sub nom.* CREW *v.* PETIT, 3 Nev. & M. K. B. 456 ; 2 Nev. & M. M. C. 309.

Add. Annotation :—**Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301.

2664. *Add. Annotation :—As to* (1) **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2665. *Add. Annotations :*—**Consd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301 ; Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

2666. *Add. Annotation :—Generally,* **Refd.** Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

2686. *Add. Annotations :*—**Refd.** Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226 ; Westminster Bank *v.* Hilton (1926), 136 L. T. 315.

2695. *Add. Annotations :—As to* (1) **Overd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492. *Generally,* **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2701. *Add. Annotation :*—**Consd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2712. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

PART X. SECT. 1, SUB-SECT. 2.—C.

b i. —— ——.]—A clause in a document under seal purporting to bind a person as principal of one of the parties, cannot so bind him where the deed was not executed by him or executed in his name.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1923] 4 D. L. R. 543.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.—B. (b).

si. *General rule.*]—The name of a person or firm to be charged upon a negotiable instrument should be clearly stated on the face or on the back of the document. A promissory note was signed by a chetty who was alleged to be the agent of applt. firm. The chetty signed it in his own name & it contained no promise by applt. firm to repay the loan :—*Held :* the firm was not liable.—P. R. M. P. R. CHETTYAR *v.* MUNIYANDI SERVAI (1932), I. L. R. 10 Ran. 257.—**IND.**

PART X. SECT. 1, SUB-SECT. 4.—B. (a).

sn. *Failure of foreign principal to perform contract.*]—Defts., acting on behalf of a foreign shipowner, who proposed to establish a service from Halifax to Havana & other southern ports, contracted in their own name with pltf. to provide space on the ship for a shipment of timber to be carried from Halifax to Buenos Ayres. The proposed service was abandoned by the shipowner, so that the contract entered into by defts. could not be performed :—*Held :* there having been failure on defts.' part to disclose that they were merely acting in the capacity of agents for a foreign principal, they were liable to pltf. for damages resulting from cancellation of the ship's sailing.—SHEPARD & MORSE LUMBER CO. INCORPORATED *v.* MATHERS (I. H.) & SON, [1926] 2 D. L. R. 457 ; 58 N. S. R. 466.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.—E.

2709 iii. —— *Principal undisclosed—Principal no right to sue.*]—COHEN *v.* DOMINION ATLANTIC RY. CO. (1931), 3 M. P. R. 495 ; *affd.,* [1931] S. C. R. 715 ; [1932] 2 D. L. R. 815.—**CAN.**

PART X. SECT. 1, SUB-SECT. 5.

2712 ii. —— *On behalf of unincorporated body.*]—An officer of a brotherhood lodge, an unincorporated body, who as such officer on behalf of the lodge borrows money & signs documents purporting to obligate it to repayment, is personally liable for repayment, having contracted for a principal who had no existence in law. —FINLAY *v.* BLACK, [1921] 2 W. W. R. 907.—**CAN.**

2712 iii. —— —— .]—A person cannot be the agent of a projected but actually as yet non-existent co., & the co. when formed cannot take advantage of any contract entered into by a person purporting to act as its agent, whether by attempted ratification or otherwise ; but a person may make a provisional contract not to become binding—*i.e.* not to be a contract at all—unless & until the co. becomes entitled to commence business. — HUDSON-MATTAGAMI EXPLORATION MINING CO. *v.* WETTLAUFER BROTHERS, LTD., [1928] 3 D. L. R. 661 ; 62 O. L. R. 387.—**CAN.**

2712 iv. —— ——.]—A co. cannot be bound by any contract made on its behalf before it comes into existence, nor can it, subsequent to its formation, ratify such a contract.—WEARNE BROTHERS *v.* RUSSA ENGINEERING WORKS (1928), I. L. R. 7 Ran. 144.—**IND.**

sp. *Bill of exchange accepted—In name of non-existent company.*] — Deft., a member of a firm, H. & S., represented & warranted to pltf. that H. & S. Co., Ltd., were an incorporated co. & that he was authorised by it to accept a bill of exchange as its agent. He accepted a draft in the name of the co. & pltf. upon the faith of such assertion & warranty discounted the draft. H. & S. Co., Ltd., were not then an incorporated co. :—*Held :* deft., by his acceptance of the draft in the name of a non-existing corpn., warranted & represented that there was such a corpn. in existence & that he had authority to accept the draft for that co., & not having any such authority, he was personally liable for the amount of the draft & the costs & expenses incurred by pltf. in endeavouring to collect same from H. & S. Co., Ltd.—BANK OF NOVA SCOTIA *v.* HATFIELD (1920), 48 N. B. R. 13 ; 58 D. L. R. 136.—**CAN.**

sq. *Purchase of goods on behalf of firm—Firm having disposed of business.*] —Pltfs., owners of an apple orchard, were visited by C., acting for deft. co., who represented to pltfs. that he was buying on behalf of N. & L., a firm which had been well-known to pltfs. in previous years as buyers of apples, & was represented to pltfs. by C., as " all right, solid as a rock " & " had been running since 1847." A paper was produced & signed by pltfs. containing particulars of the proposed sale & purporting to be made between pltfs.,

2713. *Add. Annotation :*—**Refd.** Consolidated Entertainment, Ltd. *v.* Taylor, [1937] 4 All E. R. 432.

2726. *Add. Annotations :—As to* (2) **Refd.** Public Works Comrs *v.* Pontypridd Masonic Hall Co., [1920] 2 K. B. 233. *Generally*, **Consd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439. **Refd.** Rowland *v.* Air Council (1923), 39 T. L. R. 228.

2726a. Minister of Health—For breach of contract.]—By Ministry of Health Act, 1919 (c. 21), s. 7 (1), " The Minister may sue & be sued by the name of the Minister of Health, & may for all purposes be described by that name " :—*Held :* this provision does not enable an action to be brought against the Minister for alleged breach of a contract made by the Minister as a servant of the Crown, & the proper remedy is against the Crown by petition of right.—GILLEGHAN *v.* MINISTER OF HEALTH, [1932] 1 Ch. 86 ; 101 L. J. Ch. 81 ; 146 L. T. 231 ; 47 T. L. R. 439.

2727. *Add. Annotations :*—**Consd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439. **Refd.** Public Works Comrs. *v.* Pontypridd Masonic Hall Co., [1920] 2 K. B. 233.

2729. *Add. Annotations :*—**Folld.** Hosier *v.* Derby (Earl), [1918] 2 K. B. 671. **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

2731. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

2732. *Add. Annotation :*—**Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

2733a. —— For declaration as to meaning of contract.]—By a contract made between pltfs. & the Secretary of State for War the Secretary of State hired from pltfs. a steam engine & hay press upon the terms that the engine should be used only for the purpose of working the press. Pltfs. brought an action against deft., who was Secretary of State for War at the date of the writ, but at the date of the contract did not nor did he now hold that office, alleging that deft. had improperly used the engine for other than the specified purposes, & claiming a declaration that pltfs. were entitled to compensation for the improper use of the engine, & certain other declarations as to the construction & meaning of the contract :—*Held :* the action was not maintainable. It could no more be brought against a servant of the Crown for a declaration as to what the contract meant than for substantive relief upon the contract itself.—HOSIER BROTHERS *v.* DERBY (EARL), [1918] 2 K. B. 671 ; 87 L. J. K. B. 1009 ; 119 L. T. 351 ; 34 T. L. R. 477, C. A.

2734. *Add. Annotations :*—**Consd.** R. *v.* Income Tax Special Purposes Comrs., *Ex p.* Dr. Barnado's Homes National Incorporated Assocn., [1920] 1 K. B. 26. **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

2740a. —— —— To mess.]—BROWN *v.* DOYLE (1788), 3 Camp. 51, n. ; 170 E. R. 1302.

2742a. —— —— On order of secretary of mess committee.]—LASCELLES *v.* RATHBUN, No. 704a, *ante*.

2748. *Add. Annotation :*—**Consd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2749. *Add. Annotations :*—**Consd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538 ; Edwards *v.* Porter (1924), 41 T. L. R. 57. **Apld.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

2751. *Add. Annotation :*—**Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

as sellers, & N. & L., or their agents, as buyers. Pltfs. delivered their apples to deft., & received payment on account in cheques of deft. co. At the time of the transaction N. & L. had gone out of business, having disposed of the same to another co., which after changing its name several times had gone into liquidation :—*Held :* deft. co. was liable to pltfs. for the balance remaining unpaid on account of the sale.—BRENNAN *v.* BERWICK FRUIT CO., [1928] 1 D. L. R. 548 ; 59 N. S. R. 510.—**CAN.**

PART X. SECT. 1, SUB-SECT. 6.—A. (a).

2730 i. *Secretary of State for India—Contract for supply of goods by Commanding Officer—Contract ultra vires.*]—Pltf. having entered into a contract for the supply of horses' food with the officer commanding the depot of a cavalry regiment, sued the Secretary of State for the balance due to him under the contract :—*Held :* an officer commanding a depot, not being one of the officers authorised by the Governor-General in Council under Government of India Act, 1915, s. 30 (2), to enter into contracts on behalf, of the Secretary of State, the contract sued upon was *ultra vires* & could not be enforced against the latter.—SECRETARY OF STATE *v.* SARIN & CO. (1929), I. L. R. 11 Lah. 375.—**IND.**

ar. *Who is Crown servant or agent—Contractor.*]—Resp. co. entered into a contract with the Minister of Railways & Canals, as representing the Crown, for the enlargement of the L. Canal. Applt. co. had obtained under a lease from the Govt. the right to lay & maintain a gas main across the *solum* of the canal. Clause 6 of the lease stipulated that, in the event of its gas main being from any cause injured, applt. co. was to have no claim or demand against " His Majesty, His servants or agents." During the execution of the contract, a break occurred in the gas main. & applt. co. claimed damages alleging negligence of the resp. co. in dredging the bed of the canal :—*Held :* resp. co. was not a " servant " or an " agent " within the contemplation of clause 6 of the lease & was therefore liable in damages.—MONTREAL LIGHT, HEAT & POWER CO. *v.* QUINLAN & ROBERTSON, LTD., [1929] 3 D. L. R. 568 ; S. C. R. 385 ; *revg.*, 44 Que. K. B. 230 ; *affg.*, 63 Que. S. C. 436 ; 31 Rev. Leg. 450.—**CAN.**

PART X. SECT. 1, SUB-SECT. 7.—A.

2748 v. ——.]—In an action for breach of warranty of authority, the cause of action is the breach of the express or implied promise of the person who assumes to act as agent that he has authority so to act, the consideration necessary to make that promise binding being found in the action of the other party in entering into the contract. Pltf. in such an action need not establish that he believed deft.'s representation that he had authority, though it must appear that he acted in reliance upon it.—LEGGO *v.* BROWN, [1923] V. L. R. 449.—**AUS.**

2748 vi. ——.]—BROOKS, LTD. *v.* CLAUDE NEON GENERAL ADVERTISING, LTD., [1932] 2 D. L. R. 45.—**CAN.**

2748 vii. ——.]—Deft., who at the time was president & majority shareholder of the R. co., signed in the name of the co. a contract with pltf. for the sale & installation of an oil burner for the purpose of heating a building which was owned by deft. & rented to the R. co. The burner was installed, but the co. denied liability on the contract &, after setting up a defence to an action thereon, went into bkpcy. Pltf. then sued the present deft. for damages for breach of warranty of authority. The judge held that deft. was the real purchaser & gave judgment against him for the purchase price ; leave being given to pltf. to amend the statement of claim to accord with the evidence & the judgment. Deft. appealed & pltf. cross-appealed for judgment for breach of warranty of authority :—*Held :* the appeal should be allowed on the grounds that deft. was not the real purchaser & pltf. had not made out a case against him of breach of warranty of authority.—FESS OIL BURNERS OF CANADA, LTD. *v.* HUTCHINGS, [1933] 2 W. W. R. 141 ; [1934] 1 D. L. R. 335 ; 41 Man. L. R. 307.—**CAN.**

st. *Liability for return of deposit.*]—Where a person, falsely representing himself to be the agent for the owner of certain land, entered into a contract for the sale thereof, & received a deposit on account of the purchase money, but the vendee could not obtain specific performance of the contract :—*Held :* his remedy against the agent for the return of the deposit was at law, & that a bill for that purpose would not lie.—GRAHAM *v.* POWELL (1868), 15 Gr. 327.—**CAN.**

2752. *Add. Annotations :*—**Apld.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616. **Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

2753. *Citations :*—For " P. C." read " H. L."

2753a. —— **Sale of goods—Principal not entitled to sell.**]—Where an agent purports to make a contract for a principal to buy goods, whether ascertained or not, or to sell unascertained goods, disclosing the fact that he is acting as agent, but not disclosing the name of his principal, he is personally liable to the purchaser if it afterwards appear that the principal had no right to sell, it being presumed that the purchaser would be unwilling to contract solely with an unknown man. But this presumption does not exist where a specific chattel is so sold, it being impossible to suppose that a purchaser would impose or an agent accept such a liability.—BENTON *v.* CAMPBELL, PARKER & Co., [1925] 2 K. B. 410; 94 L. J. K. B. 881; 134 L. T. 60; 89 J. P. 187; 41 T. L. R. 662; 69 Sol. Jo. 842. D. C.

2755a. Authority to compromise action.]—T., who owned a paper, formed a co. with a capital of £500 in £1 shares, & transferred his paper to the co. in consideration of the allotment to him of the 500 shares. T. gave Miss P., who was the editor of the paper, 475 shares, retaining 25 shares himself. T. & Miss P. were the directors of, & the only shareholders in, the co. Defts. published in one of their papers two articles which T. considered to be a libel upon himself & the co. to which he had transferred his paper. T. & the co. commenced actions for libel against defts. There was a meeting between T. & H., a representative of defts., with the object of settling the litigation, & eventually terms of settlement were arranged on Oct. 10, 1932, & initialled by T. & H. The terms, which were headed with the names of two actions, provided: " I accept the sum of 1,000 guineas on account of costs & expenses incurred in full discharge & settlement of my claims against " defts. " & the claims of the " co. " & the officers of that co., arising out of the articles published in the *Daily Mail* . . . & I will forthwith instruct my solrs. to serve notice of discontinuance, or to take such other steps or to agree to such other steps being taken to end the proceedings now pending." Provision was also made for a letter in the terms of an agreed draft to be written to T. by H. Pltf. co. & Miss P. did not agree to the proposed settlement, although defts. were ready & willing to carry out the settlement, & the actions proceeded to trial. Defts. counterclaimed against T. for breach of warranty of authority. The jury returned a verdict for both T. & pltf. co., & judgment was entered for each of pltfs. with costs. The Ct. of Appeal, however, held that the alleged libel was not a libel on pltf. co., & set aside the judgment in favour of pltf. co. The judge at the trial held that T. represented & warranted that he had authority to settle the action on behalf of pltf. co., whereas in fact he had no such authority, & defts. were entitled to an inquiry as to the damages they had thereby sustained. Defts. appealed (*inter alia*) by leave of the trial judge, on the question of costs in both actions. Pltf. T. appealed against the judgment against him for damages for breach of warranty of authority on the ground that he had never represented that he had authority to settle the action on behalf of pltf. co., & because the transaction relied on in the counterclaim was only an executory accord giving rise to no rights :—*Held :* inasmuch as T. warranted that he had the authority that he professed to have, whereas in fact he had not that authority, he had broken his warranty & was liable in damages. —BRITISH RUSSIAN GAZETTE & TRADE OUTLOOK, LTD. *v.* ASSOCIATED NEWSPAPERS, LTD.; TALBOT *v.* ASSOCIATED NEWSPAPERS, LTD., [1933] 2 K. B. 616; 102 L. J. K. B. 775; 149 L. T. 545, C. A.

2757. *Add. Annotation :—As to* (1) **Consd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2761. *Add. Annotation :—As to* (3) **Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

2763. *Add. Annotations :—As to* (1) **Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538; Edwards *v.* Porter (1924), 41 T. L. R. 57. *As to* (2) **Refd.** *Re* Wingfields, [1923] 2 K. B. 112.

2764. *Add. Annotations :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120; Watts *v.* Official Solicitor, [1936] 1 All E. R. 249; Myers *v.* Rothfield, [1938] 3 All E. R. 498; Brendon *v.* Spiro, [1938] 1 K. B. 176.

2769. *Add. Citation :*—13 Asp. M. L. C. 463.

2775a. —— **Acceptance subject to ratification.**]—WATSON *v.* DAVIES, No. 1001a, *ante*.

2777. *Add. Annotations :*—**Consd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538. **Apld.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

2780. *Add. Annotation :*—**Consd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2788. *Add. Annotation :*—**Refd.** Smith *v.* Buskell, Buskell *v.* Smith & G. W. Ry., [1919] 2 K. B. 362.

2791. *Add. Annotation :*—**Refd.** Cooper *v.* Dummett (1930), 70 L. Jo. 394.

2792. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

2795. *Add. Annotations :*—**Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538; Edwards *v.* Porter (1924), 41 T. L. R. 57; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2

PART X. SECT. 1, SUB-SECT. 7.—B.

2765 l. *Third party in error as to actual scope of agent's authority.*]—Deft., as agent of absentee landlords, instructed pltf., a solr., to distrain for rent on certain goods. A claim was made to the goods by a chattel mtgee., whose right was contested by pltf. under instructions from deft., whose authority for such proceedings was later repudiated by the landlords :—*Held :* pltf. could recover from deft. his costs of the interpleader proceedings upon a warranty of authority.—CUNLIFFE *v.* PLANTA, [1920] 3 W. W. R. 898; 54 D. L. R. 196.—**CAN.**

K. B. 616; Gowers *v.* Lloyds & National Provincial Foreign Bank, Ltd., [1937] 3 All E. R. 55.

2807. *Add. Annotation :*—**Refd.** Holt *v.* Markham, [1923] 1 K. B. 504.

2812. *Add. Annotation :—A to* (2) **Refd.** Archangel Saw Mills *v.* Baring & A.-G., Steam Saw Mills *v.* Baring & A.-G. (1921), 37 T. L. R. 857.

2814a. Agent receiving proceeds of sale of goods for credit of foreign Government.]—In 1917 pltfs., under licence from the Russian Imperial Govt. exported timber to this country, &, in accordance with the conditions of the licence, paid the purchases money received by them for the timber to deft. bankers for the credit of the Russian Govt. They then became entitled to receive from the Govt. in Russia an equivalent amount in roubles at a fixed rate of exchange. In Mar. 1917, the Imperial Govt. was overthrown by a revolution, & was succeeded by a Provisional Govt., which in its turn, was, on Nov. 7, 1917, displaced by the Bolshevists, who, on Dec. 13, forcibly dissolved the Constituent Assembly & established a Soviet Republic. Pltfs. having received no roubles in Russia, brought actions against the bankers to recover two sums of money, one of which was paid to them by pltfs. in the second action before Nov. 7, & the other by pltfs. in the first action on Nov. 9, at which date they did not know of the Bolshevist revolution. Pltfs. in both actions alleged that the bankers & the Russian Govt. were merely trustees for them, & the money having been paid under a contract, the consideration for which had entirely failed, they were entitled to recover. Pltfs. in the first action further contended that they had paid the money under a mistake of fact, & on that ground also they were entitled to recover it : —*Held :* (1) this money had been paid to the bank as agents for the Russian Govt., & the ct. would not order payment of it in the absence of that Govt. or its representatives ; (2) the bank were entitled to keep the money in their hands, but must undertake not to part with it without notice to pltfs. & an order of the ct.—STEAM SAW MILLS CO. *v.* BARING BROTHERS & CO., ARCHANGEL SAW MILLS CO. *v.* BARING BROTHERS & CO., [1922] 1 Ch. 244 ; 91 L. J. Ch. 325 ; 126 L. T. 403 ; 38 T. L. R. 200 ; 66 Sol. Jo. 170, C. A.

Annotations :—As to (1) **Refd.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134 ; Morgan *v.* Ashcroft, [1938] 1 K. B. 49.

2815. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

2818. *Add. Annotations :*—**Consd.** Scottish Metropolitan Assce. *v.* Samuei, [1923] 1 K. B. 348. **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

2825. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

2826. *Add. Annotations :*—**Apld.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452. **Distd.** Steam Saw Mills Co. *v.* Baring, Archangel Saw Mills Co. *v.* Baring, [1922] 1 Ch. 244. **Consd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670 ; Morgan *v.* Ashcroft, [1938] 1 K. B. 49.

2828. *Add. Annotations :*—**Consd.** Scottish Metropolitan Assce. *v.* Samuel, [1923] 1 K. B. 348. **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

2831. *Add. Annotation :*—**Consd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623.

2834. *Add. Annotation :—As to* (1) **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

2837. *Add. Annotation :*—**Refd.** Gowers *v.* Lloyds & National Provincial Foreign Bank, Ltd., [1937] 3 All E. R. 55.

2839. *Add. Annotations :*—**Refd.** Marshall Shipping Co. *v.* Board of Trade, [1923] 2 K. B. 343 ; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

2841. *Add. Annotations :*—**Refd.** Holt *v.* Markham, [1923] 1 K. B. 504 ; Jones *v.* Waring & Gillow, [1926] A. C. 670 ; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

2842. *Add. Annotation :—As to* (3) **Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd. (1932), 48 T. L. R. 422. *Generally*, **Refd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

2851. *Add. Annotation :*—**Refd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

2866. *Add. Annotation :*—**Folld.** Hosier *v.* Derby (Earl), [1918] 2 K. B. 671.

PART X. SECT. 1, SUB-SECT. 8.—A. (a).

2808 iii. —— *Subject to special terms.*]—Pltf. listed land with defts. for sale. Defts. secured a prospective purchaser, receiving from him $1,000 as deposit & gave a receipt setting out the terms of sale & concluding thus : "Money to be refunded if Gray Estate fail to deliver, as per agreement." The purchaser refused to complete :—*Held :* defts. in their receipt undertook an obligation to the purchaser to hold the deposit on his behalf, & pltf. could not recover the money from defts. as if it had been received by them simply & solely on her behalf.—GRAY *v.* MURCHISON (1922), 70 D. L. R. 7 ; [1922] 3 W. W. R. 545.—**CAN.**

2808 iv. ——.]—Where a person who has offered, through the agent of an owner of land, to buy the land for cash pays the agent a deposit on the proposed purchase-price on the condition that the money shall be held pending the execution of a transfer by the owner, then living abroad, & that, if the transfer is not executed & returned, the money will be handed back to the payer, the agent is bound to so hold the money & return it if he cannot procure the transfer.—BELL *v.* KROHN, [1931] 2 W. W. R. 701.—**CAN.**

2808 v. —— *Larceny from purchaser.*]—An agent converting to his own use a deposit on sale is guilty of larceny from the purchaser.—R. *v.* SPEIGAL, [1932] 4 D. L. R. 709 ; 58 C. C. C. 297.—**CAN.**

2809 i a. —— —— ——.]—Where a vendor has agreed to pay a commission to his agent & has agreed that the amount received by the agent as a deposit from the purchaser should be retained by the agent in part payment of such commission & has given security for the balance, the deposit must be treated as paid over to the vendor, & in an action for money had & received it is only from the vendor that it can be recovered.—BRUNSTETTER *v.* ZUSHING, [1918] 3 W. W. R. 546.—**CAN.**

PART X. SECT. 1, SUB-SECT. 8.—A. (b) ii.

2828 v. ——.]—If a bank pays money on a forged cheque to an innocent agent who at the time informs the bank that he is an agent & not a principal, & who before discovery of the forgery pays the money over in accordance with instructions received from his principal, the bank cannot recover the amount from such agent.—BANQUE D'HOCHELAGA *v.* MARSHALL, [1921] 2 W. W. R. 496 ; 31 Man. L. R. 242.—**CAN.**

2867. *Add. Annotation :*—**Consd.** R. *v.* Income Tax Special Purposes Comrs., *Ex p.* Dr. Barnado's Homes National Incorporated Assocn., [1920] 1 K. B. 26.

2877. *Add. Annotation :*—**Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

2882. *Add. Annotation :*—**Dbtd. & Distd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

2888. *Add. Annotations :*—**Consd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328 ; Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** Gowers *v.* Lloyds & National Provincial Foreign Bank, Ltd., [1938] 1 All E. R. 766.

2895. *Add. Annotation :*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

2899. *Add. Annotation :*—**Refd.** McCreagh *v.* Judd, [1923] W. N. 174.

2924. *Add. Annotation :*—**Refd.** Belvedere Fish Guano Co. *v.* Rainham Chemical Works, Feldman & Partridge, Ind Coope *v.* Same, [1920] 2 K. B. 487.

2926. *Add. Annotation :*—**Consd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

2940. *Add. Annotations :*—**Consd.** Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775 ; London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67 ; Leitch (William) & Co. *v.* Leydon ; Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81 ; United Fruit Co. *v.* Frederick Leyland & Co. (1930), 47 T. L. R. 33 ; Savory (G. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 146 L. T. 530 ; The Arpad, [1934] P. 189.

2943. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

2951. *Add. Annotation :*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626.

2953. *Add. Annotation :*—**Consd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2964. *Add. Annotation :*—**Refd.** Gottschalck & Co. *v.* Velez & Co. (1936), 53 R. P. C. 403.

Part XI.—Duration and Termination of Agency.

2989. *Add. Annotation :*—**Apld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

3002. *Add. Annotation :*—**Apld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

3004. *Add. Annotation :*—**Refd.** *In the Estate of* Dinshaw, [1930] P. 180.

3005. *Add. Annotations :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307 ; *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

3014. *Add. Annotation :*—**Refd.** Payzu *v.* Saunders, [1919] 2 K. B. 581.

PART X. SECT. 2, SUB-SECT. 2.—A. (b).

2918 i. *General rule.*]—Where a third party has suffered loss or injury he has no right of action against an agent personally unless the agent has been guilty of a wrong or a breach of trust.—WINTERMUTE *v.* MOULTON (1922), 65 D. L. R. 653.—**CAN.**

PART X. SECT. 2, SUB-SECT. 2.—B. (a).

2944 i. *Agent holding goods for principal—Absolute refusal to true owner.*]—A servant or agent can be sued for conversion of a chattel mtge. claimed by pltf. from the master or principal, where the refusal by such servant or agent to deliver it to the pltf. is absolute.—ADVANCE RUMELY THRESHER CO., INCORPORATED *v.* SERVICE, [1919] 2 W. W. R. 647 ; 12 Sask. L. R. 294.—**CAN.**

xr. *Breach of trust.*]—Under an agreement between pltf. finance co. & deft. co. which was a retail dealer in motor cars, the former co. financed for the latter co. certain shipments of cars consigned by the manufacturers, under bills of lading with draft attached, to the deft. co. By the terms of said agreement deft. co. covenanted not to sell, mtge., etc., the cars without first having paid in cash the unpaid balance of the purchase-price, & to hold the cars in trust for pltf. until their price had been paid in full, & by the latter clause deft. co. also expressly admitted that until such amount was paid it had no right or title in the cars. The cars were never in the possession of pltf., nor did pltf. have any dealings with the manufacturers with respect to them. The agreement was signed for deft. co. by deft., M., its president ; & through him deft. co. sold the cars without having made the payments called for by the agreement. Pltf. sued both defts. for damages for conversion. The defence of the co. was struck out & the action proceeded against M. :—*Held :* by the agreement deft. co. became at least a trustee for pltf., & that the sale of the cars in violation of the agreement was a breach of the trust, for which deft. M., as well as deft. co., was liable in damages.—DEALERS FINANCE CORPN., LTD. *v.* MASTERSON MOTORS, LTD. & MASTERSON, [1931] 1 W. W. R. 214 ; 4 D. L. R. 730 ; *revsg.*, [1931] 1 W. W. R. 194 ; 25 S. L. R. 240.—**CAN.**

PART X. SECT. 2, SUB-SECT. 2.—B. (b).

2950 i. *Misrepresentations — Reckless.*]—Deft., as agent for the owner, induced pltf. to purchase a grocery business. Pltf. claimed damages from deft. on the ground that he had induced her to purchase the business by misrepresentations. The jury found that the representations made were untrue, that they had been made by deft. recklessly & without regard to their truth or falsehood, & that they had induced pltf. to purchase the business : —*Held :* the jury was justified in treating deft.'s statements as definite representations & in concluding that they were made to induce & did induce, pltf. to buy the business.—EASTERBROOK *v.* HOPKINS, [1918] N. Z. L. R. 428.—**N.Z.**

PART XI. SECT. 2, SUB-SECT. 1.—A.

2965 vii. ——.]—In an ordinary house agent's agreement the principal may revoke the agent's authority at any time before the agent has fully performed what he was authorised to do.—TYNAN *v.* A'BECKETT, [1923] V. L. R. 412.—**AUS.**

2965 viii. ——.]—A contract of agency can in the absence of a term, express or implied to the contrary, be terminated at the will of either party.—POLLARD *v.* GIBSON, [1924] 4 D. L. R. 354 ; 55 O. L. R. 424 ; *varying*, 54 O. L. R. 419.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 1.—B

2976 vi. —— *Loss of subject-matter.*]—. Deft., the purchaser under an agreement for the sale of timber limits, listed the property with B. for sale. B. introduced C. as a prospective purchaser. Deft. being unable to meet the payments due under his agreement gave his vendors a quit-claim deed & they gave him an option to purchase again. This option expired, & deft. discontinued all negotiations for about nine months. He then obtained another option, &, having made another agreement with the owners to purchase, then affected a sale to C. Pltf., who was an assignee of B., claimed a commission on this sale :—*Held :* deft.'s contract with B. was determined when deft. lost the property, &, when after the lapse of the nine months, deft. again obtained an interest in it he was free to deal with C. or any one else on his own account.—CURTIS *v.* CRUICKSHANK, [1929] 2 D. L. R. 35 ; 1 W. W. R. 851 ; 40 B. C. R. 546.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 1.

st. *Death of principal—Power to convey land.*]—*Held :* under a power of attorney executed by M., who died in 1919, her attorney could execute a valid transfer of her land, after her death.—*Re* MCCARTY (1920), 53 D. L. R. 249 ; 47 O. L. R. 285.—**CAN.**

3025. *Add. Annotation :*—**Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60.

3027. *Add. Annotation :*—*As to* (1) **Folld.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

3027a. —— —— **Agent not interned.**]—In Aug. 1912, pltf., who was an Austrian subject residing in this country, made with defts., who were sugar brokers in L., a contract whereby for three years he was to have a share of the commissions & profits on certain business introduced by him & was to assist in defts.' general business in return for a share of the profits. War broke out between England & Austria in Aug. 1914, but pltf. was exempted from internment & was allowed to travel between his house & defts.' place of business. In Sept. 1914, defts. wrote to pltf. that in the circumstances the agreement was null & void, & gave him to understand that it was of no use for him to attempt to do business for them any longer. In an action for breach of the contract :— *Held :* the status of pltf. as the subject of an enemy State did not in the circumstances make the contract impossible of performance, & pltf. was entitled to damages.—SCHOSTALL *v.* JOHNSON (1919), 36 T. L. R. 75.

3028. *Add. Citations :*—*affd.*, [1918] A. C. 239; 87 L. J. K. B. 416; 118 L. T. 126; 34 T. L. R. 206; 62 Sol. Jo. 290, H. L.

Add. Annotations :—*As to* (1) **Refd.** Ertel Bieber *v.* Rio Tinto Co., [1918] A. C. 260. *As to* (2) **Distd.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304. **Refd.** Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Rodriguez *v.* Speyer, [1919] A. C. 59.

3029. *Add. Annotation :*—*As to* (2) **Refd.** Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331.

3030. *Add. Annotation :*—**Refd.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

3031. *Add. Annotation :*—**Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvennoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

3040a. —— ——.]—By an underwriting contract dated Dec. 3, 1919, a syndicate agreed with a co. in consideration of a commission to subscribe for 150,000 of 350,000 shares to be offered to the public by a prospectus then about to be issued, & all allotments to the public were to be applied in relief of the syndicate's obligation to take up the 150,000 shares. By a sub-underwriting letter applt. agreed with the syndicate to subscribe 10,000 of the 150,000 shares underwritten by them & stated : "We now hand you application for the shares hereby underwritten by us together with cheque for £1,256, being deposit of 2*s.* 6*d.* per share." The letter also provided that applt. was only to be allotted & pay for so many of the 10,000 shares as should be his due proportion of the shares not taken up by the public, & that he was to receive a commission on the shares sub-underwritten by him. The letter also contained this clause : "This contract & our said application shall, notwithstanding any withdrawal on our part &/or any repudiation of our responsibility hereunder, or under the said application form, be sufficient to authorise & empower the directors to allot to us the above-mentioned shares & enter our name in the register of members in respect thereof." Applt. did not in fact sign or hand to the syndicate any written application to the co. for the 10,000 shares as contemplated by the sub-underwriting letter, but he handed to the syndicate the letter together with his cheque for £1,250 in their favour. On the issue of the prospectus only 55,000 shares were applied for by the public. On Dec. 12 the syndicate verbally applied in their own name & in the names of several sub-underwriters including applt. for an allotment of the total amount of the shares which they were bound to take up & paid with their own cheque for the total amount of the application money. On the same day the co. allotted to applt. 6,334, being his proportion of the 10,000 shares under his sub-underwriting letter. On Dec. 22, applt. wrote to the co. withdrawing his application for shares, meaning his sub-underwriting letter, but on Dec. 29 the co. sent him the usual formal notice of the allotment to him of 6,334 shares. On motion by applt. to rectify the register by removing his name therefrom as the holder of the 6,334 shares :— *Held :* the authority given by applt. to the syndicate to apply for shares was a continuing & irrevocable authority coupled with an interest which he was not entitled to withdraw.—*Re* OLYMPIC REINSURANCE CO., POLE'S CASE, [1920] 2 Ch. 341; 89 L. J. Ch. 544; 123 L. T. 786; 36 T. L. R. 691, C. A.

See, generally, COMPANIES, Vol. IX., pp. 182 *et seq.*

3041a. —— **Agent having sole selling rights of manufacture.**]—ELLIS STERLING BOOK KEEPING MACHINES, LTD. *v.* ELLIS ADDING TYPEWRITING CO. (1930), 74 Sol. Jo. 26.

3051. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

3057. *Add. Annotations :*—**Refd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240; Maskell *v.* Hill, [1921] 3 K. B. 157.

PART XI. SECT. 3, SUB-SECT. 4.

3015 i. *General rule.*]—On June 19, 1925, C. appointed P. her attorney by a power of attorney under seal, which was expressed to come into operation when C. was incapacitated through illness from attending to business. The deed purported to confer on P. wide powers of management in respect of C.'s estate, & in particular a power to sell C.'s personal estate & withdraw money from her bank account & employ it for any of the purposes mentioned in the deed. On Sept. 9, 1925, C. was certified to be insane, & thereafter until her death on Apr. 27, 1928, she was unable to manage her affairs :— *Held :* the power of attorney became void on the supervention of C.'s insanity.—*Re* COLEMAN, *Ex p.* PROBSTING (1931), 24 Tas. L. R. 77.—**AUS.**

PART XI. SECT. 4, SUB-SECT. 3.

3045 iii. —— ——.]—*Held :* a mere authority to sell was not rendered irrevocable, either by reason of its express terms or from valuable consideration having been given.—MAHOOD *v.* GEANGE, [1927] N. Z. L. R. 780.—**N.Z**

AGRICULTURE.

NOTE.—The Act now in force in England is "Agricultural Holdings Act, 1923 (c. 9)," herein referred to as A. H. Act, 1923. The Act repealed (*inter alia*) A. H. Act of 1908 (c. 28).

Owing to the statutory extensions in the law since the original volume was published the following new sub-sections have been added to Part V., Sect. 3 :—

SUB-SECT. 1*a*.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING.

SUB-SECT. 3*a*.—COMPENSATION FOR ENFORCEMENT OF PROPER CULTIVATION.

SUB-SECT. 3*b*.—ASCERTAINMENT OF COMPENSATION.

Part I.—Definitions.

Add the following cross-references :—"**Market garden.**"]—*See* Nos. 267b, 267c, *post*.

"**Agricultural holding.**"]—*See* No. 30f, *post*.

Part II.—Commencement, Duration, and Termination of Agricultural Tenancy.

4. *Add. Annotations :*—**Refd.** Croft *v.* Blay, [1919] 1 Ch. 277; Simmons *v.* Crossley, [1922] 2 K. B. 95.

19. *Add. Annotations :*—*As to* (2) **Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559; Fordree *v.* Barrell (1931), 95 J. P. 141.

24a. Agriculture Act, 1920 (c. 76), s. 28—To what tenancies applicable.]—The above sect., which renders a notice to quit a holding invalid if it purports to determine the tenancy before the expiration of twelve months from the end of the then current year of tenancy, applies not only to the case of a yearly tenancy but to all contracts of tenancy in which a notice to quit is required to determine the tenancy, including a lease for twenty-one years with an option to either party to determine it on six months' notice at the end of the first seven or fourteen years of the term. A notice to quit includes a notice to determine the tenancy.—EDELL *v.* DULIEU, [1924] A. C. 38; 93 L. J. K. B. 286; 130 L. T. 390; 40 T. L. R. 84; 68 Sol. Jo. 183, H. L.

24b. Agricultural Holdings Act, 1923 (c. 9), s. 25 (1).]—The above sub-sect. applies to a notice to quit given by a tenant, as well as to a notice to quit given by a landlord.—FLATHER *v.* HOOD (1928), 44 T. L. R. 698; 72 Sol. Jo. 468.

27a. One month's notice in lease—Whether Agricultural Holdings Act, 1908 (c. 28), s. 22. applicable.]—WEMBLEY CORPN. *v.* SHERREN, [1938] 4 All E. R. 255.

29a. Termination of tenancy—Whether matter for arbitrator—Under Agricultural Holdings Act, 1923 (c. 9), s. 16.]—A question whether a tenancy has terminated or not is not a "question or difference arising out of the

---

PART I.

sa. *"Agriculturist"—Saskatchewan Co-operative Elevator Company Acts.*]—*Re* COMPANIES WINDING UP ACT, *Re* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD. (Sask.), [1927] 4 D. L. R. 804; [1927] 3 W. W. R. 269.—**CAN.**

sd. *"Market garden."—Not experimental bulb growing establishment.*]—WATTERS *v.* HUNTER, [1927] S. C. 310.—**SCOT.**

se. —— *Whether "holding" includes "part of a holding."*]—*Held :* in the construction of Market Gardeners Compensation (Scotland) Act, 1897 (c. 22), the term "holding" includes "part of a holding," & consequently sect. 4 of the Act applies where part of a farm, held under an ordinary agricultural lease, had been cultivated as a market garden prior to the commencement of the Act.—CALLANDER *v.* SMITH (1900), 37 Sc. L. R. 890.—**SCOT.**

sf. *"Agricultural holding."*]—Two enclosures of "permanent grass park" 10 & 3¼ acres in extent, on which there were no buildings, were used by the tenant, a dairykeeper, for the grazing & feeding of 5 cows & 1 horse. In his dairy business, which had existed before he got the enclosures, he sold the milk produced by his own 5 cows, & the milk, which he bought of other 10 cows belonging to neighbouring farmers. The horse was used for the purpose of the holding & for conveying the milk to market :—*Held :* the subjects were not "held for the purpose of a business or calling not primarily agricultural or pastoral," within Small Landholders (Scotland) Act, 1911 (c. 49), s. 26 (3) (*g*), & consequently were not excluded from the operation of the Act.—HOWATSON *v.* M'CLYMONT (1914), 51 Sc. L. R. 153.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—A.

fi. —— *Unregistered.*]—In an action of removing from an agricultural holding it was admitted that a removal notice had been sent by unregistered letter & had been received. It was also conceded that the provisions of Removal Terms (Scotland) Act, 1886, did not apply :—*Held :* under rule 113 of Sheriff Cts. (Scotland) Act, a landlord was entitled to adopt any one of the three methods of giving notice there set forth, but must adopt one or other of them; &, accordingly, the notice of intention to bring the tenancy to an end sent by unregistered letter was invalid.—DEPARTMENT OF AGRICULTURE FOR SCOTLAND *v.* GOODFELLOW, [1931] S. C. 556.—**SCOT.**

sk. *Joint tenants in possession by tacit relocation—Notice to terminate given by one tenant.*]—Two brothers were partners & joint tenants under a lease renewable by tacit relocation. The elder brother, the active partner, gave notice in writing to the landlord that he intended to leave the farm. Subsequently they declined to remove from the farm, on the ground that the notice being in the name of one of the joint tenants only, was insufficient to prevent renewal of the lease by tacit relocation :—*Held :* (1) the notice necessary, under A. H. (Scotland) Act, 1908 (c. 64), s. 18 (1), to prevent tacit relocation, might be given by a duly authorised agent for the tenant; (2) as the evidence showed that the elder brother had sufficient authority to terminate the lease on behalf of the partners, the notice given by him was effectual to prevent tacit relocation, although the fact that he was acting both for himself & as agent for his brother did not appear *ex facie* of the notice.—GRAHAM *v.* STIRLING, [1922] S. C. 90.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—B.

sp. *Statutory provisions—Contracting out.*]—Parties to a lease of agricultural subjects cannot contract out of the statutory provisions with regard to notice of termination of the tenancy. —DUGUID *v.* MUIRHEAD, [1926] S. C. 1078.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 6.

29a i. *Termination of tenancy—Whether matter for arbitrator—Under Agricultural Holdings (Scotland) Act, 1923 (c. 10), s. 15.*]—*Held :* not one of the matters remitted to the exclusive jurisdiction of the arbitrator.—DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES *v.* ESSLEMONT, [1925] S. C. 199; *on appeal*, [1926] S. C. (H. L.) 68.—**SCOT.**

termination of the tenancy" within the above sect.—SIMPSON *v.* BATEY, [1924] 2 K. B. 666; 93 L. J. K. B. 919; 131 L. T. 724; 68 Sol. Jo 754, C. A.

Annotations:—**Expld.** R. *v.* Powell, *Ex p.* Camden, [1925] 1 K. B. 641. **Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130. **Refd.** Harrison *v.* Ridgway (1925), 133 L. T. 238.

29b. —— —— ——.]—In Agricultural Holdings Act, 1923 (c. 9), s. 16 (1), which specifies the various kinds of question, difference, or claim to be determined by arbn. under the Act, the words "arising out of the termination of the tenancy of the holding" apply to a question, difference, or claim of any of the kinds previously mentioned in the sub-sect., &, consequently, no question, difference, or claim of any of these kinds can arise for determination by arbn. under the Act until after the termination of the tenancy.

The landlord of an agricultural holding gave to the tenant a notice to quit on a certain day. The landlord alleged that before that day the notice to quit was withdrawn by mutual consent. The tenant denied that he ever consented to a withdrawal of the notice to quit, & continued to occupy the holding after that day. Subsequently, on the application of the tenant the Minister of Agriculture & Fisheries appointed an arbitrator to determine in accordance with Agricultural Holdings Act, 1923, the following claims, questions, or differences between the parties—namely, (*a*) whether the tenancy had been determined by the notice to quit; (*b*) whether the tenant was entitled to compensation for disturbance, &, if so, the amount thereof; & (*c*) the amount of the compensation to the tenant for improvements & certain other matters:—*Held:* questions such as these were not questions which under sect. 16 (1) of the Act should be determined by arbn. in accordance with the Act, unless were questions "arising out of the termination of the tenancy"; that inasmuch as it did not appear that the tenancy had been terminated by the notice to quit or otherwise, these questions could not be said to arise out of the termination of the tenancy, & consequently that the arbitrator should be prohibited from proceeding with the arbn.—R. *v.* POWELL, *Ex p.* CAMDEN (MARQUIS), [1925] 1 K. B. 641; 94 L. J. K. B. 433; 132 L. T. 766; 89 J. P. 64; 41 T. L. R. 277; 23 L. G. R. 391, D. C.

Annotations:—**Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130. **Refd.** Harrison *v.* Ridgway (1925), 133 L. T. 238; R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

29c. —— **Whether condition precedent to arbitration—Under Agricultural Holdings Act, 1923 (c. 9), s. 16.**]—The words "arising out of the termination of the tenancy of the holding" in the above sect. apply to the whole of the preceding part of sub-sect. 1 of the sect., & the determination of the tenancy is a condition precedent to the right to demand the appointment of an arbitrator.—R. *v.* POWELL, *Ex p.* CAMDEN (MARQUIS), [1925] 1 K. B. 641; 94 L. J. K. B. 433; 132 L. T. 766; 89 J. P. 64; 41 T. L. R. 277; 23 L. G. R. 391, D. C.

Annotations:—**Folld.** Harrison *v.* Ridgway (1925), 133 L. T. 238. **Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130. **Refd.** R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

29d. —— —— ——.]—The determination of the tenancy is a condition precedent to the right to have a dispute within above sect. decided by arbn. Where the tenancy has not been determined, the county ct. has jurisdiction to try the issue.—HARRISON *v.* RIDGWAY (1925), 133 L. T. 238; 23 L. G. R. 434, D. C.

Annotation:—**Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

30a. Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919 (c. 63)—Application of Act.]—Sect. 1 of the above Act, rendering null & void notices to quit in the event of sales, applies (1) where the sale is a sub-sale of an interest under a previous contract; (2) to equitable as well as legal owners; (3) where notice is by one person & sale by another; (4) to the whole holding, although the sale is only as to a part.—ROBINSON *v.* NESBITT (1920), 64 Sol. Jo. 291.

Annotation:—*Generally*, **Apprvd.** Blay *v.* Dadswell, [1922] 1 K. B. 632.

30b. —— **Contract for sale after passing of Act—Notice by one person—Sale by another.**]—ROBINSON *v.* NESBITT, No. 30a, *ante*.

30c. —— —— **Sale requiring consent of several parties—Consent of some parties given after passing of Act.**]—A contract to sell to pltf. land under Church Building Act, 1839 (c. 49), was entered into before the passing of the Act of 1919, by several, but not all, of the persons whose consent was necessary to the sale. At the time of the contract deft. was in occupation of the land as yearly tenant, but was under a notice to quit which had been served upon him by the vendors. All the persons whose consents were necessary for the sale subsequently joined in the conveyance to pltf., which was executed after the passing of the Act of 1919:—*Held:* the contract of sale was entered into with pltf. before the passing of the Act of 1919, & the notice to quit, therefore, was valid, & pltf. was entitled to possession.—BROOKS *v.* BLOOR (1920), 90 L. J. K. B. 577; 124 L. T. 316; 36 T. L. R. 826; 64 Sol. Jo. 685, D. C.

30d. —— —— **Sale to tenant.**]—(1) Sect. 1 of the above Act applies not only to contracts of sale of holdings to third persons, but also to contracts of sale to the tenants themselves. (2) Agriculture Act, 1920 (c. 76), s. 29 & sched. 1, are amending & not merely declaratory, & are not retrospective as to notices which would, if valid, have expired before the commencement of that Act.—BLAY *v.* DADSWELL, [1922] 1 K. B. 632; 91 L. J. K. B. 739; 127 L. T. 6; 66 Sol. Jo. 439; 20 L. G. R. 221; 86 J. P. Jo. 65, C. A.

Annotation:—*As to* (1) **Refd.** Rigby *v.* Waugh's Exors. (1931), 100 L. J. K. B. 259.

30e. Agricultural Holdings Act, 1923 (c. 9)—Farm held under two landlords—Notice to quit given by both—Contract for sale by

st. *Lessor selling farm under power in lease—Purchaser put in possession—Sale not completed.*]—*Held:* pltf. having sold the farm, & put purchaser in possession to the knowledge of deft., the latter might conclude that pltf. had exercised the right to sell given the lessor under the lease & that his lease was therefore at an end; pltf.'s allowing the purchaser to withdraw from the agreement to purchase did not affect deft.'s rights or reinstate the lease.—RINK *v.* MILOS, [1918] 2 W. W. R. 1021; 11 Sask. L. R. 271; 42 D. L. R. 782.—**CAN.**

sz. *Contract for share farming—No provision as to duration.*]—Deft. cropped pltf.'s land on shares in 1917. & in 1918 agreed to do so again. Pltf. was trying to sell the land, as deft. knew, & during the summer sold it. No time had been fixed for deft. to give up possession:—*Held:* deft. was entitled to such occupation as was necessary to put in & harvest the crop for 1918.—FLETCHER *v.* LYONS, [1919] 3 W. W. R. 381; 48 D. L. R. 365.—**CAN.**

one for part of farm.]—On May 20, 1912, T. let a farm to C. from year to year from Oct. 11, 1911, at an annual rent of £150. On Dec. 23, 1914, T. conveyed about half the farm to pltfs., subject to & with the benefit of the tenancy agreement. T. died on Jan. 4, 1919, & C. continued to pay the whole rent to her exors., as he had since the conveyance paid it to T. After Oct. 11, 1922, the rent fell into arrear. By a notice to quit dated Oct. 10, 1923, the agents of T.'s exors. & the agent of pltfs. jointly gave C. notice to quit the whole holding on Oct. 11, 1924. By an agreement dated Oct. 1, 1924, T.'s exors. agreed to sell their part of the farm to C., & it was conveyed to him on Apr. 17, 1925. C. refused to give up possession to pltfs. of their part of the holding, contending that under sect. 26 of the above Act the contract by T.'s exors. to sell to him rendered the notice to quit null & void. Pltfs. brought an action for a declaration that the notice to quit was effective, & to recover possession of their land:—*Held:* as the contract to sell a part was not made by the persons who gave notice to quit the entire holding, but only by some of them, sect. 26 of the above Act did not apply; the tenancy had been duly determined as regards pltfs.' land, & pltfs. were entitled to the declaration which they asked & to an order for possession of their land.—ROCHESTER & CHATHAM JOINT SEWERAGE BOARD *v.* CLINCH, [1925] Ch. 753; 95 L. J. Ch. 49; 134 L. T. 139.

30f. —— **To what holdings applicable—Holding let for horse breeding.**]—A holding let for the breeding of pedigree horses is not necessarily an agricultural holding within Agricultural Holdings Act, 1923 (c. 9).

A lessor sold to pltf. the freehold of certain property subject to a lease to deft. The lease described the property as the P. stud farm; it contained covenants to repair, varnish, & distemper paddock boxes, stables, & coach-house, to graze down turf by stocking & moving, & not to use the premises otherwise than as a stud farm: & the schedule contained a description of the stud farm. The tenancy was due to expire by effluxion of time shortly after the sale to pltf., but deft. refused to give vacant possession, alleging that the lease created an "agricultural holding" within Agricultural Holdings Act, 1923 (c. 9), & that the holding had not been terminated by twelve months' notice, as required by sect. 23 of that Act. Upon a summons by pltf. for a declaration that the lease did not create a holding within the meaning of that Act, & that no notice was required for the termination of deft.'s tenancy:—*Held:* the main purpose of the letting was the breeding of race-horses, &, although there were in most of the fields plots of grass or portions of pasture land, the holding was not "wholly pastoral," & therefore Agricultural Holdings Act, 1923 (c. 9), s. 23, did not apply.—*Re* JOEL'S LEASE, BERWICK *v.* BAIRD, [1930] 2 Ch. 359; 99 L. J. Ch. 529; 143 L. T. 765; 46 T. L. R. 424.

30g. —— **Sale of holding—Agreement that notice to quit shall be valid—Form.**]—The agreement of a tenant from year to year of a holding, by writing, that a notice to quit shall be valid, within sect. 26 (1) of 1923 Act need not be in the express words of the sub-sect. Where the landlords of such a holding gave the tenant notice to quit stating that they contemplated selling the property, a reply by the tenant acknowledging the receipt of the notice to quit & continuing: "We are sorry to leave & will give you possession of the farm & buildings" on the dates mentioned in the notice to quit, was held an agreement, by writing, that the notice to quit should be valid within the sub-sect.—RIGBY *v.* WAUGH'S EXORS. (1931), 100 L. J. K. B. 259; 145 L. T. 137, C. A.

Part III.—Covenants and Customs of the Country.

32. *Add. Annotation:*—**Refd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

35. *Add. Annotation:*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

36. *Add. Annotation:*—**Apld.** Cheater *v.* Cater [1918] 1 K. B. 247.

39. *Add. Annotation:*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

56a. —— —— **Grass land laid down by tenant.**]—By a tenancy agreement made in 1894 the trustees of an estate, of which pltf. was the present tenant for life in possession, agreed to let to deft. certain farm lands & house buildings comprising 138 acres more or less, as described in a schedule attached to the agreement, on a yearly tenancy, at the rent of £48. The tenant covenanted to manage & cultivate the land in a husbandlike manner, & that he would not plough or otherwise break up "any grass land" without the consent of the landlord. In the schedule to the agreement the premises were described as consisting of 130 acres 1 r. 31 p. of arable & 8 acres of grass land. In 1898 the tenant laid down 40 acres more to permanent grass. On notice being given to him to determine the tenancy on Sept. 29, 1919, he claimed the right to plough up this 40 acres of permanent grass which had been arable at the commencement of his tenancy. In an action by pltf. to restrain him from so doing in breach of his covenants an *interim* order was made granting the injunction on the usual undertaking as to damages. Deft. counterclaimed for damages by reason of the *interim* order:—*Held:* (1) on the true construction of the agreement, the covenant not to plough up any grass land was not restricted to the 8 acres of grass at the date of the demise but & go to the root of the performance of the contract by the purchaser.—WEIST *v.* SMITH (Sask.), [1927] 1 D. L. R. 448; [1927] 1 W. W. R. 280.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

sa. *In crop-payment agreement—Essence of contract.*]—The covenants to cultivate under a crop-payment purchase are of the essence of the contract,

PART III. SECT. 2, SUB-SECT. 1.—B.

sc. *Covenant to rid land of weeds—Breach—Relief from forfeiture.*]—Relief was granted due to exceptional weather conditions, etc.—WARNER *v.* LINAHAN, [1919] 2 W. W. R. 94.—**CAN.**

extended to the grass land in dispute & pltf. was entitled to the relief claimed; (2) on the evidence, the proposed dealing with the land would have been a breach of the covenant to cultivate in a husbandlike manner; (3) deft. had suffered no damage from the granting of the *interim* injunction.—CLARKE-JERVOISE *v.* SCUTT, [1920] 1 Ch. 382; 89 L. J. Ch. 218; 122 L. T. 581.

68. *Add. Annotation:*—**Consd.** Cole *v.* Kelly, [1920] 2 K. B. 106.

69. For "that relation existing between him & the other tenants in common" read "that relation not existing between him & the other tenants in common."

80. *Add. Annotation:*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

103. *Add. Annotation:*—**Refd.** Melzak *v.* Lilienfeld, [1926] Ch. 480.

106. *Add. Annotation:*—*As to* (1) **Refd.** Clarke-Jervoise *v.* Scutt, [1920] 1 Ch. 382.

107a. *S. P.* AYLET *v.* DODD (1741), 2 Atk. 238; 26 E. R. 547.

Annotation:—**Refd.** Denton *v.* Richmond (1833), 3 Tyr. 630.

117. *Add. Annotation:*—**Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

117a. —— Grass land laid down by tenant.]—CLARKE-JERVOISE *v.* SCUTT, No. 56a, *ante*.

140. *Add. Annotations:*—**Refd.** Raikes *v.* Ogle, [1921] 1 K. B. 576; Brakspear *v.* Barton, [1924] 2 K. B. 88.

164a. Against sub-letting—Letting of grass keep in last year of tenancy—Agistment.]—Where the tenant of a farm covenants not to underlet or permit any other person to use or occupy any part of the demised premises without the written consent of the landlord, the sale or letting by the tenant, without such consent, in the last year of his tenancy of the grass keep, *i.e.* growing herbage, of his pasture lands for a definite period, is a breach of the covenant, although such sale or letting is in accordance with the usual practice of an outgoing tenant in that part of the country. *Semble:* agistment, *i.e.* the taking in by the tenant of the sheep or cattle of another to be depastured on the farm at so much per head per week, would not be a breach of the covenant.—RICHARDS *v.* DAVIES, [1921] 1 Ch. 90; 89 L. J. Ch. 601; 124 L. T. 238; 65 Sol. Jo. 44.

SUB-SECT. 16.—OTHER MATTERS (Vol. II., p. 28).

Add the following case:—

166a. Tenant to perform "team-work" for landlord.]—An agreement for an agricultural lease contained a stipulation that the tenant should perform each year for the landlord, "at the rate of one day's team-work with two horses & one proper person for every £50 of rent when required, except at hay & corn harvest, without being paid for the same." In ejectment for a forfeiture:—*Held:* (1) the work thus to be performed meant any work for which teams are generally used, & therefore included drawing coals to B. Palace; (2) the tenant was not bound to supply a car or other vehicle for the purpose of the work.—MARLBOROUGH (DUKE) *v.* OSBORN (1864), 5 B. & S. 67; 3 New Rep. 568; 33 L. J. Q. B. 148; 10 L. T. 28; 28 J. P. 532; 12 W. R. 418; 122 E. R. 758.

178a. Right of vendor to reimbursement from purchaser.]—By an agreement for the sale of real estate it was provided that if from any cause whatever other than wilful default on the part of the vendors the purchase was not completed on Jan. 2, 1899, the purchase-money should bear interest at 5 per cent. A dispute arose about the wording of the conveyance, & the purchase was not completed on the day fixed; the purchaser brought an action for specific performance, & the judge held that the vendors had been wrong in the dispute & gave judgment for specific performance with costs. After the commencement of the action one of the farms agreed to be sold fell vacant. The vendors did not let it, but occupied it themselves, paid the valuation of the outgoing tenant, & farmed the land:—*Held:* under the account of rents & profits directed by the order for specific performance, which was not on the footing of wilful default, the vendors were entitled to be allowed what they had paid for the valuation & the expenses of realising the crops, but not for the losses incurred in farming.—BENNETT *v.* STONE, [1902] 1 Ch. 226; 71 L. J. Ch. 60; 85 L. T. 753; 50 W. R. 118; 46 Sol. Jo. 151; *affd.*, [1903] 1 Ch. 509, C. A.

Annotation:—**Refd.** *Re* Bayley-Worthington & Cohen's Contract, [1909] 1 Ch. 648.

175a. Agreement to pay interest on amount of incoming valuation & on quitting to leave equal value of tenant rights.]—*Held:* not to create a personal debt to the lessor, but to

PART III. SECT. 2, SUB-SECT. 3.—B.

e i. —— ——.]—Applt. alleged that he was prevented from summer-fallowing by an excessive quantity of water being on the land:—*Held:* resp. was entitled to $133 damages.—HUNT *v.* WEIBERG (1921), 67 D. L. R. 777.—**CAN.**

e ii. —— *Or to crop—Breach.*]—A lessee agreed each year either to crop or summer-fallow every portion of the demised premises brought under cultivation. The lessee failed to crop or summer-fallow 30 acres brought under cultivation, owing to the land being covered with water. The lessor gave evidence that a crop of green feed could have been grown on the 30 acres:—*Held:* if the lessee could not, or did not choose to crop, he must summer-fallow; "crop" within the covenant in the lease included a green crop.—STEFFS *v.* SMITH (1921), 66 D. L.R. 452; 17 Alta. L. R. 366; [1922] 1 W. W. R. 70.—**CAN.**

e iii. —— *& to break land—Breach—Measure of damages.*]—The measure of damages is the value of the additional work necessary to do the summer-fallowing & breaking.—TOCHER *v.* JOHNSON (1922), 68 D. L. R. 768; 32 Man. L. R. 356; [1922] 2 W. W. R. 616.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.

120 iv. —— —— ——.]—AINLEY *v.* LOWEY (Sask.), [1926] 1 D. L. R. 73.—**CAN.**

sd. *Miscropping — Claim for damages during tenancy—How determined.*]—Agricultural Holdings (Scotland) Act, 1923 (c. 10), s. 15 (1), is, except as regards disputes relating to the construction of the lease, applicable only to disputes arising out of the termination of the tenancy; & a claim for damages for miscropping made by a landlord against a tenant under s. 35 (2) during the currency of the lease cannot be referred to arbn., but falls to be determined by the ct. in an ordinary action.—WESTWOOD *v.* BARNETT, [1925] S. C. 624.—**SCOT.**

—— —— ——.]—*See, now,* Small Landholders & Agricultural Holdings (Scotland) Act, 1931 (c. 44), s. 32.

PART III. SECT. 2, SUB-SECT. 16.

se. *Covenant to deliver to landlord share of crop or pay its value—Option of tenant—Time for exercising.*]—The lessee of a farm agreed to deliver to the lessor a fixed share of the crops, or pay the value thereof, all crops to remain the property of the lessor until the settlement of accounts at the termination of the contract:—*Held:* the time for the exercise of the option was upon the settlement of accounts when the contract was terminated.—DICKIE *v.* SPARE (1921), 62 D. L. R. 551.—**CAN.**

enure for the benefit of a subsequent landlord.—WAGSTAFF *v.* CLINTON (1883), 1 Cab. & El. 45.

194. *Add. Annotations :*—**Consd.** Bradbury *v.* Grimble (1920), 124 L. T. 189. **Refd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

Part V.—Compensation.

226a. —— ——.]—Where the tenant of a farm held on a verbal tenancy becomes bkpt., & the trustee, having entered into possession of the farm, subsequently disclaims the tenancy, he is excluded from all benefit as well as liability thereunder, including the tenant-right or right to compensation under custom of statute for unexhausted improvements by the tenant, & the amount fixed for compensation having been paid by the incoming tenant to the landlord, to whom arrears of rent are due, the landlord is not bound to account for such payment.—*Re* WADSLEY, BETTINSON'S REPRESENTATIVE *v.* TRUSTEE (1925), 94 L. J. Ch. 215; [1925] B. & C. R. 76.

227a. Assignee of farming stock or other agricultural assets—Under Agricultural Credits Act, 1928 (c. 43).]—The tenant of an agricultural holding by a charge under Agricultural Credits Act, 1928 (c. 43), dated Apr. 29, 1933, charged in favour of a bank his farming stock & other agricultural assets as defined in sect. 5 (7) of 1928 Act. The charge was duly registered & became a fixed charge on Oct. 14, 1933. The tenant quitted the holding on Oct. 11, 1933, & subsequently became bkpt. The bank made a claim to the whole of the sums due from the landlords to the tenant at the termination of the tenancy free from deductions. The landlords disputed the right of the bank to make the claim, & in any event claimed to deduct from any sums to which the tenant was entitled at his outgoing all sums due from him in respect of arrears of rent & dilapidations. An arbitrator was appointed by both parties under the provisions of Agricultural Holdings Act, 1923 (c. 9). At the arbn. the landlords contended that the bank were not the tenants of the holding within the definition of "tenant" in sect. 57 (1) of 1923 Act, & that there could be no arbn. under that Act between the landlords & the bank. The arbitrator stated a special case, & a county ct. judge held that the bank never were tenants of the holding within Agricultural Holdings Act, 1923 (c. 9), the charge, on which the arbn. was based, did not vest the land or the benefit of the contract of tenancy in the bank, & sect. 16 (1) of 1923 Act only provided for an arbn. between landlord & tenant, & therefore there was no valid submission to arbn. On an appeal by the bank :—*Held :* the definition of "tenant" in sect. 57 (1) of 1923 Act did not include a mere assign of "farming stock & other agricultural assets" or a person who was the assign of a right to compensation under 1923 Act, & therefore the bank were not entitled to proceed to arbn. with the landlords.—ECCLESIASTICAL COMRS. FOR ENGLAND *v.* NATIONAL PROVINCIAL BANK, LTD., [1935] 1 K. B. 566; 104 L. J. K. B. 352; 153 L. T. 23; 51 T. L. R. 377; 79 Sol. Jo. 305, C. A.

229. *Add. Annotations :*—**Refd.** Bradshaw *v.* Bird, [1920] 3 K. B. 144; Dale *v.* Hatfield Chase Corpn., [1922] 2 K. B. 282.

229a. Incoming tenant agreeing to repay compensation paid by landlord—Action by landlord on agreement—When cause of action arises.]—By an agreement dated Dec. 24, 1915, made under seal, pltfs. let to deft. a small-holding from year to year from Feb. 2, 1916, at a rent of £132 10*s.* a year payable by half-yearly payments on Feb. 2, & Aug. 2, each year. The tenant agreed "to pay on entry any allowance or compensation which may be due from the council to the outgoing tenant in respect of feeding stuffs or manures or any improvements mentioned in A. H. Act, 1908, Sched. 1, Part III." Deft. entered into occupation of the small-holding on Feb. 2, 1916. At that date the amount of the compensation payable to the outgoing tenant had not been fixed, & it was not until Feb. 11, 1918, that the amount of compensation was agreed to. It was then agreed that the council should pay the outgoing tenant £30 17*s.* 6*d.*, & that sum was paid by the council to the outgoing tenant on Mar. 17, 1921. On Jan. 13, 1923, pltf. council brought an action in the county ct. claiming to recover from deft. the sum of £30 17*s.* 6*d.* under the agreement of Dec. 24, 1915. Deft. pleaded that pltfs.' cause of action had arisen on Feb. 2, 1916, the date of his entry on the holding, & that therefore the claim was barred by Stat. Limitations, s. 3, because the action was not brought "within six years next after the cause of such action or suit" :—*Held :* pltfs.' cause of action against deft. did not arise on Feb. 2, 1916, when

PART III. SECT. 3, SUB-SECT. 7.

sf. *General rule—No right to compensation.*]—At common law a tenant is not entitled on quitting to any compensation for permanent improvements made by him during his tenancy on the premises leased.—R. *v.* EASTERBROOK, [1929] Ex. C. R. 28.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—A.

sg. *Improvements made in mistaken belief as to ownership of land.*]—Under the statute law of Ontario, in order that the occupant of any land may be entitled to compensation for "lasting" improvements on the land he must show that the improvements were made "under the belief that the land was his own," & a tenant recognising another as the owner by the payment of rent to him is not entitled upon the lease being terminated to any compensation for any improvements made by him.—R. *v.* EASTERBROOK, [1929] Ex. C. R. 28; *affd.*, [1931] S. C. R. 210; 1 D. L. R. 628.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—B.

229 i. *Purchaser.*]—An estate was sold with entry to the purchaser at Martinmas 1922, & on the same date an existing lease of the lands terminated, & the tenant gave up possession. Less than two months later, he intimated a claim for compensation for improvements to the purchaser, & applied to the Board of Agriculture, who appointed an arbiter : —*Held :* the "landlord" liable to make payment of compensation to the tenant was the selling owner, in respect that he alone was the "landlord" at the termination of the tenancy when the tenant quitted the holding & the claim for compensation emerged, & the obligation so incurred did not transmit to the purchaser, & interdict against the arbn. proceedings granted. —WADDELL *v.* HOWAT, [1925] S. C. 484.—**SCOT.**

deft. entered on the holding but only on Feb. 11, 1918, when the amount of the compensation was ascertained by agreement; therefore the time only began to run from Feb. 11, 1918, & the action was not barred. — CHESHIRE COUNTY COUNCIL *v.* HOPLEY (1923), 130 L. T. 123; 21 L. G. R. 524.

Annotation :—**Refd.** Cayzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269.

232. *Add. Annotations :*—**Consd.** *Re* Russell & Harding (1922), 128 L. T. 476; *Re* Joel's Lease, Berwick *v.* Baird, [1930] 2 Ch. 359.

233. *Add. Annotation :* — **Refd.** *Re* Masters & Duveen, [1923] 2 K. B. 729.

237a. Agricultural Holdings Act, 1908, s. 1 (1)—Improvements required to be made under tenancy agreement—Agreement made before January 1, 1921.]—A contract of tenancy made in 1906 for a term of fifteen years contained an agreement by the tenant to plant half the land with fruit trees & fruit bushes within the first four years, & the rest with fruit trees within the first ten years of letting. The tenant planted trees & bushes in accordance with the agreement. At the end of the tenancy he claimed compensation for the improvement thus made:—*Held :* he was not entitled to compensation, the improvement being one which he was required to make by the terms of his tenancy & the contract of tenancy having been made before Jan. 1, 1921.—HUCKELL *v.* SAINTEY, [1923] 1 K. B. 150; 92 L. J. K. B. 313; 128 L. T. 299, C. A.

237b. Agricultural Holdings Act, 1923 (c. 9)—Arable laid down as temporary pasture.]—A tenant farmer, who held a farm by successive tenancies beginning in 1912, in 1918 & in 1925 under different landlords, in each case with an undertaking by him not to convert any part of the farm, which in 1912 was all permanent pasture, into tillage, was in 1917 required to plough up two of his fields under reg. 2 (*m*) of the Defence of the Realm Regulations. These two arable fields were in 1919 laid down by the tenant as temporary pasture. On a claim by the tenant, who had left the farm in 1930 on a notice to quit by the present landlord who had purchased the farm in 1929, for disturbance under sect. 12 of the Agricultural Holdings Act, 1923 (c. 9), s. 12, he included particulars for an improvement of laying down those two arable fields as temporary pasture :—*Held :* the claim was enforceable as coming within the exact words of Sched. I., Part III., para. 28, of 1923 Act. The tenancy was to be deemed to have commenced for this purpose from 1918, that being the date when a new tenancy commenced with arable fields on the farm.—WARE *v.* DAVIES (1931), 101 L. J. K. B. 1; 146 L. T. 130, C. A.

239. *Add. Annotation :*—*As to* (2) **Refd.** Premier Dairies *v.* Garlick, [1920] 2 Ch. 17.

242a. Agricultural Holdings Act, 1908—Attempted exclusion of statutory compensation.]—*Re* MASTERS & DUVEEN, No. 267a, *post.*

252a. Effect of Agricultural Holdings Act, 1923 (c. 9), s. 16—On jurisdiction of court.]—LOWTHER *v.* CLIFFORD, No. 267c, *post.*

252b. —— ——.]—FARROW *v.* ORTTEWELL, No. 266s, *post.*

255. *Add. Annotations :*—**Consd.** Simpson *v.* Crowle, [1921] 3 K. B. 243; Smythe *v.* Wiles,

---

PART V. SECT. 3, SUB-SECT. 1.—D.

237 viia. —— —— ——.]—Where a landlord abstains from terminating a tenancy, he gives no benefit to the tenant under s. 1 (2) (*a*) of the above Act where it is not proved that the tenancy was continued in consideration of the tenant executing the improvement.—MACKENZIE *v.* MACGILLIVRAY, [1921] S. C. 722 58 Sc. L. R. 488.—**SCOT.**

237 ix. —— *Tenant laying down temporary pasture.*]—The fact that an arbiter finds that in laying down temporary pasture the tenant is complying with the rules of good husbandry, which he was bound to observe, does not preclude him from also finding that the temporary pasture is an improvement for which the tenant is entitled to compensation under the above Act.—MACKENZIE *v.* MACGILLIVRAY, [1921] S. C. 722; 58 Sc. L. R. 488.—**SCOT.**

sg. *Agricultural Holdings (Scotland) Act,* 1923 (*c.* 10), *s.* 1 (1)—*Lease entered into before Jan.* 1, 1921—*Adoption of one of alternative obligations in lease.*]—A lease entered into before Jan. 1, 1921, bound the tenant to adopt one of two rotations of cropping. The tenant adopted one of the prescribed rotations, with the result that he made an improvement upon his holding within Sched. I. of above Act. On quitting the holding at the termination of his tenancy he claimed compensation for the improvement from the landlords: —*Held :* he was entitled to compensation as for a voluntary improvement, in respect that he was not required by the lease to execute the particular improvement but was merely bound to adopt one or other of two prescribed methods of cultivation.—GIBSON *v.* SHERRET, [1928] S. C. 493.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—G.

sh. *Agricultural Holdings (Scotland) Act,* 1908 (*c.* 64)—*Sufficiency of notice.*]—A tenant who has, before the determination of his tenancy, made it clear to the landlord that he proposes to claim for unexhausted manures & feeding stuffs, but without furnishing the particulars or amounts, has sufficiently complied with s. 6 (2) of the above Act.—ROGER *v.* HUTCHESON, [1922] S. C. (H. L.) 140, 170.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—H. (a).

sj. *Agricultural Holdings (Scotland) Act,* 1923 (*c.* 10)—*"Question or difference"—What amounts to.*]—The purchaser of a farm, who became proprietor as at Whit-Sunday 1928, had entered into an agreement on May 7, 1928, with the tenant, that, in consideration of the tenant vacating the farm by June 30, 1928, the purchaser would (*inter alia*) take over at valuation certain crops, stock, & implements. The parties thereafter executed a submission to two arbiters & an oversman, by whom a valuation was made. In an action at the instance of the tenant against the new proprietor for sums due under the valuation :—*Held :* the submission did not involve any question or difference within Agricultural Holdings (Scotland) Act, 1923, s. 15 (1), in respect (*a*) that the new proprietor's obligation to take over the tenant's crops, stock, & implements arose, not "out of the termination of the tenancy," but from an express agreement between the parties; & (*b*) that, on May 7, 1928, the date when the agreement to take over at valuation was entered into by the parties, the relationship of "landlord" & "tenant" did not exist between them; &, accordingly, the submission was not incompetent because it did not take the form, required by sect. 16 (1) of the Act of submission to a single arbiter.—CAMERON *v.* NICOL, [1930] S. C. 1.—**SCOT.**

sk. —— *Effect of submission.*]—*Held :* when both parties to an agricultural valuation allow arbn. proceedings to be carried on by a method which is not in strict conformity with the provisions of Agricultural Holdings (Scotland) Act, 1923, s. 16, & the arbiter has issued his award, they are barred *personali exceptione* from objecting to the competence of the proceedings.—CAMERON *v.* NICOL, [1930] S. C. 1.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—H. (b).

254 i. *Award—Particulars not specified in.*]—The proprietor of a farm & the outgoing tenant, entered into a submission, whereby they referred the valuation of certain crops, stocks, & implements, agreed to be taken over by the proprietor, to two arbiters, & to an oversman to be appointed by the arbiters to act in the event of their differing in opinion. An award was issued signed by the two arbiters & the oversman, which contained nothing to show in respect of which, if any, of the items under valuation the arbiters had differed in their estimate, thereby rendering necessary a devolution on the oversman :—*Held :* the valuation belonged to a class of arbn. where a rigid conformity with formal procedure was not exacted; &, accordingly, that the award was not invalid because it did not distinguish between items valued by the arbiters alone & items upon which the decision of the oversman had been rendered necessary.—

[1921] 2 K. B. 66. **Refd.** St. Magnus, etc., Parochial Church Council *v.* London Diocese (Chancellor), [1923] P. 38; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

259. *Add. Annotations :*—**Apld.** Bradshaw *v.* Air Council, [1926] Ch. 329. **Refd.** Ellesmere *v.* I. R. Comrs. (1918), 88 L. J. K. B. 337; Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

264. After this case add as follows :—
See, further, Sect. 3, sub-sect. 3*b*, *post*.

SUB-SECT. 1*a*.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING.

A. Compensation to Tenant.

See A. H. Act, 1923, s. 9.

B. Compensation to Landlord.

See A. H. Act, 1923, s. 10.

264a. Notice of claim—Time for giving—Agriculture Act, 1920 (c. 76).]—*Held :* the meaning of sect. 19 of the above Act taken as a whole was that the landlord should have a right of compensation for deterioration under the sect. if he gave a notice before the termination of the tenancy & not otherwise; but if he had a right under contract to claim for deterioration apart from the sect., nothing in the sect. should interfere with that right.

A tenant held a farm as a yearly tenant under the landlord upon the terms, as the arbitrator found, of an agreement in writing under which the father of the tenant had originally held the farm. On Aug. 20, 1920, the landlord served a notice to quit upon the tenant, which expired as to the land, other than the boozy pasture, on Feb. 2, 1922. The tenant gave up possession of the land except the boozy pasture, the tenancy of which did not expire until May 1, 1922, upon that date. On Mar. 28, 1922, the landlord gave notice of & particulars of a counterclaim against the tenant for waste wrongly committed or permitted by the tenant & for breach of contract or otherwise, whereby he claimed for neglect in the care of hedges & ditches on the land & dirty land :—*Held :* (1) the landlord's claim was not barred by sect. 19 of the above Act; (2) the boozy pasture & the rest of the farm were held under one contract of tenancy; the contract did not finally cease under sect. 10 (7) of the above Act until May 1, 1922, the date of the termination of the boozy tenancy, & the landlord's notice was therefore in time.—*Re* ARDEN & RUTTER, [1923] 2 K. B. 865; 130 L. T. 51; *sub nom.* ARDEN *v.* RUTTER, 92 L. J. K. B. 894, C. A.

Annotations :—*As to* (1) **Consd.** Olive *v.* Paynter, [1932] 2 K. B. 666. **Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

264b. —— —— Agricultural Holdings Act, 1923 (c. 9), s. 16 (2)—Claims independent of Agricultural Holdings Acts.]—As the term of a lease of an agricultural holding was coming to an end the lessee made a claim in respect of tenant right, & the lessor made various counterclaims in respect of dilapidations. An arbitrator appointed under Agricultural Holdings Act, 1923 (c. 9), to settle all matters & questions between the parties in respect of the holding, stated a case under sect. 16 (4), for the opinion of the county ct. in which he found that particulars of some of the lessor's claims were given within two months of the end of the lease, but that particulars of others of the claims were not given within that time. The claims related in whole or in part to acts & omissions which were in fact breaches of agreements in the lease. The county ct. judge held that the arbitrator could only entertain those claims of which particulars were given within the two months : —*Held :* the provision in sect. 16 (2) of the Act, barring claims unless particulars are given within the time therein specified, does not apply to claims arising from breaches of the agreement of tenancy & giving ground for actions at law independently of the Agricultural Holdings Acts, & the arbitrator must deal with those claims without attributing importance to the fact that particulars thereof were not given within the time specified in the sub-sect.

With regard to the sufficiency of the particulars, I am of opinion that in the present case, as in most other cases, that is a question of fact which the arbitrator should decide for himself (SCRUTTON, J.).—OLIVE *v.* PAYNTER, [1932] 2 K. B. 666; 101 L. J. K. B. 786; 148 L. T. 65, C. A.

Annotation :—**Refd.** Farrow *v.* Orttewell, [1933] Ch. 480.

265a. —— Right to compensation—Tenant holding over after notice to quit.]—A tenancy was determined by notice to quit on a certain day. The tenant remained on in possession for about nine months, & was finally ejected. Two days before his ejectment he furnished details of his claim for compensation :—*Held :* the tenant, from the date when his notice expired, was not holding under a contract of tenancy, & the land which he persisted in

CAMERON *v.* NICOL, [1930] S. C. 1.—**SCOT.**

sj. *What questions arbitrator may determine—Termination of tenancy—Agricultural Holdings (Scotland) Act*, 1923 (*c.* 10), *s.* 15.]—In a note of suspension & interdict brought by the landlords of a farm, craving the ct. to interdict proceedings in an arbn. under the above Act upon a claim by the tenant, who had vacated the farm in favour of a new occupier, for compensation for improvements, the complainers maintained that the tenancy had not terminated, & that the appointment of an arbiter under the Act was illegal :—*Held :* the question of the claimant's title to present a claim was not one of the matters remitted by the Act to the exclusive jurisdiction of the arbiter, but was a question precedent to the existence of a statutory claim, & the ct. had jurisdiction to entertain the action of interdict.—DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES *v.* ESSLEMONT, [1925] S. C. 199; *on appeal*, [1926] S. C. (H. L.) 68.—**SCOT.**

sk. *Form of arbitration—Arbitration between outgoing & incoming tenants—Agricultural Holdings (Scotland) Act*, 1908 (*c.* 64).]—There is nothing illegal in the outgoing & incoming tenants entering into an agreement for a common law arbn.—ROGER *v.* HUTCHESON, [1922] S. C. (H. L.) 140, 170.—**SCOT.**

257 ii. —— —— ——.]—Charges for preparing & adjusting a special case fall to be dealt with by the arbiter.—THOMSON *v.* GALLOWAY, [1919] S. C. 611; 56 Sc. L. R. 521.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 2.

sl. *Agricultural Holdings (Scotland) Act*, 1908 (*c.* 64)—*What questions arbitrator must determine.*]—Under s. 10 of the above Act it falls to the arbiter to determine questions connected with the time & validity of notices to quit & notices to claim compensation.—COWDRAY *v.* FERRIES, [1919] S. C. (H. L.) 27.—**SCOT.**

sm. *Agriculture Act*, 1920 (*c.* 76), *s.* 10—*Claim exceeding one year's rent—Damage proved less than one year's rent.*]—A tenant claimed compensation for disturbance to an amount exceeding one year's rent, & the claim went to arbn., in which it was proved that the damage sustained by him was less than one year's rent :—*Held :* the minimum amount of compensation payable to a tenant under Agriculture Act, 1920

occupying unlawfully was not a holding within sect. 11 of the above Act, & he, therefore, was not within the benefit of the Act.—CAVE *v.* PAGE (1923), 67 Sol. Jo. 659, C. A.

265b. —— **Liability to pay compensation—"Landlord"—Purchaser entitled to rents—Purchase not completed till after claim.**]—Certain landowners let a farm to tenants. In 1917 they gave notice to the tenants to quit at Michaelmas, 1918, with a view to the sale of the farm. In Oct. 1917, they agreed to sell the farm to a purchaser. On July 5, 1918, the tenants gave to the purchaser, who was then entitled to the rents & profits, notice in writing under sect. 1 (1) of the Act of 1914 of their intention to claim compensation in terms of sect. 11 of the Act of 1908. On July 18, 1918, the sale of the farm was completed:—*Held:* (1) the purchaser was the "landlord" within the Acts; (2) the notice of intention to claim compensation was rightly given to him; (3) he was liable to pay compensation.—BRADSHAW *v.* BIRD, [1920] 3 K. B. 144; 90 L. J. K. B. 221; 123 L. T. 703, C. A.

Annotations:—As to (1) **Expld.** Richards *v.* Pryse, [1927] 2 K. B. 76. *Generally,* **Consd.** Dale *v.* Hatfield Chase Corpn., [1922] 2 K. B. 282; Tombs *v.* Turvey (1923), 93 L. J. K. B. 785.

265c. —— —— —— **Person entitled to rents at end of tenancy.**]—(1) Where the tenant of an agricultural holding, who has been disturbed in his tenancy, becomes entitled under sect. 11 of the above Act to compensation for loss in connection with the sale or removal of his household goods, implements, or stock on the condition, among others, of giving to the landlord a reasonable opportunity of making a valuation of such goods, etc., the question whether he has given such a reasonable opportunity is in each case a question of fact depending on the circumstances. The mere lapse of an interval of several months between notice of intention to claim compensation & sale or removal is not of itself sufficient to satisfy the condition.

(2) Where the tenant of an agricultural holding has given notice to his landlord under sect. 11, proviso (*b*), of his intention to claim compensation for disturbance, & the landlord before the appointment of an arbitrator under that sect. assigns the reversion, the person who is liable to pay such compensation as may be awarded is the person who is entitled to receive the rents at the termination of the tenancy, & the notice of intention to claim so given to the original landlord will enure for the benefit of the tenant as against such last-named person.

(3) Assuming sect. 48 (2) of the above Act to apply to proceedings for compensation for disturbance as well as for improvements, the commencement of the "proceedings" is not the service of notice of intention to claim compensation, but the appointment of the arbitrator.—DALE *v.* HATFIELD CHASE CORPN., [1922] 2 K. B. 282; 92 L. J. K. B. 237; 128 L. T. 194; 87 J. P. 11; 20 L. G. R. 765, C. A.

Annotations:—As to (2) **Consd.** Tombs *v.* Turvey (1923), 93 L. J. K. B. 785. **Refd.** Richards *v.* Pryse, [1927] 2 K. B. 76. *Generally,* **Refd.** Smith *v.* Metropolitan Properties Co., [1932] 1 K. B. 314.

266a. —— **Notice of claim—To whom given—Purchaser entitled to rents.**]—BRADSHAW *v.* BIRD, No. 265b, *ante.*

266b. —— —— —— **Landlord—Subsequent alienation of reversion.**]—DALE *v.* HATFIELD CHASE CORPN., No. 265c, *ante.*

266c. —— **Reasonable opportunity of making valuation—What amounts to.**]—DALE *v.* HATFIELD CHASE CORPN., No. 265c, *ante.*

266d. —— **Commencement of "proceedings"—What amounts to.**]—DALE *v.* HATFIELD CHASE CORPN., No. 265c, *ante.*

266e. **Agriculture Act, 1920 (c. 76)—Right to compensation—Withdrawal of notice to quit—What amounts to.**]—In Sept. 1920, a landlord gave to the tenant notice to quit his tenancy of a farm for which he was paying a yearly rental of £506 2*s.* On Dec. 31, 1920, the landlord wrote to the tenant: "I have received an offer of £670 *per annum* for your holding. If you choose to give me the same, you are most welcome to continue the tenancy":—*Held:* having regard to sect. 10 of the above Act, the letter of Dec. 31, 1920, did not constitute an offer in writing to withdraw the notice to quit within the proviso to sect. 10 (1) of that Act.—*Re* PERRETT & BENNETT-STANFORD, [1922] 2 K. B. 592; 91 L. J. K. B. 930; 128 L. T. 57; 38 T. L. R. 849; *sub nom.* PERRETT *v.* BENNETT-STANFORD, 66 Sol. Jo. 680, C. A.

266f. —— —— **Ejectment proceedings following notice to quit.**]—The landlord of a farm served on the tenant a notice to quit on Mar. 25, 1923. Owing to the illness of his wife, the tenant did not quit the farmhouse at the expiry of the notice, but he quitted the land, save as under the custom of the country, immediately after the expiry of the notice. Ejectment proceedings were brought by the landlord & judgment was obtained by default of appearance. On being served with the notice to quit, the tenant duly served on the landlord a notice of intention to claim compensation for disturbance under sect. 10 of the above Act:—*Held:* if the tenant was ejected, the ejectment was in consequence of the notice to quit, &, therefore, the tenant had quitted the farm in consequence of the notice to quit terminating the tenancy, & the tenant was accordingly entitled

---

(c. 76), s. 10, was an amount equal to one year's rent; &, although as the matter had gone to arbn. a "dispute" had not been avoided, the tenant was still entitled to one year's rent & was not limited to the amount of damage actually proved.—M'HARG *v.* SPEIRS, [1924] S. C. 272.—SCOT.

sn. —— *Loss from error in valuation of waygoing grain crop.*]—Under the lease of a farm the landlord took over the waygoing crop of grain from the outgoing tenant at fiars prices, the quantity of the growing crop being ascertained by arbn. After threshing it was found that the quantity had been underestimated by the arbiters. The outgoing tenant claimed, under the above sect., as compensation for loss in connection with the sale of the farm produce, a sum representing the difference between the price he had received & the price of the actual quantity threshed:—*Held:* the loss was not "directly attributable to the quitting of the holding," but had arisen from an error of the arbiters.—MCGREGOR *v.* BOARD OF AGRICULTURE FOR SCOTLAND [1925] S. C. 613.—SCOT.

sp. *Agricultural Holdings (Scotland) Act,* 1923 (c. 10)—*Refusal of landlord to take over stock—Claim for loss on sale.*]—The tenant of a farm received notice to quit. Having taken over another farm with a bound stock, he sold his sheep at a displenishing sale, the landlord refusing to take them over. In a claim for compensation for the difference between the price realised & the "going concern" value:—*Held:* the loss was directly attributable to the quitting of the holding under sect. 12 (6) of above Act.—KERWICK *v.* WRIGHT, [1924] S. C. 766.—SCOT.

sq. —— *Tenant holding over after notice to quit—No right to compensation.*]—HENDRY *v.* WALKER (1927), S. L. T. 333.—SCOT.

sr. —— *Ejectment proceedings following notice to quit—Whether tenant entitled to compensation.*]—HENDRY *v.* WALKER (1927), S. L. T. 333.—SCOT.

to compensation under sect. 10 of the Act.—MILLS *v.* ROSE (1923), 68 Sol. Jo. 420, C. A.

266g. —— —— **Necessity for proof of loss or expense—Entire holding in occupation of sub-tenants.**]—The effect of sect. 10 (6) of the above Act is that as a condition precedent to his right to compensation for disturbance a tenant must prove that he has incurred some loss or some expense of the kind indicated in the sub-sect.; that on proof of that he is entitled as a minimum to one year's rent of the holding; but that unless he proves some loss or some expense of the kind indicated he does not bring himself within sub-sect. 6 & is not entitled to compensation. Therefore where a lease of a holding under the Act was duly determined by notice to quit & the holding was entirely in the occupation of sub-tenants whose sub-tenancies terminated without notice on the termination of the lease, & the lessee did not sell or remove any household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding:—*Held:* he was not entitled to compensation for disturbance under sect. 10.—MINISTER OF AGRICULTURE & FISHERIES *v.* DEAN, [1924] 1 K. B. 851; 93 L. J. K. B. 374; 130 L. T. 709; 40 T. L. R. 285; 68 Sol. Jo. 401, C. A.

Annotations:—**Consd.** Westlake *v.* Page, [1926] 1 K. B. 298; *Re* O'Connor & Brewin's Arbitration, [1933] 1 K. B. 20; Spreckley *v.* Leicester County Council, [1934] 1 K. B. 366. **Refd.** Selleck *v.* Heliens (1828), 98 L. J. K. B. 214; Dunstan *v.* Benney, [1938] 2 K. B. 1.

266h. —— **Notice of claim—Time for giving—"Termination of tenancy"—Tenancy of different parts of holding expiring at different times.**]—A landlord let a farm, according to the custom of the country, upon a yearly tenancy on the terms that the tenant should enter into occupation of the main portion of the land on Apr. 6, & of the farmhouse, farm buildings, & the remainder of the land on May 13, & that "on the termination of the tenancy" he should give up possession of the different portions of the farm on the respective dates, there being one rent reserved for the whole farm:—*Held:* the "termination of the tenancy" for the purposes of sect. 10 (7) of the above Act took place on May 13, notwithstanding that the main portion of the premises had to be surrendered at the earlier date.—*Semble:* the proviso to sect. 18 (2) of the above Act applies only to a case where the tenant has been allowed by a landlord to remain on, after the cesser of the agreement of tenancy, under a new agreement.—SWINBURNE *v.* ANDREWS, [1923] 2 K. B. 483; 92 L. J. K. B. 889; 129 L. T. 650; 39 T. L. R. 545; 67 Sol. Jo. 726, C. A.

Annotation:—**Consd.** *Re* Arden & Rutter, [1923] 2 K. B. 865.

266i. —— —— **Given under Act subsequently repealed—Necessity for notice under repealing Act.**]—A tenant who had on Sept. 29, 1920, received notice to quit his farm on Sept. 29, 1921, gave notice on Nov. 17, 1920, to his landlord of his intention to claim compensation for disturbance under A. H. Act, 1908, s. 11. That sect. was repealed by the Act of 1920, which came into force on Jan. 1, 1921, & by sect. 10 substituted a new right to compensation for disturbance. The tenant gave no notice of his intention to claim compensation under that sect. as required by sub-sect. 7 (*b*) thereof:—*Held:* not having given notice under sect. 10 of the Act of 1920, he had no right of claim under that sect., but his right of making a claim under A. H. Act, 1908, s. 11, was preserved by Interpretation Act, 1889 (c. 63), s. 38, notwithstanding the repeal of sect. 11.—HAMILTON-GELL *v.* WHITE, [1922] 2 K. B. 422; 91 L. J. K. B. 875; 127 L. T. 728; 38 T. L. R. 829; 67 Sol. Jo. 80, C. A.

Annotation:—**Consd.** Briggs *v.* Dryden, Talbot *v.* Vickers [1925] 2 K. B. 667.

See, now, A. H. Act, 1923, s. 12.

266j. **Agricultural Holdings Act, 1923 (c. 9)—Right to compensation—Refusal or failure to agree to arbitration.**]—(1) A landlord of a holding gave the tenant notice to quit, & in the same document stated that he had no desire to terminate the tenancy if the tenant would agree to his demand that the rent should be fixed by arbn. The tenant did not agree to arbn.:—*Held:* the tenant did not thereby disentitle himself to compensation, for the refusal or failure to agree to arbn. dealt with by sect. 12 (1) (e) of the above Act is a refusal or failure which has taken place before the date of the notice.

(2) It cannot be laid down as a matter of law, that in no case can the minimum compensation of one year's rent provided by sect. 12 (6) be reduced under the provisions of sect. 12 (8) if the tenant, having held two or more holdings as tenant, remains in possession of one of them. But the provisions of sect. 12 (8) have no application to a case in which the tenant remains in possession of the other holding or holdings, not as tenant, but as owner.—WESTLAKE *v.* PAGE, [1926] 1 K. B. 299; 95 L. J. K. B. 456; 134 L. T. 612, C. A.

266k. —— **Amount of compensation—Tenant holding two or more holdings.**]—WESTLAKE *v.* PAGE, No. 266j, *ante.*

266l. —— —— **Minimum—One year's rent.**]—*Re* O'CONNOR & BREWIN'S ARBITRATION, No. 266cc, *post.*

266m. —— —— **Expenses of preparation of claim.**]—Under Agricultural Holdings Act, 1923 (c. 9), the landlord of a holding served upon the tenant a notice to quit which stated that the tenant at the date of the notice was not cultivating the holding according to the rules of good husbandry. None of the other reasons mentioned in sect. 12 (1) of the Act why compensation for disturbance should not be payable to him was alleged against the tenant. For the purpose of dealing with any claims which might be made each party appointed a valuer. On the termination of the tenancy by reason of the notice to quit the tenant quitted the holding, & made a claim to compensation for disturbance under the above-mentioned sub-sect. An arbitrator appointed to determine all claims between the parties stated a case for the opinion of the county ct. in which he found that at the date of the notice to quit the tenant was cultivating the holding according to the rules of good husbandry, & that the tenant did not incur any expense directly attributable to the quitting of the holding upon or in connection with the sale or removal of his property, but that he was liable to pay his valuer a fee for viewing the holding so as to enable him to prepare his claim for compensation for disturbance, & to disprove the

allegation that he was not cultivating according to the rules of good husbandry: —*Held:* by the Ct. of Appeal, affirming the decision of the county ct. judge, (1) the fee paid by the tenant to his valuer was an expense "reasonably incurred by him in the preparation of his claim for compensation" within sect. 12 (6), & should be included in the compensation payable to the tenant under that sub-sect., notwithstanding that the tenant had not incurred any other such loss or expense directly attributable to the quitting of the holding as was mentioned in that sub-sect.; (2) as that fee did not exceed in amount one year's rent of the holding, the compensation payable should under sect. 12 (6) be computed at an amount equal to one year's rent of the holding.—DUNSTAN *v.* BENNEY, [1938] 2 K. B. 1; [1937] 4 All E. R. 510; 107 L. J. K. B. 311; 158 L. T. 34; 54 T. L. R. 167; 81 Sol. Jo. 1039, C. A.

266n. ——**Liability to pay compensation—"Landlord"—Agreement for sale—Whether purchaser entitled to rents.**]—In July, 1924, the owner of an estate, which included a farm in the occupation of tenants, agreed to sell the farm to a purchaser, who agreed to pay the purchase money in Oct. 1924. The agreement was subject to conditions of sale, by one of which the purchaser agreed to pay the balance of the purchase money on the day named in the contract, & in that respect time was to be of the essence of the contract; & it was further agreed that "all rents & periodical outgoings" should be "apportioned up to the completion," & added to or deducted from the purchase money as the case might require. On Sept. 23, 1924, notice was given to the tenants to quit the farm on Sept. 29, 1925. The purchase was not in fact completed until Oct. 1925:—*Held:* (1) "completion" in the condition of sale meant actual completion, & not the date named for completion; (2) on Sept. 29, 1925, the vendor was the "person entitled to receive the rents & profits" of the farm within sect. 57, & he, & not the purchaser, was the "landlord" within sect. 12 & the person to pay compensation to the tenants.—RICHARDS *v.* PRYSE, [1927] 2 K. B. 76; 96 L. J. K. B. 743; 137 L. T. 170, C. A.

266ni. —— —— —— **Notice prevented by provision for immediate resumption of possession—Validity.**]—*Re* DISRAELI AGREEMENT, CLEASBY *v.* PARK ESTATES (HUGHENDEN), LTD., [1938] 4 All E. R. 658; 55 T. L. R. 204; 82 Sol. Jo. 1031.

266o. —— **Notice of claim—By whom given—Joint tenancy.**]—W., who had been tenant of a farm for many years, entered into negotiations with his landlord to have his tenancy agreement, upon the termination thereof, transferred to himself & B., & as the result of those negotiations W. became joint tenant of the farm with B. at the request of, & for the protection of, the landlord. Upon the termination of W.'s tenancy B. paid W. for the tenant right & also provided the whole of the finance necessary for carrying on the farm. On Feb. 21, 1924, W. alone gave notice to quit. On Mar. 21, 1924, the landlord served notice to quit upon both tenants, upon the ground that they were not cultivating the farm according to the rules of good husbandry. Thereupon B. gave notice to the landlord of his intention to claim compensation:—*Held:* (1) the notice given by B., being the one of the joint tenants who owned the household goods & agricultural implements & had suffered loss by their removal or sale upon the expiration of the joint tenancy, was sufficient to give the arbitrator jurisdiction; (2) it being the object of sect. 12 (7) (*b*) of the above Act that the landlord should have notice of what compensation was claimed against him, it would, in the case of a joint tenancy, be a great hardship upon the tenant who had a proper & valid claim for compensation which was to be defeated because his joint tenant, who had no such claim, had not joined in the notice.—HOWSON *v.* BUXTON (1928), 97 L. J. K. B. 749; 139 L. T. 504, C. A.

266p. —— **Notice to quit—Reason must be stated—Effect of notice giving alternative reasons.**]—A tenant in giving a notice to quit under sect. 12 (3) of above Act, on account of the landlord's refusal or failure to agree to the tenant's demand for arbn. as to the rent of the holding, is, as a condition precedent to his right to compensation for disturbance, bound to state correctly the reason for the notice which in fact exists, but he may put himself right by putting his notice in the alternative by stating that the notice given was either for the reason that the landlord had refused or that he had within a reasonable time failed to agree to the demand made on him by the tenant for arbn.

Where the landlord had within a reasonable time failed to agree to such a demand but had not refused to do so & the notice to quit wrongly stated that it was given by reason of the landlord's refusal to agree:—*Held:* the tenant could not succeed in his claim for compensation for disturbance.—SELLECK *v.* HELLENS (1928), 98 L. J. K. B. 214; 140 L. T. 353; 45 T. L. R. 179; 73 Sol. Jo. 76, C. A.

266q. —— —— —— **Form of notice.**]—The landlord of a holding served on the tenant notice to quit in the following form: "In accordance with sect. 12 (1) (*a*) & (*b*) of Agricultural Holdings Act, 1923 (c. 9), we hereby as agents for" the landlord "give you notice to quit," etc. The tenant, in accordance with this notice having quitted the holding, claimed compensation for disturbance, contending that the notice did not sufficiently state that it was given for any of the reasons specified in sect. 12 (1) of the Act, or did not specify for which of those reasons it was given:—*Held:* the notice to quit sufficiently stated that it was given for the reasons indicated in sect. 12 (1) (*a*) & (*b*), & was an effective notice to bar the tenant's claim to compensation if the allegations were sustained.—*Re* DIGBY & PENNY, [1932] 2 K. B. 491; 101 L. J. K. B. 615; 147 L. T. 221; 48 T. L. R. 403, C. A.

266r. —— —— —— **Reasons in accompanying letter.**]—A notice to quit under 1923 Act may be validly contained in two documents—one a formal notice to quit & the other an accompanying document which refers to that formal notice & states as the reason for giving it one or more of the causes set out in sect. 12 (1) of the Act.—TURTON *v.* TURNBULL, [1934] 2 K. B. 197; 103 L. J. K. B. 598; 151 L. T. 265; 78 Sol. Jo. 367, C. A.

266s. —— —— **By purchaser before completion—Estoppel.**]—Pltf. was the tenant of two farms on a yearly tenancy. The owner of the property died in 1928, & on July 17, 1930, his personal representatives agreed to sell deft. the farms. The date fixed for completion was Sept. 15, 1930, but the purchase was not completed till Oct. 30, 1930. Meanwhile deft. had on Oct. 9, 1930, sent to pltf. a notice to quit the premises on Oct. 11, 1931, & pltf. duly gave up possession on that date. Deft. disputed pltf.'s claim to compensation under Agricultural Holdings Act, 1923 (c. 9), on the ground that the notice to quit was invalid, because the purchase was completed only after the notice was given. Pltf. therefore brought proceedings claiming declarations that the notice to quit was valid; that, if not, deft. was estopped from denying its validity; & that he was entitled to compensation under the Act:—*Held:* (1) on the facts the pltf. was estopped from denying the validity of the notice to quit; (2) the ct. had jurisdiction to determine the matters at issue, notwithstanding the provisions for arbn. contained in sect. 16 of the Act.—FARROW *v.* ORTLEWELL, [1933] 1 Ch. 480; 102 L. J. Ch. 133; 149 L. T. 101; 49 T. L. R. 251, C. A.

266t. —— **Determination of rent—Notice of application for arbitration—Effect of delay.**]—On Jan. 16, 1929, the tenant of an agricultural holding made to the landlord a demand in writing for arbn. under Agricultural Holdings Act, 1923 (c. 9), as to the rent to be paid for the holding as from Apr. 6, 1930, the next ensuing date at which the tenancy could have been terminated by notice to quit given by the tenant at the date of the demand for arbn. The landlord consented to the matter being referred to arbn., but after a long delay, due to the fault of the landlord & his advisers, he refused to concur in the appointment of an arbitrator, to take part in the arbn. or to recognise the award. At the request of the tenant the Minister of Agriculture appointed an arbitrator who, on Sept. 23, 1931, made an award fixing a reduced rent for the holding as from Apr. 6 1930:—*Held:* the award was good & enforceable as between the parties.—GRUNDY *v.* HEWSON, [1933] 1 K. B. 787; 102 L. J. K. B. 398; 149 L. T. 212; 49 T. L. R. 346; 77 Sol. Jo. 216.

266u. —— —— **Validity of award.**]—GRUNDY *v.* HEWSON, No. 266t, *ante*.

SUB-SECT. 3*a*.—COMPENSATION FOR ENFORCEMENT OF PROPER CULTIVATION.

266v. Corn Production Act, 1917 (c. 46), s. 9 (9)—Who is person interested—Tenant.]—(1) A notice to convert certain land into tillage, made under sub-sect. 1 of the above sect. & Defence of the Realm Regulations, 1914, reg. 2 M, was served on the owner of land who was in occupation. After the service of the notice the owner agreed to let the land to a tenant who entered into occupation & carried out the requirements of the notice. The notice had not been served on the tenant. The tenant claimed compensation for loss alleged to have been suffered by him by reason of his having carried out the requirements of the notice, & the claim was referred to arbn. under the Act, & the arbitrator stated a case in which he asked the ct. certain questions:—*Held:* the tenant was a "person who was interested in the land in respect of which the notice was served," within sub-sect. 9 of the above sect., inasmuch as he was interested at the time when the loss was alleged to have occurred; & the tenant came within the words of the sub-sect. "who suffers any loss by reason of the exercise of the powers conferred by this sect." & was entitled to compensation for the loss, if any, though the notice had not been served on him, as he had carried out the requirements of the notice.

(2) Two notices were served, each in respect of a different field in a separate farm occupied by the same tenant:—*Held:* in the circumstances, the loss, if any, in respect of each field should be assessed separately.

(3) The tenant of certain land in respect of which a notice to plough had been served under the Act sent in a claim for compensation on Sept. 28, 1918, for the year 1918, & in 1919 he sent in a claim for compensation for 1919. The arbn. to assess compensation was held after both claims had been sent in:—*Held:* the assessment should not be based on the loss, if any, in each year separately; (BANKES, L.J.) the arbitrator should take the experience of the two years, setting off any profit in one year against any loss in the other; (SCRUTTON & ATKIN, L.JJ.) the whole effect of the exercise of the powers conferred by the sect. had to be considered by the arbitrator, including an estimate of the probable loss or profit in the future. —*Re* TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE, [1921] 1 K. B. 281; 90 L. J. K. B. 228; 124 L. T. 407; 85 J. P. 89; 18 L. G. R. 790, C. A.

266w. —— **Separate notices as to parts of two farms—Occupied by one tenant—Method of assessment.**]—*Re* TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE, No. 266v, *ante*.

266x. —— **Separate claims by tenant for two successive years—Method of assessment.**]—*Re* TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE, No. 266v, *ante*.

266y. —— **Award—Jurisdiction of court to remit—Award bad on face for ambiguity or uncertainty.**]—In an arbn. for the purpose of awarding compensation under the above Act, the High Ct. may remit to the arbitrator an award bad on the face of it for ambiguity or uncertainty, in accordance with Arbitration Act, 1889 (c. 49), although by sect. 11, sub-sect. 1, of the above Act, it is provided that arbns. thereunder shall be in accordance with A. H. Act, 1908, Sched. 2, which excludes Arbitration Act, 1889.—MURRAY *v.* DALTON

(1920), 90 L. J. K. B. 401; 124 L. T. 762; 37 T. L. R. 234; 65 Sol. Jo. 155, D. C.

Annotation:—**Refd.** *Re* Jones & Carter, [1922] 2 Ch. 599.

Control of food in wartime generally, *see* FOOD & DRUGS, Vol. XXV., pp. 132 *et seq.*

SUB-SECT. 3*b*.—ASCERTAINMENT OF COMPENSATION.

266z. In respect of what holdings compensation payable—Tenant sub-letting farmhouse.]—By an agreement of tenancy a landlord demised to the tenant a farm of 1,000 acres together with a farmhouse & some cottages. There was a provision that the tenant should use the demised premises for farming purposes. The tenant subsequently, with the permission of the landlord, sub-let the farmhouse to a lady who used it as a house for paying guests. Upon the determination of the lease, the tenant made a claim for compensation under A. H. Act, 1908:—*Held:* the ct. must have regard to the substance of what had been done; by the lease the holding was an agricultural one, & the fact that the farmhouse had been let to a sub-tenant did not cause it to cease to be a "holding" within the Act.—*Re* RUSSELL & HARDING (1922), 128 L. T. 476; 39 T. L. R. 92; 67 Sol. Jo. 123, C. A.

—— **Compensation for improvements—Under Agricultural Holdings Act, 1908.**] — *See* original volume, p. 42, Nos. 230–232.

266aa. Notice of claim To whom given Purchase —Taking subject to existing tenancies.]—Applt. was the tenant of an agricultural holding under a tenancy expiring on Sept. 29, 1922. In May, 1922, the landlord contracted to sell the holding, subject to the tenancy, to resp., completion to take place on Sept. 29, 1922. The completion in fact took place on Nov. 2. The contract of sale contained a general condition that the rents, profits or possession of the property should be received or retained & the outgoings discharged by the vendor up to the time appointed for completion, & that current rents should be apportioned. By a special condition it was provided that for the purpose of this general condition any rent payable on Sept. 29 was to be deemed "current rent," & was to be payable by the purchaser on completion. After the determination of the tenancy the purchaser as "landlord" made a claim against the tenant for dilapidations, & the tenant counterclaimed for compensation:—*Held:* the purchaser was not at the date of the termination of the tenancy the "landlord" within A. H. Act, 1908, s. 48, & Agriculture Act, 1920 (c. 76), s. 18.—TOMBS *v.* TURVEY (1923), 93 L. J. K. B. 785; 131 L. T. 330; 68 Sol. Jo. 385, C. A.

—— **For compensation for improvements—Under Agricultural Holdings Act, 1908.**]—*See* original volume, p. 46, Nos. 245–250.

—— **For compensation to landlord for deterioration.**]—*See* Nos. 264a, 264b, *ante*.

—— **For compensation for disturbance—Under Agricultural Holdings Act, 1908.**]—*See* original volume, p. 48, No. 266; & Nos. 265b, 265c, *ante*.

—— —— **Under Agriculture Act, 1920 (c. 76).**] —*See* Nos. 266h, 266i, *ante*.

266bb. Particulars of claim—Sufficiency.]—*Held:* having regard to the severity of the penalty attached to non-compliance with Agriculture Act, 1920 (c. 76), s. 18 (2), namely, total extinguishment of the claim, the presumption was that the requirement of "particulars" was not intended to be construed strictly, &, for the purpose of keeping the claim alive & enabling the parties to get before the arbitrator, a less degree of particularity was required to satisfy the sect. than would be required of particulars of a statement of claim in an action, notwithstanding that when the parties get before the arbitrator he might be of opinion that the particulars were insufficient, & might order further & better particulars to be given.—JONES *v.* EVANS, [1923] 1 K. B. 12; [92 L. J. K. B. 35; 128 L. T. 228, C. A.

Annotations:—**Apld.** *Re* Agricultural Holdings Act, 1923, O'Connor *v.* Brewin (1932), 76 Sol. Jo. 511. **Consd.** Spreckley *v.* Leicester County Council, [1934] 1 K. B. 366. **Refd.** Turton *v.* Turnbull, [1934] 2 K. B. 197.

266cc. —— ——.]—(1) A tenancy having been determined by notice to quit expiring on Sept. 29, 1930, the tenant gave notice of, amongst others, a claim for disturbance, & on Nov. 20, 1930, furnished particulars in which particulars of claim for disturbance were "Disturbance for two years' rent £514":—*Held:* no sufficient particulars had been delivered & therefore the claim was barred.

(2) Where the tenant proves he has directly suffered loss the minimum amount of damages is one year's rent.—*Re* O'CONNOR & BREWIN'S ARBITRATION, [1933] 1 K. B. 20; 101 L. J. K. B. 706; *sub nom. Re* AGRICULTURAL HOLDINGS ACT, 1923, O'CONNOR *v.* BREWIN, 147 L. T. 386; 76 Sol. Jo. 511, C. A.

Annotation:—*As to* (1) **Follid.** Spreckley *v.* Leicester County Council, [1934] 1 K. B. 366.

266dd. —— —— **Question of fact.**]—OLIVE *v.* PAYNTER, No. 264b, *ante*.

266ee. —— ——.]—On Mar. 19, 1931, the tenant of an agricultural holding was served by his landlord with a notice to quit expiring on Apr. 6, 1932. On Nov. 23, 1931, during the currency of the notice to quit the tenant gave notice to his landlord of his intention to make a claim for compensation for disturbance

---

PART V. SECT. 3, SUB-SECT. 3b.

266aa i. *Particulars of claim—Sufficiency—Agricultural Holdings (Scotland) Act*, 1923 (c. 10), s. 15 (2).]—By a letter, written on receipt of a notice from the tenant of his intention to terminate his tenancy of a sheep farm, the landlord intimated that he reserved his claim in respect of depletion of the sheep stock; & by a second letter, written within two months after the termination of the tenancy, in which he referred to his former letter, he stated that only 51 per cent. of the sheep stock had been delivered to the incoming tenant, & that the amount of the claim would be intimated when the exact shortage was determined:—*Held:* (1) in view of the severity of the penalty attached to non-compliance, the requirements of the above sub-sect. were sufficiently complied with if fair notice was given to the opposite party of the nature of the claim against him & of the case he had to meet; (2) the letters gave such notice, although they did not state the legal basis of the claim or its actual amount.—MONTROSE (DUKE) *v.* HART, [1925] S. C. 160.—**SCOT.**

aa. *Agricultural Holdings (Scotland) Act*, 1908 (c. 64)—*Appeal—Decision of court on case stated—Binding on arbitrator.*]—MITCHELL-GILL *v.* BUCHAN, [1921] S. C. 390; 58 Sc. L. R. 371.—**SCOT.**

under sect. 12 of A. H. Act, 1923, " for loss or expense directly attributable to my quitting the holding which I may unavoidably incur upon or in connection with the sale or removal of my household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding, including any expenses reasonably incurred by me in my claim for compensation." On Apr. 6, 1932, the tenant quitted the holding. On May 21, 1932, he gave notice under sect. 16 (2) of the Act, that the amount of his claim for disturbance was " one year's rent, viz.: Two hundred & twenty-five pounds (£225)." The county court judge held that the particulars were sufficient:—*Held:* no sufficient particulars had been delivered & therefore that the claim was barred, on the grounds: (1) the notice of Nov. 23, 1931, was merely a notice that a claim would be made & not a rendering of particulars, & (2) the notice of May 21, 1932, although it quantified the claim at the minimum sum to which the tenant was entitled under sect. 12 (6) of the Act, did not furnish particulars of some loss or expense to which the tenant had been put.—SPRECKLEY *v.* LEICESTERSHIRE COUNTY COUNCIL, [1934] 1 K. B. 366; 103 L. J. K. B. 200; 150 L. T. 9, C. A.

266ff. Award—Setting aside—Jurisdiction of court—Error on face of award.]—The inherent jurisdiction of the High Ct. to set aside an award under A. H. Act, 1908, on the ground of error appearing on the face of it where there has been no misconduct on the part of the arbitrator is not taken away by that Act. That jurisdiction was not excluded by Arbitration Act, 1889 (c. 49), & when the jurisdiction under that Act with reference to arbn. proceedings under the A. H. Act, 1908, was transferred to the county ct. by that Act, the inherent jurisdiction of the High Ct. in those matters was neither expressly nor by implication transferred to it.—*Re* JONES & CARTER, [1922] 2 Ch. 599; 91 L. J. Ch. 824; 127 L. T. 622; 38 T. L. R. 779; 66 Sol. Jo. 611, C. A.

Annotation:—**Consd.** Horrell *v.* St. John of Bletso, [1928] 2 K. B. 616.

266gg. —— —— Time for notice of motion to set aside.]—In an arbn. under the A. H. Act, 1908, the award was made on Apr. 8, 1921, & on June 3 applt. gave notice of motion to set aside the award on various grounds. There was no rule either under County Cts. Act, 1888 (c. 43), or under A. H. Act, 1908, dealing with the time within which a notice of motion to set aside an award must be given:—*Held:* the words " principles of practice " in County Cts. Act, 1888 (c. 43), s. 164, did not refer to specific rules of the High Ct., & the time limit of six weeks under R. S. C., Ord. 64, r. 14, was not a " principle of practice " within that sect. of the Act; therefore the only time limit applicable in the present case was under Stat. Limitations & under the doctrine of laches, & the motion to set aside the award was made in time.—MCCREAGH *v.* FREARSON (1921), 91 L. J. K. B. 365; 126 L. T. 601, D. C.

266hh. —— Order directing arbitrator to state special case—Appeal lies to Divisional Court.]—STEVENS *v.* DOWNHAM, ISLE OF ELY (FEOFFEES OF POOR LANDS), [1926] W. N. 168.

266jj. —— No power to order arbitrator to state special case on question not within submission to arbitration.]—STEVENS *v.* DOWNHAM, ISLE OF ELY (FEOFFEES OF POOR LANDS), [1926] W. N. 168.

—— Of compensation for improvements—Under Agricultural Holdings Act, 1908.] — *See* original volume, p. 47, No. 254–256.

266kk. Recovery of compensation agreed or awarded—In what court.]—A. H. Act, 1923, s. 19, does not give exclusive jurisdiction to the county ct. in all cases & prevent an action from being brought to recover the sum in the High Ct., when it is in excess of the amount ordinarily recoverable in the county ct.—HORRELL *v.* ST. JOHN OF BLETSO (LORD), [1928] 2 K. B. 616; *sub nom.* HORRELL *v.* BLETSO, 97 L. J. K. B. 655; 139 L. T. 400.

266ll. Costs—Agreement as to—Validity.]—The parties to an arbn. under A. H. Act, 1923, agreed beforehand that the successful party should have costs on the High Ct. scale. The agreement was not communicated to the arbitrator, who gave his award in favour of the landlord, & awarded that each party should pay his own costs. In an action by the landlord to enforce the agreement the judge gave judgment for the tenants, on the ground that the Act gave discretion to the arbitrator as to costs:—*Held:* the agreement was valid & enforceable.—MANSFIELD *v.* ROBINSON, [1928] 2 K. B. 353; 97 L. J. K. B. 466; 139 L. T. 349; 92 J. P. 126; 44 T. L. R. 518, D. C.

267a. —— " Treated as a market garden."]—(1) *Held:* the word " treated " in sect. 42 (1) of the above Act, in the collocation in which it was there used did not mean simply that the holding should be in use or cultivation as a market garden, but that it should be let by one person as landlord & occupied by the other as tenant as a market garden, & so treated as between them for the purpose of govening their rights in respect of the holding as a market garden.

By an agreement in writing dated Dec. 31, 1919, & made between the landlord of the one part & the tenant therein described as " market gardener " of the other part, it was agreed (clause 1): that the landlord should let & the tenant should take the farm therein described for the term of one year from Sept. 19, 1919, & so on from year to year at the yearly rent of £185 by half-yearly payments on Mar. 25 & Sept. 29 in each year, & that the tenant should pay to the landlord as a further rent at the rate of £6 per cent. *per annum* on all sums of money expended by the landlord in the supply of any fruit trees during the tenancy. By clause 7 the tenant was to cultivate the land on the best & most approved system of gardening in general practice in the neighbourhood, & was not to cut down, grub up, or destroy any fruit trees growing in or upon the land, or at any time to be planted thereon, under the provisions of the agreement, without the consent in writing of the landlord or his agent first had & obtained. By clause 9 the landlord was during the term to supply the tenant at his own expense with all fruit trees which might at any time be agreed between the landlord & tenant to be necessary, & the tenant was to pay a certain additional

rent in respect of the fruit trees so supplied. Clause 11 contained the following proviso: "That nothing herein contained shall be deemed to be an agreement by the landlord that the premises hereby demised or any part thereof shall be let or treated as a market garden or give rise to a claim for compensation for fruit trees or bushes under A. H. Act, 1908, or any statutory modification thereof": —*Held:* (2) clause 11 of the agreement contained the clearest possible expression of the intention of the parties that the holding was not to be treated as a market garden; there was therefore no agreement in writing within sect. 42 (1) of the Act, by which it was agreed that it should be let or treated as a market garden, & therefore no claim to compensation on that basis arose, because the existence of such an agreement was a condition precedent to such a claim; (3) the agreement was not one which was avoided by sect. 5 of the Act, because the condition precedent to the tenant having the right to claim compensation had not been satisfied.—*Re* MASTERS & DUVEEN, [1923] 2 K. B. 729; 68 Sol. Jo. 11; *sub nom.* MASTERS *v.* DUVEEN, 93 L. J. K. B. 57; 130 L. T. 13, C. A.

Annotation:—*As to* (1) **Consd.** Saunders-Jacob *v.* Yates, [1933] 2 K. B. 240.

267b. Market garden—What is—Garden of country house—Sale of produce.]—The fact that the occupier of a country house sells regularly one-half of the produce of the gardens occupied therewith does not constitute the gardens a market garden.—BICKERDIKE *v.* LUCY, [1920] 1 K. B. 707; 89 L. J. K. B. 558; 84 J. P. 61; 36 T. L. R. 210; 64 Sol. Jo. 257; 18 L. G. R. 207, D. C.

Annotation:—**Refd.** Lowther *v.* Clifford (1925), 90 J. P. 55.

267c. —— ——.]—Land was cultivated in order that the crops might be sold, & the crops included fruit & rhubarb:—*Held:* (1) the land was a market garden within A. H. Act, 1923, s. 57; (2) having regard to sect. 54 & other sects. of that Act, sect. 16 should not be read with an unrestricted meaning, & the landlord's right of action to recover the expense of making up a road had not been affected by the provision for reference to arbn. in that sect. (3) *Semble:* sect. 16 deals with procedure.—LOWTHER *v.* CLIFFORD, [1927] 1 K. B. 130; 95 L. J. K. B. 576; 135 L. T. 200; 90 J. P. 113; 42 T. L. R. 432; 70 Sol. Jo. 544; 24 L. G. R. 231, C. A.

Annotations:—*As to* (2) **Folld.** Olive *v.* Paynter, [1932] K. B. 666. *As to* (3) **Consd.** Farrow *v.* Orttewell, [1933] Ch. 480. **Refd.** Mansfield *v.* Robinson, [1928] 2 K. B. 353.

267d. "Let or treated as a market garden"—Part of premises treated as market garden.]—By lease made in 1904 a private residence at Sunbury, Middlesex, with gardens, pleasure grounds, & meadow lands, being about 27 acres in all, was demised to deft.'s predecessor in title for twenty-eight years at a yearly rent of £126. The lessee covenanted to keep the premises in repair & not to commit waste. He also covenanted not to occupy use or employ the premises for any trade except that of a nurseryman, market gardener, florist or farmer, without the written consent of the lessors. The lessee during the term ploughed up the grass land & cultivated it as a market garden. In 1924 deft., in whom the term was then vested, let the house & garden on a yearly tenancy, but continued to cultivate the rest of the land as a market garden. On the termination of the lease in 1931, the reversioners brought an action for damages for waste & for declarations that neither the demised premises nor any part thereof constituted a "holding" or "market garden" within Agricultural Holdings Act, 1923 (c. 9):—*Held:* the premises, excluding the house & grounds let in 1924, constituted a separate holding under the Act; they were let upon an agreement in writing made after Jan. 1, 1896, which provided that the holding should "be let or treated as a market garden"; it was therefore a "market garden" within sects. 48, 57 of the Act, & the claim failed.—SAUNDERS-JACOB *v.* YATES, [1933] 2 K. B. 240; 102 L. J. K. B. 417; 149 L. T. 209, C. A.

Part VI.—Fixtures.

268. *Add. Annotations:*—**Consd.** *Re* Mann & Harvey (1920), 123 L. T. 242. **Refd.** Pole-Carew *v.* Western Counties & General Manure Co., [1920] 2 Ch. 97.

268a. —— **Removal by tenant—Agricultural Holdings Act, 1908, s. 21—Power to contract out of Act.**]—A. H. Act, 1908, contains no prohibition against the parties to a lease or tenancy contracting themselves out of the provisions of sect. 21 of the Act, & it is therefore competent to them to do so.

A lease of a farm contained a covenant by the lessee to deliver up at the end of the term all the demised premises & all new & other buildings & erections thereon & all such fixtures as were in anywise affixed or fastened to the freehold of the premises:—*Held:* the covenant effectually excluded the provisions of sect. 21 of the Act, & the tenant was not entitled to remove certain buildings & fixtures erected & affixed by him during the term.—PREMIER DAIRIES *v.* GARLICK,

---

PART VI.

m i. ——.]—Where a lease of farm land provides that the lessee shall have the right, within a specified time after the expiration of the term, to remove any fence which he may have erected during his occupancy, & he erects a fence consisting of strands of wire carried on wooden pickets, the pickets & wire become part of the land, subject to the lessee's contractual right to sever them, thereby restoring them to the condition of chattels, & to remove them.—CHERRY *v.* BREDIN (Sask.), [1927] 3 D. L. R. 326; [1927] 2 W. W. R. 314.—**CAN.**

n. (p. 49) For "SASKATCHEWAN *v.* GOMBAR" read "SASKATCHEWAN ELBOW WHEAT LAND CO. *v.* GOMBAR."

n (p. 49) i. —— *Windmill & stable windows.*]—A windmill, wire fencing & windows in a stable, erected or furnished by a tenant of agricultural land:—*Held:* in view of the degree of annexation & the object of the annexation, to be removable by the tenant.—CARSCALLEN *v.* LEESON (Alta.), [1927] 4 D. L. R. 797; [1927] 3 W. W. R. 425. —**CAN.**

t. (p. 49) For "SASKATCHEWAN *v.* GOMBAR" read "SASKATCHEWAN ELBOW WHEAT LAND CO. *v.* GOMBAR."

[1920] 2 Ch. 17; 89 L. J. Ch. 332; 123 L. T. 44; 64 Sol. Jo. 375.

268b. —— —— **No notice by tenant of intention to remove—Claim by tenant for loss on removal.**]—An agricultural tenant who at the expiration of his tenancy omits to give to the landlord, under A. H. Act, 1908, s. 21, notice of his intention to remove a fixture or building, whereby the landlord is prevented from exercising the option given to him by the Act to purchase the same, cannot afterwards claim compensation for expenses or loss suffered through the removal under A. H. Act, 1914, s. 1, & A. H. Act, 1908, s. 11.—*Re* HARVEY & MANN (1920), 89 L. J. K. B. 687; *sub nom. Re* MANN & HARVEY, 123 L. T. 242, C. A.

268c. —— **Purchase by landlord—Agricultural Holdings Act, 1923 (c. 9), s. 22—Validity of award.**]—HASSALL *v.* CHOLMONDELEY (1935), 79 Sol. Jo. 522.

271. *Add. Annotation:*—**Refd.** Pole-Carew *v.* Western Counties & General Manure Co., [1920] 2 Ch. 97.

273. *Add. Annotations:*—*As to* (3) **Refd.** Vaudeville Electric Cinema *v.* Muriset, [1923] 2 Ch. 74; Golden Horseshoes (New), Ltd. *v.* Thurgood (1934), 150 L. T. 427.

275. *Add. Annotation:*—**Consd.** *Re* Mann & Harvey (1920), 123 L. T. 242.

276. *Add. Annotation:*—*As to* (4) **Refd.** Premier Dairies *v.* Garlick, [1920] 2 Ch. 17.

277. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Rogerstone Brick & Stone Co., Southall *v.* Wescomb, [1919] 1 Ch. 110.

Part VIII.—Growing Crops and Crops, Emblements, and Gleaning.

NOTE.—*Stat. Frauds, s.* 4, *is now replaced by Law of Property Act*, 1925 (*c.* 20), *s.* 40.

280. *Add. Annotations:*—**Refd.** Richards *v.* Davies, [1921] 1 Ch. 90; Back *v.* Daniels (1924), 69 Sol. Jo. 160.

286. *Add. Annotation:*—**Consd.** Stephenson *v.* Thompson, [1924] 2 K. B. 240.

PART VIII. SECT. 1.

280 i. *Sale—Interest in land—Passing before severance—Statute of Frauds—Grass.*]—ROBINSON *v.* LONG, [1923] 3 D. L. R. 918.—**CAN.**

286 ii. —— —— —— —— ——.]—As a general rule a contract for the sale of standing timber which is not to be severed immediately is a sale of an interest in land.—HANDY *v.* CARRUTHERS (1893), 25 O. R. 279.—**CAN.**

286 iii. —— —— —— —— ——.]—MCKENZIE *v.* HARVEY & BLANCHARD, [1930] 1 D. L. R. 547.—**CAN.**

286 iv. —— —— —— —— ——.]—MACMILLAN *v.* MCDONALD, [1930] 1 D. L. R. 667.—**CAN.**

286 v. —— —— —— —— ——.]—*Held:* sale of timber for the removal of which the purchaser was to have as much time as he desired, was the sale of an interest in land.—KELLY PIANO CO. *v.* NASH (1931), 44 B. C. R. 14.—**CAN.**

286 vi. —— —— *Dependent on terms of contract.*]—The question whether a contract relating to timber constitutes a sale of chattels or relates to an interest in land depends on the terms of the contract. A contract for the sale of standing timber to be cut & removed by the buyer, who is given "as much time as he desires" to remove it, is one which deals with an interest in land within the meaning of sect. 34 of Land Registry Act, R. S. B. C., 1924, &, therefore, it is one which must be registered thereunder in order to pass such interest.—CARLSON *v.* DUNCAN, [1931] 2 W. W. R. 343; 3 D. L. R. 570; 44 B. C. R. 14.—**CAN.**

286 vii. —— —— *"Orchard or fruit lands"—Soldier's Settlement Act.*]—*Held:* the sale of "orchard or fruit lands," mentioned in sect. 59 (*c*) of Soldier's Settlement Act, 1919, though providing for a valuation of the trees apart from the land, is nevertheless a sale of "orchard or fruit lands," which is not personal property. An intention in a statute to depart from a common law rule would need to be expressed with the utmost clarity, & sect. 59 (*c*) does not pretend to enact that planted & growing fruit trees are to be treated as chattels or personal property.—MCCLELLAN *v.* R., [1932] Ex. C. R. 18; *on appeal*, [1932] S. C. R. 617; 4 D. L. R. 72.—**CAN.**

b i. —— —— ——.]—MESSERVEY *v.* CENTRAL CANADA CANNING CO., [1923] 4 D. L. R. 1202; 3 W. W. R. 365.—**CAN.**

b ii. —— —— ——.]—By an agreement in writing pltf. contracted (*inter alia*) to sell to deft. 14 acres of swedes & 16 acres of turnips for 1931 feed. Subsequently, on account of the lateness of the season, the parties verbally agreed that the 14 acres intended to be sown in swedes should be sown in turnips. The crop became infected with a disease & deft. did not put his sheep on to eat any part of the crop. Pltf. required the use of the 30 acres for cultivating for the 1932 harvest, & alleging that he was prevented from so doing by deft.'s neglect to clear off the turnips, claimed £20 damages for breach of contract in addition to £180 purchase price:—*Held:* the crops were "goods" within Sale of Goods Act, 1908, & the second contract, being oral, was unenforceable.—SCULLY *v.* SOUTH, [1931] N. Z. L. R. 1187.—**N.Z.**

e i. —— ——.]—Crops growing at the completion of a sale of land pass to the purchaser, unless there be a stipulation to the contrary.—ANDERSON *v.* STASIUK, [1926] 1 D. L. R. 347; [1926] 1 W. W. R. 107; 20 Sask. L. R. 269.—**CAN.**

e ii. —— —— *Sale by mortgagee.*]—A conveyance by a mtgee. under a power of sale entitles the purchaser to the growing crops.—DYCK *v.* DYCK, [1926] 3 W. W. R. 762; [1927] 1 D. L. R. 458; 36 Man. L. R. 210.—**CAN.**

e iii. —— ——.]—Growing crops are "goods" within Sale of Goods Act when there is an agreement that they are to be severed under the contract of sale; but, otherwise, they are part of the land & pass with it.—SHEWCHUK *v.* SEAFRED, [1927] 3 D. L. R. 280; [1927] 2 W. W. R. 207; 36 Man. L. R. 469.—**CAN.**

e iv. —— *Right of vendor to crop on cancellation of contract—Who entitled to cut crops.*]—A provision in an agreement for the sale of land that the vendor, on becoming entitled to cancel the contract, shall have the right to enter into possession & to possess "the growing crop," does not give him any right to crops that have been cut & which thereby became chattels.—CANADIAN PACIFIC RY. CO. *v.* STEWART (Sask.), [1927] 3 D. L. R. 555; [1927] 2 W. W. R. 385.—**CAN.**

g i. *Permit to cut hay—Cancellation if land leased.*]—*Held:* the permit was not cancelled by only a part of the land being leased.—DECOCK *v.* BARRAGER (1909), 19 Man. L. R. 34.—**CAN.**

g ii. —— *Interest in land.*]—A contract under which an owner of land gives another the right to cut & remove the wild hay to be grown on the land is a contract concerning an interest in land & within sect. 4 of Stat. Frauds.—VAN BERKEL *v.* DE FOORT, [1933] 1 W. W. R. 125; 1 D. L. R. 652.—**CAN.**

g iii. —— *Oral agreement—Part performance.*]—Permitting haystacks to remain on land is not a sufficient part performance of an oral contract to permit the cutting of hay to take the case out of the Statute of Frauds.—VAN BERKEL *v.* DE FOORT, [1933] 1 D. L. R. 652; 1 W. W. R. 125; 41 Man. L. R. 19.—**CAN.**

p i. —— *Right of devisee to crops sown by share tenant—& growing at testator's death.*]—*Held:* as testator's interest in the wheat while growing arose out of the agreement, which amounted to a severance of the crop from the land, the money payable for testator's share in the crop fell into the residue of the estate.—*Re* BURGIN, [1922] V. L. R. 686.—**AUS.**

p ii. —— *Cost of threshing.*]—A lessor on the crop-payment plan agreed to pay one-half the cost of threshing:—*Held:* he was liable for one-half of the cost of hauling the sheaves from the stook to the thresher.—TOCHER *v.* JOHNSON (1922), 68 D. L. R. 768;

288. *Add. Annotation :*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

289. *Add. Annotation :*—**Refd.** Elmes *v.* Trembath (1934), 19 Tax Cas. 72.

296. *Add. Annotations :*—**Consd.** Stephenson *v.* Thompson, [1924] 2 K. B. 240. **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174; Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

298. *Add. Annotation :*—**Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160.

299. *Add. Annotation :*—**Folld.** Eldon (Lord) *v.* Hedley Bros., [1935] 2 K. B. 1.

299a. —— —— —— ——.]—L., the tenant from year to year of a farm in the county of Durham belonging to Lord Eldon, agreed by his tenancy agreement not to dispose of any hay, etc., that was grown or brought on the farm, but to consume such hay, etc., by stock on the farm & in the proper manner. In May, July & Oct. 1932, L. entered into three contracts for the sale to H., a firm of hay dealers, of eight stacks of hay standing on the farm. The contracts provided for the sale of the hay at various prices per ton "put free on rails. . . . Cutting & tieing to be done by Hedley Bros. Delivery of same to be taken when convenient, & only good marketable hay clear of mould to be delivered in a dry condition." H. paid L. at the time of entering into the contracts the estimated value of the stacks of hay. At the time L. entered into these contracts he was still the tenant of the farm & could not in the ordinary course determine his tenancy before May 13, 1934. In Oct. 1932, however, L. asked to be allowed to terminate his tenancy on May 13, 1933, & on Nov. 18, 1932, the landlord's agent agreed that the tenancy should terminate on May 13, 1933. In Jan. 1933, the landlord's agent informed H. that L.'s tenancy agreement would terminate on May 13, 1933, & that the hay would not be allowed to be removed from the farm. On Feb. 13, 1933, the landlord levied a distress upon the farm for arrears of rent. The bailiff found that H. were in process of cutting into the eight stacks of hay & taking the hay away, & notwithstanding the presence of the bailiff they removed all the hay in the eight stacks. On Feb. 14, 1933, H. served upon the landlord a declaration under Law of Distress Amendment Act, 1908 (c. 53), s. 1, that the tenant had no right of property or beneficial interest in the goods distrained. The landlord, thereupon, brought an action against H. alleging that their acts amounted to poundbreach & claiming treble damages therefor; in the alternative the landlord claimed £102 damages for the removal of the hay contrary to Sale of Farming Stock Act, 1816 (c. 50), s. 11. At the trial it was proved that it was a common practice in the hay market for dealers to buy hay in stacks, sometimes for a lump sum, & sometimes for a price per ton, & that purchases of stacks, even though weight & price necessarily remained to be determined at the time of delivery, were regarded by all persons interested in the market as passing the property in the stacks to the buyers at the time of the bargain :—*Held :* Sale of Farming Stock Act, 1816 (c. 50), s. 11, has not been impliedly repealed by the Agricultural Holdings Act, 1923 (c. 9); L. was not freed from his obligation under his tenancy agreement not to dispose of any hay grown on the farm but to consume it by stock on the farm by Act of 1923 (c. 9), s. 30 (1), as there was no evidence that he had made adequate provision to return to the holding the full equivalent manurial value to the holding of crops sold off or removed from the holding, & further the hay had been removed from the farm in the year before L. quitted the holding. He ought, therefore, not to have disposed of the hay otherwise than as provided for in his tenancy agreement. The purchasers of the hay stood in L.'s shoes & had therefore committed a breach of the Act of 1816, & the landlords were therefore entitled to damages for the removal of the hay.—ELDON (LORD) *v.* HEDLEY BROS., [1935] 2 K. B. 1; 104 L. J. K. B. 334; 152 L. T. 507; 51 T. L. R. 313; 79 Sol. Jo. 270, C. A.

304. *Add. Annotations :*—**Consd.** Lebeaupin *v.* Crispin, [1920] 2 K. B. 714. **Expld. & Distd.** *Re* Wait, [1927] 1 Ch. 606.

310a. —— ——.]—The owner of the herbage may maintain trespass *quare clausum fregit.*—PICKETT *v.* BUTLER (1844), 3 L. T. O. S. 39, 183.

311a. *S. P.* ARCHER *v.* SADLER (1859), 1 F. & F. 481, N. P.

311b. —— ——.]—At an auction sale of grass & crops held at a farm pltf. purchased the crop of swedes in one of the fields, & deft. purchased the grass on an adjoining field. One of the conditions upon which pltf. purchased the crop of swedes was that he should not remove from the field more than one-half of the crop of swedes, the other half having to be consumed on the field. Deft. put a number of sheep into his field of grass, & the sheep got into pltf.'s field of swedes & did considerable damage to the swedes :—*Held :* the fact that the right of pltf. to remove the swedes from the field was limited to one-half of the crop did not prevent him from maintaining an action of trespass in respect of the damage done by deft.'s sheep, as pltf. had such an exclusive right of possession in the crop as would entitle him to maintain an action of trespass.—WELLAWAY *v.* COURTIER, [1918] 1 K. B. 200; 87 L. J. K. B. 299; 118

---

32 Man. L. R. 356; [1922] 2 W. W. R. 616.—**CAN.**

p iii. —— *Failure of lessor to supply seed—Measure of damages.*]—BEAMAN *v.* TULLY (Sask.), [1927] 4 D. L. R. 143; [1927] 2 W. W. R. 953.—**CAN.**

p iv —— *Crop-payment covenant—On whom binding.*]—*Held :* binding only on the purchaser & his successors in interest under the covenant.—*Re* SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD., *Re* SENGER & HOUCK (Sask.), [1927] 4 D. L. R. 1090; [1927] 3 W. W. R. 547.—**CAN.**

s1. *Licence to sow crop—Implied right to benefit from crop—Condition precedent.*]—Where a licence to fallow was given by A. & fallowing was done & a crop put in on the land by B., but the evidence also showed that such licence, although coupled with an interest, depended on an express condition that the licencee should have the benefit of the crop only if a contract for the sale of the land was completed, on the contract not being completed :—*Held :* the licence, although coupled with an interest, did not confer any right to the crop on the licencee. Also, on the evidence, apart from the express condition, there was an implied condition to the same effect. Further, on the evidence, the condition was a condition precedent.—FERRES *v.* COPE, [1928] S. A. S. R. 415.—**AUS.**

L. T. 256; 34 T. L. R. 115; 62 Sol. Jo. 161, D. C.

Annotation :—Richards *v.* Davies, [1921] 1 Ch. 90.

315. *Add. Annotations :—As to* (1) **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209; Gurney *v.* Houghton (1920), 123 L. T. 706; Hudson's Bay Co. *v.* Maclay (1920), 36 T. L. R. 469; Newcastle Breweries *v.* R., [1920] 1 K. B. 854; Shutler *v.* Rolfe (1920), 36 T. L. R. 828; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

317. *Add. Annotation :*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

332a. —— **Not lessee for life.**]—KNEVIT *v.* POOLE (1601), Gouldsb. 143; Cro. Eliz. 463; 75 E. R. 1053.

Part IX.—Trees and Timber.

352a. —— —— ——.]—*Re* TOWER'S CONTRACT, [1924] W. N. 331.

362. *Add. Annotation :*—**Refd.** *Re* Harker's Will Trusts, Harker *v.* Bayliss, [1938] Ch. 323.

366. *Add. Annotation :*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

390. *Add. Annotation :*—**Refd.** *Re* Harker's Will Trusts, Harker *v.* Bayliss, [1938] Ch. 323.

392. *Add. Annotation :*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

395. *Add. Citation :*—15 W. R. 640.

396. *Add. Annotations :*—**Refd.** De Silva *v.* Korossa (Ceylon) Rubber Co. (1919), 88 L. J. P. C. 54; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341; Brooke *v.* Bool, [1928] 2 K. B. 578; Matania *v.* National Provincial Bank, Ltd. & Elevenist Syndicate, Ltd., [1936] 2 All E. R. 633.

402. *Add. Annotations :*—**Refd.** Chowood, Ltd. *v.* Lyall (1930), 143 L. T. 546; Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

404. *Add. Annotations :*—**Distd.** Noble *v.* Harrison, [1926] 2 K. B. 332. **Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

405. *Add. Annotations :—As to* (1) **Refd.** Noble *v.* Harrison, [1926] 2 K. B. 332. *As to* (2) **Refd.** Collis *v.* Amphlett (1919), 89 L. J. Ch. 101; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341. *As to* (3) **Refd.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341. *As to* (4) **Consd.** Collins *v.* Amphlett (1919), 89 L. J. Ch. 101. **Refd.** Mills *v.* Brooker, [1919] 1 K. B. 555; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

406. *Add. Annotations :*—**Consd.** Collis *v.* Amphlett (1919), 89 L. J. Ch. 101. **Refd.** Mills *v.* Brooker, [1919] 1 K. B. 555; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341; Noble *v.* Harrison, [1926] 2 K. B. 332.

406a. —— —— **Right to appropriate fruit.**]—Where the branches of fruit trees growing near their owner's boundary overhang the land of the adjoining owner, the right of the adjoining owner to lop the branches does not carry with it the right to pick & appropriate the fruit, & if he does so he is guilty of conversion & liable to the owner for its value.—MILLS *v.* BROOKER, [1919] 1 K. B. 555; 88 L. J. K. B. 950; 121 L. T. 254; 35 T. L. R. 261; 63 Sol. Jo. 431; 17 L. G. R. 238, D. C.

Annotation :—**Refd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

407. *Add. Annotation :*—**Refd.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

410a. —— **Injury to tenant's workman.**]—By a tenancy agreement dated Jan. 20, 1936, the then owner of an estate let part of it to a tenant, himself remaining in occupation of the adjoining land. On Feb. 10, 1936, a purchaser acquired the estate subject to the lease & became the owner & occupier of the adjoining land. On that adjoining land near the boundary of the demised land there was a beech tree which was in a dying condition & already dead from a height of about 16 ft. above the ground to its top, & a branch of that tree 40 ft. above the ground projected over the tenant's land. On May 30, 1936, that branch fell upon & killed a farm servant of the tenant who was at work upon his land. It appeared that at the date of the tenancy agreement there were many dead and dying trees on the estate, but that the risk of their branches falling had not become substantially greater by the date of the accident; & that in the meantime the owner had caused some of these trees to be cut down & was taking the advice of tree experts as to the best means of rendering the trees on the estate safe for all parties concerned. The tenant, having paid compensation under

---

PART VIII. SECT. 2.

g i. —— *Tenant whose estate forfeited.*]—A tenant whose term is ended because of his own default resulting in a forfeiture is not entitled to the crops growing at the time of the default.—SWENSON *v.* MCILMOYLE, [1930] 2 W. W. R. 382; 3 D. L. R. 959.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

403 iii. —— —— *Property in severed portion.*]—Where W. cuts off that portion of a tree overhanging his lot, the trunk of which is on L.'s lot, although the ownership of the fallen portion is in L. & he has the right to enter on W.'s lot & take it away, there is no obligation on the part of W. to deliver the cut portion to L.—LOVEROCK *v.* WEBB (1921), 70 D. L. R. 748; 30 B. C. R. 327.—**CAN.**

403 iv. —— —— ——.]—The owner of land may lop branches overhanging his land without previous notice to the owner of the tree, but may not keep the branches so lopped down for himself.—DE VILLIERS *v.* O'SULLIVAN (1883), 2 S. C. 251.—**S. AF.**

403 v. —— ——.]—A person is entitled to cut off those portions of trees growing on his neighbour's land which overhang his land.—VISHNU JAGANNATH JOSHI *v.* VASUDEP RAGHUNATH OKA (1918), I. L. R. 43 Bom. 164.—**IND.**

403 vi. *S. P.* MAUNG PO THAUNG *v.* MA GYI (1923), I. L. R. 1 Ran. 281.—**IND.**

407 ia. —— ——.]—Where the soil & freehold of a highway is in the Crown & the possession of the highway in the municipality, an action is not maintainable by an adjoining landowner for damages for the cutting by the municipality of trees on the highway.—A.-G. FOR BRITISH COLUMBIA & WATT *v.* SAANICH CORPN., [1921] 1 W. W. R. 471; 56 D. L. R. 482.—**CAN.**

407 iia. —— ——.]—A person can obtain an injunction to remove the overhanging portions of trees though he may not be able to prove any damage.—VISHNU JAGANNATH JOSHI *v.* VASUDEP RAGHUNATH OKA (1918), I. L. R. 43 Bom. 164.—**IND.**

sb. *Leaves blown on to neighbour's land —Polluting water—Trees not noxious & planted for shelter.*]—*Held :* the rule in *Rylands* v. *Fletcher* (1868), L. R. 3 H. L. 330, did not apply.—MATTHEWS *v.* FORGIE, [1917] N. Z. L. R. 921.—**N.Z.**

Workmen's Compensation Acts, 1925 to 1934, to the widow of his deceased servant, alleged that the owner was the person legally liable for the accident, & brought an action against him under sect. 30 (2) of the Act of 1925 for an indemnity :—*Held :* by the Ct. of Appeal, that the action could not be maintained for the following reasons—namely : that the tenant himself, if personal injury had been caused to him by the falling branch, could not have maintained an action against the owner inasmuch as, first (*per* GREER, L.J. & BENNETT, J.), the owner was under no duty to the tenant to protect him against the risk of the branch falling, the tenant having taken the demised land without objection in the condition in which it was at the date of the tenancy agreement with the dead branch overhanging it, & secondly (*per* GREER & MACKINNON, L.JJ., BENNETT, J. *dissenting* on this point) that, if the owner was under any such duty, he had taken reasonable care to discharge it ; that the owner could be under no higher duty to the tenant's servant lawfully on the demised land or to the representative of such deceased servant than he was under to the tenant himself ; that the fatal injury to the tenant's servant had not therefore been caused in circumstances creating a legal liability in the owner under the above-mentioned sub-sect. ; & consequently that the tenant as the person by whom the compensation had been paid was not entitled under that sub-sect. to be indemnified by the owner of the estate.—SHIRVELL *v.* HACKWOOD ESTATES CO., LTD., [1938] 2 K. B. 577 ; [1938] 2 All E. R. 1 ; 107 L. J. K. B. 713 ; 159 L. T. 49 ; 54 T. L. R. 554 ; 82 Sol. Jo. 271, C. A.

412. *Add. Annotation :*—**Refd.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

413. *Add. Annotation :*—**Consd.** Shirvell *v.* Hackwood Estates Co., [1938] 2 All E. R. 1.

418. *Add. Annotation :*—**Refd.** Musgrove *v.* Pandelis, [1919] 2 K. B. 43.

419. *Add. Annotation :*—**Refd.** Derry *v.* Sanders, [1919] 1 K. B. 223.

479a. ——.]—A tenant in fee simple in possession of real estates, with an executory gift over, is not impeachable for waste.—*Re* HANBURY'S SETTLED ESTATES, [1913] 2 Ch. 357 ; 82 L. J. Ch. 428 ; 109 L. T. 358 ; 29 T. L. R. 621 ; 57 Sol. Jo. 646.

484. Before this case add " *See, also,* ECCLESIASTICAL LAW, Vol. XIX., p. 511."
Add. Annotation :—**Refd.** Stockman *v.* Whither (1614), 1 Roll. Rep. 86.

518a. ——.]—BILLINGSLEY (LADY) *v.* HERSEY (1612), 2 Bulst. 5 ; 80 E. R. 912.

519. *Add. Annotations :*—**Apld.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500. **Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

527. *Add. Annotation :*—**Refd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

533. *Add. Annotations :*—**Distd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Refd.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252.

534. *Add. Annotation :*—**Distd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

552. *Add. Annotations :*—**Distd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Refd.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252.

591. *Add. Annotation :*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

602. *Add. Annotations :*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424 ; Horlick *v.* Scully, [1927] 2 Ch. 150

603a. —— **Trees not timber.**]—A tenant for life of land settled by will, which included plantations of larch, after having been let into possession by the trustees, entered into a contract to sell the trees on the plantations, which, being some forty years of age, were ripe for felling. The will devised the estates to the trustees with power to let the tenant for life into possession after she had attained the age of twenty-five years, & in the meantime to cultivate & manage them according to the custom of the district with full discretionary powers of cutting timber & underwood for sale :—*Held :* larch not being timber either at common law or by the custom of the district, the whole of the proceeds of sale belonged to the tenant for life, who was not bound to replant the plantations at her own expense.—*Re* HARKER'S WILL TRUSTS, HARKER *v.* BAYLISS, [1938] Ch. 323 ; [1938] 1 All E. R. 145 ; 107 L. J. Ch. 161 ; 158 L. T. 172 ; 54 T. L. R. 270 ; 82 Sol. Jo. 52.

615. *Add. Annotations :*—**Distd.** Horlick *v.* Scully, [1927] 2 Ch. 150. **Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

633a. No right to sell timber during life of tenant for life unimpeachable for waste.]—WALLER & PETTY *v.* SANDS (1632), Cro. Car. 274 ; 79 E. R. 839.

652. *Add. Annotation :*—**Consd.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] Ch. 500.

PART IX. SECT. 2, SUB-SECT. 7.

510 i. *Mortgagee.*]—The mtgee. of a term for years being in possession will, at the suit of the mtgor., be restrained from felling timber, although he may have obtained the consent of the reversioner.—CHISHOLM *v.* SHELDON (1850), 1 Gr. 318.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—A.

518 i. *General rules.*]—GOULIN *v.* CALDWELL (1867), 13 Gr. 493.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—B.

528 i. *Cannot enter & cut trees.*]—A landlord is not entitled to enter upon the holding of his tenant & cut down trees there without the tenant's consent.—KAMALKRISHNA SANYAL *v.* MADHUSUDAN CHAUDHURI (1929), I. L. R. 57 Calc. 344.—**IND.**

PART IX. SECT. 2, SUB-SECT. 9.—C.

555 ii. —— *Lessee on wild or unimproved land.*]—ATTORNEY-GENERAL OF NOVA SCOTIA *v.* MCDOUGALL, [1930] 2 D. L. R. 479.—**CAN.**

ss. *Right to cut trees for securing profitable enjoyment of land.*]—A tenant may have an implied right to cut or destroy bush in order to obtain in a reasonable way the profitable enjoyment of the land, &, in lieu of burning or destroying the timber, may save it & sell it for his own benefit. Where, however, the cutting down of the timber is done for the purpose of making an immediate profit out of the timber, & without any regard to the improvement of the land, there is no implied grant to the tenant to cut & sell the timber.

In the absence of any such grant, the property in the timber when cut vests immediately in the person entitled to the first estate of inheritance in fee or in tail.—HIRAWANU *v.* GARDNER, [1926] N. Z. L. R. 48 ; *revsd.* on the facts, *sub nom.* GARDNER *v.* HIRAWANU, [1927] A. C. 388 ; 96 L. J. P. C. 53 ; 136 L. T. 613 ; 43 T. L. R. 198—**N.Z.**

PART IX. SECT. 2, SUB-SECT. 10.—E. (a).

649 i. *Tenant for life unimpeachable—Trees taken compulsorily by overruling authority.*]—*Held :* the money given by way of compensation must be applied by the trustees as part of the corpus of the estate.—GAGE & ROPER *v.* PIGOTT & DE JENNER, [1919] 1 I. R. 23.—**IR.**

652a. —— —— ——.]—(1) By a settlement certain hereditaments were settled to the use of certain trustees during the life of A. without impeachment of waste upon the trusts, & with & subject to the powers thereinafter declared, with remainders as therein mentioned, & it was declared that the hereditaments were thereby limited to the trustees upon trust, during the life of A., that if at the time of such limitation taking effect in possession A. should not be or have been bkpt. the trustees should allow him to enter into & remain in the possession or receipt of the rents & profits of the settled estates during his life or until he should become bkpt. By an agreement, dated Dec. 7, 1920, A. agreed to sell all the timber standing in certain portions of the settled estates. On Jan. 18, 1922, a contract was entered into by A. for sale of part of the settled land, subject to the agreement of Dec. 7, 1920, & on Mar. 14, 1922, such land was conveyed to the purchaser, subject to the agreement:—*Held:* the proceeds of sale of the timber belonged to A.

(2) At the date of the contract for the sale of land & at the date of the conveyance, part of the timber, to the value of about £500, remained uncut:—*Held:* although as regards the purchaser of the land the timber was divided from the freehold, yet nevertheless it remained part of the inheritance & subject to the limitations of the settlement; accordingly, it did not vest in A., but being however part of the inheritance & still remaining subject to the limitations of the settlement, on severance it became the property of A., & therefore the £500 belonged to him.—*Re* LONDESBOROUGH (EARL), SPICER *v.* LONDESBOROUGH (EARL), [1923] 1 Ch. 500; 92 L. J. Ch. 423; 128 L. T. 792; 67 Sol. Jo. 439.

656. *Add. Annotation:— As to* (4) **Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

661a. —— —— ——.] — *Re* LONDESBOROUGH (EARL), SPICER *v.* LONDESBOROUGH (EARL), No. 652a, *ante*.

671. *Add. Annotations:*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750; *Re* Timber Regulations, Refund of Dues under, [1935] A. C. 184.

680. *Add. Annotation:*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

681. *Add. Annotation:*—**Distd.** *Re* Harker's Will Trusts, Harker *v.* Bayliss, [1938] Ch. 323.

696. *Add. Annotations:*—**Apld.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500. **Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

711. *Add. Annotation:*—**Consd.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500.

712. *Add. Annotations:*—**Distd.** Horlick *v.* Scully, [1927] 2 Ch. 150. **Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

736. *Add. Citation:—sub nom.* STEWKLEY *v.* BUTLER (1615), Moore, K. B. 880; 72 E. R. 970.
Add. Annotation:—**Refd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

739. *Add. Annotations:—As to* (1) **Consd.** Ellis *v.* Noakes, [1932] 2 Ch. 98 n. **Refd.** Joel *v.* International Circus & Christmas Fair (1920), 124 L. T. 459; Cohen *v.* Roche (1926), 95 L. J. K. B. 945; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569; *Re* Wait, [1926] Ch. 962; Golden Horseshoes (New), Ltd. *v.* Thurgood (1934), 150 L. T. 427. *As to* (2) **Refd.** Waimiha Sawmilling Co. *v.* Waione Timber Co., [1926] A. C. 101.

744. *Add. Annotation:*—**Refd.** Ellis *v.* Noakes [1932] 2 Ch. 98, n.

745. *Add. Annotations:*—**Apld.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500. **Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

757. *Add. Annotation:*—**Refd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

759. *Add. Annotation:*—**Consd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

769. *Add. Annotations:—As to* (2) **Refd.** Ambatielos *v.* Anton Jurgens Margarine Works, [1922] 2 K. B. 185; Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

781a. Exception of timber—Limitation on time for cutting.]—ELLIS *v.* NOAKES, [1932] 2 Ch. 98, n.; 101 L. J. Ch. 409, n.; 147 L. T. 453, n.

Annotations:—**Consd.** Ellis *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 81. **Refd.** Skipwith *v.* Homewoods Sawmills, Ltd., [1938] 2 All E. R. 733.

807a. —— —— ——.]—By a contract in writing dated Sept. 6, 1933, made between the vendor & defts., defts. purchased, *inter alia*, several lots of trees then standing & growing on lands belonging to the vendor. By the terms of the contract, defts. agreed with the vendor & his assigns to pay compensation for any

---

PART IX. SECT. 2, SUB-SECT. 11.

682 i. *Rights inter se—Cutting down trees.*]—If one joint owner of land cuts timber on it adversely to his co-tenant, they become joint owners of the timber. The wrongful act of cutting does not divest the tenant of his interest in the property.—GODARD *v.* TUCK (1866), 6 All. 370.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 16.

sk. *Purchaser under covenant to erect frame dwelling.*]—*Held:* entitled, under the agreement for purchase, to take standing trees to complete the building.—GIBBONS *v.* RIDDLE, [1926] 3 D. L. R. 76; 58 O. L. R. 627.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 3.

736 ii. ——.]—The owner of real estate sold all the hemlock bark thereon:—*Held:* the purchaser had a right to fell the trees.—HATCH *v.* FICK (1857), 5 Gr. 651.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 5.

804 i. *Contract to take timber by valuation—Valuation by joint valuers—Subsequent valuation by valuers of vendor.*]—Deft. agreed to purchase all merchantable timber whether "standing or down" on four lots belonging to pltf. at $7 per M., deft. to do his own logging & take the timber off. After logging for two years, deft. decided to cease work & as some merchantable timber remained the parties agreed that two cruisers, one appointed by each party, should estimate the quantity left & deft. should pay pltf. $7 per M. for what remained. The cruisers reported, but pltf. being dissatisfied with their finding, had two of his own cruisers to make an estimate & they found that more than double the amount of merchantable timber remained. On examination, the joint cruisers admitted they did not cruise two of the lots, as these lots had been logged by deft. & they concluded, without examination, there was no merchantable timber there. Pltf.'s own cruisers reported that there were 80,000 feet of "down" timber on these two lots which were merchantable. Pltf.'s action to recover the value of the remaining timber as found by his own cruisers was dismissed:—*Held:* the joint cruise was such a partial estimate of the remaining timber that it could not be regarded as a cruise contemplated by the parties, & it was not binding.—REINSETH *v.* NICOLA PINE MILLS, LTD. & MCDOUGALL, [1928] 1 D. L. R. 93; 39 B. C. R. 151.—**CAN.**

807 ii. —— *Construction—Time for removal of timber.*]—M. conveyed to B. all the timber on his land, with a right for B. at all reasonable times during —— years to enter & cut & remove same:—*Held:* the instrument did not convey to B. the fee simple in the

avoidable damage which might be done in the removal of the lots, & further undertook to cut and clear all the lots from the lands by Mar. 25, 1936, &, if any timber should not be removed by that date, defts. should become liable for any damage that might be occasioned to the vendor by reason of such non-removal. Subsequently, by two conveyances of Nov. 11, 1933, & July 12, 1934, the vendor conveyed certain lands to pltf., which included the lands upon which then stood the trees comprised in the various lots sold to defts. These trees were excepted from the respective sales to pltf., & the lands were sold subject to the contract & the rights of the vendor & defts. contained therein. By an assignment of Apr. 27, 1936, between the vendor & pltf., the vendor assigned to pltf. the benefit of all the provisions on the part of defts. (other than the payment of the purchase money) contained in the contract, so far as the same were for the benefit of the lands comprised in the conveyances. Defts. felled the trees & removed the trunks before Mar. 25, 1936, leaving behind the lops & tops of the trees on pltf.'s lands, & refused to remove them. Pltf. instituted proceedings claiming damages in respect of (i) the cost of removing the lops & tops of the trees, (ii) loss in the exercise of the sporting rights, & (iii) damage caused to growing timber by the non-removal of the lops & tops. Defts. maintained that, according to the true construction of the contract & the custom of the trade in trees, the word "timber" did not include tops or lops of trees, &, further, that pltf. was a stranger to the contract, & they were not liable to him in respect of any breach of it:—*Held:* (1) the word "timber" in the contract was used in a comprehensive sense, & could not be read as referring to only the trunks of the trees; (2) the assignment of Apr. 27, 1936, transferred to pltf. all the benefit of the contract other than the right to receive the purchase money; (3) the lops & tops of the trees which were not removed remained the property of defts., & there had been a breach of the contract to remove them, & pltf. was entitled to damages in respect of such breach.—SKIPWITH (SIR GREY) *v.* HOMEWOODS SAWMILLS, LTD., [1938] 2 All E. R. 733.

808. *Add. Annotation:—As to* (1) **Refd.** *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735.

810. *Add. Annotations:—As to* (2) **Consd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n. **Refd.** Joel *v.* International Circus & Christmas Fair (1920), 124 L. T. 459; Waimiha Sawmilling Co. *v.* Waione Timber Co., [1926] A. C. 101; Golden Horseshoes (New), Ltd. *v.* Thurgood (1934), 150 L. T. 427.

810a. —— **Confiscation by foreign State—Frustration.**]—By a contract the vendors agreed to sell & the purchasers to purchase the timber then standing uncut in a forest in the Republic of Latvia, the purchasers to have fifteen years in which to cut & remove it, such time to be extended if the purchasers were prevented by an act of the Govt., or otherwise by *force majeure*, or by war, from cutting or disposing of the timber. Merchantable timber was to mean & include all trunks & branches of trees not less than six inches in diameter at a height of four feet from the ground. The purchasers took possession of the forest, but shortly afterwards an agrarian law was passed in Latvia under which the forest & all the timber therein became the property of the Latvian State, the agreement became annulled, & all the rights of vendors & purchasers in the forest & the timber became entirely confiscated:—*Held:* the contract was not an executed contract on the

---

standing timber, but only gave him the right to cut & remove it within a reasonable time.—BEATTY *v.* MATHEWSON (1908), 40 S. C. R. 557.—**CAN.**

807 iii. —— —— *Terms of payment.*]—O'BRIEN *v.* MACKINTOSH (1903), 34 S. C. R. 169.—**CAN.**

810 ii. —— *Rights of purchaser.*]—Under a contract for the sale by the owner of land of the timber growing on it, with "the use of all roads & passes," & permission to erect saw-mills on the land, the purchaser was held not entitled (*a*) to use a saw-mill erected by him on the land for the purpose of manufacturing sleepers or brush-heads out of portion of the timber; (*b*) to remove the timber by a mode of traction which injured the roads through the land so as to render them incapable of use by the owner of the land; (*c*) to hold sales of the timber by public auction on the land; (*d*) to leave timber or branches on the land longer than was reasonably necessary. The purchaser under such a contract held entitled (*a*) to lay down & work a railway on the land for the purpose of removing the timber; (*b*) to make gaps in walls & fences for the purpose of removing the timber, subject to the duty of restoring the walls & fences.—RUDD *v.* REA, [1921] 1 I. R. 223; *affd.*, [1923] 1 I. R. 55.—**IR.**

si. *Sale of timber—On land sold to third party—Failure to remove timber.*]—*Held:* no action lay at the instance of the purchaser of the land against the purchaser of the timber for any supposed breach of duty in not removing the timber, as the only ground of action was on the contract, which did not vest in the purchaser of the land.—RAE *v.* RANKIN (1844), 2 Kerr, 453.—**CAN.**

sm. —— *Subsequent verbal agreement to let made timber remain on land—Validity.*]—HEDLEY *v.* SCISSONS (1873), 33 U. C. R. 215.—**CAN.**

sn. —— *By locatee — Subsequent patent to third party—No reservation of timber.*]—LANGMAID *v.* MICKLE (1888), 16 O. R. 111.—**CAN.**

sp. —— —— *Before issue of patent.*]—*Held:* the locatee was not, nor anyone claiming under him, after its issue, estopped from denying the validity of the sale.—CHAPIEWSKI *v.* CAMPBELL (1898), 29 O. R. 343.—**CAN.**

sr. —— —— —— *Effect of* 31 *Vict. c.* 8 *&* 37 *Vict. c.* 23 (*O.*).]—HUTCHINSON *v.* BEATTY (1876), 40 U. C. R. 135.—**CAN.**

ss. —— *On limit—Duty of vendor to maintain title for reasonable time for removal of timber.*]—CAINE *v.* SCHULTZ, [1927] 1 W. W. R. 600; 38 B. C. R. 332.—**CAN.**

sx. ——*Accepted order for timber—Whether property passes.*]—B. drew an order on deft., a pond-keeper, in favour of R. for five hundred tons of pine timber, which deft. accepted & credited R. with the timber in account. R. afterwards assigned all his property to pltf.:—*Held:* in the absence of any proof of title to the timber in B., or that he had delivered it to deft., or of any usage in the timber trade relative to such acceptances, no property vested in R. by the acceptance in any specific five hundred tons of timber, & the action could not be maintained.—POLLOK *v.* FISHER (1849), 6 N. B. R. (1 All.) 515.—**CAN.**

sy. —— *Non-payment of Crown dues—Right to damages.*]—EDSEALL *v.* HAMELL (1865), 16 C. P. 93.—**CAN.**

sz. —— *Right to cut timber during specified period—Time for removal extended—Interference by vendor.*]—Deft. having sold to pltfs. the right to cut & remove within two years the fir timber on a certain section of land, & the time for the removal of the timber having been extended by a subsequent agreement:—*Held:* pltfs. were entitled to an injunction restraining deft. from interfering, within said extended period, with the removal of the timber which pltfs. had cut prior to the expiration of the two years from the date of the original agreement.—RIDLEY & RIDLEY *v.* BARCLAY (B. C.), [1928] 4 D. L. R. 79; [1928] 3 W. W. R. 62.—**CAN.**

sa. —— *Value fixed on estimate of vendor's agent—Deficiency in quantity—Rescission.*]—Where an agreement for the purchase of timber licences for a certain sum was found to have been arrived at on the basis that the timber was being sold & bought at so much per thousand feet, & it was found that the purchaser had entered into the agreement relying on estimates, exhibited by the vendors' agent, & made up by a firm of timber-cruisers employed by them, showing the total number of feet of timber covered by the licences, & it was, afterwards, established, by

part of the vendors at the date when it was signed, & the property in the timber had not passed, to the purchaser; the performance of the contract was entirely frustrated by the act of the Latvian State, & the parties were released from it.—KURSELL *v.* TIMBER OPERATORS & CONTRACTORS, [1927] 1 K. B. 298; 95 L. J. K. B. 569; 135 L. T. 223; 42 T. L. R. 435, C. A.

810b. Sale of timber with right to remove—Whether right to remove amounts to condition.]—On a sale of timber or an exception of timber together with a right to get it, it is not necessary to treat the words conferring the right as a condition of the sale or exception.

A conveyance of woodland contained an exception of timber with full right & liberty for the vendor to enter upon the woodland at all times up to a fixed date & to fell & remove the timber:—*Held:* the property in timber not removed after the fixed date remained vested in the vendor.—ELLIS *v.* NOAKES, [1932] 2 Ch. 98, n.; 101 L. J. Ch. 409, n.; 147 L. T. 453, n.

Annotations:—**Consd.** Ell's *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 81. **Refd.** Skipwith *v.* Homewoods Sawmills, Ltd., [1938] 2 All E. R. 733.

814. *Add. Annotations:*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424; Horlick *v.* Scully, [1927] 2 Ch. 150.

828. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750; *Re* Timber Regulations, Refund of Dues under, [1935] A. C. 184.

842. *Add. Citations:*—119 L. T. 596; 62 Sol. Jo. 716, C. A.

Add. Annotation:—**Refd.** *Re* Harker's Will Trusts, Harker *v.* Bayliss, [1938] Ch. 323.

846a. *S. P.* OSBORNE *v.* OSBORNE (*circa* 1814), cited in 19 Ves. at p. 422; 34 E. R. at p. 574, L. C.

Annotations:—**Folld.** Wickham *v.* Wickham (1815), 19 Ves. 419. **Refd.** Tooker *v.* Annesley (1832), 5 Sim. 235.

851. *Add. Annotations:*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424; Horlick *v.* Scully, [1927] 2 Ch. 150.

856. *Add. Annotation:*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

874. *Add. Annotation:*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

884a. *S. P.* MATTHEW *v.* CRASSE (1613), as reported in 2 Bulst. 89; 80 E. R. 983.

---

a cruise made for the purchaser, that there was a shortage of about one-third as between the actual quantity of timber & said estimates:—*Held:* the purchaser was entitled, even though there was no fraud, to rescission of the agreement.—FUKUKAWA & QUEEN CHARLOTTE TIMBER HOLDING CO., LTD. *v.* AMERICAN TIMBER HOLDING CO., AMERICAN TIMBER HOLDING CO. *v.* FUKUKAWA (B. C.), [1928] 3 D. L. R. 44; [1928] 2 W. W. R. 37.—**CAN.**

sb. —— *Ascertainment of quantity.*]—DOUCET *v.* SYDNEY LUMBERING CO. (N. B.), [1928] 2 D. L. R. 513.—**CAN.**

sc. ——*Sale of licence by holder—Title to cut all timber except that sold by purchaser—Effect of agreement on third party without notice.*]—Where the holders of a licence for a timber berth agreed to sell it subject to the condition that they were to retain title to all the lumber cut thereon except that sold & delivered by the purchasers in the ordinary course of the latter's business, & they put the purchasers in possession of the berth under circumstances which would lead all persons without knowledge of the terms of the agreement to assume that the purchasers were the owners of the lumber:—*Held:* the vendors could not maintain their claim to the cut lumber as against those who had innocently bought it for value from said purchasers even though all the lumber so bought had not yet been delivered.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* EDMONTON LUMBER CO., LTD., [1930] 2 W. W. R. 97; *sub nom.* BEAR CREEK LUMBER CO. *v.* EDMONTON LUMBER CO. & ROSS SMITH LUMBER CO., [1930] 3 D. L. R. 406; 11 C. B. R. 376.—**CAN.**

sx. —— *During season—Timber from particular lot.*]—In a contract for the sale of wood during a season, extrinsic evidence was admitted to show that the contract was for wood cut exclusively from a particular lot.—DOYLE *v.* MERSEY PAPER CO., LTD., [1934] 2 D. L. R. 296; 7 M. P. R. 287.—**CAN.**

sz. *Licence to cut timber—Whether interest in land—Statute of Frauds.*]—A licence to cut a quantity of timber within certain prescribed limits, & to remove the same, does not convey any interest in lands under Stat. Frauds, or give any property in the standing trees.—KERR *v.* CONNELL (1836), Ber. 233.—**CAN.**

sd. —— *Trees reserved in clearing land.*]—Where a locatee of lands, in clearing a portion thereof, reserved twenty-six pine trees thereon, thinking that they would be useful for building, but had previously erected a permanent house & stable, & put up fences, & had enough timber left for building a barn without reserving these trees:—*Held:* by thus reserving these trees, the locatee left them the property of the Crown, & a licencee of timber under the Crown had a right to cut & remove them.—PARKER *v.* MAXWELL (1887), 14 O. R. 239.—**CAN.**

sf. —— *Land subject of free grant—Interference with rights of patentee.*]—LAKEFIELD LUMBER & MANUFACTURING CO. *v.* SHAIRP (1891), 19 S. C. R. 657.—**CAN.**

sg. —— *Reservation of right to cut timber for public works—Railway.*]—Pltf. held a licence from the Crown under the Crown Lands' Act for the purpose of cutting timber on certain lands defined in the licence. In the said licence was a reservation to the public, with the permission of the Crown, to go in at any time on the said lands & cut down timber for public works":—*Held:* the interpretation of the words "public works" or "public purposes" in the Crown Lands' Act, or the instruments issued under that Act, cannot be so construed as to be applicable to the building of a "railroad."—PHILLIPS *v.* REID (1899), 8 Nfld. L. R. 241.—**NFLD.**

sh. —— *Forfeiture for breach of covenant—Waiver.*]—A timber license over an area in Newfoundland for ninety-nine years was issued in 1915 under the local Crown Lands Act, 1903, as amended in 1911, the licensee agreeing to pay an annual rent & royalties. The license provided that it was subject to the express condition that the licensee should erect a saw mill or pulp factory to be completed by 1920, also to the conditions of the Act, & that if the licensee should make default in performing "any of the conditions herein contained" the license should be null & void. One of the conditions in the Act was that a licensee was to work the licensed area in a *bonâ fide* manner, & operate the mill or factory erected, in each year; but that condition was not set out in the license. The Act, as amended in 1911, provided for forfeiture only for non-payment of rent or royalties; for any breach of the other conditions the licensee was to be liable to a penalty not exceeding $10,000, & a penalty not exceeding $100 for every day the breach continued. By an amending Act of 1918 a breach of any condition was made a cause of forfeiture. The licensee & his assign did nothing under the license except to pay the rent. Rent paid in 1928 was accepted, but was returned later. In 1930 the Crown sued for a declaration that the license was null & void, or was forfeited, & for penalties & damages:—*Held:* (1) the license was subsisting, because (*a*) the provision that upon relevant default it was to be void was to be treated as making it merely voidable at the option of the Crown; (*b*) the words "conditions herein contained" meant the conditions set out, & did not include the incorporated statutory conditions; (*c*) the condition set out as to the erection of a mill or factory had been broken once & for all in 1920, & forfeiture on that account had been waived by the acceptance of rent in 1928, & there had not been any later breach of a condition for which there was a right of forfeiture, as the Act of 1918 applied only to licenses issued after it was passed; (2) damages could not be recovered, as there was no contractual obligation by the licensee to perform the conditions, nor daily penalties, as there was no continuing breach; but, by agreement, the case should be remitted for the trial ct. to decide the amount of lump sum penalty to be imposed.—JARDINE *v.* A.-G. FOR NEWFOUNDLAND. [1932] A. C. 275; 101 L. J. P. C. 70; 146 L. T. 393; 48 T. L. R. 199, P. C.—**NFLD.**

sj —— *Grant by licensee—Whether grantee liable for royalties.*]—Deft. bank was sued for royalties alleged to be due from it, under sect. 127 (1) of Forest Act, R.S.B.C., 1924, with respect to timber cut upon Crown lands held under timber licences. The timber had been cut under an agreement between deft. & a lumber co., whereby deft., as licensee, had granted to the co. the right to enter upon the lands to cut, remove & carry away therefrom, "for the co.'s own use & benefit" all the timber & trees situate & growing thereon:—*Held:* the royalties were payable by the lumber co., not by deft.—A.-G. FOR BRITISH COLUMBIA *v.* BANK OF MONTREAL, [1934] 1 W. W. R. 359; 2 D. L. R. 348; 47 B. C. R. 555.—**CAN.**

894a. —— —— **Tenant for years unimpeachable for waste.**]—Lessee for years *sans* waste cannot pull down trees that are a defence or ornament to the house.—LONDON (BP.) *v.* WEB (1718), as reported in 1 P. Wms. 527; 24 E. R. 501.

Annotation :—**Refd.** Chamberlayne *v.* Dummer (1792), 3 Bro. C. C. 549.

928. *Add. Annotation :*—*As to* (1) & (2) **Consd.** Wheeler *v.* Keeble (1914), Ltd., [1920] 1 Ch. 57.

944a. —— —— **Trees excepted.**]—If a lessee cuts down the trees excepted out of his lease, the lessor shall have trespass *vi et armis* against him.—PERCY'S CASE (1609), 13 Co. Rep. 60; Ley, 20; 77 E. R. 1470.

949. *Add. Annotation :*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

951. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

964a. ——.]—ALDERMAN *v.* BANNISTER (1826), 4 L. J. O. S. Ch. 126.

970. *Add. Annotations :*—**Consd.** Baldock *v.* Westminster City Council (1918), 88 L. J. K. B. 502; Sheppard *v.* Glossop Corpn., [1921] 3 K. B. 132. **Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681

970a. —— **Omnibus company with right to cut trees—Injury to passenger.**]—Where the route of an omnibus lies along a road lined by trees, which by permission of the owner the omnibus co. have taken reasonable care to cut, an accident caused to an outside passenger by an overhanging branch does not render the co. liable, if there is no evidence that the driver was driving too near the trees, or that he had any reason to suspect that they were overhanging.—TRINDER *v.* GREAT WESTERN RY. CO. (1919), 35 T. L. R. 291.

970b. —— **Overhanging trees.**]—Deft. was possessed of land on which there was growing a beech tree, a bough of which overhung a highway. This bough suddenly broke in fine weather, fell upon pltf.'s vehicle then passing, & caused damage. Neither deft. nor his servants knew that the bough was dangerous, & the fracture was due to a latent defect not discoverable by any reasonably careful inspection :—*Held :* deft. was not liable, as the mere fact that the tree overhung the highway did not make the tree a nuisance, & as he neither knew nor ought to have known of the actual danger, & there was no absolute obligation on him to support a tree overhanging the road unless it appeared, or would appear on a proper inspection, that nature could no longer be relied upon to support it.—NOBLE *v.* HARRISON, [1926] 2 K. B. 332; 95 L. J. K. B. 813; 135 L. T. 325; 90 J. P. 188; 42 T. L. R. 518; 70 Sol. Jo. 691, D. C.

Part X.—Fertilisers, Feeding Stuffs and Seeds.

NOTE.—*Fertilisers & Feeding Stuffs Act*, 1906 (*c.* 27), *was repealed by Fertilisers & Feeding Stuffs Act*, 1926 (*c.* 45).

971a. Feeding stuffs—Act of 1906, s. 1 (4).]—In Sept. 1922, pltf., a pig-keeper, saw defts.' managing director, who offered to sell him the bakery sweepings as pig food at 2*s.* 6*d.* a bag. Pltf. accepted the offer & purchased the sweepings from defts. & fed five pigs with it successfully from Sept. 1922 to Jan. 1923, when the pigs became ill & four of them died. The sweepings consisted of ingredients used in making bread, together with dust & dirt & other odds & ends & string :—*Held :* the words "on the sale of any article" in the above sub-sect. were wide enough to cover the sale of these bakery sweepings; the effect of the sub-sect. was to put the risk upon the seller, who, knowing the constituents of the article which he chose to sell as food for cattle, was made responsible if in fact it contained some article deleterious; if the seller desired to protect himself against the stringent provisions of the Act, it was competent to him to do so by a special contract made for that purpose.—PULLING *v.* LIDBETTER, LTD., [1924] 2 K. B. 114; 93 L. J. K. B. 542; 131 L. T. 119; 88 J. P. 83; 68 Sol. Jo. 615; 22 L. G. R. 456, C. A.

973. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel (1923), 130 L. T. 418.

974a. —— —— ——.]—A seller who in fact delivers a false invoice commits an offence under sect. 6 (1) (*b*) of the above Act, whether the nature of the article is such as to make it obligatory on him under sect. 1 to deliver an invoice or not.—HARVEY & CO. *v.* HEREFORDSHIRE COUNTY COUNCIL, [1920] 2 K. B. 395; 89 L. J. K. B. 601; 123 L. T. 428; 84 J. P. 195; 18 L. G. R. 470, D. C.

975a. —— **Sending of sample to seller—Act of 1906, s. 3 (3).**]—It is a condition precedent to a prosecution of the seller under sect. 6 (1) (*a*) of the above Act, on a charge of not sending an invoice on the sale of a fertiliser of the soil according to the provisions of sect. 1 (1), that a prescribed portion of the sample thereof taken with a view to the proceedings under sect. 3 (3) shall have been sent to the seller.—VAUGHAN *v.* GRINDELL,

---

PART IX. SECT. 9, SUB-SECT. 1.

922 vi. ——.]—LAWRENCE *v.* JUDGE (1851), 2 Gr. 301.—**CAN.**

PART IX. SECT. 10.

970 i. Read now "970b i."

970 ii. Read now "970b ii."

[1921] 3 K. B. 412; 91 L. J. K. B. 141; 125 L. T. 315; 85 J. P. 199; 19 L. G. R. 416; 27 Cox, C. C. 5, D. C.

977. *Add. Annotation:—As to* (2) **Refd.** Harvey *v.* Herefordshire County Council, [1920] 2 K. B. 395.

978a. —— **Effect of—"Reasonable excuse."**]—(1) As the object of the Act of 1906 in requiring the vendor to give the statutory invoice & imposing on him a penalty in the event of his default is to protect the purchasers of fertilisers, the effect of non-compliance with the requirement is not merely to render the vendor liable to the penalty, but also to make the sale illegal & preclude the vendor from suing for the price. (2) The fact that, owing to the nature of the article sold as a fertiliser, an analysis of it would necessitate so expensive a process as to make it impossible to sell it after analysis at a profit, affords no "reasonable excuse" within sect. 6 (1), for omitting to give the invoice required by the Act. *Semble:* neither will impossibility of analysis afford any excuse, the intention of the statute in that event being to prohibit the sale of the article altogether. (3) The expression "without prejudice to any civil liability" in sect. 6 (1) refers to the civil liability of the vendor, not to that of the purchaser.—ANDERSON, LTD. *v.* DANIEL, [1924] 1 K. B. 138; 93 L. J. K. B. 97; 130 L. T. 418; 88 J. P. 53; 40 T. L. R. 61; 68 Sol. Jo. 274; 22 L. G. R. 49, C. A.

Annotation:—As to (2) **Consd.** Pulling *v.* Lidbetter (1924), 93 L. J. K. B. 542.

978b. —— **Fertilizers & Feeding Stuffs Act, 1926 (c. 45)—Implied warranty of fitness—Sale for purpose of resale.**]—Pltfs. bought from defts., both being cattle food merchants, a quantity of linseed cake. Defts. sold in their own name, but they were in fact acting in the transaction as brokers for a bank to whom the goods had been hypothecated as security for certain bills of exchange which had been refused acceptance by the drawees. The sale note stated (*inter alia*) that the cake was sold "*tel quel*," & that the analysis, for which defts. said they accepted no responsibility, showed that the cake was "castor free." Pltfs. resold portions of the cake to their customers as food for cattle. It then appeared on further analysis that portions of the cake contained castor seed, a constituent injurious to cattle; & in fact cattle which were fed on some of the cake were injured. Claims were thereupon made upon pltfs. by their purchasers in respect of the damage so caused to their cattle, & pltfs. then claimed damages from defts., including in their claim the amounts they had to pay to the sub-purchasers:—*Held:* (1) the sale of the cake by defts. to pltfs. was a sale for use as food for cattle, within sect. 2 (2) of above Act, notwithstanding that pltfs. themselves did not intend to use the cake for that purpose but intended to resell it to those who would so use it; (2) the sale, though in fact effected by defts. on behalf of the bank, was not a sale "in exercise of a statutory power to enforce a right or to satisfy a claim or lien," within sect. 24 of above Act, so as to be exempt from the operation of the Act; (3) pltfs. were entitled to damages from defts. for the breach of the statutory warranty, & were entitled to include in those damages the amounts they were liable to pay to their sub-purchasers.—DOBELL (G. C.) & CO., LTD. *v.* BARBER & GARRATT, [1931] 1 K. B. 219; 100 L. J. K. B. 65; 144 L. T. 266; 47 T. L. R. 66; 74 Sol. Jo. 836; 36 Com. Cas. 87, C. A.

978c. —— —— —— **Sale to satisfy lien.**]—DOBELL (C. G.) & CO., LTD. *v.* BARBER & GARRATT, No. 978b, *ante*.

978d. —— —— —— **Measure of damages for breach—Sale for purpose of resale to knowledge of vendor.**]—DOBELL (C. G.) & CO., LTD. *v.* BARBER & GARRATT, No. 978b, *ante*.

979. *Add. Annotations:—***Consd.** Pontardawe R. C. *v.* Moore-Gwyn, [1929] 1 Ch. 656. **Refd.** Stearn *v.* Prentice (1918), 88 L. J. K. B. 422; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

Part XI.—Miscellaneous.

SECT. 11.—AGRICULTURAL RETURNS.

See Agricultural Returns Act, 1925 (c. 39), & case, *infra*.

SECT. 12.—AGRICULTURAL CREDITS.

See Agricultural Credits Act, 1928 (c. 43); Agricultural Credits Act, 1932 (c. 35).

979a. Restrictions on enforcement of charge—When charge enforced.]—A bank, having advanced money to a farmer on an agricultural charge within Agricultural Credits Act, 1928 (c. 43), in the year 1930 called in the money & threatened a sale, but did not until after Jan. 1, 1931, appoint an agent for sale or proceed to a sale:—*Held:* the bank's charge was not enforced until after Jan. 1, 1931, & accordingly the restrictive provisions of Agricultural Credits Act, 1928 (c. 43), s. 12, which applied only until Jan. 1, 1931, did not govern the case, & the bank was therefore entitled to retain out of the proceeds of sale the whole amount of its debt without regard

---

PART XI. SECT. 10.

c i. —— *Under licence—Under Forest Act.*]—A.-G. FOR BRITISH COLUMBIA *v.* ROBERTSON, [1924] 1 D. L. R. 1090; [1924] 1 W. W. R. 1155; 33 B. C. R. 325.—**CAN.**

h i. —— *Right of Crown to sue for expenses.*]—The Crown in the right of the Dominion may sue under Forest Act, R.S.B.C., 1924 (c. 93), s. 114, to recover expenses incurred by officials of the Dominion Forest Branch in controlling & extinguishing a fire on deft.'s property.—R. *v.* SWANSTROM, [1925] 3 D. L. R. 79: [1925] 1 W. W. R. 713.—**CAN.**

PART XI. SECT. 11.

ss. *Occupier—Who is.*]—A cattle dealer received from the owner of certain parks the right to graze animals on the parks from time to time between May 15 & Nov. 15. He had no other connection with the parks:—*Held:* the dealer's relation to the parks was not of a sufficiently permanent nature to constitute him an "occupier" in the sense of Agricultural Returns Act, 1925 (c. 39), s. 1 (1), & accordingly, he was under no obligation to make a return required by the dept. under the Act in respect of the parks.—YENDALL *v.* ALLAN, [1934] S. C. (J.) 56.—**SCOT.**

to those restrictive provisions.—*Re* JONES (JOHN), *Ex p.* NATIONAL PROVINCIAL BANK, [1932] 1 Ch. 548; 147 L. T. 60; *sub nom. Re* JONES, NATIONAL PROVINCIAL BANK *v.* OFFICIAL RECEIVER, 101 L. J. Ch. 173; 76 Sol. Jo. 111; [1931] B. & C. R. 132, D. C.

979b. Chargee—Whether "tenant" within Agricultural Holdings Act, 1923 (c. 9).]—ECCLESIASTICAL COMRS. FOR ENGLAND *v.* NATIONAL PROVINCIAL BANK, LTD., No. 227a, *ante*.

SECT. 13.—**AGRICULTURAL MARKETING.**

See Agricultural Marketing Acts, 1931 (c. 42);

979c. Validity of Scheme—Power to "buy" product—What amounts to purchase.]—Agricultural Marketing Act, 1931 (c. 42), provides that schemes may be framed & boards constituted for the marketing & disposal of agricultural produce, &, by sect. 5, a scheme may empower the board "to buy the regulated product, to produce such commodities from that product as may be specified in the scheme, & to sell, grade, pack, store, adapt for sale, insure, advertise & transport the regulated product." A board elected by hop growers framed a scheme by which all hops were to be sold through their agency, &, after paying expenses, etc., the money so received was to be pooled & divided amongst the growers according to the value of the produce taken from each one:—*Held:* although the 1931 Act authorised the board to "buy" the regulated product, the taking, pooling, sale & division constituted what in fact was a purchase from the producer & a sale on his behalf, & the scheme was therefore not an infringement of the terms of the Act.—R. *v.* MINISTER OF AGRICULTURE & FISHERIES, *Ex p.* BERRY (1932), 101 L. J. K. B. 561; 147 L. T. 326; 96 J. P. 447; 48 T. L. R. 572; 30 L. G. R. 333, C. A.

979d. Hops—"Owner occupier"—Who is—Not lessee.]—An "owner occupier" of land within proviso (*a*) to para. 46*c* of Hops Marketing Scheme (Amendment) Order, 1934, is a producer who owns the land in fee simple, & does not include a leaseholder.—AMOS *v.* HOPS MARKETING BOARD (1935), 154 L. T. 62; 52 T. L. R. 69; 79 Sol. Jo. 987.

979e. Potatoes—Validity of charge.]—Pltfs. were the Board constituted under S. R. & O., 1933, No. 1186, to administer the Potato Marketing Scheme. Under the scheme they had power to charge any registered producer who exceeded his "basic potato acreage," if such excess was likely in the opinion of the Board to increase their expenditure. The Board in 1934 passed a resolution that their expenditure was likely to be increased if in that year the potato acreage of any registered producer exceeded his basic potato acreage. The resolution then proceeded thus: "& whereas in the opinion of the Board each registered producer ought to contribute the sum of £5 per acre in respect of each acre of his excess acreage towards defraying such increased expenditure, . . . the Board hereby require every registered producer to pay to the Board on or before Aug. 1, 1934, the sum of £5 per acre in respect of each acre by which his potato acreage for the year 1934 exceeds his basic potato acreage":—*Held:* this was not dealing with the registered producers collectively, but with each one separately. The charge of the registered producers was not an arbitrary one, but a proper exercise of the power vested in the Board.—POTATO MARKETING BOARD *v.* HARLOW, [1936] 1 All E. R. 489; 80 Sol. Jo. 347.

—— **Return to Board—Whether privileged from production.**]—*See* EVIDENCE, No. 4085a, *post*.

979f. Pigs—Calculation of bonus—Construction of producer's contract.]—*Re* PIGS MARKETING BOARD, 1936 BONUS SCHEME, PIGS MARKETING BOARD *v.* BAILEY & SONS, LTD. (1937),

SECT. 14.—**WHEAT.**

See Wheat Act, 1932 (c. 24).

979g. Middlings—Whether flour or offals—Effect of Wheat Act, 1932 (c. 24).]—The Wheat Commission, as empowered by Wheat Act, 1932 (c. 24), demanded quota payments from applts. in respect of fifteen consignments of certain goods produced by the milling of wheat imported by the applts. from Germany & described by them as wheat offals known in the trade as "middlings" to be used as animal or poultry food. The Commission contended that the alleged wheat offals contained a percentage of flour in excess of that permitted by the Act, & were therefore liable to quota payment. Payment of the quota on each consignment was made under protest by applts. who thereafter brought an action against the Commission to recover the money thus paid on the ground that the imported goods were not flour, but wheat offals exempt from liability under the Act. The Commission alleged that: (i) the consignments consisted of flour within the Act; (ii) no action lay against the Commission because provision was made by the Act & the bye-laws made thereunder by the Commission for the matters in dispute to be determined by arbn. to which, in accordance with the bye-law in question, the Arbn. Act, 1889, should not apply; and (iii) the payments in respect of three of the consignments having been made more than six months before the commencement of the action, the claim for recovery thereof was barred by the Public Authorities Protection Act, 1893 (c. 61):—*Held:* (1) Wheat Act, 1932 (c. 24), contained no express words ousting the jurisdiction of the ct., & resps. therefore exceeded their powers by making a bye-law that every dispute as to whether any substance was flour should be determined by arbn. to which Arbitration Act, 1889, should not apply; (2) applts. having proved that all the consignments consisted of wheat offals & not of flour within the Act, they were not liable to make any quota payments; (3) as resps. were a public authority the quota payments made by applts. in respect of three of the consignments were not recoverable on the ground that applts. did not sue for their recovery within six months of payment as required by Public Authorities Protection Act, 1893 (c. 61).—PAUL (R. & W.), LTD. *v.*

WHEAT COMMISSION, [1937] A. C. 139; [1936] 2 All E. R. 1243; 105 L. J. K. B. 563; 155 L. T. 305; 52 T. L. R. 702; 80 Sol. Jo. 753, H. L.

979h. Ouster of jurisdiction of court—Validity of bye-law.]—PAUL (R. & W.), LTD. *v.* WHEAT COMMISSION, No. 979g, *ante*.

979j. Wheat Commission—Application of Public Authorities Protection Act.]—PAUL (R. & W.,) LTD. *v.* WHEAT COMMISSION, No. 979g, *ante*.

PART XI. SECT. 15.

sb. *Farmers' Creditors Arrangement Act—Reduction of debt—Grounds for application—Poor quality of land.*]—*Re* CRISPIN, [1935] 1 W. W. R. 281.—**CAN.**

sd. —— —— —— *Drought.*]—Debts should not be reduced under Farmers' Creditors Arrangement Act, 1934 (Dom.), on the assumption that drought conditions are to continue indefinitely.—*Re* DAHL, [1935] 1 W. W. R. 288.—**CAN.**

sf. —— *Object of Act.*]—*Re* WEIS, [1935] 1 W. W. R. 566.—**CAN.**

sh. —— *Who is "farmer"—Company.*]—*Re* MARSHALL BROS., LTD., [1935] 1 W. W. R. 80.—**CAN.**

sj. —— —— *Corporation.*]—Under a special Act, a religious community of farmers was constituted a body corporate. The corpn. had no capital stock and no shareholders; its main purposes were: (1) to promote, engage in & carry on the Christian religion, according to the religious belief of the members of the corpn.; and (2) to engage in, and carry on farming, stock-raising, milling, & all branches of those industries:—*Held:* the corpn. was not a "farmer" within Farmers' Creditors Arrangement Act, 1934.—*Re* BARICKMAN HUTTERIAN MUTUAL CORPN., [1938] 1 W. W. R. 777.—**CAN.**

sk. —— ——.]—A debtor whose farm was actually worked & managed by another person under an agreement with the debtor, held not to be a "farmer."—*Re* LANTZIUS, [1936] 1 W. W. R. 373.—**CAN.**

sl. —— —— *Administrator.*]—*Re* BOERS, [1936] 2 W. W. R. 47.—**CAN.**

so. —— —— ——.]—The administrator of the estate of a deceased farmer is not entitled to make in said capacity a proposal under the Act.—*Re* HOCKLEY, [1936] 2 W. W. R. 268.—**CAN.**

sq. —— ——.]—A debtor, about 79 years old, who had been a rancher & farmer for many years & had never had any other occupation, leased his farm. Under the terms of the lease he lived in a house on the land. He did no work on the land himself, but hoped that his health would permit him to supervise the farming operations on the termination of the lease, & he had given a solr. a power-of-attorney covering all his interests in the meantime:—*Held:* he was a "farmer" within the Act.—*Re* WRIGHT, [1936] 1 W. W. R. 467; 6 F. L. J. (Can.), 20.—**CAN.**

st. —— *Application to farmers only.*]—NATIONAL TRUST CO. *v.* POWERS, [1935] 4 D. L. R. 626; O. R. 490; 5 F. L. J. (Can.), 132.—**CAN.**

sw. —— *Applicant lessee—No proposal by lessor.*]—*Re* DIMMITT, [1935] 1 W. W. R. 303.—**CAN.**

sz. —— *Approval of composition—Jurisdiction of District Court.*]—The District Ct. has jurisdiction to hear an application for the approval of a composition accepted by the statutory majority of creditors under Farmers' Creditors Arrangement Act, 1934 (Dom.).—*Re* PECK, [1935] 1 W. W. R. 603; 5 F. L. J. (Can.), 35.—**CAN.**

sb. —— *Debtor protected by Debt Adjustment Act.*]—It is not in the public interest to permit a debtor protected by the provincial Debt Adjustment Act to ascertain what benefits he can obtain under Farmers' Creditors Arrangement Act, 1934, & then to elect whether to accept such benefits or to continue under the protection of the provincial Act.—*Re* WEESE, [1935] 1 W. W. R. 620.—**CAN.**

sd. —— *What terms imposed by Board.*]—*Re* JORGENSEN, [1935] 1 W. W. R. 300.—**CAN.**

se. —— ——.]—*Re* PROCTOR, [1936] 2 W. W. R. 437.—**CAN.**

sf. —— *Whether binding on municipalities & school districts.*]—*Re* GILBERT, [1935] 2 W. W. R. 464.—**CAN.**

sz. —— *Order for disposition of money received.*]—*Re* MARTIN, [1935] 3 W. W. R. 484.—**CAN.**

sb. —— ——.] — *Re* HOLSTEIN, [1936] 2 W. W. R. 417.—**CAN.**

sd. —— *Default by debtor.*]—The provisions of Bkpcy. Act, R.S.C., 1927, for enforcing against a defaulting debtor the terms of a binding proposal under that Act or for penalising him for such default or annulling a proposal apply in a like situation, *mutatis mutandis*, to a proposal under Farmers' Creditors Arrangement Act.—*Re* GRAMS, [1936] 1 W. W. R. 471; 6 F. L. J. (Can.), 19.—**CAN.**

sh. —— ——.]—On default by a debtor in complying with a proposal confirmed by the Board of Review under Farmers' Creditors Arrangement Act, 1934, a creditor cannot sue on the original debt without having had the proposal annulled under the provisions of said Act.—MINNEAPOLIS THRESHING MACHINE CO. *v.* MOONEY, [1936] 3 W. W. R. 569.—**CAN.**

sj. —— —— ——.]—A farmer defaulted in paying an instalment of principal & interest called for by a proposal formulated & confirmed by a Board of Review. The default was due to a partial crop failure & to a consequent misconception by a farmer of his duties under the Act. A mtgee. applied under sect. 121 of Real Property Act, 1934, to the district registrar for an order for sale to enforce the debt so reduced & adjusted by the board:—*Held:* the mtgee. was entitled to have the registrar read its mtges. as amended by the confirmed proposal & then proceed to deal with the application in the usual way.—MANITOBA FARM LOANS ASSOCN. *v.* WINNIPEG LAND TITLES OFFICE REGISTRAR, [1937] 1 W. W. R. 513; 2 D. L. R. 724; 45 Man. L. R. 60.—**CAN.**

sk. —— *Appeal—Extension of time.*]—An application to extend the time for appealing from an order made by a judge under Farmers' Creditors Arrangement Act, dismissed.—POIRIER *v.* NORTH AMERICAN LIFE ASSURANCE CO., [1936] 1 W. W. R. 654.—**CAN.**

so. —— ——.]—On default by a debtor in complying with a proposal confirmed by a board of review under Farmers' Creditors Arrangement Act, 1934, c. 53 (Dom.) a mtgee. must obtain an annulment of the proposal before applying for foreclosure, even though he seeks foreclosure to enforce the terms proposed by the Board & not those of the original mtge.; or he may apply to have the debtor declared a bkpt.—NORTH OF SCOTLAND CANADIAN MORTGAGE CO., LTD. *v.* BAK & STOBBE, [1937] 1 W. W. R. 767; *revsd.* [1937] 2 W. W. R. 540.—**CAN.**

sq. —— ——.]—On an application under sect. 19 (2) of Bankruptcy Act, to have a farmer adjudged bkpt. & for a receiving order, it was found that he had defaulted in the payment of an instalment due under a proposal formulated & confirmed by a Board of Review & in carrying out the terms of the proposal; & that the default was not due to any causes beyond his control; & that the proposal could not proceed without injustice and delay to his creditors, because of his wilful & continued failure & refusal to carry out the provisions of the proposal:—*Held:* the proposal should be annulled; the farmer be adjudged a bkpt.; a receiving order be made against him; & appct. be given the costs of the application.—*Re* SEIB, [1937] 1 W. W. R. 762.—**CAN.**

st. —— ——.]—On default by a purchaser under an agreement for the sale of land in carrying out the terms of a proposal confirmed by a Board of Review, the vendor is entitled, without obtaining an annulment of the proposal, to sue for the usual remedies under the agreement, where, at least, he is satisfied to accept the reduced amount of the debt as fixed by the board's order.—ALLEN *v.* TRUSTS & GUARANTEE CO., LTD., [1937] 2 W. W. R. 257; 3 D. L. R. 107; 7 F. L. J. (Can.) 36.—**CAN.**

sv. —— —— *From Board of Review.*]—A Board of Review under Farmers' Creditors Arrangement Act, 1934, amended by 1935, s. 5, is an administrative tribunal & not a ct.; & no appeal lies from a proposal formulated & confirmed by it.—KERR *v.* WIENS, [1937] 1 W. W. R. 535; 2 D. L. R. 743; 45 Man. L. R. 122; 6 F. L. J. (Can.) 260.—**CAN.**

sx. —— —— ——.]—No appeal lies from a proposal formulated & confirmed by a Board of Review.—*Re* PETERS, HUDSON'S BAY CO. *v.* PETERS, [1937] 1 W. W. R. 787; 2 D. L. R. 786; 7 F. L. J. (Can.) 36.—**CAN.**

sy. —— —— ——.]—There is no right of appeal from a finding of the Board of Review that the debtor is a farmer.—MCKINNON *v.* JOHNSTON, [1937] 2 D. L. R. 804.—**CAN.**

sm. —— *Debtor unable to carry out any proposal.*]—In view of all the circumstances of the debtor's affairs, the Board concluded that the debtors could not carry out any reasonable proposal, except such as would be equivalent to a winding-up in bkpcy. & recommended to the debtors that an assignment in bkpcy. would be the better course for them to take.—*Re* KJELLANDER & KJELLANDER, [1936] 2 W. W. R. 49.—**CAN.**

sp. —— *Application for leave to realise security—Necessity for good ground.*]—*Re* FOUNTAIN, [1936] 2 W. W. R. 360.—**CAN.**

st. —— *Land held subject to payment of legacies.*]—*Re* MACKERACHER, [1936] 2 W. W. R. 271.—**CAN.**

sw. —— *Effect of death of debtor.*]—*Re* HUMBERT, [1936] 2 W. W. R. 272.—**CAN.**

sz. —— *Stay of foreclosure action—Failure to comply with order of Board.*]—Where a foreclosure action is stayed during proposals for payment under Farmers' Creditors Arrangement Act, 1934 (Can.), it will be ordered to proceed if the mtgor. fails to comply with an order of the Board of Review.—SARGESON *v.* MULLETT (1935), 4 D. L. R. 523.—**CAN.**

sd. —— *Constitutional validity.*]—Farmers' Creditors Arrangement Act, is *intra vires* of the Parliament of Canada.—*Re* FARMERS' CREDITORS ARRANGEMENT ACT, 1934 & AMENDING ACT, 1935, REFERENCE, [1936] S. C. R. 384; 3 D. L. R. 610.—**CAN.**

se. —— ——.]—Farmers' Creditors Arrangement Act, 1934 (Can.), is

intra vires.—*Re* FRASER & MINIELLY, [1936] 2 D. L. R. 281; O. R. 191.—**CAN.**

sf. —— *Validity of Rules.*]—Rules 48 & 49 of the rules and regulations (amended & consolidated June 1, 1935) under Farmers' Creditors Arrangement Act, 1934, which provide for an application to the ct. for an order setting aside a proposal because, *inter alia*, the debtor has made a fraudulent or preferential conveyance of any of his property or assigned or disposed of any of it with intent to defeat or defraud his creditors, are invalid, because they purport to enact substantive law in conflict with the Act.—KRUSE *v.* WRIGHT, [1938] 2 W. W. R. 181.—**CAN.**

sg. —— *Variation of mortgage—Effect of.*]—A mtge. was executed by a farmer M. & also be deft. K. On an application by M. under Farmers' Creditors Arrangement Act, 1934, an order was made reducing as to him the amount of the principal & the rate of interest under said mtge. & providing for future payments by a division of future crops between M. & the mtgee. K. was not present or represented or considered when the order was made. The mtgee. then sued K. on the covenants in the mtge.:—*Held:* said order had no effect on K.'s liability.—INTERNATIONAL LOAN CO. *v.* KOTNIUK, [1936] 3 W. W. R. 481; 4 D. L. R. 764; 44 Man. L. R. 387; 6 F. L. J. (Can.) 148.—**CAN.**

sh. —— *Effect of Act on default after order nisi on agreement for sale.*]—*Re* PETERS, [1936] 3 W. W. R. 44.—**CAN.**

si. —— ——.]—On an application made under sect. 42 of Farmers Creditors Arrangement Act, 1934, by an official receiver at the request of a creditor who had obtained an order *nisi* in an action for cancellation of an agreement for the sale of land:—*Held:* the order *nisi* in question was not a bar to the debtor making a proposal for a composition, extension of time or scheme of arrangement under the Act.—*Re* DESCHAMPS, [1937] 1 W. W. R. 739.—**CAN.**

sm. —— *Debtor assignee from purchaser of land—No consent to assignment by vendor.*]—Where a purchaser under an agreement for the sale of land assigned the agreement, without having obtained the approval of the vendor, & the agreement provided that no assignment would be valid unless approved & countersigned by the vendors or their agent:—*Held:* the vendors were not in the position of a creditor of the assignee & therefore the Board had no jurisdiction, on the assignee's application, to deal in any way with the amount owing the vendors with respect to the land.—*Re* GESS, [1936] 3 W. W. R. 172.—**CAN.**

sn. —— *Assignee of mortgaged property—No covenant to pay.*]—A purchaser of mtged. property who has not covenanted to pay off the mtge. debt is not a debtor of the mtgee., & is not therefore entitled to an adjustment under Farmers' Creditors Arrangement Act.—GOFTON *v.* SHANKS, [1937] 4 D. L. R. 347; O. R. 856; 7 F. L. J. (Can.) 133.—**CAN.**

sp. —— *Farmer owning unfarmed land.*]—It is not the purpose of Farmers' Creditors Arrangement Act, 1934, to assist a farmer to retain land which he is not farming & which constitutes a liability in the way of taxes & interest on securities.—*Re* RYSON, [1936] 3 W. W. R. 171.—**CAN.**

sr. —— *Sale of mortgaged chattels by mortgagor pending proposal—No purposal — Interpleader.*]—Pending the hearing of an application to a Board of Review, to formulate a proposal the farmer sold at auction chattels which he had mtged. to a bank. The official receiver obtained an order for the payment of the proceeds of the sale to him. The Board declined to formulate a proposal, & the moneys paid to the receiver were claimed by the bank, & also by the farmer as exemptions. Exemptions Act, R.S.S., 1930, gives a mtgor. the right to exemptions in case of a seizure under the mtge. Under an interpleader order the moneys were paid into ct. and the bank applied for an order for payment out:—*Held:* the bank was entitled to the order.—*Re* REID, [1937] 1 W. W. R. 546.—**CAN.**

ss. —— *Refusal to formulate proposal—Right of farmer to make second proposal.*]—The fact that the Board of Review under Farmers' Creditors Arrangement Act, 1934, has refused to formulate a proposal does not prevent the farmer from making a second proposal where the conditions have changed since said refusal.—*Re* DRAPER & PRATT, [1937] 1 W. W. R. 136; 44 Man. L. R. 441.—**CAN.**

st. —— —— ——.]—There is no express authority given by either Farmers' Creditors Arrangement Act, 1934, or Bkpcy. Act, R. S. C., 1927, to the district ct. or a judge thereof to make an order requiring an official receiver under the former Act to receive and file a proposal with the Board of Review, although the farmer contends that his circumstances have changed since the Board on a prior application declined to formulate a proposal; nor has said ct. or a judge thereof power under its general jurisdiction to make such an order, it being in the nature of a *mandamus* which is beyond the jurisdiction of the district ct.—*Re* MELENIUS, [1938] 1 W. W. R. 558; 8 F. L. J. (Can.) 35.—**CAN.**

su. —— *Filing proposal—Effect.*]—Filing a proposal does not operate as a complete stay of proceedings for 90 days & leave to proceed may properly be granted.—SEXTON *v.* SMITH, [1937] 1 D. L. R. 334; 11 M. P. R. 136; 6 F. L. J. (Can.) 197.—**CAN.**

sv. —— *Review — Certiorari.*]—Although the Board of Review under Farmers' Creditors Arrangement Act, 1934, is not a ct., it is a judicial tribunal &, therefore, its decisions are subject to review by *certiorari.*—*Re* HUDSON'S BAY CO. & PETERS (No. 2), [1938] 2 W. W. R. 412.—**CAN.**

sd. —— —— *Order of Supreme Court.*]—There is no suggestion in Farmers' Creditors Arrangement Act, 1934, or in any other Act that the Board of Review under said Act is not to be subject to the supervisory authority of the Supreme Ct. of Alberta. Therefore a creditor of a debtor who has applied to the Board for relief under the Act is entitled to sue for a declaration that the debtor does not come within its provisions & for an order restraining the Board from formulating a proposal with respect to said debtor's application.—KETTENBACH FARMS, LTD. *v.* HENKE, [1937] 3 W. W. R. 703; [1938] 1 D. L. R. 44.—**CAN.**

sz. —— *Effect of Bankruptcy Act.*]—NEWTON *v.* MACKLIN, [1937] 2 W. W. R. 395.—**CAN.**

sa. —— *Acceptance of proposal—Effect on foreclosure proceedings.*]—Acceptance of a proposal under Farmers' Creditors Arrangement Act does not bar proceedings for foreclosure of mtge.—SHARPE (WILLIAM T.) *v.* DICKINSON (1937), 12 M. P. R. 1.—**CAN.**

sb. —— —— *Default.*]—Where a debtor has defaulted in complying with the terms of a proposal confirmed by the Board of Review under Farmers' Creditors Arrangement Act, 1934, sect. 19 (2) of Bkpcy. Act, R. S. C., 1927, cannot be invoked to support an application to the ct. to have the proposal annulled & the debtor adjudged a bkpt.—COMMERCIAL LIFE ASSURANCE CO. OF CANADA *v.* STRYNADKA, [1938] 1 W. W. R. 479; 2 D. L. R. 56; 7 F. L. J. (Can.) 307.—**CAN.**

AIR COUNCIL.

See PUBLIC AUTHORITIES.

AIR FORCES.

See ROYAL FORCES.

AIR NAVIGATION.

See STREET AND AERIAL TRAFFIC.

ALIENS.

Part I.—What Constitutes Alienage.

NOTE.—*The* 1914 *Act was amended by British Nationality & Status of Aliens Acts,* 1918 (*c.* 38); 1922 (*c.* 44); 1933 (c. 49).

1. *Add. Annotations :*—**Consd.** Markwald *v.* A.-G., [1920] 1 Ch. 348. **Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262. **Mentd.** The Tervaete (1922), 128 L. T. 176.

13. *Add. Annotation :—As to* (2) **Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

13a. —— ——.]—By an Order in Council made on Nov. 5, 1914, Cyprus was annexed, & by a Proclamation made thereunder on Mar. 3, 1915, revoking an earlier Proclamation, it was provided that " all Ottoman subjects, resident in Cyprus on Nov. 5, 1914, have become British subjects." An amending Order in Council made on Nov. 27, 1917, after reciting that doubts had arisen as to the effect of the Order & the proper interpretation of the Proclamation, ordered that the following persons (*inter alios*) should be deemed to have become British subjects by virtue thereof: " any Ottoman subject who was ordinarily resident & actually present in Cyprus on Nov. 5, 1914." Resp., an Ottoman subject by birth, carried on business in Cairo from 1893 to 1913. In Dec. 1913, he went to Cyprus, & after three or four months brought his family there. He rented a house in Cyprus monthly, & while there discontinued his business in Cairo. He was present in Cyprus on Nov. 5, 1914, & remained there until Oct. 1915, when he returned to Cairo, his family following in December. He received a passport describing him as a British subject, & was so registered at the British Consulate at Cairo, but after annual renewals registration was refused in 1919. He sued for a declaration that he was entitled to registration:—*Held:* if there were any difference between " resident " & " ordinarily resident " the latter became the test by virtue of the interpretative Order of 1917; but on the facts resp. was both " resident " & " ordinarily resident " in Cyprus on Nov. 5, 1914, whether or not Cyprus was then his domicil; & whatever may have been his motive for going there, he was a British subject by virtue of the Order in Council.—GOUT *v.* CIMITIAN, [1922] 1 A. C. 105; 91 L. J. P. C. 18; 38 T. L. R. 100; *sub nom.* GOUT *v.* CIMITIAN, CIMITIAN *v.* GOUT, 126 L. T. 293, P. C.

14. *Add. Annotations :*—**Refd.** Markwald *v.* A.-G., [1920] 1 Ch. 348; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

20. *Annotations :*—For " *Re* Goodman's Trust (1881), 7 Ch. D. 266 " read " *Re* Goodman's Trust (1881), 17 Ch. D. 266." **Apld.** Abraham *v.* A.-G., [1934] P. 17.

20a. —— —— —— **Legitimation by subsequent marriage—Effect of Legitimacy Act, 1926 (c. 60).**]—The meaning of the term " father " as applied in Statutes extending from 1730 to 1926 to the parentage of those who are entitled to the status of natural born subjects of the Crown & to be regarded as of British nationality is limited to a father whose children are legitimate at the date of birth. *Legitimatio per subsequens matrimonium* cannot be imported into these Statutes under Legitimacy Act, 1926 (c. 60).

Legitimacy Act, 1926 (c. 60), does not *ipso facto* by the mere use of the terms father & mother confer upon either parent or child a lawful or legitimate character. A petitioner seeking a declaration pursuant to that Act that he is of British nationality must show that his father was a natural-born subject, & if in the circumstances existing at the date of his birth petitioner according to our law has not had a lawful father, he is not entitled to the benefits of legislation providing for a declaration of his status as a natural-born subject of the Crown.—ABRAHAM (B. & J.) *v.* A.-G., [1934] P. 17; 102 L. J. P. 115; 149 L. T. 539; 77 Sol. Jo. 665.

29. *Add. Citation :*—25 Cox, C. C. 622, D. C.

43. *Add. Annotations :*—**Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

49a. **Under Treaties of Peace & consequent Orders—Who is foreign national—" Stateless person "—Denationalised German.**]—(1) Pltf. having lost Prussian nationality in 1896, & not acquired nationality of a German State or other nationality :—*Held:* he was not a German national within Peace Treaty of Versailles, Part X., s. 4, or Treaty of Peace Order, 1919.

PART I. SECT. 1.

1 iii. —— *Birth in Native Indian State.*]—The subject of a Native Indian State is an alien.—MAHOMED & SON *v.* IMMIGRANTS APPEAL BOARD (1918), 38 N. L. R. 7.—**S. AF.**

10 iv. —— ——.]—Applt., who was by birth a Bavarian subject, in 1881 became a burgher of the Orange Free State, but in 1883 left the Free State & did not return before 1902, at which date he was resident in, but not a burgher of, the Transvaal. Under the Orange Free State Constitution of 1878 Free State burghership was lost by residence abroad for more than two years :—*Held:* as at the time of the annexation of the Orange Free State & Transvaal in 1902 applt. did not become a British subject either as being a burgher of the Orange Free State or as a resident in the Transvaal, he was by inference still a Bavarian subject.—WOLFF *v.* THE TREASURY, [1919] App. D., 336.—**S. AF.**

PART I. SECT. 3.

49a i. *Under Treaties of Peace & consequent Orders—Who is foreign national—" Stateless person "—Denationalised German.*]—PAULEY *v.* CUSTODIAN, [1922] App. D. 161.—**S. AF.**

ss. *American domicile—When Irish Free State established.*]—*Held:* as S. was admittedly domiciled in the United States of America on Dec. 6, 1922, the date of the coming into operation of the Constitution of the Irish Free State, he was not one of the original citizens of the Irish Free State, having regard to Art. 3 of that Constitution; &, inasmuch as the law with reference to the future acquisition of citizenship contemplated by the said Article has not yet been enacted, S. did not at any subsequent period become a citizen of the Irish Free State. Further, S. was not a British subject, as he ceased to be such by sect. 6 of Naturalisation Act, 1870 (c. 14), when he became naturalised as a citizen of the United States of America.—BRADFIELD *v.* SWANTON, [1931] I. R. 446.—**IR.**

(2) Statelessness is not unrecognised by the municipal law of this country.

(3) Whether a man is a German national or not must be decided by German municipal law & not by English municipal law.—STOECK *v.* PUBLIC TRUSTEE, [1921] 2 Ch. 67; 90 L. J. Ch. 386; 125 L. T. 851; 37 T. L. R. 666; 65 Sol. Jo. 605.

Annotations :—As to (3) **Folld.** *Re* Chamberlain's Settlmt., Chamberlain *v.* Chamberlain, [1921] 2 Ch. 533. *Generally,* **Refd.** Kramer *v.* A.-G., [1923] A. C. 528.

49b. —— —— —— **Burden of proof.**]—(1) In 1893 pltfs. were admittedly German nationals, & on the *bonâ fide* assumption that they were still German nationals on Jan. 10, 1920, when the charge under Treaty of Peace Order, 1919, s. 1 (xvi) attached, deft. was in possession of their London property as custodian. In an action to obtain release of their property :—*Held :* the *onus* was on pltfs. to show that they had lost their original German nationality before Jan. 10, 1920, & not on deft. to disprove it.

Pltfs. had left their birthplace, Idar, in the district of Birkenfeld, about 1893, & with the exception of short annual visits to their mother, &, in the case of one, six weeks' military training in 1896, they had resided uninterruptedly out of Germany from 1893 to 1917 or 1918, when they were repatriated, after war internment, to Idar, where according to the police register entries, if genuine, they were registered as stateless on their arrival, & also on their departure for Amsterdam in 1920. On Jan. 29, 1923, the Birkenfeld Govt. after inquiry as to the period of pltfs.' absence from Germany, & as to their German visits during that period, granted them certificates to the effect that during that period they had forfeited their German nationality by ten years' "uninterrupted" residence abroad within North German Nationality Law, 1870, s. 21, & were therefore stateless on Jan. 10, 1920. These certificates were based on the view of the Administrative Cts. which, in considering whether German visits break the ten years' period, look to the number, length, purpose & intent of those visits. They were, however directly contrary to the view of the Leipzig Reichsgericht, which holds that the smallest visit, accidental or otherwise, breaks the period :—*Held :* (2) the certificates, which were admittedly only *primâ facie* evidence & open to review in any German ct., were not conclusive in an English ct., & the *onus* was on pltfs. to substantiate them; (3) if the Leipzig ct. view was right, the certificates were invalid; (4) even if the Administrative Ct. view was right, pltfs. had failed to satisfy the English ct. that an Administrative Ct. on being informed of all the circumstances, including fraudulent conduct by pltfs., applications as German nationals in 1915 & 1921, & previous false statements as to their German visits, would necessarily uphold the certificates; (5) having regard to the conflict of opinion in the German cts., pltfs. had failed to discharge the *onus* of proving that by unquestionable & undoubted German law they had lost their nationality on Jan. 10, 1920.—HAHN *v.* PUBLIC TRUSTEE, [1925] Ch. 715; 95 L. J. Ch. 9; 133 L. T. 713; 14 T. L. R. 586; 69 Sol. Jo. 824.

49c. —— —— **British subject marrying German —& naturalised as German during war.**]—By a settlement dated in 1902 a fund of £5,000 was vested in trustees on trust to invest & pay the income of the trust funds to H. during his life or until he should become bkpt. or charge it, "or until some event shall happen . . . whereby the income or any part thereof if belonging absolutely to him would become vested or charged in favour of some other person or persons or corpn.," & in the event of the determination during the life of H., of the above trust in his favour the trustees were given a discretion to apply the income for the benefit of all or any the said H., & his present or any other after-taken wife & his issue & the persons interested for the time being under the ulterior trusts, &, subject thereto, were directed to hold the capital & income of the trust funds upon trust for the benefit of the issue of H. & in default of issue upon trust for H.'s nephews & nieces. H. was born in England of English parents but had resided in Germany since 1906 & had been twice married there to German wives. During the war, on Aug. 8, 1916, he obtained a certificate of naturalisation as a German. In these circumstances a summons was taken out by the trustees to have it determined whether the life interest of H. in the funds was forfeited by the charge imposed on property of German nationals in this country on Jan. 10, 1920, by the Treaty of Peace with Germany, art. 297, or Treaty of Peace Order, 1919, & how the income accrued since Aug. 4, 1914, ought to be disposed of. It was admitted at the hearing on behalf of H. that in a German ct. applying German law he would be recognised as a German citizen. No question arose as to the income before Nov. 4, 1915, which had been paid over to H.'s agent :—*Held :* (1) the decision whether a person was a German national within the Treaty & Order fell to be determined exclusively by German municipal law, & accordingly H. was a German national; (2) H.'s interest under the settlement was forfeited as on Jan. 10, 1920, & subject to the payment of costs the accumulations of income in the trustees' hands from Nov. 4, 1915, to Jan. 10, 1920, must be paid to the custodian; (3) as the question raised was one that might affect a large section of the British public the A.-G. was a proper party to the proceedings.—*Re* CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN *v.* CHAMBERLAIN, [1921] 2 Ch. 533; 91 L. J. Ch. 34; 126 L. T. 52; 37 T. L. R. 966; 66 Sol. Jo. (W. R.) 3.

Annotation :—As to (1) **Apprvd.** Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850.

49d. —— —— ——.]—A British-born woman, between the date of the signing of the Peace Treaty between England & Germany & the date of its coming into force, went to Germany & there married a German subject. At the date of her marriage & on Jan. 10, 1920, when the Treaty came into force, she was the registered holder of shares in an English

49 ii. —— —— *By what law decided.*]—Questions of nationality must be determined by the municipal law of the country concerned.—PAULEY *v.* CUSTODIAN, [1922] App. D. 161.—S. AF.

limited co. :—*Held :* under British Nationality & Status of Aliens Act, 1914 (c. 17), s. 10, she must be deemed to be an alien, & by her marriage, which was not invalid, she had lost her British nationality & became a German national, so that her shares were subject to the charge imposed by Treaty of Peace Order, 1919, s. 1 (xvi).—FASBENDER *v.* A.-G., KRAMER *v.* A.-G., [1922] 2 Ch. 850 ; 91 L. J. Ch. 791 ; 128 L. T. 85 ; 38 T. L. R. 852 ; 66 Sol. Jo. 709, C. A.

Annotation :—**Refd.** *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

49e. —— —— **Dual nationality.**]—KRAMER *v.* A.-G., No. 215j, *post.*

49f. —— —— —— **Austrian acquiring new nationality.**]—An Austrian granted citizenship of the Czechoslovakian Republic after the disruption of the Austrian Empire, but before July 16, 1920, the date when the Treaty of Peace between the Allied & Associated Powers & Austria came into force, remains subject to the charge created by art. 249 (b) of the Treaty & Treaty of Peace (Austria) Order, 1920, s. 1 (ix), notwithstanding the provisions of art. 230 of the Treaty.—ROTHSCHILD *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1923] 2 Ch. 542 ; 93 L. J. Ch. 508 ; 130 L. T. 175 ; 68 Sol. Jo. 40.

Annotations :—**Folld.** Bohemian Union Bank *v.* Austrian Property Administrator, [1927] 2 Ch. 175. **Consd.** Groedel *v.* Hungarian Property Administrator (1927), 44 T. L. R. 65.

49g. —— —— **Czechoslovakian corporation.**]—Under the Treaty of St. Germain, which came into force on July 16, 1920, a Czechoslovakian corpn., as well as an individual, can acquire *ipso facto* Czechoslovakian nationality, & the property of such a corpn. within the territory of Great Britain at that date is entitled to the benefit of the exemption provided by art. 249 (b) of the Treaty from liability to the charge in favour of the administrator of Austrian property created by that art. & Treaty of Peace (Austria) Order, 1920, s. 1 (ix).—BOHEMIAN UNION BANK *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1927] 2 Ch. 175 ; 96 L. J. Ch. 365 ; 137 L. T. 271 ; 43 T. L. R. 356 ; 71 Sol. Jo. 431.

—— —— **Hungarian.**]—(1) The expression "nationals of the former Kingdom of Hungary" in Treaty of Peace (Hungary) Order, 1921, s. 1 (ix), means persons who were Hungarian nationals on Oct. 28, 1918, when the Austrian Empire ceased to exist by the deposition of the Emperor.

(2) Where the administrator of Hungarian property has determined that he is not satisfied that a national of the former Kingdom of Hungary has acquired *ipso facto* in accordance with the Treaty the nationality of an Allied or Associated Power, the ct. cannot go behind the decision of the administrator & investigate the question anew.—GROEDEL *v.* HUNGARIAN PROPERTY ADMINISTRATOR (1927), 44 T. L. R. 65.

49i. —— —— **By what law decided.**]—STOECK *v.* PUBLIC TRUSTEE, No. 49a, *ante.*

49j. —— —— ——.] — *Re* CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN *v.* CHAMBERLAIN, No. 49c, *ante.*

49k. —— —— **Decision of administrator—Whether final.**]—By the Treaty of Peace with Austria, art. 249 (b), the Allied & Associated Powers reserved the right to retain & liquidate all property, rights & interests which belonged at the date of the coming into force of the Treaty to nationals of the former Austrian Empire, but it was provided that "persons who within six months of the coming into force of the present Treaty show that they have acquired *ipso facto* in accordance with its provisions the nationality of an Allied or Associated Power . . . will not be considered as nationals of the former Austrian Empire within the meaning of this paragraph." The annex to arts. 249 & 250 sanctioned the imposition of a charge on such property, rights or interests. Arts. 248 to 262 with their annexes were scheduled to Treaty of Peace (Austria) Order, 1920, & by art. 1 (i) of the Order given full effect as law. By art. 1 (ix), the charge was imposed on all property, rights & interests within His Majesty's Dominions belonging to nationals of the former Austrian Empire at the date when the Treaty came into force. Art. 2 provided that "for the purposes of the foregoing provisions of this Order but not including the schedule therein referred to . . . the expression 'national of the former Austrian Empire,' does not include persons who within six months of the coming into force of the Treaty show to the satisfaction of the administrator that they have acquired *ipso facto* in accordance with its provisions nationality of an Allied or Associated Power" :—*Held :* where the administrator had decided that he was not satisfied that pltf., who was originally a national of the former Austrian Empire, had acquired *ipso facto* the nationality of an Allied or Associated Power, the ct. would not, in an action by him for a declaration that he has "shown that he has acquired *ipso facto* in accordance with the Treaty the nationality of the Republic of Poland & that he is not a national of the former Austrian Empire within the Treaty & the Treaty of Peace Order, & that his property, rights & interests in His Majesty's Dominions are not subject to be charged under the Treaty & the Treaty of Peace Order," go behind the decision of the administrator & investigate independently the question of nationality.—REITZES DE MARIENWERT *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1924] 2 Ch. 282 ; 93 L. J. Ch. 587 ; 132 L. T. 42 ; 40 T. L. R. 698 ; 68 Sol. Jo. 644, C. A.

Annotations :—**Folld.** Groedel *v.* Hungarian Property Administrator (1927), 44 T. L. R. 65. **Refd.** Groebel *v.* Hungarian Property Administrator (1925), 70 Sol. Jo. 345.

49l. —— —— —— ——.]—GROEDEL *v.* HUNGARIAN PROPERTY ADMINISTRATOR, No. 49h, *ante.*

Part II.—Rights, Liabilities, and Disabilities of Aliens in Time of Peace.

50. *Add. Annotation :*—**Refd.** The Wilhelmina, [1923] P. 112.

61. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

63. *Add. Annotations :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

65a. —— **Detention of property—Ratification by Crown—Citizen of friendly State personally hostile to Crown.**]—(1) It is not a good defence to an action of tort brought by a friendly alien resident in the United Kingdom against an officer of the Crown in respect of the wrongful seizure & detention of the alien's property that the seizure & detention have been adopted & ratified by the Crown as an act of State.

Pltf., who was born in Ireland, having become a naturalised American citizen, returned to Ireland in 1916 & took part in the rebellion of Easter, 1916, & was interned. On his release he took part in illegal drilling, &, on being arrested in Ireland, a sum of money was found upon him, which was taken & detained by the police authorities, the seizure & detention being subsequently ratified by the Chief Secretary for Ireland. In an action by pltf. against the Chief Comr. of the Police for the recovery of the money, deft. pleaded that pltf. was an alien & that the money was detained by direction of the Crown as an act of State :—*Held :* the plea was bad & pltf. was entitled to judgment.

(2) *Semble :* the fact that a subject of a friendly State residing within the realm under an implied licence from the Crown violates the local allegiance which he owes to the Crown does not disentitle him to the rights of an alien *amy* until the Crown withdraws its protection.—JOHNSTONE *v.* PEDLAR, [1921] 2 A. C. 262; 90 L. J. P. C. 181; 125 L. T. 809; 37 T. L. R. 870; 65 Sol. Jo. 679; 27 Cox, C. C. 68, H. L.

Annotation :—As to (1) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

70. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

73. *Add. Annotation :*—**Refd.** Grein *v.* Imperial Airways, Ltd. (1935), 154 L. T. 31.

79. *Add. Annotation :*—**Folld.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

82. *Add. Annotation :*—**Refd.** Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

85. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

91. *Add. Annotation :*—**Refd.** *Re* Von Krogh's Patent (1929), 49 R. P. C. 417.

92. *Add. Annotation :*—**Refd.** *Re* Von Krogh's Patent (1929), 49 R. P. C. 417.

94. *Add. Annotation :*—**Dbtd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

96. To the cross-reference after this case to Copyright Act, 1911 (c. 46), add "*&, generally,* COPYRIGHT, Vol. XIII., pp. 180–182."

114. *Add. Annotations :*—**Consd.** *Re* Lyne's Settlement Trusts, *Re* Gibbs, Lyne *v.* Gibbs, [1919] 1 Ch. 80. **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

116. *Add. Citations :*—Sty. 20, 40, 75; 1 Roll. Abr. 19b.

Add. Annotations :—As to (1) **Consd.** Du Hourmelin *v.* Sheldon (1838), 1 Beav. 79; Barrow *v.* Wadkin (1858), 27 L. J. Ch. 129. **Refd.** A.-G. *v.* Sands (1670), Freem. Ch. 129; A.-G. *v.* Duplessis (1752), Park. 144; Burgess *v.* Wheate, A.-G. *v.* Wheate (1759), 1 Eden, 177; Rittson *v.* Stordy (1855), 3 Sm. & G. 230; Sharp *v.* St. Sauveur (1871), 7 Ch. App. 343. *As to* (2) **Refd.** Burgess *v.* Wheate, A.-G. *v.* Wheate (1759), 1 Eden, 177.

119a. —— —— ——.]—A devise of land to trustees, upon trust to sell & invest the proceeds in the public funds upon trust for persons some of whom were aliens :—*Held :* the aliens did not take any interest or estate which the Crown could lay claim to.—DE HOURMELIN *v.* SHELDON, DE HOURMELIN *v.* A.-G. (1839), 4 Jur. 116.

140a. Member of Stock Exchange.]—By the rules of the London Stock Exchange each member is elected for one year only, & must come up for re-election annually under rule 21, which provides that the committee shall on the first Monday in March proceed (*inter alia*) to elect such members as they shall deem eligible to be members of the Stock Exchange during the following year commencing on Mar. 25 then instant. In 1917 an objection was lodged against the re-election of applt.

PART II. SECT. 2, SUB-SECT. 1.

74 i. *Trade mark—Alien resident abroad — Company.*]—In an action for infringement of trade mark defts. pleaded *inter alia* (*a*) that pltf. co. not being registered or licensed under the laws of any of the Provinces of Canada or under the laws of the Dominion of Canada has no right to protection of its trade mark against imitation thereof; (*b*) pltf. co. by using the said trade mark in connection with its products has done so in violation of the provisions of Food & Drugs Act of Canada, & the regulations made thereunder :—*Held :* (1) Dominion Cos. Act does not require a friendly alien, either a natural or an artificial person, to take out a licence before asserting any legal right in ct.; (2) Canadian Naturalization Act provides that an alien may take, acquire, hold & dispose of real & personal property of every description in the same manner in all respects as a natural born British subject; (3) the provisions of the International Convention for the Protection of Industrial Property as revised at Washington in 1914 recognise the right of pltf. to institute this action as freely as a Canadian owner of a trade mark; (4) at common law the alien has such a right.—CREAMETTE CO. *v.* FAMOUS FOODS, LTD., [1933] Ex. C. R. 200.—**CAN.**

sa. *Non-resident alien—Leave to sue in formâ pauperis.*]—The Supreme Ct. of Alberta has jurisdiction to grant leave to a non-resident alien to sue in *formâ pauperis.*—AUGUSTINO *v.* CANADIAN NORTH-WESTERN RY. CO. (Alta.), [1927] 4 D. L. R. 609; [1927] 3 W. W. R. 321; *revsd.* [1928] 1 W. W. R. 481; 23 Alta. L. R. 351.—**CAN.**

PART II. SECT. 7, SUB-SECT. 2.

129 i. *Right to hold & dispose—Law 3 of 1886—Act 35 of 1908—Company with Asiatic shareholders.*]—Law 3 of 1885 & Act 35 of 1908 do not apply to joint stock cos., even though their shares are held by Asiatics.—DADOO *v.* KRUGERSDORP, [1920] App. D. 530.—**S. AF.**

PART II. SECT. 8.

132 i. *Civil office of trust—Town inspector.*]—The office of town inspector is one of trust which an alien is ineligible to hold.—R. *v.* HEIGHTON (1) (1922), 69 D. L. R. 386; 55 N. S. R. (G. & R.) 512.—**CAN.**

132 ii. *S. P.* R. *v.* HEIGHTON (2) (1922), 69 D. L. R. 396; 55 N. S. R. (G. & R.) 527.—**CAN.**

who was a British subject naturalised in this country & denationalised in Germany, at the election to be held in March of that year, on the ground of his enemy birth. Upon the invitation of the committee applt., first in a letter & afterwards at an interview, set forth various facts in proof of his loyalty to the country of his adoption, but eventually the committee refused to re-elect him. Applt. impeached this decision on the ground that the committee had acted arbitrarily & capriciously & had been influenced by irrelevant considerations:—*Held:* the decision of the committee had proceeded solely upon the ground of applt.'s enemy birth, & before deeming him ineligible for re-election on that ground he had been given an opportunity of being heard. The committee having acted honestly & fairly in the exercise of their discretion & within their competence, it was not open to any ct. to review their decision.—WEINBERGER *v.* INGLIS, [1919] A. C. 606; 88 L. J. Ch. 287; 121 L. T. 65; 35 T. L. R. 399; 63 Sol. Jo. 461, H. L.

Annotation:—**Refd.** Cookson *v.* Harewood (1932), 146 L. T. 550, n.

See, further, STOCK EXCHANGE.

Part III.—Aliens in Time of War.

144. *Add. Annotation:*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

146. *Add. Annotation:*—**Refd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753.

155. *Add. Annotation:*—**Apld.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

156a. —— ——.]—A man who, having a business & commercial domicil in a neutral country, returns to his enemy country of origin & engages in active hostilities against this country, leaving his business under the care of a manager, but controlling it himself from his domicil of residence so far as he is able, cannot be considered anything but an enemy, & his business is an enemy firm & the assets are enemy property.—THE ANTWERPEN, [1919] P. 252, n.; 89 L. J. P. 26, n.

156b. —— ——.]—An action was brought to recover a debt by a firm consisting of two French subjects & a German subject, & a sequestrator was subsequently appointed in respect of the property of the German pltf.:—*Held:* as the German subject was not residing nor carrying on business in an enemy State, the action was maintainable, & the sequestrator was not a necessary party.—*Re* SUTHERLAND (DUCHESS), BECHOFF & Co. *v.* BUBNA (1921), 65 Sol. Jo. 513.

157. *Add. Annotations:*—**Refd.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513. **Mentd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

161. *Citation:*—For "[1916] A. C. 421" read "[1916] 1 A. C. 421."
Add. Annotation:—*As to* (1) **Consd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67.

162. *Add. Annotations:*—*As to* (1) **Consd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67. *As to* (2) **Refd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67.

163. *Add. Annotation:*—**Refd.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

166. *Add. Citation:*—*subsequent proceedings* (1921), 65 Sol. Jo. 513.

168. *Add. Citation:*—1 Br. & Col. Pr. Cas. 605.

183. *Add. Annotation:*—**Refd.** The Lützow, [1918] A. C. 435.

187. *Add. Annotations:*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Refd.** Ertel Bieber *v.* Rio Tinto Co., etc., [1918] A. C. 260; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

189. *Add. Annotation:*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

192. *Add. Annotation:*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

195. *Add. Annotations:*—*As to* (1) **Consd.** The Poona (1915), 84 L. J. P. 150; The St. Tudno, [1916] P. 291; *Re* Hilckes, *Ex p.* Muhesa Rubber Plantations, [1917] 1 K. B. 48; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, [1923] 2 K. B. 630; Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113. **Refd.** R. *v.* L. C. C., *Ex p.* London & Provincial Electric Theatres, [1915] 2 K. B. 466;

PART III. SECT. 1, SUB-SECT. 1.

151 ii. —— ——.]—The subject of an alien State at war with His Majesty who resides in the province of Quebec & has submitted to the laws of that country, is not an alien enemy.—RAGUSZ *v.* MONTREAL HARBOUR COMRS. (1916), 18 Q. P. R. 98; Q. R. 26 K. B. 87.—**CAN.**

155 i. —— *Place of residence & carrying on trade.*]—"Enemy" means a person, of whatever nationality, who resides or carries on business in enemy territory.—LAMPEL *v.* BERGER (1917), 40 O. L. R. 165; 38 D. L. R. 47.—**CAN.**

155 ii. —— ——.]—The question whether a person is an alien enemy is determined not by his nationality, but by the place where he resides or carries on business.—REVENTLOW-CRIMINIL *v.* STREAMSTOWN RURAL MUNICIPALITY, No. 511, [1917] 3 W. W. R. 546; 37 D. L. R. 394; *affd.*, [1920] 1 W. W. R. 578; 52 D. L. R. 266; 15 Alta. L. R. 204.—**CAN.**

155 iii. —— ——.]—A Mission Society, the headquarters of which were in Germany, held property in Natal & had an agent there for the management of its property & interests:—*Held:* (1) the society was resident in Germany & was an alien enemy; (2) a person's place of business, though one test, is not the sole test of his enemy character.—SIBISI *v.* HERMANSBERG MISSION SOCIETY (1916), 37 N. L. R. 409.—**S. AF.**

155 iv. —— ——.]—An "alien enemy" does not mean a subject of a State at war with this country but a person of any nationality who resides or carries on business in an enemy country.—MALCOMESS *v.* DURBAN TOWN COUNCIL (1917), 38 N. L. R. 275.—**S. AF.**

st. *Who is an "enemy" within Treaty of Peace (Germany) Order*, 1920, *s.* 32.]—BAUMFELDER *v.* SECRETARY OF STATE OF CANADA, [1927] Exch. C. R. 86.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

sa. *Widow of naturalised British subject—Return to foreign country after death of husband.*]—Resp., a German subject by birth, married a naturalised British subject in Cape Colony. After the death of her husband in 1901 resp. returned to Germany where she resided until 1915, & then removed to Switzerland:—*Held:* resp. was not an enemy under Act 39 of 1916.—THE TREASURY *v.* HANF, [1919] App. D. 50.—**S. AF.**

PART III. SECT. 1, SUB-SECT. 4.

193 iii. ——.]—A person who voluntarily resides in a hostile country for a substantial period of time acquires the disability attaching to an enemy during that period even if he is a British subject, unless such residence is with the consent of the Crown.—HAJI AH JON *v.* ABDUL JALIL KHAN (1920), L. L. R. 1 Lah. 276.—**IND.**

Clapham S.S. Co. *v.* Handels-en-Transport-Maatschappij Vulcaan of Rotterdam, [1917] 2 K. B. 639; Continho Caro *v.* Vermont, [1917] 2 K. B. 587; Elders & Fyffes *v.* Hamburg Amerikanische Packetfahrt Act., Elders & Fyffes *v.* Hamburg Columbien Bananen Act. (1918), 34 T. L. R. 275; *Re* British Incandescent Mantle Works (1923), 129 L. T. 126; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, [1925] A. C. 112; Bohemian Union Bank *v.* Austrian Property Administrator, [1927] 2 Ch. 175; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94. *As to* (2) **Consd.** The St. Tudno, [1916] P. 291. **Apld.** The Hamborn, [1919] A. C. 993. **Consd.** The Noordam (No. 2), [1919] P. 255; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. **Refd.** The Vesta, [1920] P. 385; I. R. Comrs. *v.* Sansom (1921), 8 Tax Cas. 20. *As to* (3) **Consd.** *Re* Hilckes, *Ex p.* Muhesa Rubber Plantations, [1917] 1 K. B. 48. **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *As to* (4) **Consd.** *Re* Hilckes, *Ex p.* Muhesa Rubber Plantations, [1917] 1 K. B. 48. *As to* (5) **Consd.** Rio Tinto Co. *v.* Ertel Bieber (1917), 116 L. T. 810; Tingley *v.* Müller, [1917] 2 Ch. 144; Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Stevenson *v.* Akt. für Cartonnagen Industrie, [1918] A. C. 239. **Refd.** *Re* Aramayo Francke Mines, [1917] 1 Ch. 451; Ertel Bieber *v.* Rio Tinto Co., [1918] A. C. 260; Rodriguez *v.* Speyer, [1919] A. C. 59; *Re* Munster, [1920] 1 Ch. 268; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56; Simpson *v.* Maurice's Exors. (1929), 14 Tax Cas. 580.

195a. —— ——.]—*Re* BADISCHE CO., LTD., *Re* BAYER CO., LTD., *Re* GRIESHEIM ELEKTRON, LTD., *Re* KALLE & CO., LTD., *Re* BERLIN ANILINE CO., LTD., *Re* MEISTER LUCIUS & BRUNING, LTD., No. 405a, *post*.

198. *Add. Annotations:*—**Consd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753; *Re* Deutsche Bank (London Agency), [1921] 2 Ch. 291. **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254; Banco de Bilbao *v.* Sancha, Banco de Bilbao *v.* Rey, [1938] 2 K. B. 176.

198a. ——.]—In Jan. 1914, pltfs. entered into a contract with defts., who were a co. incorporated under the laws of Belgium & had their registered office at Antwerp, to sell to them manganese ore deliverable in certain quantities during the second half of 1914 & the three following years alongside steamer in Bombay. In Sept. 1914, when the German armies were threatening Antwerp, the managing director of deft. co. removed all the co.'s goods & the money in bank to London & came himself to London, & there, without any formal authority from the co., carried on business in his own name, but for the benefit of the co. After the German occupation of Antwerp the German authorities placed the co. under compulsory administration. During the German occupation, meetings of the directors & shareholders were held at which formal business was transacted. These meetings were held so as to comply with Belgian law & to keep the co. in existence. The co. also collected & paid debts due to & owing by it in order to prevent the German authorities from winding up the co. & investing the uncalled capital in German War Loan, & with the like object it created a debt against its uncalled capital in favour of its bankers for the purpose of paying arrears of dividend on its preference shares. Pltfs. contended that the co. was an enemy, & they claimed a declaration that the contract was dissolved & was no longer binding on them:—*Held:* pltfs. were entitled to the declaration claimed; though acts which were necessary merely for the purpose of keeping the co. in existence might not amount to "carrying on business" within the Proclamation of Sept. 14, 1915, the collection of debts & discharge of liabilities with the intention of continuing the business amounted to a "carrying on business," & constituted the co. an "enemy" within the Proclamation.—CENTRAL INDIA MINING CO. *v.* SOCIÉTÉ COLONIALE ANVERSOISE, [1920] 1 K. B. 753; 89 L. J. K. B. 769; 122 L. T. 451; 36 T. L. R. 88, C. A.

198b. ——.]—Germany was in effective military occupation of Brussels & the greater part of Belgium at the date of an order for winding up the business carried on in this country by a German bank, of which a Belgian bank carrying on business in Brussels was an unsecured creditor:—*Held:* the Belgian bank was a creditor who was not an enemy within Trading with the Enemy Amendment Act, 1916 (c. 105), s. 1 (3).—*Re* DEUTSCHE BANK (LONDON AGENCY), [1921] 2 Ch. 291; 90 L. J. Ch. 449; 126 L. T. 20; 37 T. L. R. 912; 65 Sol. Jo. 781.

198c. Registered in allied country—Government overthrown—Non-recognition of usurping Government.]—Pltfs., an insurance co. with its registered office at Petrograd & a branch office in England, in Apr. 1917, entered into a reinsurance treaty with defts., an English insurance co., whereby pltfs. reinsured part of the risks of defts. At the end of the first year there was a balance in favour of pltfs. In an action to recover the amount of the balance defts. pleaded that as the Bolshevists had in Nov. 1917, usurped supreme power in Russia, & as the British Govt. was carrying on warlike operations against them pltfs. were alien enemies, & that owing to the entire suspension of business in Petrograd by reason of the usurpation the basis of the contract had been destroyed:—*Held:* as the Bolshevist Govt. had not been recognised by this country as the Russian Govt., & as pltfs. had not adhered to the Bolshevists pltfs. were not alien enemies; & as defts. with knowledge of the facts had continued to treat the contract as alive by crediting pltfs. with premiums & debiting them with losses, the Bolshevist revolution had not so destroyed the basis of the contract as to put an end to it, & pltfs. were entitled to recover.—EASTERN CARRYING INSURANCE CO. *v.* NATIONAL BENEFIT LIFE & PROPERTY ASSURANCE CO., LTD. (1919), 35 T. L. R. 292.

199. *Add. Citation:*—1 P. Cas. 75.

201. *Add. Annotation:*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

202. *Add. Annotation:*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

204. *Add. Annotation:*—**Consd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

205. *Add. Annotation:*—**Consd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

207. *Add. Annotations:*—**Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

208. *Add. Citation:*—1 P. Cas. 75.

Add. Annotations:—**Refd.** The Achilles, [1919] P. 340; *Re* Certain Craft Captured on Victoria Nyanza, [1919] P. 83; The Orteric, [1920] A. C. 724; The Vesta, etc., [1921] 1 A. C. 774; The Anichab, etc., [1922] 1 A. C. 235.

208a. —— —— —— **Effect of Trading with Enemy Acts, 1914-1916.**]—(1) Under the common law of England the Crown has always had &, subject to the effect of the above Acts, still has the right to seize & forfeit private property, including choses in action & equitable interests therein, found in this Kingdom belonging to subjects of an enemy State. That right has not been abandoned by desuetude. The powers conferred by the above Acts, however, are so inconsistent with the exercise of the common law right of forfeiture that that right must be treated as being thereby, at least temporarily, superseded.

(2) In order to complete the title of the Crown to property so seized an inquisition of office must be held before the conclusion of peace.—*Re* FERDINAND, EX-TSAR OF BULGARIA, [1921] 1 Ch. 107; 90 L. J. Ch. 1, C. A.

209. *Add. Annotation:*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

215a. Treaties of Peace & consequent Orders—What property subject to charge under—Right to assessment of damages in collision action.]—Before the outbreak of war, defts., the German owners of the steamship *M.*, recovered judgment against the British owners of the steamship *K.* for the amount of the damage arising out of a collision between the two vessels, & the damages were referred to the registrar & merchants for assessment. Before defts. had filed their claim in the registry the war had broken out. A few days before the Peace Treaty was ratified the claim & vouchers were filed, but by consent they were treated as having been filed after the ratification. Thereupon pltfs. took out a summons for an order to set aside the filing & service of the claim & vouchers on the ground that under arts. 296 & 297 of the Treaty & Treaty of Peace Order, 1919, s. 1 (xvi & xvii), the parties had no right to litigate the claim in the registry, inasmuch as, being a debt owing to German nationals, it had to be settled through the intervention of clearing houses:—*Held:* (1) defts.' claim was not a debt but a right, which by the Peace Treaty, art. 297, was subject to the right to be retained & liquidated "in accordance with the law of the allied State . . . concerned," namely, Great Britain; (2) not being a debt, art. 296 did not apply; (3) although defts. would not be able to handle the sum awarded, there was nothing in art. 297 or in Treaty of Peace Order, s. 1 (xvii) to deprive defts. of their right to proceed to a reference, or to prevent pltfs. paying money into ct. with a notice that it was in satisfaction of the claim of German subjects.—THE MARIE GARTZ, [1920] P. 172; 89 L. J. P. 206; 123 L. T. 680; 36 T. L. R. 417; 15 Asp. M. L. C. 98.

215b. —— —— **Debt—Due to German.**]—Clause 14 of the annex contained in the Sched. to Treaty of Peace Order, 1919, does not affect the rights of an individual British national to resist a claim by the Controller of the British Clearing Office to recover a debt which is admitted to be due to a German national, & is therefore an "enemy debt"

PART III. SECT. 2, SUB-SECT. 2.—A.

206 ii. (p. 147) For "VAN ZYH *v.* PIENMAN" read "VAN ZIJL *v.* PIENAAR."

sb. *Shares held by enemy subject—Vested in Public Trustee—Power to sell.*]—*Held:* War Precautions (Enemy Shareholders) Regulations, 1916 reg. 11 (2), which empowered the A.-G. to authorise the Public Trustee to sell shares in a co. transferred to him as being held by an alien enemy, was a valid exercise of the power conferred by War Precautions Act, 1914-1916, s. 4, & was within the defence power of the Commonwealth.—BURKARD *v.* OAKLEY (1918), 25 C. L. R. 422.—**AUS.**

sc. ——————.]—*Held:* War Precautions (Enemy Shareholders) Regulations, 1916 reg. 11, authorised the sale of shares transferred to the Public Trustee, notwithstanding that some beneficial interest in the shares was held by a person not an enemy subject, & was a valid exercise of the power conferred by War Precautions Act, 1914-1916, s. 4.—BURKARD *v.* OAKLEY (1920), 27 C. L. R. 520.—**AUS.**

212 i. *Patent in name of alien enemy—Royalties paid by licensee during suspension of patent—Who entitled to.*]—*Held:* (1) royalties paid by the licensee from the date of his licence up to the expiration of six months from the ending of the war, *i.e.*, to Jan. 10, 1920, were not sums belonging to an enemy, & were not properly in the hands of the custodian; (2) royalties paid or to be paid after June 10, 1920, were properly paid or payable in the hands of the custodian as a debt due to an enemy.—*Re* SYNTHETIC DRUG CO., [1925] Exch. C. R. 196.—**CAN.**

215 i. *Licensed to trade for limited purposes—Banking transactions.*]—The London agency of a German bank, which at the outbreak of war in 1914 became an enemy, held a bill, drawn by a German subject & accepted by a Scotsman, which had been sent from Germany for collection. It had been the practice of the bank that, if bills so sent were dishonoured, no legal proceedings were taken against acceptors in Great Britain, but the bills were retransmitted to the German office so that proceedings might be taken in the German *cts. against* the German indorsers. Licences covering the whole period of the war were issued to the London agency, empowering it to carry on banking business under supervision, to the extent of completing current transactions, so as to make its realisable assets available to its creditors, "so far as those transactions would in ordinary course have been carried out through" the London establishment. The bill having been dishonoured on presentation, was retained by the London agency, which debited the German office with the amount, & filed a letter, which owing to war conditions could not be sent, to the German office intimating the circumstances. In an action on the bill brought in 1922 by the Public Trustee against the Scottish acceptor:—*Held:* as an action on the bill was not a transaction that would in ordinary course have been carried out through the London agency, the licences conferred no right to sue.—PUBLIC TRUSTEE *v.* DAVIDSON, [1925] S. C. 451.—**SCOT.**

215 ii. Substitute this number for **215 i.** in original volume.

215b i. *Treaty of Peace & consequent Orders—What property subject to charge under—"Debts"—What are.*]—(1) Deposits of money with the National Trust Co. for investment in securities, repayment of which was guaranteed on dates which fell during the war; (2) not deposits in a savings bank & moneys invested with a loan co. to be withdrawn on notice & from the bank on presentment of the bank book; (3) not moneys deposited with a trust co. with instructions that all sums of capital & interest so received should be held by the co. to the credit of the owner until further advice.—SECRETARY OF STATE OF CANADA *v.* NEITZKE, SECRETARY OF STATE OF CANADA *v.* WIEHMAYER (1921), 68 D. L. R. 443; 62 S. C. R. 262; *varying*, 20 Exch. C. R. 219.—**CAN.**

215b ii. —— —— —— *Due to German.*]—At the outbreak of war between England & Germany in 1914 deft., as agent, held certain goods on behalf of an enemy subject, which goods, on the instructions of his principal, the agent realised between the outbreak of war & Mar. 30, 1915, with the result that he held, as the proceeds of realisation, a sum of £964 6*s.* 9*d.* Prior to the war deft.'s engagement had been at a salary of

within Treaty of Versailles & Treaty of Peace Order, 1919.—CLEARING OFFICE CONTROLLER *v.* EDWARDS & CO. (BREAD STREET), LTD., [1923] W. N. 245.

215c. —— —— **Trust estate—Accumulations of interest.**]—*Re* CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN *v.* CHAMBERLAIN, No. 49c, *ante*.

215d. —— —— —— ——.]—*Re* HALLENSTEIN, HALSTED *v.* BLANK, No. 237c, *post*.

215e. —— —— —— **Accumulations of annuities.**]—By his will a testator, who died on Jan. 14, 1916, directed his exors. to pay annuities to an Austrian & two German nationals "until he or she shall die or mortgage or otherwise charge the same . . . or until the happening of any event whereupon the same if given to him or her absolutely would no longer be received by him or her for his or her benefit." No part of the annuities could be paid to the annuitants during the war by reason of Trading with the Enemy Amendment Act, 1914 (c. 12), but accumulations were retained by the exors., as no order was made under sect. 4 of the Act vesting the annuitants' interests in the custodian:—*Held:* (1) as the Act of 1914 only suspended payments to the alien enemies & did not determine the ownership & ultimate destination of their annuities, those annuities were not forfeited *ab initio;* (2) the annuities were forfeited & determined in the case of the German nationals as from Jan. 10, 1920, by the charge imposed by the Treaty of Peace with Germany & Treaty of Peace Order, 1919, & in the case of the Austrian national as from July 16, 1920, by the charge imposed by the Treaty of Peace with Austria & Treaty of Peace (Austria) Order, 1920; (3) the accumulations of the annuities until those respective dates became subject to the charges & payable therefore to the custodian or the administrator of Austrian property as the case might be.—*Re* LEVINSTEIN, LEVINSTEIN *v.* LEVINSTEIN, [1921] 2 Ch. 251; 91 L. J. Ch. 32; 126 L. T. 177; 65 Sol. Jo. 767.

Annotations:—As to (3) **Folld.** *Re* Chamberlain's Settlmt. Chamberlain *v.* Chamberlain, [1921] 2 Ch. 533; *Re* Biedermann, Best *v.* Wertheim, [1922] 1 Ch. 31.

215f. —— —— —— ——.]—A testator, whose domicil was English, by his will directed his trustees to invest a certain sum in the Hamburg State Loan & from the income thereof to pay a number of annuities, &, as & when the annuities fell in, to apply the income & the capital so set free in accumulating a trust fund. That trust fund was also invested in the Hamburg State Loan. The annuitants, & those interested under the will in the trust fund, were German nationals:—*Held:* the interests of the beneficiaries under the will were charged under Treaty of Peace Order, 1919, as being "property, rights & interests" in the United Kingdom.—FAVORKE *v.* STEINKOPFF, [1922] 1 Ch. 174; *sub nom. Re* STEINKOPFF, FAVORKE *v.* STEINKOPFF, 91 L. J. Ch. 165; 126 L. T. 597.

215g. —— —— —— ——.]—Under the trusts of a marriage settlement of 1903 & in the events that had happened certain infant children, German nationals, were on Jan. 10, 1920, when the Peace Treaty came into operation, entitled contingently on attaining twenty-one or marrying to an annuity of £150 a year. If neither infant attained a vested interest the annuity passed to the husband, also a German national. The annuity was secured by the covenant of the wife's parents with the trustees, all British subjects, & was payable during the lives of the surviving covenantor & the surviving child, but the trustees were not to be liable for any loss occasioned by their neglect to enforce the covenant. The infants' contingent title accrued in possession on the wife's death on July 17, 1918, but the trustees had not enforced the payment of any instalment since then. The custodian having claimed the annuity, the trustees submitted the matter to the ct. The custodian had not obtained a vesting order:—*Held:* both the arrears & the contingent future instalments payable after Jan. 10, 1920, were property rights or interests within Peace Treaty Order, 1919, s. 1 (xvi), &, notwithstanding the infants' personal incapacity, were caught by the charge.—*Re* NEUBURGER'S SETTLEMENT, FORESHEW *v.* PUBLIC TRUSTEE, [1923] 1 Ch. 508; 92 L. J. Ch. 442; 129 L. T. 735; 67 Sol. Jo. 500.

215h. —— —— **Accumulations of annuities.**]—By his will dated Mar. 31, 1911, a testator bequeathed an annuity of £250 to an Austrian national "until he shall die or voluntarily or involuntarily alienate or encumber . . . the same." Testator died on Aug. 22, 1914, during the war. The annuity was therefore accumulated in the hands of his legal personal representative, who made the proper returns to the custodian under Trading with the Enemy Amendment Act, 1914 (c. 12), s. 3, but no vesting order was made under sect. 4. By Treaty of Peace (Austria) Order, 1920, the annuity & its accumulations were, as from July 16, 1920, charged in favour of the administrator of Austrian Property, to secure (*inter alia*) payment of debts owing by Austrian to British nationals:—*Held:* (1) the accumulations up to July 16, 1920, passed to the administrator of Austrian property; (2) the charge created by Treaty of Peace Order was not an involuntary alienation or encumbrance within the meaning of the will, so that the current annuity since July 16, 1920, was not forfeited, but was payable to the administrator of Austrian property.—*Re* BIEDERMANN, BEST *v.* WERTHEIM, [1922] 1 Ch. 31; 91 L. J. Ch. 105; 38 T. L. R. 37; 66 Sol. Jo. 107; *on appeal*, [1922] 2 Ch. 771, C. A.

—— —— —— **Trust estate.**]—*See* Nos. 215e—215g, *ante*.

215i. —— —— **Shares in English company.**]—FASBENDER *v.* A.-G., KRAMER *v.* A.-G., No. 49d, *ante*.

£5 per week. Pltf., as a public trustee, under Trading with the Enemy Act, 1914-16 (Fed.), claimed the moneys in the hands of deft.:—*Held:* the claim of pltf. was not defeated by reason of the Treaty of Peace, inasmuch as at the date of the declaration of war deft. was a German national, & the debt sued for, therefore, did not arise out of a transaction or contract made by a national of one power with a national of an opposing power.—PUBLIC TRUSTEE *v.* SHERWOOD, [1928] W. A. L. R. 112.—AUS.

215i 1. —— —— *Bearer shares & debentures in Transvaal mining company.*]—RANDFONTEIN ESTATES GOLD MINING CO., LTD. *v.* CUSTODIAN OF ENEMY PROPERTY, [1923] App. D. 576.—S. AF.

215j. —— —— **Property in England.**]—A person of dual nationality, who is a British subject by British law, having been born in England, & also a German subject by German law, is a "German national" within the Treaty of Peace with Germany, art. 297, & Treaty of Peace Order, 1919, giving effect to it, & is not entitled to have property in England belonging to him exempted from the charge created by sect. 1 (xvi) of that Order.—KRAMER *v.* A.-G., [1923] A. C. 528; 92 L. J. Ch. 333; 129 L. T. 390; 39 T. L. R. 462; 67 Sol. Jo. 552, H. L.; *affg.* S. C. *sub nom.* FASBENDER *v.* A.-G., KRAMER *v.* A.-G., [1922] 2 Ch. 850, C. A.

Annotation :—**Refd.** *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

215k. —— —— —— **Subject to restraint on anticipation.**]—The charge imposed by Treaty of Peace Order, 1919, s. 1 (xvi), upon all property, rights & interests in this country belonging to German nationals at the date of the coming into force of the Treaty of Versailles attaches to the interest of a married woman, who is a German national, in property in England settled upon her for life without power of anticipation, notwithstanding the restraint upon anticipation.—PUBLIC TRUSTEE *v.* WOLF, [1923] A. C. 544; 92 L. J. Ch. 520; 129 L. T. 738; 39 T. L. R. 553; 67 Sol. Jo. 637, H. L.; *revsg.* S. C. *sub nom. Re* RUSH, WARRE *v.* RUSH, [1923] 1 Ch. 56, C. A.

Annotations :—**Refd.** *Re* Neuburger's Setlmt., Forcshew *v.* Public Trustee, [1923] 1 Ch. 508; Sutherland *v.* German Property Administrator (1933), 149 L. T. 47.

215l. —— —— —— **Belonging to foreign bank in liquidation.**]—Pltfs. were the receivers of the Austro-Hungarian Bank appointed by the Reparations Commission under Treaty of Peace with Austria, art. 206, & entrusted with the duty of liquidating the bank for the purpose of distributing the liability on the currency notes of the bank among the several States among which the territory of the former Austro-Hungarian monarchy had been divided. Art. 249 of that Treaty provided that "subject to any contrary stipulation" in the Treaty, the British Govt. might retain & liquidate the property in this country of "nationals of the former Austrian Empire" which expression, as the ct. found, included the Austro-Hungarian Bank, & charge it with the payment of claims by British nationals in respect of (*inter alia*) debts due to them by Austrian nationals. By the same article Austria undertook to compensate her own nationals for the retention of & charge upon their property. Defts. were the custodian of enemy property in this country & the administrator appointed by Order in Council to liquidate the property of Austrian nationals in this country & administer the above-mentioned charge. Pltfs. claimed that art. 206 was a "contrary stipulation" within art. 249, that the property of the bank in this country was consequently not subject to the charge, & that they & not defts. were entitled to administer that property :—*Held :* there was no inconsistency between the two articles, which dealt with different subject matters, the only effect of art. 249 upon the liquidation under art. 206 being to replace the assets of Austrian nationals in this country by assets of equal value in Austria if the Austrian Govt. carried out its undertaking, & the action must be dismissed.—LUXARDO *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 147; 93 L. J. Ch. 425; 131 L. T. 200; 40 T. L. R. 546; 68 Sol. Jo. 737, C. A.

215m. —— —— —— **No enforceable agreement relating to property—Application of foreign law.**]—A man of German birth by an agreement of Apr. 4, 1899, at which date he was a naturalised American, undertook to provide

---

215j i. —— —— *Property in Australia—Subject to restraint on anticipation.*]—The words "all property, rights & interests" appearing in cl. 4 of the annex to art. 297 of the Treaty of Peace between the Allied Powers & Germany are wide enough to include an estate for life of a married woman, being a German national, still under coverture subject to a restraint on anticipation.—COWPER *v.* FRANKENBERG (1921), 21 S. R. N. S. W. 388.—**AUS.**

sd. —— —— *Rights of German nationals in testator's undisposed of property.*]—The rights of German nationals in testator's property undisposed of by his will are subject to the charge created by Regulations of Jan. 28, 1920, par. 20 (1).—*Re* MITCHNER, [1922] St. R. Qd. 39.—**AUS.**

se. —— —— —— *Administration of trusts in Germany.*]—*Re* MITCHNER, UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v.* A.-G. FOR COMMONWEALTH OF AUSTRALIA, [1927] S. R. Q. 279.—**AUS.**

sf. —— —— *Contingent interest.*]—By a settlement certain property was settled on T. for life, & contingently on their surviving him, on (*inter alia*), two German nationals. In Apr. 1925, after the death of T., one of these executed a document effecting either a renunciation of her interest in the settlement of an appointment of it to a British subject :—*Held :* assuming the interest dealt with was a contingent interest, it was property within Treaty of Peace Regulations, reg. 20. The document was ineffective by reason of the Treaty of Peace & regs. 20 & 21 made thereunder.—*Re* NICKEL, HOMBURG *v.* PUBLIC TRUSTEE [1928] S. A. S. R. 148.—**AUS.**

sg. —— *Rights acquired under vesting orders made under Trading with Enemy Acts not affected.*]—SECRETARY OF STATE OF CANADA *v.* GREENSHIELDS, LTD., [1925] Exch C. R. 29.—**CAN.**

sh. —— *Property passing to Custodian—Shares vested in Alien Property Custodian for United States.*]—Certain "securities," shares, note certificates & stocks, listed & dealt in on recognised stock exchanges, & the certificates for which were held in the United States, being owned by enemy nationals, were, upon demand of the Alien Property Custodian of the United States, surrendered to him or to others for him, in 1918, under the War legislation of that country, & were subsequently transferred to him on the books of the said cos., or new certificates issued. In regard to one of the above cos. no vesting order was ever obtained by the Canadian Custodian, but as to the others vesting orders were obtained subsequent to the action by the American Custodian, namely, in 1919, but none of the "securities" were ever transferred to him nor is it in evidence that such orders were served on the cos. :—*Held :* (1) the beneficial ownership in or title to the securities herein was in him who held the paper, & that it is the law of the place where the paper was that determined who was the holder. The contention that certificates of securities are but evidence of ownership, is not inconsistent with the idea that an assignment & delivery of the certificates carries the title and property in the securities; (2) under the Canadian Consolidated Orders enemy property was not automatically confiscated, but the owners' enjoyment thereof was suspended until the restoration of peace, &, subject to any legislation to the contrary or anything to the contrary contained in the Treaty of Peace, such enemy was then entitled to his property, or if liquidated, to its proceeds. It was only the transfer of securities by or on behalf of an enemy that was prohibited by the publication of these Orders; (3) under the Peace Order only two classes of enemy property passed to Canada : (*a*) property in Canada belonging to an enemy on Jan. 10, 1920, & not in the possession or control of the Custodian, & (*b*) enemy property in the possession & control of the Custodian on that date; (4) there was nothing to be found in the Canadian War Measures prohibiting or avoiding the transfers of the securities in issue as made by the American Custodian; on Jan. 10, 1920, the property, right or interest in the securities mentioned & the title to the same did not belong to an enemy, & was not at that date in the control or possession of the Canadian Custodian; & the property, right or interest in such securities & the title to the same belonged to the Alien Property Custodian of the United States.—SECRETARY OF STATE OF CANADA *v.* ALIEN PROPERTY CUSTODIAN FOR THE UNITED STATES & TORONTO POWER CO., LTD., & SECRETARY OF STATE OF CANADA AS CUSTODIAN OF ENEMY PROPERTY *v.* ALIEN PROPERTY CUSTODIAN FOR THE UNITED STATES & MONTREAL, CITY OF, [1930] Ex. C. R. 75; 3 D. L. R. 81; *affd.*, [1931] S. C. R. 170; 1 D. L. R. 890.—**CAN.**

two of his sons, naturalised British subjects, with the necessary capital to establish a business in London. The agreement, under which he handed to his sons for that purpose for 20 years certain American securities valued at over nine million marks, further provided (*inter alia*), that after the father's death, but not in any event until after the expiration of 20 years from the date of the agreement, the two brothers should divide the value of the securities—the fund representing the securities having been in law throughout in this country—equally between themselves & their brother & their four sisters & the descendants of such of them as might previously have died. By his will the father later stipulated that if through political or other crises the two sons were not able to distribute the funds promptly in Apr. 1919—20 years from the date of the agreement—they should be entitled to wait until such time as they were in a position to do so. Acting under that testamentary provision the two sons prolonged the period under the agreement to Dec. 1927, but in Nov. 1927, the present applts., German nationals, who were two of their sisters & six children of a deceased sister, instituted proceedings claiming that they possessed beneficial shares in the securities which constituted them creditors of their two brothers. They further alleged that the Administrator of German Property in this country, who came in as a party claiming that applts.' interests constituted "property, rights, and interests" in this country within Treaty of Peace Order, 1919, had no claim upon the property. The question whether applts. enjoyed rights under the agreement of Apr. 4, 1899, admittedly depended on the construction & effect of the agreement on applying the law of the Saxon Civil Code:—*Held:* under the German law it was only on proving both an intention on the part of the promisor to be bound to the third parties & the adoption of the contract by the third parties that they could become parties to the contract, & in the present case neither by intention in the agreement itself nor by adoption did the applts. possess rights under the agreement, & whatever claims existed under it could only be enforced against the two brothers who were parties to it by a duly constituted representative in this country of the estate of the father. According to German law applts. had no interest except as members of the community of heirs, & inasmuch as there had been no partition of the estate no member of that community of heirs had any right to any specific asset or share, & the action was misconceived.—HARTMANN *v.* KONIG (1933), 50 T. L. R. 114, H. L.

215n. —— —— **Policy money—Payable in England.**]—Pltf. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London, & in most of the capitals of Europe, the branch in Paris being its head office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were expressed to be payable in London, but all premiums were payable either at the central office in New York or at the office where the insurance was payable & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law. In an action to determine whether the policy moneys payable under the policies in question, which had matured on or before Jan. 10, 1920, the date when the Treaty of Peace with Germany came into force, were "property, rights & interests within His Majesty's Dominions" belonging to German nationals, & as such were subject to the charge created by Treaty of Peace Order, 1919, s. 1 (xvi):—*Held:* (1) there was nothing in art. 299 of s. V. of the Peace Treaty, or in par. 11 of the annex thereto, to indicate that the property, rights, & interests of the assured under such contracts were to be excluded from the general charge under par. 4 of the annex to s. IV.; (2) inasmuch as a corpn. might have a dual residence, & there was evidence that pltfs. were resident both in New York & in London carrying on business in both places & in both places being subject to the jurisdiction of the cts., it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be recoverable. Applying that test in the present case, the debts were recoverable in London where they were expressed to be payable, &, that being so, they were situate within His Majesty's Dominions & became subject to the charge.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

Annotations:—As to (2) **Consd.** I. R. Comrs. *v.* Broome's Executors (1935), 19 Tax Cas. 667. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

215o. —— —— **Share of enemy partner in firm.**]—So far as English law is concerned one partner in a firm who purchases the share of an enemy partner therein during hostilities acquires no fresh right & has no fresh remedy as a result of such purchase. Such enemy's interest in the concern still falls within the category of "property, rights, & interests" subject to the charge created by Treaty of Peace Order, s. 1 (xvi) for the purpose of giving effect to art. 297, & by Treaty of Peace Orders, s. 1 (xvii) (ccc) is payable to the administrator of German property.—FRIED *v.* GERMAN PROPERTY ADMINISTRATOR, [1925] Ch. 757; 95 L. J. Ch. 4; 134 L. T. 376; 69 Sol. Jo. 707.

Annotation:—**Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

215p. —— —— **Chose in action.**]—In Feb. 1912, three parcels of goods were shipped in a British steamship from Baltimore for Hamburg. The ship sailed & was never heard of again. The goods were insured with M., who were German nationals carrying on business in New York. The assured claimed against M., & some time before Nov. 1918, were paid by M. for a total loss; whereupon the bills of lading were handed over to M. by the assured.

Actions on the contract of carriage against the shipowners were commenced in England for the benefit of M. & other insurers by the owners of the goods & damages were recovered, of which the sum of £4,538, being that portion which corresponded with M.'s share in the insurance, was claimed by deft. to be subject in his hands to the charge created by the Treaty of Peace Order, 1919. On Nov. 18, 1918, after the outbreak of war between the United States & Germany & after proceedings had been commenced in England, pltf., in pursuance of the American Trading with the Enemy Act, 1917, & executive Orders made thereunder, made a demand upon M., the effect of which was to vest in him as Alien Property Custodian all the property, rights, claims & assets of M. within the United States. In an action by pltf. claiming payment by deft. of the said sum of £4,538 so recovered by M. & in the hands of deft. as Administrator of German Property :—*Held :* (1) on the crucial date, Nov. 18, 1918, M. had by subrogation an equitable interest as against the owners of the goods in the right of action which those owners had for the loss of their goods to the extent that was necessary to recoup to M. the amount paid on the policies of insurance ; (2) that right of action came within the general rule that choses in action must be taken to be situate in the country where they are properly enforceable ; (3) notwithstanding the fact that the bills of lading & other documents relating to the claim against the shipowners were at the material time in the hands of pltf. in the United States as Alien Property Custodian, the *situs* of the right of action was in England, & therefore the sum recovered for M. therein passed to deft. & not to pltf.—SUTHERLAND *v.* GERMAN PROPERTY ADMINISTRATOR, [1934] 1 K. B. 423 ; 103 L. J. K. B. 244 ; 150 L. T. 247 ; 50 T. L. R. 107, C. A.

215q. —— **Joint decisions of Clearing Offices—Effect.**]—In 1913 defts. had entered into contracts with German sellers for the purchase of a quantity of nitrate, delivery of which was to be made to defts.' agent alongside the vessel at Iquique, & payment for which was to be made in London after presentation of bills of lading. Several cargoes were shipped, but war broke out before the vessels arrived at their destination & before the bills of lading, which were made out to order, could be presented. In these circumstances defts. procured delivery to their sub-purchasers by giving an indemnity to the ships, & presumably received payment for the nitrate from their sub-purchasers. After an interval the German sellers duly notified their claim for the price of the nitrate & for interest to the German clearing office, which in turn passed it on to the British clearing office. Defts. were prepared to pay what the Germans claimed as the price of the goods, though they disputed the existence of any debt, either in the strict legal sense or in the sense in which the expression is used in Treaty of Peace, art. 296, & they disputed the claim for interest. As the Treaty only contemplated the admission of debts, & defts. were prepared to pay the amount claimed as the price of the goods, the British clearing office admitted the debt, & the principal money was cleared in 1923. At a later period the claim for interest was again put forward. This claim defts. still disputed, but the two clearing offices arrived at a joint decision that interest was payable upon the principal sum admitted by the British clearing office. Notice of the decision was conveyed to defts. in a letter dated Sept. 13, 1923. The decision took the form of an intimation that the British & German clearing offices had jointly agreed that interest in accordance with par. 22 of the annex to sect. III. of Part X. of the Treaty was payable upon the admitted debt at the rate of 5 per cent. *per annum* calculated from dates specified, The notice then continued as follows : " In default of a notice of appeal under r. 22 of the Rules of Procedure of the Anglo-German Mixed Arbitral Tribunal, the interest on the said sum of . . . at the rate of 5 per cent. from (the date named) to the date of crediting & advice to the German clearing office will be credited by the British clearing office to the German clearing office." No appeal was brought, &, after the expiry of the time for appealing, pltf., the controller of the British clearing office, sought to enforce this joint decision by action on the ground that a joint decision unappealed from should, on a true construction of the Peace Treaty, be regarded in the same light as if it was a foreign judgment, or the award of an arbitrator, & should, therefore, be enforced by the cts. of this country on the same principle as either a foreign judgment or an award is enforced :—*Held :* under Treaty of Peace, art. 296, as carried out by Treaty of Peace Act, 1919, & Treaty of Peace Order, 1919, the joint decisions of the clearing offices were not in the nature of judgments or of awards under an arbn., so as themselves to be enforceable by action, & therefore the action failed. —CLEARING OFFICE CONTROLLER *v.* WEIR & Co. (1925), 95 L. J. K. B. 88 ; 133 L. T. 701 ; 41 T. L. R. 603 ; 69 Sol. Jo. 809 ; 22 Lloyd, L. R. 280, C. A. ; *affd.* (1926), 135 L. T. 705 ; 42 T. L. R. 697, H. L.

215r. —— **Whether administrator agent of Crown.**]—WEINER *v.* USTAV (1927), cited 100 L. J. K. B. 385, C. A.

Annotation :—**Apld.** Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383.

215s. —— **Action against administrator—Whether Attorney-General necessary party.**] — The A.-G. is not a necessary party to an action against the administrator of Hungarian property in which the substantial claim was against the fund, & a subsidiary claim for a declaration as to nationality was added.—GROEBEL *v.* HUNGARIAN PROPERTY ADMINISTRATOR (1925), 70 Sol. Jo. 345.

215t. —— **Action by administrator—Statute of Limitations not applicable.**]—In collecting debts due to subjects of ex-enemy countries, the Administrators appointed under the Peace Treaties are acting as agents of the Crown, & therefore no Statute of Limitation runs against them.—HUNGARIAN PROPERTY ADMINISTRATOR *v.* FINEGOLD (1931), 100 L. J. K. B. 383 ; 144 L. T. 670 ; 47 T. L. R. 288 ; 75 Sol. Jo. 191.

215u. —— —— ——.]—By Treaty of Peace (Austria) Order, 1920, clause (x), para. (*ee*), " Where the property right or interest subject to the charge consists of any sum of money due to an Austrian national . . . it shall be payable to the Administrator, &

shall be paid to him on demand, & the Administrator shall have power to enforce the payment thereof, & for that purpose shall have all such rights & powers as if he were the creditor" :—*Held:* where at the date when a debt becomes payable to the Administrator it is not statute-barred as against the original creditor, it cannot afterwards, as against the Administrator, become statute-barred, inasmuch as the Administrator is the agent of the Crown, & as the above para. does not modify the general rule that the Crown is not bound by the Statute of Limitations.—AUSTRIAN PROPERTY ADMINISTRATOR *v.* RUSSIAN BANK FOR FOREIGN TRADE (1932), 48 T. L. R. 37, C. A.

Annotation :—**Refd.** Holland *v.* German Property Administrator, [1937] 2 All E. R. 807.

215v. —— **Effect of London Agreement—Whether German Government trustee or agent for German nationals.**]—The Administrator of German Property brought in 1931 an action; for a declaration that moneys in the United Kingdom in the hands of the trustees of a will proved in 1871 were subject to the charge created by art. 1 (xvi.) of Treaty of Peace Order, 1919, & the Amendment Orders, 1920–1924. Defts. to the action were the trustees & the three children, all German nationals, of a daughter of the testator who had married a German national in 1877 & had remained a German national until her death in 1927 :—*Held:* (1) as the result of the Treaty of Peace with Germany, the Treaty of Peace Act, 1919, & the Treaty of Peace Order, 1919, the property of German nationals which was in the United Kingdom at the date of the coming into force of the treaty was taken from them, & can be returned to them only by a conveyance or transfer; (2) in the agreement dated Dec. 28, 1929, between the British & German Governments as to the liquidation of German properties, & the agreement concluded with Germany at the Hague Conference, both ratified in May, 1930, there is nothing to show that the German Government was thereby expressly or by necessary implication purporting to act as agent or trustee on behalf of its nationals so as to give its nationals a right of action.—GERMAN PROPERTY ADMINISTRATOR *v.* KNOOP, [1933] Ch. 439; 102 L. J. Ch. 156; 148 L. T. 468; 49 T. L. R. 109; 76 Sol. Jo. 919.

Annotation :—**Refd.** Holland *v.* German Property Administrator, [1937] 2 All E. R. 807.

215w. —— **Transfer of property of German nationals to administrator—Complete transfer of ownership.**]—GERMAN PROPERTY ADMINISTRATOR *v.* KNOOP, No. 215v, *ante*.

215x. —— —— **Liability of trustees for payment of income to German national.**]—Subject to a life interest for B., trustees held part of a trust fund in trust for D. for life with remainder to her children. D., an Englishwoman married to an Englishman, at all material times lived with her family in Germany. B. died in 1917 & thereafter there was no communication between D. & her relatives in England, some of whom were the trustees, until 1927, when the trustees were informed that D. & her family had adopted German nationality during the war. D.'s income from the trust fund had been paid regularly since the end of the war into a bank in England at which D. kept an account, & continued to be so paid until D. died in 1934. The fact of D.'s German nationality was then communicated to the Administrator of German Property, who claimed against the trustees the amount of the income received by D. from 1927, when the trustees first heard of D.'s change of nationality, to Aug. 31, 1929, when all German-owned property which had been under the control of the administrator was released. Other claims had been made, but were abandoned during the hearing. The administrator claimed that the Treaty of Peace Order, 1919 (as amended), s. 1 (17) (*ccc*) & (*e*), effected a statutory assignment to the administrator of D.'s life interest, that after 1927 it became the duty of the trustees to pay the income thereafter accruing to the administrator, & that in paying such income to D., the trustees committed a breach of trust & that they were accordingly accountable to the administrator as the rightful beneficiary for the income thus wrongly paid to D. The trustees, in addition to denying that there was a statutory assignment, pleaded that they acted honestly & reasonably within the Trustee Act, 1935 (c. 19), s. 61, & ought fairly to be excused :—*Held:* (1) the Treaty of Peace Order, 1919, as amended, did not effect a statutory assignment of D.'s life interest; (2) if there were such a statutory assignment, the trustees ought, in the circumstances of the case & notwithstanding that they ought to have known the illegality of paying income to a German national, fairly to be excused for their breach of trust.—HOLLAND *v.* GERMAN PROPERTY ADMINISTRATOR, [1937] 2 All E. R. 807; 156 L. T. 373; 81 Sol. Jo. 434, C. A.

219. *Citations* :—For "*Re* HEGELBERG" read "*Re* HAGELBERG."

219a. —— —— ——.]—The controller of the London agency of an enemy bank appointed under the above Act ought not in the absence of special circumstances to pay (1) non-enemy holders of cheques drawn before or after the outbreak of war by enemy customers; (2) non-enemy holders of cheques drawn before or after the outbreak of war by non-enemy customers; (3) pre-war acceptances of customers, whether enemy or non-enemy, of the London branch, or of other persons domiciled for payment at the London branch.

(4) Where cheques are drawn by the head office or any enemy branch on the London branch payable to non-enemy persons, claims in respect thereof must not be met without the direction of the judge.—*Re* DRESDNER BANK (LONDON AGENCY) (1920), 64 Sol. Jo. 426.

219b. —— —— —— **Effect of Treaty of Peace.**]—(1) The provision contained in sect. 1 (3) of the above Act continues in force after the coming into operation of the Treaty of Peace of June 28, 1919.

(2) The date at which the enemy or non-enemy character of creditors is to be determined is the date of the winding-up order.—*Re* DEUTSCHE BANK (LONDON AGENCY), [1921] 2 Ch. 30; 90 L. J. Ch. 406; 126 L. T. 20; 37 T. L. R. 559; 65 Sol. Jo. 492; *subsequent proceedings*, [1921] 2 Ch. 291.

219c. —— —— —— **Who are creditors.**]—On the outbreak of war three enemy banks in the City were closed, but were afterwards re-

opened under licence. Ultimately the Board of Trade made orders under the above Act winding up the businesses, & a controller was appointed for that purpose. The controller gave the managers notice purporting to terminate their contracts under which they were entitled to a year's notice, & the contracts being subject to German law were not determined by the outbreak of war. The managers took out summonses claiming payment of their salary monthly after the date of the notice, or damages for wrongful dismissal:—*Held:* the claims for salary & for damages were not debts of a London business payable under the above Act, & the applications failed.—*Re* ANGLO-AUSTRIAN BANK, *Re* DRESDNER BANK, *Re* DIRECTION DER DISCONTO GESELLSCHAFT, [1920] 1 Ch. 69; 89 L. J. Ch. 86; 121 L. T. 640; 35 T. L. R. 736.

Annotation:—**Consd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60.

220. *Add. Annotations:*—**Consd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421. **Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60.

221. *Add. Annotations:*—**Refd.** *Re* Dieckmann (1917), 117 L. T. 713; Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

221a. —— —— **Liability of third party to put business in funds to meet bills.**]—In June, 1914, defts. by their Paris branch, drew ten bills of exchange, payable in London three months after date, on the Dresdner Bank. The Dresdner Bank accepted the bills at their London branch & received as security Russian promissory notes. Defts. provided no funds to meet the bills when they fell due &, under an arrangement between the Treasury & the Bank of England, the amount payable was discharged by the Bank of England. By 1917 the Dresdner Bank in London had repaid the sum due for principal & interest to the Bank of England. In 1918 the Board of Trade, under the above Act, ordered the business carried on by the Dresdner Bank in London to be wound up, & appointed a controller to wind up the business, with power to collect all moneys owing to the bank & to bring actions in the name of the bank:—*Held:* (1) the transaction was part of the "business" of the London branch of the Dresdner Bank; defts.' liability to put the Dresdner Bank in funds to meet the bills was an asset of the London branch within the above sect., even if the London branch accepted the bills on the instructions of the head office in Berlin & debited the current account of the head office with the amount paid on the bills, & defts. were liable to repay pltfs. the money paid by them to the Bank of England in respect of the bills with simple interest at 5 per cent. on each instalment from the date of payment; (2) the action by the controller in the name of the Dresdner Bank (London Agency) was not an action in the name of a branch of that bank but an action in the name of the Dresdner Bank, & the addition of the words "London Agency," being merely descriptive, did not change pltfs. from being the Dresdner Bank into something unknown to the law as a legal person.—DRESDNER BANK *v.* RUSSO-ASIATIC BANK, [1923] 1 Ch. 209; 92 L. J. Ch. 204; 128 L. T. 633; 67 Sol. Jo. 277.

222. *Add. Annotation:*—**Refd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

223. *Add. Annotations:*—**Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60; Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

223a. —— —— —— **Action in name of business—Addition of words "London Agency."**]—DRESDNER BANK *v.* RUSSO-ASIATIC BANK, No. 221a, *ante*.

223b. —— —— —— **After Treaty of Peace.**]—The Treaty of Peace with Germany, art. 296, which declared that enemy debts as therein defined were to be settled through clearing offices to be established after the treaty came into operation, & the annex to that article, are qualified by art. 297, & the latter article & its annex cannot be construed as limited to a confirmation of what has been done under "exceptional war measures" prior to the coming into force of the Treaty, but must be held to validate all acts & procedure done thereafter in the execution of such exceptional war measures.

Where an action was brought four months after the coming into force of the Treaty of Peace by the controller with the sanction of the Board of Trade, in the name of enemy subjects formerly carrying on business in London, to recover assets of the business alleged to be in the hands of deft.:—*Held:* the action was properly brought; & a motion by deft. to stay the proceeding on the ground that it was prohibited by the Treaty of Peace was dismissed.—MEYER & CO. *v.* FABER, [1921] 2 Ch. 226; 91 L. J. Ch. 233; 125 L. T. 531.

223c. —— —— **General position of controller.**]—*Re* VULCAAN COAL CO., HARRISON *v.* HARBOTTLE, No. 223f, *post*.

223d. —— —— ——.]—At the outbreak of war in 1914, a British subject, resident in England, & three German subjects, resident in Germany, were carrying on business in partnership in London. The outbreak of war having dissolved the partnership, the British partner with the sanction of the Home Office proceeded to wind up the business. He got in a large sum of money, representing assets of the business, & discharged nearly all the liabilities, & had a balance in hand. The controller, appointed in 1918 under Trading with the Enemy Acts, 1916 (c. 105) & 1918 (c. 31), sued, in the name of the firm, the British partner for the balance of asets. Deft. contended that he had himself claims

---

PART III. SECT. 2, SUB-SECT. 2.—B. (a).

223i. *Amending Act of* 1916, *s.* 1—*Business ordered to be wound up—Sale of stock—Rights of consignors of stock supplied on sale or return.*]—The business of an alien enemy bookseller was ordered to be wound up, upon application by the controller under the above sect.:—*Held:* he was entitled to sell the whole stock, but if there were identifiable consignments of unsold stock on sale or return from persons with whom he could communicate, he must return or store them at consignor's expense.—*Re* THOMSON, *Ex p.* M'LINTOCK, [1918] 1 S. L. T. 137.—**SCOT.**

223j. *Trading with Enemy Acts,* 1914-1916—*Business ordered to be wound up—Power of controller to apply.*]—*Held:* s. 9H of the 1914-16 Acts authorised the Minister for Trade & Customs to confer upon a controller powers under which the right of that controller to apply to the High Ct. was not to be measured by the standard laid down with regard to similar applications by a liquidator.—BROKEN HILL PROPRIETARY CO., LTD. *v.* WARNOCK (1922), 30 C. L. R. 362.—**AUS.**

223k. *Enemy Trading Act, X of* 1916—*Business ordered to be wound up—Powers of controller.*]—WOLF *v.* DADYBA (1919), I. L. R. 44 Bom. 631.—**IND.**

against the business, & that he was entitled to the taking of partnership accounts to ascertain those claims before paying over the assets :—*Held :* under the Acts, the controller had not the powers of a trustee in bkpcy., his outside powers being those of a liquidator in a voluntary winding up, & he could not therefore override the ordinary law of partnership which entitled deft. to the taking of accounts between himself & the other partners.—MEYER & Co. *v.* FABER (No. 2), [1923] 2 Ch. 421 ; 93 L. J. Ch. 17 ; 129 L. T. 490 ; 39 T. L. R. 550 ; *sub nom.* MEYER & Co. *v.* FABER, MEYER & Co. *v.* ELDER, 67 Sol. Jo. 576, C. A.

223e. —— —— **Dismissal of manager by controller —Claim by manager for salary & damages for wrongful dismissal.**]—*Re* ANGLO-AUSTRIAN BANK, *Re* DRESDNER BANK, *Re* DIRECTION DER DISCONTO GESELLSCHAFT, No. 219c, *ante.*

223f. —— —— —— **Claim by manager to retain money as against controller.**]—A controller appointed by the Board of Trade under sect. 1 (1) of the above Act to wind up the English business of an enemy co. or firm, does not represent the co. or firm. His duties are to get in the assets & discharge the liabilities of the business.

By an agreement, dated Mar. 28, 1913, H. was engaged as manager of the Newcastle branch of a German co. registered in Holland until June 30, 1918, at a salary of not less than £1,000 *per annum.* On Aug. 14, 1916, the Board of Trade made an order to wind up the business & appointed a controller under sect. 1 (1) of the above Act. On Aug. 31, 1916, the controller dispensed with the services of H. At that date H. had in his possession certain moneys of the business, which he claimed to retain, as against the controller, to satisfy his claim for damages for breach by the co. of the agreement :—*Held :* the claim was against the co., & not against the business, & H. was not entitled to retain the moneys as against the controller.—*Re* VULCAAN COAL CO., HARRISON *v.* HARBOTTLE, [1922] 2 Ch. 60 ; 91 L. J. Ch. 491 ; 127 L. T. 274 ; 66 Sol. Jo. 423.

Annotation :—**Dbtd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421

223g. —— —— **Sale of business by controller—Damages for breach of contract.**]—At the outbreak of war the majority of the shares in M. Co., carrying on business in the United Kingdom, were held by, & the majority of the directors were, alien enemies. A controller of the co. was appointed. By the appointment of new directors the co. came under British management. In Dec. 1915, M. Co. agreed to sell, & F. Co. to buy, the whole output of M. Co. until six months after the declaration of peace between England & Germany. In 1919 the Board of Trade, under the above Act, ordered the business of M. Co. to be wound up & the controller sold the business :—*Held :* although at the outbreak of war M. Co. became an alien enemy, yet its business could be lawfully carried on under new non-enemy management even if enemy shareholders might after the war benefit by such trading, &, although it was in consequence of the winding-up order that M. Co. was unable to carry out its contract, it was liable in damages to F. Co. for breach of contract.—*Re* BRITISH INCANDESCENT MANTLE WORKS, LTD. (1923), 129 L. T. 126 ; 39 T. L. R. 244 ; 67 Sol. Jo. 517.

224. *Add. Annotations :*—**Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60 ; Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

226. *Add. Citation :*—[1917] H. B. R. 243.

PART III. SECT. 2, SUB-SECT. 2.—B. (b).

230 ii. —— —— *Proof of enemy's interest in property.*]—A British subject applied to the ct. to make a vesting order vesting in the custodian for Scotland a ship & £20,000, the freight earned by the ship while under requisition of the Admlty. He averred that the enemy firm, & the two partners thereof, were " the owners or at least part-owners of the " ship :—*Held :* appct. had failed to aver a sufficient interest of the enemy firm & its partners in the ship to make s. 4 (1) of the above Act applicable.—BURRELL *v.* MAASHAVEN S.S. Co., LTD. (1919), 56 Sc. L. R. 434.—**SCOT.**

230 iii. —— —— *Instalments of purchase price of ship—Paid to builder by enemy—Ship requisitioned by Admiralty.*]—Scottish shipbuilders contracted to build a ship for Austrian shipowners. On the declaration of war between Great Britain & Austria the vessel was nearing completion, & the purchasers had paid instalments of the price amounting to £79,732. On Feb. 17, 1915, the Admlty. requisitioned the ship as she then stood at the price of £86,000, but it was not until July 30, 1917, that the Admlty. paid the builders that sum, & they refused to pay any interest from the date of requisition. On Dec. 1, 1917, the Board of Trade pronounced an order vesting the sum of £79,732, with interest from the date of receipt of the instalments, in the custodian for Scotland under the above Act :—*Held :* the custodian was entitled to decree for £79,732 with interest from the date of the interlocutor of the First Division.—PENNEY *v.* CLYDE, [1920] S. C. (H. L.) 68.—**SCOT.**

231. *War Measures Act*, 1914 (*c.* 2) *—What property can be vested—Trust funds—Agreement by beneficiaries as to disposition of fund.*]—By the will of W., a citizen of the United States, who died in 1916 resident there, the residue of his estate was given to a trustee for the sole use & benefit of the wife & daughter, share & share alike. His daughter was married to a German national, & was residing in Germany at the time of her father's death. W.'s widow was a citizen of the United States. Early in 1917, an agreement was made by the trustee & the wife & daughter, pursuant to clause 11 of the will, by which, in effect, it was agreed that the whole of the assets in Ontario should be allocated to the widow. In May, 1919, an application was made to the ct., by the Secretary of State for Canada, for an order vesting in the custodian appointed under Consolidated Orders respecting Trading with the Enemy, 1916, one-half of the assets situated in Ontario of the estate of W., on the ground that the said half belonged to or was held or managed for or on behalf of W.'s daughter, who was an enemy. The motion was made under Consolidated Order 28, which was passed pursuant to the above Act :—*Held :* it was appropriate & expedient to make the order asked for.—*Re* WALKER (1919), 46 O. L. R. 86 ; 16 O. W. N. 328.—**CAN.**

234 i. For " 234 i " read " 236 i."

sm. *Trading with Enemy Acts*, 1914-1916—*Powers & duties of custodian—Payment of mortgage debt—Form of order—Costs.*]—Where, under s. 9 D (2) of the 1914-16 Acts the Public Trustee is authorised to pay out of the property paid to him in respect of an enemy subject a mtge. debt & interest due by him, the order should provide that the mtgee. should execute a proper discharge of the mtge. & deliver up upon oath to the Public Trustee all titles & other documents relating to the land mortgaged. The costs of a motion for an order under sect. 9 D (2), of the Public Trustee & of the enemy subject were allowed out of the property in the hands of the Public Trustee. Form of order stated.—*Re* SCHURR (1920), 27 C. L. R. 442.—**AUS.**

sn. —— *Recovery of enemy debt—Effect of Treaty of Peace & subsequent Orders.*]—Before the war, F., a German firm, sent to W. Co. in Canada goods on consignment for sale on commission. During the war W. Co. sold the goods &, shortly afterwards, sold its assets to C. Co. which assumed W. Co.'s liabilities, including the liability to F. In June, 1920, C. Co., having notice of competing claims by F. & its sequestrator in France, for the amount of said liability, applied for & obtained from the master in chambers, in the Supreme Ct. of Ontario, an order for the payment of the amount into ct. In November, 1925, P., as attorney for F., & the Custodian of Alien Enemy Property each applied for payment to himself of the money in ct. :—*Held :* the Custodian was entitled to the money ; it represented an enemy " debt " owing by a debtor in Canada & recoverable by the Custodian under the regulations of Treaty of Peace (Germany) Order, 1920, Part I.—CUSTODIAN OF ALIEN ENEMY PROPERTY *v.* PASSAVANT, [1928] 3 D. L. R. 5 ; [1928] S. C. R. 242.—**CAN.**

235a. —— —— —— **To wind up partnership—Parties.**]—At the outbreak of war three German subjects were carrying on business in London in co-partnership with F., their English partner. Under the partnership articles F. was the managing partner in London, & on the dissolution by the declaration of war he carried on the business & collected the assets with the view of liquidation. No accounts had been taken between the partners since Dec. 31, 1913. F. died in 1920, & deft. was his legal personal representative. By an order of the Board of Trade it was ordered that all the property, rights, & interests of the three German partners in the assets of the firm in respect of any claim against the English partner, or his estate, should vest in pltf., who should take all necessary proceedings to collect what might be due to the German partners. In an action by pltf. as custodian of enemy property with the object of winding up the partnership he claimed an account against deft. of all dealings between the German partners & the English partner, including all dealings with the partnership assets since the dissolution, payment of what should be found due, & an inquiry of what the partnership property consisted. The German partners were not added as pltfs. in the action:—*Held:* in the absence of the German partners as parties to the action no such relief as was asked could be granted, & the action failed.—PUBLIC TRUSTEE *v.* ELDER, [1926] Ch. 776; 95 L. J. Ch. 519; 135 L. T. 589, C. A.

236. *Add. Annotation:*—**Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

236a. —— —— —— **Effect of Treaty of Peace & consequent Orders.**]—By Treaty of Peace Act, 1919 (c. 33), Treaty of Peace Order, & the Treaty of Peace with Germany, the power conferred by Trading with the Enemy Amendment Act, 1914 (c. 12), s. 5 (2), on the ct. to authorise the custodian to pay out of property paid to him in respect of an enemy debts due by that enemy, has, so far as concerns pre-war debts due by German nationals to British nationals, come to an end. Payment of such debts can now be made only through the clearing office established under s. III. of Part X. of the Treaty.—*Re* NIERHAUS, [1921] 1 Ch. 269; 91 L. J. Ch. 107; 36 T. L. R. 425; 64 Sol. Jo. 426.

Annotation:—**Refd.** *Re* National Bank für Deutschland, *Re* Anglo-Austrian Bank, [1921] 1 Ch. 284.

236b. —— —— —— ——.]—At the outbreak of war a debt was due from a German bank to the London agency of an Austrian bank. Vesting orders were made, under which the property in England of the German bank was vested in the custodian. An order had been made, under which the business of the London agency was wound up & a controller appointed. The controller applied to the ct. to give directions under the powers conferred by sect. 5 (1) or (2) of the above Act that the debt should be paid out of the property vested in the custodian:—*Held:* even if the power still subsisted under those subsects. to direct such payment to persons who were not British nationals under the Treaty of Peace, such power was discretionary & the ct. would not exercise it, except in very special circumstances, but would leave such debts to be dealt with under the Order in Council to be made at the termination of the war under sect. 5 (1) of the Act.—*Re* NATIONAL BANK FÜR DEUTSCHLAND, *Re* ANGLO-AUSTRIAN BANK, [1921] 1 Ch. 284; 90 L. J. Ch. 15; 123 L. T. 647.

237. *Add. Annotation:*—**Follo.** Dresdner Bank *v.* Russo-Asiatic Bank, [1923] 1 Ch. 209.

237a. —— —— **Release of funds in favour of British creditors—Mode of distribution.**]—Funds were released by the custodian of enemy assets in this country from his charge upon them under the Treaty of Peace Orders, the release being expressly limited in favour of creditors of British nationality. There were no German creditors, but there were some foreign creditors. Upon the trustee's application for directions:—*Held:* the ct. would direct the funds to be distributed according to Bkpcy. Act, 1914 (c. 59), but would give the custodian an opportunity of being heard, if he so wished, before the order was drawn up.—*Re* WISKEMANN, *Ex p.* TRUSTEE (1923), 92 L. J. Ch. 349; [1923] B. & C. R. 28.

237b. —— **Right to dividends—On shares held by alien enemies.**]—An English co. had certain alien enemy shareholders & certain assets in Germany. From time to time after the outbreak of the war with Germany, resolutions were passed by the directors & by the co. in general meeting declaring *interim* & final dividends respectively, subject in each case to a condition that as regards members of the co. resident in Germany, Austria & Turkey, the dividend should be payable only out of assets in Germany, & as regards members resident elsewhere out of assets in England. By an order made on Aug. 24, 1916, under sect. 4 (1) of the above Act, it was ordered that the right to transfer the shares held by alien enemies & to receive any dividends "now due & to accrue due thereon" vested in the custodian, & the shares were transferred into his name in due course:—*Held:* the resolutions, so far as they provided for payment only out of assets in Germany, were void as against the custodian, & the co. was liable out of any assets in its hands to pay him the amounts of the dividends, whether declared before or after the vesting order.—ARAMAYO FRANCKE MINES, LTD. *v.* PUBLIC TRUSTEE, [1922] 2 A. C. 406; 91 L. J. Ch. 643; 127 L. T. 661; 38 T. L. R. 756; 66 Sol. Jo. 611, H. L.; *affg.* S. C. *sub nom.* *Re* ARAMAYO FRANCKE MINES, LTD., [1921] 1 Ch. 675, C. A.

237c. —— —— **Part of trust income—Payable to enemy.**]—(1) *Held:* sect. 2 (1) of the above Act related only to moneys payable under contractual obligations arising out of loans, partnership or membership of a co., & not to trust income payable by trustees to an enemy even when the income was derived from dividends on shares.

(2) By his will a testator, who died in 1904, bequeathed his estate upon trusts whereby the residue & the proceeds of sale thereof were to go in equal shares to his children; & he directed his trustees to retain the share of each of his daughters upon trust during the life of the daughter to pay the annual income to her for her separate use without power of anticipation & until she should do or suffer any act or thing whereby the same,

if payable to her absolutely or any part thereof, might have become payable or forfeited to or vested in any other person. In the event of a forfeiture under this provision the income was given upon a discretionary trust during the remainder of the life of the daughter, & subject thereto the daughter's share was to be held in trust for her children & issue as therein mentioned, One of the testator's daughters had intermarried with a German in 1908, & had since resided in Germany. Since the coming into force of the above Act, the trustees had accumulated the income of her share, which amounted on Jan. 10, 1920, the date of the ratification of the Treaty of Peace with Germany, to about £4,000 :—*Held :* the daughter's life interest was not determined on the coming into force of the above Act, but ceased on Jan. 10, 1920, by reason of the Treaty of Peace charge, & the accumulations of income up to that date were subject to the charge.—*Re* HALLENSTEIN, HALSTED *v.* BLANK, [1922] 1 Ch. 355 ; 91 L. J. Ch. 420 ; 127 L. T. 58 ; 38 T. L. R. 313 ; 66 Sol. Jo. 299.

237d. —— **Liability of custodian for super tax.**]—Property belonging to an enemy which is paid to or vested in the custodian under the above Act is, pending its disposition by Order in Council after the termination of the war, removed from the control & beneficial ownership of the enemy. During the interval the beneficial ownership is in statutory suspense or abeyance, the custodian having meanwhile limited powers of dealing with the property.

When war broke out in 1914, M., an enemy within the Act, owned real estate in England & shares & securities in British cos. By orders under sect. 4 of the Act the real estate, shares & securities were vested in the custodian. The Special Comrs. for Income Tax assessed the custodian to super tax as agent or receiver for M. The custodian disputed the legality of the assessment :—*Held :* (1) M.'s beneficial ownership of the property having ceased on the making of the vesting orders, the profits & gains received by the custodian were received by him in respect of M., but did not in his hands belong to M. ; he did not receive or hold them as agent or receiver or trustee for M. within 5 & 6 Vict. c. 35, s. 41, &, therefore, he was not liable to be assessed to super tax ; (2) as M. could not, after the war, ask to receive back the property except on the footing that a sum equal to the amount of super tax which, but for the war, he would have been liable to pay was paid, the custodian must, under the discretion given to the ct. by sect. 5 (1) of the Act of 1914, pay that sum to the Comrs. as analogous to payment of a debt under sect. 5 (2).—*Re* MÜNSTER, [1920] 1 Ch. 268 ; 89 L. J. Ch. 138 ; 36 T. L. R. 173 ; 64 Sol. Jo. 309.

Annotation :—As to (1) **Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

239a. —— —— **Application to court—Rectification of register of shareholders.**]—Shares belonging to an alien enemy were after the declaration of war vested in the Public Trustee & sold by him. A four-day order was obtained, directing the co. to rectify the register of members, but that order was not complied with. The solrs. to the co. stated in correspondence they had the books of the co., but that all the directors & secretary had resigned :—*Held :* the Public Trustee was entitled to an order to carry out the transfer of the shares.—*Re* MANIHOT RUBBER PLANTATIONS, LTD. (1919), 63 Sol. Jo. 827.

240. *Add. Citation :*—[1918-19] B. & C. R. 171.
Add. Annotation :—**Refd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

241. *Add. Annotations :*—**Consd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753 ; *Re* Deutsche Bank (London Agency), [1921] 2 Ch. 291. **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254 ; Banco de Bilbao *v.* Sancha, Banco de Bilbao *v.* Rey, [1938] 2 K. B. 176.

253. *Add. Annotations :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Mentd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

254. *Add. Annotations :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59 ; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

256. *Add. Annotations :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59 ; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

257. *Add. Annotation :—As to* (2) **Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

259. *Add. Annotations :*—**Folld.** Krauss *v.* Krauss & Orbach (1919), 35 T. L. R. 637. **Refd.** Procurator in Egypt *v.* Deutsches Kohlen Depot Gesellschaft, [1919] A. C. 291.

260. *Add. Annotations :*—**Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107 ; *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

261. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

261a. —— —— **Suit for dissolution of marriage.**]—An alien enemy, who has been registered

PART III. SECT. 2, SUB-SECT. 3.—A.

250 vii. —— *Plaintiff compelled to sue to establish caveat.*]—An alien enemy, unless he be within the realm by the licence of the King, cannot sue in our cts. either by himself or by any person on his behalf until peace is restored.

Where a municipality, having sold land for taxes, serves notice on the owner to take proceedings on a *caveat*, thereby compelling him to proceed to establish it, the owner, if an alien enemy, should be treated, to some extent at least, as in the position of an alien enemy who is deft. to an action. Therefore the action should not be dismissed on the ground that pltf. is an alien enemy, for therefrom a discharge of an order continuing the *caveat* & a discharge of the *caveat* would follow.—REVENTLOW-CRIMINIL *v.* STREAMSTOWN RURAL MUNICIPALITY, No. 511, [1917] 3 W. W. R. 546 ; 37 D. L. R. 394 ; *affd.*, [1920] 1 W. W. R. 578 ; 52 D. L. R. 266 ; 15 Alta. L. R. 204.—**CAN.**

250 viii. ——.]—An alien enemy cannot enforce civil rights in a British ct. during the period of hostilities.—SIBISI *v.* HERMANSBERG MISSION SOCIETY (1916), 37 N. L. R. 409.—**S. AF.**

256 i. For "Proclamation of August 13, 1914" read "Proclamation of August 15, 1914."

256 iv. —— —— ——.]—An alien resident in Ontario, although his country is at war with ours, so long as he conducts himself peaceably, & is within the above Proclamation, is entitled to bring & maintain an action in any ct. in Ontario.—KRISTO *v.* HOLLINGER CONSOLIDATED GOLD MINES, LTD. (1918), 41 O. L. R. 51 ; 13 O. W. N. 206.—**CAN.**

256 v. —— —— *Christian Armenian.*]—The cts. of the province of Quebec are open to a Christian Armenian specially exempted under Order in Council of Nov. 20, 1914.—SAP *v.* PICARD (1919), 20 Q. P. R. 179.—**CAN.**

[illegible] *Action under Families Compensation Act.*]—An action brought under the above Act, for the benefit of the mother of deceased, she being an alien enemy, cannot be maintained.—CREMIDAS *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1919] 2 W. W. R. 549.—**CAN.**

as such & is domiciled in England, has a right to bring a petition for the dissolution of his marriage.—KRAUSS (OTHERWISE DES SALLES D'EPINOIX) *v.* KRAUSS (OTHERWISE DES SALLES D'EPINOIX) & ORBACH (1919), 35 T. L. R. 637; 63 Sol. Jo. 760.

276. *Add. Annotation :*—**Refd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67.

280. *Add. Annotation :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

Delete the cross-reference following this case.

280a. Effect of peace—Treaties of Peace & consequent Orders—Right to sue after restoration of peace—Cause of action arising during war.]—In an action for infringement defts. alleged (*inter alia*) that, at all material times, pltf. had been residing or carrying on business in Germany; that, having regard to the Treaty of Peace, art. 309, or, alternatively, under the common law, he could not sue; & that, at the dates of the alleged infringements, the patent had been vested in the custodian under Trading with the Enemy Amendment Act, 1916 (c. 105), & pltf. could not maintain the action :—*Held :* pltf. could not maintain the action because (1) at the date of the alleged infringement, he had been a "hostile person" within the General Vesting Order made under Trading with the Enemy Amendment Act, 1916, & the patent had been vested in the custodian, & the Divesting Order had not transferred to pltf. a right of action that had accrued to the custodian; (2) the case fell within the Treaty of Peace, art. 309.—WILDERMAN *v.* BERK (F. W.) & Co., [1925] Ch. 116; 94 L. J. Ch. 136; 132 L. T. 534; 41 T. L. R. 50; 42 R. P. C. 79.

——.]—*See, also,* original volume, Nos. 202, 269, 270.

280b. —— —— —— —— Debt incurred by neutral.]—Deft., a Norwegian subject, living in England, incurred a debt to pltfs., an Austrian co., before the outbreak of war. After the Treaty of Peace pltfs. sued deft. for the amount :—*Held :* although the claim was against a neutral subject, yet, as Treaty of Peace Order, s. 7, made the debt payable to the administrator & transferred to him all the rights of the creditors, pltfs. had no right to bring the action.—JOSEF INWALD ACT. *v.* PFEIFFER (1927), 43 T. L. R. 399, C. A.; *affd.* (1928), 44 T. L. R. 352; 72 Sol. Jo. 205, H. L.

Annotations :—**Expld.** German Property Administrator *v.* Knoop (1932), 49 T. L. R. 109. **Refd.** Holland *v.* German Property Administrator, [1937] 2 All E. R. 807.

288. *Add. Annotation :* — **Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

291. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

293. *Add. Annotation :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

295. For "but not to a counterclaim," read "but not a counterclaim."

Citation :—For "34 R. P. C. 332" read "34 R. P. C. 339."

297. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

299. For existing citations read :—

[1915] 3 K. B. 154; 84 L. J. K. B. 1806; 113 L. T. 596; 31 T. L. R. 464, C. A.

Add. Annotation :—**Refd.** Richardson *v.* Richardson, [1927] P. 228.

300. For "No. 299, *ante*," read "(1914), 31 T. L. R. 83; 59 Sol. Jo. 147."

Add. Annotation :—**Refd.** Richardson *v.* Richardson, [1927] P. 228.

303. *Add. Annotations :*—**Consd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107. **Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456.

304. *Add. Annotations :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Refd.** Ertel Bieber *v.* Rio Tinto Co., etc., [1918] A. C. 260; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

306. *Add. Citations :*— [1919] A. C. 59; 88 L. J. K. B. 147, H. L.

310. *Add. Annotation :*—*As to* (1) **Apprvd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

313. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

316. *Add. Annotations :*—*As to* (1) **Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59. *As to* (2) **Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

318. *Add. Annotation :*—**Refd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753.

320. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

322. *Add. Annotation :*—*As to* (1) **Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

329. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

---

274 iii. —— —— *War Measures Act.*]—PERLMAN *v.* PICHE (1918), Q. R. 54 S. C. 170; 41 D. L. R. 147; 24 R. de J. 438.—**CAN.**

276 ii. —— —— ——.]—A man of Austro-Hungarian nationality came to Canada after the outbreak of the war, & registered as an alien enemy. In violation of the law, he left Canada without an *exeat*, & on his return was prosecuted & fined. In Dec. 1917, he was arrested under the Immigration officer's warrant. His application for a writ of *habeas corpus* was refused on the following grounds: (1) he was an alien enemy, & could not, without the King's protection, sue in His Majesty's ct.; (2) he was not within the proclamation conferring protection upon alien enemies; (3) had he been within the protection of the proclamation, he lost his right by violation of the terms upon which protection was granted; (4) the ct. had no right to deal with the application without the consent of the Minister of Justice.—*Re* GOTTESMAN (1918), 29 Can. Crim. Cas. 439; 41 O. L. R. 547; 13 O. W. N. 344.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—C.

292 ii. ——.]—An alien enemy, who is sued by a British subject in a British ct. is entitled to be heard in defence.—UNION BANK *v.* LOHMANN, [1919] V. L. R. 418.—**AUS.**

292 iii. ——.]—An alien enemy who is sued has a right to defend the action & to appeal against any decision, final or interlocutory, that may be given against him.

Where a municipality served notice on the owner of land, sold for taxes, to take proceedings on a *caveat*, thereby compelling him to proceed to establish it :—*Held :* the owner, being an alien enemy, should be treated as being in the position of an alien enemy defending an action, & the action should not be dismissed.—REVENTLOW-CRIMINIL *v.* STREAMSTOWN RURAL MUNICIPALITY, [1920] 1 W. W. R. 577; 52 D. L. R. 266; 15 Alta. L. R. 204; *affg.*, [1917] 3 W. W. R. 546; 37 D. L. R. 394.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—D.

304 i. *Proceedings by partnership—Enemy partners.*]—If one of the partners in a firm is an alien enemy, neither he nor his partner, who does not bear an enemy character, can recover money owing to the firm.—HAJI AH JON *v.* ABDUL JALIL KHAN (1920), I. L. R. 1 Lah. 276.—**IND.**

Part IV.—Trading and Communicating with the Enemy.

332. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

336. *Add. Citation :—sub nom.* R. *v.* DE LA MOTTE (1781), 21 State Tr. 687.

347. *Add. Annotation :*—**Consd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

351. After the words " was void " at the end of the paragraph in original volume add "; (2) in the circumstances the indorsement to pltf. conveyed to him a legal title in the bills, on which he might sue after the return of peace."

359. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

363. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

370. *Add. Annotation :*—**Refd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

371. *Add. Annotations :*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331 ; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

374. *Add. Citation :*—13 Asp. M. L. C. 484.

375a. —— **Deportation order.**]—NELSON *v.* R., [1928] W. N. 197, P. C.

376. *Add. Annotation : — As to* (1) **Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

379. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

383. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

389a. —— **What amounts to " assignment "—Abandonment by enemy insured to neutral insurer.**]—In 1916 a firm in Germany despatched to a firm in Lima, both consignors & consignees being at that date enemies within the meaning of the Trading with the Enemy Acts, a parcel of diamonds by a Dutch steamship sailing from Amsterdam, the diamonds being insured against war and other risks with a Swiss insurance co. The British authorities, acting under the Reprisals Order of Mar. 11, 1915, required the Dutch vessel to put in to Kirkwall, where her cargo was examined, & the diamonds being found they were in due course placed in the custody of the Marshal of the Prize Ct., which, in Feb. 1918, ordered their detention & sale. After that order was made, but before the sale was carried out, the assured gave notice of abandonment of the diamonds & ceded all their rights therein to the insurance co., which accepted the notice & paid the assured as for a total loss. In 1919 the diamonds were sold, & the proceeds were ordered by the Prize Ct. to be handed to the predecessor in title of the Administrator of German property to be dealt with in accordance with the provisions of the Treaty of Versailles & the Treaty of Peace Order, 1919. The Swiss insurance co. claiming that as a result of the abandonment to them by the assured the diamonds became their property, now sued the Administrator of German Property to recover the proceeds of the sale :—*Held :* the action was not maintainable, inasmuch as (1) the notice of abandonment & its acceptance constituted an " assignment " within " Act B.," s. 6 (1) ; (2) the proceeds of sale of the diamonds constituted a " chose in action " within the same sub-sect. ; & (3) the Administrator of German Property, as representing the Crown, was entitled to rely on the provisions of that sub-sect. as precluding the insurance co. from recovering.—ALLGEMEINE VERSICHERUNGS-GESELLSCHAFT HELVETIA *v.* GERMAN PROPERTY ADMINISTRATOR, [1931] 1 K. B. 672 ; 100 L. J. K. B. 290 ; 144 L. T. 705, C. A.

389b. —— **What amounts to " chose in action "—Proceeds of sale of goods abandoned to neutral insurer.**] — ALLGEMEINE VERSICHERUNGS-GESELLSCHAFT HELVETIA *v.* GERMAN PROPERTY ADMINISTRATOR, No. 389a, *ante*.

392. *Add. Citation :*—1 Br. & Col Pr. Cas. 605.

392a. **" Proc. A," par. 7—Goods sent to enemy agent for sale.**]—Applts., who were Ottoman subjects carrying on business in England, in Sept. & Nov. 1915 posted to their agent, an Austrian subject, at Shanghai packets of diamonds for sale on their behalf. The diamonds were returned to England by the postal authorities & were seized in the Postal Censor's office in Nov. 1917. They were condemned on the ground that the transaction was a trading with the enemy :—*Held :* the diamonds were properly condemned, since under Trading with the Enemy (China, Siam, Persia & Morocco) Proclamation, 1915, applts.' agent was for the purpose of " Proc. A," an " enemy " & the transaction was a supplying with goods contrary to cl. 5 (7) of the latter Proclamation.—SALTI ET FILS *v.* PROCURATOR-GENERAL, [1919] A. C. 968 ; 88 L. J. P. 209 ; 121 L. T. 459 ; 35 T. L. R. 679 ; 14 Asp. M. L. C. 460, P. C.

395. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

PART IV. SECT. 2.

365 i. For " VAN ZYL *v.* PRENAAR " read " VAN ZIJL *v.* PIENAAR."

PART IV. SECT. 3, SUB-SECT. 1.

390 i. " *Act B.*," *s.* 6—*Assignment of chose in action to British firm—In payment of debt.*]—An Austrian firm was indebted to a London firm at the commencement of the war. On Sept. 25, 1914, the Austrian firm wrote a letter purporting to be an assignment to the London firm of a debt due to them by B. The letter contained an enclosure signed by the Austrian firm addressed to B. amounting to a notice of assignment of the debt. In the following December the London firm forwarded it to B. :—*Held :* as the transaction of Sept. 25 amounted to a valid equitable assignment of a chose in action for valuable consideration, it was not illegal as contravening the above sect.—GRUNDY *v.* BROADBENT, [1918] 1 I. R. 433.—**IR.**

sn. *Proclamation of December* 12, 1914—*Taking delivery of goods from enemy ships in neutral ports.*]—Pltfs. were a British bank carrying on business in London & Bombay. Defts. were a firm of merchants, British subjects, carrying on business in Bombay. On June 24, 1914, A., a German subject, drew a bill of exchange upon defts. in favour of pltfs. The bill purported to be drawn upon defts. against fifty bales of goods per a German steamer. The bill was accepted by defts. on July 20, 1914, payable at the office of pltfs. in Bombay. The steamer reached Bombay just before the outbreak of war, & in order to evade capture left Bombay & took shelter in a neutral port. The bill was presented for payment on the due date with the shipping documents attached but was dishonoured by non-payment. Pltfs. filed a suit on Sept. 30, 1915, to recover the amount due on the bill :—*Held :* pltfs. were entitled to succeed, as by the above Proclamation the consignees were permitted to take delivery of goods from enemy ships in neutral ports.—MOTISHAW & Co. *v.* MERCANTILE BANK OF INDIA (1916), I. L. R. 41 Bom. 566. —**IND.**

402. *Add. Annotations :—As to* (1) **Refd.** Lebeaupin *v.* Crispin, [1920] 2 K. B. 714. *As to* (2) **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *As to* (3) **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

402a. —— —— ——.]—Pltf. was a British subject carrying on business as an exporter of Manchester goods to Turkey. At the outbreak of war between Great Britain & Turkey deft. bank, a Turkish subject, was the holder of sight bills for the invoice amount in sterling of goods consigned by pltf. to Beyrout, which had arrived there shortly before the outbreak of war, & were subsequently delivered to the customers by deft. bank against payment in piastres. At the conclusion of the war deft. bank claimed the right to pay to pltf. an amount in sterling representing the then value of the piastres which they had received in payment for the goods. Pltf. claimed to be paid the sterling amount of the bills, or, in the alternative, damages for their conversion :—*Held :* (1) as the bank in Beyrout accepted the payment in lawful money from the Syrian merchant & handed over the goods, it constituted itself, as in a question with the drawer, debtor for the sterling amount on the face of the bill ; (2) it was not every contract that was abrogated by the war ; it was only a contract which was still executory & which for its execution required intercourse between the British subject & the enemy, & as the contract had been partially carried out, the bills had been indorsed, & the bank had been handed them together with the indorsed bills of lading, from that a subsidiary contract arose, namely, that on payment of the bills the shipping documents should be handed over, to execute which no intercourse between a British subject & the enemy was necessary ; & the bank was entitled to do what it did, & there could be no question of conversion, & having constituted themselves debtors in sterling, in sterling they must pay. —Ottoman Bank *v.* Jebara, [1928] A. C. 269 ; 97 L. J. K. B. 502 ; 139 L. T. 194 ; 44 T. L. R. 525 ; 72 Sol. Jo. 516 ; 33 Com. Cas. 260, H. L. ; *revsg.* S. C. *sub nom.* Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254, C. A.

Annotation :—As to (2) **Refd.** Simpson *v.* Maurice's Exors (1929), 14 Tax Cas. 580.

403. *Add. Annotation :*—**Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455.

405a. —— —— ——.]—For many years there existed in Germany works for the manufacture of dyestuffs (Farbenfabriken), belonging to a German concern which carried on business in England through agents. In 1878 the agents were a partnership firm consisting of A. & two other persons. In 1895 A. was the sole partner. In that year a limited co. was formed & registered in England, & in 1898 its name was changed to B. Co. Its original capital was £5,000, divided into 500 shares of £10 each of which A. held five shares & the German concern 470. In 1905 the capital was increased to £25,000 by the issue of 2,000 new shares fully paid, & in 1909 it was increased to £100,000, by the issue of 7,500 like shares. At the times material the German concern held 9,912 shares & A. twenty shares. By an agreement dated in 1910 between the German concern & B. Co., the district of the German concern was defined as the whole world outside the United Kingdom with the Channel Islands & the Isle of Man, & the district of B. Co. as the United Kingdom, the Channel Islands & the Isle of Man. The German concern bound itself not to import

---

PART IV. SECT. 4.

402 v. —— —— *Repayment of instalments.*]—In Apr., 1914, the A. co. contracted to construct machinery for the B. co. by Dec. 31, 1914. Progress payments were made by the B. co., but none of the machinery was ever delivered. After the commencement of the war, an order was, on Nov. 13, 1914, made under Trading with the Enemy Act, 1914, s. 8, appointing C. controller of the B. co., & on June 13, 1918, under Trading with the Enemy Act, 1914-1916, s. 9H, requiring the B. co. to be wound up, & appointing C. controller. The contract was never completed :—*Held :* the contract became null & void as from the commencement of the war, & neither the B. co. nor C. was entitled to recover from the A. co. any portion of the sum paid as progress payments.—*Re* Continental (1919), 27 C. L. R. 194.—**AUS.**

402 v. —— —— ——.]—A contract between a British firm & an Austrian firm, for the purchase by the latter of goods to be manufactured, provided for an extension of time for delivery if delay should occur owing to causes beyond the control of the sellers. The price was payable by instalments, of which £4,620 was paid to account of the whole when war broke out & it became illegal to implement the contract. None of the goods had at that time been delivered. Thereafter the goods were completed & sold in Great Britain at an enhanced price. Third parties having obtained a decree against the purchasers of the goods arrested money in the hands of the sellers of the goods :—*Held :* (1) the contract was dissolved by the outbreak of war ; (2) the sum paid to account of the price of the goods belonged to the buyers & was validly arrested in the hands of the sellers.—Davis & Primrose, Ltd. *v.* Clyde Shipbuilding & Engineering Co., Ltd. (1918), 56 Sc. L. R. 24.—**SCOT.**

402 vi. —— —— ——.]—In May, 1914, Scottish engineers contracted with Austrian shipbuilders to build a set of marine engines, payment to be by instalments. The first instalment had been paid, but no part of the engines had been built when war broke out & further performance of the contract became legally impossible. After the war on action brought for repetition of the instalment paid :—*Held :* as the instalment had been paid as part of the price of the engines, & as the engines had not been delivered owing to a cause for which neither of the parties was responsible, defenders were bound to make restitution of the instalment.—Cantiere *v.* Clyde, [1923] S. C. (H. L.) 105 ; 60 Sc. L. R. 635.—**SCOT.**

402 vii. —— —— *Enemy Contracts Annulment Act,* 1915.]—A contract was made in 1911 for the sale by the C. co. to the B. co. of the whole of the output of the C. co. In Sept. 1914, an agreement was entered into between the parties by which the terms of payment were varied :—*Held :* the agreement of Sept. 1914, was not rendered null & void by s. 3 (6) of the above Act, nor by Trading with the Enemy Act, 1914.—Broken Hill Proprietary Co., Ltd. *v.* Wabnock (1922), 30 C. L. R. 362.—**AUS.**

402 viii. —— ——.]—On Feb. 2, 1914, deft. firm agreed to sell to pltfs. steel bars under a c.i.f. contract free Hooghly. The goods were shipped on July 2, 1914, per a German steamer, which was subsequently captured with her cargo & condemned by the Prize Ct. :—*Held :* the contract under which the goods would be delivered in the Hooghly became impossible by the outbreak of war within Indian Contract Act, s. 56, & was void.—Madhoram Hurdeo Das *v.* Sett (1917), I. L. R. 45 Calc. 28.—**IND.**

405 i. —— —— *Effect of suspensory clause.*]—By a contract made after the outbreak of war with Germany to supply German dyes, deft. was not to be liable in case of non-arrival of the steamers at certain ports on account of the state of war. The ship & the dyes therein were seized & condemned by a Prize Ct. :—*Held :* (1) the contract was unenforceable ; (2) the Royal Proclamation of Sept. 8, 1914, put an end to the contract.—Abdul Razack *v.* Khandi Row (1918), I. L. R. 41 Mad. 225.—**IND.**

sp. *Debtor of alien enemy—Payment of interest in respect of transaction entered into before outbreak of war—Right to repayment.*]—Where a person indebted to an alien enemy had paid interest in respect of a transaction entered into before the outbreak of hostilities & sought a refund of the amount paid for the period between the outbreak of hostilities & the date of a licence to trade obtained by the enemy firm :—*Held :* he was not entitled to such refund, as there was no suspension of interest in respect of

goods into B. Co.'s district except for the purposes of B. Co., & B. Co. bound itself not to import into the German concern's district except for the purposes of the German concern. By an agreement, dated in 1912, between the same parties & operative for seven years, the German concern bound itself to sell to B. Co. & to no one else in the United Kingdom for sale in the United Kingdom anilines & chemicals manufactured by the German concern, & B. Co. bound itself to buy from the German concern & from no other manufacturer such dyestuffs. By unwritten agreement B. Co. was bound from its inception to import only from the German concern. From the time of the registration of B. Co. A.'s firm ceased to act as agents for the German concern. B. Co. sold not in the name of the German concern, but in its own name, & as a principal; but it announced to the world on its office windows, & to its customers on notepaper & other documents & by books, catalogues & samples, that it was the sole importer in England of the manufactures of the German concern. It was thus brought home to the customers that they were buying the produce of the German concern as before. The new *régime* was in effect a continuation of the agency though legally the agency had ceased. The business of B. Co. was conducted by A. & another director, both resident in England. The German concern supplied them with lists of prices to be charged by the German concern to B. Co., B. Co. making a profit by selling to customers at a price higher than the list. If an English customer offered to buy at a price lower than the list, the German concern would reduce its price to B. Co. accordingly. The overwhelming shareholding of the German concern in B. Co. caused it to be vitally interested, as seller & buyer, in the contract between itself & B. Co. & as seller in the contract between B. Co. & its customer. Down to the outbreak of war between England & Germany on Aug. 4, 1914, the control of B. Co., its business, affairs & acts, were in the hands of the German concern. On Apr. 1, 1914, B. Co. entered into a contract with a British firm for a supply to the firm of dyestuffs, identified by letters & numbers as the manufacture of the German concern or of other German manufacturers, of which samples from Germany were in the possession of the British firm. It was provided that any duties imposed by the British Govt. on the goods should be paid by the British firm or the price should be advanced accordingly. It was further provided that deliveries or orders off the contract might be suspended by either party if any contingency should arise beyond the control of the parties, such fire, as accidents, war, strikes, or the like. The contract covered a period unexpired at the outbreak of war. At that date quantities of dyestuffs remained undelivered & were never afterwards delivered. An order was made by the Board of Trade, under Trading with the Enemy Amendment Act, 1916 (c. 105), s. 1, for the winding up of the business of B. Co., & a controller appointed. In the winding up the British firm claimed damages for breach of contract in the non-fulfilment of deliveries. The controller resisted the claim on the grounds: (*a*) that the contract was dissolved at the outbreak of war, because B. Co. was an enemy or of enemy character, because the parties contracted on the footing that the goods should come from Germany, & because continued existence or performance of the contract would involve intercourse with, or tend to assist the enemy; (*b*) that owing to the suspension clause no right to damages had yet arisen; (*c*) that the object of the contract had been frustrated, because the period of suspension was indefinite & beyond the contemplation of the parties, because performance of the contract was prevented by Govt. action or embargo, & because the basis of the contract was that the importation of the goods to be supplied should continue to be possible & by reason of war it was rendered impossible. On application to the ct. by the controller for directions whether the claim should be admitted as a debt due from B. Co.:—*Held:* (1) at the date of the outbreak of war B. Co. assumed enemy character, &, accordingly, the contract became dissolved by the outbreak of war as being a current contract entered into with a co. which *eo instanti* assumed enemy character; (2) the abrogation of the contract by outbreak of war being founded on public policy, the presence of a suspension clause in the event of war did not assist the claimant, & if "war" in the clause included war between England & Germany the clause was void as against public policy, & the claim must be rejected; (3) assuming that B. Co. had not assumed enemy character at the outbreak of war, the claim must fail on the following grounds: that, the contract being for the supply of goods to be obtained from Germany, further performance on the outbreak of war involved intercourse with the enemy & became illegal accordingly; that, the contracts having been made on the basis that the existing commercial conditions would continue & that the basis having ceased to exist by outbreak of war between England & Germany, the commercial object of the contract had been frustrated, & the contract was dissolved at the outbreak of war; (4) the suspension clause was not intended by the parties to apply to war between England & Germany; (5) the doctrine of frustration applied to contracts for the sale of unascertained goods.—*Re* BADISCHE CO., LTD., *Re* BAYER CO., LTD., *Re* GRIESHEIM ELEKTRON, LTD., *Re* KALLE & CO., LTD., *Re* BERLIN ANILINE CO., LTD., *Re* MEISTER LUCIUS & BRUNING, LTD., [1921] 2 Ch. 331; 91 L. J. Ch. 133; 126 L. T. 466.

---

such transactions during that period.—VALLI MAHOMED ABU *v.* BERTHOLD REIF (1919), I. L. R. 44 Bom. 1.—IND.

sq. *Erection of machinery—Replacement of defective parts.*]—In Mar. 1913, resps. contracted to supply & erect certain machinery for applt. In Mar. 1914, the machinery was erected, & in June, 1914, it broke down. By an agreement made in Jan. 1915, resps. agreed to replace the defective parts, & did so in Apr. 1915. Shortly afterwards the machinery again broke down. In July, 1915, resps. were declared to be a co. "managed or controlled, directly or indirectly, by or under the influence of, or carried on wholly or mainly for the benefit or on behalf of persons of enemy nationality":—*Held:* the agreement of Jan. 1915, &, subject to the exception in Enemy Contracts Annulment Act, 1915, s. 3 (5), the agreement of Mar. 1913, were null & void.—SYDNEY MUNICIPAL COUNCIL *v.* AUSTRALIAN METAL CO., LTD. (1926), 37 C. L. R. 550.—AUS

406. *Add. Citations:—affd. sub nom.* FRIED KRUPP AKT. *v.* ORCONERA IRON ORE CO., LTD. (1919), 88 L. J. Ch. 304; 120 L. T. 386; 35 T. L. R. 234, H. L.

408. *Add. Annotations:—As to* (1) **Folld.** Fried Krupp Akt. *v.* Orconera Iron Ore Co (1919), 88 L. J. Ch. 304. **Refd.** Central India Mining Co. *v.* Soc. Colonial Anversoise, [1920] 1 K. B. 753; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 38 T. L. R. 739; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254. *As to* (2) **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *As to* (3) **Refd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623.

409. *Add. Annotation:*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

409a. —— —— **Effect of Treaties of Peace & consequent Orders.**]—ROWE BROTHERS & CO., LTD. *v.* LINDGENS (1920), 36 T. L. R. 247.

411. *Add. Annotation:—As to* (1) **Refd.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

412. *Add. Annotation:*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

412a. Insurance policy—Effect of Treaties of Peace & consequent Orders.]—EXCESS INSURANCE CO., LTD. *v.* MATHEWS (1925), 31 Com. Cas. 43.

413. *Add. Annotation:—As to* (2) **Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

416. *Add. Annotations:*—**Consd.** Simpson *v.* Maurice's Exors. (1929), 14 Tax Cas. 580. **Refd.** Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

418. *Add. Annotation:*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

419a. —— **Property otherwise subject to confiscation.**]—THE DEERGARDEN (1747), cited in 1 Ch. Rob. at p. 202; THE ST. PHILIP (1747), cited in 8 Term Rep. at p. 556; THE ELIZABETH (1749), cited in 1 Ch. Rob. at p. 202; THE LADY JANE (1749), cited in 1 Ch. Rob. at p. 202; THE RINGENDE JACOB (1750), cited in 1 Ch. Rob. at p. 202; THE JUFFROUW LOUISA MARGARETHA (1781), cited in 1 Ch. Rob. at p. 203; THE COMPTE DE WOHRONZOFF (1781), cited in 1 Ch. Rob. at p. 205; THE EXPEDITE VAN ROTERDAM (1782), cited in 1 Ch. Rob. at p. 206; THE BELLA GUIDITA (1785), cited in 1 Ch. Rob. at p. 207; THE EENIGHEID (1795), cited in 1 Ch. Rob. at p. 210; THE FORTUNA (1795), cited in 1 Ch. Rob. at p. 212; THE FREEDEN (1795), cited in 1 Ch. Rob. at p. 213; THE WILLIAM (1795), cited in 1 Ch. Rob. at p. 214.

——.]—*See, also,* Nos. 369-371, *ante.*

424. *Add. Annotation:*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

425. *Add. Annotation:*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

429. *Add. Annotation:—As to* (1) & (2) **Refd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

440a. ——.]—LA FLORA (1805), 6 Ch. Rob. 1; 1 Eng. Pr. Cas. 515; 165 E. R. 828.

445. *Add. Annotation:—As to* (1) **Refd.** The Rannveig, [1922] 1 A. C. 97.

460. *Add. Annotation:*—**Refd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

493a. —— ——.]—Where a licence is granted for a voyage to a hostile country, to continue in force till a given day, if the voyage is *bonâ fide* begun before that day, it continues to be protected by the licence, though delayed beyond the day by stress of weather or other accident over which the assured have no control.—GRONING *v.* CROCKETT (1811), 3 Camp. 83; 170 E. R. 1313, N. P.

Part V.—Acquisition of British Nationality.

515. Before this case add "*See* note to Part I., *ante.*"

520. *Add. Citation:*—26 Cox, C. C. 211, D. C.
Add. Annotation:—**Consd.** Markwald *v.* A.-G., [1920] 1 Ch. 348.

520a. —— ——.]—A natural-born German subject left Germany in 1878 & went to Australia, where, in 1908, he took the oath of allegiance to His Majesty & was granted under the powers of the Naturalisation Act, 1903, a certificate of naturalisation by which he became entitled to all political & other rights, powers, & privileges to which a natural-born British subject is entitled in the Commonwealth. He subsequently became a resident in London & was charged & convicted for that, being an alien, he had failed to furnish to a registration officer the particulars required by Aliens Restriction (Consolidated) Order, 1916, & his conviction was afterwards upheld by a Div. Ct. In an action brought by pltf. against the A.-G. for a declaration that he was no alien in England, but a liege

---

PART IV. SECT. 5, SUB-SECT. 1.

420 i. *Necessity for licence—How given—Approval of contract by officer entrusted to grant licence.*]—*Held:* the fact that a contract had been approved by the officer who was *de facto* entrusted by the Crown with the exercise of the prerogative to grant licences to trade with the enemy was an answer to prosecutions for trading with the enemy.—DONOHOE *v.* SCHROEDER (1916), 22 C. L. R. 362.—**AUS.**

PART V. SECT. 3.

518 ii. —— —— *Child of mother naturalised by subsequent marriage.*]—Sect. 10 (5) of the above Act does not apply to an infant whose mother by her subsequent marriage to a naturalised British subject has herself become a British subject but has not, while a widow, obtained a certificate of naturalisation in the United Kingdom.—JERGER *v.* PEARCE (1920), 27 C. L. R. 526.—**AUS.**

ss. *Commonwealth Naturalisation Acts, 1903-1917, s 10—Effect—Step-child of man naturalised under Naturalisation Act,* 1870 (c. 14).]—The above sect. does not apply to a child whose mother has married a man who was naturalised under Naturalisation Act, 1870 (c. 14).—JERGER *v.* PEARCE (1920), 27 C. L. R. 526.—**AUS.**

ss. *Naturalisation Act, R. S. C.,* 1906 (c. 77)—*Status of naturalised persons.*]—An alien naturalised in Canada under the above Act acquires the status of a British subject.—*Re* SOLVANG, [1918] 3 W. W. R. 876; 43 D. L. R. 549.—**CAN.**

v i. *Naturalisation Acts—Fitness of applicant—Previous conviction.*]—The fact that appct. had several years before undergone a sentence of imprisonment in default of paying a fine for supplying intoxicating liquor to an Indian is not a bar to his claim for naturalisation under the above Acts.—*Re* BRESNIK (1920), 58 D. L. R. 233; 34 Can. Crim. Cas. 167.—**CAN.**

subject of His Majesty the King, & entitled to the protection of His Majesty the King in all parts of His Majesty's Kingdom & Dominions:—*Held:* neither the taking of the oath of allegiance alone, nor the taking of the oath coupled with the grant of the certificate in Australia, made pltf. a British subject in the United Kingdom, & he was, therefore, an alien when in the United Kingdom, & the declaration must be refused. Pltf. was at least to this extent to be regarded as an alien, that he was a person so described in British Nationality & Status of Aliens Act, 1914 (c. 17), & for the purposes of that Act. He was a person entitled under that Act to apply as an alien for & to have granted to him in the United Kingdom a certificate of naturalisation.—MARKWALD *v.* A.-G., [1920] 1 Ch. 348; 89 L. J. Ch. 225; 122 L. T. 603; 36 T. L. R. 197; 64 Sol. Jo. 239, C. A.

Part VI.—Loss of British Nationality.

532. *Add. Annotation:*—*As to* (2) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

533. *Add. Annotations:*—**Consd.** Fasbender *v.* A.-G., [1922] 1 Ch. 232. **Refd.** *Re* Chamberlain's Settlement, [1921] 2 Ch. 523; Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850.

536. *Add. Citation:*—26 Cox, C. C. 177, D. C.

537. *Add. Citations:*—16 L. G. R. 764; 26 Cox, C. C. 244, D. C.

538. *Add. Annotations:*—**Consd.** Fasbender *v.* A.-G., [1922] 1 Ch. 232. **Refd.** *Re* Chamberlain's Settlement, [1921] 2 Ch. 533; Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850; Kramer *v.* A.-G., [1923] A. C. 528.

538a. —— **British woman marrying alien—In time of war.**]—FASBENDER *v.* A.-G., KRAMER *v.* A.-G., No. 49d, *ante*.

Part VIII.—Immigration and Expulsion of Aliens.

540. *Add. Annotation:*—**Refd.** Johnstone *v* Pedlar, [1921] 2 A. C. 262.

541. *Add. Annotation:*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

PART VI.

sb. *Revocation—Whether reasons need be stated.*]—A revocation of a certificate of naturalisation need not state the reasons of the Governor-General.—MEYER *v.* POYNTON (1920), 27 C. L. R. 436.—**AUS.**

sc. —— *Effect of Treaty of Peace with Germany.*]—Art. 278 of the above Treaty does not affect the right of the Governor-General to revoke the certificate of naturalisation of a natural-born German subject.—MEYER *v.* POYNTON (1920), 27 C. L. R. 436.—**AUS.**

sd. *Declaration of intention to become citizen of foreign State.*]—By going to the United States & there making a declaration of intention to become a citizen of that country, a person of German birth naturalised in Canada does not cease to be a British citizen.—NEWMAN (or NEUMAN) *v.* BRADSHAW, [1917] 1 W. W. R. 1223; 23 B. C. R. 492.—**CAN.**

534 i. *British Nationality & Status of Aliens Act*, 1914 (c. 17)—*Declaration of alienage—Effect on liability under Military Service Acts.*]—A natural-born British subject who is also an American subject, & has been duly called up under Military Service Act, 1916, ss. 3, 11, is not relieved from his obligation to serve by a declaration of alienage under British Nationality & Status of Aliens Act, 1914 (c. 17).—*Re* HORNE, [1919] N. Z. L. R. 190.—**N.Z.**

PART VIII.

540 ix. —— *Son of domiciled Chinaman.*]—The domicil gained by a Chinaman in Canada was held not available for the benefit of his son, twelve years of age, who had lived his lifetime in China, so as to give the son Canadian domicil.—*Re* WONG SUEY MONG, [1921] 3 W. W. R. 122.—**CAN.**

540 x. —— *Son of naturalised Russian.*]—A Russian, an insane person, was held for deportation under Immigration Act (Consolidation), s. 3. His release was applied for on the ground that his father had been resident in Canada for a number of years & had been naturalised there, & that the domicil of the father applied to the son:—*Held:* the son had no domicil in Canada & was expressly prohibited from landing under the Immigration Act.—*Re* LIPSTEIN, [1923] 2 D. L. R. 1055; 56 N. S. R. (G. & R.) 292.—**CAN.**

e (p. 193) **i.** —— ——.]—A deportation order made by an immigration officer, when there is no Board of Inquiry in the vicinity of the port of entry, must show on the face of it that there was no such Board there.—R. *v.* BANNSTEAD, *Ex p.* HIANSON, *Ex p.* MOLLER (1920), 55 D. L. R. 287.—**CAN.**

sf. *Immigration Act*, 1901-1920—*Prohibited immigrant—Onus of proof—Evidence of prosecution incomplete.*]—Where, on a prosecution under sect. 5 (2) of the above Act, the prosecution proves some only of the relevant facts & does not complete them so as to enable the tribunal to come to a conclusion one way or the other, the averment that deft. is an immigrant & has entered the Commonwealth within three years before failing to pass the dictation test is, under sect. 5 (3), to be deemed to be proved in the absence of proof to the contrary by the personal evidence of deft.—GABRIEL *v.* AH MOOK (1924), 34 C. L. R. 591; 31 Argus L. R. 84.—**AUS.**

sj. —— —— *Person born in Australia returning from abroad.*]—Where a person born in Australia has left the Commonwealth, the question whether, when he attempts to re-enter the Commonwealth, he is an immigrant within the above Act depends on whether he is as a fact coming back to Australia as to his home.—DONOHOE *v.* WONG SAU (1925), 36 C. L. R. 404.—**AUS.**

sk. —— *Application to immigration after date of enactment.*]—Applt., an alleged prohibited immigrant, entered the Commonwealth not later than the year 1906 & the dictation test, which he failed to pass, was applied to him in the year 1930. No substantive evidence was adduced that applt. had evaded an officer, the only evidence of this fact being the averment thereof contained in the information:—*Held:* s. 5 (1) (*a*) of Immigration Act, 1901-1925, only operates & applies to immigrants who enter Australia after the date of its enactment.—AH YOU *v.* GLEESON (1929), 43 C. L. R. 589; 4 A. L. J. 160; (1930), Argus L. R. 273.—**AUS.**

sm. —— *European language—What is.*]—The expression "an European language" in Immigration Restriction Act, 1901, s. 3 (*a*), means a standard form of speech recognised as the received & ordinary means of communication among the inhabitants of an European community for all purposes of the social body. Scottish Gaelic is not such a language.—R. *v.* WILSON, *Ex p.* KISCH (1935), 52 C. L. R. 234; 8 A. L. J. 348; 41 Argus L. R. 130.—**AUS.**

sn. —— —— *Refusal to hear dictation.*]—A passage of not less than fifty words in the Italian language was dictated to an immigrant by a person duly authorised under sect. 3 (*a*) of the Immigration Act, 1901-1935. The immigrant, who deliberately prevented herself from hearing the dictation, refused to, & did not in fact, write any words in the Italian or any language:—*Held:* the immigrant had failed, within the meaning of sect. 3 (*a*), to pass the dictation test.—R. *v.* DAVEY, *Ex p.* FREER (1937), 56 C. L. R. 381; 43 Argus L. R. 71.—**AUS.**

e (p. 194) **i.** —— —— "*Landing*"—*What is.*]—"Landing" is the original act of landing & not the return of a certificated Chinese resident of Canada from a short visit to an adjacent city in the United States.—R. *v.* FONG SOON, [1919] 1 W. W. R. 486; 45 D. L. R. 78; 31 Can. Crim. Cas. 78.—**CAN.**

sl. —— *Whether repugnant to Immigration Act*, 1910 (*c.* 27).]—The powers & mode of procedure of the Board of Inquiry as to deportation under the latter Act are repugnant to

541a. Alien "found in the United Kingdom" after leave refused—Alien landed in custody of Irish Free State police.]—A French subject landed in the United Kingdom on Mar. 14, 1933, with a French passport, which was endorsed with conditions prohibiting her employment in the United Kingdom. On Mar. 22 those conditions were varied by a

the former Act, & do not apply.—*Re* IMMIGRATION ACT, R. *v.* JEN JANG HOW, [1919] 3 W. W. R. 271; 47 D. L. R. 538.—**CAN.**

sm. —— ——.]—Sect. 18 of the former Act is not repugnant to s. 3 of the latter Act.—*Re* JUNG YIN, [1921] 3 W. W. R. 194.—**CAN.**

sn. *Chinese Immigration Act*, 1923 (*c.* 38)—*Deportation order—Appeal from—Person not Canadian citizen or having no Canadian domicil.*]—*Held:* the ct. had no jurisdiction to interfere.—*Re* YEE FOO, [1925] 2 D. L. R. 1113; 44 Can. Crim. Cas. 17; 56 O. L. R. 669.—**CAN.**

sp. *S.P. Re* YOUNG SUE HING (1926), 37 B. C. R. 227; [1926] 2 W. W. R. 374.—**CAN.**

sq. —— —— ——.]—*Certiorari* in general lies with respect to an order for deportation made under sect. 26 of the above Act; & sect. 38 is no bar to its application to such orders when made without or in excess of jurisdiction or in violation of the essentials of justice.—*Re* LOW HONG HING, [1926] 3 D. L. R. 692; [1926] 2 W. W. R. 597; 46 Can. Crim. Cas. 65; 37 B. C. R. 295.—**CAN.**

sr. —— *Alien allowed to land pending inquiry—Omission to obtain deposit as security.*]—*Held:* not equivalent to an assent to the alien being landed.—R. *v.* LEE CHOW YING, [1927] 1 W. W. R. 527; 47 Can. Crim. Cas. 203; 38 B. C. R. 241.—**CAN.**

ss. —— *Certificate obtained by fraud—Conclusive.*]—When the Controller of Chinese Immigration has concluded after inquiry that a Chinaman is entitled to enter Canada & has permitted him to land & given him the certificate provided for in sect. 17 of above Act, the Controller has exhausted his jurisdiction & even though it is afterwards discovered that a fraud has been committed on him, the Chinaman's right to be in Canada can be contested only before a judge as provided in sect. 17 of above Act.—R. *v.* CHIN SACK, [1928] 1 D. L. R. 779; [1928] 1 W. W. R. 618; 49 Can. Crim. Cas. 43; 39 B. C. R. 223.—**CAN.**

sv. —— *Habeas corpus—Right of person claiming Canadian birth.*]—Chinese Immigration Act, 1923 (c. 38), s. 38, enacts inferentially that anyone claiming Canadian birth has a right to apply for relief by way of *habeas corpus* from the Comptroller's decision.—*Re* CHINESE IMMIGRATION ACT & LEE CHOW YING (1928), 49 Can. Crim. Cas. 168; 39 B. C. R. 322.—**CAN.**

sw. *Chinese Immigration Act*, 1927 (*c.* 95)—*Decision as to validity of certificate—No appeal.*]—*Ex p.* CHIN SHACK (B. C.) (1928), 50 Can. Crim. Cas. 137.—**CAN.**

sx. —— *Previous deportation—Bar to admission.*]—*Re* LIM COOIE FOO, [1931] 1 W. W. R. 233; *revsg.*, [1930] 1 W. W. R. 894; 53 Can. C. C. 357; 42 B. C. R. 496; *sub nom.* R. *v.* LIM COOIE FOO (1930), 54 Can. C. C. 383; 43 B. C. R. 54.—**CAN.**

sy. —— *Habeas corpus—Order for examination—Appeal from.*]—R. *v.* LEE MOON KOO, [1931] 1 W. W. R. 571; 55 Can. C. C. 188; 43 B. C. R. 458.—**CAN.**

sm. —— *Certificate—Effect of decision as to validity.*]—When the validity of a certificate under Chinese Immigration Act, 1927, s. 17, has been decided by the ct., it is binding upon the controller, & his act on registering an alien out is ministerial & not judicial.—*Re* CHINESE IMMIGRATION ACT, & CHIN SACK (1931), 45 B. C. R. 3.—**CAN.**

so. —— *Validity of deportation order.*]—An order for deportation will be upheld, although the procedure laid down by Chinese Immigration Act, 1927, s. 10 (2), is not strictly followed, if an opportunity to retain counsel is given, & no injustice is done.—R. *v.* JUNG SUEY MEE (1932), 46 B. C. R. 533.—**CAN.**

q (p. 195) **i.** —— *Detention for return to country not specified in order—After admittance refused by country specified in order.*]—An order had been made under the above Act for deportation of a native of India to the United States. On the refusal of the United States immigration officials to allow him to enter he was held for deportation to India:—*Held:* he was illegally detained & was entitled to his discharge.—*Re* SANTA SINGH, [1924] 3 D. L. R. 1088; 3 W. W. R. 164; 34 B. C. R. 190.—**CAN.**

q (p. 195) **ii.** —— *Attempting to land forbidden person.*]—R. *v.* PALANGIO (1912), 22 O. W. R. 540; 3 O. W. N. 1440; 4 D. L. R. 611.—**CAN.**

so. —— *Whether repugnant to Chinese Immigration Act, R. S. C.*, 1906 (*c.* 95).]—*Re* IMMIGRATION ACT, R. *v.* JEN JANG HOW, [1919] 3 W. W. R. 271.—**CAN.**

sa. —— *Proceedings under—Not criminal proceedings.*]—R. *v.* ALAMAZOFF, [1919] 3 W. W. R. 281; 47 D. L. R. 533.—**CAN.**

sb. —— —— ——.]—*Re* IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156.—**CAN.**

sc. —— —— ——.]—*Re* PONG FOOK WING, *Re* IMMIGRATION ACT, [1923] 4 D. L. R. 1034; 3 W. W. R. 819.—**CAN.**

t (p. 195) **i.** —— —— *Person not Canadian citizen or having Canadian domicil.*]—The ct. cannot interfere with what is done by the Immigration officers looking to the deportation of aliens who have not acquired Canadian domicil.—*Re* GOTTESMAN (1918), 29 Can. Crim. Cas. 439; 41 O. L. R. 547; 13 O. W. N. 344.—**CAN.**

t (p. 195) **ii.** ——.]—Motion for release from custody of one held for deportation under an order of a Board of Inquiry, was dismissed for want of jurisdiction in the ct. under sect. 23 of the above Act. Appct. has not shown that he was a Canadian citizen or had Canadian domicil.—R. *v.* SCHOPPELREI, [1919] 3 W. W. R. 322.—**CAN.**

t (p. 195) **iii.** ——.]—The ct. has no power to interfere with an order of deportation made by the Board of Inquiry unless the person ordered to be deported be a Canadian citizen or have Canadian domicil.—*Re* IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156; *revsg.* 59 D. L. R. 626; 36 Can. Crim. Cas. 405; 30 B. C. R. 70.—**CAN.**

t (p. 195) **iv.** —— ——.]—*Habeas corpus* will lie in respect of a deportation order made by an immigration officer whose jurisdiction so to act in the stead of a Board of Inquiry is not shown on the face of the order, although an appeal by appct. to the Minister of the Interior under sect. 19 of the above Act has been unsuccessful.—R. *v.* BANNSTEAD, *Ex p.* HIANSON, *Ex p.* MOLLER (1920), 55 D. L. R. 287.—**CAN.**

t (p. 195) **v.** —— —— ——.]—If it be proved that the Board of Inquiry has not acted judicially, but merely on instructions from Ottawa, in ordering the deportation of a Chinaman, the ct. would be bound to grant an application for a writ of *habeas corpus*.—*Re* JUNG YIN, [1921] 3 W. W. R. 194.—**CAN.**

t (p. 195) **vi.** —— —— ——.]—An appeal lies in *habeas corpus* proceedings where a person is detained under the above Act.—*Re* IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 495; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156.—**CAN.**

t (p. 195) **vii.** —— —— ——.]—An appeal lies to the Ct. of Appeal from an order made in *habeas corpus* proceedings releasing a person detained under the above Act.—*Re* PONG FOOK WING, *Re* IMMIGRATION ACT, [1923] 4 D. L. R. 1034; 3 W. W. R. 819.—**CAN.**

v (p. 195) **i.** —— —— *Chinese immigrant.*]—Under sect. 23 of the above Act the ct. is prevented from interfering with the decision of a Board of Inquiry concerning the admission of a Chinaman to Canada.—*Re* WONG SIT KIT, [1921] 3 W. W. R. 116.—**CAN.**

v (p. 195) **ii.** ——.]—The decision of a Board of Inquiry as to the admission of a Chinaman is not subject to review by the ct.—*Re* WONG SUEY MONG, [1921] 3 W. W. R. 122.—**CAN.**

sd. *Immigration Amendment Act*, 1919 (*c.* 25)—*Not retrospective.*]—*Re* IMMIGRATION ACT & SANTA SINGH, [1920] 2 W. W. R. 999.—**CAN.**

se. —— *Appointment of immigration officer—Sufficiency.*]—The signature of the Acting Deputy Minister of Immigration & Colonisation is sufficient.—*Re* PAPPAS, [1921] 1 W. W. R. 949.—**CAN.**

sf. —— *Deportation order—Form of order.*]—Where an order only stated "P. C. 23" as the reason for deportation:—*Held:* such an order was defective.—R. *v.* LANTALUM, *Ex p.* OFFMAN (1921), 62 D. L. R. 223; 35 Can. Crim. Cas. 295; 48 N. B. R. 448.—**CAN.**

sg. —— —— *Amendment of order.*]—An order of deportation, insufficient in form as not showing jurisdiction, may be amended by the immigration officer.—*Re* PAPPAS, [1921] 1 W. W. R. 949.—**CAN.**

sh. *Immigration Law* (*R. S. C.*, 1927, *c.* 93)—*Right to annul expulsion order.*]—The tribunals have not power or jurisdiction to annul an expulsion order made against an immigrant on the strength of the immigration law even if they think the officials charged with administering the said law have not applied their orders correctly.—YERSHEMSKY *v.* MOQUIN (1928), Q. R. 45 K. B. 166.—**CAN.**

sa. —— *Right of illiterate relatives to admission—Effect of disqualification.*]—M., an immigrant from Japan in 1914, subsequently obtained a certificate of naturalisation as a Canadian citizen. In 1928 his wife & two children on arriving at Victoria from Japan were refused entry on the ground that they had not in their possession a valid passport issued in & by the Government of the country of which they were citizens as required by order in council pursuant to sect. 3 (1) of the Immigration Act. On *habeas corpus* proceedings appcts. claimed that notwithstanding their not having a passport they were entitled to admission into Canada by virtue of sect. 3 (*l*) of the Immigration Act:—*Held:* sect. 3 (*l*) is restricted to the question of illiterary of relatives of an admitted immigrant, & when otherwise disqualified such persons are prohibited from entering Canada.—*Re* TOKU NISHI (1928), 41 B. C. R. 199.—**CAN.**

sb. —— *Warrant of deportation need not be addressed to officer where alien*

condition requiring her departure from the United Kingdom on that day. She went forthwith to the Irish Free State. An order for her deportation therefrom was made by the executive authorities of the Irish Free State, & on Apr. 20 she was brought to Holyhead in the custody of the Irish Free State police & there handed over to the

detained.]—*Re* MAH FUNG (1930), 54 Can. C. C. 374.—**CAN.**

sr. —— *Validity of deportation order—What must be stated.*]—An order for deportation made by a Board of Inquiry under sect. 33 (7) of Immigration Act, 1927, which states that it was made because the deportee has entered Canada surreptitiously is not invalid because it does not also state that the Board found that he was not a Canadian citizen & did not have Canadian domicile.—R. *v.* TAKHAR, [1931] 3 W. W. R. 37; 56 Can. C. C. 376; 44 B. C. R. 360; [1932] 1 D. L. R. 332.—**CAN.**

ss. —— —— ——.]—In a deportation order the reasons for the deportation must be clearly stated. It is not sufficient to state as a reason that the deportee's entry was effected contrary to sect. 35 (7) of the Immigration Act. If not sufficiently stated the deportee is entitled to be discharged on *habeas corpus.*—*Re* MUNETAKA SAMEJIMA, [1931] 3 W. W. R. 56; 44 B. C. R. 317.—**CAN.**

st. —— —— *No fair hearing—Habeas corpus.*]—*Re* VEREGIN, [1933] 2 W. W. R. 409.—**CAN.**

su. —— —— —— *Costs.*]—Application of K. B. Rule 961.—VEREGIN *v.* SMITH, [1934] 1 W. W. R. 341.—**CAN.**

sg. —— *Defective deportation order quashed—No power of amendment.*]—The Board of Inquiry when a deportation order is found defective on its face, has the right to recall it & substitute therefor an order in proper form, so ong as the defective order had not been acted upon. Even after it has been served on the person in custody & constitutes the return made to a writ of *habeas corpus*, it may still by leave of the ct. or judge, be amended, or another order substituted for it, so as to make it conform to the finding of the Board. But after a deportation order which is not in accordance with the Act has been quashed by a ct. having jurisdiction, it cannot be amended for there is nothing to amend, the order of the Board no longer existing.—MUNETAKA SAMEJIMA *v.* R., [1932] S. C. R. 640; 4 D. L. R. 246; 58 C. C. C. 300.—**CAN.**

sv. —— *Prisoner in gaol pending deportation—Five months after termination of sentence—Grant of habeas corpus.*]—R. *v.* STACHOW, [1932] 2 W. W. R 698.—**CAN.**

sx. —— *Deportation "forthwith"—Effect of delay in obtaining passport.*]—Where in proceedings under sects. 40 & 42 of Immigration Act, R. S. C., 1927, an inquiry has been held & the deportation of the immigrant has been duly ordered, the fact that there is a long delay before a passport, promptly applied for, can be obtained from the immigrant's country does not render the order ineffective on the ground that sects. 42 (3) & 19 (2) of the Act require such person to be deported "forthwith."—*Re* JANOCZKA, [1932] 3 W. W. R. 29; [1933] 1 D. L. R. 123; 40 Man. L. R. 494; 58 C. C. C. 328.—**CAN.**

sy. —— —— *Meaning of.*]—"Forthwith" in the provision in Immigration Act, R. S. C., 1927, s. 42 (3), that when a man is ordered to be deported "he shall be deported forthwith" means within a reasonable time having regard to all the circumstances.—*Re* POLL, [1937] 3 W. W. R. 136; 7 F. L. J. (Can.) 85.—**CAN.**

sz. —— *Sufficiency of procedure.*]—Following a complaint under sect. 40 of Immigration Act, R. S. C., 1927, an investigation by a Board of Inquiry was held on which it was shown that the immigrant had been a public charge on the city of Winnipeg & the decision of the Board was that he be deported on the ground that he was not a Canadian citizen or a person having Canadian domicile & had become "in Canada a public charge": —*Held:* although the decision of the Board on such an inquiry must be accompanied by full reasons yet in the present case there had been ample particularity because to be a public charge on the city of Winnipeg is to be "in Canada, a public charge," & since the deportee admitted the truth of the complaint there was no defence which could be offered which would be effective. *Munetaka Samejima* v. *R.*, [1932] S. C. R. 640, does not call for greater particularity than was furnished in the present case. The fact that no papers were served upon the deportee before or during the inquiry is not objectionable where ample notice is given orally, especially in the case of a deportee unable to read English.—*Re* NAUMIEC, [1932] 3 W. W. R. 693; 40 Man. L. R. 622.—**CAN.**

sa. —— *Right to writ of habeas corpus.*]—Broadly speaking, every alien who has been admitted into & is actually in Canada & who has been taken into custody on a charge for which he may be deported, is entitled to the benefit of the writ of *habeas corpus* to test in ct. if his detention is according to law.—VAARO & WOROZOYT *v.* R., [1933] S. C. R. 36; 1 D. L. R. 359; 59 C. C. C. 1; *affg.* (1932), 5 M. P. A. 151; 58 C. C. C. 161.—**CAN.**

sc. —— *"Expiration" of sentence—Pardon.*]—The sentence or term of imprisonment of a convict released by pardon has not "expired" within Immigration Act, 1927, s. 43.—*Re* VEREGIN, [1933] 2 D. L. R. 362; 41 Man. L. R. 306; 60 C. C. C. 118.—**CAN.**

sd. —— —— ——.]—The sentence or term of imprisonment of a convict released by pardon has "expired" within Immigration Act, 1927, s. 43. —*Re* ROYAL PREROGATIVE OF MERCY IN DEPORTATION PROCEEDINGS, [1933] 2 D. L. R. 248; S. C. R. 269; 59 C. C. C. 301.—**CAN.**

se. —— *Detention of Canadian—No liability for false arrest.*]—The fact that a person taken into custody & investigated under an order of the Deputy Minister of Immigration made pursuant to a complaint under sect. 42 of Immigration Act, R. S. C., 1927, is found to be a Canadian citizen by birth &, therefore, not subject to deportation as an undesirable immigrant, does not render the Deputy Minister liable in an action for false arrest & imprisonment, even though the complaint did not give the full particulars called for by sect. 41.—WADE (OR ANDERSON) *v.* EGAN, [1934] 3 W. W. R. 219; [1935] 1 D. L. R. 542; 62 C. C. C. 260; *affd.*, 3 D. L. R. 756; 64 C. C. C. 21; 43 Man. L. R. 295.—**CAN.**

sf. —— *Deportation order—Appeal from dismissal of habeas corpus petition—Bail.*]—Applt., against whom a deportation order had been made, under sect. 42 of Immigration Act, R.S.C., 1927, & who had sought unsuccessfully by *habeas corpus* proceedings to be set at liberty & had then appealed to the Ct. of Appeal from the dismissal of his *habeas corpus* petition, now applied to be let out on bail pending the hearing of the appeal:—*Held:* there is no power in the cts. to grant bail in such a case.—R. *v.* COLEMAN, [1935] 3 W. W. R. 161; 4 D. L. R. 444; 64 C. C. C. 251; 43 Man. L. R. 380.—**CAN.**

sx. —— *Foreign wife of Canadian citizen—Right of entry.*]—A woman of French nationality may not enter Canada as the wife of a Canadian citizen in the absence of proof of her husband's citizenship.—VARIN *v.* CORMIER, [1937] 3 D. L. R. 588; 69 Can. C. C. 142.—**CAN.**

sy. —— *Examination as to birthplace—Appeal—Time for.*]—Appeal from order for examination as to whether appct. was born in Canada held premature.—R. *v.* SHIN SHIM (1937), 52 B. C. R. 79.—**CAN.**

sz. —— *Illegal entry—Effort of possession of passport.*]—The fact that a person in Canada has obtained a passport from the proper authorities has nothing to do with the question arising under Immigration Act, R. S. C., 1927, whether he had illegally entered Canada.—*Re* BANTA SINGH, [1938] 1 W. W. R. 328; 1 D. L. R. 789.—**CAN.**

sg. *Opium & Narcotic Drugs Acts—Proceedings under—Not criminal proceedings.*]—*Re* LOO LEN (No. 1), [1924] 1 D. L. R. 909; 1 W. W. R. 733; 41 Can. Crim. Cas. 386; 33 B. C. R. 448.—**CAN.**

sk. —— *Conviction under—No order against deportation—Power to make subsequent order.*]—There is no power to make an order except at the time of conviction.—*Re* JOE FONG (1923), 53 O. L. R. 493; 24 O. W. N. 39.—**CAN.**

sl. —— —— —— ——.]—An order against deportation made subsequently is invalid.—R. *v.* LEE PARK, [1924] 4 D. L. R. 883; 3 W. W. R. 490.—**CAN.**

sn. —— —— —— *Necessity for order.*]—Since under Opium & Narcotic Drug Act, 1923, s. 25, deportation follows automatically in the case of the conviction of an alien under sect. 4 (*d*), it is not necessary for a formal order for deportation to be made in such a case.—R. *v.* WOO FONG TOY (B.C.), [1926] 3 W. W. R. 703.—**CAN.**

so. —— —— *Validity of warrant.*]—The omission of the figures "1923" from the citation of the Act does not invalidate the warrant.—R. *v.* GAN, [1925] 3 W. W. R. 783.—**CAN.**

sp. —— —— *Subsequent detention for deportation—Validity.*]—Accused was convicted under s. 5*a* (2) of the 1911 Act & fined with imprisonment in default of payment. The fine was not paid, & on the termination of the imprisonment prisoner was held for deportation under s. 10*b*:—*Held:* the purpose of s. 10*b* was to superadd the penalty of deportation as a consequence of a conviction for the commission of any of the statutory offences created by s. 5*a*.—R. *v.* HOW, [1923] 4 D. L. R. 1007; 56 N. S. R. (G. & R.) 372.—**CAN.**

sl. —— —— —— ——.]—*Re* SUE SUN POY (No. 2), [1932] 3 W. W. R. 220.—**CAN.**

sm. —— —— —— ——.]—Before one convicted under Opium & Narcotic Drug Act, 1929, can be detained in custody for deportation an inquiry must be held to determine, first, that he has been convicted under one of the clauses of sect. 4 of said Act specified in sect. 26 thereof &, secondly, that he is an alien.—R. *v.* LOW KEE; R. *v.* WONG KIT CHOW, [1937] 3 W. W. R. 97.—**CAN.**

sq. —— —— —— *Application for release.*]—Where an alien has been convicted under s. 5*a* (2) of the 1911 Act & upon termination of the imprisonment imposed is detained for deportation under s. 10*b*, he is not entitled to release on *habeas corpus* on the ground of having Canadian domicil within Immigration Act, s. 43.—

police of the United Kingdom, by whom she was detained under arrest. She was subsequently charged that she, "being an alien to whom leave to land in the United Kingdom has been refused, was found in the United Kingdom," contrary to arts. 1 (3) (*g*) & 18 (1) (*b*) of Aliens Order, 1920, as amended by S. R. & O., Nos. 326 of 1923 &

R. *v.* CHANG SONG, [1924] 1 D. L. R. 1161; 1 W. W. R. 778; 42 Can. Crim. Cas. 8; 33 B. C. R. 176.—**CAN.**

sr. —— —— —— ——.]—A warrant of deportation regular on its face having issued after prisoner had served his sentence on conviction under the 1911 Act, the ct., on an application in *habeas corpus* proceedings, can only inquire into the truth of the statements made in the warrant, & cannot interfere by reason on the unlawful imposition of hard labour by the sentence & conviction.—R. *v.* CHOW TONG (1924), 34 B. C. R. 12.—**CAN.**

ss. —— —— —— ——.]—Where a prisoner has been convicted of an infraction of the 1923 Act & is held for deportation, the mere fact that the warrant committing him for deportation, although stating him to be an alien, does not show or recite that a Board of Inquiry was held as provided by Immigration Act, is not a ground for granting a writ of *habeas corpus*.—R. *v.* GEE DEW (No. 3), [1924] 3 D. L. R. 186; 2 W. W. R. 793; 42 Can. Crim. Cas. 213; 33 B. C. R. 548.—**CAN.**

st. —— —— —— ——.]—*Held*: *habeas corpus* proceedings "arising out of a criminal charge," & within the exception to the jurisdiction of the Supreme Ct. of Canada under Supreme Ct. Act, R. S. C., 1906, s. 36.—JUNGO LEE *v.* R., [1927] 1 D. L. R. 721; 46 Can. Crim. Cas. 329; [1926] S. C. R. 652.—**CAN.**

sw. —— —— —— —— *Appeal.*]—Accused was convicted under s. 5*a* (2) of the 1911 Act, & condemned to pay a fine, & in default of payment to imprisonment. Upon termination of the imprisonment he was kept in custody for deportation under s. 10*b*. A writ of *habeas corpus* was granted & accused ordered to be discharged from custody. On appeal the order was sustained.—*Re* MAH SHIN SHONG, *Re* SING YIM HONG, [1923] 4 D. L. R. 844; 39 Can. Crim. Cas. 401; 32 B. C. R. 176; [1923] 1 W. W. R. 1365.—**CAN.**

sx. —— —— —— ——.]—Where an alien on the termination of his imprisonment, imposed on conviction under the 1911 Act, is detained pending deportation & he applies for *habeas corpus*, but is refused release, an appeal from such refusal lies to the Ct. of Appeal.—*Re* LOO LEN (No. 1), [1924] 1 D. L. R. 909; 1 W. W. R. 733; 41 Can. Crim. Cas. 386; 33 B. C. R. 448.—**CAN.**

sg. —— —— —— ——.]—If the inquiry directed by sect. 26 of Opium & Narcotic Drug Act, 1929, to be held in accordance with the provision of Immigration Act, R. S. C., 1927, in the case of an alien convicted of certain offences under the former Act, is held before the term of the prisoner's sentence has expired, it is premature; & an order made thereon is a nullity. The Ct. of Appeal of British Columbia has jurisdiction to hear an appeal from the dismissal of a *habeas corpus* application arising out of a deportation order based on such an inquiry.—R. *v.* SUE SUN POY (No. 1), [1932] 3 W. W. R. 212; 4 D. L. R. 721; 46 B. C. R. 321; 58 C. C. C. 338.—**CAN.**

sy. —— —— —— *Validity of warrant of deportation.*]—The omission of the figures "1923" from the citation of the Act does not invalidate the warrant.—R. *v.* JUNGO LEE (1926), 46 Can. Crim. Cas. 92; 37 B. C. R. 318; [1926] 2 W. W. R. 734.—**CAN.**

sz. *Chinese Exclusion Act*, 1904 (*c.* 37) (*Cape*)—*Deportation after conviction—Effect of exemption certificate.*]—Applts., being Chinamen & holders of exemption certificates under the above Act, having each been convicted at least twice for offences against the gambling laws, but none of them having served two terms of imprisonment:—*Held*: not to be exempted under s. 2 (*e*) of the Act from s. 34, & liable under the terms of the latter sect. to be deported.—AH YET *v.* UNION GOVERNMENT, [1921] App. D. 97.—**S. AF.**

sa. *Act* 22 *of* 1913—*Prohibited immigrant—Asiatic—Holding qualifications for residence.*]—The entry of applt., an Asiatic, into Natal was not discovered until Apr. 1916, when he was arrested as a prohibited immigrant under s. 4 (1) (*a*) of the above Act:—*Held*: he had obtained no title to reside in the Union until he had successfully presented himself as an immigrant no matter how well qualified he might be to obtain a title to reside in the Union.—DESAI *v.* IMMIGRANTS' APPEAL BOARD (1916), 37 N. L. R. 277.—**S. AF.**

sb. —— —— *Indian returning after temporary residence in India—Domicil certificate not acquired before departure to India.*]—Applt., a resident in Natal from 1897, in 1911 went to India with the object of seeking a wife there from among his own relations. Prior to leaving for India he applied to the authorities for a certificate of domicil, but that certificate was illegally refused. Applt.'s visit to India was extended to a period of four years, & he returned to Natal in Apr. 1915:—*Held*: applt.'s visit to India was for a special or temporary purpose; the home in Natal continued to be his place of permanent abode, & he was domiciled in Natal within s. 30 of the above Act.—KAJEE *v.* IMMIGRANTS' APPEAL BOARD (1916), 37 N. L. R. 42.—**S. AF.**

sc. —— —— —— *Domicil certificate acquired before departure to India.*]—Immigrant, an Indian, first came to Natal in 1893, where he continued to reside. In 1899 he obtained a certificate of domicil. In 1902 immigrant went back to India. Recently he returned to Natal but was refused admission as being a prohibited immigrant under the above Act:—*Held*: the certificate conferred upon him rights, which were not restricted by the above Act, & there was no intention on the part of immigrant to abandon his domicil in Natal.—*Re* RUNGASAMY CHETTY (1917), 38 N. L. R. 42.—**S. AF.**

sd. —— —— —— *Domicil certificate acquired by deceased parent.*]—K., the possessor of a certificate of domicil under the above Act, brought his wife & son, N., to Natal from India in 1911. In 1914 they returned to India & lived there till after K.'s death in Natal in 1917. On a question as to whether N. could of right enter Natal in 1920:—*Held*: N. had no such right under s. 5 (*g*) of the above Act, as he had no father domiciled in Natal.—NATHOO *v.* IMMIGRANTS' APPEAL BOARD (1921), 42 N. L. R. 30.—**S. AF.**

se. —— —— *Second wife of Mohammedan.*]—Where a Mohammedan's daughter & her mother have returned to India & both are residing there, another wife of such Mohammedan is not a prohibited immigrant.—MARIAM & MAHOMED *v.* IMMIGRANTS' APPEAL BOARD (1918), 39 N. L. R. 382.—**S. AF.**

sf. —— —— *Sons of domiciled parents—Resident in another province.*]—M. & Y., Asiatics, & the minor sons of parents resident in the Transvaal, but formerly resident in Natal, & holding certificates of domicil under the above Act, were declared prohibited immigrants in Natal, neither M. or Y. having ever been resident in Natal save for temporary purposes during which periods their parents remained in the Transvaal.—MAHOMED *v.* PRINCIPAL IMMIGRATION OFFICER (1921), 42 N. L. R. 337.—**S. AF.**

sg. —— —— —— *Parent resident in India.*]—Applt. was born in India, in 1913, of a woman who was recognised as the wife of an Indian, S., but who had never been in the Union. S. had entered the Transvaal in 1907 & had, thereafter, acquired a domicile of choice in the Transvaal, but in 1919 had returned to India, & had since not been in the Union. Save that there was evidence that S. was undergoing medical treatment in India, there was no explanation of his long stay there. He had shares to the value of £4,000 in a business in the Transvaal but had apparently never taken any active part in the business. Applt., aged 12, arrived in the Union & claimed a right to enter the Union under Act 22 of 1913, s. 5 (*g*). On appeal from a judgment of a Provincial Div. in a case stated by the Immigrants Appeal Board:—*Held*: assuming the onus rested upon the immigration officer, the Board was entitled to find that S. had abandoned his Transvaal domicile, &, therefore, applt. was a prohibited immigrant.—MAHOMED *v.* PRINCIPAL IMMIGRATION OFFICER, [1929] App. D. 190.—**S. AF.**

sh. —— *Deportation under—Conviction obtained without Union.*]—A person not born in the Union of South Africa who is convicted of an offence under s. 4 (1) (*b*) of the above Act is liable to be deported under s. 22, whether the conviction took place within or without the Union.—COLLINGWOOD *v.* UNION GOVERNMENT, [1917] App. D. 550.—**S. AF.**

sj. —— *Boarding ship before examination of immigrants completed.*]—Where a person was convicted of being on board a ship before the general examination of immigrants had been completed, & stated in defence that notice to the master of the ship had been given:—*Held*: he was rightly convicted.—ANGLIA *v.* R. (1918), 39 N. L. R. 147.—**S. AF.**

sk. —— *Decision of immigration authority—Jurisdiction of court to interfere.*]—The ct. may interfere where there is a manifest absence of jurisdiction or if an order is made or obtained fraudulently.—UNION GOVERNMENT *v.* FAKIR, [1923] App. D. 466.—**S. AF.**

sl. —— —— ——.]—Appct., an Asiatic, had been declared by the immigration officer of Natal to be a prohibited immigrant. On application to the ct. for an order restraining his deportation:—*Held*: as the immigration officer had not acted outside his jurisdiction or *malâ fide*, the ct. had no jurisdiction to make the order prayed.—NARAINSAMY *v.* PRINCIPAL IMMIGRATION OFFICER, [1923] App. D. 673.—**S. AF.**

sm. —— *Requirement of immigration officer—Effect.*]—When an immigration officer requires a person to make & sign a declaration under sect. 19 (1) (*a*) of Act 22, 1913, his requirement becomes a requirement of the Act, & failure to comply therewith is an offence under sect. 27 (*d*).—R. *v.* LAUGHTON, [1930] N. L. R. 47.—**S. AF.**

sn. *Immigration & Indian Relief Act*, 37 *of* 1927, *s.* 5—*Retrospective.*]—PRINCIPAL IMMIGRATION OFFICER *v.*

715 of 1931, & was convicted :—*Held :* by virtue of art. 1 (4) of Aliens Order, 1920, as amended, applt. was deemed to be in the class of persons whose landing had been prohibited, & by being found in the United Kingdom after the date limited by the condition in her passport had committed the offence with which she was charged, the circumstances in which she returned to the United Kingdom being immaterial.—R. *v.* LARSONNEUR (1933), 149 L. T. 542; 97 J. P. 206; 77 Sol. Jo. 486; 24 Cr. App. Rep. 74; 31 L. G. R. 253; 29 Cox, C. C. 673, C. C. A.

543a. —— —— —— ——.]—In making a recommendation for expulsion part of a sentence regard must be had to the period of the alien's residence in this country.—R. *v.* SHAFFNER (1920), 14 Cr. App. Rep. 131. C. C. A.

543b. —— —— —— ——.]—R. *v.* GILBERT (1921), 16 Cr. App. Rep. 34, C. C. A.

544. *Add. Annotations :—As to* (2) **Follo.** R. *v.* Shaffner (1920), 14 Cr. App. Rep. 131; R. *v.* Rogoff (1924), 18 Cr. App. Rep. 1.

544a. —— —— —— —— **Family domiciled in England.**]—R. *v.* ROGOFF (1924), 18 Cr. App. Rep. 1, C. C. A.

547. *Add. Annotation :*—**Follo.** R. *v.* Gilbert (1921), 16 Cr. App. Rep. 34.

548a. —— —— —— **Unnecessary aggravation of sentence involved.**]—R. *v.* IRVING (1920), 15 Cr. App. Rep. 61, C. C. A.

551. *Add. Annotations* :—**Consd.** Eshugbayi Eleko *v.* Nigeria Govt., [1931] A. C. 662. **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209; R. *v.* Brixton Prison, *Ex p.* Bloom (1920), 90 L. J. K. B. 574; R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386.

551a. —— —— ——.]—Aliens Order, 1919, art. 12, par. 1, which empowers the Secretary of State "if he deems it to be conducive to the public good" to make a deportation order against an alien, is not *ultra vires*. In acting under the article the Secretary of State is not a judicial, but is an executive officer, & is therefore not bound to hold an inquiry or give the person against whom he proposes to make a deportation order the opportunity of being heard.—R. *v.* LEMAN STREET POLICE STATION INSPECTOR, *Ex p.* VENICOFF, R. *v.* SECRETARY OF STATE FOR HOME AFFAIRS, *Ex p.* VENICOFF, [1920] 3 K. B. 72; 89 L. J. K. B. 1200; 23 L. T. 573; 84 J. P. 222; 36 T. L. R. 677, D. C.

Annotation :—**Refd.** R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386.

553. *Add. Annotations :—As to* (1) **Consd.** R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386. **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209.

553a. —— **Aliens Restriction (Amendment) Act, 1919 (c. 92)—Power of expulsion in time of peace.**]—Appct. was charged before a metropolitan police magistrate with four offences under the above Acts. He pleaded guilty to the charges, & was sentenced to fourteen days' imprisonment & recommended for deportation. After having served his sentence, he was detained in prison awaiting deportation. The Secretary of State had on the day after the expiration of the sentence made an order for the deportation of appct. Upon an application for a writ of *habeas corpus :—Held :* the order of the Secretary of State was not *ultra vires*, but was within the powers conferred upon him by the above Acts, & Aliens Order, 1920, art. 12.—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* BLOOM (1920), 90 L. J. K. B. 574; 124 L. T. 375; 85 J. P. 87; 19 L. G. R. 62; 26 Cox, C. C. 687, D. C.

553b. —— —— ——.]—The Order in Council made as to the deportation of aliens on Mar. 25, 1920, under sect. 1 (1) of each of the above Acts, did not expire when the power to make such an order would, but for further legislation, have expired, namely on Dec. 23, 1920, inasmuch as the Act of 1919 has been continued by the Expiring Laws Continuance Acts, 1920 (c. 73), & 1921 (c. 53).—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SUGARMAN (1922), 127 L. T. 27; 86 J. P. 75; 38 T. L. R. 325; 27 Cox, C. C. 208, D. C.

553c. —— —— —— **Form of order by Secretary of State.**]—The making of an order for the deportation of an alien under Aliens' Order, 1920, art. 12 (6), lies within the discretion of the Home Secretary. It is desirable that an order made under the article should state on the face of it that the Home Secretary deems it to be conducive to the public good to make the order.—R. *v.* HOME SECRETARY, *Ex p.* BRESSLER (1924), 131 L. T. 386; 88 J. P. 89; 68 Sol. Jo. 646; 22 L. G. R. 460; 27 Cox, C. C. 655, C. A.

553d. —— —— **Recommendation for deportation—Right of appeal.**]—R. *v.* GRAHAM CAMPBELL, *Ex p.* AHMED HAMID MOUSSA, No. 558h, *post.*

553e. —— —— —— **Stateless aliens.**]—Two aliens found guilty at the County of London Sessions of receiving stolen goods were natives

PURSHOTAM, [1928] App. D. 435.—**S. AF.**

so. *Indian Immigration Act,* 1891 *(Natal)—Liability of employers for medical attendance on Indian immigrants.*]—Employers were held liable under the above Act for medical attendance on Indian immigrants, who, after being free, had not re-indentured, themselves & for their descendants.—INDIAN IMMIGRATION TRUST BOARD OF NATAL *v.* GOVINDSAMY (1920), 37 T. L. R. 128.—**S. AF.**

552 i. *Aliens Restriction Order,* 1915 *—Power of expulsion in war time—Validity of Order—Power to specify destination.*]—*Held :* par. 25 of the above Order was within the authority conferred by War Precautions Act, 1914-1916, s. 6; it conferred a discretion upon the Minister to make an order for the deportation of any particular alien, & authorised his subsequent arrest & detention & the placing him on board a ship chosen by the Minister, & his detention there whilst the ship was in the territorial limits of the Commonwealth; & such an order was not rendered invalid by the fact that the Minister made it for the purpose of carrying out an agreement by which the Commonwealth Govt. was under an obligation to the country of which the particular alien was a subject to assist as far as possible in enforcing the return to that country of persons liable to military service there.—FERRANDO *v.* PEARCE (1918), 25 C. L. R. 241.—**AUS.**

sp. —— —— *Necessity of communication of deportation order to alien.*]—Par. 25 of the above Order does not require communication to the alien of a deportation order made under it by the Minister of Defence.—MEYER *v.* POYNTON (1920), 27 C. L. R. 436. —**AUS.**

sr. —— —— *Form of deportation order.*]—Such order need not be in any particular form.—JERGER *v.* PEARCE (1920), 28 C. L. R. 588. —**AUS.**

sw. *Aliens Restriction Order,* 1916 *—Power of expulsion in war time—Subject of allied State liable for military service.*]—The Minister having ordered the deportation of an Italian subject for military service, the ct. refused an application for a rule *nisi* for *habeas corpus,* the matter being in the Minister's discretion under the above Order.—*Ex p.* MAGGI (1918), 18 S. R. N. S. W. 150.—**AUS.**

of the late Russian Empire. At the date of their trial they were not recognised as nationals by the U.S.S.R., & were therefore stateless. The Deputy-Chairman of the London Sessions recommended that they should be deported. He knew that the recommendation could not be carried out, but intended by it to direct the attention of the Secretary of State to the question of whether he should make an order under Aliens Order, 1920, Art. 11, imposing restrictions on the activities of the prisoners in this country :—*Held :* the Deputy-Chairman had no jurisdiction to recommend deportation in these circumstances, & his recommendation should be quashed.—R. *v.* GOLDFARB, R. *v.* SZCZENSLIVE, [1936] 1 All E. R. 169 ; 154 L. T. 408 ; 100 J. P. 120 ; 52 T. L. R. 254 ; 80 Sol. Jo. 267 ; 25 Cr. App. Rep. 101 ; 34 L. G. R. 184 ; 30 Cox, C. C. 360, C. C. A.

Part IX.—Registration, Internment, and other Restrictions.

557. *Add. Citation :*— 26 Cox, C. C. 16, D. C.

558a. —— —— —— **Aliens Order, 1920.**]—(1) The word "keeper" in the above Order of 1920, art. 20 (2), includes the lessee of a house who lets unfurnished rooms in the house in separate lettings to tenants at weekly rentals & employs another person to manage the house for him.

(2) A flat let on a seven years' lease would not constitute "premises" within the above Order of 1920, art. 6, but that art. does not apply to rooms in a leasehold house let unfurnished on weekly tenancies, there being a manager of the house employed by the lessee whose duties include cleaning the common stairs, ways & places, the maintenance of electric light, & so on.—RODDA *v.* GODFREY (1926), 95 L. J. K. B. 704 ; 90 J. P. 111 ; 42 T. L. R. 473 ; 24 L. G. R. 311 ; 28 Cox, C. C. 209, D. C.

558b. —— —— —— ——.]—The fact that the keeper of any premises to which the above Order of 1920, art. 7, applies knows that a person staying at such premises is a British subject, does not excuse compliance with the obligation to require such person to sign a statement as to his nationality.—WILLIAMS *v.* JONES, [1928] 2 K. B. 227 ; 97 L. J. K. B. 606 ; 139 L. T. 167 ; 92 J. P. 79 ; 44 T. L. R. 511 ; 26 L. G. R. 318 ; 28 Cox, C. C. 505, D. C.

558c. —— **Aliens Restriction (Amendment) Act, 1919 (c. 92)—Restrictions as to change of name—Carrying on business under pre-war name.**]—Resp., who was an alien, & whose real name was Karel Kollross, purchased in 1921, & continued to carry on, a business under the name of the Widmore Laundry, which business had been carried on under the same name by his predecessors for many years before Aug. 4, 1914. Apart from the laundry business resp. continued to be known as Karel Kollross, & he was registered in that name as the proprietor of the Widmore Laundry under Registration of Business Names Act, 1916 (c. 58). An information having been preferred against resp. for using the name Widmore Laundry, being a name other than that by which he was ordinarily known on Aug. 4, 1914, contrary to sect. 7 of the Act of 1919, the justices dismissed the information :—*Held :* the justices were right, as resp. had committed no offence against sect. 7 (1), by taking over an old-established business with a pre-war name & continuing to carry it on under that name.—BRUNNING *v.* KOLLROSS, [1923] 1 K. B. 311 ; 92 L. J. K. B. 323 ; 128 L. T. 600 ; 87 J. P. 41 ; 39 T. L. R. 129 ; 67 Sol. Jo. 278 ; 21 L. G. R. 108 ; 27 Cox, C. C. 383, D. C.

558d —— —— —— **Addition of "& Co."**]—An alien uses a name "other than that by which he was ordinarily known" on Aug. 4, 1914, contrary to sect. 7 (1) of the Act of 1919, if he adds to the name by which he was ordinarily known on that date the words "& Co."—EVANS *v.* PIAUNEAU, [1927] 2 K. B. 374 ; 96 L. J. K. B. 734 ; 137 L. T. 482 ; 91 J. P. 97 ; 43 T. L. R. 524 ; 25 L. G. R. 321 ; 28 Cox, C. C. 410, D. C.

558e. —— —— **Prosecution under—Whether offences triable on indictment.**]—(1) On a prosecution for an offence against a statutory Order, an objection that the Order has not been proved must be taken before the ct. at the trial. It is too late to take the point for the first time on appeal.

(2) In cases under the Act of 1914, s. 1 (4), & the Act of 1919, s. 13, when any question arises whether the person charged is an alien or not the *onus* lies upon him to prove that he is not an alien.

(3) Offences against the Act of 1914 & the Act of 1919 are punishable only in the manner prescribed by the statutes, namely on summary conviction, unless the person charged with the offence claims the right under Summary Jurisdiction Act, 1879 (c. 49), s. 17, to be tried with a jury. Where, therefore, an offence under those Acts was treated by the magistrate as an indictable one & the case sent for trial before quarter sessions without any claim for trial with a jury having been put forward by prisoner, the conviction at the sessions was quashed.—R. *v.* KAKELO, [1923] 2 K. B. 793 ; 92 L. J. K. B. 997 ; 129 L. T. 477 ; 87 J. P. 184 ; 39 T. L. R. 671 ; 68 Sol. Jo. 41 ; 27 Cox, C. C. 454 ; 17 Cr. App. Rep. 150, C. C. A.

558f. —— —— —— **Proof of Order.**]—R. *v.* KAKELO, No. 558e, *ante.*

558g. —— —— —— **Proof of allenage.**]—R. *v.* KAKELO, No. 558e, *ante.*

558h. —— —— —— **Appeal—Effect of ambiguous plea.**]—Appct. was charged under Aliens Order, 1920, with, being an alien, having failed to notify his change of address. When before the magistrate he was asked "Are you an Egyptian?" to which he answered

PART IX.

8x. *Registration—No proof of no permanent place of residence.*]—Deft. was convicted for neglect to register as an enemy alien. There was no evidence that deft. had no permanent place of residence in Canada :—*Held :* the charge could not succeed.—R. *v.* HACKMAN (1919), 44 O. L. R. 224 ; 15 O. W. N. 190.—**CAN.**

" Yes." He was then asked " Did you tell the registration officer that you intended to change your residence, & tell him when & where you were going ? " to which he answered " No." Thereupon the magistrate entered a plea of guilty & sentenced appct. to imprisonment for one month & recommended the making of a deportation order against him :—*Held :* appct. had not pleaded guilty or admitted the truth of the charge within Summary Jurisdiction Act, 1879 (c. 49), s. 19, or Criminal Justice Administration Act, 1914 (c. 58), s. 37, &, therefore, he had a right of appeal to quarter sessions by virtue of those sections.—R. *v.* GRAHAM CAMPBELL, *Ex p.* AHMED HAMID MOUSSA, [1921] 2 K. B. 473 ; 90 L. J. K. B. 818 ; 125 L. T. 310 ; 85 J. P. 189 ; 37 T. L. R. 611 ; 19 L. G. R. 461 ; 26 Cox, C. C. 747, D. C.

558l. —— —— —— —— **From recommendation for deportation.**]—R. *v.* GRAHAM CAMPBELL, *Ex p.* AHMED HAMID MOUSSA, No. 558h, *ante.*

558j. —— **Aliens Order, 1920—Effect on acquisition of English domicile.**]—In a husband's suit for dissolution of marriage the wife objected to the jurisdiction on the ground that the domicil of the husband was not English. The husband was a waiter of Italian nationality & was registered as an alien in England, & as such was subject to the restrictions & liabilities imposed by the Aliens Restriction Act, 1914 (c. 12), & the Aliens Order, 1920 :—*Held :* the provisions of the Act of 1914 & the Order of 1920 did not preclude petitioner from acquiring an English domicil of choice.—BOLDRINI *v.* BOLDRINI & MARTINI, [1932] P. 9 ; 101 L. J. P. 4 ; 146 L. T. 121 ; 48 T. L. R. 94 ; 75 Sol. Jo. 868, C. A.

558k. —— —— **Prosecution under—Effect of receiving inadmissible evidence.**]—At the trial of applt. who was a British subject by birth, for an offence against art. 6, para. 1 (*a*) of Aliens Order, 1920, & for making an untrue statement for the purpose of procuring a passport, the prosecution endeavoured to prove by means of a photostatic copy of a certificate of naturalisation authenticated by the seal of the United States of America that applt. had lost his British nationality. Applt. was convicted on both charges, & on appeal it was conceded by the Crown that the document ought not to have been admitted in evidence, inasmuch as the mode of authenticating the document did not fulfil the requirements of Evidence Act, 1851 (c. 99), s. 7 :—*Held :* though the prosecution might have proceeded at the trial on the basis that under Aliens Restriction Act, 1914 (c. 12), s. 1 (4), the burden of proving that he was not an alien lay on applt., they had not taken this course, but had themselves accepted the burden of proof & endeavoured to discharge it by putting in evidence an inadmissible document, & accordingly the conviction must be quashed.—R. *v.* BEADON (1933), 24 Cr. App. Rep. 59, C. C. A.

558l. —— —— **Possession of altered passport—Whether mens rea necessary.**]—Applt. was convicted of being in possession of an altered passport without lawful authority contrary to art. 18, para. 4 (*d*), of the Aliens Order, 1920. On appeal to quarter sessions it was found as a fact that he did not know that the passport was altered, but honestly believed, on reasonable grounds, that it had been issued to him in the ordinary course by the proper authority in a foreign country :—*Held :* the requirements of art. 18 are imperative, &, if a person is in fact in possession of an altered passport, it is neither necessary for the prosecution to prove guilty knowledge of the alteration, nor open to deft. to secure acquittal by proof that he did not know, & had no reason to suspect, that the passport was altered.—CHAJUTIN *v.* WHITEHEAD, [1938] 1 K. B. 506 ; [1938] 1 All E. R. 159 ; 107 L. J. K. B. 270 ; 158 L. T. 277 ; 102 J. P. 117 ; 54 T. L. R. 327 ; 82 Sol. Jo. 175 ; 36 L. G. R. 187, D. C.

559. *Add. Annotation :* — **Refd.** Ronnfeldt *v.* Phillips (1918), 35 T. L. R. 46.

560. *Add. Annotations :*—**Consd.** Ernest *v.* Metropolitan Police Comr. (1919), 89 L. J. K. B. 42. **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209 ; *Re* De Keyser's Royal Hotel, De Keyser's Royal Hotel *v.* R., [1919] 2 Ch. 197 ; Chester *v.* Bateson, [1920] 1 K. B. 829 ; Fowle *v.* Monsell (1920), 90 L. J. K. B. 105 ; Gurney *v.* Houghton (1920), 123 L. T. 706 ; Hudsons' Bay Co. *v.* Maclay (1920), 36 T. L. R. 469 ; R. *v.* Leman Street Police Station Inspector, *Ex p.* Venicoff, [1920] 3 K. B. 72 ; R. *v.* Wormwood Scrubbs Prison, [1920] 2 K. B. 305 ; Shutler *v.* Rolfe (1920), 36 T. L. R. 828 ; R. *v.* Cannon Row Police Station Inspector, *Ex p.* Brady (1921), 91 L. J. K. B. 98. **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98. **Mentd.** Brown *v.* Dagenham U. C. (1929), 98 L. J. K. B. 565.

561. *Add. Annotations :*—**Refd.** R. *v.* Secretary of State for Home Affairs, *Ex p.* O'Brien, [1923] 2 K. B. 361. **Mentd.** *Re* Clifford & O'Sullivan, [1921] 2 A. C. 470 ; Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

561a. —— **Restrictions as to change of name—Validity.**]—Applt., a foreigner by birth, became a naturalised British subject in 1912, & changed his name by deed poll in 1915 from Ernst to Ernest. In 1919 he was convicted under reg. 14h of the above regulations, for that, not being a natural-born British subject, he used a name other than that by which he was ordinarily known at the beginning of the war. He contended that reg. 14h was *ultra vires*, on the ground that it was not competent by Order in Council, issued under Defence of the Realm Act, 1914 (c. 8), to deprive him of any rights, powers, or privileges which were not at the same time taken away from all British subjects ; & that the regulations purported to override an Act of Parliament, although there was no power under the Act of 1914 to do so :—*Held :* reg. 14h was not *ultra vires* because it discriminated between naturalised & natural-born British subjects.

Regulations made by the King in Council under Defence of the Realm Act, 1914 (c. 8), have all the force of a statute & may take away a statutory privilege or impose a statutory duty.—ERNEST *v.* METROPOLITAN POLICE COMR. (1919), 89 L. J. K. B. 42 ; 121 L. T. 222 ; 83 J. P. 182 ; 35 T. L. R. 512 ; 17 L. G. R. 448 ; 26 Cox, C. C. 458, D. C.

563. *Add. Citation :*—**26 Cox, C. C. 58, D. C.**

ALKALI WORKS.

See INSURANCE; PUBLIC HEALTH.

ALLOTMENT OF SHARES.

See COMPANIES.

AMICUS CURIÆ.

See BARRISTERS; CRIMINAL LAW.

N/9 SALAR JUNG LIBRARY

ANIMALS.

Part II.—Property in Animals.

20. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

32. *Add. Annotation :*—**Consd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

34. *Add. Annotations :*—*As to* (3) **Apld.** Nicholls *v.* Ely Beet Sugar Factory, [1931] 2 Ch. 84. **Refd.** Granby *v.* Bakewell U. D. C. (1923), 87 J. P. 105 ; Peech *v.* Best (1930), 99 L. J. K. B. 537 ; Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

43. *Add. Annotation :*—**Refd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178.

44. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178. *As to* (2) **Consd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178.

45. *Add. Annotations :*—**Refd.** The Tubantia, [1924] P. 78 ; Hollywood Silver Fox Farm, Ltd. *v.* Emmett, [1936] 1 All E. R. 825.

46. *Add. Annotation :*—**Refd.** The Tubantia, [1924] P. 78.

50a. —— ——.]—KEARRY *v.* PATTINSON (1938), 82 Sol. Jo. 1050.

65. *Add. Annotation :*—**Refd.** Farey *v.* Welch (1929), 28 Cox, C. C. 604.

67a. —— **Unlawful taking—Larceny Act, 1861 (c. 96), s. 23—Necessity for mens rea.**]—*Held :* above sect. applies the general law of larceny to pigeons so far as it does not apply to them already : & consequently, a taker who honestly believed the pigeons taken to be his own was not within the sect.—FAREY *v.* WELCH, [1929] 1 K. B. 388 ; 98 L. J. K. B. 318 ; 140 L. T. 560 ; 93 J. P. 70 ; 45 T. L. R. 277 ; 27 L. G. R. 153 ; 28 Cox, C. C. 604, D. C.

Annotation :—**Expld. & Dbtd.** Cotterill *v.* Penn, [1936] 1 K. B. 53.

73. *Add. Annotation :*—**Refd.** The Tubantia, [1924] P. 78.

80. *Add. Annotation :*—**Refd.** Farey *v* Welch, [1929] 1 K. B. 388.

90. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178. *As to* (2) **Refd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178.

Part III.—Rights and Liabilities of Owners of Animals.

101. *Add. Annotation :*—**Apld.** Barnard *v.* Evans, [1925] 2 K. B. 794.

107. *Add. Annotation :*—**Refd.** Stearn *v.* Prentice, [1919] 1 K. B. 394.

109. *Add. Annotation :*—**Consd.** Hines *v.* Tousley (1926), 95 L. J. K. B. 773.

116. *Add. Annotations :*—**Consd.** Barnard *v.* Evans, [1925] 2 K. K. 794 ; Cotterill *v.* Penn, [1936] 1 K. B. 53.

117. *Add. Annotation :*—**Refd.** Nye *v.* Niblett (1917), 87 L. J. K. B. 590.

119. *Add. Annotations :*—**Consd.** Horton *v.* Gwynne, [1921] 2 K. B. 661. **Apld.** Farey *v.* Welch, [1929] 1 K. B. 388. **Expld. & Distd.** Cotterill *v.* Penn, [1936] 1 K. B. 53.

PART II. SECT. 1, SUB-SECT. 1.

a. *Camel.*]—Under the condition of affairs which has existed in Western Australia for many years, camels are to be regarded as belonging to the class of domestic animals.—NADA SHAH *v.* SLEEMAN (1917), 19 W. A. L. R. 119.—**AUS.**

sg. *Ranch-bred fox.*]—*Held :* a domestic animal.—EBERS *v.* MACEACHERN, [1932] 3 D. L. R. 415 ; 4 M. P. R. 333.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.

sk. *Steer—What amounts to stealing.*]—R. *v.* WOOD, [1934] 1 W. W. R. 191.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—A.

19 ii. —— —— ——.]—A fox born & reared in captivity escaped & was killed by defts. upon a stranger's land a week later :—*Held :* the fox was an animal *ferœ naturæ ;* pltf.'s qualified property therein came to an end when the animal escaped & was reduced into actual possession by defts. ; there was no immediate pursuit, nor was there *animus revertendi.*—CAMPBELL *v.* HEDLEY (1917), 39 O. L. R. 528 ; 37 D. L. R. 289.—**CAN.**

50 ii. —— *Damage to hives.*]—A bee is not an animal within Criminal Law Consolidation Act, 1876 (S. A.), s. 119.—R. *v.* NITSCHKE, [1928] S. A. S. R. 229.—**AUS.**

PART II. SECT. 2, SUB-SECT. 2.

74 ii. —— *Animal killed by trespasser.*]—When a person kills a wild animal on the property of another the carcass does not belong to the killer but to the proprietor of the property, & the latter, either himself or by his duly authorised agent, is entitled to demand &, if refused, seize the carcass, & such persons as help him to exercise his right are doing no wrong ; but as against any other person, the killer has a right to retain possession of the carcass.—R. *v.* ARTU RANTRA (1924), I. L. R. 3 Pat. 549.—**IND.**

PART II. SECT. 3.

sb. *As between husband & wife—Wife's cattle on husband's farm.*]—Where cattle belonging to a wife are placed on her husband's farm, fed from the crops grown thereon & looked after by him in carrying on farming operations, not as her agent or manager, but as his own business, & the offspring of the original stock are treated in the same way & sold from time to time & the proceeds invested in other stock, the increase of the original animals & the animals bought from the proceeds of the sale cannot be claimed by the wife.—MINAKER *v.* HADDEN, [1917] 3 W. W. R. 774.—**CAN.**

sc. *Brood of tame & domestic animals—Belongs to owner of dam or mother.*]—CALHOUN *v.* REID (Sask.), [1927] 4 D. L. R. 808 ; [1927] W. W. R. 429.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—B.

103 iii. —— *No actual interference with sheep.*]—The accused was prosecuted under sect. 537 (*a*) of the Criminal Code for the killing of a dog. It was admitted that the dog was shot & killed by the accused while on accused's premises. The accused alleged that the dog was chasing & worrying his cattle :—*Held :* no danger to sheep being involved, Sheep Protection & Dog Licensing Act, R.S.S., 1930, s. 3 (c) did not afford a defence ; & the accused must prove that he fired the shot either because the dog was molesting his cattle or because he had reasonable apprehension that it was about to injure his cattle & he believed they could be protected in no other way ; the mere fact that the dog was trespassing was no excuse. On the evidence the defence failed.—R. (STEEL) *v.* STEWART, [1937] 1 W. W. R. 400.—**CAN.**

sd. *Straying bull tied up during night—Released & driven away next day—Subsequently found dying.*]—Deft. tied up over night a bull which had strayed on his premises, to prevent it damaging his cows & released it next day & drove it away. In the evening it was found castrated near the boundary of deft.'s farm & died the next day. In an action for damages :—*Held :* deft.'s actions were justified, & in the absence of evidence as to when or how or by whom the animal was injured, pltf. could not succeed.—FICOWICH *v.* MALESHCHAK, [1924] 4 D. L. R. 585 ; 3 W. W. R. 308.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—C.

104 ii. ——.]—The making use of dogs to drive away trespassing cattle is not wrongful where in doing so the cattle are not wilfully or negligently injured.—CHALEFOUR *v.* CRETIEN, [1930] 2 W. W. R. 77.—**CAN.**

129. *Add. Annotation :—As to* (2) **Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

134. *Add. Annotations :—***Refd.** British Petroleum Co. *v.* A.-G. for Ceylon, [1926] A. C. 147; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

136a. Negligent driving by farrier — Measure of damages.]—In an action for negligent driving, whereby pltf.'s horse was injured, it appeared that the horse was sent to a farrier's for six weeks for the purpose of being cured, & that at the end of that time it was ascertained that the horse was permanently damaged to the extent of £20 :—*Held :* the proper measure of damages was the keep of the horse at the farrier's, the amount of the farrier's bill, & the difference between the value of the horse at the time of the accident & at the end of the six weeks; but pltf. ought not to be allowed also for the hire of another horse during the six weeks.—HUGHES *v.* QUENTIN (1838), 8 C. & P. 703; 173 E. R. 681, N. P.

Annotations :—**Apld.** Greenbirt *v.* Smee (1876), 135 L. T. 168. **Refd.** The Mediana (1900), 69 L. J. P. 35.

PART III. SECT. 1, SUB-SECT. 1.—E.

se. *Claim against custodian of animal—Onus of proof as to absence of negligence.*]—The *onus* is upon the custodian to show that the injury did not occur through his act or negligence only where it is shown that the injury occurred when the animal was or should have been in his custody or control, or that he was under an obligation to account for it to the owner.—FICOWICH *v.* MALESHCHAK, [1924] 4 D. L. R. 585; 3 W. W. R. 308.—**CAN.**

126 v. —— ——.]—Pltf.'s cow died from choking over an onion from a dump of culled onions which deft. had dumped in the space occupied by an "A" fence between the adjoining fields of pltf. & deft. It was found that the onions were closer to deft.'s side of the fence than to pltf.'s, & there was a break in the rail on pltf.'s side through which the cow got access to them & that if it had not been broken the accident would not have happened :—*Held :* as it was the duty of pltf. to keep his side of the fence in repair the cow was a trespasser, &, therefore, deft. was not liable for its loss.—SCHNEIDER *v.* HEE FONG, [1935] 1 W. W. R. 366; 2 D. L. R. 812.—**CAN.**

132 ii a. —— *Animal falling in well —Animal lawfully at large.*]—Pltf.'s horse while lawfully running at large was killed by falling into an open well on deft.'s land. Deft., who knew of the open well, was residing outside the province, the land being occupied by a tenant :—*Held :* deft.'s breach of Open Wells Act gave pltf. a right of action "on a tort committed within the jurisdiction," justifying allowance of the issue of a writ for service on deft. *ex juris.*—BROTHERSON *v.* KENNEDY, [1919] 2 W. W. R. 803; 47 D. L. R. 131; 12 Sask. L. R. 304.—**CAN.**

132 ii b. —— —— *What is an "open well."*]—Whether a well is an "open well" or not is a question of fact to be proved at the trial. While it might be an "open well" if insecurely covered, the fact that an animal falls into it without any evidence of how it occurred does not prove it such, nor does the fact that the material of the covering was seven years old.—DRYSDALE *v.* REID, [1920] 3 W. W. R. 832.—**CAN.**

132 ii c. —— —— *Animal unlawfully at large.*]—Owners of such animals have no right of action where they are killed or injured by falling into an open well. —DILLE *v.* GREAT WEST LIFE ASSURANCE CO., [1926] 3 D. L. R. 339; [1926] 2 W. W. R. 342; 20 Sask. L. R. 545.—**CAN.**

132 ii d. —— —— ——.]—Where pltf. proves that his stock strayed on to deft.'s premises & there fell into a well & was killed, he has established a *primâ facie* violation of the Act, & where deft.'s only explanation is that he erected a protection reasonably sufficient to keep animals away from the well, but that the animal in question somehow or other got into the well, he has not rebutted the *primâ facie* case, especially where the circumstances justify the inference that the animal got through the protection by doing that which animals are wont to do.—PITMAN *v.* BROWN, [1925] 3 D. L. R. 61; [1925] 2 W. W. R. 36; 19 Sask. L. R. 362.—**CAN.**

132 ii e. —— —— *Ignorance of owner as to existence of well.*]—An owner of land on which there is an open well contrary to statute cannot rid himself of liability for damages caused thereby by pleading that he did not know it was there.—HUDSON *v.* SILZER (Sask.), [1919] 3 W. W. R. 575; 49 D. L. R. 125.—**CAN.**

132 iii a. —— ——.]—The digging by a municipality of a ditch dangerous to animals alongside the travelled portion of a highway & the leaving of it unprotected, was held to be a misfeasance which rendered the municipality liable for the loss of a horse which plunged into the ditch & was killed.—HOWELL *v.* WILTON RURAL MUNICIPALITY NO. 472 (1922), 66 D. L. R. 321; 15 Sask. L. R. 427; [1922] 2 W. W. R. 568.—**CAN.**

132 iv. —— *Animal falling in excavation.*]—Deft. & pltf. were neighbours. Pltf.'s cow while running at large fell into an excavation on deft.'s land :—*Held :* pltf. could not recover damages.—PITTZEN *v.* SHOKLUK, [1921] 2 W. W. R. 686; 16 Alta. L. R. 482.—**CAN.**

132 v. —— ——.]—The owner or occupier of land will be liable in damages for any loss of stock resulting from failure to guard against access to an excavation.—KELLOGG *v.* DAPPEN (1922), 69 D. L. R. 528; [1922] 3 W. W. R. 573.—**CAN.**

132 vi. —— —— *Cellar of unused house.*]—Deft. owned unfenced land on which was an unused open house with a cellar beneath. Pltf.'s horse, running at large, got into the house, &, while there, one of its feet broke through the floor above the cellar &, being unable to withdraw it, it died :—*Held :* the animals must take the land as they find it, & Open Wells Act did not apply.—WRUBLESKI *v.* LOFF, [1923] 2 W. W. R. 764.—**CAN.**

z i. —— ——.]—Where there is a bye-law permitting cattle to run at large & such cattle are injured by the barbed wire of a fence which has fallen down through the rottenness of its posts, the owner of the fence is liable for the injury to cattle lawfully on the highway, & injured thereon.—CHASE *v.* COLERIDGE, [1917] 2 W. W. R. 736.—**CAN.**

z ii. —— *On racecourse—Injury to racehorse.*] — Applt.'s racehorse was injured on resp.'s racecourse by a splinter from a stake used to flag off a portion of the regular course, which had become dangerous owing to heavy rain :—*Held :* resp. having taken proper steps to ensure that the course was as safe as reasonable care & skill could make it, & the risk not being in the nature of a "trap," no liability attached for the injury.—WACKROW *v.* TAKAPUNA JOCKEY CLUB, [1928] N. Z. L. R. 249.—**N.Z.**

137 xiii. —— —— ——.]—The mere fact that a government railway line passing through pastoral country is unfenced cannot be taken as an implied permission by the Transport Comrs. for stock of adjoining landowners to be upon, or to cross, such line. An animal straying on such a railway line is a trespasser, & the only duty owed by the Transport Comrs. to the owner of the animal is not recklessly to disregard its presence, or intentionally to inflict injury upon it.—NEW SOUTH WALES TRANSPORT COMRS. *v.* BARTON, [1933] Argus L. R. 228; 6 A. L. J. 459; 49 C. L. R. 114; 33 S. R. N. S. W. 507; 50 N. S. W. W. N. 230.—**AUS.**

137 xiv. —— —— *Negligence of owner.*]—An action will not lie for damages for the loss of cattle killed by a train when the cattle were on the railway line through the negligence of pltf.—NELSON *v.* GRAND TRUNK PACIFIC RY. CO. (1920), 51 D. L. R. 141.—**CAN.**

k i. *Grain left accessible to stock—Injury from eating—Grain escaping from granary.*]—Where animals straying upon the premises were injured by consuming grain which had escaped from a granary through no fault of the grower :—*Held :* deft. was not liable under Open Wells Act, R. S. S. (c 124), s. 3.—HILL *v.* MALLACH, [1918] 1 W. W. R. 10; 10 Sask. L. R. 419; 37 D. L. R. 709.—**CAN.**

k ii. —— —— *Animal lawfully at large.*]—Where the non-observance by a proprietor of land of Open Wells Act, R. S. S., 1909 (c. 124), s. 3, results in injury to animals lawfully at large which have strayed upon his land, he is liable in damages to their owner.—WATSON *v.* GUILLAUME, [1918] 2 W. W. R. 1017; 11 Sask. L. R. 348; 42 D. L. R. 380.—**CAN.**

k iii. —— —— —— *Granary reasonably fit for grain.*]—*Held :* defts. were not liable for damages for injury to pltfs.' horses, while lawfully running at large, caused by eating wheat which had run from a granary on defts.' premises, in view of the jury's finding that the granary was reasonably fit for storing the wheat as against animals running at large.—GLENN & BABB *v.* SCHOFIELD, [1928] 2 D. L. R. 319; [1928] S. C. R. 208.—**CAN.**

k iv. —— —— *Animal trespassing.*] —If grain be left in such an unguarded condition as to permit of horses being attracted by it & eating it to their injury, the owner of the grain will be liable for the resulting damage, even though the horses are trespassers.—FULTON *v.* RANDALL, GEE & MITCHELL, LTD., [1918] 3 W. W. R. 331.—**CAN.**

k v. —— —— ——.]—A person who allows threshed grain to be accessible to stock, is liable in damages for the death of an animal resulting therefrom, even though the animal was unlawfully at large, unless the owner of the animal when turning it at large knew that such grain was accessible to stock.—HAWORTH *v.* WEBB (1922), 65 D. L. R. 174; 15 Sask. L. R. 275; [1922] 1 W. W. R. 1070.—**CAN.**

k vi. —— —— ——.]—Pltf. alleged that deft. while engaged in seeding left out in his unfenced ploughed field an unprotected waggon box which contained wheat & that pltf.'s horse while lawfully running at large gorged

139. *Add. Annotations :*—**Consd.** Dunster *v.* Hollis, [1918] 2 K. B. 795. **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546; Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455.

140. *Add. Annotation :*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

145. *Add. Annotation :*—*As to* (1) **Refd.** British & Foreign Marine Insce. *v.* Gaunt, [1921] 2 A. C. 41.

145a. Animal killed—Meaning of "external & visible injury."]—A policy of insurance provided that an insurance co. should indemnify the insured against death solely attributable to accidental external & visible injury to any horse the property of the insured, duly certified by a veterinary surgeon, & further provided that the due observance & fulfilment of the conditions of the policy should be a condition precedent to any liability of the co. under the policy. The insured's horse, drawing a loaded van, got out of the driver's control, bolted, & fell into a ditch with the van on top of it, & died in consequence of the pressure of a shaft upon its windpipe. There was no mark visible on the skin of the horse, & no certificate of a veterinary surgeon was obtained :—*Held :* (1) it was not necessary that there should have been any mark visible on the skin of the horse, & the injury was external & visible ; & (2) it was a condition precedent to the insured's right to recover that the death of the horse should be duly certified by a veterinary surgeon, but, on the facts of the case, the co. had waived compliance with such condition.—BURRIDGE & SON *v.* HAINES (F. H.) & SONS, LTD. (1918), 87 L. J. K. B. 641 ; 118 L. T. 681 ; 62 Sol. Jo. 521, D. C.

itself with the wheat & died :—*Held :* deft. was not liable.—MUSSELMAN *v.* ZIMMERMAN (1922), 66 D. L. R. 350; [1922] 2 W. W. R. 640.—**CAN.**

k vii. —— —— ——.]—The result of an action under Open Wells Act, R. S. S., 1920 (c. 169), does not depend upon whether or not the animals injured were unlawfully at large under Stray Animals Act, R. S. S. 1920 (c. 124).—WENTZALL *v.* PERKS, [1924] 3 W. W. R. 876.—**CAN.**

k viii. —— —— *Grain mixed with poisonous substance.*]—No liability attaches to a railway co. for damages for the loss of cattle which die from eating grain which has become mixed with lead ore, where the grain was dropped upon the ground among the particles of lead ore by a customer of the railway co. while unloading grain from the company's cars.—DAWSON *v.* PARADISE MINE & CANADIAN PACIFIC RY. CO., [1919] 1 W. W. R. 499.—**CAN.**

k ix. —— ——.]—The obligation imposed by Open Wells, etc., Act, R. S. S., 1920 (c. 160), s. 4, is an absolute one, & where another's animals have been injured as the result of threshed grain being accessible to them, the fact that the granary in question was reasonably fit for the storage of grain as against animals running at large is no defence.—SCHOFIELD *v.* GLENN & BABB, [1927] 3 D. L. R. 188; [1927] 2 W. W. R. 183 ; 21 Sask. L. R. 494.—**CAN.**

n i. —— *Running into animal using highway.*]—Deft., while driving his automobile at dusk at twenty-five miles an hour with his lights on, ran into pltf.'s cow which he had not seen until very close to it. He was held liable in damages.—JOHNSON *v.* GIFFEN (1921), 62 D. L. R. 635 ; [1921] 3 W. W. R. 596.—**CAN.**

n ii. —— ——.]—PAWLUK *v.* FRIESEN, [1930] 2 D. L. R. 991.—**CAN.**

pi. —— *Turkeys at large on highway.*]—CRONSBERRY *v.* PETERSON (1936), 5 F. L. J. (Can.), 309.—**CAN.**

p ii. —— *Running over cow drinking from gutter.*]—A motorist, colliding with a cow which had stopped to drink from a gutter while being driven from pasture, is liable for damages on the principle of *res ipsa loquitur*.—CROWLEY *v.* GARDNER, [1936] 3 D. L. R. 795.—**CAN.**

w i. —— *Liability of boatowner for act of repairer.*]—A boatowner employed a joiner to repair his boats. The paint scrapings were left lying on the ground, & poisoned a cow that was grazing on the pasture :—*Held :* it was the boatowner's duty to see that the paint scrapings were removed, & he was liable in damages for the cow's death.—STEWART *v.* ADAMS, [1920] S. C. 129 ; 57 Sc. L. R. 83.—**SCOT.**

w ii. —— *Animals lawfully at large—Whether poison hidden trap.*]—Poison which deft. had put in bags on his unfenced land & carefully covered with manure, & which, without his knowledge, became exposed & caused the death of pltf.'s cattle lawfully at large, which entered on the land :—*Held :* not to constitute a hidden trap.—WINMILL & THOMAS *v.* COLLINS (Sask.), [1927] 3 W. W. R. 325 ; *revsd.*, [1928] 2 D. L. R. 353 ; 1 W. W. R. 705 ; 22 S. L. R. 422.—**CAN.**

w iii. —— —— ——.]—Pltf. & deft. were farmers & occupied adjoining lands separated by a three-strand wire line fence, secured by posts. Deft.'s servant in the course of spreading grasshopper poison on deft.'s land, left an open bag of the composition on the ground at five feet distance from the fence. A horse & a number of cattle, property of pltf., pasturing on his land, were attracted by the smell of the poison, which consists in part of bran & salt, & having broken down one of the strands, were able from pltf.'s land to reach the bag, &, eating the poison, they died. Pltf. sought to hold deft. liable for negligence. Deft. & his servant knew that the mixture was poisonous to horses & cattle, & that pltf.'s horse & cattle were loose on pltf.'s land. Whether they knew that the poison was an allurement to cattle was not gone into. Judgment for pltf. Deft. appealed :—*Held :* the appeal should be allowed & the action dismissed.—PEROZEK *v.* SINCLAIR, [1933] 2 W. W. R. 484 ; 4 D. L. R. 317; 41 Man. L. R. 263.—**CAN.**

141 i. *Wrong quantity in poisonous dip—Animals poisoned.*]—Pltf. alleged that the death of his sheep was due to the presence of an excess of arsenic in powder manufactured & sold by defts. which he had added, together with more than the quantity of water specified in defts.' printed instructions, to a solution through which the sheep had already been passed without injury :—*Held :* pltf. had not proved that the death of the sheep was due to an excess of arsenic in the powder.—COOPER *v.* VISSER, [1920] App. D. 111. —**S. AF.**

PART III. SECT. 1, SUB-SECT. 1.—G.

c i. —— ——.]—A claimant has a right of action to compel council & valuer to comply with the Acts as far as may be necessary to give effect to a valid claim for compensation ; but he has no right of action in the nature of appeal against the determination of the council or the valuation of the valuer.—HOGLE *v.* ERNESTTOWN TOWNSHIP (1918), 41 O. L. R. 394 ; 13 O. W. N. 347 ; 41 D. L. R. 123.—**CAN.**

c ii. —— —— *Mandamus.*]—The direction to the municipal council to award compensation under the Act of 1914 is mandatory ; & they may by *mandamus* be required to obey the statute.—NOBLE *v.* ESQUESING TOWNSHIP (1918), 41 O. L. R. 400 ; 13 O. W. N. 339 ; 41 D. L. R. 99.—**CAN.**

c iii. —— —— ——.]—If a township council fail to perform the duties imposed upon it by s. 18 of the Act of 1914, a *mandamus* may be granted to compel the council to make the inquiry directed by the sect. & award compensation.—HUDSON & HARDY *v.* BIDDULPH TOWNSHIP (1920), 46 O. L. R. 216.—**CAN.**

sf. —— *Wanton killing of unlicensed dog.*]—Notwithstanding the Act of 1917, B. C., s. 3, one is liable in damages for causing death or injury to an unlicensed dog in a sheep-protection district, if the injury is inflicted wantonly. — WILGRESS *v.* RITCHIE, [1920] 2 W. W. R. 421 ; 52 D. L. R. 543.—**CAN.**

sg. *Stock-brands Act, R. S. B. C.*, 1924 — *Offence against.*]— R. *ex rel* MAXSON *v.* DOBBIN (B. C.), [1929] 3 W. W. R. 176 ; 52 Can. Crim. Cas. 342.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—H.

sh. *Damage to mare in foal.*]—An unborn animal, while it remains *in utero*, has no independent existence as a chattel. In an action for negligence owing to an injury suffered by a mare in foal, which caused her death & prevented the foal from being born alive, the injury assessed damages on the basis of the mare & foal as separate chattels :—*Held :* the true measure of damages was for the mare in foal & not for the mare & foal separately, &, therefore, there must be a new trial.—BELL *v.* THOMPSON (1934), 34 S. R. N. S. W. 431 ; 51 N. S. W. W. N. 138.—**AUS.**

PART III. SECT. 1, SUB-SECT. 2.

sk. *Stray Animals Act*, 1920 (c. 124)—*Meaning of animal—Turkey.*]—Since turkeys are not included under the words "animal" or "animals" in above Act an owner of a turkey, who enters upon another's land to get the turkey after it has strayed thereon commits a trespass.—SORLIE *v.* MCKEE, [1927] 1 D. L. R. 249 ; [1927] 1 W. W. R. 56 ; 21 Sask. L. R. 330.—**CAN.**

sm. *Authorised round-up—Liability for trespass.*]—A person who is authorised by the Minister to conduct a round-up in pursuance of a petition therefor under sect. 125 (3) of Domestic Animals (Unorganised Territory) Act, 1924, is personally liable for a trespass committed in the course of the conduct of the round-up. The liability imposed by said sub-sect. (3) is both joint & several on each one of the signers of the petition. The fact that some of the required number of the

151. After this case add "*See, also*, CONSTITUTIONAL LAW, Vol. XI., p. 589; COPYHOLDS, Vol. XIII., pp. 21 *et seq.*"

154. *Add. Citation :*—17 C. B. N. S. 251, n.

Add. Annotations :—**Refd.** Read *v.* Edwards (1864), 17 C. B. N. S. 245; Gayler & Pope *v.* Davies (1924), 93 L. J. K. B. 702.

156a. ——.]—MANTON *v.* BROCKLEBANK, No. 258a, *post*.

156b. ——.]—(1) For injury caused by horses or cattle to property on or adjoining a highway the owner is not liable in the absence of negligence or of wilful intention on his part.

(2) The bolting of a horse which has been left unattended in a public street is *primâ facie* evidence of negligence on the part of the owner.—GAYLER & POPE, LTD. *v.* DAVIES (B.) & SON, LTD., [1924] 2 K. B. 75; 93 L. J. K. B. 702; 131 L. T. 507; 40 T. L. R. 591; 68 Sol. Jo. 685.

Annotation :—*Generally*, **Refd.** Deen *v.* Davies, [1935] 2 K. B. 282.

159. *Add. Citation :*—62 Sol. Jo. 161.

Add. Annotation :—*As to* (1) **Refd.** Richards *v.* Davies, [1921] 1 Ch. 90.

162. After this case add "*See, now*, Dogs Act, 1906 (c. 32), s. 1 (1) (3)."

163a. Cat killing pigeons.]—The owner of a cat is not bound to keep it from straying into a neighbour's land.

A cat belongs to the class of animals *mansuetæ naturæ*. For mischief done by it in following the common instincts of its kind, its owner is not liable. To make him liable he must have knowledge of some vicious propensity beyond those common instincts. Therefore where a cat strayed from its owner's land into the land of a neighbour & killed fowls & pigeons kept there :—*Held :* the owner of the cat was not liable.—BUCKLE *v.* HOLMES, [1926] 2 K. B. 125; 95 L. J. K. B. 547; 134 L. T. 743; 90 J. P. 109; 42 T. L. R. 369; 70 Sol. Jo. 464, C. A.

Annotation :—**Refd.** Cutler *v.* United Dairies (London), Ltd., [1933] 2 K. B. 297.

166. *Add Annotation :*—**Consd.** Hines *v.* Tousley (1926), 95 L. J. K. B. 773.

167. *Add. Annotation :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

168. *Add. Annotation :*—**Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

174a. —— —— ——.]—ANON. (1470), Y. B. 10 Edw. 4, fo. 7, pl. 19.

Annotations :—**Refd.** Right *v.* Barnard (1674), Freem. K. B. 379; Ricketts *v.* East & West India Docks, etc., Ry. (1852), 12 C. B. 160.

signatures to the petition are forgeries & the consent of the Minister was therefore obtained by deception does not relieve the actual signers of it from responsibility for the wrongful conduct of the round-up.—JONES *v.* WALKER, [1932] 3 W. W. R. 327.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—A.

154 ix. ——.]—The owner of an animal in which by law the rule of property can exist is bound to take care that it does not stray into the land of his neighbour, & he is liable for any trespass it may commit, & for the ordinary consequences of that trespass. Whether or not the escape of the animal is due to the owner's negligence is immaterial.—WHALLEY *v.* VANDERGRAND, [1919] 1 W. W. R. 87; 44 D. L. R. 319.—**CAN.**

154 x. —— *To remove cattle—Under Domestic Animals Act, R. S. A.*, 1922 (*c.* 67), *s.* 64.]—If lands of A. adjoin lands of B. without a fence between them, & the lands are within an extra-municipal area which has not been closed under s. 8 of the above Act, & none of the lands have ever been within a municipal or pound district, & if A.'s cattle stray on to B.'s lands & B. gives notice to remove them, A. sufficiently complies with s. 64 of the above Act by removing them a reasonable distance on to his own land, even though this does not effect a permanent removal.—R. (GAGAN) *v.* HILLMER, [1923] 3 W. W. R. 660.—**CAN.**

157 i. —— *Default of plaintiff leaving property unprotected.*]—There is no liability for cattle straying on to land open on two sides, & not therefore protected by a lawful fence as required by Trespass Act, R.S.B.C., 1924, s. 14.—MACDONALD-BUCHANAN *v.* JOHNSON, [1934] 1 D. L. R. 216.—**CAN.**

176 iii. —— —— ——.]—Where a fence erected by one of two adjoining owners becomes by agreement, express or implied, the line fence & the other adjoining owner fences three sides of his land & joins on to the line fence, he must pay a just proportion of the then value thereof & thereafter bear an equal share of the costs of maintenance & repair, but it also vests in him all the rights of an owner in respect of the line fence. He is entitled to strengthen & repair it by adding strands of wire to prevent his cattle getting upon the land of his neighbour, & the latter has no right to remove the strands. If he does so, & the cattle get upon his land by his act, he cannot claim against the adjoining owner for resulting damages.—ARMSTRONG *v.* THOMPSON, [1923] 3 D. L. R. 74; 2 W. W. R. 609.—**CAN.**

h i. —— ——.]—A horse belonging to appl. was being grazed in a field which adjoined resp.'s farm, upon which he kept cattle, including a bull. The cattle were continually breaking through the dividing fence, & on one occasion the bull gored the horse. The fence between the properties was not a sufficient fence within Fencing Act, 1908 :—*Held :* there was no evidence of negligence by resp. towards applt. & without proof of *scienter* damages were not recoverable.—EDWARDS *v.* RAWLINS, [1924] N. Z. L. R. 333.—**N.Z.**

11. ——.]—Where there exists a valid bye-law permitting animals to run at large in a municipality, an owner cannot be held to be guilty of negligence in allowing his animals so to run.—KOCH *v.* GRAND TRUNK PACIFIC BRANCH LINES CO., [1917] 1 W. W. R. 1120; 10 Sask. L. R. 35.—**CAN.**

1 ii. ——.]—Damage caused by a bull running at large contrary to Entire Animals Ordinance, s. 4, is recoverable though the property damaged is not surrounded by a lawful fence.—MCLEAN *v.* BRETT, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—**CAN.**

1 iii. ——.]—The owner of cattle rightfully running at large is not liable for damage to crops done by them on unfenced land.—MCKAY *v.* LOUCKS, [1920] 2 W. W. R. 1007; 53 D. L. R. 394.—**CAN.**

1 iv. ——.]—Animals are not running at large when in charge of a herdsman.—R. *v.* PETERSON, [1920] 1 W. W. R. 506; 51 D. L. R. 104; 32 Can. Crim. Cas. 218.—**CAN.**

1 v. ——.]—CLEARY *v.* HITE, [1921] 3 W. W. R. 130.—**CAN.**

1 vi. ——.]—Pltf. & deft. owned adjoining farms, & the line between the farms was unfenced. Deft. turned his cattle loose & they went on to pltf.'s land & ate up his grain which was, to deft.'s knowledge, lying in stooks thereon :—*Held :* deft. was liable in damages.—DOBROLOWSKI *v.* DANYLUK, [1921] 2 W. W. R. 729.—**CAN.**

1 vii. ——.]—A bull, which has broken through from its owner's enclosed land on to adjoining enclosed land of another person & is without a herder, is running at large within Stray Animals Act.—R. *v.* BRADY, [1921] 3 W. W. R. 396.—**CAN.**

1 viii. ——.]—Under Animals Act, R. S. B. C., 1924 (c. 11), s. 11, the owner of an animal unlawfully at large is liable for personal injuries committed by it when running at large, as well as for injury to property.—JACOBSON *v.* SCHNEIDER, [1927] 1 D. L. R. 1006; [1927] 2 W. W. R. 257; 38 B. C. R. 83.—**CAN.**

1 ix. ——.]—Trespass Act, 1924, c. 260, s. 14, dealing with animals straying into lands unprotected by a lawful fence, does not apply to animals, in this instance swine, which by Animals Act, 1924, c. 11, s. 3, are absolutely prohibited from being at large.—BISHOP *v.* LIDEN, [1929] 1 D. L. R. 998; 1 W. W. R. 402; 40 B. C. R. 556.—**CAN.**

1 x. ——.]—*Semble :* animals which break out of one enclosure into an adjoining enclosure belonging to another person are at large within Stray Animals Act, R.S.S., 1930.—SINCLAIR *v.* KENNEDY, [1936] 3 W. W. R. 641.—**CAN.**

1 xi. ——.]—A horse running away while being led to water by a halter rope is not at large by permission or unlawfully on the highway within sect. 131 (2) of Motor Vehicle Act.—STUBBARD *v.* BAXTER, [1938] 2 D. L. R. 605; 12 M. P. R. 582.—**CAN.**

n i. —— ——.]—Where a municipal bye-law is passed pursuant to Stray Animals Act, R. S. S. 1920 (c. 124), to prohibit the permitting of horses to run at large, the duty imposed thereby is one towards the proprietors of cultivated land as defined in s. 2 (14) of the Act, & not towards the public at large.—OSADCHUK *v.* RUSSNIAK (1922), 63 D. L. R. 323; 15 Sask. L. R. 286; [1922] 1 W. W. R. 829.—**CAN.**

n ii. —— ——.]—A municipality passed a bye-law providing that all animals should be allowed to run at large in the municipality with certain exceptions & except between certain

180. *Add. Annotations :—As to* (1) **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. *As to* (2) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

181. After this case add "*See, also,* BOUNDARIES, Vol. VII., pp. 281, 282."

183. *Add. Annotations :* — **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75. **Refd.** Theyer *v.* Purnell, [1918] 2 K. B. 333.

187. *Add Annotation :*—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

188a. Cat trespassing.]—BUCKLE *v.* HOLMES, No. 163a, *ante.*

194. *Add. Annotation :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

195. *Add. Annotations :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Hines *v.* Tousley (1926), 95 L. J. K. B. 773. **Distd.** Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650. **Refd.** Mansel *v.* Webb (1918), 88 L. J. K. B. 323; Musgrove *v.* Pandelis, [1919] 2 K. B. 43; A.-G. *v.* Cory, Kennard *v.* Cory, [1921] 1 A. C. 521; Rainham Chemical Works *v.* Belvedere Fish Guano Co., [1921] 2 A. C. 465; Hoare *v.* McAlpine, [1923] 1 Ch. 167; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75; Glanville *v.* Sutton (1927), 44 T. L. R. 98; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1; Pontardawe R. C. *v.* Moore-Gwyn, [1929] 1 Ch. 656; Sycamore *v.* Ley (1932), 147 L. T. 342; Knott *v.* London County Council, [1934] 1 K. B. 126; Deen *v.* Davies, [1935] 2 K. B. 282.

197. *Add. Annotation :*—**Consd.** Arneil *v.* Paterson, [1931] A. C. 560. (So far as I understand the facts, I do not think the headnote in *Piper* v. *Winnifrith* is justified by the facts as found, nor is it justified by anything I find in the judgment, *per* VISCOUNT HAILSHAM.)

197a. —— —— Liability of each owner for whole damage.]—Two dogs, the property of different owners, acting in concert, attacked a flock of sheep & injured several. An action of damages brought under this Act by the owners of the sheep against the respective owners of the dogs, craving for a joint & several decree against the defenders, was defended by one defender only, who claimed that he was liable for one-half only of the damage :—*Held :* when once liability under the Act was established, the ordinary measure of damages had to be applied; in law each of the dogs occasioned the whole of the damage as the result of the two dogs acting together, & consequently each owner was responsible for the whole.—ARNEIL *v.* PATERSON, [1931] A. C. 560; 100 L. J. P. C. 161; 145 L. T. 393; 47 T. L. R. 441; 75 Sol. Jo. 424, H. L.

---

dates. Another bye-law prescribed what should constitute a lawful fence. Nothing was said as to what should be the effect of a lawful fence, & no bye-law was passed for the purposes of Municipal Act, Man., s. 602 (d) :—*Held :* the effect of the first-mentioned bye-law was to permit cattle, other than those excepted in it, to run at large between certain dates, & in this it ousted the common law liability of the owner of the cattle for damages caused by them when so running at large, & such damages were not recoverable even if the land where the damage was done was surrounded by a lawful fence.

(2) The bye-law also provided that nothing therein contained should prevent the owner of any lands trespassed upon or of any property destroyed from waiving rights created by that bye-law & bringing his action in any competent ct. in consequence of any trespass :—*Held :* that provision gave no right of action taken away by the other bye-law provision.—JUKES *v.* MISKELLY, [1923] 2 D. L. R. 561; 33 Man. L. R. 67; [1923] 1 W. W. R. 1057.—**CAN.**

194 i. —— *Remoteness of damage.*]—Damages for personal injuries suffered by the rider of a horse from a kick by a neighbour's trespassing horse are not too remote where the trespassing horse's owner knows that the neighbour frequently rides on horseback, & where it is customary in the country to ride horses when bringing home horses or cattle.—WHALLEY *v.* VANDERGRAND, [1919] 1 W. W. R. 87; 44 D. L. R. 319.—**CAN.**

194 ii. —— ——.]—Where a heifer was thoroughbred & registered & its owner intended to breed it to a certain thoroughbred registered bull, the owner of the heifer was given damages for the difference in value between the calf anticipated as the result of such breeding & the calf that was born as the result of a bull's trespass. Damage by reason of the possible influence upon the strain of subsequent offspring was held too remote & uncertain to be considered.—MCLEAN *v.* BRETT, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—**CAN.**

194 iii. —— ——.]—Deft.'s trespassing "scrub" bull served pltf.'s young purebred heifer :—*Held :* pltf. was entitled to damages for the decreased value of the heifer caused by her growth being stunted & shape being affected by being bred at an early age, but not to damages based on a consideration of the effects on the minds of others of an erroneous theory that the heifer was liable to "throw back" to the first bull in future breeding.—COUSINS *v.* GREAVES, [1920] 3 W. W. R. 702; 54 D. L. R. 650.—**CAN.**

194 iv. —— ——.]—Deft. negligently allowed his mare to escape & trespass in another's field where she kicked & injured a farm boy while she was being ejected :—*Held :* the injury was not too remote.—HARRISON *v.* ARMSTRONG (1917), 51 I. L. T. 38.—**IR.**

195 iii. —— ——.]—The owner of a bull at large contrary to law must be held to have known that he would naturally seek to cover any heifer or cow which he can reach, & his covering the heifer of another owner on that owner's property & against his will is a trespass for which the owner of the bull is liable.—MCLEAN *v.* BRETT, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—**CAN.**

195 iv. —— ——.]—Deft.'s cattle trespassed on pltf.'s land which was not enclosed by a lawful fence. Pltf.'s son on horseback was chasing the cattle out when pltf. proceeded on foot to drive a steer through a gateway & was charged by the steer & injured. Deft. had no knowledge that the steer was of a vicious nature or liable to attack persons :—*Held :* pltf. could not recover damages, as the injury was not an ordinary consequence of the trespass; the damages claimed were too remote, & the proximate cause of the injury was pltf.'s action in approaching the animal on foot which he should not have done.—HATTON *v.* MORTON, [1921] 2 W. W. R. 803.—**CAN.**

197 ia. —— —— ——.]—A sheep owner cannot join the owners of trespassing dogs as defts. in one action for damages for the loss of his sheep.—MCDERMOTT *v.* HUDSON (1920), 16 Tas. L. R. 21.—**AUS.**

197 ib. —— —— —— *Onus of proof of damage done by each dog.*]—Applt.'s sheep were worried by 5 dogs, of which resp.'s dog & one belonging to an unidentified owner were shot. In an action in the magistrates' ct. resp. was ordered to pay one-fifth of the total damages. There was no direct evidence as to the precise extent of resp.'s dog's depredations as distinguished from those of the other 4 dogs :—*Held :* allowing the appeal, & awarding as against resp. the total damages assessed, if 2 or more dogs belonging to different owners go together & jointly partake in a raid on sheep, then such raid is a joint affair, & on proof of this it lies on the owner of each dog to establish affirmatively the particular part of the damage his dog did, & to establish also that his dog acted independently of the others, & not in concert with them.—LANKSHEAR *v.* FAIR, [1930] N. Z. L. R. 347.—**N.Z.**

197 iv. —— —— ——.]—Where damage is done by animals belonging to several owners the fact that the injured party cannot specify the amount of damage done by the animals of each owner does not disentitle him to substantial damages.—PIXLEY *v.* BEDFORD, [1918] 2 W. W. R. 1055; 11 Sask. L. R. 345; 42 D. L. R. 560.—**CAN.**

197 v. —— —— ——.]—The owners of different animals were held liable as joint tortfeasors for destruction of grain.—ALTHOUSE *v.* BESANA, [1919] 3 W. W. R. 725; 49 D. L. R. 158.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C.

200 ii. ——.]—Where by deft.'s negligence his four-horse team ran away & pltf. ran out to stop them & received injuries :—*Held :* pltf. could not recover damages as he failed to show that any person was in danger when he tried to stop the horses.—

201. *Add. Annotation :* — **Consd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

202. *Add. Annotation :*—**Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

203. *Add. Annotations :*—**Consd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75; Ellor *v.* Selfridge & Co., Ltd. (1930), 46 T. L. R. 236; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n. **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

204. *Add. Annotations :—As to* (1) **Consd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75. **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

205. *Add. Annotations :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75; Deen *v.* Davies, [1935] 2 K. B. 282.

205a. —— —— **Attempt to stop horse—Volenti non fit injuria.**]—A horse belonging to defts. & attached to one of their vans was seen by pltf. running past his house without the driver. It entered a field immediately adjoining, & separated by a hedge from, pltf.'s garden, & the driver, who had followed it, was trying to pacify it, but as it continued very restive, the driver, who was excited, shouted "Help, help!" whereupon pltf. went over the hedge & attempted to hold the horse, but it suddenly reared & threw him to the ground causing him serious injuries, in respect of which he sued defts. There was evidence that the horse had bolted once, if not twice, before. The jury found (*a*) that pltf. did not freely & voluntarily, with full knowledge of the nature of the risk he ran, impliedly agree to incur it; (*b*) that defts. were guilty of negligence in employing the horse to draw the van; & (*c*) that negligence was the cause of the accident :—*Held :* the negligence (if any) of defts. in employing the horse could not be said to be the cause of the accident, inasmuch as there was a *novus actus interveniens*—namely, pltf.'s attempt to hold the horse, which he must have known was attended with risk, & therefore that the principle of *volenti non fit injuria* applied & precluded the pltf. from recovering.

Per SCRUTTON, L.J.: If a horse bolts in a highway & a bystander tries to stop it & is injured, the owner of the horse is under no legal liability to the injured person.

Per SLESSER, L.J.: If a man sees his child in great peril in the street from a runaway horse, &, moved by paternal affection, dashes out & is injured in attempting to stop the horse, it may in those circumstances well be said that there is in law no *novus actus interveniens*. — CUTLER *v.* UNITED DAIRIES (LONDON), LTD., [1933] 2 K. B. 297; 102 L. J. K. B. 663; 149 L. T. 436, C. A.

Annotation :—**Distd.** Haynes *v.* Harwood & Son, [1935] 1 K. B. 146.

205b. —— —— —— ——.]—Pltf., a police constable, was on duty inside a police station in a street in which, at the material time, were a large number of people, including children. Seeing defts.' runaway horses with a van attached coming down the street he rushed out & eventually stopped them, sustaining injuries in consequence, in respect of which he claimed damages :—*Held :* (1) on the evidence defts.' servant was guilty of negligence in leaving the horses unattended in a busy street; (2) as defts. must or ought to have contemplated that some one might attempt to stop the horses in an endeavour to prevent injury to life & limb, & as the police were under a general duty to intervene to protect life & property, the act of, & injuries to, pltf. were the natural & probable consequences of defts.' negligence; (3) the maxim "*volenti non fit injuria*" did not apply to prevent pltf. recovering.—HAYNES *v.* HARWOOD, [1935] 1 K. B. 146; 104 L. J. K. B. 63; 152 L. T. 121; 51 T. L. R. 100; 78 Sol. Jo. 801, C. A.

Annotations :—As to (3) **Distd.** Sylvester *v.* Chapman, Ltd. (1935), 79 Sol. Jo. 777. **Consd.** Deen *v.* Davies, [1935] 2 K. B. 282.

206a. —— ——.]—GAYLER & POPE, LTD. *v.* DAVIES (B.) & SON, LTD., No. 156b, *ante*.

207. *Add. Annotation :*—**Refd.** Haynes *v.* Harwood, [1935] 1 K. B. 146.

208. *Add. Annotations :*—**Consd.** Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44. **Distd.** Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125. **Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101. **Consd.** Haynes *v.* Harwood, [1935] 1 K. B. 146. **Refd.** Hardy *v.* C. L. Ry., [1920] 3 K. B. 459; Weld-Blundell *v.* Stephens, [1920] A. C. 956.

214. *Add. Annotations :*—**Consd.** Paul *v.* G. E. Ry. (1920), 36 T. L. R. 344; Hargrove *v.* Burn (1929), 46 T. L. R. 59. **Apprvd.** Cooper *v.* Swadling (1929), 46 T. L. R. 73. **Distd.** Swadling *v.* Cooper (1930), 46 T. L. R. 597. **Consd.** M'Lean *v.* Bell (1932), 48 T. L. R. 467. **Refd.** Ellerman Lines *v.* Grayson, [1919] 2 K. B. 514; Saies *v.* Bristol Petroleum Co. *v.* G. W. Ry. (1920), 90 L. J. K. B. 1289; Admiralty Comrs. *v.* S.S. Volute, [1922] 1 A. C. 129; Anglo-Newfoundland Development Co. *v.* Pacific Steam Navigation Co., [1924] A. C. 406; The Vectis, [1929] P. 204;

MCDONALD *v.* BURR, [1919] 3 W. W. R. 825.—**CAN.**

200 iii. ——.]—A horse owned by deft. co., attached to a bread-wagon, ran away upon a city street & came in contact with a truck upon which pltf. was standing, causing him to fall to the pavement & sustain serious injuries :—*Held :* there was no evidence of negligence. The accident was clearly the result of the horse running away, & there was no evidence that it was wild or vicious or had any tendency to run away before the accident. —CANIVET *v.* BROWN'S BREAD, LTD., [1930] 1 D. L. R. 519; 64 O. L. R. 580.—**CAN.**

206 x. —— —— *Mechanical precautions for control of horse.*]—TUCKER *v.* HENNESSEY, [1918] V. L. R. 56.—**AUS.**

xi. —— —— ——.]—A two-horse light trolly used for delivering ice was left unattended by the driver in a public road while he delivered ice. The wheel was chained & the reins tied to a swingle-bar. While the driver was in a shop on the roadside the horses were startled by a boy on a bicycle riding over a piece of paper. The driver saw the horses move off, ran out of the shop, & a few seconds later caught the reins. The horses were then trotting, but on one of the horses striking the driver on the leg, he released his hold on the reins. The horses then bolted & collided with a stationary vehicle :—*Held :* the driver had not been guilty of negligence.—OTTEWILL *v.* ALASKA ICE CREAM CO., LTD., [1928] S. A. S. R. 107.—**AUS.**

w i. —— ——.]—It is negligence for a man mounted on a bicycle to drive loose horses at 6.15 a.m. along the streets of a populated district, urging them round corners at a fast trot.—BARRETT *v.* HARDIE & THOMPSON, LTD., [1924] N. Z. L. R. 228.—**N.Z.**

y i. *Restive horse — Negligence.*] — Pltf. was driving a motor car when he was held up by the traffic police. Deft.'s driver pulled up his horse & cart between the car & the footpath, & the horse became restive & backed into the motor car, occasioning damage to it. The horse had not previously been known to be restive, & was usually quiet, & the driver was unable to say what had frightened the horse. The driver was not in any way negligent in the manner in which he looked after the horse :—*Held :* there was no evidence of negligence on the part of the driver of the horse or of deft.—SARTORI *v.* REYNOLDS, LTD. (1927), 29 W. A. L. R. 32.—**AUS.**

The Chatwood, [1930] P. 272 1; Flower *v.* Ebbw Vale Steel, Iron & Coal Co., [1934] 2 K. B. 132.

216. *Add. Annotations :*—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

218. *Add. Annotations :* — **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Buckle *v.* Holmes, [1926] 2 K. B. 125; Sycamore *v.* Ley (1932), 147 L. T. 342; Deen *v.* Davies, [1935] 2 K. B. 282. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

219a. Dog left inside motor car.]—Deft. parked his saloon car in a street with its back against the pavement. The car was left shut with a dog inside it. There was no evidence that the dog had a vicious propensity. When pltf., who had parked his car near deft.'s car, was walking past deft.'s car the dog, which had been barking & jumping about the car, jumped up against the window in the rear of deft.'s car, smashing a panel, whereby a glass splinter flew out & entered pltf.'s eye, with the result that pltf. lost his eye. In an action for damages for personal injuries :—*Held :* the danger of a piece of glass being knocked by a dog out of a small window at the back of the car, & of a splinter of glass hitting a passer-by on the pavement, was such an unlooked-for event that no reasonable man could say that a person ought to be convicted of negligence for not taking any precautions against it. A person must guard against a reasonable probability of danger; he was not bound to guard against a fantastic possibility.—FARDON *v.* HARCOURT-RIVINGTON (1932), 146 L. T. 391; 48 T. L. R. 215; 76 Sol. Jo. 81, H. L.

Annotations :—**Consd.** Deen *v.* Davies, [1935] 2 K. B. 282. **Refd.** Fryer *v.* Salford Corpn., [1937] 1 All E. R. 617; Woodman *v.* Richardson & Concrete, Ltd., [1937] 3 All E. R. 866.

219b. ——.]—Where a pltf., aged five, when leaning over a motor car, stationary upon the highway, which she had been warned by her father not to approach, after a general warning by deft., the owner of the car, to the children accustomed to play nearby, was bitten by a dog owned by deft., confined to the car by a leash so that it could project its nose only 3 inches over the rim of the door, & where the evidence that the dog was of a ferocious disposition towards mankind, & that deft. knew of it, was so slight that no reasonable jury could act upon it :—*Held :* judgment must be entered for deft.

Per SCRUTTON & LAWRENCE, L.JJ.—The doctrine of *scienter*, applicable to the liability of the owner of a dog let run in the street, was applicable also to the liability of the owner of a dog confined in a motor car.

Per GREER, L.J.—The owner of a dog might be liable to a person bitten, apart from any *scienter*, if he placed it in such a position & under such circumstances as rendered it likely that the dog would get excited, would lose its temper, & would cause damage to persons lawfully passing along the highway. But here deft. had tied up the dog in the way proved, had warned the children of the neighbourhood, & this warning had been expressly conveyed to pltf. Had pltf. not been so expressly warned, his Lordship stated that he did not know what his view would have been.—SYCAMORE *v.* LEY (1932), 147 L. T. 342, C. A.

Annotation :—**Consd.** Deen *v.* Davies, [1935] 2 K. B. 282.

219c. Dog with lead trailing—Nuisance.]—Deft., walking with a dog on a long lead, held the lead so loosely that the dog escaped from her control & chased a cat. In doing so, the lead became entangled with pltf.'s legs & she, a woman of 73 years of age, was thrown & injured :—*Held :* a dog with a long lead loose upon the road is a nuisance & pltf. was entitled to succeed. Pltf. was also entitled to succeed upon the ground of the negligence of deft.—PITCHER *v.* MARTIN, [1937] 3 All E. R. 918; 53 T. L. R. 903; 81 Sol. Jo. 670.

220. *Add. Annotation :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

222. *Add. Annotations :*—*As to* (1) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. *Generally*, **Refd.** Deen *v.* Davies, [1935] 2 K. B. 282.

226. *Add. Annotations :*—*As to* (1) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. *As to* (2) **Consd.** Deen *v.* Davies, [1935] 2 K. B. 282.

215 iii. —— *Liability of dog owner.*]—Deft.'s dog, to his knowledge, had for long had a habit of running after & barking at horses & carriages travelling upon highways :—*Held :* deft. was liable in damages for injury caused by the running away of horses frightened by the dog so acting.—BIRDSALL *v.* MERRITT (1917), 38 O. L. R. 587; 35 D. L. R. 260.—**CAN.**

215 iv. —— —— *Scienter.*]—Deft.'s dog jumped from an automobile & ran at pltf.'s horses & barked causing the horses to jump sideways, the pole strap to break, & the team to run away, causing loss & bodily injuries. The ct. found that the dog had, to deft.'s knowledge, the mischievous propensity of doing such acts, & deft. was held liable in damages.—SPAT *v.* HODGSON, [1919] 3 W. W. R. 210.—**CAN.**

221 ii. —— ——.]—In Saskatchewan the principles of the common law govern liability for damage done by a bull when at large, with the exception that there is no difference, as there apparently is in England, between the case of damage on a highway & damage on private property. Therefore, although there is a statutory prohibition against allowing bulls to run at large, yet, in the absence of evidence that the bull in question was vicious or possessed characteristics different from those of bulls generally, there is no liability in damages for damage done by it when at large unless the damage was such as might reasonably have been anticipated as the result of its being at large.—RICHARDSON *v.* DORN, [1937] 1 W. W. R. 143.—**CAN.**

224 iv. —— ——.]—KOCH *v.* SNYDER (1936), 6 F. L. J. (Can.), 5.—**CAN.**

225 iii. —— ——.]—Pltf.'s motor car collided with a dark brown heifer belonging to deft. which had strayed from deft.'s unfenced land & came suddenly out on to the highway from the land of an adjoining owner; the car was overturned & pltf. sustained injury. There was no negligence in the driving or management of the car :—*Held :* deft. was not liable to pltf.—HALL *v.* WIGHTMAN, [1926] N. 92.—**IR.**

225 iv. —— ——.]—*Held :* permitting one's cattle to run at large on a provincial highway being forbidden by Highway Improvement Act, 1927, s. 73, the presence of the calves on the road was unlawful, quite as much so as if forbidden by a municipal bye-law; &, where an animal is unlawfully upon a highway in this Province, the owner is liable in damages for any injury which is the natural result of the unlawful straying.—MCMILLAN *v.* WALLACE, [1929] 3 D. L. R. 367; 64 O. L. R. 4.—**CAN.**

225 v. —— ——.]—The owner of a cattle farm in Southern Rhodesia, a cattle country with large open spaces, is not negligent if he allows his cattle to roam over his farm though such cattle may stray on a public road running across the farm, & if a bull in his possession & accompanying such cattle injures a person lawfully using the road, the owner of the farm is not liable unless he knew or ought to have known that the bull was vicious.—MOUBRAY *v.* SYFRET (1935), App. D. 199.—**S. AF.**

226 i. —— *Sheep—Defective fence—Natural propensity.*]—A motor cyclist was injured by a collision in daylight with a sheep upon a public road. Pursuer averred that defender was negligent in knowingly failing to keep his fences in such repair as would prevent his sheep from straying on to the road, &, in any event, in allowing his sheep to graze upon the road :—*Held :* the accident was not the natural & probable result of the negligence alleged.—FRAZER *v.* PATE, [1923] S. C. 748; 60 Sc. L. R. 470.—**SCOT.**

226a. —— **Duty of owner.**]—No duty is cast upon the owner of an animal *mansuetæ naturæ*, which is being depastured on land adjoining the highway, to prevent it from straying on the highway, unless it is known to be of vicious habit. But a person who brings an animal on the highway must take reasonable care to prevent it from doing damage to other persons thereon. What constitutes reasonable care is a question of fact in each case, & the standard of reasonable care may not be the same in the country as in a town. In this respect the duty to the public is the same in the case of one who leaves an animal in the street, & of one who places it in a stable or yard adjoining the street without taking proper steps to prevent it from straying into the street, where it would naturally go. In either case the owner is liable for the conduct of the animal if he puts it in a position in which it is likely to cause damage to persons lawfully using the highway.—DEEN *v.* DAVIES, [1935] 2 K. B. 282; 104 L. J. K. B. 540; 153 L. T. 90; 51 T. L. R. 398; 79 Sol. Jo. 381, C. A.

230. *Add. Annotation :*—**Consd.** Deen *v.* Davies, [1935] 2 K. B. 282.

234. *Add. Annotations :*—**Consd.** Deen *v.* Davies, [1935] 2 K. B. 282. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

235. *Add. Annotation :*—*As to* (1) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

238. *Add. Annotation :*—**Refd.** Manton *v.* Brocklebank, [1923] 1 K. B. 406.

239. *Add. Annotations :* — **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Hines *v.* Tousley (1926), 95 L. J. K. B. 773. **Distd.** Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650. **Refd.** Mansel *v.* Webb (1918), 88 L. J. K. B. 323; Musgrove *v.* Pandelis, [1919] 2 K. B. 43; A.-G. *v.* Cory, Kennard *v.* Cory, [1921] 1 A. C. 521; Rainham Chemical Works *v.* Belvedere Fish Guano Co., [1921] 2 A. C. 465; Hoare *v.* McAlpine, [1923] 1 Ch. 167; Cockburn *v.* Smith, [1924] 2 K. B. 119; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75; Booth *v.* Thomas (1925), 42 T. L. R. 114; Noble *v.* Harrison, [1926] 2 K. B. 332; Smith *v.* G. W. Ry. (1926), 135 L. T. 112; Glanville *v.* Sutton (1927), 44 T. L. R. 98; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1; Pontardawe R. C. *v.* Moore-Gwyn, [1929] 1 Ch. 656; Sycamore *v.* Ley (1932), 147 L. T. 342; Knott *v.* London County Council, [1934] 1 K. B. 126; Deen *v.* Davies, [1935] 2 K. B. 282.

240. *Add. Annotation :*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

243. *Add. Annotations :*—**Consd.** Sycamore *v.* Ley (1932), 147 L. T. 342. **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Buckle *v.* Holmes (1925), 95 L. J. K. B. 158.

244. *Add. Annotations :*—*As to* (2) **Apld.** Sylvester *v.* Chapman, Ltd. (1935), 79 Sol. Jo. 777. **Consd.** Sycamore *v.* Ley (1932), 147 L. T. 342.

244a. Leopard—Confined in cage—Volenti non fit injuria.]—SYLVESTER *v.* CHAPMAN, LTD. (1935), 79 Sol. Jo. 777.

---

sk. *Animals running "at large"—Dog—Biting pedestrian.*]—The owner is liable in damages only if he knew that the dog was viciously disposed.—BOWEN *v.* LIGHTFOOT, [1920] 2 W. W. R. 153; 52 D. L. R. 305; 30 Man. L. R. 337.—**CAN.**

sl. —— *Horses — Collision with motor car.*]—The owner is *primâ facie* liable only for such damages as a horse is likely to commit if allowed to stray. The doctrine of *scienter* applies, & the case is in the same class as that of a horse biting or kicking a person on the highway.—OSADCHUK *v.* RUSSNIAK (1922), 63 D. L. R. 323; 15 Sask. L. R. 286; [1922] 1 W. W. R. 829.—**CAN.**

so. *Animals driven on highway—Negligence of motorist.*]—Animals are legally on a highway when being driven along, & a motorist must use due care, & cannot recover damages for injury if he does not.—HAGGERTY *v.* MCINTOSH (1935), 3 D. L. R. 262; O. R. 325; 5 F. L. J. (Can.), 20.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—D.

sm. *Person in unfenced garden—Cow escaping from railway yard.*]—The animal knocked down & injured pltf., but was not vicious, but nervous & excitable :—*Held :* pltf.'s action to recover damages for her injuries failed.—STREET *v.* CRAIG (1920), 48 O. L. R. 324; 56 D. L. R. 105.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A.

q i. —— ——.]—Applt. kept about seventy hives of bees on a small piece of land adjoining resp.'s farm. While resps. were reaping close to the apiary, bees in great numbers attacked resps. & their horses, causing serious injuries. In an action for damages, the magistrate found as a fact that applt. was guilty of negligence; &, further, apart from negligence, the liability of a bee-keeper was coextensive with the liability of a person keeping on his land water, wild & dangerous animals, or poisonous gases. From this judgment deft. appealed :—*Held :* (1) Apiaries Act, 1927, being restrictive & not permissive, does not exempt a registered apiarist from common-law liability for injuries inflicted by his bees; (2) applt. was guilty of negligence in keeping so many hives of bees on the boundary, & this negligence was the effective cause of the injury & damage.—ROBINS *v.* KENNEDY & COLUMB, [1931] N. Z. L. R. 1134.—**N.Z.**

sn. *Husky.*]—An animal which is the result of a cross between a dog & a wolf must be considered as essentially a wild animal, & a person in charge thereof will be responsible for injury done by it to a human being.—TEMPLE *v.* ELVERY (Sask.), [1926] 3 W. W. R. 652.—**CAN.**

sp. *Steer.*]—The rule that an owner of an animal of an ordinarily quiet nature is liable for the vicious acts thereof only if he knew that the animal was accustomed or likely to commit such acts, applies to an action for damages for personal injuries caused by an attack by a steer.—ROSENTHAL *v.* HESS (Sask.), [1927] 1 D. L. R. 493; [1927] 1 W. W. R. 15.—**CAN.**

sr. *Animal trespassing—Injury to owner of land while being driven off.*]—A boar was trespassing on resp.'s land, &, while being driven off by him & after being hit by him with a batten, suddenly turned upon & tossed him, causing injury :—*Held :* the injury was not the natural & ordinary consequence of the trespass, as it is not ordinarily in the nature of a boar *domitæ naturæ* to attack a human being, &, on the facts, there was insufficient proof of *scienter*.—MARK *v.* BARKLA, [1935] N. Z. L. R. 347.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 2.—B. (a).

245 i. *Vicious animals in general—Duty to keep under control.*]—If an owner of a dangerous animal knows it to be dangerous & neglects to keep it safe, he is liable in damages for injuries or death caused by it.—TARASOFF *v.* ZIELINSKY, [1921] 2 W. W. R. 135; 14 Sask. L. R. 226; 59 D. L. R. 177.—**CAN.**

245 ii. —— ——.]—In an action for damages for the death of a person killed by a bull known to be dangerous allowed to be at large on the farm where deceased lived, a defence of contributory negligence cannot be supported by the fact that deceased, though knowing of the possible danger, went about her ordinary business on the farm, in the course of which she was killed.—TARASOFF *v.* ZIELINSKY, [1921] 2 W. W. R. 135; 14 Sask. L. R. 226; 59 D. L. R. 177.—**CAN.**

245 iii. —— ——.] — Liability attaches to the owner if, knowing of the mischievous tendencies of his dog, he neglects reasonable precautions to prevent such tendencies causing damage.

Pltf. walking in the street was passing deft.'s house, when his dog rushed out, knocked her down, & injured her. At the trial of an action for damages for her injury, the jury found that deft. knew that the dog was of a vicious disposition & assessed damages to pltf. :—*Held :* there was evidence to sustain the jury's finding, deft.'s wife, who was in control of the dog, having knowledge of its propensity to rush out & jump at persons passing.— NORTON *v.* FITZGERALD, [1928] 3 D. L. R. 474; 62 O. L. R. 314.—**CAN.**

245 iv. —— ——.]—The owner of a domestic animal, *e.g.* a bull, unlawfully at large contrary to a statute is not liable for personal injuries committed by it, even though it was at large through the negligence of the owner, unless the statute so provides

246a. Bull attacking cow—Bull in auction yard.]—In an action for damages arising out of an attack on a cow in an auction yard by a bull which was in charge of deft.'s servants, but otherwise unsecured:—*Held:* there was no presumption in law that a bull would attack a cow in such circumstances, & for pltf. to succeed it was necessary for him to prove negligence in not having anticipated a probable danger; further, if such negligence were proved, it would be no answer for deft. to set up absence of *scienter*.—HINCKES *v.* HARRIS (1921), 65 Sol. Jo. 781.

250. *Add. Annotations:*—**Expld.** Knott *v.* London County Council (1933), 49 T. L. R. 403. **Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

254a. —— Person in control of dog liable—Not owner of premises.]—Pltf. was a charwoman who was employed as a cleaner at a school owned by defts., the London County Council, & was bitten by a dog, an Airedale, while doing her work at the school. The dog belonged to & was under the control of the school-keeper, who lived on the school premises, & was forbidden to keep any domestic animal except a cat or a dog. He kept the dog in question as a pet, & not as a watch-dog or otherwise for the benefit of defts. The school-keeper was aware that the dog had formerly attacked a boy, & the county ct. judge found as a fact that he knew the dog to be accustomed to attack mankind. Defts. did not know that the school-keeper had a dog. In an action by pltf. for keeping a dog which was known to be of a fierce & mischievous nature & accustomed to attack & bite mankind:—*Held:* the knowledge of the school-keeper that the dog was accustomed to attack mankind was not acquired by him as the servant of defts., & pltf. showed no cause of action against them.

Per LORD WRIGHT: "I think both the common law & the Legislature in Dogs Act, 1906 (c. 32), have recognised that a dog, which has been described as 'a familiar animal,' is naturally so associated with a particular master that responsibility for its acts should depend on ownership or possession & control."—KNOTT *v.* LONDON COUNTY COUNCIL, [1934] 1 K. B. 126; 103 L. J. K. B. 100; 150 L. T. 91; 97 J. P. 335; 50 T. L. R. 55; 31 L. G. R. 395, C. A.

254a. ——.]—LENG *v.* DODGSHON (1935), 79 Sol. Jo. 127.

255. *Add. Annotation:*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

258a. Mare attacking horse—Strange mare turned into field with horse.]—Trespass to person or goods by an animal in which there is at common law a valuable property, such as horses & cattle, does not generally render its owner liable.

Deft. put a mare into a field in which there was a horse belonging to pltf. without notifying pltf. The mare kicked the horse, which had to be destroyed. No *scienter* was proved in deft., but it was found by the deputy county ct. judge that the propensity of horses running loose to injure one another in sport or quarrel was common knowledge:—*Held:* (1) the mare was not within the class of dangerous animals which the owner must keep at his peril according to the rule in *Fletcher* v. *Rylands* (*see* No. 195); (2) deft. was entitled to assume that the mare, being *mansuetæ naturæ*, was an innocent animal, &, having no notice of any fact indicating the contrary, was not under any duty towards pltf. to give notice of his intention to place the mare in the field, or to have a person on the watch or in charge of her, & on the whole deft. was not liable either for breach of an absolute duty or for negligence.—MANTON *v.* BROCKLEBANK, [1923] 2 K. B. 212; 92 L. J. K. B. 624; 129 L. T. 135; 39 T. L. R. 344; 67 Sol. Jo. 455, C. A.

Annotations:—*As to* (2) **Apld.** Buckle *v.* Holmes, [1926] 2 K. B. 125. **Refd.** Gayler & Pope *v.* Davies [1924] 2 K. B. 75; Glanville *v.* Sutton (1927), 44 T. L. R. 98; Cutler *v.* United Dairies (London), Ltd., [1933] 2 K. B. 297.

260. *Add. Citations:*—6 Exch. 697; 17 L. T. O. S. 158; 155 E. R. 724.
Add. Annotation:—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

261. *Add. Annotations:*—*As to* (1) **Expld.** Addie (Collieries) *v.* Dumbreck, [1929] A. C. 358. **Refd.** Hardy *v.* C. L. Ry., [1920] 3 K. B. 459. *As to* (2) **Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776. **Refd.** Fairman *v.* Perpetual Investment Bldg. Soc., [1923] A. C. 74; Manton *v.* Brocklebank, [1923] 1 K. B. 406.

264. *Add. Annotations:*—*As to* (1) **Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431. *As to* (2) **Refd.** Baker *v.* James, [1921] 2 K. B. 674; Letang *v.* Ottawa Electric Ry., [1926] A. C. 725; Cutler *v.* United Dairies (London), Ltd., [1933] 2 K. B. 297.

270a. —— Mare kicking horse.]—MANTON *v.* BROCKLEBANK, No. 258a, *ante*.

---

or the injuries were such as might reasonably be expected to be the natural result of the animal in question being at large.—PARKEN *v.* COLE, [1931] 1 W. W. R. 9; 1 D. L. R. 811; 25 Alta. L. R. 157.—**CAN.**

246 iii. ——.]—While deft.'s servants were unloading cattle at a railway station a bullock "got wild" on the platform, rushed upon adjoining ground, was driven back, escaped through a gate, ran through the streets of the city, & injured pltf.:—*Held:* the bullock on emerging from the railway wagon had displayed its wild condition to deft.'s servants in such a way as to deprive them of the benefit of the doctrine of the *primâ facie* harmlessness of domestic animals as frequenters of the highway, & the duty of controlling it as though it belonged to the class of animals *feræ naturæ* had fallen on deft. & his servants.—HOWARD *v.* BERGIN, O'CONNOR & Co., [1925] 2 I. R. 110, 118.—**IR.**

250 i. —— *Failure to keep same off premises.*]—If a party harbours a dog, or allows it to remain about his premises, with a knowledge of its vicious character, he is liable for injuries caused by it, though he is not the owner.—WOOD *v.* VAUGHAN (1889), 28 N. B. R. 472.—**CAN.**

o i. ——.]—It is negligence on the part of the owner of a stallion, whose disposition towards mares is known to him to be dangerous, not to take reasonable care to prevent the stallion from being in an enclosure in which, as he is aware, mares belonging to other persons are or may be running, & he will be liable in damages if injury ensues.—MATHESON *v.* STUCKEY, [1921] V. L. R. 637.—**AUS.**

252 i. —— *Warning to person injured—Volenti non fit injuria.*]—A person keeping a dog liable to bite humans is responsible for it unless a warning is given of such a character as to involve the doctrine of *volenti non fit injuria*.—TAYLOR *v.* ALEXANDER, [1935] 4 D. L. R. 131; O. R. 406.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B. (d).

a i. —— ——.]—In proceedings under Sheep Protection Act, s. 13, it is not necessary for the owner of the killed or injured animal to prove that the dog which inflicted the injury complained of had a previous mischievous propensity.—R. *ex rel* BIGRIGG *v.* WILLIAMS, [1930] 1 W. W. R. 292; 2 D. L. R. 493; 53 Can. C. C. 88; 42 B. C. R. 175; *revsg.*, [1929] 1 W. W. R. 802; 52 Can. C. C. 323.—**CAN.**

273. *Add. Annotation :*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

274. *Add. Annotations :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. **Apld.** Buckle *v.* Holmes (1925), 95 L. J. K. B. 158. **Consd.** Hines *v.* Tousley (1926), 95 L. J. K. B. 773; **Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

274a. —— ——.]—The owner of a dog, which was a well-behaved dog, & against whose character nothing was known :—*Held :* not liable to indemnify an employer in respect of compensation which the employer had to pay under Workmen's Compensation Acts to the employee, who had been injured by an accident caused by the dog.—HINES *v.* TOUSLEY (1926), 95 L. J. K. B. 773 ; 135 L. T. 296 ; 70 Sol. Jo. 732 ; 19 B. W. C. C. 216, C. A.

275. *Add. Annotations :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212 ; Buckle *v.* Holmes, [1926] 2 K. B. 125 ; Sycamore *v.* Ley (1932), 147 L. T. 342 ; Deen *v.* Davies, [1935] 2 K. B. 282. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

277. *Add. Annotation :*—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

285. *Add. Annotation :*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

291. *Add. Annotation :*—**Consd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

292. *Add. Annotation :*—**Consd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

294. *Add. Annotation :*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

299a. Dog biting child—Previous biting of another child.]—PACY *v.* FIELD (1937), 81 Sol. Jo. 160.

301a. Dog biting cattle—Furious disposition—Previous biting of cattle.]—*Held :* no evidence of *scienter*.—THOMAS *v.* MORGAN (1835), 2 Cr. M. & R. 496 ; 1 Gale, 172 ; 5 Tyr. 1085 ; 5 L. J. Ex. 64 ; 150 E. R. 214.

Annotations :—**Refd.** Owen *v.* Knight (1837), 5 Scott, 307 ; May *v.* Burdett (1846), 9 Q. B. 101.

305a. Horse biting man—Previous biting of horses.]—The fact that the owner of a horse knew that it was accustomed to bite other horses is not sufficient to establish his liability for its biting a human being.—GLANVILLE *v.* SUTTON & CO., LTD., [1928] 1 K. B. 571; 97 L. J. K. B. 166; 138 L. T. 336; 44 T. L. R. 98, D. C.

306. *Add. Annotation :*—**Refd.** Wakefield *v.* Board (1928), 45 R. P. C. 261.

325. *Add. Annotation :*—*As to* (2) **Apld.** Stearn *v.* Prentice, [1919] 1 K. B. 394.

325a. Rats—Damage to crops.]—Defts. carried on the business of bone manure manufacturers on premises near pltf.'s farm. For the purpose of their business they had on their premises a heap of bones, which caused large numbers of rats to assemble there. The rats made their way from defts.' premises on to pltf.'s land, & ate his corn, causing substantial loss, in respect of which pltf. claimed damages from defts. It was not proved that the bones kept by defts. were excessive or unusual in quantity :—*Held :* no cause of action had been established against defts.—STEARN *v.* PRENTICE BROTHERS, LTD., [1919] 1 K. B. 394 ; 88 L. J. K. B. 422 ; 120 L. T. 445 ; 35 T. L. R. 207 ; 63 Sol. Jo. 229 ; 17 L. G. R. 142, D. C.

328a. —— ——.]—R. *v.* FAIRBANK (1850), 15 L. T. O. S. 259 ; *sub nom.* R. *v.* HULL JJ., 14 J. P. Jo. 384.

PART III. SECT. 2, SUB-SECT. 3.

p i. —— —— *To order dog to be kept under control—Person in charge of dog.*]—WALKER *v.* BRANDER, [1920] S. C. (J.) 20 ; 57 Sc. L. R. 651.—**SCOT.**

d i. —— —— *Whether proceedings civil or criminal.*]—The summary proceedings, before a justice of the peace, authorised by sect. 13 of Sheep Protection Act, 1926-27, for the recovery of damages for the loss of or injury to sheep, etc., killed or injured by a dog, are entirely civil in character, although the Summary Convictions Act is made applicable thereto.—R. (THRELKELD) *v.* SMITH & STEWART, [1935] 1 W. W. R. 601 ; 49 B. C. R. 550.—**CAN.**

sq. *Registration of Dogs Act*, 1914—*Presumption as to keeping.*]—There is no presumption raised by sect. 9 of above Act, that a dog has been kept at a particular place within a district. Evidence of such keeping must be given.—FOREMAN *v.* SMITH, [1927] S. A. S. R. 366.—**AUS.**

st. *Dog & Goat Act (N. S. W.)*, 1898, *s.* 19—*Dog jumping up & biting over fence.*]—Applt. while looking over resp.'s fence from a public footpath placed his hand on the top of the fence. Resp.'s dog, from inside resp.'s premises, jumped up & bit applt.'s hand, inflicting serious injury :—*Held :* applt. was entitled under *Dog & Goat Act*, 1898, s. 19, to recover damages for the injury received.—SIMPSON *v.* BANNERMAN, [1932] Argus L. R. 374 ; A. L. J. 189.—**AUS.**

sv. *Dog Registration Act*, 1908, *s.* 27.]—C., a blind man, went to visit a friend & chained his dog upon the veranda with a very short chain. H., also as a visitor, walked up the flight of concrete steps to the veranda in felt slippers. As she reached the top step the dog suddenly becoming aware of her approach sprang towards her & attempted to bite her, but was unable to do so as the chain was too short. H., thinking the dog could reach her, moved back, lost her balance, fell down the steps, and sustained injuries. In an action by H. :—*Held :* sect. 27 does not place upon dog-owners in New Zealand an absolute liability for all damages, direct or indirect done by their dogs ; the fact that the Legislature has dispensed with the necessity of proof of *scienter*, & proof of negligence on the owner's part to impose liability on a dog-owner for injury done by his dog, does not mean that all dogs are to be deemed dangerous animals & in the same class as wild beasts ; sect. 27 takes away from a dog-owner the benefit of the common law exemption from liability for trespass injuries caused by his dog ; it is still open to the dog-owner, if he can, to establish one or other of the defences open to persons who harbour animals of evil disposition—*e.g.*, want of negligence on his part ; the injury to pltf. was due to accident, & not to any negligence on the part of deft.

The judge drew attention to the fact that, as in England proof of *scienter* brings a domestic animal into category of wild animals, the English cases dealing with injuries inflicted by wild animals are applicable to cases of injuries by dogs in New Zealand by reason of the abolition in the Dominion of the necessity of proof of *scienter* in cases of injuries inflicted by dogs.—CHITTENDEN *v.* HALE, [1933] N. Z. L. R. 836.—**N.Z.**

sw. *Destruction of unlicensed dogs—Validity of bye-law.*]—Resp. municipality was empowered by statute to pass bye-laws "for restraining, prohibiting & regulating the running at large of dogs, for imposing a tax on the owners, possessors or harbourers of dogs, & for impounding, selling or killing dogs running at large in contravention of the bye-laws." A bye-law imposed a licence of $20 on dogs wholly or in part of the breed known as police dogs, of $4 on male dogs of any other breed & of $10 on female dogs of any other breed ; & provided that an unlicensed dog shall be liable to be destroyed, & that an owner or harbourer of an unlicensed dog should be liable on summary conviction to a fine &, in default of payment, to imprisonment :—*Held :* the bye-law was valid & must stand except in so far as it provide (1) for the killing of unlicensed dogs for any other reason than that they are found running at large ; & (2) for the imprisonment of any convicted offender under the bye-law for default of payment of fine imposed on such conviction ; & those two provisions must be quashed.—*Re* SHOAL LAKE VILLAGE BY-LAW, 192, [1933] 3 W. W. R. 185 ; *affd.* [1934] 1 W. W. R. 245 ; 2 D. L. R. 493 ; 41 Man. L. R. 649.—**CAN.**

sy. *Discrimination between breeds of licensed dogs—Validity of bye-law.*]—Under a statute authorising municipal bye-laws imposing a tax on the owners, etc., of dogs :—*Held :* a dog-licensing bye-law was not invalid because it imposed a higher licence fee for dogs of the breed known as police dogs than for other breeds of dogs or because it imposed a higher fee for female dogs than for male dogs.—*Re* SMEATON & SHOAL LAKE VILLAGE BY-LAW 192, [1934] 1 W. W. R. 245 ; 2 D. L. R. 493 ; 41 Man. L. R. 649.—**CAN.**

332. *Add. Annotation :*—**Refd.** A.-G. *v.* Hodgson, [1922] 2 Ch. 429.

332a. —— —— —— **Proof that infraction of bye-law caused nuisance not necessary.**]—TONG STREET LOCAL BOARD *v.* SEED (1874), 39 J. P. 278.

—— —— —— ——.]—*See, also*, No. 331, *ante*.

333a. —— —— **Metropolis Management Act, 1862 (c. 102), s. 73—Proof of actual nuisance necessary.**]—CHELSEA VESTRY *v.* KING (1864), 17 C. B. N. S. 625 ; 5 New Rep. 85 ; 34 L. J. M. C. 9 ; 11 L. T. 419 ; 29 J. P. 39 ; 10 Jur. N. S. 1150 ; 13 W. R. 157 ; 144 E. R. 250.

338. *Add. Annotation :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235.

339. *Add. Annotation :*—**Refd.** Harper *v.* Haden & Sons, Ltd. (1932), 102 L. J. Ch. 6.

Part IV.—Agistment.

342. *Add. Annotation :*—**Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160.

342. After this case add "Stat. Frauds, s. 4, is now replaced by Law of Property Act, 1925 (c. 20), s. 40."

342a. —— **Whether breach of covenant not to underlet.**]—Where the tenant of a farm covenants not to underlet or permit any other person to use or occupy any part of the demised premises without the written consent of the landlord, the sale or letting by the tenant, without such consent, in the last year of his tenancy of the grass keep—*i.e.* growing herbage, of his pasture lands for a definite period, is a breach of the covenant, although such sale or letting is in accordance with the usual practice of an outgoing tenant in that part of the country.

Semble : agistment, *i.e.* the taking in by the tenant of the sheep or cattle of another to be depastured on the farm at so much per head per week, would not be a breach of the covenant.—RICHARDS *v.* DAVIES, [1921] 1 Ch. 90 ; 89 L. J. Ch. 601 ; 124 L. T. 238 ; 65 Sol. Jo. 44.

343. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

344. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

346. *Add. Annotation :*—**Refd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

346a. —— **Animal stolen—Duty of agister.**]—An agister of cattle does not discharge himself of his duty as a bailee for reward by proving that they were stolen without his default, if by using reasonable diligence he could have recovered them.

PART III. SECT. 2, SUB-SECT. 4.

337 i. *Horses—Noise from stables.*]—Though a livery stable is constructed with all modern improvements for drainage & ventilation, if offensive odour therefrom, & the noise made by the horses, are a source of annoyance & inconvenience to the neighbouring residents, the proprietor is liable in damages for the injury caused thereby. —DRYSDALE *v.* DUGAS (1896), 26 S. C. R. 20.—**CAN.**

340 i. —— *Smell from stables.*]—DRYSDALE *v.* DUGAS, No. 337 i, *ante*.—**CAN.**

341 i. *Bees Hiving in building—Duty of occupier.*]—The occupier of a building is in general under no duty to take steps to eradicate a swarm of bees which have hived in the roof of the building.—WASSERMAN *v.* UNION GOVERNMENT, [1934] A. D. 228.—**S. AF.**

PART IV.

b i. —— *Construction.*]—By a contract for agistment pltf. agreed to make available certain properties for the agistment of deft.'s sheep. The terms of payment were 1½*d.* per head per week, £500 to be paid when the sheep arrived, £500 in six months, & the balance when the sheep were removed : —*Held :* the payment contemplated by the contract was 1½*d.* per head per week, according to the number of sheep on the properties from time to time ; the contract was one for making available the area of land agreed on for the sheep, & included the taking care of the sheep agisted at the above remuneration while they were in pltf.'s custody.—SPRING *v.* YOUNG, [1923] S. A. S. R. 116.—**AUS.**

c i. —— *Whether agister liable to supply water.*]—Pltf. having bought horses from deft., the latter agreed at pltf.'s request to winter them. The terms of the agreement were set out in a letter from deft. to pltf. in which deft. said : "I will winter them as usual, that is, bring them in straw 3 times a week." The horses were given no water by deft. & pltf. sued for damages, the horses being in poorer condition when he took delivery of them than they would have been had they been watered :—*Held :* in view of the terms of said letter & all the facts of the case, deft. was under no obligation to supply water.—RUDGE *v.* STAUFFER, [1929] 1 W. W. R. 46 ; 23 Alta. L. R. 628.—**CAN.**

344 xii. —— *Loss of animals.*]—Pltf. was the owner of a mare which he delivered to deft. for agistment in his paddock of 6,000 acres, which paddock was heavily timbered & covered with blackboys. After the mare had remained in the paddock for some time, pltf. requested the delivery of the mare in two months' time. Deft. made endeavours to find the mare, but only saw it on one occasion, & thereafter made many attempts to locate the mare, but without success : —*Held :* deft. was not liable to pltf. for the value of the mare, there being no evidence of negligence.—ROBINSON *v.* WATERS (1920), 22 W. A. L. R. 66.—**AUS.**

344 xiii. —— —— *Failure to detect loss within reasonable time.*]—A large number of sheep were lost, & there was evidence rendering it probable that these had been driven off the run :—*Held :* an agister of sheep must show that he took reasonable care to see the sheep were on the agistment area, & failure to detect this loss within a reasonable time was clear evidence of negligence.—SPRING *v.* YOUNG, [1923] S. A. S. R. 116.—**AUS.**

344 xiv. —— ——.]—An agister is bound to take reasonable care of the animal entrusted to him, & when the owner comes for it, if he cannot produce it he must show that he took all reasonable precautions against its disappearance.—COMSTOCK *v.* ASHCROFT ESTATES, LTD., [1917] 1 W. W. R. 1412 ; 23 B. C. R. 4761.—**CAN.**

344 xv. —— —— *Onus of negativing negligence.*]—In case of loss of animals while in the care of an agister, the *onus* is on him to show circumstances negativing negligence on his part.—MCCAULEY *v.* HUBER, [1920] 3 W. W. R. 123 ; 54 D. L. R. 150.—**CAN.**

344 xvi. —— —— ——.]—A contract of agistment is one in the nature of a contract of bailment for the benefit of both bailor & bailee. The agister is not an insurer of the animals but, in the absence of a special contract limiting his common-law liability, is liable for their loss or injury caused by his neglect to take such reasonable care of them as a careful man would exercise in dealing with his own property ; & if they are lost or injured while in his custody the onus is on him to show that the loss or injury did not result from such neglect.—RATHWELL *v.* SHANKOFF, [1933] 3 W. W. R. 629.—**CAN.**

344 xvii. —— *Agister not insurer—What amounts to negligence.*]—POTTS *v.* SMAIL (Alta.), [1928] 1 D. L. R. 208; [1927] 3 W. W. R. 619.—**CAN.**

344 xviii. ——.]—In an action against an agister because some of the horses which he had agreed to take care of during the winter had died, others were missing & the condition of the remainder had deteriorated :—*Held :* there being nothing in the contract to limit deft.'s common law liability, he had not discharged the onus upon him of showing that the loss and damage did not result from his neglect to take reasonable and proper care of the animals.—COOPER *v.* CONRAD, [1938] 1 W. W. R. 469.—**CAN.**

xr. —— *Failure to provide food & water.*]—Where horses have been delivered into the custody of an owner of pasture lands to be kept & pastured by him in return for a money payment, it is his duty to see that the horses are provided with sufficient food & water, & if he neglects these duties & a loss through death or a loss through depreciation is thereby incurred he is liable in damages.—METX *v.* MARSHALL (1922), 70 D. L. R. 14 ; [1922] 3 W. W. R. 660.—**CAN.**

If, having failed to use such diligence, he is sued for loss of the cattle, he must prove, in order to discharge himself, that such diligence would have been unavailing; it is not for the bailor to prove that it would have retrieved the loss.

A farmer accepted certain cattle for agistment. Some of them were stolen without his default. After learning that they were missing he made no effort, whether by informing the owner or the police, or otherwise, to recover them. It was doubtful whether any reasonable attempt on his part would have led to their recovery:—*Held:* he was liable for their loss.—COLDMAN *v.* HILL, [1919] 1 K. B. 443; 88 L. J. K. B. 491; 120 L. T. 412; 35 T. L. R. 146; 63 Sol. Jo. 166, C. A.

347. *Add. Annotation:*—**Consd.** White *v.* Smith (1927), 96 L. J. K. B. 397.

Part V.—Hiring.

371. *Add. Annotation:*—**Refd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

373. *Add. Annotation:*—**Consd.** Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

377. *Add. Annotation:*—*As to* (4) **Refd.** Kemp *v.* Elisha, [1918] 1 K. B. 228.

378. *Add. Annotation:*—*As to* (1) **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

Part VI.—Sale and Exchange of Animals.

384. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

390a. —— —— **Resale of horse at loss—Form of action.**]—A vendor gave a warranty of sound workable condition on the sale of a horse, The warranty was fulfilled, but the purchaser

356 iii. ——.]—An agister has no lien, in the absence of special agreement, upon the animals he agists.—*Re* JORGENSON, [1923] 2 W. W. R. 600. —**CAN.**

356 iv. —— *Or statute.*]—An agister has a lien on the pastured animals under Possessory Liens Act, R.S.A., 1922 (c. 104), but not under Livery Stable-Keepers Act, R.S.A., 1922 (c. 107).—SPARLING *v.* WARD, [1925] 2 D. L. R. 922; [1925] 2 W. W. R. 181.—**CAN.**

362 i. —— *For malicious injury.*]—Appct. had cattle on his land under grazing contracts with the owners. These cattle were maliciously driven off the lands & injured:—*Held:* appct. as bailee in possession could claim compensation for the cattle entrusted to his care.—WORTHINGTON *v.* TIPPERARY COUNTY COUNCIL, [1920] 2 I. R. 233; 54 I. L. R. 77.—**IR.**

PART V.

369 xv. —— —— —— ——.]—If a hired horse is in a sound condition when taken out, & it is brought back injured, the *onus* of proof in a claim for damages for negligence is on deft. The hirer is bound to treat the horse with the degree of care which a person of ordinary discretion would use towards his own, but if the horse is so treated & nevertheless receives an injury the hirer is not liable in damages for such injury.—REINSETH *v.* CAMPBELL (1920), 52 D. L. R. 357.—**CAN.**

369 xvi. —— —— —— ——.]—Where a person hires an animal & it dies while in his custody, the *onus* is upon him to establish that he took care of it. That care is the care which a prudent man would take of his own animal under the circumstances.—MURRAY *v.* COLLINS, [1920] 2 W. W. R. 845; 53 D. L. R. 120.—**CAN.**

369 xvii. —— —— ——.]—Deft. hired a horse from pltf. to drive from T. to L. & return. At a distance of between six & eight miles from S., the horse fell lame in the right hind leg. Deft. drove it to S., put it in a livery stable & gave instructions to have the hoof of the right hind leg re-shod. Deft. hired another horse & continued his journey to L., a distance of over eight miles. He returned next day, took the horse out, & finding that it was not then lame, started with it on the return journey. After travelling about three miles, the horse again fell lame & kept getting a little lamer all the way to T. The journey from S. to T., a distance of twenty-two miles, took seven & one-half hours. There was no evidence as to what caused the horse's lameness. There was no evidence that there was, between the place where the horse fell lame & T. any suitable place in which the horse could have been placed & cared for, or where deft. could have hired another horse to continue the return journey:—*Held:* as the lameness when it first developed on the return journey was not shown to have been of a more serious nature than often happens to a horse which may nevertheless walk, or even trot slowly, fifteen to twenty miles without serious distress, deft. could not be held guilty of negligence until he had travelled a sufficient distance to satisfy himself that the lameness was increasing so as to make it dangerous to the welfare of the horse to continue the journey.—GAGNON *v.* LANGIS (1920), 48 N. B. R. 76.—**CAN.**

374 ii. —— *Bill of sale granted by bailee—Rights of grantee.*]—A., the owner of twenty-seven cows depasturing on his farm, agreed to lease his farm & cows to G. for a term of years, & it was agreed that G. should have the right to purchase the farm & stock at any time during the term. G. was given possession of the stock & farm. G. gave to applt. a bill of sale over the cows. A. recovered possession of his farm & cows from G., & shortly thereafter applt. seized & sold the cows under his bill of sale. Thirty-four cows were seized & sold, only nine of which were of the original herd, the balance having been bought by G. during the time he had possession of the farm. A. claimed damages for the seizure:—*Held:* it had not been shown that the cattle substituted by G. for those originally bailed to him had become the property of A., who was entitled to damages only in respect of the cows originally bailed.—NORFOLK CO-OPERATIVE DAIRY CO., LTD. *v.* ALLEN, [1924] N. Z. L. R. 136.—**N.Z.**

374 ii. —— *Loss by bailee—Negligence.*]—In an action for the value of a horse which was lost after it had been hired to deft. under an agreement whereby the latter undertook to take "good care in every way" thereof, it appeared that the horse, which was unbroken, was received by deft. & put into a pasture belonging to a neighbour of deft., & deft. went to see it every other day. The pasture was surrounded by a fence of two strands of wire, & the horse got out twice during the winter but was put back. It disappeared about the end of the following April. The fence was down in one place, & the evidence showed a custom among the farmers in the neighbourhood to allow horses not in use to run at large during the winter. While deft. was given the right to work the horse, it was shown that it was not customary in that locality to break horses until the spring:—*Held:* deft. had taken sufficiently good care of the horse & was not liable for its loss.—ZIMMERMAN *v.* ARCHER (1922), 63 D. L. R. 399; [1922] 2 W. W. R. 524. —**CAN.**

380 i. *Contract — Covering mare — Damages for breach.*]—Breach of a contract to breed mares to a stallion is not a ground for damages, in the absence of evidence upon which such damages may be estimated with reasonable certainty.—SINCLAIR *v.* WALKER, [1917] 2 W. W. R. 321.—**CAN.**

PART VI. SECT. 1.

t i. —— —— —— *Action by purchaser for damages—What damages recoverable.*]—PERRY *v.* KIDD (1909), 12 W. L. R. 9.—**CAN.**

t ii. —— *Sale of bull—Bull sterile.*]—At an auction sale advertised "as pedigree stock sale" resp. purchased from applt. a bull described in the sale catalogue under the heading "Jersey Bulls" as "Lot 78, Bull Harbour Light." The conditions of sale expressly negatived the existence of any warranties on the vendor's part. At the time of the sale the bull had not been used, but subsequently was found to be sterile. This condition was shown to be a latent defect not discoverable upon examination. In an action by resp., claiming damages:—*Held:* as the capacity for procreation was not, by implication, a part of the description, & as the bull complied in all other respects with the description, resp. was without remedy.—DELL *v.* QUILTY, [1924] N. Z. L. R. 1270.—**N.Z.**

t iii. —— *Sale of horse as gelding—Horse in fact a "ringt"—Whether failure of implied condition on sale of goods by description.*]—TWAITES *v.* MORRISON (Alta.), [1918] 3 W. W. R. 349; 43 D. L. R. 73.—**CAN.**

t iv. —— *Default by purchaser—Resale by vendor.*]—*Held:* (1) money paid, not as a deposit, but on account

wrongfully refused delivery, & returned the horse. The vendor then put it up at auction as " in dispute," & without a warranty, when it was sold for about £40 less than the contract price. In an action for the difference between the price realised at the auction & the contract price :—*Held :* (1) this was not the proper form of action ; (2) the action must be for damages ; (3) the conditions of the auction sale were not a test of the value of the horse, the auction being of a horse " in dispute," & without warranty, & quite different from the original contract conditions ; (4) pltf. was not entitled to more than nominal damages, as he had failed to prove his damages to be the difference between the contract price & the price realised at the auction.—MACKLIN *v.* NEWBURY SANITARY LAUNDRY (1919), 63 Sol. Jo. 337, D. C.

390b. —— **Rescission by vendor—Vendor liable for keep during period animal kept by purchaser.**]—KING *v.* PRICE (1816), 2 Chit. 416.

391. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1927] 2 Ch. 367.

401. *Add. Annotation :* — **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

409. *Add. Annotation :*—**Refd.** Manchester Liners *v.* Rea, [1922] 2 A. C. 74 ; Canada Atlantic Grain Export Co. *v.* Eilers (1929), 35 Com. Cas. 90.

410. *Add. Annotations :*—**Refd.** Manchester Liners *v.* Rea, [1922] 2 A. C. 74 ; Baldry *v.* Marshall, [1925] 1 K. B. 260.

416. *Add. Annotation :*—**Refd.** Said *v.* Butt, [1920] 3 K. B. 497.

416a. As to pedigree of horse.]—A receipt described a horse as " got by Cheshire Cheese, warranted sound " :—*Held :* the statement that the horse was got by Cheshire Cheese was a mere representation.—DICKENSON *v.* GAPP (1821), cited in 1 Moo. & S. at p. 78.

Annotation :—**Folld.** Budd *v.* Fairmaner (1831), 1 Moo. & S. 74.

430. *Add. Citations :*—171 E. R. 90 ; *sub nom.* ELTON *v.* JORDAN, 1 Stark. 127, N. P.

467. For " 99 E. R. 136 " read " 99 E. R. 1016."

474. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

476a. —— ——.]—A., as agent of B., sold a mare to C., & having no express authority from B. to warrant her, refused to do so, but, at the time of the sale, told C. that " if the mare was not all right she was not his." C. thereupon paid the price, which was received by B. The mare proving unsound, C. returned her to A., & sued B. for a return of the money :—*Held :* the proper question to leave to the jury was whether it was part of the contract that the mare should be returned if she proved unsound.—FOSTER *v.* SMITH (1856), 18 C. B. 156 ; 20 J. P. 438 ; 139 E. R. 1326.

486a. ——.]—HARE *v.* TAYLOR (1837), 1 Jur. 261.

---

of the purchase-price, must be returned to the purchaser ; (2) having elected to treat the contract as at an end, instead of suing for damages for breach, the vendor was not entitled to recover anything for the care of the animals from the time fixed by the contract for delivery until he resold.—BALDWIN *v.* BRIANGER, [1920] 1 W. W. R. 216; 50 D. L. R. 540 ; 13 Alta. L. R. 27.—**CAN.**

zi. ——.]—*Held :* oral evidence that it was part of the agreement for sale of a stallion that the pedigree papers should be delivered to the purchaser within a few days of the sale, being in contradiction of the written agreement, was not admissible.—KASTER *v.* COWAN, [1925] 2 D. L. R. 742 ; [1925] 2 W. W. R. 186 ; 21 Alta. L. R. 366 ; *revsg.*, [1923] 4 D. L. R. 491 ; [1923] 3 W. W. R. 610.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

396 vi. —— ——.]—An auctioneer in selling a horse said : " Here is a horse about nine years old " in presence of the vendor who did not contradict it. A note given for the balance of the price had indorsed thereon : " Given for one bay mare nine years old." The purchaser believed the horse was of that age :—*Held :* the statement amounted to a warranty, & the vendor was bound thereby.—ALLEN *v.* SMITH, [1920] 3 W. W. R. 645.—**CAN.**

410 i. In para. for " an " read " no."

410 iv. —— —— ——.]—Pltf. purchased a horse from deft. which deft. warranted to be suitable for the general purposes of a farmer & sound in every respect. The trial judge found that there was a defect in the horse which could not be discovered by an ordinary examination at the time of the sale & that the horse was not suitable for the purpose for which it was required : —*Held :* the findings of the trial judge must be accepted.—MARTELL *v.* PRINGLE (1920), 53 N. S. R. 502.—**CAN.**

sr. *Sale of male animal—Under Livestock Purchase & Sale Act, R.S.S., 1920 (c. 125)—No implied warranty that animal capable of reproducing type & colour.*]—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) *v.* BOURKE, 1925] 3 D. L. R. 537 ; [1925] 2 W. W. R. 397 ; 19 Sask. L. R. 483.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

420 ii. ——.]— EISENHAUER *v.* MACKAY (N. S.) (1911), 9 E. L. R. 304.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.—A.

438 i. *Sound—Meaning of term—Seeds of disease at date of sale.*]—At an auction sale the auctioneer said : " Would you let this good sound mare go for that money ? " The mare was diseased at the time. No fraud was proved :—*Held :* one who was induced by the statement to bid for & purchase the mare was entitled to rescission on the ground of misrepresentation.—ANDERSON *v.* KENNEDY, [1920] 1 W. W. R. 25 ; 50 D. L. R. 105 ; 13 Sask. L. R. 38.—**CAN.**

459 i. *Warranty relating to future—Dairy cattle warranted " to calve at proper time & correct in teats only."*]—A dairy cow, due to calve within a fortnight, was bought at a cattle market under the following warranty : " Dairy cattle are warranted to calve at their proper time & correct in their teats only." The cow calved at her proper time, but, owing to disease which appeared in her teats, her milk supply was defective : — *Held :* (1) the warranty applied to the period of calving, & guaranteed, against the ordinary risks of that period, that the cow's teats would then be capable of performing their function of giving milk : (2) as the disease from which the cow suffered had not been proved to be due either to negligence on pursuer's part or to external accident, the guarantee applied.—KYLE *v.* SIM, [1925] S. C. 425.—**SCOT.**

PART VI. SECT. 2, SUB-SECT. 4.—A.

st. *Rescission—Affirmance of contract after notice of misrepresentation.*]—A purchaser of a mare was not allowed rescission on the ground of what the ct. found was an innocent misrepresentation as to her being in foal to a celebrated stallion, because after discovery that the mare was not in foal he repeatedly attempted to get her in foal by breeding her to another stallion, this being held to amount to an affirmance of the contract.—MONTICELLO STATE BANK *v.* GUEST, [1920] 3 W. W. R. 14.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—B.

g i. —— ——.]—In an action on promissory notes given for the price of a stallion, an alleged breach of warranty does not justify a defence of failure of consideration. Deft. must claim under the breach of warranty setting it up in diminution of the price, or in an action for damages.—EDWARDS *v.* PEARSON (Alta.), [1919] 3 W. W. R. 505.—**CAN.**

sv. *Cheque given for price—Whether breach of warranty a defence.*]—MYKLEBUST *v.* GALEY (Sask.) (1919), 46 D. L. R. 699.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—C.

484 ii. —— *Effect of—On other remedies of purchaser.*]—A condition for return of a horse in as good condition as when sold & the substitution of another horse of equal value prevents the purchaser from resorting to any other form of remedy, unless he can show that he returned the horse in good condition & the vendor failed to substitute as agreed.—EDWARDS *v.* PEARSON (Alta.), [1919] 3 W. W. R. 505.—**CAN.**

485 ii. —— *Purchaser not liable for cost of keep after repudiation of contract.*]—LONG *v.* BYERS (Sask.), [1927] 4 D. L. R. 223.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—D.

486 ix. —— ——.]—A written contract entered into in Mar. 1928, for the

Part VII.—Carriage of Animals.

517. *Add. Annotations :*—**Consd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186. **Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

518. *Add Annotation :—As to* (2) **Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

522. *Add. Annotations :*—**Refd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186 ; L. &. N. W. Ry. *v.* Hudson, [1920] A. C. 324.

526. *Add. Annotations :*—**Refd.** Hemmings *v.* Stoke Poges Golf Club, [1920] 1 K. B. 720 ; Monk *v.* Warbey, [1935] 1 K. B. 75.

530. For "**Expenses reasonably—Incurred in disinfecting,**" etc., read "**Expenses reasonably incurred—In disinfecting,**" etc.

531. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443 ; Transoceanica Soc. Italiana Di Navigazione *v.* Shipton, [1923] 1 K. B. 31 ; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

535. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

542. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

544. *Add. Annotation :—Generally,* **Refd.** Glassbrook Bros. *v.* Leyson, [1933] 2 K. B. 91.

---

sale of a stallion provided that the only "guarantee" by which the seller bound himself was that the horse was serviceably sound as a serving stallion, and it also provided that if the horse "after a fair trial on sure breeding mares" should prove not to be so sound the buyer would return it to the seller & receive another horse of equal value in exchange, but that the seller should not be bound by the conditions of this guarantee" unless the buyer submitted a monthly report in writing showing the condition of the horse, etc., & that the contract should expire & the seller be released from any further obligation to the buyer after Apr. 1, 1929, except in the event of the death of the horse within three years. In an action, begun after Apr. 1, 1929, for the balance of the purchase-price the buyer claimed a set-off for damages for loss of service fees which he would have earned with the horse had it been as guaranteed & counter claimed for the excess of said damages over the amount of pltf.'s claim :—*Held :* deft.'s only remedy for the difference between the purchase-price & the actual value of the horse was that expressly agreed to in the contract, viz. the return of the horse and the taking of another in its place, said provision, however, did not affect his right to sue for other damages, such as loss of service fees, which he had suffered up to Apr. 1, 1929, through the breach of the guarantee, but that his failure to submit the monthly report provided for in the contract would preclude him from recovering said other damages, & the trial judge's conclusion that there had been a reasonable compliance with that requirement could not be sustained.—HEAD *v.* LINTON, [1930] 2 W. W. R. 369 ; 24 S. L. R. 596.—**CAN.**

486 x. ——.]—The measure of damage in an action for breach of warranty of a bull is the difference between the value at the time of delivery to the buyer & the value it would have had if it had answered to the warranty.—WARD *v.* ROSSER (1920), 54 D. L. R. 531.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—E.

sw. *Proof of breach at time of sale necessary—Sufficiency of evidence.*]—WESTWOOD *v.* MCMILLAN (Sask.), [1920] 2 W. W. R. 857 ; 53 D. L. R. 317.—**CAN.**

sx. —— ——.]—AHEIR *v.* CAPLETTE [1926] 3 D. L. R. 346 ; [1926] 2 W. W. R. 346 ; 20 Sask. L. R. 549.—**CAN.**

sy. ——.]—LONG *v.* BYERS (Sask.), [1927] 4 D. L. R. 223.—**CAN.**

PART VI. SECT. 3.

sz. *Live Stock Pedigree Act,* 1927 (*c.* 12)—*False registration of animal—What amounts to.*]—An application for registration of a transfer of ownership of an animal is not an application for the registration of the animal. Moreover, where the statements made in the former application are true with respect to the animal mentioned therein there is no offence under sect. 17 of above Act although the animal which was in fact sold was not the animal named in said application.—R. *v.* DAVENPORT (Alta.), [1928] 2 D. L. R. 852 ; [1928] 1 W. W. R. 876 ; 50 Can. Crim. Cas. 40.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 1.—A.

528 i. —— *Animals poisoned—No affirmative evidence.*]—Pltf. shipped horses by defts.' railway. On arrival at destination, some of the horses had died & others were sick & died soon after. It was subsequently established that they died of arsenic poison. An action against deft. railway co. for negligence was dismissed, as there was no evidence connecting the cause of injury with any alleged negligence. The cause of the damage was purely a matter of speculation, & certain provisions of the contract were a complete answer to pltf.'s claim that the damages arose from defts.' negligence. —TURNER *v.* CANADIAN PACIFIC RY. CO. (1922), 66 D. L. R. 31 ; [1922] 2 W. W. R. 858.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 2.

532 i. *Declaration of value — Requisites of.*]—FOX *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 541 i, *post.*—**IR.**

541 i. *Carrier exempted from liability "in any case" above declared value.*]—A railway co. made conditions limiting their liability for loss of or damage to any live stock delivered to them for transit beyond the value, in the case of horses, of £50, unless a higher value was declared in writing at the time of delivery, & a percentage of 1½ per cent. paid on the value, so declared, in excess of the above-named sum. A race horse, exceeding £50 in value, was delivered to the co. for transit by the sender's groom, who informed the booking clerk that he had got "a very valuable 'chaser, worth about £1,000," a figure arrived at by the groom himself from casual gossip. The clerk gave the groom the co.'s form of "consignment note & waybill" for live stock, & the groom filled it in for carriage at the ordinary rate, & signed it, with full knowledge of its contents. The horse having been injured in transit :—*Held :* (1) the above conditions were not unreasonable ; (2) the contract of carriage, which was signed by the groom under a direction by his employer that the horse was to be carried at the ordinary rate, exempted the co. from liability for any greater amount than £50 ; (3) in order to make the co. liable for the full value of the horse, the declaration of value must have been made with the intention of paying the higher rate, & the statement of value made by the groom to the booking clerk was insufficient.—FOX *v.* LONDON, MIDLAND & SCOTTISH RY. CO., [1926] I. R. 106.—**IR.**

sa. *Shipper undertaking obligation to "feed" & "water" animals—Obligation of supplying feed & water.*]—The obligation to furnish the feed & water is upon the shipper.—KNIGHT-WATSON RANCHING CO. *v.* CANADIAN PACIFIC RY. CO. (1921), 62 D. L. R. 601 ; 15 Sask. L. R. 1 ; [1921] 3 W. W. R. 788 ; *revsg.*, 14 Sask. L. R. 5.—**CAN.**

sb. *Carrier under no liability "unless written notice delivered at point of delivery"—Sufficiency of notice.*]—KNIGHT-WATSON RANCHING CO. *v.* CANADIAN PACIFIC RY. CO. (1921), 62 D. L. R. 601 ; 15 Sask. L. R. 1 ; [1921] 3 W. W. R. 788 ; *revsg.*, 14 Sask. L. R. 5.—**CAN.**

PART VII. SECT. 2

si. —— *Train run in contravention of Lord's Day Act.*]—Pltf. shipped goods, including horses, by defts.' line, & signed a special contract providing that defts. should not be liable for any loss or damages in respect of the live stock by reason of injury except such as might arise from a collision, & should in no case be responsible for any amount exceeding certain small sums named. Pltf. accompanied his goods, & the train was lawfully proceeding on a Sunday, notwithstanding the Lord's Day Act, when a collision occurred with one of defts.' trains, which was being run unlawfully because in contravention of that Act, & some of the horses & other goods of pltf. were destroyed or damaged. Pltf. sued in tort for the amount of his loss, claiming much more than the limited amounts stated in the special contract. Defts. set up the special contract :—*Held :* the provision of the contract limiting the liability of defts. in the case of a collision to a stated sum did not sustain the defence, because that provision must be taken not to have contemplated a collision occurring by reason of the breach of a statute distinctly prohibiting & making unlawful the act which caused the collision.—RISE *v.* CANADIAN PACIFIC RY. CO. (1910), 14 W. L. R. 635.—**CAN.**

Part VIII.—Wild Birds.

563a. —— —— —— **Birds lawfully taken elsewhere.**]—Applt. was charged under Wild Birds Protection Act, 1880 (c. 35), s. 3, as extended under s. 8 in the county of London by the Wild Birds Protection (Administrative County of London) Order, 1909, par. 4, with having in his possession some goldfinches recently taken. The magistrate found that the charge was proved & dismissed it under the Probation of Offenders Act, 1907 (c. 17), ordering applt. to pay the costs. The birds were lawfully caught in Ireland on or immediately before Dec. 3, 1918, &, after being kept there for upwards of a month to enable them to recover their condition, & travel safely, were sent to applt. in London by post. They were found in applt.'s possession in a wild & terrified state on Jan. 15, 1919 :—*Held :* the magistrate was justified in taking into consideration all the circumstances of the case, including the condition of the birds when exposed for sale & the fact that they had to be kept in Ireland for some time in order to endure the journey & arrive alive, & also the length of the journey, in order to arrive at the conclusion that the birds were recently taken.—HARRIS *v.* LUCAS, [1919] 2 K. B. 291 ; 88 L. J. K. B. 1082 ; 121 L. T. 317 ; 83 J. P. 208 ; 35 T. L. R. 486 ; 17 L. G. R. 421 ; 26 Cox, C. C. 468, D. C.

564. *Add. Annotation :*—**Apld.** Harris *v.* Lucas, [1919] 2 K. B. 291.

After this case add :—

——.]—*See, now,* Protection of Birds Act, 1933 (c. 52).

Part X.—Cruelty to and Killing, Maiming, and Wounding Animals.

NOTE.—The Act now in force in England is Protection of Animals Act, 1911 (c. 27), as amended by Protection of Animals Act (1911) Amendment Acts, 1912 (c. 17), & 1921 (c. 14) ; Protection of Animals Act, 1927 (c. 27) ; Protection of Animals (Cruelty to Dogs) Act, 1933 (c. 17) ; Protection of Animals Act, 1934 (c. 21). In considering the cases in Sect. 1 of this Part, regard should be had to their dates & the Act under which they were decided.

572a. Shooting trespassing dog—No attempt to drive dog away before shooting.]—A farm labourer shot at a dog which was trespassing on his master's land, & wounded it. The dog was not doing damage & deft. made no effort to drive it away before he shot it, & the justices found that shooting was not necessary :—*Held :* he was guilty of " cruelly ill-treating " the dog within Protection of Animals Act, 1911 (c. 27), s. 1.—BARNARD *v.* EVANS, [1925] 2 K. B. 794 ; 94 L. J. K. B. 932 ; 133 L. T. 829 ; 89 J. P. 165 ; 41 T. L. R. 682 ; 28 Cox, C. C. 69, D. C.

574. *Add. Annotation :*—**Distd.** Barnard *v.* Evans, [1925] 2 K. B. 794.

576. *Add. Annotation :*—**Distd.** Barnard *v.* Evans, [1925] 2 K. B. 794.

587. *Add. Annotation :*—*As to* (1) & (2) **Refd.** Jenkins *v.* Ash (1929), 45 T. L. R. 479.

587a. —— **Liberation in exhausted condition.**]—On a prosecution of A. & G. for cruelly ill-treating a live wild rabbit contrary to Protection of Animals Act, 1911 (c. 27), s. 1, it appeared that A. had dangled the rabbit by its hind legs three or four yards away from two greyhounds, held in leash by G., & that the greyhounds having been taken thirty or forty yards away, the rabbit had been thrown on the ground, where it had remained, only hopping a couple of yards when flicked by a hat. The magistrate held that there was no cruel ill-treatment within the sect. ; that what had been done by resps. was ordinary coursing & so protected by sect. 1 (3) (*b*), & that there was no evidence of the rabbit having been liberated in an injured, mutilated, or exhausted condition. On appeal :—*Held :* all the evidence showed that there had been cruel ill-treatment of the rabbit & that the rabbit had been liberated

---

PART VII.

556 ii. —— *Reduced into possession—Action for damages for shooting.*]—Pltf., a squatter on the foreshore of a lake, held entitled to damages for the shooting, on the land & water close to his shack, of a number of Canada geese which had been hatched from eggs he had collected on an island in the lake, it being clear that the geese were not in a state of nature & had been reduced to possession. Game Act, 1932, s. 3, had no application, since it applies to birds which are wild by nature & whilst in a state of nature ; & the geese in question were not in a state of nature.—KASTANIUK *v.* SARSONS [1935] 2 W. W. R. 415.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.

574 ii. —— *Failure to remove from animal broken pieces of instrument.*]—Resp. undertook to treat a horse, & inserted into the animal's urethra a catheter, which broke, & the horse was returned to its owner with the broken pieces left in the urethra :—*Held :* (1) if resp. allowed the broken pieces of the catheter to remain in the urethra for an unreasonable time, without taking any steps to alleviate the pain or without taking any steps to secure their removal, he unreasonably caused unnecessary pain ; (2) resp. was under a duty to inform the owner of the horse within a reasonable time that the fragments were in the animal's urethra. —MARTIN *v.* CARPENTER, [1925] S. A. S. R. 421.—**AUS.**

ss. *Abandoning horse in street—Horse found starving—Whether owner exercising control.*]—*Held :* accused could not be convicted of ill-treatment under Prevention of Cruelty to Animals Act, 1890, s. 3 (*a*), as he was not in a position to exercise control over the animal at the time of the ill-treatment.—R. *v.* NAZIR WAZIR (1919), I. L. R. 44 Bom. 159.—**IND.**

sd. *Permitting animal injured on ship to land—Master of ship ignorant of animal's condition.*]—*Held :* the master's want of knowledge was no defence. —M'LAREN *v.* SMITH, [1923] S. C. (J.) 91.—**SCOT.**

PART X. SECT. 1, SUB-SECT. 2.

se. *Carrying cranes by train—With eyes stitched up.*]—*Held :* accused had committed no offence under Prevention of Cruelty to Animals Act, 1890, s. 3, cl. (*b*), for the cruelty was caused by the persons who stitched up the eyes & not by the manner or position in which the birds were carried in the train.—R. *v.* IBRAHIM MEER SHIKAR (1917), I. L. R. 41 Bom. 654.—**IND.**

sg. *Keeping deer in captivity—No right to redelivery of deer.*]—It is illegal to keep a deer in captivity, & there is therefore no right of action for redelivery against the officers of the Department of Mines & Forests.—MARSHALL *v.* MUNROE, [1933] 2 D. L. R. 201 ; 6 M. P. R. 255.—**CAN.**

in an exhausted condition. On this ground & also on the ground that the cruel ill-treatment occurred before the rabbit was liberated for the purpose of being coursed or hunted, resps. had not brought themselves within the protection given by the sect. to the coursing or hunting of any captive animal.—JENKINS *v.* ASH (1929), 141 L. T. 591; 93 J. P. 229; 45 T. L. R. 479; 27 L. G. R. 537; 28 Cox, C. C. 665, D. C.

587b. —— **Ill-treatment before liberation.**]—JENKINS *v.* ASH, No. 587a, *ante*.

595. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

602. *Add. Annotation :*—**Consd.** White *v.* Fox & Dawes (1932), 48 T. L. R. 641.

602a. —— —— **Not domestic animal.**]—WHITE *v.* FOX & DAWES (1932), 48 T. L. R. 641, D. C.

604. After this case add :—

Dog—Disqualification for ownership.]—*See* Protection of Animals (Cruelty to Dogs) Act, 1933 (c. 17).

613. *Add. Annotation :*—**Refd.** R. *v.* Wood, *Ex p.* Farwell (1918), 87 L. J. K. B. 913.

625. After this case add "*See* Animals (Anæsthetics) Act, 1919 (c. 54)."

651. *Add. Citation :*—26 Cox, C. C. 113.

653. *Add. Annotations :*—**Consd.** Cotterill *v.* Penn [1936] 1 K. B. 53. **Refd.** Nye *v.* Niblett (1918), 87 L. J. K. B. 590.

654. *Add. Annotations :*—**Consd.** Horton *v.* Gwynne, [1921] 2 K. B. 661. **Apld.** Farey *v.* Welch, [1929] 1 K. B. 388. **Expld. & Distd.** Cotterill *v.* Penn, [1936] 1 K. B. 53.

656. *Add. Annotation :*—**Refd.** Nye *v.* Niblett (1918), 87 L. J. K. B. 590.

Part XI.—Diseased Animals.

657. *Add. Annotation :*—**Refd.** Theyer *v.* Purnell, [1918] 2 K. B. 333.

659. *Add. Citation :*—88 L. J. K. B. 263.

664. *Add. Annotation :*—**Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

688a. —— **Transit of Animals (Amendment) Order, 1930—Meaning of "consecutive journeys."**]—Transit of Animals (Amendment) Order, 1930, art. 1, enacts, among other things, that any road vehicle used for the conveyance of animals the property of a dealer or in connection with the trade or business of a dealer shall, as soon as practicable after each occasion on which it is so used, and before any other animal is placed in it, be cleansed and disinfected as therein mentioned, "Provided that in the case of a vehicle . . . making consecutive journeys on any one day between the same two points, the requisites of this article shall be deemed to be sufficiently complied with if the vehicle is cleansed & disinfected . . . as soon as practicable after the completion of the last of such consecutive journeys" :—*Held :* on the construction of the Order, the expression "consecutive journeys . . . between the same two points" in the proviso to art. 1 does not mean consecutive journeys in the same direction between the two points, the return journey counting as distinct, but consecutive journeys in either direction, & the vehicle need not be cleansed & disinfected until the completion of the last of its consecutive journeys in either direction.—NETHAWAY *v.* BREWER, [1931] 2 K. B. 459; 100 L. J. K. B. 524; 145 L. T. 191; 95 J. P. 159; 75 Sol. Jo. 359; 29 L. G. R. 489; 29 Cox, C. C. 305, D. C.

690a. —— **"Double dipping"—Meaning.**]—*Held :* the words "double dipped" meant twice dipped & not dipped for a second time after the first prescribed dipping.—ADAMS *v.* GALLOWAY (1925), 23 L. G. R. 588, D. C.

PART X. SECT. 1, SUB-SECT. 3.

sl. *Commitment for trial for overdriving—Jurisdiction of one justice.*]—R. *v.* NELSON (1916), 28 Can. Crim. Cas. 276.—**CAN.**

PART XI. SECT. 1.

662 vi. ——.]—A contract for the sale of animals affected with a contagious or infectious disease is an offence against R. S. C. 1906 (c. 75), s. 38, whether or not the seller knows that the animals are so affected.—BALDWIN *v.* SNOOK, [1918] 2 W. W. R. 314; 40 D. L. R. 433.—**CAN.**

662 vii. ——.]—On a sale without warranty of an animal known to the seller to be affected with a certain contagious disease there is no common-law duty upon the seller to warn the buyer of the disease, where the latter is reputed to be possessed of more than ordinary skill & knowledge in the treatment of animals, the disease in question is fairly common in the neighbourhood, the buyer knows that the animal is suffering from some complaint, although not the particular nature of it, & the buyer refuses to complete the sale until he has had the animal in his possession a certain time.

The Animal Contagious Diseases Act, R. S. C. 1906 (c. 75), does not give a right of action to a buyer of animals who suffers damage from a sale which is illegal under that Act.—O'MEALEY *v.* SWARTZ, [1918] 3 W. W. R. 98.—**CAN.**

662 viii. ——.]—In view of Orders in Council authorised under s. 38k exempting tuberculosis from the effect of Animal Contagious Diseases Act, R. S. C. 1906 (c. 75), s. 38, *Baldwin* v. *Snook*, No. 662 vi., *ante*, was held not applicable to support a defence of illegal sale of cattle.—WOOD, WEILLER & MCCARTHY, LTD. *v.* VALCOUR, [1921] 2 W. W. R. 32.—**CAN.**

662 ix. ——.]—Where animals are exposed for sale by a vendor & he knows that they are infected with a contagious disease he is liable to a penalty under Animal Contagious Diseases Act, & if he effects a sale of the animals under such circumstances the sale is illegal & void. If in addition to the breach of his statutory duty the vendor makes false representations as to the condition of the animals & thereby induces a person to purchase them, the latter is entitled to succeed in an action for any resulting damages sustained by him, & in any event he is entitled to recover any money paid by him to the vendor on the illegal contract, he not being in *pari delicto* with the vendor.—LONG *v.* ZLATNICK (1922), 70 D. L. R. 88; [1922] 3 W. W. R. 687.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 2.

690 ii. —— *Validity of notice—Blank form issued by Government Veterinary Officer—Day & hour filled in by Inspector.*]—KAJEE *v.* R., [1930] N. L. R. 55.—**S. AF.**

PART XI. SECT. 2, SUB-SECT. 3.

sk. *Hogs fed on garbage—Under licence waiving compensation—Disease necessitating slaughter—Onus of proof of cause of disease.*]—A. obtained a licence to feed his hogs on garbage obtained from outside, which licence contained the following words: "In consideration of the granting of a licence to me I hereby agree . . . (4) to forfeit all claim to compensation, in case it is necessary to destroy any of my hogs, as a result of hog cholera, unless it can be shown that the infection came from some other source than garbage feeding" :—*Held :* the *onus* of proving that the cholera in question came from some other source than garbage feeding was upon suppliant.—ALDERSON *v.* R. (1922), 65 D. L. R. 398; 21 Exch. C. R. 359.—**CAN.**

694a. Compensation—On commercial basis of valuation—Failure to object—Valuation binding.]—By Diseases of Animals Act, 1894 (c. 57), s. 15 (2), "The Board shall for animals slaughtered under this section pay compensation as follows: (i) Where the animal slaughtered was affected with foot-&-mouth disease the compensation shall be the value of the animal immediately before it became so affected. (ii) In every other case the compensation shall be the value of the animal immediately before it was slaughtered."

Pltf. was the owner of a herd of pedigree Friesian cattle which became infected with foot-&-mouth disease, & the Minister of Agriculture & Fisheries provisionally decided that it was not a case for slaughter, but was a case for isolation which would have caused expense to pltf. together with possible risk of losing his stock. Subsequently, however, after certain conversations between the Govt. inspector & pltf. the Minister decided to have the cattle valued & slaughtered. The cattle were valued on behalf of the Minister on a commercial & not a pedigree basis at £993, & notice of this valuation was given to pltf. & he signed the valuation form. The cattle were accordingly slaughtered on the following day & pltf. was paid the sum of £993. Pltf. did not give within 14 days, as required by clause 39 of Animals (Transit & General) Order, 1912, a counter-notice that he disputed the valuation. Afterwards pltf. claimed from the Minister the difference between the £993 & the pedigree value. The latter was agreed at the trial to be £2,162. The claim was based (*inter alia*) on the provision in s. 15 (2) that "the value" of the slaughtered animals should be paid as compensation:—*Held:* as pltf. & the Minister had agreed that the valuation should be on a commercial basis, the agreement was binding & the claim of pltf. failed.—BLIGH *v.* MINISTER OF AGRICULTURE & FISHERIES (1931), 47 T. L. R. 492.

697. *Add. Annotation:*—**Consd.** Tees Conservancy Comrs. *v.* James, [1935] Ch. 544.

699. *Add. Annotation:*—*As to* (1) **Refd.** R. *v.* North Worcestershire Assmt. Com., *Ex p.* Hadley, [1929] 2 K. B. 397.

700. *Add. Annotation:*—**Refd.** Fisher *v.* Oldham Borough Corpn. (1930), 143 L. T. 281.

705a. —— —— Burden of proof—Diseases of Animals Act, 1894 (c. 57), ss. 4 (1), 57 (1).]—A farmer who was summoned under Diseases of Animals Act, 1894 (c. 57), s. 4, for not giving notice with all practicable speed to a constable of the fact that two of his cows were suffering from foot & mouth disease, contended before the justices that as there was no evidence that he knew before the day on which he gave notice that the animals were affected, he had discharged the onus which lay upon him under sect. 4 by giving notice on that date. The justices accepted this contention, & dismissed the summons:—*Held:* this contention was in direct conflict with sect. 57 of the Act, which cast on the accused the onus of proving absence of knowledge, & that the justices ought to have convicted.—WILSON *v.* YATES (1927), 91 J. P. 188; 44 T. L. R. 25; 25 L. G. R. 514, D. C.

NOTE.—It has been found desirable to add the following Part:—

Part XII.—Breeding of Animals.

Statutory control—Horse breeding.]—*See* Horse Breeding Act, 1918 (c. 13).

Hire of stallion's services—Right of lien on mare —For expense of covering.]—*See* original volume, p. 257, No. 380.

Increase in animals—Who entitled to.]—*See* original volume, pp. 212, 213.

PART XI. SECT. 2, SUB-SECT. 5.

sl. *Power to make bye-law—Prohibiting admission of infected animals into municipality.*]—To provide in a bye-law that no animal affected with any infectious or contagious disease shall be brought into the municipality was held to be beyond the powers of a municipal council under Municipal Act.—R. *v.* MOULD, [1920] 2 W. W. R. 540; 52 D. L. R. 302.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 6.

gi. —— *Proof of scienter.*]—On a prosecution under Cattle Disease Act, Ireland, 29 & 30 Vict. c. 4, & 33 & 34 Vict. c. 36, & the Orders of the Privy Council, "knowledge" that the cattle are diseased is part of the offence & must be proved by the prosecutor.—CARROLL *v.* EWERS (1873), I. R. 7 C. L. 226.—**IR.**

gii. —— *Certificate of veterinary surgeon—No proof of authenticity—Whether admissible.*]—In a prosecution for failure to give notice of the existence of swine fever in contravention of the Act, the prosecutor produced a certificate bearing to be signed by a veterinary surgeon, certifying the existence of the disease at accused's premises. No evidence was led to prove the authenticity of the certificate, which was not attested, or to prove that the grantor held the office of veterinary inspector under the Act. The justices sustained an objection to the admission of the certificate as evidence:—*Held:* the certificate was admissible as evidence, in terms of Diseases of Animals Act, 1894, s. 44 (5), without proof of its authenticity or of the grantor's qualifications, at all events in the absence of specific challenge on these points by the accused at the trial.—HENDERSON *v.* WARDROPE, [1932] S. C. (J.) 18.—**SCOT.**

PART XII.

sm. *Statutory control—Horse breeding—Refusal of certificate of registration of stallion—Registration of Stallions Act, 1916.*]—At the trial of an action by a person, who was the owner of a stallion, against the members of the Board of Control & Appeal under the above Act for wrongful refusal to consider an appeal against the refusal of a certificate of registration, it appeared that pltf. was not actual owner but had control & management of the animal:—*Held:* he was entitled to maintain the action.—DUTTON *v.* EVANS (1920), 16 Tas. L. R. 45.—**AUS.**

Hire of stallion's services—Liability of owner of stallion—Injury to mare.]—*See* Vol. II., p. 220, cases q, r.

—— —— *Mare improperly served by stallion.*]—*See* Vol. II., p. 220, cases s, t, u.

sp. —— —— *Breach of contract.*]—SINCLAIR *v.* WALKER, No. 380 i., *ante.*—**CAN.**

sr. *Warranty of fitness by agent—Liability of principal.*]—In an action for breach of warranty as to fitness for breeding on the sale of a horse:—*Held:* on the facts vendor was an agent only, & his principal was liable upon the warranty.—SIM *v.* GOOD (1916), 9 S. L. R. 273; 30 D. L. R. 554.—**CAN.**

ARBITRATION.

Part I.—The Submission.

3. *Add. Annotation :*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

7. *Add. Annotation :—As to* (1) **Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

14. *Add. Annotation :*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

24. *Add. Annotation :*—**Refd.** Anglo-Newfoundland Development Co *v.* R., [1920] 2 K. B. 214.

26. *Add. Annotation :*—**Refd.** Anglo-Newfoundland Development Co. *v.* R., [1920] 2 K. B. 214.

26a. ——.]—It is not necessary that both parties should have signed the written agreement (BANKES, L J.). — ANGLO-NEWFOUNDLAND DEVELOPMENT Co. *v.* R., [1920] 2 K. B. 214 ; 89 L. J. K. B. 570 ; 122 L. T. 731 ; 84 J. P. 121 ; 14 Asp. M. L. C. 584, C. A.

26b. ——— **Verbal agreement to grant royalties—Amount to be settled by arbitration—Refusal of grantee to arbitrate.**]—In 1913 a patent was granted for " Improvements in winches for operating the rope of a duplex derrick." Between the times of the filing of the provisional & complete specifications, the patentee, under a verbal agreement, entered the service of a co. engaged in making windlasses as technical adviser & engineer draughtsman ; & the co., while the patentee was in their employment, made & sold the patented windlasses. In 1919 the patentee commenced an action against the co., alleging that it was a term of the verbal agreement that, during pltf.'s service, the co. should have pltf.'s licence to make & sell windlasses under the patent, at a reasonable royalty, &, failing agreement between the parties, at such royalty as might be settled by arbn. He contended that he would have received at least 5 per cent. on the selling price of the windlasses. Defts. denied that they had agreed to accept a licence from pltf. :—*Held :* pltf. had proved that the agreement for a licence had been made ; he was entitled to a reasonable royalty ; &, as the agreement was verbal, & defts. refused to refer the matter to arbn., the matter could not go to arbn. It was directed that the matter should be referred to an official referee for inquiry & report under sect. 13 of the above Act.—FLEMING *v.* DOIG (J. S.) (GRIMSBY), LTD. (1921), 38 R. P. C. 57.

36b. **Reference under National Health Insurance Regulations of Insurance Commissioners.**]—By an agreement between a medical practitioner on the panel & the insurance committee of a county, the practitioner agreed to give medical treatment to insured persons, & by clause 1 the National Health Insurance (Medical Benefit) Regulations (England), 1913, were incorporated. By clause 14, " any dispute or question arising between the committee & the practitioner . . . relating to the construction of this agreement or the rights & liabilities of the committee or the practitioner . . . hereunder shall be referred to the Comrs." By reg. 51 of the regulations, " Where under the provision of these regulations or of any agreement made between the committee & a practitioner . . . is referred, or any appeal from a decision of the committee is made to the Comrs. the Comrs. shall determine such questions or appeal in such manner as they think fit, & if in the opinion of the Comrs. a hearing is required they may authorise any two or more of the Comrs. to hear & determine such question or appeal, & any decision of the Comrs. or any of them made under this article shall be final & conclusive." A dispute having arisen under the agreement, the practitioner brought an action against the committee in respect thereof, & the committee applied under the Act of 1889, s. 4, to stay the action : —*Held :* the action must be stayed

PART I. SECT. 2.

d i. —— —— *Informal extension of written submission amounting to new parol submission.*]—An award was not made within the time fixed by the written submission to arbn. nor was the time extended. The arbitrators proceeded after the expiry of the time, both parties appearing before them & taking part in the proceedings, & the award was made & not appealed from or moved against, & had ever since been acted upon :—*Held :* a parol submission must be taken to have been made & to include the terms contained in the written one, & the award to have been made pursuant to the parol submission.—HARRISON *v.* HARRISON (1918), 41 O. L. R. 195 ; 13 O. W. N. 245.—**CAN.**

10 v. —— —— *Signature of one of series of documents—Forming part of agreement.*]—A submission or written agreement to submit differences to arbn. may be collected from a series of documents, even though connected by parol evidence, & signature of any document forming part of the agreement is sufficient to bind the person so signing to the submission contained in the agreement.—SUKHAMAL BANSIDHAR *v.* BABN LAL KEDIN & CO. (1920), I. L. R. 42 All. 525.—**IND.**

e i. —— *Must not be contrary to public policy.*]—If it is an implied term of a reference to arbn., & of an *ekranama* pursuant to the award, that a complaint that a non-compoundable offence under the Penal Code has been committed shall not be proceeded with, the consideration is unlawful on the ground of public policy, & the award & *ekranama* are therefore unenforceable ; that is so irrespective of whether in law a prosecution has been commenced.—KAMINI KUMAR BASU *v.* BIRENDRA NATH BASU (1929), 57 L. R. Ind. App. 117, P. C.—**IND.**

1 i. —— *General requisites.*]—An award made by arbitrators is not invalid on the ground that in the reference to arbn. the actual dispute is stated merely in general terms, when the award itself shows that the nature of the dispute was properly explained to the arbitrators.—RAM BAHADUR SEN *v.* MAHANATH GANESH BHAGAT (1923), I. L. R. 2 Pat. 554.—**IND.**

1 ii. ——]—A submission to arbn. according to the above sect. is a submission which provides that either party in case of a dispute arising on the contract is at liberty to take the necessary steps to get the dispute decided by arbn.—BURJOR *v.* ELLERMAN CITY LINES, LTD. (1925), I. L. R. 49 Bom. 854.—**IND.**

1 iii. —— *Written agreement to submit.*]—A submission to arbn. under Indian Arbn. Act need not be signed by both parties. All that is required is a written agreement to submit, & acting upon it.—RADHA KANTA DAS *v.* BAERLIEN BROTHERS (1928), I. L. R. 56 Calc. 118.—**IND.**

PART I. SECT. 3, SUB-SECT. 1.

8a. *Appointment of appraisers—Under arrangement separate from policy.*]—*Held :* not to constitute a submission to arbn., but a provision for appraisement.—SEARLE *v.* ALLIANCE INSURANCE CO., [1925] 4 D. L. R. 378 ; [1925] 3 W. W. R. 729.—**CAN.**

(PICKFORD, L.J. & SARGANT, J.) upon the ground that there was a "submission" to arbn. within the Act of 1889, s. 27 (BANKES, L.J.), upon the ground that under reg. 51 a special tribunal was constituted with special powers for determining disputes between practitioners & the committee.—CLEMENTS *v.* COUNTY OF DEVON INSURANCE COMMITTEE, [1918] 1 K. B. 94; 87 L. J. K. B. 203; 118 L. T. 89; 82 J. P. 71, C. A.

39. *Add. Annotation :*—**Refd.** Wyndham *v.* Jackson, [1937] 3 All E. R. 677.

40. *Add. Annotation :*—**Refd.** Wyndham *v.* Jackson, [1937] 3 All E. R. 677.

41. *Add. Annotations :*—**Consd. O'Rourke** *v* Darbishire, [1920] A. C. 581. **Expld. & Distd.** Infields, Ltd. *v.* Rosen & Son, [1938] 3 All E. R. 591.

42. *Add. Annotation :*—**Refd.** Wyndham *v.* Jackson, [1937] 3 All E. R. 677.

43. *Add. Annotation :*—**Refd.** Wyndham *v.* Jackson, [1937] 3 All E. R. 677.

44a. —— —— **Appeal.**]—Where proceedings are taken out of the ordinary *cursus curiæ*, with the assent of the parties, the decree or the ct. below cannot be regarded as the award of an arbitrator, so as to deprive either party of the right of appeal, unless there has been an attempt to give the ct. a jurisdiction which it does not possess, or unless the procedure has been so violently strained as to be put entirely out of its course.—PISANI *v.* A. G. FOR GIBRALTAR (1874), L. R. 5 P. C. 516; 30 L. T. 729; 22 W. R. 900, P. C.

Annotation :—**Consd.** Wyndham *v.* Jackson, [1937] 3 All E. R. 677.

44b. —— —— **Enforcement.**]—Pltf. issued a writ in the Ch. Div. claiming an account & payment of all sums due to her under a contract entered into by pltf. with deft. An order was accordingly made for an account. At the request of both parties, the master gave a decision on a matter which was not covered by the judge's order for an account, & he issued a certificate to the effect that a certain sum was due from deft. to pltf. Deft. sought to have the certificate discharged or varied by a judge of the Ch. Div., but the judge treated the certificate as a nullity, on the ground that the master had no power to consider matters not within the scope of the original order for an account. Pltf. then sought unsuccessfully to enforce the master's certificate, asking for the payment of the sum alleged to be due to her. Pltf. then brought an action in the K. B. Div., claiming payment of the amount awarded by the master, on the ground that the master had acted as an arbitrator, & that his decision was therefore in the nature of an award :—*Held :* the intention of the parties was that the master should deal with the dispute according to the ordinary process of the ct., under which his determination would not be final, but subject to a further order by the judge. His decision therefore, could not be treated as an award, & the present action could not succeed.—WYNDHAM *v.* JACKSON, [1938] 2 All E. R. 109; 107 L. J. K. B. 295; 158 L. T. 296; 54 T. L. R. 560; 82 Sol. Jo. 254, C. A.

45. *Add. Annotation :*—**Refd.** Wyndham *v.* Jackson, [1937] 3 All E. R. 677.

53. *Add. Annotation :*—**Consd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

53a. —— ——.]—BOYNTON *v.* RICHARDSON, No. 71a, *post.*

66. *Add. Annotations :*—**Consd.** Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121; Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

68. *Add. Annotation :*—**Consd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

70. *Add. Annotation :*—**Consd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

71. *Add. Annotations :* — **Apld.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107. **Consd.** Wisbech R. D. C. *v.* Ward (1927), 91 J. P. 200. **Refd.** Brightman *v.* Tate, [1919] 1 K. B. 463; Wisbech R. C. *v.* Ward, [1928] 2 K. B. 1.

71a. **Surveyor's certificate—Valuation of timber—Liability for negligence.**]—A firm of surveyors was appointed jointly by the parties to a contract for the sale of certain growing timber, to value the timber. The vendor subsequently commenced proceedings against the surveyors for damages for negligence in respect of their valuation of the timber :—*Held :* the surveyors were in the position of quasi-arbitrators, & the action failed.—BOYNTON *v.* RICHARDSON (1924), 69 Sol. Jo. 107.

PART I. SECT. 3, SUB-SECT. 2.

42 iii. —— ——.]—In an action of slander the parties agreed to trial before a judge & seven jurymen instead of the requisite eight. A verdict was given for pltf. Deft. appealed :—*Held :* the ct. had acted as an arbitrator, & no appeal lay.—LOANE *v.* BLACK, [1925] 3 D. L. R. 940.—**CAN.**

42 iv. —— ——.]—*Re* FRASER'S APPEAL, *Re* WINNIPEG CHARTER, [1927] 4 D. L. R. 213; [1927] 2 W. W. R. 600; 36 Man. L. R. 597.—**CAN.**

PART I. SECT. 3, SUB-SECT. 6.

51 ii. ——.]—Where land was expropriated for railway purposes the railway co. & the owner agreed to have the compensation determined by reference to three named persons called "valuers" in the submission; their decision was to be binding & conclusive on both parties & not subject to appeal; they could view the property & call such witnesses & take such evidence, on oath or otherwise, as they, or a majority of them, might think proper: & either party could have a representative present at the view or taking of evidence, but his failure to attend for any reason would not affect the validity of the decision :—*Held :* this agreement did not provide for a judicial arbn. but for a valuation merely.—CAMPBELLFORD, LAKE ONTARIO & WESTERN RY. CO. *v.* MASSIE (1914), 50 S. C. R. 409.—**CAN.**

m i. *Assessing loss by theft & fire—Appointment of appraisers under arrangement separate from policy.*]—*Held :* a provision for appraisement, & not a submission to arbn.—SEARLE *v.* ALLIANCE INSURANCE CO., [1925] 4 D. L. R. 378; [1925] 3 W. W. R. 729.—**CAN.**

n i. *S. P.* IRWIN *v.* CAMPBELL (1914), 32 O. L. R. 48.—**CAN.**

PART I. SECT. 4.

t i. *S.P.* JNAUENDRA NATH BAGCHI *v.* SURES CHANDRA ROY (1927), I. L. R. 6 Pat. 556.—**IND.**

v i. ——.]—The selection of a guardian cannot be referred to arbn., as it is not a matter of private interest between parties.—PALANIANDI CHETTI *v.* ADAIKALAM CHETTI (1923), I. L. R. 47 Mad. 459.—**IND.**

xc. *Construction of agreement—Involving point of law.*]—By an agreement between the N. B. Ry. Co. & the F. Ry. Co. it was provided that, in the event of an Act of Parliament being obtained & the capital being subscribed, a line of railway should be constructed by the F. Co., & thereafter worked by the N. B. Co. on certain terms. It was further provided that the N. B. Co. should be bound to contribute to the F. Co. a sum sufficient to make up a dividend of 4 per cent. on the "paid-up share capital" of the F. Co., & that all questions which might arise between the parties in relation to the agreement, or the import or meaning thereof, or the carrying out of the same, should be referred to arbn. in terms of Railway Companies Arbitration Act, 1859. The line of railway was thereafter constructed & worked in terms of the agreement. In an action at the

78. *Add. Annotation :*—**Refd.** L. & N. E. Ry. *v.* Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

79. *Add. Annotation :*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

80. *Add. Annotations :*—**Refd.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304 ; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331 ; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

125. *Add. Annotation :* — **Refd.** Woodrow *v.* Trawlers (White Sea & Grimsby), Ltd., [1930] 1 K. B. 176.

135a. ——.]—By a contract made between an Italian buyer & English sellers it was provided as follows : " Any dispute arising out of this contract to be settled by arbn. in London in the usual way." A dispute having arisen between the parties, defts. appointed M. as their arbitrator. Pltf. having failed to appoint an arbitrator after due notice given, M. made an award in favour of defts., & defts. thereupon counterclaimed to enforce the award :—*Held :* (1) the words " to be settled by arbn. in London in the usual way " meant the way in which disputes arising as to the particular commodity were settled in London, & there was ample evidence that the dispute had been settled " in the usual way " ; (2) any objection to the award upon the ground of irregularity or misconduct on the part of the arbitrator could only be taken by motion to set aside or remit the award, & pltf. having failed to move within the limited time, his remedy in that respect had lapsed.—SCRIMAGLIO *v.* THORNETT & FEHR (1924), 131 L. T. 174 ; 40 T. L. R. 320 ; 68 Sol. Jo. 630 ; 29 Com. Cas. 175, C. A.

141. *Add. Annotations :*—**Refd.** Phœnix Insce. of Hartford *v.* De Monchy (1929), 141 L. T. 439 ; The Njegos, [1936] P. 90.

141a. —— ——.]—Pltfs. Danish & Norwegian merchants, to whom, as endorsees of the bills of lading, the property in part of a cargo of grain had passed, claimed in respect of short delivery from defts., the owners of the Yugo-Slavian steamship *N.* By a charterparty entered into in London by an English registered co. as agents for defts., & the London branch of a Paris firm as agents for the charterers, an Argentine co., the *N.* was chartered to load the grain in the River Plate for delivery at Scandinavian ports. The charterers were the shippers. The charterparty was in English on the Chamber of Shipping River Plate (" Centrocon ") form. The bills of lading, in an English form & in the English language, incorporated " all the terms, conditions & exceptions " of the charterparty " including the negligence clause." The charterparty contained the usual English arbn. clause. The cargo was damaged by fire on board the *N.* due, as pltfs. alleged, to the ship being unseaworthy. Defts., who counterclaimed for a general average contribution, in an amended defence pleaded that the law governing the bills of lading contract was Yugo-Slavian law, the law of the flag, under which it was alleged that, if they had exercised due diligence to keep the ship seaworthy, the exceptions in the charterparty would apply without the implied warranty of seaworthiness. It was admitted that the proper law of the charterparty was English law. The question of the law applicable to the bills of lading was tried as a preliminary issue :—*Held :* (1) the arbn. clause, which would have been decisive as to the application of English law, was not incorporated into the bills of lading ; but (2) those clauses, which were incorporated, & particularly the exceptions clause, could not be isolated from their context & incorporated without any indication of the proper law of the contract from which they were taken ; (3) the inference was that sensible business men must have intended that the bills of lading should be read with the English interpretation attaching to the charterparty ; & (4) both on what should be presumed to be the intention of the parties & on the ground of business efficacy the proper law of the contract was English & not Yugo-Slavian law.—THE NJEGOS, [1936] P. 90 ; 105 L. J. P. 49 ; 155 L. T. 109 ; 52 T. L. R. 216 ; 18 Asp. M. L. C. 609 ; *sub nom.* NJEGOS CARGO OWNERS *v.* NJEGOS OWNERS, 41 Com. Cas. 149.

---

instance of the N. B. Co. against the F. Co., concluding for declarator (*inter alia*) that the pursuers were freed & relieved of all liability to make up the dividend of the F. Co. to 4 per cent., & that the articles of the agreement thereanent were null & of no effect, the pursuers averred that the *ex facie* capital of defenders' co. was not the " paid-up share capital " on which the dividend had been guaranteed in respect that defenders had raised that capital in a manner which was illegal & *ultra vires* of their statutory authority, the pursuers maintained that this depended on a legal interpretation of matters outwith the agreement, & consequently that the clause of arbn. did not apply, & that the question raised in the action fell to be decided by the Ct. of Session :—*Held :* the arbn. clause was a general clause, by which the parties had contracted themselves out of the jurisdiction of the ct. as to anything which fell within the clause : the questions raised were questions of the construction of the agreement, &, accordingly, must be determined by the arbiter, even although their determinations depended upon the question of *ultra vires* & although it involved a point of law.—NORTH BRITISH RY. CO. *v.* NEWBURGH & NORTH FIFE RY. CO., [1911] S. C. 710.—**SCOT.**

sm. *Liability for & amount of alimony.*]—*Held :* proper subjects for arbn.—HARRISON *v.* HARRISON (1918), 41 O. L. R. 195 ; 130 W. N. 245.—**CAN.**

sp. *Right to receiver & injunction.*]—*Held :* not a matter to refer.—SURENDRA KUMAR ROY CHOWDHURY *v.* SUSHIL KUMAR ROY CHOWDHURY (1927), I. L. R. 55 Calc. 249.—**IND.**

PART I. SECT. 5.

st. *Reference by Crown—By whom signed.*]—DOMINION BUILDING CORPN., LTD. *v.* R., [1927] 2 D. L. R. 510, [1927] Exch. C. R. 79.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.

137 ii. ——.]—Where a submission to arbn. is made subject to Arbn. Act, R.S.A., 1922 (c. 98), the provisions of that Act must be held to be applicable in so far as they can reasonably be applied.—MASTERS & MCDOUGALL *v.* STEPHEN, STEPHEN *v.* MASTERS & MCDOUGALL, [1925] 4 D. L. R. 684 ; [1925] 3 W. W. R. 493.—**CAN.**

PART I. SECT. 6, SUB-SECT. 3.

145 v. —— ——.]—A policy of fire insurance provided that if a claim be rejected & an action be not commenced within three months after such rejection, all benefits under the policy should be forfeited, & further any question of amount of loss should be referred to arbn., such arbn. to be a condition precedent to any action. To a claim sent in, the co. answered that they did not agree upon the amount claimed & that under the conditions of the policy they did not admit their liability :—*Held :* the right of action was that it might be decided whether such rejection was right or wrong, & it was only in the event of that question being decided against the co. that it would become necessary to ascertain the amount of the loss by arbn.—EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. *v.* DINANATH (1922), I. L. R. 47 Bom. 509.—**IND.**

145 vi. —— ——.]—Insurers alleged that material misrepresentations were made by the insured in his proposal, & that consequently the policy was void under clause 7 of the policy, & that

146. *Add. Annotations :*—**Consd.** Woodall *v.* Pearl Assce., [1919] 1 K. B. 593. **Distd.** Macaura *v.* Northern Assce., [1925] A. C. 619 ; Freshwater *v.* Western Australian Insurance Co. (1932), 102 L. J. K. B. 75 ; Stevens & Sons *v.* Timber & General Mutual Accident Insurance Assocn., Ltd. (1933), 102 L. J. K. B. 337 ; Toller *v.* Law Accident Insurance Society, Ltd., [1936] 2 All E. R. 952. **Refd.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167 ; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497 ; Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586 ; Locker & Woolf, Ltd. *v.* Western Australian Insurance Co. (1935), 79 Sol. Jo. 574.

147. *Add. Annotations :*—**Consd.** Macaura *v.* Northern Assce., [1925] A. C. 619 ; Stevens & Sons *v.* Timber & General Mutual Accident Insurance Assocn., Ltd. (1933), 49 T. L. R. 224. **Refd.** Toller *v.* Law Accident Insurance Society, Ltd., [1936] 2 All E. R. 952.

147a. —— ——.]—In a proposal for insurance against accident the intending assured stated his occupation & signed a declaration that the answers to the questions therein were true, & that he agreed that the declaration should be the basis of the contract between him & the insurance co. whose policy, subject to the terms & conditions thereof, he agreed to accept. The policy recited the proposal & declaration " which proposal & declaration warranted to be true it is a reed shall be the basis of this contract . . . & be considered as incorporated herein, & any suppression, misrepresentation, or misstatement of fact in such written proposal & declaration shall *ipso facto* render this policy null & void " ; & it provided that it was a condition precedent to the recovery of any sum under the policy that the conditions indorsed thereon should be strictly observed. Condition 8 provided that the policy might be renewed from year to year but only upon condition that nothing had happened to increase the risk, & if the risk was increased by (*inter alia*) the assured engaging in some other occupation, then " unless notice in writing of such increased risk is given to the co. . . . & any extra premium that may be required paid . . . the policy is void & no claim can be made." By condition 11, " If any question shall arise touching this policy or the liability of the co. thereunder or the extent or nature of such liability or otherwise howsoever in connection herewith then the assured & all persons claiming through the assured may refer & shall be bound, if the co. shall so require, to refer the same to arbn. by one arbitrator to be agreed on or in default of agreement by two arbitrators & their umpire under the Act of 1889 . . . & no person shall be entitled to bring or to maintain any action or proceeding on this policy except for the sum awarded under such arbn." During the currency of the policy the assured was killed by an accident. The co. denied liability on the policy on the ground that the assured either had misstated his occupation in the proposal, or, if not, had changed his occupation for one involving increased risk of which notice as required by condition 8 had not been given to the co., & contended that the policy was therefore void, & they required the dispute to be referred to arbn. under condition 11. In an action on the policy :—*Held :* (1) upon the co. requiring arbn. condition 11 made the obtaining of an award a condition precedent to a right of action ; (2) the co. by relying on the terms of the policy which rendered it void in certain events did not thereby repudiate the policy as a binding contract between the parties, & were entitled to rely upon the arbn. clause as a defence to the action.—WOODALL *v.* PEARL ASSURANCE CO., [1919] 1 K. B. 593 ;

---

therefore a dispute had arisen which, under clause 12 of the policy, should be referred to arbn. :—*Held :* the question of misrepresentation was within the arbn. clause in the policy.—RICHARDSON *v.* ARMY, NAVY, & GENERAL ASSURANCE ASSOCN., LTD., [1924] 2 I. R. 96.—**IR**

145 vii. —— ——.]—F. insured a motor char-a-banc with deft. co. The policy contained the usual clause as to wilful misstatements, & a clause that any dispute . . . " as to the extent & meaning " of the policy should be referred to arbn. The co. repudiated a claim by F. on the ground that non-disclosure by him of material facts had rendered it null & void, but in an action by F. the co. moved to stay the proceedings & to refer to arbn. :—*Held :* the contract having been repudiated the dispute was not one as to the extent & meaning of the policy, & not being otherwise within the arbn. clause could not be referred to arbn.—FUREY *v.* EAGLE, STAR & BRITISH DOMINIONS INSCE. CO. (1922), 56 I. L. T. 23.—**IR.**

e. *Revsd.*, [1909] W. N. 161.—**SCOT.**

e i. —— ——.]—The parties in framing a contract may insert a clause binding them to refer all future disputes, either in the carrying out of the contract or in respect of a breach of it, to arbn., & one party to such a contract cannot, by averring that the other party has repudiated the contract, get rid of the arbn. clause.—SANDERSON & SON *v.* ARMOUR & CO., LTD (1922), 91 L. J. P. C. 167 ; 127 L. T. 597 ; [1922] S. C. (H. L.) 117 ; 59 Sc. L. R 268.—**SCOT.**

e ii. —— ——.]—Where there is a repudiation which goes to the substance of the whole contract, the person setting up that repudiation cannot insist on a subordinate term of the contract still being enforced.—GRAHAM *v.* PROVIDENT LIFE ASSURANCE CO., [1922] N. Z. L. R. 718.—**N.Z.**

e iii. —— ——.]—Where a contract contains an arbn. clause, & one of the parties seeks to avoid the contract, the dispute is referable to arbn. if the avoidance of the contract arises out of the terms of the contract itself. Where, however, a party seeks to avoid the contract for reasons *dehors* it, the arbn. clause cannot be resorted to as it, together with the other terms of the contract, is set aside. In other words, a party cannot rely on a term of the contract to repudiate it, & still say the arbn. clause should not apply. If he relies on a contract he must rely on it for all purposes.—INDIA ELECTRIC CO. *v.* GENERAL ELECTRIC TRADING CO. (1929), I. L. R. 53 Bom. 573.—**IND.**

s i. —— *Performance of contract prevented by Government.*]—A firm agreed to sell & to ship from Calcutta to Buenos Ayres bales of jute goods. The contracts contained provisions exempting the sellers from liability for late & short shipment attributable (*inter alia*) to Govt. commandeering of ships, war, " or any other unforeseen circumstances " & included provisions for the shipment of delayed cargoes as soon as possible, subject to a right of refusal on the part of the purchasers. Each contract contained an arbn. clause in these terms : " Any dispute that may arise under this contract to be settled by arbn." Before all the bales had been shipped, the further export of jute from India to the Argentine was prohibited. A controversy having arisen between the parties as to whether, in the circumstances, the contracts had been rendered void & unenforceable *quoad* the shipment of the remainder of the bales :—*Held :* on a construction of the contracts, the controversy was a dispute arising under the contracts, & accordingly fell to be determined by arbn.—SCOTT & SONS *v.* DEL SEL, [1923] S. C. (H. L.) 37.—**SCOT.**

s ii. —— *Contract cancelled.*]—If a contract is cancelled, an arbn. clause falls with such cancellation.—COX TOWING LINE *v.* DUNFIELD & CO. (1922), 68 D. L. R. 133.—**CAN.**

s iii. —— *Existence of dispute.*]—The right of one party to a contract to insist upon a term in it providing for reference to arbn. depends in the first place on the existence of a dispute.—STANDARD INSURANCE CO. *v.* SCANDRETT (1923), 23 S. R. N. S. W 254 ; 40 N. S. W. W. N. 22.—**AUS.**

s iv. —— ——.]—The existence of a dispute is an essential condition for the jurisdiction of arbitrators.—UTTAM CHAND SALIGRAM *v.* JEWA MAMOOJI (1919), I. L. R. 46 Calc. 534.—**IND.**

88 L. J. K. B. 706; 120 L. T. 556; 83 J. P. 125; 63 Sol. Jo. 352; 24 Com. Cas. 237, C. A.

Annotations:—As to (2) **Apld.** Freshwater *v.* Western Australian Insce. Co. (1932), 102 L. J. K. B. 75. **Consd.** Stevens & Sons *v.* Timber & General Mutual Accident Insurance Assocn., Ltd. (1933), 49 T. L. R. 224. **Refd.** Macaura *v.* Northern Assce., [1925] A. C. 619; Toller *v.* Law Accident Insurance Society, Ltd., [1936] 2 All E. R. 952.

147b. ——— ———.]—Where an insurance co. alleges that a claim under an indemnity policy is invalidated by reason of the non-disclosure of a material fact, & where the policy contains an arbn. clause, the co. can at the same time insist that the claimants must under the arbn. clause proceed to arbn. in lieu of bringing an action to enforce the claim.—Stevens & Sons *v.* Timber & General Mutual Accident Insurance Assocn., Ltd. (1933), 102 L. J. K. B. 337; 148 L. T. 515; 49 T. L. R. 224; 77 Sol. Jo. 116, C. A.

Annotations:—**Consd.** Toller *v.* Law Accident Insurance Society, Ltd., [1936] 2 All E. R. 952. **Refd.** Jones *v.* Birch Bros., Ltd., [1933] 2 K. B. 597.

Compare original volume, p. 356, No. 293.

153. *Add. Annotations:*—**Refd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

155. *Add. Annotations:—As to* (1) **Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730; N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604; The Njegos, [1936] P. 90. *As to* (2) **Refd.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167.

156. *Add. Annotation:*—**Consd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

164. *Add. Annotation:*—**Consd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690.

164a. ———.]—By two contracts made in 1919, applt. bought from resps. a large quantity of "American Fresh Eggs." The contracts provided that in case of any dispute as to the quality or condition of the goods, the question should be referred to arbn., provided that, "such reference shall be claimed in writing within three days after the goods have been landed." It was also provided that the award in writing of any two arbitrators should be conclusive & binding on all parties, subject to the right of appeal. The goods arrived in England, & were not examined at the port of landing, but were sold by applt. to sub-purchasers. More than three days after the goods had been landed applt. wrote to resps. complaining that the goods were of inferior quality, & some time later he wrote a letter claiming a reference to arbn. Resps. did not then take the objection that the claim was out of time, but signed a submission to arbn. in respect of each contract. At the reference resps took the points that applt.'s claim was out of time, & that the goods should have been examined at the port of landing. The arbitrators awarded "that the buyer was out of time in examining & making claim on the goods, & also in claiming arbn., & that therefore his case fails." The buyer took no steps to set aside the awards, but nearly two years later brought an action claiming damages for breach of contract:—*Held:* the awards were a bar to the action.—Ayscough *v.* Sheed Thomson & Co. (1924), 93 L. J. K. B. 924; 131 L. T. 610; 40 T. L. R. 707; 30 Com. Cas. 23, H. L.; *affg.* (1923), 92 L. J. K. B. 878, C. A.

Annotation:—**Distd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690.

165a. Arbitrator to be appointed within limited time.]—A ship was chartered for a voyage from R. to H. with a full cargo of linseed. The charterparty provided for the reference of all disputes to the final arbitrament of two arbitrators, one to be appointed by each of the parties, with power to appoint an umpire, & the clause continued: "Any claim must be made in writing & claimants' arbitrator appointed within three months of final discharge, & where this provision is not complied with the claim shall be deemed to be waived & absolutely barred." After the arrival of the ship at H. the charterers brought an action against the shipowners in respect of damage alleged to have been occasioned to a part of the linseed during the voyage by reason of the unseaworthiness of the ship at the commencement of the voyage. The shipowners pleaded that the charterers failed to appoint their arbitrator within three months of the discharge of the ship & that by reason thereof the action was not maintainable, &, by order of the ct., the question whether the claim in the action was barred by the arbn. clause was tried as a preliminary question of law:—*Held:* (1) the arbn. clause was not open to objection on the ground that it ousted the jurisdiction of the ct.; (2) inasmuch as the claim in the action was founded upon a breach of the implied condition of seaworthiness, there being in the charterparty no express provision relating to unseaworthiness, the shipowners were not entitled to the benefit of the term in the clause restricting the time within which the action could be brought, & consequently the claim was not barred by the arbn. clause.—Atlantic Shipping & Trading Co. *v.* Dreyfus (L.) & Co., [1922] 2 A. C. 250; 91 L. J. K. B. 513; 127 L. T. 411; 38 T. L. R. 534; 66 Sol. Jo. 437; 15 Asp. M. L. C. 566; 27 Com. Cas. 311, H. L.; *varying* S. C. *sub nom.* Dreyfus & Co. *v.* Atlantic Shipping & Trading Co. (1921), 37 T. L. R. 417, C. A.

Annotations:—As to (1) **Distd. & Expld.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478. *As to* (2) **Distd.** Ford *v.* Compagnie Furness (France), [1922] 2 K. B. 797; Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690. **Refd.** Cosmopolitan Shipping Co. *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

165b. ———.]—A charterparty contained a clause providing that all disputes arising out of the

---

153 iv. ——— *Lease in dispute.*]—A lease contained a clause referring to arbn. certain specific matters & "any other questions in reference to this lease which may arise between the parties." In arbn. proceedings the issue between the parties was not the validity of a notice to quit but the question whether the tenant was possessing under the lease or under a new bargain:—*Held:* as the lease itself was in dispute, the arbn. clause in the lease did not apply.—Hoth *v.* Cowan, [1926] S. C. 58.—**SCOT.**

sb. *Clause in broker's note—Rules applicable to members only.*]—Flour was sold by defts. to pltf. under contracts in broker's notes which contained a condition that the rules & regulations of the S. Assocn. should apply. The rules of the assocn. provided that every dispute or difference arising out of any contract or dealing should be referred to arbn. Pltf., who was not a member of the assocn., having sued defts. for damages for breach of contract:—*Held:* as the rules referring to arbn. were applicable only to disputes between members of the assocn., an application for a stay of proceedings must be dismissed.—Levin *v.* Beare, etc., [1921] App. D. 78.—**S. AF.**

PART I. SECT. 6, SUB-SECT. 4.

b. *Revsd.*, [1909] W. N. 161.—**SCOT.**

contract should be referred to arbn., the claimants' arbitrator to be appointed within a time therein limited, & if he was not so appointed the claim was to be deemed to be waived & absolutely barred. Loss to cargo was suffered owing to the ship's unseaworthiness. The cargo owners claimed damages & went to arbn., but did not appoint their arbitrator within the time limited. An award was made in their favour, the shipowners not appearing :—*Held :* although the loss was caused by unseaworthiness, &, consequently, the above clause could not have been set up by the shipowners, the cargo owners were entitled in virtue of the clause to go to arbn., but only in accordance with its terms, & as they had not complied with those terms the arbitrator had no jurisdiction to make the award.—FORD (H.) & Co. *v.* COMPAGNIE FURNESS (FRANCE), [1922] 2 K. B. 797 ; 92 L. J. K. B. 88 ; 128 L. T. 286 ; 16 Asp. M. L. C. 102, D. C.

165c. ——.]—Pltfs. bought from defts. a quantity of East African copra cake to be of fair average quality, sound delivered. The contract provided that "the goods are not warranted free from defect rendering same unmerchantable, which would not be apparent on reasonable examination" ; that any disputes arising out of the contract should be settled by arbn. ; & that notice of arbn. should be given & the arbitrator nominated in writing not later than fourteen days after the final discharge of the vessel. Pltfs. resold the copra cake to B. & Co., who resold it to dealers, & they in turn resold it to farmers, who used it for feeding cattle. The cattle fed on the cake became ill, & it was then found on analysis that the cake contained an admixture of castor beans in so large a proportion as to make it poisonous. Claims were then made by the various buyers against their sellers & by pltfs. against defts. as soon as the mischief was discovered, but this was after the expiration of fourteen days from the final discharge of the vessel. Pltfs. claimed arbn., but the arbitrator before whom the matter came held that he had no jurisdiction, as notice of arbn. was not given nor the arbitrator nominated in time. In an action by pltfs. claiming damages, it was found that it was within the contemplation of the parties that the copra cake would be used for cattle food & nothing else :—*Held :* the presence of the arbn. clause was not in itself a bar to the action, nor was the award, which dealt merely with the arbitrator's jurisdiction & not with the claim.—PINNOCK BROTHERS *v.* LEWIS & PEAT, LTD., [1923] 1 K. B. 690 ; 92 L. J. K. B. 695 ; 129 L. T. 320 ; 39 T. L. R. 212 ; 67 Sol. Jo. 501 ; 28 Com. Cas. 210.

Annotations :—**Distd.** Ayscough *v.* Sheed Thomson (1924), 93 L. J. K. B. 924. **Refd.** Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66.

165d. ——.]—Pltfs. chartered their ship to defts. to carry grain, the charterparty providing that all disputes should be referred to arbn. & that claimant's arbitrator must be "appointed within three months of final discharge, & where this provision is not complied with the claim shall be deemed to be waived & absolutely barred." Before completion of discharge defts. made various payments to pltfs. on account of freight, & on final discharge pltfs. claimed that £568 was still owing for freight. Defts. admitted that £416 was still owing for freight, but they set up a counterclaim for £581 for short delivery & refused to pay the £416 until their counterclaim was met. Neither party referred the matter to arbn., & more than three months after final discharge pltfs. brought an action for £568 balance of freight & defts. counterclaimed £581 for short delivery :—*Held :* though pltfs. could not recover the £568, as the claim for it ought to have been taken to arbn., yet they could recover the £416 about which there had never been any dispute, but the counterclaim, as it was always in dispute, was barred by the arbn. clause.—BEDE STEAM SHIPPING CO., LTD. *v.* BUNGE Y BORN LIMITADA S.A. (1927), 43 T. L. R. 374.

167. *Add. Annotations :*—**Distd.** Crediton Gas Co. *v.* Crediton U. D. C., [1928] 1 Ch. 447. **Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

168. *Add. Annotation :*—**Consd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

172. *Add. Annotation :*—**Consd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

234. *Add. Citation :*—2 Hudson's B. C. 4th ed. 100. *Add. Annotations :*—**Consd.** *Re* Nott & Cardiff Corpn., [1918] 2 K. B. 146. **Refd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

237a. **"If any dispute as to the agreement or any matter or thing therein or intention or construction thereof."**]—Where a dispute arose on a contract as to the meaning of a clause therein which dealt with tests that the purchaser was making, the purchaser contending that the tests were unsatisfactory, & the vendor that they signed the contract on the faith of an assurance by the purchaser that the tests were proving satisfactory, & the contract contained a clause that if any dis-

PART I. SECT. 6, SUB-SECT. 7.—A.

166 iv. ——.]—An arbitrator cannot, by an erroneous construction of the contract, give himself jurisdiction over matters not covered by it ; he cannot go beyond the matters as to which the parties agreed to give him jurisdiction, nor can he deprive the ct. of the right & duty of determining the limits of the jurisdiction.—LAW *v.* CITY OF TORONTO (1920), 47 O. L. R. 251 ; 18 O. W. N. 58.—**CAN.**

PART I. SECT. 6, SUB-SECT. 7.—C.

sa. *Whether disputes within arbitration clause.*]—On an application for a stay of proceedings in an action on an insurance policy covering loss of profits suffered by reason of a fire which destroyed pltfs.' merchandise, on the ground that the instrument upon which the action was brought contained a stipulation that "if any difference arises as to the value of the property insured, the property saved, or the amount of the loss, such value & amount, & the proportion thereof, if any, to be paid by the insurer shall, whether the right to recover on the policy is disputed or not, & independently of all other questions, be submitted to arbn.," etc., an order was made staying proceedings in the action until completion of an arbn. pursuant to said stipulation :—*Held :* it was the intention of the parties to refer to arbn. not only the disputes between them, but also the question whether these disputes fell within the arbn. clause, & in the circumstances of this case, where no serious question of law arose, the issues ought to be decided by arbn.—FAMOUS CLOAK & SUIT CO. *v.* PHŒNIX ASSCE. CO. (1931), 44 B. C. R. 120.—**CAN.**

PART I. SECT. 6, SUB-SECT. 7.—D.

a (p. 343) l. "*Any difference*"—*Partnership dispute—Claim for damages.*]—A clause in a deed of partnership provided that any difference between the partners in regard to any matter relating to the partnership affairs should be submitted to arbn. Pltf. sued deft. for damages suffered through the fraudulent acts of deft. in breach of his duty as a partner :—*Held :* such a claim fell within the terms of the arbn. clause.—WALTERS *v.* ALLISON (1922), 43 N. L. R. 238.—**S. AF.**

pute should arise between the parties as to the agreement or any clause, matter or thing therein contained, or the intention or construction thereof, or in anywise relating thereto, the same should be referred to arbn.: —*Held:* such dispute came within the clause, & was not a dispute dehors the contract.—DE LA GARDE *v.* WORSNOP & Co., [1928] Ch. 17; 96 L. J. Ch. 446; 137 L. T. 475; 71 Sol. Jo. 604.

238a. **"All loss."**]—In an action in Manitoba against building contractors to recover sums improperly paid to them under a contract, & for damages, a judgment by consent was entered whereby it was provided (*inter alia*) that pltf. should recover, among other sums, "all loss to pltf. by reason of defective workmanship & materials," & that there should be set off against the sums recovered by pltf. the fair value of the work done & materials provided at fair contractor's prices. The judgment provided further that the sums to be debited & credited were to be determined by two appraisers, & that any matter upon which they differed was to be referred to a named umpire whose decision thereon was to be final; & that the Manitoba Arbn. Act should not apply. Defts moved to set aside or vary an award made:—*Held:* (1) under the words "all loss" there was jurisdiction to award to pltf. not only sums actually expended at the date of the award, but also a sum estimated as being necessary to make good the defects; (2) the award being within the jurisdiction conferred by the submission, & there being no error apparent on its face, it could not be questioned either on the facts or on the law.—A.-G. FOR MANITOBA *v.* KELLY, [1922] 1 A. C. 268; 91 L. J. P. C. 101; 126 L. T. 711; 38 T. L. R. 281, P. C.

Annotations:—*As to* (2) **Consd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395. **Refd.** Hirji Mulji Cheong Yue S.S. Co., [1926] A. C. 497; Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193.

240. *Add. Annotation:*—**Refd.** *Re* Boks & Peters, Rushton, [1919] 1 K. B. 491.

254. *Add. Annotations:*—**Consd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610. **Apprvd.** Ramdutt Ramkissen Das *v.* Sassoon (1929). 98 L. J. P. C. 58. **Refd.** Namlooze Vennootschap Handels-en-Transport Maatschappij Vulcaan *v.* Ludwig Mowinckels Rederi A/S. (1937), 42 Com. Cas. 200.

254a. ——.]—Unless the submission otherwise provides, the Crown is entitled, in arbn. proceedings, to rely upon the defence of the above Act.—CAYZER, IRVINE & Co. *v.* BOARD OF TRADE (1925), 95 L. J. K. B. 134; 136 L. T. 7; 42 T. L. R. 163; 70 Sol. Jo. 347; *revsd.* on other grounds, *sub nom.* BOARD OF TRADE *v.* CAYZER, IRVINE & Co., [1927] A. C. 610, H. L.

Annotations:—**Consd.** Naamlooze Vennootschap Handels-en-Transport Maatschappij "Vulcaan" *v.* A/S. Ludwig Mowinckels Rederi, [1938] 2 All E. R. 152. **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

254b. ——.]—Although above Act does not in terms apply to arbns. it is an implied term of a contract which contains an arbn. clause that the arbitrator must decide the dispute according to the existing law of contract, & every defence open in a ct. of law can be equally proponed for the arbitrator's decision, & consequently in an arbn. above Act can be pleaded.—RAMDUTT RAMKISSEN DAS *v.* SASSOON (E. D.) & Co. (1929), 98 L. J. P. C. 58; 140 L. T. 542; 45 T. L. R. 205, P. C.

Annotation:—**Consd.** Namlooze Vennootschap Handels-en-Transport Maatschappij Vulcaan *v.* Ludwig Mowinckels Rederi A/S. (1937), 42 Com. Cas. 200.

255. *Add. Annotation:*—**Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

263. *Add. Annotations:*—**Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478; Hallen *v.* Spaeth, [1923] A. C. 684. **Expld.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774. **Refd.** Woodall *v.* Pearl Assce., [1919] 1 K. B. 593; Atlantic Shipping & Trading Co. *v.* Dreyfus, [1922] 2 A. C. 250; Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610; Gowar *v.* Hales (1927), 96 L. J. K. B. 1088; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586; Freshwater *v.* Western Australian Insurance Co. (1932), 102 L. J. K. B. 75; Cipriani *v* Burnett, [1933] A. C. 83; Israelson *v.* Dawson (Port of Manchester Insurance Co., Ltd.), [1933] 1 K. B. 301; Paul (R. & W.), Ltd. *v.* Wheat Commission (1935), 152 L. T. 352; Groom *v.* Crocker, [1937] 3 All E. R. 844.

265. *Add. Annotation:*—**Refd.** Paul (R. & W.), Ltd. *v.* Wheat Commission (1935), 152 L. T. 352.

265a. —— —— **Action on charterparty.**]—ATLANTIC SHIPPING & TRADING CO. *v.* DREYFUS (L.) & Co., No. 165a, *ante*.

269. *Add. Annotation:*—**Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

273. *Add. Annotation:*—**Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

278. *Add. Annotation:*—**Refd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

288. *Add. Annotation:*—**Refd.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167.

290. *Add. Annotations:*—**Apld.** Woodall *v.* Pearl

PART I. SECT. 7.

r i. ——.]—GROTHE *v.* MONTREAL CORPN., [1924] 4 D. L. R. 401.—**CAN.**

s c. *Waiver of right to immediate appraisal—Repossession by vendor of farm implement—Farm Implement Act, R.S.S.* 1920 (*c.* 128), *s.* 24.]—*Re* GRAY TRACTOR CO. OF CANADA & VAN TROYEN, [1925] 1 D. L. R. 718; [1925] 1 W. W. R. 513; 19 Sask. L. R. 202.—**CAN.**

PART I. SECT. 8.

263 vii. —— ——.]—An agreement to refer a dispute to arbn. does not oust the jurisdiction of the ct.—BHOWANIDAS RAMGOBIND *v.* PANNACHAND LUCHMIPAT (1924), I. L. R. 52 Calc. 453.—**IND.**

288 i. *Statutory reference—Jurisdiction ousted.*]—When the rules of an assocn. registered under Primary Producers' Co-operative Assocns. Acts, 1923 to 1926, provide for the settlement of disputes between the association & any of its members by arbitration, a magistrate's ct. has no jurisdiction to entertain an action by a member against the association for moneys claimed to be due for milk supplied, & the association cannot waive its right to this statutory remedy.—KUHL *v.* THE MACLAGAN VALLEY CO-OPERATIVE DAIRY ASSOCN., LTD. (1929), S. R. (Q.) 49; 23 Q. J. P. 17.—**AUS.**

PART I. SECT. 9, SUB-SECT. 1.

290 v. —— *Reference of disputed claim under policy.*]—Conditions in an insurance policy requiring the reference of any disputed claim to arbn. & the making of an award a condition precedent to any right of action on the policy, & requiring the action to be brought within three months after such award, are valid.—WEBB *v.* QUEENSLAND INSURANCE CO., LTD., [1920] N. Z. L. R. 118.—**N.Z.**

290 vi. —— ——.]—On an application by way of motion by pltf. co. to restrain deft. from proceeding with his action, which by agreement was dealt with as if made by originating summons

Assce., [1919] 1 K. B. 593. **Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478. **Apld.** Hallen *v.* Spaeth, [1923] A. C. 684. **Expld.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774. **Apld.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610; Freshwater *v.* Western Australian Insurance Co. (1932), 102 L. J. K. B. 75. **Expld.** Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586. **Refd.** Hill *v.* South Staffordshire Ry. (1865), 12 L. T. 63; Atlantic Shipping & Trading Co. *v.* Dreyfus, [1922] 2 A. C. 250; Gowar *v.* Hales (1927), 96 L. J. K. B. 1088; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; Cipriani *v.* Burnett, [1933] A. C. 83; Israelson *v.* Dawson (Port of Manchester Insurance Co., Ltd.), [1933] 1 K. B. 301; Paul (R. & W.), Ltd. *v.* Wheat Commission (1935), 152 L. T. 352; Groom *v.* Crocker, [1937] 3 All E. R. 844.

293. *Add. Annotation :*—**Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

294a. —— **Effect of Third Parties (Rights against Insurers) Act, 1930 (c. 25).**]—Pltf. was injured in a motor accident & recovered judgment against C. & H. for £300 damages for negligence. H. subsequently became bkpt. At the time of the accident H. was insured with deft. co. against third party risks. The policy of insurance contained the usual arbn. clause making an award a condition precedent to bringing an action on the policy. Pltf. issued a writ against deft. co. contending that under Third Parties (Rights against Insurers) Act, 1930 (c. 25), s. 1, & Road Traffic Act, 1930 (c. 43), s. 36 (4), they were accountable to him for the amount of the judgment. Deft. co. thereupon took out a summons to stay the action on the ground that under the arbn. clause the obtaining of an award was a condition precedent to bringing the action. SWIFT, J., dismissed the summons & directed that the summons should be put into the New Procedure List. On appeal by deft. co. :—*Held :* the rights of deft. co. under the policy were not affected by either of the Acts of 1930, & deft. co. was therefore entitled to rely on the arbn. clause, which made it a condition precedent to bringing an action that an award should first be obtained.—FRESHWATER *v.* WESTERN AUSTRALIAN ASSURANCE CO., LTD., [1933] 1 K. B. 515; 102 L. J. K. B. 75; 148 L. T. 275; 49 T. L. R. 131; 76 Sol. Jo. 888, C. A.

Annotation :—**Apld.** Dennehy *v.* Bellamy, [1938] 2 All E. R. 262.

294b. —— ——.]—The infant pltf. was employed by B. & Co., & while in their employ sustained serious injuries as the result of an accident. He brought an action against B. & Co. & obtained a judgment which he was unable to enforce as B. & Co. went into liquidation. B. & Co. had started arbn. proceedings against defts., who were their underwriters in a policy of insurance which contained a *Scott* v. *Avery* clause. Pltf. brought the present action, relying upon the Third Parties (Rights against Insurers) Act, 1930 (c. 25). On an application to stay the action on the ground that there was in existence no arbn. award, which alone could give pltf. a right of action against defts., the judge ordered the action to be stayed. Pltf. appealed :—*Held :* (1) this was not a matter of practice or procedure, but a question of liability to pay such sum as should be found due upon the arbn., in accordance with the clause in the insurance policy. The Ct. of Appeal would therefore not interfere with the judge's order unless it could be shown that he had gone wrong in principle, or that his order was one which would produce an injustice; (2) the judge was right in refusing to eliminate the condition precedent in accordance with the power given him by Arbn. Act, 1934 (c. 14), s. 3 (4). DENNEHY *v.* BELLAMY, [1938] 2 All E. R. 262; 82 Sol. Jo. 350, C. A.

294c. —— **Effect of Road Traffic Act, 1930 (c. 43).**] —FRESHWATER *v.* WESTERN AUSTRALIAN ASSURANCE CO., LTD., No. 294a, *ante*.

294d. —— ——.]—Deft. B., who owned a motor-car, took out a third-party insurance policy containing the clause, "In the event of any difference arising between the co. & the insured under this policy the same shall be referred to arbn.," with the addition, known as the addition in *Scott* v. *Avery*, "& the obtaining of an award shall be a condition precedent to the liability of the co. under this policy." B.'s car was involved in a collision with a motor omnibus, & pltf. who was a passenger on the omnibus, brought an action for personal injuries against B. & the omnibus proprietors. B. referred the claim to the insurance co. & they repudiated liability. & B. thereupon instituted third-party proceedings against them. On a motion by the insurance co. that the third-party proceedings should be stayed on the ground of the inclusion of the above clause in the policy, B. contended that by reason of Road Traffic Act, 1930 (c. 43), s. 38, the clause had no effect. The judge ordered a stay. On appeal :—*Held :* the arbn. clause, even with the addition in *Scott* v. *Avery*, was unaffected by sect. 38, & even if the addition was avoided for certain purposes by sect. 38, the addition was severable & the first part of the clause was unaffected by the sect., & the judge had rightly exercised his discretion to order a stay.—JONES *v.* BIRCH BROS., LTD., [1933] 2 K. B. 597; 102 L. J. K. B. 746; 149 L. T. 507; 49 T. L. R. 586, C. A.

299. *Add. Annotation :*—**Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

300. *Add. Annotation :*—**Consd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

301. *Add. Annotation :*—**Consd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

302. *Add. Annotations :*—*As to* (1) **Folld.** Pailin *v.* Northern Employers Mutual Indemnity Co., [1925] 2 K. B. 73. **Apld.** Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316.

302a. Reference of disputes under charterparty—No action maintainable till after arbitration.]—

for the construction of the policy, removed into the Ct. of Appeal for argument :—*Held :* pltf. co. was entitled to a declaration that it was a condition precedent to the liability of the co. to pay, & of deft. to recover any sum under the policy that the amount payable by the co. in respect to the accident should be determined by arbn.—UNITED INSURANCE CO. *v.* ARTHUR, [1929] N. Z. L. R. 33.—**N.Z.**

295 *v.* ——.]—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—**CAN.**

WILLIAMS & MORDEY *v.* MULLER (W. H.) & Co. (LONDON), LTD. (1924), 18 Lloyd, L. R. 50.

303. *Add. Annotation :*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

305. *Add. Annotation :—As to* (2) **Consd.** *Re* Nott & Cardiff Corpn., [1918] 2 K. B. 146.

305a. Provision for fixing valuation of buildings by reference to arbitration.]—Applt. let an estate to resp. for a term of ten years, & covenanted that at the end of the term he would purchase "by valuation buildings erected by the lessee," with a reference to arbn. if the parties were unable to agree the valuation. Resp. covenanted not to transfer the demised premises without the written consent of applt.; but, in breach of that covenant, he sub-leased for the entire term, there being similar covenants in the sub-lease. At the end of the term applt. having resumed possession, resp. sued him to recover the value of buildings erected by the sub-lessee. There had been no agreement as to the amount of the valuation, & no arbn. :—*Held :* the action failed, since upon the true construction of applt.'s covenant resp. could not recover in the absence of an agreement, or an award, as to the amount of the valuation.—HALLEN *v.* SPAETH, [1923] A. C. 684; 92 L. J. P. C. 181; 129 L. T. 803, P. C.

306. *Add. Annotations :*—**Consd.** Ramdutt Ramkissen Das *v.* Sassoon (1929), 98 L. J. P. C. 58. **Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

310a. Jurisdiction of arbitrator—Dismissal of action on ground that award is condition precedent.]—When an action on a contract has been dismissed upon a contention by deft. that an award is a condition precedent to the right to sue, & the claim is then submitted to arbn., deft. is precluded from contending that the award is bad in that the arbitrators had not jurisdiction to construe the contract, but only to determine the sum, if any, due.—SOUTH BRITISH INSURANCE CO. *v.* GAUCI BROTHERS & Co., [1928] A. C. 352; 97 L. J. P. C. 101; 139 L. T. 362, P. C.

316a. Petition of right.]—(1) Where a petition of right, founded on a contract with the Crown which contains a written agreement to submit differences to arbn., has been filed in the High Ct. of Justice, proceedings in the petition may in a proper case be stayed under the Act of 1889, s. 4. (2) The granting of the King's fiat is not a step in the proceedings within that sect.

Held : (3) as the matters in dispute included an important constitutional question the proceedings in the petition ought not to be stayed.—ANGLO-NEWFOUNDLAND DEVELOPMENT CO. *v.* R., [1920] 2 K. B. 214; 89 L. J. K. B. 570; 122 L. T. 731; 84 J. P. 121; 14 Asp. M. L. C. 584, C. A.

Annotation :—As to (1) **Refd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

324. To the existing paragraph, after the last words "being known" add as follows :—; (4) although the ct. had jurisdiction to appoint a receiver pending a reference to arbn., it was not proper to do so unless a special case was made, as the course of liquidation before the tribunal chosen by the parties themselves would thereby be interfered with.

331a. Implication from conduct.]—Pltf., a director & shareholder in a co., brought an action, in her representative capacity as shareholder, against a fellow-director & shareholder, in his capacity as director, alleging that he had made certain payments contrary to the regulations of the co. Deft. applied under Arbn. Act, 1889 (c. 49), s. 4, to have the action stayed, & relied upon a clause in the arts. of assocn. providing that, whenever any doubt, difference or dispute should arise between any members of the co. or between the co. & any member or members or on any other account, matter or thing in any way connected with the co., or the conduct, affairs, business, or interest thereof, or any act or default of the directors, or any of them, the members of the co. respectively should not take proceedings at law, but the same should be referred to arbn. It was contended that there was no submission in writing as

308 v. For "4 I. C. L. R. 17" read "I. R. 4 C. L. 17."

sd. *Reference of disputes at port of loading—No action "elsewhere" till after arbitration.*]—*Held :* the clause prohibited the bringing of an action on such a dispute outside the province in which the port of loading was situated.—COX TOWING LINE *v.* DUNFIELD & Co. (1922), 68 D. L. R. 133.—**CAN.**

se. *Provision for fixing price of goods.*]—Pltf. agreed to sell, & deft. agreed to purchase, all fish caught by pltf. The price was to be "hereafter agreed upon, failing which the price shall be arrived at by the decision of three arbitrators." Provision was made for appointment of the arbitrators who were to "determine the price for the winter fish & the price so determined shall be paid" by deft. to pltf. :—*Held :* the fixing of the price by agreement or arbn. was a condition precedent to the right of pltf. to sue to recover the price.—VIDAL *v.* ROBINSON (WILLIAM) Co., LTD.; STEVENS *v.* ROBINSON (WILLIAM) Co., LTD.; SIGURDSON *v.* ROBINSON (WILLIAM) Co., LTD., [1925] 1 D. L. R. 1001.—**CAN.**

PART I. SECT. 10, SUB-SECT. 3.—C.

c i. ——.]—A clause in a policy of fire insurance whereby the parties agreed that, if any difference should arise as to the amount of loss, it should be submitted to arbn., but which did not provide that the determination of the insurer's liability should be postponed until the loss had been ascertained :—*Held :* not to be a reason for staying an action by the insured on the policy.—GRANCHUK *v.* SPRINGFIELD FIRE & MARINE INSURANCE CO., [1925] 1 D. L. R. 857; [1925] 1 W. W. R. 272; 35 Man. L. R. 139.—**CAN.**

sf. *Arbitration Act, R. S. M.*, 1913 (c. 9)—*Agreement to refer to foreign court.*]—Sect. 6 of the above Act enables deft. to take advantage of an agreement to refer disputes to arbn. by an application to stay proceedings in the action. A clause in an agreement providing for the reference of any disputes which may arise to the decision of a foreign ct. is a submission within s. 6.—BRAND *v.* NATIONAL LIFE ASSURANCE CO. OF CANADA, [1918] 3 W. W. R. 858.—**CAN.**

sg. *Arbitration abortive.*]—Where an arbn. proves abortive & an action is brought with respect to the matter arbitrated, the objection that the parties should be compelled to resort to arbn. should be taken at the commencement of the action.—BERGE *v.* GREW (Alta.), [1927] 3 W. W. R. 811.—**CAN.**

sh. *Alberta Co-operative Associations Act—Dispute arising out of marketing agreement.*]—KEAY *v.* ALBERTA CO-OPERATIVE WHEAT PRODUCERS, LTD. & ALBERTA POOL ELEVATORS, LTD., [1929] 3 D. L. R. 858; S. C. R. 616; *affg.* with variation, [1929] 1 D. L. R. 949; 1 W. W. R. 413; *revg.*, [1929] 1 D. L. R. 515; 1 W. W. R. 96.—**CAN.**

si. *Arbitration Act, R. S. S.*, 1930, *s.* 7.]—On an application under Arbitration Act, R. S. S., 1930, s. 7, for a stay of proceedings in an action, on the ground that the parties had agreed to refer the difference between them to arbn. the onus is upon applt. where the material shows a *prima facie* right to a stay, to show that the case is not a fit one for arbn. or that the respondent has lost his right to arbitrate. In the present case, an action by the insured upon a policy of fire insurance which contained statutory condition 17 of sect. 146 of Saskatchewan Insurance Act, R. S. S., 1930 :—*Held :* as the matter to be tried in the action fell squarely within said condition & there was no suggestion in the material that an arbn. would result in either of the parties not getting substantial justice, said onus had not been discharged.—ALTWASSER *v.* HOME INSURANCE CO. OF NEW YORK, [1933] 2 W. W. R. 46.—**CAN.**

456. *Add. Annotation :*—**Apld.** Cipriani *v.* Burnett, [1933] A. C. 83.

472. *Add. Annotation :*—**Consd.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

498. *Add. Annotation :*—**Refd.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

503. *Add. Annotation :*—**Refd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

523. *Add. Annotation :*—**Apprvd.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

A. By Death (p. 393).

See, now, Arbitration Act, 1934 (c. 14), s. 1.

523a. Appeal from refusal to revoke.]—An appeal from a judge at chambers refusing to revoke a submission to arbn. is in a matter of practice & procedure & therefore lies to the Ct. of Appeal & not to a Div. Ct.—SIMBRO TRADING CO. *v.* POSOGRAPH (PARENT) CORPN., [1929] 2 K. B. 266; 98 L. J. K. B. 631; 141 L. T. 395; 73 Sol. Jo. 384, C. A.

548. *Add. Annotation :*—**Refd.** Woodrow *v.* Trawlers (White Sea & Grimsby), Ltd., [1930] 1 K. B. 176.

C. By Bankruptcy (p. 397).

See, now, Arbitration Act, 1934 (c. 14), s. 2.

565. After this case, following "*D. By Lunacy.*—*See* case *infra*," add as follows :—

E. Other Cases.

565a. Frustration of adventure—Charterparty containing arbitration clause.]—Resps. agreed to place their steamship at the disposal of applts. on Mar. 1, 1917, & applts. agreed to employ her on specified terms for ten months from the date when she was delivered to them. The charterparty contained a clause by which all disputes arising out of the contract were submitted to arbn. The ship was requisitioned by the Govt. before Mar. 1, 1917, & was not released until Feb. 1919. Applts. then refused to take delivery of her. An arbitrator awarded resps. damages for breach of contract, & they brought an action upon the award :—*Held :* there had been in 1917 a frustration of the charterparty which forthwith brought to an end the whole contract, including the submission to arbn., & the contract being executory the arbitrator had not jurisdiction.—HIRJI MULJI *v.* CHEONG YUE S.S. Co., [1926] A. C. 497; 95 L. J. P. C. 121; 134 L. T. 737; 42 T. L. R. 359; 31 Com. Cas. 199; 17 Asp. M. L. C. 8, P. C.

Annotations :—**Distd.** De la Garde *v.* Worsnop (1927), 96 L. J. Ch. 446. **Refd.** Stevens & Sons *v.* Timber & General Mutual Accident Insurance Assocn., Ltd. (1933), 102 L. J. K. B. 337; Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524.

Part II.—The Arbitrators and Umpire.

584. *Add. Annotation :*—*As to* (1) **Refd.** Oil Products Trading Co. *v.* Société Anonyme Société de Gestion D'Entreprises Coloniales (1934), 150 L. T. 475.

618a. Necessity for notice to parties.]—A contract for the sale of goods was entered into "subject to the customary terms & conditions & subject to the rules & regulations of the London Metal Exchange, in so far as these rules & regulations do not conflict with the provisions of this contract." A dispute having arisen, the matter was referred to two arbitrators, who, having heard the parties, decided that it was necessary to appoint a third arbitrator. The third arbitrator did not hear the parties, nor was his appointment communicated to them, & they only became aware of it upon receiving the award. The rules of the London Metal Exchange provide that arbitrators may, after giving notice of their appointment, proceed in the absence of either or both parties. It was sought to set aside the award, because no notice of the appointment of the third arbitrator had been given to the parties. It was argued against this contention that the third arbitrator was, by virtue of Arbn. Act, 1934 (c. 14), s. 4 (1), an umpire, & there was a custom for arbitrators to appoint an umpire without any notice to the parties to the arbn. :—*Held :* (1) sect. 4 (1) has no application to this case, as it deals only with cases where the agreement provides that the reference shall be to three arbitrators, & not to two with power to appoint a third; (2) when a third

---

arbn. to receive evidence of such value & to decide the question.—CALGARY CITY *v.* BLOW, [1926] 3 D. L. R. 1165; 1925] 3 W. W. R. 225.—**CAN.**

sn. *Award set aside—Agreement to refer not exhausted.*]—An arbn., ending in an award which is set aside as being invalid, is an abortive arbn., & the agreement to refer is not exhausted thereby.—RIKHAB KUMAR *v.* TRIVEDI & Co. (1929), I. L. R. 51 All. 874.—**IND.**

PART I. SECT. 13, SUB-SECT. 1.—B.

494 ii. —— *Submission by Crown in right of Dominion.*]—Ontario Arbn. Act, s. 5, making a submission to arbn. irrevocable except by leave of the ct., does not apply to a submission by the Crown in right of the Dominion.—GAUTHIER *v.* R. (1916), 56 S. C. R. 176; 40 D. L. R. 353.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

579 x a. —— ——.]—FINO *v.* SOUTH AFRICAN RAILWAYS & HARBOURS (1927), 48 N. L. R. 369.—**S. AF.**

579 xii a. —— ——.]—SWANSON *v.* BOARD OF LAND & WORKS, [1928] V. L. R. 283; 49 A. L. T. 217; [1928] Argus L. R. 186.—**AUS.**

579 xxvii. ——.]—SIMS *v.* SELLER (P. E. I.), [1927] 2 D. L. R. 51.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—A.

n. Add as follows :—*Revsd. sub nom.* INVERNESS RY. & COAL CO. *v.* MCISAAC (1905), 37 S. C. R. 134.—**CAN.**

o i. —— *Objection to—Whether maintainable.*]—Where an agreement with an incorporated club provides that it shall be compensated for damage from the acts which the agreement authorises the other party to perform, it is not open to such party to object that notice of the appointment, in pursuance of the agreement, of the club's arbitrator is not properly signed.—*Re* WINNIPEG GOLF CLUB *v.* HUTCHINGS (Man.), [1926] 4 D. L. R. 1188; [1926] 3 W. W. R. 443.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—B.

y ii. —— ——.]—A motion to appoint an arbitrator under s. 8 of the above Act on the refusal of the municipality to appoint its arbitrator, refused on the ground of lack of jurisdiction.—GOLD *v.* SOUTH VANCOUVER, [1918] 3 W. W. R. 585.—**CAN.**

See, also, Vol. II., p. 409, case **n.**

PART II. SECT. 1, SUB-SECT. 4.

618 i. *Time for appointment.*]—SYNOD OF HURON *v.* FERGUSON (1924), 56 O. L. R. 161.—**CAN.**

arbitrator is appointed, the arbitral tribunal then consists of all three, &, by the rules of the London Metal Exchange, the hearing must take place before them all; (3) it was therefore impossible to treat the award in this case as being the award of two arbitrators only, & it must be set aside.—*Re* ARBITRATION BETWEEN BRITISH METAL CORPN., LTD. & LUDLOW BROS. (1913), LTD., BRITISH METAL CORPN., LTD. *v.* LUDLOW BROS. (1913), LTD., GARDNER & CO., LTD. *v.* LUDLOW BROS. (1913), LTD., [1938] 1 All E. R. 135; 54 T. L. R. 867, C. A.

B. Under Arbitration Act, 1889 (c. 49), s. 5.

626a. Who may apply—Only party to submission.] —A deed of partnership provided that each original partner could, by will or codicil, nominate a qualified person as a new general partner; that the admission to the partnership was to be subject to the consent, not to be unreasonably withheld, of the general partners; & that a general partner or the qualified nominee, if of opinion that the consent to admission had been unreasonably withheld, could require the matter to be referred to arbn. An original partner nominated by will F., a qualified person, as a new general partner. After the death of the nominator the general partners refused to admit F. into the partnership. F. made an application under Arbn. Act, 1889, s. 5, asking that some fit & proper person might be appointed to act as arbitrator:—*Held:* only a party to the submission could make an application under sect. 5, & F. was not such a party.—*Re* FRANKLIN & SWATHLING'S ARBITRATION, [1929] 1 Ch. 238; 98 L. J. Ch. 101; 140 L. T. 403.

---

627. *Add. Annotation:*—**Consd.** *Re* Arbitration between British Metal Corpn., Ltd. & Ludlow Bros. (1913), Ltd., [1938] 1 All E. R. 135.

After this case insert, "*See, now,* Administration of Justice Act, 1920 (c. 81), s. 16."

629. *Add. Annotation:—As to* (3) **Distd.** *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673.

629a. —— Discretion of court to refuse to appoint except upon terms.] — On an application under the Act of 1889, s. 5, to appoint an arbitrator the ct. has a discretion & may in a proper case refuse to make an appointment except upon terms.

A contract between British shipbuilders & foreign shipowners for the building & purchase of certain ships contained a clause referring disputes & differences to the decision of a single arbitrator in accordance with the Arbn. Act. Disputes having arisen the foreign firm duly gave notice to the British shipbuilders to appoint an arbitrator, &, on their refusal to do so, applied to the ct. under sect. 5 of the Act to appoint an arbitrator:—*Held:* in the case of an application for arbn. by a foreigner residing out of the jurisdiction the ct. had an absolute discretion in assenting to or refusing the application, & in the former case the ct. could attach any reasonable condition, such as making an order for security for the costs of the proceedings, to the granting of the application.—*Re* BJORNSTAD & OUSE SHIPPING CO., [1924] 2 K. B. 673; *sub nom.* BJORNSTAD *v.* OUSE SHIPPING CO., 93 L. J. K. B. 977; 131 L. T. 663; 40 T. L. R. 636; 68 Sol. Jo. 754; 30 Com. Cas. 14, C. A.

630. *Add. Annotations:—As to* (1) **Folld.** Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121. **Expld.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

630a. —— —— ——.]—A contract for the sale of goods was entered into between B., the seller, & R., who, so far as appeared from the contract, were the buyers. The contract contained an arbn. clause. The goods delivered in pursuance of the contract were despatched to a foreign firm, who complained of their quality. Thereupon the foreign firm & R., who said they had merely acted as agents for that firm, claimed to have the dispute as to the quality of the goods submitted to arbn. B., while willing to go to arbn. as between himself & R., refused to assent to an arbn. to which the foreign firm were parties, maintaining that he had sold to R. as principals. R. & the foreign firm then took out a summons for the appointment of an arbitrator pursuant to the Act of 1889, s. 5:—*Held:* it being in dispute whether there was a submission between B. on the one hand & R. & the foreign firm on the other, there was no "matter" pending in the High Ct. as between those parties; therefore an appeal from an order for the appointment of an arbitrator was not in a matter of practice & procedure within R. S. C. Ord. 54, r. 23, &, consequently, it lay not to the Ct. of Appeal, but to the Div. Ct.—RICHARDSONS & BRADLEY & CO. *v.* BERNHARD, [1925] 2 K. B. 121; 94 L. J. K. B. 691; 133 L. T. 234, D. C.

SECT. 3.—**TIME FOR APPOINTMENT AND COMMENCEMENT OF UMPIRE'S AUTHORITY** (p. 413).

See, now, Arbitration Act, 1934 (c. 14), s. 5.

696. *Add. Annotation:*—**Refd.** Paterson *v.* Ardrossan Harbour Co. (1926), 19 B. W. C. C. 621.

---

sn. *Three names suggested in notice to arbitrate — Effect.*] — BEGLEY *v.* IRVINE, [1930] 3 D. L. R. 672.—**CAN.**

PART II. SECT. 1, SUB-SECT. 5.

so. *Original nominee incapable of acting.*]—A party to an arbn. has power to appoint another arbitrator in place of a first who has rendered himself incapable of acting.—*Re* WEILER BROTHERS & CITY OF VICTORIA CORPN. (1917), 24 B. C. R. 148.—**CAN.**

PART II. SECT. 1, SUB-SECT. 6.—C.

d (p. 408) **i.** —— *Vancouver Incorporation Act.*]—SPENCER *v.* CITY OF VANCOUVER (1922), 68 D. L. R. 747; 30 B. C. R. 382; [1922] 1 W. W. R. 779.—**CAN.**

d (p. 408) **ii.** —— —— *Costs of application.*]—A Supreme Ct. judge in appointing an arbitrator is acting as *persona designata,* & has no jurisdiction under s. 133 (9) of the above Act to award costs.—MATTE *v.* VANCOUVER (CITY), [1917] 2 W. W. R. 53.—**CAN.**

n i. —— ——.]—BULGER *v.* HOME INSURANCE CO., [1927] 2 D. L. R. 585; [1927] 2 W. W. R. 456; 38 B. C. R. 270; *revsd.* [1929] 1 D. L. R. 47; [1928] S. C. R. 436.—**CAN.**

o i. —— *Party declining to appoint—Ottoman Order in Council, 1910, arts. 90, 99, 129.*]—SOUTH BRITISH INSURANCE CO., LTD. *v.* GAUCI BROTHERS & CO., [1928] A. C. 352; 97 L. J. P. C. 101; 139 L. T. 362, P. C.—**EGYPT.**

sp. *Arbitrator incapable of acting—Removal of residence to United States of America—Arbitration Act, 1909.*]—Where an arbitrator had removed his residence to Buffalo, N.Y., & was not expected to return:—*Held:* the appointment of a new arbitrator was justified as the first was "incapable of acting" within s. 7 of the above Act. —*Re* MCNAUGHT & STOKES-STEPHENS OIL CO. (No. 2), [1918] 3 W. W. R. 337; 43 D. L. R. 7.—**CAN.**

sq. *Appointment on dissolution of company—Failure of company to appoint.*] —*Re* MERSEY HYDRAULIC CO. (N. S.), [1929] 2 D. L. R. 799.—**CAN.**

704. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

791. *Add. Annotation :*—**Refd.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107.

793. *Add. Annotation :*—**Refd.** Wisbech R. C. *v.* Ward (1927), 138 L. T. 308.

794. *Add. Annotations :*—*As to* (1) **Consd.** Wisbech R. D. C. *v.* Ward (1927), 91 J. P. 200. **Refd.** Brightman *v.* Tate, [1919] 1 K. B. 463. *As to* (2) **Folld.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107.

812a. Removal of arbitrator—Parties of different nationalities—Observations by arbitrator on national veracity.]—CATALINA S.S. OWNERS *v.* NORMA OWNERS (1938), 82 Sol. Jo. 698, D. C.

Part III.—The Hearing.

816a. —— Act of 1889, s. 2, Sched. I. (f)—Against Crown—"Subject to any legal objection."]—(1) In an arbn. for the determination of disputes under a contract between the Shipping Controller on behalf of His Majesty & another party, the arbitrators or umpire have no jurisdiction under Sched. 1 (*f*), incorporated in sect. 2 of the above Act, or otherwise, to require the Shipping Controller to make discovery of the documents in his possession or power relating to the matters in question. (2) In Sched. 1 (*f*), incorporated in sect. 2 of the above Act, the words "subject to any legal objection" apply to all the subsequent provisions of the clause, including not only the provision that the parties shall produce before the arbitrators or umpire all books, etc., within their possession or power, but also the provision that the parties shall "do all other things which . . . the arbitrators or umpire may require."—*Re* SOCIÉTÉ LES AFFRÉTEURS RÉUNIS & SHIPPING CONTROLLER, [1921] 3 K. B. 1 ; *sub nom.* SOCIÉTÉ LES AFFRÉTEURS RÉUNIS *v.* SHIPPING CONTROLLER, 90 L. J. K. B. 812 ; 124 L. T. 727 ; 37 T. L. R. 460, D. C.

Annotation :—*As to* (2) **Refd.** Kursell *v* Timber Operators & Contractors, [1923] 2 K. B. 202.

Discovery against the Crown generally, *see* DISCOVERY, Vol. XVIII., p. 60.

817. *Add. Annotations :*—**Consd.** *Re* Soc. Les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1 ; Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202.

817a. —— Power of arbitrator to order—Reference by consent out of court.]—In a reference by consent out of ct. under the Act of 1889, the arbitrator has jurisdiction to order either party to make discovery of documents or to answer interrogatories on oath, by virtue of Sched. 1 (*f*) of the Act.—KURSELL *v.* TIMBER OPERATORS & CONTRACTORS, LTD., [1923] 2 K. B. 202 ; 92 L. J. K. B. 607 ; 129 L. T. 21 ; 87 J. P. 79 ; 39 T. L. R. 419 ; 67 Sol. Jo. 557 ; 28 Com. Cas. 376, D. C.

823. After this case add:—

—— —— ——.]—*See, now,* Arbitration Act, 1934 (c. 14), s. 8 (1), Sched. I.

830. *Add. Annotation :*—**Refd.** Ricketts *v.* Gurney (1819), 7 Price, 699.

830a. —— ——.]—On an application to the Ct. of Exch. on the same facts as set out in No. 830 :—*Held :* the party was privileged during the journey, including his stay at Clifton, on the ground of the deviation being for a necessary purpose, & the delay no more than reasonable for the accomplishment of it.—RICKETTS *v.* GURNEY (1819), 7 Price, 699 ; 1 Chit. 682 ; 146 E. R. 1106.

Annotation :—**Refd.** Spencer *v.* Newton (1837), 1 Nev. & P. K. B. 818.

835. *Add. Annotations :*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

836. *Add. Annotation :*—**Consd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

840. *Add. Annotation :*—**Refd.** R. *v.* Sullivan, [1923] 1 K. B. 47; R. *v.* Harris, [1927] 2 K. B. 587

841a. Whether entitled to act as advocate for party appointing him.]—An arbitrator appointed to act for one of the parties to a commercial dispute is not justified in taking up the position of an advocate for the party appointing him, but should act impartially.—ROFF *v.* BRITISH & FRENCH CHEMICAL MANUFACTURING CO. & GIBSON, [1918] 2 K. B. 677 ; 87 L. J. K. B. 996 ; 119 L. T. 436 ; 34 T. L. Ry. 485 ; 62 Sol. Jo. 620, C. A.

PART II. SECT. 5, SUB-SECT. 1.

sr. *Arbitrator a barrister.*]—SCHOOL DISTRICT ST. BONIFACE *v.* MACDONALD, [1927] 2. D. L. R. 735.—**CAN.**

sv. *By statute—Exclusion by agreement.*]—Although sects. 18 & 19 of Arbn. Act, R.S.S., 1930, which govern the fees of arbitrators, permit the exclusion of Scheds. B. & C., such exclusion must be by an agreement in writing under sect. 20 ; &, except as so provided in sect. 20, the application of sects. 18, 19, 20 & 24 cannot be excluded by agreement between the parties.—*Re* GORDON & SASKATCHEWAN PROVINCE, [1937] 2 W. W. R. 657.—**CAN.**

PART II. SECT. 5, SUB-SECT. 4.

sz. *Action for return of excess paid —Payment by one cheque to arbitrators jointly—Form of judgment.*]—The judgment should be against each deft. for the sum received by him in excess of the amount to which he was entitled.—CANADIAN NORTHERN RY. CO. *v.* OUSLEY, [1918] 2 W. W. R. 1005 ; 11 Sask. L. R. 282 ; 42 D. L. R. 772.—**CAN.**

PART II. SECT. 7.

t (p. 431) **l.** —— *Right of court to stay action.*]—On an application to stay a suit instituted in respect of a dispute which was previously referred to the arbn. of two gentlemen chosen by both parties, but one of whom refused to act, it was held by the original ct. that the ct. had no power to appoint an arbitrator in place of the arbitrator who refused & staying the suit would lead the parties to an infructuous arbn. :—*Held :* the ct. had such power, but the application for stay should be dismissed on the merits of the case.—GENERAL ELECTRIC TRADING CO. *v.* SIEMANS (INDIA), LTD. (1928), I. L. R. 56 Calc. 848.—**IND.**

PART III. SECT. 2, SUB-SECT. 1.

835 vi. ——.]—In a mercantile reference to arbn., it is an implied term of the contract that the arbitrators must decide the dispute according to the existing law of contract, & that every defence which would have been open in a ct. of law, including limitation, can be raised, unless that defence has been excluded by agreement of the parties.—RAMDUTT RAMKISSENDASS *v.* E. D. SASSOON & CO. (1929), I. L. R. 56 Calc. 1048.—**IND.**

841b. ——.]—FRENCH GOVERNMENT *v.* TSURUSHIMA MARU (OWNERS), No. 1022a, *post.*

862. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

874. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

888a. —— —— **Agreement to dispense with notice.**]—FRENCH GOVERNMENT *v.* TSURUSHIMA MARU (OWNERS), No. 1022a, *post.*

905a. —— **Award sent back for amendment.**]—Where an award is sent back to the arbitrator to be amended, he is not bound to give the parties notice to attend him thereon.—HOWETT *v.* CLEMENTS, CLEMENTS *v.* HOWETT (1845), 1 C. B. 128 ; 135 E. R. 485 ; *previous proceedings* (1844), 7 Man. & G. 1044.

Annotation :—**Consd.** Davies *v.* Pratt (1855), 17 C. B. 183.

906. *Add. Annotations :—As to* (1) **Apprvd. & Folld.** Oppenheim *v.* Mahomed Haneef, 1922] 1 A. C. 482. **Refd.** Scrimaglio *v.* Thornett & Fehr (1924), 131 L. T. 174. *As to* (2) **Apprvd. & Folld.** Oppenheim *v.* Mahomed Haneef, [1922] 1 A. C. 482. **Refd.** Scrimaglio *v.* Thornett & Fehr (1924), 131 L. T. 174.

939. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

941. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

943. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

949a. ——.]—An arbitrator appointed under Agricultural Holdings Act, 1908 (c. 28), for the purpose of determining claims & compensation payable in respect of (*inter alia*) certain fixtures, hay & straw left by the tenant on his farms, & hay & straw removed by him after the determination of the tenancy, held two sittings & then gave notice that he had been waiting to be supplied with information as to the hay & straw sold off & warned the parties that if it was not supplied promptly he would have to hold another sitting. After an interval of less than a fortnight he gave further notice that he would go to the farms on a specified date " to value the hay & straw & to receive an account of the hay & straw removed." The tenant not having such an account ready & thinking that the only question to be dealt with was a valuation of the stacks of hay & straw remaining on the farm did not attend by himself or his representative, but his foreman was present to point out & give information about the stacks on the farms. While there the arbitrator, besides valuing the stacks, questioned the foreman as to the hay & straw removed. Immediately afterwards he closed the hearing & made an award in which he dealt with the claim for hay & straw removed on the basis of the foreman's evidence, which had not been tendered by either party, & was taken in the presence only of the landlord's representative. He did not deal with the question of the fixtures, but purported to reserve power to deal with them, if required : —*Held :* the award must be set aside as the arbitrator had been guilty of legal misconduct in taking evidence in the absence of, & without previous notice to, the tenant.—*Re* O'CONOR & WHITLAW'S ARBITRATION (1919), 88 L. J. K. B. 1242, C. A.

949b. ——.]—In an arbn. between sellers & buyer arising out of the rejection by the latter of certain goods which he alleged did not correspond to the contract description, the arbitrators heard the evidence of each of the parties in the absence of the other. No objection was made at the time to this procedure. An award having been made in favour of the sellers, the buyer moved to set it aside :—*Held :* the award must be set aside, as the arbitrators had acted improperly in hearing the evidence on behalf of one party in the absence of the other.—RAMSDEN (W.) & Co. *v.* JACOBS, [1922] 1 K. B. 640 ; 91 L. J. K. B. 432 ; 126 L. T. 409 ; 26 Com. Cas. 287, D. C.

949c. —— **Evidence immaterial.**]—It is misconduct which may justify the setting aside of an award if the arbitrators hear evidence in the absence of the parties, even though the evidence so received is immaterial. It makes no difference that the arbitrators could not properly have made any other award than that which they did make, & it is quite immaterial whether the evidence wrongly admitted helped the arbitrators to a right conclusion or a wrong conclusion, & the ct. cannot inquire to what extent their minds were affected by such evidence.—ROYAL COMMISSION ON SUGAR SUPPLY *v.* KWIK-HOO-TONG TRADING SOCIETY (1922), 38 T. L. R. 684, D. C. ; *subsequent proceedings,*

PART III. SECT. 2, SUB-SECT. 2.

t i. ——.]—*Re* SMITH & PLYMPTON (TOWNSHIP) (1886), 12 O. R. 20.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.

883 iii. —— ——.]—There is no statutory rule that if an arbitrator proceeds *ex parte* without giving notice of his intention to proceed in that manner, the award made by him must be set aside.—UDAICHAND PANNA LALL *v.* DEBIBUX JEWANRAM (1920), I. L. R. 47 Calc. 951.—**IND.**

PART III. SECT. 2, SUB-SECT. 8.—A.

g i. —— ——.]—An arbitrator cannot decide the case submitted to him on his own knowledge & without taking evidence, unless the terms of the reference especially permit him to do so.—LACHMI NARAIN *v.* SHEONATH PONDE (1919), I. L. R. 42 All. 185.—**IND.**

p i. —— ——.]—In an agricultural reference when the general question submitted was a matter depending upon opinion :—*Held :* the overseman, himself a farmer & skilled valuer, was able to form a just & conscientious opinion without the necessity of hearing evidence.—FLETCHER *v.* ROBERTSON (1919), 56 Sc. L. R. 305 ; [1919] 1 S. L. T. 260.—**SCOT.**

PART III. SECT. 2, SUB-SECT. 8.—B.

938 v. ——.]—An award was set aside for the taking of evidence by the arbitrator in the absence of the other arbitrators & of one of the parties.—*Re* SNIDER & MILLER'S ARBITRATION, [1924] 4 D. L. R. 313 ; 3 W. W. R. 226.—**CAN.**

938 vi. ——.]—One of the parties to an arbn. sought reduction of the arbiter's award on the ground that the arbiter had examined witnesses without that party being present or being represented :—*Held :* as the arbiter had decided the question in that party's favour, he had suffered no injustice, & reduction refused.—BLACK *v.* WILLIAMS & Co. (WISHAW), LTD., [1924] S. C. (H. L.) 22.—**SCOT.**

938 vii. ——.]—An arbitrator heard evidence from one party in the absence of his opponent, & also took evidence in the absence of both parties. The award was consequently set aside by the ct.—BURNS *v.* BURNE (1922), 43 N. L. R. 461.—**S. AF.**

938 viii. —— *By umpire.*]—Arbitrators having differed, the matter was submitted to an umpire, who made inquiries in the absence of deft., but denied that he had recorded any evidence at the time :—*Held :* in making these inquiries the umpire was guilty of misconduct.—ABDUL HAMID *v.* MUHAMMAD AFZAL (1927), I. L. R. 8 Lah. 329.—**IND.**

sub nom. KWIK-HOO-TONG TRADING SOCIETY *v.* ROYAL COMMISSION ON SUGAR SUPPLY (1923), 129 L. T. 500.

952. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

955. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

956. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

960. *Add. Annotations :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684 ; Mercer *v.* Reid (1931), 47 T. L. R. 574.

962a. —— **Small reduction of amount payable—Award upheld.**]—MERCER *v.* REID (1931), 47 T. L. R. 574 ; 75 Sol. Jo. 589, D. C. ; *affd.*, 48 T. L. R. 33, C. A.

963. *Add. Annotation :*—**Refd.** Mercer *v.* Reid (1931), 47 T. L. R. 574.

964. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922). 38 T. L. R. 684.

969. *Add. Annotation :*—**Follid.** Caven *v.* Canadian Ry. (1925), 133 L. T. 774.

1000. *Add. Annotation :*—**Refd** Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202.

1022a. —— —— ——.]—In commercial arbns. the practice is that, unless the parties give notice that they desire to attend personally or by their solr. or counsel, the arbitrators present the evidence & arguments to the umpire & have full power to act as advocates. In an arbn. on a charterparty the umpire without hearing the parties made his award on the case as presented by the arbitrators. On a motion to set aside the award on the ground of misconduct by the umpire : — *Held :* there was no evidence of misconduct by the umpire, & the motion failed.

In arbn. proceedings *primâ facie* the common law rule applies that the parties should have notice of the proceedings so that they could attend them, if desirous of so doing, & the only way in which the rule can be departed from is by agreement, & the ct. would give effect to their agreement (ATKIN, L.J.).—FRENCH GOVERNMENT *v.* TSURUSHIMA MARU (OWNERS) (1921), 37 T. L. R. 961, C. A.

Annotation :—**Refd.** Bourgeois *v.* Weddell, [1924] 1 K. B. 539.

1023a. Right to call arbitrator as witness.]—A dispute arose between the buyer & sellers of a quantity of meat as to its quality. The buyer sent K. to inspect & report upon the meat. The dispute having been referred to arbn., the buyer appointed K. as his arbitrator. The arbitrators having failed to agree upon their award the matter was referred to an umpire, & the buyer then proposed to call K. as a witness before the umpire to prove the state of the meat. The sellers objected to the competency of K. as a witness on the general principle that an arbitrator was disqualified from giving evidence in the arbn. proceedings :—*Held :* as it was a commercial arbn. K. was not disqualified from giving evidence before the umpire, notwithstanding that he had acted as arbitrator.—BOURGEOIS *v.* WEDDELL & Co., [1924] 1 K. B. 539 ; 93 L. J. K. B. 232 ; 130 L. T. 635 ; 40 T. L. R. 261 ; 68 Sol. Jo. 421 ; 29 Com. Cas. 152 ; 88 J. P. Jo. 25, D. C.

SUB-SECT. 1 (p. 456).—STATEMENT OF SPECIAL CASE DURING REFERENCE.

Arbitration Act, 1889, s. 19, is now replaced by S.C.J. (Consolidation) Act, 1925 (c. 49), s. 94.

1034. *Add. Annotation :*—**Refd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

1035. *Add. Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt (1922), 127 L. T. 824.

1036. *Add. Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt (1922), 127 L. T. 824.

1036a. —— —— ——.]—A contract for the sale of sugar provided that the contract was subject to the rules of the Refined Sugar Assocn. The rules required that all members of the assocn. making contracts subject to those rules should refer any disputes arising out of such contracts, including any questions of law, to the arbn. of the council of the assocn. ; & by r. 19 : " Neither buyer, seller, trustee in bkpcy., nor any other person as aforesaid shall require, nor shall they apply to the ct. to require, any arbitrators to state in the form of a special case for the opinion of the ct. any question of law arising in the

---

959 v. ——.]—An award was set aside because, in considering the same after the hearing, an arbitrator, in the absence of & without notice to the parties, interviewed & got information from one who had been a witness on the hearing.—*Re* YUKON GOLD CO. & MOREAU, [1921] 1 W. W. R. 760 ; 57 D. L. R. 229.—**CAN.**

959 vi. ——.]—Where the arbitrator had taken evidence in the absence of both parties :—*Held :* the award should be set aside.—BURNS *v.* BURNE (1922), 43 N. L. R. 461.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 8.—C.

968 x. *S. P.* LATHAM *v.* FOSTER'S AUSTRALIAN FIBRES, LTD., [1926] V. L. R. 427.—**AUS.**

PART III. SECT. 2, SUB-SECT. 8.—D.

975 v. —— —— *Waiver.*]—The award in question herein was also objected to on the ground that the arbitrators permitted expert testimony to be given on behalf of one of the parties by more than three expert witnesses, contrary to Manitoba Evidence Act, s. 7 :—*Held :* it was not shown that more than three witnesses called by said party were experts ; & even if more than three of them were experts, the other party by failing to object to their evidence at the hearing & by himself calling more than three experts had waived the right to raise the objection.—*Re* WINNIPEG GOLF CLUB & HUTCHINGS, [1928] 3 D. L. R. 522 ; [1928] 2 W. W. R. 224 ; 37 Man. L. R. 341.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

1034 v. —— *Arbitration Act, R. S. O.*, 1914 (c. 65).]—A case may be stated by the arbitrators under s. 29 of the above Act.—*Re* TORONTO GENERAL TRUSTS CORPN. & MCCONKEY (1918), 41 O. L. R. 314 ; 13 O. W. N. 281.—**CAN.**

1034 vi. ——.]—An arbitrator is not *functus officio* until his award has been actually made and the power given him and the ct. under said sect. 15 of Arbn. Act, R. S. A. 1922, to state a case for the opinion of the ct. may be exercised " at any stage of the proceedings," *i.e.* at any stage before the proceedings have come to an end by a completed award.—*Re* JAMIESON CONSTRUCTION CO., LTD., & EDMONTON CITY, [1930] 3 W. W. R. 23 ; 4 D. L. R. 58.—**CAN.**

m 1. ——.]—A case stated by arbitrators, under Arbn. Act, R. S. O., 1914 (c. 65), s. 22, for the determination of the ct., is now to be heard by a judge in the Weekly Ct.—*Re* MCCONKEY'S ARBITRATION (1918), 42 O. L. R. 380 ; 14 O. W. N. 31 ; 43 D. L. R. 782.—**CAN**

reference, but such question of law shall be determined in the arbn. in manner herein directed." A dispute between the buyers & sellers was referred to the arbn. of the council. The buyers requested the arbitrators either to state their award in the form of a special case under the Act of 1889, s. 7, or alternatively to state a case for the opinion of the ct. under sect. 19 upon certain points of law arising in the reference, or to give them an opportunity of applying to the ct. for an order directing them to state a case. The arbitrators, thinking themselves precluded by r. 19, refused to comply with that request, & made their award without giving the buyers an opportunity of applying to the ct. for an order. The buyers move to set aside the award on the ground of misconduct of the arbitrators in so refusing:—*Held:* r. 19 & the agreement embodying it were contrary to public policy & invalid, as involving an ouster of the statutory jurisdiction of the cts. under the Arbn. Act, & the award must be set aside.—CZARNIKOW *v.* ROTH, SCHMIDT & Co., [1922] 2 K. B. 478; 92 L. J. K. B. 81; 127 L. T. 824; 38 T. L. R. 797; 28 Com. Cas. 29, C. A.

1037. *Add. Annotations:*—**Refd.** Buerger *v.* Barnett (1919), 89 L. J. K. B. 161; Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

1039a. —— **Well-defined question of law must be formulated.**]—An arbitrator should not state a special case except upon some well-defined questions of law & should insist that the party asking him to state a case should formulate the questions upon which he desires it to be stated. It is improper for an arbitrator to state a case merely asking generally for the opinion of the ct. on any questions of law involved.—WILLIAMS *v.* MANISSALIAN FRÈRES (1923), 29 Com. Cas. 42, C. A.

Annotation:—**Refd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330.

1047. *Add. Annotation:*—**Refd.** Czarnikow *v.* Roth, Schmidt (1922), 127 L. T. 824.

1049. *Add. Citation:—On appeal,* [1914] 1 Ch. 300, C. A.

1051a. —— **Application to stay proceedings—Until security for costs given.**]—The Govt. of an independent State made with a co. a contract containing an arbn. clause. An arbn. took place & was divided into two parts, the first being as to whether the Govt. had committed a breach of contract. The result of this part of the arbn. was that an award was given in favour of the co. & the Govt. was ordered to pay costs. The second part of the arbn. as to the amount of damage then began, & when the evidence had been closed the Govt. asked the arbitrator to state an advisory case for the opinion of the ct., but the arbitrator refused to do so. The Govt. then issued a summons asking that the arbitrator might be ordered to state a case, & thereupon the co., applied that all further proceedings might be stayed until the Govt. (1) had paid the costs which it had been ordered to pay, & (2) had given security to answer the costs of the matter & of the arbn.:—*Held:* so far as concerned the summons for a case to be stated the Govt. was in the position of a pltf., & it could not rely on its foreign sovereignty, & being out of the jurisdiction must give security for the costs of the summons, but the rest of the co.'s application must stand over to be dealt with on the hearing of the summons.—DUFF DEVELOPMENT CO., LTD. *v.* KELANTAN GOVERNMENT (1925), 41 T. L. R. 375; *sub nom. Re* DUFF DEVELOPMENT CO., LTD. & KELANTAN GOVERNMENT, 69 S. Jo. 491.

1052. *Add. Annotation:*—**N.F.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

1053. *Add. Annotations:*—**Consd.** Duff Development Co. *v.* Kelantan Government (1925), 41 T. L. R. 375. **Refd.** Northwood *v.* L. C. C. (1927), 137 L. T. 49.

1054. *Add. Annotation:*—**Refd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528.

1055. *Add. Annotations:—As to* (1) **Consd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528. *As to* (2) **Refd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528.

1056. *Add. Annotations:*—**Consd.** Northwood *v.* L. C. C. (1927), 137 L. T. 49. **Refd.** Manbre Saccharine Co. *v.* Corn Products Co., [1919] 1 K. B. 198; Cogstad *v.* Newsum, [1921] 2 A. C. 528; Duff Development Co. *v.* Kelantan Government (1925), 41 T. L. R. 375.

1057. *Add. Annotations:*—**Consd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528. **Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1058a. —— —— —— ——.]—A special case stated by an arbitrator for the opinion of the ct. is stated under the Act of 1889, s. 19, or s. 7, according as the arbitrator does or does not retain jurisdiction in the reference. If he retains jurisdiction the case is stated under sect. 19, & no appeal lies to the Ct. of Appeal from the decision of the High Ct. upon the special case; but if he makes his award finally, & retains no further jurisdiction in the reference, the case is stated under sect. 7 & an appeal lies from the decision of the ct.

By a submission contained in a charterparty disputes were referred to two arbitrators &, if they could not agree, to an umpire. The umpire stated for the opinion of the High Ct. a special case in which he set out the facts, decided that there had been a breach of the charterparty, & assessed damages for the breach. The award concluded with these words: "The question for the opinion of the ct. is whether upon the true construction of the charterparty & the facts stated by me the decisions at which I have arrived are correct in law. If they be correct my award is to stand, but if incorrect in any particulars I desire that the award may be referred back to me for reassessment of the damages due in accordance with the decision of the ct.":—*Held:* this was not a final

---

1058 ii. —— —— ——.]—The appeal was from the pronouncement of the Ct. of Appeal for Ontario, given in exercise of that ct.'s jurisdiction under sect. 26 of Arbn. Act, R. S. O., 1927, in answer to certain questions of law submitted to it by the arbitrator, arising in the course of a reference to determine the amount of compensation from applt. city to be awarded to resp. for alleged damages resulting from resp.'s lands being injuriously affected by certain works:—*Held:* this ct. had not jurisdiction to entertain the appeal, as the pronouncement of the Ct. of Appeal was not a final judgment in the sense that it bound the parties to it & concluded them from taking exception to any ultimate award by the arbitrator founded thereon.—LONDON CORPN. *v.* HOLEPROOF HOSIERY CO. OF CANADA, LTD., [1933] S. C. R. 349; 3 D. L. R. 657.—**CAN.**

award; the case was, therefore, stated under sect. 19 & no appeal lay to the Ct. of Appeal. —COGSTAD (C. T.) & Co. *v.* NEWSUM (H.), SONS & Co., [1921] 2 A. C. 528 90 L. J. K. B. 1293; 85 J. P. 253; 37 T. L. R. 995; 19 L. G. R. 581; 27 Com. Cas. 11; *sub nom. Re* COGSTAD (C. T.) & Co. & NEWSUM (H.), SONS & Co., LTD., 126 L. T. 65; 15 Asp. M. L. C. 369, H. L.; *affg.* S. C. *sub nom. Re* COGSTAD & Co. & NEWSUM, SONS & Co., [1921] 1 K. B. 87, C. A.; *previous proceedings, sub nom.* LORD (OWNERS) *v.* NEWSUM, SONS & Co., LTD., [1920] 1 K. B. 846.

Annotation:—**Expld. & Distd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1059. *Add. Annotations:*—**Consd.** *Re* Wulff & Dreyfus (1917), 117 L. T. 583; *Re* Cogstad & Newsum, [1921] 1 K. B. 87; A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193; Barton *v.* Blackburn (1933), 150 L. T. 327. **Refd.** *Re* Olympia Oil & Cake Co. & MacAndrew. Moreland, [1918] 2 K. B. 771; *Re* Parsons & Brixham Fishing Smack Insce. Soc. (1918), 62 Sol. Jo. 384; Westacott *v.* Hahn, [1918] 1 K. B. 495; Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480; Northwood *v.* L. C. C. (1927), 137 L. T. 49; Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590; Bedwas Navigation Colliery Co. (1921), Ltd. *v.* South Wales Coal Mines Scheme Executive Board (1934), 151 L. T. 420.

1067. *Add. Annotation:*—*As to* (1) **Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1067a. Finality—Request to court to vary if award wrong in law.]—Disputes which had arisen under a charterparty were referred to arbn. & the arbitrator made his award in the form of a special case in which, after setting out the facts, & holding that the owners had committed a breach of the charterparty, he made an award in favour of the charterers & assessed the damages & costs payable by the owners to the charterers. The case proceeded as follows: "The question for the opinion of the ct. is whether upon the facts as stated by me my award is right in law. If my award be correct then it shall stand; but should the ct. find that it be wrong in law then I request that the ct. shall vary my award as in their discretion they may think fit, both as to the damages & as to the costs . . . except that if the ct. shall only vary my award on the subject of the amount of the damages, my discretion as to the costs of the reference & the costs of my award shall stand":—*Held:* the award was a complete & final award under sect. 7 of the Act of 1889.—LARRINAGA & Co. *v.* SOCIETE FRANCO-AMERICAINE DES PHOSPHATES DE MEDULLA (1922), 92 L. J. K. B. 45; 27 Com. Cas. 160.

1069a. Subject-matter of commercial nature—May be transferred to & heard in Commercial Court.]—PRACTICE NOTE, [1927] W. N. 258.

1070. For "**Burden of proof on party disputing award**" read "**Right to begin—Burden of proof on party disputing award.**"

1071. For "—— " read "—— ——."

1071a. —— Award in alternative form—Party claiming damages entitled to begin.]—PATRICK & Co. *v.* RUSSO-BRITISH GRAIN EXPORT CO., LTD. (1927), 43 T. L. R. 724.

1071b. Case stated on unstamped document—Struck out.]—SYMINGTON & Co. *v.* UNION INSURANCE SOCIETY OF CANTON (1927), 164 L. T. Jo. 390.

1073. *Add. Annotation:*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 31.

1077. *Citation:*—For existing citations read "as reported in [1915] 2 K. B. 393, n."

1082. *Add. Annotation:*—**Refd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

1083. *Add. Annotation:*—**Refd.** Ruf *v.* Pauwels, [1919] 1 K. B. 660.

1083a. Act of 1889, s. 7—Appeal lies to Court of Appeal.]—COGSTAD (C. T.) & Co. *v.* NEWSUM (H.), SONS & Co., No. 1058a, *ante*.

1083b. Loss of right to appeal—Acceptance of award.]—In an arbn. concerning a contract of sale of goods the umpire stated a special case in which he made three different awards, leaving the ct. to decide which was right. The judge having decided that the first award was right, applts. demanded & obtained payment of the amount of that award & gave a receipt therefor. They then appealed from the decision of the judge & contended that the second award was the right one:—*Held:* having demanded & accepted payment under the first award applts. were precluded from contending that it was wrong.—DEXTERS, LTD. *v.* HILL CREST OIL CO. (BRADFORD), [1926] 1 K. B. 348; 95 L. J. K. B. 386; 134 L. T. 494; 42 T. L. R. 212; 31 Com. Cas. 161, C. A.

Part IV.—The Award.

1086. *Add. Annotations:*—**Mentd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45; Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

1059 1. —— —— *Where erroneous award can be set aside.*]—Although an appeal cannot be brought upon an opinion of the ct. given to arbitrators, who have consulted the ct. on a point of law arising in the course of the arbn. proceedings, yet the award expressed to be based upon such opinion & incorporating same, if the opinion is erroneous, may be set aside & referred back to the arbitrators as being based on an error of law apparent upon the face of the award.—*Re* BRECHIN & DRAPERY IMPORTING CO., LTD., [1928] N. Z. L. R. 241.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 2.—D.

ss. *Duty of court.*]—*Re* EDMONTON & JAMIESON CONSTRUCTION CO., [1931] 1 D. L. R. 1011.—**CAN.**

1100. *Add. Annotation :*—**Mentd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

1107a. —— Award signed by all three as arbitrators.]—Under a submission to arbn. each of the two parties could appoint an arbitrator, & the arbitrators could appoint an umpire. The parties duly appointed arbitrators & the arbitrators appointed an umpire. An award was then made & was signed by these three persons, who added to their signatures the word " arbitrators " :—*Held :* the third person who signed the award was properly appointed as umpire, he acted as umpire, & he really intended to sign as umpire, & the fact that he signed as arbitrator was only a matter to require a purely formal amendment.—BENABU & CO. *v.* PRODUCE BROKERS CO., LTD. (1921), 37 T. L. R. 609 ; *on appeal,* 37 T. L. R. 851, C. A.

1125a. ——.]—An award is published when the arbitrator gives the parties notice that it may be had on payment of his charges ; whether they be reasonable or not.—MACARTHUR *v.* CAMPBELL (1833), 5 B. & Ad. 518 ; 2 Nev & M. K. B. 444 ; 4 L. J. K. B. 25 ; 110 E. R. 882 ; *subsequent proceedings* (1834), 2 Ad. & El. 52.

Annotations :—**Dbtd.** Brooke *v.* Mitchell (1840), 8 Dowl. 392. **Refd.** Allenby *v.* Proudlock (1835), 4 Dowl. 54 ; Sherry *v.* Oke (1835), 1 Har. & W. 119 ; Mooro *v.* Darley (1845), 1 C. B. 445 ; Paxton *v.* Great North of England Ity. Co. (1846), 8 Q. B. 938 ; Roberts *v.* Eberhardt (1857), 3 C. B. N. S. 482.

1139a. Reference to pleadings.]—By an agreement appcts. were to act as consulting engineers in connection with a certain coal refining process owned by resps. While the plant for the working of the process was being erected, a dispute arose, resps. wanting appcts. to attend every day at the site of the plant & appcts. considering this to be no part of their duty. Resps. thereupon terminated the agreement & the matter was referred to arbn. Appcts. pleaded that the termination of the agreement was unjustified ; resps. pleaded that appcts. should have attended every day & that they had been guilty of negligence in respect of certain matters set out in the counterclaim. The arbitrator found the termination of the agreement to be unjustified & also negligence on the part of applts. in respect of the matters set out in the counterclaim, & he awarded applts. damages after setting off an unspecified amount for damages for negligence. Resps. moved to set aside the award on the ground of error of law apparent on the face of it. At the hearing resps. contended that the whole of the pleadings in the arbitration were admissible. Resps. contended that for the purpose of deciding whether there was an error of law apparent on the face of the award, the ct. could not look at any document except the award itself. Resps. further contended that the arbitrator had committed an error in law in deciding that the negligence found did not afford sufficient ground for the termination of the agreement, & further that on the true consideration of the agreement, the refusal to attend daily was as a matter of law a sufficient ground for the termination of the agreement :—*Held :* (1) inasmuch as the arbitrator in his award referred to certain paragraphs in the counterclaim, such paragraphs ought, in considering whether there was an error on the face of the award, to be regarded as forming part of the award ; (2) whether misconduct justifies dismissal is a question of fact, & the arbitrator's decision was final ; (3) the right to terminate the agreement because appcts. refused to attend daily was a question specifically submitted to the arbitrator & the ct. could not interfere with his decision, even if the question was a question of law.—HITCHINS *v.* BRITISH COAL REFINING PROCESSES, LTD., [1936] 2 All E. R. 191 ; 80 Sol. Jo. 367, D. C.

1139b. Contract referred to in terms of reference.]—Where a letter to an arbitrator contains the terms of reference agreed between the parties to a dispute, & in it the arbitrator is requested to take into consideration the conditions of the contract between the parties relating to the work out of which the dispute arises, the conditions do not thereby become incorporated with & form part of the award, & cannot therefore be looked at in proceedings in which it is sought to set aside the arbitrator's award on an allegation that it contains an error in law on the face of it.—JOHN GILL CONTRACTORS, LTD. *v.* BROMLEY TRADING CO., LTD. (1936), 52 T. L. R. 452 ; *sub nom.* BROMLEY TRADING CO., LTD. *v.* JOHN GILL CONTRACTORS, LTD., 80 Sol. Jo. 449, D. C.

PART IV. SECT. 2.

1092 ii a. —— —— —— *Other dissenting.*]—Where a submission to arbn. before three arbitrators provides that any two of them can make an award, &, after discussion & the taking of his opinion, one of the three refuses to concur in the award, the other two have the right to sign it in his absence. —*Re* WINNIPEG GOLF CLUB & HUTCHINGS, [1928] 3 D. L. R. 522 ; [1928] 2 W. W. R. 224 ; 37 Man. L. R. 341.—**CAN.**

k i. —— *Majority award valid—Alberta Insurance Act, R. S. A.,* 1922 (c. 171).]—On a submission to an arbn. of three persons under statutory condition No. 22 in Sched. C. to the above Act, to determine the amount of loss, the decision of a majority of the arbitrators is binding.—GLASGOW UNDERWRITERS *v.* SMITH, [1924] 4 D. L. R. 801 ; [1924] S. C. R. 531 ; *affg.,* [1924] 1 D. L. R. 187 ; 1 W. W. R. 155 ; 20 Alta. L. R. 114.—**CAN.**

w i. —— —— ——.]—*Held :* the award was valid.—*Re* BALDWIN & WILLINSKY, [1925] 1 D. L. R. 1177 ; 56 O. L. R. 296.—**CAN.**

1100 v. —— *Award by one.*]—*Held :* valid.—*Re* NATIONAL TRUST CO. & MUNICIPAL DISTRICT OF VALE, [1925] 3 D. L. R. 459.—**CAN.**

1104 i. *Award by umpire—Appointed by arbitrators without authority.*]—The decision of a chairman to whom arbitrators have referred is not a binding award, since he is not an umpire within Arbn. Act, R. S. N. S., 1923.—SILBERT *v.* DAVID, [1938] 3 D. L. R. 463 ; 6 M. P. R. 544.—**CAN.**

1106 ia. —— ——.]—*Held :* binding.—MASTERS & MCDOUGALL *v.* STEPHEN, STEPHEN *v.* MASTERS & MCDOUGALL, [1925] 4 D. L. R. 684 ; [1925] 3 W. W. R. 493.—**CAN.**

1109 viii. —— ——.]—Where the arbitrators did not meet together & sign the formal document in the presence of each other :—*Semble :* the award was invalid.—HARRISON *v.* HARRISON (1918), 41 O. L. R. 195 ; 13 O. W. N. 245.—**CAN.**

1109 ix. —— ——.]—RYE FARM CO. *v.* BRITISH OAK INSURANCE CO., LTD., [1924] 3 D. L. R. 706 ; 3 W. W. R. 16.—**CAN.**

PART IV. SECT. 5.

1125 x. ——.]—An award made upon an arbn. under Municipal Act is published when notice thereof is given by the arbitrators to the municipality. —*Re* SWEINSSON & MUNICIPALITY OF CHARLESWOOD, [1917] 1 W. W. R. 293 ; 27 Man. L. R. 234.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 1.

sg. *Power of court to require statement of reasons.*]—The power conferred on the ct. by Arbn. Act, R.S.O., 1927, s. 26, to direct arbitrators to state their reasons for their decisions & their findings of fact & law is limited to a situation where an appeal from the award is pending, or where a special case has been stated by the arbitrators for the opinion of the ct. ; the power cannot be invoked in aid of a motion to set aside an award which is not the subject of appeal.—DOMINION NATURAL GAS CO., LTD. *v.* UNITED GAS & FUEL CO. OF HAMILTON, LTD., [1935] O. R. 1.—**CAN.**

1152a. —— Existence of written contract—Signature by one party only.]—(1) To constitute a contract in writing it is not necessary that such contract should be signed by both parties, & the recital in an award of the existence of a contract in writing between the parties when in fact the contract has been signed by one of them only does not constitute an error in law on the face of the award sufficient to justify the ct. in setting it aside.

(2) In the case of a decision of a Div. Ct. setting aside the award of an arbitrator for error of law & as being bad on the face of it, the leave of that ct. or of the Ct. of Appeal to appeal from the decision is not necessary, as Supreme Ct. of Judicature (Procedure) Act, 1894 (c. 16), s. 1 (1) (*b*), has no application.—RUF (T. A.) & CO. *v.* PAUWELS, [1919] 1 K. B. 660; 88 L. J. K. B. 674; 121 L. T. 36; 83 J. P. 150; 35 T. L. R. 322; 33 Sol. Jo. 372, C. A.

1177a. Award of Official Arbitrator under Requisition of Land (Assessment of Compensation) Act, 1919.]—A local authority, as empowered by the Middlesex County Council Act, 1934, s. 35, resolved to acquire certain lands owned by the claimants. It was agreed, *inter alia*, that the sale & purchase should be effected as if the local authority had obtained, & as if there had come into operation, a compulsory purchase order under sect. 35 of the Act of 1934, & as if a notice to treat had been served by the local authority for the compulsory purchase of the said lands on Feb. 1, 1936. The claimants claimed compensation, with interest thereon at 4 per cent., from Feb. 1, 1936, &, as the parties could not agree, the assessment of such compensation was referred to an Official Arbitrator. It was now conceded by the claimants that the decision in *Collins* v. *Feltham Urban District Council*, [1937] 3 All E. R. 189; Digest Supp., determined that interest on the amount of compensation was payable as from the date of the arbitrator's award only, & not from any earlier date. The main question now before the ct. was whether Arbn. Act, 1934 (c. 14), s. 11, applied to this assessment of compensation, & empowered the arbitrator to award interest as from the date of the award:—*Held:* Arbn. Act, 1934 (c. 14), s. 11, was not applicable to this arbn.—ALL SOULS' COLLEGE, OXFORD *v.* MIDDLESEX COUNTY COUNCIL, [1938] 2 All E. R. 586; 54 T. L. R. 677.

1182. *Add. Annotations:*—**Refd.** *Re* Rubel Bronze & Metal Co. & Vos, [1918] 1 K. B. 315; Robert (A.) Munro & Co. *v.* Meyer, [1930] 2 K. B. 312; Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148.

1187. *Add. Annotation:*—**Consd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

1188. *Add. Annotations:*—**Refd.** Lebeaupin *v.* Crispin (1920), 124 L. T. 124; Sheik Mohammad Habib Ullah *v.* Bird (1921), 37 T. L. R. 405.

1246. In cross-ref. after this case add "Nos. 1291, 1321."

1247. *Add. Annotation:*—**Refd.** Bremer Oeltransport G.m.b.H. *v.* Drewry, [1933] 1 K. B. 753.

1263. *Add. Annotation:*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1288. *Add. Annotation:*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1291. *Add. Citation:*—7 Mod. Rep. 345.

1326. *Add. Annotation:*—**Refd.** Woodrow *v.* Trawlers (White Sea & Grimsby), Ltd., [1930] 1 K. B. 176.

PART IV. SECT. 8, SUB-SECT. 1.

1155 i. *Must conform to submission.*]—The awards in these cases, making special provision with regard to the repairing & keeping up a mill-dam, etc., were held bad as beyond the submission & power of the arbitrators.—*Re* HALEY & ENNIS (1854), 1 P. R. 173.—CAN.

PART IV. SECT. 8, SUB-SECT. 2.—A.

1161 xi. ——.]—The umpire is bound by the terms of the submission, & he cannot make an award not within its scope.—PORTER *v.* PORTER (1921), 55 I. L. T. 206.—IR.

PART IV. SECT. 8, SUB-SECT. 2.—B.

s i. ——.]—*Held:* the arbitrators had no power to include in their award interest on the amount found to be the value of the property from the date of taking possession.—TORONTO CITY CORPN. *v.* TORONTO RY. CORPN., [1925] A. C. 177, P. C.—CAN.

ss. *Reference of "accuracy" & "justice" of accounts.*]—*Held:* the arbitrator was appointed to adjust the accounts between the parties on a fair & equitable basis, & had a discretion whether any interest should be allowed to either party, & in the exercise of that discretion was not bound to apply any rule of law.—FISHER *v.* MATSON & CO., MATSON & CO. *v.* FISHER, [1918] N. Z. L. R. 1.—N.Z.

PART IV. SECT. 8, SUB-SECT. 2.—C.

1185 ii. —— *Award dismissing claim for short delivery.*]—*Held:* words "any claim or dispute arising in connection with this contract" in the arbn. clause included a claim for short delivery of goods.—GHAMANDI LAL-NARAIN DAS *v.* CHURANJI LAL-POKHAR MAL (1923), I. L. R. 4 Lah. 168.—IND.

1188 i. *Submission of any question arising under contract—Award giving damages for non-delivery.*]—Where a contract provided for a reference to arbn. of any question arising under it:—*Held:* the proper conclusion upon the evidence was that the parties, by their course of conduct before the arbitrators, established that the question as to the damages was a matter in dispute & a subject of the reference.—*Re* BEAVER WOOD FIBRE CO., LTD., & AMERICAN FOREST PRODUCTS CORPN., [1920] 47 O. L. R. 590; 54 D. L. R. 672; 18 O. W. N. 281.—CAN.

PART IV. SECT. 8, SUB-SECT. 2.—G.

g (p. 479) **i.** —— *Valuation to be fixed as in open market—Absence of any market.*]—CANADIAN PACIFIC RY. CO. *v.* WINDEBANK, [1917] 3 W. W. R. 99.—CAN.

q i. ——.]—The points for decision on a submission to arbn. were on which partner rested the responsibility for the causes necessitating dissolution, & on which condition the partnership should be dissolved:—*Held:* this did not give jurisdiction to the arbitrator to award payment by one partner of damages because of premature dissolution of the partnership.—*Re* ARBITRATION ACT, *Re* GUYOT & VIGOURET & AWARD MADE BY GOSSELIN, [1919] 3 W. W. R. 957.—CAN.

PART IV. SECT. 8, SUB-SECT. 3.—D.

1286 iv. —— *Delivery of goods "in fair proportion to all imports."*]—*Held:* the direction to deliver goods "in fair proportion to all imports" was uncertain & lacking in finality & therefore not enforceable.—THOMPSON, MEGGITT & CO., LTD. *v.* MOODY (1920), 21 S. R. N. S. W. 125; 37 N. S. W. W. N. 267.—AUS.

PART IV. SECT. 8, SUB-SECT. 3.—E.

sb. *Award of sum subject to variation—"Good & special reasons."*]—NOBLE *v.* CAMPBELLFORD, LAKE ONTARIO & WESTERN RY. CO. (1918), 21 Can. Ry. Cas. 380.—CAN

sc. *Award for payment for working to "estimated" depth.*]—An award stated that a contractor was entitled to payment at the contract-price for the drilling to an estimated depth of 2,400 feet, saying nothing about the amount to which the contractor was thus entitled:—*Held:* the amount of the contract-price & credits allowed could be ascertained by evidence, & the use of the word "estimated" in the award was definite & amounted to a fixing of the depth at 2,400 feet.—MCNAUGHT *v.* STOKES-STEPHENS OIL CO., LTD., [1919] 1 W. W. R. 952.—CAN.

PART IV. SECT. 8, SUB-SECT. 3.—L.

1356 i. *Award settling dispute—Alternative if court should decide differently.*]—An arbitrator awarded a certain sum, &, in the event of the Supreme Ct. determining that certain views expressed by him in his reasons were erroneous, a certain larger sum:—*Held:* in the absence of any such determination the alternative award did not come into operation, & the

1357a. ——— ———.]—COGSTAD (C. T.) & Co. *v.* NEWSUM (H.) SONS & Co., No. 1058a, *ante*.

1357b. ——— ———.]—LARRINAGA & CO. *v.* SOCIETE FRANCO-AMERICAINE DES PHOSPHATES DE MEDULLA, No. 1067a, *ante*.

1358. *Add. Annotation :*—**Reld.** Bremer Oeltransport G.m.b.H. *v.* Drewry, [1933] 1 K. B. 753.

1361. *Add. Citations :*—88 L. J. K. B. 227 ; 119 L. T. 553 ; 83 J. P. 9.

Add. Annotation :—**Reld.** *Re* Fiscel & Mann & Cook, [1919] 2 K. B. 431.

1361a. ——— ———.]—Arbitrators made their award in an alternative form stating a special case & giving to the parties the option of taking the opinion of the ct. upon the points of law involved in it if notice of intention to apply to the ct. was given before a date specified ; & in the alternative making an award in favour of one of the parties if, as was the case, no such notice was given. The case was set down for argument in the special paper :—*Held :* the condition was reasonable & the award was good, so that there was nothing for the ct. to deal with.—LYON (J. L.) & Co., LTD. *v.* HADDOCK, PARKER & Co., [1919] W. N. 11.

1415a. ——— ——— **Reserved for consideration if required.**]—*Re* O'CONOR & WHITLAW'S ARBITRATION, No. 949a, *ante*.

1421. *Add. Annotation :*—**Reld.** Woodrow *v.* Trawlers (White Sea & Grimsby), Ltd., [1930] 1 K. B. 176.

1435a. ———.]—(1) Where parties submitted all matters in difference to arbn., & the award, after reciting the submission, awarded that a certain sum was due & owing from one party to the other :—*Held :* the award must be intended to be made on all the matters referred.

(2) It appeared by affidavit that the claims of one of the parties consisted of items for money due, & also for prospective damages, in consequence of a contract between the parties being put an end to by the other side, but as it also appeared that each of the claims was investigated before the arbitrators :—*Held :* a general finding was sufficient that a balance was due to one of the parties.

(3) Where on a reference one of the parties admits the claim of the other, but seeks to reduce the balance by a set-off, it is sufficient for the award to state that a sum is owing to one side or the other, without further noticing the set-off.—*Re* CROYDON CANAL CO. (1839), 1 Per. & Dav. 391.

1461. *Add. Annotation :*—**Reld.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1467. *Add. Annotation :*—**Reld.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1468. *Add. Annotation :*—**Reld.** Weber *v.* Birkett, [1925], 1 K. B. 720.

1472. *Add. Annotation :*—**Reld.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1473. *Add. Annotation :*—**Reld.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1477. *Add. Annotation :*—**Reld.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1497. *Add. Annotation :*—**Consd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1506. *Add. Annotation :*—**Reld.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1511. *Add. Annotation :*—**Reld.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774.

1516a. ———.]—*Re* CROYDON CANAL CO., No 1435a, *ante*.

1593a. ——— ———.]—A.-G. FOR MANITOBA *v.* KELLY, No. 238a, *ante*.

1598. *Add. Annotations :*—**Distd.** Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480. **Consd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395 ; Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193.

1598a. ——— ———.]—Certain trawlers were insured as to three-quarters of their value in the B. Insurance Co. To save their vessels from destruction by enemy submarine, the owners cut away the trawls, which were not insured, & claimed a general average contribution against the co., of which the owners were members. The rules provided that all disputes should be settled in the first instance by a general meeting of the co., or, on appeal, by two arbitrators & an umpire, none of whom should be lawyers. The general meeting having refused the claim, the owners proceeded to arbn. under a submission which provided that " all matters in difference in reference to the said claim for a general average contribution are referred," etc. The umpire by his award ignored the claim for general average. On a motion to set aside the award :—*Held :* it was bad as disclosing an error in law on the face of it ; &, having regard to the general terms of the submission, it was not open to resps. to say that a definite point of law had been submitted to arbn., as to which the decision of the arbitrator was final, & the award must be set aside.—PARSONS *v.* BRIXHAM FISHING SMACK INSURANCE CO., LTD. (1918), 118 L. T. 600 ; 14 Asp. M. L. C. 307 ; *sub nom. Re* PARSONS & BRIXHAM FISHING SMACK INSURANCE CO., LTD., 62 Sol. Jo. 384, D. C.

---

award was not thereby rendered uncertain.—MELBOURNE HARBOUR TRUST COMRS. *v.* HANCOCK, [1927] V. L. R. 418 ; 39 C. L. R. 570 ; [1927] Argus L. R. 245.—AUS.

PART IV. SECT. 8, SUB-SECT. 9.—D.

1517 i. *Reference of two separate matters—One award.*]—*Held :* the award must be referred to the arbitrator to draw up two awards.—*Re* DREYFUS & S. A. MILLING & TRADING CO., [1923] S. A. S. R. 75.—AUS.

PART IV. SECT. 10.

1520 v. ———.]—Where an arbn. award is valid as to a part thereof & void as to another part, the valid portion, if severable from the rest, is enforceable.—CITY OF SWIFT CURRENT *v.* LESLIE, [1920] 1 W. W. R. 467 ; 52 D. L. R. 532.—CAN.

1541 ii. ———.]—An award contained two directions :—*Held :* the two directions could not be severed, &, although the first direction was valid, the second direction being invalid judgment must be entered for deft.—THOMPSON, MEGGITT & Co., LTD. *v.* MOODY (1920), 21 S. R. N. S. W. 125 ; 37 N. S. W. W. N. 267.—AUS.

PART IV. SECT. 13, SUB-SECT. 1.

1594 ii. ——— ———.]—The ct. has jurisdiction to set aside an award where an error of law appears on the face of it.—*Re* CASSWELL & Co., LTD. & DONALD & JACOBS, LTD., [1921] N. Z. L. R. 368.—N.Z.

1594 iii. ——— ———.]—SALEH MAHOMED UMER DOOSAL *v.* NATHOOMAL KESSAMAL (1927), 54 L. R. Ind. App. 427 ; I. L. R. 55 Calc. 126.—IND.

1594 iv. ———.]——In determining whether an agreement to abide by the result of an arbn. is binding, a distinction is to be drawn between the case where parties to a contract generally refer their " differences " arising therefrom & the case where a specific question of fact or law is submitted. In the former case the fact that the arbitrator was wrong in point of law is ground for setting the award aside.—*Re* WOOD & MALKIN CO., LTD. (B. C.), [1928] 4 D. L. R. 511 ; [1928] 2 W. W. R. 674.—CAN.

1598b. —— ——.]—An error in law on the face of an award means that one can find in the award or in a document actually incorporated, as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award & which is erroneous. Where it is impossible to say, from what is shown on the face of the award, what mistake, if any, the arbitrator has made, or that the arbitrator has tied himself down, on the face of his award, to some special legal proposition which is unsound, the award will stand.—CHAMPSEY BHARA & Co. *v.* JIVRAJ BALLOO SPINNING & WEAVING Co., [1923] A. C. 480; 92 L. J. P. C. 103; 129 L. T. 166; 39 T. L. R. 253, P. C.

Annotations:—**Folld.** John Gill Contractors, Ltd. *v.* Bromley Trading Co. (1936), 52 T. L. R. 452. **Refd.** Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193.

1599. *Add. Annotations:*—**Consd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87; A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; Northwood *v.* L. C. C. (1927), 137 L. T. 49; Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590; Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193; Barton *v.* Blackburn (1933), 150 L. T. 327; Bedwas Navigation Colliery Co. (1921), Ltd. *v.* South Wales Coal Mines Scheme Executive Board (1934), 151 L. T. 420.

1603a. —— **Immaterial to decision.**]—BUERGER & Co. *v.* BARNETT, No 1822a, *post.*

1603b. —— **Reference on question of law.**]—Where a specific question of law has been submitted to an arbitrator's decision & he has decided it wrongly, that alone is not a sufficient ground for setting aside the award. Where, however, a question of law has not been specifically referred to him, but its determination becomes necessary in the decision of the matters which have been referred, & he makes a mistake apparent on the face of his award, then the award can be set aside on the ground that it contains an error of law apparent on the face of it.—ABSALOM (F. R.), LTD. *v.* GREAT WESTERN (LONDON) GARDEN VILLAGE SOCIETY, LTD., [1933] A. C. 592; 102 L. J. K. B. 648; 149 L. T. 193; 49 T. L. R. 350, H. L.

Annotations:—**Consd.** Barton *v.* Blackburn (1933), 150 L. T. 327; Hitchins *v.* British Coal Refining Processes, Ltd., [1936] 2 All E. R. 191. **Expld. & Distd.** John Gill Contractors, Ltd. *v.* Bromley Trading Co. (1936), 52 T. L. R. 452.

1603c. —— ——.]—Two firms amalgamated, & by clause 15 of the Articles of Partnership: "The shares of profits payable to the said partners as hereinbefore provided shall be reviewed & if necessary revised as on Sept. 30, 1923, & again as on Sept. 30, 1926, in such manner as may be mutually agreed upon, & in case of disagreement as shall be settled by the special arbitrator hereinafter referred to." By clause 41 the special arbitrator was appointed, & by clause 42 the Articles were to be deemed a submission to arbn. under the Arbn. Act, 1889. The partners did not agree upon whether there should be a review & revision on Sept. 30, 1926, & the dispute continued till the partnership terminated by effluxion of time on Sept. 30, 1929. Provision was made in the deed of dissolution for the exchange of a statement & counter-statement of the contentions of the parties with facts & figures & full particulars, on which the contentions were based, & if the parties failed to agree within two weeks of the delivery of the counter-statement, the dispute was to be referred to the special arbitrator under clauses 15, 41 & 42 of the Articles. The statement & counter-statement raised questions of law & of fact & of mixed law & fact. The dispute was referred to the special arbitrator, before whom the parties appeared in July, 1930, when he gave directions for discovery & adjourned. The parties in Dec. 1930, agreed that certain questions of law raised by certain of the partners in their counter-statement should be decided, with the assistance of a Chancery King's Counsel sitting as assessor, at a preliminary hearing. They also agreed that "either party shall have the same right of appeal in relation to any decision of the arbitrator at the preliminary hearing as such party would have had if there had been no preliminary hearing at all, & the points of law had been argued & determined upon the same occasion as the merits of the dispute." The special arbitrator having heard the parties, stated under the order of the ct. a special case on the questions of law under sect. 19 of Arbn. Act, 1889, which came before FARWELL, J., & the arbitrator stated the conclusions of FARWELL, J., upon the face of the award:—*Held:* by SCRUTTON, L.J., & ROCHE, J.—LAWRENCE, L.J., dissenting—this was a case where a dispute was referred to an arbitrator in the decision of which questions of law became material & accordingly the ct. could interfere if error in law appeared on the face of the award; *per* LAWRENCE, L.J., dissenting: In this case specific questions of law were referred to the special arbitrator for decision, as distinct from questions of law which became material in deciding disputes which were referred to him under clause 15. They were also questions of law which could not have been decided in arbitration proceedings under clause 15 in the absence of an express agreement between the parties to that effect, & therefore they could not be termed properly questions of law incidental to the determination of a dispute which had arisen under clause 15. Accordingly, though error in law might appear on the face of the award, the ct. could not interfere; also by SCRUTTON, L.J., & ROCHE, J. (*a*) clause 15 of the articles was not too vague or uncertain to be enforceable in law, or to be capable of judicial meaning or construction; & (*b*) the question whether or not a revision was necessary was a matter within the scope of the arbn. & accordingly the special arbitrator had jurisdiction. Accordingly the special arbitrator having held the contrary under the direction of FARWELL, J., & these errors appearing on the face of the award, it must be set aside, & the case remitted to him to consider on the merits.

1599 i. —— *In special case submitted to High Court.*]—*Re* BRECHIN & DRAPERY IMPORTING CO., LTD., No. 1059 i, *ante.*—N.Z.

—BARTON *v.* BLACKBURN (1933), 150 L. T. 327, C. A.

1614. *Add. Annotation :*—**Consd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268.

1622. *Add. Annotation :*—**Refd.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

1624. *Add. Annotations :*—**Expld.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391. **Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1643. *Add. Annotations :*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1644. *Add. Annotation :*—**Refd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1644a. ——.]—Though an award may be set aside for an error of law appearing on the face of it, & though a question of construction is, generally speaking, a question of law, yet, where a question of construction is the very thing referred for arbn., then the decision of the arbitrator upon that point cannot be set aside by the ct. only because the ct. would itself have come to a different conclusion. If it appears by the award that the arbitrator has proceeded illegally, for instance, that he decided on evidence which in law is not admissible or on principles of construction which the law does not countenance, then there is error in law which may be ground for setting aside the award ; but the mere dissent of the ct. from the arbitrator's conclusion on construction is not enough for that purpose.—KELANTAN GOVERNMENT *v.* DUFF DEVELOPMENT CO., [1923] A. C. 395 ; 129 L. T. 356 ; 39 T. L. R. 337 ; 67 Sol. Jo. 437, H. L. ; *previous proceedings, sub nom.* DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385, C. A.

Annotations :—**Consd.** Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193. **Apld.** Barton *v.* Blackburn (1933), 150 L. T. 327.

1645. *Add. Annotations :*—*As to* (1) **Apprvd.** Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480. **Consd.** Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590. **Apld.** Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193. **Consd.** John Gill Contractors, Ltd. *v.* Bromley Trading Co. (1936), 52 T. L. R. 452. **Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1647. *Add. Annotations :*—**Consd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395 ; Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193. **Refd.** Barton *v.* Blackburn (1933), 150 L. T. 327 ; Hitchins *v.* British Coal Refining Processes, Ltd., [1936] 2 All E. R. 191 ; John Gill Contractors, Ltd. *v.* Bromley Trading Co. (1936), 52 T. L. R. 452.

1667. *Add. Annotation :*—**Consd.** Sutherland *v.* Hannevig, [1921] 1 K. B. 336.

1668a. —— —— **Act of 1889, s. 7 (c).**]—An arbitrator in making his award gave two sets of costs to one of the parties in terms which were not sufficiently explicit, & subsequently on the request of one party added explanatory words & issued an amended award :—*Held :* inasmuch as the original award was in the language intended by the arbitrator & neither contained words which he had meant to omit, nor omitted words which he had intended to insert, the fact that he had failed to choose apt words to convey his meaning was not an "accidental slip or omission" entitling him to amend his award under the above sect., & the amended award must be set aside.—SUTHERLAND & CO. *v.* HANNEVIG BROTHERS, LTD., [1921] 1 K. B. 336 ; 90 L. J. K. B. 225 ; 37 T. L. R. 102 ; *sub nom. Re* SUTHERLAND & CO. & HANNEVIG BROTHERS, LTD., 125 L. T. 281 ; 15 Asp. M. L. C. 203, D. C.

1669. *Add. Annotation :*—**Refd.** Sutherland *v.* Hannevig, [1921] 1 K. B. 336.

1604 ii. —— *Apparent on face of award.*]—*Held :* the mistake rendered the award invalid.—BEACH *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1924] 4 D. L. R. 995 ; 56 O. L. R. 35 ; *affd.*, 57 O. L. R. 603 ; *affd.*, [1927] S. C. R. 251.—**CAN.**

1606 vii. —— *Omission to mention agreed disposition of property.*]—*Held :* the arbitrator was entitled to supply the omission by an addition to the award.—DEBRET *v.* DEBRET, [1917] 3 W. W. R. 503 ; 10 Sask. L. R. 366.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—B. (a).

1626 i. *General reference of all matters in dispute.*]—*Held :* the parties were bound by the arbitrator's award however erroneous in law it might be.—NATIONAL MORTGAGE & AGENCY CO., LTD. *v.* BRAID & CO., [1923] N. Z. L. R. 933.—**N.Z.**

1626 ii. *Reference of all differences—Several questions of law involved.*]—Where all differences have been referred to an arbitrator, the rule that a wrong decision of the arbitrator on a question of law is final & cannot be reviewed unless the error appears in the award itself or in a document, contemporaneous & forming part of the award, applies to any number of questions of law which may be specifically referred in the same reference, & does not apply merely where the question of law is the sole question referred. An award will not be set aside where the error occurs not in the award itself, but in a contemporaneous document setting out the reasons for the award, & which the arbitrator has expressly stated is not to be deemed to be part of the award.—STEANS *v.* MALING & CO., LTD., [1931] N. Z. L. R. 312.—**N.Z.**

1630 vi. ——.]—Where a question of law has been submitted to the arbitrators their decision is not open to review.—*Re* MCNAUGHT & STOKES-STEPHENS OIL CO., LTD. (NO. 3) (1919), 14 Alta. L. R. 148.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—B. (b).

1649 vii. ——.]—It is no ground for setting aside an award that an examination of the materials before the arbitrator discloses that his findings are unsupported by, or against, the weight of evidence.—LATHAM *v.* FOSTER'S AUSTRALIAN FIBRES, LTD., [1926] V. L. R. 427.—**AUS.**

1649 viii. ——.]—An appellate ct. will not interfere with a finding of arbitrators on a question of fact.—SPARKS *v.* CANADIAN NATIONAL RAILWAY, [1934] 1 D. L. R. 798.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 3.

1665 iii. For "SANDFORD *v.* SANDFORD" read "SANFORD *v.* SANFORD."

1665 iv a. —— ——.]—Where an arbitrator has made an award in respect of a claim involving the proof of a number of items, an affidavit of the arbitrator setting out the items in respect of which he has made his award, & the amount he awarded in respect of each item of the claim, is inadmissable in evidence.—HALLIGAN *v.* LAWSON (1922), 22 S. R., N. S. W. 501 ; 39 N. S. W. W. N. 204.—**AUS.**

1666 iii. —— —— *Effect of statute—Arbitration Act*, 1914 (*c.* 65).]—*Held :* the arbitrator had power to amend his award under s. 10 (*c*) of the above Act.—*Re* WHITE & CITY OF TORONTO (1917), 38 O. L. R. 337.—**CAN.**

1671 vii. —— *Unless award not truly stating arbitrator's opinion.*]—An appellate ct. should not interfere to vary an award unless it is satisfied that the award did not truly represent the honest opinion of the arbitrators as to damages, or that their basis of valuation was erroneous.—*Re* SCOTT & OSHAWA TOWN (1922), 52 O. L. R. 504.—**CAN.**

1671 viii. —— *Power to increase amount.*]—The amount awarded by an arbitrator may, upon consideration of the evidence, be increased by the appellate ct.—LAKE ERIE & NORTHERN RY. CO. *v.* BRANTFORD GOLF & COUNTRY CLUB (1918), 21 Can. Ry. Cas. 360 ; 32 D. L. R. 219.—**CAN.**

1674a. Stranger cannot alter.]—An award by an umpire is not vitiated by a mistake in the recital of the award, in the Christian name of one of the original arbitrators who had appointed the umpire. Such mistake not being material, an alteration made by a stranger subsequently to the publication of the award, by striking out the wrong & inserting the right Christian name, does not vitiate the award, but leaves it in the state in which it was before such alteration.—TREW *v.* BURTON (1833), 1 Cr. & M. 533; 3 Tyr. 559; 2 L. J. Ex. 236; 149 E. R. 511.

1698. *Add. Annotation :*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268.

1701a. —— Liability to cross-examination.]—In June, 1913, claimants, R. & Co., effected an insurance with resps., an insurance co., whereby the insurance co. agreed that, if at any time during the period covered by the policy the premises of claimants should be destroyed by fire, & their business should be thereby interfered with or interrupted, they would pay to claimants monthly until such time as the reduction in turnover in consequence of the fire should have ceased, but not exceeding in all nine months, on account of annual net profit & charges as therein set forth, the same percentage on the amount by which the turnover in each month should in consequence of the fire be less than the turnover for the corresponding month of the year preceding the fire as the sum or sums thereby insured should bear to the total of the turnover for the last financial year. It was provided that the amount of the losses under the policy should be assessed by claimants' auditors, L. & G. A condition on the back of the policy provided for reference to arbn. of all differences arising out of the policy. The premises of claimants were destroyed by fire on July 22, 1913, a date within the period covered by the policy. G., a member of the firm of L. & G., duly assessed the amount of the loss suffered by claimants in respect of profits for the period of nine months succeeding the fire. Differences having arisen in regard to the payments under the policy, the parties went to arbn. G. was called as a witness by claimants at the arbn. proceedings, & stated that although it did not so appear on the face of the assessments he was at the time of signing the same satisfied that the losses of the turnover respectively therein stated were in fact sustained in consequence of the fire. There was no suggestion of any fraud on the part of the assessor :—*Held :* as G., whether regarded as an arbitrator or an assessor, had been called to give oral testimony he could be cross-examined on all relevant issues & consequently could be cross-examined to show that he had failed to take into account certain considerations necessary for arriving at the reduction in the turnover of claimants due solely to the fire.—RECHER & Co. *v.* NORTH BRITISH & MERCANTILE INSURANCE Co., [1915] 3 K. B. 277; 84 L. J. K. B. 1813; 113 L. T. 827, D. C.

1722a. —— Reference to umpire by arbitrators—Custom of the tallow trade.]—Pltfs. sold to defts. a quantity of paraffin wax under a contract providing, "any dispute arising under this contract to be settled by arbitrators in London in the usual way." A claim was made by defts. against pltfs., & the arbitrators, being unable to agree, appointed an umpire by a document headed, "the use of this form constitutes a submission to the rules of the assocn.," *i.e.*, the London Oil & Tallow Trades Assocn. The umpire awarded that defts.' claim failed & that they were to pay the costs of the arbn. The rules of the assocn. provided for an appeal to an appeal committee, & defts. claimed a right of appeal. Pltfs. thereupon brought an action against defts. to recover the costs of the arbn., & the evidence was that in the trade in paraffin wax the usual way of settling a dispute by arbn. was to appoint arbitrators who could appoint an umpire whose decision would be final :—*Held :* the heading did not apply & the umpire was really appointed in pursuance of the original agreement as to arbn. & not under the rules of the assocn., & pltfs. were entitled to recover.—PALMER & Co., LTD. *v.* PILOT TRADING Co., LTD. (1929), 45 T. L. R. 214.

1731a. —— Question of law.]—HITCHINS *v.* BRITISH COAL REFINING PROCESSES, LTD., No. 1139a, *ante*.

1735. *Add. Annotation :*—**Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

1738. After this case add "**Personal representative.**]—*See* Vol. XXIV., p. 621, Nos. 6508, 6509, & *compare* original volume, pp. 393 *et seq.*"

1751. *Add. Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

1757. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

1758. *Add. Annotation :*—**Refd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

1760. *Add. Annotation :*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

1761. *Add. Annotation :*—**Refd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

1762. *Add. Annotation :*—**Refd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

PART IV. SECT. 15, SUB-SECT. 2.—A. (b).

1723 xi. —— *Damages — Unless wrong principle followed.*]—LAKE ERIE & NORTHERN RY. Co. *v.* MUIR (1918), 21 Can. Ry. Cas. 350.—CAN.

PART IV. SECT. 15, SUB-SECT. 2.—A. (c).

n i. ——.]—Where arbn. proceedings are initiated by a provincial railway co. & much of the evidence is received before an amalgamation of the co. with a Dominion railway co. is effected & the proceedings are allowed to proceed after the amalgamation, until practically all that remained to be done is the making of the award, the Dominion co. is bound by the award made as a result of such proceedings.—HANEY *v.* CANADIAN NORTHERN RY. Co., [1917] 3 W. W. R. 105; 36 D. L. R. 674.—CAN.

PART IV. SECT. 15, SUB-SECT. 2.—D.

sd. *Jurisdiction of court ordering reference.*]—Where an order for a reference is made with the consent of the solrs. on both sides, & arbitrators are appointed in pursuance of such order, & the arbitrators take evidence & file their award, counsel for both parties taking no objection to the regularity of the proceedings the parties will not be permitted, afterwards, to attack the award or the subsequent proceedings on the ground that the ct. by which the order for reference was made had no jurisdiction to do so.—HALL *v.* ELECTRIC COMRS. OF LAWRENCETOWN, [1921] 54 N. S. R. 283; 67 D. L. R. 535.—CAN.

PART IV. SECT. 16, SUB-SECT. 1.

a i. —— *Compulsory reference—Subsequent voluntary submission.*]—*Held :* the award of the arbitrator was not open to review by the ct.—

1799a. —— Single judge of High Court.]—PRODUCE BROKERS, LTD. *v.* BLYTH, GREENE, JOURDAIN & CO., LTD., No. 1960a, *post.*

1802a. Denial of submission.]—Motion to set aside an award. Appcts. were general merchants dealing particularly in oil, & resps. were a co. carrying on business in Belgium with no authorised agents in this country & they also dealt in oil. D. of Paris, with whom the appcts. did a regular business, about Nov. 23, 1932, without consulting appcts. made an arrangement with resps. for appcts. to purchase from resps. 150 tons of palm oil. Resps. never sent a contract to appcts., who never signed any contract with resps. D. was never an agent for appcts. Appcts. repudiated any contract being made. The matter was referred to arbn. by resps. in accordance with conditions of sale endorsed upon the alleged contract of the Liverpool United General Produce Assocn., Ltd. The award, dated Apr. 21, 1933, adjudged the appcts. to pay £800 to resps. as damages for breach of the alleged contract. Appcts. disputed the validity of the award, alleging that the real issue in dispute was whether there was a contract between them & resps. containing the alleged submission to arbn. Appcts. now sought to set aside the award on the ground that the arbitrators had purported to find the existence of a contract containing the alleged submission to arbn., but they had no jurisdiction as no submission had been signed by appcts.:—*Held:* the application to set aside the award was based upon the fact that there was one, & there could only be an award if there was a submission to arbn. Appcts.' case was that there was no submission & therefore there was no jurisdiction for the ct. to set aside an award which it was denied existed. The ct. would, however, stand over this appeal & direct appcts. to bring an action for a declaration that the award was null & void & on the decision of that action this appeal would be heard.—OIL PRODUCTS TRADING CO., LTD. *v.* SOCIÉTÉ ANONYME SOCIÉTÉ DE GESTION D'ENTREPRISES COLONIALES (1934), 150 L. T. 475, D. C.

1822. *Add. Annotations:*—**Refd.** Buerger *v.* Barnett (1919), 89 L. J. K. B. 161; Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

1822a. —— Question to be raised immaterial.]—(1) It is not misconduct on the part of an arbitrator or umpire, within the Act of 1889, s. 11, to refuse to state a case, under sect. 7 (b) or 19 of the Act, for the opinion of the ct. on a point of law, if his finding on a question of fact makes the question which would be raised by the case immaterial.

(2) An award is not vitiated by an error in law on the face of it, if the error is not material to the decision.—BUERGER & CO. *v.* BARNETT (1919), 89 L. J. K. B. 161; 120 L. T. 570; 35 T. L. R. 260; 63 Sol. Jo. 391, D. C.

1822b. ——.]—When questions of law arise in an arbn. it is of the greatest importance that the right of the parties to obtain the assistance of the ct. at any period of the proceedings should be fully enforced, though the arbn. tribunal has not passed through all the stages of its own procedure providing for an appeal from the award. If the umpire by refusing to make his award in the form of a special case deprives the parties of the right to have questions of law, which are neither frivolous nor vexatious but are substantial, decided by the ct., he is guilty of misconduct & his award will be set aside.—*Re* FISCHEL & CO. & MANN & COOK, [1919] 2 K. B. 431; 121 L. T. 275; *sub nom.* FISCHEL & CO. *v.* MANN & COOK, 88 L. J. K. B. 1173, D. C.

1825a. Disregarding statute passed after hearing but before issue of award.] — (1) Resps. ROYAL COMMISSION OF WHEAT SUPPLIES *v.* USHER & CO., LTD., [1920] 2 I. R. 483.—**IR.**

a ii. ——.]—LACOSTE *v.* CEDARS RAPIDS MANUFACTURING & POWER CO., [1928] 2 D. L. R. 1.—**CAN.**

a iii. ——.]—Under its inherent jurisdiction, the power of the ct. to set aside an award depends on whether it is "bad on its face" or on some ground which is more or less an extension of the same principle.—*Re* WOOD & MALKIN CO., LTD. (B. C.), [1928] 4 D. L. R. 511; [1928] 2 W. W. R. 674.—**CAN.**

1786 i a. —— *Appellate Division of Supreme Court.*]—An appeal from or a motion to set aside or remit an award must be to the Appellate Div. of the Supreme Ct.—SNIDER *v.* MILLER, [1924] 2 D. L. R. 617; 1 W. W. R. 1163; 20 Alta. L. R. 237; *affg.*, [1924] 1 D. L. R. 198; [1923] 3 W. W. R. 1376.—**CAN.**

1802 iii. —— ——.]—In a submission to arbn. the parties thereto agreed that the Arbn. Act should not apply therein, & that the decision of the arbitrator should be final & binding upon both parties:—*Held:* this agreement was void as against public policy.—BEACH *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1924] 4 D. L. R. 995; 56 O. L. R. 35.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 2.—A.

c i. ——.]—Unless in the procedure adopted by the arbitrators there has been something radically wrong or vicious an award cannot be impeached on the ground that the technical web of judicial procedure & rules of evidence which surround judicial procedure were not strictly adhered to.—MAURIC SHWE HPU *v.* U MIN NYUN (1925), I. L. R. 3 Ran. 387.—**IND.**

l (p. 547). For "**IND.**" read. "**CEYLON.**"

ss. *Award reciting order of reference not fixing time for delivery of award.*]—*Held:* an award which recited an order of reference not fixing a time for delivery of the award was *primâ facie* liable to be set aside, but Supreme Ct. Ordinance, 1876, of the Gold Coast, Ord. 52, rr. 12 (c) & 13, prevented the omission from having that effect.—YAMIKE KWEKU *v.* ANNOR ADJAYE, [1926] A. C. 755; 95 L. J. P. C. 157; 135 L. T. 642.—**GOLD COAST.**

PART IV. SECT. 16, SUB-SECT. 2.—B.

w (p. 548) **i.** —— ——.]—The misconduct referred to in Arbn. Act, s. 14 (2) is "legal misconduct." In determining whether there was "legal misconduct" on the part of the arbitrator which would justify the setting the award aside, the ct. may look at the evidence adduced before him, in order to ascertain whether he acted on evidence which was wholly inadmissible & which went to the root of the question before him.

While in the present case, an arbn. as to the loss suffered by the seller of goods because of their non-acceptance by the buyer, the arbitrator was held to have erred in allowing the seller to "split" his case, yet, as he had exercised a discretion in the matter & no substantial injustice was occasioned thereby, the course adopted did not invalidate the award.—*Re* WOOD & MALKIN CO., LTD. (B. C.), [1928] 4 D. L. R. 511; [1928] 2 W. W. R. 674.—**CAN.**

y (p. 548) For "**IND.**" read "**CAN.**"

c i. —— *Refusal to state case.*]—Neglect by an arbitrator to state a case for the opinion of the ct. after being definitely asked by either of the parties to do so is *primâ facie* technical misconduct for which his award may be set aside.—FISHER *v.* MATSON & CO., MATSON & CO. *v.* FISHER, [1918] N. Z. L. R. 1.—**N.Z.**

1811 ii a. ——.]—Where in a paving contract with a city the city's engineer is made arbitrator, he must guard against being unduly influenced by his employers; & if it appears that he is so biased as to be likely not to decide fairly, then the contractor will not be bound by his decision.—BLOME *v.* CITY OF REGINA, [1920] 1 W. W. R. 311; 50 D. L. R. 93; 13 Alta. L. R. 94.—**CAN.**

sf. *Keeping answers secret.*]—Where arbitrators have not disposed of all the questions submitted to them, but have deliberately agreed not to disclose & to keep secret their answers to specific questions put to them, there is such misconduct as requires the ct. to set aside the award instead of remitting it.—*Re* BIDEN & THOMPSON, [1932] 1 W. W. R. 843.—**CAN.**

to an arbn. had hired of claimant, for a certain period, a number of horses which, on the outbreak of war & before the expiry of the period, were commandeered by the War Office. He then refused to pay the hire for the full period on the ground of frustration of the adventure. At the hearing of the arbn. on June 19, 1917, claimant did not press for hire after the seizure of the horses, & on July 31, 1917, the arbitrator issued his award, giving claimant the amount due up to the date of the seizure, but not afterwards. On July 10, 1917, Courts Emergency Powers Act, 1917 (c. 25), had come into operation, but there was nothing to show whether the arbitrator was or was not aware of the Act. On a motion to set aside the award on the ground of the technical misconduct of the arbitrator in not taking the statute into consideration:—*Held:* whether or not the arbitrator was aware of the Act, he had applied its principles, &, consequently, there was no misconduct; the parties were not taken by surprise, & the award was good.

(2) It has been contended that the fact that the arbitrator did not know or take cognisance of the Act, which was passed after the hearing of the arbn. & before the issue of the award, constituted misconduct. I doubt very much whether that would amount to misconduct, although possibly it might amount to surprise (A. T. LAWRENCE, J.).—OSMOND *v.* WOOLLEY (1917), 87 L. J. K. B. 822; 118 L. T. 29; 34 T. L. R. 133, D. C.

1826. *Add. Annotations:*—**Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054; Ramdutt Ramkissen Das *v.* Sassoon (1929), 98 L. J. P. C. 58.

1827. *Add. Annotation:*—**Refd.** *Re* Boks & Peters, Rushton, [1919] 1 K. B. 491.

1839a. Surprise.]—It is no ground for setting aside an award that the unsuccessful party suffered a surprise; as an arbitrator would have power to postpone the proceedings upon any reasonable application for that purpose. —SOLOMON *v.* SOLOMON (1859), 28 L. J. Ex. 129.

1839b. —— What amounts to.]—OSMOND *v.* WOOLLEY, No. 1825a, *ante*.

1846. *Add. Annotation:*—**Refd.** Delahunt *v.* Moody (1927), 21 B. W. C. C. 588.

1850a. —— Objection to authority of arbitrator to determine dispute.]—The owner of a timber estate sold the whole of the timber thereon to a timber co. in consideration of fully paid up shares in the co. Subsequently by policies effected in his own name with several insurance cos. he insured this timber against fire. The greater part of the timber having been destroyed by fire, he sued the insurance cos. to recover the loss, but the actions were stayed & the matter was referred to arbn. in pursuance of the conditions contained in the policies. Claimant was the sole shareholder in the co. & was also a creditor of the co. to a large extent. The arbitrator held that claimant had no insurable interest in the goods insured & disallowed the claim:—*Held:* claimant having allowed the point of want of insurable interest to be raised before the arbitrator without objection, it was not open to him to call in question the authority of the arbitrator to entertain it.—MACAURA *v.* NORTHERN ASSURANCE CO., [1925] A. C. 619; 94 L. J. P. C. 154; 133 L. T. 152; 41 T. L. R. 447; 69 Sol. Jo. 777; 31 Com. Cas. 10, H. L.

Annotation:—**Consd.** Toller *v.* Law Accident Insurance Society, Ltd., [1936] 2 All E. R. 952.

1851a. —— ——.]—DEXTERS, LTD. *v.* HILL CREST OIL CO. (BRADFORD), No. 1083b, *ante*.

1855. *Add. Annotation:*—**Refd.** Mercer *v.* Reid (1931), 47 T. L. R. 574.

1857a. By motion.]—Any objection to an award on the ground of misconduct or irregularity on the part of an arbitrator must be taken by motion to set aside or remit the award, & if not so taken [within the time limited by R. S. C., Ord. 64, r. 14] cannot be pleaded in answer to an action on the award (*per* CUR.).—OPPENHEIM & CO. *v.* MAHOMED HANEEF, [1922] 1 A. C. 482; 91 L. J. P. C. 205; 127 L. T. 196, P. C.

Annotation:—**Apld.** Scrimaglio *v.* Thornett & Fehr (1924), 131 L. T. 174.

1857b. ——.]—SCRIMAGLIO *v.* THORNETT & FEHR, No. 135a, *ante*.

1857c. —— Entered in special paper.]—A motion to set aside an award which has been stated in the form of a special case should be entered in the special paper, & both the motion & the special case should be argued before the judge who takes the special paper. Where a special case has been set down in the special paper & subsequently notice of motion is given to set aside the award, the motion should be set down also in the special paper. —*Re* COWAN BROTHERS, LTD. & RYMER (HENRY) & CO., [1919] W. N. 140, D. C.

1869. *Add. Annotation:*—**Refd.** *Re* Campbell (1919), 88 L. J. Ch. 519.

PART IV. SECT. 16, SUB-SECT. 2.—D.

sg. *Excess of jurisdiction.*]—The ct. has jurisdiction to set aside any award which purports to exercise jurisdiction beyond that given by the authorising Act & the submission made pursuant thereto.—*Re* BRITISH COLUMBIA MINISTER OF PUBLIC WORKS & TIPPING, [1931] 2 W. W. R. 835; 44 B. C. R. 321.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 3.

1852 i a. —— ——.]—SCOTIA CONSTRUCTION CO., LTD. *v.* HALIFAX CITY, [1935] S. C. R. 124.—**CAN.**

1852 xi. —— *Consent to extension of time for making award.*]—*Held:* the act of consent to extension of time, & recognition of the propriety of the arbitrators making the award, precluded objection to the award on the ground of misconduct.—POWIS *v.* VANCOUVER (CITY), RAMAGE *v.* VANCOUVER (CITY) (1917), 23 B. C. R. 180.—**CAN.**

1852 xii. ——.] — Where applts. went on with an arbn. without objection after an irregularity had occurred:—*Held:* they were precluded from seeking to set aside the award on the ground of the irregularity. — U GUNAWA *v.* U PYINNYADIPA (1923), I. L. R. 1 Ran. 15.—**IND.**

1852 xiii. ——.]—A reference was made to arbiters to determine the amount payable by a landlord to his tenant in respect of sheep stock:—*Held:* pursuer having full knowledge of the nature of the stock that was tendered to him, & having accepted the stock & dealt with it as if it was his own, was barred from objecting to the award of the oversman.—FLETCHER *v.* ROBERTSON (1919), 56 Sc. L. R. 305; [1919] 1 S. L. T. 260.—**SCOT.**

sh. *Award following opinion of court on case stated.*]—*Held:* the award might be set aside notwithstanding that it followed the opinion of the ct. upon a case stated under Arbn. Act, s. 29.—*Re* MCCONKEY'S ARBITRATION (1920), 17 O. W. N. 329; 47 O. L. R. 411.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 4.—C.

1898 i. *Grounds for extension—Not mistake of counsel on question of law or practice.*]—On a motion to extend the time for making an application to set aside an award:—*Held:* where the rules require special circumstances to be shown upon an application for extension of time, the mistake of counsel or solr. upon a question of law or practice does not constitute a special circumstance justifying the intervention of the ct.—*Re* SWEINSSON & MUNICIPALITY OF CHARLESWOOD, [1917] 1 W. W. R. 293; 27 Man. L. R. 234.—**CAN.**

1912a. —— Failure to apply within time limit.]—OPPENHEIM & Co. *v.* MAHOMED HANEEF, No. 1857a, *ante.*

1912b. —— ——.]—SCRIMAGLIO *v.* THORNETT & FEHR, No. 135a, *ante.*

1923a. Evidence of arbitrator.]—Where, on the hearing of a motion to set aside the award of arbitrators, it is found impossible otherwise to ascertain the material facts of the case, the ct. can, & will, accede to an application by a party for leave to call the arbitrators as witnesses in regard to these facts.—LEISERACH *v.* SCHALIT, SCHALIT *v.* LEISERACH, [1934] 2 K. B. 353; 103 L. J. K. B. 608; 151 L. T. 398, D. C.

1925. *Add. Annotations :*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1937. *Add. Annotations :*—**Distd.** Stanton *v.* Laws, [1934] W. N. 130. **Consd.** Kevorkian *v.* Burney, [1937] 4 All E. R. 97.

1937a. Whether leave to appeal necessary.]—RUF (T. A.) & Co. *v.* PAUWELS, No. 1152a, *ante.*

1943. *Add. Annotations :*—**Apld.** Absalom, Ltd. *v.* Great Western (London) Garden Village Society, Ltd. (1933), 149 L. T. 193. **Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590.

1950a. Misconduct.] — OPPENHEIM & Co. *v.* MAHOMED HANEEF, No. 1857a, *ante.*

1954a. ——.]—Where an arbitrator in making his award deals with the costs of the award & his own personal costs, but does not mention the costs of the parties in the reference, the ct. will not presume that he has exercised his discretion to make no order as to costs, or to leave each side to pay their own costs, but will remit the award to the arbitrator to exercise his discretion in express terms.—*Re* BECKER, SHILLAN & Co. & BARRY BROTHERS, [1921] 1 K. B. 391; 90 L. J. K. B. 316; 124 L. T. 604; *sub nom.* BECKER, SHILLAN & Co. *v.* BARRY BROTHERS, 37 T. L. R. 101, D. C.

Annotations :—**Consd.** Bradshaw *v.* Air Council, [1926] Ch. 329. **Refd.** Larrinaga *v.* Soc. Franco-Américaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1960a. —— By motion—Before single judge of High Court.]—A judge of the High Ct. sitting alone may entertain a motion to set aside or remit for further statement an award stated in the form of a special case.—PRODUCE BROKERS, LTD. *v.* BLYTH, GREENE, JOURDAIN & Co., LTD. (1918), 88 L. J. K. B. 597; 119 L. T. 311; 34 T. L. R. 419.

Annotation :—**Folld.** *Re* Cowan & Rymer, [1919] W. N. 140.

1960b. —— ——.]—OPPENHEIM & Co. *v.* MAHOMED HANEEF, No. 1857a, *ante.*

1981. For the paragraph in original volume substitute the following paragraph :—
Foreign award — Whether enforceable as judgment of foreign court.]—An award in a foreign arbn. [unenforceable in the foreign country without an enforcement order] is not a decision which a ct. here ought to recognise as a foreign judgment, & cannot be enforced.—MERRIFIELD, ZIEGLER & Co. *v.* LIVERPOOL COTTON ASSOCN., LTD. (1911), 105 L. T. 97; 55 Sol. Jo. 581.

Annotation :—**Refd.** Harrop *v.* Harrop, [1920] 3 K. B. 386.

1981a. —— Action on—By what law contract governed.] — Pltfs., an insurance co. in London, & defts., an insurance co. in Norway, entered into a written contract headed "Reinsurance contract—Marine Insurance." The contract was not stamped as a policy, but it contained the usual terms of a reinsurance treaty, pltfs. being the reinsured & defts. the reinsurers, & there was a clause providing that in the event of disputes an arbn. should take place in Norway. The contract was signed by pltfs. in Norway & by defts. in London & was stamped with an English sixpenny stamp, but not in accordance with the English law as to contracts of marine insurance, but it was valid by the law of Norway. An arbn. under the contract was held in Norway & an award was issued in favour of pltfs. In an action on the award defts. submitted that the law applicable to the whole contract must be the law of England, & that, since the contract neither was a policy as required by English law nor was properly stamped as such a policy, pltfs. could not recover on the award :—*Held :* as the action was brought on the award, & as the proper inference from the provision as to the arbn. being held in Norway was that the parties intended the law of Norway to govern the contract, pltfs. were entitled to recover the sum awarded.—NORSKE ATLAS INSURANCE Co., LTD. *v.* LONDON GENERAL INSURANCE Co., LTD. (1927), 43 T. L. R. 541.

Annotation :—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

---

sg. *Within term following publication.*]—An award must be moved against within the term following its publication, or within the period which such term formerly occupied.—KEAN *v.* EDWARDS (1888), 12 P. R. 625.—**CAN.**

sj. *Under Consolidated Municipal Act*, 1922, *ss.* 333, 345 (1).]—*Re* VAHEY & CARLETON COUNTY, [1924] 4 D. L. R. 1055; 56 O. L. R. 129.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 4.—D.

sk. *Limited to evidence taken down in writing by arbitrator.*]—*Re* NEW BRUNSWICK GAS & OILFIELDS, LTD. & NEW BRUNSWICK ELECTRIC POWER COMMITTEE (N.B.), [1926] 2 D. L. R. 102.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 4.—F.

y (p. 561). For "WADE AND OTHERS (No. 2) (1909)" read "WADE *v.* HARDLEY (No. 2) (1910)."

PART IV. SECT. 17, SUB-SECT. 1.

sl. *Under Arbitration Act*, 1927 (c. 97), *s.* 11.]—The power conferred by above sect. is conferred upon "the ct." & may be exercised by a judge sitting in ct.; that does not necessarily mean the weekly ct.: & a judge having the parties before him at a trial may, of his own motion, in a proper case, remit the matter to the arbitrators.—MILLER *v.* MCDONNELL, [1928] 4 D. L. R. 728; 62 O. L. R. 484.—**CAN.**

PART IV. SECT. 17, SUB-SECT. 2.

sm. *Under 2 Edw. 7, c. 107, ss. 12, 21—Grounds for remitting.*]—*Re* COLEMAN & TORONTO & NIAGARA POWER CO. (1917), 40 O. L. R. 130; 38 D. L. R. 65.—**CAN.**

PART IV. SECT. 17, SUB-SECT. 3.

sn. ——.]—Unless there is a mistake in law or fact evident on the face of the award itself, or the arbitrator admits that he has made a mistake in law or fact, or there has been fraud or corruption, the award will not be referred back.—*Re* FOX & CONSOLIDATED MINING & SMELTING CO. OF CANADA, [1925] 1 D. L. R. 245; [1924] 3 W. W. R. 861.—**CAN.**

so. —— *Arbitrators alleging mistake.*]—The ct. will not remit an award because the arbitrators allege a mistake involving an impeachment of their award.—ROBINS *v.* ANDREWS, [1923] 2 D. L. R. 353; 1 W. W. R. 963.—**CAN.**

1981b. —— —— **Service out of the jurisdiction.**]—On Nov. 19, 1929, a charterparty was made in London which provided that any dispute arising during the execution of the charterparty should be settled by arbn. in Hamburg. In 1931, disputes arose between the parties which were submitted to arbn. in Hamburg, & an award made against deft. for £20,913 13*s.* 7*d.*, payment to be made in English currency. On Nov. 29, 1932, pltfs., who were a German firm, obtained *ex parte* an order that they should be at liberty to issue a writ against deft., who was residing in France, claiming the amount due & payable under the award, & to serve notice of the writ on deft. in France. On Jan. 5, 1933, deft. applied to have that order set aside, but the application was dismissed. On appeal:—*Held:* (1) the order for service out of the jurisdiction was properly made under R. S. C., Ord. 11, r. 1 (*e*), as the action based on the award was for the enforcement of a contract made within the jurisdiction, namely, the submission to arbn. contained in the charterparty; but (2) the order could not be supported on the ground that the breach of contract was committed within the jurisdiction, as the award had not required payment in England, & the ordinary rule therefore applied that the debtor must seek out his creditors, the German firm, at their place of business & pay them there.

(3) Authorities on the question whether in an action on an award the action is founded on the award or on the agreement to submit the differences from which the award results discussed. *Qu.:* whether an action may be brought upon an implied contract in the award itself.—BREMER OELTRANSPORT G.M.B.H. *v.* DREWRY, [1933] 1 K. B. 753; 102 L. J. K. B. 360; 148 L. T. 540, C. A.

1982. *Add. Annotation:*—**Consd.** *Re* Debtor (No. 21 of 1937); Debtor *v.* Petitioning Creditor & Official Receiver, [1938] 2 All E. R. 824.

1985. After this case add "*See, now*, R. S. C., Ord. 11, r. 8a."

1985a. Grounds for granting or refusing order—Objection to award.]—Where there is no objection to an award or where the objection raised is one which can easily be disposed of, the summary procedure provided by the Act of 1889, s. 12, is prompt & convenient; but where there are matters which may gravely affect the validity of the award or the right to proceed under it, it is proper that they should be dealt with by an action in which the facts can be fully ascertained, & no order under the sect. should be made giving leave to proceed summarily under the award.—*Re* BOKS & Co. & PETERS, RUSHTON & Co., [1919] 1 K. B. 491; 88 L. J. K. B. 351; 120 L. T. 516, C. A.

1985b. —— **Award against Crown.**]—An award against the Crown in an arbn. under the Act of 1889 cannot, for the purpose of enforcement, be treated as a judgment or decree on a petition of right, & under sect. 12 of that Act leave to enforce the award as a judgment or order will be refused.—GRECH *v.* BOARD OF TRADE (1923), 92 L. J. K. B. 956; 130 L. T. 15; 39 T. L. R. 630; 67 Sol. Jo. 725, C. A.

1986. *Add. Annotations:*—**Distd.** Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121. **Folld.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

1992. *Add. Annotation:*—**Refd.** The Beldis, [1936] P. 51.

2043. *Add. Annotation:*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

2043a. Nature of action.]— BREMER OELTRANSPORT G.M.B.H. *v.* DREWRY, No. 1981b, *ante*.

2045. *Add. Annotation:*—**Consd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

2046. *Add. Annotation:*—**Consd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

2056a. ——.]—OPPENHEIM & Co. *v.* MAHOMED HANEEF, No. 1857a, *ante*.

2059. *Add. Annotation:*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

2060. *Add. Annotation:*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

2092a. ——.]—On a motion for an attachment for not performing an award, the ct. will not discuss objections to the award, not apparent on the face of it; as, that the arbitrator was partial, or that matters were brought before him, the reference being of all matters in difference, which are not disposed of by the award.—MACARTHUR *v.* CAMPBELL (1834), 2 Ad. & El. 52; 4 Nev. & M. K. B. 208; 4 L. J. K. B. 25; 111 E. R. 21; *previous proceedings* (1834), 5 B. & Ad. 518.

Annotations:—**Consd.** Wright *v.* Graham (1848), 3 Exch. 131. **Refd.** Smith *v.* Troup (1849), 7 C. B. 757; Davies *v.* Pratt (1855), 17 C. B. 183.

2162. *Add. Annotation:*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

PART IV. SECT. 19, SUB-SECT. 4.—C.

2050 iii a. —— ——.]—B., an arbitrator, in the absence of & without notice to one of the parties, made an award:—*Held:* although the award might have been set aside for misconduct of the arbitrator if moved against in time, yet, the award being final, the misconduct could not be set up as an answer to an action upon the award.—TOURANGEAU *v.* SANDWICH WEST TOWNSHIP, [1920] 48 O. L. R. 306; 56 D. L. R. 33.—CAN.

2050 iii b. —— ——.]—In a suit in India upon an award made upon a submission to arbn. in England, irregularity or misconduct in arriving at the award is not a defence.—OPPENHEIM & Co. *v.* MAHOMED HANEEF, [1922] 1 A. C. 482; 91 L. J. P. C. 205; 127 L. T. 196; 49 L. R. Ind. App. 174.—IND.

2050 iii c. —— ——.]—An award duly made in England under the English Act of 1889 can be enforced by a suit in an Indian ct., & cannot be set aside by an Indian ct. on any ground of misconduct or irregularity on the part of the arbitrator.—JOHN BATT & Co. (LONDON) *v.* KANOOLAL & Co. (1925), I. L. R. 53 Calc. 65.—IND.

2056 i. *Not irregularity in conduct of arbitrators.*] — Arbitrators appointed, but not in writing for the purpose of winding up the affairs of a partnership between pltf. & deft. met & went over such papers as were available at the moment, heard what each of the partners had to say & reached a conclusion which they stated at the meeting. The arbitrators took no oath of office, & two witnesses were sworn. A day or two after the meeting, one of the arbitrators prepared & signed a memorandum headed "Report of Arbitrators," stating the conclusion that the balance due to pltf. was a certain sum. This memorandum was taken by pltf. to the other arbitrators, each of whom signed it. This action was brought upon the memorandum as upon an award. Deft. pleaded the award was irregular & illegal. In that no evidence was taken under oath, the arbitrators were not sworn, or legally appointed, deft. was not permitted to give his evidence, & although he objected, the award was given without his being heard. Deft. also counterclaimed for moneys paid to pltf., etc.:—*Held:* the objections pleaded ought to have been taken on a motion to set aside the award, & were not available as a defence to the action.—MILLER *v.* MCDONNELL, [1928] 4 D. L. R. 728; 62 O. L. R. 484.—CAN.

2165. *Add. Annotation :*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

2166. *Add. Annotation :*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

2187. *Add. Annotations :*—**Apld.** Bradshaw *v.* Air Council, [1926] Ch. 329. **Refd.** Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

2187a. Discretion of arbitrator—Must be exercised judicially.]—An arbitrator's discretion as to costs must be exercised judicially.—LLOYD DEL PACIFICO *v.* BOARD OF TRADE (1930), 46 T. L. R. 476 ; 35 Com. Cas. 325.

2213. *Add. Annotation :*—**Consd.** Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202.

2244. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2326. *Add. Annotation :—As to* (1) **Refd.** Reid, Hewitt *v.* Joseph, [1918] A. C. 717.

2331. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2332. *Add. Annotations :*—**Consd.** Reid, Hewitt *v.* Joseph, [1918] A. C. 717. **Refd.** Terry *v.* Gould (No. 2) (1924), 69 Sol. Jo. 212 ; Weber *v.* Birkett, [1925] 1 K. B. 720.

2336. *Add. Annotation :*—**Consd.** Reid, Hewitt *v.* Joseph, [1918] A. C. 717.

2340. *Add. Annotations :*—**Consd.** Keen *v* Towler (1924), 41 T. L. R. 86. **Apld.** King *v.* Sunday Pictorial Newspapers (1920) (1924), 133 L. T. 397.

2344. *Add. Annotation :*—**Apld.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

2352. *Add. Annotation :*—**Refd.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

2353. *Add. Annotation :*—**Consd.** Williams *v.* Jones, [1926] 1 K. B. 255.

2354. *Add. Annotation :—As to* (1) **Consd.** Williams *v.* Jones, [1926] 2 K. B. 37.

2355a. —— Whether more than one issue—R. S. C., Ord. 65, r. 2.]—WILLIAMS *v.* JONES (STANLEY) & Co., [1926] 2 K. B. 37 ; 95 L. J. K. B. 471 ; 134 L. T. 652 ; 70 Sol. Jo. 463, C. A.

2358. *Add. Annotation :*—**Apld.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

2361a. —— Award not providing for costs of parties.]—*Re* BECKER, SHILLAN & Co. & BARRY BROTHERS, No. 1954a, *ante*.

PART IV. SECT. 19, SUB-SECT. 8.

p i. —— ——.]—The procedure by action upon an award is one that ought to be pursued where the objections raised are such as to render the validity of the award a matter of doubt. The summary method provided by Arbn. Act of enforcing awards is to be used only in reasonably clear cases.—WONG SOON *v.* GAREB, [1936] 1 W. W. R. 270 ; 1 D. L. R. 605 ; 63 C. C. C. 174 ; 50 B. C. R. 310.—**CAN.**

sn. *What defences available.*]—Appits. brought an action against the Commonwealth to recover money due under two contracts. While the action was pending the A.-G. of the Commonwealth agreed to submit to arbn. the matters in dispute between the parties. This agreement recited the making of the two contracts. The arbitrator having made his award in favour of the Commonwealth, appits. moved to set aside the award or to remit it to the arbitrator on certain grounds, none of which related to the validity of either of the contracts. That motion was dismissed. On an application by the Commonwealth for leave to enforce the award :—*Held :* appits. were not entitled to challenge the validity of the two contracts or the authority of the A.-G. to make the agreement for arbn. —KIDMAN *v.* COMMONWEALTH OF AUSTRALIA (1925), 37 C. L. R. 233 ; 26 S. R. N. S. W. 379 ; 43 N. S. W. W. N. 11 ; [1926] Argus L. R. 118.—**AUS.**

so. *Arbitration Act*, 1909, *s.* 13—*Award merely determining rights.*]—The above sect. does not authorise a judge to give leave to issue execution directly on an award which merely determines rights, but says nothing as to the amount to which the successful party is entitled.—*Re* MCNAUGHT & STOKES-STEPHENS OIL CO. (No. 2), [1918] 3 W. W. R. 337 ; 43 D. L. R. 7.—**CAN.**

sp. *Arbitration Act, R. S. M.*, 1913 (*c.* 9)—*Award under Municipal Act.*]—Arbn. Act, R. S. M., 1913 (c. 9), applies to awards under Municipal Act unless expressly conflicting with the latter Act. Where an award on an arbn. under Municipal Act is made on a written submission & fixes not only the amount but also the liability, it may be entered on application as a judgment of the Ct. of King's Bench & enforced accordingly.—SWEINSSON *v.* RURAL MUNICIPALITY OF CHARLESWOOD, [1917], 3 W. W. R. 201 ; 36 D. L. R. 32.—**CAN.**

sq. *Decree—Failure to accept award.*]—Where in a suit parties have referred their difference to arbn. without an order of the ct. & an award is made, a decree in terms of the award can be passed by the ct. under Civil Procedure Code, Ord. XVIII., r. 3, although the parties do not accept the award.—SUBBARAJU *v.* VENKATRAMARAJU (1928), I. L. R. 51 Mad. 800.—**IND.**

sg. *Motion to have award made order of court—Whether necessary.*]—*Re* COFFEY ESTATE, [1935] 3 W. W. R. 287.—**CAN.**

PART IV. SECT. 20, SUB-SECT. 1.—D. (b).

1 i. —— *Arbitration Act, R. S. M.*, 1913 (*c.* 9)—*Greater Winnipeg Water District Act*, 1913 (*c.* 22).]—*Re* IVERSON & GREATER WINNIPEG WATER DISTRICT, [1921] 1 W. W. R. 621 ; 57 D. L. R. 184 ; 30 Man. L. R. 98.—**CAN.**

1 ii. —— *Arbitration Act*, 1908.]—An order provided that the costs of the reference & award should be within the discretion of the arbitrator under & subject to the above Act :—*Held :* the discretion of arbitrators with regard to costs was not limited by the principles which the cts. apply.—TYNAN *v.* FORBES, [1921] N. Z. L. R. 738.—**N.Z.**

PART IV. SECT. 20, SUB-SECT. 3.

z i. —— *Includes costs of counterclaim.*]—KIRK *v.* KIRK (1897), 40 N. S. R. 600.—**CAN.**

sk. *" Costs of attendance of " party—Party attending with several witnesses—Costs of witnesses not included.*]—MCQUEEN *v.* VANCOUVER ISLAND POWER CO., LTD. (1925), 35 B. C. R. 558.—**CAN.**

PART IV. SECT. 20, SUB-SECT. 6.

st. *Power of arbitrator to fix counsel's fees.*]—On an arbn. as to costs in an action, the arbitrator has power to fix the counsel's fees.—CHATTERSON *v.* DUTTON, [1917] 2 W. W. R. 393 ; 33 D. L. R. 622 ; 10 Sask. L. R. 169.—**CAN.**

sv. *Power of arbitrator to postpone taxation.*]—An arbitrator on making his award may reserve the question of the costs of the arbn. & tax them subsequently.—CHATTERSON *v.* DUTTON, [1917] 2 W. W. R. 393 ; 33 D. L. R. 622 ; 10 Sask. L. R. 169.—**CAN.**

2395 vii. —— ——.]—The taxing officer having disallowed the fees for senior counsel on the taxation of a bill of costs in an arbn. case on the ground that two counsel were in no way necessary :—*Held :* as the arbn. involved a sum of nearly £6,000 & the evidence was of a highly technical nature, the services of a senior counsel were properly employed, & his fees & the accessory charges should have been allowed.—GARLICK & Co. *v.* POYNTON (1917), 38 N. L. R. 59.—**S. AF.**

2414 viii. ——.]—NEW BRUNSWICK ELECTRIC POWER COMMISSION *v.* QUINTON, [1924] 4 D. L. R. 345.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

2440 i. *Any question arising in cause—Questions which must arise.*]—The power given by sect. 14 of Arbn. Act, 1908, to the ct. or a judge to " refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee " is limited to the reference of specific questions which must necessarily be decided in the cause or matter & does not justify a reference of " all questions in dispute in an action other than matters of law or the issue of fraud," as that may involve the reference of questions that it may prove unnecessary to decide.—MOIR *v.* WHITE, [1934] N. Z. L. R. 674 ; G. L. R. 514.—**N.Z.**

PART V. SECT. 1, SUB-SECT. 4.

a i. —— *" Acting " Deputy Registrar of Supreme Court.*]—*Held :* while the validity of the appointment was doubtful, yet as the above officer had acted since his appointment, a judge of first instance should uphold the appointment unless fully satisfied that there was no power of making it, especially where, as in this case, the reference had proceeded without objection on the point.—FUSARELLI *v.* IOCO TOWNSITE CO., [1922] 1 W. W. R. 1238.—**CAN.**

Part V.—References by Order of Court.

SECT. 1 (p. 613).—**REFERENCES FOR INQUIRY AND REPORT.**

See, now, S.C.J. (Consolidation) Act, 1925 (c. 49), ss. 88, 92.

2448. *Add. Annotation:*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

2451. Before this case add "Arbitration Act, 1889, s. 15, is now replaced by S.C.J. (Consolidation) Act, 1925 (c. 49), s. 90."

2455. *Add. Annotation:*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

2458. Before this case add "Arbitration Act, 1889, s. 13 (2), is now replaced by S.C.J. (Consolidation) Act, 1925 (c. 49), s. 88 (2)."

2459. *Add. Annotation:*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

2464. *Add. Annotation:*—**Apld.** Telsen Electric Co., Ltd. *v.* Eastick & Sons (No. 2), [1938] 1 All E. R. 436.

2464a. —— —— ——.]—It was held in an action that an agreement for the sale of pltf.'s business constituted a breach of an agreement by a receiver to maintain prices. An inquiry with regard to damages was directed to a named person. It was contended that the reference was a reference under the Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 89, & not under sect. 88:—*Held:* (1) as the reference was one to decide only the amount of the claim, it did not fall within sect. 88, but within sect. 89 of the Act of 1925; (2) any application to set aside the award under such a reference must be made to the Div. Ct., & not to a single judge, since the words "or a judge" in sect. 90 (2) do not refer to a single judge of the K. B. Div., but were inserted to give effect to the practice in the Ch. Div.—TELSEN ELECTRIC CO., LTD. *v.* EASTICK & SONS (No. 2), [1938] 1 All E. R. 436.

2475. For cross-reference after this case read "*See now,* S.C.J. (Consolidation) Act, 1925 (c. 49), s. 90 (3)."

SECT. 2 (p. 619).—**REFERENCES FOR TRIAL.**

See, now, S.C.J. (Consolidation) Act, 1925 (c. 49), s. 89.

2485. *Add. Annotation:*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

2511. *Add. Annotation:*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

2554. Before this case add "Arbitration Act, 1889, ss. 16, 17, is now replaced by S.C.J. (Consolidation) Act, 1925 (c. 49), ss. 91, 92."

2557. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Soc. les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1; Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202. *As to* (2) **Consd.** *Re* Soc. les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1; Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202; Light *v.* West, [1926] 2 K. B. 238.

2567. Delete cross-reference before this case.

2575. Before this case add "*See, now,* S.C.J. (Consolidation) Act, 1925 (c. 49), s. 90 (2)."

2580a. No power to alter his own order.]—Where a referee acts deliberately, even though he may not realise that what he is doing does not carry out his full intention, he has no jurisdiction under R. S. C., Ord. 28, r. 11, to alter his report subsequently.—BENTLEY *v.* O'SULLIVAN (1925), 133 L. T. 189; 41 T. L. R. 374; 69 Sol. Jo. 509, D. C.

2580b. Power to set aside his own order.]—In an action tried by an official referee judgment was given against defts. by default. Defts. applied to the judge in chambers to set aside the judgment of the official referee & to order a new trial. The application was not made within six days after the trial before the official referee, but no objection in regard to time was taken by pltfs. before the judge in chambers. The judge referred to the official referee the application to set aside his own judgment. At the hearing of the application the official referee himself took the point that the application to set aside his judgment had not been made within six days after the trial; & he further held that, having regard to the concluding words of R. S. C., Ord. 59a, r. 3 (b), he had no jurisdiction to set aside his own judgment:—*Held:* (1) the objection in regard to time, not having been taken at the earliest opportunity, could not be relied upon by pltfs. on the appeal; (2) as under R. S. C., Ord. 36, r. 50, the official referee had "the same authority in the conduct of any reference or trial as a judge of the High Ct.," he had jurisdiction to set aside his own judgment, & the words "save as herein provided, no application for a new trial before a referee shall be made" at the conclusion of Ord. 59a, r. 3 (b), referred only to the procedure to be followed in appeals from referees to the Divisional Ct.—LONDON STEAMSHIP & TRADING CORPN., LTD. *v.* RUSSIAN VOLUNTEER FLEET (1926), 135 L. T. 607; 42 T. L. R. 632; 70 Sol. Jo. 838, D. C.

PART V. SECT. 1, SUB-SECT. 5.

p (p. 616) i. —— —— —— *Alberta Rules, r.* 312.]—MAINFROID *v.* MAINFROID (Alta.), [1926] 4 D. L. R. 1060, [1926] 3 W. W. R. 617.—**CAN.**

z i. —— —— ——.]—*Re* COCHRAN'S TRUSTS (No. 2) (1919), 52 N. S. R. 278.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.

2474 ii. ——.]—AVORY & SON *v.* PARKS (1917), 12 O. W. N. 4; 39 O. L. R. 74; 35 D. L. R. 71.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.—A.

sp. *General rule.*]—A judge has no statutory power to direct a reference to an arbitrator of issues in the action.—ROLUP *v.* JENKINS, [1937] 4 D. L. R. 437.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.—D.

sw. *Under Alberta Rules.*]—MAINFROID *v.* MAINFROID (Alta.), [1926] 4 D. L. R. 1060; [1926] 3 W. W. R. 617.—**CAN.**

o i. —— *Action on building contract.*]—HOUSE REPAIR & SERVICE CO. *v.* MILLER (1921), 64 D. L. R. 115; 49 O. L. R. 205.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.—E.

l i. ——.]—An order made by a judge in the exercise of his discretion, referring an action to arbn. under Ord. 97, will not be interfered with by the Ct. of Appeal, unless it is manifest that the order will operate to defeat the rights of, or cause injustice to, one or other of the parties.—TYLORS (AUSTRALIA), LTD. *v.* MACGROARTY, [1928] St. R. Qd. 371.—**AUS.**

2593. *Add. Annotation :*—**Refd.** Ruf *v.* Pauwels, [1919] 1 K. B. 660.

2599. *Add. Citation :*—46 L. J. Q. B. 136.

2603. *Add. Annotations :*—*As to* (1) **Consd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528. *As to* (2) **N.F.** Cogstad *v.* Newsum, [1921] 2 A. C. 528.

2611a. —— **Costs.**]—In an action upon a contract in the High Ct. judgment was given for pltf. for an amount to be ascertained on taking an account between the parties, with costs of the action. This judgment was dated & entered on Apr. 8. The referee took the account & ascertained the amount to be £83 10*s.* & on Nov. 29 indorsed the order accordingly. On the next day & before final entry of the completed order, the judge, upon pltf.'s application, ordered the costs to be taxed on the High Ct. scale :—*Held :* in the circumstances the judge had jurisdiction under County Cts. Act, 1919 (c. 73), s. 11, to award costs on the High Ct. scale, for until the result of the account was ascertained the question of costs could not be finally determined.—LIGHT *v.* WEST (WILLIAM) & SONS, LTD., [1926] 2 K. B. 238 ; 95 L. J. K. B. 557 ; 134 L. T. 693 ; 42 T. L. R. 311 ; 70 Sol. Jo. 404, C. A.

Part VI.—Application of Arbitration Act, 1889, to References under Statute.

2618. *Add. Annotation :*—**Consd.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

Part VII.—Foreign Arbitrations.

See Arbitration Clauses (Protocol) Act, 1924 (c. 39) ; Arbitration (Foreign Awards) Act, 1930 (c. 15) ; Arbitration Act, 1934 (c. 14).

2619a. Submission—What amounts to.]—By an agreement between an English co. & a Luxembourg co. it was agreed that any disputes arising from the objects thereof should be settled by arbn. Differences having arisen the English co. commenced an action in the English cts. claiming to enforce the agreement, but this action was discontinued. Correspondence ensued, in which the English co. stated that it had chosen its arbitrator & setting out the questions to be submitted, & calling upon the Luxembourg co. to name its arbitrator & state the questions it desired to be submitted to arbitration. The Luxembourg co. appointed an arbitrator & stated that it would allege that the claim of the English co. was inadmissible & then put in a counterclaim to the original action. The English co. moved to stay all proceedings in the counterclaim pursuant to Arbn. Clauses (Protocol) Act, 1924 (c. 39), s. 1, as amended by Arbn. (Foreign Awards) Act, 1930 (c. 15), s. 8, or alternatively pursuant to Arbn. Act, 1889 (c. 49). The Luxembourg co. opposed the motion contending that (i) there had been no "submission made in pursuance of an agreement to which the protocol applies" within sect. 1 of the Act of 1924 ; (ii) as certain terms as to times stated in the agreement had not been strictly complied with, the ct. was entitled to find that by effluxion of time the arbn. clause had become inoperative ; (iii) as the agreement was in the nature of an appointment of an agent & the agency had been discontinued, the agreement itself had become inoperative & the arbn. clause with it ; (iv) part of the counterclaim which alleged a conspiracy was outside the agreement & must be excluded from the stay ; (v) as the English co., by issuing a writ, had elected to enforce its rights before an English tribunal, it could not then claim to enforce the arbn. clause ; & (vi) Arbn. Act, 1934 (c. 14), s. 14, had restored the discretion of the ct. to order an arbn. agreement to cease to have effect & that this was a proper case for the ct. to exercise that discretion :—*Held :* (1) the naming of their respective arbitrators & the constitution of the arbn. tribunal was a "submission" in pursuance of the agreement within sect. 1 of the Act of 1924 ; (2) any non-compliance with the terms as to times stated in the agreement had been waived by the parties coming together & being at one as to the constitution of the arbn. tribunal ; (3) until all matters in dispute under the agreement had been duly settled, the agreement was still operative, notwithstanding that the relations, which the agreement had originally brought into being, had been discontinued ; (4) the claim for damages for conspiracy was not a matter to which the arbn. provisions of the agreement extended & should be excluded from any stay ; (5) the Luxembourg co. by its own conduct in sharing in the constitution of the arbn. tribunal had waived any right it may have had as a result of the election by the English co. ; (6) assuming that sect. 14 of the Act of 1934 applied, this was not a case in which the discretion of the ct. ought to be

PART V. SECT. 2, SUB-SECT. 6.

sy. *Time for appeal—Extension of time—When granted.*]—An application was refused for extension of time for appeal from a matter in a referee's report, the report, although not finally confirmed, having been dealt with nearly two months before, & the reason for extension & merits of appeal being, in the circumstances, insufficient.—JAMIESON *v.* JAMIESON, [1921] 1 W. W. R. 63.—**CAN.**

PART V. SECT. 3.

sz. *Scope of reference—Not facts in issue & determined by court.*]—FOSTER *v.* REAUME, [1926] 1 D. L. R. 1024 : 60 O. L. R. 63.—**CAN.**

applied, & a stay should be ordered.—RADIO PUBLICITY (UNIVERSAL), LTD. *v.* COMPAGNIE LUXEMBOURGEOISE DE RADIODIFUSION, [1936] 2 All E. R. 721.

2619b. Stay—When ordered.]—RADIO PUBLICITY (UNIVERSAL), LTD. *v.* COMPAGNIE LUXEMBOURGEOISE DE RADIODIFUSION, No. 2619a, *ante*.

ARMS AND AMMUNITION.

Carrying - - *See* CRIMINAL LAW.
Gun Licences - ,, REVENUE.
Sale of - - ,, TRADE AND TRADE UNIONS.

ARTIFICIAL CREAM.

See FOOD AND DRUGS.

ASSISTANCE, WRIT OF.

See EXECUTION.

AUCTION AND AUCTIONEERS.

Part I.—Definitions.

1. *Citations :*—For " 1 Dav. 111 " read " 1 Dow. 111, H. L."

Part II.—Auctioneer's Licence.

15a. Use of initials "A.A.I."]—Pltf. Bowler & his co-pltf. Blake carried on in partnership the business of auctioneers & estate agents at P. & G, & in May, 1920, deft. entered their employment as an outside canvassing & negotiating clerk under a written agreement of service which provided (*inter alia*) that either party could terminate the employment on giving seven days' notice in writing & (clause 5) " after the termination from any cause of the employment aforesaid the clerk shall not for the term of one year carry on or be interested in carrying on the business of auctioneers & estate agents after such termination directly or indirectly assist as clerk manager or in any other capacity in the carrying on of such business within the borough of P. or in the town of G." In Sept. 1920, pltfs. duly terminated deft.'s employment, & on leaving their service he at once commenced business on his own account as an estate agent within the prohibited area, describing himself as " C. Lovegrove, A.A.I., Estate Agent," the initials A.A.I. meaning Associate of the Auctioneers' Institute, but he did not take out an auctioneer's licence nor do any business as an auctioneer : —*Held :* deft. had not by the use of the initials A.A.I. held himself out to be an auctioneer.—BOWLER *v.* LOVEGROVE, [1921] 1 Ch. 642 ; 90 L. J. Ch. 356 ; 124 L. T. 695 ; 37 T. L. R. 424 ; 65 Sol. Jo. 397.

Annotation :—**Refd.** Vincents of Reading *v.* Fogden (1932), 48 T. L. R. 613.

Part III.—Authority of Auctioneer.

20. *Add. Annotation :*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd. (1935), 79 Sol. Jo. 558.

43. *Add. Annotation :*—**Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

46. After this case add :— —— ——.]—Stat. Frauds, s. 4, is now replaced by Law of Property Act, 1925 (c. 20), s. 40.

56. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

57. *Add. Annotations :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945 ; Chaney *v.* Maclow, [1929] 1 Ch. 461. **Refd.** A.-G. *v.* Cohen, [1936] 2 K. B. 246.

58. *Add. Annotation :*—**Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

59. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

63. *Add. Annotation :*—**Apld.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

63a. —— —— ——.]—A freehold house was knocked down to deft. as the highest bidder, but he afterwards refused to sign the contract because one of the conditions of sale required the purchaser to pay certain road-making charges. On the same day the auctioneer, as soon as he was informed of deft.'s refusal, signed the contract as deft.'s agent. In an action by the vendor for specific performance, the judge held in the circumstances the auctioneer's signature could fairly be said to be part of the transaction of sale, & there was a memorandum in writing sufficient to satisfy Law of Property Act, 1925 (c. 20), s. 40 :—*Held :* an auctioneer had authority to sign a memorandum sufficient to satisfy the Act, provided he signed it at such a time & in such circumstances that the signature could fairly be said to be part of the transaction of sale, & as the question whether this condition was satisfied was a question of fact, the judge's decision that there was a valid memorandum must be affirmed.—CHANEY *v.* MACLOW, [1929] 1 Ch. 461 ; 98 L. J. Ch. 345 ; 140 L. T. 312 ; 45 T. L. R. 135 ; 73 Sol. Jo. 26, C. A.

65. *Add. Annotation :*—**Distd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

66. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

67. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

PART I.

b 1. —— *Who is—Person conducting Dutch auction.*]—A person conducting a Dutch auction is acting as an auctioneer within Auctioneers' Act, 1921, s. 3.—CARROLL *v.* SOLOMON, [1931] W. A. L. R. 82.—AUS.

PART II.

ss. *Acquisition of provincial licence —Necessity for municipal licence.*]—A person who has obtained a provincial licence as auctioneer under Auctioneers & Pedlers' Act, R. S. A., 1922 (c. 39), may be compelled to take out a municipal licence.—R. (MORRIS) *v.* STIMMEL, [1923] 4 D. L. R. 955 ; 3 W. W. R. 1185.—CAN.

sb. —— —— *Power of city—Cannot arbitrarily refuse licence.*]—MOOSE JAW *v.* TAYLOR, [1924] 1 W. W. R. 1063.—CAN.

sc. —— —— —— *Cannot arbitrarily revoke licence.*]—MOOSE JAW *v.* TAYLOR, [1924] 1 W. W. R. 1063.—CAN.

c 1. —— —— *Auctioneer licensed by province.*]—MOOSE JAW *v.* TAYLOR, [1924] 1 W. W. R. 1063.—CAN.

sd. *Licensing & Bankrupt Sales in City of St. John Act, N. B.*, 1924 (c. 75)—*When fee of $500 payable.*]—PAGE *v.* ST. JOHN'S CORPN. (N. B.), [1926] 2 D. L. R. 414.—CAN.

PART III. SECT. 1.

241. *To receive purchase price—By bill of exchange.*]—An auctioneer cannot without authority from his client take payment otherwise than in cash, & if he takes a bill of exchange, & afterwards does not pay the vendor, the purchaser is not discharged.—BOOTHMAN *v.* BYRNE (1923), 57 I. L. T. 36.—IR.

68. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

71. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

75. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

76a. —— **Entry of purchaser's name—Auctioneer's name printed on catalogue.**]—Pltf. bought for £60 at an auction one of the lots, which was the property of deft., who was the auctioneer. The lot was included in the printed catalogue, the whole of which was pasted into the auctioneer's book, & after the lot in question was knocked down to pltf. deft. wrote against its description in the book the price & pltf.'s trade name. Deft.'s name was nowhere written by him in the book, but his printed name appeared on the front page of the catalogue pasted in the book. Deft. refused to hand over the goods on the ground that the lot in question had been the subject of a " knock-out " to which pltf. had been a party. In an action for breach of contract deft. pleaded that there was no memorandum signed by him within Sale of Goods Act, 1893 (c. 71), s. 4 (1) :—*Held :* (1) the existence of a " knock-out " did not afford any defence to the action ; (2) deft.'s printed name, having been authenticated by his writing down the price & the purchaser's name, was a sufficient signature, & there was a sufficient note or memorandum of the contract, & pltf. was entitled to recover.—COHEN *v.* ROCHE, [1927] 1 K. B. 169; 95 L. J. K. B. 945 ; 136 L. T. 219 ; 42 T. L. R. 674 ; 70 Sol. Jo. 942.

Part IV.—Conduct of the Sale.

81a. —— ——.]—In a sale of certain property by auction, deft. was declared to be the highest bidder, & he subsequently signed a written contract stating that he was in fact the purchaser of the property. The sale was subject to certain special conditions, clause 1 of which stated that the property was also sold subject to the National Conditions of Sale, & by clause 2 it was stipulated that in the event of the property remaining unsold or being bought in by the vendors, the vendors should be entitled to withdraw another lot from the sale. Clause 1 of the National Conditions of Sale provided that subject (*inter alia*) to the vendors bidding up to a reserve price, the highest bidder should be the purchaser. In an action by pltfs. for specific performance of the agreement by deft. to purchase the property, deft. pleaded (*a*) that he had agreed to bid at the sale merely as a puffer or dummy bidder on behalf of the vendors, & (*b*) that the vendors had employed other puffers to bid on their behalf & that this employment was contrary to Sale of Land by Auction Act, 1867 (c. 48), s. 6, & also to the conditions of sale. Deft. at the trial contended that the sale was in fact one without reserve & therefore the vendors were precluded from bidding either by themselves or an agent by reason of the provisions of sect. 5 of the Act :—*Held :* (1) deft. in bidding for the property was bidding for himself & not as a dummy bidder for pltfs. ; (2) the sale was subject to a reserve price ; & (3) there was no contravention of Sale of Land by Auction Act, 1867 (c. 48), s. 6 ; (4) Sale of Land by Auction Act, 1867 (c. 48), s. 5, does not require that the words " with reserve " or " without reserve " & no others should be used in the particulars or conditions of sale. The requirements of the section are satisfied so long as it is made plain, in whatever words may be chosen, that the sale is subject to a reserve.—HILLS & GRANT, LTD. *v.* HODSON, [1934] Ch. 53 ; 103 L. J. Ch. 17 ; 150 L. T. 16.

82. *Add. Annotation :*—*As to* (1) **Distd.** Hills & Grant, Ltd. *v.* Hodson, [1934] Ch. 53.

82a. Sale below reserve price—Vendor bidding personally.]—NARRAMORE *v.* FULLER, HALL & FOULSHAM (1932), 76 Sol. Jo. 289.

82b. Notice that sale without reserve—Requirements of Sales by Auction Act, 1867 (c. 48), s. 5.]—HILLS & GRANT, LTD. *v.* HODSON, No. 81a, *ante*.

134. *Add. Annotation :*—**Refd.** Beyfus *v.* Lodge, [1925] Ch. 350.

145. *Add. Annotation :*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd. (1935), 79 Sol. Jo. 558.

148. *Add. Annotation :*—**Apld.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

149. *Add. Annotation :*—**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

150. *Add. Annotation :*—**Consd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

After this case add :—

——.]—*See, now*, Auctions (Bidding Agreements) Act, 1927 (c. 12).

PART IV. SECT. 3, SUB-SECT. 2.

se. *Sale " without reserve "—Burden of proof.*]—The *onus* of proving that a sale by auction was " without reserve " is upon the person alleging it. In case of doubt the presumption is that the auction was one with reserve. NEUGEBAUER & CO., LTD. *v.* HERMANN, [1923] App. D. 564.—**S. AF.**

PART IV. SECT. 5.

a i. —— *Sale for cash—Bidder unable to pay cash.*]—*Held :* no sale had been effected.—DENIS *v.* MORINVILLE CORPN. (Alta.), [1917] 2 W. W. R. 323 ; 34 D. L. R. 724.—**CAN.**

c i. —— *Not affected by verbal statements made by vendor's clerk at sale.*]—CURRIER *v.* CROSBY (1877), 17 N. B. R. (1 P. & B.) 464.—**CAN.**

PART IV. SECT. 7.

sf. *Refusal of bidder to pay—Sale of goods seized under execution—Sheriff entitled to sell goods again.*]—HALIFAX AUTOMOBILE CO. *v.* DREW, [1924] 1 D. L. R. 891 ; 57 N. S. R. 1.—**CAN.**

PART IV. SECT. 9.

148 vi. ——.]—A combination among intending purchasers at an unreserved auction sale to stifle competition by not bidding against one another is a fraud against the seller, & the auctioneer is not bound to recognise a bid by a member of such a combination.—NEUGEBAUER & CO., LTD. *v.* HERMANN, [1923] App. D. 564.—**S. AF.**

151 i. *Knock-out sale—Enforcement of agreement between parties.*]—GRANT *v.* WHITZMAN (1921), 55 N. S. R. 16.—**CAN.**

n i. ——.]—Sale declared void.—FOY *v.* MERRICK (1860), 8 Gr. 323.—**CAN.**

n ii. ——.]—*Held :* the legal estate passed by the conveyance, & if it was sought to impeach it, the case must be taken into equity.—RAYNES *v.* CROWDER (1864), 14 C. P. 111.—**CAN.**

n iii. ——.]—A sale will not be set aside on the ground that a party was prevented from bidding by promises made to him by the purchaser. Such fact, if established, would constitute the purchaser a trustee for him, & would be subject for a suit.—BROCK *v.* SAUL (1867), 2 Ch. Ch. 145.—**CAN.**

151a. —— ——.]—At a sale by public auction of surplus property belonging to the Ministry of Munitions pltf. & deft. agreed, in order to avoid competition, that deft. alone should bid for certain goods, & that the goods, if purchased, should be divided equally between them. In pursuance of that agreement pltf. abstained from bidding & the goods were knocked down to deft. Deft. subsequently repudiated the agreement. In an action by pltf. to recover one moiety of the goods purchased or the value thereof over & above the price paid at the auction.—*Held:* the agreement was not illegal, & judgment should be entered for pltf.—RAWLINGS *v.* GENERAL TRADING CO., [1921] 1 K. B. 635; 90 L. J. K. B. 404; 124 L. T. 562; 37 T. L. R. 252; 65 Sol. Jo. 220; 26 Com. Cas. 171, C. A.

Annotation:—**Apld.** Cohen *v.* Roche, [1927] 1 K. B. 169.

151b. —— ——.]—COHEN *v.* ROCHE, No. 76a, *ante*.

152. *Add. Annotation:*—**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

153. *Add. Annotation:*—**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

155a. ——.]—A purchaser alleged by his answer to a suit for specific performance, that he acted as a puffer in bidding for one lot, & also as puffer in bidding for another lot, which was knocked down to him; & that he therefore purchased the lot, & signed the agreement for the purchase, as the agent of the vendor; but the statement in his depositions of the circumstances attending the signature was somewhat different from that in his answer, & he had signed an order on his attorney for payment of the deposit money:—*Held:* there was not sufficient evidence of agency, & deft. was held to have purchased on his own account.

Taking into consideration the signature by deft. of the memorandum of agreement, the contradiction between his answer & his examination, & his having given an order for the deposit in his own name, & on his own agent, it is impossible to contend that he purchased as the agent of pltf. (TURNER, V.-C.).—BENNETT *v.* SMITH (1852), 20 L. T. O. S. 28; 16 Jur. 421.

Part V.—Deposit.

171a. Failure to require deposit—Whether breach of contract with vendor.]—Pltfs. entrusted to defts., who were auctioneers, a suit of armour for sale by auction. One of the conditions of sale was that the buyer should pay down 10*s.* in the £ or more if required in part payment of the purchase-money, in default of which the lot might be put up again & resold. By another condition, on the failure of a buyer to comply with any of the conditions, the money deposited in part payment was to be forfeited. One B., who had previously bought for an American millionaire, bid at the auction & the armour was knocked down to him. The auctioneers did not ask B. for a deposit, as they assumed that he was acting for the millionaire for whom he had acted before. The millionaire afterwards repudiated B.'s authority, & B., when asked to take the armour, could not pay for it. Consequently the sale was not carried out. In an action by the sellers against the auctioneers for breach of contract to procure the buyer to pay the deposit:—*Held:* there was no negligence or breach of duty on the part of the auctioneers in exercising their judgment, in the circumstances, by not enforcing the conditions of sale as to a deposit, &, since on the evidence the armour would not have been sold if it had been put up again, there were no damages, & the action failed.—CYRIL ANRADE, LTD. *v.* SOTHEBY & CO. (1931), 47 T. L. R. 244; 75 Sol. Jo. 120.

191a. —— —— **Order for repayment under Law of Property Act, 1925 (c. 20), s. 49.**]—Leasehold shops described in the particulars of sale as "Valuable business premises" were put up for sale by auction, subject to special conditions of sale & also to the National Conditions of Sale, by one of which, namely, the sixth, it was stipulated that the leases or copies thereof might be examined at the office of the vendors' solicitors before the sale & that the purchaser, whether or not he inspected the same, should be deemed to have bought with notice of the contents thereof. Deft. only became aware of the sale on the day when it was held &, having on that day been supplied by the auctioneers with the particulars & special conditions, but not with the National Conditions, & relying upon the truth of the description in the particulars, he bid at the sale and was declared to be the highest bidder thereat. He then signed the usual form of memorandum to the effect above stated & paid a deposit to the auctioneers. In the course of investigating the title it came to deft.'s knowledge for the first time that the leases under which the properties were held were subject to covenants which prohibited any other trade or business than that of a ladies' outfitter, fancy draper & manufacturer of ladies' clothing from being carried on upon the properties. In consequence of the existence of those restrictive covenants & the failure of pltfs. to procure their removal or the licence of the lessors to use the properties for the purposes of any business, deft. refused to complete the purchase. In an action by the vendors for specific performance in which deft. counterclaimed rescission of the contract & to recover his deposit:—*Held:* (1) a shop which could be used for one purpose only was not fairly described as "valuable business premises"; & (2) such a misleading representation by pltfs. in their particulars of sale disentitled them, notwithstanding the sixth condition, to the assistance of the ct. to compel deft., who purchased in reliance upon the truth of such representation, to

specifically perform his part of a contract for a consideration different from that which he was led to expect. The action was dismissed; & deft. was declared to be entitled to give a valid receipt to the auctioneers for the deposit.—CHARLES HUNT, LTD. *v.* PALMER, [1931] 2 Ch. 287; 100 L. J. Ch. 356; 145 L. T. 630; 75 Sol. Jo. 525.

Annotations:—As to (2) **Refd.** *Re* Russ & Brown's Contract, [1934] Ch. 34; Bellotti *v.* Chequers Developments, Ltd., [1936] 1 All E. R. 89.

192. *Add. Annotation:*—**Refd.** Beyfus *v.* Lodge, [1925] Ch. 350.

Part VII.—Rights and Duties in Relation to Vendor.

213. *Add. Annotation:*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

219. *Add. Annotations:*—**Distd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142. **Refd.** Karflex, Ltd. *v.* Poole, [1933] 2 K. B. 251.

225. *Add. Annotation:*—**Consd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

240. *Add. Annotation:*—**Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

242a. **Sale stopped by vendor.**]—DAVIES *v.* DAWS, DAWS *v.* DAVIES (1930), 74 Sol. Jo. 663.

246. *Add. Annotation:*—**Consd.** Bow's Emporium *v.* Brett (1927), 44 T. L. R. 194.

255. *Add. Annotations:*—**Consd.** London Corpn, *v.* Lyons Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78. **Refd.** Page *v.* Sully (1919), 63 Sol. Jo. 55; Benton *v.* Campbell, Parker. [1925] 2 K. B. 410.

257. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

260. *Add. Annotation:*—**Refd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455.

263. *Add. Annotation:*—**Consd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

268. *Add. Annotation:*—**Refd.** Adams *v.* Morgan, [1923] 2 K. B. 234.

Part VIII.—Rights and Liabilities in Relation to Purchaser.

273. *Add. Annotations:*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410. **Refd.** Page *v.* Sully (1918), 63 Sol. Jo. 55; London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

280a. —— **Option to resell on purchaser's default.**]—Goods were put up for sale by auction, the conditions of sale printed on the auctioneers' catalogue providing: "The lot to be taken away & paid for the day after sale," & "upon failure of complying with the above conditions all lots uncleared within the time aforesaid shall be resold." A purchaser, through his own negligence, bid for a lot for which he had not intended to bid, & the lot was knocked down to him. He afterwards endeavoured to persuade the auctioneers to put up the lot for sale again, but they declined. Upon his refusing to pay, an action for the purchase price was brought by the auctioneers, & the purchaser contended that under the conditions of sale it was obligatory upon the auctioneers to resell the lot in question, & that he could be charged only with any deficiency upon resale:—*Held:* the words "all lots uncleared shall be resold" did not impose any obligation upon the auctioneers, but merely conferred upon them an option of reselling at their discretion, & the auctioneers were entitled to recover the full price at which the lot was knocked down to the purchaser.—ROBINSON, FISHER & HARDING *v.* BEHAR, [1927] 1 K. B. 513; 96 L. J. K B. 150; 136 L. T. 284; 91 J. P. 59; 43 T. L. R. 66, D. C.

282. *Add. Annotation:*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

289. *Add. Annotation:*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

293. *Add. Annotation:*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

293a. —— ——.]—PAGE *v.* SULLY, No. 301a, *post.*

295. *Add. Annotation:*—**Distd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

296. *Add. Annotation:*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

PART VII. SECT. 1.

t i. —— *Disappearance of purchaser—Lot not resold.*]—Pltf. instructed defts. to sell his household furniture by public auction for cash without reserve. At the auction a suite of furniture was put up for sale, & after some bidding was knocked down to B. for £9 5*s.* B. went away, ostensibly to get the money, but did not return, & she could not be traced subsequently. The furniture was not removed & defts. asked pltf. what they should do with it, but he refused to give any directions as to its disposal. Pltf. then sued defts. for £9 5*s.*, the price of goods sold & delivered or, alternatively, as damages for negligence:—*Held:* the first claim could not be sustained in law & there had been no negligence on the part of defts.—ASHENDEN & CO. *v.* DORNEY, [1930] W. A. L. R. 111.—**AUS.**

PART VII. SECT. 6, SUB-SECT. 2.

240 ii. ——.]—*Re* MCCOLL, MCCOLL *v.* MCCOLL (1881), 8 P. R. 480.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

296 iii. —— ——.]—Pltf. & C. entered into a hire-purchase agreement in respect of a motor car. After making his first payment C. delivered the car to W. to sell at public auction. K. bought the car at an auction conducted by W.:—*Held:* the name of the vendor having been disclosed to the purchaser at the sale W. was not responsible to the buyer.—ARCHIBALD *v.* WASHER & CO. & KINNERNEY, [1923] N. Z. L. R. 165.—**N.Z.**

m i. —— —— ——.]—A house & premises were put up for sale by public auction, but no sale was effected. Subsequently a sale by private treaty was made & the original conditions of sale were signed by the purchaser. The purchaser paid the auctioneer the auction fees provided for by the conditions of sale. The purchase subsequently fell through owing to the vendor's inability to get certain mtgees. to join in the sale:—*Held:* the purchaser was not entitled to recover the auction fees paid by him to the auctioneer.—M'NULTY *v.* HANRATTY (1917), 52 I. L. T. 43.—**IR.**

301a. Non-delivery—Goods included in a lot by mistake.]—In the catalogue of a sale by auction a lot marked 103 to 109* was included, being various bundles of paper. Item 109* was a bundle which the auctioneer did not intend to be in the catalogue, & he purposed to sell it separately. It was, however, knocked down to pltf., & he paid for it, but the auctioneer refused to deliver it to him. The catalogue announced the sale as being "By order of J. S. & others." The buyer brought an action for damages against the auctioneer: —*Held:* the various owners of the lots not being disclosed as the principals, & there being no disclaimer by the auctioneer of personal liability, the auctioneer was personally liable for non-delivery; & the fact that the buyer accidentally learned of the ownership of lot 109* was not material.—PAGE *v.* SULLY (1918), 63 Sol. Jo. 55, D. C.

307. *Add. Annotation:*—**Refd.** Page *v.* Sully (1918), 63 Sol. Jo. 55.

309. *Add. Annotation:*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd. (1935), 79 Sol. Jo. 558.

311. *Add. Annotation:*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

312a. ——.]—An auctioneer who sells a chattel on behalf of a principal does not by the mere fact of sale warrant his principal's right to sell.—BENTON *v.* CAMPBELL, PARKER & Co., [1925] 2 K. B. 410; 94 L. J. K. B. 881; 134 L. T. 60; 89 J. P. 187; 41 T. L. R. 662; 69 Sol. Jo. 842, D. C.

Part IX.—Rights and Liabilities in Relation to Third Parties.

313. *Add. Annotations:*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410. **Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

326. *Add. Annotation:*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd., [1936] Ch. 78.

337. *Add. Annotations:*—**Refd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752; Harper *v.* Haden & Sons, Ltd. (1932), 102 L. J. Ch. 6.

AUDIENCE, RIGHT OF.

See BARRISTERS; SOLICITORS.

AUSTRALIA, COMMONWEALTH OF.

See DEPENDENCIES AND DOMINIONS.

BAILMENT.

Part I.—In General.

1. *Add. Annotations :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353; Karflex, Ltd., *v.* Poole, [1933] 2 K. B. 251; Bryce *v.* Hornby (1938), 82 Sol. Jo. 216.

4. *Add. Annotation :*—**Refd.** Union Transport Finance, Ltd. *v.* Ballardie, [1937] 1 K. B. 510.

6. *Add. Annotation :*—**Refd.** Folkes *v.* King, [1923] 1 K. B. 282.

13a. —— —— **Car park.**]—The owner of a motor car left it on a private parking ground, & on payment of 1*s.* received from the attendant a ticket headed " Seaway Car Park, Car Park Ticket " & containing a receipt for 1*s.*, followed by the provision : " The proprietors do not take any responsibility for the safe custody of any cars or articles therein nor for any damage to the cars or articles however caused . . . all cars being left in all respects entirely at their owners' risk." Later when the owner returned for his car the attendant told him he had just given it to the owner's friend. The man who had so obtained the car had neither the ticket nor the key to the car, which was locked; but he was able to get his hand through the windscreen & free the car. The car was never recovered, & the owner brought these proceedings against the proprietors of the car park for damages. The negligence of the attendant was admitted, but liability denied :—*Held :* (1) the relation between the proprietors & the owner of the car was that of licensors & licensee, & therefore the proprietors were under no liability whatever in regard to the car; (2) what had been done by the attendant did not amount to a misdelivery of the car; (3) even if the relationship between the parties was such as to constitute a contract of bailment & the act of the attendant amount to a misdelivery of the car, the conditions on the ticket relieved the proprietors of all liability; (4) no term could be implied in the contract (if any) between the parties that the car should not be parted with without production of the ticket.—ASHBY *v.* TOLHURST, [1937] 2 K. B. 242; [1937] 2 All E. R. 837; 106 L. J. K. B. 783; 156 L. T. 518; 53 T. L. R. 770; 81 Sol. Jo. 419, C. A.

16. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

38. *Add. Annotation :*—**Refd.** Van Oppen *v.* Tredegars (1921), 37 T. L. R. 504.

Part II.—Gratuitous Bailment.

43. *Add. Citation :*—Palm. 381. *Annotation :*—**Refd.** Hill *v.* Vaux, 1 Ld. Raym. 227.

46. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; Betts *v.* Metropolitan Police District Receiver (1932), 48 T. L. R.

PART I. SECT. 1.

8k. *Person obtaining possession & control of goods without owner's consent.*]—To constitute a bailment it is sufficient if the bailee, having obtained possession & control of the bailor's goods without the latter's knowledge or consent, afterwards acknowledges to the bailor that he holds them for him, & thereafter retains possession & control for him with his consent.—MAKOWER, MCBEATH & Co., PROPRIETARY, LTD. *v.* DALGETY & Co., LTD., [1921] V. L. R. 365.—**AUS.**

13 l. —— *Licence to occupy floor space.*]—Deft. was owner of a private garage, & rented to pltf. the right to store his motor car therein. The garage had no dividing partitions or stalls, & no particular space was assigned to pltf. Pltf. was given a key of this garage & was able to enter at any time he saw fit to do so & remove & return his car as he chose :—*Held :* deft. was not bailee of pltf.'s car.—LESSER *v.* JONES, [1920] 47 N. B. R. 318.—**CAN.**

14 l. —— *Goods left at cloak-room—Ball organised by committee.*]—The committee hired a hall, & tickets were sold. A room was provided for a cloak-room, & a caretaker of this room hired at a remuneration paid by the committee. When resp. presented his numbered ticket corresponding to the number placed on his coat it was found that another coat had been substituted for his :—*Held :* as regards the caretaker, there was no implied contract between him & resp. As regards the members of the committee, any contract they might make was a contract on behalf of the whole body, including resp.—CORBETT *v.* JAMIESON, [1923] N. Z. L. R. 374.—**N.Z.**

30 l. —— *Cab driver & cab proprietor.*]—A taxi-cab co. hired cabs to drivers under a contract which purported to create the relation of bailor & bailee as between the letter & the hirer. The letting was for a period of twenty-four hours. At the termination of the hiring the driver was to return the cab immediately to the co.'s garage in good order & condition. If he so desired the driver could use the co.'s garage telephone, uniform & greasing & inspection services. He supplied his own petrol, but had to buy it from the co. He was to keep the cab in his own personal custody & was not to allow any other person to drive it. The cab was to be used exclusively for the carriage of passengers for hire. A right to inspect the cab was reserved to the co.'s servants. The driver agreed to pay as rent for the cab a certain sum at the conclusion of the hiring, such sum being a fixed percentage of the amount earned by him as fares during the hiring, the balance belonged to the driver. He had no specific right to a renewal of the agreement; but each day he took out a cab a contract embodying the above provisions was executed by him :—*Held :* the contract was one of bailment & not partnership.—CHECKER TAXICAB CO. *v.* STONE, [1930] N. Z. L. R. 169.—**N.Z.**

30 li. —— *Delivery of mineral-water bottles—Charge for detention of empties.*]—Pltfs. sold mineral-water in bottles branded with their name. The course of dealing with customers was to invoice the bottles at a deposit rate of two shillings per dozen & when bottles were returned the customers were credited in full. Where bottles were not returned the customers were debited with a charge for them; pltfs. usually accepting half the deposit rate for missing bottles where a deficiency was found to exist :—*Held :* the transaction was in law a bailment in which bare possession of the bottles vested in the borrower, the true ownership remaining in the lender.—CANTRELL & COCHRANE *v.* NEESON, [1926] N. I. 107.—**IR.**

PART I. SECT. 2.

8m. *General rule.*]—A man cannot be made a bailee of goods against his will.—MCCUTCHEON *v.* LIGHTFOOT, [1930] S. C. R. 108; 1 D. L. R. 995; *affg.*, [1929] 1 D. L. R. 971; 1 W. W. R. 694; 38 Man. L. R. 160; *revg.*, [1928] 2 W. W. R. 240.—**CAN.**

38 ii. ——.]—LONG *v.* R. (1922), 63 D. L. R. 134; 21 Exch. C. R. 264.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

8o. *Timber sold remaining in mill yards—Warehouse receipt given to buyer.*]—*Held :* seller gratuitous bailee for buyer.—FERGUSON *v.* EYER (1918), 43 O. L. R. 190.—**CAN.**

40 iii. —— *Valuables of bathers left with caretaker of bathing-shed.*]—Applts.

517 ; Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

47. *Add. Annotations :*—**Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42 ; Bryce *v.* Hornby (1938), 82 Sol. Jo. 216.

50. *Add. Annotations :*—**Refd.** The Santa Catharina (1919), 88 L. J. P. 170 ; The Cairnsmore, The Gunda, [1921] 1 A. C. 439 ; The Canadia (1922), 127 L. T. 499.

50a. —— ——.]—Pltf., who was a member of a residential club, of which defts. were the proprietors, gave the manager certain jewellery to lock up in a safe in the manager's office. The rules provided that " No claim in respect of any property alleged to have been left or lost in the club-house will be entertained, & neither the club nor the proprietors shall be responsible for any article of value so left or lost in the club, but small articles of value may, on application to the secretary, be deposited in the safe, but neither the club nor the proprietors shall be under any liability in respect of such deposits." The jewellery was stolen from the safe by the night porter employed by defts., who before engaging him had obtained references from two persons by whom he had been employed, but apparently had made no inquiry as to his previous career. After the theft it was discovered that he was an old & dangerous criminal :—*Held :* defts. had not used due care in engaging the night porter, & as the above rule did not negative defts.' liability for damage due to their neglect to take such care, they were liable for the loss.—Williams *v.* Curzon Syndicate, Ltd. (1919), 35 T. L. R. 475, C. A.

Annotation :—**Consd.** De Parrell *v.* Walker (1932) 49 T. L. R. 37.

52. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

64. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

65. *Add. Annotation :*—**Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 602.

67. *Add. Annotations :*—**Consd.** Coldman *v.* Hill, [1919] 1 K. B. 443. **Distd.** City of Baroda (Cargo Owners *v.* Hall Line (1926), 42 T. L. R. 717.

67a. —— ——.]—Bryce *v.* Hornby (1938), 82 Sol. Jo. 216.

69a. Loss of goods.]—An innkeeper is not liable in trover for the loss of articles deposited in his house for the purpose of being forwarded by a carrier.—Williams *v.* Gesse (1837), 3 Bing. N. C. 849 ; 7 C. & P. 777 ; 3 Hodg. 131 ; 5 Scott, 56, 57 ; 132 E. R. 637.

Annotation :—**Refd.** Wilkinson *v.* Verity (1871), L. R. 6 C. P. 206.

70. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443 ; G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

75. *Add. Annotations :*—*As to* (2) **Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359. *Generally*, **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443 ; Smith *v.* G. W. Ry. (1920), 37 T. L. R. 117 ; *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

77. *Add. Citation :*—15 Jur. 1079.

---

were sued by resp. for the value of a gold watch & other articles left by resp. in the custody of the caretaker of a bathing-shed conducted by applts. & which were lost, presumably stolen :—*Held :* the fact by undertaking the care of valuables belonging to bathers the use of the bathing-shed was rendered more attractive would constitute a consideration.—Timaru Borough Council *v.* Boulton, [1924] N. Z. L. R. 365.—**N.Z.**

40 iv. —— ——.]—Pltf. hired a locker at deft.'s bathing sheds in which to place his clothes & effects & which was securely locked before he proceeded to bathe. Subsequently on opening the locker it was found to be empty. In an action based upon a contract of bailment the judge expressly found that there was no one continuously employed on duty in the locker room during the absence of pltf. & returned a verdict for pltf. for the value of the articles placed in the locker :—*Held :* inasmuch as there had been no finding of facts from which any duty owed by deft. to pltf. would arise there must be a new trial.—Greenwood *v.* Waverley Municipality Council (1928), 28 S. R. N. S. W. 219 ; 45 N. S. W. W. N. 59.—**AUS.**

PART II. SECT. 1, SUB-SECT. 2.

47 ii. —— ——.]—Pltf. on leaving a hotel was allowed to leave a locked bag in the baggage room, which was kept locked except when opened for taking luggage in or out. On calling for the bag he found contents had been stolen :—*Held :* the hotelkeeper was a gratuitous bailee & had exercised the reasonable care of a prudent man.—Brewer *v.* Calori (1921), 29 B. C. R. 457.—**CAN.**

47 iii. —— ——.]—Gibson *v.* Wilson & Downer (1922), 67 D. L. R. 410.—**CAN.**

47 iv. —— ——.]—The duty of a gratuitous bailee is to take the same care of the goods deposited with him as a reasonably prudent & careful man might fairly be expected to take of his own property.—Mumford *v.* Northern Trusts Co., [1924] 2 W. W. R. 745.—**CAN.**

47 v. —— —— *Cloak-room— Of school.*]—Boards of Education are not insurers of school children's clothing ; they are responsible for its loss or injury only when it is caused by their negligence.—Stevenson *v.* Toronto Board of Education (1919), 46 O. L. R. 146 ; 17 O. W. N. 52.—**CAN.**

47 vi. —— —— —— *Of racing club.*]—Resp. sued applts., a racing club, for the value of a coat which she had left at applts.' cloak-room at the racecourse, & which disappeared from there. Resp. was holder of a ticket for the race meeting, but paid nothing for the deposit of the coat. There were hung on the walls of the waiting-room notices stating that while every care would be taken of deposited articles the club accepted no responsibility for same :—*Held :* there was a want of care on the part of applts. in discharging the duty they had accepted.—Wellington Racing Club *v.* Symons, [1923] N. Z. L. R. 1.—**N.Z.**

g i. —— ——.]—The exhibiting of a dog at a dog show constitutes a bailment for the benefit of both the exhibitor & the club or assocn. holding the exhibition, & the latter are liable for their own carelessness notwithstanding a provision in the entry form signed by the exhibitor that " it shall be a condition of entry that the club shall not be liable for loss or damage to any exhibit occasioned by fire, accident, condition of structure, or negligence of other exhibitors or of the officials or servants of the club or otherwise."—Andrew *v.* Griffin, [1918] 1 W. W. R. 274 ; *affd.*, [1918] 1 W. W. R. 532.—**CAN.**

59 iii. —— ——.]—Defts. having by mistake removed a suit case from a railway carriage, took the most speedy means of restoring the suit case to the owner by placing it on a steamer about to leave for a point on the railway :—*Held :* (1) defts. as bailees without reward were bound to use as much diligence in dealing with the goods in their possession as they would in dealing with their own ; (2) in delivering the suit case to a fireman on the steamer to be delivered to the mate, defts. failed to acquit themselves of the responsibility resting upon them.—McCowan *v.* McCulloch, [1926] 1 D. L. R. 312 ; 58 N. S. R. 320.—**CAN.**

65 iv. —— ——.]—The fact that a chattel has been lost or injured in the hands of a gratuitous bailee raises a *primâ facie* presumption against him. That presumption, however, may be rebutted by his proving that he was not to blame for the loss or injury.—Mumford *v.* Northern Trusts Co., [1924] 2 W. W. R. 745.—**CAN.**

PART II. SECT. 1, SUB-SECT. 4.

77 i. *Rights of finder against all but true owner—Money found in shop.*]—Deft. was a shopkeeper, & pltf., a salesman in the shop, picked up from the floor a roll of banknotes, & handed it to deft., who caused inquiry to be made for the owner. No claim was made, & deft. kept the notes :—*Held :* the property was " lost," & as against all other persons than the owner, the finder became the substantial owner of the thing found by him, & pltf. was not, by reason of being in the employment of deft., deprived of his rights as a finder.—Haynen *v.* Mundle, 22 C. L. T. 152.—**CAN.**

77 ii. —— —— *Or in bank.*]—A clerk in a bank noticed lying on a desk, used by patrons of the bank in the public portion of the premises, a wallet

88. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

90a. —— **Liability where goods recovered by owner.**]—Trover & conversion lies for goods found & converted although they come afterwards to the hands of the party that lost them (ROLL, C.J.).—GOWR *v.* —— (1651), Sty. 261 ; 82 E. R. 695.

91. *Add. Annotations :*—**Refd.** Leitch (William) & Co. *v.* Leydon ; Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81 ; United Fruit Co. *v.* Frederick Leyland & Co. (1930), 47 T. L. R. 33.

96. *Add. Annotations :*—**Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** The Empress (1922), 92 L. J. P. 42 ; Bryce *v.* Hornby (1938), 82 Sol. Jo. 216.

100. *Add. Citations :*—*sub nom.* PARRY *v.* ROBERTS, 3 Ad. & El. 118 ; 5 Nev. & M. K. B. 669 ; 4 L. J. K. B. 189.

103a. *S. P.* PARRY *v.* ROBERTS (1835), 3 Ad. & El. 118 ; 5 Nev. & M. K. B. 669 ; 4 L. J. K. B. 189 ; 111 E. R. 358 ; *sub nom.* BARRY *v.* ROBERTS, 1 H. & W. 242.

104. *Add. Annotation :*—**Refd.** Bryce *v.* Hornby, (1938), 82 Sol. Jo. 216.

106. *Add. Citation :*—*sub nom.* ANON., Cary, 9.

Add. Annotation :—**Refd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

107. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson, [1932] A. C. 562.

108. *Add. Annotations :*—**Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** Bryce *v.* Hornby (1938), 82 Sol. Jo. 216.

118. *Add. Annotation :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235.

122. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

123a. —— ——.]—If I have a load of hay, & another will come & mingle his hay with mine, in this case I may well take & detain the whole (CROKE, J.).—DOWGLAS *v.* KENDALL (1610), as reported in 1 Bulst. 93 ; 80 E. R. 792.

125a. *S. P.* PRICE *v.* GROOM (1848), 11 L. T. O. S. 475, N. P. ; *on appeal*, 2 Exch. 542.

131. *Add. Annotation :*—**Consd.** Lambert *v.* I. R. Comrs. (1927), 12 Tax Cas. 1053.

131a. —— **Distinct chattels.**]—The doctrine of confusion of property does not apply to distinct chattels like chairs & tables, but to commodities such as corn, wine, oil & the like, of which there can be a commingling of substance (BRAMWELL, B.).—SMITH *v.* TORR (1862), 3 F. & F. 505.

Part III.—Bailment for Valuable Consideration.

133. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443 ; The Empress (1922), 92 L. J. P. 42 ; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353 ; Bryce *v.* Hornby (1938), 82 Sol. Jo. 216.

136. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

137. *Add. Annotations :*—**Consd.** Winkworth *v.* Raven, [1931] 1 K. B. 652. **Refd.** Coldman

containing money, & handed it over to the manager for the rightful owner, who never was discovered or appeared to claim it :—*Held :* the money was not "lost."—HEDDLE *v.* BANK OF HAMILTON (1912), 17 B. C. R. 306.—**CAN.**

PART II. SECT. 3.

108 i. *Duties of borrower—Measure of diligence.*]—Where an owner of a motor car leaves it at a garage to be repaired & is given, without charge, a motor therefrom for use in the meantime, he is a bailee from the garage proprietor without reward unless it be that the work of repairing is the consideration for the loan of the car. He is therefore bound to take reasonable care of the car hired, & if it be received by him in good condition & he returns it damaged & fails to give any account of the time, place & manner of the injury, the law will presume that he has been negligent.—BIJOU MOTOR PARLORS *v.* KEEL, [1918] 1 W. W. R. 706 ; 39 D. L. R. 410.—**CAN.**

108 ii. —— —— *Onus to negative negligence.*]—Pltf. loaned deft. his traction engine to be used for hauling a gasoline engine to start same. While being used for hauling a separator over rough ground the crankshaft broke :—*Held :* the *onus* was on deft. to negative negligence on his part, &, not having discharged this *onus*, he was liable in damages.—SMITH *v.* MOATS, [1921] 1 W. W. R. 268 ; 56 D. L. R. 415 ; 14 Sask. L. R. 37.—**CAN.**

108 iii. —— ——.]—ANDERSON *v.* ROYER (Sask.), [1928] 3 D. L. R. 248.—**CAN.**

108 iv. —— ——.]—Defts. having delivered their motor-truck to pltfs. to be repaired, pltfs. lent defts. a truck for the time their own was under repair. The borrowed truck was injured while being driven by defts.' servant, & pltfs. sued for damages, alleging negligence :—*Held :* defts. were gratuitous bailees, the bailment being for their sole benefit, & the *onus* was upon them to prove that they were not guilty of even slight negligence.—RIVERDALE GARAGE, LTD. *v.* BARRETT BROS., [1930] 4 D. L. R. 429 ; 65 O. L. R. 616.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

133 ii. —— *Not liable for theft—Motor car left at garage—Garage under repair.*] — FOURNIER *v.* MCKENNA (1921), 57 D. L. R. 725 ; 54 N. S. R. 479.—**CAN.**

135 ii. —— ——.]—A restaurant keeper who invites customers to deposit articles of clothing temporarily in a place provided by him for that purpose is a bailee for hire & not a gratuitous bailee. It is part of the accommodation for which the keeper of the restaurant receives his recompense from his customers. The bailee in such a case is bound to exercise ordinary diligence in caring for the articles entrusted to him & is liable in case of failure to do so.—MURPHY *v.* HART (1919), 52 N. S. R. 79.—**CAN.**

136 iii. —— —— *Stable keeper.*]—Pltf.'s mare, kept for him in an open stall in deft.'s stable, was kicked by a horse, which was kept in the adjoining open stall, & had broken his halter shank during the night & got loose :—*Held :* as it was not proved that the horse had ever broken a halter shank before, or that the shank was not as strong as halter shanks usually were, deft. was not liable.—TEMPLETON *v.* WADDINGTON (1904), 24 C. L. T. Occ. N. 151 ; 14 Man. L. R. 495.—**CAN.**

136 iv. —— *Liability for acts of servants.*]—A motor car was entrusted by its owners to garage proprietors for safe custody over night. During the night the night watchman in charge of the garage took the car out for his own purposes, contrary to his employers' instructions & without their knowledge. While being driven by the night watchman the car collided with another car & was damaged :—*Held :* as the defenders had delegated their duty of keeping the car safely secured in the garage to their servant, they were liable to pursuers for the servant's failure in performance.—CENTRAL MOTORS, GLASGOW, LTD. *v.* CESSNOCK GARAGE & MOTOR CO., [1925] S. C. 796.—**SCOT.**

136 v. —— ——.]—Pltf., a customer of deft., left his motor-car at deft.'s service station to be supplied with gas & oil & washed. There were no facilities at the station for washing the car, & deft.'s servant, as was his duty, took out the car to drive it to a garage to be washed. On the way to the garage the servant changed his mind & drove the car in another direction "upon a frolic of his own." In doing so he ran the car into a telephone pole & damaged the car :—*Held :* deft., as master, was liable in damages for the wrongful act of his servant.—VAN GEEL *v.* WARRINGTON, [1929] 1 D. L. R. 94 ; 63 O. L. R. 143.—**CAN.**

v. Hill (1918), 88 L. J. K. B. 491; Welden *v.* Smith, [1924] A. C. 484.

140. *Add. Annotations :*—**Consd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50. **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Santa Catharina (1919), 88 L. J. P. 170; Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 475; Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426; Reynolds *v.* Boston Deep Sea Fishing & Ice Co. (1921), 38 T. L. R. 22; Rutter *v.* Palmer, [1922] 2 K. B. 87; Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662; Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185; Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Canadian Government Merchant Marine, [1927] 2 K. B. 432; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51; Aslan *v.* Imperial Airways, Ltd. (1933), 49 T. L. R. 415; Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534.

140a. —— **Car driven "at customer's sole risk."**]—The owner of a motor car deposited the car for sale on commission with deft., the keeper of a garage, upon the terms of a printed document containing the clause: "Customers' cars are driven by our staff at customers' sole risk." The car was sent out by deft. in charge of one of his drivers to be shown to a prospective purchaser, & was injured owing to the negligence of the driver: —*Held :* the above clause protected deft. from liability for the negligence of his servants.—RUTTER *v.* PALMER, [1922] 2 K. B. 87; 91 L. J. K. B. 657; 127 L. T. 419; 38 T. L. R. 555; 66 Sol. Jo. 576, C. A.

Annotations :—**Apld.** Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 138 T. L. 286. **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Derbyford *v.* G. W. Rly. (1927), 43 T. L. R. 527; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

140b. —— **No liability for any accident or damage —Whether bailee liable for negligence.**]—Pltf., the owner of a steam trawler, sent the trawler to be examined on a slipway belonging to deft. co., who were ship repairers. A clause in the contract under which defts. allowed the use of their slipway provided that "All persons using the slipway must do so at their own risk & no liability whatever shall attach to the co. for any accident or damage done to or by any vessel either in taking her to the slip or when on it or when launching from it. . . ." The trawler was put on the cradle & was drawn out of the water, but suddenly she fell over on her side & was damaged. In an action for negligence: —*Held :* the above clause, though it did not expressly mention negligence, protected defts. from liability.—REYNOLDS *v.* BOSTON DEEP SEA FISHING & ICE CO., LTD. (1922), 38 T. L. R. 429, C. A.

Annotations :—**Distd.** Forbes, Abbott & Lennard *v.* Great Western Ry. (1927), 96 L. J. K. B. 995. **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Rutter *v.* Palmer, [1922] 2 K. B. 87; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

141. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

142. *Add. Annotation :*—**Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662.

143. *Add. Annotations :*—**Consd.** Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534. **Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Canadian Government Merchant Marine, [1927] 2 K. B. 432.

144. *Add. Annotations :*—**Consd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662; Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Canadian Government Merchant Marine, [1927] 2 K. B. 432; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51. **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Santa Catharina (1919), 88 L. J. P. 170; Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 475; Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185; Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50; Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534.

145. *Add. Annotation :*—**Consd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 12 7.

148. *Add. Annotation :*—**Refd.** British Trawlers Foderation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 147 L. T. 313.

159. *Add. Citation :*—88 L. J. K. B. 55. *Annotation :*—**Refd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

163. *Add. Annotations :*—**Consd.** Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426. **Apld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646. **Refd.** The Cap Palos, [1921] P. 458; L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263; The

---

141 iv. —— ——.]—Where a bailee for reward, or a person who is under the same legal obligations as such a bailee, is sued for the loss of goods, the *onus* of proving that the loss did not occur through any want of reasonable care on the part of deft. or his employees is upon deft.—MAKOWER, MCBEATH & CO., PROPRIETARY, LTD. *v.* DALGETY & CO., LTD., [1921] V. L. R. 365.—**AUS.**

141 v. —— ——.]—The burden is on pltf. in the first instance to establish negligence, but where the loss is established or the goods are not returned, a sufficient case is raised against the bailee to put him upon his defence. The law in such case presumes negligence to be the cause of the loss or non-return. Where there is no explanation of the cause of loss & deft. fails to meet the *prima facie* case against him he will be held liable for the consequences of his neglect.—MURPHY *v.* HART (1919), 52 N. S. R. 79.—**CAN.**

141 vi. —— ——.]—CAMMAERT *v.* GRASSWOLD (Alta.), [1926] 2 D. L. R. 1062.—**CAN.**

141 vii. —— ——.]—Where goods stored with a bailee for reward are damaged while under his charge the *onus* is on him of showing that he took all reasonable care to prevent such damage. In an action against a garage proprietor for damage to a motor car caused by a fire of unknown origin which broke out in the garage in which the car was stored some hours after the apparent complete extinguishment of a previous fire which had occurred on the evening prior to the morning on which the fire in question herein started:—*Held :* the finding of the trial judge that the proprietor had discharged the *onus* on him of disproving negligence was warranted by the evidence &, therefore, should be sustained.—ROMANO *v.* COLUMBIA MOTORS, LTD., [1930] 1 W. W. R. 159; 1 D. L. R. 815; 42 B. C. R. 168; *affg.*, [1929] 4 D. L. R. 1064; 2 W. W. R. 636.—**CAN.**

sa. *Goods stored in unsuitable temperature.*]—Deft. held liable for storing meat in a room used for storing beer, which requires a different temperature.—RINEHART *v.* INLAND ICE & COLD STORAGE CO. (1935), 2 D. L. R. 803.—**CAN.**

sd. *Car left in car park—Ticket limiting liability—Notice.*—The owner of a car park is liable on loss of the car when the words on the ticket issued limiting liability were so small as not to be noticeable.—SPOONER *v.* STARKMAN, [1937] 2 D. L. R. 582; O. R. 542.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

157 iv. —— *Ship received in dry dock—Injury by water when moored in unsafe place.*]—PORTER & SONS *v.* MUIR BROS. DRY DOCK CO., [1929] 2 D. L. R. 561; 63 O. L. R. 437.—**CAN.**

161 vi. Read now "163a i."

161 vii. Read now "163a ii."

Refrigerant, [1925] P. 130; Tate & Lyle, Ltd. *v.* Hain S.S. Co. (1934), 151 L. T. 249; A/S. Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

163a. —— **Evidence of negligence—Failure to examine goods periodically.**]—Resps.' wheat was stored at applts.' warehouse, which was allowed to become congested with grain of various kinds, including maize, which had a special tendency to heat, & applts. were in consequence unable to fulfil the obligation they were under to resps. to execute their orders to turn & cool as expeditiously as they were bound to do. Resps.' wheat was moist, & there was evidence that even a small rise in the surrounding temperature might, unless it was expeditiously turned, cause it to heat:—*Held:* applts. were liable.—LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD. *v.* CHARLTON & BAGSHAW (1918), 146 L. T. Jo. 20, H. L.

164. *Add. Annotation:*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

168. *Add. Annotations:—Generally*, **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; The Arpad, [1934] P. 189.

170. *Add. Annotation:*—**Refd.** Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

171. *Add. Annotation:*—**Consd.** Engel *v.* Lancashire & General Assce. (1925), 41 T. L. R. 408.

184. *Add. Annotation:*—**Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

187. *Add. Annotation:*—**Apld.** Caldecutt *v.* Piesse (1932), 49 T. L. R. 26.

190. For "**Company not responsible for package over £10,**" read "**Company not responsible for package over stated value.**"

Add. Annotation:—**Refd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

192. *Add. Annotation:*—**Consd.** Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426.

192a. —— **Loss of luggage left outside cloak-room.**]—A condition in a railway cloak-room ticket purporting to exempt the railway co. from responsibility for articles above a specified value deposited in the cloak-room except on certain terms, & assented to by the person taking the ticket, is not prevented from being part of the contract & from protecting the co. merely because it is unreasonable, provided that it be not so extravagant as to imply, & there is no other evidence to show, that that person's assent to it has been obtained by fraud, or so irrelevant as to be foreign to the contract.

Pltf. took his bicycle to the cloak-room at a station of deft. co. for the purpose of depositing it there, paid to the official the charge demanded, & received a ticket purporting to be a cloak-room ticket upon the face of which was legibly printed the following condition: "The co. will not be in any way responsible in respect of any article deposited the value whereof exceeds £5, unless at the time of deposit the true value & nature of the article shall have been declared, & 1*d.* per £1 sterling of the declared value be paid for each day or part of a day in addition to the ordinary cloak-room charges." The value of the bicycle exceeded £5, but pltf. made no declaration of value or additional payment. The bicycle was standing at the open door of the cloak-room, but the official told pltf. to leave it there as he would put it away. When pltf. returned to claim the bicycle it could not be found. In an action by pltf. against defts. for the value of the bicycle defts. relied upon the above condition. It was found in effect that pltf. knew that there was printing on the ticket, that he believed it contained a condition, & that defts. had done sufficient to give pltf. notice of the condition; & it was not found & there was no evidence to show that pltf.'s assent to the condition had been obtained by fraud. It was further found that owing to the negligence of the official in leaving the bicycle at the door of the cloak-room it had been stolen:—*Held:* (1) assuming that the condition was unreasonable which, *semble*, it was not, defts. were not, merely on that ground, prevented

---

163a iii. —— —— ——.]—Pltf. placed apples in the cool stores of deft. The apples were in good order & condition when they were placed in the store. Several months later the apples were taken out of the store considerably damaged & deteriorated:—*Held:* it was the duty of deft. being a bailee for reward to provide a cool store fit for the purpose intended, & to maintain the proper temperature & proper circulation of cold air in the store by efficient means, & to store the apples in such manner as would ensure access of the cold air to the fruit; & as fruit was liable to be injuriously affected by failure to perform any of these duties, & might become affected at any time, it was the duty of deft. to inspect the fruit in the store at reasonable times, &, if indications of deterioration were observed, to notify pltfs., &, if necessary & practicable, to take steps to protect the goods from further damage.—AURORA TRADING CO., LTD. & JACKSON *v.* NELSON FREEZING CO., LTD., [1922] N.Z. L. R. 662.—**N.Z.**

163a iv. —— —— *Failure to inspect premises—Defective wharf.*]—*Held:* the collapse of the wharf was due to failure of worm-eaten piles supporting it, & such defect should have been known if proper diligence had been used in inspection.—FURNESS WITHY CO., LTD. *v.* AHLIN (1918), 42 D. L. R. 97.—**CAN.**

163b. *Delivery to purchaser without production of lake-bills of lading.*]—*Held:* defts., an elevator co., to whom the goods had been shipped for storage, were liable.—NORTHERN GRAIN CO., LTD. *v.* GODERICH ELEVATOR & TRANSIT CO., LTD., [1926] 1 D. L. R. 297; [1926] S. C. R. 120.—**CAN.**

172 ii. ——.]—Pltf. delivered goods to defts., a warehouse co., for storage. The warehouse contract provided that the responsibility of the co. "for the contents of any piece or package is limited to the sum of $50, unless the value thereof is made known at the time of storage & receipted for in the schedule; an additional charge will be made for higher valuation." The goods, which were in several packages, were stored without a declaration of value & without any additional charge for a higher valuation. Through the negligence of defts.' servants, the goods were included in a shipment of other goods & sent to England. Some of pltf.'s goods were lost, & others damaged:—*Held:* the amount which pltf. was entitled to recover was limited by the clause of the warehouse contract.—MAUNSELL *v.* GAMPBELL SECURITY FIREPROOF STORAGE & MOVING CO., LTD., [1921] 2 W. W. R. 348; [1921] 2 W. W. R. 579.—**CAN.**

172 iii. ——.]—A cold storage co. gave a receipt for hops stored with them which bore, "The co. will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for any damage whatsoever. . . . All goods are received subject to the conditions on the back of this receipt." The first condition on the back was, "The co. will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for loss or damage to goods stored through maintaining too high or too low a temperature in the stores, failure of machinery, buildings or plant fire, or any other cause whatsoever other than theft":—*Held:* the contract meant that defenders promised to do their utmost to take care of the hops, but that, if their efforts were unsuccessful for any cause other than theft, they were not to be liable in damages.—BALLINGALL & SON *v.* DUNDEE ICE & COLD STORAGE CO. [1924] S. C. 238.—**SCOT.**

from relying upon it, inasmuch as it was not so extravagant as to imply that pltf.'s assent to it had been obtained by fraud, or so irrevelant as to be foreign to the contract; (2) defts. were protected by the condition, although the bicycle had not been deposited within the cloak-room; (3) on the above facts & findings judgment should be entered for defts.—GIBAUD *v.* GREAT EASTERN RY. Co., [1921] 2 K. B. 426; 90 L. J. K. B. 535; 125 L. T. 76; 37 T. L. R. 422; 65 Sol. Jo. 454, C. A.

Annotations:—As to (2) **Consd.** L. &. N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. **Refd.** Armour *v.* Walford (London), [1921] 3 K. B. 473; The Cap Palos, [1921] P. 458; Nunan *v.* Southern Ry. (1923), 130 L. T. 131; Buerger *v.* Cunard S. S. Co., [1925] 2 K. B. 646; The Refrigerant, [1925] P. 130. *Generally*, **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48; H. M. F. Humphrey, Ltd. *v.* Baxter, Hoare & Co. (1933), 149 L. T. 603; Ashby *v.* Tolhurst, [1937] 2 K. B. 242; A/S. Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

194. *Add. Annotation:*—**Consd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

195a. —— —— ——.]—DOVER *v.* MILLS (1831), 5 C. & P. 175; 172 E. R. 928, N. P.

Annotation:—**Refd.** Colepeppre *v.* Good (1832), 5 C. & P. 380.

197. *Add. Annotations:*—**Expld. & Distd.** Thompson *v.* London, Midland & Scottish Ry. Co., [1930] 1 K. B. 41. **Consd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76. **Apld.** Ehinger *v.* S. E. & C. Ry. & The Pullman Car Co. (1922), 38 T. L. R. 678; Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305. **Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Apld.** L'Estrange *v.* Graucob, Ltd., [1934] 2 K. B. 394.

198. *Add. Annotations:*—**Apld.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Refd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

199. *Add. Annotation:*—**Refd.** Bryce *v.* Hornby (1938), 82 Sol. Jo. 216.

201. *Add. Annotations:*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470; Alexander *v.* Rayson, [1936] 1 K. B. 169.

203. *Add. Annotation:*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

207. *Add. Annotation:—As to* (2) **Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Française (1926), 42 T. L. R. 735.

211. *Add. Annotations:*—**Refd.** Geddling *v.* Marsh, [1920] 1 K. B. 668; Aslan *v.* Imperial Airways, Ltd. (1933), 49 T. L. R. 415.

212. *Add. Annotation:*—**Apld.** Point Anne Quarries *v.* The M. F. Whalen (1922), 39 T. L. R. 37.

215. *Add. Annotations:*—**Consd.** The Kate, [1935] P. 100. **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Dobell C. (G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66; Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

216a. Duty to keep in repair.]—Where a person hires a specific thing for the purpose of using it, there is an implied contract on the part of the letter that he will in the meantime keep the thing, as I should say, in repair, that is, he will not by want of reasonable care after the contract is made allow it to become worse than it was at the time the contract was made (BRETT, L.J.).—ROBERTSON *v.* AMAZON TUG & LIGHTERAGE CO. (1881), as reported in 7 Q. B. D., at p. 606, C. A.

Annotations:—**Refd.** The West Cock, [1911] P. 208; The Glenmorven, [1913] P. 141.

218. *Add. Annotations:*—**Folld.** Mintz *v.* Silverton (1920), 36 T. L. R. 399. **Refd.** Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 475.

218a. Agreement to insure chattel—Against "all risks."]—Defts. hired a crane-barge from pltfs., one of the terms of the contract being that pltfs. would insure the crane against all risks, defts. paying the premium. Pltfs. took out a policy covering, as they thought, all risks. The crane, when proceeding to lift a load, broke away from its bedplate & fell over & was damaged. It was then found that the accident was not covered by the policy, & defts. refused to pay for the damage. In an action for breach of contract:—*Held:* though defts. had failed to discharge the *onus* which was upon them, of proving that what happened was not the result of negligence by their servants, yet, as the agreement in regard to insurance was intended to be an arrangement for the benefit of both parties, & as the accident came within the description "all risks" & defts. had stipulated that they were not to bear those risks, the action failed.—BRICE & SONS *v.* CHRISTIANI & NIELSEN (1928), 44 T. L. R. 335; 72 Sol. Jo. 172.

219. *Add. Annotation:*—**Refd.** Bryce *v.* Hornby (1938), 82 Sol. Jo. 216.

223. *Add. Annotation:—As to* (1) **Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Canadian Government Merchant Marine, [1927] 2 K. B. 432.

224. For the existing paragraph substitute as follows:—**Obligation to keep in repair—Agreement for redelivery in good working order.**]—SCHRODER *v.* WARD, No. 237, *post.*

226. *Add. Annotations:*—**Refd.** Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526; Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180; May *v.* May, [1929] 2 K. B. 386; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

227. *Add. Annotations:*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42; Bryce *v.* Hornby (1938), 82 Sol. Jo. 216.

232. *Add. Annotation:*—**Consd.** Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

233. *Add. Annotation:*—**Consd.** Aitchison *v.* Page Motors, Ltd. (1935), 154 L. T. 128.

PART III. SECT. 2, SUB-SECT. 3.—A.

231 iv. ——.]—A bailee is not liable for damages done to a chattel through the negligence of his servant where the servant at the time the injury was done was not acting in the course of his employment.—SOUTH ISLAND MOTORS, LTD. *v.* THACKER, [1931] N. Z. L. R. 1104.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 1.

se. *What amounts to hire-purchase agreement.*]—In order that an agreement may be classed as a hire-purchase agreement, the hirer's right to exercise his option to purchase need not be unfettered, unqualified, & absolute.—BROADLEY *v.* CHECKER CAB CO. (AUSTRALIA), LTD. (1931), 48 N. S. W. W. N. 44.—**AUS.**

238a. —— Hire of electric cooker—No alteration or addition to be made—What amounts to.]—EGHAM-STAINES ELECTRICITY CO., LTD. *v.* GAS LIGHT & COKE CO. (1937), 81 Sol. Jo. 649.

241. *Add. Annotation:*—**Folld.** Taylor *v.* Thompson (1929), 69 L. Jo. 116.

244a. ——.]—AUTOMOBILE & GENERAL FINANCE CORPN., LTD. *v.* MORRIS (1929), 73 Sol. Jo. 451.

244b. ——.]—TAYLOR *v.* THOMPSON (1930), 69 L. Jo. 116; 169 L. T. Jo. 101; [1930] W. N. 16.

244c. —— Sale of Goods Act, 1893 (c. 71), s. 1.]—Pltfs. negotiated by letter with defts. for the purchase of a certain machine. A letter from defts., which contained an estimate, stated that the estimate was subject to conditions printed thereon. One of the conditions provided that: "In lieu of any warranty or condition implied by law, we guarantee that the materials . . . are of the best quality," & that defts. would replace any part broken or unduly worn within 12 months. After further negotiations defts. sent to pltf. a hire-purchase agreement expressed in a covering letter to be drawn up in accordance with the terms stated in the letter above mentioned. The hire-purchase agreement provided that: "This agreement embodies the entire agreement as to the hiring of the machinery." There was in the agreement no exclusion of any warranty or condition. The hire-purchase agreement was duly entered into. The machine proved unsatisfactory & pltfs. brought an action for breach of warranty. The judge held that the correspondence formed no part of the contract between the parties & he gave judgment for pltfs.:—*Held:* (1) upon the evidence the correspondence formed part of the contract between the parties; (2) defts.' liability for warranty & condition was excluded by the correspondence & pltfs. could not succeed in their action; (3) since the hire-purchase agreement was an irrevocable agreement to sell on the part of the owner, it was a contract for the sale of goods within Sale of Goods Act, 1893 (c. 71), s. 1, & the statutory warranties & conditions would be implied.—FELSTON TILE CO., LTD. *v.* WINGET, LTD., [1936] 3 All E. R. 473, C. A.

245. *Add. Annotations:*—**Distd.** Taylor *v.* Thompson (1929), 69 L. Jo. 116. **Consd.** Lewis *v.* Thomas, [1919] 1 K. B. 319; Blakey *v.* Pendlebury's Trustees (1931). 47 T. L. R. 503; *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536; Modern Light Cars, Ltd. *v.* Seals (1933), 49 T. L. R. 503; Karflex, Ltd. *v.* Poole, [1933] 2 K. B. 251. **Refd.** South Bedfordshire Electrical Finance, Ltd. *v.* Bryant, [1938] 3 All E. R. 580.

247a. What amounts to hire purchase agreement.]—The purchaser of a motor car entered into an agreement with the vendors, motor traders, under which she signed a promissory note covering 24 monthly instalments payable under the agreement. That promissory note, which was stated in the agreement to be given & received not as payment of the monthly instalments but as collateral security for the due payment thereof, was made payable to the vendors, indorsed by them, & subsequently discounted with a banking co. The purchaser of the motor car, contrary

---

241 vi. ——.]—Pltf. handed over nine motor lorries to deft., receiving from him Rs.5,000 upon the terms of a written agreement, the material parts of which were as follows:—"I have to-day agreed to sell to you on the hire-purchase system for Rs.25,000 my nine lorries . . . in consideration of payment as under. In case of failure to pay any of the instalments on due date, previous payments will be considered null & void, & the lorries are not considered as sold until the final payment has been received. The purchaser has no right to mortgage or dispose of any lorries until the full amount has been paid & [plt.] or his nominee has the right to seize the lorries wherever they may be. The consideration money is to be paid as under. As against the payment of Rs.5,000 I have to-day given to you delivery of all the nine lorries, & also a letter addressed to the Commissioner of Police to transfer the lorries to your name":—*Held:* the agreement was an agreement for sale.—COLE *v.* NANALAL MORARJI DARE (1924), I. L. R. 49 Bom. 172.—**IND.**

241 vii. ——.]—Applt., which was a co. carrying on the business of selling new & secondhand motor cars, accepted an order from resp. for a motor car, which was written upon one of applt.'s order forms, the order describing the same but not stating in the description whether it was to be a new or a second-hand car. In the order resp. agreed to pay a deposit & the balance of the purchase money by instalments & to execute applt.'s usual form of hire-purchase agreement. On the order form it was stated that all new cars were sold subject to a guarantee which was set out, which did not include a guarantee that the car was new; & that no guarantee was given with second-hand cars. Resp. also signed applt.'s usual form of hire-purchase agreement, by which the co. agreed to let & the hirer to take the car described therein, the description being similar to that in the order form, & repeated the provisions as to guarantee above referred to; & this agreement excluded any implied "warranty undertaking or agreement other than is herein set forth." The car delivered by applt. to resp. was not new:—*Held:* the contract between the parties was constituted by the order & the hire-purchase agreement; & that, when read together, they constituted an agreement for the sale, & not merely for the hire, of the car.—MARCUS CLARK (AUSTRALIA), LTD. *v.* BROWN (1928), 40 C. L. R. 540; [1928] V. L. R. 293; [1928] Argus L. R. 189.—**AUS.**

241 viii. ——.]—A hire-purchase agreement relating to a motor truck provided for payment in nine monthly instalments. The hirer could become the owner of the truck on payment in full of the instalments & a rupee extra. On failure on part of the hirer to pay any instalment as it became due, the owner was entitled to seize the truck & credit its value as against the amount due but subject to a condition that the owner in no case would credit the hirer with more than the amount still due on the contract:—*Held:* the agreement though in form is one of hire, its object is to provide for a contract of sale in which security to the seller is provided for due payment of the purchase price.—MAUNG BA OH *v.* MOTOR HOUSE CO. (1929), I. L. R. 7 Ran. 431.—**IND.**

241 ix. ——.]—When it is clear from the agreement that the party taking the chattel, called the hirer or lessee, has to pay the full amount of consideration mentioned in the agreement, even though the payment is by instalments, & that amount is sufficient to cover the purchase price of the chattel, or when it is clear from the agreement that the hirer or lessee cannot at any time during the period mentioned in the agreement return the chattel to the other party called the owner, or lessor, & absolve himself from the obligation to make further payment, the agreement is really an agreement for sale & not for hire.

If the hirer is not bound to pay the full amount of the purchase price, or if he can terminate the hiring at any time by delivering the chattel to the other party, the agreement is in form & in substance an agreement for hire, & all that the hirer has obtained is an option to purchase.—BHIMJI *v.* BOMBAY TRUST CORPN., LTD. (1929), I. L. R. 54 Bom. 381.—**IND.**

245 iii. ——.]—The essential feature of a true hire-purchase agreement, as distinguished from a sale, is that the hirer should have a right to terminate the agreement at his pleasure.—MAHABALEE PRASAD *v.* PALMER (1932), I. L. R. 54; All. 781.—**IND.**

247 i. —— *Sale of Goods Act*, 1895—*Option only.*]—A hire-purchase agreement conferring an option to return the goods is not an agreement to sell within Sale of Goods Act, 1895, s. 14. Such a contract is one of bailment of a chattel, & the warranty of fitness is of the nature implied in that form of contract. Notwithstanding that the option to return a chattel cannot be exercised until after payment of the penultimate instalment of hire, a contract of hire-purchase so expressed is not an agreement to sell.—KLOSE *v.* DUNCAN & FRASER, LTD., [1928] S. A. S. R. 139.—**AUS.**

to the terms of the agreement & during its currency, sold the motor car to a third party, from whom it was bought by deft. On a claim by the original vendors claiming damages from the deft. for conversion of the motor car:—*Held:* the agreement between pltfs. & the original purchaser was a hire-purchase agreement; that the promissory note was given by way of collateral security only, & not by way of payment, conditional or other; & pltfs. were therefore entitled to recover possession of the motor car.—MODERN LIGHT CARS, LTD. *v.* SEALS, [1934] 1 K. B. 32; 102 L. J. K. B. 680; 149 L. T. 285; 49 T. L. R. 503; 77 Sol. Jo. 420.

249. *Add. Annotation:*—**Consd.** Modern Light Cars, Ltd. *v.* Seals (1933), 49 T. L. R. 503.

252a. —— **Liability for minimum payment—Termination of agreement by hirer.**]—H. hired, under the terms & conditions of a hire-purchase agreement, a tandem bicycle for the term of fifty-three weeks at small weekly payments. By cl. 5 of the agreement H. was given an option of terminating the hiring at any time by returning the bicycle but remaining liable for the rent up to the date of the return & for all other sums payable under the agreement & damages (if any) for any breach of any term of the agreement. By cl. 7 it was agreed that in the event of the hiring being determined no allowance or credit, etc., should be allowed to H., but he was to pay by way of compensation for depreciation of the goods in addition to any other sums payable thereunder such sums as with the amount previously paid for rent should make up a sum equivalent to not less than one-half of the total amount including the option purchase price payable under the agreement. H. having returned the bicycle in pursuance of cl. 5 after having paid only one instalment, pltfs. claimed a sum of £6 16*s.* 6*d.*, being as to £1 4*s.* arrears of rent, & as to £5 12*s.* 6*d.*, the further sum due under cl. 7. The county ct. judge having disallowed the latter amount as being a penalty, but having awarded pltfs. the sum of £1 15*s.* as damages in lieu thereof, pltfs. now appealed:—*Held:* no question as to pltfs.' claim under cl. 7 being liquidated damages or in the nature of a penalty arose, & therefore the money for which the hirer had made himself liable had to be paid & the claim could not be impeached on any principle of law.—ASSOCIATED DISTRIBUTORS, LTD. *v.* HALL, [1938] 2 K. B. 83; [1938] 1 All E. R. 511; 107 L. J. K. B. 701; 158 L. T. 236; 54 T. L. R. 433; 82 Sol. Jo. 136, C. A.

252b. Delivery—Refusal of hirer to take delivery—Remedy of owner.]—Under a hire-purchase agreement deft. agreed to hire from pltfs. a cash register for ten months certain at an agreed monthly rental payable in advance with an option to purchase on payment of a fixed sum within one month after payment of all the rent for the agreed period of hiring. Deft. in breach of his contract refused to accept delivery of the register. Pltfs. issued a default summons in the county ct. for rent accrued due up to the date of the summons:—*Held:* no actual debt had been incurred & the action was not maintainable, pltfs.' remedy being in damages only.—NATIONAL CASH REGISTER CO. *v.* STANLEY, [1921] 3 K. B. 292; 90 L. J. K. B. 1220; 125 L. T. 765; 37 T. L. R. 776; 65 Sol. Jo. 643, D. C.

254. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

255. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

256a. —— **After unsatisfied judgment for instalments.**]—Deft. had entered into a hire-purchase agreement with pltfs. for the acquisition of a cold-room. Several instalments being in arrear, pltfs. brought an action, & obtained judgment for the amount of the instalments due. As the judgment remained unsatisfied, pltfs. retook possession of most of the cold-room, but were prevented from retaking all of it. They therefore brought the present action to recover the rest of the goods. It was contended by deft. that the result of the judgment in the first action, being an action to recover the value of the chattel, had the effect of terminating the contract & transferring the ownership of the chattel to deft.:—*Held:* the first action was merely one for instalments due, & did not operate to transfer the ownership in the chattel. As there was still a breach of contract, pltfs. were entitled to recover possession.—SOUTH BEDFORDSHIRE ELECTRICAL FINANCE, LTD. *v.* BRYANT, [1938] 3 All E. R. 580; 82 Sol. Jo. 681, C. A.

257. *Add. Annotation:*—**Apld.** A.-G. *v.* Pritchard (1928), 97 L. J. K. B. 561.

258. *Add. Annotations:*—**Distd.** A.-G. *v.* Pritchard (1928), 97 L. J. K. B. 561. **Consd.** South Bedfordshire Electrical Finance, Ltd. *v.* Bryant, [1938] 3 All E. R. 580.

258a. —— **Recovery of unpaid instalments.**]—On a claim by the owner of furniture for unpaid instalments:—*Held:* as the agreement with the hirer was for the sale of the furniture, the property not to pass to him until all the instalments had been paid, & the owner had resumed possession of it & dealt with it in such a way as to put it out of his power to return it to the hirer, he was disentitled from claiming part of the purchase price, & the proper remedy was to sue for damages for breach of contract.—A.-G. *v.* PRITCHARD (1928), 97 L. J. K. B. 561; 44 T. L. R. 490.

248 vi. —— —— *What is payment.*]—Under a hire-purchase agreement the hirers made an initial payment & gave to the owners bills of exchange for the total amount of the monthly payments as collateral security. These bills were subsequently discounted by the owners:—*Held:* no conditional payment, & the property in the goods remained in the owners.—*Re* RANKIN & SHILIDAY, [1927] N. 162.—**IR.**

st. *Subject-matter — Radio sets.*]—"Electric equipment, apparatus, & appliances required in connection with the use of electric energy" which by Order in Council have been added to the chattels or class of chattels that under the Chattels Transfer Act, 1908, may be disposed of by way of customary hire-purchase agreements, has reference to outfits, devices and things necessary to bring of convey electric energy to the point where it can be used, & does not include equipment, etc., requiring electric energy in connection with their use. From this it follows that radio receiving sets cannot be the subject of customary hire-purchase agreements.—BLANCHARD *v.* RANDALL & KING, LTD. (1937), 32 M. C. R. 95.—**AUS.**

PART III. SECT. 3, SUB-SECT. 2.

251 ii. —— *Initial payment at commencement of hiring—Whether payment in advance or first instalment.*]—AUTO SUPPLY CO., LTD. *v.* RAGHUNATHA CHETTY (1929), I. L. R. 52 Mad. 829.—**IND.**

259 ii. ——.]—ROGERS *v.* NANAIMO MOTORS, LTD. (1926), 37 B. C. R. 326.—**CAN.**

261. *Add. Annotation :*—**Refd.** Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255.

262. *Add. Citation :*—119 L. T. 632.

Add. Annotations :—As to (1) **Consd.** Nelson Murdoch *v.* Wood (1922), 126 L. T. 745. *As to* (2) **Apld.** Cohen *v.* Roche, [1927] 1 K. B. 169.

262a. —— —— ——.]—Pltfs. let a piano on a hire-purchase agreement which provided that until all the instalments were paid the hirer should have no property in the goods otherwise than as hirer, & that in case of any breach of the agreement pltfs. might, without any formal notice, put an end to the hiring & retake possession of the piano, & that the hirer should keep the piano in his own custody. At a date when the hirer had paid all the instalments then due, but before he had paid the total price, he sold the piano to deft., who *bonâ fide* believed that the hirer was the absolute owner. The hirer having subsequently got the piano back into his own possession & having again disposed of it, but having, in the meantime, kept up the payment of the instalments, pltfs., on ascertaining the facts, claimed damages from deft. for conversion :—*Held :* the sale by the hirer to deft. was not *ipso facto* a repudiation of the hire-purchase agreement, as pltfs. had never accepted the repudiation, but it transferred whatever interest the hirer had at the time of the sale, & as pltfs. were not entitled to the possession of the piano until they elected to put an end to the agreement there was no conversion by deft.—NELSON MURDOCH & Co. *v.* WOOD (1921), 126 L. T. 745; 38 T. L. R. 23; 66 Sol. Jo. (W. R.) 6 D. C.; *revsd.* on other grounds (1922), 38 T. L. R. 393, C. A.

264. After " the owner can maintain an action for conversion against the purchaser " add ", as the hirer has not ' agreed to buy ' the goods within Factors Act, 1889 (c. 45), s. 9."

Add. Annotation :—**Consd.** Buller & Co. *v.* Brooks, T. J. (1930), 142 L. T. 576.

268a. Ownership at time of agreement—Necessity for.]—Pltfs. were " hire-purchase dealers." Their business consisted in purchasing motor cars from the owners thereof for cash & letting them out to would-be purchasers on hire-purchase agreements. At the request of deft. pltfs. purchased a motor from K., & on Nov. 12, 1931, entered into a hire-purchase agreement in respect of that car with deft. In the hire-purchase agreement pltfs. were called " the owners " & deft. was called " the hirer." The agreement provided (*inter alia*) for the payment by the hirer of a deposit of £95 " in consideration of the option of purchase hereinafter contained." The usual provision was made for the payment of rent by monthly instalments, & it was agreed that if the hirer desired to terminate the hire, or if the owners terminated the hire or retook the car for non-performance of any terms of the agreement, the hirer should pay such sum as, with the deposit & instalments already paid, would make a total of £235 " by way of compensation for depreciation of the said motor." There was the usual option to the hirer to become the purchaser of the car on completing the payment of instalments totalling with the deposit (which was to become the absolute property of the owners, & for which credit was to be given only in the event of the purchase being completed or the depreciation money becoming payable) £309 5*s.* 6*d.*, or by payment at any time after the execution of the agreement of the outstanding balance of that amount, " but unless & until such purchase has been so effected the motor shall be & remain the sole & absolute property of the owners, & the hirer a mere bailee thereof." Deft. paid the deposit of £95 to K., who gave credit for it to pltfs. against the purchase price paid by them. Deft. then made default in payment of the first instalment of rent. Pltfs. retook the car & sued deft. in the Mayor's & City of London Ct. for £100 (being the £235 depreciation money, less the £95 deposit, & £40 abandoned to bring the claim within the jurisdiction of the ct.). After action brought it was discovered that K. had no title to the car, of which he had obtained possession dishonestly. The car was claimed by the true owners, who were then bought out by pltfs. Deft. contended that it was a condition of the contract that pltfs. were the owners of the car at the date of the hire-purchase agreement, & could give deft. a valid option of purchase. That condition being broken he contended that he was under no liability to the pltfs., & he counterclaimed for the return of the deposit of £95 (which pltfs. had never actually received, since it had merely reduced the amount out of which they were swindled by K.). Judgment having been entered in the ct. below for deft. on the claim & counterclaim, pltfs. appealed :—*Held :* on the true construction of the agreement there was an express condition that pltfs. were the owners of the motor car & entitled to give deft. an option to purchase it; that condition was broken, & the judgment on the claim was therefore right. As to the counterclaim the deposit was expressly stated to be " in consideration of

---

264 v. —— ——.]—Pltf. & C. entered into a hire-purchase agreement in the usual form in respect of a motor car. After making his first payment C. delivered the car to deft. W. to sell. Deft. K. bought the car at an auction conducted by W. :—*Held :* both defts. were liable to pltf.—ARCHIBALD *v.* WASHER & Co. & KINNERNEY, [1923] N. Z. L. R. 165.—**N.Z.**

sa. *Seizure by owner on default by hirer—Goods of third party attached to chattel—Conversion by owner.*]—M. had hired to W. a motor lorry with solid tyres. These became worn out, & B. fitted new tyres to the lorry under a hire-purchase agreement with W. Subsequently W. made default under his hiring agreement with M., who seized the lorry & refused to hand over the tyres to B. The tyres were detachable only by means of special machinery which M. did not possess :—*Held :* B. was entitled to possession of the tyres, & could succeed against M. in an action for detinue.—BERGOUGNAN *v.* BRITISH MOTORS, LTD. (1929), 30 S. R. N. S. W. 61; 47 N. S. W. W. N. 10.—**AUS.**

so. *Wrongful repossession by owner—Measure of damages.*]—Pltf., who was then share farming, hired from deft. a harvester with the option of purchase. When he still had to pay £83 if he wished to complete his purchase he gave up farming & went mining for gold. He left the machine with a neighbour for safe custody, & deft. wrongfully re-possessed it, & after doing some necessary repairs, resold it for £82, which was the best price possible. Pltf. claimed to be entitled to substantial damages for conversion assessed in accordance with the rules laid down in *Liesbosch* (*Owners*) *v. S.S. Edison* (*Owners*), [1933] A. C. 448 :—*Held :* as pltf. had abandoned farming the harvester was not a factor in his business as a going concern, & he was entitled to nominal damages only.—MIZZA *v.* MCKAY-MASSEY HARRIS (H. V.) PTY., LTD., [1935] W. A. L. R. 87.—**AUS.**

the option of purchase," which pltfs. were never in a position to give. The consideration had therefore wholly failed, & the defendant had also rightly succeeded on the counterclaim.

Qu.: whether, if the defective title of pltfs. had not been discovered until a number of instalments of rent had been paid & deft. had had the use of the motor car for a substantial part of the contemplated period, he could have recovered the whole of the instalments paid without deduction for use & occupation.

Per GODDARD, J. Apart from the express condition in this agreement, it is an implied condition (& not merely a warranty) of any hire-purchase agreement, that the persons letting the chattel are the owners of it at the date when the agreement is entered into, & not merely that they will become the owners before the option to purchase is exercised. Moreover, the doctrine that a bailee is estopped from denying his bailor's title unless evicted by title paramount does not apply to hire-purchase, where the bailment of hire is coupled with an element of sale.—KARFLEX, LTD. *v.* POOLE, [1933] 2 K. B. 251; 102 L. J. K. B. 475; 149 L. T. 140; 49 T. L. R. 418, D. C.

Annotation:—**Expld. & Distd.** Mercantile Union Guarantee Corpn., Ltd. *v.* Wheatley, [1938] 1 K. B. 490.

268b. —— ——.]—Under a hire-purchase agreement dated Feb. 7, 1936, pltfs. agreed to let a motor-lorry to deft. on usual hire-purchase terms. The lorry was bought & paid for by pltfs. on Feb. 11, 1936, & was delivered to deft. on Mar. 8. On Sept. 16, 1936, pltfs. retook possession of the lorry, deft. having got into arrears with his instalments, & sued deft. for the balance of depreciation money & instalments due. Deft. sought to repudiate the contract on the ground that pltfs. had broken the condition, express or implied, that they were the owners of the lorry, & had a good title to sell or hire it, at the date of the signing of the agreement:—*Held:* the material date at which the implied condition as to title arose was not the date of the signing of the agreement but the date of the delivery of the lorry to the would-be hire purchaser, & by the material date pltfs. were the owners of the lorry.—MERCANTILE UNION GUARANTEE CORPN., LTD. *v.* WHEATLEY, [1938] 1 K. B. 490; [1937] 4 All E. R. 713; 107 L. J. K. B. 158; 158 L. T. 414; 54 T. L. R. 151; 81 Sol. Jo. 1002.

268c. Purchaser absconding with goods—Effect on financing agreement.]—Pltfs. were financing a hire-purchase agreement of defts., who were the makers of ranges. The hire-purchase agreement was entered into between pltfs. & the purchaser, & concerned the hire purchase of two ranges. Defts. agreed that, should pltfs. for any reason whatsoever have to resume possession of the ranges, they would, upon being called upon to do so, collect them, & further agreed to purchase them at a price not exceeding the amount then outstanding under the hire-purchase agreement. The purchaser, after paying one instalment, absconded & was adjudicated bkpt. He took one of the ranges with him, & it was contended that defts. were under an obligation to purchase this missing range, & to pay the purchase price thereof, although it could not be found:—*Held:* the agreement by defts. to purchase the range involved the capacity of pltfs. to give delivery of it, &, as pltfs. could not state where the missing range was, defts. were under no obligation to pay the amount agreed as the purchase price thereof.—WATLING TRUST, LTD. *v.* BRIFFAULT RANGE CO., LTD., [1938] 1 All E. R. 525; 82 Sol. Jo. 233, C. A.

271a. —— ——.]—DASH *v.* FAULKNER (1886), 2 T. L. R. 255.

272a. —— —— Breach of agreement as to method of redelivery — Goods stolen — Measure of damages.]—BOOTH *v.* WELLBY (1928), 165 L. T. Jo. 213, C. A.

274a. Materials supplied by bailee—Implied warranty of fitness for purpose.]—Pltfs. entrusted a motor-car for repair to defts., who were garage proprietors & repairers of motor-cars. In the course of repairing the car

---

PART III. SECT. 4.

269 i a. —— —— ——.]—*Held:* a firm of upholsterers who had contracted to remove, beat, & relay a carpet, were not liable for its accidental destruction while in the premises of a firm of carpet-beaters with whom they had sub-contracted to beat it, there being no *delectus personæ* in such a contract as to bar them from employing a sub-contractor, & no negligence in the selection of the sub-contractor.—STEVENSON & SONS *v.* MAULE & SON, [1920] S. C. 335; 57 Sc. L. R. 284.—**SCOT.**

269 iv. —— —— ——.]—On leaving his motor car at deft.'s garage for the purpose of having it repaired pltf. signed a "work order," at the end of which there appeared in small type the following: "this co. does not assume in any way any liability whatever either for cars left with us for repair, storage or other purposes, or while being driven by our employees." Pltf. did not call for his car as soon as it was repaired & deft. put it in storage, but failed to remove the water from the radiator with the consequence that it froze & damaged the car:—*Held:* the above special clause in the work order exonerated deft. from liability whether pltf. had read it or not.—WALDEN *v.* HANEY GARAGE, LTD., [1928] 1 D. L. R. 688; [1928] 1 W. W. R. 371; 39 B. C. R. 413.—**CAN.**

269 v. —— —— ——.]—Pltf. left his motor car at the garage of deft., a garage proprietor & motor mechanic, & instructed him to adjust the headlights of the car. In the garage was exhibited a notice, seen by pltf., "Cars garaged & driven at owner's risk—Every care but no responsibility." Deft. drove the car on the road to test the headlights, when a collision caused by deft.'s negligence damaged the car:—*Held:* the notice applied to the driving of the car during which the damage occurred, but did not amount to an unequivocal & unambiguous notification to pltf. that the car was being accepted by deft. on terms that deft. was not to be liable for the consequences of his own negligence in driving, & therefore deft. was responsible.—MORAN *v.* LIPSCOMBE (1929), V. L. R. 10; 1929 A. L. R. 38.—**AUS.**

269 vi. —— ——.]—An automobile left with deft. to be repaired & parked by deft. in an open shed at the rear of the repair shop, with the key in the ignition lock, & with no one in attendance for some 20 minutes to half an hour to protect it, was stolen and damaged. In an action to recover the cost of the repairs necessitated by the damage it suffered while in the hands of the thief or thieves:—*Held:* deft. had been negligent & was, therefore, liable.—RUTHERFORD & MCDONALD'S ORPHEUM GARAGE *v.* STEWART-WARNER SALES CO., LTD., [1935] 3 W. W. R. 472; 50 B. C. R. 256.—**CAN.**

270 i. —— —— *Liability for acts of servant.*]—A master is liable for the conduct of his servant whom he selects & puts in his place to discharge the duty he has undertaken, & this law is applicable in a case of bailment. The conduct of the servant is then the conduct of the master, & the master is able to the bailor.

Pltf., a customer of deft., left his motor car at deft.'s service station to be supplied with gas & oil & washed. There were no facilities at the station for washing the car, & deft.'s servant, as was his duty, took out the car to drive it to a garage to be washed. On the way to the garage the servant changed his mind & drove the car in another direction "upon a frolic of his own." In doing so he ran the car into a telephone pole & damaged the car:—*Held:* deft. as master was liable in damages for the wrongful act of his servant.—VAN GEEL *v.* WARRINGTON, [1929] 1 D. L. R. 94; 63 O. L. R. 145.—**CAN.**

defts. obtained from the makers of the car, & fitted, six new connecting rods. One of these rods had a latent defect, which defts. could not by reasonable care or skill have discovered, & it broke, causing extensive damage to the engine. Pltfs. brought an action in the county ct. claiming damages from defts., but the county ct. judge gave judgment for defts. on the ground that he was not prepared to hold, in the absence of direct authority, that in a contract for work done & materials supplied there was an absolute warranty that the materials supplied were fit for the purpose. Pltfs. appealed:—*Held:* the warranty implied in a contract for work done & materials supplied as to the fitness of the materials was not less than that implied in a contract for sale of goods—namely, an absolute warranty of fitness. But that warranty might be excluded if it appeared that the person giving the order did so in such a form as to show that he did not rely on the contractor's skill & judgment. The case must therefore go back to the county ct. judge for him to determine on the evidence whether the implied warranty was in fact excluded or not.—MYERS (G. H.) & Co. *v.* BRENT CROSS SERVICE Co., [1934] 1 K. B. 46; 103 L. J. K. B. 123; 150 L. T. 96, D. C.

Part IV.—Considerations Common to all Classes of Bailment.

278. *Add. Annotations:*—**Refd.** Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526; Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180; May *v.* May, [1929] 2 K. B. 386; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

280. *Add. Annotations:*—**Consd.** Kempler *v.* Bravingtons (1925), 133 L. T. 680. **Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

285. *Add. Annotations:*—**Refd.** Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte de Mulhouse (1924), 93 L. J. K. B. 1098; The Jupiter (No. 3) (1927), 137 L. T. 333.

286. *Add. Annotation:*—**Refd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

287. *Add. Annotations:*—**Distd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142. **Refd.** Karflex, Ltd. *v.* Poole, [1933] 2 K. B. 251.

290. *Add. Annotation:*—**Refd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

296. *Add. Annotations:*—**Distd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223; Wait & James *v.* Midland Bank (1926), 31 Com. Cas. 172.

298. *Add. Citation:*—19 Q. B. D. 68.
Add. Annotations:—**Consd.** Flatau *v.* Sawyer (1892), 8 T. L. R. 656. **Refd.** Sarat Chunder Dey *v.* Chunder Lala (1892), 56 J. P. 741; H. *v.* H., [1928] P. 206.

299. *Add. Annotation:*—**Consd.** Laurie & Morewood *v.* Dudin (1925), 134 L. T. 309.

300. *Add. Annotation:*—**Consd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223.

304a. ——.]—Defts., warehousemen, held 618 quarters of maize belonging to A., who sold 200 quarters thereof to W., who sold them to pltfs., giving to the latter a delivery order which they lodged with defts. Defts. did not object to the order, nor did they make any acknowledgment to pltfs. of their title:—*Held:* the mere receipt of the delivery order by defts. without objection did not estop them from denying that pltfs. were the owners of the 200 quarters.—LAURIE & MOREWOOD *v.* DUDIN & SONS, [1926] 1 K. B. 223; 95 L. J. K. B. 191; 134 L. T. 309; 42 T. L. R. 149; 31 Com. Cas. 96, C. A.

Annotations:—**Consd.** Wait & James *v.* Midland Bank (1926), 31 Com. Cas. 172; *Re* Wait, [1927] 1 Ch. 606.

304b. ——.]—WAIT & JAMES *v.* MIDLAND BANK (1926), 31 Com. Cas. 172.

306. *Add. Annotation:*—**Consd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223.

309. *Add. Annotations:*—**Apld.** The Joannis Vatis, [1922] P. 92. **Refd.** The Rosalind (1920), 90 L. J. P. 126.

312. *Add. Annotations:*—**Consd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586. **Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

313. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

317. *Add. Annotation:*—**Refd.** Whiteley *v.* Hilt, [1918] 2 K. B. 808.

318a. —— ——.]—SINGER & Co., LTD. *v.* FOULKES (D. E.) & Co., LTD. (1931), 75 Sol. Jo. 603.

319a. Completion of work—Goods sent to tradesman for work to be done.]—Where goods are sent to a tradesman to exercise his skill upon them, his duties as bailee do not cease

PART IV. SECT. 1, SUB-SECT. 1.

275 ii. ——.]—The law imposes an obligation upon a bailee to restore the article bailed to the bailor, subject to this, that the bailee is excused from restoring it if his inability to do so is due to no want of reasonable care on his part.—PATERSON *v.* MILLER, [1923] V. L. R. 36.—AUS.

PART IV. SECT. 1, SUB-SECT. 7.

316 ii. —— ——.]—S. sold certain sheep to D. Under the contract of sale, on a fixed date, a count & *pro formâ* delivery was to be given, & such delivery was to be taken only upon payment in cash of the full amount of the purchase-money & not before. Until such payment in cash, or until all cheques, etc., given in payment were met & satisfied, the sheep were to remain the sole & absolute property of S. During the period between the *pro formâ* delivery & payment the sheep were to be in charge of D. D. sold the sheep though payment to S. in accordance with the terms of the contract had not been made:—*Held:* under the terms of the contract, S. had a right to immediate possession of the sheep.—SCOTTON *v.* BRIDGE & Co., LTD. (1919), 19 N. S. W. L. R. 70.—AUS.

as soon as his work is done. Until the parties have shown, either by express words or by conduct, that they intend to alter the original relationship between them, that relationship continues.—MITCHELL *v.* DAVIS (1920), 37 T. L. R. 68.

322. *Add. Annotation :*—**Refd.** Whiteley *v.* Hilt, [1918] 2 K. B. 808.

325. *Add. Citation :*—119 L. T. 632.

Add. Annotations :—**Consd.** Nelson Murdoch *v.* Wood (1922), 126 L. T. 745. **Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

329a. —— —— **After termination of bailment.**]—*Semble :* a bailor cannot maintain trover against his bailee until after the term of the bailment has expired.—UPHAM *v.* GOULSTONE (1843), 2 L. T. O. S. 166.

333a. —— —— **Loss of goods without negligence—Involuntary bailee.**]—If involuntary bailees of property, without negligence, do something which results in the loss of the property by the owner thereof, they are not liable for conversion.—ELVIN & POWELL, LTD. *v.* PLUMMER RODDIS, LTD. (1933), 50 T. L. R. 158 ; 78 Sol. Jo. 48.

336. *Add. Annotations :*—**Consd.** Coldman *v.* Hill, [1919] 1 K. B. 443. **Refd.** City of Baroda (Cargo Owners) *v.* Hall Line (1926), 42 T. L. R. 717.

338. *Add. Annotations :*—**Consd.** Coldman *v.* Hill, [1919] 1 K. B. 443. **Apld.** Betts *v.* Metropolitan Police District Receiver (1932), 48 T. L. R. 517. **Consd.** Copper Exporters Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

339. *Add. Annotation :*—**Consd.** White *v.* Smith (1927), 96 L. J. K. B. 397.

339a. Right of sale—On non-payment of charges—Storage of goods.]—Defts., a firm of warehousemen, received a quantity of furniture from pltf. to be stored by them at an agreed rental. An express condition of the contract stipulated that if the rent or other charges due to defts. should be two years in arrear defts., on giving proper notice in the terms of the contract to pltf., should be entitled to sell the whole or any part of the goods & pay themselves out of the proceeds :—*Held :* defts. were entitled to sell the whole of the goods, & it was not unreasonable that they should do so, & they had done nothing actionable in selling.—WILLETTS *v.* CHAPLIN & Co. (1923), 39 T. L. R. 222.

340. *Add. Annotations :*—**Apld.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886. **Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

348. *Add. Annotation :*—**Consd.** Buller & Co. *v.* Brooks, T. J. (1930), 142 L. T. 576.

350. *Add. Annotations :*—**Consd.** Leitch (William) & Co. *v.* Leydon ; Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

357. *Add. Annotations :*—**Apld.** The Joannis Vatis, [1922] P. 92. **Refd.** The Rosalind (1920), 90 L. J. P. 126.

371. *Add. Annotations :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945. **Refd.** The Arpad, [1934] P. 189.

372. *Add. Annotation :*—**Refd.** The Joannis Vatis (1921), 15 Asp. M. L. C. 506.

373. *Add. Annotations :*—**Consd.** The Rosalind (1920), 90 L. J. P. 126. **Apld.** The Joannis Vatis, [1922] P. 92 ; The Zelo, [1922] P. 9. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127.

374a. *S. P.* BROWN *v.* HAND-IN-HAND FIRE INSURANCE SOCIETY (1895), 11 T. L. R. 538 ; 39 Sol. Jo. 672.

374b. —— —— **With interest from date of loss.**]—While on hire by the Admlty. a steam trawler was sunk through a collision with the *R.* The value of the trawler was agreed between the parties, but the Admlty. claimed, as bailees in possession, to recover as part of their damages interest from the date of the loss. The owners of the *R.* contended that interest was only payable from the date when the Admlty. paid the value of the trawler to her owners :—*Held :* under the Admlty. rule a bailee in possession was entitled to recover from a wrongdoer a complete equivalent of the chattel deteriorated or lost, namely, its value at the time of the deterioration or loss, with interest from that date ; but inasmuch as there was an agreement between the parties that defts. should pay what the Admlty. had to pay to the owners of the trawler, interest on the payment only ran from the date of payment.—THE ROSALIND (1920), 90 L. J. P. 126 ; 37 T. L. R. 116.

379. *Add. Annotations :*—**Apld.** The Zelo, [1922] P. 9. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127 ; Wilston S.S. Co. *v.* Andrew Weir (1925), 31 Com. Cas. 111.

381. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

382. *Add. Annotation :*—*As to* (1) **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

PART IV. SECT. 2, SUB-SECT. 1.

344 v a. —— —— ——.]—WALL *v.* PORTER, [1930] 3 D. L. R. 343.—CAN.

354 iii. —— —— *Joint negligence of bailee & third party.*]—A. entrusted his motor car to C. for repairs. While the car was being tested by C. it came into collision with a lorry belonging to B. In an action for damages brought by A. against B., the jury found that the driver of the lorry had driven at an excessive speed, & that the driver of the motor car was negligent in not keeping a proper look-out : —*Held :* the doctrine of identification of bailor & bailee was not applicable in relation to liability for negligence.—WELLWOOD *v.* KING (ALEXANDER), LTD., [1921] 2 I. R. 274.—IR.

354 iv. —— ——.]—A bailor is not so far identified with his bailee as to be prevented from recovering damages against a third person with respect to injuries to the subject-matter of the bailment resulting from the negligence of the third person & the contributory negligence of the bailee.—KRAHN *v.* BELL, [1930] 2 W. W. R. 146 ; 4 D. L. R. 480 ; 24 S. L. R. 365.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.

376 ii. —— *Proceeds of sale paid to fictitious owner.*]—The owner of furniture entrusted it to pltf. for storage. Pltf. was fraudulently induced to send the furniture for sale by deft., who was to account to the owner for it. Deft. sold the furniture & paid the purchase-money to the person who had falsely represented himself to be the owner :—*Held :* pltf. could not maintain an action against deft. either for conversion or for money had & received.—GRACE BROTHERS, LTD. *v.* LAWSON (1922), 31 C. L. R. 130.—AUS.

390a. —— Purchaser—Bailment by seller—Effect of exemptions clause in contract of bailment.] —When goods in a warehouse are sold & the seller gives the buyer a delivery note addressed to the warehouseman, which the buyer accepts, the buyer becomes assignee of the contract between the seller & the warehouseman & is bound by its terms. Where, therefore, the contract between the seller & the warehouseman contained a clause exempting the latter from liability for negligence causing injury to the goods, & the goods were in fact injured while in the warehouse through the alleged negligence of the warehouseman:—*Held:* the warehouseman was entitled to rely on the exemptions clause as a defence to an action claiming damages for negligence brought against him by the buyer.—H. M. F. HUMPHREY, LTD. *v.* BAXTER, HOARE & CO., LTD. (1933), 149 L. T. 603; 77 Sol. Jo. 540.

392. *Add. Annotations:*—**Consd.** Brooke *v.* Bool, [1928] 2 K. B. 578. **Reld.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

PART IV. SECT. 2, SUB-SECT. 3.

383 i. *Negligence of hirer in use of chattel.*]—WAINIO *v.* BEAUDREAULT (Ont.), [1927] 4 D. L. R. 1131.—**CAN.**

383 ii. ——.]—A bailor is not responsible for the negligence of his bailee.—GIBSON *v.* O'KEENEY, [1928] N. I. 66.—**IR.**

BANKERS AND BANKING.

Part I.—Constitution and General Position of Banks.

4a. **Restraint of transfer—Practice.**]—An application under 39 & 40 Geo. III., c. 36, to restrain the Bank from making a transfer without making them parties, must be upon notice to defts., or on affidavit, as in cases of waste. —A.-G. *v.* GALE (1802), 6 Ves. 772, n.; 31 E. R. 1301.

9a. —— —— **To foreign trustees.**]—Demurrer allowed to a bill by the Bank of England for an injunction against the action of an exor. claiming a transfer of stock. Considering the stock as specifically bequeathed (which was doubtful) to trustees in France upon special trusts, if the exor. cannot maintain the action upon the nature of the bequest, or as having assented, the injunction is unnecessary; if he can, upon his title to the stock, to be applied as the other property, there is no equity.—BANK OF ENGLAND *v.* LUNN (1809), 15 Ves. 569; 33 E. R. 870.

23. *Add. Annotation:*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

38a. —— —— **Court of Chancery Act, 1841 (c. 5), s. 4.**]—CHAMBERLAIN & SPROAT *v.* WALL & LLOYD (1920), 150 L. T. Jo. 387.

56. *Add. Annotations:*—**Distd.** Hong Kong & Shanghai Bank *v.* Lo Lee Shi, [1928] A. C. 181. **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; Koch *v.* Dicks, [1932] W. N. 156; Broken Hill Proprietary Co. *v.* Latham (1932), 48 T. L. R. 630.

57. *Add. Annotation:*—*As to* (2) **Consd.** Woollatt *v.* Stanley (1928), 138 L. T. 620.

67a. —— ——.]—SNOW *v.* LEATHAM (1826), 2 C. & P. 314; 172 E. R. 141, N. P.

Annotation:—**Refd.** Slater *v.* West (1828), 3 C. & P. 325.

98. *Add. Annotation:*—**Consd.** Bailey *v.* Bailey, [1926] Ch. 758.

106. *Citations:*—For "3 L. T. M. C. 84" read "3 L. J. M. C. 84."

107. After this case add:—
—— ——.]—*See, now,* Savings Bank Act, 1920 (c. 12), s. 1, & Savings Bank Act, 1929 (c. 27), s. 10, Sched.

112a. **"Dispute"—Conflicting claims to deposit—Jurisdiction of Registrar of Friendly Societies.**]—*Held:* (1) the words "any person claiming to be entitled to any money deposited in such savings bank" in Savings Bank Act, 1844 (c. 83), s. 14, were not limited to persons claiming through a depositor; (2) a dispute between a depositor & a person claiming adversely to him was a dispute within the sect.; (3) the Registrar of Friendly Societies now has jurisdiction over disputes between rival claimants to a deposit.—BAILEY *v.* BAILEY, [1926] Ch. 758; 95 L. J. Ch. 470; 135 L. T. 431; 42 T. L. R. 502, C. A.

112b. **Nomination to deposit—Invalid nomination—Recovery of money paid under.**]—P., who had money to his credit in the Post Office Savings Bank, signed a nomination form by which he left the money to deft. The name of a witness appeared on the form, but P. had not signed the form in his presence as required by the regulations. After P.'s death, as the form appeared on the face of it to be valid, the Postmaster-General paid the money to deft. Pltf., having taken out letters of administration of P.'s estate, claimed the money from deft., as money received by him to the use of pltf.:—*Held:* the form was invalid, & the position of deft. was the same as if he had received payment under a will afterwards held invalid, & pltf. was entitled to recover.—PEARMAN *v.* CHARLTON (1928), 44 T. L. R. 517; 72 Sol. Jo. 368.

SECT. 6*a*.—**MUNICIPAL SAVINGS BANKS.**

112c. **Nomination to deposit—Regulations—Power of bank to alter.**]—A. had a sum of money on deposit at a municipal savings bank, which he purported to nominate to his two daughters under the regulations relating to deposits in savings banks. A. died intestate, & an application was made by one of his next of kin for a declaration that the nomination was void, on the ground that there was a limit as to nominations by depositors under the special Act of the corpn. whose bank it was, & that, even though by later regulations the corpn. had purported to abandon this limitation, such a nomination was *ultra vires* the special Act & void:—*Held:* regulations as to nominations could be made by the corpn. under their special Act similar to those indicated in Savings Banks Act, 1887 (c. 40), with such modifications, including abolition of the maximum, as might be considered necessary; the limit laid down could be abolished under these regulations & such abolition need not abrogate the whole matter, & the nomination by deceased was good.—*Re* KIMBER, VALE *v.* ROCKMAN, [1928] Ch. 749; 97 L. J. Ch. 430; 139 L. T. 550; 72 Sol. Jo. 545.

128. *Add. Annotation:*—**Refd.** *Re* Lee Behrens & Co. (1932), 48 T. L. R. 248.

128a. —— **To act as sole judicial trustee with remuneration.**]—A bank may be appointed a sole judicial trustee, with remuneration, under the sect. dealing with the appointment of "a person" under Judicial Trustee Act, 1896 (c. 35).—*Re* COHEN, COHEN *v.* COHEN (1918), 62 Sol. Jo. 682.

PART I. SECT. 6.

111 l. *Savings bank book—Notice of loss—Meaning of "lost."*]—A rule of the Savings Bank of South Australia which by the Savings Bank Act, 1875, has the same force as if inserted in the Act, provides that if a pass-book be lost, notice in writing shall forthwith be given to the bank:—*Held:* a stolen pass-book is lost within the meaning of the rule.—MICHAIL *v.* SAVINGS BANK OF SOUTH AUSTRALIA, [1930] S. A. S. R. 60.—**AUS.**

t. Read now "**112a l.**"

156. *Add. Citation :—sub nom.* BANK OF AUSTRALASIA *v.* BANK OF AUSTRALIA, 12 Jur. 189.

159. *Add. Citation :*—18 Jur. 885.

166. *Add. Annotations :*—**Refd.** Wright *v.* Morgan, [1926] A. C. 788 ; A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743 ; Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

169. *Add. Annotations :*—**Consd.** Atherton *v.* British Insulated & Helsby Cables, [1925] 1 K. B. 421. **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

203. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

215a. *S. P.* FRY *v.* RUSSELL (1858), 3 C. B. N. S. 665 ; 140 E. R. 902 ; *sub nom.* FRY *v.* RUSSELL, POWIS *v.* BUTLER, 27 L. J. C. P. 153 ; 4 Jur. N. S. 193.

226. *Add. Citation :*—1 De G. F. & J. 17.

SECT. 8.—FOREIGN AND BRITISH OVERSEAS BANKS (Vol. III., p. 159).

For " *See* COMPANIES " read as follows :—

230a. Credit notes of Russian State Bank—Rights of holders.]—MARSHALL *v.* GRINBAUM (1921), 37 T. L. R. 913.

Foreign companies.]—*See* COMPANIES, Vol. X., pp. 1198–1209.

231. *Add. Annotations :—As to* (4) **Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321 ; Anchor Donaldson *v.* Crossland, [1929] A. C. 297.

PART I. SECT. 7, SUB-SECT. 3.

y i. —— ——.]—R. *v.* BARNARD (1925), 44 Can. Crim. Cas. 137 ; 57 O. L. R. 397.—**CAN.**

y ii. —— ——.] R. *v.* SMITH (1925), 44 Can. Crim. Cas. 361 ; 57 O. L. R. 383.—**CAN.**

y iii. —— ——.]—R. *v.* GOUGH (1925), 44 Can. Crim. Cas. 122 ; 57 O. L. R. 426.—**CAN.**

sg. *Qualification—Bank of Canada.*]—Bank of Canada Act, 1934 (Dom.), provides, by sect. 10 (2), that the permanent directors of the bank shall be selected from diversified occupations. By sect. 43, the Governor in Council is directed to make bye-laws with respect to, *inter alia*, " the nomination of directors . . . & what constitutes such nomination " ; & a bye-law made pursuant thereto provided that the persons to be declared elected should be (*a*) the two persons receiving the two greatest number of votes among the candidates whose " chief occupation is in primary industry," (*b*) the two persons receiving the two greatest number of votes among the candidates whose " chief occupation is in commerce or manufacturing," (*c*) the three persons receiving the greatest & two next greatest number of votes among the candidates whose " chief occupation is other than in primary industry, commerce or manufacturing." Deft. W., who was nominated for election as a director, was described on the list of nominees as an " accountant," but on the list of shareholders his description was " merchant." Pltf., a shareholder, who alleged that W. was in fact a merchant & not an accountant, &, therefore, that he could be nominated under category (*b*) only, & who sued for a declaration that he was ineligible under (*c*), obtained a mandatory order requiring W. to withdraw his acceptance of his nomination :—*Held :* the question of W.'s proper category was one of fact which could be tried properly only at the trial of the action & since the evidence supporting the order did not establish that pltf. was clearly right he could not be said to be entitled to an injunction, &, on " the balance of convenience " it should be dissolved.—BAIN *v.* BANK OF CANADA & WOODWARD, [1935] 3 W. W. R. 25 ; 4 D. L. R. 112 ; 50 B. C. R. 138.—**CAN.**

PART I. SECT. 7, SUB-SECT. 4.—B.

214 ix. —— *By administrator to next of kin.*]—CLARKSON *v.* MCLEAN (1918), 42 O. L. R. 1 ; 13 O. W. N. 373.—**CAN.**

PART I. SECT. 7, SUB-SECT. 4.—C.

sa. *Dividends payable after shareholder's death—Belong to legatees.*]—BRYSON *v.* BRYSON (1927), Q. R. 65 S. C. 112.—**CAN.**

PART I. SECT. 7, SUB-SECT. 5.

u i. —— *Appointment of interim liquidator—Notwithstanding curator appointed.*]—*Re* HOME BANK OF CANADA (Ont.), [1923] 4 D. L. R. 891.—**CAN.**

x i. *Pensions fund society—Right of members to fund.*]—Where the merger or winding up of a bank constitutes a cessation of employment & a pensions fund society has been founded in accordance with Pension Fund Societies Act, R. S. C., 1906 (c. 123), members, ex-members & pensioners rank for distribution of the funds of the society according to the byelaws of the society regardless of the general law unless the bye-laws make no provision for the case in question.—*Re* SOCIETE DE LA CAISSE DE RETRAITE DE LA BANQUE NATIONALE, TRUDEL *v.* LEMOINE, [1925] 4 D. L. R. 97 ; [1925] S. C. R. 698 ; *affd.*, [1926] 3 D. L. R. 988.—**CAN.**

b (p. 157) i. —— *Bank not properly incorporated—Effect upon position of shareholders.*]—*Re* HOME BANK OF CANADA, [1927] 1 D. L. R. 871 ; 59 D. L. R. 654 ; 8 C. B. R. 143.—**CAN.**

j i. —— *Debt to party liable as surety.*]—In the winding up of a bank a person liable to the bank as surety may set off his personal right against the bank as a depositor, where both debts exist at the time of the winding up.—CLARKSON *v.* ROBINET, [1925] 4 D. L. R. 778 ; *varying*, 26 O. W. N. 466.—**CAN.**

j ii. —— *Debt to party liable as partner.*]—A partner, with his co-partner, was sued by the liquidators of an insolvent bank for a partnership debt, for which he had pledged his individual deposit in the bank :—*Held :* he was entitled to have his separate deposit applied, either as a set-off in the action, or against the partnership debt.—CLARKSON *v.* SMITH & GOLDBERG, [1926] 1 D. L. R. 509 ; 58 O. L. R. 241.—**CAN.**

j iii. ——.]—CLARKSON & HOME BANK OF CANADA *v.* LANCASTER (1927), 38 B. C. R. 217.—**CAN.**

223 i. *Liability to contribute—Trustee.*]—*Held :* not personally liable, as the will was sufficiently " named " in the books of the bank in connection with the actual holding.—*Re* HOME BANK OF CANADA, NATIONAL TRUST CO.'S CASE (1925), 57 O. L. R. 27 ; 5 C. B. R. 644 ; *affg.* 5 C. B. R. 318.—**CAN.**

sb. *Action by bank—Security for costs.*]—Order made.—HOME BANK *v.* HAMONA FARMERS ASSOCN., [1927] 1 W. W. R. 528 ; 21 Sask. L. R. 420.—**CAN.**

PART I. SECT. 10, SUB-SECT. 1.

a (p. 159) i. —— ——.]—CUNNINGHAM *v.* NORTHERN BANKING CO., LTD., [1928] N. I. 112.—**IR.**

sc. *Right to give consent for adding bank as party.*]—A local manager of a bank has authority to give the consent in writing required by Rules of Ct., r. 41, for the adding of a pltf.—KUSCH *v.* PEAT, [1922] 2 W. W. R. 174 ; 63 D. L. R. 408 ; 15 Sask. L. R. 324.—**CAN.**

f (p. 160) i. —— ——.]—The local manager of a bank, in answer to the inquiry of a customer, informed him that a cheque held by him was good, & the customer indorsed the cheque & left it with the manager to be applied against his debt to the bank, &, relying on such assurance, permitted his position as against the maker of the cheque to be altered to his prejudice. On the failure of the maker to provide funds to meet the cheque :—*Held :* the bank was estopped from denying that the customer paid in the amount represented by the cheque.—BANQUE D'HOCHELAGA *v.* BRUNET, [1925] 2 W. W. R. 447.—**CAN.**

f (p. 160) ii. —— ——.]—The acceptance of a cheque by a local bank manager is binding on the bank, although at the time the drawer has insufficient funds to meet it.—LEDUC *v.* LA BANQUE D'HOCHELAGA, [1926] 1 D. L. R. 433 ; [1926] S. C. R. 76.—**CAN.**

235 iii. —— *Liability of bank.*]—R., a branch manager of deft. bank, suggested to pltf. that some part of pltf.'s moneys on deposit with the bank should be invested, stating that an investment could be found which would return interest at 8 per cent. For the purpose of such an investment, pltf. handed to R. two cheques, one payable to cash on bearer, & the other payable to self or bearer & indorsed by pltf. R. used the money for his own purposes. Pltf. sought to recover the amount from the bank. This ct. found on the evidence : that pltf. believed, & R. intended him to believe, that R., in making the proposal, was acting as agent of the bank ; that pltf. believed he was placing his money at the disposal of the bank, & R. was fully aware of this ; that unrestricted discretion was committed by pltf. to R. as to the nature of the investment :—*Held :* the bank was not liable. In this transaction R. was not doing something of a kind that, as agent of the bank, he was authorised to do, in the sense that such a transaction would fall within the general scope of his employment.—ROYAL BANK OF CANADA *v.* MACK, [1932] S. C. R. 488 ; 1 D. L. R. 753.—**CAN.**

235 iv. —— ——.]—The manager of a local branch of deft. bank suggested an investment to pltf. who had an account in the savings bank dept. Pltf. signed a cheque payable to cash on bearer for the amount required & gave it to the manager to complete the

237. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

239. *Add. Annotations :—As to* (2) **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1932), 77 Sol. Jo. 12. **Refd.** Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826. *Generally*, **Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

247. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

263. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

Part II.—Business of Banking.

264. *Add. Citation :—sub nom.* BANK OF AUSTRALASIA *v.* BANK OF AUSTRALIA, 12 Jur. 189.

270a. Cheque presented after business hours—Right of bank to deal with cheque.]—Pltf. had an account with defts.' branch, the closing hour of which was 3 p.m. Pltf. drew a cheque in favour of W., & handed it to W. at such an hour that it was impossible for him to present it for payment before 3 p.m. He did, in fact, present it for payment shortly after 3 o'clock, & received payment. Later in the day pltf. decided to stop payment of the cheque, & sent his son to the bank at the hour of opening on the following morning, but he then found that the money had already been paid :—*Held :* a bank is entitled to deal with a cheque within a reasonable business margin after their advertised time of closing, & in cashing the cheque defts. had acted within their rights.—BAINES *v.* NATIONAL PROVINCIAL BANK, LTD. (1927), 96 L. J. K. B. 801; 137 L. T. 631 ; 32 Com. Cas. 216.

272. *Add. Annotations :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

274. *Add. Annotation :*—**Consd.** *Re* Farrow's Bank, [1923] 1 Ch. 41.

274a. —— Bank stopping payment before final clearance of cheque received for collection.]—*Re* FARROW'S BANK, LTD., No. 479a, *post.*

275. *Add. Annotation :*—**Refd.** Garrard *v.* James, [1925] Ch. 616.

276. *Add. Annotation :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

276a. —— —— —— At branch where account kept.]—In the absence of special agreement, it is an implied term of the contract between a bank & its customer that the promise of the bank to repay a balance is a promise to repay it at the branch of the bank where the account is kept & not till after demand at that branch. The obligation of the bank is local, although after local demand & refusal to pay the bank is liable to be sued wherever it can be served. When local demand must be met by payment in a foreign currency the remedy available in an English ct. for refusal to pay is a cause of action in damages for breach of contract & not for debt.—RICHARDSON *v.* RICHARDSON, [1927] P. 228 ; 96 L. J. P. 125 ; 137 L. T. 492 ; 43 T. L. R. 631 ; 71 Sol. Jo. 695.

investment, when he approved of it. Some time later the manager told pltf. that the investment was unsatisfactory & that the money was still in the bank. About two months after he was given the cheque the manager paid it into his own account to cover shortages for money he had taken from the bank. In an action to recover the amount of the cheque from the bank :—*Held :* the bank cannot take advantage of its own manager's improper use of the cheque to make good his thefts from it, & pltf. was entitled to judgment. —MCDONALD *v.* ROYAL BANK OF CANADA (1929), 41 B. C. R. 450.—**CAN.**

245 i. *Guaranteeing repayment of loan—Made by third party to customer.*]—*Held :* not within the ostensible authority of a local branch manager of a bank.—STEVENS *v.* MERCHANTS BANK OF CANADA, [1920] 1 W. W. R. 52 ; 49 D. L. R. 528 ; 30 Man. L. R. 46.—**CAN.**

248 ii. —— *Delivery up of keys to purchaser from customer without getting cheque.*]—Pltf. sold his business & agreed to assign to the purchasers the lease of the premises upon which the business was carried on. Pltf. sent the keys of the premises to deft. C., manager of a branch of deft. bank, in a letter, in which he requested C. to hand the keys to W., one of the purchasers, upon receiving from W. a cheque for a named sum. C., without getting the cheque, gave up the keys to the landlord of the premises, who handed them to W. :—*Held :* (1) C. had failed to carry out the terms of his instructions ; (2) the keys were sent to C. in his capacity as manager, & the transaction was within the scope of his authority as such ; (3) the *onus* of proving damage was on pltf., & he had not satisfied it.—GARBER *v.* UNION BANK OF CANADA (1919), 46 O. L. R. 129 ; 17 O. W. N. 16.—**CAN.**

250 ii a. —— —— ——.]—As the terms of Mercantile Law (Scotland) Amendment Act, 1856 (c. 60), s. 6, are unequivocal & unambiguous, they cannot be construed as relating only to the case where the representations are founded on as the basis of a substantive action, but must equally apply where they are founded on in defence.—UNION BANK OF SCOTLAND *v.* TAYLOR, [1925] S. C. 835.—**SCOT.**

sd. *Agreeing to forward bankers draft.*]—*Held :* as the promise by the acting manager to forward the draft was a voluntary act without remuneration & not part of his duty as an officer of the bank, the bank was not liable for his failure in performing it.—MAXWELL *v.* UNION BANK OF CANADA, [1922] 1 W. W. R. 7 ; 69 D. L. R. 130. —**CAN.**

PART II. SECT. 1, SUB-SECT. 2.

b i. ——.]—BRANDON *v.* BANK OF MONTREAL, [1926] 4 D. L. R. 182 ; 59 O. L. R. 268.—**CAN.**

275 va. —— —— ——.]—A deposit of money in a bank to meet a draft is not payment of the draft. The money so deposited must be appropriated by the depositor thereof to the draft. Where the bank is authorised so to appropriate the money it acts in doing so as agent of the depositor, &, if it fails to carry out its duties as such agent, the loss falls on its principal. It is possible for a bank while acting as agent of the drawer of a draft for the purpose of collecting it to act also as agent of the drawee in appropriating the money.—BRANTFORD CORDAGE CO. *v.* MILNE, [1925] 1 D. L. R. 862 ; [1925] 1 W. W. R. 911 ; 35 Man. L. R. 17 ; *affg.*, [1925] 1 D. L. R. 92 ; [1925] 1 W. W. R. 442.—**CAN.**

275 vii. —— —— *In Canadian paper in American bank—In what currency payable by bank.*]—*Held :* pltf.'s deposits created merely the relation of debtor & creditor, & the bank's obligation under that relationship was to repay the exact amount of money which was received on deposit. Whether amounts of deposits repayable in Canadian or American currency discussed.—SHEPPARD *v.* FIRST INTERNATIONAL BANK OF SWEET GRASS, [1924] 1 D. L. R. 582 ; 1 W. W. R. 290.—**CAN.**

275 viii. —— —— *Cheque delivered to bank to be cashed.*]—The fact that the holder of a cheque delivers it to a bank to be cashed does not constitute a deposit nor render the bank his debtor, & the bank has no right to set off against the proceeds of the cheque a debt owing to it by the holder.—ROYXEL *v.* ROYAL BANK OF CANADA, [1918] 2 W. W. R. 791 ; 12 Sask. L. R. 218.—**CAN.**

277. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

277a. —— Duration—Notice to close & transfer account—No notice to transferee.]—Judgment debtors instructed their bank to transfer their account to the account of another body which had diplomatic privilege & to close their account, & that transaction was then entered in the books of the bank, but before any notice of or acquiescence in the transfer by the proposed transferees the judgment creditor served a garnishee order *nisi* on the bank attaching the judgment debtors' account :—*Held :* (1) after the bank received notice to close & transfer the account, & the appropriate book entries had been made, but no notice of the transfer had been given to the proposed transferees, the relation of banker & customer still existed ; (2) the judgment debtors had power to revoke the direction to close & transfer their account at the time when the garnishee order was served ; (3) at the time the garnishee order was served it operated in law as a revocation of the direction to transfer the account so long as no notice of or acquiescence in the transfer had been received by the proposed transferee.—REKSTIN *v.* SEVERO SIBIRSKO GOSUDARSTVERNNOE AKCIONERNOE OBSCHESTRO KOMSEVERPUTJ & BANK OF RUSSIAN TRADE, [1933] 1 K. B. 47 ; 102 L. J. K. B. 16 ; 147 L. T. 231 ; 48 T. L. R. 578 ; 76 Sol. Jo. 494, C. A.

277b. Order to transfer account—No notice to transferee.]—REKSTIN *v.* SEVERO SIBIRSKO GOSUDARSTVERNNOE AKCIONERNOE OBSCHESTRO KOMSEVERPUTJ & BANK OF RUSSIAN TRADE, No. 277a, *ante*.

281. *Add. Annotation :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

282. *Add. Annotations :*—**Apld.** British American Continental Bank *v.* British Bank for Foreign Trade, [1920] 1 K. B. 328. **Refd.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452 ; Jones *v.* Waring & Gillow, [1926] A. C. 670.

282a. Account opened in assumed name—Payment in of cheque obtained by duress—Payment out on forged cheques—Action by party whose name assumed.]—Pltf. brought an action against deft. bank for £125,000, money had & received by defts. to his use. Pltf.'s case was that an account was opened in his name at a branch of deft. bank by some one other than himself, that a cheque for £150,000 payable to his order was paid into the account, & that on the following day a forged cheque, purporting to be drawn by pltf., for £130,000 was cashed by one H., the balance being afterwards withdrawn by H., by means of other forged cheques. Defts. alleged that the cheque for £150,000 was obtained by a blackmailing conspiracy from one A., who was discovered by one N. with pltf.'s wife in compromising circumstances, & that the proceeds were shared between the conspirators whom defts. alleged to include, among others, pltf., pltf.'s wife, & H. & N. Pltf. & his wife denied that they took part in any conspiracy, & pltf. said that, when he heard of the relations between his wife & A., he instructed H., who represented himself to be a solr., to take divorce proceedings, & that, when the sum of £25,000 was handed to him by H., he, pltf., passed the amount on to his wife & said that he would have nothing more to do with her, & that he learned later that A. had paid £150,000. It was to recover the difference between these two amounts that the action was brought. The jury found that there was a conspiracy to get money from A. by catching him with pltf.'s wife, but that pltf. & his wife were not parties to the conspiracy, that A. was induced to part with the money through fear, & that his parting with it was not free & voluntary :—*Held :* pltf. never got the property in the cheque for £150,000 & could not sue in conversion, & he had no right to sue in contract because the dealings with deft. bank were not on his behalf, & therefore he had no title to the cheque, & the action failed.—ROBINSON *v.* MIDLAND BANK, LTD. (1925), 41 T. L. R. 402 ; 69 Sol. Jo. 428, 792, C. A.

284a. —— Effect of mere book entries.] — In dealings between banker & customer, where it is sought to treat a mere book entry as a payment, some other circumstances must be present & relied upon to enable the customer in whose favour it is made to succeed, either some express previous authority to pay, or a communication of the making of the entry to the customer & an acting upon it by him ; there must be, in effect, both a payment by one party & a receipt by the other, or an alteration in the position of the customer in whose favour the book entry was made.—BRITISH & NORTH EUROPEAN BANK, LTD. *v.* ZALZSTEIN, [1927] 2 K. B. 92 ; 96 L. J. K. B. 539 ; 137 L. T. 127 ; 43 T. L. R. 299.

289a. —— Bills specifically appropriated to one account—Payment of proceeds to other account.]—A banker who has agreed with a customer to open two accounts in his name, & who holds bills which the customer has specifically appropriated to one account, is not entitled, without the customer's consent, to transfer the proceeds of such bills to the other account.—GREENHALGH (W. P.) & SONS *v.* UNION BANK OF MANCHESTER, [1924] 2 K. B. 153 ; 93 L. J. K. B. 844 ; 131 L. T. 637.

292. *Add. Annotations :*—**Refd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683 ; Savory (E. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

292a. —— —— ——.]—(1) The word "customer" in Bills of Exchange Act, 1909 (No. 27 of 1909, Commonwealth), s. 88 (1), which is in the same terms as the above sect. signifies a relationship in which duration is not of the essence, & includes a person who has opened an account on the day before paying in a cheque to which he has no title.

(2) The negligence referred to in the subsect. is negligence in collecting the cheque, not in opening the account. The test is

284 ii. —— *Moneys held to manager's own account.*]—BLENKHORN *v.* ROYAL BANK (1929), 60 N. S. R. 388.—**CAN.**

89 ii. —— ——.]—In the absence of any special contract to keep a customer's accounts separate a bank may combine his accounts in different departments of the bank for the purpose of meeting his indebtedness to the bank without notifying him or obtaining his consent thereto.—WALLINDER *v.* IMPERIAL BANK OF CANADA, [1925] 4 D. L. R. 390 ; [1925] 3 W. W. R. 409.—**CAN.**

whether the paying in of any given cheque, coupled with the circumstances antecedent & present, was so out of the ordinary course that it ought to have aroused doubt in the banker's mind, & caused him to make inquiries. The standard of care required is that derived from the practice of bankers. —TAXATION COMRS. *v.* ENGLISH, SCOTTISH & AUSTRALIAN BANK [1920] A. C. 683; 89 L. J. P. C. 181; 123 L. T. 34; 36 T. L. R. 305, P. C.

Annotations:—As to (1) **Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344. *As to* (2) **Apld.** Hampstead Grdns. *v.* Barclays Bank (1923), 39 T. L. R. 229. **Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294. **Apld.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Consd.** Slingsby *v.* Westminster Bank, Ltd., [1931] 1 K. B. 173. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclay's Bank, [1924] 1 K. B. 775; London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116.

292b. —— Another bank for whom cheque collected—Bills of Exchange Act, 1882 (c. 61), s. 82.]—(1) The word "customer" in the above sect. applies to another bank for whom the bank, which relies on the protection of the sect., collects a cheque.

(2) The words "receives payment" in the sect. apply to a bank which receives payment as a collecting bank.—IMPORTERS CO. *v.* WESTMINSTER BANK, [1927] 2 K. B. 297; 96 L. J. K. B. 919; 137 L. T. 693; 43 T. L. R. 639; 32 Com. Cas. 369, C. A.

293. *Add. Citation:*—88 L. J. K. B. 55.

Add. Annotations:—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114; Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

298a. Remittance sent abroad on request—Obligation of bank.]—Pltfs., customers of defts., bankers in London, instructed them to transmit money to a person in Rumania, & defts. sent a cheque by registered post to him personally. The cheque never reached him, but someone apparently put on it a forged indorsement of his name, & it was eventually cleared through a bank in Poland, & defts. debited pltfs. with the amount. In an action for negligence pltfs. alleged that defts. should have sent the cheque by a letter which was insured in addition to being registered:—*Held:* as the loss of a cheque was a rare occurrence, & as the standard of defts.' duty should not be measured by a consideration of all the precautions which subsequent events might suggest, the action failed.—OSE GESELLSCHAFT, ETC. *v.* JEWISH COLONIAL TRUST (1927), 43 T. L. R. 398.

298b. Bank instructed to transfer sum to second bank—To be held to credit of third—Third non-existent—Claim for return by customer of first bank.]—In June, 1918, pltf., who was then a banker in Odessa, had a large credit with a Swiss bank at Basle & he instructed that bank to transfer to defts., who were an English bank, £18,044 to be held by defts. to the credit of a bank in Petrograd. On hearing from the Basle bank defts. credited the money to the Petrograd bank in their books on account of pltf., & they notified the Petrograd bank, but their communication was returned & there was no evidence that it was ever received by the Petrograd bank. About 1930 pltf. became aware that the money was still with defts. & he claimed a declaration that they held it as trustees for him:—*Held:* the only party who were defts.' customers were the Swiss bank, & as there was no contract between pltf. & defts. the action failed.—ASCHKENASY *v.* MIDLAND BANK, LTD. (1934), 51 T. L. R. 34; 78 Sol. Jo. 783, C. A.

300. *Add. Annotations:*—**Apld.** London Provincial & South Western Bank *v.* Buszard (1918), 35 T. L. R. 142. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

301. *Add. Annotations:*—**Consd.** Brown *v.* Swan (1921), 37 T. L. R. 787. **Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

302. *Add. Annotations:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; Richardson *v.* Richardson, [1927] P. 228.

303. *Add. Citation:*—63 Sol. Jo. 246.

304. *Add. Annotations:*—**Consd.** Elliott *v.* Baxlronside, [1925] 2 K. B. 301. **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414; Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

306. *Add. Annotation:*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

293 i. *Drawing cheque—Customer's duty to bank.*]—A customer of a bank owes a duty to the bank in drawing cheques to take reasonable & ordinary precautions against the amount of the cheque being raised by forgery, & if as the natural & probable result of the neglect of those precautions the amount is so increased the customer must bear the loss as between himself & the bank. The duty of a customer to draw up his cheque without negligence is the same with respect to a cheque on a savings account as in the case of a cheque on a current account.—WILL *v.* BANK OF MONTREAL, [1931] 2 W. W. R. 364; 3 D. L. R. 526.—**CAN.**

sd. *Unauthorised withdrawal of sum from account by manager—Onus of proof of repayment.*]—F., a local branch bank manager, took without authority certain sums from S.'s account in the bank. S. having died, his exors. sued the bank & F. to recover these sums:—*Held:* on the evidence, defts. had not acquitted themselves of the *onus* of establishing repayment, & pltfs. were entitled to recover.—STEWART *v.* ROYAL BANK OF CANADA & FRASER, [1930] S. C. R. 544; 4 D. L. R. 694; *revg.*, [1930] 2 D. L. R. 617; 1 M. P. R. 302.—**CAN.**

PART II. SECT. 1, SUB-SECT. 3.—A.

301 ii. —— ——.]—For certain limited purposes a branch bank may be treated as a separate organisation, but for all purposes of liability a bank is a unit & indivisible.—WHITE *v.* ROYAL BANK OF CANADA, [1923] 4 D. L. R. 1206; 53 O. L. R. 543.—**CAN.**

se. *Forwarding to another branch documents for collection—Negligence.*]—Where a branch office of a bank, in the usual course of banking business for reward, sends to another office of the bank for collection on behalf of a customer negotiable documents of debts, such as participation certificates issued by the Canadian Wheat Board, which, having been indorsed by the producer, are, in effect, made payable to bearer on surrender thereof, & whose terms deny responsibility in the Wheat Board with respect to indorsements, &, failing to receive a return letter of acknowledgment, the sending office makes no inquiry of the receiving office as to the safety of the documents until after the lapse of six weeks, it is guilty of negligence. The bank is still more guilty of negligence, when, having made the belated inquiry & learned that the documents have not been received at the other office it fails to take immediate steps in the quickest manner available to warn the debtor liable under the documents of the loss thereof, & thus stop payment to any unauthorised person.—NELSON *v.* UNION BANK OF CANADA, [1923] 3 W. W. R. 1330.—**CAN.**

303 i. —— —— ——.]—GARRIOCH *v.* CANADIAN BANK OF COMMERCE, [1919] 3 W. W. R. 185.—**CAN.**

310. *Add. Annotations :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Mentd.** *Re* Gunsbourg, *Ex p.* Trustee, [1919] B. & C. R. 99.

311. *Add. Annotation :*—**Consd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578.

312. *Add. Annotation :*—*Generally,* **Refd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

After this case add, *See* Law of Property Act, 1925 (c. 20), s. 136 (1).

317. *Add. Annotations :*—*As to* (1) **Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47. **Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. *Generally,* **Refd.** Richardson *v.* Richardson, [1927] P. 228 ; Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653 ; Hirschhorn *v.* Evans, [1938] 3 All E. R. 491.

321a. —— **Operation as revocation of direction to transfer account—Before notice to transferee.** —REKSTIN *v.* SEVERO SIBIRSKO GOSUDARSTVERNNOE AKCIONERNOE OBSCHESTVO KOMSEVERPUTJ (BUREAU) & BANK FOR RUSSIAN TRADE, LTD., No. 277a, *ante.*

321b. —— **Client account of solicitor.**]—In compliance with Solicitors Act, 1933 (c. 24), & Rules, pltf., a solr., opened a client account at a branch of defts.' bank. Money received from a client, to be applied in payment of rent & costs payable by the client to a third party, was paid into that account, & a cheque was duly drawn by pltf. on that account, & sent to the solr. acting for the third party. Before that cheque was presented a garnishee order *nisi* was served on the bank in respect of debts owing or accruing due from the bank to pltf. When the cheque was presented the bank marked it " Refer to drawer," & returned it unpaid :—*Held :* (1) money standing to the credit of the client account was a debt owing from the bank to pltf., in whose name the account was opened, & the garnishee order *nisi* bound that debt in the hands of the bank. The bank was, therefore, justified in returning the cheque unpaid ; (2) in the circumstances, the words " Refer to drawer " marked on the cheque were not libellous.—PLUNKETT *v.* BARCLAYS BANK, LTD., [1936] 2 K. B. 107 ; [1936] 1 All E. R. 653 ; 105 L. J. K. B. 379 ; 154 L. T. 465 ; 52 T. L. R. 353 ; 80 Sol. Jo. 225.

321c. —— **Joint account—Debt of one party.**]—A judgment debtor & his wife had a joint account with applt. bank, on which account either of them could draw. A garnishee order was made on this account in respect of a debt owed by the husband :—*Held :* a joint account with a bank, even if owned by a husband & wife, cannot be attached under a garnishee order in respect of a debt owed by one of the joint owners.—HIRSCHORN *v.* EVANS, [1938] 2 K. B. 801 ; [1938] 3 All E. R. 491 ; 159 L. T. 405 ; 54 T. L. R. 1069 ; 82 Sol. Jo. 664, C. A.

330. *Add. Citation :*—40 L. T. 404.

331. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

332. *Add. Annotations :*—**Consd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578. **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328 ; Jones *v.* Waring & Gillow, [1926] A. C. 670.

333. *Add. Annotations :*—**Consd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328 ; Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** Gowers *v.* Lloyds & National Provincial Foreign Bank, Ltd., [1938] 1 All E. R. 766.

333a. —— **Payment into account under belief that customer alive—Liability to refund.**]—Where money has been paid into the current account of the customer of a bank under a mistake of fact, such as the belief that the customer is still alive & entitled to the money, the money can be recovered back from the bank without joining the customer's legal personal representatives as defts. to the action.—ADMIRALTY COMRS. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD. (1922), 127 L. T. 452 ; 38 T. L. R. 492 ; 66 Sol. Jo. 422.

333b. Pension paid to bank on forged certificate given to bank.]—G., a retired officer in the colonial customs service & in receipt of a pension, from 1916 to 1926 collected his pension from deft. bank, with which he had an account, coming to the bank in person. In 1926 G. changed his place of residence & thereafter collected his pension by post through deft. bank by means of receipt forms sent direct to him by pltfs. The receipt form included a certificate that the pensioner was still alive. G. died in 1929 & from then up to 1935, when his widow died, the pension was collected by means of forged receipt forms, the certificates being duly filled up by an alleged medical practitioner. The certificate might be signed by the bank or by a person of certain named categories including medical practitioners. Pltfs., the Crown

---

PART II. SECT. 1, SUB-SECT. 4.

317 ix a. —— —— ——.]—Moneys in a joint banking account to the credit of the judgment debtor & another person may be garnished by the judgment creditor.—EMPIRE FERTILIZERS, LTD. *v.* CIOCI, [1934] 4 D. L. R. 804.—**CAN.**

317 xi. —— ——.]—Moneys deposited by a judgment debtor in the State Savings Bank of Victoria may be attached by garnishee proceedings. Service of the garnishee order *nisi* on the bank is a sufficient demand to satisfy any right which the bank may have to receive a demand for payment as a condition precedent to its liability. —CHUBB *v.* EMERY, [1933] V. L. R. 125 ; Argus L. R. 132.—**AUS.**

317 xii. —— *Money on deposit with English branch of local bank.*]—Money on deposit with an English branch of a local bank does not constitute a debt recoverable within the jurisdiction, & is, therefore, not liable to be attached by proceedings under Part XX. of Common Law Procedure Act, 1899.—MELVILLE ISLAND, LTD. *v.* RICHARDS (1933), 50 N. S. W. W. N. 41.—**AUS.**

317 xiii. —— *Account in trade name.*] —Where an individual keeps his bank account under a trade name & is sued & his banker is garnisheed, it is for the bankers to satisfy themselves that the judgment debtor named is the person keeping such account, & if satisfied beyond reasonable doubt that the right fund is being garnisheed to pay it into ct.—SMITH *v.* GAUTSCHE, [1917] 2 W. W. R. 295 ; 23 B. C. R. 455.—**CAN.**

317 xiv. —— *Banking company in liquidation—Declaration of dividend by liquidator.*]—An order had been made for the winding up of a banking co. & for the appointment of a liquidator. At the date of the order a customer of the bank had moneys standing to his credit in its books. In the course of the liquidation the liquidator gave notice of his intention to pay a dividend of 5*s.* in the £ :—*Held :* even assuming that the notice given by the liquidator amounted to the declaration of a dividend, the declaration did not create a " debt owing or accruing " to the customer by or from the banking co. so as to be attachable by a judgment creditor of the customer in garnishee proceedings, under the Justices Act, 1928, s. 126, against the banking co.—NATIONAL BANK OF AUSTRALASIA, LTD. *v.* NORRIS, [1932] V. L. R. 485 ; Argus L. R. 423.—**AUS.**

Agents for the Colonies, then sued to recover from deft. bank the amount so paid since 1929 :—*Held :* (1) the certificate not being signed by the bank, it did not amount to a warranty by the bank that G. was still alive, & the bank was, in the circumstances, entitled to rely upon the certificate as being true ; (2) the money could not be recovered as money paid under a mistake of fact, as the bank had paid it away to a person whom they believed to be their principal, & the fact that they were mistaken in that belief was irrelevant.—GOWERS *v.* LLOYDS & NATIONAL PROVINCIAL FOREIGN BANK, LTD., [1938] 1 All E. R. 766 ; 158 L. T. 467 ; 54 L. T. R. 550 ; 82 Sol. Jo. 232, C. A.

Annotation :—**Consd.** Hirschhorn *v.* Evans, [1938] 3 All E. R. 491.

334. *Add. Annotations :*—**Consd.** *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189. **Refd.** Bradford Old Bank *v.* Sutcliffe (1918), 88 L. J. K. B. 85 ; Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652 ; Holder *v.* I. R. Comrs. (1932), 48 T. L. R. 365 ; Philadelphia National Bank *v.* Price, [1937] 3 All E. R. 391.

338a. —— Joint account—Including proceeds of theft.]—THE ADMIRALTY *v.* MILLS (1908), *Times*, Oct. 29.

338b. Necessity for demand—Whether condition precedent to action against banker on account.]—Where money is standing to the credit of a customer on current account with a banker, in the absence of a special agreement a demand by the customer is a necessary ingredient in the cause of action against the banker for money lent.—JOACHIMSON *v.* SWISS BANK CORPN., [1921] 3 K. B. 110 ; 90 L. J. K. B. 973 ; 125 L. T. 338 ; 37 T. L. R. 534 ; 65 Sol. Jo. 434 ; 26 Com. Cas. 196, C. A.

Annotations :—**Consd.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 38 T. L. R. 492 ; Richardson *v.* Richardson, [1927] P. 228 ; Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263. **Refd.** *Re* British American Continental Bank, Credit General Leigeois' Claim, [1922] 2 Ch. 589 ; Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372 ; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461 ; Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578.

342. *Add. Annotation :—Generally*, **Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

342a. —— Account in credit—Reasonable notice.]—In the absence of special stipulation a banker can close his customer's banking account in credit only on giving him a reasonable notice, dependent on the nature of the account & the facts & circumstances of the case. When a banking account, opened by pltfs. with defts., & having a credit balance of some £7,000, was so interwoven with a "snowball" scheme of insurance devised by pltfs. that it became in respect to subscriptions to the scheme a part thereof :—*Held :* a month's notice by defts. to discontinue the account was not, in the circumstances of the case, sufficient, but an injunction restraining defts. from closing the account must be refused.—PROSPERITY, LTD. *v.* LLOYDS BANK, LTD. (1923), 39 T. L. R. 372.

342b. Existence of account—Proof of—Effect of non-existence of entry in material books.]—DOUGLASS *v.* LLOYDS BANK, No. 403a, *post.*

344. *Add. Annotation :*—**Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367.

347. *Add. Citation :—affg.* S. C. *sub nom. Re* GROSS, *Ex p.* ADAIR (1871), 24 L. T. 198.

353. *Add. Annotation :*—**Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367.

358. *Add. Annotation :*—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

359. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

363. *Add. Annotations :*—**Consd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321. **Refd.** *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189 ; Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

364. *Add. Annotations :*—**Refd.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653. Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

368. *Add. Annotations :*—**Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367 ; Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

380a. Payment of principal's money to own account—Bank without notice—Retention against overdraft.]—*Re* SANGSTER, GREEN *v.* MOCKETT (1894), 10 T. L. R. 184.

381a. Trust moneys credited to private account—Liability of bank.]—Resp. bank agreed with applts. to furnish applts.' agent with cash in exchange for drafts upon applts. The

PART II. SECT. 2, SUB-SECT. 1.

334 v. ——.]—Pltf. made a promissory note in favour of S., which was dishonoured on presentment. Both banked with defts., to whom S. was indebted on overdraft for a greater sum than the amount of the note. Subsequently pltf. paid £100 into his account, & defts. immediately, without reference to pltf., paid the note for £119 19*s.* 10*d.* & debited pltf.'s account with the amount by which his funds in the hands of defts. were insufficient to meet the note :—*Held :* defts. were at liberty to apply whatever funds of pltf. they had in hand in satisfaction, *pro tanto*, of the note of which they were the holders for value.—BELL *v.* UNION BANK, [1923] N. Z. L. R. 379.—**N.Z.**

PART II. SECT. 2, SUB-SECT. 2.—A.

sa. *Repayment of advance by cheque—On trust account—Knowledge of bank—Liability.*]—ATCHISON *v.* DOMINION BANK, [1935] 3 W. W. R. 97.—**CAN.**

sb. —— —— —— ——.]—RETAILER'S TRUST CO., LTD. *v.* DOMINION BANK, [1935] 3 W. W. R. 165.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—B.

si. *Right of bank to refuse to pay.*]—In order to hold a banker justified in refusing to pay a demand of his customer the customer being an exor., & drawing a cheque as exor., there must in the first place be some misapplication, some breach of trust intended by the exor., & there must in the second place be proof that the bankers are privy to the intent to make their misapplication of the trust funds. If it be shown that any personal benefit to the bankers themselves is designed or stipulated for, that circumstance above all others will most readily establish the fact that the bankers are in privity with the breach of trust that is about to be committed. —STANDARD BANK *v.* ESTATE VAN RHYN, [1925] App. D. 266.—**S. AF.**

PART II. SECT. 2, SUB-SECT. 3.—A.

371 i. *Joint account of persons not partners—Cheque drawn & countermanded by one after decease of other—Payment by bank—No right of action in survivor.*]—RADCLIFFE *v.* BANK OF MONTREAL, [1919] 2 W. W. R. 887.—**CAN.**

371 ii. —— *Subsequent claim by one to whole account—Position of bank.*]—Where a bank deposit is made in the name of either of two persons it is a notification that either one may deal with the funds & that the account will be subject to the control of either of them in the absence of special directions. But upon a subsequent notice to the bank by one of such persons that he claims it all, the bank in dealing with the money thereafter in any way affecting such claim acts at its own risk.—HILL *v.* HOCHELAGA BANK, [1921] 3 W. W. R. 430.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—B.

g. Add "*on appeal*, [1919] A. C. 658 ; 88 L. J. P. C. 118 ; 121 L. T. 190 P. C."

cash, as resps. knew, was to be used in paying for grain to be purchased for applts. by their agent. In numerous cases resps. instead of giving the agent cash credited the drafts, wholly or in part, to the agent's private account which was generally overdrawn. Applts. sued resps. to recover the aggregate amount, with interest, of specified drafts, or parts of drafts which had been thus applied; the agent was not joined as a party. Resps. alleged but did not prove that the agent had paid for grain by cheques on his private account. The Ct. of Appeal ordered an account to ascertain what loss applts. had sustained:—*Held:* resps. having been parties to a misapplication of trust funds, applts. were entitled to judgment for the amount sued for.—BRITISH AMERICA ELEVATOR CO. *v.* BANK OF BRITISH NORTH AMERICA, [1919] A. C. 658; 88 L. J. P. C. 118; 121 L. T. 100, P. C.

Annotation:—**Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367.

387a. —— —— ——.]—For some years before 1919 one U., a merchant, had a banking account at defts.' bank. In that year he converted himself into a limited co., all the shares being allotted to himself except one, which was held by his wife. A debenture in the form of a floating charge over the assets of the co. was issued to a creditor of U. as a security for his debt. The arts. of assocn. of the co. incorporated Table A. by par. 71 of which the business of the co. is to be managed by the directors. By the arts. U. was appointed sole director. After the formation of the co. U. kept on his private banking account with defts. as before, they having notice that his business had been transferred to the co. The co. had a separate account, which was kept at another bank, but defts. had no knowledge of that fact. U., as sole director, became possessed of a number of cheques, some crossed & others uncrossed, drawn in favour of the co. He indorsed them "A.L.U., Ltd.—A.L.U. sole director," & paid them into his own account with defts. instead of paying them in to the co.'s account with the other bank. Defts., without inquiring whether the co. had a separate banking account, collected the cheques & credited U. with the proceeds, which he misappropriated. When doing so they treated him as being identical with the co., as he owned all the shares, & overlooked the materiality of the cheques being drawn in the co.'s favour & not in his. In an action brought by the co. on behalf of the debenture-holder for conversion of the cheques:—*Held:* (1) defts. were precluded from setting up that U., when paying the cheques in to his own account, was acting within the scope of his apparent authority as agent of the co., upon two grounds: first, that the act of an agent paying his principal's cheques into his own account was so unusual as to put them on inquiry, that they ought to have inquired whether the co. had a separate banking account, &, if it had, why the cheques were not paid in to that account, & that their failure to make that inquiry amounted to negligence; &, secondly, that U. when paying in the cheques did not purport to act as the co.'s agent, but as being himself the co., & that defts. so treated him; (2) with respect to the cheques which were crossed the omission to inquire about the co.'s banking account disentitled defts. as collecting bankers to the protection afforded by Bills of Exchange Act, 1882 (c. 61), s. 82.

A customer of a bank paid into his account some cheques to which he had no title. Immediately on his so paying them in the bank credited him with the amounts of the cheques in their ledger, but there was no agreement between the bank & the customer that he should be allowed to draw against the cheques before they were cleared, nor did he in fact draw against them until after the bank had received the proceeds:—*Held:* (3) apart from any question whether the bank had notice of any defect in the customer's title, they were not holders in due course, there being no evidence that they took the cheques for value. The mere fact that bankers credit a customer with the amounts of cheques before they are cleared does not make them holders for value; in order to entitle them to that character there must have been an agreement, express or implied, that the customer should be allowed to draw against the cheques before clearance, & that agreement must have been acted upon.—UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL. SAME *v.* BARCLAYS BANK, [1924] 1 K. B. 775; 93 L. J. K. B. 690; 131 L. T. 271; 40 T. L. R. 302; 68 Sol. Jo. 716; 29 Com. Cas. 182, C. A.

Annotations:—*As to* (1) **Apld.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443. **Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294. **Apld.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811; E. B. M. Co. *v.* Dominion Bank, [1937] 3 All E. R. 555. *As to* (2) **Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Redf.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402. *Generally*, **Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114; Slingsby *v.* Westminster Bank, Ltd., [1931] 2 K. B. 583.

389. *Add. Annotations:*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612. **Refd.** Banque Belge pour l'Etranger (Soc. Anon.) *v.* Ham brouck, Spanoghe (1920), 123 L. T. 495.

391. *Add. Annotations:*—**Distd.** *Re* Harrison, Day *v.* Harrison (1920), 90 L. J. Ch. 186. **Consd.** Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

391a. —— —— **Cheques drawn by wife on bank manager's advice—Title of wife to balance.]** —A husband, in 1908 transferred the money standing to a current account at his bank in his own name into the joint names of himself & his wife. He did not inform his wife of the joint account, & always drew cheques on the account himself. He died in Nov. 1919. The wife never drew any

cheque on the account until shortly before his death, when he was in failing health & unable to attend to business. The bank manager then informed her of the joint account, & advised her to draw a cheque, which she did. The husband had also from time to time made deposits in the joint names of himself & his wife, & in Aug. 1919, consolidated them into one deposit in the joint names. The wife never knew of this deposit until after her husband's death. There was then found among his papers an envelope indorsed with the wife's initials & containing the deposit receipt & a document in which he said: "I would like this paying away at once if possible as under," with a list of names with amounts against them:—*Held:* the money standing to the credit of both the current account & the deposit account belonged to the wife as survivor, & the document did not raise any presumption that the husband regarded the deposit as his own property.—*Re* HARRISON, DAY *v.* HARRISON (1920), 90 L. J. Ch. 186.

402. *Add. Annotations:*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110; Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263.

402a. Effect of need for notice of withdrawal.]—There is no difference in principle in the nature of a deposit requiring notice of withdrawal & a deposit not requiring notice of withdrawal.—*Re* GLENDINNING, STEEL *v.* GLENDINNING (1918), 88 L. J. Ch. 87; 120 L. T. 222; 63 Sol. Jo. 156.

403a. Loss of right to repayment—Laches.]—In May, 1866, one F. deposited £6,000 with a Birmingham branch of deft. bank, upon the terms that he could withdraw the money at any time on giving fourteen days' notice & that interest should be paid on it at the rate of 6 per cent. for the first three months, & thereafter at the current bank rate for the time being. In Aug. 1866, the bank repaid £2,500 of the £6,000 with interest due to that date, & a note of the payment was indorsed on the deposit receipt. In Nov. 1866, a further indorsement was made showing that all interest then due had been paid, but after that date there was no record of any further payment by the bank of either principal or interest & no record of any demand by F. for payment. F. died in 1893. In 1927 a relative of F. discovered the deposit receipt amongst some old papers, & sent it to the surviving exor. & trustee of F.'s will. He gave deft. bank formal notice to pay the £3,500, balance of the principal £6,000, together with interest, in fourteen days. The bank refused to pay, on the ground that it must be presumed that the deposit must have been repaid long ago. The exor. then brought this action to enforce payment, & the bank pleaded presumption of payment; & although they refused to plead Stat. Limitations, they claimed relief on the ground that F. & his representatives had been guilty of laches:—*Held:* although defts. could not produce evidence of repayment, the proper inference from all the circumstances was that that money must have been repaid, & the action therefore failed. Bankers' Books Evidence Act, 1879 (c. 11), s. 3, makes an entry in bankers' books *primâ facie* evidence of an account.

Qu.: whether the non-existence of any entry in material books is *primâ facie* evidence of the non-existence of an alleged account.—DOUGLASS *v.* LLOYDS BANK, LTD. (1929), 34 Com. Cas. 263.

404. *Add. Annotation:*—**Refd.** Sockalingam Chettiar *v.* Ramanayake, [1937] A. C. 230.

409. *Add. Annotation:*—**Apld.** *Re* Westerton, Public Trustee *v.* Gray (1919), 122 L. T. 264.

409a. Assignment by order in writing to bank to pay third party sum on deposit—Unindorsed deposit receipt—Letter to assignee.]—About a year before his death, which happened in 1917, testator handed to his landlady, G., an envelope addressed to her describing it as a present to her. She was about to open it, when he took it from her hand & said he would keep it for her & locked it up in his despatch box. After testator's death there was found in his despatch box an envelope containing: (1) A deposit receipt for £500 deposited with his bank in 1914; (2) an order in writing signed by testator directing the bank to pay to G. the sum of £500 then on deposit; & (3) a letter addressed to G.: "You have been very kind to me & I desire to make some return by giving you the amount £500 now on deposit at the . . . bank as per receipt enclosed." The deposit receipt was not indorsed by testator & no notice was given to the bank of any assignment till after his death, the interest on the sum on deposit having been carried by the bank to his current account:—*Held:* there was a

PART II. SECT. 3, SUB-SECT. 1.

c i. —— —— ——.]—A deposit having been made in a bank by a woman in the joint names of herself & her niece, to whom she was *in loco parentis:*—*Held:* joint ownership constituted, with benefit of survivorship.—BOURQUE *v.* LANDRY (1936), 10 M. P. R. 108; 5 F. L. J. (Can.) 293.—**CAN.**

c ii. —— —— ——.]—The presumption that moneys deposited by a husband in the joint names of himself & his wife are then joint property does not apply in the case of a mother & son; there is in such a case a presumption of a resulting trust in favour of the mother.—FIDLER *v.* BARNES (1936), 11 M. P. R. 254.—**CAN.**

g. *Deposit by factor—Principal's money — Whether bank liable to principal.*]—Where a deposit is made by a factor of his principal's money to his own credit, to the knowledge of the bank, the bank is not liable to the principal on the bkpcy. of the factor.—M. A. HANNA CO. *v.* PROVINCIAL BANK OF CANADA, [1934] 2 D. L. R. 471; *affd.*, [1935] S. C. R. 144; 1 D. L. R. 545.—**CAN.**

sl. *Deposit account opened by agent—Extent of agent's authority not disclosed to bank—Misappropriation by agent—Liability of bank.*]—Where an account was opened in deft. bank in pltf.'s name by pltf.'s agent but the only knowledge the bank had of the limitations placed by pltf. on the agent's operation of the account or of the business which he was managing for pltf. was contained in a letter from pltf. instructing the bank that it was "a deposit account only & from time to time remittances will be forwarded to us by credit advices alone":—*Held:* the bank was not liable for misappropriation by the agent on the ground of negligence or connivance in the breach of his instructions in permitting him to open & draw cheques upon another account which he opened in his own name entitled "Trust Account No. 2," & in which to the knowledge of the bank he deposited a part of the proceeds of said business.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* ROYAL BANK OF CANADA, [1935] 1 W. W. R. 551.—**CAN.**

so. *Deposit account of guarantor—Default by customer whose debt guaranteed.*]—A banker is not entitled to apply the money of a customer, standing to the customer's credit in the books of the bank upon a deposit account without the authority, express or implied, of that customer, in discharge of the indebtedness to the bank of another customer whose debt has been guaranteed by the depositor.—BANK OF ENGLAND *v.* MARTIN, [1937] I. R. 189.—**IR.**

valid & complete gift to G. of the sum on deposit by way of assignment under Jud. Act, 1873, s. 25 (6).—*Re* WESTERTON, PUBLIC TRUSTEE *v.* GRAY, [1919] 2 Ch. 104; 88 L. J. Ch. 392; 122 L. T. 264; 63 Sol. Jo. 410.

Annotation :—**Apprvd.** & **Apld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

412. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

425. For "SAUNDERSON *v.* BOWES," read "SANDERSON *v.* BOWES."

Add. Annotation :—**Apld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

431. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

453. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

454. *Add. Annotation :*—**Consd.** Slingsby *v.* Westminster Bank, Ltd., [1931] 1 K. B. 173.

456. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

456a. Contract to print notes—Notes printed without authority—Liability to bank.]—Pltfs., a Portuguese bank, made with defts., who were printers, a contract which provided that defts. should print the authorised notes for the bank, the plates being left in defts.' possession & being intended to be available only for the purposes of the bank. By means of an elaborate fraud defts. were induced by an unauthorised person to print from the plates a large quantity of notes & to deliver the notes to him, & the result was that these notes were put into circulation. In consequence of the fraud pltfs. honoured a large number of the spurious notes, & on learning the facts they found it necessary to withdraw all the genuine notes of the same issue from circulation as they had, at that time, no means of distinguishing the genuine from the spurious notes. In an action for breach of contract, negligence, or conversion :—*Held :* it was an implied term of the contract that there was to be no use of the plates for any purpose not authorised by pltfs., & there was an absolute duty on defts. not to print or deliver notes of pltf. bank without the authority of the bank, &, even if defts. were bound only to take reasonable care to avoid such acts, defts. had, on the facts, fallen short of the standard of care required by the special nature of the business, & pltfs. were entitled to recover.—BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD. (1930), 47 T. L. R. 214; 75 Sol. Jo. 81; *on appeal* (1931), 100 L. J. K. B. 465, C. A.; [1932] A. C. 452, H. L.

456b. —— —— **Measure of damages.**]—A firm of printers employed by the Bank of Portugal to print a series of bank notes known as Vasco da Gama 500 escudo notes delivered to the Bank 600,000 notes which were put into circulation in Portugal. Subsequently, in breach of their contract of employment, the printers delivered to one M., the head of a band of criminals, 580,000 notes of the same type, printed from the original plates or from plates made from the same die, in the belief that he had the authority of the bank. M. & his associates introduced these false notes into Portugal & put a large number of them into circulation. The bank on discovering that unauthorised notes were in circulation issued notices withdrawing the whole of this issue of Vasco da Gama notes & undertaking, within a limited time, to exchange all notes of this type presented to the bank for other notes. The bank had an exclusive license to issue bank notes as legal tender in Portugal, but the amount of the notes to be issued was controlled by law. At all material times the currency was inconvertible. In an action by the bank against the printers for breach of contract defts. maintained (*a*) that the loss suffered by the bank was due to their own voluntary action in paying the unauthorised notes; (*b*) that the loss to the bank was limited to the cost of printing & paper in regard to the new issue :—*Held :* (1) the loss arose naturally from the breach of contract; (2) the proper measure of damages was the exchange value expressed in sterling of the genuine currency given in exchange for the spurious notes together with the cost of printing the genuine notes withdrawn.—BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD., WATERLOW & SONS, LTD. *v.* BANCO DE PORTUGAL, [1932] A. C. 452; 101 L. J. K. B. 417; 147 L. T. 101; 48 T. L. R. 404; 76 Sol. Jo. 327, H. L.

Annotation :—**Refd.** The Edison (1932), 147 L. T. 141.

479. *Add. Annotations :*—**Consd.** Hibernian Bank, Ltd. *v.* Gysin & Hanson, [1938] 2 K. B. 384. **Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

479a. Cheque credited before clearance—Whether bank holders for value—Bank stopping payment before final clearance.]—(1) Where a customer pays a crossed cheque into his bank, the question whether the bank receive it as holders for value or as agents for collection is a pure question of fact. The fact that the cheque is immediately credited in the ledger does not necessarily make the bank holders for value. That inference may be rebutted by notices in the pass-book & paying-in slip or other evidence showing that the customer could not draw before clearance.

(2) If the bank receive the cheque as agents for collection & stop payment before it is

PART II. SECT. 4, SUB-SECT. 3.

sg. *Money paid to retire draft—Failure of purpose for which draft paid—Liability of bank to refund.*]—*Held :* pltfs. could recover from the bank the amount paid by them to retire the draft.—GIBBONS & CARNES *v.* ROYAL BANK OF CANADA, 1921] 2 W. W. R. 370.—**CAN.**

sj. *Delay in transmitting draft—Transaction not part of manager's duty—Liability of bank.*]—*Held :* as the promise by the acting manager to forward the draft was a voluntary act without remuneration & not part of his duty as an officer of the bank, the bank was not liable for his failure in performing it.—MAXWELL *v.* UNION BANK OF CANADA, [1922] 1 W. W. R. 7; 69 D. L. R. 130.—**CAN.**

sk. *Payment of draft on forged indorsement—Liability of bank.*]—Where payment of a draft was made to the wrong person on the forged signature of the payee & the payee never received the money :—*Held :* the customer was entitled to the return from the bank of the moneys paid for the draft.—PORTEOUS *v.* PORTEOUS, [1932] 3 D. L. R. 562; O. R. 547.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

463 i. —— *Stoppage of bank-cheque for debt—Debt not paid.*]—UNION BANK OF CANADA *v.* NETTLETON (1924) 55 O. L. R. 643.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.

ci. ——.]—A co. drew bills of exchange upon customers to whom they had supplied goods & who accepted the bills. The co. indorsed the bills in blank, & delivered them to a bank for collection. The co. went into liquidation. Its current account with the bank was overdrawn to a large amount. In the liquidation the bank claimed that they were owners of the bills, & that they were not bound to value & deduct the obligations in the bills for the purpose of a ranking. The bank's

finally cleared at the clearing house, they can only receive & hold the proceeds as collecting agents for their customer, & not on the ordinary bank relationship of debtor & creditor. Consequently, in a winding up following on the stoppage the liquidator must pay the full proceeds of a cheque cleared after the stoppage to the customer, although it was cleared shortly before the actual winding up.—*Re* FARROW'S BANK, LTD., [1923] 1 Ch. 41; 92 L. J. Ch. 153; 128 L. T. 332; 67 Sol. Jo. 78; [1925] B. & C. R. 8, C. A.

479b. —— ——.]—UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL, SAME *v.* BARCLAYS BANK, No. 387a, *ante*.

484. *Add. Annotations:*—**Refd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623; Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

485. *Add. Annotation:*—**Consd.** Calico Printers' Association, Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

487. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

493. *Add. Annotations:*—**Apld.** London Provincial & South Western Bank *v.* Buszard (1918), 35 T. L. R. 142. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

500. *Add. Annotation:*—*Generally*, **Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

507. *Add. Annotation:*—**Refd.** Torrens *v.* I. R. Comrs. (1933), 18 Tax Cas. 262.

527a. What is negligence—Defective title of customer—Statutory protection of banker.]—SLINGSBY *v.* WESTMINSTER BANK, LTD., No. 691d, *post*.

537. *Add. Annotations:*—**Consd.** Barclay *v.* Malcolm (1925), 133 L. T. 512; Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

538. *Add. Annotation:*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

538a. ——.] — A. drew a cheque for £700 in favour of B. & gave it to B., who presented it forthwith. A. had current & deposit accounts at the bank, but her money on current account was not sufficient to meet the cheque without resort to the money on deposit. It had been the practice of the bank to allow A. to overdraw her current account so long as the overdraft was covered by her money on deposit. The bank refused payment of the cheque, not because of the state of A.'s current account, but because they doubted A.'s signature on the cheque. A. died before anything further was done:—*Held:* in the circumstances there had not been any appropriation or dedication of the money in the bank, or any constructive payment of the cheque; & there had been an incomplete gift *inter vivos* of the amount of the cheque, which gift would not be perfected by the assistance of equity.—*Re* SWINBURNE, SUTTON *v.* FEATHERLEY, [1926] Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.

Annotation:—**Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 K. B. 645.

540. *Add. Annotation:*—**Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

544. *Add. Annotations:*—**Apld.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Consd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231.

544a. —— —— ——.]—A bye-law of applt. co. authorised its secretary-treasurer jointly with any director to sign cheques drawn upon its bank account. A series of cheques payable to one of the directors were fraudulently signed by the director jointly with the secretary-treasurer, & after indorsement were placed by resp. bank to the credit of an account which the director had with them. Resps. collected the cheques from applts.' bank in the usual course of business. In order that there should be to the credit of applts.' account sufficient to meet each of the cheques, the director in each case fraudulently drew a cheque upon one of various other accounts upon which he had authority to draw, & paid it into applts.' account. Applts. sued resps. to recover the aggregate amount of the cheques collected by them:—*Held:* the action failed, because (1) resps. had not knowledge, either by the form of the cheques collected or otherwise, that they were improperly drawn on applts.' account, & could not recover the money as having been held by their bankers in trust for them, & (2) applts. had suffered no loss, & the ct. could not investigate applts.' liability to persons not parties to the action in respect of the cheques placed to applts.' credit.—CORPORATION AGENCIES *v.* HOME BANK OF CANADA, [1927] A. C. 318; 96 L. J. P. C. 63, P. C.

Annotations:—*As to* (1) **Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176.

545a. Transfer to own account by agent—In breach of power of attorney—Liability of bank.]—Resp., a widow, who had a deposit account with applt. bank, desired that A., a close friend of resp. & her husband, should attend to the investment of her money, & with the sole object of making arrangement for such investment at a higher rate of interest than the ordinary bank rate on deposits, she executed a power of attorney in A.'s favour on June 24, 1929, using a printed form in very wide terms supplied by applt. bank. At that time resp. had $13,081 credited to her account. A. also had had for a considerable time an account in the same branch of the bank which had generally showed a debit balance; & at the date of the execution of the power of attorney his debit balance exceeded $8,000. On June 29, 1929, A.,

---

lien over the proceeds of the bills was admitted:—*Held:* the bills, having been indorsed & delivered to the bank for the limited purpose of collection, remained assets of the co., over which the bank held a mere right in security in virtue of their lien, & the obligations under the bills must be valued & deducted for the purposes of a ranking.—CLYDESDALE BANK, LTD. *v.* SENIOR (JAMES ALLAN) & SON LIQUIDATORS, [1926] S. C. 235.—SCOT.

PART II. SECT. 8, SUB-SECT. 2.—A.

538 l. *Constructive payment—Cheque & credit slip stamped "paid."*]—WHITE *v.* ROYAL BANK OF CANADA, [1923] 4 D. L. R. 1206; 53 O. L. R. 543.—CAN.

purporting to act under the power of attorney, transferred from resp.'s account to his own account $8,500, which, together with a small sum of his own, was sufficient to discharge the whole of his debt to applt. bank. The assistant manager of the bank took from A. a promissory note payable to resp. on demand with interest at 7 per cent. *per annum*, but did not ask on her behalf for security, although applts. had had a mtge. as security for their debt, nor did they communicate in any way with resp. or her solr. In 1931 resp. took a promissory note from A. for the sum transferred & interest, & in 1932 having changed her solrs. she demanded payment from applt. bank of the amount of $8,500, & on applts.' refusal resp. commenced an action for the recovery of that sum :—*Held :* (1) the transfer of the money by A. to his own account made him a constructive trustee for resp. of the amount transferred ; (2) the bank having concurred in the transfer for their own benefit became subject to a similar fiduciary obligation ; (3) any delay or silence on resp.'s part had not prejudiced the bank & there was no defence of estoppel ; (4) there was no question of ratification since A. had not in transferring the money acted or purported to act as agent of resp. ; (5) the liability of A. & the bank was not joint, & resp. was at liberty to sue either or both subject only to the limitation that she could not recover more than the total sum due to her.—IMPERIAL BANK OF CANADA *v.* BEGLEY, [1936] 2 All E. R. 367, P. C.

546a. —— —— Cheques paid to customer's creditors.] — Deft. bank negligently, & in breach of the instructions given by their customer, pltf. co., paid cheques drawn on the co.'s account signed by one director only. All the cheques were paid to the co.'s trade creditors :—*Held :* (1) the bank being put on inquiry & being negligent, as the jury found, were not entitled to assume that a signature purporting to be that of a new director was that of a person duly appointed ; (2) whether pltf. co.'s account was in credit or in debit at the time of the payments to trade creditors, the bank were, on the equits able doctrine under which a person who has in fact paid the debts of another without authority is allowed to take advantage of his payment, entitled to credit for the cheque-paid in discharge of the debts of pltf. co. ; (3) an inquiry should be ordered into the circumstances of payment of each cheque.—LIGGETT (B.) (LIVERPOOL), LTD. *v.* BARCLAYS BANK, LTD., [1928] 1 K. B. 48 ; 97 L. J. K. B. 1 ; 137 L. T. 443 ; 43 T. L. R. 449.

Annotation :—As to (2) & (3) **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

546b. Issue of bank drafts to customer's agent—Agent without proper authority—Negligence.] —A co. instructed its bankers in writing that any two of four named persons, of whom three were directors & the fourth was an accountant in the co.'s employment, had authority to draw cheques & sign orders for payments on its behalf. The co. from time to time required drafts payable in New York to remit to creditors there. The course of business was that the accountant attended at the bank with a cheque, duly signed by two of the named persons, payable to the bankers' order for the sum for which the draft was required, but without any further document or written instructions ; having filled up a requisition note giving particulars of the draft required, including the name of the payee, he was handed a draft in accordance with those particulars. In Jan. 1922, it was first discovered that on 41 out of 106 occasions upon which drafts had been so purchased since Nov. 1918, the accountant, having entered his own name in the requisition note, had obtained drafts payable to himself, & had misappropriated the proceeds, covering his fraud by false entries in the company's books. The resps. having paid the co. under a policy guaranteeing the fidelity of the accountant, sued the bankers (applts.) in respect of the loss after the date of the policy : —*Held :* the bankers had acted negligently in issuing the drafts without authority in accordance with the company's instructions, & were liable in damages in respect thereof ; the frequent repetition of the same irregular procedure afforded no defence either by way of estoppel, ratification or otherwise.—BANK OF MONTREAL *v.* DOMINION GRESHAM

PART II. SECT. 8, SUB-SECT. 2.—B.

545 i. *To clerk—Notice of limitation of authority.*]—A clerk's express duties were to collect amounts due from grain dealers for freight charges, etc., & on presentation of bills of lading & payment of charges to hand out warehouse receipts, & deposit all moneys collected to the credit of the Receiver-General in a designated bank & at certain intervals to remit by draft to the head office of the business. Such charges were almost always paid to him by accepted cheque & deft. bank cashed such a cheque on it. paying the clerk the proceeds :—*Held :* the bank was negligent as inquiry should have been made as to the clerk's authority & the unusual act of a business firm cashing such a cheque, especially of a large amount, & a certain discrepancy between the name of the payee in the cheque & the name in the indorsement should have aroused suspicion.—R. *v.* ROYAL BANK OF CANADA (1920), 1 W. W. R. 198 ; 50 D. L. R. 293 ; 30 Man. L. R. 104.—**CAN.**

545 ii. —— —— ——.]—HAYES *v.* STANDARD BANK, [1927] 3 D. L. R. 336 ; 60 O. L. R. 461 ; *revsd.*, [1928] 2 D. L. R. 898 ; 62 O. L. R. 186.—**CAN.**

ss. *Effect of signing "verification slip."*]—RUTHERFORD *v.* ROYAL BANK OF CANADA, [1932] S. C. R. 131 ; 2 D. L. R. 332.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.—C.

548 i. *Cheque drawn on one branch—Payment at another—Dishonour on presentation.*]—A bank, which pays a cheque at any branch except that at which the customer keeps his account, must be assumed to have paid it not on the credit of the customer but on the indorsement itself.

A. drew a cheque in favour of B. upon the Bank C., D. branch, & B. indorsed it for collection in favour of L., who received payment from the P. branch of the bank, which sent the cheque on to the D. branch. The latter dishonoured the cheque, whereon the P. branch gave notice of dishonour & instituted a suit against B. & L. for the recovery of the sum paid. The defence was (*inter alia*) that the cheque having been discharged by payment there was no power left in the P. branch to give notice of dishonour :—*Held :* the payment by the P. branch did not operate as a discharge of the cheque, the payment having been made not on the credit of A. but on the credit of B. &, therefore, pltf. was entitled to recover the sum from defts. —RAJA JOYTI PRASAD SINGH DES BAHADUR *v.* CHOTA NAGPUR BANKING ASSOCN. (1928), I. L. R. 8 Pat. 413.—**IND.**

sk. *Effect of confirmation by telephone.*] —The accountant of a bank called up defts.' office by telephone, an automatic telephone, which rang number required direct without the necessity of calling a "central" operator. A woman's voice answered &, the accountant asking for the manager, a man's voice answered. The accountant then stated that it was the bank speaking & that the bank had a certain amount of money to pay over for the F. Co. "under protest," & the man at the other end of the wire said "All right" :—*Held :* this constituted a notice to defts. that the money was available at the bank, & that it was not necessary the person spoken to should be identified.—FIDELITY OIL & GAS CO. *v.* JANSE DRILLING CO. (Alta.) (1916), 34 W. L. R. 370 ; 10 W. W. R. 533.—**CAN.**

GUARANTEE & CASUALTY CO., LTD., [1930] A. C. 659; 99 L. J. P. C. 202; 144 L. T. 6; 46 T. L. R. 575; 36 Com. Cas. 28, P. C.

Annotations :—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811.

548. *Add. Annotations :*—**Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

549. *Add. Annotation :*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

550. *Add. Annotations :*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102; Vanbergen *v.* St. Edmunds Properties, Ltd. (1933), 149 L. T. 182.

552. *Add. Annotation :*—**Consd.** Ralston *v.* Ralston, [1930] 2 K. B. 238.

554. *Add. Annotation :*—**Refd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

557. *Add. Annotations :*—**Consd.** *Re* Farrow's Bank, [1923] 1 Ch. 41. **Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

565. *Add. Annotation :*—*As to* (1) **Refd.** Tolley *v.* Fry (1929), 46 T. L. R. 108.

567. *Add. Annotation :*—**Consd.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

567a. —— **Whether libellous.**]—PLUNKETT *v.* BARCLAYS BANK, LTD., No. 321b, *ante*.

569. *Add. Annotations :*—**Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47. **Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110; Richardson *v.* Richardson, [1927] P. 228; Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578; Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653; Hirschhorn *v.* Evans, [1938] 3 All E. R. 491.

574. *Add. Annotation :*—**Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

579. *Add. Annotations :*—**Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367; Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

585. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

589. *Add. Annotation :*—**Consd.** Westminster Bank *v.* Hilton (1926), 136 L. T. 315.

589a. —— **Mistake in telegram—Duty of bank to make inquiry.**]—Pltf., who had an account with defts., on July 31, 1924, drew a cheque, No. 117,285, & post-dated it Aug. 2. On Aug. 1 he telegraphed to defts. to stop payment of cheque No. 117,283, mentioning the date, the payee, & the amount. These particulars were correct as to cheque No. 117,285, but the number of the cheque was wrong. Cheque No. 117,285 was presented on Aug. 6, & the bank officials paid it, supposing that it had been drawn in place of the one that had been stopped. If they had searched, they would have seen that a cheque numbered 117,283 had already been presented & honoured. In an action for negligence :—*Held :* the view of the bank officials, that the cheque presented, being subsequent to the date of the stop instructions, might be a duplicate cheque which they were bound to cash, was correct, & pltf. was not entitled to recover.—WESTMINSTER BANK, LTD. *v.* HILTON (1926), 136 L. T. 315; 43 T. L. R. 124; 70 Sol. Jo. 1196; *sub nom.* HILTON *v.* WESTMINSTER BANK, LTD., 102 L. T. Jo. 450, H. L.

592. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

594. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

595. *Add. Annotation :*—*As to* (2) **Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

600a. Presentment over counter—Duty of bank to pay.]—Pltfs., a partnership firm at Liverpool, sold goods to the P. Co. & drew upon the co. a bill for a large amount payable in three months in payment for the goods. The P. Co. accepted the bill payable at deft.

PART II. SECT. 8, SUB-SECT. 3.—A.

549 iii. —— *Money advanced on agreed terms—Bank holding security.*]—FINUCANE *v.* STANDARD BANK OF CANADA, [1921] 3 W. W. R. 314; 62 S. C. R. 110; 59 D. L. R. 465.—**CAN.**

y i. —— *Dishonour of cheques payable to self.*]—A demand made personally by a customer upon his banker for payment is a two-party transaction. The refusal of payment cannot give rise to the implication of defamation of the customer to a third party, which necessarily arises when a trader's cheque, drawn or indorsed in favour of a third party, is presented by the holder & dishonoured by the banker. Judgment for pltf. for £250 set aside, & judgment entered for defts., defts. having admitted liability to pay pltf. nominal damages & having paid £10 into ct.—KINLAN *v.* ULSTER BANK, LTD., [1928] I. R. 171.—**IR.**

PART II. SECT. 8, SUB-SECT. 3.—B.

573 ii. ——.]—A banker is not obliged to pay a cheque when there are no assets belonging to the customer in his hands; & the countermanding of a cheque by a customer in whose account there are funds sufficient to meet it cannot do more than cause the obligation to pay, which otherwise existed, to cease to exist.—PUNJAB INDUSTRIAL AGENCY, LTD. *v.* MERCANTILE BANK OF INDIA, LTD. (1929), I. L. R. 11 Lah. 667.—**IND.**

PART II. SECT. 8, SUB-SECT. 3.—D.

583 i. *Dishonour by country bank—Failure to return cheque by return of post—Clearing-house rules.*]—When a cheque is passed through the clearing-house in Melbourne & not returned dishonoured within the time allowed by the rules of the clearing-house for the return of dishonoured cheques, its payment to the collecting bank must on the expiration of that time be regarded as complete. Pltf. paid into his account at a country branch of deft. bank a cheque drawn upon a Melbourne branch of another bank. The cheque was passed through the Melbourne clearing-house, where, on the settlement of balances, its amount was credited to deft. bank by the bank upon which it was drawn. After the expiration of the time allowed by the rules of the clearing-house for the return of dishonoured cheques had expired, the cheque was returned dishonoured to deft. bank. Notwithstanding that the rules provided that any stale return might be rejected, deft. bank credited the bank upon which the cheque was drawn with its amount :—*Held :* deft. bank had, as agent for pltf., received payment of the cheque, & was therefore liable to pltf. for its amount as money had & received to his use.—RIEDELL *v.* COMMERCIAL BANK OF AUSTRALIA, LTD., [1931] V. L. R. 382; Argus L. R. 285.—**AUS.**

PART II. SECT. 8, SUB-SECT. 4.

sl. *Payment after notice of countermand—Liability of bank.*]—GARRIOCH *v.* CANADIAN BANK OF COMMERCE, [1919] 3 W. W. R. 185.—**CAN.**

589 i. *By telegram—Payment after notice of countermand—Negligence.*]—*Held :* defts. were guilty of a breach of duty as bankers.—READE *v.* ROYAL BANK OF IRELAND, LTD., [1922] 2 I. R. 22.—**IR.**

sm. *By notice of death.*]—The duty & authority of a bank to pay a cheque cease on notice of the drawer's death.—CURLEY *v.* BRIGGS (ADMINISTRATOR OF DRURY ESTATE), [1920] 2 W. W. R. 1025; 53 D. L. R. 351.—**CAN.**

sn. ——.]—It is not the death of the customer, but notice of his death, that operates as a revocation of the authority of a bank to pay the customer's cheque.—KENDRICK *v.* DOMINION BANK & BOWNAS (1920), 47 O. L. R. 372; 18 O. W. N. 138.—**CAN.**

so. ——.]—WINNIPEG SAVINGS BANK (TRUSTEE) *v.* KENNY, [1924] 1 D. L. R. 952.—**CAN.**

bank at Liverpool, where they kept their account. Shortly before the bill became payable the co., who were then overdrawn at deft. bank, asked that bank to order payment of the bill & charge to the account of the co. Defts. were willing to act upon this advice, because they had an arrangement for a running overdraft with the co., & the bill was within the limits of that overdraft. When the bill became due it was brought by W., a servant of pltfs., to a partner of pltf. firm, who, at W.'s request, indorsed the bill in blank. W., instead of taking the bill to pltfs.' bank for the purpose of collection through the clearing house, presented the bill for payment over the counter to deft. bank & received the money, which he then fraudulently converted & stole. Pltfs. sued defts. to recover the amount of the bill on the grounds of negligence, money had & received, & conversion of the bill. Evidence was given at the trial that there is an almost universal custom at Liverpool that trade bills should be presented through the clearing house for payment to the bank at which they were accepted payable, but evidence was also given that presentation of such bills over the counter, though most unusual, was not irregular :— *Held :* deft. bank were not liable to pltfs. (1) on the ground of negligence, because no privity of contract existed between defts. & pltfs., & defts. owed no duty to pltfs. ; (2) on the ground of money had & received, because the drawing of the bill did not amount to an assignment in favour of the payee of funds of the drawee, as the acceptors had no funds to meet the bill, which was paid out of a loan by defts., & the advice to pay the bill sent by the acceptors to defts. gave no rights to pltfs. as against defts. ; (3) defts. were not liable to pltfs. for the conversion of the bill, because the bill was a negotiable instrument, & they paid it in good faith without notice of any defect in title & in accordance with the law merchant. A bank was not bound to make inquiries merely because a bill indorsed in blank or an open cheque was presented for payment over the counter. According to the law merchant such presentation, although unusual, was always recognised as due presentation, sufficient to require the bankers to pay, in the absence of very special circumstances of suspicion.—AUCHTERONI & Co. *v.* MIDLAND BANK, LTD., [1928] 2 K. B. 294 ; 97 L. J. K. B. 625 ; 139 L. T. 344 ; 44 T. L. R. 441 ; 72 Sol. Jo. 337 ; 33 Com. Cas. 345.

603. *Add. Annotation :*—**Refd.** *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221.

615. *Add. Annotation :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

617. *Add. Annotations :*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102 ; Vanbergen *v.* St. Edmunds Properties, Ltd. (1933), 149 L. T. 182.

624. *Add. Annotation :*—**Consd.** *Re* British Trade Corpn., [1932] 2 Ch. 1.

625. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

626. *Add. Annotation :*—**Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

627. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

629. *Add. Citation :*—88 L. J. K. B. 55.
Add. Annotations :—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114 ; Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

629a. —— —— **Space left between name of payee & words "or order."**]—Pltfs., exors. of a will, kept an exors.' account with defts., & retained a firm of solrs., Messrs. C. & P., who used to assist them in matters connected with their testator's estate. The acting member of the firm was one J. C. Pltfs. in conference with J. C. decided to invest through Messrs. J. P. & Co., stockbrokers, a sum of £5,000, part of the estate lodged on deposit with defts. J. C. accordingly drew out a form of cheque for signature by pltfs. It was in the form " Pay J. P. & Co. or order " & was drawn on pltfs.' deposit account with defts. The cheque was signed by pltfs. & left with J. C. to be posted to J. P. & Co. with instructions to invest the money. J. C., instead of posting the cheque to J. P. & Co., fraudulently inserted the words " per C. & P." in the blank space between the payees' name & the words " or order " ; he then indorsed the document with the names C. & P. & paid it so altered & indorsed into the W. Bank to the credit of a co. in which he was interested & which had an account at that bank. The document was accepted without question by the W. Bank & passed through the clearing-house, & the account of pltfs. with defts. was debited, & that of the co. with the W. Bank was credited, with the amount on the face of the document. In an action by pltfs. against defts. for conversion, negligence & breach of duty :—*Held :* (1) the cheque had been " materially altered " within Bills of Exchange Act, 1882 (c. 61), s. 64, & was avoided as between pltfs. & defts. by that sect., & therefore defts. could not rely upon sect. 60 of the Act as excusing them for paying the cheque ; (2) for the same reason defts. could not rely on sect. 80 of the Act ; (3) assuming the description of the payees, " J. P. & Co. per C. & P." to be a recognised although unusual description, the indorsement of " C. & P." without any reference to " J. P. & Co." was irregular & invalid & defts. were negligent in honouring the cheque, & for this reason also were not protected by sect. 80, or *semble* by sect. 60 of the Act ; (4) in leaving a blank space between the names of the payees & the words " or order " pltfs. were not guilty of any breach of duty towards defts.—SLINGSBY *v.* DISTRICT BANK, LTD., [1932] 1 K. B. 544 ; 101 L. J. K. B. 281 ; 146 L. T. 377 ; 48 T. L. R. 114 ; 37 Com. Cas. 39, C. A.

Annotation :—As to (4) **Refd.** Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

sp. *Note made by customer—Bank not bound to debit customer's account after maturity—To protect endorser.*]—ROYAL BANK OF CANADA *v.* MCNAUGHTON, [1931] 3 D. L. R. 233.—CAN.

631. *Add. Annotations :*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244 ; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40 ; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116 ; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811.

634. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

634a. —— —— **Customer silent—Estoppel.**]—Pltf. had an account with deft. bank, & his wife forged his signature on cheques & thereby drew out all the money left in the account, & she lent it to her sister. Pltf., on discovering the facts, did not at once inform the bank, but about nine months later, when his wife told him that she wanted more money for her sister, he stated his intention of going to the bank, & that night his wife committed suicide. Pltf. then went to the bank & told the manager about the forged cheques. In an action by pltf., claiming to be credited by deft. bank with the amount of the forged cheques, the bank pleaded (*a*) adoption & ratification, & (*b*) that pltf. was estopped by his silence from alleging that the signatures were forgeries. The tribunal of first instance found that the forged cheques were honoured through the carelessness of the bank officials. There was no evidence that pltf. had ever adopted the forged cheques as his own :—*Held :* ratification had no applicability to a forged signature but pltf. was estopped from alleging the forgeries because his silence until after his wife's death had caused the bank to lose their right of action against the forger, & therefore the action failed.—GREENWOOD *v.* MARTINS BANK, LTD., [1933] A. C. 51 ; 101 L. J. K. B. 623 ; 147 L. T. 441 ; 48 T. L. R. 601 ; 76 Sol. Jo. 544 ; 38 Com. Cas. 54, H. L.

Annotations :—**Consd.** *Re* National Benefit Assurance Co. (1932), 48 T. L. R. 612. **Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367 ; Refuge Assurance Co. *v.* Pearlberg, [1938] 2 All E. R. 25.

635. *Add. Annotation :*—**Consd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

639a. Payment to third party without valuable consideration—Right of bank to recover.]—Deft. H. having possessed himself of crossed cheques which were drawn on pltf. bank in his favour & which purported to be drawn by his employer's authority defrauded his employer by paying them into a bank, which collected them & credited H. with the amounts. H. drew out these amounts & paid some of the money without valuable consideration to deft. S., who in turn paid into her account with deft. bank a portion of what she so received. S. had no notice of any defect in H.'s title, & she never paid into her account with deft. bank any money except money which was part of the proceeds of H.'s frauds. In an action for a declaration that the money standing to the credit of S. with deft. bank was the property of pltf. bank :—*Held :* on the assumption that H. obtained a voidable title to the proceeds of the cheques, yet pltf. bank had established their right to the money claimed, as it was capable of being traced.—BANQUE BELGE POUR L'ETRANGER *v.* HAMBROUCK, [1921] 1 K. B. 321 ; 90 L. J. K. B. 322 ; 37 T. L. R. 76 ; 65 Sol. Jo. 74 ; 26 Com. Cas. 72, C. A.

Annotation :—**Expld.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

640. *Add. Annotation :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

644. *Add. Citation :*—88 L. J. K. B. 55.

Add. Annotations :—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114 ; Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

646. *Add. Annotation :*—*As to* (2) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

647a. Alteration of payee.]—Pltfs., exors. of one T., deceased, employed a solr., one C., of a firm C. & P. to act for them in matters relating to deceased's estate. They wished to invest a sum of £5,000 through a firm of stockbrokers, & C. accordingly prepared a cheque for that amount payable to the stockbrokers ; pltfs. then signed the cheque & handed it back to C. to deal with as directed. C., however, fraudulently added to the cheque the words "*per* C. & P.," & then indorsed the cheque with the words "C. & P." & handed it to a branch of deft. bank to be credited to the account which a co. in which he was interested kept at that branch. The cheque was credited to that co. & was passed through the clearing house, & in due course pltfs. were debited by their own bank with the sum of £5,000. On discovering the fraud pltfs. brought this action to recover the £5,000 from defts. :—*Held :* the words added by C. to the cheque constituted a material alteration & rendered the cheque void under Bills of Exchange Act, 1882 (c. 61), s. 64 (1). As therefore the cheque when it came into the hands of defts. was merely a piece of worthless paper no action could be brought on it, & pltfs.' claim failed. If, however, the cheque remained a valid one defts. had dealt with it without negligence & were protected by

---

PART II. SECT. 10.

635 ii a. —— —— ——.]—In an action by a customer of deft. bank to recover the aggregate amount of a number of cheques forged by a confidential clerk employed by the customer, which were paid by the bank & charged to the customer's account, the fraud being skilfully concealed from both customer & bank :—*Held :* with the exception of certain cheques bearing genuine signatures, the amounts of which were raised by the clerk, there was no negligence on the part of either the customer or the bank in failing to discover the frauds.—COLUMBIA GRAPHOPHONE CO. *v.* UNION BANK OF CANADA (1916), 38 O. L. R. 326 ; 34 D. L. R. 743.—**CAN.**

635 ii b. —— —— ——.]—A customer of a bank was estopped from denying that certain forged cheques were signed by him or by his authority, by reason of his conduct in not having notified the bank when he learned of the forgery of previous cheques on his account by the same person.—CABANA *v.* BANK OF MONTREAL, [1919] 3 W. W. R. 969.—**CAN.**

637 i. —— —— *Debited in pass book —Book returned unexamined.*]—The negligence of a customer, who, by failing to examine her pass book, does not discover that there has been an unauthorised withdrawal from her account :—*Held :* not to give rise to an estoppel or prevent the recovery from the bank of further moneys subsequently paid out by the bank in good faith on similar cheques.—ABBOTT *v.* BANK OF TORONTO ; ABBOTT *v.* BANK OF MONTREAL, [1934] 3 D. L. R. 256 ; O. R. 396.—**CAN.**

Bills of Exchange Act, 1882 (c. 61), s. 82, & for that reason also the claim failed.—SLINGSBY *v.* WESTMINSTER BANK, LTD. (No. 2), [1931] 2 K. B. 583; 101 L. J. K. B. 291, n.; 146 L. T. 89; 47 T. L. R. 1; 36 Com. Cas. 61.

Annotation :—**Overd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

647b. ——.]—SLINGSBY *v.* THE DISTRICT BANK, No. 629a, *ante*.

649. *Add. Annotations :*—**Consd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889. **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

652. *Add. Annotation :*—**Refd.** Goldman *v.* Cox (1924), 40 T. L. R. 744.

655. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

658. *Add. Annotations :*—**Consd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Bow's Emporium *v.* Brett (1927), 44 T. L. R. 194.

663. *Add. Annotations :*—**Consd.** Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. **Refd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

666. In paragraph, for "protected by Bills of Exchange Act, 1882 (c. 61), s. 19," read "protected by Stamp Act, 1853 (c. 59), s. 19."

Add. Annotations :—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811.

667. *Add Annotation:*—**Refd.** Lloyds Bank *v.* Chartered Bank of India (1927), 44 T. L. R. 165.

668a. —— —— —— ——.] — M., who was secretary & managing director of pltf. co., represented that he had bought goods for them from W., & the co. drew cheques to the aggregate amount of £762 in payment on a South African bank, making them payable to W., & handing them to M. as manager that he might hand them to W. M., instead of doing so, paid the cheques with forged indorsements into his own account with deft. bank which credited him with the amounts & obtained payment from the South African bank. The cheques were signed by two directors, including M., of pltf. co. M. applied the money received from the cheques with the exception of about £272 for W., paying out of the proceeds of five cheques "to order" for £62 10*s.* each four sums of £60 from his private account to W. One cheque, dated May 27, 1918, for £97 10*s.*, which was payable to "self or order" & signed by M. & a co-director, was refused by the bank, & came back to them after such refusal with M.'s name written in after the word "self," but the alteration was not initialed by both directors, & the addition was in M.'s writing. Pltf. co. repudiated the transactions & sued the bank for damages for conversion of the cheques, or alternatively for money had & received. Deft. bank claimed protection under Bills of Exchange Act, 1882 (c. 61), s. 82, & also as holders for value :—*Held :* (1) the *onus* of proving that there was no negligence had been discharged by the bank, except as to the five cheques for £62 10*s.* each; (2) the bank's duty with regard to these five cheques was to have made inquiries, & they were negligent in paying them into M.'s account; (3) the bank was negligent in cashing the cheque of May 27, 1918, as it should have seen that the alteration in it was made without the concurrence of both directors; (4) the evidence was not sufficient to show that M. paid anything out of his private account to W. in respect of the fifth cheque for £62 10*s.*; (5) there must be judgment for pltf. co. for £2 10*s.* on four of the cheques "to order" for £62 10*s.*, £62 10*s.* on the fifth cheque for the same amount, & £97 10*s.* on the cheque of May 27, 1918, making an aggregate amount of £170.—SOUCHETTE, LTD. *v.* LONDON COUNTY, WESTMINSTER & PARR'S BANK, LTD. (1920), 36 T. L. R. 195.

670. *Add. Annotations :*—**Consd.** Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. **Refd.** Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297; Slingsby *v.* Westminster Bank, [1931] 1 K. B. 173.

671. *Add. Citation :—sub nom.* MATHEWS *v.* WILLIAMS, BROWN & Co., 10 R. 210.

672. *Add. Annotation :—As to* (2) **Refd.** Savory (E. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

672a. —— **Collection for another bank.**] — IMPORTERS Co. *v.* WESTMINSTER BANK, No. 292b, *ante*.

673. *Add. Annotations :*—**Refd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683; Savory (E. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

674. *Add. Annotations :—As to* (2) **Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116.

676. *Add. Annotations :*—**Apld.** Brown *v.* Swan (1921), 37 T. L. R. 787. **Consd.** *Re* Farrows' Bank, [1923] 1 Ch. 41; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. **Refd.** Dey *v.* Mayo, [1920] 2 K. B. 346; Sutters *v.* Briggs, [1922] 1 A. C. 1; Underwood *v.* Bank of Liverpool &

PART II. SECT. 11.

658 iv. —— —— ——.]— Pltf., who had a savings account with deft. bank, learned on Apr. 28, 1936, from an examination of his passbook that six cheques, afterwards discovered to have been forged, had been charged up against him. Instead of pointing this out to the bank, or asking to see the cheques, he told its manager not to honour any more cheques on his account; that when he wanted money he would come to the bank. The bank requested him to put these instructions in writing but he refused. Between that date & June 8, 1936, ten more forged cheques were charged against his account. He then notified the bank of the forgeries. The forger was sentenced to prison in June, 1936, & was living at the time of this action. It was not shown that the bank was prejudiced as to the cheques cashed before Apr. 28 by the silence of pltf. :—*Held :* there was no estoppel against pltf. in respect of the cheques cashed before Apr. 28 & pltf. was entitled to judgment against the bank for the amount thereof.—KEECH *v.* CANADIAN BANK OF COMMERCE, [1938] 2 W. W. R. 291.—**CAN.**

Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297; Slingsby *v.* Westminster Bank, [1931] 1 K. B. 73.

677. *Add. Annotations :*—**Refd.** Dey *v.* Mayo, [1920] 2 K. B. 346; Sutters *v.* Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41; Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297.

679. *Add. Annotation :*—**Distd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

680. *Add. Annotation :*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

680a. "Receives payment"—Collecting bank.]—IMPORTERS CO. *v.* WESTMINSTER BANK, No. 292b, *ante*.

680b. Payment in ordinary course of business—Bills of Exchange Act, 1882 (c. 61), s. 60—Stamp Act, 1853 (c. 59), s. 19.]—Pltfs., as managers of a convalescent home, kept an account with deft. bank. Pltfs. employed a secretary of the committee which managed the home, who kept his personal account with deft. bank. By a series of frauds, the secretary misappropriated cheques amounting to over £4,000, which were the property of pltfs. & which he contrived to have placed to his account with deft. bank in the following manner. The cheques, which were crossed, were all properly signed by pltfs.' proper officers, & in most cases were drawn to people who had supplied goods to the home, in which cases the secretary forged an indorsement, or procured a forged indorsement of the payee, & paid the cheques into deft. bank, asking the bank to credit his account with the amount of the cheques. In other cases, the secretary procured cheques to be drawn in payment of forged invoices in favour of fictitious persons, & in these cases the indorsements were similarly forged, & the amounts of the cheques credited to the secretary's account. In an action for conversion, deft. bank pleaded: (i.) that the payees were non-existent persons, & that the secretary was the bearer of the cheques; (ii.) that it had paid the cheques in good faith in the ordinary course of business, & was protected by Bills of Exchange Act, 1882 (c. 61), & Stamp Act, 1853 (c. 59); & (iii.) that the cheques were crossed, & that it received payment thereof for a customer in good faith, & without negligence :—*Held :* (1) (MACKINNON, L.J., dissenting) as a receiving bank deft. bank had been guilty of conversion, &, as it had been found by the judge to have acted negligently, it was not protected by Bills of Exchange Act, 1882 (c. 61), s. 82. Deft. bank was therefore liable to pltfs. for the amount of the cheques converted during the six years prior to the action; (2) each transaction was a separate one, & the bank was not entitled to plead that, as the system had been going on for some time, the cheques received during the six years prior to the action had been received without negligence on the part of the bank; (3) (MACKINNON, L.J., making no reference to this point) Stamp Act, 1853 (c. 59), s. 19, is impliedly repealed by Bills of Exchange Act, 1882 (c. 61), s. 60; (4) *per* SLESSER & MACKINNON, L.JJ.: a bank can act negligently, & yet be acting in the ordinary course of business; (5) *per* GREER, L.J.: Bills of Exchange Act, 1882 (c. 61), s. 60, protects a bank only when that bank is merely a paying bank, & is not a bank which receives the cheque for collection. *Per* SLESSER, L.J.: deft. bank as paying bank was to be deemed to have paid the cheque in the ordinary course of business, & was protected by sect. 60.—CARPENTERS CO. *v.* BRITISH MUTUAL BANKING CO., LTD., [1938] 1 K. B. 511; [1937] 3 All E. R. 811; 107 L. J. K. B. 11; 157 L. T. 329; 53 T. L. R. 1040; 81 Sol. Jo. 701; 43 Com. Cas. 38, C. A.

681. Before this case add "*See, also,* Nos. 674-680."

684. *Add. Annotations :*—**Apld.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811.

685 *Add. Annotation :*—**Apld.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

687. *Add. Annotations :*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Savory (E. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 146 L. T. 530.

687a. —— —— ——.]—L., who was the chief accountant at the Bombay branch of pltf. bank, & was authorised to sign cheques on their behalf, had by a system of fraud procured the signature by another official of the branch of cheques payable to deft. bank. Those cheques were then sent to deft. bank for collection, with instructions written by L. on the bank's letter paper requesting deft. bank to place the proceeds of the cheques to the credit of a joint account which L. had opened at deft. bank in the name of himself & his wife. Those instructions having been carried out, the proceeds of the cheques were then collected by L. promptly after they had been paid in. It appeared from the account itself that it was generally in small credit until the arrival of each fraudulent cheque, & there was a failure on the part of deft. bank to make inquiries of pltf. bank as to the regularity of the transactions :—*Held :* (1) each cheque taken by itself was "issued," being signed & dealt with by persons having ostensible authority to sign & issue it, but the accompanying instructions, signed by L. alone, gave notice of irregularity which destroyed the "holding in due course"; (2) deft. bank were not entitled to rely on Indian Negotiable Instruments Act, s. 131, as their title as holders was defective through notice, so that they were not "true owners" within the sect.; (3) deft. bank had failed to discharge the burden of showing that they had collected without negligence. Examination of L.'s account should have put them on inquiry as to the source from which these payments were made, & pltfs. were entitled to succeed in their claim for conversion; (4) defts. could not set off the amount of the cheques repaid to

pltfs. against the amount of the converted cheques.—LLOYDS BANK *v.* CHARTERED BANK OF INDIA, AUSTRALIA & CHINA, [1929] 1 K. B. 40; 97 L. J. K. B. 609; 139 L. T. 126; 44 T. L. R. 534; 33 Com. Cas. 306, C. A.

Annotations :—As to (3) **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Refd.** Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Slingsby *v.* Westminster Bank, Ltd., [1931] 2 K. B. 583; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116.

687b. —— —— ——.]—One T., a solr., had from a client a power of attorney entitling T. to draw cheques on the client's banking account & to apply the moneys for the purposes of his client. T. for his own purposes fraudulently drew 15 cheques on his client's account with the B. bank, signing the cheques by using a rubber stamp which had on the upper line the name of the client & on the lower line " his attorney " & by placing his own signature between the lines. T. then paid the cheques into his own account with the M. bank, defts., with whom he had an overdraft. On discovering the facts the client brought an action against defts. for damages for conversion of the cheques, & defts. relied on Bills of Exchange Act, 1882 (c. 61), s. 82, alleging that the cheques were crossed cheques & that they had received payment of them in good faith & without negligence. During the proceedings T.'s client died, & the proceedings were continued by the client's exors. as pltfs. It was admitted that defts. had acted in good faith :—*Held :* except in the case of two of the cheques defts. in presenting & receiving payment for the cheques, had converted them, & as defts. had from the form of the cheques notice as to the money not being T.'s money, they were negligent in making no inquiry as to T.'s authority to make these payments into his own account, & therefore the action succeeded.—MIDLAND BANK, LTD. *v.* RECKITT, [1933] A. C. 1; 102 L. J. K. B. 297; 148 L. T. 374; 48 T. L. R. 271; 76 Sol. Jo. 165; 37 Com. Cas. 202, H. L.

Annotation :—**Consd.** Slingsby *v.* District Bank, Ltd., [1932] 1 K. B. 544.

689. *Add. Annotation :—As to* (1) **Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 146 L. T. 530.

690. *Add. Annotations :—As to* (1) **Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Refd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Australian Bank of Commerce *v.* Perel, [1926] A. C. 737; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. *Generally,* **Refd.** Goldman *v.* Cox (1924), 40 T. L. R. 423.

691. *Add. Annotation :—As to* (2) **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

691a. —— —— **Cheque payable to & indorsed by public official.**]—A banker to whom a private customer hands, for collection on his account, a cheque payable to & indorsed by a public official is put upon inquiry whether the customer is entitled to the cheque, & acts negligently if he credits the customer with the proceeds of the cheque without having made any such inquiry.

The Overseas Military Forces of Canada engaged in the European war had an estates office in England authorised by the Secretary of State for the Colonies to perform in accordance with statutory conditions the duties of collecting & distributing the estates of members of these forces dying in Europe. A sergeant employed at the office misappropriated during a period of ten months thirty-two cheques of the aggregate value of about £3,900, representing money belonging to the estates of deceased soldiers. Each of the cheques was drawn payable to " The Officer in Charge, Estates Office, Canadian Overseas Military Forces," & was indorsed generally by that officer under the same description with a view to its being sent to the Paymaster-General of these forces for payment of the amount to the beneficiaries,

---

PART II. SECT. 12, SUB-SECT. 3.

691 i. *What is negligence—Defective title of customer—Collection for stranger.*]—A man unknown to a banker was permitted to open an account with the bank by paying in a deposit of £5 in notes & four crossed cheques for collection, such cheques being made payable to a number or bearer & marked " bank," or " not negotiable," or " bank not negotiable." Without making any inquiry as to the man's title to the cheques the bank collected them. On the following day the man, by an open cheque, drew out almost the whole of the amount to the credit of his account, & paid in for collection four other crossed cheques, including one drawn by pltf. payable to a number or bearer to which the man who paid it in had no title. These four cheques were collected by the bank almost without inquiry :—*Held :* the circumstances in which the account was opened was such as to put the bank upon inquiry; the duty of inquiry extended to the transactions of the next day & in the absence of reasonable inquiry the bank was guilty of negligence.—LONDON BANK OF AUSTRALIA, LTD. *v.* KENDALL (1920), 28 C. L. R. 401.—**AUS.**

691 ii. —— —— ——.]—MASON *v.* SAVINGS BANK OF SOUTH AUSTRALIA, [1925] S. A. S. R. 198.—**AUS.**

691 iii. —— ——.]—Pltf.'s manager, S., had general authority to draw cheques on pltf.'s account. S. drew & signed a cheque on pltf.'s account for £250 odd in favour of " A. or bearer "; the amount, date & payee's name was also in the handwriting of S. The cheque was crossed generally " Not negotiable." The cheque was on one of pltf.'s cheque forms. This cheque was paid by S. into his account with deft. bank a few hours after it appeared to have been signed. The teller on S. handing in the cheque, asked S. which his title was & received an assurance from S. that " it was all right." S. was well known & of good repute in the district, & had had an account with deft. bank for some time, & during the previous six months several cheques in his favour signed by him, drawn on pltf.'s account, had been paid in & not been queried. Over a year later S. drew & signed a further cheque on one of pltf.'s forms on pltf.'s account for £358 odd in favour of " V. or bearer." The cheque & transaction were similar to the other cheque except that the date, name of payee & payee & amount were not in S.'s handwriting. A similar query was made by the teller, & answered in much the same way. In the interval five directors' cheques signed by S. had been paid in payable to himself or bearer. Other than the inquiry made by the teller of S. no inquiries were made by the deft. The cheques were in fact drawn by S. without authority & the proceeds were misappropriated by him. In an action for damages for conversion :—*Held :* there was a conversion in each case. Also, as the bank had not acted without negligence, it was not protected by sect. 88 of Bills of Exchange Act, 1909.—BENNETT & FISHER, LTD. *v.* COMMERCIAL BANK OF AUSTRALIA, LTD., [1930] S. A. S. R. 26.—**AUS.**

691 iv. ——.]—Where a banker claims the protection of sect. 88 (1) of Bills of Exchange Act, 1909–1912, the test of negligence is whether the transaction of paying in the cheque, coupled with the circumstances antecedent & present, was so out of the ordinary course that it ought to have aroused doubts in the banker's mind & caused him to make inquiry.—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* BEATTY, [1931] S. R. (Q.) 291.—**AUS.**

or in some cases directly to the beneficiary, & each cheque was crossed generally. The sergeant paid the first two cheques into a branch of defts.' bank at which he had a small private account of his own & the rest of them into another branch of the bank which passed them on to the former branch. No inquiry was made at either branch whether he was entitled to the cheques, & at the former branch they were credited to his account & payment of them was received for him. In an action by the Paymaster-General against defts. for damages for conversion of the cheques:—*Held:* the fact that the cheques were drawn payable to & indorsed by a public official should have put the cashiers of defts. upon inquiry whether their private customer was entitled to the cheques; in crediting the cheques to him without any inquiry the cashiers of both the branches had been guilty of negligence; & therefore defts. were not protected by Bills of Exchange Act, 1882 (c. 61), s. 82, from liability to pltf.—Ross *v.* London County, Westminster & Parr's Bank, [1919] 1 K. B. 678; 88 L. J. K. B. 927; 120 L. T. 636; 35 T. L. R. 315; 63 Sol. Jo. 411.

Annotations:—**Dbtd.** Slingsby *v.* Westminster Bank, [1931] 1 K. B. 173. **Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Reld.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

691b. —— —— **Cheque payable to company.**]—Underwood (A. L.), Ltd. *v.* Bank of Liverpool, Same *v.* Barclays Bank, No. 387a, *ante*.

691c. —— —— ——.]—In 1922 pltfs. were building ships for a firm, L. M. & P., & in connection with that business L. M. & P. sent pltfs. a crossed cheque for £8,000. That cheque was duly received at pltfs.' office & B., a director, signed a receipt form on the back of the cheque as follows: "L. & M. Shipbuilding Co. T. B. director." Another director of pltfs., J., then indorsed the cheque to the order of another co. of which B. was a director, B. & Co. Ltd. The cheque was then indorsed by B. "for & on behalf of B. & Co. T. B. director," & was paid into the account of B. & Co. at a branch of defts.; & subsequently by arrangement between defts. & himself B. drew £2,000 out of the £8,000 thus credited to B. & Co. Ltd. for his own private purposes. J. had no right to indorse the cheque to the order of B. & Co., & B. & Co. had no right to the proceeds of the cheque. In 1923 pltfs. went into liquidation, & the liquidator on examining the accounts found that the cheque for £8,000 had been misapplied, & also that other sums were owing by B. to pltfs. The liquidator thereupon proceeded by a misfeasance summons against J. & B., & upon that summons an order was made for £450 against J. & £10,450 against B. The money was not paid, & pltfs. brought an action against defts. for conversion of the £8,000 cheque:—*Held:* there was clear evidence of negligence on the part of defts., & Bills of Exchange Act, 1882 (c. 61), s. 82, gave no defence to the claim.—London & Montrose Shipbuilding & Repairing Co., Ltd. *v.* Barclays Bank (1926), 31 Com. Cas. 182, C. A.

691d. —— —— **Dividend warrant for War Loan.**]—The first pltf., who was an executrix & a beneficiary under a will, received from the Bank of England a warrant for interest on War Loan, the warrant being crossed "& Co. Not negotiable" & being expressed to be "A/c Harry Turner, deceased." She signed the warrant & sent it to the exor.'s solr. in pursuance of an arrangement that any warrants received by her should be sent to him for attention. The solr. paid the warrant into his own account with deft. bank, representing to the bank that it was a repayment of a loan which he said he had made to the first pltf. In an action against the bank to recover the amount:—*Held:* (1) although the drawer of the warrant was an official of the Bank of England on which it was drawn, yet, as he was acting as an agent of the Government, the warrant constituted a "cheque"; (2) the word "dividends" in Bills of Exchange Act, 1882 (c. 61), s. 95, included interest on Government stock, & (3) as defts. had not been guilty of any negligence they were, on both grounds, protected by Bills of Exchange Act, 1882 (c. 61), s. 82, & the action failed.—Slingsby *v.* Westminster Bank, Ltd., [1931] 1 K. B. 173; 100 L. J. K. B. 195; 144 L. T. 369; 47 T. L. R. 1; 36 Com. Cas. 54.

Annotations:—**Dbtd.** Slingsby *v.* District Bank, Ltd., [1932] 1 K. B. 544. **Reld.** Slingsby *v.* Westminster Bank, Ltd. (No. 2), [1931] 2 K. B. 583.

691e. —— —— **Sufficiency of inquiries—Breach of regulations.**]—T., a motor trader in Bristol, had an account with deft. bank. He induced pltfs., a hire-purchase finance firm, to make out a cheque to W. & Co. for £189 5*s*., which cheque was crossed & marked not negotiable in print. T., having forged the indorsement of W. & Co. upon it, then added his own indorsement to it & paid it into his own account. The cashier asked T., if he had obtained the cheque from W. & Co., to which question he replied in the affirmative. The cashier then inspected T.'s account & saw there were considerable dealings between him & W. & Co. T. then volunteered the information that he had bought a car from W. & Co., & sold it to a customer of his, & mentioned a cheque for £484 10*s*. which had passed through his account in favour of W. & Co., & led the cashier to believe that a hire-purchase arrangement had been entered into with pltfs. in respect of a car bought from W. & Co. & sold to one of his customers. Deft. bank's regulations require such a cheque to be dealt with by the branch manager, & not by the cashier. The cheque was not brought to the branch manager's notice, nor did the cashier by inquiry discover, as the fact was, that many cheques drawn by T. on his account had been dishonoured, or honoured only after repeated presentation. The bank made no inquiry of W. & Co. respecting the cheque. Pltfs. sued the bank for the conversion of the cheque:—*Held:* (1) a breach of the bank's own regulations was not conclusive proof that the cashier made insufficient inquiry, nor is a customer entitled to require literal performance of such regulations; (2) the past banking history of T. was such that the bank should have made further inquiry, possibly by reference to the drawer or the payee of the cheque.—Motor Traders Guarantee Corpn., Ltd. *v.* Midland Bank, Ltd., [1937] 4 All E. R. 90; 157 L. T. 498; 54 T. L. R. 10; 81 Sol. Jo. 865.

692a. ——.] —TAXATION COMRS. *v.* ENGLISH, SCOTTISH & AUSTRALIAN BANK, No. 292a, *ante*.

692b. —— **Question of fact.**] — The question whether a banker in receiving payment of a cheque for a customer has acted without negligence, so as to be protected by Bills of Exchange Act, 1882 (c. 61), s. 82, if the customer has no title thereto, is a question of fact. Where there was a missing link in the chain of identification of the customer:—*Held:* that fact ought to have put the bank upon inquiry, & the bank was not protected by the sect.—HAMPSTEAD GUARDIANS *v.* BARCLAYS BANK, LTD. (1923), 39 T. L. R. 229; 67 Sol. Jo. 440.

692c. ——.]—SLINGSBY *v.* WESTMINSTER BANK (No. 2), No. 647a, *ante*.

692d. —— **Failure to require particulars of cheques paid in.**]—It was the practice of bankers having a head office in London & various branch offices in London & elsewhere to accept at their head office cheques for the credit of an account at any one of their branch offices & to accept at any one of their branch offices cheques for the credit of an account at any other branch office. A firm of London stockbrokers were in the habit of signing crossed cheques which were intended to be applied in payment of jobbers' accounts, & which in accordance with a rule of the London Stock Exchange were crossed & made payable to bearer. They had in their employment two clerks, P. & S. P. had an account at one country branch of the bank. The wife of S. had an account at another country branch. The manager of country branch No. 1 knew that P. was a stockbroker's clerk, but did not know & did not ask the name of his employers. The manager of country branch No. 2 knew nothing of S. Both P. & Mrs. S. had, when opening their accounts, given references which appeared satisfactory to the respective branch managers. P. stole many of the cheques signed as above, & handed them in at one or other of the bankers' London branches, making out paying-in slips which represented that the cheques were paid in by the payees & directed payment to be made to the credit of P.'s account at country branch No. 1. S. also stole many of the cheques & handed them in at the bankers' head office, making out paying-in slips directing payment to be made to the account of Mrs. S. at country branch No. 2. The stolen cheques were in each case received by the London office & sent to the Clearing House. The paying-in slips were sent to the country branch, no mention being made of the names of the drawers. The amounts of the cheques were without question credited as directed by the paying-in slips. Written rules formulated by the bankers for the direction of their managers provided, among other things, that no new current account should be opened without knowledge of, or full inquiry into, the circumstances & character of the customer; there was also a rule, not written but generally recognised, that banks do not take payments in, without inquiry, of cheques drawn by a firm in favour of a third party & paid in by a person, other than the payee, who is or ought to be known to be an employee of the drawing firm. The stockbrokers sued the bankers for conversion of the stolen cheques. The bankers pleaded Bills of Exchange Act, 1882 (c. 61), s. 82, & alleged that they had in good faith & without negligence received payment of the cheques for their customers P. & Mrs. S.:—*Held:* (1) the practice of the bankers was defective in that the branch which received the cheques in the first instance never informed the crediting branch of the names of the drawers of the cheques; (2) the managers of the crediting branches had omitted to make sufficient inquiries when accepting P. & Mrs. S. as customers; in these circumstances the bankers had failed to prove that they had acted without negligence, & consequently that they were liable; (3) *Semble*, by Ct. of Appeal, neither P. nor Mrs. S. was a "customer" within the true meaning of sect. 82, inasmuch as neither had an account at the City offices into which the cheques were paid.—LLOYDS BANK, LTD. *v.* SAVORY (E. B.) & Co., [1933] A. C. 201; 102 L. J. K. B. 224; 49 T. L. R. 116; 38 Com. Cas. 115; *sub nom.* SAVORY & CO. *v.* LLOYDS BANK, LTD., 148 L. T. 291, H. L.

Annotation:—*Generally*, **Refd.** Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811.

692e. —— **Failure to inquire as to employment or occupation of customer.**]—LLOYDS BANK, LTD. *v.* SAVORY (E. B.) & Co., No. 692d, *ante*.

692f. Who is "customer."]—LLOYDS BANK, LTD. *v.* SAVORY (E. B.) & Co., No. 692d, *ante*.

Banker's drafts.]—*See* Bills of Exchange Act (1882) Amendment Act, 1932 (c. 44).

693. *Add. Annotation:*—**Refd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67.

694. For "forgot" in the seventh line of the paragraph read "forged."

Add. Annotations:—**Consd.** Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. **Refd.** Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297; Slingsby *v.* Westminster Bank, [1931] 1 K. B. 173.

696. *Add. Annotation:*—**Refd.** Firm Bishun Chand *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

703. *Add. Annotations:*—**Consd.** Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. **Refd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127; Firm Bishun Chand *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465; Paton *v.* I. R. Comrs., [1938] A. C. 341.

PART II. SECT. 13, SUB-SECT. 1.

696 i. *Passing to & fro of—Effect.*]—*Qu.*: whether the return of a bank's pass book without comment constitutes a stated & settled account & operates as an estoppel precluding the customer from disputing the entries therein to the prejudice of the bank.—BATAKRISHNA PRAMANIK *v.* BHOWANIPUR BANKING CORPN., LTD. (1931), I. L. R. 59 Calc. 662.—**IND.**

699 iii. —— ——.]—BHARAT NATIONAL BANK *v.* BANARJE DAS (1923), I. L. R. 5 Lah. 129.—**IND.**

sp. *Signing vouchers as to correctness of account in pass-book—Estoppel.*]—COLUMBIA GRAPHOPHONE CO. *v.* UNION BANK OF CANADA (1916), 38 O. L. R. 326; 34 D. L. R. 743.—**CAN.**

st. —— ——.]—Monthly vouchers regularly signed by a bank's customer as to the correctness of his account as it stood from time to time & given in exchange for cancelled cheques, were held to be fatal to his contention that certain cheques had not been credited to him.—UNION BANK OF CANADA *v.* WOOD, [1920] 3 W. W. R. 173.—**CAN.**

sw. —— ——.]—CAMPBELL *v.* IMPERIAL BANK, [1924] 4 D. L. R. 289: 55 O. L. R. 318.—**CAN.**

704. *Add. Annotation :—As to* (2) **Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

706. *Add. Annotations :—***Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81 ; Paton *v.* I. R. Comrs., [1938] A. C. 341.

708. *Add. Annotation :—***Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

713. *Add. Annotation :—***Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

728. *Add. Annotation :—***Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

734. *Add. Annotations :—***Apld.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328. **Refd.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452 ; Steam Saw Mills Co. *v.* Baring, Archangel Saw Mills Co. *v* Baring, [1922] 1 Ch. 244 ; Jones *v.* Waring & Gillow, [1926] A. C. 670.

735. *Add. Annotation :—As to* (2) **Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd. (1932), 48 T. L. R. 422.

748. *Add. Annotation :—***Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

752. *Add. Annotations :—***Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711; Astor Properties, Ltd. *v.* Tunbridge Wells Equitable Friendly Society, [1936] 1 All E. R. 531.

753. *Add. Annotation :—***Consd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

756. *Add. Annotation :—***Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

756a. Credit conditional on tender of approved insurance policy—What is approved insurance policy.]—Bankers issued a letter of credit to English sellers of 100 tons of steel plates to Dutch buyers. By the terms of the letter of credit the bankers agreed to honour the sellers' draft for the amount of the purchase-money, which included freight & insurance to R., provided the draft were accompanied by an approved insurance policy covering the shipment of the goods. The sellers presented their draft accompanied by a certificate of insurance which did not contain & did not offer any means of ascertaining the full terms of the insurance. In an action by the sellers against the bankers for not honouring the draft :—*Held :* the certificate was not an "approved insurance policy" within the meaning of the letter of credit, & the bankers were justified in refusing to honour the draft. An approved insurance policy is one to which no reasonable objection can be made.—SCOTT (DONALD H.) & CO., LTD. *v.* BARCLAYS BANK, LTD., [1923] 2 K. B. 1 ; 92 L. J. K. B. 772 ; 129 L. T. 108 ; 39 T. L. R. 198 ; 67 Sol. Jo. 456 ; 28 Com. Cas. 253, C. A.

*Annotations :—***Refd.** Harper *v.* Mackechnie, [1925] 2 K. B. 423; Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692; Sassoon *v.* International Banking Corpn., [1927] A. C. 711; De Monchy *v.* Phœnix Insce. Co. of Hartford (1928), 138 L. T. 703.

756b. Irrevocable letter of credit—Payment for goods—Refusal of bank to pay invoices—Liability of bank to seller.]—Pltfs. entered into a contract with buyers in C. to manufacture & ship machinery by instalments over several months at agreed prices, but subject to a stipulation that should the cost of labour or wages increase, there should be a corresponding increase in the purchase price. The buyers were also to open a "confirmed irrevocable credit" in favour of pltfs. with a bank in this country, & to pay for each shipment as it took place. In pursuance of this arrangement defts., who were the buyers' bankers in L., wrote to pltfs. stating that they would pay bills drawn on the buyers to the extent of £70,000, the bills to be accompanied by documents & to be received before Apr. 14, 1921, "this to be considered a confirmed irrevocable credit." Pltfs. shipped two instalments under the contract & received payment under the letter of credit. The buyers then found that the invoices included an increase in the purchase price on account of wages & material, & instructed defts. only to pay so much of the next invoices as represented the original prices. Defts. accordingly refused to pay the bill presented on the next shipment & pltfs. then cancelled the contract, claiming damages from defts. as on a repudiation by the buyers :—*Held :* the credit being irrevocable, the refusal of defts. to take & pay for the particular bills on presentation of the proper documents constituted a repudiation of the contract as a whole, & pltfs. were entitled to damages so reckoned. The basis of this form of banking facility is that the buyer is taken, as between himself & the banker, to accept the seller's invoices as correct. Any adjustment must be made by way of refund by the seller & not by way of retention by the buyer.—URQUHART LINDSAY & CO. *v.* EASTERN BANK, LTD., [1922] 1 K. B. 318 ; 91 L. J. K. B. 274 ; 126 L. T. 534 ; 27 Com. Cas. 124.

*Annotation :—***Refd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

756c. Revocable letter of credit—Duty of bank to give notice of withdrawal.]—A firm in W., who wished to buy a quantity of asbestos sheets from pltfs., a firm in L., instructed defts. to open a credit in favour of pltfs. Defts. accordingly wrote a letter dated June 14, 1920, to pltfs. informing them of their instructions & adding that their letter "is merely an advice of the opening of the

---

713 ii. —— —— ——.]—The delivery of a pass-book cannot constitute a *donatio mortis causâ* so as to give the donee title to the money represented by it.—CUSACK *v.* DAY, [1925] 3 D. L. R. 1028 ; [1925] 2 W. W. R. 715.—**CAN.**

PART II. SECT. 16.

a i. ——.]—A document in the form of a letter written by a bank was as follows :—"We beg to inform you that we are in receipt of advice by wire from our London office that a confirmed irrevocable credit has been opened under which we are authorised to negotiate your bills, as offered on G. & Co., of London, to the extent of £16,875 on the following conditions : bills to be drawn payable three months after sight & to be accompanied by proper shipping documents representing shipment of two thousand bales of jute of a particular mark from Calcutta to Antwerp, during Nov., Dec. 1920." Among the conditions, the two following were the most important :—(a) "Please note that this advice does not release you from the liability attaching to the drawer of a bill of exchange" ; (b) "Under present conditions we can give no undertaking to negotiate bills drawn under this credit" :—*Held :* the document was not an ordinary banker's letter of credit.—CHANDANMULL BENGANEY *v.* NATIONAL BANK OF INDIA, LTD. (1923), I. L. R. 51 Calc. 43.—**IND.**

above-mentioned credit, & is not a confirmation of the same." On July 20, 1920, pltfs. shipped part of the goods to the buyers & were paid the agreed price by defts. on presentation of the stipulated documents which included bills of lading & a draft on defts. On Aug. 4, 1920, defts. were instructed by cable that the credit was withdrawn. On Sept. 30, 1920, pltfs., not having had notice of the withdrawal of the credit, shipped the balance of the goods to the buyers, but defts. refused payment of a draft for the price. Pltfs. brought an action against defts. for recovery of the balance of the credit, alleging (*inter alia*) that it was the duty of defts. to give to pltfs. reasonable notice that the credit had been withdrawn. There was evidence that it was the practice of defts. at once to inform persons to whom revocable credit was given of the withdrawal of the credit, but that in this instance, owing to pressure of business, they had forgotten to do so. Among the documents tendered to defts. on the application for payment on the second occasion was a bill of lading which defts. alleged was out of order, but which, according to pltfs., was in exactly the same terms as the former bill of lading accepted by defts. without objection:—*Held:* (1) a letter in the form of that written by defts. on June 14, 1920, intimated to the person in whose favour the credit was opened that he might find that the credit was revoked at any time; (2) there was no legal obligation on defts. to give notice of the revocation of the credit; (3) the giving of notice was an act of courtesy which it was very desirable should be performed, but it was not founded upon any legal obligation.—CAPE ASBESTOS CO., LTD. *v.* LLOYDS BANK, LTD., [1921] W. N. 274.

760. *Add. Annotations:*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

767. *Add. Annotations:*—**Consd.** Torrens *v.* I. R. Comrs. (1933), 18 Tax Cas. 262. **Refd.** National Provident Institution *v.* Brown, Brown *v.* National Provident Institution, Provident Mutual Life Assce. Assocn. *v.* Ogston, Ogston *v.* Provident Mutual Life Assce. Assocn. (1921), 8 Tax Cas. 57.

768. *Add. Annotation:*—**Refd.** Torrens *v.* I. R. Comrs. (1933), 18 Tax Cas. 262.

779. *Add. Annotation:*—**Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

790. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

798. *Add. Annotation:*—**Refd.** Humphrey *v.* Wilson (1929), 141 L. T. 469.

803a. —— ——.]—Three shareholders in a shipbuilding co., which was heavily indebted to a bank, agreed to purchase certain shares in a steel co. which belonged to the shipbuilding co. & were held by the bank as security. The price of the shares was £69,750, & the bank agreed to advance £39,750, "on joint loan" to the three purchasers, the balance being provided by them in equal portions. The shares were thereafter to be held by the bank in security of the sum advanced. The purchasers paid for the shares by granting their individual cheques to the sellers for £10,000 each, & by drawing joint cheques, signed by them all, on the bank for the £39,750 advanced. The bank paid this amount to the sellers, & opened a joint overdraft account in name of the three purchasers. The purchasers were not customers of the bank. The value of the shares having fallen, the bank intimated to one of the three purchasers that it held him liable for the whole amount of the loan. He thereupon brought an action concluding for declarator that he was liable only for one-third of the amount of the loan, & that, on payment thereof, he was entitled to receive a transfer of one-third of the shares held in security by the bank:—*Held:* (1) the pursuer was liable for one-third only, in respect (*a*) that the purchasers were not jointly & severally liable, as drawers of the joint cheques, to the bank as a holder in due course, seeing that the cheques had been paid by the bank as drawee & were thus no longer subsisting documents of debt; & (*b*) that the loan was constituted by the agreement to advance it which imposed only a joint liability, & not by the cheques which were merely part of the machinery for carrying out the transaction; but (2) the pursuer was not entitled to receive a transfer of one-third of the shares, in respect that the bank, under the arrangement for the pledge of the shares, was entitled to treat the whole of the shares deposited as being security for the whole of the amount advanced.—COATS *v.* UNION BANK OF SCOTLAND, LTD., [1929] S. C. 114 (H. L.).

805. *Add. Annotations:*—*As to* (1) **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609. *As to* (2) **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

809. *Add. Citations:*—88 L. J. K. B. 85; 119 L. T. 727.

Add. Annotation:—**Refd.** Tate *v.* Crewdson, [1938] 3 All E. R. 43.

818a. —— **Capitalisation of unpaid interest on advance.**]—To secure a co.'s indebtedness to a bank, resps. from time to time gave guarantees to the bank. From 1920 onwards the co. was indebted to the bank continuously, & the interest on the amount

---

PART II. SECT. 19.

82. *Unauthorised application of proceeds—In payment of borrower's debts to other customers—Right to damages.*]—After crediting pltf. with the proceeds of a note which it discounted for him, deft. bank, without authority from him, applied nearly all of such proceeds to pay off debts which he owed to other customers of the same bank, & paid itself the amount of the note out of the proceeds of promissory notes which it held as collateral securities for advances made by it to him:—*Held:* pltf. was entitled to nominal damages & costs for the breach of the contract to lend him the money, & to judgment for the amount of the proceeds of his note which the bank had so applied, together with interest.—MARSH *v.* ROYAL BANK OF CANADA, [1922] 1 W. W. R. 486; 63 D. L. R. 659; 15 Sask. L. R. 201.—CAN.

PART II. SECT. 20, SUB-SECT. 1.

809 i. *Discharge of overdraft—Tender of cheque—What amounts to acceptance.*]—*Held:* the action of the bank in retaining & clearing the cheque was not conclusive on the question of acceptance, & as the bank had not accepted the proceeds of the cheque in full settlement, judgment had been rightly entered for the bank.—BURT *v.* NATIONAL BANK OF SOUTH AFRICA, LTD., [1921] App. D. 59.—S. AF.

owing from time to time was debited half-yearly to the co.'s account. On Nov. 17, 1926, when the co. had become completely insolvent, resps. satisfied the whole indebtedness to the bank by means of a loan from the bank to resps. personally. Resps. claimed repayment of income tax under Income Tax Act, 1918 (c. 40), s. 36 (1), on the part of the total sum paid amounting to £17,861 16*s.* 5*d.*, which represented interest debited half-yearly to the co.'s account with the bank:—*Held:* the interest due each half-year which, upon the failure of the co. to pay it, was, according to the regular practice of bankers, added to the capital sum advanced, was thereby capitalised & could not thereafter be treated as interest paid under the sub-sect.—INLAND REVENUE COMRS. *v.* HOLDER, [1931] 2 K. B. 81; 100 L. J. K. B. 439; 145 L. T. 193; 47 T. L. R. 330, C. A.; *on appeal, sub nom.* HOLDER *v.* INLAND REVENUE COMRS., [1932] A. C. 624, H. L.

Annotations:—**Folld.** Fenton's Trustee *v.* I. R. Comrs., [1936] 1 All E. R. 116. **Consd.** I. R. Comrs. *v.* Lawrence, Graham & Co., [1937] 2 K. B. 179; Paton *v.* I. R. Comrs., [1938] A. C. 341. **Refd.** Carnarvon (Earl) *v.* I. R. Comrs. (1935), 19 Tax Cas. 455; Marland *v.* I. R. Comrs. (1934), 19 Tax Cas. 467.

820. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Lawrence, Graham & Co., [1937] 2 K. B. 179.

828. *Add. Annotations:*—**Expld.** Elder *v.* Northcott, [1930] 2 Ch. 422; I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

829. *Delete citation & add the following para. & citation:*—

Where a creditor appropriates his debtor's payments in his books without communicating the appropriation to the debtor the creditor is not bound by the appropriation.—LONDON & WESTMINSTER BANK *v.* BUTTON (1907), 51 Sol. Jo. 466.

PART II. SECT. 20, SUB-SECT. 2.

822 iv. —— ——.]—A bank's customer conveyed certain lands, by way of mtge., as security for the money which had been advanced to him. The mtge. deed provided that the interest payable by the mtgor. was to be "at the said bank's current rate & calculated according to the custom of the bankers." As a matter of fact compound interest had been paid during the lifetime of the mtgor. In a suit for the administration of the estate of the mtgor. the bank claimed to be entitled to compound interest on the mtge. debt until date of payment:—*Held:* after the death of the mtgor. the relationship of banker & customer came to an end, & thereafter the deft. bore simple interest only.—MORGAN *v.* ROE (1911), 46 I. L. T. 41, C. A.—**IR.**

y i. —— —— ——.]—Where there is an agreement between a bank & its customer, that he shall pay interest at the rate of 8 per cent. upon a promissory note, the agreement is not entirely void, & the customer remains liable to pay interest at the rate of 5 per cent.—STANDARD BANK OF CANADA *v.* ALBERTA ENGINEERING CO., LTD. (1917), 1 W. W. R. 1177; 33 D. L. R. 542; 11 Alta. L. R. 96.—**CAN.**

y ii. —— —— ——.]—The stipulation by a bank for an illegal rate of interest merely avoids the rate & not the entire contract for interest.—UNION BANK *v.* FARMER, [1917] 1 W. W. R. 1361.—**CAN.**

y iii. —— —— ——.]—Pltf. was indebted to deft. bank for which debt they took his note charged with interest at 9 per cent. Order made for reduction of interest to 5 per cent.—DEGROW *v.* UNION BANK OF CANADA (1922), 63 D. L. R. 688.—**CAN.**

y iv. —— —— ——.]—Where a bank contracts for 8 per cent. interest it can only collect the legal rate of 5 per cent.—BANK OF MONTREAL *v.* HOLOBOFF, [1923] 3 W. W. R. 645.—**CAN.**

y v. —— —— ——.]—A provision in a guarantee given a bank that any account settled or stated by or between the bank & its customer may be adduced by the bank as conclusive evidence against the guarantor, cannot be held binding on the guarantor, when there is included in the amount so stated interest charges at a rate in excess of the maximum legal rate allowed under Bank Act.—ROYAL BANK OF CANADA *v.* MCBRIDE, [1927] 1 D. L. R. 909; [1927] 1 W. W. R. 245; 21 Sask. L. R. 417.—**CAN.**

y vi. —— —— ——.]—Where interest on a loan has been charged up to a borrower's current account at a rate in excess of 7 per cent. & such charges have been included in the statements furnished him from month to month, &, without making any objection thereto, he has signed & returned such statements as satisfactory, he cannot complain, in an action to recover the loan & interest, that the charges for interest at that rate were illegal.—ROYAL BANK OF CANADA *v.* DOTEN (Alta.), [1927] 3 D. L. R. 305; [1927] 2 W. W. R. 670.—**CAN.**

y vii. —— —— *Whether charged.*]—Upon the return of a dishonoured bill, the drawer would again draw for the same amount, & pltf. bank would discount the bill as before, & if the second bill came back dishonoured it would again be charged in full to the drawer's account:—*Held:* there was no breach of Bank Act, s. 91.—IMPERIAL BANK OF CANADA *v.* ALLEY, [1926] 3 D. L. R. 85; 59 O. L. R. 1.—**CAN.**

y viii. —— —— *Acquiescence—Whether guarantor bound.*]—When a bank has charged a borrower interest at a rate beyond that permitted by the Bank Act the principle that if the borrower voluntarily pays the excess he cannot recover it back extends to the borrower's voluntary assent to anything which is equivalent to payment of interest at that rate; & if at the date of a guarantee given the bank the actual amount guaranteed includes such excess interest & the borrower has so recognized the propriety of the excess charge that it must be considered voluntarily "paid," it is not afterwards open to the guarantor to say that as against him the accounts must be re-opened & such voluntary payments rescinded.—BANQUE CANADIENNE NATIONALE *v.* SHRAGGE (Man.), [1929] 3 W. W. R. 676; [1930] 1 D. L. R. 590.—**CAN.**

y ix. —— —— —— *Giving renewal note.*]—Where a customer has given a bank a note bearing a rate of interest higher than 7 per cent. & has renewed it with a note for an amount inclusive of the interest accrued at said rate such renewal note has the same effect as payment would have had with respect to the matter of interest, *i.e.*, the customer cannot complain in an action to recover the loan & interest that the rate of interest was illegal.—CANADIAN BANK OF COMMERCE *v.* POSTMAN & POSTMAN, [1931] 3 W. W. R. 737.—**CAN.**

ss. *Raising rate of interest—Whether customer bound.*]—The mere sending of a notice that the interest charged on overdrafts against security held by the bank has been raised, is not of itself sufficient to render a customer liable to pay the enhanced rate, but where, after receiving such a notice, the customer borrows more money from the bank, the bank is justified in charging him interes at the enhanced rate.—GADDAR MAL *v.* TATA INDUSTRIAL BANK, LTD., BOMBAY (1927), I. L. R. 49 All. 674.—**IND.**

PART II. SECT. 21, SUB-SECT. 1.

d i. —— *Liability contracted after execution of mortgage.*]—A mtge. to a bank cannot be a valid security for a liability contracted subsequently to its execution.—*Re* EDMONTON BREWING & MALTING CO., LTD. (NO. 2), [1918] 3 W. W. R. 988; 43 D. L. R. 748.—**CAN.**

n. Add "*affd.*, 58 S. C. R. 448."

sm. *Unauthorised loan by bank—Right to sue.*]—Though under its memorandum of assocn. a bank is precluded from lending money on mtges. yet, where money has been lent by the bank on a mtge., it is entitled to sue for & realise the money so lent.—AHMED SAIT *v.* BANK OF MYSORE (1929), I. L. R. 53 Mad. 771.—**IND.**

PART II. SECT. 21, SUB-SECT. 2.

o i. ——.]—QUEBEC BANK *v.* PHILLIPS, [1917] 2 W. W. R. 365; 10 Sask. L. R. 190; 36 D. L. R. 440.—**CAN.**

PART II. SECT. 21, SUB-SECT. 3.

837 i. *Promissory note—Bank parting with possession—Right to recover.*]—Where a promissory note which had been pledged by the holder thereof to his bank as collateral security was lost by the bank:—*Held:* the bank was liable to him for the value thereof, which was *primâ facie* its face value.—ROYAL BANK OF CANADA *v.* TALBOT, [1928] 3 D. L. R. 157; [1928] 2 W. W. R. 190; 34 Alta. L. R. 395.—**CAN.**

r i. —— —— *Money advanced partly on security of land.*]—A bank may recover upon a promissory note notwithstanding that the moneys were advanced upon the security in part of lands.—ROYAL BANK OF CANADA *v.* GOLD, [1918] 2 W. W. R. 745; 24 B. C. R. 145; 41 D. L. R. 276.—**CAN.**

a i. —— —— *New note given by maker—Rights of bank.*]—*Held:* the bank was entitled to recover on the note.—BANK OF MONTREAL *v.* WEISDEPP, [1917] 2 W. W. R. 615; 24 B. C. R. 73; 34 D. L. R. 26.—**CAN.**

844. *Citations :*—For " 61 L. J. Ch. 732 " read " 61 L. J. Ch. 723."

Add. Annotations :—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Refd.** Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

846. *Add. Annotation :*—**Consd.** Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

846a. —— —— Bank entitled to hold securities not merely for specific advance but for balance of whole account between broker & bank.]—TINDALL *v.* BARNETTS & HOARE (1887), 3 T. L. R. 476.

a ii. —— —— *Conversion of specific security into general security.*]—*Held :* as the bank knew that debtor had no right to hypothecate generally the notes they could not recover, not being holders in due course.—BANK OF MONTREAL *v.* NORMANDIN, [1925] 3 D. L. R. 975; [1925] S. C. R. 687.—**CAN.**

f ii. —— *Obtained to cover overdraft—Alleged fraud of manager.*]—Pltf. alleged that a bank manager obtained a note from him without disclosing that the note was for payment of an overdraft then due to the bank. Application for judgment dismissed for want of any evidence of fraud on the bank manager's part.—BRASSETH *v.* ROYAL BANK OF CANADA (1921), 67 D. L. R. 740.—**CAN.**

f ii. —— *Renewal—Effect of.*]—The renewal by defts. of a promissory note given to pltf. bank as security for a loan :—*Held :* not to estop them from setting up the defence that the bank had received & misapplied the proceeds of goods covered by a lien note which they had assigned to the bank as collateral security, such proceeds having been paid into the bank by the maker of the lien note.—CANADIAN BANK OF COMMERCE *v.* REID, [1925] 3 D. L. R. 509; [1925] 1 W. W. R. 1080; 21 Alta. L. R. 337.—**CAN.**

sp. *Repayment of advance by cheque—On trust account—Knowledge of bank—Liability.*]—Where a bank which had made loans to a trust co. on which, in pursuance of the arrangement between it & the co., repayments were being made by the application of balances standing from time to time to the credit of the co.'s general account, was found on the evidence to have had express notice that cheques drawn on the account, in another bank, of pltf. estate, of which the co. was then exor., & deposited in the co.'s said general account, represented the moneys of the estate, & knew that payments received from the co. on its debt must represent, in part at least, the proceeds of said cheques, & concurred in the intention of the co. to so apply them :—*Held :* the bank was liable to the estate for the amount of the cheques, with interest from the dates when they were deposited in the co.'s account.—ATCHISON *v.* DOMINION BANK, [1935] 3 W. W. R. 97.—**CAN.**

sq. —— —— —— ——.]—Pltf. co., which had been appointed administrator of an estate after the original administrator, a trust co., went into liquidation, sued for restitution of moneys of the estate which had been received by deft. bank from said trust co. through a breach of trust to which, it was alleged, the bank was a party. It was found that moneys of the estate had been deposited in the trust co.'s general account in the bank, & that a cheque drawn on that account had been given the bank in settlement of notes due by the co. :—*Held :* under all the circumstances, the bank must be taken to have known that the co. was using trust funds for its own purposes, including its payments to the bank, & to have been put upon inquiry every time it received or was offered a cheque from the general account to be applied on the debts owing to it by the trust co. The bank was, therefore, liable. The knowledge of or notice to such officials of the bank's branch, where the trust co. had its account, as accountants, ledger keepers or receiving tellers would be the knowledge of or notice to the bank. —RETAILERS' TRUST CO., LTD. *v.* DOMINION BANK, [1935] 3 W. W. R. 165.—**CAN.**

PART II. SECT. 21, SUB-SECT. 4.

844 iii. —— —— —— *Rights of customer.*]—A stockbroker, having in his possession shares belonging to a customer, pledged to him for a specific & definite purpose, has no right, in the absence of agreement with the customer, or some established custom binding upon the customer, to repledge the shares for more than the amount due to him; & where there has been such a repledge the customer is entitled, as against the broker's creditors, to the redelivery of the shares, which have not been disposed of by the bank, free from any claim of the trustee in bkpcy. of the broker's estate.—HAGGART *v.* TRUSTS & GUARANTEE CO., [1930] 2 D. L. R. 127; 65 O. L. R. 23; 11 C. B. R. 163.—**CAN.**

847 v a. —— —— —— ——.]—Shares in pltf.'s name were endorsed by him in blank without restriction & handed to his brokers as security on account of a purchase of other shares which he directed them to make. The brokers, although they had not carried out pltf.'s order to buy, hypothecated pltf.'s said shares with deft. bank. In an action against the bank & the brokers, in bkpcy. for conversion :—*Held :* in the absence of evidence that the bank had notice of a lack of capacity in the brokers to deal with the shares & of evidence pointing to a lack of good faith in the bank in the transaction, pltf. was estopped by his conduct in so endorsing the shares from asserting title to them as against the bank, even though there was fraud on the part of the brokers.—ROBINSON *v.* BANK OF TORONTO & CLARK (R. P.) & CO., [1932] 2 W. W. R. 91; 45 B. C. R. 518.—**CAN.**

m i. —— *Stock registered in name of bank's nominee—Identity of shares not preserved—Rights of owner.*]—A customer, who had a secured loan account with a bank which was operated upon in accordance with the above practice, averred that the bank had sold her shares without her authority, in breach of their obligation to retain the specific shares unless realised for reduction of the loan & to retransfer the identical shares on repayment of the loan :—*Held :* defenders had acted according to their usual practice, which was known to & approved by the firm of stockbrokers whom pursuer had employed as her agents in the transactions, & she was barred from insisting in the action.—CRERAR *v.* BANK OF SCOTLAND, [1922] S. C. (H. L.) 137; 59 Sc. L. R. 312.—**SCOT.**

p i. *Shares of company—Sale by bank before default—Measure of damages.*]—GEORGESON *v.* DOMINION BANK, [1924] 3 D. L. R. 607; 2 W. W. R. 931.—**CAN.**

857 ii. *Shares deposited by customer—Defect in title—Rights of bank.*]—Share certificates endorsed in blank held to be negotiable instruments transferable by delivery. Pltf. agreed to take a certain number of its shares from a stock-brokerage co. which had acted as his brokers, provided certain conditions were complied with, &, as a guarantee of his performance of the agreement if said conditions should be fulfilled, transferred to the co. certain other shares owned by him with a certificate of transfer on the back thereof signed by him, the name of the transferee being left blank. The co.'s bank, having demanded further security from it before it would pay a cheque drawn by the co., the co. delivered to it pltf.'s said shares as security.—PATRICK *v.* ROYAL BANK OF CANADA, [1932] 2 W. W. R. 257: 3 D. L. R. 532; 45 B. C. R. 437.—**CAN.**

861 i. *Bearer securities—Presumed to belong to depositing customer.*]—BANK OF MONTREAL *v.* ISBELL, [1925] 2 D. L. R. 30; *revsg.* 26 O. W. N. 263.—**CAN.**

sy. *Pledge by administrator or trustee in breach of trust—Bank without notice —Liability.*]—In an action brought by the beneficiaries of the estate of a deceased against a bank pltfs. alleged that the administrator of the estate, which was a co. which had become bkpt. & had been wound up, had hypothecated to the bank for the co.'s debt securities which the bank knew or should have known belonged to the estate, but that, although the officials of the bank, because of the information which they had, were put upon inquiry, they had deliberately closed their eyes. The hypothecation notes with respect to some at least of said securities contained descriptions which were held sufficient to inform the bank :—*Held :* if the bank were to-day holding these securities for a debt of the co. to them, there would be no doubt that it could not hold them for moneys advanced after such notice. But that was not the situation in question. The securities were disposed of by redemption or sale years ago & the proceeds went to the co. If the moneys were misapplied by the co., there is no principle of law on which the bank could be held to be liable simply because it at one time held the securities as security.—WHITE *v.* DOMINION BANK, [1934] 3 W. W. R. 93; *revsd.*, [1934] 3 W. W. R. 386; [1935] 1 D. L. R. 42; 42 Man. L. R. 400.—**CAN.**

sz. —— —— ——.]—In order to hold a bank liable where a trustee has used trust funds in reducing his personal debt to the bank, the bank having no notice of the trust, it is necessary to prove fraud on the part of the trustee & that the bank was a party to that fraud. If the bank was put upon inquiry & deliberately closed its eyes, that would be fraud.—MCPHERSON *v.* DOMINION BANK, [1935] 2 W. W. R. 1; *affd.*, [1935] 3 W. W. R. 390; [1936] 1 D. L. R. 268; 43 Man. L. R. 415.—**CAN.**

sa. *Bonds—Validity of charge—No certification by trustee.*]—The deposit of bonds with a bank as collateral creates a valid equitable charge notwithstanding the absence of certification by the trustee required by the bond.—*Re* CADWELL'S, LTD., TRUSTEE *v.* ROYAL BANK, [1934] 2 D. L. R. 341; O. R. 178.—**CAN.**

862. *Add. Annotation :*—**Refd.** Gowers *v.* Lloyds & National Provincial Foreign Bank, Ltd., [1938] 1 All E. R. 766.

862a. Shares held by bank as security for joint loan to three persons—Several liability—Whether one borrower entitled to transfer of one-third of the shares on payment of his proportion.]—COATS *v.* UNION BANK OF SCOTLAND, LTD., No. 803a, *ante*.

865. *Add. Annotations :*—**Apld.** *Re* Allester, [1922] 2 Ch. 211. **Consd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53. **Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652 ; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312.

865a. Bills of lading pledged—Authorised sale by pledgor—Title of bank to proceeds.]—A limited co. pledged bills of lading with a bank to secure an overdraft. When it was time to sell the goods, the co. in accordance with the well-established mercantile practice obtained the bills of lading from the bank for realisation on the terms stated in the usual letter of trust given by the co. to the bank, to wit, that the co. received the bills of lading in trust on the bank's account & undertook to hold the goods when received & the proceeds when sold as the bank's trustees to remit the entire net proceeds as realised :—*Held :* the bank's previous rights as pledgee remained unaffected by this common & convenient mode of realisation.—*Re* ALLESTER (D.), LTD., [1922] 2 Ch. 211 ; 91 L. J. Ch. 797 ; 127 L. T. 434 ; 38 T. L. R. 611 ; 66 Sol. Jo. 486 ; [1922] B. & C. R. 190.

Annotations :—**Consd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53. **Refd.** Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1938] 2 K. B. 147 ; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 4 All E. R. 651.

---

sb. *Advance to son—Representation by father that son entitled to shares.*]—Upon the representation of a father that his son was entitled to an interest in certain shares in a co. standing in the name of another son, a bank lent money to the son :—*Held :* the bank was entitled to a declaration of its debtor's right to certain of such shares over which the father had control.—ROYAL BANK *v.* POPE, [1917] 2 W. W. R. 1 ; 11 Alta. L. R. 68.—**CAN.**

sd. *Advance to executor.*]—A bank is put upon inquiry if it accepts a pledge of certificates in such circumstances that it has notice that the pledgor may be pledging part of an estate for which he is exor. If it fails to make inquiry it will be estopped from making any claim against the estate.—CARTWRIGHT *v.* LYSTER & BANK OF NOVA SCOTIA, [1934] 2 D. L. R. 166 ; O. R. 161.—**CAN.**

PART II. SECT. 21, SUB-SECT. 6.

h (p. 277) i. —— *Indorsed by shipper to bank—Bank to apply part of proceeds to payment of promissory note.*]—*Held :* no violation of Bank Act, s. 90.—ROYAL BANK OF CANADA *v.* WYE, [1926] 4 D. L. R. 262 ; [1926] 2 W. W. R. 780 ; 36 Man. L. R. 14.—**CAN.**

h (p. 277) ii. —— *Bank taking bailee's receipt from parties for whom goods shipped—Duty of bank not to impair security.*]—SALTERS (JOSEPH) SONS, LTD. *v.* BANK OF NOVA SCOTIA, [1926] 1 D. L. R. 581 ; 58 N. S. R. 389.—**CAN.**

q (p. 280) i. —— *Chattel mortgage to secure past debt—Subsequent mortgage of land—Right to enforce chattel mortgage.*]—*Held :* (1) the mtge. was not contrary to Bank Act ; (2) the fact that a mtge. on land was afterwards given to the bank did not prevent it from realising first on the chattel mtge.—PIPER *v.* CANADIAN BANK OF COMMERCE, [1922] 1 W. W. R. 121.—**CAN.**

q (p. 280) ii. —— ——.]—A. obtained advances & delivered to the bank storage tickets for wheat in elevators :—*Held :* the security of the warehouse receipts would not cover past advances.—YOUNG *v.* DENCHER, BANK OF TORONTO *v.* ADAMES, [1923] 1 D. L. R. 432 ; 18 Alta. L. R. 496 ; [1923] 1 W. W. R. 136.—**CAN.**

q (p. 280) iii. —— *Chattel mortgage as security for loan—Whether crops of following year chargeable.*]—Security on grain given to a bank in Oct. 1921, in respect of advances made in the spring of 1920, held invalid in respect of the 1921 crop.—NORTH AMERICAN LUMBER CO., LTD. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265 ; 65 D. L. R. 348 ; 15 Sask. L. R. 375.—**CAN.**

q (p. 280) iv. —— *Lease of chattels to secure advances.*]—*Held :* the lease was invalid, the bank not having the power under Bank Act to take a lease of chattels as security.—BANK OF MONTREAL *v.* HUESTON (1922), 69 D. L. R. 208 ; 51 O. L. R. 584.—**CAN.**

q (p. 280) v. —— *Lien agreements on goods—Valid.*]—*Re* CANADIAN HART PRODUCTS, LTD. (TRUSTEE) *v.* ROYAL BANK, [1924] 4 D. L. R. 225 ; 54 O. L. R. 293 ; 4 C. B. R. 211.—**CAN.**

q (p. 280) vi. —— *Warehouse receipt for goods on leased premises—Valid.*]—*Re* J. STANLEY WEDLOCK, LTD. (P. E. I.), [1926] 2 D. L. R. 263 ; 7 C. B. R. 147.—**CAN.**

s (p. 281) i. *S. C.* BANQUE CANADIENNE NATIONALE *v.* SAWCHUK, [1926] 3 D. L. R. 864 ; [1926] 2 W. W. R. 771 ; 36 Man. L. R. 1.—**CAN.**

o (p. 281) i. —— —— —— *Whether purchaser owner within sect.* 88.]—An agreement for the sale of timber licences together with all the timber thereon gave the purchaser the right to cut & remove the timber & provided that the purchase-price should be payable in instalments & that the property in the licences & all timber cut therefrom should remain in the vendors until fully paid for by the purchasers. The agreement was not registered under Conditional Sales Act. Security on the timber cut by the purchasers & remaining on the timber berths was given under sect. 88 of the Bank Act by the purchaser to the applt. bank. The purchaser became bkpt., the cut timber was taken possession of by its trustee, & sold under an order of the ct. & the proceeds thereof were claimed by the bank & also by the vendors, to whom a balance was owing under the agreement. The bank had had no notice of the vendors' claim & had not inquired as to the purchaser's title, but all parties had acted in good faith :—*Held :* at the time of the assignment to the bank the purchaser was the "owner" of the timber within sect. 88 & had possession thereof within the meaning of that word in Sched. C. to said sect. ; & the agreement between the purchaser & the vendors was one within Conditional Sales Act. The bank's claim was therefore sustained.—ROYAL BANK OF CANADA *v.* HODGES (B. C.), [1930] 1 D. L. R. 397 ; [1929] 3 W. W. R. 605 ; 42 B. C. R. 44 ; *revg.*, [1929] 2 W. W. R. 202.—**CAN.**

s (p. 282) i. —— —— ——.]—ROYAL BANK OF CANADA *v.* MCLENNAN, [1931] 1 D. L. R. 981.—**CAN.**

s (p. 282) ii. —— —— *Grower of roses for sale as cut flowers—Whether "wholesale dealer."*]—A co. growing roses & selling the cut flowers held not to be a wholesale purchaser of, or dealer in the products of agriculture.—MACPHERSON *v.* LONDON LOAN ASSETS, LTD., [1931] 2 D. L. R. 630 ; O. R. 109 ; 12 C. B. R. 302.—**CAN.**

sa. *Security on crop to be grown—Priority over claim by vendor under crop-payment agreement.*]—GOEBEL *v.* CANADIAN BANK OF COMMERCE, [1921] 3 W. W. R. 81 ; 14 Sask. L. R. 451.—**CAN.**

sb. *Security invalid under Bank Acts—Sale of goods to third party—Bank not entitled to follow goods or proceeds.*]—HAWKER *v.* ROYAL BANK OF CANADA (1921), 59 D. L. R. 674.—**CAN.**

sc. *Title of bank as against municipal lien for taxes.*]—*Re* ELECTRICAL FITTINGS & FOUNDRY CO., LTD. (Ont.), [1926] 1 D. L. R. 752 ; 58 O. L. R. 364.—**CAN.**

sd. ——.]—Where a debtor has given security to a bank on chattels under sect. 88 of Bank Act, & has subsequently made an assignment for benefit of creditors, the bank is entitled to the proceeds of sale of the goods in priority to the claim of the municipality for arrears of land taxes under Assessment Act, R.S.O., 1927, s. 112.—*Re* JAMES STEELE, LTD., [1934] O. R. 98 ; 2 D. L. R. 130.—**CAN.**

sf. *Wheat tickets—Sale in breach of instructions—Measure of damages.*]—A borrower from a bank gave it as collateral security an assignment of wheat tickets on the terms that the bank was to sell the wheat on deft.'s instructions & apply the proceeds in reduction of his loan. The borrower later on instructed the bank to sell when wheat should reach $1 per bushel at Fort William ; & the bank's manager agreed to carry out these instructions. The market-price at Fort William reached said price some weeks afterwards ; but no sale was made, although it was admitted that the wheat could have been sold at that time :—*Held :* the borrower was entitled to damages & the measure thereof was the market-price at the time when the bank should have sold the wheat ; & not, as held on the trial, at the date when the borrower learned that his instructions had not been complied with.—BANK OF TORONTO *v.* SIMONSON, [1932] 2 W. W. R. 102.—**CAN.**

865b. Pledge of receipts for goods—Fraudulent second pledge by pledgor—Conversion—Estoppel.]—A firm of merchants, who purchased ground-nuts from up-country growers & were entitled to obtain delivery of them under railway receipts, obtained a loan from resps., bankers, on the security of the goods covered by the railway receipts, & delivered the relevant receipts to the bank by way of pledge, giving to the bank at the same time a promissory note for the amount advanced & a letter of lien. The bank then passed the receipts on to their own godown keeper to enable him to obtain possession of the goods, & he, in accordance with the usual practice adopted by the bank, & in order to avail himself of the merchants' services, handed the railway receipts back to the merchants for the specific purpose of clearing the goods & storing them in the bank's godown. The merchants, however, then fraudulently used the same receipts to obtain a second advance from applts., bankers, from whom they had been in the habit of securing loans under arrangements similar to those negotiated with resp. bank, & who were unaware of the loan by resp. bank. On a claim by resps. against applts. for damages for conversion :—*Held :* resps. owed no duty to applts. in the matter—there was no relationship of contract or agency, & they had no reason to think that the receipts would ever be handed to applt.—& they were not therefore estopped by their conduct in returning the receipts to the merchants for the specific purpose of clearing the goods from denying as against applts. that the merchants had the right of pledging the goods as owners, or from setting up their title as against applts. to the goods. No authority had been given to the merchants to deal with the goods otherwise than by handling them for the limited purpose of transferring them to the bank's godown. Resps. committed no breach of duty owing to applts. or to anyone else ; all that they did was to deal with their own property, as pledgees, in the usual course of business which was well known to & had been followed both by applts. & resps. Not only was there an absence of any duty or of anything amounting to a neglect of the usual precautions, but there was no ground for finding any representation by resps. that the merchants had any title to dispose of the goods. The merchants could not transfer a better title than they possessed—a title subject to the pledge to resps.—MERCANTILE BANK OF INDIA, LTD. *v.* CENTRAL BANK OF INDIA, LTD., [1938] A. C. 287 ; [1938] 1 All E. R. 52 ; 107 L. J. P. C. 25 ; 158 L. T. 269 ; 54 T. L. R. 208 ; 81 Sol. Jo. 1020, P. C.

865c. Whether charge or trust created.]—Deft. bank advanced money to deft. co., sometimes by way of overdraft & at other times by way of advance on loan account. These advances were secured by trust receipts, by which the co. agreed that goods purchased with such advances should be held by them as agents for & in trust for the bank, the intention being that the bank should be entitled to such goods as security for the advance. There was, *inter alia*, an undertaking to deliver the goods to the bank to enable it to sell the same :—*Held :* these documents created an

---

PART II. SECT. 21, SUB-SECT. 7.

sl. *Assignment of mortgage—Or of agreement for sale of land—As additional security—Valid.*]—*Re* WIARTON LUMBER CO., *Ex p.* BANK OF COMMERCE, [1924] 2 D. L. R. 160 ; 4 C. B. R. 477.—**CAN.**

so. *Assignment of debts present & future & all contracts & securities—Valid.*]—*Re* WIARTON LUMBER CO., *Ex p.* BANK OF COMMERCE, [1924] 2 D. L. R. 160 ; 4 C. B. R. 477.—**CAN.**

sl. —— *Subsequent assignment to creditor—Duty of bank to account—Interest.*]—Book debts were assigned as security to deft. bank. Subsequently they were assigned to pltf. subject to the assignment to the bank. The bank realised under its assignment :—*Held :* pltf. was entitled to an accounting from the bank in detail, & the bank could, not, as against pltf., charge a higher rate of interest than permitted under Bank Act.—ROBERTSON (JOHN) & SON, LTD. *v.* CANADIAN BANK OF COMMERCE, [1920] 2 W. W. R. 1003.—**CAN.**

sh. *Assignment of money due under agreement for sale of land—Valid.*]—*Re* SHAW, [1925] 3 D. L. R. 1205 ; 5 C. B. R. 825.—**CAN.**

sk. —— ——.]—Although under sect. 79 (1) of Bank Act, 1934, a bank may take an assignment of the rights of a vendor under an agreement for the sale of property as additional security for debts contracted to the bank in the course of its business, a bank cannot take such an assignment as security for an anticipated future indebtedness ; but where the assignment was taken both as additional security for an existing debt & as security for future indebtedness it is valid in respect to the debt for which it was taken as additional security.—CANADIAN BANK OF COMMERCE *v.* YORKSHIRE & CANADIAN TRUST, LTD., [1938] 1 W. W. R. 530 ; 2 D. L. R. 285.—**CAN.**

sm. *Common law assignment of money—Subsequent security under Bank Act—Property passed by assignment—Validity of security immaterial.*]—IMPERIAL BANK *v.* WESTERN SUPPLY & EQUIPMENT CO. (1918), 39 D. L. R. 803.—**CAN.**

PART II. SECT. 21, SUB-SECT. 8.

sk. *Fire insurance policies.*]—A bank may, under s. 75 (1) (*d*) of the Bank Act take as security the obligations of fire insurance companies to pay indemnities stipulated for in fire insurance policies.—TURGEON *v.* DOMINION BANK (Can.), [1930] S. C. R. 67 ; [1929] 4 D. L. R. 1028 ; *affg.*, 47 Que. K. B. 383 ; 10 C. B. R. 212.—**CAN.**

sl. *Prohibited security—Money lent thereunder recoverable.*]—A bank may recover money lent upon a prohibited security although it cannot enforce the security.—UNION BANK *v.* FARMER, [1917] 1 W. W. R. 1361.—**CAN.**

sm. *Authorised securities under Bank Act, s.* 88—*Whether authorised forms must be used.*]—A bank took what purported to be a security under sect. 88 of Bank Act on live stock of a rancher, but used Form C. instead of Form E. :—*Held :* the document was in form to the like effect as Form E., & constituted a valid security.—ROYAL BANK OF CANADA *v.* MACKENZIE, [1932] S. C. R. 524 ; 2 D. L. R. 12.—**CAN.**

sp. —— *Position of bank.*]—A bank taking security under Bank Act, 1927, s. 88, is a mtgee. only, & not an absolute owner.—BANK OF MONTREAL *v.* GUARANTY SILK DYEING & FINISHING CO., LTD., [1934] 4 D. L. R. 394 ; O. R. 625 ; *on appeal*, [1935] 4 D. L. R. 483 ; O. R. 493.—**CAN.**

sq. *Assignment of goods covered by lien note—Right to recover on note.*]—The fact that the assignment of property covered by a lien note given to a bank is invalid is no bar to the right to recover upon the note itself.—THIEN *v.* BANK OF BRITISH NORTH AMERICA (1912), 1 W. W. R. 795 ; 20 W. L. R. 192 ; 4 Alta. L. R. 228 ; 4 D. L. R. 388.—**CAN.**

sr. *Timber licences — Who may pledge.*]—The president of a co. holding a controlling interest is not the "owner" of the property of the co. within Bank Act, s. 88, so as to enable him to pledge timber licences belonging to the co. as security for advances.—ROYAL BANK OF CANADA *v.* PORT ROYAL PULP & PAPER CO., [1937] 4 D. L. R. 254 ; 12 M. P. R. 219.—**CAN.**

PART II. SECT. 22, SUB-SECT. 1.—A.

nl. —— ——.]—A bank has not a lien in respect of a deposit or balance to the credit of a customer, as there is no specific property on which a lien can operate.—*Re* MORRIS, CONEYS *v.* MORRIS, [1922] 1 I. R. 81.—**IR.**

sr. *Lien on goods not in existence—Bank Act, s.* 88.]—The owner of a timber licence, who proposes to go into the forest to cut down the trees & transform them into what is commercially known as pulpwood & who may require financial assistance from a bank before the pulpwood is produced in its commercial form, can give the bank which assists him a valid lien on the finished product, although not in existence as such at the time of the loan.—LANDRY PULPWOOD CO., LTD. *v.* LA BANQUE CANADIENNE NATIONALE, [1928] 1 D. L. R. 493 ; [1927] S. C. R. 605.—**CAN.**

equitable charge upon the goods, & not a trust in respect of them.—MERCANTILE BANK OF INDIA, LTD. *v.* CHARTERED BANK OF INDIA, AUSTRALIA & CHINA, & STRAUSS & CO., LTD. (No. 2); CHARTERED BANK OF INDIA, AUSTRALIA & CHINA *v.* MERCANTILE BANK OF INDIA, LTD., & STRAUSS & CO., LTD. (No. 2), [1937] 4 All E. R. 651; 158 L. T. 412; 43 Com. Cas. 80.

877. After this case add:—

Agricultural charge — Enforcement.]—*See* AGRICULTURE, No. 979a, *ante*.

878a. —— ——.]—Bankers most undoubtedly have a general lien on all securities deposited with them as bankers by a customer, unless there be an express contract or circumstances that show an implied contract inconsistent with the lien.—LONDON CHARTERED BANK OF AUSTRALASIA *v.* WHITE (1879), 4 App. Cas. 413; 48 L. J. P. C. 75, P. C.

883. *Add. Annotation:—Generally,* **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

921. *Add. Annotation:*—**Folld.** Baker *v.* Lloyds Bank, [1920] 2 K. B. 322.

921a. —— —— ——.]—Defts. acted as bankers for a firm up to Feb. 3, 1914, when the firm being insolvent by deed assigned all their property to pltf. as trustee for their creditors. The deed provided that payments to the creditors should be made upon the basis of a bkpcy. distribution of the property & that secured creditors should have the same rights as under a bkpcy. At the date of the deed the firm had £2,934 to the credit of their current account in deft. bank, & the bank held certain shares as security for an advance to the firm. These shares were subsequently sold by the bank & realised £812 in excess of the amount of the advance to the firm. Before Feb. 3, 1914, the firm had discounted with the bank a number of bills of exchange, which matured after that date, & in respect thereof the firm became the debtors of the bank to the amount of £19,941. In an action by pltf. as trustee under the deed to recover from the bank the two sums of £2,934 & £812, the bank claimed a lien on those sums & also to set off a sufficient portion of £19,941 against those sums:—*Held:* the bank's claim was right on both points.—BAKER *v.* LLOYDS BANK, [1920] 2 K. B. 322; 89 L. J. K. B. 912; 123 L. T. 330; [1920] B. & C. R. 128.

921b. —— —— **Balance of proceeds of sale of shares—Held as security for advances.**]—BAKER *v.* LLOYDS BANK, No. 921a, *ante*.

923. *Add. Annotations:*—**Consd.** Baker *v.* Lloyds Bank, [1920] 2 K. B. 322; *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221.

925. *Add. Annotation:*—**Refd.** *Re* Southerden, Adams *v.* Southerden, [1925] P. 177.

926. *Add. Annotation:*—**Consd.** Baker *v.* Lloyds Bank, [1920] 2 K. B. 322.

930a. —— **Liability for negligent payment of cheque—No right to set off sums recovered from customer by party defrauded.**]—LLOYDS BANK *v.* CHARTERED BANK OF INDIA, AUSTRALIA & CHINA, No. 687a, *ante*.

932. *Add. Annotation:*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

932a. —— **Joint & several guarantee—Termination.**]—By an agreement the six signatories thereto jointly & severally agreed with a Canadian bank to guarantee repayment up to a fixed sum of all liabilities, including interest, which a customer had or should incur to the bank: it was provided that the agreement should be a continuing guarantee "until the undersigned, or the exor. or administrator of the undersigned, shall have given the bank notice in writing to make no further advances on the security of this guarantee." In 1913, the bank, without notice to the guarantors but with the assent of the debtor, increased the rate of interest upon the advances to 8 per cent., though, by Bank Act (R. S. Can. c. 29), s. 91, it was illegal for a bank to charge more than 7 per cent. Subsequently one of the signatories died, & his exors. gave notice purporting to terminate the liability of the estate of the deceased under the guarantee:—*Held:* (1) the guarantee remained in force against all the guarantors until each & all of them or their respective exors. or administrators gave notice to determine it; (2) the increase in the rate of interest did not discharge the guarantors, but they were liable for the

---

PART II. SECT. 22, SUB-SECT. 1.—F.

so. *Pledged to third party—Duty of bank to disclose lien.*]—*Held:* such a duty existed.—LAZARD BROTHERS & CO. *v.* UNION BANK OF CANADA (1920), 47 O. L. R. 608; 18 O. W. N. 290; 51 D. L. R. 636.—**CAN.**

PART II. SECT. 22, SUB-SECT. 2.

m i. —— ——.]—*Held:* money to the credit of the customer not shown to be trust funds, might be retained & set off by the bank as against the indebtedness of the customer on the note.—ROY *v.* CANADIAN BANK OF COMMERCE (1918), 24 B. C. R. 397; 38 D. L. R. 742.—**CAN.**

930 i. *Set-off or counterclaim—Balance on current account—Right to set off undue promissory note.*]—Where at the date of the death of a customer of a bank there was a deposit to his credit the bank cannot on the maturing, after his death, of promissory notes made or endorsed by him to the bank, set off the amount thereof against the deposit.—TRUSTS & GUARANTEE CO., LTD. *v.* ROYAL BANK OF CANADA. [1931] 1 W. W. R. 689; 2 D. L. R. 601.—**CAN.**

sp. *Bank cashing cheque—Holder indebted to bank.*]—A bank, to which a cheque has been delivered to be cashed, has no right to set off against the proceeds of the cheque a debt owing to it by the holder.—ROYXEL *v.* ROYAL BANK OF CANADA, [1918] 2 W. W. R. 791; 11 Sask. L. R. 218.—**CAN.**

st. *Debt not recoverable — Statute-barred.*]—A bank has not a lien in respect of a deposit or balance to the credit of a customer, inasmuch as there is no specific property on which a lien can operate; the only right of the bank is a right of set-off, but such a right cannot be exercised where a debt is statute-barred & not recoverable.—*Re* MORRIS, CONEYS *v.* MORRIS, [1922] 1 I. R. 136.—**IR.**

sv. *Bank acting as clearing house—Right of set-off against insolvent bank.*]—*Re* HOME BANK OF CANADA, [1931] 1 D. L. R. 589; 66 O. L. R. 264; 12 C. B. R. 513.—**CAN.**

PART II. SECT. 23.

932 i. *Continuing guarantee — Consideration—Whether fresh transaction after guarantee given necessary.*]—A guarantee given by deft. to pltf. bank for the benefit of a firm which was already heavily indebted to the bank provided that in consideration of the bank "agreeing or continuing" to deal with A. Bros., herein referred to as "the customer," in the way of its business as a bank," deft. undertook that the amount of the guarantee would be paid to the bank at the times & in the manner specified:—*Held:* the words "continuing to deal . . . in the way of its business as a bank" must involve some *bonâ fide* fresh transaction between the bank & the firm, it being impossible to restrict these words to merely keeping the firm's account open, that is, merely receiving payment from any one who chose to pay in money to the bank to the firm's credit; &, since the bank had not continued to deal with the firm in the way its covenant called for, the guarantor had not received the consideration on which his covenant was based &, therefore, was not bound to perform it.—ROYAL BANK OF CANADA *v.* SALVATORI, [1928] 3 W. W. R. 501, P. C.—**CAN.**

932 ii. —— —— ——.]—A guarantee is to receive its application from the state of facts as shown in evidence.

principal sum advanced & for such interest as the debtor was legally to pay.—EGBERT *v.* NATIONAL CROWN BANK, [1918] A. C. 903; 87 L. J. P. C. 186; 119 L. T. 659; 35 T. L. R. 1, P. C.

Annotation:—*As to* (2) **Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

934. *Add. Annotation:*—**Refd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 146 L. T. 336.

935. *Add. Annotation:*—**Consd.** *Re* Conley, *Ex p.* Trustee *v.* Barclays Bank, Ltd., [1938] 2 All E. R. 127.

938. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

961. *Add. Annotation:*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

966. *Add. Annotation:*—**Refd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

974. *Add. Annotation:*—**Consd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

978. *Add. Annotation:*—**Refd.** Holder *v.* I. R. Comrs. (1932), 48 T. L. R. 365.

985. *Add. Annotation:*—**Consd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

986. *Add. Annotation:*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

986a. —— —— **Without consent of customer.**]—It is an implied term of the contract between a banker & his customer that the bank will not divulge to third persons, without the consent of the customer express or implied, either the state of the customer's account, or any of his transactions with the bank, or any information relating to the customer acquired through the keeping of his account, unless the banker is compelled to do so by order of a ct., or the circumstances give rise to a public duty of disclosure, or the protection of the banker's own interests requires it.

Pltf. was a customer of deft. bank. A cheque was drawn by another customer of defts. in favour of pltf., who instead of paying it in to his own account indorsed it to a third person who had an account at another bank. On the return of the cheque to defts. their manager inquired of the last-named bank who the person was to whom it had been paid, & was told it was a bookmaker. That information defts. disclosed to third persons: —*Held:* that disclosure constituted a breach of defts.' duty to pltf., for though the information was acquired not through pltf.'s account but through that of the drawer of the cheque, it was acquired by defts. during the currency of pltf.'s account & in their character as bankers.—TOURNIER *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, [1924] 1 K. B. 461; 93 L. J. K. B. 449; 130 L. T. 682; 40 T. L. R. 214; 68 Sol. Jo. 441; 29 Com. Cas. 129, C. A.

Annotation:—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

986b. —— **Extent of duty to inquirer.**]—Where for business purposes inquiry is made of a bank as to the stability of a customer of the bank, the only duty, if any, owed by the bank to the inquirer is a duty, in giving a reply, not to be negligent.—BATTS COMBE QUARRY CO. *v.* BARCLAYS BANK, LTD. (1931), 48 T. L. R. 4.

In an action on a guarantee given a bank:—*Held:* although the wording of the guarantee was exactly the same as that of the guarantee in *Royal Bank of Canada* v. *Salvatori*, [1928] 3 W. W. R. 501, yet that case was distinguishable because the circumstances out of which the guarantee arose therein were very different from those in the present case; there was no failure of consideration in the present case & the bank was entitled to judgment.—ROYAL BANK OF CANADA *v.* MILLS, [1932] 3 W. W. R. 283; 4 D. L. R. 574; 26 Alta. L. R. 453.—**CAN.**

935 i. *Whether surety released—Increase in rate of interest.*]—*Held:* an increase in the rate of interest charged by the bank to an amount in excess of that authorised by Canadian Bank Act, without intimation to the guarantors, did not discharge them from their liability.—EGBERT *v.* NATIONAL CROWN BANK, [1918] A. C. 903; 87 L. J. P. C. 186; 119 L. T. 659.—**CAN.**

935 ii. *S. P.* MERCHANTS BANK OF CANADA *v.* BUSH, [1918] 2 W. W. R. 574, 631.—**CAN.**

935 iii. —— *Taking new security from principal debtor.*]—BANK OF NEW ZEALAND *v.* BAKER, [1926] N. Z. L. R. 462.—**N.Z.**

935 iv. —— *Note indorsed as security for specific purpose—General hypothecation of note by creditor to bank.*]—*Held:* surety released.—GORDON *v.* HEBBLEWHITE, [1927] 1 D. L. R. 817; [1927] S. C. R. 29.—**CAN.**

sw. *Account settled between bank & customer—How far binding on surety of customer.*]—Even if a certificate given by a customer of a bank of the correctness of the condition of his account as stated therein constitutes an account stated between the bank & its customer, yet such certificate cannot be conclusive as against the surety of the customer.—STANDARD BANK OF CANADA *v.* ALBERTA ENGINEERING CO., LTD., [1917] 1 W. W. R. 1177.—**CAN.**

sx. —— —— *Special agreement to accept account.*]—An express provision in the guarantee given to the bank that the stating, settling or admission of an account between the creditor & the bank should be conclusive evidence against the sureties cannot be effective to prevent the sureties from objecting to illegal charges, nor to charges, which though not illegal, were improper to the knowledge of the bank.—NORTHERN CROWN BANK *v.* WOODCRAFTS, LTD., [1917] 1 W. W. R. 1205; 33 D. L. R. 367.—**CAN.**

sz. *Advance also secured by crop to be grown—Right of surety to proceeds of crop.*]—Where a bank advances money for the purchase of seed grain on the security of the crop to be grown therefrom & also procures the signature of a surety to the borrower's note, the surety has a right to have any money realised out of the crop appropriated to the reduction of the debt for which he became surety in priority to all other claims of the bank against the borrower. —PROUDLOCK *v.* CANADIAN BANK OF COMMERCE, [1925] 2 W. W. R. 150; 19 Sask. L. R. 413.—**CAN.**

sa. *Arrangement between debtor & surety—Drafted by bank's solicitor—Effect on bank as creditor.*]—IMPERIAL BANK OF CANADA *v.* HANCOCK, [1930] 3 W. W. R. 398; [1931] 1 D. L. R. 426.—**CAN.**

PART II. SECT. 25.

957 ii. —— *Rights of bank.*]—A cheque on the S. Bank, which was indorsed by the payee to the H. Bank, was deposited & applied against his overdraft after the H. Bank had suspended payment at its head office, but before notice thereof reached the local branch in which the cheque was deposited:—*Held:* the H. Bank was entitled to enforce payment of the cheque from the drawer.—SULLIVAN *v.* HOME BANK OF CANADA, [1927] 1 D. L. R. 1097; S. C. R. 115.—**CAN.**

957 iii. *Collection of bills for customer—Money received—Rights of customer.*] —Where a branch of resp. bank had received bills from appits. for collection & remittance of the proceeds, & after collection but prior to remitting the bank suspended payment:—*Held:* (1) appits., having employed the bank as a whole in a fiduciary capacity, were entitled to a prior charge on the balances held by the bank as a whole at the date of suspension of payment: (2) appits. were not entitled to a prior charge on the bank's general assets.—SHAW WALLACE & CO. *v.* AMRITSAR NATIONAL BANK (IN LIQUIDATION) (1926), I. L. R. 7 Lah. 155.—**IND.**

PART II. SECT. 26.

985 ii. —— ——.]—Neither the assignee of the equity of redemption of property mortgaged to a bank, nor a surety who has mortgaged property by way of collateral security to a bank is entitled to obtain from the bank the same full account that the bank is obliged to give its customer. A guarantor of a customer's account with a bank is not entitled to demand from the bank a copy of the account but is entitled to demand from the bank information as to the balance then owing, the rate of interest charged, & the amount, if any, realised by the bank in respect of collateral securities. —ROSS *v.* BANK OF NEW SOUTH WALES (1928), 28 S. R. N. S. W. 539; 45 N. S. W. W. N. 117.—**AUS.**

987. *Add. Annotation :* — **Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

990a. Disclosing any other information relating to customer.]—TOURNIER *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, No. 986a, *ante.*

1008a. —— Primâ facie evidence of account.]—DOUGLASS *v.* LLOYDS BANK, LTD., No. 403a, *ante.*

1010. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1011. *Add. Annotation :*—**Refd.** Ironmonger *v.* Dyne (1928), 44 T. L. R. 579.

1012. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1012a. —— —— Entries tending to incriminate.]—On an application under Bankers' Books Evidence Act, 1879 (c. 11), s. 7, for leave to inspect & take copies of entries in a banker's books before the trial of an action, the ct. is guided by the general rules regulating the inspection of documents before trial. Therefore if resp. to the application, being a party to the action, objects in proper form that the entries tend to incriminate him, the ct. will not grant the leave applied for.—WATERHOUSE *v.* BARKER, [1924] 2 K. B. 759; 93 L. J. K. B. 897; 132 L. T. 15; 40 T. L. R. 805; 69 Sol. Jo. 51, C. A.

1012b. —— ——.]—Where, under Bankers' Books Evidence Act, 1879 (c. 11), s. 7, an order is made for the inspection of a judgment debtor's account with a banker, the ct. has power to make the order extend to the banking account of a person other than debtor, if the account of that other person was controlled by debtor & was used by debtor for his or her own purposes.—IRONMONGER & Co. *v.* DYNE (1928), 44 T. L. R. 579, C. A.

1013. For "ss. 2 & 5" read "ss. 2–5."

Add. Annotation :—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1016. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1017. *Add. Annotation :—As to* (1) **Apld.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1018. *Add. Annotations :*—**Apld.** Waterhouse *v.* Barker, [1924] 2 K. B. 759. **Consd.** Ironmonger *v.* Dyne (1928), 44 T. L. R. 579.

1019. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker (1924), 132 L. T. 15.

1022. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

PART II. SECT. 28, SUB-SECT. 1.

994 vii. —— —— *Whereabouts of clerk making entry unknown.*]—The production by one of the directors of pltf. bank of the actual ledger containing the overdraft account in suit, with proof of the manner in which it had been posted up, & the further fact that the whereabouts of the men who made the actual entries were no longer known :—*Held :* sufficient to render the book relevant under Evidence Act, s. 32.—BHARAT NATIONAL BANK, LTD., DELHI *v.* BISHAN LAL (1931), I. L. R. 13 Lah. 448.—**IND.**

1004 iv. —— —— ——.]—An order to inspect the books of a bank relating to the account of a person not party to the litigation will seldom or never be exercised except where such account is in form or substance really the account of a party to the litigation, or is kept on his behalf, so that entries in it would be evidence against him at the trial. In any case, no such order will be made unless the third party has been given an opportunity to attend the hearing of the application.—JAMES *v.* MABIN (No. 3), [1929] N. Z. L. R. 899.—**N.Z.**

PART II. SECT. 28, SUB-SECT. 2.

1015 v. —— *What are "legal proceedings."*]—A Comr. issued a summons to the manager of a bank, requiring him to attend before a Royal Commission & give evidence, & to produce the ledgers containing the accounts of certain persons, & also all cheques drawn on the accounts & all deposit slips affecting such accounts. Later, on being informed of the difficulty in producing the ledgers, the Comr. made a verbal order to the bank to produce copies of the entries in accordance with Bankers' Books Evidence Act :—*Held :* the proceedings before the Commission were not "legal proceedings" within the meaning of Bankers' Books Evidence Act, & the verbal order was invalid; but the summons was valid.—MCCORMACK *v.* CAMPBELL (1930), S. R. (Q.) 228.—**AUS.**

aa. *Pay-in slips.*]—A bank retaining pay-in slips which have accompanied payments into a customer's account does not hold them as the agent of the customer, who, consequently, will not be ordered in an action to which he is a party to produce them as documents in his possession or power. In such an action the ct. also declined to make any order relating to those documents under Evidence Act, 1915, s. 89.—LEVER *v.* MAGUIRE, [1928] V. L. R. 262; 49 A. L. T. 194; [1928] Argus L. R. 169.—**AUS.**

BARRISTERS.

16a. —— **Procured by fraud—Duty of Benchers.**] —The Benchers of the Inns of Court owe a duty to the public in respect of admission to the Bar: therefore a fraud committed upon them to procure such admission is a mischief against public policy none the less because its intent is not to procure money for the offender.—R. *v.* BASSEY (1931), 47 T. L. R. 222; 75 Sol. Jo. 121; 22 Cr. App. Rep. 160, C. C. A.

31. *Add. Annotation:*—**Refd.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

46. *Add. Annotation:*—**Consd.** *Re* Debtor, Petitioning Creditor *v.* Debtor (No. 29 of 1931) (1933), 102 L. J. Ch. 348.

50a. ——.]—All motions before the ct. must be made by counsel.—DRAKE *v.* MORGAN (1858), 27 L. J. P. & M. 3; 4 Jur. N. S. 32.

51. *Add. Annotation:*—**Refd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

66a. Before Parliamentary Commission.]—BELFAST RIOTS COMMISSION CASE (1886), 21 L. Jo. 556.

71. *Add. Annotation:*—**Refd.** Marson *v.* Unmack, [1923] P. 163.

84. After this case add the following cross-reference: *See, further*, JUDGMENTS, Vol. XXX., pp. 203 *et seq.*

SECT. 1, SUB-SECT. 1.

b i. —— *Nature of duties devolving upon.*]—The discharge of the duties under Law Society Act, now R. S. O., 1914, c. 157 is not a matter of mere private concern, but one affecting the public, having to do with the well-being of the society in maintaining the standards which should prevail in the legal profession; &, unless in a case of manifest wrong, there should be no interference with the society's exercise of its statutory powers.—HALL *v.* BAR (1923), 54 O. L. R. 147.—**CAN.**

SECT. 1, SUB-SECT. 2.—A.

11 ii. For "(1905), S. C. 221" read "[1905] T. S. 221."

11 iii. —— *Without examination—Managing clerk to solicitor.*]—In Law Practitioners Act, 1908, s. 5, the words "managing clerk to a solr." must be taken in the strict sense to mean one who has control & supervision of other clerks in the solr.'s employ.—*Re* CHALMERS, [1918] N. Z. L. R. 561.—**N.Z.**

c i. —— *Qualification—English barrister.*]—Appct. sought admission as an advocate on the ground that he was admitted as a barrister in England & had passed an examination in Natal statute law & practice as required by the proviso to Ord. 32, r. 38. The Law Society opposed on the ground that it was necessary for appct. also to have passed the examination in Union statute law required by sect. 2 of Act 19, 1921:—*Held:* as appct.'s qualification acquired outside the Union would not have entitled him to admission in Natal, sect. 2 of Act 19, 1921, did not apply to him.—*Ex p.* ROBINSON (1930), 51 N. L. R. 305.—**S. AF.**

c ii. —— —— *Cambridge degree.*]—Appct., who held the degree of LL.B. of the University of Cambridge, applied under sect. 1 of Act 19, 1921, for admission as an Advocate, relying upon G. N., No. 1475 of 1925, under which the Chief Justice & Judges of the App. Div. decided that the examination in Roman-Dutch Law in connection with the degree of LL.B. of the University of Cambridge should be an adequate examination in Roman-Dutch Law within sect. 2 of the Act:—*Held:* applct. was entitled to admission.—*Ex p.* HALL (1931), 52 N. L. R. 118.—**S. AF.**

15 ii a. —— ——.]—The ct. will not grant *mandamus* to compel Benchers of a Law Society to admit an individual as member with a view to his qualifying himself to be called to the Bar.—*Re* HAGEL & LAW SOCIETY OF BRITISH COLUMBIA (1922), 31 B. C. R. 75.—**CAN.**

SECT. 1, SUB-SECT. 2.—B.

25 iii. —— —— —— *Duty of tribunal to come to a finding.*]—Where the High Ct. did not think fit summarily to reject a complaint made against an advocate, & was obliged, therefore, to refer the case for inquiry to the Bar Council, & the tribunal, after certain evidence had been taken on affidavits, on the intimation of complainant's solr. that he withdrew the complaint reported "in these circumstances the inquiry cannot be further proceeded with, the ct. referred the matter back to the tribunal, holding that the Act required the tribunal to come to a finding."—*Re* BAR COUNCILS ACT (1929), I. L. R. 57 Calc. 724.—**IND.**

sl. *Effect of entry on roll of advocates—Right of retired judge to practise in High Court.*]—After his retirement from the position of a judge of the High Ct. at Patna, India, applt. with a view to resuming practice at the Bar of that ct. applied to have his name entered on the roll of advocates as required by Indian Bar Councils Act, 1926. The judges, by a majority, held that he was entitled to be so enrolled under that Act, but added that in view of the fact that he had been a permanent judge of that ct. they refused to allow him to appear in the cts. of the province. On appeal against that refusal:—*Held:* by being entered on the roll of advocates applt. had established a statutory right to practise of the Indian Bar Councils Act, 1926, s. 14 (1) providing that, "An advocate shall be entitled as of right to practise . . . in the High Ct. of which he is an advocate. . . ."—PRAFULLA RANJAN DAS *v.* PATNA HIGH COURT JUDGES (1930), 47 T. L. R. 98, P. C.—**IND.**

SECT. 2, SUB-SECT. 1.—D.

u i. *Before High Court of Madras—Exercising insolvency jurisdiction—Right to "act."*]—Advocates, enrolled in the High Ct. of Madras, under Indian Bar Councils Act (I of 1926) are, by virtue of sects. 2 (*a*), 8 & 14 of the Act, entitled not only to appear & plead, but also to "act" in the insolvency jurisdiction of the High Ct. Insolvency Rules of the High Ct., r. 128, which allowed advocates only to appear & plead in that jurisdiction, is no longer in force.—*Re* POWERS OF ADVOCATES (1928), I. L. R. 52 Mad. 92.—**IND.**

sa. *Natal—Qualification acquired outside Natal.*]—A person admitted as an attorney in Natal by virtue of qualifications acquired elsewhere than in Natal is not entitled to appear as counsel in the Supreme Ct. or to practise as an advocate until he has served under articles in Natal for at least 18 months.—INCORPORATED LAW SOCIETY *v.* POSEMAN (1929), 50 N. L. R. 318.—**S. AF.**

SECT. 2 SUB-SECT. 7.—A.

sb. *Barrister of five years' standing—What constitutes.*]—*Held:* applt., who had been called to the Bar more than five years, but had never practised as a barrister, was a "barrister of not less than five years' standing" within the meaning of Industrial Arbn. Act, s. 6 (7).—MCCAWLEY *v.* R. (1918), 26 C. L. R. 9.—**AUS.**

SECT. 3, SUB-SECT. 1.—A.

g. For "IR." at the end of this case read "SIERRA LEONE."

sc. *For conviction for perjury in England—Disbarment in England—How far binding on Indian court.*]—*Held:* (1) the loss of the privilege of being a barrister in England, though the only qualification for admission in India as an advocate, did not necessarily entail disbarment in the High Ct. (2) Suspension for one year ordered in this case.—*Re* AN ADVOCATE (1923), I. L. R. 46 Mad. 903.—**IND.**

sd. *Professional misconduct—Under Pleaders' Act—Canvassing for work.*]—S., a district pleader, holding a Sanad for the Surat District, sent circular postcards to the public under his signature as a High Ct. pleader stating that he had been authorised by the District Ct. to examine Wakf properties & to issue certificates. In fact all that he had been authorised to do was to examine accounts for certain specific Wakf properties on his separate application in each case, but was not authorised to audit the accounts of Wakf properties generally:—*Held:* it was improper conduct on the part of S. to issue such postcards & to canvass for the auditing work in the way that he did & accordingly he was guilty of an offence under Pleaders' Act, s. 26.—GOVERNMENT PLEADER *v.* SIDDICK (1929), I. L. R. 53 Bom. 640.—**IND.**

se. —— *Extent of jurisdiction.*]—No power to exercise inherent disciplinary jurisdiction over legal practitioners, independently of the Legal Practitioners Act & the Indian Bar Councils Act, now exists in the High Ct. in respect of their professional or other misconduct. No disciplinary power over legal practitioners or power to punish for contempt outside the Indian Penal Code is vested in the subordinate cts.—MAHANT SHANTANAND GIR *v.* MAHANT BASUDEVANAND GIR (1930), I. L. R. 52 All. 619.—**IND.**

sf. *Procedure of High Court—Under Bar Councils Act, 1926.*]—As from

110. *Add. Annotation :*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

148a. ——.]—On an indictment for rape, prisoner ought to be defended by counsel.—R. *v.* HANCOCK (1931), *as reported in* 23 Cr. App. Rep. 16, C. C. A.

155a. Under Poor Prisoners' Defence Act, 1930 (c. 32).]—R. *v.* TIDMARSH (1931), 23 Cr. App. Rep. 79, C. C. A.

162a. —— **Right of junior counsel settling pleadings to lead another junior counsel.**]—A member of the Outer Bar settled pleadings & led at trial. Another member of the Outer Bar was briefed to attend trial as his junior. On party & party taxation the taxing master disallowed the fees paid to the second counsel on the ground that the junior who settled the pleadings could not lead, but could be led by a senior either of the Outer or Inner Bar :—*Held :* junior counsel who settled pleadings could lead another junior counsel, & fees of both counsel should be allowed.—DOUGLAS *v.* ASSOCIATED NEWSPAPERS, LTD. (1922), 67 Sol. Jo. 48.

173a. —— **Position of.**]—A barrister practising in Bristol & a barrister practising in London, or, rather one having chambers in both places, is not practising separate professions ; he is still a practising barrister. The profession of a practising barrister is that of a barrister practising in the courts of Great Britain, & wherever he is called upon to go, there he acts as a practising barrister. I think it is quite impossible to regard a change of chambers from one town to another as a relevant fact. Now, as to the fact of the barrister becoming a King's Counsel, I do not think the matter can be dealt with by construing the King's patent, or by considering it in a technical manner, but by regarding what, *de facto*, is the state of affairs which arises when a barrister becomes a King's Counsel. No doubt at one time he was considered to hold an office ; he was paid a salary & could not appear against the Crown without a licence. What happens now is that the Sovereign confers a titular rank which is recognised in the cts. by giving the holder precedence, a seat within the Bar, & by entitling him to wear a silk gown. On the other hand, by the practice of the profession, he abstains from doing certain classes of work which he did before appointment. But he is still acting in the same way as before, practising the art of advocacy. All he does is to limit the part he takes therein, but he carries on the work of advocacy still, though in a higher degree. I do not think that there can be any distinction between the different cases where junior barristers become King's Counsel ; the position involved is quite simple & all must come under the same head. Both the junior barrister & the King's Counsel carry on the same profession, but the latter occupy a higher rank or degree within it (ROWLATT, J.).—SELDON (F. E.) *v.* CROOM-JOHNSON ; SELDON (F. E.) *v.* BRUCE THOMAS, [1932] 1 K. B. 759 ; 101 L. J. K. B. 358 ; 147 L. T. 72 ; 48 T. L. R. 304 ; 76 Sol. Jo. 273 ; 16 Tax Cas. 740.

191. *Add. Annotation :*—**Apld.** *Re* Morgan, Brown *v.* Jones (1927), 71 Sol. Jo. 650.

191a. —— ——.]—Where trustees are represented by the same firm of solrs. & one of them is interested in the trust fund beneficially, it is *primâ facie* the solrs.' duty to employ separate counsel to represent the independent trustee, in order that the ct. may have the assistance of such separate counsel. —*Re* MORGAN, BROWN *v.* JONES (1927), 71 Sol. Jo. 650.

220a. —— **Of junior counsel—Proportionate to fee of leader.**]—A junior counsel is entitled to be allowed two-thirds of the fee allowed to his leader & the taxing master has no power to direct that the amount of the fee of junior counsel on the hearing before the master in chambers should be deducted from the amount of the fee allowed on the adjourned hearing before the judge in ct., on the ground that the brief was practically the same on each occasion.—*Re* PARK, BOTT *v.* CHESTER (1921), 66 Sol. Jo. (W. R.) 2.

June 1, 1928, the procedure by which an advocate can be called upon to answer for misconduct is governed by Bar Councils Act, 1926, ss. 10 *et seq.* To proceed under sect. 10, the High Ct. is required, by sub-sect. (2) of that sect., if it does not summarily reject the complaint, either to refer the case for inquiry to the Bar Council, or, after consultation with the Bar Council, to refer it to the ct. of a District judge. Similar powers of reference are given where the ct., instead of acting on a complaint, acts on its own motion. But in either event, it is necessary for the case to be either referred to the Bar Council, or at any rate for the Bar Council to be consulted.—*Re* A VAKIL OF AZAMGARH (1928), I. L. R. 51 All. 76.—**IND.**

sg. *Under Legal Practitioners Act,* s. 12.]—The discretion of the High Ct., in each particular case under sect. 12, is absolute, & it can let off a pleader with an admonition or suspend him or strike him off the rolls.—*Re* A PLEADER (1929), I. L. R. 57 Calc. 337. —**IND.**

sh. *Acts in furtherance of civil disobedience movement.*]—Where a legal practitioner, being a member of the civil disobedience movement commits illegal acts in furtherance of that movement, he brings himself within the disciplinary jurisdiction of the High Ct.—*Re* PLEADER RAMGOBIND SINHA (1932), I. L. R. 11 Pat. 365.—**IND.**

SECT. 5, SUB-SECT. 1.—A. (g).

188 i. *Party proposing employment—Proceeding against previous client.*]—Appct., an advocate, allowed resp. to give him instructions in full without warning him that the other side had approached him to represent them in the matter & that he had not declined the offer. He, however, was not retained by resp. & the brief of the other side being offered to him, accepted the same :—*Held :* whilst the action of resp. did not amount to professional misconduct, the case came within the ambit of the rule that counsel ought not to accept a brief against a party, even though that party refuses to retain him, in any case in which he would be embarrassed in the discharge of his duty by reason of the confidence & applt. was rightly refused permission by the trial ct. to appear in the suit.—U. KO KO GYI *v.* U SAN MYA (1930), I. L. R. 8 Ran. 446.—**IND.**

190 iii. —— ——.]—A legal practitioner may change sides, but, if, as in this case, such conduct is likely to cause mischief or reasonable misapprehension in the mind of his late client, the ct. would not allow the advocate to appear for the other party. —MAUNG SEIN GYI *v.* MANECKJEE (1929), I. L. R. 8 Ran. 44.—**IND.**

SECT. 5, SUB-SECT. 2.

206 vi. —— ——.]—Where a pleader sued to recover from his client a sum of money as remuneration for his services as a pleader, on the basis of a verbal agreement entered into with his client, or, if the agreement was held to be invalid, on the basis of *quantum meruit :—Held :* though the agreement was void under Legal Practitioners Act, s. 28, the pleader was entitled to reasonable compensation for work & labour done by him on behalf of the client.—THANGAMMAL AYIYAR *v.* KRISHNAN (1929), I. L. R. 53 Mad. 309.—**IND.**

217 i. *Amount of fees—Application of "two-thirds" rule in India.*]—The amount of fees allowed to junior counsel must be adjusted by the Taxing Master according to two-thirds of the amount allowed to senior counsel. —*Re* GOPALCHANDRA SINGHA (1930), I. L. R. 58 Calc. 505.—**IND.**

221 ix a. —— —— *India—English barrister.*]—A barrister of England, enrolled as an advocate of the Allahabad High Ct. & practising in that ct. or in cts. subordinate to it, can bring a suit against his client for recovery of his fees settled for his professional services in acting & pleading for his client.—NIHAL CHAND SHASTRI *v.* DILAWAR KHAN (1933), I. L. R. 55 All. 570.—**IND.**

227. *Add. Annotation :*—**Consd.** *Re* Sandiford (No. 2), Italo-Canadian Corpn., Ltd. *v.* Sandiford, [1935] Ch. 681.

228a. —— —— **Right to prove against estate of deceased solicitor.**]—Counsel has no right to prove for his fees in the administration of the insolvent estate of a deceased solr. in a case where the client reimbursed the solr. the amount of the fees upon the faith of the solr.'s false representation that he had in fact paid them to counsel.—*Re* SANDIFORD (NO. 2), ITALO-CANADIAN CORPN., LTD. *v.* SANDIFORD, [1935] Ch. 681 ; 104 L. J. Ch. 335 ; 154 L. T. 7.

230. *Add. Annotation :*—**Consd.** *Re* Sandiford (No. 2), Italo-Canadian Corpn., Ltd. *v.* Sandiford, [1935] Ch. 681.

242. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

291. *Add. Annotations :*—**Apld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474. **Refd.** Sourendra Nath Mitra *v.* Srimati Tarubala Dasi (1930), 46 T. L. R. 191.

300. *Add. Annotation :*—**Refd.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

311. *Add. Annotation :*—**Refd.** L. *v.* L., [1931] P. 63.

323a. Express instructions given to solicitor.]—At the hearing of an action for debt counsel for deft. consented to judgment against his client for part only of the claim, pltf. abandoning the balance. Without the knowledge of counsel on either side, or of the solrs. for pltf., deft. had given instructions to her solrs. that the case was not to be settled. Upon an application made before the judgment was drawn up :—*Held :* the case must be restored to the list for hearing.—SHEPHERD *v.* ROBINSON, [1919] 1 K. B. 474 ; 88 L. J. K. B. 873 ; 120 L. T. 492 ; 35 T. L. R. 220, C. A.

Annotation :—**Refd.** Sourendra Nath Mitra *v.* Srimati Tarubala Dasi (1930), 46 T. L. R. 191.

324. *Add. Annotation :*—**Distd.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

326. *Add. Annotation :*—**Apld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

331. *Add. Annotation :*—**Apld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

335. *Add. Annotation :*—**Refd.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

347a. —— **Whether evidence for opposite party.**]—The judge at a trial will not take the facts from the opening of the counsel on the opposite side.—MACHELL *v.* ELLIS (1845), 1 Car. & Kir. 682.

---

221 xi. —— ——.]—ARMOUR *v.* DINNER (1899), 4 Terr. L. R. 30.—**CAN.**

sh. *" Normal " fees—Fees in big & difficult cases.*]—*Held :* both are ju[illegible] such fees as a practising law-agent finds sufficient in order to command the services of competent counsel in cases of a similar character.—CALEDONIAN RY. CO. *v.* GREENOCK CORPN., GLASGOW & SOUTH WESTERN RY. CO. *v.* SAME, [1922] S. C. 299.—**SCOT.**

sl. *Counsel engaged by commissioners under Public Inquiries Act, 1929—Reasonable compensation—Petition of right.*]—Where comrs. appointed under Public Inquiries Act, 1929, by the Lieutenant-Governor in Council are authorised by their commission to engage the services of counsel to assist them in their inquiry, & acting on that authority they do engage counsel, it must be taken that in so engaging counsel they are acting on behalf of the Lieutenant-Governor in Council & that, in the absence of an express agreement with the counsel as to their remuneration, there is an implied agreement with the Crown that they will be given reasonable compensation for their services. If such compensation be not paid the counsel may proceed by petition of right to recover it.

In the present case :—*Held :* a letter from the comrs. to the A.-G. advising paying of counsel fees of a certain amount was, under the circumstances, evidence of the opinion of the commissioners as to what would be a fair & reasonable compensation for the commission counsel ; the counsel at the trial had agreed that the comrs. if called to testify would state what they had stated in the letter.—HOGARTH *v.* R., [1934] 2 W. W. R. 340.—**CAN.**

SECT. 5, SUB-SECT. 4.

238 ii. ——.]—There is no hard & fast rule rendering counsel in a cause incompetent as a w'tness in that cause. —R. *v.* BECKER, [1929] App. D. 167.—**S. AF.**

252 xiv. ——.]—GRADY *v.* WAITE, [1930] 1 D. L. R. 838 ; 1 M. P. R. 116. —**CAN.**

SECT. 5, SUB-SECT. 6.

274 i. *Misconduct—Inserting libel on judge in notice of appeal—On instructions of client.*]—*Held :* this conduct was highly improper.—JACOB & Co. *v.* RASH BEHARI GHOSE (1920), I. L. R. 47 Calc. 828.—**IND**

274 ii. —— *Refusal to take brief.*]—The refusal of a lawyer to take up a brief for a member of the public, simply & solely on the ground that he would be appearing against a brother practitioner, who was the litigating party on the other side, or putting forward untrue excuses, when the real reason is a disinclination to appear against a brother practitioner, is professional misconduct ; that is, it is a breach of the duty which the acceptance of the status of an advocate demands from every man who becomes an advocate.—MUHAMMAD INAYAT ALI *v.* EMPEROR (1929), I. L. R. 51 All. 892. —**IND.**

SECT. 5, SUB-SECT. 7.—C. i. (b).

291 i. *General rule.*]—Rules regarding competency of counsel to compromise suits, make admissions, or confess judgment, so as to bind their clients, discussed.—MUTHIAH CHETTIAR *v.* MUTHU K. R. A. KAROPPAN CHETTI (1927), I. L. R. 50 Mad. 786.—**IND.**

291 ii. ——.]—An advocate, admitted to practise by the appropriate ct. in India, when briefed in a suit, including a suit in the ct. of a subordinate judge, has the implied authority of his client to settle the suit by a compromise. If he is briefed in an interlocutory matter he has implied authority to settle the whole suit where it appears that the intention was to place him in the same position, & to arm him with the same authority, as though he had been briefed to conduct the whole suit.—SOURENDRA NATH MITRA *v.* TARUBALA DASI (1930), 46 T. L. R. 191 ; 57 L. R. Ind. App. 133, P. C.—**IND.**

294 i. *Power presumed—Counsel apparently properly instructed—Party's agent present without protest.*]—NILMONE CHAUDHURI *v.* KEDAR NATH DAGA (1922), I. L. R. 1 Pat. 489.—**IND.**

300 iv. ——.]—A settlement within the apparent general authority of counsel :—*Held :* binding.—B. N. SEN & BROTHERS *v.* CHUNI LAL DUTT & Co. (1923), I. L. R. 51 Calc. 385.—**IND.**

301 i. *Authority to compromise out of court.*]—A compromise effected by counsel on behalf of his client out of ct., & not assented to by his client, is only binding upon the client if it is expressly authorised or subsequently ratified by the client or by his agent authorised in that behalf.—ASKARAU CHOUTMAL *v.* EAST INDIAN RY. CO. (1925), I. L. R. 52 Calc. 386.—**IND.**

301 ii. ——.]—The fact that negotiations for compromise between counsel took place before the hearing of the suit commenced, or were carried on outside the ct., does not vitiate the agreement.—JOHURMULL BHUTRA *v.* KEDAR NATH BHUTRA (1927), I. L. R. 55 Calc. 113.—**IND.**

sc. *Effect of client's presence in court.*] —Mere presence in ct. of the client, when he does not make his presence known to the counsel, does not affect the ostensible authority of the counsel, who can compromise the suit without consulting the client. — GHASIRAM GOENKA *v.* HARIBUX GOBARDHANDAS (1931), I. L. R. 59 Calc. 31.—**IND.**

SECT. 5, SUB-SECT. 7.—C. (b) iii.

t i. ——.]—The general authority of counsel to compromise a suit does not extend beyond matters in the suit. —JOHURMULL BHUTRA *v.* KEDAR NATH BHUTRA (1927), I. L. R. 55 Calc. 113.—**IND.**

SECT. 5, SUB-SECT. 7.—C. (b) iv.

334 ii. ——.]—Where the advocate for one of the parties in a proceeding for the grant of letters of administration under a misapprehension consented to the other party being granted the letters :—*Held :* if such consent was given without instructions the client might withdraw the consent at any time prior to the actual issue of letters.—KYONE HOE TSEE *v.* KYON SOON SUN (1925), I. L. R. 3 Ran. 261.—**IND.**

SECT. 5, SUB-SECT. 8.

aa. *Counsel must not combine functions of advocate & witness.*]—CAIRNS *v.* CAIRNS, [1931] 3 W. W. R. 335 ; 4 D. L. R. 819 ; 26 Alta. L. R. 69.—**CAN.**

SECT. 5, SUB-SECT. 10.

e i. ——.]—In an action for damages for breach of contract, certain admissions were made by counsel for both

356a. Whether binding at second trial.]—A man was employed by a railway co. to sweep their yard & goods warehouse. Several lines of rails ran through the yard, & it was his duty to sweep between the lines, but to stand clear of them when trucks were being run over them. On June 10, 1918, a capstan man in the employ of defts. gave notice to the man that he was going to run trucks into the yard, which notice the man acknowledged. The first truck was sent in, & the capstan man stated that he saw the man apply the brake to it, which was not a part of his duty, & then leave the yard. A second truck was then sent down on another line, & shortly afterwards the man was found sitting on the ground, having sustained injuries from which he died. Upon a claim by his widow for compensation under Workmen's Compensation Act, 1906 (c. 58), an admission was made by counsel at the trial that "deceased was crushed between two waggons & sustained abdominal injury from which he died." A new trial having been ordered:—*Held:* the above admission was not to be binding at the second trial.—DAWSON *v.* GREAT CENTRAL RY. CO. (1919), 88 L. J. K. B. 1177; 121 L. T. 263; 12 B. W. C. C. 163, C. A.

376. *Add. Annotation:*—**Distd.** Stanton *v.* Laws, [1934] W. N. 130.

383a. Duty to assist court—By citing all relevant authorities.]—Upon the hearing of an appeal in the House of Lords, it is the duty of counsel to bring to the attention of the House any authority, statutory or other, within their knowledge which bears one way or the other upon the matters under debate, irrespectively of whether or not the particular authority assists the case of the party who is aware of it. It is likewise the duty of those who instruct counsel, if they are aware of any such authority, to bring it to the attention of counsel, in order that they in turn may bring it to the attention of the House.—GLEBE SUGAR REFINING CO., LTD. *v.* GREENOCK PORT & HARBOURS TRUSTEES, [1921] 2 A. C. 66; 125 L. T. 578; 37 T. L. R. 436; 65 Sol. Jo. 551, H. L.

383b. Duty to disclose adultery of petitioner in suit for dissolution of marriage.]—Where a petitioner has committed adultery it is the duty of his counsel & solr. to disclose the fact to the ct. if they are aware of it.—ABRAHAM *v.* ABRAHAM & HARDING (1919), 120 L. T. 672; 35 T. L. R. 371; 63 Sol. Jo. 411.

Disclosure of petitioner's adultery in suits for dissolution of marriage generally, *see* HUSBAND & WIFE.

389. *Add. Annotation:*—**Apld.** Grinham *v.* Davies, [1929] 2 K. B. 249.

After this case add, *See, also,* NEGLIGENCE, Nos. 842, 842a.

408a. —— ——.]—PRACTICE NOTE, [1920] W. N. 34.

421a. —— ——.]—The House of Lords has a prior claim to the attendance of counsel over other cts., & before absenting himself counsel ought to have made an application for leave to be absent.—ABRAM S.S. CO. *v.* WESTVILLE SHIPPING CO. (1923), as reported in 67 Sol. Jo. 535, H. L.

453. *Add. Annotations:*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626; Wilson *v.* United Counties Bank, [1920] A. C. 102; Ley *v.* Hamilton (1934), 151 L. T. 360. **Refd.** Barber *v.* Pigden, [1937] 1 K. B. 664.

463. *Add. Annotation:*—**Refd.** Barber *v.* Pigden, [1937] 1 K. B. 664.

465. *Add. Annotation:*—**Consd.** De Freville *v.* Dill (1927), 43 T. L. R. 431.

480. *Add. Annotation:*—**Refd.** Harte *v.* Williams, [1934] 1 K. B. 201.

---

parties & put in at the trial by consent:—*Held:* deft. was bound by the admissions made by counsel on his behalf.—DOMINION ART CO., LTD. *v.* MURPHY (1923), 54 O. L. R. 332.—CAN.

SECT. 6, SUB-SECT. 1.

383 i. —— *Should not make scandalous charges.*]—Members of the legal profession are under no duty to their clients to make grave & scandalous charges against either judges or the opposite parties on their client's mere wish. They are responsible to the ct. for the fair & honest conduct of the case. They are not mere agents of the man who pays them, but are acting in the administration of justice.—*Re* DIVARKA PRASAD MITHAL (1923), I. L. R. 46 All 121.—IND.

383 ii. —— *Duty as regards offensive questions.*]—An advocate should exercise his own discretion before putting an offensive question.—M. BANERJEE *v.* ANUKUL CHANDRA MITRA (1927), I. L. R. 55 Calc. 85.—IND.

si. *May criticise questions submitted to jury—After asking for direction & calling no evidence.*]—STEELE *v.* BELFAST CORPN., [1920] 2 I. R. 125, 133.—IR.

SECT. 6, SUB-SECT. 5.

429 ii. —— ——.]—*Re* DIVARKA PRASAD MITHAL, No. 383 i., *ante.*—IND.

439 ii. —— —— ——.]—In an action of damages for breach of promise of marriage defender made a tender of £100 & expenses, which was not accepted by pursuer. The jury having awarded the pursuer the sum of £75, she moved for a new trial on the ground that counsel for defender, in addressing the jury, had used words which represented that an award of £50 would carry the expenses of the action. The ct., holding that there had been no intention to mislead the jury, & that the words used did not necessarily bear the meaning put upon them by pursuer, & had not prevented the trial from being a fair one, refused to grant a new trial.—REEKIE *v.* M'KINVEN, [1921] S. C. 733.—SCOT.

BASTARDY.

Part I.—The Presumption of Legitimacy.

2. *Add. Annotations :*—**Consd.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605. **Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115 ; Warren *v.* Warren, [1925] P. 107.

3. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115 ; Farman *v.* Farman (1924), 40 T. L. R. 823.

4. *Add. Annotations :*—**Consd.** Mart *v.* Mart, [1926] P. 24 ; Farnham *v.* Farnham (otherwise Daniels), [1937] P. 49.

11. *Add. Annotation :*—**Refd.** Gaskill *v.* Gaskill, [1921] P. 425.

12. *Add. Annotations :*—**Consd.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605 ; Stafford *v.* Kidd, [1937] 1 K. B. 395. **Refd.** Gaskill *v.* Gaskill, [1921] P. 425 ; Russell *v.* Russell, [1924] A. C. 687.

17. *Add. Annotations :*—**Apld.** Warren *v.* Warren, [1925] P. 107. **Refd.** Russell *v.* Russell, [1924] A. C. 687.

20. *Add. Annotation :*—**Refd.** Andrews *v.* Andrews & Chalmers (1924), 40 T. L. R. 873.

22. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687 ; Mart *v.* Mart, [1926] P. 24. **Refd.** Andrews *v.* Andrews & Chalmers (1924), 132 L. T. 400 ; *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605 ; Stafford *v.* Kidd, [1937] 1 K. B. 395.

22a. —— —— ——.]—In the absence of evidence to the contrary the presumption of legitimacy does not arise in the case of a child born to a resp. more than nine months after she has obtained, under Summary Jurisdiction Married Women's Act, 1895 (c. 39), an order that she be no longer bound to cohabit with petitioner.—ANDREWS *v.* ANDREWS & CHALMERS, [1924] P. 255 ; 93 L. J. P. 137 ; 132 L. T. 400 ; 40 T. L. R. 873.

Annotations :—**Refd.** Mart *v.* Mart, [1926] P. 24 ; *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605 ; Stafford *v.* Kidd, [1937] 1 K. B. 395.

22b. —— ——.]—STEWART *v.* STEWART, No. 65e, *post.*

22c. **Deed of separation—Whether access presumed.**]—The legal presumption of access, & of the legitimacy of a child born during marriage, is rebutted by its conception during a period when the spouses are living apart under a deed of separation. For this purpose a deed of separation has the same effect as an order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), that the wife shall not be bound to cohabit with her husband, or a judicial separation.—MART *v.* MART, [1926] P. 24 ; 95 L. J. P. 29 ; 134 L. T. 446 ; 42 T. L. R. 253.

Annotations :—**Consd.** Collis *v.* Collis & Thomas (1933), 77 Sol. Jo. 573. **N.F.** *Re* Bromage, Public Trustee *v.* Cuthbert, 1935] Ch. 605. **Foll.** Stafford *v.* Kidd, [1937] 1 K. B. 395.

PART I. SECT. 2.

7 v. —— ——.]—*Held :* " born out of wedlock " within Children of Unmarried Parents Act, 1921 (c. 54), s. 13, & the husband may show by his own evidence & that of his wife that they had in fact no intercourse at such time as would make his parentage possible.—*Re* DUCKWORTH & SKINKLE (1924), 55 O. L. R. 272.—**CAN.**

7 vi. —— —— *Wife divorced woman.*]—Where a Hindu woman was married to S. in Oct. 1903, was divorced by him in June 1904, married T. in July 1904, & gave birth to a son in Sept. 1904 :—*Held :* there was no proof that T. could not have had access to her at any time when the son could have been begotten, & the son should be held to be the legitimate son of T.—SETHU *v.* PALAIN (1925), I. L. R. 49 Mad. 553.—**IND.**

12 iv. —— *Irrebuttable presumption.*]—Once access of, or intercourse by, a husband is proved, no evidence will be allowed to show that the child is not the child of the husband. The circumstance that the wife had intercourse with several at that time makes no difference.—JAGANNATHA MUDALI *v.* CHINNASWAMI CHETTI (1932), I. L. R. 55 Mad. 243.—**IND.**

14 i. —— —— *Even where wife adulteress.*]—*Re* BROWN & ARGUE, [1925] 3 D. L. R. 873 ; 57 O. L. R. 297.—**CAN.**

22c i. *Deed of separation—Presumption of non-access.*]—The legal presumption of access & of the legitimacy of a child of the spouses born during marriage is rebutted by its conception during the operation of a decree of the ct. pronouncing their separation, or during a period when the spouses are living apart under a deed of separation ; & the evidence of either spouse to negative legitimacy is, therefore, admissible.—MCINTOSH *v.* MCINTOSH, [1934] N. Z. L. R. Supp. 132 ; G. L. R. 357.—**N.Z.**

sc. *Child of Chinese resident in Straits Settlements & " t 'sip."*]—According to the Chinese law of marriage, which is applied in Penang in the case of Chinese residents, a Chinaman may have secondary wives (sometimes called " t 'sips ") who have the status of wives & whose children are legitimate. Although some sort of ceremony is usual when a " t 'sip " is taken, proof of the performance of a ceremony is not essential to establish the relationship. Deceased resp. for twenty-six years lived & was maintained in the house of a Chinese merchant in Penang, & bore him children. One child who survived the father was referred to in his will as " my daughter," & her name appeared upon his tombstone. The resp. had been recognised by the Chinaman & by his primary wife as occupying in his household the position of a secondary wife :—*Held :* deceased resp. was a secondary wife, whether or not the performance of a ceremony was proved, & under the practice in Penang (which was not questioned in the appeal) she was entitled, upon the death of the Chinaman partially intestate, to share as a widow.—CHEANG THYE PHIN *v.* TAN AH LOY, [1920] A. C. 369 ; 89 L. J. P. C. 44 ; 122 L. T. 593, P. C.—**STRAITS SETTLEMENTS.**

sd. ——.]—Regarded as legitimate & entitled to inherit equally with children by the " t 'sai " (primary wife).—KHOO HOOI LEONG *v.* KHOO HEAN KWEE, [1926] A. C. 529 ; 95 L. J. P. C. 94 ; 135 L. T. 170.—**STRAITS SETTLEMENTS.**

se. ——.]—The Chinese custom of legitimation of a natural son by subsequent recognition is not part of the law of the Straits Settlements in relation to Chinese people there domiciled ; nor does recognition as a son raise a presumption that the son's mother was a " t 'sip," or secondary wife. The modifications of the law of England which obtain in the Colony in its application to the various alien races established there arise from the necessity of preventing the injustice or oppression which otherwise would ensue. It is from that necessity that the status of " t 'sips," & consequently the legitimacy of their offspring, have been recognised ; but there are no grounds which would justify treating an illegitimate natural son as legitimated by the mere fact of subsequent recognition.—KHOO HOOI LEONG *v.* KHOO CHONG YEOK, [1930] A. C. 346 ; 99 L. J. P. C. 129 ; 143 L. T. 25, P. C.—**STRAITS SETTLEMENTS.**

sf. *Child of Mahomedan & his servant —Acknowledgment of child by father as his son.*]—The son of a Mahomedan by a female servant in his house claimed a declaration of his legitimacy. The parents had continuously cohabited for many years, & the father on several occasions had acknowledged plff. as his son. There was some evidence of a *nikah* marriage :—*Held :* evidence that other members of the father's class had illegitimate children by servants was inadmissible to rebut the presumption of legitimacy arising from the acknowledgments, & though the fact that the mother unlike the father's other wives was not *parda-nishin* was one to be considered, it was insufficient to interfere with the presumption of law or the balance of proof of the fact of legitimacy.—MOHABBAT ALI KHAN *v.* MAHOMED IBRAHIM KHAN (1929), 56 L. R. Ind. App. 201.—**IND.**

22d. —— ——.]—If a husband & wife are not living together but are living separate & apart under a separation deed, the presumption of the legitimacy of children of a married woman born while the marriage is still continuing is not thereby rendered inapplicable. If therefore the wife gives birth to children while the separation continues, these children will *primâ facie* be legitimate. To rebut the presumption of legitimacy, proof of absence of sexual intercourse between the husband & wife at the material time must be conclusive.

A husband & wife having entered into a separation deed, agreed to live separate & apart. They separated, & at all material times lived apart on terms of estrangement & hostility. Some time after the deed of separation had been entered into & while so living apart, the wife, who was then living with E. H., gave birth to a child. This child was registered as the child of E. H. & the wife. There was no evidence that the husband knew of the existence of this child but it was proved that he was never asked to provide for it or acknowledge it in any way. Some years afterwards another child was born while the wife was living with A. A. & was registered as the child of A. A. & the wife. A question having arisen whether these children might be entitled under the terms of a gift in a will for the children of the husband & the wife on their attaining twenty-one or in the case of daughters on marriage, an originating summons was taken out for the purpose (*inter alia*) of determining this question:—*Held:* both children were according to the evidence illegitimate & not entitled to the gifts in question.—*Re* BROMAGE, PUBLIC TRUSTEE *v.* CUTHBERT, [1935] Ch. 605; 104 L. J. Ch. 299; 153 L. T. 313; 51 T. L. R. 408; 79 Sol. Jo. 418.

Annotation:—**N.F.** Stafford *v.* Kidd, [1937] 1 K. B. 395.

22e. —— ——.]—The execution of a deed of separation, together with evidence that it was acted upon by the parties, is sufficient to rebut the legal presumption of access & of the legitimacy of a child born during marriage, in the case of a child conceived during a period when the spouses are living apart under the deed.—STAFFORD *v.* KIDD, [1937] 1 K. B. 395; [1936] 3 All E. R. 1023; 106 L. J. K. B. 193; 156 L. T. 75; 101 J. P. 68; 53 T. L. R. 169; 81 Sol. Jo. 16; 35 L. G. R. 97; 30 Cox, C. C. 532, D. C.

Annotation:—**Distd.** Bowen *v.* Norman, [1938] 1 K. B. 689.

22f. Oral agreement for separation—Whether presumption of access ousted.]—COLLIS *v.* COLLIS & THOMAS (1933), 77 Sol. Jo. 573.

24a. ——.]—HASLAM *v.* CRON, OLIVANT'S CLAIM (1871), 19 W. R. 968.

25. *Add. Annotations:*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115; Farman *v.* Farman (1924), 40 T. L. R. 823.

28. *Add. Annotation:*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

35. *Add. Annotations:*—**Consd.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605. **Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115; Warren *v.* Warren, [1925] P. 107.

36. *Add. Annotations:*—**Apld.** Best *v.* Best & McKinley, [1920] P. 75; *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

42. *Add. Annotation:*—**Consd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115.

43. *Add. Annotation:*—**Refd.** Gaskill *v.* Gaskill, [1921] P. 425.

43a. —— —— —— ——.]—When adultery is to be inferred solely from the length of gestation of a child *in utero*, & evidence adverse to the wife, its mother, as regards her conduct, is absent, the same considerations apply as in a case of legitimacy & the presumption thereof. In such a case the evidence to negative lawful access as the cause of pregnancy must be strong, distinct, satisfactory, & conclusive, & must not consist of a mere balance of probability. If on medical evidence there is no distinct & inherent impossibility of access by the husband which could account for the birth of a child, the wife cannot be found guilty of adultery.—GASKILL *v.* GASKILL, [1921] P. 425; 90 L. J. P. 339; 126 L. T. 115; 38 T. L. R. 1.

Annotation:—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

46. *Add. Annotation:*—**Refd.** Warren *v.* Warren, [1925] P. 107.

49. *Add. Annotations:*—**Apld.** Gaskill *v.* Gaskill, [1921] P. 425. **Consd.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605; Stafford *v.* Kidd, [1937] 1 K. B. 395. **Refd.** Russell *v.* Russell, [1924] A. C. 687.

54. *Add. Annotations:*—**Consd.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605. **Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115; Warren *v.* Warren, [1925] P. 107.

56. *Add. Annotation:*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

PART I. SECT. 3.

49 iii. —— *Illicit intercourse with paramour.*]—*Held:* evidence of pltf. should not have been received to bastardise her child, & as there was no admissible evidence that the child was illegitimate, it must be taken that pltf.'s husband was the father.—KIJKO *v.* BACZYZKI (1921), 67 D. L. R. 46; 51 O. L. R. 225.—**CAN.**

PART I. SECT. 4.

56 vii. —— ——.]—The evidence of a man & his wife, given for the purpose of bastardising a child born during wedlock, & at a time consistent with lawful conception, is not admissible.—*Re* BROWN & ARGUE, [1925] 3 D. L. R. 873; 57 O. L. R. 297.—**CAN.**

56 viii. —— ——.]—A husband sued his wife for divorce on the ground of adultery, which she denied. The wife had given birth to a child, of which the husband alleged that he was not the father. The husband gave evidence of non-access. The birth had been registered by the wife, who gave the name of a man other than her husband as its father:—*Held:* (1) the husband's evidence as to non-access was inadmissible; (2) the registration of the child's birth by the wife did not throw the *onus* upon her of proving that the child was not an adultrine child, but the *onus* of proof remained upon the husband.—SURMON *v.* SURMON, [1926] APP. D. 47.—**S. AF.**

56 ix. —— ——.]—Evidence of adultery does not bastardise issue, unless it amounts to evidence of non-access by the husband at about the time when the child might have been begotten.—JUSTICE *v.* JUSTICE, [1925] S. A. S. R. 278.—**AUS.**

56 x. —— ——.]—AARNES *v.* AARNES, [1929] 2 D. L. R. 298; 1 W. W. R. 894; 23 S. L. R. 503.—**CAN.**

56 xi. —— ——.]—*Held:* the evidence of spouses was admissible to bastardise a child born during wedlock; the rule to the contrary, applied in *Russell* v. *Russell*, No. 70a, not being part of the law of Scotland.—BURMAN *v.* BURMAN, [1930] S. C. 202.—**SCOT.**

56 xii. —— ——.]—In Indian law a wife is a competent witness to prove access or non-access by her husband.—MAYANDI ASARI *v.* SAMI ASARI (1932), I. L. R. 55 Mad. 292.—**IND.**

56 xiii. —— ——.]—The presumption of legitimacy which arises when a child is born in wedlock can be met only by some kind of definite proof that sexual intercourse between husband & wife did not or could not take place at the time the woman conceived. Evidence that the child has physical characteristics which suggest Mongolian paternity is not in itself sufficient to constitute such proof where the mother & her husband are Europeans. The testimony of a parent of the child is not admissible to prove that the child is illegitimate.—AH CHUCK *v.* NEEDHAM, [1931] N. Z. L. R. 559.—**N.Z.**

56 xiv. —— —— *Nullity suit.*]—The rule in *Russell* v. *Russell* applies

57. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

58. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687. **Distd.** Holland *v.* Holland, [1925] P. 101. **Refd.** Warren *v.* Warren, [1925] P. 107 ; Farnham *v.* Farnham (otherwise Daniels), [1937] P. 49.

59. *Add. Annotation :*—**Refd.** Warren *v.* Warren, [1925] P. 107.

60. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687. **Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

61. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

63. *Add. Annotation :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687.

64. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

65a. —— —— ——.]—Resp., A. L., a married woman, living at all material times in London apart from her husband, preferred a complaint against applt. alleging that he was the father of her bastard child. Evidence was given by two independent witnesses that at all material times one F. L., was living in Cardiff. Resp. alone identified F. L. as her husband :—*Held :* apart from resp.'s identification, there was no evidence of non-access by the husband, & since *Russell* v. *Russell*, No. 70a, *post*, such evidence could not be given by the wife.—BROWN *v.* LEECH (1924), 94 L. J. K. B. 48 ; 132 L. T. 205 ; 88 J. P. 208 ; 41 T. L. R. 89, D. C.

65b. —— —— —— **Child still-born.**]—The rule laid down by the House of Lords in *Russell* v. *Russell*, No. 70a, *post*, that evidence of non-access by the husband or wife cannot be admitted where the result may be to bastardise a child, does not include a still-born child.—HOLLAND *v.* HOLLAND, [1925] P. 101 ; 94 L. J. P. 64 ; 133 L. T. 318 ; 41 T. L. R. 431.

65c. —— —— ——.]—A wife's admission that she had committed adultery, even if accompanied by a statement of her belief that a child subsequently born, was the result of the adultery, cannot bastardise the child without evidence of the non-access of the husband. The confession of the wife, therefore, that she had committed adultery is admissible as evidence in a suit for divorce so long as she does not assert that the husband could have had no access at the time of conception.—WARREN *v.* WARREN, [1925] P. 107 ; 94 L. J. P. 68 ; 133 L. T. 352 ; 41 T. L. R. 599 ; 69 Sol. Jo. 725.

Annotations :—**Consd.** Rimmer *v.* Rimmer (1930), 46 T. L. R. 624, n. **Folld.** Roast *v.* Roast, [1938] P. 8.

65d. —— —— ——.]—Where a husband took out a summons asking that an order for maintenance should be discharged, on the ground that the wife had committed adultery :—*Held :* evidence of the husband of non-access to bastardise his child was not admissible.—BOSTON *v.* BOSTON (1928), 138 L. T. 647 ; 92 J. P. 44 ; 26 L. G. R. 183, D. C.

Annotation :—**Distd.** Stewart *v.* Stewart (1932), 96 J. P. 94.

65e. —— —— —— **Effect of separation order.**]—A maintenance order having been made against a husband in 1929 on the ground of desertion, including a non-cohabitation clause, the husband in Nov. 1931, took out a summons for discharge or variation of the order on the ground that since the order made in 1929, the wife had committed adultery. The proof of adultery submitted to the Bench was the husband's evidence of the birth to his wife on Oct. 27, 1931, of a child of which he could not be the father by reason of his non-access. The magistrates refused to admit the evidence, on the ground that they were debarred from so doing by the decision in *Russell* v. *Russell*, No. 70a, & declined to vary the order. The husband appealed :—*Held :* the magistrates' view that the husband must be presumed to be the father of the child born in Oct. 1931, was wrong. The separation order had the force of a judicial separation, & therefore there was no presumption of law that appct. was the father of the child. The magistrates had been in error in excluding the evidence of non-access. The appeal succeeded, & the order would be set aside so far as the allowance to the wife was concerned.—STEWART *v.* STEWART (1932), 146 L. T. 407 ; 96 J. P. 94 ; 76 Sol. Jo. 96 ; 30 L. G. R. 104 ; 29 Cox, C. C. 438, D. C.

Annotation :—**Refd.** Natborny *v.* Natborny (1932), 101 L. J. P. 58.

65f. —— —— —— **Effect of order for maintenance.**]—On Oct. 17, 1935, resp., on the ground of desertion, obtained against her husband a maintenance order which did not contain a provision that she was no longer bound to cohabit with him. On June 20, 1937, she gave birth to a child, her husband being then still alive :—*Held :* proof of the maintenance order was not sufficient to rebut the legal presumption of access of the husband & of the legitimacy of the child born during resp.'s marriage.—BOWEN *v.* NORMAN, [1938] 1 K. B. 689 ; [1938] 2 All E. R. 776 ; 107 L. J. K. B. 273 ; 158 L. T. 257 ; 102 J. P. 123 ; 54 T. L. R. 342 ; 82 Sol. Jo. 77 ; 36 L. G. R. 192 ; 30 Cox C. C. 674.

66. *Add. Annotation :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687.

67. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

68. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

70a. —— —— ——.]—The rule of law that neither a husband nor a wife is permitted to give evidence of non-intercourse after marriage to bastardise a child born in wedlock applies to proceedings instituted in consequence of adultery, & is not affected by the

---

in nullity suits. Thus, when on the hearing of a wife's petition for nullity on the ground of her husband's impotence *quoad hanc*, it was disclosed that a child had been born during wedlock, the evidence of the spouses tending to bastardise such child was inadmissible.—G. *v.* G., [1934] N. Z. L. R. 246.—N.Z.

56 xv. —— —— *Premature delivery.*] —In an action by a husband for divorce on the ground of adultery medical evidence was led that deft. had been delivered of a *fœtus* some 3 or 3½ months old :—*Held :* the evidence of the husband of non-access by him to his wife at such times as would render it impossible for him to have been the father was admissible, as such evidence could not bastardise a child born or to be born *stante matrimonio*.—JOHNSON *v.* JOHNSON (1933), N. L. R. 107.—S. AF.

56 xvi. —— ——.]—A married woman, later divorced on the ground of adultery, cannot give evidence of non-intercourse for three years in order to fasten the paternity of the child, born during wedlock, on her paramour.—THOMAS *v.* RYAN, [1937] 4 D. L. R. 729 ; 12 M. P. R. 498 ; 69 Can. C. C. 169 ; *affd.*, [1938] 2 D. L. R. 272.—CAN.

above sect., which makes the parties to such proceedings, & the husbands & wives of such parties, competent witnesses.—RUSSELL *v.* RUSSELL, [1924] A. C. 687; 93 L. J. P. 97; 131 L. T. 482; 40 T. L. R. 713; 68 Sol. Jo. 682, H. L.

Annotations :—**Apld.** Brown *v.* Leech (1924), 94 L. J. K. B. 48. **Consd.** Farman *v.* Farman (1924), 40 T. L. R. 823. **Distd.** Warren *v.* Warren, [1925] P. 107. **Consd.** Mart *v.* Mart, [1926] P. 24; *Re* A. B.'s Petn., [1928] P. 25. **Distd.** Stewart *v.* Stewart (1932), 96 J. P. 94. **Consd.** Collis *v.* Collis & Thomas (1933), 77 Sol. Jo. 573. **Dist.** Farnham *v.* Farnham (otherwise Daniels), [1937] P. 49; *Re* Harmer's Estate, Public Trustee *v.* A.-G., [1937] 1 All E. R. 130. **Consd.** Stafford *v.* Kidd, [1937] 1 K. B. 395. **Distd.** Roast *v.* Roast, [1938] P. 8. **Refd.** Andrews *v.* Andrews & Chalmers (1924), 132 L. T. 400; Holland *v.* Holland, [1925] P. 101; Selby *v.* Atkins (1926), 135 L. T. 45; S. *v.* S. & P. (1927), 44 T. L. R. 52; Inverclyde *v.* Inverclyde, [1931] P. 29; Grubb *v.* Grubb (1934), 150 L. T. 420; Snowman *v.* Snowman (1934), 50 T. L. R. 445; Russell *v.* Russell, [1935] P. 39.

—— —— ——.]—*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 198.

Evidence in matrimonial suits generally, *see* HUSBAND & WIFE.

71. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687; Mart *v.* Mart, [1926] P. 24. **Refd.** Andrews *v.* Andrews & Chalmers (1924), 132 L. T. 400: *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605; Stafford *v.* Kidd, [1937] 1 K. B. 395.

72. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

73. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

73a. —— —— ——.]—Although, as decided in *Russell* v. *Russell*, No. 70a, *ante*, neither husband nor wife can give evidence of non-access, with a view of showing that a child born in wedlock was not a child of the marriage, yet the fact of non-access can be proved by evidence *aliunde*.—FARMAN *v.* FARMAN (1924), 40 T. L. R. 823.

74. *Add. Annotation :*—**Expld.** *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605.

76. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687; Mart *v.* Mart, [1926] P. 24; Farnham *v.* Farnham (otherwise Daniels), [1937] P. 49.

79a. **Statutory declaration by wife—For rectification of birth register—Not admissible.**]—In proceedings for the rescission of a decree *nisi* there was tendered in evidence a statutory declaration by the wife, made for the purpose of rectifying a birth register by the deletion of the name of the husband as the father of a child born to her some sixteen months after a maintenance order :—*Held :* such a declaration was not admissible by reason of the rule in *Russell* v. *Russell*, No. 70a, *ante*.—RIMMER *v.* RIMMER (1930), 144 L. T. 96; 46 T. L. R. 624, n.

Annotations :—**Consd.** Collis *v.* Collis & Thomas (1933), 77 Sol. Jo. 573; Stafford *v.* Kidd, [1937] 1 K. B. 395. **Refd.** Bowen *v.* Norman, [1938] 1 K. B. 689.

79b. **Statement in will—By father.**]—A testator & his wife were married in 1847. M. H. was born in 1850, & in the birth certificate the parents were given as testator & his wife. Upon the death of M. H., the legacy duty for which the present trustee of a resettlement of the funds subject to the trusts of testator's will became chargeable would be 1 per cent. if M. H. were the legitimate daughter of testator & 10 per cent. if she were a stranger in blood. The Inland Revenue contended that M. H. was not legitimate & sought to prove this by the evidence of : (i.) testator's will in which he always referred to M. H. as his "daughter or reputed daughter," (ii.) the acts & statements of the exors. of testator's will who had, on the death of testator, paid legacy duty on the bequests to M. H. on the footing that she was a stranger in blood, & (iii.) an affidavit sworn by a grandson of testator as to the reputation in the family with regard to the legitimacy of M. H. :—*Held :* (1) the statements in testator's will were not excluded by the rule in *Russell* v. *Russell*, that rule being limited to evidence of non-intercourse between spouses; (2) upon a consideration of the evidence, the *primâ facie* presumption of legitimacy arising from the birth certificate was displaced & the illegitimacy of M. H. was established. Legacy duty was therefore payable at the rate of 10 per cent.—*Re* HAMER'S ESTATE, PUBLIC TRUSTEE *v.* A.-G., [1937] 1 All E. R. 130; 53 T. L. R. 275; 81 Sol. Jo. 99.

80. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687; Mart *v.* Mart, [1926] P. 24; *Re* Bromage, Public Trustee *v.* Cuthbert, [1935] Ch. 605; Stafford *v.* Kidd, [1937] 1 K. B. 395.

82. *Add. Annotation :*—**Apld.** Elliott *v.* Albert, [1934] 1 K. B. 650.

83. *Add. Annotations :*—**Refd.** Holland *v.* Holland, [1925] P. 101; Warren *v.* Warren, [1925] P. 107; Farnham *v.* Farnham (otherwise Daniels), [1937] P. 49.

84. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

85. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor (1926), 134 L. T. 430.

89. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

90a. —— **Allegation of bigamous marriage——Conclusive evidence required.**]—HAYWARD *v.* HAYWARD (1928), 72 Sol. Jo. 469.

91. *Add. Annotation :*—**Consd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

95. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

---

75 i. —— —— *Whether admissible to prove access before marriage.*]—There is no rule of law that evidence negativing intercourse before marriage is inadmissible to disprove the paternity of a child born in wedlock but conceived before marriage.—MCLEAN *v.* MCLEAN, [1931] N. Z. L. R. 167.—**N.Z.**

79a i. *Statement to district registrar of births.*]—A statement as to the particulars of the birth of an illegitimate child signed by its mother, a married woman, before the district registrar of births, is not admissible evidence against her to prove her adultery as it is evidence tending to bastardise the child.—JESSOP *v.* JESSOP (1931), 48 N. S. W. W. N. 78.—**AUS.**

92 i. *Evidence as to legitimacy—Declaration in matter of pedigree—By deceased member of family—By father.*]—A husband or wife is entitled to give evidence as to events prior to their marriage even though such evidence may have the effect of bastardising a child born in wedlock. Upon an application by A. for maintenance under Testator's Family Maintenance & Guardianship of Infants Act, 1916, it appeared that A. was born about seven weeks after the marriage of his mother with M. Declarations by M., who was deceased, were tendered in evidence to show that, although M. had been intimate with his wife about four months before their marriage, A. was not his son, & that his wife had admitted that fact :—*Held :* the evidence was not rendered inadmissible by reason of the rule laid down in *Russell* v. *Russell*, No. 70a, & the declarations of M. were admissible as evidence to prove matters of pedigree. —*Re* MACKAY (1928), 28 S. R. N. S. W. 404; 45 N. S. W. W. N. 106.—**AUS.**

sw. *Admission in form under Vita Statistica Act.*]—A form voluntarily signed by the parent under Vital Statistics Act, acknowledging a child as illegitimate, is admissible in a case not concerning any title or right of the children.—*Re* MILLAR, [1938] 3 D. L. R. 164; O. R. 188.—**CAN.**

96. *Add. Citation :—previous proceedings* (1861), 2 Sw. & Tr. 465.

97. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

Part II.—Mode of Determining Question of Legitimacy.

SUB-SECT. 1 (p. 369.)

Legitimacy Declaration Act, 1858, *is now replaced, except as to sect.* 3, *by S. C. J.* (*Consolidation*) *Act*, 1925, *s.* 188.

111. For " a person who has no interest in opposing a petition will not be cited," read " a person not cited, who has no real interest in opposing a petition for a declaration of legitimacy, will not be allowed to intervene."

Add. Citation :—1 New Rep. 107, 378.

121. *Add. Annotation :*—**Apld.** Rutter *v.* Rutter, [1921] P. 136.

127. After this case add :—

——— ———.]—*See note to Sub-sect.* 1, *supra.*

129a. ——— **Issue directed at same time as main suit.**]—DEAR *v.* DEAR & CLARK (1936), 80 Sol. Jo. 657.

130a. **Under Legitimacy Act, 1926 (c. 60)—Parties.**]—*Held :* in a suit, to which only a husband & wife were parties, the ct. was not competent to find the facts necessary to make the child a legitimated child by virtue of the above Act.—BEDNALL *v.* BEDNALL & SHIVUSSAWA, [1927] P. 225; 96 L. J. P. 150; 137 L. T. 632; 43 T. L. R. 599; 71 Sol. Jo. 453.

Annotations :—**Apld.** Green *v.* Green, [1929] P. 101. **Refd.** Jones *v.* Jones (1929), 98 L. J. P. 74.

130b. ——— ———.]—The ct. has no jurisdiction to make an order for custody in divorce proceedings in the case of a child of the parties who was born before their marriage & had not been declared legitimate in accordance with Legitimacy Act, 1926 (c. 60). Such an order for custody would imply a declaration of legitimacy, which cannot be made by the ct. in proceedings in which the child & other persons interested are not represented.—GREEN *v.* GREEN, [1929] P. 101; 98 L. J. P. 58; 140 L. T. 93; *sub nom.* G. *v.* G., 45 T. L. R. 7; 73 Sol. Jo. 111.

Annotations :—**Folld.** Jones *v.* Jones (1929), 98 L. J. P. 74. **Refd.** *Re* Carroll, [1931] 1 K. B. 317; Lindsay *v.* Lindsay, [1934] P. 102.

130c. ——— ———.]—If a child is born to a couple who afterwards marry, & is re-registered on the authority of the Registrar-General under the rules provided in pursuance of Legitimacy Act, 1926 (c. 60), as legitimated, & if the mother of the child subsequently secures a divorce, the ct. has no jurisdiction to grant her an order for the custody of the child, because such an order would imply a declaration of the legitimacy in proceedings in which the child & other parties interested are not parties.—JONES *v.* JONES (1929), 98 L. J. P. 74; 140 L. T. 647; 45 T. L. R. 292; 73 Sol. Jo. 192; 29 Cox, C. C. 33.

130d. ——— **Petition on behalf of several persons—Procedure.**]—A petition for legitimation can only be presented by the party to be legitimated. Persons having a common interest must proceed by separate petitions, but leave may be obtained for them to be heard together with one set of affidavits & one body of evidence. Interested parties must be brought before the ct. Notice of the proposed petition must be given to the A.-G. one month before filing.—*Re* A. B.'s PETITION (1927), 96 L. J. P. 155; 138 L. T. 64; *sub nom. Re* CLAYTON'S PETITION, 43 T. L. R. 659; 71 Sol. Jo. 543.

130e. ——— **Hearing — Whether in camerâ.**] — A petition filed under the above Act for the legitimation of a person who was born illegitimate, but whose parents were married subsequently to his birth, is not a proceeding which entitles petitioner to a hearing *in camerâ*.—GREENWAY *v.* A.-G. (1927), 44 T. L. R. 124; 71 Sol. Jo. 882; *sub nom. Re* A. B.'s PETITION, 97 L. J. P. 104; *sub nom. Re* C. D.'s PETITION, 138 L. T. 208.

Annotation :—**Refd.** *Re* Lowe, Stewart *v.* Lowe, [1929] 2 Ch. 210.

130f. ——— ——— **Hearsay evidence—Admissibility.**] —The rule in pedigree cases that declarations of deceased relatives made *ante litem motam* are admissible in evidence extends to proceedings under Legitimacy Act, 1926 (c. 60). The declarations are admissible in the latter class of proceedings in spite of the fact that the legal relationship of the declarant to the party sought to be legitimated is incidentally part of the subject-matter for decision. Although the party sought to be legitimated is *filius nullius* until decree & therefore before decree can have no relations, the result of excluding the declarations would be to take away by a rule of evidence the benefit that the statute intended to confer upon persons whose birth has been originally illegitimate apart from the operation of the statute.

The true construction to be placed upon the limitation *ante litem motam* in cases of legitimation is not a reference to the commencement of proceedings under the statute but the origination of controversy in the family in which legitimation is sought sufficient to create bias in the minds of its members at the moment of their declarations which are subsequently put forward as evidence.—*Re* DAVY, [1935] P. 1; *sub nom.* DAVY *v.* A.-G., 103 L. J. P. 115; 151 L. T. 562; 50 T. L. R. 588; 78 Sol. Jo. 618.

130g. ——— **Costs—Of Attorney-General.**]—On this petition under Legitimacy Act, 1926 (c. 60), for a declaration of legitimacy *per subsequens matrimonium*, where the declaration was made as prayed, the application of counsel for the A.-G. that petitioner should pay the A.-G.'s costs was granted. Counsel stated that the A.-G.'s instructions were to use discretion as to the particular cases of that kind in which costs should be claimed.—CUNLIFFE *v.* A.-G. (1934), 103 L. J. P. 114; 50 T. L. R. 596, n.; 78 Sol. Jo. 520.

PART II. SECT. 2, SUB-SECT. 1. *a). Jurisdiction of court.*]—*Held :* Legitimacy Declaration Act, 1858 (Imp.), gives the ct. jurisdiction to make a declaration of legitimacy upon a direct application for that purpose.—*Re* G., [1922] 1 W. W. R. 978; 63 D. L. R. 365; 17 Alta L. R. 473.—CAN.

Part III.—Legitimation by Subsequent Marriage.

132. *Add. Annotations:*—**Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259. **Refd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

134. *Add. Annotation:*—**Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

135. *Add. Annotation:*—**Consd.** Abraham (B. & J.) *v.* A.-G., [1934] P. 17.

136. *Add. Annotation:*—**Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

138. *Add. Annotation:*—**Refd.** Bryce *v.* Bryce, [1933] P. 83.

141a. —— —— —— **Germany.**]—*Re* ASKEW, MARJORIBANKS *v.* ASKEW, No. 152a, *post.*

142a. Under Legitimacy Act, 1926 (c. 60)—Parent married to third party when petitioner born—Petitioner with foreign domicile.]—Though the Legitimacy Act, 1926 (c. 60), does not in general permit the legitimation of a person born before the marriage of his parents if either parent was married to a third person when the illegitimate person was born, this restriction does not apply when the person seeking to be declared legitimate is domiciled abroad, & when by the law of the domicile he would be legitimated *per subsequens matrimonium.* In this case the infant petitioner & his father, a British subject, were domiciled in Germany. When the petitioner was born there was a subsisting marriage between his father & a woman not the petitioner's mother. The father was divorced in Germany, & married the mother of his son. By German law petitioner was thereby legitimated:—*Held:* under the joint operation of Legitimacy Act, 1926 (c. 60), ss. 2, 3, the infant petitioner was entitled to a declaration of legitimacy.—COLLINS *v.* A.-G. (1931), 145 L. T. 551; 47 T. L. R. 484; 75 Sol. Jo. 616.

142b. —— —— **Marriage subsequently declared void for incapacity.**]—A man went through a form of marriage with a woman in 1909. Another woman, then unmarried, bore him a child in Apr. 1929. The man was granted in May, 1929, a decree of nullity of the 1909 union on the ground of the woman's incapacity. He married the mother of his child in Nov. 1929, after the decree of nullity had been made absolute. On a petition for a declaration of legitimacy on behalf of the child it was held that, as the retrospective effect of the decree of nullity was to declare that there had been no marriage in 1909 at all, the man was in fact free to marry when the child was born in Apr. 1929, & the child was entitled under the Legitimacy Act, 1926, to the declaration sought.—NEWBOULD *v.* A.-G., [1931] P. 75; 100 L. J. P. 54; 144 L. T. 728; 47 T. L. R. 297; 75 Sol. Jo. 174.

Annotation:—**Consd.** Siveyer *v.* Allison, [1935] 2 K B. 403.

142c. —— **Court must be satisfied as to parentage.**]—Where a petition for a declaration of legitimacy under Legitimacy Act, 1926 (c. 60), was presented on behalf of a young woman of unsound mind who was entitled to an estate of some £11,000, the ct. was not satisfied with the proof of parentage adduced, & dismissed the petition.—S. (OTHERWISE U.) *v.* A.-G. (1931), 146 L. T. 144; 48 T. L. R. 66.

142d. —— **Child conceived after presentation of divorce petition by mother—Born after decree absolute.**]—Mrs. S., on Mar. 14, 1929, presented a petition for divorce. In Apr. & May, 1929, she was living apart from her husband & was constantly seeing a man named M. A decree *nisi* on the divorce petition was granted in June, 1929, & was made absolute on Jan. 13, 1930. On Jan. 23, 1930, Mrs. S. gave birth to a child—the present petitioner—& Mrs. S. & M. were married on Mar. 20, 1930. In her divorce petition Mrs. S. made no disclosure of adultery. M. was now seeking a divorce & asking for the custody of the child, & the present petition was for a declaration that the child of M. & Mrs. S. was legitimated *per subsequens matrimonium:—Held:* the presumption that the child was the lawful issue of Mr. & Mrs. S. was rebutted by the evidence, & a declaration ought to be made under Legitimacy Act, 1926 (c. 60), s. 2, that the child petitioner was a legitimated person within sect. 1 of the Act.—MATURIN *v.* A.-G., [1938] 2 All E. R. 214; 54 T. L. R. 627; 82 Sol. Jo. 275.

144a. —— —— —— ——.]—*Qu.:* whether a child, born in Scotland, of parents domiciled there, who at the time of his birth were not married, but who afterwards intermarried in Scotland, neither having in the meantime married any other person, can take as heir lands of his father in England.

It is said that the *lex loci rei sitæ* must govern the succession to real estate. Undoubtedly it must (LORD BROUGHAM, C.).—DOE d. BIRTWHISTLE *v.* VARDILL (1835), 2 Cl. & Fin. 571; 9 Bli. (N. S.) 32; 6 E. R. 1270.

PART III. SECT. 1.

ak. *Subsequent marriage of parents in England—Child acquiring domicil in Ontario—Ontario Legitimation Act,* 1921 (c. 53).]—W. was born out of wedlock in England; his parents subsequently married in England; & W. went to Ontario when twenty-four years of age, & acquired a domicil in Ontario:—*Held:* W. was legitimate.—*Re* W., [1925] 2 D. L. R. 1177; 56 O. L. R. 611.—**CAN.**

142a i. *Under Legitimacy Act,* 1926 c. 60).]—M.'s parents were not married until two years after her birth. Their marriage took place in England in 1876, her father being domiciled in England. M. became legitimate in England by virtue of the British Legitimacy Act, 1926 (c. 60). M. claimed to be one of the lawful next-of-kin of her father's sister, who died intestate on Aug. 9, 1930, & whose estate was the subject of administration proceedings in the Irish Free State:—*Held:* M.'s claim was good; the question of legitimacy was one of status, & status depended on the law of domicile, & as M. was legitimate in England on Aug. 9, 1930, she was also legitimate in the Irish Free State, her legitimacy not being dependent on the Legitimacy Act, 1931 (No. 13 of 1931) of the Irish Free State.—*Re* HAGERBAUM, [1933] I. R. 198.—**IR.**

142a ii. *Under Legitimacy Act,* 1928.]—Pltf. was born on Mar. 23, 1890. Subsequently, on Mar. 14, 1907, her parents married one another. Pltf.'s father who had been born & had lived all his life in the County of Antrim, died on Feb. 26, 1915. M., who was a sister of pltf.'s father, died on Feb. 17, 1936, intestate & unmarried. The said M.'s next-of-kin consisted of the children of brothers & sisters who had predeceased her:—*Held:* the words "domiciled in Northern Ireland" in Legitimacy Act (Northern Ireland), 1928, s. 1 (1), should be interpreted as "domiciled in that portion of Ireland which is now Northern Ireland," & consequently pltf. was entitled to take an interest in the estate of M.—*Re* M., [1937] N. I. 151.—**IR.**

148. *Add. Annotation :*—**Reld.** Abraham (B. & J.) *v.* A.-G., [1934] P. 17.

152a. **On exercise of power of appointment.**]—For the purpose of the exercise of a power of appointment a child which is legitimate by the *lex domicilii* will be treated as legitimate by the English Cts.

Under an English marriage settlement of 1893, funds were settled on trust for J., the husband, who was the settlor, his wife F., & the issue of the marriage, but in the event of a future marriage the husband had power to appoint part of the funds to the children of that marriage. There were issue of the first marriage, two children. About 1909 J. separated from F., who lived in Switzerland with her two children until her death in 1918. J. had acquired a German domicil before 1911, & his first marriage was dissolved in June, 1911, by a ct. in Germany having jurisdiction, the decree *nisi* being made absolute on July 27, 1911. On Apr. 20, 1912, J. married his second wife A., with whom he had cohabited since 1909. M., their acknowledged daughter, had been born on Jan. 30, 1911, at Zurich, & by German law the marriage gave her the status of legitimacy. By deed poll, dated June 13, 1913, J. purported to revoke the trusts relating to a portion of the trust funds under the marriage settlement of 1893, & appointed the income of that portion after his death to A., & after her death he appointed the capital to M. J. died in 1929 :—*Held :* (1) the *lex domicilii*, that is German law, was applicable ; (2) the *lex domicilii*, in its widest sense being recognised by the English Cts., M. was a legitimate child of J. ; & (3) J. had validly exercised the power of appointment in favour of M.—*Re* ASKEW, MARJORIBANKS *v.* ASKEW, [1930] 2 Ch. 259 ; 99 L. J. Ch. 466 ; 143 L. T. 616 ; 46 T. L. R. 539.

152b. **Under Legitimacy Act, 1926 (c. 60)—Death after marriage of parents—Before operative date of Act—Rights of issue.**]—M. had two illegitimate children, a son & a daughter, by L., whom she subsequently married in 1905. The son died in 1919 leaving issue. L. died in 1919. M. died in 1928 intestate :—*Held :* the son having died before above Act came into force, his issue took no share of M.'s estate.—*Re* LOWE, STEWART *v.* LOWE, [1929] 2 Ch. 210 ; 98 L. J. Ch. 440 ; 141 L. T. 428 ; 45 T. L. R. 484.

152c. —— **Meaning of "disposition."**]—The first deft. was a person legitimated by Legitimacy Act, 1926 (c. 60) ; & as her parents were married in 1915, the date of legitimation was Jan. 1, 1927, being the date when the Act came into operation. The will of her grandfather who died in 1922, after a life interest to her father, gave certain funds to be shared between the "children" of her father who should survive that father. The father died in 1928. Under Legitimacy Act, 1926 (c. 60), she was entitled to take as a "child" in respect of any "disposition" coming into operation on or after Jan. 1, 1927. On the one hand it was contended that the will was the "disposition," & as this came into operation in 1922 she could not take ; &, on the other hand, it was contended that the bequest was the "disposition," &, as this was contingent, it did not come into operation until 1928 upon the happening of the contingency : —*Held :* the "disposition" was the will & such legitimated person did not take under the gift to "children."—*Re* HEPWORTH, RASTALL *v.* HEPWORTH, [1936] Ch. 750 ; [1936] 2 All E. R. 1159 ; 105 L. J. Ch. 380 ; 155 L. T. 250 ; 52 T. L. R. 694 ; 80 Sol. Jo. 672.

SECT. 3.—**UNDER LEGITIMACY ACT, 1926 (c. 60).**

Mode of determining legitimacy.]—*See* Nos. 130a–130g, *ante.*

Effect of Act—On rights of succession to intestate.]—*See* No. 152b, *ante.*

—— —— **Intestate of unsound mind.**]—*See* DESCENT, No. 283c, *post.*

—— **On right to take under will.**]—*See* No. 152c, *ante.*

—— **On nationality.**]—*See* ALIENS, No. 20a, *ante.*

Conditions of legitimation.]—*See* Nos. 142a, 142b, 142c, 142d, *ante.*

Part IV.—Legal Position of Bastard.

157. *Add. Annotation :*—**Consd.** *Re* Phillips, *Re* Howard, Charter *v.* Ferguson, [1919] 1 Ch. 128

161. *Add. Annotations :*—**Reld.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259 ; Boldrini *v.* Boldrini & Martini, [1932] P. 9.

162. *Add. Annotation :*—**Reld.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

163. After this case add :—

—— ——.]—*See, now,* Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 2 (1).

166. *Add. Annotations :*—**Reld.** Papadopoulos *v.* Papapopoulos, [1930] P. 55 ; *Re* Ross, Ross *v.* Waterfield, [1930] 1 Ch. 377.

After this case add :—

Right to succeed to mother on intestacy.]—*See* Legitimacy Act, 1926 (c. 60), s. 9.

170. After this case add :—

Right of mother to succeed on intestacy.]—*See* Legitimacy Act, 1926 (c. 60), s. 9.

178. *Add. Annotation :*—**Consd.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

179. *Add. Annotation :*—**Reld.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

PART IV. SECT. 1.

154 i. *Nullius filius—Extent of rule.*] —*Held :* does not prevail in a ct. of eq. —*Re* CONNOR, [1919] 1 I. R. 361.—IR.

PART IV. SECT. 2, SUB-SECT. 2.—A. (b).

167 iii. —— *Right of Crown to escheat not affected—Although intestate legitimated per subsequens matrimonium.*]—*Re* W., [1925] 2 D. L. R. 1177 ; 56 O. L. R. 611.—CAN.

Part V.—Rights and Liabilities towards the Bastard.

199. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

200. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

204. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

204a. *S. P. Ex p.* EMERSON (1895), 11 T. L. R. 218, D. C.

206. *Add. Annotation :*—**Consd.** Green *v.* Green, [1929] P. 101.

207. *Add. Annotations :*—**Consd.** Green *v.* Green, [1929] P. 101; *Re* Carroll, [1931] 1 K. B. 317.

208. *Citation :*—For "*subsequent proceedings*" read "*on appeal.*"

Add. Annotation :—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

210a. *S. P.* R. *v.* CLAYDON (1859), 34 L. T. O. S. 46.

211. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

214. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

215. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

225. *Add. Annotations :*—**Consd.** *Re* Carroll, [1931] 1 K. B. 317. **Refd.** Green *v.* Green, [1929] P. 101.

226. *Add. Annotations :*—**Folld.** *Re* Carroll, [1931] 1 K. B. 317. **Refd.** Green *v.* Green, [1920] P. 101.

226a. —— ——.]—In determining the question of the custody of an illegitimate child, too young to have any views of its own, where the character of the mother is not attacked, it is the duty of the ct. to give effect to the wishes of the mother with regard to the religion & education of her child, because, according to the whole tenor of the authorities, unless the character of the mother is such that her wishes with regard to those matters may be disregarded, the mother has a legal right to require that her child shall be brought up in her religion in which the child has been baptised. So far as religious education is concerned, the authorities require the ct. to give the gravest consideration to the wishes of the parents; in the case of an illegitimate child, of the mother. —*Re* CARROLL (J. M.), [1931] 1 K. B. 317; 100 L. J. K. B. 113; 144 L. T. 383; 95 J. P. 25; 47 T. L. R. 125; 75 Sol. Jo. 98; 29 L. G. R. 152, C. A.

227. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

228. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931 1 K. B. 317.

241a. —— **Permanent maintenance.**] — (1) A judgment recognising the right of an illegitimate child to perpetual maintenance against the putative father & his estate, is contrary to public policy.

(2) The right to a posthumous affiliation order is a cause of action unknown in England. —*Re* MACARTNEY, MACFARLANE *v.* MACARTNEY, [1921] 1 Ch. 522; 90 L. J. Ch. 314; 124 L. T. 658; 65 Sol. Jo. 435.

Part VI.—Affiliation Proceedings and Kindred Proceedings under Colonial Statutes.

259. *Add. Annotation :*—**Distd.** Boyce *v.* Cox, [1922] 1 K. B. 149.

262. *Add. Annotation :*—**Distd.** Boyce *v.* Cox, [1922] 1 K. B. 149.

PART V. SECT. 1.

198 i. *Father's right to custody—Father maintaining child.*]—*Held :* 1 & 2 Vict. c. 56, s. 53, imposed an obligation on the father to support & maintain an infant illegitimate son, which obligation the father was willing to fulfil, & had fulfilled until prevented by the mother, & the father was *primâ facie* entitled to the custody of the child. —*Re* GAVAGAN, [1922] 1 I. R. 148.—**IR.**

205 vi a. —— —— —— ——.]—WALTER *v.* CULBERTSON, [1921] S. C. 490; 58 Sc. L. R. 401.—**SCOT.**

205 ix a. —— —— —— ——.]—*Held :* a parent should not be deprived of the custody of an infant unless it is shown that the parent has abandoned or deserted it, or that his conduct has been such as to disentitle him to its custody, or that he has allowed it to be brought up by another person at that person's expense.—*Re* P., [1922] 1 W. W. R. 853; 63 D. L. R. 430; 17 Alta. L. R. 493.—**CAN.**

si. "*Neglected child*"—*Who is.*]—An illegitimate child whose mother is unable to maintain it is a "neglected child" within Children's Protection Act (Ontario), although cared & provided for by a third party.—*Re* S. (1919), 45 O. L. R. 46.—**CAN.**

sm. *Equal Guardianship of Infants Act, R. S. B. C.*, 1924 (*c.* 101)—*Not applicable to illegitimate child*].—*Re* S., *Re* EQUAL GUARDIANSHIP OF INFANTS ACT, [1927] 2 D. L. R. 91; [1927] 1 W. W. R. 441; 38 B. C. R. 285.—**CAN.**

PART V. SECT. 3.

227 ii. —— —— ——.]—In the case of the father of a legitimate child, if he has not waived or forfeited his right by conduct, the ct. will allow his wishes on religion to control the faith of the child, even after his death, but, in the case of the mother of an illegitimate child, will only do so so long as she is living, & the obligation to support the child remains. Where special facts nullify or negative the application of any rule of law or practice compelling the ct. to yield to the wishes of a parent as to the religion of a child, the ct. is bound solely to pay regard to the welfare of the child.—*Re* CONNOR, [1919] 1 I. R. 361.—**IR.**

PART V. SECT. 4.

p i. —— —— *Child born before Children of Unmarried Parents Act*, 1921 (*Ont.*) (*c.* 54).]—*Held :* the father is not liable to be prosecuted.—R. *v.* O'DONNELL (1923), 39 Can. Crim. Cas. 94.—**CAN.**

sn. *Municipality—Child over six—Child Welfare Act, C. A.*, 1924 & 1927.]—CARTIER RURAL MUNICIPALITY *v.* DIRECTOR OF CHILD WELFARE, [1931] 2 D. L. R. 845; 2 W. W. R. 7; 39 Man. L. R. 429.—**CAN.**

so. *Illegitimate Children's Act*, 1927—*Object of Act—Protection of child.*]—MCLELLAN *v.* TURNER (1929), 1 M. P. R. 279.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 1.

253 ii. ——.]—Under Children of Unmarried Parents Act, 1921, the father of an illegitimate child is liable for the maintenance & care of the mother before, at, & after the birth of the child, notwithstanding that the child is still-born.—*Re* KIRKPATRICK & MOROUGHAN, [1927] 3 D. L. R. 546; 60 O. L. R. 495.—**CAN.**

sp. *Birth before passing of Children of Unmarried Parents Act*, 1923 (*c.* 59)

262a. —— —— **Under separation order.**]—An unmarried woman was delivered of a child. The putative father made payments for its maintenance within twelve months. Subsequently the mother married another man, who maintained the illegitimate child till the mother obtained a separation order on the ground of his cruelty. No provision was made in the order for maintenance of the illegitimate child :—*Held :* the mother was a " single woman " within 1872 Act, s. 3, the effect of a separation order being to confer on her the status of a *feme sole.*—BOYCE *v.* Cox, [1922] 1 K. B. 149 ; 91 L. J. K. B. 122 ; 126 L. T. 254 ; 85 J. P. 279 ; 38 T. L. R. 51 ; 66 Sol. Jo. 142 ; 20 L. G. R. 686 ; 27 Cox, C. C. 139, D. C.

263. *Annotations :*—For " R. *v.* Suffolk JJ. (1884), 12 J. P. 426 " read " R. *v.* Suffolk JJ. (1848), 12 J. P. 426."

Add. Annotation :—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

264. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

267. *Add. Citation :*—26 Cox, C. C. 129.

274. After this case add :—

—— —— **Marriage of person under sixteen.**] —*See* Age of Marriage Act, 1929 (c. 36), s. 2.

274a. —— **After death of father.**]—*Re* MACARTNEY, MACFARLANE *v.* MACARTNEY, No. 241a, *ante.*

278a. —— ——.]—(1) A woman who was with child went to stay at the house of her sister, who lived in a different petty sessional division from that in which the woman usually resided. The woman went home to be confined, & fourteen days after the birth of her child she went back to her sister & stayed with her for a month. Eight days after the commencement of this visit the woman applied to a justice of the peace acting for the petty sessional division of the place where her sister resided for a summons against the man alleged by her to be the father of her child :—*Held :* the woman resided in that petty sessional division within 1872 Act, s. 3, so as to give the justices of that petty sessional division jurisdiction to make an affiliation order against the putative father, as that sect. did not require that the application should be made to a justice of the peace acting for the petty sessional division of the place where the woman usually or permanently resided.

(2) Where an affiliation order has been made which is not appealed against, or where there has been an appeal to quarter sessions against the order & the appeal has been dis-

(*Alta.*).]—The above Act applies, where its conditions are complied with, to a child born before the Act was passed or came into operation.—ANDERTON *v.* SEROKA, [1925] 2 D. L. R. 488 ; [1925] 1 W. W. R. 1019 ; 21 Alta. L. R. 100 ; *affg.* [1925] 1 W. W. R. 543.—**CAN.**

sq. *Birth before passing of Child Welfare Act,* 1927.]—The liability which sect. 145 of Child Welfare Act, 1927, c. 60, imposes on the father of an illegitimate child to contribute to its maintenance extends to the maintenance of a child born before the Act came into force.—KARST *v.* BERLINSKI, [1930] 2 W. W. R. 417 ; 4 D. L. R. 884 ; 24 S. L. R. 534.—**CAN.**

sr. *Birth outside Alberta—Children of Unmarried Parents Act,* 1923 (c. 50) (*Alta.*) *applicable.*]—MUNRO *v.* LEEDHAM, [1925] 2 D. L. R. 604 ; [1925] 1 W. W. R. 1113 ; 21 Alta. L. R. 75.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 2.

ss. *Application for preliminary expenses—Proof of pregnancy—Sufficiency.*]—On the hearing of an application for preliminary expenses under Child Welfare Act, 1923, the only evidence to prove that the woman was quick with child was a medical certificate which was in the following terms : " I have this day examined W. & find that she is pregnant. I estimate the period of gestation as about 4½ to 5 months " :—*Held :* this did not amount to proof that she was quick with child as required by Child Welfare Act, 1923, s. 70, & the magistrate had no jurisdiction to make an order.—*Ex p.* FAHEY (1929), 29 S. R. N. S. W. 352 ; 46 N. S. W. W. N. 135.—**AUS.**

st. *Whether mother must be unmarried.*] —The mother of an illegitimate child has the right to apply under Child Welfare Act, 1924, for a summons or warrant against the alleged father only if she is unmarried. Under the law of England as it stood on July 15, 1870, a husband is responsible for the maintenance of all the children of his wife born before her marriage to him, whether they were legitimate or illegitimate ; and that *semble* is the law of Manitoba.—LANG *v.* DAVIS, [1930] 1 W. W. R. 1 ; 2 D. L. R. 571.—**CAN.**

su. —— *Widow.*]—A widow is an " unmarried woman " within sect. 41 of Child Welfare Act, C. A., 1924.—HAWRYSH *v.* REPA, [1933] 1 D. L. R. 776 ; 1 W. W. R. 122 ; 41 Man. L. R. 31 ; 59 C. C. C. 217.—**CAN.**

sd. —— *Divorced woman.*]—A woman who has been married & divorced & who is not now married is a " single woman " within the definition of " mother " in Children of Unmarried Parents Act, R.S.B.C., 1924, & is, therefore, entitled to prosecute affiliation proceedings thereunder.—DODD *v.* WILCOX, [1936] 1 W. W. R. 98 ; [1935] 4 D. L. R. 797 ; 64 Can. C. C. 238.—**CAN.**

sf. ——.]—A child born of a married woman may be held to be " born out of wedlock " within sect. 11 (*a*) of Children of Unmarried Parents Act, 1923, & an affiliation order may be granted on her complaint.—K. *v.* K., [1937] 2 W. W. R. 678.—**CAN.**

PART VI. SECT. 2.

271 iii. —— *Limitation of action—What amounts to gift.*]—The making of a gift, in the present case a pair of shoes, by the alleged father to an illegitimate child is not a payment of " money for the maintenance of the child " within the limitation section of Child Welfare Act, R. S. S., 1930.—CAMRUD *v.* HENDRY, [1935] 2 W. W. R. 655.—**CAN.**

sw. *Who may lay complaint—Children of Unmarried Parents Act,* 1923 (c. 50) (*Alta.*).]—The deputy A.-G. of Alberta may authorise another person to act for the Superintendent of Neglected & Dependent Children in laying a complaint under the above Act. Such authorisation may be sufficiently given by telegram.—MUNRO *v.* LEEDHAM, [1925] 2 D. L. R. 604 ; [1925] 1 W. W. R. 1113 ; 21 Alta. L. R. 75.—**CAN.**

sx. —— ——.]—A complaint in question was laid by an inspector in the child welfare branch of the department of the A.-G. ; & his authority to lay it, which was attached to the complaint, purported to be conferred by the " Acting Deputy Attorney-General " :—*Held :* sect. 11 of Public Service Act, R.S.A., 1922, & sect. 26 of Interpretation Act, R.S.A., 1922, were sufficiently comprehensive to confer on the Acting Deputy A.-G. the authority to instruct the inspector to lay the information for & in the place of the superintendent of child welfare. —FLETCHER *v.* NAHAYOWSKY, [1935] 3 W. W. R. 193 ; 4 D. L. R. 383 ; 64 Can. C. C. 296 ; 5 F. L. J. (Can.) 148.—**CAN.**

sy. —— ——.]—Where the affidavit filed by the mother stated that deft. was the father of the child, not " really the father " as required by Children of Unmarried Parents Act, s. 26 :—*Held :* the omission of the word " really " was fatal, & the action should be dismissed.—LANCASTER *v.* VAUGHAN (No. 2) (1924), 33 B. C. R. 440.—**CAN.**

sy. *Right to apply for maintenance—Notwithstanding agreement between mother & father.*]—*Held :* such an agreement does not bar another person's right of action under Child Welfare Act, 1927.—KARST *v.* BERLINSKI, [1930] 2 W. W. R. 417 ; 4 D. L. R. 884 ; 24 S. L. R. 534.—**CAN.**

sz. —— *Previous nullity decree—Whether res judicata.*]—In affiliation proceedings under Child Welfare Act, R.S.S., 1930, resp. raised the preliminary objections of *lis alibi pendens & res judicata,* the facts being : in an action in the King's Bench he had obtained a decree that the marriage solemnised between him & the complainant herein, of which the child in question herein was an issue, was null & void. The complainant herein had counterclaimed in said action for the custody of said child & the other children of the alleged marriage & for an order for permanent maintenance by the pltf. of herself & said children. The counterclaim was dismissed. Subsequently on a second issue as to the custody of the child in question herein it was ordered that the deft. in the action, the complainant herein, should have the custody of the child :—*Held :* the question of the maintenance of the child in question herein had not been tried or determined in the King's Bench &, therefore, that question was not *res judicata.*—WASILENKO *v.* WASILENKO, [1937] 1 W. W. R. 129.—**CAN.**

missed, & subsequently an application is made to justices to enforce the order by the issue of a distress warrant, the justices have no jurisdiction to enter into any inquiry as to the validity of the original order.—R. *v.* LANCASHIRE JJ., *Ex p.* TYRER, [1925] 1 K. B. 200; 94 L. J. K. B. 331; 132 L. T. 382; 89 J. P. 17; 41 T. L. R. 103; 69 Sol. Jo. 194; 23 L. G. R. 32; 27 Cox, C. C. 711, D. C.

280. *Add. Annotation:*—**Refd.** R. *v.* Lancashire JJ., *Ex p.* Tyrer (1924), 88 J. P. Jo. 701.

285. *Add. Annotations:*—**Refd.** Kenney *v.* Kenney (1925), 133 L. T. 400; R. *v.* Howard, *Ex p.* Da Costa, [1938] 3 All E. R. 241.

287. *Add. Annotation:*—**Folld.** R. *v.* Howard, *Ex p.* Da Costa, [1938] 3 All E. R. 241.

288a. —— —— **Order quashed for lack of corroboration.**]—Where on appeal to quarter sessions an order of affiliation is quashed on the ground of the insufficiency of the corroborative evidence, the order of quarter sessions is a decision on the merits, & is final, & fresh proceedings cannot be taken before justices.—R. *v.* HOWARD, *Ex p.* DA COSTA, [1938] 2 K. B. 544; [1938] 3 All E. R. 241; 107 L. J. K. B. 675; 54 T. L. R. 825; 82 Sol. Jo. 477; 36 L. G. R. 406; *sub nom.* R. *v.* ESSEX JUSTICES, *Ex p.* DA COSTA, 159 L. T. 191; 102 J. P. 333, D. C.

290. After this case add:—

—— ——.]—*See, now*, Bastardy Act, 1923 (c. 23), s. 1.

293. *Add. Annotation:*—**Apld.** Williams *v.* Letheren, [1919] 2 K. B. 262.

306a. *S. P.* DELOMBRE *v.* FOUQUAULT (1909), 44 L. Jo. 263.

PART VI. SECT. 3, SUB-SECT. 1.

299 i. *Amendment of summons—Where two possible fathers.*]—Where an information was laid under sect. 112 of Child Welfare Act, 1927, & the magistrate after hearing the evidence, instead of discharging the alleged putative father or making an order of filiation, complied with the request of counsel for complainant to "amend" the information so as to bring it within sect. 135 of the Act, relating to informations against possible fathers, & adjourned the hearing:—*Held:* what purported to be an amendment was really the taking of a new information & the alleged putative father was thereupon entitled to an order discharging him as putative father.—WESTFALL *v.* BONNER, [1931] 1 W. W. R. 124; 2 D. L. R. 779; 25 S. L. R. 182; *revsg.*, [1930] W. W. R. 525; 4 D. L. R. 584; 24 S. L. R. 583.—**CAN.**

PART VI. SECT. 4.

ci. *Before whom—Judge of any county or district court in Ontario.*]—*Held:* to be the effect of Children of Unmarried Parents Act, 1921, & Children of Unmarried Parents Act, R. S. O., 1927, as amended by 19 Geo. V., c. 23, s. 10.—*Re* GRAWBARGER & MOYER, [1930] 4 D. L. R. 651; 65 O. L. R. 491; *affg.*, [1930] 1 D. L. R. 856; 64 O. L. R. 630.—**CAN.**

c ii. —— *Justice of Province where child chargeable.*]—A justice has jurisdiction over a complaint by a married female pauper expecting to be delivered of an illegitimate child likely to be chargeable to the Province, although she has a settlement in another Province.—*Re* MONCTON, RODENHIZER *v.* STEEVES, [1934] 1 D. L. R. 651; 61 C. C. C. 383.—**CAN.**

g (p. 394) **i.** —— *Children of Unmarried Parents Act, 1927, s. 21—Whether retrospective.*]—A proceeding to obtain an affiliation order against A. as the father of an illegitimate child borne by W. on Oct. 13, 1925, was commenced under the provisions of Children of Unmarried Parents Act, 1921, & continued after Children of Unmarried Parents Act, 1927, came into force upon receiving the royal assent on Apr. 5, 1927. Some evidence was taken in June, 1927, & on June 29 an order was pronounced by a county ct. judge declaring A. to be the father of the child:—*Held:* above sect. which was different in terms from sect. 25 of the earlier statute, was applicable to the proceeding though not in force when it was commenced. Above sect. providing that no order of affiliation shall be made upon the evidence of the mother of the child unless her evidence is corroborated by some other material evidence, is an enactment governing procedure only, & had effect from the time of its coming into force with respect to any order made thereafter, & whether or not the proceeding was commenced before or after the enactment came into force.—*Re* WICKS & ARMSTRONG, [1928] 2 D. L. R. 210; 49 Can. Crim. Cas. 281; 61 O. L. R. 667.—**CAN.**

g (p. 394) **ii.** —— *That husband not father—Illegitimate Children Act, R.S.N.S.*, 1923.]—A married informant may give evidence in bastardy proceedings under Illegitimate Children's Act, R.S.N.S., 1923, that her husband was not the father of her child.—HANTSPORT TOWN *v.* PULSIFER, [1933] 4 D. L. R. 518; 6 M. P. R. 530; 60 C. C. C. 249.—**CAN.**

317 xii. Add "*revsd. sub nom.* RIDLEY *v.* WHIPP, 22 C. L. R. 381."

317 xii a. —— —— ——.]—An isolated instance of familiarity in the presence of a third person & a statement by the putative father when taxed with the paternity of the child that other men besides him could be the father of it, do not amount to corroboration under Infant Life Protection Act, 1907, s. 19, of the evidence of complainant that deft. was the father of her child.—FROST *v.* ALLEN (1919), 15 Tas. L. R. 12.—**AUS.**

317 xii b. —— —— ——.]—Resp., an expectant mother, alleging she was with child by the appit. lodged a complaint against him for the payment by him of the preliminary expenses provided for by sect. 69 of Child Welfare Act. The evidence relied upon by resp. in corroboration was claimed by her to show opportunity for intercourse under circumstances rendering it probable that the opportunity had been availed of. This evidence was: that the appit. & resp. were known to be on affectionate terms with one another for a long time, that they were known to be alone together on many occasions for long periods of time & that at a party on the date of alleged intercourse they went away for some considerable time, & were later near midnight found seated together in the back of a motor car:—*Held:* having regard to present day conditions, & the degree of freedom allowed to young men & women, an inference could not properly be drawn from the evidence that advantage had been taken of the opportunity that presented itself, & there was no evidence in corroboration of the resp.'s allegations.—*Re* MORRIS, *Ex p.* BROWN (1932), 32 S. R. N. S. W. 165; 49 N. S. W. W. N. 67.—**AUS.**

317 xvi a. —— —— ——.]—In affiliation proceedings under Child Welfare Act, C.A., 1924:—*Held:* complainant's evidence had been sufficiently corroborated.—TRACH *v.* MATIASHYN, [1935] 3 W. W. R. 588.—**CAN.**

317 xxiii a. —— —— ——.]—In an action by P. against L. for lying-in & medical expenses & ailment for her illegitimate child, L. denied on oath P.'s allegation of seduction:—*Held:* the corroborative evidence in regard to seduction required must be evidence *aliunde* which was inconsistent with deft.'s innocence.—DU PLESSIS *v.* LEVY (1925), 46 N. L. R. 249.—**S. AF.**

317 xxiii b. —— —— ——.]—A denial of a conversation testified to by independent evidence:—*Held:* an implied admission which vested the evidence with a quality it did not previously possess, & corroboration of the mother's evidence in a material particular.—PITTMAN *v.* BYRNE, [1926] S. A. S. R. 207.—**AUS.**

317 xxiii c. —— —— ——.]—Evidence of a false denial by deft. is not corroboration, where such denial is not of facts establishing, or connected with, opportunities for intercourse at the critical time, & there is no evidence of opportunity, on the occasions referred to, which can cause the denial to give any particular colour to facts which have no suggestive significance.—MORRISON *v.* TAYLOR, [1927] V. L. R. 62; [1927] Argus L. R. 30.—**AUS.**

317 xxiii d. —— —— ——.]—The requirement of corroboration in a bastardy case does not import the necessity for independent testimony which establishes the fact of intercourse at a time when the child might have been conceived. Proof of a guilty affection extending over or into the actual period may justify the inference of intercourse without any definite proof of opportunity during that period. It is desirable, if not essential, that the corroboration of the mother's evidence should extend to cover the date of birth of the child.—STANDFIELD *v.* BYRNE (1929), S. A. S. R. 352.—**AUS.**

317 xxiii e. —— —— ——.]—R. *v.* MOORE (1927), 38 B. C. R. 425.—**CAN**

317 xxiii f. —— —— ——.]—LUCIER *v.* OULLETTE (Sask.), [1928] 3 W. W. R. 597.—**CAN.**

317 xxiii g. —— —— ——.]—ARNOTT *v.* BARBOUR, [1935] 2 W. W. R. 513; 3 D. L. R. 289; 63 C. C. C. 390; 5 F. L. J. (Can.) 99.—**CAN.**

317 xxiii h. —— —— ——.]—VEREBIOFF *v.* MOOJELSKI, [1936] 3 W. W. R. 591.—**CAN.**

317 xxiii a. —— —— —— ——.]—On a complaint that deft. had left his illegitimate child without adequate means of support, evidence was given by the complainant that deft. was the father of the child. Letters which pltf. swore she had received from deft.,

318. *Add. Annotation :*—**Refd.** Thomas *v.* Jones, [1920] 2 K. B. 399.

320. *Add. Annotation :*—**Consd.** Holland *v.* Roberts (1938), 158 L. T. 313.

321. *Add. Annotation :*—**Refd.** Thomas *v.* Jones, [1920] 2 K. B. 399.

322. *Add. Annotations :*—*As to* (2) **Distd.** Jones *v.* Thomas, [1934] 1 K. B. 323. *Generally*, **Refd.** Thomas *v.* Jones, [1921] 1 K. B. 22.

323. *Add. Annotations :*—**Consd.** Thomas *v.* Jones, [1921] 1 K. B. 22 ; Holland *v.* Roberts (1938), 158 L. T. 313.

325a. —— —— ——.]—Applt. was charged on complaint preferred by resp. with being the father of a bastard child of resp. Applt. was a farmer & a bachelor. Resp. was his housekeeper. On the morning of the birth when resp. was in labour, applt., who had no other female servant, lit a fire for her & took her some tea & brandy. He also sent for the doctor. After the birth he allowed her & the child to remain for five weeks & two days, until June 17, in his house. There was no evidence whether she was sufficiently recovered to have left at an earlier date. Applt. admitted that during those five weeks & two days he never asked resp. who was the father of her child. Resp. in her evidence said that during that time, though she did not fix the date except that it was before June 16, she asked applt. what he was going to do about the child, & he said that there was nothing for him to do but to pay. After resp. had left his house she wrote him a letter charging him with being the father of the child, & asking him if he meant to pay for its maintenance. To that letter he made no reply :—*Held :* the above facts did not afford any evidence corroborating the evidence of resp. in some material particular, as required by 1872 Act, s. 4.—THOMAS *v.* JONES, [1921] 1 K. B. 22 ; 90 L. J. K. B. 49 ; 124 L. T. 179 ; 85 J. P. 38 ; 36 T. L. R. 872, C. A.

Annotations :—**Consd.** Jones *v.* Thomas, [1934] 1 K. B. 323 ; Holland *v.* Roberts (1938), 158 L. T. 313. **Refd.** R. *v.* Atkinson (1934), 24 Cr. App. Rep. 123.

325b. —— —— —— **Letters from respondent—Evidence of complainant as to handwriting.**]—JOHNSON *v.* PRITCHARD (1933), 97 J. P. Jo. 754 ; 176 L. T. Jo. 389, D. C.

325c. —— —— ——.]—A false statement made by the alleged father before the hearing of the complaint in affiliation proceedings is not necessarily corroboration of the woman's evidence in any material particular as required by Bastardy Laws Amendment Act, 1872 (c. 65), s. 4.—JONES *v.* THOMAS, [1934] 1 K. B. 323 ; 103 L. J. K. B. 113 ; 150 L. T. 216 ; 98 J. P. 41 ; 31 L. G. R. 424 ; 30 Cox, C. C. 47, D. C.

325d. —— —— ——.]—In bastardy proceedings brought by resp. against applt., alleging that applt. was the father of her child, resp. gave evidence that applt. had taken her home after a dance three miles out of his way to his own home, & that intercourse had taken place on the way. Evidence was also given by another girl who had been at the dance that

---

& which pointed to sexual intercourse at a relevant period, were admitted without objection. In one of these letters reference was made to the enclosure of £2. In another the writer acknowledged the receipt of letters from the complainant. Deft.'s solr. tendered letters written by the complainant to deft. In one of which reference was made to the receipt of money from deft. Complainant's solr. also rendered a letter written to him by deft.'s solr., in which it was admitted, though paternity was denied, that deft. had contributed towards the support of a prior illegitimate child of which the complainant was also the mother :—*Held :* there was sufficient corroboration of the mother's oath that deft. was the father of her child.—CALLAN *v.* HARTY, *Ex p.* HARTY (1928), 22 Q. J. P. 78.—**AUS.**

317 xxxviii b. —— —— —— ——.]—The conduct & words of applt. herein upon receipt of a letter from resp.'s solr. charging applt. with being the father of resp.'s child :—*Held :* to constitute an "act which affords evidence of acknowledgment of paternity," within Children of Unmarried Parents Act. Also, the mother's evidence as to the paternity of the child had been "corroborated by some other material evidence."—DUNHAM *v.* BRADNER, [1934] 3 W. W. R. 67 ; 4 D. L. R. 514 ; 48 B. C. R. 503 ; 62 C. C. C. 163.—**CAN.**

317 xliii. —— —— —— ——.]—*Semble :* the mere admission by deft. of intercourse after the date fixed for conception is not corroboration on an affiliation charge.—WADE *v.* ALDERMAN, [1934] S. A. S. R. 108.—**AUS.**

317 xlv a. —— —— —— ——.]—Where reliance is placed upon opportunity of intercourse, that evidence must be supplemented by evidence of circumstances which lead to the inference that it was probable that advantage would be taken of the opportunity.—RIDLEY *v.* WHIPP (1916), 22 C. L. R. 381.—**AUS.**

317 xlv b. —— —— —— ——.]—On the hearing of a complaint under Illegitimate Children's Act, R.S.M., 1913 (c. 92), the corroboration of the mother's evidence required to support a filiation order may be supplied, not by mere proof of opportunity of intercourse, but by such proof coupled with the fact that deft. denies circumstances with respect to it which are otherwise proved & innocent in themselves & thereby gives to the proved opportunity a different complexion from what it would have borne had such false statements not been made.—BARTLEY *v.* GALL, [1925] 3 D. L. R. 585 ; [1925] 2 W. W. R. 669 ; 35 Man. L. R. 200.—**CAN.**

317 xlv c. —— —— —— —— *No proof of receipt of letters.*]—SIEVEWRIGHT *v.* KRONEVITT, [1932] 1 W. W. R. 837 ; 2 D. L. R. 809 ; 26 Alta. L. R. 298.—**CAN.**

317 xlv d. —— —— —— *Failure of defendant to call evidence or give evidence himself.*]—*Held :* deft.'s conduct did not afford corroboration of pltf.'s case.—FADDES *v.* M'NEISH, [1923] S. C. 443.—**SCOT.**

317 xlv e. —— —— —— *Misconduct prior to possible time of conception.*]—In affiliation cases evidence is admissible of misconduct by deft. with the person on whose behalf the order is sought previous to the period when the conception must have occurred.—MUNRO *v.* KRAUSE, [1931] 2 W. W. R. 685 ; 4 D. L. R. 120 ; 56 Can. C. C. 311 ; 25 Alta. L. R. 486.—**CAN.**

317 xlix a. —— —— ——.]—In an action of affiliation it was proved that pursuer had sexual intercourse with the defender between Dec. 7 & Dec. 14, & that she had previously, between Nov. 7 & Nov. 20, had sexual intercourse with another man. She menstruated normally from Dec. 1 to Dec. 6. The child was born on Sept. 4, a date consistent with the paternity of either man. The medical evidence established that menstruation after conception was very uncommon, but not impossible :—*Held :* the pursuer had sufficiently instructed that defender was the father of her child.—SINCLAIR *v.* RANKIN, [1921] S. C. 933 ; 58 Sc. L. R. 624.—**SCOT.**

317 xlix b. —— —— ——.]—Mere promiscuity of sexual intercourse without evidence that such intercourse takes place as a means of gain does not justify a finding that a woman is a common prostitute.—NICHOLLE *v.* PADDICK, [1927] S. A. S. R. 595.—**AUS.**

q (p. 398) l. —— ——.]—In an action of affiliation & aliment the proof disclosed that pursuer's child was born on Sept. 20, 1932. Defender admitted having had connection with pursuer on Nov. 19, 1931, 306 days before the birth of the child. Pursuer alleged that connection also took place on Dec. 12, 1931, but this alleged act of connection was held not to be proved. Pursuer admitted having had a menstrual period about Dec. 6 or Dec. 7, 1931. There was no evidence pointing to any other man as the father of pursuer's child :—*Held :* as the period of 306 days elapsing between the last proved act of connection & the birth of the child was not an impossible period of gestation, the presumption, in the absence of evidence to the contrary, was that defender was the father of the child ; & further, that defender had failed to displace this presumption ; & decree granted.—JAMIESON *v.* DOBIE, [1935] S. C. 415.—**SCOT.**

b (p. 399) l. —— *After prescribed period.*]—Where an application for an application order is made within the prescribed period, but no appointment is served, it must be deemed abandoned & a second application after the prescribed period is invalid.—*Re* STONE & REYNOLDS, [1934] 2 D. L. R. 70 ; O. R. 173.—**CAN.**

she had seen applt. & resp. together on the road. It was suggested to resp. in cross-examination that applt. had refused to have intercourse with resp. on this occasion :—*Held :* evidence of mere opportunity was not sufficient corroboration within 1872 Act, s. 4, & in this case there was no other corroborative evidence, arising either from the conduct of applt. or from the cross-examination of resp. to justify the making of an order against applt.—HOLLAND *v.* ROBERTS (1938), 158 L. T. 313, C. A.

330. After this case add :—

—— —— ——.]—*See, now,* Poor Law Act, 1927 (c. 14); Bastardy (Witness Process) Act, 1929 (c. 38).

334. *Add. Annotations :*—**Folld.** R. *v.* Howard, *Ex p.* Da Costa, [1938] 3 All E. R. 241. **Refd.** Kenney *v.* Kenney (1925), 133 L. T. 400.

337a. Affiliation proceedings—Effect of previous acquittal of respondent of carnal knowledge of complainant.]—On an affiliation summons it was proved that resp. had been acquitted at the assizes on a charge of unlawful carnal knowledge of complainant, & the justices held that they were bound by the decision at assizes & stopped the case :—*Held :* the case must go back for the justices to determine as a whole. It was legitimate for them to take into account the fact that complainant's story had failed to convince the jury, but if, after hearing the evidence they thought her story true, they ought to find accordingly.—PACKER *v.* CLAYTON (1932), 97 J. P. 14 ; 31 L. G. R. 98, D. C.

345. *Add. Citation :*—2 L. M. & P. 130.

358a. —— ——.]—An order of bastardy stated to be made upon the oath of the wife, as otherwise, is good ; for it will be presumed that the non-access of the husband was proved by competent witnesses on oath other than the wife ; or if proved by her also, that the judgment of the justices was founded on the other proof.—R. *v.* LUFFE (1807), 8 East, 193 ; 103 E. R. 316.

Annotations :—**Refd.** R. *v.* Kea (1809), 11 East, 132 ; R. *v.* Hartington (1816), 4 M. & S. 559 ; Head *v.* Head (1823), 1 Sim. & St. 150 ; R. *v.* Sourton (1836), 2 Har. & W. 209 ; Morris *v.* Davies (1836-7), 5 Cl. & Fin. 163 ; R. *v.* King's Lynn Recorder (1846), 3 Dow. & L. 725 ; R. *v.* Shipperbottom (1847), 10 Q. B. 514 ; Ormerod *v.* Chadwick (1847), 16 M. & W. 367 ; R. *v.* Collingwood (1848), 12 Q. B. 681 ; R. *v.* Grafton (1848), 3 New Mag. Cas. 2 ; R. *v.* Pilkington (1853), 2 E. & B. 546 ; Legge *v.* Edmonds (1855), 25 L. J. Ch. 125 ; *Ex p.* Baker (1857), 7 E. & B. 697 ; Yates *v.* Chippindale (1862), 11 C. B. N. S. 512 ; Turnock *v.* Turnock & Turnock (1867), 36 L. J. P. & M. 85 ; *Re* Parson's Trust (1868), 18 L. T. 704 ; R. *v.* Suffolk Justices (1848), 12 J. P. 426 ; Jones *v.* Davies, [1901] 1 K. B. 118 ; Webb *v.* Murrel (1904), 68 J. P. 104 ; Brown *v.* Leech (1924), 94 L. J. K. B. 48 ; Russell *v.* Russell, [1924] A. C. 687.

365a. Revocation of order—Mother convicted of perjury.]—BATCHELOR *v.* SMITH (1935), 79 Sol. Jo. 49, D. C.

366a. Variation of order—Adjudication of paternity —"Fresh evidence."]—On the application of resp., justices made an order adjudging that applt. was the father of her illegitimate child, & ordered him to make her a periodical payment. On a subsequent application by applt. under Criminal Justice Administration Act, 1914 (c. 58), s. 30 (3), to revoke the whole order, he tendered fresh evidence, which went only to show that he was not the father of the child. The justices refused to hear it, holding that they had no power to deal with that part of the order which adjudged the paternity :—*Held :* (1) the justices were right ; (2) (AVORY & SHEARMAN, JJ.) there being nothing to show that the evidence tendered was of facts which had occurred since the original hearing, or had come to the knowledge of applt. since the hearing, that evidence was not "fresh evidence" within sect. 30 (3).—COLCHESTER *v.* PECK, [1926] 2 K. B. 366 ; 95 L. J. K. B. 1038 ; 135 L. T. 32 ; 90 J. P. 130 ; 42 T. L. R. 535 ; 28 Cox, C. C. 225, D. C.

Annotations :—*As to* (1) **Folld.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191. **Consd.** Batchelor *v.* Smith (1935), 79 Sol. Jo. 49.

366b. —— —— ——.]—(1) Criminal Justice Administration Act, 1914 (c. 38), s. 30 (3), while empowering justices to deal generally with an existing bastardy order, does not enable them to revoke that part of the order which consists of the adjudication of paternity.

(2) "Fresh evidence" must be of such a character that not merely is it relevant, but of such importance that it would have affected the judgment of any one if they had had the opportunity of hearing it at the original hearing of the case.—R. *v.* COPESTAKE, *Ex p.* WILKINSON, [1927] 1 K. B. 468 ; 96 L. J. K. B. 65 ; 136 L. T. 100 ; 90 J. P. 191 ; 24 L. G. R. 562, C. A.

Annotations :—*As to* (1) **Consd.** Batchelor *v.* Smith (1935), 72 Sol. Jo. 49. *As to* (2) **Consd.** Nicholson *v.* Inverforth (1935), 79 Sol. Jo. 816.

367. *Add. Annotation :*—**Refd.** Grocock *v.* Grocock, [1920] 1 K. B. 1.

367a. —— **Justices' discretion.**]—Under 1872 Act, s. 4, the magistrate has a discretion as to whether he will grant or refuse an order for payment of arrears due under an affiliation order, but he has no discretion to grant an order for payment of a portion only of the arrears enforceable by law.—GROCOCK *v.* GROCOCK, [1920] 1 K. B. 1 ; 88 L. J. K. B. 1068 ; 121 L. T. 466 ; 83 J. P. 185 ; 35

PART VI. SECT. 5.

g i. —— *No evidence of means & expenses.*]—An order made under Children of Unmarried Parents Act, 1923 (c. 50) (Alta.), fixing amounts to be paid by the putative father set aside, where it was made without evidence being adduced as to his means, the expenses incurred by the mother, or the respective abilities of the parents to provide for the child. —ANDERTON *v.* SEROKA, [1925] 2 D. L. R. 912 ; [1925] 2 W. W. R. 433 ; 21 Alta. L. R. 362.—**CAN.**

g ii. —— *Variation of order.*]—Where the mother craved an increase because of the cost of living due to the war :—*Held :* the amount of inlying expenses be unaltered, but decree granted for 4*s.* 6*d.* per week, in name of aliment, permission being granted to deft. to apply to the ct. should a change of circumstances arise.—FORBES *v.* MATTHEW, [1919] S. C. 242 ; 56 Sc. L. R. 137.—**SCOT.**

g iii. ——.]—The true criterion in Scotland is, not the rank or financial position of the parties, but the support beyond want which must be accorded to an illegitimate child.—FRASER *v.* CAMPBELL, [1927] S. C. 589.—**SCOT.**

g iv. —— *Effect of Illegitimate Children's Act, R.S.N.S.,* 1923, *Pt. II.*]—Cts. trying actions for maintenance cannot, by means of Illegitimate Children's Act, R.S.N.S., 1923, Pt. II., order payment of maintenance of a sum in excess of their ordinary jurisdiction.—LAKE *v.* WILCOX, [1934] 2 D. L. R. 139 ; 7 M. P. R. 298 ; 61 C. C. C. 394.—**CAN.**

348 i a. ——.]—Under Illegitimate Children's Act, R.S.N.S., 1923, s. 12, one found to be the putative father must pay the sum fixed by the order, or give a bond.—OVERSEERS OF POOR *v.* RONDEAU, [1937] 1 D. L. R. 801 ; *sub nom. Re* RONDEAU (1937), 11 M. P. R. 362 ; 68 Can. C. C. 132.—**CAN.**

T. L. R. 509; 63 Sol. Jo. 627; 17 L. G. R. 623; 26 Cox, C. C. 485, D. C.

Annotation:—**Reld.** Colchester *v.* Peck, [1926] 2 K. B. 366.

368. *Add. Annotation:*—**Reld.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

371. *Add. Annotation:*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

372a. —— **Application for warrant—Jurisdiction of justices to question validity of affiliation order.**]—R. *v.* LANCASHIRE JJ., *Ex p.* TYRER, No. 278a, *ante.*

375. *Add. Annotation:*—**Consd.** Firman *v.* Royal, [1925] 1 K. B. 681.

379. *Add. Annotations:*—*As to* (1) **Apld.** Grocock *v.* Grocock, [1920] 1 K. B. 1. **Expld.** Colchester *v.* Peck, [1926] 2 K. B. 366.

384. *Add. Citation:*—*sub nom.* R. *v.* SMITH, 55 L. J. M. C. 147.

389. *Add. Annotation:*—**Reld.** Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586.

395. *Add. Annotation:*—**Reld.** Marsland *v.* Taggart, [1928] 2 K. B. 447.

398. After this case add:—

—— —— —— ——.]—*See, now,* Summary Jurisdiction Act, 1879 (c. 49), ss. 35, 47.

403a. —— —— **New evidence.**]—Complainant in an affiliation summons was a married woman who was not living apart from her husband at the material date, & an order on the evidence & on his own admission was made against one M. After the time for appealing against this order had expired, the rule in the present case was obtained on an affidavit by complainant's husband that he had cohabited with complainant at the material date & could have been the father of the child:—*Held:* the question of access or non-access was a question of fact for the justices, from which they were entitled to find that M. was the child's father; the ct. would not, in support of a rule for a *certiorari*, rehear a case upon further evidence on a disputed question of fact, & perform the functions of quarter

PART VI. SECT. 6.

371 ll. ——.]—Where, upon an application under sect. 128 (*b*) of Child Welfare Act, R.S.S., 1930, the putative father did not show that efforts had been made by him to comply with the filiation order & the evidence showed that he had treated it with contempt & had paid not the slightest attention to its terms, an order of imprisonment was directed.—WERCHOLA *v.* FORNALIUK, [1934] 2 W. W. R. 643.—**CAN.**

st. *Imprisonment—Failure to pay aliment—Offer by father to maintain child in his home.*]—In an application under Civil Imprisonment (Scotland) Act, 1882, s. 4, by the mother of two illegitimate daughters for warrant to imprison the father, in respect of his failure to obtemper a charge proceeding upon a decree for payment of aliment until the children respectively attained fourteen years of age, the Sheriff, notwithstanding an offer by the father, a married man, to maintain the children, who were then over ten years of age, in his own home, granted warrant of imprisonment. The father, having sought to suspend the charge & warrant, the mother contended that his offer of maintenance should not be entertained, in respect that, under the decree for aliment which was still current, his obligation could only be discharged by money payments:—*Held:* (1) a father's option at common law to maintain his illegitimate child in his home, if a boy after the age of seven, & if a girl after the age of ten, was not excluded by the fact that at the date of such an offer of maintenance a decree against him for aliment was still current; (2) in view of the *bonâ fide* offer of maintenance here made, the complainer was not a person wilfully refusing to pay aliment within Civil Imprisonment (Scotland) Act, 1882, s. 4, & charge & warrant suspended.—MACDONALD *v.* DENOON, [1929] S. C. 172.—**SCOT.**

sw. —— *Effect.*]—A filiation order under Child Welfare Act, C. A., 1924, c. 30, provided that, in the event of the accused failing to give the bond or making the cash payment required of him by the order, he should be committed to gaol for 12 months. On appealing from the order the accused, not wishing to go to gaol pending the hearing of the appeal, gave the bond provided for by sect. 68 (*b*) of said Act. His appeal was dismissed; &, none of the directions of the filiation order having been complied with, his bondsmen delivered him into custody, & he was committed to gaol & served the prescribed term. An action was then brought by the mother on the bond given in respect to the appeal:—*Held:* the serving of the term of imprisonment did not satisfy his obligations on the filiation order & pltf. was held entitled to judgment; but she could not recover more than the amount presently in default under siad order.—BOYAK *v.* KOBYLANSKI, [1929] 1 D. L. R. 867; 1 W. W. R. 364; 38 Man. L. R. 89.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 2.

400 ll. —— —— *Irregularity or illegality in proceedings.*]—Illegitimate Children's Act, R S.S.1920(c.156),s.10, gives the ct. power at the instance of a putative father to rescind or vary an order. He thus has a means of relief, & *certiorari* may in the discretion of the superior ct. be refused.—DWYER *v.* BULBECK, [1923] 1 D. L. R. 597; 39 Can. Crim. Cas. 162; 16 Sask. L. R. 13; [1922] 3 W. W. R. 391.—**CAN.**

r i. —— —— *Refusal to vary or rescind order.*]—The magistrate has no discretion to refuse to hear an application, but after hearing it he may refuse to rescind or vary his order. If the magistrate refuses to hear the application, appt. is entitled to a prerogative writ of *mandamus* to compel him to do so.—WHEATLEY *v.* HOWARD, [1923] 3 D. L. R. 288; 2 W. W. R. 942.—**CAN.**

y i. —— ——.]—Notice of an appeal from an order of filiation made under Child Welfare Act, C. A., 1924, c. 30, was given within 10 days of the making & date of the formal order. The judge had three days previously, & after the hearing, endorsed on the information an entry which included the words, "Remanded until Friday," "Filiation order granted." At the adjourned sitting he made another such entry which repeated & supplemented the previous entry, & he then signed & dated the formal order. On the appeal, the county ct. judge held that said first entry constituted the order provided for in sect. 750 (*b*) of the Criminal Code, made applicable by sect. 70 of the Child Welfare Act, & sustained the preliminary objection that the notice of appeal had not been filed within 10 days "after the conviction or order." An application for *mandamus* was dismissed. On appeal therefrom:—*Held:* the appeal should be allowed & a *mandamus* issued as prayed for.—DANIELSON *v.* THORDARSON, [1930] 3 W. W. R. 104; [1931] 1 D. L. R. 199; 39 Man. L. R. 182.—**CAN.**

y ii. —— *Grounds for allowing appeal.*]—On appeal to a county ct. judge from an order of filiation made against deft. in a bastardy case by a stipendiary magistrate, the judge, after rehearing the case, disbelieved the evidence of the mother, who was contradicted in important particulars by independent witnesses, & contradicted her evidence before the magistrate, as to the paternity of the child:—*Held:* the appeal from the county ct. judge must be dismissed.—MULGRAVE *v.* CLANCEY (1925), 58 N. S. R. 105.—**CAN.**

y iii. —— *At what place.*]—In a complaint under Children of Unmarried Parents Act, R. S. B. C., 1924 (c. 34), s. 7 (1), "the cause" of the complaint within Summary Convictions Act, R. S. B. C., 1924 (c. 245), s. 77, is the seduction & not the birth of the child; & an appeal from the dismissal of the complaint is properly taken to the county ct. nearest the place where the seduction occurred.—FERGUSON *v.* TAYLOR (B. C.), [1926] 3 W. W. R. 203; 46 Can. Crim. Cas. 149.—**CAN.**

y iv. *Not to Court of Appeal—From Juvenile Court judge under Child Welfare Act.*]—*Re* KWASNICKI & LAMONT, [1932] 2 W. W. R. 428; 3 D. L. R. 270; 40 Man. L. R. 555; 58 C. C. C. 368.—**CAN.**

y v. —— *From King's Bench Judge under Child Welfare Act (Sask.).*]—OLSON *v.* POLLARD, [1933] 3 W. W. R. 679.—**CAN.**

d i. —— *Under Illegitimate Children's Act, R. S. S., 1920 (c. 156).*]—An order made by a magistrate under s. 5 of the above Act may be varied by him on the application of either of the parties under s. 9, & may be rescinded or varied by him on the application of the putative father under s. 10.—WHEATLEY *v.* HOWARD, [1923] 3 D. L. R. 288; 2 W. W. R. 942.—**CAN.**

sx. *Compliance with order—Whether condition precedent to appeal.*]—It is not a condition precedent to the bringing of an appeal by a deft. from an order under Children of Unmarried Parents Act, 1924 (c. 34), as amended, that proof be furnished that he has complied with the terms of the order.—HYNES *v.* ALTON (B. C.), [1928] 3 W. W. R. 261.—**CAN.**

sy. *To Supreme Court—What court may consider.*]—In an appeal on a point of law under Destitute Persons Act, 1910, from an affiliation order, on the ground that complainant's evidence was not corroborated in a material particular as required by sect. 10 of that Act, the magistrate's

sessions, to which, owing to lapse of time, an appeal could not be made.—R. *v.* MARKHAM, *Ex p.* MARSH (1923), 67 Sol. Jo. 518.

403b. —— —— **Sufficiency of corroboration.**]—On a bastardy summons justices, having heard the evidence of the mother & such other evidence as was produced by her & other evidence tendered by the person alleged to be the father, made an order in these terms: "On hearing the complaint & the evidence of complainant & other evidence satisfactorily corroborating in a material particular her evidence & also the evidence tendered by deft., & being satisfied of the truth of the complaint, it is adjudged that deft. is the putative father of the child":—*Held:* the question whether the evidence of the mother was corroborated in some material particular by other evidence to the satisfaction of the justices, was a matter to be decided by the justices &, even if the other evidence did not corroborate the evidence of the mother, the justices had acted within their jurisdiction, & a writ of *certiorari* should not issue to quash their order.—R. *v.* LINCOLNSHIRE JJ., *Ex p.* BRETT, [1926] 2 K. B. 192; 95 L. J. K. B. 827; 135 L. T. 141; 90 J. P. 149; 28 Cox, C. C. 178, C. A.

notes of evidence should be incorporated in & form part of the case on appeal, & the discretion to admit evidence under sect. 68 of the Act not strictly legally admissible belongs solely to the magistrate & is not controllable by the Supreme Ct. The latter ct., however, is entitled to have regard to the nature of such evidence, once admitted, when considering whether the evidence submitted as corroborative may be regarded as such, its proper function on an appeal on a point of law being to determine whether there was evidence which was corroborative; & if there was such evidence, it is not for the Appellate Ct. but for the magistrate to determine whether or not the evidence satisfied him. *Qu.:* whether the Appellate Ct. on appeal on a point of law is entitled to treat as corroborative evidence not relied on by the magistrate as corroborative. —ANSON *v.* PARKER, [1928] N. Z. L. R. 490.—**N.Z.**

sa. —— *Failure to appear before county court.*]—Failure to appear before the county ct. on appeal from an affiliation order made by justices estops deft. from appealing to the Supreme Ct.—OVERSEERS OF POOR *v.* CAMERON, [1934] 2 D. L. R. 445; 7 M. P. R. 540.—**CAN.**

sf. *Right to serve second notice of appeal—Prior appeal dismissed for lack of proof of jurisdiction.*]—Applt. appealed from a conviction under Children of Unmarried Parents Act, R. S. B. C., 1924, c. 34. A prior appeal was dismissed because of lack of proof of a point going to the jurisdiction of the ct.:—*Held:* the time allowed by the Act for appealing not having expired, applt. had a right to serve another notice of appeal & properly prove his right to appeal.—HYNES *v.* ALTON (B. C.), [1929] 1 W. W. R. 863; 52 Can. C. C. 333.—**CAN.**

sd. *Notice of appeal—Contents.*]—Notice of appeal under Children of Unmarried Parents Act Amendment Act, 1927, s. 6 (2) (*c*), must designate the proper sittings at which the appeal should be heard, & irregularity is fatal to the appeal.—OGILVIE *v.* FINLEY (1931), 45 B. C. R. 76.—*Sub nom.* R. *v.* OGILVIE, *Re* OGILVIE *v.* FINLEY (1931), 57 C. C. C. 195.—**CAN.**

sk. —— ——.]—An appeal from the dismissal of an information laid by an unmarried woman under Child Welfare Act against the alleged putative father was dismissed on the grounds that the notice of appeal was invalid in that it stated that the appeal was to a county ct. other than the proper county ct. & it did not set forth with reasonable certainty the order appealed from. On appeal:—*Held:* the appeal should be allowed & the appeal to the county ct. judge remitted to him for hearing.—SYWACK *v.* HRUBESNAK, [1937] 1 W. W. R. 225; 1 D. L. R. 735; 67 C. C. C. 395; 44 Man. L. R. 507.—**CAN.**

so. —— *To Superintendent of Neglected Children—When necessary.*]—Notice to the Superintendent of Neglected Children under Children of Unmarried Parents Act, R.S.B.C., 1924, need only be given on commencement of proceedings, & not on appeal.—MYLLYMAKI *v.* ARNOLD (1935), 63 C. C. C. 366.—**CAN.**

sq. *Application by ratepayer—Whether appeal by mother lies.*]—An application by a ratepayer of a poor district for a filiation order having been dismissed, the mother has no right of appeal.—NORTH BROOKFIELD OVERSEERS *v.* MEISNER (1934), 64 C. C. C. 117.—**CAN.**

sr. *Dismissal of appeal in county court—Whether mandamus lies.*]—A conviction in affiliation proceedings under Child Welfare Act, 1936, was appealed to the county ct. The judge dismissed the appeal. Applt. then moved in the King's Bench for a *mandamus* directing the county ct. judge to hear & determine the appeal. DONOVAN, J., refused the *mandamus*, & on appeal from his order:—*Held:* the appeal should be dismissed.—R. (CLEAVER) *v.* STACPOOLE, *Re* RAFTER, [1937] 1 W. W. R. 251; 1 D. L. R. 788; 45 Man. L. R. 270; 67 C. C. C. 398.—**CAN.**

ss. *From county court.*]—An appeal to the county ct. from a filiation & maintenance order was dismissed for want of jurisdiction on the ground that the proceedings were not in order. Applt. then moved for a *mandamus*. It was refused on the ground that Child Welfare Act, 1936, s. 65, now gives a right of appeal from the county ct. Applt. then moved for a certificate that an appeal to the Ct. of Appeal was justified. It was objected that he was too late & that the time for appeal should not be extended:—*Held:* in view of the continuous effect of a filiation order & the fact that appct. had explained the delay & had at all times exhibited a *bonâ fide* intention to appeal, the time for so applying should be extended & the motion remitted.—R. *v.* CLEAVER, *Re* RAFTER, [1937] 1 W. W. R. 557; 2 D. L. R. 557; 45 Man. L. R. 277; 68 Can. C. C. 55.—**CAN.**

BANKRUPTCY AND INSOLVENCY.

Part I.—Bankruptcy Jurisdiction.

4. *Add. Annotation :*—**Refd.** *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

15. *Add. Annotation :*—**Refd.** Bundy *v.* Motor Cab Owner Drivers' Assocn. (1930), 143 L. T. 334.

27. *Add. Annotation :*—**Refd.** Bowling *v.* Camp (1922), 128 L. T. 342.

40a. —— —— **How derived.**]—*Re* PRIOR, *Ex p.* PRIOR, No. 1548a, *post.*

60. *Add. Annotations :* — **Consd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79. **Apld.** *Re* Sandiford (No. 2), Italo-Canadian Corpn., Ltd. *v.* Sandiford, [1935] Ch. 681. **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67 ; *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814 ; *Re* Wait, [1927] 1 Ch. 606.

69. *Add. Annotation :*—**Refd.** R. *v.* Customs & Excise Comrs., [1928], A. C. 402.

79a. —— —— **Dependent on intention.**]—*Ex p.* BLACKMORE (1801), 6 Ves. 3 ; 31 E. R. 909, L. C.

Annotation :—**Refd.** *Re* Bryant, *Ex p.* Paterson (1813), 1 Rose, 402.

79b. —— **Actor.**]—It is certain that no actor, nor any person exhibiting gymnastic feats in public, nor even the proprietor of a theatre, would be a trader within the meaning of the Bkpcy. Act (KELLY, C.B.).—SPEAK *v.* POWELL (1873), L. R. 9 Exch. 25 ; 43 L. J. M. C. 19 ; 29 L. T. 434.

160a. —— —— ——.]—A surgeon dispensing his own medicines :—*Held :* a trader within the bkpt. law.—NICHOLSON *v.* COOPER (1858), 31 L. T. O. S. 184.

177. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

190a. Theatrical proprietor.]—SPEAK *v.* POWELL No. 79b, *ante.*

196. *Add. Annotation :*—**Consd.** *Re* Debtors (No. 836 of 1935), Petitioning Creditor *v.* Debtors, [1936] 1 All E. R. 875.

199. *Add. Annotation :*—**Folld.** *Re* Debtors (No. 836 of 1935), Petitioning Creditor *v.* Debtors, [1936] 1 All E. R. 875.

207a. Business abroad—Branch in England—Assignment for benefit of creditors operating by foreign law.]—A foreigner resident abroad but trading in England does not commit an act of bkpcy. within 1914 Act, s. 1 (1) (*a*), (2), by executing abroad a deed of assignment of his property for the benefit of his creditors generally, & intended to operate according to the law of that foreigner's domicil.—*Re* DEBTORS (No. 836 of 1935), [1936] Ch. 622 ; 105 L. J. Ch. 265 ; *sub nom. Re* DEBTORS (No. 836 of 1935), PETITIONING CREDITOR *v.* DEBTORS, [1936] 1 All E. R. 875 ; 154 L. T. 592 ; 52 T. L. R. 478 ; 80 Sol. Jo. 404 ; [1936-7] B. & C. R. 75, C. A.

218a. *S. P. R. v.* COLE (1698), 12 Mod. Rep. 243 ; 1 Ld. Raym. 443 ; Holt, K. B. 360 ; 88 E. R. 1293.

Annotation :—**Refd.** Belton *v.* Hodges (1832), 9 Bing. 365.

218b. *S. P. Re* COOKE, *Ex p.* ADAM (1813), as reported in 1 Ves. & B. 493 ; 2 Rose, 36 ; 35 E. R. 191.

Annotation :—**Refd.** *Re* Smedley (1864), 10 L. T. 432.

223a. —— ——.]—A person who buys goods under age cannot, when he comes of age, be bkpt. in respect of them.—WHITLOCK'S CASE (1725), Cas. *temp.* King, 46 ; 25 E. R. 215.

224. *Add. Annotation :*—**Apld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

226. *Add. Annotation :*—**Apld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

226a. ——.]—(1) In the absence of debts actually enforceable against them infants cannot be made bkpt., even on their own petition. (2) *Qu. :* whether if a receiving order & order of adjudication are made in such a case the official receiver can deduct his costs of obtaining the rescission & annulment of

---

PART I. SECT. 1.

4 ii. ——.]—IMPERIAL BANK OF CANADA *v.* BARBER, [1921] 20 O. W. N. 282 ; 59 D. L. R. 523 ; 1 C. B. R. 485. —**CAN.**

20 iii. —— ——.]—Bkpcy. Act applies to debts & contracts, including leases, existing when it came into force.—*Re* MCKAY (1921), 51 O. L. R. 86 ; 2 C. B. R. 59 ; 64 D. L. R. 699.—**CAN.**

PART I. SECT. 2.

40 i. *Registrar—General powers & jurisdiction.*]—The registrar was held to have no jurisdiction to assess the damages sustained by a firm of traders by reason of an interim receiving order made upon the petition of a co. & afterwards rescinded. While the registrar has jurisdiction under Bkpcy. Act, s. 159 (*f*), to make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers by the registrar, his jurisdiction is confined solely to those cases, & does not extend to cases that are by the rules required to be heard by a judge.—*Re* STUART & SUTTERBY, [1930] 2 D. L. R. 689 ; 65 O. L. R. 154 ; 11 C. B. R. 279 ; *affd.*, [1931] 1 D. L. R. 754 ; 66 O. L. R. 427 ; 12 C. B. R. 267.—**CAN.**

40 ii. —— ——.]—A summary motion was made by the trustee of a bkpt.'s estate for an order declaring that he was entitled, as against two claimants, to the proceeds of the sale of certain goods. The motion was made returnable before the judge in bkpcy. ; but the registrar, assuming that he had the jurisdiction of a judge in bkpcy., without any authority from the judge, & without the consent of the parties, assumed to hear & determine the application, & made a declaratory order :—*Held :* the registrar had not the jurisdiction which he assumed to exercise.—*Re* BARTRAM, [1930] 3 D. L. R. 146 ; 65 O. L. R. 182 ; 11 C. B. R. 345.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

121 ii. —— —— *Debts of former business unpaid.*]—A person who ceases to carry on his business & becomes a farmer is not a person "engaged solely in farming," etc., so long as his debts in connection with his former business remain unpaid. He must be deemed to be still carrying on that business until all the debts are paid, & he is not protected by Bkpcy. Act, s. 8 (1).—*Re* GARTRELL, *Ex p.* KEARNS, [1923] 3 D. L. R. 406 ; [1923] 2 W. W. R. 855 ; 4 C. B. R. 103.—**CAN.**

121 iii. —— —— *Also dealing in wood.*]—PETIT *v.* GIRARD, [1931] 2 D. L. R. 991.—**CAN.**

those orders out of the assets.—*Re* A. & M., [1926] Ch. 274; 70 Sol. Jo. 607; *sub nom. Re* L. A. & B. F. M., *Ex p.* OFFICIAL RECEIVER *v.* THE DEBTORS, 95 L. J. Ch. 258; 134 L. T. 539; [1926] B. & C. R. 19, D. C.

230. *Add. Annotations:*—**Apld.** *Re* A. & M., [1926] Ch. 274. **Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913; *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120.

235. *Add. Annotation:*—**Apld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

SUB-SECT. 6.—MARRIED WOMEN.

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 1 (*d*).

263. For "*Held:* she was subject . . . under 1883 Act, s. 24" read, "*Held:* such power of appointment was not separate property within Married Women's Property Act, 1882, s. 1 (5), & she could not be directed to appoint to her trustee in bkpcy. under 1883 Act, s. 24."

Add. Annotations:—**Apld.** *Re* Mathieson, [1927] 1 Ch. 283. **Refd.** *Re* Armstrong, *Ex p.* Boyd (1888), 21 Q. B. D. 264.

265. *Add. Annotation:*—**Refd.** MacCarthy *v.* Agard, [1933] 2 K. B. 417.

267. *Add. Annotations:*—*As to* (1) **Apld.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689. **Refd.** South Behar Ry. *v.* I. R. Comrs., [1925] A. C. 476.

274. *Add. Annotation:*—**Refd.** *Re* Debtor (No. 15 of 1936), Debtor *v.* Petitioning Creditor & Official Receiver, [1936] 2 All E. R. 1493.

274a. —— **What is—Professional artiste producing scenæ.**]—The debtor, a married woman & professional singer, had up to May, 1925, been engaged in musical comedy, but had subsequently produced scenæ & vocal acts at various music halls. In the production of these scenæ she had required certain accessories in the way of dresses, etc., in respect of which she had incurred liabilities. On the hearing of a petition against her for a receiving order a number of contracts with music-hall proprietors were put in evidence, from which it appeared that in consideration of a fixed sum per week she undertook to sing & to engage & pay one or more singers to assist her in the production of her scenæ, & also to provide & pay an accompanist. The registrar dismissed the petition on the grounds that Bkpcy. Act, 1914 (c. 59), s. 125, did not include profession or occupation under the term "business"; that "trade" & "business" were *ejusdem generis* & intended to bring within the scope of the Act women who were actually trading or carrying on a business in the nature of a trade, & that the fact that the debtor was assisted by another singer & a pianist did not make her any the less a professional artist than when she acted on the stage. On appeal:—*Held:* the debtor was carrying on a continuous occupation for the purpose of making profits by entering into contracts under which she bound herself to produce scenæ on the stage & to provide the necessary accessories in the way of assistant singers & accompanist, & that in those circumstances she could properly be described as carrying on a business within sect. 125.—*Re* A DEBTOR (No. 3 of 1926), [1927] 1 Ch. 97; 135 L. T. 689; [1926] B. & C. R. 86, C. A.

Annotations:—**Consd.** *Re* Debtor, *Ex p.* Debtor (No. 490 of 1935), [1936] Ch. 237. **Refd.** *Re* Bankruptcy Notice (No. 292 of 1928) (1928), 44 T. L. R. 533.

274b. —— —— **Engaging in speculative transactions.**]—A series of speculative transactions by a married woman, if they involve the making of genuine commercial contracts extending over a long period of time, may amount to carrying on a "business" within 1914 Act, s. 125 (1), so as to make her subject to the bkpcy. laws.—*Re* BANKRUPTCY NOTICE (No. 292 OF 1928) (1928), 44 T. L. R. 533, C. A.

Annotation:—**Consd.** *Re* Debtor, *Ex p.* Debtor (No. 490 of 1935), [1936] Ch. 237.

274c. —— **Effect of Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 4 (1) (c)—Receiving order made before passing of Act.**]—The debtor, a married woman, had a series of speculative Stock Exchange transactions with the petitioning creditors extending over a period of eighteen months which resulted in a debt to them of £3,500, in respect of which they obtained judgment against her. The petitioning creditors petitioned for a receiving order. The debtor disputed the petition on the ground that she was a married woman who was not carrying on a trade or business within the meaning of sect. 125 of 1914 Act. The Registrar held that the transactions in which the debtor had been engaged constituted the carrying on by her of a business within sect. 125 & made a receiving order against her. The debtor appealed. Before the hearing of the appeal Law Reform (Married Women & Tortfeasors)

PART I. SECT. 3, SUB-SECT. 5.

sb. *Lunatic so found—Assignment through committee.*]—The ct. may make an order authorising an assignment under the Bkpcy. Act to be made by an insolvent lunatic through his committee.—*Re* BUCHNER, [1936] 1 D. L. R. 459; O. R. 25.—**CAN.**

PART I. SECT. 3, SUB-SECT. 6.

266 i. *Judgment debt—Bankruptcy Act,* 1908, *s.* 26 (*f*).]—A bkpcy. notice under the above sub-sect. cannot be issued against a married woman against whom a creditor has recovered a judgment.—*Re* WALKER, *Ex p.* HINKEY, [1927] N. Z. L. R. 81.—**N.Z.**

267 i. *Carrying on business.*]—It is only in cases where a married woman carries on a trade or business that she is subject to Bkpcy. Act, 1919 (c. 36) (Can.).—*Re* STONE, [1925] 4 D. L. R. 518.—**CAN.**

267 ii. —— *In partnership with husband.*]—*Held:* debtor was not carrying on business separately from her husband, & her adjudication in bkpcy. was irregular.—*Re* SCOTT (1924), 20 Tas. L. R. 43.—**AUS.**

267 iii. —— *Debts unpaid after sale of business—Receiving order may be made.*]—A married woman carried on a trade separately from her husband. Having incurred debts, & being unable to meet her creditors, on Feb. 9, 1929, she filed a petition for arrangement & was granted the protection of the ct. on Mar. 1. She was unable to carry out her proposal to pay twenty shillings in the pound, & eventually on July 26, her petition was dismissed, & thereby an act of bankruptcy was committed. On Oct. 30 she was adjudicated a bkpt. on the petition of two of her creditors, wherein she was described as a married woman carrying on a trade separately from her husband, in respect of debts undischarged at the date of the petition. She applied to have this adjudication set aside on the ground that she was not such a trader on the date of adjudication. She stated that during the progress of the arrangement matter she found that she was unable to get any further credit & closed down & went out of trade on Mar. 23, & had not since carried on any trade:—*Held:* there was ample evidence that the debts in respect of which adjudication was sought were trade debts for goods supplied incurred by her while she was carrying on a trade separately from her husband, & the fact of her having trade debts undischarged at the date of the petition was evidence from which it could be inferred that she was still carrying on her trade.—*Re* SOMERS, [1930] I. R. 1.—**IR.**

Act, 1935 (c. 30), was passed :—*Held :* (1) the Registrar was right in holding that the transactions in question constituted the carrying on by the debtor of a business within the sect. ; it was true that an occasional speculation, even if such a speculation was repeated at intervals over a period, might not amount to " carrying on a business " for the purposes of sect. 125, but, if over a considerable period such dealings were repeatedly carried on in order to make a profit & were as frequent & systematic as those in the present case, they might properly be held to constitute the carrying on of a business by the married woman. It was a question in each case of fact & degree ; (2) also, having regard to sect. 38 (2) of Interpretation Act, 1889 (c. 63), inasmuch as the receiving order was made by the Registrar before the passing of 1935 Act, it remained valid notwithstanding sect. 4 (1) (*c*) of the latter Act.—*Re* DEBTOR, *Ex p.* DEBTOR (No. 490 of 1935), [1936] Ch. 237 ; 105 L. J. Ch. 129 ; 154 L. T. 44 ; 52 T. L. R. 70 ; 79 Sol. Jo. 839 ; [1934–5] B. & C. R. 329, C. A.

274d. —— ——.]—The debtor was a married woman who had been carrying on a business of letting furnished flats. She brought an action against the man who later became the petitioning creditor for the return of goods which, it was alleged, she had used in her business. On July 23, 1935, judgment was given to the effect that the goods were the property of the petitioning creditor & the action was dismissed with costs. These costs were taxed at £48 & later by the addition of interest the debt was increased. Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), came into operation on Aug. 2, 1935 : —*Held :* (1) Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), had no application to this case ; (2) having regard to the terms of the judgment of July 23, 1935, it could not be maintained that the debt was incurred in the course of the debtor's business or in the getting in of the assets thereof, & a receiving order made by the registrar must be discharged.—*Re* DEBTOR (No. 15 of 1936), DEBTOR *v.* PETITIONING CREDITOR & OFFICIAL RECEIVER, [1936] 2 All E. R. 1493 ; 80 Sol. Jo. 755.

274e. —— ——.]—*Re* DEBTOR, *Ex p.* CADBURY BROS., LTD. (1936), 80 Sol. Jo. 144, C. A.

274f. —— ——.]—On Sept. 7, 1933, the petitioning creditor guaranteed the banking account of the debtor, a married woman not carrying on a trade or business, up to a limited amount. On Aug. 2, 1935, the Act came into operation. In Jan. 1936, the bank called on the guarantor to pay under the guarantee & on Feb. 21 the guarantor did so. On May 28 the guarantor obtained judgment against the debtor in respect of the sum so paid. The debtor having failed to comply with a bkpcy. notice issued in respect of this debt the guarantor served her with a bkpcy. petition. The Registrar refused to make a receiving order. On appeal :—*Held :* the implied undertaking of the principal debtor to repay the money paid on her behalf to the bank arose at the time of the guarantee ; the obligation of the guarantor, though for a time at common law inchoate & unenforceable, had its origin in 1933 before the passing of the Act of 1935 ; it followed, therefore, that the contract or obligation in respect of which judgment was given existed before the passing of that Act & consequently that the married woman debtor, not being a trader, could not be made bkpt.—*Re* DEBTOR (No. 627 OF 1936), [1937] Ch. 156 ; [1937] 1 All E. R. 1 ; 106 L. J. Ch. 172 ; 53 T. L. R. 191 ; 81 Sol. Jo. 57 ; [1936–7] B. & C. R. 121 ; *sub nom. Re* DEBTOR (No. 627 OF 1936), *Ex p.* PETITIONING CREDITOR *v.* DEBTOR, 156 L. T. 95, C. A.

274g. —— **Speculation.**]—*Re* DEBTOR, *Ex p.* DEBTOR (No. 490 OF 1935), No. 274c, *ante*.

276. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

285. *Add. Annotation :*—**Consd.** Food Controller *v.* Cork, [1923] A. C. 647.

286. *Add. Annotations :*—**Consd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369. **Refd.** A.-G. *v.* De Keyser's Royal Hotel, [1920] A. C. 508 ; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

312. *Add. Annotation :*—**Consd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118.

PART I. SECT. 3, SUB-SECT. 7.

287 ii. ——.]—A petition in bkpcy. may be presented & a receiving order made under Bkpcy. Act, R.S.C., 1927, against the representative of a deceased person.—*Re* ROMBOUGH ESTATE, [1933] 3 W. W. R. 396.—**CAN.**

287 iii. ——.]—A receiving order may be made under Bkpcy. Act, R.S.C., 1927, against an exor. *qua* exor., even though the petition was not launched until after the death of testator.—YORKSHIRE INSURANCE CO. *v.* BANK OF TORONTO, [1934] 1 W. W. R. 416 ; 2 D. L. R. 65 ; 48 B. C. R. 1.—**CAN.**

287 iv. ——.]—A receiving order under Bkpcy. Act cannot be made against personal representatives when no proceedings were commenced against deceased.—*Re* CAVICCHI, [1935] 2 D. L. R. 64 ; 8 M. P. R. 386.—**CAN.**

sg. *Assignee of debt—Assigned by debtor with consent of creditor.*]—*Re* STAR FLOORING CO., [1924] 3 D. L. R. 269 ; 4 C. B. R. 679.—**CAN.**

sk. *Ecclesiastical bodies.*]—Ecclesiastical bodies or institutions are not included within the ambit of a bkpcy. statute essentially designed for the administration of the property of persons or corpns. carrying on business. The Bkpcy. Act was never intended to apply to a parish or church or other religious body.—SARRAZIN *v.* LES CURÉ MARGUILLIERS DE L'ŒUVRE ET FABRIQUE DE LA PAROISSE DE ST-GABRIEL DE BRANDON, [1935] S. C. R. 419 ; 3 D. L. R. 554.—**CAN.**

PART I. SECT. 4, SUB-SECT. 1.

cl. *To deal with prosecution of fraudulent debtors.*]—Under Bkpcy. Act, s. 93, the prosecution may be ordered & proceeded with in the ordinary way before the existing criminal cts. It does not require the judge in bkpcy. to hear evidence &, if he thinks fit, to commit accused to stand trial although under sect. 95 the judge in bkpcy. has a right to do so.—R. *v.* GOLDHAMMER, [1924] 3 D. L. R. 1007 ; Q. R. 36 K. B. 507 ; 5 C. B. R. 127.—**CAN.**

sb. *Under Bankruptcy Act*, 1919 (*c.* 36)—*To order stay of execution—Until receiving order dealt with.*]—*Held :* the ct. had such power.—*Re* THOMPSON POWDER CO., *Re* WINDING-UP ACT, [1923] 1 D. L. R. 496 ; 3 C. B. R. 481.—**CAN.**

sc. *Under Bankruptcy Act, s.* 63.]—The jurisdiction conferred by Bkpcy. Act, s. 63, is confined to the administration of the bkpt.'s estate, & does not extend to persons or matters outside the Act.

The trustee in bkpcy. of R.'s estate moved for an order declaring that T. was a general partner of R. or that T. had wrongfully obtained from the firm of R. Bros. of which R. had been a member a certain sum of money :—*Held :* the trustee did not represent the firm of R. Bros., the authorised assignment having been executed by R. only, & the Bkpcy. Ct. had no jurisdiction to try the questions raised by the trustee's motion.—*Re* REYNOLDS, [1928] 3 D. L. R. 562 ; 62 O. L. R. 360 ; 10 C. B. R. 127.—**CAN.**

sd. *To order repayment of money—Paid by assignee to creditor—Mistake of law.*]—*Held :* jurisdiction could not be excluded by a plea of payment by mistake of law.—DEMPSEY *v.* PIPER [1921] N. Z. L. R. 753.—**N.Z.**

331. *Add. Annotation :*—**Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

333. *Add. Annotations :* — **Apld.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43. **Refd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

369. *Add. Annotation :*—**Refd.** *Re* Horder, *Ex p.* Trustee, [1936] 2 All E. R. 1479.

371a. —— **Indemnity.**]—The trustee in bkpcy. of a certain bkpt. alleged that the bkpt. had incurred a number of his debts on behalf of resps. & he applied by motion in bkpcy. for a judgment against them to indemnify the bkpt.'s estate against such debts. Resps. objected that the case ought to be tried by the common law cts. in the usual manner :—*Held :* notwithstanding the wide jurisdiction conferred upon the ct. in bkpcy. by 1914 Act, s. 105, the practice has grown up of leaving to the ordinary tribunal cases which did not raise bkpcy. points, & in the present case the ordinary procedure ought to be adopted.—*Re* HORDER, *Ex p.* TRUSTEE, [1936] Ch. 744 ; [1936] 2 All E. R. 1479 ; 105 L. J. Ch. 382 ; 80 Sol. Jo. 672 ; [1936–7] B. & C. R. 102.

388. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1922] 2 Ch. 470.

389. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1922] 2 Ch. 470.

389a. —— —— —— ——.]—A debtor cannot avoid the operation of a bkpcy. notice, served upon him in England, by himself during the currency of the notice petitioning for & obtaining an award of sequestration of his estate under Bkpcy. (Scotland) Act, 1913 (c. 20). A receiving order made in pursuance of the bkpcy. notice in England will, therefore, be valid, & cannot be set aside on the ground of the sequestration.—*Re* A DEBTOR (No. 199 OF 1922), [1922] 2 Ch. 470 ; 91 L. J. Ch. 577 ; 127 L. T. 832 ; 38 T. L. R. 683 ; 66 Sol. Jo. 521 ; [1922] B. & C. R. 151, C. A.

390a. —— —— —— —— ——.]—*Re* A DEBTOR (No. 737 OF 1928). No. 957a, *post.*

395a. What is a British Court—Jerusalem District Court.]—The High Ct., being satisfied by evidence that the Jerusalem District Ct. was a British ct. having jurisdiction in bkpcy. within sect. 122 of 1914 Act, made an order requesting that ct. & all other cts. in Palestine having jurisdiction in bkpcy. to aid the High Ct. to effect service of a notice of motion upon a resp. resident within its jurisdiction, & to aid in other matters in connection therewith.—*Re* GREGORY (MAUNDY) (No. 396 of 1933), TRUSTEE *v.* JERUSALEM (PATRIARCH) (No. 2) (1934), 103 L. J. Ch. 267 ; [1934] B. & C. R. 63.

PART I. SECT. 4, SUB-SECT. 2.

88. —— *Superior Court.*]—The Superior Ct. sitting in any provincial judicial district has jurisdiction to hear a petition in bkpcy. served upon a debtor residing & doing business in any part of the province.—BOILY *v.* MCNULTY, [1928] 1 D. L. R. 926 ; [1928] S. C. R. 182 ; 8 C. B. R. 565.—**CAN.**

PART I. SECT. 4, SUB-SECT. 4.

348 ii. —— —— ——.]—The jurisdiction of the Bkpcy. Ct. is confined to the administration by the trustee of the bkpt.'s estate & does not extend to persons or matters outside the Bkpcy. Act ; therefore a claim by the trustee with respect to the estate against a stranger to the estate is not subject to the Bkpcy. Ct.'s jurisdiction.—STOBIE FORLONG ASSETS, LTD. *v.* BECK, [1932] 1 W. W. R. 822.—**CAN.**

363 i. —— *With intent to defeat creditors.*]—If debtor before his bkpcy. pays money fraudulently, with a view to concealing from his creditors his assets, the ct. will order repayment of such money.—*Re* COHEN & SWEIGMAN, *Ex p.* ROSENBERG, [1925] 1 D. L. R. 248 ; 5 C. B. R. 346.—**CAN.**

PART I. SECT. 5.

388 xiv. —— *Power of Scottish Court to confirm foreign sequestration & to authorise sale of property in Scotland.*]—A petition was presented by the official receiver appointed by the Ct. of Chile in the sequestration of the estates of a deceased person resident there, craving the ct. to confirm the Chilian sequestration, to authorise petitioner to sell Scottish heritage belonging to deceased's estate, & to authorise petitioner to uplift the proceeds of certain Scottish policies of assurance on the life of deceased. The ct. granted authority to petitioner to sell the Scottish heritage on certain terms, under a declaration that such sale should not operate conversion, & on condition that petitioner should consign the balance of the proceeds in the name of the accountant of ct. to abide the orders of the ct., but refused, as unnecessary, the crave of the petition for authority to uplift the proceeds of the policies of assurance.—ARAYA *v.* COGHILL, [1921] S. C. 462 ; 58 Sc. L. R. 395.—**SCOT.**

PART I. SECT. 7.

392 iii a. —— *Whether enforceable in Saskatchewan—Necessity for notice to interested parties.*]—*Qu. :* whether the words "British Ct." in Imperial Bkpcy. Act, 1914 (c. 59), s. 122, include a Canadian Ct. exercising bkpcy. jurisdiction, & whether the provisions of said Act apply to immovables in Canada. Even if said words & provisions do so apply, an application to the Saskatchewan Ct. of K. B., by a trustee in bkpcy. appointed in England, for an order giving effect to an order made there under sect. 122 will not be heard if due & proper notice of the application has not been given to all persons interested in the relief sought thereby.—*Re* GRAHAM (Sask.), [1928] 4 D. L. R. 375 ; [1928] 3 W. W. R. 8 ; 10 C. B. R. 171.—**CAN.**

392 iii b. —— ——.]—The words, in Bkpcy. Act, 1914, s. 122, "every British Court elsewhere having jurisdiction in bkpcy," include the Saskatchewan Ct. of King's Bench, &, therefore, the English trustee is entitled to obtain therefrom an order in aid of an order made by the English Ct. under said sect.—*Re* GRAHAM (No. 2), [1929] 3 D. L. R. 353 ; 1 W. W. R. 309 ; 23 S. L. R. 297 ; 10 C. B. R. 340.—**CAN.**

392 ix. —— *Whether enforceable in Irish Free State.*]—Where a person, having real & personal estate in the Irish Free State, was adjudicated a bkpt. in England, & the ct. having bkpcy. jurisdiction in England ordered that a request for the assistance of the ct. having bkpcy. jurisdiction in the Irish Free State be made, & the official receiver in bkpcy. in England having applied to the High Court of Justice in the Irish Free State pursuant to such order for a declaration that the said property became vested in the official receiver as the trustee in the bkpcy. by virtue of the adjudication :—*Held :* the official receiver was entitled to such order, & the bkpcy. ct. of the Irish Free State & its officers, including the official assignee, should act in aid of, & auxiliary to, the English bkpcy. ct.—*Re* BULLEN, [1930] I. R. 82.—**IR.**

o. For "*Order of Canadian Provincial Court—Where good throughout Canada,*" read "*Order of provincial court—Good throughout Union.*"

o1. —— *No request of other provincial court—Subsequent motion to remedy omission.*]—Where a motion was made without such request, the ct. granted a similar motion, made after such request had been obtained, to remedy the omission.—*Re* LEGACE & LEPINAY, [1922] 3 W. W. R. 284 ; 70 D. L. R. 867.—**CAN.**

Part II.—Acts of Bankruptcy.

401. *Add. Annotation :*—**Consd.** *Re* Debtors (No. 836 of 1935), Petitioning Creditor *v.* Debtors, [1936] 1 All E. R. 875.

409. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

410. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

421. *Add. Annotation :*—**Refd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

427. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

428. *Add. Citations :—sub nom. Re* PHILLIPS, *Ex p.* PHILLIPS, 69 L. J. Q. B. 604 ; 82 L. T. 691 ; 44 Sol. Jo. 469 ; 7 Mans. 277, D. C.

434a. —— —— —— ——.]—An unstamped deed of arrangement, although admissible in evidence to prove an act of bkpcy., cannot, after it has ceased to be available as an act of bkpcy., be put in evidence without a stamp where the fact that the deed is void for want of registration is relied upon by the trustee in a subsequent bkpcy. of the debtor to establish a title to the property comprised in the deed.—*Re* SHAW, *Ex p.* OFFICIAL RECEIVER (1920), 90 L. J. K. B. 204 ; [1920] B. & C. R. 156.

SUB-SECT. 2 (p. 52).

NOTE.—13 Eliz. c. 5 is now replaced by Law of Property Act, 1925 (c. 20), s. 172.

438. *Add. Annotation :*—**Consd.** *Re* Debtors (No. 836 of 1935), Petitioning Creditor *v.* Debtors, [1936] 1 All E. R. 875.

451. *Add. Citation :*—1 Sm. & G. 246, n. ; 65 E. R. 106.

454a. —— ——.]—By indenture dated Feb. 21, 1921, made between bkpt., a retired produce broker, of the first part, & B., his solr., of the second part, & S. of the third part, after reciting that a receiving order had been made against bkpt. on Oct. 7, 1920, & B. had lodged a proof for £470 9*s.* 2*d.* for moneys expended & advanced as bkpt.'s solr. up to the date of the receiving order, & that since that date B. had continued to act as bkpt.'s solr., & his bill of costs amounted to £217 10*s.* 1*d.*, & that B. had undertaken to pay to a bank certain moneys due to them by bkpt. on realising his securities, & that there was lodged on behalf of bkpt. the sum of £1,350 with the official receiver to enable him to discharge the provable debts in the bkpcy., debtor assigned to B. so much of the £1,350 as should be payable to bkpt. & £2,050 payable to bkpt. under a certain agreement. B. was to hold the sums assigned to him upon trust, in the first place to pay & discharge all moneys due, or thenceforth becoming due to himself for costs, advances or otherwise, & in the next place to pay & discharge certain alleged debts of bkpt. at X., & lastly to apply the balance for the benefit of S. & her children. On Feb. 3, 1921, the above-mentioned receiving order was rescinded. At the date of the assignment bkpt. was living apart from his wife, to whom he had agreed to pay maintenance at the rate of £10 per week, & judgment had been recovered by H. for £58 6*s.* 11*d.* for the board & lodging of bkpt.'s wife. On Feb. 8, 1921, a writ had been issued by bkpt.'s wife for arrears of maintenance due to her from bkpt. On Feb. 11, 1921, H. issued a bkpcy. notice in respect of her judgment & a petition was filed on Apr. 30, 1921. A receiving order was made on June 3, 1921, & debtor was adjudged bkpt. on June 20, 1921 :—*Held :* on the facts the assignment was executed with the intent to defeat & delay creditors, & was therefore fraudulent & void as an act of bkpcy. under 1914 Act, s. 1 (1) (*b*). —*Re* PRIOR, *Ex p.* TRUSTEE, [1922] B. & C. R. 1, C. A.

468. *Add. Annotations :*—**Expld.** *Re* Fredericke & Whitworth. *Ex p.* Hibbard, [1927] 1 Ch. 253. **Refd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9.

469. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

471. *Add. Annotations :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515 ; *Re* M. I. G. Trust, Ltd., [1933] Ch. 542. **Refd.** *Re* Moyle, *Ex p.* Trustee, [1924] B. & C. R. 22 ; *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765 ; Peat *v.* Gresham Trust, Ltd., [1934] A. C. 252 ; *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

471a. —— **Defeat or delay of creditors necessary consequence of sale or charge.**]—*Re* SIMMS, No. 596a, *post.*

479. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

485. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

487. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

488. *Add. Annotations :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22. **Refd.** *Re* Prior, *Ex p.* Trustee, [1922] B. & C. R. 1.

489. *Add. Annotation :*—**Refd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118.

491. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

PART II. SECT. 1.

sf. *Partner—Retirement more than six months before bankruptcy—Debt incurred during partnership.*]—*Held :* such partner could not be joined as a party in bkpcy. proceedings against the partnership.—*Re* STANDARD COOPERAGE CO., [1924] 2 D. L. R. 703 ; 4 C. B. R. 673.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

402 iii. ——.]—An insolvent debtors' disposition of his property for the benefit of his creditors is not void under sect. 9 (7) of the Bkpcy. Act where it is not a conveyance or assignment, in the proper sense of the term, by which the whole of his property is vested in a trustee or trustees for the benefit of his creditors generally.—BLACK *v.* BELIVEAU & NEWTON, [1929] 3 D. L. R. 356 ; 2 W. W. R. 176 ; 38 Man. L. R. 222 ; 10 C. B. R. 577.—**CAN.**

423 ii. —— *Assignment by debtor without property—Valid.*]—JONES *v.* BOUTILLIER, [1932] 2 D. L. R. 708.—**CAN.**

sg. *Assignment where no assets—To procure stay of action—Abuse of Bankruptcy Act.*]—*Re* COULL, [1932] 1 D. L. R. 381 ; 5 M. P. R. 395.—**CAN.**

sk. *Effect of assignment.*]—The dispositive power of a debtor is not affected by an authorised assignment of property, as sect. 9 (4) of the Bkpcy. Act is only for the benefit of creditors who avail themselves of the Act.—COUILLARD *v.* PROVINCIAL BANK OF CANADA, [1937] 4 D. L. R. 43.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—A.

457 i. —— *Transfer of property to near relatives—In return for promissory notes—Not included in statement of affairs.*]—An intent to defraud creditors presumed from the above transfer which took place within six months of the bkpcy.—R. *v.* TESSIER (1921), 62 D. L. R. 479 37 Can. Crim. Cas. 375. —**CAN.**

501. *Add. Annotation :*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

502. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

533. *Add. Annotation :*—**Refd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

534. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

539. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

544. *Add. Annotation :*—**Refd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

550. *Add. Annotation :*—**Refd.** *Re* Stanton, [1929] 1 Ch. 180.

552. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

555. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

558. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

567. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

580. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

590. *Citations :*—For "21 W. R. 422" read "21 W. R. 402."

595. *Add. Annotations :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426. **Refd.** *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett (1933), 176 L. T. Jo. 142.

596a. —— **In private company ormed by debtor & his solicitor.**]—The transfer by a debtor of substantially the whole of his property, whether by way of charge or by way of sale, constitutes an act of bkpcy., if the necessary consequence of the transfer will be to defeat or delay his creditors. The bkpt. was carrying on an increasing business as a builder, but was in need of further capital. He had creditors for some £28,000, & in addition he owed B.'s bank about £6,500. In pursuance of an arrangement with L.'s bank, but without notice to any of the creditors, L.'s bank took over the bkpt.'s account from B.'s bank, paying off to B.'s bank the overdraft of £6,500; & a few days later, on Jan. 9, 1929, a private limited co. was formed of which the bkpt. & his solr. were the only directors. There was a contemporaneous agreement for sale to the co. of substantially the whole of the bkpt.'s assets for £17,000 to be satisfied by the issue to the bkpt. of 17,000 £1 shares, the co. undertaking to pay the bkpt.'s liabilities. On Jan. 14 the necessary assignments to the co. were executed, & a debenture for £12,500 was sealed in favour of L.'s bank. On Jan. 17 the bkpt.'s overdraft on L.'s bank was paid off by a transfer from a new account opened by L.'s bank in favour of the co. Upon the formation of the co. & the issue of the debenture becoming known, the bkpt.'s creditors began to press, & some of them were paid off in full. On Feb. 27, 1929, the bkpt. committed an act of bkpcy. by failing to comply with a bkpcy. notice. On Mar. 8 a petition was presented, & on May 9 a receiving order was made, & adjudication followed on May 23. Upon a motion by the trustee for a declaration that the sale agreement of Jan. 9 was void by 1914 Act, s. 1 (1) (*b*), & for ancillary relief :—*Held :* (1) the agreement was a fraudulent transfer & an act of bkptcy., & the whole of the assets comprised therein formed part of the assets of the bkpt. divisible amongst his creditors, & as the trustee's title related back to the act of bkpcy. & overrode that of the co., the co. must account to the trustee for such of the assets as had come to the hands of the co. or of any person by the order or for the use of the co. The substitution in the place of a going business & substantial business assets of (*a*) shares in a private co. which has taken over the debtor's assets & liabilities, & (*b*) a right of action by the debtor against the co. on its covenant to discharge his liabilities must necessarily have the result of delaying creditors, & the substituted assets could not be treated as an equivalent which the creditors could reach as satisfactorily as the assets transferred; (2) 1914 Act, s. 45, protects only transactions which are *bonâ fide;* &, as the knowledge of the bkpt. & his solr. of the facts which stamped it in law as a fraudulent transfer was the knowledge of the co., sect. 45 afforded no defence, even although the parties might have thought the transfer to be in the best interest of the creditors.—*Re* SIMMS, [1930] 2 Ch. 22; 99 L. J. Ch. 235; 46 T. L. R. 258; [1929] B. & C. R. 129; *sub nom. Re* SIMMS, *Ex p.* TRUSTEE, 143 L. T. 326.

598. *Add. Annotations :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426; *Re* Simms, [1930] 2 Ch. 22.

599. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

600. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426. *As to* (2) **Refd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628; *Re* Simms, [1930] 2 Ch. 22.

601. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

669a. —— ——.]—Where a trader went to his neighbour & told him that he expected to be arrested, & while he remained there was informed that a sheriff's officer was going towards his house, upon which he concealed himself in the back room & desired his neighbour to watch, & when told that the officer had gone past his house & had left the street, immediately returned home :—*Held :* this was an act of bkpcy. of "otherwise absenting himself to the intent to delay creditors" although it appeared not only that no creditor was delayed, but that none could possibly be delayed.—CHENOWETH *v.* HAY (1813), 1 M. & S. 676; 2 Rose, 137; 105 E. R. 252.

Annotations :—**Consd.** Gimmingham *v.* Laing (1816), 2 Marsh. 236. **Refd.** Toleman *v.* Jones (1824), 9 Moore, C. P. 24; Rouch *v.* Great Western Ry. Co. (1840), 1 Q. B. 51.

PART II. SECT. 2, SUB-SECT. 8.

q i. ——.]—In a judgment by default recovered against a husband & wife it was declared pltf. should be entitled to recover against defts. jointly & severally the sums therein specified; but it was ordered that execution be limited to the free separate property of the wife. Notwithstanding the precise & restricted terms of the judgment, a *præcipe* was lodged for a writ of sale directed against the real & personal property of both defts. The writ of sale followed the language of the *præcipe*, & a return of *nulla bona* was later made against both defts. On a petition to have the husband adjudicated bkpt. upon the ground of his having committed an available act of bkpcy. within Bkpcy. Act, 1908, s. 26 (*j*) :—*Held :* the writ of sale & the return thereto were irregular & ineffectual as against the husband, the ct. had no power in the present pro-

763. *Add. Annotation :*—**Refd.** *Re* Gunsbourg [1920] 2 K. B. 426.

778. *Add. Annotation :*—**Refd.** Bracia Czeczowiczka *v.* Markus, Bracia Czeczowiczka *v.* Loy, [1936] 1 All E. R. 944.

779. *Add. Annotation :*—**Distd.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

787. *Add. Annotation :*—**Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

788. *Add. Annotation :*—**Consd.** *Re* Debtor, [1929] 1 Ch. 170.

797a. Creditor who has assented to deed of arrangement—Deed void for want of registration.]—On June 11, 1921, applt. co. recovered judgment against debtor for a certain sum & costs. On Apr. 18, 1922, debtor executed a document in the form of a memorandum of agreement by which he assigned his property to trustees for the benefit of his creditors. The agreement provided (*inter alia*) that it should not be registered either as a composition or deed of arrangement or otherwise & contained a schedule of creditors & their debts. At the date of the agreement there were five bkpcy. petitions pending against debtor by creditors other than appl. co. As a result of negotiations between debtor & the five creditors & in consideration of his entering into the agreement of Apr. 18, 1922, the five creditors agreed to the dismissal of their petitions & signed letters dated Apr. 17, 1922, which were all in the same form, & contained a statement that it was understood that it was not intended to register the agreement as a deed of arrangement, by which they respectively agreed that so long as debtor complied with the terms of the agreement of Apr. 18, 1922, they would not bring any action against him in respect of their scheduled debts or attempt to set aside the agreement. On July 18, 1922, applt. co. signed a letter of assent in the same terms, which was also dated Apr. 17, 1922, & agreed to hand it over to debtor on receiving from him a promissory note or bill of exchange of a third party for £300. This condition debtor performed. The letter was not, however, handed over to debtor owing to the refusal by him to pay to applt. co. an agreed sum for costs, a term which the ct. held formed no part of the original bargain. Applt. co. subsequently issued a bkpcy. notice against debtor founded on its judgment debt. The registrar set the bkpcy. notice aside on the ground that applt. co. was bound by the agreement contained in the letter signed by it. On appeal :—*Held :* (1) the agreement of Apr. 18, 1922, being a deed of arrangement, was void for want of registration under 1914 (Deeds) Act, & the letter of assent, being an assent to a void instrument, was also itself void ; (2) as debtor & all the creditors who assented to the agreement knew from the terms of the instrument itself & from the statement contained in the letters signed by them that the agreement was void, & there was no representation that the agreement was valid, there was no question of estoppel, & applt. co. was not estopped from issuing the bkpcy. notice.—*Re* A Bankruptcy Notice, [1924] 2 Ch. 76 ; 93 L. J. Ch. 497 ; 68 Sol. Jo. 458 ; [1924] B. & C. R. 188 ; *sub nom. Re* A Bankruptcy Notice (No. 62 of 1924), *Ex p.* Petitioning Creditors *v.* Debtor, 131 L. T. 307, C. A.

Annotation :—As to (2) **Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

Compare Nos. 8778a, 8782d, *post*, & original volume, p. 160, No. 1498.

800. *Add. Annotation :*—**Folld.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

800a. Change in judgment creditor — Judgment obtained by firm — No leave to issue execution.]—Where a firm consisting of several members has recovered in the firm name judgment against a debtor, the fact that a member has since retired from the firm does not render it necessary that the firm should obtain leave of the ct. under R. S. C., Ord. 42, r. 23, in order that a bkpcy. notice may be issued in the name of the firm, & a bkpcy. petition presented in that name.—*Re* Hill, *Ex p.* Holt & Co., [1921] 2 K. B. 831 ; 90 L. J. K. B. 734 ; 125 L. T. 736 ; [1921] B. & C. R. 12.

804a. —— —— Notice not good against partners not served.]—*Re* Debtors (No. 807 of 1922), *Ex p.* Debtor, No. 887a, *post*.

805. *Add. Annotation :*—**Apld.** *Re* Debtor (No. 24 of 1935), [1936] Ch. 292.

806. *Add. Annotation :*—**Apprvd.** *Re* Debtor (No. 24 of 1935), [1936] Ch. 292.

811. *Add. Annotation :*—**Consd.** *Re* Debtor (1920), 90 L. J. K. B. 513.

823. *Add. Annotation :*—**Consd.** *Re* Debtor (No. 21 of 1937), Debtor *v.* Petitioning Creditor & Official Receiver, [1938] 2 All E. R. 824.

828. *Add. Annotation :*—**Expld.** *Re* A Debtor, [1929] 2 Ch. 146.

830. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1929] 2 Ch. 146.

830a. ——.]—Where a bkpcy. notice was issued against the co-resp. in a divorce suit for failure to comply with an order, made before decree absolute, requiring him to pay the costs of the petitioner to the latter's solrs., for lodgment of the money in ct. :—*Held :* the bkpcy. notice was bad & the receiving order made thereon ought to be discharged because (1) it was not issued in the name of petitioner, the real creditor, but in that of his solrs. ; (2) the decree not having been made absolute at the date of the order, the incidence of the costs was still open to revision, & the creditor, therefore, had not obtained a " final " judgment or order within 1914 Act, s. 1 (1) (*g*).—*Re* A Debtor (No. 76 of 1929), [1929] 2 Ch. 146 ; 98 L. J. Ch. 334 ; 141 L. T. 250 ; 45 T. L. R. 403 ; 73 Sol. Jo. 299 ; [1929] B. & C. R. 48 ; C. A.

Annotation :—As to (1) **Consd.** Mason *v.* Mason & Cottrell (1933), 49 T. L. R. 458.

ceedings to amend the judgment as entered, & no act of bkpcy. had been established as against the husband upon which an order of adjudication could properly be made.—*Re* Green, A Debtor, [1928] N. Z. L. R. 531.—**N.Z.**

PART II. SECT. 2, SUB-SECT. 10.—A. (c).

797a l. *Creditor who has assented to deed of arrangement—Deed void.*]—A debtor being insolvent to the knowledge of his creditors agreed with them to assign all his property to an attorney, to realise upon & distribute the proceeds. In it the creditors undertook not to institute any ct. proceedings against the debtor. One creditor becoming dissatisfied with the arrangement presented a petition in bkpcy. :—*Held :* the debtor being insolvent, the assignment was null & void under Bkpcy. Act, R. S. C., 1927, s. 9 (7), & the petitioning creditor was not estopped under the agreement from presenting a petition.—*Re* Brown, [1932] O. R. 453 ; 3 D. L. R. 305.—**CAN.**

PART II. SECT. 2, SUB-SECT. 10.—A. (g).

n. For " *Held :* the objection was sustainable " read " *Held :* the objection was not sustainable."

sg. *Costs of unsuccessful execution no*

851a. Judgment including excessive interest within Moneylenders Act, 1927 (c. 21).]—The provisions of Moneylenders Act, 1927 (c. 21), s. 9, do not prevent a moneylender who has obtained judgment for a debt which includes interest at a rate exceeding 5 per cent. *per annum* from serving a bkpcy. notice upon the debtor requiring payment of the judgment debt.

A moneylender presented a bkpcy. petition against his debtor upon which a receiving order was made, though the act of bkpcy. relied upon in the petition was non-compliance with a bkpcy. notice requiring the judgment debtor to pay the judgment debt, which in fact included interest at a rate amounting to 270 per cent. *per annum*:—*Held*: the receiving order was rightly made. —*Re* A DEBTOR (247 OF 1930), [1930] 2 Ch. 239; 99 L. J. Ch. 356; 143 L. T. 292; *sub nom.* DEBTOR *v.* PETITIONING CREDITORS, [1929] B. & C. R. 184, C. A.

857. *Add. Annotation*:—**Refd.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

866. *Add. Annotation*:—**Consd.** *Re* A Debtor, *Ex p.* Debtor (1922), 92 L. J. Ch. 410.

870. *Add. Annotation*:—**Refd.** *Re* A Debtor, [1929] 2 Ch. 146.

871. *Add. Annotation*:—**Refd.** Lyons *v.* Collins, [1936] 3 All E. R. 788.

875. *Add. Citation*:—15 Mans. 304.
Add. Annotation:—**Consd.** *Re* A Debtor, *Ex p.* Debtor (1922), 92 L. J. Ch. 410.

875a. —— Judgment to pay creditor—Notice to pay registrar of county court.]—(1) Where a county ct. judgment in form or effect directs payment to be made to the creditor the bkpcy. notice founded on it properly requires payment to be made to the creditor instead of to the registrar.

(2) The Practice Regulation of Feb. 18, 1890, which requires every notice of motion by way of appeal from a county ct. to state the grounds of the appeal, does not preclude an applt. from relying upon a point not taken in the ct. below, if the ct. thinks fit to give leave to raise the new point.—*Re* A DEBTOR (No. 16 OF 1922), *Ex p.* THE DEBTOR (1922), 92 L. J. Ch. 410; [1922] B. & C. R. 264, D. C.

887a. —— Partner—Not at principal place of business.]—Where a judgment has been recovered against a firm, & a bkpcy. notice following the judgment has been served on one member of the firm, but not at the principal place of business of the firm, & a petition presented against the firm, a receiving order cannot be made against the firm other than the partner who was not served.—*Re* DEBTORS (No. 807 OF 1922), *Ex p.* DEBTOR (1922), 92 L. J. Ch. 120; [1922] B. & C. R. 119, C. A.

887b. —— —— ——.]—Where judgment for a debt has been recovered against a firm & a bkpcy. notice in the usual form & following the judgment has been served on one of the partners only at a place other than the principal place of business of the firm & has not been complied with, a receiving order can properly be made against that partner on the judgment creditor's petition.—*Re* DEBTOR (No. 24 of 1935), [1936] Ch. 292; 105 L. J. Ch. 364; 154 L. T. 234; 80 Sol. Jo. 54; [1936-7] B. & C. R. 93, C. A.

889a. —— When justified.]—The debtor, an aviator, against whom the creditors had obtained judgment for a debt, three days later left England on a flight to Australia & back. The creditors thereupon obtained from a registrar in bkpcy. an order for substituted service of a bkpcy. notice on the debtor by registered letter addressed to him at his place of business in London & also to him care of his solrs. The bkpcy. notice required compliance with its provisions within seven days:—*Held*: (1) the case was not one in which an order for substituted service ought to have been made, as it was improbable in the circumstances that the service of the notice would come to the knowledge of the debtor within the time limited by the notice for compliance with its requirements; (2) the debtor's solrs. were not sufficient agents for receiving the notice, as it was for the debtor himself & not his solrs. to decide within the seven days whether he would pay the debt.—*Re* JUDGMENT DEBTOR (No. 1539 OF 1936), [1937] Ch. 137; 106 L. J. Ch. 183; [1936-7] B. & C. R. 135; *sub nom. Re* JUDGMENT DEBTOR (No. 1539 OF 1936), JUDGMENT DEBTOR *v.* JUDGMENT CREDITOR, [1936] 3 All E. R. 767; 156 L. T. 16; 53 T. L. R. 144; 80 Sol. Jo. 1035, C. A.

Annotation:—**Consd.** *Re* De Cespedes, Debtor *v.* Petitioning Creditor & Official Receiver, [1937] 2 All E. R. 572.

889b. ——.]—The debtor, an alien who had become domiciled in England, had purchased the lease of a house in London which he assigned to his mother in 1928. The debtor lived in the house & paid the rates. In Apr. 1936, the debtor took up a permanent residence in France, but visited England from time to time on business. A bkpcy. notice was issued against him on Aug. 24, 1936, & an order for substituted service of this notice was made on Aug. 27, 1936. The affidavit in support of the application for substituted service stated that on Aug. 24 a clerk to the solrs. for the petitioning creditor, having been informed that the debtor's solrs. could not facilitate service of the bkpcy. notice, had attended at the house above mentioned to serve the debtor, but had been unable to obtain a reply; that a registered letter addressed to the debtor at the same house had been sent on the same day; & that the clerk had attended at the house again on Aug. 27 & had been unable to obtain a reply. The affidavit did not state that the debtor was not within the jurisdiction, nor that service by post would not reach him, nor that there was any reason to think that the house mentioned was the place at which the debtor would be found:—*Held*: the affidavit was not one on which an order for substituted service ought properly to have been made.—*Re* DE CESPEDES, DEBTOR *v.* PETITIONING CREDITOR & OFFICIAL RECEIVER, [1937] 2 All E. R. 572; 156 L. T. 471, C. A.

---

included.]—*Re* EVA, [1927] N. Z. L. R. 652.—N.Z.

PART II. SECT. 2, SUB-SECT. 10.—C. sh. *Time of service—Service out of time.*]—A debtor summons was personally served on bkpt. two days too late:—*Held*: the condition of bkpcy. prior to the filing of a petition necessarily involved an act of bkpcy. which the ct. would assume was a proper ground for the adjudication.—*Re* GORHAM, [1924] 2 I. R. 46. —IR.

898. *Add. Annotations :*—**Consd.** *Re* Debtor, *Ex p.* Debtor, [1918–19] B. & C. R. 221. **Refd.** *Re* Debtor (No. 21 of 1937), Petitioning Creditor *v.* Debtor, [1938] 2 All E. R. 356.

919. *Add. Annotation :*—**Refd.** Farquharson *v.* Pearl Assurance Co., [1937] 3 All E. R. 124.

923a. —— **Issue of second notice by same creditor.**]—Creditors having obtained judgment issued a bkpcy. notice for £945 & served it on debtors. Debtors paid a sum of £100, including £5 for costs, nine days later, but in the belief that the notice would be disputed the creditors issued & served a fresh bkpcy. notice about two months later for £857, &, that notice not having been complied with within seven days, a petition based on the fresh bkpcy. notice was presented & served. Debtors gave notice of an application to set aside service of the petition, but the registrar refused to do so, & made a receiving order on the fresh bkpcy. notice :—*Held :* (1) debtors could not refuse to comply with the fresh bkpcy. notice on the ground that as the previous notice had resulted in an act of bkpcy. this had put it out of the power of debtors to make any payment in compliance with the fresh notice or otherwise deal with their property ; (2) if they did make a payment in compliance with the fresh notice it might be that if a trustee were appointed under the previous bkpcy. notice the payment might be set aside, & the money made available for the general body of creditors.—*Re* DEBTORS (No. 771 OF 1926) (1926), 43 T. L. R. 9 ; 70 Sol. Jo. 1089; *sub nom. Re* FREDERICKE & WHITWORTH, *Ex p.* HIBBARD, [1927] 1 Ch. 253; 96 L. J. Ch. 70; 136 L. T. 268; [1926] B. & C. R. 156, C. A.

929. *Add. Annotation :*— **Refd.** Bracia Czeczowiczka *v.* Markus, Bracia Czeczowiczka *v.* Loy, [1936] 1 All E. R. 944.

929a. —— —— **Onus of proof.**]—(1) Before the war, the creditors, a Polish firm, sold to the debtors, an Austrian firm, trading in East Africa, certain cotton goods. The period of credit had not expired on the outbreak of the war ; but the debtors being enemy nationals were interned & their African business & property was lost to them. After the war they had a claim against the German Govt., but had then become nationals of Czechoslovakia. In 1924 the debtors returned to East Africa, & in the same year the creditors sued them in Vienna & obtained judgment against them. In 1925 the debtors obtained an award from the Mixed German Czechoslovak Arbitral Tribunal against the German State for a large sum & in the same year the creditors obtained an attachment on the "alleged debtors' claim against the Reich Settling Office." In 1932 the creditors obtained judgment for their debt in Kenya & in 1933 they caused the debtors to be served with two bkpcy. notices. The bkpcy. law in Kenya on this point is the same as in England under 1914 Act. The debtors sought to have the orders set aside on the ground that by attaching the award in Germany the creditors had prevented them satisfying the judgment : —*Held :* the onus was on the debtors to prove affirmatively that the claim in respect of which the bkpcy. notice was issued could & would have been paid but for some act or omission of the creditor & they had entirely failed to prove any such case.

(2) It was contended that the attachment orders in Berlin were a form of execution & it was, therefore, improper to issue the bkpcy. notices :—*Held :* the attachment orders were not a form of execution & could not be an execution upon the Kenya decree obtained after the orders. The attachment orders having proved abortive, were not a bar to the issue of the notices.

(3) In Kenya the procedure in execution follows the Indian Code, & arrest & imprisonment is the normal form of execution. There being some evidence of means & that the debtors had refused to pay some part of the debt when they had the means to pay, a receiving order was made in lieu of committal :—*Held :* the order was rightly made as the English decisions under the Debtors Act, 1869, did not apply.—BRACIA CZECZOWICZKA *v.* MARKUS, BRACIA CZECZOWICZKA *v.* LOY, [1936] 1 All E. R. 944; 80 Sol. Jo. 508, P. C.

929b. —— —— **Foreign attachment order.**]—BRACIA CZECZOWICZKA *v.* MARCUS, BRACIA CZECZOWICZKA *v.* LOY, No. 929a, *ante*.

938. *Add. Annotations :*—**Refd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9; *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253 ; *Re* Bankruptcy Notice (No. 171 of 1934), [1934] Ch. 431.

940a. Claim in Chancery for declaration of charge.]—In a pending action in the Chancery Div. a debtor claimed a declaration that he was entitled to a charge on the proceeds of certain property in the hands of trustees in priority to the creditor. In a subsequent action in the K. B. D. brought by the creditor against the debtor in respect of a different transaction the creditor obtained judgment in respect of which he issued a bkpcy. notice. On an application by the debtor under sect. 1 (1) (*g*), of 1914 Act, to have the bkpcy. notice set aside :—*Held :* the claim in the Chancery action was not a "counterclaim, set-off or cross-demand" within the sub-sect., & was not therefore a ground for setting aside the bkpcy. notice.—*Re* BANKRUPTCY NOTICE (No. 171 OF 1934), [1934] Ch. 431 ; 103 L. J. Ch. 253 ; 78 Sol. Jo. 297 ; [1934] B. & C. R. 43 ; *sub nom. Re* JUDGMENT DEBTOR (No. 171 OF 1934), 151 L. T. 107 ; 50 T. L. R. 333, C. A.

940b. Affidavit filed by debtor—Day fixed for hearing—Form of order.]—Rule 140, sub-r. 2, provides that there shall be endorsed on every bkpcy. notice an intimation to the debtor that if he has a counterclaim, set-off, or cross demand which equals or exceeds the amount of the judgment debt, & which he could not have set up in the action in which the judgment or order was obtained, he must within the time specified in the notice file an affidavit to that effect with the Registrar. Rule 141 provides that the filing of "such affidavit" shall operate as an application to set aside the bkpcy. notice & then states the procedure to be followed.

On May 25, 1934, judgment creditors for

939 l. ***Must be mutual & in same right.***]—*Re* ANDERSON, *Ex p.* ALEXANDER (1927), 27 S. R. N. S. W. 296 ; 44 N. S. W. W. N. 69.—AUS.

£2,727 issued a bkpcy. notice against the judgment debtor. On May 31 the debtor filed an affidavit in which he alleged that he had a cross demand for two sums amounting together to £1,500. The Registrar marked the application "Fix a day—Motion—No Stay," & appointed June 28 for the hearing. A stay having been refused, the act of bkpcy. became complete on June 4, & on June 5 the judgment creditors presented a bkpcy. petition founded on that act of bkpcy. On June 21 the debtor's application was dismissed & on June 28 a receiving order was made. On appeal by the debtor:—*Held:* receiving order was properly made; there had been no compliance by the debtor with r. 140, as the affidavit on the face of it showed that the cross demand did not equal or exceed the amount of the judgment debt, & therefore the procedure provided by r. 141 for dealing with a bkpcy. notice did not come into operation, & the case must be treated as if no affidavit under r. 140 had in fact been filed. Also, the Registrar, if he thought, as he appeared to have done, that the affidavit did not satisfy r. 140, ought to have marked the application "Affidavit not sufficient—No case raised" & not to have taken seisin of the matter.—*Re* DEBTOR, *Ex p.* DEBTOR (No. 523 OF 1934), [1935] Ch. 347; 104 L. J. Ch. 217; 152 L. T. 297; [1934-5] B. & C. R. 189, C. A.

942. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1929] 1 Ch. 362.

953. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1929] 1 Ch. 362.

954. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1929] 1 Ch. 362.

957. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1929] 1 Ch. 362.

957a. Statement to agent of creditors of insolvency in foreign country.]—A debtor informed a person acting for some creditors in England (*a*) that he owed debts to a very much larger amount in Switzerland; (*b*) that bkpcy. proceedings had been initiated against him there; (*c*) that he intended to offer his Swiss creditors £1,000, which was all the money he had; (*d*) that if the Swiss creditors accepted that, he intended to offer his English creditors 5*s.* in the £1, payment to be spread over a number of years. The creditors proceeded against the debtor, alleging that he had committed an act of bkpcy. under 1914 Act, s. 1 (1) (*h*). A receiving order having been made, the debtor appealed:—*Held:* (1) the statements made by the debtor were not a mere discussion of his affairs, but a "notice" to his creditors that he had suspended or was about to suspend payment within the sect.; (2) the debtor being in England, there being creditors in England, & the jurisdiction here being undoubted, it was not necessary to suspend the making of a receiving order here. The Swiss proceedings could be considered from time to time, & a stay in the proceedings here ordered, if advisable.—*Re* A DEBTOR (No. 737 OF 1928), [1929] 1 Ch. 362; 98 L. J. Ch. 38; 140 L. T. 266; [1928] B. & C. R. 130, C. A.

959. *Add. Annotation:*—**Consd. & Apld.** *Re* A Debtor, [1929] 1 Ch. 362.

963. *Add. Annotations:*—**Refd.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689; *Re* A Debtor, [1927] 1 Ch. 97.

971. *Add. Annotation:*—**Expld.** *Re* A Debtor, [1929] 1 Ch. 362.

972. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1929] 1 Ch. 362.

PART II. SECT. 2, SUB-SECT. 11.—A.

sr. *Whether binding on partner.*]—A partner gave notice of suspension of payment to his firm's creditors:—*Held:* the notice did not affect another alleged partner who had neither expressly nor impliedly authorised this notice.—ABDUL SATTAR *v.* V. E. A. R. M. CHETTYAR FIRM (1932), I. L. R. 10 Ran. 215.—**IND.**

PART II. SECT. 2, SUB-SECT. 11.—B.

sw. *Statement of inability to pay debts.*]—Notice of suspension of payment of debts must be a specific & deliberate act on the part of the debtor, & the suspension, actual or intimated, must apply to all the creditors. It is something different from a notice of inability to pay his debts.—M. S. M. M. CHETTYAR FIRM *v.* P. MOODAHAR (1932), I. L. R. 11 Ran. 96.—**IND.**

PART II. SECT. 2, SUB-SECT. 12.

sj. *Defaults.*]—Defaults more than six months before presentation of a bkpcy. petition followed by demands for payment are not *per se* an act of bkpcy., but when further defaults take place within six months of the petition the whole form one continuing act of bkpcy.—*Re* RAITBLAT, [1925] 3 D. L. R. 446; 5 C. B. R. 765; *affd.*, [1925] 2 D. L. R. 1219; 5 C. B. R. 714.—**CAN.**

sk. *Failure to meet series of promissory notes.*]—*Held:* an act of bkpcy.—*Re* FOX, LESTER *v.* PORTER, [1925] 1 D. L. R. 198; 5 C. B. R. 328.—**CAN.**

sl. *Failure to meet liabilities as they become due.*]—The words "ceases to meet his liabilities as they become due" do not mean that when in any single case debtor makes default in payment of a debt as & when due he commits an act of bkpcy., but a failure "to meet his liabilities as they become due" in some wider sense.—*Re* CANADIAN CAP CO., *Ex p.* TRUSTEE, [1924] 1 D. L. R. 617; 53 O. L. R. 506; 4 C. B. R. 185.—**CAN.**

sm. ——.]—Where there were repeated defaults by a debtor in fulfilling promises to pay made within three months preceding a petition in bankruptcy: *Held:* an order adjudging the debtor a bkpt., on the ground that it had ceased to meet its liabilities generally as they became due, should be affirmed.—*Re* SHELLBROOK STORE, LTD., [1931] 2 W. W. R. 646.—**CAN.**

sn. ——.]—The words "ceases to meet his liabilities as they become due" do not include a continuing default.—BROWN *v.* KELLY-DOUGLAS & CO., [1923] 1 W. W. R. 1340; [1923] 2 D. L. R. 738; 32 B. C. R. 143.—**CAN.**

so. *Mere insolvency.*]—Insolvency in itself, without an admission of insolvency, is not a ground for the filing of a petition to adjudge a debtor a bkpt.; it must appear that he has committed an act of bkpcy.—*Re* KRONSON, [1931] 3 W. W. R. 22.—**CAN.**

sf. *Failure to meet debts.*]—A debtor's failure to meet his liabilities as they become due is an act of bkpcy.—*Re* MARCUS, [1936] 3 D. L. R. 42; 10 M. P. R. 357; 6 F. L. J. (Can.) 53.—**CAN.**

sh. *Receiving order in lieu of committal—Kenya.*]—In Kenya the procedure in execution follows the Indian Code, & arrest & imprisonment is the normal form of execution. There being some evidence of means & that the debtors had refused to pay some part of the debt when they had the means to pay, a receiving order was made in lieu of committal:—*Held:* the order was rightly made as the English decisions under Debtors Act, 1869 (c. 62), did not apply.—BRACIA CZECZOWICZKA *v.* MARKUS, BRACIA CZECZOWICZKA *v.* LOY, [1936] 1 All E. R. 944; 80 Sol. Jo. 508, P. C.—**KENYA.**

PART II. SECT. 4.

m i. —— *Not statement showing insolvency prepared by creditors' agent.*]—*Re* TENENBEIN, *Re* BANKRUPTCY ACT (Man.), [1927] 4 D. L. R. 270; [1927] 2 W. W. R. 374—**CAN.**

m ii. ——.]—*Re* SHIRLEY (N. B.), [1927] 2 D. L. R. 969; 8 C. B. R. 235; *affd.*, [1928] 1 D. L. R. 350; 8 C. B. R. 612.—**CAN.**

Part III.—Petition.

997a. —— **Proceedings by public officer or agent—Necessity for affidavit of authority.**]—Where a bkpcy. petition presented by a co. under Bkpcy. Act, 1883 (c. 52), s. 148, was not accompanied by the affidavit required by r. 258 of the Bkpcy. Rules, 1886, stating that the person presenting the petition was the authorised public officer or agent of such co. :—*Held :* the petition was rightly refused. —*Re* CRIPPS, ROSS & Co., *Ex p.* ROSS (1888), *as reported in* 5 Morr. 226.

1007a. —— ——.]—*Re* AYRE, *Ex p.* POTTS (1840), 10 L. J. Bcy. 26.

1016a. —— **Exercising powers under Law of Distress Amendment Act, 1908 (c. 53).**]—A landlord obtained judgment against his tenant for £204 in respect of rent & fire insurance, & served on him a bkpcy. notice. The notice was not complied with, & a petition for a receiving order was presented. While the petition was pending, the landlord, as the premises were sublet, served on the subtenants a notice, under sect. 6 of the above Act, to pay their rents directly to him, & from one subtenant he received £62, the debt being thus reduced by that amount. A receiving order was afterwards made :—*Held :* as the claim still amounted to more than £50 the landlord had not, by exercising his powers under the above Act, precluded himself from proceeding under the bkpcy. notice in the normal way.—*Re* A DEBTOR (No. 549 of 1928), [1929] 1 Ch. 170 ; 98 L. J. Ch. 35 ; 140 L. T. 165 , 45 T. L. R. 30 ; 72 Sol. Jo. 727 ; [1928] B. & C. R. 125, C. A.

1019a. Solicitor—Petition based on order for payment of costs to client.]—*Re* A DEBTOR (No. 76 of 1929), No. 830a, *ante.*

1025. After this case add, " *See* S. C. J. (Consolidation) Act, 1925 (c. 49), ss. 36-43."

1043. *Add. Annotation :*—**Refd.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

1045. *Add. Annotation :*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

1047a. —— —— **Under voidable contract.**]—A. employed L. as his agent to negotiate a loan for him with a money-lender. B., a money-lender, lent A. £60 on his promissory note for £100, & without the knowledge or consent of A. paid L. a commission. B. recovered judgment against A. for the amount of the promissory note in default of appearance, & issued a bkpcy. notice based on the judgment, & A. having failed to comply with the bkpcy. notice, B. presented a bkpcy. petition against him. On the hearing of the petition before the registrar it appeared for the first time that a commission had been paid by B. to L. :—*Held :* the act of bkpcy. was founded on a contract which was voidable by A., & the ct. ought not, within 1914 Act, s. 5 (3), to be satisfied with the proof of B.'s debt, & the receiving order must be rescinded.—*Re* A DEBTOR (No. 229 of 1927), [1927] 2 Ch. 367 ; 96 L. J. Ch. 381 ; 137 L. T. 507 ; [1927] B. & C. R. 127, C. A.

1048. *Add. Annotation :*—*As to* (1) **Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

1049a. Part of debt unenforceable in bankruptcy.]—Where judgment has been obtained against a married woman for a debt, part of which was incurred before the passing of Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), a bkpcy. notice issued in respect of the judgment is invalid ; since the judgment is not divisible, &, since the bkpcy. notice is a step in the enforcement in bkpcy. of a judgment in respect of a debt incurred before the passing of the Act contrary to sect. 4 (1) (*c*) of the Act, it follows that failure to comply with the notice is not an act of bkpcy., & a bkpcy. petition founded on it necessarily fails.—*Re* DEBTOR (NO. 21 OF 1937), [1938] Ch. 694 ; *sub nom. Re* DEBTOR (NO. 21 OF 1937), DEBTOR *v.* PETITIONING CREDITOR & OFFICIAL RECEIVER, [1938] 2 All E. R. 824 ; 107 L. J. Ch. 321 ; 159 L. T. 115 ; 54 T. L. R. 897 ; 82 Sol. Jo. 434, C. A.

1050. *Add. Annotation :*—**Folld.** *Re* Debtors, [1927] 1 Ch. 19.

1051a. ——.]—A debt to be a good petitioning creditor's debt must be a liquidated sum, payable either immediately or at some certain future time at the date of the act of bkpcy. It is not sufficient that the debt should have

---

PART III. SECT. 1, SUB-SECT. 1.—A.

b i. —— ——.]—There is no power in an agent, acting under general power of attorney, to present an insolvency petition on behalf of his principal, unless the power expressly authorises such act.—*Re* OSMAN (1919), 40 N. L. R. 17.—**S. AF.**

b ii. *S.P. Ex p.* GARBUTT (1925), 46 N. L. R. 57.—**S. AF.**

991 ii. —— *Unlicensed company.*]—Extra Provincial Corpns. Act cannot & is not intended to affect the right of an unlicensed foreign corpn. to institute proceedings under Bkpcy. Act.—*Re* SOCIETY SHIRT CO., [1932] 1 D. L. R. 561 ; O. R. 104.—**CAN.**

998 ii. —— *No evidence when debt accrued—Motion unopposed.*]—*Held :* petitioners were entitled to the relief which they claimed.—FISHER *v.* WILKIE, LTD., [1920] 19 O. W. N. 251 ; 59 D. L. R. 502 ; 1 C. B. R. 376.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A.

1026 ii. ——.]—Where there is no privity of contract between the insolvent & the alleged creditor, no debt can exist which may be made the ground for a bkpcy. petition.—*Re* CANADIAN CHOCOLATE CO., [1924] 2 D. L. R. 508.—**CAN.**

1026 iii. ——.]—A bkpcy. ct. should not proceed with a petition on a disputed debt until the ordinary cts. have settled the disputed question.—*Re* WHISTLE CO., [1925] 1 D. L. R. 1110 ; 5 C. B. R. 495.—**CAN.**

s i. *Debt contracted before Bankruptcy Act, 1919, in operation.*]—A receiving order against a co. under the above Act may be based upon a debt owing to the co. by reason of its having undertaken, after the Act came into operation, the liabilities incurred by a firm before the Act came into operation. —*Re* STEWART MERCANTILE CO., LTD. [1921] 1 W. W. R. 740 ; 59 D. L. R. 412 ; 1 C. B. R 367.—**CAN.**

s ii. —— *Judgment founded on cause of action partly arising before Act in operation.*]—*Held :* such judgment was sufficient either as an available act of bkpcy., or as constituting a debt upon which to found a bkpcy. petition.—*Re* MAGUIRE, [1923] 1 D. L. R. 1186 ; 51 O. L. R. 63 ; 3 C. B. R. 880.—**CAN.**

s iii. ——.]—Such a debt cannot be used as a ground for a bkpcy. petition.—*Re* SUTTON, [1924] 4 D. L. R. 315 ; 5 C. B. R. 75.—**CAN.**

sn. *Debt contracted in province in which company not licensed to trade—No residential qualification.*]—When a co. is not licensed to trade in a province & has no assets in that province, the mere fact that members of the co. have purchased raw furs when in that province does not confer on it a sufficient residential qualification to enable a bkpcy. petition to be presented against it in that province.—*Re* ROBINSON (R. S.) & SON, LTD., [1923] 1 D. L. R. 691 ; 3 C. B. R. 537.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—C. (a).

1050 iv. ——]—It is sufficient if the debt is actually owing, though not actually due or payable —*Re* TUNNELL, LTD., *Ex p.* WILLS & ANDERSON, [1923] 4 D. L. R. 1018.—**CAN.**

become a liquidated sum in the interval between the act of bkpcy. & the presentation of the petition.—*Re* DEBTORS (No. 669 of 1926), [1927] 1 Ch. 19; 96 L. J. Ch. 33; 136 L. T. 182, C. A.

1065. *Add. Annotation :*—**Consd.** *Re* Debtors, [1927] 1 Ch. 19.

1066. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1067. *Add. Annotation :*—**Apld.** *Re* Debtor, *Ex p.* Lawrence, [1928] Ch. 665.

1077a. **Tender before bankrupty notice—Whether creditor bound to accept.**]—On Jan. 3, 1928, a creditor obtained judgment for £47, in respect of two overdue instalments of a debt, leaving the remaining £23 instalment, which only became due between the date of the writ & the judgment, untouched by the judgment. On Jan. 9, in response to the creditor's invitation, debtor tendered the £23 in cash, but the tender was refused. On Jan. 27 the creditor filed a bkpcy. notice in respect of the £47 judgment debt, & on Feb. 16 he filed a petition based on the two debts, & on non-compliance with the bkpcy. notice :—*Held :* though the two debts were still owing & amounted to over £50, so that the creditor was formally entitled to present a petition under 1914 Act, s. 4 (1), nevertheless the refusal before the bkpcy. notice of the £23 offered at his invitation, & refused only in order to keep the total debt over £50, was "sufficient cause" within sect. 5 (3) for making no order on the petition.—*Re* DEBTOR, *Ex p.* LAWRENCE (No. 21 OF 1928), [1928] Ch. 665; *sub nom. Re* DEBTOR (No. 21 OF 1928), *Ex p.* PETITIONING CREDITOR *v.* DEBTOR, 97 L. J. Ch. 255; *sub nom. Re* DEBTOR, *Ex p.* LAWRENCE, 139 L. T. 519, D. C.

1078. *Add. Annotation :*—**Consd.** Giles *v.* Kruyer, [1921] 3 K. B. 23.

1110a. —— —— **Note given for illegal consideration—Bonâ fide holder without notice.**]—Where evidence has been given by a petitioner in support of his claim on a promissory note given for illegal consideration, showing his *bona fides* & want of notice of the illegality of the consideration, & there is no ground for disbelieving him, the ct. will not hold that he has not discharged the *onus* of proof which falls on him to prove the claim, & a receiving order should be made.—*Re* A DEBTOR (No. 4 OF 1922), *Ex p.* PETITIONING CREDITOR, [1922] B. & C. R. 116, C. A.

1127. *Add. Annotations :*—**Consd.** *Re* A Debtor, [1929] 2 Ch. 146. **Distd.** *Re* Debtor (No. 975 of 1937), Debtor *v.* Petitioning Creditor & Official Receiver, [1938] 2 All E. R. 530. **Refd.** *Re* A Debtor, [1927] 1 Ch. 19; Mason *v.* Mason & Cottrell, [1933] P. 199.

1128a. ——.]—In divorce proceedings the jury awarded in Feb. 1937, against the debtor, the co-resps., £2,000 damages. An order was made on Feb. 15, 1937, directing £1,000 to be lodged in ct. within fourteen days, & the other £1,000 within twenty-eight days. This order not being complied with, on Mar. 8, 1937, the ct. ordered the debtor to pay the £2,000 to petitioner in the divorce proceedings (who was the petitioning creditor in these proceedings), upon the joint undertaking of petitioner & his solr. to abide the decision of the ct. as to its ultimate application. The debtor failed to comply with this order, & a further order was made on Nov. 1, 1937, in the following terms: "That the co-resp. do within seven days after the service of this order pay to petitioner the sum of £1,000, part of the sum of £2,000 the amount of damages assessed herein." This further order also was not complied with, & a bkpcy. notice, founded upon the order of Nov. 1, 1937, was then served upon the co-resp. :—*Held :* (1) the order of Nov. 1, 1937, was one in which the destination of the £1,000 in respect of which it was made was finally determined, & the creditor was entitled to serve a bkpcy. notice in respect of the amount specified therein; (2) there was jurisdiction in the Divorce Ct., under the Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 189 (3), to make the order of Nov. 1, 1937, that £1,000, part of the £2,000 damages, should be paid to petitioner direct.—*Re* DEBTOR (NO. 975 OF 1937), DEBTOR *v.* PETITIONING CREDITOR & OFFICIAL RECEIVER [1938] 2 All E. R. 530; 54 T. L. R. 814; 82 Sol. Jo. 393, C. A.

1135. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1156a. **Failure to comply with bankruptcy notice—Right to petition not confined to creditor serving notice.**]—When an act of bkpcy. has been committed by the failure of a debtor to comply with a bkpcy. summons, any creditor may avail himself of it for the purpose of presenting a bkpcy. petition against the debtor; the right to petition is not limited to the creditor who has served the bkpcy. notice.—*Re* HASTINGS, *Ex p.* DEARLE (1884), 14 Q. B. D. 184; 54 L. J. Q. B. 74; 33 W. R. 440; 1 Morr. 281, C. A.

1167. *Add. Annotation :*—**Refd.** Weston (Victor) (Fabrics), Ltd. *v.* Morgensterns, [1937] 3 All E. R. 769.

1175. *Add. Annotation :*—**Dbtd.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199.

1177a. —— —— —— **Delay in presenting petition.**]—*Re* CARR, *Ex p.* JACOBS, No. 1178a, *post.*

1177b. —— —— —— ——.]—A creditor, by his agent, attended a meeting of creditors held on Nov. 4, 1901, at which a resolution was carried approving a deed of assignment for the benefit of creditors. The agent neither assented nor dissented, but stated that he must consult his principal, & expressly reserved his right to take bkpcy. proceedings. On Nov. 30, he wrote to the trustee under the deed saying he was not satisfied with the debtor's affairs, & that he still reserved his right to take steps in bkpcy. The trustee in reply asked him if he intended to proceed in bkpcy. to do so at once in order to save trouble & expense. No further communication was made to the trustee till after the filing of the petition on Jan. 27, 1902. The petition was dismissed on the authority of *Re Carr; Ex p. Jacobs*, No. 1178a :—*Held :* there had been no acquiescence or unexplained delay. The case of

PART III. SECT. 1, SUB-SECT. 2.—G. so. *Order for alimony.*]—Upon a petition by a woman for a receiving order against her husband, based upon a failure to pay alimony :—*Held :* the order did not create a debt within Bkpcy. Act, s. 44.—*Re* FREEDMAN, [1924] 3 D. L. R. 517; 55 O. L. R. 206; 5 C. B. R. 47.—CAN.

Re Carr; Ex p. Jacobs, No. 1178a, only applies to the case of a petitioning creditor who has been "sitting on the rail."—*Re* DAY, *Ex p.* HAMMOND (1902), 86 L. T. 238; 50 W. R. 448; 18 T. L. R. 442; 46 Sol. Jo. 361, D. C.

Annotation:—**Consd.** *Re* Beesley (1913), 109 L. T. 910.

1177c. —— —— —— ——.]—On July 22, 1913, B. executed a deed of assignment for the benefit of his creditors, & on Aug. 12 called a meeting of his creditors to approve the deed. At this meeting J., the secretary of S., Ltd., one of the creditors, & N., solr. for S., Ltd., were present, but they did not vote upon the resolutions, & expressed themselves dissatisfied with the deed. Subsequently S., Ltd., on being requested to assent to the deed, notified the trustee on Sept. 2 that they declined to assent; & on Oct. 18 they presented a petition against B., alleging as the act of bkpcy. the deed of July 22:—*Held:* (1) there had been no assent, express or implied, on the part of the petitioning creditors, such as to disentitle them to set up the deed as an available act of bkpcy., upon which a petition could be founded; (2) in view of the decision in *Re Day, Ex p. Hammond*, No. 1177b, the case of *Re Carr; Ex p. Jacobs*, No. 1178a, could no longer be relied upon as an authority for the proposition that an unexplained delay in presenting a petition might amount to acquiescence in a deed.—*Re* BEESLEY (1913), 109 L. T. 910, D. C.

1177d. —— —— ——.]—Where the agent of certain creditors asked the trustee of a deed of assignment by debtor to furnish particulars of the deed, &, later on, wrote to the trustee enclosing the creditors' account, & asking for an acknowledgment of the claim, & after receipt of particulars of the deed, including information that certain of debtor's property was to be sold, stood by for fourteen days, but subsequently presented a petition founded on the deed of assignment:—*Held:* there was sufficient acquiescence by the creditors to preclude them from relying on the deed as an act of bkpcy.—*Re* A DEBTOR, *Ex p.* NEWBURYS, LTD. (1926), 95 L. J. Ch. 199; [1926] B. & C. R. 23.

1177e. —— —— ——.]—If in bkpcy. proceedings the execution of a deed of assignment is relied on by a creditor as an act of bkpcy. by a debtor & as a ground for the making of a receiving order, the ct. may dismiss the petition & refuse to grant the petitioning creditor relief if it appears that he was himself a participator or sharer in bringing the deed into existence.

At a meeting of the creditors of a debtor, it was suggested that a deed of arrangement should be entered into by the debtor. One of the creditors, who was present throughout the proceedings, acquiesced in the proposal that his own name should be added to those to serve on the proposed committee of inspection, & in this sense he took part in the procedure which led up to the execution of the deed:—*Held:* the fact that the petitioning creditor himself took part in the proceedings which led up to the execution of the deed, constituted a sufficient cause within sect. 5 (3) of 1914 Act, for dismissing the petition for a receiving order & that a receiving order made by the registrar of the county ct. must be discharged.—*Re* DEBTOR (No. 11 OF 1935), [1936] Ch. 165; 105 L. J. Ch. 146; 154 L. T. 397; *sub nom. Re* DEBTOR, *Ex p.* DEBTOR *v.* PETITIONING CREDITOR & OFFICIAL RECEIVER (No. 11 OF 1935), [1934-5] B. & C. R. 322, D. C.

Annotation:—**Apprvd. & Apld.** *Re* Debtor (No. 382 of 1938), Debtor *v.* Petitioning Creditors & Official Receiver, [1938] 3 All E. R. 744.

1177f. —— —— ——.]—A petitioning creditor, who has in any way assented to, recognised or approved of a deed of assignment by a debtor, cannot afterwards allege that the execution of the deed constitutes an act of bkpcy. When therefore a petitioning creditor has—while not directly assenting to the execution by a debtor of a deed of assignment in favour of creditors—at a meeting of creditors & subsequently, in reply to a letter in which he was asked to confirm what had been said at the meeting, intimated that he would not do anything to upset the deed, but would wait & see what happened, he must be taken to have expressed his approval & recognition of the deed, & the ct. therefore will refuse to allow him to take advantage of the execution of the deed as an act of bkpcy. on which a petition can be founded. In such a case there is "sufficient cause" within the meaning of sect. 5 (3) of 1914 Act for not making an order.—*Re* DEBTOR (No. 5 OF 1936), [1936] Ch. 728; 105 L. J. Ch. 375; *sub nom. Re* DEBTOR (No. 5 OF 1936), DEBTOR *v.* PETITIONING CREDITOR & OFFICIAL RECEIVER, [1936-7] B. & C. R. 16.

1177g. —— —— ——.]—At a meeting of creditors, a resolution was passed that the debtor be asked to execute a deed of assignment in favour of trustees appointed on behalf of the creditors. No one present voted against the resolution, but after the meeting resps.' representative said to the chairman: "Of course you will register my objection, as I reserve all my clients' rights":—*Held:* as resps. had not made any objection to the passing of the resolution at the time when it was passed, they were privy to it, & must be regarded as being bound by it.—*Re* DEBTOR (No. 382 of 1938), DEBTOR *v.* PETITIONING CREDITORS & OFFICIAL RECEIVER, [1938] 3 All E. R. 744; 159 L. T. 377; 54 T. L. R. 1098; 82 Sol. Jo. 663, C. A.

1178. *Add. Annotations*:—**Apld.** *Re* Debtor, [1936] Ch. 165; *Re* Debtor (No. 382 of 1938), Debtor *v.* Petitioning Creditors & Official Receiver, [1938] 3 All E. R. 744. **Refd.** *Re* A Debtor, *Ex p.* Petitioning Creditors, [1924] B. & C. R. 105; *Re* Debtor (No. 5 of 1936), [1936] Ch. 728; Weston (Victor) (Fabrics), Ltd. *v.* Morgensterns, [1937] 3 All E. R. 769.

1178a. —— —— ——.]—There is no duty cast on a creditor who receives notice of a deed of assignment for the benefit of creditors to express his dissent; nor does mere attendance at a meeting of creditors where such a deed is agreed to amount to approval. An unexplained delay of two months in presenting a petition or expressing dissent from the deed amounts to acquiescence.—*Re* CARR, *Ex p.* JACOBS (1901), 85 L. T. 552; 50 W. R. 336, D. C.

Annotations:—**Distd.** *Re* Day, *Ex p.* Hammond (1902), 86 L. T. 238. **M.F.** *Re* Beesley (1913), 109 L. T. 910.

1178b. —— —— ——.]—*Re* BEESLEY, No. 1177c, *ante*.

1178c. —— —— **Failure to dissent from deed of**

assignment.]—*Re* CARR, *Ex p.* JACOBS, No. 1178a, *ante.*

1179. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

1179a. —— —— Attendance at meeting of committee of inspection.]—About the end of 1922 debtor made an arrangement to pay his creditors in full by instalments, a committee being appointed to watch over his affairs. His trading was not prosperous & new debts were incurred. On Feb. 21, 1924, he executed a deed of assignment for the benefit of his creditors generally & a circular letter with a form of assent was sent to & received by petitioning creditors, who were new creditors. On Feb. 25, 1924, their director with their accountant attended the office of one of the trustees under the deed & suggested that they or some other new creditor should be represented on the committee of inspection. Petitioning creditors were then invited to attend the meeting of the committee on Mar. 26, 1924, & their director & their solr. attended accordingly, discussing & advising on certain matters. Petitioning creditors, however, refused to assent to the deed & presented a petition in bkpcy. grounded upon the execution of the deed as an act of bkpcy.: —*Held:* on the facts, petitioning creditors had so far recognised the deed as to preclude them from availing themselves of its execution as an act of bkpcy.—*Re* A DEBTOR, *Ex p.* PETITIONING CREDITORS (No. 24 OF 1924) (1924), 94 L. J. Ch. 42; [1924] B. & C. R. 105, D. C.

1180. *Add. Annotations:*—**Refd.** *Re* Debtor, [1936] Ch. 165; *Re* Debtor (No. 5 of 1936), [1936] Ch. 728.

1182. *Add. Annotations:*—**Apld.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199. **Refd.** Weston (Victor) (Fabrics), Ltd. *v.* Morgensterns, [1937] 3 All E. R. 769.

1210. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

1211. *Add. Citation:*—39 L. J. Bcy. 46.

1217. *Add. Citation:*—29 W. R. 268.

1218. *Add. Annotation:*—**Refd.** *Re* Debtor (No. 21 of 1937), Petitioning Creditor *v.* Debtor, [1938] 2 All E. R. 356.

1234. *Add. Annotation:*—**Apprvd.** *Re* Debtor (No. 24 of 1935), [1936] Ch. 292.

1253a. —— Secretary duly authorised to present petition.]—The secretary of a limited co. was authorised under seal of the co. to present a bkpcy. petition, & at the commencement of the petition had so described himself, but had signed the petition in his own name without any description either before or after his name. Objection being taken on behalf of debtor that the petition was wrongly signed & attested & the consideration for the debt not truly stated, the county ct. registrar dismissed the petition:—*Held:* the petition amply informed debtor who petitioners were, & what the debt was in respect of which they were petitioning; there was no defect or irregularity &, even if there were, it would come within 1914 Act, s. 147 (1), & the appeal must be allowed & a receiving order made & dated as of the date on which it should have been made in the county ct.—*Re* MARSDEN, *Ex p.* SELLERS (E. H.) & SONS, LTD. (1921), 91 L. J. Ch. 318; 126 L. T. 408; [1921] B. & C. R. 188, D. C.

1274a. —— True copy of bankruptcy notice not made exhibit to affidavit.]—An original bkpcy. notice on the file of the county ct. was in Form No. 6 in the Appendix of Forms to the Bkpcy. Rules, 1915, intituled "In the High Court of Justice, In Bankruptcy," & was sealed with the county ct. seal, the Form not being adapted in any way to the form of bkpcy. notice to be issued by a county ct. On an appeal from a receiving order, the Div. Ct. discovered that the original bkpcy. notice was in Form No. 6, & the affidavit of service exhibited a copy of the bkpcy. notice sealed with the seal of the county ct. which was not a true copy of the original bkpcy. notice. The ct. held that the bkpcy. notice was bad, allowed the appeal, rescinded the receiving order, dismissed the petition & set aside the bkpcy. notice.—*Re* EVANS, DAVIES *v.* EVANS, [1931] B. & C. R. 48, D. C.

1275a. Nature of document must be brought to notice of debtor.]—*Re* DEBTOR (No. 441 OF 1938), *Ex p.* PETITIONING CREDITOR *v.* DEBTOR, [1938] 4 All E. R. 92, C. A.

1286a. —— —— Details of debt—Petition by money-lender.]—Money-lenders' Act. 1927 (c. 21), s. 9 (2), applies to loans made before, as well as to those made after, the Act.—*Re* DEBTOR (No. 99 OF 1928) (1928), 97 L. J. Ch. 250; 139 L. T. 234; 72 Sol. Jo. 335; [1928] B. & C. R. 40, C. A.

1286b. Affidavit sworn before act of bankruptcy committed—Petition sealed & filed after act of bankruptcy.]—Where an affidavit verifying the statements contained in a petition was sworn & the petition was signed a day before the act of bkpcy. alleged in the petition was committed, & all the facts alleged were duly proved on the hearing of the petition:—*Held:* no "substantial injustice" had been caused to the debtor by the defect or irregularity, so as to vitiate the subsequent proceedings.—*Re* DEBTOR (NO. 49 OF 1932), *Ex p.* DEBTOR *v.* PETITIONING CREDITOR & OFFICIAL RECEIVER (1933), 102 L. J. Ch. 143; [1933] B. & C. R. 53.

PART III. SECT. 1, SUB-SECT. 4.

1202 i. *Within six months—When time begins to run—Ceasing to meet liabilities.*]—Where A. had failed to pay liabilities on their due dates eighteen months prior to the presentation of the bkpcy. petition against him:—*Held:* the mere continuance of the failure to pay the same liabilities could not be said to be an act of bkpcy. occurring within six months before the presentation of the petition.—BROWN *v.* KELLY-DOUGLAS & CO., [1923] 2 D. L. R. 738; 32 B. C. R. 143; [1923] 1 W. W. R. 1340.—**CAN.**

1202 ii. —— *Continuing state of bankruptcy.*]—The limitation period for presenting a petition does not apply where a permanent state of bkpcy. exists for a period more than six months before & down to the time of presenting a petition.—*Re* RAYNER, [1935] 2 D. L. R. 542; 8 M. P. R. 369.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—B.

u i. —— —— ——.]—All members of the firm must be named in a petition for a receiving order against a partnership.—*Re* CLUFF BROTHERS, [1925] 4 D. L. R. 721.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.

1261 i. —— *On partners.*]—All members of the firm must be served with a petition for a receiving order against a partnership.—*Re* CLUFF BROTHERS, [1925] 4 D. L. R. 721.—**CAN.**

1275 ii. —— *By whom—Solicitor.*]—*Re* X. (1920), 59 D. L. R. 617; 1 C. B. R. 459.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.

1277 va. —— ——.]—*Semble:* the affidavit required by sect. 4 (2) of Bankruptcy Act, R. S. C., 1927, c. 11, in verification of a creditor's petition must be made by petitioner, except in cases under rule 32, *viz.* those where petitioner is a corpn.—*Re* MCKAY OIL CO., [1930] 1 W. W. R. 56; 2 D. L. R. 643; 11 C. B. R. 248.—**CAN.**

1287a. —— **To require proof—Although debt & act of bankruptcy admitted.**]—Bkpcy. being a matter which affects not only the debtor & his creditors but also the general public, a duty is imposed upon the ct. to see that all the requirements of the 1914 Act & rules have been observed. Where therefore a petition in bkpcy. is presented by moneylenders it is the duty of the Registrar before making a receiving order to satisfy himself that all the requirements of sect. 5 (2) of 1914 Act, r. 171 of Bkpcy. Rules, 1915, & Moneylenders Act, 1927 (c. 21), s. 10, have been complied with. Admission or consent by any one of the parties that this has been done is not sufficient. On an appeal the Registrar should furnish the Ct. of Appeal with a full note of the proceedings before him showing that these requirements have not been overlooked.—*Re* DEBTOR, *Ex p.* DEBTOR (No. 591 OF 1934), [1935] Ch. 353; 104 L. J. Ch. 228; [1934-5] B. & C. R. 234; *sub nom. Re* DEBTOR (No. 591 OF 1934), *Ex p.* DEBTOR *v.* PETITIONING CREDITORS & OFFICIAL RECEIVER, 152 L. T. 368; *sub nom. Re* DEBTOR, 51 T. L. R. 277, C. A.

1313. *Add. Citation :*—68 L. T. 589.

1326. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1332. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263.

1345. *Add. Annotations :*—**Consd.** *Re* A Debtor, [1929] 1 Ch. 170. **Apld.** *Re* Debtor (No. 21 of 1937), Petitioning Creditor *v.* Debtor, [1938] 2 All E. R. 356.

1347. *Add. Annotation :*—**Consd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1347a. —— ——.]—The registrar in bkpcy. possesses the widest discretion in respect of granting adjournments of the hearing of petitions, the only limit that the law imposes upon him being that he should exercise a judicial discretion.—*Re* A DEBTOR, *Ex p.* PETITIONING CREDITOR (1920), 89 L. J. K. B. 432; [1920] B. & C. R. 1, D. C.

1357. *Add. Annotation :*—**Refd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1357a. —— —— **Reasonable prospect of satisfaction of debts.**]—Where a debtor applies for the adjournment of a petition, the ct. should be satisfied that there is a reasonable prospect of the debts being satisfied, & the ct. should be put in possession of every possible information as to the position of debtor, & as to the position of the negotiations which, it is said, will result in obtaining funds for the payment of his debts.—*Re* BOWEN, *Ex p.* THE DEBTOR, [1924] B. & C. R. 32, C. A.

1366. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1366a. Agreement to withdraw—Bill of exchange given in consideration of—Void.] — DAVIS *v.* HOLDING (1836), 1 M. & W. 159; 1 Gale, 380; Tyr. & Gr. 371; 5 L. J. Ex. 102; 150 E. R. 388.

Annotations :—**Refd.** Belcher *v.* Sambourne (1844), 6 Q. B. 414; Smith *v.* Salzmann (1854), 9 Exch. 535; Whitmore *v.* Farley (1881), 14 Cox, C. C. 617.

1367a. —— **After receiving order made.**] — A creditor who presented a petition in bkpcy. against debtor failed to disclose a charge which had been given him by debtor some years previously. The registrar allowed the creditor to amend his petition after a receiving order had been made :—*Held :* apart from amending the petition, it was doubtful whether the receiving order could be set aside on the ground of the omission to state the security; but there was power to amend the petition even after the making of the receiving order.—*Re* A DEBTOR (No. 1507 OF 1921), [1922] 2 K. B. 109; 91 L. J. Ch. 471; 127 L. T. 344; 38 T. L. R. 574; 66 Sol. Jo. 472; [1922] B. & C. R. 9, C. A.

Annotation :—**Consd.** *Re* Small, Westminster Bank, Ltd. *v.* Trustee, [1934] Ch. 541.

1378a. —— **To remove name of debtor—Proceedings against partnership—One partner a company—Winding up.**]—*Re* DOBREE & Co., No. 3793a, *post.*

Part IV.—Receiving Order.

1451a. —— **To make order against partners—Act of bankruptcy by other partners.**] — *Re* GOWLAND BROTHERS, *Ex p.* PROCTER SHOTTON (1928), 65 L. Jo. 378, D. C.

1453. *Add. Annotations :*—**Refd.** *Re* A Debtor, [1927] 2 Ch. 367; *Re* Debtor (No. 21 of 1937), Petitioning Creditor *v.* Debtor, [1938] 2 All E. R. 356.

PART III. SECT. 3, SUB-SECT. 7.—B.

1334 iii. —— *Position of sisted creditor.*]—A creditor who had petitioned for sequestration of the estates of his debtor proposed to abandon his petition before sequestration had been awarded. Another creditor thereupon lodged a minute craving to be sisted as a party to the petition. The Lord Ordinary sisted him, & six weeks later, on his petition, granted sequestration. Vouchers, admittedly sufficient to substantiate the creditor's debt, were exhibited to the Lord Ordinary before he granted sequestration, & were subsequently lodged in process, but these particular vouchers had not been produced when the creditor was sisted. Thereafter the debtor presented a petition for recall of the sequestration on the ground that the proceedings were *ab initio* void, in respect that the sisted creditor had not fulfilled the statutory procedure for obtaining sequestration laid down in Bkpcy. (Scotland) Act, 1913, s. 20, in that he had failed timeously to lodge in process the necessary evidence of his debt :—*Held :* a creditor craving to be sisted in terms of Bkpcy. (Scotland) Act, 1913, s. 33, as petitioner to a petition for sequestration did not need to to follow out the statutory procedure prescribed by sect. 20 as essential in the case of an original petitioner, it being sufficient if such sisted creditor, before the award of sequestration was made, satisfied the Lord Ordinary as to the existence of his debt.—STEWART *v.* WETHERDAIR, LTD., [1928] S. C. 577.—**SCOT.**

PART III. SECT. 3, SUB-SECT. 10.

c i. ——.]—The creditor, who, under sect. 35 of Bkpcy. Act, 1924-30, is substituted for a petitioning creditor who has failed to "proceed with due diligence on his petition" must be a person whose debt was in existence at the time of the act of bkpcy. alleged in the petition.—MCNAMARA *v.* LANGFORD (1932), 45 C. L. R. 267; 5 A. B. C. 8.—**AUS.**

PART III. SECT. 3, SUB-SECT. 12.

1379 iii. —— ——.]—*Re* LITTLE, [1925] 1 D. L. R. 395; 56 O. L. R. 196; 5 C. B. R. 244; *revsg.*, [1924] 2 D. L. R. 1172.—**CAN.**

PART III. SECT. 3, SUB-SECT. 13.—B.

1408 ii. ——.] — Where a judge before whom a bkpcy. petition was being tried had no knowledge of the law of another province, & a question arose concerning that law & he sent the case over to be tried in a competent ct. in that province :—*Held :* this was a reasonable course to pursue. —*Re* FAIRWEATHERS, *Ex p.* MONTREAL (CITY) (1921), 2 C. B. R. 342.—**CAN.**

1454. *Add. Annotation :*—**Consd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1457. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 21 of 1937), Petitioning Creditor *v.* Debtor, [1938] 2 All E. R. 356.

1462. *Add. Annotation :*—**Expld. & Distd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1467. *Add. Annotations :*—**Consd.** *Re* Forder, Forder *v.* Forder (1927), 96 L. J. Ch. 314. **Refd.** *Re* Debtor, [1928] Ch. 199.

1482. *Citations :*—For "54 L. Jo. 444; 148 L. T. Jo. 178" read "89 L. J. K. B. 40."

1483a. Debtor claiming indemnity—As surety for contingent liability of petitioning creditor.]—Petitioning co., of which debtor was formerly chairman, had lent debtor a large sum of money, & recovered judgment against him (on balance of account) for £2,065. A receiving order was made in the county ct. from which debtor appealed, alleging that he had become surety for the co. for their bank overdraft with a limit of £5,000, & that he was entitled to be indemnified against this liability. No payment had been made by debtor on account of the bank overdraft. At a creditors' meeting the creditors were of opinion that debtor was insolvent & there was no alternative but bkpcy. :—*Held :* on the facts, petitioning creditors' obligation to indemnify debtor as surety in respect of his contingent liability for a debt due from petitioning creditors to a bank did not constitute "sufficient cause" for the dismissal of the petition.—*Re* A DEBTOR (No. 13 OF 1922), *Ex p.* THE DEBTOR, [1923] B. & C. R. 54, C. A.

1483b. Previous receiving order made by another court.]—Where a receiving order has been made in one ct., a second order should not be made in another ct. simply to enable the petitioning creditor to get his costs; but in a proper case a second order may be made.—*Re* DEBTOR (No. 415 OF 1935) (1935), 79 Sol. Jo. 921, C. A.

1483c. Petition by moneylender—Tender of all sums due except postponed interest.]—Petitioners, who were moneylenders, presented a bkpcy. petition against the debtor. In their petition the claim was stated to be in respect of specified sums due on two promissory notes & interest at 5 per cent. The claim further stated "& we also have a claim for interest on the said two promissory notes which is postponed interest under sect. 9 (1) of Moneylenders Act, 1927 (c. 21)." On the petition coming before the Registrar the debtor tendered to the petitioning creditors the principal due on the promissory notes with 5 per cent. interest but not the postponed interest. This tender was refused, & the Registrar made a receiving order against the debtor. On appeal :—*Held :* under sect. 9 (1) of Moneylenders Act, 1927 (c. 21), the right of a moneylender to recover interest in excess of 5 per cent. was not destroyed but merely postponed for the purposes mentioned in the sub-sect. The tender made by the debtor did not include the whole sum which the moneylenders might ultimately recover, as it did not include the postponed interest which they might receive in the event of the other creditors being paid in full. They were therefore justified in refusing the tender & the receiving order was rightly made.—*Re* DEBTOR (No. 231 OF 1936), [1937] Ch. 181; 106 L. J. Ch. 189; 53 T. L. R. 108; 80 Sol. Jo. 974; [1936–7] B. & C. R. 113; *sub nom. Re* DEBTOR (No. 231 OF 1936), DEBTOR *v.* PETITIONING CREDITORS & OFFICIAL RECEIVER, [1936] 3 All E. R. 641; 156 L. T. 9, C. A.

1488. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1489. *Add. Annotations :*—**Consd.** *Re* Forder, Forder *v.* Forder (1927), 96 L. J. Ch. 314. **Refd.** *Re* Debtor, [1928] Ch. 199.

1490. *Add. Annotation :*—**Consd.** *Re* Debtor, [1928] Ch. 199.

1491. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1491a. —— ——.]—Debtor furnished a friend with a cheque for £500 as a deposit in connection with the underwriting of shares by a co. in which the friend was interested. The cheque was dishonoured & judgment obtained against debtor for £500 & £14 6s. costs. In Dec. 1926, the judgment creditors petitioned for a receiving order against debtor in respect of the judgment debt. From time to time arrangements were made for adjourning the petition, but in Mar. 1927, the petitioning creditors intimated that the conditions on which they would agree to the petition being dismissed were that debtor should pay £100 & provide a guarantee for payment of the balance of the debt & also agree to pay to them the costs of their proceedings against the underwriters as between solr. & client, & the costs of their proceedings against debtor, also as between solr. & client. Pay-

---

PART IV. SECT 1.

1459 ii. —— *Authorised assignment made before conditions of composition deed fulfilled.*]—*Re* LIPSON, [1923] 3 D. L. R. 1171; (1922), 52 O. L. R. 352; 2 C. B. R. 488.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

s. Read now "**1461 i.**"

1461 ii. *Authorised assignment—Between service & hearing of bankruptcy petition.*]—Bkpcy. Act, s. 4 (6), does not apply where debtor, with the palpable intention of choosing his own trustee, makes an assignment after he has been served with a petition in bkpcy. & before the return of the notice of hearing.—*Re* CROTEAU & CLARK CO., LTD., [1920] 48 O. L. R. 359; 55 D. L. R. 413; 1 C. B. R. 364.—**CAN.**

1461 iii. —— *After but on same day as presentation of petition & appointment of interim receiver.*]—Although after the presentation of a petition in bkpcy. & appointment of an interim receiver debtor on the same day makes an assignment for the general benefit of his creditors to an authorised trustee other than the one asked for in the petition, the ct. will hear the petition on its return & may grant the same & appoint as trustee the person named therein.—*Re* PROGRESSIVE FARMERS CO., LTD., [1921] 3 W. W. R. 265; 1 C. B. R. 551.—**CAN.**

1461 iv. ——.]—Motion by a creditor for a receiving order, after debtor had made an authorised assignment, dismissed as unnecessary, but without prejudice to its being renewed if any necessity should arise.—*Re* WATERHOUSE (THOMAS) & CO. (1921), 4 D. L. R. 518; 50 O. L. R. 476.—**CAN.**

1464 i. *No other creditor — Other facilities for realising debt.*]—It is a sufficient cause for refusing a receiving order that the judgment creditor has equally good facilities for realising under the judgment itself, & that there is no other creditor.—*Re* STONE, [1925] 4 D. L. R. 518.—**CAN.**

sp. *Debtor in position to pay.*]—If debtor is in a position to pay petitioning creditor, no receiving order ought to be made against him without giving him some opportunity of paying or securing the debt.—*Re* MAGUIRE, [1923] 1 D. L. R. 1186; 51 O. L. R. 63; 3 C. B. R. 880.—**CAN.**

ii. ——.]—The ct. refused an order sequestrating a debtor's estate when it was clear that the sequestration would not be for the benefit of the creditors.—FINDLAY *v.* BEETAR (1921), 42 N. L. R. 19.—**S. AF.**

ment of the costs of proceedings against the underwriters was refused, but payment by debtor of solr. & client costs was agreed to, & sums of £50 & £144 were paid & the petition dismissed. In July petitioners again commenced proceedings for a receiving order in respect of a sum ascertained by deducting from the original debt & interest & costs as between solr. & client the payments of £50 & £144. A receiving order having been made:—*Held:* the acts of petitioners in seeking to obtain payment of their costs in the proceedings against the underwriters & in obtaining payment by debtor of their solr. & client costs amounted to extortion & an abuse of the process of the ct., & the case fell within 1914 Act, s. 5 (3), as being one where the ct. was satisfied that for sufficient cause no receiving order ought to be made, & the receiving order must be discharged.—*Re* DEBTOR (No. 883 OF 1927), [1928] Ch. 199; 97 L. J. Ch. 120; 138 L. T. 440; 72 Sol. Jo. 85; [1928] B. & C. R. 1, C. A.

1492. *Add. Annotation:*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1493. *Add. Annotation:*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1494. *Add. Annotation:*—**Apld.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199.

1495. *Add. Annotation:*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1496. *Add. Annotation:*—**Refd.** *Re* Debtor, *Ex p.* Debtor, [1918–19] B. & C. R. 221.

1498. After this case add "*Compare* No. 797a, *ante*."

1498a. Exercising powers under Law of Distress Amendment Act, 1908 (c. 53).]—*Re* A DEBTOR, No. 1016a, *ante*.

1500. *Add. Annotations:*—**Distd.** *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120. **Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913; *Re* A. & M., [1926] Ch. 274. **Mentd.** *Re* A Debtor, [1922] 2 K. B. 109.

1500a. Order against firm "other than" partner not served with bankruptcy notice.]—*Re* DEBTORS (No. 807 OF 1922), *Ex p.* DEBTOR, No. 887a, *ante*.

1508. *Add. Annotations:*—**Apld.** *Re* A Debtor, [1922] 2 K. B. 109. **Consd.** *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120; **Refd.** *Re* A. & M., [1926] Ch. 274.

1513. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1920] 1 K. B. 461.

1515a. —— —— Application opposed by official receiver.]—Where debtor applies to the registrar in bkpcy. to rescind a receiving order made against him, on the ground that all his debts have, since the making of the order, been paid in full, & the official receiver states that in his opinion the receiving order should not be rescinded until debtor has undergone a public examination, the registrar is not bound by that opinion, though in the independent exercise of his discretion he ought to give proper weight thereto.—*Re* A DEBTOR (No. 446 OF 1918), [1920] 1 K. B. 461; 89 L. J. K. B. 113; 64 Sol. Jo. 147; [1920] B. & C. R. 31; *sub nom. Re* A DEBTOR, *Ex p.* THE DEBTOR *v.* PETITIONING CREDITORS & OFFICIAL RECEIVER, 122 L. T. 354, C. A.

1519a. —— —— All debts paid in full.]—*Re* A DEBTOR (No. 446 OF 1918), No. 1515a, *ante*.

1520. *Add. Citations:*—[1920] 1 K. B. 461; 89 L. J. K. B. 113; 122 L. T. 354; [1920] B. & C. R. 31.

1538a. —— ——.]—Every ct. exercising bkpcy. jurisdiction, under sect. 108 (1) of 1914 Act, may rescind its orders, but the discretion to rescind a receiving order should only be exercised in exceptional circumstances & upon full disclosure of all material facts. These facts may only be ascertainable by the public examination of the debtor & the publicity resulting from bkpcy. proceedings. —*Re* DEBTOR (No. 5 OF 1936), *Ex p.* OFFICIAL RECEIVER (1937), 106 L. J. Ch. 225; [1936–7] B. & C. R. 187, C. A.

1539a. —— —— Unequal treatment of creditors.]—A debtor against whom a receiving order had been made came to the following arrangement with his four creditors. The petitioning creditor was paid in full, another had accepted £50 in full satisfaction of a debt of £135, & the other two had given a release, although they had not been paid anything. The debtor applied to have the receiving order rescinded. The registrar in his discretion refused the application:—*Held:* the ct. will only in exceptional cases interfere with the registrar's discretion. The unequal treatment of the creditors was a strong ground for refusing to interfere in such a matter.—*Re* DEBTOR (No. 994 OF 1935), DEBTOR *v.* OFFICIAL RECEIVER, [1936] 1 All E. R. 794; 80 Sol. Jo. 344, C. A.

1541a. —— —— Failure to disclose security.]—*Re* A DEBTOR (No. 1507 OF 1921), No. 1367a, *ante*.

1542. *Add. Annotation:*—**Consd.** *Re* Debtor (No. 994 of 1935), Debtor *v.* Official Receiver, [1936] 1 All E. R. 794.

1545a. —— Sequestration in Scotland.] — *Re* A DEBTOR (No. 199 OF 1922), No. 380a, *ante*.

1548a. —— —— Power to make charging order on balance of funds in court.]—A debtor, against whom a receiving order had been made, paid money into ct. to satisfy his debts in full. The receiving order was then rescinded by an order which directed the official receiver, after paying the debts & deducting his costs, charges & expenses, to pay the balance in his hands to debtor. A subsequent unsatisfied judgment creditor applied to the registrar in bkpcy. for a charging order upon the balance of the funds in the hands of the official receiver:—*Held:* (1) the registrar had jurisdiction to make the order; (2) the registrar's jurisdiction was derived through the jurisdiction of the judge of the High Ct. to whom for the time being bkpcy. matters were assigned exercising his bkpcy. jurisdiction.—*Re* PRIOR, *Ex p.* PRIOR, [1921] 3 K. B. 333; 90 L. J. K. B. 1222; *sub nom. Re* DEBTOR, *Ex p.* DEBTOR (No.

PART IV. SECT. 5.

1541 iv. —— *Order based on statement of former president & manager.*]—A petition in bkpcy. against a co. which resulted in a receiving order being made was based on a statement obtained by the present custodian of the estate from one W. who had been the president & general manager of the co. but who, at the time he gave the statement, was no longer occupying either of said offices:—*Held:* the receiving order must be set aside with costs to be paid by the petitioner to the co. Leave given petitioner, on paying said costs, to amend his petition as he might be advised.—*Re* F. G. WRIGHT & CO., LTD., [1937] 3 W. W. R. 404; 4 D. L. R. 55; 45 Man. L. R. 418.—**CAN.**

718 OF 1920), 125 L. T. 727; [1921] B. & C. R. 124, C. A.

1551. *Add. Annotation :*—**Consd.** *Re* Debtor (No. 994 of 1935), Debtor *v.* Official Receiver, [1936] 1 All E. R. 794.

1552. *Add. Annotation :*—**Folld.** Harman *v.* Official Receiver, [1934] A. C. 245.

1552a. —— **Receiving order discharged subject to condition—Condition not fulfilled—Rescission of discharging order.**]—Debtor, a barrister, was entitled on the death of his mother to a vested remainder in tail of considerable value. His mother was seventy-five. The petition was filed on July 19, 1923. His present indebtedness amounted to about £6,000 & negotiations for a loan for that amount with an insurance co. had been going on since July 16, 1923. Owing to a delay in raising this loan, the registrar had made a receiving order on Nov. 21, 1923, from which debtor appealed; & upon debtor undertaking during the interval necessary to raise the loan, to insure his life immediately, *i.e.* from Dec. 1, 1923, to Jan. 1, 1924, in order that, in the event of his death during that period, the unsecured creditors might be safeguarded, the Ct. of Appeal allowed the appeal, discharged the receiving order & dismissed the petition without prejudice to another petition being presented if the loan was not carried through & petitioning creditors' debt not paid on or before Jan. 1, 1924. Up to Dec. 20, debtor had not insured his life pursuant to his undertaking & petitioning creditors then moved to commit debtor for contempt. The Ct. of Appeal allowed debtor three hours within which to insure his life, & a certificate being produced showing that this had been done, the ct. made no order except that debtor should pay the creditors' costs. Subsequently debtor having again broken his undertaking by not completing the insurance on his life, the Ct. of Appeal rescinded their order, with the result that the receiving order stood as originally made by the registrar.—*Re* A DEBTOR, *Ex p.* THE DEBTOR (NO. 1088 OF 1923), [1924] B. & C. R. 1, C. A.

Annotation :—**Consd.** Harman *v.* Layton-Bennett (1935), 79 Sol. Jo. 108.

1552b. —— **From order restoring adjudication order—To House of Lords without leave of Court of Appeal.**]—Applt. was adjudicated a bkpt. on Aug. 22, 1932. On Oct. 24, 1932, the Ct. of Appeal allowed an appeal from the order of adjudication upon certain terms, & ordered that the application for adjudication be adjourned. One of the terms not having been complied with applt. moved the Ct. of Appeal to vary its order, but on Feb. 10, 1933, the Ct. of Appeal rescinded its order of Oct. 24, 1932, & restored the order of adjudication so as to have effect from Aug. 22, 1932. The Ct. of Appeal refused applt. leave to appeal from its order of Feb. 10, 1933. Nevertheless he appealed, & the objection was taken that under sect. 108 (2) (*b*) of Bkpcy. Act, 1914, the appeal was not competent, as it was an appeal "in bkpcy. matters" & leave to appeal had been refused. The order of Feb. 10, 1933, purported to be made "in bkpcy. matters" & applt. so treated it in his petition of appeal to the House of Lords. The cts. having jurisdiction in bkpcy., which under sect. 108 (1) of 1914 Act might review, rescind, or vary any order made by them under their bankruptcy jurisdiction, were by sect. 96 confined to the High Ct. & county cts., & it was alleged that therefore the Ct. of Appeal had no power to exercise that jurisdiction of reviewing, rescinding, or varying its order :—*Held :* if the order was a complete nullity the House could not deal with it, but if it were to be regarded as an order of the Ct. of Appeal it fell within the provisions of sect. 108 (2) (*b*), which expressly limited the jurisdiction of the House in respect of orders made "in bkpcy. matters" where leave to appeal had been refused by the Ct. of Appeal. Appeal dismissed as incompetent.—HARMAN *v.* OFFICIAL RECEIVER, PETITIONING CREDITORS & TRUSTEE, [1934] A. C. 245; 103 L. J. Ch. 158; 150 L. T. 501; 50 T. L. R. 238; 78 Sol. Jo. 192; [1934] B. & C. R. 25, H. L.

1552c. —— —— —— **Application for declaration that order void.**]—HARMAN *v.* LAYTON-BENNETT (1935), 79 Sol. Jo. 108, C. A.

1561. Add the following para. :—

Therefore, where a debtor had been arrested under an order of the Ch. Div. made after the date of a receiving order pronounced before, but not drawn up & signed by the registrar (Bkpcy. Rules, 1883, r. 153, App., Forms 29 & 30) until after the arrest, he was ordered to be discharged, notwithstanding that he had by his counsel submitted to the order of attachment.

1569. *Add. Annotation :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1570. *Add. Annotation :*—**Apld.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

1571a. **On equitable assignment.**]—A., a builder, was in 1937 engaged in certain building operations. From time to time he had been financed by one W. in these transactions; the arrangement being that W. should guarantee with A.'s bank his overdraft at that bank & make him small cash advances from time to time. Part of the arrangement entered into was to the effect that all moneys received by A. for houses erected by him or

---

PART IV. SECT. 6.

1554 i. *In general—Debtor consenting to order.*]—Where a petition for a receiving order has been filed & served, debtor should not make an authorised assignment, but should notify petitioning creditor, or his solr., that he, the debtor, consents to a receiving order.—*Re* LALONDE, [1924] 1 D. L. R. 1018; 55 O. L. R. 279; 4 C. B. R. 416.—CAN.

ar. *On person holding himself out as member of partnership.*]—A receiving order made against a partnership will include a person who has held himself out as a member thereof.—*Re* MAIN CLOAK CO., [1925] 1 D. L. R. 290.—CAN.

at. *On power to proceed on judgment summons.*]—Sect. 24 of Bkpcy. Act, R. S. C., 1927 c. 11, provides that when a receiving order or an authorised assignment is made no creditor to whom the debtor is indebted in respect of a debt provable in bkpcy. shall have any remedy against the property or person of the debtor except with the leave of the ct. Pltf. herein, a judgment creditor of deft., applied to the judge in Bkptcy. for leave to proceed to obtain an order committing deft. to gaol for non-compliance with an order directing him to pay a monthly sum on account of pltf.'s judgment. The day before the application deft made an assignment in bkpcy. The application was opposed by deft. through his solr., & also by the custodian :—*Held :* the judge had exercised a proper discretion in refusing to grant leave to proceed.—*Re* MINTZ, MALOUF *v.* MINTZ, [1930] 1 W. W. R. 198; 2 D. L. R. 77; 24 S. L. R. 290; 11 C. B. R. 227.—CAN.

arising on a mtge. transaction in connection with houses erected should be paid over to a certain firm of solrs. originally acting as solrs. for W., who were to act also for A. The solrs.—after certain deductions—were to pay the balance to the credit of W.'s account at his own bank, which was then to be applied by W. in reduction of A.'s overdraft at his bank in relief of W.'s guarantee. A., having completed the houses, mtged. them to a building society. The solrs. received the amount advanced &, after making various payments & deductions out of the sum so received under the terms of the arrangement, were left with a balance of £963 9*s*. 3*d*. in their hands. On Monday, Mar. 15, 1937, before 11 a.m., they paid this amount by cheque to the credit of W.'s banking account. On the same day, but some hours later, after the time of payment to the bank, a receiving order was made against A., & on Mar. 18, 1937, he was adjudicated a bkpt. Neither W. nor the solrs. had any notice of the fact that bkpcy. proceedings were pending at the time when the moneys were received by the solrs. nor when they were dealt with by them. The trustee in bkpcy. having applied in the county ct. by motion for an order that this sum of £963 9*s*. 3*d*. formed part of the bkpt's estate, it was ordered that W., the resp. to the motion, should pay over this sum to him as trustee. From this decision W. appealed :—*Held :* (1) the judge was wrong in holding that the moneys were the bkpt. A.'s own property to deal with as he wished. The arrangement between A. & W. constituted a good equitable assignment of the moneys so received, & hence could not be dealt with otherwise than in accordance with the arrangement between A. & W. The moneys were not the property of the bkpt. A., & the payment into W.'s account by the solrs. could not be impeached ; (2) as regards the time of paying in, namely before the receiving order was actually made but on the same day, a question arose on the true meaning of the words in the proviso (i) to sect. 45 of 1914 Act : "that the payment . . . takes place before the date of the receiving order." The result of the authorities on this question showed that in cases of competition in point of time between a judicial & a non-judicial act, the rule that the judicial act should be given precedence must prevail, & the application of the rule therefore gave precedence to the judicial act. The making of the receiving order (being a judicial act) must therefore in accordance with the rule be referred back to the earliest moment of the day of Mar. 15, 1937, & the actual payment into the bank (being a non-judicial act) could not be treated as having been made before it.—*Re* WARREN, *Ex p.* WHEELER *v.* TRUSTEE IN BANKRUPTCY, [1938] Ch. 725 ; *sub nom. Re* WARREN, WHEELER *v.* MILLS, [1938] 2 All E. R. 331 ; 107 L. J. Ch. 409 ; 159 L. T. 17 ; 54 T. L. R. 680 ; 82 Sol. Jo. 394.

1579a. —— Effect of—On transactions pending appeal from receiving order.]—*Re* WIGZELL, *Ex p.* HART, No. 1893a, *post*.

Part V.—Adjudication Order.

1586a. —— ——.]—An appeal against a decision of a registrar, approving a proposal for a scheme of arrangement, having been allowed, the Ct. of Appeal, upon the application of the official receiver, adjudged the debtor bkpt. under Bkpcy. Act, 1883 (c. 52), s. 20, & Bkpcy. Rules, 1886, s. 191.—*Re* BURR, *Ex p.* BOARD OF TRADE, [1892] 2 Q. B. 467 ; 61 L. J. Q. B. 591 ; 66 L. T. 553 ; 8 T. L. R. 515 ; 9 Morr. 133, C. A.

1603. *Add. Annotations :*—**Reld.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814 ; *Re* Wait, [1927] 1 Ch. 606.

1619. *Add. Citation :*—11 Cox, C. C. 360.

1620. *Add. Annotation :*—**Reld.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1624. *Add. Annotation :*—**Consd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1625. *Add. Annotation :*—**Reld.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1636. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

1637. *Add. Annotation :*—**Dbtd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

1638. After this case add **"On duty to maintain wife.]**—*See* HUSBAND & WIFE, No. 595a."

1640. Add the following para. :—

A debtor entitled to land in Middlesex was adjudged bkpt., & an order was made under sect. 121 of 1883 Act, that his estate should be administered in a summary way, so that no appointment of a trustee was made. He never disclosed to the official receiver the fact of his having the land, & he subsequently mortgaged it to a mtgee. who forthwith registered his mtge. :—*Held :* the title of the official receiver was not postponed to that of mtgee. by reason of the order of adjudication not having been registered.—*Re* CALCOTT & ELVIN'S CONTRACT, [1898] 2 Ch. 460.

PART IV. SECT. 7.

1575 ii. —— *To enable debtor to pay.*]—A receiving order directed not to issue for seven days & not then to issue if petitioner's claim, including the costs of the petition, satisfied.—*Re* MAGUIRE, [1923] 1 D. L. R. 1186 ; 51 O. L. R. 63 ; 3 C. B. R. 880.—**CAN.**

PART V. SECT. 1.

d i. —— —— *Want of assets.*]—Where there are no assets the making of an order for adjudication is in the discretion of the ct.—*Re* BARAKAT, [1920] N. Z. L. R. 134.—**N.Z.**

1598 iii. —— ——.]—Sequestration of the estates of a debtor was pronounced in the sheriff ct. of L. in 1900. The trustee was subsequently discharged, but bkpt. never obtained his discharge. He, however, continued to carry on business & incurred new debts. In 1922 one of the new creditors presented a petition in the same ct. for sequestration of debtor's estates :—*Held :* in the circumstances Bkpcy. (Scotland) Act, 1913 (c. 20), s. 16, did not make incompetent a new award of sequestration.—COOK *v.* M'DOUGALL, [1923] S. C. 86.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 1.

sv. *On chattel mortgage by debtor.*]—The validity of a chattel mtge. given by debtor who is subsequently adjudicated bkpt must be determined as at the time of such adjudication.—*Re* SAUNDERS ALBERTA COLLIERIES, LTD., [1925] 3 D. L. R. 323 ; [1925] 2 W. W. R. 122 ; 5 C. B. R. 727.—**CAN.**

1642. *Add. Citation :*—39 L. J. Bcy. 46.

1647. *Add. Annotation :*—**Refd.** Holden *v.* Southwark Corpn., [1921] 1 Ch. 550.

1650. After this case add :—

——.]—*See, now,* Companies Act, 1929 (c. 23), s. 142.

1656. *Add. Annotation :*—**Consd.** *Re* Boulton, *Ex p.* Moncrieff *v.* Official Receiver (1926), 135 L. T. 461.

1657a. —— —— ——.]—The partners of a firm, which was heavily indebted to the firm's bankers, formed a limited co. to take over the debt. They then, with the consent of the principal creditors of the firm, gave the bank a joint & several guarantee for payment of the transferred debt & of any sums due to the bank from the co. Upon the subsequent bkpcy. of the firm & the individual partners : —*Held :* (1) bkpts. had by the guarantee contracted a "debt provable in the bkpcy. without having at the time of contracting it any reasonable or probable ground of expectation of being able to pay it" within 1914 Act, s. 26 (3) (*d*), which covered not only a new & original debt, but also a debt in renewal of or in substitution for a previously existing debt, & their discharge must be suspended for a period of two years ; (2) the ct., upon the particular facts of the case, granted each partner a certificate that his bkpcy. was "caused by misfortune without any misconduct on his part," the certificate to operate when the discharge took effect. Circumstances which may constitute "misfortune without any misconduct" within sect. 26 (4), discussed. — *Re* Boulton Brothers & Co., [1927] 1 Ch. 79 ; *sub nom. Re* Boulton Brothers & Co., *Ex p.* Moncrieff *v.* Official Receiver, 96 L. J. Ch. 90 ; [1927] B. & C. R. 1, C. A.

1666. *Add. Annotation :*—**Refd.** Sevenoaks U. D. C. *v.* Twynam, [1929] 2 K. B. 440.

1667. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1669. *Add. Annotation :*—**Refd.** Sevenoaks U. D. C. *v.* Twynam (1929), 98 L. J. K. B. 537.

1670. *Citation :*—For "26 L. J. Bcy. 29" read "36 L J. Bcy. 29."

Add. Annotation :—As to (1) **Consd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

1731. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1735. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1766. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1771. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1775a. —— **Surplus assets after payment of composition.**]—Bkpt. made a composition with his creditors, which was approved, & the cash required to satisfy the composition having been deposited with the official receiver, the adjudication was annulled, but the order annulling the adjudication contained no reference to the vesting of surplus assets : —*Held :* although the order of annulment contained no express provision as to the vesting of any surplus assets, on payment of the composition the estate of debtor, *i.e.* the surplus after satisfying the composition, would, by necessary implication, revest in debtor.—Flower *v.* Lyme Regis Corpn., [1921] 1 K. B. 488 ; 90 L. J. K. B. 355 ; 124 L. T. 463 ; 37 T. L. R. 145 ; 65 Sol. Jo. 133 ; [1920] B. & C. R. 138, C. A.

1781. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1795a. Agreement not to prove—Promise by debtor to pay after bankruptcy.]—John *v.* Mendoza, [1938] 4 All E. R. 472 ; 159 L. T. 548 ; 55 T. L. R. 50 ; 82 Sol. Jo. 891.

Part VI.—Official Receiver, Special Manager, and Interim Receiver.

1808a. On grant of administration—Estate of undischarged bankrupt—Whether estate of trustee divested—After-acquired property.]—An order under 1914 Act, s. 130, for the administration of the estate of a deceased undischarged bkpt. according to the law of bkpcy. is not a second or subsequent receiving order or adjudication within s. 39 so as to divest the estate of the trustee in bkpcy. in favour of the official receiver under the administration order ; but bkpt.'s estate, including any after-acquired property, remains vested in his trustee in bkpcy.—*Re* Sarjeant, [1923] 2 Ch. 302 ; 129 L. T. 825 ; *sub nom. Re* Sarjeant, *Ex p.* Official Receiver, 92 L. J. Ch. 626 ; [1923] B. & C. R. 63.

—— —— —— ——.]— *See, now,* Bkpcy. (Amendment) Act, 1926 (c. 7), s. 3.

1826. *Add. Annotation :* — **Refd.** *Re* A Debtor, [1920] 1 K. B. 401.

1853. *Add. Annotations :* — **Refd.** Everett *v.* Griffiths, [1920] 3 K. B. 163 ; Hearts of Oak Assurance Co., Ltd. *v.* A.-G. (1931), 47 T. L. R. 579.

1879a. Application by receiver for annulment of adjudication—Whether receiver entitled to costs.]—*Re* A. & M., No. 226a, *ante.*

1879b. Form of order.]—Where, on an unsuccessful appeal by the debtor, the Official Receiver becomes entitled to his costs, he is entitled to an order for taxation, for payment out of the £20 security paid into ct., & for any remaining amount of his costs to be paid out of the estate.—*Re* Smith, Debtor *v.* Official Receiver, *Re* Shaw, Debtor *v.* Official Receiver, [1938] 1 All E. R. 408 ; *sub nom. Re* Debtor, *Ex p.* Debtor *v.* Official Receiver (No. 507 of 1937), *Re* Debtor, *Ex p.* Debtor *v.* Official Receiver (No. 549 of 1937), 107 L. J. Ch. 223, C. A.

PART V. SECT. 3, SUB-SECT. 3.

3 (p. 188) l. —— *In filing petition—Creditor prejudiced.*]—*Re* Hastie, [1926] N. Z. L. R. 428.—N.Z.

PART VI. SECT. 3.

sw. *When court will appoint.*]—Petitioner must convince the ct. that an interim receiver is necessary to protect the creditors' interests.—*Re* Canadian Coal Supply, *Ex p.* Staples Bell Inc., [1924] 2 D. L. R. 831 ; 4 C. B. R. 577.—CAN.

Part VII.—The Trustee and Committee of Inspection.

1889. *Add. Annotations :*—**Apld.** *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283. **Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814 ; *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79. **Apld.** *Re* Sandiford (No. 2), Italo-Canadian Corpn. *v.* Sandiford, [1935] Ch. 681. **Refd.** *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67 ; *Re* Wait, [1927] 1 Ch. 606.

1890. *Add. Annotations :* — **Consd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67.

1893. *Add. Citations :*—122 L. T. 35 ; [1918-19] B. & C. R. 249.

Add. Annotations :—**Apld.** *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283. **Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Consd.** *Re* Sandiford (No. 2), Italo-Canadian Corpn., Ltd. *v.* Sandiford, [1935] Ch. 681 ; *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79.

1893a. —— **Duty not to take advantage of mistake of fact.**]—A receiving order was made against a debtor, who thereupon applied for & obtained a stay of the advertisement of the receiving order & all proceedings thereunder pending an appeal therefrom. The appeal was subsequently dismissed & an order was made adjudicating him bkpt. At the date of the receiving order bkpt. had an account at a bank. After the making of the receiving order & pending the hearing of the appeal bkpt. paid into the bank £165 which he had collected from his debtors, & drew out of his account £199. The bank acted in good faith & received & paid those sums in the ordinary course of business without knowing that a receiving order had been made against bkpt. The trustee in bkpcy. claimed a declaration that the sums paid into the bank after the date of the receiving order vested in him as trustee :—*Held :* (1) the sums paid into the bank by bkpt. after the date of the receiving order became by virtue of 1914 Act, ss. 18 (1), 37 (1), 38 (*a*), the property of his trustee in bkpcy. ; (2) the bank were not entitled to credit themselves with the payments out to bkpt., as those transactions took place after the date of the receiving order & were therefore not protected by sects. 45 & 46 ; (3) there was nothing dishonest in the trustee enforcing the rights given to him by the Act, & the action of the ct. in staying the advertisement & proceedings could not operate in any way in derogation of the rights of the trustee.—*Re* WIGZELL, *Ex p.* HART, [1921] 2 K. B. 835 ; *sub nom. Re* WIGZELL, *Ex p.* TRUSTEE, 90 L. J. K. B. 897 ; [1921] B. & C. R. 42 ; *sub nom. Re* WIGZELL, *Ex p.* TRUSTEE *v.* BARCLAYS BANK, LTD., 125 L. T. 361 ; *sub nom. Re* WIGZELL, HART *v.* BARCLAYS BANK, 37 T. L. R. 526 ; 65 Sol. Jo. 493, C. A.

Annotations :—As to (2) **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. *As to* (3) **Consd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Refd.** *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67.

—— ——.]—*See* Bankruptcy (Amendment) Act, 1926 (c. 7), s. 4.

1894a. —— **Duty to recover statutory debt.**]—In 1919 debtor paid deft., a bookmaker, various cheques for bets lost on horse racing, & these cheques were cleared through various banks, as holders. On Aug. 30, 1920, debtor was adjudicated bkpt. & on Mar. 30, 1921, his trustee in bkpcy. by the direction of his committee of inspection, commenced an action to recover £955, the amount admitted to be due, if recoverable. The action was transferred to the judge in bkpcy. under Bkpcy. Rules, 1915, r. 123. Deft. took the point that such an action ought not to be brought by an officer of the ct., as the claim, however legal, was practically dishonest, & that all cts. must apply the rule in *Re Condon, Ex p. James*, No. 60, *ante :—Held :* the claim the trustee in bkpcy. was seeking to enforce was in respect of a debt which under Gaming Act, 1835 (c. 41), s. 2, & the decision of the House of Lords in *Sutters* v. *Briggs* (*see* GAMING & WAGERING, Vol. XXV., p. 418, No. 213), was a statutory debt, & there was nothing in *Re Condon. Ex p. James*, or in any of the cases in which the rule in that case had been followed, which entitled the ct. to say that if & when a right of action in respect of such a debt vested in a trustee in bkpcy., it was a dishonest or dishonourable thing for him as an officer of the ct. to enforce it, & judgment for the trustee in bkpcy. must be entered in the action for the amount claimed.—SCRANTON'S TRUSTEE *v.* PEARSE, [1922] 2 Ch. 87 ; 91 L. J. Ch. 579 ; 127 L. T. 698 ; 38 T. L. R. 629 ; 66 Sol. Jo. 503 ; [1922] B. & C. R. 52, C. A.

Annotation :—**Refd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814.

1894b. —— **Duty to act equitably—Recovery of money paid to bkrupt with approval o official receiver.**]—On June 26, 1924, a receiving order was made against W. on a petition presented on May 25, 1924, in respect of an act of bkpcy. on May 1, 1924.

---

m 1. ——.]—*Re* CANADIAN COAL SUPPLY, *Ex p.* STAPLES BELL INC., [1924] 2 D. L. R. 831 ; 4 C. B. R. 577. —**CAN.**

sz. *Order of appointment containing undertaking as to damages by petitioning creditor—Undertaking not discharged on termination of appointment.*]—*Re* JACKSON, [1926] 1 D. L. R. 1189 ; 58 O. L. R. 482.—**CAN.**

sa. *Order appointing—Not appealable.*]—RAMSAY GLASS CO. *v.* ROYAL BANK OF CANADA, [1931] 2 D. L. R. 759.—**CAN.**

sb. *Powers of custodian—Sale of perishable goods—Must be physically perishable.*]—*Re* WEBBER, [1931] 2 D. L. R. 269 ; 2 M. P. R. 513 ; 12 C. B. R. 274.—**CAN.**

sc. —— *Disposition of shares.*]—*Re* ESTATE OF H. K. REED & CO., LTD. (No. 1), [1930] 3 W. W. R. 98 ; 4 D. L. R. 841 ; 12 C. B. R. 31.—**CAN.**

PART VII. SECT. 1.

sd. *Representative of creditors—To enforce rights.*]—*Re* HERSH, *Ex p.* GOLDSTEIN, [1923] 3 D. L. R. 101 ; 4 C. B. R. 84.—**CAN.**

W. was a promoter of boxing contests & had in view at the date of the presentation of the petition boxing competitions, one of which was held at the Stadium, Wembley, on Aug. 9, 1924. He appealed against the receiving order, & pending that appeal the receiving order was not gazetted. His appeal having failed it was then gazetted on July 29, 1924. At an interview between W., his solr., the solr. for the Wembley authorities & A., the assistant official receiver, who under Bkpcy. Rules, 1915, r. 316, represented the official receiver, A. was told of the proposed boxing contest & the judge held on the evidence that at the interview W. told A. he desired notwithstanding the receiving order to be allowed to stage the contest as the only hope of providing assets to meet the claims of his creditors, & that it was arranged he could do so without any interference by the official receiver, on W. undertaking not to use the proceeds of the sale of tickets for his private purposes but only for discharging the expenses of the staging of the contest & to hand over any balance to the official receiver. On that arrangement being made W. proceeded with the negotiations for the contest & an agreement was executed by which he gave the Wembley authorities the right to collect all moneys paid for tickets at the turnstiles, & they were to have those moneys as a security for the payment by W. for the use of the Stadium. Various ticket agents paid W. for blocks of tickets to be sold by them to the public. The contest, which was held at the Stadium on Aug. 9, 1924, only realised after payment of all expenses £730 which W. paid to the official receiver. On Sept. 6, 1924, W. was adjudicated bkpt., & on Sept. 9, S. was appointed trustee in the bkpcy. On a motion by S. to recover from the various ticket agents all sums paid by them since the date of the receiving order to W. for tickets they had bought from him & to recover the money collected by the Wembley authorities at the turnstiles :—*Held :* A. had power to give his sanction to W.'s receipt of the proceeds of the sale of tickets to be applied by him in discharging expenses & the trustee in bkpcy. was bound by the sanction so given, but even if he were not so bound & even if A. exceeded his powers the trustee could not take the benefit of W.'s activities without accepting their burden, & the payment to W. of the moneys which the trustee claimed, being the direct result of the leave obtained by W. from A. to stage the boxing contests, it would be inequitable & unjust to make resps. pay these moneys over again for the benefit of W.'s creditors & to hold that the charge given to the Wembley authorities was nugatory.—*Re* WILSON, *Ex p.* SALAMAN, [1926] Ch. 21 ; 95 L. J. Ch. 58 ; 133 L. T. 814 ; 70 Sol. Jo. 65 ; [1925] B. & C. R. 96.

1894c. —— **Extent of duty.**]—G. contracted with M. & Co. that they should build upon his land four greenhouses at a price of approximately £1,100, with the proviso that he was not to be bound by such contract unless he obtained a loan sufficient to meet his obligation under the contract. M. & Co. introduced G. to the Agricultural Mtge. Corpn., & a sufficient loan by the Corpn. to G. was arranged.

The work having been carried out to the satisfaction of all parties, M. & Co. wrote to the Corpn. requesting payment by them of the £1,153 14*s.*, & the Corpn. expressed their willingness to pay M. & Co. upon receipt of G.'s permission. M. & Co. sent a form of permission to G. for his signature, but on the very day of its arrival a receiving order was made against G. The trustee in G.'s bkpcy. was able to sell the land at an enhanced price by virtue of the presence on it of the four greenhouses. M. & Co. then sought to restrain the trustee from dividing £1,153 14*s.*, part of the proceeds of sale of the said land among the creditors generally & claimed the said sum for themselves in full :—*Held :* as M. & Co. at the date of the receiving order had no right to receive the loan from the Corpn. without the consent of G., the said sum was divisible between the general creditors. The facts did not warrant the application of the doctrine of *Re Condon, Ex p. James*, No. 1889, as M. & Co. by their own failure to obtain a charge to secure their debt were in the position of unsecured creditors.—*Re* GOZZETT, *Ex p.* MESSENGER & CO., LTD. *v.* TRUSTEE, [1936] 1 All. E. R. 79 ; 80 Sol. Jo. 146, C. A.

1895. *Add. Annotations :*—**Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Consd.** *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283 ; *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79.

1896. *Add. Annotations :*—**Consd.** *Re* Stokes, *Ex p.* Mellish, [1919] 2 K. B. 256 ; *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735.

1961a. —— **Suspension of bankruptcy—Death of trustee.**]—Where proceedings in a bkpcy. have been suspended by a resolution of the creditors, passed under 1861 Act, s. 110, & the trustee appointed by the creditors to wind up the estate & effects of the bkpt. has died, the Ct. of Ch. has jurisdiction, under the Trustee Acts, to appoint new trustees.—*Re* RAPHAEL'S TRUST ESTATE (1870), L. R. 9 Eq. 233 ; 39 L. J. Ch. 200 ; 18 W. R. 247.

PART VII. SECT. 2, SUB-SECT. 2.

1911 ii. —— ——.]—*Re* LONDON BRIDGE WORKS, LTD. (Ont.), [1926] 4 D. L. R. 1121.—**CAN.**

k i. —— *Not secured creditor who has not valued security.*]—*Re* LONDON BRIDGE WORKS, LTD. (Ont.), [1926] 4 D. L. R. 1121.—**CAN.**

o i. —— *Trust company as proxy for creditor.*]—At the election of a trustee the votes of a trust co. as proxy for creditors are illegal.—*Re* DITCHBURN BOATS & AIRCRAFT (1936), LTD., [1938] 2 D. L. R. 518 ; 7 F. L. J. (Can.) 292.—**CAN.**

1943 i. *Who may appeal against decision on election—Custodian not being creditor.*]—The custodian appointed by the official receiver after an authorised assignment under Bkpcy. Act, if he is not a creditor of the assignor, is not entitled to appeal from the decision of the official receiver as chairman of the first meeting of creditors who, after passing on the admission or rejection of proofs of claim for the purpose of voting, has declared a certain person elected as trustee.—*Re* MCCOUBREY, [1924] 2 D. L. R. 1126 ; [1924] 2 W. W. R. 348 ; 4 C. B. R. 642.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 6.

1959 ii. —— *Conflict of interest & duty.*]—Where a trust co. was an authorised trustee in the bkpcy. of a limited co., & certain directors & shareholders of the latter, having large claims against debtors' estate, were also shareholders of the trust co., one being also a director, it was considered undesirable that the trust co. should continue to act, & another trustee was appointed.—*Re* SHAW (WALTER W.) CO., LTD., [1922] 3 W. W. R. 119; 68 D. L. R. 616.—**CAN.**

1966a. —— Refusal to convene creditors' meetings.]—*Re* BURN (J.), *Ex p.* DAWSON (E. W. de V.), MCCLELLAN (H. T.) & TRUSTEE, No. 6318a, *post.*

1966b. —— In regard to convening meeting of creditors.]—(1) Creditors who, pursuant to 1914 Act, s. 79, have required the trustee or official receiver to convene a meeting of creditors for the purpose of passing specified resolutions, cannot obtain an order from the ct. compelling the trustee or official receiver to comply with such requisition if the ct. is of opinion that no useful purpose would be served thereby. A trustee is entitled to apply to the ct. for directions under sect. 79 (3) as to whether a meeting ought to be called or not in compliance with a requisition of creditors to convene it.

(2) The ct. is not bound to hear a creditor in opposition to a bkpt.'s application for discharge if satisfied that its attention has been called to all the facts & arguments necessary to enable the ct. to come to a proper decision.—*Re* BURN, DAWSON *v.* MCCLELLAN (No. 2) (1931), 101 L. J. Ch. 113; [1931] B. & C. R. 108.

2007a. —— —— Without order of court for delivery of accounts.]—The ct. has jurisdiction under 1914 Act, s. 105 (5), to make an immediate & unconditional order for the committal of a trustee of a deed of arrangement for non-compliance with an order of the Board of Trade made in pursuance of Deeds of Arrangement Act, 1914 (c. 47), s. 13, to transmit an account of his receipts & payments as such trustee.—*Re* ALLEN, [1935] Ch. 74; 152 L. T. 328; *sub nom. Re* ALLEN, *Ex p.* BOARD OF TRADE *v.* NELSON, 104 L. J. Ch. 204; [1934] B. & C. R. 99.

2028a. —— ——.]—Where a trustee in bkpcy. with the sanction of the committee of inspection employs a solr. to do particular business, the principle on which the solr.'s bill of costs against the trustee is to be taxed is that of solr. & client, not as between solr. & his own client but that of "where the client & others are interested in a common fund," *i.e.* bkpt.'s estate, & on such a taxation the taxing master is not bound to allow copies of documents supplied to counsel at his request, nor the whole amount of the fees paid to counsel on the written authority of the trustee. But where the trustee has honestly sanctioned an expenditure which is not excessive, the taxing master should take a liberal view as far as possible in allowing the amounts against the estate which have honestly been incurred on behalf of such trustee.—*Re* LAVEY, *Ex p.* COHEN & COHEN, [1921] 1 K. B. 344; 90 L. J. K. B. 246; 124 L. T. 572; [1920] B. & C. R. 171.

2114. *Add. Annotations:*—**Apld.** *Re* Burn, *Ex p.* Dawson (E. N. de V.), McClellan (H. T.) & Trustee, [1932] 1 Ch. 247. **Refd.** Sevenoaks U. D. C. *v.* Twynam, [1929] 2 K. 440.

PART VII. SECT. 4, SUB-SECT. 2.

sb. *To employ bankrupt at remuneration—Approbation of court.*]—*Held:* the employment of bkpt. & the terms of his employment, including his remuneration, must have the approbation of the ct.; the subsequent approbation is unauthorised by Bkpt. & Insolvent Act, 1857, s. 276.—*Re* MACKAY, MCGUINNESS *v.* HOLLINGSHEAD (1921), 55 I. L. T. 89.—**IR.**

sc. *To accept tenders.*]—When the trustee is accepting tenders, he must have the written authority of the inspectors to do so.—*Re* BROWN TAXI CO. & DETROIT RADIATOR CO. (1922). 65 D. L. R. 136.—**CAN.**

sd. *To dispose of property.*]—When the trustee is selling stock or transferring property he must have the written authority of the inspectors to do so.—*Re* BROWN TAXI CO. & DETROIT RADIATOR CO. (1922), 65 D. L. R. 136.—**CAN.**

se. *To dispose of shares—Application for direction of court.*]—*Re* ESTATE OF H. K. REED & CO., LTD. (No. 2), [1930] 3 W. W. R. 158; 4 D. L. R. 923; 12 C. B. R. 33.—**CAN.**

sf. *To lease.*]—On a motion under sect. 84 of Bkpcy. Act by a secured creditor to reverse the trustee's act or decision, authorised by the creditors & inspectors, in leasing the plant of the bkpt. for the current year:—*Held:* a trustee in bkpcy. has no power to lease under sect. 43 of Bkpcy. Act & the lease was accordingly set aside.—SECHART FISHERIES, LTD., *Re* EDWARD RENNEBERG & SONS CO. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN. (B. C.), [1929] 4 D. L. R. 536; 2 W. W. R. 413; 10 C. B. R. 565.—**CAN.**

1983 i. *Payment—Power to make—To complete contract.*]—Debtor agreed to purchase goods on condition that should he fail to complete payment he should lose all the money paid. When all the payments had been made save the last one debtor became bkpt.:—*Held:* the trustee might pay the last instalment & retain the goods.—*Re* LEMIEUX & COPPING MOTOR DISTRIBUTORIES (1922), 69 D. L. R. 105; 1 C. B. R. 464.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—A.

j i. —— *Some creditors not notified.*]—If the trustee discovers that he has failed to send to some of the creditors a notice intended to be sent to all, he should notify those who have been overlooked to file their proofs & should advise them of what has taken place; it is not necessary to call a new meeting.—*Re* CANADIAN CEREAL & FLOUR MILLS CO. (1922), 67 D. L. R. 234; 51 O. L. R. 316; 2 C. B. R. 158.—**CAN.**

2001 i. *To realise to best advantage—Acceptance of tenders.*]—The trustee must be governed by the advice of the inspectors & by ordinary business judgment in delaying the acceptance of any tender for the purchase of debtor's assets.—*Re* CANADIAN CEREAL & FLOUR MILLS CO. (1922), 67 D. L. R. 234; 51 O. L. R. 316; 2 C. B. R. 158.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—B. (b).

2008 ii a. —— *Accountant—Charge for clerk's time.*]—Where an accountant's work is indispensable a trustee under Bkpcy. Act may be allowed to charge against the estate, as a disbursement subject to taxation, a fee for his partner's work as accountant provided the trustee renounces any profit thereby accruing to him. But payments made to the trustee's firm for the work of its employees must be disallowed as disbursements.—*Re* BRYANT, ISARD & CO., [1925] 4 D. L. R. 157; 57 O. L. R. 471; 5 C. B. R. 799.—**CAN.**

sg. *Costs incurred before appointment of inspectors.*]—Solrs.' costs for services rendered prior to the appointment of inspectors are not taxable against the estate.—*Re* STONEBERG (1922), 69 D. L. R. 728; [1922] 2 W. W. R. 1328.—**CAN.**

sh. *Salaries of regular employees.*]—A custodian or trustee in bkpcy. cannot recover as disbursements, the salaries paid its regular employees.—*Re* CHEVRIER & SONS, LTD., [1928] 2 W. W. R. 111; 37 Man. L. R. 444; 10 C. B. R. 27.—**CAN.**

ART VII. SECT. 5, SUB-SECT. 1.—B. (c).

g i. ——.]—The taxation of a trustee in bkpcy.'s bill of fees & disbursements will be reopened when it appears *primâ facie* that improper items have been included. Proof that the taxing master did not understand how far the inspectors had approved the accounts will establish such a *primâ facie* case.—*Re* J. STANLEY WEDLOCK, LTD., [1925] 2 D. L. R. 566; 5 C. B. R. 626.—**CAN.**

2031 i. *Basis of taxation of solicitor's charges—Amount of costs limited.*]—*Re* MESSERVEYS, LTD., [1924] 1 D. L. R. 1037; 4 C. B. R. 493.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—C. (a).

2035 i. *Order for payment—When granted—Proceeds of sale handed over to debtor.*]—Where debtor parts with property to a trustee who in fraud of creditors, disposes of it & hands over the proceeds of the sale to debtor, such a fraudulent trustee may be compelled to pay to the creditors the money which he received as a result of such sale.—CAMERON *v.* MOSELEY, [1923] 3 D. L. R. 267.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—H.

sk. *Trustee giving secret information to purchaser of part of estate—Right to set aside sale.*]—*Re* DAVIES FOOTWEAR CO., UNDERHILLS, LTD., *v.* BARBER (1923), 53 O. L. R. 467; 4 C. B. R. 131.—**CAN.**

sl. *Effect of Bankruptcy Act,* 1914, s. 80.]—Above sect. is not intended to confer a general jurisdiction upon the Ct. of Bkpcy. to set aside such a sale & thereby affect rights acquired by purchasers.—*Re* CHIRNSIDE; DIGBY *v.* UNION TRUSTEE CO. OF AUSTRALIA, LTD. (1929), V. L. R. 217.—**AUS.**

2158. *Add. Annotation :*—**Consd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

2176. *Add. Annotation :*—**Refd.** Spencer *v.* Ashworth, Partington, [1925] 1 K. B. 589.

2264a. ——.]—A trustee having persistently disregarded the directions of the Board of Trade to send his accounts for audit the Board of Trade removed him. His accounts were sent in shortly after his removal, & it was not alleged that he had been guilty of any misappropriation or other irregularity. The creditors by ordinary resolution disapproved of the trustee's removal, & the trustee appealed to the High Ct. The ct. held, on the facts, that the Board of Trade's decision to remove the trustee was right. The motion was accordingly dismissed with costs.—*Re* ROTHMAN & ALLANSWICK, *Ex p.* RUBENS *v.* BOARD OF TRADE, [1934-5] B. & C. R. 224.

2288. *Add. Annotation :*—**Refd.** *Re* Bulmer, Greaves *v.* I. R. Comrs., [1937] 1 All E. R. 323.

2293a. —— **Holder of proxy from company.**]—At the date of the receiving order the bkpt. had on deposit with a bank certain preference & ordinary shares which had been deposited by him by way of security for a loan. A creditor for a large sum of money, a limited co., was appointed one of the members of the committee of inspection in the bkpcy. The co., being unable to act personally, appointed applt., who was its chairman, to act as its general proxy on the committee. In the course of the bkpcy. the applt., whilst so acting, purchased some of the deposited shares from the bank without any knowledge that the person who had deposited the shares was the bkpt. & that the equity of redemption in them formed part of his estate. Applt. subsequently sold some of these shares :—*Held :* applt. must in the circumstances of the case be treated as a member of the committee of inspection & was therefore in a fiduciary relation to the bkpt.'s estate. He was therefore precluded on general equitable principles from entering into the present transaction, which was

PART VII. SECT. 5, SUB-SECT. 2.—A.

2125 iv a. —— —— *"Cash receipts."*]—The trustee is to be confined to five per cent. of the cash receipts in all circumstances, unless the inspectors in writing increase the amount & the ct. approves.—*Re* BRYANT ISARD & CO., [1925] 4 D. L. R. 157 ; 57 O. L. R. 471 ; 5 C. B. R. 799 ; *varying* [1925] 1 D. L. R. 847 ; 5 C. B. R. 393.—**CAN.**

2125 iv b. —— —— —— *Meaning.*]—*Re* JOHNSTON, [1925] 4 D. L. R. 226.—**CAN.**

2125 iv c. —— ——.]—Bkpcy. Act, 1927 (c. 11), s. 85, does not recognise 5 per cent. of the cash receipts as the ordinary commission allowable to a trustee in bkpcy. ; but merely fixes 5 per cent. as the limit of the charge to be allowed, except with the approval in writing of the inspectors & of the ct. Under the circumstances in the present case a commission of 3 per cent. on both the receipts & on the cash received by the trustee under a composition agreement was held to be reasonable.—*Re* CHEVRIER & SONS, LTD., [1928] 2 W. W. R. 111 ; 37 Man L. R. 444 ; 10 C. B. R. 27.—**CAN.**

sm. *Right to priority — Over Crown debts.*]—The trustee is entitled to be paid his fees & expenses in priority to the Crown.—*Re* CANADIAN CARPET & COMFORTER MANUFACTURING CO., *Ex p.* A.-G. FOR CANADA, [1924] 4 D. L. R. 1307 ; 5 C. B. R. 54.—**CAN.**

sn. —— *Over claims for taxes.*]—A. trustee in bkpcy. is entitled to retain his fees & expenses out of the estate in priority to the Crown's claim for sales taxes.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111 ; 51 O. L. R. 287 ; 2 C. B. R. 138.—**CAN.**

so. —— ——.]—The claim of the trustee in bkpcy. for his expenses is payable in priority to the taxes owing by debtor to a municipality.—*Re* ADAMS SHOE CO., *Ex p.* TOWN OF PENETANGUISHENE, [1923] 4 D. L. R. 927.—**CAN.**

sp. —— ——.]—The trustee in bkpcy.'s claim for his fees & expenses always precedes the Crown's claim for taxes under War Revenue Tax Act.—*Re* DAVIS, [1924] 3 D. L. R. 556 ; 4 C. B. R. 698.—**CAN.**

sq. —— *Over claims by landlord.*]—If the landlord's claim arose anterior to that of the Crown's claim for taxes, the trustee's claim for his fees & expenses will count after the landlord's claim.—*Re* DAVIS, [1924] 3 D. L. R. 556 ; 4 C. B. R. 698.—**CAN.**

Priority of debts generally, *see* cases in Part XII., *post.*

q i. *Power of court to enforce payment.*]—The ct. will not dispose of a petition for an order for immediate payment of the trustee's costs.—MEN'S ATTIRE REGISTERED *v.* HART (1922), 68 D. L. R. 193 ; 2 C. B. R. 534.—**CAN.**

sv. *Non-payment of fees—Whether ground for setting aside composition.*]—LAKE ST. JOSEPH HOTEL *v* GROSLEAU (1928), Q. R. 45 K. B. 118 ; 10 C. B. R. 14.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.—B. (b).

sw. *Duty to obtain indemnity—Value of estate uncertain.*]—Where there is any doubt as to the value of the estate an authorised trustee should before proceeding with its administration, obtain an indemnity from the creditors.—*Re* GUMP (1921), 69 D. L. R. 202 ; 51 O. L. R. 118 ; 2 C. B. R. 56.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 1.—B.

2159 i. *Receiver handing over assets to trustee—Whether lien for charges—Whether locus standi to impeach management of trustee.*]—*Held :* (1) the interim receiver's fees & expenses were a first charge upon the assets, & should be paid in priority to other fees & expenses, in the administration thereof ; (2) no one except the creditors can attack the trustee upon the ground that he has mismanaged the estate.—*Re* GUMP (1921), 69 D. L. R. 202 ; 51 O. L. R. 118 ; 2 C. B. R. 56.—**CAN.**

2159 ii. —— ——.]—Before the making of the receiving order debtor co. made an assignment to T., an authorised trustee, who had no knowledge that a bkpcy. petition had been filed before the assignment :—*Held :* T. having acted innocently, ought to receive remuneration for his services, which must be treated as an expenditure of the trustee, ranking ahead of the claim of the Crown.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111 ; 51 O. L. R. 287 ; 2 C. B. R. 138.—**CAN.**

sx. *Bankrupt insured for benefit of creditor—Policy moneys held in trust for creditor.*]—*Re* WILNER (Ont.), [1928] 2 D. L. R. 396 ; 8 C. B. R. 616.—**CAN.**

sy. *Trustee carrying on business—Liability for goods supplied.*]—*Re* ALLIED OIL & GAS CO., SMITH *v.* TRUSTEE (Ont.), [1928] 2 D. L. R 986 ; 10 C. B. R. 69.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 1.—B.

sz. *Who may vote—Wife of bankrupt.*]—Bkpcy. (Scotland) Act, 1913, s. 60, enacts that the wife of the bkpt. shall not be entitled to vote in the election of the trustee, but that in all other respects she may be ranked as a creditor. Sect. 71 enacts that a majority in number & value of the creditors, present at any meeting duly called for the purpose, may remove the trustee :—*Held :* the wife of the bkpt. was not entitled to vote for the removal of the trustee in respect that the removal of the trustee was nothing more than a step in the procedure for electing a new trustee.—MACNAUGHT *v.* SIEVWRIGHT, [1928] S. C. 687.—**SCOT.**

PART VII. SECT. 9, SUB-SECT. 1.—C. (a).

sa. *For good cause.*]—If a trustee in bkpcy. acts throughout with the consent of the creditors, & if his appointment as trustee is confirmed at a general meeting of creditors, there can be no grounds for dismissing him from office.—LANGLOIS *v.* LEMIRE. *Re* GARDNER (1922), 65 D. L. R. 128.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 3.

2285 i. *Revocation of order of release—To enable trustee to administer after-acquired property—Estate administered in ignorance of existence of property.*]—*Re* WATSON (1927), 61 O. L. R. 173.—**CAN.**

PART VII. SECT. 10.

sg. *Must be appointed by creditors.*]—The creditors of a bkpt. have no power to delegate their power to appoint inspectors of the estate.—BANQUE CANADIENNE NATIONALE *v.* MUTUAL LIFE INSURANCE CO. OF NEW YORK & SHRAGGE, [1933] 1 W. W. R. 508.—**CAN.**

sm. *Power—To override creditors' instructions to trustee.*]—Where at a creditors' first meeting they instruct the trustee to give priority to certain claims :—*Semble :* it is not competent for the inspectors to override such instructions.—*Re* OLYMPIA CAFE CO., LTD., *Ex p.* BEDALI, [1927] 1 D. L. R. 907 ; [1927] 1 W. W. R. 131.—**CAN.**

sp. *Exercise of powers—Must act personally.*]—*Re* BROWN TAXI CO. & DETROIT RADIATOR CO. (1922), 65 D. L. R. 136.—**CAN.**

therefore void against the trustee in bkpcy. As, however, the transaction was entered into by applt. in ignorance that the shares formed part of the bkpt.'s estate, the ct., whilst ordering him to hand over to the trustee in bkpcy. the shares retained by him (subject to his lien for the price paid by him), would not order him to replace the shares sold by him but would be content to require him to account for the purchase money actually received for the shares which he had resold.

The validity of the appointment of a limited co. as a member of a committee of inspection doubted.—*Re* BULMER, *Ex p.* GREAVES, [1937] Ch. 499; *sub nom. Re* BULMER, GREAVES *v.* INLAND REVENUE COMRS., [1937] 1 All E. R. 323; 106 L. J. Ch. 268; 156 L. T. 178; 53 T. L. R. 303; 81 Sol. Jo. 117; [1936-7] B. & C. R. 196, C. A.

2299a. Resolution of—Proof of.]—*Re* OGUS (1936), 80 Sol. Jo. 425; *sub nom.* PRACTICE NOTE, [1936] W. N. 160.

Part VIII.—Proof of Debts.

2344. *Add. Annotation :*—**Consd.** *Re* Moss, *Ex p.* Everitt (1923), 93 L. J. Ch. 98.

2353. *Citations :*—Delete " 1 L. J. Bcy. 44."

2385. *Add. Citations :—affg.* S. C. *sub nom.* MORGAN *v.* HARDY (1887), 18 Q. B. D. 646, C. A.; *revsg.* (1886), 17 Q. B. D. 770.

Add. Annotations :—**Consd.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216. **Refd** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

2392. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

2415. *Add. Citation :*—1 Ves. & B. 112.

2419a. Forbearance to prove on agreement by third party to pay debt—Bankruptcy of third party.]—M.B.C. Co. brought an action against F. claiming repayment of a loan. Before judgment could be obtained a receiving order was made against F. In consideration of M.B.C. Co. foregoing its right to prove in the bkpcy. of F., C. promised to pay to M.B.C. Co. on demand the amount of the loan. No part of this sum was paid, & M.B.C. Co. obtained judgment against C. in respect of it. A receiving order was then made against C. M.B.C. Co. tendered a proof in the bkpcy. of C., but the trustee rejected it :—*Held :* the giving up by M.B.C. Co. of its right to prove in the bkpcy. of F. was good consideration for the promise by C. to pay the amount agreed, & M.B.C. Co. were entitled to prove in the bkpcy. of C.—*Re* CUTHBERT, *Ex p.* MONNOYER BRITISH CONSTRUCTION CO., LTD. v. TRUSTEE, [1936] 1 All E. R. 342.

2429. *Add. Citation :*—15 L. J. Bcy. 9.

2453. *Add. Annotation :*—**Consd.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

2458. *Add. Annotation :*—**Consd.** *Re* Houlder, [1929] 1 Ch. 205.

2463. *Add. Citations :—affg.* S. C. *sub nom.* MORGAN *v.* HARDY (1887), 18 Q. B. D. 646, C. A.; *revsg.* (1886), 17 Q. B. D. 770

Add. Annotations :—**Apld.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216. **Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

2298 i. —— *To consent to appointment of solicitor—No particular form necessary—Must be specific.*]—*Re* BRYANT, ISARD & Co. (Ont.), [1926] 4 D. L. R. 440; 7 C. B. R. 594; *varying*, [1925] 1 D. L. R. 34; 7 C. B. R. 93.—**CAN.**

PART VII. SECT. 11.

sd. *Authorised trustee acting for estate without authority.*]—R. was appointed an authorised trustee in bkpcy. F. another authorised trustee, made an arrangement with R. whereby he purported to transfer to R. the administration of an estate & R. proceeded to deal with the estate as if he had become authorised trustee. In an action upon a security bond given by R. :—*Held :* the security required by the Act applies only to an authorised trustee in bkpcy. after his appointment as trustee of an estate; R. did not act as an authorised trustee under the Act; therefore deft. co. never became liable for his misconduct.—MULVEY *v.* GENERAL ACCIDENT ASSCE. CO., [1930] 2 D. L. R. 657; 65 O. L. R. 110; 11 C. B. R. 273.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.

m i. —— *Meaning of.*]—" Unliquidated damages " in sect. 104 of Bkpcy. Act, R. S. C., 1927, which provides that demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust shall not be provable in bkpcy., means unliquidated damages according to the law & practice of the province.—MCALLISTER & MCALLISTER *v.* ORROCK, [1937] 3 W. W. R. 267; *sub nom. Re* MCALLISTER, MCALLISTER & CO. *v.* ORROCK, [1937] 4 D. L. R. 353; 45 Man. L. R. 433.—**CAN.**

2385 ii. —— *Bankruptcy Act, s. 44).*—The above sect. does not give persons not otherwise entitled to recover from bkpt. a right to prove against his estate because of an obligation to a third person.—*Re* EXCELSIOR ELECTRIC DAIRY MACHINERY, LTD., [1923] 3 D. L. R. 1176; (1922), 52 O. L. R. 225; 2 C. B. R. 599.—**CAN.**

se. *Debt due from association prohibited from dealing on credit system.*]—*Held :* not provable.—*Re* KELVINGTON GRAIN GROWERS' CO-OPERATIVE ASSOCN., [1924] 1 D. L. R. 249.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—B.

2427 i. *Bankruptcy of purchaser—Part delivery before bankruptcy—Cancellation of contract.*]—The insolvent co. agreed to buy sugar, to be delivered in fixed monthly instalments. After certain deliveries had been made the sugar co. intimated that there would be no more deliveries until the outstanding account for previous deliveries was settled. The insolvent co. made no demand for deliveries & the sugar co. made no tender :—*Held :* the sugar co. could not be permitted to lie by until the whole period of the contract was up & then claim damages for the failure to call for delivery during each of the preceding months.—*Re* ROCKLAND COCOA & CHOCOLATE CO. (1921), 64 D. L. R. 644; 51 O. L. R. 19; 2 C. B. R. 43.—**CAN.**

2428 i. ——*Resale by vendor—Proof for loss on resale.*]—*Held :* the vendors could prove for such damages as they would have been entitled to recover against the insolvent for the breach of the contract.—*Re* HACHBORN (1922), 67 D. L. R. 227; 51 O. L. R. 312; 2 C. B. R. 224.—**CAN.**

2438 i. —— *Payment in foreign currency.*]—*Held :* the vendor entitled to prove for an amount equivalent in value to the amount payable in foreign currency.—*Re* MCKAY (1922), 52 O. L. R. 466; 3 C. B. R. 462.—**CAN.**

2438 ii. —— *Goods not reasonably fit for required purpose.*]—*Held :* the value of the goods should be estimated, the damages incurred by the purchaser deducted, & the balance proved for.—*Re* SCOTLAND WOOLLEN MILLS CO., [1923] 2 D. L. R. 274; 3 C. B. R. 636.—**CAN.**

sf. *Sale & purchase in bulk.*]—Claim of purchaser to rank on estate of vendor disallowed.—*Re* WHITE, [1925] 1 D. L. R. 1189; 58 N. S. R. 1; 5 C. B. R. 511.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—C.

2448 iv. —— —— *For full amount of rent due—Notwithstanding agreement for reduction of rent in consideration of compromise—Compromise not carried out.*]—*Re* MARTINS, LTD. (N. S.), [1926] 2 D. L. R. 685; 7 C. B. R. 485.—**CAN.**

2465 i. *Proof by sub-tenant—Against tenant—Failure to obtain renewal.*]—Sub-tenant who has failed to obtain further sub-lease owing to bkpcy. of tenant & disclaimer by trustee is entitled to rank as a creditor for damages against the estate of the tenant.—*Re* SCHULTE-UNITED, LTD., [1934] 4 D. L. R. 51; O. R. 453.—**CAN.**

2467. *Add. Annotation :*—**Refd.** *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

2508. *Add. Annotation :*—**Expld.** *Re* Houlder, [1929] 1 Ch. 205.

2509. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

2514a. —— Payments received from other sureties.] —In Aug. 1921, two borrowers with three sureties borrowed £20,000 from an insurance co. The loan was secured by the joint & several covenant of the borrowers & the sureties & by a mtge. & further charge on the borrowers' life policies. The loan was repayable by instalments spread over five years, but, if a borrower or surety became bkpt., it was immediately repayable. On Jan. 10, 1924, a receiving order was made against one surety, H., on his own petition, & on Jan. 25 he was adjudicated bkpt. At the date of the receiving order the amount due to the insurance co. as creditors was £8,000 principal & £249 interest, & on Jan. 13, 1926, they put in a proof for that amount in H.'s bkpcy. Between the date of the receiving order & the proof, however, the creditors had received some £5,372 made up of £4,910 payments of principal & interest by the other sureties & £462 credited *ex gratia* as the surrender value of the policies which had really lapsed. The trustee in bkpcy. applied to reduce the proof by £5372 :—*Held :* as each surety was liable for the whole debt due at the date of the receiving order, the creditors were entitled to prove for the full amount in the surety H.'s bkpcy. without giving credit for any sums received from the other co-sureties since that date, provided that they did not in the whole recover more than 20*s.* in the pound.—*Re* HOULDER, [1929] 1 Ch. 205 ; *sub nom. Re* HOULDER, *Ex p.* RABBIDGE *v.* EAGLE STAR DOMINIONS INSURANCE CO., 98 L J. Ch. 12 ; 140 L. T. 325 ; [1928] B. & C. R. 114.

2545. *Add. Annotation :*—**Expld.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2546. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2557. *Add. Annotations :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

2560. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2591. *Add. Annotation :*—**Consd.** Spencer *v.* Ashworth, Partington, [1925] 1 K. B. 589.

2597. *Add. Citation :*—15 L. J. Bcy. 9.

2646. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

2647. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

2649. *Add. Annotation :*—**Consd.** *Re* Houlder, [1929] 1 Ch. 205.

2650. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

2703. *Add. Annotations :*—**Expld.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** *Re* Warren, Wheeler *v.* Mills, [1938] 2 All E. R. 331.

2721a. —— Against general partner—Bankruptcy of limited partnership.] — X. was the sole general partner in two limited partnerships, Firm A. & Firm B. By May 12, 1931, five bills of exchange had been drawn on Firm B., who accepted them by X. as managing partner. Receiving orders were subsequently made against both firms on X.'s petition, & in each case X. was adjudicated bankrupt :—*Held :* the holders of the bills were entitled to prove in the Firm A. bkpcy. —*Re* BARNARD, MARTINS BANK *v.* TRUSTEE, [1932] 1 Ch. 269 ; 101 L. J. Ch. 43 ; 146 L. T. 191 ; [1931] B. & C. R. 73.

2770. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

2771. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

2791a. Apportionment of dividend.]—The covenantor by deed covenanted to pay an annuity to trustees for the benefit of his son, &, in certain events, for the benefit of other persons. The covenantor became bkpt. & the trustees lodged proof for the amount of arrears of annuity together with a sum which represented the capitalised value of the annuity. Proof was admitted for a smaller sum & a dividend declared & paid. The question was whether the whole of the dividend was payable to the annuitant & if not how it was to be apportioned :—*Held :* the dividend must be apportioned in the ratio which the arrears of annuity bore to the total proof lodged. The portion representing arrears should be paid to the annuitant & the balance invested in the purchase of an annuity to be administered by the trustees in accordance with the trusts declared in the deed.—*Re* BEECHAM'S SETTLEMENT, JOHNSON *v.* BEECHAM, [1934] Ch. 183 ; 103 L. J. Ch. 33 ; 150 L. T. 351.

PART VIII. SECT. 4, SUB-SECT. 3.—D. (a).

2481 iv. —— *Contingent on survivorship of wife.*]—*Re* LAING (1921), 64 D. L. R. 637 ; 51 O. L. R. 11 ; 2 C. B. R. 38.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—D. (b) iii.

2526 ii. ——.]—*Re* ANDREW MOTHERWELL ESTATE, [1923] 4 D. L. R. 986; *affd.* 25 O. W. N. 359.—**CAN.**

1 i. ——.]—*Held :* the surety could not rank on the estate before the creditor had been paid in full.—*Re* COUGHLIN & Co., *Ex p.* GUARANTEE CO. OF NORTH AMERICA, [1923] 4 D. L. R. 971 ; 3 W. W. R. 1177.—**CAN.**

2545 iii. ——.]—The contingent liability of a surety who has not been called on to pay is a debt provable on the bkpcy. of the principal debtor.—*Re* FROMENT, ALBERTA LUMBER CO. *v.* ALBERTA DEPARTMENT OF AGRICULTURE, [1925] 3 D. L. R. 377 ; [1925] 2 W. W. R. 415 ; 5 C. B. R. 765.—**CAN.**

2545 iv. ——.]—A surety who has not paid or been excused becomes on the insolvency of the principal debtor a conditional creditor, & may as such prove his claim against the insolvent estate.—ROSSOUW, ETC. *v.* HODGSON, [1925] App. D. 97.—**S. AF.**

sg. *Creditor agreeing to pay off debt due to another creditor—Agreement not carried out.*]—*Held :* the creditor was entitled to rank as a creditor for the amount which he had agreed to pay off.—*Re* BENSON-JOHNSTON, LTD., [1924] 4 D. L. R. 575 ; 5 C. B. R. 196; *affd.* [1925] 1 D. L. R. 999; 5 C. B. R. 414.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—D. (b) iv.

2560 i. *Co-surety's liability to contribution.*]—A surety can prove in the bkpcy. of a co-surety for contribution, although the proving surety has not paid the creditor anything.—*Re* FROMENT, ALBERTA LUMBER CO. *v.* ALBERTA DEPARTMENT OF AGRICULTURE, [1925] 3 D. L. R. 377 ; [1925] 2 W. W. R. 415 ; 5 C. B. R. 765.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—F. (b) i.

2666 i. *Proof for aggregate sum of several bills.*]—The liability of an endorser arises in respect of each individual note & a bank cannot make a general claim against a bkpt. estate as endorser of a large number of notes. —*Re* HAYES, MCKAY & SHARP, LTD. (1934), 7 M. P. R. 535.—**CAN.**

2806. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

2807. *Add. Citations:—sub nom. Re* DODDS, *Ex p.* VAUGHAN'S EXORS., 25 Q. B. D. 529 ; 62 L. T. 837 ; 39 W. R. 125 ; 6 T. L. R. 293 ; 7 Morr, 199.

2810. *Add. Annotation :*—**Refd.** *Re* Hedderwick, Morten *v.* Brinsley, [1933] Ch. 669.

2811. *Add. Annotation :*—**Refd.** *Re* Hedderwick, Morten *v.* Brinsley, [1933] Ch. 669.

2812. *Add. Annotations :*—**Consd.** Firman *v.* Royal, [1925] 1 K. B. 681. **N.F.** *Re* Hedderwick, Morten *v.* Brinsley, [1933] Ch. 669.

2815. *Add. Annotations :*—**Consd.** *Re* Blanchard, *Ex p.* Blanchard (1932), 101 L. J. Ch. 313. **Folld.** *Re* Hedderwick, Morten *v.* Brinsley, [1933] Ch. 669. **Refd.** Campbell *v.* Campbell, [1922] P. 187.

2829. *Add. Annotation :*—**Refd.** Schlesinger & Joseph *v.* Mostyn, [1932] 1 K. B. 349.

2851a. For what amount company may prove—Shares reissued.]—(1) Where a co. in pursuance of its arts. of assocn. has forfeited shares for non-payment of moneys due on allotment & calls, & the arts. provide that notwithstanding forfeiture the ex-shareholder shall be liable to pay all calls or other money owing upon the shares at the time of the forfeiture & the shares are subsequently sold & re-allotted to other persons with the result of a loss to the co. the co. on the subsequent bkpcy. of the ex-shareholder is only entitled to prove for the actual loss suffered, that is the difference between the amount received on the re-allotment of the forfeited shares & the amount due at the date of the forfeiture.

(2) Any payment of the uncalled capital by the new allottees must enure for the benefit of the original allottee who has forfeited the shares & release him *pro tanto* in respect of the damages for which his breach of contract in failing to pay the calls rendered him liable.—*Re* BOLTON, *Ex p.* NORTH BRITISH ARTIFICIAL SILK, LTD., [1930] 2 Ch. 48 ; 99 L. J. Ch. 209 ; 143 L. T. 425 ; [1929] B. & C. R. 141.

2901. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1 ; *Re* Wait, [1927] 1 Ch. 606 ; Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

2902. *Add. Annotations :*—**Apld.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97. **Refd.** *Re* Dent, *Ex p.* Trustee, [1923] 1 Ch. 113 ; Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1 ; *Re* Warren, Wheeler *v.* Mills, [1938] 2 All E. R. 331.

2902a. —— ——.]—By marriage articles in 1914, made between husband & wife & three trustees, it was agreed that, after the intended marriage, an indenture of settlement should be executed & that the husband would bring into settlement all property to which he then was or thereafter might become entitled, to be held, subject to life interests in favour of husband & wife, upon trusts to be mutually agreed between the trustees of the settlement. It was further agreed that the first trustees of the settlement should be the three trustees of the articles therein named, & that if they or either of them should fail to accept the trusteeship of the settlement, then such other person or persons as the spouses should nominate ; & that in the meantime until the execution of the settlement the persons in whom such property should be vested should hold the same upon the trusts of the settlement. The marriage was solemnised on the day of the execution of the articles. On the death of his father on Feb. 22, 1918, the husband, under his will, became entitled in reversion, subject to the life interest of testator's widow, to a share in his residuary estate. On June 13, 1919, the trustees of the articles gave notice to the will trustees of the execution of the articles. On Oct. 21, 1920, the husband, in pursuance of his contract contained in the articles, executed a settlement by which he assigned to the trustees thereof, of whom there were three & of whom one was also a trustee under the articles, but the other two were not, his interest under his father's will upon trusts for the benefit of his wife & children. On Dec. 5, 1921, the settlor was adjudicated bkpt. The trustee in bkpcy. moved for a declaration that the settlement & the transfer of the property purported to be made thereunder were void as against him :—*Held :* (1) the acquisition by bkpt. on his father's death of the property which was non-existent at the date of the articles did not operate under the well settled doctrine as a complete equitable assignment of that property, as the persons to whom the property was contracted to be assigned & the trusts upon which such persons were to hold it were not ascertained at the date of such acquisition ; (2) even if there had been an equitable assignment within that doctrine, it would not have operated as a transfer of property within the true meaning of 1914 Act, s. 42 (3) ; (3) the assignment contained in the settlement of Oct. 1920, operated as a transfer of property within that sub-sect. & was void by reason of its execution within two years of the commencement of the bkpcy.—*Re* DENT, *Ex p.* TRUSTEE, [1923] 1 Ch. 113 ; 92 L. J. Ch. 106 ; 67 Sol. Jo. 32 ; [1922] B. & C. R. 137.

2905a. —— **Gift by father to children—Investment in father's firm—Bankruptcy of firm.**]—*Re* AIREY (EDWARD) & SONS, *Ex p.* AIREY (H. W.) & AIREY (P. B.) (1931), 72 L. Jo. 25, D. C.

2934. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

2955. *Add. Annotation :*—**Distd.** *Re* Pitchford, [1924] 2 Ch. 260.

PART VIII. SECT. 4, SUB-SECT. 3.—L.

2903 l. *Continuing contracts generally—Debtor failing to complete.*]—*Held :* the creditors were entitled to be paid the damages sustained in respect of the unexpired portions of the contract.—*Re* MCKAY (1922), 52 O. L. R. 466 ; 3 C. B. R. 462.—**CAN.**

2905 l. *Loan.*]—*Re* **NODEN, HALLETT & JOHNSTON,** *Ex p.* JOHNSTON (Ont.), [1927] 3 D. L. R. 700 ; 8 C. B. R. 295 ; *affd.* [1928] 2 D. L. R. 686 ; 10 C. B. R. 211.—**CAN.**

sh. *Agency—Bankruptcy of stock brokers—Proof for shares.*]—*Re* ROBERTSON, *Re* WEATHERHEAD, [1931] 2 D. L. R. 995 ; [1930] 3 W. W. R. 599 ; 43 B. C. R. 232 ; 12 C. B. R. 117.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 7

ss. *Costs of solicitors retained to oppose granting of receiving order.*]—*Held :* the solrs. were entitled to rank upon the estate of debtor for the amount of their costs so incurred.—*Re* TUNNELL, LTD., [1924] 4 D. L. R. 862 ; 56 O. L. R. 110 ; 5 C. B. R. 73.—**CAN.**

2978a. Proof by plaintiff against bankrupt defendant—Stay of action after bankruptcy—Proof in bankruptcy for amount claimed in action.]—On Oct. 25, 1920, resp., a mtge. broker, hereinafter called pltf., issued a writ against debtor in the K. B. Div. to recover a sum of £650 for commission earned. On June 20, 1921, the action was set down for trial. On July 19, 1921, a receiving order was made against debtor. On Feb. 2, 1922, on the application of pltf. made in the action the action was stayed with liberty to pltf. to restore. On Mar. 6, 1922, pltf., instead of applying to restore the action, lodged his proof in the bkpcy. of debtor for £650. The official receiver rejected his proof, but on Jan. 17, 1923, the county ct. judge reversed the decision of the official receiver & admitted the proof. On Sept. 29, 1923, pltf. lodged a further proof for £46 17*s.* 9*d.* for his untaxed costs of the action, all of which were incurred before the date of the receiving order. On Oct. 31, 1923, the official receiver rejected that proof. Pltf. appealed, & on Feb. 11, 1924, the county ct. judge reversed his decision & ordered that the proof of the costs, amounting to £46 17*s.* 9*d.*, should be admitted subject to taxation. On the appeal of the official receiver:—*Held:* (1) as pltf. had obtained no judgment dealing either with his claim in the action or the costs thereof, but had elected to stay his action & to prove in bkpcy. for the amount claimed in the action, he was not entitled to prove for his untaxed costs of the action; (2) (ASTBURY, J.) the sum for which pltf. sought to prove in respect of his costs was not a debt or liability certain or contingent to which debtor was subject at the date of the receiving order or to which he might become subject before his discharge by reason of any obligation incurred before that date, within 1914 Act, s. 30 (3), & therefore was not provable.—*Re* PITCHFORD, [1924] 2 Ch. 260; *sub nom. Re* PITCHFORD, *Ex p.* OFFICIAL RECEIVER, 93 L. J. Ch. 541; [1924] B. & C. R. 118; *sub nom. Re* PITCHFORD, *Ex p.* OFFICIAL RECEIVER *v.* HALL, 131 L. T. 669, D. C.

2983. *Add. Annotation:*—**Refd.** *Re* Pitchford, [1924] 2 Ch. 260.

2989. *Add. Annotation:*—**Consd.** *Re* Pitchford, [1924] 2 Ch. 260.

2991. *Add. Annotation:*—*As to* (1) **Refd.** Abraham *v.* Buckley, [1924] 1 K. B. 903.

2993. *Add Annotation:*—**Consd.** *Re* Pitchford, [1924] 2 Ch. 260.

3001. *Add. Citation:*—*sub nom.* R. *v.* SUSSEX JJ., 14 J. P. Jo. 224.

3003a. Second bankruptcy—Proof by trustee in first bankruptcy—Debts must have been proved in first bankruptcy.]—*Re* COOMBES, *Ex p.* OFFICIAL RECEIVER *v.* TRUSTEE (1935), 51 T. L. R. 258, D. C.

3029a. Necessity for stamp—Duty of trustees.]—When an unstamped proof of debt in respect whereof a fee is payable is received by a trustee, it is his duty to point out to the creditor that he has omitted to affix to it the bkpcy. stamp, value 1*s.* 6*d.*, required by Table A of the Scale of Fees, & to inform him that, in the absence of the stamp, the proof cannot be dealt with as a proof of debt against the estate.—*Re* BROWN, BORIANI *v.* TRUSTEE (1934), 103 L. J. Ch. 105; [1933] B. & C. R. 212.

3029b. —— ——.]—When an unstamped proof of debt, in respect whereof a fee is payable, is received by a trustee, it is his duty to point out to the creditor that he has omitted to affix to it the bkpcy. stamp, value 1*s.* 6*d.*, required by Table A of the Scale of Fees, & to inform him that in the absence of the stamp the proof cannot be dealt with as a proof of debt against the estate.—PRACTICE NOTE, [1934] W. N. 11; 177 L. T. Jo. 44.

3038. *Add. Annotations:*—**Consd.** *Re* A Debtor, [1927] 2 Ch. 367. **Refd.** *Re* Debtor (No. 21 of 1937), Petitioning Creditor *v.* Debtor, [1938] 2 All E. R. 356.

3049. *Add. Annotation:*—**Refd.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

3050. *Add. Annotation:*—**Refd.** *Re* Debtor, [1928] Ch. 199.

3052a. —— —— **Parties represented by independent counsel.**]—Although the ct. has power to go behind a judgment or compromise, in order to ascertain whether a petition founded thereon has been properly presented, it will not do so where the parties were represented by independent counsel at the time of such judgment or compromise, unless there is evidence that counsel acted

PART VIII. SECT. 6, SUB-SECT. 1.

3018 v. —— *Name & description of declarant.*]—It is sufficient if the initials of the christian names & the full surname be given, & words setting forth the occupation or station in life of the declarant.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

3018 vi. —— *Omission of "make oath & say"—Effect of substitution of words having same meaning.*]—The declaration should not be rejected for such variance.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

3018 vii. —— *Statement of account—Sufficiency of statement.*]—The statement of account is *primâ facie* properly referred to in a declaration only when it is "annexed & marked 'A.'" If, however, the statement is a proper one & is annexed to the declaration, though not so marked, & from an examination thereof in conjunction with the declaration or from other circumstances, it may reasonably be concluded that the statement is that referred to, it may be admitted.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

3020 i. —— *Proof on behalf of corporation.*]—(1) The declarant need not expressly describe himself as one of the classes authorised to make the declaration.

(2) Where the declaration does not state that the deponent has knowledge of the facts deposed to it is objectionable & should be rejected.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

sj. *Interlineations & erasures.*]—Although the declaration contains interlineations & erasures not duly initialed, it may be received, in the discretion of the official receiver, chairman, or trustee, if he is satisfied that the change was made before the declaration was sworn.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

3024 ii. ——.]—It is sufficient if made before a person authorised to take affidavits under Canada Evidence Act, R. S. C., 1906 (c. 145), s. 36.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

PART VIII. SECT. 6, SUB-SECT. 2.

sk. *Necessity for filing claim.*]—Neither the ct. nor the trustee will consider a creditor's claim against bkpt.'s estate until it has been filed.—*Re* CONTINENTAL PUBLISHING CO., *Ex p.* DAVIS & SIMMONS, [1924] 1 D. L. R. 339; 4 C. B. R. 343.—**CAN.**

PART VIII. SECT. 7, SUB-SECT. 1.

3035 iv a. —— —— ——.]—*Re* UNION, INDIAN SUGAR MILLS CO., LTD. *v.* BRIJ LAL, JAGANNATH (1927), I. L. R. 49 All. 728.—**IND.**

3035 vi. —— ——.]—The judge has power to inquire into the consideration for the judgment debt.—*Re* ALLAN GRAIN GROWERS' CO-OPERATIVE ASSOCN., *Ex p.*, ROBINSON, LITTLE & CO. (1922), 65 D. L. R. 347; 15 Sask. L. R. 295; [1922] 2 W. W. R. 142.—**CAN.**

improperly or without full knowledge of the facts.—*Re* DEBTOR, [1929] 1 Ch. 125; 140 L. T. 136; *sub nom. Re* DEBTOR (No. 27 OF 1927), *Ex p.* DEBTOR *v.* PETITIONING CREDITOR (1928), 97 L. J. Ch. 167; [1928] B. & C. R. 34, D. C.

Annotation:—**Apprvd.** *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

3054. *Add. Annotations:*—**Reld.** *Re* A Debtor, [1927] 2 Ch. 367; *Re* Debtor (No. 21 of 1937), Petitioning Creditor *v.* Debtor, [1938] 2 All E. R. 356.

3058. *Add. Annotation:*—**Reld.** *Re* Home & Colonial Insce. Co., [1930] 1 Ch. 102.

3059. *Add. Annotation:*—**Reld.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

3105a. Creditor money-lender—Contract harsh & unconscionable.]—A trustee in bkpcy. has no power to reject or reduce a proof by a money-lender, on the ground that the contract is harsh & unconscionable, such power being vested in the ct. alone.—*Re* ARMSTRONG, *Ex p.* LIPTON (1926), 95 L. J. Ch. 184; [1926] B. & C. R. 21.

3134. *Add. Citations:*—*sub nom. Re* BYROM, *Ex p.* ECKERSLEY, 22 L. J. Bcy. 27; 17 Jur. 198.

3140. *Add. Annotations:*—**Reld.** *Re* Debtors, [1927] 1 Ch. 19; Mason *v.* Mason & Cottrell, [1933] P. 199; *Re* Debtor (No. 975 of 1937), Debtor *v.* Petitioning Creditor & Official Receiver, [1938] 2 All E. R. 530.

3152a. —— —— ——.]—The effect of Bkpcy. Rules, 1915, r. 262 read with rr. 26, 27, 28, is that subject to the ct.'s power to extend the time, which will only be exercised in very special circumstances, no application to reverse or vary the trustee's decision in rejecting a proof can be entertained unless it is made by notice of motion supported by affidavit & set down within 21 days of the decision, so that there is an effective application before the ct. within that period.—*Re* BARLEY, [1923] 1 Ch. 177; *sub nom. Re* BARLEY, *Ex p.* HARRISON, 92 L. J. Ch. 419; [1922] B. & C. R. 258.

3172. *Add. Annotation:*—**Consd.** *Re* Searle, Hoare, [1924] 2 Ch. 325.

3173a. Debt arising out of harsh & unconscionable contract—Creditor money-lender.]—*Re* ARMSTRONG, *Ex p.* LIPTON, No. 3105a, *ante*.

3200. *Add. Annotations:*—**Apld.** *Re* Home & Colonial Insce. (1928), 44 T. L. R. 718. **Expld.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617. **Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745; Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

3210. *Add. Annotation:*—**Consd.** *Re* Searle, Hoare, [1924] 2 Ch. 325.

3210a. ——.]—Where, after the admission by the trustee of a creditor's proof against bkpt.'s estate & that creditor's participation in a first dividend, it was ascertained that he had proved for & received more than he was entitled to, & upon an application to the ct. his proof was reduced:—*Held:* in the absence of any rule in bkpcy., the well-known principle of equity, that a beneficiary who has been overpaid is not entitled to receive any further payment out of the common fund, until the payments to the other beneficiaries are levelled up to the

---

3057 i. —— *Except in regard to assessed taxes.*]—Judgment was recovered by the A.-G. of the Irish Free State against R. for excess profits duty in respect of the four accounting periods ending Dec. 31, 1917, 1918, 1919, 1920. The assessments were made by the revenue officials of the Irish Free State subsequent to Mar. 31, 1923. On the petition of the A.-G., R. was adjudged bkpt.:—*Held:* the position behind the judgment could be examined to determine the question whether the A.-G. was a competent petitioning creditor in respect of the amount of the duties.—*Re* READE, [1927] I. R. 31.—**IR.**

PART VIII. SECT. 7, SUB-SECT. 2.

3071 ii. —— *After commencement of proceedings.*]—The mother of a bkpt. claimed to be ranked in his sequestration in respect of two loans alleged to have been made by her to him before his insolvency. At the date of sequestration no writ existed establishing the loans, but in support of her claim for a ranking the claimant produced, among other evidence, a holograph acknowledgment of the loans granted by the bkpt. after sequestration. The other evidence was by itself insufficient to prove the loans:—*Held:* bkpt.'s holograph acknowledgment, having been granted after sequestration, could not be used as evidence establishing the loans; & claim rejected.—CARMICHAEL'S TRUSTEE *v.* CARMICHAEL, [1929] S. C. 265.—**SCOT.**

sl. *Proof by relative of bankrupt—Necessity for corroboration.*]—Where a relative of a bankrupt is claiming against the bkpt.'s estate he should, in order to make out a *primâ facie* case, adduce some corroborative evidence of the existence of the debt.—*Re* MORRIS, *Re* SHAUGHNESSEY, [1930] 1 W. W. R. 673.—**CAN.**

sm. —— ——.]—WRIGHT *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1930] 2 W. W. R. 293; 4 D. L. R. 1026; 11 C. B. R. 432.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 2.

3075 i. *Effect of delay.*]—The authority conferred on a trustee in bkpcy. by Bkpcy. Act, 1927, c. 11, s. 127 (2), to disallow a creditor's claim may be lost by undue delay in giving the claimant the notice of disallowance called for by said sect., especially where the claimant, if required to undertake the burden of proving his claim after such delay, would be seriously prejudiced by the delay; but, although in such a case the trustee is held by reason of the delay to have admitted the proof of the claim, he may be permitted to apply to expunge or modify the proof.—*Re* BADGER'S ESTATE, OSTRANDER & CO., LTD. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN. (Sask.), [1930] 2 D. L. R. 88; [1929] 3 W. W. R. 568; 24 S. L. R. 229; 11 C. B. R. 118.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 5.

3147 ii. —— —— *To direct issue.*]—*Held:* the bkpcy. judge had power to direct an issue to be tried.—INTERPROVINCIAL FLOUR MILLS, LTD. *v.* WESTERN TRUST CO., [1923] 2 D. L. R. 361; 16 Sask. L. R. 401; [1923] 1 W. W. R. 1068.—**CAN.**

3147 iii. —— —— *To adjudicate summarily.*]—The jurisdiction of the ct. to summarily adjudicate upon the rights of parties on an appeal under sect. 127 (4) of Bkpcy. Act, R. S. C., 1927, & r. 139, is limited to cases of claims for debt within the Act as to which there has been proper proof filed with, and which claims have been disallowed by, the trustee, & does not extend to cases in which there is a claim to property adverse to the title or rights of the trustee. In the latter cases the proper procedure to have the rights of the parties determined is under Bkpcy. rule 142, by notice of motion, upon the return of which if necessary the ct. may direct an issue or pleadings.—SAKER & SAKER *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., [1931] 3 W. W. R. 175.—**CAN.**

3157 i. —— *Evidence.*]—The authorised trustee, or claimant, may use as evidence the whole or any part of examinations of directors of debtor corpn. taken under Bkpcy. Act, s. 56.—*Re* CHRISTIE GRANT, LTD., [1921] 3 W. W. R. 264; 1 C. B. R. 489.—**CAN.**

3157 ii. *S. P. Re* DUMFERMLINE TRADING CO., *Ex p.* RELIABLE TRADING CO. (1922), 66 D. L. R. 813; [1922] 2 W. W. R. 1274.—**CAN.**

t i. —— *Jurisdiction of judge in bankruptcy.*]—*Re* MARITIME EDUCATION CO. POWELL & MERSEREAU *v.* AMERICAN HYDRO CARBON CO., [1930] 1 D. L. R. 733; 1 M. P. R. 481; 11 C. B. R. 338.—**CAN.**

t ii. —— ——.]—*Re* MARITIME EDUCATION CO., AMERICAN HYDRO CARBON CO. *v.* CLAYTON-KENNEDY, [1930] 1 D. L. R. 642; 1 M. P. R. 452; 11 C. B. R. 333; *affg.* 10 C. B. R. 425.—**CAN.**

t iii. —— *No right to substitute new claim on appeal.*]—*Re* MANITOBA METAL & HEATING CO., [1931] 3 W. W. R. 771.—**CAN.**

amount received by the overpaid beneficiary, was applicable with the result that the overpaid creditor was not entitled to participate in any future dividends in respect of his reduced proof without giving credit for the overpayment in respect of his original proof.

The mere fact that the trustee cannot recover either payments made to a creditor whose proof is subsequently expunged or overpayments made to a creditor whose proof is subsequently reduced, does not prevent the operation of that equitable principle in the case of a proof in bkpcy. Nor does the judgment of JESSEL, M.R., in *Re Tait, Ex p. Harper* (*see* No. 3210), contain any statement inconsistent with that application of the principle.—*Re* SEARLE, HOARE & Co., [1924] 2 Ch. 325; 68 Sol. Jo. 755; *sub nom. Re* SEARLE, HOARE & Co., *Ex p.* TRUSTEE, 93 L. J. Ch. 571; 132 L. T. 21; [1924] B. & C. R. 114.

3220a. —— —— ——.]—Where a petition is presented under sect. 130 of 1914 Act, & petitioners have, by inadvertence, omitted, both in the petition & in the proof, to value a security of considerable substance, but greatly below the value of the debt, the ct. has jurisdiction to give leave to amend the petition & the proof by valuing the security.—*Re* SMALL, WESTMINSTER BANK *v.* TRUSTEE, [1934] Ch. 541; 103 L. J. Ch. 305; 151 L. T. 200; [1934] B. & C. R. 1.

3222. *Add. Citation :*—[1918–19] B. & C. R. 276.

3224. *Add. Annotation :*—**Refd.** *Re* Maxson, *Ex p.* Trustee (1919), 88 L. J. K. B. 54.

3261. *Add. Annotation :*—**Expld. & Distd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

3264a. —— —— **Dividend received.**]—Applts. sold a quantity of rice to a purchaser. The purchase-money was not paid, & the vendors brought an action claiming the return of the goods on the ground that they had been obtained by the fraud of the purchaser. The purchaser became bkpt., & resps., who were the trustees in the bkpcy., were added as defts. The vendors afterwards proved for the price of the goods sold in the bkpcy. & received a dividend :—*Held :* they had elected to affirm the contract of sale, & the action could not be maintained.—KIN TYE LOONG *v.* SETH (1920), 89 L. J. P. C. 113; 123 L. T. 639; [1920] B. & C. R. 89, P. C.

Part IX.—Secured Creditors.

3334. *Add. Annotation :*—**Refd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

3352. *Add. Annotation :*—**Folld.** *Re* Debtor, *Ex p.* Petitioning Creditors (No. 5 of 1932) (1932), 101 L. J. Ch. 372.

3355. *Add. Annotation :*—**Consd.** *Re* Debtor, *Ex p.*

PART VIII. SECT. 10.

3218 ii. —— —— ——.]—The creditor was allowed to amend his claim & set out the security which he held.—STERLING CLOTHING CO. *v.* MEN'S ATTIRE REGISTERED (1922), 66 D. L. R. 358; 2 C. B. R. 535.—**CAN.**

3218 iii. —— *Proof made on footing of holding security—Security invalid.*]—Claimant was allowed to amend his claim.—*Re* DUMFERMLINE TRADING CO., *Ex p.* RELIABLE TRADING CO. (1922), 66 D. L. R. 813; [1922] 2 W. W. R. 1274.—**CAN.**

3236 ii. —— ——.]—J., who was adjudicated bkpt. on Sept. 16, 1927, was indebted to the U. Bank. Prior to the adjudication the bank had registered judgment mtges. against two farms belonging to the bkpt. The bank estimated the value of such security & proved as unsecured creditors for the balance of their debt. Subsequently as a result of the bkpt.'s criminal acts the value of the farms was so depreciated that they failed to realise the amount at which they had been assessed by the bank. The Official Assignee had recovered sufficient assets to pay all the unsecured creditors twenty shillings in the pound :—*Held :* the U. Bank were entitled to amend their proof of debt by increasing the amount thereof.—*Re* JOHNSTON, [1929] N. I. 103.—**IR.**

a i. ——.]—*Re* MCKINNON'S, LTD., [1935] 1 W. W. R. 111; 2 D. L. R. 801.—**CAN.**

ak. *Time for.*]—It is doubtful if the discretionary power in the ct. under sect. 163 (4) of Bkpcy. Act applies to the filing or amending of claims with the trustee. But the ct. has in bkpcy. an equitable jurisdiction to deal with matters of this sort. But, in view of there having been so much delay & so much change of position in the course of administration of the brokers' estate between the date of bkpcy. & the date of filing the amended claim (nearly seven years); in view of circumstances which should have enabled resp. to obtain much earlier the information (as to the sales of his securities) which he had when he filed his amended claim; in view of the situation with regard to the new co. (which after its bkpcy. could not properly issue more debentures, and, moreover, was not, as such co., before the ct.) & with regard to other creditors in similar position to resp.; & in view of all the facts & circumstances of the case, & bearing in mind that the allowance, under such or like facts & circumstances, of such amendments as that now sought might lead, in this case & in similar cases, to endless delays & confusion in the administration & distribution of stock brokerage bkpcies., it must be said that the Judge in Bkpcy. had exercised a sound discretion in declining to give effect to the amended claim, & an appellate ct. was not justified (in the circumstances of the case) in interfering with his exercise of that discretion.—*Re* STOBIE FORLONG & Co., *Re* COLWELL'S CLAIM, [1938] S. C. R. 193; *sub nom.* STOBIE FORLONG'S TRUSTEE *v.* COLWELL, [1938] 2 D. L. R. 209.—**CAN.**

PART VIII. SECT. 12.

al. *Claim rejected in part—Right of creditor to appeal.*]—A creditor received a notice from the trustee disallowing part of his claim & enclosing a cheque for the balance. The creditor clearly showed that he had no intention of accepting the cheque in full accord & satisfaction of his claim, but he cashed the cheque :—*Held :* the creditor was not thereby debarred from appealing from the disallowance by the trustee.—*Re* COHEN & SWEIGMAN, *Ex p.* GELMAN, [1925] 4 D. L. R. 359.—**CAN.**

am. *Claim of Crown rejected—Position of Crown.*]—*Re* WARDFOLD MANUFACTURING CO., [1926] 3 D. L. R. 333; 59 O. L. R. 195.—**CAN.**

PART IX. SECT. 1.

3332 iv. —— *Appeal from decision of referee—Forbidding creditor to enforce security.*]—*Re* CANADIAN WESTERN STEEL CORPN. (1922), 69 D. L. R. 689; 2 C. B. R. 494.—**CAN.**

b i. *To advise as to validity of lien.*]—A judge of the Ct. of K. B. has jurisdiction to advise an assignee for the benefit of creditors on whether certain creditors have a mechanics' lien on the assets of the estate.—*Re* BECK, [1921] 3 W. W. R. 150.—**CAN.**

PART IX. SECT. 2.

sn. *Assignment of unpaid purchase-money under farm sale agreement to secure balance of purchase price of other property.*]—*Held :* pltf. was a secured creditor.—ANDERSON *v.* SERGE, [1924] 2 D. L. R. 1018; [1924] 1 W. W. R. 1200; 18 Sask. L. R. 255.—**CAN.**

so. *Lease of property on crop-payment plan.*]—Lessor held a secured creditor in respect of rent.—*Re* TURNER (1922), 65 D. L. R. 130; 15 Sask. L. R. 381; [1922] 2 W. W. R. 414.—**CAN.**

sp. ——.]—*Held :* the lessor to the extent of his share of the crop reserved as rent was protected against the creditors of the lessee, notwithstanding a provision in the lease whereby the lessee's share of the crop was to be applied in payment of debts owing by the lessee to the lessor outside of the lease.—*Re* DEMRY & DEMRY, TRUSTEE *v.* HALLAND, [1924] 4 D. L. R. 1275; [1924] 3 W. W. R. 708.—**CAN.**

sq. *Purchase of property by third party—Agreement to transfer on repayment.*]—*Held :* the purchaser was a secured creditor.—*Re* BOURGEOIS, [1923] 2 W. W. R. 204; 3 C. B. R. 841.—**CAN.**

Petitioning Creditors (No. 5 of 1932) (1932), 101 L. J. Ch. 372.

3355a. —— **1914 Act, s. 4 (2).**]—Where deft. in an action pays money into ct. in satisfaction under R. S. C., Ord. 52, r. 1, & pltf. subsequently obtains judgment for a larger sum, pltf. is a secured creditor to the extent of the payment into ct. Accordingly, if pltf. refuses to take the money out of ct. but presents a bkpcy. petition for the full amount of his debt & costs without mentioning his security in the petition, as required by Bkpcy. Act, 1914 (c. 59), s. 4 (2), the petition will be dismissed.—*Re* DEBTOR, *Ex p.* PETITIONING CREDITORS (No. 5 OF 1932) (1932), 101 L. J. Ch. 372 ; [1931] B. & C. R. 245.

3360. *Add. Annotation :*—**Refd.** *Re* Bueb, [1927] W. N. 299.

3365a. ——.]—*Re* BUEB, *Ex p.* TRUSTEE (1927), 64 L. Jo. 476 ; 164 L. T. Jo. 408.

3375a. Deposit of securities—To secure joint debt of firm—Debts due under separate personal guarantees of partners.]—The general rule in bkpcy., that, when a creditor seeks to prove against his debtor's estate, he must give up or value any security which if not retained by him would go to augment that estate, presupposes that the security is for the particular debt for which he seeks to prove, & does not apply to a case where the security is for a different debt.

Where, therefore, two of the partners of a firm deposited with the bankers of the firm securities which belonged to them individually to secure a joint debt of the firm, & also gave the bankers their separate personal guarantees up to a limited amount to pay the joint debt of the firm, & the firm subsequently, as debtors, executed a deed of assignment for the benefit of their creditors, which provided that in the administration of the joint & separate estates of the debtors the rules prevailing in bkpcy. should be followed :—*Held :* as the bankers did not hold a charge on the securities so deposited for the debts due under the separate guarantees given by the two partners, &, therefore, were not "secured creditors" within the definition in 1914 Act, s. 167, in respect of those debts, they were entitled to prove for them under the trusts of the deed of assignment against the estates of the two partners without giving credit for the value of those securities.—*Re* DUTTON, MASSEY & CO., *Ex p.* MANCHESTER & LIVERPOOL DISTRICT BANKING CO., [1924] 2 Ch. 199 ; 93 L. J. Ch. 547 ; 131 L. T. 622 ; 68 Sol. Jo. 536 ; [1924] B. & C. R. 129, C. A.

3378. Add the following paragraph :—

"Also, under the circumstances N. was a party to the fraud, & his debentures were not a charge upon the property of S. in the hands of the trustee."

3383a. ——.]—*Re* DUTTON, MASSEY & CO., *Ex p.* MANCHESTER & LIVERPOOL DISTRICT BANKING CO., No. 3375a, *ante*.

---

st. *Judgment recovered before assignment—After passing of Bankruptcy Act,* 1919.]—*Held :* the assignment took precedence over the judgment.—PARKER-EAKINS CO. *v.* ROYAL BANK OF CANADA (1922), 65 D. L. R. 679.—**CAN.**

sv. ——.]—*Re* AYLWARD, *Ex p.* MCMILLAN (P. E. I.), [1927] 4 D. L. R. 305 ; 8 C. B. R. 352.—**CAN.**

m (p. 357) **i.** ——.]—*Re* TABATA (R. & Co., [1933] 1 W. W. R. 29.—**CAN.**

3347 ii. *Seizure of goods under lien notes—Acquired with knowledge of insolvency—By holder of unregistered bill of sale.*]—*Re* MUSTARD, [1923] 2 D. L. R. 922 ; 4 C. B. R. 140 ; *affd.*, 24 O. W. N. 513.—**CAN.**

3347 iii. ——.]—Where by a provincial statute certain creditors are given a right of distress similar to that of a landlord for rent, & an actual distraint is made thereunder before the making by the debtor of an assignment in bkpcy., the creditor is a secured creditor within Bkpcy. Act.—*Re* GARRY CAFETERIA (Man.), [1928] 1 W. W. R. 139 ; 8 C. B. R. 604.—**CAN.**

t (p. 358) **i.** ——.]—The term "secured creditor" in Bkpcy. Act, s. 9, includes a creditor who has obtained a charging order against a fund in ct.—*Re* KAPLAN, MCLEAN (J. J. H.) ESTATE CO. *v.* NEWTON (Man.), [1926] 3 W. W. R. 593.—**CAN.**

t (p. 358) **ii.** *S. P.* BORTOLUZZI *v.* KAPLAN (Man.), [1927] 1 D. L. R. 183. —**CAN.**

sw. *Distress.*]—When a landlord distrains he becomes a secured creditor under Bkpcy. Act, but, in Alberta, his rights & priorities are not governed by that Act, but are subject to Landlord's Rights (Bkpcy.) Act, Alta., 1924 (c. 12), s. 3.—*Re* HAMILTON & OAKES, [1925] 2 D. L. R. 514 ; [1925] 1 W. W. R. 172 ; 5 C. B. R. 465.—**CAN.**

3360 i. *Appointment of receiver.*]—An order appointing a receiver :—*Held :* not to be a charge, & a judgment creditor of bkpt. not by virtue of the order a secured creditor.—*Re* PETERSON, *Re* HOLLOWAY, [1925] 4 D. L. R. 1042 ; [1925] 3 W. W. R. 708.—**CAN.**

sx. *Judgment for tolls for water supplied by municipality.*]—*Held :* the city of K. was, by virtue of the charge given it by Water Act, B.C., 1914, s. 151, a secured creditor.—*Re* KAMLOOPS COPPER CO., *Ex p.* KAMLOOPS, [1925] 3 D. L. R. 896 ; [1925] 2 W. W. R. 733 ; 35 B. C. R. 243.—**CAN.**

s (p. 360) **i.** —— —— *Joint & several note.*]—*Held :* the holder of the notes was not a secured creditor.—HODGE *v.* MCLEAN & UNION BANK OF CANADA, [1919] 3 W. W. R. 1108 ; 50 D. L. R. 125 ; 13 Sask. L. R. 85.—**CAN.**

j (p. 361) **i.** —— ——.]—Where the vendor under an agreement for the sale of land assigned all his interest in the land & in the moneys owing under the agreement & gave the assignee a transfer of the land, which the latter registered, & guaranteed the assignee against default by the purchasers, the transaction being an absolute sale of the land & the debt :—*Held :* on the bkpcy. of the vendor after the purchasers had defaulted & the assignee had demanded payment from the vendor, the assignee was not a "secured creditor" within Bkpcy. Act, s. 2 (ii.). —*Re* BUCK ESTATE, MATHER *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1933] 1 W. W. R. 526 ; 2 D. L. R. 790.—**CAN.**

t (p. 362) **i.** *Lien upon mining lands for wages.*]—*Held :* claimants were not secured creditors.—*Re* REEVE DOBIE MINES, WAGE-EARNERS CLAIM (1921), 64 D. L. R. 534 ; 50 O. L. R. 499 ; 1 C. B. R. 540.—**CAN.**

sy. *Wife taking security for money advanced to husband for business purposes.*]—HAW *v.* HAW'S OFFICIAL ASSIGNEE, [1927] N. Z. L. R. 366.—**N.Z.**

sc. *Execution against property subject to conditional sale agreement.*]—Where a conditional sale agreement is void as against execution creditors of the purchaser because of non-compliance with the requirements of Conditional Sales Act, R.S.A., 1922, the fact that the purchaser makes an assignment in bkpcy. does not deprive an execution creditor of the right he otherwise would have to realise his claim out of the vendor's interest.—CROWN COAL CO., LTD. *v.* SWANSON LUMBER CO., LTD. & CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1935] 3 W. W. R. 187.—**CAN.**

sf. *Conditional sale.*]—Conditional vendor held not a secured creditor within Bkpcy. Act.—*Re* FARLEY & GRANT, [1936] 1 D. L. R. 57.—**CAN.**

sg. ——.]—The claimants herein sold goods to the bkpt. under agreements of conditional sale. The agreements were not registered. The creditors of the bkpt. had no notice of the provision in the agreements reserving the property in the goods to the sellers, & no creditor had obtained any judgment or attaching order or issued a writ of execution. The claimants affirmed, & the trustee in bkpcy. denied, that they were secured creditors :—*Held :* the claimants were secured creditors.—*Re* LYTTON CANNERS, LTD., [1938] 2 W. W. R. 455.—**CAN.**

PART IX. SECT. 3.

h i. ——.]—An assignment under Bkpcy. Act does not interfere with or lessen the rights of a secured creditor to enforce or retain his security.—WHITE & CO. *v.* THE IONIA (1922), 69 D. L. R. 94 ; 20 Exch. C. R. 327.—**CAN.**

h ii. ——.]—In bkpcy. the rule of equality is absolute except where Bkpcy. Act itself gives priority to some debts over others.—*Re* ORZY, [1924] 1 D. L. R. 250 ; 53 O. L. R. 323 ; 3 C. B. R. 737.—**CAN.**

h iii. ——.]—The rights of secured creditors remain unimpaired in the event of a receiving order or authorised assignment being made, & any proceedings taken to constitute a creditor a secured creditor or to realise on his

3412. *Add. Annotations :*—**Consd.** *Re* A Debtor, [1922] 2 K. B. 109. **Refd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525 ; *Re* Small, Westminster Bank, Ltd. *v.* Trustee, [1934] Ch. 541.

3505. *Add. Annotations :*—**Consd.** *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735 ; *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283. **Refd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87 ; *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79.

3532. *Add. Annotation :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205.

3534. *Add. Annotation :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205.

3535. *Add. Annotations :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3558. *Add. Citation :*—*sub nom. Re* EMETT, *Ex p.* ANDREWS, 1 Madd. 573.

Add. Annotations :—**Refd.** Dalby *v.* India & London Life Assce. (1854), 18 Jur. 1024; Crompton *v.* Huber (1855), 25 L. T. O. S. 43.

Part X.—Mutual Credit and Set-off in Bankruptcy.

3561. *Add. Annotations :*—**Consd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293 ; *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

security shall not, if legal, be interfered with or vacated.—*Re* HAMILTON & OAKES, [1925] 2 D. L. R. 514 ; [1925] 1 W. W. R. 172 ; 5 C. B. R. 465.—**CAN.**

h iv. ——.]—*Re* DUMAIS (1927), Q. R. 44 K. B. 79.—**CAN.**

3383 xxi. —— *Mortgage on vessel—Right to enforce security in admiralty court.*]—*Held :* an assignment under Bkpcy. Act did not prevent the holder of a mtge. upon a vessel from enforcing his security before the Exch. Ct. in Admlty.—WHITE & Co., LTD. *v.* THE IONIA, [1921] 20 Exch. C. R. 327 ; 1 C. B. R. 415.—**CAN.**

3383 xxii. —— *Security not realising sufficient to satisfy debt—Right to prove for balance.*]—If a creditor fails to file his claim in accordauce with Bkpcy. Act, s. 46, he cannot proceed against the insolvent, after a composition has been confirmed, for payment of the composition dividend on the unrealised portion of his secured debt.—DALEY & MORIN *v.* FOGEL (1922), 68 D. L. R. 772.—**CAN.**

3386 iv. ——.] — *Held :* a vendor secured by a lien note might seize the goods & obtain an order for sale, though he had not proved in the bkpcy.—*Re* EMPIRE TRACTION CO., LTD., [1920] 3 W. W. R. 515.—**CAN.**

3386 v. ——.]—A secured creditor may proceed to realise his security independently of any bkpcy. or winding-up proceedings.—*Re* CANADIAN WESTERN STEEL CORPN. (1922), 69 D. L. R. 689 ; 2 C. B. R. 494.—**CAN.**

sz. *Right to sue under Fraudulent Preferences Act, R. S. S.*, 1920 (c. 204).]—If the security of a secured creditor is sufficient to satisfy his claim in full he cannot bring action under the above Act.—BARRETT *v.* BARON, [1925] 1 D. L. R. 474 ; [1925] 1 W. W. R. 87 ; 19 Sask. L. R. 207 ; 5 C. B. R. 448.—**CAN.**

sa. *Settlement of claim by trustee & secured creditor.*] — *Held :* creditor estopped from setting up a preference in respect of part of his claim, unless the settlement contains an express stipulation to the contrary.—*Re* MARTIN MILK PRODUCTS, [1925] 1 D. L. R. 533 ; 5 C. B. R. 281.—**CAN.**

sb. *Sufficiency of security—Presumption.*]—In the absence of evidence to the contrary, it is presumed that the security of a secured creditor is sufficient to realise his claim —ANDERSON *v.* SERGE, [1924] 1 W. W. R. 1260; [1924] 2 D. L. R. 1018; 18 Sask. L. R. 255.—**CAN.**

sd. *Debt secured on property subject to Increase of Rent & Mortgage Restriction Act.*]—*Held:* the circumstance that a security subject was a property to which Increase of Rent & Mtge. Interest (Restrictions) Act, 1920, applied did not affect the right of the creditor to value his security & claim for unsecured balances, in respect (*a*) that the Act of 1920 had not repealed the provisions of Bkpcy. (Scotland) Act, 1913, conferring that right on creditors ; (*b*) that, as the trustee in bkpcy. was not a person "deriving title under" the original mtgor. within sect. 12 (1) (*f*) of 1920 Act, but was administering the estate for behoof of the creditors in virtue of his judicial act & warrant, he was not entitled to found upon sect. 7 of 1920 Act as a ground for rejecting the claim ; & (*c*) that, in any event, as the affect of sequestration was to divest the bkpt. of his property & thus prevent fulfilment by him of the conditions enumerated in sect. 7 of 1920 Act, the creditor could no longer be debarred from enforcing his security. WOOD *v.* MACKAY'S TRUSTEE, [1936] S. C. 93.—**SCOT.**

PART IX. SECT. 4, SUB-SECT. 2.

q i. —— *Guarantee by third party.*]—A guarantee by a third party or a charge on the property of a third party is outside Bkpcy. Act, s. 46 (3), & the creditor is not called upon to value the security.—*Re* COUGHLIN & Co., *Ex p.* GUARANTEE CO. OF NORTH AMERICA, [1923] 3 W. W. R. 1177 ; 4 D. L. R. 971.—**CAN.**

sc. *Effect of—On creditor's rights against sureties.*]—Where a creditor on filing a claim against bkpt. values his security, & such valuation is accepted, he is not thereby paid to the extent of the valuation so as to relieve the sureties from liability therefor.—KUPROSKI *v.* ROYAL BANK OF CANADA, [1926] 3 D. L. R. 801; [1926] S. C. R. 532; 7 C. B. R. 499.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 3.

e i. —— ——.]—Where a trustee took possession of goods upon which liens were held by virtue of an oral election to redeem at a valuation :—*Held :* he could not contend that it was invalid because not in writing.—*Re* GUARANTEED BATTERIES, LTD., [1923] 3 D. L. R. 743 ; 53 O. L. R. 45 ; 3 C. B. R. 695.—**CAN.**

g. i —— ——.]—A creditor whose security was a vendor's lien under an agreement for the sale of land was notified by the receiver, within 30 days after the receiver had been called upon to elect under sect. 109 of Bkpcy. Act, R.S.C., 1927, that the trustee did not intend to redeem or to require the security to be realised. Then, & within said 30 days, the creditor moved for a vesting order & for an order for immediate possession & a writ of possession :—*Held :* in view of the fact that the official receiver had elected not to redeem, it was not necessary for the creditor to have waited until the 30 days had elapsed before applying for the vesting order, & he was entitled to the vesting order. —*Re* BLAIS, [1936] 2 W. W. R. 510.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 4.—A.

sf. *No right to writ of possession.*]—*Re* BLAIS (1936), 6 F. L. J. (Can.) 5.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 4.—B.

sh. *Necessity for.*]—Under Bkpcy. Act, s. 6, no leave is necessary for a secured creditor to proceed to realise on his security.—IMPERIAL LUMBER CO. *v.* JOHNSON, [1923] 1 D. L. R. 1125 ; 1 W. W. R. 920 ; 3 C. B. R. 707.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 5.—D.

3500 v. —— ——.]—A bank held liens upon bkpt. co.'s personal property which it valued in pursuance of Bkpcy. Act. The goods were sold for a greater sum than the valuation :—*Held :* the bank was entitled to receive all moneys realised from the sale of the goods under lien, subject only to a claim for wages & the charges of local agents.—*Re* GUARANTEED BATTERIES, LTD., [1923] 3 D. L. R. 743 ; 53 O. L. R. 45 ; 3 C. B. R. 695.—**CAN.**

3500 vi. ——.]—A bank paid over to the trustee in bkpcy. the amount realised in excess of its claim, & subsequently it was found that payment of its claim fell short by the amount realised under a forged bill of lading :—*Held :* the bank was entitled to be repaid such shortage by the trustee.—*Re* ADANAC GRAIN CO., LTD., [1922] 1 W. W. R. 849 ; 66 D. L. R. 772 ; 31 Man. L. R 480.—**CAN.**

3500 vii. —— *Right to payment in full.*]—A. & B. valued their securities in bkpcy. proceedings at amounts less than the principal sums covenanted to be paid. The trustee in bkpcy. having sold the mortgaged lands :—*Held:* A. & B. were entitled on allocation to payment of the full amount of their claims with interest.—*Re* TURRETINE'S ESTATE, [1920] 1 I. R. 23.—**IR.**

se. *Claim partly unsecured—Appropriation of payments to unsecured claim not permissible.*]—MOORE *v.* WILLIAMS (A. R.) MACHINERY CO., LTD., [1925] 2 D. L. R. 1009.—**CAN.**

3562. *Add. Annotations :*—**Consd.** *Re* National Benefit Assce., [1924] 2 Ch. 539; *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** Paddy *v.* Clutton, [1920] 2 Ch. 554; *Re* City Life Assce. (1925), 42 T. L. R. 45.

3562a. —— **1914 Act, s. 31.**]—The right of set-off is not one which depends upon the volition of either party, but upon an absolute statutory rule. Sect. 31 of the Bkpcy. Act, 1914, is directory in form & requires that its terms should be put in force (LORD HANWORTH, M.R.).—*Re* CITY EQUITABLE FIRE INSCE. Co. (2), [1930] 2 Ch. 293; 99 L. J. Ch. 536; 143 L. T. 444; [1929-30] B. & C. R. 233, C. A.

3566a. —— ——.]—*Ex p.* EDWARDS (1745), 1 Atk. 100; 26 E. R. 66, L. C.

Annotation :—**Refd.** *Ex p.* Quinten (1796), 3 Ves. 248.

3580. *Add. Annotation :*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

3598. *Add. Annotations :*—**Apld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3599. *Add. Annotation :*—**Expld.** Giles *v.* Kruyer, [1921] 3 K. B. 23.

3612. *Add. Annotations :*—**Folld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Mentd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

3625. *Add. Annotation :*—**Consd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3631. *Add. Annotation :*—**Refd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

3637a. Equitable debt—Against legal debt.]—Bkpcy. jurisdiction proceeds upon equitable principles & draws no distinction between equitable & legal rights for the purposes of administration; & deft. is entitled under 1914 Act, s. 31, to set off against a legal debt claimed by a trustee in bkpcy. an equitable debt due to himfrom bkpt., both debts being in existence before the date of the receiving order.—MATHIESON'S TRUSTEE *v.* BURRUP, MATHIESON & Co., [1927] 1 Ch. 562; 96 L. J. Ch. 148; 136 L. T. 796; [1927] B. & C. R. 47.

3648. *Add. Annotations :*—**Consd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560. **Refd.** Paddy *v.* Clutton, [1920] 2 Ch. 554.

3650. *Add. Annotation :*—**Consd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

3652. *Add. Annotations :*—**Consd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560. **Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

3653. *Add. Annotations :*—**Folld.** Paddy *v.* Clutton, [1920] 2 Ch. 554. **Distd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. **N.F.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3654. *Add. Annotation :*—**Consd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3655. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1927] 1 Ch. 410.

3656. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3656a. —— ——.]—F. having guaranteed advances by certain banks to the T. Assocn. in which he was interested, subsequently executed two deeds of arrangement in favour of his creditors. The Assocn. having gone into liquidation, the liquidator lodged a proof against F.'s estate in respect of sums due by F. to the Assocn. The trustee of F.'s estate rejected the proof & claimed to set off the various sums which had been advanced by the banks to the Assocn. for which F. had given his personal guarantee. The banks had proved against F.'s estate under the guarantees but nothing had been paid to them :—*Held :* inasmuch as none of these sums had in fact been paid by F. or his trustee to the banks the trustee was not entitled, under 1914 Act, s. 31, to set off F.'s contingent liability under the guarantees against the sums due by him to the Assocn.—*Re* FENTON, *Ex p.* FENTON TEXTILE ASSOCN., LTD., [1931] 1 Ch. 85; 99 L. J. Ch. 358; 143 L. T. 273; 46 T. L. R. 478; 74 Sol. Jo. 387; [1929] B. & C. R. 189, C. A.

Annotation :—**Consd.** *Re* Fenton (No. 2) *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

3660. *Add. Annotation :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451

3661. *Add. Annotation :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson (1924), 131 L. T. 652.

3662. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1927] 1 Ch. 410.

3663. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

3665. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn., Ltd., [1931] 1 Ch. 85.

3667. *Add. Annotations :*—**Distd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3672. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn., Ltd., [1931] 1 Ch. 85.

3678. *Add. Annotations :*—**Consd.** Paddy *v.* Clutton, [1920] 2 Ch. 554; *Re* National Benefit Assce., [1924] 2 Ch. 339. **Apld.**

PART X. SECT. 1, SUB-SECT. 2.—B. (o).

3600 v. —— —— *Rebates on insurance premiums.*]—Debtor co. were indebted to a broker upon accepted drafts for insurance premiums paid by him on their behalf, & arranged with the broker to cancel the insurance policies upon which he had paid the premiums represented by the unpaid drafts, & to have the amounts allowed by way of rebate for the unearned premiums paid by the insurance cos. to the broker :—*Held :* the broker was entitled to apply the sum paid to him for rebates in reduction of the co.'s indebtedness, or by way of set-off against his claim for the amount of the premiums paid by him.—*Re* FAIRWEATHERS, LTD. (1921), 67 D. L. R. 590; 51 O. L. R. 438; 2 C. B. R. 202.—**CAN.**

3600 vi. —— —— *Creditor for services rendered—Debtor for goods delivered by bankrupt—Agreement for services to be paid for by supply of goods.*]—*Held :* there was a right of set-off.—*Re* MCMURTRY & Co., *Ex p.* JAMES (M. A.) & SONS, [1924] 1 D. L. R. 737.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.

3646 i. *Arrears of rent—Against sum due for grass seed.*]—*Held :* the landlord could exercise the right of set-off.—*Re* GRANTHAM, *Ex p.* DOYLE, [1923] 3 D. L. R. 94; 4 C. B. R. 168.—**CAN.**

3648 iii. —— ——.]—If shares in a co. are disclaimed by the official assignee upon the bkpcy. of a shareholder, & if for purposes of proof an estimate is made under Bkpcy. Act, 1908, s. 111, of the amount claimable in respect of future calls thereon, the co. may set off against such amount a sum due by the co. to bkpt. for goods supplied by him.—*Re* ANDERSON, [1924] N. Z. L. R. 1163.—**N.Z.**

Re City Life Assce. (1925), 42 T. L. R. 45, **Consd.** *Re* City Equitable Fire Insurance Co., [1930] 2 Ch. 293, C. A.; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

3679. *Add. Annotation :*—**Refd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

3680. *Add. Annotations :*—**Consd.** *Re* City Life Assce. (1925), 42 T. L. R. 45. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3689. *Add. Annotations :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358; *Re* City Equitable Fire Insurance Co., Ltd., [1930] 2 Ch. 293.

3695. *Add. Annotation :*—**Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

3696a. Shares deposited as security for debit balance owing to bankrupt—Unauthorised sale by bankrupt.]—Deft. opened a speculative account with a firm of stockbrokers & deposited with them as security for any debit balance which might from time to time be owing by him on that account the indicia of title to various bonds & shares, including certain rubber shares. In 1920 the firm sold the rubber shares without the knowledge or authority of deft., who was kept in ignorance of the sale till after the bkpcy. of the firm. On Feb. 16, 1922, a receiving order was made against the firm & they were adjudicated bkpt. In Feb. 1923, the trustee in bkpcy. of the firm rendered deft. a final account, which, after giving credit to deft. for the proceeds of the sale of the shares, showed a balance due from deft. In an action to recover that balance the trustee claimed that the rights of the parties ought to be adjusted under the mutual credits clause of 1914 Act, as at the date of the receiving order. The judge, in ordering an account to be taken, directed that the value of the shares, to be ascertained when the account was certified, that being the date when the shares ought to have been returned to deft., should be set off against the claim of the trustee :—*Held :* the brokers could not have maintained an action for their debt if they were not in a position to hand over the shares against payment, & the trustee in bkpcy. had no higher right; no question of set-off arose under the mutual credits clause of 1914 Act, the right of deft. being to a return of the shares *in specie ;* & in the special circumstances of the case the order of the judge was correct.—ELLIS & Co.'s TRUSTEE *v.* DIXON-JOHNSON, [1925] A. C. 489; 94 L. J. Ch. 221; 133 L. T. 60; 41 T. L. R. 336; 69 Sol. Jo. 395; [1925] B. & C. R. 54, H. L.

3697. *Add. Annotation :*—**Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

3702. *Add. Annotation :*—**Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

3707. *Add. Annotations :*—**Folld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3708. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3714. *Add. Annotations :—As to* (2) **Consd.** *Re* City Life Assce., [1926] Ch. 191. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358; *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

3719. *Add. Annotations :*—**Consd.** Paddy *v.* Clutton, [1920] 2 Ch. 554; Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339; *Re* City Life Assce. (1925), 42 T. L. R. 45; *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3727. *Add. Annotation :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3739. *Add. Annotations :*—**Consd.** Paddy *v.* Clutton, [1920] 2 Ch. 554; Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339; *Re* City Life Assce. (1925), 42 T. L. R. 45; *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3740. *Add. Annotations :*—**Consd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9. **Refd.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

3740a. ——.]—Applt., the managing director of a co. which was insolvent, recovered judgment against the co. for repayment of money lent by him to the co. Shortly afterwards, the provisional liquidator of the co., which was subsequently, in Apr. 1925, ordered to be wound up, paid to applt. the amount for which he had recovered judgment, & in Apr. 1926, an order was made in the winding up upon applt. to repay to the liquidator that amount, on the ground that the payment to him by the liquidator was void as a fraudulent preference. In consequence of applt.'s non-compliance with that order, a bkpcy. notice was served upon him, & a receiving order made against him, the registrar refusing to allow applt. to set off against the amount he had been so ordered to repay to the liquidator the sum for which he had recovered judgment against the co. :—*Held :* applt. had not, at the date of the receiving order, any valid or effectual right of set-off in respect of the sum he had been ordered to repay to the liquidator.—*Re* A DEBTOR (82 of 1926),

---

PART X. SECT. 1, SUB-SECT. 4.

3703 ii. ——.]—A bank distrained for rent owing to it & sold the goods & chattels of the tenant. He was then indebted to the bank under a chattel mtge. which had been assigned to the bank & also for the balance of an open account. After satisfying its claim for rent & the costs of the distress from the proceeds of said sale the bank applied the balance, of the sum realised towards payment of the open account & the debt under the chattel mtge. The tenant, a few days later, made an authorised assignment :—*Held :* the bank was entitled to set off as it did the balance of the sum realised, over & above the whole amount due it for rent, against said other debts due it.—*Re* WORTH, [1938] 1 W. W. R. 765.—**CAN.**

sm. ***Claim by creditor to share of profits in business—Claim by insolvent for damages for breach of contract to purchase business.***]—***Held :*** the case was one of mutual dealings.—**JEFFERY *v.* RANGOON OFFICIAL ASSIGNEE (1927), I. L. R. 6 Ran. 46.—IND.**

[1927] 1 Ch. 410; 136 L. T. 349; *sub nom. Re* MUMFORD, DEBTOR *v.* PETITIONING CREDITOR, *Ex p.* OFFICIAL RECEIVER, 96 L. J. Ch. 75; [1926] B. & C. R. 165, D. C.

3741. *Add. Annotations :*—**Expld. & Distd.** *Re* Fowler (B. P.), Ltd., [1937] 3 All E. R. 781. **Refd.** *Re* A Debtor, [1927] 1 Ch. 410.

3746. *Add. Annotation :*—**Consd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

3750a. —— ——.]—GROOM *v.* WEST (1838), 8 Ad. & El. 758; 1 Per. & Dav. 19; 1 Will. Woll. & H. 638; 8 L. J. Q. B. 25; 112 E. R. 1025; *sub nom.* GOOM *v.* WEST, 2 Jur. 940.

3769. *Add. Annotations :*—**Distd.** *Re* Pennington & Owen, [1925] Ch. 825. **Consd.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677. **Apld.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

3776. *Add. Annotation :*—**Apld.** *Re* Lennard, Lennard's Trustee *v.* Lennard, [1934] Ch. 235.

3776a. —— —— ——.]—By deed dated Mar. 16, 1906, L. bound himself by covenant to pay an annuity of £108 to C. from & after the death of her husband (which occurred on Nov. 13, 1923); & F., the father of the covenantor, guaranteed payment of the annuity. On Aug. 21, 1911, F. died; &, under his will, L. became entitled on the death of testator's widow to a one-fifth share of the ultimate residue of his estate. On Oct. 17, 1929, L. was adjudicated bkpt. On Oct. 30 C. proved in the bkpcy., & early in 1930 her proof was admitted for the sum of £673 17*s.* 8*d.*, & she received by way of dividend in respect thereof £134 15*s.* 7*d.* Ignoring that proof, the exors. proceeded to pay certain instalments of the annuity amounting to £344 9*s.* 10*d.*, & on Sept. 8, 1932, they expended the sum of £849 on the purchase for her of an annuity of £108.

On Jan. 18, 1931, the widow of F. died, & thereupon the trustee in bkpcy. became entitled to payment of the share of the bkpt. in the residuary estate of F., subject to such right as the exors. had to have the estate of the surety indemnified out of the share therein of L., the principal debtor, against any claim upon that estate by C. In this action the trustee in bkpcy. claimed a declaration that the exors. were not entitled (as they claimed to be) to retain out of the said share of the bkpt., on account of any unsatisfied liability of the bkpt., as the principal debtor, to indemnify the estate of the surety, any sum in excess of the sum of £539 2*s.* 1*d.*, being the amount of C.'s proof less the dividends of £134 15*s.* 7*d.* :—*Held :* on the principle recognised in *In re Melton*, the exors. were, notwithstanding the bkpcy., entitled to apply the share in their hands of the principal debtor in discharging his obligation to indemnify the estate of their testator, the surety; & that, having regard to the fact that C. proved in the bkpcy., they were entitled to retain out of that share the sum for which C. proved less the amount received by her by way of dividend, but were not entitled to retain any sum in excess thereof.—*Re* LENNARD, LENNARD'S TRUSTEE *v.* LENNARD, [1934] Ch. 235; 103 L. J. Ch. 81; 150 L. T. 235; [1933] B. & C. R. 204.

3781a. —— **Property conveyed to settlement trustees—Against unpaid sum covenanted to be brought into settlement.**]—Upon the marriage of the bkpt. in 1802, the estate of the wife, consisting of freehold, copyhold & leasehold lands, were conveyed to the use of the bkpt. & his heirs, who covenanted with the trustees within six months after the marriage, to pay to them £4,000 upon the trustes of the settlement. The trustees never demanded payment. In 1806 the bkpt. sold part of the freehold premises, & he & his wife levied a fine of the whole, declaring the uses of that part which was sold to the purchaser, but without making any declaration as to the remainder. In 1812 the bkpt. conveyed all his estates to trustees for the benefit of his creditors. In 1813 the bkpt. covenanted that he & his wife would levy a fine to the uses declared in the deed of 1812, & a fine was levied accordingly. The wife never surrendered the copyhold premises pursuant to the settlement 1802. In 1814 the commission issued, & the husband was declared a bkpt., his execution of the trust deed 1812 being the act of bkpcy. The trustees of the settlement proved the £4,000 under the commission & signed the bkpt.'s certificate :—*Held :* the trustees on behalf of the wife & children of the pkpt., had a lien upon the estates thereby conveyed & remaining unsold by the bkpt. to the amount of the £4,000.—*Re* DICKEN, *Ex p.* DICKEN (1817), Buck. 115, L. C.

Annotations :—**Consd.** *Re* Sewell, White *v.* Sewell, [1909] 1 Ch. 806; Stammers *v.* Elliott (1868), 3 Ch. App. 195.

3781b. —— **Dividend—Against sums paid by debtor on contract of guarantee.**]—F., having guaranteed advances by certain banks to the T. Assocn., in which he was interested, subsequently executed two deeds of arrangement in favour of his creditors. The Assocn. having gone into liquidation, the liquidator lodged a proof against F.'s estate in respect of sums due by F. to the Assocn. The trustee of F.'s estate rejected the proof & claimed to set off the various sums which had been advanced by the banks to the Assocn. for which F. had given his personal guarantee. At that time, although one or more of the banks had proved against F.'s estate under the guarantees, nothing had been paid to any of them. The Assocn. was admitted to prove against F.'s estate for a very large sum, & the trustee declared an interim dividend of 1*s.* in the pound. The banks were paid the dividend in respect of their admitted proofs, which also amounted in the aggregate to a considerable sum. The sums constituting the amount of the banks' proofs represented the amount of the Assocn.'s debt which had been guaranteed by F. The question arose whether the trustee of F.'s estate was under the circumstances entitled to pay to the liquidator of the Assocn. the sum representing the interim dividend declared in respect of the admitted proof. The matter came before the ct. by way of motion on behalf of the trustee, the question being whether this declared dividend was properly payable to the liquidator of the Assocn. or the trustee was entitled to withhold payment of all or any part thereof. On behalf of the Assocn. it was urged that the previous proceedings reported in *Re Fenton*,

Ex p. Fenton Textile Assocn., Ltd., No. 3656a, *ante*, had concluded the matter, that the question was now *res judicata*, & that, notwithstanding the payment to the banks of the amount of the dividend since that decision, the liquidator of the Assocn. was entitled to the full dividend in respect of the Assocn.'s admitted proof:—*Held:* (1) the question raised by the motion had not been determined by the Ct. of Appeal in the previous proceedings; & (2) the claim by the trustee to withhold the payment of any part of the dividends payable in respect of the Assocn.'s proof failed. The rule against double proof afforded an answer to the trustee's claim to retain the dividends on the admitted proof of the Assocn. so long as any part of the debt due to the banks remained unsatisfied.—*Re* FENTON (No. 2), *Ex p.* FENTON TEXTILE ASSOCN., LTD., [1932] 1 Ch. 178; 146 L. T. 229; [1931] B. & C. R. 59; *sub nom. Re* FENTON (No. 2), *Ex p.* TRUSTEE UNDER DEED OF ARRANGEMENT *v.* FENTON TEXTILE ASSOCN., LTD., 101 L. J. Ch. 1.

Part XI.—Joint and Separate Estates—Bankruptcy of Firm or Partner.

3793a. One partner a company—Compulsory winding up—Rights of trustee.]—Where a receiving order was made against a firm consisting of an individual & a co., & subsequently an order was made for the compulsory winding up of the co., & liquidators were appointed, the ct. directed that the administration of the bkpcy. should be conducted by the trustee in bkpcy. & that assets collected by the special manager who had been appointed in the bkpcy. should be handed over to the trustee in bkpcy. Leave was given to amend the proceedings by making the petition & receiving order against the partners "other than the co."—*Re* DOBREE & Co., [1929] B. & C. R. 1.

3832a. Claim under covenant void against creditors—Postponed to claims of joint creditors of partnership—& of creditors against separate estate.]—*Re* CUMMING & WEST, *Ex p.* NEILSON & CRAIG *v.* TRUSTEE, No. 7155a, *post*.

3866a. —— —— ——.]—Applying the following well-settled principle of bkpcy., that, just as a debtor may not, when proving against the assets, compete with his own creditors, so a partner of a debtor may not compete with that debtor's creditors, so long as there are any creditors of the debtor not fully satisfied, to whom the partner is under liability. Where the assets of the bkpt. are sufficient to satisfy in full the statutory interest on the amounts due to the separate & joint creditors respectively, but are not sufficient to pay, in addition thereto, the amount due to a partner of the debtor, the separate & joint creditors are upon the proper construction of 1914 Act, sect. 33 (8), entitled, in priority to the partner of the bkpt., to be paid the statutory interest in full on their respective debts proved in the bkpcy.—*Re* HOWES, [1934] Ch. 49; 150 L. T. 95; [1933] B. & C. R. 133; *sub nom.* HOWES, *Re*, TRUSTEE *v.* GILL & REIGATE LTD., 102 L. J. Ch. 346.

3900. *Add. Annotations:*—**Reld.** *Re* Biddulph, *Ex p.* Burton (1843), 3 Mont. D. & De G. 364; Stroud *v.* Gwyer (1860), 28 Beav. 130.

3945a. Estate of undischarged bankrupt partner—Second bankruptcy of partner—Unsatisfied balance of joint liabilities in first bankruptcy.]—T. & M., partners in a firm, had been adjudged bkpt.; bkpt. M.'s discharge had been refused, & there were unsatisfied joint debts in the bkpcy. of the firm; & a subsequent receiving order was made against M. under which he was again adjudged bkpt.:—*Held:* under 1914 Act, s. 33 (6) & s. 39 (1), the unsatisfied balance of the joint liabilities of the firm could be proved in the subsequent bkpcy. of M. by the trustee in the first bkpcy.—*Re* MOSS, *Ex p.* EVERITT (1923), 93 L. J. Ch. 98; [1923] B. & C. R. 135.

3981a. Meaning of "solvent."]—*Re* BEAUCHAMP BROS., No. 4116a, *post*.

4019. *Add. Annotation:*—**Reld.** Holmes *v.* Watt, [1935] 2 K. B. 300.

4030. *Add. Annotation:*—**Consd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

4069. *Add. Annotations:*—**Reld.** *Re* Gunsbourg, [1920] 2 K. B. 426; Moore *v.* Flanagan, [1920] 1 K. B. 919.

4102a. —— —— **Separate personal guarantees of partners.**]—*Re* DUTTON, MASSEY & Co., *Ex p.* MANCHESTER & LIVERPOOL DISTRICT BANKING CO., No. 3375a, *ante*.

4108. *Add. Annotation:*—**Consd.** *Re* Dutton, Massey, *Ex p.* Manchester & Liverpool District Banking Co., [1924] 2 Ch. 199.

4116a. Right to administration of partnership assets.]—(1) Where a partnership has been dissolved by the bkpcy. of one partner, the general rule that the solvent partner is entitled to have the administration of the partnership assets does not apply when such solvent

---

PART X. SECT. 5, SUB-SECT. 1.

3784 i. *How right to retain lost—Proof against bankrupt.*]—*Re* LUSSIER, [1927] 4 D. L. R. 637; 61 O. L. R. 177.—**CAN.**

PART XI. SECT. 1.

3788 v. ——.]—The separate creditors must be satisfied in full before the partnership creditors can rank, & as to partnership assets, the partnership creditors must first be satisfied in full before the separate creditors can rank.—*Re* TAYLOR *v.* LEVEYS, [1923] 3 D. L. R. 1134; 52 O. L. R. 201; 2 C. B. R. 390.—**CAN.**

3788 vi. ——.]—*Re* DAUM & PLAETZER, *Ex p.* MONROE (Ont.), [1927] 4 D. L. R. 744; 8 C. B. R. 446.—**CAN.**

sp. *Effect of authorised assignment by firm.*]—An authorised assignment by a firm operates as an assignment also of the separate estate of each partner.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK, [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487.—**CAN.**

st. *Motion by trustee to have debtor declared partner in bankrupt firm—Debtor entitled to be heard.*]—*Re* POLLARD, [1925] 4 D. L. R. 370.—**CAN.**

PART XI. SECT. 3, SUB-SECT 2.—C.

sz. *Money paid by partner under partnership agreement on death of bankrupt partner to deceased's estate.*]—*Re* ENGELAND (Ont.), [1926] 4 D. L. R. 1029.—**CAN.**

partner is an infant, but, *semble*, such solvent infant partner may apply to the ct. by an adult next friend to have such administration. (2) Whoever the liquidating person is, whether the solvent partner or the trustee as representing the bkpt. partner, he holds the partnership assets in trust for discharging the partnership liabilities, & if, to the knowledge of any one dealing with the liquidating person, there has been any misapplication of such assets, the person so dealing is accountable for any part of the assets which he may have received.

(3) I suppose that so long as the members of this partnership were solvent—I mean by "solvent" were not judicially declared bkpt. . . . (VAUGHAN WILLIAMS, J.).—*Re* BEAUCHAMP BROTHERS. *Ex p.* CARR (1896), 75 L. T. 315; 3 Mans. 207.

4152a. Right to follow assets misapplied—Against party with notice of breach of trust.]—*Re* BEAUCHAMP BROTHERS, *Ex p.* CARR, No. 4116a, *ante*.

4165. *Add. Annotation :*—**Distd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors.. [1930] 1 Ch. 342.

4167. *Add. Annotation :*—**Consd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

4169. *Add. Annotation :*—**Refd.** *Re* Howes, *Ex p.* Trustee, [1934] 1 Ch. 49.

4172. *Add. Annotation :*—**Refd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

4183. *Add. Annotation :*—**Refd.** *Re* Howes, *Ex p.* Trustee, [1934] 1 Ch. 49.

4186a. —— —— Share of deceased partner ascertained before adjudication.]—The rule that in the bkpcy. of a firm the exors. of a deceased partner may not prove in competition with the creditors of his surviving partners may be inapplicable when the share of the deceased partner has been ascertained before the adjudication in bkpcy., & no joint liability can be shown to exist. On the death of a partner in a London firm a sum was found due to his estate from the surviving partners in respect of his share in the business, & certain claims & accounts between the deceased partner & another firm in Dundee, of which during his life he was also a partner, & which firm was after the death of the deceased partner a creditor of the London firm, were also compromised & settled by his exors. before the bkpcy. of the London firm :—*Held :* the proof of a debt put in by the deceased partner's exors. in the bkpcy. of the London firm ought to be admitted.—*Re* DOUGLAS, *Ex p.* DOUGLAS' (JAMES) EXECUTORS, [1930] 1 Ch. 342; 142 L. T. 379; [1929] B. & C. R. 76; *sub nom. Re* DOUGLAS, DOUGLAS & HILL *v.* MYERS (J. E.), 99 L. J. Ch. 97.

4217. *Add. Annotations :*—**Apld.** Houghton *v.* Nothard, Lowe & Wills, [1928] A. C. 1. **Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

Part XII.—Priority of Debts.

4279. *Add. Annotations :*—**Refd.** *Re* Webb (Smithfield, London, [1922] 2 Ch. 369; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4281a. —— "Local rate"—Land drainage rate.]

PART XI. SECT. 6, SUB-SECT. 1.

sa. *Right to claim for money advanced to partner after ineffective dissolution.*]—*Re* WALKEAM, [1926] 1 D. L. R. 274; 58 O. L. R. 141; 7 C. B. R. 4.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 3.

sb. *Claim by Workmen's Compensation Board—For arrears of payment of assessments.*]—Claim refused.—WORKMEN'S COMPENSATION BOARD *v.* EDGAR, [1924] 3 D. L. R. 273; [1924] 2 W. W. R. 566; 20 Alta. L. R. 385.—**CAN.**

sc. —— *Extent of priority.*]—*Re* SYER, *Ex p.* WORKMEN'S COMPENSATION BOARD (Ont.), [1927] 3 D. L. R. 802; 8 C. B. R. 275.—**CAN.**

sd. ——.]—Applt. held as trustee for debenture holders a blanket mtge. on the property of a bkpt. which crystallised when the bkpcy. order was made & thereupon became a specific charge upon the property. The bkpt. owed the Workmen's Compensation Board on an assessment for fees due to the Board & applt. claimed priority for the mtge. in the distribution of the bkpt.'s assets :—*Held :* the Board was not entitled to priority over applt.'s charge.—DINNING *v.* WORKMEN'S COMPENSATION BOARD, [1932] 1 W. W. R. 136; 1 D. L. R. 376.—**CAN.**

se. ——.]—WORKMEN'S COMPENSATION BOARD & DINNING *v.* NICHOLS, [1932] 2 W. W. R. 325; 3 D. L. R. 385; 45 B. C. R. 241.—**CAN.**

sf. ——.]—**The lien of the Workmen's Compensation Board will be defeated on sale of the assets by the trustee, where no steps have been taken to enforce the lien, the security has not been surrendered, & no statutory declaration under Bkpcy. Act, s. 107, has been filed.**—*Re* MOTOR BODIES, LTD., WORKMEN'S COMPENSATION BOARD *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., [1932] 3 D. L. R. 272; 5 M. P. R. 309.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 4.

sd. *General rule.*]—The Crown has a prerogative right to be paid upon a distribution in bkpcy. in priority to other unsecured creditors, but it is merely a right of preference in the administration of the estate.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—**CAN.**

sf. ——.]—Where the Crown is an unsecured creditor for taxes owing by bkpt., the Crown will take preference over all other secured creditors in respect of those taxes.—*Re* NOEL, *Ex p.* GRAVELBOURG TOWN (1922), 65 D. L. R. 754; 2 C. B. R. 545.—**CAN.**

sj. ——.]—*Re* STANDARD PHARMACY, LTD., *Re* ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300; [1926] 1 W. W. R. 773.—**CAN.**

sk. *Trustee entitled to set off payment of taxes against claim of landlord for arrears of rent.*]—*Re* GRANTHAM, *Ex p.* DOYLE, [1923] 3 D. L. R. 94; 4 C. B. R. 168.—**CAN.**

4280 ii. —— —— *Water rate.*]—*Re* AN ARRANGING DEBTOR, [1921] 2 I. R. 1.—**IR.**

4280 iii. —— *Light rates.*]—*Re* MATHESON, *Ex p.* PRINCE ALBERT (CITY), [1924] 1 W. W. R. 129; [1924] 1 D. L. R. 260; 18 Sask. L. R.—**CAN.**

4280 iv. —— *Electric power rates.*]—*Re* BECKER'S DELICATESSEN, [1925] 1 D. L. R. 652; 56 O. L. R. 140; 5 C. B. R. 208.—**CAN.**

4280 v. —— *Crown Timber Act, 1927 (c. 38), s. 2 (1).*]—The word "rates" in above sub-sect. means the price which any licencee is required to pay for the timber to be cut under his licence, & does not mean the "taxes, rates, or assessments" which under Bkpcy. Act, 1927 (c. 11), s. 125, may be levied or imposed upon the debtor or upon any property of a bkpt. under any law, Dominion or of the Province.—*Re* HARDY, [1929] 1 D. L. R. 300; 63 O. L. R. 246; 10 C. B. R. 288.—**CAN.**

4280 vi. —— ——.]—*Re* ABERNETHY-LOUGHEED LOGGING CO., [1938] 1 W. W. R. 544.—**CAN.**

b i. —— ——.]—*Re* INTERNATIONAL METAL WORKS, LTD., *Ex p.* R., [1925] 1 D. L. R. 309; 5 C. B. R. 378.—**CAN.**

b ii. —— ——.]—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* EDMONTON CITY, [1925] 2 D. L. R. 525; [1925] 1 W. W. R. 747; 21 Alta. L. R. 160; 5 C. B. R. 587.—**CAN.**

b iii. —— *Municipal taxes.*]—*Re* CANADA PRESERVING CO. (Ont.), [1928] 2 D. L. R. 529; 10 C. B. R. 63.—**CAN.**

b iv. —— —— *Necessity for notice of claim.*]—The provisions of sect. 112 (11) of Assessment Act, R. S. O., 1927, as to notice of amount due for taxes, are, by sect. 125 of Bkpcy. Act, 1927, made part of the Bkpcy. Act.—*Re* CANADIAN HORSESHOE CO., [1931] O. R. 402; 12 C. B. R. 485.—**CAN.**

c i. —— *Business taxes.*]—*Re* WEST

—A land drainage rate levied by a drainage board constituted under Land Drainage Acts, 1861 (c. 133), & 1918 (c. 17), is a local rate entitled to preferential payment within 1914 Act, s. 33 (1) (*a*).—*Re* ELLWOOD, [1927] 1 Ch. 455; *sub nom. Re* ELLWOOD, *Ex p.* RIVER DEE DRAINAGE BOARD *v.* HOOSON, 96 L. J. Ch. 170; 136 L. T. 696; [1927] B. & C. R. 53, D. C.

4284. *Add. Annotations :*—**Refd.** *Re* Webb (Smithfield, London, [1922] 2 Ch. 369; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4288. After this case add :—

——.]—*See, also*, Bkpcy. (Amendment) Act, 1926 (c. 7), s. 2.

4295a. —— —— **Helping employer to perfect invention—Under agreement for payment out of profits.**]—Where a clerk assisted his master in perfecting an invention, for which a patent had been obtained, upon an agreement to be paid out of the profits, but which agreement had no reference to his duties as clerk :—*Held :* he was not precluded from proving for his remuneration as a clerk, or from receiving three months' salary in full.—*Re* ELLINS, *Ex p.* HICKIN (1850), 3 De G. & Sm. 662; 19 L. J. Bcy. 8; 14 L. T. O. S. 469; 14 Jur. 405; 64 E. R. 651.

4298. *Add. Annotation :*—**Consd.** Moriarty *v.* Regent's Garage & Engineering Co. (1920), 90 L. J. K. B. 783.

(F. E.) & Co. (1921), 62 D. L. R. 207; 50 O. L. R. 631; 2 C. B. R. 3.—**CAN.**

c ii. —— ——.]—Where a township or municipality is, by a provincial statute, made a preferred creditor in respect of business taxes, this preference disappears when the statute is repealed by a dominion statute.—*Re* NOEL, *Ex p.* GRAVELBOURG TOWN (1922), 65 D. L. R. 754; 2 C. B. R. 545.—**CAN.**

c iii. —— ——.]—A municipal corpn. is not entitled by Bkpcy. Act, s. 51 (6), to priority over other creditors of bkpt., for business taxes in respect of which no distress has been made.—*Re* CECILIAN CO. (1922), 69 D. L. R. 679; 51 O. L. R. 649; 2 C. B. R. 510. —**CAN.**

c iv. —— ——.]—A city is in respect of business tax a secured creditor.—*Re* MATHESON, *Ex p.* PRINCE ALBERT (CITY), [1924] 1 D. L. R. 260; [1924] 1 W. W. R. 129; 18 Sask. L. R. 3.—**CAN.**

c v. —— ——.]—*Re* STANDARD PHARMACY, LTD., *Re* ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300; [1926] 1 W. W. R. 773.—**CAN.**

c vi. —— *Dominion taxes—Over taxes due to municipality.*]—*Held :* Dominion taxes preferred.—*Re* ADAMS SHOE CO., *Ex p.* TOWN OF PENETANGUISHENE, [1923] 4 D. L. R. 927.—**CAN.**

c vii. —— *Income tax.*]—*Re* LE BLANC, [1924] 3 D. L. R. 256.—**CAN.**

c viii. —— ——.]—*Held :* balance of income tax entitled to priority.—*Re* ORR, [1924] 2 I. R. 120.—**IR.**

c ix. —— ——.]—R. *v.* LITHWICK & COLE (1921), 20 Exch. C. R. 293.—**CAN.**

c x. —— ——]—*Re* KINGSTON AUTO WRECKERS, LTD. (1935), 5 F. L. J. (Can.) 148.—**CAN.**

c xi. —— *Poll tax.*]—*Re* LE BLANC, [1924] 3 D. L. R. 256.—**CAN.**

c xii. —— *Sales taxes.*]—*Held :* the Crown was entitled to priority over all other unsecured creditors in respect of sales taxes.—*Re* WEST (F. E.) & CO. (1921), 68 D. L. R. 772; 50 O. L. R. 631; 2 C. B. R. 3.—**CAN.**

c xiii. —— ——.]—*Held :* a creditor could not rank as a secured creditor in priority to the claim of the Crown for taxes on sales of goods to debtor.—*Re* NICHOLSON SALES & SERVICE CORPN., [1924] 3 D. L. R. 593; 4 C. B. R. 692. —**CAN.**

—— *War revenue taxes.*]—*See* cases in Part XII., Sect. 1, sub-sect. 6, *post.*

c xiv. —— *Taxes assessed prior to assignment.*]—*Held :* the city had a preferential lien on the goods of the assignor for the above taxes.—*Re* MCKENZIE, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—**CAN.**

d i. ——.]—*Held :* debtor's chattels subject to seizure for arrears of taxes by the municipality even in the hands of the trustee.—*Re* HARRISON (1922), 69 D. L. R. 658; 51 O. L. R. 634; 2 C. B. R. 360.—**CAN.**

d ii. ——.]—*Re* LAURANCE (1923), 55 O. L. R. 196; 4 C. B. R. 349.—**CAN.**

d iii. ——.]—Where a landlord has distrained prior to bkpcy. of the tenant & there are taxes owing, & subsequent to bkpcy. the municipality gives the notice required by sect. 112 (11) of Assessment Act, R. S. O., 1927, the municipality is entitled to rank for its claim upon the proceeds of the distress, in priority to the claim of the landlord for three months' accelerated rent.—*Re* PATERSON (D. S.) CO., [1932] O. R. 432; 3 D. L. R. 279.—**CAN.**

sl. *Claim of inspector of taxation.*]—*Re* MCKENZIE, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—**CAN.**

sp. *Necessity for notice—Notice to custodian—Custodian becoming trustee.*]—Notice to a custodian who afterwards becomes trustee in bkpcy. is sufficient notice to make a claim for taxes a preferred claim in bkpcy.—*Re* ZIMMON, OTTAWA *v.* TREW, [1936] 3 D. L. R. 326.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 5.

sr. *Bias of court in favour of creditor.*]—The right of a creditor for arrears of wages to stand as a preferred creditor will be construed by the ct. with a bias in favour of the creditor.—*Re* CORSON SHOE CO., [1924] 1 D. L. R. 555.—**CAN.**

4285 ix. —— *After judgment recovered.*]—The claim of a wage-earner to priority for his wages remains a claim for wages even after judgment has been recovered.—BALL *v.* THORNE (1920), 46 O. L. R. 261; 50 D. L. R. 85.—**CAN.**

4285 x. —— *Earned within three months of bankruptcy.*]—*Held :* a workman could only rank as a preferred creditor for wages earned within three months of the bkpcy.—RODDEN *v.* GOODMAN (1922), 67 D. L. R. 635.—**CAN**

4285 xi. —— ——.]—*Held :* the director & president & the director & secretary-treasurer of bkpt. co. were entitled to priority for wages or salaries in respect of services rendered to bkpt. co. during the three months before the date of the assignment.—*Re* EASTERN ONTARIO MILK PRODUCTS CO., [1923] 1 D. L. R. 591; 52 O. L. R. 67; 21 O. W. N. 483.—**CAN.**

4285 xii. —— ——.]—*Held :* a claim for wages was not entitled to priority not being earned within three months immediately preceding the receiving order.—*Re* CONTINENTAL PUBLISHING CO., *Ex p.* DAVIS & SIMMONS, [1924] 1 D. L. R. 339; 4 C. B. R. 343.—**CAN.**

4285 xiii. *S. P. Re* OLYMPIA CAFE CO., LTD., *Ex p.* BEDALI (Man.), [1927] 1 D. L. R. 907; [1927] 1 W. W. R. 131.—**CAN.**

4285 xiv. —— —— *Commission payable when goods shipped—Services rendered more than three months before bankruptcy—Goods shipped within three months of bankruptcy.*]—*Held :* the salesman could not rank as a preferred creditor in respect of such commission. —*Re* HERCULES RUBBER CO., *Ex p.* ALLAN, [1924] 1 D. L. R. 999; 4 C. B. R. 555.—**CAN.**

4285 xv. —— *Allowance for expenses.*]—Where a person is employed as a travelling salesman & is given his expenses in addition to his salary, he may claim to stand as a preferred creditor as regards both his salary & his expenses.—*Re* CORSON SHOE CO., [1924] 1 D. L. R. 555.—**CAN.**

4285 xvi. —— *Truck driver furnishing truck, gas & oil—Priority for time only.*]—*Held :* an independent contractor in regard to the supply of the truck & so entitled to priority in respect of his services only.—*Re* SEXTON, [1931] 1 D. L. R. 657; 66 O. L. R. 313; 12 C. B. R. 45.—**CAN.**

4289 ia. —— —— ——.]—A travelling salesman, selling goods on commission, was allowed by debtor co. to sell their goods at specified prices, any goods sold by him to be invoiced to the customer at the price at which he sold, & he to be allowed the difference between the net price & his selling price :—*Held :* not entitled to priority. —*Re* SPECIALITY BAGS, LTD., [1923] 1 D. L. R. 827; 53 O. L. R. 355; 3 C. B. R. 617.—**CAN.**

4289 ib. —— ——.]—*Re* VANCOUVER DRESS CO., LTD., [1931] 3 W. W. R. 220; 44 B. C. R. 283.—**CAN.**

4292 i. —— *Accountant—Monthly salary—Part time employment.*]—*Held :* he was a servant & entitled to rank as a preferred creditor.—*Re* GORDEAN FURNITURE CO., *Ex p.* SLADDEN, [1923] 4 D. L. R. 1198; [1923] 3 W. W. R. 630.—**CAN.**

4298 i. —— *Company official—Director.*]—The mere fact that a director who claims priority for wages is a superior officer of a co. does not of itself deprive him of priority. The real question is whether the person making the claim has contracted to render service to the co. beyond what would come within the scope of his duties as a statutory officer.—*Re* EASTERN ONTARIO MILK PRODUCTS CO., [1923] 1 D. L. R. 591; 21 O. W. N. 483; 52 O. L. R. 67.—**CAN.**

sp. *Brother of bankrupt.*]—The amendment to the Bkpcy. Act, 1927, made in 1932, by which a brother of the bkpt. can no longer claim for wages as a preferred creditor, does not apply where the assignment for benefit of creditors took place before the 1932 amendment but the distribution is subsequent to the Act.—*Re* MAHON, [1935] 1 D. L. R. 416.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 6.

h i. ——.]—The preferential rights of a landlord are restricted as provided by Landlord & Tenant Act, s. 38, & a landlord cannot claim to rank as a

4334. After this case add :—
Health Insurance & Unemployment Insurance contributions.]—*See* National Health Insurance Act, 1924 (c. 38), ss. 4–9, 133, & Un-

preferred creditor in respect of sums voluntarily paid by him for taxes owing by bkpt.—*Re* CRYSTAL, [1926] 2 D. L. R. 840 ; 59 O. L. R. 44.—**CAN.**

h ii. —— *Under Landlord's Rights (Bankruptcy) Act*, 1924 (*c.* 12) (*Alta.*), *s.* 3.]—The above sect. entitles a landlord to priority to the extent of the amount limited thereby over all bkpt.'s secured creditors, including the Crown.—*Re* STANDARD PHARMACY, LTD., *Re* ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300 ; [1926] 1 W. W. R. 773.—**CAN.**

h iii. —— *Cannot be deprived of preferential lien—Except by agreement.*] —*Re* MILNER, *Ex p.* FORBES (Ont.), [1926] 2 D. L. R. 988 ; 7 C. B. R. 319.—**CAN.**

s i. —— —— —— *Special covenant.*] — *Held :* notwithstanding a clause in a lease as to acceleration rent, the landlord was only entitled to rent for the time the premises were occupied by the trustee.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* MONKA (1924), 34 B. C. R. 99.—**CAN.**

sn. *Arrears of rent—Priority over —War revenue taxes.*]—*Re* SOLOMONS BOCHNER FUR CO., [1924] 1 D. L. R. 685 ; 53 O. L. R. 497 ; 24 O. W. N. 42. —**CAN.**

sp. —— —— ——.]—The Crown claiming under War Revenue Tax Act & a landlord for arrears of rent rank *inter se* according to their priority in time.—*Re* DAVIS, [1924] 3 D. L. R. 556 ; 4 C. B. R. 698.—**CAN.**

sq. —— —— *Sales tax.*]—*Re* CALCUS CO., LTD., *Ex p.* MCGUIRE, [1925] 3 D. L. R. 809 ; 57 O. L. R. 272 ; 5 C. B. R. 763, *revsg.*, [1925] 2 D. L. R. 246.—**CAN.**

sr. —— —— *Taxes due under Income War Tax Act*, 1917.]—*Re* HUMBERSTONE COAL CO., LTD., *Ex p.* NATIONAL TRUST CO., LTD., [1925] 3 D. L. R. 154 ; [1925] 2 W. W. R. 68 ; 5 C. B. R. 719 ; *revsg.*, [1925] 1 W. W. R. 964 ; 5 C. B. R. 639.—**CAN.**

st. —— —— *Fees & expenses of trustee.*]—The trustee's claim for his fees & expenses always precedes the Crown's claim for taxes under War Revenue Tax Act, but if the landlord's claim arose anterior to that of the Crown, then the trustee's claim will count after the landlord's & will precede the Crown's claim.—*Re* DAVIS, [1924] 3 D. L. R. 556 ; 4 C. B. R. 698.—**CAN.**

su. —— *Three months' rent accrued prior to bankruptcy—Construed as "accrued due next prior."*]—*Re* CLAMAN'S, LTD., [1932] 1 W. W. R. 413 ; 45 B. C. R. 474.—**CAN.**

sa. —— —— *Effect of acceleration clause.*]—The effect of sect. 126 of Bkpcy. Act, R. S. C., 1927, is that in Saskatchewan the rights of a landlord on the bkpcy. of a tenant are governed by sects. 42–48 of Landlord & Tenant Act, R. S. S., 1930. Where, therefore, no rent is accrued at the date of the assignment in bkpcy. a landlord in Saskatchewan is not entitled on the distribution of the property of the bkpt. to a prior claim for three months' rent. A provision in a lease that in the event of the bkpcy. of the tenant the rent for a certain period will be accelerated & become due at once cannot be relied on to prevent the assets of the bkpt. tenant from being distributed according to the bkpcy. laws.—NEW REGINA TRADING CO., LTD. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1934] S. C. R. 47 ; 1 D. L. R. 630.—**CAN.**

sb. ——.]—MACNEIL (JAMES H.) & SONS *v.* WRIGHT (1933), 7 M. P. R. 101.—**CAN.**

sc. —— *Priority over claim for fees— & liability for workmen's compensation.*] —In distribution the landlord's claim for rent under Landlord & Tenant Act, 1927, s. 37, has priority over the expenses & fees of the custodian & trustee, & over the liability of the debtor under Workmen's Compensation Act, R.S.O., 1927.—*Re* BOLUS, *Ex p.* WORKMEN'S COMPENSATION BOARD & JEFFERS, [1934] 2 D. L. R. 609 ; O. R. 231.—**CAN.**

sd. *Landlord mortgagee—Mortgagor attorned tenant.*]—By virtue of Bkpcy. Act, s. 126, sect. 3 of Landlord's Rights (Bkpcy.) Act, 1924, of Alberta, & sect. 105 of Land Titles Act of Alberta, a mtgee. to whom the mtgor. has attorned as tenant is entitled on the bkpcy. of the mtgor. to be paid out of the proceeds of the distrainable assets in the lands of the trustee, in priority to all other debts, for three months' arrears of rent, & the costs of distress, if any.—*Re* PORTER & CANADIAN BANK OF COMMERCE, [1930] 1 W. W. R. 61 ; [1930] 1 D. L. R. 909 ; 11 C. B. R. 219.—**CAN.**

sf. *Covenant by tenant to pay taxes & other expenses.*]—A landlord can only rank as a preferred creditor in respect of arrears of rent, & this is so even where the lease stipulates that the tenant shall make other payments, namely a portion of the taxes & costs of heating the premises.—*Re* STANLEY MILLS CO. (1924), 27 O. W. N. 123 ; *affg.*, [1924] 3 D. L. R. 40 ; 4 C. B. R. 655.—**CAN.**

sl. *Costs of distress.*]—*Re* MCKENZIE, [1924] 1 W. W. R. 159 ; 4 C. B. R. 492.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 9.

f i. —— —— *Debt not being debt for taxes, rates or assessments.*]—The Crown in the right of a province has no priority over other creditors of bkpt. with respect to a debt due to it which is not a debt for taxes, rates or assessments.—*Re* CARDSTON U. F. A. CO-OPERATIVE ASSOCN., LTD., *Re* PROVINCE OF ALBERTA, [1925] 4 D. L. R. 897 ; [1925] 3 W. W. R. 651.—**CAN.**

f ii. —— —— ——.]—*Re* STANDARD PHARMACY, LTD., *Re* ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300 ; [1926] 1 W. W. R. 773.—**CAN.**

r i. —— *Sales taxes.*]—Sales taxes due to the Dominion Govt. under Special War Revenue Act (Dom.), 1915 (c. 8), as enacted by 10 & 11 Geo. 5, c. 71, are merely debts due to the Crown, not expressly charged upon the assets of debtor.—*Re* WEST (F. E.) & CO. (1921), 62 D. L. R. 207 ; 50 O. L. R. 631 ; 2 C. B. R. 3.—**CAN.**

r i a. —— ——.]—12 & 13 Geo. V. (c. 47), amending Special War Revenue Act, 1915, & by sect. 17 making the taxes to which it refers a lien or charge upon the property of a debtor in favour of the Crown, & directing that this lien shall prevail, notwithstanding the provisions of the Bkpcy. Act, does not in terms repeal the Bkpcy. Act ; & the repeal of sect. 17, in 1925, by 15 & 16 Geo. V. (c. 26), s. 9, leaves the prerogative right to prior payment in a case of bkpcy. untouched. By sects. 86 & 51 of the Bkpcy. Act, the Crown has surrendered its prerogative to be paid debts due to it in priority to debts due to a subject, save only debts that fall within sect. 51, subsect. 6.—*Re* MOORE (D.) CO., LTD., [1928] 1 D. L. R. 383 ; 61 O. L. R. 434 ; 8 C. B. R. 338, 479.—**CAN.**

r i b. —— ——.]—*Re* WILNER (Ont.), [1928] 2 D. L. R. 396 ; 8 C. B. R. 616.—**CAN.**

r i c. —— ——.]—*Re* A. PUCCINI & CO., [1929] 2 D. L. R. 558 ; 63 O. L. R. 522 ; 10 C. B. R. 408.—**CAN.**

r i d. —— ——.]—*Re* TYRER CO., [1930] 4 D. L. R. 320 ; 11 C. B. R. 479.—**CAN.**

r i e. —— *Sales tax, income tax & corporation tax.*]—The claim of the Crown in right of the Dominion to sales tax, & income tax, & in right of the Province to corpn. tax, rank *pari passu* in priority to all other creditors. —*Re* NAVILLA ICE CREAM CO., LTD., [1934] 4 D. L. R. 741 ; O. R. 772.—**CAN.**

r ii. —— *Charge against goods admitted as settler's effects.*]—*Held :* to take priority over the lien for costs given an execution creditor.—*Re* WILEY, *Re* ANTHONY SALT CO., *Re* CROWN'S CUSTOMS DUTIES CLAIM, [1925] 4 D. L. R. 790 ; [1925] 3 W. W. R. 683.—**CAN.**

r iii. —— *Health Insurance contributions.*]—On a claim for arrears due in respect of Health Insurance contributions, alleged to be recoverable as Crown debts ranking next after the usual preferential payments :—*Held :* Health Insurance contributions were recoverable only as a civil debt.—*Re* LINDSAY, [1926] N. 128.—**IR.**

r iv. —— *Debt due to Land Commission.*]—*Held :* a preferential debt. —*Re* MALONEY, [1926] I. R. 202.—**IR.**

r v. —— *Contributions under Unemployment Insurance Acts.*]—*Held :* as regards the contributions payable under Unemployment Insurance Act, 1920, by a bkpt. in respect of employed persons, the Minister for Industry & Commerce (to whom all the powers & duties of the Minister of Labour under the Act have been transferred) is entitled to claim, not only the priority given by sect. 26 (5) of the Act to the four months' contributions immediately prior to the date of adjudication but is also entitled to claim priority to ordinary creditors in respect of the anterior arrears of contributions, since they must be placed in the same category as Crown debts.—*Re* HENNESSY, [1932] I. R. 11.—**IR.**

r vi. —— ——.]—W., an arranging debtor, effected a composition with his creditors whereby 5*s.* in the £ was to be paid on all his unsecured debts & on such portion of his partly secured debts as should not be covered by security. The composition was payable in three equal instalments at four, eight, & twelve months respectively, from the date of confirmation of the offer, the first instalment being secured by the promissory note of the debtor alone & the subsequent instalments being secured by joint & several promissory notes of the debtor & one surety :—*Held :* such a "bill composition" was a "distribution of the property" of the arranging debtor within Preferential Payments in Bkpcy. (Ireland) Act, 1889 (c. 60), s. 4, & accordingly the Ministry for Industry & Commerce was entitled by virtue of the Crown prerogative to be paid all arrears of the debtor's contributions to the unemployment fund, other than arrears accruing during the four months prior to the confirmation of the offer, in priority to all other debts. —*Re* W., AN ARRANGING DEBTOR, [1933] I. R. 202.—**IR.**

sa. *Surety paying Crown debt.*]—A surety who has paid the indebtedness of the principal debtor to the Crown is entitled to stand in the same position as the Crown & to exercise its remedies for the recovery of the debt.—*Re* PATHE FRERES PHONOGRAPH CO. OF CANADA (1921), 64 D. L. R. 628 ; 50 O. L. R. 644 ; 2 C. B. R. 21.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 10.

Fees & expenses of trustee.]—*See* cases in Part VII., Sect. 5, sub-sect. 2, A., *ante*.

employment Insurance Act, 1920 (c. 30), ss. 5, 26 (4).

4334a. Wife—In respect of annuity for maintenance of husband's household.]—Where an annuity is secured to a wife by an antenuptial settlement to be expended in maintaining the husband's household, the wife cannot, on the husband's bkpcy., claim to be paid the amount in preference to the other creditors.—BIRKETT *v.* PURDOM, [1895] A. C. 371; 11 R. 184, H. L.

4335a. —— —— Bond to secure annuity taken in payment.]—Where a woman lends money to her husband [to help him in his business] & then accepts from him, in lieu of the money lent, a bond to secure an annuity payable by him for her life, & he subsequently is adjudicated bkpt. or dies insolvent, she may claim in the bkpcy., or in the administration by the ct. of his estate, for the value of the annuity in competition with the creditors of the husband.—*Re* SLADE, CREWKERNE UNITED BREWERIES, LTD. *v.* SLADE, [1921] 1 Ch. 160; 89 L. J. Ch. 556; 124 L. T. 232; 64 Sol. Jo. 668.

4336. *Add. Annotations :*—**Consd.** *Re* Slade, Crewkerne United Breweries *v.* Slade, [1921] 1 Ch. 160. **Distd.** *Re* Cumming & West, *Ex p.* Neilson & Craig *v.* The Trustee, [1929] 1 Ch. 534.

4338. *Add. Annotation :*—**Refd.** *Re* Wombwell (1921), 37 T. L. R. 625.

4342. *Add. Annotations :*—**Consd.** *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283. **Refd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814; *Re* Gozzett, *Ex p.* Messenger & Co. *v.* Trustee, [1936] 1 All E. R. 79.

4345. *Add. Annotation :*—**Refd.** Dennistoun *v.* Dennistoun (1925), 69 Sol. Jo. 477.

4353. *Add. Annotation :*—**Refd.** *Re* Slade, Crewkerne United Breweries *v.* Slade, [1921] 1 Ch. 160.

4353a. —— —— Debt left on deposit with debtors.]—A creditor for a sum of £100,000 of a firm of merchant bankers in May, 1918, agreed with the debtors to leave the debt on deposit with them until Jan. 1932, at interest, with commission to be paid to nominees of the creditor—namely, O. & his family; & it was further agreed that O. should be credited with a share of the firm's profits, which in fact he subsequently drew from the firm. In July, 1920, the debt was, by the direction of the creditor, transferred in the books of the debtors to F., who agreed with the debtors to leave the debt on deposit with them until Jan. 1932, upon the conditions expressed in the former agreement, as if F.'s name had been inserted therein instead of the name of the original creditor. On Feb. 24, 1926, F. transferred the debt in equity to O., & on Mar. 2, 1926, the debtors had notice of that assignment. On Mar. 15, 1926, a receiving order was made against the debtors on their own petition, & shortly afterwards they were adjudicated bkpts. Between Mar. 2, 1926, & the date of that order F. became indebted to the firm in the sum of £15,000 for moneys expended by the firm between those dates in taking up accommodation bills drawn by F. on & accepted by the firm for which, as between F. & the firm, F. through not having supplied the necessary funds, was liable, F.'s liability arising in every case from contractual liabilities undertaken by F. towards the firm at dates earlier than Mar. 2, 1926 :—*Held :* upon the proper construction of the agreement of May, 1918, the creditor did not advance money to the debtors on a contract that she should receive a share of the profits of their business within Partnership Act, 1890 (c. 39), s. 2 (3) (*d*), with the result that O.'s proof for the £100,000 was not liable to be postponed to the claims of the other creditors.—*Re* PINTO LEITE & NEPHEWS, *Ex p.* DES OLIVAES (VISCONDE), [1929] 1 Ch. 221; 98 L. J. Ch. 211; 140 L. T. 587; [1928] B. & C. R. 188.

4357. *Add. Annotations :*—**Consd.** *Re* Cumming & West, *Ex p.* Neilson & Craig *v.* The Trustee, [1929] 1 Ch. 534. **Refd.** *Re* Slade, Crewkerne United Breweries *v.* Slade, [1921] 1 Ch. 160.

---

t i. —— ——.]—CRAWFORD & Co. *v.* HUNTERS & Co. (1817), 1 Nfld. L. R. 43.—**NFLD.**

t ii. —— ——.]—FERGUS & GLEN INSOLVENT ESTATE (1831) 2 Nfld. L. R. 27.—**NFLD.**

4331 i. *Judgment creditor—Registered certificate of judgment.*]—A judgment creditor of a bkpt., who has registered a certificate of judgment with the district registrar, is not entitled to a lien against the estate for the costs incurred in obtaining the judgment.—*Re* YAWOSKI (1922), 66 D. L. R. 570; [1922] 1 W. W. R. 296; 2 C. B. R. 181.—**CAN.**

d i. —— ——.]—*Held :* the trustee must pay the sheriff's fees & charges, including poundage & the costs of the execution creditor in priority to all other charges or claims.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138. —**CAN.**

e i. ——.]—The property of C., Ltd., was destroyed by fire in July, 1930, & on Aug. 27 the co. became bkpt. $29,404 was received on certain fire insurance policies held by the co. One I. had previously sold timber to the co. in which he still retained an interest. When the fire occurred I. advanced $15,000 to the co. on July 30, & by agreement with the co. took as security an assignment of the first $15,000 which should become payable to the co. on the insurance policies. The assignment was not registered under Assignment of Book Accounts Act :—*Held :* in view of sect. 2 of the 1930 Amendment registration was not necessary, as the money was "growing due under a specified contract," & I. was entitled to priority in respect of $15,000.—*Re* CAMPBELL RIVER MILLS, LTD., [1931] 2 D. L. R. 946; 43 B. C. R. 477; *on appeal*, 44 B. C. R. 412.—**CAN.**

sb. *Costs of action continued by trustee—With authority of court.*]—*Held :* costs incurred after the insolvency preferred.—MYERSON *v.* GREEN & HOMES (1922), 68 D. L. R. 209.—**CAN.**

m i. *Price of goods supplied to debtor—With approval of trustee—For continuation of business after bankruptcy.*]—*Held :* accounts for such goods preferred.—*Re* MORRIS, [1923] 3 D. L. R. 848; 53 O. L. R. 36.—**CAN.**

sc. *Money-lender.*]—In no case can a person who lends money to another before the latter's bkpcy. rank as a preferred creditor for the money so loaned.—RODDEN *v.* GOODMAN (1922), 67 D. L. R. 635.—**CAN.**

sd. *Solicitor—Costs of preparing authorised assignment.*]—*Re* JACOBSON, *Ex p.* GOLDBERG (N. B.), [1927] 2 D. L. R. 363; 8 C. B. R. 258.—**CAN.**

se. *Arrears of maintenance of lunatic.*]—A person of unsound mind having died insolvent, arrears due for maintenance to the institution where he had been kept were allowed after debts due to the Crown, & in priority to the taxed costs of his committee.—*Re* MAGUIRE, [1923] 1 I. R. 108.—**IR.**

sg. *Surety.*]—A surety who has been released by the creditor on payment of a portion of the debt is not entitled to rank in preference to the creditor on the bkpcy. of the debtor.—*Re* WALKER & Co., *Re* HARTLEN, [1935] 1 D. L. R. 347.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 1.

4335 viii. —— —— *Payment of debt by wife as surety for husband.*]—*Held :* wife not a deferred creditor.—*Re* BARRON, *Ex p.* BARRON, [1924] 4 D. L. R. 1307; 4 C. B. R. 624.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 3.

se. *Agreement to postpone "personal" claims—Whether claim on mortgage included.*]—BIRKETT *v.* SHERWIN-WILLIAMS, [1931] 3 D. L. R. 485.—**CAN.**

Part XIII.—Distribution of Estate and Payment of Dividends.

4366a. Agreement for distribution contrary to bankruptcy laws—Void.]—STAINES *v.* WAINWRIGHT (1839), 6 Bing. N. C. 174; 8 Scott, 280; 9 L. J. C. P. 107; 133 E. R. 68.

Annotation :—**Distd.** Prince *v.* Haworth, [1905] 2 K. B. 768.

4372a. Creditors for annual interest—Appropriation of dividends.]—In cases where the Official Receiver is acting as trustee, an arrangement exists between the Board of Inland Revenue & the Bkpcy. Dept. whereby creditors for annual interest are entitled to prove gross, & to appropriate any dividends received in the bkpcy. against principal until 20*s.* in the £ thereon has been paid. Such arrangement was not intended to apply only where the trustee is an Official Receiver, but also to outside trustees, & is likewise applicable to cases of composition or schemes of arrangement under the Bkpcy. Acts.— *Re* BEECHAM WELLES *v.* TRUSTEE, [1934] B. & C. R. 138.

4377a. Final dividend—Duty to give notice—Sufficiency of proof of posting.]—On Jan. 30, 1933, the trustee in bkpcy. wrote to the creditors asking for a proof of their debt. On Feb. 24, the trustee wrote again saying that he understood that the creditors had a charge upon certain land of the bkpt. & asked for particulars. The creditors replied with some details of the charge, but put in no proof. In Nov. 1935, the creditors wrote again, & in Feb. 1936, a proof was put in. The creditors denied that they had received the statutory notice under 1914 Act, s. 67, which the trustee proved he had posted on Dec. 10, 1933. The creditors alleged as the reason for their delay that they believed a negotiation was in progress for the sale of the land:—*Held :* (1) proof of posting was sufficient compliance with sect. 67, & the creditors were not entitled to claim; (2) in the exceptional circumstances of the case the creditors should be given seven days in which to establish the claim upon paying the costs of the motion.—*Re* PAYYER, BROWN, SON & VARDY *v.* TRUSTEE, [1936] 1 All E. R. 568; *sub nom. Re* PAYYER, *Ex p.* BROWN, SON & VARDY *v.* TRUSTEE, 52 T. L. R. 383.

4403. *Add. Annotations :*—**Apld.** *Re* Home & Colonial Insce. (1928), 44 T. L. R. 718. **Expld.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617. **Refd.** *Re* Gurwiez, *Ex p.* Trustee (1919), 88 L. J. K. B. 740; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745; Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

4432. *Add. Annotations :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4433. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

4484a. —— **Proof subsequently reduced.**]—*Re* SEARLE, HOARE & Co., No. 3210a, *ante*

4487. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

4494. *Add. Annotation :*—**Refd.** *Re* Home & Colonial Insce. (1928), 44 T. L. R. 718.

Part XIV.—Administration in Bankruptcy of Estates of deceased Insolvents.

4545. *Add. Annotation :*—**N.F.** Latter *v.* Juckes (1926), 42 T. L. R. 723.

4547. *Add. Annotation :*—**Refd.** *Re* Sarjeant, [1923] 2 Ch. 302.

4549. *Add. Annotation :*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4551. *Add. Annotation :*—**Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

4555a. —— —— **Adjudication before death.**]—Debts incurred for necessaries by a bkpt. after adjudication, & also funeral expenses to a reasonable amount, may properly be paid out of money accumulated by the bkpt. since the adjudication.

The sect. does not deprive the bkpt. of those fruits of his personal exertions which are necessary to enable him to live; in other words it is only the surplus over & above that which vests in the trustee (TOMLIN, J.).—*Re* WALTER, SLOCOCK *v.* OFFICIAL RECEIVER, [1929] 1 Ch. 647; 98 L. J. Ch. 403; 141 L. T. 319; [1929] B. & C. R. 63.

4556. *Add. Annotations :*—**Refd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4559a. —— **Administration of estate of undischarged bankrupt—Right to after-acquired property.**]—*Re* SARJEANT, No. 1808a, *ante*.

—— —— ——.]—*See, now,* Bkpcy. (Amendment) Act, 1926 (c. 7), s. 3.

PART XIII. SECT. 1.

4361 ii. —— —— *Lex loci applicable to debt situated in another Province.*]—When a party is made bkpt. in one Province the law applicable to the divisibility of a debt situated in another Province is the law of the latter Province. A dividend is situated at the head office of the banking co. declaring it.—*Re* SAWTELL, *Ex p.* MONTREAL BANK, [1933] 2 D. L. R. 392; O. R. 295.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.

sp. *Creditor proving late.*]—Right of creditor who proves late to interim dividends.—*Re* PETRIE (H. W.), LTD., *Ex p.* BARBER, [1938] 1 D. L. R. 793.—**CAN.**

PART XIII. SECT. 6.

sf. *Refund—Action in county court to recover money paid in error.*]—*Held :* not maintainable, it not being open to the judge to go behind the declared dividend.—MCLENNAN *v.* CARTER, [1927] 1 D. L. R. 375; 59 N. S. R. 64.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 1.

sg. *Time of insolvency.*]—Upon a petition for the administration in bkpcy. of a deceased debtor's estate it is sufficient to establish that the estate was insolvent at the date of the hearing of the petition.—*Re* NONMUS (ALFRED) (1929), 29 S. R. N. S. W. 330; 46 N. S. W. W. N. 111; 1 A. B. C. 39.—**AUS.**

Part XVI.—Miscellaneous Practice and Procedure.

4578a. Motion to declare property part of bankrupt's estate—Who may appear.]—On the hearing of an application by the trustee in the bkpcy. to declare certain property alleged to have been transferred by the bkpt. to resps. to be part of the bkpt.'s estate, objection was taken to the motion being heard on the ground that certain of the property claimed by the trustee had been sold by resps. to the parties taking the objection, & that no notice of motion had been served upon them:—*Held:* the objection must fail; any order made upon the motion would affect only the right of the trustee & resps., & would not affect the rights of any other person; & the parties taking the objection had no *locus standi* to be heard.—*Re* VON WEISSENFELD, *Ex p.* HENDRY (1892), 9 Morr. 30.

Annotation:—**Refd.** *Re* Hirth, *Ex p.* Official Receiver (1899), 68 L. J. Q. B. 287.

4578b. Appearance of infant on motion—Appointment of guardian ad litem.]—(1) Where it is desired to bring an infant before the ct. the proper course is to apply for the appointment of a guardian *ad litem* for that purpose.

(2) Where, on an appeal from a County Ct., the Div. Ct. in bkpcy. directs such appeal to stand over in order that certain persons, some of whom are infants, may be made parties, it would appear that application for the appointment of a guardian *ad litem* should be made to the County Ct.—*Re* LOWNDES, *Ex p.* TRUSTEE (1887), 3 Morr. 216.

Annotation:—*As to* (1) **Follid.** *Re* Dent, *Ex p.* Trustee (1922), 92 L. J. Ch. 106.

4585. *Add. Annotation:*—**Expld.** *Re* Gay, Trustee *v.* Bennett & Georges Tiard (1931), 101 L. J. Ch. 127.

(That case did not decide the point. The headnote is inaccurate. It ought not to have been reported, *per* FARWELL, J.)

4586a. —— ——.]—A notice of motion seeking personal relief against a foreigner cannot be served out of the jurisdiction, & in such a case the ct. cannot give leave to serve resp. abroad.—*Re* GAY, TRUSTEE *v.* BENNETT, (A. A.) & GEORGES TIARD (1931), 101 L. J. Ch. 127; [1931] B. & C. R. 45.

4594. *Add. Annotation:*—**Consd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

4612a. Primâ facie evidence of fraudulent preference—No right to appeal reserving right to call rebutting evidence.]—Where a trustee in bkpcy. has called evidence in support of a charge of fraudulent preference by the bkpt., resp. must elect either to call rebutting evidence, or to conclude his case on the footing that the evidence given is the only evidence. He cannot by agreement with his opponent & by leave of the county ct. judge obtain an adjournment & lodge an appeal, reserving the right to call rebutting evidence in case the appeal should result in favour of the trustee.—*Re* MOYNIHAN, *Ex p.* TRUSTEE, [1930] 2 Ch. 356; 99 L. J. Ch. 26; 143 L. T. 703; [1929] B. & C. R. 116, D. C.

4613a. —— Objection by one party.]—PRACTICE NOTE, [1899] W. N. 121.

4633. *Add. Annotation:*—**Refd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

4637. *Add. Annotation:*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

4637a. Admission at preliminary examination—On criminal charge of misappropriating funds.]—The accused, who was a trustee under a will, was charged with having in Mar. 1916, fraudulently converted to his own use certain shares deposited with him by a co-trustee. In an affidavit filed by the accused in defence to proceedings for an account commenced against him by the co-trustee in the Ch. Div. the accused swore that he had, with the approval of his co-trustee, invested the capital in his own business. Subsequently, in his preliminary examination in bkpcy., he made admissions to the Official Receiver in regard to the disposition of the capital by him. He was indicted for fraudulent conversion as a trustee under Larceny Act, 1916 (c. 50), s. 21, but the judge, on his notice being brought to the fact that that Act was not in force at the time when the offence was alleged to have been committed, allowed the indictment to be amended by the substitution of Larceny Act, 1861 (c. 96), s. 80, for the later statute. The two statutes define the offence in almost precisely the same words:—*Held:* the admissions in the preliminary examination in bkpcy. were not admissions made "in any compulsory examination or deposition before any court on the hearing of any matter in bkpcy.," & could, therefore, be given in evidence at the trial without infringing Larceny Act, 1916 (c. 50), s. 43 (3).—R. *v.* TUTTLE (1929), 140 L. T. 701; 45 T. L. R. 357; 21 Cr. App. Rep. 85; 28 Cox, C. C. 610, C. C. A.

4638. *Add. Annotation:*—**Refd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

4638a. Deposition—Admissibility against deponent in other proceedings.]—A deposition of a witness, taken in the Ct. of Bkpcy. for one purpose, & filed, may be used against him as an admission in any other proceeding in the matter of the same bkpcy.—*Re* COOPER, *Ex p.* HALL (1882), 19 Ch. D. 580; 51 L. J. Ch. 556; 46 L. T. 549, C. A.

Annotation:—**Refd.** Bevis *v.* Bevis, [1935] P. 86.

4665. *Add. Annotation:*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

4665a. —— Necessary before other side entitled to refer to contents.]—On June 29, 1923, resps., having received from bkpt. an order for

---

PART XVI. SECT. 3, SUB-SECT. 1.

4666 i. *Part of examination.*]—A portion merely of an examination under Bkpcy. Act of a person alleged to have property of debtor in his possession cannot be admitted in evidence in collateral proceedings.—HOULDING *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1921] 2 W. W. R. 899; 14 Sask. L. R. 356.—**CAN.**

d i. —— ——.]—Powers under Presidency Towns Insolvency Act, s. 36, are not to be used when parties are in litigation, as an extra method of discovery in addition to the ample facilities for discovery enjoyed by ordinary litigants under the Code of Civil Procedure.—SARAT KUMAR RAY *v.* NABIN CHANDRA RAM CHANDRA SHAKA (1928), I. L. R. 56 Calc. 667.—**IND.**

PART XVI. SECT. 3, SUB-SECT. 2.

s j. *Motion for trial of bankruptcy action—Adjournment to take oral evidence.*]—*Re* FULTON, [1925] 4 D. L. R. 1001.—**CAN.**

goods, on the same day delivered them to bkpt. together with an invoice bearing the same date, which subsequently at bkpt.'s request was post-dated to July 10. On July 20, bkpt., although fully realising his insolvency, sent to resps. & to 107 other creditors cheques which were all post-dated to July 31 in settlement of their several accounts. On July 31 bkpt. gave notice to his creditors that he was about to suspend payment. Not one of those post-dated cheques was paid on presentation; but on July 30, the day preceding the act of bkpcy., bkpt. paid in cash to resps., who had no knowledge of bkpt.'s financial difficulties, the amount he owed them less discount. On Aug. 30, 1923, on a creditor's petition presented on Aug. 3, an order of adjudication was made against bkpt. Upon a motion by the trustee in bkpcy. for a declaration that the payment to resps. was a fraudulent preference under 1914 Act, s. 44 (1), resps. filed an affidavit in opposition, which contained statements which revealed a voluntary offer on July 30 on the part of bkpt. to resps. to pay the amount due to them in cash; & the question was then raised whether the trustee had the right, which he claimed, to read those statements as admissions by resps. of the absence of pressure & of the entirely voluntary nature of the payment:—*Held:* (1) the practice in the Bkpcy. Ct., differing in this respect from the practice in the Ch. Div., was that where an affidavit had been filed by a resp. to an application, applt. was only entitled to refer to the contents thereof after resp. on opening his case had elected to read it; (2) where a bkpt. in imminent expectation of bkpcy. voluntarily pays a particular creditor with the result of giving him a preference in fact, & the reason for such payment is unexplained, a *primâ facie* case of fraudulent preference is established; therefore, the trustee having proved a *primâ facie* case of fraudulent preference & the creditors having withdrawn their affidavit in opposition, & there being therefore no evidence to the contrary, the trustee was entitled to succeed on his application.—*Re* COHEN, *Ex p.* TRUSTEE, [1924] 2 Ch. 515; 94 L. J. Ch. 73; [1924] B. & C. R. 143; *sub nom. Re* COHEN, *Ex p.* TRUSTEE *v.* SNOW (W. R.) & Co., 69 Sol. Jo. 35, C. A.

Annotations:—As to (2) **Distd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765. **Expld.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542. (I do not think that the headnote in *In re Cohen* accurately sets out what is the result of that case, *per* Lord HANWORTH, M.R.). **Dbtd.** Peat *v.* Gresham Trust, Ltd., [1934] A. C. 252.

4671. *Add. Annotation:*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

4704a. —— —— —— **Whether barred by lapse of time.**]—In the circumstances:—*Held:* a solr.'s petition that his bill might be paid was not barred by the fact that the items occurred more than six years before the demand for payment.—*Re* FISHER, *Ex p.* BRUTTON (1845), De G. 116; 1 New Pract. Cas. 159; 14 L. J. Bcy. 15; 4 L. T. O. S. 321; 9 Jur. 96.

4705. *Add. Annotation:*—**Refd.** Knight *v.* Knight, [1925] Ch. 835.

4714a. Direction as to costs as between trustee & claimant against estate—Should not be included in order settling rights of parties.]—It is not, as a general rule, necessary or desirable that the order which determines a contest between a trustee & a person making claims against the estate should contain any direction as to the manner in which the costs of the trustee or costs which he is ordered to pay should be dealt with as between the trustee & the estate.—"PRACTICE NOTE" (1930), 47 T. L. R. 88; *sub nom. Re* SIMMS, *Ex p.* QUAIFE (A. E.), [1929-30] B. & C. R. 275.

4719. *Add. Annotation:*—**Consd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

4755a. —— **Fees for leading counsel—Opposition to approval of composition scheme.**]—A debtor commenced an action against three creditors, who were represented by the same solrs., & on the hearing of an application to approve a scheme of composition separate counsel were engaged for each. The position of one of the creditors, if the scheme had been approved, would have been far more serious than that of the other two, & the solrs. engaged a leading counsel to appear for him. The application was dismissed, & the registrar ordered that the costs of the proceedings be taxed & paid out of the bkpt.'s estate. The taxing master, being of opinion that there should be no discrimination between the three creditors, disallowed the whole of the costs incurred in briefing leading counsel:—*Held:* the taxing master ought to have considered the position of each creditor separately &, in the circumstances of the case, have allowed the costs of briefing leading counsel.—*Re* POTTS, *Ex p.* EPSTEIN *v.* TRUSTEE & BANKRUPT, [1935] Ch. 334; 104 L. J. Ch. 49; 152 L. T. 456; [1934] B. & C. R. 142.

4771a. —— ——.]—WILLASEY *v.* MASHITER (1834), 3 My. & K. 293; 40 E. R. 112.

4772a. —— ——.]—WHALLEY *v.* WILLIAMSON (1843), 6 Man. & G. 269; 6 Scott, N. R. 948; 134 E. R. 894.

4772b. —— ——.]—SHEA *v.* BOSCHETTI, *Re* PEILE (1858), 25 Beav. 561; 53 E. R. 751.

PART XVI. SECT. 4.

sk. *Ex parte order—Rescission—Non-disclosure of true state of affairs.*]—*Re* GORDON BROTHERS, LTD., (Ont.) [1926] 3 D. L. R. 131; 7 C. B. R. 576.—**CAN.**

PART XVI. SECT. 5, SUB-SECT. 1.

sj. —— —— ——.]—*Held:* as the work done by the solr. in collecting the debts due to debtor was of real benefit to his estate, & was done with the tacit sanction of the ct., the costs of the solr. should be paid to him out of the money lodged by him with the official assignee.—*Re* MALONEY, [1928] I. R. 155.—**IR.**

sn. *Of successful application for recovery of property intrusted to bankrupt—Payable out of estate.*]—*Re* NEVILLE & GREEN (Ont.), [1926] 3 D. L. R. 407; 7 C. B. R. 631; *varying*, [1926] 2 D. L. R. 1025.—**CAN.**

so. *Of proceedings under the Act—Costs of action by trustee.*]—*Re* ASH ESTATE, [1934] 1 W. W. R. 540.—**CAN.**

sp. *Rights of solicitor—Amount of fees—Estate not realised by trustee.*]—*Re* CAPLAN, [1925] 3 D. L. R. 964; 5 C. B. R. 826.—**CAN.**

sq. *Levy for expenses—On what payments made.*]—The provision for a levy for expenses of superintendent in Bkpcy. Act, s. 126A, on all payments made by the trustee extends only to payments made by the trustee as such & in the course of the administration.—*Re* COLONIAL MANUFACTURING CO., *Ex p.* BANK OF NOVA SCOTIA, [1934] 1 D. L. R. 703; O. R. 116.—**CAN.**

sd. *Fees of trustee's solicitor—Limitation.*]—Bkpcy. Act, 1927, s. 162, does not limit the amount of the fees payable to the trustee's solr. but only the amount they may be increased by the inspectors.—*Re* LINTON & SINCLAIR CO.'S ESTATE, [1937] 1 D. L. R. 137; 11 M. P. R. 203.—**CAN.**

SECT. 6.—**OTHER CASES.**

4790a. Bankruptcy matter in which infant interested—Chancery practice relating to infants applicable.]—"PRACTICE NOTE," [1930] W. N. 254; [1931] B. & C. R. 44.

Part XVII.—Appeals.

4794. *Add. Annotations:*—**Folld.** *Re* Andrews, Official Receiver (Trustee) *v.* Standard Range & Foundry Co., [1936] 2 All E. R. 750. **Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

4794a. —— —— ——.]—In a bkpcy. matter the county ct. judge stated a case for the opinion of the High Ct. on three questions. The case was argued before a judge in the Ch. Div., who held that the first question was concluded by previous decisions of that division, & the second & third questions did not therefore arise. The operative part of the order as drawn up dealt only with costs:—*Held:* this was a decision of the High Ct. & not of the county ct. within 1914 Act, s. 108 (2), & an appeal therefrom lay to the Ct. of Appeal. —*Re* ANDREWS, *Ex p.* OFFICIAL RECEIVER (TRUSTEE) *v.* STANDARD RANGE & FOUNDRY CO., LTD., [1936] 2 All E. R. 750; 80 Sol. Jo. 594, C. A.

4808a. Who is "person aggrieved."]—A person who alleges himself to be a creditor under a bkpcy., but who has omitted for several years to prove his debt in the regular way, is not a "person aggrieved" within Bkpcy. Act, 1869 (c. 71), s. 71, by the refusal to make an order the result of which, if made, would be to increase the assets available for the creditors, & is, therefore, not entitled to appeal from the refusal.—*Re* WOODS, *Ex p.* DITTON (1879), 11 Ch. D. 56; 40 L. T. 297; 27 W. R. 401, C. A.

Annotations:—**Expld.** *Re* Sidebotham, *Ex p.* Sidebotham (1880), 14 Ch. D. 458, C. A. **Distd.** *Re* Langtry, *Ex p.* Stephenson (1894), 63 L. J. Q. B. 570.

4808b. ——.]—*Re* BURN (J.), *Ex p.* DAWSON (E. N. de V.), MCCLELLAN (H. T.) & TRUSTEE, No. 6318a, *post.*

4817. *Add. Annotation:*—**Refd.** Rodriques *v.* Bakewell & Salmon, [1934] 1 K. B. 668.

4818. *Add. Annotation:*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

4819. *Add. Annotation:*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

4836. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

4850. *Add. Annotation:*—**Consd.** Bottomley *v.* West Derby Assessment Committee, etc. (1931), 47 T. L. R. 468.

4851a. —— **From refusal of application.**]—On Dec. 31, 1935, a secured creditor gave notice to a trustee in bkpcy. calling upon him to exercise his right of election under 1914 Act, Sched. II., r. 13 (*c*). In June, 1936, the trustee applied for an extension of the time within which to exercise his election. The application was dismissed on June 25, 1936, & the trustee was ordered to pay the creditors' costs. After some correspondence the order was drawn up dismissing the application &

PART XVII. SECT. 1.

sr. *From registrar in insolvency—To judge exercising insolvency jurisdiction —Order for attendance of witness.*]—SARAT KUMAR RAY *v.* NABIN CHANDRA RAM CHANDRA SHAKA (1928), I. L. R. 56 Calc. 667.—**IND.**

ss. *From judge in insolvency—To Divisional Bench.*]—SARAT KUMAR RAY *v.* NABIN CHANDRA RAM CHANDRA SHAKA (1928), I. L. R. 56 Calc. 667.—**IND.**

sv. *From Divisional Bench—To Full Bench.*]—SARAT KUMAR RAY *v.* NABIN CHANDRA RAM CHANDRA SHAKA (1928), I. L. R. 56 Calc. 667.—**IND.**

sw. *To Supreme Court—When appeal lies.*]—In bkpcy. matters an appeal from the Appeal Ct. to the Supreme Ct. only lies in matters of general importance which are open to doubt.—*Re* SCHULTE-UNITED, LTD., [1934] 4 D. L. R. 252.—**CAN.**

sx. —— ——.]—The competency of the Supreme Ct. of Canada in bkpcy. proceedings is to be looked for exclusively in the Bkpcy. Act, & the rules properly made under it; it is not controlled by the sects. of the Supreme Ct. Act dealing with the Ct.'s ordinary jurisdiction.—*Re* COLLINGS, *Ex p.* COLLINGS & MURPHY (NO. 1), [1936] S. C. R. 609; 1 D. L. R. 225.—**CAN.**

PART XVII. SECT. 2.

sz. *Order involving amount exceeding $500.*]—An appeal lies on the question whether a creditor for an amount over $500 shall be entitled to rank on bkpt.'s estate as a secured creditor or merely as an ordinary creditor, being an appeal involving an amount exceeding $500.—APEX LUMBER CO. *v.* JOHNSTONE, [1925] 3 D. L. R. 1050; [1925] 3 W. W. R. 360.—**CAN.**

sa. *Order on question of procedure.*]—No appeal lies from a decision on a question of procedure.—WINTER *v.* CAPILANO TIMBER CO. (1926), 37 B. C. R. 91; [1926] 2 W. W. R. 536.—**CAN.**

PART XVII. SECT. 3.

4815 l. *Application for leave—Within what time—Extension of time—Leave to appeal to Supreme Court of Canada.*]—*Re* HUDSON FASHION SHOPPE, LTD., *Ex p.* ROYAL DRESS CO., [1926] 1 D. L. R. 515; 58 O. L. R. 298.—**CAN.**

so. *Grounds for granting leave—Landlord's preferential claim for rent endangered—By claim of Crown—Under War Revenue Act, 1915.*]—*Re* CALCUS CO., LTD., [1925] 2 D. L. R. 228; 5 C. B. R. 514.—**CAN.**

sd. —— *Question of great importance & general interest.*]—BOILY *v.* MCNULTY, [1927] 2 D. L. R. 1010; [1927] S. C. R. 275.—**CAN.**

sg. —— *Whether hotel-keeper "trader" within Landlord & Tenant Act, C. S. N. B., 1903 (c. 153), s. 47.*]—*Re* HOTEL DUNLOP, LTD., QUINN *v.* GUERNSEY, [1927] 1 D. L. R. 810; [1927] S. C. R. 134.—**CAN.**

sj. —— *Question of construction.*]—*Held:* leave to appeal should be granted. Among other questions, the meaning of the word "settlements" in Bkpcy. Act, s. 60, appears to be involved in this appeal, the point being whether this word should receive the same construction as that given to it under the English Bkpcy Act, 1914 (c. 59), s. 42.—GARSON *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1928] 3 D. L. R. 937; [1928] S. C. R. 419; 10 C. B. R. 203.—**CAN.**

sk. —— *Order adjudging debtor bankrupt.*]—A judge of the Supreme Ct. of Canada is competent, under sect. 174 of Bkpcy. Act, to grant leave to appeal from the judgment of an appellate ct. affirming an order rendered by a bkpcy. ct. by which a debtor was adjudged a bkpt. Even although no actual amount may be in controversy, such an appeal involves the future rights both of the creditor & of the debtor, which are directly affected by the bkpcy. proceedings following as a consequence of the order.—DUBROFSKI *v.* VIGER CO. & PERRAS, [1933] S. C. R. 218; 4 D. L. R. 66.—**CAN.**

sm. *Appeal to Supreme Court—What is "proceeding."*]—Pltf.'s tenant made an assignment under Bkpcy. Act, R. S. C., 1927, & deft. was appointed trustee. Pltf. claimed the amount of three months' rent & obtained leave, under sect. 24 of Bkpcy. Act, to commence an action in the King's Bench Ct., Sask. Pltf. recovered judgment at trial, which was reversed by the Ct. of Appeal, which dismissed its action. Pltf. appealed to the Supreme Ct. of Canada. Deft. moved to quash the appeal for want of jurisdiction, on the ground that the judgment appealed from was in a proceeding under Bkpcy. Act & no special leave to appeal had been obtained under sect. 174 thereof: —*Held:* the motion to quash should be dismissed; said sect. 174 had no application, the action not falling within the description therein, "proceedings under this Act."—NEW REGINA TRADING CO., LTD. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1933] S. C. R. 453; [1933] 1 W. W. R. 492; 4 D. L. R. 812.—**CAN.**

containing provisions by which the trustee should be reimbursed out of the estate for the costs which he had been ordered to pay. On Aug. 5, 1936, notice of appeal was given. The creditors raised a preliminary objection that the notice of appeal was out of time under Bkpcy. Rules, 1915, r. 130. The trustee contended that the direction as to costs had the effect of making the order a compound & not a simple order, & that he was entitled to see the order before making up his mind as to an appeal:—*Held:* the refusal of the application for extension of time was a simple refusal & the appeal ought to have been brought within 21 days of such refusal.—*Re* BULMER, INLAND REVENUE COMRS. & TRUSTEE *v.* NATIONAL PROVINCIAL BANK, LTD., [1936] 3 All E. R. 366; 80 Sol. Jo. 993.

4857. *Add. Annotation:*—**Refd.** *Re* Barley, [1923] 1 Ch. 177.

4860. *Add. Annotation:*—**Consd.** *Re* Barley, [1923] 1 Ch. 177.

4869. *Add. Annotation:*—**Consd.** *Re* Barley, [1923] 1 Ch. 177.

4873. *Add. Annotation:*—**Consd.** *Re* Barley, [1923] 1 Ch. 177.

4876. *Add. Annotation:*—**Refd.** *Re* Barley, [1923] 1 Ch. 177.

4878a. —— ——.]—*Re* MUSCOVITCH, *Ex p.* MUSCOVITCH *v.* OFFICIAL RECEIVER, [1938] 4 All E. R. 570.

4888. *Add. Annotation:*—**Consd.** *Re* Barley, [1923] 1 Ch. 177.

4894. *Add. Annotation:*—**Refd.** *Re* Barley, [1923] 1 Ch. 177.

4901a. —— —— **Two receiving orders—Separate appeals.**]—Where receiving orders have been made in two separate cts. & appeals are presented against each, the Ct. of Appeal will in a proper case dispense with security for costs in one of the appeals.—*Re* DEBTOR [1934-5] B. & C. R. 212, C. A.

4907a. —— —— —— **Appeal by Poor Person.**]—On an appeal by a poor person from the dismissal of a motion in bkpcy., the deposit pursuant to Bkpcy. Rules, r. 131, must be paid before the appeal is entered. The exception of bkpcy. proceedings in R. S. C., Ord. 16, r. 22, is imported into r. 31F.—*Re* DEBTOR (1932), 74 L. Jo. 291.—C. A.

4910. *Add. Annotation:*—**Consd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

4911. *Add. Annotation:*—**Consd.** *Re* Debtor, Petitioning Creditor *v.* Debtor (No. 29 of 1931] (1933), 102 L. J. Ch. 348.

4914a. —— **Point not taken in court below.**]—*Re* DEBTOR (NO. 16 OF 1922), *Ex p.* THE DEBTOR, No. 875a, *ante*.

SECT. 10.—**OTHER CASES.**

4970a. Appeal from county court—Documents to be supplied.]—PRACTICE NOTE, [1932] W. N. 172; 174 L. T. Jo. 46.

Part XVIII.—Order of Discharge.

To statutory cross-reference add:—"*See, also,* Bkpcy. (Amendment) Act, 1914 (c. 7), s. 1."

4996a. —— **Discretion of court to hear creditor.**]—*Re* BURN, DAWSON *v.* MCCLELLAN (No. 2), No. 1966b, *ante*.

5023. *Add. Annotation:*—**Consd.** *Re* Kutner, [1921] 3 K. B. 93.

5035a. Payment of money in consideration of—

PART XVII. SECT. 4, SUB-SECT. 3.

4855 ii. ——.]—Where an application to a judge of this ct. for leave to appeal from a judgment of a provincial ct. of appeal in a matter arising under the Bkpcy. Act is made within the thirty days specified by Bkpcy. Rule 72, or where the specified fourteen days notice has not been given to the adverse party, the application must be dismissed; the judge has no power to extend the time.—*Re* NORTH SHORE TRADING CO., PROVIDENCE WASHINGTON ASSCE. CO. *v.* GAGNON & CLOUTIER, [1928] 2 D. L. R. 136; [1928] S. C. R. 180; 10 C. B. R. 181.—**CAN.**

4855 iii. ——.]—The Supreme Ct. of Nova Scotia *en banc* cannot, nor can a judge of the Supreme Ct. of Canada, extend the time fixed by Bkpcy. Rule 72 for an application to be made to a judge of the Supreme Ct. of Canada for special leave to appeal to this ct.—*Re* WEBBER, VALINSKY *v.* BACON, [1931] S. C. R. 498.—**CAN.**

4855 iv. ——.]—*Re* WEBBER (No. 2), [1931] 4 D. L. R. 244.—**CAN.**

4855 v. ——.]—The judge sitting in bkpcy. from whose decision an appeal was taken to the Appeal Ct. under sect. 174 of the Bkpcy. Act has power, under s. 163 (5) of the Act, to extend the time limited by Bkpcy. Rule 72 for applying to a judge of the Supreme Ct. of Canada for special leave to appeal to this ct., under sect. 174 (2), from the Appeal Ct.'s decision.—*Re* SMITH & HOGAN, LTD., INDUSTRIAL ACCEPTANCE CORPN., LTD., & CANADIAN ACCEPTANCE CORPN., LTD. *v.* CANADA PERMANENT TRUST CO., [1931] S. C. R. 652.—**CAN.**

4862 i. *Grounds for extending time—Necessity for special circumstances.*]—*Re* MCKINNON'S, LTD. (NO. 2), [1935] 1 W. W. R. 248.—**CAN.**

PART XVII. SECT. 9.

a i. ——.]—Upon appeals to this ct. in bkpcy. matters the tariff which applies is that provided for in the Rules of this ct., & contained in Form I. set out in the sched. thereto; & the costs of said application for leave should be taxed according to that tariff, & not according to the tariff prevailing in the bkpcy. cts. The judge hearing said application was not empowered to adjudicate otherwise.—*Re* COLLINGS, *Ex p.* COLLINGS & MURPHY (NO. 2), [1936] S. C. R. 613; 1 D. L. R. 409.—**CAN.**

ak. *Jurisdiction of Court of Appeal of British Columbia.*]—The above ct. when acting as an appeal ct. in bkpcy. has complete jurisdiction over costs.—*Re* KWONG TAI CHONG CO. (ASSIGNMENT OF) (1922), 65 D. L. R. 132; [1922] 2 W. W. R. 229; *sub nom.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* JANG BOW KEE & YIN SHEE, 31 B. C. R. 40.—**CAN.**

PART XVIII. SECT. 3, SUB-SECT. 1.

5013 i. *Whose interests court must consider—Public interests.*]—On considering the application of a debtor for his discharge under Bkpcy. Act, regard must be had not only to the interests of bkpt. & his creditors, but also to the interests of the public.—*Re* SCEPTRE HARDWARE CO., [1923] 1 D. L. R. 1201; [1923] 1 W. W. R. 966; 3 C. B. R. 734.—**CAN.**

5014 i. —— *Bankrupt.*]—*Re* JONES, [1926] N. Z. L. R. 318.—**N.Z.**

d i. —— *Reasons of trustee's report.*]—*Re* MCKENZIE (Man.), [1926] 4 D. L. R. 210.—**CAN.**

5018 iii. ——.]—It is the policy of the Legislature that normally an insolvent on giving up the whole of his property should be a free man again. But in considering an application by an insolvent for his discharge the ct. must have regard to the interest of the community at large. Where the insolvent has preyed on the public & is still likely to do so if freed from insolvency, & during his insolvency has disregarded the interests of his creditors & has deliberately withheld information from the Official Assignee which it was his duty to disclose, the ct. should refuse to grant him a discharge.—E. A. MAMSA *v.* M. E. MAJID (1931), I. L. R. 9 Ran. 333.—**IND.**

PART XVIII. SECT. 3, SUB-SECT. 2.

ii. ——.]—The granting or refusing of a discharge to a bkpt. or the impositions of terms with respect to it are matters for the exercise of judicial discretion; therefore an appellate ct. will hesitate to interfere with an order made upon reasonable grounds, but it may moderate the conditions imposed if they appear too onerous.—*Re* LOBEL, [1929] 1 D. L. R. 986; [1929] W. W. R. 326; 38 Man. L. R. 48; 10 C. B. R. 350.—**CAN.**

Void.]—A., an insolvent, having petitioned the ct. for the relief of insolvent debtors to be discharged out of custody; & having been brought up before that ct. to be examined, was opposed by B., a creditor, & remanded to a future day. Before that day arrived, C., who acted as the attorney of A., in consideration of B.'s withdrawing his opposition to A.'s discharge, undertook that B. should be the sole assignee of A.'s estate, & should receive £100 out of it within three weeks from his appointment:—*Held:* this agreement was contrary to the policy of the insolvent act, & therefore void.—MURRAY *v.* REEVES (1828), 8 B. & C. 421; 2 Man. & Ry. K. B. 423; Dan. & Ll. 161; 108 E. R. 1099; *sub nom.* MURRAY *v.* REID, 6 L. J. O. S. K. B. 348.

Annotations:—**Apld.** Hall *v.* Dyson (1852), 17 Q. B. 785. **Consd.** Levita's Claim, [1894] 3 Ch. 365. **Refd.** Gilmour *v.* King (1833), 3 Tyr. 581.

5035b. —— ——.]—An agreement by the attorney of an insolvent with one of the creditors, who has given notice of opposition to the insolvent's discharge, to pay such creditor's certain sum of money in consideration that he will withdraw his opposition, is void; such consideration being contrary to the policy of the Insolvent Debtors Act, & a fraud upon the other creditors, although it do not appear that the money is to be paid out of the insolvent's funds.—HALL *v.* DYSON (1852), 17 Q. B. 785; 21 L. J. Q. B. 224; 18 L. T. O. S. 63, 223; 6 Jur. 270; 117 E. R. 1481.

Annotations:—**Consd.** McKewan *v.* Sanderson (1873), L. R. 15 Eq. 229; McKewan *v.* Sanderson, [1875] L. R. 20 Eq. 65; Levita's Claim, [1894] 3 Ch. 365. **Refd.** Hills *v.* Mitson (1853), 8 Exch. 751; Lound *v.* Grimwade (1888), 39 Ch. D. 605; Kearley *v.* Thomson (1890), 24 Q. B. D. 742; Windhill L. B. of Health *v.* Vint (1890), 63 L. T. 366.

5038a. ——.]—A bill of exchange given to buy off opposition to bkpt.'s last examination & the allowance of the certificate:—*Held:* void *ab initio*.—REEVES *v.* HAWKES (1862), 6 L. T. 53.

5039a. ——.]—*Held:* a fraud on other creditors.—ROGERS *v.* KINGSTON (1825), 2 Bing. 441; 10 Moore, C. P. 97; 3 L. J. O. S. C. P. 77; 130 E. R. 376.

Annotation:—**Refd.** Sweenie *v.* Sharp (1826), 12 Moore, C. P. 163.

5039b. ——.]—*Held:* the agreement was illegal.—HILLS *v.* MITSON (1853), 8 Exch. 751; 22 L. J. Ex. 273; 155 E. R. 1555.

Annotation:—**Refd.** Lound *v.* Grimwade (1888), 39 Ch. D. 605.

5039c. *S. P.* HUMPHREYS *v.* WELLING (1862), 1 H. & C. 7; 32 L. J. Ex. 33; 6 L. T. 250; 158 E. R. 780.

5043. *Add. Annotations:*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46. **Refd.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97.

5050. *Add. Annotation:*—**Consd.** *Re* Kutner, [1921] 3 K. B. 93.

5052. After this case add "*See, also,* Nos. 1654-1657a, *ante.*"

5093a. —— **Meaning of "debt."**]—*Re* BOULTON BROTHERS & Co., No. 1657a, *ante.*

5176. Before this case add, "*See, now,* Bkpcy. (Amendment) Act, 1926 (c. 7), s. 1 (2)."

5262. *Add. Annotation:*—*As to* (2) **Refd.** *Re* Kutner, [1921] 3 K. B. 93.

5264a. —— **Condition suspending discharge until larger dividend than ten shillings in the pound paid.**]—The Ct. of Bkpcy. is not empowered by 1914 Act, s. 26, to suspend the discharge of a bkpt. until a dividend higher than 10*s.* in the pound—in this case 15*s.* in the pound—has been paid to his creditors.—*Re* KUTNER, [1921] 3 K. B. 93; 90 L. J. K. B. 1264; 125 L. T. 458; 37 T. L. R. 667; [1921] B. & C. R. 113; *sub nom. Re* KUTNER, *Ex p.* DEBTOR *v.* OFFICIAL RECEIVER, 65 Sol. Jo. 604, C. A.

PART XVIII. SECT. 5, SUB-SECT. 1.—B.

g i. —— *Insolvency due to world conditions after War—No possibility of payment of debts.*]—*Re* RAFUSE (N. S.), [1929] 4 D. L. R. 321; 10 C. B. R. 570.—**CAN.**

sp. *Bankruptcy arising out of judgment for personal injuries.*]—In applying sects. 142 & 143 of Bkpcy. Act, R.S.C., 1927, if the liability for the judgment which brought about the authorised assignment arose from circumstances for which the assignor cannot justly be held responsible the ct. has power to grant a discharge; but if it has arisen from circumstances for which he can justly be held responsible there is no power to grant an unconditional discharge. A judgment for personal injuries caused by a deliberate assault must be held to have arisen from circumstances for which the assignor should justly be held responsible.—*Re* LITZ, [1937] 2 W. W. R. 27; 45 Man. L. R. 159.—**CAN.**

PART XVIII. SECT. 5, SUB-SECT. 1.—C. (b) ii.

5073 ii. —— ——.]—The test as to whether a debtor's book-keeping methods are those usual & proper in the business carried on by him is whether debtor can at any time tell therefrom just how he stands to his assets & liabilities.—*Re* MORDEN (1922), 66 D. L. R. 332; [1922] 1 W. W. R. 519; 2 C. B. R. 189.—**CAN.**

5081 ii. ——.]—Even when a debtor pays less than fifty cents in the dollar to unsecured creditors & has not kept proper books of account, he may obtain his discharge if the bkpcy. appears to have been an honest one & he produces reasonable excuses for his failure to keep account books.—*Re* COVINGTON, [1923] 4 D. L. R. 946.—**CAN.**

5081 iii. ——.]—*Re* NEWSOME (Ont.), [1927] 3 D. L. R. 828; 8 C. B. R. 279.—**CAN.**

PART XVIII. SECT. 5, SUB-SECT. 2.

p (p. 570) i. —— ——.]—Discharge may be suspended for a fraud not connected with the bkpcy.—*Re* JOHNSTON, [1935] 3 D. L. R. 115.—**CAN.**

p (p. 570) ii. —— ——.]—Discharge may be refused for any fraud & not necessarily a fraud within Bkpcy. Act.—*Re* CAMPBELL, [1935] 3 D. L. R. 233; O.R. 303.—**CAN.**

r i. —— *Until payment of specified dividend.*]—On an application by a bkpt. for an order of discharge the ct. found that the conduct of the debtor prior to & leading up to the assignment had been characterised by various facts of the kind enumerated in sect. 143 of the Bkpcy. Act, & refused an immediate or unconditional discharge; but, while entertaining grave doubts whether appct. was entitled to any discharge at all, made an order suspending the discharge until a dividend of not less than 50 cents on the dollar had been paid to the creditors.—*Re* RUNNER (Man.), [1928] 1 W. W. R. 930.—**CAN.**

5238 i. *For what period—Not less than minimum period—Misconduct.*]—*Re* MCCORMACK (Ont.), [1927] 2 D. L. R. 492; 8 C. B. R. 211.—**CAN.**

z i. —— ——.]—Debtor had misrepresented his financial position for the purpose of obtaining credit. The ct. fixed the time for discharge at three years from the date of the order.—*Re* THIESSEN, [1924] 1 D. L. R. 588; [1924] 1 W. W. R. 197; 34 Man. L. R. 125.—**CAN.**

PART XVIII. SECT. 5, SUB-SECT. 3.

g i. —— *Order for payment out of salary.*]—In exercising the discretion given him by sect. 142 (1) of Bkpcy. Act, R. S. C., 1927, with respect to the salary of a bkpt. a judge in bkpcy. should not make the fulfilment of an order against the debtor's salary a condition of his discharge unless it is clearly established that the salary is more than what the debtor needs for the support of himself & his family.—MASON *v.* CANADIAN BANK OF COMMERCE, [1932] 1 W. W. R. 373.—**CAN.**

5269 iii. —— ——.]—Where the assets of the assignors, a partnership, were not equal to fifty cents in the dollar on their unsecured liabilities, & the ct. was not fully satisfied with explanations on certain matters given by a partner asking for his discharge, an order was made for his discharge on his consenting to judgment against him.—*Re* SCEPTRE HARDWARE CO., [1923] 1 D. L. R. 1201; [1923] 1 W. W. R. 966; 3 C. B. R. 734.—**CAN.**

5269 iv. —— ——.]—*Re* FLETCHER & FLETCHER (Sask.), [1930] 1 D. L. R. 218; 11 C. B. R. 70; [1929] 3 W. W. R. 175.—**CAN.**

5283. *Add. Annotation :*—**Refd.** *Re* Barley, [1923] 1 Ch. 177.

5328. *Add. Annotations :*—**Refd.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] 1 Ch. 97 ; *Re* Warren, Wheeler *v.* Mills, [1938] 2 All E. R. 331.

5352a. —— —— Illegal agreement with creditor—Debt not revived.] — TABRAM *v.* FREEMAN (1834), 4 B. & Ad. 887 ; 2 Cr. & M. 451 ; 4 Tyr. 180 ; 3 L. J. Ex. 135 ; 110 E. R. 690.

Annotation :—**Refd.** Wilkin *v.* Manning (1854), 9 Exch. 575.

5364a. Liability under annuity deed.]—DOUGLAS *v.* SMITH (1849), 13 Jur. 294.

5367. *Add. Citation :—sub nom. Re* MERCHANT TRADERS' SHIP, LOAN & INSURANCE ASSOCN., *Ex p.* CHAPPELL, 19 L. T. O. S. 29.

5380. *Add. Annotation :*—**Refd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

5387. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

5387a. On forfeiture clause—Conditional discharge.]—(1) The discharge from bkpcy. of a life tenant with the common form protected life interest, such discharge being conditional on his paying a sum of money, does not have the effect of putting an end to the operation of the forfeiture clause if the money has not in fact been paid.

(2) Where there is a trust of a fund under the terms of which the trustees are bound to apply the income of the fund in a particular way on a given future contingency, the person who takes the income as a result of that trust on the happening of the contingency is a person who has an interest of a kind which, but for the forfeiture clause, is capable of vesting in his trustee in bkpcy.—*Re* CLARK, CLARK *v.* CLARK, [1926] Ch. 833 ; 95 L. J. Ch. 325 ; 135 L. T. 666 ; 70 Sol. Jo. 344 ; [1926] B. & C. R. 77.

5397. *Add. Citations :*—Bail Ct. Cas. 151 ; 17 Jur. 165.

5399a. Revives debt.]—HATT *v.* VERDIER (1770), 2 Wm. Bl. 724 ; 96 E. R. 425.

5399b. *S. P.* BEST *v.* BARKER (1782), 8 Price, 533, n. ; 146 E. R. 1286 ; *sub nom.* BEST *v.* BARBER, 3 Doug. K. B. 188.

Annotations :—**Consd.** Wilson *v.* Kemp (1815), 3 M. & S. 595. **Apld.** Sweenie *v.* Sharp (1826), 12 Moore C. P. 163. **Refd.** Blackbourn *v.* Ogle (1820), 8 Price, 526 ; Drew *v.* Jefferies (1820), 8 Price, 531.

5402a. *S. P.* HORTON *v.* MOGGRIDGE (1816), 6 Taunt. 503 ; 128 E. R. 1154.

5424a. *S. P.* TURNER *v.* SCHOMBERG (1745), 2 Stra. 1233 ; 93 E. R. 1152.

Annotation :—**Folld.** Bailey *v.* Dillon (1759), 2 Burr. 736.

5424b. *S. P.* WILSON *v.* KEMP (1815), 3 M. & S. 595 ; 105 E. R. 733.

Annotations :—**N.F.** Blackbourn *v.* Ogle (1820), 8 Price 526. **Consd.** *Re* Ganderer (1822), 1 L. J. O. S. K. B. 16 ; Peers *v.* Gadderer (1822), 1 B. & C. 116.

5455. *Add. Annotation :*—**Refd.** Indian & General Investment Trust *v.* Borax Consolidated, [1920] 1 K. B. 539.

5457. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

Part XIX.—Statement of Affairs and Discovery of Property.

5460. *Add. Annotation :*—**Apld.** R. *v.* Tuttle (1929), 410 L. T. 701.

5475. *Citations :*—For "24 Q. B. D. 406" read "24 Q. B. D. 466."

5475a. —— —— —— Letter returned marked "gone away."]—Bkpt. cannot escape service of an order of the ct. by leaving his last known address, & there is nothing in 1914 Act, nor in Bkpcy. Rules, to say that a registered letter which does not reach debtor is not good service. Where, therefore, a copy of an order that bkpt. should attend at a specified time & place for his adjourned public examination, had been sent by registered letter & returned through the post, marked "gone away," a warrant was ordered to be issued for his arrest.—*Re* LEVY (1924), 68 Sol. Jo. 419; *sub nom. Re* LEVY, *Ex p.* OFFICIAL RECEIVER, [1924] B. & C. R. 19, D. C.

5482. *Add. Citation :—sub nom. Re* TEMPLE, *Ex p.* TEMPLE, 2 Rose, 22.

5495a. —— —— —— ——.]—The object of the public examination of debtor is not merely to obtain a full & complete disclosure of his assets & the facts relating to the bkpcy. in the interests of his creditors, but is also for the protection of the public ; & debtor is not entitled to refuse to answer questions put to him at his public examination on the ground that by so doing he may incriminate himself.

In the course of his public examination debtor refused to answer a question on the ground that he might thereby incriminate himself. On the case coming on before the judge he interviewed debtor in his private room & on his return into ct. stated (1) that he was not satisfied that an answer to the question would result in further assets or secure rights for the creditors, & (2) that he

---

PART XVIII. SECT. 6.

g i. —— *Creditor without notice of insolvency.*]—The ct., on the application of a creditor, annulled the composition order & the discharge & made a receiving order.—*Re* MCKAY, *Ex p.* MASON, [1924] 4 D. L. R. 307 ; 5 C. B. R. 81.—**CAN.**

PART XVIII. SECT. 7, SUB-SECT. 2.—B.

t i. ——.]—An action against discharged bkpts. for return of the price of a bond & damages for misrepresentation prior to the bkpcy. will not be dismissed unless the bkpt. can show that the claim was one provable under sect. 104 of Bkpcy. Act & was not released by discharge within sect. 147 (1) (*b*).—HOLAND *v.* JOHNSON, [1934] 1 D. L. R. 672 ; O. R. 108.—**CAN.**

PART XVIII. SECT. 7, SUB-SECT. 2.—D.

sl. *Liability for necessaries—Medical expenses.*]—*Held :* debtor's discharge did not free him from liability to pay for necessaries which included medical expenses. — *Re* REYNOLDS, [1924] 4 D. L. R. 104 ; 5 C. B. R. 69.—**CAN.**

sm. ——.]—Bkpcy. Act, s. 147 (*d*), has no application to the supply of a retail grocer by a wholesale grocer, or to the supply of groceries to a lumberman for use in camp.—*Re* BLADES, [1933] 1 D. L. R. 473.—**CAN.**

sp. *Liability to reimburse surety.*]—K. was surety for payment of a debt due by G. to D. G. applied to be declared insolvent & in due course G. was discharged. D. then sued K. & got a decree against him. Thereafter K. sued G. for recovery of the amount which he had been compelled to pay :—*Held :* the order of discharge was a bar to the suit.—GANGADHAR *v.* KANHAI (1928), I. L. R. 50 All. 606.—**IND.**

was satisfied that there were serious personal reasons why it would be to debtor's detriment to answer the question in public:—*Held:* neither of the reasons given by the judge for declining to order debtor to answer the question was a sufficient reason.—*Re* PAGET, *Ex p.* OFFICIAL RECEIVER, [1927] 2 Ch. 85; 96 L. J. Ch. 377; 137 L. T. 369; 43 T. L. R. 455; 71 Sol. Jo. 489; [1927] B. & C. R. 118, C. A.

Annotation:—**Apld.** *Re* Jawett, [1929] 1 Ch. 108.

5495b. —— —— —— **Answers disclosing secret formulas for manufacturing proprietary articles.**]—*Re* KEENE, No. 5811a, *post.*

5496. For "—— —— **All matters considered on application for discharge**" read "—— —— —— **All matters considered on application for discharge.**"

Add. Annotations:—**Folld.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85. **Apld.** *Re* Jawett, [1929] 1 Ch. 108.

5499a. —— —— —— **Questions as to loss of property.**]—*Held:* though the words "with intent to deceive or to defraud" were absent from 1914 Act, s. 157 (1) (*c*), the jury had still to consider whether deft. knowingly & with intent to deceive or to evade the Act either made statements that were unsatisfactory in the sense that they were untrue or grossly exaggerated or intentionally evasive, or made statements without caring whether they were true or not.—R. *v.* PHILLIPS (1921), 85 J. P. 120.

5499b. —— —— —— **Questions in the public interest.**]—In Nov. 1927, the debtor, who had practically no capital of his own, suffered judgment for an injunction & costs for selling lamps in infringement of a patent. In Aug. 1928, the debtor was adjudicated bkpt. on the patentees' petition for non-payment of those costs. At his public examination on Oct. 19, the bkpt., who was admittedly still dealing in electrical goods, on being asked by the registrar where he had obtained the lamps that he sold when he was in business, refused to answer the question:—*Held:* as it was not clear that the disclosure of the source of supply might not lead to the disclosure of further assets, *e.g.* claims to commission or otherwise, or might not be in the public interest, by enabling the supply of infringing lamps to be stopped at its source, the bkpt. must answer the question.—*Re* JAWETT, [1929] 1 Ch. 108; 98 L. J. Ch. 7; 140 L. T. 176; [1928] B. & C. R. 78.

5505. *Add. Annotations:*—**Refd.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85; *Re* Jawett, [1929] 1 Ch. 108.

5506a. —— **Issue of subpœna to produce documents.**]—*Re* WILSON, *Ex p.* DEBTOR, [1936–7] B. & C. R. 23.

5512. *Add. Annotation:*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

5519. For existing paragraph read—

"The jurisdiction conferred on the ct. by 1883Act, s. 27, to order that any person, who if in England would be liable to be brought before it under the sect. shall be examined in Scotland or Ireland, "or in any other place out of England," must be read with some limitation & does not extend to places abroad which are not within the jurisdiction of the British Crown."

5523a. —— **After discharge.**]—The power given to the ct. by 1914 Act, sect. 25, to order the attendance for examination of the bkpt. & persons capable of giving information respecting the bkpt., his dealings or property is not limited to the duration of the bkpcy., but survives the effective discharge of the bkpt.—*Re* COULSON, *Ex p.* OFFICIAL RECEIVER (TRUSTEE), [1934] Ch. 45; 103 L. J. Ch. 31; 150 L. T. 5; 77 Sol. Jo. 749; [1933] B. & C. R. 173, C. A.

5543. *Add. Annotation:*—**Refd.** *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

5562. *Add. Annotation:*—**Refd.** *Re* Gregory (1934), 50 T. L. R. 492.

5562a. —— **As to compromise of proceedings between bankrupt & third party.**]—W., who had deposited with the debtor bonds of the value of £30,000 & shortly before his death had made a demand for their return to him with which the debtor refused to comply, died on July 12, 1930. On Feb. 23, 1931, the exors. of W.'s will brought an action against the debtor claiming the return of the bonds. In Nov. 1931, pltfs. discovered correspondence which disclosed the fact that the debtor had made proposals to W. for obtaining for him an honour from His Majesty, & they communicated this to deft.'s solrs. On Jan. 14, 1932, a compromise of the action was arranged between counsel under which the debtor consented to return the value of the bonds, & by Jan. 1933, this was in fact done. On May 23, 1933, the debtor was adjudicated bkpt. In the bkpcy. N., one of W.'s exors. & the surviving pltf. in the action, was, under 1914 Act, s. 25, summoned to give evidence & produce documents relating to the deposit of the bonds with the bkpt. N. was asked whether, after reading the correspondence between W. & the bkpt., he understood that the transaction related to some trafficking in honours. On the advice of his counsel N. refused to answer the question. The matter was accordingly reported by the registrar to CLAUSON, J., who on June 11, 1934, made an order directing N. to answer the question. On appeal:—*Held:* as the compromise was not impugned by any documents, materials or evidence before the ct. & thus stood good & binding, it would not be right to compel an answer from the witness in respect of a matter to which he was not *primâ facie* shown to be a party or privy. The ct. must deem the witness capable of giving information on some grounds that appeared to have a foundation. It ought not to lend itself to a mere fishing inquiry based upon the trustee's hope to build up some case as to which there was before the ct. no information showing that the witness was implicated.—*Re* GREGORY (MAUNDY), *Ex p.* NORTON, [1935] Ch. 65; 78 Sol. Jo. 550; *sub nom. Re* GREGORY (MAUNDY), TRUSTEE *v.* NORTON, 104 L. J. Ch. 1; [1934] B. & C. R. 165; *sub nom. Re* GREGORY (MAUNDY), *Ex p.* NORTON *v.* TRUSTEE, 152 L. T. 58, C. A.

5591a. Admission of indebtedness—Need not be in writing.]—An admission of indebtedness is not required to be in writing before the ct. can make an order for payment under 1914 Act, sect. 25 (4). Where the application for an order is made by the trustee it need not be verified by affidavit.—*Re* PARREN, *Ex p.* TRUSTEE, [1933] B. & C. R. 170.

5591b. —— Application for order for payment—How made.]—*Re* PARREN, *Ex p.* TRUSTEE, No. 5591a, *ante*.

5634. *Add. Annotation :*—**Refd.** *Re* Gregory (1934), 50 T. L. R. 492, C. A.

5649. *Add. Annotation :*—**Refd.** *Re* Gregory (1934), 50 T. L. R. 492.

Part XX.—Property Available for Distribution amongst Creditors.

5684. For the words "Admission or rejection of proofs.]—*See, generally,* Part VIII., *ante,*" following this case, read "Admission or rejection of proofs, *see, generally,* Part VIII., *ante.*"

5696. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

5738a. Definition of property—1914 Act, s. 167—What included—Passport.] — A passport issued by the British Passport Office on behalf of the Secretary of State for Foreign Affairs to a person who afterwards becomes bkpt. is the property of the Crown & not the "property" of the bkpt. within above sect., & where a bkpt. has passed his public examination & has not been guilty of any misconduct & desires to go abroad to earn his living the ct. will, in a proper case, direct the passport to be handed to the bkpt.—*Re* SUWALKSY, SUWALSKY *v.* TRUSTEE & OFFICIAL RECEIVER, [1928] B. & C. R. 142.

5747. *Add. Annotations :*—**Refd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

5749. *Add. Annotations :*—**Consd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9. **Expld.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

5754. *Add. Annotations :*—**Apld.** *Re* Collins, [1925] Ch. 556. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

5760. *Add. Annotations :*—**Consd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9. **Expld.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

5760a. —— Money paid in compliance with subsequent bankruptcy notice.]—*Re* DEBTORS (No. 771 of 1926), No. 923a, *ante*.

5761. *Add Annotation :*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

5766. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

5766a. —— —— ——.]—A debtor made certain payments to the solrs. who were acting for him in bkpcy. proceedings. One payment was made before the receiving order was made, & two payments were made for the purpose of prosecuting an appeal against the receiving order, including £20 in respect of security for costs. The appeal was dismissed & the trustee sought to recover from the solrs. the whole of the payments made to them by the debtor after the date of the receiving order & so much of the first payment as exceeded the amount properly applicable to the costs & disbursements of the bankruptcy proceedings :—*Held :* the sums claimed by the trustee were properly recoverable.—*Re* POLLOCK, OFFICIAL RECEIVER *v.* HASLIP, JACKSON, [1936] 3 All E. R. 157; 155 L. T. 532; 53 T. L. R. 47; 80 Sol. Jo. 915; [1936-7] B. & C. R. 24.

5769. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

5769a. —— —— Costs after date of receiving order.]—The ct. will not extend the practice of allowing a solr. acting for a debtor to retain, as against the trustee in the bkpcy., moneys *bonâ fide* paid by the debtor for costs of resisting the bkpcy. proceedings, so as to apply to moneys paid to him by the debtor after the date of the receiving order for costs of an appeal against it.—*Re* DEBTOR (No. 490 of 1935), [1937] Ch. 92; 106 L. J. Ch. 193; 156 L. T. 234; [1936-7] B. & C. R. 192.

5775a.——.]—On Sept. 20, 1917, debtor transferred his assets, including certain furniture, to a co. formed by him. On Sept. 27 he committed an act of bkpcy. upon which a petition

PART XX. SECT. 2.

b i. —— *Trustee ignorant of existence of property.*]—Deft. in replevin pleaded property in himself. He had assigned all his property to trustees for the benefit of his creditors, but kept possession of the goods in question, & the trustees did not know of their existence :—*Held :* the general property in the goods passed to the trustees.—MCINTOSH *v.* HASTINGS (1865), 11 N. B. R. (6 All.) 234.—**CAN.**

5689 iv. —— —— *Registered judgment as security for loan.*]—A judgment by confession given by a person who is at the time solvent as security for a present advance of money & recorded to bind lands under Nova Scotia Registry Act, R. S., 1900 (c. 137), s. 16, is a valid security as against the authorised assignee under an assignment in bkpcy. subsequently made.—*Re* RHODENIZER ESTATE & NOVA SCOTIA TRUST CO., [1923] 1 D. L. R. 1055; 56 N. S. R. 179.—**CAN.**

5713 v. ——.]—The authorised trustee is not entitled to possession or control of any property by lien agreements for store fixtures & fittings purchased by debtor, especially if nothing has been paid on account of such purchases, & bkpt. has no official interest in the property.—*Re* ALIOTIS & CLIRIS (1921), 63 D. L. R. 346; 55 N. S. R. 64.—**CAN.**

5713 vi. —— *Lease granted to bankrupt free of rent—Stipulation that lease not seizable by creditors.*]—*Held :* the property could not be used for the benefit of bkpt.'s creditors.—LEGAULT *v.* DUFRESNE (1922), 66 D. L. R. 136.—**CAN.**

t i. —— ——.]—As an assignment only vests the property of debtor in the assignee subject to the rights of secured creditors, it can only affect the equity of redemption in the property.—WHITE & CO. *v.* THE IONIA (1922), 69 D. L. R. 94; 20 Exch. C. R. 327.—**CAN.**

PART XX. SECT. 3, SUB-SECT. 2.

sn. *Under Canadian Bankruptcy Act.*]—The English Acts & the Canadian Act distinguished as to the time to which the trustee's title relates back.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34; *revsd.*, [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—**CAN.**

was presented on Oct. 8, & a receiving order was made against him on Oct. 24, followed by an adjudication on Dec. 12. After the date of the receiving order part of the furniture was sold by the co. to a *bonâ fide* purchaser for value without notice, by whom it was resold to another purchaser in the same position. On Feb. 3, 1919, the transfer of Sept. 20, 1917, was held to be fraudulent & void & an act of bkpcy., & the co. was ordered to deliver to the trustee all the property comprised in that sale. The value of the property having been found by the registrar, a further order was made against the co. to pay the amount of that value to the trustee. No payment having been made under that order the trustee claimed to recover the furniture or its value from the ultimate purchaser :—*Held :* the title of the trustee related back to the act of bkpcy. of Sept. 20, 1917, & neither the original nor any subsequent transferee could establish any title as against the trustee.—*Re* GUNSBOURG, [1920] 2 K. B. 426 ; *sub nom. Re* GUNSBOURG, *Ex p.* TRUSTEE, 89 L. J. K. B. 725 ; [1920] B. & C. R. 50 ; *sub nom. Re* GUNSBOURG, *Ex p.* COOK, 123 L. T. 353 ; 36 T. L. R. 485 ; 64 Sol. Jo. 498, C. A.

Annotations :—**Apld.** *Re* Dombrowski, *Ex p.* Trustee (1923), 92 L. J. Ch. 415. **Refd.** *Re* Simms, [1930] 2 Ch. 22.

5775b. ——.]—Bkpt., when he was hopelessly insolvent, transferred his business to a one-man co., which was an act of bkpcy. Subsequently the two resps. advanced £1,000 each & received four debentures of £250 each respectively containing a charge on the undertaking & assets of the co. Resps. had no notice of the fact that the transfer to the co. was a fraudulent conveyance within 1914 Act :—*Held :* although resps. were *bonâ fide* purchasers for value without notice, as the transfer was an act of bkpcy. to which the title of the trustee related back, the trustee was entitled to the assets so transferred as property divisible amongst the creditors of bkpt.—*Re* DOMBROWSKI, *Ex p.* TRUSTEE (1923), 92 L. J. Ch. 415 ; [1923] B. & C. R. 32.

Annotation :—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

5776. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

5776a. —— **Whether fraction of day regarded.**]—In order to make out an act of bkpcy. by lying in prison for two months, the whole of the day of arrest may be taken into the account. But a portion of the day may be considered for the purpose of showing a valid act to have been done by the bkpt. before the bkpcy. Goods of the bkpt. having been delivered to a purchaser on the day on which the bkpt. went to prison, & paid for the next day, the payment will be defeated by the relation of the act of bkpcy., by lying in prison for two months, to the day of the arrest.—SAUNDERSON *v.* GREGG (1821). 3 Stark. 72 ; 171 E. R. 771, N. P.

Annotations :—**Consd.** Hill *v.* Farnell (1829), 9 B. & C. 45. **Refd.** Cannan *v.* Denew (1833), 3 L. J. C. P. 65.

5785. *Add. Annotation :*—**Refd.** *Re* Debtor, *Ex p.* Petitioning Creditors (No. 5 of 1932) (1932), 101 L. J. Ch. 372.

5786. *Add. Annotations :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426. **Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

5786a. Fraudulent transfer to private company.]—*Re* SIMMS, No. 596a, *ante.*

5798. To the cross-reference before this case add "*see, also,* COUNTY COURTS, Vol. XIII., p. 498, No. 488."

5804. *Add. Annotation :*—*As to* (1) **Consd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

5805. *Add. Annotation :*—**Refd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

5807a. Balance of sequestrator's account in registry.]—*Re* LITTLE HALLINGBURY, ESSEX (1837), 1 Curt. 556 ; 163 E. R. 195.

5811a. —— **Secret formulas for manufacturing proprietary articles.**]—Debtor, against whom a receiving order had been made, had carried on business in the manufacture & sale in England, France & America of certain proprietary articles made according to secret formulas invented by him & his brother with whom he was in partnership. In his public examination he was required to disclose these formulas in writing to his trustee. The debtor & his brother had each of them agreed not to disclose the secret. Upon the dissolution of the partnership bkpt. retained the assets & goodwill of the business in England & America, while his brother continued to carry it on in France. The formulas had never been committed to writing. Bkpt. refused to disclose them on the ground that they existed only in his brain as the result of his skill & capacity, & that to disclose them would be a breach of his agreement with his brother :—*Held :* the formulas were part of the goodwill & assets of his business, & he was bound to communicate them to his trustee.—*Re* KEENE, [1922] 2 Ch. 475 ; 91 L. J. Ch. 484 ; 127 L. T. 831 ; 38 T. L. R. 663 ; 66 Sol. Jo. 503 ; [1922] B. & C. R. 103, C. A.

5821a. Life interest in remainder.]—*Re* SILBER'S SETTLEMENT, PUBLIC TRUSTEE *v.* SILBER, [1920] W. N. 77.

5826a. ——.]—*Re* CLARK, CLARK *v.* CLARK, No. 5387a, *ante.*

5827. *Add. Annotations :*—**Apld.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch.

PART XX. SECT. 4, SUB-SECT. 1.—E.

80. *Money placed in bank to credit of bankrupt.*]—*Held :* the bank could not apply the moneys to satisfy debtor's liability to the bank, it being a fraudulent preference.—*Re* LONGMORE, *Ex p.* ROYAL BANK & RIDER, [1923] 2 D. L. R. 873 ; 3 C. B. R. 818.—**CAN.**

§ 1. *Money from sale of chattels—Sold under void bills of sale.*]—The ct. made an order for payment to the official assignee of the value of the chattels seized & sold by the money-lender.—TURNBULL'S ESTATE (OFFICIAL ASSIGNEE OF) *v.* GOLDSTEIN (1921), 29 C. L. R. 377 ; 21 S. R. N. S. W. 695 ; 38 N. S. W. W. N. 170.—**AUS.**

8a. *Money paid in circumstances giving bankrupt no right of recovery.*]—*Held :* the assignment did not vest the moneys so paid in the trustee.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK (1922), 68 D. L. R. 757 ; [1922] 2 W. W. R. 280.—**CAN.**

8d. *Money supplied to provide bail for bankrupt.*]—*Held :* the money never was the property of bkpt.—MORRIS *v.* KLINE, DEMERS, GARNISHEE (1922). 68 D. L. R. 222 ; 2 C. B. R. 521.—**CAN.**

§ 1. *Money illegally paid to solicitors by former trustee.*]—The ct. ordered the solrs.' bill to be retaxed & a reference to be made to inquire into the validity of the solrs.' retainer.—*Re* BRYANT ISARD & Co., [1924] 3 D. L. R. 487 ; 5 C. B. R. 6.—**CAN.**

8f. *Money from sale by lender of securities for loan—Customer's securities wrongfully deposited with lender by bankrupt.*]—Circumstances in which :—*Held :* the money so paid to the trustee belonged to the customer.—*Re* THOMPSON, SONS & Co., NEWTON *v.* HAMILTON, [1927] 1 D. L. R. 943 ; [1927] 1 W. W. R. 308 ; 36 Man. L. R. 312.—**CAN.**

304 ; *Re* Smith, Public Trustee *v.* Aspinall, [1928] Ch. 915.

5831. *Add. Annotations :*—**Apld.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304 ; *Re* Smith, Public Trustee *v.* Aspinall, [1928] Ch. 915.

5835. *Add. Annotation :*—**Refd.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

5838a. Termination of protective trust—Trustee Act, 1925 (c. 19), s. 33—Debt owed to estate—Application of income for maintenance.]—A testatrix guaranteed her son's loan account at a bank. She then made a will appointing him one of her exors. & giving him a legacy of £100 & a protected life interest in the income of her residuary estate. She then guaranteed the son's overdraft on his current account. On each occasion the son charged his estate & interest in a public-house to secure such sum as testatrix might be called upon to pay. The estate of testatrix was about to be called upon to pay a sum of over £5,000. The son after the death of testatrix executed a deed of assignment for the benefit of his creditors :—*Held :* (1) the fact that testatrix required security for the repayment of the debt after the execution of her will showed an intention not to release the debt, & the son was liable to the estate in the amount which would have to be paid to the bank ; (2) notwithstanding that the debt or some part might remain unpaid, the trustees of the will were entitled to pay in their discretion such part of the income as they might think necessary for the son's maintenance & support.—*Re* EISER'S WILL TRUSTS, FOGG *v.* EASTWOOD, [1937] 1 All E. R. 244.

5845. *Add. Annotations :*—**Refd.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n. ; *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304 ; *Re* Smith, Public Trustee *v.* Aspinall, [1928] Ch. 915.

5850. *Add. Annotations :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5851. *Add. Annotation :*—**Distd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5855. *Add. Annotations :*—**Distd.** *Re* Balfour's Settlement, Public Trustee *v.* Official Receiver, [1938] 3 All E. R. 259. **Refd.** *Re* Salting, Baillie-Hamilton *v.* Morgan, [1932] 2 Ch. 57.

5858. *Add. Annotation :*—**Consd.** *Re* Wombwell (1921), 37 T. L. R. 625.

5859a. —— Of property partly of bankrupt & partly of third party—Good to extent of third party's property.]—Bkpt. was entitled to reversionary interests in certain property subject to mtges. then vested in his father, & before his bkpcy. he joined with his father in executing a settlement in which provision was made that the son's interest should determine in the event of his bkpcy. :—*Held :* bkpt. was to be treated as settlor of the equity of redemption & therefore the provision for forfeiture on bkpcy. was void to that extent, but as to the father's mtges. bkpt. was not the settlor, & therefore the provision for forfeiture was valid to that extent.—*Re* WOMBWELL (1921), 125 L. T. 437 ; 37 T. L. R. 625 ; *sub nom. Re* WOMBWELL, *Ex p.* TRUSTEE, [1921] B. & C. R. 17.

5861a. In mortgage—Whether void as against bankruptcy laws.]—A provision in a mtge. to the effect that, if the mtgor. is made bkpt., a larger sum shall be paid to the mtgee. than would have been paid had the mtgor. not been made bkpt., is void, as being in contravention of the bkpcy. laws, & the security held by the mtgee. will be, notwithstanding such provision, a security for the amount actually advanced & no more.—*Re* JOHNS, WORRELL *v.* JOHNS, [1928] 1 Ch. 737 ; 97 L. J. Ch. 346 ; 139 L. T. 333 ; 72 Sol. Jo. 486 ; [1928] B. & C. R. 50.

5865. *Add. Annotation :*—**Consd.** *Re* Wombwell (1921), 37 T. L. R. 625.

5867. *Add. Annotation :*—**Consd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

5869. *Add. Annotation :*—**Consd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

5870. *Add. Annotation :*—**Apld.** *Re* Johns, Worrell *v.* Johns, [1928] Ch. 737.

5872. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5884. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5885. *Add. Annotation :*—**Refd.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

5890. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5894a. —— Income taken by trustees after breach of trust.]—A marriage settlement gave the income of a fund to the tenant for life until he should die or should do or suffer something whereby the income or part thereof, if belonging absolutely to him, should become payable to, or vested in, someone else, & then followed a discretionary trust. During the years 1933–36, the then sole trustee of the settlement, at the request of the tenant for life, made advances to him amounting to over £1,400. As the settlement contained no provision for such advances, this payment was a breach of trust. After the death of the trustee, a bank, & later the Public Trustee, acted in the trusts of the settlement. On Aug. 17, 1937, the trustees by letter asserted their right to retain the income for the recoupment of capital which had been advanced. On Aug. 26, 1937, the tenant for life filed his petition in bkpcy. The trustee in bkpcy. claimed to be entitled to receive the income of the fund :—*Held :* from the time that the trustees asserted their right to retain the income, it became payable to, or vested in, some person other than the tenant for life, & from that moment the

---

PART XX. SECT. 4, SUB-SECT. 2.—D. (a).

5846 iii. —— ——.]—A., by will, inherited property which was declared by the will to be unseizable, but he was given power to dispose of it :—*Held :* A. could not assert the unseizable quality of his property in bkpcy. proceedings.—CRAIG *v.* KENNEDY (1922), 68 D. L. R. 78 ; 2 C. B. R. 528.—**CAN.**

c i. —— *Clause forfeiting deposit on lessee's bankruptcy.*]—*Re* ABRAHAM (1925), 59 O. L. R. 104 ; [1926] 3 D. L. R. 971.—**CAN.**

PART XX. SECT. 4, SUB-SECT. 2.—D. (b).

vi. —— *Charge as collateral security for advance on mortgage.*]—*Held :* on the charge being given by applt. the interest appointed to him became forfeited.—MCQUADE *v.* MORGAN (1927), 39 C. L. R. 222 ; [1927] Argus L. R. 258 ; 1 A. L. T. 61.—**AUS.**

tenant for life's interest was forfeited. The trustee in bkpcy. had therefore no right to any part of the income.—*Re* BALFOUR'S SETTLEMENT, PUBLIC TRUSTEE *v.* OFFICIAL RECEIVER, [1938] Ch. 928; [1938] 3 All E. R. 259; 159 L. T. 83; 54 T. L. R. 895; 82 Sol. Jo. 493.

5897. *Add. Annotation :*—**Distd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5898. *Add. Annotations :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5899. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5902a. "On bankruptcy or until he suffered any act or thing or any event happened whereby he would be deprived of right to receive income"—Order of Probate Court setting apart whole income for children of beneficiary.]—In 1887, C. settled the proceeds of property as to the income upon himself for life determinable on his bkpcy. or until he suffered any act or thing or any event happened whereby, if payable to him absolutely, he would be deprived of the right to receive the income or any part thereof. By an order in 1895 after the dissolution of C.'s marriage, it was ordered that the trustees should set apart the whole of the income of the settled funds which was then payable to him, & apply it for the children of the marriage until majority. C. became bkpt. in 1904, & his youngest child attained twenty-one in 1910 :—*Held :* the above order was an act or event antecedent to his bkpcy. by which C.'s interest in the whole income was determined for a substantial period, & a forfeiture took place at the time the order was made, & nothing passed to the trustee in bkpcy.—*Re* CAREW'S TRUSTS, GELLIBRAND *v.* CAREW (1910), 103 L. T. 658; 55 Sol. Jo. 140.

5905. *Add. Annotation :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5908. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5909a. "Shall do some act" whereby income would be assigned—Authority to pay income to trustee of composition scheme—No notification of authority to trustee.]—B. was entitled to the income of one-third share of the residuary estate of testatrix unless & until he should be or become bkpt. or should do or suffer some act or thing whereby such share of income should be wholly or partially assigned, charged or incumbered or until he should die, whichever event should first happen, & from & after his death or bkpcy. or the doing or suffering such act as aforesaid such share & the income thereof should be held upon trust for hisissue. Shortly after the death of testatrix B. entered into a scheme for composition with his creditors, & he then signed an authority to the trustees of testatrix's will "until further notice" to pay to the trustee under the scheme "the income now due or to accrue due" to B. from her estate. It appeared that there had been no communication by B. to the trustee of the scheme for composition concerning the authority given to the trustees of the will until after these proceedings had been taken in the matter :—*Held :* in these circumstances the authority given to the trustees of the will did not operate as a good equitable assignment of B.'s interest in testatrix's estate & did not work a forfeiture thereof, inasmuch as in the absence of communication concerning the authority, the same remained simply a bare authority which was revocable. —*Re* HAMILTON, FITZGEORGE *v.* FITZGEORGE (1921), 124 L. T. 737, C. A.

5913. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5916. *Add. Annotation :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5918. *Add. Annotation :*—**Refd.** *Re* Gillott's Settlement, Chattock *v.* Reid (1933), 175 L. T. Jo. 400.

5920. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5922. *Add. Annotation :*—**Distd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5922a. "By any deed or document anticipate, charge, assign, or otherwise dispose of"—Debtor presenting bankruptcy petition.]—*Held :* the forfeiture clause had not taken effect.—*Re* GRIFFITHS, JONES *v.* JENKINS, [1926] Ch. 1007; 95 L. J. Ch. 429; 136 L. T. 57; 70 Sol. Jo. 735; [1926] B. & C. R. 56.

5924. *Add. Annotation :*—**Expld.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5925. *Add. Annotation :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5931. *Add. Annotations :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5932. *Add. Annotation :*—**Apld.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5932a. —— Bankruptcy before death of testator.]—Testator directed that if an annuitant should become bkpt. or insolvent he should forfeit the annuity :—*Semble :* such a direction applied only to future events, & no forfeiture would be incurred by an insolvency during testator's lifetime.—*Re* DRAPER (1888), 57 L. J. Ch. 942; 58 L. T. 942; 36 W. R. 783.

Annotation :—**Folld.** *Re* Strange, Lamb *v.* Bossi Leu (1916), 60 Sol. Jo. 640.

5932b. "Until he shall forfeit same in case of bankruptcy"—Existing bankruptcy known to testator.]—*Re* EVANS, PUBLIC TRUSTEE *v.* EVANS, No. 5936a, *post*.

5933. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5934. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5935. *Add. Annotation :*—**Apld.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch 291.

5935a. —— Bankruptcy at & after determination of prior life interest—Annulled after income payable.]—B. was bequeathed an interest during his life in the income of testator's residuary estate, & by his will testator directed that, if any beneficiary thereunder should become bkpt., such beneficiary should forfeit his share which should thereupon devolve as provided for in the event of his death. Testator died in 1910 & on Apr. 16, 1914, B. was adjudicated bkpt. On Dec. 14, 1925, B.'s life interest fell into possession, & on Apr. 7, 1926, he procured the annulment of his bkpcy. Between Dec. 14, 1925, & the date of the annulment the trustees received income in respect of the residuary

estate, but dealt only with such part as did not include the income in respect of B.'s interest, no payment being made in respect of that by them :—*Held :* as after Dec. 14, 1925, the trustees received sums in respect of the income of testator's estate which they could have been asked to hand over to the trustee in the bkpcy. of B. before the annulment of his bkpcy., there existed something upon which the forfeiture could operate, the test being whether there was any actual income of the share which could be treated by the trustees as payable to, or retained for, or appropriated for, the residuary legatee, & the annulment was not in time to prevent the operation of the forfeiture clause.—*Re* FORDER, FORDER *v.* FORDER, [1927] 2 Ch. 291 ; 96 L. J. Ch. 314 ; 137 L. T. 538 ; [1927] B. & C. R. 84, C. A.

5936. *Add. Annotations :*—**Apld.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5936a. "Unless he attempts to become bankrupt"—Whether applicable to bankruptcy in invitum or generally.]—Testator, by his will dated Dec. 21, 1911, devised & bequeathed his real & personal estate to his trustees upon trust to sell & convert with power to postpone, & proceeded : " Out of my estate I desire my trustees to pay to my son H. an annuity of £156 to be paid monthly, unless he attempts to assign it or to become bkpt. In these events it shall be entirely optional with my trustees to pay him the annuity, my wish & intention being that the money is to be for his personal use to keep him from want. If they think his conduct or circumstances deserves or requires it, I authorise them to increase the annuity to £260 per annum, payable as & on the condition stated." Testator then directed that the residue of the income of his estate should be paid to his wife during her life or widowhood, & that after her death or remarriage it should be applied for the maintenance of his daughter until she attained the age of twenty-five years, & that upon her attaining that age the whole of the residue of his property should be given to her. By a codicil to his will, dated Sept. 10, 1918, testator devised two freehold farms to his son H. for the term of his life or " until he shall do some act to effectuate a sale or mtge. thereof or which shall forfeit the same in the case of bkpcy.," in either of which events the farms were to fall back into & form part of his residuary estate. Testator died on Sept. 13, 1918, leaving his widow, his daughter, & his son H. surviving. On Nov. 3, 1911, a receiving order had been made against H. on a creditor's petition, the act of bkpcy. being the failure to comply with a bkpcy. notice, & on Nov. 24, 1911, he was adjudged bkpt. Testator made his will & codicil with knowledge of these facts. On Jan. 22, 1919, H. obtained his discharge, but his creditors had not been paid in full, & the bkpcy. had not been annulled. On a summons taken out by the trustees for the determination of the questions whether the legacy given to H. by the will had become forfeited by his bkpcy., & whether the freeholds devised to him by the codicil belonged to him or formed part of the residuary estate :—*Held :* (1) the words " unless he attempts to become bkpt." in the will must be read in their strict grammatical sense & as so read did not apply to a bkpcy. *in invitum* or bkpcy. generally, & therefore no forfeiture of the annuity had occurred on which the discretionary trust arose, & consequently the annuity was payable to the trustee in H.'s bkpcy. ; (2) the words of devise in the codicil though phrased in words of futurity applied under the doctrine of *Trappes* v. *Meredith*, No. 5932, *ante*, to the past bkpcy. of H., & there was no principle upon which the ct. would be justified in holding that the doctrine was not applicable to legal estates, & consequently the devised freeholds had ever since the death of testator formed part of his residuary estate.—*Re* EVANS, PUBLIC TRUSTEE *v.* EVANS, [1920] 2 Ch. 304 ; 89 L. J. Ch. 525 ; 123 L. T. 735 ; 36 T. L. R. 674, C. A.

5936b. "Become vested or charged"—Assignment of "whole means & estate."]—A testator, who died in 1932, bequeathed his residuary estate to trustees in trust to pay the income thereof to his wife, F. P., for life, & after her death to raise thereout a fund the income of which, in the events which happened, they were directed to pay to F. H. during his life, " if at the time of this present trust taking effect in possession no act or event shall have happened whereby the life interest . . . if belonging to him absolutely, would have become vested in or charged in favour of some other persons or person. . . ." A discretionary trust in favour of F. H. his wife & issue was created in the event of failure of the trust during his life. In 1933 F. H. being temporarily resident in Scotland, though domiciled in England, executed a deed assigning to a trustee for the benefit of his creditors " my whole means & estate, heritable and moveable, real and personal, wherever situated, now pertaining & belonging or due & indebted to me or over which I may have any power of disposal or to which I may succeed during the subsistence of this trust." This deed was never registered in accordance with the Deeds of Arrangement Act, 1914 (c. 47), s. 2. F. P. died in 1936 :—*Held :* (1) the terms of the deed were wide enough to cover the interest of F. H. under the will ; (2) inasmuch as on the true construction of the deed the law intended to be applied in dealing with it was the law of Scotland, which did not require registration, it was not void for want of registration in accordance with Deeds of Arrangement Act, 1914 (c. 47) ; (3) accordingly, there had been forfeiture of the life interest of F. H. & the discretionary trust came into force.—*Re* PILKINGTON'S WILL TRUSTS, PILKINGTON *v.* HARRISON, [1937] Ch. 574 ; [1937] 3 All E. R. 213 ; 106 L. J. Ch. 360 ; 157 L. T. 132 ; 53 T. L. R. 745 ; 81 Sol. Jo. 459.

5953. *Add. Annotation :*—**Refd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

PART XX. SECT. 4, SUB-SECT. 2.—E.

5957 iii. ——.]—Pltf. in Feb. 1930, recovered judgment against deft. in respect of injuries sustained on July 14, 1928, in a collision with a motor lorry driven by deft.'s servant. On Jan. 31, 1929, deft. assigned " all his real & personal estate " to trustees for the benefit of his creditors, such assignment being executed as creditor by the insurance co. with which he held a policy indemnifying him against third

5958. *Add. Annotations:*—**Consd.** Anglo-Baltic & Mediterranean Bank *v.* Barber, [1924] 2 K. B. 410; *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105. **Distd.** Hood's Trustees *v.* Southern Union General Insce. Co. of Australasia, [1928] Ch. 793. **Refd.** *Re* Harrington Motor Co. (1927), 44 T. L. R. 58; *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

5958a. ——.]—H., who had taken out a policy of insurance in deft. co. against third party risks, was involved in an accident whereby C. was seriously injured by H.'s motor car. C. commenced proceedings against H. for damages, but before obtaining judgment H. was adjudicated bkpt. & the official receiver was appointed the trustee in the bkpcy. The trustee informed the co., in reply to a question put by them, that he did not propose to take any part in C.'s action against H. H. subsequently purported for an agreed sum to release the co. from their liability under the policy to indemnify him in respect of any judgment obtained against him by C. Shortly afterwards C. obtained judgment against H. for damages for the injuries sustained by him. Subsequently H. committed a second act of bkpcy. & was adjudicated bkpt. for the second time, & a trustee was appointed. In an action brought by the two trustees jointly for a declaration (*inter alia*) that deft. co. were liable to indemnify H. & or pltfs. against the damages awarded to C. & that the agreement by which H. purported to release the co. was null & void:—*Held:* (1) the benefit of the indemnity vested in the trustee under the first bkpcy., notwithstanding that C.'s claim, being one in respect of a tort for which judgment was not obtained till after the commencement of the first bkpcy., was not provable in such bkpcy.; (2) the benefit of the indemnity having vested in the trustee in the first bkpcy., his right thereto could not be affected by any subsequent agreement between deft. co. & H.; (3) the trustee in the first bkpcy. was not estopped by his refusal to take part in C.'s action against H. from asserting his claim against deft. co.—HOOD'S TRUSTEES *v.* SOUTHERN UNION GENERAL INSURANCE CO. OF AUSTRALASIA, [1928] Ch. 793; 97 L. J. Ch. 467; 139 L. T. 536; [1928] B. & C. R. 95, C. A.

——.]—*See, now,* Third Party (Rights Against Insurers) Act, 1930 (c. 25).

5960. *Add. Annotation:*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

6012a. —— —— **Husband surviving wife.**]—In the year 1876 a husband during the lifetime of his wife took out a policy on his life with an assurance co., whereby, after a recital that the assured "for the benefit of his wife" in pursuance of Married Women's Property Act, 1870 (c. 93), had proposed to the co. to effect an assurance on his own life for £500, in consideration of the payment of the premiums during the life of the assured, the co. covenanted that the property of the co. should be liable to pay to the exors., administrators & assigns of the assured the sum of £500. In 1918 the wife died, & in 1929 the husband died without having married again. In 1891 the husband was adjudicated bkpt. & obtained his discharge as from Apr. 14, 1899:—*Held:* upon the true construction of the policy & Married Women's Property Act, 1870 (c. 93), s. 10, the interest in the

party risks:—*Held:* deft.'s right to indemnity by the insurance co. having arisen prior to the assignment, passed as a chose in action to the trustee under the deed, & pltf. had no legal or equitable right to the insurance moneys.—SMITH *v.* HORLOR, [1930] N. Z. L. R. 537.—**N.Z.**

5961 ii. —— *Premium paid by bankrupt.*]—Where payments due to a co. issuing a policy were not by the policy itself expressed to be payable during the lifetime of the assured or for seven years at least:—*Held:* the policy was not within the protection afforded by Life Insurance Act, 1908, s. 65, & the policy-moneys passed to the official assignee of the deceased policy-holder.—LONDON & LANCASHIRE INSURANCE CO., LTD. *v.* FISHER, [1924] N. Z. L. R. 1286.—**N.Z.**

5961 iii. —— *Property transferred before assignment in bankruptcy.*]—A trustee in bkpcy. is not entitled to recover insurance on a building burned after the assignment in bkpcy., but which stood on land transferred prior to the assignment.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* WINNIPEG FIRE UNDERWRITERS' AGENCY (Alta.), [1926] 3 D. L. R. 528; [1926] 2 W. W. R. 541.—**CAN.**

5961 iv. —— *Policy effected outside jurisdiction.*]—Life Insurance Act, 1908, s. 65 (2), (3), protecting life insurance policies from creditors of the assured, applies not only to such policies effected in New Zealand, but also to policies which have been effected in another country with a co. not carrying on business in New Zealand & are possessed by a person domiciled in New Zealand at the date of his death.—*Re* LYON, LYON *v.* PUBLIC TRUSTEE, [1934] N. Z. L. R. 296; G. L. R. 237; *affd. sub nom.* PUBLIC TRUSTEE *v.* LYON, [1936] A. C. 166, P. C.—**N.Z.**

5967 ii. —— *In action of tort.*]—Damages for personal injuries do not vest in the trustee in bkpcy.—*Re* HOLLISTER (Ont.), [1926] 3 D. L. R. 707; 7 C. B. R. 629.—**CAN.**

h i. *Sums due by way of differences—Transactions closed by special resolution of Stock Exchange.*]—Sums which have become due, in the ordinary course of business from one certified broker to another, by way of differences in respect of Stock Exchange transactions entered into between the parties, as members of the Bombay Native Share & Stock Brokers' Association, form part of the estate of the creditor broker, which passes to his assignee in the case of his insolvency, under Presidency Towns Insolvency Act (III. of 1909), ss. 17 & 52.—KAIKUSHROO TALYARKHAN *v.* BAI GULAB (1928), I. L. R. 53 Bom. 508.—**IND.**

h ii. *Sums due from bankrupt commission agent—Right to recover from principals—Subject to rights of third party.*]—Where commission agents had incurred liability on behalf of their principals, who had agreed to indemnify them, & the agents having subsequently gone into liquidation, official liquidator sued the principals for the amount of liability:—*Held:* he could recover the said amount even though the agents, having gone into liquidation, had not actually paid their vendor.—OSMAN JAMAL & SONS *v.* GOPAL PURSHATTAM (1928), I. L. R. 56 Calc. 262.—**IND.**

sq. *Rights under contract — Cancellation before receiving order.*]—*Held:* the trustee in bkpcy. had no rights under the contract in the name of bkpt., it having been rightly cancelled.—*Re* DOLLAR TAXI CO., *Ex p.* TRUSTEE, [1924] 3 D. L. R. 97; 4 C. B. R. 667.—**CAN.**

sr. *Proceeds of company's assets—Sold by directors—To discharge personal guarantees of directors.*]—*Held:* the transaction was not fraudulent.—*Re* UNITED EXHIBITORS, [1925] 3 D. L. R. 446; 5 C. B. R. 779.—**CAN.**

st. *Gratuity payable by employer.*]—*Held:* a gratuity which is promised to be paid by a railway co., at its discretion, to its employee, at the conclusion of his service, is not in the nature of a recoverable debt but is only a gift which is not completed until it has passed out of the hands of the donor, & cannot therefore be seized by the creditor.—SECRETARY OF STATE *v.* JAMUNA DAS (1932), I. L. R. 11 Pat. 584.—**IND.**

PART XX. SECT. 4, SUB-SECT. 3.—B.

sv. *Proceeds of sale—Bill of sale given by husband to wife—To secure loan by wife.*]—*Held:* the proceeds derived from realisation of the security effected after an act of bkpcy., but before actual adjudication, were money lent to the husband by the wife for the purpose of his trade or business at the date of bkpcy., &, as such, assets in the husband's estate.—*Re* HAW, [1926] N. Z. L. R. 558.—**N.Z.**

sw. *Chattels in ostensible possession of husband—Onus of proof.*]—*Held:* the *onus* was on the wife to prove that they were her property.—*Re* MCELLAND'S ESTATE, [1923] 4 D. L. R. 395; 3 C. B. R. 849.—**CAN.**

sz. *Money lent to husband for business purposes.*]—Money lent by a married woman to her husband for the purposes of a business carried on by him is assets of his estate in bkpcy.—*Re* HOLLAND, [1933] 1 D. L. R. 607.—**CAN**

policy moneys vested in the husband & upon his adjudication in the trustee in his bankruptcy subject to the trust in favour of his wife which enured for her benefit only if she survived her husband; with the result that as she died before her husband & before the fund fell into possession, the policy moneys belonged & were payable to the trustee in bkpcy.

Semble: Married Women's Property Act, 1870 (c. 93), s. 10, does not enable a husband to confer the benefit of the policy upon any wife who does not by surviving him become his widow.—*Re* COLLIER, [1930] 2 Ch. 37; 143 L. T. 329; *sub nom. Re* COLLIER, *Ex p.* COLLIER'S EXECUTORS, 99 L. J. Ch. 241; [1929] B. & C. R. 173.

Annotation:—**Dbtd.** Cousins *v.* Sun Life Assurance Society, [1933] Ch. 126.

6052. *Add. Annotation:*—**Refd.** *Re* Pennington & Owen, [1925] Ch. 825.

6074. *Add. Annotation:*—**Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814.

6092a. —— ——.]—The bkpt., a married woman, was entitled, under a post-nuptial settlement made by her husband, a man of considerable wealth, to an income of £5,000 *per annum* free of tax, subject to a restraint upon anticipation, &, in the event of her becoming discovert, the £5,000 *per annum* was subject to a discretionary trust of which she was one of two objects. In Sept. 1936, she presented a petition for the dissolution of her marriage, & in Aug. 1937, she was adjudicated bkpt. An interim order for alimony *pendente lite* was made, giving her £10 per week pending the result of an application of the trustee in bkpcy. under 1914 Act, s. 52, for the whole or some part of the income of £5,000 *per annum* to be made available for the payment of creditors. Upon that application being made, the registrar ordered £3,000 *per annum* out of the £5,000 *per annum* to be paid to the trustee. It was contended that it was obligatory on the registrar in bkpcy. to make an order that the whole of the £5,000 *per annum* should be paid to the trustee, as the bkpt. had means of subsistence available, namely, the obtaining an order from the Divorce Ct. for alimony *pendente lite* or maintenance at a higher rate than that already awarded:—*Held:* it could not be said that, in the circumstances, the registrar had exercised his discretion upon any wrong principle. The creditors were not entitled, where the husband had provided these settlement moneys out of his own money, to throw the whole burden of supporting the bkpt. on the husband, & the order made ought not to be varied.—*Re* BOWDEN (LADY), TRUSTEE *v.* BANKRUPT, [1937] 4 All E. R. 635; 54 T. L. R. 219; 81 Sol. Jo. 1038, C. A.

6098a. —— **In Irish Free State—In possession of Irish creditors—Claim to lien.**]—Where creditors resident & domiciled in the Irish Free State were in possession of chattels belonging to an English bkpt. on which the creditors claimed a lien, which the trustee admitted, for moneys owing to them by the bkpt., the Div. Ct. were of opinion that, as between the creditors & the trustee, the creditors were entitled to realise their security by the sale of the chattels. But, save as aforesaid, the ct. refused to make any special order declaring a lien on or directing the sale of the chattels, or any order which the High Ct. of the Irish Free State could be asked to enforce by an order in aid.—*Re* SYKES, CLOGHRAN STUD FARM CO. *v.* TRUSTEE (1932), 101 L. J. Ch. 298; [1931] B. & C. R. 215, D. C.

6108. *Add. Annotation:*—**Apld.** Anantapadmanabhaswami *v.* Secunderabad Official Receiver, [1933] A. C. 394.

6111. *Add. Annotation:*—**Consd.** Bergerem *v.* Marsh (1921), 91 L. J. K. B. 80.

6113. *Add. Annotation:*—**Apld.** Bergerem *v.* Marsh (1921), 91 L. J. K. B. 80.

6115a. —— **Bankruptcy abroad.**]—Testator by his will declared himself to be residing in London, & domiciled in England. He subsequently resided in Algiers & carried on business as a coal merchant there until his death. On a petition presented by him in his lifetime to the ct. in Algiers he was declared bkpt. by the French ct. after his death, & a "syndic" was appointed there to whom creditors' claims might be sent. The effect of the order on the evidence was to vest in the French "syndic" the whole of bkpt.'s estate, including assets accruing after the commencement of the bkpcy. In a subsequent creditor's administration action in England, K., an English creditor, was appointed administrator & after a grant of administration with the will annexed, proceeded to advertise for creditors. The French "syndic" now claimed that the assets in this country should be transferred to him, admitting that if his application was successful the costs of administration here would have to be deducted:—*Held:* a bkpcy. order having been made by a French ct. of competent jurisdiction the "syndic" was entitled to the whole of the assets wheresoever situate, & these must be handed to him after deducting the costs, charges & expenses of the administration proceedings here.—*Re* BURKE, KING *v.* TERRY (1919), 54 L. Jo. 430; 148 L. T. Jo. 175.

Annotation:—**Refd.** Bergerem *v.* Marsh (1921), 91 L. J. K. B. 80.

6115b. —— ——.]—In 1913 deft., a domiciled Englishman, entered into an hotel partnership with other persons in Belgium in connection with the Ghent Exhibition. Deft. became tenant of a house in Ghent for a period of eight months from Apr. 1913, & employed clerks & other persons. The

PART XX. SECT. 4, SUB-SECT. 6.—A.

11. —— —— *Property part of estate of lunatic under care of court.*]—Lands being real estate, situate in the Irish Free State, devolved upon a person as heir-at-law who had been an undischarged bkpt. in England since the year 1924. The person who died possessed of the property had been a lunatic under the care of the ct. in the Irish Free State. In the winding up of the lunatic's estate by the Chief Justice in Lunacy the rents of the real estate of the lunatic which had accrued after her death were claimed respectively by the Official Receiver in England & the Official Assignee in the Irish Free State for the benefit of the creditors in the respective bkpcies.:—*Held:* the only effective vesting order before the ct. was that made in the Irish bkpcy. matter, the land in question had not become vested in the Official Receiver in England merely by the operation of the English vesting declaration, but it was competent for the Irish ct., exercising bkpcy. jurisdiction, if requested to do so, to make that vesting declaration effective.—*Re* CORBALLIS, [1929] I. R. 266.—**IR.**

6103 v. —— ——.]—Land in Canada owned by a bkpt. at the time he is adjudicated a bkpt. under the English Bkpcy. Act, 1914, c. 59, vests in his trustee under the English bkpcy. proceedings.—*Re* GRAHAM (No. 2), [1929] 3 D. L. R. 353; 1 W. W. R. 309; 23 S. L. R. 297; 10 C. B. R. 340.—**CAN.**

partnership incurred heavy liabilities, & by a decree of the Commercial Ct. at Ghent, dated Aug. 9, 1913, the partnership & its members were declared to be insolvent pursuant to an article of the Belgian Civil Code. The decree was pronounced by the ct. without notice to deft., but subsequently, in accordance with the recognised procedure, he was notified of the decree & appeared by solr. to show cause why it should be dissolved. It was, however, affirmed by the Ct. of Appeal. Pltf., trustee in the bkpcy., brought an action in England alleging that deft. was possessed of assets within the jurisdiction of the English cts. & claiming a declaration that all deft.'s assets had become vested in pltf. as trustee: —*Held:* (1) the decree of the Belgian ct. was valid inasmuch as deft. had submitted to the jurisdiction, (2) the proceedings were not contrary to natural justice, inasmuch as deft. had been afforded an opportunity of being heard; (3) subject to the decision of other issues not before the ct., there should be a declaration that pltf. was entitled to all the movable assets of deft., wherever situate, & to the appointment of a receiver.—BERGEREM *v.* MARSH (1921), 91 L. J. K. B. 80; 125 L. T. 630; [1921] B. & C. R. 195.

6116. For catchword "**Real property in England**" read "**Immovables in England.**"

6116a. —— **Bankruptcy abroad.**]—Although an assignment of a bkpt.'s property to the representative of his creditors under the bkpcy. law of a foreign country (other than Scotland, Ireland, or British India) is not & does not operate as an assignment of any immovables of the bkpt. situate in England, nevertheless an English ct. has jurisdiction in such case to appoint a receiver to the bkpt.'s English property for the benefit of his creditors.—*Re* KOOPERMAN, [1928] B. & C. R. 49; 72 Sol. Jo. 400.

Annotation:—**Follid.** *Re* Osborn, *Ex p.* Trustee (1932), 74 L. Jo. 134.

6116b. —— **Bankruptcy outside England—Immovable property in England—Bankruptcy in Isle of Man.**]—Where a person was adjudged bkpt. in the Isle of Man & an order was made by that ct. seeking the aid of the High Ct. for the purpose of getting in movable & immovable property in England for distribution in the bkpcy. & the trustee in bkpcy. moved the High Ct. to give effect to such order pursuant to Bkpcy. Act, 1914 (c. 59), s. 122:—*Held:* (1) the High Ct. is bound to give such assistance as it can, but has a discretion as to what assistance it ought to give, & can impose such conditions & require such undertakings as it may think proper in each particular case; (2) where land in England does not vest in the trustee in bkpcy. of another country, the Bkpcy. Ct. has no jurisdiction to make a vesting order, but may appoint the trustee in bkpcy. to be receiver of the rents & profits with liberty to sell & deal with the proceeds of sale as trustee in the bkpcy. or, where mtgees. sell, may appoint the trustee in bkpcy. to be receiver of the surplus proceeds of sale.—*Re* OSBORN, *Ex p.* TRUSTEE, [1931–32] B. & C. R. 189.

6121. *Add. Annotations:*—**Refd.** *Re* Wait, [1927] 1 Ch. 606; Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

6123. *Add. Annotation:*—**Refd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

PART XX. SECT. 4, SUB-SECT. 6.—B. (b).

r i. —— ——.]—Although a foreign Bkpcy. Act cannot, of its own force, operate beyond the country which enacted it, yet private international law & the comity of nations operating on the general principles relating to movable property will recognise its extra-territorial effect, so far at least as it deals with personal property, especially where, as in the case of the U.S. Bkpcy. Act, the Act does not expressly confine itself to property within the United States, but extends to "all property" of bkpt.; & the fact that the U.S. Bkpcy. Act is given effect in Canada only by comity of nations is not a ground for holding that it should be given no greater effect in Canada than would be given to the Canadian Bkpcy. Act in the United States.—WILLIAMS *v.* RICE (Man.), [1926] 3 D. L. R. 225; [1926] 2 W. W. R. 192.—**CAN.**

t (p. 693) i. —— —— *Immovables.*]—Bkpcy. in the United States does not affect immovables in Ontario.—MARINE TRUST CO. *v.* WEINIG, [1935] 3 D. L. R. 282.—**CAN.**

y i. —— *Property in British India.*]—Upon a foreign ct. adjudicating a person an insolvent, the only property in British India which vests in the receiver by virtue of private international law is such movable property as the insolvent was free to assign to the receiver at the date of the adjudication.

The District Ct. at Secunderabad adjudicated persons insolvents under Provincial Insolvency Act, 1907. Jurisdiction is exercised at Secunderabad, & the above Act there applied, by Orders made by the Governor-General in Council under Foreign Jurisdiction Act, 1890, & Indian (Foreign Jurisdiction) Order, 1902. The insolvents were holders of a decree of the Madras High Ct., which, before the adjudication, had been attached by that Ct. in execution proceedings. By sect. 64 of the Code of Civil Procedure, 1908, any private transfer of the attached decree was void against claims under the attachment:—*Held:* the District Ct. at Secunderabad was a foreign ct.; accordingly, the adjudication operated in British India only under private international law &, having regard to sect. 64 of the Code, did not affect the rights of the attaching creditor; it was unnecessary to consider whether the attachment created a charge, or conferred title.—ANANTAPADMANABHASWAMI *v.* SECUNDERABAD OFFICIAL RECEIVER, [1933] A. C. 394; 102 L. J. P. C. 77; 149 L. T. 54; 49 T. L. R. 316, P. C.—**IND.**

aa. *Insolvency in South Africa—Property in Ireland.*]—By an order of the Supreme Ct. of the Union of South Africa the estate of an insolvent was sequestrated for the benefit of his creditors; subsequently a trustee of the estate was elected, & was declared entitled to administer the estate in accordance with Insolvency Act, 1916. The insolvent was entitled to certain freehold & leasehold property in Ireland. Under the law of the Union of South Africa the trustee was entitled to the immovable property of the insolvent situate in Ireland, so far as such right did not conflict with the law in Ireland. The Supreme Ct. of South Africa having requested the Irish ct. to act in its aid, the trustee applied for an order vesting the property in him:—*Held:* he was entitled to such order.—*Re* BOLTON, [1920] 2 I. R. 324.—**IR.**

ac. *Bankruptcy in Straits Settlements—Immovables in British India.*]—*Held:* the Straits Settlements Bkpcy. Ordinance No. 44 had no binding force in British India where the immovable property was situated & therefore the adjudication at Penang had no effect on such property.—AIYASWAMY CHETTY *v.* MADRAS OFFICIAL ASSIGNEE (1933), I. L. R. 57 Mad. 616.—**IND.**

PART XX. SECT. 4, SUB-SECT. 7.

6122 i. *Payments to accrue under building contract.*]—B., who had engaged in a partnership with deft. K. in a contract for the construction of certain works, on June 8, 1927, assigned to pltf. "all my profits up to the sum of £500 plus 10 per cent. interest" that were to accrue to him from the said partnership for the said contract. He was adjudicated bkpt. on an act of bkpcy. committed on June 17 of the same year, of which, however, pltf. had no notice. In an action by pltf. against the official assignee & deft. K. to recover the amount of the assignment:—*Held:* it having been established that on June 17, 1927, the date to which the bkpcy. related back, no profit had been earned by B. to which the assignment could attach, & as the assignment could not give a good title as against the official assignee to profits accruing after the commencement of the bkpcy. pltf. could not succeed against the official assignee, nor could he recover against K., who was bound by law to pay the official assignee bkpt.'s share of the profits of the contract.—HEWITT *v.* OFFICIAL ASSIGNEE OF BARNES & KEEBLE, [1930] N. Z. L. R. 416.—**N.Z.**

6124. *Add. Annotation :*—**Refd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

6126. *Add. Annotations :*—**Apld.** *Re* Collins, [1925] Ch. 556. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

6128. *Add. Annotations :*—**Apld.** Cotton *v.* Heyl, [1930] 1 Ch. 510. **Consd.** *Re* Wait, [1927] 1 Ch. 606 ; Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503. **Refd.** *Re* Williams, Richards *v.* Williams, [1930] 2 Ch. 378 ; *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97 ; *Re* Warren, Wheeler *v.* Mills, [1938] 2 All E. R. 331.

6128a. —— 1914 Act, s. 43—Sales agreement between manufacturer & company—To secure loan.]—Being short of liquid capital, the debtor, who was a manufacturer of furniture, approached A. for assistance. A. agreed to help him & for this purpose a co. was incorporated on Sept. 1, 1933, with a capital of 100 shares of £1 each, of which A. held ninety-eight, his clerk one, & the debtor one. On the same date the debtor entered into an agreement with the co. by which the co. agreed to buy for cash goods manufactured by him up to a total amount of £7,000, the price to be 10 per cent. less than the prices that any of certain specified customers had agreed to pay for them, & the goods to be invoiced to the customers in the name of the co. The agreement also provided that the debtor should not sell goods to any person other than the co., that he should repay to the co. any part of the price of goods so purchased which the customer failed to pay, & that the co. should not make a profit of more than £2,500 in any one year. Notices were issued to customers that for the future sales would be effected through the co. On Feb. 5, 1934, a receiving order was made against the debtor, & on Feb. 19 he was adjudicated a bkpt. The question arose whether the agreement was void as against the trustees in bkpcy. so that the sums remaining due from customers at the beginning of the bkpcy. formed part of the debtor's estate :—*Held :* the agreement was not void either as an unregistered bill of sale or as an assignment of future book debts within 1914 Act, s. 43.—*Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464 ; 104 L. J. Ch. 282 ; [1934-5] B. & C. R. 262 ; *sub nom. Re* Lovegrove, *Ex p.* Applestone *v.* Trustees, 152 L. T. 480 ; 79 Sol. Jo. 145 ; *sub nom. Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd. *v.* Trustees, 51 T. L. R. 248, C. A.

6129. *Add. Annotations :*—**Apld.** *Re* Collins, [1925] Ch. 556. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

6129a. ——.]—*Re* Collins, No. 6659a, *post.*

6135. *Add. Annotation :*—**Apld.** *Re* Caines Mortgage Trusts, [1918-19] B. & C. R. 297.

6138a. Trust fund invested in partnership—Bankruptcy of firm.]—In 1919 a sum of Rs.10,000, lying with a firm belonging to resp.'s uncle, was directed by the father of resp. to be invested in the firm in the name of resp., who was then a minor, the money to be handed over to the resp. on his attaining twenty-one. The interest on the investment in the meantime was to be paid to the father. In 1925 the members of the firm were adjudicated insolvent & their estate & effects vested in the Official Assignee :—*Held :* the Rs.10,000, being admitted to be a trust in the hands of the firm, must be taken to have remained a part of the assets of that business & to have been there at the date of the insolvency, & upon such insolvency passed to the Official Assignee subject to a charge in favour of resp.—Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432, P. C.

6150a. —— Transfer of shares bought for client.]—A. instructed his broker to purchase on his behalf two hundred shares in a co. The broker instructed a firm of brokers to effect the purchase. The firm duly purchased the shares & sent a transfer of the shares to the broker, prepared in the name of A. The broker had in the meantime filed his petition in bkpcy. & the transfer passed to the official receiver & from him to the trustee in bkpcy. of the broker. It was claimed by the firm & also by A. :—*Held :* it was " property held by bkpt. on trust " within the exception contained in 1914 Act, s. 38, & it must be handed over to A.—Barber & Sons *v.* Rigley (1922), 38 T. L. R. 650 ; 66 Sol. Jo. 577.

6124 i. —— *Retention money.*]—*Held :* moneys already earned by the assignor, although not already due & payable to him, could be assigned by him, & their assignment was not invalidated by bkpcy. intervening before such moneys became due & payable, & this principle was applicable to retention money kept back in respect of progress payments under a building contract.—Official Assignee *v.* Sharpe, [1921] N. Z. L. R. 460.—**N.Z.**

6128 i. *Book debts—Assignment to incorporated bank.*]—*Held :* the assignment of all book debts then due or accruing due or thereafter to become due was a general assignment of book debts within Bkpcy. Act, s. 30, but was valid.—Sapera Tobacco Co. *v.* Royal Bank of Canada (1922), 63 D. L. R. 58 ; 2 C. B. R. 309 ; 52 O. L. R. 131.—**CAN.**

6128 ii. —— *Assignment not registered—No provincial legislation providing for registration.*]—*Held :* assignment void as against trustee in bkpcy.—Royal Bank of Canada *v.* Eastern Trust Co., [1923] 1 D. L. R. 498 ; [1923] S. C. R. 177.—**CAN.**

6128 iii. *Future book debts.*]—*Re* Gordon Store, Ltd., *Ex p.* Standard Bank, [1923] 4 D. L. R. 279 ; 3 C. B. R. 816.—**CAN.**

6128 iv. ——.]—To be valid against a trustee in bkpcy. any assignment of future book debts must be rigidly according to Bkpcy. Act, s. 30.—*Re* Walton, [1924] 4 D. L. R. 706 ; 5 C. B. R. 112.—**CAN.**

PART XX. SECT. 5, SUB-SECT. 1.

6133 iv. ——.]—*Re* Standard Imports, Ltd., *Ex p.* Canadian Express Co. (1922), 68 D. L. R. 396 ; 2 C. B. R. 206.—**CAN.**

6133 v. ——.]—*Re* Wilson (Ont.), [1926] 1 D. L. R. 584 ; 7 C. B. R. 437.—**CAN.**

PART XX. SECT. 5, SUB-SECT. 2.—A.

6139 iv. —— ——.]—As against an assignee in bkpcy. one who has as principal consigned goods to bkpt. under an agency contract by which the property did not pass to bkpt. may recover the goods or the proceeds thereof, provided & so far as they can be identified.—*Re* Cocks Estate & Consort Trading Co. (1922), 65 D. L. R. 778 ; [1921] 3 W. W. R. 434.—**CAN.**

6139 v. —— *Money entrusted to.*]—*Held :* the payer could only rank as a preferred creditor if the trust money could be traced to a particular fund.—*Re* Dominion Ticket, etc. Corpn., *Ex p.* Aker, [1924] 2 D. L. R. 807.—**CAN.**

6150 i. *Broker—Securities sold for client—Proceeds paid into broker's general account.*]—*Held :* as the money could not be distinguished in any way from other moneys in the general account of the brokers the client could not claim it & could only sue for breach of contract.—Dalphe *v.* Fairbanks, Gosselin & Co. (1922), 66 D. L. R. 335 ; 2 C. B. R. 524.—**CAN.**

sb. *Sole beneficiary—Widow's claim to share of estate.*]—Where a widow claims under Widows Relief Act, R. S. A., 1922 (c. 145), s. 10, to the unadministered portion of her husband's estate, such portion does not vest in the trustee in bkpcy. of the sole

6208a. ——.] — In the circumstances (*see* No. 6208):—*Held:* C. had a lien on the goods for his debt.—BURN *v.* CARVALHO (1834), 7 Sim. 109; 58 E. R. 777; *subsequent proceedings* (1839), 4 My. & Cr. 690, L. C.

Annotations:—**Consd.** Frith *v.* Forbes (1862), 31 L. J. Ch. 793. **Refd.** Hutchinson *v.* Heyworth (1838), 9 Ad. & El. 375.

6215. *Add. Annotation:*—**Dbtd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

6263. *Add. Annotation:*—**Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

6270. *Add. Annotation:*—**Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321.

6272. *Add. Annotations:*—*As to* (1) **Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321; Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432. *As to* (2) **Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321; *Re* Wait, [1927] 1 Ch. 606.

6277. *Add. Annotation:*—**Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

6279. *Add. Annotation:*—**Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

6295a. Life interest falling into possession—During third bankruptcy—Right of trustee under previous bankruptcies.]—*Re* SILBER'S SETTLEMENT, PUBLIC TRUSTEE *v.* SILBER, [1920] W. N. 77.

6296. *Add. Annotations:*—**Apld.** *Re* Garrett, [1930] 2 Ch. 137. **Refd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

6296a. —— **Police pension.**]—The provision in Police Pensions Act, 1921 (c. 31), s. 14 (1), that on the pensioner's bkpcy. his pension "shall not pass to any trustee or other person" acting on the creditors' behalf merely excludes the pension from being property that vests in the trustee under 1914 Act, s. 18 (1). It does not prevent the ct. from making an order under 1914 Act, s. 51 (2), for payment of all or part of the pension to the trustee for the creditors' benefit. This sect. applies to property whether or not vested in the trustee, & the order does not effect any vesting.—*Re* GARRETT, [1930] 2 Ch. 137; 46 T. L. R. 464; *sub nom. Re* GARRETT, OFFICIAL RECEIVER & TRUSTEE *v.* THE BANKRUPT, 99 L. J. Ch. 341; 143 L. T. 402; [1929] B. & C. R. 177.

Annotation:—**Apprvd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

beneficiary under the husband's will.—*Re* MCINTYRE, [1925] 4 D. L. R. 127; [1925] 3 W. W. R. 172.—**CAN.**

PART XX. SECT. 5, SUB-SECT. 2.—B.

p i. —— *Sum held for investment.*] — In 1919 a sum of Rs.10,000 was left in the hands of a firm of jewellers for investment in their business at a fixed rate of interest in the name of resp., to whom the Rs.10,000 was to be paid on his attaining twenty-one years. In 1925 the members of the firm were adjudicated insolvents under Presidency Towns Insolvency Act, 1909. By sect. 52 (1) (*a*) of that Act property held in trust by an insolvent is excluded from the divisible assets. It has been admitted that the transaction of 1919 constituted a trust in favour of resp., & it was not alleged that the Rs.10,000 had not been invested in the business, or that it had been lost, or ceased to exist before the insolvency:—*Held:* the assets of the firm vested in the official assignee subject to a charge for the Rs.10,000 in favour of resp. The right of a beneficiary to follow a trust fund does not depend upon whether the fund has been properly or improperly disposed of.—OFFICIAL ASSIGNEE *v.* BHAT (1933), 60 L. R. Ind. App. 203.—**IND.**

sc. *Specific purpose—Stock certificate deposited with agent—For sale.*]—Bkpt. sold a portion of the shares & had the remainder fraudulently transferred into his own name:—*Held:* the trustee must return the shares.—DENMAN *v.* TOUSAW, HART & ANDERSON & BELL TELEPHONE CO. (1922), 66 D. L. R. 572.—**CAN.**

sd. —— —— ——.]—*Held:* it was necessary for petitioner accurately to identify the certificate which he claimed from the insolvent.—MCKAY *v.* TURGEON (1922), 67 D. L. R. 607.—**CAN.**

sf. *Unemployment relief tax deducted from wages.*]—Money collected by an employer of labour by deduction of unemployment relief tax from his employees' wages forms by statute a debtor & creditor account between him & the Crown, & any such amount unpaid by him on his bkpcy. passes to the Official Assignee & is divisible among his creditors, including the Crown.—*Re* BEAMISH, *Ex p.* R., [1935] N. Z. L. R. 356.—**N.Z.**

PART XX. SECT. 5, SUB-SECT. 4.—A.

6261 i. *General rule—Fund undistinguishable.*]—In order to give rise to a right to follow moneys as trust moneys mixed with the trustee's personal moneys there must have existed a trust fund capable of being identified & followed.—*Re* CHRISTIE GRANT, LTD., *Ex p.* CANADIAN EXPRESS CO., [1923] 1 D. L. R. 505; 32 Man. L. R. 375; [1922] 3 W. W. R. 1161.—**CAN.**

6261 ii. *S.P.* OGILVIE FLOUR MILLS CO., LTD. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1925] 4 D. L. R. 969; [1925] 3 W. W. R. 586.—**CAN.**

6267 i. *Agent to sell goods—Right to proceeds of sale.*]—Money received by a commission agent from sales of his customers' property is, after deduction therefrom of the agent's commission & expenses, money held by him in a fiduciary capacity, & if it is mixed by the agent with his own money in his general banking account & he become bkpt., the money can be followed by the *cestuis que trust* if it is still traceable; otherwise they have no recourse other than proving their claims in the bkpcy.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1923] 3 W. W. R. 257.—**CAN.**

PART XX. SECT 6.

6283 i. "*Working tools*" — *Law agent's library.*]—*Held:* law reports, statutes, & legal text-books, forming the professional library of a practising law-agent, were not necessary "working tools."—PENELL *v.* ELGIN, [1926] S. C. 9.—**SCOT.**

h i. —— ——.]—*Re* TRENWITH, [1922] 3 W. W. R. 1205.—**CAN.**

h ii. —— *Effect of mortgage.*]—Where the owner of an urban homestead mortgages it, the exemption rights of the owner are confined to the equity of redemption.—*Re* BELL, [1922] 1 W. W. R. 1015; 67 D. L. R. 66; 32 Man. L. R. 9 at p. 13.—**CAN.**

h iii. —— "*Building occupied*"—*By debtor.*]—Debtor was the registered owner of a lot on which was a two-storey building, in the upper storey of which he & his wife had dwelt continuously since his purchase of the lot. The lower storey was used mainly as a store, in which debtor's wife carried on a business, but in the rear part was stored some coal, wood & household furniture. The store & dwelling had an outside entrance as well as an inside one. A lean-to had been erected by debtor, which had an outside entrance only:—*Held:* the property was within Exemptions Act, s. 2, cl. 10, & was under Bkpcy. Act, s. 10, excepted from an assignment under that Act.—*Re* SKEELE, [1923] 1 D. L. R. 589; [1923] 1 W. W. R. 117; 3 C. B. R. 589.—**CAN.**

h iv. —— —— *By partner—Partnership property.*]—Under Bkpcy. Act a lot & building belonging to a partnership passes to the authorised assignee under an assignment by the partnership, although part of the building is occupied as a home by one of the partners.—*Re* DOBROVITCH, DOBROVITCH *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1925] 1 D. L. R. 21; [1924] 3 W. W. R. 681.—**CAN.**

h v. —— *Exempt from seizure under execution.*] — *Held:* not property divisible amongst bkpt.'s creditors.—TRADERS TRUST CO. *v.* COHEN (Man.), [1927] 3 W. W. R. 473.—**CAN.**

PART XX. SECT. 7, SUB-SECT. 1.—A. (a).

6286 iii. ——.]—The after-acquired property of a debtor is available among creditors under a receiving order but not under an authorised assignment.—*Re* LIPSON, [1923] 3 D. L. R. 1171; 52 O. L. R. 352; 2 C. B. R. 488.—**CAN.**

6291 iv a. —— —— *Under intestacy.*] —*Held:* to vest in the trustee.—*Re* LUSSIER, [1927] 4 D. L. R. 637; 61 O. L. R. 177.—**CAN.**

6293 v. —— ——.]—An insolvent has power to dispose of any property he may acquire after being declared insolvent, & all persons dealing with him *bond fide* & for a consideration will be discharged from making a further payment to the official assignee, provided the transactions took place before the official assignee intervened & claimed the property on behalf of insolvent's estate.—CHHOTE LAL *v.* KEDAR NATH (1924), I. L. R. 46 All. 565.—**IND.**

6298. *Citations :*—For " CHIPPENDALE *v.* TOMLINSON (1752), 1 Cooke's Bankrupt Laws, 7th ed., p. 406 " read " CHIPPENDALL *v.* TOMLINSON (1785), 4 Doug. K. B. 318 ; 1 Cooke's Bankrupt Laws, 8th ed., p. 428 ; 99 E. R. 900."

Add. Annotations :—**Distd.** Beckham *v.* Drake (1849), 2 H. L. Cas. 579. **Consd.** *Re* Roberts, [1900] 1 Q. B. 122. **Refd.** *Re* Elswood (1855), 26 L. T. O. S. 96 ; Wadling *v.* Oliphant (1875), 1 Q. B. D. 145.

6315. *Add. Annotation :*—**Apld.** *Re* Walter, Slocock *v.* Official Receiver, [1929] 1 Ch. 647.

6316a. —— **Application of 1914 Act, s. 38.**]—*Re* WALTER, SLOCOCK *v.* OFFICIAL RECEIVER, No. 4555a, *ante.*

6318a. Refusal of application for payment by trustee—Whether creditor may appeal.]—(1) In a bkpcy. where an application has been made by the trustee under 1914 Act, s. 51 (2), for the payment to the trustee out of the personal earnings of the bkpt. of such weekly sums as the ct. might direct, & the application has been refused, a creditor is not entitled to appeal under 1914 Act, s. 108 (2), from the refusal as being a " person aggrieved."

(2) Under 1914 Act, s. 105, the ct. having jurisdiction in bkpcy. has the widest possible powers. If, therefore, creditors, in pursuance of a resolution passed at a creditors' meeting, request the trustee or official receiver by virtue of 1914 Act, s. 79 (2), to summon meetings, & the trustee or official receiver refuse to comply with their request, the ct. has ample jurisdiction to decline to order the trustee to carry out the creditors' request to convene the meeting if it considers that the holding thereof would serve no useful purpose & would only result in a useless waste of the assets in the bkpcy. The function of the ct. in such a case is not merely ministerial.—*Re* BURN (J.), *Ex p.* DAWSON (E. N. de V.), MCCLELLAN (H. T.) & TRUSTEE, [1932] 1 Ch. 247 ; 146 L. T. 386 ; [1931] B. & C. R. 103 ; *sub nom. Re* BURN, DAWSON *v.* BANKRUPT, 101 L. J. Ch. 110.

6324. *Add. Annotation :*—**Refd.** Dyster *v.* Randall, [1926] Ch. 932.

6331. *Add. Citation :—sub nom. Re* CLAYTON & BEAUMONTS' CONTRACT, 2 Mans. 345.

6334. *Citations :*—For " [1918] 2 Ch. 389 " read " [1918] 2 Ch. 339."

6347. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576.

6348. *Add. Annotation :*—**Refd.** Dyster *v.* Randall, [1926] Ch. 932.

6352. *Add. Annotation :*—**Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

6353a. Liability of after-acquired property for necessaries.]—*Re* WALTER, SLOCOCK *v.* OFFICIAL RECEIVER, No. 4555a, *ante.*

6366. *Add. Annotations :*—**Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Refd.** *Re* Cohen, *Ex p.* Official Receiver, [1919] 2 K. B. 271 ; *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

6390a. Property acquired between two insolvencies —Assignees under second insolvency entitled.]—CURTIS *v.* SHEFFIELD (1836), 8 Sim. 176 ; 5 L. J. Ch. 377 ; 59 E. R. 70.

Annotation :—**Consd.** *Re* Clagetts Estate, Fordham *v.* Clagett (1882), 20 Ch. D. 637.

6395. *Add. Annotation :*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

6398. *Add. Annotation :*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

6401a. —— **To husband & wife jointly.**] — A settlor by a voluntary settlement made in 1913 directed the trustees to whom he had transferred certain securities to accumulate & invest the income thereof subject to a proviso under which the settlor reserved to himself power, by notice given to the trustees, to require the income of any year or the residue of such income remaining uninvested to be paid as to one moiety to himself & as to the other moiety to a lady who afterwards became his wife, or if she should then be dead to require the whole income of such year or of the residue of such year to be paid to the settlor, with trusts after the death of the survivor of them in favour of the settlor's children therein named. In Jan. 1927, the settlor gave notice to pltf. as trustee that he required the whole income for that year to be paid as to one moiety to himself & as to the other moiety to his wife. In Aug. 1927, the settlor was adjudicated bkpt. :—*Held :* the power was indivisible, & could not be exercised by the settlor " for his own benefit " within 1914 Act, s. 38 (*b*), but only for the joint benefit of himself & his wife, & therefore did not vest in his trustee in bkpcy.—*Re* TAYLOR'S SETTLEMENT TRUSTS, PUBLIC TRUSTEE *v.* TAYLOR, [1929] 1 Ch. 435 ; 98 L. J. Ch. 142 ; 140 L. T. 553 ; [1929] B. & C. R. 15.

6415. *Add. Annotation :*—*As to* (2) **Refd.** Watson *v.* Haggitt (1927), 44 T. L. R. 90.

PART XX. SECT 7. SUB-SECT. 1.—A. (b).

6298 iii. ——.]—The evidence of a bkpt. was that he was employed in selling goods for a co., that he was, when examined in Oct. 1927, special representative of the co. on the basis that he was to receive a salary & a guarantee of a certain amount together with a bonus on anything over that amount : but this arrangement was to cease on Nov. 1, 1927, & he expected to make arrangements to sell on a commission basis :—*Held :* applying the English law without deciding whether, under Canadian Bkpcy. Act, subsequent salary, income, or compensation is ever assets for the trustee, the bkpt.'s future earnings, not being a fixed salary, could not be applied for the benefit of his creditors.—*Re* RUNG, [1929] 1 D. L. R. 300 ; 62 O. L. R. 557 ; 10 C. B. R. 1.—**CAN.**

si. *Agreement between trustee, bankrupt & employer—Interference by court.*]—*Re* LOUNSBURY (N. B.), [1927] 4 D. L. R. 1040.—**CAN.**

PART XX. SECT. 7, SUB-SECT. 1.—B. (a).

vi. —— *Application to bankruptcy by authorised assignment.*]—*Re* GADSBY, *Ex p.* WHITE & ELLIOTT, [1925] 3 D. L. R. 1159.—**CAN.**

PART XX. SECT. 7, SUB-SECT. 3.

6381 iii. —— ——.]—A person who had been declared bkpt. & whose insolvent estate had been fully administered, but who did not obtain his discharge, went into business & acquired certain assets. The person who had administered the estate as authorised trustee applied to the registrar in bkpcy. for directions :—*Held :* there was no power in the ct. to appoint or continue appct. as trustee & he had no status to make the application.—*Re* HERMAN, [1930] 2 D. L. R. 471 ; 65 O. L. R. 43 ; 11 C. B. R. 239 ; *affg.*, 10 C. B. R. 379 ; *revg.*, 10 C. B. R. 323.—**CAN.**

PART XX. SECT. 9, SUB-SECT. 1.

6416 i. " *Goods,*" " *goods & chattels*"—*Goods of third party—Intermingled with bankrupt's property by third party.*]—*Held :* the entire property became assets to satisfy the creditors.—*Re* PROGRESSIVE FARMERS, *Re* HOLDEN NATIONAL CO.'S CLAIM (1921), 62 D. L. R. 631 ; 2 C. B. R. 551.—**CAN.**

6444a. —— ——.]—A lessee erects trade fixtures, firmly attached to the freehold, but removable as between himself & the landlord. He then mortgages the premises by way of demise, by the same description as that in the lease, & without referring to the new erections; the sum secured being a floating balance, limited to an amount greater than the premises would be worth, without the fixtures. He becomes bkpt.:—*Held:* the mtgee. was entitled to the fixtures.—*Re* WEST, *Ex p.* BENTLEY (1842), 2 Mont. D. & De G. 591; 6 Jur. 719.

Annotations:—**Consd.** *Re* Mackie, *Ex p.* Tagart (1847), De G. 531; Walmsley *v.* Milne (1859), 7 C. B. N. S. 115.

6449. *Add. Citation:*—*sub nom. Re* PLIMMER, *Ex p.* SPELLER, 14 C. B. 159, n.

Add. Annotation:—**Refd.** Graham *v.* Furber (1853), 2 C. L. R. 10.

6463. *Add. Annotation:*—**Refd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., Ltd., [1933] A. C. 402.

6464. *Add. Annotations:*—**Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672; Barras *v.* Aberdeen Steam Trawling & Fishing Co., Ltd., [1933] A. C. 402; I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762; I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1937] A. C. 26.

6477. *Add. Annotations:*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6483. *Add. Annotations:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

6507a. —— **In name of agent—Delivery orders in hands of buyers.**]—Bkpt., who carried on business as a merchant, had for some years dealt with pltfs. in vacuum flasks, which came from Germany. The bills of lading in respect of the goods were made out "to order" & the charges were paid by S., a forwarding agent employed by bkpt. The goods on arrival were stored at a wharf in the name, & for the account, of S. When a sale had taken place S. signed a delivery order which bkpt. handed to the buyers against payment for the goods. Between Aug. 3 & Sept. 7, 1927, pltfs. purchased a number of cases of vacuum flasks & paid bkpt. for them prior to the commencement of the bkpcy., the receiving order being made on Sept. 24. Bkpt., upon payment being made for the goods, handed to pltfs. delivery orders for the goods signed by S. & addressed to the wharfingers. These delivery orders had not been presented at the wharf at the date of the bkpcy., & when they were presented shortly afterwards the wharfingers, acting on S.'s instructions, refused to deliver the goods. The trustee in bkpcy. claimed that the goods were in the possession, order or disposition of bkpt. at the date of the receiving order & formed part of bkpt.'s estate under 1914 Act, s. 38 (*c*):—*Held:* pltfs. had not by their conduct in any way induced a belief that the goods were in the possession, order or disposition of bkpt. in such circumstances that he was the reputed owner thereof, & the trustee was not entitled to the goods as forming part of bkpt.'s estate.—SIMEONS (C.) & Co. *v.* DURAND'S TRUSTEE, [1928] 2 K. B. 66; 97 L. J. K. B. 537; 138 L. T. 612; [1928] B. & C. R. 19.

6514. *Add. Annotation:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6515. *Add. Annotations:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6516a. —— —— **On business premises.**]—The custom of hiring furniture which exists in the case of hotel proprietors, & is so notorious as to exclude the doctrine of reputed ownership in the event of the bkpcy. of the hotel proprietor whether the particular furniture was hired or not, does not extend to furniture in the possession of traders generally, *e.g.* a wholesale grocer.—*Re* TABOR, *Ex p.* CORK, [1920] 1 K. B. 808; *sub nom. Re* TABOR, *Ex p.* TRUSTEE, 89 L. J. K. B. 352; 122 L. T. 799; 36 T. L. R. 191; [1919] B. & C. R. 299.

Annotations:—**Folld.** *Re* Kaufman Segal & Domb, *Ex p.* Trustee, [1923] 2 Ch. 89. **Refd.** French *v.* Gething, [1922] 1 K. B. 236.

6519. *Add. Annotations:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808. **Folld.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6523. *Add. Annotation:*—**Refd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

6525. *Add. Annotations:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6561. *Add. Annotation:*—**Refd.** French *v.* Gething, [1922] 1 K. B. 236.

6613. *Add. Annotation:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6614. *Add. Annotation:*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

PART XX. SECT. 9, SUB-SECT. 3.—B. (a).

sg. *Pledge without delivery—Indian Contract Act.*]—A railway receipt, providing that delivery of the consigned goods is to be made upon the receipt being given up by the consignee, or by a person whom he names by indorsement thereon, is a document of title within Indian Contract Act, 1872, s. 178 (for which a new section was substituted by the amending Act IV. of 1930), & a pledge of a railway receipt operated under the repealed section as a pledge of the goods. The pledgee does not release the pledge by handing the receipt to the pledgor in order that he may collect the goods from the railway co. & place them in a warehouse upon behalf of the pledgee. Goods so pledged are not in the possession, order or disposition of the pledgor within sect. 52 (2) (*c*) of the Presidency-towns Insolvency Act, 1909, even where the railway receipt has been handed to the pledgor for the purpose above stated. Further, where the owner of goods hands to a bank indorsed railway receipts relating thereto as security for an advance (even without a formal letter of hypothecation), there is constituted, in the absence of evidence to the contrary, an equitable charge upon the goods which is binding between the owner & the bank without notice to those having custody of the goods; upon a subsequent insolvency of the owner the assignee takes no higher right than the owner had at the commencement of the insolvency.—MADRAS OFFICIAL ASSIGNEE *v.* MERCANTILE BANK OF INDIA, LTD., [1935] A. C. 53; 104 L. J. P. C. 1; 152 L. T. 170; 40 Com. Cas. 143, P. C.—**IND.**

PART XX. SECT. 9, SUB-SECT. 3.—B. (b) i.

6621 ii. —— *Second mortgage of.*]—In 1905, C. the owner of a life policy of assurance, mortgaged it to the insurance co. In Apr. 1907, C. mortgaged the policy & the lands to B., who gave no notice to the co. till Nov. 1920. In June, 1907, C. was adjudicated bkpt.

6625. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

6647. *Add. Citations :—sub nom. Re* PLIMMER, *Ex p.* SPELLER, 14 C. B. 159, n.

Add. Annotation :—**Refd.** Graham *v.* Furber (1853), 2 C. L. R. 10.

6657. *Add. Annotation :*—**Consd.** *Re* Collins, [1925] Ch. 556.

6659. *Add. Annotation :*—**Apld.** *Re* Collins, [1925] Ch. 556.

6659a. —— ——.]—For some years before his bkpcy. a surveyor & assessment specialist with a staff of clerks had entered into contracts with clients for personal service in the latter capacity. Under these contracts he had to value his clients' properties for rating purposes & give expert evidence on their appeals, his remuneration being a percentage of the reduction of their assessments when obtained. He mortgaged these contracts & the sums to become due on completion thereof to a mtgee., who by special arrangement with the mtgor. gave no notice to the clients so as not to imperil the mtgor.'s business position, the mtgor. being allowed to collect the fees when due in his own name & hand them over to the mtgee. At the date of the mtgor.'s bkpcy., some fees (*a*) were due on completed contracts, but some fees (*b*) were still unearned. The trustee employed bkpt. & some of his staff to carry out the uncompleted contracts & earn fees (*b*) :—*Held :* (1) though the work to be done under the contracts required a certain amount of technical skill on which bkpt.'s clients relied, it was nevertheless part of bkpt.'s business, so that the fees (*a*) due at the date of the bkpcy. were due to him "in the course of his trade or business" & being in his order & disposition by the consent of the mtgee. belonged to the trustee under 1914 Act, s. 38 (*c*); (2) the mtge. of fees (*b*) earned since the bkpcy. was inoperative against the trustee.—*Re* COLLINS, [1925] 1 Ch. 556; 133 L. T. 479; *sub nom. Re* COLLINS, *Ex p.* SALAMAN (TRUSTEE), 95 L. J. Ch. 55; [1925] B. & C. R. 90.

6663. *Add. Annotation :*—**Refd.** Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255.

6689. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

6696. *Add. Annotation :*—**Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

6701. *Add. Annotations :*—**Folld.** Birmingham Banking Co. (Official Liquidators) *v.* Carter (1872), 20 W. R. 354. **Refd.** Semphill *v.* Queensland Sheep Investment Co. (1873), 29 L. T. 737; *Re* Pooley, *Ex p.* Rabbinge (1878), 38 L. T. 663.

6706. *Add. Annotation :*—**Refd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6708a. —— **Same day as act of bankruptcy.**]—Though a bkpt. may be up to the ears in insolvency, notice at any fractional period of the day on which the act of bkpcy. is committed, is sufficient to take the case out of the clause of reputed ownership; if the notice be given before the act of bkpcy. is in fact committed (SIR GEORGE ROSE).—*Re* RICHARDSON, *Ex p.* RICHARDSON (1839), 3 Deac. 496; Mont. & Ch. 43, C. of R.

Annotations :—**Refd.** *Re* Worcester, *Ex p.* Agra Bank (1868), 3 Ch. App. 555; Colonial Bank *v.* Whinney (1886), 11 App. Cas. 426.

6735. *Add. Annotation :*—**Refd.** English Insce. *v.* National Benefit Assce., [1929] A. C. 114.

6742. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6744. *Add. Annotation :*—**Distd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6745. *Add. Annotations :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

6745a. Whether mere visible employment of goods in trade or business sufficient.]—(1) In order that goods may come within 1914 Act, s. 38 (*c*), the consent or permission of the true owner must be given not only to their being in the possession, order or disposition of bkpt., but also to their being used in his trade or business. (2) In order that goods may be in the possession, order or disposition of bkpt. in his trade or business within the clause they must be not merely visibly employed in his trade or business, but acquired & used for the purposes of the business.—LAMB *v.* WRIGHT & CO., [1924] 1 K. B. 857; 93 L. J. K. B. 366; 130 L. T. 703; 40 T. L. R. 290; 68 Sol. Jo. 479; [1924] B. & C. R. 97.

6745b. Fees due on completed contracts to surveyor & assessment specialist.]—*Re* COLLINS, No. 6659a, *ante.*

6746. *Add. Annotation :*—**Refd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6751a. Must be given both to possession & to use in trade or business.]—LAMB *v.* WRIGHT & CO., No. 6745a, *ante.*

6762. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6773. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

6777. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Trustee (1925), 134 L. T. 264.

6794. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6798. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6802a. —— —— ——.]—In Jan. 1922, G. purchased from bkpts. certain chattels used by them in their business as clothiers, & subse-

---

In 1915 the insurance co. were paid the amount due on their mtge. & handed the policy to the assignees. In 1920 the assignees surrendered the policy to the insurance co., & received its surrender value, & B. applied for payment of the amount due to him on his mtge. :—*Held :* the equity of redemption in the mtge. was "goods & chattels" within Irish Bkpt. & Insolvent Act, 1857 (c. 60), s. 313, & was at the date of the bkpcy. "in the possession, order, or disposition of bkpt." by the consent & permission of the true owner.—*Re* CLANCARTY, [1921] 2 I. R. 377.—**IR.**

PART XX. SECT. 9, SUB-SECT. 5.—A.

6752 i. *Delivery of goods to trustee—After notice stopping goods in transitu—Withdrawal of notice on innocent misrepresentation of trustee.*]—*Held :* the trustee could not rely on a withdrawal so induced.—*Re* ROBERTS, [1924] 1 D. L. R. 386.—**CAN.**

PART XX. SECT. 9, SUB-SECT. 6.—A.

6799 ii. —— —— ——.]—Where there was no immediate delivery of a car to the purchaser nor any change of possession :—*Held :* the sale & transfer were void as against the trustees.—FITZGERALD *v.* MCMORROW, [1923] 3 D. L. R. 619; 52 O. L. R. 383; 4 C. B. R. 29.—**CAN.**

quently in consideration of the option to purchase & the hire-rent agreed upon let them on hire to bkpts. at a monthly rental. The chattels consisted of cutting tables, work tables, machines, stools, etc. The agreement was determinable in the event (*inter alia*) of a receiving order in bkpcy. being made against the hirers, upon which all payments made by the hirers were forfeitable & the chattels were to be delivered to the owner. On Sept. 6, 1922, a receiving order was made against the hirers; on Sept. 21 they were adjudicated bkpt., & on Sept. 25 a trustee in the bkpcy. was appointed. On motion by the trustee for a declaration that the chattels formed part of the estate of bkpts. as being in their order & disposition with the consent of the true owner:—*Held:* there was no proof of a general custom of hiring out chattels such as were specified in the agreement, nor was such a custom recognised by the cts. The inference of ownership was inevitable that by reason of the possession & user of the goods in the trade or business of the trader they "must" be the property of bkpts.—*Re* KAUFMAN SEGAL & DOMB, *Ex p.* TRUSTEE, [1923] 2 Ch. 89; 92 L. J. Ch. 218; 128 L. T. 650; 67 Sol. Jo. 333; [1923] B. & C. R. 1.

6818. *Add. Annotation:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6819. *Add. Annotations:*—**Distd.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89. **Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6821. *Add. Annotations:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6824. *Add. Annotation:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6853. *Add. Annotation:*—**Refd.** English Insce. *v.* National Benefit Assce., [1929] A. C. 114.

6856. *Add. Annotation:*—*As to* (2) **Consd.** Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503.

6858. *Add. Annotation:*—**Refd.** Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503.

6858a. ——.]—A trader carried on the business of selling & hiring out of pianos largely by means of hire-purchase agreements, by each of which the trader agreed to let on hire a piano, & in consideration the hirer agreed to pay the trader a sum of £4 on the date of hiring & £1 monthly so long as the hirer continued the hiring. The trader agreed that if the hirer should punctually pay him a specified total sum in these instalments, the piano was to become the absolute property of the hirer, but that until then it was to continue the trader's sole property. Early in 1930 the trader entered into a number of trader's agreements by which he agreed to deposit the hire-purchase agreements with the G. Co., Ltd., & on demand to assign to that co. or its nominees the full benefit of those agreements, & in the meantime to hold them on trust for the G. Co. & its nominees. The G. Co. subsequently assigned the benefit of the trader's agreements to pltf. No notice of the assignment was given until after the trader was adjudicated bkpt. on July 23, 1930:—*Held:* the monthly sums which, after the commencement of the bkpcy., had or would become payable in advance under the hire-purchase agreements, if the hirer continued the hiring, were "debts . . . growing due to the bkpt. in the course of his trade or business" within Bkpcy. Act, 1914, s. 38 (*c*), & were therefore properly divisible among the bkpt.'s creditors as being things in action "at the commencement of the bkpcy. in the possession, order or disposition of the bkpt., in his trade or business, by the consent & permission of the true owner" within that sect. — BLAKEY *v.* PENDLEBURY PROPERTY TRUSTEES, [1931] 2 Ch. 255; 100 L. J. Ch. 399; 145 L. T. 524; 47 T. L. R. 503; [1931] B. & C. R. 29, C. A.

Annotation:—**Consd.** Latham *v.* Goldsbury (1933), 49 T. L. R. 258.

6858b. Judgment debt.]—S., a customer of bkpt., a stockbroker, became indebted to him in respect of Stock Exchange transactions in a sum for which bkpt., on Dec. 18, 1923, recovered judgment. Later, S. became similarly indebted to bkpt. in a further sum. On Jan. 15, 1924, bkpt. assigned both debts to W. to secure £500, & covenanted with him that, in the event of his refraining from giving notice of the assignment to S., he, bkpt., would, on payment of the debts or any part thereof, hand the cheque or other form of payment to W. On Feb. 27, 1924, bkpt. committed an act of bkpcy. In Mar. 1924, J., who acted as solr. for both bkpt. & W. in the matter of the assignment, on the instructions of both & without disclosing same, made an agreement with S. for the liquidation of the two debts, whereby S. undertook to pay the aggregate amount thereof by monthly instalments, the first instalments being allocated to the payment of the later of the two debts & the subsequent ones to the payment of the judgment debt; & S. further agreed to deliver promissory notes payable to bkpt. or order to cover the instalments allocated to the later debt. J. received the notes from S. &, as agent of W., collected the amounts as they fell due on the notes & paid part thereof to W. & retained the balance. After payment J. returned the notes to S. to be cancelled. At that time neither J. nor W. nor S. had notice of any available act of bkpcy. On Sept. 18, 1924, a receiving order was made, at which date S. had paid & W. had received from J. sums amounting to £90 in respect of the later debt. Upon receiving notice of the receiving order, J. gave notice to S. of the assignment. On Sept. 25, 1924, an order of adjudication was made, & on Oct. 7, 1924, appct. was appointed trustee. In Apr. 1925, W. died, & his exor. was made resp. to the motion by which a declaration was sought that the two debts were at the commencement of the bkpcy. in the order & disposition of bkpt. & property of bkpt. divisible amongst his creditors:—*Held:* (1) the earlier debt, which, admittedly, arose in the course of bkpt.'s business, was, notwithstanding its conversion into a judg-

6820 iv. —— *Driving car.*]—The mere driving of other persons in a motor car for pleasure does not justify the inference that the driver must be the owner. Where it is proved that the possession giving rise to the reputation of ownership by the bkpt. was not with the consent of the true owner, which is a question of fact to be determined by the circumstances of each case, the Official Assignee cannot claim the property as passing to him.—*Re* MCKAY, COWIE *v.* OFFICIAL ASSIGNEE, [1933] N. Z. L. R. Supp. 190.—N.Z.

ment debt, none the less at the commencement of the bkpcy. a debt due in the course of his business & in the order & disposition of bkpt. & divisible amongst his creditors; (2) the agreement between bkpt. & S. & the deposit of the notes by bkpt. with W. having been effected after the commencement of the bkpcy., in the absence of knowledge on the part of either S. or W. of an available act of bkpcy., & the ct. inferring an agreement by W. with bkpt., in consideration of the deposit of the notes, not to enforce payment of the advance so long as S. paid the amounts as & when they fell due, constituted valid transactions for valuable consideration within 1914 Act, s. 45, &, apart from such inference, the forbearance of W. on the strength of the deposit of the notes to sue & his acceptance of the instalments constituted sufficient consideration for the deposit of the notes; (3) even if the trustee was entitled to recover the instalments paid after the date of the receiving order, the amount paid before that date was a payment protected by sect. 45 (b); & the judgment debt formed part of the property of bkpt. divisible amongst his creditors, while the claim in respect of the other debt should be dismissed.—*Re* WETHERED, *Ex p.* SALAMAN, [1926] Ch. 167; 70 Sol. Jo. 324; *sub nom. Re* WETHERED, *Ex p.* SALAMAN'S TRUSTEE, TRUSTEE *v.* BANCE, 95 L. J. Ch. 127; 134 L. T. 261; [1925] B. & C. R. 265.

6858c. Sums deposited with brewers—By tenant of licensed premises.]—A tenant of licensed premises deposited with the brewers, his landlords, sums to secure the due payment of all amounts becoming due from him to them, whether for rent, goods supplied, or otherwise. He lodged the deposit receipts with his bank as security for his overdraft, which was also guaranteed by G. G. having paid off the overdraft, was subrogated to the rights of the bank, which thereafter held the deposit receipts on his behalf. A receiving order in bkpcy. was made against the tenant on his own petition, & six days later the bank, for the first time, gave notice to the brewers of the charge on the receipts. The balance remaining due from the brewers to the tenant was claimed both by G. & by the trustee in bkpcy. who alleged that it was a debt growing due to the bkpt. & in his possession, order or disposition at the date of the receiving order:—*Held:* the balance of the sums deposited with the brewers was a debt growing due to the bkpt. at the date of the receiving order, & such a debt could be, & in this case was, in the possession, order or disposition of the bkpt. in his trade or business, by the consent & permission of the true owner, under such circumstances that he was the reputed owner thereof.—LATHAM *v.* GOLDSBURY, [1933] 1 K. B. 844; 102 L. J. K. B. 401; 148 L. T. 528; 49 T. L. R. 258; [1933] B. & C. R. 86.

6859. *Add. Annotations:*—**N.F.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6863. *Citations:*—For "5 Ch. App. 520" read "8 Ch. App. 520."

Add. Annotation:—**Refd.** Latham *v.* Goldbury (1933), 49 T. L. R. 258.

6867. *Add. Annotation:*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6868. *Add. Annotation:*—**Follid.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6869. *Add. Annotation:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6873. *Add. Annotations:*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6879. *Add. Annotation:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6879a. Clothiers—Custom to hire machines.]—*Re* KAUFMAN SEGAL & DOMB, *Ex p.* TRUSTEE, No. 6802a, *ante.*

6881. *Add. Annotations:*—**Apld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808. **Follid.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6881a. —— —— ——.]—*Re* TABOR, *Ex p.* CORK, No. 6516a, *ante.*

6882a. —— —— **Antique furniture.**]—A custom exists in the antique furniture trade to deliver goods to a dealer on approval. In the event of the bkpcy. of such dealer, goods upon his premises are not in his order & disposition within 1914 Act, s. 38.—*Re* FORD, *Ex p.* TRUSTEE, RESTALL, BROWN & CLENNELL'S CASE, [1929] 1 Ch. 134; 140 L. T. 275; 72 Sol. Jo. 517; *sub nom. Re* FORD, *Ex p.* TRUSTEE *v.* RESTELL, BROWN & Co., 97 L. J. Ch. 334; [1928] B. & C. R. 55; *sub nom. Re* FORD, *Ex p.* HAWKINS, 44 T. L. R. 643.

Annotation:—**Apld.** *Re* Ford, *Ex p.* Trustee, Powell's Case, [1929] 1 Ch. 137.

6882b. —— —— —— —— **Sent by private customer.**]—No trade custom exists of private customers sending articles of furniture to retail dealers for sale on commission or otherwise so notorious as to exempt such articles from the operation of the doctrine of reputed ownership in the event of the bkpcy. of the dealer. But, where such a customer left a table with a retail dealer to be sold on the terms that the dealer should retain the surplus, if any, over an agreed minimum price & upon the bkpcy. of the dealer the table was exposed on his premises with other furniture for sale:—*Held:* as the effect of the custom which was established in *Re Ford, Ex p. Trustee,*

PART XX. SECT. 9, SUB-SECT. 8.—A.

6859 i. *Duty of court—To take notice of alleged custom.*]—Where it is proved that no less than 57 funeral cars & hearses were supplied in Ireland under hire-purchase agreement by one firm between Nov. 23, 1912, & Mar. 8, 1923, the ct. will draw the conclusion that the custom of hiring funeral hearses on the hire-purchase system is sufficiently notorious. The test in such cases is what is the state of knowledge of persons who have made themselves acquainted with the nature & custom of the particular situation.—*Re* TORRENS, [1924] 2 I. R. 1, 4; 58 I. L. T. 30.—**IR.**

PART XX. SECT. 9, SUB-SECT. 8.—B.

aa. *Undertaker — Custom to hire hearses & funeral carriages.*]—*Re* TORRENS, No. 6859 i., *ante.*—**IR.**

PART XX. SECT. 10, SUB-SECT. 3.—B.

l (p. 809) l. —— —— ——.]—ROSS JOHNSON, LTD. *v.* VICTORIA MINES, LTD. (B. C.), [1930] 1 D. L. R. 57; 10 C. B. R. 23; [1929] 2 W. W. R. 511.—**CAN.**

b (p. 810). Add "*affd. sub nom.* MARTIN *v.* FOWLER, 46 S. C. R. 119."

f (p. 810) l. —— ——.]—Payment of proceeds of sale:—*Held:* a preferential payment & void.—ZEIDMAN & LAMARRE *v.* AMERICAN FURNITURE CO. & LAVERY (1922), 66 D. L. R. 99; 2 C. B. R. 547.—**CAN.**

Restall, Brown & Clennell's Case, No. 6882a, *ante*, was to prevent the reputation of ownership from attaching to any of the furniture so exposed, the table, which was not distinguished from the other articles of furniture, was not in the bkpt.'s possession in such circumstances that he was the reputed owner thereof.—*Re* FORD, *Ex p.* TRUSTEE, POWELL'S CASE, [1929] 1 Ch. 137; 140 L. T. 276; 72 Sol. Jo. 517; *sub nom. Re* FORD, TRUSTEE *v.* POWELL, 98 L. J. Ch. 144; [1928] B. & C. R. 56.

6885. *Add. Annotations:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6888. *Add. Annotation:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6889. *Add. Annotations:*—**Apld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808. **Refd.** French *v.* Gething, [1922] 1 K. B. 236.

6890. *Add. Annotation:*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6890a. —— ——.]—*Re* TABOR, *Ex p.* CORK, No. 6516a, *ante*.

6898. *Add. Annotations:*—**Refd.** French *v.* Gething [1922] 1 K. B. 236; Latham *v.* Goldsbury (1933), 49 T. L. R. 258.

6911. *Add. Annotation:*—**Refd.** *Re* Chiandetti, *Ex p.* Trustee (1921), 91 L. J. K. B. 70.

6912. *Add. Annotation:*—**Refd.** *Re* Chiandetti, *Ex p.* Trustee (1921), 91 L. J. K. B. 70.

6912a. —— **Goods sold in interpleader action—Proceeds in court.**] — *Re* CHIANDETTI, *Ex p.* TRUSTEE, No. 7113a, *post*.

6915. *Add. Annotation:*— **Consd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70.

6916a. —— —— ——.]—*Re* CHIANDETTI, *Ex p.* TRUSTEE, No. 7113a, *post*.

6918. *Add. Annotations:*—**Consd.** *Re* Fairley, [1922] 2 Ch. 791. **Apld.** *Re* Brelsford, [1932] 1 Ch. 24. **Consd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

6918a. —— —— **Subsequent withdrawal & return of nulla bona.**]—On Jan. 14, 1921, the sheriff, in executing a writ of *fi. fa.* for £144, levied on debtor's goods, but on Jan. 29 being paid £72, on account of the debt in addition to costs, fees, & possession money, he withdrew by arrangement reserving a right of re-entry for £72 balance. He retained the £72 received on account for fourteen days & then paid it to the execution creditors. On Mar. 16 the sheriff made a second levy, but on being paid £53 on account of the debt in addition to fees & possession money, he again withdrew reserving a right of re-entry for the £19 balance. After retaining the £53 for fourteen days he paid it to the execution creditors. On Apr. 26 the sheriff made a third levy, but the goods seized being found on interpleader to belong to a third party, he finally withdrew & made a return of *nulla bona* on May 2. On Sept. 8 a petition in bkpcy. based on an act of bkpcy. of Aug. 19 was presented. A receiving order was made on Sept. 29 followed by an adjudication on Oct. 1 & an order for summary administration on Oct. 3:—*Held:* the execution was completed within 1914 Act, ss. 40, 41, by the return of *nulla bona* on May 2, & the trustee had no title to the £72 & £53 realised by that completed execution.

Qu: whether the trustee would in any case have been entitled to the moneys paid before June 8, the earliest possible date to which his title could relate back under sect. 37.—*Re* FAIRLEY, [1922] 2 Ch. 791; *sub nom. Re* FAIRLEY, *Ex p.* OFFICIAL RECEIVER, 92 L. J. Ch. 140; [1922] B. & C. R. 127; *sub nom. Re* FAIRLEY, *Ex p.* LOW & BONAR, LTD., 38 T. L. R. 893, D. C.

Annotation:—**Consd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

6918b. —— ——.]—On Sept. 17, 1928, resps. recovered judgment in the High Ct. for £215 & costs. On the following day the sheriff levied execution on the goods of the debtor under a writ of *fi. fa.* issued by resps. to enforce their judgment. On Sept. 24, 1928, it was agreed in writing between resps. & the debtor that in consideration of resps. withdrawing execution, the debtor should pay to resps. £15 on account of the debt & costs & the balance thereof by monthly instalments, the debtor undertaking, in case of default in payment of any of the agreed instalments, to authorise the sheriff to retake possession. In pursuance of the agreement the £15 & the costs of the execution were paid; whereupon the sheriff withdrew. Up to Oct. 22, 1929, the amount paid in respect of the instalments was £63 & no more, & on Jan. 10, 1930, the sheriff entered a second time into possession to levy execution for the balance of the debt remaining unpaid. On Jan. 13, 1930, while the sheriff was in possession, a receiving order was made against the debtor on his own petition filed on the same day, & he was adjudicated bkpt. On Jan. 14 resps. received notice of the receiving order. On Jan. 16, 1930, the official receiver, as trustee in the bkpcy., claimed from resps. payment of the two sums so received by them, amounting together to £78, as forming part of bkpt.'s estate available for the general body of his creditors, & on Mar. 12, 1931, issued a notice of motion to enforce his claim. On the hearing of the motion before the judge of the Nottingham county ct., on Apr. 30, 1931, a special case was stated under 1914 Act, s. 100 (3), for the opinion of the High Ct., whether resps. were entitled to retain or were bound to account for & pay to the trustee in bkpcy. the two sums of £15 & £63 so received by them or either of those sums:—*Held:* both sums so received by resps. were, within 1914 Act, s. 40, benefits of the execution for which they were liable to account to the trustee in bkpcy.—*Re* BRELSFORD, [1932] 1 Ch. 24; 146 L. T. 160; *sub nom. Re* BRELSFORD, OFFICIAL RECEIVER & TRUSTEE *v.* SHELL MEX, LTD., 100 L. J. Ch. 365; [1931] B. & C. R. 21.

Annotations:—**Folld.** *Re* Kern (P. E. & B. E.), [1932] 1 Ch. 555. **Consd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

6918c. —— ——.]—Sect. 40 of 1914 Act, which enacts that an execution creditor shall not be entitled to retain the benefit of the execution against the trustee in bkpcy., unless he has completed the execution before the date of the receiving order, is a substantive enactment, & the right of the trustee thereunder is not limited to benefits of execution received by the execution creditor after the date to

which the trustee's title to the bkpt.'s property relates back under sect. 37 of 1914 Act.—*Re* KERN (P. E. & B. E.), [1932] 1 Ch. 555; 146 L. T. 570; *sub nom. Re* KERN (P. E. & B. E.), THOMAS HENRY, LTD. *v.* TRUSTEE, 101 L. J. Ch. 257; [1931] B. & C. R. 150.

Annotation :—**Consd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

6919. *Add. Annotation :*—**Consd.** *Re* Fairley, [1922] 2 Ch. 791.

6920. *Add. Annotations :—As to* (1) **Consd.** *Re* Fairley, [1922] 2 Ch. 791; *Re* Godwin, *Ex p.* Trustee *v.* Morris, *Re* Godwin, *Ex p.* Trustee *v.* British Reinforced Concrete Engineering Co., [1935] Ch. 213. **Refd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70; *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450. *Generally*, **Refd.** *Re* Brelsford, [1932] 1 Ch. 24.

6920a. —— ——.]—On June 1, 1932, a creditor obtained a judgment against the bkpt. for £111 1*s.* On June 16 the judgment creditor caused execution to be levied against the bkpt.'s goods for £121 6*s.* 6*d.* & costs of execution. The sheriff went into possession. On July 2 the bkpt. paid to the judgment creditor a sum of £60, & on July 8 a further sum of £60, & on July 22 he paid to the judgment creditor a further sum of £13 9*s.* 3*d.*, making in all the total sum of £133 9*s.* 3*d.*, being the full amount due under the judgment, together with the costs of the execution. On Aug. 3, 1932, the judgment creditor instructed the sheriff to withdraw, which he did on the same date, his costs being paid by the judgment creditor. The withdrawal was unconditional & no power of re-entry was reserved. On Nov. 21, 1932, the bkpt. filed his own petition, & a receiving order was made against him on that date. On Dec. 6 he was adjudged bkpt. The trustee in bkpcy. moved in the county ct. for: (*a*) a declaration that the payments made by the bkpt. to the judgment creditor were void as against the trustee by virtue of 1914 Act, ss. 40, 41; (*b*) an order that the judgment creditor should repay to the trustee in bkpcy. the sums paid to him by the bkpt. by virtue of the same sections. The county ct. judge dismissed the application & the trustee appealed :—*Held :* dismissing the appeal, the phrase "the benefit of the execution" in sect. 40 (1), referred solely to the protection obtained by an execution creditor by reason of the issue of a writ of *fi. fa.* & its delivery to the sheriff, & did not include any payments to an execution creditor whether by the sheriff or by the judgment creditor; the section related only to executions which were in fact in existence at one or other of the appropriate dates mentioned in the section, & had no reference to an execution which had been unconditionally withdrawn before any of those dates.—*Re* GODWIN, *Ex p.* TRUSTEE *v.* MORRIS, *Re* GODWIN, *Ex p.* TRUSTEE *v.* BRITISH REINFORCED CONCRETE ENGINEERING CO., [1935] Ch. 213; 104 L. J. Ch. 189; 152 L. T. 392; 51 T. L. R. 118; 78 Sol. Jo. 930; [1934] B. & C. R. 101, D. C.

***Annotations :*—Consd.** *Re* **Samuels,** *Ex p.* **Trustee** *v.* **Tee** (J. H. S.), [1935] Ch. 341; **Folld.** *Re* **Andrews, Official Receiver (Trustee)** *v.* **Standard Range & Foundry Co., [1936] 2 All E. R. 750.**

6920b. —— —— **Sheriff reserving right to re-enter.**]—A judgment creditor having seized a debtor's goods under a writ of *fi. fa.*, an arrangement was come to between the judgment creditor & the debtor in order to avoid a sale. In pursuance of that arrangement the sheriff withdrew, reserving a right of re-entry. Under the arrangement the debtor paid various sums to the judgment creditor in part payment of the debt & in satisfaction of the sheriff's fees. Subsequently the debtor filed his own petition & a receiving order was made against him. At the date of the receiving order the debt had not been paid in full & the sheriff had the power of re-entry :—*Held :* the sums paid by the debtor before the date of the receiving order were not for the "benefit of execution" within 1914 Act, s. 40, & the judgment creditor was entitled to retain them as against the trustee in bkpcy.—*Re* SAMUELS, *Ex p.* TRUSTEE *v.* TEE, [1935] Ch. 341; 104 L. J. Ch. 197; 152 L. T. 454; 51 T. L. R. 169; [1934] B. & C. R. 158.

Annotation :—**Folld.** *Re* Andrews, Official Receiver (Trustee) *v.* Standard Range & Foundry Co., [1936] 2 All E. R. 750.

6920c. —— ——.]—A judgment creditor having seized a debtor's goods under a writ of *fi. fa.*, an arrangement was come to between the judgment creditor & the debtor in order to avoid a sale. In pursuance of that arrangement the sheriff withdraw from possession, reserving the right of re-entry. Under the arrangement the debtor paid various sums to the judgment creditor in part payment of the debt & in satisfaction of the sheriff's fees. The debtor having failed to continue his payments the sheriff re-entered into possession under his power of re-entry. Subsequently the debtor filed his own petition & a receiving order was made against him, & later he became bkpt. At the date of the receiving order the debt had not been paid in full :—*Held :* the words "the benefit of the execution" in sect. 40 (1) of 1914 Act, did not refer to moneys actually received by the creditor in whole or partial satisfaction of his debt, whether under or in consequence of an execution or not, but they referred to the charge which the creditor obtained by the issue of the execution, & to the extent that by the payment of money that charge had been reduced or abrogated there was *pro tanto* no benefit of the execution to be considered. The benefit of the execution could only refer to the charge still remaining under the still subsisting execution for the balance of the debt. Therefore, the sums paid by the debtor before the date of the receiving order were not "the benefit of the execution" within sect. 40 (1), & the judgment creditor was entitled to retain them as against the trustee in the bkpcy.—*Re* ANDREW, *Ex p.* OFFICIAL RECEIVER (TRUSTEE) (No. 2), [1937] Ch. 122; 106 L. J. Ch. 195; 80 Sol. Jo. 932; [1936-7] B. & C. R. 205; *sub nom. Re* ANDREW, OFFICIAL RECEIVER *v.* STANDARD RANGE & CUNDRY CO., LTD. (No. 2), [1936] 3 All E. R. 450; 155 L. T. 586; 53 T. L. R. 90, C. A.

6921. *Add. Annotation :*—**Consd.** *Re* Fairley, [1922] 2 Ch. 791.

6939. *Add. Annotation :*—**Refd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

6941. *Add. Annotations :*—**Refd.** *Re* Godwin, *Ex p.* Trustee *v.* Morris, *Re* Godwin, *Ex p.* Trustee *v.* British Reinforced Concrete Engineering Co., [1935] Ch. 213 ; *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

6947. *Add. Annotation :*—**Apld.** *Re* Harris, *Ex p.* Shell-Mex & Official Receiver (1930), 99 L. J. Ch. 448.

6952a. —— —— **Registrar of county court & sheriff same person—Notice received in capacity of registrar.**]—The condition of service within the fourteen days limited by 1914 Act, s. 41 (2), of notice on the sheriff of a bkpcy. petition having been presented is sufficiently complied with, so as to entitle the official receiver to be paid the moneys retained by the sheriff, if during that period he has acquired knowledge of the presentation of a petition.

M., who held the office of high bailiff of a county ct., in pursuance of 1914 Act, s. 41 (2), retained the moneys paid to him to avoid a sale of the debtor's goods. Before the expiration of the prescribed period of retention a bkpcy. petition was presented by the debtor & a receiving order thereon was signed by M., who then held the office of registrar of the same ct. of which he was also high bailiff. A formal notice in writing was sent by the official receiver to M. of the presentation of the petition & of the making of the receiving order, which was not received until after the fourteen days had expired :—*Held :* knowledge of the presentation of the petition acquired by M. as registrar constituted a sufficient compliance with the requirement of s. 41 (2), of service of notice upon him as high bailiff, with the result that the official receiver was entitled to be paid the moneys in the hands of the high bailiff.—*Re* HARRIS, [1931] 1 Ch. 138 ; 99 L. J. Ch. 448 ; 144 L. T. 232 ; [1929] B. & C. R. 211, D. C.

—— —— —— ——.]—*See, now,* Bkpcy. Rules, 1915, r. 323B.

6954. *Add. Annotation :*—**Refd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70.

6955. *Add. Annotation :*—**Refd.** *Re* Fairley, [1922] 2 Ch. 791.

6961. *Add. Annotations :*—**Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814 ; *Re* Wait, [1927] 1 Ch. 606 ; *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283.

6964. *Add. Annotation :*—**N.F.** Latter *v.* Juckes (1926), 42 T. L. R. 723.

6965. *Add. Annotation :*—**Consd.** *Re* Sarjeant, [1923] 2 Ch. 302.

965a. "Any other petition"—Notice not given within fourteen days.]—A sheriff, on behalf of an execution creditor, levied an execution against debtor for more than £20, & received the money from debtor to avoid a sale. Within fourteen days of the payment the sheriff received notice of a bkpcy. petition on which an order would have been made had not debtor in the meanwhile filed his own petition on which a receiving order was made as a matter of course. Notice of this second petition was given to the sheriff more than fourteen days after the payment, but while the money was still in his hands pending the result of the first petition. The trustee in bkpcy. & the execution creditor both claimed the money :—*Held :* the words in 1914 Act, s. 41 (2), "or on any other petition of which the sheriff has notice," were not to be qualified by the addition of the words "within the said fourteen days" so as to permit the sheriff to pay the proceeds of the execution to the execution creditor because notice of the second petition on which the receiving order was made was not given within fourteen days of the receipt of such proceeds. The sheriff must hold, in the first instance, to see whether a receiving order would be made, & if he had notice of another petition, even after the lapse of fourteen days, then he must hold to see whether an order would be made on that other petition, or on any petition.—LATTER *v.* JUCKES & PAGE, [1927] 1 K. B. 17 ; 96 L. J. K. B. 137 ; 136 L. T. 177 ; 42 T. L. R. 723 ; 70 Sol. Jo. 905 ; [1926] B. & C. R. 133, C. A.

6966. *Add. Annotation :*—**Refd.** *Re* British Salicylates, [1918–19] B. & C. R. 160.

6979. *Add. Annotation :*—**Refd.** Latter *v.* Juckes & Page, [1927] 1 K. B. 17.

6995. *Add. Annotation :*—**Consd.** *Re* Woods (Bristol), Ltd., [1931] 2 Ch. 320.

6998a. *S. P.* BLOXHOLM *v.* OLDHAM (1750), cited in 1 Burr. at p. 22 ; 97 E. R. 168.

Annotation :—**Consd.** Balme *v.* Hutton (1831), 2 Cr. & J. 19.

7000a. *S. P.* BELCHER *v.* MAGNAY (1843), 12 M. & W. 102 ; 1 Dow. & L. 441 ; 13 L. J. Ex. 49 ; 2 L. T. O. S. 124 ; 7 Jur. 1160 ; 152 E. R. 1128.

Annotations :—**Refd.** Cheston *v.* Gibbs (1843), 12 M. & W. 111 ; Edwards *v.* Evans (1843), 2 L. T. O. S. 75.

PART XX. SECT. 10, SUB-SECT. 4.—A.

6934 ii. —— *Bankruptcy Act, s.* 11 (3).]—Until a sheriff with whom a writ of execution has been placed receives a copy of the assignment by debtor as provided by the above sect. "or publication of notice in the *Gazette* as provided by the Act," he is not safe in not attaching debtor's goods. A statement made by the solr. for the assignee to a sheriff's officer that an assignment has been made, does not amount to notice to the sheriff, & is not a ground for depriving him of the costs of a levy made after such statement.—TOWERS *v.* SOLOMON, [1922] 1 W. W. R. 1077 ; 2 C. B. R. 579.—**CAN.**

6934 iii. —— *Extra Judicial Seizures Act, R. S. A.*, 1922 (*c.* 96).]—Bkpcy. Act, 1919, s. 11 (3), does not apply to property seized under the above Act.—*Re* HAMILTON & OAKES. [1925] 2 D. L. R. 514 ; [1925] 1 W. W. R. 172 ; 5 C. B. R. 465.—**CAN.**

sc. *Duty of sheriff to retain costs.*]—Where at the time of an authorised assignment the sheriff had in his hands the proceeds of an execution sale of the debtor's property, he errs in paying over those proceeds to the trustee without first subtracting the costs, & the trustee should return the amount of the costs to the sheriff.—*Re* BELL'S ESTATE, [1934] 2 W. W. R. 417.—**CAN.**

PART XX. SECT. 10, SUB-SECT. 4.—C.

6983 iii. ——.]—While a sheriff is not entitled to poundage unless he has obtained some money for the execution creditor, yet r. 495 contemplates that the sheriff is to receive something, even though no money has been realised by him, since it provides that he is to be entitled to poundage "or such less sum as a judge may deem reasonable."—MOROSCHAN *v.* MOROSCHAN, [1921] 2 W. W. R. 147 ; 14 Sask. L. R. 233 ; 59 D. L. R. 353 ; 1 C. B. R. 493.—**CAN.**

6983 iv. —— *Seizure after authorised assignment.*]—TOWERS *v.* SOLOMON, [1923] 1 W. W. R. 1184 ; 3 C. B. R. 806.—**CAN.**

6990 i. *Possession money—Sheriff continuing in possession—After notice of assignment.*]—The costs to which the execution creditor is entitled are the costs of execution up to the time notice of the assignment is given the sheriff.—BAKER *v.* RICHARDS, [1918] 2 W. W. R. 902 ; *affd.* 59 S. C. R. 656 ; 49 D. L. R. 684.—**CAN.**

7006a. —— Sale after bankruptcy—Of goods sufficient to satisfy two executions—One delivered after bankruptcy.]—*Held:* the assignees might recover in trover for such of the goods as were sold after the sheriff had raised money enough to satisfy the first execution.—STEAD *v.* GASCOIGNE (1818), 8 Taunt. 527; 129 E. R. 488.

Annotations:—**Refd.** Giles *v.* Grover (1832), 9 Bing. 128; Batchelor *v.* Vyse (1834), 4 Moo. & S. 552; Aldred *v.* Constable (1844), 6 Q. B. 370.

7008a. —— Stay of proceedings—When ordered.]—GIBSON *v.* HUMPHREY (1833), 1 Cr. & M. 544; 2 Dowl. 68; 3 Tyr. 588; 2 L. J. Ex. 234; 149 E. R. 516, Ex. Ch.

Annotation:—**Refd.** Moon *v.* Raphael (1835), 2 Bing. N. C. 310.

7030. *Add. Citation:*—*affg.* S. C. *sub nom.* R. *v.* EDWARDS (1853), 9 Exch. 32.

Add. Annotation:—**Refd.** *Re* Warren, Wheeler *v.* Mills, [1938] 2 All E. R. 331.

7032. *Add. Annotation:*—**Refd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369.

7042a. —— 6 Geo. 4, c. 16, s. 81—Two calendar months—Computation.]—By above sect. all executions, etc., executed or levied more than two calendar months before the issuing of the commission, are valid. Deft., the sheriff, seized the goods of W. on Aug. 13, in execution, upon a judgment on a warrant of attorney at the suit of pltf., at about eleven o'clock, & at about one on Oct. 13 a commission of bkpcy. issued against W.:—*Held:* (1) the ct. would take notice of the fraction of a day, in putting a construction upon that part of the clause; &, therefore, it was clear that more than two calendar months had elapsed; (2) the day of issuing the commission was to be included in the computation.—GODSON *v.* SANCTUARY (1832), 4 B. & Ad. 255; 1 Nev. & M. K. B. 52; 2 L. J. K. B. 19; 110 E. R. 451.

Annotations:—*As to* (1) **Refd.** R. *v.* Middlesex JJ. (1845), 3 Dow. & L. 109. *As to* (2) **Refd.** Whitmore *v.* Robertson (1841), 11 L. J. Ex. 43; Skey *v.* Carter (1843), 11 M. & W. 571; Whitmore *v.* Greene (1844), 2 Dow. & L. 174.

7058. *Add. Annotation:*—**Refd.** Latter *v.* Juckes & Page, [1927] 1 K. B. 17.

7063. *Add. Annotations:*—*As to* (1) **Refd.** Ellis *v.* Stenning & Son, Ltd. (1932), 101 L. J. Ch. 401; Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

7070. *Add. Annotation:*—**Refd.** Anantapadmanabhaswami *v.* Secunderabad Official Receiver, [1933] A. C. 394.

7079. *Add. Citation:*—*sub nom. Re* PLUMMER, *Ex p.* TRUSTEE, 69 L. J. Q. B. 936; 48 W. R. 634; 44 Sol. Jo. 572; 7 Mans. 367, C. A.

Add Annotation:—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7085. *Add. Annotation:*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7086. *Add. Annotation:*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7087. *Add. Citation:*—*subsequent proceedings* (1805), 11 Ves. 377.

7089a. Declaration of trust without consideration—Credit in account of money to wife.]—*Held:* not binding on bkpt.'s creditors.—*Re* SMITH, *Ex p.* SMITH (1812), 1 Rose, 208.

Annotation:—**Consd.** Parsons *v.* Coke (1858), 27 L. J. Ch. 828.

7091. *Add. Annotation:*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

PART XX. SECT. 10, SUB-SECT. 8.

y (p. 830) **i.** —— —— *Memorandum that title subject to costs of prior execution.*]—On an assignment under Bkpcy. Act, where there are executions recorded against land of the assignor, the registrar of land titles, in making transmission of title to the assignee, should make a memorandum that the title is subject to a lien for costs of the first execution which was lodged with the sheriff & to a lien for costs of registration & sheriff's fees of all the executions.—*Re* LAND TITLES ACT, SASKATCHEWAN GENERAL TRUST CORPN., LTD.'S CASE, [1923] 3 W. W. R. 628.—**CAN.**

7069 i. *Garnishee order.*]—A debt was attached by a garnishee order under a judgment which was still subsisting:—*Held:* a receiving order under Bkpcy. Act, s. 11, did not rank in priority to such garnishment.—*Re* BLOUIN, GAGNON *v.* GRAIN & PROVISION CO., [1924] 1 D. L. R. 332; Q. R. 35 K. B. 161.—**CAN.**

d (p. 837) **i.** —— *Priority.*]—A creditor has priority for costs of execution once the writ is placed in the hands of the sheriff.—*Re* FERGUSON, [1935] 2 D. L. R. 473; O. R. 223.—**CAN.**

sf. *Payment by contractor to prevent removal & sale by sheriff of sub-contractor's plant & materials—Bankruptcy of sub-contractor—Effect of.*]—*Re* STEWART (Ont.), [1926] 2 D. L. R. 1043; 7 C. B. R. 680.—**CAN.**

PART XX. SECT. 11, SUB-SECT. 1.

7078 ii. —— *Bankruptcy Act, s.* 29.]—"Settlement" in the above sect. discussed.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34; *revsd.* [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—**CAN.**

7078 iii. *S. P.* TRADERS TRUST CO. *v.* COHEN (Man.), [1927] 3 W. W. R. 473.—**CAN.**

7086 ii a. —— ——.] —*Held:* a gift not being hedged about with conditions was not a settlement within Bkpcy. Act, 1908, s. 75.—BRAITHWAITE *v.* BRAITHWAITE, [1923] N. Z. L. R. 1186.—**N.Z.**

j i. —— ——.]—Where insured, under a policy of life insurance, declares it to be for the benefit of his wife, the trust created is not invalidated by his subsequent insolvency, & creditors of insured have no rights which would interfere with the rights of his wife even though the endowment policy matures during the life of insured.—BANK OF BRITISH NORTH AMERICA *v.* EDGECOMBE (1919), 46 N. B. R. 105.—**CAN.**

sg. *Conveyance of property to wife & sons.*]—Where a transfer in the nature of a settlement was made for the purpose of defeating creditors:—*Held:* though it would not be set aside, yet the creditors might seek payment of their claims out of the property transferred.—KIEHL *v.* FUSSEL (1922), 68 D. L. R. 780.—**CAN.**

r i. *Purchase of property & investment of money in wife's name.*]—Where property had been acquired & money invested by a husband in the name of his wife for the purpose of defeating his creditors:—*Held:* the property belonged to the husband, & the proceeds received by the wife from a sale of furniture owned by the husband should be paid to a receiver.—MCCURDY *v.* NEVE (1923), 51 N. B. R. 123.—**CAN.**

sj. *Declaration of trust in favour of wife—In pursuance of alleged antenuptial settlement.*]—*Held:* a settlement within Bkpcy. Act, s. 29 (1), & null & void.—*Re* ALIOTIS & CLIRIS, [1923] 1 D. L. R. 348; 56 N. S. R. 43; 3 C. B. R. 600.—**CAN.**

sk. *Settlement on creditor.*]—On Jan. 29, 1925, J., being in embarrassed circumstances & indebted, amongst others, to M. for £1,200, settled certain land on M., & another upon trust for herself & her only child during her life & after her death for her child absolutely. A private meeting of J.'s creditors was held on Apr. 22, 1925, & a committee appointed to investigate her affairs, & it was agreed to accept £200 from M. to be distributed among the creditors in full payment of their debts. Some of the creditors, including the R. Co., refused to carry out this arrangement, but on the faith that it would be carried out, J., on Apr. 28, paid M. £100 on account of his debt. On June 5 the debtor filed a petition for liquidation, but before the meeting on June 24 the R. Co. served a debtor's summons. The R. Co. had notice of the meeting for June 24, but did not attend. This meeting was attended by creditors whose indebtedness was about two-thirds of the total sum. They unanimously passed a resolution for liquidation by arrangement, & appointed a trustee. On the hearing of an application by the debtor & the trustee to dismiss the debtor's summons it was held that the application must be dismissed, but as the creditors who absented themselves from the liquidation meeting should have & could have attended it, they must pay the costs. The bkpcy. proceedings were continued, & a trustee appointed. The trustee then applied to have the settlement to M. delivered up to be cancelled & for repayment of the £100 paid to M. on Apr. 28, 1925:—*Held:* the settlement was not made in good faith & must be delivered up. The payment of £100 to M. was a fraudulent preference, & it must be repaid to the trustee.—*Re* JEFFREYS (1925), 21 Tas. L. R. 31.—**AUS.**

7094. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7096a. Settlement of property in exercise of general power of appointment.]—*Held :* not within 1914 Act, s. 42.—*Re* MATHIESON, [1927] 1 Ch. 283; 71 Sol. Jo. 18; *sub nom. Re* MATHIESON, MOORE (TRUSTEE) *v.* MATHIESON, 96 L. J. Ch. 104; [1927] B. & C. R. 30; *sub nom. Re* MATHIESON, *Ex p.* TRUSTEE, 136 L. T. 528, C. A.

7096b. Property accruing "after marriage in right of wife."]—Property devolving on a husband on the intestacy of his deceased wife is property that has accrued to the husband after marriage in right of his wife within the exception to 1914 Act, s. 42.—*Re* BOWER WILLIAMS, *Ex p.* TRUSTEE, [1927] 1 Ch. 441; 96 L. J. Ch. 136; 136 L. T. 752; 43 T. L. R. 225; 71 Sol. Jo. 122; [1927] B. & C. R. 21, C. A.

7098. *Add. Annotation :*—**Refd.** Jagger *v.* Jagger, [1926] P. 93.

7104. *Add. Annotations :—As to* (1) **Refd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94. *As to* (2) **Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7104a. —— Plaintiff in compromised action against settlor.]—*Re* COLE (A. V. & M. E. M. A.), TRUSTEE IN BANKRUPTCY *v.* PUBLIC TRUSTEE, No. 7121a, *post.*

7105. *Add. Annotation :*—**Refd.** *Re* Wombwell (1921), 37 T. L. R. 625.

7106. *Add. Annotation :*—**Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7109. *Add. Annotation :*—**Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7113a. —— Gift by brother to sister.]—By a deed of gift dated Oct. 7, 1919, debtor, who was adjudged bkpt. on Nov. 23, 1920, "in consideration of his natural love & affection for the donee" purported to assign & convey to his sister, resp., "the business carried on by him at 58a, Old Compton Street, Soho, & the stock-in-trade, wine & produce in & about the premises." At the date of the deed petitioning creditors were proceeding to enforce judgment under R. S. C., Ord. 14, & on Mar. 18, 1920, obtained final judgment against debtor for £527 7*s.* 4*d.* for goods sold & costs. On Mar. 20, 1920, execution was levied. Upon such levy being made, resp. claimed under the deed of gift the whole of the furniture & stock seized by the sheriff. An interpleader summons was taken out by the sheriff, & upon the hearing thereof, on Mar. 26, 1920, the master ordered claimant to pay into ct. £600 or give security for such amount, & in default the sheriff was authorised to sell the property seized & pay the proceeds into ct. to abide the result of an issue directed to be tried between claimant & the execution creditors. Pursuant to the order the sheriff sold the goods on Apr. 28, 1920, & on May 20, 1920, paid the sum of £202 12*s.* 2*d.* into ct. On Nov. 3, 1920, the parties to the interpleader summons agreed to divide the money between them & to withdraw the record; these terms were embodied in an order of the master of that date. In the meantime, however, a receiving order was made on Nov. 1, 1920, & petitioning creditors, the execution creditors, informed the official receiver of the sum of money being in ct. & of the terms of settlement so agreed as aforesaid. Thereupon the official receiver intervened, & on Nov. 1, 1920, gave notice in writing to the Paymaster-General of the Supreme Ct. of the receiving order, & this notice had the effect of preventing the order being acted upon. The trustee moved for a declaration that the deed of gift was void as against him :—*Held :* (1) the deed of gift was a voluntary settlement &, being made within two years of the bkpcy., was void; (2) the execution having been completed & the proceeds held by the sheriff for fourteen days, the trustee's title was barred, because, although the execution was not completed before the sheriff had been in possession for twenty-one days, the act of bkpcy. thereby created had not occurred within three months of the presentation of the petition & was not therefore available to establish the trustee's title.—*Re* CHIANDETTI, *Ex p.* TRUSTEE (1921), 91 L. J. K. B. 70; 37 T. L. R. 984; [1921] B. & C. R. 82.

7118. *Add. Annotation :*—**Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7119a. —— Donee taking over liability for mortgage debt.]—By an indenture dated July 19, 1920, a husband assigned his reversionary interest under a will to his wife, subject to a mtge.; & the wife covenanted expressly to pay the mtge. debt & interest & to indemnify the husband against his liability under the mtge. The husband was adjudged bkpt. on June 20, 1922, within two years of the assignment. On motion by the trustee in the bkpcy. for a declaration that the assignment was void against him as being a voluntary settlement under 1914 Act, s. 42 :—*Held :* there was ample consideration in the assignment, & the wife was a "purchaser" for valuable consideration within the sect.—*Re* CHARTERS, *Ex p.* TRUSTEE, [1923] B. & C. R. 94.

7121a. —— Compromise of action.]—A *bonâ fide* compromise of a *bonâ fide* action claiming rights against a deft.'s property is valuable consideration within 1914 Act, s. 42, for a settlement of that property made by deft. under that compromise, & pltf. is the purchaser within that sect. It is not the business of the Ct. of Bkpcy. before which the settlement is subsequently impeached to consider whether the action could possibly have succeeded if fought out to a finish.—*Re* COLE (A. V. & M. E. M.), TRUSTEE IN BANKRUPTCY *v.* PUBLIC TRUSTEE, [1931] 2 Ch. 174; 100 L. J. Ch. 316; 145 L. T. 484; [1931] B. & C. R. 7.

Annotation :—**Consd.** *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

7122. *Add. Citation :—sub nom. Re* MACDONALD, *Ex p.* MCCULLUM, [1920] 1 K. B. 205; 122 L. T. 316.

7124. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

PART XX. SECT. 11, SUB-SECT. 2.

h i. —— *Purchased by husband for wife—To trustee during minority of wife—Transfer to wife at majority.*]—*Held :* not a settlement on the wife in consideration of marriage & void as against the trustee.—*Re* MCELLAND'S ESTATE, [1923] 4 D. L. R. 395; 3 C. B. R. 849.—**CAN.**

PART XX. SECT. 11, SUB-SECT. 3.

7107 ill. —— *Question of fact.*]—*Re* GRANT (N. S.), [1926] 1 D. L. R. 681; 7 C. B. R. 254.—**CAN.**

sl. *Good faith—Onus of proof.*]—*Re* MACKEEN (N. S.), [1929] 1 D. L. R. 528; 10 C. B. R. 311.—**CAN.**

PART XX. SECT. 11, SUB-SECT. 4.

y i. —— *Onus of proof.*]—**Bkpcy. Ordinance of the Straits Settlements,**

7125. *Add. Annotation :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7127. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7129. *Add. Annotations :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426; *Re* Mathieson, [1927] 1 Ch. 283.

7133. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7134. *Add. Annotations :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426. **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

7135. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7136. *Add. Annotation :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7138. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7142. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7147. *Add. Annotation :*—**Refd.** *Re* Patrick & Lyon, Ltd., [1933] Ch. 786.

7148. *Add. Annotations :*—**Consd.** *Re* Baker, *Ex p.* Trustee *v.* Baker & Arnold, [1936] Ch. 61. **Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7149a. Settlor having power to raise sum in excess of debts.]—On Mar. 19, 1932, the settlor executed a voluntary deed of settlement by which he assigned all his interests under two wills to trustees upon certain trusts. By clause 5 he gave himself power at any time to raise the sum of £150 without the consent of the trustees. At the date of the settlement his debts did not exceed £160. On Feb. 22, 1935, he was adjudicated bkpt.:—*Held :* the deed was not void under sect. 42 (1) of 1914 Act, against the trustee in bkpcy.—*Re* BAKER, [1906] Ch. 61; 105 L. J. Ch. 33; 154 L. T. 101; *sub nom. Re* BAKER, *Ex p.* TRUSTEE *v.* BAKER & ARNOLD, [1934-5] B. & C. R. 214.

7153a. ——.]—*Re* DENT, *Ex p.* TRUSTEE, No. 2902a, *ante.*

7155a. Covenant to pay premiums on life policy.]—A. & B. were traders in partnership. In 1927 both partners were adjudicated bankrupt. In 1910, A. on his marriage had executed an ante-nuptial settlement, by which he (*inter alia*) covenanted with the trustees of the settlement to keep up a life policy on his life then existing & to pay the premiums, etc. On the bkpcy. of the two partners the trustees of the settlement lodged a proof in the bkpcy. of A. with regard to the covenant to keep up the policy, for a sum that was arrived at by commuting in a single payment the annual premiums payable to keep up the policy & to make it fully paid. The trustee in bkpcy. rejected the proof on the ground that under 1914 Act, s. 42 (2), their claim was postponed until all the other creditors for valuable consideration in money or money's worth had been satisfied, & he alleged that the assets available would not be sufficient:—*Held :* the covenant fell within 1914 Act, s. 42 (2), & the trustee was right in rejecting the proof, as being a claim for something which was only provable after the other creditors for valuable consideration in money or money's worth had been satisfied, & also having regard to 1914 Act, ss. 33 (6); 42 (2), & 63 (1), the right of the trustees to put in a proof must depend on all the creditors of the partnership between A. & B., the joint creditors of the partnership, as well as the separate creditors of A., being first satisfied.—*Re* CUMMING & WEST, *Ex p.* NEILSON & CRAIG *v.* TRUSTEE, [1929] 1 Ch. 534; 141 L. T. 61; *sub nom. Re* CUMMING, *Ex p.* NEILSON & CRAIG *v.* ADAMSON (TRUSTEE), 98 L. J. Ch. 83; [1929] B. & C. R. 4.

7156. *Add. Annotation :*—**Refd.** *Re* Debtor, [1929] 1 Ch. 362.

7158. *Add. Annotation :*—**Refd.** *Re* Debtor, [1929] 1 Ch. 362.

7159. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch 283.

7161a. Covenant to settle all property to which settlor might become entitled—Settlement of reversionary interest.]—*Re* DENT, *Ex p.* TRUSTEE, No. 2902a, *ante.*

7164. *Add. Annotation :*—**Apprvd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. D. 515.

7165. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7166a. —— ——.]—To constitute a fraudulent preference three conditions must be fulfilled; (1) that the payment is made by a person unable to pay his debts as they become due from his own money; (2) that it in fact prefers one creditor over others; (3) that the dominant motive with which the payment was made was a desire to prefer that creditor to whom the payment was made. If a voluntary payment in fact gives a creditor a preference & the reason for such payment

s. 50 (1), provides that: "Any settlement of property, not being . . . a settlement made in favour of a purchaser . . . in good faith & for valuable consideration, . . shall, if the settlor becomes bkpt. within two years after the date of the settlement, be absolutely void as against the official assignee"; & by sect. 50 (3): "'Settlement' for the purposes of this sect. includes any conveyance or transfer of property . . .":—*Held :* upon the true construction of the above sect. the onus is upon the official assignee to prove that a conveyance which he is seeking to set aside thereunder was not made in good faith & for valuable consideration.—CHEAH SOO TUAN, OFFICIAL ASSIGNEE OF THE ESTATE OF *v.* KHOO SAW CHEOW, [1931] A. C. 67; 100 L. J. P. C. 45; 144 L. T. 130; [1929-30] B. & C. R. 270, P. C.—**STRAITS SETTLEMENTS.**

PART XX. SECT. 12. SUB-SECT. 1.

7164 iii a. ——.]—To establish a fraudulent preference by an insolvent debtor where bkpcy. has supervened within three months of the transfer of the property to the creditor, the following conditions must be fulfilled: (*a*) the debtor must have acted with a view to giving that creditor a preference over the other creditors—*i.e.*, that the real dominant & substantial motive was the desire to prefer the particular creditor; & (*b*) the creditor must have accepted the transfer with knowledge that the intention of the debtor was a desire to prefer the particular creditor.—*Re* BURNS, *Ex p.* OFFICIAL ASSIGNEE IN BANKRUPTCY, [1934] N. Z. L. R. 99; G. L. R. 364.—**N.Z.**

7164 x. ——.]—A preference & a fraudulent preference are vitally different. Bkpcy. Act prohibits a fraudulent preference only; & to constitute a fraudulent preference there must be present two circumstances, a preference in fact & an intention on the part of debtor to prefer.—BURNS *v.* ROYAL BANK OF CANADA, BURNS *v.* GRAHAM (1922), 69 D. L. R. 608; 51 O. L. R. 564; 2 C. B. R. 241.—**CAN.**

7164 xi. ——.]—Where the delivery of goods was not a disposition in the ordinary course of business & the effect was to prefer defts.:—*Held :* it should be set aside.—JACOBSON, ETC. *v.* JACOBSON, ETC. (1920), App. D. 75.—**S. AF.**

7164 xii. ——.]—The intention to give a preference is an intention in fact, & must be an intention entertained by the debtor. There can be no intention to prefer if the payment is made in the ordinary course of business.—CANADIAN CREDIT MEN'S ASSN., LTD. *v.* JENKINS, [1928] 3 D. L. R. 139; 62 O. L. R. 281; 10 C. B. R. 77.—**CAN.**

is unexplained, then a presumption of preference arises. The existence of an explanation ousts the presumption of preference.—*Re* DRAGE (J.) & SONS, PALMER & ROBERTS *v.* KNIGHT (1926), 134 L. T. 765.

7171. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7172. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7172a. —— ——.]—(1) Debtor was adjudged bkpt. on his own petition on July 6, 1923, & for a long time prior to that date had been hopelessly insolvent. On June 22, 1923, bkpt. paid applt. £146 by a customer's cheque & on June 21 & 23, 1923, he transferred goods to applt. of the value of £378 in discharge of his indebtedness. Debtor was able to pay his creditors 2*s.* in the pound, but the transfer of the goods to applt. was arranged on a basis that the debt was worth 20*s.* in the pound & the goods were not of the class with which applt. was in the habit of dealing, & applt. knew that debtor was unable to pay his debts, & the transaction took place on the eve of bkpcy. when debtor must have known he had no chance of pulling round. The threat of applt. to place the matter in other hands, which amounted to consulting a solr., had no terrors for debtor :—*Held :* the payment & transfer were made with a view to prefer applt. & not in consequence of any pressure which applt. brought to bear upon bkpt.

(2) In establishing a case of fraudulent preference in addition to giving evidence of insolvency the trustee must give some evidence of a view to prefer.—*Re* HOYLE, *Ex p.* TRUSTEE, [1924] B. & C. R. 22, D. C.

7167 i. *revsd.* (1915), 51 S. C. R. 554.

7167 xvi. —— ——.]—Where a mtgee. knew the mtgor. could not meet his current liabilities but believed he had more than sufficient property to pay his debts, & the conveyances were not made to give the mtgee. an unjust preference, who acted *bonâ fide* & without intent to delay creditors :—*Held :* the mtge. was valid.—ROBINSON *v.* PETERS (1919), 47 N. B. R. 1.—**CAN.**

7167 xvii. —— ——.]—Knowledge that debtor has ceased to be able to meet his liabilities as they become d ue will render payments within three months of the bkpcy. by debtor to a creditor fraudulent & voidable as against the trustee in bkpcy.—STEVENSON *v.* TAYLOR, *Re* CANADIAN CAP CO., LTD. (1922), 70 D. L. R. 853.—**CAN.**

7167 xviii. —— ——.]—Where certain transactions were impeached as being preferential :—*Held :* the *primâ facie* presumption of their invalidity had not been rebutted by showing that they were made as required by Bkpcy. Act, s. 32, since they were made with knowledge on the part of the creditor that debtor was "insolvent," as defined by sect. 2 (*t*), & therefore were not made in good faith.—*Re* LONGMORE (1922), 52 O. L. R. 570 ; 3 O. B. R. 200.—**CAN.**

7167 xix. —— ——.]—Where three partners bought out the fourth & took $1500 from A. for a quarter share in the partnership, & subsequently A. advanced $400 on the security of a chattel mtge. knowing the firm was insolvent :—*Held :* the mtge. was void as against creditors.—*Re* UNITY MANUFACTURING CO., MOORE'S CLAIM, [1923] 1 D. L. R. 84 ; 3 C. B. R. 396.—**CAN.**

7167 xx. —— ——.]—A bank is in no different position from that of any other creditor in relation to the provisions of Bkpcy. Act, & where a bank knows its customer to be insolvent, it cannot within the three months limited by sect. 31 accept from him or appropriate any money standing to his credit towards liquidation of a liability by the customer to the bank.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1923] 3 W. W. R. 257.—**CAN.**

7167 xxi. —— ——.]—To make a security given a creditor a fraudulent preference under Fraudulent Preferences Act, R. S. S. 1920 (c. 204), s. 4, there must be a concurrence of intent on the part of both debtor & creditor. If the person taking the security be innocent of any fraudulent intent, he cannot be affected by the fact that there was such an intent, unknown to him, in the mind of debtor.—WOLFE *v.* SMITH & BRUER, [1923] 3 D. L. R. 54 ; [1923] 3 W. W. R. 375.—**CAN.**

7167 xxii. —— ——.]—*Re* THOMPSON, *Ex p.* TRUSTEES, [1923] 4 D. L. R. 1028.—**CAN.**

7167 xxiii. —— ——.]—*Re* FOX, LESTER *v.* PORTER, [1925] 1 D. L. R. 198 ; 5 C. B. R. 328.—**CAN.**

7167 xxiv. —— ——.]—*Re* VOGUE FUR SHOP, LTD., *Ex p.* PAQUET CO., [1925] 1 D. L. R. 785 ; 5 C. B. R. 386.—**CAN.**

7167 xxv. —— ——.]—*Re* FULTON, [1926] 2 D. L. R. 277 ; 58 O. L. R. 400.—**CAN.**

7167 xxvi. —— ——.]—*Re* CUDNEY (Ont.), [1928] 1 D. L. R. 699 ; 8 C. B. R. 559.—**CAN.**

7167 xxvii. —— —— *Circumstances putting creditor on enquiry.*]—*Re* MCQUILLAN, *Ex p.* ROYAL BANK (Ont.), [1928] 2 D. L. R. 331 ; 10 C. B. R. 73.—**CAN.**

g i. —— *Valuable consideration not given.*]—Lack of consideration will usually imply a suggestion that a conveyance was made unduly to prefer one creditor, & where the result of such conveyance is that the grantor's creditors will be defrauded the conveyance will be set aside without proof, apart from the nature of the conveyance itself, of the fraudulent intent of the grantor & the grantee.—DOTY *v.* MARKS, [1924] 3 D. L. R. 687 ; 55 O. L. R. 147.—**CAN.**

g ii. —— *Security taken.*]—A person who makes a *bonâ fide* advance to another person or company when it is on the eve of insolvency & takes security therefor does not thereby come within sect. 64 of Bkpcy. Act relating to preferred creditors, if, at least, he is not at the time already a creditor ; & even one who is already a creditor may, in special circumstances, make such an advance & take a valid security therefor as well as for his pre-existing debt. Moreover, if a preferred creditor within the meaning of the Act did not take his security with the intent of procuring a preference to himself over other creditors the transaction stands.—*Re* BRITISH COLUMBIA BOND CORPN., LTD. & LANG, [1931] 1 W. W. R. 386 ; [1931] 2 D. L. R. 985 ; 43 B. C. R. 481 ; 12 C. B. R. 213.—**CAN.**

7169 iii. —— *Transactions between relatives.*]—Where transactions are between near relations, the *onus* is on the parties to those transactions to show that they were not made fraudulently as against creditors, & for this purpose evidence in corroboration is required.—BROWN *v.* BULMER (1922), 65 D. L. R. 180.—**CAN.**

7169 iv. —— ——.]—In transactions between relatives having the effect of defeating the claims of a seller's creditors, even if the purchaser has full knowledge of the seller's intent to defraud, such knowledge is not of itself sufficient to render the transaction void, if it is found to have been *bonâ fide* for full value.—WAGNER *v.* HARTOWS, [1923] 1 D. L. R. 186 : [1922] 3 W. W. R. 1050.—**CAN.**

7169 v. —— ——.]—*Re* READY & CASS, [1924] 2 D. L. R. 528 ; 33 B. C. R. 371.—**CAN.**

7169 vi. ——.]—Creditors, knowing of the insolvency of debtor, made a composition of their debts giving an extension of time. Within three months debtor was made bkpt. :—*Held : primâ facie* this agreement constituted a fraudulent preference which the creditors preferred must rebut.—*Re* DALE & CARROLL, [1924] 4 D. L. R. 597 ; 5 C. B. R. 139.—**CAN.**

7169 vii. ——.]—The *onus* of proof of an intention by debtor to prefer a particular creditor lies on the official assignee.—*Re* HARDY (No. 2), [1922] N. Z. L. R. 613.—**N.Z.**

7172 i. —— *What must be proved.*]—B., who was in possession of business premises under a lease not in writing from pltf., made an assignment to deft. co. for the benefit of creditors, & on the same day executed a surrender of the lease :—*Held :* as the surrender preceded the assignment, it was not invalid as a fraudulent preference or a fraudulent parting with property in fraud of creditors.—BELL *v.* CHARTERED TRUST & EXECUTOR CO., CHARTERED TRUST & EXECUTOR CO. *v.* BELL & BURSEY (1919), 46 O. L. R. 192 ; 49 D. L. R. 113 ; 17 O. W. N. 88.—**CAN.**

7173 i. "*Transfer.*"]—A mtgo. under Sask. Land Titles Act is a "transfer" within the meaning of Bkpcy. Act, s. 2 (2), notwithstanding the provision in the former Act that a mtge. shall have effect as security but shall not operate as a transfer of the land thereby charged.—*Re* CARSON, [1922] 1 W. W. R. 204 ; 2 C. B. R. 187 ; 63 D. L. R. 352 ; 15 Sask. L. R. 94.—**CAN.**

7173 ii. ——.]—*Re* MARITIME RADIO CORPN., LTD. (N. B.), [1927] 2 D. L. R. 450 ; 8 C. B. R. 153.—**CAN.**

sd. *Assignment & Preferences Act, R.S.O.*, 1927—*Superseded by Bankruptcy Act.*]—Assignments & Preferences Act, R.S.O., 1927, is now superseded by the Bkpcy. Act, & cannot be resorted to in respect of preferential transactions.—*Re* TRENWITH, [1934] 3 D. L. R. 195 ; O. R. 326.—**CAN.**

sf. *Effect of Bankruptcy Act—On Fraudulent Preferences Act, R.S.B.C.*]——A debtor who had not yet been adjudged a bkpt. or made an authorised assignment returned his stock on hand

7175. *Add. Annotation :*—**Refd.** *Re* Conley, *Ex p.* Trustee *v.* Barclays Bank, Ltd., [1938] 2 All E. R. 127.

7176a. —— **Preference by agent of debtor.**]—If a principal leaves the control of his business in the hands of an agent so that the agent is employed to determine which of the creditors of the principal shall be paid, when they shall be paid, & why they shall be paid, a payment made by such an agent with an intention to prefer a creditor of his principal is, in the event of the bkpcy. of the principal, a fraudulent preference by the principal within 1914 Act, s. 44. It makes no difference that the agent had not authority to sign the cheques he drew & presented to his principal, nor that the principal when signing them had no intention to prefer any creditor, but honestly believed the payments so made to be proper & in the ordinary course of business.

A firm of builders, having contracted to erect houses at S., employed T. as their salaried agent to control & manage the purchase of & payment for building materials, & generally to supervise & advise the firm on financial matters in relation to the contract. The partners had no knowledge as to the terms upon which the materials supplied had in fact been purchased, nor were they aware of any of the circumstances relating to any payments they in fact made. They signed cheques drawn by the agent as & when he prepared & presented them, but the agent had no right to make any payment except by cheques signed by his principals. The partners having become bkpts. it appeared in the bkpcy. proceedings that less than three months before the date of the receiving order, T., intending to prefer S. & Co., creditors of his principals, & then well aware of his principals' insolvency, presented to F., the managing partner, two cheques which T. had drawn & which F. signed without inquiry in the honest belief that T. intended thereby to make proper payments but which were in fact intended & devoted by T., one to the extent of £100 in payment of a debt due by his principal, under a contract other than the S. contracts & the other to the extent of £647 in payment for goods delivered by S. & Co. on credit terms not then expired :—*Held :* the partners as principals were bound by the acts of their agent T. when he, acting within the scope of his employment & as their agent, made the payments in question, & the act of the agent in making the payments with knowledge of the principals' insolvency & with a view of giving a preference must be treated as the act of the principals.—*Re* DRABBLE BROS., [1930] 2 Ch. 211 ; 99 L. J. Ch. 345 ; 143 L. T. 337 ; 74 Sol. Jo. 464 ; [1931] B. & C. R. 200, C. A.

7177. *Add. Citation :*—40 L. T. 404.

7178. *Add. Annotation :*—**Refd.** *Re* Conley, *Ex p.* Trustee *v.* Barclays Bank, Ltd., [1938] 2 All E. R. 127.

7181. *Add. Annotations :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** *Re* Warren, Wheeler *v.* Mills, [1938] 2 All E. R. 331.

7183a. Payment to agent of creditor — Whether payment to "person in trust for creditor."]—*Re* MORANT, *Ex p.* TRUSTEES, No. 7414a, *post.*

7183b. "Surety or guarantor"—Who is.]—In Apr. 1931, & again in May, 1933, the wife of the bkpt. deposited with a bank War Loan as collateral security for the bkpt.'s indebtedness to the bank. In Feb. 1933, the bkpt.'s mother deposited certain War Loan & Building Society shares for the same purpose. Similar arrangements were subsequently made with Lloyds Bank. Shortly before Nov. 16, 1934, by various means the bkpt. paid large sums into his accounts so that on that day the accounts were in credit. Shortly after that date, the wife & mother demanded the release of the securities & obtained them. On Nov. 30 the business of the bkpt. was closed down & he was immediately made bkpt. The securities in question were merely deposited with the bank, & neither the wife

---

to deft. co., the creditor from which he had bought it. Pltfs., judgment creditors, sought to set aside the transfer under Fraudulent Preferences Act, R.S.B.C., 1924. Deft. contended that said Act had ceased to be operative since the passing of Bkpcy. Act, R.S.C., 1927 :—*Held :* assuming for the purposes of the argument that the debtor was in insolvent circumstances when the transfer complained of was made & that the transfer was "with a view of giving" deft. co. a preference over other creditors, pltfs. were, under the circumstances, entitled to invoke the provisions of Fraudulent Preferences Act.—GARD *v.* YATES, [1936] 1 W. W. R. 212 ; 2 D. L. R. 50 ; 50 B. C. R. 353.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 2.

7174 vii. —— *Transfer in bank books.*]—The transfer of a sum of money from the current account of a co. to the liability account of the co. in the books of the bank, thus reducing the liability of the co. to the bank by the same amount, when the manager of the bank was aware that the co. was insolvent & on the verge of being declared bkpt. :—*Held :* not a set-off or payment by the debtor, & therefore not a fraudulent preference.—*Re* SUTCLIFFE & SONS, LTD., [1933] O. R. 120 ; 1 D. L. R. 562.—**CAN.**

m i. *Property conveyed to creditor by registered conveyance—Unregistered reconveyance to debtor without notice.*]—*Held :* property must pass to the trustee in bkpcy.—*Re* MCCUAIG & BRAY, [1924] 3 D. L. R. 44 ; 2 W. W. R. 373 ; 4 C. B. R. 660.—**CAN.**

m ii. *Property covered by Exemptions Act.*]—Sect. 64 of Bkpcy. Act, R. S. C., 1927, which provides that preferential conveyances to creditors within three months prior to an authorised assignment shall be deemed fraudulent & void as against the trustee, does not apply to dealings by the debtor with his exempt property.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* UMBEL & GILLESPIE GRAIN CO., LTD., [1931] 3 W. W. R. 145.—**CAN.**

sa. *Provision in fire insurance policy for payment to bank.*]—A provision in a fire insurance policy that the amount of the loss shall be payable to a bank does not operate as an assignment of the policy to the bank, nor can it be said, in the circumstances of the case, to constitute an illegal preference under Bkpcy. Act, 1927 (c. 12).—TURGEON *v.* DOMINION BANK (Can.), [1930] S. C. R. 67 ; [1929] 4 D. L. R. 1028 ; *affg.*, 47 Que. K. B. 383 ; 10 C. B. R. 212.—**CAN.**

sb. *Effect of Bankruptcy Act—On Assignments & Preferences Act (Ont.).*]—In a proceeding in bkpcy. in Ontario, the trustee in bkpcy. may invoke the aid of the ct. to set aside as preferential a transaction between the bkpt. & a creditor which took place more than three months before the making of the authorised assignment or receiving order, upon the ground that the transaction was preferential under Assignments & Preferences Act, R. S. O., 1927, & the trustee in bkpcy. is a person entitled to set up the provisions of that Act & attack the transaction.—*Re* POMMIER, [1930] 4 D. L. R. 113 ; 65 O. L. R. 415 ; 11 C. B. R. 449.—**CAN.**

sc. *Promissory note.*]—Where a payee of a promissory note negotiates it before maturity to a creditor in settlement of a debt, & within three months of said transfer of the note the payee is adjudicated a bkpt. or makes an authorised assignment under Bkpcy. Act, R. S. C., 1927, the transfer should not, upon the application of the trustee in bkpcy., be set aside as a fraudulent preference under sect. 64 of said Act, when the maker of the notes indicates that he has good defences, legal & equitable, to a claim or an action by the payee, or his or its representative, the trustee in bkpcy. for payment, & also insists upon his right of set-off against such a claim or in such an action for an undisclosed & unascertained amount, & the ct. is unable to determine whether or not the setting aside of the transfer will be of benefit to the creditors whose claims in whole or in part are unsecured.—*Re* SHANNON (H. S.) & CO., LTD., CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* SNIDER & DUNCAN, [1932] 1 W. W. R. 12.—**CAN.**

nor the mother gave any covenant or undertaking of any kind to pay any sum to the bank :—*Held :* the depositors, although they did not enter into any contract to pay the bank, were " sureties or guarantors " within the meaning of 1914 Act, s. 44, & there was, therefore, a fraudulent preference.—*Re* CONLEY, *Ex p.* TRUSTEE *v.* BARCLAYS BANK, LTD., *Re* CONLEY, *Ex p.* TRUSTEE *v.* LLOYDS BANK, LTD., [1938] 2 All E. R. 127 ; 107 L. J. Ch. 257 ; 158 L. T. 323 ; 54 T. L. R. 641 ; 82 Sol. Jo. 292, C. A.

7185a. Payment of overdraft—Preference of guarantor.]—The father of the bkpt. had guaranteed the payment of the overdraft of the bkpt. whether on his business or private account up to £2,000, which was the permitted amount of overdraft by applt. bank. In Mar. 1932, the bkpt. was in obvious financial difficulties & was aware of his insolvency. He carried on business until Oct. 1932, but on Oct. 11 he gave notice that he was about to suspend payment, & on Oct. 22 a petition in bkpcy. was presented against him. On Nov. 23 a receiving order was made, & on Dec. 9 he was adjudicated bkpt. The overdraft had been over £2,000, but by Sept. 12, 1932, was reduced to just below that sum. After Sept. 12 he drew cheques in favour of his creditors, but paid in cheques of greater amount, & at the date of the petition in bkpcy. he had reduced his business & private ac ounts' overdraft to £1,301 15*s.* 7*d.* In May, June, July & Aug. 1932, the bkpt. paid out of his account to trade creditors considerably larger sums than in Sept. The trustee in bkpcy. claimed that in so reducing the overdraft, after he knew he was insolvent, he had fraudulently preferred the bank & the guarantor to the general body of his creditors, & claimed that the difference of £698 4*s.* 5*d.* was payable to him, the trustee, on behalf of the other creditors. CLAUSON, J., held that there had been a fraudulent preference of the bank & that there should be repayment :—*Held :* the onus was on those who claimed that there had been a fraudulent preference to establish that the debtor's real intention was to prefer, &, to establish that, a dominant intent to prefer must be shown, & where there was not direct evidence & more than one explanation the intent to prefer could not be inferred. The account after Sept. 12, 1932, continued to be operated in the same way as before that date, payments being made out of it to trade creditors & sums paid in, the only course that a business man could pursue, therefore there was no evidence of a dominant intent to prefer.—*Re* LYONS, *Ex p.* BARCLAYS BANK, LTD. *v.* TRUSTEE (1934), 152 L. T. 201 ; 51 T. L. R. 24 ; 78 Sol. Jo. 754 ; [1934-5] B. & C. R. 174, C. A.

Annotation :—**Consd.** *Re* Conley, *Ex p.* Trustee *v.* Barclays Bank, Ltd., [1938] 2 All E. R. 127.

7220a. —— ——.]—A. being in difficulties, & having been served with writs by several of his creditors, applied to defts., who were attorneys, for their advice & assistance. After several ineffectual attempts to make an arrangement, it was finally resolved, at a meeting of the creditors, that A.'s property should be immediately sold ; thereupon A. employed an auctioneer for that purpose, & directed him to pay the balance of the proceeds, after deducting his own charges, to defts., which was accordingly done. Another meeting of the creditors took place, at which 5*s.* in the pound was offered, which being refused, A. went to prison, & obtained his discharge under the Insolvent Act. Defts. claimed to retain a portion of the money paid to them by the auctioneer in discharge of their bill of costs :—*Held :* this was not a voluntary transfer in favour of a particular creditor, within sect. 32 of above Act.—WAINWRIGHT *v.* CLEMENT (1838), 4 M. & W. 385 ; 1 Horn & H. 395 ; 8 L. J. Ex. 25 ; 3 Jur. 266 ; 150 E. R. 1478.

PART XX. SECT. 12, SUB-SECT. 3.

7186 vi. ——.]—In order to make a payment a fraudulent preference within Bkpcy. Act, 1908, s. 79, it is not necessary that the payment should be made in actual contemplation of bkpcy.—*Re* LINNEY (H.) & CO., LTD., [1925] N. Z. L. R. 907.—**N.Z.**

7216 vii. —— ——.]—Payments made & goods returned by a retailer to a creditor, a wholesaler, within three months of the former's bkpcy., the payments being for goods delivered during that period or for goods delivered previously the credit for which had expired during said period :—*Held :* not to be a preference within sect. 64 of Bkpcy. Act, R.S.C., 1927.—*Re* COLQUHOUN & SON, LTD., CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* CAMPBELL, WILSON & STRATHDEE, LTD., [1937] 1 W. W. R. 222.—**CAN.**

1 (p. 863) i. —— *Creditor having made inquiries.*]—Where in fulfilment of an agreement, a lien note was given by debtor by way of collateral security for advances to be made by the creditor, who had made the fullest inquiries into the financial position of debtor & had failed to discover his insolvency :—*Held :* the giving of the lien note could not be construed as a fraudulent preference.—*Re* HUGHES MUSIC SALES CO., CO-OPERATIVE MUSIC SUPPLY CO. *v.* GOLD MEDAL FURNITURE MANUFACTURING CO., [1924] 2 D. L. R. 706 ; 4 C. B. R. 565. —**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—A.

r (p. 865) i. —— ——.]—If the ordinary result of a transaction is to prefer one creditor to another, even though there is no intention to prefer, it is void against the trustee. It is not necessary, in such a case to establish anything in the nature of fraud, & provided the effect of the transaction is to diminish the property of the debtor available for division among the creditors, it falls within sect. 95 of Commonwealth Bkpcy. Act, 1924-1929.—*Re* MAZOK, *Ex p.* REES, E. SACHS & CO., [1931] S. R. (Q.) 19 ; 2 A. B. C. 237.—**AUS.**

t (p. 865) i. —— *Creditor with knowledge of insolvency.*]—Actual intent to defraud creditors necessary, although creditor aware of debtor's insolvency.—HICKERSON *v.* PARRINGTON (1892), 18 A. R. 635.—**CAN.**

w i. ——.]—The *bona fides* of a transaction is negatived if the creditor who receives payments from debtor has knowledge of debtor's insolvency. But if the creditor has no such knowledge & the transaction is one arising out of the ordinary course of business, the fact that debtor was insolvent when he made the payments will not render such payments a fraudulent preference.—*Re* SPEAL, *Ex p.* LUCAS, [1924] 1 D. L. R. 191.—**CAN.**

c (p. 865) i. ——.]—To constitute a preference under Bkpcy. Act, s. 31, there must be a common or concurrent view, *i.e.* intent on the part of debtor & the creditor to create a preference.—*Re* BELL, [1922] 1 W. W. R. 1015 ; 2 C. B. R. 271 ; 67 D. L. R. 66 ; 32 Man. L. R. 9.—**CAN.**

c (p. 865) ii. ——.]—*Re* GOLDSTEIN, [1923] 1 D. L. R. 864 ; 53 O. L. R. 60. —**CAN.**

c (p. 865) iii. ——.]—The intention of debtor to yield to the dictates of his conscience & to fear the consequence of his crime, negatives the intention to prefer. At any rate, the intention of debtor is not enough, the creditor, too, must intend to obtain a preference.—*Re* CARSON, [1924] 4 D. L. R. 492 ; 55 O. L. R. 649 ; 4 C. B. R. 683. —**CAN.**

c (p. 865) iv. ——.]—To constitute a fraudulent preference there must be an intention on the part of debtor to prefer the creditor in question & an intention on the part of that creditor to be preferred. Therefore where A. was a creditor of B., bkpt., & C. paid A. what B. owed him, & C. was therefore substituted in the place of A., as creditor of B. :—*Held :* as the money paid by C. never became assets in the hands of B., the transaction could not be set aside.—*Re* NIAGARA HATS, LTD., TRUSTEE *v.* BANK OF MONTREAL, [1924] 4 D. L. R. 953.—**CAN.**

c (p. 865) v. ——.]—If a partner makes a payment to a creditor with intent to prefer him, & there is a like intent on the part of the creditor to be preferred, this will be a fraudulent preference & may be set aside by the

7225. *Add. Citation :*—12 L. T. 22.

Add. Annotation :—**Consd.** *Re* Stanton, [1929] 1 Ch. 180.

7225a. —— ——.]—*Re* COHEN, *Ex p.* TRUSTEE, No. 4665a, *ante.*

7226. *Add. Annotation :*—**Consd.** *Re* Conley, *Ex p.* Trustee *v.* Barclays Bank, Ltd., [1938] 2 All E. R. 127.

7228. *Add. Annotations :*—**Refd.** *Re* Prior, *Ex p.* Trustee, [1922] B. & C. R. 1; *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7236. *Add. Annotation :*—**Consd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

7237. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7237a. —— **Payment in fact giving preference.**]—*Re* DRAGE (J.) & SONS, PALMER & ROBERTS *v.* KNIGHT, No. 7166a, *ante.*

7238. *Add. Annotations :*—**Refd.** *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22; *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

7239. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7249. *Add. Citation :*—12 L. T. 22.

Add. Annotation :—**Refd.** *Re* Stanton, [1929] 1 Ch. 180.

---

trustee.—*Re* ROSEDALE PRODUCE CO., *Ex p.* MCGOWAN, [1924] 1 D. L. R. 321; 4 C. B. R. 277.—**CAN.**

c (p. 865) **vi.** ——.]—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1926] 3 D. L. R. 684; [1926] S. C. R. 621; 7 C. B. R. 639.—**CAN.**

c (p. 865) **vii.** ——.]—A payment made by debtor to a creditor within three months of an assignment in bkpcy. is not deemed fraudulent, unless both creditor & debtor have a concurrent or mutual view or intent to effect a preference.—*Re* DEMRY & DEMRY, TRUSTEE *v.* HALLAND, [1924] 4 D. L. R. 1275; [1924] 3 W. W. R. 708; 34 Man. L. R. 534; 5 C. B. R. 293; *revsg.*, [1924] 4 D. L. R. 309; [1924] 3 W. W. R. 147; 5 C. B. R. 87. —**CAN.**

c (p. 865) **viii.** ——.]—*Re* STEEVES, NOVA SCOTIA TRUST CO. *v.* BISHOP, [1925] 2 D. L. R. 233; 5 C. B. R. 554.—**CAN.**

c (p. 865) **ix.** ——.]—Where the trustee in bkpcy. of a partnership seeks to set aside a transfer, charge, or payment as a preference, the trustee must show that such transfer, charge or payment was made by the firm to a firm creditor with concurrent intent on the part of both the debtors & their creditor that, as a result of such transaction, the creditor should obtain a preference over other creditors of the firm.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—**CAN.**

c (p. 865) **x.** ——.]—*Re* BOAK (GEO. E.) & SON (N. S.), [1926] 1 D. L. R. 1179; 7 C. B. R. 477.—**CAN.**

c (p. 865) **xi.** ——.]—*Re* DEMERY (Ont.), [1926] 2 D. L. R. 120; 7 C. B. R. 271.—**CAN.**

c (p. 865) **xii.** ——.]—*Re* KINNIBURGH (Ont.), [1927] 3 D. L. R. 748; 8 C. B. R. 303.—**CAN.**

c (p. 865) **xiii.** ——.]—ROBINSON *v.* MCCAULEY (Man.) (1913), 24 W. L. R. 617; 4 W. W. R. 930; 13 D. L. R. 437.—**CAN.**

c (p. 865) **xiv.** ——.]—BANK OF MONTREAL *v.* SHEAN, [1931] 4 D. L. R. 305; O. R. 489; 12 C. B. R. 479.—**CAN.**

7224 viii. —— —— ——.]—Preference must be given voluntarily by debtor, & where a creditor demands a transfer or a mtge., such a demand imports pressure & will be sufficient to rebut the suggestion of preferring that creditor.—COPP *v.* WILLIAMS 1922), 65 D. L. R. 377.—**CAN.**

7224 ix. —— —— ——.]—Security given by an insolvent debtor to a creditor with intent to give him a preference over other creditors is void: but the existence of the intent may be negatived by showing that the debtor yielded to the importunity of the preferred creditor, & may also be negatived by proof of the existence of some other motive which may not have had its origin in the creditor, *e.g.* when property is conveyed as the result of fear of a criminal prosecution or where the transaction has its origin in the recognition of a moral obligation to restore property improperly converted. When the idea of giving the security originates with the debtor, pressure plays no part in the transaction.—GOLDMAN *v.* HARRISON, [1928] 3 D. L. R. 73; 62 O. L. R. 291.—**CAN.**

p (p. 866) **i.** —— *Bankruptcy Act*, 1908, *s.* 79 (3).]—"Good faith" in the above sub-sect. means absence of knowledge that a preference was intended.—*Re* LINNEY (H.) & CO., LTD., [1925] N. Z. L. R. 907.—**N.Z.**

7228 x. ——.]—A debtor who was unable to pay a certain creditor obtained from her a further loan secured by a mtge. Shortly after debtor made an authorised assignment. The original debt was not included in the mtge., & at the time the creditor was not aware of any available act of bkpcy. on the part of debtor :—*Held :* there was no intention to prefer, & the creditor might reasonably conclude that the loan would enable debtor to carry on his business, & the mtge. was declared valid.—*Re* GOLDSTEIN, [1923] 1 D. L. R. 864; 53 O. L. R. 60.—**CAN.**

7228 xi. ——.]—There is no fraudulent preference unless bkpt.'s real, dominant, & substantial motive was a desire to prefer the particular creditor over his other creditors. If his real reason was something else, some benefit, to be obtained for himself, the transaction cannot be attacked as a fraudulent preference.—OFFICIAL ASSIGNEE *v.* WAIRARAPA FARMERS' CO-OPERATIVE SOCIETY, LTD., [1925] N. Z. L. R. 1.—**N.Z.**

7235 ii. —— ——.]—Where an assignment of a book debt had been made within three months preceding the authorised assignment :—*Held :* the burden of establishing that it was not a preference was cast upon the assignee-creditor, & evidence of pressure would be of no avail to support the transaction.—*Re* WEBB (1921), 64 D. L. R. 633; 51 O. L. R. 5; 2 C. B. R. 16.—**CAN.**

7235 iii. —— ——.]—*Re* PROGRESSIVE FARMERS CO., *Ex p.* BROWN BROTHERS & BURNSTAD, LTD., [1923] 1 W. W. R. 833; 3 C. B. R. 702.—**CAN.**

a (p. 868) **i.** —— ——.]—Where a debtor agreed with a creditor that he should have some special advantage if debtor became bkpt., & the result was to avoid a distribution under Bkpcy. Act of bkpt.'s property :—*Held :* the agreement was void.—*Re* WETMORE, *Ex p.* BAIRD & PETERS, [1924] 4 D. L. R. 66.—**CAN.**

d (p. 868) **i.** —— —— ——.]—Although a previous agreement to give security may serve to rebut the intention to prefer in giving security by one in insolvent circumstances, if the transaction is attacked after sixty days, yet under Assignments Act, ss. 39 & 41, if the giving of security is attacked within sixty days the transaction is utterly void & nothing will rebut such a result.—HODGE *v.* MCLEAN & UNION BANK OF CANADA, [1919] 2 W. W. R. 855; 12 Sask. L. R. 298.—**CAN.**

d (p. 868) **ii.** —— —— ——.]—Pltf. co., a creditor of a trading firm, obtained from their debtors a chattel mtge. & an assignment of book-debts. The firm afterwards made an assignment to deft. for the benefit of creditors. Pltf. co. sought to establish its priority over the assignment to deft. :—*Held :* as deft.'s assignment was not made within sixty days after the transaction with pltf. co., & the transaction was not attacked within sixty days, there was no statutory presumption of invalidity under Assignments & Preferences Act, R. S. O. 1914 (c. 134), s. 5.—CRAIG (W. G.) & CO., LTD. *v.* GILLESPIE (1920), 47 O. L. R. 529; 54 D. L. R. 514.—**CAN.**

d (p. 868) **iii.** —— —— ——.]—A conveyance attacked as a preference within sixty days of its execution is void, regardless of the intent in giving it & of the pressure exerted to obtain it, if at the time of its execution debtor was in insolvent circumstances or unable to pay his debts in full & the conveyance had the effect of giving a preference, as defined by Assignments Act, R. S. M., 1913 (c. 12), s. 42, over the execution creditor attacking it.—TROTTER *v.* PEDLAR, [1921] 1 W. W. R. 233; 56 D. L. R. 717.—**CAN.**

c (p. 869) **i.** —— —— —— ——.]—The statutory presumption of intent to prefer cannot be rebutted by proof that the debtor had no desire to prefer, but simply yielded to the pressure applied by the creditor.—PELLATT & PELLATT, LTD. *v.* MCLEAN, [1929] 3 D. L. R. 82; 63 O. L. R. 552.—**CAN.**

p (p. 869) **i.** —— *Transaction within three months of insolvency.*]—BRISCOE *v.* STANDARD BANK (1923), 53 O. L. R. 623; 3 C. B. R. 863.—**CAN.**

p (p. 869) **ii.** —— ——.]—If a creditor knows debtor is insolvent before he enters into a transaction with him & the effect is to give to that creditor a preference, it makes no difference what was the motive, view, or interest of debtor if bkpcy. intervenes within three months, as the creditor could not possibly rebut the presumption of undue preference, & the transaction will be deemed fraudulent & set aside.—*Re* LAVINE, [1924] 3 D. L. R. 318; 4 C. B. R. 664.—**CAN.**

p (p. 869) **iii.** —— ——.]—*Held :* a creditor to whom bkpt. had made certain payments within three months prior to the assignment had not met the presumption that such payments were preferential, & such payments were fraudulent & void.—*Re* BLACK & WHITE HAT SHOP, LTD., NEWTON *v.* FINESILVER, [1925] 4 D. L. R. 245; [1925] 2 W. W. R. 782.—**CAN.**

7261a.—— ——.]—In order to constitute "pressure," it is not necessary that legal proceedings should have been resorted to, for, if the pressure was such that it overweighed the bkpt.'s own inclination, & induced him to pay against his will, that would be sufficient pressure within the meaning of the bkpt. laws.—GREEN & COX *v.* BRADFIELD (1844), 1 Car. & Kir. 449; 174 E. R. 887.

7267. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7267a. ——.]—*Re* HOYLE, *Ex p.* TRUSTEE, No. 7172a, *ante.*

7268. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7270. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7273. *Add. Annotation :*—**Refd.** *Re* Conley, *Ex p.* Trustee *v.* Barclays Bank, Ltd., [1938] 2 All E. R. 127.

7318. *Add. Annotations :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515; *Re* M. I. G. Trust, Ltd., [1933] Ch. 542. **Refd.** *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22; *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765; Peat *v.* Gresham Trust, Ltd., [1934] A. C. 252; *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

7323. *Add. Citation :*—*sub nom.* MORGAN *v.* BAKER, 2 Jur. 1068.

7334. *Add. Annotation :*—**Consd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 6: 8.

7337. *Add. Annotation :*—**Refd.** *Re* Stanton, [1929] 134 L. T. 765.

7339a. Agreement to assign interests—In consideration of advance—No memorandum of agreement within Statute of Frauds.]—By a parol agreement between a lender & D., the former agreed to lend & did lend D. £2,000 in consideration of the latter's promise to assign certain interests. About a year later, in pursuance of this agreement, D. assigned these interests to the lender, & became bkpt. immediately afterwards. At the time of the assignment no memorandum of the above agreement within Stat. Frauds, s. 4, was in existence, but it was recited in the assignment :—*Held :* the assignment, notwithstanding the failure of bkpt. to set up the statute in answer to the claim by the lender for the performance of the agreement, did not constitute a fraudulent preference or a fraudulent conveyance under 1914 Act, & was valid as against the trustee in bkpcy.—*Re* DAVIES, *Ex p.* MILES, [1921] 3 K. B. 628; *sub nom. Re* DAVIES, *Ex p.* TRUSTEE, 91 L. J. K. B. 81; [1921] B. & C. R. 92.

7340. *Add. Annotation :*—**Apld.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

7359. *Add. Annotations :*—**Consd.** *Re* Stanley (1924), 69 Sol. Jo. 36; *Re* Conley, *Ex p.* Trustee *v.* Barclays Bank, Ltd., [1938] 2 All E. R. 127.

7360. *Add. Annotations :*—**Consd.** *Re* Stanley (1924), 69 Sol. Jo. 36; *Re* Conley, *Ex p.* Trustee *v.* Barclays Bank, Ltd., [1938] 2 All E. R. 127.

7361a.—— ——.]—A private co., of which a father & son were the only directors & shareholders, was ordered to be wound up, & within the preceding three months the son paid a sum of £1,503 odd into the co.'s bank to reduce an overdraft of the co. to secure which his father had given a guarantee. The liquidator claimed repayment of the sum as being a fraudulent preference within Cos. (Consolidation) Act, 1908 (c. 69), s. 210, & a preliminary

PART XX. SECT. 12, SUB-SECT. 4.—B.

ak. *Pressure—Must be actual.*]—"Pressure," in Bkpcy. Act, s. 31 (2), means actual pressure in its original sense, the pressure which is brought to bear by a creditor upon his debtor, & not some secret motive under the impulse of which debtor acts, but which is not actual pressure.—*Re* BELL, [1922] 1 W. W. R. 1015; 2 C. B. R. 271; 67 D. L. R. 66; 32 Man. L. R. 9.—**CAN.**

al. —— ——.]—The absence of fraudulent intention in the circumstances in which the fund is taken does not constitute "pressure" within Bkpcy. Act, s. 31 (2).—*Re* CARSON, [1924] 4 D. L. R. 492; 55 O. L. R. 649; 4 C. B. R. 683.—**CAN.**

7258 vi. —— ——.]—GRANT *v.* VAN NORMAN (1882), 7 A. R. 526.—**CAN.**

7258 vii. —— ——.]—MANSOOKHLAL DOLATCHAND & CO. *v.* NAGARDASS MOOLCHAND (1928), I. L. R. 6 Ran. 536.—**IND.**

7271 viii. ——.]—Evidence disclosing a dominant motive such as fear of prosecution or disgrace, impelling debtor to give the security, is admissible to rebut the *primâ facie* presumption raised by Bkpcy. Act, s. 31 (2).—*Re* BELL (1922), 67 D. L. R. 66; 32 Man. L. R. 9; [1922] 1 W. W. R. 1015.—**CAN.**

7307 iii. —— ——.]—BROCKLESBY *v.* FREEDMAN-ELLIS, [1932] 1 D. L. R. 187; O. R. 56; *revsd. on facts,* [1932] 2 D. L. R. 818; O. R. 439.—**CAN.**

7310 i. *revsd.* (1915), 51 S. C. R. 554.

PART XX. SECT. 12, SUB-SECT. 4.—C.

m i. ——.]—Moneys improperly drawn by an exor. from the funds of testator's estate & applied to exor.'s own uses were restored by him within three months before he was declared a bkpt. :—*Held :* the restoration was not a preferential payment within Bkpcy. Act, s. 31. The estate was not a "creditor" of the exor. within the sect., though in some sense a creditor.—*Re* CARSON, [1924] 4 D. L. R. 492; 55 O. L. R. 649; 4 C. B. R. 683.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—E.

r (p. 889) **i.** *Security to cover advance & past debt.*]—A security given for such a purpose :—*Held :* to be given for valuable consideration & *bonâ fide,* & under pressure, & an action on behalf of other creditors attacking the security was dismissed with costs.—BANQUE D'HOCHELAGA *v.* JEANNOTTE, [1923] 1 W. W. R. 28; 16 Sask. L. R. 523.—**CAN.**

7347 v. ——.]—An incorporated co., being in fact insolvent, made in favour of its president, a creditor, as guarantor, a mtge. on its plant to secure him for moneys paid to the co., & by the co. to its bankers, in reduction of the co.'s liability within two months of the co. being adjudged bkpt. :—*Held :* the transaction was free from any taint of fraud; the co. entered into it for the sole object & in the *bonâ fide* expectation & belief that it would thereby be enabled to carry on its business successfully, & not with the view of preferring either the president or the bank to the co.'s other creditors.—BURNS *v.* ROYAL BANK OF CANADA, BURNS *v.* GRAHAM (1922), 69 D. L. R. 608; 51 O. L. R. 564; 2 C. B. R. 241.—**CAN.**

7347 vi. ——.]—A debtor gave a creditor a mtge. & the effect of that was to give the mtgee. a preference :—*Held :* when the mtge. was created, as debtor had not been sued by his creditors & his sole reason for giving the mtge. was that he might continue his business & pay off his other creditors, this was not a fraudulent preference.—*Re* BARTER, [1923] 1 D. L. R. 919; 3 C. B. R. 631.—**CAN.**

7347 vii. ——.]—A preference to be fraudulent must be given with the intention of creating rights additional to those possessed by other creditors, & where a preference is given not to give one creditor an unfair advantage over other creditors, but to enable debtor to extinguish a past debt & to carry on his business & the preferred creditor has no knowledge of any available act of bkpcy. on the part of debtor, such a preference is not fraudulent within Bkpcy. Act.—*Re* BUCHANNAN, [1923] 1 D. L. R. 391; 3 C. B. R. 427.—**CAN.**

7347 viii. ——.]—CANADIAN BANK OF COMMERCE *v.* TREACY, [1924] 2 W. W. R. 193; 2 D. L. R. 759.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—F.

7359 ii. ——.]—The trustee in bkpcy. of H. under an authorised assignment sought to recover payments made by H., when in a hopeless state of insolvency, for the purpose, as his creditors, defts., knew, of preferring them so that his guarantors might be as far as possible relieved. The payments were made within a few days of H.'s voluntary assignment, & some were made after the assignment :—*Held :* defts. had not at the times of payment notice of any "available act of bkpcy." committed by H.; the transactions were all before Bkpcy. Act, 1921 (c. 17), s. 3, but the payments were not made "in good faith."—BRISCOE *v.* MOLSONS BANK (1922), 69 D. L. R. 675; 51 O. L. R. 644.—**CAN.**

objection being raised that in any event no order for repayment could be made :—*Held :* (1) the real object of the insertion of the words " or any surety or guarantor for the debt due to such creditor," in Bkpcy. Act, 1914 (c. 59), s. 44 (1), was to enable the trustee to recover the payment from the person actually preferred ; (2) the motive of the son in making the payment being to keep the business going, there was no fraudulent preference, & the summons must be dismissed.—*Re* STANLEY (G.) & Co., [1925] Ch. 148 ; 94 L. J. Ch. 187 ; 133 L. T. 37 ; 69 Sol. Jo. 36 ; [1925] B. & C. R. 1.

Annotations :—**Consd.** *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201 ; *Re* Conley, *Ex p.* Trustee *v.* Barclays Bank, Ltd., [1938] 2 All E. R. 127.

7365. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

7393. *Add. Annotation :*—**Refd.** *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

7393a. Payment of proceeds of sale of shares—Payment before transfer.]—Certain stockbrokers within a fortnight of a receiving order being made against them sold shares for a client & paid the proceeds to him before the transfer was executed. The sale was effected by what is called " a put through " by which a jobber lends his name as purchaser, but no money is paid :—*Held :* the payment was made without pressure & was a fraudulent preference.—*Re* FELLOWES, O'BRIEN, GORDON & TOOTAL (CARRYING ON BUSINESS AS ELLIS & Co.) (1924), 68 Sol. Jo. 478.

7396. *Add. Annotations :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542. **Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7404. *Add. Annotation :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7411. *Add. Annotation :*—**N.F.** *Re* Seymour, Trustee *v.* Barclays Bank, Ltd., [1937] 3 All E. R. 499.

7411a. ——.]—On Mar. 17, 1936, a petition in bkpcy. was served on the debtor. In May, 1936, he had two accounts with his bank, one, in use, at its Marble Arch branch, the other, dormant, at its Edgware Road branch, the latter being overdrawn by £240 6*s.* 4*d.* & the overdraft guaranteed by a friend of the debtor. On May 5, 1936, the Marble Arch account being then overdrawn by £2 12*s.* 11*d.*, the debtor obtained £300 from moneylenders, & on the next day paid £300 into the Marble Arch account, withdrew £250, & paid £240 6*s.* 4*d.* into the Edgware Road account. On July 27, 1936, a receiving order was made against him on the petition of Mar. 17, 1936. On Dec. 9, 1936, he was adjudicated a bkpt., & on Dec. 11, 1936, the appointment of the trustee in the bkpcy. was confirmed. The trustee contended that his title as trustee related back to Mar. 17, 1936, that the debtor on May 5, 1936, knew himself to be insolvent & next day, intending to prefer the guarantor, paid into the Edgware Road account the £240 6*s.* 4*d.*, that that money was the trustee's property, & that the payment of it was not protected by 1914 Act, s. 45, & that the bank should pay it to the trustee. On a motion by the trustee for a declaration that the money formed part of the debtor's estate & that the debtor's payment of it to the bank was void as against the trustee, made in bad faith, & contrary to the bkpcy. laws :—*Held :* the payment was protected by sect. 45.—*Re* SEYMOUR, *Ex p.* TRUSTEE, [1937] Ch. 668 ; *sub nom. Re* SEYMOUR, TRUSTEE *v.* BARCLAYS BANK, LTD., [1937] 3 All E. R. 499 ; 157 L. T. 472 ; 53 T. L. R. 940 ; 81 Sol. Jo. 629 ; [1936-7] B. & C. R. 178.

PART XX. SECT. 12, SUB-SECT. 4.—G.

7381 iv. —— ——.]—*Re* ASSAF & DABOUS (Ont.), [1927] 1 D. L. R. 24 ; 7 C. B. R. 689.—**CAN.**

7388 ii. —— *Conveyance of property for past consideration—Creditor with knowledge of existence of other creditors.*]—*Re* DAVID, [1925] 4 D. L. R. 1046 ; *affg.*, [1925] 1 D. L. R. 164 ; 5 C. B. R. 323.—**CAN.**

sm. *Sale by creditor—Collusive sale—Payment of proceeds of sale to creditor.*]—*Held :* the transaction must be set aside for it was not really only a " payment of money to a creditor," saved out of the general provisions of Assignments & Preferences Act ; R. S. O. 1914 (c. 134), by sect. 6. The transaction was substantially an appropriation of goods in part payment of a preferred creditor's claim, & the proceeds of the sale could be reached by the assignee under sect. 13.—MACFIE *v.* CATER (1921), 64 D. L. R. 511 ; 50 O. L. R. 452.—**CAN.**

sn. *Cheque obtained from debtor—Three days before bankruptcy—Accepted by bank on day of bankruptcy.*]—*Held :* a cheque does not operate as an assignment of the funds of drawer in the hands of the person on whom it is drawn ; & unless payment was made by the drawee before the assignment it was not a payment protected by Assignments & Preferences Act, s. 6 (1) ; but if paid before the assignment it was a payment in cash at the date when the cheque was paid by the bank.—ROWLATT *v.* GARMENT (J. & G.) MANUFACTURING Co (1921), 64 D. L. R. 88 ; 49 O. L. R. 166.—**CAN.**

7395 iii. —— *Mortgagee party to fraud.*]—Debtor granted a mtge. to certain of his creditors. No money changed hands & at the time it was known to debtor & to the creditors, the mtgees., that debtor was insolvent. The mtge. was part of a scheme to give an undue preference :—*Held :* void under Assignments for Benefit of Creditors Act, 1898 (P. E. 1) (c. 4), & might be set aside as against the trustee in bkpcy.—CAMPBELL *v.* GALLANT, CROCKETT & ROYAL BANK OF CANADA, *Re* MILLIGAN ESTATE (1922), 70 D. L. R. 320.—**CAN.**

a (p. 901) **i.** *Assignment for creditors.*]—Creditors who take under a composition affecting substantially the whole of debtor's property are entitled to the protection of Bkpcy. Act, s. 82, as against the official assignee, upon debtor shortly afterwards being adjudicated bkpt., provided the payment was before adjudication & that the creditors had not at the time of such payment notice of any available act of bkpcy. committed before that time & acted in good faith.—*Re* COCHRANE, [1925] N. Z. L. R. 15.—**N.Z.**

so. *Dissolution of partnership—Act injurious to partnership creditors—Preference given to separate creditors.*]—*Re* ASSAF & DABOUS (Ont.), [1927] 1 D. L. R. 24 ; 7 C. B. R. 689.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 5.

7407 i. *How time calculated—Assignment executed but not filed—Subsequent re-execution & filing.*]—An authorised assignment dated, executed, & delivered on Aug. 11, was re-executed on Sept. 11, & then filed :—*Held :* the assignment was not revocable at the will of assignor ; as soon as the trustee accepted the assignment it took effect as of the day of its original execution.—*Re* LONGMORE (1922), 52 O. L. R. 570 ; 3 C. B. R. 200.—**CAN.**

f i. —— *Law of Ontario.*]—A chattel mtge. impeached as a fraudulent preference under r. 120 by the trustee was made more than three months before the assignment to the trustee :—*Held :* although the chattel mtge. did not come within Bkpcy. Act, s. 31, the trustee could attack it as fraudulent under the laws of Ontario quite apart from the Act.—*Re* DAVISON, [1923] 4 D. L. R. 1049 ; 52 O. L. R. 244.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 6.

m (p. 903). For " —— *In what court proceedings may be taken* " read " *In what court proceedings may be taken.*"

m (p. 903) **i.** ——.]—The fact that a fraudulent transfer was made in a province other than that in which the authorised assignment was made, does not deprive the ct. of the latter province with original jurisdiction with respect to the authorised assignment of jurisdiction to set aside the fraudulent transfer.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942 ; [1926] 3 W. W. R. 34 ; *revsd.*, [1927] 1 D. L. R. 577 ; [1927] 1 W. W. R. 162 ; 22 Alta. L. R. 487 ; 8 C. B. R. 23.—**CAN.**

7412 ii. —— *Prior assignment of same property to same parties.*]—The fact of a prior assignment does not affect the right to set aside a later assignment of the same property to the same parties, & the setting aside of the later assignment does not affect rights under the prior assignment.—HODGE *v.* MCLEAN & UNION BANK OF CANADA,

7414a. —— **Payment to agent of creditor—Agent paying over sum to principal in course of business.**]—A payment by a debtor to an agent who receives the money in the ordinary course of his employment for the use of a creditor is not a payment in favour of a " person in trust for any creditor," within 1914 Act, s. 44. The effect of that sect. is not to render the personal liability of an agent to repay a debt, payment of which he has received on behalf of his principal, greater than his liability in a case where money has been paid to him for the use of his principal in circumstances which entitle the person paying it to recover it back, even though it should turn out that, in fact, the payment constituted a fraudulent preference within the sect.

M. being indebted to G. & also to a co. for the price of goods supplied, on Jan. 14, 1921, paid to C. & B., agents of G. & the co. &, to the knowledge of debtor, authorised to receive the payment, the sum of £1,500 in settlement of the amounts respectively owing to G. & the co. The agents in the ordinary course of their employment received that sum for the use of their principals & paid over part thereof to G. & the balance to the co., such payment being made in good faith, in the belief that the payment was a good & valid payment, in ignorance of the impending bkpcy. of debtor & long before any claim by the trustees in the bkpcy. On Feb. 11, 1921, debtor committed an act of bkpcy. by assigning his property in favour of his creditors, & on Mar. 12, 1921, a receiving order was made against him on which he was adjudicated bkpt. Upon a motion by the trustees of bkpt. for an order on C. & B. as agents, neither of their principals having been made resps., to repay the £1,500 on the ground that the payment was void against the trustees as a fraudulent preference:—*Held:* (1) C. & B. received the money merely as agents of & for the use of the creditors in the ordinary course of their employment, & not as " persons in trust for any creditor " within 1914 Act, s. 44; (2) the circumstances under which the money was received & paid over precluded appcts. from recovering the money, even though it were proved that the payment, in fact, constituted a fraudulent preference, as to which the ct. did not consider it to be necessary to decide. *Semble:* (3) the personal liability of a person to whom payment has been made " in trust for any creditor " under 1914 Act, s. 44, must depend upon the facts of each case; in particular, whether the trustee had acted in good faith & whether he still held the money or had paid it over to the creditor before having received notice that the payment constituted a fraudulent preference.—*Re* MORANT, *Ex p.* TRUSTEES, [1924] 1 Ch. 79; 93 L. J. Ch. 104; 130 L. T. 398; [1923] B. & C. R. 145.

7416. *Add. Annotation:*—**Refd.** *Re* Yagerphone, Ltd., [1935] Ch. 392.

7420. *Add. Citation:*—10 B. & S. 371.

7428. *Add. Annotations:*—**Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

7430. *Add. Annotation:*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

[1919] 3 W. W. R. 1108; 50 D. L. R. 123; 13 Sask. L. R. 85.—**CAN.**

7412 iii. —— *Denial by transferee that property belongs to bankrupt.*]—The words " property belonging to debtor " in Bkpcy. Act, s. 56 (8), have practically the same meaning as " property of debtor " used in sect. 25, & include property of debtor which has been dealt with by himself by transfer to a creditor, & the fact that an alleged fraudulent transferee from bkpt. does not admit that the property in question belongs to bkpt. does not prevent an application being brought under the above sect. & Bkpcy. Rule 120, for the delivery of the property to the trustee.—*Re* HOULDING, [1921] 2 W. W. R. 521; 14 Sask. L. R. 277; 59 D. L. R. 238.—**CAN.**

7412 iv —— *Discharge of bankrupt's liability by transaction.*]—A trustee in bkpcy. has no right to set aside a transfer made by bkpt. to a creditor whereby bkpt.'s liability to the creditor is discharged, even though the transfer amounts to a fraudulent preference.—*Re* REGAL PHONOGRAPH CO., *Ex p.* TRUSTEE, [1924] 1 D. L. R. 947; 4 C. B. R. 418.—**CAN.**

7412 v. —— *As against the Crown.*]—The provisions of Bkpcy. Act, 1908, relating to fraudulent preference do not bind the Crown.—OFFICIAL ASSIGNEE *v.* R., [1922] N. Z. L. R. 265.—**N.Z.**

7413 viii. —— *Person claiming property in question as owner & not as creditor not proper party.*]—*Re* STERNBERG, *Ex p.* TRIEFUS & STRIPP, LTD., [1925] 2 D. L. R. 203; 5 C. B. R. 237; *varying*, [1924] 2 D. L. R. 492; 4 C. B. R. 528.—**CAN.**

7414 iv. —— ——.]—In Assignments Act, R. S. S. 1909 (c. 142), s. 39, " sixty days thereafter " means sixty days after the date of the conveyance & not after the date of some prior agreement upon which such conveyance may have been made, & " such transaction " means the conveyance & not such prior agreement.—HODGE *v.* MCLEAN & UNION BANK OF CANADA, [1919] 3 W. W. R. 1108; 50 D. L. R. 123; 13 Sask. L. R. 85.—**CAN.**

w (p. 904) i. —— *After settlement by trustee of preferred creditor's claim.*]—*Re* TAYLOR (Ont.), [1926] 2 D. L. R. 877; 7 C. B. R. 550.—**CAN.**

sp. —— *Note given by purchaser of debtor's stock-in-trade indorsed to creditor—Note in hands of bonâ fide holder for value.*]—*Held:* the creditor could not be compelled to share ratably with the other creditors.—ROBERTSON *v.* HOLLAND (1888), 16 O. R. 532.—**CAN.**

sq. *Position of trustee — Cannot approbate & reprobate — Promissory notes transferred to & discounted by creditor.*]—*Re* LONGMORE (1922), 52 O. L. R. 570; 3 C. B. R. 200.—**CAN.**

st. —— *Estoppel by conduct.*]—S. made a bill of sale of certain chattels to deft. in order to protect the chattels against his creditors. Shortly afterwards S. made an assignment under Bkpcy. Act to pltf., who later sold at public auction the assets of S. not included in the bill of sale. On the same occasion the auctioneer sold, on instructions of S., the chattels included in the bill of sale & paid the proceeds to S. who left Canada without paying them to deft.:—*Held:* pltf., having refrained from attacking the bill of sale earlier & having allowed the sale to proceed & the moneys to be paid to S., it was too late to hold deft. liable.—*Re* STEVENS, IMPERIAL CANADIAN TRUST CO., LTD. *v.* NORTH AMERICAN LUMBER & SUPPLY CO., LTD., [1924] 2 W. W. R. 245; 4 C. B. R. 632; [1924] 2 D. L. R. 104.—**CAN.**

sw. *Avoidance of transfer fraudulent under general laws.*]—The right of a trustee in bkpcy. to take proceedings to avoid a transfer made by bkpt. which is in fraud of his creditors under general laws is impliedly authorised by Bkpcy. Act & the rules thereunder.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34; *revsd.* [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—**CAN.**

1 (p. 906) i. —— —— —— *Bankruptcy Act, s.* 35 — *Bankruptcy Rules, r.* 120.]—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 341; *revsd.*, [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—**CAN.**

PART XX. SECT. 13, SUB-SECT. 1.

7430 v. ——.]—MERCHANTS BANK OF CANADA *v.* KEN MCCLARY & CO., [1921] 1 W. W. R. 940; 14 Sask. L. R. 187.—**CAN.**

sz. *Payment of wages.*]—Pltf., trustee in bkpcy. of the property of a co., sued defts. who were the directors & officers of the co., & the only shareholders except their wives, to recover sums of money withdrawn by defts. from the funds of the co. Defts. had earned a large part of the sums withdrawn as employees of the co.:—*Held:* pltf. co. as trustee had no *locus standi* to maintain the action; its right was no greater than the right of the co. which it represented; the bkpt. co. could not recover payments actually made by it for wages, nor could its trustee.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* REAUME, [1931] 4 D. L. R. 450; O. R. 398; 12 C. B. R. 429.—**CAN.**

7438. *Add. Annotation :*— **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

7438a. —— ——.]—A father, having a power of appointment over a fund in favour of his children, agreed with his son to pay his debts, & then to appoint to him a portion of the fund equal to the amount of his debts, which he was then to hand over to the father. The father paid the debts, & made the appointment, when the son became bkpt. :—*Held :* the trustee had no right to the fund appointed. —*Re* ANGERSTEIN, *Ex p.* ANGERSTEIN (1874), 9 Ch. App. 479 ; 43 L. J. Bcy. 131 ; 30 L. T. 446 ; 22 W. R. 581, L. JJ.

7440. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7442. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7443. *Add. Annotation :*—**Consd.** *Re* Seymour, Trustee *v.* Barclays Bank, Ltd., [1937] 3 All E. R. 499.

7446. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

7447. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

7449. *Add. Annotation :*—**Refd.** *Re* Seymour, Trustee *v.* Barclays Bank, Ltd., [1937] 3 All E. R. 499.

7483a. —— **1914 Act, s. 45.**]—*Re* WETHERED, *Ex p.* SALAMAN, No. 6858b, *ante*.

7490. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7503a. —— **1914 Act, s. 45—Transfer to private company formed by debtor & his solicitor.**]—*Re* SIMMS, No. 596a, *ante*.

7520. *Add. Annotation :*—**Consd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

7521. *Add. Annotation :*—**Refd.** *Re* Harris, *Ex p.* Shell-Mex & Official Receiver (1930), 99 L. J. Ch. 448.

7543. *Add. Annotation :*—**Consd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

7546a. —— **That bankruptcy notice served on debtor—& of petitioning creditor's intention to take bankruptcy proceedings.**]—Deft. to an action, in which the trustee in bkpcy. claimed that certain farm stock in a bill of sale given to deft. by bkpt. was in the reputed ownership of bkpt. & formed part of his estate, had been informed of the service on bkpt. of a bkpcy. notice, & later had been informed by the petitioning creditor that he was going to take bkpcy. proceedings against his debtor :—*Held :* a mere statement of intention to take bkpcy. proceedings amounted at most to a threat to file a petition, &, falling short of a notice of the actual presentation of a petition, it was not constructive notice of an available act of bkpcy.—HERBERT'S TRUSTEE *v.* HIGGINS, [1926] Ch. 794 ; 95 L. J. Ch. 303 ; 135 L. T. 321 ; 42 T. L. R. 525 ; 70 Sol. Jo. 708 ; [1926] B. & C. R. 26.

7574. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

7577. *Add. Annotation :*—**Refd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70.

7594. *Add. Annotations :*—**Consd.** *Re* Garrett, [1930] 2 Ch. 137 ; *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

7595. *Add. Annotation :*—**Consd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

7598. *Add. Annotations :*—**Apld.** *Re* Garrett, [1930] 2 Ch. 137. **Consd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

7599. *Add. Annotation :*—**Consd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

7600. *Add. Annotation :*—**Consd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

7601. *Add. Citation :*—*revsg.* S. C. *sub nom. Re* WIX, *Ex p.* CHATTERBY, 29 W. R. 400.

7603a. —— **Employee of company—Refusal of company to pay—Termination of employment alleged.**]—Bkpt., after his adjudication, entered into an agreement of service in writing for one year at a salary of £1,000, the agreement being signed in the name of a joint stock co., underneath which was the name of the managing director followed by the words, "managing director." An order was subsequently made by a registrar, under 1914 Act, s. 51 (2), that £300 out of a sum of £416 13*s.* 4*d.* due under the agreement from the co. &/or its managing director to bkpt.

PART XX. SECT. 13, SUB-SECT. 2.—A. (a).

8a. *Failure to make proper inquiries.*]—By Bkpcy. Act a creditor who takes a mtge. & fails to make the proper inquiries will be held to have knowledge of the insolvency of the mtgor. at the time of giving the mtge., & the mtge. will be set aside as a fraudulent preference.—*Re* THOMPSON, *Ex p.* TRUSTEES, [1923] 4 D. L. R. 1028.—**CAN.**

8b. ——.]—Where the circumstances under which a debt is paid are such that a strong suspicion would arise in the mind of an ordinary business man as to the *bona fides* of the payment, the payee ought to inquire closely into all the circumstances. Otherwise, if the payer becomes bkpt., the payment will be construed as a fraudulent preference. —*Re* STERNBERG (1924), 27 O. W. N. 212 ; *varying*, [1924] 2 D. L. R. 492 ; 4 C. B. R. 528.—**CAN.**

PART XX. SECT. 13, SUB-SECT. 2.—A. (b).

8c. *General rule.*]—When a person knows of an act of bkpcy. or wilfully refrains from making such inquiries as would give him such knowledge, or where the facts are such that an act of bkpcy. had been committed, such a person will be deemed to have notice.—*Re* HERSH, *Ex p.* GOLDSTEIN, [1923] 3 D. L. R. 101 ; 4 C. B. R. 84.—**CAN.**

7537 iv. —— *That debtor financially embarrassed.*]—*Held :* not of itself knowledge of insolvency.—*Re* WEBB (1921), 64 D. L. R. 633 ; 51 O. L. R. 5 ; 2 C. B. R. 16.—**CAN.**

7537 v. —— *That debtor hard pressed for money.*]—*Held :* not sufficient to infer that a creditor had constructive notice of an act of bkpcy.—*Re* ROBBINS, *Ex p.* ROOT, [1924] 3 D. L. R. 90 ; 4 C. B. R. 670.—**CAN.**

PART XX. SECT. 13, SUB-SECT. 2.—C.

7581 vi. —— ——.]—Every payment made by bkpt. within a short time of his bkpcy. is regarded with suspicion by the ct. as likely to be a fraudulent preference. The *onus* is on the payee to show that he had no knowledge of an available act of bkpcy., actual or constructive, that he gave some consideration for the payment & that he was actuated by no fraudulent motive in accepting such payment.—*Re* HOWARD GRAHAM & Co., *Ex p.* GRAHAM, [1923] 2 D. L. R. 1024 ; 3 C. B. R. 855.—**CAN.**

7581 vii. —— ——.]—*Re* GROCERY SPECIALTY CO., *Re* SHULMAN, [1923] 2 D. L. R. 316 ; 3 C. B. R. 46 ; *affd.*, 24 O. W. N. 90.—**CAN.**

PART XX. SECT. 15.

7599 i. *Salary or income—Member of Legislative Assembly.*]—The annual allowance of a member of the Legislative Assembly of New South Wales, paid to him pursuant to the Constitution Act (N. S. W.), 1902, s. 28, is within the operation of the Bkpcy. Act (Federal), 1924-30, s. 101, of which is valid. Further, the Ct. of Bkpcy. properly exercised its discretionary power under s. 101, in ordering a bkpt. member of the Legislative Assembly to pay portion of his allowance to the Official Receiver.—STUART-ROBERTSON *v.* LLOYD, [1932] ARGUS L. R. 369 ; 6 A. L. J. 144.—**AUS.**

7601 ii. —— *Fixed annual salar payable weekly.*]—A fixed annual salary payable in weekly instalments to a bkpt. debtor constitutes property of the bkpt. within Bkpcy. Act, R. S. C., 1927, s. 23.—CLARKSON *v.* TODD, [1934] 2 D. L. R. 316 ; S. C. R. 230 ; *revsg.* S. C. *sub nom. Re* TOD, [1933] 1 D. L. R. 422 ; O. R. 519.—**CAN.**

be forthwith paid by them to the trustee of the estate of bkpt. When the registrar made that order the only parties before the ct. were the trustee & bkpt. Neither the co. nor its managing director paid the £300, but alleged that nothing was due to bkpt. upon the ground that he had broken the agreement by absenting himself from his employment. The trustee then served a notice of motion in the High Ct. upon the co. & its managing director asking for a declaration that he was entitled to the £300 from resps. as forming part of the property of bkpt., & for an order for payment of that amount. The judge found that no dismissal had taken place nor had bkpt., by his conduct, given notice of his intention not to perform the contract which could be treated by resps. as an anticipatory breach. No point was taken as to whether the managing director was properly made a resp.:—*Held:* in the circumstances there must be a declaration & order for payment in terms of the notice of motion.—*Re* LAVEY, *Ex p.* TRUSTEE, [1920] 1 K. B. 674; 89 L. J. K. B. 24; 122 L. T. 592; [1920] B. & C. R. 43; *subsequent proceedings*, [1920] B. & C. R. 186.

7603b. —— Maintenance.]—*Held:* the jurisdiction of the ct. to make an order under sect. 51 (2) of 1914 Act was not confined to property which vested in the trustee under the Act on an order of adjudication being made; maintenance ordered to be paid by the Divorce Ct. to a bkpt. during the joint lives of himself & her former husband was "income" within the sub-sect.; & the ct. had jurisdiction to direct that a part of that maintenance (the amount to be fixed by the Registrar) should be paid to the trustee for the benefit of the bkpt.'s creditors.—*Re* LANDAU, *Ex p.* TRUSTEE, [1934] Ch. 549; 103 L. J. Ch. 294; 50 T. L. R. 403; 78 Sol. Jo. 430; [1934] B. & C. R. 84; *sub nom. Re* LANDAU, *Ex p.* TRUSTEE *v.* BANKRUPT, 151 L. T. 190, C. A.

7607. *Add. Annotation:*—**Refd.** *Re* Landau, *Ex p.* Trustee, [1934] Ch. 549.

7607a. —— Police pension—Notwithstanding Police Pensions Act, 1921 (c. 31), s. 14 (1).]—*Re* GARRETT, No. 6296a, *ante*.

7610. *Add. Annotation:*—**Refd.** Nixon *v.* A.-G., [1931] A. C. 184.

7612. *Add. Annotation:*—**Consd.** *Re* Garrett, [1930] 2 Ch. 137.

7615a. Application of 1914 Act, s. 51 (2)—Immaterial whether property vested in trustee.]—*Re* GARRETT, No. 6296a, *ante*.

7615b. Effect of order—No vesting.]—*Re* GARRETT, No. 6296a, *ante*.

7626. *Add. Annotation:*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

638. *Add. Annotations:*—**Refd.** *Re* Leeds & Batley Breweries & Bradbury's Lease, Bradbury *v.* Grimble, [1920] 2 Ch. 548; McIlroy *v.* Clements (1923), 67 Sol. Jo. 402; Rider *v.* Ford, [1923] 1 Ch. 541.

7639a. Contract for sale of goods.]—HUSSEY *v.* FIDDALL (1699), 12 Mod. Rep. 324; Holt, K. B. 95; 3 Salk, 59; 88 E. R. 1353.

Annotation:—**Refd.** Hitchin *v.* Campbell (1772), 2 Wm. Bl. 827.

7648a. —— Assuming management of farm.]—*Held:*—a sufficient election to take the term.—THOMAS *v.* PEMBERTON (1816), 7 Taunt. 206; 129 E. R. 83.

7648b. —— Milking cows.]—*Held:* assignees, having allowed bkpt.'s cows to remain upon the demised premises for two days & ordered them to be milked there, thereby became tenants to the lessor.—WELCH *v.* MYERS (1816), 4 Camp. 368; 171 E. R. 117, N. P.

7649a. —— ——.]—Where assignees put a term up to auction, to ascertain whether it was of value, without giving themselves out to be the proprietors, &, there being no bidders, interfered no further in the matter, & never received rents:—*Held:* they were not answerable in covenant to the lessor.—. TURNER *v.* RICHARDSON (1806), 7 East, 335; 3 Smith, K. B. 330; 103 E. R. 129.

Annotations:—**Consd.** Copeland *v.* Stephens (1818), 1 B & Ald. 593. **Distd.** Hanson *v.* Stevenson (1818), 1 B. & Ald. 303. **Apld.** Lindsay *v.* Limbert (1827), 12 Moore, C. P. 209. **Consd.** Williams *v.* Taylor (1869), 21 L. T. 612; Titterton *v.* Cooper (1882), 9 Q. B. D. 473. **Refd.** Hill *v.* Dobie (1818), 2 Moore, C. P. 342; Williams *v.* Bosanquet (1819), 1 Brod. & Bing. 238; Doe d. Palmer *v.* Andrews (1827), 4 Bing. 348; Wollaston *v.* Hakewill (1841), 3 Man. & G. 297; Mackley *v.* Pattenden (1861), 30 L. J. Q. B. 225; Levi *v.* Ayers (1878), 3 App. Cas. 842; Hill *v.* East & West India Dock Co. (1884), 9 App. Cas. 448.

7649b. *S. P.* CARTER *v.* WARNE, No. 9026a, *post*.

7649c. —— ——.]—Where assignees for the purpose of preventing a distress paid arrears of rent due, at the same time intimating to the landlord that they did not mean to take to the lease unless it could be advantageously disposed of, & the effects were soon after sold & the lease was at the same time put up to sale by order of the assignees, but there were no bidders for it:—*Held:* they were not liable to the landlord as assignees of the lease.—WHEELER *v.* BRAMAH (1813), 3 Camp. 340; 170 E. R. 1404.

Annotations:—**Consd.** Copeland *v.* Stephens (1818), 1 B. & Ald. 593. **Distd.** Hanson *v.* Stevenson (1818), 1 B. & Ald. 303. **Refd.** Hancock *v.* Welsh (1816), 1 Stark. 347; Doe d. Palmer *v.* Andrews (1827), 4 Bing. 348; Goodwin *v.* Noble (1857), 8 E. & B. 587.

7650a. —— Carrying on business for benefit of creditors.]—Where the assignee kept bkpt. in the premises, carrying on the business for the benefit of the creditors from Nov. 15, 1823, until Apr. following, but on Dec. 22, 1823, had disclaimed the lease by letter to the landlord:—*Held:* the assignee, notwithstanding such disclaimer, had elected to accept the lease.—CLARK *v.* HUME (1825), Ry. & M. 207; 171 E. R. 995.

7652a. —— —— To prevent distress.]—WHEELER *v.* BRAMAH, No. 7649c, *ante*.

7653a. —— ——.]—*Held:* to amount to an acceptance of the lease.—PAGE *v.* GODDEN (1818), 2 Stark. 309; 171 E. R 655.

PART XX. SECT. 16, SUB-SECT. 1.

1 l. —— *Right of trustee to give notice of intention to retain—Acceptance of rent by lessors.*]—*Held:* Bkpcy. Act. s. 13 (15), extends sect. 52 (5) to all cases where proceedings are taken under sect. 13 so as to enable either trustee or debtor himself to overcome the forfeiture & elect to retain the demised premises for the whole or any part of the term. If this construction of the Act was wrong, the lessors had waived their rights by acceptance of rent with full knowledge of the circumstances & notice of election to retain.—*Re* MCRAY (1921), 51 O. L. R. 86; 2 C. B. R. 59; 64 D. L. R. 699.—CAN.

7670a. —— ——.] — CARTWRIGHT *v.* GLOVER (1861), 2 Giff. 620; 30 L. J. Ch. 324; 3 L. T. 880; 7 Jur. N. S. 857; 9 W. R. 408; 66 E. R. 260.

Annotation :—**Refd.** Wilson *v.* Wallani (1880), 5 Ex. D. 155.

7681a. —— **Statutory tenancy—Under Rent Restriction Acts.**]—PARKINSON *v.* NOEL, No. 7782b, *post.*

7681b. —— —— ——.]—A statutory tenancy under the Rent Restriction Acts is not "property" of the statutory tenant within sect. 167 of the 1914 Act, &, therefore, it does not pass to his trustee in bkpcy. under sect. 63 of that Act, & is not extinguished on a disclaimer of it by the latter.—SUTTON *v.* DORF, [1932] 2 K. B. 304; 101 L. J. K. B. 536; 47 L. T. 171; 96 J. P. 259; 48 T. L. R. 430; 76 Sol. Jo. 359; 30 L. G. R. 312.

7689. *Add. Citation :—sub nom. Re* CLAYTON & BEAUMONTS' CONTRACT, 2 Mans. 345.

7689a. Shares—Subject to equitable charge.]—The registered owner of fully paid shares in a private co. charged them in favour of W., & handed him the certificates & a blank transfer. He subsequently gave other equitable charges to other mtgees. On the owner's bkpcy. his trustee disclaimed "all my interest" in the shares under 1914 Act, but, as the blank transfer was not completed & lodged & none of the mtgees. applied for a vesting order, bkpt.'s name remained on the register :—*Held :* (1) as between himself & the co., bkpt., so long as his name remained on the register, was entitled to vote in respect of the shares, though, as between himself & the mtgees., he could only vote as they dictated; (2) the trustee could not have disclaimed more than the equity of redemption in the shares. *Qu. :* whether a trustee can disclaim unincumbered fully paid shares. —WISE *v.* LANSDELL, [1921] 1 Ch. 420; 90 L. J. Ch. 178; 124 L. T. 502; 37 T. L. R. 167; [1920] B. & C. R. 145.

7692. *Add. Annotation :*—**Refd.** *Re* Wait, [1926] Ch. 962.

7693a. Sub-contract for sale of land—Contract for purchase of land need not be disclaimed.]—Where a person, who is subsequently adjudicated bkpt., has entered into a contract for the purchase of land & into a subcontract to sell the same land with a building thereon to be erected by him, his trustee in bkpcy. is entitled to disclaim the subcontract of sale without being obliged to disclaim the contract of purchase. If the sub-purchaser has paid a deposit he has a lien upon such interest in the land as bkpt. possessed before his bkpcy., including the right, if any, to specific performance of the contract of purchase of the land; he may also prove in the bkpcy. for any damage for breach of the agreement to build, but he is not entitled to specific performance of the contract to build, & his equity is subject to the overriding equity of the original vendor.—*Re* GOUGH, HANNING *v.* LOWE (1927), 96 L. J. Ch. 239; 71 Sol. Jo. 470; [1927] B. & C. R. 137, D. C.

7702. *Add Annotation :*—**Distd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

7704. *Add. Annotations :*—**Refd.** Wise *v.* Lansdell, [1921] 1 Ch. 420; *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

7707. *Add. Annotation :*—**Consd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

7735. *Add. Citations :—sub nom. Re* WEGG, *Ex p.* HANBURY, 12 L. J. Bcy. 43; *sub nom. Re* WEGG, *Ex p.* BANBURY, 7 Jur. 660.

7751. *Add. Annotations :*—**Consd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184. **Refd.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7756. *Add. Annotation :*—**Consd.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7756a. —— —— **Right to compensation.**]—Where the tenant of a farm held on a verbal tenancy becomes bkpt., & the trustee, having entered into possession of the farm, subsequently disclaims the tenancy, he is excluded from all benefit as well as liability thereunder, including the tenant-right or right to compensation under custom or statute for unexhausted improvements by the tenant, & the amount fixed for compensation having been paid by the incoming tenant to the landlord, to whom arrears of rent are due, the landlord is not bound to account for such payment.—*Re* WADSLEY, BETTINSON'S REPRESENTATIVE *v.* TRUSTEE (1925), 94 L. J. Ch. 215; [1925] B. & C. R. 76, D. C.

7764a. —— **Liability for rates for period of occupation until disclaimer.**]—Where a trustee in bkpcy. goes into occupation of onerous property & subsequently disclaims the property, he is liable to pay the rates on the property for the period of his occupation.—*Re* LISTER, *Ex p.* BRADFORD OVERSEERS & BRADFORD CORPN., [1926] Ch. 149; *sub nom. Re* LISTER, BRADFORD OVERSEERS & CORPN. *v.* DURRANCE, 95 L. J. Ch. 145; 42 T. L. R. 143; *sub nom. Re* LISTER, *Ex p.* BRADFORD OVERSEERS & CORPN. *v.* DURRANCE, 134 L. T. 178; 90 J. P. 33; 24 L. G. R. 67; [1926] B. & C. R. 5, C. A.

PART XX. SECT. 16, SUB-SECT. 5.—A.

7666 i. *Right to disclaim—Lease.*]—OFFICE SPECIALTY MANUFACTURING CO. *v.* EASTERN TRUST CO., [1931] 3 M. P. R. 526.—**CAN.**

7672 i. *Within what time—Extension of time—Power of court to grant.*]—*Re* ROGERS (DECEASED) (1926), 26 S. R. N. S. W. 526; 43 N. S. W. W. N. 143.—**AUS.**

7676 i. *Sufficiency of disclaimer — Delay in taking decisive steps.*]—By virtue of Bkpcy. Act, s. 52, when the trustee does not decide, within a month after the bkpcy., to retain premises held under a tenancy not yet expired, this is taken to be a disclaimer of the premises & puts an end to the tenancy & also to a subtenancy created by the tenant.—SEGUIER *v.* DUFRESNE (1922), Q. R. 60 S. C. 525.—**CAN.**

7676 ii. —— *Verbal disclaimer—No consent of creditors.*]—*Held :* the assignee could not make a disclaimer of a debt without the consent of the creditors.—BROWNE *v.* SIDNEY MILLS, LTD., [1920] 28 B. C. R. 73.—**CAN.**

PART XX. SECT. 16, SUB-SECT. 5.—E.

7761 i. *On trustee—Right to remove fixtures.*]—Where A. purchased a tenant's interest in leased premises including trade fixtures & the last tenant had made an assignment for the benefit of creditors to deft., who gave a disclaimer :—*Held :* the fixtures belonged to deft., & he had the right to remove them within the three months' delay given by Creditors' Trusts Deeds Act, s. 55 (1).—WINTEMUTE *v.* TAYLOR, [1919] 2 W. W. R. 882.—**CAN.**

sd. *On creditors—Disclaimer of assets.*] —A secured creditor put in a claim against bkpt.'s estate for certain assets, which assets the trustee disclaimed :—*Held :* the ct. could not order the trustee to accept those assets as part of the estate.—*Re* CANADIAN CARPET & COMFORTER MANUFACTURING CO., *Ex p.* A.-G. FOR CANADA, [1924] 4 D. L. R. 1307; 5 C. B. R. 54.—**CAN.**

7769. *Add. Annotations :* — **Refd.** Harrison *v.* Holland, [1921] 3 K. B. 297; Chillingworth *v.* Esche, [1923] 1 Ch. 576.

7770. *Add. Annotation :—As to* (1) **Consd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

7778. *Add. Annotations :* — **Consd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184. **Refd.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7778a. —— ——.]—After a debtor has been adjudicated bkpt. & his trustee has disclaimed a lease belonging to him, the property thereby demised revests in the landlord under 1914 Act, s. 54 (2), & he may obtain an order for delivery of possession. Neither the subsequent annulment of the bkpcy. nor the acceptance by the landlord from debtor of rent due for a period ending before the disclaimer operates to revest any interest in the lease in debtor.—*Re* HYAMS, *Ex p.* LINDSAY *v.* HYAMS (1923), 93 L. J. Ch. 184; 130 L. T. 237; [1923] B. & C. R. 173, C. A.

7780. *Add. Annotation :*—**Refd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

7782a. —— **Rights as to statutory tenancy—Under Rent Restriction Acts.**]—The effect of a disclaimer by a trustee in bkpcy. of bkpt.'s interest in a quarterly tenancy is to deprive the tenant of any further interest in the demised premises, &, consequently, he is debarred from relying on a statutory tenancy therein under the above Acts.—REEVES *v.* DAVIES, [1921] 2 K. B. 486; 90 L. J. K. B. 675; 125 L. T. 354; 37 T. L. R. 431, C. A.

Annotations :—**Consd.** Roe *v.* Russell, [1928] 2 K. B. 117. **Refd.** Mellows *v.* Low, [1923] 1 K. B. 522; Parkinson *v.* Noel, [1923] 1 K. B. 117.

7782b. —— —— ——.]—A statutory tenancy under Increase of Rent & Mortgage Interest Restrictions Act, 1920 (c. 17), is "property" of the tenant within 1914 Act, s. 167.

Pltfs. having let to deft. a dwelling-house to which the Act of 1920 applied, deft. retained possession of it after the expiration of the term under the provisions of that Act. Deft. was afterwards adjudicated bkpt., & the trustee in bkpcy. disclaimed any interest in the house. In an action by pltfs. against deft. for possession of the house & mesne profits :—*Held :* (1) the statutory tenancy to which deft. became entitled under the Act of 1920 was "property" within 1914 Act, s. 167, & passed under sect. 53 to his trustee in bkpcy; (2) on disclaimer thereof by the trustee that interest in the premises ceased to exist & was no longer available for the benefit of deft., & consequently pltfs. were entitled to judgment.—PARKINSON *v.* NOEL, [1923] 1 K. B. 117; 92 L. J. K. B. 361; 128 L. T. 538; 67 Sol. Jo. 184; 21 L. G. R. 130.

Annotations :—As to (1) **Consd.** Keeves *v.* Dean, Nunn *v.* Pellegrini, [1923] 2 K. B. 804. **Expld.** Lovibond *v.* Vincent, [1929] 1 K. B. 687. **Overd.** Sutton *v.* Dorf (1932), 76 Sol. Jo. 359. *As to* (2) **Refd.** Mellows *v.* Low, [1923] 1 K. B. 522; Roe *v.* Russell, [1928] 2 K. B. 117.

7782c. —— —— ——.]—SUTTON *v.* DORF, No. 7681b, *ante.*

7789a. On mortgagee — Of shares — Bankrupt's name still on register.]—WISE *v.* LANSDELL, No. 7689a, *ante.*

7791. *Add. Annotations :*—**Refd.** Wise *v.* Lansdell, [1921] 1 Ch. 420; *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

7793. *Add. Annotations :*—**Folld.** Morris & Sons, Ltd. *v.* Jeffreys (1932), 148 L. T. 56. **Refd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

7793a. —— —— ——.]—Disclaimer of a lease by a trustee in bkpcy. operates as a discharge of a surety for payment of the rent, notwithstanding that part of the demised premises have been sublet before the bkpcy. The lessee of certain premises was adjudicated a bkpt., & his trustee, acting in pursuance of the powers conferred on him by Bkpcy. Act, 1914 (c. 59), s. 54, disclaimed the lease. Prior to the bkpcy., the lessee had sublet a portion of the premises. Deft. had guaranteed the payment of the rent, & the lessors claimed from him sums equal to the rent which would have accrued if the lease had still been in existence :—*Held :* the disclaimer discharged the surety, on the ground that if the surety were called on to pay he would have a right of proof against bkpt.'s estate, whereas the intention of sect. 54 was that the bkpt. & his property should be released from all liability.—MORRIS (D.) & SONS, LTD. *v.* JEFFREYS (1932), 148 L. T. 56; 49 T. L. R. 76.

7801a. —— ——.]—NAISH *v.* TATLOCK (1794), 2 Hy. Bl. 319; 126 E. R. 573.

Annotations :—**Consd.** Vincent *v.* Godson (1853), 1 Sm. & G. 384. **Refd.** How *v.* Kennet (1835), 3 Ad. & El. 659.

7801b. —— ——.]—BEARD *v.* DAVIDSON (1843), 1 L. T. O. S. 646.

7811. *Add. Annotation :*—**Consd.** *Re* Farrow's Bank, [1921] 2 Ch. 164.

7821. *Add. Annotations :*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7832. *Add. Annotations :*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7835. *Add. Annotations :*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7836. *Add. Annotations :*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184;

7770 iii. —— *Right to possession.*]—A monthly tenant remained in possession after being adjudicated insolvent. The official assignee having disclaimed interest :—*Held :* the landlord was entitled to an order for possession.—*Re* ABUBAKER HAJI ABDULLA (1924), I. L. R. 48 Bom. 580.—**IND.**

7787 iii. ——.]—A disclaimer of a lease by an assignee for the benefit of creditors :—*Held :* to operate as a forfeiture & not as a surrender, & to effect the termination of a sub-lease granted by the assignor.—KERR *v.* CAPITAL GROCERY, LTD., [1921] 1 W. W. R. 1221; 59 D. L. R. 388; 1 C. B. R. 490.—**CAN.**

7788 i. —— *Liability to ejectment.*]—Where a tenant, who has replaced bkpt. on disclaimer of the lease by the trustee, has begun an action of ejectment against the sub-tenant, who refuses to quit the premises, if the latter does not avail himself of his rights under 11 & 12 Geo. 5, c. 17, s. 43, but contests the action & allows it to proceed to judgment, he cannot then present a petition invoking his rights.—SEGUIER *v.* DUFRESNE (1922), Q. R. 60 S. C. 525.—**CAN.**

PART XX. SECT. 16, SUB-SECT. 6.

7815 i. *In what cases—Trustee electing not to take.*]—The order for possession under Bkpt. & Insolvent Act, 1857 (Jr.), s. 271, is consequential upon the order to assignees to elect, & though the judge has a discretion, yet upon the assignees electing not to take the premises, there is a *primâ facie* duty upon the judge to make the order for possession unless good reason is shown to the contrary, the object of the sect. being to protect the landlord from being left with a bkpt. tenant.—*Re* KEANE (1922), 57 I. L. T. 5.—**IR.**

Re Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7848. *Add. Annotation :*—**Consd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

7854. *Add. Annotation :*—**Consd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

7854a. —— —— **Joint tenants.**]—A landlord who has proved in the bkpcy. of one of two joint tenants of premises for arrears of rent is entitled to levy a distress on goods of the other tenant on the premises for the same arrears, at any rate so long as no dividend has been paid to him in the bkpcy.

Semble : a distress can properly be levied on the tenant's own goods for arrears of rent already proved for in his bkpcy. so long as no dividend has been received by the landlord in the bkpcy. It is not until a dividend is being paid that the landlord is put to his election between the two remedies.—HOLMES *v.* WATT, [1935] 2 K. B. 300 ; 104 L. J. K. B. 654 ; 153 L. T. 58, C. A.

7854b. —— —— **No dividend received.**]—HOLMES *v.* WATT, No. 7854a, *ante*.

7856. *Add. Annotation :*—**Consd.** Woolwich Equitable Building Society *v.* Preston, [1938] Ch. 129.

7867a. One year's rent due before registration of composition deed.]—WILLIAMS *v.* CADBURY (1867), L. R. 2 C. P. 453 ; 36 L. J. C. P. 233 ; 16 L. T. 354 ; 15 W. R. 905.

Annotations :—**Distd.** Selby *v.* Greaves (1868), L. R. 3 C. P. 594. **Folld.** *Re* Douglas, *Ex p.* Ryder (1871), 6 Ch. App. 413.

7868. *Add. Annotation :*—**Apld.** *Re* Wells, [1929] 2 Ch. 269.

7869. After this case add :—

——.]—*See* Bkpcy. Act, 1914 (c. 59), s. 35 (1).

7869a. ——.]—The lessee of a farm, in respect of which the rent was payable quarterly, died intestate in 1928, & his administratrix entered into possession. Subsequently an order for administration was made in respect of the estate of the lessee, which was insolvent. At the date of the order one quarter's rent was unpaid. A receiver was appointed, & ultimately the lessor, three quarters' rent being by that time due to him, took out a summons, in the administration action, for the purpose of ascertaining whether, having regard to Administration of Estates Act, 1925 (c. 23), s. 34 (1), which applied the law of bkpcy. to the administration of insolvent estates, he was entitled to distrain on the property :—*Held :* there was nothing in 1914 Act which interfered with the landlord's right to distrain, & he was entitled to distrain for the three quarters' rent.—*Re* WELLS, [1929] 2 Ch. 269 ; 98 L. J. Ch. 407 ; 141 L. T. 323 ; [1929] B. & C. R. 119.

7873. *Add. Annotation :*—**Refd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

7878. *Add. Annotation :*—**Apld.** *Re* Johns, Worrell *v.* Johns, [1928] Ch. 737.

7913. *Add. Citation :*—12 L. T. 25.

7931a. ——.]—Assignees of a bkpt. agreed to sell a part of his estate, & filed a bill for specific performance. It turned out that the estate was vested in an assignee under a previous insolvency. After the master had made his report, upon a reference as to title, the assignee in insolvency offered to concur in the sale :—*Held :* a good title could be made.—SIDEBOTHAM *v.* BARRINGTON (1841), 4 Beav. 110 ; 10 L. J. Ch. 302 ; 5 Jur. 429 ; 49 E. R. 280.

Annotation :—**Refd.** Fraser *v.* Wood (1845), 8 Beav. 339.

PART XX. SECT. 17, SUB-SECT. 1.

c i. ——.]—The debtor co., before its authorised assignment in bkpcy., was indebted to its landlord for rent. The landlord distrained for rent, & the debtor's goods on the demised premises were under seizure by the landlord & in its possession when the debtor's assignment became effective, & a custodian was appointed :—*Held :* the landlord was at that time a secured creditor, within Bkpcy. Act, & the custodian, as custodian, never came into possession of the goods under distress for rent.—*Re* PATERSON (D. S.) & Co., [1931] O. R. 777 ; 12 C. B. R. 433.—**CAN.**

7847 ii. ——.]—A landlord cannot distrain for rent after the making of a receiving order.—*Re* JENNY LIND CANDY SHOPS, LTD., [1935] O. R. 119. —**CAN.**

PART XX. SECT. 17, SUB-SECT. 3.

se. *Property claimed by lienholders & mortgagees.*]—*Held :* the prohibition in Landlord's Rights (Bkpcy.) Act, Alta., 1924 (c. 12), s. 3, as to distress for rent not applicable to above property, the estate having no beneficial interest therein.—*Re* HAMILTON & OAKES, [1928] 2 D. L. R. 514 ; [1925] 1 W. W. R. 172 ; 5 C. B. R. 465.—**CAN.**

PART XX. SECT. 17, SUB-SECT. 4.

r i. ——.]—A sheriff who has seized & is in possession under a landlord's distress warrant prior to the tenant making an authorised assignment under Bkpcy. Act, is bound to hand over the goods to the trustee in bkpcy. on demand.—*Re* WORK & DAY ESTATE, [1921] 2 W. W. R. 94 ; 58 D. L. R. 377 ; 1 C. B. R. 553.—**CAN.**

PART XX. SECT. 17, SUB-SECT. 5.

7866 vii. —— —— ——.]—A landlord claimed, in bkpcy. proceedings, the same priority in respect of taxes as for the rent :—*Held :* while a mere covenant to pay taxes is not a covenant to pay rent, the parties to a lease can stipulate that the taxes which the lessee covenants to pay shall be deemed to be rent & may be recovered in the same way ; & the landlord has the same priority in respect of the unpaid taxes as he has in respect of rent fixed by the *reddendum*.—*Re* NATIONAL PIANO CO., [1931] 3 D. L. R. 298 ; 66 O. L. R. 303 ; 12 C. B. R. 52.—**CAN.**

7868 ii. ——.]—*Re* WILLIAMSON (1927), 38 B. C. R. 479.—**CAN.**

d i. —— *Goods seized by landlord—Liability for costs of seizure.*]—*Held :* the trustee was entitled to the possession of the goods without paying the costs of the seizure.—GARDNER *v.* GUY STREET GARAGE (1922), 70 D. L. R. 57.—**CAN.**

sg. *Distraint before assignment—Effect of Landlord & Tenant Act, 1931 (Man), s. 45—Preferential lien limited to three months' arrears.*]—Sect. 12 of Distress Act, R.S.M., 1913, has not been impliedly repealed by Landlord & Tenant Act 1931, but, even if it has spite of an order pronounced upon him been, the landlord's rights are curtailed to the same extent by sect. 45 (1) of the latter Act. "The preferential lien of the landlord for rent," within sect. 45 (1), includes his claim as a secured creditor created by a distress made before the assignment.—*Re* MURRAY (G. W.) & CO., LTD., [1934] 3 W. W. R. 491. —**CAN.**

PART XX. SECT. 18, SUB-SECT. 1.

7907 v —— *Bond—Purchased by bankrupt from trust of which bankrupt sole trustee—Refusal to assign—Person appointed to assign.*]—The estate of bkpt., who was serving a sentence of penal servitude, included an interest amounting to £50 in a bond & disposition in security. He had bought the interest from a trust in which he was sole trustee, but he had never had the title transferred from himself as trustee to himself as an individual. The borrower offered to repay the loan on receipt of a valid discharge, but he would not accept a discharge signed by the trustee in bkpcy. The trustee, therefore, prepared an assignation of the bond by bkpt. to himself, but bkpt. refused to sign it, & persisted in his refusal in the Sheriff Ct. No pains could follow, as bkpt. was already in prison. The trustee then presented a petition craving the ct. to authorise the clerk of ct. to sign the assignation on bkpt.'s behalf. The parties interested in the execution of the assignation in the manner proposed having lodged in process letters of consent thereto, the ct., in view of the small sum involved, granted the prayer of the petition.—PENNELL'S TRUSTEE, [1928] S. C. 605. —**SCOT.**

PART XX. SECT. 18, SUB-SECT. 2.

h i. —— *Nature of trustee's title.*]—DOE d. RANKIN *v.* ANDREWS (1883), 22 N. B. R. 425.—**CAN.**

sf. *Interference by court.*]—*Re* GOLDBERG (Ont.), [1927] 4 D. L. R. 775 ; 8 C. B. R. 463.—**CAN.**

7949. *Add. Annotations :*—**Apld.** Farey *v.* Cooper, [1927] 2 K. B. 384. **Refd.** Boorne *v.* Wicker, [1927] 1 Ch 667.

7950. *Add. Annotations :*—**Apld.** Farey *v.* Cooper, [1927] 2 K. B. 384. **Refd.** Boorne *v.* Wicker, [1927] 1 Ch. 667.

7950a. —— ——.]—If bkpt. join with his trustee in selling the goodwill & business previously carried on by bkpt., & agrees with the purchaser not to carry on a similar business within a prescribed district, such agreement is binding on him.—BUXTON & HIGH PEAK PUBLISHING & GENERAL PRINTING CO. *v.* MITCHELL (1885), 1 Cab. & El. 527.

Part XXI.—Actions, Arbitrations, and other Legal Proceedings by and against Trustee and Bankrupt.

7968a. —— ——.]—*Qu. :* whether the assignee of an insolvent can maintain an action against an attorney for negligence in preparing a lease for the insolvent, whereby he failed to obtain possession of the premises demised.—DELAFIELD *v.* FREEMAN (1829), 6 Bing. 294 ; 3 Moo. & P. 704 ; 8 L. J. O. S. C. P. 70 ; 130 E. R. 1293.

7974. Delete the words " the damage suffered, if any . . . claim should be made."

7984. *Add. Annotation :*—**Consd.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

7992. *Add. Annotations :*—*As to* (1) **Consd.** Josselson *v.* Borst, [1938] 1 K. B. 723. **Refd.** Ellis *v.* Torrington (1919), 89 L. J. K. B. 369.

8000. *Add. Annotation :*—**Refd.** *Re* Horder, *Ex p.* Trustee, [1936] 2 All E. R. 1479.

8002. After this case add " *See, now,* Order of the Lord Chancellor, dated Aug. 15, 1921, [1921] W. N. 362."

8024a. Against receiver for debenture-holders—Act of bankruptcy consisting in sale of property to company.]—On Jan. 9, 1929, S., a builder, assigned his business & assets to a limited co. in consideration of shares in the co. On Jan. 14, 1929, the co. issued debentures charged on its assets & undertaking. On Feb. 14, 1929, a receiver was appointed

PART XX. SECT. 18, SUB-SECT. 4.

sg. *Inadequacy of price—Whether ground for rescission.*]—The ct., under the circumstances of the case, refused, upon the application of a debtor who had assigned all his property in trust for his creditors, to set aside a sale made by the trustees, on the ground of inadequacy of price.—LINTON *v.* MICHIE (1859), 7 Gr. 182.—**CAN.**

PART XXI. SECT. 3, SUB-SECT. 1.

k (p. 977) i. —— *Production of power of attorney.*]—A trustee resident in Ontario was replaced by a trustee resident in Quebec, who was authorised to proceed with the action of the former trustee but failed to produce any power of attorney :—*Held :* production not necessary.—MORRIS *v.* KLINE, DEMERS, GARNISHEE (1922), 66 D. L. R. 330.—**CAN.**

sh. *Duty to sue in official name.*]—Pltf., in his official capacity as trustee in bkpcy., used his own name instead of his official title in an action :—*Held :* to avoid any difficulty the action should be treated as an issue directed under Bkpcy. Rule 120, as the form of action only affected the question of costs. It was of no real consequence as Bkpcy. Act, s. 16, providing that the trustee may sue in his own name, is permissive.—FITZGERALD *v.* MCMORROW, [1923] 4 D. L. R. 619 ; 52 O. L. R. 383 ; 3 C. B. R. 29.—**CAN.**

7998 ii. ——.]—Except in those cases where a creditor is authorised under Bkpcy. Act, s. 35, to take proceedings, any proceeding to be taken for the benefit of bkpt.'s or authorised assignor's estate must be taken by the trustee or authorised assignee.—HOULDING *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1921] 2 W. W. R. 899 ; 14 Sask. L. R. 356.—**CAN.**

8000 iii. —— *Proceedings begun in wrong court—Transfer of proceedings.*]—Where proceedings had been commenced in the wrong ct. :—*Held :* the proceedings should be continued under Bkpcy. Act, r. 120 ; & an order transferring the proceedings to the bkpcy. side should be made if necessary.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1922] 3 W. W. R. 209 ; 68 D. L. R. 762.—**CAN.**

8000 iv. —— *Application at chambers for declaration—Matter within jurisdiction of Bankruptcy Court.*]—Where there was no question in the action that could not be fully & effectually dealt with by the judge in bkpcy. in the summary way provided by r. 120 : —*Held :* the application must be referred to the judge in bkpcy. to be dealt with by him, an *interim* injunction to stand in the meantime.—EASTERN TRUST CO. *v.* LLOYD MANUFACTURING CO., [1923] 2 D. L. R. 852 ; 56 N. S. R. 246 ; 3 C. B. R. 710.—**CAN.**

8000 v. —— *Action to set aside settlement made by bankrupt.*]—A trustee in bkpcy. brought action in the Supreme Ct. to set aside a settlement made by bkpt. in favour of deft. & voidable under Bkpcy. Act, s. 29 :—*Held :* the action was improperly taken ; the trustee should have proceeded under r. 120, which provides a summary method of disposing of matters of this kind by a motion in chambers, which may afterwards take the form of an issue or trial ; the ct. should discountenance costly proceedings when summary & inexpensive proceedings are open to the trustee.—STILLWATER LUMBER & SHINGLE CO. *v.* CANADA LUMBER & TIMBER CO., [1923] 2 D. L. R. 900 ; 32 B. C. R. 81 ; [1923] 1 W. W. R. 1333.—**CAN.**

8000 vi. —— *Proceedings to set aside sale or transfer by bankrupt.*]—An action by a trustee in bkpcy. to set aside a conveyance by debtor must be commenced as prescribed by r. 120, by summary application to the bkpcy. judge in chambers, & not by a writ of summons in the Ct. of K. B.—*Re* VISCOUNT GRAIN GROWERS CO-OPERATIVE ASSOCN.'S TRUSTEE *v.* BRUMWELL & ROYAL BANK, [1924] 3 D. L. R. 803 ; [1924] 3 W. W. R. 54 ; 5 C. B. R. 94.—**CAN.**

8000 vii. —— *Appellate court—Appeal against judgment in favour of bankrupt—Judgment assigned by bankrupt to third party.*]—*Held :* the trustee in bkpcy. had a right to resume the action in the interest of the estate.—FREEDMAN *v.* HART, *Re* BAITTLE (1922), 68 D. L. R. 288 ; 2 C. B. R. 536.—**CAN.**

sj. *Assent of inspectors—Whether necessary—Motion for directions.*]—*Re* JACOBSON, *Ex p.* GOLDBERG (N. B.), [1927] 2 D. L. R. 363 ; 8 C. B. R. 258.—**CAN.**

sk. *Application for interim injunction—Undertaking as to damages.*]—*Held :* should be made binding on a trustee in bkpcy. personally, when suing in his official capacity, unless the ct. is satisfied that the estate in his hands will be sufficient to answer damages. A trustee is under no obligation to take such a proceeding without proper indemnity from the creditors.—BRENNER'S TRUSTEE *v.* BRENNER, [1923] 3 D. L. R. 1097 ; 52 O. L. R. 374 ; 3 C. B. R. 84.—**CAN.**

sl. *Right to take proceedings under State Bankruptcy Act—Effect of Federal Act.*]—Prior to the date of the commencement of the Bkpcy. Act, 1924-1928, an order for the sequestration of the estate of P. was made in the Bkpcy. Ct. of this State. Subsequently to that date the official assignee had taken out a notice of motion under Bkpcy. Act, 1898, s. 134, claiming against E. certain property as part of the bankrupt's estate :—*Held :* the official assignee had, under the State Bankruptcy Act, prior to the commencement of the Bankruptcy Act, 1924-1928, acquired the right, & had a duty imposed on him, to institute the proceedings under sect. 134 of the State Act.—*Re* PARSONS (1928), 28 S. R. N. S. W. 575 ; 45 N. S. W. W. N. 158.—**AUS.**

PART XXI. SECT. 3, SUB-SECT. 2.

sm. *Against holder of lien note on chattels—Description of chattels alleged insufficient.*]—*Held :* the trustee had no status to attack the lien note & it was valid as against him. The holder of the note must, on demand by the trustee, identify the chattels within ten days.—*Re* GAUDREAU, *Ex p.* CARRUTHERS (1922), 68 D. L. R. 783.—**CAN.**

by the debenture-holders. On May 23, 1929, S. was adjudicated a bkpt., & on May 27, 1929, a trustee in bkpcy. was appointed. On Apr. 15, 1930, an order was made by CLAUSON, J., upon a motion by the trustee against the co. & the debenture holders declaring that the assignment of Jan. 9, 1929, was fraudulent & void & an act of bkpcy. & that the assets of the bkpt. purported to be thereby assigned formed part of his estate & vested in the trustee for the benefit of his creditors; & the co. was ordered to deliver up to the trustee or to account to him for such of the assets as had come to the hands of the co. or of any person by the order or for the use of the co. The receiver on taking possession converted to his own use chattels of the bkpt. consisting of plant & machinery, motor vans & office furniture & carried on the bkpt.'s business of a builder, in the course of which he completed a number of current building contracts & received payment thereunder from the building owners. On Dec. 23, 1931, the trustee elected to treat the receiver as a trespasser & claimed that the receiver (who by leave of the ct. was made a resp. to the motion of the trustee in place of the debenture-holders) by so taking possession, intermeddling with or trespassing on the assets, contracts & possessory rights which passed to him was a trespasser &/or guilty of conversion &/or interference with the trustee's contractual rights & was liable in damages for the value of all the assets & for the net moneys paid by the building owners under the building contracts as money had & received to his use. The receiver did not dispute his liability to account to the trustee for the sum of £2,600, the value of the chattels which he had converted to his use, but resisted the trustee's claim to recover as damages for their conversion a sum equal to the profits that would have accrued to him from the building contracts but for the acts of the receiver:—*Held:* the trustee having elected to treat the receiver as a wrongdoer in completing the contracts was not entitled to treat the contracts as having been kept alive for his benefit or to call upon the receiver to account for the profits realised by such completion as special damages for conversion or as damages for wrongfully intermeddling with the contracts between the bkpt. & the building owners; also the profits made by the receiver on the contracts completed by him could not on the facts of the case be treated as money had & received to the use of the trustee.—*Re* SIMMS, *Ex p.* TRUSTEE, [1934] Ch. 1; 103 L. J. Ch. 67; [1933] B. & C. R. 176; *sub nom. Re* SIMMS, *Ex p.* TRUSTEE *v.* WILLIAMS, SIMMS, LTD. & GILLETT, 149 L. T. 463, C. A.

Annotation:—**Refd.** Joly *v.* Pinhoe Nurseries, Ltd., [1936] 1 All E. R. 841.

8025a. —— **Sale of goods—After making of vesting order.**]—FORD *v.* DABBS (1843), 5 Man. & G. 309; 6 Scott, N. R. 192; 12 L. J. C. P. 134; 134 E. R. 583.

Annotations:—**Refd.** Williams *v.* Chambers (1847), 10 Q. B. 337; Jackson *v.* Burnham (1852), 8 Exch. 173.

8033. *Add. Annotation:*—**Refd.** Anglo-Baltic & Mediterranean Bank *v.* Barber, [1924] 2 K. B. 410.

8040a. —— ——.]—A. was in possession, on Oct. 23, 1847, of barges which had belonged to the bkpt. On Oct. 29, A. sold to B. A fiat issued Nov. 4 on an act of bkpcy. committed Nov. 3. The barges were demanded from A. in Mar. 1848:—*Held:* the assignees could not maintain trover against A. upon counts stating the possession of the assignees & a conversion pending their title.—STANFIELD *v.* STAFFE (1849), 13 L. T. O. S. 489.

8044. *Add. Annotation:*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

8064. *Add. Annotation:*—**Refd.** Ord *v.* Ord, [1923] 2 K. B. 432.

8067. *Add. Annotation:*—**Refd.** Torrens *v.* I. R. Comrs. (1933), 18 Tax Cas. 262.

8081. *Add. Annotation:*—**Refd.** L. *v.* L. (1934), 50 T. L. R. 441.

8089. *Add. Annotation:*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

8092. *Add. Annotations:*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371; Sullivan *v.* Constable (1932), 48 T. L. R. 267.

8028 ii. —— *Action already brought by bankrupt.*]—*Held:* it might be continued by the trustee.—BRENNER *v.* AMERICAN METAL CO., [1920] 19 O. W. N. 239; 55 D. L. R. 702; 1 C. B. R. 375.—**CAN.**

8034 ii. —— *Unpaid purchase price of shares—Sold by broker.*]—Where a trustee in bkpcy. gave shares belonging to bkpt.'s estate to a broker to be sold by him & the broker became bkpt.:—*Held:* the trustee was entitled to sue the purchaser for the price of the shares.—FINLAYSON *v.* BALFOUR, WHITE & CO., *Re* THORNTON DAVIDSON & CO. (1922), 70 D. L. R. 66.—**CAN.**

sn. *Action to recover money paid by bankrupt in breach of trust.*]—The trustee in bkpcy. has no right of action, at least without authority from the *cestuis que trust*, to recover trust money which was held by bkpt. & paid by him in breach of trust to others.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1922] 2 W. W. R. 280; 68 D. L. R. 757.—**CAN.**

k i. *Proceedings to recover land acquired collusively by third party.*]—TRUSTEE, ETC. *v.* PARUK (1921), 42 N. L. R. 1.—**S. AF.**

l i. *Proceedings to set aside writ—Issued by mortgagee to enforce security.*]—An assignment under Bkpcy. Act does not prevent the holder of a mtge. upon a vessel from enforcing his security before the Exch. Ct. in Admlty., & a motion by the assignee to set aside the writ of summons & warrant of arrest issued in the ct. by the mtgee. against the ship should be dismissed with costs. The only right of the assignee under Bkpcy. Act is to defend the action & he cannot otherwise interfere therein.—WHITE & CO. *v.* THE IONIA (1922), 69 D. L. R. 94; 20 Exch. C. R. 327.—**CAN.**

so. *Proceedings to impeach sale of goods under Bulk Sales Act, 1917.*]—*Re* PACKER, [1927] 3 D. L. R. 330; 60 O. L. R. 402.—**CAN.**

sp. *Proceedings to recover debts—Presidency Towns Insolvency Act.*]—Presidency Towns Insolvency Act, s. 7, is not limited in its scope to matters in which the official assignee, by the operation of the insolvency law, claims a higher title than what the insolvent himself would have had, & the official assignee is entitled to proceed by way of motion under sect. 7 in cases where he has a money claim against strangers to the insolvency, the only limitation placed on the jurisdiction of the Insolvency Ct. being that, when once the official assignee has summoned a witness, under sect. 36 of the Act, & that witness disputes his indebtedness, the official assignee has no option but to proceed by way of suit. Where the official assignee, standing in no higher position by reason of the special provisions of the insolvency law than the bkpt. himself, seeks to recover a debt which is not admitted, it is a matter of discretion for the judge sitting in insolvency whether in any given case he should deal with such a claim in the Insolvency Ct. or refer it to the machinery of the ordinary cts.—OFFICIAL ASSIGNEE *v.* NARASIMHA MUDALIAR (1929), I. L. R. 52 Mad. 717.—**IND.**

sq. *Action under Deaths by Accident Compensation Act, 1908.*]—The statutory rights of action, given to a person by Deaths by Accident Compensation Act, 1908, does not in the event of such person's bkpcy. pass to the official assignee under Bkpcy. Act, 1908, s. 61.—*Re* RICHTER, [1929] N. Z. L. R. 364.—**N.Z.**

8097. *Add. Annotation :*—**Consd.** Knight *v.* Ponsonby, [1925] 1 K. B. 545.

8104a. —— **Costs of carrying out order of court.**]—Upon a motion by a trustee in bkpcy. to which bkpt.'s wife was resp. a declaration was made that certain furniture which was upon premises occupied by bkpt. & his wife formed part of the property of bkpt. divisible among the creditors, & the ct. ordered the wife to account on oath before a registrar for the furniture & to pay the taxed costs of & incident to the motion. At the end of the declaration & order a provision was inserted, at the request of, & by way of indulgence to, the wife that, with a view to the furniture being bought by or on behalf of the wife from the trustee at a valuation by an independent valuer to be appointed by the parties or in case of difference to be appointed by the judge, & the wife undertaking not to part with or dispose of the furniture, execution should not issue except by leave of the judge. The furniture was valued by a firm of valuers selected by the wife out of three firms suggested by the trustee, & bought by or on behalf of the wife at a price based upon the valuation. Upon the taxation of the trustee's solrs.' bill of costs, the taxing master disallowed as against the wife the fee paid by the trustee to the firm of valuers, upon the ground that the costs relating to the purchase of the furniture by or on behalf of the wife under the valuation did not come within the order, & were not costs of carrying it out. On a motion by the solrs. to review the taxation :—*Held :* the taxation must be reviewed & the fee for the valuation allowed as against the wife, inasmuch as it formed part of the costs of carrying out the order & was therefore within the rule that where costs of suit are given generally by decree at the hearing, the subsequent costs of working out the directions of the decree will be included.—*Re* LAVEY, *Ex p.* COHEN & COHEN, [1920] 3 K. B. 625 ; 90 L. J. K. B. 31 ; [1920] B. & C. R. 182 ; *subsequent proceedings*, [1921] 1 K. B. 344.

8104b. —— **Costs of transcript of shorthand notes of evidence.**]—The trustee by motion applied against resp. to impeach certain transactions & gave formal notice by letter that he would read in support of the motion the transcript of the shorthand notes of the evidence given by witnesses at a private sitting. This motion was dismissed with costs. On taxing resp.'s bill of costs the taxing master disallowed part of the transcript as irrelevant to the motion & reduced counsel's fees accordingly. On motion for a review of taxation :—*Held :* having regard to the terms of the notice to read the transcript resp.'s solr. was justified in bespeaking & paying for the whole of the transcript, & it was his duty to supply the whole transcript to counsel, &, accordingly, resp. was entitled to all the costs of & consequential upon so doing.—*Re* MARKS, *Ex p.* VANN, [1923] B. & C. R. 92.

8114. *Add. Annotation :*—**Refd.** *Re* Wait, [1926] Ch. 962.

8138a. —— —— **After-acquired property.**]—An undischarged bkpt. can maintain an action in relation to after-acquired property subject to the right of his trustee to intervene & claim it.—DYSTER *v.* RANDALL & SONS, [1926] Ch. 932 ; 95 L. J. Ch. 504 ; 135 L. T. 596 ; 70 Sol. Jo. 797 ; [1926] B. & C. R. 113, C. A.

8168a. *S. P.* MATTHEWS *v.* DICKINSON (1817), 7 Taunt. 399 ; 1 Moore, C. P. 104 ; 129 E. R. 160.

Annotation :—**Consd.** Whitworth *v.* Hall (1831), 2 B. & Ad. 695.

8172a. ——.]—OWEN *v.* LAVERY (1900), 16 T. L. R. 375, C. A.

8195. *Add. Annotations :*—**Distd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200. **Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82.

8200. *Add. Annotations :*—**Consd.** Knight *v.* Ponsonby, [1925] 1 K. B. 545. **Refd.** Maatschappij voor Fondsenbezit *v.* Shell Transport & Trading Co., [1923] 2 K. B. 166.

PART XXI. SECT. 3, SUB-SECT. 6.

8099 v. —— —— ——.]—BURNS *v.* GRAHAM, [1923] 4 D. L. R. 1111 ; 53 O. L. R. 226 ; 4 C. B. R. 190.—**CAN.**

8099 vi. —— —— —— *Action commenced without obtaining indemnity from creditors.*]—*Held :* if it were necessary under Bkpcy. Act, s. 68 (2), & r. 54, that a special reason for awarding costs against the trustee personally should be assigned, it was the failure to arrange an indemnity before indulging in speculative litigation knowing that he had no assets.—THORNE *v.* CANADIAN STEERING WHEEL CO., [1923] 4 D. L. R. 1127 ; 52 O. L. R. 460 ; 2 C. B. R. 445.—**CAN.**

8099 vii. —— ——.] — *Held :* Bkpcy. Act, s. 68 (2), provides that "subject to the provisions of this Act & to General Rules, the costs of & incidental to any proceeding in ct. . . . shall be in the discretion of the ct." The word "ct." has impliedly a wider meaning than that given in the interpretation clause, & the sect. applies to the Ct. of Appeal. In the present case the clause making the trustee personally liable should not be struck out.—*Re* KWONG TAI CHONG CO.'S ASSIGNMENT (1922), 65 D. L. R. 132 ; [1922] 2 W. W. R. 229, *sub nom.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* JANG BOW KEE & YIN SHEE (1922), 31 B. C. R. 40.—**CAN.**

PART XXI. SECT. 4.

8105 iv. ——.]—If a creditor desires to proceed against the trustee in another province he must apply to the ct. having original jurisdiction for an order under Bkpcy. Act, s. 71 (2), & the judge possessing discretionary powers would be entitled to consider whether in all the circumstances it was advisable to ask for the assistance of a bkpcy. ct. in another province. When the cts. of any one province are seized with the administration of an insolvent estate, they should not permit any other ct. to interfere except with its leave or concurrence.—*Re* BRYANT, ISARD & CO., [1924] 1 D. L. R. 217 ; 4 C. B. R. 317.—**CAN.**

8132 iii. —— ——.]—*Re* PENTICTON HOTEL CO., LTD., [1937] 3 W. W. R. 36.—**CAN.**

sr. *Action to recover possession—Of partly built ship—For purpose of completion.*]—A judge of the Bkpcy. Ct. may grant an application for recovery from the trustee in bkpcy. of possession of ships partly built & materials in connection therewith, & the necessary portion of bkpt.'s building yards claimed by appct. under a lien to secure the completion & delivery of ships in accordance with bkpt.'s contract & which prior to the order declaring the bkpcy. had been taken possession of by appct., & subsequently by the trustee. Such appct., although not a "creditor" or "secured creditor" under Bkpcy. Act, comes within the words "any other person aggrieved by any act or decision of the trustee" in sect. 39.—R. *v.* HODGES, [1921] 2 W. W. R. 388 ; 1 C. B. R. 530.—**CAN.**

st. *Action for goods sold & delivered.*]—*Held :* may be brought in the name of the original creditor, notwithstanding that he has made an assignment for the general benefit of his creditors.—KRIENKE *v.* SCHAFTER, [1919] 1 W. W. R. 990.—**CAN.**

PART XXI. SECT. 5, SUB-SECT. 1.—C.

h i. —— ——.]—*Held :* bkpt. had no right of action, such right being vested solely in the official assignee.—TIMMINGS *v* TREADGOLD, [1923] N. Z. L. R. 73.—**N.Z.**

PART XXI. SECT. 6, SUB-SECT. 1.

a i. —— *For debt due from one member of bankrupt firm.*]—*Held :* after an authorised assignment no such action could be brought against bkpt. without leave.—*Re* TAYLOR *v.* LEVEYS, [1923] 3 D. L. R. 1134 ; 52 O. L. R. 201 ; 2 C. B. R. 390.—**CAN.**

a ii. —— *Whether consent of trustee sufficient.*]—A consent by a trustee in bkpcy. to the bringing of an action by a creditor against the bkpt. which the trustee has refused or neglected to bring does not satisfy the requirements

8276a. —— Action for specific performance of agreement—Time for disclaiming agreement unexpired.] — PUTTOCK *v.* DAINTRY (1894), 38 Sol. Jo. 273.

8281a. —— To apply for judgment in default of defence—Draft minutes to be shown to official receiver.]—Where after action brought a receiving order in bkpcy. was made against deft., on a motion for judgment on minutes in default of defence the ct. made the order in the terms of the minutes, but directed that before it was drawn up the draft minutes should be shown to the official receiver, who was to be at liberty to apply to the ct. with regard thereto if he should think fit.—HATTON *v.* DENISON (1926), 70 Sol. Jo. 565.

8290a. —— Defendant making substantial counterclaim.]—An action against a deft. who makes a substantial counterclaim, & against whom a receiving order has been made after writ issued, will be stayed pending the result of an application to adjudicate him bkpt.—FRANCO *v.* DUTTO, [1923] W. N. 40.

8304. *Annotations :*—For " *Re* Somes, Stewart *v.* Somes (1895), 73 L. J. 359 " read " *Re* Somes, Stewart *v.* Somes (1895), 73 L. T. 359."

8306. *Add. Citations :—previous proceedings, sub nom. Re* SOMES, STEWART *v.* SOMES (1895), 73 L. T. 359, C. A.

8331. *Annotation :*—For " **Mentd.** *Re* Bagley, [1911] 1 K. B. 317, C. A.," read " **N.F.** *Re* Bagley, [1911] 1 K. B. 317."

8332. For " *Held :* it was necessary," etc., read " *Held :* it was not necessary," etc.

Part XXII.—The Debtors Acts and Bankruptcy Offences Generally.

8335. *Add. Annotation :*—**Dbtd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

8348. *Add. Annotation :*—**Consd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

8378. *Add. Annotation :* — **Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

8398a. Equitable assignor—Undertaking to pay specific sum out of moneys to be received.]—An action for the grant to pltf. by deft. of his proprietary interests in an invention was compromised by an order on certain terms. One of the terms was an undertaking

of sect. 69 of Bkpcy. Act, R. S. C., 1927.—RENTZ *v.* CHAUSSE, [1938] 2 W. W. R. 572.—**CAN.**

f i. —— *Bankruptcy Act Amendment Act*, 1923 (c. 31), s. 10.]—*Re* CANADIAN HART PRODUCTS, [1927] 2 D. L. R. 359 ; 60 O. L. R. 219.—**CAN.**

f ii. —— *By Canadian creditor in foreign court.*]—*Held :* the Superior Ct. of Quebec sitting in bkpcy. had power to stay proceedings instituted in the United States by a Canadian creditor.—*Re* MOUNT ROYAL LUMBER & FLOORING CO., MORGAN LUMBER CO. *v.* SCOTT, [1927] 2 D. L. R. 866 ; Q. R. 42 K. B. 277.—**CAN.**

f iii. ——.]—PRIBAG *v.* DWORSHIK, [1929] 4 D. L. R. 1067 ; 1 W. W. R. 238 ; 38 Man. L. R. 25 ; 10 C. B. R. 294.—**CAN.**

f iv. —— *Cancellation of assignment before trial.*]—In an action of debt, pltf. may show that an assignment in bkpcy., which had been pleaded as a defence, had been cancelled before the trial.—FORBES *v.* RAFUSE, [1934] 3 D. L. R. 734.—**CAN.**

sg. *Leave of court—When necessary.*] —*Re* DUGGAN, [1931] 3 D. L. R. 815.—**CAN.**

sh. —— ——.]—WHITTEN & CO. *v.* COWPER, [1932] 2 D. L. R. 240.—**CAN.**

PART XXI. SECT. 7, SUB-SECT. 1.—A.

8237 vii. ——.]—A trustee to whom an assignment has been made under Bkpcy. Act may, with the permission of the inspectors, under sect. 20 (1), proceed with an action begun by debtor before the assignment, without any leave to proceed, so far as bkpcy. proceedings are concerned. But the trustee cannot proceed with the action in the name of the insolvent, nor in his own name, but only in the official name of the trustee.—*Re* BRENNER (N.) & CO., LTD., [1921] 49 O. L. R. 71 ; 58 D. L. R. 640 ; 19 O. W. N. 445.—**CAN.**

l i. —— *Personal liability.*]—Where Bkpcy. Rule 54 (3) applies, failure or neglect by the trustee to anticipate & provide against costs being allowed by the ct. to deft. may be considered justification for not relieving the trustee of his personal liability for the costs.—NEWTON *v.* ST. JEAN BAPTISTE PARISH, [1933] 2 W. W. R. 270.—**CAN.**

PART XXI. SECT. 7, SUB-SECT. 1.—B.

m i. ——.]—Where an assignee in insolvency elects, under Insolvency Act, 1915, s. 176, to abandon a common law action commenced by the insolvent prior to his insolvency, the action may be stayed until further order by the ct., but should not be dismissed, as a dismissal of the action might be pleaded in bar as *res judicata* in a future action by the insolvent, should such an action be commenced by him after he has obtained his certificate of discharge.—MILLANE *v.* PRESIDENT, ETC., OF SHIRE OF HEIDELBERG, [1928] V. L. R. 52 ; [1928] Argus L. R. 5.—**AUS.**

PART XXI. SECT. 8.

n i. —— *Order giving creditor right to bring proceedings—Appeal from.*]—A judge sitting in bkpcy. having granted a petition by resp., under Bkpcy. Act, s. 35, to be authorised to take certain proceedings in the name of the trustee, but at resp.'s own expense & risk, the Ct. of K. B. held it was a mere preparatory judgment & one not subject to the control of that ct. :—*Held :* special leave to appeal to the Supreme Ct. of Canada should not be granted.—MERCHANTS BANK OF CANADA *v.* ANGERS (1921), 67 D. L. R. 604 ; 62 S. C. R. 354.—**CAN.**

q i. —— —— *To set aside preferential transactions—Rights of creditors not joining in action.*]—*Held :* creditors attacking transactions, & taking all the risk, cannot be compelled, in the event of success, to share the fruits of their success with those creditors who declined to share the risk.—*Re* LONGMORE (1922), 52 O. L. R. 570 ; 3 C. B. R. 200.—**CAN.**

r i. —— —— *To proceed with appeal —To Privy Council.*]—Where one creditor applied for & obtained an order under Bkpcy. Act, s. 35, allowing him to proceed, in the name of the trustee, but at his own expense & for his own benefit :—*Held :* an appeal to the Privy Council did not lie.—*Re* ANDREW MOTHERWELL OF CANADA, LTD. (1924), 55 O. L. R. 294 ; 5 C. B. R. 107.—**CAN.**

PART XXII. SECT. 1, SUB-SECT. 1.

l i. —— 1924 *Act—Right to discharge —Discretion of court.*]—PING LEE *v.* PAUL WISE, [1929] 3 D. L. R. 410 ; 2 W. W. R. 376 ; 52 Can. C. C. 15 ; 41 B. C. R. 64.—**CAN.**

l ii. —— —— ——.]—On an application for discharge from custody under sect. 7 of Arrest & Imprisonment for Debt Act, R. S. B. C., 1924, if the ct. is satisfied that deft. had no intention of quitting the province at the time the writ of *capias* was issued, he should be discharged.—THOMPSON *v.* SCOLLARD 1930), 41 B. C. R. 206.—**CAN.**

sy. *Exemption of Indians from arrest for debt—R. S. C.*, 1927, *ss.* 102–105.]—*Ex p.* TENASSE, [1931] 1 D. L. R. 806; 2 M. P. R. 523.—**CAN.**

sc. *Review of order.*]—It is open to a judge who has granted an *ex parte* order under s. 3 of Arrest & Imprisonment for Debt Act, R.S.B.C., 1924, to review it at large, *i.e.*, as to irregularities or as to the merits, upon all the materials that were before him when he granted it or upon new ones.—MIT SINGH *v.* GILL, [1936] 1 W. W. R. 396; 2 D. L. R. 43; 65 C. C. C. 263; 50 B. C. R. 332.—**CAN.**

se. *Who may be liable to arrest—Necessity for residence.*]—A former resident of the Province of Prince Edward Island is not liable to arrest for evasion of debt if he returns for a temporary visit.—CAMPBELL *v.* CAMPBELL, [1936] 1 D. L. R. 236.—**CAN.**

sf. *Affidavit—Contents.*]—An affidavit for capias must state the amount of the debt & how it was contracted, & must show a good cause of action.—DYKES *v.* MANDEVILLE, [1936] 3 D. L. R. 434 ; 10 M. P. R. 363 ; 66 Can. C. C. 289 ; 6 F. L. J. (Can.) 69.—**CAN.**

by deft. to pay pltf. a sum of £1,000 forthwith, which was duly paid, & a further sum of £4,000 out of the first moneys received by deft. on a future sale of his rights in the invention. No time for the payment of the sum in question was fixed by the undertaking. At the date of the order pltf. was aware that deft. had already disposed of half his rights. Pltf. having learnt that deft. had agreed to sell the remaining half interest in these rights to one G. for a sum immediately payable & the balance by deferred payments & that he had used the amount received for his own purposes in breach, as the ct. found as a fact, of his undertaking, moved the ct. for the committal of deft. or the issue of a writ of attachment :—*Held :* (1) the undertaking to pay the £4,000, being an undertaking to pay a specific sum out of the moneys to be received in respect of a future sale, constituted a good equitable assignment thereof, & by dealing with the moneys received in disregard of the undertaking deft. had committed a breach of his fiduciary duty to pltf. The act of deft. therefore brought the case within the third exception to Debtors Act, 1869 (c. 62), s. 4 ; (2) the undertaking to pay out of the first moneys received could not be construed as an order to pay forthwith or within a fixed time after receipt within R. S. C., Ord. 41, r. 5, & therefore the order for committal or for leave to issue a writ of attachment could not be made. The ct., however, fixed a time for the payment of the moneys remaining due.—COTTON *v.* HEYL, [1930] 1 Ch. 519 ; 99 L. J. Ch. 289 ; 143 L. T. 16.

Annotation :—As to (1) **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

8408. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

8435. *Add. Annotation :*—**Consd.** *Re* Whaley, *Ex p.* Official Receiver, [1921] 2 K. B. 623.

8435a. Motion to commit by official receiver acting as trustee—Necessity for affidavit.]—Bkpts. were musical artists, & on Sept. 16, 1920, the registrar made orders for each of them to pay £4 a week out of their respective salaries under 1914 Act, s. 51 (2). On Jan. 13, 1921, upon the application of the official receiver as trustee, under sect. 53 (1) of the Act, no trustee having been appointed, & it appearing to the ct. that bkpts., as partners, were then in receipt of at least £200 a week under a contract with the A. Co., the above orders were varied, & orders were made that during the continuance of the engagement of bkpts. at the A. each should pay weekly £25 out of his salary to the official receiver during the bkpcy., the first payment to be made on Jan. 15, 1921, with liberty to bkpts. to apply in the event of the employment with the A. Co. being determined. Appeals from these orders were dismissed by the Ct. of Appeal. Bkpts. having made default in payment of instalments under the orders, the official receiver as trustee applied for a committal of bkpts. for contempt of ct. under sect. 22 (4) of the Act. It was objected that each application should be supported by affidavit & not by a report of the official receiver :—*Held :* the official receiver's report was sufficient evidence in support of the application in each case, & an order for committal must be made.—*Re* WHALEY, *Ex p.* OFFICIAL RECEIVER, [1921] 2 K. B. 623 ; 125 L. T. 511 ; *sub nom. Re* WHALEY, *Ex p.* OFFICIAL RECEIVER, *Re* SCOTT, *Ex p.* OFFICIAL RECEIVER, 90 L. J. K. B. 892 ; 37 T. L. R. 645 ; [1921] B. & C. R. 1.

8439a. —— Application by agent for unincorporated association.]—In an action by pltf. against an unincorporated body & seventeen named persons described as its committee, in which pltf. claimed damages for libel, judgment was given in the High Ct. for deft. with costs. On a bkpcy. notice founded on that judgment not being complied with, defts. presented a petition in bkpcy. ; but this petition was dismissed by the registrar as being wrong in form, on the ground (*inter alia*) that the petition was by an agent on behalf of an unincorporated assocn. & others, whereas such an assocn. cannot sue or be sued, either in its own name or by a purported agent. Subsequently, defts. took out a judgment summons in the county ct., & the county ct. judge ordered pltf. to pay by instalments the sum due under the judgment of the High Ct., together with the costs of the summons :—*Held :* (1) as procedure by judgment summons is a mode of enforcing a judgment & directly in connection with the action, as distinguished from a bkpcy. petition, which is not, the county ct. judge had jurisdiction to make the order ; (2) the death of one of the successful defts. since the judgment did not render it necessary for the survivors to obtain the leave of the ct. before they could enforce the judgment.—BUNDY *v.* MOTOR CAB OWNER DRIVERS' ASSOCN. (1930), 143 L. T. 334 ; 46 T. L. R. 422, D. C.

8445a. Form of application—Enforcement of Divorce Court order—Affidavit of service.]—When application is made for the issue of a judgment summons to enforce a Divorce Ct. order appct. must state in his application, & be prepared, if necessary, to prove, that the order has been served on resp. & the affidavit of service filed as required by Matrimonial Causes Rules, 1924, r. 79.—PRACTICE NOTE, [1931] W. N. 184 ; 172 L. T. Jo. 76 ; [1931] B. & C. R. 44.

8447. *Add. Annotation :*—**Refd.** Smythe *v.* Wiles, [1921] 2 K. B. 66.

8448a. Summonses against co-respondent — For damages & for costs—Priority.]—Where damages & costs are awarded against a co-resp. & petitioner takes out two judgment summonses against him, one in respect of the costs & the other in respect of the damages, an order will go in respect of the payment of costs first.—*Re* WINTER, *Ex p.* WILLIAMS (1927), 44 T. L. R. 41 ; 71 Sol. Jo. 1002.

PART XXII. SECT. 1, SUB-SECT. 6. —A.

ah. *Duty of debtor to attend & make disclosure.*]—On appeal by the debtor from an order requiring her to pay a certain amount per month, the debtor having asked that a much smaller amount be substituted therefor :—*Held :* under the circumstances, all the materials for coming to a decision as to the debtor's ability to pay were not before the ct., & the order should have directed the debtor to attend again at her own expense & make satisfactory disclosure. The order was, therefore, set aside & one for the further attendance of the debtor substituted.—ROYAL BANK OF CANADA *v.* DIAMOND, [1930] 1 W. W. R. 809 ; 3 D. L. R. 810 ; 38 Man. L. R. 585.—CAN.

8449. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1929] 2 Ch. 146.

8451. *Add. Annotation :*—**Refd.** Bundy *v.* Motor Cab Owner Drivers' Assocn. (1930), 143 L. T. 334.

8451a. —— **Notes — Necessity for leave.**]—PRACTICE NOTE, No. 8484a, *post.*

8459. *Add. Annotations :*—**Consd.** *Re* Blanchard, *Ex p.* Blanchard (1932), 101 L. J. Ch. 313. **Folld.** *Re* Hedderwick, Morten *v.* Brinsley, [1933] Ch. 669.

8463. *Add. Annotations :*—**Refd.** Edwards *v.* Porter (1924), 41 T. L. R. 57 ; Green *v.* Weatherill, [1929] 2 Ch. 213 ; Townshend *v.* Child (1932), 48 T. L. R. 575 ; MacCarthy *v.* Agard, [1933] 2 K. B. 417.

8464. After this case add :—

——.]—*See, now,* Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 1 (*d*).

8467. *Add. Annotation :*—**Refd.** Bundy *v.* Motor Cab Owner Drivers' Assocn. (1930), 143 L. T. 334.

8471. *Add. Annotations :*—**Consd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524. **Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400 ; *Re* Blanchard, *Ex p.* Blanchard (1932), 48 T. L. R. 480.

8475. *Add. Annotation :*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8479. *Add. Annotations:*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400 ; *Re* Judgment Debtor (1935), 51 T. L. R. 524.

8480. *Add. Annotation :*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8484. *Add. Annotations :*—**Consd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400. **Apld.** *Re* Blanchard *Ex p.* Blanchard (1932), 48 T. L. R. 480. **Refd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524.

8484a. ——.]—(1) An instalment order made pursuant to Debtors Act, 1869 (c. 62), s. 5, shall be drawn up forthwith & notice thereof given by pltf. to deft. by registered post at the last-known address of deft.

(2) The notice shall state the amount of the debt due, the costs of the summons, the amount & the period of the instalments & the day of the week or month on which the first instalment is directed to be paid.

(3) Any subsequent application for the issue of a committal summons shall be accompanied by a certified copy of the said notice to deft. together with a statement that no proceedings have been taken in respect of the instalment order, or in respect of the judgment or order on which it is founded in any ct. of inferior jurisdiction.

(4) No office copy or other copy of the order, or notes of the hearings made in judgment summons proceeding shall be made without the special leave of the judge.—PRACTICE NOTE, [1934] W. N. 72 ; 177 L. T. Jo. 241 ; 77 L. Jo. 239 ; [1934] B. & C. R. 13.

8484b. Notice of order.]—PRACTICE NOTE, No. 8484a, *ante.*

8484c. Copy of order—Necessity for leave.]—PRACTICE NOTE, No. 8484a, *ante.*

8485. *Add. Annotations :*—**Consd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400. **Refd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524.

8486. *Add. Annotations:*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400 ; *Re* Judgment Debtor (1935), 51 T. L. R. 524.

8487. *Add. Annotation :*—**Refd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524.

8494a. —— **Non-payment of alimony.**]—It is not the province of the Ct. of Ch. to enforce by committal orders for payment of alimony made by the Divorce Div. Therefore, where a wife moved to commit her husband for non-compliance with an order to pay her £5 a week, of which some £400 were in arrear :—*Held :* to make a committal order at once in such a case was not the usual practice of the Ch. Div., & the right order was that the husband should pay £3 a week towards payment of the arrears, the order made by the Divorce Div. still remaining in force.—*Re* BLANCHARD, *Ex p.* BLANCHARD (1932), 101 L. J. Ch. 313 ; 147 L. T. 222 ; 48 T. L. R. 480 ; 76 Sol. Jo. 459, C. A.

—— —— **Jurisdiction of Divorce Division.**]—*See, now,* Debtors Act (Matrimonial Causes) Jurisdiction Order, 1932, R. S. & O., 1932. No. 503.

8494b. —— **General principles.**]—*Re* JUDGMENT DEBTOR (1935), 51 T. L. R. 524 ; 79 Sol. Jo. 625 ; [1934-5] B. & C. R. 197.

8496a. —— **Evidence of means—Sufficiency of evidence.**]—Where a county ct. judge has made an order on a judgment summons for payment of the judgment debt by instalments, & a subsequent application is made for a committal order for non-payment of the instalments, the effective "order or judgment" is the instalment order & not the original judgment, & on the application for a committal order the judge cannot make the order unless he has affirmative evidence of means since the date of the instalment order, & is not entitled to rely on the evidence previously given on the hearing of the application for the instalment order, nor on his disbelief of debtor's evidence denying means, unless there is reasonably direct evidence of means since the date of the instalment order.—NESOM *v.* METCALFE, [1921] 1 K. B. 400 ; 90 L. J. K. B. 273 ; 124 L. T. 606 ; 37 T. L. R. 111, D. C.

8496b. —— **Documents accompanying.**]—PRACTICE NOTE, No. 8484a, *ante.*

8499a. —— —— **Sufficiency of evidence of**

PART XXII. SECT. 1, SUB-SECT. 6.—B.

8459 ii. ——.]—Permanent alimony, even though in arrears, is not a debt within Arrest & Imprisonment for Debt Act, R. S. B. C., 1924, s. 3.—MCKAY *v.* MCKAY, [1933] 2 W. W. R. 78 ; 47 B. C. R. 241.—**CAN.**

8a. *Who may make order for payment —Not local master.*]—BEAVER LUMBER CO., LTD. *v.* BRENNER, [1929] 2 D. L. R. 640 ; 1 W. W. R. 583 ; 23 S. L. R. 319.—**CAN.**

PART XXII. SECT. 1, SUB-SECT. 6.—C.

9 i. —— —— *Death of creditor—Right of administrators.*]—On the death of a judgment creditor, his administrators must be added as pltfs. before they can examine the judgment debtor.—MCPHAIL *v.* WINSLOW, [1935] 2 D. L. R. 777 ; 8 M. P. R. 552.—**CAN.**

PART XXII. SECT. 1, SUB-SECT. 6.—D.

8b. *Attachment in default of payment —Notwithstanding assignment in bankruptcy.*]—*Re* GLENCROSS, JONES *v.* GLENCROSS (N. B.), [1929] 2 D. L. R. 380.—**CAN.**

PART XXII. SECT. 1, SUB-SECT. 6—E.

8d. *Stay of proceedings—Antecedent action by debtor against creditor.*]—MORRISON *v.* MULRY, [1935] 1 W. W. R. 423 ; 49 B. C. R. 326.—**CAN.**

debtor's means.] — Prohibition refused.]—EDWARD *v.* WYVILL (1885), 2 T. L. R. 210, C. A.

8501. *Add. Annotations :*—**Apld.** *Re* Blanchard, *Ex p.* Blanchard (1932), 48 T. L. R. 480. **Consd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524. **Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8506. *Add. Annotations :*—**Apld.** Morriss *v.* Winter, [1930] 1 K. B. 243. **Refd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

8513. *Add. Annotation :*—**Consd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8514a. Renewal—Time for application.]—Every application for the renewal of an order of commitment if unexecuted must be made to the ct. or judge before the expiration of one year from the date of the making of such order, & so on from time to time during the continuance of the renewed order.—PRACTICE NOTE, [1938] W. N. 249.

8521. *Add. Annotation :*—**Consd.** R. *v.* Central Criminal Court JJ *Ex p.* L. C. C., [1925] 2 K. B. 43.

SECT. 3 (p. 1044).—**BANKRUPTCY OFFENCES.**

See, also, Bkpcy. (Amendment) Act, 1926 (c. 7), s. 5.

8534a. —— Intent to defraud—Burden of proof.]—On the hearing of a charge against bkpt. under 1919 Act, s. 154 (4) (5), proof that deft. has been in possession of property to the value there specified does not throw upon him the burden of showing that he has not concealed or fraudulently removed any part of it after or within six months before the presentation of the petition; but proof that during that period deft. has concealed or removed a part of his property to that value throws upon him the burden of showing that in doing so he had no intent to defraud.—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SHUKE, [1926] 1 K. B. 127; 95 L. J. K. B. 361; 134 L. T. 317; 28 Cox, C. C. 126; [1926] B. & C. R. 1, D. C.

8557a. Failure to keep account books.]—Under 1914 Act, s. 158, as amended by Bkpcy. (Amendment) Act, 1926 (c. 7), s. 7, an omission to keep books of account though "honest" may not be "excusable."—R. *v.* DANDRIDGE (1931), 22 Cr. App. Rep. 156; [1931] B. & C. R. 40, C. C. A.

PART XXII. SECT. 2.

k i. —— ——.]—TOOLE *v.* HENNEBERRY (P. E. I.), [1928] 3 D. L. R. 38.—**CAN.**

k ii. ——.]—Fraudulent Debtors Arrest Act, R. S. O., 1914 (c. 83), enacts that before a writ of *ca. sa.* will be issued, it must be shown that debtor has been guilty of an intent to defraud his creditors. Where debtor had assigned all his property for the benefit of his creditors & then left Ontario & had subsequently returned with the object of settling pltf.'s claim & had resided unmolested in Ontario for some time :—*Held :* no fraudulent intent shown.—CANADA LUMBER CO. *v.* GAFFNEY, [1923] 4 D. L. R. 594.—**CAN.**

k iii. —— *Under Absconding Debtors' Act, R. S. O.,* 1877 (c. 68)—*Debt must be due when writ issued.*]—KYLE *v.* BARNES (1883), 10 P. R. 20.—**CAN.**

sd. *Attachment of aeroplane temporarily landed—For debt incurred in foreign domicil of parties—Invalid.*]—WILLIAMS *v.* COLUMBIA AIRWAYS, [1931] 2 D. L. R. 823.—**CAN.**

sf. *Arrest of foreigner.*]—A foreigner temporarily in Ontario against whom a judgment has been obtained in a foreign ct. cannot be arrested under Fraudulent Debtors Arrest Act, R. S. O., 1927, as being about to quit Ontario with intent to defraud his creditors.—RED STAR LABORATORIES CO. *v.* PABST, [1937] 4 D. L. R. 236; O. R. 864; 69 Can. C. C. 144.—**CAN.**

PART XXII. SECT. 3, SUB-SECT. 1.

8534 iv. —— *Prosecution—In what court.*]—Upon a motion to quash the orders of a police magistrate on the ground that only a judge in bkpcy. had power to act in such a case :—*Held :* since the offence was an indictable offence it ought to be prosecuted & carried on under the Criminal Code like any other offence of a criminal nature, & motion dismissed.—R. *v.* ROY, [1923] 2 D. L. R. 1182; 39 Can. Crim. Cas. 347; 4 C. B. R. 90.—**CAN.**

8534 v. —— *Who may be liable.*]—Applts., one being the manager & the other an employee of a bkpt. co. were convicted for having concealed & fraudulently removed goods belonging to the bkpt., contrary to sect. 191 of Bkpcy. Act. The ground of appeal was that no other person than the bkpt. could be indicted for any offence under that section :—*Held :* affirming that conviction, the offences created by sect. 191 of Bkpcy. Act were offences within sect. 69 of the Criminal Code.—SIMCOVITCH *v.* R., [1935] S. C. R. 26; 1 D. L. R. 769; 63 C. C. C. 701.—**CAN.**

q i. —— *Prosecution an abuse of process.*]—Where criminal proceedings against a debtor for fraudulent concealment are not taken in vindication of public justice but wholly because of his refusal to comply with a demand from his creditors to "dig up the money or take the consequences," the prosecution is an abuse of process which the cts. cannot countenance. The criminal cts. are not to be held *in terrorem* over alleged debtors.—R. *v.* BELL (B. C.), [1929] 3 D. L. R. 931; 2 W. W. R. 399; 51 Can. Crim. Cas. 388.—**CAN.**

t i. —— —— ——.]—To justify a committal of a judgment debtor under Arrest & Imprisonment for Debt Act for concealing or making away with his property "in order to defeat, delay or defraud his creditors or any of them," a fraudulent intent must be shown. Neither due & reasonable appropriation of property or income to the maintenance & health of himself & his family, according to circumstances, nor, of themselves, improvidence or "great carelessness" in expenditure, import a fraudulent intent. Continuous wilful & extravagant squandering of debtor's income in self-indulgence might be carried to such a degree as would manifest a fraudulent intention to contravene the statute.—CUTLER *v.* CHIFFEY, [1921] 1 W. W. R. 686.—**CAN.**

t ii. —— —— ——.]—Affidavits used on an application for a writ of attachment under Absconding Debtors Act, R. S. S., 1920 (c. 58), s. 3, alleging that defts. were "badly involved" & "financially embarrassed," setting out a newspaper advertisement by defts. of certain chattels for sale & giving deponents' opinions from their "experience" in dealing with defts. that they were attempting to sell with intent to defraud creditors :—*Held :* insufficient to justify granting the application.—CANADIAN BANK OF COMMERCE *v.* KENZIE, [1923] 2 W. W. R. 993.—**CAN.**

t iii. —— —— ——.]—*Held :* the affidavit of pltf. stating merely that he had good reason to believe & did verily believe that deft. "has assigned, transferred & disposed of his personal property & effects by a bill of sale with intent & design to defraud his creditors" was insufficient. The affidavit must show "such facts & circumstances as form the grounds of such beliefs," as required by the K. B. Div. Rules.—DOW *v.* DAYMENT, [1923] 1 D. L. R. 772; 32 Man. L. R. 402; [1922] 3 W. W. R. 1119.—**CAN.**

t iv. —— ——.]—On a prosecution under the Criminal Code, s. 417, the intent & not the effect is to be looked at, &, where the effect of a conveyance is merely to prefer one creditor over another, the intent to prefer not being an intent to defraud, there is no offence.—R. *v.* CREW, [1926] 4 D. L. R. 841; 46 Can. Crim. Cas. 123; 59 O. L. R. 201.—**CAN.**

o i. —— *Giving undue preference.*]—A. convicted of a contravention of Insolvency Act, 32 of 1916, s. 139 (3), had shortly before he surrendered his estate made payments to two creditors, & there was no proof to rebut the inference that he intended to prefer these creditors :—*Held :* the conviction should be sustained.—R. *v.* ISMAIL (1920), App. D. 316.—**S. AF.**

sg. *Making false statement—After adjudication.*]—An officer of a corpn. may be convicted of making a false statement, even after adjudication, for the purpose of influencing creditors to accept a composition.—R. *v.* MINDEN, [1935] 4 D. L. R. 309; O. R. 486; 64 C. C. C. 309.—**CAN.**

PART XXII. SECT. 3, SUB-SECT. 2.

8544 ii. —— *Insolvency Act,* 32 *of* 1916, *s.* 136 (3).]—The offence created by this sect. consists in the disposal by insolvent otherwise than in the ordinary course of business of property which he has obtained on credit, & the jury should be directed to confine their attention to the mode of disposal of the property purchased on credit.—R. *v.* ABRAHAMSON (1920), App. D. 283.—**S. AF.**

PART XXII. SECT. 3, SUB-SECT. 3.

8555 ii. ——.]—PARAK *v.* R. (1919), 40 N. L. R. 328.—**S. AF.**

8565a. —— —— ——.] — R. *v.* DORRINGTON (1927), 20 Cr. App. Rep. 1, C. C. A.

8587a. —— Obligation to disclose bankruptcy absolute.]—The obligation imposed by 1914 Act, s. 155 (*a*), on an undischarged bkpt. to disclose his position to the person from whom he seeks credit is absolute. It is no defence that he took steps to have such information conveyed or that he had reasonable grounds to believe that it has been conveyed, if in fact it had not.—R. *v.* LEINSTER (DUKE), [1924] 1 K. B. 311 ; 93 L. J. K. B. 144 ; 130 L. T. 318 ; 87 J. P. 191 ; 40 T. L. R. 33 ; 68 Sol. Jo. 211 ; 27 Cox, C. C. 574 ; 17 Cr. App. Rep. 176 ; [1924] B. & C. R. 78, C. C. A.

8590a. —— Sale of land & business to bankrupt—Purchase money payable by instalments.]—Pltfs. entered into a contract with deft. for the sale to him of the whole issued share capital of a private co. & of certain freehold premises. The contract provided that the purchase price or any unpaid part thereof should carry interest at 2½ per cent. *per annum* from the date of completion & should be payable by weekly instalments of principal & interest of not less that £3, & if any such instalment should be in arrear for fourteen days the unpaid balance of the purchase money should become immediately payable & should be secured by a legal charge upon the freehold property. Pltfs. asked for rescission of the contract by reason of the fact that the purchaser concealed from them until after the execution of the contract the fact that he was an undischarged bkpt. :—*Held :* the entering into a contract in this form by an undischarged bkpt. is an obtaining of credit within sect. 155 of 1914 Act, & a contract so entered into by an undischarged bkpt. without disclosure of the fact that he is an undischarged bkpt. is unenforceable by him. Pltfs. were, therefore, entitled to an order for rescission of the contract & costs of the action.—DE CHOISY *v.* HYNES, [1937] 4 All E. R. 54 ; 81 Sol. Jo. 883.

8593a. Time for giving information of bankruptcy.] —If an undischarged bkpt. gives information to a creditor a reasonable time before he obtains credit from him he is not within Bkpcy. Act, 1914 (c. 59), s. 155. The information need not necessarily be given at the moment of obtaining the credit.—*R. v.* ZEITLIN (1932), 23 Cr. App. Rep. 163 ; [1933] B. & C. R. 69, C. C. A.

8633a. Bankrupt guilty of gambling—Severity of sentence.]—R. *v.* BREWIN (1926), 19 Cr. App. Rep. 154, C. C. A.

Part XXIII.—Compositions and Schemes and Deeds of Arrangement.

8645. *Add. Annotations :*—**Apld.** *Re* Ellis, [1925] Ch. 564. **Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8645a. —— To entertain claim to enforce right adverse to deed—Creditor not entitled to benefit of deed.]—In 1922 applt. entered into the employment of debtor as manageress of his business, & as a condition of such employment she lent him a sum of £500 for the repayment of which he gave her a charge on his share & interest in his business. In 1924 debtor executed a deed of arrangement for the benefit of his creditors generally. The deed was expressed to be made between debtor of the first, the trustee of the second part, three named creditors of the third part, & " the several persons, companies, & partnership firms, being creditors of debtor, whose names & seals are set out & affixed to the schedule hereto, or who shall otherwise in writing assent to these presents, hereinafter called ' the creditors ' " of the fourth part. Applt., who refused to consent to the deed, applied under the above sect. for a declaration that she was entitled as against the trustee of the deed to a charge on all the share & interest, with the exception of chattels, of debtor in his business, & for an order that the trustee should hand over & execute such documents as might be necessary

PART. XXII. SECT. 3, SUB-SECT. 4

so. *Obtaining repaired car by fraud.*]—The criminal intent involved in the offence created by the sub-sect., is the intent to cheat another out of a position of economic safety into the position of risk involved in giving credit ; it is not an intent to defraud another of some material thing. The prisoner delivered a motor car to the prosecutor for repair. By means of false representations the prisoner induced the prosecutor to allow him to take away the repaired car without immediate payment :—*Held :* an offence under the sub-section was established, & it was not necessary to prove an intent to defraud the prosecutor of the money due for the repairs. —R. *v.* KELLY, [1934] V. L. R. 29 ; 40 Argus. L. R. 6.—**AUS.**

PART XXII. SECT. 3, SUB-SECT. 6.

sv. *Procedure for commencing & carrying on prosecution.*]—Where bkpt. is charged with indictable offences under Bkpcy. Act, s. 89, & orders to prosecute are made under sect. 93, the prosecution must be commenced & carried on under Criminal Code, & a justice of the peace or police magistrate has jurisdiction to receive the information, hold the preliminary investigation & commit for trial. Upon a committal if the judge who made the order presides at the trial, he acts not as a judge in bkpcy., but as a judge of the Supreme Ct.—R. (EMERY) *v.* ROY, [1923] 2 W. W. R. 400.—**CAN.**

sy. *Application for leave to prosecute.*]—R. *v.* MARCOVITZ & APPLEBAUM, [1932] 4 D. L. R. 335 ; 58 C. C. C. 355.—**CAN.**

sz. ——.]—Order for leave to proceed under sect. 195 of Bkpcy. Act is not a condition precedent to prosecution under sect. 191 (*o*) of Bkpcy. Act. —R. *v.* FELDMAN, [1933] 2 D. L. R. 257 ; O. R. 254 ; 59 C. C. C. 330.—**CAN.**

sf. *Right of creditor to lay charge.*]—A creditor may lay a charge, although the Bkpcy. Act provides for an order for prosecution by the ct. on the report of the trustee.—RIVEST *v.* R., [1934] 4 D. L. R. 587 ; 62 C. C. C. 155.—**CAN.**

PART XXII. SECT. 3, SUB-SECT. 8.

sk. *Review of penalties.*]—Penalties for bkpcy. offences held inadequate & reviewed.—R. *v.* WEBBER, [1937] 2 D. L. R. 499 ; 11 M. P. R. 448 ; 68 Can. C. C. 45.—**CAN.**

PART XXIII. SECT. 3, SUB-SECT. 1.

sw. *Meeting duly summoned not held —Meeting held on following day—No proper adjournment of first meeting.*]—*Held :* the meeting was irregular & all business done void, because the first proposed meeting was not adjourned according to the rules.—*Re* WHOLESALE GROCERS, LTD., [1923] 2 D. L. R. 491 ; 3 C. B. R. 650.—**CAN.**

for the purpose of transferring the share & interest to applt. The registrar in bkpcy. dismissed the application on the ground that he had no jurisdiction under the sect. to entertain it. On appeal:—*Held:* (1) the object of the sect. was to provide a trustee or *cestui que trust* under a deed of arrangement with a summary means of obtaining a determination of questions arising in the administration of the trusts of the deed similar to that provided by originating summons in the Ch. Div. under R. S. C. Ord. 55, r. 3; (2) applt. was not a creditor entitled to the benefit of the deed; creditors so entitled were those defined as such by the deed, & applt., not having assented to the deed, did not come within that category; (3) applt.'s claim was not for the enforcement of the trusts or the determination of any questions arising under the deed within the above sect., but was a claim to enforce a right adverse & paramount to the deed.—*Re* ELLIS, [1925] Ch. 564; 41 T. L. R. 474; *sub nom. Re* ELLIS, *Ex p.* MYTTENAERE, 94 L. J. Ch. 239; [1925] B. & C. R. 81; *sub nom. Re* A DEED OF ARRANGEMENT (No. 9 of 1924), 133 L. T. 306, C. A.

8645b. Under 1914 (Deeds) Act, s. 11—To extend time for giving security by trustee.]—The registrar has no jurisdiction to extend the period of seven days, allowed by above sect. within which the trustee under a deed of arrangement must give security in the prescribed manner.—*Re* EARLY, SMITH & PAVEY, *Ex p.* TRUSTEE (1928), 98 L. J. Ch. 34; [1928] B. & C. R. 113.

8653a. Proposal in writing under 1914 Act, s. 16—Necessity for signature by debtor.]—At a meeting of creditors of a debtor against whom a receiving order had been made a proposal for a scheme of composition was submitted on behalf of the debtor. The proposal was not signed by the debtor himself but by his solrs. On behalf of the debtor a certificate by an eminent physician was exhibited to an affidavit, in which it was stated that the debtor was "still so seriously ill as to make it quite impossible for him to discuss any matters of business, & that any attempt to explain to him business details or proceedings would have a serious & possibly a fatal effect upon him":—*Held:* no proposal for a composition had been lodged by the debtor within 1914 Act, s. 16 (1); the words "signed by him" were explicit; there was no ground for altering the words of the statute or giving to the statute a judicial interpretation which would in effect be an amendment or alteration of its plain terms.—*Re* BLUCHER (PRINCE), *Ex p.* DEBTOR, [1931] 2 Ch. 70; 47 T. L. R. 19; 74 Sol. Jo. 735; *sub nom.* BLUCHER (PRINCE), *Re*, DEBTOR *v.* OFFICIAL RECEIVER, 100 L. J. Ch. 292; 144 L. T. 152; [1931] B. & C. R. 1, C. A.

8665. *Add. Annotation:*—**Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

8683a. —— Chairman not bound by decision of previous chairman.]—*Held:* on the construction of Sched. I., rule 14 of 1914 Act, the decision of the chairman of the first meeting to admit or reject a proof for the purpose of voting is not binding, & that the chairman at each subsequent meeting has the power to admit or reject the proof.—*Re* POTTS, *Ex p.* ETABLISSEMENTS CALLOT & DE SCHRIJVER *v.* LEONARD TUBBS & CO. & OFFICIAL RECEIVER, [1934] Ch. 356; 103 L. J. Ch. 115; 150 L. T. 456; 50 T. L. R. 193; 78 Sol. Jo. 103; [1933] B. & C. R. 217.

8758. *Add. Annotation:*—**Refd.** Sevenoaks U. D. C. *v.* Twynam, [1929] 2 K. B. 440.

8764. *Add. Annotation:*—**Refd.** *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

PART XXIII. SECT. 3, SUB-SECT. 2.

m 1. —— *Wife of bankrupt.*]—The wife of bkpt. is not barred by her status as wife from voting on a resolution to wind up her husband's estate under a deed of arrangement, although the effect of the resolution is to prevent the election of a trustee.—MACNAUGHT *v.* SIEVWRIGHT, [1927] S. C. 285.—**SCOT.**

8677 ii. —— —— —— *Proxy for company.*]—A proxy need not be under the co.'s seal, unless expressly required by the Act of incorporation, or by the articles of assocn.; if it is so required the burden of establishing its necessity is on the person alleging it.

A proxy which purports to be signed by the co., under which is subscribed the name of the person who affixes the signature of the co. & who so describes himself that the chairman can conclude he is an officer or employee of the co., is *primâ facie* evidence of authority, & the chairman should receive it & permit the person named therein to vote.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

8682 i. —— *In respect of what debts—Unliquidated damages.*]—Where there is a claim for unliquidated damages, they must be assessed before the claimant can have any right to vote.—*Re* ANDREW MOTHERWELL ESTATE, [1923] 4 D. L. R. 986; *affd.*, 25 O. W. N. 359.—**CAN.**

8682 ii. —— —— ——.]—*Held:* valuation by the ct. a condition precedent.—*Re* ARTHUR FUEL CO. (Man.), [1927] 1 D. L. R. 646; [1927] 1 W. W. R. 158.—**CAN.**

8684 iv. ——.]—Since Bkpcy. Act, 1921 (c. 17), s. 12, Bkpcy. Act, 1919 (c 36), s. 13 (3) must be construed as meaning that in the calculation of proved debts, the two-thirds in value may be composed partly of debts less than $25, but as regards voting, creditors whose claims are less than $25 are to be excluded. Under Bkpcy. Act, 1919, s. 42, no one whose claim is for less than $25 may vote.—*Re* BLUEBIRD FASHION SHOPS, LTD., [1921] 59 D. L. R. 549.—**CAN.**

sa. *Appeal from decision of chairman—Rights of creditor who has not filed proof at time of meeting.*]—A creditor is entitled to exercise his rights provided he has duly proven his claim in accordance with Bkpcy. Act & Rules prior to the hearing of the appeal. The ct. may adjourn the hearing of the appeal to permit of such proof, provided that the creditor has not delayed unreasonably in making it.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

sb. —— *On technical grounds—Necessity to raise objection before decision given—Discretion of court.*]—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

sc. —— *Application by creditor to be added or substituted as appellant.*]—Not allowed, since the latter creditor had a right of appeal, & the rights of the creditor applying to be added would not be affected by the non-joinder or non-substitution.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

sd. —— *That creditor entitled to vote—Objection at meeting.*]—*Held:* not a condition precedent—*Re* ARTHUR FUEL CO. (Man.), [1927] 1 D. L. R. 646; [1927] 1 W. W. R. 158.—**CAN.**

se. *Method of voting—Corporations.*]—Corpns. must vote at meetings of creditors by depositing signed proxies with the custodian, under Bkpcy. Act, ss. 99 (1), 101 (1).—*Re* CARRIE, [1936] 1 D. L. R. 455; O. R. 28.—**CAN.**

PART XXIII. SECT. 5, SUB-SECT. 1.

sk. *Effect of.*]—A composition or scheme of arrangement, though approved by the ct. & by statute binding on all the creditors, is at bottom only a contract between the parties. Creditors' rights are only suspended during the composition period. There is no obligation, legal or moral, which can debar the composition creditors, if the composition has been annulled, from claiming to rank on the assets of the estate *pari passu* with the creditors whose claims have arisen since the composition.—*Re* LIPSON, [1924] 3 D. L. R. 761; 55 O. L. R. 215; 24 O. W. N. 382.—**CAN.**

sm. ——.]—*Held:* a judicial hypothec upon real assets of debtor, resulting from registration, was postponed to an authorised assignment subsequently made by debtor for the benefit of his creditors.—ROYAL BANK OF CANADA *v.* LARUE, [1928] A. C. 187; 97 L. J. P. C. 49; 138 L. T. 562; *affd.* S. C. *sub. nom.* BELANGER, ETC. *v.* ROYAL BANK OF CANADA, [1926] S. C. R. 218.—**CAN.**

8768. *Add. Annotations :*—**Reld.** *Re* Ellis, [1925] Ch. 564; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8771a. Unstamped deed—Admissibility in evidence—To prove non-registration.]—*Re* SHAW, *Exp.* OFFICIAL RECEIVER, No. 434a, *ante.*

8772a. Under 1914 (Deeds) Act—Necessity for assent of majority of creditors—How majority calculated.]—A debtor gave his sister a power of attorney authorising her to execute a deed of arrangement for the benefit of his creditors & to make any affidavit necessary for registering the deed. The deed was accordingly executed by her as his attorney under the power, & she also made the affidavit required by 1914 (Deeds) Act, s. 5 (1), to be made " by the debtor " on the registration of the deed stating the total estimated amount of property & liabilities included under the deed & the names & addresses of the creditors. There were ninety-six creditors in all, of whom sixty-eight were for sums over £10; twenty-five of the sixty-eight did not assent to the deed within the time required by the Act; forty-three with debts over £10 & twenty-eight with debts under £10 assented. The debtor escaped bkpcy. proceedings by reason of the execution of the deed & afterwards recognised it & concurred in the trustee acting under it. He subsequently made an application for a declaration that the deed was void. No creditor was made a party to the application, it being addressed to the trustee of the deed alone :—*Held :* (1) the deed had received the assent of the majority of creditors in number within sect. 3 (5) of the Act, inasmuch as for the purpose of the section creditors whose debts amount to sums not exceeding £10 are not to be reckoned either in calculating the total number of creditors or the majority in number; (2) inasmuch as the creditors did not, under the power of attorney, gain any control over the debtor's property or business, it was not in itself a deed of arrangement within sect. 1 (2) (*e*) of the Act, which required registration in order to be valid.—*Re* WILSON, [1916] 1 K. B. 382; 85 L. J. K. B. 329; 114 L. T. 32; 32 T. L. R. 86; 60 Sol. Jo. 90; [1916] H. B. R. 17, D. C.

8778a. —— ——.]—In 1904 debtor who was heavily indebted, & against whom bkpcy. proceedings were pending, signed an instrument under which a trustee was to receive the whole of debtor's income &, after making certain deductions, to distribute the balance among the creditors, & in consideration of the arrangement the creditors agreed that all proceedings in bkpcy. or otherwise were to be stayed & to accept payment of their debts by instalments & to release debtor from all claims or demands in respect of their debts. The instrument provided that no document executed by debtor should be registered under the above Act. A number of the then creditors including appct. assented to the instrument, which was never registered under the Act. The arrangement was carried out until the death of debtor, which occurred in Nov. 1918, appct. receiving *pro rata* amounts on his debt between Aug. 1905, & July, 1917. The debt carried interest at 4 per cent. & the payments under the arrangement to appct. were not sufficient to cover the interest so that an amount exceeding the original debt was still owing to appct. In Feb. 1919, an administration order under 1914 Act, s. 130, was made upon a creditor's petition for the administration of deceased debtor's estate as being a person who had died insolvent, & the estate was being administered by the official receiver. At the time of debtor's death there was in the hands of the trustee under the instrument a sum of £465 8*s.* 3*d.* which the official receiver claimed on the ground that it formed part of the general estate of debtor, & the trustee paid the amount to him upon the terms that the official receiver was to be in the same position as he would have been if the money had remained in the trustee's hands. On a motion by appct. for a declaration that the £465 8*s.* 3*d.* was held by the trustee on behalf of the assenting creditors, including appct., was divisible amongst them, & that appct. was entitled to prove in the administration of the estate for the balance due to him from debtor after giving credit for all sums received or receivable under the arrangement : —*Held :* (1) the instrument was a deed of arrangement within 1887 Act, s. 4 (2), upon the ground that it was an assignment of property by debtor for the benefit of his creditors generally & also upon the ground that it was an agreement for a composition; (2) not having been registered it was void under sect. 5 of the Act; (3) as the instrument was void it created no trust for the benefit of the creditors, & the trustee under the instrument held the £465 8*s.* 3*d.* to the use of the official receiver as the representative of debtor, & was bound to repay it to him; (4) as the only direction to apply the money received by the trustee was contained in the void instrument & all parties knew & acted upon the assumption that it was invalid, deceased debtor would not have been, nor was the official receiver as his representative, estopped from setting up its invalidity & claiming from the trustee any money still in his hands; (5) equally there was no estoppel which prevented appct. from setting up the invalidity of the instrument & proving in the administration for the balance due to him from debtor; (6) as the instrument was void the release of the debts it contained was of no effect; (7) as under the instrument there was only a provision for payment to the creditors of debtor's income so long as he lived, no promise to pay the balance of the debts could be implied from the payments which had been made so as to take the debts out of the operation of the statutes of limitation, & appct.'s right to prove in the administration for the balance

---

sp. *Authorised assignment by partner on behalf of firm — No authority by other partner.*]—*Held :* invalid.—*Re* SQUIRES BROTHERS, [1922] 3 W. W. R. 30; 68 D. L. R. 571.—**CAN.**

PART XXIII. SECT. 5, SUB-SECT. 2.—A.

st. *Under Bankruptcy Act—Deed of assignment.*]—The title of an assignee is not complete as against third persons until registration.—TOWERS *v.* SOLOMON, [1922] 1 W. W. R. 1077; 2 C. B. R. 579.—**CAN.**

PART XXIII. SECT. 5, SUB-SECT. 2.—B.

sa. *Necessity for.*]—An assignment under Bkpcy. Act must be accepted for registration though not accompanied by the affidavit provided for by Homesteads Act, 1920, s. 7, & by Assignment Act, s. 7a.—*Re* LAND TITLES ACT, *Re* CITY GARAGE & MACHINE CO., LTD., [1921] 1 W. W. R. 371; 59 D. L. R. 416; 1 C. B. R. 412.—**CAN.**

due to him was therefore barred.—*Re* LEE, *Ex p.* GRUNWALDT, [1920] 2 K. B. 200; 89 L. J. K. B. 364; 123 L. T. 31; [1919] B. & C. R. 287.

Annotations:—As to (3), (4), (5) & (6) **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8782a. —— Assignment of property to trustees for benefit of creditors—Assignment not to be registered.]—*Re* A BANKRUPTCY NOTICE, No. 797a, *ante*.

8782b. —— Authority to realise trader's estate & to apply proceeds in payment of creditors.]—A letter signed by debtor in the following form: "I hereby authorise you to realise my estate including stock-in-trade, book debts, furniture, & all other assets & to apply the proceeds first in payment of the costs, charges, & preferential claims, etc., & secondly to pay the balance to my creditors *pro rata*":—*Held:* (1) not an "assignment of property" within sect. 1 (2) (*a*) of the above Act; (2) not a deed of arrangement within sub-sect. 1.—LIPTON (B.), LTD. *v.* BELL, [1924] 1 K. B. 701; 40 T. L. R. 163; *sub nom.* LIPTON (B.), LTD. *v.* BELL, HAYES *v.* BELL, 93 L. J. K. B. 563; 130 L. T. 749; 68 Sol. Jo. 521; [1924] B. & C. R. 82, C. A.

8782c. —— Document discharging debtor—Constituting assignment for benefit of creditors generally.]—Pltf.'s claim was for £148, the amount of two bills of exchange drawn by pltf., accepted by deft. & dishonoured on presentation. Deft. pleaded in his defence that the cause of action was merged in a deed of arrangement executed by him in favour of creditors. By that document the consenting creditors of deft accepted the following terms for the settlement of all debts owing by deft. to them: "(1) all the goods which have been removed from M.'s office & given to M. & Co., in trust on behalf of creditors, should be handed over to the creditors . . . (2) M. undertakes to pay to the above trustee for the creditors £80 payable . . . (3) M. also undertakes to pay on his own account (certain creditors named therein) who shall be excluded from the list of the general creditors. I agree to these terms":—*Held:* the agreement was for the benefit of three or more creditors, made by a debtor who was at the date of the execution of the deed insolvent, & was a deed of arrangement within sect. 1 of the above Act, & was void owing to non-registration.—LANDSBERG *v.* MENDEL, [1924] W. N. 46.

8782d. —— Deed of arrangement made by insolvent debtor.]—A debtor, who was insolvent, under a scheme for the composition of his debts, which amounted to about £150,000, entered into a deed of arrangement with his creditors under which he agreed to pay his trade creditors, including pltfs., a composition of their claim, together with certain profits out of his business up to Apr. 30, 1926, & he covenanted to carry on that business up to that date, the creditors covenanting to release him from the full amount of his liability. Some of his creditors, whose claims amounted to £150 were not parties to the scheme or deed, &, acting under legal advice, debtor did not register the deed. After paying his trade creditors, including pltfs., a small portion of the composition, debtor sold his business & entered into another scheme of arrangement with his creditors, to which pltfs. refused to be parties, & they sued for the original debt owing to them, less the amount which they had received under the composition:—*Held:* (1) the deed came within Deeds of Arrangement Act, 1914 (c. 47), s. 1 (1) (*b*), &, not being registered, was void; (2) pltfs., who had assented to the deed, were not estopped by such assent from denying the validity of the deed; (3) assuming that they were so estopped, debtor, by selling his business before Apr. 30, 1926, had not fulfilled the conditions of the deed under which he would be released from his original liability, & therefore pltfs. were relegated to their original rights & were entitled to succeed on their claim. The authorities on the doctrine of estoppel as applicable to deeds of arrangement considered. — HUDDERSFIELD FINE WORSTEDS, LTD. *v.* TODD (1925), 134 L. T. 82; 42 T. L. R. 52.

8782e. —— Power of attorney by debtor—Authorising third party to execute deed of arrangement.]—*Re* WILSON, No. 8772a, *ante*.

8782f. —— Deed by debtor resident in Scotland.]—*Re* PILKINGTON'S WILL TRUSTS, PILKINGTON *v.* HARRISON, No. 5936b, *ante*.

8787. *Add. Annotations:*—**Refd.** *Re* Ellis, [1925] Ch. 564; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8788. *Add. Annotation:*—**Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82.

8789. *Add. Annotation:*—**Refd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

PART XXIII. SECT. 6, SUB-SECT. 1.—A.

11. —— —— *Non-assenting creditors not opposing.*]—*Re* HOWE, [1921] 20 O. W. N. 244; 59 D. L. R. 457; 1 C. B. R. 482.—**CAN.**

g i. —— ——.]—The ct. is not empowered to turn an arrangement matter into bkpcy. solely because the arranging debtor at the second private sitting has failed to obtain the requisite majority of his creditors to support his proposal.—*Re* C. & L., [1937] I. R. 521.—**IR.**

8810 i. —— *Reasonable security provided.*]—In a composition scheme, if one of the creditors obtains an advantage over the others the ct. will scrutinise the scheme very closely. Where under a scheme all the creditors would receive more than 50 per cent. & it was reasonable & provided for immediate payment of all but one of the creditors, but the creditor who financed the scheme would be entitled to be paid in full, the ct. ratified the composition as the most advantageous that could be proposed.—*Re* GARDNER, *Ex p.* CROFT & SONS, LTD., [1921] 19 O. W. N. 25; 59 D. L. R. 555; 1 C. B. R. 424.—**CAN.**

8811 i. *Whether bound to refuse to approve—Fraudulent conduct.*]—The ct. will approve of a compromise between debtor & his creditors which is in the best interests of the creditors, even where debtor has obtained credit by false & fraudulent representations, where debtor by his discharge is not relieved from liability for the full claim of a creditor from whom he obtained credit by false & fraudulent representations, & he is still liable to prosecution.—*Re* CHMELNITSKY, [1922] 3 W. W. R. 114; 68 D. L. R. 492.—**CAN.**

sb. *Power of registrar—Limited to approval or rejection.*]—The Bkpcy. Act contains no provision which enables the ct. to modify or change the proposal: it must either approve or reject the same.—MARTIN *v.* RIMAN, [1931] 1 D. L. R. 773; 66 O. L. R. 394.—**CAN.**

PART XXIII. SECT. 6, SUB-SECT. 1.—B.

8825 ii. —— ——.]—Where the judge refused to sanction an arrangement on the ground that there was evidence of reckless, not to say dishonest, trading on debtor's part for some years previously, & he adjudged debtor bkpt.:—*Held:* on the facts, there was no sufficient ground for overruling the wishes of the majority of the creditors accepting debtor's proposal for an arrangement, & the order of adjudication must be discharged. Principles which should guide the ct. in dealing with arrangements under Irish Bkpt. & Insolvent Act, 1857 (c. 60), considered.—*Re* C., [1926] I. R. 14.—**IR.**

8869a. —— Creditor with contingent claim.]—C., a debtor, in Oct. 1936, entered into a deed of arrangement with his creditors under which a certain lease, of which he was an assignee, was not assigned by was to be held by him on trust for the trustee of the deed. In the assignment of the lease to C. there was a covenant by him with the assignors (who were appct. & one D.) & with each of them to pay the rent & perform & observe the covenants on the part of the lessee & to keep the assignors effectually indemnified against all actions claims & demands whatsoever by reason or on account of the non-payment of the rent or the breach, non-performance or non-observance of the covenants or conditions or any of them. The lease had been assigned to appct. & D. by the original lessees, & in the deed of assignment to appct. & D. there was a covenant with the original lessees to the effect that the covenants implied by Law of Property Act, 1925 (c. 20), s. 77 (1), para. (*c*), should be incorporated in the deed—namely (*inter alia*) at all times to perform & observe the covenants contained in the original lease, & to keep the original lessees indemnified in respect of any breach of such covenants. Appct. had assented to the deed of arrangement entered into by the debtor with his creditors, but the deed did not contain any provision, in the trusts for the distribution of the debtor's property among the creditors, incorporating the bkpcy. provisions relating to the distribution of the property & assets of a bkpt. Appct. claimed to be a creditor of the debtor under the terms of the deed of arrangement. He alleged that he might be called upon by virtue of the covenants incorporated in the assignment to him to indemnify the original lessees (the assignors to him) against any liability they might be under to the lessors, & that, if he were to be so called on, the debtor in his turn would be liable to indemnify him, & claimed that such a contingent liability on the part of the debtor was a " debt " within the meaning of the deed of arrangement, & that he (appct.) was a " creditor " of the debtor within the meaning of the deed in respect thereof :—*Held :* there was nothing in the deed of arrangement which would enable the ct. to construe the words " creditors," " debtors " or " debts " in the deed in any wider sense than was ordinarily attributed to those words in order to bring any one who might have a contingent or future claim against the debtor within the scope of the deed. The motion therefore would be dismissed.—*Re* CASSE, *Ex p.* ROBINSON *v.* TRUSTEE, [1937] Ch. 405 ; 106 L. J. Ch. 343 ; *sub nom. Re* CASSE, ROBINSON *v.* GRIGG, [1937] 2 All E. R. 710 ; 157 L. T. 528 ; [1936-7] B. & C. R. 155.

8872. *Add. Annotations :*—**Apld.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224. **Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007 ; I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96.

8882a. ——.]—FLOWER *v.* LYME REGIS CORPN., No. 1775a, *ante*.

8923. *Add. Annotation :*—**Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

8929a. —— Debtor expecting execution—Deed valid.]—BOWEN *v.* BRAMIDGE (1833), 6 C. & P. 140.

PART XXIII. SECT. 6, SUB-SECT 2.

8843 iv. ——.]—In special circumstances under Bkpcy. Rule, 68 (2), the ct. may set aside a composition, although it has been ratified, & may order bkpt. to make another which will provide greater security for the creditors. But where a composition has been ratified, & is a reasonable & fair attempt to pay creditors as much as possible, there can be no grounds for setting it aside.—ROSENTHAL *v.* HOPE & HART (1922), 67 D. L. R. 628 ; 24 Q. P. R. 120.—**CAN.**

a i. —— *Prior to bankruptcy.*]—Paras. *q.* & *r.* of sect. 191 of Bkpcy. Act, referring to false statements in writing, apply to false statements which the debtor may have made after he had been adjudged bkpt. Therefore, the refusal by the Bkpcy. Ct. to approve a proposal of compromise, on the ground that the debtor had knowingly made false statements to resp. bank, but prior to his bkpcy., was not justified under sect. 16 (2) of the Act. —ELECTRIC MOTOR & MACHINERY CO., LTD. *v.* DUCLOS & BANK OF MONTREAL, [1932] S. C. R. 634 ; 4 D. L. R. 81.—**CAN.**

sf. *Absence of information & undervaluation.*]—*Held :* the proposal was not " reasonable & proper."—*Re* GASTON, [1922] 2 I. R. 179.—**IR.**

sh. *Composition giving discharge against all creditors & persons not in bankruptcy.*]—A proposed composition with a bkpt.'s creditors which provides for the discharge of, not only all the provable debts of the bkpt., but also of all claims of whatsoever nature of all creditors against the bkpt. & also against persons who are not in bkpcy. (in the present instance, the directors, officers & employees of the bkpt. co.) is not one which the ct. can approve ; at least, in the absence of the personal assent thereto of every creditor. Nor will such a composition be approved in part only, *i.e.* as to that portion which releases only the bkpt. with respect to his provable debts, where the effect of doing so would be to give a guarantor of performance of the composition only part of that which he stipulated for as consideration for his guarantee.—*Re* KERN AGENCIES, LTD. (No. 2), [1931] 2 W. W. R. 633.—**CAN.**

PART XXIII. SECT. 6, SUB-SECT. 5.

8860 ii. —— ——.]—*Re* C., No. 8825 ii, *ante*.—**IR.**

8865 i. —— *Enhanced value of assets.*]—An offer of a composition was passed by the requisite majority of creditors, & confirmed by the ct. Later, the property was sold for a price which considerably increased the assets. An opposing creditor then applied for an order setting aside the arrangement :—*Held :* a composition passed by the requisite majority of creditors & confirmed by the ct. cannot be upset except for fraud.—*Re* Q., AN ARRANGING DEBTOR, [1923] 2 I. R. 89.—**IR.**

sk. *Who may appeal—Trustee.*]—An appeal lies by a trustee in bkpcy. from an order refusing to approve a proposal for a composition with creditors.—*Re* KERN AGENCIES, LTD., [1931] 1 W. W. R. 629 ; 2 D. L. R. 614.—**CAN.**

PART XXIII. SECT. 8, SUB-SECT. 3.—A.

k (p. 1090) **i.** ——.]—*Re* COBOURG FELT CO., *Ex p.* WEAVER, [1925] 2 D. L. R. 997 ; 5 C. B. R. 622.—**CAN.**

t (p. 1090) **i.** —— *Homstead lands—Claim of exemption not filed—Sale of homestead lands.*]—P., in Jan. 1912, executed an assignment for the benefit of his creditors of all his property except two lots of land on which he & his family lived, the value of which did not exceed $1,500 ; & this assignment was duly registered by the assignees. By transfer dated in Apr. 1912, P. transferred all his right, title & interest in the two homestead lots to plff., for value ; & P.'s claim to the lots as exempt from seizure & sale under execution was admitted in writing by his assignees. P., however, did not file a claim of exemption within thirty days of the registration of the assignment ; & the registrar refused to register the transfers, on the ground that P. had no right to deal with the land, because of his failure to file a claim of exemption within thirty days under Land Titles Act, R. S. Sask. 1909, c. 41, s. 117 :—*Held :* this statutory provision was not applicable, in the circumstances stated, the registrar should be directed, under Land Titles Act, s. 150, to register the transfers as if the assignment had not been registered.—LEACH *v.* HAULTAIN (1913), 24 W. L. R. 154 ; 4 W. W. R. 484 ; 11 D. L. R. 238.—**CAN.**

sl. *Judgment.*]—Under an assignment in trust for the benefit of creditors of all the assignor's property the assignee is entitled to an assignment of a bond which a purchaser under an agreement of sale with the assignor has entered into to protect the assignor against his (the purchaser's) default under the agreement, &, if before such assignment of the bond the assignor has obtained judgment on it, the trustee has a right to an assignment of the judgment.—*Re* HIRSCH *v.* ALTON, INTERIOR TRUST CO. *v.* MACKENZIE, [1925] 4 D. L. R. 695 ; [1925] 1 W. W. R. 429 ; 34 Man. L. R. 650 ; 5 C. B. R. 545.—**CAN.**

so. *Assigned property—Collection Act, R. S. N. S.*, 1923 (*c.* 232).]—*Re* POLSON, TRUSTEE *v.* THOMPSON & SUTHERLAND, LTD., [1926] 1 D. L. R. 330 ; 58 N. S. R. 345.—**CAN.**

8929b. —— **Execution paid out by debtor—Money not recoverable by trustee.**]—BOYLE *v.* BLACKSTOCK (1863), 8 L. T. 641.

8933a. —— **& sale of effects thereunder by trustees—Property protected—Although purchaser allowing debtor to retain possession.**]—LEONARD *v.* BAKER (1813), 1 M. & S. 251; 105 E. R. 94.

Annotation :—**Refd.** Latimer *v.* Batson (1825), 4 B. & C. 652.

8933b. —— —— —— **Although balance unsold remaining in debtor's possession.**]—WOODERMAN *v.* BALDOCK (1819), 8 Taunt. 676; 129 E. R. 547; *sub nom.* WOODHAM *v.* BALDOCK, 3 Moore, C. P. 11.

Annotations :—**Refd.** Aldred *v.* Constable (1844), 3 L. T. O. S. 299; Hickman *v.* Cox (1858), 30 L. T. O. S. 279; Barker *v.* Furlong, [1891] 2 Ch. 172.

8933c. ——.]—*Held :* from the date of the deed of assignment the trustee was the legal owner of debtor's property, & the possession taken by him was effectual, so that there was no property of debtor which the sheriff could seize.—NORTH EASTERN RY. CO. *v.* SPARK (1877), 37 L. T. 143.

8965a. *S. P. Re* PRICE'S TRUST DEED (1868), L. R. 6 Eq. 460; 19 L. T. 113; 16 W. R. 997.

Annotations :—**Apld.** *Re* Raphael's Trust Estate (1870), L. R. 9 Eq. 233. **Refd.** Bell *v.* Bird (1868), L. R. 6 Eq. 635.

8970a. Restraint of trustee from acting—Injunction.]—IZARD *v.* COLBRON (1824), 13 Price, 327; M'Cle. 181; 147 E. R. 1006.

8977a. To grant preferential treatment.]—On Apr. 21, 1933, the debtor executed a deed of arrangement in favour of a trustee & his creditors. The deed did not contain a trust for the payment by way of preference of those persons who would be preferential creditors if the debtor were in bkpcy. At the date of the execution of the deed an employee of the debtor was receiving compensation at the rate of £1 3*s.* 10*d.* per week under an award made pursuant to the Workmen's Compensation Act, 1925 (c. 84). On May 22, 1933, the trustee of the deed wrote, through his solrs., to the employee's solrs. that he would treat the employee's claim to compensation as a preferential claim. Later he was advised that he was not entitled to grant any preferential treatment. He then brought the matter before the county ct. The county ct. judge ordered that the trustee should admit the employee as a creditor under the deed & treat him as a preferential creditor pursuant to Deeds of Arrangement Act, 1914 (c. 47), s. 17, as if the estate of the debtor were being administered in bkcpy. The trustee appealed :—*Held :* (1) the order was not in correct form, because the employee could not be treated as a preferential creditor by virtue of sect. 17 of the Deeds of Arrangement Act, 1914 (c. 47), s. 17; (2) the trustee was entitled, by virtue of Trustee Act, 1925 (c. 19), s. 15 (*f*), to grant the employee preferential treatment, & he was bound by the letter of May 22, 1933, to do so.—*Re* SHENTON, [1935] Ch. 651; 153 L. T. 343; *sub nom. Re* SHENTON, *Ex p.* BATES, 104 L. J. Ch. 311; *sub nom. Re* SHENTON, BATES *v.* HARRIS, [1934–5] B. & C. R. 201.

Annotation :—*Generally*, **Refd.** *Re* Moss, Westminster Corpn. *v.* Reubens, [1935] W. N. 171.

9022. *Add. Annotation :*—**Folld.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

9023. *Add. Annotations :*—**Folld.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

9024. *Add. Annotation :*—**Folld.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

9025a. Claim for royalties.]—N. & B. were the holders by novation of a licence from pltf. co. to use & exercise certain inventions relating to wireless apparatus which were the subject of letters patent owned or controlled by pltf. co. subject to the payment of certain royalties by N. & B. to pltf. co. N. & B. got into difficulties, & were unable to meet their obligations as they became due owing to overtrading, but they claimed to be still solvent. At a meeting of the trade creditors it was agreed that a committee of inspection should be appointed & that N. & B. should execute a deed of inspectorship. The deed, which was executed on May 6, 1928, was in the usual form, & in all material particulars the same as that considered by the ct. in *Easterbrook* v. *Barker*, No. 9024. By the deed N. & B., the debtors, in consideration of a release of their indebtedness to the assenting creditors, assigned their real & personal estates to C. as inspector upon trust to allow N. & B. " henceforth to manage & carry on their said business " subject to the covenants & conditions of the deed. N. & B. undertook to carry on the business or wind it up as the inspector & committee should think best. In a circular which was sent out by C., the inspector, on Sept. 10, 1928, announcing that the deed of inspectorship had been executed, it was stated that " all orders for goods required for the purpose of carrying on the business will be issued on my official order forms in the usual way & will be paid for by me." The inspector & the committee of inspection left the conduct of the business subsequent to the execution of the deed

---

PART XXIII. SECT. 8, SUB-SECT. 3.—B.

8935 ll. —— —— ——.]—ROSS JOHNSON, LTD. *v.* VICTORIA MINES, LTD., [1930] 1 D. L. R. 57; 41 B. C. R. 321; 11 C. B. R. 23; [1929] 2 W. W. R. 511.—CAN.

8948 ll. —— ——.]—Payment into ct. under a garnishee summons, under Alberta practice, is not payment to the garnishing creditor under Bkpcy. Act, s. 11 (1), so as to prevent a subsequent authorised assignment taking precedence over the garnishment.—WESTERN CANADA FLOUR MILLS CO., LTD. *v.* WHITE BAKERY, [1921] 1 W. W. R. 828; 59 D. L. R. 621; 1 C. B. R. 390.—CAN.

PART XXIII. SECT. 9, SUB-SECT. 1.—C.

sp. *To fix date of creditors' meetings.*]—When an authorised trustee takes over the estate of bkpt. as though he were sequestrator, he has authority to fix the date of the creditors' meeting & may change the date where it is impossible to give proper notice, & any meeting held on a date not so finally fixed by the trustee is illegal.—LEFAIVRE & GAGNON *v.* DE LISLE (1922), 66 D. L. R. 264.—CAN.

sq. *To apply to court—For approval of composition arrangement.*]—*Re* SHAW (1920), 59 D. L. R. 619; 1 C. B. R. 368.—CAN.

st. —— *For directions.*]—A trustee has the right to apply to the ct. for directions in connection with the administration of the estate, but is not entitled, prior to an authorised assignment or receiving order, to bring into ct. persons who may be entitled to certain assets, in order to determine their legal rights.—*Re* GELLER BROTHERS, [1924] 2 D. L. R. 590; 54 O. L. R. 283; 4 C. B. R. 108.—CAN.

sw. *To attack chattel mortgage—For non-compliance with Chattel Mortgage Act.*]—An authorised assignee or trustee in bkpcy. can maintain an action to set aside a transaction for want of compliance with the provisions of Bills of Sale & Chattel Mtge. Act, even although the transaction was complete before Bkpcy. Act came into force.—HOULDING *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1921] 2 W. W. R. 899; 14 Sask. L. R. 356.—CAN.

sx. —— ——.]—*Re* HAMER, *Ex p.* ROYAL BANK OF CANADA, [1922] 1 W. W. R. 1241; 66 D. L. R. 800; 15 Sask. L. R. 165.—CAN.

of inspectorship to N. & B. Pltfs. brought an action by which they claimed royalties upon wireless sets constructed & sold by N. & B. since Sept. 6, 1928. The action was brought against N. & B. & also against the inspector & the members of the committee of inspection personally:—*Held:* the deed of inspectorship did not constitute a partnership between N. & B. & their creditors, or between N. & B. & the inspector & the committee, also N. & B. did not become the agents of the inspector or of the committee to carry on the business, but the business remained the business of N. & B. & therefore pltfs.' claim for royalties against the inspector & committee of inspection failed.—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* NEWMAN, [1930] 2 K. B. 292; 99 L. J. K. B. 687; 143 L. T. 471; [1929-30] B. & C. R. 223.

9026a. —— **Putting up property for sale.**]—Assignees of debtor's property, in trust for the creditors, may put up a lease for sale, to try whether it can be made beneficial, without rendering themselves chargeable as assignees of the lease.—CARTER *v.* WARNE (1830), 4 C. & P. 191; Mood & M. 479, N. P.

Annotations:—**Consd.** How *v.* Kennet (1835), 3 Ad. & El. 659; White *v.* Hunt (1870), L. R. 6 Exch. 32.

9028a. For rates—Money distributed among unsecured creditors.]—*Re* MOSS, WESTMINSTER CORPN. *v.* REUBENS, [1935] W. N. 171; 180 L. T. Jo. 310.

9032a. ——.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante.*

9034. *Add. Annotation:*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

9034a. ——.]—*Re* LAMPLOUGH (CLARKSON), *Ex p.* HARDING (1835), 4 Deac. & Ch. 793, 795, 6 R.

9035. *Add. Annotation:*—**Apprvd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

9074. *Add. Annotation:*—**Refd.** Goldfarb *v.* Bartlett & Kremer, [1920] 1 K. B. 639.

9094. *Add. Annotation:*—**Refd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200.

9109a. —— ——.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante.*

9115a. ——.]—It would be an obvious fraud on the other creditors who agree to accept a composition payable *pro rata* to all if one creditor was enabled by a secret bargain to obtain a better advantage for himself (DAVEY, L.J.).—MURRAY *v.* REEVES (1828), 8 B. & C. 421; 2 Man. & Ry. K. B. 423; Dan. & Ll. 161; 108 E. R. 1099; *sub nom.* MURRAY *v.* REID, 6 L. J. O. S. K. B. 348, C. A.

Annotations:—**Consd.** *Re* McHenry, McDermott *v.* Boyd, Levita's Claim, [1894] 3 Ch. 365. **Refd.** Gilmour *v.* King (1833), 3 Tyr. 581; Hali *v.* Dyson (1852), 17 Q. B. 785.

9181a. Assent by assignor of debt—Not sufficient assent.]—PINDER *v.* COQUI (1866), 15 W. R. 22,

9198a. —— ——.]—*Re* LEE, *Ex p.* GRUNWALDT. No. 8778a, *ante.*

9198b. —— ——.]—HUDDERSFIELD FINE WORSTEDS, LTD. *v.* TODD, No. 8782d, *ante.*
Compare No. 797a, *ante*, & original volume, p. 160, No. 1498.

9204a. —— **Assent by branch of company—Whether whole company bound.**]—Pltfs. were a large co. with branches at L. & B. Defts. had dealings with both branches & on Aug. 20, 1936, owed £2 4*s.* 5*d.* to the L. branch & £59 2*s.* 8*d.* to the B. branch. On that date, being in difficulties, defts. executed a deed of assignment to a trustee for the benefit of their creditors. Pltfs.' agent at L. in response to a circular letter from the trustee assented to the deed, but their agent at B. subsequently refused to assent & pltfs. sued defts. for £59 2*s.* 8*d.*:—*Held:* the assent in respect of the L. debt was an assent binding pltfs. in respect of all debts due to them: & it was not open to them afterwards, either through their agent at B. or otherwise, to dissent.—DUNLOP RUBBER CO., LTD. *v.* HAIGH & SON, [1937] 1 K. B. 347; [1936] 3 All E. R. 381; 106 L. J. K. B. 166; 155 L. T. 579; 53 T. L. R. 98; 80 Sol. Jo. 933; [1936-7] B. & C. R. 149.

9229a. —— ——.]—HUDDERSFIELD FINE WORSTEDS, LTD. *v.* TODD, No. 8782d, *ante.*

9231. *Add. Annotation:*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated

---

PART XXIII. SECT. 10, SUB-SECT. 2.—A.

sy. *Assignment to creditor to secure advances—Retention of amount by assignee in excess of amount paid to other creditors.*]—Pltf. having become insolvent, made an assignment for the benefit of creditors, whereupon one of the creditors was appointed assignee. The business was reconveyed to pltf. on his undertaking to pay a composition on the amount of his indebtedness for the payment of which another of defts. became surety, & pltf. subsequently executed several assignments to defts. to secure advances. Defts. having taken possession under the last-mentioned assignments, the matters in difference between pltf. & defts. were referred to a master, with instructions to "take an account & report the sum due from either party to the other of them." The master having reported (*inter alia*) that defts., after paying the other creditors of pltf. their respective claims at the rate of sixty-two & a half cents on the dollar, had paid to themselves the full amount of their claim, & that being of opinion that defts. were not entitled to any greater rate of dividend on their claim than that paid to the other creditors, he had disallowed the surplus with interest, & had credited the same to pltf.:—*Held:* the decision of the Supreme Ct. of Nova Scotia, confirming the report of the master on the reference must be reversed on the ground that the master had exceeded his authority & reported on matters not referred to him.—DOULL *v.* MCILREITH (1886), 19 N. S. R. (7 R. & G.) 341; 7 C. L. T. 406; *revsd.* (1887), 14 S. C. R. 73.—**CAN.**

PART XXIII. SECT. 10, SUB-SECT. 2.—C. (a).

s (p. 1133) **1.** —— *As regards priority of subsequent creditors.*]—*Re* THOUN, [1925] 4 D. L. R. 242.—**CAN.**

9213 ii. —— *Out of assets in schedule.*]—Under a document signed by one A. & three of his creditors, applt. was appointed to take control on A.'s behalf of certain of his assets enumerated in an annexed schedule & to dispose of them for the benefit of the three creditors. The latter portion of the document was as follows: "& we the undersigned creditors of the said A. do hereby agree to accept as full settlement of the claims we have against him such *pro rata* share as may be found due in respect of the sale of the said assets, & we agree to pay the said applt. the usual commission on all assets realised: applt. having taken possession of the assets & having sold some of them, resp., one of the creditors who had signed the document, in an action against applt., complained that applt. had awarded a preference to one M. a creditor who had signed the document in respect of his claim which was based on two mtge. bonds referred to in the schedule of assets, & that applt. had failed to award resp. a *pro rata* share of the proceeds of the assets realised. It was common cause that if M. was entitled to the preference, resp., an unsecured creditor, would get nothing. The C. P. D. ordered applt. to amend his account by striking out the preference awarded to M. & distributing the proceeds of the assets among the creditors *pro rata* according to the respective amounts of their claims. Extrinsic evidence showing that the parties never intended that the secured creditors should abandon their preference had been led subject to subsequent decision as to its admissibility, but was held by the cts. below to be inadmissible, on the ground that the document was not ambiguous:—*Held:* the words "*pro rata* share" meant that the three creditors were to look to the proceeds of the assets in the schedule alone for the settlement of their claims, if the assets did not realise the full amount of their debts, & that they had reference not to the respective claims of the creditors but to the proportion that the proceeds bore to the total amount of the debts & that there was nothing in the document to show that preferences were to be given up.—SWANEPOEL *v.* VAN HEERDEN, [1928] App. D. 15.—**S. AF.**

Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

9234a. —— **Dealings with trustee—Estoppel.**]—Defts. executed a deed of arrangement for the benefit of their creditors. The trustee under the deed sent a circular letter to all defts.' creditors, announcing the deed, & undertaking to pay for goods ordered for current purposes. A statement of account was also asked for. The pltf. co., which was a creditor, duly sent its account, & from time to time supplied to the trustee, & received payment for, further goods. In an action for the balance of the price of goods sold to defts. before the deed of arrangement, the judge held that pltf. co. by its conduct was bound by the deed of arrangement, & was estopped, not only from relying upon the deed as an act of bkpcy., but also from bringing the action :—*Held :* defts. could not rely upon an estoppel, but pltf. co. by its conduct had assented to the deed of arrangement, &, therefore, could not succeed in the action.—WESTON (VICTOR) (FABRICS), LTD. *v.* MORGENSTERNS, [1937] 3 All E. R. 769 ; 81 Sol. Jo. 684, C. A.

9253a. *S. P.* CECIL *v.* PLAISTOW (1794), 1 Anst. 202 ; 145 E. R. 844.

Annotation :—**Apld.** Britton *v.* Hughes (1829), 5 Bing. 460.

9311a. Right to take proceedings under 1914 (Deeds) Act, s. 23—Claim to enforce right adverse to deed.]—*Re* ELLIS, No. 8645a, *ante.*

9313a. ——.]—A debtor executed a deed of arrangement, & after his death the trustee of the deed, having discharged all the debts, had a considerable surplus in his hands :—*Held :* there being no provision, express or implied, in the deed for the payment of interest on the debts, the creditors were not entitled to interest, & the surplus, after payment of the trustee's costs & expenses, belonged to the legal personal representatives of the deceased debtor.—*Re* RISSIK, [1936] Ch. 68 ; 105 L. J. Ch. 40 ; 154 L. T. 100 ; *sub nom. Re* RISSIK, *Ex p.* TRUSTEE UNDER DEED OF ASSIGNMENT *v.* DEBTOR & SCHWEDER & CO., [1934-5] B. & C. R. 208.

9453. *Add. Annotation :—As to* (1) **Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

9486. *Add. Annotation :*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

9532. *Add. Annotation :*—**Apld.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

9538a. —— ——.]—A. instituted a suit against B. & C. respecting a sum of £4,000. D. also was made a party to the suit ; but, having no interest, he disclaimed. A., B. & C. afterwards came to a compromise, in pursuance of which they executed a deed, assigning the £4,000 to trustees in trust to pay to D. his costs of the suit, & to divide the rest of the fund amongst A., B. & C. D., though he was not a party, either to the compromise or to the deed, filed a bill against A., B. & C. & the trustees, to compel a performance of the trusts & payment of his costs. A demurrer by C., for want of equity, was allowed.—GIBBS *v.* GLAMIS (1841), 11 Sim. 584 ; 59 E. R. 999 ; *sub nom.* GIBBS *v.* GIBBON, 5 Jur. 378, L. C.

Annotations :—**Consd.** Steele *v.* Murphy (1841), 3 Moo. P. C. C. 445 ; Synnot *v.* Simpson (1854), 5 H. L. Cas. 121.

9538b. —— —— **Provisions coming into operation after death of debtor.**]—The doctrine of *Garrard* v. *Lauderdale* (*Lord*), No. 9536, *ante*, does not apply to provisions for creditors which do not come into operation till after the death of the settlor.—*Re* FITZGERALD'S SETTLEMENT, FITZGERALD *v.* WHITE (1887), 37 Ch. D. 18 ; 57 L. J. Ch. 594 ; 57 L. T. 706 ; 36 W. R. 385, C. A.

Annotation :—**Apld.** Priestley *v.* Ellis, [1897] 1 Ch. 489.

9540a. —— ——.]—A., on going abroad, granted & assigned to B. freehold & personal property upon trusts for management & realisation, & for payment of A.'s debts & of the surplus to A. ; the deed contained full powers for settling demands. B. communicated with the creditors upon the subject of the trust :—*Held :* the creditors did not thereby acquire any right to sue the trustee for the purpose of having the trusts performed.—CORNTHWAITE *v.* FRITH (1851), 4 De G. & Sm. 552 ; 64 E. R. 954.

9543. *Add. Annotation :*—**Refd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

9546. *Add. Annotation :*—**N.F.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

9547. *Add. Annotation :*—**Distd.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

9549. *Add. Annotation :*—**Refd.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

9575. *Add. Annotations :*—**Apld.** Farey *v.* Cooper, [1927] 2 K. B. 384. **Refd.** Boorne *v.* Wicker, [1927] 1 Ch. 667.

9576. *Add. Annotations :*—**Apld.** Farey *v.* Cooper, [1927] 2 K. B. 384. **Refd.** Boorne *v.* Wicker, [1927] 1 Ch. 667.

9576a. ——.]—A debtor, who has assigned his business & goodwill to a trustee for the benefit of creditors, is not precluded, in the absence of express stipulation to the contrary, from soliciting the customers of the old business, notwithstanding that the deed of assignment contains a covenant by him to aid to the utmost of his power the realisation of the property assigned & the distribution of the proceeds thereof amongst the creditors In such a case debtor cannot be restrained from canvassing the customers, nor can a third person be restrained from instigating debtor to do so.—FAREY *v.* COOPER, [1927] 2 K. B. 384 ; 96 L. J. K B. 1046 ; 137 L. T. 720 ; 43 T. L. R. 803, C. A.

9619. *Add. Annotations :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

PART XXIII. SECT. 12, SUB-SECT. 1.

9612 iii. ——.]—Where conveyances made by the assignee for the benefit of creditors to pltfs. were made & accepted in satisfaction of pltfs.' claim against debtor :—*Held :* deft. was thereby freed from liability as surety.—UNION BANK OF CANADA *v.* MAKEPEACE (1919), 44 O. L. R. 202 ; 15 O. W. N. 179 ; 46 D. L. R. 193.—**CAN.**

sb. *Variation by registrar—Discharge of surety.*]—MARTIN *v.* RIMAN, [1931] 1 D. L. R. 773 ; 66 O. L. R. 394.—**CAN.**

BENEFICIAL ASSOCIATIONS.

See FRIENDLY SOCIETIES.

BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

Part I.—In General.

10. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

13. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640 ; Sutters *v.* Briggs, [1922] 1 A. C. 1.

14. *Add. Annotation :*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley, [1926] Ch. 38.

14a. —— —— ——.]—A lady, in her last illness, gave a cheque for £700 to a person with whom she had lived for some time, & the cheque was duly presented but not honoured, owing to the signature being of a very shaky & doubtful character. The donor died before the cheque could be again presented :—*Held :* the cheque not having been paid, there was no valid & effectual gift of the money to the donee.—*Re* SWINBURNE, SUTTON *v.* FEATHERLEY, [1926] Ch. 38 ; 95 L. J. Ch. 104 ; 134 L. T. 121 ; 70 Sol. Jo. 64, C. A.

Annotation :—**Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 K. B. 645.

37. *Add. Annotations :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625 ; Ouellette *v.* Canadian Pacific Ry., [1925] A. C. 569 ; Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Shotts Iron Co. *v.* Curran, [1929] A. C. 409.

Part II.—Requirements of Form.

81. *Add. Annotation :*—**Refd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67.

82. *Add. Annotations :*—**Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Refd.** Slingsby *v.* Westminster Bank, Ltd. (1930), 47 T. L. R. 1.

95. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

144. *Add. Annotation :*—**Consd.** Akbar Khan *v.* Attar Singh, [1936] 2 All E. R. 545.

PART I. SECT. 1.

14 i. —— *Revocable mandate—Revoked by death.*]—The authority of a bank to pay a cheque ceases on notice of the drawer's death.—CURLEY *v.* BRIGGS (ADMINISTRATOR OF DRURY ESTATE), [1920] 2 W. W. R. 1025 ; 53 D. L. R. 351.—**CAN.**

14 ii. *S. P.* KENDRICK *v.* DOMINION BANK & BOWNAS (1920), 47 O. L. R. 372 ; 18 O. W. N. 138.—**CAN.**

e i. ——.]—Its nature & negotiability discussed.—CHAMPAKLAL GOPALDAS *v.* KESHRICHAND NAGANMAL (1925), I. L. R. 50 Bom. 765.—**IND.**

PART II. SECT. 1, SUB-SECT. 1.

aa. *Note made by married woman—Effect of restraint upon anticipation.*]—Where a promissory note was made by a married woman :—*Held :* the promissory note was in fact, as well as in form, a valid unconditional promise on the part of the maker to pay a sum certain in money. Effect of Married Women's Property Act, R. S. O., 1914 (c. 149), ss. 4 (2), 5 (2), discussed.—ANDERSON *v.* MCLAREN, [1924] 4 D. L. R. 1076 ; 56 O. L. R. 26.—**CAN.**

r i. —— ——.]—An instrument is not a negotiable promissory note where there is not an unconditional promise, as required by Bills of Exchange Act, s. 176.—*Re* MITCHELL & UNION BANK OF CANADA, [1923] 4 D. L. R. 1132 ; 52 O. L. R. 523, *revsg. sub nom. Re* STEVENS & MITCHELL, 21 O. W. N. 331.—**CAN.**

r ii. —— ——.]—Where a cheque was drawn & given under the condition that it was not to become effective unless a loan was granted by a certain bank :—*Held :* the cheque could not be detached from the condition, &, the condition not having been fulfilled, the cheque could not be recovered on.—JONES *v.* THOMAS & NORMAN (1922), 65 D. L. R. 431.—**CAN.**

r ii. —— ——.]—There is nothing in law to debar the maker of a promissory note from pleading as a defence to a suit thereon that as a matter of fact the note was given for a special purpose & was not payable until the happening of a certain specific event which, so far, had not yet happened.—BHOGI RAM *v.* KISHORI LAL (1928), I. L. R. 50 All. 754.—**IND.**

s i. —— ——.]—Where a written promise to pay a specified sum of money at a certain time after date also contains the words " with the privilege of renewals," the instrument is not a promissory note within the meaning of sect. 176 of Bills of Exchange Act, R. S. C., 1927.—ROSS *v.* EMPIRE CONSTRUCTION & INVESTMENT CO., LTD., [1932] 1 W. W. R. 714 ; 40 Man. L. R. 225 ; 3 D. L. R. 167.—**CAN.**

58 i. *Promise to pay or do something else.*]—If under the terms of a written promise to pay a sum of money the obligation may be discharged in part, or in full, by the rendering of services, the promise is not an unconditional one to pay a sum certain &, therefore, the document is not a promissory note.—STANDARD TRUSTS CO. *v.* LAVALLEY, [1930] 3 W. W. R. 305 ; [1931] D. L. R. 149 ; 25 Alta. L. R. 1 ; *affd.*, [1931] S. C. R. 595 ; 4 D. L. R. 634.—**CAN.**

60 vii. —— *Payment on account of specified contract.*]—WILSON *v.* PELLETIER (N. B.), [1928] 1 D. L. R. 716.—**CAN.**

79 i. *As per memorandum of agreement—Memorandum meaningless.*]—*Held :* there was a good promissory note.—CANADIAN BANK OF COMMERCE *v.* LIVINGSTON (P. E. I.) (1909), 6 E. L. R. 459.—**CAN.**

sf. *Collateral conditional agreement.*]—The delivery of a promissory note to the payee subject to a collateral agreement by the payee not to enforce his rights until certain requests of the maker have been complied with does not make the note any less an unconditional promise in writing.—WESTCOTT *v.* LUTHER, [1933] 2 D. L. R. 369 ; S. C. R. 251.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.

f i. —— *Admission by solicitor of maker.*]—ARBUTHNOT *v.* CAMPBELL (No 2), [1931] 1 W. W. R. 240.—**CAN.**

h i. —— —— *Alleged maker denying signature.*]—Where an expert on handwriting said deft.'s signatures were genuine, but the judge held, after seeing enlargements of them, that they were forged :—*Held :* the absence of any evidence by pltf. & the uncertain nature of the other evidence justified the judge in dismissing the action.—EASTERN TOWNSHIPS INVESTMENTS CO. *v.* MCLENNAN (1919), 29 B. C. R. 1.—**CAN.**

PART II. SECT. 1, SUB-SECT 3.

sb. " *Sixty days after sight*"—*Sum certain with interest for indefinite period.*]—*Held :* the document was not a bill of exchange.—ROSENHAIN & CO. *v.* COMMONWEALTH BANK OF AUSTRALIA, [1922] V. L. R. 787 ; 31 C. L. R. 46.—**AUS.**

sc. *Cheque payable to " Ministre de la Voirie "—No time for payment stated.*]—An instrument in the form of a cheque drawn upon B. by A. payable to the order of the " Ministre de la Voirie " :—*Held :* not " payable on demand " & not a " cheque " within Bills of Exchange Act, s. 165.—LEDUC *v.* LA BANQUE D'HOCHELAGA, [1926] 1 D. L. R. 433 ; [1926] S. C. R. 76.—**CAN.**

sd. *Promise to pay by instalments—*

178a. —— **Or order.**]—The directors of pltf. co., being desirous of paying £250 to the L. & W. Corpn. for services rendered, drew a document in the form of a cheque for that amount on their account with deft. bank & delivered the document to B., a director of the L. & W. Corpn. The document was partly printed & partly in writing. The printed form was suitable for being filled in to make a cheque payable to order. It contained the blank space for the name of the payee to be filled in, followed by the printed words " or order." The document was made out in the form " Pay cash or order," the word " cash " being in writing. The document was not crossed & was never endorsed. It was paid into B.'s banking account & presented to deft. bank in the ordinary way of bank accounting, & was duly paid. In the result, the sum of £250 passed from the account of pltf. co. with deft. bank to the L. & W. Corpn., & deft. bank debited pltf. co.'s account with that sum & interest. Subsequently, a compulsory winding up order was made against pltf. co. on the petition of the Board of Trade, presented a few days before the above transactions took place. The liquidator of pltf. co. contended that the document was a cheque payable to order & required endorsement, & that as it had not been endorsed, deft. bank had no authority to pay the money as they did :—*Held :* the document could not be described as a cheque, because it was not a bill of exchange within 1882 Act, s. 73. The word " cash " could not be described as a " specified person." The document was not payable either to a specified person or to bearer, &, therefore, failed to satisfy 1882 Act, s. 7, which required that there must be a payee. The document must therefore be construed in accordance with the apparent intention of those who drew it. The printed words " or order," being inconsistent with the apparent intention of the drawers, must be neglected in favour of the written word " cash." Therefore, the document was a good direction to the bank to pay £250 to bearer. Deft. bank having paid the money in accordance with that direction, the action failed.—NORTH & SOUTH INSURANCE CORPN., LTD. *v.* NATIONAL PROVINCIAL BANK, LTD., [1936] 1 K. B. 328 ; 105 L. J. K. B. 163 ; 154 L. T. 255 ; 52 T. L. R. 71 ; 80 Sol. Jo. 111 ; 41 Com. Cas. 80.

191. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

205. *Add. Annotations :*—**Apld.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294. **Refd.** Derbyshire Territorial Army Association *v.* South-East Derbyshire Assessment Committee (1935), 99 J. P. 260.

207. *Add. Annotation :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, etc. (1927), 44 T. L. R. 165.

208. *Add. Annotation :*—**Apld.** Goldman *v.* Cox (1924), 40 T. L. R. 744.

209a. —— —— ——.]—Pltf., who was a Pole, & could not read English unless it was printed, bought goods from one A. Cohen, & certain cheques were made out in favour of " A. Cohen " by a clerk in the employment of pltf. & were signed by pltf. The clerk afterwards forged the name of the payee by inserting " S " before " A. Cohen " & forged the indorsement & got the cheques cashed by deft., who obtained payment for the cheques on presentation. In an action for money received by deft. to the use of pltf. :—*Held :* as the cheques were, before signature, made out to a real creditor & not to a fictitious person pltf. was entitled to recover.—GOLDMAN *v.* COX (1924), 40 T. L. R. 744 ; 69 Sol. Jo. 10, C. A.

Annotation :—**Refd.** Slingsby *v.* District Bank Ltd. (1931), 47 T. L. R. 587.

213. *Add. Annotation :*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

215. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640 ; McDonald *v.* Nash, [1924] A. C. 625.

217. *Add. Annotation :*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

218. *Add. Annotation :*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

240. *Add. Annotations :*—**Apld.** Mason *v.* Lack (1929), 140 L. T. 696. **Refd.** Haseldine *v.* Winstanley, [1936] 1 All E. R. 137.

240a. ——.]—An instrument purporting to be a bill of exchange was drawn by pltf. At the time when deft. accepted it there was no other name upon it, the only indication of a name being that it was payable at a certain bank at which, in fact, deft. had no account. On a claim by pltf. for the amount of the alleged bill :—*Held :* (1) since the document was not signed by the person giving it & addressed to the person who was to pay it, it was neither upon the authorities nor within 1882 Act, s. 3, a valid bill of exchange ; (2) it was a good promissory note upon which, after amendment of the statement of claim, pltf. was entitled to

---

After future date.]—MOTOR FINANCE CO. *v.* HARMS, [1930] 3 W. W. R. 302 ; 4 D. L. R. 1014.—**CAN.**

sf. " *After 12 months after date.*"]—A promise to pay " after 12 months after date " is indefinite as to time of payment, & is not therefore a promissory note within the Bills of Exchange Act.—GAUDET *v.* CORNEAU, [1936] 1 D. L. R. 754 ; 11 M. P. R. 96. —**CAN.**

PART II. SECT. 1, SUB-SECT. 4.

g (p. 25) **i.** —— ——·——.]—A note for a sum with interest " & all costs & a reasonable attorney's fee if placed in the hands of an attorney for collection " is not expressed to be for a " sum certain in money " within Bills of Exchange Act, R.S.C., 1927, & is therefore not a promissory note.—TEMPLE TERRACE ASSETS CO. *v.* WHYNOT, [1934] 1 D. L. R. 124.—**CAN.**

k p. 25) **i.** —— —— —— *At stated rate for uncertain time.*]—*Held :* the document was not a bill of exchange. —ROSENHAIN & CO. *v.* COMMONWEALTH BANK OF AUSTRALIA, [1922] V. L. R. 787 ; 31 C. L. R. 46.—**AUS.**

152 iii. —— —— *Error in calculation of instalment.*]—CONTINENTAL GUARANTY CORPN. OF CANADA *v.* VANCE, [1928] 1 D. L. R. 1134.—**CAN.**

152 iv. —— ——.]—The fact that an instrument in the form of a promissory note contained a promise by the payee written on the back thereof to accept payments by stated instalments :—*Held :* not to prevent it from being a true promissory note.—JACKSON *v.* DIGNEY, [1931] 1 D. L. R. 542; [1930] 3 W. W. R. 460 ; 39 Man. L. R. 201.—**CAN.**

PART II. SECT. 1, SUB-SECT. 5.

189 ii. —— *Named person without notice.*]—Bills cannot be treated as payable to bearer within sect. 21 (5) of Bills of Exchange Act when an existing person is named as payee, even though such person was unconscious of the transaction.—HARLEY *v.* BANK OF TORONTO, [1938] 2 D. L. R. 135 ; O. R. 100.—**CAN.**

recover.—MASON *v.* LACK (1929), 140 L. T. 696; 45 T. L. R. 363; 73 Sol. Jo. 284.

Annotation :—As to (2) **Refd.** Haseldine *v.* Winstanley, [1936] 1 All E. R. 137.

241. *Add. Annotations :*—**Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Refd.** Slingsby *v.* Westminster Bank, Ltd. (1930), 47 T. L. R. 1.

242. *Add. Annotations :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Slingsby *v.* Westminster Bank, Ltd. (1930), 47 T. L. R. 1.

242a. —— Cheque drawn by Government official on Bank of England—Dividend warrant for interest on War Loan.]—The first pltf., who was an executrix & a beneficiary under a will, received from the Bank of England a warrant for interest on War Loan, the warrant being crossed " & Co. Not negotiable " & being expressed to be " A/c Harry Turner, deceased." She signed the warrant & sent it to the exor.'s solr. in pursuance of an arrangement that any warrants received by her should be sent to him for attention. The solr. paid the warrant into his own account with deft. bank, representing to the bank that it was a repayment of a loan which he said he had made to the first pltf. In an action against the bank to recover the amount :—*Held :* (1) although the drawer of the warrant was an official of the Bank of England on which it was drawn, yet, as he was acting as an agent of the Government, the warrant constituted a " cheque "; (2) the word " dividends " in Bills of Exchange Act, 1882 (c. 61), s. 95, included interest on Government stock.—SLINGSBY *v.* WESTMINSTER BANK, LTD., [1931] 1 K. B. 173; 100 L. J. K. B. 195; 144 L. T. 369; 47 T. L. R. 1; 36 Com. Cas. 54.

Annotations :—Generally, **Refd.** Slingsby *v.* District Bank, Ltd., [1932] 1 K. B. 544; Slingsby *v.* Westminster Bank, Ltd. (No. 2), [1931] 2 K. B. 583.

251. *Add. Annotation :*—**Consd.** Mason *v.* Lack (1929), 140 L. T. 696.

252. *Add. Annotation :*—**Refd.** Mason *v.* Lack (1929), 140 L. T. 696.

254. *Add. Annotations :*—**Refd.** Mason *v.* Lack (1929), 140 L. T. 696; Haseldine *v.* Winstanley, [1936] 1 All E. R. 137.

255. *Add. Annotation :*—**Consd.** Mason *v.* Lack (1929), 140 L. T. 696.

260. *Add. Annotation :*—**Expld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

273. *Add. Annotation :*—**Refd.** Akbar Khan *v.* Attar Singh, [1936] 2 All E. R. 545.

292a. —— —— Interest to be charged thereon.]—Pltf. deposited the sum of Rs.43,900 with defts. & received a deposit receipt in the following form : " This receipt is hereby executed by [defts.] for Rs.43,900 . . . received from [a firm] for & on behalf of [pltf.]. This amount to be payable after two years. Interest at the rate of Rs. 5-4-0 per cent. per year to be charged." This document was stamped as a receipt :—*Held :* the document was a deposit receipt & not a promissory note. It evidenced the deposit of the sum mentioned & that it was to be repayable on demand after the expiration of two years from its date.—AKBAR KHAN *v.* ATTAR SINGH, [1936] 2 All E. R. 545; 80 Sol. Jo. 718, P. C.

292b. Memorandum for purchase of goods.]—*Held :* an agreement, & not a promissory note.—ELLIS *v.* ELLIS (1820), Gow, 216, N. P.

295a. Statement of sum borrowed & received—" Which I promise never to repay."]—*Held :* pltf. was well entitled upon the lending on one side, & the borrowing on the other, notwithstanding the words in the conclusion of the note.—ANON. (*circa* 1716), cited in 2 Atk. at p. 32; 26 E. R. 416, N. P.

Annotation :—**Refd.** Simpson *v.* Vaughan (1739), 2 Atk. 31.

297a. Acceptance of bill without drawer or drawee.]—MASON *v.* LACK, No. 240a, *ante*.

Part III.—Classification of Instruments.

341. *Add. Annotations :*—**Refd** Sutters *v.* Briggs, [1922] 1 A. C. 1. **Mentd.** The Joannis Vatis (1921), 91 L. J. P. 182.

PART II. SECT. 2, SUB-SECT. 2.

252 i. —— *Bill accepted.*]—An instrument purporting to be a promissory note, in which there is no mention of a drawee, may become a bill of exchange if acceptance is endorsed thereon by a third party. A person who thus endorses an acceptance thereby admits himself to be a drawee & becomes liable under it, even though he is not named as a drawee, provided acceptance by him is not inconsistent with the address on the bill of exchange. The acceptor having signified his acceptance is estopped from contending that he is not the drawee.—JOGESHCHANDRA DHAR *v.* MAHAMMAD IBRAHIM (1929), I. L. R. 57 Calc. 695.—**IND.**

PART II. SECT. 4, SUB-SECT. 1.

ai. —— ——.]—NORTHERN LUMBER CO., LTD. *v.* BLEICH, NICHOLS & SHEPARD (Sask.), [1929] 4 D. L. R. 274; 2 W. W. R. 538; *revg.*, [1929] 2 D. L. R. 698.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.

ad. *Promissory note for interest in patent right—Form of indorsement.*]—GALLAGHER *v.* MURPHY (Ont.), [1928] 4 D. L. R. 618; *revsd.*, [1929] 2 D. L. R. 124; S. C. R. 288.—**CAN.**

PART II. SECT. 5.

1 i. —— *Followed by lien agreement.*]—A document which satisfies the statutory definition of a promissory note is not prevented from being a true promissory note by the fact that it is followed on the same paper by a collateral agreement, if such agreement does not qualify the obligation of the maker of the note or restrict the note's negotiability.—BANK OF NOVA SCOTIA *v.* PHILPOTT, [1930] 2 W. W. R. 128; 4 D. L. R. 148; 24 S. L. R. 473.—**CAN.**

PART II. SECT. 6.

324 iii. ——.]—A promissory note given for the debt of a third person without consideration is not enforceable at the suit of the payee. The only difference between such a note & a mere simple agreement is that the note imports consideration &, therefore, unless the maker negatives all possible consideration the payee is entitled to recover on the implied consideration.—BEAVER LUMBER CO., LTD. *v.* MAKSS (DESROCHES), [1933] 2 W. W. R. 601.—**CAN.**

PART III. SECT. 1.

ae. *Cheque payable to " cash or order."*]—*Held :* payable to bearer.—JUDMAIER *v.* STANDARD BANK OF CANADA (Alta.), [1927] 1 W. W. R. 270.—**CAN.**

PART III. SECT. 3.

ag. *Drawn on resident in British India—Wherever drawn.*]—A bill of exchange drawn upon a resident of British India is an inland instrument irrespective of the place where it was drawn.—KIDSTON (A.-G.) & CO. *v.* SETH BROS. (1929), I. L. R. 57 Calc. 730.—**IND.**

Part V.—Computation of Time of Payment.

441a. —— —— —— ——.] — Where a promissory note, repayable by instalments, provides that if any instalment should not be paid "punctually" the whole of the balance is immediately to become payable, the use of the word "punctually" does not deprive the maker of the note of the three days of grace allowed by 1882 Act, s. 14, "in every case where the bill itself does not otherwise provide."—SCHAVERIEN *v.* MORRIS (1921), 37 T. L. R. 366.

Part VI.—Acceptance.

456. *Add. Annotation:*—**Refd.** Mason *v.* Lack (1929), 140 L. T. 696.

468. *Add. Annotations:*—**Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593; McDonald *v.* Nash, [1924] A. C. 625.

502a. —— **Acceptance subject to terms of contract —Negotiability destroyed.**]—LONDON & NORTHERN TRADING CO., LTD. *v.* ARCOS, LTD., No. 2158a, *post.*

508a. —— ——.]—Defts., merchants in London, were in the habit of purchasing goods for G., a merchant at Petersburg, which they consigned to pltf., his agent at Hamburg, & they drew bills to the amount, pursuant to the credit established for them. In such course of business, they consigned Brazil sugars & indigo to pltf. for G. & other merchants at Petersburg, & transmitted the bills of lading, & drew bills to the amount; upon which pltf. informed them, that he protected their drafts to the amount of all the goods consigned to the merchants at Petersburg, except those consigned to G.; that he accepted the draft for the amount of such goods provisionally, under the guarantee of defts., inasmuch as the sugars against which the bill was drawn were not, as ordered by his principal, Havannah, to the amount of which he was authorised to accept, but Brazil, respecting which he had no directions; that he would communicate with his principal on the subject, & inform defts. of the result. Such communication being made, G. at Petersburg, confirmed the order for the Brazil sugars, & directed pltf. to accept to their amount, & release defts. from their guarantee. Pltf. also informed defts. of their drafts, drawn on him against goods, being confirmed & acknowledged by other merchants at Petersburg, for whose account they were drawn. Upon the bkpcy. of G. & an action by pltf. against defts., for the amount of the bill which he had paid:—*Held:* pltf. was to be considered as having accepted the bill, not for the account of defts. until he, the acceptor, was in funds, but in reference to the confirmation of the order for the Brazil, instead of the Havannah sugars; which confirmation being given, his claim was upon the bkpt. at Petersburg, not upon defts., against whom, consequently, no action could be maintained.—LOHMANN *v.* ROUGEMONT (1840), 6 Bing. N. C. 253; 8 Scott, 520; 9 L. J. C. P. 158; 133 E. R. 100.

545. *Add. Annotation:*—**Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

Part VII.—Inchoate Instruments.

555. *Add. Annotation:*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625.

563. *Add. Annotation:*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

564a. —— **Authority to indorse.**]—Bills of exchange drawn by pltfs. to their own order, on & accepted by W. S. & Co., a co. of which deft. was a director, were indorsed by deft. in pursuance of a verbal agreement under which pltfs. sold & delivered goods to the acceptors, in consideration of deft. indorsing the bills with the intention of making himself liable to pltfs. in case of default by the acceptors. Pltfs. subsequently indorsed the bills, writing their name underneath that of deft. Pltfs. sued deft. as indorser:—*Held:* (1) by virtue of Bills of Exchange Act, 1882 (c. 61), s. 20, pltfs. had authority to complete the bills by adding their own indorsement, & the fact that pltfs. wrote their name underneath, instead of above, that of deft. was no answer to pltfs.' claim; (2) although the verbal contract found to have been made between deft. & pltfs. was in one sense a contract of guarantee, Stat. Frauds could

---

PART V.

419 iv. ——.]—A promissory note payable on demand is payable immediately. The issue of a statement of claim demanding payment is a sufficient demand as against a maker, even though the note is expressed to be payable at a particular place; although in that case pltf. may be deprived of costs if the maker is sued without previous demand & can show, the burden being upon him, that he was prejudiced by the fact that demand for payment was not made at the place specified.—ROYAL BANK OF CANADA *v.* DWIGANS, [1933] 1 W. W. R. 672; 3 D. L. R. 178.—**CAN.**

PART VI. SECT. 2.

sm. *Acceptance by wife.*]—*Held:* not binding on husband.—ECCLES *v.* MERCHANTS BANK OF CANADA, [1923] 3 D. L. R. 1103; 52 O. L. R. 135.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

sp. *Indorsement "will accept on arrival of goods."*]—*Held:* the words when applied to a bill on demand meant "will pay," & no further acceptance was necessary.—HUMPHREYS *v.* TAYLOR, [1921] N. Z. L. R 343.—**N.Z.**

not be set up as an answer to a claim under the bills.—McCALL BROS., LTD. *v.* HARGREAVES, [1932] 2 K. B. 423; 101 L. J. K. B. 733; 147 L. T. 257; 48 T. L. R. 450; 76 Sol. Jo. 433.

565. *Add. Annotations:*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625. **Refd.** Lickbarrow *v.* Mason (1793), 6 East, 20, n.

567a. ——.]—*Re* GOOCH, *Ex p.* JUDD, No. 2096a, *post.*

567b. ——.]—McDONALD (GERALD) & CO. *v.* NASH & CO., No. 2096b, *post.*

567c. **No drawee—Name of wrong drawee inserted—Alteration with consent of drawer.**]—M. drew two documents in the form of bills of exchange, but addressed to no one, for £1,000 & £500, respectively, payable ninety days after date. Deft. was induced, by fraud, to sign a form of acceptance written across each document. M. then took the documents to pltf. & requested him to get them discounted at his (pltf.'s) bank. Pltf., by mistake, inserted M.'s name as addressee on both documents, & took them to his bank, who, however, ultimately declined to discount them. M. then asked pltf. to discount them for him. Before doing so, pltf., in the presence of, & with the consent of M., crossed out M.'s name as addressee & substituted that of deft. Pltf., as *bonâ fide* holder for value without notice of any fraud, subsequently presented the documents to the deft., who refused to pay:—*Held:* (1) the insertion of deft.'s name as addressee was within sect. 20 of 1882 Act, & made the documents good bills of exchange on which deft. could be sued; (2) there was no material alteration within sect. 64 of that Act; (3) if the documents were not good bills of exchange, they were promissory notes on which deft. could be sued by a *bonâ fide* holder for value without notice.—HASELDINE *v.* WINSTANLEY, [1936] 2 K. B. 101; [1936] 1 All E. R. 137; 105 L. J. K. B. 391; 154 L. T. 406; 80 Sol. Jo. 206.

568a. —— **Effect of 1882 Act, s. 12.**]—F., a financier, L., a distiller, D. & M., a firm of shipbrokers, & one A. were minded to load a ship with a cargo of whisky to be carried across the Atlantic & sold in the U.S. or at some point from which it could easily be smuggled into the U.S., in violation of the laws of that country. D. & M. entered into a contract to buy a steamer for £2,565; F. advanced £256 as a deposit on the purchase. On Oct. 26. 1927, an agreement was entered into between F., L. & D. & M., whereby L. agreed to sell to D. & M. 7,500 cases of whisky at 27*s.* 6*d.* a case free on board at Leith or Glasgow to be delivered *ex* warehouse not later than Nov. 26. D. & M. were to take delivery on board a vessel of a regular line of steamers. Payment was to be made by a bill for £5,500 drawn by F., accepted by A. & indorsed to L., & a second bill for £4,812 accepted by A. & D. & M., both bills to be payable ninety days from Nov. 26, & to be drawn & accepted on Oct. 26 & handed to L. to hold as security until he should hand the shipping documents or delivery order from bond on or before Nov. 26. L. agreed to lend D. & M. £2,500 (£1,000 at 8 per cent. *per annum* & £1,500 at 40 per cent. *per annum* interest) for the purchase of the steamer, the loan to be secured by a first mtge. on the steamer. F. agreed to lend D. & M. £1,000 at 40 per cent. *per annum* interest to be secured by a second mtge. on the steamer. D. & M. agreed to insure the steamer for £1,000 against all risks including seizure or confiscation & £2,500 against marine risks & deliver to L. cover notes for £1,500 & £1,000 & to F. a cover note for £1,000. F. & L. agreed jointly to underwrite the insurance for £1,000 against confiscation at a figure to be agreed in the event of the ordinary market rate exceeding thirty guineas per cent. D. & M. agreed to provide £1,600, the estimated balance required for the equipment of the steamer for the voyage. In intended pursuance of the agreement two documents undated, & purporting to be bills of exchange, though written upon unstamped paper, were sent to L.; both were headed "London"; one was drawn by F., accepted by A., & indorsed by F., & was for £5,500, payable ninety days after date; the other not signed by any one as drawer; it was accepted by A. & by D. & M., & was for £4,812 payable ninety days after date. Delay having occurred in naming a liner to take delivery of the whisky & in equipping the steamer for the adventure, L. gave to D. & M. a delivery order addressed to the keepers of the bonded warehouse where the whisky was in store. D. & M. immediately pledged the whisky for £500. F. hearing of this paid off the loan & took a transfer of the delivery order. The so-called bills of exchange for £5,500 & £4,812 were sent to L., who was at Lausanne. He struck out "London" & substituted "Lausanne," added Dec. 3 as the date of each, & signed his name as the drawer of the second, & stamped them both as foreign bills:—*Held:* (1) the so-called bill for £5,500, being drawn, accepted & indorsed in this country on unstamped paper, was void by Stamp Act, 1891 (c. 39), ss. 2, 37 (2), 38 (1); (2) the so-called bill for £4,812 though valid in other respects, as a foreign bill, notwithstanding 1882 Act, s. 64, was invalidated by L. having added a date not in accordance with the contract, & was not protected by 1882 Act, s. 12.—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, [1929] 1 K. B. 470; 98 L. J. K. B. 282; 140 L. T. 479; 45 T. L. R. 185, C. A.

Annotation:—*As to* (2) **Distd.** Koch *v.* Dicks, [1933] 1 K. B. 307.

577a. —— ——.]—Where a bill of exchange on duly stamped paper is presented for signature to the acceptor by the drawer, & the former signs at the request of the latter with knowledge that the drawer intends to convert the document into a bill of exchange & negotiate it as such, it is immaterial, as against a holder in due course, whether the document was in blank or fully filled in when presented to the

PART VII. SECT. 1.

566 vi. —— *& place of payment.*]—Where instead of handing over a note, applt.'s solr. filled in a place for payment, & discounted it with resp. & kept the money, & resp. filled in his own name as payee, & the note was not paid at maturity & no notice of dishonour was given to applt.:—*Held:* the solr. had no authority to negotiate the note, & resp. had no authority to fill in his name as payee, & he could not recover from applt.—KNUST *v.* ABBOT, [1923] N. Z. L. R. 1072.—N.Z.

drawer for signature.—DUNN (M.), LTD. *v.* JEFFERSON (1925), 69 Sol. Jo. 695, 725.

584. *Add. Annotation :*—**Refd.** Guildford Trust *v.* Goss (1927), 136 L. T. 725.

585. *Add. Annotation :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

587. *Add. Annotation :*—**Dbtd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

588a. —— **Particular purpose—Fraudulent use for another purpose.**]—A cheque was signed in blank by one of the partners in a syndicate, in the belief that the stamp of the syndicate would be subsequently affixed & the cheque used for the ordinary business of the syndicate. It was made payable to another partner, & was indorsed by a third partner, who believed the same as the drawer, as well as by the payee. The payee, in fraud of the other two partners, did not affix the stamp of the syndicate & used the cheque for the purpose of raising a loan from money-lenders, for which he gave a promissory note binding him to repay an agreed sum by monthly instalments. When one of the instalments fell due, the cheque was tendered in payment & was dishonoured upon presentation, & the money-lenders then sued the drawer & the indorser :—*Held :* the drawer & indorser were liable on the cheque, as there had been nothing to put pltfs. on inquiry whether a fraud was being perpetrated by the payee, & as both defts., when signing the document, had intended that the document should be negotiated as a cheque, the cheque could not be regarded as a document given in escrow.—GUILDFORD TRUST, LTD. *v.* GOSS (1927), 136 L. T. 725 ; 43 T. L. R. 167.

Part VIII.—Delivery.

595. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625

596. *Add. Annotation :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, etc. (1927), 44 T. L. R. 165.

643. *Add. Annotation :*—**Expld & Distd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

663. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

Part IX.—Capacity and Authority of Parties.

687. *Add. Annotation :*—**Refd.** Kreditbank Cassel G.m.b.H. *v.* Schenkers, [1926] 2 K. B. 450.

691a. —— ——.]—*Re* ADANSONIA FIBRE CO., MILES' CLAIM (1874), 9 Ch. App. 635 ; 43 L. J. Ch. 732 ; 31 L. T. 9 ; 22 W. R. 889, L. JJ.

Annotation :—**Consd.** Yorkshire Banking Co. *v.* Beatson (1880), 5 C. P. D. 109.

691b. ——.]—FLEMING *v.* MCNAIR (1812), cited in 3 Dow, at p. 229 ; 3 E. R. 1048, H. L.

Annotations :—**Consd.** Davison *v.* Robertson (1815), 3 Dow, 218. **N.F.** Yorkshire Banking Co. *v.* Beatson (1880), 5 C. P. D. 109.

692a. —— ——.]—In order to take a case out of the principle, that every partner in a mercantile or ordinary trading partnership is liable upon bills, drawn by a partner in the recognised trading business of the firm, for a transaction incident to the business of the firm, although such partner's name does not appear upon the face of the instrument, & although he be a sleeping & secret partner, it must be established that the holder of the bills knew, at the time he received them, that the transaction was a private contract not within the scope of the partnership.—BUNARSEE DASS *v.* GHOLAM HOSSEIN (1870), 13 Moo. Ind. App. 358 ; 20 E. R. 585, P. C.

693a. —— ——.]—SUTTON *v.* GREGORY (1797), Peake, Add. Cas. 150 ; 170 E. R. 226, N. P.

694a. —— —— ——.]—If one partner draw or indorse a bill in the partnership name, it will *primâ facie* bind the firm, although passed by the partner to a separate creditor in discharge of his own debt, unless there be evidence of covin between such separate debtor & creditor, or at least of the want of authority either express or to be implied, in the debtor partner to give the joint security of the firm

---

PART VIII. SECT. 3, SUB-SECT. 1.

598 ii. ——.]—Extrinsic evidence is always admissible to show delivery in escrow.—IMPERIAL BANK *v.* HEISZ, IMPERIAL BANK *v.* HUNDT, [1930] 1 D. L. R. 339 ; 64 O. L. R. 452.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.—A.

611 viii. ——.]—Oral evidence is not admissible to show an agreement contemporaneous with the making of a note that the liability of the maker is contingent on the happening of some event.—RUTHENIAN FARMERS ELEVATOR CO. *v.* GNIAZDOSKI, [1922] 3 W. W. R. 19 ; 68 D. L. R. 656 ; 32 Man. L. R. 322.—**CAN.**

611 ix.——.]—MCNEILL *v.* STEWART, [1921] 1 D. L. R. 607 ; 3 M. P. R. 581. —**CAN.**

628 i. —— *Until death of maker.*]—BONHAM *v.* BONHAM (1920), 48 O. L. R. 434 ; 57 D. L. R. 459 ; 19 O. W. N. 268.—**CAN.**

637 iv. ——.]—Evidence of alleged conditions attached to the payment of a promissory note, *e.g.* payment out of a particular fund, is not admissible, as it would vary the terms of the written document.—GUGGISBERG *v.* WEBER, [1924] 1 D. L. R. 335 ; 1 W. W. R. 137 ; 18 Sask. L. R. 6.—**CAN.**

638 i. *Excluding liability if goods rejected.*]—An action by payee against the maker of a promissory note given for the price of goods was dismissed, on the ground that deft. had exercised, as under a contemporaneous oral agreement he was entitled to do, the right of rejecting & returning the goods.—NATIONAL MANUFACTURING CO. *v.* STEPA, [1922] 1 W. W. R. 814 ; 65 D. L. R. 284 ; 17 Alta. L. R. 398.—**CAN.**

PART IX. SECT. 1.

o i. —— *Knowledge of acceptor.*]—In an action on a promissory note it is enough to show that the acceptor had such knowledge as to put him on inquiry as to the maker's mental incompetency.—GRANT *v.* IMPERIAL TRUST, [1935] 3 D. L. R. 660.—**CAN.**

o ii. ——.]—MCNAB *v.* IMPERIAL TRUST CO., [1935] 4 D. L. R. 570.—**CAN.**

PART IX. SECT. 2.

t (p. 96) i. ——.]—POPE *v.* FRASER, [1933] 3 W. W. R. 754.—**CAN.**

for his separate debt.—RIDLEY *v.* TAYLOR (1810), 13 East, 175; 104 E. R. 336.

Annotations :—**Consd.** Frankland *v.* M'Gusty (1830), 1 Knapp. 274; *Re* Acraman, *Ex p.* Bushell (1844), 3 Mont. D. & De G. 615. **Distd.** Leverson *v.* Lane (1862), 13 C. B. N. S. 278. **Refd.** Lloyd *v.* Ashby (1825), 2 C. & P. 138; Wintle *v.* Crowther (1831), 1 Cr. & J. 316; *Re* Riches, *Ex p.* Darlington District Joint Stock Banking Co. (1865), 34 L. J. Bcy. 10.

694b. —— —— ——.]—Bills drawn by one partner for a separate debt in the partnership name cannot be recovered upon as against the firm, unless pltf. can prove either a direct assent from the other partners, or circumstances from which such assent might have been reasonably presumed.—FRANKLAND *v.* M'GUSTY (1830), 1 Knapp, 274; 12 E. R. 324, P. C.

Annotations :—**Consd.** *Re* Wardley & Hodson, *Ex p.* Thorpe (1836), 2 Deac. 16. **Refd.** Leverson *v.* Lane (1862), 13 C. B. N. S. 278.

694c. —— **Note made for self & partner—Partner bound.**]—LANE *v.* WILLIAMS (1692), 2 Vern. 277; 23 E. R. 779; *subsequent proceedings* (1693), 2 Vern. 292.

Annotations :—**Consd.** Devaynes *v.* Noble, Sleech's Case (1816), 1 Mer. 539. **Refd.** Bank of Australasia *v.* Breillat (1847), 6 Moo. P. C. C. 152.

694d. —— —— ——.]—SMITH *v.* JERVES & BAILY (1727), 2 Ld. Raym. 1484; 92 E. R. 464; *sub nom.* SMITH *v.* BAILY, 11 Mod. Rep. 401.

695a. —— —— **With addition of partnership name—Firm bound.**]—GALWAY (LORD) *v.* MATTHEW & SMITHSON (1808), 1 Camp. 403; 170 E. R. 1000, N. P.; *subsequent proceedings, sub nom.* GALLWAY (LORD) *v.* MATHEW & SMITHSON, 10 East, 264.

Annotations :—**Consd.** Rooth *v.* Quin & Janney (1819), 7 Price, 193. **Apld.** *Re* Clarke, *Ex p.* Buckler (1844), 3 L. T. O. S. 284.

696a. —— ——.]—In an action against partners on a bill of exchange, it is no legal objection that the bill has been drawn or indorsed by one in his own name only. The liability of the parties may be collected from their course of business & other circumstances, showing that the partner who drew or indorsed had authority to bind the partnership by that mode of drawing or indorsing. Nor is it sufficient for the other partners to show that, in the particular instance, the partner who drew or indorsed the bill in question violated his private instructions in so doing.—SOUTH CAROLINA BANK *v.* CASE (1828), 8 B. & C. 427; 2 Man. & Ry. K. B. 459; 108 E. R. 1101; *sub nom.* SOUTH CAROLINA BANK *v.* CASE, BECKETT *v.* SAME, Dan. & Ll. 103; 6 L. J. O. S. K. B. 364.

Annotations :—**Expld.** Smith *v.* Craven (1831), 1 Cr. & J. 500. **Dbtd.** Nicholson *v.* Ricketts (1860), 2 E. & E. 497. **Consd.** *Re* Adansonia Fibre Co., Miles' Claim (1874), 9 9 Ch. App. 635; Yorkshire Banking Co. *v.* Beatson (1880), 5 C. P. D. 109. **Refd.** Vere *v.* Ashby (1829), 10 B. & C. 288; Beckham *v.* Knight (1838), 4 Bing. N. C. 243; Trueman *v.* Loder (1840), 11 Ad. & El. 589.

698a. —— —— **After dissolution.**]—A bill drawn & accepted after dissolution of partnership, though dated before, does not bind the retiring partner.—WRIGHT *v.* PULHAM (1816), 2 Chit. 121; *sub nom.* WRIGHTSON *v.* PULLAN, 1 Stark. 375; 171 E. R. 501.

701a. —— —— ——.]—A bill, though drawn on a partnership, & accepted by one of the partners, if for a separate debt of one of them, shall not bind the partnership, if the party knew the consideration of the bill. *Aliter*, if in the hands of a *bonâ fide* indorsee without notice.—WELLS *v.* MASTERMAN (1799), 2 Esp. 731; 170 E. R. 512, N. P.

Annotations :—**Refd.** Leverson *v.* Lane (1862), 13 C. B. N. S. 278; Ellston *v.* Deacon (1866), L. R. 2 C. P. 20.

701b. —— —— ——.]—A partnership acceptance, given in discharge of the several debt of one of two partners, cannot be proved against the joint estate, by a person who took it in discharge of such several debt, though it was left for acceptance at the house of business of the partnership, & thence returned accepted, unless the holder makes out that it was accepted in the partnership name, with the knowledge & assent of the other partner.—*Re* O'NEILL, *Ex p.* GOULDING (1829), 8 L. J. O. S. Ch. 19, L. C.

Annotations :—**Refd.** Leverson *v.* Lane (1862), 13 C. B. N. S. 278; *Re* Riches & Marshall's Trust Deed, *Ex p.* Darlington, etc., Banking Co. (1865), 4 De G. J. & Sm. 581.

702a. —— —— **Bill not addressed to partnership address.**]—Deft., a cheesemonger at A., carried on at W. the hosiery trade in partnership with C., but in his own name. C. accepted, in the name of deft., a bill of exchange drawn for goods supplied to the partnership, & which was addressed to deft. at A.:—*Held :* the acceptance was binding on deft., although the bill was not addressed to the place where the partnership business was carried on.—STEPHENS *v.* REYNOLDS (1860), 5 H. & N. 513; 29 L. J. Ex. 278; 2 L. T. 222; 157 E. R. 1283; *subsequent proceedings*, 2 F. & F. 147.

Annotations :—**Consd.** Yorkshire Banking Co. *v.* Beatson (1), Leeds & County Banking Co. *v.* Same (1879), 4 C. P. D. 204. **Refd.** Yorkshire Banking Co. *v.* Beatson (1880), 5 C. P. D. 109.

709a. —— —— **Not for partnership purposes—Firm not bound.**]—SHEPPARD *v.* DRY (1840), cited in Byles on Bills, 18th ed., p. 56, n. (*l*).

713a. —— —— **For private debt—Firm not bound.**]—ARDEN *v.* SHARPE & GILSON (1797), 2 Esp. 524; 170 E. R. 442, N. P.

713b. —— —— ——.]—RIDLEY *v.* TAYLOR, No. 694a, *ante*.

713c. —— **Bill or note indorsed by partner in own name.**]—SOUTH CAROLINA BANK *v.* CASE, No. 696a, *ante*.

722. *Add. Annotation :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

726. *Add. Annotations :*—**Consd.** Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

734. *Add. Annotations :*—**Distd.** Goldman *v.* Cox (1924), 40 T. L. R. 744. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

737. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

738. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

PART IX. SECT. 3.

k i. —— ——.]—The maker of a promissory note whose signature is forged is not liable to the holder, when the latter has notified him that payment is demanded & he has not replied to the holder, who had suffered no prejudice.—INDUSTRIAL ACCEPTANCE CORPN. *v.* LUNENBERG OUTFITTING CO., [1934] 2 D. L. R. 558.—**CAN.**

746. *Add. Annotations :*—**Consd.** Goldman *v.* Cox (1924), 40 T. L. R. 423; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Australian Bank of Commerce *v.* Perel, [1926] A. C. 737; Jones *v.* Waring & Gillow, [1926] A. C. 670; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116.

765. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Reckitt *v.* Barnett, Pembroke & Slater, [1928], 2 K. B. 244.

757. *Add. Annotations :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank, [1927] 137 L. T. 443; Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

759. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

763a. —— —— **"Directors" added after signatures—Acceptance by company—Drawer requiring indorsement by directors.**]—A bill of exchange addressed to a limited co. was accepted in the following form: "Accepted payable at the W. Bank—A.B. & C.D., directors—Fashions Fair Exhibition, Ltd." The drawer when sending the bill to the co. for acceptance stated in his letter that as a condition of his doing the work for which the bill was drawn he should require it to be indorsed by the directors as well as accepted by the co. Accordingly the same two directors signed the bill also on the back, "Fashions Fair Exhibition, Ltd. A.B. & C.D., directors," & one of them when returning the accepted bill drew attention in his letter to the fact that it was "duly indorsed by two directors of the co. as requested by you." In an action against A.B. & C.D. as indorsers of the bill:—*Held :* (1) they were personally liable, upon the ground that if the indorsement was to be treated as that of the co. it gave no greater validity to the bill than was already contained in the acceptance, & therefore under 1882 Act, s. 26 (2), the construction that it was the personal indorsement of defts. was to be adopted; (2) even if the indorsement stood by itself, as defts.' signature did not in terms say that they were signing on behalf of the co., the addition to their names of the word "directors" must be treated as a word of description only & not as excluding their liability; (3) the ct. were entitled to look at the surrounding circumstances under which the bill was signed, including the letters which passed between the parties on the subject of the indorsement, from which it was to be inferred that defts. by indorsing intended to guarantee the payment of the bill.—ELLIOTT *v.* BAX-IRONSIDE, [1925] 2 K. B. 301; 94 L. J. K. B. 807; 133 L. T. 624; 41 T. L. R. 631, C. A.

Annotation :—As to (1) **Consd.** Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

763b. —— —— **"Receiver" added after signature.**]—Pltf., who had been appointed receiver on behalf of the debenture-holders of a co., sued defts. as acceptors of bills of exchange, which were signed by "R., Receiver, F. Ltd." as drawer. They had been accepted in respect of goods supplied by the co. to defts., & pltf. had stated that it must be "clearly understood that I am in no way accepting any liability or responsibility whatever in respect of the orders themselves":—*Held :* (1) the above were not "surrounding circumstances" from which the intention of the parties could be inferred, & such intention must be gathered from the terms of the document alone; (2) the words "Receiver, F. Ltd." were words of description only, & the bills did not purport to have been drawn on behalf of the co.; (3) pltf. was entitled to recover against defts. upon the bills.—KETTLE *v.* DUNSTER & WAKEFIELD (1927), 138 L. T. 158; 43 T. L. R. 770.

Part X.—Consideration.

772. *Add. Annotations :—As to* (1) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; *Re* Cuthbert, *Ex p.* Monnoyer British Construction Co. *v.* Trustees, [1936] 1 All E. R. 342.

773. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Sutters *v.* Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41.

PART IX. SECT. 5.

763 v a. —— —— *"President" & "Mgr." added after signatures.*]—*Held :* the individual defts. were personally liable on the note.—LOCZKA *v.* RUTHENIAN FARMERS' CO-OPERATIVE CO., LTD., [1922] 2 W. W. R. 782; 68 D. L. R. 535; 32 Man. L. R. 137.—**CAN.**

763 v b. —— —— *"Pres." & "Secy." added after signatures.*]—Whether those signing a promissory note signed it as officials of a limited co. or as individuals, is a question of intent, & the intent must be gathered from the face of the document itself, & where, on a series of notes made to the same person at one time, a rubber stamp containing the name of the co. & two lines was impressed on the notes & the signers signed on the two lines & added the words "Pres." & "Secy." after their signatures & were in fact the president & secretary of the co. respectively:—*Held :* the notes were made by the co.—SCHAFFER *v.* TUBBY, SMITH & CO., LTD., [1924] 1 D. L. R. 468; 1 W. W. R. 213.—**CAN.**

763 v c. —— —— *"Director" & "Secretary" added after signatures.*]—A promissory note was granted in the following terms: "Four months after date we promise to pay. . . [C. D.] Director, [E. F.] Secretary. The Fraserburgh Empire Ltd." The body of the note & the words appended to the signatures had all been written by the same person, not one of the signatories, before signature:—*Held :* the two signatories were personally liable.—BREBNER *v.* HENDERSON, [1925] S. C. 643.—**SCOT.**

763 v d. —— —— *"Managing Proprietor" added after signature.*]—A suit was brought on three hundis running in the following form: "56 days after date I promise to pay S. C. F., or order the sum of R.'s 600, only for value received in cash (signed) G. V. A., Managing Proprietor, G. & B. Friends, S. Rd. Bombay No. 4":—*Held :* the only person liable on these hundis was G. V. A. who had signed them & not any alleged firm passing under the name of G. & B. Friends, & the words Managing Proprietor, etc., were merely added as a description of his occupation & business address.—SITARAM KRISHNA PADHYE *v.* CHINANDAS FATEHCHAND (1928), I. L. R. 52 Bom. 640.—**IND.**

797. *Add. Annotation :*—**Reld.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330.

801. *Add. Annotation :*—**Reld.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

802. *Add. Annotation :*—**Reld.** Poteliakhoff *v.* Teakle, [1938] 3 All E. R. 686.

803. *Add. Annotations :*—**Distd.** Burrell *v.* Leven (1926), 42 T. L. R. 407; Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32 ; Poteliakhoff *v.* Teakle, [1938] 3 All E. R. 686. **Consd.** Burden *v.* Harris, [1937] 4 All E. R. 559. **Reld.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Sutters *v.* Briggs, [1922] 1 A. C. 1; Eldridge & Morris *v.* Taylor, [1931] 2 K. B. 416 ; Bartlam *v.* Evans, [1936] 1 K. B. 202.

823. *Add. Annotation :*—**Reld.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

826a. ——.]—MASCARENHAS *v.* MERCANTILE BANK OF INDIA, LTD., DA SILVA *v.* MERCANTILE BANK OF INDIA, LTD., No. 843a, *post.*

833. *Add. Annotation :*—**Reld.** Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793.

837. *Add. Annotation :*—**Reld.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

843a. Fraudulent pledge of debentures—Surrender for renewal—Rights of pledgee.]—A man, entrusted with certain debenture securities for the purpose of collecting the interest on behalf of the owners, by means of forged endorsements pledged all the debentures with his bankers to secure his own indebtedness. Later the debentures, which constituted negotiable instruments, were surrendered by the bank to the issuing authority, who exchanged them for new debentures of the same total value. All the new instruments were issued directly to & in the name of the surrendering bank, & clear of all previous endorsements. The original securities were then cancelled & retained by the makers. Later the said bank at the request of the pledgor of the securities endorsed the new instruments over to another bank, the present respondents, to whom he had transferred his loan account. On a claim by the owners of the original debentures, the present applts., for the delivery to them of the new instruments by resp. bank :—*Held :* there was nothing in the circumstances of the transaction to put resps. on inquiry. The issue by the makers of the "renewal" debentures constituted in effect a new contract between them & the first bank, &, resp. bank being the holders in due course of those instruments, applts. had no right of action against them. The "renewals" were in form & in substance new & independent obligations in substitution for those under the surrendered instruments.—MASCARENHAS *v.* MERCANTILE BANK OF INDIA, LTD., DA SILVA *v.* MERCANTILE BANK OF INDIA, LTD. (1931), 47 T. L. R. 611, P. C.

PART X. SECT. 1, SUB-SECT. 3.

795 i. *Forbearance to sue—Surety.*]—*Held :* the giving of a note to avoid suit contituted deft. a principal debtor, & his equities as a surety were gone.—ALLIANCE TRUST CO. *v.* JOHNSON, [1920] 2 W. W. R. 800 ; 15 Alta. L. R. 479.—**CAN.**

795 ii. —— *Note given by vice-president of company & wife.*]—Defts., husband & wife, were respectively vice-president & president of a co. which was indebted to pltf. co. & was unable to make payment. Defts. made a joint & several promissory note in favour of pltf. co., payable on demand, for the amount of the debtor co.'s indebtedness. This was done at the solicitation of K., a representative of pltf. co., who said that he would not sue "them" so long as they showed a disposition to pay :—*Held :* by "them" K. meant the debtor co.; forbearance to sue upon the demand note was a sufficient consideration for the giving of it ; & the wife deft. was liable upon it.—CITIES SERVICE OIL CO. *v.* RUBEL, [1931] 2 D. L. R. 183 ; 66 O. L. R. 475.—**CAN.**

795 iii. —— *Husband—Note given by wife.*]—Forbearance to press for payment or extension of credit is valuable consideration for a promissory note given by the debtor's wife to the creditor.—VICTOR *v.* GALLEN, [1937] 2 D. L. R. 99 ; 11 M. P. R. 155.—**CAN.**

795 iv. —— —— ——.]—The forbearance (which may be implied) & extension of time by a creditor is sufficient consideration for a demand note signed by a wife to secure the creditor of her husband.—MCMURCHY *v.* HARPER, [1937] 2 D. L. R. 774.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.

q i. —— ——.]—*Held :* the forbearance or extension of time limited for the balance of payments which R. obtained by the giving of the note was valuable consideration within the meaning of the common law of England or under sect. 53 of Bills of Exchange Act, R. S. C., 1927.—*Re* ROSS, HUTCHISON *v.* ROYAL INSTITUTION FOR ADVANCEMENT OF LEARNING, [1932] S. C. R. 57 ; [1931] 4 D. L. R. 689.—**CAN.**

rr. Extension of credit.]—FULLER & CO. *v.* HOLLAND (N. S.) (1910), 9 E. L. R. 1[illegible].—**CAN.**

PART X. SECT. 1, SUB-SECT. 5.

sv. *Sale of improvements by quit-claim deed.*]—DUBE *v.* MORNEAULT (1920), 48 N. B. R. 200 ; 55 D. L. R. 512.—**CAN.**

sx. *Giving credit.*]—In an action upon promissory notes made by defts. husband & wife, in favour of pltfs. wholesale merchants, it appeared that in Mar. 1921, the wife deft. who had been carrying on a retail business, made an assignment under the Bkpcy. Act, & shortly afterwards made a proposal to compound her debts at 35 cents in the dollar, to be paid in ten equal monthly instalments. The composition was duly approved by the ct. Pltfs. were among the creditors. The debtor did not complete the composition payments within the times proposed, & the final payment was not made until Aug. 1923. After the composition was approved, the debtor continued to do business, & made some purchases from pltfs. In Sept. 1922, the debtor proposed to buy a large quantity from pltfs. on credit, but pltfs. refused to give credit for the quantity desired unless defts. would make some settlement of the old debt, *i.e.* the unpaid balance of pltfs.' compound claim. Defts. thereupon signed the promissory notes now sued upon, delivered them to pltfs., & received a new supply of goods upon the credit they desired :—*Held :* the notes were not made for the accommodation of pltfs. ; but, though representing a compromised debt, were in fact made in consideration of the giving of credit in respect of the new sale, & that was sufficient consideration to support the notes & to render defts. liable.—CHAMANDY BROTHERS, LTD. *v.* ALBERT, [1928] 2 D. L. R. 577 ; 62 O. L. R. 105 ; 10 C. B. R. 32.—**CAN.**

sy. *Delivery up of void bill.*]—Valuable consideration for a bill of exchange may consist in the delivery up of another bill which the person taking the former bill was entitled to keep, even though the bill delivered up was void.—ROYAL BANK OF CANADA *v.* GROBE & WALBRIDGE (Alta.), [1928] 3 D. L. R. 93 ; [1928] 2 W. W. R. 55.—**CAN.**

sz. *Credit given to third party.*]—B., having an unauthorised loan from applt. bank, of which he was a director, & wishing that it should cease to appear in the books, persuaded the first resp. to sign a promissory note for Rs. 20,000, dated Dec. 22, 1917, in favour of the bank ; B. promised that he would himself pay the principal & interest. The note was credited by the bank to B., the first resp. receiving no part of the money. On Dec. 23, 1918, B. paid to the bank a sum out of which the bank allocated Rs. 908 to the payment of the interest due upon the note. B. had notice of that allocation & adopted it in his own books. On Aug. 9, 1921, applt. bank sued the first resp. upon the note :—*Held :* the first resp. was liable on the note. The giving of credit by the bank to B. was consideration.—NATIONAL BANK OF UPPER INDIA *v.* BANSIDHAR (1929), L. R. 57 Ind. App. 1, P. C.—**IND.**

sa. *Note given for price of car—To father of vendor—Father "backing" son in business — Absence of consideration.*]—MCLEAN *v.* MCDOUGALL, [1930] 1 D. L. R. 713 ; 1 M. P. R. 77.—**CAN.**

PART X. SECT. 2.

844 ii. ——.]—CANADIAN BANK OF COMMERCE *v.* COLWELL (1923), 56 N. S. R. 347.—**CAN.**

PART X. SECT. 3.

855 i. *Liability of accommodating party—Not entitled to notice of dishonour.*]—CODVILLE CO. *v.* JORDAN, [1922] 1 W. W. R. 1280 ; 63 D. L. R. 694.—**CAN.**

856 vi. —— —— —— *Subsequent indorser not entitled to benefit of col-*

862. *Add. Annotation :*—**Expld.** *Re* Chetwynd's Estate, Dunn's Trust, Ltd. *v.* Brown, [1937] 3 All E. R. 530.

868. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

895. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

896a. —— **Under 1882 Act, s. 21 (2)—Payee.**]—The original payee of a cheque is not a " holder in due course " within the above sect. —JONES (R. E.), LTD. *v.* WARING & GILLOW, LTD., [1926] A. C. 670 ; 95 L. J. K. B. 913 ; 135 L. T. 548 ; 42 T. L. R. 644 ; 70 Sol. Jo. 756 ; 32 Com. Cas. 8, H. L.

Annotation :—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

897. *Add. Annotation :*—**Apprvd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

899. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

901. *Add. Annotation :*—**Consd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

902. *Add. Annotations :*—**Consd.** Sutters *v.* Briggs, [1922] 1 A. C. 1. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787 ; Robinson *v.* Marsh, [1921] 2 K. B. 640.

917. *Add. Annotations :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

922. *Add. Annotation :*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

935. *Add. Annotation :*—**Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

942. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

---

lateral security.]—SMITH *v.* FRALICK (1856), 5 Gr. 612.—**CAN.**

sb. *Right of accommodating party—To sue—On warehouse receipt indorsed by accommodated party.*]—*Held :* pltf. could not recover, for there was no debt contracted at the time of the indorsement.—COCKBURN *v.* SYLVESTER (1877), 1 A. R. 471.—**CAN.**

sd. *Evidence.*]—LERNER *v.* FRANCO-CANADIAN IMPORT CO., LTD. (1934), 7 M. P. R. 439.—**CAN.**

PART X. SECT. 5.

896 iv. —— ——.]—UNION BANK OF CANADA *v.* ANTONIOU, [1921] 1 W. W. R. 649 ; 56 D. L. R. 338 ; 61 S. C. R. 253.—**CAN.**

896 v. —— ——.]—WEICKER *v.* MORTIMER, [1922] 2 W. W. R. 725 ; 15 Sask. L. R. 436.—**CAN.**

896 vi. —— ——.]—ALLAHABAD BANK, LTD., LAHORE *v.* RATTAN CHAND CHAWLA (1927), I. L. R. 8 Lah. 702.—**IND.**

897 vi. —— ——.]—GUNNS, LTD. *v.* WARK, [1924] 1 D. L. R. 377 ; 51 N. B. R. 292.—**CAN.**

897 vii. —— ——.]—MARSHALL *v.* ROGERS, [1924] 1 D. L. R. 888.—**CAN.**

897 viii. —— ——.]—The original payee of a cheque is not a holder in due course.—JOHNSON *v.* JOHNSON, [1928] 2 D. L. R. 531, 912 ; [1928] 1 W. W. R. 774 ; [1928] 2 W. W. R. 63 ; 23 Alta. L. R. 388.—**CAN.**

907 i. " *Complete & regular on face of it*"—*Instrument signed in blank.*]—A party who knows that a note has been signed in blank & negotiated to him before being filled out is not a holder in due course.—SAVARD *v.* TREMBLAY (1922), Q. R. 34 K. B. 458. —**CAN.**

913 iii. —— ——.]—Pltf. purchased a 1916 model motor-truck from G. A cash payment was made on account & promissory notes given for the balance. G. assigned the agreement & notes to defts. for valuable consideration, of which pltf. had due notice. Later pltf. found the truck was a 1913 model but continued to use it. He then brought an action for cancellation of the notes : —*Held :* defts. were holders of the notes in due course & had discharged any *onus* for the fraudulent conduct of G. of which they had no notice.—FRASER *v.* MCGREGOR, JOHNSTON & THOMAS, LTD. (1922), 31 B. C. R. 306. —**CAN.**

913 iv. —— ——.]—BANK OF AUSTRALASIA *v.* CURTIS, [1927] N. Z. L. R. 247.—**N.Z.**

916 vi. —— ——.]—In order for a person to whom a bill or note is negotiated to be affected with notice of a defect in the title of the person negotiating it he must have knowledge of the facts or a suspicion of something wrong combined with a wilful neglect of the means of knowledge.—ROYAL BANK OF CANADA *v.* GROBE & WALBRIDGE (Alta.), [1928] 3 D. L. R. 93 ; [1928] 2 W. W. R. 55.—**CAN.**

916 vii. —— ——.] — Promissory notes for $1,000. & $2,000 were endorsed by defts. respectively for the accommodation of a co. which was a customer of pltf. bank, pursuant to an arrangement made at a conference between the manager of the co., one of defts., & the local manager of pltf. bank, whereby the proceeds of the notes, when endorsed, were to be applied in reduction of a balance due by the co. upon a purchase of land, & that the notes should not be used until the co. had raised a sum of $1,000 to make up the sum of $4,000 to be paid upon the land purchase. Defts. endorsed the notes upon these conditions. The notes were not discounted by pltf. bank, but were pledged to the bank by the co. as collateral security for advances made to the co. The co. never raised the $1,000 necessary to complete the payment of $4,000 :—*Held :* the local manager of the bank had full notice & knowledge of the arrangement, & when he accepted the notes as pledge he was not acting in good faith & pltf. bank was therefore not a holder in due course.—IMPERIAL BANK *v.* HEISZ, IMPERIAL BANK *v.* HUNDT, [1930] 1 D. L. R. 339 ; 64 O. L. R. 452.—**CAN.**

n (p. 140) **i.** —— *Notice that transferor not entitled to transfer.*]—Defts. entered into a hire-purchase agreement with the H. Co. in respect of a motor car, & gave promissory notes as collateral security, but not in payment of the instalments payable thereunder. It was a term of the hire-purchase agreement, that defts. should be entitled to determine the hiring by returning the car to the H. Co. &, thereupon, the H. Co. was obliged to surrender all promissory notes given by defts., & not then due. Pltf., in course of an arrangement for financing the H. Co.'s transactions, paid the H. Co. an agreed price for the car, & the H. Co. indorsed deft.'s promissory notes & delivered them to pltf. Thereafter, defts. proposed, in lieu of the instalments, to pay £150 at once, & the residue of the consideration in a single deferred payment. The H. Co. sought to retire the promissory notes held by the pltf., but as the parties could not agree as to the rebate for payment in anticipation of the due dates, nothing eventuated. The H. Co., however, accepted the £150, & later, the balance of the consideration, from defts., & met each note held by pltf. as it fell due, until it went into liquidation. Pltf.'s representative was aware, in another capacity, of what had occurred between the other parties. Pltf. having brought an action against defts. on the promissory notes still held by it :—*Held :* it was a part of the bargain between defts. & the H. Co. that the promissory notes should not be discounted ; of this pltf. was aware ; pltf. was not a holder in due course, & could not recover.—AUTOMOBILE FINANCE CO. OF AUSTRALIA *v.* HENDERSON (1930), 23 Tas. L. R. 9.—**AUS.**

g (p. 141) **i.** —— ——.]—IMPERIAL BANK *v.* HEISZ, IMPERIAL BANK *v.* HUNDT, [1930] 1 D. L. R. 339 ; 64 O. L. R. 452.—**CAN.**

k (p. 141) **i.** —— *Private arrangement between parties—Not expressed on face of instrument.*]—An open letter of credit was granted to W., trader, on the guarantee of T. & M., merchants, upon an agreement, not expressed in the letter, that W. should buy produce & consign bills of lading & policy of insurance endorsed to T. & M., as security. W., in fraud & violation of their agreement, drew bills under the letter, & indorsed for value to the Merchants Bank of Halifax, who had no notice of the above agreement :—*Held :* a negotiable instrument is not to be affected by any private arrangement which the parties to it do not choose to put upon the face of the document. If it were intended to limit W. in the use of the letter of credit as between him & the world at large, to a use for mercantile purposes connected with the purchase of the produce, it would have been very easy to have expressed on the face of the letter of credit that it was to be accepted if presented accompanied by bills of lading & policy of insurance. — MERCHANTS BANK OF HALIFAX *v.* WINTER (1898), 8 Nfld. L. R. 30.—**NFLD.**

PART X. SECT. 6, SUB-SECT. 2.—A.

940 i. *Smuggling.*]—WALLBRIDGE *v.* FOLLETT (1846), 2 U. C. R. 280.—**CAN.**

940 ii. ——.]—The seller of smuggled goods cannot collect a note given for the price thereof as such transaction is contrary to public policy.—BEAULIEU *v.* OUELLETT (1936), 65 C. C. C. 355.—**CAN.**

942 i. *Gaming—Gambling in grain futures.*]—Promissory note unenforceable.—BANK OF TORONTO *v.* SWEENEY, BANK OF TORONTO *v.* COCHRANE, BANK OF TORONTO *v.* BORYS, [1927] 2 W. W. R. 597 ; 21 Sask. L. R. 670.—**CAN.**

942 ii. *Speculation.*]—In an action brought by a grain brokerage co. on promissory notes made by deft. in favour of pltf. &, alternatively, for the return of money lent by pltf. to deft. :—*Held :* pltf. could not recover on the notes since deft. had, to the knowledge of pltf., no intention of making or taking delivery of the grain

943. *Add. Annotations :*—**Distd.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Apld.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153. **Consd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

945. *Add. Annotations :*—**Refd.** Maskell *v.* Hill, [1921] 3 K. B. 157; Humphery *v.* Wilson (1929), 141 L. T. 469.

946a. Compounding felony.]—GUIBORN *v.* FELLOWS (1717), 2 Eq. Cas. Abr. 160; 5 Vin. Abr. 408, pl. 20; 22 E. R. 136, L. C.

960. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Sutters *v.* Briggs, [1922] 1 A. C. 1.

964. *Add. Annotation :*—**Apld.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

971. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

991. *Add. Annotation :*—*As to* (1) **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

995. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1033. *Add. Annotations :*—**Folld.** Low *v.* Fry (1935), 152 L. T. 585. **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

1033a. ——— ———.]—By an agreement entered into orally between the parties pltf. agreed to sell a house for £800 to deft., who thereupon handed to pltf. a cheque made payable to him for £450 as part purchase price. There was no memorandum or note of the agreement in writing to satisfy the terms of sect. 40 of the Law of Property Act, 1925 (c. 20), s. 40. Subsequently, deft. repudiated the agreement & stopped the cheque, which was dishonoured. Pltf. sued deft. on the cheque. There was no evidence that pltf. had not always remained able & willing to convey the property to deft. :—*Held :* pltf. could recover on the cheque.—Low *v.* FRY (1935), 152 L. T. 585; 51 T. L. R. 322.

1037. *Annotations :*—Delete "Barwick *v.* S. E. & C. Ry. Cos., [1920] 2 K. B. 387; Bombay & Persia Steam Navigation Co. *v.* MacLay, [1920] 3 K. B. 402; Markwald *v.* A.-G., [1920] 1 Ch. 348."

Add. Annotations :—**Refd.** Maclaine *v.* Eccott (1924), 132 L. T. 173; Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

1038. *Add. Annotations :*—**Refd.** The Penelope, [1928] P. 180; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

1052. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Churchill & Sim *v.* Goddard, [1937] 1 K. B. 92.

1053. *Add. Annotations :*—**Distd.** Guildford Trust *v.* Pohl & Maritch (1928), 72 Sol. Jo. 171. **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

in the transactions in question, &, therefore, the moneys for which the notes were given were advanced by pltf. for a purpose which was illegal under sect. 231 of the Criminal Code, & which had been carried out either wholly or to a substantial degree; nor could pltf. recover (except as to $1,350) on the alternative claim for moneys advanced, since (with the exception of the $1,350 which was advanced for other purposes) the moneys were advanced for said illegal purpose.—PRUDENTIAL EXCHANGE CO., LTD. *v.* EDWARDS, [1938] 1 W. W. R. 22; 1 D. L. R. 218.—**CAN.**

946 iii. ——.]—MACWILLIAMS *v.* HIGGINS, [1927] 2 D. L. R. 781; [1927] 1 W. W. R. 772; 36 Man. L. R. 458.—**CAN.**

946 iv. ——.]—Promissory note unenforceable. The fact that the magistrate consented to the withdrawal of the charge is immaterial.—BECKER *v.* BACHMAN (Alta.), [1927] 2 D. L. R. 1144; [1927] 2 W. W. R. 32.—**CAN.**

l i. ——.]—Moneys due on a promissory note executed in consideration of the balance of the security deposit for the lease of a house taken for immoral purposes cannot be recovered by suit.—KALIKUMARI BAISHNABI *v.* MANOMOHINEE BAISHNABI (1935), I. L. R. 63 Cal. 445.—**IND.**

m. Read now "**946a i.**"

n i. *Transaction in breach of licensing laws.*]—*Held :* pltfs. could not recover on bills of exchange given in payment for intoxicating liquors sold by their agent in a local option district.—WILSON CO. *v.* MAYFLOWER BOTTLING CO. (N. S.) (1913), 13 E. L. R. 489; 14 D. L. R. 711.—**CAN.**

n ii. ——.]—*Held :* there was no legal consideration for the cheque on which pltf. sued, & he could not recover.—SKALE *v.* BECKER, [1926] 1 D. L. R. 723; 59 O. L. R. 551.—**CAN.**

PART X. SECT. 6, SUB-SECT. 2.—B.

958 iv. —— ——.]—M. drew a cheque, crossed "not negotiable," & payable to D. or order, & delivered it to D. in payment of money won from him by D. under a wagering contract. D. indorsed the cheque to R. but upon presentment to M. for payment it was dishonoured :—*Held :* the cheque having been given for a consideration which by virtue of Gaming & Betting Act, 1912, was not illegal but merely void, D. had acquired a good title to it, & therefore that R. was entitled to recover its value from M.—ROBERTS *v.* MALOUF (1929), 29 S. R. N. S. W. 179; 46 N. S. W. W. N. 61.—**AUS.**

s i. —— ——.]—A promissory note given to a creditor in order to procure his consent to an assignment in contravention of Act 32, 1916, s. 141 (*b*), is not by reason of that fact alone void in the hands of a person not a party to it, who, subsequently to the illegality, gives value for it in good faith.—VALAYATHAN *v.* FIVE ROSES TEA & COFFEE WORKS (1931), 52 N. L. R. 143.—**S. AF.**

sb. *Amount recoverable.*]—Where the consideration for a promissory note as between the maker & payee was illegal & judgment is recovered thereon against the maker by a holder in due course who took it from the payee as collateral security for a debt, the amount of the judgment should be limited to the amount of the transferees' present indebtedness to the holder. The same result follows even though the original transaction was not illegal, where the maker has already paid the amount of the note to the payee.—ROYAL BANK OF CANADA *v.* GROBE & WALBRIDGE (Alta.), [1928] 3 D. L. R. 93; [1928] 2 W. W. R. 55.—**CAN.**

PART X. SECT. 7.

993 v. —— —— *Assignment by vendor of rights under contract to third party—Property in goods never passing to purchaser.*]—MONTICELLO STATE BANK *v.* KILLORAN, [1920] 3 W. W. R. 542.—**CAN.**

PART X. SECT. 8, SUB-SECT. 1.

s i. —— *Verbal agreement that note to be operative only on happening of event.*]—DENNIS *v.* IVEY & BOYCE, [1920] 3 W. W. R. 744.—**CAN.**

s ii. —— *Note given to show fictitious assets—Estoppel of maker.*]—HAY *v.* ALLEN, [1921] 1 W. W. R. 33.—**CAN.**

s iii. ——.]—KLOTZ *v.* JOUAN, [1925] 3 D. L. R. 105.—**CAN.**

s iv. ——.]—DEVLIN *v.* MOORE'S MILLS CREAMERY, LTD. (N. B.), [1927] 3 D. L. R. 479.—**CAN.**

PART X. SECT. 8, SUB-SECT. 2.

1040 ii. —— —— ——.]—The maker of a post-dated cheque the consideration for which has failed & payment of which he has stopped, is liable thereon to a bank which in good faith & without knowledge of the facts has before its date received it by indorsement from the payee & given credit therefor to the payee.—UNION BANK OF CANADA *v.* TATTERSALL, [1920] 2 W. W. R. 497; 52 D. L. R. 407; 15 Alta. L. R. 350.—**CAN.**

q (p. 164) **i.** —— —— —— *Withdrawal of retainer.*]—The rule that partial failure of consideration for a promissory note is a defence *pro tanto*, as against an immediate party, only when the amount of the note referable to such partial failure is ascertained & liquidated, was applied herein to an action on a note given a solr. on being retained to conduct the defence to a charge which was withdrawn before the date set for trial, but with respect to which the solr. prepared for trial.—KRAUSS *v.* LUCIUK, [1928] 1 D. L. R. 1132; [1928] 1 W. W. R. 184; 22 Sask. L. R. 374.—**CAN.**

PART X. SECT. 9, SUB-SECT. 1.

sd. *General rule.*]—In an action against the maker of a promissory note by an alleged holder in due course deft. has the right to plead fraud of the payee.—ARBUTHNOT *v.* CAMPBELL, [1930] 2 W. W. R. 275.—**CAN.**

1053 iii. —— ——.]—ROYAL BANK *v.* WANNAMAKER (Ont.), [1929] 4 D. L. R. 999.—**CAN.**

1054. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1054a. —— —— ——.]—GUILDFORD TRUST, LTD. *v.* POHL & MARITCH (1928), 72 Sol. Jo. 171.

1086a. ——.]—Where in an action for the payment of a sum alleged to be due to pltf. upon a promissory note deft. pleaded that there was no consideration for the note :—*Held :* (1) inadequacy of consideration affords no relevant answer to a demand upon a promissory note ; (2) it is not for the ct. to inquire into the adequacy of the consideration for the note, but to consider whether or not there had or had not been any consideration given ; (3) the burden of proof that no consideration had been given was on deft.—ADIB EL HINNAWI *v.* YACOUB FAHMI ABU EL HUDA EL FARUQI, [1936] 1 All E. R. 638, P. C.

1093. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

1132. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

Part XI.—Negotiation and Transfer.

1155. *Add. Annotation :*—*As to* (2) **Consd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

1161. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1163. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1169. *Add. Annotation :*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

1178. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1188. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

1189. *Add. Annotation :*—**Dbtd.** Mascarenhas *v.* Mercantile Bank of India, Ltd., Da Silva *v.* Mercantile Bank of India, Ltd. (1931), 47 T. L. R. 611.

1190. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

1196. *Add. Annotation :*—*As to* (2) **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1059 xv. ——.]—Where notes were nullities for fraud, & the signer was not estopped by any negligence on her part :—*Held :* the third party, although a holder in due course, had no right to recover from her.—DUNSHEA *v.* KESTEVEN, [1922] N. Z. L. R. 1032. —**N.Z.**

1059 xvi. ——.]—Where there was a defect in the payee's title, of which the indorsee had notice :—*Held :* he was not entitled to recover.—DARROCK *v.* BURNS (1927), 48 N. L. R. 320.—**S. AF.**

1059 xvii. ——.] — MCTAVISH *v.* COTSWOLD SCHOOL DISTRICT, [1931] 3 W. W. R. 623.—**CAN.**

PART X. SECT. 9, SUB-SECT. 2.

1073 i. —— *Husband & wife.*]—FRYERS & CO., LTD. *v.* STEEVES (N. B.), [1927] 4 D. L. R. 1077.—**CAN.**

PART X. SECT. 10, SUB-SECT. 1.

1093 i. Add " *varied*, [1917] 1 W. W. R. 1177."

sf. *Question for jury.*]—Pltf. sued upon two promissory notes made by deft. to L. & transferred, after maturity, & not for value, to pltf. They were renewals for the balance unpaid of a previous note from deft. to L. There was conflicting evidence as to the reason & consideration for giving the original note. L. asserted that the note was given for the amount owing to him by deft. on a loan. Deft. asserted that the note was for L.'s accommodation ; that the loan from L., asserted by L. to have been made to deft., had in fact been made to one It., that subsequently L. wanted the money, R. could not then pay, that deft. gave the note, for the same amount as that owing by R., to enable L. to raise money, but received no consideration, that it was agreed that deft. was not to be called upon to pay the note or any renewals, & that the note or any renewals would not be negotiated after maturity. The trial judge withdrew the case from the jury : —*Held :* there the questions whether the note was given simply for L.'s accommodation or in consideration of a debt due by deft. or by R., & whether there was an agreement, as alleged by deft., that the note should not be negotiated after maturity, should have been submitted to the jury.—GLESBY *v.* MITCHELL, [1932] S. C. R. 260 ; 1 D. L. R. 641 ; *affg.*, [1931] 2 D. L. R. 675 ; 3 M. P. R. 507.—**CAN.**

PART X. SECT. 10, SUB-SECT. 2.—B. (a).

1096 ix. —— ——.]—Fraud is no defence where an action on a note is brought by a holder in due course. It merely shifts the burden to pltf. to show that he took the note before maturity, in good faith, for value & with no notice of the fraud.—CANADIAN BANK OF COMMERCE *v.* PEEBLES, [1924] 1 D. L. R. 225.—**CAN.**

1096 x. —— ——.]—D. sued T. on a promissory note which had been given by T. to F. & which had been indorsed by F. to D. T.'s defence was that the note had been obtained from him by fraud & that D. had notice of the fraud when it was endorsed to him. D. proved the indorsement of the note to him & closed his case. T. then established in his case that the note had been obtained from him by fraud. D. in reply, gave evidence of the circumstances under which the note was indorsed to him ; this evidence was not very clear or definite. He was cross-examined at length, & it was shown that his recollection was deficient in some respects. The trial judge directed a verdict for D. & the jury gave a verdict for D. accordingly without leaving the box :—*Held :* upon proof by T. that the note had been obtained by fraud, sect. 35 of Bills of Exchange Act cast the burden upon D. of proving that value had in good faith been given by him for the bill, & the trial judge should have left that issue to the jury.—DOUGLAS *v.* TIERNAN (1932), 32 S. R. N. S. W. 149 ; 49 N. S. W. W. N. 31.—**AUS.**

1115 ii. *Illegality—Onus on defendant.*]—*Held :* the onus of proof of illegality was cast on defts. by sect. 30 of the Bills of Exchange Act, 1908, & the principle laid down in *Talbot* v. *von Boris*, No. 1114, *viz.*, that the provision of sect. 30 (2) of the Bills of Exchange Act, 1882 (Imperial), & of the New Zealand Act of 1908, does not apply to a case where the holder seeking to enforce the instrument is the person to whom it was originally delivered & in whose possession it remains, was not affected by the decision in *Jones (R. E.), Ltd.* v. *Waring & Gillow*, No. 896a.—COX & WALSH *v.* BURTON, [1933] N. Z. L. R. 249.—**N.Z.**

PART XI. SECT. 4.

g (p. 185) **i.** —— ——.]—To be the holder of a promissory note & entitled to sue on it in his own name, pltf. must be either the payee or the indorsee in possession of the note.—BARNEY *v.* LAUZON, [1923] 2 W. W. R. 19.—**CAN.**

m (p. 188) **i.** —— —— —— *Assignment to evade counterclaim.*]—Deft. made a note in favour of C., who lost it. C. made an assignment of it to J. in order that J. might bring an action thereon & so prevent deft. bringing a counterclaim against C. Just before trial the note was found & indorsed to J. :—*Held :* C. must be joined as pltf., & deft. allowed ot bring in his counterclaim.—JONES & COLQUHOUN *v.* FINCH (1922), 66 D. L. R. 822.—**CAN.**

m (p. 188) **ii.** —— —— *Indorsement in consideration of advances—Advances repaid.*]—*Held :* an action might be brought either in the name of the indorser or holder.—CLOW *v.* DOULL, [1920] 1 W. W. R. 1060.—**CAN.**

m (p. 188) **iii.** —— —— " *On account of " payee.*]—An indorsement was not struck out & action was brought on the note in the name of the payee. At the trial the judge allowed pltf. to amend by adding the indorsee as co-pltf., deft. having objected that pltf. had no right of action ; & judgment was given for the indorsee, but costs were given deft. against the payee, the original pltf. Deft. appealed on the grounds that no amendment should have been allowed, & pltf. was not entitled to judgment. Appeal dismissed.—JACKSON MACHINES, LTD. *v.* MICHALUCK, [1922] 2 W. W. R. 572 ; 67 D. L. R. 182 ; 15 Sask. L. R. 467.—**CAN.**

d (p. 189) **i.**—*Payee of cheque.*]—BELCHER *v.* DIXON, [1923] N. Z. L. R. 273.—**N.Z.**

1248. *Add. Annotations :*—**Consd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593; McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1250. *Add. Annotations :*—**Apld.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. **Apprvd.** McDonald *v.* Nash, [1924] A. C. 625. **Apld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Refd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

1254a. —— ——.]—A testator gave a promissory note to G., saying he wished to provide otherwise than by will, for pltf. & afterwards made his will, appointing G., with others, his exor., & to whom, after payment of legacies, he bequeathed a moiety of his personal estate. G. having made some payments on account to the pltf. afterwards denied her title :—*Held :* he was a trustee of the note for pltf.—LLOYD *v.* CHUNE (1860), 2 Giff. 441; 3 L. T. 366; 6 Jur. N. S. 1365; 66 E. R. 184.

Annotation :—**Expld.** *Re* Whitaker (1889), 42 Ch. D. 119.

1293a. By crossing "not negotiable."]—A bill was drawn by the Irish Casing Co., Ltd., payable three months after date "to the order of the Irish Casing Co., Ltd., only" for £500, & was crossed "not negotiable." Defts. were the drawees & acceptors of the bill. The drawers indorsed the bill to pltfs. for value, & when the bill was dishonoured by non-payment, pltfs. sued defts. for the amount of the bill & interest. Pltfs. admitted that the Irish Casing Co., Ltd., at the date when the bill became due was indebted to defts. in a sum exceeding the amount of the bill :—*Held :* the crossing "not negotiable" & the word "only" in the body of the bill sufficiently prohibited transfer so as to render the bill not negotiable within 1882 Act, s. 8 (1), & pltfs. could not recover.—HIBERNIAN BANK, LTD. *v.* GYSIN & HANSON, [1938] 2 K. B. 384; [1938] 2 All E. R. 575; 107 L. J. K. B. 639; 158 L. T. 525; 54 T. L. R. 780; 82 Sol. Jo. 548; 43 Com. Cas. 277.

1306. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

1312. *Add. Annotation :*—**Consd.** Importers Co. *v.* Westminster Bank, [1927] 1 K. B. 869.

1314a. Rubber stamp—Various names—Intention of indorser.]—Thomas Cook & Son, Ltd., carried on a tourist & ticket business, & Thomas Cook & Son (Bankers), Ltd., an allied but quite separate co., carried on a money-changing business in the same room. An employee of pltf. co., having in his possession in the course of his employment certain cheques drawn in favour of pltf. co., obtained that co.'s indorsement upon them, wrote above the indorsement "Pay to the order of Messrs. Thos. Cook & Son, Ltd." & gave the cheques to Thomas Cook & Son (Bankers), Ltd., in exchange for foreign currency. The cheques were then further indorsed by Thomas Cook & Son (Bankers), Ltd., by means of a rubber stamp "*per pro* Thos. Cook & Son. *per pro* Thos. Cook & Son, Ltd. *per pro* Thos. Cook & Son (Bankers), Ltd." & countersigned in the usual way. In an action for conversion of the cheques, pltf. co. contended that either Thomas Cook & Son, Ltd., was liable because that co. had converted the cheques & had not given value for them, or that Thomas Cook & Son (Bankers), Ltd., was liable because it gave value for the cheques when Thomas Cook & Son, Ltd., in whose favour they were indorsed, had not indorsed them :—*Held :* when pltf. co.'s employee wrote the words "Pay to the order of Messrs. Thos. Cook & Son, Ltd." he intended the cheques to pass to Thomas Cook & Son (Bankers), Ltd., in exchange for the foreign currency, & although he misdescribed that co., the cheques were in law indorsed to that co. Thomas Cook & Son (Bankers), Ltd., had given value for the cheques & neither deft. co. was liable.—BIRD & CO. (LONDON), LTD. *v.* COOK (THOMAS) & SON, LTD., & COOK (THOMAS) & SON (BANKERS), LTD., [1937] 2 All E. R. 227; 156 L. T. 415.

PART XI. SECT. 9.

e i. —— *Bank selling assets to another bank.*]—Where one bank sells its assets to another bank under Bank Act, ss. 99 to 111, & the agreement for sale has been approved by the Governor in Council, the purchasing bank may sue in its own name in respect of a promissory note, part of the assets acquired, notwithstanding that the note has not been indorsed by the selling bank as required by Bills of Exchange Act.—BANK OF MONTREAL *v.* IRVINE & FEINSTEIN, [1924] 3 D. L. R. 752; 2 W. W. R. 1047.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 1.

sg. "*Indorsed*" *written opposite signature.*]—A promissory note was signed by W. & M. on the face of the note & opposite M.'s signature the word "indorsed" was written by a salesman in the service of pltf. co., to which the note was made payable :—*Held :* M. did not sign the note with the intention of indorsing it, but as maker, though as between him & W. only as a surety, & the word "indorsed" was merely a memorandum intended to show that M. was a surety.—GORRIE (A. D.) CO., LTD. *v.* WHITFIELD & MICHAUD (1920), 48 O. L. R. 605; 58 D. L. R. 326; 19 O. W. N. 336.—**CAN.**

sh. "*I hereby assign the moneys payable under the within note.*"]—BANK OF NOVA SCOTIA *v.* PHILPOTT, [1930] 4 D. L. R. 148; 2 W. W. R. 128; 24 S. L. R. 473.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 2.

k i. —— *Of company.*]—If a co. authorises that its bank may accept for deposit cheques "purporting to be indorsed by any one director or the secretary or treasurer," an indorsement is good which is made by one who is a director & secretary though he does not purport to sign as director or secretary.—UNION BANK OF CANADA *v.* TATTERSALL, [1920] 2 W. W. R. 497; 52 D. L. R. 407; 15 Alta. L. R. 350.—**CAN.**

k ii. —— ——.]—BRECHT *v.* HEFFEL, [1923] 3 D. L. R. 40; 2 W. W. R. 1135.—**CAN.**

k iii. —— ——.]—IMPERIAL BANK OF CANADA *v.* DENNIS, [1925] 3 D. L. R. 488; 57 O. L. R. 203.—**CAN.**

k iv. —— ——.]—FIDELITY TRUST CO. *v.* TERMINAL LAND & INVESTMENT CO. (Ont.), [1927] 4 D. L. R. 532.—**CAN.**

sj. *Member of syndicate.*]—An indorsement by one of the members of a syndicate, carrying on the business of travelling a stallion, in the syndicate's name of a promissory note made payable to the syndicate or its order :—*Held :* to be a valid indorsement.—RILEY *v.* REED, [1925] 2 D. L. R. 737; [1925] 2 W. W. R. 286; 19 Sask. L. R. 366.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 3.—A.

1311 i. *Must be written on instrument —Writing on face of note.*]—Where the intention of all parties is that a signature is for the purpose of indorsement, it makes no difference where the signature is placed.—SIMONIN *v.* PHILION, [1922] 2 W. W. R. 1280; 66 D. L. R. 673.—**CAN.**

sk. —— *Allonge.*]—Before finding that a sheet of paper is an allonge to a promissory note, the ct. should scrutinise the evidence & material with the greatest care, & the evidence in favour of such a finding should be of the strongest character.—BARNEY *v.* LAUZON, [1923] 3 D. L. R. 140; 2 W. W. R. 19.—**CAN.**

1313 i. *Must be signed—Name mis spelt—In cheque—Name properly spelt in indorsement.*]—Although the word "limited" be omitted from a payee co.'s name in a cheque, there being no doubt of the co. being the intended payee, an indorsement of the cheque is effective by the proper signature of the payee on the back of it.—UNION BANK OF CANADA *v.* TATTERSALL, [1920] 2 W. W. R. 497; 52 D. L. R. 407; 15 Alta. L. R. 350.—**CAN.**

1318. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1319. *Add. Annotation :*—**Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1322. *Add. Annotation :*—**Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

1324. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1334. *Add. Annotation :*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625.

Part XII.—General Duties of Holder.

1397. *Add. Annotations :*—**Refd.** Jaeger *v.* Jaeger Co. (1927), 44 R. P. C. 437; Sassoon *v.* International Banking Corpn., [1927] A. C. 711; Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

1407. *Add. Annotation :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

1459. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

1461. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

1463. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

1477. After this case add "**Bill accepted payable at bank—Presentment over counter—Validity.**] —*See* BANKERS, No. 600a, *ante*."

1529. *Add. Annotation :*—**Consd.** *Re* British Trade Corpn., [1932] 2 Ch. 1.

1531. For "SAUNDERSON *v.* BOWES" read "SANDERSON *v.* BOWES."

Add. Annotation :—**Apld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

1542. *Add. Annotation :*—**Apld.** *Re* British Trade Corpn., [1932] 2 Ch. 1.

1546. *Add. Annotation :*—**Apld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

1548a. —— —— —— **Bill treated as promissory note.**]—On Mar. 23, 1920, the branch of the British Trade Corpn., Ltd., at Batoum, drew a document in the following form : "At sight pay this sole exchange to the order of Mr. B. L. Mailoff the sum of one thousand pounds sterling value received which place to account No. 2." The document was signed "For the British Trade Corpn." by the manager & accountant, & it was addressed at the foot "To the British Trade Corpn., 13, Austin Friars, London, E.C." By successive indorsements pltf. became the holder, & on Dec. 20, 1923, his agents presented the document at the London offices of the corpn. Payment was refused, as it was required that the indorsements should have a banker's certification. On Nov. 23, 1926, a special resolution was passed for the voluntary winding up of the corpn. in connection with an amalgamation with the Anglo-Austrian Bank, Ltd. On Apr. 6, 1931, pltf. sought to prove in the winding up for £1,000 in respect of the document, but the liquidator rejected the proof on the ground that it was barred by the Statute of Limitations, as more than six years had elapsed since the date of the document before the winding-up resolution. The holder took out a summons claiming to

---

PART XI. SECT. 15, SUB-SECT. 3.—E.

s1. *After advance made—Relation back.*]—*Held :* the indorsement related back to the time when the note was given & the money paid.—CANADIAN BANK OF COMMERCE *v.* COLWELL (1923), 56 N. S. R. 347.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 4.

1356 i. —— *"Pay to order of M. Bank to credit of" payee.*]—*Held :* a restrictive indorsement, & the indorsee & holder is not entitled to recover from the maker, who has paid in good faith the amount of the note to the payee.—MERCHANTS BANK OF CANADA *v.* BRETT, [1923] 2 D. L. R. 264; 32 Man. L. R. 529; [1923] 1 W. W. R. 607.—**CAN.**

r i. —— —— ——.]—O'DONOGHUE . HEMBROFF (1871), 19 Gr. 95.—**CAN.**

t i. —— *Right to make equitable assignment.*]—A bill of exchange payable to the order of A. only & endorsed by A. payable to B. only, cannot be further negotiated by mere endorsement. Such a case is one to which sect. 68 of Bills of Exchange Act, 1927, applies. But there may be an assignment of such a bill by B. under the rules governing the assignment of choses in action.—DEALERS FINANCE CORPN., LTD. *v.* SEDGWICK, [1932] 1 D. L. R. 71; 2 W. W. R. 598; *revsg.*, [1931] 1 D. L. R. 1014; 1 W. W. R. 164.—**CAN.**

PART XI. SECT. 16.

1366 ii a. —— ——.]—The right which the transferee for value of a bill has under Bills of Exchange Act, s. 61 (1), to have the endorsement of the transferor does not oblige the transferor to give an unqualified endorsement unless there is some contract or equity which requires him to assume personal responsibility on the bill.—SCOTT *v.* FERGUSON, [1929] 3 D. L. R. 705; 2 W. W. R. 37; 23 S. L. R. 512.—**CAN.**

PART XI. SECT. 17.

1367 iii. —— *Apparent cancellation of indorsement.*]—*Held :* it is for the holder to prove in order to establish his title by reason of Bills of Exchange Act, ss. 143, 144, that the apparent cancellation was not intended to be one.—ROYAL BANK OF CANADA *v.* ALLEN, [1919] 3 W. W. R. 1063; 49 D. L. R. 572; 15 Alta. L. R. 171.—**CAN.**

PART XII. SECT 2, SUB-SECT. 1.

h i. —— *Cheque drawn on foreign trust company.*]—A cheque drawn on a foreign trust co. is a bill of exchange & must be presented for payment within a reasonable time after endorsement.—PROVINCIAL BANK *v.* BELLEFLEUR, [1936] 1 D. L. R. 795.—**CAN.**

1405 xiii. ——.]—RAM SARUP *v.* HARDHO PRASAD (1927), I. L. R. 50 All. 309.—**IND.**

1405 xiv. ——.]—The liability of the maker of a promissory note depends upon presentment, if the note is payable on demand at a particular place.—CORPORATION SECURITIES, LTD. *v.* ROYAL BANK, [1935] 2 D. L. R. 173.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 2.—A. (b).

1432 iii. ——.]—Cheque in circulation six months :—*Held :* an unreasonable time & not recoverable.—BALLEM *v.* FRIED, [1923] 4 D. L. R. 1203.—**CAN.**

1434 ii. —— *Cheque mislaid—Delay not causing damage.*]—*Held :* the drawer was not discharged by the cheque not having been presented within a reasonable time.—KING & BOYD *v.* PORTER, [1925] N. 107.—**IR.**

PART XII. SECT. 2, SUB-SECT. 7.—B. (a).

1530 xxv. —— —— —— *Acceleration of date of payment.*]—(1) A promissory note in the body of it made payable at a particular place must be presented for payment there, before an action thereon is brought against the maker. (2) The fact that the date of payment has been accelerated by virtue of a collateral agreement does not render presentment unnecessary.—MORGAN *v.* SHAW, [1926] 1 D. L. R. 828; [1926] 1 W. W. R. 483; 36 B. C. R. 454.—**CAN.**

1530 xxvi. —— —— ——.]—Presentation of promissory notes at the place of payment is not necessary to make makers liable thereon.—SCHONEMEIER *v.* KING & JARDINE (1929), 50 B. C. R. 174.—**CAN.**

1530 xxvii. —— —— ——.]—The fact that a promissory note made payable at a particular place has not been presented for payment before action brought thereon does not release the maker.—EVANS *v.* ALLAN, [1938] 2 W. W. R. 353.—**CAN.**

have his proof admitted and he elected to treat the document as a promissory note :—*Held :* the document when treated as a promissory note did not need to be presented for payment in order to render the maker liable, because, in order that a place of payment should be specified " in the body " of the note within sect. 87, sub-sect. 1, it must be embodied in the actual terms of the contract for payment. Time therefore began to run under the Statute of Limitations as from the date of the document, & it was barred before the date of the winding-up resolution.—*Re* BRITISH TRADE CORPN., LTD., [1932] 2 Ch. 1 ; 101 L. J. Ch. 273 ; 147 L. T. 46, C. A.

1549. *Add. Annotation :*—**Apld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

1581. *Add. Annotation :*—**Refd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

1638. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

1715. *Add. Annotations :*—**Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787 ; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

1839. *Add. Annotation :*—**Refd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1851. *Add. Annotation :* — **Refd.** The Hayle, [1929] P. 275.

1877. *Add. Annotation :*—**Refd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

Part XIII.—Liability of Parties.

1983. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

1991. *Add. Annotation :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

PART XII. SECT. 2, SUB-SECT. 9.

1563 ii. —— *Specified place having ceased to exist.*]—SPARKS *v.* HAMILTON (1920), 47 O. L. R. 55 ; 17 O. W. N. 427.—**CAN.**

w i. —— *Agreement for extension of time.*]—NEWMAN *v.* BROWNE (W. R.) & SON, [1925] 1 D. L. R. 676 ; 56 O. L. R. 148.—**CAN.**

sm. *Payee without funds.*]—*Held :* non-presentment of a cheque did not affect the holder's right to recover, there being evidence that the maker had not funds to meet it & no evidence of damage to him through non-presentment.—CLOW *v.* DOULL, [1920] 1 W. W. R. 1060.—**CAN.**

sn. *Not by waiver of notice of non-payment & protest.*]—ROYAL BANK OF CANADA *v.* MCNAUGHTON, [1931] 3 D. L. R. 233.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 10.

g i. ——.]—GUNSOLLY *v.* ENGSTROM, [1924] 2 W. W. R. 382.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 11.

p i. ——.]—Owing to the long period of time before presenting a note for payment, & in the absence of evidence of the circumstances under which it was given & indorsed :—*Held :* the indorser was discharged.—BANK OF MONTREAL *v.* MCNEILL & MCNEILL, [1924] 2 W. W. R. 165 ; 33 B. C. R. 263.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 1.

1625 ii. —— *Surely for note signing below maker.*]—Pltf. sued the two defts. on a promissory note, dated Dec. 1, 1926, whereby they promised to pay pltf. or order $1,000 with interest at 5 per cent. one year after date. Deft. R. signed the note as accommodation to deft. A., & pltf. knew this. A. did not defend. When the note fell due it was not presented to A. & no notice was given to R. that the note had not been paid. In Oct. 1928, the note not being paid, R. told pltf. he would not be surety any longer :—*Held :* it was of no consequence that R. signed not on the back of the note, but on its face, beneath the name of A., & he was liable upon the note as an endorser, & so was entitled to avail himself of the defences of non-presentation for payment, & non-receipt of notice of dishonour.—KUPFERSCHMIDT *v.* AMMONEIT & RUSSWURM, [1931] 4 D. L. R. 550 ; O. R. 678 ; *affd.*, [1932] 4 D. L. R. 720.—**CAN.**

1625 iii. ——.]—Notice of dishonour must be given to an endorser, although, from the position of his signature, he appears to be a maker.—BOISVERT *v.* LAVALLEE, [1935] 2 D. L. R. 412.—**CAN.**

so. *To accommodation maker — Of promissory note.*]—*Held :* he is not entitled to notice of dishonour, even though it be known to the payee that he is such a maker.—CODVILLE CO. *v.* JORDAN, [1932] 1 W. W. R. 1280 ; 63 D. L. R. 624.—**CAN.**

sq. —— ——.]—An accommodation maker of a promissory note when sued on the note by the payee cannot raise the defence that he was not given due notice of dishonour upon non-payment. —FRY *v.* JOHNSTON & GRIFFITH, [1932] 4 D. L. R. 416 ; O. R. 667.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 6.—A.

sg. *By telephone.*]—A telephone conversation with a person representing himself to be the indorser, & not denied in evidence by the indorser, is sufficient notice of dishonour.—NOYES BROS., LTD. *v.* OATES, [1933] S. R. (Q.) 112.—**AUS.**

PART XII. SECT. 4 SUB-SECT. 6.—B.

sk. " *Deposited in any post office* "—*Placed in rural mail box on gate.*]—A notice of dishonour mailed in a rural mail box at pltf.'s gate to be collected by the rural mail carrier & delivered to the post office is not " deposited in any post office " within Bills of Exchange Act, 1927, s. 103.—TRAFTON *v.* GRIMMER, [1936] 3 D. L. R. 379.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 6.—C.

d i. —— —— ——.]—A letter in the following terms : " We humbly demand from you £550, being amount owing on a promissory note made by F. & indorsed by you to the C. Co., & of which we are the holders " :—*Held :* a sufficient notice of dishonour.—NEES *v.* BUTTING, [1928] N. Z. L. R. 209.—**N.Z.**

1807 i. —— *Name of indorser wrongly stated.*]—*Held :* under Bills of Exchange Act, s. 106, notice of dishonour was dispensed with.—BROCK & PATTERSON, LTD. *v.* CROCKETT, [1923] 4 D. L. R. 1204 ; 56 N. S. R. 132.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 8.—B.

1869 iii. —— —— *Express promise.*]—An express promise to pay with full knowledge of the facts & when the indorser is aware that he has had no notice of dishonour is a waiver of his right to notice.—CANADIAN BANK OF COMMERCE *v.* BROOKDALE COLLIERIES, LTD., [1923] 1 D. L. R. 138 ; 1 W. W. R. 877.—**CAN.**

1874 i. —— —— *Coupled with request for time.*]—*Held :* sufficient to hold him liable for payment notwithstanding the previous failure to give the statutory notice of dishonour. —IMPERIAL BANK *v.* TRUSTS & GUARANTEE CO., [1921] 1 W. W. R. 801 ; 57 D. L. R. 693 ; 16 Alta. L. R. 343.—**CAN.**

s i. —— —— ——.]—If there is no express promise, yet there may be such an admission of liability as to warrant the ct. in inferring that notice was actually received, & for this purpose it is not enough to show merely that the indorser did not repudiate his liability.—CANADIAN BANK OF COMMERCE *v.* BROOKDALE COLLIERIES, LTD., [1923] 1 D. L. R. 138 ; 1 W. W. R. 877.—**CAN.**

1884 i. —— *Agreement postponing time of payment—Between maker & indorser.*]—NEWMAN *v.* BROWNE (W. R.) & SON, [1925] 1 D. L. R. 676 ; 56 O. L. R. 148.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 8.—D.

1933 iv. ——.]—ROYAL BANK OF CANADA *v.* MCEACHERN (Sask.), [1929] 4 D. L. R. 978 ; 3 W. W. R. 380.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 9.

1937 i. *On liability of—Indorser.*]—If no notice of dishonour is given to the indorser, he is discharged from his liability as against the payee.—SIMONIN *v.* PHILION, [1922] 2 W. W. R. 1280 ; 66 D. L. R. 673.—**CAN.**

1937 ii. —— ——.]—ARMSTRONG-LOGAN AGENCY, LTD. *v.* EHMANN, [1923] 3 W. W. R. 806.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 1.—A.

1946 i. *General rule.*]—Where the notes are " foreign bills " under Bills of Exchange Act, s. 25, protest upon non-payment is necessary to hold the indorser.—SPARKS *v.* HAMILTON (1920), 47 O. L. R. 55 ; 17 O. W. N. 427.—**CAN.**

1993. *Add. Annotation :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

1994. *Add. Annotation :*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

2004. *Add. Annotation :*—**Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

2032a. —— —— ——.]—The acceptor supra protest of a bill of exchange, for the honour of the drawer, is, like the drawer himself, estopped from denying that the bill is a valid bill ; &, consequently, it is not competent to him to set up as a defence to an action against him by an indorsee, that the payee is a fictitious person, & that he was ignorant of that fact at the time he accepted the bill.—PHILLIPS *v.* IM. THURN (1865), 18 C. B. N. S. 694 ; 144 E. R. 617.

2040a. —— ——.]—DUNN (M.), LTD. *v.* JEFFERSON, No. 577a, *ante*.

2049a. On bills drawn against confirmed credit—Bills not presented to bank.]—Applts., merchants at Calcutta, sold goods to merchants in London at c.i.f. price, payment by drafts against a confirmed credit, to be opened by the buyers. On shipment of the goods applts. drew on the buyers bills payable to resps., who negotiated them with notice that they were drawn against a confirmed credit opened by the buyers with the E. Bank. Applts. handed to resps. with the bills the shipping documents, also a memorandum describing the bills as D/A, *i.e.*, documents against acceptance, drafts. Resps. handed the documents to the buyers against their acceptances, which were dishonoured upon maturity. Resps. sued applts. as drawers of the bills :—*Held :* resps. were entitled & bound to treat the description of the bills as D/A drafts as a direction to hand the documents to the drawers on their acceptance, & applts. had no defence, set-off or counterclaim in respect of the loss of the rights which they would have had under the confirmed credit, if the documents had been handed to the E. Bank for presentation.—SASSOON (M. A.) & SONS, LTD. *v.* INTERNATIONAL BANKING CORPN., [1927] A. C. 711 ; 96 L. J. P. C. 153 ; 137 L. T. 501, P. C.

2059. *Add. Annotation :*—**Refd.** *Re* Conley, *Ex p.* Trustee *v.* Barclays Bank, Ltd., [1938] 2 All E. R. 127.

2060. *Add. Annotations :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625 ; National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2066. *Add. Annotation :*—**Refd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2070. *Add. Annotations :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625 ; National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2082. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

2088. *Add. Annotations :*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625. **Refd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2090. *Add. Annotation :*—**Refd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2092. *Add. Annotations :*—**Distd.** McDonald *v.* Nash, [1924] A. C. 625. **Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593.

2093a. —— **Order of indorsements immaterial—Intention of parties considered.**]—Bills of exchange drawn to the order of the drawer & accepted were indorsed by a third party with the intention of rendering himself liable if the acceptor did not pay. They were afterwards indorsed by the drawer with the intention of completing them & making them enforceable against the third party if necessary, the signature of the drawer being placed below that of the third party on the backs of the bills. The acceptor not having paid the bills at maturity, the drawer brought an action upon them against the third party as indorser :—*Held :* he was entitled to recover, inasmuch as the fact that his signature instead of being above was below that of the third party on the backs of the bills was a mere inadvertence which did not nullify the intentions of the parties or alter the rights which they would otherwise have had.—NATIONAL SALES CORPN., LTD. *v.*

PART XII. SECT. 5, SUB-SECT. 1.—B.

o i. —— —— ——.]—BANK OF TORONTO *v.* BENNETT (1925), 57 O. L. R. 326.—**CAN.**

PART XIII. SECT. 1.

1994 i. *Cheque—Not equitable assignment.*]—ROWLATT *v.* GARMENT (J. & G.) MANUFACTURING CO. (1921), 64 D. L. R. 88 ; 49 O. L. R. 166.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.

1996 v. ——.]—CLARKSON *v.* LAWSON (1856), 14 U. C. R. 67.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.

2051 i. *Cheque—To payee—Conversion by agent of payee.*]—Where payee permits an agent to cash a cheque, & he converts the proceeds, the maker is not liable for the amount to the payee. —RANDS *v.* HIRAM WALKER, G. & W., LTD., [1936] 4 D. L. R. 186 ; O. R. 488.—**CAN.**

2052 ii. —— ——.]—LEE *v.* BLAKE, [1924] 4 D. L. R. 369 ; 55 O. L. R. 310.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.

sd. *Unqualified signature—Intention.*]—On the sale of a motor car to a co., the vendor was handed a cheque in payment. The cheque was signed for & on behalf of the co. by a director, & also bore upon its face deft.'s signature without any words indicating the capacity in which he signed. Deft. signed the cheque intending by his signature to certify that the cheque was drawn for a proper payment. The vendor took the cheque without forming any opinion as to deft.'s liability thereon, & presented it for payment. The cheque was dishonoured :—*Held :* deft. was not estopped from showing the intention with which he signed the cheque, &, since he had not signed with the intention of drawing the cheque either for himself or for the co., he was not liable as a drawer.—AMALGAMATED HANDWORK MANUFACTURERS CO. *v.* COLE, [1935] V. L. R. 103 ; 41 Argus L. R. 119.—**AUS.**

PART XIII. SECT. 4, SUB-SECT. 1.—A.

2058 v. ——.]—An indorsement does not conclusively establish a liability to pay, but indorsement is *primâ facie* evidence of an agreement to pay. —LEE *v.* BLAKE, [1924] 4 D. L. R. 639 ; 55 O. L. R. 310.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 1.—B.

h i. —— *Signature as surety & co-principal.*]—A person who signs a promissory note as surety & co-principal debtor before it is endorsed by the payee is not in the position of an ordinary endorser under the Bills of Exchange Act, 19 of 1893 (Cape), but is the signer of an aval, & it is not necessary to give notice of dishonour or to protest such note for non-payment in order to render such person liable in an action for a legal holder of the note.—PEIMER *v.* FINBRO FURNISHERS (PTY.), LTD., [1936] A. D. 177. —**S. AF.**

PART XIII. SECT. 4, SUB-SECT. 2.

2085 vi. —— *Indorsement obtained by misrepresentation of drawer—Negligence of indorser.*]—HANCOCK & CO., LTD. *v.* JOHNSTONE, [1923] N. Z. L. R. 639.—**N.Z.**

BERNARDI, BERNARDI *v.* NATIONAL SALES CORPN., LTD., [1931] 2 K. B. 188; 100 L. J. K. B. 386; 145 L. T. 48; 47 T. L. R. 380; 36 Com. Cas. 270.

Annotation :—**Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2093b. —— —— ——.]—MCCALL BROS., LTD. *v.* HARGREAVES, No. 564a, *ante*.

2094. *Add. Annotation :*—**Dbtd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2095. *Add. Annotations :*—**Consd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. **Expld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **N.F.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2096. *Add. Annotations :*—**Distd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593; McDonald *v.* Nash, [1924] A. C. 625. **Expld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **N.F.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2096a. —— —— ——.]—J. sold certain goods to C., Ltd., of which G. was managing director & in which he was largely interested. In payment for these goods J. drew a bill of exchange to his own order at three months for £450 upon C., Ltd., who accepted it, & it was indorsed by G. before J. had indorsed it as payee, & his name appeared below that of G. The bill was indorsed by G. in order to enable J. to discount it, & for no consideration moving from J. to G., who was to be under no liability to J. The bill was discounted by J.'s bank & was not met at maturity. An arrangement was subsequently made by which C., Ltd., paid £100 in to the bank in part satisfaction & the bank received two bills drawn by J. to his own order & accepted by C., Ltd., for £175 each at one month & two months respectively. These bills were indorsed by G. before they were signed by J. either as drawer or payee. They were afterwards indorsed by J., whose name appeared on the bills below that of G. The first bill not having been met at maturity, J. took it up & sued C., Ltd., & G. upon the bill & recovered judgment, & afterwards presented a petition in bkpcy. in the county ct. against G., founded on the judgment debt, upon which a receiving order was made against him. On appeal :—*Held :* (1) J. had authority under 1882 Act, s. 20, to fill in his own name as drawer & payee; (2) there was sufficient consideration passing from J. to G. to entitle J. to sue G. on the bill notwithstanding the order in which the signatures appeared on the bill; (3) by reason of the agreement between J. & G., G. could not have set up any defence against J. arising out of his own prior indorsement; (4) the judgment debt was a good petitioning creditor's debt & the receiving order was rightly made.—*Re* GOOCH, *Ex p.* JUDD, [1921] 2 K. B. 593; 90 L. J. K. B. 932; 125 L. T. 583; [1921] B. & C. R. 100, C. A.

Annotations :—*As to* (1) **Apld.** McDonald *v.* Nash, [1924] A. C. 625; McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. *As to* (2) **Apld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2096b. —— —— ——.]—In May, 1920, applts. sold to A. & Co. 19,000 cases of tinned soup at the price of 10*s.* per case, cash against delivery order. A. & Co., being unable to find the money, applied for financial assistance to resps., who undertook as between themselves & A. & Co. to find 75 per cent. of the money, there being then about 16,000 cases which had not been taken up. On Aug. 10, 1920, at a meeting between applts., resps. & A. & Co., it was agreed that resps. should indorse a series of eight bills of exchange, seven for £1,000 each & one for £117 odd, to be drawn by applts. on A. & Co. payable six months after date to applts.' order, & that applts., in consideration of the bills being duly indorsed by resps., should hand to resps. delivery orders for the balance of the cases. These bills were at once drawn by applts. on A. & Co. expressed to be payable to applts.' order, & were accepted by A. & Co & indorsed by resps. Room was left above the name of resps. for the indorsement of the name of any person to whom applts. should direct payment. Resps. then handed the bills to applts. in exchange for the delivery orders. One bill having been discharged, applts. shortly before the remaining bills became due indorsed their name as payee on the bills above resps.' signature. Applts. duly presented the bills to A. & Co., who dishonoured them. They then gave notice of dishonour & claimed payment from resps., who denied liability. In an action by applts. to recover the amount of the bills against resps. as indorsers :—*Held :* (1) on the facts resps. must be taken to have intended to make themselves liable to applts. on the bills; (2) the bills, when handed to applts., were wanting in a material particular within 1882 Act, s. 20, by reason of the absence of any indorsement by applts. above the signature of resps., & applts. had implied authority to fill in their name as payees, as they did, over the name of resps.; & when so filled up, the bills became retrospectively enforceable.—MCDONALD (GERALD) & CO. *v.* NASH & CO., [1924] A. C. 625; 93 L. J. K. B. 610; 131 L. T. 428; 40 T. L. R. 530; 68 Sol. Jo. 594; 29 Com. Cas. 313, H. L.

Annotations :—*As to* (1) **Expld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. *As to* (2) **Apld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Reld.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301; Kreditbank Cassel G.m.b.H. *v.* Schenkers, [1926] 2 K. B. 459.

2097. *Add. Annotations :*—**Apld.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. **Apprvd.** McDonald *v.* Nash, [1924] A. C. 625. **Apld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Reld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

PART XIII. SECT. 6.

2098 v. —— ——.]—PARKER WOOD & CO., LTD. *v.* RICHARDS (1925), 46 N. L. R. 277.—**S. AF.**

2098 vi. —— ——.]—R. signed promissory notes in favour of H. S. also signed the notes below R.'s signature as "surety & co-principal debtor *in solidum*"—*Held :* S.'s liability was that of a surety & not of a joint maker with R.—SHUTER *v.* RIDGWAY (1926), 47 N. L. R. 149.—**S. AF.**

y i. —— ——.]—A person who has placed his signature on a promissory note below that of the maker in the place where the maker usually signs, without adding anything to indicate that he has signed as indorser only, will be held to be a maker unless there is competent evidence to prove that he was not.—TRIGGS *v.* ENGLISH, [1924] 4 D. L. R. 937; 3 W. W. R. 566.—**CAN.**

2103. *Add. Annotations :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625; National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2118. *Add. Annotations :*—**Refd.** The Kronprinsessan Margareta, The Parana, etc., [1921] 1 A. C. 486; Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243.

2136. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

2142. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

2143. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

2151. *Add. Annotation :*—**Refd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

2158a. Breach of agreement to accept—Market value of bill.]—Applts. & resps. had entered into a series of contracts for the purchase & sale of timber. Disputes had arisen with reference to the performance of those contracts, & on Aug. 2, 1931, the parties met & entered into a fresh contract with a view to the settlement of a particular dispute. The fresh contract provided (*inter alia*) for the acceptance by the resps. of bills of exchange for £70,000. Subsequently resps. on instructions from their principals, refused to carry out their agreement to accept bills. Applts. brought this action, claiming £70,000 or specific performance of the agreement, & resps. raised various matters by way of counterclaim. BATESON, J., by whom the action was tried, gave judgment for applts. for £70,000 & decided in favour of the resps. on part of the counterclaim. On appeal from that judgment the Ct. of Appeal ordered a new trial & stated that the bills to be accepted by the resps. under the contract of Aug. 2, 1931, should have been accepted subject to the terms of the contract so that a discounter of the bills would have notice of the terms of that contract & would be bound by them. There was nothing in the contract requiring that the acceptances should be in any way qualified, although there was an independent stipulation that if the resps. should so reqiure the bills should be renewed. Applts. now appealed to the House of Lords :—*Held :* acceptance qualified as directed by the Ct. of Appeal would destroy the character of the bills as negotiable bills of exchange, & on this point the appeal must be allowed. But as the true measure of damages for breach of contract to accept bills was not the face value of the bills but their market value, the sum of £70,000 awarded to applts. by BATESON, J., must be reduced to £65,000, which the evidence showed to have been the market value of the bills; & execution must be stayed until the sum due from applts. to resps. on the counterclaim should have been determined. —LONDON & NORTHERN TRADING CO., LTD. *v.* ARCOS, LTD. (1933), 38 Com. Cas. 242, H. L.

2161. *Add. Annotations :*—**N.F.** Uliendahl *v.* Pankhurst Wright (1923), 39 T. L. R. 628; Peyrae *v.* Wilkinson, [1924] 2 K. B. 166. **Refd.** *Re* Chesterman's Trusts, Mott *v.* Browning, [1923] 2 Ch. 466.

2169. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

2205a. —— —— —— Illegality of payment during war.]—Bills of exchange which were accepted before the war, & which became due after war was declared, were held by the drawer, who was resident in Germany, & was an enemy for the purpose of the Trading with the Enemy Acts. After the declaration of peace the holder sued the acceptors, claiming interest from the dates when the bills respectively matured :—*Held :* as there was no breach of duty in not paying the bills as long as the war continued, & as payment did not become legal until the declaration of peace with Germany on Jan. 10, 1920, interest was only recoverable from that date.—BIEDERMANN *v.* ALLHAUSEN & CO. (1921), 37 T. L. R. 662.

2225. *Add. Annotation :*—**Folld.** Dresdner Bank *v.* Russo-Asiatic Bank, [1923] 1 Ch. 209.

2249. *Add. Annotation :*—**Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

2101 xxii. —— —— ——.]—A person who has placed his signature on the back of a promissory note, before delivery to or indorsement by the payee, is liable as surety under an *aval*, & is not in the position of an ordinary indorser.—MOTI & CO. *v.* CASSIM'S TRUSTEE, [1924] App. D. 720.—**S. AF.**

2101 xxiii. —— —— ——.]—A person who indorses his name on a promissory note before negotiation thereof is not an indorser, but an *aval* or surety for the maker.—CASSIMJEE *v.* MAHARAJ (1925), 46 N. L. R. 151.—**S. AF.**

PART XIII. SECT. 10.

1i. —— —— *Note signed by surety before principal—Liable as maker.*]—FRASER *v.* CUMMINGS & LEOPOLD (1921), 67 D. L. R. 767.—**CAN.**

ri. —— ——.]—RICHTER *v.* BARTLEY & MIKELSON (Sask.), [1928] 4 D. L. R. 919; [1928] 3 W. W. R. 513.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 2.—A.

2172 x. ——.]—Interest is recoverable as damages on a dishonoured cheque.—MOHAN SINGH *v.* KIRPA, MOHAN SINGH *v.* SHAND, [1936] 1 W. W. R. 559; 50 B. C. R. 399.—**CAN.**

2175 iii. —— ——.]—GANPAT TUKARAM MALI *v.* SOPANA TUKARAM MALI (1927), I. L. R. 52 Bom. 88.—**IND.**

2177 ii. —— ——.]—PUBLIC TRUSTEE *v.* GLADSTONE, [1921] N. Z. L. R. 224.—**N.Z.**

PART XIII. SECT. 11, SUB-SECT. 2.—D.

1i. —— *Legal rate payable after maturity.*]—Where a promissory note provides for the payment of interest at a certain rate "until paid," interest at said rate is payable only until the note is due, & thereafter interest can be recovered at the legal rate only. In order to enable interest at a particular rate to be recovered after maturity, the note must provide in unequivocal terms for payment at that rate after maturity. A demand note which provides for the payment of a certain rate of interest "until paid" carries interest at that rate until payment is demanded and refused; & thereafter at the legal rate.—BEAVER LUMBER CO., LTD. *v.* HOPFAUF, [1932] 1 W. W. R. 357.—**CAN.**

so. *Reasonable rate—Not agreed rate—Promissory note inadmissible for want of stamp.*]—*Held :* where a promissory note is inadmissible in evidence for want of stamp, & the creditor sues for the money lent as on the original contract of loan, he may claim a reasonable rate of interest, but he cannot claim at the rate stated in the promissory note.—ISMAIL HOOSAIN MAMBA *v.* K. PURBHUBHAI (1928), I. L. R. 6 Ran. 415.—**IND.**

PART XIII. SECT. 11, SUB-SECT. 3.

2227 iii. ——.]—*Held :* as defts., the makers of the note, were bound without protest, the notarial fees could not be recovered from them.—GOWANS *v.* CROCKER PRESS CO. (1920), 46 O. L. R. 24; 50 O. L. R. 58.—**CAN.**

Part XIV.—Discharge.

2280. *Add. Annotations :*—**Consd.** Morley *v.* Moore, [1936] 2 All E. R. 79. **Refd.** Société des Hôtels Le Touquet Paris-Plage *v.* Cummings, [1922] 1 K. B. 451.

2308. *Add. Annotation :*—**Refd.** Société des Hôtels Le Touquet Paris-Plage *v.* Cummings, [1922] 1 K. B. 451.

2314. *Add. Annotation :*—**Refd.** Société des Hôtels Le Touquet Paris-Plage *v.* Cummings, [1922] 1 K. B. 451.

2318a. Agreement to pay money—Consideration uncertain.]—A beneficiary under testator's will was a debtor of his who had owed him money under a promissory note given in 1877, & had, in 1882, entered into an agreement with testator to pay him a certain sum of money for which no distinct consideration could be clearly ascertained :—*Held :* (1) there was a presumption of law that the promissory note had been discharged by accord & satisfaction on the entrance into the later agreement ; (2) there was no presumption that the money still due under the agreement had been forgone by testator.—WOODCOCK *v.* EAMES (1925), 69 Sol. Jo. 444.

2362. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2364. *Add. Annotations :*—**Distd.** Goldman *v.* Cox (1924), 40 T. L. R. 744. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2368. *Add. Annotation :*—**Refd.** Jones *v* Waring & Gillow, [1926] A. C. 670.

2370. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2391. *Add. Annotation :*—**Consd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2393. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2393a. Joint maker appointed holder's executor.]—During the lifetime of testator the exor. named in his will & three other persons made a joint & several promissory note payable to him. After the death of testator & probate of the will the exor. brought an action on the promissory note against one of the other makers thereof :—*Held :* the action was not maintainable, inasmuch as the effect of pltf.'s appointment as exor. was at common law that the debt was discharged by release at the date of the death of testator, & in equity that it was discharged by payment at the date of probate, so that in either case the debt had ceased to exist before the action.—JENKINS *v.* JENKINS, [1928] 2 K. B. 501 ; 97 L. J. K. B. 400 ; 139 L. T. 119; 44 T. L. R. 483 ; 72 Sol. Jo. 319, D. C.

2414. *Add. Annotation :*—**Consd.** *Re* Gordon (John) (1931), 75 Sol. Jo. 869.

2414a. —— —— **Entry in account book—"All lost."**]—*Re* GORDON (JOHN) (1931), 75 Sol. Jo. 869.

2416a. —— —— **Verbal agreement for acceptance of composition.**]—Pltf. was the holder of a bill of exchange accepted by deft. for goods supplied. Before the bill became due deft. had made a verbal offer to his creditors to pay a composition in discharge of his liabilities. At a meeting of the creditors, which was attended by pltf.'s agent, the creditors passed a resolution accepting deft.'s offer. The resolution was reduced to writing & was signed by a number of the creditors, including pltf.'s agent, but not by deft. The creditors subsequently executed a deed assigning their debts to deft.'s solr. in consideration of deft.'s solr. paying the amounts owing to them under the composition. Pltf. was not a party to that deed. In an action by the holder of the bill against the acceptor, for the amount of the bill :—*Held :* upholding a contention of pltf., which was not raised in the cts. below, 1882 Act, s. 62, had not been complied with, as pltf. had neither renounced his rights under the bill in writing, nor delivered the bill up to the acceptor &, therefore, pltf. was entitled to recover the full amount of the bill.—RIMALT *v.* CARTWRIGHT (1924), 93 L. J. K. B. 823 ; 132 L. T. 40 ; 40 T. L. R. 803 ; 68 Sol. Jo. 788 ; [1924] B. & C. R. 239, C. A.

2450. *Add. Annotation :*—**Refd.** Koch *v.* Dicks, [1933] 1 K. B. 307.

PART XIV. SECT. 1.

b. Add " *Revsd.* on other grounds, 56 S. C. R. 165."

PART XIV. SECT. 2, SUB-SECT. 4.

j i. *Mortgage to secure present & future advances—Given during currency of note.*]—*Held :* the mtge. not being strictly coextensive with the note, the remedy on the note was not merged in the mtge., & deft. was liable.—O'NEILL *v.* LYE, [1923] N. Z. L. R. 1039.—**N.Z.**

sp. *Payment under garnishment proceedings by judgment creditor of payee.*]—*Held :* in the circumstances no answer to the indorsee's claim.—CLOW *v.* DOULL, [1920] 1 W. W. R. 1060.—**CAN.**

sr. *Notes given to secure advances—Made in prepayment of purchase-money—Delivery of goods.*]—*Held :* the payees were entitled to recover the balance due on the first note given prior to the contract, but as regards the notes given subsequently the goods delivered must be credited against the advances made, & the plea of payment must prevail.—TYRER CO. *v.* EUREKA LUMBER CO. (1922), 55 N. S. R. 441.—**CAN.**

st. *Note due to deceased—Not sale of goods to executor personally.*]—MCKENZIE *v.* MCDONALD (P. E. I.), [1927] 2 D. L. R. 67.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 10.

q i. —— ——.] — DAVIDSON CO-OPERATIVE ASSOCN., LTD. *v.* WEBBER (Sask.), [1928] 4 D. L. R. 732 ; 3 W. W. R. 426.—**CAN.**

PART XIV. SECT. 4.

2401 i. *At what time—Before maturity—No necessity for evidence of discharge to be in writing.*]—LYONS *v.* SMITH, [1922] 3 W. W. R. 684 ; 70 D. L. R. 101.—**CAN.**

PART XIV. SECT. 6.

sv. *Surrender to maker for cancellation.*]—A woman, payee of a promissory note, told her husband, who was her exor. & was also the father of the maker of the note, to give it to the maker. The next day she died. The note was destroyed by the maker :—*Held :* his liability was extinguished.—*Re* ILLSLEY, [1931] 2 D. L. R. 799 ; 3 M. P. R. 441.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 1.

2451 v. —— ——.]—Bills of exchange, payable some sixty, some ninety, & some one hundred & twenty days after sight, drawn on applts., were indorsed for value to resps. who duly stamped them, and after acceptance noted in the corner of each bill the date for presentation. The parties to the bills having mutually agreed that the dates of payment should be postponed, resps. altered the dates so noted, but without making any alteration in the bills as originally drawn. On presentation for payment at the extended dates the bills were dishonoured by applts. :—*Held :* there had been no discharge of the bills by material alteration, nor was a new stamping necessary under Indian Stamp Act, 1899, ss. 14, 35 ; & applts. remained liable.—PESTONJI (H.) & CO. *v.* COX & CO. (1928), 55 L. R. Ind. App. 353.—**IND.**

2455a. —— ——.]—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, No. 568a, *ante.*

2462a. —— **Inland bill altered to foreign bill.**]—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, No. 568a, *ante.*

2462b. —— ——.]—The alteration of a complete bill of exchange, without the knowledge or consent of the acceptor, by changing the place of drawing from a place within, to a place outside, the British Islands, so that the bill becomes a foreign instead of an inland bill, is a material alteration within Bills of Exchange Act, 1882 (c. 61), s. 64, & the bill is thereby avoided.—KOCH *v.* DICKS, [1933] 1 K. B. 307; 102 L. J. K. B. 97; 148 L. T. 208; 49 T. L. R. 24; 38 Com. Cas. 66, C. A.

2473. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

2475. *Add. Annotation :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

2475a. —— **Addition of " per " another party.**]—Pltfs., exors. of one Turner, deceased, employed a solr., one C., of a firm C. & P., to act for them in matters relating to the deceased's estate. They wished to invest a sum of £5,000 through a firm of stockbrokers, & C. accordingly prepared a cheque for that amount payable to the stockbrokers; pltfs. then signed the cheque & handed it back to C. to deal with as directed. C., however, fraudulently added to the cheque the words " per C. & P.," & then indorsed the cheque with the words " C. & P." & handed it to a branch of deft. bank to be credited to the account which a co. in which he was interested kept at that branch. The cheque was credited to that co. & was passed through the clearing house, & in due course pltfs. were debited by their own bank with the sum of £5,000. On discovering the fraud pltfs. brought this action to recover the £5,000 from defts. :—*Held :* the words added by C. to the cheque constituted a material alteration & rendered the cheque void under Bills of Exchange Act, 1882 (c. 61), s. 64 (1). As therefore the cheque when it came into the hands of defts. was merely a piece of worthless paper no action could be brought on it, & pltfs.' claim failed.—SLINGSBY *v.* WESTMINSTER BANK (No. 2), [1931] 2 K. B. 583; 101 L. J. K. B. 291, n.; 146 L. T. 89; 47 T. L. R. 1; 36 Com. Cas. 61.

Annotation :—**Consd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

2475b. —— ——.]—Pltfs., exors. of a will, kept an exors.' account with defts., & retained a firm of solrs., Messrs. C. & P., who used to assist them in matters connected with their testator's estate. The acting member of the firm was one J. C. Pltfs. in conference with J. C. decided to invest through Messrs. J. P. & Co., stockbrokers, a sum of £5,000 part of the estate lodged on deposit with defts. J. C. accordingly drew out a form of cheque for signature by pltfs. It was in the form " Pay J. P. & Co. or order " & was drawn on pltfs.' deposit account with the defts. The cheque was signed by pltfs. & left with J. C. to be posted to J. P. & Co. with instructions to invest the money. J. C., instead of posting the cheque to J. P. & Co., fraudulently inserted the words " per C. & P." in the blank space between the payees' name & the words " or order "; he then indorsed the document with the names C. & P. & paid it so altered & indorsed into the W. Bank to the credit of a co. in which he was interested & which had an account at that bank. The document was accepted without question by the W. Bank & passed through the clearing house, & the account of pltfs. with defts. was debited, & that of the co. with the W. Bank was credited, with the amount on the face of the document. In an action by pltfs. against defts. for conversion, negligence & breach of duty :—*Held :* (1) the cheque had been " materially altered " within Bills of Exchange Act, 1882 (c. 61), s. 64, & was avoided as between pltfs. & defts. by that sect., & therefore defts. could not rely upon sect. 60 of the Act as excusing them for paying the cheque; (2) for the same reason defts. could not rely on sect. 80 of the Act; (3) assuming the description of the payees, " J. P. & Co. per C. & P." to be a recognised although unusual description, the indorsement of " C. & P." without any reference to " J. P. & Co." was irregular & invalid, & defts. were negligent in honouring the cheque, & for this reason also were not protected by sect. 80, or *semble* by sect. 60 of the Act; (4) the additions & alterations referred to in the proviso to sect. 79 (2) of the Act are additions to & alterations in the original crossing of a crossed cheque & not to or in the body of a cheque.—SLINGSBY *v.* DISTRICT BANK, LTD., [1932] 1 K. B. 544; 101 L. J. K. B. 281; 146 L. T. 377; 48 T. L. R. 114; 37 Com. Cas. 39.

2481. *Add. Annotation :*—**Consd.** Koch *v.* Dicks, [1933] 1 K. B. 307.

2484. *Add. Annotations :*—**Distd.** Hong Kong & Shanghai Bank *v.* Loo Lee Shi, [1928] A. C. 181. **Apld.** Koch *v.* Dicks, [1932] W. N. 156. **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373.

2485a. ——].—A banknote issued by applt. bank, payable to bearer on demand, was accidentally mutilated. The bank declined to pay on presentation of a document which was proved to have been patched together from the fragments. This document, though it did not show the number of the note, showed clearly its other main features :—*Held :* as the identity of the document as a note of the bank was established, & it contained all the elements necessary to render it valid & effectual as a negotiable instrument, the bank was liable to pay the holder.—HONG KONG & SHANGHAI BANK *v.* LO LEE SHI, [1928] A. C. 181; 97 L. J. P. C. 35; 138 L. T. 529; 44 T. L. R. 233; 72 Sol. Jo. 68, P. C.

2493a. Alteration of name of drawee.]—HASELDINE *v.* WINSTANLEY, No. 567c, *ante.*

2458 ii. —— —— *Deceased.*]—*Held :* a material alteration.—BELLAMY *v.* PORTER (1913), 13 D. L. R. 278; 4 O. W. N. 1171; 28 O. L. R. 572.—**CAN.**

2475 iii. —— *Additional payee.*]—The list of possible material alterations set out in Bills of Exchange Act, 1927, s. 146, is not exhaustive. The addition by one maker of a promissory note of the name of the payee's wife as additional payee was accordingly held to be material, since the business effect of the instrument was thereby altered.—GILL *v.* DOEY, [1934] 3 D. L. R. 274; O. R. 406.—**CAN.**

SUB-SECT. 4.—WHETHER APPARENT (Vol. VI., p. 383).

After "*See* 1882 Act, s. 64 (1)" add the following case :—

2513a. General rule.]—An alteration is "apparent" within 1882 Act, s. 64 (1), if it is of such a kind that it would be observed & noticed by an intending holder scrutinising the document which he contemplates taking with reasonable care.—WOOLLATT *v.* STANLEY (1928), 138 L. T. 620.

2515. *Add. Annotation :—Generally* **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

2518. *Add. Annotations :—***Apld.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294. **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587 ; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

2553. *Add. Annotation :—***Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2555. *Add. Annotation :—***Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2559. *Add. Annotation :—As to* (2) **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2638. *Add. Annotation :—***Refd.** *Re* Conley, *Ex p.* Trustee *v.* Barclays Bank, Ltd., [1938] 2 All E. R. 127.

2666. *Add. Annotation :—***Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2677. *Add. Annotation :—***Refd.** Smith *v.* Wood, [1929] 1 Ch. 14.

2679. *Add. Annotation :—***Refd.** *Re* Conley, *Ex p.* Trustee *v.* Barclays Bank, Ltd., [1938] 2 All E. R. 127.

2682. *Add. Annotation :—***Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2686. *Add. Annotation :—***Refd.** McDonald *v.* Nash, [1924] A. C. 625.

Part XVI.—Lost, Stolen, and Destroyed Instruments.

2752. *Add. Annotation :—***Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

Part XVIII.—Conflict of Laws.

2779. *Add. Annotations :—***Refd.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789; Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

2781. *Add. Annotations :—***Distd.** Soc. Anon. des

PART XIV. SECT. 7, SUB-SECT. 4.

sk. *Addition of place of payment.*]—A promissory note which at the side of the place of signature bore the printed words "Payable at," was delivered by the maker without any place of payment added. Without the authority or assent of the maker, the payee subsequently added a place of payment & negotiated the note to pltf. It was apparent on the face of the note that the place of payment was written by a hand other than the maker's. Pltf. sued the maker on the note :—*Held :* the alteration was not apparent, within proviso to sect. 69 (1) of Bills of Exchange Act, 1909-1932, & the maker was liable on the note.—AUTOMOBILE FINANCE CO. OF AUSTRALIA, LTD. *v.* LAW, [1934] V. L. R. 17.—**AUS.**

PART XIV. SECT. 9.

2558 i. —— *Release of one.*]—In an action on a promissory note by the original payee against two joint makers, it is no defence for one of the makers, in the absence of any writing or delivery up of the note, to allege that he has been verbally released by the payee.—GOODMAN *v.* ARMSTRONG (1926), 47 N. L. R. 452.—**S. AF.**

2559 iii. —— —— ——.]—BUECKERT *v.* FRIESEN, [1927] 2 D. L. R. 873 ; [1927] 1 W. W. R. 825 ; 36 Man. L. R. 462.—**CAN.**

PART XIV. SECT. 10, SUB-SECT. 2.—A.

2600 viii. —— ——.]—If the holder of a promissory note has, without the knowledge or consent of an indorser of the note, agreed to give an extension of time for payment to the maker while the note is still current, the indorser is thereupon discharged from liability.—LIEBENBERG ESTATE *v.* STANDARD BANK OF SOUTH AFRICA, LTD., [1927] App. D. 502.—**S. AF.**

r. For existing para. read :—

"An indorsement on the back of a note of the payment of interest up to a future date beyond the maturity of the note, in the absence of evidence of mistake, is to be deemed an extension of time for the payment of the note to such date, so as to discharge a party thereto who is merely a surety for the payment thereof."

PART XIV. SECT. 10, SUB-SECT. 2.—B.

sb. *To party accommodated—Note renewed by one joint maker.*]—In an action for contribution between joint makers of a promissory note :—*Held :* the renewal of the note by one surety & the surrender of the original note to the party accommodated released the other surety, since it gave time to the principal debtor.—RUSSELL *v.* ARNOLD (1922), 53 O. L. R. 114.—**CAN.**

sd. —— *By holder without notice of nature of note.*]—If the holder of an accommodation note having no notice of its true character at the time of his taking the note, but after notice thereof gives indulgence to the payee (the party accommodated), he does not thereby discharge the maker (the accommodation party).—BANK OF HINDUSTAN, LTD., MADRAS *v.* GOVINDARAJULU NAIDU (1933), I. L. R. 57 Mad. 482.—**IND.**

PART XIV. SECT. 11.

o i. —— *First note destroyed.*]—*Held :* the original indebtedness was discharged & the second note was not a renewal but a satisfaction.—CRISTAL *v.* SIMOVITCH (1922), 70 D. L. R. 861.—**CAN.**

2633 viii. —— ——.]—*Re* THOMPSON, [1931] 4 D. L. R. 573 ; O. R. 714 ; 12 C. B. R. 498.—**CAN.**

r i. ——.]—The taking of a renewal note, where the original note is retained by the holder, does not of itself discharge the indebtedness represented by the original note, but merely suspends the right of action thereon during the currency of the renewal.—ROYAL BANK *v.* HOGG, [1930] 2 D. L. R. 488 ; 64 O. L. R. 653.—**CAN.**

PART XIV. SECT. 12, SUB-SECT. 1.

2639 i a. —— ——.]—The relation of principal & surety is created by indorsement of a bill for accommodation, & if a creditor discharges the principal debtor, the surety is also discharged.—HARRIS *v.* LERNER, [1924] 2 D. L. R. 518 ; 30 R. L. N. S. 63.—**CAN.**

PART XIV. SECT. 12, SUB-SECT. 3.

sv. *Deposit with creditor of securities as collateral to notes—Securities entrusted to principal debtor for collection.*]—Premium-notes, indorsed by G. & F., were deposited with pltf. as security collateral to two notes made by G. & indorsed by F. Pltf. entrusted some of these notes to G. for collection, & G. failed to pay over all that he collected :—*Held :* both G. & F. were liable.—ROUTLEY *v.* GORMAN & CORAN (1920), 47 O. L. R. 420 ; 18 O. W. N. 173.—**CAN.**

PART XIV. SECT. 12, SUB-SECT. 5.

2684 vii a. ——.]—Two persons signed a promissory note, being in fact accommodation parties. One paid in full at maturity, without notice of dishonour : —*Held :* entitled to contribution.—FOX *v.* TORONTO GENERAL TRUSTS CORPN., [1934] 4 D. L. R. 759 ; O. R. 671.—**CAN.**

PART XVI. SECT. 3.

sw. *Instrument taken in good faith.*]—Pltf. bought stolen bearer bonds in good faith :—*Held :* pltf. had acquired a good title.—GAREY *v.* DOMINION MANUFACTURERS, LTD., [1925] 1 D. L. R. 99 ; 56 O. L. R. 159.—**CAN.**

Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153; Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

2783. *Add. Annotations :*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153. **Refd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

2784. *Add. Annotations :*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Refd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

2789. *Add. Annotations :*—**Refd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2790. *Add. Annotation :*—**Refd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889.

2791a. —— **Validity of indorsement—Liability of acceptor in England.**]—A bill of exchange was drawn in France by E. upon resps. in London to the order of M. It was sent to London, was accepted by resps. payable at a London bank, & returned to France, where it was indorsed by E. in his own name, on behalf, & with the authority, of M., to applts. On presentation for payment, resps. refused to meet it on the ground that it did not bear the indorsement of M., the payee, but merely the indorsement of E. In an action on the bill against resps. as acceptors evidence was given that by French law an indorsement might be validly made by a duly authorised agent signing his own name :—*Held :* applts. as indorsees obtained a good title to the bill by virtue of 1882 Act, s. 72, & were entitled to recover the amount thereof from resps. as acceptors.—KOECHLIN ET CIE. *v.* KESTENBAUM BROTHERS, [1927] 1 K. B. 889; 96 L. J. K. B. 675; 137 L. T. 216; 43 T. L. R. 352; 32 Com. Cas. 267, C. A.

2792. *Add. Annotation :*—*As to* (2) **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2794. *Add. Annotations :*—**Apld.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889. **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2812. *Add. Annotations :*—**Consd.** De Beeche *v.* South American Stores, Ltd. & Chilian Stores, Ltd., [1935] A. C. 148. **Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

2813. *Add. Annotation :*—**Consd.** Société Anonyme Metallurgique de Prayon, Trooz, Belgium *v.* Koppel (1933), 77 Sol. Jo. 800.

2816a. —— **Bill drawn accepted and payable in Germany.**]—SOCIETE ANONYME METALLURGIQUE DE PRAYON, TROOZ, BELGIUM *v.* KOPPEL (1933), 77 Sol. Jo. 800.

2816b. —— **Bills drawn in Russia—Payable in sterling in London.**]—In Oct. 1915, in order to rehabilitate Russian credit in London, an arrangement was made by the Bank of England, with the authority of the Treasury, under which approved Russian banks were to draw three months' sterling bills & remit them through the Banque de l'Etat, Petrograd, to London for acceptance by certain banks & accepting houses, who agreed to renew the bills until one year after the termination of the War, the Banque de l'Etat undertaking to provide to meet the acceptances on maturity. Imperial Russian Treasury Bills to the amount of the acceptances were to be lodged with the Bank of England as collateral security. No accepting house was to be liable for more than £100,000, unless otherwise agreed. In pursuance of this arrangement the Russio-Asiastic Bank in 1916 drew 151 bills of exchange on twenty-one accepting houses maturing in Feb. & Mar. 1918, which were prevented through Baring Bros. & Co. as agents for the Banque de l'Etat & accepted by the banks & financial houses under a form of agreement with the Banque de l'Etat which carried out the above arrangement more completely; & authorised the issue by the Treasury of sterling Treasury Bills of the Imperial Russian Government to the amount of the acceptances to cover any default in payment on maturity. In Jan. 1918, shortly before maturity, all the acceptances were assigned to the Bank of England in consideration of the issue of Exchequer bonds to the accepting houses to the amount thereof. Notice of the assignment was despatched by the Bank of England to the Russo-Asiatic Bank in Petrograd, but according to the evidence never reached its destination in consequence of the Bolshevist revolution in Russia. By a decree issued by the Soviet Government in Dec. 1917, all private banks in Russia were abolished & the whole of their assets transferred to a State Bank. The Russo-Asiatic Bank, whose head office was in Petrograd, was one of the banks so abolished. Its London branch was opened in 1908 & was ordered to be wound up by the ct. in 1926, under sect. 338 of Cos. Act, 1929. The Bank of England, on behalf of the Crown, lodged a proof of debt in the liquidation for £752,500, proceeds of the above named bills. The liquidator rejected the proof of the Bank of England on several grounds, the most important being that the claim was barred by the Statutes of Limitation :—*Held :* (1) the bills had been assigned to the Bank of England with the authority & on behalf of the Crown, & had passed to the Bank an equitable title to all the rights under the agreements made with the acceptors, including the right of action for breach of contract, if the bills were not paid at maturity; (2) the obligation being to pay in sterling in London at maturity the debt was located in England & not in Russia, & therefore English law must be applied; (3) that the Russian Imperial Treasury bills were only a collateral security & being of no value at any material time were not a discharge of the debt; (4) on the evidence of experts & docu-

---

PART XVIII. SECT. 4.

q 1. —— *Note drawn & payable in Victoria—In consideration of purchase of land in New South Wales.*]—Applt., who had agreed to buy certain land in New South Wales, made default in payment of interest on the outstanding balance of purchase money. After negotiations between applt. & the vendor's agent, the former gave a promissory note, payable to the agent, for the amount due. The note was issued & payable in Victoria :—*Held :* the governing law of the note was that of Victoria &, therefore, it was not affected by Moratorium Act, 1930-1931 (N.S.W.).—WRAGGE *v.* SIMS COOPER & CO. (AUSTRALIA) PROPRIETARY, LTD. (1934), 50 C. L. R 483; 40 Argus L. R. 64.—**AUS.**

ments, the Russo-Asiastic Bank ceased to have any corporate existence in Russia as the result of decrees of the Soviet Government on or before Jan. 26, 1918, a date before the bills matured, & as from that date there was no debtor who could be sued. Stat. Limitations therefore was no defence to the application, & the Bank of England was entitled to be admitted to prove for the debt in the winding-up of the London branch of resp. bank. There being no evidence, however, that notice of the assignment had reached the drawers, the assignors must be joined in the application.—*Re* RUSSO-ASIATIC BANK, *Re* RUSSIAN BANK FOR FOREIGN TRADE, [1934] Ch. 720; 103 L. J. Ch. 336; 152 L. T. 142; 78 Sol. Jo. 647; [1934] B. & C. R. 71.

2819a. Foreign usage—Evidence of—Admissibility.]—Resps. were jointly bound to fulfil the obligations contained in leases of premises in Santiago de Chile granted by the predecessors in title of applts. The leases provided the following way in which the rents should be payable: "Payment shall be effected monthly in advance in Santiago de Chile on the first day of each month by first class bills on London." In 1931, Chilean legislation supervened which resps. maintained prevented them from acquiring foreign exchange in Chile or from paying the rents in Chile by drafts on London without the authorisation of the committee established by the legislation to control exchanges, & that requests by them for such authorisation from time to time had been refused by the committee. The Chilean legislation established a control of international operations of exchange & the transfer of funds abroad, entrusting such control to a committee or commission. The legislation defined international exchange transactions as "the purchase & sale of all kinds of currency & gold in any form & the bills of exchange, cheques, drafts, letters of credit, telegraphic orders, & documents of any other nature requiring the transfer of funds from Chile or *vice versa*." Conflicting evidence by Chilean experts was given as to the meaning in Chile of first class bills on London. The evidence accepted was that "payable in Chile in first class bills on London" had a special mercantile meaning in Chile—namely, "bills drawn in Chile by one or other of a select list of bankers & mercantile houses in Chile upon one or other of a select list of bankers & mercantile houses in London" & these were known technically as F.C.L. bills. An advocate in Chile who had been Minister of Justice gave evidence that the F.C.L. bills came within the mischief of the Chilean legislation:—*Held:* (1) the conditions precedent to the admissibility of evidence as to the meaning in Chile of first class bills on London had been fulfilled—namely, the evidence did not conflict with a statutory definition, was of a usage common to the place in question & expounded without contradicting the terms of the contract; (2) though witnesses could be called to prove foreign law, the ct. was at liberty to look at a translation of the passages in question & to consider what was their proper meaning, but the ct. would have regard not only to its own view of the foreign law but to the interpretation put upon it by a competent foreign authority; (3) the Chilean legislation made it impossible for the rent to be paid as directed, as the mode of payment as already interpreted would have been an international exchange transaction within the meaning of the Chilean legislation.—DE BEECHE *v.* SOUTH AMERICAN STORES, LTD., & CHILIAN STORES, LTD., [1935] A. C. 148; 104 L. J. K. B. 101; 152 L. T. 309; 51 T. L. R. 189; 40 Com. Cas. 157, H. L.

2824. *Add. Annotations:*—**Expld.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877. **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

Part XIX.—Cheques.

2841. *Add. Annotation:*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2842. *Add. Annotation:*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

2846. *Add. Annotation:*—*As to* (1) **N.F.** Hibernian Bank, Ltd. *v.* Gysin & Hanson, [1938] 2 K. B. 384.

2846a. ——— ———.]—A further item in the finding of negligence is that some of the cheques were crossed "account of payee," one with the addition of the word "only." While this addition does not affect the negotiability of an order or bearer cheque, I agree with the view of ROWLATT, J., in *House Property Co. of London, Ltd.* v. *London, County & Westminster Bank*, No. 2850, that when such a cheque is paid into the account of a person who is not the payee the bank is put on inquiry, especially when he is a servant of the payee (SCRUTTON, L.J.).—UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL, UNDERWOOD (A. L.), LTD. *v.* BARCLAYS BANK, [1924] 1 K. B. 775; 93 L. J. K. B. 690; 131 L. T. 271; 40 T. L. R. 302; 68 Sol. Jo. 716; 29 Com. Cas. 182, C. A.

Annotations:—**Refd.** London & Montrose Shipbuilding & Repairing Co., Ltd. *v.* Barclays Bank, Ltd. (1925), 31 Com. Cas. 67; Robinson *v.* Midland Bank, Ltd. (1925), 41 T. L. R. 402; Kreditbank Cassell G.M.B.H. *v.* Schenkers, Ltd., [1926] 2 K. B. 450; Houghton & Co. *v.* Nothard, Lowe & Wills, Ltd., [1927] 1 K. B. 246; Auchteroni & Co. *v.* Midland Bank, Ltd., [1928] 2 K. B. 294; Liggett, B. (Liverpool), Ltd. *v.* Barclays Bank, Ltd., [1928] 1 K. B. 48; Lloyds Bank, Ltd. *v.* Chartered Bank of India (1928), 97 L. J. K. B. 609; Reckitt *v.* Barnett, Pembroke & Slater, Ltd. (1928), 45 T. L. R. 36; Slingsby *v.* Westminster Bank, Ltd., [1931] 1 K. B. 173.

2847. *Add. Annotations:*—*Generally*, **Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41; Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297.

2849. *Add. Annotations:*— **Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2850. *Add. Annotation :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

2851. *Add. Annotations :*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244 ; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40 ; Carpenters Co. *v.* British Mutual Banking Co., [1937] 3 All E. R. 811. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775 ; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264 ; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465 ; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114 ; Lloyds Bank, Ltd. *v.* Savory & Co. (1932), 49 T. L. R. 116.

2852. *Add. Annotations :*—**Apprvd.** Sutters *v.* Briggs, [1922] 1 A. C. 1. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

Part XX.—Negotiable Instruments other than Bills of Exchange, Promissory Notes, and Cheques.

2866. *Add. Annotation :*—**Refd.** Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

2873. *Add. Annotations :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

2887. *Add. Annotations :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40 ; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

2891. *Add. Annotations :*—*As to* (1) **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. *As to* (2) **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2897. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

2901a. —— **1882 Act, s. 95—Warrant for interest on Government stock.**]—SLINGSBY *v.* WESTMINSTER BANK, LTD., No. 242a, *ante.*

2908a. *Add. Annotation :*—**Apld.** Nippon Yusen Kaisha *v.* Ramjiban Serowgee, [1938] A. C. 429.

2911. *Add. Annotation :*—**Refd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167.

Part XXI.—I.O.U.'s.

2924. *Add. Annotations :*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Refd.** Nihalchand Navalchand McMullan, [1934] 1 K. B. 171.

Part XXII.—Actions on and in Connection with Negotiable Instruments.

2976. *Add. Annotation :*—**Consd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2976a. One joint maker appointed holder's executor—Action by executor against one of other makers.]—JENKINS *v.* JENKINS, No. 2393a, *ante.*

3015. *Add. Annotation :*—*As to* (2) **Consd.** Powszechny Bank Zwiazowy W. Polsce *v.* Paros, [1932] 2 K. B. 353.

3019. *Add. Annotation :*—**Apprvd.** Powszechny Bank Zwiazkowy W. Polsce *v.* Paros, [1932] 2 K. B. 353.

PART XX. SECT 2. SUB-SECT. 5,

2876 ii. ——.]—Pltf. who owned thirty-one debentures of the Bombay Improvement Trust entrusted them to his agent, deft. No. 1, for collection of interest. Deft. No. 1 forged pltf.'s signature on the debentures, & indorsed them in his own favour. Subsequently deft. No. 1 pledged them with a bank, deft. No. 2, to secure an overdraft to himself. The bank surrendered the debentures to the Bombay Improvement Trust for renewal. New debentures were issued payable to the bank or order. These new debentures were subsequently indorsed to another bank (deft. No. 3) for value. Pltf. filed a suit against defts. for a return of the debentures, or in the alternative for their value :—*Held :* the debentures were promissory notes, &, therefore, negotiable instruments within Negotiable Instruments Act, ss. 4 & 13.—MERCANTILE BANK OF INDIA *v.* MASCURENHAS (1928), I. L. R. 52 Bom. 792 ; *on appeal* (1931). 47 T. L. R. 611, P. C.—**IND.**

PART XX. SECT. 2, SUB-SECT. 7.

sx. *Lien note.*]—*Held :* not a promissory note.—CANADIAN BANK OF COMMERCE *v.* JOHNSON, [1925] 4 D. L. R. 511 ; [1925] 3 W. W. R. 328.—**CAN.**

sy. ——.]—*Held :* not a promissory note.—METCALFE *v.* ADAIR (Man.), [1927] 1 D. L. R. 982 ; [1927] 1 W. W. R. 331 ; 36 Man. L. R. 255.—**CAN.**

PART XXII. SECT. 1.

2951 via. —— —— ——.]—JOHNSON *v.* RICHARDSON, [1922] 3 W. W. R. 453.—**CAN.**

PART XXII. SECT. 3.

n i. —— *Letter granting delay for payment.*]—On Sept. 3, 1929, applt. sued resp. corpn. on four promissory notes overdue & the defence set up was that the action was premature because, on Aug. 28, 1929, applt. had written a letter to the secretary of the corpn. stating *inter alia* that unless payment was made within fifteen days he would take proceedings ; but he brought his action before the expiry of that time : —*Held :* applt. was entitled to judgment.—LACAILLE *v.* LACAILLE CORPN., [1931] S. C. R. 619 ; 4 D. L. R. 337.—**CAN.**

xi. —— *Letter granting delay—Action before expiry of delay.*]—LACAILLE *v.* LACAILLE CORPN., [1931] S. C. R. 619 ; 4 D. L. R. 337.—**CAN.**

3019a. —— —— ——.]—In an action brought on a writ specially indorsed under R. S. C., Ord. 3, r. 6, by indorsees against the maker of a promissory note, pltfs. in an affidavit in support of a summons for leave to sign final judgment under R. S. C., Ord. 14, r. 1, stated that they were holders in due course of the note, having taken it in good faith for value from the payees without notice of any defect in their title. Deft. in his affidavit in answer stated facts which, if true, showed that the note had been negotiated in fraud of him. The judge in chambers made an order, under R. S. C., Ord. 14, r. 6, that deft. should have leave to defend the action if he brought a sum of money into ct. within a certain time, but that if he failed to do this, pltfs. should have leave to sign judgment for the amount claimed. On appeal from this order:—*Held:* (1) a triable issue was raised between the parties; the mere statement in pltfs.' affidavit that they had given value without notice of any defect in their indorsers' title was not sufficient to decide that issue in pltfs.' favour, but that the ct. must have an opportunity of deciding it, & therefore deft. was entitled to leave to defend the action without the condition that he should pay money into ct.; (2) by GREER, L.J., & *semble* by SLESSER, L.J., where a deft. is entitled to leave to defend, the judge in chambers cannot under R. S. C., Ord. 14, r. 6, make an order for conditional leave to defend, the effect of which is to give pltf. conditional leave to sign judgment.—POWSZECHNY BANK ZWIAZKOWY W. POLSCE *v.* PAROS, [1932] 2 K. B. 353; 101 L. J. K. B. 671; 147 L. T. 377, C. A.

3020. *Add. Annotation:*—**Consd.** Powszechny Bank Zwiazowy W. Polsce *v.* Paros, [1932] 2 K. B. 353.

3023. *Add. Annotation:*—**Refd.** Powszechny Bank Zwiazowy W. Polsce *v.* Paros, [1932] 2 K. B. 353.

3056. *Add. Annotation:*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

Part XXIII.—Securities for Negotiable Instruments.

3120. *Add. Annotation:*—*As to* (2) **Refd.** Aman *v.* Southern Ry. (1925), 42 T. L. R. 31.

Part XXV.—Stamp Duties.

SUB-SECT. 1.—BILLS OF EXCHANGE AND OTHER ORDERS ON ONE PERSON TO PAY ANOTHER (Vol. VI., p. 493).

3121a. Bill of exchange.]—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, No. 568a, *ante.*

3125. *Add. Annotation:*—**Refd.** Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

3126. *Add. Annotation:*—Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

3146a. "Chequelet."]—A bank issued documents to its customers in the form of receipts for payment by them to the customer of sums under £2, & agreed with its customers that they would pay to persons presenting these documents to them signed by a customer the sums named therein & would debit the customer's account therewith, it being their avowed intention that the documents should be used for the same purpose as cheques, & the object being to avoid the stamp duty on cheques:—*Held:* the documents were bills of exchange within Stamp Act, 1891 (c. 39), s. 32.—MIDLAND BANK, LTD. *v.* INLAND REVENUE COMRS., [1927] 2 K. B. 465; 96 L. J. K. B. 1006; 137 L. T. 817; 43 T. L. R. 754; 71 Sol. Jo. 622.

3150. *Add. Annotation:*—**Refd.** Akbar Khan *v.* Attar Singh, [1936] 2 All E. R. 545.

PART XXII. SECT. 7.

aa. *Pleading — Striking out—When ordered.*]—NEEDLES *v.* SLOVARP, [1922] 2 W. W. R. 649; 66 D. L. R. 273; 15 Sask. L. R. 448.—**CAN.**

ad. *Discovery — Examination for — Action by indorsee.*]—EMPIRE FINANCIERS, LTD. *v.* NANCE, [1920] 1 W. W. R. 694; 51 D. L. R. 231.—**CAN.**

PART XXII. SECT. 11, SUB-SECT. 1.

af. *Right to jury.*]—BANK OF YORKTON *v.* BRYAN, [1930] 2 W. W. R. 49; 4 D. L. R. 287; 24 Alta. L. R. 576.—**CAN.**

PART XXII. SECT. 11, SUB-SECT. 4.

d i. —— *& to prove collateral agreement—For "working out" of note.*]—MALLOUGH *v.* DICK, [1927] 2 D. L. R. 370; [1927] 1 W. W. R. 544; 22 Alta. L. R. 425.—**CAN.**

d ii. *To show that note signed as trustee only.*]—Evidence not admissible.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* ANDERSON (1917), 37 D. L. R. 805.—**CAN.**

f i. —— *Addition of word "security"—Evidence to explain.*]—Parol evidence is admissible to explain the addition of the word "security" to the name of one of the makers.—MCINTOSH *v.* MCNAUGHTON, [1935] 2 D. L. R. 237; O. R. 155.—**CAN.**

PART XXIII. SECT. 7.

al. *Failure of holder to sue on collateral—Security barred by lapse of time.*]—In an action on a promissory note deft. counterclaimed on the ground that pltf. had negligently failed to sue on certain notes given him as collateral security with the result that action on said notes was now barred by Stat. Limitations. The trial judge found that deft. had acquiesced in the opinion of a solr. acting for both parties that it was not worth while suing on the notes & that the only practical thing to do was to try to get renewal notes, but he held that deft.'s acquiescence could operate only as estoppel & since estoppel was not pleaded he allowed the counterclaim. On appeal:—*Held:* the appeal should be allowed. Deft.'s claim was for negligence in failing in a duty to sue on the notes or to return them to him & thereby put him in a position to sue. Under the circumstances there was no duty to do anything more than to try to obtain renewal notes. The solr. did so try &, therefore, pltf. was not guilty of the negligence which deft. had to establish in order to succeed on his counterclaim.—ORLOFF *v.* KIPPAN, [1936] 2 W. W. R. 631; 4 D. L. R. 506.—**CAN.**

PART XXV. SECT. 1, SUB-SECT. 1.

3123 ii. —— *Issued by one branch on another.*]—Demand drafts, issued by one office of a bank upon another of the same bank, are bills of exchange payable on demand & are exempt from stamp duty.—*Re* DEMAND DRAFTS OF IMPERIAL BANK OF INDIA (1928), I. L. R. 56 Calc. 233.—**IND.**

3172. *Add. Annotation :*—**Refd.** Lemon *v.* Austin Friars Investment Trust (1925), 133 L. T. 790.

3173. *Add. Annotation :*—**Refd.** Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

3197. *Add. Annotation :*—**Refd.** Knightsbridge Estates Trust, Ltd. *v.* Byrne, [1938] 2 All E. R. 444.

3209. *Add. Annotations :*—**Refd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46 ; Slingsby *v.* District Bank, Ltd., [1931] 2 K. B. 588.

PART XXV. SECT. 2, SUB-SECT. 1.

sk. *Time for stamping—Whether after acceptance & indorsement.*]—BUTLER *v.* EVANS (1873), 9 N. S. R. (2 G. & O.) 171.—**CAN.**

PART XXV. SECT. 2, SUB-SECT. 2.

sm. *Time for stamping.*]—HENDERSON *v.* GESNER (1866), 25 U. C. R. 184. —**CAN.**

sn. ——.] — *Held :* a promissory note before being negotiated could be stamped by the maker on the day of the making thereof, though after it had been signed & indorsed by the payee.—BANK OF OTTAWA *v.* MCLAUGHLIN (1883), 8 A. R. 543.—**CAN.**

PART XXV. SECT. 4, SUB-SECT. 3.—B.

3254 vii. ——.]—Where a promissory note, being insufficiently stamped, is inadmissible in evidence, a suit to recover the principal debt based on the acknowledgment contained in a contemporaneous receipt mentioning the loan & referring to the promissory note, is maintainable.—GOVIND SINGH *v.* BIJOY BAHADUR SINGH (1929), I. L. R. 52 All. 169.—**IND.**

PART XXV. SECT. 4, SUB-SECT. 8.—C.

3263 v. ——.]—An unstamped cheque is admissible in evidence & may amount to an earnest or part payment.—SYKES *v.* GECK, [1920] 1 W. W. R. 741.—**CAN.**

PART XXV. SECT. 6, SUB-SECT. 1.

f i. —— —— —— ——.]—TRAVIS *v.* GLASIER (1870), 2 Han. 215.—**CAN.**

f ii. —— —— —— ——.]—BANK OF NOVA SCOTIA *v.* CUSHING (1882), 21 N. B. R. 498.—**CAN.**

BILLS OF LADING.

See SHIPPING AND NAVIGATION.

BILLS OF SALE.

Part I.—Objects and Application of Bills of Sale Acts.

6. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

7. *Add. Annotation :*—**Refd.** *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464.

Part II.—What Transactions are Bills of Sale and require Registration.

11. *Add. Annotation :*—**Refd.** French *v.* Gething, [1922] 1 K. B. 236.

12. *Add. Annotations :*—**Refd.** *Re* George Inglefield, Ltd., [1933] Ch. 1 ; *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464.

14. *Add. Annotation :*—**Refd.** *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464.

15a. —— ——.]—H., a dealer in motor vehicles, & defts., a finance co., entered into a transaction for the sale of a motor lorry by H. to defts. & the letting of the lorry by defts. to H. on an agreement in the form of a hire-purchase agreement. The transaction was carried out by means of the printed forms used by defts. in their business, which were more appropriate to a case in which they bought a vehicle & let it on hire-purchase to a third party, than to the present case. H., being in possession of the lorry, then fraudulently sold it to pltfs., who were not aware of the previous transaction between H. & defts. The payments due from H. to defts. under the hire-purchase agreement between them having fallen into arrear, defts. resumed possession of the lorry & refused to deliver it to pltfs. at their request. Pltfs. thereupon brought an action against defts. claiming delivery up of the lorry or damages for its detention :—*Held :* in the circumstances the transaction between H. & defts. was in fact what it purported to be, & the agreement between them as to the letting of the lorry was a valid hire-purchase agreement & could not be treated as a bill of sale to secure the repayment of a loan by defts. to H.—STAFFS MOTOR GUARANTEE, LTD. *v.* BRITISH WAGON CO., LTD., [1934] 2 K. B. 305; 103 L. J. K. B. 613; 151 L. T. 396.

15b. —— **Sale—Re-letting to seller.**]—BRITISH, RAILWAY TRAFFIC & ELECTRIC CO. *v.* KAHN, [1921] W. N. 52.

24. *Add. Annotations :*—**Refd.** *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464 ; Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351.

27. *Add. Annotation :*—**Refd.** Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351.

35. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

41. *Add. Annotations :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196 ; *Re* George Inglefield, Ltd., [1933] Ch. 1.

44. *Add. Annotations :*—**Expld. & Apld.** French *v.* Gething, [1922] 1 K. B. 236. **Refd.** Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351.

55a. **Sales agreement between manufacturer & company—To secure loan.**]—Being short of liquid capital, the debtor, who was a manufacturer of furniture, approached A. for assistance. A. agreed to help him & for this

---

PART I.

g i. —— *Protection of creditors.*]—Bills of Sale Act, R. S. A., 1922, c. 151, is not intended to do anything further than to stop a buyer of goods who has not registered a bill of sale & who is not in possession of the goods from claiming, as against creditors of the person in possession, that he had bought the goods from said person. It is not the intention of the Act that the buyer of a chattel who leaves it in the possession of the vendor until it can be sold again & then sells it & makes delivery to a person who takes it away is to be deprived of the proceeds of the resale by reason of garnishee or other proceedings taken by creditors of the person in possession before the resale & delivery.—*Re* AYLING, ROYAL BANK OF CANADA *v.* HEYLER & AYLING, [1930] 1 W. W. R. 102 ; 1 D. L. R. 68.—**CAN.**

sa. *Bills of Sale & Chattel Mortgage Act, R. S. M.*, 1913 (*c.* 17)—*Not applicable to mortgage of equity in mortgaged goods.*]—The above Act does not apply to a chattel mtge. which expressly covers not the goods themselves referred to therein but any interest or equity which mtgor. may have in them after the claim of a prior named mtgee. shall have been satisfied.—BANQUE D'HOCHELAGA *v.* BROWNSTONE, [1925] 3 D. L. R. 176 ; [1925] 2 W. W. R. 348 ; 35 Man. L. R. 62.—**CAN.**

sb. *Crop Payments Act*, 1924 (*c.* 147), *ss.* 2, 3—*Effect of—Alienation by landlord, vendor or mortgagee.*]—*Re* CROP PAYMENTS ACT, *Re* BILLS OF SALE & CHATTEL MORTGAGE ACT (1926), 36 Man. L. R. 34 ; [1926] 2 W. W. R. 844.—**CAN.**

sd. *Contract made outside jurisdiction—Provincial Act not applicable.*]—NATIONAL CASH REGISTER CO. *v.* LOVETT, MOORE *v.* NATIONAL CASH REGISTER CO. (1906), 1 E. L. R. 321.—**CAN.**

sf. *Who may be "creditor"—Trustee in bankruptcy.*]—A trustee in bkpcy. is a creditor within Bills of Sale Act, R. S. N. S. 1923, c. 201, s. 8.—*Re* SATISFACTION STORES, [1929] 2 D. L. R. 435 ; 60 N. S. R. 357.—**CAN.**

PART II. SECT. 1.

10 ii. Add "*revsd.*, [1920] 3 W. W. R. 421."

PART II. SECT. 2.

sm. *Declaration reserving to maker powers of management & disposition—No power in cestui que trust to seize or take possession.*]—PURCELL *v.* DEPUTY FEDERAL TAXATION COMR. (1920), 28 C. L. R. 77.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.

28 i. Add "*revsd.*, [1920] 3 W. W. R. 421."

PART II. SECT. 4.

t i. —— *Goods paid for but not delivered.*]—*Held :* registration not required under Bills of Sale Act in order to protect purchaser's right to goods subsequently manufactured & paid for under the agreement, the property in which had passed to him but which were still on vendor's premises.—ALLEN-STOLTZE LUMBER CO., LTD. *v.* SUMMIT LAKE LUMBER CO., LTD., [1920] 3 W. W. R. 895.—**CAN.**

sp. "*Customer's agreement*" — & "*trust receipts.*"]—*Re* DOMINION SHIPBUILDING & REPAIR CO., LTD. (1923), 53 O. L. R. 485 ; 24 O. W. N. 30.—**CAN.**

purpose a co. was incorporated on Sept. 1, 1933, with a capital of 100 shares of £1 each, of which A. held ninety-eight, his clerk one, & the debtor one. On the same date the debtor entered into an agreement with the co. by which the co. agreed to buy for cash goods manufactured by him up to a total amount of £7,000, the price to be 10 per cent. less than the prices that any of certain specified customers had agreed to pay for them, & the goods to be invoiced to the customers in the name of the co. The agreement also provided that the debtor should not sell goods to any person other than the co., that he should repay to the co. any part of the price of goods so purchased which the customer failed to pay, & that the co. should not make a profit of more than £2,500 in any one year. Notices were issued to customers that for the future sales would be effected through the co. On Feb. 5, 1934, a receiving order was made against the debtor, & on Feb. 19 he was adjudicated a bkpt. The question arose whether the agreement was void as against the trustees in bkpcy. so that the sums remaining due from customers at the beginning of the bkpcy. formed part of the debtor's estate :—*Held :* the agreement was not void either as an unregistered bill of sale or as an assignment of future book debts within sect. 43 of Bkpcy. Act, 1914 (c. 59).—*Re* LOVEGROVE, *Ex p.* LOVEGROVE & CO. (SALES), LTD., *Re* LOVEGROVE, *Ex p.* TRUSTEES, [1935] Ch. 464 ; 104 L. J. Ch. 282 ; (1934-5), B. & C. R. 262 ; *sub nom. Re* LOVEGROVE, *Ex p.* APPLESTONE *v.* TRUSTEES, 152 L. T. 480 ; 79 Sol. Jo. 145 ; *sub nom. Re* LOVEGROVE, *Ex p.* LOVEGROVE & CO. (SALES), LTD. *v.* TRUSTEES, 51 T. L. R. 248, C. A.

70. *Add. Annotation :*—**Refd.** Modern Light Cars, Ltd. *v.* Seals, [1934] 1 K. B. 32.

74. *Add. Annotation :*—**Refd.** *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464.

82. *Add. Annotations :*—*As to* (1) **Consd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807. *As to* (2) **Refd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807 ; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 4 All E. R. 651.

90. *Add. Annotation :*—**Apld.** *Re* Allester, [1922] 2 Ch. 211.

93. *Add. Annotation :*—**Refd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807.

93a. —— —— **Room on borrower's premises.**]—Deft. co., in order to secure pltf. against loss on a certain contract & in consideration of pltf. giving further time within which to pay for the goods, set aside certain specified goods in two rooms on defts.' premises, which were locked up & the keys handed to pltf., no other goods being in those two rooms. The terms of the transaction were recorded in two letters written by deft. co. to pltf., one letter written before the keys were handed over, & the second letter subsequently. The second letter contained the words : "The goods to be locked up, the keys in your possession, & you to have the right to remove same as desired." The co. went into liquidation & the liquidator claimed that the transaction was invalid under Companies Act, 1908 (c. 69), s. 93 (1) (c), as being a charge created or evidenced by an instrument which if executed by an individual would require registration as a bill of sale. Pltf. brought an action claiming a declaration that the goods were in his possession, & that he was entitled to remove them :—*Held :* possession of the goods passed to pltf. by the delivery of the keys of the rooms in which they were locked up, notwithstanding that those rooms were on defts.' premises, inasmuch as defts. had conferred upon pltf. a licence to make the necessary entry in order to use the keys, which licence could not be revoked, & therefore the transaction was valid as against the liquidator, & pltf. was entitled to remove the goods.—WRIGHTSON *v.* MCARTHUR & HUTCHISONS, [1921] 2 K. B. 807 ; 90 L. J. K. B. 842 ; 125 L. T. 383 ; 37 T. L. R. 575 ; 65 Sol. Jo. 553 ; [1921] B. & C. R. 136.

Annotation :—**Refd.** Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 4 All E. R. 651.

97. *Add. Annotation :*—**Consd.** French *v.* Gething, [1922] 1 K. B. 236.

98. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

98a. Letter assigning chattel in hands of third party—Or proceeds of sale—As security for overdraft.]—The owner of a motor car which was in the hands of deft., a motor engineer, for the purpose of repairs, & which he had instructed deft. to sell on his behalf when repaired, had an account at pltfs.' bank, which was overdrawn. Being requested by pltfs. to give security for the overdraft he wrote to deft. a letter authorising him "to hold the car to the order of" the bank "or the proceeds when sold," & sent a copy of that letter to pltfs. The letter was not registered as a bill of sale. The car having been sold & the price received by deft., pltfs. claimed the proceeds :—*Held :*

PART II. SECT. 5, SUB-SECT. 4.

80 i. *Following alleged sale to vendor.*]—C. purchased an automobile, paying partly in cash & partly by post-dated cheque. Later requiring money to finance his business, he borrowed $1,400 from pltf., giving in return a hire-purchase agreement as to the automobile. C. continued in possession of the car :—*Held :* the document was an assurance & came within Bills of Sale Act.—RITHET (R. P.) & CO. *v.* SCARFF (1920), 29 B. C. R. 70.—**CAN.**

80 ii. ——,]—A. an employee of pltf. co., being desirous of obtaining a new motor car for the purposes of his work, arranged with an officer of pltf. that the co. would advance him £200 to enable him to purchase the car. A. selected a car & signed an order for it in his own name, & an invoice addressed to pltf. was issued to A. A cheque for the balance of the amount owing on the car was given by the pltf. to A., who handed it to the vendor. The co.'s ledger showed the amount of the cheque as an advance to A. As security for this advance A. entered into a hire-purchase agreement with the co., whereby the co. purported to let the car to A. upon the usual terms of a hire-purchase agreement. The agreement was not registered as a bill of sale, & A. subsequently sold the car to deft. In an action for detention :—*Held :* the ct. was not concluded by the form into which the parties had thrown the transaction, but was entitled, & indeed bound, to inquire into its real nature ; the transaction between A. & pltf. amounted to an advance by pltf. to A. on the security of the car ; the pltf. could not make out its title independently of the hire-purchase agreement, which contained a licence to take possession of a personal chattel, & was consequently a bill of sale within Instruments Act, 1915, s. 127, & the agreement not being registered as a bill of sale was void, & deft. was entitled to succeed.—AUSTRALIAN METROPOLITAN LIFE ASSURANCE CO., LTD. *v.* LEA, [1928] V. L. R. 29.—**AUS.**

the letter in question created one entire charge upon the car & the proceeds which represented it, & the equitable assignment of the proceeds could not be severed from the assignment of the car itself; the letter was consequently a bill of sale & void for want of registration & for non-compliance with the statutory form.—NATIONAL PROVINCIAL & UNION BANK OF ENGLAND *v.* LINDSELL, [1922] 1 K. B. 21; 91 L. J. K. B. 196; 126 L. T. 319; 66 Sol. Jo. (W. R.) 11; [1921] B. & C. R. 209.

Annotation :—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

104. *Add. Annotation :*—**Expld. & Apld.** Shears *v.* Jones, [1922] 2 Ch. 802.

108. *Add. Annotations :*—**Consd.** *Re* Johns, Worrell *v.* Johns, [1928] Ch. 737. **Refd.** Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 4 All E. R. 651.

109. *Add. Annotation :*—**Refd.** Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 4 All E. R. 651.

110a. ——.]—An agreement to execute a bill of sale, to secure payment of a debt, in the event of the debt not being paid by a certain date, is a bill of sale within 1882 Act, & is void unless the requirements of that Act as to registration are complied with.—SHEARS & SONS, LTD. *v.* JONES, [1922] 2 Ch. 802; 92 L. J. Ch. 28; 128 L. T. 218; 66 Sol. Jo. 682; [1922] B. & C. R. 211.

112. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Trustee (1925), 134 L. T. 264.

117. After this case add

Power of distress as indemnity against rent.]—*See* Law of Property Act, 1925 (c. 20), s. 189 (1).

Part III.—Instruments not within the Expression "Bill of Sale."

128. *Add. Annotations :*—**Folld.** French *v.* Gething, [1922] 1 K. B. 236. **Refd.** Canvey Island Comrs. *v.* Preedy, [1922] 1 Ch. 179.

133. *Add. Annotations :*—**Refd.** The Harlow, [1922] P. 175; Merchants' Marine Insce. *v.* North of England Protecting & Indemnity Assocn. (1926), 42 T. L. R. 724.

134. *Add. Annotation :*—**Refd.** The Humorous, The Mabel Vera, [1933] P. 109.

135. *Add. Annotations :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 4 All E. R. 651.

138. *Add. Annotations :*—**Refd.** *Re* Allester, [1922] 2 Ch. 211; Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

138a. Letter of trust on redelivery for realisation of pledged bills of lading.]—A limited co. pledged bills of lading with a bank to secure an overdraft. When it was time to sell the goods, the co. in accordance with the well-established mercantile practice obtained the bills of lading from the bank for realisation on the terms stated in the usual letter of trust given by the co. to the bank, to wit, that the co. received the bills of lading in trust on the bank's account & undertook to hold the goods when received & the proceeds when sold as the bank's trustees & to remit the entire net proceeds as realised :—*Held :* the letter of trust was not a bill of sale at all within the definition of 1878 Act, s. 4. *Semble :* if it had been so, it would on the evidence have been a document "used in the ordinary course of business" within the exception in that definition.—*Re* ALLESTER (D.), LTD., [1922] 2 Ch. 211; 91 L. J. Ch. 797; 127 L. T. 434; 38 T. L. R. 611; 66 Sol. Jo. 486; [1922] B. & C. R. 190.

Annotations :—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53; Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1937] 3 All E. R. 312; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 4 All E. R. 651.

138b. Agreement for sale of growing crop.]—An agreement for the sale of a growing crop is a transfer of "goods" within 1878 Act, s. 4, & is therefore excepted from the definition of "bill of sale" in that sect. as being a "transfer of goods in the ordinary course of business of any trade or calling."—STEPHENSON *v.* THOMPSON, [1924] 2 K. B. 240; 93 L. J. K. B. 771; 131 L. T. 279; 88 J. P. 142; 40 T. L. R. 513; 68 Sol. Jo. 536; 22 L. G. R. 359; [1924] B. & C. R. 170, C. A.

141. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

PART II. SECT. 6.

st. *To give security — Registration necessary.*]—*Re* MCINTYRE, TRUSTEE *v.* CANADA METAL CO., LTD. (Ont.), [1925] 2 D. L. R. 839; 5 C. B. R. 629.—**CAN.**

sv. *Royalty agreement with oil company.*]—An agreement under which a co. incorporated to drill for oil & gas agrees to pay another co. a percentage royalty on all the oil, gas & other products to be recovered by the former, is not one to which Bills of Sale Act, 1929, applies.—*Re* PUBLIX OIL & GAS, LTD., *Re* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. & MERLAND OIL CO. OF CANADA, LTD., [1936] 3 W. W. R. 634; [1937] 1 D. L. R. 203.—**CAN.**

PART III. SECT. 5.

sw. *Lien note—No collateral contract to transfer property in goods back to seller.*]—*Held :* not a chattel mtge.—O'BRIEN *v.* STEBBINS & MULLEN, [1927] 3 D. L. R. 274; 2 W. W. R. 176; 21 Sask. L. R. 478.—**CAN.**

PART III. SECT. 6.

142 iv. —— ——.] — GORDON MACKAY & CO., LTD. *v.* CAPITAL TRUST CO., LTD., [1927] 2 D. L. R. 1150; S. C. R. 374; 8 C. B. R. 216.—**CAN.**

142 v. —— ——.]—Debentures issued by the co. on May 1, 1927, were not registered as chattel mtges, under the Bills of Sale & Chattel Mtge. Act. By each debenture the co. agreed to pay the principal sum therein mentioned on a certain date, with interest. There was no covering deed or trust mtge. Each debenture provided security for its payment by creating a first floating charge on all its assets & undertakings both present & future :—*Held :* the words used in creating the charge did not constitute the debentures a mtge. with Bills of Sale & Chattel Mtge. Act, & they were a charge on the property of the co. in priority to the claims of all other creditors.—*Re* DOMINION CHOCOLATE CO., [1931] 2 D. L. R. 813; O. R. 86; 12 C. B. R. 456.—**CAN.**

144a. —— —— **Society incorporated under Industrial & Provident Societies Act, 1893 (c. 39).**]—Upon a claim by a debenture-holder in the winding up of a society incorporated under the above Act to be declared a secured creditor, the question arose whether the debenture, by which the property of the society present & future was charged to secure the repayment of the principal sum & interest, was void by reason of Bills of Sale Acts, as to all or any of the assets of the society thereby charged :—*Held :* (1) the society was not an incorporated co. within the exception from 1882 Act, mentioned in sect. 17 of that Act ; (2) the property charged by the debenture, although described in general terms, was severable ; &, accordingly, the debenture was a valid charge upon such of the assets of the society as did not consist of personal chattels within 1878 Act, s. 4.—*Re* NORTH WALES PRODUCE & SUPPLY SOCIETY, [1922] 2 Ch. 340 ; 91 L. J. Ch. 415 ; 127 L. T. 288 ; 38 T. L. R. 518 ; 66 Sol. Jo. 439 ; [1922] B. & C. R. 12.

148. *Add. Annotations :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340 ; National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 241.

149. *Add. Annotations :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340 ; National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 241.

151. *Add. Annotation :*—**Apld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

155. *Add. Annotation :*—**Apld.** Lemon *v.* Austin Friars Investment Trust (1925), 133 L. T. 790.

156. *Add. Annotations :*—**Consd.** Lemon *v.* Austin Friars Investment Trust, [1926] Ch. 1. **Refd.** Dey *v.* Rubber & Mercantile Corpn., [1923] 2 Ch. 528.

158. *Add. Annotation :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

Part IV.—Subject-Matter of Bills of Sale—" Personal Chattels."

160. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

168. *Add. Annotations :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340 ; Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255.

176. *Add. Annotations :*—**Refd.** Golden Horseshoes (New), Ltd. *v.* Thurgood (1934), 150 L. T. 427 ; Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

180. *Add. Annotation :*—**Refd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

PART IV. SECT. 1.

sy. *Sale of dwelling-house for removal.*]—A sale of a dwelling-house with the intention on the part of the vendor & purchaser that it shall be removed from the land on which it is situated is a sale of a chattel within the meaning of sect. 9 of the Bills of Sale Act, R. S. A., 1922, c. 151.—WADE *v.* MUNICIPAL DISTRICT OF GOLDEN CENTRE, [1929] 2 D. L. R. 779 ; 1 W. W. R. 901 ; 24 Alta. L. R. 1.—**CAN.**

sz. *Goods not property of grantor.*]—The purchaser of a motor car under an uncompleted conditional sale agreement orally agreed to sell it to his father in consideration (*inter alia*) of the latter's assumption of the payments due the original vendor ; but there was not sufficient change of possession to satisfy Bills of Sale Act if it applied to such a transaction. After the father had paid off the vendor the car was seized under an execution against the son :—*Held :* the transaction was not a " sale, assignment or transfer " of the car ; its only effect was to give the father an equitable interest in the car which did not depend upon the delivery of possession ; &, therefore, it was not affected by Bills of Sale Act then in force, R. S. A., 1922, which did not provide, as does the present Act, 1929, s. 27, that it shall apply to bills of sale although the goods may not be the property of the grantor. —BOYD *v.* HALLING, [1931] 1 W. W. R. 595 ; 2 D. L. R. 568 ; 25 Alta. L. R. 243.—**CAN.**

sa. *Property exempt from execution.*]—The Bills of Sale Act, R. S. S., 1930, applies to property exempt from seizure under execution. A herd of hogs in the apparent possession & ownership of an execution debtor were seized under execution. His wife, claiming them as hers, produced a written memorandum, dated five years previously, of a sale to her by the debtor of four hogs ; & adduced evidence to show that at that time he owned only four hogs & that the herd seized was their progeny ; & contended, that, although the sale had not been registered under Bills of Sale Act & although there had been no actual & continual change of possession, yet as said four hogs were the only hogs owned by her husband at that time they were exempt from seizure, &, therefore, said Act did not apply to them or their progeny :—*Held :* the contention could not be sustained &, therefore, the seizure was valid.—MCGIRR *v.* BELOUS, [1932] 1 W. W. R. 495.—**CAN.**

sg. *After-acquired property—Increase & progeny of sheep.*]—By an indenture described as a mtge. of stock, H. assigned to Y., as security for moneys advanced, certain sheep, a detailed description of which was given in the schedule thereto, & also all the increase & progeny of such sheep, & all other sheep which then belonged or which might thereafter belong to H., & which at any time during the continuance of the security might be brought on the property :—*Held :* the indenture operated in law as an assignment of the sheep described in the schedule & operated in equity as an assignment of the progeny, when born, & of the sheep acquired & brought on to the land when so acquired & brought on to the land, &, therefore, any wool shorn from such sheep during the continuance of the security belonged to Y. —YOUNGHUSBAND, LTD. *v.* CAMPBELL (1934), 34 S. R. N. S. W. 404 ; 51 N. S. W. W. N. 80.—**AUS.**

PART IV. SECT. 2.

a i. —— *Goods in possession of third party—Claiming possession on his own behalf.*]—*Held :* Bills of Sale Act did not apply.—PRETE *v.* LAUZON & FENSOM, [1923] 3 D. L. R. 1152 ; 52 O. L. R. 334.—**CAN.**

PART IV. SECT. 3.

167 ii. ——.]—The assignment by way of security of a chattel, the subject of a hire-purchase agreement & which at the date of the assignment was in the possession of the hirer, who was not in default under the hire-purchase agreement, is an assignment of a chose in action within s. 3 of Bills of Sale Act, 1898.—MOTOR CREDITS, LTD. *v.* W. F. WOLLASTON, LTD. (IN LIQUIDATION) (1929), 29 S. R. N. S. W. 227 ; 46 N. S. W. W. N. 48.—**AUS.**

PART IV. SECT. 4, SUB-SECT. 3.

o i. ——.]—When a mtgee. enters into possession, he becomes entitled to any crops growing on the land as against a mtgee. of the crops under a chattel mtge. executed after his mtge. & before possession taken ; but, if the crops are cut at the time of possession taken, the holder of the chattel mtge. would have priority.—HARRISON *v.* CARBERRY ELEVATOR CO. (Man.) (1908), 7 W. L. R. 535.—**CAN.**

o ii. ——.]—Where a chattel mtge. includes future crops, there is an implied term that mtgor. may carry on his business & sell the mtged. property in the usual way, & purchaser, *e.g.*, a canning factory, gets a good title. —NOURSE *v.* CANADIAN CANNERS, LTD., [1935] 2 D. L. R. 121 ; *affd.*, [1935] 3 D. L. R. 168 ; O. R. 361.—**CAN.**

a i. —— *Chattel mortgage including cut grain—Amount of cut grain not specified.*]—*Held :* mtge. not valid even in part.—NORTH AMERICAN LUMBER CO. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265 ; 65 D. L. R. 348 ; 15 Sask. L. R. 375.—**CAN.**

190. *Add. Annotation :*—**Distd.** Stephenson *v.* Thompson, [1924] 2 K. B. 240.

196a. Growing crops.]—STEPHENSON *v.* THOMPSON, No. 138b, *ante*.

Part V.—Statutory Requirements.

213a. —— Substantial accuracy—Payment of loan by cheque.]—Pltf. granted a bill of sale over certain furniture to a money-lender, &, as she was unable to pay him the first instalment when it became due, defts. agreed to advance to her £1,000 on another bill of sale for the purpose of paying him off & of having her furniture released from the first bill of sale. Pltf. accordingly received a cheque for £1,000 from defts., & after receiving it she executed the second bill of sale, which stated that the consideration for it was £1,000 paid to pltf. In an action by pltf. to restrain defts. from disposing of the furniture comprised in the second bill of sale, pltf. relied on 1882 Act, s. 8, & she contended that the real consideration was the payment off of the money-lender & the release of her furniture from the first bill of sale :—*Held :* the consideration for the second bill of sale was the loan of

---

a ii. —— *Lease by mortgagee in possession to guarantor of mortgagor's debt to bank—Profits from crop to be applied in reduction of debt.*]—*Held :* the above arrangement did not violate Chattel Mtge. Act, R. S. C., 1920 (c. 200), s. 20, as an attempt to create a security on a growing crop, since it did not come within any instrument mentioned therein.—BURNS & BROWN *v.* ZULAUF & DOEER (Sask.), [1926] 1 W. W. R. 943.—**CAN.**

a iii. ——.]—Bills of Sale & Chatte Mtge. Act cannot apply to a sale o growing crops.—NOURSE *v.* CANADIAN CANNERS, LTD. [1935], 3 D. L. R. 168; O. R. 361.—**CAN.**

197 iv a. ——.]—JACKSON *v.* PENFOLD, [1931] 1 D. L. R. 808; 66 O. L. R. 440.—**CAN.**

197 x. ——.]—Security on grain given to a bank in Oct. 1921, in respect to advances made in the spring of 1920 :—*Held :* invalid in respect to 1921 crop as there was no proof that 1921 crop was intended as the security, & if there was such an agreement made in 1920 as to 1921 crop it was bad as covering property not then in existence.—NORTH AMERICAN LUMBER CO. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—**CAN.**

197 xi. ——.]—*Held :* an agreement only intended to operate as security for payment, payable when the crop was harvested, was void under R. S. M., 1913 (c. 17), s. 33.—HASCALL *v.* ROYAL BANK OF CANADA, [1923] 2 W. W. R. 504; 33 Man. L. R. 230.—**CAN.**

197 xii. ——.]—*Held :* a security on crops to be grown *in futuro* was invalid under R. S. S., 1920 (c. 200), s. 20.—RICHLAND FARM, LTD. *v.* VERMETTE, [1923] 3 W. W. R. 74.—**CAN.**

197 xiii. ——.]—DALTON *v.* EATON, [1924] 1 D. L. R. 493; 1 W. W. R. 246; 18 Sask. L. R. 92.—**CAN.**

197 xiv. ——.]—ORPEN *v.* DYER (Alta.), [1929] 4 D. L. R. 1084; 1 W. W. R. 382.—**CAN.**

197 xv. ——.]—Pltf. in 1929 agreed to sell a certain half-section of land to one A. In pursuance of the agreement a lease was entered into reserving to pltf. as rent one-third of the crop of each of the years, 1929, 1930, 1931, to be applied on the instalments of the purchase price, interest & taxes. In Apr. 1930, A., in consideration of extensions of time, & advances, agreed to give pltf. the whole of the crop & authorised pltf. to sell it as pltf. saw fit & deduct from the proceeds payments due under the agreement for sale plus any advances. The advances were for the purchase of cattle & clover seed. Subsequently, in response to a letter written by a solr. on behalf of A., deft. advanced A. money on the notes of A. & his son. In pursuance of a promise made in said letter A. later consigned a car of wheat grown on the land to order of the deft. The bill of lading was at A.'s instance, issued to A. & a co. which was the agent of pltf. A. delivered the bill of lading to said agent, who endorsed to the order of deft. & forwarded it to deft. with instructions to sell. Deft. procured & sold the grain, & wrote said agent of pltf. offering to pay it one-third of the proceeds of the car. Pltf. insisted on receiving the whole proceeds of the car less the usual charges :—*Held :* deft. was not entitled to retain its advance.—LAW UNION & ROCK INSURANCE CO. *v.* NORTH WEST COMMISSION CO., [1931] 2 W. W. R. 905.—**CAN.**

g i. ——.]—PROCTOR *v.* ANDERSON & NORTHERN ELEVATOR CO., LTD., EKMAN & PROCTOR & MALLERY, [1921] 3 W. W. R. 39.—**CAN.**

k i. ——— *Transaction not bonâ fide.*]—Pltf. claimed the right to take certain wheat in A.'s possession. A. wanted some of it for seed. It was agreed that pltf. would purchase the wheat from A. at a price which was equal to the amount of A.'s indebtedness to pltf., & pltf. would immediately re-sell it to A. at a price per bushel which made the total price at about the same as on pltf.'s purchase. This was carried out, & to secure the purchase price pltf. took from A. a seed grain mtge. on the crop to be grown :—*Held :* as A. did not require the whole of the wheat for seed, & as the price fixed had no relation to the value of the wheat but was fixed with reference to the debt owing by A. to pltf., the actual value being much less than the price agreed on, the transaction could not be considered a *bonâ fide* sale to A., & pltf.'s mtge. was invalid.—LYNCH *v.* TURNEY (Sask.), [1923] 3 D. L. R. 7; [1923] 2 W. W. R. 876; *revsg.*, [1923] 1 D. L. R. 1198.—**CAN.**

k ii. ——— ——.]—*Held :* the chattel mtge. in question, which was given on a growing crop for the purchase-price of seed grain, was *bonâ fide* & valid.—FEIBER *v.* ROMANCIEWICZ, [1928] 4 D. L. R. 400; [1928] 2 W. W. R. 625.—**CAN.**

sa. *Binder twine chattel mortgage—To secure price of twine used in previous year.*]—*Held :* may be validly granted in the following year over the crops of that year, & is entitled to priority.—FENNELL *v.* UNION BANK OF CANADA, [1923] 3 W. W. R. 79.—**CAN.**

sc. *Whether giving of chattel mortgage effects severance.*]—When the question is whether fixtures have ceased to be part of the freehold the test is, has there been an actual severance or does the contract in question provide for immediate severance? if neither of these facts is present then the fixtures remain part of the freehold. The chattel mtge. in question herein which covered articles which were found on the evidence to be fixtures & which expressly granted & assigned "fixtures," *held* to be in respect of or affecting lands &, therefore, to fall within Mtgors.' & Purchasers Relief Act, 1932.—SAM SICK HONG *v.* MAH PON, [1933] 3 W. W. R. 249; *affd.*, [1934] 2 W. W. R. 626; 3 D. L. R. 758; 48 B. C. R. 362.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—A.

b i. ——— ——— *Not amount secured.*]—HENTON *v.* INTERNATIONAL HARVESTER CO., [1926] 2 D. L. R. 962; [1926] 2 W. W. R. 118; 22 Alta. L. R. 102.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—B.

f i. —— *Seed-grain mortgage.*]—A seed-grain mtge. & the affidavit of *bona fides* stated that it was given to secure the price, mentioning it, of 330 bushels of barley "purchased" from the mtgee. The evidence showed that the mtgor. took delivery of only 320 or 321 bushels. There was no evidence indicating that the difference between the price of the quantity referred to in the mtge. & the quantity delivered was to be paid by the mtgor. for anything but barley :—*Held :* it could not be inferred from the above facts that the consideration set forth in the mtge. & affidavit was not truly stated.—HORTNESS *v.* FEFCHAK, [1931] 2 W. W. R. 267; 4 D. L. R. 797.—**CAN.**

f ii. —— —— *Necessaries incorrectly specified.*]—Under sect. 32 of Bills of Sale Act, 1929, which provides for the giving of security on a growing or future crop for the purchase-price of seed grain, meat, groceries, flour, clothing & binder twine & for money borrowed to pay for machinery repairs & wages, which goods & borrowings are collectively called "necessaries," the correct specifying in the security & the affidavit of *bona fides* of the particular nature of the alleged necessaries is an essential part of both affidavit & security without which the document does not become a security. The term "dry goods" is not a sufficient specification of the nature of the thing referred to in sect. 32 as "clothing"; & the term "borrowing" is too general to specify the nature of borrowing for the particular purposes authorised by the section.—SHARMAN *v.* WHITE, [1932] 1 W. W. R. 30.—**CAN.**

h i. —— *Misstatement as to currency.*—The fact that a bill of sale states that the consideration was paid in "lawful money of Canada," whereas it was in fact paid in United States currency, does not invalidate the bill of sale.—FIRST NATIONAL BANK OF MINNEAPOLIS *v.* MANN & CONWAY, [1925] 3 D. L. R. 648; [1925] 2 W. W. R. 525; 19 Sask. L. R. 546.—**CAN.**

£1,000, & as a cheque was a good payment until dishonoured there was no need to state in the second bill of sale that the payment was by cheque, & therefore, as the consideration was correctly stated in the second bill of sale, the action failed.—D'USEZ *v.* TRAFFICS & DISCOVERIES, LTD. (1924), 40 T. L. R. 441.

220. *Add. Annotations :*—**Consd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26. **Refd.** B. S. Lyle, Ltd. *v.* Chappell (1931), 146 L. T. 236.

228a. —— —— **& grantor's creditors paid by grantee.**]—(1) On June 24, 1925, the parties to a bill of sale for £1,000 entered into an agreement that the grantee should pay, as he then did, £600 to creditors of the grantor in satisfaction of their debt, that the existing bill of sale should be cancelled, & that the grantor should give to the grantee a new bill of sale for £1,600. The new bill of sale provided that " in consideration of £1,600 paid to " the grantor " by " the grantee " on June 24, 1925," the grantor assigned the chattels to the grantee :—*Held :* the new bill of sale truly set forth the consideration for which it was given, as required by 1882 Act, s. 8.

(2) A bill of sale provided that the grantor would pay the grantee the principal sum of £1,600 with the interest then due " on Dec. 24, 1925." A contemporaneous mtge. of other property, given as part of the same transaction & as a collateral security for the principal sum, provided as follows : " The mtgor." (the grantor of the bill of sale) " hereby covenants with the mtgee." (the grantee) " to pay to him on Dec. 24 next £1,600 with interest thereon, & it is hereby agreed & declared that (subject to the right of the mtgee. to require repayment of the principal on Dec. 24 next according to the foregoing covenant by the mtgor. or at any time thereafter) the principal money hereby secured shall be repaid by instalments of not less than £20 " on specified dates ; these provisions not being contained in the bill of sale :—*Held :* the bill of sale by being made contemporaneously with, & as part of the same transaction as, the mtge. containing that clause for repayment of the principal by instalments, was not made or given subject to a " defeasance or condition " within 1878 Act, s. 10 (3), & the fact that that clause was not contained in the body of the bill of sale or written on the same paper or parchment therewith did not avoid the registration of the bill of sale under that sub-sect.—STOTT *v.* SHAW & LEE, LTD., [1928] 2 K. B. 26 ; 97 L. J. K. B. 556 ; 139 L. T. 302 ; 44 T. L. R. 493 ; [1928] B. & C. R. 24, C. A.

237. *Add. Annotation :*—**Distd.** Henshall *v.* Widdison (1923), 130 L. T. 607.

237a. —— ——.]—Pltf., H., had had a number of betting transactions with deft., W., a bookmaker, since 1918. Pltf. lost various bets & paid his losses by cheques. He won other bets for which he was paid by various cheques. Eventually, pltf. obtained judgment against deft. for £692 10*s*. Execution was levied at the instance of the judgment creditor whereupon deft.'s wife, claimant in the interpleader proceedings which followed, claimed the goods seized, alleging that they belonged to her because her husband, the judgment debtor, had given her a bill of sale covering them to secure the repayment of a sum of £600 which she had advanced to him. The judgment creditor contended that the bill of sale was bad because it did not truly state the consideration. The bill of sale contained the words " In consideration of a sum of £600 now paid . . . " & the judgment creditor said that the £600 was not paid at the time of making the bill of sale, & therefore was not " now paid," as therein stated, but was paid some time later. It was therefore contended that the bill of sale was not a good bill of sale because the statement that the money was " now paid " was untrue. According to the evidence, deft.'s wife had borrowed the £600 from her mother to help her husband, & she handed the £600 over to her husband to pay his debts at 6 p.m., on the same day that the bill of sale was executed :—*Held :* there was evidence in the present case on which the county ct. judge could find that the £600 was " now paid " within the meaning of the statement in the bill ; the bill of sale was executed, & the money was paid over by claimant at substantially the same time ; the bill was therefore valid & the appeal must be dismissed.—HENSHALL *v.* WIDDISON (1923), 130 L. T. 607, D. C.

249. *Add. Annotations :*—**Refd.** B. S. Lyle, Ltd. *v.* Chappell (1931), 146 L. T. 236 ; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

256. *Add. Annotations :*—**Refd.** B. S. Lyle, Ltd. *v.* Chappell (1931), 146 L. T. 236 ; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

260. *Add. Annotations :*—**Refd.** B. S. Lyle, Ltd. *v.* Chappell (1931), 146 L. T. 236 ; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

273. *Add. Annotation :*—**Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

279. *Add. Annotations :*—**Refd.** Westen *v.* Fairbridge, [1923] 1 K. B. 667 ; Gordon *v.* Goldstein, [1924] 2 K. B. 779.

282. *Add. Annotation :*—**Consd.** Wilkins *v.* New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

283a. —— —— **Rights under preceding oral agreement.**]—Where, after oral negotiations, a bill of sale of furniture is granted to secure a loan of money with an agreed sum for interest, & the bill is found to be bad, the lender is entitled to recover the principal money lent & interest by virtue of the contract created by the oral negotiations which preceded the granting of the bill of sale.—

PART V. SECT. 1, SUB-SECT. 2.—C. (a).

t l. —— ——.]—MOWAT *v.* CLEMENT (1886), 3 Man. L. R. 585.—**CAN.**

227 vii. —— ——.]—*Re* GAUDREAU, *Ex p.* ROYAL BANK OF CANADA, [1922] 3 W. W. R. 79 ; 66 D. L. R. 831.—**CAN.**

t l. —— —— *& notes under discount —Notes subsequently taken up by grantee.*]—*Held :* the chattel mtge. was valid.—FISH *v.* HIGGINS (1884), 2 Man. L. R. 65.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

sb. *Situation of chattels not properly designated—Description by which premises generally known.*]—*Held :* sufficient if not likely to mislead & chattels capable of being identified.—*Re* COMFORTER & CUSHION MANUFACTURING CO., *Ex p.* HENDERSON (J. B.) & Co. (Ont.), [1926] 1 D. L. R. 30.—**CAN.**

sd. *One mortgage form attached to part of another mortgage form.*]—*Held :* void for uncertainty.—HENTON *v.* INTERNATIONAL HARVESTER CO., [1926] 2 D. L. R. 962 ; [1926] 2 W. W. R. 118 ; 22 Alta. L. R. 102.—**CAN.**

WILKINS *v.* NEW SAVILLE SECURITIES, LTD. & HAWKINGS (G. F.) & SON (1922), 39 T. L. R. 85.

Annotation :—**Folld.** Bradford Advance Co. *v.* Ayers, [1924] W. N. 152.

283b. —— —— ——.]—When a bill of sale is void under 1882 Act, s. 9, it is void for all purposes, including the covenant to pay interest. But where a loan has been negotiated purporting to be under a bill of sale which turns out in fact to be void, an action will lie for money had & received, with an obligation to repay the loan & interest at a reasonable rate.—BRADFORD ADVANCE CO., LTD. *v.* AYERS, [1924] W. N. 152.

288. *Add. Annotation :*—**Consd.** Gordon *v.* Goldstein, [1924] 2 K. B. 779.

288a. Joint parties—Joint assignment—Of property owned by one party.]—By a bill of sale a husband & wife, who were therein together called "the grantor," purported to assign to the grantee the chattels described in the schedule thereto, which in fact belonged to the wife alone :—*Held :* inasmuch as "the grantor" was not the true owner of the chattels at the time when the bill of sale was executed, except as against the grantor the bill of sale was void under 1882 Act, s. 5.—GORDON *v.* GOLDSTEIN, [1924] 2 K. B. 779; 94 L. J. K. B. 21; 132 L. T. 155; [1924] B. & C. R. 245.

Annotation :—**Expld.** Gamage *v.* Payne (1925), 42 T. L. R. 138.

289. *Add. Annotations :*—**Consd.** Westen *v.* Fairbridge, [1923] 1 K. B. 667. **Distd.** Gordon *v.* Goldstein, [1924] 2 K. B. 779.

297. *Add. Annotation :*—**Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

299. *Add. Annotation :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

301. *Add. Annotation :*—**Expld. & Apld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

302. *Add. Annotations :*—**Expld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340. **Refd.** Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255.

302a. —— —— **Other property of industrial society—Charged by debenture.**]—*Re* NORTH WALES PRODUCE & SUPPLY SOCIETY, No. 144a, *ante*.

329. *Add. Annotations :*—**Mentd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249 : *Re* A Bankruptcy Notice, [1924] 2 Ch. 76; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale de Commerce de Petrograd *v.* Goukasson (1924), 40 T. L. R. 837; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

346. For "does render the bill of sale void," read "does not render the bill of sale void."

372. *Add. Annotation :*—**Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

PART V. SECT. 2, SUB-SECT. 3.

sg. *Sufficiency of—Small present payment—& extension of time for payment.*]—*Held :* sufficient.—IMPERIAL LUMBER YARDS, LTD. *v.* FERGUSON, COCKSHUTT PLOW CO., CLAIMANT, [1922] 2 W. W. R. 133; 65 D. L. R. 758.—**CAN.**

sl. *Discharge of consideration—Whether bill security for different consideration.*]—*Qu. :* whether a bill of sale given for one consideration may, after the consideration is discharged, be used as security for an entirely different consideration.—LAW UNION & ROCK INSURANCE CO., LTD. *v.* KEYRIACOU & CHRISTOFIS, [1934] S. R. (Q.) 63.—**AUS.**

PART V. SECT. 2, SUB-SECT. 4.

293 v. —— —— *Reference to description in another instrument.*]—*Held :* goods & chattels must be so set out on the face of the instrument as to be easily identifiable, & a reference to another instrument cannot suffice; & as to subsequently acquired goods the mtge. was null & void.—*Re* RINN, [1923] 3 D. L. R. 986; 33 Man. L. R. 153; [1923] 1 W. W. R. 1190; 3 C. B. R. 328.—**CAN.**

293 vi. —— ——.]—A bill of sale of certain personal chattels, which were specifically set forth therein, contained also an assignment by the grantor of "all other personal chattels whether of a like nature or otherwise howsoever which I may during the continuance of this bill of sale be possessed of & which may be in & upon or about the said section or any other land which I may hereafter occupy or be in possession of whether brought there in substitution for renewal of or in addition to the said personal chattels or otherwise howsoever & all my right title claim & demand to the same" :—*Held :* sect. 28 of Bills of Sale Act, 1886 (S. A.), did not render such bill of sale void as against the trustee in bkpcy. of the grantor as failing to "contain or state a description of the personal chattels in respect of after-acquired chattels comprised therein" as required by sect. 9 (3) of the Act.—WURM *v.* RICHARDSON (1932), 46 C. L. R. 301; 4 A. B. C. 193; 6 A. L. J. 32.—**AUS.**

q l. ——.]—When a mtge. of a car was made by H., he was owner of only one undivided half-share in the car :—*Held :* notwithstanding the consent of his partner to the mtge., it was valid only to the extent of H.'s half share; the fact that shortly after giving the security H. became the sole owner did not operate retrospectively under Chattels Transfer Act, s. 21.—BOWDEN *v.* R., [1921] N. Z. L. R. 249.—**N.Z.**

PART V. SECT. 2, SUB-SECT. 6.—G.

p i. —— *Rights of grantor.*]—The covenant implied in instruments by way of security over stock which, while forbidding the removal of stock without the grantee's consent, permits a sale by the grantor in the ordinary course of business, provided that the number of stock is not thereby reduced below the number stated in the security, does not require as a condition of a valid sale that the proceeds be paid to the grantee.—NATIONAL BANK OF NEW ZEALAND *v.* DALGETY & CO., [1925] N. Z. L. R. 250.—**N.Z.**

PART V. SECT. 2, SUB-SECT. 8.—A.

sh. *Attachment after signature but before delivery.*]—The fact that the inventory of goods & chattels referred to in the chattel mtge. in question herein was not attached thereto when the mtgor. signed the mtge. but was attached subsequently held not to invalidate the mtge. The inventory was attached, under instructions from the mtgor., before the mtge. was delivered to the mtgee. & before the mtgor. had obtained possession of the goods under a bill of sale from the mtgee.—STUBBERT *v.* SCOTT & TEMPLE, [1931] 1 W. W. R. 598.—**CAN.**

PART V. SECT. 2, SUB-SECT. 8.—B.

b (p. 70) l. —— *Clause capable of different constructions—Sufficient.*]—A description is sufficient when it is apparent that the mtge. covers all the chattels of the specified kind owned by the mtgor.—ROYAL BANK OF CANADA *v.* MACKENZIE, [1932] S. C. R. 524; 2 D. L. R. 12.—**CAN.**

415 xi. —— —— ——.]—BANQUE D'HOCHELAGA *v.* HAYDEN & GILLESPIE ELEVATOR CO., [1922] 1 W. W. R. 1054; 63 D. L. R. 514; 17 Alta. L. R. 277.—**CAN.**

415 xii. —— —— ——.]—The description of the goods in the chattel mtge. in question herein held not to be sufficient to satisfy the requirements of sect. 17 of Chattel Mortgage Act, R. S. S., 1920, c. 200, which provides that the goods must be so described as to be "readily and easily known and distinguished."—MANNING *v.* HALL, [1930] 3 W. W. R. 526; [1931] 1 D. L. R. 96.—**CAN.**

416 vii. —— —— ——.]—The insolvent assigned to applt. personal chattels described at the foot of the bill of sale situate on block 151 . . . & "all other personal chattels whatsoever whether of the kinds mentioned at the foot hereof or not which are now or during the continuance of this security may be in upon or about the said land & elsewhere." The insolvent had other chattels situated on another block of land :—*Held :* the bill of sale did not satisfy the requirements of s. 9 of Bills of Sale Act, 1886, & the omissions contained in the bill of sale were material omissions.—*Re* ROHRLACH; RIEDEL *v.* THE OFFICIAL RECEIVER (1928), S. A. S. R. 113.—**AUS.**

m (p. 73) l. —— " *Eight pure bred red poll cows.*"]—A bill of sale of cattle described them as "eight pure bred red poll cows named as follows, giving the names, in the possession of W. R. & pasturing on a named timber reserve" :—*Held :* (1) the description was sufficient, in the absence of evidence that claimant had red poll cows other than those covered by the bill of sale so as to make those covered thereby difficult of identification; (2) the *onus*

417. *Add. Annotation :*—**Consd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

418. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

420. *Add. Annotation :*—**Apld.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

420a. ——.]—The sched. contained the following items : " Horses : eight horses described by their name & colour & two three-year-olds (one colt & one filly). Cows : nineteen shorthorn, one Jersey. Store-cattle : two steers, five heifers. Pigs : four large black sows, one middle white boar, pedigree, & thirty pigs (crossed as above) " :—*Held :* the description of the horses, cows & pigs satisfied the requirements of 1882 Act, s. 4, but the store cattle were not specifically described within that section & consequently formed part of the bkpt.'s estate.—HERBERT'S TRUSTEE *v.* HIGGINS, [1926] Ch. 794 ; 95 L. J. Ch. 303 ; 135 L. T. 321 ; 42 T. L. R. 525 ; 70 Sol. Jo. 708 ; [1926] B. & C. R. 26.

423. *Add. Annotation :*—**Apld.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

435. *Add. Annotation :*—**Refd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

439. *Add. Annotation :*—**Consd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

439a. —— —— —— ——.]—STOTT *v.* SHAW & LEE, LTD., No. 228a, *ante*.

444. *Add. Annotation :*—**Refd.** Wilkins *v.* New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

450. *Add. Annotation :*—**Consd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

453. *Add. Annotation :*—**Consd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

487. *Add. Annotation :*—**Refd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

495. *Add. Annotation :*—**Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

498. *Add. Annotation :*—**Consd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

---

was on the party attacking the bill of sale to show that the cows described were incapable of identification even on making proper inquiries.—ROBILLARD *v.* MCCULLOUGH, [1926] 3 D. L. R. 178 ; [1926] 2 W. W. R. 350 ; 20 Sask. L. R. 559.— **CAN.**

n (p. 73) i. —— " *Issue of*" *named* "*animal.*"]—It is not a sufficient description to describe an animal as the issue of another animal when the animal has at the date of the mtge. ceased to follow its dam for nurture.—RESER *v.* BEWLEY, [1922] 1 W. W. R. 1134 ; 65 D. L. R. 58 ; 17 Alta. L. R. 548.—**CAN.**

k (p. 74) i. —— —— —— ——.]—KING *v.* DOMINION BANK, [1920] 3 W. W. R. 295.—**CAN.**

sk. *Locality of goods misdescribed—Not misleading.*]—A chattel mtge. is not invalidated by an error in the description of the locality of goods included, such error not being misleading.—*Re* ORD, WILKINS *v.* NATIONAL DRUG & CHEMICAL CO., [1936] 3 D. L. R. 429.—**CAN.**

PART V. SECT. 3.

p i. —— *Reference in schedule to earlier mortgage.*]—OTAGO FARMERS CO-OPERATIVE ASSOCN. OF NEW ZEALAND, LTD *v.* MCGOWAN, [1925] N. Z. L. R. 482.—**N.Z.**

PART V. SECT. 4, SUB-SECT. 1.

466 i. *Non-compliance with statutory requirements—How far mortgage valid.*] —Bills of Sale Act, N. B. 1903 (c. 142), s. 5, affords no protection for a mtge. not executed & attested in accordance with s. 3 subsequent to another mtge. also not in accordance with s. 3. Such prior mtge. is good as between the parties & those who are not protected by s. 5.—MEADE *v.* DESCHENE, [1923] 2 D. L. R. 332.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

o i. ——.]—Chattel mtges. unregistered under such an agreement :—*Held :* void as against a mtgee. of the land claiming the chattels under a distress under an attornment clause in his mtge. —MCDOUGALL & SECORD, LTD. *v.* MERCHANTS BANK OF CANADA, [1920] 1 W. W. R. 364 ; 51 D. L. R. 309.— **CAN.**

PART V. SECT. 5, SUB-SECT. 2.

o i. —— *Declaration as to bona fides sworn six days before execution.*]—*Held :* mtge. null & void as against the trustee in bkpcy. of the mtgor.—*Re* GIBBONS, [1924] 3 D. L. R. 619 ; 5 C. B. R. 16.— **CAN.**

PART V. SECT. 5, SUB-SECT. 3.

492 ii. —— ——.]—*Held :* a document not a " true copy " was null & void against purchasers.—COMMERCIAL CREDIT CO. OF CANADA, LTD. *v.* FULTON BROTHERS, [1923] A. C. 798 ; 93 L. J. P. C. 12 ; 130 L. T. 72 ; 39 T. L. R. 684 ; [1923] B. & C. R. 102. —**CAN.**

PART V. SECT. 5, SUB-SECT. 4.—A.

o (p. 86) i. —— *Bill for future advances.*]—ROBINSON *v.* PETERS (1919), 47 N. B. R. 1.—**CAN.**

o (p. 86) ii. —— *Effect of omission—Part of goods delivered.*]—*Held :* bill valid where there was an immediate delivery followed by an actual & continued change of possession, & where goods had been sold & the proceeds were lying in the sheriff's hands.—KIPPAN *v.* MCCAW, [1924] 1 D. L. R. 601 ; 1 W. W. R. 65 ; 34 Man. L. R. 64.— **CAN.**

o (p. 86) iii. ——.]—L., a dealer in cars, being about to buy a car & requiring money for the purpose, applied to pltf. for the money, which was lent. Two documents were executed, a bill of sale by L. to pltf. & an agreement for a conditional sale by pltf. to L. :—*Held :* transaction was a mtge. of the car by L. to pltf. : pltf.'s rights against deft., who had seized the car under a subsequent assignment from L., were governed by Bills of Sale & Chattel Mtge. Act. Affidavits of execution & *bona fides* were not made nor were the documents registered, therefore pltf. could not succeed as against deft. who was a purchaser in good faith & for value.—COMMERCIAL FINANCE CORPN., LTD. *v.* CAPITAL DISCOUNT CORPN., LTD., [1931] 1 D. L. R. 1007 ; O. R. 22.— **CAN.**

q (p. 86) i. —— ——.]—*Re* MCDONAGH (Ont.), [1926] 3 D. L. R. 36 ; 7 C. B. R. 686.—**CAN.**

500 iii. —— —— *Must be subscribing witness.*]—The attesting witness making an affidavit within Bills of Sale & Chattel Mortgage Act, R.S.O., 1927, s. 4 (*a*), must also be a subscribing witness.—RIDLEY *v.* MCGREGOR & CANADIAN BANK OF COMMERCE, [1934] 2 D. L. R. 399 ; O. R. 259.—**CAN.**

m (p. 86) i. —— —— —— *Omission of statement as to knowledge.*]—CRAIG (W. G.) & Co., LTD. *v.* GILLESPIE (1920), 47 O. L. R. 529 ; 54 D. L. R. 514.—**CAN.**

q (p. 87) i. —— *Bank taking mortgage—Local manager—Without written authority.*] — *Held :* sufficient. — *Re* GAUDREAU, *Ex p.* ROYAL BANK OF CANADA, [1922] 3 W. W. R. 79 ; 66 D. L. R. 831.—**CAN.**

506 v a. —— —— ——.]—While it is very desirable, the absence of date is not fatal, as the Ordinance does not prescribe any form of affidavit.—BANQUE D'HOCHELAGA *v.* HAYDEN & GILLESPIE ELEVATOR CO., [1922] 1 W. W. R. 1054 ; 63 D. L. R. 514 ; 17 Alta. L. R. 277.—**CAN.**

506 ix. —— *Discrepancy in date.*]— A chattel mtge. is not invalidated by a discrepancy in dates between the affidavit of execution & the affidavit of *bonâ fides*, due to clerical error.— LECKIE *v.* DRIVER, [1936] 2 D. L. R. 703 ; O. R. 325.—**CAN.**

PART V. SECT. 5, SUB-SECT. 4.—B.

sk. *Presumption of accuracy—Absence of evidence to rebut.*]—*Re* GAUDREAU, *Ex p.* ROYAL BANK OF CANADA, [1922] 3 W. W. R. 79 ; 66 D. L. R. 831.—**CAN.**

g (p. 88) i. —— *Necessity for affidavit —Bill executed under corporate seal of company.*]—LIVERGOOD *v.* TAYLOR, [1920] 3 W. W. R. 62.—**CAN.**

g (p. 88) ii. *S. P.* LIVERGOOD *v.* HOME, [1920] 3 W. W. R. 67.—**CAN.**

k (p. 88) i. —— —— ——.]—The absence of the date of execution of a chattel mtge. from the affidavit of the witness renders the mtge. invalid.— NORTH AMERICAN LUMBER CO., LTD. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265 ; 65 D. L. R. 348 ; 15 Sask. L. R. 375.—**CAN.**

k (p. 88) ii. —— —— ——.]—*Re* LAWSON, *Ex p.* SHANKEY, [1925] 1 D. L. R. 1100.—**CAN.**

n (p. 88) i. —— —— ——.]—The affidavit must strictly comply with the form in the statute, or the mtge. is void against creditors of mtgor.—*Re* RAPER, *Ex p.* JAMIESON, [1924] 4 D. L. R. 789 ; 5 C. B. R. 184.—**CAN.**

p (p. 89) i. —— —— —— *Omission of material fact.*]—PROCTOR *v.* ANDERSON & NORTHERN ELEVATOR CO., LTD., EKMAN & PROCTOR & MALLERY, [1921] 3 W. W. R. 39.—**CAN.**

d (p. 90) i. —— —— *Misstatement—Whether bill vitiated.*]—*Re* BLAIR, *Ex p.* MAPLE LEAF MLLG. CO. (Ont.), [1927] 3 D. L. R. 477 ; 8 C. B. R. 329.—**CAN.**

r (p. 91) i. —— —— ——.]— KEOUGH *v.* PRICE (1877), 27 C. P. 309. —**CAN.**

552. *Add. Annotation :*—**Expld.** Gordon *v.* Goldstein, [1924] 2 K. B. 779.

613a. —— —— **Unless possession taken.**]—In Dec. 1926, T. executed a bill of sale to one H., which was registered & duly re-registered in May, 1926, five years later. In Dec. 1926, V., son of T., took a written transfer of the bill of sale & paid off the creditor. At the date of the transfer T. & his wife & V. & his wife were all living in the same house. Nothing was ever paid by T. to V., & in Apr. 1927, V. gave him notice of his intention to seize the property comprised in the bill of sale, & according to his own story took formal possession of the property comprised in it. In Mar. 1928, V. & his wife left the house he was living in with T. & went to another house near, leaving a few of the chattels covered by the bill of sale behind for the use of his mother, brother & sister, but taking away the rest. In May, 1931, T. was made a bkpt. On a claim by the trustee in bkpcy. against V. to the property comprised in the bill of sale & also to the proceeds of sale of certain furniture (which was also comprised therein) on the ground that the bill of sale had not been re-registered in May, 1931, as required by Bills of Sale Act, 1878 (c. 31), s. 11, & Bills of Sale Act, 1882 (c. 43), s. 8 :—*Held :* resp. V. took possession of the chattels in Apr. 1927, & as regards those he did not remove when he left the house in Mar. 1928, he allowed his mother to retain them for her use & that of his brother & sister. He had therefore obtained the legal title to the chattels in Apr. 1927, & no re-registration of the bill of sale was necessary.—*Re* TOOTH, TRUSTEE *v.* TOOTH, [1934] Ch. 616 ; 102 L. J. Ch. 315 ; 151 L. T. 424 ; [1933] B. & C. R. 146.

Part VI.—Avoidance.

648. *Add. Annotation :*—**Consd.** Shears *v.* Jones, [1922] 2 Ch. 802.

663. *Add. Annotation :*—**Refd.** Thomas *v.* Metropolitan Housing Corpn., Ltd., [1936] 1 All E. R. 210.

664. *Add. Annotation :*—**Refd.** Thomas *v.* Metropolitan Housing Corpn., Ltd., [1936] 1 All E. R. 210.

672. *Add. Annotation :*—**Expld. & Apld.** French *v.* Gething, [1922] 1 K. B. 236.

r (p. 91) ii. —— —— —— *Not filled in.*]—*Held :* the affidavit of *bona fides* was insufficient.—MCINTYRE *v.* UNION BANK (1885), 2 Man. L. R. 305. —**CAN.**

PART V. SECT. 5, SUB-SECT. 5.—D.

596 iii. —— *Not stated in mortgage—Stated in affidavit.*]—The statement of the address of the agent of mtgee. in the affidavit of *bona fides* is sufficient to satisfy the statutory requirements, although mtgee.'s address is not stated in the mtge. itself.—IMPERIAL LUMBER YARDS, LTD. *v.* FERGUSON, COCKSHUTT PLOW CO., CLAIMANT, [1922] 2 W. W. R. 133 ; 65 D. L. R. 758.—**CAN.**

PART V. SECT. 5, SUB-SECT. 8.

l (p. 101) i. —— ——.]—If the mtgee., during the currency of a mtge. & before renewal becomes necessary, takes actual possession of the goods & makes no sale or change of title, the mtge. remains valid & effective without renewal.—MCCABE *v.* COSTE, [1922] 3 W. W. R. 465 ; 70 D. L. R. 25.—**CAN.**

l (p. 101) ii. *S.P.*—*Re* BLACKBURN, *Ex p.* MOFFATT, [1925] 2 D. L. R. 1206 ; 5 C. B. R. 698.—**CAN.**

n (p. 102) i. ——.]—*Re* NATHAN CRYSTAL, *Ex p.* HAWTHORNE, [1925] 4 D. L. R. 1078.—**CAN.**

o (p. 102) i. ——.]—*Re* KERR, *Ex p.* MARTIN (Ont.), [1926] 4 D. L. R. 705 ; 7 C. B. R. 605.—**CAN.**

t (p. 102) i. —— *Statement filed after proper time.*]—*Held :* the chattel mtge. was void.—*Re* NATHAN CRYSTAL, *Ex p.* HAWTHORNE, [1925] 4 D. L. R. 1078.—**CAN.**

616 iii. —— —— ——.]—MCCABE *v.* COSTE, [1922] 3 W. W. R. 465 ; 70 D. L. R. 25.—**CAN.**

616 iv. —— —— ——.]—MCDONALD *v.* CAREY, [1923] 3 D. L. R. 1018 ; 2 W. W. R. 972.—**CAN.**

616 v. —— —— ——.]—When an order permitting the filing of a renewal statement is obtained on an *ex parte* application while the question of the rights of the chattel mtgee. are *coram judice* in other proceedings, the mtgee.'s position should not be taken to have been bettered in any way thereby.—*Re* BILL'S ESTATE, [1924] 4 D. L. R. 576 ; 3 W. W. R. 475.—**CAN.**

616 vi. —— —— *From what date time for subsequent renewals fixed.*]—MCCABE *v.* COSTE, [1922] 3 W. W. R. 465 ; 70 D. L. R. 25.—**CAN.**

618 viii. —— ——.]—Where deft. purchased goods from mtgor., paying full value & knew of the mtge., but considered he was entitled as a matter of law to rely upon mtgee.'s failure to file renewal :—*Held :* deft. was not a purchaser in good faith.—CANADIAN BANK OF COMMERCE *v.* MUNROE, [1925] 1 D. L. R. 368 ; [1925] 1 W. W. R. 1.—**CAN.**

PART VI. SECT. 2.

r (p. 107) i. ——.]—LIVERGOOD *v.* HOME, [1920] 3 W. W. R. 67.—**CAN.**

r (p. 107) ii. ——.]—The creditors entitled to the protection of Chattel Mtge. Act, R. S. S., 1920 (c. 209), are all creditors of the seller, & not merely those whose claims have been prosecuted to judgment.—FIRST NATIONAL BANK OF MINNEAPOLIS *v.* MANN & CONWAY, [1925] 3 D. L. R. 648 ; [1925] 2 W. W. R. 525 ; 19 Sask. L. R. 546.—**CAN.**

r (p. 107) iii. —— ——.]—"Creditor" in Bills of Sale Act, R. S. A., 1922 (c. 151), s. 12, includes a simple contract creditor.—LAPIERRE *v.* TWIN CITY GRAVEL & CONCRETE CO., LTD. & TERWILLEGER (Alta.), [1926] 3 W. W. R. 775.—**CAN.**

s (p. 107) i. —— —— *Obtaining judgment subsequently to sale.*]—*Held :* "creditors."—MICKELSON *v.* NASH-SIMINGTON CO., [1923] 3 W. W. R. 843. —**CAN.**

t (p. 109) i. —— —— *Before judgment recovered by creditor.*]—*Held :* mtgee. was entitled to maintain her right as such.—HENRY *v.* SEXSMITH (1921), 64 D. L. R. 373 : 50 O. L. R. 278.—**CAN.**

t (p. 109) ii. —— *Subsequent seizure & disposal of goods by grantee.*]—*Held :* a defective bill of sale could not be perfected by a seizure & disposal of the goods thereunder as against creditors who had already seized the goods under execution.—*Re* SCRAGG, [1925] 1 D. L. R. 240 ; [1924] 3 W. W. R. 905.—**CAN.**

t (p. 109) iii. —— *Grantor remaining in possession—Whether bill avoided.*]—SHERIFF *v.* MCKEEN (1883), 23 N. B. R. 184.—**CAN.**

d (p. 109) i. ——.]—SLOAN *v.* OTTAWA CAR MANUFACTURING CO. (1921), 64 D. L. R. 333 ; 50 O. L. R. 235.—**CAN.**

l (p. 109) i. ——.]—Resp., as trustee in bkpcy. of an automobile dealer in O., disputed the right claimed by applt., as vendor to the dealer under conditional sale agreements, in certain automobiles, in stock on the dealer's premises at the time of the assignment in bkpcy. Two of the automobiles, had been ordered by the dealer from the maker, & shipped to the dealer by freight, the bills of lading being sent to a bank with draft for price attached, so that the dealer could get possession by payment of the draft. The dealer, having ascertained the serial numbers of the cars, executed an "indenture," in reality a bill of sale, purporting to sell, assign, transfer, & set over the cars to applt. in consideration of the price represented by the drafts. The bill of sale was not registered. Applt. & the dealer then executed a conditional sale agreement (which was registered) by which applt. agreed to sell the cars to the dealer for the amounts represented by the drafts, the property in the cars to remain in applt. until the price was paid. Applt. then gave cheques to the dealer with which the dealer paid the drafts & got possession of the cars. In the case of the other cars, the dealer, when ordering one, sent its driver to the maker's factory with the dealer's blank cheque, which was filled in for the price & handed to the maker, the driver then taking possession of the car & driving it to the dealer's place of business, where it went into stock. The dealer then

673. *Add. Annotation :*—**Consd.** French *v.* Gething, [1922] 1 K. B. 236.

673a. —— ——.]—By a post-nuptial deed in May, 1914, a husband gave his wife certain household furniture in the house in which the husband & wife lived together. The furniture remained in the house, which continued to be occupied by the husband & wife. The deed was not registered under 1878 Act. Execution creditors under a judgment recovered in 1920 against the husband levied execution at the house. The wife claimed the furniture. In an interpleader issue between the wife & the execution creditors :—*Held :* the furniture was not in the possession or apparent possession of the husband within 1878 Act, s. 8, nor in his order & disposition or reputed ownership within Married Women's Property Act, 1882 (c. 75), s. 10.—FRENCH *v.* GETHING, [1922] 1 K. B. 236 ; 91 L. J. K. B. 276 ; 126 L. T. 394 ; 38 T. L. R. 77 ; 66 Sol. Jo. 140 ; [1922] B. & C. R. 30, C. A.

678. *Add. Annotation :*—**Consd.** French *v.* Gething, (1921), 91 L. J. K. B. 276.

689. *Add. Annotation :*—**Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

695. *Add. Annotations :*—**Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431 ; *Re* Wait, [1926] Ch. 962. **Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1 ; *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

704. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

706. *Add. Annotations :*—**Consd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569. **Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1 ; *Re* Wait, [1927] 1 Ch. 606 ; Cotton *v.* Heyl, [1930] 1 Ch. 510 ; *Re* Williams, Richards *v.* Williams, [1930] 2 Ch. 378 ; Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503 ; *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

708a. —— —— ——.]—The grantor of a bill of sale described the goods in the schedule thereto as his own, though, in fact, the true owner was pltf., his wife. The bill of sale was given as security for a loan to the grantor from deft., & at the time of its execution the wife made a statutory declaration that the goods were those of her husband. One firm of solrs. acted for all the parties in this transaction. On a claim by the wife to the goods : —*Held :* she was estopped from denying that the goods were those of her husband, & thus showing that the bill of sale was void as against deft. under 1882 Act, s. 5.—WESTEN *v.* FAIRBRIDGE, [1923] 1 K. B. 667 ; 92 L. J. K. B. 577 ; 129 L. T. 221 ; 67 Sol. Jo. 403 ; [1923] B. & C. R. 86.

710a. —— —— **Voluntary deed of gift by husband —Declared void after date of bill.**]—A man who was in debt executed a deed of gift of his furniture in favour of his wife, who thereafter granted a bill of sale upon the furniture to a person who took for value & without notice. Subsequently the deed of gift was declared void under 13 Eliz. c. 5 as being in fraud of creditors. The furniture having been taken in execution by a judgment creditor the bill of sale holder claimed the furniture under the bill of sale. Interpleader proceedings were instituted in which the execution creditor alleged that the bill of sale was void under 1882 Act, s. 5, on the ground that the grantor was not the "true owner" of the furniture at the time of the execution of the bill of sale :—*Held :* until the deed of gift was set aside the donee thereunder was the "true owner" of the furniture, & as she had conveyed the furniture to a purchaser for value without notice before the deed of gift was set aside, claimant obtained a good title under the bill of sale.—HARRODS, LTD. *v.* STANTON, [1923] 1 K. B. 516 ; 92 L. J. K. B. 403 ; 128 L. T. 685 ; [1923] B. & C. R. 70, D. C.

718. *Add. Annotation :*—**Refd.** Wilkins *v.* New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

---

executed an "indenture," or bill of sale (not registered), of the car to applt., which then executed a conditional sale (registered) of it to the dealer for the original price, or 90 per cent. of it, & gave its cheque to the dealer for that sum, thus enabling the dealer to meet its cheque to the maker of the car :—*Held :* as against resp., the bills of sale & conditional sale agreements were invalid.—*Re* GRAND RIVER MOTORS, LTD., COMMERCIAL FINANCE CORPN., LTD. *v.* MARTIN, [1933] S. C. R. 591 ; 4 D. L. R. 375.—**CAN.**

o (p. 109) l. —— —— *Seizure under lien subsequently obtained.*]—*Re* MUSTARD, [1923] 2 D. L. R. 922 ; 4 C. B. R. 140 ; *affd.*, 24 O. W. N. 513. —**CAN.**

sk. *Against principal—Agent granting bill without authority.*]—ALLEN *v.* NORFOLK CO-OPERATIVE DAIRY CO., LTD., [1923] N. Z. L. R. 715.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 1.—A.

h (p. 110) l. *Chattels subsequently taken by bargainee.*]—A bill of sale void under the statute cannot be made valid by any subsequent possession taken by the bargainee.—KIPPAN *v.* MCCAW, [1924] 1 D. L. R. 601 ; 1 W. W. R. 65 ; 34 Man. L. R. 64.—**CAN.**

b (p. 114) l. —— ——.]—YOUNG *v.* MAGEE, [1924] 3 D. L. R. 426 ; 2 W. W. R. 816 ; 20 Alta. L. R. 431.—**CAN.**

675 iii. —— *Grantee daughter of grantor.*]—A father living with his daughter in a house owned by him sold to her the furniture in the house for a sum of money, which she immediately paid, & a sale note specifying the articles sold was signed by him. There was no delivery of possession, & the furniture remained in the house, & both parties continued to live there :—*Held :* the transaction being *bonâ fide*, possession of the furniture must be deemed to have passed with the title at the time of sale, the sale note therefore was not a document conferring power to seize or take possession & did not require registration as a bill of sale. —BALSARINI *v.* LEWIS, [1931] Argus. L. R. 374.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 1.—B.

l (p. 116) l. —— ——.]—The "change of possession" required by Bills of Sale Ordinance, C. O., 1898 c. 43), s. 9, must be open.—DOMINION LUMBER CO. *v.* ALBERTA FISH CO., [1921] 3 W. W. R. 619.—**CAN.**

r (p. 116) l. ——.]—STRAKER *v.* NORTH OF SCOTLAND CANADIAN MTGE. CO., LTD., [1932] 1 W. W. R. 354.—**CAN.**

sl. *Goods sold—Actual change of possession—Knowledge of creditor.*]—Where there has been an actual sale of goods, &, as between the parties, an actual change of possession, knowledge of that change by a particular creditor will be sufficient as to him to satisfy the requirements of Bills of Sale & Chattel Mtge. Act with respect to change of possession, whether the rest of the public know of it or not.—MAROQ *v.* BERTHOLET, [1928] 2 D. L. R. 691 ; [1928] 1 W. W. R. 843 ; 37 Man. L. R. 307.—**CAN.**

sm. *Chattel mortgage on crop—Given after hiring agreement substituted for lease.*]—FRANCIS *v.* BOCZ (Sask.), [1929] 4 D. L. R. 38.—**CAN.**

so. *Validity of sale against creditors of bargainee.*]—Under Bills of Sale & Chattel Mtge. Act, R.S.O., 1927, s. 8, a sale by a bargainor, not being the owner, unaccompanied by possession is not void against the creditors of the bargainee.—*Re* LAUTENSCHLAGER, [1934] 3 D. L. R. 513 ; O. R. 507.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—A.

686 xi. ——.]—LIQUID CARBONIC CO. *v.* ROUNTREE, [1924] 1 D. L. R. 1092 ; 54 O. L. R. 75.—**CAN.**

719. *Add. Annotation :* — **Expld. & Apld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

722. *Add. Annotations :* — **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76 ; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52. **Refd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249 ; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale de Commerce de Petrograd *v.* Goukassow (1924), 40 T. L. R. 837.

723a. Owner—Statutory declaration that goods belonged to grantor.] — WESTEN *v.* FAIRBRIDGE, No. 708a, *ante*.

Part VII.—Rights and Liabilities of Parties.

754. *Add. Annotation :*—**Refd.** *Re* Tooth, *Ex p.* Trustee *v.* Tooth, [1934] Ch. 616.

761a. —— **Seizure under void bill.**]—THOMPSON *v.* WARD (1858), 31 L. T. O. S. 86.

762. *Add. Annotation :*—**Refd.** *Re* Tooth, *Ex p.* Trustee *v.* Tooth, [1934] Ch. 616.

809. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

PART VI. SECT. 6, SUB-SECT. 2.

740 i. *Second bill to cure invalidity—Second bill valid.*]—Where goods have been sold *bonâ fide* & a bill of sale given which is invalid because it was not duly registered, & the seller gives the buyer a new bill of sale, even after the period for registration dating from the execution of the first, which is registered before the seller's creditors are in a position to proceed against the goods, it will entitle the buyer to hold them as against the creditors.—FIRST NATIONAL BANK OF MINNEAPOLIS *v.* MANN & CONWAY, [1925] 3 D. L. R. 648 ; [1925] 2 W. W. R. 525 ; 19 Sask. L. R. 546 ; *revsg.*, [1925] 1 W. W. R. 899.—**CAN.**

t i. —— —— ——.]—Although the provisions of Chattels Transfer Act, 1924, require that the true bargain between the parties to an instrument shall be recorded at the time when the instrument is registered, yet there is nothing in the Act from which it can be inferred that a registered instrument is to become void if it be varied by a subsequent agreement which is made between the same parties & which is itself unregistered.—GUARDIAN, TRUST & EXECUTORS CO., LTD. *v.* EQUITABLE LOAN & FINANCE CO., LTD., [1929] N. Z. L. R. 702.—**N.Z.**

sm. *Second bill invalid—First bill valid only between parties.*]—TOPHAM *v.* MOTOR SECURITIES CO., FEDERAL MOTOR CO. *v.* TOPHAM (B. C.), [1928] 3 D. L. R. 153 ; *affd.*, [1929] 1 D. L. R. 995 ; 1 W. W. R. 116 ; 40 B. C. R. 375. —**CAN.**

PART VII. SECT. 1, SUB-SECT. 2.

o i. ——.]—TULLY *v.* ANDREWS 1921), 59 D. L. R. 687.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 3.

756 x. —— ——.]—DORMAN *v.* CRAPPER (1914), 27 W. L. R. 599 ; 6 W. W. R. 551 ; 17 D. L. R. 121 ; 7 Sask. L. R. 229.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—A.

xi. —— ——.]—WARNER *v.* DORAN 1931), 2 M. P. R. 574.—**CAN.**

h i. —— *Insecurity clause.*]—A chattel mtge. on a retail merchants' stock-in-trade & fixtures provided that if the mtgee. should "feel unsafe or insecure or deem the goods & chattels thereby covered in danger of being sold or removed then it shall be lawful for him to seize said goods & chattels." The mtge. also gave a right to seize on any default in payment occurring simpliciter. It also authorised the mtgee. on a seizure being made to sell the goods & retain "such money as may be due" under the mtge. plus expenses incurred by him ; & provided that on default in payment the mtgee. would become absolute owner of the goods in law apart from equity :—*Held :* the right to seize because of a feeling of insecurity was not dependent upon there being a default in payment at the time of the seizure but was a power separate from & independent of the powers arising on such default.—RICHARDS *v.* HANSON & HANSON, [1935] 3 W. W. R. 144 ; 50 B. C. R. 245.—**CAN.**

sg. *Seizure under insecurity clause.*]—Insecurity clauses in a chattel mtge. are strictly construed & their terms must be rigidly complied with. In order to avail himself of an insecurity clause in a chattel mtge. the mtgee. must proceed, not upon an imaginary, whimsical or arbitrary belief, but upon an honest, sincere belief based on reasonable grounds, & if he invokes such clause to uphold a seizure he must have made the seizure because of that belief, & not for any other reason. —MCINOKE *v.* CITY DAIRY, LTD. (No. 2), [1932] 2 W. W. R. 398 ; 40 Man. L. R. 405.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—B.

d i. —— *Proceedings to cancel principal security.*] — Where it was the intention that a breach of agreement to purchase land should give a right of distress under a collateral chattel mtge. : —*Held :* the right to seize under the mtge. was not curtailed by reason of proceedings to cancel the agreement.—COOK *v.* ORR, [1924] 1 D. L. R. 920 ; 1 W. W. R. 1027.—**CAN.**

d ii. —— *Principal security satisfied.*]—AMHERST BOOT & SHOE CO. *v.* CARTER (N. B.) (1922), 70 D. L. R. 110.—**CAN.**

sn. *Exemptions Act,* 1920 (c. 51)—*Extent of exemption—Not dependent on prior dealings with property.*]—A chattel mtgor.'s right under Exemptions Act, 1920 (c. 51), s. 3, to claim that certain of the mortgaged chattels are exempt from seizure under the mtge. does not depend in any way on his dealings with the mortgaged property prior to the seizure. Therefore where a mtge. covered thirty horses the fact that prior to the seizure the mtgor. sold ten of them did not disentitle him to claim four of the remaining twenty as exempt ; four being the number allowed him by said Act.—BURROWS *v.* JOHNSTON (Sask.), [1928] 4 D. L. R. 865 ; [1928] 3 W. W. R. 337.—**CAN.**

so. —— *Debtor resident outside province.*]—The fact that a debtor is not a resident of Saskatchewan does not disentitle him to the benefits of Exemptions Act, R. S. S., 1920.—MCDERMID *v.* WENZEL (Sask.), [1929] 1 D. L. R. 1083 ; [1929] 1 W. W. R. 780.—**CAN.**

sp. *Whether seizure amounts to distress.*]—Where there is a legal distress it must be exhausted before concurrent remedies can be enforced. The seizure in question herein, made under a chattel mtge. which gave a right to distrain as for rent :—*Held :* not to be a distress, but an exercise of the other provisions of the mtge. authorising the seizure & sale of the goods.—COMMERCIAL FINANCE CORPN., LTD. *v.* WILSON, [1931] 2 W. W. R. 578 ; 3 D. L. R. 601.—**CAN.**

sq. *Necessity for seizure by sheriff—Distress Act, R. S. S.*, 1930, *s.* 6—*What amounts to "chattel mortgage."*]—A document which although in form an absolute bill of sale is in reality a mtge. is a "chattel mtge." within sect. 6 (1) of Distress Act, R. S. S., 1930, which provides that no chattels covered by a chattel mtge. shall be seized or sold except by the sheriff or a person authorised by him, & also within sect. 3 of Exemptions Act, R. S. S., 1930, which provides the right to set up a claim of exemption in the case of a seizure under a chattel mtge.—DRIEDGER *v.* SCHMIDT, [1931] 3 W. W. R. 514.—**CAN.**

sv. *Grantee takes subject to existing execution.*]—A bargainee in a bill of sale or a chattel mtge. must take subject to any execution against the bargainor or mtgor. in the sheriff's hands, at the date of execution of the bill of sale or chattel mtge., with or without notice thereof & whether or not a seizure has been made.—MUTUAL FINANCE CORPN., LTD. *v.* GANLEY, [1934] O. R. 1 ; 1 D. L. R. 451.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—C.

785 ii. —— *Rights of creditors.*]—*Re* BERRINGER, [1930] 1 D. L. R. 882 ; 11 C. B. R. 221.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 3.

y i. —— —— ——.]—KNIGHT *v.* T. S. PATTILLO CO., [1927] 3 D. L. R. 13 ; 59 N. S. R. 357.—**CAN.**

y ii. —— *Deduction of expenses of realisation.*]—YUKON HARDWARE CO. *v.* MCLENNAN (Y. T.) (1905), 2 W. L. R. 294.—**CAN.**

sq. *Necessity to obtain leave of court—Jurisdiction of court on application.*] —RUDDER *v.* LUNDIN, *Re* EXTRA-JUDICIAL SEIZURES ACT, [1922] 2 W. W. R. 974 ; 67 D. L. R. 657.—**CAN.**

sr. —— *For mortgagee to bid at sale.*] —STEWART *v.* COCCIOLONE, [1930] 3 W. W. R. 141 ; 4 D. L. R. 876.—**CAN.**

sw. *Title to goods not passing to grantor until paid for—Notice to purchaser.*]—The purchaser under a bill of sale of chattels made from lumber who has notice that the title to the lumber would not pass until paid for must account to the seller of the lumber.—FIDELITY LUMBER CO. *v.* ROOTE, [1934] 3 D. L. R. 158 ; 48 B. C. R. 429.—**CAN.**

824. *Add. Annotation :*—**Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

830a. —— ——.]—In June, 1921, a bill of sale, which was duly registered, was given to secure £400 with interest at 24 per cent. *per annum.* An agreement was afterwards made by which the present claimant agreed with the grantor of the bill of sale to pay to the grantee £450 then owing thereon & to lend to the grantor a further sum of £550 upon having the payment of these sums, making together £1,000 with interest thereon, secured by a transfer of the £450 then owing on the bill of sale & the securities for the same. Subsequently, in Nov. 1921, a deed was made between the parties to the bill of sale & claimant, by which, in pursuance of the agreement & in consideration of £450 then paid to the grantee of the bill of sale by claimant, the grantee assigned to claimant the principal & interest secured by the bill of sale & all securities therefor, & the grantee also at the request of the grantor assigned to claimant the goods comprised in the bill of sale free from all equity of redemption under the bill of sale, but subject to a proviso for redemption in the deed, & the grantor covenanted with claimant to pay to her on a specified date the £1,000 with interest at 6 per cent. *per annum.* The latter deed was not registered as a bill of sale under the Bills of Sale Acts :—*Held :* the deed was not a " transfer or assignment " of the registered bill of sale within 1878 Act, s. 10, but was a new bill of sale which itself required to be registered &, therefore, claimant was not entitled to rely upon the registered bill of sale as assignee thereof.—MARSHALL & SNELGROVE, LTD. *v.* GOWER, [1923] 1 K. B. 356 ; 92 L. J. K. B. 499 ; 128 L. T. 829 ; [1923] B. & C. R. 81, D. C.

831. *Add. Annotation :*—**Consd.** Marshall & Snelgrove *v.* Gower, [1923] 1 K. B. 356.

837. *Add. Annotation :*—**Refd.** *Re* Tooth, *Ex p.* Trustee *v.* Tooth, [1934] Ch. 616.

846. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1 ; *Re* Wait, [1927] 1 Ch. 606 ; Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

PART VII, SECT. 2, SUB-SECT. 4.—A. (b).

802 iii. —— —— ——.]—KING *v.* KUHN (1887), 4 Man. L. R. 413.—**CAN.**

802 iv. —— ——.]—Where a trader gives a chattel mtge. upon his stock-in-trade & it is shown either by the express terms of the mtge., or by necessary implication, that the intention of the parties is that the mtgor. shall remain in possession of the stock-in-trade mortgaged, & carry on business therewith in the ordinary course of trade, a purchaser from him of any of the mortgaged goods, *bonâ fide,* & in the ordinary course of business, will obtain title to such goods freed from the mtge. ; but if the mtge. on its true construction does not contemplate that the mtgor. is to be at liberty to dispose of the mortgaged goods in the ordinary course of his trade, a purchaser of such mortgaged goods will hold the same subject to the mtge.—SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD. *v.* CANADIAN PACIFIC RY. CO., [1924] 3 D. L. R. 525 ; 2 W. W. R. 910.—**CAN.**

q i. —— ——.]—GRAVES *v.* WASKESIU MILLS, LTD., [1934] 2 W. W. R. 529.—**CAN.**

r i. —— *Prior mortgage.*]—The purchaser from a mtgor. in good faith of movables mortgaged without possession takes them free from the mtgee.'s lien.—BACKER, KLORASANCE *v.* AHMED ESMAIL JAMAL (1927), I. L. R. 5 Ran. 633.—**IND.**

807 ii a. —— —— ——.]—A second chattel mtge. made in good faith, & for valuable consideration, takes priority over a prior unfiled chattel mtge., even if the second mtgee. has actual notice of the prior mtge.—ROFF *v.* KRECKER (1892), 8 Man. L. R. 230.—**CAN.**

810 i a. —— —— *By bill of sale.*]—D, executed a bill of sale, duly registered, assigning to the Crown (*inter alia*) all after-acquired chattels. D. subsequently executed in favour of deft. another bill of sale over certain farm implements acquired since the first bill of sale. Upon the sale of these implements the Crown claimed the proceeds on the ground that upon their acquisition they became subject to the security of the Crown. Deft. was aware that the Crown held a chattel security, but believed it comprised other chattels than those contained in his security :—*Held :* the title acquired by the Crown was equitable only, & since deft. acquired a good title at law for value & without notice of the special provision in the Crown's security, the legal title prevailed over the equitable title ; & deft.'s knowledge of the existence of the former bill of sale did not amount to constructive notice of its contents.—R. *v.* CANTERBURY FARMERS CO-OPERATIVE ASSOCN., LTD., [1924] N. Z. L. R. 513.—**N.Z.**

sd. *Bankruptcy of grantor—Bill renewed owing to mistake after bankruptcy.*]—A renewal of a chattel mtge. permitted, owing to honest mistake, after bkpcy. of the mtgor. intervened, is a valid security against mtgor.'s trustee in bkpcy.—*Re* DAINTY CONFECTIONS, LTD., CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* HOPPER, [1937] 1 D. L. R. 249.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—B.

r i. —— *Title of chattel mortgagees not derived from " tenant " within Distress Act, R. S. A.,* 1922 (*c.* 97), *s.* 5—*Mortgagees protected from distress.*]—CRYSTALL *v.* OLSEN (Alta.), [1927] 3 D. L. R. 85 ; [1927] 2 W. W. R. 35.—**CAN.**

814 ii. —— *After removal of goods by grantor.*]—Deft. leased a house to P., who gave a bill of sale of goods to pltf. & received from him a lease of the goods for two years. Before a quarter's rent came due, P. moved the goods off the premises ; deft. followed them & distrained for the rent ; pltf. gave notice that he was owner of the goods & forbade the sale, but deft., believing the bill of sale to be fraudulent, sold the goods under the distress :—*Held :* deft. was liable.—PIDGEON *v.* MILLIGAN (1871), N. B. Dig. 282.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—C.

819 iii. —— *Irrigation district—Postponed to mortgagee to secure price of seed grain.*]—By virtue of the amendment of 1923 (*c.* 26), to Bills of Sale Act, the rights of a mtgee. under a chattel mtge. given to secure the price of seed grain are superior to those of an irrigation district resting on a distress levied on the mortgaged crop for arrears of rates due by the mtgee.—GUELPH & ONTARIO INVESTMENT & SAVINGS SOCIETY *v.* BOARD OF TRUSTEES OF LETHBRIDGE NORTHERN IRRIGATION DISTRICT, [1925] 4 D. L. R. 522 ; [1925] 3 W. W. R. 475.—**CAN.**

819 iv. —— *Assessment of Workmen's Compensation Board.*] — The Workmen's Compensation Board seized chattels under execution for the amount of an assessment due the Board. Mtgees. of the property under a prior mtge. claimed the goods so seized. On an issue directed to determine whether the goods were those of the Board as against the mtgees., the judge decided in favour of the mtgees. & the Board appealed :—*Held :* appeal should be allowed.—WORKMEN'S COMPENSATION BOARD *v.* SUMAS OIL & GAS CO., LTD., [1933] 2 W. W. R. 121 ; 3 D. L. R. 489 ; 47 B. C. R. 12.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 5.

sp. *To sue—Debt repayable on demand—Whether demand necessary.*]—Under a mtge. payable on demand where the debt is a present one the mtgee. may sue the mtgor. forthwith without first making demand upon him. Under a chattel security providing for the repayment of a sum " upon demand " & importing the covenants, powers, provisions, agreements & conditions which by virtue of Chattels Transfer Act, 1924, are to be implied in instruments by way of security, a demand by notice in writing is necessary, & the covenant to pay " upon demand " imports a covenant not to sue except after demand.—BROWN *v.* AIMERS, [1934] N. Z. L. R. 414 ; G. L. R. 359.—**N.Z.**

PART VII. SECT. 3.

a i. —— ——.]—In order for an assignee of a chattel mtge. to recover the debt secured thereby in an action by him alone against mtgor., his assignment must be absolute & in writing & notice thereof in writing must have been given to mtgor.—BELLEMARE *v.* GAMACHE, [1921] 2 W. W. R. 564.—**CAN.**

b i. ——.]—The assignee of a bill of sale & lien notes, which are in effect a chattel mtge., can stand in no better position than the original holder thereof, & must hold the same subject to existing equities, & he is liable in damages for any unwarranted sale by him of the chattels covered by the bill of sale & lien notes.—SCOTT *v.* MOOSE JAW MOTORS, LTD. & J. HANNA, LTD., [1924] 4 D. L. R. 279 ; 2 W. W. R. 1234.—**CAN.**

b ii. ——.]—TRADERS TRUST CO. *v.* CRAWFORD, [1926] 1 D. L. R. 1167 ; 58 O. L. R. 381.—**CAN.**

PART VII. SECT. 4.

g i. —— *Chattels taken by mortgagee.*]—TINANT *v.* SIMON (1922), 67 D. L. R. 773.—**CAN.**

BONDS.

Part III.—Validity.

67. *Add. Annotation :*—**Refd.** R. *v.* Bernhard, [1938] 2 K. B. 264.

70. *Add. Annotation :*—**Refd.** R. *v.* Bernhard, [1938] 2 K. B. 264.

119a. —— **Warden of fleet—Pleading.**]—HUGGINS *v.* BAMBRIDGE (1740), Willes, 241 ; 125 E. R. 1152.

155a. ——.]—If a bond to secure an annuity contain a recital of the payment of the consideration, & the annuity has been paid for several years, the actual payment of the consideration will be presumed, though there be no receipt indorsed, & though the subscribing witness have no recollection of the subject.—HASLAM *v.* DIGGLES (1824), 1 C. & P. 398 ; 171 E. R. 1247, N. P.

Part IV.—Execution.

194. *Add. Annotation :*—**Consd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

Part V.—Interpretation.

269. *Add. Annotation :*—*Generally*, **Refd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 146 L. T. 336.

Part VI.—Operation and Incidents.

313. After this case add :—
——.]—*See, now*, Law of Property Act, 1925 (c. 20), s. 80 (1).

317. *Add. Annotations :*—**Apld.** Lawrence *v.* Hayes, [1927] 2 K. B. 111. **Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

338. After this case add :—
——.]—*See, now*, Law of Property Act, 1925 (c. 20), s. 81.

357. *Add. Annotation :*—**Dbtd.** Greer *v.* Kettle, [1938] A. C. 156.

Part VII.—Performance or Breach of Condition.

413. *Add. Citation :*—*sub nom.* MOORWOOD *v.* DICKENS, 3 Bulst. 148.

456. *Add. Citation :*—*sub nom.* FOREWOOD *v.* DICTON, 1 Roll. Rep. 296.

536. *Citations :*—For "BROWN'S CASE (1550), Benl. 8 ; Ben. & D. 35 ; 73 E. R. 937," read "BROWN'S CASE (1500), cited Benl. 8 ; Ben. & D. 35 ; 73 E. R. 937."

547. *Add. Annotation :*—**Refd.** Cantiere Navale Triestina *v.* Russian Soviet Naptha Export Agency, [1925] 2 K. B. 172.

Part VIII.—Amount Recoverable on Breach of Condition.

569. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

604a. —— —— ——.]—A joint & several bond was conditioned for payment of the principal money

---

PART III. SECT. 3, SUB-SECT. 11.

sa. *Loan to infant secured by simple bond—Subsequent bond to cover same loan after majority attained.*]—Where a minor borrowed a sum of money, executing a simple bond for it, & after attaining majority executed a second bond in respect of the original loan plus interest thereon :—*Held :* a suit upon the second bond was not maintainable, as that bond was without consideration & did not come under Indian Contract Act, s. 25 (2).—SURAJ NARAIN *v.* SUKHU AHIR (1928), I. L. R. 51 All. 164.—**IND.**

PART III. SECT. 3, SUB-SECT. 13.

sb. *Penalty bond—Omission of penal sum in obligatory clause.*]—*Held :* this omission did not render the bond uncertain & ineffectual.—GREAT WEST LIFE ASSURANCE CO. *v.* CAMPBELL (Man.), [1928] 1 D. L. R. 263 ; 37 Man. L. R. 164 ; [1927] 3 W. W. R. 645.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 1.

366 ii. —— *On both obligors.*]—*Held :* not necessary.—FORTUNE *v.* COCKBURN (1863), 22 U. C. R. 359.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 3.

1 i. —— *Delivery at specified destination—Failure to re-land in Canada.*]—R. *v.* VANCOUVER BREWERIES, LTD., [1928] 4 D. L. R. 881—**CAN.**

1 ii. —— ——.]—R. *v.* FIDELITY INSURANCE CO., [1928] 4 D. L. R. 965.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 5.

1 i. —— *Selection of land during lifetime of obligor & obligee.*]—BURNHAM *v.* RAMSAY (1872), 32 U. C. R. 491.—**CAN.**

sc. *To pay over half purchase-money on sale of land—Death of obligor & obligee before sale—Bond not charge on land.*]—J., the owner of certain land, executed a bond, which was registered, whereby, for himself, his heirs, exors. or administrators, he covenanted that, on his effecting a sale of the land, which, however, was to be entirely at his option, he would pay A. half the purchase-money. He died without having effected a sale ; & subsequently A. died. J. by his will devised the land to I. for life with remainder in fee to L. & they both joined in an agreement to sell to D. :—*Held :* without deciding whether the bond was in force as between J. & A.'s representatives, it did not constitute a charge on the land the liability thereunder being merely of a personal character.—*Re* EAGAN & DAWSON (1909), 18 O. L. R. 638 ; 13 O. W. R. 694.—**CAN.**

PART VIII. SECT. 3.

q i. —— *Conveyance of land—Failure to obtain title.*]—*Held :* the damages were not confined to the purchase-money paid & interest.—PLUMER *v.* SIMONTON (1858), 16 U. C. R. 220.—**CAN.**

after six months' notice, & in the meantime for payment of interest on the usual quarter days. Default having been made in payment of one quarter's interest, as it was said, through inadvertence, the obligee gave notice to pay the principal, & the next day brought actions on the bond against the several obligors:—*Held:* the ct. had no power to stay the proceedings on payment of the interest due & costs.—WHEELHOUSE *v.* LADBROOKE (1858), 3 H. & N. 291; 27 L. J. Ex. 307; 31 L. T. O. S. 104; 4 Jur. N. S. 417; 157 E. R. 481.

621. *Add. Annotation:*—**Refd.** Mussen *v.* Van Dieman's Land Co., [1938] Ch. 253.

628. *Annotation:*—**Consd.** Latter *v.* Colwill, [1937] 1 All E. R. 442.

Part IX.—Assignment.

680. *Add. Annotation:*—**Apld.** *Re* City Life Assce., [1926] Ch. 191.

691. *Add. Annotation:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

Part X.—Discharge.

695. *Add. Annotation:*—*As to* (1) **Refd.** Berry *v.* Berry, [1929] 2 K. B. 316.

700. *Add. Citation:*—Cited 6 Co. Rep. 44 b. *Add. Annotation:*—**Refd.** Ene's Case (1627), Litt. 58.

701a. *S. P.* ENE'S CASE (1627), Litt. 58; 124 E. R. 135.

712. *Add. Annotation:*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

749. *Add. Annotation:*—**Refd.** Provident Accident & White Cross Insurance Co. *v.* Dahne & White, [1937] 2 All E. R. 255.

751. *Add. Annotation:*—**Refd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

770. *Add. Annotation:*—**Consd.** Koch *v.* Dicks, [1933] 1 K. B. 307.

796a. —— **Payment by one—Whether co-obligor released.**]—Assignment of bond to co-obligor, who pays it, is of no use.—WOFFINGTON *v.* SPARKS (1754), 2 Ves. Sen. 569; 28 E. R. 363.

803. *Add. Annotation:*—**Refd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

Part XII.—Actions on Bonds.

827. *Add. Annotation:*—**Refd.** Jenkins *v.* Deane (1933), 103 L. J. K. B. 250.

828. *Add. Annotation:*—**Consd.** Way *v.* Bishop, [1928] Ch. 647.

841. *Add. Annotation:*—**Refd.** Jenkins *v.* Deane (1933), 103 L. J. K. B. 250.

848. *Add. Annotation:*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

850. *Add. Annotation:*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

853. *Add. Annotation:*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

888. *Add. Annotation:*—**Refd.** Bremer Oeltransport G.M.B.H. *v.* Drewry, [1933] 1 K. B. 753.

947a. —— ——.]—CANNEL *v.* BUCKLE (1724), 2 P. Wms. 243; 2 Eq. Cas. Abr. 23; 24 E. R. 715, L. C.

Annotations:—**Refd.** Harvey *v.* Ashley (1748), 3 Atk. 607; Drury *v.* Drury (1761), 2 Eden, 39; Wright *v.* Cadogan (1764), 2 Eden, 239; Durnford *v.* Lane (1781), 1 Bro. C. C. 106; Caruthers *v.* Caruthers (1794), 4 Bro. C. C. 500; Field *v.* Moore, Field *v.* Brown (1855), 7 De G. M. & G. 691.

950a. ——.]—WATKYNS *v.* WATKYNS (1740), 2 Atk. 96; 26 E. R. 460.

Annotation:—**Refd.** Sleech *v.* Thorington (1754), 2 Ves. Sen. 560.

953. *Add. Annotation:*—**Refd.** Davey *v.* Robinson, [1923] 1 K. B. 563.

PART XII. SECT. 2.

860 iii. —— *Bond in penal sum.*]—Summary judgment cannot be obtained in an action on a bond in a penal sum guaranteeing the payment of a smaller sum.—WESTERN DOMINION INVESTMENT CO. *v.* MCMILLAN, [1925] 1 W. W. R. 566.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 3.

sm. *Extension of time for payment in consideration of higher rate of interest.*]—*Held:* the proper time for applying to amend in order to raise the above defence was at the trial, & not on appeal.—WESTERN DOMINION INVESTMENT CO. *v.* MACMILLAN, [1925] 4 D. L. R. 562.—**CAN.**

PART XII. SECT. 6.

d i. —— *Alternative pleas of payment & denial of execution.*]—The plea of payment will not amount to an admission of the bond, & will not relieve pltf. from the necessity of proving the alleged loss of the bond.—MUHAMMAD ZAFAR *v.* ZAHUR HUSAIN (1926), I. L. R. 49 All. 78.—**IND.**

f i. —— *Of fulfilment of condition of bond.*]—CONSOLIDATED DISTILLERIES LTD. *v.* R., [1931] S. C. R. 283; 2 D. L. R. 912.—**CAN.**

PART XII. SECT. 8.

a i. —— *At instance of obligee of earlier bond—Obligor's property insufficient to satisfy both bonds.*]—*Held:* there was no equity to restrain proceedings on the judgment obtained by the obligee of the second bond.—NEWENHAM *v.* MOUNTCASHEL (1872), 19 Gr. 530.—**CAN.**

BOUNDARIES, FENCES AND PARTY-WALLS.

Part I.—Boundaries.

8. *Add. Citation :*—109 L. T. 820.

10. *Add. Annotation :—Generally*, **Refd.** *Re* Boundary between Canada & Newfoundland in Labrador Peninsula (1927), 137 L. T. 187.

39. *Add. Annotation :*—**Refd.** *Re* Boundary between Canada & Newfoundland in Labrador Peninsula (1927), 137 L. T. 187.

94. *Add. Annotations :*—**Consd.** Brighton & Hove General Gas Co. *v.* Hove Bungalows, [1924] 1 Ch. 372. **Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241.

97. *Add. Annotation :*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

114. *Add. Annotation :*—**Refd.** Hanscombe *v.* Bedfordshire County Council, [1938] 3 All E. R. 647.

PART I. SECT. 1, SUB-SECT. 1.

c i. ——.]—A grant of land to within one chain of a river, means to within one chain of the edge of the river, not of the top of the bank.—STANTON *v.* WINDEAT (1843), 1 U. C. R. 30.—**CAN.**

ss. *Boundary in plan running in straight line—Deviation for convenience.*]—Lands owned by pltf. & deft. were described as bounded in the one case on the north & in the other on the south side of the "C. Rd." The road in the original grant & the plan attached thereto, was shown to run in a straight line between the lands of the two opposite proprietors. The line as laid out ran through a deep gully & for convenience the road at that point was directed to one side, returning to the described straight line further one :—*Held :* the line as shown upon the plan controlled the line by which the parties bounding upon the road had held.—BANKS *v.* BEALS, [1928] 1 D. L. R. 459 ; 59 N. S. R. 503.—**CAN.**

PART I. SECT. 1, SUB-SECT. 2.—A.

m (p. 264) i. ——.]—PIERS *v.* WHITING, [1923] 3 D. L. R. 879.—**CAN.**

p (p. 264) i. —— ——.]—KINGSTON *v.* HIGHLAND (1920), 47 N. B. R. 324.—**CAN.**

p (p. 264) ii. *S. P.* KANEEN *v.* MELLISH (1922), 70 D. L. R. 327.—**CAN.**

q (p. 264) i. ——*Duty of surveyors.*]—R., who held a licence from the Government to cut timber on Crown lands, claimed that S., licencee of the adjoining lot, was cutting timber on his grant, & replevied logs alleged to be so cut by S. The replevin suit was settled by an agreement between the parties to leave the matter to surveyors to establish the line between the two lots, the agreement providing that the lines of the land held under the licence of R. should be surveyed & established by named surveyors & the stumps counted, etc. :—*Held :* under this agreement the surveyors were bound to make a formal survey, & could not take a line run by one of them at a former time as the said boundary line.—SNOWBALL *v.* RITCHIE (N. B.) (1888), 14 S. C. R. 741.—**CAN.**

b (p. 264) i. —— —— ——.]—A.-G. FOR ONTARIO *v.* BOOTH (1923), 53 O. L. R. 374.—**CAN.**

d (p. 264) i. —— *Conventional line.*]—CROWLEY *v.* FEENEY (1932), 5 M. P. R. 218.—**CAN.**

f (p. 265) i. —— ——.]—Where adjoining owners erroneously assume that a certain line is the boundary between their properties & concur in the erection of a fence thereon, but neither has made any representations to the other & said concurrence is not the settlement of a dispute as to the boundary, the line so adopted is not binding on either owner when the error is discovered. — LES SOEURS DE MISERICORDE *v.* TELLIER, [1932] 2 W. W. R. 357 ; 40 Man. L. R. 351.—**CAN.**

sb. *Fence dividing cleared portions of adjoining lots—Whether uncleared portions divisible by continuation of line of fence.*]—Pltf. & deft. occupied adjoining lots for twenty years by a line & fence extending from the front through the cleared land. *Semble :* that, in the absence of any actual possession beyond the clearing, it must be considered that the possession from thence to the rear of the lot was intended to be a continuation of the line in the front.—BELYEA *v.* BELYEA (1857), 3 All. 588.—**CAN.**

PART I. SECT. 1, SUB-SECT. 3.

s. (p. 266) i. —— —— ——.]—A concession or base line had been run & posts planted on it upon an original survey, but the question was, how the side line of a lot was to be ascertained : —*Held :* the distance between the two nearest ascertained monuments on the base line should be measured & divided proportionately between the lots, making due allowance for roads, & the side line required should be run from the angle of the lot so ascertained.—CULP *v.* CULP (1857), 6 C. P. 466.—**CAN.**

r (p. 267) i. —— —— *Where mound missing.*]—KAJNER *v.* KOVACZ, [1922] 3 W. W. R. 102 ; 68 D. L. R. 793.—**CAN.**

r (p. 267) ii. —— —— ——.]—*Held :* evidence of the existence & location at one time of a certain mound, according to the rules governing surveys, was a proper way of establishing the boundary line.—CAIN *v.* COPELAND, [1922] 2 W. W. R. 1025 ; 67 D. L. R. 581 ; 15 Sask. L. R. 529.—**CAN.**

r (p. 267) iii. —— —— *Where posts destroyed by fire.*]—BARRY *v.* DESROSIERS (1908), 14 B. C. R. 126 ; 9 W. L. R. 633.—**CAN.**

r (p. 267) iv. —— ——.]—ARTLEY *v.* CURRY (1823-1900), 3 Ont. Dig. 5323.—**CAN.**

r (p. 267) v. —— —— *Point of commencement.*]—HOOVER *v.* SABOURIN (1874), 21 Gr. 333.—**CAN.**

t (p. 267) i. —— *When overplus apportioned.*]—Where three lots faced upon a certain street, & upon a survey being made it was found that there was more land upon the ground than was shown upon the plan, & the question arising as to whether this overplus of land should be added to one lot or apportioned between the three :—*Held :* the crucial question being the location of the north-east angle of one lot, & that point being ascertainable by measurement from the true & unalterable lines upon the plan in accordance with Surveyors Act, R. S. O., 1927, s. 12 (1), the principle of apportionment introduced by sect. 12 (3) had no application, as the sub-sect. only applies where the original stakes defining the angles of a lot cannot be found or their position satisfactorily established.—MARTIN *v.* KELLOG, [1932] O. R. 274 ; 2 D. L. R. 496 ; *affd.*, [1932] 4 D. L. R. 617.—**CAN.**

t (p. 267) ii. —— *Right to show true boundaries.*]—Parties adjoining a right of way are not estopped from showing the true boundaries by an incorrect survey.—SISTERS OF MERCY *v.* TELLIER, [1932] 3 D. L. R. 715.—**CAN.**

w (p. 269) i. —— *Survey not conclusive.*]—R. *v.* COSBY (1892), 21 O. R. 591.—**CAN.**

ss. *Monuments — Where placed — Whether position selected conclusive.*]—Monuments placed in compliance with R. S. O. 1877, c. 146, ss. 34, 35, 36 & 37, must be placed at the true corners governing points, or off-sets, or at the true ends of concession lines, & there is nothing in these sections making a survey thereunder or the placing of the monuments conclusive, whether right or wrong, & evidence may be received in contradiction.—R. *v.* COSBY (1892), 21 O. R. 591.—**CAN.**

ss. —— —— ——.]—*Held :* the intention of sect. 26 of Saskatchewan Surveys Act, 1924, which made sects. 56, 58, & 60-67 of Dominion Lands Surveys Act, 1908, c. 21 (Dom.), applicable to all lands, in the province which were originally Dominion lands, was to adopt the provisions of those sects. for the purpose of all matters falling within the jurisdiction of the province with respect to such lands, & that, therefore, the area of each of the quarter sections in question was determined by reference to the monuments on the ground.—KRISTIANSEN *v.* SILVERSON (Sask.), [1929] 4 D. L. R. 252 ; 3 W. W. R. 322 ; *revg.*, [1929] 1 W. W. R. 256.—**CAN.**

sg. *Removal of boundary post—Form of information.*]—An information for removing a post lawfully placed by a land surveyor to mark the angle of a lot must contain the word "wilfully."—R. *v.* FISH, *Ex p.* SOBEY (1932), 4 M. P. R. 390.—**CAN.**

PART I. SECT. 1, SUB-SECT. 4.—C.

sl. *Decision of jury on view—Finality of.*]—COUTURIER *v.* OUELLETTE (1933), 6 M. P. R. 352.—**CAN.**

Part II.—Fences.

130. *Add. Annotation :*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

137a. Danger created by highway authority—Road level raised—Adjoining owner not liable to fence.]—Where a danger has been created on a highway by something done on the highway & not by anything done on the adjoining land, the owner of the adjoining land is not bound to make any alteration on or to his land to do away with that danger. Thus, where, in consequence of a highway having been made up by a highway authority, the level of the adjoining land, which is unfenced, has been lowered so as to cause a dangerous drop from the edge or kerb of the reconstructed highway, & a pedestrian slips down from the highway on to the adjoining land & is thereby injured, the owner of the adjoining land is not liable, but the highway authority is.—NICHOLSON *v.* SOUTHERN RY. CO. & SUTTON & CHEAM URBAN DISTRICT COUNCIL, [1935] 1 K. B. 558; 104 L. J. K. B. 265; 152 L. T. 349; 99 J. P. 141; 51 T. L. R. 216; 79 Sol. Jo. 87; 33 L. G. R. 140.

138. *Add. Annotations :*—**Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359. **Refd.** Nicholson *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council, [1935] 1 K. B. 588.

139. *Add. Annotations :*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; Nicholson *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council, [1935] 1 K. B. 588; Shirvell *v.* Hackwood Estates Co., [1938] 2 All E. R. 1.

143. *Add. Annotation :*—**Refd.** Nicholson *v.* Southern Ry. Co. & Sutton & Cheam Urban District Council, [1935] 1 K. B. 558.

145. *Add. Annotations :*—*As to* (1) **Apld.** Noble *v.* Harrison, [1926] 2 K. B. 332; Wilkins *v.* Leighton, [1932] 2 Ch. 106. **Consd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101. **Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

146. *Add. Annotation :*—**Refd.** Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44.

148. *Add. Annotation :*—**Distd.** Sack *v.* Jones, [1925] Ch. 235.

154a. Spiked iron fence—On bank.]—*Held :* not a nuisance.—GIBSON *v.* PLUMSTEAD BURIAL BOARD (1897), 13 T. L. R. 273, C. A.

155. *Add. Annotations :*—**Consd.** Bromley *v.* Mercer, [1922] 2 K. B. 126. **Refd.** Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44; Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125; Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

157. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

158. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

159. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

163. *Add. Annotations :*—**Consd.** Hardy *v.* C. L. Ry. (1920), 124 L. T. 136; Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44; Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776; Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125; Coates *v.* Rawtenstall Borough Council, [1937] 3 All E. R. 602. **Refd.** Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253; Addie (Collieries) *v.* Dumbreck, [1929] A. C. 358; Compania Mexicana De Petraleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106; Sycamore *v.* Ley (1932), 147 L. T. 342; Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101; Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30; Ellis *v.* Fulham Corpn., [1937] 3 All E. R. 454.

168. *Add. Annotations :*—**Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776. **Refd.** Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746.

169. *Add. Annotation :*—**Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671.

171. *Add. Annotations :*—**Folld.** Canvey Island Comrs. *v.* Preedy, [1922] 1 Ch. 179. **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375; Symes & Jaywick Association Properties, Ltd. *v.* Essex Rivers Catchment Board, [1936] 2 All E. R. 551. **Refd.** Brighton & Hove Gas Co. *v.* Hove Bungalows (1923), 88 J. P. 61; Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

171a. —— ——.]—Pltfs. were incorporated, under Canvey Island (Sea Defences) Act, 1883, for protecting Canvey Island from inundation by the sea. They succeeded former comrs. appointed by an Act of 1729 (32 Geo. 3, c. 31), which contained a power for these comrs. under s. 13 to erect a new sea wall further inward, on giving compensation to the owner whose land was taken for this purpose. In 1813 the new wall was built, & £150 given as compensation to the owner of the land taken. Under the Act of 1883 the property & rights of the former comrs. were vested in pltfs. who had power

---

PART II. SECT. 1.

1i. ——.]—BIANCO *v.* BANKS (1932), 5 M. P. R. 295.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—A.

sf. Park adjoining railway—No obligation on municipal corporation to construct fence.]—RICHARDSON *v.* CANADIAN NATIONAL RY. CO., [1927] 2 D. L. R. 801; 32 Can. Ry. Cas. 411; 60 O. L. R. 296.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—C. (a).

135 ii. ——.]—A public road crossed a stream by a bridge. There was a fence between the road & the land adjoining it, erected by the proprietor of the latter. At a point immediately adjoining the bridge there was a gap, 15 feet wide, in the fence. A pedestrian, on a dark night, mistaking this gap for the road, walked through it & fell into the stream & was drowned. In an action of damages against the proprietors of the land adjoining the road :—*Held :* there was no duty on such proprietors to fence a natural, as opposed to an artificially created, danger on their lands, any such duty, where it existed, falling on the road authorities, & action accordingly dismissed.—MORRISON *v.* LONDON MIDLAND & SCOTTISH RY. CO., [1929] S. C. 1.—**SCOT.**

sk. Reclaimed marsh lands.]—It is unnecessary to fence reclaimed marsh lands bordering on a right of way, on which no cattle are kept, as these are unenclosed lands within Wire Fence Act, R. S. O., 1927.—VAN NECK *v.* VAN NECK, [1937] 4 D. L. R. 731.—**CAN.**

under that Act to hold lands. Pltfs. claimed to be owners in possession of the foreshore between the new & the old wall. Deft. claimed under a conveyance of Apr. 1919 to be the freeholder in possession of a strip of land comprising part of this foreshore, & to be entitled as of right to excavate & remove shells & other drift even although, as pltfs. alleged, it deprived the new wall of protection & support, & exposed it to injury by the action of wind & water. The greater risk to the wall in consequence of deft.'s action was established by the evidence. In an action by pltfs. to restrain deft. from so removing the drift, & from trespassing on their land:—*Held:* (1) assuming the strip in question to be deft.'s freehold, pltfs. were still entitled to an injunction restraining him from so removing drift from the strip as to expose their wall & works & the lands protected thereby to greater risk of inundations of the sea; (2) pltfs. had established their statutory title under the Acts of 1792 & 1883 to the whole of the land taken & set out pursuant to s. 13 of the first Act, & had exercised specific acts of ownership over the foreshore; the possession of pltfs. & of deft. being at most doubtful or equivocal the law attached possession to the title; deft., therefore, was a trespasser, & must be restrained from excavating or removing stones, shingle, shell or soil from the particular strip of foreshore & from otherwise trespassing on same.—CANVEY ISLAND COMRS. *v.* PREEDY, [1922] 1 Ch. 179; 91 L. J. Ch. 203; 126 L. T. 445; 86 J. P. 21; 66 Sol. Jo. 182; 20 L. G. R. 125.

Annotation:—**Overd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

172. *Add. Annotation:*—*As to* (1) **Refd.** A.-G. & Public Trustee *v.* Woolwich Metropolitan B. C. (1929), 93 J. P. 173; Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765; Symes & Jaywick Associated Properties, Ltd. *v.* Essex Rivers Catchment Board, [1936] 3 All E. R. 908.

181. *Add. Annotation:*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

203. After this case add, "Power of commissioners to direct repair of fences, *see* COMMONS, No. 939a."

204. *Add. Annotation:*—**Refd.** Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253.

205. *Add. Annotation:*—**Distd.** Sack *v.* Jones, [1925] Ch. 235.

210. *Add. Annotation:*—**Refd.** Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765.

213. *Add. Annotation:*—**Refd.** Greenwood Tileries, Ltd. *v.* Clapson, [1937] 1 All E. R. 765.

Part III.—Party-Walls.

215. Before this case add:—

See, now, Law of Property Act, 1925 (c. 20), s. 38.

223a. **Law of Property Act, 1925 (c. 20)—Damage to party wall—Action by owner of one half—Measure of damages.**]—Pltf. was by virtue of Law of Property Act, 1925 (c. 20), Sched. 1, Part V, the owner of one half of a party wall divided vertically. He brought an action in respect of damage to the wall:—*Held:* he could only recover the damage to that half of the wall which was vested in him.—APOSTAL *v.* SIMONS, [1936] 1 All E. R. 207; 80 Sol. Jo. 205, C. A.

240. *Add. Annotations:*—*As to* (2) **Refd.** Sack *v.* Jones, [1925] Ch. 235; Brooke *v.* Bool, [1928] 2 K. B. 578; Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

PART II. SECT. 2, SUB-SECT. 3.

p l. *Right to interfere with.*]—City of Victoria Official Map Act, 1880, & amending Acts, have reference to streets only:—*Held:* nothing in those Acts could justify an interference by private individuals with the boundaries of a lot held by purchase & 20 years' possession.—CROWTHER *v.* BEAVEN (1884), 1 B. C. R. pt. 2, 116.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.

r (p. 294) l. —— *Marsupial-proof—Question of fact.*]—Whether a fence is or is not marsupial-proof within sect. 171 of Land Acts, 1910-1927, is a question of fact for the adjudicating tribunal.—R. *v.* MAGISTRATES' COURT & ESMOND, *Ex p.* BEAZLEY, [1928] St. R. Qd. 349; 22 Q. J. P. 97.—**AUS.**

r (p. 294) ll —— *Material benefit to adjoining lessee — Determination of value.*]—Lessees of a holding erected a fence before Nov. 1, 1924. On June 1, 1927, the lessees filed a plaint in the magistrate's ct., whereby they claimed that the fence "is of material benefit," to deft., an adjoining holder. The magistrate determined the benefit as from Nov. 1, 1924:—*Held:* the time from which the magistrate must determine the value of the benefit cannot be earlier than the date of the plaint claiming that benefit under the sect.—R. *v.* POLICE MAGISTRATE AT BLACKALL & HART, *Ex p.* HART, [1928] St. R. Qd. 174; 22 Q. J. P. 47.—**AUS.**

sg. *Forest reserve.*] — It is no defence to an action for recovery of a penalty from the owner of stock grazing on a forest reserve without a permit, that the reserve was not enclosed by a "lawful fence" as defined in the Fence Ordinance.—MINISTER OF INTERIOR FOR CANADA *v.* NELSON, [1920] 1 W. W. R. 129.—**CAN.**

sl. *Duty not to plant trees alongside fence—Meaning of "alongside."*]—The word "alongside" in sect. 26 of Fencing Act, 1908, which prohibits a person from planting trees on or alongside any boundary line or fence without the previous written consent of the occupier of the adjoining land, must be construed as "contiguous" to, in its ordinary sense—*viz.*, "touching"—that boundary line or fence, & not in its loose sense as meaning "neighbouring." Therefore, young macrocarpa trees planted for a length of about 25 chains parallel to & at a distance varying from 2 ft. to 4 ft. from the boundary line or fence were held not to have been planted "alongside" such boundary line or fence.—GILBERT *v.* SAMPSON, [1934] N. Z. L. R. 137.—**N.Z.**

PART III. SECT. 1, SUB-SECT. 2.

so. *Duration.*]—Where on the erection of a building on each of two adjoining & separately owned lots, the owners agree to plans calling for a party wall & the use by each owner of part of the premises of the other & the buildings are so constructed, the right to such use will, in the absence of a reference to time, be held to continue during the existence of the two buildings as they were constructed.—SMITH *v.* CURRY (Man.), [1918] 2 W. W. R. 848; 42 D. L. R. 225.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—C. (b).

d l. —— *Cement wall causing collapse of adjoining wall.*]—The building of a concrete wall against an adjoining wall involves the danger of damage to such adjoining wall through lateral pressure exerted by the liquid concrete in seeking its own level, enhanced as such pressure is in practical construction by dropping the concrete from a height, unless precautions are taken by the construction of a properly duly wired or otherwise properly fastened lumber form to prevent such pressure being communicated to the adjoining wall as well as any vibrations that may be set up by the drop. Because said preventive measures were not taken (wires not being used in the lumber forms) in building deft.'s wall, a part of pltf.'s adjoining wall gave way:—*Held:* pltf. was entitled to damages, although deft. had employed architects of repute & a competent independent contractor.—PETER *v.* YORKSHIRE & PACIFIC SECURITIES, LTD., [1937] 3 W. W. R. 49; 7 F. L. J. (Can.) 99.—**CAN.**

249. *Add. Annotations :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

250. *Add. Annotation :*—**Apld.** Sack *v.* Jones, [1925] Ch. 235.

251. *Add. Annotations :*—**Apld.** Sack *v.* Jones, [1925] Ch. 235; Simpson *v.* Weber (1925), 133 L. T. 46. **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

251a. Right of support—By adjoining house.]—Pltf. & deft. were the owners of adjoining houses, separated by a party-wall, & with implied mutual rights of support. Pltf. alleged that owing to lack of repair & underpinning deft.'s house was subsiding, dragging the party-wall over, & thereby damaging pltf.'s house :—*Held :* pltf.'s allegations had not been substantiated by the evidence. *Semble :* even if they had been substantiated pltf. would have had no cause of action.—SACK *v.* JONES, [1925] Ch. 235; 94 L. J. Ch. 229; 133 L. T. 129.

251b. —— Law of Property Act, 1925 (c. 20), s. 38 (1).]—Pltf. & deft. co. were the owners of adjoining houses, which had been built about eighty years ago. Deft. co., for the purpose of building some flats, proceeded to demolish their house, & took the appropriate steps under the London Building Act, since they would be interfering with the party wall between the two houses. The surveyors thought the wall strong enough to withstand the demolition. Although certain shores were put up, the demolition caused a serious bulge in the wall, &, finally, deft. co.'s half of the wall collapsed. Pltf.'s half of the wall had in it two recesses, which, upon the collapse of deft. co.'s half, caused two apertures, &, by reason of these apertures, pltf.'s stock was damaged :—*Held :* (1) deft. co. did not trespass on the party wall separating their premises from those of pltf.; (2) pltf.'s premises & his half of the party wall were entitled to the rights of support or user from deft. co.'s premises & their half of the party wall, & such support or user, which included the protection of the apertures above referred to, had been withdrawn.—UPJOHN *v.* SEYMOUR ESTATES, LTD., [1938] 1 All E. R. 614; 54 T. L. R. 465.

257. *Add. Annotation :*—**Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671.

258a. —— ——.]—If a wall is knocked down, the owner may maintain an action for the trespass, but he cannot, by omitting to rebuild it, hold deft. always responsible for any consequential damage (POLLOCK, C.B.).—FIRMSTONE *v.* WHEELEY (1844), 2 Dow. & L. 203; 13 L. J. Ex. 361.

Annotations :—**Refd.** Clegg *v.* Dearden (1848), 12 Q. B. 576; Smith *v.* Kenrick (1849), 7 C. B. 515.

271a. —— No agreement for lease.]—TAYLOR *v.* REED (1815), 6 Taunt. 249; 128 E. R. 1030.

Annotation :—**Refd.** Collins *v.* Wilson (1828), 1 Moo. & P. 454.

272. *Add. Annotation :*—**Refd.** London County Council *v.* Stilgoe (1931), 95 J. P. 149.

282. *Add. Annotation :*—**Consd.** London County Council *v.* Harling Street Owners, [1935] 2 K. B. 322.

284. *Add. Annotation :*—**Refd.** Burlington Property Co. *v.* Odeon Cinemas, Ltd., [1938] 3 All E. R. 469.

301. *Add. Annotation :*—**Refd.** Burlington Property Co. *v.* Odeon Cinemas, Ltd., [1938] 3 All E. R. 469.

309. *Add. Annotations :*—**Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578; Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191; Matania *v.* National Provincial Bank, Ltd. & Elevenist Syndicate, Ltd., [1936] 2 All E. R. 633.

310. *Add. Annotations :*—*As to* (2) **Refd.** Sack *v.* Jones, [1925] Ch. 235; Brooke *v.* Bool, [1928] 2 K. B. 578; Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191.

315. *Add. Annotation :*—**Refd.** Burlington Property Co. *v.* Odeon Cinemas, Ltd., [1938] 3 All E. R. 469.

315a. Award infringing rights acquired by conveyance—Validity.]—Resps. had obtained an award under the London Building Act entitling them to pull down a wall which contained windows & to rebuild it with openings reaching down to the ground. This work was being done at the suggestion of the local authority & in order to provide against congestion among persons coming out of a cinema. By virtue of an indenture dated June 24, 1906, applts. were entitled "to one half of the wall . . . & to the use of the said wall for the support of any buildings or erections which he or they may at any time erect or rebuild over Hunt's Court" :—*Held :* the rebuilding of the wall in such a form was an interference with applts.' rights, & the surveyors who made the award had exceeded their jurisdiction.—BURLINGTON PROPERTY CO., LTD. *v.* ODEON CINEMAS, LTD., [1938] 3 All E. R. 469; 82 Sol. Jo. 624, C. A.

• i. —— *Wall built & used only by adjoining owner.*] — *Held :* deft. was answerable, as the injury was the direct result of negligence in the original construction of the wall.—MCQUILLAN *v.* RYAN (1921), 64 D. L. R. 482; 50 O. L. R. 337.—CAN.

• ii. —— *Party wall undermined—Extent of liability.*]—JEFFREY (F. W.) & SONS, LTD. *v.* COPELAND FLOUR MILLS, FINLAYSON *v.* COPELAND FLOUR MILLS, [1923] 4 D. L. R. 1140; 52 O. L. R. 617.—CAN.

PART III. SECT. 1, SUB-SECT. 3.—D. sp. *Remedy—Action for damages.*]—Where a mutual wall has been built so as to encroach on the property of one of the two adjoining owners, but was built in good faith under some mistake as to title & with the knowledge of, but without any protest from, him on whose land it encroaches, the owner of the building should not be compelled to remove the wall back to the boundary line; the remedy is in damages.—O'LEARY *v.* SMITH, [1924] 2 D. L. R. 521; [1924] 2 W. W. R. 227; 34 Man. L. R. 386; *on appeal* [1925] 2 D. L. R. 1022.—CAN.

Part IV.—Evidence of Boundaries.

323. *Add. Annotation :*—**Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456.

332. *Add. Annotation :*—**Refd.** British Thomson-Houston Co. *v.* British Insulated & Helsby Cables, [1924] 2 Ch. 160.

343. *Add. Annotation :—As to* (3) **Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

359. *Add. Annotation :*—**Apld.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

402. *Add. Annotation :*—**Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 135 L. T. 281.

433. *Add. Annotation :*—**Apld.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

436a. —— —— **Title deeds—Nature of document misconceived.**] —There is no clear authority that in proceedings for the production of documents of title to land, the ct. will differentiate cases where boundaries are in dispute from other cases. Although the ct. is more ready to order production of documents in cases where boundaries are in dispute, it will apply to those cases the same principle which is applied to other cases where the title to land is in dispute, namely, the principle adopted by the Ct. of Appeal in *A.-G.* v. *Emerson*, No. 433, *ante*, that the assertion on oath by the party against whom production is sought that the documents which he objects to produce relate solely to his own title & do not tend to prove or support the case of his opponent will not be disregarded, unless the ct. is reasonably certain that the deposing party misconceived the nature or effect of those documents.—CHOWOOD, LTD. *v.* LYALL, [1929] 2 Ch. 406 ; 98 L. J. Ch. 451.

437. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

PART IV. SECT. 1.

318 ii. —— *Conversations between previous owners—Not admissible when title deeds are put in.*]—DUNPHY *v.* PHILLIPS (1929), 1 M. P. R. 227.—CAN.

h i. —— *Surveyors giving conflicting evidence—Duty of court to accept evidence of surveyor making first examination.*]—SHUPE *v.* LANGENBURG RURAL MUNICIPALITY, [1920] 3 W. W. R. 706.—CAN.

sq. *Subsequent conveyances — Acts of possession.*]—MATTHEWS *v.* GOODE (1923), 56 N. S. R. 543.—CAN.

st. *Survey marks of Crown agents.*]—Where a Crown grant describes the subject land by reference to the boundaries of a "measured portion," evidence of the measurements which were made & the survey marks which were erected or adopted on such portion by the Crown or its agents on the last occasion, preceding the grant, when such portion was measured as a portion for sale, is admissible for the purpose of ascertaining the boundaries of the Crown grant.—CURRIE *v.* CLARKE (1929), 29 S. R. N. S. W. 215 ; 46 N. S. W. W. N. 81.—AUS.

PART IV. SECT. 3, SUB-SECT. 2.

334 iii. —— *Not private boundaries.*]—DUNPHY *v.* PHILLIPS (1929), 1 M. P. R. 227.—CAN.

PART IV. SECT. 7.

426 iii. —— —— ——.]—MCNEIL & HINGLEY, LTD. *v.* HILL (N. S.), [1928] 2 D. L. R. 954.—CAN.

BOUNTIES.

See CHARITIES ; PRIZE LAW.

BUILDING CONTRACTS, ENGINEERS AND ARCHITECTS.

Part II.—The Contract.

9. *Add. Citation:* — *revsg.* S. C. *sub nom.* STEWARDS & CO., LTD. *v.* R. (1900), 17 T. L. R. 111, C. A.

11a. —— **Communication of acceptance—What amounts to—Return of opened bills of quantities.**]—WILLCOCKS & BARNES *v.* PAIGNTON CO-OPERATIVE SOCIETY, LTD. (1930), 74 Sol. Jo. 247.

18. *Add. Annotations:*—**Refd.** Boot (London) *v.* Uttoxeter U. D. C. (1924), 88 J. P. 118; Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

20. *Add. Annotations:*—**Consd.** *Re* Meyrick's Settlmt., Meyrick *v.* Meyrick, [1921] 1 Ch. 311. **Refd.** Cohen *v* Sellar, [1926] 1 K. B. 536.

21. *Add. Annotation:*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

33. *Add. Annotation:*—**Refd.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

34. *Add. Annotation:*—**Refd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

36a. **Contract between employer & third party for supply of materials—No liability to builder for delay.**]—GAZE (W. H.) & SONS, LTD. *v.* PORT TALBOT CORPN., No. 58a, *post.*

36b. **Contract with owner of building estate—Implied warranties—As to workmanship & materials.**]—(1) In a contract with builders or with the owners of a building estate for the purchase of a house to be erected or in course of erection, there is an implied warranty by the vendors that the house shall be built in an efficient and workmanlike manner and of proper materials, and that it shall be fit for habitation.

(2) A representation by builders in conversation with a prospective buyer, that all houses on the estate are of the best material & workmanship, may amount to a warranty collateral to a subsequent formal contract, for breach of which an action will lie.—MILLER *v.* CANNON HILL ESTATES, LTD., [1931] 2 K. B. 113; 100 L. J. K. B. 740; 144 L. T. 567; 75 Sol. Jo. 155.

Annotation:—*Generally*, **Refd.** Hoskins *v.* Woodham, [1938] 1 All E. R. 692.

36c. —— —— ——.]—Pltf. on Dec. 19, 1935, entered into an agreement for the purchase of a house stated to be "erected or in the course of erection." The balance of the purchase money was to be paid, & completion to be made, on Jan. 7, 1936, or "so soon thereafter as the premises shall be completely finished & ready for occupation." On Dec. 19, the house, in addition to the decorations, lacked such things as water-taps, baths, & grates, & the plastering of the walls of the dining-room & drawing-room was incomplete. Pltf. actually went into occupation on Jan. 7, 1936. In May, 1936, he complained of various defects in the house, & in this action he relied upon an implied warranty that the house should be of the same standard of building & of finish as was the show-house, &, in any event, that the construction should be carried out in a proper, efficient & workmanlike manner. It was contended that this was the sale of a completed house, & that there was no such implied warranty:—*Held:* this was a purchase of a house in the course of erection, & not a purchase of a completed house, & pltf. was, therefore, entitled to rely upon the implied warranty.—PERRY *v.* SHARON DEVELOPMENT CO., LTD., [1937] 4 All E. R. 390; 81 Sol. Jo. 1021, C. A.

Annotation:—**Consd.** Hoskins *v.* Woodham, [1938] 1 All E. R. 692.

36d. —— —— ——.]—Pltf. on Mar. 25, 1936, purchased from deft., who was developing a building estate, a recently completed house. In the autumn of that year he found that the whole of the ground floor was damp & complained to deft. It was found as a fact that the dampness was due to the fact that the joists to which flooring on the ground floor was nailed were embedded in 6 ins. of concrete & flush with the surface thereof. There was thus no air-space between the floor & the concrete, but there was a sheet of prepared felt. The local bye-law required that there shall be an air-space, but a proviso allowed the boards to be laid directly on concrete or other similar dry & impervious foundation:—*Held:* (1) there is no implied

PART II. SECT. 1.

11. —— —— *Forfeiture of deposit.*]—BAYNES & HORIE *v.* VANCOUVER BOARD SCHOOL TRUSTEES (B. C.), [1927] 2 D. L. R. 698.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

8a. *Repugnant provisions.*]—A provision for payment on the basis of cost plus a percentage if the actual cost is more or less than the contract price is repugnant where the contractor has made an absolute covenant to do the work & furnish the material for a definite sum.—GIT *v.* FORBES (1921), 62 S. C. R. 1; 59 D. L. R. 155.—**CAN.**

8b. *Contract to erect house similar to another house.*]—By a building contract it was agreed that a house was to be erected similar to H.'s house:—*Held:* the house was to be similar to H.'s house in the sense that it was to have a general likeness in the principal points of materials, design, & workmanship.—MAYS *v.* ROBERTS (1928), S. A. S. R. 217.—**AUS.**

PART II. SECT. 2, SUB-SECT. 2.—C.

8c. *Contract with Crown—Rent of plant.*]—Claimant contracted to construct certain public works in the harbour of Toronto, on a cost plus basis. It was (*inter alia*) agreed that the claimant would furnish the plant, for which he was to receive as rental thereof a certain percentage of its value per annum for a working season of 150 days; this to be payable when each piece commenced operation, & to cease when determined by resp.'s engineer. A portion of this rented plant became locked in behind a coffer-dam constructed in connection with the works in question. It was properly there engaged on the works, but it could not be removed when its work was completed on account of the coffer-dam, & while so retained was not available for use, which condition of affairs was not due to any fault of the contractor:—*Held:* said portion of the plant never ceased to be part of the rented plant under the terms of the contract & was still retained for use on the works by resp.'s engineer & the claimant was entitled to recover rent therefor.—ROGER MILLER & SONS, LTD. *v.* R., [1930] S. C. R. 293; 2 D. L. R. 751; *affg.*, [1929] Ex. C. R. 136.—**CAN.**

warranty of fitness for human habitation upon a purchase of a new house from a builder, if the house is completed at the time of the contract for sale; (2) a floor laid in this way did not comply with the bye-law.—HOSKINS *v.* WOODHAM, [1938] 1 All E. R. 692.

36e. ——— ——— **House reasonably fit for habitation.**]—MILLER *v.* CANNON HILL ESTATES, LTD., No. 36b, *ante*.

36f. —— **Representation as to material & workmanship—Amounts to collateral warranty.**]—MILLER *v.* CANNON HILL ESTATES, LTD., No. 36b, *ante*.

Compare SALE OF LAND, No. 2922c, *post*.

36g. —— **Extent of duty—To purchaser.**]—A builder who builds a house for sale is under no duty either to a future purchaser or to persons who come to live in the house to take care that it is well constructed & safe.

The principle laid down in *Donoghue* v. *Stevenson*, [1932] A. C. 562, is that there can be no duty cast upon the vendor without proximate relationship, of which the main test is whether there is reasonable opportunity for examination between the time of the sale or the doing of the work & the use or consumption of the article by the purchaser.—OTTO *v.* BOLTON & NORRIS, [1936] 2 K. B. 46; [1936] 1 All E. R. 960; 105 L. J. K. B. 602; 154 L. T. 717; 52 T. L. R. 438; 80 Sol. Jo. 306.

Annotations:—**Refd.** Howard *v.* Furness Houlder Argentine Lines, Ltd. & Brown, Ltd., [1936] 2 All E. R. 781; Dransfield *v.* British Insulated Cables, Ltd., [1937] 4 All E. R. 382.

36h. —— —— **To stranger to contract.**]—OTTO *v.* BOLTON & NORRIS, No. 36g, *ante*.

Liability for accident to building owner inspecting work.]—*See* NEGLIGENCE, No. 287a, *post*.

37. *Add. Annotation:*—**Refd.** Neale *v.* Richardson, [1938] 1 All E. R. 753.

38. *Add. Annotation:*—**Refd.** Bean *v.* Flaxton R. D. C., [1929] 1 K. B. 450.

39. *Add. Annotations:*—**Distd.** A.-G. *v.* Denby, [1925] Ch. 596. **Apld.** Bean *v.* Flaxton R. D. C., [1929] 1 K. B. 450.

43. *Add. Annotation:*—**Consd.** Stumbles *v.* Whitley (1929), 46 T. L. R. 37.

45a. ——.]—MILLER *v.* LONDON COUNTY COUNCIL, No. 55a, *post*.

47. *Add. Annotation:*—**Refd.** British & Foreign Marine Insce. *v.* Gaunt, [1921] 2 A. C. 41.

51. *Add. Annotation:*—**Consd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

55a. **Construction of clause.**]—(1) A building contract contained provisions under which the date for completion of the works was Nov. 15, 1931. Clause 31 of the contract provided that "it shall be lawful for the engineer if he shall think fit, to grant from time to time, & at any time or times by writing under his hand such extension of time for completion of the work & that either prospectively or retrospectively, & to assign such other time or times for completion as to him may seem reasonable." Clause 37 provided for the payment of liquidated damages for delay at a specified rate. The contractor did not complete the works till July 25, 1932, & on Nov. 17, 1932, the engineer issued a certificate granting an extension of time to Feb. 7, 1932, & certifying the amount due to the building owner as liquidated damages in respect of the period between Feb. 7 & July 25, 1932:—*Held:* the words "either prospectively or retrospectively" did not confer on the engineer a right to fix the extension of time *ex post facto* when the work was completed. They empowered him to wait till the cause of delay had ceased to operate, & then "retrospectively" with regard to the causes of delay to assign to the contractor a new date to work to. The extension admittedly proper not having been granted in time no liquidated damages were payable.

(2) The contractor claimed to be paid the first portion of the retention money, which by clause 41 was to be paid on the issue of the certificate of completion. The building owner relied on clause 42, which provided that "no sum or sums of money shall be considered to be due & owing to the contractor . . . unless the engineer shall in writing under his hand have certified or recommended the amount to be paid as such instalment or balance to the contractor." No such certificate had been given:—*Held:* the retention money claimed must be either an "instalment" or a "balance," & a condition precedent had not been complied with, so the action was premature.—MILLER *v.* LONDON COUNTY COUNCIL (1934), 151 L. T. 425; 50 T. L. R. 479.

PART II. SECT. 2, SUB-SECT. 3.

sh. *Contract to put old houses "in first class shape."*]—*Held:* the phrase must have reference to their capacity for taking on repairs, which could be only those which their aged condition permitted.—HOUSE REPAIR & SERVICE CO., LTD. *v.* MILLER (1921), 64 D. L. R. 115; 49 O. L. R. 205.—**CAN.**

sk. *"Extra haul" & "overhaul."*]—The view of a contract advanced by resp. was that the contract phrases "extra haul" & "overhaul" have, by usage, in construction contracts, or at all events in railway construction contracts, a special & specific meaning; & that they signify that the length of the haul in respect of which the contractor was entitled to charge for overhaul, was to be ascertained by taking the distance, measured along the centre line of the railway in process of construction, between the projections, first, of the centre of mass of earth, to be excavated in making the cut, & second, of the embankment, & deducting therefrom 500 feet; the projections being for this purpose the several points on the centre line nearest the respective centres of mass:—*Held:* the alleged usage had not been proven. It had been established that there was a practice widely followed of inserting in railway construction contracts a clause providing for the computation of payment for overhaul according to the method contended for by resp.; but in the text books, engineering manuals & writings by engineers produced, there was no basis for the view that the effect of the words used in the present contract is, apart from such special stipulations, what was contended by resp.—GEORGIA CONSTRUCTION CO. *v.* PACIFIC GREAT EASTERN RY. CO., [1929] 4 D. L. R. 161; S. C. R. 630; *revg.*, [1929] 1 D. L. R. 77; 35 C. R. C. 204; 40 B. C. R. 290; [1928] 3 W. W. R. 466; *revg.*, [1928] 3 D. L. R. 26; 35 C. R. C. 197; 40 B. C. R. 81.—**CAN.**

sm. *"Impracticable."*]—In a contract for diamond-drilling, the diameter of the bore was to be reduced where the continuation of the original size became impracticable for certain reasons:—*Held:* impracticable did not mean physically impossible nor commercially unprofitable, but impracticable in the sense in which an experienced driller would understand that term.—ADELAIDE OIL EXPLORATION CO., LTD. *v.* GOLDFIELDS DIAMOND DRILLING CO. (PROPRIETARY), LTD., [1932] S. A. S. R. 390.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—C.

52 iii. —— ——.]—Where the architect ordered additional work, & at that time it was apparent that the work originally contracted for could not be completed within the time fixed, but there was no application for extension nor intimation from the owner of an intention to enforce a claim for damages for delay:—*Held:* the contract should not be construed so as to impose upon the contractor the obligation of completing the work, including additions, within the time fixed.—GRIER *v.* GEORGAS (1923), 54 O. L. R. 580.—**CAN.**

56. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

58a. —— **Contract for supply between employer & third party.**]—A. co. carrying on the business of builders & decorators entered into a contract with a corpn. for the erection of two lodges & a park entrance. With the assent of the builders, the corpn. conducted the negotiations with a stone firm for the supply of the stone which was required for the work & fixed the quantity & price. The contract between the builders & the corpn. provided that the corpn. should pay the stone firm the price of the stone, to be deducted from the contract price. Owing to delay in delivering the stone the builders were unable to complete the work until some months after the date fixed for completion by the contract. In an action by the builders against the corpn. in respect of the loss arising to the builders by reason of such delay :—*Held :* there was no implied obligation on the corpn. under the contract between them & the builders to supply the stone ; at the highest there was only an obligation on them to hold the benefit of the contract with the stone firm for the builders ; & that "business efficacy" did not require that there should be implied an obligation on the corpn. to make good to the builders any loss which they might suffer by reason of the failure of the stone firm to deliver in time. Accordingly the corpn. were not liable to the builders for such loss.—GAZE (W. H.) & SONS, LTD. *v.* PORT TALBOT CORPN. (1929), 93 J. P. 89 ; 27 L. G. R. 200.

59. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

65a. ——.]—By a contract in writing dated Feb. 21, 1912, defts. agreed to build a steamer for, & deliver her to, pltf. on or before Feb. 28, 1913. The contract contained the following exceptions clause :—"If the steamer is not delivered entirely ready to the purchaser at the above-mentioned time, the builders hereby agree to pay to the purchaser for liquidated damages, & not by way of penalty, the sum of £10 sterling for each day of delay & in deduction of the price stipulated in this contract, being excepted only the cause of force majeure &/or strikes of workmen of the building yard where the vessel is being built, or the workshops where the machinery is being made, or at the works where steel is being manufactured for the steamer, or any works of any sub-contractor." As a result of the universal coal strike of 1912 the works from which defts. obtained their materials for other ships they were building got behindhand ; the ship in turn to be built before pltf.'s occupied the berth that was intended to be occupied by pltf.'s much longer than otherwise she should have done, & consequently pltf.'s steamer was late in being laid down. The steamer having been delivered after the contract date, pltf. claimed damages :—*Held :* (1) the general dislocation of the business of defts. & those from whom they obtained materials operating indirectly on the completion of pltf.'s steamer, by preventing the completion of the vessel prior in turn, constituted a case of force majeure within the exceptions clause & excused defts. in respect of the delay so caused ; (2) delay due to breakdown of machinery was, but delay due to bad weather was not, covered by the exception of force majeure.—MATSOUKIS *v.* PRIESTMAN & CO., [1915] 1 K. B. 681 ; 84 L. J. K. B. 967 ; 113 L. T. 48 ; 13 Asp. M. L. C. 68 ; 20 Com. Cas. 252.

Annotation :—**Refd.** Lebeaupin *v.* Crispin, [1920] 2 K. B. 714.

68. *Add. Annotation :*—**Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1937] A. C. 1.

70. *Add. Annotations :*—**Consd.** Alexander *v.* Webber, [1922] 1 K. B. 642. **Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

71. *Add. Annotation :*—**Refd.** Stoodman *v.* Frigidaire Corpn., [1932] W. N. 248.

Part III.—Certificates.

78. *Add. Annotation :*—**Refd.** Neale *v.* Richardson, [1938] 1 All E. R. 753.

84. *Add. Annotation :*—**Refd.** Neale *v.* Richardson, [1938] 1 All E. R. 753.

84a. —— **Architect as arbitrator—Refusal to issue certificate.**]—Pltf. contracted to build a house for deft., for which he was to be paid by instalments when a certificate was given by the architect. In case of disputes, the architect was to act as arbitrator. A dispute arose, & the architect nominated a person other than himself to act as arbitrator. It being pointed out to him that the contract provided that he himself should be the arbitrator, he refused to arbitrate or to issue a certificate with regard to the final instalment. Deft. took no steps to appoint a new arbitrator, or to stay the present action :—*Held :* it was the duty of the architect, acting as arbitrator, to decide whether the unissued certificate ought to have been issued. As he had failed to do this, the lack of a certificate was no bar to

---

PART II. SECT. 4.

s i. —— *Material departure from specification.*]—MCINNIS *v.* GRAY, [1930] 3 D. L. R. 337.—CAN.

PART III. SECT. 1.

73 xxvii. ——.]—DIXON *v.* SOUTH AUSTRALIAN RAILWAYS COMRS. (1923), 34 C. L. R. 71.—AUS.

73 xxviii. ——.]—The engineer's certificate, required for the payment of works specified in the contract & of additional work not covered by the contract but ordered by the engineer, is not a condition precedent to the right of the contractor to be paid for work done to replace works executed in virtue of the contract which have been destroyed or damaged by an act of nature.—DUFRESNE CONSTRUCTION CO., LTD. *v.* R., [1935] Ex. C. R. 77.—CAN.

84 i. —— *Certifier improperly influenced.*]—*Held :* the issue of the certifier's certificate was not a condition precedent to the right of the contractor to recover payment.—NORTHERN CONSTRUCTION CO. *v.* R., [1925] 2 D. L. R. 582.—CAN.

sq. —— *Alteration of contract in many details.*]—*Held :* a final certificate was not a condition precedent to the bringing of an action by the contractor for the balance due.—MCMANUS *v.* GRAVELBOURG, [1925] 1 D. L. R. 995.—CAN.

pltf.'s right to recover the balance of money due.—NEALE *v.* RICHARDSON, [1938] 1 All E. R. 753; 158 L. T. 308; 54 T. L. R. 539; 82 Sol. Jo. 331, C. A.

87a. When contractor entitled to.]—A building contract contained a clause, numbered 30, in these words: "The contractor shall be entitled . . . under certificates to be issued by the architect to the contractor . . . to payment by the employer from time to time by instalments, when in the opinion of the architect actual work to the value of £1,000 has been executed in accordance with the contract, at the rate of 90 per cent. of the value of the work so executed in the building & materials actually on the site for use on the works until the balance in hand amounts to the sum of £2,000. . . ." By clause 32, if any dispute should arise between the employer, or the architect on his behalf, & the contractors as to the construction of the contract or as to the withholding by the architect of any certificate to which the contractors might claim to be entitled, the dispute was to be referred to an arbitrator. By another clause, No. 26, if the contractors should suspend the work, except in case of a certificate being withheld, the architect was empowered to give notice to the contractors to proceed with the work with all reasonable dispatch. Disregard of this notice might involve the contractors in serious consequences. During the progress of the work, after £9,000 or more had been paid by the employers to the contractors upon certificates given by the architect, the contractors claimed that on Mar. 11, 1929, they were entitled to a further substantial sum which had not been included in the architect's certificates. The employers insisted that the contractors had been overpaid, & that no certificate was due to them. The contractors thereupon stopped work, & the architect served upon them a notice under clause 26. The parties then submitted to an arbitrator the "disputes in regard to (*a*) the issue of certificates, & (*b*) the validity of the notice served by the architect under clause 26" of the contract. The arbitrator found that on May 11, 1929, there remained due to the contractors a sum of £793 17*s.* 10*d.*, & awarded that "having regard to the provisions of clause 30" (which he then set out as above) "the architect had up to the said 11th day of Mar. 1929, issued to the contractor certificates in accordance with the terms of the contract." He further awarded that the notice given under clause 26 was properly given & was valid:—*Held:* the arbitrator had erred in his construction of clause 30 of the contract in holding that, after the value of work done & materials on the site had reached the sum of £1,000, it was still necessary that a round sum of £1,000 should be due to the contractors in order to entitle them to a certificate; the construction of sect. 30 had not been expressly or specifically left to the arbitrator, & his award should be set aside for error in law appearing upon the face of it.—ABSALOM (F. R.), LTD. *v.* GREAT WESTERN (LONDON) GARDEN VILLAGE SOCIETY, LTD., [1933] A. C. 592; 102 L. J. K. B. 648; 149 L. T. 193; 49 T. L. R. 350, H. L.

Annotations:—**Consd.** Hitchins *v.* British Coal Refining Processes, Ltd., [1936] 2 All E. R. 191. **Expld.** John Gill Contractors, Ltd. *v.* Bromley Trading Co. (1936), 52 T. L. R. 452.

97. *Add. Annotation:*—**Refd.** Neale *v.* Richardson, [1938] 1 All E. R. 753.

107. *Add. Annotation:*—**Consd.** Milestone & Sons, Ltd. *v.* Yates Castle Brewery, Ltd., [1938] 2 All E. R. 439.

125. *Add. Annotation:*—**Refd.** Neale *v.* Richardson, [1938] 1 All E. R. 753.

126. *Add. Annotation:*—**Refd.** Neale *v.* Richardson, [1938] 1 All E. R. 753.

Part IV.—Price.

129. *Add. Annotations:*—**Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 554; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179.

PART III. SECT. 2.

o i. ——.]—The progressive estimates provided for by a road construction contract under which the contractor was entitled to receive on certificates based thereon a certain percentage of the value of the finished work as shown by said estimates:—*Held:* not to be finally binding between the parties but to be subject to revision.—*Re* NORTHERN CARTAGE & CONTRACTING CO., LTD., [1937] 1 W. W. R. 186.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—A.

102 iv. —— ——.]—D'AMOURS *v.* TROIS-PISTOLES, [1924] 4 D. L. R. 501.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—C.

108 ii. ——.]—*Held:* as soon as a dispute arose & was notified by either party the architect's certificate was eliminated as determining, or as part of the machinery for determining, the amount due to the contractor.—PIGGOTT *v.* TOWNSEND (1926), 27 S. R. N. S. W. 25; 44 N. S. W. W. N. 26.—**AUS.**

PART IV. SECT. 1.

a i. —— —— ——.]—Under a contract between a building contractor & an owner the former undertook to perform certain work in a substantial & workmanlike manner & to the full satisfaction of the owner, a specified amount of the contract price was to be retained until the completion of the work & "the balance" was to be paid thirty days after the completion, the owner was to make weekly payments to the contractor for labour & material paid for by the contractor during the previous week:—*Held:* under the express terms of the contract, entire performance was a condition precedent to payment of the balance remaining unpaid to the contractor & that substantial performance was not a compliance with the contract enabling the contractor to sue.—PAS CONSTRUCTION CO., LTD. *v.* OLENSKY, [1931] 1 W. W. R. 106; 1 D. L. R. 843; 39 Man. L. R. 332.—**CAN.**

e i. —— —— —— ——.]—MODERN CONSTRUCTION CO. *v.* SHAW, [1923] 3 D. L. R. 893; 3 W. W. R. 301.—**CAN.**

r i. —— —— ——.]—TORONTO RADIATOR MANUFACTURING CO. *v.* ALEXANDER (1895), 2 Terr. L. R. 120.—**CAN.**

st. *Percentage on cost—How calculated.*]—A contract entered into between pltfs. & defts. for the construction of a vessel by pltfs. for defts. provided that defts. were to pay pltfs. an agreed sum for the use of their plant, consisting of yard, sheds, machinery, etc., &, in addition ten per cent. above the cost of all labour & material which entered into the construction of the vessel:—*Held:* the ten per cent. must be restricted

129a. —— —— **Work abandoned.**]—SMALL & SONS, LTD. *v.* MIDDLESEX REAL ESTATES, LTD., [1921] W. N. 245.

132. *Add. Annotation :*—**Refd.** Colley *v.* Overseas Exporters, [1921] 3 K. B. 302.

135. *Add. Annotations :*—**Distd.** Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423. **Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

136. *Add. Annotation :*—**Consd.** Sagar *v.* Ridehalgh & Son. Ltd., [1931] 1 Ch. 310.

138. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

142. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

143. *Add. Annotation :*—**Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

144. *Annotation :*—For " [1910] " read " [1919]."

Add. Annotations :—**Distd.** Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423. **Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

145. *Add. Annotation :*—**Refd.** Moriarty *v.* Regent's Garage Co., [1921] 1 K. B. 423.

147a. ——*——.]—SMALL & SONS, LTD. *v.* MIDDLESEX REAL ESTATES, LTD., [1921] W. N. 245.

Part V.—Payment.

171. *Add. Annotations :*—**Consd.** *Re* Mahmoud & Ispahani, [1921] 2 K. B. 716. **Apld.** *Re* National Benefit Assurance Co., Ltd. [1931] 1 Ch. 46.

Part VI.—Alterations, Additions and Omissions.

180a. —— **Excavation in rock.**]—A contractor agreed to erect a convalescent home & agreed (*inter alia*) that the conditions of contract contained in Bill No. 1 of the bills of quantities should form part of the contract. These bills were to be deemed to have been prepared in accordance with the standard method of measurement of building works last issued by the Chartered Surveyors' Institution, which required that, where practicable, the nature of the soil should be described & attention drawn to any existing trial holes, & that excavation in rock should be given separately. Bill No. 1 of the bills of quantities referred the contractor to the drawings, the block plan & the site to satisfy himself as to the local conditions & the full extent & nature of the operations. The bills of quantities contained no separate item for excavation in rock. The existence of rock upon the site was known to the architect. It was not, however, shown upon any of the plans nor referred to in the bills of quantities :—*Held :* in the circumstances, the contractor was entitled to treat the excavation in rock as an extra, & to be paid the extra cost of the excavation plus a fair profit.—BRYANT & SON, LTD. *v.* BIRMINGHAM HOSPITAL SATURDAY FUND, [1938] 1 All E. R. 503.

to labour & material supplied by pltfs. & should not be extended to include engines, tanks, & other articles which were provided by defts. & with the supplying of which pltfs. had nothing to do.—BOEHNER *v.* BACKMAN (1922), 55 N. S. R. 325.—**CAN.**

PART IV. SECT. 2.

135 i. *General rule.*]—FISHER *v.* COX (1921), 54 N. S. R. 226 ; 57 D. L. R. 567.—**CAN.**

135 ii. ——.]—LA CROIX BROTHERS & Co. *v.* COOK (Sask.), [1926] 4 D. L. R. 747 ; [1926] 3 W. W. R. 385.—**CAN.**

136 iv. ——.]—WEBSTER *v.* MCINTOSH (Sask.), [1927] 3 D. L. R. 115 ; [1927] 2 W. W. R. 838.—**CAN.**

136 v. ——.]—EVANS *v.* DRAPER (Sask.), [1927] 4 D. L. R. 1079 ; [1927] 3 W. W. R. 507.—**CAN.**

h (p. 367) **i.** —— —— ——.]—SPEIRS, LTD. *v.* PETERSEN, [1924] S. C. 428.—**SCOT.**

141 iv a. —— —— ——.]—LYALL *v.* CLARK, [1933] 2 D. L. R. 737.—**CAN.**

146 iii. —— ——.]—WILLIAMS *v.* STEWART & CAMERON, LTD., [1923] 4 D. L. R. 855, 3 W. W. R. 1024.—**CAN.**

149 i. *Work completed after date specified—Waiver.*] — DUFFERIN CONSTRUCTION CO. *v.* THOROLD, [1929] 4 D. L. R. 132.—**CAN.**

az. *How calculated.*]—The amount to which a contractor is entitled on a *quantum meruit* is the value of the work from the point of view of the value of the services rendered by him, not the benefit to the person for whom the work is done. Meaning of " cost " discussed.—JAMIESON CONSTRUCTION CO., LTD. *v.* LACOMBE & NORTH WESTERN RY., [1926] 2 D. L. R. 653 ; [1926] 1 W. W. R. 628 ; 22 Alta. L. R. 165.—**CAN.**

aa. *Illegal contract.*]—Where in the carrying out of an illegal building contract the contractor's work & materials have been incorporated into a building he cannot recover on a *quantum meruit* based on defts.' retention of the premises, since the latter is unable to exercise an option to return the materials. In order to recover upon a *quantum meruit* there must be some evidence of a fresh contract to pay for the work done.—FARRELL *v.* SAWITSKI (Sask.), [1929] 4 D. L. R. 289 ; 3 W. W. R. 23.—**CAN.**

PART V.

g (p. 373) **i.** —— *Ascertained by intention of parties.*]—HANSON *v.* PARKS, [1925] 3 D. L. R. 1103.—**CAN.**

r i. —— ——.]—*Held :* to make the 20 per cent. retained by the owner a valid security for completion of the work, the architect in certifying 80 per cent. due should base his estimate on the proportion that the value of the work done bore to the cost of the entire undertaking.—HOPGOOD *v.* FEENER (1921), 62 D. L. R. 419 ; 62 S. C. R. 534.—**CAN.**

h (p. 374) **i.** —— *Owner giving promissory notes in default of cash—Notes discounted with bank & interest paid.*]—SMITH *v.* MCCUTCHEON, [1922] 1 W. W. R. 306 ; 67 D. L. R. 554 ; 31 Man. L. R. 413.—**CAN.**

sb. *Under cost plus percentage agreement—Part of material supplied by owner—Right of contractor to percentage on cost of such material.*]—SMITH *v.* MCCUTCHEON, [1922] 1 W. W. R. 306 ; 67 D. L. R. 554 ; 31 Man. L. R. 413. —**CAN.**

PART VI. SECT. 1.

f i. —— *Materials encountered in excavation.*]—On a contract for dam construction the contractor was held unable to recover extra for hardpan excavation, since the material was earth within the contract ; nor could he recover for rock excavation, or for remote & unjustified extras.—BISHOP (W. I.), LTD. *v.* JAMES MACLAREN & CO., [1937] 2 D. L. R. 625 ; 7 F. L. J. (Can.) 19.—**CAN.**

195. *Add. Annotation :*—**Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

199. *Add. Annotations :*—**Consd.** Diamantidi *v.* Grosvenor Securities, Ltd. & Guildhall Trust, Ltd., [1937] 1 All E. R. 703. **Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1936] 1 All E. R. 454.

200. *Add. Annotation :*—**Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1936] 1 All E. R. 454.

202. *Add. Annotation :*—**Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1936] 1 All E. R. 454.

211. *Add. Annotation :*—**Consd.** Neale *v.* Richardson, [1938] 1 All E. R. 753.

215. *Add. Annotation :*—**Refd.** Wisbech R. C. *v.* Ward, [1927] 2 K. B. 556.

Part VII.—Maintenance and Defect Clauses.

222. *Add. Annotation :*—**Consd.** Murphy *v.* Hurly, [1922] 1 A. C. 369.

Part VIII.—Breach of the Contract.

225a. Approval of council's surveyor & inspector—Subsequent discovery of breach of contract—Whether approval conclusive.]—Defts. agreed to build for pltfs. a number of houses in accordance with certain plans & specifications, the work to be carried out to the satisfaction of the surveyor & the sanitary inspector of the urban district council.

PART VI. SECT. 2, SUB-SECT. 1.

186 i. *Written contract—Evidence to vary inadmissible.*]—KARSGAARD *v.* BAILEY, [1931] 1 D. L. R. 85.—**CAN.**

sd. *Prices for extras agreed on.*]—BLAIS *v.* PARADIS, [1933] S. C. R. 452; [1933] 4 D. L. R. 814.—**CAN.**

sf. *Contract with municipality—Compulsory employment of labour.*]—A municipality which compels a contractor to employ labour from men on public relief, thereby increasing his costs, is liable in damages for the variation in the contract.—CHERICO *v.* SUDBURY, [1937] 2 D. L. R. 92.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

195 ii. —— ——.]—Where a contractor chooses to adopt a more expensive method of carrying out his contract than the contract properly interpreted calls for the loss is his own. —GEORGIA CONSTRUCTION CO. *v.* PACIFIC GREAT EASTERN RY. CO. (B. C.), [1929] 1 D. L. R. 77; [1928] 3 W. W. R. 466; *on appeal*, [1929] 4 D. L. R. 161; S. C. R. 630.—**CAN.**

e (p. 380) **i.** —— ——.]—A contract for the execution of road making works for a municipal council provided that no extra works done by the contractor would be paid for unless there were an order in writing & a certificate of the engineer in respect of them. Pltf. alleged that certain extra works were in fact done at the oral request of the engineer & with his knowledge, & that certain of the extra works were actually paid for by progress payments on the work completed, that deft. stood by & took the benefit of the extra works, & that he thereby had been induced to believe that deft. would not require written orders, & had acted to his detriment in the belief so induced :—*Held :* even if these allegations were proved, they did not establish either waiver or estoppel.—BYSOUTH *v.* SHIRE OF BLACKBURN & MITCHAM (No. 2), [1928] V. L. R. 562; [1928] Argus L. R. 337.—**AUS.**

sc. *Entire contract.*]—Pltf. contracted to perform the whole of the works required in & about the construction of a concrete retaining wall for deft. for a fixed price according to a certain plan & specification. The contract provided that the specification should form & be construed as forming part of the agreement. It also required pltf. to build the wall in a certain position. This involved removing a sand bank. The plan showed a bank approximately 6 ft. in width. Pltf. claimed that the bank was 12 ft. in width, & he brought an action on the common counts for the work & labour done in removing the extra 6 ft. :—*Held :* the contract was an entire contract to build the wall for a fixed price & that inasmuch as the specification was, & the plan was not, expressly incorporated in the contract, pltf.'s obligation to complete the works for the agreed price was not affected by the alleged understatement in the plan, & therefore he was not entitled to recover payment for extra work occasioned thereby.—WALKER *v.* RANDWICK MUNICIPALITY COUNCIL (1930), 30 S. R. N. S. W. 84; 47 N. S. W. W. N. 20.—**AUS.**

se. *Alternative methods of carrying out contract.*]—Where there are equivalent methods for carrying out the contract no extras caused by the adoption of one may be recovered without a new agreement.—QUEBEC *v.* DUMONT, [1936] 1 D. L. R. 446.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

gi. —— *No estimate given.*]—PRICE *v.* SWIFT CANADIAN CO., LTD. (1932), 4 M. P. R. 543.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.

216 i. *Right of contractor to abandon contract.*]—The contract in question was for the construction of an Ice Pier at Barrington Passage, N. S. The specification (*inter alia*) provided that the foundations for the crib "must be excavated by means of a dredge to the rock & cleared off by a diver." This the contractor found more difficult than he anticipated, & he told the District Engineer that the excavation by dredge was impossible of performance. Thereupon the District Engineer verbally relieved him of the dredging, the foundation area for crib to be levelled off with bags of concrete, etc., but refused to put the instructions in writing. The contractor would not carry on, & the work was taken out of his hands for delay in execution of the contract. Hence the present action for damages alleged to have been suffered :—*Held :* if a party by his contract charges himself with an obligation possible to be performed he must make good, unless the performance becomes impossible in law or in fact, or by the conduct of the other party. If what is agreed is possible & lawful, it must be done. The changes in the work under the contract made by the District Engineer in this case were not matters of detail, but, from an engineering standpoint, were fundamental changes which could only be authorised by the Chief Engineer.—BOONE *v.* R., [1933] Ex. C. R. 33; *revsd.* [1934] 3 D. L. R. 161; S. C. R. 457.—**CAN.**

PART VII.

r i. —— *Defect due to unsuitability of subject-matter of contract—Method of repair.*]—*Held :* the obligation of the contractor was not affected by the alleged fact that the material was not suitable to the climatic conditions. If a method of repair as satisfactory but less expensive than that called for by the contract could be secured by the owner, he should be bound to accept it.—BLOME *v.* REGINA (CITY), [1920] 1 W. W. R. 311; 50 D. L. R. 93; 13 Alta. L. R. 94.—**CAN.**

sd. *Liability of contractor for defects—Materials supplied by contractor.*]—WEBSTER *v.* MCINTOSH (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—**CAN.**

222 i. *Notice to remedy defects—Failure to comply with—Liability of contractor.*]—Where a contractor was notified of defects by the owner & wrongly insisted that they were trifling & could be fixed up at slight expense, but the owner refused to accept repairs of that sort & employed a carpenter to do the necessary work :—*Held :* the contractor had all the notice & opportunity to repair properly which he could have claimed, even if the contract had expressly provided for such notice.—WEBSTER *v.* MCINTOSH (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—**CAN.**

PART VIII. SECT. 1.

k i. —— *Different contractors for building & joiner work.*]—A builder contracted to carry out the building & plastering work in connection with the erection of a house, & another contractor undertook to carry out the joiner work. The builder finished his work, & the owner accepted possession of the house & paid two instalments of the account. Afterwards the outside walls began to crack, & it was discovered that the walls were off the plumb. In an action by the builder for the balance of his account, the owner averred that the defect in the walls was occasioned by the use of faulty materials in the construction of the concrete floors by the builder.

The houses were completed to the satisfaction of the surveyor & the inspector, & pltfs. sold them at a profit. In fact the express agreement to cement & the implied agreement to do the work properly had been broken, & on complaint by the purchasers pltfs. carried out repairs to put the houses in a habitable state, & they sued defts. for the cost of the repairs. Defts. contended that they were under no liability as the surveyor & the inspector had approved of the work, that pltfs., having sold the houses at a profit, had suffered no damage, & that, as the repairs were only an act of generosity, pltfs. could not recover the cost:—*Held:* there being in the contract no statement that the approval of the surveyor & the inspector was to be final & conclusive, their approval was only a superadded protection, & pltfs. were entitled to recover the difference between the value of the houses as they ought to have been when completed & their value in fact. —NEWTON ABBOT DEVELOPMENT CO., LTD. *v.* STOCKMAN BROS. (1931), 47 T. L. R. 616.

225b. Liability for defects limited to defects discovered within five years—Discovery within five years—Effect on subsequent discoveries.] —A district council employed contractors to make a road, the contract containing the following clause: "Should it at any time subsequent to the termination of the period of maintenance up to but not exceeding a period of five years from the date of the completion of the works be discovered that the terms of this specification have been violated by the execution of bad, insufficient or inaccurate work the council shall be at liberty to make good such work & to recover the cost thereof from the contractor . . ." :—*Held:* the council could recover only for the defects discovered within the five years to the actual extent of that discovery, & such discovery did not entitle the council to recover for defects thereafter discovered.—MARSDEN URBAN DISTRICT COUNCIL *v.* SHARP (1931), 48 T. L. R. 23, C. A.

230a. —— Excess of cost of completion over contract price.]—By a contract in writing dated May 12, 1916, deft. agreed to build for pltf. a house, subject to the conditions set forth in the schedule thereto, for the sum of £1,900. The conditions provided (*inter alia*) that deft. should begin the works immediately after possession of the site was given to him, & should regularly proceed with & complete the same within six months after the date of the plans being passed by the local authority, & that if deft. should suspend the works or should not proceed with them with due diligence, pltf. by his architect should have power to give notice to deft. requiring him to proceed, & on failure of deft. to comply with such notice for thirty days pltf. should be entitled to enter upon & take possession of the works & site & employ any other person to complete the works. On July 10, 1916, the plans were duly passed. On July 14, 1916, an order was made by the Minister of Munitions under the powers of the Defence of the Realm (Consolidation) Regulations, 1914, which provided that on & after July 20, 1916, no person should without licence from the Minister of Munitions commence or carry on any building or construction work. On July 21 deft. applied for a licence to proceed, & continued to work fairly well until Aug. 12, when he ceased to proceed with due diligence with the deliberate intention, as the ct. held, of ensuring that the licence should be refused & that he should thereby be enabled to put an end to the contract. On Sept. 9 pltf.'s architect gave him thirty days' notice to proceed with the works. On Sept. 30, before the expiration of the notice, the Minister of Munitions refused to grant the licence to proceed. In an action by pltf. for damages for breach of contract:—*Held:* deft. could not take advantage of the intervention of the Minister of Munitions, which was brought about by his own act, & the proper measure of damages was what it cost pltf. to complete the house substantially as it was originally intended & in a reasonable manner at the earliest moment he was allowed to proceed with the work, less any amount that would have been due & payable to deft. by pltf., had deft. completed the house to the roofing-in at the time agreed by the terms of his contract.—MERTENS *v.* HOME FREEHOLDS CO., [1921] 2 K. B. 526; 90 L. J. K. B. 707; 125 L. T. 355, C. A.

230b. —— House improperly built—Difference between value in fact & proper value.]—NEWTON ABBOT DEVELOPMENT CO., LTD. *v.* STOCKMAN BROS., No. 225a, *ante*.

The builder averred that the damage to the walls was caused by the use of unseasoned timber in the construction of the roof by the other contractor. Neither of these averments was established at the proof, but either of them might have been the cause of the cracking of the walls:—*Held:* breach of contract had not been established against pursuer, & he was entitled to decree for the balance of the contract price.—CARRUTHERS *v.* MACGREGOR, [1927] S. C. 816.—**SCOT.**

sf. *Deposit of funds as security for due construction—Default by employer—Return of bonds.*]—CANADIAN TERMINAL SYSTEM, LTD. *v.* KINGSTON CORPN., [1936] S. C. R. 106; [1935] 4 D. L. R. 713.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

a (p. 388) l. —— ——.]—Where a builder prepares plans & specifications for work that he constructs, there is no rule of law that he thereby assumes the responsibility of an architect & is under the same liability. It is a question of fact whether in the circumstances of each particular case a necessary inference arises that the builder represented that he was competent to fulfil the full duties of an architect.—STEIN *v.* ANDERSON, [1937] N. Z. L. R. 491; 13 N. Z. L. J. 179.—**N.Z.**

r (p. 389) l. —— —— ——.]—Where no time had been set for the completion of a roof, which deft. agreed to build on pltf.'s hotel, & at the expiration of a reasonable time the contractor left it unfinished, & the owner agreed to the contractor undertaking to complete it within a further period:—*Held:* the contractor was not liable in damages where, within that period, the unfinished condition of the roof resulted in its destruction by a storm & consequentual damage by rain to the hotel.—DUMONT *v.* LANDRY (Sask.), [1927] 3 D. L. R. 605; [1927] 2 W. W. R. 869.—**CAN.**

b (p. 389) l. —— ——.]—DOE & ROMAN CATHOLIC EPISCOPAL CORPN. OF DIOCESE OF LONDON, IN ONTARIO *v.* CANADIAN SURETY CO., BLONDE *v.* DOE, [1937] S. C. R. 1; 1 D. L. R. 145.—**CAN.**

e (p. 389) l. —— *Right to general damages—Not where no evidence of loss beyond specific damage.*]—EVANS *v.* DRAPER (Sask.), [1927] 4 D. L. R. 1079; [1927] 3 W. W. R. 507.—**CAN.**

h (p. 390) l. —— *Cost of alteration.*] —Where a building as constructed does not comply in respect to the quality of the work or material with that called for by the contract the measure of damages is the cost of such alterations or repairs as are necessary to bring about compliance with the contract.—PEARSON-BURLEIGH, LTD. *v.* PIONEER GRAIN CO., LTD., [1933] 1 W. W. R. 179; 1 D. L. R. 714; 41 Man. L. R. 65.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.

b l. *Failure to furnish plan.*]—*Held:* delay & loss from spring flood of river were not attributable to delay in furnishing plan, & therefore employer was not liable.—CREELMAN *v.* CANADIAN PACIFIC RAILWAY, [1932] 4 D. L. R. 798.—**CAN.**

238. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 481.

243. *Add. Annotations :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., Ltd. (1931), 47 T. L. R. 373 ; Pearl Assurance Co. *v.* South Africa Union Government, [1934] A. C. 570.

262. *Add. Annotation :*—**Apld.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

263. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

265a. ——.]—A bill will not lie to compel the performance of an agreement to build an house.—ERRINGTON *v.* AYNESLY (1788), 2 Bro. C. C. 341 ; 2 Dick. 692 ; 21 E. R. 440.

273a. —— **Non-compliance with building regulations.**]—Deft. agreed to erect a house according to a plan to be approved by pltfs., & according to the regulations of Metropolitan Building Acts. Pltfs. approved a plan, but it was objected to by the Board of Works :—*Held :* deft. must specifically perform his contract, subject to the plan being modified to conform with the regulations of the Board of Works.—CUBITT *v.* SMITH (1864), 11 L. T. 298 ; 28 J. P. 820 ; 10 Jur. N. S. 1123.

Annotation :—**Refd.** Wolverhampton Corpn. *v.* Emmons, [1901] 1 K. B. 515.

Part IX.—Excuses for Non-Performance.

279. *Add. Annotations :*—**Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455 ; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544 ; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532 ; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179.

282. *Add. Annotations :*—*As to* (2) **Refd.** Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526 ; Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132 ; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Meduila (1923), 92 L. J. K. B. 455 ; Cantiere Navale Triestina *v.* Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579 ; Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298 ; The Penelope, [1928] P. 180 ; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1 ; May *v.* May (1929), 98 L. J. K. B. 770 ; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274 ; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

285a. —— —— **Brought about by contractor's own act.**]—MERTENS *v.* HOME FREEHOLDS Co., No. 230a, *ante*.

287a. —— **Indemnity Act, 1920 (c. 48)—"Direct & particular interference with business"—What is.**]—The claimant whose business was that of a steam-trawler owner had a contract with a firm of trawler builders to build for him a number of trawlers. Before the builders had commenced to build the trawlers so contracted for the Admiralty issued an order to them under Reg. 8A of the Defence of the Realm Regulations, directing them not to proceed with any work on vessels for private owners, but to work for the Admiralty instead. At the time of making that Order the Admiralty had full knowledge of the existence of the claimant's contract with the builders. By reason of the order he suffered substantial loss. On a claim being made for compensation under Indemnity Act, 1920 (c. 48), s. 2 (1) (b) & Sched., Part II. :—*Held :* the Admiralty's knowledge of the contract was wholly immaterial, & in so far as the order interfered with claimant's business it was only a secondary & indirect interference, with the result that claimant was not entitled to compensation.—BLACK *v.* ADMIRALTY COMRS., [1924] 1 K. B. 661 ; 93 L. J. K. B. 341 ; 130 L. T. 711 ; 40 T. L. R. 316 ; 68 Sol. Jo. 866, C. A.

Annotation :—**Refd.** Brocklebank, Ltd. *v.* R., [1925] 1 K. B. 52.

Part X.—Forfeiture.

293. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

PART VIII. SECT. 3, SUB-SECT. 1.

243 i. —— *Deduction of value of incompleted work with fifty per cent. thereon — Penalty.*]—MACDONALD *v.* NORTH WEST BISCUIT Co., [1924] 1 D. L. R. 987 ; 1 W. W. R. 795.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.

si. *Owner taking possession before completion.*]—CASSIDY (A. W.) & Co. *v.* HICKS (Sask.), [1929] 2 D. L. R. 353.—**CAN.**

PART IX. SECT. 1.

ri. ——.]—A contractor who entered into a contract with a municipality for the construction of a sewer system is bound to do the work necessary to shore up the sides of the trenches when he is met with a condition of the soil generally known as quicksand ; & that fact is not a sufficient cause which would justify the ct. to set aside the contract on the ground that its performance is impossible. Even if the contract provides that the work will be performed under the supervision of the city engineer, the contractor cannot complain of the fact that the engineers had not given him any instructions or advice as to the way the trenches should be cribbed, as he was at liberty to do such work in his own way without the permission of the engineer as long as the latter was not making any formal objection.—RIVET *v.* LA CORPORATION DU VILLAGE DE ST.-JOSEPH, [1932] S. C. R. 1.—**CAN.**

PART IX. SECT. 3.

sg. *Supply of defective materials.*]—In an action wherein the contractor sued to recover the balance of the contract price unpaid under a contract to drill an oil well, & the owner pleaded that the contract had not been completed, it was found that the contractor had carried out the contract except with respect to bailing the well, & that he was prevented from doing so because the casing pipe supplied by the owner was too light & had collapsed :—*Held :* therefore, the case was one coming under the principle that where under the terms of a building contract mutual obligations are imposed on both parties with respect to carrying out the contract, & as a result of the failure of the owner to fulfil his obligations the contractor is unable to finish the work completely, the fact that the work was not fully completed does not disentitle the contractor to recover the full contract price.—UNION DRILLING & DEVELOPMENT Co., LTD. *v.* CAPITAL OIL & NATURAL GAS Co., LTD., [1931] 1 W. W. R. 786 ; *affd.*, [1931] 2 D. L. R. 851 ; 2 W. W. R. 508 ; *affd.*, [1931] 3 D. L. R. 656.—**CAN.**

Part XI.—Materials.

312. *Add. Annotation :—As to* (1) **Apld.** *Re* Blyth Shipbuilding & Dry Docks Co. Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

316. *Add. Annotation :—***Reld.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

318. *Add. Annotation :—***Apld.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

319. *Add. Annotation :—***Distd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

319a. —— ——.]—A shipbuilding contract provided for payment of the price of the vessel by instalments, the first to be paid on the signing of the contract, the next when the keel was laid, & others at various stages in the progress of the ship's construction. She was to be constructed under the inspection of the purchasers' surveyor, to whose approval the quality of the material used & the workmanship were to be subject. Clause 6 provided that from & after payment by the purchasers to the builders of the first instalment on account of the price the vessel & all materials & things appropriated for her should thenceforth, subject to the lien of the builders for unpaid purchase-money including extras, become & remain the absolute property of the purchasers. After the first instalments of the purchase-money had been paid & the vessel had been partly constructed, a receiver was appointed in an action commenced by debenture-holders of the shipbuilding co. for enforcing their security :— *Held :* certain worked material lying in the yard ready to be incorporated into the hull of the vessel & approved by the purchasers' surveyor, had not been "appropriated for her" within the above clause so as to become the property of the purchasers.—*Re* BLYTH SHIPBUILDING & DRY DOCKS CO., FORSTER *v.* BLYTH SHIPBUILDING & DRY DOCKS CO., [1926] Ch. 494 ; 95 L. J. Ch. 350 ; 134 L. T. 643, C. A.

*Annotations :—***Reld.** Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649 ; Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

325a. Erection of temporary building for special purpose—Agreement for return of materials.] —Pltf. agreed with deft., who was mayor of H., to erect the hustings for the election for the borough of H., as before with alterations, for £19 10*s.* by receiving the wood back again. After the election was ended, the mob carried the wood of the hustings away. In *assumpsit* for not returning the wood :— *Held :* deft. was bound to return the wood, by putting the hustings safely into the possession of pltf.—FULLER *v.* PATTRICK (1849), 18 L. J. Q. B. 236 ; 13 L. T. O. S. 185 ; 13 Jur. 561.

Part XII.—Assignment and Devolution of Rights and Liabilities.

340. *Add. Annotation :—***Consd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

341. *Add. Annotations :—As to* (1) **Consd.** *Re* National Benefit Assce., [1924] 2 Ch. 339 ; *As to* (2) **Reld.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. *As to* (3) **Apld.** *Re* City Life Assce., [1926] Ch. 191. *As to* (4) **Consd.** *Re* National Benefit Assce., [1924] 2 Ch. 339.

342. *Add. Annotation :—***Reld.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730.

342a. ——.]—Pltfs. claimed £1,000 being retention moneys due from defts. to a firm of contractors. Pltfs. claimed under an assignment dated Apr. 7, 1924. On Nov. 21, 1922, defts. entered into a building contract for a lump sum with S., the contractors, for the construction of a number of cottages under a housing scheme. The contract provided for interim payments, but no money was to become payable to the contractors except on the architect's certificate in writing, & certificates were to be issued when work to the value of £1,000 had been executed & thereafter at monthly intervals as certified by the architect in writing. He was to certify the amount from time to time payable to the contractors under the contract. The amount to be certified by the architect on his first & monthly certificates as due to the contractors was to be at the rate of 90 per cent. of the value of the work, including extras. The balance of 10 per cent. of the value of the work was to be retained until the sum so retained, called a retention fund, should amount to £2,472 after which the contractors were to be paid monthly to the full value of the work done & the materials supplied. The retention fund was to be deposited in a bank until the final adjustment of accounts. The contract was varied by consent, & in the events which happened the retention fund amounted to £1,000 at the beginning of 1924. This was never deposited at the bank & remained a merely notional fund, but both parties treated it as a separate sum capable of being earmarked.

XI. SECT. 2, SUB-SECT. 1.

1. ——.]—An unpaid builder as such has no lien upon the building in his possession for the balance due to him, unless under the contract for construction.—N. P. A. CHETLIAR FIRM *v.* SHARMA (1927), I. L. R. 6 Ran. 87.—IND.

It was included without distinction in the architect's final certificate for £1,848 10*s.* 2*d.* on Jan. 28, 1927. Meanwhile pltfs., who were supplying cement to the contractors, found that the latter were getting into arrears with their payments & to obtain further credit the contractors, being then indebted to pltfs. in the sum of £671 on Apr. 7, 1924, assigned to them the retention fund by a document dated Apr. 7, 1924, in the following terms: "In part reduction of the amount now, or to be, owing from us to you for goods supplied by you, we hereby assign to you all moneys now or hereafter to become due to us from the Hemsworth R. D. C. for retention moneys in respect of the G. housing scheme. & for which your receipt shall be a sufficient discharge. It is understood that we are only to be credited with the amount actually paid to you under this assignment as & when the same is received by you." Due notice of that assignment was given by pltfs. to defts. on the following day. This was acknowledged by defts. on May 26, 1924. By that time the contractors had issued a number of debentures to the M. & C. Bank. These debentures were dated at various periods from Feb. 1, 1900, to Feb. 2, 1924, & they charged the undertaking & property, both present & future, of the contractors, the charge being a specific charge on their freehold & leasehold property, machinery, goodwill, & uncalled capital & a floating charge on all the co.'s other assets, subject to a proviso that the contractors were not to be at liberty to create any mtge. or charge on any of the assets in priority to the debentures. A receiver for the debenture holders was appointed in Oct. 1924, & he duly entered into possession. Seven days after the appointment of the receiver a resolution was passed for the voluntary winding-up of the co. The receiver refused to recognise the right of pltfs. to payment under their assignment in priority to the debenture holders, & on the architect's certificate being given in Jan. 1927, defts. declined to interplead & paid the retention moneys to the receiver for the debenture holders:—*Held:* the assignment in question was a good legal assignment & pltfs. were entitled to sue on it. The retention fund in this case arose out of an existing contract, & although it did not become payable until a date later than that of the assignment, it was a debt or other legal thing in action which could be assigned. The assignment was within Jud. Act, 1873, s. 25, & Law of Property Act, 1925 (c. 20), s. 136. It could be sued on by the assignee without joining the assignor as a party. Pltfs. were therefore entitled to recover on the assignment.—EARLE (G. & T.) (1925), LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL (1928), 140 L. T. 69; 44 T. L. R. 758, C. A.

344. *Add. Annotations:* — **Refd.** Cottage Club Estates *v.* Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; *Re* Wait, [1927] 1 Ch. 606; Earle *v* Hemsworth R. D. C. (1928), 140 L. T. 69; Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

345. *Add. Annotations:*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

45a. Effect of—On contractor's rights under arbitration clause.]—Building contractors assigned to a bank all money due & to become due to them under a building contract, which contained an arbn. clause, & the proper notice of the assignment was served on the building owners. Disputes having arisen regarding a claim by the contractors for compensation & extra payment, recourse was had to arbn.:—*Held:* (1) the arbitrator had jurisdiction to entertain the arbn., since the contractors' rights under the arbn. clause did not constitute a "legal" or "other remedy" for the debt within Law of Property Act, 1925 (c. 20), s. 136 (1), & were not passed & transferred to the bank by the assignment; (2) the arbitrator had to consider not merely the terms of the contract within the limits of the document, but also the application & enforcement of those terms, having regard to the whole legal position which the parties had created, including the relinquishment by the contractors themselves by the assignment of their right to claim the debt, & he must make his award in favour of the building owners.—COTTAGE CLUB ESTATES *v.* WOODSIDE ESTATES CO. (AMERSHAM), [1928] 2 K. B. 463; 97 L. J. K. B. 72; 139 L. T. 353; 44 T. L. R. 20; 33 Com. Cas. 97.

347. *Add. Annotation:*—**Consd.** Ahmed Angullia Bin Hadjee Mohamed Salleh Angullia *v.* Estate & Trust Agencies (1927), Ltd., [1938] A. C. 624.

348. *Add. Annotation:*—**Consd.** Ahmed Angullia Bin Hadjee Mohamed Salleh Angullia *v.* Estate & Trust Agencies (1927), Ltd., [1938] A. C. 624.

349. *Add. Annotation:*—**Consd.** Ahmed Angullia Bin Hadjee Mohamed Salleh Angullia *v.* Estate & Trust Agencies (1927), Ltd., [1938] A. C. 624.

Part XIII.—Substituted Contracts and Sub-Contracts.

363. *Add. Annotation:*—**Consd.** Milestone & Sons, Ltd. *v.* Yates Castle Brewery, Ltd., [1938] 2 All E. R. 439.

365a. —— On architect's certificate—Validity.]—Pltfs. contracted to build a hotel for defts., the contract being in the standard form recommended by the Royal Institute of British Architects (1909 edition). When the greater part of the work had been completed & paid for, pltfs. went into liquidation. The balance of the contract price outstanding at that time was £1,234 16*s.* 6*d.* As to £643 0*s.* 9*d.*, part of that balance, defts. contended that they were entitled by the terms of the contract to pay it direct to various subcontractors, who had been nominated by defts.' architect. The architect had issued a certificate in favour of the contractors, including sums due to subcontractors, & later, in some cases on the day on which the writ in this action was issued, & in others at a later date, gave certificates

in respect of the same matters in favour of the subcontractors. No contractual obligation to the subcontractors was pleaded, but reliance was placed upon a clause in the contract which said that such sums should be paid to the subcontractor by the contractor or by the employer as the architect should direct:—*Held:* the certificates in favour of the subcontractors were invalid, & did not empower defts. to pay the subcontractors direct.—MILESTONE & SONS, LTD. *v.* YATES CASTLE BREWERY, LTD., [1938] 2 All E. R. 439.

369a. —— **Dismissal of sub-contractor at request of employer.**]—Deft., a contractor, had contracted to divert a road for a county council, &, as incidental to that purpose, to make a tunnel. The work of excavating for the tunnel was sub-contracted to a firm called C. Bros. This firm was later turned into a limited co. & a receiver was appointed by the debenture holders. The receiver elected to complete the sub-contract, but, hampered by lack of money, he was unable to proceed with the work at the speed the contract required. The head contract contained a clause giving the engineers of the county council, if they were dissatisfied with any subcontractor, power to require his removal. The sub-contract, which contained many provisions in similar terms to those in the head contract, contained no clause providing for the contingency of the engineers giving a notice under the above clause. The engineers served such a notice: *Held:* (1) as the parties had the head contract before them when they entered into the sub-contract, they must be taken to have had in contemplation the possibility of the engineers giving such a notice, & a term could not be implied in the sub-contract giving the contractor power, as between him & the subcontractor, upon such a notice being given, to put an end to the sub-contract; (2) a recital that the sub-contractor had agreed to carry out the work in accordance with the terms of the principal contract did not, where other clauses were expressly included, incorporate the clause of the principal contract here in question; (3) the effect of the giving of the notice was to give the subcontractor the right to sue for breach of contract or upon a *quantum meruit* basis. He was not obliged to wait until the date of completion arrived & then sue on a breach of contract.—CHANDLER BROS., LTD. *v.* BOSWELL, [1936] 3 All E. R. 179; 80 Sol. Jo. 951, C. A.

373a. **Liability for injury to workman.**]—Pltf. was a workman engaged in building operations. The first defts. were the general contractors, & the second defts. were subcontractors engaged in putting in the staircases in a new building. At the material time, there was a ladder (provided by the general contractors) from the ground up to the second floor, but no ladder from the ground to the first floor. The subcontractors had put in a staircase from the ground to the first floor, which was incomplete in the following respects: there was no handrail or bannisters, none of the risers were in, & one tread, the tenth from the bottom, & immediately beneath a landing half-way up the staircase, was missing. Pltf., almost immediately before the accident, had gone up this staircase without mishap, which he explained by saying that he went up two steps at a time, but, upon coming down, his foot slipped through the hole due to the missing tread, & he was seriously injured:—*Held:* (1) pltf. had no cause of action against the subcontractors, as the staircase was obviously incomplete; (2) the absence of a ladder from the ground to the first floor was not in effect an invitation to workmen to use the incomplete staircase; (3) the contractors had no power to invite or license any person to use the incomplete staircase, which could only be done by the subcontractors; (4) the accident was due to pltf.'s own want of care, & the action failed.—HOWARD *v.* FARMER & SON, LTD., [1938] 2 All E. R. 296; 82 Sol. Jo. 351, C. A.

Part XIV.—Guarantees and Sureties.

383a. — **Loans to debtor by creditor.**]—A firm of contractors agreed to construct a new & enlarged dock. The Dock Board required a guarantee for the performance of the contract & defts. gave a joint & several bond in the sum of £50,000 conditioned for the due performance of the contract:—*Held:* (1) this was a contract of guarantee & not of insurance; (2) by clause 7 of the agreement the Dock Board had made it clear that they were a non-disclosing body & they had thereby contracted out of any duty to disclose; (3) loans of £45,000 made to the contractors by the Dock Board out of a fund provided by the Treasury under Trade Facilities Act, 1921 (c. 65), & of which the guarantors had no knowledge, were outside the construction contract & therefore outside the guarantee; & no certificate of the Dock Board engineer, though agreed to be final & binding upon them, could make the guarantors liable in respect of such loans; (4) such advances, though repayable by an increased percentage of retention money, were not a variation of

PART XIII. SECT. 2, SUB-SECT. 2.

n i. —— *Dismissal of sub-contractor by architect.*]—Deft., a sub-contractor, gave pltf., a contractor, a price for certain work in connection with a building. The contractor was bound by general conditions of contract; those conditions were not defined nor in the contemplation of the parties when the sub-contractor's price was given & accepted, nor did he ever become party to them, although they were referred to & incorporated in certain specifications according to which the sub-contractor was bound to work:—*Held:* the sub-contractor was not bound by a term in the general conditions whereby the architect had power to dismiss a sub-contractor.—OSBURN *v.* LEGGETT, [1930] S. A. S. R. 346.—**AUS.**

372 ii. —— *Mechanic's lien action pending against sub-contractor—Liability for sales tax.*]—HOPE (HENRY) & SONS, LTD. *v.* SHEEHY (RICHARD) & SONS (1922), 52 O. L. R. 237.—**CAN.**

c i. —— ——.]—Contractors:—*Held:* entitled to damages for breach of contract by sub-contractors by reason of materials not being delivered in time.—HOPE (HENRY) & SONS, LTD. *v.* SHEEHY (RICHARD) & SONS (1922), 52 O. L. R. 237.—**CAN.**

the contract & therefore not a discharge of the guarantors.—TRADE INDEMNITY CO., LTD. *v.* WORKINGTON HARBOUR & DOCK BOARD, [1937] A. C. 1; [1936] 1 All E. R. 454; 105 L. J. K. B. 183; 154 L. T. 507; 41 Com. Cas. 186, H. L.

383b. —— Bond to indemnify road authority—Authority stated to be rural district council—Authority in fact county council.]—On June 6, 1930, in consideration of the issue by pltf. co. of a bond on behalf of F. "in favour of the Gower R.D.C.," in connection with a contract for road improvement, defts. undertook to indemnify pltf. co. against all losses incurred in consequence of having issued the bond. On July 4, 1930, pltf. co. & F. bound themselves by a bond issued in favour of the Glamorgan C.C. which had by virtue of the Local Government Act, 1929 (c. 17), s. 30, become the competent road authority on Apr. 1, 1930. Pltf. co. became liable to perform its obligations under the bond, & it thereupon sought to be indemnified by defts. Defts. did not know, when they gave their undertaking that the Glamorgan C.C. had become the competent road authority:—*Held:* (1) the maxim *ignorantia legis neminem excusat* was not applicable; (2) the words in the undertaking "in favour of the Gower R.D.C." were not mere surplusage & immaterial, & it could not be inferred that defts. meant "the competent road authority"; (3) there was no evidence that defts. misled pltf. co. by their conduct, & defts. were not estopped from saying that they had never agreed to indemnify pltf. co.—PROVIDENT ACCIDENT & WHITE CROSS INSURANCE CO., LTD. *v.* DAHNE & WHITE, [1937] 2 All E. R. 255; 81 Sol. Jo. 421.

Part XV.—Arbitration Clauses.

386. *Add. Annotation:*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

387. *Add. Annotation:*—**Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

388. *Add. Annotation:*—**Refd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

388a. Clause restricting time for opening reference—"Until after completion of works"—Meaning of.]—The form of building contract issued by the Royal Institute of British Architects provides, by condition 31 in the schedule thereto, that should the building owner not pay the builder any sum certified by the architect within the time limited by the contract, the builder is to be at liberty to determine the contract & recover from the building owner payment for all work executed. Condition 32 provides that in case any difference shall arise between the building owner & the builder as to the construction of the contract or as to any matter arising thereunder, such difference is to be referred to arbn., but that "such reference . . . shall not be opened until after the completion of the works." During the progress of certain works which were being carried out under a building contract in the above form the building owner neglected to pay the builder a sum certified by the architect within the stipulated time, & thereupon the builder determined the contract under condition 31. The builder commenced arbn. proceedings while the contract works were still uncompleted, & the arbitrator made an award in his favour for the money due to him under the contract:—*Held:* the words "until after the completion of the works" in condition 32 meant until after completion of the whole of the works contracted for, & not merely until after completion of so much of the works as the builder was under the circumstances bound to perform; consequently the arbn. was premature & the arbitrator had no jurisdiction to make the award; or at all events the validity of the award was sufficiently doubtful to render it improper to enforce it summarily.—SMITH *v.* MARTIN, [1925] 1 K. B. 745; 94 L. J. K. B. 645; 133 L. T. 196, C. A.

390. *Add. Annotation:*—**Refd.** Trade Indemnity Co. *v.* Workington Harbour & Dock Board, [1937] A. C. 1.

397a. —— Manner in which work done.]—PRESTIGE & CO., LTD. *v.* BRETTELL, [1938] 4 All E. R. 346; 55 T. L. R. 59; 82 Sol. Jo. 929, C. A.

PART XV. SECT. 1.

h i. ——.]—A contract for the construction of a covered way from the mainland to a lighthouse contained an arbn. clause, the first part of which referred all disputes, whenever arising, as to the contract & its execution to the employers' engineer, while the second part referred any dispute or claim arising after, or consequent on, the completion of the contract to another engineer. A dispute having arisen as to the rate payalbe for the removal of certain rock, the contractors refused to continue the work, & the employers took the work out of their hands. An action having been brought by the contractors for payment of sums alleged to be due under the contract & for damages:—*Held:* as the work was still in progress, the first part of the arbn. clause applied, it being immaterial that the work had been taken out of the hands of the pursuers, & action sisted to allow the arbn. to proceed.—CRAWFORD *v.* NORTHERN LIGHTHOUSES COMRS., [1925] S. C. (H. L.) 22.—SCOT.

li. —— *Breach of contract alleged against engineer—Engineer appointed by contract as arbitrator.*]—One of the conditions of a road-making contract between pltf. & deft. provided that any dispute relating to any alleged breach of contract by deft. should from time to time be referred to & be decided by the award of deft.'s engineer. Alleging that by reason of breaches of the contract committed by deft. by its engineer deft. had repudiated the contract, which repudiation pltf. had elected to accept as a rescission of the contract, pltf. brought an action for damages or for work & labour done. Deft. applied under Arbn. Act, 1928, s. 5, for a stay of the proceedings. It was admitted by pltf. that the breaches of contract alleged were amongst the matters agreed to be referred. Deeming himself bound by authority:—*Held:* although deft. was otherwise entitled to have the proceedings stayed until the matters agreed to be referred had been referred to the appointed arbitrator, in which case the ct. could afterwards determine whether on his decision there had been a repudiation of the contract, yet in the exercise of its discretion under the sect. the ct. should not compel pltf. to accept a tribunal which in the circumstances had become unsuitable for the determination of the dispute which had arisen. The matter should therefore stand over to enable the parties to agree upon another arbitrator; failing such agreement the appeal should be dismissed.—MODERN ROAD CONSTRUCTION CO. PTY., LTD. *v.* MELBOURNE HARBOUR TRUST COMRS., [1932] V. L. R. 275; Argus L. R. 237.—AUS.

PART XV. SECT. 4.

e i. —— ——.]—A building contract contained a clause referring all disputes arising under the contract to the arbn. of the employers' engineer, who in fact superintended & directed the work:—*Held:* as the contractors had agreed to the appointment of the engineer as arbiter, they could not object to his acting upon the ground that he was an interested party with a bias.—CRAWFORD *v.* NORTHERN LIGHTHOUSES COMRS., [1925] S. C. (H. L.) 22.—SCOT.

Part XVI.—Architects and Engineers.

425. *Add. Annotations:*—**Folld.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107. **Consd.** Wisbech R. D. C. *v.* Ward (1927), 91 J. P. 200.

425a. —— —— **Interim certificates.**]—Pltfs., a local authority, made a contract with builders under which deft. was the architect. The Ministry of Health had the right to re-require the use of materials which the Disposals Board had for sale. While the houses were in course of erection deft. gave interim certificates, & he also gave documents under which pltfs. paid the Board for articles supplied by the Board. Under these certificates & documents pltfs. had to pay both the builders & the Board for the same material. In an action by pltfs. to recover the amount from deft. on the ground of negligence:—*Held:* as the certificates were only interim certificates, & as deft. on going into the figures with pltfs. had indicated to them that the amount paid to the Disposals Board was to be deducted from the final balance due to the contractors, deft. had not been guilty of negligence, & the action failed—WISBECH RURAL DISTRICT COUNCIL *v.* WARD, [1928] 2 K. B. 1; 97 L. J. K. B. 56; 138 L. T. 308; 91 J. P. 200; 44 T. L. R. 62; 26 L. G. R. 10, C. A.

428. *Add. Annotation:*—**Consd.** Wisbech R. C. *v.* Ward, [1927] 2 K. B. 556.

434. *Add. Annotation:*—**Distd.** Nixon *v.* Erith U. D. C., [1924] 1 K. B. 87.

436. *Add. Annotation:*—**Refd.** Nixon *v.* Erith U. D. C., [1924] 1 K. B. 819.

443a. —— **Abandonment after commencement of stage—Scale fee.**]—Defts. employed pltf. as architect in connection with the erection of a new town hall. It was agreed that his fees should be in accordance with the scale of professional charges of the Royal Institute of British Architects. This scale provided that, in cases where the project was abandoned, the fee payable depended upon the stage of the work that had been completed, being in the present case (*a*) for preparing sketch design & making approximate estimate, one-quarter of the total fee, & (*b*) for preparing drawings & particulars sufficient to enable quantities to be prepared, two-thirds of the total fee. When stage (*a*) had been completed & stage (*b*) nearly so, defts. abandoned the scheme. They contended that, as stage (*b*) had not been completed, no fee was due to pltf. in respect of that stage, & that the only amount due to him was that due in respect of stage (*a*):—*Held:* defts., having instructed pltf. to proceed with stage (*b*), had lost their right of abandoning & terminating his employment at the end of stage (*a*). They were therefore under an obligation to allow him to earn the fee for stage (*b*), &, having broken their contract, they were liable to pay him for the work actually done in respect

PART XVI. SECT. 1.

e i. —— —— *Unqualified person.*]—*Held:* a person illegally employed could not thereby found a claim for admission to the Association of Professional Engineers as being a person "practising as a professional engineer" under Engineering Profession Act, Man. 1920 (c. 38), s. 7.—*Re* ENGINEERING PROFESSION ACT, *Re* JOHNSON, [1922] 3 W. W. R. 424; 70 D. L. R. 161.—**CAN.**

sf. *Termination of appointment—By verbal cancellation given to architect's assistant—Record of cancellation made by architect.*]—*Held:* effective.—ROWLEY *v.* COOK, [1920] 2 W. W. R. 331; 52 D. L. R. 709.—**CAN.**

sg. *Suspension order—Appeal.*]—Appeal to a judge from a suspension order under sect. 22 of Ontario Architects Act is not final. The judge's order is appealable to the Ct. of Appeal.—HYNES *v.* SWARTZ, [1938] 1 D. L. R. 29; *sub nom. Re* HYNES & SWARTZ, [1938] O. R. 77.—**CAN.**

sh. —— *Grounds for.*]—Mere negligence in his professional duties will not warrant the suspension of an architect for professional misconduct.—SWARTZ *v.* ONTARIO ASSOCIATION OF ARCHITECTS REGISTRATION BOARD, [1938] 1 D. L. R. 509.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 1.—A.

sj. *Whether architect liable for mistakes of surveyor.*]—HARRIES, HALL & KRUSE *v.* SOUTH SARNIA PROPERTIES, LTD., SOUTH SARNIA PROPERTIES, LTD. *v.* BAIRD & BAIRD (Ont.), [1928] 4 D. L. R. 872; *on appeal*, [1929] 2 D. L. R. 821; 63 O. L. R. 597.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 1.—C.

sm. *Retirement of architect—Subsequent discovery of inaccuracy in plans.*]—Pltf., an architect, sued for professional fees, & deft., building owner, counterclaimed for damages for negligence on the ground that certain measurements in the plans prepared by pltf. were inaccurate, & that he had been put to additional expense by reason thereof. After the plans were prepared, but before the inaccuracies were discovered, the parties quarrelled & pltf. retired from the employment on terms which he set out in a letter to deft. as follows: "As your decision to carry out the erection of garage contrary to the instructions issued by me to contractor entirely overrides my authority & leaves me without any security that the work will be done as I direct, I accept your offer to be relieved of all responsibility in connection with same. . . ." The magistrate gave judgment for pltf. on the counterclaim on the ground that the arrangement between the parties relieved pltf. from all responsibility in respect of the plans:—*Held:* the arrangement between the parties only relieved the architect from responsibility in connection with the erection of the work in accordance with the [illegible] ared & did not relieve him from any responsibility which he had incurred by reason of defects in the plans & specifications which were not known to the building owner at the time.—MURNANE *v.* STEERE, [1934] W. A. L. R. 98.—**AUS.**

PART XVI. SECT. 2, SUB-SECT. 2

k i. —— *In giving decisions.*]—Where the owner's engineer is made arbitrator, he must guard against being unduly influenced by his employers; & if it appears that he is so biased as to be likely not to decide fairly, then the contractor will not be bound by his decision.—BLOME *v.* REGINA (CITY), [1920] 1 W. W. R. 311; 50 D. L. R. 93; 13 Alta. L. R. 94.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 3.

sl. *Advertisement by unregistered architect—Formerly on register but struck off.*]—R. *v.* SHEWBROOKS, [1931] 3 W. W. R. 97; 56 Can. C. C. 365; 44 B. C. R. 313.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 1

d i. —— ——.]—Pltf.:—*Held:* entitled to payment for plans adopted & used, although there was no express contract to that effect.—SINCLAIR *v.* LAND SETTLEMENT BOARD (B. C.), [1925] 2 D. L. R. 1050.—**CAN.**

g i. —— *Work done before registration as architect.*]—A person employed as an architect who is not registered, & whose employment is discontinued before he becomes registered, cannot recover for his services.—ROWLEY *v.* COOK, [1920] 2 W. W. R. 331; 52 D. L. R. 709.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 2

k i. *Plans approved by employer—To be used at future date.*]—*Held:* employer bound to pay, even though the building contemplated was never erected.—QUIRK *v.* TOWN OF SYDNEY MINES (1923), 56 N. S. R. 281.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 3.

445 ii. ——.]—An architect employed to prepare plans is entitled to be paid a fair remuneration for his work, notwithstanding that the employer does not benefit by the work & does not erect the buildings contemplated by the plans.—HUTCHINSON *v.* ZIVE (1927), 48 N. L. R. 451.—**S. AF.**

445 iii. ——.]—BRIDGMAN *v.* VOLLANS (Man.), [1928] 3 D. L. R. 679 — **CAN.**

of stage (*b*).—THOMAS *v.* HAMMERSMITH BOROUGH COUNCIL, [1938] 3 All E. R. 203; 82 Sol. Jo. 583, C. A.

443. *Add. Annotation:*—**Refd.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

452a. —— —— **General Housing Memorandum No. 4.**]—ELKINGTON *v.* WANDSWORTH CORPN. (1924), 41 T. L. R. 76; 88 J. P. Jo. 702.

458. *Add. Annotations:*—**Apld.** Higgins *v.* Northampton County Borough (1926), 90 J. P. 82. **Refd.** Shipley Urban District Council *v.* Bradford Corpn. (1935), 179 L. T. Jo. 475.

SECT. 4.—REGISTRATION.

See Architects (Registration) Act, 1931 (c. 33).

PART XVI. SECT. 3, SUB-SECT. 4.

c (p. 445) i. —— ——.]—Pltf., an architect, prepared plans for & superintended the erection of a building estimated to cost $175,000. After $50,000 had been expended, pltf. rendered a partial account based upon the estimated cost at 3½ per cent., amounting to $6,125, intimating that the full charge for his services would be 5 per cent. of the estimated cost. Deft. considered the claim excessive, & dispensed with pltf.'s further services:—*Held:* pltf. should be awarded for his services up to the time of his dismissal, including damages for dismissal, the sum of $8,000.—COBB *v.* ROY, [1921] 54 N. S. R. 135; 57 D. L. R. 212.—**CAN.**

n (p. 445) i. —— ——.]—DALLYN *v.* NIAGARA FALLS CITY, [1934] 4 D. L. R. 798.—**CAN.**

st. *Reasonable remuneration.*]—In the absence of adequate proof of professional usage which would require the employer to remunerate the architect in terms of the tariff framed under Architects & Quantity Surveyors (Private) Act, No. 18 of 1927, the latter is entitled to a reasonable remuneration for the services he rendered.—MCKINLAY *v.* RORVIK, [1935] N. L. R. 80.—**S. AF.**

BUILDING SOCIETIES.

Part III.—Rules.

13. *Add. Annotation :*—**Consd.** Hole *v.* Garnsey, [1930] A. C. 472.

14. *Add. Annotation :*—**Consd.** Hole *v.* Garnsey, [1930] A. C. 472.

15. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

17. *Add. Annotation :*—**Apld.** *Re* Quinn & National Catholic Benefit & Thrift Soc.'s Arbitration, [1921] 2 Ch. 318.

19. *Add. Annotation :*—**Consd.** Hole *v.* Garnsey, [1930] A. C. 472.

20. *Add. Annotations :*—**Consd.** *Re* Quinn & National Catholic Benefit & Thrift Soc.'s Arbitration, [1921] 2 Ch. 318; Hole *v.* Garnsey, [1930] A. C. 472.

23. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

Part IV.—Officers.

36. *Add. Annotation :*—**Reld.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

37. *Add. Annotation :*—**Reld.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

65a. *S. P.* R. *v.* HASTIE (1863), Le. & Ca. 269; 1 New Rep. 335; 32 L. J. M. C. 63; 7 L. T. 695; 27 J. P. 85; 9 Jur. N. S. 235; 9 Cox, C. C. 264; 169 E. R. 1391; *sub nom.* R. *v.* HARTIE, 11 W. R. 293, C. C. R.

Part VI.—Shares.

84. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

85. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

86. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

101. *Add. Annotation :*—**Reld.** *Re* Burradon & Coxlodge Coal Co. (1930), 23 B. W. C. C. 7.

Part VII.—Advances.

110. *Add. Citation : — subsequent proceedings,* [1921] 2 Ch. 438, C. A.

110a. —— —— **Rights & benefits under—Whether transferable.**]—SUN BUILDING SOCIETY *v.* WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY, No. 230a, *post.*

112. *Add. Annotations :—As to* (1) **Reld.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438. *As to* (3) **Reld.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438. *As to* (4) **Reld.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

115a. —— **Collateral security for first mortgage.**]—An estate co. in respect of two separate advances for the purposes of one building estate mtged. two separate sets of plots of that estate with a building society. It further secured each advance by a collateral charge. These collateral charges were second mtges. & each contained a clause stating that Law of Property Act, 1925 (c. 20), s. 93, should apply to the charge. It was most probable that it was intended that that clause was intended to negative such application. The estate co. had executed another mtge. with the same society in respect of quite different land & the society, not being satisfied with the security in this case, refused to allow the collateral mtges. to be released unless this third mtge. was also redeemed. It was contended that as the society was forbidden by statute to lend money on the security of a second mtge., the collateral mtges. were invalid & inoperative :—*Held :* (1) the Building Societies Act, 1894 (c. 47), s. 13, forbidding an advance on land subject to a prior mtge. does not make void a second mtge. where the society already has a first mtge. as security for the same debt. The society can fortify its position by taking a second mtge.; (2) the collateral mtge. being good, the society was entitled in the circumstances to consolidate this mtge. with the third mtge. & to refuse to redeem unless the debts outstanding under both mtges. were satisfied in full.

PART VII. SECT. 2.

—— —— *Right to partial release of mortgaged property.*]—ALMON *v.* FAIRBANKS (1876), 10 N. S. R. (1 R. & C.) 407.—CAN.

Consideration of a verbal collateral agreement to release houses from a mtge. upon payment of £400 upon the sale of each house. —HAYES BRIDGE ESTATE *v.* PORTMAN BUILDING SOCIETY, [1936] 2 All E. R. 1400.

119. *Add. Citation :* — *subsequent proceedings*, [1921] 2 Ch. 438, C. A.

123a. Effect of attornment clause.]—In a mtge. to a building society, power to distrain arising from an attornment clause reserving merely a nominal rent has no practical value. A proviso, in an attornment clause under which the mtgor. becomes tenant from year to year, that the society, after its power of sale has arisen, may terminate the yearly tenancy created by the clause by re-entering & taking possession without notice to the borrower, does not make re-entry & taking possession the only means, other than the giving of six months' notice, by which the society can terminate the tenancy. Proceedings in ct. by the society for possession are tantamount to re-entry & taking possession. Therefore, on the taking of proceedings, the yearly tenancy becomes a tenancy at will, terminated by the claim for possession.—WOOLWICH EQUITABLE BUILDING SOCIETY *v.* PRESTON, [1938] Ch. 129 ; 107 L. J. Ch. 63 ; 54 T. L. R. 80 ; 81 Sol. Jo. 943 ; *sub nom.* WOOLWICH EQUITABLE BUILDING SOCIETY *v.* ORISTON, 158 L. T. 216.

134. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

142. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

146. *Add. Annotation :*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc. (1921), 91 L. J. Ch. 74.

147. *Add. Annotation :*—**Refd.** Waring *v.* London & Manchester Assurance Co., [1935] Ch. 310.

155. *Add. Annotation :*—**Refd.** Hayes Bridge Estate *v.* Portman Building Society, [1936] 2 All E. R. 1400.

158a. ——.]—KIDDERMINSTER MUTUAL BENEFIT BUILDING SOCIETY *v.* HADDOCK (1936), 80 Sol. Jo. 466.

161. After this case add :—

—.]—*See, now*, Law of Property Act, 1925 (c. 20), s. 115.

174. After this case add :-

—.]—*See, now*, Law of Property Act, 1925 (c. 20), s. 115.

174a. Transfer of property & shares—No release from covenant—Liability on covenant.]—Deft. received from pltf. building society an advance upon mtge. of certain property, such advance being regulated by the number of advanced shares held by him. He subsequently transferred the equity of redemption in the property & his shares to a third party. The rules provided that when that had been done the transferee should be liable for all subscriptions & that the board of the society might grant to the original mtgor., at his cost & charges, a release from all future liability in respect thereof. The covenant in the mtge. was to pay the money advanced to him & also such other subscriptions & payments as may become payable in respect of the shares :—*Held :* the proper construction of the covenant was that the original mtgor. was liable to pay all sums due in respect of such shares whoever the shareholder might be ; & the proper construction of the rules was that in order to be released from the covenant, he must obtain a release from the board.—WEST BROMWICH BUILDING SOCIETY *v.* BULLOCK, [1936] 1 All E. R. 887 ; 80 Sol. Jo. 654.

182. After this case add :—

—.]—*See, now*, Law of Property Act, 1925 (c. 20), s. 115 (9).

184. *Add. Annotations :*—**Refd.** Sweet *v.* Macdiarmid (or Henderson) (1920), 7 Tax Cas. 640 ; Inland Revenue Comrs. *v.* Hay (1924), 8 Tax Cas. 636.

Part VIII.—Borrowing and Loans.

187a. For purchase of mortgages Whether purpose of society.]—SUN BUILDING SOCIETY *v.* WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY, No. 230a, *post.*

190. *Add. Annotation :*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 83.

198. *Add. Annotations :*—*As to* (2) **Consd.** *Re* Airedale Co-operative Worsted Manufacturing Society, Ltd., [1933] Ch. 639. **Refd.** Bowling *v.* Cox, [1926] A. C. 751 ; *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett (1933), 176 L. T. Jo. 142. *Generally*, **Mentd.** Dominion Coal Co. *v.* Mackinonge S.S. Co., [1922] 2 K. B. 132 ; Boston Corpn. *v.* Fenwick (1923), 129 L. T. 766 ; Holt *v.* Markham, [1923] 1 K. B. 504 ; Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226 ; Anchor Donaldson *v.* Crossland, [1929] A. C. 297 ; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

202. *Add. Annotation :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

208. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

220. *Add. Annotations :*—**Consd.** *Re* Airedale Co-operative Worsted Manufacturing Society, Ltd., [1933] Ch. 639. **Refd.** Bowling *v.* Cox, [1926] A. C. 751 ; *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett (1933), 176 L. T. Jo. 142.

PART VII. SECT. 3.

sd. *Assumption of mortgage by purchaser—Monthly instalments unpaid—Rights of purchaser.*]—STARK *v.* SHEPHERD (1881), 29 Gr. 316.—**CAN.**

PART VII. SECT. 4.

24 i. *Determination of amount payable—Liability for losses incurred in management of society.*]—*Held :* under the mtge. in question & the bye-laws & rules of the society, the society could not charge against the mtge. a share of losses incurred in the management of the society.—LEE *v.* CANADIAN MUTUAL LOAN CO. (1908), 23 C. L. T. 165 ; 5 O. L. R. 471 ; 2 O. W. R. 370.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.

t. For the existing "*Held*" paragraph read "*Held :* pltf. was entitled to foreclose for the whole amount due, to be computed according to the rules."

Part IX.—Investment or Other Application of Surplus Funds.

228. *Add. Annotation :*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

230. *Add. Citation : — subsequent proceedings,* [1921] 2 Ch. 438, C. A.

230a. —— —— **Insufficient surplus funds to carry out purchase.**]—Although a building society may transfer its mtges. either to an individual or to another building society, yet if it agrees to sell those securities to a purchaser & makes no stipulation as to what it is that the purchaser is to take under such agreement for sale, the only conclusion that can be drawn is that it agrees to transfer such benefits as it itself enjoys, & that it cannot do. Pltf. society was in liquidation, & in May, 1919, its liquidators entered into a contract with deft. society for the sale to deft. society of thirty-seven of the freehold & leasehold mtges. of pltf. society for £6,400. Deft. society having declined to complete, pltf. society issued a writ for specific performance. Subsequently the parties by agreement stated a special case for the opinion of the ct as to, amongst other things, whether the contract was *ultra vires* deft. society, because it had not at the date of the contract surplus funds properly available for investment, & whether pltf. society could transfer the mtges. without the consent of the mtgors. Both these points were decided in favour of pltf. society :—*Held :* (1) although the contract might be *intra vires* in its inception, notwithstanding that deft. society had not sufficient surplus funds to carry it out, yet if at the time when an order was made for its specific performance deft. society had not sufficient surplus funds the effect of the order would be to require the society, which was not an investing society, to invest moneys which were not its surplus funds in a security in which it had no power to invest them ; (2) a further effect of the order, if made, would be to require deft. society to borrow money to pay for the mtges. ; & as its borrowing powers could not be resorted to except for borrowing for the purposes of the society, & as the purchase of the mtges. was not one of those purposes, the order would be an order requiring deft. society to do an *ultra vires* act ; therefore no order for specific performance ought in the circumstances to be made ; (3) having regard to the fact that the mtges. in question were building society mtges., pltf. society was not in a position to transfer to deft. society all the rights & benefits to which under them it was itself entitled, pltf. society was not ready & willing to perform its part of the contract, & consequently it could not enforce the contract.—SUN BUILDING SOCIETY *v.* WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY, [1921] 2 Ch. 438 ; 91 L. J. Ch. 74 ; 125 L. T. 782 ; 37 T. L. R. 844 ; 65 Sol. Jo. 734, C. A.

Part X.—Disputes.

242. *Add. Citation :*—37 J. P. 468.

251. *Add. Annotation:*—**Refd.** Northwood *v.* L. C. C. (1927), 137 L. T. 49.

277. *Add. Citation :*—37 J. P. 468.

Part XII.—Amalgamation and Transfer.

285a. **Amalgamation—Effect of 1874 Act, s. 33—Dissolution of constituent societies unnecessary.**]—By a contract dated Sept. 15, 1928, applt. agreed to sell to resp. two freehold plots of land & a dwelling-house. On Nov. 30, 1925, the property so contracted to be sold was mtged. to the H. Equitable B.B. Society, & on Jan. 31, 1928, that society was united in accordance with the provisions of the Building Societies Acts with the H. Permanent B.B. Society under the name of the H. Building Society. On June 28, 1928, the money due on the mtge. was repaid to the H. Building Society, which society gave a receipt endorsed on the mtge. A note was also endorsed that on Jan. 31, 1928, the H. Equitable B.B. Society & the H. Permanent B.B. Society were united & became one society under the name of the H. Building Society, & that the transaction was duly registered as required by the Building Society Acts. The purchaser required an abstract of the documents effecting the transfer of the mtge. to the H. Building Society from the H. Equitable B.B. Society & asserted that resolutions as to union, the notice to the registrar, & consents in writing of the shareholders in the two societies must be abstracted. The purchaser also claimed to be entitled to see the instrument of union to ascertain that the provisions of the Building Societies Acts had been complied with.

PART X. SECT. 1.

243 ii. —— ——.]—The rules of the building society provided that every dispute arising between members of the society or any person claiming through or under a member or under the rules of the society or any officer thereof should be referred to arbn. :—*Held :* the effect of the rules of the society & sect. 36 of Building Societies Act, 1886, was not to oust the jurisdiction of the ct. to determine a question whether a certain person was a member of the society or not, such question not being a dispute within the rules & sect. 36 of the Act.—BOLTON & DOWNS BUILDING CO., LTD. *v.* DARLING DOWNS BUILDING SOCIETY, [1935] Q. S. R. 237.—**AUS.**

The vendor contended that this was not necessary as under 1877 Act, s. 5, the registration operated as a conveyance of the property which was then vested in the H. Equitable B.B. Society. The judge held that under the Building Societies Acts the possibility was contemplated of a union without a dissolution of the uniting societies, & 1877 Act, s. 5, which provided that the registration of the union should operate as a conveyance, must be read as subject to 1874 Act, s. 33, under which the instrument of union might provide that certain properties should be excepted & not transferred, & it was therefore necessary for the purchaser to be furnished with an abstract of the instrument of union to enable him to see whether 1877 Act, s. 5, could operate without any qualification :—*Held :* 1874 Act, s. 33, & 1877 Act, s. 5, contemplated that a union of two societies might be made without a dissolution of each society, & it was putting too much on 1874 Act, s. 33, to say it gave complete union so that no inquiry could be made as to the terms of union, & 1877 Act, s. 5, made it clear that only such properties vested in the united society as the instrument of union provided, therefore it was necessary that the vendor should abstract & verify the resolution of union, the notice to be given to the registrar of the union, & the other instrument of union if any, & until he had done so he had not produced to the purchaser a proper title.—*Re* FRYER & HAMPSON'S CONTRACT (1929), 140 L. T. 680, C. A.

285b. —— **Property vesting in united society—Dependent on terms of instrument of union.**]—*Re* FRYER & HAMPSON'S CONTRACT, No. 285a, *ante*.

Part XIII.—Dissolution.

293. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

294. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

298. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

305. *Add. Annotation :*—**Refd.** *Re* Vernon Heaton Co., [1936] Ch. 289.

307. *Add. Citation :—subsequent proceedings*, [1921] 2 Ch. 438, C. A.

310. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

313. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

314. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

316. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

343. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

344. *Add. Annotation :—Generally*, **Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

349. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust, [1932] 1 Ch. 395.

359. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

365. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

370. *Add. Annotations :—As to* (2) **Consd.** *Re* Airedale Co-operative Worsted Manufacturing Society, Ltd., [1933] Ch. 639. **Refd.** Bowling *v.* Cox, [1926] A. C. 751 ; *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett (1933), 176 L. T. Jo. 142.

BURGLARY AND THEFT INSURANCE.

See INSURANCE.

BURIAL AND CREMATION.

Part I.—Rights and Duties of Executors and Others as to Burial.

20a. —— **Not freehold estate—No personal estate—3 & 4 Will. 4, c. 104.**]—CARTER *v.* BEARD (1839), 10 Sim. 7; 3 Jur. 532; 59 E. R. 514.

Annotation :—**Refd.** *Re* Rhodes, Rhodes *v.* Rhodes (1890), 44 Ch. D. 94.

45. *Add. Annotations* :—*As to* (2) **Refd.** Kent *v.* Atkinson, [1923] P. 142; Rose *v.* Ford, [1937] 3 All E. R. 359.

47. *Add. Annotation* :—**Refd.** Barnett *v.* Cohen, [1921] 2 K. B. 461.

After this case add :—

-.]—*See, now*, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 2 (3).

56a. —— **Verbal instructions by deceased for elaborate funeral.**]—*Re* READ, GALLOWAY *v.* HARRIS (1892), 36 Sol. Jo. 626.

Part II.—Churchyards.

69. After this case add :—

——.]—*See, now*, Parochial Church Council (Powers) Measure, 1921 (No. 1), s. 4 (1) (ii) (c).

Part III.—Burial in Churches and Churchyards.

77. *Add. Annotation* :—**Refd.** Preston Corpn. *v.* Pyke, [1929] 2 Ch. 338.

81. *Add. Annotation* :—**Consd.** Preston Corpn. *v.* Pyke, [1929] 2 Ch. 338.

101. *Add. Annotation* :—**Refd.** Preston Corpn. *v.* Pyke, [1929] 2 Ch. 338.

121. *Add. Annotation* :—**Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

138. *Add. Annotation* :—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

139. *Add. Annotation* :—**Refd.** *Re* Little Gaddesden Churchyard, *Ex p.* Cuthbertson, [1933] P. 150.

140a. Material—White marble.]—(1) A faculty to erect a memorial in a churchyard was refused by the Consistory Ct. on the ground that the memorial was to be of white marble. It was 8 feet by 4 feet, & consisted of a St. Andrew's cross about 1 inch above the ground. Resting on the cross was a vase about 20 inches above the ground. Forty-one per cent. of the memorials already in the churchyard were of white marble :—*Held* : there was nothing illegal in the use of white marble for the memorial & in the circumstances the wishes of petitioner ought to be acceded to & a faculty granted.

(2) The incumbent's so-called discretion does not exist. All that he can do, when any one wishes to erect a memorial, if he does not consent, is to say that that person must obtain a faculty, & if that faculty is refused the matter cannot proceed. That is the power of the incumbent : he has no judicial discretion. In the second place there has been a grave misunderstanding as to the report of the Central Council for the Care of Churches, & its pamphlet on the care of churchyards. That report is merely advice, & does not profess to be anything else. The incumbent in the present case thought that he was bound to follow that report. He spoke of himself as a man under authority, referring to the diocesan report, which followed the lines of the report of the Central Council. That is wrong, for, as I have said, these reports are merely advice. The only authority is that of the Chancellor & of the ct. to which appeals from his decision can be taken (Sir LEWIS DIBDIN).—*Re* LITTLE GADDESDEN CHURCHYARD, *Ex p.* CUTHBERTSON, [1933] P. 150; *sub nom.* CUTHBERTSON *v.* LITTLE GADDESDEN PARISHIONERS, 77 Sol. Jo. 268.

140b. Powers of incumbent.]—*Re* LITTLE GADDESDEN CHURCHYARD, *Ex p.* CUTHBERTSON, No. 140a, *ante*.

PART I. SECT. 1, SUB-SECT. 1.

sa. *General rule.*]—In the absence of a testamentary disposition providing otherwise, the right to the possession of a dead body for the purposes of preservation & burial belongs to the surviving husband or wife or next of kin, & for any infraction of said right, such as an unlawful mutilation of the remains, an action for damages will lie & recovery may be had therein for mental suffering which results proximately from the wrongful act although no actual pecuniary damage is alleged or proven.—EDMONDS *v.* ARMSTRONG FUNERAL HOME, LTD., [1930] 3 W. W. R. 649; [1931] 1 D. L. R. 676; 25 Alta. L. R. 173.—CAN.

sb. *Right of executor.*]—The exor. has a right to the body for the purpose of burial, & in an action by an exor. against the widow & others, an interim injunction was granted & continued until the trial of the action, restraining defts. from preventing pltfs. from carrying out the burial of the body of the deceased.—HUNTER *v.* HUNTER, [1930] 4 D. L. R. 255; 65 O. L. R. 586.—CAN.

PART I. SECT. 2, SUB-SECT. 2.

sc. *Coroner—Liability of municipality.*]—An unclaimed human body having been found dead within the area of deft. municipality, a provincial coroner instructed pltf., an undertaker, to prepare it for burial. Pltf. did the necessary work & completed the burial & sued the municipality for his labour & expenses incurred :—*Held* : reading together Coroners Act, R. S. M., 1913, Manitoba Anatomy Act, R. S. M., 1913, & Burials Act, R. S. M., 1913, sect. 5 of Coroners Act placed the duty on the coroner to cause the body to be interred & sect. 19 of Burials Act rendered the municipality liable for the expenses of the interment.—DAVEY *v.* CORNWALLIS, [1931] 1 W. W. R. 1; 2 D. L. R. 80; 39 Man. L. R. 259.—CAN.

PART II. SECT. 1, SUB-SECT. 1.

se. *Company—Whether "lot holder."*]—BAYVIEW CEMETERY CO. *v.* MCLEAN, [1932] 3 D. L. R. 629; 5 M. P. R. 302.—CAN.

PART III. SECT. 6, SUB-SECT. 2.

136 i. *Removal—To another part of churchyard.*] — Where a proposed extension of the fabric of a Scottish Episcopal church entailed encroachment on part of the graveyard surrounding the church, the ct., in the exercise of the *nobile officium*, authorised the removal, subject to certain conditions, of the gravestones, & their re-erection upon or near the fabric of the new building.—CHRISTIE, ETC. PETITIONERS, [1926] S. C. 750.—SCOT.

Part V.—Fees on Burial in Churchyard or Cemetery.

165. *Add. Citation :—sub nom.* ANON., 1 Vent. 274.

Part VII.—Provision of Land for Burial Grounds.

201. *Add. Annotation :—Generally,* **Reld.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

Part VIII.—Provision of Burial Grounds under Burial Acts.

204. *Add. Annotations :—***Consd.** Nicholl *v.* Llantwit Major Parish Council, [1924] 2 Ch. 214 ; L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

223. *Add. Annotation :—***Reld.** Rotunda Hospital, Dublin *v.* Coman (1920), 7 Tax Cas. 517.

228a. Power to acquire land by exchange.]—NICHOLL *v.* LLANTWIT MAJOR PARISH COUNCIL, No. 291a, *post.*

231. *Add. Annotation :—As to* (1) **Apld.** Hoskyns-Abrahall *v.* Paignton U. D. C., [1929] 1 Ch. 375.

237a. Allotment of unconsecrated part — For parishioners of particular denomination— Extent of rights.]—1853 Act, s. 7, upon its true construction, authorised the allotment by a burial board of portions of the unconsecrated part of a new burial ground for burials exclusively of parishioners belonging to the particular religious denomination for whom an allotment is made.

Under the provisions of the Burial Acts such an allotment was in 1854 made by pltfs. as the burial board, of a portion of the unconsecrated ground for the burial of the Roman Catholic parishioners. Upon an originating summons under R. S. C., Ord. 54, r. 1, taken out by pltfs. to have it determined whether, by virtue of that allotment for the Roman Catholic parishioners, a deceased parishioner not a member of the Roman Catholic denomination could be buried in such allotted portion ; & if he could, whether he could be so buried with the rites or ceremonies of any denomination other than those of the Roman Catholic :—*Held :* (1) the portion so allotted for the Roman Catholics was by virtue of its allotment appropriated exclusively for the burial of the Roman Catholics ; (2) a Roman Catholic parishioner had, under the Burial Acts, no greater rights in the portion so allotted for their burial than a parishioner, as such, had, before those Acts, in his old parish burial ground ; &, consequently, although he still had, under those Acts, a right of interment in that allotted portion, he had no individual right, as a parishioner, to interfere with the burial therein of a parishioner of a different denomination; (3) the A.-G. was entitled in properly constituted proceedings, if he should think fit to institute them, to an order restraining pltfs. from permitting the burial of persons other than Roman Catholics in the portion allotted to Roman Catholics; (4) nothing in 1853 Act enabled any particular rites or ceremonies to be enforced in regard to burials within the portion allotted to Roman Catholics or rendered the performance in regard to such burials of any particular rites or ceremonies unlawful.—PRESTON CORPN. *v.* PYKE, [1929] 2 Ch. 338 ; 98 L. J. Ch. 388 ; 141 L. T. 252 ; 93 J. P. 181 ; 45 T. L. R. 398 ; 27 L. G. R. 740.

237b. —— —— Right of parishioners of other denominations to burial.]—PRESTON CORPN. *v.* PYKE, No. 237a, *ante.*

237c. —— —— Restraint of unauthorised burial by Attorney-General.]—PRESTON CORPN. *v.* PYKE, No. 237a, *ante.*

237d. —— —— Performance of particular rites & ceremonies — Whether enforceable.]—PRESTON CORPN. *v.* PYKE, No. 237a, *ante.*

237e. —— —— —— Whether lawful.]—PRESTON CORPN. *v.* PYKE, No. 237a, *ante.*

262a. ——.]—The exclusive right of burial in part of a cemetery granted by a local authority under 1879 Act, s. 2, which incorporates 1847 Act, to a grantee who has purchased the right to erect a vault on the space set apart for the purpose of the grant, is a right of interment of the dead therein & of keeping the vault in reasonably good repair subject to such regulations as the local authority think fit. The grantee has no freehold interest in the space or the vault & no right to use them for the purpose of performing private rights or ceremonies, or to open or enter the vault for the purpose of depositing articles therein, without the consent of the local authority.—HOSKINS-ABRAHALL *v.* PAIGNTON URBAN COUNCIL, [1929] 1 Ch. 375 ; 98 L. J. Ch. 103 ; 140 L. T. 397 ; 93 J. P. 93 ; 45 T. L. R. 161 ; 27 L. G. R. 129, C. A.

PART VIII. SECT. 5.

260 i. *Extent of right—To A. "& his heirs & assigns."*]—Under Cemetery Act, R. S. A., 1922 (c. 166), the purchaser of a lot cannot get by a conveyance, even when expressed to be to his heirs & assigns, a title in fee simple without restriction or limitation. The title which he obtains may properly be described as an easement. —STRATHCONA CEMETERY CO. *v.* TAYLOR, [1924] 3 D. L. R. 625 ; 2 W. W. R. 970 ; 20 Alta. L. R. 459.—CAN.

260 ii. —— —— *To whom right of burying passes.*]—The right of burying in the lot succeeds, speaking generally, to the next-of-kin of deceased.—STRATHCONA CEMETERY CO. *v.* TAYLOR, [1924] 3 D. L. R. 625 ; 2 W. W. R. 970 ; 20 Alta. L. R. 459.—CAN.

PART IX. SECT. 1.

sd. *Prohibiting employment of hired labour to improve burial plots.*]—*Held :* reasonable & within the directors' powers.—STRATHCONA CEMETERY CO. *v.* TAYLOR, [1924] 3 D. L. R. 625 ; 2 W. W. R. 970 ; 20 Alta. L. R. 459.—CAN.

Part X.—Position of Burial Grounds.

272. *Add. Annotation :—As to* (1) **Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

274. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

277. *Add. Annotation :*—**Refd.** A.-G. *v.* Hodgson [1922] 2 Ch. 429.

Part XI.—Closed and Disused Burial Grounds.

279a. **Removal of graves—Liability of trustees to injunction.**]—Persons had purchased family graves in perpetuity in a private burying ground, which was afterwards closed by order of the Queen in council. There was no formal grant executed, but their title was merely evidenced by a receipt for the purchase-money stating the purchase :—*Held :* they were entitled to an injunction to restrain the trustees from removing or injuring the graves or gravestones, etc., but the relief must be limited to the spot purchased by pltfs., & the rights of the trustees to the remainder was unaffected.—MORELAND *v.* RICHARDSON (1856), 22 Beav. 596 ; 25 L. J. Ch. 883 ; 27 L. T. O. S. 287 ; 20 J. P. 547 ; 2 Jur. N. S. 726 ; 4 W. R. 765 ; 52 E. R. 1238.

284. *Add. Annotation :*—**Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

290. After this case add :—

-.]—*See, now,* Parochial Church Council (Powers) Measure, 1921 (No. 1), s. 4 (1) (ii) (c).

291. *Add. Annotations :*—**Consd.** Nicholl *v.* Llantwit Major Parish Council, [1924] 2 Ch. 214. **Apld.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

291a. —— ——.]—A parish council being the duly constituted burial authority for the parish took from pltf., in consideration of a covenant to redeem the tithe rentcharges charged on the land being conveyed & on adjoining land retained by pltf., a conveyance of land " to hold the same . . . according to the true intent & meaning " of the Burial Acts. The land proved unfit & was never used for interments, & it was never fenced off or consecrated, nor did it adjoin any burial ground. The council agreed with pltf., with the approval of the parish meeting, to exchange the land for other land suitable for use as a burial ground :—*Held :* (1) the land first acquired by the council had never been "set apart for the purposes of interment" & was not therefore a " disused burial ground," so as to be subject to the restriction imposed by 1884 Act, s. 3 ; (2) the council had power to effect the exchange by virtue of the powers to sell land not required for interments & to buy land for the purposes of interment conferred respectively by 1852 Act, ss. 28 & 26, as extended by 1853 Act, s. 7.—NICHOLL *v.* LLANTWIT MAJOR PARISH COUNCIL, [1924] 2 Ch. 214 ; 93 L. J. Ch. 602 ; 131 L. T. 634 ; 68 Sol. Jo. 718.

Annotation :—As to (1) **Expld.** L. C.-C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

292. *Add. Annotations :*—**Consd.** Nicholl *v.* Llantwit Major Parish Council, [1924] 2 Ch. 214. **Apld.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

294a. **Land set apart for interment—Interments abandoned as to part—Continued as to other part.**]—(1) Where a piece of land has been effectually set apart for the purposes of interment it becomes a " burial ground " within the aggregate definition of Metropolitan Open Spaces Act, 1881 (c. 34), 1884 Act, & Open Spaces Act, 1887 (c. 32), & any portion for which the purposes of interment are subsequently abandoned becomes a " disused burial ground " within the similar definition, although interments still go on in other parts of the cemetery.

(2) A sale of a " disused burial ground " by the Admiralty under the general powers of Admiralty Lands & Works Act, 1864 (c. 57), s. 15, is not a sale under the authority of an Act of Parliament within 1884 Act, s. 5, & consequently the disused burial ground still remains subject to the building prohibitions of 1884 Act, s. 3.—LONDON COUNTY COUNCIL *v.* GREENWICH CORPN., [1929] 1 Ch. 305 ; 98 L. J. Ch. 49 ; 140 L. T. 456 ; 93 J. P. 123 ; 45 T. L. R. 144 ; 27 L. G. R. 282.

296. *Add. Annotation :*—**Consd.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

296a. —— **Sale by Admiralty.**]—LONDON COUNTY COUNCIL *v.* GREENWICH CORPN., No. 294a, *ante.*

300. *Add. Annotations :*—**Apld.** Stevens *v.* Willing & Co. (1929), 167 L. T. Jo. 178. **Consd.** St. Nicholas Acons *v.* L. C. C., [1928] A. C. 469.

300a. **Urinal.**]—A borough council petitioned for a faculty to authorise the conversion of a consecrated churchyard, which had been wholly closed for interments by Order in Council, into an open space, & the laying out & maintenance of it as such. Authority was sought for laying out & maintaining part of the churchyard as a playground for children & for the erection upon it of urinals & a small toolshed :—*Held :* (1) the proposed urinals were " buildings " within 1884 Act, s. 2, & Open Spaces Act, 1887 (c. 32), s. 4, & the ct. had no jurisdiction to authorise their erection ; (2) the proposed toolshed was necessary for the laying out & maintaining of the churchyard as an open space, & was not a " building " within the above Acts ; (3) the facts proved justified the authorisation of games in the converted churchyard, but

---

PART XI. SECT. 1, SUB-SECT. 2.—A.

284 l. *Compulsory sale—Basis of compensation.*]—On expropriation of a cemetery, the trustees can only claim value as cemetery & cannot have the value of sand & gravel deposits beneath it, that not being part of the value to the owners.—R. *v.* MIDDLETON CHURCH TRUSTEES (1920), 56 D. L. R. 60.—CAN.

organised games, such as cricket & football, the laying out of tennis courts & the erection of swings & other structures should be prohibited. Faculty decreed, but not to issue until the council had made bye-laws embodying the above prohibitions & prescribing the hours during which the churchyard should be open to the public, so as to prevent any nuisance to the occupants of adjoining houses, & had carried a copy thereof into the diocesan registry for approval by the chancellor. — BERMONDSEY BOROUGH COUNCIL *v.* MORTIMER, [1926] P. 87.

300b. Toolshed.]—BERMONDSEY BOROUGH COUNCIL *v.* MORTIMER, No. 300a, *ante*.

300c. Underground chamber.] — ST. NICHOLAS ACONS (RECTOR & CHURCHWARDENS) *v.* LONDON COUNTY COUNCIL, No. 309a, *post*.

309. *Add. Annotation :*—**Distd.** St. Nicholas Acons *v.* L. C. C., [1928] A. C. 469.

309a. —— ——.]—A brick built chamber intended to contain machinery for transforming electric current, with a roof of asphalt supported by steel girders & reinforced concrete, but so constructed that the roof does not project above the ground level, if erected in a churchyard closed for burials by Order in Council, would constitute a " building " erected " upon a disused burial ground " within 1884 Act, s. 3, & an ecclesiastical ct. has no jurisdiction to grant a faculty authorising the erection of such a building in such a situation. — ST. NICHOLAS ACONS (RECTOR & CHURCHWARDENS) *v.* LONDON COUNTY COUNCIL, [1928] A. C. 469; 97 L. J. P. C. 113; 139 L. T. 530; 92 J. P. 185; 44 T. L. R. 656; 26 L. G. R. 583, P. C.

315. *Add. Annotation :—Generally*, **Refd.** Bermondsey B. C. *v.* Mortimer, [1926] P. 87.

315a. Buildings incidental to use as children's playground.]—By Disused Burial Grounds Act, 1884 (c. 72), s. 3, it is made unlawful to erect buildings on a disused burial ground. By sect. 42 of the London County Council (General Powers) Act, 1935, a private Act, a local authority may erect (*inter alia*) buildings on any open space, & by sect. 41 open space includes a disused burial ground under the control of the local authority. A local authority proposed to erect buildings on a disused burial ground, to be used as a playground & gymnasium for children, & applied for a faculty so to do under Open Spaces Act, 1906 (c. 25), s. 11 :—*Held :* with respect to this burial ground the public Act of 1884 was abrogated by the private Act of 1935, & the latter must prevail, & a faculty was decreed.—*Re* ST. DUNSTAN'S, STEPNEY, [1937] P. 199; 53 T. L. R. 905.

323a. —— Playground for children—Tennis courts & swings.]—BERMONDSEY BOROUGH COUNCIL *v.* MORTIMER, No. 300a, *ante*.

324a. Danger to persons in churchyard—Defective tombstone.]—The infant pltf., while lawfully in a churchyard, was injured by the fall of a tombstone which had been erected by defts. It was found that defts. had been negligent in the erection of the tombstone :—*Held :* defts. owed a duty to persons who might lawfully be in the churchyard, & were liable for the injury sustained by pltf.—BROWN *v.* COTTERILL (1934), 51 T. L. R. 21.

330. *Add. Annotation :*—**Consd.** St. Nicholas Acons, London *v.* L. C. C., [1928] P. 102.

331. *Add. Annotation :*—**Apld.** *Ex p.* West Riding County Council (1935), 52 T. L. R. 111.

333. *Add. Annotation :*—**Folld.** *Ex p.* West Riding County Council (1935), 52 T. L. R. 111.

333a. —— ——.]—Where a church burial ground has been closed for burials & afterwards, by agreement between the vicar & churchwardens & the local authority, dedicated for the purpose of an " open space " under Open Spaces Act, 1906 (c. 25), there is no jurisdiction in the Chancellor of the diocese to order the issue of a faculty to enable a strip of the ground to be taken by the county council for the purpose of widening an adjoining road.—*Ex p.* WEST RIDING COUNTY COUNCIL (1935), 52 T. L. R. 111.

Part XIV.—Burial of Persons Found Drowned.

350. After this case add :—

—— ——.] — *See, now*, Burial of Drowned Persons Act, 1886 (c. 20).

Part XVI.—Registration of Burials.

375. *Add. Annotations :—As to* (1) **Consd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879. *As to* (2) **Consd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879; China Navigation Co., Ltd. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Brocklebank *v.* R., [1925] 1 K. B. 52. *As to* (3) **Refd.** Marshal Shipping Co. *v.* Board of Trade, [1923] 2 K. B. 343.

PART XV. SECT. 2.

sk. *Reinterment with testatrix—Testatrix illegitimate—Testamentary direction invalid.*]—Testatrix left estate amounting to £3,600. By her will she provided that her whole estate should be expended on the erection of a vault on ground to be purchased. She directed that the remains of two persons, whom she designated as her uncle & aunt, should be exhumed from the grave where they had been buried for many years, & should be buried along with her own remains in the vault. Testatrix was of illegitimate birth, & the two persons referred to were, accordingly, not legally related to her :—*Held :* the estate of the testatrix had fallen into intestacy, in respect that she was not entitled to direct an application to be made for the exhumation & re-interment of persons to whom she was not related & this direction was an inseparable part of her will.—MACKINTOSH'S JUDICIAL FACTOR *v.* LORD ADVOCATE, [1935] S. C. 406.—SCOT.

Part XIX.—Taxation and Rating of Burial Grounds and Burial Fees.

389. *Add. Annotations :*—**Refd.** Poplar Assmt. Com. *v.* Roberts, [1922] 2 A. C. 93; Harper *v.* Hedges, [1923] 2 K. B. 314; Ilford Corpn. *v.* Mallinson (1932), 96 J. P. 185; Townley Mill Co. (1919), Ltd. *v.* Oldham Asessment Committee, [1936] 1 K. B. 585.

PART XIX.

sm. *Taxes—Whether land in use for purposes of cemetery.*]—BURNABY DISTRICT CORPN. *v.* OCEAN VIEW DEVELOPMENT, LTD., [1923] 3 D. L. R. 1073; 32 B. C. R. 413.—CAN.

m i. —— —— —— *Method of valuation.*]—FALKIRK PARISH COUNCIL *v.* STIRLINGSHIRE ASSESSOR, [1928] S. C. 405.—SCOT.

m ii. —— —— —— ——.]—ABERDEEN ASSESSOR *v.* ABERDEEN CEMETERY CO., LTD.; ABERDEEN ASSESSOR *v.* MASTER OF TRADES HOSPITAL [1929] S. C. (Ct. of Sess.) 275.—SCOT.

CARRIERS.

Part I.—Who is a Common Carrier.

4a. —— —— ——.]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s furniture from L. to H., the contract being subject to a condition that the contractors would not be responsible for loss or damage caused by fire. Part of the furniture, which was loaded on a motor lorry, was destroyed by fire, occasioned by the negligence of defts.' servants, the remaining portion being damaged by the fire. Pltf. sued defts. for the value of the goods damaged & destroyed :—*Held :* defts. were not liable, inasmuch as the condition that they would not be responsible for fire protected them from liability, since the clause would be of no effect unless it referred to fire caused by the negligence of defts., as, not being common carriers, they would not in any event be liable for loss caused by accidental fire.—TURNER *v.* CIVIL SERVICE SUPPLY ASSOCN., LTD., [1926] 1 K. B. 50; 95 L. J. K. B. 111; 134 L. T. 189.

Annotations :—**Folld.** Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185. **Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

4b. —— ——.]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s goods from L. to O., the contract being subject to a condition that defts. would not be responsible for fire. The goods, which were loaded on a motor van, were destroyed while in transit by fire, which was occasioned by the negligence of defts.' servants. Pltf. sued defts. for the value of the goods :—*Held :* as defts. were bailees only & not common carriers, &, therefore, not liable for an accidental fire, the condition must be construed as exempting them from liability for fire arising from their own negligence, as otherwise the condition would be of no effect. —FAGAN *v.* GREEN & EDWARDS, LTD., [1926] 1 K. B. 102; 95 L. J. K. B. 363; 134 L. T. 191; 70 Sol. Jo. 185.

Annotations :—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

5a. —— **Upon terms limiting liability.**]—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, *post.*

6. *Add. Annotation :*—*As to* (3) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

6a. —— **No fixed terminus.**]—LIVER ALKALI CO. *v.* JOHNSON, No. 31, *post.*

12a. —— —— ——.]—TURNER *v.* CIVIL SERVICE SUPPLY ASSOCN., LTD., No. 4a, *ante.*

12b. —— —— ——.]—FAGAN *v.* GREEN & EDWARDS, LTD., No. 4b, *ante.*

14a. —— **Of goods accompanied by passenger.**]—By London County Council (Tramways & Improvements) Act, 1911, s. 42 : "Every passenger travelling upon any of the council's tramways may take with him his personal luggage, not exceeding 28 lbs. in weight, without any charge . . . all such luggage to be carried by hand" under certain conditions. In respect to luggage which did not fulfil these conditions the council were entitled to make such charge as they thought fit. Pltf., wishing to send a parcel of goods weighing some 50 lbs. to a customer, instructed his servant to convey it by one of defts.' tramcars. The servant did so, & in addition to paying his own fare paid 2*d.* for the parcel. When he arrived at his destination the servant claimed his parcel, but found that it had been lost. In an action brought by pltf. claiming damages :—*Held :* the provisions of sect. 42 of the private Act being inconsistent with one of the peculiar features of a common carrier, who was bound to carry all goods of the class which he proposed to carry, for all & sundry & irrespective of the fact that the goods were accompanied by a passenger, the London County Council were not common carriers of goods so as to be entitled to the benefit of Carriers Act, 1830 (c. 68).—ROSENTHAL *v.* LONDON COUNTY COUNCIL (1924), 131 L. T. 503; 88 J. P. 157; 22 L. G. R. 527.

16. *Add. Annotation :*—**Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

17. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

18. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

28. *Add. Annotation :*—**Refd.** Aslam *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

PART I. SECT. 1.

4 i. *Carrying on business as carrier—Furniture remover.*]—Deft., a carrier & forwarding agent, tendered for the removal of pltf.'s furniture in the following terms : "We beg to quote £120. This price includes all transit charges, including delivery to house & unpacking, also risk of breakage, the value of any one package not to exceed £10." This tender was accepted :—*Held :* deft. was not in this transaction a common carrier, & Mercantile Law Act, 1918, s. 19, did not apply.—WILSON *v.* NEW ZEALAND EXPRESS CO., LTD., [1923] N. Z. L. R. 201.—**N.Z.**

5 i. *Carrier of goods—Of all persons—For hire.*]—MATHEWSON *v.* MITCHELL, POOLEY *v.* MITCHELL, [1925] 4 D. L. R. 384.—**CAN.**

h i. —— *Right to reject reserved.*]—A carrier who, while inviting all & sundry to employ him, reserves to himself the right of accepting or rejecting their offers of goods for carriage, whether his conveyances are full or empty, being guided in his decision by the attractiveness or otherwise of the particular offer, & not by his ability or inability to carry having regard to his other engagements, is not a common carrier.—CRUM *v.* BIG 4 TRANSFER & STORAGE CO., LTD., [1930] 1 W. W. R. 547; *affd.*, [1930] 4 D. L. R. 486; 2 W. W. R. 337.—**CAN.**

PART I. SECT. 2.

15 i. *Haulage contractor—Person towing damaged motor cars.*]—Persons engaged in the business of towing damaged motor cars are common carriers, & as such are entitled to retain the thing transported until payment for services rendered.—TERRY *v.* AUTOMOBILE OWNERS ASSOCN. (1927), Q. R. 65 S. C. 390.—**CAN.**

sb. *Public vehicle under Public Vehicles Act.*]—A public vehicle under Public Vehicles Act, R. S. S., 1930, is not a "common carrier" within sect. 216 (84) of City Act, R. S. S., 1930, which gives a city power to make bye-laws for the licensing of "common carriers," nor, therefore, within the meaning of a city bye-law imposing a licence fee on motor vehicles operated as "common carriers."—LYNE *v.* CHECKER STAGE SERVICE, LTD., [1932] 1 W. W. R. 335.—**CAN.**

31. For existing paragraph substitute the following :—

Deft. was a barge-owner, & let out his vessels for the conveyance of goods to any customers who applied to him. Each voyage was made under a separate agreement, & a barge was not let to more than one person for the same voyage. Deft. did not ply between any fixed termini, but the customer fixed in each particular case the points of arrival & departure. In an action against deft. by the pltfs. for not safely & securely carrying certain goods :—*Held :* deft. in exercising this employment had incurred the liability of a common carrier, & was liable though the goods were lost without negligence on his part.

Deft. was not a common carrier nor liable as such, but was liable as a ship-owner carrying goods for hire, upon the custom applicable to him as such (*per* CUR.).

Add. Annotations :—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742 ; Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50 ; Aslan *v.* Imperial Airways, Ltd. (1933), 149 L. T. 276.

Part II.—Private Carriers and Forwarding Agents.

43. *Add. Annotation :*—*As to* (1) **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

44. *Add. Annotations :*—*Generally*, **Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

45. *Add. Annotation :*—**Refd.** Troy *v.* Eastern Co. of Warehouses Insce. & Transport of Goods, etc. (Petrograd) (1921), 91 L. J. K. B. 632.

46. *Add. Citation :*—15 Asp. M. L. C. 208.

47. *Add. Citations :*—91 L. J. K. B. 632 ; 15 Asp. M. L. C. 387.

Part III.—The Contract at Common Law.

51. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

58. *Add Annotations :*—*As to* (1) **Apld.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369. *As to* (2) **Refd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646 ; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158 ; A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

66. *Add. Annotations :*—*As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (2) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

82. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

85. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

90a. —— ——.]—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, *post.*

PART I. SECT. 4.

33 ii. ——.]—A ferry-boat engaged in transporting persons & goods for hire is a common carrier. The ferryman must insure not only the goods, but the seaworthiness of the vessel itself & his liability in case of unseaworthiness is not affected by the Harter Act.—DIRECT TRANSPORT CO. *v.* DETROIT & WINDSOR FERRY CO., [1936] 1 D. L. R. 423 ; O. R. 86 ; *affd.* [1936] 4 D. L. R. 807.—CAN.

PART III. SECT. 3, SUB-SECT. 1.—A.

t i. —— ——.]—The *onus* is on the carrier to prove that the loss is not due wholly or in part to his negligence, & that he took all known means a reasonably prudent carrier should take to preserve goods from damage.—CANADIAN NORTHERN QUEBEC RY. CO. *v.* PLEET, [1923] 4 D. L. R. 1112 ; 26 Can. Ry. Cas. 238.—CAN.

t ii. —— ——.]—In accordance with a rule of the Canadian freight classification approved by Railway Board, goods were loaded by the owners, pltfs., & under the standard bill of lading, carriers are not liable for any loss or damage caused by the act or default of the shipper or owner. An accident happened through the flooring of a car giving way on account of the weight placed on it by pltfs. The defective flooring was known to both parties, but pltfs. alone knew the use the cars were to be put to :—*Held :* the accident should be attributed to pltfs.' method of loading rather than to any breach of duty on part of defts.—CANADIAN WESTINGHOUSE CO., LTD. *v.* CANADIAN PACIFIC RY. CO. (1923), 54 O. L. R. 238.—CAN.

t iii. —— *Default of consignee.*]—HATFIELD & CO. *v.* CANADIAN PACIFIC RY. (N. B.), [1926] 2 D. L. R. 93.—CAN.

t iv. —— *Position of Indian railways.*]—A railway co. in India under Indian Railways Act, 1890, is not an insurer, but is under the duty of taking a certain measure of reasonable care.—GREAT INDIAN PENINSULA RY. CO., LTD. *v.* JESRAJ PATWARI (1927), I. L. R. 55 Calc. 132.—IND.

77 ii a. —— ——.]—NORTHERN GRAIN CO. *v.* CANADIAN NATIONAL RYS. & GRAND TRUNK PACIFIC RY., [1922] 3 W. W. R. 733 ; 70 D. L. R. 281.—CAN.

77 v. —— —— *Through sub-contractor's negligence.*]—When a carrier undertakes for reward to carry goods & entrusts the carriage of them to a sub-contractor, & the goods are subsequently lost through the sub-contractor's negligence or that of his servants, the carrier is liable, because there has been a breach of his undertaking that ordinary care will be exercised in the carriage of the goods.—WILSON *v.* NEW ZEALAND EXPRESS CO., LTD. (No. 2), [1924] N. Z. L. R. 465.—N.Z.

77 vi. *S. P.* WILSON *v.* NEW ZEALAND EXPRESS CO., LTD. (No. 3), [1924] N. Z. L. R. 890.—N.Z.

77 vii. —— —— *What amounts to negligence.*]—Where goods entrusted to a bailee for reward are lost or destroyed while in his custody, the onus is on him to show that the loss or destruction was not due to his negligence. Where while a motor van carrying goods for hire was being operated with the cut-out open flames occasionally issued from the heater pipes at a point only a few inches from the wooden floor of the van, it cannot be said that this method of operation did not constitute negligence.—CRUM *v.* BIG 4 TRANSFER & STORAGE CO., LTD., [1930] 2 W. W. R. 337 ; 4 D. L. R. 486.—CAN.

85 iii. —— ——.]—Goods were damaged :—*Held :* defts. were not excused from liability by any special contract in the bills of lading issued after delivery taken of the goods, &, having failed to show that the damage was not caused by their fault or neglect, they were liable.—EDGETT, LTD. *v.* PACIFIC GREAT EASTERN RY. CO., [1923] 1 W. W. R. 684 ; 32 B. C. R. 37.—CAN.

91 i. —— *Goods destroyed—No written contract limiting liability.*]—*Held :* applts. were common carriers & were liable to owners for goods destroyed by fire without proof of negligence.—INDIA GENERAL NAVIGATION & RY. CO. *v.* DEKHARI TEA CO., LTD. (1923), L. R. 51 Ind. App. 29.—IND.

sk. *Misdelivery—Measure of damages.*—The measure of damages for misdelivery of goods by a carrier is the loss suffered by the shipper, being the price he has to pay to replace the shipment.—SCALES *v.* CLARKE STEAMSHIP CO., [1937] 2 D. L. R. 420.—CAN.

92a. —— ——.]—Chests of tea of resps. were delivered to a railway co. for conveyance from A. to C. The railway broke down, & by an arrangement between the railway co. & applts., who were common carriers by water, applts. agreed to convey the tea by a special flotilla by river to a point at which it could be put on the railway again :—*Held :* in so doing, applts. had not so far departed from their usual course of business as to take these journeys out of their usual business as carriers, & they were liable for the loss of the tea which was destroyed by fire while on board one of their boats.—INDIA GENERAL NAVIGATION & RY. CO. *v.* DEKHARI TEA CO. (1923), 93 L. J. P. C. 108 ; 130 L. T. 554 ; 16 Asp. M. L. C. 285, P. C.

96. *Add. Annotation :*—**Reld.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

102. *Add. Citations :*—[1917] 2 K. B. 755 ; 33 T. L. R. 517.

114. *Add. Annotations :*—*As to* (1) **Consd.** Frenkel *v.* McAndrews, [1929] A. C. 545. **Reld.** United States Shipping Board *v.* Bunge & Born (1924), 41 T. L. R. 73. *As to* (2) **Reld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158 ; A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577. *Generally*, **Reld.** Hain S.S. Co. *v.* Tate & Lyle, Ltd., [1936] 2 All E. R. 597.

122. *Add. Annotation :*—**Distd.** Silver *v.* Ocean S.S. Co. (1929), 46 T. L. R. 78.

123. *Add. Annotation :*—**Consd.** Silver *v.* Ocean S.S. Co. (1929), 46 T. L. R. 78.

144a. Contract to carry by particular train—Whether warranty of time of arrival.]—LORD *v.* MIDLAND RY. CO., No. 412, *post.*

149. *Annotations :*—After "*As to* (2)" add "**Reld.**"

Add. Annotation :—*As to* (2) **Reld.** Jensen *v.* Hollis Bros. & Co., [1936] 1 All E. R. 140.

151. *Add. Annotation :*—**Reld.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

PART III. SECT. 3, SUB-SECT. 1.—B.

a i. —— *Goods warehoused for carrier's convenience.*]—Resps., husband & wife, were proceeding to England on Apr. 3 by mail steamer, & on Mar. 29 the male resp. wrote applts., common carriers, to the following effect : "Cabin trunk leave this day, Mar. 29. One cabin trunk will leave T. per goods train to Port A., addressed Mr. & Mrs. H., rail Port A., c/o C. & Co. Kindly deliver cabin trunk to Orient steamer S.S. *O.*" The trunk left T. by goods train, arrived & was received at Port A. by defts., who put it in their store—all on Mar. 31. On Apr. 2 the store was broken into, & most of the contents of the trunk stolen. There was no reply to resp.'s letter :—*Held :* the letter, or the letter, together with the address on the trunk, only authorised applts. to collect the trunk, & deliver it on the steamer, & the collection earlier than was necessary, & the consequent storing in the warehouse, were only for the convenience of applts. &, accordingly, applts. were liable as common carriers in respect of the articles stolen.—COCKING *v.* HOFFMANN, [1932] S. A. S. R. 108.—**AUS.**

100 i. —— *Goods stolen from carrier's warehouse at destination—Carrier making no warehouse charge.*]—*Held :* holding the goods at owner's risk, defts. could not be found liable for the loss unless they were guilty of wilful neglect or misconduct.—BROWN *v.* DOMINION EXPRESS CO. (1921), 67 D. L. R. 325 ; 51 O. L. R. 359.—**CAN.**

100 ii. —— —— —— *Consignee with notice of arrival—Bonded goods—Carrier liable.*]—GEORGE *v.* CANADIAN NORTHERN RY. CO. (1922), 53 O. L. R. 94.—**CAN.**

100 iii. —— —— —— *Carrier not liable—Failure of consignee to remove goods within reasonable time.*]—DYAMENT & PZADKAWOLSKI *v.* CANADIAN EXPRESS CO., [1923] 3 D. L. R. 1122 ; 52 O. L. R. 114.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—D.

105 i. *Illegality as defence.*]—Pltf. shipped by deft. co. intoxicating liquor, intending to have it sold in Ontario in violation of provincial statute & of Dominion legislation. Pltf. in the shipping bill declared "that this shipment is of a class & shipped under conditions permitted by law." Part of the goods were stolen from defts.' car at destination :—*Held :* pltf. could not recover, as the cause of action was founded upon an illegal contract.—MAJOR *v.* CANADIAN PACIFIC RY. CO., [1922] 3 W. W. R. 512.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—B'

sf. *Who are.*]—While there was in Ireland an internal rebellion, with an army employed to support it, armed raiders took goods from a ry. co. who were common carriers :—*Held :* the raiders were "King's Enemies," & the co. was not bound to reimburse the owner.—SECRETARY OF STATE FOR WAR *v.* MIDLAND GREAT WESTERN RY. CO. OF IRELAND, [1923] 2 I. R. 102.—**IR.**

PART III. SECT. 4.

155 i. *Effect of delay—Consignee may refuse goods—Measure of damages.*]—LECLERC *v.* R. (1920), 62 D. L. R. 324 ; 20 Exch. C. R. 236.—**CAN.**

PART III. SECT. 5.

h i. —— —— ——.]—DEVLIN *v.* GRAND TRUNK RY. CO. OF CANADA (1870), 30 U. C. R. 537.—**CAN.**

159 ix. —— —— —— ——.]—PORTAGE MILLING & TRANSFER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 3 D. L. R. 84 ; 33 Man. L. R. 91 ; [1923] 2 W. W. R. 88.—**CAN.**

159 x. —— —— —— *Delay in delivery.*]—HATFIELD & SCOTT, LTD. *v.* CANADIAN PACIFIC RY. CO. (1921), 57 D. L. R. 453.—**CAN.**

159 xi. —— —— ——.]—INDIA GENERAL NAVIGATION & RY. CO., LTD. *v.* GIRIDHARILAL GOBERDHONE DAS (1927), I. L. R. 54 Calc. 430.—**IND.**

165 ii. —— —— —— *Goods damaged.*]—Where goods are damaged in transit & have been in the hands of a number of carriers, the vendor must prove the damage took place while in the custody of the carrier he is suing.—ROSE & LAFLAMME, LTD. *v.* CAMPBELL, WILSON & STRATHDEE, LTD. & GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 397.—**CAN.**

165 iii. —— —— —— *Short delivery.*]—*Held :* defts. had discharged the *onus* of showing that they had transferred the goods in good order & condition to another carrier in the usual course for conveyance or delivery, & they thereupon ceased to be liable.—HARRIS *v.* DUBLIN & SOUTH EASTERN RY. CO., [1927] I. R. 137.—**IR.**

sg. *What consignee must prove—That goods in good condition when shipped—That goods actually passed over line of defendants.*]—NOVA SALES CO. *v.* CANADIAN PACIFIC RY., [1925] 3 D. L. R. 919.—**CAN.**

PART III. SECT. 6.

c i. —— *Goods sent to specified wharf.*]—*Held :* evidence of a constructive delivery, which imposed on the carrier the duty of taking the goods on board.—MORRISON *v.* THOMPSON (1877), 11 N. S. R. (2 R. & C.) 411.—**CAN.**

PART III. SECT. 7, SUB-SECT. 1.

d i. ——.]—Goods carried by defts. for pltf. :—*Held :* at owner's risk while in defts.' warehouse at point of destination.—BROWN *v.* DOMINION EXPRESS CO. (1921), 67 D. L. R. 325 ; 51 O. L. R. 359.—**CAN.**

d ii. ——.]—When goods entrusted to a shipowner, trading as a common carrier, have reached their destination & been stored pending removal by the consignee, the carrier ceases to be liable as an insurer.—OAKLEY *v.* WHITEHOUSE & CO. (1921), 17 Tas L. R. 125.—**AUS.**

e i. *S. P.* O'NEILL *v.* GREAT WESTERN RY. CO. (1857), 7 C. P. 203.—**CAN.**

f i. ——.]—SECRETARY OF STATE *v.* HAR KISHAN DAS-KURA MAL (1925), I. L. R. 7 Lah. 370.—**IND.**

PART III. SECT. 7, SUB-SECT. 2.

182 ii. —— ——.]—PREMIER LUMBER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649 ; [1923] S. C. R. 84 ; 1 W. W. R. 473.—**CAN.**

182 iii. —— ——.]—NORTHERN ELECTRIC CO., LTD. *v.* CANADIAN PACIFIC RY. CO. & FILLMORE RURAL TELEPHONE CO., LTD. & WIBERG, [1923] 3 D. L. R. 781 ; 3 W. W. R. 278.—**CAN.**

PART III. SECT. 7, SUB-SECT. 3.

p i. —— *Delivery without requiring surrender of bills of lading—Delivery after indorsement of bills of lading as security.*]—*Held :* the carriers were liable.—HICKMAN GRAIN CO. *v.* CANADIAN PACIFIC RY. CO., [1927] 1 D. L. R. 851 ; 1 W. W. R. 317 ; 32 C. R. C. 333 ; 36 Man. L. R. 322 ; *revsd. sub nom.* CANADIAN PACIFIC RY. CO. *v.* HICKMAN GRAIN CO., [1928] 1 D. L. R. 1069 ; [1928] S. C. R. 170 ; 34 C. R. C. 238.—**CAN.**

p ii. ——.]—CAMPBELL *v.* CANADIAN PACIFIC & CANADIAN NATIONAL RY. COS. (1924), 30 Can. Ry. Cas. 380.—**CAN.**

PART III. SECT. 7, SUB-SECT. 5.

s i. ——.]—*Held :* a consignee by delay in accepting delivery cannot

201. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

203. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

208. *Add. Annotations :*—**Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

Part IV.—Modifications of the Common Law Contract.

232. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

234a. ——.]—A carrier who regularly receives goods for carriage upon terms limiting his liability may be under the obligations & subject to the liabilities of a common carrier in so far as the limitation of liability does not extend. He does not by limiting his liability assume for all purposes the position of a bailee for reward who is liable only for negligence of himself or his servants, unless the limitation of liability is so extensive as to be inconsistent with the profession or contract of a common carrier.

A consignor who tenders to carriers for carriage goods apparently harmless but in fact dangerous, whether the carriers are common carriers bound by the custom of the realm to carry goods provided they are safe & fit for carriage or whether they are a railway co. bound by statute to afford reasonable facilities for the receiving, forwarding & delivering of goods, must give warning of the danger; otherwise he impliedly warrants that the goods are safe & fit for carriage.

Forwarding agents delivered to a railway co. for carriage certain carboys containing a corrosive fluid & also certain bales of felt goods on the terms of consignment notes exempting the co. from liability in certain events & stating that they did not undertake to carry dangerous goods except on special conditions. The carboys were insufficient to contain the fluid, which escaped & injured the felt goods. The co. professed to carry the felt goods as common carriers. The owner of the felt goods claimed damages against the co., & the co. paid £437 in settlement of the claim. In an action by the co. against the forwarding agents to recover this sum as damages for breach of warranty :—*Held :* (1) the terms of the consignment notes did not prevent the co. from being, as they professed to be, common carriers of the felt goods; (2) the co. were therefore liable as insurers, & without proof of negligence, to the owner of the felt goods; (3) they were entitled to recover from the forwarding agents, as upon an implied warranty that the carboys were fit to be carried, the amount they had paid to the owner of the felt goods for the damage done to his goods.—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., [1922] 2 K. B. 742; 91 L. J. K. B. 807; 127 L. T. 664; 38 T. L. R. 711, C. A.

241. *Add. Annotation :*—**Refd.** Dew *v.* United British S.S. Co. (1928), 98 L. J. K. B. 88.

262. *Add. Annotations :*—**Refd.** The Christel Vinnen, [1924] P. 61; Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

265. *Add. Annotations :*—**Consd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 44 T. L. R. 97; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51. **Refd.** Fagan *v.* Green & Edwards, [1906] 1 K. B. 102; Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

266. *Add. Annotations :—As to* (1) **Apld.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Same, [1927] 2 K. B. 432. (*See* [1928] 1 K. B. 717.) **Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662. *As to* (2) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51; Aslan *v.* Imperial Airways, Ltd. (1933), 49 T. L. R. 415. **Refd.** Rutter *v.* Palmer, [1922] 2 K. B. 87;

---

extend the period of the contractor's liability as such.—PORTAGE MILLING & TRANSFER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 2 W. W. R. 88.—CAN.

sk. *Rights of carrier — To sell — Must be exercised with reasonable diligence.*]—DAVIS *v.* ELLIOT (1924), 55 O. L. R. 583.—CAN.

PART III. SECT. 7, SUB-SECT. 6.

199 i. *When justified—Refusal of consignee to pay charges.*]—PATEL *v.* KERLER & CO., [1923] App. D. 506.—S. AF.

PART III. SECT. 7, SUB-SECT. 7.

201 i. *Whether agent for sale of necessity—Perishable goods—Sale without communicating with owner.*]—Where goods carried by a railway co. are liable to perish while in its possession because of the consignee's delay in taking delivery, the co. has the right to advertise & sell the goods without any notice to the consignor, whether or not there are any tolls payable.—ALBERTA POTATO & VEGETABLE CO. *v.* CANADIAN PACIFIC RY. CO. (Alta.), [1927] 2 D. L. R. 813; [1927] 2 W. W. R. 65; 32 Can. Ry. Cas. 356.—CAN.

PART III. SECT. 8.

c. Add "*revd.* (1921), 64 D. L. R. 316; 50 O. L. R. 223."

c i. —— ——.]—NAZZARENO *v.* ALGOMA EASTERN RY. CO. (1922), 70 D. L. R. 268.—CAN.

PART IV. SECT. 1, SUB-SECT. 2.

si. *Condition requiring notice of loss—Absence of notice bar to right of action.*]—PREMIER LUMBER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649; [1923] S. C. R. 84; 1 W. W. R. 473.—CAN.

sm. *S. P.* NORTHERN ELECTRIC CO., LTD. *v.* CANADIAN PACIFIC RY. CO. & FILLMORE RURAL TELEPHONE CO., LTD. & WIBERG, [1923] 3 D. L. R. 781; 3 W. W. R. 278.—CAN.

sn. *United States freight classification.*]—A contract of carriage of goods from the United States to Canada made according to a freight classification in use in the United States, whereby the carrier's liability was limited to a certain amount :—*Held :* to be authorised by Railway Act, 1919 (c. 68), s. 322 (4), & such classification & limitation were binding on the shipper.—SPORLE *v.* GREAT NORTHERN RY. CO., [1925] 3 D. L. R. 302; [1925] 2 W. W. R. 385; 30 Can. Ry. Cas. 186; 35 B. C. R. 232.—CAN.

PART IV. SECT. 1, SUB-SECT. 4.—A.

o i. —— *Goods lost—No proof of misconduct of carrier's servants—Carrier not liable.*]—SOUTH AFRICAN RYS. *v.* CONRADIE, [1922] App. D. 137.—S. AF.

Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185; Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534.

267. *Add. Annotations :*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Ambatielos *v.* Anton Jurgens Margarine Works, [1922] 2 K. B. 185; Rutter *v.* Palmer, [1922] 2 K. B. 87.

271. *Add. Annotations :—As to* (1) **Apprvd. & Apld.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. *As to* (2) **Apprvd. & Apld.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 203. **Consd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

After this case add :—

Loss, damage or delay—Loss of bullion—Carriage by air.]—*See* ASLAN *v.* IMPERIAL AIRWAYS, LTD., STREET & AERIAL TRAFFIC, No. 260a, *post.*

300. *Add. Annotation :—As to* (2) **Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678.

302. *Add. Annotation :*—**Refd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563.

307a. **Goods handed to unauthorised person.**]—ROSE BROS. (WIGMORE), LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1935), 79 Sol. Jo. 923.

335. *Add. Annotation :*—**Consd.** Studebakers Distributors, Ltd. *v.* Charlton Steam Shipping Co., [1938] 1 K. B. 459.

342. *Add. Annotations :—As to* (1) **Refd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563. *As to* (2) **Consd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563.

347. *Add. Annotations :—As to* (2) **Apld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (3) **Apld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

351. *Add. Annotations :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 44 T. L. R. 97.

352. *Add. Annotation :—As to* (1) **Refd.** Brown *v.* Harrison (1927), 96 L. J. K. B. 1025.

368. *Add. Annotation :*—**Refd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

376. *Add. Annotations :—As to* (4) **Consd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258. **Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223.

381. *Add. Annotation :—As to* (1) **Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

403. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

411. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

412. Add the following paragraph :—

A contract by a ry. co. to carry goods by a given train, which ordinarily arrives in London at a particular hour, does not amount to a warranty that it will so arrive, although the co.'s servants be informed that the object of the sender requires that it should arrive.

424. *Add. Annotation :—As to* (3) **Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

426. *Add. Annotations :—As to* (2) **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407. **Refd.** Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

430. *Add. Annotation :—Generally,* **Refd.** Glassbrook Bros. *v.* Leyson, [1933] 2 K. B. 91.

434. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

436. *Add. Annotation :—As to* (1) **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

442. *Add. Annotations :—As to* (1) **Refd.** Evans *v.* Employers' Mutual Insurance Association, Ltd., [1936] 1 K. B. 505. *As to* (2) **Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

452. *Add. Annotations :*—**Overd.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. **Consd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

453. *Add. Annotation :*—**Consd.** Neilson *v.* L. & N. W. Ry., [1922] 1 K. B. 192.

454. *Add. Citations :*—[1922] 1 K. B. 192; *affd. sub nom.* LONDON & NORTH WESTERN RY. CO. *v.* NEILSON, [1922] 2 A. C. 263; 91 L. J. K. B. 680; 38 T. L. R. 653; 66 Sol. Jo. 502, H. L.

Add. Annotations :—**Apld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646. **Refd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50.

460. *Add. Citations :—affd.*, [1922] 1 A. C. 178; 91 L. J. K. B. 423; 127 L. T. 1; 38 T. L. R. 359; 27 Com. Cas. 247, H. L.

PART IV. SECT. 1, SUB-SECT. 7.

s i. —— *" Value at place & time of shipment."*]—*Held :* the value must not be calculated at the cost price to the owner at the place where he bought the goods, but at the market value of the goods at the place & time of shipment. —THOMPSON *v.* CANADIAN PACIFIC RY. CO. (1922), 52 O. L. R. 306.—**CAN.**

so. *Goods exceeding declared value—Shipper bound by declared value.*]—SPORLE *v.* GREAT NORTHERN RY. CO., [1925] 3 D. L. R. 302; [1925] 2 W. W. R. 385; 30 Can. Ry. Cas. 186; 35 B. C. R. 232.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B.

323 i. *" Pictures "—Sound films.*]—On a claim in the Magistrate's Ct. for £44 16s., the value of a motion picture sound film, which, without any declaration as to its nature & value, had been entrusted to a carrier for carriage from one town to another & had been irreparably damaged in transit, the magistrate decided that the film was not a " picture or pictures " within sect. 1 of Carriers Act, 1830, & therefore the carrier was not protected by the said section & was liable. On appeal :—*Held :* the question decided by the magistrate was one of fact & therefore not appealable, &, further, the decision was right in fact as well as in law.—S. O. S. MOTORS, LTD. *v.* FOXTON & METRO GOLDWYN-MAYER, LTD., CORPN., [1932] N. Z. L. R. 1159; G. L. R. 425.—**N.Z.**

PART IV. SECT. 2, SUB-SECT. 4.—A.

r i. —— *Package containing scheduled articles—Effect of non-disclosure.*]—Where a package declared to contain stationery, but in fact containing scheduled articles (as under the schedule to Carriers Act) exceeding Rs. 100 in value & also non-scheduled articles is lost in transit the value of the lost non-scheduled articles may be recovered by the consignee from the carrier under sect. 3 of the Act.—RIVER STEAM NAVIGATION CO., LTD. *v.* JAMUNADAS RAMKUMAR (1931), I. L. R. 59 Calc. 472.—**IND.**

PART IV. SECT. 2, SUB-SECT. 4.—B.

p. —— —— ——.]—TAMBOLI *v.* GREAT INDIAN PENINSULA RY. CO. (1927), 55 L. R. Ind. App. 67.—**IND.**

• (p. 69) i. —— *Must be approved by Railway Commissioners Board—Onus of proof of approval on carrier.*]—SPORLE *v.* GREAT NORTHERN RY. CO., [1924] 4 D. L. R. 184; 3 W. W. R. 136; 34 B. C. R. 140.—**CAN.**

• (p. 69) ii. —— *Mistake by company—Recovery of deficiency in freight.*]—

Part V.—Carriage of Persons.

480. *Add. Annotations :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. **Refd.** Phillips *v.* Britannia Hygenic Laundry Co., [1923] 1 K. B. 539; Aslan *v.* Imperial Airways, Ltd. (1933), 49 T. L. R. 415; Myers (G. H.) & Co. *v.* Brent Cross Service Co., [1934] 1 K. B. 46.

481. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

492. *Add. Annotation :*—*As to* (2) **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

516. *Add. Annotations :* — **Consd.** Brandon *v.* Osborne Garrett, [1924] 1 K. B. 548; The

---

Where a consignment of goods was by mistake accepted by a railway at a concession rate which was applicable only to a particular special customer, instead of at the ordinary rate applicable to that class of goods according to the goods tariff, & by one of the conditions of consignment the railway reserved the right of "remeasurement, re-weighment, re-classification & re-calculation of rates":—*Held:* the railway could lawfully demand at the destination the deficiency in freight calculated at the correct rate.—SECRETARY OF STATE FOR INDIA *v.* HARBANS PRASAD (1929), I. L. R. 52 All. 81.—**IND.**

l (p. 69) i. ——.]—PURAN DAS *v.* EAST INDIAN RY. CO. (1927), I. L. R. 6 Pat. 718.—**IND.**

l (p. 69) ii. ——.]—SHEO NARAIN *v.* EAST INDIAN RY. (1927), I. L. R. 50 All. 246.—**IND.**

n (p. 69) i. ——.]—MASON & RISCH PIANO CO. *v.* CANADIAN PACIFIC RY. CO. (1908), 8 W. L. R. 951; 1 Sask. L. R. 213; 8 Can. Ry. Cas. 369.—**CAN.**

n (p. 69) ii. ——.]—SECRETARY OF STATE *v.* GHANAYA LAL-SRI KISHAN (1928), I. L. R. 10 Lah. 329.—**IND.**

pp i. —— *When railway protected.*]—So long as it is established that the risk notes, the forwarding note, & the railway receipt refer to the particular consignment in question, the railway co. is amply protected.—MOOLJI SIKKA & CO. *v.* BENGAL NAGPUR RY. CO., LTD. (1929), I. L. R. 56 Calc. 1060.—**IND.**

qq i. ——.]—The word "misconduct" in a risk note suggests that a railway servant has been guilty of doing something which was inconsistent with the conduct required of him by the rules of the co. In the absence of proof that there was any breach of duty by the railway servants or any infringement of the rules which regulate their terms of employment, no fair inference of misconduct could properly arise.—BOMBAY BARODA & CENTRAL INDIA RY. CO. *v.* NAJNAGAR SPINNING, WEAVING, & MANUFACTURING CO. (1929), I. L. R. 54; Bom. 106.—**IND.**

rr i. —— *Meaning of "robbery."*]—The word "robbery" as used in Risk Note H. is not synonymous with "theft," &. therefore, where there is no robbery from a running train, but theft only, deft. railway co. is not absolved from liability by the proviso to the note.—JAI NARAIN-LACHHMI NARAIN *v.* GREAT INDIAN PENINSULAR RY. CO. (1929), I. L. R. 11 Lah. 158.—**IND.**

rr ii. —— *Meaning of deterioration.*]—The word "deterioration" in the risk note, form B., & in Railways Act, s. 72, & Contract Act, s. 161, is wide enough to include depreciation in value of the goods on account of a fall in the market price.—GREAT INDIAN PENINSULAR RY. *v.* JUGUL KISHORE MUKAT LAL (1929), I. L. R. 52 All. 238.—**IND.**

rr iii. —— *Damage to goods by cold—Conditions in bill of lading as to ventilation complied with.*]—ROBERT *v.* CANADIAN NATIONAL RY., [1932] 1 D. L. R. 306.—**CAN.**

ss. *Liability for delay in delivery—Meaning of deterioration.*]—The word "deterioration" in Railways Act, s. 77, includes loss in value owing to delay in delivery & a fall in the market value of the goods consigned. Hence, a suit for the recovery of such loss is not maintainable without the notice required by the sect.—BHAGWAN DAS LACHMI NARAIN *v.* BENGALNAGPUR RAILWAY (1929), I. L. R. 51 All. 895.—**IND.**

ss. *Non-acceptance of goods—Sale—"Public auction"—What amounts to.*]—SECRETARY OF STATE *v.* SUNDERJI SHIVJI & CO., SECRETARY OF STATE *v.* DEDJI SHIVJI & CO. (1937), 81 Sol. Jo. 961, P. C.—**IND.**

PART V. SECT. 2, SUB-SECT. 1.

479 viii. —— *Inconvenience from drunken passenger.*]—Where a carrier allows a passenger who is obviously drunk to come on board his vehicle or vessel it becomes the duty of the carrier to prevent any inconvenient or injurious consequences to other passengers arising from his condition.—BOOTH *v.* CANADIAN PACIFIC RY. CO., [1938] 1 W. W. R. 753.—**CAN.**

483 i. *Not liable for mere accident—Apart from negligence or misconduct.*]—MILLS *v.* CANADIAN PACIFIC STEAMSHIPS, LTD. (1926), Q. R. 65 S. C. 148.—**CAN.**

483 ii. ——.]—MARCHESSEAULT *v.* CANADIAN NATIONAL RYS. (1926), Q. R. 42 K. B. 355.—**CAN.**

488 i. —— *Caused by act of stranger.*]—If an accident is due to the train leaving the metals, *primâ facie* the railway co. is guilty of negligence. If an accident is caused to a train by evilly-disposed persons over whom the railway co. had no control or any reason to anticipate that they intended to carry out their design in the sector in which the accident occurred, the railway co. will not be liable for negligence or for damages.—JEWAN RAM KHETTRY *v.* EAST INDIAN RY. CO. (1924), I. L. R. 51 Calc. 861.—**IND.**

490 ii. —— —— *Opening carriage door.*]—While a street car was backing up to a platform which it had overrun, a passenger opened one of the rear doors without the knowledge of the conductor or motorman. The door, which opened outwards & projected over the platform, struck plff., who was standing on the platform waiting for a car. The conductor was inside the car collecting fares, & had left the door unlocked & unguarded, although the motorman had informed him that he was going to back up:—*Held:* defts. were liable.—ODEGAARD *v.* WINNIPEG ELECTRIC CO., [1927] 4 D. L. R. 387; [1927] 2 W. W. R. 589; 36 Man. L. R. 592.—**CAN.**

490 iii. —— —— *Breach of bye-law.*]—A passenger cannot recover for injuries caused by falling from a train while travelling on the rear platform, which was forbidden by a bye-law of which proper notice was given.—ASKIN *v.* CANADIAN PACIFIC RAILWAY, [1937] 4 D. L. R. 71; O. R. 730; *affd.*, [1938] 2 D. L. R. 281; O. R. 172.—**CAN.**

491 iii a. ——.]—Ry. cos. have a duty to provide a reasonably adequate & safe access to their carriages for normal passengers, but they owe no special duty towards those passengers who are abnormal by reason of physical disability.

A passenger brought an action against a ry. co. for damages in respect of personal injuries sustained by him through a fall, owing to his having missed his foothold on the step of a ry. carriage while attempting to enter it at one of defenders' stations. Pursuer averred that, being of abnormal weight & advanced age, he had great difficulty in entering ry. carriages, a fact which was well known to defenders' servants as he was a regular traveller by their trains from the station in question, & that, at the time of the accident, access to the carriage was rendered difficult for a normal passenger, & dangerous to him in view of his physical disability, by reason of a concealed danger, viz., that the step of the carriage, owing to its design & to the place where the train was drawn up on the occasion in question, was at an unusual height above the platform:—*Held:* (1) while defenders had a duty to provide a reasonably adequate & safe access to their trains for the normal individual, they had no special duty towards abnormal passengers such as pursuer; (2) defenders were not bound to ensure that there should be an unvarying distance between step & platform; (3) pursuer's averments did not disclose any failure of duty on defenders' part, by way of concealed danger or otherwise, which brought about the accident, but the true cause of the accident was pursuer's own physical disability; action dismissed.—HENDERSON *v.* LONDON, MIDLAND & SCOTTISH RY. CO., [1935] S. C. 734.—**SCOT.**

491 vi. —— *Effect of finding of negligence.*]—It is generally sufficient for carriers to prove that they have adopted the best-known apparatus & have kept it in working order, but this rule is not applicable when there is a definite finding of negligence against the carriers.—CANADIAN NATIONAL RAILWAY *v.* MULLER, [1934] 1 D. L. R. 768.—**CAN.**

497 ii. —— *Driver of omnibus stooping down to recover tickets on floor.*]—BRADLEY *v.* BELL BUS CO., [1928] N. Z. L. R. 204.—**N.Z.**

501 i. —— *Passenger injured by sudden stopping of train.*]—The fact that a passenger was injured because of the sudden stopping of a railway train establishes a *primâ facie* case of negligence against the railway co.; & in order to rebut that presumption it is not enough for the co. to show that the train was necessarily or reasonably so stopped because, *e.g.*, there was an obstruction on the track, it must also show that it was not because of its negligence that the obstruction got there.—VIVIAN *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1930] 1 W. W. R. 791; 3 D. L. R. 892; 42 B. C. R. 423.—**CAN.**

501 ii. ——.]—The driver of a motor bus owes a duty to his passengers not to drive so close to a vehicle ahead, that, in any emergency created by driver of that vehicle, he will have to apply his brakes so violently that a passenger is thrown from a seat in the bus & injured. Also, while a carrier is not an insurer of his passengers'

Paludina, [1925] P. 40. **Refd.** Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

526. *Add. Annotation :—As to* (1) **Refd.** Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1.

536. *Add. Annotation :*—**Refd.** Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

549. *Add. Annotations :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39; Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30.

560. *Add. Annotation :—As to* (2) **Refd.** Sharpe *v.* Southern Ry. (1925), 133 L. T. 693.

560a. —— **Warning not heard by passenger—Passenger asleep.**]—Pltf. was a passenger on defts.' railway to G. by a train which arrived at that station while it was still daylight. Owing to the train being too long for the platform at G., upon its arrival there the hindmost carriage, in which pltf. was, stopped short of the platform. A porter shouted to the passengers to keep their seats, but pltf., who was asleep, did not hear him. On waking pltf. realised that he was at G. station, & fearing that he might be carried on, got out in a hurry without looking to see what he was stepping on. There being a drop of five feet from the carriage floor to the ground, he fell & was injured :—*Held :* even if in the circumstances defts. were negligent, of which the ct. thought there was no evidence, pltf.'s act in getting out without looking where he was going was contributory negligence, & defts. were not responsible.—SHARPE *v.* SOUTHERN RY. CO., [1925] 2 K. B. 311; 94 L. J. K. B. 913; 133 L. T. 693; 69 Sol. Jo. 775, C. A.

Annotation :—**Apld.** Baker *v.* Longhurst & Sons, Ltd., [1933] 2 K. B. 461.

571. *Add. Annotation :*—**Distd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

572. *Add. Annotation :*—**Refd.** Sharpe *v.* Southern Ry. (1925), 133 L. T. 693.

573. *Add. Annotation :—As to* (1) **Consd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

578. *Add. Annotation :*—**Apld.** Broome *v.* Agar (1928), 138 L. T. 698.

579a. *S. P.* WHITEHOUSE *v.* MIDLAND RY. CO. (1866), 30 J. P. 760.

---

safety, he owes a duty to his passengers to provide seats so protected that they cannot be injured by being thrown therefrom upon an emergency application of the brakes.—DE COURCEY *v.* LONDON STREET RY., [1932] 2 D. L. R. 319; O. R. 226.—**CAN.**

512 i. —— *Act done in course of employment.*]—Pltf., a passenger upon a south-bound car of an electric street ry. co., got off at a stopping place, & crossing behind the car, attempted to pass over the rails used by the north-bound cars, & was struck by a car & injured. She had followed the directions given her by the conductor of the south-bound car :—*Held :* pltf. was entitled to recover. The way pltf. was directed to take was dangerous & this was known to the conductor.—FORSTER *v.* TORONTO RY. CO. (1921), 67 D. L. R. 441; 51 O. L. R. 136.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

k i. —— —— *Bye-law prohibiting passengers from riding on car platforms.*]—Where it was proved that pltf. could not, by exercise of reasonable care, have avoided the accident, that there was standing room inside the car, but standing passengers prevented him from going in :—*Held :* pltf. was entitled to recover.—KIME *v.* HAMILTON RADIAL ELECTRIC RY. CO. (1921), 50 O. L. R. 113; 64 D. L. R. 191.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

537 ii. —— ——.]—Pltf. alleged that he had been injured by falling from a train of defts. in which he was a passenger, & charged negligence of defts.' servants in leaving open the vestibule door of a car, through which he fell. To the question "In what did the negligence consist?" the jury answered : "By the south side of rear end of second-class car by trap & door of vestibule being open" :—*Held :* this answer, making the negligence the "being open" of the door, & not the opening or leaving of it open, & not indicating who opened it or left it open, was not a finding upon which a judgment for pltf. could be based.—ALEXANDER *v.* CANADIAN NATIONAL RY., [1930] 3 D. L. R. 140; 36 C. R. C. 404; 65 O. L. R. 162.—**CAN.**

537 iii. —— —— *Contributory negligence.*]—Contributory negligence proved in claim against ry. co. for damages caused by swinging door at exit on alighting from train.—HADDOCK *v.* BRITISH COLUMBIA ELECTRIC RY. CO., LTD. (1937), 51 B. C. R. 483.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.

575 i. —— *Platform too low.*]—Where at a railway station there is no platform, or a platform of inadequate length to permit a passenger to step from the carriage on to a platform, the duty of the carrier to supply passengers with reasonable facilities for boarding & alighting from trains is fulfilled by providing the carriages with steps. A train pulled into a station in broad daylight, the carriage in which suppliant was travelling being drawn up beyond the platform. After goods from that station had been put out & a reasonable time had elapsed, the guard, thinking that all passengers had alighted, gave the signal to start & the train moved on, with the result that suppliant, who was then alighting from the side of the carriage away from the platform & out of view of the train officials, fell & was injured : —*Held :* there was no obligation upon the train officials to see that all passengers had actually alighted, & there was no evidence of negligence.—MUNT *v.* R., [1932] N. Z. L. R. 1691; G. L. R. 667.—**N.Z.**

p. Add "*revsd.* (1920), 48 O. L. R. 386; 19 O. W. N. 221."

p i. *Train stopping before reaching station—No duty to warn passengers.*]—GRAND TRUNK RY. CO. OF CANADA *v.* MURPHY, [1924] 1 D. L. R. 450; [1924] S. C. R. 101; 29 Can. Ry. Cas. 398.—**CAN.**

q i. —— —— —— ——.]—As long as the entrance doors of a street car are open while the car is standing at a passenger landing place there is an implied invitation extended to intending passenger to enter the car, & it is the duty of the conductor in charge of the car to afford them a reasonable opportunity to do so in safety. He is therefore negligent in giving the signal to start the car before the entrance doors are closed & all persons attempting to board the car are safely on.—WILSON *v.* WINNIPEG ELECTRIC RY. CO., [1922] 2 W. W. R. 610; 68 D. L. R. 617.—**CAN.**

s i. —— —— *Conductor not on platform.*]—A tramway conductor, as the car was approaching a "stop if required" station, went on to the top of the car to change the screens which showed the destination of the car, having satisfied himself that there was no one who wished to board the car, & that an elderly woman inside the car, the only passenger, showed no sign of wishing to get off. The passenger, who thought she had given a signal to stop, stepped on to the footboard & was jolted off after the car had passed the station, & was injured :—*Held :* no blame attached to the conductor, & the accident was due to the fault of the passenger.—GRAY *v.* GLASGOW CORPN., [1926] S. C. 967.—**SCOT.**

584 v. —— *Passenger thrown down.*] —*Held :* there was negligence on the part of defts.' servants, & deft. liable in damages.—GUILDAY *v.* WINNIPEG ELECTRIC RY. CO., [1922] 3 W. W. R. 498; 70 D. L. R. 517.—**CAN.**

584 vi. —— *After stopping—No invitation to alight.*]—The stoppage of a tram-car at other than at an authorised stopping place is not in itself an invitation to passengers to leave the vehicle; & upon a tram-car so stopping, a passenger alights at his own risk of injury from the restarting of the tram-car as well as from passing traffic.—KILPATRICK *v.* CHRISTCHURCH TRAMWAY BOARD, [1933] N. Z. L. R. Supp. 170.—**N.Z.**

t i. *Passenger stepping from moving car—Accident avoidable by exercise of reasonable care by carrier.*]—GRIFFIN *v.* CAPE BRETON ELECTRIC CO. (1921), 63 D. L. R. 251; 55 N. S. R. 19.—**CAN.**

t ii. —— *In contravention of bye-law.*]—*Held :* a contravention of an absolute statutory provision precluded a claim for damages.—HILL *v.* GRAND TRUNK RY. CO. (1922), 52 O. L. R. 508.—**CAN.**

u i. —— *What is dangerous condition.*] —ELLIOTT *v.* TORONTO TRANSPORTATION COMMISSION, [1927] 1 D. L. R. 259; 32 Can. Ry. Cas. 200; 59 O. L. R. 609.—**CAN.**

so. *Omnibus stopping at unsafe place.*] —When the place where the driver of a motor bus usually makes his stop is presently safe to his knowledge & available, it is negligence on his part to cause or invite passengers to alight at a place which, to his knowledge, is unsafe.—ROADHOUSE *v.* WINNIPEG ELECTRIC CO., [1935] 2 W. W. R. 194; 3 D. L. R. 246; 43 B. C. R. 184; *affd.*,

592. *Add. Annotation :*—**Folld.** Schlarb *v.* London & North Eastern Ry. Co., [1936] 1 All E. R. 71.

592a. —— —— ——.]—On a very foggy night pltf., having descended the staircase of a ry. station, was proceeding cautiously forward on the platform, when she fell over the edge. It was proved that on this particular night the lighting of the station was quite ineffective at this particular point, & the construction of the station was such that pltf. was without any indication of which way the platform was run. The foot of the staircase was within three yards of the edge of the platform, but the latter was marked by a white line painted along it. There was no guard rail :—*Held :* defts. were negligent & there was no evidence of contributory negligence on the part of pltf.—SCHLARB *v.* LONDON & NORTH EASTERN RY. CO., [1936] 1 All E. R. 71 ; 80 Sol. Jo. 168.

597. *Add. Annotations :*—**Apprvd. & Apld.** Letang *v.* Ottawa Electric Ry., [1926] A. C. 725. **Refd.** Cutler *v.* United Dairies (London), Ltd., [1933] 2 K. B. 297.

598. *Add. Annotations :*—**Refd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455 ; Schlarb *v.* London & North Eastern Ry. Co., [1936] 1 All E. R. 71.

598a. —— —— ——.]—Applt. met with an accident on resps.' property by using some slippery steps giving convenient access to their tramline. She sued resps. for damages. Resps. contended that applt. had been guilty of contributory negligence, & that the maxim "*Volenti non fit injuria*" applied to prevent her from receiving compensation :—*Held :* unless resps., who had invited applt. to use the access & were bound to keep it reasonably safe, established that she understood the extent of the danger which she was incurring & that she resolved to undertake the risk, the defence of "*Volenti non fit injuria*" failed.—LETANG *v.* OTTAWA ELECTRIC RY. CO., [1926] A. C. 725 ; 95 L. J. P. C. 153 ; 135 L. T. 421 ; 42 T. L. R. 596, P. C.

598b. —— **Whether escalator dangerous.**]—ALEXANDER *v.* CITY & SOUTH LONDON RY. Co. (1928), 44 T. L. R. 450, D. C.

600. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

603. *Add. Annotation :*—*As to* (3) **Refd.** Montreal City *v.* Watt & Scott (1922), 128 L. T. 147.

605. *Add. Annotations :*—**N.F.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540. **Refd.** Nunan *v.* Southern Ry., [1923] 2 K. B. 703.

609. *Add. Annotations :*—*As to* (1) **Refd.** Baker *v.* Longhurst & Sons, Ltd., [1933] 2 K. B. 461. *As to* (2) **Consd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

620. *Add. Annotations :*—*As to* (1) **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539 ; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n. ; Ryan *v.* Youngs, [1938] 1 All E. R. 522.

[1936] S. C. R. 147 ; 2 D. L. R. 190. —**CAN.**

sq. *Car starting before passenger clear.*]—Pltf., 75 years old, got his right hand caught in the rear door of a "one-man" street car when alighting from it, & was compelled to run 50 or 60 yards with the car, thereby putting a severe strain upon his muscles, heart & arteries :—*Held :* although the motor-man saw his signal light go on, which was said to mean that the rear door had closed, yet since he did not look back or otherwise make certain that pltf. was clear of the car before it started he was negligent ; & pltf. was entitled to damages for his pain & suffering, past & prospective.—FRASER *v.* WINNIPEG ELECTRIC CO., [1936] 3 W. W. R. 524 ; 4 D. L. R. 624.—**CAN.**

sr. *Contributory negligence of passenger.*]—In an action against the owners of a tramway system, brought by a woman passenger on one of their cars to recover damages in respect of personal injuries which she had sustained in consequence of the alleged negligence of defenders' servants, pursuer averred that, when the car was approaching at a slow speed, & appeared about to stop at the stopping place where she intended to alight, she descended the step below the rear platform, & that, while she was standing with both feet on the step, waiting for the car to stop, the car was accelerated with a jerk which threw her off the step & caused her injuries :—*Held :* pursuer, by voluntarily placing herself on the step of the moving car, had added a risk, which was not contemplated in the contract of carriage between her & defenders, & which constituted contributory negligence on her part ; action dismissed.—CALDWELL *v.* GLASGOW CORPN., [1936] S. C. 490.—**SCOT.**

sw. *Train stopping suddenly at platform—Passenger waiting to alight.*]—Suppliant was a passenger by train. Before its arrival at the station-platform which was her destination she rose from her seat. The train gave a jolt as it was stopping, & she was thrown off her balance in the carriage-aisle & injured. The evidence showed the jolt was not an unusual one :—*Held :* resp. could not be held responsible for the injuries suffered by suppliant.—CHANDLER *v.* R., [1936] N. Z. L. R. 95 ; 12 N. Z. L. J. 232.—**N.Z.**

PART V. SECT. 2, SUB-SECT. 6.

586 ii. ——.]—Deft. co. gratuitously, & for her own convenience, carried pltf. some four hundred yards past a station, where she was allowed to alight. At this place the ground was not level, & a person living along the line had been permitted for his own convenience to lay down on the right of way a platform, one end of which rested on a plank. Pltf. descended safely to the platform, but in passing from it she fell & was injured, owing, as alleged, to some defect in the condition of the plank supporting it :—*Held :* the co. was not liable.—BURKE *v.* BRITISH COLUMBIA ELECTRIC RY. CO., LTD. (1900), 7 B. C. R. 85.—**CAN.**

592 ii. —— —— ——.]—Where a passenger, arriving at a station at night, walked along a platform, not intended but frequently used as a means of exit, but which was not in any way guarded, &, after leaving the platform, fell into an excavation in the railway co.'s grounds & was injured :—*Held :* the co. were liable.—OLDRIGHT *v.* GRAND TRUNK RY. CO. OF CANADA (1895), 22 A. R. 286.—**CAN.**

sa. *Waiting room—Passage leading to "Ladies Toilet"—Unlighted & unlocked door opening on to stairs to basement.*]—Pltf.'s wife entered a passage leading from a waiting room above the entrance to which were the words "Ladies Toilet." The passage had three doors leading off it on the left. The first was apparently that of a private office, the second was marked "Ladies Toilet" but was locked, & the third, a few feet beyond, was standing open. There was no artificial light in the passage, & the daylight was waning. Pltf.'s wife passed through the open doorway & immediately fell down a flight of stairs into the basement below, & was severely injured :—*Held :* the third doorway was a trap or concealed place of danger, & was a place to which pltf.'s wife might reasonably have been expected to go in the belief, reasonably entertained, that she was entitled or invited to do so.—KNOWLTON *v.* HYDRO ELECTRIC POWER COMMISSION OF ONTARIO, [1926] 1 D. L. R. 217 ; 58 O. L. R. 80.—**CAN.**

sc. —— —— ——.]—An unlocked & unlabelled door leading from a railway waiting room is not a trap, & a woman who, thinking it to lead to a lavatory, enters & falls down unlighted steps & is injured, has no right of action against the railway co.—GRANT *v.* CANADIAN PACIFIC RAILWAY, [1936] 4 D. L. R. 380 ; 11 M. P. R. 25.—**CAN.**

sd. —— *Doors leading from—Duty of carrier.*]—The public cannot assume that access is allowed through all the doors opening into or leading into or leading out of a waiting room. When the doors intended for public use are indicated, failure to put on the other doors notices that ingress through them is forbidden does not amount to negligence ; on the contrary, the absence of any notice should put the public upon inquiry whether it should attempt to open these doors & to proceed further into a place where it has no business. But, even if failure to keep such doors locked may amount to negligence, the carrier will not be liable for an accident to a passenger where the cause of the accident was the passenger's own want of caution in proceeding beyond such a door in the dark & in a strange place.—CANADIAN NATIONAL RYS. CO. *v.* LEPAGE, [1927] 3 D. L. R. 1030 ; [1927] S. C. R. 575.—**CAN.**

625. *Add. Annotation :—As to* (2) **Refd.** Fosbroke-Hobbes *v.* Airwork, Ltd. & British American Air Services, Ltd., [1937] 1 All E. R. 108.

629. *Add. Annotation :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

631a. —— —— **Running over defective line.**]—In an action against a ry. co. for an injury to a passenger, it is evidence of negligence in the conduct of the carrying, that the train was run over a rail known to have been defective & fractured, the jury considering that this was the cause of the accident.—PYM *v.* GREAT NORTHERN RAIL. CO. (1861), 2 F. & F. 619 ; *subsequent proceedings* (1862), 2 B. & S. 759 ; (1863), 4 B. & S. 396, Ex. Ch.

Annotation :—**Consd.** Readhead *v.* Midland Rail. Co. (1867), L. R. 2 Q. B. 412.

638. *Add. Annotations :*—**Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

645. *Add. Annotation :*—**Refd.** Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253.

647. *Add. Annotation :*—**Consd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

652. *Add. Annotation :*—**Refd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

680. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

681a. —— —— —— **Accident in booking-hall.**]—ROGERS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1930), 46 T. L. R. 238 ; 74 Sol. Jo. 123 ; 94 J. P. Jo. 155.

683a. —— **Necessity for submission to Rates Tribunal of schedule for standard season tickets.**]—*Re* STANDARD CHARGES SCHEDULES, No. 1323a, *post*.

683b. —— **Season ticket rates—Continuation of—1921 Act, s. 34.**]—SOUTHEND CORPN. *v.* LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

684. *Add. Annotations :*—**Consd.** Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185 ; Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258. **Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223.

685a. —— **Railway company—Whether applicable—Action under Fatal Accidents Act, 1846 (c. 93).**]—Where a passenger by railway, who has agreed with the railway co. that their liability for personal injury shall not exceed a certain sum, is killed by the negligence of the co.'s servants, the damages recoverable by his dependants in an action under the above Act are not limited to such agreed sum.—NUNAN *v.* SOUTHERN RY. CO., [1924] 1 K. B. 223 ; 93 L. J. K. B. 140 ; 130 L. T. 131 ; 40 T. L. R. 21 ; 68 Sol. Jo. 139, C. A.

Annotations :—**Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Apld.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258. **Refd.** Penton *v.* Southern Ry., [1931] 2 K. B. 103 ; Fosbroke-Hobbes *v.* Airwork, Ltd. & British American Air Services, Ltd., [1937] 1 All E. R. 108.

685b. —— —— —— **Injury on journey by special train.**]—Pltf. was engaged as a workman by contractors to the Ministry of Health for the construction of a road near H., & the Ministry made with deft. railway co. arrangements for a special train to take pltf. & other men from C. to H., a distance of twenty-six miles. Pltf. received from his employers a voucher which was addressed to the booking clerk & which contained these words : " On surrender of this voucher please supply the bearer with a return workman's ticket to H. by any ordinary workman's train without payment. This voucher is only available by workman's train." The voucher, on presentation at the booking office, was exchanged for a ticket. One side of the ticket had on it (*inter alia*) the words : " See back. Workmen. By special cheap train for the ' working classes.' " On the other side were (*inter alia*) the words : " This ticket is issued subject to the bye-laws, rules & regulations of the Managing Committee," & " This ticket is issued subject to the conditions mentioned in the Managing Committee's Act (62 & 63 Vict. c. clxviii), & its use by the holder is to be taken as evidence of a special contract upon those conditions. The liability of the co. is limited to a sum not exceeding £100." The above-mentioned Act contained provisions as to the running of workmen's trains on the particular railway within twenty miles of London, & limited the co.'s liability to £100, subject to certain conditions. Pltf. was injured by a collision between his train & another train. In an action for damages defts. admitted negligence, but contended that the issue of the ticket created a special contract between themselves & pltf. whereby

---

PART V. SECT. 2, SUB-SECT. 10.

622 iii. —— —— ——.]—WATSON *v.* PACIFIC STAGES, LTD. (1935), 5 F. L. J. (Can.) 52.—**CAN.**

PART V. SECT. 2, SUB-SECT. 11.

p i. —— —— ——.]—The form of contract or shipping order used by a ry. co. in connection with the transportation of live stock provided that an attendant should accompany the shipment, but should not have the right to travel free or at a rate less than the ordinary fare, unless he had signed the special form of contract printed on the back of the shipping bill, which contained limitations as to claims for personal injuries sustained while travelling. In an action to recover damages for injuries during transportation, due to the negligence of the ry. co.'s servants :—*Held :* the fact that the attendant had not paid any fare was due to the fact that the ry. co.'s agent made no attempt to collect the fare, & the ry. co. was responsible for the omission ; the attendant was a full-fare passenger & not a trespasser & was entitled to recover damages.—STEWART *v.* GRAND TRUNK PACIFIC RY. CO., [1924] 1 D. L. R. 881 ; 1 W. W. R. 473.—**CAN.**

s i. —— ——.]—When one entrusts himself or his property to another to be carried, there is an implied contract that the traveller shall use ordinary care in the transport, & in the absence of special circumstances the fact that the passenger is the father of the driver has no significance.—KEY *v.* KEY, [1930] 3 D. L. R. 327 ; 65 O. L. R. 232.—**CAN.**

PART V. SECT. 2, SUB-SECT. 12.

sm. *Passenger standing on platform of moving car.*]—A passenger who leaves his seat in a tramway car & goes on to the platform, while the car is in motion, is not necessarily guilty of contributory negligence should he meet with an accident while on the platform, the question depending in each case upon the particular circumstances.—BUCHANAN *v.* GLASGOW CORPN., [1921] S. C. 658.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.

651 iii. —— —— *Another route adopted—Liability for excess fare.*]—A passenger after purchasing a ticket from Agra to M. *via* Aligarh & C. discovered that if he travelled beyond Aligarh & *via* G. he would reach his destination more quickly than by the route indicated on the ticket, although he would be travelling by a longer route. He did travel accordingly & on arrival at M. he was made to pay excess fare. On suit for refund :—*Held :* Indian Railways Coaching Tariff, r. 64, applied to a passenger who was found travelling, either intentionally or by mistake, by a route other than that indicated on the ticket & not to a passenger who had arrived at his destination, & the case was governed by r. 63 & the excess fare was justified.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* MURTI MANOHAR (1928), I. L. R. 51 All. 399.—**IND.**

their liability was limited to £100. The ct. found that pltf. must be taken to have been aware of the conditions indorsed on the back of the ticket. On the further question whether the terms of the contract applied to the particular journey:—*Held:* although the ticket & the conditions on it had been drafted as applicable to a journey by a train coming under the co.'s private Act, & contained no reference to such a journey as pltf.'s by a special train to a destination beyond twenty miles from London, yet, in the case of a passenger in the position of pltf., the conditions were a plain intimation that one condition on which the contract was made was that the co.'s liability should be limited to £100, & pltf. could recover no more than that amount.—HEARN *v.* SOUTHERN RY. Co. (1925), 41 T. L. R. 305, C. A.

685c. **Time limit for making claim.**]—Pltf. was received by defts. under a contract to be carried in one of their steamships. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:—*Held:* (1) the clause relieving defts. from liability for the negligence of their servants was valid & enforceable, but applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury; (2) as pltf. had failed to give any written notice of his claim within the time prescribed by the contract, he was not entitled to recover.—JONES *v.* OCEANIC STEAM NAVIGATION CO., [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

686a. **Contract for voyage—Mistake as to nature of voyage—Ratification.**]—In Oct. 1933, pltf., a widow lady who since the death of her husband in 1929 had suffered from insomnia, nervous disorder, & heart trouble, wished to go to sea for a pleasure cruise. She called at the office of deft. co. & bought a ticket for a voyage to Australia & back on defts.' steamer *O.* She was under the impression that the voyage was to be a pleasure cruise & that she would have the benefit of the usual entertainments & shore excursions which are arranged on pleasure cruises, but in fact the voyage was an ordinary voyage in the regular mail & passenger service between England & Australia. She embarked on the *O.* in due course, & after the steamer had started she discovered that the voyage was not a pleasure cruise & she asked the purser to make arrangements for her to be put ashore & conveyed back to England. He suggested that she should go ashore at Toulon & return home by train through France, but as he could not undertake that deft. co. would refund the money which pltf. had paid for her passage she decided to stay on board, & she accordingly travelled to Australia & back. She then brought this action for damages for breach of contract. She had paid to deft. co. £140 for the return ticket to Australia & had paid a further £60 as a deposit to cover incidental expenses during the voyage, & she said that owing to the circumstances of the voyage her health had become worse & she had been put to trouble & expense at the ports of call:—*Held:* although originally the parties were not *ad idem* & there was no concluded contract, when pltf. made up her mind to remain on board for the voyage to Australia & back instead of returning to England from Toulon she elected to affirm the contract which deft. co. had in fact offered her, & as deft. co. had performed that contract the action failed.—MACMILLAN *v.* ORIENT STEAM NAVIGATION CO., LTD. (1935), 40 Com. Cas. 182.

688. *Add. Annotation:*—**Refd.** Penton *v.* Southern Railway, [1931] 2 K. B. 103.

689. *Add. Annotations:*—**Distd.** L'Estrange *v.* Graucob (F.), Ltd., [1934] 2 K. B. 394. **Refd.** Nunan *v.* Southern Ry. (1923), 130 L. T. 131; Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305.

695. *Add. Annotations:*—**Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Refd.** Nunan *v.* Southern Ry. (1923), 130 L. T. 131.

695a. —— —— —— **Conditions ascertainable by reference to time-table.**]—Pltf., who could not read, had an excursion ticket taken for her by her niece on the face of which were printed the words: "Excursion. For con-

---

PART V. SECT. 3, SUB-SECT. 5.

688 v. —— —— ——.]—*Held:* in view of the smallness of the type in which the condition was printed & the absence of any device to draw attention to it, defts. had not taken reasonable means to bring it to pursuer's notice.—WILLIAMSON *v.* NORTH OF SCOTLAND, ETC. NAVIGATION CO., [1916] S. C. 554.—SCOT.

p i. —— —— —— ——.]—In an action by a passenger against a ry. co. to recover damages for personal injury sustained by him while travelling on one of their trains, defenders maintained that, under the contract of carriage, they were exempt from liability. When the accident occurred, pursuer was travelling on a "pleasure party" ticket, issued at a fare less than the ordinary fare. The ticket bore on the front, in legible print, "See Back," & on the back, also in legible print, "This ticket is issued subject to the General Notices, Regulations, & Conditions in the co.'s current Time Tables & Bills." Defenders' current Time Tables contained a section headed "General Notices, Regulations, & Condition," which included a condition that the holder of a ticket issued at a fare less than the ordinary fare should have no right of action against the co. in respect of injury, however caused. Pursuer admitted that he knew that there was printing on the back of his ticket, & that he must have read what was printed on the back of a similar ticket when travelling on previous occasions, but deponed that what he read had conveyed nothing to him:—*Held:* the condition formed part of the contract, in respect that the reference of the ticket to the conditions in defenders' time tables was reasonable notice of their existence & terms, & further, as pursuer knew there was printing on the back of the ticket, & admitted that at some time he must have read the printing, he must be taken to have known that it referred to conditions. Defenders assoilzied.—GRAY *v.* L. & N. E. RY. Co., [1930] S. C. 989.—SCOT.

q i. —— —— —— ——.]—GRAND TRUNK PACIFIC COAST S.S. CO. *v.* SIMPSON (1922), 63 S. C. R. 361; 65 D. L. R. 614; [1922] 2 W. W. R. 320. —CAN.

s i. *S. P.* ERICKSON *v.* CANADIAN PACIFIC RY. CO., WALSTEAD *v.* CANADIAN PACIFIC RY. CO. (Sask.), [1928] 1 D. L. R. 29; [1927] 3 W. W. R. 749. —CAN.

ditions see back"; & on the back was a notice that the ticket was issued subject to the conditions in the deft. co.'s time-tables & excursion bills. On the excursion bills excursion tickets were stated to be issued subject to the conditions shown in the company's current time-tables. The time-tables, which could be obtained for sixpence each, stated: "Excursion tickets . . . are issued subject to the general regulations & to the condition that the holders . . . shall have no rights of action against the co. . . . in respect of . . . injury (fatal or otherwise) . . . however caused." A special jury found that an accident to the pltf. on the journey covered by the excursion ticket was due to negligence on the part of deft. co. To prevent the case going back for a new trial, the jury were asked whether the deft. co. took reasonable steps to bring the conditions to the notice of pltf. & answered "No," & awarded damages. Argument was then allowed whether the jury could so find, & it was held that as a matter of law when the ticket was accepted the contract was complete, & therefore there was no evidence on which the jury could find as they did:—*Held:* (1) the fact that pltf. could not read did not alter the legal position; she was bound by the special contract made on the excursion ticket on the acceptance of the ticket; & the indication of the special conditions by reference to the time-tables was sufficient notice of their existence & contents; (2) the question put to the jury for the sake of convenience as to reasonable notice must be determined upon the law applicable to the conditions upon which the ticket was issued, & those conditions negatived the right of pltf. to recover damages.—THOMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. Co., [1930] 1 K. B. 41; 98 L. J. K. B. 615; 141 L. T. 382, C. A.

Annotations:—As to (1) **Apld.** Penton *v.* Southern Railway, [1931] 2 K. B. 103. *Generally*, **Reld.** Fosbroke-Hobbes *v.* Airwork, Ltd. & British American Air Services, Ltd., [1937] 1 All E. R. 108.

695b. —— —— —— **Plaintiff unable to read.**]—THOMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. Co., No. 695a, *ante*.

695c. —— —— —— **Whether question of law or fact.**]—THOMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. Co., No. 695a, *ante*.

695d. —— —— ——.]—Defts., a railway co., issued to persons asking for tickets between certain hours of the day between certain stations return day tickets at a reduced rate, whether such rate was demanded or not. On the front of these tickets were the words, legibly & clearly printed in large letters, "For conditions see back," & on the back was printed a condition exonerating the co. from liability for injury to the holder of the ticket, however caused. Pltf. asked for "Waterloo return," & was supplied with one of these tickets, which he accepted without objection. He was injured on the journey through the alleged negligence of defts.' servants:—*Held:* in the absence of proof that pltf. actually knew of this condition, defts. must show that they had taken reasonable steps to bring it to his notice, but on the facts there was no evidence for a jury that they had not done so.—PENTON *v.* SOUTHERN RY., [1931] 2 K. B. 103; 100 L. J. K. B. 228; 144 L. T. 614; 75 Sol. Jo. 100.

696. *Add. Annotation:*—**Reld.** Walpole *v.* Canadian Northern Ry., [1923] A. C. 113.

701. *Add. Annotation:*—**Reld.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

703a. —— ——.]—METROPOLITAN RY. Co. *v.* GREAT WESTERN RY. Co. (1886), 3 T. L. R. 113.

704. *Add. Annotations:*—**Reld.** Paterson Zochonis *v.* Elder Dempster, [1923] 1 K. B. 420; Pratt *v.* Patrick, [1924] 1 K. B. 438.

723. *Add. Annotations:*—**Reld.** Flint *v.* Lovell, [1935] 1 K. B. 354; Ley *v.* Hamilton (1934), 151 L. T. 360.

724. *Add. Annotations:—As to* (1) **Consd.** Smith *v.* Schilling, [1928] 1 K. B. 429. **Reld.** Ley *v.* Hamilton (1934), 151 L. T. 360; Mechanical & General Inventions Co. *v.* Austin & Austin Motor Co., [1935] A. C. 346.

725. *Add. Annotation:*—**Reld.** Baker *v.* Dalgleish Steam Shipping Co. (1921), 126 L. T. 482.

733. *Add. Annotations:*—**Folld.** Haynes *v.* Davey (1937), 25 Ry. & Can. Tr. Cas. 294. **Apld.** London, Midland & Scottish Ry. Co. *v.* Greaver, [1937] 1 K. B. 367.

733a. —— —— ——.]—A passenger who travels upon a railway without paying his own fare but by producing the return half of a non-transferable return ticket issued to another person is guilty of the offence of travelling without having previously paid his fare & with intent to avoid payment thereof, though he did not know that the ticket was non-transferable & would not have used it if he had known.—HAYNES *v.* DAVEY (1937), 25 Ry. & Can. Tr. Cas. 294.

753a. —— —— **Transfer of non-transferable ticket.**]—K. purchased for 10*s.* an excursion return ticket, which was not transferable. The ordinary single fare for the same journey was 23*s.* On arrival at his destination K. handed to G. the return half of his excursion ticket which G. intended to use to avoid payment of his fare. Informations were preferred against K. & G., under the bye-law set out below, charging them respectively with having unlawfully transferred & unlawfully received a partly used ticket. The bye-law provided: "No person shall . . . transfer or receive any partly-used ticket . . . to or from any other person with intent

---

PART V. SECT. 4.

699 ii. —— —— *Negligence of issuing company.*]—In an action against a railway co. to recover damages in respect of pecuniary loss & also for *solatium*, pursuer averred that his son, while travelling as a passenger on defenders' railway from London to Glasgow, with the return half of a ticket purchased by him in Glasgow, was fatally injured as a result of an accident to the train, which occurred in England, & admittedly was caused by the negligence of defenders' servants:—*Held:* the rights of the parties fell to be determined in accordance with the law of England, as the *lex loci delicti*.—NAFTALIN *v.* LONDON, MIDLAND & SCOTTISH RY. Co., [1933] S. C. 259.—SCOT.

PART V. SECT. 6, SUB-SECT. 1.

so. *Pulling communication cord—Defences—Compartment overcrowded.*]—A railway passenger who pulls the emergency chain because he finds the compartment crowded beyond the prescribed limit commits no offence under Indian Railways Act, 1890, s. 108, merely because he does so for the additional reason of obtaining the names of certain passengers who used abusive language towards him.—EMPEROR *v.* POPATLAL BHAICHAND (1929), I. L. R. 54 Bom. 326.—IND.

that any person shall use the same for the purpose of travelling . . . on the ry., unless the ticket shall at the time of issuing thereof purport to be transferable." The magistrate dismissed the informations on the ground that, as the bye-law was framed to cover cases where there was no fraudulent intent, it was void & *ultra vires* as being repugnant to the general principles of law:—*Held:* inasmuch as the purpose of the bye-law was to prohibit transactions which must in general be fraudulent, the bye-law was a valid one.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* GREAVER, [1936] 3 All E. R. 333; 155 L. T. 535; 100 J. P. 511; 53 T. L. R. 75; 80 Sol. Jo. 878, D. C.

756. *Add. Annotation:*—**Consd.** London Passenger Transport Board *v.* Summer (1935), 154 L. T. 108.

759. *Add. Annotation:*—**Consd.** London, Midland & Scottish Ry. Co. *v.* Greaver, [1937] 1 K. B. 367.

764. *Add. Annotation:*—**Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

765. *Add. Annotation:*—**Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

775. *Add. Annotations:*—**Refd.** Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364; *Re* Carroll, [1931] 1 K. B. 317.

776. *Add. Annotation:*—**Refd.** Davies *v.* Shanly (M. W.) (Park Chairs No. 1), Ltd. (1936), 81 Sol. Jo. 59.

777. *Add. Annotation:*—**Refd.** Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299.

781a. —— —— ——.]—Where a passenger on a tramcar makes a sufficient & proper tender of his fare & the conductor mistakenly refuses to accept it & has him arrested under a bye-law, which authorises the conductor, if a passenger's name or residence is unknown to him, to have the passenger arrested for evading payment, the conductor's employers are liable for the act of the conductor, whether he was or was not aware of the name & residence of the passenger, inasmuch as the conductor's act, although done mistakenly, is an act within the scope of his employment.—PERCY *v.* GLASGOW CORPN., [1922] 2 A. C. 299; 91 L. J. P. C. 187; 127 L. T. 501; 86 J. P. 201; 38 T. L. R. 722; 66 Sol. Jo. 555; 20 L. G. R. 605.

Part VI.—Carriage of Passengers' Luggage.

784. *Add. Annotation:*—*As to* (1) **Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

786. *Add. Annotation:*—*As to* (1) **Consd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

787. *Add. Annotation:*—*As to* (1) **Consd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

792. *Add. Annotation:*—**Consd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

795. *Add. Annotation:*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

796. *Add. Annotation:*—**Consd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

799. *Add. Annotation:*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

800. *Add. Annotation:*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

804a. **Luggage put in luggage van—By order of official.**]—EHINGER *v.* SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD., No. 851a, *post.*

811. *Add. Annotations:*—*As to* (1) **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522; Pratt *v.* Patrick, [1924] 1 K. B. 488; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

813. *Add. Annotation:*—**Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

816. *Add. Annotation:*—*As to* (2) **Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

823. *Add. Annotation:*—*As to* (3) **Folld.** Vosper *v.* G. W. Ry. (1927), 137 L. T. 520.

827a. **Luggage put in compartment by porter—Passenger travelling in another compartment.**] — Pltf., who had a third-class ticket, got a porter to put his suit-case in a first-class compartment & travelled in another part of the train, third class, with some friends whom he found on the train. At the end of the journey pltf.'s suit-case could not be found. In an action against the railway co. for its value:—*Held:* as the railway had failed to discharge the *onus*

PART V. SECT. 7.

b 1. —— —— *Refusal to obey conductor—Request unreasonable—Carrier liable.*]—RAINES *v.* BRITISH COLUMBIA ELECTRIC RY. CO. (1921), 70 D. L. R. 738; 30 B. C. R. 340.—**CAN.**

g 1. —— —— *Removal exposing passenger to danger—Carrier liable.*]—HOWE *v.* NIAGARA ST. CATHARINES & TORONTO RY. CO., [1925] 2 D. L. R. 115; 30 Can. Ry. Cas. 95; 56 O. L. R. 202; *revsg.*, [1924] 4 D. L. R. 839; 55 O. L. R. 387.—**CAN.**

m 1. —— —— *Removal exposing passenger to danger—Carrier liable.*]—HOWE *v.* NIAGARA ST. CATHARINES & TORONTO RY. CO., [1925] 2 D. L. R. 115; 30 Can. Ry. Cas. 95; 56 O. L. R. 202.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

o 1. —— *Sent back by returning steamer after arrival at destination—Carrier liable.*]—SMITH *v.* UNION S.S. CO. (1922), 68 D. L. R. 488.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.

806 1. *Luggage placed in compartment with passenger—Whether company liable—Passenger leaving carriage with door open.*]—Pltf. & her sister arrived at Euston Station of defts.' railway shortly after 5 p.m. in order to travel by the 6.10 p.m. train to H. Their luggage included two dressing cases which they directed a porter to put in a carriage in which they had reserved seats. The porter carried out these instructions & placed pltf.'s dressing case on the rack of a corridor carriage which was about the middle of the train. As the porter left, pltf. lifted down her case & placed it on the seat. Having removed a book therefrom, the two ladies left the carriage, without closing the door, & proceeded to a bookstall on the platform about the end of the train. Upon their return seven minutes later pltf.'s dressing case had disappeared:—*Held:* the onus of proving that the loss was due to negligence on the part of the passenger lay upon the co. Pltf., by leaving her dressing case unprotected in a carriage with the door open, was not guilty of such negligence as would exonerate the co., who were, accordingly, liable for the loss.—CARR *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1931), N. I. 94.—**IR.**

of proving that the loss of the hand luggage arose by reason of the negligence of the passenger, pltf. was entitled to recover.—VOSPER *v.* GREAT WESTERN RY. Co., [1928] 1 K. B. 340; 97 L. J. K. B. 51; 137 L. T. 520; 43 T. L. R. 738; 71 Sol. Jo. 605, D. C.

829. *Add. Annotation :—As to* (2) **Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

830. *Add. Annotations :—As to* (1) **Refd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678; Vosper *v.* G. W. Ry. (1927), 137 L. T. 520. *As to* (2) **Refd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. *As to* (3) **Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678.

831. *Add. Annotation :—Generally,* **Refd.** Vosper *v.* G. W. Ry. (1927), 137 L. T. 520.

833a. *S. P.* HARRISON *v.* GREAT WESTERN RY. Co. (1875), 39 J. P. 312.

851a. —— —— ——.]—Pltf., who was a passenger with a ticket from Paris to London *via* Dover, & thence by the railway of deft. railway co., took an additional ticket from the second defts., the Pullman Car Co., for a Pullman car forming part of the train between Dover & London. The Pullman car ticket stated that the Pullman Car Co. accepted no liability for passengers' luggage, & that co. did all that was reasonably necessary to bring this condition to pltf.'s notice. At Dover pltf. took a seat in the Pullman car, but an official refused to allow her to take her suit-case with her & directed a porter to put it in the luggage vestibule at the end of the car. There was no evidence in whose employment the official was, or as to the exact relationship between the two defts. cos. On the arrival of the train in London the luggage was unloaded by the Pullman car officials, but pltf.'s suit-case could not be found. In an action against both cos. :—*Held :* as a railway co. contracted as insurers of passengers' luggage except where the loss was caused by the passenger's own default, the railway co. were liable, but as there was no evidence that lack of care, if any, by the Pullman Car Co.'s officials in unloading had contributed to the loss, the Pullman Car Co. were not liable.—EHINGER *v.* SOUTH-EASTERN & CHATHAM RY. Co. & PULLMAN CAR CO., LTD. (1922), 38 T. L. R. 678; 66 Sol. Jo. 633.

851b. —— —— ——.]—A special contract, entered into between a shipowner & a passenger by sea, contained a provision that the shipowner would not be answerable for loss of baggage "under any circumstances whatsoever" :—*Held :* such a stipulation covered the case of wilful default & misfeasance by the shipowner's servants.—TAUBMAN *v.* PACIFIC STEAM NAVIGATION Co. (1872), 26 L. T. 704; 1 Asp. M. L. C. 336.

Annotations :—**Consd.** Price *v.* Union Lighterage Co. (1904), 73 L. J. K. B. 222; Travers *v.* Cooper, [1915] 1 K. B. 73. **Refd.** The Pearlmoor, [1904] P. 286.

852. *Add. Annotation :—Generally,* **Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

853. *Add. Annotation :*—**Apld.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615.

854. *Add. Annotation :—As to* (1) **Refd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

855. *Add. Annotation :—As to* (1) **Refd.** Penton *v.* Southern Railway, [1931] 2 K. B. 103.

857. *Add. Annotation :—As to* (1) **Refd.** Brown *v.* Harrison, Hourani *v.* Same (1927), 137 L. T. 549.

858. *Add. Annotations :*—**Consd.** Werner *v.* Det Bergenske Dampskibsselschaft (1926), 134 L. T. 573. **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

863. *Add. Annotations :*—**Refd.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263; Nunan *v.* Southern Ry., [1923] 2 K. B. 703; Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646; The Refrigerant, [1925] P. 130; H. M. F. Humphrey, Ltd. *v.* Baxter, Hoare & Co. (1933), 149 L. T. 603; Danneberg *v.* White Sea Timber Trust, Ltd. (1935), 154 L. T. 25; Ashby *v.* Tolhurst, [1937] 2 K. B. 242.

866. *Add. Annotations :*—**Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. **Apld.** Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305. **Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Apld.** L'Estrange *v.* Graucob (F.), Ltd., [1934] 2 K. B. 394. **Refd.** Nunan *v.* Southern Rys., [1923] 2 K. B. 703.

PART VI. SECT. 7.

sp. *Luggage left with porter—Passenger telephoning for car.*]—A passenger arrived by train at a railway station with heavy luggage in the van & lighter articles accompanying her in the compartment. All the luggage was taken on a barrow by a porter to a cab-stand in the station, where the passenger expected to be met by friends with a car. Failing to find them, she went to telephone to them, leaving the luggage in charge of the porter along with her two young children. In her absence the porter left the luggage unattended, & a thief having got rid of the children by a device, stole the lighter articles. In an action by the passenger against the railway co. :—*Held :* the co. was liable, in respect that its liability as carrier of passengers' luggage lasted until the passenger, using due diligence, had been afforded a reasonable opportunity of taking delivery of the luggage; & here it was not proved that the passenger had failed to exercise due diligence.—PARKER *v.* L. M. S. RY. Co., [1930] S. C. 822.—SCOT.

PART VI. SECT. 8, SUB-SECT. 4.

d i. —— *Special contract.*]—*Held :* it was a valid answer to pltf.'s action that she had assented to be bound by the contract relieving the carrier from liability.—FENNELL *v.* MONTREAL S.S. Co. (1876), 6 Nfld. L. R. 124.—**NFLD.**

d ii. —— —— *Construction.*]—DIXON *v.* RICHELIEU NAVIGATION Co. (1889), 18 S. C. R. 704.—**CAN.**

e i. —— ——.]—*Held :* pltf. was bound by the conditions.—WOOD *v.* ALLAN (1880), 13 N. S. R. (1 R. & G.) 477; *affd.* (1882), 15 N. S. R. (3 R. & G.) 211.—**CAN.**

855 iii. —— —— *Inexperienced traveller.*]—*Held :* pltf., a woman of scant education & unaccustomed to travel, was entitled to recover from deft. co. notwithstanding a clause on her ticket limiting defts.' liability, as the clause had been waived, & there was a special contract.—TOLERTON *v.* CUNARD S.S. Co., [1924] 3 D. L. R. 355; 2 W. W. R. 927; 33 B. C. R. 551.—**CAN.**

Part VII.—Carriage of Animals.

885. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1923] 2 K. B. 742.

890. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

893. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

Part VIII.—Carriage of Explosives and Dangerous Goods.

894. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

895. *Add. Annotations :*—**Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742 ; McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

896. *Add. Annotations :*—*As to* (1) **Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (2) **Folld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (3) **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31.

896a. ——.]—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, *ante*.

896b. Goods unfit to travel—Liability of sender.]—SOUTHERN RY. CO. *v.* BOOTS PURE DRUG CO., LTD. (1935), 79 Sol. Jo. 109.

Part IX.—Measure of Damages.

905. *Add. Annotations :*—**Consd.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535 ; The Edison, [1932] P. 52 ; The Arpad (1934), 50 T. L. R. 505.

910. *Add. Annotations :*—**Consd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535. **Apld.** *Re* Hall & Pim's Arbitration (1928), 139 L. T. 50 ; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404 ; The Edison, [1932] P. 52. **Consd.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154 ; The Arpad (1934), 50 T. L. R. 505. **Apld.** Vaile Bros. *v.* Hobson, Ltd. (1933), 149 L. T. 283. **Refd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690 ; Riley *v.* Brown (1929), 98 L. J. K. B. 739 ; Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209 ; Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66 ; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616; Flint *v.* Lovell, [1935] 1 K. B. 354 ; Haynes *v.* Harwood, [1935] 1 K. B. 146 ; Millar's Machinery Co., Ltd. *v.* Way (David) & Son (1935), 40 Com. Cas. 204 ; Archie Parnell & Alfred Zeitlin, Ltd. *v.* Theatre Royal (Drury Lane), Ltd. (1936), 80 Sol. Jo. 284 ; Domine *v.* Grimsdall, [1937] 2 All E. R. 119.

912. *Add. Annotation :*—**Refd.** The Arpad (1934), 50 T. L. R. 505.

914. *Add. Annotations :*—**Consd.** The Edison, [1932] P. 52. **Refd.** The Arpad (1934), 50 T. L. R. 505.

918. *Add. Annotations :*—*As to* (1) **Consd.** The Edison, [1932] P. 52 ; Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154 ; The Arpad (1934), 50 T. L. R. 505. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535.

924. *Add. Annotation :*—**Consd.** The Arpad (1934), 50 T. L. R. 505.

930. *Add. Annotation :*—**Refd.** Aronson *v.* Molga Holzindustrie A./G. Leningrad (1927), 32 Com. Cas. 276.

PART VII. SECT. 1, SUB-SECT. 2.

sb. *To deliver promptly.*]—AVERY *v.* CANADIAN PACIFIC RAILWAY (1929), 1 M. P. R. 502.—**CAN.**

PART VII. SECT. 3.

r i. —— *No evidence as to cause of loss.*]—In an action for damages for the loss of three horses which died while in transit on deft.'s railway under a contract known as "Live Stock—Special Contract—Shipping Order," approved by the Board of Railway Comrs. for Canada :—*Held :* there being no evidence to establish the actual cause of the deaths, the facts disclosed pointed to the conclusion that something beyond the control of deft., rather than any fault on its part, was the cause of the loss, &, therefore, under the terms of the contract deft. was not liable.—BAYNE *v.* CANADIAN NATIONAL RYS., [1933] 3 W. W. R. 616.—**CAN.**

w i. —— *Animals dying of arsenic poisoning.*]—Action against deft. ry. co. dismissed, as there was no evidence connecting the cause of injury with any alleged negligence, & the cause of the damage was purely a matter of speculation.—TURNER *v.* CANADIAN PACIFIC RY. CO., [1922] 2 W. W. R. 853 ; 66 D. L. R. 31.—**CAN.**

b i. —— *Unless written notice of claim given at point of delivery.*]—KNIGHT-WATSON RANCHING CO. *v.* CANADIAN PACIFIC RY. CO., [1921] 3 W. W. R. 788 ; 62 D. L. R. 601 : 15 Sask. L. R. 1.—**CAN.**

PART IX. SECT. 1.

901 v. ——.]—Action against a ry. co. for alleged shortages in thirty-seven cars of grain loaded in bulk from elevators on private sidings & delivered at private sidings. The real dispute between the parties as to each car was as to the quantity (*a*) shipped, (*b*) delivered at destination, (*c*) loss in transit, if any, & if any whether the shipper was to blame for the loss. The cars were all shipped under the uniform bill of lading for bulk grain :—*Held :* after reviewing the method of weighing & billing the grain, it was not to be assumed on that account that the grain was not carefully weighed or that the ry. was charged with any worthwhile quantity as having been put into any car which was not actually put into it, & the bills of lading largely lost their value as *prima facie* evidence of quantities, & in accordance with the real intention of the parties, should be considered rather as evidence only of approximate quantities shipped.—GRAIN CLAIMS BUREAU, LTD. & FEDERAL GRAIN, LTD. *v.* CANADIAN PACIFIC RY. CO., [1936] 2 W. W. R. 17 ; 2 D. L. R. 558.—**CAN.**

Part X.—Statutory Control of Carriers' Business.

954a. Side entrance to—Refusal to re-open.]—In deciding an application for the provision of reasonable facilities under 1854 Act, s. 2, & of reasonable facilities & conveniences under 1921 Act, s. 16 (1), the ct. must be satisfied that in refusing such facilities & conveniences the railway co. are acting without due regard to the proper discharge of their obligations, & the facility or convenience asked for will not be ordered where it is only for the benefit of a special class of persons who form a small proportion of the travelling public. Where it is sought to restore a former convenience & conditions have changed, there is nothing in the fact that it was afforded before, & the question will be decided on its merits.

Therefore where an application was made for an order for the re-opening of a subsidiary side entrance to the station of the Midland Ry. Co. at N. which had been closed in pursuance of a general policy of " closed " stations adopted by the co., & it was shown that only 16 per cent. of the passengers using the station, who were mainly season & weekly ticket holders, would be likely to use such entrance, & that no general public inconvenience existed, the ct. refused to make any order.—NOTTINGHAM CORPN. *v.* MIDLAND RY. CO. (1922), 128 L. T. 539; 67 Sol. Jo. 404; 21 L. G. R. 71; 17 Ry. & Can. Tr. Cas. 72.

955. *Add. Annotation :* — **Consd.** Nottingham Corpn. *v.* Mid. Ry. (1922), 128 L. T. 539.

957. *Add. Annotation :—As to* (1) **Consd.** Winsford Urban District Council *v.* Cheshire Lines Committee (1931), 21 Ry. & Can. Tr. Cas. 10.

958. *Add. Annotation :—As to* (3) **Consd.** Nottingham Corpn. *v.* Mid. Ry. (1922), 128 L. T. 539.

960. *Add. Annotations :*—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14; Winsford Urban District Council *v.* Cheshire Lines Committee (1931), 21 Ry. & Can. Tr. Cas. 10. **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

967. *Add. Annotation :—As to* (1) **Distd.** London & North Eastern Ry. Co. *v.* British Trawlers Federation, Ltd., [1934] A. C. 279.

973a. —— Over land of third party—Not ordered.]—*Held :* a railway co. cannot be ordered to work a siding which trespasses on the land of a third party.—STOKES *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1932), 21 Ry. & Can. Tr. Cas. 30.

976a. —— Refusal to accept privately owned wagons.]—Where a railway co. is always ready to provide an adequate supply of wagons for the conveyance of coal from stations on their system, their refusal of an application that they should accept privately owned wagons does not constitute a refusal to afford reasonable facilities for the receiving, forwarding, & delivery of traffic on their railway, or the subjection of appcts., or of the traffic in which they are interested, to undue or unreasonable prejudice or disadvantage.—CHARRINGTON, GARDNER, LOCKETT & CO., LTD. *v.* SOUTHERN RY. CO. (1926), 42 T. L. R. 758; 19 Ry. & Can. Tr. Cas. 1.

977a. —— Transference to different station.]—(1) A railway co., as part of a comprehensive scheme for reorganising a goods station, necessitated by a great increase in the traffic there, proposed to transfer a coal depot which had existed there for fifty years to another station a mile & a half distant :—*Held :* though the coal merchants who used the depot might thereby be greatly inconvenienced, yet the proposed scheme was in the public interest; & the consequent withdrawal of facilities long enjoyed by the coal merchants was justified by the change of circumstances, & by the substitution of new facilities equally good, & was therefore not a denial of reasonable facilities under the Railway & Canal Traffic Act, 1854.

(2) *Qu. :* whether facilities for storing coal at a station are facilities for receiving & delivering coal traffic under the Traffic Acts.—LUTON, DUNSTABLE & DISTRICT COAL MERCHANTS' ASSOCN. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1937), 26 Ry. & Can. Tr. Cas. 98.

980. *Add. Annotation :—As to* (1) **Consd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758.

991a. —— Jurisdiction of Commissioners.]—By rule 52 of the Railway & Canal Commission Rules any application to rescind an order of the Comrs. must be made within twenty-eight days after the said order has been communicated to the parties unless the Comrs. think fit to enlarge the time. In 1931 the Comrs. allowed an application to be made to rescind an order made in 1891. In 1891 the Comrs. ordered a railway co. to afford reasonable facilities for passenger traffic on a branch line which had been closed to passenger traffic. The railway co. complied with the order. In a later case between other parties it was held by the Ct. of Appeal that the Comrs. had no jurisdiction to make the order of 1891. In 1930 the railway co. again closed the line to passenger traffic. On an application by the urban council of the district for an order compelling the railway co. to obey the order of 1891, & on a motion by the railway co. to rescind the order of 1891 :—*Held :* the order of 1891, having been made without jurisdiction, must be rescinded. A facility which involves the railway co. which affords it in a loss is not reasonable.—WINSFORD URBAN DISTRICT COUNCIL *v.* CHESHIRE LINES COMMITTEE (1931), 21 Ry. & Can. Tr. Cas. 10.

1010a. —— To continue former facilities—Pending decision as to rights of parties.]—Upon an application for an interlocutory injunction ordering that certain former facilities for

receiving & running through passenger coaches should be continued pending a decision as to the rights of the parties:—*Held:* this not being an application to restrain a threatened act, regard should be made to the balance of convenience, & upon the facts, no interlocutory order should be made.—GREAT CENTRAL RY. CO. *v.* LONDON & NORTH WESTERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 89.

1015a. —— **Necessity for submission to Rates Tribunal of schedule for standard workmen's fares.**]—*Re* STANDARD CHARGES SCHEDULES, No. 1323a, *post.*

1025. *Add. Citation:—sub nom.* R. *v.* RAILWAY COMRS., 46 J. P. 35.

1043a. Amount fixed so as to allow rebate to be made.] — Coal was conveyed from two collieries over the lines of three railway cos. at a charge equal to the rate by an alternative route. A through rate was ultimately fixed at a sum of 2*d.* per ton in excess of the original charge, in order to allow one of the cos. to make a rebate of that amount in accordance with its practice with respect to other coal traffic. The new rate having been withdrawn, an application was made for a through rate equal to the original charge:—*Held:* (1) the question of rebate had been rightly excluded in fixing the amount of the through rate; (2) the Railway Comrs. had power to apportion the rate in such a way that part of it would be finally handed over to the trader. —GLENAVON GARW COLLIERIES, LTD. *v.* RHONDDA & SWANSEA BAY RY. CO., GREAT WESTERN RY. CO. & BARRY RY. CO. (1915), 16 Ry. & Can. Tr. Cas. 65, C. A.

1049a. —— —— **Applicants not performing functions of ordinary railway company.**]—STOCKSBRIDGE RY. CO. *v.* GREAT CENTRAL RY. CO. (1909), 13 Ry. & Can. Tr. Cas. 335.

1051a.—— **Congested route—Alternative route available.**]—*Held:* (1) the proposed route was reasonable, & it was not sufficient to show that the receiving of the traffic in question would render a difficult task more difficult, unless such traffic would amount to an obstruction; (2) it was material to consider whether the proposed route was the only available route or whether there were other routes available; (3) although an arrangement between railway cos. might be shown to be very widely accepted, it was not open to the ct. to reject evidence as to the proper terminal at any port of shipment.—DEARNE VALLEY RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., LANCASHIRE & YORKSHIRE RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO. (1914), 15 Ry. & Can. Tr. Cas. 202.

1058a. —— **Terminal costs.**] — DEARNE VALLEY RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., LANCASHIRE & YORKSHIRE RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., No. 1051a, *ante.*

1060a. —— **Payment of rebate to trader.**]—GLENAVON GARW COLLIERIES, LTD. *v.* RHONDDA & SWANSEA BAY RY. CO., GREAT WESTERN RY. CO. & BARRY RY. CO., No. 1043a, *ante.*

1072. *Add. Annotation:*—**Refd.** Sandilands *v.* London, Midland & Scottish Ry. Co. (1927), 20 Ry. & Can. Tr. Cas. 136.

1077. *Add. Annotation:—As to* (1) **Consd.** Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

1080. *Add. Annotations:—As to* (4) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1096a. —— **Regulation affecting one class of goods only—Lower rate necessary in public interest.**] —PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1219a, *post.*

1098. *Add. Annotation:—As to* (1) **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

1108. *Add. Annotations:*—**Refd.** *Re* Railways Act, 1921, *Re* Great Western Ry. Co.'s Application, [1933] 2 K. B. 391; Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1110. *Add. Annotation:*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1111. *Add. Annotation:*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1115. *Add. Annotation:—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1122. *Add. Annotation:*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1123. *Add. Annotation:—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1123a. Meaning of "trader"—Railway & Canal Traffic Act, 1888 (c. 25), s. 27.]—MASTER LIGHTERMEN & BARGE OWNERS ASSOCIATION *v.* SOUTHERN RY. CO. (No. 2), No. 1166c, *post.*

1124. *Add. Annotation:*—**Consd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

1144. *Add. Annotations:*—**Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr.

PART X. SECT. 3, SUB-SECT. 2—A.

3a. ***Classification causing preference—Validity of bye-law.***]—By Government Railways Act, 1912, s. 24, the Comrs. are empowered to demand tolls in respect of goods carried upon the railways, but subject to the provisions of the Act, such tolls shall be charged equally to all persons, & after the same rate in respect of all goods of the same description:—*Held:* certain bye-laws made in pursuance of the Act, which classified imported galvanised iron in a different class to iron of a similar nature manufactured locally, & which prescribed a toll of a higher rate for the imported than for locally manufactured iron of the nature referred to, were not *ultra vires.*—HARDY'S, LTD. *v.* RAILWAY COMRS. FOR NEW SOUTH WALES (1928), 28 S. R. N. S. W 318; 45 N. S. W. W. N. 82.—AUS.

PART X. SECT. 3, SUB-SECT. 3.—D.

h i. —— —— —— —— ——

Dominion Railway Act, 1919, s. 316.] —R. (CANADIAN PACIFIC RY. CO. & MILLER) *v.* STANDELL, [1923] 2 W.W. R. 728.—CAN.

Cas. 108; Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1149. *Add. Annotation:—As to* (1) **Reld.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1149a. ——.]—MASTER LIGHTERMEN & BARGE OWNERS ASSOCIATION *v.* SOUTHERN RY. CO. (No. 2), No. 1166c, *post.*

1166a. —— **Wharfage.**]—By its Act a canal co. was precluded from charging for wharfage in respect of private wharves constructed under provisions of the Act, which empowered adjoining owners to construct wharves on the banks of the canal. An oil co. acquired from the canal co. land adjoining the canal bank, under three conveyances, by one of which they were obliged, & by another empowered, to construct a wharf on a line beyond their boundary, so that the front part of the wharf should extend beyond the canal bank over the canal. On a wharf so erected the oil co. fixed a pipe & discharged oil in bulk from vessels lying in the canal. Competitors of the oil co. owning land that was near to but did not adjoin the canal obtained from the canal co. easements to erect valve houses on the canal bank, & discharged their oil in the same way. The canal co.'s sched. of charges contained two classes of oil. As to the one it was stated that the rate was inclusive of a charge for wharfage, as to the other, that the rate was for tolls only but that the use of the canal co.'s wharves was free. The oil co. & their competitors were charged the same rates, which were less than the maximum tolls for the use of the canal:—*Held:* the oil co.'s wharf was not a private wharf, to which the wharfage rate was inapplicable, firstly because it was constructed, not under the powers conferred by the Act on adjoining landowners, but under the obligations imposed as part of the consideration for which the land was acquired; secondly, because the wharf, extending over the canal, was not wholly constructed on the land of the adjoining owner; therefore, the oil co. was not unduly prejudiced by being charged the same rates as their competitors who did not own land adjoining the canal. The Commission found as a fact that the canal co. did not, in certain cases, charge for wharfage, though they charged an inclusive rate which covered the use of their wharves.—ANGLO-AMERICAN OIL CO. *v.* MANCHESTER SHIP CANAL (1929), 20 Ry. & Can. Tr. Cas. 45.

Annotation:—**Reld.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1166b. —— ——.]—(1) *Held* by the Comrs. where an inclusive charge covers services in respect of which a railway co. is bound to show no undue preference, then, if it can be shown that there is allowed out of the inclusive charge less for those services than is charged to complainants for the same services, an undue preference is made out. Therefore a cause of action was disclosed by an application which alleged that out of an inclusive charge made by the resps. for collection & delivery by water of rail-borne traffic less was retained by resps. in respect of wharfage at a wharf where goods were loaded on to railway trucks than was charged to the applicants for the same wharfage; (2) by the Ct. of Appeal such a question ought not to be tried on the pleadings because there might be disclosed at the trial material facts which had not been disclosed on the pleadings.—MASTER LIGHTERMEN & BARGE OWNERS ASSOCIATION *v.* SOUTHERN RY. CO. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1166c. —— ——.]—Resps. made an inclusive charge of 3*s.* 10*d.* for collection & delivery by lighter on the Thames. This charge covered lighterage by resps.' accredited agents & also wharfage at the waterside station where the traffic was loaded & unloaded. Resps. paid their agents 2*s.* 10*d.* for the lighterage & retained 1*s.* for the wharfage. For the same wharfage the resps. charged 1*s.* 6*d.* to appcts., who were lightermen competing with resps.' agents. The Comrs. found as a fact that this discrimination, which they assumed to be a preference of resps.' agents against appcts., was necessary for the purpose of preventing the traffic collected & delivered by resps.' agents from being transferred from resps.' railway to rival carriers by road:—*Held:* (1) it was in the public interest that this traffic should be retained by the resps. instead of being carried by road; (2) the following facts were properly taken into account by the Comrs. in deciding that the preference was not undue, *viz.*, that a similar system had been enforced for forty years by other railway cos. owning other wharves on the Thames; in consideration of the preference resps.' agents had submitted themselves to a system of control which was an advantage to resps.; the effect of the preference & the consequent monopoly of resps.' agents had been to augment resps.' traffic, & at the same time to render the working of it cheaper & more efficient, & to minimise delays & demurrage charges.

(3) *Per* MAUGHAM, L.J.: "Trader" in Railway & Canal Traffic Act, 1888 (c. 25), s. 27, includes a rival carrier.—MASTER LIGHTERMEN & BARGE OWNERS ASSOCIATION *v.* SOUTHERN RY. CO. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

Annotation:—*As to* (1) **Reld.** Auld *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 239.

1166d. Rebate on sidings rate.]—Upon a complaint of undue preference it was admitted that appcts., whose works at S. were connected by a private siding with defts.' railway, paid the same rates as if their traffic used that station, while two of their competitors, whose respective works at B., ten miles from S., were also connected by private sidings with defts.' railway, received a rebate of 2½*d.* per ton off the B. station rates on traffic similar to that of appcts. Appcts. called no evidence. The railway co., while submitting that the *onus* of proof had not shifted on them under 1888 Act, s. 27 (1), called evidence & put in tables based on the Pidcock principle with the object of showing that the value of the private siding services rendered to appcts at S. was in excess of the amounts included in their rates for station terminals at that station & also of the value of the respective private siding services rendered to appcts.' competitors at B. after allowing for the rebate:—*Held:* without deciding whether the *onus* had shifted to the railway co., but inclining

to the view that it had, the Pidcock principle had been properly applied in the dissection of the respective rates, & there was no preference of appcts.' competitors.—PRENTICE BROTHERS, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 177.

1167. *Add. Annotation :—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1169. *Add. Annotation :—As to* (3) **Refd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758.

1171. *Add. Annotation :—***Refd.** Prentice *v.* L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177.

1175. *Add. Annotation :—***Refd.** Sandilands *v.* London, Midland & Scottish Ry. Co. (1927), 20 Ry. & Can. Tr. Cas. 136.

1175a. —— Adoption of exceptional rates.]—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1377a, *post.*

1178. *Add. Annotations :—***Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126; R. *v.* Sussex Confirming Authority, *Ex p.* Tamplin & Sons Brewery (Brighton), Ltd. (1937), 157 L. T. 590.

1184. *Add. Annotation :—As to* (1) **Consd.** Port of Manchester Warehouses *v.* Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Cas. 54.

1192. *Add. Annotation :—As to* (1) **Refd.** *Re* Great Western Railway Co.'s Application, [1933] 2 K. B. 391.

1193. *Add. Annotations :—As to* (1) **Consd.** Prentice *v.* L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177. **Refd.** Port of Manchester Warehouses *v.* Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Can. 54; Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1194. *Add. Annotation :—As to* (1) **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 2) (1934), 21 Ry. & Can. Tr. Cas. 126.

1205. *Add. Annotation :—Generally,* **Refd.** *Re* Great Western Railway Co.'s Application, [1933] 2 K. B. 391.

1219a. —— Injunction—Rate quoted but not actually made.]—Appcts. were owners of a bonded warehouse situated in Trafford Park, Manchester, in close proximity to, but not on, the premises of the Manchester Ship Canal Co. The latter co. also owned a similar warehouse within their dock area at Manchester. A large consignment of cigarettes was conveyed over the Ship Canal to appcts.' warehouse, & was thence consigned to London over the railways of resp. cos., who charged a rate of 107*s.* per ton in two-ton lots, this being the ordinary Manchester town rate, whereas for similar traffic consigned from the warehouse of the Ship Canal Co. they quoted a rate of 54*s.* 6*d.*, the latter being the Liverpool to London rate, which was governed by competitive shipping rates. Upon a complaint that the Manchester Ship Canal Co. were being unduly preferred the above difference in rates was sought to be justified by the railway cos. on the ground that, the ports of Manchester & Liverpool being in competition, the lower rate was necessary in order to secure for Manchester in the public interest traffic which otherwise would go to Liverpool, & that the only practical way in which to distinguish between goods consigned from Manchester Town & Manchester Port respectively was to draw a line between goods on the premises of the Ship Canal Co. & those which had passed out of the control of that co. :—*Held :* (1) both rates were properly charged under the circumstances, & the difference between them was justified; (2) where a railway co. quotes a rate constituting an undue preference & asserts a right & intention of charging the same the ct. has jurisdiction to interfere by injunction without waiting till such charge is actually made.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 54.

1224a. —— —— ——.]—*Held :* "the discovery by the party aggrieved of the matter complained of" in 1888 Act, s. 12, means discovery of the preferential treatment of complainant's competitor, & not discovery of the evidence by which the complaint can be substantiated.—BRITISH REINFORCED CONCRETE ENGINEERING CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 78.

1236. *Add. Annotation :* — **Refd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758.

1237a. Continuance of fixed rate—Under subsisting agreement—What amounts to agreement.]—An undertaking given by a railway co. during parliamentary proceedings in connection with an Act not to disturb existing fares for a limited period :—*Held :* not an agreement fixing those rates within 1921 Act, s. 34.—SOUTHEND CORPN. *v.* LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

1237b. —— —— ——.]—(1) A colliery co. agreed with a railway co. that in consideration of the colliery co. sinking a pit the railway co. would build a railway & would charge for the coal conveyed from the pit to the port of shipment rates as low per ton per mile as the rates for the time being charged by the railway co. for coal to or from the said port to or from any colliery in Glamorganshire. In pursuance of this agreement a charge of 6.923*d.* was made from before 1914 to Jan. 1920, when, in consequence of the imposition of a flat rate addition by the Minister of Transport the mileage rate of the said charge so increased came to exceed the mileage rate of the charges, similarly increased, for coal from more distant collieries to the same port : —*Held :* by the Rates Tribunal the charge of 6.923*d.* was fixed under a statutory agreement & originally fixed for valuable consideration.

(2) An assignment of the goodwill of a business "& all other protected rights & all other hereditaments, effects & things not capable of delivery by hand held relating to or enjoyed or exercised in connection with the said business" transfers the benefit of an agreement for a railway rate.

(3) An agreement which has been assigned, but incompletely for want of notice, is a subsisting agreement within sect. 34 (2) of Railways Act.

(4) The jurisdiction of the Rates Tribunal under sect. 34 (2) of the Railways Act is to continue charges, but not so as to override the repeal of agreements for charges effected by sect. 34 (1). Consequently, an agreement that a colliery co. shall have as low a rate per ton per mile as any other colliery cannot be continued.

(5) The adjustment prescribed by sect. 34 (2) means that the adjusted charge is to bear the same relation to the general charges made on the appointed day as the charge to be continued bore to the general charges made on Aug. 4, 1914.—POWELL DUFFRYN STEAM COAL CO. *v.* GREAT WESTERN RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 187.

1237c. —— —— **What is a fixed rate.**]—A rate which bears a fixed relation to an ascertainable standard is a fixed rate, though it may vary in actual amount from time to time, & such a rate should be continued after the appointed day, if made under an agreement for valuable consideration, under 1921 Act, s. 34.—CARDIFF COLLIERIES, LTD. *v.* GREAT WESTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 202.

Annotations :—**Folld.** Forest of Dean Freighters' Assocn. *v.* Great Western Ry. Co. (1928), 20 Ry. & Can. Tr. Cas. 13. **Consd.** Powell Duffryn Steam Coal Co. *v.* Great Western Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 187.

1237d. —— —— ——.]—*Held :* although a fixed quarterly allowance when distributed over a fluctuating quarterly traffic yielded a varying tonnage charge, nevertheless inasmuch as sums payable under an agreement & ascertainable with reference to a fluctuating standard may be considered as fixed by that agreement, the charges payable by appcts. under the agreement in question were special charges fixed by a subsisting agreement for valuable consideration & should be continued under 1921 Act, s. 34.—R. & W. PAUL, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 228.

1237e. —— **Under special statutory provision—What amounts to special statutory provision.**]—SOUTHEND CORPN. *v.* LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

1237f. —— —— ——.]—A bill was promoted in Parliament to empower two railway companies to purchase jointly the railway of a third company. Petitioners against the bill withdrew their opposition in consideration of the promoters agreeing to the insertion of a clause limiting the charging powers on the line proposed to be purchased. The bill with the clause so inserted was passed into law :—*Held :* charges were thereby fixed under a special statutory provision, & were originally so fixed for valuable consideration.—FOREST OF DEAN FREIGHTERS' ASSOCN. *v.* GREAT WESTERN RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 13.

1237g. —— **Originally fixed for valuable consideration—What amounts to.**]—FOREST OF DEAN FREIGHTERS' ASSOCN. *v.* GREAT WESTERN RY. CO., No. 1237f, *ante*.

1237h. —— —— ——.]—POWELL DUFFRYN STEAM COAL CO. *v.* GREAT WESTERN RY. CO., No. 1237b, *ante*.

1237j. —— **Extent of jurisdiction of Rates Tribunal.**]—POWELL DUFFRYN STEAM COAL CO. *v.* GREAT WESTERN RY. CO., No. 1237b, *ante*.

1237k. Railway Freights Rebates Scheme—Review.]—*Re* RAILWAY FREIGHT REBATES SCHEME (1936), 25 Ry. & Can. Tr. Cas. 148.

1243. *Add. Annotation :*—**Refd.** Rownson, Drew & Clydesdale *v.* G. W., L. M. & S., L. & N. E & Southern Rys. (1928), 19 Ry. & Can. Tr. Cas. 235.

1245a. "Rolling stock"—Transit of empty wagons needing repair on change of ownership.]—Under the heading "Rolling Stock" of the "General Railway Classification of Goods, 1921," if there is a transit because of a change of ownership or because of a change in the sphere of operations, the full rate for the conveyance of empty wagons is chargeable ; if the cause of the transit is repairs only, the half-rate is chargeable ; if the repairs are only an accompaniment of the transit due to change of ownership, the full rate is chargeable.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* INCE WAGON & IRONWORKS CO., LTD. (1924), 131 L. T. 229 ; 40 T. L. R. 551, C. A.

1245b. "Pipes, rain water & their connections, cast iron or steel"—Include rain water pipes adapted for other purposes.] — ROWNSON, DREW & CLYDESDALE *v.* GREAT WESTERN, LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & SOUTHERN RY. COS. (1928), 19 Ry. & Can. Tr. Cas. 235.

1245c. "Coal"—Coal, coke & patent fuel.]—*Re* NATIONAL GAS COUNCIL OF GREAT BRITAIN & IRELAND'S APPEAL (1927), 19 Ry. & Can. Tr. Cas. 163, C. A.

1245d. "Castings, iron or steel of light type"—Includes cantilever wall brackets.]—Small cantilever wall brackets, constructed so that one end of the top bar is let into the wall, are not "cantilevers, iron or steel, as girders," class 7, but "castings, iron or steel of light type," classes 13 to 17.—AMALGAMATED RY. COS. *v.* ASSOCIATED BUILDERS' MERCHANTS, LTD. (1930), 20 Ry. & Can. Tr. Cas. 162.

1245e. Railway motor carriages fitted with electric motors.]—A railway coach fitted with an electric motor which derives its power from a generating station is a "railway motor carriage with engine combined running on its own wheels" & not a "railway vehicle running on its own wheels."—AMALGAMATED RY. CO.'S *v.* RAILWAY CARRIAGE & WAGON BUILDERS (1933), 21 Ry. & Can. Tr. Cas. 158.

1245f. "Glassware."]—Oven-table glassware, machine-made, but designed to resist great heat, is not "glassware . . . common, machine-made, Class 16c" but is "glassware . . . Class 18g."—AMALGAMATED RY. COS. *v.* BRITISH HEAT-RESISTING GLASS CO., LTD. (1936), 25 Ry. & Can. Tr. Cas. 1.

1245g. "Extracts & essences for human food."]—A railway co. carried Virol under Class 3 as an article not specified in the classification :—*Held :* Virol was a mixture of different component parts rather than an extract or essence, &, as it did not come clearly within the expression "extracts & essences for human food," the railway co. must continue to carry it under Class 3 as being unclassified. —BOVRIL, LTD. & VIROL, LTD. *v.* GREAT WESTERN RY. CO. (1904), 12 Ry. & Can. Tr. Cas. 151.

1245h. Alteration—When granted.]—The standard charges based on the classification are not intended to be the equivalent of the services rendered in each particular case. They are overall charges which the cos. are prepared to make in all the circumstances of all the articles in the classification. The cos. may make more profit out of one carriage than another. That alone is not a ground for transferring the article which is carried at the greater profit into a lower class.—WOOLWORTH & CO. *v.* AMALGAMATED RY. COS. (1930), 20 Ry. & Can. Tr. Cas. 149.

1245j. Publication—Addition of explanation to statutory classification.]—By 1921 Act, s. 28, the Rates Tribunal have jurisdiction to determine any question as to the class in which any article is classified, & by sect. 54 the railway cos. are required to keep for sale printed copies of the general classification for the time being in force. The railway cos. kept for sale two copies, one a literal copy, known as the Statutory Classification, in which the different articles appeared according to their class, & another, a copy known as the Working Classification, in which the different articles appeared in alphabetical order followed by the number of the class to which they belonged. In the Working Classification were numerous explanatory entries inserted by the railway cos. but not found in the statutory copy. On an application to incorporate into the Statutory Classification the explanations in the Working Classification :—*Held :* granting the application, that the railway cos. had not contravened the provisions of 1921 Act, s. 54.—AMALGAMATED RY. COS. *v.* LONDON CHAMBER OF COMMERCE (1930), 20 Ry. & Can. Tr. Cas. 157.

1246a. On rejection of goods by consignee.]—A contract of carriage of goods in a co.'s wagon to a private siding does not terminate until the wagon is returned empty by the consignee to the railway co. Where a consignee rejects a consignment delivered to him in a co.'s wagon at his private siding, the services of hauling the wagon back to the station & then accommodating it while the instructions of the consignor as to its disposal are obtained, & also the service of hauling the wagon back to the private siding, where the instructions are to redeliver the consignment, are all services rendered for the convenience of the consignor within para. 5 of the Sched. to the Rates & Charges Orders. The charges for such services are therefore recoverable from the consignor, both under the contract where the consignment note provides that all charges are to be paid by the consignor & under the Rates & Charges Order.—LONDON & NORTH EASTERN RY. CO. *v.* BRAHAMS (1931), 21 Ry. & Can. Tr. Cas. 1.

1246b. Services in connection with sidings—When conveyance begins & ends.]—(1) The Railway Rates Tribunal, on a modification of standard charges under sect. 35 of 1921 Act, fixed standard charges for "services performed by the co. at the beginning & end of transit" :—*Held :* such standard charges were applicable to services at or in connection with private sidings, & a rate or charge being thereby otherwise provided for such services the Tribunal had no jurisdiction to fix a reasonable charge for them under para. 11 (1) (i.) of Sched. V. of 1921 Act.

(2) The Tribunal having in fact fixed a standard charge for private siding services the question whether it ever had power so to do could not be entertained on an application to fix reasonable charges for private siding services.

(3) In applying sect. 40 of 1921 Act to exceptional rates for traffic which has been transferred from one class to another, the disintegration is to be made by reference to the standard rate to which the exceptional rate is for the time being exceptional, not by reference to the standard rate out of which the exceptional rate was originally carved.

(4) A railway co. granted a rate by passenger train from private siding to private siding :—*Held :* conveyance began & ended, not at the private siding, but in the station at the point where the traffic was attached to or detached from the passenger train.—NESTLE & ANGLO-SWISS CONDENSED MILK CO. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 61.

1268. *Add. Annotation :—Generally,* **Refd.** Master Lightermen & Barge Owners Association *v.* Southern Ry. Co. (No. 1) (1933), 21 Ry. & Can. Tr. Cas. 108.

1276. *Add. Annotation :—As to* (1) **Refd.** Nestle & Anglo-Swiss Condensed Milk Co. *v.* London, Midland & Scottish Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 61.

1285. *Add. Annotations :—As to* (1) **Refd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93 ; Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31.

1286. *Add. Annotations :—As to* (1) **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31; *Re* Standard Charges (Collection & Delivery) (1925), 19 Ry. & Can. Tr. Cas. 53. *As to* (2) **Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93.

1287. *Add. Annotations :*—**Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93. **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31 ; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

1287a. Stevedoring.]—The London & North Western Railway Co. (Rates & Charges) Order Confirmation Act, after reciting the Railway & Canal Traffic Act, confirms the Order as set out in the Sched. By para. 21 of the Sched., nothing therein contained shall affect the right of the co. to make any charges which they are authorised by any Act of Parliament to make in respect of any accommodation or services provided or rendered by the co. at or in connection with docks or

shipping places, & by para. 26 of the Sched. the term "railway" means any railway or steam tramway over which the co. conveys merchandise, & in respect of which no maximum rates & charges other than those authorised in the Sched. are for the time being authorised by Parliament. By Pt. IV. of the Appendix to the Sched. the co. may charge such reasonable sums as they think fit for any accommodation or services rendered within the scope of their undertaking by the desire of a trader, & in respect of which no provisions are made by the Sched. :—*Held :* (1) in construing the Sched. the definition of "railway" in para. 26 of the Sched. is to be applied, & not the definition in sect. 3 of 1873 Act ; (2) the work of stevedoring is incidental to the undertaking of a dock owned by a railway co. ; (3) in doing the work of stevedoring a railway co. is not bound by the limitations of Pt. IV. of the Appendix to the Sched., &, in the absence of any other restrictive enactment, may contract as they please.—DAMPS SELSK SVENDBORG *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1928), 20 Ry. & Can. Tr. Cas. 67.

1307. *Add. Annotation :*—**Refd.** *Re* Great Western Railway Co.'s Application, [1933] 2 K. B. 391.

1316. *Add. Annotations :*—**Refd.** Bede Steam Shipping Co. *v.* Bunge y Born, Limitada S. A. (1927), 43 T. L. R. 374 ; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316 ; Great Western Ry. Co. *v.* Boon (1928), 20 Ry. & Can. Tr. Cas. 63.

1316a. —— ——.]—GREAT CENTRAL RY. Co. *v.* SWANN (1913), 48 L. Jo. 47.

1318. *Add. Annotation :*—**Refd.** Great Western Ry. Co. *v.* Boon (1928), 20 Ry. & Can. Tr. Cas. 63.

1323. *Add. Annotations :*—**Refd.** Griffiths *v.* Studebakers, [1924] 1 K. B. 102 ; R. *v.* Leinster, [1924] 1 K. B. 311.

SECT. 6.—EXCEPTIONAL RATES AND FARE

(Vol. VIII., p. 207).

1323a. Under 1921 Act—Meaning of "standard" & "exceptional."]—The expression "standard" as applied to charges in Part III. of the above Act is the correlative or complementary term to "exceptional," &, there being therefore no other alternative, every chargeable rate, fare, or charge for conveyance must necessarily be included in one or other of the above categories. Railway cos. are therefore required, under sect. 30 of the above Act, to submit to the Rates Tribunal forms of schedules for standard season tickets & workmen's fares.—*Re* STANDARD CHARGES SCHEDULES (1923), 17 Ry. & Can. Tr. Cas. 147.

1323b. New exceptional rates—Grounds for granting.]—The fact that equal rates were formerly charged from two competing points to a common market unequally distant from them, whereas the corresponding standard charges are unequal, is not a ground on which the Railway Rates Tribunal will grant a new exceptional rate so as to restore the equality. —DOWLOW LIME & STONE CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1928), 20 Ry. & Can. Tr. Cas. 41.

1323c. —— ——.]—An application for a new exceptional rate under sect. 37 (3) of Railways Act, 1921, may be justified by showing that the rate for which it is intended to be substituted is unfair or excessive, or that the new rate will tend to augment the standard revenue. Where the existing rate in force is one which the railway co. has no legal power to charge the Tribunal will not consider whether it is unjust or excessive.

In a proper case the Tribunal will grant a new exceptional rate to relieve a trader against an undue prejudice. A trader is not unduly prejudiced by a lower rate granted to another trader who does not compete with him.—DOLE (JAMES) & CO. *v.* FOUR AMALGAMATED RY. COS. & LONDON PASSENGER TRANSPORT BOARD (1936), 25 Ry. & Can. Tr. Cas. 87.

1323d. —— **Validity of flat rate.**]—A new exceptional rate under Railways Act, 1921 (c. 55), s. 37, must not be a flat rate irrespective of distance, but must contain a charge based on so much per ton per mile according to distance & class.—*Re* GREAT WESTERN RY. Co.'S APPLICATION, [1933] 2 K. B. 391, 102 L. J. K. B. 549 ; 149 L. T. 372 ; 49 T. L. R. 500 ; *sub nom.* GREAT WESTERN RY. Co. *v.* BRISTOL GRAIN IMPORTERS DEFENCE ASSOCN., 21 Ry. & Can. Tr. Cas. 46, C. A.

1323e. —— **Must be fixed by tribunal & entered in rate book.**]—A new exceptional rate within Rys. Act, 1921 (c. 55), s. 37, requires to be "fixed," that is, sanctioned by the Ry. Rates Tribunal under the above section & it also requires to be entered in the rate book of the co. before it is "granted," that is to say, before it becomes operative as between the ry. co. & consignors of goods. Therefore where the tribunal fixed a rate of 10*s.* 9*d.*, but the ry. co. entered in its rate book a rate of 14*s.* 9*d.* there was no effective exceptional rate granted, since neither rate was both sanctioned by the tribunal & entered in the rate book.—GREAT WESTERN RY. Co. *v.* JAMES (HENRY R.) & SONS, LTD., [1936] 2 All E. R. 660 ; 80 Sol. Jo. 571 ; 24 Ry. & Can. Tr. Cas. 241, C. A.

1323f. Disintegration—On continuation.]—Where an exceptional rate is referred to the Rates Tribunal for its determination under 1921 Act, s. 36, then, if the Tribunal decides to continue the rate, its duty is to disintegrate it in the manner provided for in sect. 40 of the Act, & the performance of this duty may at its discretion be postponed until some party interested in the rate applies for the disintegration.—DISINTEGRATION OF CONTINUED EXCEPTIONAL RATES (1928), 20 Ry. & Can. Tr. Cas. 1.

1323g. —— **Time for.**]—A railway co. applied to the Rates Tribunal to sanction a rate, more than 40 per cent. below the standard rate, between a seaport town & the Midlands. Another seaport town competing in the same traffic, having been admitted to oppose the said rate, sought to administer interrogatories to the railway co. as to the disintegration of the existing rates between the two ports respectively & the Midlands & of the new proposed rate, with a view to showing the effect that the new rate would have on the competition, & the prejudice that would be caused to the opponents of the rate :—*Held :*

by the Rates Tribunal, such rates are to be disintegrated by the Rates Tribunal, under 1921 Act, s. 40, at the time when they are sanctioned; it is proper for the railway co. to present the rate for sanction without any proposed disintegration, & there is no procedure for obtaining a preliminary disintegration of such a rate.—BRISTOL CORPN. *v.* GREAT WESTERN RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 28.

1323h. —— **Traffic transferred from one class to another.**]—NESTLE & ANGLO-SWISS CONDENSED MILK CO. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1246b, *ante*.

SECT. 7.—**OWNER'S RISK RATES** (Vol. VIII., p. 207).

1323j. **Conveyance of goods by passenger train at owner's risk — Application for reduction of rate—Difference in risk negligible—Whether ground for two scales.**]—Appcts. were consignors of gramophone records in the form of flat discs by passenger train. Resps. conveyed these discs at full parcels scale, but under owner's risk conditions. Appcts. claimed that since the discs were conveyed at owner's risk, a reduction should be made from the full parcels scale. It was admitted that when packed by the manufacturers the risk of breakage in transit was negligible. Resps. contended that in the case of goods carried by passenger train the difference between the owner's risk rate & the co.'s risk rate was not intended as a measure of the difference of risk:—*Held:* the difference in the risk to the railway cos. under the two sets of conditions being negligible, on the analogy of 1921 Act, s. 46 (3), there was no ground for directing that there should be two scales, but the discs, when properly packed, should be carried at co.'s risk, &, when not properly packed, at owner's risk. "Properly packed" means packed according to reasonable regulations made by the railway cos., the question of reasonableness to be settled by the Tribunal in case of difference.—BRITISH MUSIC INDUSTRIES FEDERATION *v.* CALEDONIAN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 121.

1323k. —— —— **Grounds for ordering.**]—Revised scales of rates based on the "zone" principle for the carriage of parcels by passenger train at co.'s risk & owner's risk respectively were put into force by resp. cos. in Nov. 1918, & were subsequently twice increased in 1920 by uniform percentage additions in accordance with directions of the Minister of Transport. In May, 1923, new & reduced scales for the above traffic were introduced, whereby the above increases of 1920 were reduced in unequal proportions in order to remove what resp. cos. considered to be anomalies between the co.'s risk & owner's risk scales, with the result that the reductions made in the charges under the owner's risk scale were considerably less than those made in the charges under the co.'s risk scale. Upon an application under 1921 Act, s. 60, to reduce the rates for parcels containing sausages, etc., consigned by passenger train at owner's risk:—*Held:* looking to the circumstances in which the above percentage increases had been recommended & imposed & subsequently continued by 1921 Act, s. 60, the railway cos. were not entrusted with them for any purpose connected with the adjustment of relationships between scales of charge but for the purpose of meeting increased expenses, & in the absence of special circumstances the proper practice was to give equal reduction to all; taking the above owner's risk scale of Nov. 1918, & not that of 1914, as sought by appcts., as a basis of calculation, the owner's risk rates by passenger train on appcts.' above traffic should not exceed those in force in Sept. 1920, as reduced, by 25 per cent.—SAUSAGE MANUFACTURERS' ASSOCN. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., GREAT WESTERN RY. CO., SOUTHERN RY. CO., & CHESHIRE LINES COMMITTEE (1924), 18 Ry. & Can. Tr. Cas. 59.

1323l. **Delay in making claim—When relief granted.**]—Where the course of business between a consignor & his selling agent made it impossible for the agent to know what consignments he ought to have received until the half-yearly stocktaking, & where in consequence no advice was given to the co. within fourteen days of the consignment being handed to them that it had not been delivered, & no claim was made within twenty-eight days:—*Held:* that is not the kind of impossibility contemplated by the proviso to condition 6 of the standard terms & conditions of carriage of merchandise by passenger train at owner's risk, in respect of which the Rates Tribunal may grant relief.—WAPNAH *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 87.

1326a. —— **Charges imposed by Ministry of Transport.**]—Appcts. claimed reductions in the charges made by resps. for the detention of ordinary wagons & sheets, which were in the case of wagons 3*s.* per day for the first two days after the expiration of the free periods allowed for loading & unloading & thereafter 5*s.* per day, & in the case of sheets 6*d.* & 1*s.* for the like periods. These charges had been imposed on & after Jan. 1, 1920, by an order of the Minister of Transport, made in accordance with a recommendation of the Rates Advisory Committee, with the object of diminishing wagon detention & causing traders to exercise more diligence in loading & unloading them. The charges in force in 1913 had been 1*s.* 6*d.* per day for wagons & 3*d.* per day for sheets after the free periods then given. Appcts. also claimed that in reckoning the above periods Saturday should be treated as half a day. Resps. contended

---

PART X. SECT. 9, SUB-SECT. 1.

sq. *Right of Minister of Transport to fix free time for detention—Under Ministry of Transport Act*, 1919 (c. 50), *s.* 3.]—NORTH BRITISH RY. CO. *v.* STEEL CO. OF SCOTLAND, LTD., [1922] S. C. (H. L.) 132; 59 Sc. L. R. 275.—SCOT.

§ i. ——.]—R. *v.* FRANK A. GILLIS CO., LTD., [1923] Exch. C. R. 1; 70 D. L. R. 635.—CAN.

§ ii. —— *Cars excepted from Rules—"Cars stored on carrier's or private track"—"Private cars on private track of car owner."*]—TORONTO HAMILTON & BUFFALO RY. CO. *v.* STEEL CO. OF CANADA (1923) 55 O. L. R. 63.—CAN.

st. *Notice of arrival—Time for.*]—Under the Demurrage Rules notice of arrival of a car may be mailed on Sunday or a legal holiday.—CANADIAN CAR DEMURRAGE BUREAU *v.* DEPT. OF NATIONAL DEFENCE, OTTAWA, [1935] 2 D. L. R. 72.—CAN.

show the charges complained of were reasonable, & also that it was not open to the ct. to reverse the policy of the Minister of Transport in making a differentiation between the first two days following the free periods & subsequent days:—*Held:* (1) the ct. had jurisdiction to modify the charges complained of; (2) having regard to the value of wagons & sheets as compared with 1913, the loss of profit to the railway cos. arising from detention, the standing & overall charges & the extra expenses of shunting & occupation of siding involved, the charges of 3*s.* per day for wagons & 6*d.* per day for sheets, while on the high side, were not unreasonable, but the additional charges of 2*s.* & 6*d.* per day upon wagons & sheets respectively after the expiration of the first two days beyond the free periods were no longer justified, & should be discontinued, & the existing arrangements with regard to Saturdays should not be interfered with.—BRITISH HAY TRADERS' ASSOCN. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., SOUTHERN RY. CO., & GREAT WESTERN RY. CO., BRITISH INDUSTRIES FEDERATION *v.* SAME (1925), 18 Ry. & Can. Tr. Cas. 169.

1330. *Add. Annotations:—As to* (3) **Consd.** G. W. Ry. *v.* Laing (1922), 28 Com. Cas. 100. *Generally*, **Refd.** London & North Eastern Ry. Co. *v.* Brahams (1931), 21 Ry. & Can. Tr. Cas. 1.

1331a. —— **Congestion caused by increased traffic —Insufficiency of unloading sidings.**]—Pltf. co. had on their railway system at P. a small junction station, where there was a siding with sufficient accommodation for unloading the normal goods traffic consigned to that station. Defts. were contractors who were interested in one of three local building schemes which were started about the same time, involving a large increase in the goods traffic consigned to P. Owing to the congestion brought about in P. station by this increased traffic, & the fact that the unloading siding could only accommodate a limited number of wagons at a time, a number of the wagons arriving with goods at P. on defts.' account had to be put into storage sidings, to await their turn to be taken into the proper siding to be unloaded. Great delay in the discharge of wagons was caused thereby, but all the delay occurred at the storage sidings before the wagons were put into the unloading siding. Pltf. co. claimed from defts. exceptional charges for the detention of wagons in the storage sidings, under an implied contract or for accommodation or services provided or rendered by pltfs. to defts. within the scope of pltfs.' undertaking by the desire of defts.:—*Held:* as, on the facts of the case, the wagons were not put into the storage sidings at the desire of defts. they were not liable to pay the exceptional charges claimed.—GREAT WESTERN RY. CO. *v.* LAING (J.) & CO., LTD. (1922), 39 T. L. R. 93; 28 Com. Cas. 100, C. A.

1337. *Add. Annotation:—Generally*, **Refd.** Prentice *v.* L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177.

1337a. —— ——.]—PRENTICE BROTHERS, LTD. *v.* LONDON & NORTH EASTERN RY. CO., No. 1166d, *ante*.

1337b. —— **Terminal charges not in fact made.**]—Appcts. carried on business as timber merchants at a private siding about half a mile from resps.' station at R. They made no use of the station for their traffic. On an application to reduce the rates on appcts.' traffic on the grounds (1) that they were excessive, inasmuch as they were the same as those charged for similar traffic which made use of the station at R., & (2) that the rates in fact included charges for the use of the station, & resps. were not entitled to make any charge over & above the charge for conveyance:—*Held:* (1) the conveyance of appcts.' traffic started from or ended at a siding in the R. station, & resps. were entitled to charge for any services prior or subsequent to such conveyance, & such services were in fact rendered & the charges were not excessive.

(2) The ct. will not infer that station terminals are being paid simply because a siding rate & a station rate are the same in amount. It is only open to the ct. to do so when comparable traffics are passing from the station & the siding under such rates.—DIXON (T. & M.) LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1924), 18 Ry. & Can. Tr. Cas. 46.

1342. *Add. Annotation:—As to* (1) **Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93.

1349. *Add. Annotation:—As to* (2) **Refd.** Dixon *v.* L. M. & S. Ry. (1924), 18 Ry. & Can. Tr. Cas. 46.

1349a. —— **Application for increase—Before "appointed day"—1921 Act, s. 60.**]—The Railway Rates Tribunal has jurisdiction under the proviso to the above sect. to entertain, prior to "the appointed day" to be fixed under that Act, an application by a private siding owner for an increase in a rebate allowed him & for a consequent reduction in charge, & that jurisdiction is not qualified or excluded by the provisions of sect. 61 of the above Act, as to charges in connection with private sidings, the expression "charges" in sect. 60 including not only gross charges, but also the net charges payable by a trader after allowing for any rebate to which he may be entitled.—BRITISH EXTRACTING CO., LTD., BRITISH SOAP CO., LTD., & BRITISH CREAMERIES, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 102, C. A.

Annotations:—**Apld.** British Hay Traders' Assocn. *v.* L. M. & S. Ry., L. & N. E. Ry., Southern Ry. & G. W. Ry., British Industries Federation *v.* Same (1925), 18 Ry. & Can. Tr. Cas. 169. **Refd.** Paul *v.* L. & N. E. Ry. (1927), 19 Ry. & Can. Tr. Cas. 228.

1364. *Add. Annotation:*—**Refd.** Tate & Lyle *v.* L. & N. E. Ry. & L. M. & S. Ry. (1926), 43 T. L. R. 134.

1373. *Add. Annotation:*—**Consd.** *Re* Standard Charges (Collection & Delivery) (1925), 19 Ry. & Can. Tr. Cas. 53.

PART X. SECT. 11, SUB-SECT. 3.

1365 ii. —— *Long-standing voluntary toll.*]—Where an increase in a long-standing voluntary toll is sought, the *onus* is on the carrier to establish its reasonableness.—NATIONAL DAIRY COUNCIL *v.* GRAND TRUNK & CANADIAN PACIFIC RY. COS. (MILK RATE CASE) (1919), 26 Can. Ry. Cas. 113.—CAN.

SECT. 12.—**REDUCTION OF RATES**
(Vol. VIII., p. 217).

1377a. Who may apply for—Trader "interested" —Warehouseman & forwarding agent.]—Appcts., who were warehousemen & forwarding agents at Trafford Park, Manchester, & who had unsuccessfully applied to the Railway Comrs. in respect of an alleged undue preference founded on the same facts, applied for a reduction in a rate of 106*s.* 7*d.*, formerly 107*s.*, charged upon cigarettes consigned in two-ton lots from their Trafford Park warehouse, which was near to, but outside, the Manchester Docks, to King's Cross, London, upon the ground that the corresponding rate from Liverpool was 54*s.* 6*d.*, provisionally reduced to 50*s.* The lower rate was also charged on similar traffic consigned from Manchester Docks, while the higher rate was the ordinary Manchester town rate. Appcts. contended that where traffic as to which the conditions were in all respects alike is sent from two places A. & B. in the same district to the same destination, the same railway co. shall not charge a higher sum from A. than from B., unless the distance of the destination in the case of A. is greater than the distance in the case of B., provided that the rate in the case of A. is a productive rate. They admitted that conditions could not be treated as in all respects alike, if in the one case there was competition which did not exist in the other. Resps. objected that appcts. were not interested traders within 1921 Act, s. 60, & that the rate complained of, which was the ordinary Manchester town rate, was reasonable:—*Held:* (1) while something in the nature of a direct interest must be shown, the interest of appcts. in the above charges was sufficiently direct to entitle them to prosecute these proceedings; (2) in deciding what was a reasonable rate to be charged to appcts., regard should be had to the following considerations: (a) that it was not enough for a trader to show that without a reduction in rate he could not carry on a particular branch of his business; (b) that when railway cos. declared that in their own interests they could not grant facilities or reductions in rates, it would not be right for that ct. to compel them to adopt such a course of business unless appcts. showed that the railway cos. were mistaken; (c) that it was not intended by 1921 Act to establish the principle of equal mileage rates for all places & the consequent adoption of exceptional rates based on competition by water or road as the standard for all rates whether such competition existed in other places or not, & therefore that the existence of a low exceptional rate, not being in fact an undue preference, while a fact to be considered, was not alone a sufficient ground for ordering the reduction of a rate for goods in competition with those having the benefit of the low rate; (3) applying the above principles & taking all the circumstances into account, appcts. should be allowed a rate of 72*s.* 6*d.* subject to any general revision of rates.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO., & GREAT NORTHERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 95.

1377b. Grounds for ordering—Necessity for primâ facie case.]—Confectionery in bottles & jars was carried by the railway cos. originally at co.'s risk, & subsequently under certain agreed packing conditions. In 1920 the cos., without making any reduction in rates, refused to carry confectionery packed as above except at owner's risk, owing to the heavy proportion of claims against them for damage. They continued to carry confectionery not contained in bottles & jars at co.'s risk. Upon an application for a reduction in the rates for confectionery when contained in bottles & jars:—*Held:* (1) an appct. for a reduction in rates must make a *primâ facie* case for the same; (2) such a case had been made upon the above facts; (3) the cos. were not precluded from making special conditions by reason of the fact that they for some time had carried the above goods without conditions; (4) while certain losses in respect of confectionery not contained in bottles & carried at co.'s risk were borne by the cos., which losses did not arise in the case of confectionery in bottles carried at owner's risk, the saving to the cos., *e.g.* 4 or 5 per cent., was not sufficient to justify a reduction in rate.—MANUFACTURING CONFECTIONERS' ALLIANCE, INCORPORATED *v.* CALEDONIAN RY CO. (1922), 17 Ry. & Can. Tr. Cas. 135.

1377c. ——.]—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1377a, *ante*.

1377d. —— Experimental rate.]—Upon an application for an experimental reduced rate of 40*s.* per ton for flax straw in full train loads for a transit of approximately 200 miles, resp. railway cos. offered for a period of five months a rate of 45*s.*, plus siding haulage charge. The ordinary class rate was 88*s.* 2*d.*, less 12½ per cent. Similar traffic was being carried to the same destination from places forty or fifty miles away at approximately the same rate as that offered:—*Held:* the rate should be 45*s.* *Qu.*: whether the Tribunal ought to take into account the possibility that an experimental rate will result in bringing a large future traffic.—MARSH *v.* GREAT EASTERN & GREAT WESTERN RY. COS. (1922), 17 Ry. & Can. Tr. Cas. 129.

1377e. —— Removal of flat-rate additions imposed by Minister of Transport.]—Upon applications to remove certain flat-rate additions to the rates on appcts.' traffic which had been imposed by the Minister of Transport in exercise of his powers under Ministry of Transport Act, 1919 (c. 50), s. 3 (1) (*c*):—*Held:* (1) the ct. would not assume that the Minister was wrong in imposing such flat-rate additions; (2) it was not competent to the ct. to remove such flat-rate additions on the ground that the reasons given in support of their imposition by the former Rates Advisory Committee were not applicable to appcts.' traffic; (3) the rates on appcts.' traffic were not excessive, notwithstanding that the percentage increase resulting from such flat-rate additions was greater on traffic carried at low mileage rates than on that carried at higher mileage rates, & that larger reductions in rates had been given to blast furnace than to appcts.', *i.e.*, coal, traffic.

(4) A rate is not necessarily excessive because a railway co. are not handing back on balance

to the traders all the savings that they are making in reduced expenses.—MONMOUTHSHIRE & SOUTH WALES COAL OWNER'S ASSOCN. *v.* GREAT WESTERN RY. CO., MONMOUTHSHIRE & SOUTH WALES COKE OVENS & BYE-PRODUCTS WORKS ASSOCN. *v.* SAME, SOUTH WALES PATENT FUEL MANUFACTURERS' ASSOCN. *v.* SAME (1923), 18 Ry. & Can. Tr. Cas. 1.

1377f. —— **Reductions granted to other interests.**]—Upon an application for the removal of a flat-rate increase of 2*d.* per ton, being part of a larger increase which originally had been imposed on appcts.' traffic in coal, coke & patent fuel in accordance with a second general revision of rates directed by the Minister of Transport which had since been voluntarily reduced by resps., the following grounds were relied upon by appcts. in support of their case: (1) that a greater proportionate reduction in rates had been given to the traffic of certain admittedly necessitous industries than to their traffic; (2) that their traffic, & in particular their short distance traffic, had increased in density since the above increase in rates, thereby producing an exceptional profit for resps.; & (3) that they apprehended in the future an intensive foreign competition which a reduction in railway rates would assist them to meet:—*Held:* (1) the reductions in rates granted by resps. to the traffic of other industries were justified & did not establish a case of hardship or injustice to appcts.; (2) while it was doubtful as to how far the increase in coal traffic had resulted in increased profit to resp. cos., the period of prosperity in appcts.' trade which was mainly due to the abnormal European political situation was passing away; (3) in an application for a reduction of a rate under 1921 Act, s. 60, the *onus* lay upon an appct. to show the existence of some element of unfairness or of hardship amounting to unfairness, & appcts. had not discharged that *onus* by alleging that a reduction in rates would assist.—MINING ASSOCN. OF GREAT BRITAIN *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. COS., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) *v.* SAME (1924), 18 Ry. & Can. Tr. Cas. 14.

1377g. —— **Abolition of free storage facilities.**]—Appcts., the owners of a warehouse at Trafford Park, Manchester, claimed that a rate of 10*s.* 11*d.* per ton for sugar from Liverpool to their private siding at Trafford Park, being the same amount as the corresponding rate from Liverpool to resp. co.'s Oldham Road station at Manchester, should be reduced by an amount equal to the cost incurred by resps. in providing terminal accommodation & services, including twenty-eight days' free warehousing, at their Manchester station. No sugar had been consigned by rail to appcts.' warehouse, nor was there any evidence that any trader desired to consign sugar to it. Prior to the war resps. had given fourteen days' free storage at Manchester for sugar in view of similar free accommodation provided by competing water-carriers from Liverpool to Manchester. This facility having been withdrawn by resps., they had lost as a result a large part of their sugar traffic from Liverpool to Manchester, &, therefore, as from Nov. 1923, had restored the above free storage for an extended period of twenty-eight days:—*Held:* the ct. had no jurisdiction to abolish the facility of free storage, there was no evidence that the 10*s.* 11*d.* rate to Trafford Park was unreasonable or excessive, & there was no presumption that the rate when compared with the corresponding rate to Oldham Road station was unreasonable, because the latter included free storage at that station.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 81.

1377h. ——.]—Upon an application that the rates on molasses intended to be used for cattle feeding which, with certain exceptions, was in Class 1 of the 1891–2 classification, should be reduced & placed on the same basis as the rates for oilcake & meals, which were in Class 3 of that classification:—*Held:* there was no evidence that the rates complained of were unjust or unreasonable except by comparing them with the treatment of another article in another class, & the ct. had not power at that stage to alter the classification.—NATIONAL ASSOCN. OF CORN & AGRICULTURAL MERCHANTS *v.* LONDON, MIDLAND & SCOTTISH RY. CO., CROSFIELD'S OIL & CAKE CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH RY CO. (1925), 18 Ry. & Can. Tr. Cas. 97.

1377i. —— **Group rates.**]—GOOD (JOHN) & SONS, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 191.

1377j. **Burden of proof—On applicant.**]—MINING ASSOCN. OF GREAT BRITAIN *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. COS., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) *v.* SAME, No. 1377f, *ante*.

1377k. —— ——.]—EBBW VALE STEEL, IRON & COAL CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 207.

1377l. **Power of railway company during transitional period until "appointed day"—To raise reduced rates.**]—Under 1921 Act, s. 60, the rates in existence on Aug. 15, 1921, are maximum rates, & the railway cos. are entitled to reduce them, & to raise them again without applying to the Railway Rates Tribunal, if by so doing they do not exceed the maximum.

Where, on Aug. 15, 1921, there was a rate for sugar & a lower rate for sugar in four-ton lots, & the railway cos. subsequently conceded a still lower rate for sugar in five-ton lots:—*Held:* the five-ton rate was not a new rate, & on Aug. 15, 1921, there was a rate in force for sugar in five-ton lots, namely the rate for sugar in four-ton lots.—TATE & LYLE, LTD. *v.* LONDON & NORTH EASTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO. (1926), 43 T. L. R. 134; 71 Sol. Jo. 82; 20 Ry. & Can. Tr. Cas. 166, H. L.

Annotation:—**Consd.** Great Western Ry. Co. *v.* Boon (1928), 20 Ry. & Can. Tr. Cas. 63.

1377m. **Charges fixed for services at beginning & end of transit—Charges for sidings otherwise provided.**]—NESTLE & ANGLO-SWISS CONDENSED MILK CO. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1246b, *ante*.

What rates—Owner's risk rates.]—*See* Nos. 1323j, 1323k, *ante.*

—— **Charges for detention.**]—*See* No. 1326a, *ante.*

SECT. 14.—**TRANSITIONAL PERIOD.**

1377n. Power during transitional period to make "such charges as were in force"—Meaning of.]—"Such charges as were in force," in sect. 60 of 1921 Act, mean such charges as the co. were holding themselves out as claiming for the particular service in question.—GREAT WESTERN RY. CO. *v.* BOON (1928), 20 Ry. & Can. Tr. Cas. 63.

1377o. —— ——.]—TATE & LYLE, LTD. *v.* LONDON & NORTH EASTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO., No. 1377l, *ante.*

SECT. 15.—**AGREED CHARGES.**

See Road and Rail Traffic Act, 1933 (c. 53), ss. 37–39.

1377p. What agreements approved.]—General observations as to agreed charges under the Road & Rail Traffic Act, 1933 (c. 53).

Where an agreement is approved by the Tribunal statements made by the parties in the proceedings for approval form part of the agreement. It is no objection to an agreement for a charge that it does not limit the railway co. to carriage by rail.—*Re* CHISWICK PRODUCTS AGREED CHARGE (1934), 22 Ry. & Can. Tr. Cas. 53.

1377q. ——.]—An agreement to carry the whole of a trader's traffic wherever required for a percentage of the purchase price may properly be made under Road & Rail Traffic Act (c. 53), s. 37. The objection that such an agreement makes it impossible for competing traders to compare their own charges with the agreed charge would be equally applicable to a tonnage or a package rate.

It is not necessary that such an agreement should contain a provision for limiting the advantage which may be expected to accrue to the trader. A comparison between a rate based on the purchase price of a certain commodity & a rate based on mileage & weight of a consignment of the same commodity is fallacious.

An agreement may be approved though it gives liberty to the parties to agree (without seeking the approval of the Tribunal) for the exclusion of certain traffics from the operation of the agreement.—*Re* WOOLWORTH'S AGREED CHARGE (1934), 22 Ry. & Can. Tr. Cas. 90.

SECT. 16.—**GOODS VEHICLES.**

See Part XII., *post.*

Part XI.—Remedies of and against Carriers.

1378. *Add. Annotation:*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

1380a. —— —— **Market salesman.**]—A foreign consignor sent fruit consigned to himself in England, instructing a firm of carriers to collect goods & pay charges. The consignor's son ordered them to deliver the goods to a firm of market salesmen. This firm accepted the goods, sold them, & credited the son with the proceeds, & refused payment to the carriers:—*Held:* (1) a market salesman who receives the goods of another to sell, is as against the carriers an independent contractor & is the consignee, although he may be liable to a principal to "sell & account"; (2) his acceptance, in the absence of notice to the contrary, is evidence of an implied contract with the carrier to pay his charges, of which the consideration is that the carrier has parted with his lien.—WORLD TRANSPORT CO. *v.* TEALING & CO., [1936] 2 All E. R. 573; 80 Sol. Jo. 634.

1389. *Add. Annotation:*—**Apld.** R. *v.* Harding (1929), 46 T. L. R. 105.

1390. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

1398. *Add. Annotation:*—*As to* (1) **Refd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

1435. *Add. Annotation:*—**Refd.** Oakley *v.* Lyster, [1931] 1 K. B. 148.

449. *Add. Citation:*—91 L. J. K. B. 39.

Add. Annotations:—**Refd.** Anderson *v.* Equitable Life Assce. Soc. of the United States (1926), 134 L. T. 557; Dexters *v.* Hill Crest Oil Co. (Bradford), [1926] 1 K. B. 348.

PART XI. SECT. 1, SUB-SECT. 2.

sb. *Goods carried under approved bill of lading—Action by connecting carrier against shipper—Not maintainable.*]—NEW YORK CENTRAL RY. CO. *v.* ELLIOTT (N. S.), [1928] 2 D. L. R. 973; 34 Can. Ry. Cas. 246.—**CAN.**

sc. *Agreement as to freight charge—Subsequent additional charges according to "special joint tariff"—No liability to pay.*]—NEW YORK CENTRAL RY. CO. *v.* JOSEPH DOLAN & SONS, LTD., [1929] 1 D. L. R. 817; 35 C. R. C. 333; 63 O. L. R. 341.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 4.—A. (a).

1391 vii. —— *Waiver.*]—CONBOY *v.* MILLSAP, [1930] 3 W. W. R. 161.—**CAN.**

st. *Payment for services rendered—Towing damaged motor car.*]—TERRY *v.* AUTOMOBILE OWNERS ASSOCN., No. 15 i, *ante.*

PART XI. SECT. 2, SUB-SECT. 1.

sx. *consignee—Damage to goods en route—Owner having paid damage to consignee.*]—Where an owner of goods had indorsed a bill of lading to the buyer:—*Held:* he had parted with all his rights to obtain damages from the carrier. The fact that the owner paid the indorsee the damages suffered by the goods *en route* did not deprive the latter of his right of action against the carrier.—FORD MOTOR CO. *v.* UNION S.S. CO., [1925] 1 D. L. R. 265; [1924] 3 W. W. R. 718.—**CAN.**

Part XII.—Goods Vehicles.

See Road and Rail Traffic Act, 1933 (c. 53).

SECT. 1.—LICENCES.

1474. "A" licence—When granted.]—It is not sufficient for appct. for an A licence to discharge the burden of proving that there are persons ready & willing to employ him. He must also satisfy the licensing authority that the haulage he proposes to do cannot for some reason be done by other carriers already engaged in carriage, whether by road or rail.—ENSTON & Co. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 3.

Annotations :—**Apld.** *Re* Fry's Appeal (1934), 22 Ry. & Can. Tr. Cas. 29. **Consd.** London & North Eastern Ry. Co. *v.* Sanderson (1935), 22 Ry. & Can. Tr. Cas. 171. **Apld.** London, Midland & Scottish Ry. Co. *v.* Tait & MacConn (1935), 22 Ry. & Can. Tr. Cas. 201. **Expld. & Apld.** Thornley & Son *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 249. **Expld. & Distd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23. **Apld.** Edwards *v.* London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 67; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Palmer (1935), 23 Ry. & Can. Tr. Cas. 76. **Consd.** Tickle *v.* London, Midland & Scottish, Great Western, & London & North Eastern Ry. Cos. (1935), 23 Ry. & Can. Tr. Cas. 88. **Apld.** Crompton *v.* London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 178. **Consd.** Jones *v.* London Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 208. **Apld.** Axford *v.* Southern Ry. Co. (1936), 24 Ry. & Can. Tr. Cas. 77. **Consd.** Ferguson *v.* Western S.M.T. Co. (1935), 24 Ry. & Can. Tr. Cas. 72; London, Midland & Scottish Ry. Co. *v.* Pennington (1935), 23 Ry. & Can. Tr. Cas. 256. **Apld.** Newbury & District Motor Services, Ltd. *v.* Stephen & Hewett (1936), 24 Ry. & Can. Tr. Cas. 140. **Refd.** Petrie *v.* Great Western Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 15; Power *v.* London, Midland & Scottish Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 21; Charman *v.* Southern Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 116; Allatt *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1935), 23 Ry. & Can. Tr. Cas. 82; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Williams (1935), 23 Ry. & Can. Tr. Cas. 159; Orange, Ltd. *v.* Jennings (1935), 23 Ry. & Can. Tr. Cas. 195; Cooper *v.* Southern Ry. Co. (1935), 24 Ry. & Can. Tr. Cas. 55; McLachlan *v.* Morgan & Co. (1935), 23 Ry. & Can. Tr. Cas. 243; Southern Ry. Co. *v.* Owen (1936), 24 Ry. & Can. Tr. Cas. 36; Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99; London, Midland & Scottish Ry. Co. *v.* Anton (1936), 24 Ry. & Can. Tr. Cas. 325; Pocock *v.* Wasey (1936), 24 Ry. & Can. Tr. Cas. 316; Sheraton *v.* United Automobile Services, Ltd. (1936), 25 Ry. & Can. Tr. Cas. 83.

1475. —— ——.]—The fact that an appct. was a partner in a firm which used goods vehicles during the basic year is not a relevant matter to be taken into account on an application for an A licence. Since Parliament has granted to licensing authorities a discretion to grant or refuse licences, traders no longer have the right to choose the carriers they will employ.

It is not enough for an appct. for an A licence to prove that traders are willing to employ him. He must also show that there is a need for his services in the locality in which he proposes to operate.—PETRIE *v.* GREAT WESTERN RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 15.

Annotations :—**Refd.** London & North Eastern Ry. Co. *v.* Sanderson (1935), 22 Ry. & Can. Tr. Cas. 171; London, Midland & Scottish Ry. Co. *v.* Tait & MacConn (1935), 22 Ry. & Can. Tr. Cas. 201.

1476. —— ——.]—(1) An applt. who thought that his application was a matter of form, & who did not realise the importance of presenting the whole of his case to the licensing authority was allowed to call new evidence before the Appeal Tribunal.

(2) The fact that an appct.'s vehicle has been employed by other hauliers is some evidence of a public need for additional transport facilities.—*Re* FRY'S APPEAL (1934), 22 Ry. & Can. Tr. Cas. 29.

1477. —— ——.]—An A licence should be granted where the public need for a carrier in the appct.'s district is established, even though it is not shown that that need has been brought about by any general expansion of industry. An appct.'s ignorance of the law relating to motor cars, the fact that an appct. has bought a goods vehicle without first obtaining a licence for it, & the probability that an appct. will lose money in the business of a carrier are not relevant considerations to which a Comr. should have regard in granting or refusing an A licence.—*Re* HUGHES' APPEAL (1934), 22 Ry. & Can. Tr. Cas. 141.

1478. —— ——.]—The fact that vehicles were used during the basic year by a firm since dissolved of which the appct.'s son was a member is not a good ground for granting an application for an A licence intended to be exercised for the benefit of the son.—LONDON & NORTH EASTERN RY. CO. *v.* HURD, NEWHAMS, LTD. *v.* HURD (1935), 22 Ry. & Can. Tr. Cas. 147.

1479. ——.]—*Held :* by the Appeal Tribunal, distinguishing *Enston's Case*, railway cos. are in an exceptional position owing to their peculiar statutory obligations as to collection & delivery. If, therefore, a railway co. can show that they could carry out these statutory obligations more efficiently with the licence than without it their application should succeed, notwithstanding they will thereby abstract traffic from other carriers already engaged in carrying in the district intended to be served.—LONDON & NORTH EASTERN RY. CO. *v.* SANDERSON (1935), 22 Ry. & Can. Tr. Cas. 171.

Annotations :—**Apld.** Watts *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 187. **Refd.** London, Midland & Scottish Ry. Co. *v.* Tait & MacConn (1935), 22 Ry. & Can. Tr. Cas. 201; Auld *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 239.

1480. —— ——.]—The fact that an appct. was a carrier up to a few weeks before the commencement of the basic year, but went out of business because of rate cutting by his competitors, should not influence a licensing comr. to grant him an A licence in the absence of evidence that the work he proposes to do cannot be done by other carriers. Where an appct. failed to adduce evidence showing that his vehicles would not be in excess of local requirements, his application ought to have been refused.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* INMAN (1935), 22 Ry. & Can. Tr. Cas. 184.

Annotations :—**Refd.** Crompton *v.* London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 178; London, Midland & Scottish Ry. Co. *v.* Pennington (1935), 23 Ry. & Can. Tr. Cas. 256.

1481. —— ——.]—There being only two covered vans in G. suitable for the removal of furniture, the appct. was granted an A licence on proof

that there was a need in G. for another such van & that there were persons willing to employ him.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* TAIT & MACCONN (1935), 22 Ry. & Can. Tr. Cas. 201.

Annotations :—**Distd.** Ferguson *v.* Western S.M.T. Co. (1935) 24 Ry. & Can. Tr. Cas. 72. **Refd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23 ; Tickle *v.* London, Midland & Scottish, Great Western & London & North Eastern Ry. Cos. (1935), 23 Ry. & Can. Tr. Cas. 88.

1482. —— ——.]—*Held :* an A licence should not be granted to a carrier of twelve years' standing who gave up the business of carrying because he was losing money, but was out of time for an application under sect. 7 (2). But there may be an equitable right to a licence where a carrier was actively employed as such on Apr. 1, 1934, but failed through inadvertence to apply in time.—YEARSLEY *v.* GREAT WESTERN RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 258.

Annotation :—**Refd.** Barker *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1936), 24 Ry. & Can. Tr. Cas. 161.

1483. —— ——.]—(1) An appct. who proposes to provide a new type of service, such as a regular daily service, is not bound to satisfy the licensing authority that the haulage he proposes to do cannot for some reason be done by other carriers already engaged in carriage, whether by road or rail.

(2) An appeal was allowed where applt. did not present his true case to the licensing authority, but did present it to the Appeal Tribunal. Observations on the duty of a licensing comr. to give the reasons for his decision in writing when duly requested to do so.—SMITH *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 262.

Annotation :—**Distd.** Ferguson *v.* Western S.M.T. Co. (1935), 24 Ry. & Can. Tr. Cas. 72.

1484. —— ——.]—The fact that an appct. has been granted a short term licence for administrative reasons under sect. 3 (4), & that he has purchased a vehicle on the faith of that grant are not grounds for granting him an A licence for the full currency period.—RHODES *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 266.

1485. —— ——.]—An appct. for an A licence who proves that there are persons ready & willing to employ him & that the service which he offers can be more efficiently operated by him than by others should be granted a licence.—EDWARDS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 67.

Annotation :—**Refd.** London, Midland & Scottish Ry. Co. *v.* Anton (1936), 24 Ry. & Can. Tr. Cas. 325.

1486. —— ——.]—(1) On an application for an A licence by a newcomer to the carriers' business appct. must not only prove that there are persons ready & willing to employ him, but must also make out a *primâ facie* case that if the application is granted traffic facilities in the district which he proposes to serve will not be in excess of requirements.

(2) The willingness of an appct. for an A licence to enter into an undertaking to observe a condition limiting his exercise of the licence is not a proper ground for granting the licence.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* PALMER (1935), 23 Ry. & Can. Tr. Cas. 76.

1487. —— ——.]—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* WILLIAMS, No. 1618, *post.*

1488. —— ——.]—(1) An applt. who had failed to prove his case before the comr. was permitted to call new evidence to prove it before the Appeal Tribunal.

(2) At a public inquiry held by the comr. it appeared that appct. had captured the traffic of the objectors, but it did not appear how this had been done. The comr. refused the application because there was no evidence of any need for the services of the appct. On new evidence being called before them the Appeal Tribunal were satisfied that the traffic of the objectors had been captured by appct. because of the inefficiency of the former ; the appeal was therefore allowed though there was no evidence to show that the work proposed to be done by the appct. could not for some reason or reasons be done by other carriers.—STEPHENSON *v.* SAGAR & SON (1935), 23 Ry. & Can. Tr. Cas. 183.

1489. —— ——.]—Although it is found as a fact that there is work available for an appct. to do, he ought not to be granted a licence to do it unless he also proves a *primâ facie* case that there is no other carrier able to do the work.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* PENNINGTON (1935), 23 Ry. & Can. Tr. Cas. 256.

Annotation :—**Consd.** Barkley *v.* London, Midland & Scottish Ry. Co. & London & North Eastern Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 267.

1490. —— ——.]—(1) A carrier who anticipates that he is not likely to use his vehicle to do any work except for one person only ought not to be granted an ordinary A licence.

(2) The fact that an appct. bought his vehicle before the passing of the Road & Rail Traffic Act, 1933 (c. 53), but after the end of the basic year, & used it for carrying goods for reward, & the hardship which would be occasioned by refusing a licence in such circumstances, are not matters which a Comr. ought to take into consideration in the exercise of his discretion.—BARKLEY *v.* LONDON, MIDLAND & SCOTTISH RY. CO. & LONDON & NORTH EASTERN RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 267.

Annotations :—**Consd.** Kerr & London, Midland & Scottish Ry. Co. *v.* Brown (1936), 24 Ry. & Can. Tr. Cas. 323. **Refd.** Miller & Co. *v.* London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Great Western Ry. Co., Coast Lines, Ltd. & Bowker (1937), 25 Ry. & Can. Tr. Cas. 364.

1491. —— ——.]—*Held :* the fact that a ry. co. offered facilities for the transport of wet hides & had a number of years ago carried wet hides for a trader for whom appct. proposed to carry wet hides was evidence that suitable transport facilities in the district intended to be served by appct. were in excess of requirements.—LONDON, MIDLAND & SCOTTISH RY. CO. & LONDON & NORTH EASTERN RY. CO. *v.* DUNNETT (1935), 23 Ry. & Can. Tr. Cas. 276.

Annotations :—**Consd.** Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158 ; Great Western & London, Midland & Scottish Ry. Cos. *v.* Smart (1936), 24 Ry. & Can. Tr. Cas. 273 ; Alexander (Charles) *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1938), 26 Ry. & Can. Tr. Cas. 260. **Refd.** London, Midland & Scottish Ry. Co. *v.* Ingleby (1936), 24 Ry. & Can. Tr. Cas. 294.

1492. —— ——.]—A carrier who was entitled to an A licence because he had been carrying

during the basic year was granted an A licence under sect. 7 (1) of the Act subject to the condition that he should use his vehicle exclusively for the traffic of one co. Later part of the traffic of that co., came under the control of another person who also desired to employ this carrier. The carrier therefore surrendered his A licence with the condition attached & applied for an A licence without any condition. Sir Henry Piggott was of opinion that in ordinary justice the applicant was entitled to an A licence:—*Held:* by the Appeal Tribunal, appct. should not have been granted an A licence because it appeared that he was not the only carrier capable of dealing with the traffic.—SOUTHERN RY. Co. *v.* OWEN (1935), 24 Ry. & Can. Tr. Cas. 36.

1493. —— ——.]—An appct. obtained an A (Contract) licence. Later he applied for an A licence, claiming that he had been mistaken as to the nature of the A (Contract) licence. He adduced no evidence that persons other than the co. with whom he was under contract would employ him:—*Held:* on the facts, appct. had not made a mistake, & no case had been made out. *Semble:* if a mistake had been made, this would have afforded equitable grounds for granting an A licence.—AXFORD *v.* SOUTHERN RY. Co. (1936), 24 Ry. & Can. Tr. Cas. 77.

1494. —— ——.]—A haulage co. went into liquidation in Sept. In Oct. resps., two of its former drivers started business on their own account, & applied for an A licence. At the inquiry two of their customers stated that they, the customers, had employed the co., but that in the interval between the liquidation & the commencement of the new business they had employed other firms. A third customer had no complaint against applts., whom he had employed until the new business started:—*Held:* resps. had not established a *primâ facie* case that the work they proposed to do could not be done by existing operators, & were therefore not entitled to a licence.

Per Sir Henry Piggott: Particulars of the objector's & other existing services should be given in the Notice of Objection.—NEWBURY & DISTRICT MOTOR SERVICES, LTD. *v.* STEPHENS & HEWETT (1936), 24 Ry. & Can. Tr. Cas. 140.

1495. —— ——.]—An application for an A licence was refused both because appcts. failed to discharge the onus of proving the need for the service which they desired to provide & that this need could not for some reason be met by the facilities already available, & also because the grant of the licence would have created an excess of transport facilities in the district.—ORANGE (J.), LTD. *v.* JENNINGS (1935), 24 Ry. Can. & Tr. Cas. 195.

1496. —— ——.]—An A licence ought not to be granted to an appct. who does not prove that he is the only carrier capable of carrying the traffic he proposes to carry. It makes no difference that there are persons who desire to avail themselves of his services.—JONES *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1935), 24 Ry. Can. & Tr. Cas. 208.

1497. —— ——.]—A co. engaged principally upon haulage on trunk routes applied at the close of the first currency period for a new A licence in continuation of their existing A licence. The amalgamated railway cos. objected upon the ground that suitable transport facilities were already in excess of requirements:—*Held:* by the Appeal Tribunal: (1) it is no part of a licensing authority's duty to have regard to a difference between road & rail rates or to take into account the railway "rates structure" set up pursuant to Railways Act, 1921; (2) there is nothing in the Act to support the view that the "*status quo*" should be maintained beyond the first currency period; (3) the principle laid down in *Smart's Case*, No. 1518, *post*, is not limited to applications for variations but applies equally to applications such as this. The principle is that, if an objector proves that suitable transport facilities are in excess of requirements, or would be if the licence were granted, then, generally speaking, a licence should not be granted. The Appeal Tribunal now point out that proof of the objection does not give the objector a legal right to have the application dismissed; the reason why such an application should be dismissed is that it would not be in the public interest for a licensing authority to exercise his discretion so as to create wasteful competition; (4) an established haulier on a trunk service when applying for a new A licence in continuation of his expiring licence should satisfy the licensing authority (*a*) that during the currency of his expiring licence the authorised vehicles have been regularly & fully employed; (*b*) as to his gross receipts & tonnage; (*c*) there has been no material change in the circumstances relating to his business. If the licensing authority is satisfied as to these matters he should grant the application unless there are overriding circumstances to the contrary. Such overriding circumstances exist if the evidence establishes beyond reasonable doubt that suitable transport facilities are, or will be, in excess of requirements; (5) transport facilities are not "suitable" within sect. 11 (2) of the Act unless they are (*a*) suitable for carrying the goods required to be carried, (*b*) suitable to the person requiring them to be carried on the occasions when he requires transport, & (*c*) suitable to current industrial & commercial conditions; (6) on the facts of this case, appcts. had satisfied the licensing authority as to the matters (*a*), (*b*) & (*c*) of (4) above, & that the objectors, though they had proved that their facilities were physically adequate, had not proved them to be "suitable." Application granted.—FOUR AMALGAMATED RY. COS. *v.* BOUTS-TILLOTSON TRANSPORT, LTD. (1937), 25 Ry. & Can. Tr. Cas. 158.

Annotations:—Generally, **Reld.** *Re* Boyer (William) & Sons (Transport), Ltd. (1937), 25 Ry. & Can. Tr. Cas. 302; Hazell *v.* Southern Counties Road Transport Co., Ltd. (1937), 25 Ry. & Can. Tr. Cas. 259; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stevenson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 328; Modern Haulage Services, Ltd. *v.* London, Midland & Scottish & London & North Eastern Ry. Cos., Southern Ry. Co. *v.* Coleman, London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stuart (1937), 25 Ry. & Can. Tr. Cas. 272; Alexander (Charles) *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1938), 26 Ry. & Can. Tr. Cas. 260; Oxlade *v.* Great Western Ry. Co. (1938), 26 Ry. & Can. Tr. Cas. 234; McNamara & Co. (1921), Ltd. *v.* London, Midland & Scottish & Great Western Ry. Cos. (1937), 26 Ry. & Can. Tr. Cas. 117; London & North Eastern Ry. Co. *v.* Blyth Transport Co. (1937), 26 Ry. & Can. Tr. Cas. 202.

1498. —— ——.]—Where the holder of a B licence acquires the carrying business of the holder of an A licence & applies for an A licence which is necessary to enable him to obtain the full benefit of the goodwill transferred, the fact that he is already the holder of a B licence is not a special circumstance which would justify the licensing authority in refusing him an A licence. When application is made for an A licence for the purpose of effecting the transfer of a carrying business, then whether or not the case is one in which the licensing authority is bound to take into account the objection that transport facilities are or will be in excess of requirements, nevertheless appct. must prove that a reasonable number of the customers of the vendor are prepared to transfer their business to the purchaser.—WASEY *v.* BORWICK (1937), 25 Ry. & Can. Tr. Cas. 217.

Annotation :—**Distd.** Ball (Leicester), Ltd. *v.* Platts Bros. (1937), 25 Ry. & Can. Tr. Cas. 189.

1499. —— ——.]—An old-established firm of hauliers also carried on a gravel, etc., business. In 1927 the entire business was acquired by a limited co. In 1931 a second limited co. was formed & acquired the road haulage portion of the business. This haulage co. was in 1934 granted an A licence, claimed tonnage. It now applied for an A licence in continuation of the expiring licence. Mr. Gleeson Robinson refused the application on the ground that a B licence was appropriate ; otherwise any person combining a haulage business with another business could evade the disabilities of a B licensee by incorporating a separate haulage co. On appeal:—*Held :* although Mr. Gleeson Robinson's views might be properly applicable to many cases, they did not apply in this case where appct. co. was the successor of an old-established transport business & had been incorporated in 1931, before the Road & Rail Traffic Act was contemplated.—*Re* BOYER (WILLIAM) & SONS (TRANSPORT), LTD. (1937), 25 Ry. & Can. Tr. Cas. 302.

1500. —— ——.]—(1) When a carrier transfers his business to a co. which he himself manages, this cannot be regarded as a colourable transaction so as to make him still the user of the vehicles for the purpose of applying for a licence. In such a case it is the co. which uses the vehicles & which must apply for the licence, even though the vehicles are registered in the name of the manager.

(2) A change of base by itself is not necessarily such a material change of circumstances as should disqualify an appct. for a licence for a further currency period within the rules laid down in *Four Amalgamated Railway Cos. & Bouts-Tillotson.* But a change of base accompanied by a change of the area of normal user may be such a material change.—TURRELL *v.* DAYS' TRANSPORT & REMOVAL SERVICE, LTD., CHILD & SONS, LTD. ORWELL TRANSPORT, NICE BROS., LONDON & NORTH EASTERN RY. CO. (1938), 26 Ry. & Can. Tr. Cas. 247.

1501. —— **For additional vehicles—When granted.**]—(1) The principles on which A licences should be granted or refused during the first currency period are *inter alia* that the *status quo* should as far as possible be maintained. No increase in the number of vehicles licensed should be allowed except upon proof that such increase is really necessitated by the general expansion of industry in any particular business or district. Stabilisation of the industry should be the first aim of the licensing authorities.

(2) The mere fact that particular customers are willing to give further custom to the appct. is not by itself sufficient to justify the grant of an A licence for an increased number of vehicles.

Where an appct. seeks an A licence for an increased number of vehicles on the ground that particular customers propose to use those vehicles his proper course is to apply for contract licences under Road & Rail Traffic Act, 1933 (c. 53), s. 7 (1).

(3) An undertaking by the appct. to observe certain conditions attached to the grant of an A licence cannot be accepted as an alternative to refusing the application because such an undertaking would not be enforceable.—RIDGEWELL & CO. *v.* SOUTHERN RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 6.

Annotations :—**Apld.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23 ; *Re* Fry's Appeal (1934), 22 Ry. & Can. Tr. Cas. 29. **Distd.** London & North Eastern Ry. Co. *v.* Robson (Gateshead), Ltd. (1935), 22 Ry. & Can. Tr. Cas. 233. **Apld.** Barkley *v.* London, Midland & Scottish Ry. Co. & London & North Eastern Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 267. **Consd.** Cooper *v.* Southern Ry. Co. (1935), 24 Ry. & Can. Tr. Cas. 55 ; Forrester *v.* Great Western Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 225 a London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112. **Apld.** London & North Eastern Ry. Co. *v.* Allen (1936), 24 Ry. & Can. Tr. Cas. 149. **Consd.** Great Western & London, Midland & Scottish Ry. Cos. *v.* Smart (1936), 24 Ry. & Can. Tr. Cas. 273 ; Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99 ; Kerr & London, Midland & Scottish Ry. Co. *v.* Brown (1936), 24 Ry. & Can. Tr. Cas. 323. **Apld.** Chapman *v.* Garlick, Burrell & Edwards, Ltd. (1937), 26 Ry. & Can. Tr. Cas. 177. **Consd.** London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stevenson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 328. **Apld.** London, Midland & Scottish Ry. Co. *v.* Young's Express Deliveries (1937), 26 Ry. & Can. Tr. Cas. 209. **Refd.** Power *v.* London, Midland & Scottish Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 21 ; *Re* Hughes' Appeal (1934), 22 Ry. & Can. Tr. Cas. 141 ; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Collier Daniels Transport Co. (1936), 24 Ry. & Can. Tr. Cas. 258 ; Southern Ry. Co. *v.* Hardy & Son, Ltd. (1935), 24 Ry. & Can. Tr. Cas. 18 ; Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158 ; J. & E. Transport, Ltd. *v.* London, Midland & Scottish Ry. Co. (1937), 26 Ry. & Can. Tr. Cas. 183 ; Miller & Co. *v.* London, Midland & Scottish Ry. Co. (1937), 25 Ry. & Can. Tr. Cas. 364.

1502. —— —— ——.]—*Held :* by the Appeal Tribunal, the enlargement of a carrier's licence cannot be justified by general evidence of an increase in his business & general evidence that that increased business cannot be done by other carriers.—LONDON & NORTH EASTERN RY. CO. *v.* BRIGGS (1935), 22 Ry. & Can. Tr. Cas. 252.

Annotation :—**Refd.** London & North Eastern Ry. Co. *v.* Brownbridge (1935), 22 Ry. & Can. Tr. Cas. 255.

1503. —— —— ——.]—(1) Where an appct. hired vehicles in the past as part of a general policy, & not in a casual manner, he has no right to a licence to enable him to dispense with hiring in the future, apart from special circumstances such as those mentioned in *L. M. S. and Barr.*

(2) A general increase in a carrier's business is a good ground for authorising him to use a larger number of vehicles ; & the fact that the increase is largely attributable to the custom of one particular firm is not in the circumstances a ground for limiting him

to a contract licence under sect. 7 (1).—LONDON & NORTH EASTERN RY. CO. *v.* ROBSON (GATESHEAD), LTD. (1935), 22 Ry. & Can. Tr. Cas. 233.

Annotations :—**Refd.** Thornley & Son *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 249; Four Amalgamated Ry. Cos. *v.* Foster & Co. (1936), 24 Ry. & Can. Tr. Cas. 265.

1504. —— —— ——.]—HAWKER, LTD. *v.* GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. No. 1536, *post*.

1505. —— —— ——.]—(1) On an application to vary a carrier's licence by the inclusion of an additional vehicle it is not sufficient for appct. to prove an increase in his business since the original grant of his licence, & there is no distinction between the cases where the application is opposed by a railway co., where it is opposed by a rival road carrier, & where it is not opposed at all.

(2) Where the decision of the licensing authority appears to have been based on erroneous grounds a resp. is nevertheless entitled to support the decision on other grounds.—ALLATT *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1935), 23 Ry. & Can. Tr. Cas. 82.

Annotation :—*As to* (1) **Refd.** London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112.

1506. —— —— ——.]—(1) An application in part for claimed, & in part for discretionary, tonnage should be so published, & not as an application for discretionary tonnage only. Where an appct. carries partly in one traffic area & partly in another general evidence as to his operations throughout the country will not suffice to support an application for a licence for vehicles intended to be normally based in a particular traffic area.

(2) A licensing comr. should act judicially, & should not allow his mind to be influenced by mere complaints unsupported by evidence.

(3) Where the previous conduct of an appct. is brought in issue by allegations of criminal offences it is the duty of those making the allegations to furnish appct. with particulars of the offences he is alleged to have committed if he requires them. If the fact that a criminal offence has been committed comes in question even collaterally, it must be strictly proved.

(4) A licensing comr. who is required to give his reasons for a decision under sect. 6 (3) of Road & Rail Traffic Act, 1933 (c. 53), is bound to give all his reasons. He cannot reserve to himself a right to give additional reasons later.

(5) Previous offences committed by an appct. as a carrier against sect. 19 of Road & Rail Traffic Act, 1930, & the charging of uneconomic rates as a carrier do not constitute "previous conduct of appct. as a carrier of goods" within sect. 6 (2) (*b*) of Road & Rail Traffic Act, 1933, & a licensing comr. is not entitled in law to take such matters into consideration when exercising his discretion under that sect. But if an objection to the application is made under sect. 11 (2) of the Act, on the ground that suitable transport facilities are or, if the application were granted, would be in excess of requirements, such matters are relevant to such objection & should be taken into consideration.

(6) A road carrier who maintains long-distance trunk services, & seeks authority for additional vehicles to be used for the collection & delivery of his traffic, may justify his application by showing that such collection & delivery can be better co-ordinated with his trunk services & can be performed more efficiently with vehicles owned by him & under his control than by employing others to do the work.—BOUTS-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD. (1935), 23 Ry. & Can. Tr. Cas. 106.

Annotations :—*As to* (5) **Refd.** Moore *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 318. *As to* (6) **Refd.** Watts *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 187; London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stevenson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 328.

1507. —— —— ——.]—On an application to vary an A licence by including an additional vehicle appct. established a case for his tonnage being increased, & his application was granted. On appeal by the objectors to the Appeal Tribunal :—*Held :* a case for an additional vehicle could not be established merely by making a case for additional tonnage, &, though the latter case had been made out, the Tribunal were not competent to deal with the appeal on that basis.—SOUTHERN RY. CO. *v.* BARNES (1935), 23 Ry. & Can. Tr. Cas. 137.

1508. —— —— ——.]—(1) There is no right of appeal by an objector to an application for claimed tonnage where the comr.; being satisfied that the vehicle to be authorised is properly included in the claimed tonnage grants the application.

(2) Where a carrier who was established during the basic year seeks to augment the vehicles which he is authorised to use he must prove some general expansion in the business of his customers.—STUBBS (LEONARD) & CO., LTD. *v.* JACKSON & ELLIS (1935), 23 Ry. & Can. Tr. Cas. 141.

1509. —— —— ——.]—(1) An increase in the business of a carrier is not the same thing as an increase in the business of his customers; & evidence of the former by itself does not justify an addition to the vehicles authorised by a carrier's licence.

(2) On an application for a variation of a licence a Comr. is entitled to take into consideration the conclusions he came to on the original application.

(3) General evidence that a carrier has had difficulty in finding other carriers to carry for him is not a special circumstance justifying the licensing of additional vehicles to enable the carrier to do his own carrying himself.

(4) A licence ought not to be granted to a carrier for services which the Comr. thinks are unnecessary.

(5) The decision of a Comr. on an application cannot create anything in the nature of an estoppel against appct.—FORRESTER *v.* GREAT WESTERN RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 225.

1510. —— —— ——.]—An established carrier sought an enlargement of his licence on the ground that his fruit-carrying business had increased. The Comr. having refused the application on the ground that suitable

transport facilities in the district were in excess of requirements :—*Held :* though the evidence in support of the Comr.'s finding was very slight, the appeal should not be allowed because the Tribunal were of opinion that appct.'s fruit-carrying business had not increased, & they refused to consider whether his business of carrying vegetables had increased.—COOPER *v.* SOUTHERN RY. CO. (1935), 24 Ry. & Can. Tr. Cas. 55.

1511. —— —— ——.]—A haulier holding an A licence for two vehicles applied for it to be varied by the addition of a third vehicle. His gross receipts had increased & he had been compelled to hire :—*Held :* such an appct. must first establish a case as laid down in *Ridgewell's Case.* If such a case is established the formula in *Hawker's Case* must then be applied to determine how many (if any) additional vehicles should be authorised. Assuming that this appct. had established the first point, he failed on the second point, for he had not proved abnormal hiring, while the increase in gross receipts, computed on a basis of ten-months as laid down in *Hawker's Case,* was too small to justify the extra vehicle. The formula in *Hawker's Case* cannot be applied to certain cases. Alternative considerations discussed. Matters to be considered when assessing evidence of increase in gross receipts discussed. Two classes of hirers distinguished. —LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* BEAZLEY (1936), 24 Ry. & Can. Tr. Cas. 112.

Annotations :—**Consd.** Great Western & London, Midland & Scottish Ry. Cos. *v.* Smart (1936), 24 Ry. & Can. Tr. Cas. 273. **Apld.** Drinkwater *v.* London & North Eastern, London, Midland & Scottish & Great Western Ry. Cos. (1936), 25 Ry. & Can. Tr. Cas. 32. **Refd.** Bradshaw *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1936), 24 Ry. & Can. Tr. Cas. 137 ; London & North Eastern Ry. Co. *v.* Allen (1936), 24 Ry. & Can. Tr. Cas. 149; Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99 ; J. & E. Transport, Ltd. *v.* London, Midland & Scottish Ry. Co. (1937), 26 Ry. & Can. Tr. Cas. 183.

1512. —— —— ——.]—An appct. claimed an additional vehicle under his A licence on three grounds : (1) that the vehicle was to be acquired from a trader, who was then operating it under a C licence, & that the trader would thenceforth employ the applicant to do his cartage ; (2) that his business was increasing ; (3) that he required a heavier vehicle for certain work :—*Held :* operation of a vehicle under a C licence was no evidence of need for its authorisation under an A licence, & since the trader could obtain another C licence there was danger of a dual grant in respect of his work. Ground (2) had not been established by the evidence ; & the evidence for ground (3) did not justify an additional vehicle, though it might have justified the replacement of an existing vehicle by a heavier one. The fact that an extra vehicle would be placed on the roads is not a ground for refusing a licence where a case has been made out. " Contracting out " of the Act, referred to. Remission to licensing authority, refused.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* ROBERTS (1936), 24 Ry. & Can. Tr. Cas. 154.

1513. —— —— ——.]—*Held :* that the avoidance of double-shift working is not in itself a sufficient ground for authorising additional tonnage under an A licence. Meaning of " Harrogate & district " discussed.—LONDON & NORTH EASTERN RY. CO. *v.* PARKER (1936), 24 Ry. & Can. Tr. Cas. 159.

1514. —— —— ——.]—(1) The fact that a trader desires to transfer his traffic from other carriers to appct. only because appct. is in a position to help him financially is not a matter to be taken into consideration on an application to increase the number of vehicles authorised under a licence.

(2) Evidence of increase in gross receipts is not so useful as evidence of increase in tonnage of goods carried, nor so useful as evidence of increase in gross receipts & increase in tonnage of goods carried.—REECE, LTD. *v.* FOUR AMALGAMATED RY. COS. (1935), 23 Ry. Can. & Tr. Cas. 199.

Annotation :—Generally, **Consd.** Four Amalgamated Ry. Cos. *v.* Foster & Co., Ltd. (1936), 24 Ry. & Can. Tr. Cas. 265.

1515. —— —— ——.]—MOSS BROS. *v.* SOUTHERN RY. CO., No. 1636, *post.*

1516. —— —— ——.]—(1) The fact that manufacturers adopt a practice of waiting for orders before manufacturing their goods in place of manufacturing the goods first & warehousing them in anticipation of orders, if proved, is material to the question whether there is a need for additional vehicles.

General evidence that an appct. has had difficulty in hiring will not by itself justify the grant of a licence for an additional vehicle.

The evidence of a commercial clerk assistant goods manager to a ry. co. that the ry. formerly carried traffic which it has since lost, & that, so far as he knows, the ry. facilities meet the requirements of traders, does not prove that the ry. facilities are suitable with regard either to that traffic or to the persons requiring facilities for it.

General evidence of an increase in a carrier's business without evidence that the business of his customers has also increased will not justify the grant of a licence for an additional vehicle.

Evidence that one carrier has without good cause abstracted the traffic of another may be a ground for refusing a licence, but the mere fact of absence of any such evidence is not a ground for granting a licence.

(2) Where, owing to the pressure of business before the Comr., evidence which was available could not be called, the Appeal Tribunal sent the case back for a further inquiry.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* COLLIER DANIELS TRANSPORT, LTD. (1936), 24 Ry. & Can. Tr. Cas. 258.

1517. —— —— ——.]—FOUR AMALGAMATED RY. COS. *v.* FOSTER & CO., LTD., No. 1697, *post.*

1518. —— —— ——.]—(1) Objectors having submitted that if they proved suitable transport facilities to exist in the district where an appct. proposes to carry, then the application must fail :—*Held :* if such facilities are in excess of requirements, or would be if the licence were granted, then, generally speaking, a licence should not be granted. But there may be exceptional cases (though the Appeal Tribunal failed to visualise them) where a grant would be justified. In this context, " suitable " means more than

"adequate" & "requirements" does not refer solely to the requirements of appct. & objector; both words must be considered in relation to current industrial & commercial conditions.

A haulier operating nine vehicles under A licence on a trunk service & one vehicle for collection & delivery, applied for an extra vehicle for the trunk service. The objectors contended that suitable facilities were in excess of requirements:—*Held:* the two questions, whether appct. has made out a case within *Ridgewell's Case*, & whether the objectors have proved their objection, have both to be considered. On the facts, this appct. had made out a case, & the objectors had not shown that their facilities were "suitable."

Methods of ascertaining quantum of extra tonnage discussed. When considering quantum on a trunk service, the tonnage of a collection & delivery vehicle should not be taken into consideration. Extra vehicle of 2½ tons authorised.

(3) The Appeal Tribunal will not decide any principle not necessary for their decision upon the facts.

(4) Counsel for representative bodies heard, under rule 5, Appeal Tribunal Rules, 1934.—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SMART (1936), 24 Ry. & Can. Tr. Cas. 273.

Annotations:—As to (1) **Consd.** Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158; Alexander (Charles) *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1938), 26 Ry. & Can. Tr. Cas. 260. **Refd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Cos. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99; Watts *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 187.

1519. —— —— ——.]—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* BUTLER, No. 1635, *post.*

1520. —— —— ——.]—H. applied for the variation of his A licence by the authorisation of additional vehicles. At the inquiry in Feb. 1935 certain of his customers gave evidence of increases in their business, in their industries, in the tonnage they desired H. to carry, etc. The variation was granted. Later H. applied for another variation to authorise further additional vehicles. At the inquiry in Apr. 1936 the customers who had given evidence in 1935 were not called, but general evidence was given by H.'s accountant that there had been an increase in tonnage due partly to increased business done for these customers:—*Held:* additional vehicles should not be granted solely on the ground that tonnage had increased, since increased tonnage for old customers might be due not to increases in customers' businesses but to their transferring to appct. work hitherto done by other carriers. However, it is unnecessary for customers to be called to give the same evidence which they have given fourteen months previously, provided that some evidence is given to confirm appct.'s general statements. Helpful evidence would be (i) evidence of inquiries by appct. as to the cause of increases in the business of these customers, or (ii) letters from these customers containing statements as to increases in their business & as to their suffering inconvenience from appct. being unable to supply transport. Such letters would be open to challenge by objectors.

H. operated a trunk service & ancillary collection & delivery services. He based his application as to the trunk service upon increased traffic due partly to increased work for old customers, as stated above, & partly to obtaining substantial business from a new customer whose goods had hitherto been carried by rail. H. delivered these goods more expeditiously than the railway, but no reason was given why speedier delivery was necessary:—*Held:* it would not be in the public interest to grant H. a licence to carry goods hitherto carried by another carrier, provided that the previous carrier's facilities were suitable. The fact that the latter were slower did not render them unsuitable in the absence of evidence that more expeditious delivery was reasonably necessary to the trader. H. was not entitled to additional vehicles for his trunk service.

As to his collection & delivery service H. gave evidence that owing to reorganisation of the working of his fleet he needed further vehicles for this work, that he had been hiring these at a cost of £500 *per annum*, & had had difficulty in hiring suitable vehicles:—*Held:* special considerations apply to collection & delivery vehicles; it was reasonable for H. to use his own vehicles for this purpose; the amount paid for hire represented the work of two vehicles, & he should be authorised to use these on his A licence.

The "Hawker formula" discussed *obiter*. When once an appct. for a variation has established a case within *Ridgewell's Case*, this formula is a useful guide to determine the quantum, if any, of additional tonnage to be authorised.—HAWKER, LTD. *v.* GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (No. 2) (1936), 25 Ry. & Can. Tr. Cas. 99.

Annotations:—**Consd.** London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stevenson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 328. **Distd.** J. & E. Transport, Ltd. *v.* London, Midland & Scottish Ry. Co. (1937), 26 Ry. & Can. Tr. Cas. 183. **Refd.** London, Midland & Scottish Ry. Co. *v.* Young's Express Deliveries (1937), 26 Ry. & Can. Tr. Cas. 209.

1521. —— —— ——.]—Additional tonnage will not be authorised upon the ground that appcts. had sometimes to keep customers waiting for transport. It is inevitable that on some occasions carriers cannot meet the demands of their customers at short notice. Nor is the hiring of horse-drawn vehicles a ground, in the absence of evidence that appcts. intend to use motor vehicles in substitution for horse-drawn vehicles.

"Carrying capacity" discussed. "Static carrying capacity" distinguished from "performance capacity."—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* RICHARDS, LTD. (1936), 25 Ry. & Can. Tr. Cas. 114.

1522. —— —— ——.]—(1) An appct. for additional tonnage performed 80 per cent. of his work for customers who refused access to their premises to motor-drivers who were not members of a trade union. For this reason appct. found it difficult to hire vehicles for this work:—*Held:* customers' requirements as to trade union membership were not a special circumstance entitling the appct. to additional tonnage in the absence of evidence of need.

(2) Where 80 per cent. of a haulier's work is done for three particular customers, this cannot be said to be a case in which a Contract A licence should be applied for.—PAYNE *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. COS. (1937), 25 Ry. & Can. Tr. Cas. 269.

1523. —— —— ——.]—S. & Co. applied for the authorisation of additional vehicles under A licence upon the grounds that (1) they had obtained substantial new traffic from U.; (2) certain fruit traffic had increased; (3) there had been a substantial general increase in their tonnage carried; (4) they had proved a case within *Ridgewell's Case;* (5) they needed additional maintenance tonnage.

(1) U.'s traffic had previously been consigned by rail; S. & Co. agreed to carry this at a rate cheaper than that by rail, & to furnish warehouse accommodation. The railway cos. objected to the application on the ground that their facilities were suitable: —*Held:* in considering whether objectors' facilities were suitable a licensing authority ought to take into consideration neither the fact that road rates were cheaper (unless they were uneconomic), nor the fact that warehouse accommodation would be provided; that on the facts the railway cos. had proved their objections; & that no additional tonnage should be granted for carrying U.'s traffic; (2) *Held:* on the facts as to the fruit traffic the objectors had proved their objections.

(3), (4) *Held:* since S. & Co. had proved (*a*) that there had been an increase in their business, (*b*) that there had been an increase in the business of their customers, (*c*) that some of their customers had been inconvenienced by their inability to provide transport facilities, they had made out a case for additional tonnage within *Ridgewell's Case.* As to quantum, the formula in *Hawker's Case* (*No.* 1) applied; but when applying this formula (i) the increased goods tonnage carried in respect of U.'s traffic & the fruit traffic must be disregarded, & (ii) the tonnage of maintenance vehicles must be deducted from fleet tonnage in order to arrive at "effective" vehicle tonnage.

(5) By applying the "Hawker formula" it was ascertained that two additional vehicles of 8 tons each should be authorised: —*Held:* this was a substantial addition to S. & Co.'s fleet & they should be authorised to use further tonnage for maintenance purposes.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* STEVENSON TRANSPORT, LTD. (1937), 25 Ry. & Can. Tr. Cas. 328.

Annotation:—**Refd.** Alexander (Charles) *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1938), 26 Ry. & Can Tr. Cas. 260.

1524. —— —— ——.]—(1) An applt. against the variation of a licence by the addition of a vehicle is entitled to a decision of the Appeal Tribunal notwithstanding the licence so varied has expired before the appeal can be heard. The Tribunal have no discretion to refuse to entertain such an appeal.

(2) The material date as upon which the Appeal Tribunal decide the rights of the parties is the date of the decision appealed against—not the date of the hearing of the appeal.

(3) Where a licensee uses some of his vehicles on services where transport facilities are already in excess of requirements he cannot justify an application for additional vehicles by showing that the remaining vehicles are insufficient for other work for which transport facilities are not in excess of requirements.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* LYNER, LONDON & NORTH EASTERN RY. CO. *v.* LYNER (1937), 26 Ry. & Can. Tr. Cas. 26.

1525. —— —— ——.]—(1) A co. purchased the business of a carrier who was licensed to use two vehicles & a trailer, but in fact for a considerable time had used only one vehicle & a trailer. On an application by the purchasing co. for an A licence for two vehicles & a trailer:—*Held:* in the absence of any evidence that it was reasonably necessary to use two vehicles a licence for one vehicle only & a trailer should be granted.

(2) The fact that the Appeal Tribunal have allowed an appeal against the grant of an A licence on the ground of insufficient evidence, instead of sending the case back to the licensing authority for further inquiry, should not prejudice any further application made by the same resp.—GREAT WESTERN RY. CO. *v.* RUPERT PEDLEY, LTD., LONDON & NORTH EASTERN RY. CO. *v.* RUPERT PEDLEY, LTD. (1937), 26 Ry. & Can. Tr. Cas. 132.

1526. —— —— ——.]—An A licensee carried solely for one customer a shipper & forwarding agent. Upon an application for the authorisation of an additional vehicle:—*Held:* under the circumstances of the case the forwarding agent was a regular customer of the appct. for the purpose of applying the principles of *Ridgewell's Case.* The Appeal Tribunal expressly gave no decision of general application to the case of carriers employed by shipping or forwarding agents or clearing houses.—CHAPMAN *v.* GARLICK, BURRELL & EDWARDS, LTD. (1937), 26 Ry. & Can. Tr. Cas. 177.

1527. —— —— ——.]—(1) In considering one appeal the Appeal Tribunal are entitled to refer to facts found by themselves on a former appeal.

(2) A carrier who applies for additional vehicles on the ground that he has found new customers must show that the traffic of the new customers could not equally well have been carried by other existing means of transport. Where the traffic of the new customers was formerly carried by road, it is enough to show that they had good reason for transferring their traffic from their former carriers to appcts.—J. & E. TRANSPORT, LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1937), 26 Ry. & Can. Tr. Cas. 183.

1528. —— —— ——.]—Four cos. of carriers went into liquidation & while under the control of the liquidator lost a portion of their traffic. Subsequently the business of these four cos. was acquired by appct. co. & a part of the lost traffic was regained:—*Held:* appct. co. was entitled to rely on the increase of traffic so obtained for the purpose of making a case for additional vehicles within the rule in *Ridgewell's Case.*

The base or centre of normal user which an appct. is required to specify & prove means the place from & to which the vehicles normally

start & return, not the place at which the traffic originates.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* YOUNG'S EXPRESS DELIVERIES, LONDON & NORTH EASTERN RY. CO. *v.* YOUNG'S EXPRESS DELIVERIES (1937), 26 Ry. & Can. Tr. Cas. 209.

1529. —— —— **For particular customers—Duty to apply for contract licence.**]—RIDGEWELL & CO. *v.* SOUTHERN RY. CO., No. 1501, *ante*.

1530. —— —— —— ——.]—(1) A hauler applied for the addition of one vehicle to his A licence. He proposed to use this vehicle exclusively for one customer:—*Held:* that, whether or not there was a contract with this customer, the haulier could not be authorised to use this vehicle under an ordinary A licence; (2) Order directed to lie in the office for a fortnight, to enable appct. to apply for an A (Contract) licence.—KERR & LONDON, MIDLAND & SCOTTISH RY. CO. *v.* BROWN (1936), 24 Ry. & Can. Tr. Cas. 323.

Annotation:—**Refd.** Miller & Co. *v.* London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Great Western Ry. Co., Coast Lines, Ltd. & Bowker (1937), 25 Ry. & Can. Tr. Cas. 364.

1531. —— —— **Vehicles formerly hired.**]—Only special circumstances will justify the grant of a licence to a carrier with the object of enabling him to own the vehicles which he formerly hired. The risk he runs in losing his custom to those who supply such vehicles is not such a special circumstance.—WARD *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. COS. (1934), 22 Ry. & Can. Tr. Cas. 38.

Annotation:—**Refd.** *Re* Lovell (Shaw) & Sons, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 250.

1532. —— —— ——.]—(1) The mere fact that a carrier who has been hiring the vehicles he requires now desires to use his own is not sufficient to justify the grant of an A licence, apart from special circumstances.

(2) Where a carrier has in the past, by evading the limits imposed by law on hours of work and weight of loads, been able to do with fewer & smaller vehicles, the fact that he will no longer be able to evade the law & will therefore require more or larger vehicles to do the same amount of work is no ground for authorising an increase in his tonnage—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* BARR (LEEDS), LTD. (1934), 22 Ry. & Can. Tr. Cas. 44.

Annotations:—*As to* (1) **Consd.** Burgoine & Sons *v.* Four Amalgamated Ry. Cos. (1934), 22 Ry. & Can. Tr. Cas. 77; Randall *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 163. **Apld.** London & North Eastern Ry. Co. *v.* Robson (Gateshead), Ltd. (1935), 22 Ry. & Can. Tr. Cas. 233. **Refd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23; Reece, Ltd. *v.* Four Amalgamated Ry. Cos. (1935), 23 Ry. & Can. Tr. Cas. 199; London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112.

1533. —— —— ——.]—A carrier who seeks to acquire additional vehicles in order to do away with the necessity of hiring must prove special circumstances. It is not enough to allege that hired vehicles are unsatisfactory without particularising how & why they are unsatisfactory.—BURGOINE & SONS *v.* FOUR AMALGAMATED RY. COS. (1934), 22 Ry. & Can. Tr. Cas. 77.

1534. —— —— ——.]—LONDON & NORTH EASTERN RY. CO. *v.* ROBSON (GATESHEAD), LTD., No. 1503, *ante*.

1535. —— —— ——.]—*Held:* by the Appeal Tribunal a carrier cannot justify an application for an A licence by general evidence that he has lost custom through being unable to hire vehicles when he needed them.—LONDON & NORTH EASTERN RY. CO. *v.* BROWNBRIDGE (1935), 22 Ry. & Can. Tr. Cas. 255.

Annotation:—**Refd.** London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112.

1536. —— —— ——.]—(1) Where additional vehicles are sought to be authorised under a public carrier's licence, if appct. is a newcomer to the business he must prove a *primâ facie* case that the existing operators already in business are not able to cope with the traffic which he proposes to carry; if appct. is an operator already established during the basic year it is sufficient to show some expansion in the business of his customers, & a useful method of arriving at the amount of additional tonnage to which he is entitled is to take into consideration the tonnage of goods carried per ton of unladen weight of the vehicles.

(2) Great difficulty in finding covered vans to hire is a special circumstance which justifies an applicant being authorised to use vehicles of his own in place of the vehicles which he formerly made a practice of hiring.—HAWKER, LTD. *v.* GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1935), 23 Ry. & Can. Tr. Cas. 23.

Annotations:—*As to* (1) **Consd.** Forrester *v.* Great Western Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 225. **Expld.** London & North Eastern & London, Midland & Scottish Ry. Co. *v.* Beazley (1936), 24 Ry. & Can. Tr. Cas. 112. **Refd.** London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Williams (1935), 23 Ry. & Can. Tr. Cas. 159; Crompton *v.* London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 178; Orange, Ltd. *v.* Jennings (1935), 23 Ry. & Can. Tr. Cas. 195; London, Midland & Scottish Ry. Co. *v.* Pennington (1935), 23 Ry. & Can. Tr. Cas. 256. *As to* (2) **Consd.** Great Western & London, Midland & Scottish Ry. Cos. *v.* Smart (1936), 24 Ry. & Can. Tr. Cas. 273.

1537. —— —— ——.]—(1) The fact that the contractor from whom a carrier has been accustomed to hire has proved to be unsatisfactory is not a special circumstance justifying the grant of a licence to the carrier to enable him to carry in his own vehicles.

(2) The burden of proving objections does not lie on objectors; the burden of disproving them lies in the first place on appct.

(3) A carrier who had been carrying since 1875, but had hired cars to carry in from 1928 to 1934, was a newcomer to the carrying trade.—MCLACHLAN *v.* MORGAN & CO. (1935), 23 Ry. & Can. Tr. Cas. 243.

1538. —— —— **Necessary to avoid illegality as to hours & weights.**]—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* BARR (LEEDS), LTD., No. 1532, *ante*.

1539. —— —— **Motor to be used in addition to horse-drawn vehicles.**]—*Held:* by the Appeal Tribunal, in the special circumstances of the case, a licence ought to be granted to a carrier for a motor lorry which he proposed to use in addition to & not in substitution for carts drawn by horses.—*Re* WOOD'S APPEAL (1935), 22 Ry. & Can. Tr. Cas. 247.

1540. —— —— **Difficulty of overhauling vehicles.**]—An appct. using seven motor vehicles under an A licence & two under a B licence applied

to vary the A licence by the addition of a further vehicle. In support of his application he put in two letters from customers :—*Held :* (1) letters are often of small assistance to a case ; appcts. should call witnesses wherever possible ; these letters gave no particulars of the transport difficulties they alleged, & did not justify the application ; (2) An operator with nine vehicles should have no difficulty in providing for overhaul & repair. He could not invoke sect. 6 (2) (*d*) of the Act. If in difficulty he could apply for a short-term licence under sect. 3 (3).—BRADSHAW *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. (1936), 24 Ry. & Can. Tr. Cas. 137.

1541. —— —— **Evidence of increase of business.**]—REECE, LTD. *v.* FOUR AMALGAMATED RY. COS., No. 1514, *ante.*

1542. —— —— ——.]—(1) A haulier applied for additional tonnage on the grounds that his existing vehicles were so overworked that he had no opportunity to overhaul or repair them, & that his business & that of his customers had substantially increased. He supported his application by letters from customers :—*Held :* failure to comply with the requirements of the Act as to overhaul, etc., could not be a ground of application. The appct. had, however, made out a case on other grounds. As to the amount of extra tonnage to be authorised, increase in gross receipts considered ; (2) The evidential value of letters is small, & oral evidence should be given wherever possible. In future the Appeal Tribunal will pay less regard to the contents of letters.—LONDON & NORTH EASTERN RY. CO. *v.* ALLEN (1936), 24 Ry. & Can. Tr. Cas. 149.

Annotation :—Generally, **Reld.** London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Collier Daniels Transport, Ltd. (1936), 24 Ry. & Can. Tr. Cas. 258.

1543. —— **Conditions—Undertaking to observe—Whether alternative to refusing application.**]—RIDGEWELL & CO. *v.* SOUTHERN RY. CO., No. 1501, *ante.*

1544. —— —— —— ——.]—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* PALMER, No. 1486, *ante.*

1545. —— **Charges deduced from price of vehicle.**]—(1) The findings of fact of a licensing authority are subject to review by the Appeal Tribunal.

(2) The probable charges of a carrier cannot be inferred from the price he has paid for his vehicle.—POWER *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 21.

Annotation :—As to (1) **Reld.** Four Amalgamated Ry. Cos. *v.* Foster & Co. (1936), 24 Ry. & Can. Tr. Cas. 265.

1546. —— **Subsidiary company—Vehicles owned by parent company.**]—A co. which was entitled to an A licence under the provisions of sect. 7 (2) signified to the licensing authority its desire that the provisions of sect. 12 should have effect as regards its subsidiary co. which was not so entitled to a licence, & in respect of vehicles which belonged not to the subsidiary co. but to the parent co. :—*Held :* the signification could be treated as a nullity, & the parent co. should be granted an A licence under the provisions of sect. 7 (2). *Qu. :* whether the provisions of sect. 12 apply to A & B licences or only to C licences. The vehicles which a licensee uses or intends to use should be specified in the licence, if necessary as & when they are acquired.—LINTON CHALK & WHITING CO., LTD. *v.* LINTON HAULAGE CO. (1934), 22 Ry. & Can. Tr. Cas. 132.

1547. —— **Specification of vehicles—Necessity for.**]—LINTON CHALK & WHITING CO., LTD. *v.* LINTON HAULAGE CO., No. 1546, *ante.*

1548. —— **Base from which vehicles to be used.**]—Application was made for A licences for vehicles to be normally used from P. as a base. The evidence showed that some of the vehicles would be used from bases other than P., but in the neighbourhood of P. :—*Held :* (1) the comr. was not wrong in law in granting licences for vehicles to be used from P. as a base ; (2) when a railway co. seeks A licences for the purpose of discharging its statutory obligation of collection & delivery it must prove its case separately in respect of each base from which the collection & delivery is to be effected.—NORMAN *v.* GREAT WESTERN RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 5.

Annotation :—**Reld.** Watts *v.* London & North Eastern & London, Midland & Scottish Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 187.

1549. —— **Back loading—Whether justified.**]—Where appcts. charged a lower rate for services which, in the opinion of their customers, were more efficient than those offered by the objectors, it was found as a fact that the work could be dealt with efficiently by existing facilities & allowed an objection on the ground that transport facilities were in excess of requirements :—*Held :* there cannot be any objection to back loading as a normal part of a carrier's business under an A licence, because this practice relieves traffic congestion & makes for the economical transport of goods. But where the traffic is undirectional the effect may be to produce uneconomic competition.—SHEPHERD *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 173.

1550. —— —— **Matters for consideration.**]—(1) A distinction must be drawn between the carrier already established, who seeks to obtain back loads in order that his vehicles shall not operate an undue amount of dead mileage, & one who, having newly entered the carrying business, seeks to obtain a licence solely on the ground that he has been promised work by one or more clearing houses.

(2) Where on an appeal by an objector against the grant of a licence it appeared to the Appeal Tribunal doubtful whether appcts. base or centre was in the traffic area of the Comr. who granted the licence, the appeal was formally allowed, & the case was sent back to the Comr. for a further hearing with the suggestion that a short-term licence should be issued to resp. pending the final disposal of the matter.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* WOODRUFF (1935), 23 Ry. & Can. Tr. Cas. 261.

Annotation :—**Reld.** London & North Eastern Ry. Co. *v.* Turnbull & Sons (Leeds), Ltd. (1937), 25 Ry. & Can. Tr. Cas. 239.

1551. —— **Vehicles used principally for single customer.**]—(1) The Tribunal admitted new evidence of facts which had occurred since the decision of the Comr.

The Comrs. must not grant an ordinary A licence for vehicles which will be principally used for the business of a single customer, so that they are generally loaded only with the goods of that customer, even though none of the vehicles will ever be used for the purposes of a contract for the carriage of goods for a year.—SOUTHERN RY. CO. *v.* HARDY & SON, LTD., HARDY & SON, LTD. *v.* SOUTHERN RY. CO. (1935), 24 Ry. & Can. Tr. Cas. 18.

Annotation :—**Reld.** Miller & Co. *v.* London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Great Western Ry. Co., Coast Lines, Ltd. & Bowker (1937), 25 Ry. & Can. Tr. Cas. 364.

1552. —— **In continuation of existing licence—What must be shown.**]—FOUR AMALGAMATED RY. COS. *v.* BOUTS-TILLOTSON TRANSPORT, LTD., No. 1497, *ante*.

1553. —— —— ——.]—*Held :* (1) an established haulier who applies for a new A licence in continuation of his expiring licence should satisfy the licensing authority (*a*) that during the currency of his expiring licence the authorised vehicles have been regularly & fully employed ; (*b*) as to his gross receipts & tonnage ; (*c*) that there has been no material change in the circumstances relating to his business If the licensing authority is satisfied as to these matters he should grant the application unless there are overriding circumstances to the contrary. This applies not only to trunk services but also to other facilities, although special considerations may arise in connection with collection & delivery services ; (2) where an A licensee has on a prior application stated that he intended to provide facilities within certain districts or between certain places, & where it appears upon his application for a new licence in continuation of his existing licence that he has been providing, & intends to provide, facilities within other districts or between other places, then his application should be refused in the absence of evidence of need ; (3) if during the currency period of an expiring A or B licence there has been a substantial break in the continuity of the licensee's haulage business, the licensee should not necessarily be treated as a newcomer when he applies for a new licence in continuation. But if the evidence proves the former business to have been abandoned, the new licence should not be granted in the absence of evidence of need. *Aliter* if the break was due to illness or fluctuation of business.—MODERN HAULAGE SERVICES, LTD. *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., SOUTHERN RY. CO. *v.* COLEMAN, LONDON MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* STUART (1937), 25 Ry. & Can. Tr. Cas. 272.

Annotations :—**Apld.** Barnett Joel, Ltd. *v.* London & North Eastern Ry. Co. (1937), 26 Ry. & Can. Tr. Cas. 136. **Consd.** O'Sullivan *v.* Great Western Ry. Co. (1937), 26 Ry. & Can. Tr. Cas. 155. **Reld.** McNamara & Co. (1921), Ltd. *v.* London, Midland & Scottish & Great Western Ry. Cos. (1937), 26 Ry. & Can. Tr. Cas. 117 ; Oxlade *v.* Great Western Ry. Co. (1938), 26 Ry. & Can. Tr. Cas. 234.

1554. —— —— ——.]—Until Dec. an A licensee had engaged in local carrying from his base at Blackburn & a certain amount of long distance work to Eversham & Hull. Between Dec. & Mar. he possessed no vehicle, but made arrangements with other customers to undertake his work. In Mar. he acquired one vehicle & commenced to operate a regular service between Liverpool & Glasgow. His A licence having expired on Mar. 24, he applied for a fresh A licence on Apr. 6 :—*Held :* (*a*) appct. had not intended to abandon his business as haulage contractor in Dec., but (*b*) he was normally using his vehicle & intended normally to use his vehicle within districts & between places other than those within & between which he had previously stated he intended to use it, & therefore his application should, in the absence of evidence of need, be refused.—HARGREAVES *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1937), 26 Ry. & Can. Tr. Cas. 56.

Annotation :—**Reld.** Oxlade *v.* Great Western Ry. Co. (1938), 26 Ry. & Can. Tr. Cas. 234.

1555. —— —— ——.]—For the first currency period hauliers were granted an A licence for twenty-three vehicles & sixteen trailers in possession & fourteen vehicles & fourteen trailers to be acquired. All these vehicles & trailers, both in possession & to be acquired, represented claimed tonnage. This licence ran from Oct. 1, 1934, to Sept. 30, 1936. Of the vehicles & trailers to be acquired, eight of each were specified in the licence by July 14, 1936, & the remaining six by Sept. 17, 1936. Until these vehicles were acquired the hauliers dealt with part of their traffic by hiring.

At the end of the first currency period the hauliers applied for a licence in substitution for their expiring licence :—*Held :* since the hauliers had discharged the burden of proof laid down in *Four Amalgamated Railway Cos. & Bouts-Tillotson Transport, Ltd.*, they should be granted a licence for the second currency period. The fact that they resorted to hiring for some time instead of acquiring vehicles to which they were entitled as claimed tonnage was not an abnormality or overriding circumstances within the meaning of that decision, & for the purposes of the proof required under that decision the hired vehicles must, under the circumstances of this case, be regarded as their own vehicles.

Quantum of maintenance tonnage to be allowed pursuant to sect. 6 (2) (*d*) of the Act, discussed. There can be no definite ruling as to what proportion maintenance vehicles should bear to the total fleet since the circumstances of each case differ. A licensing authority is not justified in granting "standby" vehicles as opposed to maintenance vehicles.—MCNAMARA & CO. (1921), LTD. *v.* LONDON, MIDLAND & SCOTTISH & GREAT WESTERN RY. COS. (1937), 26 Ry. & Can. Tr. Cas. 117.

1556. —— —— ——.]—A licensees applied for a new licence in continuation of their expiring licence. Their work was principally local haulage in London. Since 1934 they had been in a position to place contracts for the carriage of fruit from London to Newcastle. Until Jan. 1937, they had carried out this long-distance work by sub-contracting, although at intervals of a month or less they performed the work with their own vehicles. After Jan. 1937, they regularly employed four of their own vehicles on the London-Newcastle route. In their original application the hauliers had described the districts within which they proposed to provide facilities as "England" :—*Held :* the

occasional use of vehicles on the London-Newcastle route could not amount to normal user; the institution of a regular service on this route in Jan. 1937, constituted a material change in the circumstances relating to appcts.' business; therefore in the absence of evidence of need authorisation should not be granted in respect of the four vehicles.

Stuart's Case apld. & expld. In order to discover whether there has been a material change in circumstances within the principles laid down in that case it is necessary to ascertain in what districts or between what places the appct. was normally using his vehicles prior to & at the time of his previous application, & this question is to be ascertained upon the facts & not merely by the answer given to the question in the application form. Such answers have in the past been frequently made in wide terms & without regard to the facilities actually provided.—BARNETT JOEL, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1937), 26 Ry. & Can. Tr. Cas. 136.

Annotation:—**Reld.** Oxlade *v.* Great Western Ry. Co. (1938), 26 Ry. & Can. Tr. Cas. 234.

1557. —— —— ——.]—(1) Where there has been a material change in the circumstances relating to a carrier's business a new licence in substitution for an expiring licence will not be granted except upon proof of need.

(2) In order to determine whether or not there has been such a change relating to the district of normal user, the district alleged in the original application & in the evidence in support thereof should be compared with the district in which the vehicles were in fact normally used during the currency period. If the only material is the statement in the original application, & if there is doubt as to what the real intentions of appct. were, it would be reasonable also to inquire what were the districts in which the vehicles were normally used about the time of the original application. Apart from this what happened prior to the original application is irrelevant.

(3) An application for a licence in substitution for an existing licence in respect of a vehicle which was being sold together with a carrier's business was adjourned. The vehicle was then involved in an accident & taken off the road. The adjourned application was treated as an application for authority to use an additional vehicle in substitution for the damaged vehicle:—*Held:* it ought to have been considered in relation to the facts & circumstances which existed at the time the application was made.—O'SULLIVAN *v.* GREAT WESTERN RY. CO. (1937), 26 Ry. & Can. Tr. Cas. 155.

Annotations:—**Reld.** Barnett Joel, Ltd. *v.* London & North Eastern Ry. Co. (1937), 26 Ry. & Can. Tr. Cas. 136; Oxlade *v.* Great Western Ry. Co. (1938), 26 Ry. & Can. Tr. Cas. 234.

1558. —— —— ——.]—Hauliers applied for A licences in continuation of their expiring licences. Their businesses consisted principally in the carriage of imported fish from the Tyne Commission Quay at North Shields to Billingsgate Market, London. A railway co. as objectors gave evidence in support of their contention that trnasport facilities suitable for this traffic were in excess of requirements. Sir John Maxwell decided that in the absence of evidence by fish exporters—who were the persons responsible for routing the traffic—he could not find the objection proved:—*Held:* by the Appeal Tribunal, overruling Sir John Maxwell, the objectors' contention had been proved, & the hauliers' applications must be refused *in toto*.—LONDON & NORTH EASTERN RY. CO. *v.* BLYTH TRANSPORT CO., LTD., LONDON & NORTH EASTERN RY. CO. *v.* B. & C. L. TRANSPORTERS (1937), 26 Ry. & Can. Tr. Cas. 202.

Annotation:—**Consd.** Alexander *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1938), 26 Ry. & Can. Tr. Cas. 260.

1559. —— —— ——.]—(1) Cotton goods are dispatched from Manchester to Southampton for shipment. A substantial proportion of the traffic is not ready for dispatch until after the collection for the last train of the day before the ship sails. It is, however, still possible for the traffic to catch the ship by road:—*Held:* in such circumstances the railway facilities are not suitable for that traffic.

(2) *Qu.:* whether a licensing authority should have any regard to the possibility of the vehicles proposed to be authorised being in excess of requirements in a case where the application is not for a licence for additional vehicles but for a licence to be substituted for an expiring licence.

(3) *Qu.:* whether other aspects of the public interest should not be considered even if the vehicles proposed to be authorised are found to be in excess of requirements.

(4) *Qu.:* whether it is in the public interest that a carrier by road should be compelled to cease business though there has been no change in the circumstances of that business since he was first licensed to carry it on.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* COLLIER DANIELS TRANSPORT, LTD. (NO. 2) (1938), 26 Ry. & Can. Tr. Cas. 226.

1560. —— —— ——.]—A haulier operating three vehicles under A licence applied for a new licence in continuation of her expiring licence. Prior to 1935 her business consisted in carrying tinplates from Swansea to the Midlands. In 1935 she commenced carrying brass goods between Birmingham & Swansea for the I. Co., for whom—with the exception of one small lot in 1932—she had not previously carried. This new traffic amounted to 17 per cent. of her tonnage in 1935, to 82 per cent. in 1936, & to 87 per cent. in the first quarter of 1937. Despite an adjournment for the purpose no evidence of need in respect of the new traffic was given:—*Held:* (1) although there had been no change of base or of the districts in which or places between which appct. carried, the carrying of a new class of goods for a new customer constituted a material change of business within the meanin of *Four Amalgamated Railway Cos. & Bouts-Tillotson Transport, Ltd.*; (2) in the normal course of business customers & classes of goods carried may fluctuate & change, & it would be unreasonable not to allow a margin of tonnage for normal fluctuation.

Licence granted for two vehicles: one in respect of work still done for old customers, one in respect of normal fluctuation & other considerations.—OXLADE *v.* GREAT WESTERN RY. CO. (1937), 26 Ry. & Can. Tr. Cas. 234.

1561. —— —— ——.]—TURREL *v.* DAYS' TRANSPORT & REMOVAL SERVICE, LTD., CHILD &

SONS, LTD., ORWELL TRANSPORT, NICE BROS., LONDON & NORTH EASTERN RY. CO., No. 1500, *ante*.

1562. —— —— ——.]—(1) It is not necessarily a material change in the circumstances relating to one service of a carrier's business that some of the vehicles are occasionally transferred to other services.

(2) In considering a change of circumstances in the case of a business transferred from one carrier to another the material time for comparison is not the date of the transfer but the date of the original application.

(3) *Per* Mr. Riches: "Where parties contract on the footing of a licence being in force it is, in my opinion, incumbent on the purchaser to take all reasonable steps to satisfy himself that there has been no material change in the circumstances as to the normal user of the vehicle or vehicles specified since the original licence was granted."

(4) Though railway cos. may be able to carry the traffic their facilities may not be suitable for "rush traffic" where urgent delivery on the site is required, as in the case of granite slabs for shop fronts. In such a case there may be a need for carriers by road.

(5) Where it was proved that fish carried by road is delivered in a better condition than fish carried by rail:—*Held:* the railway services were not suitable, that there was a need for the road services, & the alternative railway service was not an overriding circumstance justifying the refusal of the licence.

(6) In coming to a decision on the question of suitability of transport services the fact that lower rates are charged by road than by rail should be taken into consideration if it is proved that the traffic would not pass at all but for the lower rates.

(7) Where considerable difficulty is caused to the licensee by many vehicles being specified in separate licences the Appeal Tribunal may order them all to be specified in one licence, but regard will also be had to the point of view of the Licensing Authority as to specifying on different licences vehicles used on different services & to the duties to be performed in administering the Act.—ALEXANDER (CHARLES) *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* ALEXANDER (CHARLES) (1938), 26 Ry. & Can. Tr. Cas. 260.

1563. —— **To whom granted—Liquidator.**]—A haulage co. holding two A licences went into liquidation. The liquidator applied for A licences in respect of the vehicles specified in the co.'s licence. Mr. Henderson granted the application, but only in respect of such vehicles as were in use at the date of liquidation & he expressed the licences to expire on the dates on which the co.'s licences would have expired:—*Held:* this was a proper course. There is no reason why a liquidator should not be granted a licence. Under sect. 3 (2) of the Act licences may be granted for less than the full currency period for "special reasons," & the appointment of a liquidator was a special reason. Insolvency does not by itself show that goods had been carried at uneconomic rates. The objectors had not proved that facilities would be in excess of requirements: their facilities differed materially from those of the co.

The "carriers quarters" system in Scotland commented upon.—AITCHISON *v.* DOWLING (1936), 25 Ry. & Can. Tr. Cas. 9.

Annotations:—**Reid.** J. & E. Transport, Ltd. *v.* London, Midland & Scottish Ry. Co. (1937), 26 Ry. & Can. Tr. Cas. 183; London, Midland & Scottish Ry. Co. *v.* Young's Express Deliveries (1937), 26 Ry. & Can. Tr. Cas. 209.

1564. —— **Hiring allowance—When justified.**]—A haulier applied for a new A licence in continuation of her existing A licence & in respect of the same tonnage, viz.: four vehicles in possession & one vehicle to be hired. During a fourteen weeks period the hiring allowance had been utilised three times when a vehicle was under repair & three times for work which could not be undertaken by the other four vehicles. The application was granted, & the objectors appealed against that part of the decision which authorised the hiring allowance:—*Held:* this was a case of the type in which the need for an additional vehicle should be dealt with by an application for temporary replacement under article 15 of the Goods Vehicles (Licences & Prohibitions) Regulations, 1936.

Urgent applications under this article are dealt with very rapidly by licensing authorities.—SOUTHERN RY. CO. *v.* WILKINSON (1937), 25 Ry. & Can. Tr. Cas. 245.

1565. —— **To what vehicles applicable.**]—(1) Two railway cos. applied for the variation of a number of their A licences in respect of different bases by the addition of further vehicles. The majority of the applications were for vehicles to be used for the collection & delivery of rail-borne traffic; in some instances the ground of the application was that such traffic had increased, & in others it was that the vehicles were to be used in substitution for horse-drawn vehicles. The applications were granted. The objectors (applts.) contended, *inter alia*), that such vehicles should have been authorised under B licence:—*Held:* it was proper in such a case to authorise collection & delivery vehicles under A licence, & not under B licence subject to conditions restrictive as to radius, since it was necessary for the efficient working of a large transport organisation that vehicles could in an emergency be used from a base other than their normal base. If the right to unrestricted user under A licence were abused, the licensing authority could refuse a subsequent application.

(2) The ratio in which motor vehicles should be authorised in substitution for horse-drawn collection & delivery vehicles cannot be fixed & depends entirely upon the facts of each case.

(3) By reason of sects. 11 (2) & 15 of the Act objectors who are B licensees have no right of appeal against a decision to grant an A licence. *Sanderson's Case* explained & followed.—WATTS *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1937), 25 Ry. & Can. Tr. Cas. 187.

1566. **"B" licence—When granted.**]—A trader who carries his own goods long distances to deliver to his customers, & on the return journey carries goods for his customers for reward, competes with carriers who only carry for reward, & it is not desirable in the interests of transport that he should do so.—COX *v.* GREAT WESTERN RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 161.

1567. —— ——.]—*Held:* (1) a B licence should not be granted to an appct. who failed to prove a need for further transport facilities in his district; (2) the principles laid down in *Enston's Case* do not apply to all applications for B licences any more than they apply to all applications for A licences.—THORNLEY & SON *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 249.

1568. —— ——.]—(1) A manufacturing co. using a fleet of vehicles to deliver their products made a practice of carrying goods for hire or reward on return journeys. They applied for a B licence to enable them to continue to do so:—*Held:* the carrying of return loads for hire or reward is not generally in the public interest provided that alternative transport is available. On such an application, therefore, a licensing authority has to consider whether a case for exceptional treatment is made out, & whether alternative transport is available. Letters from customers asserting a preference for road over rail transport do not assist such a case, & the existence of alternative road transport may be inferred from them. Here no case for exceptional treatment was shown, & the existence of alternative transport for the return loads was proved: the application was rightly dismissed.

Obiter, on an application for a B licence it may be material for the licensing authority to consider whether alternative transport is available for the carriage of appct.'s own goods.

(2) The licensing authority, in reaching his decision, had made use of knowledge of transport conditions acquired generally in the course of his duties:—*Held:* he was entitled so to do, but if during a public inquiry a licensing authority contemplates using knowledge of specific matters he should give the parties an opportunity of dealing with them.—BARRATT & CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. COS. (1936), 24 Ry. & Can. Tr. Cas. 127.

Annotations:—As to (1) **Consd.** London & North Eastern & London, Midland & Scottish Ry. Cos. *v.* Sheville (1936), 25 Ry. & Can. Tr. Cas. 45. **Apld.** London & North Eastern & London, Midland & Scottish Ry. Cos. *v.* Smalley (1936), 25 Ry. & Can. Tr. Cas. 118; London, Midland & Scottish Ry. Co. *v.* Mitchell & Broadbent (1936), 25 Ry. & Can. Tr. Cas. 78. **Consd.** London & North Eastern & London, Midland & Scottish Ry. Cos. *v.* Smalley (1937), 25 Ry. & Can. Tr. Cas. 348. **Refd.** Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158; London, Midland & Scottish Ry. Co. *v.* Holden (1936), 24 Ry. & Can. Tr. Cas. 178.

1569. —— ——.]—*Held:* the whole of the provisions of sect. 7 (3), apply only to applications for licences for the first currency period. On applications for licences for the second or subsequent currency periods the discretion to grant or refuse the licence is that given by sect. 6 of the Act.

An appct. proved that there was a need for his car to be used on a private estate where no licence was required to use a car for carriage of goods for hire or reward, & that there was a possibility that there might be a need for the car to be used on public roads where a licence would be required:—*Held:* no case for a licence had been made out.

Obiter, if the public are admitted to a private estate the roads on that estate are roads within Road & Rail Traffic Act, 1933 (c. 53).—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* HOLDEN (1936), 24 Ry. & Can. Tr. Cas. 178.

1570. —— ——.]—(1) A haulier applied for the renewal of his B licence permitting him (*inter alia*) to carry strawboards for a certain co. A ry. co. objector gave general evidence as to ry. facilities & argued that these facilities were suitable & that therefore the application should have been dismissed:—*Held:* in this case whether or not the ry. facilities were suitable depended upon whether or not the strawboards had frequently to be carried for urgent delivery. The evidence as to this was unsatisfactory; case remitted for further inquiry.

The fact that objectors have in the past carried large quantities of certain goods does not prove that their facilities are suitable; it is a factor to be taken into consideration, but is not conclusive.

It had been stated as one ground for granting the application the fact that conveyance of strawboards by rail would involve a 50 per cent. increase in transport charges; he described the rail charge as "on the high side":—*Held:* this finding was not justified by the evidence; the rail rate had been authorised by the Ry. Rates Tribunal & was not on the high side.

(2) Evidence tendered by objectors should be as particularised as that given by appcts.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* INGLEBY (1936), 24 Ry. & Can. Tr. Cas. 294.

1571. —— ——.]—A coal merchant who hawked coal from his motor vehicle during the winter months applied for a B licence:—*Held:* a coal merchant who is unable to discharge the ordinary burden of proof should nevertheless be granted a B licence if: (*a*) his business is genuine; (*b*) he requires the vehicle for carrying goods in connection with his own business & these goods cannot satisfactorily be carried otherwise; (*c*) taking the year as a whole the vehicle cannot be economically operated unless used during the off season for hire or reward; & provided a special condition be attached preventing him carrying for hire save during the off season & preventing wasteful competition.

This principle only applies to genuine coal merchants' businesses, & it does not necessarily apply to other seasonal businesses.—SOUTHERN RY. CO. *v.* LAMBERT (1936), 25 Ry. & Can. Tr. Cas. 24.

Annotations:—**Refd.** Four Amalgamated Ry. Cos. *v.* Bouts-Tillotson Transport, Ltd. (1937), 25 Ry. & Can. Tr. Cas. 158; Marris *v.* London, Midland & Scottish & London & North Eastern Ry. Cos. (1937), 25 Ry. & Can. Tr. Cas. 248.

1572. —— ——.]—Furniture dealers applied for a B licence to enable them to carry out removals. They did business on the "easy payment" system, & proposed to apply this system to removals:—*Held:* they must raise a *primâ facie* case within the terms of *Enston's Case;* their proposed method of collecting charges was not a matter which the licensing authority should take into consideration.—BRADSHAWS STORES, LTD. *v.* WALKER & LONDON, MIDLAND & SCOTTISH RY. CO. (1936), 25 Ry. & Can. Tr. Cas. 42.

1573. —— ——.]—A wholesale fruit merchant used motor vehicles to convey fruit from London to Nottingham & Ilkeston. He applied for a B licence to enable him to continue his practice of carrying for hire or reward on the return journeys to London:—*Held:* he was not entitled to a licence if

there were already in existence suitable transport facilities for the conveyance of (*a*) his goods, & (*b*) those of his customers.

The evidence showed that railway facilities were suitable for the conveyance of appct.'s goods to Nottingham but not to Ilkeston. The Tribunal refused to assume in the absence of evidence that suitable facilities to Ilkeston were provided by A licence-holders. There was also insufficient evidence as to facilities available for conveyance of the customers' goods; case therefore remitted to the licensing authority for further inquiry.

Barratt's Case followed; decision of Mr. Gleeson Robinson therein approved, save that the Tribunal doubted whether a licensing authority was entitled to take into consideration the fact that a B licensee would obtain an advantage over his competitors not similarly licensed.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SMALLEY (1936), 25 Ry. & Can. Tr. Cas. 118.

1574. —— ——.]—Sect. 6 (2) (*e*) of the Act requires the licensing authority to have regard to the extent to which the vehicles to be authorised will be in substitution for horse-drawn vehicles previously used by the appct. for the purposes of his business as a carrier.

Resp. co-operative society applied for a B licence for one vehicle to enable them to effect furniture removals for their members. They had hitherto done this work locally by their own horse-drawn vans, for which they had hired horses from S. Mr. Nicholson granted the application subject to a radius of twenty-five miles. On appeal it was said that S. had now himself obtained a licence on the ground of substitution of motor for horse-drawn vehicles, & that if this decision were supported there would have been a dual grant:—*Held:* where a van belonging to one person had been drawn by a horse belonging to another, the fact that the owner of the horse has already successfully invoked sect. 6 (2) (*e*) does not preclude the owner of the van from relying on it as well.

Grant upheld, subject to a reduction of radius to fifteen miles.—REED & SONS *v.* BRISTOL CO-OPERATIVE SOCIETY, LTD. (1937), 25 Ry. & Can. Tr. Cas. 241.

1575. —— ——.]—The owner of a furniture depository & a furniture removal business had been authorised under B licence to carry furniture & household effects within a 100-mile radius. He applied for a new licence in continuation of his expiring licence & asked that the restrictive radius be removed:—*Held:* (1) in the absence of evidence to the contrary it must be assumed that removals beyond the 100-mile radius had been satisfactorily effected by other carriers & therefore that the lifting of the restriction would create an excess of suitable facilities; but (2) it is reasonable that the owner of a depository who is also a furniture remover should be permitted to carry without radius restriction furniture & household effects stored in his depository.—BROWN *v.* LONDON & NORTH EASTERN RY. CO. (1937), 25 Ry. & Can. Tr. Cas. 265.

1576. —— ——.]—(1) It is not by itself a ground for refusing a B licence that appct.'s own goods could be quite satisfactorily carried by existing transport & that there is no other valid & sufficient reason why he should carry them himself. But where there already exist suitable transport facilities for the carriage of the goods which appct. proposes to carry for reward the licence must be refused.

(2) In the absence of any explanation from the traders concerned it is not right to draw the inference that rail transport is unsuitable from the fact that many consignees order their goods forward by road.

(3) Where there is a finding that there are no A licensees in a certain area who are not fully employed, & this finding is based on knowledge acquired in the exercise of the duties of a licensing authority, the Appeal Tribunal have no alternative but to accept it.—LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SMALLEY (1937), 25 Ry. & Can. Tr. Cas. 348.

1577. —— ——.]—A haulier held a B licence with conditions entitling him to carry for hire or reward within a thirty-mile radius & to carry for certain named persons without restriction. His vehicles were used exclusively for hire or reward. He applied for permission to carry for any customer without restriction. It appeared that he carried for the named persons from the provisions to London & wished to carry return loads:—*Held:* (1) appct. could not be treated as a public carrier & the application should, in the absence of evidence of need, be refused; (2) the application fell within sect. 11 (3) of the Act & the licensing authority was under a duty to hear objections, & objectors accordingly had a right of appeal.—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* FLETCHER (1938), 26 Ry. & Can. Tr. Cas. 221.

1578. —— **Additional vehicles—When granted.**]—Wharfingers applied for a variation of their B licence by the addition of five vehicles that they might themselves do work hitherto done for them by sub-contractors. They complained of an increasing difficulty in hiring vehicles from such sub-contractors:—*Held:* by Mr. Gleeson Robinson, in the case of applications by wharfingers, forwarding agents & clearing houses who had hitherto done all or part of their haulage work by sub-contractors, & in the absence of special circumstances, a licensing authority should safeguard the transport industry generally by refusing to authorise vehicles for the purpose of doing such work as was hitherto done by sub-contractors. He refused the application. On appeal, the Appeal Tribunal were disposed to agree, *obiter*, with Mr. Gleeson Robinson as far as concerned forwarding agents, clearing houses, & some wharfingers. In the case of these appcts., however, they found special circumstances to exist, & held appcts.' road facilities were to be regarded as collection & delivery services ancillary to trunk routes by sea, & since an increasing difficulty in hiring had been proved, the extra vehicles should be authorised.—*Re* LOVELL (SHAW) & SONS, LTD. (1937), 25 Ry. & Can. Tr. Cas. 250.

1579. —— **Application for—What must be stated.**]—GREAT WESTERN RY. CO. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, No. 1580, *post*.

1580. —— **Jurisdiction of licensing authority.**]—(1) An appct. for a B licence in respect of a motor vehicle in describing the area which he intends to serve is only bound to state the district within which or the places between which he intends normally to use the vehicle. (2) In granting such a licence the licensing authority may, if he thinks fit, under sect. 8 (3) (*a*), attach to the licence a condition that it shall be used only in a specified district or between specified places; or he may grant the licence without imposing any restriction.

(3) When a rule *nisi* for a writ of *certiorari* has been made absolute by the K. B. Div. & an appeal to the Ct. of Appeal from the order absolute has been allowed. *Qu.*: whether it is necessary to sue out writs of *supersedeas* & *procedendo* to avoid the writ.—GREAT WESTERN RY. CO. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, [1936] A. C. 128; 105 L. J. K. B. 37; 52 T. L. R. 44; 79 Sol. Jo. 941; 24 Ry. & Can. Tr. Cas. 1; *sub nom.* R. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, *Ex p.* GREAT WESTERN RY. CO., 154 L. T. 39, H. L.

Annotations:—*As to* (1) **Apld.** Modern Haulage Services, Ltd. *v.* London, Midland & Scottish & London & North Eastern Ry. Cos., Southern Ry. Co. *v.* Coleman, London, Midland & Scottish & London & North Eastern Ry. Cos. *v.* Stuart (1937), 25 Ry. & Can. Tr. Cas. 272. **Refd.** Charman *v.* Southern Ry. Co. (1934), 22 Ry. & Can. Tr. Cas. 116.

1581. —— **Licensing authority using knowledge gained in course of duty—Duty to give notice to parties.**]—BARRATT & CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. COS., No. 1568, *ante*.

1582. —— **Conditions—Consideration of public interest.**]—(1) Leave to call new evidence on appeal was refused to an applt., who as appct. had been given every opportunity to present his case to the comr. & had not asked for an adjournment.

(2) In attaching conditions to a B licence granted under sect. 7 (3), which provides that no condition shall be attached which would constitute a substantial interference with the business for which the vehicles were used during the basic year, a comr. may also take into account the public interest. The business may include the business of a carrier.—PLENTY *v.* GREAT WESTERN RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 82.

1583. —— —— **Auctioneer's licence.**]—The Appeal Tribunal imposed a condition on an auctioneer's B licence limiting him to the carriage of furniture for hire or reward to or from his auction rooms & within a certain area.—NEWBURY & DISTRICT MOTOR SERVICES *v.* PERRY (1935), 23 Ry. & Can. Tr. Cas. 1.

1584. —— —— **Duty to attach.**]—When granting a B licence a licensing authority in the proper exercise of his discretion under sect. 8 (3) of the Act should attach reasonable conditions having regard to the evidence.

An appct. carried for hire or reward within twenty-five miles of his base. The licensing authority granted a B licence without special conditions:—*Held*: he should have attached conditions in accordance with the evidence. Case remitted for reconsideration.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* BREEZE (1936), 24 Ry. & Can. Tr. Cas. 290.

Annotation:—**Refd.** Sutcliffe, Ltd. *v.* London, Midland & Scottish Ry. Co. (1936), 25 Ry. & Can. Tr. Cas. 213.

1585. —— ——.]—A newcomer applied for a B licence. It was granted subject to a condition limiting the use of his vehicle to a 25-mile radius from its base. Hauliers with bases twelve & fifteen miles respectively from the newcomer's base objected, & appealed:—*Held*: on the evidence, the newcomer had made out a *primâ facie* case, but that it had been *pro tanto* rebutted by the two objectors, so far as their bases were concerned; condition amended to prevent the newcomer carrying for persons other than those residing within four miles of his base. An offer made at a public inquiry by an objector, to station a vehicle at an appct.'s base, should not be taken into consideration.

Value of maps as evidence, commented upon.—POCOCK *v.* WASEY (1936), 24 Ry. & Can. Tr. Cas. 316.

1586. —— ——.]—*Qu.*: whether a licensing authority has jurisdiction to grant a B licence subject to special condition empowering the licensee to carry for a firm who are themselves holders of an A licence.—LONDON & NORTH EASTERN RY. CO. *v.* TURNBULL & SONS (LEEDS), LTD. (1937), 25 Ry. & Can. Tr. Cas. 239.

1587. —— **Grant quashed by Divisional Court—Issue of writ of supersedeas & procedendo by Court of Appeal.**]—GREAT WESTERN RY. CO. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, No. 1580, *ante*.

1588. —— **Return loads.**]—Traders had carried return loads within radii of sixty-five, forty & twenty miles under B licence, claimed tonnage. They now applied for a fresh B licence subject to the same conditions in continuation of the first licence. Objectors gave evidence of their facilities:—*Held*: by Mr. Farndale, in cases where appcts. had been carrying return loads since at least the commencement of the basic year, they should be permitted to continue so to do unless objectors proved beyond doubt that alternative transport facilities were commercially suitable as well as physically sufficient.

In the absence of evidence by objectors that they could deliver goods in the district in question early the morning next after dispatch, & that such delivery met the needs of consignees, Mr. Farndale found, & the Appeal Tribunal agreed, that objectors had not proved their facilities to be commercially suitable.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* MITCHELL & BROADBENT (1936), 25 Ry. & Can. Tr. Cas. 78.

1589. —— **Radius.**]—Appcts. applied for a B licence in substitution for their existing B licence under which they were permitted to carry for hire or reward within a 70-mile radius. They had been carrying daily return loads from points 35 to 65 miles from their base:—*Held*: since the return loads were not carried for "long distances" & since they formed a regular service, the decision in *Barratt's Case* did not apply.

Sir William Hart granted the application subject to new radii of 15 & 35 miles. He considered these to be radii within which a B licensee might reasonably be expected to operate:—*Held*: by the Appeal Tribunal, in fixing a radius regard should be had to the evidence of past work & future need; Sir William's decision must be reversed.—

SUTCLIFFE (EDWARD), LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1936), 25 Ry. & Can. Tr. Cas. 213.

1590. "C" licence—Condition prohibiting carriage for reward—Vehicle owned by mutual benefit societies.]—An incorporated society, whose members consisted exclusively of persons employed at a colliery, had as its object the business of delivering to its members coal supplied to them from the colliery by the colliery co. For the purposes of its business the society owned a motor goods vehicle in respect of which it held "a C licence" under the above sub-sect. The society used the vehicle for making a delivery of coal at the house of one of its members, the charge for the delivery being deducted from the wage of the member payable by the colliery co. & subsequently paid by that co. to the society. On an information against the society for having failed to comply with the condition, to which the licence was subject under the above sub-sect., by using the vehicle for the carriage of goods for hire or reward :—*Held :* as the society was incorporated, it was a legal entity separate & distinct from its individual members ; & consequently in using the vehicle for the carriage of coal to one of the members at a charge, it used the vehicle for "the carriage of goods for hire or reward" within the Road & Rail Traffic Act, 1933 (c. 53), s. 2 (4), & was guilty of the offence with which it was charged.

In another case in which the material circumstances were in all respects similar to those above mentioned, except that the society which carried on the business & owned the vehicle & against which the information was laid, was an unincorporated society :—*Held :* as the society was unincorporated, it had no separate existence apart from its individual members who were themselves the owners of the vehicle & the recipients of the payments made for the use of it ; & consequently when the vehicle was used for the carriage of coal to the member it was not used for "the carriage of goods for hire or reward" within the sub-sect., & the society was not guilty of the offence charged against it.—WURZEL *v.* HOUGHTON MAIN HOME DELIVERY SERVICE, LTD., WURZEL *v.* ATKINSON, [1937] 1 K. B. 380 ; [1936] 3 All E. R. 311 ; 106 L. J. K. B. 197 ; 155 L. T. 575 ; 100 J. P. 503 ; 53 T. L. R. 81 ; 80 Sol. Jo. 895 ; 34 L. G. R. 587 ; 25 Ry. & Can. Tr. Cas. 59, D. C.

1591. —— Breach of condition.]—Resps., as holders of a private "C" carrier's licence, were charged with having failed to comply with a condition attached to the licence, namely, that "the holder of this licence is entitled to use the authorised vehicles for the carriage of goods for or in connection with any trade or business carried on by him, but no vehicle which is for the time being an authorised vehicle shall be used for the carriage of goods for hire or reward," contrary to Road & Rail Traffic Act, 1933, s. 9 (1). The vehicles in question were used for the removal & disposal of the whole of the surplus excavations from the site of a new railway station, for the sum of 1*s.* 10*d.* per cubic yard of excavation, & it was alleged that the consideration paid, or some part of it, was paid for the carriage of the rubbish. The justices dismissed the charge, holding that the property in the rubbish passed to the respondents the moment it was loaded on to the vehicle, & that it could not be said that a person had carried his own goods for hire or reward :—*Held :* (1) a large part of the payment recovered by resps. was paid for the carriage of the rubbish from the premises of the railway, & the offence charged was proved ; (2) this was not a case of "delivery or collection by a person of goods sold, used or let on hire or hire purchase in the course of a trade or business carried on by him" within sect. 1 (5) (*a*) of the Act of 1933.—SPITTLE *v.* THAMES GRIT & AGGREGATES, LTD., [1937] 4 All E. R. 101 ; 107 L. J. K. B. 200 ; 158 L. T. 374 ; 101 J. P. 557 ; 81 Sol. Jo. 902 ; 35 L. G. R. 627 ; 26 Ry. & Can. Tr. Cas. 109, D. C.

1592. —— When necessary.]—A van was adapted for the carriage of passengers ; it was used for the transport of samples to the owner's place of business, in order that they might be taken thence to be shown to customers :—*Held :* if the vehicle was a goods vehicle, which, in the opinion of the ct., it was not, yet it was a motor vehicle constructed solely for the carriage of not more than seven passengers (exclusive of the driver) & their effects & not adapted for the carriage of goods, & it was being used by a commercial traveller for the purpose of soliciting orders, both within the meaning of the Road & Rail Traffic Act (Exemption) (Amendment) Provisional Regulations, 1936.—TAIT *v.* ODHAMS PRESS, LTD. (1937), 26 Ry. & Can. Tr. Cas. 80.

1593. Variation—What amounts to.]—*Re* COLES' APPEAL, No. 1665, *post.*

1594. —— Application to include tonnage used before Apr. 1, 1934.]—(1) The right of an appct. to claimed tonnage under sect. 7 (3) of the Act is exhausted when he is granted a licence for the first currency period. If, therefore, he did not apply before Apr. 1, 1934, for all that he might have applied for he has no right thereafter to have his licence varied so as to include the difference between the tonnage he did apply for & that which he might have applied for.

(2) A trailer is not a specified vehicle within sect. 10 (2). Consequently, the holder of a licence for a motor vehicle & a trailer has no right to have a second motor vehicle substituted for the trailer.

The principles with regard to hiring laid down in *L. M. & S. & Barr*, No. 1519, *ante*, apply as well to the variation of a licence as to the grant of a new licence.—RANDALL *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 163.

Annotation :—As to (1) **Reid.** Sheraton *v.* United Automobile Services, Ltd. (1936), 25 Ry. & Can. Tr. Cas. 83.

1595. —— Application to include vehicles formerly hired.]—RANDALL *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1594, *ante.*

1596. —— Specified vehicle—Trailer.]—RANDALL *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1594, *ante.*

1597. —— Application before licence granted.]—A carrier applied for a licence. Before his application could be heard he applied for a variation of the licence which he hoped would be granted. On hearing of the original application Mr. Chamberlain re-

fused to entertain the application for the variation because it had not been published, & he granted the original application in part only. On the application for a variation coming before Sir William Hart he refused to authorise additional vehicles because the evidence in support of the application for a variation was the same as the evidence on the original application, but he did authorise heavier vehicles. On the matter coming before the Appeal Tribunal they approved of what had been done both by Mr. Chamberlain & by Sir William Hart.—BARLOW *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 24 Ry. & Can. Tr. Cas. 52.

1598. —— **Purchase of haulier's business—Application of 1933 Act, s. 11.**]—A haulier using ten vehicles under an A licence contracted to purchase the business of another haulier, operating five vehicles under an A licence. The first haulier applied to vary his licence by the inclusion of the additional five vehicles :—*Held :* the case did not fall within sect. 11 (3) (*b*) of the Act. Para. (*b*) of subsect. (3) applies only to applications for licences, & not to applications for variations of licences.

A haulier purchasing another haulier's business & applying to vary his own A licence by the inclusion of the purchased vehicles must prove (1) that the vendor had a business as a public carrier ; (2) that the vendor's customers are ready & willing to give their work to the purchaser ; (3) that this work should be done under an A licence ; (4) that to do this work it is reasonably necessary for the purchaser to use the vendor's vehicles in addition to his own vehicles. In this case the fourth point had not been proved & the variation was refused.—BOSTON HAULAGE CO., LTD. *v.* SANDERSON & LONDON & NORTH EASTERN RY. CO. (1936), 24 Ry. & Can. Tr. Cas. 107.

Annotations :—**Apld.** London & North Eastern Ry. Co. *v.* Butler & Marshall (1936), 24 Ry. & Can. Tr. Cas. 144. **Consd.** Wasey *v.* Borwick (1937), 25 Ry. & Can. Tr. Cas. 217 ; O'Sullivan *v.* Great Western Ry. Co. (1937), 26 Ry. & Can. Tr. Cas. 155. **Apld.** Ball (Leicester), Ltd. *v.* Platts Bros. (1937), 26 Ry. & Can. Tr. Cas. 189. **Reld.** Great Western Ry. Co. *v.* Rupert Pedley, Ltd. (1937), 26 Ry. & Can. Tr. Cas. 132.

1599. —— —— ——.]—A haulier contracted to purchase the business of another haulier, including two vehicles. The vendor at that time owned no vehicles. The purchaser applied for an A licence for two vehicles to be acquired. After the application but before the public inquiry the vendor bought the two vehicles, obtained A licences for them, & transferred them to the purchaser :—*Held :* sect. 11 (3) (*b*) did not apply ; therefore the licensing authority was under a duty to hear an objector & the objector had a right of appeal under sect. 15 (1) (*b*). For sect. 11 (3) (*b*) to apply the vendor's licence must be in existence at the date of the purchaser's application.

For three months prior to the contract the vendor had owned no vehicles, & evidence as to hiring was vague. The licensing authority did not investigate the vendor's books & records, but granted the application : —*Held :* the principles of *Boston Haulage Co., Ltd. & Sanderson*, must be applied. The question whether the vendor had any business to dispose of, or whether the purchase was a device intended to prevent a public inquiry, had been insufficiently investigated. Application referred back to the licensing authority for the holding of a further public inquiry.—LONDON & NORTH EASTERN RY. CO. *v.* BUTLER & MARSHALL (1936), 24 Ry. & Can. Tr. Cas. 144.

1600. —— —— ——.]—An established haulier authorised to operate three vehicles under A licence purchased the goodwill of another haulier's business, but did not purchase any of the vendor's vehicles. At the conclusion of the first licensing period the purchaser applied for a new licence authorising use of the three vehicles as before together with one additional vehicle. Mr. Stirk granted the licence in respect of the three vehicles, but refused authorisation for the extra vehicle on the ground that there had been a material change in appct's. business :—*Held :* the case fell to be determined in accordance with the principles laid down in *Boston Haulage Co.* v. *Sanderson*, & since appct. had upon the evidence discharged the burden of proof laid upon him by that decision the appeal must be allowed.—BALL (T.) (LEICESTER), LTD. *v.* PLATTS BROS. (1937), 26 Ry. & Can. Tr. Cas. 189.

1601. —— **Extension of area.**]—A B licence was granted for the carriage of livestock within sixty miles of a place in Anglesey. It appeared that the principal markets for livestock from Anglesey were in Manchester & Salford ; the Appeal Tribunal accordingly enlarged the area so as to include these places.—WILLIAMS & EVANS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 193.

1602. —— **What may be considered.**]—FORRESTER *v.* GREAT WESTERN RY. CO., No. 1509, *ante*.

1603. —— **Additional vehicles—When granted.**]—Appcts. for B licences or variations who rely on an increase in gross receipts should present figures showing separately the gross receipts earned in carrying goods for hire or reward.

A ballast merchant & road haulier held a B licence for twenty-five vehicles for the first currency period. At its expiry he obtained a second licence for nineteen vehicles, the other six being at that time unfit for use. He now applied for the addition of six vehicles to his licence. He gave evidence of an increase in the gross receipts of his business & of an increase in hiring :—*Held :* on the facts, it was impossible to tell what portion of the gross receipts related to carrying for hire or reward & what related to the ballast business ; & the hiring figures could not properly be assessed since they must have been affected by the fact that six vehicles were at one time laid up although authorised.

Per Mr. Gleeson Robinson : A false statement made by appct.'s assistant manager to objectors, with a view to having objections withdrawn, is " previous conduct of appct. in the capacity of a carrier of goods," within sect. 6 (2) (*b*) of the Act.—DRINKWATER *v.* LONDON & NORTH EASTERN, LONDON, MIDLAND & SCOTTISH & GREAT WESTERN RY. Cos. (1936), 25 Ry. & Can. Tr. Cas. 32.

1604. **Licensing authority—Duty to give reasons for decisions.**]—SMITH *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1483, *ante*.

1605. —— —— All reasons.]—BOUTS-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1506, *ante*.

1606. —— Duty to act judicially.]—BOUTS-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1506, *ante*.

1607. —— Public inquiry—Powers.]—LESLIE *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1649, *post*.

1608. —— —— ——.]—A co. applied for an A licence in continuation of an existing licence issued to a carrier whose business they had acquired. Mr. Nicholson gave notice of the application in *Applications & Decisions*, held a public inquiry, & heard objectors. On the evidence he held that the co. had not shown a need that justified their application, & he dismissed it:—*Held:* on appeal, although sect. 11 (3) (*b*) of the Act applied to the application, the licensing authority had power to notify it. He had power to hold a public inquiry, both under sect. 11 (5) & under the principles laid down in *Board of Education* v. *Rice*, [1907] A. C. 179, & *Local Government Board* v. *Arlidge*, [1915] A. C. 120. He had power to hear objectors, not as statutory objectors, but as persons making representations to assist him. In deciding such an application he was bound to have regard to all the matters set out in sect. 6 (2) of the Act. In this case the evidence justified the finding: appeal dismissed.

It is incorrect to refer to such an application as one "made under sect. 11 (3) (*b*) of the Act" or as one for "transfer of licence."—EX-ARMY TRANSPORT, LTD. *v.* DIAMOND & CO., LTD. (1936), 24 Ry. & Can. Tr. Cas. 303.

Annotations:—**Consd.** *Re* Woodward's Application, Woodward *v.* North Western Traffic Area Licensing Authority, [1937] 4 All E. R. 656. **Refd.** Wasey *v.* Borwick (1937), 25 Ry. & Can. Tr. Cas. 217.

1609. —— —— ——.]—F. T. carried on business as a haulage contractor & was the holder of an "A" licence under the Road & Rail Traffic Act, 1933, granted by resp., the Licensing Authority, which authorised him to use a vehicle for a period ending Apr. 30, 1938. F. T. died on Mar. 9, 1937, & subsequently his widow, acting as his legal personal representative, made an application to resp. for an "A" licence, which was granted to her under the Act & which authorised her to use the same vehicle for the duration of the unexpired portion of the term. By a letter, dated Apr. 16, & written on behalf of appcts., trading as R. & D. Transport, resp. was informed that the widow of F. T. was negotiating with appcts. for the sale of the business & that when her application has been granted an application would be made by them under sect. 11 (3) (*b*) of the 1933 Act. On May 24 appcts. duly filed with resp. an application for a licence to expire not later than Apr. 30, 1938. From time to time appcts. supplied resp. with all the information he required & was entitled to receive under the Act. By letter, dated Aug. 9, resp. informed appcts. that he was of opinion that the application was one to which the provisions of sect. 11 (3) (*b*), could be taken to apply, but that in order properly to exercise his discretion under sect. 6 it would be necessary to publish the application in Part I. of *Applications & Decisions* & to consider the application at a public inquiry. Appcts. contended that resp. had no power to publish the application or to hold an inquiry & they issued this summons raising the question:—*Held:* the Licensing Authority had power to publish the application & to hold an inquiry, if in his discretion he considered it was necessary to do so, before granting the licence.—WOODWARD *v.* NORTH-WESTERN TRAFFIC AREA LICENSING AUTHORITY, [1938] Ch. 331; 107 L. J. Ch. 148; 158 L. T. 111; 26 Ry. & Can. Tr. Cas. 167; *sub nom. Re* WOODWARD'S APPLICATION, WOODWARD *v.* NORTH WESTERN TRAFFIC AREA LICENSING AUTHORITY, [1937] 4 All E. R. 656; 54 T. L. R. 216; 82 Sol. Jo. 15.

1610. —— Non-compliance with conditions—Consideration of.]—Breaches of the conditions attached to a licence such as would justify the revocation of the licence are previous conduct of an appct. in his capacity of a carrier of goods & ought to be considered on an application for a new licence in substitution for an existing licence.

Although under sect. 11 (2) of the Road & Rail Traffic Act, 1933, a statutory objector may object to the grant of a licence on the ground that any of the conditions of a licence held by appct. have not been complied with, it can only be in rare cases that an objector has knowledge whether or not breaches of conditions have taken place, & in the great majority of cases this knowledge will be that of the licensing authority only acquired by him in the course of his administrative duties under the Act. Consequently any such non-compliance may be properly considered by the licensing authority *ex proprio motu suo*. In such a case the licensing authority is not bound to hear direct evidence of non-compliance with the conditions. Where it is intended to take such matters into consideration it is better that written notice should be given to appct., but if sufficient oral notice has been given the fact that there was no written notice will not be a ground of appeal.—MOORE *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. (1937), 25 Ry. & Can. Tr. Cas. 318.

1611. "Previous conduct of applicant"—Criminal offences—Necessity for strict proof.]—BOUT-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1506, *ante*.

1612. —— —— When material.]—BOUT-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1506, *ante*.

1613. —— Material time.]—A licensing authority dismissed an application for an A licence in substitution for an expiring licence upon the ground, *inter alia*, that appct.'s previous conduct in the capacity of a carrier of goods was such as to disentitle him to a licence. This previous conduct comprised the transaction under which appct. had obtained the vehicles with which he began business as a road haulier. On appeal:—*Held:* since at the time of the transaction in question appct. had not yet begun to be a carrier of goods, the conduct was not such as fell to be considered by a licensing authority under sect. 6 (2) (*b*) of the Act. Appeal allowed.

Objectors' evidence in proof of objection discussed.—HAZELL *v.* SOUTHERN COUNTIES

ROAD TRANSPORT CO., LTD. (1937), 25 Ry. & Can. Tr. Cas. 259.

1614. —— **What amounts to.**]—DRINKWATER *v.* LONDON & NORTH EASTERN, LONDON MIDLAND & SCOTTISH & GREAT WESTERN RY. COS., No. 1603, *ante*.

1615. —— ——.]—MOORE *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., No. 1610, *ante*.

1616. —— ——.]—On an application for an A licence it was disclosed that one of the partners had been convicted & sentenced to prison for frauds in connection with carriers' licences arising out of a business of dealing in motor vehicles carried on by him :—*Held :* this was not conduct of appct. in the capacity of a carrier of goods within Road & Rail Traffic Act, 1933, s. 6 (2) (*b*).—KEELING & SONS *v.* LONDON & NORTH EASTERN RY. CO. (1937), 26 Ry. & Can. Tr. Cas. 195.

1617. Newcomer—Who is.]—(1) An appct. is a newcomer to the carrying business notwithstanding he was a partner in a firm of carriers before the basic year.

(2) Where a newcomer applies for a carrier's licence the burden of proof is on him to meet the objection under sect. 11 (2) of Road & Rail Traffic Act, 1933 (c. 53), that, if the application is granted, transport facilities will be in excess of requirements ; & he must discharge that burden even if there are no objectors.—TICKLE *v.* LONDON, MIDLAND & SCOTTISH, GREAT WESTERN, & LONDON & NORTH EASTERN RY. COS. (1935), 23 Ry. & Can. Tr. Cas. 88.

1618. —— ——.]—(1) *Held :* (1) by the Appeal Tribunal, an appct. who had been a partner in a firm of carriers from 1918 till May, 1933, & thereafter a carrier on his own account, was a newcomer to the carrier's business for the purpose of an application for a licence which he proposed to use for a carrying business of an entirely different character ; (2) the evidence of the managing director of a co. of haulage contractors that there was a shortage of goods vehicles in the district proposed to be served by appct. did not make a *primâ facie* case that the work proposed to be done by the appct. could not for some reason or reasons be done by other existing carriers.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* WILLIAMS (1935), 23 Ry. & Can. Tr. Cas. 159.

1619. —— ——.]—On an application for an A licence for a vehicle to be normally used in R. & 100 miles around an objection was lodged on the ground that transport facilities were in excess of requirements. It was admitted on behalf of the objectors that if appct. would restrict himself within the limits of a B licence the objection could not possibly be sustained. Nevertheless the objection was allowed :—*Held :* by the Appeal Tribunal, an appct. who had been a carrier & haulage contractor except for the period from 1929 to 1933, when he went out of business for family reasons, was a newcomer to the carrying business.—CROMPTON *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 178.

Annotations :—**Folld.** Barkley *v.* London, Midland & Scottish Ry. Co. & London & North Eastern Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 267. **Consd.** London, Midland & Scottish Ry. Co. *v.* Pennington (1935), 23 Ry. & Can. Tr. Cas. 256.

1620. —— ——.]—MCLACHLAN *v.* MORGAN & Co., No. 1537, *ante*.

1621. —— ——.]—An appct. for an A licence had been a carrier during the basic year. He had also had a coal business which, as the Comr. found, was always a very small part of his general business :—*Held :* in these circumstances appct. was a newcomer to the carrying business, because it appeared from his books that over the whole period of the basic year his vehicle was not used mainly for carriage for reward ; the burden of proof was on appct. to establish that no other carrier could do the work which he proposed to continue to do ; &, that burden not having been discharged, the licence should have been refused, notwithstanding there was no evidence to show that transport facilities in the district were in excess of requirements.—LONDON & NORTH EASTERN RY. CO. *v.* HAGAN (1935), 24 Ry. & Can. Tr. Cas. 31.

Annotation : **Refd.** Sheraton *v.* United Automobile Services, Ltd. (1936), 25 Ry. & Can. Tr. Cas. 83.

1622. —— ——.]—(1) Sect. 5 (3) requires that, in the case of A & B licences, a separate application must be made in respect of each permanent base or centre from which the vehicles will be normally used, but permits the Comr. to grant a single licence in respect of such applications. A single application having been made for a B licence for two vehicles " for goods to be conveyed within a twenty-five miles radius of Ayr & Kilmarnock, from Bus Station, Ayr, & Bus Station, Kilmarnock " :—*Held :* by Mr. Henderson, since Ayr & Kilmarnock are only ten miles apart one application was sufficient, but two licences ought to be granted. On the matter coming to the notice of the Appeal Tribunal they gave no decision on this point because no objection was taken to the form of the application.

(2) On an application for a B licence to carry parcels an objection that suitable transport facilities in the district intended to be served were already in excess of requirements was disallowed by Mr. Henderson because it was not supported by evidence :—*Held :* by the Appeal Tribunal, a co. which has been engaged in carrying parcels & passengers for many years is a newcomer to the carrying business & ought not to be granted a licence except upon proof of a *primâ facie* case that no other carrier could carry the parcels.—FERGUSON *v.* WESTERN S. M. T. CO., LTD. (1935), 24 Ry. & Can. Tr. Cas. 72.

1623. —— ——.]—(1) A haulier who had operated during the basic year applied for an A licence. He claimed to have an equitable right to a licence because his delay had been due to inadvertence & ignorance :—*Held :* at this late stage an appct. claiming to have operated during the basic year must produce conclusive & fully corroborated evidence. Appct. must be treated as a newcomer.

(2) Evidence of work done by vehicles operating illegally is probably not receivable in support of an application—*obiter*.—BARKER *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1936), 24 Ry. & Can. Tr. Cas. 161.

1624. —— ——.]—(1) A limited co. had two separate departments, one carrying on the business of building contractor, & the other

carrying on that of haulage contractor. During the basic year the haulage department carried 21 per cent. of their tonnage for the building department, & the balance for outside customers. The co. applied for an A licence (partly claimed tonnage). This application was adjourned, & in the interval a new limited co. was formed which took over the haulage business of the older or parent co. The new co. applied for an A licence :—*Held :* in these special circumstances the new co. was to be regarded not as a newcomer & subject to the requirements of *Enston's Case*, but as successor to the haulage department of the parent co., & should be granted an A licence for such vehicles as were engaged during the basic year in carrying for customers other than the building department.

(2) Abandonment of part of appeal at late stage taken into account in assessing costs.—GERRARDS TRANSPORT, LTD. *v.* NORMAN E. BOX, LTD. (1936), 24 Ry. & Can. Tr. Cas. 248.

1625. —— ——.]—(1) A firm of carriers was wound up in 1934. One of the former partners applied for a B licence in 1935. In the meanwhile he had maintained a business as carrier by means of hiring & sub-contracting :—*Held :* the applicant was a newcomer, & as such had to fulfil the requirements laid down in *Enston's Case*. On the evidence he had done so.

(2) The carriage of livestock is not traffic of a special character, in connection with which an appct.'s personal skill should be considered.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* ANTON (1936), 24 Ry. & Can. Tr. Cas. 325.

1626. —— ——.]—MODERN HAULAGE LTD. *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., SOUTHERN RY. CO. *v.* COLEMAN, LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* STUART, No. 1553, *ante*.

1627. —— ——.]—An operator under B licence ceased to carry on any business other than that of haulier. During the currency of his first B licence he applied for an A licence :—*Held :* the grant of the B licence exhausted his rights to claimed tonnage : there is no continuing right. Appct. was a new comer & must discharge the onus of proof laid down in *Enston's Case*.

As to the admission of fresh evidence before the Appeal Tribunal, *Taylor's Appeal* followed.—SHERATON *v.* UNITED AUTOMOBILE SERVICES, LTD. (1936), 25 Ry. & Can. Tr. Cas. 83.

1628. Onus of proof—That facilities not excessive.]—TICKLE *v.* LONDON, MIDLAND & SCOTTISH, GREAT WESTERN & LONDON & NORTH EASTERN RY. COS., No. 1617, *ante*.

1629. —— ——.]—*Held :* (1) the burden of proving an objection under sect. 11 (2) does not lie on the objector, but the burden of disproving the objection lies on appct. ; (2) the fact that a carrier has been compelled to hire vehicles to carry his customers' goods is no evidence that either his business or theirs has increased ; (3) in determining the number of vehicles to be authorised for a seasonal business of a carrier in a small way, the comr. should not have regard to the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair, as appears to be required by sect. 6 (2) (*d*) of Road & Rail Traffic Act, 1933.—LONDON & NORTH EASTERN RY. CO. *v.* BURGESS (1935), 23 Ry. & Can. Tr. Cas. 147.

1630. —— ——.]—LONDON & NORTH EASTERN RY. CO. *v.* HAGAN, No. 1621, *ante*.

1631. —— **Of abstraction of traffic.** (1) by the Appeal Tribunal, the burden of proving an objection that appcts. have abstracted traffic from the objectors does not lie on the objectors, but it is for appcts. to disprove the objection.

(2) The Appeal Tribunal have no jurisdiction to allow an amendment of a notice of appeal.—LONDON, MIDLAND & SCOTTISH, GREAT WESTERN & LONDON & NORTH EASTERN RY. COS. *v.* MOTOR CARRIERS (LIVERPOOL), LTD. (1935), 23 Ry. & Can. Tr. Cas. 164.

1632. Evidence—Of objections.]—MCLACHLAN *v.* MORGAN & CO., No. 1537, *ante*.

1633. —— —— **Need for particularity.**]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* INGLEBY, No. 1570, *ante*.

1634. —— **Letters from customers.**]—BRADSHAW *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS., No. 1540, *ante*.

1635. —— ——.]—(1) An appct. for an additional vehicle put in letters from customers, but furnished no evidence as to his tonnage or receipts :—*Held :* the evidence was insufficient.

(2) The absence of evidence as to alternative facilities is not a ground for granting an application.—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* BUTLER (1936), 24 Ry. & Can. Tr. Cas. 301.

1636. —— **Of goods & receipts during illegal user.**]—(1) Hauliers operating a service from their Devon base to London applied for authorisation of two extra vehicles. These vehicles had been operated illegally without licence for four & five months respectively. Their case was based upon an increase in the business both of their Devon customers & of a London co. for whom they carried on return journeys :—*Held :* evidence of customers obtained, of goods carried, & of receipts earned during a period of illegal running must be ignored ; (2) if the holder of an A licence applies for the authorisation of extra vehicles to be normally used for carrying from a particular base, he must first prove a need for these vehicles to carry goods outward from that base. If he proves that need, evidence as to return loads may be helpful, though not, strictly speaking, necessary. If he does not prove that need, evidence as to return loads will not support his application. In this case appcts. had not been able to prove sufficient increase in business outward from their base ; evidence as to return loads did not therefore need to be considered.—MOSS BROS. *v.* SOUTHERN RY. CO. (1936), 24 Ry. & Can. Tr. Cas. 253.

1637. —— **Failure to hear—Ground for rehearing.**]—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* COLLIER DANIELS TRANSPORT, LTD., No. 1516, *ante*.

1638. —— **Fresh evidence—On reference back.**]—(1) When as the result of an appeal a case is

referred back to a licensing authority for further inquiry, applt. ought to call fresh evidence.

(2) A haulier who substitutes a motor vehicle for a horse-drawn vehicle is not entitled as of right to a licence.—JONES *v.* ROBERTS & OWEN (No. 2) (1936), 24 Ry. & Can. Tr. Cas. 287.

1639. —— **Maps.**]—POCOCK *v.* WASEY, No. 1585, *ante.*

1640. —— **Rights of objectors.**]—An appct. for additional tonnage put in letters from his customers. The texts of these were read at the public inquiry but the names of the writers were not read or disclosed to the objectors. Appct. could not give evidence as to his tonnage at the inquiry, but subsequently submitted a written statement of tonnage to Mr. Chamberlain, who then granted the application :—*Held :* (1) where a party relies on the contents of documents, the opposing parties are entitled to see those documents ; (2) objectors should have been given the opportunity of commenting upon the statement of tonnage. The proceedings were unsatisfactory : appeal allowed.

If important information is promised to a licensing authority, he should adjourn the public inquiry for its reception at a later hearing.—LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. *v.* BARTON (1936), 25 Ry. & Can. Tr. Cas. 37.

1641. —— **Of refusal of traffic—Necessity for strict proof.**]—An allegation that an objector has refused traffic should be strictly proved.

Hauliers applied for an extension of the radius prescribed in their B licence. They were employed as sub-contractors by C., a road haulier, to carry bricks for the M. Co. C. gave evidence of the M. Co.'s need, & stated that railway co. objectors were not meeting that need, as a result of which the M. Co. had had to acquire vehicles of their own under C. licence :—*Held :* on the facts, that need had not been proved. The relations between the M. Co. & the objectors should have been proved by some official of the M. Co. & not by C.'s evidence, which was hearsay.—LONDON, MIDLAND & SCOTTISH RY. Co. *v.* BOTTERILL & SONS (1936), 25 Ry. & Can. Tr. Cas. 72.

1642. **Number of vehicles—Provisions for overhaul—Seasonal business of small carrier.**]—LONDON & NORTH EASTERN RY. Co. *v.* BURGESS, No. 1629, *ante.*

1643. —— **Wrongful possession during basic year.**]—(1) Wrongful possession of a vehicle during the basic year cannot confer a right to claimed tonnage. But where such a vehicle was handed over in part payment for another vehicle under a hire-purchase agreement, possession of the second vehicle during the basic year could confer the right to claimed tonnage.

(2) A licensing authority granted an application for an A licence in respect of two vehicles, claimed tonnage, but doubted whether the appct. was the owner of the vehicles :—*Held :* the objector had a right to appeal.—SOUTHERN COUNTIES ROAD TRANSPORT CO., LTD. *v.* HAZELL (1936), 24 Ry. & Can. Tr. Cas. 312.

1644. **Motor vehicle substituted for horse-drawn—What amounts to.**]—*Held :* (1) where a carrier sold a barge which was towed by a horse, & bought a motor car, this was a case of a motor vehicle being substituted for a horse-drawn vehicle within sect. 6 (2) (*e*).

(2) Objectors who had called no evidence in support of their objection were permitted to appeal to the Appeal Tribunal under the provisions of sect. 15 (1) (*b*) on the grounds that the evidence given by appct. in support of his application was untrue, that the objectors had not been in a position to refute such evidence, & that appct. had made no *primâ facie* case that the work he proposed to do could not be done by other carriers. The Appeal Tribunal, being satisfied that the evidence of appct. had been untrue, allowed the appeal.—LONDON, MIDLAND & SCOTTISH RY. Co. *v.* ABRAM (1935), 23 Ry. & Can. Tr. Cas. 153.

1645. —— ——.]—An appct. having tendered for a contract for work to be done by his horses & carts, & having failed to secure the contract, disposed of the horses & carts & applied for an A licence for motor vehicles to be used instead :—*Held :* by the Appeal Tribunal, this was not a case of the substitution of motor vehicles for horse-drawn vehicles for the purposes of the business of a carrier within sect. 6 (2) (*e*).—LONDON & NORTH EASTERN RY. Co. *v.* ALDRIDGE (1935), 23 Ry. & Can. Tr. Cas. 188.

1646. —— **Ratio.**]—WATTS *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1565, *ante.*

1647. —— **Right to licence.**]—JONES *v.* ROBERTS & OWEN (No. 2), No. 1638, *ante.*

1648. **Publication of application—What should be stated.**]—BOUTS-TILLOTSON, LTD. *v.* DONALDSON WRIGHT, LTD., No. 1506, *ante.*

1649. —— **When necessary.**]—(1) An appct. applied for an A licence in continuation of an existing licence issued to a carrier whose business she had acquired. The provisions of sect. 11 (1), (2) of the Act as to publication & the hearing of objectors do not apply to certain applications of this nature : sect. 11 (3) (*b*) :—*Held :* sect. 11 (3) (*b*) does not apply unless the licensing authority is satisfied that at the time of the sale the vendor had a genuine carrier's business.

(2) Mr. Henderson published the application, held a public inquiry, & heard objectors : —*Held :* the licensing authority was justified in taking these steps in order to ascertain whether sect. 11 (3) (*b*) applied. He was entitled to hear any representations made to him on that subject. "Statutory objectors" distinguished from other persons entitled to make representations.—LESLIE *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1936), 24 Ry. & Can. Tr. Cas. 182.

1650. **Agreement to permit operation of vehicles in name of licensee—Validity.**]—Pltf. who was entitled by virtue of sect. 7 (2) to obtain as of right A licences in respect of goods vehicles up to a certain tonnage, did not wish to use those vehicles himself. He entered into an agreement with defts., whereby, in consideration of a money payment by defts., defts. were to be entitled to operate the vehicles in pltf.'s name, under pltf.'s licences, which could not, by sect. 21 of the Act, be transferred or assigned by him to defts. The

present action was brought by pltf. to recover the sum payable under the agreement:—*Held:* although the agreement did not purport to transfer or assign pltf.'s licences, it could not be carried into effect without the commission by defts. of a criminal offence under sect. 1, since defts. would be using vehicles in respect of which they had no licence. Nor could pltf., who had licences, but was not the person using the vehicles within sect. 1, comply with the requirements of sect. 16 by keeping, or causing to be kept, the records therein mentioned. The agreement was therefore illegal, & pltf.'s claim failed.—NASH *v.* STEVENSON TRANSPORT, LTD., [1936] 2 K. B. 128; [1936] 1 All E. R. 906; 105 L. J. K. B. 527; 154 L. T. 420; 52 T. L. R. 331; 80 Sol. Jo. 245, C. A.

1651. Effect of decision—Whether amounting to estoppel.]—FORRESTER *v.* GREAT WESTERN RY. CO., No. 1509, *ante*.

1652. Traffic of special character—What is.]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* ANTON, No. 1625, *ante*.

1653. —— Right to make second application.]—GREAT WESTERN RY. CO. *v.* RUPERT PEDLEY, LTD., LONDON & NORTH EASTERN RY. CO. *v.* RUPERT PEDLEY, LTD., No. 1525, *ante*.

1654. Vehicles operated from two bases—Whether two licences required.]—FERGUSON *v.* WESTERN S. M. T. CO., LTD., No. 1622, *ante*.

1655. Notice of objection—Contents.]—NEWBURY & DISTRICT MOTOR SERVICES, LTD. *v.* STEPHENS & HEWETT, No. 1494, *ante*.

1656. —— ——.]—It is imperative that notices of objection follow the form in Sched. III. of the Goods Vehicles (Licences & Prohibitions) Provisional Regulations, 1934 (now replaced by the Goods Vehicles (Licences & Prohibitions) Regulations, 1936). If an objector does not follow that form his objection is invalid.

Objectors who were road hauliers gave no particulars of their transport facilities in the notices of objection, nor did they state what licences they held:—*Held:* the notices of objection were invalid, consequently the licensing authority was not bound to take them into consideration & the objectors had no right of appeal.

Where an appct. proposes to carry throughout Great Britain objectors have complied with the form if they describe the "district" in which they already provide transport as "Northern Scotland."—AITCHISON *v.* GALBRAITH (1936), 25 Ry. & Can. Tr. Cas. 3.

1657. Authority to carry specified goods from future date.]—(1) A licensing authority has no power to permit the carrying of certain goods only as from a future date.

(2) Under sect. 15 (12) (*b*) of the Act the Appeal Tribunal has power to award to an unsuccessful party the costs of any issue on which he has succeeded.—GRAY & DIXON *v.* LONDON, MIDLAND & SCOTTISH RY. CO. & PALIN (1936), 24 Ry. & Can. Tr. Cas. 234.

1658. Contract licence—When necessary.]—PAYNE *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & GREAT WESTERN RY. Cos., No. 1522, *ante*.

1659. —— ——.]—On an application for an A contract licence under sect. 7 (1) of Road & Rail Traffic Act, 1933, it is not necessary to prove that the other party to the contract is under any obligation to employ the appct.

Such a licence must be granted if it is proved: (*a*) that there is a contract between appct. & another party; (*b*) that the other party is a person carrying on a business (not being a business of carrying or arranging for the carrying of goods); (*c*) that the contract is (1) for the carriage of goods for or in connection with the business carried on by the other party, & (2) covers a continuous period of not less than a year; (*d*) that the vehicles to be used by appct. under the licence will be used by him exclusively for the purposes of the contract.—CLARK'S APPEAL (1937), 26 Ry. & Can. Tr. Cas. 61.

1660. —— ——.]—Hauliers holding A licences in a number of traffic areas carried goods for the A. Co. & the B. Co., both subsidiary cos. of the X. Co. They distributed the B. Co.'s goods from Birmingham. The A. Co. reorganised their transport arrangements with the result that their goods fell also to be distributed from Birmingham instead of from Liverpool as previously. The hauliers had insufficient vehicles specified in their West Midland licence to cope with the resultant increase of work at Birmingham. They therefore used three vehicles specified in their Metropolitan licence solely to distribute from Birmingham the goods of the A. Co. & the B. Co. The hauliers applied for a new licence in the West Midland area to authorise both the vehicles hitherto specified in their West Midland licence & also the three additional vehicles. If the application were granted they proposed to have the three vehicles deleted from their Metropolitan licence.

Colonel Redman refused to add the three vehicles on the ground that, in virtue of sects. 7 (1) & 12 of the Act, a contract could be made between the hauliers & the X. Co. (the holding co.) whereby the hauliers could contract to carry the goods of the A. Co. & the B. Co., & that a contract A licence was therefore appropriate:—*Held:* reversing Colonel Redman, sect. 12 of the Act had no application to this case, & a contract between an appct. & a person carrying on a trade or business within the meaning of sect. 7 (1) must be a contract for the carriage of the goods of that person & could not be a contract to carry the goods of more than one person. The fact that the "persons" here stood in the relation of holding co. & subsidiary co. was immaterial.

Observations upon the area of normal user being described as "the whole of England & Wales."—METROPOLITAN TRANSPORT SUPPLY CO., LTD. *v.* GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. (1937), 26 Ry. & Can. Tr. Cas. 147.

1661. Suitable facilities—What must be considered.]—When considering the suitability of existing railway facilities some regard must be had to the facilities for collection & delivery. Facilities which might otherwise be suitable may be shown to be unsuitable if there are no reasonable facilities available for carrying the fruit to or from the terminal railway stations.—LEWIS *v.* SOUTHERN RY. CO. (1936), 25 Ry. & Can. Tr. Cas. 18.

1662. —— ——.]—(1) Transport facilities which make no provision for the speedy delivery

of traffic in respect of which there is real urgency with regard to delivery are not suitable facilities for such traffic.

(2) Before refusing an application for an A licence on the ground that the application should have been for a contract licence the licensing authority should be completely satisfied that vehicles of the appct. have been &/or will be used exclusively for carrying the traffic of a particular person.—MILLER & Co. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., GREAT WESTERN RY. CO., COAST LINES, LTD., & BOWKER (1937), 25 Ry. & Can. Tr. Cas. 364.

SECT. 2.—APPEALS.

1663. When appeal lies—Appeal from agreed condition.]—(1) The Appeal Tribunal will not entertain an appeal from a condition to which the applt. himself has agreed.

(2) The time for lodging a notice of appeal is limited by regulations made by the Minister of Transport. The Appeal Tribunal has no power to extend that time. Consequently, that time having elapsed, an amendment of the notice of appeal will not be allowed.—*Re* EDWARDS' APPEAL (1934), 22 Ry. & Can. Tr. Cas. 1.

1664. —— Effect of right to apply to licensing authority for variation.]—(1) An applt. who did not realise the importance of proving his case before the comr. was allowed to call new evidence on appeal.

(2) The fact that an appct. who is dissatisfied with the conditions attached to his licence may be entitled to apply to the licensing authority to vary the conditions does not affect his right of appeal to the Appeal Tribunal.—*Re* TAYLOR'S APPEAL (1934), 22 Ry. & Can. Tr. Cas. 32.

Annotation :—As to (1) **Consd.** Burgoine & Sons *v.* Four Amalgamated Ry. Cos. (1934), 22 Ry. & Can. Tr. Cas. 77. **Refd.** Sheraton *v.* United Automobile Services, Ltd. (1936), 25 Ry. & Can. Tr. Cas. 83.

1665. —— Application for variation of licence—What amounts to.]—An application to a licensing authority for a dispensation from the requirements of sect. 16 & regulations made thereunder is not an application for a variation of a licence within sect. 15 (1) (*a*), & the Appeal Tribunal have no jurisdiction to entertain an appeal from the refusal of a licensing authority to grant such a dispensation.—*Re* COLES' APPEAL (1934), 22 Ry. & Can. Tr. Cas. 129.

1666. —— Application for claimed tonnage—Vehicle properly included.]—STUBBS (LEONARD) & Co., LTD. *v.* JACKSON & ELLIS, No. 1508, *ante*.

1667. —— —— Doubt as to ownership of vehicle.]—SOUTHERN COUNTIES ROAD TRANSPORT Co., LTD. *v.* HAZELL, No. 1643, *ante*.

1668. —— Untrue evidence given.]—LONDON, MIDLAND & SCOTTISH RY. Co. *v.* ABRAM, No. 1644, *ante*.

1669. Who may appeal—Person aggrieved—Objector.]—The word "thereon" in Road & Rail Traffic Act, 1933 (c. 53), s. 15 (1) (*b*), refers to "application" & not to "objection." Consequently an objector who is not aggrieved by the decision on the application but is aggrieved by the refusal of the licensing authority to entertain his objection has no right of appeal.—LUCAS *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1934), 22 Ry. & Can. Tr. Cas. 25.

1670. —— —— ——.]—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* FLETCHER, No. 1577, *ante*.

1671. ——.]—WATTS *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1565, *ante*.

1672. Notice of appeal—Time for—Extension.]—*Re* EDWARDS' APPEAL, No. 1663, *ante*.

1673. —— —— ——.]—By Art. 23 (1) of the Goods Vehicles (Licences & Prohibitions) Regulations, 1936, appeals to the Appeals Tribunal in the case of notifiable applications shall be lodged at the Tribunal's office not later that one month after the date of the publication in *Applications & Decisions* of the decision appealed against :—*Held :* this provision is peremptory, & the Appeal Tribunal has no power to enlarge the time for lodging an appeal.—MIDGLEY *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1938), 26 Ry. & Can. Tr. Cas. 218.

1674. —— —— **How calculated.**]—For the purpose of calculating the time for lodging an appeal against a decision on an application to which the provisions of sect. 11 of the Act do not apply the date of the decision is the day on which the comr. gives his decision, not the day on which the appct. first receives written notice of the decision.—*Re* HUXLEY'S APPEAL (1934), 22 Ry. & Can. Tr. Cas. 35.

Annotation :—**Refd.** Southern Counties Road Transport Co. *v.* Hazell (1936), 24 Ry. & Can. Tr. Cas. 312.

1675. —— **Amendment—Jurisdiction of Appeal Tribunal.**]—LONDON, MIDLAND & SCOTTISH, GREAT WESTERN & LONDON & NORTH EASTERN RY. COS. *v.* MOTOR CARRIERS (LIVERPOOL), LTD., No. 1631, *ante*.

1676. Right of audience—Officer of association—Meaning of "association."]—The Appeal Tribunal certified an assocn. to be "an assocn. representing a substantial number of persons interested in or likely to be affected by the decisions of the Tribunal," & accordingly granted right of audience to an officer of the assocn. under Road & Rail Traffic Act, 1933 (Appeal Tribunal) Rules, 1934, r. 11 (2) (*a*). It was subsequently ascertained that the name of the assocn. had been registered under Registration of Business Names Act, 1916 (c. 58), as the business name of the secretary of the assocn. ; that the assocn. had no banking account separate from the private banking account of the secretary ; & that although by the rules of the assocn. its government was vested in an executive committee of whom a president was to be a member, no president had in fact been elected. The assocn. had 182 members :—*Held :* the assocn. was not an assocn. in the ordinary meaning of the word. The body of persons whom the secretary represented was not an assocn. or body of persons within rule 11 (2) (*a*).—*Re* SUSSEX CARRIERS' ASSOCN. (1935), 24 Ry. & Can. Tr. Cas. 64.

1677. Power to hear counsel.]—GREAT WESTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SMART, No. 1518, *ante*.

1678. Evidence—Fresh evidence—When admissible.]—An appct. neglected *per incuriam*

to call before the licensing authority evidence material to his application. The Appeal Tribunal, being of opinion that if the evidence had been called the application would have been granted, allowed the evidence to be called on appeal.—DRINKWATER *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 19.

1679. —— —— ——.]—*Re* FRY'S APPEAL, No. 1476, *ante*.

1680. —— —— ——.]—*Re* TAYLOR'S APPEAL, No. 1664, *ante*.

1681. —— —— ——.]—PLENTY *v.* GREAT WESTERN RY. CO., No. 1582, *ante*.

1682. —— —— ——.]—CHARMAN *v.* SOUTHERN RY. CO., No. 1701, *post*.

1683. —— —— ——.]—STEPHENSON *v.* SAGAR & SON, No. 1488, *ante*.

1684. —— —— ——.]—SOUTHERN RY. CO. *v.* HARDY & SON, LTD., HARDY & SON, LTD. *v.* SOUTHERN RY. CO., No. 1551, *ante*.

1685. —— —— ——.]—Mr. Chamberlain allowed an objection that traffic facilities in the district were in excess of requirements upon proof that the objector had four cars of which only one was in use because there was no work for the other three. On appeal, the Appeal Tribunal admitted new evidence to show that these three cars were out of use because they were mechanically unfit, but refused to admit new evidence to show that since the decision of the Comr. the traffic needs of the district had been increased by the reopening of certain quarries & the decision of the county council to proceed with a large scheme of road reconstruction. The matter was referred back to the Comr. for further inquiry.—JONES *v.* ROBERTS & OWEN (1935), 24 Ry. & Can. Tr. Cas. 205.

1686. —— —— ——.]—SHERATON *v.* UNITED AUTOMOBILE SERVICES, LTD., No. 1627, *ante*.

1687. —— —— **Reference back for re-hearing.**]—Applt. applied for & was refused a B licence to carry milk within fifty miles of Nantwich. On appeal to the Appeal Tribunal he endeavoured to show that he was entitled to a B licence to carry milk from places within ten miles of Wrenbury to Manchester & other goods back from Manchester to those places. The Appeal Tribunal referred the case back to the licensing authority for re-hearing.—HARDEN *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 23 Ry. & Can. Tr. Cas. 71.

1688. —— —— **Evidence of applicant.**]—An appct. carrying on a hardware & scrap business applied for a B licence to enable him to carry return loads from Leeds to Glasgow for hire or reward. At the inquiry his solr. stated that the return loads were provided by appct.'s own customers, but appct. himself stated in cross-examination that he obtained these loads from clearing-houses. Mr. Henderson accepted the solr.'s statement & granted the application. In these circumstances the Appeal Tribunal called appct. to give evidence before them. It then appeared that the return loads were carried only for one or other of two clearing-houses: —*Held:* the case was governed by the decision in *Barratt's Case*, & since no exceptional circumstances existed the application must be refused. Appeal allowed. LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS. *v.* SHEVILLE (1936), 25 Ry. & Can. Tr. Cas. 45.

1689. —— **Letters—When admissible.**]—CHARMAN *v.* SOUTHERN RY. CO., No. 1701, *post*.

1690. —— —— ——.]—An appct. for an A licence proved that he was carrying for a substantial number of customers, & tendered in evidence a number of letters from customers supporting his application:—*Held:* he had not made out a *primâ facie* case. The fact that proposed facilities would be a convenience to some customers is not evidence to support a *primâ facie* case. Nor do letters showing no more than willingness to employ constitute a *primâ facie* case.—LONDON & NORTH EASTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO. *v.* GIMSON (1936), 24 Ry. & Can. Tr. Cas. 82.

1691. —— —— ——.]—LONDON & NORTH EASTERN RY. CO. *v.* ALLEN, No. 1542, *ante*.

1692. —— **Purposes for which vehicles to be used.**]—AULD *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1935), 22 Ry. & Can. Tr. Cas. 289.

Annotations:—**Refd.** Ferguson *v.* Western S. M. T. Co. (1935), 24 Ry. & Can. Tr. Cas. 72; Southern Counties Road Transport Co. *v.* Hazell (1936), 24 Ry. & Can. Tr. Cas. 312.

1693. —— **Illegal work done.**]—BARKER *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1623, *ante*.

1694. Decision based on erroneous grounds—Right of respondent.]—ALLATT *v.* LONDON & NORTH EASTERN & LONDON, MIDLAND & SCOTTISH RY. COS., No. 1505, *ante*.

1695. Decision runs from date of decision appealed from.]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* LYNER, LONDON & NORTH EASTERN RY. CO. *v.* LYNER, No. 1524, *ante*.

1696. Powers of appellant.]—Resp. to an appeal may not challenge that part of the licensing authority's decision which is not appealed from.—AITKIN *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1936), 24 Ry. & Can. Tr. Cas. 321.

1697. ——.]—(1) *Held:* on an application by resps. to strike out applts.' grounds of appeal, on an appeal by an objector, (1) the Appeal Tribunal has jurisdiction to review a licensing authority's findings of fact; (2) an applt. may raise any point relevant to the issues as to whether suitable transport facilities exist or are in excess of requirements; (3) an applt. may argue that a licensing authority wrongly exercised his discretion because it had been established before him that suitable transport facilities existed or were in excess of requirements. In this case the grounds of appeal sufficiently indicated a case which applts. were entitled to make; (4) it is doubtful whether the Appeal Tribunal has power to strike out a ground of appeal.

(5) A haulage co. operating twenty-four vehicles under an A licence, claimed tonnage, applied for the authorisation of extra vehicles:—*Held:* having regard to the size of the fleet, one extra vehicle should be authorised for maintenance purposes. As to other extra vehicles, the evidence was insufficient. The failure of a pooling scheme is not evidence of need for additional vehicles. —FOUR AMALGAMATED RY. COS. *v.* FOSTER & CO., LTD. (1936), 24 Ry. & Can. Tr. Cas. 265.

1698. Jurisdiction of Appeal Tribunal—To dismiss appeal—Non-appearance of applicant.]—*Re* SMITH'S APPEAL (1934), 22 Ry. & Can. Tr. Cas. 15.

1699. —— To review findings of fact.]—POWER *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1545, *ante*.

1700. —— ——.]—FOUR AMALGAMATED RY COS. *v.* FOSTER & CO., LTD., No. 1697, *ante*.

1701. —— To rectify condition—Mistake of applicant.]—(1) Where an appct. agreed to conditions attached to a B licence under mistake, the Appeal Tribunal will rectify the mistake, & will make all such consequential amendments to the conditions as may be reasonable.

(2) In proper cases letters will be admitted by the tribunal as evidence of the facts stated in them, though the authors of the letters are not called as witnesses nor cross-examined, but it is more satisfactory that facts should be proved by witnesses.

(3) Where a confusion arose at the public inquiry owing to two names having the same pronunciation the Appeal Tribunal admitted new evidence to explain the confusion.

(4) The Appeal Tribunal has no jurisdiction to order a comr. to enlarge the area for which a B licence is granted beyond the area mentioned in the published application.—CHARMAN *v.* SOUTHERN RY. CO. (1934), 22 Ry. & Can. Tr. Cas. 116.

Annotations :—As to (2) **Consd.** London & North Eastern Ry. Co. & London, Midland & Scottish Ry. Co. *v.* Gimson (1936), 24 Ry. & Can. Tr. Cas. 82. **Refd.** Hawker, Ltd. *v.* Great Western & London, Midland & Scottish Ry. Co. (1935), 23 Ry. & Can. Tr. Cas. 23.

1702. —— To order Commissioner to enlarge area of licence.]—CHARMAN *v.* SOUTHERN RY. CO., No. 1701, *ante*.

1703. —— To issue B licence—Application for A licence.]—It is not competent for the Appeal Tribunal to make an order on the licensing authority to issue a B licence when the application was for an A licence. Where an appct. intends to use vehicles normally based upon a number of different bases he must prove his case in respect of each base ; general evidence as to his operations over the whole traffic area is not sufficient.—LONDON & NORTH EASTERN RY. CO. *v.* ROBSON (GATESHEAD), LTD. (1935), 22 Ry. & Can. Tr. Cas. 233.

Annotations :—**Refd.** Thornley & Son *v.* London, Midland & Scottish Ry. Co. (1935), 22 Ry. & Can. Tr. Cas. 249. Four Amalgamated Ry. Cos. *v.* Foster & Co. (1936), 24 Ry. & Can. Tr. Cas. 265.

1704. —— Where doubt as to jurisdiction of Commissioner.]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* WOODRUFF, No. 1550, *ante*.

1705. —— To strike out grounds of appeal.]—FOUR AMALGAMATED RY. COS. *v.* FOSTER & CO., LTD., No. 1697, *ante*.

1706. —— Extent.]—GREAT WESTERN & LONDON MIDLAND & SCOTTISH RY. COS. *v.* SMART, No. 1518, *ante*.

1707. —— ——.]—The Appeal Tribunal allowed an appeal by an appct. to whom the licensing authority had refused a B licence, upon a ground neither raised in the notice of appeal nor argued before them. Special order as to costs.—MARRIS *v.* LONDON, MIDLAND & SCOTTISH & LONDON & NORTH EASTERN RY. COS. (1937), 25 Ry. & Can. Tr. Cas. 248.

1708. —— Application for variation—Licence expired before hearing.]—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* LYNER, LONDON & NORTH EASTERN RY. CO. *v.* LYNER, No. 1524, *ante*.

1709. —— To refer to facts in previous appeal.]—J. & E. TRANSPORT, LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 1527, *ante*.

1710. Costs.]—GRAY & DIXON *v.* LONDON, MIDLAND & SCOTTISH RY. CO. & PALIN, No. 1657, *ante*.

1711. ——.]—GERRARDS TRANSPORT, LTD. *v.* NORMAN E. BOX, LTD., No. 1624, *ante*.

1712. —— Scottish practice.]—The Ct. of Session, in the exercise of its *nobile officium*, ordered the extractor of the ct. to issue an extract of an order for costs made by Road & Rail Traffic Appeal Tribunal sitting in Scotland, in the same manner as if it were a decree of the Ct. of Session.—*Re* LONDON, MIDLAND & SCOTTISH RY. CO. (1937), 25 Ry. & Can. Tr Cas. 257.

CASE, ACTION ON THE.

See ACTION ; BAILMENT.

CASE STATED.

See ARBITRATION ; MAGISTRATES.

CATCHING BARGAIN.

See FRAUDULENT AND VOIDABLE CONVEYANCES.

CATTLE.

See ANIMALS ; COMMONS ; DISTRESS ; HIGHWAYS ; MARKETS.

CATTLEGATE.

See COMMONS.

CAVEAT.

See ADMIRALTY ; EXECUTORS.

CAVEAT EMPTOR.

See SALE OF GOODS; SALE OF LAND.

CELLAR.

See PUBLIC HEALTH; RATES.

CHARITIES.

Part I.—Charitable Purposes.

1. *Add. Annotations :—As to* (1) **Consd.** Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460. **Follid.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Refd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651 ; Jackson *v.* Voss, [1923] 2 K. B. 357 ; Brighton College *v.* Marriott (1924), 69 Sol. Jo. 229 ; I. R. Comrs. *v.* Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154 ; Scottish Woollen Technical College, Galashiels *v.* I. R. Comrs. (1926), 11 Tax Cas. 139 ; Adamson *v.* Melbourne & Metropolitan Board of Works, [1929] A. C. 142. *As to* (2) **Consd.** A.-G. *v.* National Provincial Bank, [1924] A. C. 262 ; Verge *v.* Somerville, [1924] A. C. 496 ; Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121 ; R. *v.* Income Tax Special Comrs., *Ex p.* Headmasters' Conference, Same *v.* Same, *Ex p.* Incorporated Assocn. of Preparatory Schools (1925), 41 T. L. R. 651 ; Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460 ; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59. **Apld.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578. **Distd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557 ; Hunter (Sir G. B.) (1922) "C" Trust, Trustees *v.* I. R. Comrs. (1929), 14 Tax Cas. 427. **Consd.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643. **Distd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465. **Consd.** Master Mariners, Honourable Co. of, *v.* I. R. Comrs. (1932), 17 Tax Cas. 298 ; Peterborough Royal Foxhound Show Society *v.* I. R. Comrs., [1936] 1 All E. R. 813 ; Scottish Flying Club, Ltd. *v.* I. R. Comrs. (1935), 20 Tax Cas. 1. **Refd.** Barber *v.* Chudley (1922), 92 L. J. K. B. 711 ; R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651 ; *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237 ; *Re* Ludlow, Bence-Jones *v.* A.-G. (1923), 93 L. J. Ch. 30 ; *Re* Shakespeare Memorial Trust, Lytton *v.* A.-G., [1923] 2 Ch. 398 ; *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362 ; I. R. Comrs. *v.* Falkirk Temperance Café Trust (1926), 11 Tax Cas. 353 ; I. R. Comrs. *v.* Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154 ; I. R. Comrs. *v.* Peeblesshire Nursing Assocn. (1926), 11 Tax Cas. 335 ; Scottish Woollen Technical College, Galashiels *v.* I. R. Comrs. (1926), 11 Tax Cas. 139 ; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691 ; Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs., [1930] 1 K. B. 593 ; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153 ; *Re* Spence's Estate, Barclays Bank, Ltd. *v.* Stockton-on-Tees Corpn., [1937] 3 All E. R. 684 ; *Re* Ashton, Westminster Bank *v.* Farley, [1938] Ch. 482.

1a. ——.]—VERGE *v.* SOMERVILLE, No. 199b, *post.*

2. *Add. Annotations :*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258 ; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

3. *Add. Annotation :*—**Refd.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

3a. —— **Motive immaterial.**]—(1) Motive is immaterial in considering whether a bequest is charitable.

(2) A gift to provide a stained glass window in a church is a good charitable gift even though the motive may be said to be neither to beautify the church nor benefit the parishioners, but merely to perpetuate the memory of testatrix & her relatives.

(3) Where a gift is made for a particular charitable purpose which is sufficiently provided for without the gift, the gift must be applied *cy près.*—*Re* KING, KERR *v.* BRADLEY, [1923] 1 Ch. 243 ; 92 L. J. Ch. 292 ; 128 L. T. 790 ; 67 Sol. Jo. 313.

Annotation :—As to (3) **Follid.** *Re* Robertson, Colin *v.* Chamberlin, [1930] 2 Ch. 71.

4a. —— —— **Question for court.**]—To be valid a charitable bequest must be for the public benefit, & the trust must be capable of being administered & controlled by the ct. The opinion of the donor of a gift or the creator of a trust that the gift or trust is for the public benefit does not make it so, the matter is one to be determined by the ct. on the evidence before it.—*Re* HUMMELTENBERG, BEATTY *v.* LONDON SPIRITUALISTIC ALLIANCE, [1923] 1 Ch. 237 ; 92 L. J. Ch. 326 ; 129 L. T. 124 ; 39 T. L. R. 203 ; 67 Sol. Jo. 313.

Annotations :—**Consd.** I. R. Comrs. *v.* Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27. **Apprvd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

4b. —— ——.]—*Re* GROVE-GRADY, PLOWDEN *v.* LAWRENCE, No. 208a, *post.*

12a. —— —— —— **Beneficiaries formerly helped by testator.**]—*Re* SHEPHERD, SMITHEM *v.* SHEPHERD (1921), 152 L. T. Jo. 18.

21a. —— **Widows with children dependent on them—Valid.**]—A testator bequeathed a sum of money to trustees upon trust to invest it & to use the income of the investments "in providing annual allowances of forty

---

PART I. SECT. 1.

1 vi. —— *Estate Duty Assessment Act,* 1914, *s.* 8 (5).]—The word "charitable" in the above sect. is to be construed in its legal & not its popular sense.—CHESTERMAN *v.* FEDERAL COMR. OF TAXATION, [1926] A. C. 128 ; 95 L. J. P. C. 39 ; 134 L. T. 360 ; 42 T. L. R. 121. —**AUS.**

3 ii. —— *Purpose not source.*]—In determining whether a gift to an assocn. is a gift for charitable purposes, the ct. may inquire into the objects of the assocn. & if these are found to be charitable within Stat. Eliz. the ct. may hold the gift to be for charitable purposes.—PERPETUAL TRUSTEE CO., LTD. *v.* SHELLEY (1921), 21 S. R. N. S. W. 426 ; 38 N. S. W. W. N. 132. —**AUS.**

sc. *India—Application of English law.*]—In matters relating to public charitable trusts, the cts. in India would be governed by principles & rules of English law & practice on the subject, unless the English law or practice is inconsistent with the rules & practice of the Indian cts.—SHIVRAMDAS *v.* NERURKAR, I. L. R., [1937] Bom. 843.—**IND.**

pounds each to widows or spinsters in England whose income otherwise shall not be less than eighty or more than one hundred & twenty pounds per annum. . . ." The provision continued: " . . . preference shall be given to widows with young children dependent on them. . . .":—*Held:* the provision was in substance for widows of small means with young children dependent on them & created a valid charitable trust. —*Re* DE CARTERET, FORSTER *v.* DE CARTERET, [1933] 1 Ch. 103; 102 L. J. Ch. 52 148 L. T. 188; 48 T. L. R. 555; 76 Sol. Jo. 474.

22. *Add. Annotation:*—**Folld.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

23. *Add. Annotation:*—**Refd.** Verge *v.* Somerville, [1924] A. C. 496.

23a. —— —— **Trade union certified to be war charity—Necessity for registration under War Charities Act, 1916 (c. 43).**]—The National League of the Blind of Great Britain & Ireland, a registered trade union whose funds were derived from subscriptions of members, & gifts by the public, was certified by the Charity Comrs. as a charity for the blind, but had not been registered as a charity under the above Act, nor under Blind Persons Act, 1920 (c. 49). Applt. having been convicted of having solicited & obtained money from members of the public:—*Held:* the League was a charity as well as a trade union, & required to be registered under both those Acts, & the conviction must be affirmed.—BARBER *v.* CHUDLEY (1922), 92 L. J. K. B. 711; 128 L. T. 766; 87 J. P. 69; 21 L. G. R. 114, D. C.

23b. —— **"Oldest respectable inhabitants"—Valid.**]—Testator gave the income to be derived from all his securities to A., for her life, & after her decease to "the oldest respectable inhabitants in G. to the amount of 5*s.* per week each":—*Held:* the amount of the gift implied poverty, &, coupled with the use of the word "oldest," implying age, was sufficient to render the gift a good charitable bequest.—*Re* LUCAS, RHYS *v.* A.-G., [1922] 2 Ch. 52; 91 L. J. Ch. 480; 127 L. T. 272; 66 Sol. Jo. 368.

Annotations:—**Consd.** *Re* Forster, Gellatly *v.* Palmer, [1938] 3 All E. R. 767. **Refd.** *Re* Roadley, Iveson *v.* Wakefield, [1930] 1 Ch. 524.

23c. —— **Disabled soldiers of former enemy country—Valid.**]—Testator devised & bequeathed the residue of his property "to the German Govt. for the time being for the benefit of its soldiers disabled in the late war . . . in the event of this . . . being for any reason held to be void, then I give devise & bequeath the whole of such residue to General Smuts of the Transvaal, upon trust to retain thereout for himself absolutely the sum of £1,000 . . . & upon trust as to the residue to apply the same at his discretion & in such manner as he may think fit for the benefit of any disabled Boers who have suffered through the South African War. . . ." The German Govt. had notified its willingness to accept the legacy if it should be held to be valid; General Smuts had also expressed his willingness to accept the alternative trust should it become effective. Upon a summons asking the ct. to determine whether the devise & bequest to the German Govt. was void for uncertainty or otherwise: wise:—*Held:* (1) the gift did not fail for uncertainty; (2) there was no objection to the gift from the point of view of public policy; (3) the trustee being abroad, the ct. had no power to direct a scheme, & in such cases the practice was to hand over the fund to be applied according to the trusts of the will.

(4) A scheme directed by this ct. in relation to gifts for charitable purposes is not necessarily or, I think, generally, a scheme for the application of the fund *cy-près* (MAUGHAM, J.).—*Re* ROBINSON, BESANT *v.* GERMAN REICH, [1931] 2 Ch. 122; 100 L. J. Ch. 321; 145 L. T. 254; 47 T. L. R. 264.

Annotations:—*As to* (2) **Consd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465. *Generally*, **Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148; I. R. Comrs. *v.* Gull, [1937] 4 All E. R. 290.

27. *Add. Annotation:*—**Consd.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

27a. —— ——.]—Testatrix gave the income of certain shares in a public co. for the education of children of employees of the co. & gave the income of further shares in the co. for the benefit of incapacitated employees, the income in each case to be applied by the governors of the co., in their discretion:—*Held:* both gifts were good charitable bequests, the first being for promoting education & the second for the alleviation of poverty.—*Re* RAYNER, CLOUTMAN *v.* REGNART (1920), 89 L. J. Ch. 369; 122 L. T. 577; 84 J. P. 61.

28. *Add. Annotation:*—*As to* (1) **Apld.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

29. *Add. Annotation:*—**Consd.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

30. *Add. Annotation:*—**Consd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

30a. **Infirm, sick & aged priests.**]—The testatrix bequeathed £200 payable annually out of the income of her residuary estate to the treasurer of a society for the relief of infirm, sick & aged Roman Catholic secular priests in the C. diocese. It was contended that this was a good charitable gift, on the grounds (i) that it was a trust for the relief of poverty, & (ii) that it was a trust for the advancement of religion:—*Held:* (1) the funds were not clothed with a trust for the relief of poverty;

PART I. SECT. 2, SUB-SECT. 1.

b l. —— *Indigent gentlewomen.*]—*Held:* a true charitable bequest.—*Re* CAMPBELL, PEACOCK *v.* EWEN, [1930] N. Z. L. R. 713.—**N.Z.**

sb. "*Wounded & disabled soldiers*" —"*Home for wounded sailors.*"]—Testatrix, by a will executed in 1921, directed her trustees to pay out of the moneys representing her net residuary estate (*inter alia*) "To the Wounded & Disabled Soldiers of New Zealand the sum of four hundred pounds," & "To a home for Wounded Sailors of the British Empire the sum of one hundred pounds." (All parties agreed that the latter was a good charitable gift):—*Held:* as the gift to "the Wounded & Disabled Soldiers of New Zealand" was not to individuals but to a section of the public, it was a charitable gift; &, although it was a gift direct, the absence of anything directly constituting a trust was immaterial as the ct. could constitute the trust; the gifts to "a home for Wounded Sailors of the British Empire" disclosed a general intention in favour of charity, & did not fail because the object of such gift might be uncertain.—*Re* SIMMONDS, PUBLIC TRUSTEE *v.* STONE, [1933] N. Z. L. R. Supp. 172.—**N.Z.**

(2) they were clothed with a trust for the advancement of religion.—*Re* FORSTER, GELLATLY *v.* PALMER, [1938] 3 All E. R. 767; 54 T. L. R. 1086; 82 Sol. Jo. 647.

34a. —— **Distributing coal & making loans to poor & deserving inhabitants.**]—Testator, a native of F., a small village, bequeathed his residuary estate to trustees upon trust to set aside £800 as a "Coal Fund," the income whereof was to be used for the purchase of coal to be distributed among such poor & deserving inhabitants of F. as a committee should think fit, & to hold the rest of his residuary estate as a "Loans Fund" & to apply the capital & income thereof, under the direction of the committee, "in making loans to poor & deserving inhabitants of the parish of F. in manner hereinafter provided." No loan was to exceed £100, repayable within nine years at longest. No interest was to be charged & no borrower to have more than one loan. Only one-sixth part of the fund was to be lent in any one year, & the borrowers were to be inhabitants or residents of F. not above the age of thirty-five years. Testator directed that "all surplus money forming part of or arising from the 'Loans Fund' over & above £500 & not required for loans shall be invested by the trustees under the direction of the committee, but all investments purchased shall be from time to time sold for the purpose of advancing the produce thereof in loans if & when required":—*Held:* (1) the will displayed a general charitable intention & contained an immediate & effective gift of the whole of the residue to charity, displacing the claim of the next of kin; (2) the question of accumulation beyond the period allowed by law did not arise, the possibility of a surplus hereafter not impairing the validity of the immediate gift to charity; (3) the doctrine of *cy-près* could be at once applied, if necessary, to any surplus income after the period allowed by law for accumulation had expired.—*Re* MONK, GIFFEN *v.* WEDD, [1927] 2 Ch. 197; 96 L. J. Ch. 296; 137 L. T. 4; 43 T. L. R. 256, C. A.

Annotation:—As to (1) **Refd.** I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R. 270.

36. *Add. Annotation:*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

42a. —— —— **Maintenance of patients from particular parish.**]—A testator, by his will, gave a sum of £3,000 to his trustees upon trust for investment & directed that the yearly income thereof should be applied "in payment of the expenses & maintenance of patients from the parishes of" S. & S. to & at two named hospitals or either of them:—*Held:* the gift was a trust for the relief of impotent & poor persons within the purposes set out in the preamble to the Statute of Elizabeth & was a valid charitable bequest.—*Re* ROADLEY, IVESON *v.* WAKEFIELD, [1930] 1 Ch. 524; 99 L. T. Ch. 232; 144 L. T. 64; 46 T. L. R. 215.

45. *Add. Annotations:*—**Apld.** I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R. 270. **Folld.** *Re* Chaplin, Neame *v.* A.-G. (1932), 76 Sol. Jo. 576; *Re* James, Grenfell *v.* Hamilton (1932), 48 T. L. R. 250. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* De Casteret, Forster *v.* De Carteret, [1933] Ch. 103.

46. *Add. Annotations:*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Apld.** *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

47a. **Nursing home—Persons of moderate means—Gift charitable.**]—Testator made the following gift in his will: "I give & bequeath all the residue & remainder of my estate not otherwise disposed of by this my will to: (a) such institution, society or nursing home, or nursing homes, or similar institutions as assist or provide for persons of moderate means such as clerks, governesses & others who may not be able or eligible to benefit under the National Health Insurance Act, Old Age Pensions, or other Act of a like character to have either surgical operations performed together with medical treatment or medical treatment alone on payment of some moderate contribution; (b) the Royal National Lifeboat Institution; (c) the Lister Institute of Preventive Medicine; (d) & such other funds, charities & institutions as the exors. in their absolute discretion shall think fit; & I direct that such residue shall by divided amongst the legatees named in the paragraphs (a), (b), (c), & (d) lastly hereinbefore contained in such shares & proportions as my trustees shall determine." It was admitted that the objects under (b) & (c) were charitable. On the question whether the residue was validly disposed of by the will or failed in whole or in part for uncertainty:—*Held:* (1) the objects included under paragraph (a) were charitable since the means of the recipients would necessitate their being unable without the bounty of testator to procure the treatment of which they might stand in need; (2) the objects specified under heading (d) being for such indefinite charitable & non-charitable objects as the exors. should think fit were not exclusively charitable, & therefore though a trust for charitable & non-charitable indefinite purposes indiscriminately failed by reason of uncertainty, this trust being of a part of a fund for charitable purposes & another part for non-charitable indefinite purposes the ct. could ascertain what the parts were.—*Re* CLARKE, BRACEY *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION, [1923] 2 Ch. 407; 92 L. J. Ch. 629; 129 L. T. 310; 39 T. L. R. 433; 67 Sol. Jo. 680.

Annotation:—As to (1) **Apld.** *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

47b. **"Home of Rest"—Lady teachers—Valid.**]—*Re* ESTLIN, PRICHARD *v.* THOMAS, No. 45, *ante.*

47c. —— **Sisters of a Community & Clergy—Valid.**]—Testatrix devised a freehold house to her trustees in trust to establish a Home of Rest for the Sisters of a Community, for the Clergy of the Diocese of Truro, & such persons as the Mother Superior of the Community should nominate & appoint, & bequeathed £6,000, the interest of which should be applied to repair the house & maintain & support the inmates. The Sisters of the Community were engaged on charitable work & their individual incomes were pooled. It was doubtful whether it was practicable to carry on the Home of Rest with the resources available:—*Held:* (1) the devise & bequest were

a good charitable trust; (2) the Sisters & the Clergy were good objects of a charity; (3) the Mother Superior should only appoint persons who were suitable objects of a charity, & to do otherwise would be a breach of trust; (4) there should be an inquiry in Chambers whether it would be practicable now or at any future time to establish the Home of Rest, & if so to settle a scheme; (5) & if it was found not practicable the question must be determined whether the trust failed or should be applied *cy-près*.—*Re* JAMES, GRENFELL *v.* HAMILTON, [1932] 2 Ch. 25; 101 L. J. Ch. 265; 146 L. T. 528; 48 T. L. R. 250; 76 Sol. Jo. 146.

Annotation:—As to (1) **Follid.** *Re* Chaplin, Neame *v.* A.-G., 76 Sol. Jo. 576.

47d. —— **For means of physical & mental recuperation—Valid.**]—Testator devised & bequeathed to his trustees a freehold house, its contents, & funds representing the net residue of his estate upon trust to establish & found a charity "to provide a Home of Rest that shall afford the means of physical &/or mental recuperation to persons in need of rest by reason of the stress & strain caused or partly caused by the conditions in which they ordinarily live &/or work." The same clause provided that the trustees should apply to the ct. or the Charity Comrs. for a scheme in respect of the charity & also specified testator's further wishes with regard to the charity, but provided that if the ct., the Charity Comrs., or the trustees considered those wishes in any respects impracticable or difficult to realise, in those respects they were not to be regarded as binding on or fettering the discretion of the ct. the Charity Comrs., or the trustees in the provision or alteration of a scheme. One of those wishes, expressed also in the same clause, was that in considering the suitability of a candidate for admission to the home the candidate's financial position should not be taken into account; another was that persons admitted might be required to pay according to their means for board, lodging & other benefits &, where reasonably possible, for medical attendance & treatment, for which, however, the funds of the home might be drawn upon at the trustees' discretion:—*Held:* these were valid charitable trusts.—*Re* CHAPLIN, NEAME *v.* A.-G., [1933] Ch. 115; 102 L. J. Ch. 56; 148 L. T. 190; 76 Sol. Jo. 576.

48. *Add. Annotations:*—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121. **Apld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Consd.** *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383. **Refd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

49. *Add. Annotations:*—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121. **Apld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Refd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

50. *Add. Annotations:—As to* (1) **Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151; *Re* Ashton, Westminster Bank *v.* Farley, [1938] Ch. 482. As to (2) **Consd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271. **Refd.** *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173. *As to* (2) **Refd.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

57. *Add Annotation:—As to* (2) **Apld.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

62. *Add. Annotation:*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

66. *Add. Annotation:*—**Refd.** Brighton College *v.* Marriott (1924), 69 Sol. Jo. 229.

68. *Add. Annotations:*—**Apld.** *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691. **Consd.** Bonar Law Memorial Trust *v.* I. R. Comrs. (1933), 49 T. L. R. 220. **Refd.** I. R. Comrs. *v.* Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27.

68a. **Advancement of Christian principles.**]—H. died on July 12, 1922, having made his will on May 24, 1921, in which he directed that the residue of his estate, about £13,000, should be paid to certain persons to be held by them upon certain trusts as follows: "Whereas I believe in the universality of the Christian religion & that the remedy for the unrest & disorders of the body politic will be found in the application of Christian principles to all human relationships. & whereas I believe the drink traffic to be one of the most subtle & effective forces in preventing the successful application of these principles & I therefore hope & trust that active steps will be taken to minimise & ultimately extinguish this enemy of my country's welfare. Now therefore I declare it to be my wish that my general beneficiaries shall hold the whole of my residuary trust estate together with the income thereof in spreading the Christian principles before mentioned & in aiding all active steps to minimise & extinguish the drink traffic." The public trustee issued a summons to have it determined whether that gift in the will constituted a valid charitable trust or whether the gift so far as given for the minimising of the drink traffic was not charitable & therefore the whole gift was invalid & the next of kin became entitled. The judge held that the gift was a good charitable gift. On appeal by the next of kin:—*Held:* the first recital in the gift was the dominant clause showing that the main object was the advancement of Christian principles with a suggestion as to a particular method by which the advancement could be furthered & that method was subsidiary & ancillary, therefore the whole gift was a good charitable gift, being one for the advancement of Christian principles.

Temperance itself is undoubtedly a charitable object (LAWRENCE, L.J.).—*Re* HOOD,

8a. *Political economy—Furtherance of better relations between employers & employees—Valid.*]—*Re* COBBETT (1921), 17 Tas. L. R. 139.—**AUS.**

PUBLIC TRUSTEE *v.* HOOD, [1931] 1 Ch. 240; 100 L. J. Ch. 115; 143 L. T. 691; 46 T. L. R. 571; 74 Sol. Jo. 549, C. A.

Annotation:—**Consd.** Bonar Law Memorial Trust *v.* I. R. Comrs. (1933), 49 T. L. R. 220.

69. *Add. Annotations:*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271.

70. *Add. Annotations:*—**Distd.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488. **Refd.** *Re* Ward's Estate, Ward *v.* Ward (1937), 81 Sol. Jo. 397.

70a. Zoology—Zoological Society of London—Valid.]—The objects of the Zoological Society of London as defined by its Charter are "the advancement of zoology & animal physiology & the introduction of new & curious subjects of the animal kingdom":—*Held:* the first object was clearly educational & the second object, being on construction merely in aid of the first, was also educational &, *semble*, it was educational in itself. The Society was therefore an educational charity, although in carrying out its objects it was found necessary to provide its pupils with food & amusement. The second object necessitated & involved the upkeep & improvement of Zoological Gardens. Consequently a bequest of money to the Society upon trust to apply the income for "the upkeep & improvement of the Zoological Gardens, & for the objects of the said Society," was a good charitable gift & not void for perpetuity.—*Re* LOPES, BENCE, JONES *v.* ZOOLOGICAL SOCIETY OF LONDON-[1931] 2 Ch. 130; 100 L. J. Ch. 295; 146 L. T. 8; 46 T. L. R. 577; 74 Sol. Jo. 581.

70b. Children's outing.]—*Re* WARD'S ESTATE, WARD *v.* WARD (1937), 81 Sol. Jo. 397.

78a. —— Trust to erect national theatre—& revive English classical drama—Valid.]—(1) The Shakespeare Memorial Trust was established to erect & endow a Shakespeare Memorial National Theatre, with the object of performing Shakespeare's plays, reviving English classical drama, & stimulating the art of acting:—*Held:* the trust was a good charitable trust, on the ground either that the objects were for the advancement of education or that they came within the class of purposes beneficial to the community other than by way of the relief of poverty or the advancement of education or religion referred to by LORD MACNAGHTEN in *Income Tax Special Purposes Comrs.* v. *Pemsel*, [1891] A. C. 531.

(2) At the time when a donation of £70,000 was made to the charity, part of which was applied by the charity in the purchase of a site for the theatre, no annual subscription had been received, but within only nine days of that time the first annual subscription was received. On the subsequent sale of the site, the question arose whether, in those circumstances, the consent of the Charity Comrs. was required to the sale by the charity:—*Held:* notwithstanding that in the inception of its formation it was contemplated that the charity should be supported by annual subscriptions as well as by income from endowment, & notwithstanding that there was an interval of nine days only between the donation & the first of the annual subscriptions, the charity was not at the time when the donation was received a mixed charity within 1853 Act, s. 62; & as it was, therefore, not exempted from the jurisdiction of the Charity Comrs., their consent to the sale by the charity was required.—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., [1923] 2 Ch. 389; 92 L. J. Ch. 551; 130 L. T. 56; 39 T. L. R. 610, 676; 67 Sol. Jo. 809.

73b. Bequest to provide sweets—For all children within parish—Not confined to those attending school—Not valid.]—Testator by his will, after leaving money for prizes for the best-conducted school children in the parish, left money to provide "a pennyworth of sweets each for all boys & girls below the age of fourteen resident within the parish," & he directed that the income of the residue of his estate should be applied in awarding annual prizes to residents for the best-kept gardens & cottages:—*Held:* since there was no provision as to the gift of sweets being confined to children who had attended school, that gift was not charitable & was void, but the gift to provide prizes for the best-kept gardens & cottages was a good charitable gift as it was one for the benefit of the community.—*Re* PLEASANTS, PLEASANTS *v.* A.-G. (1923), 39 T. L. R. 675.

Annotation:—**Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611.

75. *Add. Annotations:*—**Apprvd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121. **Apld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Consd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383. **Refd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

75a. ——.]—Testator by his will, wherein he described himself as a Clerk in Holy Orders, gave all his property to the Public Trustee upon trust for investment. He then directed that the income should be paid to the Bishops of the dioceses of St. D. & B., the rector of L. & the vicars of two other parishes & their successors, together with a layman appointed by the conference of each of those dioceses, whom he nominated administrative trustees. After stating that his wife left her interest in certain property to him to be used as he wished, but for preference for Church purposes, testator, in expressed accordance with her wish, by clause 3, devised all he should die possessed of as a fund for assisting the education of candidates for Holy Orders in the Church of England, to be administered by the trustees. Clause 12 contained the following proviso: "If for any sufficient reason, whether disendowment may or may not have taken place, the trustees decide that the interests of the Church could be better served by any changes in the method of

PART I. SECT. 4, SUB-SECT. 1.

sa. ***Wakf.***]—A trust in the sense of being an obligation attached to the ownership of the property is known to & recognised by the Muhammadan Law. The distinction between an English trust for charitable & religious purposes & a Muhammadan *wakf* is more historical than legal.—SYED SHAH MOHAMAD KAZIM *v.* SYED ABI SAGHIR (1931), I. L. R. 11 Pat. 288.—**IND.**

administering, or even in the object to which the fund is applied under my will, such change or changes may be made with the several consents expressed by a majority of the Diocesan Conferences of B. & St. D." :—*Held:* the objects to which the trustees were, by clause 12, empowered to change the application of the fund were not other than charitable objects & were religious objects in the interests of the Church as an organisation existing for the instruction & edification of the public, & the gift in clause 3 was a valid charitable gift.—*Re* WILLIAMS, PUBLIC TRUSTEE *v.* WILLIAMS, [1927] 2 Ch. 283; 96 L. J. Ch. 449; 137 L. T. 477; 71 Sol. Jo. 605.

Annotation:—**Refd.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

78. *Add. Annotations:*—**Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

78a. —— —— ——.]—A testatrix who died domiciled in England, leaving property in both England & the United States, by her will gave a legacy of 10,000 dollars or the equivalent thereof in sterling at current rates of exchange to the rector & churchwardens or other the governing body of C. Church for the purpose of keeping the burial ground & monument therein to her late husband & herself in good & sufficient repair & for the maintenance of the church & the decorations thereof. Testatrix, who lied in 1925, was buried in C. cemetery immediately adjoining the churchyard, which had long been closed for burials, in the same grave as her husband:—*Held:* a valid charitable bequest, to be divided equally between the vicar & churchwardens of C. Parish Church as the controllers of the church & churchyard & the Borough Council as managers & owners of the cemetery.—*Re* EIGHMIE, COLBOURNE *v.* WILKS, [1935] Ch. 524; 104 L. J. Ch. 254; 153 L. T. 295; 51 T. L. R. 404.

78a. **Benefit of Roman Catholic Church—Open to public—Valid.**]—(1) A bequest for the benefit of a church belonging to a monastic order of the Roman Catholic Church but open to the public was not rendered invalid by Roman Catholic Relief Act, 1829 (c. 7).

Testatrix by her will dated Sept. 7, 1903, gave the residue of all her property, after the death of G., to whom she had given a life interest, in the following terms: "To the Superior of the Jesuit Church of the Immaculate Conception, Farm Street, London, to the Superior of that Church at the moment of the legacy falling due, & failing him to any other representative Father of the Order of the Society of Jesus . . . " :—*Held:* the gift was to this Superior upon trust for the benefit of the church at Farm Street as he might in his discretion think fit; & this was a valid gift.

(2) Testatrix died in 1910, & G. died in 1928. The Superior of the Church of the Immaculate Conception, Farm Street, London, was not the same person at the death of testatrix as at the death of G.:—*Held:* the gift was a valid gift to the Superior at the moment of G.'s death absolutely.—*Re* BARCLAY, GARDNER *v.* BARCLAY, STEUART *v.* BARCLAY, [1929] 2 Ch. 173; 98 L. J. Ch. 410; 141 L. T. 447; 45 T. L. R. 406, C. A.

Annotation:—*Generally*, **Refd.** *Re* Stratton, Knapman *v.* A.-G. (1930), 47 T. L. R. 32.

80a. —— ——.]—*Re* EIGHMIE, COLBOURNE *v.* WILKS, No. 78a, *ante*.

81a. **Upkeep of chapel & school—Includes maintenance of services & Sunday school.**]—A testator by his will, after giving certain specific legacies including one of £50 to the K. H. Baptist Chapel, directed that a trust be created with the remainder of his personal & real estate "for the payment from the income thereof of the following legacies, viz., £25 *per annum* to M. L., £100 *per annum* to J. L., & the balance of the income to be divided equally between my two sisters C. P. & M. H. . . . On the death of the last surviving legatee under the trust I direct that the income be devoted to the upkeep of the K. H. Baptist Chapel & school & for the provision of prizes for the scholars of both sexes." A summons was taken out to determine (i) whether the gift was a good & valid bequest of the whole of the residuary estate or whether it failed to any & what extent. The only school attached to the K. H. Baptist church was a Sunday school in connection with which book prizes were awarded. It was contended that such a school was not what testator had in mind, & that, even if it was, the upkeep of the chapel & school would not exhaust the income of the residuary estate the capital of which amounted to some £29,500, with the result that the balance of the income which was not used for that purpose must be held to be undisposed of by the will; (ii) how, in view of the fact that, at the date of the summons, the testator's two sisters, both of whom had survived the testator, had both died, the income of the testator's estate thereby set free should be disposed of until the death of the survivor of the other annuitants, M. L. & J. L.:—*Held:* (1) there was a good charitable bequest of the whole of the testator's residuary estate in favour of the K. H. Baptist Chapel & school & the word school included Sunday school; (2) the personal representatives of testator's two sisters were entitled to the surplus of the income, after providing for the annuities to M. L. & J. L., until the survivor of M. L. & J. L. had died; (3) "upkeep" of the chapel did not mean merely keeping the premises in repair, but included all the expenses necessarily incurred in providing the chapel services & maintaining, in a broad sense, the Sunday school.—*Re* STRICKLAND'S WILL TRUSTS, NATIONAL GUARANTEE & SURETYSHIP ASSOCN., LTD. *v.* MAIDMENT, [1936] 3 All E. R. 1027; [1937] 3 All E. R. 676.

82. *Add. Annotation:*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

89. *Add. Annotations:*—*As to* (1) **Apld.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271. **Consd.** *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617. **Refd.** *Re*

Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283.

90. *Add. Annotation :—Generally,* **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

91a. ——.]—A testatrix by her will gave all the residue of her estate to her exors. for the assistance of such schemes of the Church Army & the Salvation Army & in such amounts as her exors. should in their absolute discretion think fit :—*Held :* there was a valid charitable gift, as both the Church Army & the Salvation Army had as their defined objects the relief of poverty & the promotion of religion, both charitable objects within the Statute of Elizabeth.—*Re* SMITH, WALKER *v.* BATTERSEA GENERAL HOSPITAL (1938), 54 T. L. R. 851 ; 82 Sol. Jo. 434.

91b. **Church Army.**]—*Re* SMITH, WALKER *v.* BATTERSEA GENERAL HOSPITAL, No. 91a, *ante.*

94. *Add. Annotation :*—**Refd.** *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance (1923), 92 L. J. Ch. 326.

105a. —— **Infirm, sick & aged.**]—*Re* FORSTER, GELLATLY *v.* PALMER, No. 30a, *ante.*

106. *Add. Annotations :*—**Consd.** *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173 ; *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

106a. —— ——.]—A Roman Catholic testator by his will bequeathed "£1,000 for Masses, foundation & others" & also devoted four houses "for one foundation Mass to be said for my soul & the souls of my parents & relatives during the space of twenty-five years," & directed that the property should revert to a named church. Evidence was given that by a "foundation Mass" was intended a Mass the saying of which was to be paid for out of the interest of an invested fund, so that unless the gift was charitable it would be void for perpetuity :—*Held :* a gift for the saying of Masses is charitable as being for the advancement of religion (*a*) because it enables a ritual act to be performed which is the central act of the religion of a large proportion of Christian people, & (*b*) because it assists in the endowment of priests whose duty it is to perform the act.—*Re* CAUS, LINDEBOOM *v.* CAMILLE, [1934] Ch. 162 ; 103 L. J. Ch. 49 ; 150 L. T. 131 ; 50 T. L. R. 80 77 Sol. Jo. 816.

110a. —— —— **Invalid.**]—WALPOOL'S CASE (1349), Duke, 95.

Annotations :—**Consd.** Adams & Lambert's Case (1602), 4 Co. Rep. 104b. **Refd.** Heath *v.* Chapman (1854), 2 Drew. 417.

114. *Add. Annotations :*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318. **N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

116. *Add. Annotation :*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

118. *Add. Annotation :*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

119. *Add. Annotations :*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

120. *Add. Annotation :*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

128a. —— **For benefit of church open to public——Valid.**]—*Re* BARCLAY, GARDNER *v.* BARCLAY, STEUART *v.* BARCLAY, No. 79a, *ante.*

129. *Add. Annotations :*—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121 ; Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271 ; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383. **Refd.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283 ; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173 ; *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276 ; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

130. *Add. Annotation :*—**Consd.** *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173.

135. *Add. Annotations :*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318. **Refd.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

144. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

145. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

152. *Add. Annotation :*—**N.F.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

155. *Add. Annotations :*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318. **Refd.** *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

PART I. SECT. 4, SUB-SECT. 6.

s. For "[1919] 1 I. R. 443" read "[1919] 1 I. R. 316."

PART I. SECT. 4, SUB-SECT. 7.

106 xi. —— ——.]—A bequest for the saying of masses for the repose of souls is not in this Province void as superstitious. A bequest of the residue of testator's estate (consisting of both realty & personalty) to a church, "to be invested & kept invested . . . for ever & the interest . . . to be applied & expended . . . for the saying of holy masses . . . for the repose of the soul of testator & his descendants for ever" :—*Held :* ineffective as creating or tending to create a perpetuity, & not a charitable use. *Semble :* in any case the personalty alone would have been applicable to the trust declared.—*Re* ZEAGMAN (1916), 37 O. L. R. 536.—**CAN.**

106 xii. —— ——.]—A bequest of the annual income of a trust fund to a priest for the saying of masses in perpetuity is valid as a charitable trust & thus outside the scope of the rule against perpetuities.—*Re* HALLISY, [1932] 4 D. L. R. 516 ; O. R. 486.—**CAN.**

114 iv. —— ——.]—Testator (who died within three months from the date of the execution of his will) directed his interest in a farm of land to be sold, & out of the proceeds of the sale a sum of £200 to be set apart & given to the parish priests & curates of C. Roman Catholic Church to be invested by them ; the principal to remain invested for all time in the names of the successive parish priests & curates of C., the interest thereof to be applied in saying masses for the repose of testator's soul. After bequeathing a pecuniary legacy, testator gave the rest, residue & remainder of his property to the Abbot of M., & the Franciscan Friars in C. in equal shares for the purposes of having masses said for the repose of his soul in M. & C. At the dates of the execution of the will & of the death of testator the same person was Abbot of M. & the same three Franciscan Friars were resident in C. :—*Held :* (1) the legacy of £200 was void as a charge upon lands under Charitable Donations & Bequests Act, 7 & 8 Vict. c. 97 ; (2) in reference to the gift of residue so far as it consisted of pure personalty, there was a gift of one-half to the person who filled the office of Abbot of M. at the date of testator's death in his individual capacity for the offering up of masses & same was valid ; there was a gift of the other half for the offering of masses to a specified body, because they were members of the Order of Franciscan Friars bound by monastic vows, which was void as contrary to the policy of Catholic Relief Act, 10 Geo. 4, c. 7.—BURKE *v.* POWER, [1906] 1 I. R. 119.—**IR.**

PART I. SECT. 4, SUB-SECT. 12.

sd. "*Service of my Lord & Master*"—*Valid.*]—The gift to trustees of moneys "to be employed in the service of my "Lord & Master" is a good charitable gift.—*Re* BREWER, SOLICITOR-GENERAL

157. *Add. Annotations :—As to* (1) **Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407 ; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557 ; *Re* Hood. Public Trustee *v.* Hood (1930), 143 L. T. 691.

163. *Add. Annotation :—***Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

164. *Add. Annotation :—***Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

166. *Add. Annotation :—***Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

172. *Add. Annotation :—***Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

176. *Add. Annotation :—***Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

179. *Add. Annotation :—***Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

183. *Add. Annotation :—***Distd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96.

After this case add :—*Compare*, No. 217b, *post*.

183a. —— **Gift for purchase of site & erection of public hall.**]—By his will G. O. S. gave his collection of arms & antiques to the corpn. of a certain town on condition that they deposited the same in one of the rooms of the public hall thereinafter mentioned, where the collection should be open to inspection by the public. The testator gave the whole of his real & residuary personal estate to his exor. & trustee upon trust for sale & conversion &, subject to the payment thereout of his funeral & testamentary expenses & debts & certain legacies & the setting apart of a sum to provide for a certain annuity mentioned in the will, upon trust to apply the proceeds of sale in the purchase of a suitable site in the said town & in or towards the erection on such site of a public hall, which site & hall when completed should be presented by his trustee to the said corpn. to be used by them for such public purposes as they might consider desirable :—*Held :* (1) the reference to " public purposes " in the will was limited to public purposes for the benefit of the inhabitants of the particular borough mentioned in the will & excluded any possibility of the hall being used for private purposes. The gift for the purchase of a site & the erection thereon of a public hall to be presented to the corpn. was therefore a valid charitable gift ; (2) the object of the bequest of arms & antiques was an educational object & the bequest was charitable.—*Re* SPENCE, BARCLAYS BANK, LTD. *v.* STOCKTON-ON-TEES CORPN., [1938] Ch. 96 ; [1937] 3 All E. R. 684 ; 107 L. J. Ch. 1 ; 53 T. L. R. 961 ; 81 Sol. Jo. 650.

183b. —— **Gift of antiques for exhibition in public hall.**]—*Re* SPENCE, BARCLAYS BANK, LTD. *v.* STOCKTON-ONTEES CORPN., No. 183a, *ante*.

191. *Add. Annotation :—***Consd.** *Re* Spence's Estate, Barclays Bank, Ltd. *v.* Stockton-on-Tees Corpn., [1937] 3 All E. R. 684.

193. *Add. Annotation :—***Refd.** Institution of Civil Engineers *v.* I. R. Comrs., [1932] 1 K. B. 149.

195a. Shakespeare Memorial Trust—Erection of theatre—Revival of English classical drama—Valid.]—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., No. 73a, *ante*.

196. *Add. Annotation :—As to* (1) **Refd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

197. *Add. Annotations :—As to* (1) **Folld.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362. **Consd.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

199a. Promotion of physical efficiency of army—Encouragement of sport—Valid.]—By his will testator gave a sum of £3,000 to form the nucleus of a regimental fund for his regiment " for the promotion of sport, including in that term only shooting, fishing, cricket, football, & polo." He also thereby gave directions as to the management of the fund. Later in the will he directed the payment of a further sum of £2,000, in the events which happened, " to the aforesaid Sporting Fund " to be held upon the same terms as the former legacy :—*Held :* the gifts were gifts for the purpose of promoting the physical efficiency of the army, & were valid charitable gifts.—*Re* GRAY, TODD *v.* TAYLOR, [1925] Ch. 362 ; 94 L. J. Ch. 430 ; 133 L. T. 630 ; 41 T. L. R. 335 ; 69 Sol. Jo. 398.

*Annotations :—***Consd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

199b. Repatriation of soldiers—After war service—Valid.]—(1) A valid charitable trust may exist although in its administration the benefit is not confined by the donor to the poor to the exclusion of the rich.

A resident in New South Wales bequeathed his residuary estate " unto the trustees for

---

v. BYDDER, [1933] N. Z. L. R. 1221.—**N.Z.**

sf. *Establishment of religious newspaper.*]—*Held :* a gift for the establishment of a Catholic newspaper could not be supported as being for a charitable purpose.—MELBOURNE ROMAN CATHOLIC ARCHBISHOP *v.* LAWLOR, THE POPE *v.* NATIONAL TRUSTEES, EXECUTORS & AGENCY CO. OF AUSTRALASIA, LTD. (1934), 51 C. L. R. 1 ; [1934] V. L. R. 231 ; 40 Argus L. R. 202 ; 8 A. L. J. 70.—**AUS.**

PART I. SECT. 5, SUB-SECT. 1.

rn i. —— *Improvement.*]—A gift by will to a city council, to be expended for the improvement of the city as the trustee of the will and the council should agree :—*Held :* a good charitable gift. —*Re* BONES, GOLTZ *v.* BALLARAT TRUSTEES, EXECUTORS & AGENCY CO., LTD., [1930] V. L. R. 346 ; A. L. R. 279.—**AUS.**

sk. *Gift to parish—Amalgamation of parishes.*]—A., by her will made in 1935, devised & bequeathed the residue of her property to the Representative Body of the Church of Ireland to hold the same upon trust to pay or apply the income of such residuary estate for the benefit of the parish of D. In 1896 the parish of D. was united to the parish of K. In 1923 that union was dissolved & a new parish was created consisting of the former parish of D. & the parish of C., & thenceforth this new parish was known as the parish of C. & D. :—*Held :* the parish of D. had a sufficient ecclesiastical existence to enable it to be the recipient of the gift ; the income of the residuary estate of the testatrix must be applied for the benefit of the parish of D. as it existed prior to its union with the parish of K., but that, while the union of the parish of D. with the parish of C. continued to exist, the income must be applied for the general purposes of the united parish without any discrimination as to the area of the united parish that should be benefited by the application of the income or any part thereof.—CORBALLY *v.* CHURCH REPRESENTATIVE BODY, [1938] I. R. 35.—**IR.**

PART I. SECT. 5, SUB-SECT. 4.

sg. *Trust or benefit of returned soldiers—What amounts to.*]—Claim of the Soldiers' Aid Commission established in Ontario by Soldiers' Aid Commission Act, 1916, to administer a charitable bequest for the benefit of charities dealing with young war widows refused as the Act was held to deal only with gifts for the benefit of returned men.—*Re* HAMMOND (1921), 68 D. L. R. 590 ; 51 O. L. R. 149.—**CAN.**

the time being of the 'Repatriation Fund' or other similar fund for the benefit of the New South Wales returned soldiers." At the date of the will, & of testator's death, there was established under statutes of the Commonwealth of Australia a repatriation fund for Australian soldiers generally, but there was no repatriation fund, or similar fund, for New South Wales soldiers:—*Held:* (2) the gift created a valid charitable trust; (3) the trustees of the Commonwealth statutory repatriation fund were not trustees of the charity, & the settlement of a scheme had been rightly directed.—VERGE *v.* SOMERVILLE, [1924] A. C. 496; 131 L. T. 107; 40 T. L. R. 279; 68 Sol. Jo. 419; *sub nom.* VERGE *v.* SOMERVILLE, A.-G. FOR AUSTRALIA *v.* SOMERVILLE, 93 L. J. P. C. 173, P. C.

Annotations:—As to (1) **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 459. *As to* (2) **Refd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461. *Generally*, **Refd.** *Re* Ward's Estate, Ward *v.* Ward (1937), 81 Sol. Jo. 397.

201. *Add. Annotation:*—**Consd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

205. *Add. Annotations:—As to* (1) **Consd.** Adamson *v.* Melbourne & Metropolitan Board of Works, [1929] A. C. 142; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

206. *Add. Annotations:—As to* (1) **Dbtd.** *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237. **Consd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59; *Re* Grove-Grady, Plowden *v.* Lawrence, [1927] 1 Ch. 557. *As to* (2) **Refd.** I. R. Comrs. *v.* Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27.

208. *Add. Annotation:—As to* (2) **Expld. & Distd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

208a. —— —— **If beneficial to community.**]—Testatrix, who died in 1925, by her will gave her residuary estate to her trustees to form a trust for the founding, establishing & maintaining of a charitable institution to be called the "Beaumont Animals' Benevolent Society" under such rules & regulations & under such committee of management not exceeding ten members & otherwise in all respects as her trustees should in their absolute discretion think fit, & having regard to her wish that the expense of management should be kept as low as possible; provided that all members of the committee & of the governing body & all officials of the said society should be & always have been declared anti-vivisectionists & opponents of all sport involving the pursuit or death of any stag, deer, fox, hare, rabbit, bird, fish, or any other animal, & to have for its objects (*a*) the acquisition of land, permitted by a judge of the Ch. Div. or the Charity Comrs., for the provision of refuges for the preservation of "all animals, birds or other creatures not human"; (*b*) the distribution of any part of the yearly income of the trust fund amongst such societies or homes for the benefit of animals generally or for the benefit of individual cases British or foreign as the committee of the "Beaumont Animals' Benevolent Society" might think fit; (*c*) the founding, establishing, endowing, supporting, maintaining or providing of hospitals or homes for animals in Great Britain having no declared vivisectionist upon the governing body or bodies thereof or in any way connected with the management thereof:—*Held:* although a trust in perpetuity for animals might be a good charitable trust if in its execution there was necessarily involved a benefit to the community, yet where that element was wanting, the trust would be bad; therefore, trusts in the present case not having been shown to be for purposes beneficial to the community they were not good & valid charitable trusts.—*Re* GROVE-GRADY, PLOWDEN *v.* LAWRENCE, [1929] 1 Ch. 557; 98 L. J. Ch. 261; 140 L. T. 659; 45 T. L. R. 261; 73 Sol. Jo. 158, C. A.; *varied on appeal, sub nom.* A.-G. *v.* PLOWDEN, [1931] W. N. 89; 171 L. T. Jo. 308; 71 L. Jo. 329, H. L.

210. *Add. Annotations:*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Apld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

213. *Add. Annotation:*—**Refd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

213a. **Encouragement of gardening—Charitable.**]—*Re* PLEASANTS, PLEASANTS *v.* A.-G., No. 73b, *ante*.

213b. **Provision of public recreation for working-class people—Valid.**]—Testator by his will dated Apr. 30, 1929, gave the residue of his estate to trustees upon trust to make certain payments thereout &, by clause 14 of his will, directed that they should hold the ultimate residue "to be expended in some scheme or schemes to be approved by my trustees for the benefit in the cities of Vancouver, & if in the opinion of my trustees there is some equally deserving object of the nature hereinafter indicated of Nottingham or other places of the working people such as playing fields parks gymnasiums or other plans which will give recreation to as many people as possible but as regards Vancouver I would not exclude some educational purpose being considered by my trustees." By a preceding clause, clause 13, testator had made a disposition of certain moneys, in certain events, in the following terms: "Upon trust for any scheme to be approved by my trustees of a national character excluding hospitals & works of an educational character. Without binding my trusiees I would prefer a scheme which would give open-air recreation to as large a number of people as possible." Testator died on Feb. 14, 1931, leaving ultimate residue of the value of about £35,000:—*Held:* (1) upon the true construction of the will, the dominant object of testator was the health & welfare of the working classes, & the benefits authorised by clause 14 were the supply of healthy recreation, mainly in the open air & in particular by providing playing fields, parks & gymnasiums; & (2) through legislative recognition indicated by Mortmain & Charitable Uses Act, 1888 (c. 42), s. 6, of the dedication of land to the public for recreation as a charitable object, the provision of means for public recreation was a charitable object within "the meaning, purview & interpretation" of the preamble to the 43 Eliz. c. 4. Accordingly, the trusts expressed in clause 14

of the will were valid charitable trusts.—*Re* HADDEN, PUBLIC TRUSTEE *v.* MORE, [1932] 1 Ch. 133; 146 L. T. 190; 48 T. L. R. 9; 75 Sol. Jo. 781; *sub nom. Re* HADDEN, PUBLIC TRUSTEE *v.* WARE, 101 L. J. Ch. 52.

Annotation :—As to (2) **Consd.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

215. *Add. Annotations :—As to* (2) **Refd.** Verge *v.* Somerville, [1924] A. C. 496; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

215a. —— **Of Jews to Palestine—Gift to Jewish National Fund—Valid.**]—A summons asked whether deft. co., the Jüdischer Nationalfonds, Ltd., or some other & what co. was referred to in the devise & bequest in the codicil to testator's will of the residuary estate to the Jewish National Fund, & whether the same was a valid charitable gift. By a codicil to his will made in 1919 testator who died shortly after declared: "whereas it is my desire that members of my family shall make their home in Palestine working & living on the land, I give, devise, & bequeath all the residue of my estate subject as aforesaid to the Jüdischer Nationalfonds which is one of the instruments of the Zionist Organisation, for the purpose of purchasing land there, & enabling such members of my family as are in a direct line of descent from my father, who may desire, to settle in Palestine subject generally to the regulations & conditions that may be necessary for the common weal":—*Held :* the co. was beneficially entitled to the fund to be applied by them so far as was necessary for the purpose indicated by testator, & as to the balance for the general purposes of the co.—*Re* ROSENBLUM, ROSENBLUM *v.* ROSENBLUM (1924), 131 L. T. 21; 68 Sol. Jo. 320.

Compare INCOME TAX, No. 476e, *post.*

217. *Add. Annotations :—As to* (1) **Consd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59; *Re* Cranstoun, National Provincial Bank, Ltd. *v.* Royal Society for Encouragement of Arts, Manufactures & Commerce, [1932] 1 Ch. 537. *Generally,* **Refd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 139 L. T. 225.

217a. —— ——.]—Testator devised to the Royal Society of Arts two ancient cottages in order that the Society might preserve them in their present condition. He also gave £700 to the Society upon trust to invest & to apply the income for the maintenance of the cottages. The Society had issued an appeal to form a Fund for the Preservation of Ancient Cottages, of which testator was aware. The Society was by its charter authorised to hold real property in mortmain. The objects of the fund were to preserve ancient cottages as specimens & models of English craftsmanship so as to teach the lessons of such craftsmanship. These cottages were Elizabethan & picturesque :—*Held :* the primary object of the fund was for the good of the community at large, & was charitable in the legal sense; the cottages fell within the objects of the fund; & the devise & bequest were charitable.—*Re* CRANSTOUN, NATIONAL PROVINCIAL BANK *v.* ROYAL SOCIETY FOR THE ENCOURAGEMENT OF ARTS, MANUFACTURES & COMMERCE, [1932] 1 Ch. 537; 101 L. J. Ch. 152; 146 L. T. 568; 48 T. L. R. 226; 76 Sol. Jo. 111.

217b. **Primrose League—Not a charity.**]—Testatrix by her will gave a leasehold house "to the Primrose League of the Conservative cause to be used as a habitation in connexion with the league or in a manner which will benefit the cause":—*Held :* as the gift was impressed with a trust & could not be sold, & as the league was not a charity, the gift failed.—*Re* JONES, PUBLIC TRUSTEE *v.* CLARENDON (EARL) (1929), 45 T. L. R. 259.

217c. **Bequest "unto my country England"—Valid as charitable gift to people of England.**]—Testator, who died in 1930, by his will gave his residuary estate "unto my country England for—own use & benefit absolutely":—*Held :* residuary gift was a valid gift for charitable purposes & the residuary estate must be transferred to such person as His Majesty should direct under his sign manual.—*Re* SMITH, PUBLIC TRUSTEE *v.* SMITH, [1932] 1 Ch. 153; 100 L. J. Ch. 409; 146 L. T. 145; 48 T. L. R. 44; 75 Sol. Jo. 780, C. A.

217d. **Temperance.**]—*Re* HOOD, PUBLIC TRUSTEE *v.* HOOD, No. 68a, *ante.*

Compare INCOME TAX, No. 472b, *post.*

225. *Add. Annotations :*—**Consd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

230. *Add. Annotation :—As to* (1) **Follid.** *Re* Hooper, Parker *v.* Ward, [1932] 1 Ch. 38.

230a. —— —— —— ——.] — Testator bequeathed to his exors. & trustees money out of the income of which to provide, "so far as they legally can do so & in any manner that they may in their discretion arrange," for the care & upkeep of certain graves, a vault, certain monuments, a tablet & a window. On a summons to determine whether the bequest was valid in whole or in part :—*Held :* the rule against perpetuities not applying to the trust for the upkeep of the tablet & the window, the trust for the upkeep of the graves, the vault & the monuments was valid for twenty-one years from

---

PART I. SECT. 6, SUB-SECT. 1.

218 iv. —— —— —— —— ——.]—A direction in a will to the exors. to deposit a sum in a bank or invest it, "the yearly interest to be devoted to the care of my grave," creates, leaving statutory provisions out of consideration, a perpetual trust; &, as the purpose is not charitable, is void; but legislative sanction is given to this particular form of perpetual trust, by above sect. — *Re* JONES (1918), 42 O. L. R. 62; 13 O. W. N. 405.—**CAN.**

• i. —— ——.]—Bequests made to bodies incapable of contracting, on the condition precedent that they should agree with testator's trustees to care for certain burial lots for all time :—*Held :* void.—*Re* LAING ESTATE, [1927] 1 W. W. R. 699; 38 B. C. R. 449.—**CAN.**

• ii. —— ——.]—Testator bequeathed a sum in trust, the income of which was to be used to clean & keep in order certain family graves :—*Held :* not charities, & void as a perpetuity.—*Re* MAIN'S WILL TRUSTS (1933), 7 M. P. R. 139.—**CAN.**

• iii. —— ——.]—A will directed that $500 be paid to some trust co. & that the proceeds thereof be used to keep the grave of testator & that of his mother in good condition :—*Held :* the bequest infringed the rule against perpetuities.—*Re* HALLIDAY ESTATE, [1935] 1 W. W. R. 360; 43 Man. L. R. 81.—**CAN.**

testator's death.—*Re* HOOPER, PARKER *v.* WARD, [1932] 1 Ch. 38; 101 L. J. Ch. 61; 146 L. T. 208.

231a. ——.]—Testator gave £200 to his trustees, on trust to invest it & to pay the income thereof to a cemetery co. "during such period as they shall continue to maintain & keep" two specified graves "in the cemetery in good order & condition with flowers & plants thereon as same have hitherto been kept by me," & he declared that, if the graves should not be kept in such order & condition, his trustees should pay & apply the income in manner therein mentioned:—*Held:* the gift was a valid gift.—*Re* CHARDON, JOHNSTON *v.* DAVIES, [1928] Ch. 464; 97 L. J. Ch. 289; 139 L. T. 261.

238a. —— **In memory of testatrix—Valid.**]—*Re* KING, KERR *v.* BRADLEY, No. 3a, *ante*.

239a. War memorial—Useful character—Valid.]—Included in the objects of an assocn. formed by adjacent villages in 1917 was one for the erection of a permanent memorial or memorials to perpetuate the memory of those from the district who served in the Great War. A circular distributed by the assocn. in the latter part of 1917 stated the aims of the committee & said that the committee were of opinion that this memorial "should be of a useful character, possibly in the nature of a memorial hall." In response to this circular a sum exceeding £1,000 was collected, but later the two villages became divided in their views, & an arrangement was made for the funds to be divided between them in unequal shares. Each village put up some small memorial, but the balance of the money was not enough to build the memorial hall. A number of people withdrew from the scheme, & their subscriptions were returned to them. A balance of about £1,000 remained in the hands of the pltf., who asked for directions as to its application:—*Held:* the object of the assocn. was to promote for the benefit of the two villages some useful memorial, preferably of the type of a village hall. That was in law a charitable purpose, & the preparation of a scheme should be directed.—MURRAY *v.* THOMAS, [1937] 4 All E. R. 545.

240. *Add. Annotation:*—**Apld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.

241. *Add. Annotations:*—**Consd.** *Re* Forster, Gellatly *v.* Palmer, [1938] 3 All E. R. 767. **Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

242. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

245. *Add. Annotations:*—**Consd.** *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103. **Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

247. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

249. *Add. Annotations:*—**Apld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60. **Consd.** *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

250. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. *As to* (2) **Apld.** *Re* Turkington, Owen *v.* Benson, [1937] 4 All E. R. 501. **Refd.** *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

251. *Add. Citation:*—[1912] 1 Ch. 29.
Add. Annotations:—*As to* (1) **Apld.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. *As to* (2) **Refd.** *Re* Kuypers, Kuypers *v.* Kuypers, [1925] Ch. 244. *Generally*, **Refd.** *Re* Bancroft, Bancroft *v.* Bancroft, [1928] Ch. 577.

251a. —— **London Library.**]—A gift of real & personal estate to the trustees of an unincorporated voluntary assocn. [the London Library], not being a charity, for the general purposes of the assocn. held valid, & not open to objection on the ground of remoteness.—*Re* PREVOST, LLOYDS BANK, LTD. *v.* BAR-

---

232 l. *Erection of monument—To testator's memory—Not charitable use.*]—A will provided that one-half of the residue of the estate be used by the exors. "towards the erection of a monument or some suitable memorial to me." Testator's husband died after the making of the will, & she caused to be erected between his grave & the space reserved for hers a monument to him on which was left a blank space apparently intended to be filled in with an inscription for herself after her death:—*Held:* the provision for the monument was not an enforceable trust nor a charitable bequest which could be worked out *cy-près*.—*Re* JEFFERSON ESTATE (Man.), [1930] 3 D. L. R. 453; [1929] 3 W. W. R. 690.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.

h l. —— *Society of St. Vincent de Paul—House of Providence.*]—Testator bequeathed £100 to the Society of St. Vincent de Paul, & directed the residue of his estate to be converted into cash, & paid to the House of Providence. These were voluntary unincorporated associations:—*Held:* so far as they could be paid out of personalty these legacies were good; & should be paid over to the persons having the management of the pecuniary affairs of the institutions named.—ELMSLEY *v.* MADDEN (1867), 18 Gr. 386.—**CAN.**

11. *Fund of Benevolence of Freemasons—Valid.*]—*Re* VOSZ, PUBLIC TRUSTEE *v.* STEELE, [1926] S. A. S. R. 216.—**AUS.**

PART I. SECT. 6, SUB-SECT. 4.

sk. *Superannuation fund for employees.*]—An incorporated trading co. had set aside certain moneys to be held by trustees with the object of providing individual personal benefits, allowances & provisions to persons who had been, were, or might become its employees. It was contemplated by the trust instrument that employees might make contributions to the fund available for these purposes. No period was fixed for the duration of the trusts, nor was any distinction drawn in the instrument between employees who were in needy or affluent circumstances. Voting power was given to members subject to the votes varying according to the amount of salary received. The deed also provided that the fund was not to be regarded as relieving members from the duty of making provision for those dependent on them:—*Held:* the trust was in favour of a fluctuating body of individuals & not an appreciably important class of the community, & the trust was not a valid charitable gift.—*Re* HARRIS SCARFE, LTD., [1935] S. A. S. R. 433.—**AUS.**

CLAYS BANK, LTD., [1930] 2 Ch. 383; 99 L. J. Ch. 425; 143 L. T. 743; 46 T. L. R. 557; 74 Sol. Jo. 488.

255. *Add. Annotation :—As to* (2) **Refd.** Verge *v.* Somerville, [1924] A. C. 496.

258. *Add. Annotation :—***Apld.** *Re* Thompson, Public Trustee *v.* Lloyd, [1934] Ch. 342.

259. *Add. Annotation :—As to* (1) **Refd.** *Re* Grove-Grady, Plowden *v.*, Lawrence, [1929] 1 Ch. 577.

265. *Add. Annotation :—***Refd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121.

265a. Gift to Jewish National Fund—To enable testator's relations to settle in Palestine.]—*Re* ROSENBLUM, ROSENBLUM *v.* ROSENBLUM, No. 215a, *ante*.

266. *Add. Annotations :—As to* (1) **Consd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362. **Apld.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. **Refd.** *Re* Hadden, Public Trustee *v.* More, [1932] 1 Ch. 133; Peterborough Royal Foxhound Show Society *v.* I. R. Comrs., [1936] 1 All E. R. 813.

266a. Provision of knickers for all boys of district—Void.]—(1) Testator devised his residuary estate on trust, the income to be applied for ever in providing knickers for boys who resided in the F. district, who were not supported by any charitable institution, & whose parents were not in receipt of parochial relief :—*Held :* as none of the conditions necessarily imported poverty & therefore the object of the benefaction was not the relief of poverty & as the limitation of area did not make the trust a good charitable trust, the bequest was void as offending against the rule against perpetuities.

(2) A trust which is not a charitable trust cannot be changed into a charitable one by limiting the area in which it is to operate (EVE, J.).—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G., [1930] 1 Ch. 255; 99 L. J. Ch. 104; 46 T. L. R. 96; 73 Sol. Jo. 833; *sub nom.* PUBLIC TRUSTEE *v.* A.-G., 142 L. T. 321.

Annotation :—As to (2) **Apld.** *Re* King, Henderson *v.* Cranmer (1931), 75 Sol. Jo. 781.

267. *Add. Annotation :—***Apld.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488.

267a. Social club—Staff Christmas fund—Invalid.]—Testator gave three legacies in the following terms: "To the Junior Carlton Club, Pall Mall, S.W.: £100 of Funding Loan in trust to pay the interest yearly to the Staff Christmas Fund. To the Union Club, Brighton: £100 of Funding Loan in trust to pay the interest yearly to the Staff Christmas Fund. To the Sussex County Cricket Club: £300 of Funding Loan in trust to pay the interest yearly to the Nursery Fund ":—*Held :* the legacies to the clubs were not charitable, &, therefore, invalid.—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, [1929] 2 Ch. 276; 98 L. J. Ch. 419; 141 L. T. 295; 45 T. L. R. 504.

267b. —— Attached to church.]—The testator in his will directed that, upon the death of his wife, his trustees should then pay the whole of the capital of his estate to a named club. He directed that the club should appoint three trustworthy men, to be approved by the trustee of the will, to receive such capital & to manage the same for the benefit of the club, & that half of the capital sum should be applied in the purchase of new premises for the club, & that the remaining half should be invested to form a permanent yearly income for the maintenance of the club. The club had for its object the religious, moral, intellectual, physical & social improvement of its members, & was closely linked with the parochial activities of an ecclesiastical parish. The incumbent of the parish was the permanent president of the club. The rules did not make the club one for the benefit of the inhabitants generally or a particular class of inhabitants of a particular district :—*Held :* the club was not a charity, & the gift therefore failed.—*Re* TOPHAM, PUBLIC TRUSTEE *v.* TOPHAM, [1938] 1 All E. R. 181.

267c. Cricket club—Nursery fund—Invalid.]—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, No. 267a, *ante*.

270. *Add. Annotations :—***Apld.** *Re* Ogden, Brydon *v.* Samuel, [1933] Ch. 678. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383; R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

271. *Add. Annotation :—***Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

272a. Gift to Universal Negro Redemption Fund—Valid.]—UNIVERSAL NEGRO IMPROVEMENT ASSOCN. INCORPORATED *v.* MORTER (1928), 44 T. L. R. 331; 72 Sol. Jo. 154, P. C.

272b. Gift for disabled soldiers of former enemy country—Valid.]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante*.

Part II.—Assurances for Charitable Purposes.

295. *Add. Annotation :—***Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

302. *Add. Annotation :—***Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

316. *Add. Annotation :—***Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

350. *Add. Annotation :—***Refd.** I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213.

351. *Add. Annotation :—***Refd.** I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213.

384. *Add. Annotation :—***Refd.** Cross *v.* Imperial Continental Gas Assocn., [1923] 2 Ch. 553.

397. *Add. Annotation :—***Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

398. *Add. Annotation :—***Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

429. *Add. Annotation :*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

432a. Art gallery—Valid—Right of trustees to purchase house & grounds.]—*Re* TOWNER, EASTBOURNE CORPN. *v.* A.-G. (1923), 40 T. L. R. 3.

464. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

466. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

472. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

480. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

502. For cross-reference before this case, read "*See, now*, Settled Land Act, 1925 (c. 18), s. 119, Sched. V."

503. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

534. For cross-reference before this case, read "*See, now*, Settled Land Act, 1925 (c. 18), s. 29 (4)."

625. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

629a. —— Under Education Act, 1921 (c. 51), s. 117—Assurance of land for erection of sanatorium—Exempt.]—*Re* HARROW SCHOOL GOVERNORS & MURRAY'S CONTRACT, [1927] 1 Ch. 556; 96 L. J. Ch. 267; 137 L. T. 119; 71 Sol. Jo. 408.

638. *Add. Annotation :*—**Refd.** *Re* Anziani, Herbert *v.* Christopherson, [1930] 1 Ch. 407.

Part III.—Charitable Trusts.

646. After this case add :—
——.]—*See, now*, Law of Property Act, 1925 (c. 20), ss. 53, 55.

653. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

656. *Add. Annotation :*—**Refd.** *Re* Williams, Williams *v.* All Souls, Hastings, Parochial Church Council, [1933] Ch. 244.

657a. —— ——.]—A gift to A. "who will at her death dispose of it in such charitable ways for good to result from my hard work in accumulating the property handed over for her use only & to do as she may wish in her lifetime," gives A. only a life estate, & on her death, whether before or after testator, the fund becomes applicable for charitable purposes & is not distributable as on an intestacy.—*Re* CAMMELL, PUBLIC TRUSTEE *v.* A.-G. (1925), 69 Sol. Jo. 345.

658. *Add. Annotations :*—*As to* (1) **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465. *As to* (3) **Distd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96; Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488. **Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

661. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

673. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

680. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

687. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Apld.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691; *Re* James, Grenfell *v.* Hamilton (1932), 146 L. T. 528.

687a. ——.]—A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, No. 740b, *post*.

691a. —— —— **Fund deposited in names of bishop & two archdeacons—Income not drawn upon—Date of deposit coinciding with creation of new diocese.**]—On June 29, 1888, money was deposited in a bank in the names of the Bishop of Wakefield & two archdeacons. In May, 1888, the Diocese of Wakefield was newly formed, & H. was enthroned on June 25, 1888, as first bishop of that diocese. The income of the fund so deposited was not drawn upon, & the fund with £900 accumulated interest was found intact by the exors. of the archdeacon, who was the survivor of the three persons in whose names the money had been deposited. The fund was not contributed to by those in whose names it was deposited :—*Held :* in such circumstances the exors. of the archdeacon who was the survivor were not beneficially entitled to the fund, but the fund was one subject to charitable trusts.—PEASE *v.* HOW (1922), 91 L. J. Ch. 334; 126 L. T. 629; 66 Sol. Jo. 250.

691b. Limitation of area insufficient.]—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G., No. 266a, *ante*.

691c. ——.]—*Re* KING, HENDERSON *v.* CRANMER (1931), 75 Sol. Jo. 781.

692a. ——.]—*Re* KEMBLE, NASH *v.* LOMBARDINI (1931), 71 L. Jo. 347.

702. *Add. Annotation :*—**Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

PART II. SECT. 4, SUB-SECT. 5.

sd. *Necessity for registration—Under 24 Vict. c. 43.*]—*Re* STRATFORD BAPTIST CHURCH PROPERTY (1869), 2 Ch. 388.—CAN.

PART II. SECT. 6, SUB-SECT. 4.

t l. —— —— *Not applicable to.*]—The above Act is not in force in Manitoba.—*Re* FENTON ESTATE, [1920] 2 W. W. R. 367; 53 D. L. R. 82; 30 Man. L. R. 246.—CAN.

PART III. SECT. 1, SUB-SECT. 1.

sm. *By settlement—Settlor divesting himself of income from shares.*]—TUNLEY *v.* FEDERAL COMR. OF TAXATION (1927), 39 C. L. R. 528.—AUS.

PART III. SECT. 2, SUB-SECT. 2.—A. (a).

sp. *Gift "for some good public purpose"—"Such as emergency hospital, women's home or park with urinary"—Valid.*]—COX *v.* HOGAN & VICTORIA CORPN. (1925), 35 B. C. R. 286.—CAN.

702a. "Missionary purposes"—Valid—Court entitled to regard missionary work of legatee.]—Testatrix bequeathed her residuary estate "for missionary purposes" to J.:—*Held:* (1) the ct. could admit evidence that testatrix had often met J. at conferences of Christian workers & discussed religious subjects with him, & that before she made her will she had sent him considerable sums of money to aid him in the work in which he was so engaged, which was that of pastor of a church belonging to a body created solely for evangelistic purposes; (2) having regard to that evidence, the gift was not void for uncertainty but was a good charitable gift.—*Re* REES, JONES *v.* EVANS, [1920] 2 Ch. 59; 89 L. J. Ch. 382; 123 L. T. 567.

Annotations:—*As to* (1) **Consd.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

702b. "Parish work"—Void.]—A testatrix bequeathed the residue of her estate in equal shares to two charities & to the respective vicars & churchwardens of two named churches "for parish work":—*Held:* it was impossible to find any substantial distinction between the phrase "for parish work" & the phrases "parochial activities" or "parochial purposes" which were considered by the Ct. of Appeal in *In re Bain*, [1930] 1 Ch. 224; Digest Supp., & in *In re Stratton*, [1931] 1 Ch. 197; Digest Supp., not to be charitable & the expression "parish work" could not as a matter of construction be read as equivalent to "church work," & the gifts in question were not therefore charitable & consequently failed.—*Re* ASHTON, WESTMINSTER BANK *v.* FARLEY, [1938] Ch. 482; [1938] 1 All E. R. 707; 107 L. J. Ch. 282; 158 L. T. 441; 54 T. L. R. 491; 82 Sol. Jo. 173, C. A.

703a. "Two institutions which I hope to be able to name"—Valid.]—Testatrix, who died in 1919, left her foreign property to "two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my exors.":—*Held:* the gift ought to be construed, not as a gift to two institutions which might or might not be charitable, but as a gift to two charitable institutions of the kind specified, & therefore was not too vague but was a good charitable gift.—*Re* SMITH, BLYTH *v.* A.-G. (1920), 36 T. L. R. 416, C. A.

705. *Add. Annotations:*—**Consd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651; *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Expld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237; *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; Verge *v.* Somerville, [1924] A. C. 496; General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578; Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691; *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461; I. R. Comrs. *v.* Gull, [1937] 4 All E. R. 290.

708. *Add. Annotations:*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

716. *Add. Annotations:*—**Apld.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Distd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. **Consd.** *Re* Ashton's Estate, Westminster Bank, Ltd. *v.* Farley, [1938] Ch. 482. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

717a. "For such objects connected with the church as" vicar "shall think fit"—Valid.]—Where testatrix devised & bequeathed all the residue of her estate to the vicar of a church "for such objects connected with the church as he shall think fit":—*Held:* "objects connected with the church" did not mean parochial objects, but meant objects connected with the fabric & services of the church, & therefore the gift created a valid charitable gift.—*Re* BAIN, PUBLIC TRUSTEE *v.* ROSS, [1930] 1 Ch. 224; 99 L. J. Ch. 171; 142 L. T. 344; 45 T. L. R. 617, C. A.

Annotations:—**Apld.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. **Folld.** *Re* Martley, Simpson *v.* Bourne (1931), 47 T. L. R. 392. **Consd.** *Re* Davies, Lloyds Bank, Ltd. *v.* Mostyn (1932), 48 T. L. R. 539; *Re* Ashton's Estate Westminster Bank, Ltd. *v.* Farley, [1938] Ch. 482. **Refd.** *Re* Stratton, Knapman *v.* A.-G. (1930), 47 T. L. R. 32.

717b. "Such parochial institutions or purposes as" vicar "shall select"—Invalid.]—Testatrix, who died in 1929, made a bequest of money in trust for the vicar of a parish for the time being, to be distributed by him "among such parochial institutions or purposes as he shall select":—*Held:* as "parochial institutions or purposes" might include objects which were not charitable the bequest was not a valid charitable gift.—*Re* STRATTON, KNAPMAN *v.* A.-G., [1931] 1 Ch. 197; 100 L. J. Ch. 62; 144 L. T. 169; 47 T. L. R. 32; *sub nom. Re* STRATTON, KNAPMAN *v.* STRATTON, 74 Sol. Jo. 787, C. A.;

PART III. SECT. 2, SUB-SECT. 2.—A. (b).

715 l. "*Among such charitable institutions & schemes already constituted or which may hereafter be constituted as they shall in their absolute discretion select*"—*Valid.*]—CUNNINGHAM *v.* TALBOT, [1932] 2 W. W. R. 638; 3 D. L. R. 665.—**CAN.**

st. "*To be invested in war charities at trustees' discretion to be selected by trustees*"—*Valid.*]—*Re* HAMMOND (1921), 68 D. L. R. 590; 51 O. L. R. 149.—**CAN.**

sw. *Bequest to Bishop "for diocesan purposes."*]—Testatrix made bequests to the Anglican Bishop for the time being of the Diocese of Grafton & Armidale to be used respectively "for diocesan purposes" & "for diocesan purposes generally." She also bequeathed the sum of £20 per annum to the said Bishop to be used "in support of" an indicated Anglican Church:—*Held:* (1) upon the true construction of the words "for diocesan purposes" & "for diocesan purposes generally" the discretion vested in the Bishop trustee must be exercised within the scope of diocesan purposes proper, that every diocesan purpose proper was a religious purpose & charitable in the legal sense, & the gifts to be used for the above-mentioned purposes were, therefore, valid; (2) the gift of the sum of £20 per annum to be used "in support of" the indicated church was a trust for a religious purpose & was valid.—*Re* MACGREGOR, THOMPSON *v.* ASHTON (1932), 32 S. R. N. S. W. 483; 49 N. S. W. W. N. 179.—**AUS.**

sz. "*Such charitable institutions & schemes . . . as my trustees shall in their absolute discretion select.*"]—*Held:* valid & not void for uncertainty.—*Re* CUNNINGHAM'S ESTATE (1932), 45 B. C. R. 543.—**CAN.**

affg. S. C. *sub nom. Re* STRATTON, STRATTON *v.* A.-G., [1930] 2 Ch. 151.

Annotation :—**Consd.** *Re* Ashton's Estate, Westminster Bank, Ltd. *v.* Farley, [1938] Ch. 482.

717c. **"For the benefit of the work of the Cathedral"—Valid.**]—*Re* MARTLEY, SIMPSON *v.* BOURNE (CARDINAL) (1931), 47 T. L. R. 392; 75 Sol. Jo. 279.

717d. **"For work connected with the Roman Catholic Church"—Invalid.**]—*Re* DAVIES, LLOYDS BANK, LTD. *v.* MOSTYN (1932), 48 T. L. R. 539; 76 Sol. Jo. 474; *affd.* 49 T. L. R. 5, C. A.

718. *Add. Annotations :*—**Consd.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283; *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Folld.** *Re* Jackson, Midland Bank Executor & Trustee Co. *v.* Wales (Archbp.), [1930] 2 Ch. 389. **Consd.** *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75. **Apld.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. **Consd.** *Re* Ashton, Westminster Bank *v.* Farley, [1938] Ch. 482. **Refd.** *Re* Stratton, Knapman *v.* A.-G. (1930), 47 T. L. R. 32.

718a. **Trustees empowered to change objects if interests of Church better served.**] — *Re* WILLIAMS, PUBLIC TRUSTEE *v.* WILLIAMS, No. 75a, *ante*.

718b. **Gift to Archbishop to be applied "in his discretion in any manner as he might think best for helping to carry on the work of the Church in Wales."**]—Testatrix made a bequest of half her residuary estate to the Archbishop of Wales for the time being to be paid & applied by him in or towards the General Fund belonging to the Church in Wales, or in his discretion in any manner as he might think best for helping to carry on the work of the Church in Wales :—*Held :* the alternative gift was too indefinite in that it could not be said that the application of it by the Archbishop must be for a charitable purpose, & the whole gift was therefore void.—*Re* JACKSON, MIDLAND BANK EXECUTOR & TRUSTEE CO., LTD. *v.* WALES, ARCHBISHOP OF, [1930] 2 Ch. 389; 99 L. J. Ch. 450; 144 L. T. 102; 46 T. L. R. 558.

720. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Chapman, Hales *v.* A.-G. (1922), 91 L. J. Ch. 527; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

721. *Add. Annotations :*—**Consd.** A.-G. *v.* National Provincial Bank, [1924] A. C. 262; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** Verge *v.* Somerville, [1924] A. C. 496; *Re* Hadden, Public Trustee *v.* More, [1932] 1 Ch. 133.

723. *Add. Annotation :*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

724a. **"Charitable or public institutions"—At discretion of trustees—Void.**]—By his will dated May 3, 1918, testator, after making certain specific & pecuniary bequests & giving an annuity to his wife, devised & bequeathed all his real & personal estate not thereby otherwise disposed of upon trust for conversion & investment of the net residue as therein mentioned. He directed his trustees "to hold the residuary moneys & investments upon trust, subject to payment of the wife's annuity, to pay & apply the same for the benefit of one or more charitable or public institutions in Wales as they may deem advisable in their absolute discretion & in such proportions & shares as they may deem fit" :—*Held :* the non-charitable objects of the residuary gift were too vague, & the whole gift failed for uncertainty.—*Re* DAVIS, THOMAS *v.* DAVIS, [1923] 1 Ch. 225; 92 L. J. Ch. 322; 128 L. T. 735; 39 T. L. R. 201; 67 Sol. Jo. 297.

725. *Add. Annotation :*—**Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

728a. **"To such charities or to such religious bodies"—As trustees in their discretion shall think fit—Valid.**]—*Re* TOMKINSON, M'CREA & BELL *v.* A.-G. OF THE DUCHY OF LANCASTER (1929), 74 Sol. Jo. 77.

731. *Add. Annotations :* — **Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Distd.** I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R 270. **Consd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557; *Re* Smith, Public Trustee *v.* Smith, [1931] 2 Ch. 364. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; A.-G. *v.* National Provincial Bank, [1924] A. C. 262; Verge *v.* Somerville, [1924] A. C. 496; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; Midland Counties Institution of Engineers *v.* I. R. Comrs. (1928), 14 Tax Cas. 285; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461; Master Mariners, Honourable Co. of *v.* I. R. Comrs. (1932), 17 Tax Cas. 298; Peterborough Royal Foxhound Show Society *v.* I. R. Comrs., [1936] 1 All E. R. 813.

734. *Add. Annotation :*—**Refd.** Verge *v.* Somerville, [1924] A. C. 496.

PART III. SECT. 2. SUB-SECT. 2.—B.

t i. "*Charitable or other deserving institutions*"—*As trustees think fit—Void.*] — CAMPBELL'S TRUSTEES *v.* CAMPBELL, [1921] S. C. (H. L.) 12; 58 Sc. L. R. 69.—**SCOT.**

b i. "*Benevolent, charitable & religious institutions*"—*As trustees think proper—In limited locality—Valid.*]—EDGAR, ETC. *v.* CASSELLS, [1922] S. C. 395; 59 Sc. L. R. 304.—**SCOT.**

c i. ——.]—By the law of Scotland a trust for "charitable or benevolent" purposes is a trust for "charitable" purposes alone.—JACKSON'S TRUSTEES *v.* INLAND REVENUE, [1926] S. C. 579; 10 Tax Cas. 460.—**SCOT.**

e ii. —— *In particular place—As trustees shall think deserving.*]—*Re* GREAVES (B. C.), [1917] 1 W. W. R. 997.—**CAN.**

sg. "*Charitable, religious, philanthropic, educational, or scientific*"—*Void.*]—Testator directed his trustee to hold the surplus of his residuary estate on trust, to invest the same & pay the net annual income to named children & another named person for life equally, or to the survivors, & upon the death of the survivor to hold his residuary estate upon trust "for such charitable, religious, philanthropic, educational or scientific institution or institutions absolutely" as his trustee should select . . . :—*Held :* the gift was void for uncertainty.—*Re* WHITE, EXECUTOR TRUSTEE & AGENCY CO. OF SOUTH AUSTRALIA, LTD. *v.* A.-G., [1933] S. A. S. R. 129.—**AUS.**

735. *Add. Annotations :—As to* (1) **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258 ; *Re* Ashton, Westminster Bank *v.* Farley, [1938] Ch. 482. *As to* (2) **Consd.** *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617.

735a. **" Charities & institutions "—" As executors in their absolute discretion think fit "—Void.]** —*Re* CLARKE, BRACEY *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION, No. 47a, *ante*.

739. *Add. Annotations :—***Consd.** Caldwell *v.* Caldwell (1921), 91 L. J. P. C. 95 ; A.-G. *v.* National Provincial Bank, [1924] A. C. 262 ; *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96 ; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153 ; *Re* Ogden, Brydon *v.* Samuel, [1933] Ch. 678 ; *Re* Spence's Estate, Barclays Bank, Ltd. *v.* Stockton-on-Tees Corpn., [1937] 3 All E. R. 684. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225 ; *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151 ; *Re* Hadden, Public Trustee *v.* More, [1932] 1 Ch. 133.

740a. **" Charitable purposes " directed by testator or for such objects as executor selects—Void.]** —*Re* CHAPMAN, HALES *v.* A.-G., No. 1424a, *post*.

740b. **" Patriotic purposes or charitable institutions or objects "—At discretion of trustees—Void.]** —(1) Testator by his will directed his trustees to apply one-fifth of his residuary estate " for such patriotic purposes or objects & such charitable institution or institutions or charitable object or objects in the British Empire " as they in their absolute discretion should select :—*Held :* the words of the gift must be read disjunctively, " patriotic purposes " were not necessarily charitable, & the gift was void for uncertainty.

(2) The general rule is clear that if you are making a will you must declare your wishes, & not leave it in wide & uncertain terms to some one else to make a will for you. Special treatment is meted out to a gift for charitable purposes, & in that case the cts. have recognised that it is open to a testator who declares a charitable purpose to leave it to his trustees to select the particular charities for whose benefit his fund is to be applied. But that does not apply to cases not coming within the description of charity (VISCOUNT CAVE, C.).—A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, [1924] A. C. 262 ; 40 T. L. R. 191 ; 68 Sol. Jo. 235 ; *sub nom. Re* TETLEY, A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, 93 L. J. Ch. 231 ; 131 L. T. 34, H. L. ; *affg.* S. C. *sub nom. Re* TETLEY, NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD. *v.* TETLEY, [1923] 1 Ch. 258, C. A.

Annotations :—As to (1) **Consd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557. **Expld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Consd.** Bonar Law Memorial Trust *v.* I. R. Comrs. (1933), 49 T. L. R. 220. **Refd.** Verge *v.* Somerville, [1924] A. C. 496 ; I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R. 270 ; General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578 ; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; Keren Kayemoth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 298 ; Peterborough Royal Foxhound Show Society *v.* I. R. Comrs., [1936] 1 All E. R. 813.

745. *Add. Citation :—*91 L. J. P. C. 95.

748. *Add. Annotation :—As to* (1) **Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121.

749. *Add. Annotation :—***Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

751. *Add. Annotation :—***Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

751a. **" Objects of charity or any other public objects "—" In parish of F."—Valid.]**—By her will made in 1889 testatrix bequeathed all her residuary estate to trustees upon trust to apply such parts thereof as were applicable by law for charitable legacies, in such manner as her trustees should, in their absolute discretion, think fit, " for the benefit of the schools, & charitable institutions, & poor, & other objects of charity, or any other public objects in the parish of F." : —*Held :* it was a good charitable gift of the whole residuary estate, & was not to be read disjunctively.—*Re* BENNETT, GIBSON *v.* A.-G., [1920] 1 Ch. 305 ; 89 L. J. Ch. 269 ; 122 L. T. 578 ; 84 J. P. 78 ; 64 Sol. Jo. 291.

*Annotation :—***Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

754. *Add. Annotations :—***Refd.** Adamson *v.* Melbourne & Metropolitan Board of Works, [1929] A. C. 142 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

755a. **" Hospital or other charitable or benevolent institution "—Valid.]**—By his will, made in 1917, testator gave his residuary estate to trustees upon trust to apply the same & the income thereof in providing or endowing, or assisting in providing or endowing, any hospital wards, beds, or cots, or other like or similar objects, as his trustees should in their absolute discretion think fit, in memory of his late wife, " for, at, or in connection with, any hospital or convalescent home or other charitable or benevolent institution " ; & testator expressed the wish, but not so as to impose any legal obligation on his trustees, that such hospital or other charitable or benevolent institution should be in, or connected with, the parish of St. Marylebone, London, or at, or in connection with, the town of Kilmarnock :—*Held :* the word " hospital " where it was first used in the will was used in an adjectival sense, & applied to the following words " wards, beds, or cots " ; the primary intention of testator was to provide or endow the same, & the places where they could be provided or endowed must be hospitals or convalescent homes or other charitable institutions, & the words " benevolent institution " must be construed as *ejusdem generis*, with " hospital " ; & therefore the bequest constituted a good & valid charitable gift.—*Re* LUDLOW, BENCE-JONES *v.* A.-G. (1923), 93 L. J. Ch. 30, C. A.

763. *Add. Annotation :—***Folld.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

765. *Add. Annotation :—As to* (2) **Consd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

769. *Add. Annotation :—***Consd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

769a. **Invalid gift for maintenance of family graves—Surplus to rector of B.—Void for uncertainty.]**—FOWLER *v.* FOWLER (1864), 33 Beav. 616 ; 33 L. J. Ch. 674 ; 10 L. T. 682 ; 28 J. P. 707 ; 10 Jur. N. S. 648 ; 12 W. R. 972 ; 55 E. R. 507.

*Annotations :—***Distd.** *Re* Williams (1877), 5 Ch. D. 735. **Refd.** Hoare *v.* Osborne (1866), 30 J. P. 309 ; *Re* Rigley's Trusts (1866), 36 L. J. Ch. 147 ; Choa Choon Neoh *v.* Spottiswoode (1869), Wood's Oriental Cases, App. I.

769b. Gift for maintenance & upkeep of masonic temple—Residue to masonic charities—Whole gift void.]—By a codicil to his will testator directed his exors., on the death of his wife, to pay from his estate to the trustees of a masonic temple, erected by him to the memory of his son, £10,000, to be invested & the interest applied by the trustees, in their full & sole discretion, to the maintenance & upkeep of the masonic temple, & the balance, if any, to be applied in favour of any masonic charities which the trustees might select. The masonic temple was to be used for masonic ceremonies, & smaller rooms for lodge meetings, business & meetings of a social but not political character. Upon a summons to ascertain whether the legacy was valid or not:—*Held:* (1) the decisions in the "tomb cases" were inapplicable; (2) the whole income of the fund being charged with a trust, at the discretion of the trustees, for a primary object which was invalid, the ct. was not entitled to control this discretion, & institute an inquiry at chambers as to the amount of income necessary to be applied for maintenance & upkeep of the temple, so that the gift of the balance would be valid; (3) as the primary gift was not sufficiently defined, the whole legacy was void for uncertainty.—*Re* PORTER, PORTER *v.* PORTER, [1925] Ch. 746; 95 L. J. Ch. 46; 133 L. T. 812.

770. *Add. Annotation:*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

771. *Add. Annotations:*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

772. *Add. Annotation:*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

776. *Add. Annotation:*—**Folld.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

786. *Add. Annotations:*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

794. *Add. Annotations:*—**Apld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

795. *Add. Annotations:*—**Apld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

810. For "**appointment**" read "**apportionment.**"

816. *Add. Annotation:*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

817. *Add. Annotation:*—**Consd.** *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617.

823a. —— Description not confined to charitable purposes — Description having particular meaning in religious denomination to which testator belonged.]—In construing gifts of recent date, evidence is not admissible to show that words having a clear ordinary meaning were used in a special narrower sense.

Testator, a member of the "Brethren," or "Plymouth Brethren," by his will left all his property, subject to a life interest, to his widow, to be divided into two equal parts, one for his sons, & the other for his trustees "to distribute between the various good works which I & my wife have been in the habit of assisting. . . ." After the widow's death this summons was taken out to determine whether that direction created a good charitable trust. Affidavits were tendered to the effect that among the "Brethren" "good works" was a phrase in common use to indicate works distinctly religious, *i.e.* Christian, & suggesting that testator had used it in that sense:—*Held:* there was no evidence of the significance with which the testator had used the words, & the statement as to their use among the "Brethren" was not evidence of constant use in such a sense as would exclude non-religious charitable objects.—*Re* How, How *v.* How, [1930] 1 Ch. 66; 99 L. J. Ch. 1; 142 L. T. 86.

832. *Add. Annotations:*—*As to* (1) **Apprvd.** Blackwell *v.* Blackwell, [1929] A. C. 318. *As to* (2) **Refd.** *Re* Keen, Eversheld *v.* Griffiths, [1937] Ch. 236.

836. *Add. Annotations:*—**Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66. **Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

B. Names of Charities omitted or left blank (Vol. VIII., p. 305).

For "*See* Nos. 1419 *et seq.*, *post*," read "*See, also*, Nos. 1419 *et seq.*, *post*," & add as follows:—

PART III. SECT. 2, SUB-SECT. 3.—B (b).

770 i. *Gift of residue or surplus for charitable purposes — Valid.*]—Testatrix gave the residue of her estate upon trust for conversion & directed the same to be expended upon the erection in a certain cemetery of a monument (with minute directions as to its nature & surroundings) to the memory of her deceased son, & the sum of £50 to be paid to the proper person for the perpetual care of the ground. After certain other directions the will continued, "I direct that any money left unexpended after the erection & completion of the said monument to be paid to the treasurer of the Children's Hospital, Camperdown . . .":—*Held:* the special rule in the class of cases known as the "tomb cases" applied, &, therefore, the primary gifts for the erection of the monument & for the perpetual care of the ground having failed, the whole of the residuary fund was applicable to deft. charity.—POOLEY *v.* ROYAL ALEXANDRA HOSPITAL FOR CHILDREN (1932), 32 S. R. N. S. W. 459 49 N. S. W. W. N. 156.—**AUS.**

PART III. SECT. 4, SUB-SECT. 2.—B.

824 i. *Admitted—Description applying indifferently to more than one charity —"Old People's Home"—Old Folks Home or Maison des Vieux.*]—*Re* SMITH (1912), 22 W. L. R. 630; 3 W. W. R. 399; 22 Man. L. R. 758; 8 D. L. R. 93.—**CAN.**

824 ii. —— —— *Gift to "St. James' Presbyterian Church, $375 which I owe it"—Two St. James' Churches—Evidence of debt.*]—*Re* MCLAURIN LEGACY (1911), 9 E. L. R. 326.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.—C.

830 ii. —— ——.]—Where testator made a bequest to a society, & it was found no society exactly corresponding to the designation given by testator was known:—*Held:* if the society is misdescribed, the ct. will if possible, discover from surrounding circumstances, what society was intended. The ct. will admit extrinsic evidence to determine what testator's words express. Evidence to show that testator subscribed to a particular society will be admitted, to show what was in his mind when he made the bequest.—*Re* ALEXANDER'S WILL (1885), 7 Nfld. L. R. 42.—**NFLD.**

PART III. SECT. 4, SUB-SECT. 3.—A.

sa. *Public institutions in Scotland—Void.*]—Testator directed his trustees, upon the expiry of a life-rent of the residue of his estate, "to pay appropriate & distribute the free residue & remainder of my said estate & effects at such times & in such proportions as my trustees may think fit to & among such poor persons in E. or such charitable, educational, or benevolent societies or public institutions in Scotland as my trustees shall select":—*Held:* the words "public institutions in Scotland" were to be read as indicative of a separate class; they were too indefinite to receive effect; & the whole bequest was void from uncertainty.—REID'S TRUSTEES *v.* CATTANACH'S TRUSTEES, [1929] S. C. 727.—**SCOT.**

sb. "*Any worthy cause*"—*Void.*]—A clause of a will reads as follows: "the balance of my estate I leave entirely in the hands of my exor. to aid & help any worthy cause or causes as he shall think fit":—*Held:* the will did not create a valid charitable trust

841a. Gift to " two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my executors "—Valid.]—Testatrix, who died in 1919, left her foreign property to " two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my exors." :—*Held :* the gift ought to be construed, not as a gift to two institutions which might or might not be charitable, but as a gift to two charitable institutions of the kind specified, & therefore was not too vague but was a good charitable gift.—*Re* SMITH, BLYTH *v.* A.-G. (1920), 36 T. L. R. 416, C. A.

841b. Gift to any institution in Sussex assisting crippled ex-service men.]—Testator bequeathed his residuary estate to any institution formed in Sussex for the purpose of housing, aiding & assisting crippled ex-service men or, if no such institution, directed the formation of such an institution :—*Held :* a home which provided lodgings for crippled ex-soldiers & sailors belonging to the district who had for the time being nowhere else to go, satisfied the conditions of the will, & a scheme for the administration of the fund was directed.—*Re* BLOOMFIELD, PUBLIC TRUSTEE *v.* KOHLBECK (1933), '77 Sol. Jo. 539.

841c. " Institutions established for benevolent purposes "—Void.]—A testatrix domiciled in New Zealand, bequeathed to the trustee & exor. of her will (resp. co.) her residuary estate, " to apply the same in making other bequests towards institutions, societies or objects established in or about Auckland aforesaid for charitable, benevolent, educational or religious purposes " within the absolute discretion of the trustee :—*Held :* the gift failed for uncertainty, as a gift for " benevolent purposes " is not a good charitable gift.—A.-G. FOR NEW ZEALAND *v.* NEW ZEALAND INSURANCE CO., LTD., [1936] 3 All E. R. 888 ; 53 T. L. R. 37 ; 80 Sol. Jo. 912, P. C.

843a. —— Poor of parish where testator buried—Direction as to place of burial—Subsequent parol direction as to different place.]—Testatrix, by her will, directed that her remains should be deposited in the church nearest which she might chance to die ; & in a subsequent part of the will gave a legacy to the poor of the parish where her remains were deposited. Her executrix, in pursuance of parol directions given subsequent to the date of the will, buried her in the neighbouring parish of W. :—*Held :* nevertheless, the poor of the parish of B., where testatrix died, were entitled to the legacy.—SALTER *v.* FAREY (1843), 12 L. J. Ch. 411 ; 1 L. T. O. S. 76 ; 7 Jur. 831.

856. *Add. Annotation :*—**Refd.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

864a. Gift to German Reich—For benefit of disabled German soldiers—Valid.]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante*.

865. *Add. Citation :*—3 Leon. 18.

869. *Add. Annotation :*—**Refd.** *Re* Forshaw, Wallace *v.* Middlesex Hospital (1934), 51 T. L. R. 97.

875. *Citation :*—For " 2 W. R. 154 " read " 21 W. R. 154."

—PLANTA *v.* GREENSHIELDS, [1931] 1 W. W. R. 401 ; 2 D. L. R. 189 ; 43 B. C. R. 439.—**CAN.**

sd. " *Pious acts* "—*Void.*]—In construing a will which, after providing for certain pecuniary legacies, directed that the balance income be spent on " pious acts " according to the discretion of the trustees :—*Held :* bequest void for uncertainty.—SATKARHI BHATTACHARYA *v.* HAZARILAL KHANNA (1930), I. L. R. 58 Calc. 1025.—**IND.**

PART III. SECT. 4, SUB-SECT. 3.—C.

sw. *Advancement of art, science or literature.*]—A testator directed his trustees to hold the residue of his estate for behoof of his sister in liferent, with power to encroach on the capital, & on her death to make certain payments. He further provided : " & if there is still any residue left my trustees shall apply it in whatever manner to them may seem most suitable for the advancement of art, science, or literature in the burgh of C." :—*Held :* the bequest was void from uncertainty.—HARPER'S TRUSTEES *v.* JACOBS, [1929] S. C. 345.—**SCOT.**

sx. *Gift to " missions, Corean & Home " —Testator contributor to Presbyterian missions.*]—Where a legacy was to " the missions, Corean & Home," & testatrix had been in the habit of contributing to the Home & Corean Mission Fund in connection with the Presbyterian Church in Canada :—*Held :* the legacy in question should go to the latter fund.—*Re* HENDERSON ESTATE (1914), 14 E. L. R. 401.—**CAN.**

sy. *Gift to the blind.*]—A gift by will to the blind, *simpliciter*, is a good charitable gift.—*Re* BOND ; BRENNAN *v.* A.-G., [1929] V. L. R. 333 ; [1929] Argus L. R. 300.—**AUS.**

sz. " *Orphanages.*"]—After certain gifts testator directed that " the balance of my estate shall be equally divided : Salvation Army Rescue Home ; Home for Incurables, Fullerton ; South Australian Protestant Orphanages ; Minda Home." There was one institution in South Australia whose rules provided for the care of orphans of a particular denomination ; there were also other institutions whose rules enabled them to receive not only orphans but other children whose condition needed relief. All these institutions, including the first-named, as a practice received children other than orphans :—*Held :* whether an institution was or was not an orphanage was a question of fact, & both the rules & practice of the institution were to be considered. An orphanage is an institution where the main or primary purpose which it is actually fulfilling is to provide & care for orphaned children. The orphanages took one-fourth of the residue of the estate, to be divided equally between them.—*Re* DODSON, [1931] S. A. S. R. 387.—**AUS.**

sz. *Right of executors to come to arrangement with charity.*]—Gift to Picton Academy, Picton, in aid of poor & deserving young men & women getting an education. Picton Academy was one of the public schools of Picton : —*Held :* neither the trustees of the Picton Academy Educational Foundation, nor the Board of School Comrs. for town of Picton were entitled, but the exors. were entitled to make an arrangement with the trustees of the Picton Academy Educational Foundation.—*Re* LOGGIE'S WILL (1934), 8 M. P. R. 298.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.—D.

1 i. —— —— " *Industrial School for Blind, B. Place* "—" *Royal Institution for Blind Incorporated* " *in B. Place entitled.*]—*Re* VOSZ, PUBLIC TRUSTEE *v.* STEELE, [1926] S. A. S. R. 218.—**AUS.**

1 ii. —— —— *Home Mission Extension Fund—Home Mission & Forward Movement entitled.*]—Testatrix after making certain bequests provided that " the residue is to be paid to the Home Mission Extension Fund of the Cong. Church & the other to the London Missionary Society to be kept at interest." The Congregational Union had no fund known under the above name ; there was a fund known as the Home Mission & Forward Movement Board :—*Held :* testatrix intended to indicate a certain purpose by the use of the words " Home Mission Extension " & a gift was expressed to the Congregational Union & Home Mission for Home Mission purposes.—*Re* TURNER, ELDER'S TRUSTEE & EXECUTOR CO., LTD. *v.* MORIALTA PROTESTANT CHILDREN'S HOMES INCORPORATED, [1930] S. A. S. R. 223.—**AUS.**

1 iii. —— —— " *Home for Fallen Girls* "—" *Church Home for Girls* " *entitled.*]—On new evidence adduced on a further hearing of the application the original hearing of which is reported [1936] 3 W. W. R. 620, it appeared that testator's bequest to the " Home for Fallen Girls " was a case of misdescription or error in the name & that the " Church Home for Girls " was intended. There was no such institution as the first named :—*Held :* the Church Home for Girls was entitled to the bequest.—*Re* GILROY ESTATE (NO. 2), [1937] 1 W. W. R. 356 ; 2 D. L. R. 351.—**CAN.**

p i. —— *Gift to Society for Prevention of Cruelty to Animals in New Zealand—Several local societies for prevention of cruelty to animals—Legacy divided.*]—*Re* BUCKLEY, PUBLIC TRUSTEE *v.* WELLINGTON SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS (INC.), [1928] N. Z. L. R. 148.—**N.Z.**

876a. ——— ——— ——— **London General Hospital Fund —King Edward's Hospital Fund for London or London Hospital—Former entitled.**]—*Re* BORINGER, MEARA *v.* KING EDWARD'S HOSPITAL FUND FOR LONDON (1931), 48 T. L. R. 14.

884a. ——— ——— **"Chelsea Hospital"—Royal Hospital, Chelsea.**]—The ct. held that a testamentary gift to "the Chelsea Hospital" went to the Royal Hospital, Chelsea, & not to any other hospital having "Chelsea" as part of its name.—*Re* DE JONG, PUBLIC TRUSTEE *v.* GOLDSMID (1929), 46 T. L. R. 70; 73 Sol. Jo. 850.

891a. ——— **Gift to "Soldiers' Crippled Homes"—Three claimants—Legacy divided.**]—Testatrix by her will bequeathed part of her estate to "Soldiers' Crippled Homes." In response to advertisements three institutions put in claims:—*Held:* as there was nothing to show that testatrix knew about these institutions, the fairest course would be to divide the bequest equally between the three.—*Re* HUSBAND, NEAVE *v.* BARNARDO'S HOMES NATIONAL INCORPORATED ASSOCN. (1923), 58 L. Jo. 600.

894a. ——— **"Diocesan Curates' Aid Society"—Testator resident in Oxford—Oxford Diocesan Spiritual Help Society entitled.**]—*Re* JOHNSON, GOODRICH *v.* OGLE (1893), 9 T. L. R. 277.

894b. ——— **Gift to three bishops for poor of dioceses —One bishop a suffragan.**]—*Re* SMITH, TREVOR *v.* GOODHALL (1934), 51 T. L. R. 108; 78 Sol. Jo. 839.

896a. ——— ——— **"Southwark Diocesan Society" —Southwark Diocesan & South London Fund.**]—*Re* WATT, HICKS *v.* HILL, [1932] 2 Ch. 243, n.; 101 L. J. Ch. 417, n.; 147 L. T. 528, n., C. A.

898. *Add. Annotation:—As to* (1) **Consd.** *Re* Watt, Hicks *v.* Hill, [1932] 2 Ch. 243, n.

901a. ——— **"United Methodists"—Gift over on union with other religious body—Effect of Methodist Church Union Act, 1929 (c. lix), s. 18.**]—By sect. 18 of Methodist Church Union Act, 1929 (c. lix) (an Act to authorise the union of the Wesleyan Methodist, Primitive, & United Methodist Churches): "All personal or movable property (other than chattels real . . .) at the date of union . . . held in trust for or on behalf of . . . the United Methodist Church . . . or for the purposes of any . . . charity subsidiary or ancillary to [the United Methodist Church] shall as from that date be deemed to . . . be held in trust for . . . the purposes of the Methodist Church or the . . . charity subsidiary or ancillary to the Methodist Church nevertheless in other respects upon the same trusts . . . as those upon . . . which the same were previously held so far as circumstances will permit."

Testator directed that after his wife's death a sum of money should be held upon trust to invest & to apply the income in augmenting the salaries of the ministers of the United Methodists' chapel at Batley: with a proviso that "in case the said chapel & property connected therewith shall, in the opinion & absolute discretion of the trustees or trustee for the time being of my will, at any time cease to be used for the preaching & teaching the doctrine of the said United Methodists, or for any other reason . . . shall cease to exist for the said purpose, or the said United Methodists at Batley shall become merged in or united with some other religious body, then the said sum . . . shall be held upon trust for such of my nephews & nieces . . . as shall be living at my death in equal shares." About four years after testator's wife's death, the Wesleyan Methodist, Primitive Methodist, & United Methodist Churches became merged & united in accordance with the Methodist Church Union Act, 1929 (c. lix):—*Held:* (1) the trust created by testator's will was for a particular kind of charity & the will showed no general charitable intent; (2) the proviso was void for perpetuity & therefore did not affect the trust; (3) the Act enlarged the trust, which, under sect. 18, continued as a trust "subsidiary or ancillary to" the purposes of the Methodist Church &

PART III. SECT. 4, SUB-SECT. 3.—E.

898 ii. ——*Gift to Presbyterian Church —Entry into Union.*]—*Re* PATRIQUIN (N.S.), [1928] 2 D. L. R. 791; *on appeal*, [1929] 2 D. L. R. 197; 60 N. S. R. 343. —**CAN.**

898 iii. ——— ——— ———.]—Testatrix bequeathed to "aged & infirm ministers & widows of the Presbyterian Church." There was no fund in connection with the church known as a fund for aged & infirm ministers & widows. By the United Church of Canada Act, the Presbyterian Church in Canada became part of the United Church of Canada, but after this union, a Presbyterian Church continued to exist that did not form part of the United Church. Testatrix was opposed to the union:—*Held:* the bequest was not made either to the United Church nor to the continuing Presbyterian Church; the exors. should have possession & control of the corpus & pay the income annually to aged & infirm ministers of the continuing Presbyterian Church & their widows.—*Re* LOGGIE (1927), 53 N. B. R. 395.—**CAN.**

898 iv. ——— ——— ———.]—WEATHERBY *v.* WEATHERBY (1927), 53 N. B. R. 403.—**CAN.**

898 v. ——— ——— ———.]—*Held:* the congregation could not take bequests; by becoming a congregation of the United Church of Canada at T., it had become something so different from the congregation for whose benefit the bequests were made, that it did not now come within the description in the will; the present congregation was not the same entity as the congregation which P. contemplated as her beneficiary. As to the bequest to "the Trustees of the T. Presbyterian Church," it was to a corpn. which, even if it continued to exist, was not now one for carrying into effect the testatrix' object, & the same principle applied as in the case of the other bequest.—MCLELLAN *v.* FRASER & FRASER *v.* MCLELLAN, [1930] S. C. R. 344; 3 D. L. R. 241; *affg.*, [1929] 2 D. L. R. 197; 60 N. S. R. 343; *varg.*, [1928] 2 D. L. R. 791.—**CAN.**

898 vi. ——— ——— ———.]—By her will, made in 1921, G. gave a sum to "the Home Mission Fund of the Presbyterian Church in Canada" & a sum to "the Foreign Mission Fund of the Presbyterian Church in Canada." When she made her will she was a member of a congregation of the Presbyterian Church in Canada, at Hopewell, Nova Scotia. That congregation entered the United Church of Canada in 1925, when United Church of Canada Act (Dom., 1924, c. 100) came into force. G. remained a member of the congregation until her death in 1919:—*Held:* the United Church of Canada was not entitled to the gifts.—UNITED CHURCH OF CANADA *v.* PRESBYTERIAN CHURCH IN CANADA, [1934] S. C. R. 708; [1935] 1 D. L. R. 1; *affg.*, S. C. *sub nom. Re* GRAY, [1933] 2 D. L. R. 400; 6 M. P. R. 465. —**CAN.**

898 vii. ——— ——— ———.]—In the case of bequests to the Home & Foreign Mission Boards of the Presbyterian Church in Canada:—*Held:* these objects did not cease to exist on the creation of the United Church of Canada, which was accordingly entitled to the bequests.—*Re* STEPHENS, ANDERSON *v.* UNITED CHURCH OF CANADA (1933), 6 M. P. R. 305.—**CAN.**

898 viii. ——*Gift to Congregational Church—Entry into Union.*]—UNITED CHURCH *v.* MURPHY, [1931] 1 D. L. R. 452.—**CAN.**

898 ix. ——— ——— ———.]—Testator devised his residuary estate to a Congregational Church, or if it should cease to exist, then over:—*Held:* the church ceased to exist within the meaning of the devise on becoming part of the United Church of Canada.—*Re* KELLEY, [1933] 4 D. L. R. 416; *affd.*, [1934] 3 D. L. R. 379.—**CAN.**

898 x. ——*Gift to Methodist Church—Entry into Union.*]—Legacy to Methodist Church held to fail because the Union was in force before the time of vesting.—*Re* THORNE, [1935] 4 D. L. R. 778.—**CAN.**

was a charity to augment the salaries of ministers of the chapel.—*Re* TALBOT, JUBB *v.* SHEARD, [1933] Ch. 895; 102 L. J. Ch. 362; 149 L. T. 401; 49 T. L. R. 462; 77 Sol. Jo. 388.

906. *Add. Annotation :*—**Distd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

908. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Forshaw, Wallace *v.* Middlesex Hospital (1934), 50 T. L. R. 473; *Re* Harwood, Coleman *v.* Innes, [1936] Ch. 285. *Generally*, **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

910a. **"Lord Milner's Homes for Mentally Disabled Soldiers"—Ex-Service Welfare Society entitled.**]—*Re* GURDON, REYNOLDS *v.* EX-SERVICES WELFARE SOCIETY (1936), 80 Sol. Jo. 288.

912a. —— —— —— ——.]—Testatrix by her will dated Sept. 22, 1924, directed her exors. to sell the residue of her property & to pay the proceeds to the Margate Cottage Hospital. At the time she made her will there was a hospital of that name, an unincorporated body, to the funds of which testatrix was a subscriber. About the year 1926, a fund was opened for the purpose of purchasing a new site & building a larger hospital, to which testatrix was also a contributor. At the time of testatrix's death on Oct. 19, 1930, the work formerly carried on at the Margate Cottage Hospital, including the medical & nursing staff & the patients, had been transferred to & was carried on at the new hospital, called the "Margate & District General Hospital," which had been opened on July 3, 1930. The invested funds held by trustees for the Margate Cottage Hospital & the income thereof were dealt with by the same trustees for the purposes of the new hospital :—*Held :* the real intention of testatrix was to add the proceeds of sale of her residuary estate to the funds dedicated to the purposes of the Margate Cottage Hospital, &, accordingly, there was a valid charitable bequest of those moneys to which the next of kin of testatrix had no title.

Qu. : whether the Margate & District General Hospital was in any & what sense identical with the Margate Cottage Hospital, & whether the purposes of the Margate & District General Hospital to which those who administered the funds of the Margate Cottage Hospital had devoted them were in a true sense the purposes of the Margate Cottage Hospital.—*Re* WITHALL, WITHALL *v.* COBB, [1932] 2 Ch. 236; 101 L. J. Ch. 414; 147 L. T. 526.

922. *Add. Annotation :*—**Refd.** *Re* Withall, Withall *v.* Cobb, [1932] 2 Ch. 236.

924. *Add. Annotation :*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

926. *Add. Annotations :*—**Consd.** *Re* Withall, Withall *v.* Cobb, [1932] 2 Ch. 236. **Refd.** *Re* Watt, Hicks *v.* Hill, [1932] 2 Ch. 243, n.

932. *Add. Annotations :*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** Brighton College *v.* Marriott, [1926] A. C. 192; *Re* Ashton's Estate, Westminster Bank, Ltd. *v.* Farley, [1938] Ch. 482.

933. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

945. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

948. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

948a. **Gift for amusement to be settled by patients—Pensioners but no patients.**]—*Re* HOVENDEN, WESTMINSTER BANK, LTD. *v.* ROYAL HOSPITAL FOR INCURABLES (1938), 82 Sol. Jo. 315.

962. *Add. Annotation :*—**Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

980. *Add. Annotation :*—*Generally*, **Refd.** Clergy Orphan Corpn. *v.* Christopher, [1933] Ch. 267.

980a. **Charity for orphans of Established Church—Effect of Welsh Disestablishment—Children of Welsh clergy entitled.**]—A charity formed in 1749 was incorporated by Act of Parliament in 1809. Its object was to maintain & educate poor orphans of clergymen of the Church of England. Owing to the disestablishment of the Church in Wales doubts arose whether the corpn. had power to continue its work among the poor orphans of clergymen in Wales & Monmouthshire, & a summons was issued to obtain a decision of the ct. on the point :—*Held :* there was nothing in Welsh Church Act, 1914 (c. 91), or the Welsh Church (Temporalities) Act, 1919 (c. 65), that interfered with the power of the corpn. to maintain & educate poor orphans of clergymen in Wales & Monmouthshire.—*Re* CLERGY ORPHAN CORPN. TRUSTS, CLERGY ORPHAN CORPN. *v.* CHRISTOPHER, [1933] 1 Ch. 267; 102 L. J. Ch. 83; 148 L. T. 324; 49 T. L. R. 79.

981a. **Gift to "church"—Construed as gift to congregation—Not to edifice.**]—*Re* TYLER (1901), 45 Sol. Jo. 204.

981b. —— **Gift to institution — "Church of England."**]—*Re* BARNES, SIMPSON *v.* BARNES (1922), [1930] 2 Ch. 80, n.; 99 L. J. Ch. 380, n.; 143 L. T. 332, n.

Annotation :—**Folld.** *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75.

981c. —— —— **"Roman Catholic Church."**]—Testatrix made a residuary bequest "to the

PART III. SECT. 4, SUB-SECT. 3.—G.

sz. *Bequest to "Protestant Orphan Girls' Home"—Bequest taken by "Protestant Children's Homes"—Formed by amalgamation of "Girls' Home" & "Protestant Orphans' Home."*]—*Re* CARRICK, [1929] 3 D. L. R. 373; 64 O. L. R. 39.—**CAN.**

PART III. SECT. 4, SUB-SECT. 5.—A.

x i. —— *Gift to "that church which is sound & evangelical"—Prior gift to Presbyterian Church.*]—Testator, a minister of the United Presbyterian Church of North America, after bequeathing $1,000 to the said church, proceeded as follows: "I give for a Jewish mission $1,000 to that church which is sound & evangelical in doctrine & pure in worship, using the songs of praise, the inspired book which can unite all nations," etc. The evidence showed that this description applied to the said church :—*Held :* not void, for uncertainty, for that testator clearly intended the said church as the legatee.—GILLIES *v.* MCCONOCHIE (1882), 3 O. R. 203.—**CAN.**

x ii. —— *"Roman Catholic Church in Canada"—General Roman Catholic Church.*]—*Held :* a bequest to "foreign missions in connection with the Roman Catholic Church in Canada," should be paid to the general Roman Catholic Church, to be used for foreign missions in connection with that branch of the church which is in Canada, there being no Roman Catholic Church in Canada as a separate entity.—*Re* UPTON (1913), 24 O. W. R. 54; 4 O. W. N. 815; 9 D. L. R. 373.—**CAN.**

PART III. SECT. 4, SUB-SECT. 5.—B.

sa. *Fund for maintenance & repair—Repair of fabric—& conduct of services—& provision of furniture, fittings & vessels.*]—*Re* BOYD (1924), 55 O. L. R.

Roman Catholic Church, for the use thereof": —*Held:* the gift was a valid charitable bequest. — *Re* SCHOALES, SCHOALES *v.* SCHOALES, [1930] 2 Ch. 75; 99 L. J. Ch. 377; 143 L. T. 331; 46 T. L. R. 354; 74 Sol. Jo. 233.

981d. **Trust for Bishoprics in connection with Church of England—Bishopric at Cape Town.**] —In 1841 certain resolutions were agreed to by the clergy & laity in this country at a meeting convened by the Archbishop of Canterbury to raise a fund for the endowment of Bishoprics in the Colonies, the fundamental object being to found & endow Bishoprics in connection with the Church of England. Among the Colonies selected was the Cape of Good Hope. In 1847 a large sum was given to the fund, & amongst the specific purposes mentioned for its application was the endowment of a Bishopric at Cape Town. In June, 1847, a Bishop's Diocese was created for the Cape of Good Hope by Letters Patent, & Cape Town was constituted a Bishop's See. The Bishop appointed was to be under the Metropolitical See of Canterbury. In 1849 part of the fund was invested on mtge. in the Colony & part laid out in the purchase of an estate in Cape Town for the use of the Bishop. In the year 1850, a representative Legislature was granted to Cape Colony, & in 1853 by fresh Letters Patent a separate See of Cape Town was created. In 1864, as the result of disputes concerning the effect of the Letters Patent of 1853, it was decided by the Privy Council in *Re the Lord Bishop of Natal* (1864), 3 Moo. P. C. (N. S.) 115, that as there was an independent legisative assembly in the Colony at the date when the Letters Patent of 1853 were granted, there was no power in the Crown by virtue of its prerogative to establish a Metropolitan See or Province whose status the Colony could be required to recognise. As a result in Feb. 1870, the Church of the Province of South Africa was constituted on a consensual basis. In 1882, following further disputes, the Privy Council decided in *Merriman* v. *Williams* (1882), 7 App. Cas. 484, that the Church of the Province of South Africa was not a Church in connection with the Church of England as by law established. Having regard to the fact that the present Archbishop of Cape Town was not a Bishop of the Church of England or of a Church in connection with the Church of England but was a Bishop of the Church of the Province of South Africa; & the doubt felt how the income of the fund should be dealt with, an originating summons was taken out by the present trustees of the fund raised in 1841 for the determination of the question how the income of the fund allocated to the endowment of a Bishopric at Cape Town should be applied, & whether the present Archbishop of Cape Town would be beneficially entitled to the income of the investments in this country held by the fund & set apart for the endowment of a Bishopric of Cape Town:—*Held:* (1) as it had been established that the present Archbishop of Cape Town was not a Bishop of the Church of England as by law established but a Bishop of the consensual Church of the Province of South Africa, which was, however, in communion with the Church of England, he was not a beneficiary of the funds in this country set apart for the endowment of the Bishopric of Cape Town. The question of a *cy-près* application of the fund thereupon arose; (2) therefore, as the fund in question & the trustees were in this country, & the trusts relating to it established here, the ct. had jurisdiction to order a scheme *cy-près*; & the proper order was first to declare that on the true construction of the resolutions, the original trusts which affected the property were for the endowment of a Bishopric of Cape Town in connection with the Church of England, & those trusts had become impracticable; & then to direct the trustees in this country to pay the income in question now in their hands to the Archbishop of Cape Town for the time being appointed & recognized by the Church of the Province of South Africa, but only so long as that Church remained, in the Archbishop of Canterbury's opinion, in communion with the Church of England.—*Re* COLONIAL BISHOPRICS FUND, 1841, [1935] Ch. 148; 104 L. J. Ch. 205; 152 L. T. 458.

986. *Add. Annotations:*—**Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151; *Re* Ashton, Westminster Bank *v.* Farley, [1938] Ch. 482.

987. *Add. Annotation:*—**Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151.

991a. —— **Gift to Superior of Jesuit Church.**]—*Re* BARCLAY, GARDNER *v.* BARCLAY, STEUART *v.* BARCLAY, No. 79a, *ante*.

991b. —— **"To the rector of St. Thomas' Roman Catholic Church of Newport.**]—*In the Estate of* PESCA (1930), 74 Sol. Jo. 59.

991c. —— **"To Mayor of L. for poor & needy fishermen of L."**]—A testatrix bequeathed one-quarter of her residuary estate to the "Mayor of Lowestoft for the benefit of poor & needy fishermen of Lowestoft":—*Held:* the testatrix intended the fund to be administered by the Mayor of Lowestoft for the time being, & a scheme should be directed to be drawn up.—*Re* PIPE, LEDGER *v.* MOBBS, [1937] 3 All E. R. 536; 106 L. J. Ch. 252; 53 T. L. R. 904; 81 Sol. Jo. 570.

999. *Add. Annotations:*—**Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

PART III. SECT. 4, SUB-SECT. 6.—A.

sd. *Gift to "parish priest"—Curate temporarily in charge at time of death.*]—N. by her will bequeathed the residue of her estate to the parish priest of L., officiating at the time of her decease, to be applied by him for the benefit of the Roman Catholic Church in the parish as he, in his discretion, should think fit, & in the event of the failure of such bequest, testatrix bequeathed the said residue to the said parish priest of L., for his own use & benefit. Testatrix died within three months of the execution of her will, & as the property consisted almost entirely of land, the charitable bequest failed. There was no parish priest of L. at the time of the death of testatrix, but all the duties of the office were being discharged by the curate of the parish:—*Held:* the curate was entitled to the ultimate residue bequeathed to the parish priest for his own use & benefit. —MCALLISTER *v.* STEWART, [1931] N. I. 52.—IR.

PART III. SECT. 4, SUB-SECT. 6.—B.

sg. *Education of deserving children in district—Meaning of "deserving."*]—In a bequest for the "education of poor & deserving children in the district of A.":—*Held:* deserving means deserving of education, not morally deserving.—KERKRAAD OF THE DUTCH REFORMED CHURCH, ALEXANDRIA *v.* SCHEEPERS, [1932] App. D. 88.—S. AF.

PART III. SECT. 4, SUB-SECT. 7.

1007 i. *Discretion of trustees—Gift to war charities—Not confined to Canada.*]—*Re* HAMMOND (1921), 68 D. L. R. 590, 51 O. L. R. 149.—CAN.

1020a. Admission to Home of Rest—Must be suitable objects of a charity.]—*Re* JAMES, GRENFELL *v.* HAMILTON, No. 47c, *ante*.

1041. *Add. Annotation :*—**Refd.** *Re* Robinson, Wright *v.* Tugwell, [1923] 2 Ch. 332.

1041a. —— Condition subsidiary to main charitable object—Performance of condition likely to defeat main charitable object—Condition dispensed with.]—Testatrix, who died in 1889, bequeathed £1,500 towards an endowment for a proposed evangelical church at B., provided certain conditions were carried out. An action was commenced for the administration of her estate, & on the further consideration thereof on Nov. 3, 1891, it appeared that amongst other conditions, which mainly related to the conduct of the services, it was made an " abiding condition " that the black gown should be worn in the pulpit, unless there should be an alteration in the law rendering it illegal. It further appeared that in compliance with the conditions a church had been erected at B. & the other conditions laid down by testatrix fulfilled, except the condition as to wearing a black gown, which condition was held by the judge to be a continuing condition, but not an illegal one ; & accordingly, the fund was carried over to the credit of the action, the separate account of " the £1,500 endowment fund for the proposed B. church," with liberty for the incumbent & all persons interested to apply as to the capital or income thereof. This petition was presented by the present incumbent asking that under a scheme or otherwise the fund in ct. might be transferred to the Ecclesiastical Comrs. Evidence was adduced that the use of the black gown in the pulpit was practically unknown in the diocese of the new church, & that its use was calculated to alienate the congregation & to defeat the main objects of testatrix, namely, the teaching & practice of evangelical doctrine & services :—*Held :* the condition requiring the wearing of a black gown in the pulpit was subsidiary to the main charitable object, namely, the endowment of an evangelical church at B., & as the performance thereof had been shown to be impracticable the condition might be dispensed with & the fund be transferred to the Ecclesiastical Comrs. as part of the endowment of the church so erected as aforesaid.—*Re* ROBINSON, WRIGHT *v.* TUGWELL, [1923] 2 Ch. 332 ; 92 L. J. Ch. 340 ; 129 L. T. 527 ; 39 T. L. R. 509 ; 67 Sol. Jo. 619.

1054. *Add. Annotation :—Generally,* **Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895.

1055. *Add. Annotation :—As to* (2) **Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895.

1061. *Add. Annotation :*—**Consd.** *Re* Quintin Dick, Cloncurry *v.* Fenton, [1926] Ch. 992.

1069. *Add Citation :*—[1910] 1 Ch. 273.

1069a. Gift over on charity receiving state subsidy—Charity receiving grant in aid as public elementary school.]—Testator, who by his will gave the residue of his property to certain charities, made it a condition of the gift that the charities should not be taken over or subsidised by the State or by any public or local authority. One of the institutions, which had a school attached recognised by the Board of Education as a public elementary school, received grants in aid of teachers' salaries from the local education authority :—*Held :* the grants did not amount to a subsidy & the charity was not prevented from receiving a share of the residue.—*Re* GREGORY, HOW *v.* CHARRINGTON (1935), 52 T. L. R. 130 ; 79 Sol. Jo. 880.

1078. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

1080. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612 ; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59 ; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

1081. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

1085a. —— —— Masonic lodge—Valid.]—The testator by his will gave the residue of his estate to a masonic lodge as a fund to build a suitable temple in Stafford :—*Held :* this was a gift to the members of the lodge which they could deal with as they pleased, & the gift was, therefore, good, whether it was charitable or not.—*Re* TURKINGTON, OWEN *v.* BENSON, [1937] 4 All E. R. 501 ; 81 Sol. Jo. 1041.

1089a. —— Provision of knickers for all boys of district—Void.]—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G., No. 266a, *ante*.

1095. *Add. Annotation :*—**Consd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1098. *Add. Annotation :—Generally,* **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

PART III. SECT. 6, SUB-SECT. 4.—A.

e 1. —— *Orchestra—Void.*]—By an indenture of trust, which recited that the settlor had donated the sum of £10,000 for the purpose of assisting in founding a permanent fund for establishing & maintaining a metropolitan permanent orchestra in & for the State of Victoria, & that the donor had paid the money to the trustee, it was declared that the trustee should hold the said sum, & all sums thereafter given in augmentation of it, upon trust to apply the income of the fund in or towards the maintenance of a metropolitan permanent orchestra, so many of the members whereof as the trustee should consider sufficient to be professional musicians, etc. At the date of the deed such an orchestra did not exist, & the sum of £10,000 was altogether insufficient to establish & maintain one :—*Held :* the settlement infringed the rule against perpetuities, & there was a resulting trust for the settlor.—*Re* DYER, DYER *v.* TRUSTEES, EXECUTORS & AGENCY CO., LTD., [1935] V. L. R. 273 ; 41 Argus L. R. 384.—AUS.

PART III. SECT. 6, SUB-SECT. 4.—B.

k 1. —— ——.]—Testator left an estate of $99,000, of which $44,000 was in real estate & Hudson Bay Co. shares. This latter sum was left in trust to supply an income for a Bishop of Cornwall, or if such a Bishop was not elected within twenty-five years after testator's death, the money was to go to the University of Bishop's College, at Lennoxville, for the endowment of a Professorship of Natural Science :—*Held :* there was an immediate gift for charitable uses delayed as to the actual conveyance till the secured debts were paid, &, therefore, vested at the death & effective in law, though the particular application of the gift might be in suspense for twenty-five years, or might never take effect at all, in which contingency there was a valid transfer to another charity at the end of twenty-five years ; & the will did not offend against the rule concerning perpetuities.—*Re* MOUNTAIN'S WILL (1912), 21 O. W. R. 866 ; 3 O. W. N. 1011 ; 26 O. L. R. 163 ; 4 D. L. R. 737.—CAN.

1098a. —— ——.]—*Re* MONK, GIFFEN *v.* WEDD, No. 34a, *ante.*

1099. *Add. Annotations :*—**Consd.** Verge *v.* Somerville, [1924] A. C. 496. **Distd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96. **Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Distd.** Wernher's Charitable Trust (Trustees) *v.* I. R. Comrs., [1937] 2 All E. R. 488. **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465; *Re* Spence's Estate, Barclay's Bank, Ltd. *v.* Stockton-on-Tees Corpn., [1937] 3 All E. R. 684.

1102. *Add. Annotation :—Generally,* **Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895.

1102a. —— —— —— ——.]—*Re* TALBOT, JUBB *v.* SHEARD, No. 901a, *ante.*

1109. *Add. Citation :*—127 L. T. 123.

Add. Annotation :—**Refd.** *Re* Talbot, Jubb *v.* Sheard, [1933] Ch. 895.

1114. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1115. *Citations :*—After " H. L." add " *affg.* S. C. *sub nom.* HARBIN *v.* MASTERMAN (1871), L. R. 12 Eq. 559 : [1894] 2 Ch. 184, C. A."

Add. Annotations :—**Consd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56. **Apld.** *Re* Knapp, Spreckley *v.* A.-G., [1929] 1 Ch. 341. **Consd.** *Re* Jefferies, Finch *v.* Martin, [1936] 2 All E. R. 626.

1116. *Add. Annotations :—As to* (1) **Consd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56. **Distd.** Berry *v.* Geen, [1938] A. C. 575.

1116a. Direction for accumulation—Discretion of trustees.]—The expression in a will of a wish that " the interest upon my investments may be allowed to accumulate . . ." followed by an indication of the charitable objects to which the accumulations are to be devoted does not bind the trustees of the will. But it is a directory provision ; & the trustees ought to bear it in mind & generally to use their discretion so as to give effect to it.

A will, after certain bequests, including a bequest of residue in trust for " the Trustees of the S.M. Charities," expressed a wish of testator that " the income upon my investments may be allowed to accumulate for a period of twenty-one years or so long as the law will allow," & then set out various charitable objects in the town of S. which testator desired should thereafter benefit by such income only :—*Held :* the wish as to accumulation was not binding, but was in the circumstances a directory provision to which regard should be had in settling a scheme.—*Re* KNAPP, SPRECKLEY *v.* A.-G., [1929] 1 Ch. 341 ; 98 L. J. Ch. 95 ; 140 L. T. 533.

1118. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd (1927), 137 L. T. 4.

1150. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1186a. ——.]—Testator gave the residue of his estate on trust to pay the income to his wife for life & after her death to pay £3,000 to the Royal National Lifeboat Institution in order to defray the cost of building two lifeboats, & he directed that after payment of certain legacies to hospitals the remainder of the residue should be paid to the aforesaid institution for the purpose of keeping the two lifeboats in repair & of replacing them when necessary, & that if the remainder of the residue should be insufficient for this purpose the institution might apply it to its general purposes. The legacy of £3,000 was inadequate to provide two lifeboats :—*Held :* on the death of the wife the £3,000 legacy failed & fell into residue, & the institution was entitled to take the whole of the residue, after payment of the legacies to hospitals, & to apply it to its general purposes.—*Re* BECK, CROOK *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION (1926), 42 T. L. R. 245.

1188. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1189. *Add. Annotations :*—**Distd.** *Re* Beck, Crook *v.* Royal National Lifeboat Institution (1926), 42 T. L. R. 244. **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1200. *Add. Annotation :*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

1203a. —— **Absolute property of beneficiary.**]—A young man who was the only support of his widowed mother lost his life in attempting to save a child from drowning. A subscription list was opened to provide assistance for the mother. The greater part of the subscriptions were given in response to a letter published in certain newspapers, inviting people to provide " for the immediate needs of the widowed mother." A much smaller sum was given in response to a private letter in which the following words were used : " Subscriptions have come in very well to date, but you will realise that a sum of at least £500 is necessary to be of any use for investment purposes, to provide [the mother] with a small weekly pension." The trustees of the fund were anxious to purchase an annuity for the mother, but it was contended that the latter was entitled to have the whole fund handed over to her :—*Held :* there was nowhere a sufficient expression of a trust to provide a pension, & the mother was entitled to have the fund handed over to her as her own absolute property.—*Re* JOHNSON, PEARSON *v.* JOHNSON, [1938] 2 All E. R. 173 ; 82 Sol. Jo. 333.

1225. *Add. Annotation :*—**Refd.** Harper *v.* Hedges, [1923] 2 K. B. 314.

1227. *Add. Annotations :*—**Consd.** Verge *v.* Somerville, [1924] A. C. 496 ; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96 ; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

PART III. SECT. 6, SUB-SECT. 4.—H.

1115 i. ***Absolute vested interest payable at future date—Whether charity entitled to immediate distribution.***]—An accumulated fund was directed to be paid by a trustee twenty-one years after the death of the party giving it for the aged & deserving poor of the town. On a motion to approve a compromise between the trustee & the town council: *—Held :* it was doubtful if the rule that a legatee may put an end to an accumulation exclusively for his benefit applied.—*Re* BIRTWISTLE (1935), 4 D. L. R. 137.—CAN.

Part IV.—Effectuation of Charitable Trusts by means of Schemes and the Cy-près Doctrine.

1246a. —— **Not necessarily application cy-pres.**]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante.*

1247. *Add. Annotation:*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

1248. *Add. Annotation:*—**Consd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

1248a. —— —— —— ——.]—*Re* WILSON-BARKWORTH, BURSTALL *v.* DECK (1933), 50 T. L. R. 82.

1252a. —— **No trustees.**]—VERGE *v.* SOMERVILLE, No. 199b, *ante.*

1252b. —— **Uncertainty as to beneficiary.**]—*Re* HURST, HARPER *v.* KING EDWARD'S HOSPITAL FUND FOR LONDON (1935), 79 Sol. Jo. 252.

1252c. Gift to trustees of chapel—Disclaimer by trustees.]—By her will a testatrix bequeathed to the trustees of a certain Methodist Chapel £1,000 or half her residuary estate whichever should be the lesser amount with the direction that the trustees should purchase a field which they should permit to be used as a recreation ground by the children attending the Sunday School in connection with the chapel & others as the trustees should approve. The exors. set aside sufficient to satisfy this legacy & distributed the residue of the estate. The trustees of the chapel disclaimed the legacy. The trustees thereupon took out a summons to determine whether the bequest failed & fell into the residuary estate of the testatrix or whether by reason of the charitable nature of the trust attached to it the bequest ought to be applied *cy-près:—Held:* (1) as it was not of the essence of the bequest that the trustees of the chapel should be the trustees of the charity, the bequest did not lapse, but ought to be applied *cy-près;* (2) the costs of the proceedings should be paid out of the £1,000. —*Re* LAWTON, GARTSIDE *v.* A.-G., [1936] 3 All E. R. 378.

1264. *Add. Annotation:*—**Refd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1265a. ——.]—A testator who was a native of Scotland but died domiciled in England gave his residuary estate upon trust, after payment of annuities, to establish educational charities in & for the benefit of the residents of a town in Scotland. After the building & opening of a college in the town, there remained a large sum of money in the hands of the trustee subject to the trusts of the will. Upon an application to settle a scheme *cy-près*, the ct., at the instance of the A.-G., gave liberty to the trustee to carry into effect a scheme for the administration of the charity to be settled by the Ct. of Session in Scotland.—*Re* MARR'S WILL TRUSTS, WALKER *v.* A.-G., [1936] Ch. 671; 105 L. J. Ch. 345; 155 L. T. 485.

1267. *Add. Annotation:*—**Refd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1269. *Add. Annotation:*—**Refd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1273a. —— **Object & trustee out of the jurisdiction.**]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante.*

1274. *Add. Annotation:*—**Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

1277. *Add. Annotation:*—**Consd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1278. *Add. Annotations:*—**Consd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122. **Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

1312. *Add. Annotations:*—**Refd.** *Re* Hood, Public Trustee *v.* Hood, [1931] 1 Ch. 240; *Re* Caus, Lindeboom *v.* Camille, [1934] Ch. 162.

1371. *Add. Citation:*—*previous proceedings* (1912), 106 L. T. 295.

Add. Annotation:—*Generally,* **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

PART IV. SECT. 1, SUB-SECT. 1.—A.

p i. —— *Funds insufficient.*] —*Re* MITCHNER, [1922] St. R. Qd. 39.—**AUS.**

p ii. —— *Legatee uncertain.*]—Testator, domiciled & dying in Ireland, bequeathed shares to "the Director of the African Mission." There was no society known as "the African Mission," & no individual with the official designation of "Director of the African Mission." There were, however, two societies which carried on missionary work in Africa, one of them being known in English as "The Society of African Missions," its principal officer being the "Provincial." The other Society possessed an Irish Mission to Africa of which the principal officer was the "Secretary," who was also described in a French publication of the Society as "Directeur." Testator had been on terms of intimacy with the latter officer, & had sent him a subscription, & in his letter enclosing the subscription he referred to "the needs of your great African Mission." Testator had also known the Provincial of the former Society, had discussed its work with him, was in regular receipt of its publication, called the "African Missioner," & had also contributed, although a much smaller amount, to its funds:—*Held:* the gift was a good charitable bequest for the propagation of the faith in Africa; & it should be referred to Chambers to settle a scheme, with the approval of the Attorney-General.—*Re* MULCAHY, BUTLER *v.* MEAGHER, [1931] I. R. 239.—**IR.**

r i. ——.]—*Re* WRIGHT (1923), 56 N. S. R. 364.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.—C (a).

sw. *School closed by statute.*]—Testatrix having during her lifetime erected a school-house, vested, by her will, the said school-house in her trustees upon certain charitable trusts. By her will she also created a perpetual yearly rentcharge which she vested in the said trustees to be expended in the maintenance of the said school & in paying a scripture reader residing on the said school premises. Testatrix died on Dec. 1, 1888, & the trusts were fully carried out until by the operation of Education Act (Northern Ireland), 1923, the school, as such, was closed permanently in Feb. 1929. On a summons being brought to determine whether the said school premises & the said rentcharge were still impressed with a charitable trust:—*Held:* although the trust was for a specific charitable purpose & disclosed no general charitable intention, there was no resulting trust to the testatrix's estate, & the trust should be administered *cy-près.*—*Re* HARDY, NELSON *v.* A.-G., [1933] N. I. 150.—**IR.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

1372 v. ——.]—*Re* MCNAB, [1925] 2 D. L. R. 1100; 56 O. L. R. 676; *affg.*, 55 O. L. R. 538.—**CAN.**

1372 vi. ——.]—*Re* DERMORE ESTATE (Alta.), [1927] 2 D. L. R. 1093; [1927] 2 W. W. R. 113.—**CAN.**

1372 vii. ——.]—*Held:* the ct. could find an indication of a general charitable intention from the fact that the property had been devoted to a particular charitable purpose, in circumstances from which it was apparent that the donors intended to make absolute perpetual gifts of the property, not reserving to themselves any interest in it; & that the fund should be applied *cy-près.*—ARMSTRONG *v.* A.-G. (1934), 34 S. R. N. S. W. 454; 51 N. S. W. W. N. 151.—**AUS.**

sb. *Purpose unnecessary—Fund to establish free school—Free school established by statute.*]—R. *v.* CUTLER (*circa* 1876), R. E. D. 159.—**CAN.**

1373a. ——.]—*Re* EDWIN RILEY CHARITIES (1930), 70 L. Jo. 409.

1373b. ——.]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante*.

1373c. ——.]—Where a testator selects a particular charity & takes some care to identify it, it is very difficult for the ct. to find a general charitable intent, if the named society ceases to exist before testator's death; but a general charitable intent may be inferred where no charitable institution as described in the will has ever existed.—*Re* HARWOOD, COLEMAN *v.* INNES, [1936] Ch. 285; 105 L. J. Ch. 142; 154 L. T. 624.

1382a. Gift for rebuilding & equipment of hospital —Hospital partially rebuilt at testator's death.]—Testatrix gave a legacy "towards the rebuilding & equipment" of a hospital "to the satisfaction & under the direction" of her exors. At the death of testatrix the hospital was almost entirely rebuilt, though not equipped. The directors did not at any time direct the rebuilding or equipment:—*Held:* (1) the exors. could not give directions for works already completed, but if they gave their assent to proposed works of which they had a general knowledge they might apply the legacy towards such works when properly executed; (2) "equipment" meant everything required to convert an empty building into a hospital; (3) no limit of time being fixed the discretion of the executors remained exercisable until the hospital was fully rebuilt & fully equipped.—*Re* UNITE, EDWARDS *v.* SMITH (1900), 75 L. J. Ch. 163; 54 W. R. 358; 22 T. L. R. 242; 50 Sol. Jo. 239.

1392. *Add. Annotation:*—**Consd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1394. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1395. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1395a. Misdescription of charity.]—*Re* FORSHAW WALLACE *v.* MIDDLESEX HOSPITAL (1934), 51 T. L. R. 97; 78 Sol. Jo. 859, C. A.

1395b. Non-existence of object—Reference to "treasurer."—By her will a testatrix gave her residuary personal estate to the Berwick-upon-Tweed Infirmary, the Newcastle-upon-Tyne Infirmary, the Newcastle-upon-Tyne Nursing Home, & Doctor Barnardo's Homes London, in equal shares; & she directed that the receipt of the treasurer for the time being of the aforesaid institutions should be a sufficient discharge to her executor for payment of the aforesaid legacies.

No institution having been found which correctly answered the description of the "Newcastle-upon-Tyne Nursing Home," & doubts having arisen as to how the gift of this one-quarter share of residue should be disposed of, an originating summons was taken out by the exor. of the will for the purpose of determining (*inter alia*) the question whether certain of defts. (being institutions which seemed most nearly to correspond to the particular institution referred to in the will), namely, the Northumberland County Nursing Assocn., the Newcastle Private Hospital & Nurses' Home (a private nurses' home whereof two of defts., A. M. F. & S. L. P., were proprietors), the Cathedral Nursing Society for the Sick Poor of Newcastle-upon-Tyne (of which another deft., F. C. C., was treasurer) or any other body, society or institution was entitled to the particular one-fourth share in the residuary personal estate of the testatrix in question, or whether such share devolved as upon an intestacy:—*Held:* (1) no society or body existed which satisfied the ct. that it was the society or body meant & intended by the description "The Newcastle-upon-Tyne Nursing Home," but (2) although the objects of a nursing home are not necessarily charitable, the fact that the testatrix was dealing with the residue of her estate in equal shares, the other three named residuary legatees were charities having kindred objects, & there was a direction in the will that the receipt of the treasurer for the time being of each institution was to be a sufficient discharge showed a general charitable intention in the will, there was sufficient context to prevent a lapse of the particular share in question & therefore no intestacy. A scheme for administering the one-quarter share *cy-près* could therefore be properly carried out.—*Re* KNOX, FLEMING *v.* CARMICHAEL, [1937] Ch. 109; [1936] 3 All E. R. 623; 106 Ch. 97; 156 L. T. 189; 80 Sol. Jo. 915.

1396. *Add. Citation:*—1 Ves. 243.

Add. Annotation:—**Refd.** *Re* Hood, Public Trustee *v.* Hood, [1931] 1 Ch. 240.

Add. Annotation:—**Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

1412. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; *Re* De Carteret, Forster *v.* De Carteret, [1933] Ch. 103.

PART IV. SECT. 2, SUB-SECT. 2.—B.

si. —— ——.]—A will directed that the residuary estate be invested by the exor. & trustee & the income thereof be paid to the Winnipeg Foundation to be used by it in the support & maintenance & for the purpose of the following charities "carrying on work for the sick & poor in the City of Winnipeg & the vicinity thereof & being the . . . & the Home for Fallen Girls." No question arose with respect to any of the institutions named except the "Home for Fallen Girls." There was neither when the will was made nor at the testator's death any institution in Winnipeg or its vicinity of that name. But four institutions in Winnipeg did charitable work in caring for girls who came within the ordinary meaning of the term "fallen":—*Held:* testatrix appeared to have been thinking of the special & particular charitable work which in fact was being carried on by each of the various institutions named in the will, & that view negatived a suggestion that she intended to assist the church of which, on the evidence, she was an active member in meeting its contributions or liabilities to the joint work carried on by it (the Church of England) & the United Church of Canada in maintaining an institution known at the time of the making of the will as the Church Home for Girls but which had later changed its name. The *cy-près* doctrine should be applied & the gift in question should be held intended for the benefit of the charitable work for fallen girls carried on by four institutions.—*Re* GILROY ESTATE, [1936] 3 W. W. R. 620 [1937] 1 D. L. R. 142.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (b).

sd. *Hostel ceasing to exist—Work of hostel undertaken by Government—No general charitable intention.*]—*Re* FITZGIBBON (1922), 69 D. L. R. 524; 51 O. L. R. 500.—**CAN.**

se. *Surplus held for similar purposes.*]—Where a charitable object comes to an end contributions raised do not belong to the donors but are held for similar charitable purposes.—HALIFAX SCHOOL FOR BLIND *v.* ATTORNEY-GENERAL, [1935] 2 D. L. R. 347.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (d).

sk. *Lack of applicants.*]—Testator bequeathed a sum of money to trustees for the purpose of founding a bursary to be granted by them "to any

1418a. Lack of applicants.]—PHILIPPS *v.* A.-G., [1932] W. N. 100; 173 L. T. Jo. 320.

1418b. Trust for Bishoprics in connection with Church of England—Bishopric at Cape Town—Church in South Africa not part of Church of England.]—*Re* COLONIAL BISHOPRICS FUND, 1841, No. 981d, *ante*.

1418c. Gift to provide stipend—Increase of stipend—Gift insufficient.]—A donor in 1898 transferred to the governors of Queen Anne's Bounty certain stock upon trust to pay the income thereof to the incumbent of a parish for securing the services of three or more curates for that parish, & the governors were to require, upon making each half-yearly payment of income, a certificate that three or more curates had been assisting in the parish at stipends amounting in the aggregate to not less than £400 *per annum*. Up to 1934, three curates had been assisting in the parish. It was now found that the income from the stock together with other money available was, on account of the larger stipends now payable to curates, sufficient only to provide the necessary stipends for two curates. The ct. was asked for directions as to the execution of the trusts of the charity, &, if necessary, for a scheme making the income available for the augmentation of the stipends of two curates:—*Held:* a scheme should be ordered whereby the income of the fund should be made available for the augumentation of the stipends of two curates, instead of three.—*Re* BURTON'S CHARITY, QUEEN ANNE'S BOUNTY *v.* A.-G., [1938] 3 All E. R. 90; 82 Sol. Jo. 545.

1423. *Add. Annotation:*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

1424. *Add. Annotation:*—**Refd.** *Re* Chapman, Hales *v.* A.-G., [1922] 2 Ch. 479.

1424a. —— —— Alternative non-charitable gift.]—Testatrix by her will appointed an exor., & after giving various pecuniary legacies, including two for charitable purposes, & £100 to her exor., she left in blank the name of her residuary legatee. By a codicil testatrix desired that her residue should be "applied for charitable purposes as I may in writing direct, or to be retained by my exor. for such objects & such purposes as he may in his discretion select, & to be at his own disposal." She left no written directions as to the charities to be benefited:—*Held:* (1) no good charitable trust was declared, the exor. having a discretion to devote the residue to objects & purposes other than charitable; (2) the trust for those objects & purposes was too indefinite for the ct. to execute, & there being no direct gift to the exor., the added words "to be at his own disposal" were not sufficient to enable the ct. to hold that the exor. took the residue beneficially, & he held it as trustee for the next of kin.—*Re* CHAPMAN, HALES *v.* A.-G., [1922] 2 Ch. 479; 91 L. J. Ch. 527; 127 L. T. 616; 66 Sol. Jo. 522, C. A.

See, also, No. 841a, *ante*.

1430. *Add. Annotation:*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

1431. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Cammell, Public Trustee *v.* A.-G. (1925), 69 Sol. Jo. 345.

1434. *Add. Annotation:*—**Consd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

---

deserving young man, being a native of D., attending college in the prospect of becoming a minister of the Established Church of Scotland, or as a missionary." The trustees received payment of the bequest in 1888. In 1907 they presented a petition in which they stated that, although full publicity had been given to the bursary by advertisement & by intimation in the local schools, no application for it had ever been made, & craved the ct. to empower them, failing application from natives of Dunbar, to grant the bursary to otherwise qualified appots. born in the Presbytery of Dunbar, or failing such appts. to otherwise qualified appts. without conditions as to nativity. The ct. granted the petition.—*Re* BORLAND, [1908] S. C. 852.—**SCOT.**

sf. ——.]—Testator, having erected six houses for the residence of six widows who had been the wives of persons who had resided for five years on the F. estates, demised to trustees a yearly rentcharge of £70 a year, charged on the townland of D., & directed them to apply the sum of £10 a year in repairing & improving the six houses, & to pay the remaining sum of £60 a year in six equal shares of £10 each to such six widows during their widowhood. He further directed that the person or persons seized of his real estate under the limitations in his will should have the sole & exclusive control of this charity, & should not be subject to the control of the Comrs. of Charitable Donations & Bequests or any other persons, but should have full power & authority when the houses should become vacant to select such widows qualified as already stated to inhabit the houses & receive the annual pension provided. For many years past there had been a lack of qualified appots., & since 1913 only two of them had been occupied:—*Held:* the trust was not charitable.—A.-G. *v.* FORDE, [1932] N. I. 1.—**IR.**

sg. *Dispersal of congregation.*]—A church & a manse were held by trustees "for the congregation of United Original Seceders presently worshipping in A. Square under the pastoral charge of the Rev. A. B." Adherence to the principles contained in a document known as the "Testimony" was declared in the trust deed to be a condition of the right of any individual to remain a member of the congregation. The congregation had seceded on a question of doctrine from the Synod of the United Original Secession Church. In 1878 the congregation, which had become reduced to fourteen individuals, ceased to worship together, & the trustees let the property & accumulated the rents. In 1912 the last of the trustees died & his testamentary trustees brought an action of multiplepoinding for the disposal of the property & the accumulations of rent:—*Held:* failing the establishment of a right to the property by any congregation of the United Original Seceders, the trust, being a trust for public purposes, fell to be administered *cy-près*.—ANDERSON'S TRUSTEES *v.* SCOTT, [1914] S. C. 942.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2.—D.

s i. ——.]—An association, which had managed an institution for the education & training of destitute boys in an industrial training ship, owing to change of circumstances, whereby it was no longer possible to carry on the institution usefully, was wound up. A petition was presented to the ct. craving approval of a scheme for the funds to be transferred to nine trustees, of whom seven should be nominated by the existing executive committee, & the remaining two by two local shipowners' associations, with power to assume new trustees from time to time, but vacancies among the trustees appointed by the shipowners' associations to be filled by persons nominated by these bodies. The ct. sanctioned the scheme, being satisfied that in the particular circumstances of the case sufficient provision had been made in the constitution of the trust for the due administration of the funds in the future.—CLYDE INDUSTRIAL TRAINING SHIP ASSOCN., [1925] S. C. 676.—**SCOT.**

sk. *Persons eligible to act as administrators no longer available.*]—Trustees presented a petition in which they stated that the administration of a fund had become unworkable through lack of effective machinery for carrying it on, as owing to a change in local conditions, persons eligible to act as administrators were no longer available, & craved the ct. to authorise a transfer of the fund to a general trust having similar objects. The ct. authorised the transfer.—ROSYTH CANADIAN FUND TRUSTEES, [1924] S. C. 352.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2.—E.

s l. *Surplus applied to such other purposes as should be deemed proper.*]—Where, after satisfying the prescribed objects of a certain charitable trust, there remained a surplus income of the charitable fund which it was found to be impracticable to spend on the objects so prescribed, the ct., at the suit of the Advocate-General of

1444a. Fund for erection of stained glass window—Surplus applied to additional stained glass windows.]—*Re* KING, KERR *v.* BRADLEY, No. 3a, *ante*.

1444b. Gift for restoration or maintenance of church.]—Testatrix bequeathed her residue "to be used towards the restoration or maintenance of" a certain church:—*Held:* she intended that the residue should be used either for the restoration or maintenance of the church, or for both purposes, & that, there being a general charitable intention, any surplus must be applied *cy-près*.—*Re* ROBERTSON, COLIN *v.* CHAMBERLIN, [1930] 2 Ch. 71; 99 L. J. Ch. 284; 143 L. T. 36; 46 T. L. R. 276.

1449a. —— —— Alternative non-charitable gift.]—*Re* CHAPMAN, HALES *v.* A.-G., No. 1424a, *ante*.

1453. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1457a. —— Particular purpose completed—Resulting trust of surplus.]—By his will, made in 1876, testator gave £5,000 Consols to Cambridge University, to be transferred to the University if accepted "upon trust to be applied for the express purpose of carrying on to completion & publication my Etymological Dictionary of Anglicised Foreign Words & Phrases," should the same be incomplete at the time of his decease, they applying the annual dividends towards the completing & publishing of the dictionary. Testator constituted one of his exors. residuary legatee & died in 1880. The University accepted the bequest on the terms & for the purpose specified, & published the dictionary in 1892. After all payments had been made in connection with the publication there remained over a surplus of £1,151 14*s*. 10*d*. Consols & £230 derived from income & sales of the dictionary. Upon a summons by the University asking how this surplus should be applied:—*Held:* in the absence of any general charitable intention to be gathered from the terms of the bequest there was no room for the application of the doctrine of *cy-près*, & there was a resulting trust for testator & those claiming under him of the surplus moneys.—*Re* STANFORD, CAMBRIDGE UNIVERSITY *v.* A.-G., [1924] 1 Ch. 73; 93 L. J. Ch. 109; 130 L. T. 309; 40 T. L. R. 3; 68 Sol. Jo. 59.

Annotations:—**Distd.** *Re* Robertson, Colin *v.* Chamberlin, [1930] 2 Ch. 71. **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197; *Re* Strickland's Will Trusts National Guarantee & Suretyship Assocn., Ltd. *v.* Maidment, [1936] 3 All E. R. 1027.

Part V.—Trust Property after Trust created.

1480. *Add. Annotation:*—*As to* (2) **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

1508. *Add. Annotation:*—**N.F.** Nicholson *v.* England, [1926] 2 K. B. 93.

1511. *Add. Annotations:*—*As to* (2) **Consd.** Toates *v.* Toates, [1926] 2 K. B. 30. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251. *Generally*, **Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.

1532a. —— Settled Land Act, 1925 (c. 18), ss. 29, 94.]—The trust deed of a charity placed the entire management & control of its property, which, whether land or investments, was all revenue, in the hands of a sole trustee, in whom it was vested with full power to sell & give receipts for the purchase-money:—*Held:* (1) the trustee could sell the land under his trust deed & give a receipt for the purchase-money without resorting to his life tenant powers under sect. 29 of the above Act at all; (2) in any case the proceeds of sale would remain revenue & would not become capital money arising under the Act; (3) sect. 94 (1) had no application.—*Re* BOOTH & SOUTHEND-ON-SEA ESTATES CO.'S CONTRACT, [1927] 1 Ch. 579; 96 L. J. Ch. 272; 43 T. L. R. 334; *sub nom.* BOOTH *v.*

Bengal, at the relation of the Treasurer for Charitable Endowments, & with the consent of the author of the trust, gave leave for the extension of the objects of the trust so as to apply the surplus to such other purposes as the ct. deemed proper upon the *cy-près* principle.—ADVOCATE-GENERAL OF BENGAL *v.* WEBB-JOHNSON (1924), I. L. R. 52 Calc. 508.—**IND.**

sn. *Erection of church tower—Surplus applied to building Sunday school.*]—ROWE & BROWN *v.* PUBLIC TRUSTEE, [1928] N. Z. L. R. 51.—**N.Z.**

PART IV. SECT. 2, SUB-SECT. 3.

sp. *Administration of charity becoming increasingly arduous & discouraging.*]—It is not a legitimate ground for the application of the doctrine of *cy-près* merely that the administration of a charity has become increasingly arduous & discouraging in its results.—*Re* GLASGOW DOMESTIC TRAINING SCHOOL, [1923] S. C. 892.—**SCOT.**

sr. *Inexpedient to effect purpose.*]—Where the Y.W.C.A. applied for leave to divert certain moneys procured by subscription "for the purpose of building an extension to supply increased demand for accommodation in order to be of greater service to the young girl":—*Held:* there was no gift except to do that which, under the circumstances, it is inexpedient & unnecessary to effect now, & it was not within the principle of the cases in which the ct. executes a general purpose *cy-près*, & the application should be refused.—*Re* YOUNG WOMEN'S CHRISTIAN ASSOCN. EXTENSION CAMPAIGN FUND, [1934] 3 W. W. R. 49.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

ss. *Interest payable to beneficiary—Whether entitled to corpus.*]—A testator by his will appointed trustees, providing for the appointment of new trustees in place of those dying, etc., & gave them his residuary estate in trust to convert into money & stand possessed of all moneys in trust for certain uses & purposes, including, as to $20,000, to invest it & pay the net annual interest & income therefrom to his sister for life if remaining unmarried, & from & after her death or marriage to keep invested said sum & "pay & apply the net annual interest & income thereof," one-half to applt., a charitable institution (incorporated by statute), "to be used for the general purposes of that institution," &, as to another $20,000, to invest it & pay & apply the net annual interest & income thereof for the benefit of a certain church, & should (*inter alia*) said church cease to exist or change its adherence, "then & thereafter" to "annually pay over the whole of the net annual interest & income" of said sum to applt. "to be used for the general purposes of that institution." In events which occurred since testator's death, applt. became entitled to said gifts in its favour. It claimed the right, as sole beneficiary of the income, to receive from the trustees the corpus (one-half & the whole respectively) of said sums:—*Held:* applt. was not entitled to receive the corpus.—HALIFAX SCHOOL FOR THE BLIND *v.* CHIPMAN, [1937] S. C. R. 196; 3 D. L. R. 9.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.

1502 iii. *Whether charities within Real Property Limitation Act, 1833 (c. 27)—Express trust—Charges.*]—*Re* DRAKE'S ESTATE, [1909] 1 I. R. 136, 140.—**IR.**

SOUTHEND-ON-SEA ESTATE CO.'S CONTRACT, 137 L. T. 122.

1545. *Add. Annotation :—As to* (2) **Consd.** *Re* Child Villiers' Appln., Villiers *v.* A.-G., [1922] 1 Ch. 394.

1549. *Add. Annotations :—As to* (1) **Consd.** I. R. Comrs. *v.* Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154. *As to* (2) **Reld.** *Re* Child Villiers' Appln., Villiers *v.* A.-G., [1922] 1 Ch. 394; *Re* Booth & Southend-on-Sea Estates Co.'s Contract, [1927] 1 Ch. 579.

1595. *Add. Annotation :—***Reld.** *Re* Smith, Public Trustee *v.* Smith (1931), 100 L. J. Ch. 409.

1609a. —— **Not decreed.**]—SOMERVILLE *v.* CHAPMAN (1779), 1 Bro. C. C. 61; 28 E. R. 985.

*Annotations :—***Expld.** A.-G. *v.* St. John's Hospital, Bath (1865), 1 Ch. App. 92. **Reld.** Browne *v.* Tighe (1834), 2 Cl. & Fin. 396.

1670. *Add. Annotation :—Generally,* **Reld.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc. (1921), 91 L. J. Ch. 74.

Part VII.—Trustees.

1847. *Add. Annotation :—***Reld.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

1870a. Powers under Settled Land Act, 1925 (c. 18), s. 29—Powers of sale under sects. 29, 94.]—*Re* BOOTH & SOUTHEND-ON-SEA ESTATES CO.'S CONTRACT, No. 1532a, *ante.*

1870b. —— **To what trusts applicable—Public trusts—Trust of society within Literary & Scientific Institutions Act, 1854 (c. 112).**]—Trusts of land belonging to an unincorporated society, confined to members paying an annual subscription, & the object of which is the encouragement of literature, science & art, & which comes within Literary & Scientific Institutions Act, 1854 (c. 112), are "public trusts" within Settled Land Act, 1925 (c. 18), s. 29, & the trustees, appointed by deed since 1925, have the powers conferred on them by that sect.—*Re* CLEVELAND LITERARY & PHILOSOPHICAL SOCIETY'S LAND, BOLCHOW *v.* LAUGHTON, [1931] 2 Ch. 247; 100 L. J. Ch. 363; 145 L. T. 486.

1938. *Add. Annotation :—***Reld.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

Part IX.—Jurisdiction over Charities.

1980a. —— —— —— **Gift "unto my country England."**]—*Re* SMITH, PUBLIC TRUSTEE *v.* SMITH, No. 217c, *ante.*

1981. *Add. Annotation :—***Reld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

1998. *Add. Annotation :—***Reld.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

2001. *Add. Annotation :—***Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

2015. *Add. Annotation :—***Reld.** R. *v.* All Souls College, Oxford (1681), Skin. 13.

2019a. —— —— ——.]—If the visitor of a college refuse to exercise his visitatorial power by hearing an appeal, the Ct. of Queen's Bench will grant a mandamus to set him in motion, but cannot afterwards review his decision.

A fellow of King's College, Cambridge, had been expelled the college & deprived of his fellowship, by the provost & fellows, upon a charge of fraud & perjury, the proceedings being conducted partly in the absence of the accused, & the charge being alone supported by a comparison of his letters with an answer which he had filed in a suit in Chancery. Upon appeal to the visitor, the decision of the provost & fellows was affirmed: —*Held :* the ct. had no power to grant a mandamus to restore to the fellowship.—*Ex p.* BULLER (1855), 25 L. T. O. S. 102; 1 Jur. N. S. 709; 3 W. R. 447; 3 C. L. R. 1158.

2026. *Add. Annotation :—***Reld.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons (1932), 102 L. J. K. B. 113.

2041. After this case add :—

——.]—*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 19 (5).

2111a. *S. P. Ex p.* BULLAR (1857), 28 L. T. O. S. 269; 21 J. P. Jo. 84.

2137. For the existing paragraph substitute the following paragraph :—

Not exempt—Gift of land to mixed charity at date of determination of question by commissioner—Not mixed charity at time of donation.]—In order that a donation or bequest may come within the provision in 1853 Act, s. 62, exempting from the jurisdiction or control of the Charity Comrs. a

---

PART V. SECT. 3, SUB-SECT. 6.

1860 i. *When sanctioned by court.*]—When land is held upon a charitable trust, which contemplates its permanent retention, & there is no express power to mtge. the land, the ct. will not give its sanction to a mtge. unless satisfied that a mtge. will be not merely beneficial, but is necessary for the carrying into effect of the trust. Business expediency is insufficient.—*Re* HUGHES, THORNTON *v.* CHURCH OF ENGLAND TRUSTS CORPN. (MELBOURNE DIOCESE) (1935), 41 Argus L. R. 19.—**AUS.**

sc. *Departure from trust—Whether sanctioned.*]—The ct. will not authorise a departure from the terms of a charitable trust by way of mtge. of the trust premises, unless the performance of the trust as originally created has become impossible otherwise.—*Re* HUGHES, THORNTON *v.* MELBOURNE CHURCH OF ENGLAND TRUSTS CORPN., [1934] V. L. R. 345.—**AUS.**

PART VII. SECT. 2, SUB-SECT. 2.

st. *Power of appointing successor—Reasonable apprehension of death—Implied power of revocation.*]—Where power is given to a trustee to appoint his successor "at his death" for a public charitable trust, there should, if the appointment is made *inter vivos* to take effect at once, be proof of circumstances showing that the appointor had reasonable apprehension of his death, & it is always subject to the condition that, if the appointor recovers, the transfer is not to operate; & even if the power of revocation is not expressly reserved in the deed, such a deed should always be deemed to be subject to a power of revocation by implication.—CHOCKALINGA MUDALIAR *v.* DURAISWAMI MUDALIAR (1927), I. L. R. 51 Mad. 720.—**IND.**

donation or bequest made to a "mixed charity"—*i.e.* a charity maintained partly by voluntary subscriptions & partly by income from endowment—it must be a donation or bequest to a charity which is already, at the date of gift, a mixed charity. It is not sufficient to bring the donation or bequest within the exemption for the charity to become a mixed charity between the date of gift & the determination by the ct. of the question of exemption.

Land within the registered area was conveyed to a charity which at the time, although possessed of other income-bearing land, was not also maintained by any voluntary subscriptions. After the application for registration & pending the determination of the question of exemption by the ct., voluntary subscriptions were received & the charity became a mixed charity:—*Held:* the land not having been given to a charity which at the date of gift was a mixed charity, was not exempt from the jurisdiction or control of the Charity Comrs., & a restriction must be entered on the register against a disposition of the land without their consent.—*Re* CHILD VILLIERS' APPLICATION, VILLIERS *v.* A.-G., [1922] 1 Ch. 394; 91 L. J. Ch. 473; 126 L. T. 555; 38 T. L. R. 291; 66 Sol. Jo. 266, C. A.

Annotation:—**Apld.** *Re* Shakespeare Memorial Trust, Lytton *v.* A.-G., [1923] 2 Ch. 398.

2146a. —— Land purchased out of donation—Donation before first annual subscription.]—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., No. 78a, *ante*.

2154. *Add. Annotation:*—**Consd.** *Re* Diptford Parish Lands, [1934] Ch. 151.

2154a. Time for appeal.]—(1) On an appeal, by leave of the A.-G., from an order of the Charity Comrs. establishing a scheme for the administration of charities, the petition to the ct. must under Charitable Trusts Act, 1860 (c. 136), s. 8, be presented within three calendar months next "after the definitive publication of the order," which is effected under sect. 7 of the Act by affixing a copy of the order when made in some convenient place within the parish or in the district to which the charity is applicable such as on the church door, & an appeal presented more than three months after the date when the order is first so affixed is out of time.

(2) A petition for appeal, to be presented under Charitable Trusts Act, 1869 (c. 110), s. 11, under the hand of applt., may be signed by the applt.'s solicitor or other duly authorised agent.—*Re* DIPTFORD PARISH LANDS, [1934] Ch. 151; 103 L. J. Ch. 145.

2154b. Petition for appeal—Signature.]—*Re* DIPTFORD PARISH LANDS, No. 2154a, *ante*.

Part X.—Practice.

2177a. —— Action to restrain exclusion from management of non-provided school.]—Where an action was begun which claimed an injunction restraining defts. from excluding pltf. from the meetings of the managers of a non-provided school, who had been appointed in pursuance of an order made by the Board of Education under Education Act, 1902 (c. 42), s. 11 (8), & damages, & where the management of such non-provided school had been originally established by a trust deed, the action was not allowed to proceed until, in pursuance of Charitable Trusts Act, 1853 (c. 137), s. 17, & Orders in Council made under Board of Education Act, 1899 (c. 33), s. 2 (2), a certificate from the Board as exercising with regard to educational charities the jurisdiction formerly exercised by the Charity Comrs. had been obtained.—FALCONER *v.* STEARN, [1932] 1 Ch. 509; 101 L. J. Ch. 231, 232; 146 L. T. 461; 30 L. G. R. 187.

2224. *Add. Annotation:*—**Refd.** Key *v.* Bastin, [1925] 1 K. B. 650.

2227a. Bequests to Irish parishes.]—*Re* LOVE, NAPER *v.* BARLOW, [1932] W. N. 17; 173 L. T. Jo. 116; 73 L. Jo. 168.

2246a. Bequests to Irish parishes—Attorney-General of the Irish Free State not proper party.]—*Re* LOVE, NAPER *v.* BARLOW, [1932] W. N. 17; 173 L. T. Jo. 116; 73 L. Jo. 168.

2252. *Add. Annotation:*—**Refd.** Key *v.* Bastin, [1925] 1 K. B. 650.

2271. *Add. Annotation:*—**Refd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

2283. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

2289a. —— Trust to establish Home of Rest—Reference to decide whether practicable.]—*Re* JAMES, GRENFELL *v.* HAMILTON, No. 47c, *ante*.

2330a. ——.]—An information was filed in the year 1821 against the trustee of a grammar school founded in the reign of Edward VI., praying that a new scheme might be approved of for the management of the school. Pending these proceedings, the trustees, in the year 1838, themselves made new regulations for the school, to which the usher, who was appointed previously to the filing of the information, was ordered to conform. The usher refused to be bound by such new regulations, & was consequently dismissed, & now presented a petition under Charities Procedure Act, 1812 (c. 101), alleging that the trustees of the school had no power to alter the rules, & praying that he might be re-

PART IX. SECT. 3, SUB-SECT. 1.

sd. *Effect of Church of England Trust Property Act*, 1917, *s.* 32.]—Although by reason of the wide powers conferred upon Synod by sect. 32 of Church of England Trust Property Act, 1917, in respect to the variation of trusts, it is improbable that the Ct. of Equity will continue to exercise its *cy-près* jurisdiction in respect to charitable trusts coming within the operation of that Act, nevertheless the ct. has jurisdiction to entertain informations the object of which is to complain of breaches of such trusts & to administer the same, & will not decline to exercise such jurisdiction except for good cause shown.—A.-G. *v.* CHURCH OF ENGLAND PROPERTY TRUST DIOCESE OF SYDNEY (1933), 34 S. R. N. S. W. 36; 50 N. S. W. W. N. 241.—**AUS.**

PART IX. SECT. 3, SUB-SECT. 2.

sv. *Enforcement of provision for schism.*]—When property is given in trust for A., B. & C., etc., forming an association for fraternal & benevolent purposes, if the instrument provides for the case of a schism then the ct. will act upon it.—LINDSAY *v.* EMPY (Alta.) (1915), 32 W. L. R. 246; 9 W. W. R. 32; 23 D. L. R. 877.—**CAN.**

instated :—*Held :* the ct. had no power, except under an information, to decide whether the trustees had power to alter the regulations of the school. Petition dismissed, with costs.—A.-G. *v.* EAST RETFORD GRAMMAR SCHOOL (1848), 17 L. J. Ch. 450.

2330b. Matters relating to constitution of charity.]—A.-G. *v.* BRISTOL CORPN., *Ex p.* Goodenough, No. 2346a, *post.*

2346a. —— —— After decree.]—After a decree had been made, in a suit by information & bill, for the general administration of a charity, one of the objects of which was a free grammar school, the master of the school, who was not a party to the suit, presented a petition in it, with the sanction of the A.-G., stating that, in 1832, which was five years before the decree was made, defts., the trustees of the charity, unlawfully removed him from his office, & praying to be paid the arrears of his salary :—*Held :* (1) the petition could not be entertained, because it was presented by a person who was not a party to the suit, & involved an important question between the petitioner & the trustees, which was not raised at the hearing of the suit ; (2) the ct. would not have had jurisdiction to determine the question, if the petition had been presented under Charities Procedure Act, 1812 (c. 101), but that a new suit must be instituted.

(3) Where the rule laid down for the management of a charity is clear, & the only question is whether the parties have acted according to that rule or not, that is a question which may be determined on petition. But, where the question has reference to the original constitution of the charity, as, for instance, whether certain persons called governors or trustees, have a certain authority, that is a question touching the original constitution of the charity, which can be decided only on information (SHADWELL, V.-C.).—A.-G. *v.* BRISTOL CORPN., *Ex p.* GOODENOUGH (1845), 14 Sim. 648 ; 14 L. J. Ch. 457 ; 5 L. T. O. S. 533 ; 60 E. R. 510.

2353a. —— Not petition for payment out of funds in court of money for completion of purchase of land.]—*Ex p.* ST. BARTHOLOMEW'S HOSPITAL (GOVERNORS) (1928), 72 Sol. Jo. 225.

2414a. Order for payment of legacy to trustee—Undertaking to render accounts to Attorney-General.]—*Re* REDDISH, PENTON *v.* WATERS, [1934] W. N. 198 ; 178 L. T. Jo. 329.

2423a. —— —— ——.]—PHILIPPS *v.* A.-G., [1932] W. N. 100 ; 173 L. T. Jo. 320.

2446. After this case add :—

——.]—*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 19 (5).

2537. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

2562a. Application to ascertain whether cy-pres doctrine applicable.]—*Re* LAWTON, GARTSIDE *v.* A.-G., No. 1252c, *ante.*

2576. *Add. Annotation :*—**Refd.** *Re* Monk. Giffen *v.* Wedd, [1927] 2 Ch. 197.

CHATTEL MORTGAGES.

See BILLS OF SALE.

CHEAT.

See CRIMINAL LAW.

CHECKWEIGHER.

See MINES.

CHEESE.

See FOOD AND DRUGS.

CHIMNEY.

See EASEMENTS; NUISANCE.

CHIMNEY SWEEP.

See MASTER AND SERVANT; TRADE.

CHOSES IN ACTION.

Part I.—In General.

7. *Add. Annotation :*—**Refd.** *Re* Sandiford (No. 2), Italo-Canadian Corpn., Ltd. *v.* Sandiford, [1935] W. N. 158.

12a. **Rentcharge—Arrears of.**]—SALWAY *v.* SALWAY (1770), 2 Dick. 434; Amb. 692; 21 E. R. 338.

13. *Add. Annotations :*—**Distd.** Baker *v.* Archer-Shee, [1927] A. C. 844; A.-G. *v.* Belilios, [1928] 1 K. B. 798. **Refd.** New York Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Brassard *v.* Smith, [1925] A. C. 371; Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; Daw *v.* I. R. Comrs., Duff Dunbar *v.* I. R. Comrs. (1928), 14 Tax Cas. 58.

19. After this case add "**Patent.**]—*See* PATENTS."

20. *Add. Annotations :* — **Dbtd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15.

21. *Add. Citations :*—FAVORKE *v.* STEINKOPFF, [1922] 1 Ch. 174; *sub nom. Re* STEINKOPFF, FAVORKE *v.* STEINKOPFF, 91 L. J. Ch. 165; 126 L. T. 597.

21a. —— ——.]—In Feb. 1912, three parcels of goods were shipped in a British steamship from Baltimore for Hamburg. The ship sailed & was never heard of again. The goods were insured with M., who were German nationals carrying on business in New York. The assured claimed against M., & some time before Nov. 1918, were paid by M. for a total loss; whereupon the bills of lading were handed over to M. by the assured. Actions on the contract of carriage against the shipowners were commenced in England for the benefit of M. & other insurers by the owners of the goods & damages were recovered, of which the sum of £4,538, being that portion which corresponded with M.'s share in the insurance, was claimed by deft. to be subject in his hands to the charge created by the Treaty of Peace Order, 1919. On Nov. 18, 1918, after the outbreak of war between the United States & Germany & after proceedings had been commenced in England, pltf., in pursuance of the American Trading with the Enemy Act, 1917, & executive Orders made thereunder, made a demand upon M., the effect of which was to vest in him as Alien Property Custodian all the property, rights, claims & assets of M. within the United States. In an action by pltf. claiming payment by deft. of the said sum of £4,538, so recovered by M. & in the hands of deft. as Administrator of German Property :—*Held :* (1) on the crucial date, Nov. 18, 1918, M. had by subrogation anequitable interest as against the owners of the goods in the right of action which those owners had for the loss of their goods to the extent that was necessary to recoup to M. the amount paid on the policies of insurance; (2) that right of action came within the general rule that choses in action must be taken to be situate in the country where they are properly enforceable; (3) notwithstanding the fact that the bills of lading & other documents relating to the claim against the shipowners were at the material time in the hands of pltf. in the United States as Alien Property Custodian, the *situs* of the right of action was in England, & therefore the sum recovered for M. therein passed to deft. & not to pltf.—SUTHERLAND *v.* GERMAN PROPERTY ADMINISTRATOR, [1934] 1 K. B. 423; 103 L. J. K. B. 244; 150 L. T. 247; 50 T. L. R. 107, C. A.

23. *Add. Annotations :*—**Consd.** Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25; English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170. **Refd.** New York Life Insce. *v.* Public Trustee (1924), 93 L. J. Ch. 449; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

24. *Add. Annotations :* — **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** New York Life Insce. *v.* Public Trustee (1924), 93 L. J. Ch. 449.

25. *Add. Annotations :*—**Apld.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Richardson *v.* Richardson, [1927] P. 228. **Consd.** Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710. **Refd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

26. *Add. Annotation :*—**Overd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

26a. ——.]—An agreement for the sale, among other things, of simple contract debts owed by debtors resident out of the United Kingdom is exempt from stamp duty in respect of such debts on the ground that they are "property locally situate out of the United Kingdom" within the exception in Stamp Act, 1891 (c. 39), s. 59 (1).—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* INLAND REVENUE COMRS., [1932] A. C. 238; 101 L. J. K. B. 193; 146 L. T. 330; 48 T. L. R. 170.

Annotation :—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

27. *Add. Annotations :*—*As to* (1) **Consd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174. *As to* (2) **Refd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174.

PART I. SECT. 1, SUB-SECT. 2.

d. Add "*revsd.* 17 O. R. 574."

s. Add "*revsd. in part* 4 A. R. 267."

PART I. SECT. 2.

27 l. *Residence of debtor.*]—Resp. & one S. were both resident in & subjects of the Indore State. Resp. carried on business as a commission agent at Indore, also at Bombay, his head office being at Indore. S. had dealings with resp. through both offices, a separate account being kept at each. On Apr. 17, 1924, a sum of nearly two lakhs was owing by resp. to S. on the Bombay account; the Indore account was about even. On that date a notice was served on resp. by order of the Indore Govt. requiring him to pay to it the sum owing to S. on the Bombay account. The debt was accordingly transferred to the Indore account without the consent of S., & on May 15, 1924, was credited to the ruler of Indore. On May 16, 1924, applts.

27a. Assignment executed abroad—Of debt payable in England.]—C., being domiciled in Guatemala, deposited a sum of money with a bank in London. Subsequently he, being then in Guatemala, assigned in writing by way of gift the money so lying to his credit at the bank to N., who was also domiciled in Guatemala, & written notice of that assignment was given to the bank. It was not disputed that if the effect of that assignment had had to be decided by English law it would have been held good. By the law of Guatemala an assignment of money made without consideration is void, unless made by a document executed before a notary on stamped paper, & signed by both parties; & by the same law an infant cannot accept a voluntary assignment himself, it must be made to & accepted by a legal representative appointed by a judge on the infant's behalf. The assignment was on unstamped paper, was not executed before a notary, & was not signed by N. At the time of the assignment N. was an infant & no legal representative had been appointed. The money lying in the bank having been claimed both by the republic of Guatemala & by N. the bankers interpleaded. In an action to determine the issue between the two claimants:—*Held:* the validity of the assignment to N. must be determined by the law of Guatemala, & was therefore bad:

(*Per* BANKES, L.J.) upon the ground that, as the republic & N. were both domiciled & resident in Guatemala at the date of their respective assignments, & as the English depositary claimed no interest in the fund, the question which, if either, of the two claimants was entitled to it must be determined by the law of their domicil & residence, & not by that of this country;

(*Per* SCRUTTON & LAWRENCE, L.JJ.) upon the ground that the question of a person's capacity to take an assignment of personal property is to be governed either by the law of his domicil, or by that of the country where the assignment takes place, & that, as in this case the country of N.'s domicil & that of the assignment to him were the same, it was immaterial to inquire which, had they been different, ought to prevail; but from either point of view N. was incapable, by reason of his infancy, of receiving the donation;

(*Per* SCRUTTON, L.J.) on the further ground that by reason of non-compliance with the formalities relating to stamp, notary, etc., the assignment was, both by the law of the place where it was made, & by that of the domicil of the parties to it, not merely inadmissible in evidence but void;

(*Per* LAWRENCE, L.J.). As the contract of deposit was made in England, & the money was repayable in England where the bank was domiciled, & was recoverable in England, it was an English debt having a local situation in this country, & accordingly the validity of the assignment, as distinguished from that of a contract to assign, must be governed by the *lex loci rei sitæ*, & not by the law of the country where the assignor & assignee were domiciled, or where the assignment took place. Consequently if non-compliance with the required formalities had been the only objection he would have held the assignment good.—REPUBLICA DE GUATEMALA *v.* NUNEZ, [1927] 1 K. B. 669; 96 L. J. K. B. 441; 136 L. T. 743; 43 T. L. R. 187; 71 Sol. Jo. 35, C. A.

Annotations:—**Follid.** *Re* Anziani, Herbert *v.* Christopherson, [1930] 1 Ch. 407. **Reld.** Richardson *v.* Richardson, [1927] P. 228.

27b. —— Exercise of power of appointment over sum in England.]—An assignment, executed in a foreign jurisdiction by a person there domiciled, of a chose in action locally situate (so far as a chose in action can be) in England, is void if the assignment is void on grounds of substance according to the local law.

A document executed abroad in exercise of powers of appointment conferred by settlements executed in accordance with English law, & expressed to be intended to operate both as an assignment & as a will, may take effect as a conveyance *inter vivos* of the property of the person executing it.

Upon the marriage of testatrix, who was born in Italy, to an Italian, two settlements of property belonging to her, hereinafter respectively called the "A" settlement & the "B" settlement, were executed. The "A" settlement comprised proceeds of sale of English freeholds conveyed to the settlement trustees on trust for sale, & investments & other moneys, the whole fund being settled on trust to pay to the husband during the joint lives of himself & testatrix, £500 a year, & subject thereto to pay the annual income to testatrix for life without power of anticipation, &, after her death, to raise £50,000, as she should by deed or will appoint & pay the sum so raised to such persons as she should appoint. The "B" settlement comprised certain freeholds & certain moneys which were settled on trust to pay the income to testatrix for life, & after her death as she should appoint. Both were English in language & form, & the trustees were resident in the United Kingdom. By a deed of Dec. 10, 1906, to which her husband & the trustees of the "A" settlement were parties, testatrix appointed that the residue of the £50,000, which she then had power to appoint under the "A" settlement should be charged upon & raised out of the property subject to that settlement, &, after her death, should be held in trust for her absolutely as her separate estate. By a deed of May 23, 1912, between herself, her husband, & the "B" settlement trustees, testatrix appointed that, after her death, &, until then, subject to her life interest, the property comprised in the "B" settlement should be held by the trustees upon trust to pay sums which she or her husband should become liable to pay to them under certain covenants of indemnity in the deed, &, subject thereto in

---

served on resp. an order of the High Ct., made in a suit which they had brought against S., attaching before judgment the debt in question. Applts. having obtained later a decree in their suit against S. sued resp. claiming to enforce the attachment:—*Held:* as the contract between resp. & S. did not provide expressly or impliedly that payment was to be solely, or primarily, at Bombay, or make the debt enforceable only there, the *situs* of the debt was Indore; & it had been effectively seized by the Indore Govt. before attachment by applts. It was not for the ct. to inquire whether the Indore Govt. in seizing property situate in its own territory had acted within the law of that State.—CHATURBHUJ PIRAMAL *v.* CHUNILAL OOMKARMAL (1933), 60 L. R. Ind. APP. 211.—**IND.**

trust for testatrix, her heirs, administrators & assigns. Testatrix & her husband lived in Italy, & she was domiciled there at the date of her death. On July 28, 1927, being then domiciled in Italy, she executed an "appointment & assignment," expressed to be supplemental to the "A" settlement, the "B" settlement, & the deed of Dec. 10, 1906, & expressed also to be intended to operate as an assignment *inter vivos* & as a will. By it, she appointed & assigned the property comprised in those documents, subject to certain subsisting trusts, to the trustees of the appointment & assignment whom she appointed exors. upon trust for the payment of certain debts & legacies, & she gave the final residue to one of the trustees absolutely. After the death of testatrix leaving no other testamentary disposition, the deed of appointment & assignment was admitted to probate in the United Kingdom:—*Held:* (1) the deed of appointment & assignment so far as it purported to assign movable property was subject to the law of the country in which it had been executed & in which the testatrix was domiciled, *i.e.* to Italian law, & that, being null & void in Italian law, it did not effectually assign the remainder of the £50,000, appointed by the deed of Dec. 10, 1906; (2) the appointees of the sum of £50,000, were not persons entitled to immovable property. Their right, which was to require the trustees to pay the amount, was a chose in action in the nature of a movable; (3) the deed of appointment & assignment, as it was expressed to be intended to operate as an assignment as well as a will, could take effect as a conveyance *inter vivos* of the immovable property of testatrix situate in England.—*Re* ANZIANI, HERBERT *v.* CHRISTOPHERSON, [1930] 1 Ch. 407; 99 L. J. Ch. 215; 142 L. T. 570.

After this case for "**Assignments executed abroad.**]—*See* Nos. 459–462, 504, 505, *post*," read "——.]—*See, also*, Nos. 459–462, 504, 505.

Part II.—Assignment in General.

29. *Add. Annotations:*—**Refd.** Public Trustee *v.* Elder, [1926] Ch. 776; Skipwith (Sir Grey) *v.* Homewoods Sawmills, Ltd., [1938] 2 All E. R. 733.

35. Before this case add, "1873 Act, s. 25 (6), is now replaced by Law of Property Act, 1925 (c. 20), s. 136."

40. *Add. Annotation:*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

Part III.—What may be Assigned.

47. Before this case add, "1873 Act, s. 25 (6), is now replaced by Law of Property Act, 1925 (c. 20), s. 136."

53. *Add. Annotation:*—**Refd.** *Re* Bower-Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

63. *Add. Annotations:*—*As to* (1) **Refd.** Cottage Club Estates *v.* Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; *Re* Wait, [1927] 1 Ch. 606; Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69; Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

67. *Add. Annotations:*—**Consd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605. **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

67a. **Assignment of part of debt—Not operative to pass legal right to part assigned.**]—A firm of C., V. & Co., being owners or pledgees of certain cotton goods, which had been transferred or pledged to them by one member of the firm, insured them for £8,000 upon an open policy of marine insurance. The goods were lost at sea. The firm incurred a liability of £7,000 to one W., & in settlement of his claim it was agreed that they should assign the policy to him & that he should pay them a certain sum unconditionally & a further sum of £1,000 if, but only if, the should receive that amount or more from the insurers. W. then in his own name brought an action against the insurers to recover the value of the insured goods:—*Held:* an assignment of part of a debt or legal chose in action is merely an equitable assignment & is not effectual to transfer the legal right to the debt or "thing in action" under Law of Property Act, 1925 (c. 20), s. 136, & therefore pltf. suing in his own name could not recover; by SLESSER, L.J., also on the additional ground that no express notice had been given to the insurers after execution of the assignment; SCRUTTON, L.J., *contra* on this point, inclining to the view that, if there was an assignment valid in other respects, the pleadings gave sufficient notice of it *pendente lite* so as to bring the case within R. S. C., Ord. 17, r. 3.—WILLIAMS *v.* ATLANTIC ASSURANCE CO., LTD., [1933] 1 K. B. 81; 102 L. J. K. B. 241;

PART II. SECT. 1.

sg. *Judicature Act, R.S.A.*, 1922—*Equitable rights not affected.*]—Sect. 37 (*m*) of Judicature Act, R.S.A., 1922, deals with only the legal right between the assignor & assignee of a chose in action & there is nothing therein to suggest that, while the assignee has all the legal rights & remedies of the assignor, some one may not have equitable rights in that chose in action which has become legally vested in the assignee.—DAWSON *v.* LEACH & HAZZA, [1935] 3 W. W. R. 547; [1936] 1 D. L. R. 31.—CAN.

PART III. SECT. 2, SUB-SECT. 1.

s i. —— ——.]—The judgment of a foreign ct. creates a debt, & is *primâ facie* assignable.—MUHAMMAD MOIDEEN *v.* CHINTHAMANI CHETTAR (1929), I. L. R. 52 Mad. 503.—IND.

PART III. SECT. 2, SUB-SECT. 2.

64 iii. —— ——.]—Under Choses in Action Act, R.S.S., 1930, there can be an assignment of part of a debt.—MACDONALD *v.* ROYAL BANK OF CANADA, [1934] 1 W. W. R. 732.—CAN.

148 L. T. 313; 37 Com. Cas. 304; 18 Asp. M. L. C. 334, C. A.

71. *Add. Annotation :*—**Refd.** Mason *v.* Mason & Cottrell, [1933] P. 199.

73. *Add. Annotation :—As to* (2) **Apld.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

77a. —— —— **Retention money.**] — *Held :* retention money under a building contract, although not becoming payable until a later date than the assignment, constituted a debt or legal thing in action which could be assigned, & could be sued for in an action without joining the assignors as parties.—G. & T. EARLE, LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL (1928), 140 L. T. 69; 44 T. L. R. 758, C. A.

78. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; *Re* Wait, [1927] 1 Ch. 606.

80. *Add. Annotation :—As to* (2) **Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

81. *Add. Annotation :*—**Apld.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

82. *Add. Annotation :*—**Refd.** Gray *v.* Spyer, [1922] 2 Ch. 22.

84. *Add. Annotation :*—**Refd.** Norwich Union Fire Insce. Soc. *v.* Colonial Mutual Fire Insce., [1922] 2 K. B. 461.

86. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

91. *Add. Annotation :*—**Refd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249.

93. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

94. *Add. Annotation :*—**Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

96. *Add. Annotation :*—**Refd.** Skipwith (Sir Grey) *v.* Homewoods Sawmills, Ltd., [1938] 2 All E. R. 733.

106a. —— —— **Grantee bound to attend at specified place to receive payments & give receipts.**]—*Held :* assuming such condition to be a valid one, there was nothing to prevent the grantee from assigning the annuity to a third person.—ARDEN *v.* GOODACRE (1852), 11 C. B. 883; 21 L. J. C. P. 129; 18 L. T. O. S. 208; 16 Jur. 529; 138 E. R. 723.

110a. —— ——.]—Testatrix by her will, dated in 1862, gave a fifth share of her residuary estate to her daughter W. for life, with remainder to her children, but if she should die without issue, which event happened, "her share to go to her next of kin as if she had not been married." In 1866 J., another daughter of testatrix, married, & by her marriage settlement covenanted that any real or personal property to which she then was entitled for any estate or interest whatsoever in reversion, remainder, or expectancy should be settled upon the trusts of the settlement. W. died in 1912 without issue, & leaving J. her sole next of kin :—*Held :* the interest which J. had at the date of the settlement in the settled share of W. was

---

PART III. SECT. 2, SUB-SECT. 3.

77 ii. —— ——.]—M. who had contracted with defts. to do certain work for them, gave an order upon defts. in favour of H. & M., who assigned it to pltfs. to pay to H. & M. "any moneys due or to become due on my contract . . . in consideration of moneys advanced by them to me for the purpose of financing this contract." Defts. acknowledged the receipt of the order. Afterwards certain payments were made by defts. to sub-contractors on M.'s direction, certain costs in the action were paid to solrs. & execution creditors of M. attached moneys in defts.' hands payable upon the contract, whereupon an interpleader issue was directed & tried :—*Held :* the order under which pltfs. claimed was not a legal assignment of an existing chose in action nor an assignment of the contract : it was nothing more than an equitable assignment of a fund not yet in existence.—INTERIOR TRUST CO. *v.* ESSEX BORDER UTILITIES COMMISSION (1928), 62 O. L. R. 551.—**CAN.**

78 i. *Money accruing to assignor by will.*]—An amount which exors. are directed by the will to pay for the maintenance & education of an infant may be assigned by the person to whom they have become liable therefor.—*Re* GRANT ESTATE, MULLIN & MULLIN *v.* ANNABLE, [1928] 1 W. W. R. 894; 22 Sask. L. R. 483.—**CAN.**

PART III. SECT. 3.

8a. *To construct tramway across grantor's land—Assignable.*]—MCDONALD *v.* PEDDLE, [1923] N. Z. L. R. 987.—**N.Z.**

8b. *To execute lease.*]—A right arising under an agreement with an owner of immovable property to call upon him to execute a lease is a chose in action, and as such movable property.—WEARNE BROTHERS *v.* RUSSA ENGINEERING WORKS (1928), I. L. R. 7 Ran. 144.—**IND.**

PART III. SECT. 4.

96 i. *Claim to compensation—Damage to lands—Assignable.*]—By erection of a public work, a dam, the Crown expropriated the right to flood the land of V., who subsequently sold the property to H., with the right to recover compensation from the Crown : —*Held :* it was not an assignment of litigious rights, & H. was entitled to recover compensation.—R. *v.* HYE (1921), 69 D. L. R. 173; 21 Exch. C. R. 76.—**CAN.**

96 ii. ——.]—By a clause in a lease it was provided that in case the demised premises should be resumed by any authority, then out of the compensation moneys payable to the lessor & lessee, the lessor shall be entitled to receive £8,440, & in addition £300 *per annum* or a proportionate part thereof for the unexpired term of the lease & the lessee shall be entitled to the balance :—*Held :* the clause in the lease did not operate as an equitable assignment.—TOOTH *v.* BRISBANE CITY COUNCIL (1929), 41 C. L. R. 212.—**AUS.**

c i. —— —— ——.]—A right of action in tort is not assignable. The lessee under a crop payment lease, having been served while threshing with a garnishee summons issued in a suit against the lessor, sold all the crop in his own name & paid the lessor's share of the proceeds into ct., meanwhile notifying the lessor that he would do so. The lessor after receiving said notice & a copy of the garnishee summons assigned to pltf. all his claims & demands against the lessee for "debts or rentals now due or to become due" under the lease, & all his interest in the crops grown thereunder. The lease required the lessee to deliver the lessor's share on the day of threshing, &, if required, at a certain elevator in the name of the lessor. The pltf., *i.e.* the assignee of the lessor, sued the lessee for damages on the ground of conversion.—*Held :* the action was not maintainable.—KOZAK *v.* MISIURA, [1928] 1 D. L. R. 591; [1928] 1 W. W. R. 1; 22 Sask. L. R. 208.—**CAN.**

1 i. —— —— *Claim by insurance company—Having paid loss.*]—Pltfs., insurance cos., had insured premises which were destroyed by a fire which, as they alleged, arose from the negligence of defts. Having paid the owners of the premises the amount of the loss, pltfs. claimed to be subrogated to the right of the owners to recover against defts. & also alleged they had taken assignments in writing by way of subrogation to the right of the owners, & they claimed in this action damages for the negligence of defts. causing the fire :—*Held :* the action was a simple common law action in which the owners' rights were asserted against the alleged wrongdoers, & a motion to strike out a jury notice given by defts. upon the ground that the action was one which, before 1873, was exclusively within the jurisdiction of the Ct. of Chancery, was refused.—ROYAL EXCHANGE ASS'CE. CO. *v.* GRIMSHAW BROTHERS, LTD., [1928] 2 D. L. R. 412; 62 O. L. R. 25.—**CAN.**

1 ii. —— —— *Nuisance.*]—CANADIAN SURETY CO. *v.* FINCH, [1930] 2 D. L. R. 421.—**CAN.**

PART III. SECT. 5.

100 i. *Promise to pay over proceeds of litigation—Compromise of suit—Effect of agreement.*]—Where there was an assignment of part of the fruits of litigation :—*Held :* even if they were to be regarded as non-existing property at the date of the agreement, the agreement attached upon the money being paid.—VATSAVAYA VENKATA JAGAPATI *v.* POOSAPATI VENKATAPATI (1924), L. R. 52 Ind. App. 1.—**IND.**

either a mere *spes successionis*, or must be treated as such, & was not assignable at law.—*Re* MUDGE, [1914] 1 Ch. 115; 83 L. J. Ch. 243; 109 L. T. 781; 58 Sol. Jo. 117, C. A.

Annotation :—**Refd.** *Re* Lind, Industrials Finance Syndicate *v.* Lind, [1915] 2 Ch. 345.

114. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Wait, [1927] 1 Ch. 606.

118. *Add. Annotations :*—**Apld.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97. **Refd.** *Re* Dent, *Ex p.* Trustee, [1923] 1 Ch. 113; Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; *Re* Gillott's Settlement, Chattock *v.* Reid (1933), 77 Sol. Jo. 447; *Re* Warren, Wheeler *v.* Mills, [1938] 2 All E. R. 331.

119. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

124. *Add. Annotations :*—**Consd.** Smith *v.* Smith, [1923] P. 191; Walls *v.* Legge, [1923] 2 K. B. 240.

125. *Add. Annotations :*—**Consd.** Smith *v.* Smith, [1923] P. 191. **Refd.** Campbell *v.* Campbell, [1928] P. 187; *Re* Nelson, Norr's *v.* Nelson (1918), [1928] Ch. 920, n.

153. *Add. Annotations :*—**Consd.** Burrowes *v.* Burrowes (1929), 141 L. T. 201. **Refd.** Capron *v.* Capron, [1927] P. 243.

154. *Add. Annotations :*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

160. *Add. Annotation :*—**Refd.** Capron *v.* Capron, [1927] P. 243.

Part IV.—What amounts to an Assignment.

191. *Add. Annotation :*—**Apld.** The Zigurds (1931), 47 T. L. R. 525.

193. *Add. Annotation :*—*As to* (2) **Apld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

195. *Add. Annotations :*—**Refd.** Cottage Club Estates *v.* Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

196. *Add. Annotations :*—*As to* (3) **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304. *Generally*, **Refd.** The Zigurds (No. 2) (1932), 48 T. L. R. 559.

200. *Add. Annotation :*—**Consd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29.

202. *Add. Annotation :*—**Refd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29.

204. *Add. Annotation :*—**Refd.** Smith *v.* Zigurds S.S. Owners & E. A. Casper, Edgar & Co., [1934] A. C. 209.

204a. —— ——.]—Pltfs., shipowners & brokers of West Hartlepool, acted as ship's agents for the steamship *Z.*, of Riga, & before making any necessary disbursements on behalf of or incurring any liability in respect of the vessel obtained from the master the following document: "Please pay the freight for my vessel, the *Z.*, & all demurrage which may be payable under the charter, to my agents, Messrs. C. E. & Co., Ltd., & oblige." The persons described in the document as the master's agents were pltfs. In an action by pltfs. for necessaries the evidence showed that this document came into being with the approval of the managing owner of the *Z.* & after he had agreed to assign to pltfs. all freight & demurrage :—*Held :* the document operated as an assignment of the freight & demurrage & pltfs. were entitled to judgment.—THE ZIGURDS (1931), 47 T. L. R. 525.

204b. —— ——.]—Pltf., who had obtained judgment as first mtgee. against the proceeds of sale of a Latvian steamship, further claimed legal assignment to himself of the freight earned on the ship's last voyage. It was argued that by an agreement supplementary to the mtge. the mtgee. was given an equitable assignment, which by reason of notice to or knowledge possessed by the consignee or receiver of the cargo was converted into a legal assignment. The alleged notice consisted in the intervention by the mtgee. in an action by necessaries claimants who had arrested the ship, &/or in the terms of the mtgee.'s affidavit of interest filed in that action. The knowledge of the mtgee.'s claim was said to be proved by a letter written by the solrs. for the consignees or receivers of cargo. The material paragraphs of the supplementary agreement were as follows: "The mtgee. shall be at liberty so long as any moneys may be due under the said first mtge. & this agreement & he is hereby empowered in his own name or in the name of the shipowners . . . to demand, sue for, & receive & give receipt for all moneys due to the shipowners in connection with the said steamship & to institute such legal proceedings as he may think proper. . . ." "In relation to the matters dealt with herein, where they apply, the shipowners hereby appoint the mtgee. their attorney for them & in their name at any time during the

---

PART III. SECT. 13, SUB-SECT. 4.

ae. *Pension Act, s.* 20 (3)—*What amounts to charge—Order under Collection Act, R. S. N. S.* 1923.]—CHIPMAN *v.* ROSCOE (N. S.), [1929] 4 D. L. R. 130.—**CAN.**

PART III. SECT. 14.

a i. ——.]—An option to purchase contained in a will, is *prima facie* not purely personal but is assignable by the optionee & transmissible by him to his personal representatives.—PERPETUAL TRUSTEE CO. *v.* UNION TRUSTEE CO. (1927), 28 S. R. N. S. W. 222; 45 N. S. W. W. N. 30.—**AUS.**

sf. *Non-negotiable promissory notes.*]—Promissory notes drawn in such form that they are non-negotiable, can be assigned in the same manner as an ordinary chose in action.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931.—**CAN.**

sg. *Land scrip.*]—WRIGHT *v.* BATTLEY (1905), 15 Man. L. R. 322; 1 W. L. R. 563.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.

c i. ——.]—MCQUADE & CLARK *v.* MONCRIEFF & VIETAUNET (B. C.), [1929] 1 D. L. R. 782.—**CAN.**

sh. *When amounting to assignment.*]—A simple order to pay only constitutes an assignment if that intention appears on the face of the agreement, & there is consideration.—*Re* MARITIME FINANCE, LTD., [1935] 2 D. L. R. 799.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 2.

sk. *General rule.*]—An assignment is to be regarded as absolute, although it appears on its face that it is only for the purpose of securing a debt lesser in amount, so long as it does not purport to be by way of charge only.—*Re* BLAND & MOHUN (1913), 25 O. W. R. 419; 30 O. L. R. 100; 5 O. W. N. 522.—**CAN.**

currency of this security to collect, sue for, receive & give effective receipts for all freights . . . which may be or become due & owing to the shipowners. . . ." :—*Held:* (1) by Law of Property Act, 1925 (c. 20), s. 136, a legal assignment must be absolute & express notice thereof must be given to the debtor; the constructive notice upon which the mtgee. relied was not sufficient to comply with the statute & the claim to a legal assignment of the freight failed; but there was in the supplementary agreement clear evidence of an equitable assignment of the freight to the mtgee.; (2) in a case where the mtgor. was a shipowner through whose default in business the whole trouble had been occasioned, & against whom judgments had been recovered, in default of appearance, by (*inter alios*) the interveners, it was not a necessary condition that the mtgor. should be joined in the mtgee.'s action.—THE ZIGURDS (No. 2), [1932] P. 113; 101 L. J. P. 81; 148 L. T. 72; 48 T. L. R. 559; 18 Asp. M. L. Cas. 324.

204c.—— ——.]—Pltfs., while acting as agents for a foreign steamship in an English port, were asked to make disbursements & incur expenses on behalf of the vessel. Before doing so they obtained the following document, addressed to the receivers of cargo, which was signed by the master with the approval & consent of the managing owner of the ship: "Please pay the freight for my vessel, the *Z.*, & all demurrage which may be payable under the charter, to my agents, E. A. Casper, Edgar & Co., Ltd., & oblige." On June 15, 1931, on an *ex parte* motion, LANGTON, J., gave judgment for pltfs.' claim for necessaries, & pronounced for the validity of an assignment to them of the freight & demurrage. At the reference to assess the amount of the claim the registrar, however, reported that the document was no more than an order to pay the freight & demurrage to pltfs., who, he said, had under it nothing in the nature of a right *in rem* against the freight. He, therefore, disallowed several items on the ground that they were not necessaries. Interveners, who as necessaries men were interested in the fund represented by the freight, moved to set aside the judgment of June 15, 1931, on the ground that the document was merely an ordinary agent's authority to collect the freight, & that even if it amounted to an equitable assignment the action must fail because the assignor was not joined as a pltf.:—*Held:* on the evidence of pltfs., combined with the document itself, there was an equitable assignment of the freight & demurrage to pltfs.; where the ct. was satisfied that there was no danger of fraud or harsh treatment of the assignor it could dispense with the presence of the assignor as a joint pltf.; & pltfs. could maintain their action *in rem*.—THE ZIGURDS (No. 3), [1932] P. 113; 101 L. J. P. 84; 148 L. T. 72; 48 T. L. R. 561; 18 Asp. M. L. C. 324; *revsd.* on another point, [1933] P. 87, C. A.

204d. Amount recoverable by assignee limited.]—Deft. owed £285 to W., who owed money to pltf. bank, & W. assigned to the bank the debt owed to him by deft. The assignment, which was in writing, provided that "the amount recoverable under these presents shall not at any time exceed £150." Due notice of the assignment was given to deft. In an action upon the assignment:—*Held:* (1) the assignment was not an assignment of part only of the debt, but an absolute assignment of the whole debt with a proviso that if the bank recovered more than £150 they must hold the balance as trustees for the assignor, & it was a good legal assignment; (2) even if it was an assignment of part only of the debt it would still be a good equitable assignment, & pltfs. were entitled to recover.—BANK OF LIVERPOOL & MARTINS, LTD. *v.* HOLLAND (1926), 43 T. L. R. 29; 32 Com. Cas. 56.

Annotation:—As to (1) **Refd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

205. *Add. Annotations:—As to* (1) **Refd.** National Provincial & Union Bank of England *v.* Lindsell, [1922] 1 K. B. 21; *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221. *As to* (2) **Consd.** Timpson's Exors. *v.* Yerbury, [1936] 1 All E. R. 186. **Refd.** Allgemeine Versicherungs Gesellschaft Helvetia *v.* German Property Administrator (1931), 144 L. T. 705; The Zigurds (No. 3) (1932), 49 T. L. R. 193; Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53; Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351. *As to* (3) **Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; Harmer *v.* Armstrong, [1934] Ch. 65; Coleridge-Taylor *v.* Novello & Co., [1938] Ch. 608; *Re* Warren, Wheeler *v.* Mills, [1938] 2 All E. R. 331. *Generally*, **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

211. *Add. Annotation:—As to* (1) **Refd.** Palmer *v.* *v.* Carey, [1926] A. C. 703.

214a. ——.]—Order to pay money out of a particular fund gives the party a specific lien thereon.—SMITH *v.* EVERETT (1792), 4 Bro. C. C. 64; 29 E. R. 780.

Annotations:—**Refd.** Crowfoot *v.* Gurney (1832), 9 Bing. 372; Best *v.* Argles (1834), 2 Cr. & M. 394.

221a. —— **Part of debt.**]—BANK OF LIVERPOOL & MARTINS, LTD. *v.* HOLLAND, No. 204a, *ante*.

PART IV. SECT. 2, SUB-SECT. 1.—A.

205 x. —— —— *Building contract apportioning price between builder & third party.*]—GRANT *v.* TRAVIS, [1924] 2 D. L. R. 1164; 2 W. W. R. 503.—**CAN.**

205 xi. —— ——.]—An agreement between a debtor & a creditor that the debt owing shall be paid out of a specific fund coming to the debtor, or an order given by a debtor to his creditor upon a person owing money or holding funds belonging to the giver of the order, directing such person to pay such funds to the creditor, operates as an equitable assignment of that part of the debt or funds to which the agreement or order refers.—THAKAR DAS *v.* MALIK CHAND (1932), I. L. R. 14 Lah. 325.—**IND.**

PART IV. SECT. 2, SUB-SECT. 1.—B. (c).

sm. *Authorising payment of sum in hands of garnishee—Order giving effect to verbal assignment.*]—CLARKE BROTHERS, LTD. *v.* GOODIN & PEDERSON, [1922] 3 W. W. R. 504; 68 D. L. R. 792.—**CAN.**

223 i. *Assigning money due or to become due—Under contract.*]—It is no objection to an equitable assignment of a claim against a third person that the work upon which the claim is based has yet to be performed.—*Re* MATTHEWS SHEET METAL & ROOFING CO., LTD., *Ex p.* MARTIN, [1924] 1 D. L. R. 761; 55 O. L. R. 262; 4 C. B. R. 471.—**CAN.**

223 ii. —— *Under policy.*]—*Held:* the assignment was not vitiated by the fact that, at the time, the fund on which the assignment was intended to operate had not yet come into existence.—LIVERPOOL & LONDON &

234. *Add. Annotation :*—**Reld.** Coleridge-Taylor *v.* Novello & Co., [1938] 2 All E. R. 318.

236. *Add. Annotation :*—**Apprvd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

237. *Add. Annotation :*—**Reld.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

250a. Directions to pay proceeds of cargo to creditor.]—An order by A. to B., directing the latter to pay over to C., a creditor of A., the proceeds of a cargo consigned by A. to B., creates no lien in favour of C.—HOLLAND & HUMBLE'S ASSIGNEES *v.* —— (1815), 1 Stark. 143; 171 E. R. 427; *sub nom.* HEYWOOD *v.* WARING, 4 Camp. 291; *sub nom. Re* HOLMES, *Ex p.* HEYWOOD, 2 Rose, 355, N. P.

Annotations :—**Consd.** Frith *v.* Forbes (1862), 31 L. J. Ch. 793. **Reld.** Giles *v.* Grover (1832), 9 Bing. 128; Malcolm *v.* Scott (1843), 3 Hare, 39.

258. *Add. Annotation :*—**Reld.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

258a. Agreement to pay proceeds into lender's bank—Advances for purchase of goods.]—By a written agreement made in 1917 a trader was to purchase goods from time to time & resp. was to advance money to pay for them; the trader was to sell the goods & to pay the proceeds to the credit of resp. at his bank; resp., after deducting the amount which he had advanced & one-third of the gross profits, was to pay the remaining two-thirds to the trader. In 1921 the trader became bkpt., & applt. was appointed assignee in the bkpcy. At the time of the bkpcy. a large sum advanced under the agreement had not been repaid, & the trader had in his hands goods purchased under the agreement, & the proceeds of other goods so purchased. Resp. claimed a charge on the above assets in respect of the advances not repaid :—*Held :* as the agreement did not, either contractually or otherwise, create any right of the lender in either the goods or their proceeds, it did not amount to an equitable assignment so as to entitle resp. to the charge claimed.—PALMER *v.* CAREY, [1926] A. C. 703; 95 L. J. P. C. 146; 135 L. T. 237; [1926] B. & C. R. 51, P. C.

Annotations :—**Distd.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97. **Reld.** *Re* Warren, Wheeler *v.* Mills, [1938] 2 All E. R. 331.

259. *Add. Annotation :*—**Dbtd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

269. *Add. Annotation :*—**Reld.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

274. *Add. Annotation :*—**Reld.** *Re* Wait, [1927] 1 Ch. 606.

274a. *S. P.* BRADLEY *v.* —— (1744), Ridg. *temp.* H. 194; 27 E. R. 801, L. C.

280. *Add. Annotation :*—*As to* (1) **Reld.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578.

303. *Add. Annotation :*—*As to* (1) **Distd.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n.

307. *Add. Citations :*—[1922] 1 K. B. 21; 91 L. J. K. B. 196; 126 L. T. 319; [1921] B. & C. R. 209.

Add. Annotation :—**Reld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

GLOBE INSURANCE CO., LTD. *v.* HARTLEY & FORD, [1927] V. L. R. 523; 49 A. L. T. 70; [1927] Argus L. R. 417.—**AUS.**

sp. *To agent holding its funds—To pay to holder of 'order.*]—*Re* BRITISH COLUMBIA EMPIRE SALMON CANNERS, LTD. (1934), 49 B. C. R. 89.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B. (f).

238 i. *Banker's deposit receipt—Surrender to bank—New deposit receipt taken out.*]—In order to transfer the beneficial interest in a deposit receipt, a written assignment is unnecessary. It is sufficient if the deposit receipt is surrendered to the bank, & a new deposit receipt taken out, with intent to pass the beneficial interest, in the names of the persons to whom the depositor intends to pass the beneficial interest. S., the owner of a deposit receipt for £900, surrendered the same to the bank, & directed a new deposit receipt to be made out in the names of himself & his two nephews, with the intention that the interest in the same should at his own death pass to his nephews. S. subsequently died :—*Held :* there had been an effectual transfer of the beneficial interest, & at the death of A. the same passed to the two nephews.—MCENEANEY *v.* SHEVLIN, [1912] 1 I. R. 32.—**IR.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

243 iii. ————.]—It is an essential requisite of an equitable assignment of a chose in action that the fund which is being disposed of shall be indicated in such a way that it can be identified.—DUNNETT *v.* WHITEWATER RURAL MUNICIPALITY, [1932] 1 W. W. R. 749; 40 Man. L. R. 267; 3 D. L. R. 135.—**CAN.**

246 iv. —— ——.]—*Held :* the order set out in the judgment, in the circumstances, was a good equitable assignment of moneys due from the board of a drainage district to a person who had a contract with it.—STIRLING COLLIERIES, LTD. *v.* JONES, [1924] 4 D. L. R. 1305; 3 W. W. R. 955.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—B.

256 i. *Directions to agent to sell & pay proceeds into bank—Principal paying for goods by cheques drawn against proceeds.*]—KIDD *v.* HARDEN, MCCONNAL *v.* HARDEN, [1924] 4 D. L. R. 516; 3 W. W. R. 293.—**CAN.**

258 a i. *Agreement to pay proceeds to lender—Advances for purchase of goods.*]—B. being indebted to a co. for the price of sheep which it had purchased on his behalf, by an agreement in writing undertook so long as his indebtedness to the co. should continue not to sell any of the sheep without the written consent of the co., & in the event of any sale with such consent to pay the nett proceeds to the co. in full or to the extent of his indebtedness. Some of the sheep having been sold :—*Held :* the agreement operated as an equitable assignment of the proceeds to the co.—*Re* MCPHERSON, THOM & CO.; SANDHURST & NORTHERN DISTRICT TRUSTEES, ETC., CO., LTD. *v.* COOMBIE PASTORAL CO. PTY., LTD., [1929] V. L. R. 295; Argus L. R. 340.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 2.—C.

c. Add "*revsd.*, [1921] 1 W. W. R. 839."

PART IV. SECT. 2, SUB-SECT. 3.

sn. *Lodging notes as collateral security.*]—A document providing that certain notes "are lodged with the bank as a general & continuing collateral security for the due payment of all advances made or to be made to me by the bank" :—*Held :* not a proper assignment; there is a distinction between lodging a document as collateral security & an assignment.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931.—**CAN.**

st. *Indorsement of lien note.*]—*Held :* to constitute a good equitable assignment thereof.—CANADIAN BANK OF COMMERCE *v.* LA BRASH, [1918] 1 W. W. R. 6; 39 D. L. R. 398; 10 Sask. L. R. 408.—**CAN.**

PART IV. SECT. 3.

280 i. *Necessity for communication to & assent by assignee—To constitute assignment.*]—A letter assigning moneys must be shown to have been communicated to the assignee before it will be held to constitute an equitable assignment. — STARR CO. OF CANADA, LTD. *v.* MERRILL, [1922] 3 W. W. R. 926; 70 D. L. R. 557.—**CAN.**

PART IV. SECT. 6.

288 ii. ——.]—LOEPPKY *v.* LANG, [1925] 2 D. L. R. 610; [1925] 1 W. W. R. 1104; 19 Sask. L. R. 337.—**CAN.**

ss. *Assignment of lien agreement—Whether consideration amount due under lien.*]—A. R. WILLIAMS MACHINERY CO., LTD. *v.* MOORE, [1926] 4 D. L. R. 568.—**CAN.**

Part V.—Notice of Assignment.

See, now, Law of Property Act, 1925 (c. 20), ss. 136, 137.

313. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

322a. Assignment of covenant of indemnity on assignment of lease—Notice to one of two covenantors—One covenantor bankrupt.]—By an assignment made in 1927 a lessee assigned the lease to a co., which covenanted with the lessee to pay the rent & to perform the lessee's covenants. In 1930 the co. went into voluntary liquidation, & two liquidators were appointed. By an agreement for sale made in Feb. 1931, the co. agreed to sell the lease to an intended purchaser. By an assignment made in Dec. 1931, the co., acting by the liquidators & at the direction of the intended purchaser, assigned the lease to a second assignee, & the intended purchaser & the second assignee entered into covenants with "the co. & the liquidators" to pay rent becoming due under the lease, to perform the lessee's covenants, & to keep them indemnified against all claims in respect thereof. In 1934 the second assignee became bkpt. By an assignment made in July, 1936, "the co. acting by the liquidators" assigned to the original lessee the benefit of the aforesaid covenants in the assignment of 1931 by the intended purchaser & the second assignee, & the original lessee released the co & the liquidators from all claims under the covenants by the co. in the former assignments, except so far as necessary to enable him to enforce the covenants & indemnities assigned to him ; & he covenanted to indemnify them against all liability in respect of any claim by him against them under the covenants by the co. in the former assignments & in respect of the assignment of 1936. Notice of this last assignment was not given to both the covenantors, namely the intended purchaser & the second assignee, but only to the former. In Aug. 1936, the lessor, as pltf., recovered judgment in an action for rent against one of the original lessees as deft. Subsequently deft. lessee recovered judgment in a claim by him against the intended purchaser, who had been joined as a third party to the action, for the amount recovered by pltf. against deft., on the ground that by virtue of the assignments of 1931 & 1936 the third party was liable to indemnify the deft. against pltf.'s claim. On appeal by the third party against the last-mentioned judgment —*Held :* (1) the assignment of 1936 was not rendered ineffective as an assignment to deft. of the covenants by the third party in the earlier assignment of 1931 by reason of the fact that it was not made by all the joint covenantees, namely the co. & the two liquidators, but only by the co., inasmuch as by sect. 81 of Law of Property Act, 1925 (c. 20), a covenant made with two or more jointly, after the passing of the Act, shall be construed as being made also with each of them ; (2) the assignment of 1936 was not rendered ineffective as an assignment to deft. of the covenants by the third party in the earlier assignment of 1931 because of notice of assignment under sect. 136 of the Law of Property Act, 1925, not having been given to both the joint covenantors, namely the third party & the bkpt. second assignee, but only to the former of them, inasmuch as by sect. 118 of Bkpcy. Act, 1914 (c. 59), where a bkpt. is a contractor jointly with any person, such person may be sued in respect of the contract without the joinder of the bkpt., & in view of that provision it was sufficient to give notice of the assignment of the contract to the person liable to be sued thereon ; (3) the assignment of 1936 in assigning to deft. the covenants by the third party in the earlier assignment of 1931 was an assignment of a "debt or other legal thing in action" effectual in law to pass the legal right thereto within Law of Property Act, 1925 (c. 20), s. 136 (1) ; (4) on the true construction of the assignment of 1936 its later provision did not render it nugatory by releasing the co. from the obligation of assigning to deft. the covenants of the third party ; (5) the assignment of 1936 was valid & effective.—Josselson *v.* Borst & Gilksten, [1938] 1 K. B. 723 ; 107 L. J. K. B. 488 ; 159 L. T. 341, C. A.

334. *Add. Annotation :*—**Refd.** The Zigurds (No. 3)' [1932] P. 113.

338a. —— ——.]—A. B. was entitled to a reversionary interest in a fund vested in four trustees, of whom he was one. A. B. mortgaged his interest to C. D., another trustee :—*Held :* C. D.'s notice in the transaction was a sufficient notice to the trustees of the mtge. ; but A. B.'s notice was not.—Willes *v.* Greenhill (No. 1) (1860), 29 Beav. 376 ; 54 E. R. 673 ; *affd. on other grounds* (1861), 4 De G. F. & J. 147, L. C.

354. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

PART V. SECT. 1, SUB-SECT. 1.

311 i. *Assignment—As security—Of debts.*]—Okell Morris & Co. *v.* Dickson (1902), 9 B. C. R. 151.—CAN.

PART V. SECT. 1, SUB-SECT. 3.

sb. *Assignment of lien.*]—Hendsbee *v.* Sonora Timber Co., Ltd., [1928] 1 D. L. R. 642 ; 59 N. S. R. 457.—CAN.

PART V. SECT. 3, SUB-SECT. 1.

se. *To guarantor—Notice not given to debtor.*]—Donald *v.* Jukes, [1921] 2 W. W. R. 208 ; 56 D. L. R. 692 ; 60 S. C. R. 652.—CAN

PART V. SECT. 3, SUB-SECT. 3.

sd. *Of debtor.*]—Notice to the solr. of debtor that the claim against the latter was to be paid to a third party is notice to debtor himself that such claim had been assigned.—St. John & Quebec Ry. Co. *v.* Bank of British North America & Hibbard Co. (1921), 67 D. L. R. 650 ; 62 S. C. R. 346.—CAN.

PART V. SECT. 4.

sf. *Before action—Judicature Act,* 1909, *s.* 19 (6).]—Woodstock Electric Railway, Light & Power Co. *v.* Dominion Tanneries, Ltd. (1918), 45 N. B. R. 408.—CAN.

PART V. SECT. 5.

b i. —— *That alleged assignee had possession of notes.*]—Although debtors may have known that notes were in the possession of a bank, the alleged assignee :—*Held :* this was insufficient, being a far different thing from having notice of the assignment, & there was no duty in debtors to inquire of the bank.—Merchants Bank of Canada *v.* Greenlees, [1923] 2 W. W. R. 931. —CAN.

PART V. SECT. 6.

381 ii. —— —— ——.]—On an assignment of a debt the express notice

362. *Add. Annotation :*—**Refd.** Josselson *v.* Borst, [1938] 1 K. B. 723.

393. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

406. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

407. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

417. After this case add "*See, now,* Law of Property Act, 1925 (c. 20), s. 137."

421. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

437a. **Assignment of freight.**]—Among the claimants to a fund in ct., representing the proceeds of a sale of a foreign vessel & her freight, were a mtgee. of the ship & a firm of ship brokers who acted as the ship's agents & made advances on behalf of the ship. Both claimants relied upon documents which were admitted to be good equitable assignments of the freight. The mtgee.'s assignment was prior in time. The ship's agents relied upon a letter dated Mar. 2, 1931, & signed by the master of the ship with the consent & approval of her managing owner. Having received this letter, the ship's agents on Mar. 5, 1931, wrote to the receivers of cargo : "S.S. *Z.* We beg to give you notice that we hold captain's authority to collect the freight per this steamer's cargo, against which we have made payments." The mtgee. had given no notice of his assignment. In an action brought by the mtgee. against the owners claiming possession of the ship & her freight under his mtge., the ship's agents intervened to claim against the freight as assignees relying on their assignment, & on the letter of Mar. 5, 1931, as being notice thereof :—*Held :* in the circumstances the letter was a good & sufficient notice of the assignment.—SMITH *v.* ZIGURDS S.S. OWNERS & E. A. CASPER, EDGAR & Co., LTD., [1934] A. C. 209 ; *sub nom.* SMITH *v.* E. A. CASPER EDGAR & Co., LTD., 103 L. J. P. 28 ; 150 L. T. 303 ; 39 Com. Cas. 178 ; 18 Asp., M. L. C. 475 ; *sub nom.* THE ZIGURDS (No. 3), 50 T. L. R. 162, H. L.

440. *Add. Annotation :*—**Refd.** Knight *v.* Knight, [1925] Ch. 835.

460. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

461. *Add. Annotation :*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

463. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

Part VI.—Effect of Assignment.

475. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Bernstein, Barnett *v.* Bernstein (1924), 69 Sol. Jo. 88. *As to* (2) **Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

483. *Add. Annotation :*—**Apld.** Mabro *v.* Eagle Star & British Dominions Insurance Co., [1932] 1 K. B. 485.

483a. —— ——.]—G. & T. EARLE, LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL, No. 77a, *ante.*

485. *Add. Annotations :*—**Refd.** Cheshire County Council *v.* Hopley (1923), 130 L. T. 123 ; The Koursk, [1924] P. 140 ; Venn *v.* Tedesco, [1926] 2 K. B. 227.

504. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

509. *Add. Annotation :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1922] 2 K. B. 433.

---

in writing to the debtor which under sect. 37 (*m*) of Judicature Act is required to complete the transfer of the legal right to the debt need not be in any special form, it being sufficient if the effect upon the debtor is to convey to him with sufficient certainty the fact that the right to demand payment has been transferred to a certain third person as assignee.—GENERAL MOTORS ACCEPTANCE CORPN. & WILLIAMSON *v.* JOHNSON, [1930] 2 W. W. R. 167 ; 4 D. L. R. 291 ; 24 Alta. L. R. 475.—**CAN.**

PART V. SECT. 9, SUB-SECT. 1.—A. (a) i.

o. Add "*Revsd.* 47 S. C. R. 313 ; 10 D. L. R. 232 ; 23 W. L. R. 445."

p i. ——.] — The assignee of an equitable interest in personal estate without notice of an existing earlier assignment will gain priority simply by the act of giving notice to the person who has the legal dominion over the fund before notice is given by an assignee earlier in point of time.—GORDON *v.* GORDON, [1924] 2 D. L. R. 74 ; 1 W. W. R. 903 ; 18 Sask. L. R. 187.—**CAN.**

PART V. SECT. 9, SUB-SECT. 1.—A. (b).

ak. *Assignments of money payable under commission certificates—Certificates not assignable—Order for payment given to first assignee—Certificates handed to second assignee.*]—J. I. CASE THRESHING MACHINE CO. *v.* GENERAL MOTORS ACCEPTANCE CORPN., [1924] 4 D. L. R. 1297 ; 3 W. W. R. 694.—**CAN.**

PART V. SECT. 10.

al. *Registered judgment—Notice given against creditor—Of assignment.*]—If a vendor of land, in order to secure an indebtedness, assigns all the moneys due or to become due under the agreement of sale, such assignment not being registered, but due notice thereof being given to the purchaser, the assignee will be entitled to the moneys as against one who subsequently obtains & registers judgments against the vendor.—CANADIAN BANK OF COMMERCE *v.* ROYAL BANK OF CANADA, [1921] 2 W. W. R. 462 ; 60 D. L. R. 275 ; 29 B. C. R. 407.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

am. *Assignment as security—Payment of debt—Direction by assignee for payment o moneys to assignor—Right of assignor to sue in own name.*]—ELLIOTT *v.* LE PAGE (Man.), [1929] 3 D. L. R. 912.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

476 ii. —— —— *Money due under agreement for sale—Power to cancel agreement.*]—Where a vendor of land under agreement for sale assigns the moneys due under the agreement for sale & notice of the assignment, equitable or legal, is given to debtor, it is not open to the vendor & debtor to cancel the agreement without the concurrence of the assignee.—UNION BANK OF CANADA *v.* DUTCZAK, [1924] 3 D. L. R. 457 ; 2 W. W. R. 864.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—A.

ti. —— *Of contract for sale of land.*]—INTERSTATE INVESTMENT CO., LTD. *v.* MOBBS (1928), 28 S. R. N. S. W. 572 ; 45 N. S. W. W. N. 176.—**AUS.**

u. Add "*revsd. in part,* 4 A. R. 267."

s l. —— *Of lien.*]—Pltf., assignee of three several claims of workmen who had liens under Woodmen's Lien Act, commenced an action in his own name without serving any notice of the assignment upon debtor :—*Held :* pltf. could bring an action in his own name without giving the notice referred to in Jud. Act, s. 19 (5).—BARNES *v.* BLACK, [1925] 3 D. L. R. 65 ; 58 N. S. R. 69.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (a).

m l. —— —— *Effect of Land Titles Act, s.* 101.]—ARMSTRONG *v.* MARSHALL (1915), 8 W. W. R. 300 ; 19 D. L. R. 183 ; 8 Alta. L. R. 449.—**CAN.**

519. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

542. *Add. Annotation :*—**Refd.** Parker *v.* Jackson, [1936] 2 All E. R. 281.

544. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

Part VII.—Assignment subject to Equities.

592. *Add. Annotation :—As to* (2) **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

601. *Add. Annotations :*—**Consd.** *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

601a. —— **Assignment of debt payable in futuro.**]—In 1918, C., a creditor of a firm, agreed to leave the sum constituting her debt on deposit with the firm for fifteen years from Jan. 1, 1917, upon the terms (*inter alia*) that interest & commission thereon should be paid to V. for his own use, & that in certain events, which subsequently happened, V. should receive a share of the firm's profits, which he in fact received during the years 1918–1921. In 1920, by C.'s direction, the debtor firm transferred C.'s debt by a book entry into the name of F., V. continuing to receive interest & commission as before, & on Feb. 24, 1926, F. made an equitable assignment of the debt to V. Notice of the assignment was given to the debtor firm on Mar. 2, 1926, whereupon the firm transferred the debt by a book entry into the name of V. At the date of the said equitable assignment by F., F. was under a liability to the debtor firm in respect of certain accommodation bills for which, as between F. & the firm, F. was liable, but such liability did not accrue due as a debt until after notice of assignment had been given, namely, when the debtor firm expended £15,000 in taking up the acceptances. On Mar. 15, 1926, the debtor firm presented their petition for a receiving order & were subsequently adjudicated bkpt. In a claim by V. to prove in the firm's bkpcy. :—*Held :* the assignment by F. to V. was subject to all rights of set-off which had accrued due on the part of the firm against F. at the date of the notice of assignment but was not subject to any right of set-off in respect of the £15,000 which had not accrued due at that date ; nor did the fact that the debt assigned was a debt payable *in futuro*, for which the assignor was not at the date of the notice of assignment in a position to sue, affect the general rule governing the assignment of a chose in action.—*Re* PINTO LEITE & NEPHEWS, *Ex p.* DES OLIVAES, [1929] 1 Ch. 221 ; 98 L. J. Ch. 211 ; 140 L. T. 587 ; [1928] B. & C. R. 188.

604. *Add. Annotation :*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

605. *Add. Annotations :—As to* (2) **Distd.** *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221. **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

607a. **For breach of warranty by assignor—Against claim for instalments due under assigned agreement—Judgment obtained for damages for breach of warranty.**]—The owner of a business sold it to deft. on terms of payment by instalments, & then assigned the benefit of the agreement to pltf. Before notice of assignment was given to deft., the latter obtained judgment against the assignor for damages for breach of warranty on the above sale. In an action by pltf., as assignee, against deft. for payment of instalments due under the assigned agreement, deft. claimed to set off the amount of the judgment. Pltf. contended that deft.'s right to damages in

---

PART VI. SECT. 3, SUB-SECT. 1.—B. (b).

512 ia. —— —— —— ——.]—Pltf. brought action on July 2, 1929, for balance of account for goods sold & delivered. On Oct. 25, following, pltf. assigned the debt to three persons who on the following day assigned the debt to M., & on Jan. 1, 1930, M. re-assigned to pltf. :—*Held :* the several assignments were merely equitable, & pltf. was the proper person in whose name the action should be brought.—MOUAT BROS. & CO. *v.* WARNIER, [1931] 1 D. L. R. 569 ; 43 B. C. R. 238.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 2.

550 iii. —— ——]—SHEPHERD *v.* LIVINGSTON, [1924] 1 D. L. R. 723 ; 1 W. W. R. 455.—**CAN.**

550 iv. —— ——.]—MCPHERSON *v.* LEES (ANDREW), LTD., [1926] N. Z. L. R. 523.—**N.Z.**

sw. *Payment to assignee—Money due under agreement for sale—Covenant by assignor to convey on payment.*]—Where a vendor has covenanted in writing with an assignee to convey the land to the purchaser on payment of the full amount of the purchase-money, the purchaser is protected as to title & may safely make his payments to the assignee ; & the assignee can sue on the purchaser's covenant to pay contained in the agreement.—UNION BANK OF CANADA *v.* DUTCZAK, [1924] 3 D. L. R. 457 ; 2 W. W. R. 864.—**CAN.**

PART VII. SECT. 1.

565 iii. ——.]—Even assuming a proper assignment, notes lodged with a bank as a general & continuing security for the due payment of all advances made, or to be made, must be taken by the assignee subject to any equities existing between the original parties.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931.—**CAN.**

565 iv. —— *Effect of express contract.*]—Notwithstanding Choses in Action Act, R. S. S., 1920 (c. 202), s. 5, debtor can contract with his creditor, for good consideration, that he will not avail himself of his right to set up against the creditor's assignee any equity existing between the creditor & himself. If the contract which includes the clause not to set up the equities against an assignee was induced by fraud, such clause falls with the contract, except where debtor is estopped as against the assignee from setting up the fraud.—HAMILTON *v.* RAILTON, [1925] 3 D. L. R. 1090 ; [1925] 3 W. W. R. 136 ; *revsg.*, [1925] 2 W. W. R. 195.—**CAN.**

566 viii. —— —— *Assignment of security by bank.*]—Where a creditor, a bank, held securities for its debt which were subject to orders from the debtor to pay certain other creditors out of the surplus of the proceeds thereof over & above the amount due the bank :—*Held :* a third party by purchasing the securities from the bank with full knowledge of said orders placed himself in the position of the bank & assumed whatever liability the orders imposed upon the bank.—STEPHENS (G. F.) & CO., LTD. *v.* PERDUE, WERNER *v.* PERDUE & EATON, [1931] 3 W. W. R. 90 ; 4 D. L. R. 46.—**CAN.**

q i. —— *Notice of covenant by assignor—Whether assignee bound.*]—MCBRIDE *v.* ONTARIO JOCKEY CLUB, LTD., [1926] 1 D. L. R. 414 ; 58 O. L. R. 97.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

t i. ——.]—ROYAL BANK OF CANADA *v.* GUSTAFSON, [1924] 1 W. W. R. 544; 33 B. C. R. 379.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.

604 ii. Add "*revsd.* in part, 25 A. R. 179."

604 iv. —— ——.]—ROYAL BANK OF CANADA *v.* GUSTAFSON, [1924] 1 W. W. R. 544 ; 33 B. C. R. 379.—**CAN.**

respect of the breach of warranty had merged in the judgment, & that the latter could not be set off against his claim :—*Held :* the set-off was valid.—LAWRENCE *v.* HAYES, [1927] 2 K. B. 111 ; 96 L. J. K. B. 658 ; 137 L. T. 149 ; 91 J. P. 141 ; 43 T. L. R. 379, D. C.

Part VIII.—Voluntary Assignments.

613. *Add. Annotation :*—**Consd.** Macedo *v.* Stroud, [1922] 2 A. C. 330.

617. *Add. Annotation :*—**Consd.** *Re* Bowden, Hulbert *v.* Bowden, [1936] Ch. 71.

619. *Add. Annotation :*—**Refd.** *Re* Bowden, Hulbert *v.* Bowden, [1936] Ch. 71.

624a. —— ——.]—SLOANE *v.* CADOGAN (1808), cited in 12 Sim. at p. 291.

Annotations :—**Consd.** Edwards *v.* Jones (1836), 1 My. & Cr. 226 ; Beatson *v.* Beatson (1841), 12 Sim. 281. **Distd.** Meek *v.* Kettlewell (1843), 1 Ph. 342. **Apld.** Kekewich *v.* Manning (1851), 1 De G. M. & G. 176 ; Donaldson *v.* Donaldson (1854), Kay, 711. **Refd.** Fenner *v.* Taylor (1831), 2 Russ. & M. 190 ; M'Fadden *v.* Jenkyns (1842), 1 Hare, 458 ; Price *v.* Price (1851), 21 L. J. Ch. 53 ; Bridge *v.* Bridge (1852), 16 Beav. 315 ; Voyle *v.* Hughes (1854), 2 Sm. & G. 18 ; Gilbert *v.* Overton (1864), 4 New Rep. 420 ; Glegg *v.* Rees (1871), 7 Ch. App. 71.

634. For " *Held :* (1) as it was the intention of the settlor," etc., read " *Held :* (1) as it was not the intention of the settlor," etc.

Add. Annotations :—*As to* (1) **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179. *As to* (3) **Consd.** Macedo *v.* Stroud, [1922] 2 A. C. 330. *Generally*, **Refd.** Timpson's Executors *v.* Yerbury, [1936] 1 All E. R. 186.

PART IX.

p i. —— *Under Assignment of Book Debts Act*, 1923 (*c.* 29).]—*Re* RAPORT, DENISON *v.* UNION BANK OF CANADA, [1925] 3 D. L. R. 1058 ; 57 O. L. R. 374 ; 5 C. B. R. 811.—CAN.

p ii. —— ——.]—K., on June 8, made a chattel mtge. to pltfs. on his stock-in-trade, & by the same instrument purported to assign to pltfs. as additional security, all present & future book debts arising out of or connected with K.'s business. The affidavit of *bona fides* described the instrument as a bill of sale by way of mtge., & asserted that it was not taken for the purpose of protecting the " goods & chattels " mentioned therein against the creditors of the mtgors., etc. :—*Held :* the instrument did not comply with above statute & was invalid as an assignment.—WESTLAKE *v.* MARTIN, [1930] 4 D. L. R. 805 ; 66 O. L. R. 89 ; 11 C. B. R. 469 ; *varg.*, 11 C. B. R. 87.—CAN.

p iii. —— *Under Assignment of Book Debts Act, R. S. O.*, 1927.]—The Assignment of Book Debts Act, R. S. O., 1927, confers no greater right upon an assignee of a chose in action than he had before. All it does is to make a general assignment of book debts void, as against creditors & subsequent purchasers or mtgees. in good faith & for value, unless registered. By registration pltf. co had preserved whatever rights it acquired by virtue of the assignment & no more.—SNYDER'S, LTD. *v.* FURNITURE FINANCE CORPN., LTD., [1931] 1 D. L. R. 398 ; 66 O. L. R. 79.—CAN.

sp. *Book account—Under Assignment of Book Accounts Act, R. S. B. C.*, 1924 (*c.* 16).]—VERNON HARDWARE CO. *v.* REID & REINHARD (B. C.), [1927] 2 W. W. R. 117.—CAN.

st. —— ——.]—Registration under Assignment of Book Accounts Act, R. S. B. C., 1924, of an assignment of book accounts does not confer any greater rights upon the assignee than he had by virtue of the assignment ; the effect of the registration is merely to preserve those rights. The fact that the assignment is also registered under Cos. Act, 1929, does not " confirm " it, *i.e.*, make it good without being subject to existing superior equities.—BURRARD DRYDOCK CO., LTD. *v.* BANK OF TORONTO & VULCAN ENGINEERING WORKS, LTD., [1933] 1 W. W. R. 222 46 B. C. R. 447.—CAN.

CHURCHYARD.

See BURIALS ; ECCLESIASTICAL LAW.

CINEMATOGRAPH.

See THEATRES.

CITIZENS.

See ALIENS ; CONSTITUTIONAL LAW ; LOCAL GOVERNMENT.

CITY.

See LOCAL GOVERNMENT; METROPOLIS.

CIVIL LAW.

See ECCLESIASTICAL LAW.

CIVIL RIGHTS.

See ALIENS; CONSTITUTIONAL LAW; ROYAL FORCES; and titles *passim*.

CLERKS.

Arraigns, of	*See* CRIMINAL LAW.
Articled	,, SOLICITORS.
Assize, of	,, CRIMINAL LAW.
Barristers'	,, BARRISTERS.
Ecclesiastical	,, ECCLESIASTICAL LAW.
Justices, to	,, MAGISTRATES.
Local Authorities, to	,, LOCAL GOVERNMENT.
Parish	,, ECCLESIASTICAL LAW.
Peace, of the	,, LOCAL GOVERNMENT.
Town	,, LOCAL GOVERNMENT.

CLUBS AND OTHER VOLUNTARY ASSOCIATIONS.

Part II.—Jurisdiction of the Courts.

11. *Add. Annotation :*—**Consd.** Cookson *v.* Harewood (1931), 101 L. J. K. B. 394, n.

13a. Application of funds cy-près.]—*Re* HOMES FOR INEBRIATES ASSOCIATION, THE ASSOCIATION *v.* A.-G. (1935), 79 Sol. Jo. 903.

13b. Application of funds—Civil Service Association—Application intra vires.]—KELLY *v.* WYLD (1937), 81 Sol. Jo. 179.

Part III.—Constitution and Internal Arrangements.

17. *Add. Annotation :*—**Consd.** Morgan *v.* Driscoll (1922), 38 T. L. R. 251.

18. *Add. Annotations :—As to* (1) **Consd.** Lamberton *v.* Thorpe (1929), 141 L. T. 638. **Refd.** Maclean *v.* The Workers' Union, [1929] 1 Ch. 602; Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

20. *Add. Annotations :—As to* (1) **Consd.** Morgan *v.* Driscoll (1922), 38 T. L. R. 251. *Generally*, **Refd.** Doyle *v.* White City Stadium, Ltd., [1935] 1 K. B. 110.

20a. —— To alter qualification for membership.]—GRIMWOOD *v.* ALDENHAM (1928), 72 Sol. Jo. 569.

21a. —— Binding without express notice—Agreement to be bound by "any further rules & alterations to existing rules."]—Pltf. who was under twenty-one years of age, applied in Mar. 1932, for a licence as a boxer in the following words: "I hereby apply for a licence as a boxer &, if the licence is granted me, I declare to adhere strictly to the rules of the British Boxing Board (1929) as printed & abide by any further rules or alterations to existing rules as may be passed." A licence was duly granted & renewed for a further year on Mar. 1, 1933. A copy of the rules was supplied to pltf. at the time of his application, & reg. 20, para. 16, provided that the boxer's money might be stopped only when he was disqualified "for committing a deliberate foul, for not trying, or retiring without sufficient cause, or if the referee gives a no contest decision." This paragraph was altered on June 17, 1932, to read: "Boxers in case of disqualification are only entitled to receive bare travelling expenses, pending the decision of the board . . . when the board . . . may deal with the money as it thinks fit." No notice of the altered rules was given to pltf. On July 12, 1933, pltf.

PART II.

sc. *Validity of rules.*]—Where the rights or privileges of members of a club are not in any way affected, nor the property of the club in any way injured, the ct. has no jurisdiction to consider the legal validity of the rules of the club, nor to grant an injunction against the commission of acts merely criminal or merely illegal.—WATT *v.* MACLAUGHLIN, [1923] 1 I. R. 112.—**IR.**

12 ii. —— *Majority of members acting illegally—Injunction.*]—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—**CAN.**

12 iii. —— —— ——.]—The property of a voluntary society cannot be diverted by a majority of its members from the purposes for which it was given by those who contributed to it, or devoted to purposes that are alien to or in conflict with the fundamental rules laid down by the society, & the dissenting minority who adhere to these rules are entitled to have them restrained from so doing.—KOWALCHUK *v.* UKRAINIAN LABOR FARMER TEMPLE ASSOCN., [1935] 1 W. W. R. 529; 2 D. L. R. 691; 43 Man. L. R. 76.—**CAN.**

sd. *Dispute outside province of domestic tribunal.*]—Where the rules of a voluntary society provide that certain disputes & complaints should come before the domestic tribunals the law cts. will not as a rule usurp their functions, but where a dispute arises with which the rules never designed the domestic tribunals to deal, the law cts. will not refer the matter to the domestic tribunals but will themselves deal with it.—CRISP *v.* SOUTH AFRICAN COUNCIL OF THE AMALGAMATED ENGINEERING UNION, [1930] App. D. 225.—**S. AF.**

se. *Failure to pass candidate—No injustice—Whether court will interfere.*]—The mere fact of failing to pass an examination held under the Barbers Act is, in the absence of evidence of unfairness, no ground for interference by the ct. under Barbers Act Amendment Act, 1934.—HARLEY *v.* BARBERS' ASSOCN. OF BRITISH COLUMBIA (1936), 50 B. C. R. 327.—**CAN.**

sg. *Competition for scholarship—Examination—Fraud & mistake—Validity of second award.*]—L'ACADÉMIE DE MUSIQUE DE QUÉBEC *v.* PAYMENT, BERNIER & PICHE, [1936] S. C. R. 323; 4 D. L. R. 279.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

c i. ——.]—A person on becoming a member of a lawful assocn. or society is, subject to its constitution, bound by the decisions of the society on matters of dispute between him & the society, unless such decision is contrary to natural justice, or in violation of the rules of the society, or done *mala fide*.—CUTLER *v.* LAW SOCIETY OF MANITOBA, [1930] 3 W. W. R. 387; *affd.*, [1931] 2 W. W. R. 653; 4 D. L. R. 453; 39 Man. L. R. 535.—**CAN.**

sk. *Bye-law — Validity —Restricting play by women members of golf club.*]—A club, incorporated under the provisions of the Incorporated Societies Act, 1908, had power under its constitution to make & alter its rules, & its committee had authority to make bye-laws within certain prescribed limits. The rules provided for the admission of various classes of members, each class enjoying specifically defined rights, but in the case of ordinary members no distinction was drawn between the playing privileges of men & women. The committee, without the previous authority of a general meeting, purported to enact a bye-law prohibiting women who were ordinary members from playing on the club links on Saturdays before the hours of 3 p.m., & then only after men players had commenced their rounds. It was further provided that women playing on Saturday afternoons should give the right of way to men players. The committee, in making this bye-law, relied upon one of the rules of the club, which was to the following effect: "The committee may make bye-laws for the regulation of the club-house, grounds, & links, & for the arrangement & control of games & matches." Certain women members, who challenged the validity of this bye-law, played on a Saturday & were fined by the committee & were suspended from the exercise of their privileges as members. Upon an application by these members to have the club restrained from putting such bye-law into force & acting thereunder:—*Held:* the committee, in making the bye-law in question, had acted beyond the powers conferred upon it by the rules of the club, & the bye-law was therefore invalid.—O'NEILL *v.* PUPUKE GOLF CLUB, INCORPORATED, [1932] N. Z. L. R. 1012.—**N.Z.**

PART III. SECT. 1, SUB-SECT. 2.

f i. —— —— *Necessity for unanimous vote or consent of all members.*]—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—**CAN.**

f ii. —— ——.]—A rule prescribed that no future motion to open the links for play on Sundays should be passed unless by a majority of two-thirds of those present & voting:—*Held:* the repeal of the rule did not itself require a two-thirds majority.—WATT *v.* MACLAUGHLIN, [1923] 1 I. R. 112.—**IR.**

agreed to box at the White City Stadium on the terms that he should receive £3,000 win, lose or draw. At the contest pltf. was disqualified for hitting below the belt. The promoters of the contest paid the sum of £3,000 to the Board of Control at their request, & after holding an inquiry the Board withheld the money from pltf. on the ground that he had been disqualified. Pltf. brought proceedings to recover the amount against White City Stadium, Ltd., & the Board of Control:—*Held:* (1) the contract with the Board of Control was too closely connected with a contract as to employment that it was binding on the infant pltf. having regard to the fact that the contract as a whole was for his benefit; (2) notice of the altered rules was unnecessary in order to make them binding on pltf. in view of the terms of his application for a licence.—DOYLE *v.* WHITE CITY STADIUM, LTD., [1935] 1 K. B. 110; 104 L. J. K. B. 140; 152 L. T. 32; 78 Sol. Jo. 601, C. A.

Annotation:—As to (1) **Refd.** Mercantile Union Guarantee Corpn., Ltd. *v.* Ball, [1937] 3 All E. R. 1.

21b. Notice of general meeting—Who entitled to.]—Pltfs. were the captain & the secretary of the women's section of a golf club, of which deft. co. were the proprietors. At an extraordinary general meeting of the members a resolution was passed deleting from the rules of the club a provision for the election of a women's committee to manage the affairs of the women's section. No woman member of the club received notice of that meeting, as none of the women members held any shares in the co. In an action for a declaration that the resolution was invalid:—*Held:* under the rules women members were not full members & were not entitled to receive notices of general meetings, & the action failed.—COLE *v.* MERTON PARK (WIMBLEDON) GOLF CLUB, LTD. (1927), 43 T. L. R. 400.

23. *Add. Annotation:—As to* (1) **Distd.** *R. v.* General Medical Council, [1930] 1 K. B. 562.

25. *Add. Annotation:—Generally,* **Refd.** Howard *v.* Odhams Press, Ltd., [1938] 1 K. B. 1.

33a. —— —— ——.]—WELLS *v.* MYDDLETON (1935), 79 Sol. Jo. 270, C. A.

35. *Add. Annotations:—As to* (2) **Expld.** Maclean *v.* The Workers' Union, [1929] 1 Ch. 602. *Generally,* **Refd.** Cooper *v.* Wilson, [1937] 2 K. B. 309.

38. *Add. Annotations:*—**Consd.** Amalgamated Soc. of Carpenters, Cabinet Makers & Joiners *v.* Braithwaite, General Union of Operative Carpenters & Joiners *v.* Ashley, [1922] 2 A. C. 440. **Followed.** Wing *v.* Burn (1928), 44 T. L. R. 258. **Refd.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

39. *Add. Annotations:—As to* (1) **Refd.** A.-G. *v.* Swan, [1922] 1 K. B. 682; Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

39a. —— —— ——.]—WING *v.* BURN (1928), 44 T. L. R. 258.

39b. —— —— ——.]—DONALDSON *v.* INSTITUTE OF BOTANO-THERAPY, LTD. (1937), 184 L. T. Jo. 384.

46a. —— —— ——.]—In an action against the officers of a club for an injunction restraining them from enforcing a resolution by which the council of the club has excluded pltf. from membership of the club, the questions for the ct. are, (*a*) whether the rules of the club have been observed, (*b*) whether the council has given pltf. a fair hearing, & (*c*) whether the council has acted in good faith.—LAMBERTON *v.* THORPE (1929), 141 L. T. 638; 45 T. L. R. 420.

Annotation:—**Refd.** Lumiansky *v.* Myddleton (1934), 78 Sol. Jo. 223.

46b. —— Withdrawal of licence as boxing manager—In accordance with rules.]—LUMIANSKY *v.* MYDDLETON (1934), 78 Sol. Jo. 223.

53a. —— Claim by member for proportion of—On winding up of club.]—A limited co. was registered with the object of carrying on a proprietary club, & by the articles H. was appointed governing director for life & the management of the club was vested in her. In 1915 H. granted a lease of premises to the club which was carried on there. In 1918 a subscription of four guineas a year for country members & five guineas for town members was charged, & as from Jan. 1, 1919, an entrance fee of five guineas was imposed. From 1917 to Mar. 25, 1919, a notice stating that the club would be carried on permanently was exhibited by H. On Mar. 11, 1919, H., without notice to the executive committee, issued a writ for arrears of rent, & on recovering summary judgment

---

PART III. SECT. 2, SUB-SECT. 2.—A.

24 i. *Power to expel after inquiry by committee—Inadequate inquiry.*]—MONTGOMERY *v.* LEE STEERE (1926), 29 W. A. L. R. 70.—**AUS.**

26 i. *Power to expel for infringing rules.*]—Where a club was registered under Cos. Act:—*Held:* the committee were not in law the directors of the co. & had no authority to exercise the powers of directors to exclude pltf. from membership of the club.—MURPHY *v.* SYNNOTT, [1925] N. I. 14.—**IR.**

PART III. SECT. 2, SUB-SECT. 2.—B.

29 iv. —— —— ——.]—Resp., being charged with having grossly misconducted himself within the meaning of a rule of applt. club, was summoned before a meeting of the club committee to show cause why he should not be dealt with under the rule. He was aware of the details of the charges preferred against him before attending the meeting, but, having attended as requested, & having failed in the opinion of the committee to justify his conduct, was suspended from membership. He took action against the club to have the suspension removed, & for damages, on the ground that the committee's decision, having been arrived at without affording him an opportunity of cross-examining the witnesses against him, was contrary to the principles of natural justice:—*Held:* the committee was not bound by the formal rules of evidence, & the inquiry having been conducted in accordance with the club's rules & the decision of the committee arrived at in good faith, in pursuance of an honest desire to protect the interests of the institution, after resp. had been given every facility for presenting a defence, the suspension was not contrary to the principles of natural justice, notwithstanding that no opportunity was given to cross-examine the witnesses.—PERRY *v.* FEILDING CLUB, [1929] N. Z. L. R. 529.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 2.—E.

49 ii. —— —— ——.]—A club incorporated under Incorporated Societies Act, 1908, which acting by its executive committee wrongfully & in breach of the club's rules excludes a member from the use of the club's premises, commits a breach of contract & the member is entitled to recover damages. The members of the committee, acting within the scope of their authority, are not personally liable in tort for inducing or procuring such breach of contract.—HENDERSON *v.* KANE & PIONEER CLUB, [1924] N. Z. L. R. 1073.—**N.Z.**

51 i. *Declaration of membership.*]—Pltf., a member of a society which was incorporated under Societies Act, 1924, & which owned property, was expelled therefrom without having been given notice of the proceedings against him or particulars of the charge or names of the complainants:—*Held:* he was entitled to a declaration that he had been wrongfully expelled & was still a member in good standing of the society.—KLIS *v.* POLISH SOCIETY FOR BROTHERLY AID OF COLEMAN, [1932] 1 W. W. R. 683; [1932] 2 D. L. R. 136; 26 Alta. L. R. 90.—**CAN.**

closed the club. The co. then passed a resolution for voluntary winding up & a liquidator was appointed. A., who was a member of the club, claimed to prove as creditor for general damages & a proportion of her subscription for 1919, B., another member, claimed general damages, the return of her entrance fee & the proportion of her subscription for the current year:—*Held:* A. & B. were entitled to prove, not only for the proportion of their subscriptions of which they had lost the benefit for the current year, but also in respect of damages for the loss of the amenities of the club, & in the case of B. to a return of the entrance fee; & the damages should be assessed in the case of A. at £7, which included the proportion of her subscription for 1919, & in the case of B. at £14, which also included the entrance fee & proportion of her subscription.—*Re* CURZON SYNDICATE, LTD. (1920), 149 L. T. Jo. 232.

54. For "**Entrance fee payable by instalments**" read "**Entrance fee—Payable by instalments.**"

54a. —— **Claim by member for return of—On winding up of club.**]—*Re* CURZON SYNDICATE, LTD., No. 53a, *ante*.

61. *Add. Annotation:* —**Apld.** Wimbledon & Putney Commons Conservators *v.* Tuely (1930), 47 T. L. R. 17.

Part IV.—Liability of Clubs and Members.

91. *Add. Annotation:*—**Consd.** De Parrell *v.* Walker (1932), 49 T. L. R. 37.

91a. —— **Liability for loss or damage to member's goods—Effect of negligence—Construction of rule.**]—One of the rules of a proprietary club provided that the proprietors would not be responsible for the loss of or damage to any article brought by members or guests into the club but would take all reasonable care of articles for which a receipt would be given if the same were deposited in the office:—*Held:* the rule covered loss or damage caused by negligence.—ORCHARD *v.* CONNAUGHT CLUB (1930), 46 T. L. R. 214; 74 Sol. Jo. 169.

Part VI.—Debentures.

105. *Add. Citations:*—[1922] 1 Ch. 51; 91 L. J. Ch. 93; 126 L. T. 225.

Part VII.—Duty Payable by Clubs.

106. *Add. Annotation:—As to* (3) **Refd.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

Part VIII.—Sale of Intoxicating Liquors in Clubs.

109. *Add. Annotations:*—**Apld.** Wurzel *v.* Houghton Main Home Delivery Service, Ltd., Wurzel *v.* Atkinson, [1937] 1 K. B. 380. **Refd.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

110. *Add. Annotation:*—**Consd.** Watson *v.* Cully, [1926] 2 K. B. 270.

—— —— **Whether in "club"—Temporary premises.**]—The word "club" as used in Licensing Act, 1921 (c. 42), s. 4, means the premises of a registered club, & not the assocn. of persons who are members of the club.

Where, on the occasion of a fête, a registered club engaged a room adjoining the ground on which the fête was to be held, & there supplied intoxicants to members otherwise than in the permitted hours:—*Held:* as the room in question was not habitually used for the purposes of the club, no offence had been committed under the above sect.—WATSON *v.* CULLY, [1926] 2 K. B. 270; 95 L. J. K. B. 554; 135 L. T. 28; 90 J. P. 119; 42 T. L. R. 529; 24 L. G. R. 357; 28 Cox, C. C. 194, D. C.

Annotation:—**Refd.** Clarke *v.* Griffiths, Peacock *v.* Same (1926), 95 L. J. K. B. 905.

111b. —— —— —— **Additional unregistered premises.**]—Applts. were respectively the steward & one of the members of a club which occupied, besides its registered premises, additional premises which were at a considerable distance & which were not registered. At these additional premises the steward supplied to the other applt. beer,

---

PART IV. SECT. 1, SUB-SECT. 1.

70 ii. —— *Money lent to lodge.*]—Where a person gives credit to an abstract entity, such as a club or lodge, he can look to those who assumed to act for it & those who authorised or sanctioned that being done, in the absence of anything indicating the contrary.—FINLAY *v.* BLACK, [1921] 2 W. W. R. 907.—CAN.

PART IV. SECT. 2.

86. *General rule.*]—If liabilities are to be fastened upon any members of an unincorporated voluntary assocn. it must be by reason of the acts of those members themselves or their agents, & the agency must be made out by the person who relies on it, for none is implied by the mere fact of assocn.—TOEWS *v.* ISAAC, [1929] 2 D. L. R. 719; 1 W. W. R. 817; 38 Man. L. R. 201; *revg. in part*, [1928] 1 W. W. R. 643.—CAN.

which the latter paid for & there consumed. An information having been preferred against the steward for supplying the beer, for consumption off the club premises, otherwise than on the premises of the club, & against the other applt. for unlawfully obtaining the liquor, contrary to Licensing (Consolidation) Act, 1910 (c. 24), s. 94 :—*Held :* as the liquor was not supplied in the registered premises of the club it was not supplied " in a club " within the above sect., & the conviction must be quashed.—CLARKE *v.* GRIFFITHS, PEACOCK *v.* GRIFFITHS, [1927] 1 K. B. 226 ; 95 L. J. K. B. 905 ; 135 L. T. 58 ; 90 J. P. 151 ; 42 T. L. R. 541 ; 24 L. G. R. 466 ; 28 Cox, C. C. 240, D. C.

119. *Add. Annotation :*—**Dbtd.** Wurzel *v.* Houghton Main Home Delivery Service, Ltd., Wurzel *v.* Atkinson, [1937] 1 K. B. 380.

125. *Add. Annotation :*—**Consd.** Ashton *v.* Wainwright, [1936] 1 All E. R. 805.

125a. Effect of Licensing (Consolidation) Act, 1910 (c. 24), s. 96.]—Above section does not impliedly exclude registered clubs from the operation of sect. 82 of above Act, but it grants to the magistrate & the police special & additional powers in the case of registered clubs.—HAMMOND *v.* HANLON, [1935] 1 K. B. 474 ; 104 L. J. K. B. 239 ; 153 L. T. 13 ; 99 J. P. 134 ; 51 T. L. R. 195 ; 33 L. G. R. 12 ; 30 Cox, C. C. 215, D. C.

127a. Permitted hours on Sunday—Fixed number between specified hours—Discretion of club to alter limiting hours.]—Licensing Act, 1921 (c. 42), s. 2 (1), provides that " The hours during which intoxicating liquor may be sold or supplied on Sundays . . . in any . . . club . . . shall be as follows, that is to say, five hours, of which not more than two shall be between 12 noon & 3 in the afternoon, & not more than three between 6 & 10 in the evening. . . ." ; & s. 2 (2) provides that " Subject to the foregoing provisions, the permitted hours on Sundays shall be such as may be fixed . . . in the case of a club in accordance with the rules of the club. . . ." In a golf club the permitted hours on Sundays were fixed by a rule of the club at five hours, namely, from 12 noon to 1.30 p.m., 2 p.m. to 2.30 p.m., & 4.30 p.m. to 7.30 p.m. ; & pursuant to that rule a supply of intoxicating liquor was given to members of the club on a Sunday at 5 p.m. :—*Held :* on the true construction of above sect. the permitted hours on Sundays for a club were a period of not more than two hours, the whole of which should be between 12 & 3 p.m., & a period of not more than three hours, the whole of which should be between 6 & 10 p.m., & consequently that the supply in question was not authorised by the sect. —BROWN *v.* JOYCE, [1931] 1 K. B. 643 ; 100 L. J. K. B. 168 ; 144 L. T. 552 ; 95 J. P. 41 ; 47 T. L. R. 200 ; 75 Sol. Jo. 80 ; 29 L. G. R. 126 ; 29 Cox, C. C. 273.

Part IX.—Betting and Gaming in Clubs.

134a. —— Totalisator club.]—It is not an offence against Betting Act, 1853 (c. 119), s. 1, to carry on a totalisator club on a credit basis. —STREATHAM CINEMA, LTD. *v.* JOHN MCLAUCHLAN, LTD., [1933] 2 K. B. 331 ; 102 L. J. K. B. 536 ; 149 L. T. 447 ; 97 J. P. 273 ; 49 T. L. R. 471 ; 31 L. G. R. 219.

136. *Add. Annotations :*—**Apld.** R. *v.* O. K. Social & Whist Club (1929), 45 T. L. R. 570 ; Daniels *v.* Pinks, [1931] 1 K. B. 374. **Consd.** Davis *v.* Parker, [1931] 2 K. B. 210. **Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32 ; R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

136a. —— Whether members' club is.]—The committee of management of a members' club installed in the club certain machines for the use of members only & for the purpose of giving additional pleasure to the members. The machines were operated by means of pennies inserted in a slot. The player, having first inserted a penny, depressed a handle, causing three cylinders to revolve on which were depicted bells, bars & fruits. On the cylinders ceasing to revolve the player either lost his penny or received winnings up to twenty pennies, according to the combination of fruits &/or bells &/or bars opposite a pointer. The machine automatically filled a jack pot from its winnings, & the pennies in the jack pot were returned to the player who obtained the combination of three bars. The machines were similar in type to other machines for the user of which persons had been convicted under the Gaming Houses Act, 1854 (c. 38), where the persons had used the machines in shops or places of public entertainment or in proprietary clubs. Four members of the committee of management of the club in question were charged under Gaming Houses Act, 1854 (c. 38), s. 4, for being persons having the care & management of certain premises, to wit, the club, which were then being used for the purpose of unlawful gaming being carried on therein. The contention of the members of the committee of management was that the position of a members' club was analogous to that of a private house, & that gaming upon the machines in a members' club was therefore not unlawful gaming :—*Held :* in order that a house should be a common gaming house within

PART VIII. SECT. 3.

af. *Right of members to store beer at club.*]—Members of a club on purchasing beer from a Govt. vendor may store it at the club, & the club is entitled to charge a fee for storage & service. —R. *v.* ROCK (1923), 32 B. C. R. 67.—**CAN.**

ag. *" Distributing " beer by servant of club—What amounts to.*]—R. *v.* ROCK (1923), 32 B. C. R. 67.—**CAN.**

ah. *Supply during prohibited hours—No payment made.*]—Three members of a club were found drinking liquor at the bar of the club premises one Sunday morning. The secretary informed an officer of police, who had come upon the premises, that the members had not paid for the liquor, but that he had given it to them, thinking he was entitled to do so :—*Held :* the secretary had been rightly convicted on a charge of supplying liquor on licensed premises during prohibited hours.—*Re* DUFFEL. *Ex p.* TURNBULL (No. 2) (1931), 31 S. R. N. S. W. 46 ; 48 N. S. W. W. N. 14.—**AUS.**

Gaming Act, 1845 (c. 109), s. 2, it was not necessary that some person should be keeping the house for his gain, lucre or living; it was sufficient that it was a house kept or used for playing at any game where the chances of the game being played therein are not alike favourable to all the players; the chances of the game played on the machines in this club were not alike favourable to all the players, & the fact that the club was a members' club did not prevent the club premises being kept or used for the purpose of unlawful gaming being carried on therein, & therefore the members of the committee of management of the club could be convicted of the offence charged under s. 4 of the Gaming Houses Act, 1854 (c. 38), s. 4.—DANIELS *v.* PINKS, [1931] 1 K. B. 374; 100 L. J. K. B. 337; 144 L. T. 372; 95 J. P. 23; 47 T. L. R. 166; 75 Sol. Jo. 59; 29 L. G. R. 120.

140. *Add. Annotation :*—**Reld.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

140a. —— —— —— ——.]—There is a sufficient element of chance in the game popularly called a "whist drive" to make a club where it is played for money a "common gaming house."—R. *v.* O. K. SOCIAL & WHIST CLUB, LTD. (1929), 45 T. L. R. 570; 73 Sol. Jo. 451; 21 Cr. App. Rep. 119, C. C. A.

Annotation :—**Reld.** R. *v.* Brennand (1930), 47 T. L. R. 22.

Part X.—Dissolution of Clubs.

148a. Claims by members of proprietary club—For damages for loss of club amenities—& for proportion of subscriptions—& return of entrance fee.]—*Re* CURZON SYNDICATE, LTD. No. 53a, *ante*.

PART IX. SECT. 2.

137 i. *Common gaming house—Who are liable as persons assisting in conducting business—Employees.*]—R. *v.* DORGAN, R. *v.* KESSLER, R. *v.* COATES (Sask.) (1927), 47 Can. Crim. Cas. 344. —**CAN.**

137 ii. —— —— *Steward.*]—R. *v.* SULLIVAN (1930), 53 Can. C. C. 243; 42 B. C. R. 435.—**CAN.**

137 iii. —— —— —— ——.]—Applt. was steward of a *bonâ fide* club which had a membership of 1,700 & provided all the regular facilities of a social club, including meals, billiard rooms, reading rooms, various card games, etc.; it also leased & operated a football field. Members contributed ten cents apiece to the funds of the club for each half hour's play at the poker table, irrespective of whether they were winning or losing. This money was not taken from the stakes or the pot, but was collected by the applt., as steward, from the players & paid over to the club. Only members were allowed in the premises, a bye-law expressly forbidding the introduction of visitors to any part of the club property. Applt. was convicted, under sect. 226 of the Criminal Code, of unlawfully keeping a common gaming house; & the conviction was affirmed by the appellate ct.:—*Held :* the club was not "a house . . . kept for gain" within sect. 226 of the Criminal Code & applt. had been wrongly convicted.—R. *v.* BAMPTON, [1932] S. C. R. 626; 4 D. L. R. 209; 58 C. C. C. 289.—**CAN.**

137 iv. —— —— *Secretary.*]—Slot machines maintained on the premises of a *bonâ fide* club were under the control of the club's secretary. He kept the keys of the machines, deposited money of the club in them & collected the "proceeds" of their operation for the benefit of the club. The playing of the machines was a game of at least "mixed chance & skill," if not of pure chance. The secretary was convicted of keeping a common gaming house :—*Held :* the conviction should be sustained.—R. *v.* THOMAS, [1934] 1 W. W. R. 493; 61 C. C. C. 301; 48 B. C. R. 76.—**CAN.**

137 v. —— *Lawfully incorporated club.*]—The facts that a club has been lawfully incorporated & its constitution & frame-work still formally exist & some of its legitimate activities & amenities are participated in or made use of *bonâ fide* by some of its members to a substantial degree does not prevent its premises being a common gaming house within sect. 226 (*a*) of Criminal Code, R.S.C., 1927, if the real object of its actual proprietors in carrying it on is the acquiring of gain for themselves from gambling engaged in therein.—R. *v.* WILLIAMSON, [1937] 2 W. W. R. 545; 3 D. L. R. 553; 51 B. C. R. 456; 68 Can. C. C. 380.—**CAN.**

COMMERCE.

See AGENCY; BANKERS; BILLS OF EXCHANGE; CARRIERS; CONTRACT; INSURANCE; SALE OF GOODS; SHIPPING; STOCK EXCHANGE; TRADE AND TRADE UNIONS.

COMMON LANDS.

See COMMONS.

COMMONWEALTH OF AUSTRALIA.

See DEPENDENCIES AND DOMINIONS.

COMMORIENTES.

See EVIDENCE; EXECUTORS.

COMMUNION.

See ECCLESIASTICAL LAW.

COMMUTATION.

Death Duties, of – – – *See* ESTATE AND OTHER DEATH DUTIES.
Railway fares, of – – – ,, CARRIERS.
Sentence, of – – – – ,, CRIMINAL LAW.
Tithes, of – – – – ,, ECCLESIASTICAL LAW.
Workmen's Compensation, of – ,, MASTER AND SERVANT.

COMPANIES.

NOTE.—The Act now in force is the Companies Act, 1929 (c. 23), which repealed (*inter alia*) the Companies (Consolidation) Act, 1908 (c. 69). References to sections of the 1908 Act should therefore be checked with the Comparative Table appended below.

1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.
1	357, 358	54	60	105	76	152	185, 198	202	259	252	323
2	1	55	57	106	77	153	186	203	260, Sch.	253	324
3	2	56	55, 50	107	78	154	194		IX.	254	325
4	2	57	16	108	131	155	195	204	187	255	326
5	2	58	53	109	135	156	193	205	173, 229,	256	359
6	3	59	49	110	137	157	197		258	257	327
7	4	60	146	111	138	158	192	206	261	258	328
8	17, 19	61	147	112	132, 133	159	196	207	262	259	329
9	5	62	92	113	129, 130,	160	199, 200	208	263	260	330
10	6, 7, 8	63	93		134	161	209	209	264	261	331
11	8 (2)	64	112	114	130	162	307	210	265	262	332
12	9	65	113, 171	115	28	163	203	211	174, 258	263	333
13	10, 319	66	114	116	370	164	204	212	266	264	334
14	20	67	115	117	33	165	205	213	270	265	335
15	12	68	116	118	11, 14 (2),	166	206	214	191, 248,	266	336
16	13, 14	69	117		108 (4),	167	207		260	267	337
17	15	70	118		379, 3rd	168	208	215	276	268	338
18	23	71	120		Sch. F.	169	210	216	272	269	339
19	14	72	140	119		170	211	217	277	270	340
20	18	73	141	120	153	171	213	218	363	271	341
21	21	74	143	121	26	172	221	219	288	272	
22	62	75	144	122	156	173	220	220	282	273	342
23	68	76	29	123	157	174	214	221	212	274	343, 344,
24	25	77	30	124	158	175	216	222	283		346, 348,
25	95	78	31	125	159	176	218	223	294		349, 351,
26	108, 110	79	32	126	160	177	219	224	284, 285		352 Sch.
27	101	80	34	127	161	178	163, 373	225	289		X., III.
28	65	81	35, 355,	128	162	179	222	226	290	275	345
29	64		Sch. IV.	129	168	180	223	227	291	276	366
30	98, 110	82	40	130	169	181	224	228	293	277	367
31	99	83	36	131	163	182	225	229	300	278	371
32	100	84	37	132	164	183	227	230	301	279	372
33	102	85	39	133	165	184	228	231	302	280	375
34	103	86	41	134		185	226	232		281	362
35	104	87	94	135		186	232, 241,	233	303	282	364
36	105	88	42	136	167		247, 248,	234		283	376
37	70, 97, 141	89	43	137	170		249	235	304	284	377
38	72	90	44	138	178	187	250	236	378	285	380
39	48	91	54	139	175	188		237	305	286	
40		92	67	140	172	189	233, 242	238	374	287	
41	50	93	79, 80, 82,	141	171	190		239	297	288	
42	51		83, 87	142	177	191	251	240	298	289	
43	95, 108	94	86	143	176	192	234	241	299	290	
44	7, 52	95	310	144	202	193	252	242	295	291	
45		96	85	145	288	194	235, 244,	243	312, 314	292	
46	55	97	84	146	179		248	244	313	293	
47	56	98	82 (4)	147	181	195	236, 245	245	316	294	
48	57	99	80, 83	148	182	196	254	246	317	295	
49	56	100	88	149	183, 184,	197	255	247	318	296	
50	57	101	89		185, 186,	198		248	319		
51	58	102	73		187, 188	199	256	249	321		
52	58	103	74	150	189	200	257	250	322		
53	59	104	75	151	184, 191	201	288	251	360		

Part I.—Nature, Characteristics, Definitions and Classification.

6. *Add. Annotations :—As to* (1) **Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14. *As to* (2) **Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

11. *Add. Annotations :*—**Consd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33. **Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 42 T. L. R. 401; Colville Estate, Ltd. *v.* I. R. Comrs., [1930] 2 K. B. 393; E. B. M. Co. *v.* Dominion Bank, [1937] 3 All E. R. 555.

14. *Add. Annotation :*—**Refd.** E. B. M. Co. *v.* Dominion Bank, [1937] 3 All E. R. 555.

15. *Add. Annotations :*—**Refd.** British Thomson-Houston Co. *v.* Starling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33; Prichard & Constance *v.* Amata (1924), 42 R. P. C. 63.

25a. —— **Distinct from component members.**]—DITCHAM *v.* MILLER, No. 5959b, *post.*

Part II.—Domicil, Residence and Nationality of Companies.

26a. —— —— **Business conducted abroad.**]—A trading corpn. was registered in England under Cos. Acts, but the whole administration of the business of the co. was conducted by directors domiciled & resident in Holland. The register of members was kept at the office in England :—*Held :* the domicil of the co. was not in Holland but in England.—BAELZ *v.* PUBLIC TRUSTEE, [1926] Ch. 863; 95 L. J. Ch. 400; 135 L. T. 763; 42 T. L. R. 696; 70 Sol. Jo. 818.

26b. ——.]—To constitute residence by a British co. in a foreign State so as to render the co. subject to the jurisdiction of the cts. of that State, the co. must to some extent carry on business in that State at a definite & reasonably permanent place.—LITTAUER GLOVE CORPN. *v.* F. W. MILLINGTON (1920), LTD. (1928), 44 T. L. R. 746.

27. *Add. Annotations :*—**Consd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682; Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

27a. ——.]—A co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe :—*Held :* a corpn. might have a dual residence, & there was evidence that pltfs. were resident both in New York & in London carrying on business in both places & in both places were subject to the jurisdiction of the cts.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

Annotations :—**Consd.** I. R. Comrs. *v.* Broome's Executors (1935), 19 Tax Cas. 667. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

Part III.—Companies under Companies (Consolidation) Act, 1908, and Similar Acts.

38. *Add. Annotation :—As to* (6) **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

45. *Add. Annotation :*—**Consd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

75. For the paragraph " (9) (WARRINGTON, L.J. . . . 1908 Act, s. 82," substitute :—" (9) (LORD SUMNER, LORD DUNEDIN expressing the contrary opinion), an allotment of shares & debentures made before filing a statement in lieu of prospectus as required by 1908 Act, s. 82 (1), is not wholly void."

For the paragraph " (10) (LORD STERNDALE, M.R., . . . was written," substitute :—

PART I. SECT. 1.

s.a. *Under statute—Existence apart from members—Conveyance of property by originators to company.*]—Defts. contracted with pltfs. to sell them all the fruit & vegetables to be grown on their land during a specified time. The contract provided that if any transfer should be made by the grower to any corpn., it should be deemed to be made subject to the agreement & the transferee should be bound by the terms thereof. Defts., for the admitted purpose of freeing themselves from the contract, incorporated a joint stock co. for the purpose of holding the land, & transferred the land to it in consideration of the allotment to them of the whole of its capital stock :—*Held :* the co. could not be declared to be a trustee for the growers & bound by the contract.—ASSOCIATED GROWERS OF B. C., LTD. & KELOWNA GROWERS EXCHANGE *v.* EDMUNDS & BYZANT ORCHARDS, LTD., [1926] 1 D. L. R. 1093; [1926] 1 W. W. R. 535; 36 B. C. R. 413.—CAN.

s.c. *One company owning all shares of another—Distinct legal persons.*]—ASSINIBOIA RURAL MUNICIPALITY *v.* SUBURBAN RAPID TRANSIT CO., [1931] 2 D. L. R. 862; 1 W. W. R. 778; 39 Man. L. R. 402.—CAN.

PART I. SECT. 2.

s.e. *Companies limited by guarantee—Assignment of undertaking by third party—Validity.*]—LLOYD'S BANK *v.* MORRISON & SON, LTD., [1927] S. C. 571.—SCOT.

PART II.

a i. —— —— *In several places.*]—A co. is to be treated in matters of trade & commerce as resident not only where its principal place of business is, but wherever it has a place of business.—EHMKA *v.* BORDER CITIES IMPROVEMENT CO. (1922), 52 O. L. R. 193.—CAN.

PART III. SECT. 1, SUB-SECT. 5.—A. (a) ii.

s.g. *General rule.*]—VITOMEN CEREAL, LTD. *v.* MANITOBA GRAIN CO. (B. C.), [1928] 4 D. L. R. 440.—CAN.

"(10) Observations of LORD SUMNER as to the practice of the Registrar of Joint Stock Companies, in cases where everything is in order, of antedating the incorporation of a co. to the date of the application for registration."—JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) *v.* LEWIS, [1924] A. C. 958; 93 L. J. Ch. 414; 40 T. L. R. 621; 68 Sol. Jo. 663; [1925] B. & C. R. 16; *sub nom. Re* JUBILEE COTTON MILLS, LTD., 131 L. T. 579, H. L.

Annotation :—*As to* (9) **Consd.** *Re* Burton, 1927] 2 Ch. 132.

82. *Add. Annotation :*—*As to* (1) **Refd.** Jubilee Cotton Mills Official Receiver & Liquidator *v.* Lewis, [1924] A. C. 958.

192. *Add. Annotation :*—**Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

196. *Add. Annotation :*—**Refd.** Harrods *v.* Harrod (1924), 40 T. L. R. 195.

198. *Add. Annotation :*—**Refd.** Radio Rentals, Ltd. *v.* Rentals, Ltd. (1934), 51 R. P. C. 407.

210. *Add. Citation :*—9 Jur. N. S. 843.

216. *Add. Annotation :*—**Refd.** Sturtevant Engineering Co. *v.* Sturtevant Mill Co. of U.S.A., Ltd., [1936] 3 All E. R. 137.

225. *Citation :*—For "56 Sol. Jo. 36" read "56 Sol. Jo. 361."

Add. Annotation :—**Consd.** Harrods *v.* Harrod (1924), 40 T. L. R. 195.

227. *Add. Annotation :*—**Consd.** Crystalate Gramophone Record Manufacturing Co. *v.* British Crystalite Co. (1934), 51 R. P. C. 315.

228. *Add. Citation :*—*On appeal*, 41 R. P. C. 67, C. A.

228a. **"Harrods" — "R. Harrod."**]—The ct. granted an interlocutory injunction to restrain deft. co. from carrying on business under any name comprising the well-known name of pltf. co. on the ground that defts.' use of the name was calculated to lead the public erroneously to believe that defts.' business had some connection with pltfs.' business.—HARRODS, LTD. *v.* HARROD (R.), LTD. (1924), 40 T. L. R. 195; 41 R. P. C. 74, C. A.

Annotation :—**Expld.** Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers', etc., Insce., [1925] Ch. 675.

228b. **"Society of Motor Manufacturers & Traders" —"Motor Manufacturers' & Traders' Mutual Insurance Co."**]—A co., carrying on the business of insurance against motor risks, adopted as part of its name the ordinary descriptive words "Motor Manufacturers & Traders," which had already been adopted as part of its name by a society having for its main objects the promotion, encouragement & protection of the motor trade generally. There was no charge of fraud &, in the opinion of the ct., no tangible risk of injury to the society's business reputation owing to the similarity of the names; the names being sufficiently distinguishable & deft. co.'s business wholly different from that of pltf. society :—*Held :* pltf. society was not entitled to a monopoly of its descriptive words, or to any relief against deft. co. —MOTOR MANUFACTURERS' & TRADERS' SOCIETY *v.* MOTOR MANUFACTURERS' & TRADERS' MUTUAL INSURANCE CO., [1925] Ch. 675; 94 L. J. Ch. 410; 133 L. T. 330; 41 T. L. R. 483; 42 R. P. C. 307, C. A.

228c. **"British Legion"—British Legion Club (Street), Ltd.**]—BRITISH LEGION *v.* BRITISH LEGION CLUB (STREET), LTD. (1931), 47 T. L. R. 571; 48 R. P. C. 555.

Annotations :—**Consd.** Clock, Ltd. *v.* Clock House Hotel, Ltd. (1935), 52 R. P. C. 386; Sturtevant Engineering Co. *v.* Sturtevant Mill Co. of U.S.A., Ltd., [1936] 3 All E. R. 137. **Refd.** British Medical Association *v.* Marsh (1931), 47 T. L. R. 572.

228d. **"B. M. A."—"B. M. A. Drug Stores."**]—BRITISH MEDICAL ASSOCN. *v.* MARSH (1931), 47 T. L. R. 572; 48 R. P. C. 565.

Annotations :—**Refd.** Clock, Ltd. *v.* Clock House Hotel, Ltd. (1935), 52 R. P. C. 386; Sturtevant Engineering Co. *v.* Sturtevant Mill Co. of U.S.A., Ltd., [1936] 3 All E. R. 137.

237. *Add. Annotation :*—*As to* (1) **Consd.** Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers' & Traders' Mutual Insce., [1925] Ch. 675.

238. *Add. Annotations :*—**Refd.** Harrods *v.* Harrod (1924), 40 T. L. R. 195; Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers' & Traders' Mutual Insce. (1925), 94 L. J. Ch. 410.

240a. —— ——.]—In 1902 the Crystalate Manufacturing Co., Ltd., commenced manufacturing & selling (*inter alia*) electrical accessories, & in 1928 sold their business to pltfs. At no time had either co. sold electric lamps. In 1933 defts. were formed & commenced selling electric lamps, & in one advertisement were inadvertently described as "British Crystalate Co., Ltd." Pltfs. commenced an action to restrain defts. from carrying on business under their name or any name containing the word "Crystalite" or any other word only colourably differing from "Crystalate." Defts. alleged that the businesses carried on by the parties were dissimilar & that there was no likelihood of confusion :—

PART III. SECT. 3, SUB-SECT. 3.—B. (a).

198 ii. ——.]—Where there is no proof of injury or of likely injury to pltf., by deprivation of profits or of its reputation suffering by reason of the use of its trade name by deft., an injunction will not be granted to prevent deft. from such user notwithstanding proof of extension of pltf.'s reputation to New Zealand & of deft.'s intention to deceive.—COLES (G. J.) & CO., LTD. *v.* COLES (G. J.) (N.Z.), LTD., [1933] N. Z. L. R. 1189.—**N.Z.**

sd. *Insurance company.*]—The Continental Assurance Co., a United States corpn., was refused registration in Canada under Foreign Insurance Cos. Act, on the ground that its name was liable to be confounded with that of the Continental Life Insurance Co., a Canadian corpn. licensed under Canadian & British Insurance Cos. Act. On appeal from the ruling of the Minister of Finance :—*Held :* under sect. 9 of Foreign Insurance Cos. Act registration may be refused if the name of appct. co. is so similar to the name of a co. already registered under the same Act, as to cause confusion; the words "or otherwise on public grounds objectionable" in sect. 9 (1) of Foreign Insurance Cos. Act mean something other than the question of confusion arising out of a similarity of names.—*Re* FOREIGN INSURANCE COS. ACT, 1932, [1934] Ex. C. R. 84.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—B. (b).

sd. *"Precision Engineering Co."—"Cu-Tone Precision Engineers."*]—An application by C. & T., Ltd., for approval of a change of name to the "Cu-Tone Precision Engineers, Ltd.," was opposed by the Precision Engineering Co., Ltd. Both cos. were engaged in the engineering business. Appct. had been engaged in making what are known as "precision tools," & in what is styled "precision work." The objecting co. was engaged in manufacturing motor-plates, steel shelving, lockers, & office equipment. Appct. co. had decided to make "precision work" a prominent feature of its business, & adopted the term "precision" not as a fancy word, but as being descriptive of the kind of work in which it proposed to specialise :—*Held :* granting the approval sought, as the word "precision" was an ordinary English word descriptive of part of the work carried on by appct. co. in common with other engineering firms, it had not acquired a secondary or subsidiary meaning to denote only the business of the objecting co., & could not be monopolised by the latter, & its use in the form proposed was not calculated to deceive.—*Re* CUFF & THOMSON, LTD., [1933] N. Z. L. R. 50; G. L. R. 313.—**N.Z.**

Held: defts. had adopted their name in good faith as being descriptive of the "crystal light" sold by them, but pltfs. & defts. were both concerned in the same trade, that their names were substantially similar, & the use by defts. of their name was calculated to cause confusion between the two businesses. An injunction was granted with costs, the operation of the injunction being suspended for two months.—CRYSTALATE GRAMOPHONE RECORD MANUFACTURING CO., LTD. *v.* BRITISH CRYSTALITE CO., LTD. (1934), 51 R. P. C. 315.

251. *Add. Annotation:*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

255. *Add. Annotations:*—*As to* (1) **Refd.** I. R. Comrs. *v.* Cornish Mutual Assce. (1924), 41 T. L. R. 70. *As to* (2) **Refd.** South Behar Ry. *v.* I. R. Comrs., [1925] A. C. 476.

257. *Add. Annotation:*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

260a. —— **What amounts to—Not acquisition of shares of company to promote its amalgamation with another company.**] — DOMINION IRON & STEEL CO., LTD. *v.* INVERNAIRN. [1927] W. N. 277.

264. *Add. Annotation:*—**Refd.** Westripp *v.* Baldock, [1938] 2 All E.R. 779.

265. *Add. Annotation:*—**Consd.** I. R. Comrs. *v.* Cornish Mutual Assce. (1924), 41 T. L. R. 70.

266. *Add. Annotations:*—*As to* (1) **Apld.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281. **Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657; *Re* United General Commercial Insce. Corpn., [1927] 2 Ch. 51. *As to* (2) **Refd.** Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 135 L. T. 673.

270. *Add. Annotation:*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

271. *Add. Annotation:*—**Folld.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

272a. —— ——.]—An assocn. with four branches was formed to obtain subscriptions from the members of each branch & to lend to members out of the fund so formed money on interest. Each fund, with its accretions of interest, was divided up periodically among the members ratably at a period of the year which differed in each branch. The assocn. & its branches all consisted of more than twenty members. The assocn. was not registered under any Act. Disputes having arisen, a resolution was passed by the members for the dissolution of the assocn., & an action was brought by three members suing on behalf of all members other than defts. against defts., who were the treasurer & secretary of the assocn., claiming administration of the assets of the assocn., an account of the subscriptions received by defts. from members & of their application thereof, payment of the amount found due & other relief. The action was resisted on the ground that the assocn. was illegal & that no relief could therefore be given:—*Held:* (1) the assocn. was rendered illegal by 1908 Act, s. 1 (2), as being an unregistered assocn. of more than twenty persons carrying on a business having for its object the acquisition of gain; (2) the ct. was not debarred from affording relief to the members asking for the return of money paid into the hands of agents for application for an illegal purpose by granting an account.—GREENBERG *v.* COOPERSTEIN, [1926] Ch. 657; 95 L. J. Ch. 466; 135 L. T. 663.

282. *Add. Citation:*—130 L. T. 450.
Add. Annotation:—**Refd.** Drabble *v.* Hycolite Manufacturing Co. (1928), 44 T. L. R. 264.

286. *Add. Annotation:*—**Consd.** Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn., Ltd., [1931] A. C. 677.

298. *Add. Annotation:*—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500.

310. *Add. Annotation:*—*Generally*, **Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

313a. Substitution of—For deed of settlement.]—A co. registered under 1908 Act, with a deed of settlement can, if it satisfies 1929 Act, s. 5, substitute a memorandum & articles for the deed of settlement.—*Re* SHERBORNE GAS & COKE CO., LTD. (1935), 80 Sol. Jo. 33.

317. *Add. Annotation:*—**Consd.** *Re* Blucher (Prince), *Ex p. Debtor*, [1931] 2 Ch. 70.

327. *Add. Annotation:*—**Refd.** Campbell *v.* Rofe, [1933] A. C. 91.

327a. —— —— **Right of export.**]—The E. Syndicate in 1899 was granted by the Egyptian

---

PART III. SECT. 4, SUB-SECT. 1.

265 iii. ——.]—An assocn. of more than 20 persons formed for starting a business for gain requires registration in accordance with Cos. Act, s. 4, whatever may be the use to which the gains of the business are to be put, *e.g.* educational & other charitable purposes.—CHHEDI LAL *v.* PUNNU LAL (1929), I. L. R. 52 All. 325.—**IND.**

265 iv. —— *Meaning of "gain."*]—The word "gain" is not limited to pecuniary or commercial profits. It means acquisition, something obtained or acquired.—TAN WAING *v.* BO HEIN (1932), I. L. R. 10 Man. 490.—**IND.**

PART III. SECT. 4, SUB-SECT. 2.

sc. *Trade union.*]—Appct. co. was an assocn. of employers in the bread-making trade & was registered under Cos. Act, 1899, but not under the Trade Union Act, 1881:—*Held:* appct. co. being a trade union its registration under Cos. Act, 1899, was void, & consequently no order could be made against it for costs.—*Re* TRUTH & SPORTSMAN, LTD., *Ex p.* BREAD MANUFACTURERS, LTD. (1937), 37 S. R. N. S. W. 242; 54 N. S. W. W. N. 98.—**AUS.**

PART III. SECT. 4, SUB-SECT. 5.

sd. *Striking off register—Effect.*]—(1) The intention to dissolve a co. should not be read into a statute providing for the striking of the co. off the register because of a short delay in the payment of its annual fee, unless the language of the statute expressly or by necessary implication imposes that penalty. (2) The conduct of deft. shareholders after the co. had been struck off the register held to make them trustees of the co.'s property for the individual shareholders, who made contributions to conserve the property, & not for the co. It was, therefore, not necessary for pltf., whose suit was for his share of the assets, to have the co. restored to the register & to have the action brought by the co.—DADSON *v.* GREST & GREST, [1928] 1 D. L. R. 479; [1928] 1 W. W. R. 286; 22 Sask. L. R. 253.—**CAN.**

sf. *Right to certificate to commence business—Non-compliance with Securities Act.*]—Where a co. is not one which is required by Securities Act, 1930, entitled until 1933, Security Frauds Prevention Act, to comply with that Act, the registrar of cos. is not entitled because of non-compliance with that Act to refuse to issue it a certificate under sect. 40 of the Cos. Act, 1929, entitling it to commence business; & a *mandamus* will issue commanding him to do so.—R. *v.* REGISTRAR OF COS. (No. 1), [1934] 1 W. W. R. 393 48 B. C. R. 152.—**CAN.**

PART III. SECT. 6.

ki. —— *That company duly incorporated.*]—The fact that a co. incorporated under Cos. Act includes in its name the word "Co-operative," contrary to Co-operative Assocns. Act, 1920 (o. 19). s. 4 (2), does not render it an illegal co., since Cos. Act, s. 28, makes a certificate of incorporation conclusive evidence that the co. was duly incorporated.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

Govt. a concession for manufacturing & selling salt for Egypt from the Mex area, & the sole right to export salt from that area, but the Govt. reserved the right to abolish the salt monopoly at six months' notice. The syndicate then promoted applt. co., which agreed to purchase the rights of the syndicate under the Mex concession, but with the reservation that the co. should not do any export trade in salt, such right of export being reserved by the syndicate from the sale to the co. On Jan. 1, 1906, the Govt. abolished the salt monopoly of the syndicate. The memorandum of association of the applt. co. did not expressly prohibit the co. from exporting salt from Egypt, but stated that one of the objects of the co. was to ratify the agreement with the syndicate, & another object was to deal in salt & soda, & it was conceded that under its memorandum the co. could acquire salt deposits outside Egypt & there engage in the export of salt :—*Held :* the memorandum did not exclude from the permitted objects of the co. the export of salt from Egypt so as to prevent its engaging in that business.—EGYPTIAN SALT & SODA CO. *v.* PORT SAID SALT ASSOCN., [1931] A. C. 677 ; 100 L. J. P. C. 147 ; 145 L. T. 313, P. C.

330. *Add. Annotation :*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

335. *Add. Annotation :*—**Refd.** *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

337. *Add. Annotation :*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

341. *Add. Annotation :—As to* (1) **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769 ; Beattie *v.* Beattie, Ltd., [1938] 3 All E. R. 214.

343. *Add. Annotation :—As to* (1) **Refd.** Bank of N. T. Butterfield *v.* Golinsky, [1926] A. C. 733.

346. *Add. Annotations :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258 ; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

347a. —— **Between members & directors.**]—*Held :* even if a particular article of a private co. was wide enough to make it apply to a dispute between the co. & a member in his capacity of a director & provided for reference of such a dispute to arbn., sect. 20 of Cos. Act, 1929, did not give contractual force to the article in reference to such a dispute so as to constitute it, for the purpose of that dispute, a written agreement for submission to arbn. within sect. 4 of Arbn. Act, 1889 (c. 49).—BEATTIE *v.* BEATTIE, LTD., [1938] Ch. 708 ; [1938] 3 All E. R. 214 ; 107 L. J. Ch. 333 ; 159 L. T. 220 ; 54 T. L. R. 964 ; 82 Sol. Jo. 521, C. A.

351. *Add. Annotations :*—**Apld.** Plantations Trust *v.* Bilba (Sumatra) Rubber Lands (1916), 114 L. T. 676. **Refd.** Beattie *v.* Beattie, Ltd., [1938] 3 All E. R. 214.

354. *Add. Annotations :—As to* (2) **Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743. *As to* (4) **Consd.** Ramsden *v.* David Sharratt & Sons (1930), 35 Com. Cas. 314. *Generally,* **Refd.** Harrods, Ltd. *v.* Lemon (1930), 47 T. L. R. 97.

355a. —— **Liquidator.**]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858b, *post.*

398. *Add. Annotations :* -- **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Refd.** Hole *v.* Garnsey, [1930] A. C. 472.

406. *Add. Annotations :*—**Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826 ; Liggett (Liverpool) *v.* Barclays Bank (1927),

---

PART III. SECT. 7, SUB-SECT. 4.—A.

336 iii. ——.]—The objects of a co., as set forth in its memorandum of assocn., were (*a*) to acquire land in G. & to erect thereon a public hall with shops & cellars ; (*b*) to let the hall for public meetings, lectures, auctions, & similar purposes ; (*c*) to let the shops & cellars to tenants, either year to year or on lease ; & (*d*) to do all such other things as were "incidental or conducive to the attainment of the above object." A hall with shops & cellars underneath was erected, but, some fifty years afterwards, was destroyed by fire. The sum recovered under an insurance policy formed the whole assets of the co. Thereafter the co. presented a petition under Cos. Act, 1929, s. 5, craving the ct. (*inter alia*) to confirm a resolution, duly passed, which altered its memorandum of assocn. by deleting all reference to the erection & letting of a public hall with shops & cellars, & substituting therefor provisions for the erection & letting of shops & dwelling-houses & warehouses. Answers were lodged by certain dissentient shareholders, who maintained that the proposed alteration, if sanctioned, would completely alter the nature of the co.'s undertaking :—*Held :* as the proposed alteration of the memorandum involved a fundamental change in the character of the co. it was not one which could be forced on dissentient shareholders ; & petition refused.—STRATHSPEY PUBLIC ASSEMBLY & AGRICULTURAL HALL CO. *v.* ANDERSON'S TRUSTEES, [1934] S. C. 385.—**SCOT.**

sl. *Memorandum of insurance company—Alteration to include life assurance—Conditions of grant.*]—The Mutual Property Insco. Co., Ltd., whose objects were to carry on every kind of insurance except life presented a petition under 1929 Act, sect. 5, to confirm a resolution altering the memorandum so as to include power to carry on life insurance :—*Held :* resolution should be confirmed on alteration of the name of the co. to the "Mutual Property & Life Insco. Co., Ltd." & on deposit of the £20,000 required by Assurance Cos. Act, 1909.—*Re* MUTUAL PROPERTY INSCE. CO., LTD., [1934] S. C. 61.—**SCOT.**

so. *Company registered without "limited"—Charitable objects—Alteration.*]—A co. registered under sect. 18 (1) of Cos. Act (Northern Ireland), 1932, by licence of the Ministry of Commerce, as a co. for promoting a charitable object with limited liability but without the addition to its name of the word "limited" cannot extend the objects in its memorandum under sect. 5 of the said Act where the change in the objects is of a substantial character unless circumstances appear in which the doctrine of *cy-près* would be applicable & the principles of *cy-près* should be followed in the consideration of any such application.—*Re* ULSTER SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS (INCORPORATED) & COMPANIES ACT (NORTHERN IRELAND), 1932, [1936] N. I. 97.—**IR.**

PART III. SECT. 7, SUB-SECT. 6.—A. (a).

358 i. *To take up number subscribed for.*]—P. agreed to purchase shares in a co. & subscribed to the memorandum of assocn., but later asked the promoter to cancel his "requirements." P.'s name was never entered in the register of members :—*Held :* P. was liable.—*Re* J. H. CHANDLER & CO., LTD. (1926), I. L. R. 48 All. 580.—**IND.**

PART III. SECT. 7, SUB-SECT. 6.—A. (c).

388 i. *Where shares subscribed for not allotted.*]—Persons signing a memorandum of assocn. of a co. to be incorporated are contributories, although no shares are allotted.—*Re* T. E. O'REILLY, LTD., [1927] 3 D. L. R. 797 ; 60 O. L. R. 649.—**CAN.**

395 i. *By transfer.*] — An original subscriber of a co. can withdraw his subscription & transfer his share at the first meeting of provisional directors, & where a majority of original incorporators are present & vote at the meeting such withdrawal does not invalidate anything done at the meeting.—*Re* GEORGE W. GRIFFITHS CO., [1924] 4 D. L. R. 1031.—**CAN.**

PART III. SECT. 7, SUB-SECT. 6.—B

400 i. *Misrepresentation by promoter—Not ground for rescission.*]—Subscribers to the memorandum of assocn. of a co. cannot repudiate shares for which they have subscribed either on the ground that they were induced to join the co. by fraud or misrepresentation, or on the ground that the truth of the precedent representations made by the promoters of the co. was a condition of the contract : the true remedy of the persons so defrauded is to sue for damages the persons so defrauding them.—PETROTITE & CHALLENGE HEATERS, LTD. *v.* BODLEY, [1924] N. Z. L. R. 102.—**N.Z**

137 L. T. 443; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Underwood *v.* Bank [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

410. *Add. Annotations:*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

411. *Add. Annotations:*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444. **Apld.** *Re* Walters' Deed of Guarantee, Walters' "Palm" Toffee, Ltd. *v.* Walters (1933), 49 T. L. R. 192.

415. *Add. Annotation:* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

423. *Add. Annotations:*—**Consd.** I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762. **Refd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

427. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853

431a. ——.]—A collateral obligation imposed by the arts. of assocn. of a co. registered under 1908 Act upon a member of the co., which in certain events involves a liability on the part of that member to take further shares in the co., can be enforced notwithstanding that the liability of the member to contribute in a winding up is limited by the Act under which the co. is registered.

The limitation of liability in respect of shares held is distinct from an obligation collaterally imposed upon a member in certain events to take up further shares which will themselves, when taken up, be entitled to a similar limitation of liability. There is nothing in such a collateral obligation which is *ultra vires* or repugnant to the system of limited liability.—AGRICULTURAL WHOLESALE SOCIETY *v.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY, [1925] Ch. 769; 94 L. J. Ch. 397; 133 L. T. 274; 41 T. L. R. 470; 69 Sol. Jo. 557, C. A.; *affd. sub nom.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY *v.* AGRICULTURAL WHOLESALE SOCIETY, [1927] A. C. 76, H. L.

Annotation:—**Expld. & Distd.** Hole *v.* Garnsey, [1930] A. C. 472.

432a. —— **Unless arising from wilful neglect or default.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *post.*

432b. —— ——.]—FENTON TEXTILE ASSOCN., LTD. *v.* THOMAS & CLARK (1928), 45 T. L. R. 113; *on appeal* (1929), 45 T. L. R. 264, C. A.

432c. —— **Unless arising from wilful or wrongful act or default.**]—One of the arts. of assocn. of a co. provided that "The directors & other officers shall be indemnified by the co. against all costs, losses, & expenses incurred by them in or about the discharge of their respective duties, except such as may happen from their own respective wilful or wrongful act or default":—*Held:* the above art. did not protect a director from liability for negligence resulting in loss to the co.—*Re* CITY OF LONDON INSURANCE CO., LTD. (1925), 41 T. L. R. 521; 69 Sol. Jo. 591.

433. *Add. Annotation:*—*As to* (1) **Consd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

435. *Add. Annotation:*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

437. *Add. Annotation:*—*As to* (1) **Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

439. *Add. Annotations:*—*As to* (1) **Consd.** Collins *v.* Associated Greyhounds Racecourses (1929), 141 L. T. 529. *As to* (3) **Apld.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442. *Generally,* **Refd.** Jewson & Sons, Ltd. *v.* Arcos, Ltd. (1933), 39 Com. Cas. 59; R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy (1936), 154 L. T. 499.

439a. **"Issued" to the public—What amounts to.**]—A co. being in want of further capital, a document was prepared by applt., who was the managing director, & signed by the other directors, stating the position of the co., that it was proposed to issue 20,000 preference shares, & giving an estimate of the profits after the new capital was available. Attached was an application form for preference shares. A second document was also prepared by the applt., written on the co.'s paper & addressed to a fellow director, marked "strictly private & confidential," which, after setting out the amount of nominal & issued capital, stated the purposes for which the additional capital was required, & concluded thus: "I shall be very happy to discuss this proposition in all its details with any one who is really interested." Attached was a form of application for ordinary shares. Several copies of these documents were given to applt.'s fellow director, who sent a copy to a solr., with a request, in substance, that he should find some client willing to provide the capital required. The solr. sent the documents to resp.'s brother-in-law, & he in turn sent them to resp., who, on the faith of the statements they contained, subscribed for 3,000 ordinary shares in the co. Subsequently ascertaining that a considerable part of the issued capital had been issued otherwise than for cash, a fact that was not stated in either of the documents, he sued applt. for damages for the loss he had sustained through the omission by applt. to comply with the requirements of 1908 Act, s. 81 (1) (*e*). At the trial the jury found that the two documents were an offer of shares by the co. to the public. In answer to the question, whether they were in fact issued to the public, the jury said: "There is no proof of this." The jury found that resp. sustained damage to the amount of £2,000:—*Held:* the documents were not issued as a prospectus within 1908 Act, s. 81 (1) (*e*).—NASH *v.* LYNDE, [1929] A. C. 158; 98 L. J. K. B. 127; 45 T. L. R. 42; 72 Sol. Jo. 873; *sub nom.* LYNDE *v.* NASH, 140 L. T. 146, H. L.

462. *Add. Annotation:*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

PART III. SECT. 8, SUB-SECT. 1.

1. i. —— ——.]—An advertisement offering the public shares in a co. for sale is a "prospectus" under sect. 2 (14) of Indian Cos. Act (VII. of 1913), —PRAMATHA NATH SANYAL *v.* KALI KUMAR DUTT (1924), I. L. R. 52 Calc. 440.—IND.

476. *Add. Annotation :*—**Consd.** Nash *v.* Lynde, [1929] A. C. 158.

483. *Add. Annotations :*—**Apld.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442. **Refd.** R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy (1936), 154 L. T. 499.

484. For first catchword " —— " read " **Notice of contracts.**"

491. *Add. Annotation :*—**Apld.** Coles *v.* White City (Manchester) Greyhound Assocn. (1929), 45 T. L. R. 230.

525. *Add. Annotation :*—**Refd.** R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy, [1936] 1 All E. R. 586.

525a. ——.]—*Held :* pltf. was entitled to the rescission of a contract to take shares, on the ground that the prospectus did not disclose the facts (1) that the land purchased by the co. for its operations had been scheduled to a town-planning resolution, which had been registered as a land charge, & (2) that, unless the consent of the local authority should be obtained before any buildings were erected, the co. would not be entitled to compensation for their possible removal under the town-planning scheme.—COLES *v.* WHITE CITY (MANCHESTER) GREYHOUND ASSOCN., LTD. (1929), 45 T. L. R. 230, C. A.

556a. —— ——.]—If the name of a person is improperly placed in the list of directors in the prospectus of a co., it must depend upon the circumstances of the case whether it is a material misstatement.—SMITH *v.* CHADWICK (1882), 20 Ch. D. 27 ; 51 L. J. Ch. 597 ; 46 L. T. 702 ; 30 W. R. 661, C. A. ; *affd. on other grounds* (1884), 9 App. Cas. 187, H. L.

560. *Add. Annotation :*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

562. *Add. Annotation :*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

568. *Add. Annotation :*—**Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

577. *Add. Annotation :*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

581. *Add. Annotation :*—**Consd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

581a. —— —— **Directors without knowledge that misrepresentation basis of contract.**]—Deft. co. had no knowledge, that, so far as pltf. was concerned, his application had been induced by any representations made before the co. was incorporated. In these circumstances I think pltf. fails to establish any right to have any contract to take the shares in question rescinded (LUXMOORE, J.).—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., [1930] 1 Ch. 1, 14 ; *affd.*, [1930] 1 Ch. 1, 28, C. A

581b. —— **Contract between company & agent for undisclosed principal—Whether principal entitled to rescission.**]—Shortly before the incorporation of a co. a draft prospectus, which was afterwards adopted by the co., was circulated for the purpose of obtaining underwriters of shares intended to be offered to the public by the proposed co. An investment co. entered into an underwriting agreement on Nov. 28, 1927, by which they agreed that they would within three days of the issue of the prospectus " either subscribe themselves . . . on the basis of the said prospectus for 1,164,000 . . . shares of 5*s.* each or cause the same before the date aforesaid to be subscribed on the terms of the said prospectus by responsible persons," & any reasonable objection might be taken by the co. within two days to persons put forward by the investment co. On Nov. 29, 1927, M. & O. signed & remitted an offer to underwrite 12,000 shares addressed to the investment co. & also an application for the shares addressed to the proposed company, which was accompanied by a cheque for £600. On Dec. 12, 1927, the incorporation of the proposed co. took place, & the underwriting agreement & prospectus were adopted by the co. & the prospectus issued to the public. The public response was insufficient, & 8,160 shares were allotted to M. & O., the allotment letter bearing at the back a form of renunciation. M. & O. were agents for pltf., who had provided the £600. They renounced the shares in favour of pltf., who paid the further sum of £624 due on allotment & sent the allotment letter to the co., who replied stating that it had been duly registered in his name & placed his name on the register of shareholders :—*Held :* pltf. was not entitled to rescission, because (1) the contract between M. & O. & the co. was of such a class that M. & O. must be treated as the principals, so that pltf., as the undisclosed principal, could not sue on the contract or obtain its rescission, & (2) the contract constituted by the co.'s acceptance of pltf.'s authority under the renunciation to place his name on the register could not be treated as a contract entered into on the basis of the draft prospectus.—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., [1930] 1 Ch. 1 ; 99 L. J. Ch. 52, C. A.

581c. —— —— **Effect of renunciation by agent in favour of plaintiff.**]—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., No. 581b, *ante*.

582a. Misrepresentation by promoters.]—If a person is induced to take shares on the faith of a promise by the promoters of a co., which promise is not kept, he is a contributory. His remedy is only against the persons who made the promise.—*Re* UNITED KINGDOM SHIPOWNING CO., LTD., FELGATES CASE (1865), 2 De G. J. & Sm. 456 ; 11 L. T. 613 ; 11 Jur. N. S. 52 ; 13 W. R. 305 ; 46 E. R. 451, C. A.

604. *Add. Annotation :*—**Refd.** Solloway *v.* Johnson, [1934] A. C. 193.

614a. ——.]—B. signed a printed form issued by the promoters of an intended co., expressing his willingness to become a member of the council of administration of the intended co. M. also wrote to the promoters promising to help the co. Soon afterwards the promoters issued a prospectus in which the co. was described as " to be incorporated under the Cos. Acts," & an extract was given from the proposed articles of assocn. to the effect that there would be a council of administration of members of the co., & a list of members of the council was appended containing the names of B. & M. In reliance on this prospectus, K. applied for shares in the intended co. On Jan. 31, three days after

K.'s application, the co. was duly registered under the Cos. Act; & on Feb. 2, the directors allotted K. the shares which he had applied for, & approved a form of prospectus substantially the same as that which had been issued by the promoters. On Feb. 11, K. paid the allotment money on those shares. On June 26, K. discovered that B. & M. had both declined to take shares in the co. & to become members of the council of administration, & took out a summons to have his name removed from the list of shareholders: —*Held:* the effect of the statement in the prospectus was not merely that B. & M. had expressed their willingness to become members of the council of administration, but that they had authorised the publication of their names as members, & as such was a false statement of fact; the prospectus, although issued by the promoters before the formation of the co., was the basis of the contract between the co. & K. for the allotment of shares; that the misstatement in the prospectus was relied on by K., & was material to the contract, & consequently that K. was entitled to rescind the contract & repudiate the shares. The ct., being of opinion that there had been no laches or acquiescence, ordered K.'s name to be removed from the list of shareholders, & the money paid by him in application & allotment to be returned with interest at 4 per cent.—*Re* METROPOLITAN COAL CONSUMERS' ASSOCN. KARBERG'S CASE, [1892] 3 Ch. 1; 61 L. J. Ch. 741; 66 L. T. 700; 8 T. L. R. 637, C. A.

Annotations:—**Refd.** *Re* Canadian Direct Meat Co. (1892), 36 Sol. Jo. 805; *Re* Consort Deep Level Gold Lines, Ltd., *Ex p.* Stark, *Ex p.* Elliston (1896), 45 W. R. 227; Lynde *v.* Anglo-Italian Hemp Spinning Co., [1896] 1 Ch. 178; *Re* Metal Constituents, Ltd., Lurgan's Case, [1902] 1 Ch. 707; Hilo Manufacturing Co., Ltd. *v.* Williamson (1911), 28 T. L. R. 164; Mair *v.* Rio Grande Rubber Estates, Ltd., [1913] A. C. 853; *Re* Pacaya Rubber & Produce Co., Ltd., Burns' Appln., [1914] 1 Ch. 542; Goldrei, Foucard & Son *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Bisset *v.* Wilkinson, [1927] A. C. 177, P. C.

642. *Add. Annotations:*—**Consd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641. **Refd.** Horwood *v.* Statesman Publishing Co. (1929), 141 L. T. 54; United Motor Finance Co. *v.* Addison & Co., [1937] 1 All E. R. 425.

660. *Add. Annotation:*—**Refd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

667. *Add. Annotation:*—**Consd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

677. *Add. Annotation:*—**Refd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

702. *Add. Annotations:*—**Expld.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

703. *Add. Annotation:*—**Refd.** Aylott *v.* West Ham Corpn., [1927] 1 Ch. 30.

738. *Add. Annotation:*—**Refd.** The Saxicava, [1924] P. 131.

741. After this case add:—
See, now, Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41), s. 1.

(*i*) *Other Cases* (Vol. IX., p. 139).

770a. Acceptance of sum paid into court—Effect on liability under 1908 Act, s. 84.]—Resp. applied for & was allotted debenture stock in W., C., & Co., Ltd., relying upon the statements contained in a prospectus. The first-named applts. were directors in W., C., & Co., Ltd.; the second-named applts. carried on business as merchant bankers in the name of S. & Co., who were stated in the prospectus to have purchased the whole of the debenture stock of W., C., & Co., Ltd., but who were alleged by resp. to have issued the prospectus as agents for the other applts. Resp. by his writ claimed "damages for false & fraudulent misrepresentation against all applts., & against such of applts. as were directors of W., C., & Co., Ltd., compensation under 1908 Act, s. 84, alternatively damages for conspiracy to defraud, the damages claimed in respect of the three claims being £178." The trial judge dismissed the action against the first-named applts. with costs. The action then proceeded against the second-named applts. until they amended their defence by leave & paid £130 into ct. with a denial of liability, which amount the resp. accepted in lieu of the £178 claimed, in full satisfaction of the cause of action for fraudulent misrepresentation. The Ct. of Appeal set aside the orders & judgment of the trial judge & ordered a new trial of the action as regards the causes of action under 1908 Act, s. 84, & conspiracy to defraud:—*Held:* (1) both on the issue of conspiracy to defraud & the issue of deceit, after the money had been taken out in satisfaction there was no cause of action & no head of damage remained unsatisfied of which there was any evidence or which could be ordered to be tried anew; (2) on the question of com-

---

PART III. SECT. 8, SUB-SECT. 3.—D. (b).

sl. *Prospectus must be issued by or on behalf of company.*]—Sect. 84 of 1908 Act is confined to prospectuses issued by or on behalf of the co.—URQUHART *v.* STRACEY, [1928] N. I. 162.—IR.

678 l. *Measure of damages.*]—URQUHART *v.* STRACEY, No. 747 l, *post.*—IR.

PART III. SECT. 8, SUB-SECT. 3.—D. (c).

sm. *Under Criminal Code, s. 414.*]—The above sect. relates to the issuing of a written prospectus, statement or account by a director with the intention of deceiving shareholders of a co., or of inducing some other person to entrust or advance property to the co.; & where deft. obtained subscriptions for stock of a co., of which he was a promoter, upon false oral statements:—*Held:* a conviction under that sect. was not justified.—R. *v.* ANDERSON (1924), 55 O. L. R. 586.—CAN.

sn. —— *Ingredients of offence.*]—R. *v.* HARCOURT (Ont.) (1929), 52 Can. Crim. Cas. 342.—CAN.

PART III. SECT. 8, SUB-SECT. 3.—F. (c).

747 l. *Claim for damages against directors—& others—Joined with statutory claim for compensation against directors.*]—Pltf. bought debentures in a co. on the faith of statements in a prospectus. Some of defts. were directors in the co., & some were partners in an issuing house called S. & Co. Pltf. claimed against all defts. damages for fraudulent misrepresentations in the prospectus & for conspiracy to defraud, & against such of defts. as were directors in the co. claimed compensation under 1908 Act, s. 84:—*Held:* (1) pltf. was entitled to have the alternative causes of action for compensation & for misrepresentation & conspiracy submitted to the jury subject to two limitations, (*a*) that he could not get damages more than once in respect of what was in substance the same cause of action, & (*b*) that the causes of action could conveniently be tried or disposed of together; (2) if pltf. succeeded on the cause of action under sect. 84, he would be entitled to such compensation as he might prove, in addition to any damages already received in respect of fraudulent misrepresentation.—URQUHART *v.* STRACEY, [1928] N. I. 162; *varied,* 141 L. T. 641, H. L.—IR.

pensation under 1908 Act, s. 84, although the case should have been left to the jury there was nothing left to be tried after resp. had taken out in satisfaction money paid in on the issue of conspiracy only. Compensation was not, either as to the amount recoverable or the mode of measuring it something different from or even greater than damages. —CLARK *v.* URQUHART, STRACEY *v.* URQUHART, [1930] A. C. 28; 99 L. J. P. C. 1; 141 L. T. 641, H. L.

771a. —— **Order for new trial—After acceptance of sum paid into court.**]—CLARK *v.* URQUHART, STRACEY *v.* URQUHART, No. 770a, *ante*.

777. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

784. *Add. Annotation :*—**Consd.** With *v.* O'Flanagan, [1936] Ch. 575.

814. *Add. Annotation :*—*As to* (1) **Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

814a. Profit sharing deposit notes redeemable in four years—Company bound to redeem.]—Pltf., in reliance upon a prospectus issued in Sept., 1920, by deft. co., hereinafter called "the Trust," applied for & had allotted to him subject to the terms of the prospectus four £100 7½ per cent. profit sharing deposit notes of the Trust. It was stated in the prospectus that the notes would be paid off at 105 per cent. by four annual drawings, &, under the heading "Earlier payments," that the Trust retained the right to pay off at 105 per cent. all or any of the outstanding notes at any time on giving three months' previous notice in writing, but that in the event of the sale of the Trusts' R. B. estates, further referred to in that prospectus, which according to the construction placed upon the prospectus by the ct. was not confined to a sale under a certain option of purchase referred to later in the prospectus, but included a sale to anybody whomsoever, the Trust would set aside out of the proceeds of sale a sum sufficient to redeem all the notes then outstanding, & the holders would be given an option of being then paid off in cash at 105 per cent. or of retaining their notes till the date of drawing. Each of the notes, which was in the form of the specimen note referred to in the prospectus, provided that the Trust would, as & when the principal sum of £100 became payable in accordance with the conditions indorsed thereon, pay to pltf. the sum of £105, & was expressed to be subject to & with the benefit of those conditions, which repeated the provisions contained in the prospectus for the redemption of the notes by drawings & the option retained by the Trust to pay off the notes on notice, but did not refer to the promise by the Trust contained in the prospectus as to earlier payments in the event of the sale of the Trust's R. B. estates. The option to purchase referred to in the prospectus having lapsed & the Trust having contracted to sell the R. B. estates without having given notice to pltf. that his option to be paid off or to retain his notes had thereby become exercisable, & the Trust having repudiated their liability to perform their promise contained in the prospectus, pltf. brought an action to have the said liability of the Trust established & for an injunction to restrain them from dealing with the proceeds of sale without in the first place setting aside a sum sufficient to pay off the outstanding notes :—*Held :* pltf. was entitled to the relief claimed on either of two grounds, namely, (1) that the entire contract was contained in two written instruments, namely, the deposit notes & the prospectus, the terms of which the ct. could reconcile by construing the promise in the prospectus as if it were inserted in the note as a proviso to come into operation, if & when the R. B. estates were sold, or (2) that the promise was a binding collateral contract, the consideration for which was the contract by pltf. to take up the notes, & that, as the terms of that promise & an *animus contrahendi* on the part of pltf. & the Trust had been clearly proved, the test laid down by LORD MOULTON in *Heilbut, Symons & Co. v. Buckleton* (*see* No. 1565) was satisfied.—JACOBS *v.* BATAVIA & GENERAL PLANTATIONS TRUST, [1924] 2 Ch. 329; 93 L. J. Ch. 520; 131 L. T. 617; 40 T. L. R. 616; 68 Sol. Jo. 630, C. A.

818. *Add. Annotations :*—**Consd.** *Re* Burton, [1927] 2 Ch. 132. **Refd.** Jubilee Cotton Mills Official Receiver & Liquidator *v.* Lewis, [1924] A. C. 958.

820. *Add. Annotations :*—*As to* (4) **Refd.** Long Acre Press *v.* Odhams Press, [1930] 2 Ch. 196. *As to* (5) **Consd.** Atherton *v.* British Insulated & Helsby Cables, [1925] 1 K. B. 421. *Generally*, **Refd.** Stapley *v.* Read (1924), 131 L. T. 629.

826. *Add. Annotation :*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

834a. Order under 1929 Act, s. 56 (3)—What

PART III. SECT. 10, SUB-SECT. 1.

sp. *Includes premiums on sale of stock.*]—TORONTO *v.* CONSUMERS' GAS CO., [1927] 4 D. L. R. 102.—**CAN.**

PART III. SECT. 10, SUB-SECT. 2.—E.

sp. *Increase not permitted by articles—Resolution to reduce simultaneously with resolution to increase—Validity.*]—Where articles do not authorise increase of capital, a co. may not, under 1929 Act, sect. 50 (1) (*a*), pass resolutions to reduce capital simultaneously with resolutions to increase capital & to alter articles to permit such increase.—*Re* METROPOLITAN CEMETERY CO., [1934] S. C. 65.—**SCOT.**

ART III. SECT. 10, SUB-SECT. 3. —A.

834a i. *Order under* 1929 *Act*, s. 56 (3)—*What amounts to special circumstances.*]—In a petition at the instance of a shipping co. for confirmation of a reduction of capital it, appeared that the co. had no debentures or debenture stock, that the co.'s only debts, consisted of expenditure incurred by its ships in the course of their voyages, the amount of which would not be ascertained till their return; that such debts were, in practice, regularly discharged as soon as their amount had been ascertained; & that the value of the co.'s ships was ample security for its outstanding debts. On a motion for an order in terms of Cos. Act, 1929, s. 56 (3), the ct. directed that the provisions of Cos. Act, 1929, s. 56 (2), should not apply to the creditors of the co. or any class of them; & confirmed the reduction of capital *simpliciter*.—*Re* UNIFRUITCO STEAMSHIP CO., [1930] S. C. 1104.—**SCOT.**

834a ii. —— ——.]—In a petition at the instance of a colliery co. for confirmation of a reduction of capital, it appeared that the co. had no debentures or debenture stock; that the co.'s principal creditors were trade creditors, mineral owners in respect of lordships, employees in respect of wages, & the collectors of rates & taxes; that, during the dependence of the petition, all these creditors, with one exception, had been paid or had consented to the proposed reduction; that the remaining creditor, the Inland Revenue, whose claim was for £19,690 in respect of unascertained income tax liability had, in accordance with department practice, declined to sign any consent, but had stated no objection to the proposed reduction; & that the value of the co.'s liquid assets was ample security for its outstanding liabilities. On a motion for an order in terms of

amounts to special circumstance—Not mere solvency of company.] — PRACTICE NOTE (1930), 69 L. Jo. 252; 169 L. T. Jo. 283; [1930 W. N. 78.

839a. —— —— **Company in voluntary liquidation.**] —A reduction, reorganisation & increase of capital with a view to continuing to carry on the business of a co. can be directed by the ct., while the co. is in voluntary liquidation, & all further proceedings in a voluntary winding up stayed.—*Re* WALTERS (STEPHEN) & SONS, LTD. (1926), 70 Sol. Jo. 953.

839b. —— ——.]—*Re* ACME SPINNING CO., LTD., *Re* AMALGAMATED COTTON MILLS TRUST, LTD. (1937), 81 Sol. Jo. 922; *sub nom.* PRACTICE NOTE, 184 L. T. Jo. 402.

840. *Add. Annotations :*—**Refd.** Campbell *v.* Rofe, [1933] A. C. 91; Carruth *v.* Imperial Chemical Industries, Ltd., [1937] 2 All E. R. 422.

842. *Add. Annotation :*—**Refd.** Carruth *v.* Imperial Chemical Industries, Ltd., [1937] 2 All E. R. 422

849a. —— **Scheme fully explained & approved on poll.**]—Resp. co., which was incorporated with a capital of £95,000,000 consisting of cumulative preference, ordinary & deferred shares, petitioned the ct. to sanction a reduction of capital to £89,565,859 by cancellation of half the amount of each of the 21,736,564 deferred shares of 10*s.* each, & by conversion & consolidation of each four deferred shares into one £1 ordinary share carrying full dividend rights as from Jan. 1, 1935. The scheme, which was submitted by the directors for the purpose of simplifying & strengthening the co.'s financial structure, was approved by more than the statutory majority at the extraordinary general meeting, & by more than the majority prescribed by the arts. of assocn. of the co. at each of the separate class meetings of the ordinary & deferred shareholders. It was provided by the memorandum & arts. of assocn. that the special rights or privileges of any class of shareholders should not be varied or extinguished without the approval of a separate class meeting of the shareholders so affected. Apart from the scheme, the co.'s profits, in terms of the articles, were to be distributed in payment of (i) a dividend of 7 per cent. *per annum* on the cumulative preference shares, (ii) a dividend of 7 per cent. *per annum* on the ordinary shares, & (iii) out of the available balance of profits, (*a*) a further dividend on the ordinary shares, together with (*b*) a dividend on the deferred shares in such a manner that the balance so distributable in respect of the ordinary shares should be as nearly as possible twice the total amount to be distributed in respect of the deferred shares. The board sent to all shareholders a circular which contained detailed information regarding the scheme, but which made no reference to the comparative holdings of the directors in ordinary & deferred shares of the co. Meetings for the purpose of obtaining the shareholders' sanction were convened, & held on May 1, 1935. The first was an extraordinary general meeting of all shareholders, at which the chairman spoke in support of the scheme & announced that, with the approval of the shareholders, he proposed to make that one speech in relation to that meeting & to the two subsequent class meetings of the ordinary shareholders & deferred shareholders respectively, without any further speeches. The resolutions having been defeated on a show of hands, a poll was taken forthwith, & thereafter two meetings, purporting to be separate class meetings of ordinary shareholders & deferred shareholders, were held. The resolution was duly passed at the meeting of the ordinary shareholders, & it was declared lost on a show of hands at the deferred shareholders' meeting, but was subsequently carried by the requisite majority on a poll being taken. Holders of shares of classes other than deferred shares were present in the hall during the holding of the class meeting of the deferred shareholders, but there was no evidence that any shareholder other than deferred shareholders either took any part in the conduct of, or voted at, that meeting. The co.'s petition was opposed by applt. on behalf of himself & all other holders of deferred shares, on the ground that, *inter alia*, the reduction of capital was *ultra vires* the co. & was not properly sanctioned by the deferred shareholders, who, under the scheme, were exposed to unfair treatment as a class of shareholders : —*Held :* (1) as the arts. of assocn. empowered the co. to reduce its share capital in the ways specifically mentioned therein, " or otherwise as may seem expedient," the co. thus became entitled to reduce its capital in any way authorised by 1929 Act; (2) the meeting of deferred shareholders was properly convened, the objection which might have been raised to the presence of holders of shares of another class was waived, the poll was duly demanded, & the extraordinary resolution was duly passed by the requisite majority; (3) the circular issued to the shareholders disclosed sufficient information to enable them to judge of the fairness & propriety of the scheme; (4) the proposed reduction of capital should be confirmed, as the scheme for the re-arrangement thereof did not operate unfairly in relation to the holders of deferred shares.—CARRUTH *v.* IMPERIAL CHEMICAL INDUSTRIES, LTD., [1937] A. C. 707; [1937] 2 All E. R. 422; 156 L. T. 499; 53 T. L. R. 524; *sub nom. Re* IMPERIAL CHEMICAL INDUSTRIES, LTD., 106 L. J. Ch. 129, H. L.

863. *Add. Annotation :*—**Refd.** Drown *v.* Gaumont-

Cos. Act, 1929, s. 56 (3), the ct. found it unnecessary to apply the provisions of Cos. Act, 1929, s. 56 (2), & confirmed the reduction of capital *simpliciter*.—*Re* CADZOW COAL CO., LTD., [1931] S. C. 272.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3.—C.

sq. *Cancellation of vendor's shares*].—Deft. co. was incorporated for the express purpose (*inter alia*) of acquiring the assets & business of a certain boiler works of which pltf. was the principal owner. Under an agreement between pltf. & the co., which modified an earlier agreement, the co. agreed to assume the liabilities of said business and to issue to pltf. fifty-five of the co.'s shares fully paid up in consideration of the transfer of the assets of said works. It was then discovered that the liabilities of pltf.'s business equalled or exceeded the value of its assets, & he & the co. entered into a compromise agreement under which his said shares were surrendered & cancelled & he agreed to take in lieu thereof whatever the shareholders should vote him :—*Held :* said compromise agreement was within the power of the co.; it did not bring about a real reduction of capital or constitute a purchase by the co. of its own shares or prejudice creditors.—PATTERSON *v.* VULCAN IRON WORKS, [1930] 1 W. W. R. 640; 2 D. L. R. 961; 42 B. C. R. 300; *affg.*, [1929] 4 D. L. R. 508, C. A.—**CAN.**

British Picture Corpn., Ltd., [1937] 2 All E. R. 609.

871. *Add. Annotation :*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

887. *Add. Annotation :*—**Refd.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

935. *Add. Annotation :*—**Refd.** Briggs *v.* I. R. Comrs. (1932), 17 Tax Cas. 11.

942a. Resolution before operative date of 1929 Act — Confirmation after such date.]—*Re* GRAYSON, ROLLO & CLOVER DOCKS, LTD. (1930), 69 L. Jo. 151 ; 169 L. T. Jo. 144 ; [1930] W. N. 27.

943. *Add. Annotation :*—**Refd.** Carruth *v.* Imperial Chemical Industries, Ltd., [1937] 2 All E. R. 422.

977a. —— —— **Large fund available to meet liabilities.**]—*Re* ANTWERP WATERWORKS CO., LTD., [1931] W. N. 186 ; 172 L. T. Jo. 75 ; 72 L. Jo. 79.

1012a. —— **At date of registration of minute.**]—A co., which desired to vary the constitution of its capital, petitioned the ct. for an order sanctioning a scheme of arrangement which involved the reduction & subsequent increase, subdivision & consolidation of capital. The capital was to be reduced by converting certain issued ordinary shares of 15*s.* each into ordinary shares of 12*s.* each. The capital was then to be increased by the issue of redeemable preference shares of £1 each & shares of 4*s.* each. It was part of the scheme that the unissued ordinary shares of 15*s.* each should be subdivided & consolidated into ordinary shares of 12*s.* each. It was proposed that the minute of reduction to be registered under 1929 Act, s. 58, should be approved in a form which, after dealing with the reduction, stated the amount & constitution of the share capital at the date of the registration of the minute, but did not give details of the increase, subdivision & consolidation of the capital :—*Held :* the scheme should be sanctioned & the suggested form of order should be approved.—*Re* HARRODS (BUENOS AIRES), LTD., [1936] 2 All E. R. 1651 ; 80 Sol. Jo. 689.

1012b. —— ——.]—A co. with a share capital consisting of preference shares of £1 each & ordinary shares of £1 each, desiring to reduce its capital, approved a scheme by special resolution whereby the issued preference shares & ordinary shares of £1 each (which were fully paid up) were to be reduced to an equivalent number of preference shares & ordinary shares of 10*s.* each. These 10*s.* shares were then to be consolidated in such a manner that every two of such preference & ordinary shares respectively should constitute one £1 fully paid preference or ordinary share as the case might be. The ct. was petitioned to sanction the scheme. The ct. sanctioned the scheme & approved a form of minute for registration.—*Re* HOLLAND & WEBB, LTD., [1936] 3 All E. R. 955 ; 80 Sol. Jo. 1014.

1015. *Add. Annotation :*—**Refd.** *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1017. *Add. Annotations :*—**Refd.** *Re* Dampney & Reduced (1924), 68 Sol. Jo. 718 ; *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1019a. Passing of special resolution—& confirmation by court.]—(1) The proper form of minute in petitions for reduction of capital is not as set out in *Re Salinas of Mexico*, [1919] W. N. 311, but should state that the capital has been reduced "by a special resolution confirmed by an order of the High Ct. of Justice." (2) With regard to the form of notice of registration pursuant to 1908 Act, s. 51 (3), it is a sufficient compliance with the statute to give such notice in the short form approved in *Re Oceana Development Co.* (1912), 56 Sol. Jo. 537, which removed the objection to the length of the minute.—*Re* NORTH POLE ICE CO., LTD. & REDUCED, [1924] W. N. 131.

Annotation :—As to (1) **Expld.** *Re* Dampney & Reduced (1924), 68 Sol. Jo. 718.

PART III. SECT. 10, SUB-SECT. 3.—F. (a) iii.

sr. *Free shares taken by promoters.*]—Where on an unopposed petition by a co. for confirmation of resolutions for the reduction of capital & cancellation of shares, it appeared that the promoters had taken a large holding of free shares & that one of the objects of the petition was probably to free the promoters of a possible liability in respect of these shares :—*Held :* the reduction & cancellation of the shares should be confirmed.—*Re* ADELAIDE MORTGAGE & INVESTMENT CO., LTD. (1928), S. A. S. R. 478.—**AUS.**

PART III. SECT. 10, SUB-SECT. 3.—F. (e).

926 i. *Nominal capital not reduced—Amount returned liable to be called up again.*]—By special resolution under Cos. Act, 1929, s. 55, a limited co. resolved that, in respect of each fully-paid £1 share of its issued capital, the sum of 2*s.* 6*d.* be paid off "upon the footing that the amount so returned or any part thereof may be again called up." In a petition at the instance of the co. for confirmation of the proposed reduction :—*Held :* the form of the reduction was competent & the ct. confirmed the reduction *simpliciter*.—*Re* BROWN, SONS & CO., [1931] S. C. 701.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3.—G. (b).

f i. —— *Without remit to reporter—Creditors not affected.*]—FOWLERS (ABERDEEN), LTD., [1928] S. C. 186.—**SCOT.**

f ii. —— ——.]—In a petition for reduction of capital presented by a co. in which it was stated that the proposed reduction did not involve either the diminution of liability in respect of any unpaid share capital or the payment to any shareholder of any paid-up share capital, & that the rights of creditors were not affected in any way, & further, that the leading creditors & all the shareholders had assented to the proposed reduction, the ct. dispensed with a remit to a reporter, & granted the prayer of the petition.—*Re* SCOTTISH STAMPING & ENGINEERING CO., LTD., [1928] S. C. 484.—**SCOT.**

f iii. —— ——.]—*Re* HAY & SONS, [1928] S. C. 622.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3.—G. (c) ii.

961 i. *When dispensed with.*]—Where, on an application by a limited co. for confirmation by the ct. of a reduction of its capital it appears that the co.'s only creditors are those in respect of trade liabilities incurred from day to day during the current month, the ct. may make an order confirming the reduction forthwith & dispensing with the advertisement of the presentation of the petition & the settlement of the list of creditors.—*Re* A. LESSER & CO. PTY., LTD. (1929), V. L. R. 316 ; 1929 A. L. R. 265.—**AUS.**

PART III. SECT. 10, SUB-SECT. 3.—G. (d) i.

967 i. *Who are creditors — Persons entitled to unclaimed dividends.*]—ARIZONA COPPER CO., PETITIONERS, [1926] S. C. 315.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3.—G. (e).

st. *Function of court—What court must consider.*]—*Re* MILLS (E. W.), LTD., [1925] N. Z. L. R. 227.—**N.Z.**

PART III. SECT. 10, SUB-SECT. 3.—G. (g) ii.

p i —— —— *Amount after increase by subsequent resolution.*]—*Held :* when a co. has passed the necessary resolutions to reduce its capital, subject to the approval of the ct., by writing down the par value of the existing shares, &, on such reduction being confirmed by the ct., to increase its capital by the creation of further shares, the minute required to be recorded under Cos. Act, 1908, s. 51, should set forth (*a*) the state of the co.'s capital after giving effect to the reduction as sanctioned, & (*b*) the state of its capital as increased by the resolutions passed conditionally upon such reduction taking effect.—D. SIMPSON, LTD., [1929] S. C. 65.—**SCOT.**

1019b. —— ——.]—Where a petition for reduction of capital does not involve & is not followed by any sub-division, consolidation or reorganisation of share capital, the old form of minute used in cases of simple reduction is correct, & it is not necessary to state that the capital has been reduced by virtue of a special resolution, & with the sanction of an order of the High Ct. of Justice.—*Re* DAMPNEY & Co., LTD. & REDUCED (1924), 68 Sol. Jo. 718.

1028. *Add. Annotation :—As to* (3) **Refd.** *Re* Acme Spinning Co. (1937), 81 Sol. Jo. 922.

1029. *Add. Annotation :—***Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

1036. *Add. Annotation :—***Refd.** *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1036a. —— ——.]—*Re* NORTH POLE ICE CO., LTD., & REDUCED, No. 1019a, *ante.*

1080a. —— **Company in voluntary liquidation.**]—*Re* WALTERS (STEPHEN) & SONS, LTD., No. 839a, *ante.*

1087. After this case add :—

—— —— ——.]—*See, now,* 1929 Act, s. 153 (5).

1102. *Add. Annotations :—***Apld.** Parker & Cooper *v.* Reading & James (1926), 96 L. J. Ch. 23. **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292 ; *Re* Lee Behrens & Co. (1932), 48 T. L. R. 248.

1105. *Add. Annotation :—As to* (2) **Consd.** Stewart *v.* Sashalite, Ltd., [1935] 2 All E. R. 1481.

1108. *Add. Annotations :—***Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407. **Refd.** I. R. Comrs. *v.* Barnato, [1936] 2 All E. R. 1176.

1124. *Add. Annotations :—***Consd.** I. R. Comrs. *v.* Doncaster (1924), 93 L. J. K. B. 338 ; *Re* Speir, Holt *v.* Speir. [1924] 1 Ch. 359; I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395. **Folld.** I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982; *Re* Taylor, Waters *v.* Taylor, [1926] Ch. 923. **Distd.** *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682; Parker *v.* Chapman (1928), 138 L. T. 729 ; Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, [1930] A. C. 720. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52 ; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364 ; Income Tax Comr., Bengal *v.* Mercantile Bank of India, Ltd., [1936] 2 All E. R. 857 ; *Re* Ward, Ringland *v.* Ward, [1936] 2 All E. R. 773.

1125. *Add. Annotation :—***Overd.** A.-G. *v.* Tube Investments, Ltd. (1930), 142 L. T. 561.

On increase of capital.]—After this cross-reference add :—

1126a. — —**When increase takes place.**]—In Dec. 1927, resp. co. passed an extraordinary resolution that the capital of the co. be increased to £1,550,000 by the creation of 300,000 new ordinary shares & payment was made on the increase of the stamp duty under Stamp Act, 1891 (c. 39), s. 112. On the same day the co. passed an extraordinary resolution altering the Arts. of the co. & adding an Art. 44 (*a*) which provided "the directors of the company for the time being be & they are hereby authorised from time to time by resolution passed by them to increase the existing capital of the co. from £1,550,000 to £2,500,000 by the creation of 950,000 additional shares of £1 each. Such increases within the limits aforesaid may be made successively & such new shares shall have " certain priorities & rights. The Crown asserted that immediately on the creation of Art. 44 (*a*) there was an increase of capital within the meaning of Stamp Act, 1891 (c. 39), s. 112, & stamp duty was payable on the 950,000 new shares:—*Held:* under Art. 44 (*a*) two steps were necessary before an increase of capital was created within the meaning of Stamp Act, 1891 (c. 39), s. 112 : first the introduction of the article & then a step which might not in fact be ever taken, namely, a resolution creating the increase or some of the increase of the capital authorised by the article ; & until the directors exercised the power to increase given to them by the article there was no increase in the registered capital of the company & no duty was attracted under sect. 112.—A.-G. *v.* TUBE INVESTMENTS, LTD. (1930), 142 L. T. 561, C. A.

1127. *Add. Annotation :—As to* (2) **Distd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646.

1133. *Add. Annotation :—***Refd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646.

1134. *Add. Annotation :—As to* (2) **Refd.** Lynde *v.* Nash, [1928] 2 K. B. 93.

1153a. —— **Liability of sub-underwriter.**] — ICE RINKS, LTD. *v.* MATHUEN (1930), 74 Sol. Jo. 41.

1169. *Add. Annotation :—***Consd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

1169a. —— —— —— **Directors without knowledge that misrepresentation basis of contract.**]—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., No. 581a, *ante.*

1169b. —— —— —— **Between company & agent for undisclosed principal—Renunciation by agent in favour of principal.**]—COLLINS *v.*

PART III. SECT. 10, SUB-SECT. 4.

g]. —— ——.]—*Held :* the proposed arrangement was so drastic in its destruction of the sinking fund & placed absolute power in the hands of those who controlled the co. to redeem whose stock they pleased, as to make it a violation of the rights of the minority ; & for that reason approval of the arrangement should be refused.—*Re* SECOND STANDARD ROYALTIES, LTD. (1930), 66 O. L. R. 288.—CAN.

PART III. SECT. 11, SUB-SECT. 2.—A. (a).

sc. *Agreement to pay commission—Ultra vires.*]—An agreement was entered into by applt. co., incorporated in New South Wales, for the underwriting by them of a proposed issue of capital of resp. co. The taking up of any of the shares pursuant to the underwriting agreement involved the payment out of resp. co.'s share capital of a commission to applt. co. in respect of such shares. The New South Wales Cos. Acts, 1899 to 1918, contain no provision expressly authorising the payment of underwriting commissions. On a claim by applt. co. that the underwriting agreement was *ultra vires* resp. co. & unenforceable :—*Held ;* inasmuch as the agreement would result in applt. co. receiving from resp. co. a discount for which there was no consideration it was *ultra vires* resp. co.—AUSTRALIAN INVESTMENT TRUST, LTD. STRAND & PITT STREET PROPERTIES, LTD., [1932] A. C. 735 ; 148 L. T. 1 ; 48 T. L. R. 646, P. C.—**AUS.**

PART III. SECT. 11, SUB-SECT 3.—B.

sw. *To account to company for money received before incorporation of company.*]—Where a co. brought an action against an underwriter, & recovered a verdict for £317 10*s.* :—*Held :* as deft. by his statement of accounts had not admitted that he held any money for the co.'s use, the verdict should be set aside & judgment entered for him. —HARMONIC RESONATOR, LTD. *v.* WALTON (1927), 27 S. R. N. S. W. 81 ; 44 N. S. W. W. N. 50.—**AUS.**

ASSOCIATED GREYHOUND RACECOURSES, LTD., No. 581b, *ante*.

1205. *Add. Annotations:*—**Distd.** Pailin *v.* Northern Employers' Mutual Indemnity Co., [1925] 2 K. B. 73. **Consd.** Hindmarch *v.* Carterthorne Colliery Co. (1928), 21 B. W. C. C. 44; Vickers *v.* Cumberland Coal Owners' Mutual Indemnity Co. & Whitehaven Colliery Co. (1934), 27 B. W. C. C. 56. **Refd.** Wales *v.* Iron Trades Employers Assocn. (1928), 21 B. W. C. C. 316; Wooding *v.* Monmouthshire & South Wales Mutual Indemnity Society, Ltd., [1938] 3 All E. R. 625.

1220. *Add. Annotation:*—**Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

1226. *Add. Annotations:*—*As to* (2) **Expld.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Apld.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

1226a. ——.] — AGRICULTURAL WHOLESALE SOCIETY *v.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY, No. 431a, *ante*.

1230. *Add. Annotations:*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576; *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

1265. *Add. Annotation:*—**Refd.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K B. 447.

1265a. —— ——.]—In the absence of fraud or *mala fides*, a *cestui que trust* cannot be put on the list of contributories, though he may be called upon to indemnify his trustee.—*Re* ELECTRIC TELEGRAPH CO. OF IRELAND, BUNN'S CASE (1860), 2 De G. F. & J. 275; 9 W. R. 43; 45 E. R. 627; *sub nom. Re* ELECTRIC TELEGRAPH CO. OF IRELAND, *Ex p.* BUNN, 3 L. T. 567; *sub nom.* ELECTRIC TELEGRAPH CO. OF IRELAND *v.* BUNN, 29 L. J. Ch. 913; 6 Jur. N. S. 1223, L. JJ.

1268. *Add. Annotation:*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

1320. *Add. Annotation:*—**Apld.** *Re* Hobson, Houghton, [1929] 1 Ch. 300.

1321. *Add. Annotation:*—*As to* (1) **Refd.** Berry *v.* Tottenham Hotspur Football & Athletic Co., [1936] 3 All E. R. 554.

1342. *Add. Annotation:*—*Generally*, **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

1358a. ——.]—The appct. was persuaded by Y. to take part in a certain transaction & to deposit with Y., as security until the transaction was completed, certain shares, of which the appct. was the registered holder. The appct. was told that these shares were to be put temporarily in the name of Y. & for that purpose the appct. signed certain documents, but in no instance was the signature witnessed. By means of a transfer purporting to be executed by the appct. & properly witnessed, the name of Y. was entered upon the co.'s register as holder of the shares. The appct. in evidence said that she had never signed a transfer of the shares & the witness to the signature admitted that she had not signed as witness in the presence of the appct. A handwriting expert gave evidence that the appct.'s alleged signature on the transfer form was more likely to be genuine than a forgery. The appct. moved to rectify the co.'s register under 1929 Act, s. 100. Certain brokers had been instructed by Y. to sell the said shares & they opposed the application on the ground that the transfer was part of a scheme " to rig the market " : —*Held:* (1) the jurisdiction of the ct. to rectify the register is not limited to cases where a name has been entered improperly, but extends to cases where a name stands on the register without sufficient cause; (2) there was sufficient evidence, even assuming the transfer to have been a proper one & not a forgery, that the appct.'s name had without sufficient cause been omitted from, & Y.'s name had without sufficient cause been placed upon the register, & it ought to be rectified; (3) as the brokers did not claim that they themselves or anyone with whom they had entered into any contract had a right to have their or his name put upon the register, their application must be refused, but they had rightly brought the suggestion of illegality before the ct. On the evidence the appct. was no party to any illegality.—*Re* IMPERIAL CHEMICAL INDUSTRIES, LTD., [1936] 2 All E. R. 463; 80 Sol. Jo. 533.

1379a. Restrictions on transfer—Deposit with bank as security—Sale by bank notwithstanding restrictions.]—S. H., the holder of shares in a private co., T. H., Ltd., was also chairman of a co., C. & Co., Ltd. The account of C. & Co. with their bankers being largely overdrawn, S. H. gave the bankers a continuing guarantee & deposited with them a certificate for 800 shares in T. H., Ltd., with a memorandum charging all shares, the certificates for which were or might be lodged with the bankers, as security for the payment on demand of all moneys due or to become due to them, &, upon default by him in paying or further securing on demand any money secured, authorising them without further notice to sell the shares.

By the arts. of assocn. of T. H., Ltd., a member could not transfer his shares until he had given notice to the secretary offering to sell the shares at a price to be fixed by the auditor, & until the secretary had offered them to the other members, one director, T. H. V. H., having a right of pre-emption. The bankers began to press for a transfer of the shares into the names of two nominees. They were aware of the arts. of assocn. of T. H., Ltd., & were warned by S. H. that such a transfer would be invalid. They also gave S. H. notice in writing demanding payment

PART III. SECT. 12, SUB-SECT. 4.—B. (a).

sy. *Company holding franchise—Second company owning shares—Whether liable to Municipal & Public Utility Board.*]—Where a co. has been given a franchise, the fact that all its issued shares, except qualification shares, are held by another co. & that its officers are all officers of such other co. does not impose on the latter co. the obligations with respect to the franchise which the former co. is under &, therefore, does not subject it to orders of the Municipal & Public Utility Board with respect to said obligations.—*Re* SUBURBAN RAPID TRANSIT CO., WINNIPEG ELECTRIC CO. & RURAL MUNICIPALITY OF ASSINIBOIA, [1931] 1 W. W. R. 778.—CAN.

PART III. SECT. 12, SUB-SECT. 4.—B. (b).

sz. *Limited company—Husband & wife sole shareholders—Wife not personally liable on contract.*]—Where a husband & wife are the sole shareholders in a co. incorporated under Cos. Act, 1929 (B. C.), the wife cannot be held personally liable for goods sold on credit to the co.—WALDRON *v.* HOGAN, [1934] 3 D. L. R. 800.—CAN.

PART III. SECT. 13, SUB-SECT. 5.—B. (d) vii.

1374 l. *Wrong entry of nature of shares—Agreement to take paid-up shares—Shares entered as partly paid.*] —*Re* CUSTOM HOUSE MOTOR CO., LTD. (IN VOLUNTARY LIQUIDATION), [1928] St. R. Qd. 338.—AUS.

of C. & Co.'s overdraft. S. H. then gave them as further security certificates for 346 additional shares in T. H., Ltd., & executed instruments purporting to be transfers of 1,146 shares in that co., & the nominees of the bankers were placed on the register of the co. as the holders of the shares. In order to obtain a further advance for the benefit of C. & Co., S. H. executed a mtge. of other property, covenanting to pay the bankers on demand all money then or at any time due from himself or from C. & Co. Application was then made to the auditor of T. H., Ltd., to fix a price for the 1,146 shares: a price was fixed, & the shares were bought by T. H. V. H. with money borrowed from the bankers & secured by a so-called transfer of the 1,146 shares & 850 other shares to nominees of the bankers, who were placed on the register of T. H., Ltd., as the holders of 1,996 shares. Two actions were brought, one by E. H., a shareholder in T. H., Ltd., suing on behalf of herself & all other the shareholders in the co., except T. H. V. H., & claiming to have the register of shareholders rectified by restoring thereto the name of S. H. as the holder of 1,146 shares & entering that of T. H. V. H. as the holder of 850 shares on the ground that all the transfers & registrations aforesaid were made in contravention of the co.'s arts. & were void. The second action was brought by S. H., who sought the same relief & also claimed the right to redeem the 1,146 shares on the footing that the sale of the shares was void, & that his equity of redemption was still subsisting. In E. H.'s action, which was the first to be tried, an order was made for rectification of the register as prayed therein. In S. H.'s action a similar order was made, a further order that S. H. was entitled to redeem the 1,146 shares. T. H. V. H., T. H., Ltd., & the bankers & their nominees appealed against the orders in both actions. The Ct. of Appeal dismissed the appeal in E. H.'s action. From that decision there was no appeal. The Ct. of Appeal allowed the appeal in S. H.'s action, holding that S. H. was entitled to be upon the register, but that the sale of the 1,146 shares to T. H. V. H. operated as a valid transfer of the equitable interest in the shares, & ordering that S. H. should execute a declaration of trust of the shares in favour of T. H. V. H. & bankers or as they should direct. From this decision S. H. appealed, & there was a cross-appeal by T. H. V. H., T. H., Ltd., the bankers & their nominees:—*Held:* applt. was entitled to have the register rectified by restoring his name thereto as the holder of 1,146 shares, on the grounds: (1) *Per* Lord CHANCELLOR, Lord BLANESBURGH, Lord RUSSELL OF KILLOWEN & Lord MACMILLAN (Lord ATKIN *doubting*), that there was no effective demand for payment before the attempted sale of the shares, the demand which was made having been superseded by the security & mtge. subsequently given & executed; (2) *Per* Lord CHANCELLOR, Lord ATKIN, & Lord MACMILLAN, that there was no effective sale of the shares, the restrictions imposed by the arts. of assocn. of the co. not having been observed; (3) *Per* Lord CHANCELLOR & Lord MACMILLAN, that applt. was not estopped from claiming rectification of the register, inasmuch as the bankers were well aware, & had been informed by applt., of all the restrictions upon the sale of the shares (Lord BLANESBURGH *assenting* on other grounds); (4) *Per* Lord CHANCELLOR, Lord BLANESBURGH, Lord ATKIN, Lord RUSSELL OF KILLOWEN & Lord MACMILLAN, that the attempted sale by the bankers did not operate to pass the equitable apart from the legal interest in the shares.—HUNTER *v.* HUNTER, [1936] A. C. 222; 105 L. J. Ch. 97; 154 L. T. 513, H. L.

1411a. —— Where further investigation required.]—On an application under 1908 Act, s. 32, by summons or motion, for the rectification of the register, if there is some question in dispute requiring investigation the practice is for the judge not to make an order for rectification but to make an order dismissing the summons on motion & leaving it open to appct. to bring an action.—*Re* GREATER BRITAIN PRODUCTS DEVELOPMENT CORPN., LTD. (1924), 40 T. L. R. 488, D. C.

1433. *Add. Annotations:*—**Consd.** *Re* Paulin, *Re* Crossman, [1935] 1 K. B. 26. **Refd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443; I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1937] A. C. 26.

1448a. —— Right to issue stock warrants payable to bearer.]—There is nothing in the Cos. Act, 1929 (c. 23), that, expressly or by implication, deprives a co. of the power to issue warrants to bearer in respect of stock.—PILKINGTON *v.* UNITED RAILWAYS OF THE HAVANA & REGLA WAREHOUSES, LTD., [1930] 2 Ch. 108, 99 L. J. Ch. 555; 144 L. T. 115; 46 T. L. R. 370; 74 Sol. Jo. 264.

1448b. Conversion of preference shares into ordinary shares—Whether alteration in status of shareholders.]—Where preference shareholders had the right to give six months' notice converting their shares into ordinary shares, & some of them gave such notice less than six months before the co. went into voluntary liquidation:—*Held:* such notice was valid & effectual to convert their preference shares into ordinary shares, & did not create an alteration of their status after the commencement of the winding up within 1908 Act, s. 205.—*Re* BLAINA COLLIERY CO., LTD. (1926), 70 Sol. Jo. 404.

PART III. SECT. 14.

sz. "*Preference shares.*"]—"Preference share" is an indefinite term having a commercial or popular rather than a legal import. Where a preference of any character is given to the holder of a share, the circumstance that in other respects he is deprived of the usual rights of a holder of common shares does not prevent his share from being properly designated a "preference share."—RUBAS *v.* PARKINSON, [1929] 3 D. L. R. 658; 64 O. L. R. 87.—CAN.

PART III. SECT. 15, SUB-SECT. 1.

1450 ll. —— —— ——.]—The memorandum of assocn. of a co. provided, *inter alia*, that the preference stock should rank as to dividend & capital in priority to the ordinary stock & all other stock & shares in the capital for the time being of the co., & that it should be "subject to the other provisions with regard to the same contained in the articles of assocn." The arts. of assocn. set forth that the co. might increase its share capital by the creation of new shares, with such preference over other shares or stock as it might direct, provided that no shares or stock should be created with a preference over, or ranking *pari passu* with, the existing preference stock without the sanction of the stockholders affected:—*Held:* upon a sound construction of the memorandum of assocn., the co. had not power at its own hand, even with the sanction of the preference stockholders, to create new preference stock ranking *pari passu* with existing preference stock; & that an altera-

1451. *Add. Annotation :*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

1453. *Add. Annotation :—As to* (1) **Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

1455a. —— **Power in memorandum—No provision in articles.**]—By the memorandum of assocn. of a co. incorporated under the Cos. Act, 1899, of New South Wales, the material provisions of which Act were similar to the law as to English cos., the co. was to have power to issue with preferential rights part of the shares in its original capital thereby stated. The articles of assocn. contained no express power to issue preference shares as part of the original capital. Art. 10 provided that the shares should be under the control of the directors, who might allot them on such " terms & conditions " as they thought fit. By art. 117 the management of the " business of the co." was vested in the directors who, in addition to the powers otherwise expressly conferred on them, might do all such things as the co. might do, save those which by the articles or statute were to be done in general meeting. The articles gave the co. power in general meeting to create new shares, & gave the directors authority, in the absence of a direction by the general meeting, to issue the new shares with preferential rights :—*Held :* the express power given by the memorandum to issue part of the original capital with preferential rights could be exercised by the co. in the absence of an article to the contrary, & under art. 10 the directors had authority to exercise the power of the co. in that respect. Even if that was not so, the directors had that authority under art. 117.—CAMPBELL *v.* ROFE, [1933] A. C. 91 ; 102 L. J. P. C. 1 ; 148 L. T. 230 ; 49 T. L. R. 156, P. C.

1459. *Add. Annotation :*—**Refd.** Campbell *v.* Rofe, [1933] A. C. 91.

1460. *Add. Annotation :*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

1461. *Add. Annotations :*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144 ; *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

1466a. —— **Necessity for disclosure of all material facts.**]—Where a co. proposes to alter the rights of stockholders, all material facts must be disclosed before the stockholders are called on to vote on the proposals.—HUGHES *v.* UNION COLD STORAGE CO., LTD. (1934), 78 Sol. Jo. 551.

Annotation :—**Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

1472. *Add. Annotation :*—**Refd.** Leeds Industrial Co-operative Soc. *v.* Slack, [1924] A. C. 851.

1480. *Add. Annotations :—Generally,* **Consd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646. **Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

1515. *Add. Annotation :*—**Refd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

1552. *Add. Annotations :—As to* (2) **Distd.** Collins *v.* Associated Greyhounds Racecourses, [1930] 1 Ch. 1. *As to* (4) **Distd.** Collins *v.* Associated Greyhounds Racecourses, [1930] 1 Ch. 1. (In my view the headnote of the report is inaccurate so far as it states what constitutes the fourth head, which should read, " Where the contract is made to the knowledge of the co. on the basis of certain representations, & it turns out that some of them were material & untrue," *per* LUXMOORE, J.).

---

tion of the memorandum was necessary for that purpose.— *Re* SCOTTISH NATIONAL TRUST CO., [1928] S. C. 499.—**SCOT.**

d. In citation, for " 760 " read " 670."

PART III. SECT. 15, SUB-SECT. 2.

k i. *Power to modify rights by bye-law —Validity of bye-law—Companies Act, R. S. C.*, 1906 (c. 79).]—HOLMESTED *v.* ALBERTA PACIFIC GRAIN CO., LTD. (Alta.), [1928] 1 D. L. R. 135 ; [1927] 3 W. W. R. 707.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—A. (a).

b i. ——.]—*Held :* persons, who, intending to become shareholders in a proposed co., had signed & sealed a " subscribers' agreement," were not shareholders.—*Re* BLUEBIRD CORPN., LTD., [1926] 2 D. L. R. 484 ; 58 O. L. R. 486.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—B. (a) i.

s i. —— —— ——.]—Where the evidence was not conclusive :—*Held :* in the circumstances A.'s agreement for employment stood by itself, & his status as a shareholder, which was established by what he had done & omitted to do, was not affected.—*Re* BUFF PRESSED BRICK CO. (1924), 56 O. L. R. 33.—**CAN.**

c i. —— *Balance to be paid on commencement of undertaking by company.*] —A. added on the foot of an application for shares the words : " This subscription is given on the understanding that I am to be called upon for the balance of the money when building operations commence " :—*Held :* this stipulation had nothing to do with his becoming a shareholder ; & failure of the co. to commence building did not entitle A. to rescind his contract.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

f i. —— —— ——.]—A. relied, as entitling him to rescission, upon the non-fulfilment of a condition that a building should be erected on a certain site :—*Held :* his agreement constituted A. a shareholder *in præsenti*, & the condition should be treated merely as a collateral obligation on the part of the co.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—D. (b).

sy. *Abrogation of original agreement—Ascertainment of terms of substituted oral agreement.*]—LAZIER *v.* MCCULLOUGH (1913), 25 W. L. R. 911 ; 14 D. L. R. 270 ; 6 Alta. L. R. 503.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—E.

d i. —— *Nof after election to retain shares.*]—MCDONALD *v.* WAIRAKEI, LTD., [1924] N. Z. L. R. 201.—**N.Z.**

f i. —— *Lapse of time.*]—Where the owner of shares held in escrow agreed to sell them, & certificates therefor were issued in the name of the purchaser & retained by the trustee pending fulfilment of the terms of the trust agreement, but no demand had yet been made upon the purchaser for payment :—*Held :* the fact that there was a lapse of about four years without any action being taken by the purchaser displaying any right of ownership or interest in the shares did not show that he had abandoned the contract of purchase.—DALLAS & BIRKE *v.* DALLAS OIL CO., LTD., & WEBSTER, [1930] 2 W. W. R. 301 ; 2 D. L. R. 788 ; 24 Alta. L. R. 445 ; *affd.*, [1931] S. C. R. 220 ; 2 D. L. R. 733.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—F.

m i. —— ——.]—The ct. has jurisdiction to decree specific performance of a contract with a co. for the purchase of shares thereof, but the matter is one of judicial discretion, *i.e.* contracts for the sale of shares are treated on the same principles as to the exercise of the ct.'s jurisdiction to decree specific performance as are contracts relating to land.—MCDOUGAL SEGUR EXPLORATION CO. OF CANADA, LTD. *v.* SOLLOWAY MILLS & CO., [1931] 2 W. W. R. 516.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—G. (a).

1553 vi. ——.]—MILNE *v.* DURHAM HOSIERY MILLS, LTD., [1925] 3 D. L. R. 725 ; 57 O. L. R. 228.—**CAN.**

1553 vii. ——.]—PATHESCOPE UNION OF SOUTH AFRICA, LTD. *v.* MALLINICK, [1927] App. D. 292.—**S. AF.**

1553 viii. ——.]—ROBERTS *v.* ARNOTT CO., [1932] 1 D. L. R. 798.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—G. (b).

sa. *Representation must have induced contract.*]—MARITIME UNITED FARMERS CO-OPERATIVE, LTD. *v.* DICKIE, [1925] 1 D. L. R. 377 ; 52 N. B. R. 42.—**CAN.**

sc. *Representation as to capacity for development & net earnings.*]—A contract for shares induced by false statements in the prospectus as to capacity for development & net earnings may be rescinded.—PIGOTT *v.* NESBITT, THOMSON & CO., [1937] 4 D. L. R. 598 ; O. R. 888.—**CAN.**

1553. *Add. Annotation :*—**Reld.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

1565. *Add. Annotation :*—**Reld.** Sullivan *v.* Constable (1932), 48 T. L. R. 267.

1578. *Add. Annotation :—As to* (1) **Reld.** Steedman *v.* Frigidaire Corpn., [1932] W. N. 248.

1585. *Add. Annotations :*—**Reld.** *Re* Royal British Bank (1859), 3 De G. & J. 387; Western Bank of Scotland *v.* Addie, Addie *v.* Western Bank of Scotland (1867), L. R. 1 Sc. & Div. 145.

1589a. —— **Statement by agent—That application purely formal.**]—E., acting as agent of pltf. co., represented to deft. that the co. owned valuable rights over certain mines in China, & deft. agreed to go to China & investigate & make a report upon the properties, & he signed an application form for 2,000 £1 shares upon a representation by E. that the application was purely formal, & deft. paid £250 on allotment upon a representation by E. that the payment was for an option on 250 shares to be bought by deft., if he so desired, on his return from China. The shares were allotted to deft. at a meeting at which E. was in the chair, but no notice of the allotment was sent to deft. Deft. went to China & pltf. co. alleged that he returned to England without obtaining any information. Deft., on the other hand, alleged that E.'s representations were false & that the mining rights were valueless. In an action in which pltf. co. in liquidation claimed (*inter alia*) £1,750 for unpaid calls on the shares, the trial judge held that as deft. intended only to take an option on the shares & had never contracted to take them the action failed :—*Held :* although E. was an agent of pltf. co. to come to an agreement with deft., yet by reason of E.'s fraudulent use of the application form signed by deft. the latter could not be treated as having agreed to take the shares, & the decision of the trial judge must be affirmed.—HUMPHREY & DENMAN, LTD. (IN LIQUIDATION) *v.* KAVANAGH (1925), 41 T. L. R. 378, C. A.

1604. *Add. Annotation :*—**Reld.** *Re* United Citizen's Investment Trust (1931), 101 L. J. Ch. 17.

1644a. —— **Contract to repay advance after allotment.**]—WHEELER *v.* FRADD (1898), 14 T. L. R. 302, 440; 42 Sol. Jo. 364, C. A.

1645. *Add. Annotation :*—**Distd.** Lynde *v.* Nash, [1928] 2 K. B. 93.

1653. After this case add :—

—— ——.]—*See, now,* 1929 Act, s. 39 (1).

1654a. —— **What amounts to.**]—In Jan. 1920, K. applied, on a form supplied to him by Y., for 100 shares in a co. about to be formed. On Apr. 14, Y. purported to transfer to K. 100 shares, but the transfer did not specify the denoting numbers of the shares comprised therein. At a meeting of the directors held on Apr. 16, a resolution was passed purporting to allot all the shares of the co. At that date the co. had not issued a prospectus or filed a statement in lieu thereof. On Apr. 20, the statement in lieu of prospectus

---

PART III. SECT. 17, SUB-SECT. 1.—G. (c).

1588 ii. —— ——.]—Deft., director of a co., without putting his signature to any written document, made fraudulent misrepresentations as to the financial position of the co., whereby pltf. was induced to apply & pay for shares :—*Held :* Lord Tenterden's Act had no application to the case, & pltf. was entitled to recover from deft. the amount paid for the shares.—DIAMANTI *v.* MARTELLI, [1923] N. Z. L. R. 663.—N.Z.

f. Read now "1588 i."

g. Read now "1588 ii."

1588 iii. —— ——.]—PETROTITE & CHALLENGE HEATERS, LTD. *v.* BODLEY, No. 400 i., *ante*.—N.Z.

PART III. SECT. 17, SUB-SECT. 1.—G. (d).

r i. ——.]—TRUSTS & GUARANTEE CO. *v.* SMITH, [1924] 2 D. L. R. 211; 54 O. L. R. 144; 4 C. B. R. 195.—CAN.

r ii. ——.]—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—CAN.

r iii. ——.]—If a shareholder desires to rescind his contract to take shares in a co., then, in order to make the rescission effective, he must before the commencement of the winding-up either have his name removed from the register of members, or institute appropriate legal proceedings to have it removed. Pltf. who had been induced to take shares under circumstances which entitled him to repudiate his contract, duly notified deft. co. of his repudiation. Negotiations were then entered into between pltf. & the director of the co. with reference to the mode of repayment to pltf. of the moneys due to him by the co. No agreement was, however, arrived at between the parties, & after some further delay pltf. commenced an action claiming, *inter alia*, an order directing the removal of his name from the register. A few days prior to the commencement of this action, the directors, without any notice to pltf., passed an effective resolution for the voluntary winding up of the co. :—*Held :* the claim for the rectification of the register was, under the circumstances, too late & must be refused.—FLEMING *v.* ECLIPSE LAUNDRY CO., [1928] N. Z. L. R. 598.—N.Z.

sb. *Failure to repudiate before declaration of insolvency.*]—Apart from the effect of the commencement of winding up, it is too late for a shareholder in a limited co. to apply for rectification of the register of shareholders, on the ground of misrepresentation, after there has been a definite public declaration of insolvency, & this is so whether the business has in fact been kept open as a going concern or not.—*Re* LUCAS, LTD., SERPELL'S CASE, [1928] V. L. R. 466; 49 A. L. T. 270; [1928] Argus L. R. 288.—AUS.

PART III. SECT. 17, SUB-SECT. 2.—A.

1606 iii. —— *Agreement to subscribe for shares when called upon.*]—BEARDMORE & CO., LTD. *v.* BARRY, [1928] S. C. 101.—SCOT.

PART III. SECT. 17, SUB-SECT. 2.—B. (a).

f i. ——.]—Where a contract to purchase shares was entered into by one of two partners of a trading firm, without authority express or implied, & owing to a clerical error the firm was not entered on the register of members & the name of the other partner alone was entered :—*Held :* the latter was never under any liability to the co. & could not be made a contributory.—MABECAR *v.* MCKENZIE & SON, [1924] 2 D. L. R. 1242; 2 W. W. R. 521.—CAN.

PART III. SECT. 17, SUB-SECT. 2.—C.

sc. —— *Whether nominee liable—Nominee incapable of contracting.*]—Petitioner's father signed her name to a stock subscription book of a bank, paid the calls, & received the dividend cheques, which were indorsed by her at her father's request, the moneys being received by him. The bank was put into liquidation by winding-up proceedings, & the order for call against contributories was made three months before she came of age. A year after the liquidation commenced she took proceedings to have her name removed from the list of contributories :—*Held :* she was not liable as a contributory, & her name must be removed from the list.—*Re* CENTRAL BANK & HOGG (1890), 19 O. R. 7.—CAN.

PART III. SECT. 17, SUB-SECT. 3.—A.

f i. ——.]—Allotment is the acceptance by a co. of an offer to take shares.—IMPERIAL BANK OF CANADA *v.* DENNIS, [1926] 3 D. L. R. 168; 59 O. L. R. 20; *varying*, [1925] 3 D. L. R. 488; 57 O. L. R. 203.—CAN.

PART III. SECT. 17, SUB-SECT. 3.—C. (a).

1654 i. *Allotment before statement in lieu of prospectus filed.*]—*Held :* ineffective to charge persons who had signed a "subscribers' agreement."—*Re* BLUEBIRD CORPN., LTD., [1926] 2 D. L. R. 484; 58 O. L. R. 486.—CAN.

sd. *Application before compliance with Sale of Shares Act—Allotment after compliance with Act.*]—Before a co. had obtained the certificate required by Sale of Shares Act, & before its agent for the sale of shares had been licensed thereunder, an agent thereof obtained an application for shares. The shares were allotted after the certificate & licence were issued, & the shareholder paid several sums on the notes given for the shares & appointed proxies at different times to vote. The shareholder did not know until after a winding-up order had been made that the Act had not been complied with at the time of his application :—*Held :* he was not entitled to have his name removed from the list of contributories.—*Re* GREAT NORTH INSURANCE CO., PAINTER'S CASE, [1925] 2 D. L. R. 778; [1925] 1 W. W. R. 1149; 21 Alta. L. R. 326; *revsg.*, [1925] 1 W. W. R. 752.—CAN.

was filed. At a meeting of the directors held on Apr. 30, the transfer from Y. to K. came before the board, & a resolution was passed approving the transfer & directing that a share certificate should be forwarded to K. Subsequently K. was registered a member of the co. The certificate, dated May 26, was sent to, & was accepted by, K. On June 8 a bonus, declared at the meeting of Apr. 30, was paid to, & was accepted by, K. K., as purporting to be the owner of the shares, attended a meeting of shareholders on Mar. 24, 1921. Subsequently the co. went into liquidation, & K., on whose shares there was a liability of 10*s.* per share, then denied being a shareholder, contending that the allotment of shares to Y. was void under 1908 Act, s. 82 :—*Held :* (1) although the allotment to Y. was void, K. was a member of the co. at the commencement of the winding up, there having been no agreement between him & the co. until Apr. 30, when the co. was legally in a position to allot shares ; (2) in any event, in view of his subsequent conduct, he was estopped from denying that he was a member of the co.—*Re* BURTON (JAMES) & SONS, LTD., [1927] 2 Ch. 132 ; 96 L. J. Ch. 457 ; 137 L. T. 564 ; 71 Sol. Jo. 491.

1659. *Add. Annotation :—As to* (4) **Consd.** With *v.* O'Flanagan, [1936] Ch. 575.

1663. *Add. Annotation :—Generally,* **Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

1664. *Add. Annotation :*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw (1935), 153 L. T. 245.

1668a. Unauthorised issue of allotment letters by secretary—Estoppel of company.]—PEFER-BOROUGH TRUST, LTD. *v.* STEEL INDUSTRIES OF GREAT BRITAIN, LTD. (1934), 78 Sol. Jo. 861.

1681a. —— —— ——.]—In their circular the directors asked whether, should there be any of the reserved shares remaining undisposed of, each shareholder would say if he wished to have any shares in addition to those he might receive as his proportional shares. They also required payment to be made on or before Oct. 1. Applts. answered that they did wish to have some additional shares. In their reply, dated July 18, the directors declared that additional shares had been allotted to them, & that payment thereon must be made on a day specified or the shares would be forfeited. No notice was taken of this communication :—*Held :* there was no complete contract as to these additional shares.—JACKSON *v.* TURQUAND (1869), L. R. 4 H. L. 305 ; 39 L. J. Ch. 11, H. L.

1746. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1771. After this case add :—
——.]—*See, now,* 1929 Act, s. 41.

1778. *Citation :*—For " 96 L. T. 743 " read " 92 L. T. 743."

1782a. Shares held by trustees—Certificates of altered subdivision of shares.]—The trustees of a will held 230 shares in a co., & from time to time they had requested that the share certificates should be altered to different amounts, each amount represented by a separate certificate. This request had been complied with on four occasions, but on the fifth occasion the directors of the co. objected, & refused to alter the subdivision. It was provided by the articles that every member

---

PART III. SECT. 17, SUB-SECT. 3.—C. (b).

1666 i. *Exercise of powers by directors —Directors never properly appointed.*]—An applicant for shares in a co. who accepted the shares allotted him, paid for them in part, allowed his name to appear on the list of shareholders, attended both in person & by proxy shareholders' meetings & accepted a dividend :—*Held :* to be precluded from contending for the first time after a winding-up order had been made that the directors who made the allotment were only *de facto* not *de jure* directors, & from disputing his status as a shareholder.—*Re* ACME PRODUCTS, LTD., HOPPS' CASE, [1932] 2 W. W. R. 586 ; 4 D. L. R. 330 ; 40 Man. L. R. 444.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—D. (a).

sf. *Allotment on terms other than those in application.*]—Where an allotment of shares was made on terms differing substantially from those contained in the application :—*Held :* as the allottee so far from accepting the allotment virtually repudiated it, he could not be held liable on the ground that the shares were duly allotted to him.—WHITTLE *v.* HENLEY, [1924] App. D. 138.—**S. AF.**

sg. *Allotment fraud on company—Company not bound to repudiate.*]—*Re* SUN RAY MANUFACTURING CO., *Ex p.* BIRKETT & SONS, LTD., [1925] 1 D. L. R. 1204 ; 5 C. B. R. 286 ; *affd.,* [1924] 2 D. L. R. 1055 ; 4 C. B. R. 615.—**CAN.**

sh. *Non-fulfilment of conditions by company—Acquiescence.*]—A subscriber for stock who has received his stock without inquiry as to fulfilment of conditions & has acted as a shareholder in every way, cannot set up breach of condition as a ground for refusing to pay for his shares.—*Re* MANITOULIN QUARTZITE, LTD., [1933] 4 D. L. R. 132.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—D. (b) i.

n i. —— *Contract to take treasury shares.*]—Deft. applied to a California co. through an agent in Victoria, B.C., for shares in the co. He intended to obtain treasury shares, but the shares which he received were shares owned by one A. Deft.'s name was entered, to his knowledge, on the co.'s register of shareholders, & he received dividends & contributed funds to assist in rehabilitating the co., but it was not until after the present action was brought that he learned that he had not received treasury shares. He thereupon immediately repudiated ownership. The action was one in which creditors of the co. sought, in accordance with the law of California, to fix deft. with a liability for its debts proportionate to the amount of his shares :—*Held :* deft. never became a shareholder since no contract making him such ever came into existence, & that his conduct did not estop him from denying that he was a shareholder.—AMERICAN SEAMLESS TUBE CORPN. *v.* GOWARD, [1930] 2 W. W. R. 31 ; 3 D. L. R. 870 ; 42 B. C. R. 551 ; *affd.,* [1931] 1 W. W. R. 509 ; 1 D. L. R. 878 ; 43 O. L. R. 407.—**CAN.**

n ii. —— ——.]—WITCOMB *v.* TORONTO GENERAL TRUSTS CORPN., [1931] 2 W. W. R. 545.—**CAN.**

n iii. —— ——.]—An agreement for the sale of treasury shares of a co. is not satisfied by the transfer to the purchaser of an individual shareholder's personal stock.—CLAY *v.* POWELL & CO., LTD., [1932] S. C. R. 210 ; 1 D. L. R. 366.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—E. (a).

1707 v. —— ——.]—An application for shares in a co. is not binding on appct. unless & until it has been accepted by allotment & notice thereof made & given within a reasonable time. —MACLEAN *v.* REIDRUG, LTD., [1932] 1 W. W. R. 223.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—E. (d).

1737 i. *Receipt by allottee immaterial —Posting sufficient.*]—HOWSON *v.* CROW (Ont.), [1925] 1 D. L. R. 495.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—G.

g i. —— *Non-compliance with Sale of Shares Act, R. S. M.,* 1913 (*c.* 175).]—Allotment void, & not merely voidable ; & where a purchaser of shares has not done anything from which an agreement to keep & pay for them can be implied, he can, even after a winding-up order, repudiate the purchase & successfully resist being placed on the list of contributories, where he only became aware, after the winding-up order, that the above Act was not complied with.—*Re* NORTH WESTERN TRUST CO., *Re* MCASKILL *v.* NORTH WESTERN TRUST CO., [1926] 3 D. L. R. 612 ; [1926] S. C. R. 412.—**CAN.**

1773 i. *Effect of avoidance—Right to recover money paid.*]—The right of an appct. to have the register of members of a co. rectified by the removal of his name therefrom under an order of the equity ct. carries with it the right to recover from the co. moneys paid to it by appct. in respect of his contract to take shares, & this is so whether the basis of the rescission of the contract be fraudulent or innocent misrepresentation. — *Re* AUSTRALIAN SLATE QUARRIES, LTD. (1930), 47 N. S. W. W. N. 179.—**AUS.**

should be entitled to one certificate for all the shares registered in his name, or to several certificates, each for a part of such shares :— *Held :* although the directors in the exercise of their discretion might comply with such a demand, the trustees had no right to demand certificates for different amounts, & were not entitled to an order compelling the directors to issue such certificates.—SHARPE *v.* TOPHAMS, LTD., [1938] 4 All E. R. 12.

1783a. As to compliance with formalities — Authorised affixing of seal.]—SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE, No. 1794a, *post.*

1786. *Add. Annotation :*—**Reld.** South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496.

1794. *Add. Annotations :*—**Apld.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826 ; South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496. **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587 ; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

1794a. Seal affixed by secretary without authority.] —The A. co., of which D. was a director & G. was the secretary, being debtors of W. who, on Apr. 23, 1928, had issued a writ to enforce payment of the debt, procured the issue to W. of a certificate No. 528, certifying that W. was the registered holder of 2,000 preferred ordinary shares numbered 40,652 to 42,651 of ten shillings each fully paid in pltf. co., which certificate, early in May, 1928, was accepted by W. as security for the payment of the debt & on the faith of which W. abstained from serving the writ upon the A. co. until June 18, 1928. D. was also managing director & G. was also secretary of pltf. co. The certificate bore the seal of that co., & was attested by the signatures of D. & G. as such director & secretary respectively. Pltf. co. having refused to recognise W.'s title to the shares brought this action against W., in which they claimed a declaration that W. was not entitled to the shares & rectification of their register of members. By art. 105 of the arts. of assocn. of pltf. co. it was provided as follows : " The seal of the co. shall not be affixed, except by the authority of a resolution of the board of directors & in the presence of at least one director & the secretary ; & the said one director & the secretary shall sign every instrument to which the seal shall be so affixed in their presence & in favour of any purchaser or person *bonâ fide* dealing with the co. such signature shall be conclusive of the fact that the seal has been properly affixed." The following further facts were held to have been established at the trial : from entries in the register of members it appeared that the shares in dispute had in Nov. 1927, been issued, with other shares, to the English & Foreign Investment Trust, Ltd., & that in respect of those shares three shillings per share were paid up. There was no entry showing when that co. ceased to be a member. There were entries in the register indicating that the 2,000 shares were transferred to W., & that W. was entered on the register as a member on Apr. 30, 1928, as having acquired the shares as fully paid & as having had a certificate No. 528 issued to him. There was no record of any transfer from the English & Foreign Investment Trust, Ltd. In Apr. 1928, while the register & seal of pltf. co. were under their physical control, D. & G. made the entries in the register, &, as director & secretary respectively of pltf. co., affixed the seal of that co. to & signed the certificate issued to W., but without any authority from pltf. co. & fraudulently in the interest of the A. co. :—*Held :* (1) the certificate not having in truth been sealed by pltf. co.'s authority, was, in the circumstances aforesaid, a forgery & not binding upon the co ; (2) W., whose ignorance of art. 105 had been proved, was, on that account, precluded from relying on that article to support the contention that pltf. co. was bound in his favour to treat the attesting signatures as conclusive evidence of the fact that the seal of pltf. co. had been properly affixed to the certificate ; (3) as affixing the seal was not a matter in which normally a single director would have power to act without the authority of the board of directors, W. was not relieved from the obligation to inquire whether the formalities required by the art. had been complied with.—SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE, [1931] 1 Ch. 496 ; 100 L. J. Ch. 169 ; 144 L. T. 607 ; 74 Sol. Jo. 820.

1810. *Add. Annotation :*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

1814a. " Initial share issue "—Meaning.]—GAS METER CO., LTD. *v.* DIAPHRAGM & GENERAL LEATHER CO., LTD. (1925), 41 T. L. R. 342.

1815. Before this case add " *see, now,* 1929 Act, s. 47."

PART III. SECT. 18, SUB-SECT. 3.—C.

f i. —— ——.]—An allottee :—*Held :* entitled to rely upon the certificates showing the stock given him to be fully paid up, whether in fact it was actually paid for or not.—*Re* SUPPLIES, LTD., CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* CALDWELL, [1926] 1 D. L. R. 824 ; 58 N. S. R. 399.—CAN.

PART III. SECT. 19.

1812 i. *Issue for improper purpose—Increase of voting power—Restraint.*]—Where directors, in exercising their powers to issue & allot shares, do so in order to get control of the voting power, the ct. will declare the issue & allotment invalid.—SMITH & TATCHELL *v.* HANSON TIRE & SUPPLY CO., LTD., [1927] 3 D. L. R. 786 ; [1927] 2 W.W.R. 529 ; 21 Sask. L. R. 621.—CAN.

1812 ii. —— —— ——.]—TREASURE TROVE DIAMONDS, LTD. *v.* HYMAN, [1928] App. D. 464.—S. AF.

sp. *Withdrawal of shares.*]—The right to withdraw shares periodically under an escrow agreement upon giving the vendor fifteen days' notice in writing, cannot be exercised by notice given after such date.—BANCROFT *v.* MONTREAL TRUST CO., [1937] 4 D. L. R. 461 ; 52 B. C. R. 54.—CAN.

PART III. SECT. 20, SUB-SECT. 1.—A.

11. —— *Issue for future services to be rendered.*]—Defts. procured the incorporation of pltf. co., & made an agreement with the original directors, who were merely the nominees of defts., that, as consideration for services which they promised to perform, defts. should receive practically the whole of the common shares of the capital stock of pltf. co. as fully paid shares :—*Held :* the transaction was *ultra vires* of pltf. co.—BANKING SERVICE CORPN., LTD. *v.* TORONTO FINANCE CORPN. LTD., [1928] A. C. 333 ; 97 L. J. P. C. 65 ; 139 L. T. 149, P. C.—CAN.

1 ii. —— ——.]—The manager of a co. incorporated under Ontario Cos. Act agreed with the co. to buy certain shares thereof at their par value & to pay therefor partly by promissory notes & partly by serving the co. as its manager for the next four years. The manager became bkpt. & the co. claimed against his estate for the amount of the notes. The trustee disallowed the claim & the co. appealed :—*Held :* as the evidence showed that the contract was, not illusory, but a *bonâ fide* transaction, the terms of payment were within the

1817. *Add. Annotations :—As to* (4) **Apld.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809. *Generally*, **Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

1821. *Add. Annotations :—As to* (1) **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. *Generally*, **Consd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646. **Refd.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

1826. *Add. Annotation :—As to* (2) **Distd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646.

1860. *Add. Annotation :*—**Distd.** Investment Trust Corpn., Ltd. *v.* Singapore Traction Co., [1935] Ch. 615.

1871. *Add. Annotation :*—**Refd.** Tarrant *v.* Roberts (1930), 47 T. L. R. 199.

1923. *Add. Annotation :*—**Refd.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 43.

1928. *Add. Annotation :—As to* (3) **Refd.** Faber *v.* I. R. Comrs., 1936] 1 All E. R. 617.

1929. *Add. Annotation :—As to* (3) **Refd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs., [1933] 1 K. B. 134.

1934. *Add. Annotation :*—**Refd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs., [1933] 1 K. B. 134.

1935. *Add. Annotation :*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

1940. *Add. Annotation :—As to* (3) **Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

1949. *Add. Annotation :*—**Refd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

1953. *Add. Annotation :—As to* (1) **Consd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

2026. After this case add the following new sub-section :—

SUB-SECT. 3*a*.—UNDER COMPANIES (CONSOLIDATION) ACT, 1908, s. 88.

See case *infra*.

---

powers of the co.—*Re* GIBSON ESTATE, PELICAN LAKE LUMBER CO., LTD. & TRADERS TRUST CO. (Man.), [1929] 4 D. L. R. 1001 ; 3 W. W. R. 224 ; 11 C. B. R. 100.—**CAN.**

l iii. ——.]—AUDITORIUM, LTD. *v.* LUMSDEN, [1926] 4 D. L. R. 976 ; 59 O. L. R. 496.—**CAN.**

l iv. ——.]—SIGNAL HILL OILS CO., LTD. *v.* LONDON OIL SECURITIES, LTD. (Alta.), [1927] 3 D. L. R. 984 ; [1927] 2 W. W. R. 392.—**CAN.**

l v. ——.]—WASCHYSYN *v.* KILDONAN ICE & FUEL CO., [1929] 4 D. L. R. 555 ; *affd.*, [1937] 1 W. W. R. 572 ; 2 D. L. R. 653 ; 45 Man. L. R. 96.—**CAN.**

l vi. ——.]—Unless a co. has been expressly authorised by statute to issue shares at a discount, it is *ultra vires* for it to issue shares as fully paid up in consideration of property or services where no attention is given to the question of the relationship of the value of the consideration to the par value of the shares.—SPOONER *v.* SPOONER OILS, LTD., [1936] 1 W. W. R. 561 ; 2 D. L. R. 634.—**CAN.**

sh. *Under Companies Act*, 1929, *s.* 47—*Petition to court—Remit to reporter.*]—Where a petition is presented to the ct. under Cos. Act, 1929, s. 47, for authority to issue shares at a discount, the ct. will not dispense with a remit to a reporter.—*Re* EDINBURGH & DUNDEE INVESTMENT CO., [1930] S. C. 681.—**SCOT.**

PART III. SECT. 20, SUB-SECT. 1.—B.

sj. *Issue of shares as bonus.*]—*Held :* a co. agreeing to issue twenty-one preferred shares & seven common shares both fully paid, on receipt of only the par value of the twenty-one preferred shares, was making an agreement to issue shares at a discount, which was *ultra vires* & could not be enforced.—AUDITORIUM, LTD. *v.* LUMSDEN, [1926] 4 D. L. R. 976 ; 59 O. L. R. 496.—**CAN.**

sl. *Crediting applicants with commission.*]—The crediting of appcts. for shares with " commission " at 25 per cent. of the par value may amount to sale of shares at a discount & be *ultra vires* the co.—*Re* BROOKS STEAM MOTORS, LTD., [1934] 2 D. L. R. 648.—**CAN.**

PART III. SECT. 20, SUB-SECT. 2.—C. (b) i.

sn. —— *Credit for accommodation bills met by shareholder.*]—An agreement was entered into by a co. with one of its shareholders to credit moneys which he might be called upon to pay in respect of accommodation bills entered into by him for the co.'s assistance, or which might fall due to him for services rendered to the co. against his liability for shares. Although a sufficient sum had accumulated under these heads to extinguish the shareholder's liability on his shares, the co. went into liquidation before an actual credit had been passed for the amount: —*Held :* the transaction did not amount to payment by the shareholder of the amount due by him on his shares within Cos. Act, 1908, & the actual set-off not having been carried into effect prior to the liquidation, the shareholder was precluded by sect. 68 of the Act from having his name removed from the list of contributories.—HARDING & Co. *v.* HAMILTON, [1929] N. Z. L. R. 338.—**N.Z.**

PART III. SECT. 20, SUB-SECT. 2.—C. (b) ii.

1856 i. *Issue to director—For services rendered—On resolution of shareholders —Application of surplus assets.*]—Where there was a surplus available for distribution by way of dividend among shareholders, & it was open to the shareholders if unanimous to deal with it as they might think fit :—*Held :* no creditor could object, & every shareholder would necessarily be estopped by his own conduct.—*Re* DORENWENDS, LTD., [1924] 3 D. L. R. 118 ; 55 O. L. R. 413.—**CAN.**

PART III. SECT. 20, SUB-SECT. 3.—B. (a).

m i. —— ——.]—Any *bonâ fide* transaction between a co. & a shareholder which, if the co. brought an action against him for calls, would support a plea of payment, is a " payment in cash."—MOTOR FUELS CORPN. ETC. (IN LIQUIDATION) *v.* LINDER BROTHERS (1927), 48 N. L. R. 279.—**S. AF.**

PART III. SECT. 20, SUB-SECT. 3.—B. (b).

1886 ii. —— ——.]—By an agreement in writing applt. & another agreed to sell & the co. agreed to purchase certain land at the price of £2,610, which price was to be paid & satisfied partly by certain cash instalments & partly by the issue of fully paid shares in the co. Possession of the land was to be given on payment of £10 & the issue of four hundred shares ; transfer was to be made after payment of all instalments, the last of which, under the agreement was not payable until Aug. 1928. Possession of the land was given & the shares were issued, but no contract was filed at or before the issue of the shares :—*Held :* under the agreement the shares were not paid or to be paid in cash.—*Re* GOODMAN BROTHERS AUTO & SERVICE CO., LTD., *Ex p.* ROSE, [1927] S. A. S. R. 571.—**AUS.**

sl. *Adoption of contract with promoter —Money placed in his hands by intending shareholders.*]—Where a co. on completion of conveyances to it by the vendor gave credit to him for moneys placed in his hands as promoter on the terms of the co.'s prospectus by intending shareholders & specifically appropriated by them in payment *pro tanto* for their shares, registered the shares in their names, & at the same time obtained credit in respect of the payment from the vendor on account of the purchase-money :—*Held :* this was a payment in cash to the co. in respect of those shares within New South Wales Cos. Act, 1874, s. 57, which is substantially identical with Imperial Cos. Act, 1867, s. 25.—NORTH SYDNEY INVESTMENT & TRAMWAY CO. *v.* HIGGINS, [1899] A. C. 263 ; 68 L. J. P. C. 42 ; 80 L. T. 303 ; 47 W. R. 481 ; 15 T. L. R. 232 ; 6 Mans. 321, P. C.—**AUS.**

PART III. SECT. 20, SUB-SECT. 3a.

sl. *Filing of contract—Time for filing—Extension of time.*]—Where the failure to comply with 1908 Act, s. 88, was due to inadvertence & when the irregularity was discovered the contract was reduced to writing but more than three years after the proper date for filing, & the co. presented a petition for extension of time :—*Held :* merely to grant relief from the prescribed penalty would be an insufficient remedy, & the time for filing was extended.—*Re* ANDERSON & MUNRO, LTD., [1924] S. C. 222.—**SCOT.**

PART III. SECT. 20, SUB-SECT. 3.—C. (c).

1925 i. *Sufficiency of—Whether court will inquire into.*]—*Held :* the agreement not having been set aside, the adequacy of the consideration could not be inquired into in a winding-up proceeding.—*Re* DOMINION COMBING MILLS, [1930] 3 D. L. R. 98 ; 65 O. L. R. 65 ; 11 C. B. R. 189 ; *revsg.*, 11 C. B. R. 84 ; *affg.*, 10 C. B. R. 462.—**CAN.**

PART III. SECT. 21, SUB-SECT. 2.

2053 i. *Must state amount of call—& time & place of payment.*]—PIONEER ALKALI WORKS, LTD. *v.* AMIRUDDIN SHALEBHOY TYEBJI (1925), I. L. R. 50 Bom. 461.—**IND.**

2060. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

2070. *Add. Annotation :*—**Overd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2070a. ——.]—Where the owner of shares in a co. sells them there arises out of the contract of sale an implied promise by the purchaser to indemnify his vendor against all calls that may be made upon him in respect of the shares at any future date, whether made while the purchaser remains entitled to the shares or after he has parted with them to a sub-purchaser; & it makes no difference in that respect that the transfer which the vendor delivers to the purchaser in completion of his contract is executed in blank.—SPENCER *v.* ASHWORTH PARTINGTON & Co., [1925] 1 K. B. 589; 94 L. J. K. B. 447; 132 L. T. 753, C. A.

2072. *Add. Annotation :*—**Refd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2087a. Sale by transferee to sub-purchaser.]—SPENCER *v.* ASHWORTH PARTINGTON & Co., No. 2070a, *ante*.

2100. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2136a. Issue of deferred payment certificates.]—The specialty debt resulting from a call on shares of a co. can only be discharged by accord & satisfaction when the co. has received money or money's worth. For this purpose the consideration given by way of payment must be something which is regarded by the parties to the transaction as fairly representing the sum to be discharged. The consideration must not be a clear blind or clearly colourable or illusory.

When, therefore, R. M. Co. purported to satisfy a call on shares of W. Co. held by R. M. Co. by the issue of deferred creditors' certificates equal in nominal amount to the sum due, under a scheme of arrangement agreed to by W. Co., & the evidence established that to the knowledge of all the parties the certificates were always worth less than their nominal value & that the certificates were not accepted as in any sense a payment of the sum due for calls but as the best that could be saved out of the wreck of R. M. Co., R. M. Co. were not entitled to a dividend in the winding up of W. Co. in respect of a contract debt found to be due to them until the amount of the calls was paid in full.—*Re* WHITE STAR LINE, LTD., [1938] Ch. 458; [1938] 1 All E. R. 607; 107 L. J. Ch. 225; 158 L. T. 315; 54 T. L. R. 473; 82 Sol. Jo. 213, C. A.

2167. *Add. Annotation :*—**Refd.** *Re* Turner, Tennant *v.* Turner, [1938] Ch. 593.

2168. *Add. Annotation :*—*As to* (3) **Refd.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

2171. *Add. Annotation :*—**Refd.** *Re* Turner, Tennant *v.* Turner, [1938] Ch. 593.

2174. *Add. Annotations :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83; Batu Pahat Bank, Ltd. *v.* Tan Keng Tin, Official Assignee of Property, [1933] A. C. 691.

2179. *Add. Annotations :*—*As to* (1) **Refd.** Bank of N. T. Butterfield *v.* Golinsky, [1926] A. C. 733; I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1937] A. C. 26.

2183a. —— **Lien in respect of debt of trustee—Right of trustees to sell shares.**]—Pltfs. were the trustees of the marriage settlement of one of them, who was also a beneficiary under the settlement. They claimed damages from defts. for breach of an agreement, whereby defts. undertook to purchase shares in a certain company. The pltf., who was a beneficiary under the settlement, was, in his individual capacity, indebted to the co. & the co. had, under its articles, a lien upon shares in respect of the debts of a member. In a previous action it had been held that whatever equitable interest the co. had in these shares under its lien was postponed to the interests of the beneficiaries under the settlement, other than the debtor-trustee & persons claiming under him. Defts. now contended that, as the co. would lose its lien, which was admittedly good against the debtor-trustee & persons claiming under him, if the trustees were to sell, the trustees were not in a position to sell the shares free from encumbrances, & therefore the defts. were not bound to carry out their agreement to purchase:—*Held:* the right of the trustees to sell the shares in execution of their trust was not affected by the co.'s lien against the debtor-trustee's personal interest, & the trustees could give an unencumbered title to a purchaser of the shares, although the co. would lose its lien thereby. Defts. were, therefore, bound to carry out their agreement to purchase.—MATHIESON *v.* GRONOW (1929), 141 L. T. 553; 45 T. L. R. 604.

PART III. SECT. 21, SUB-SECT. 3.

1 i. ——.]—EUROPEAN & NORTH AMERICAN RY. CO. *v.* DUNN (1876), 16 N. B. R. (3 Pug.) 320.—**CAN.**

PART III. SECT. 21, SUB-SECT. 4—B. (b).

2068 iii. ——.]—The transferor of shares in a co. remains liable to the co. for calls due & owing at the date of transfer, notwithstanding that the co. duly registered such transfer & recovered judgment & issued execution in respect of the calls against the transferee.—MOTOR & CASH ORDERS, LTD. *v.* O'MARA (1936), 36 S. R. N. S. W. 243; 53 N. S. W. W. N. 113.—**AUS.**

PART III. SECT. 21, SUB-SECT. 5.—A. (b).

e i. —— *Estoppel.*] — DOMINION SECURITIES *v.* DUNCAN, [1929] N. Z. L. R. 65.—**N.Z.**

PART III. SECT. 21, SUB-SECT. 7.

e i. —— *Liability of application & allotment money in voluntary winding up.*]—A co. in voluntary liquidation may recover unpaid application & allotment money from a former shareholder, whose shares have been duly forfeited for non-payment of calls.—*Re* AUSTRALIAN GROUP & GENERAL ASSURANCE CO., LTD. (1932), 32 S. R. N. S. W. 435; 49 N. S. W. W. N. 111.—**AUS.**

PART III. SECT. 23, SUB-SECT. 2.

2174 i. *Lien extended to fully paid shares—Valid.*]—Where a debt to a co. was contracted at a time when its articles imposed a lien on its shares, "not fully paid up," & the debt existed when the articles were amended by striking out the words "not fully paid up":—*Held:* that this amendment operated, apart from sub-sect. (3) of sect. 111 of Cos. Ordinance, to create an effective lien with respect to such debt on shares of the debtor fully paid up when the debt was contracted.—BATU PAHAT BANK, LTD. *v.* TAN KENG TIN, [1933] A. C. 691, P. C.—**STRAITS SETTLEMENTS.**

PART III. SECT. 23, SUB-SECT. 1.

sg. *Personal representative.*] — The effect of sects. 51 & 56 of Cos. Act, 1932 (Man.), is that the personal representative of a deceased shareholder can sell & transfer the latter's shares direct to a purchaser without first becoming by transmission a shareholder in the co., & without making the declaration referred to in sect. 54.—DEACON *v.* CENTRAL MANITOBA MINES, LTD., [1934] 1 W. W. R. 45.—**CAN.**

g i. —— *Agreement binding—Company entitled to refuse to register*

2210a. —— ——.]—PICKERING *v.* APPLEBY (1720), 1 Com. 354; 92 E. R. 1108.

Annotation:—**Reld.** Watson *v.* Spratley (1854), 10 Exch. 222.

2211a. —— —— **Spanish & Portuguese bonds.**]—*Qu.:* whether Spanish & Portuguese Bonds are "goods, wares, & merchandizes," within Stat. Frauds, s. 17.—PAWLE *v.* GUNN (1838), as reported in 1 Arn. 200; 6 Scott, 286; 7 L. J. C. P. 206.

2217. *Add. Annotation:*—**Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2224a. —— **Dividend before exercise of option to purchase—Payment postponed.**]—By a contract made in Apr. 1922, it was agreed between the persons interested therein that a business forming part of a testator's estate should be converted into a private co. with a capital of £30,000, divided into £20,000 debentures bearing interest at 7 per cent. & 10,000 ordinary shares of £1 each, fully paid, which were to be allotted to the trustees of the will. One of the trustees, F., was appointed manager of the co., & was given the option, so long as he continued to be both trustee & manager, of purchasing the whole of the debentures & shares at par value. In June, 1928, the co. declared a dividend of 57½ per cent. on the ordinary shares for the year ending Mar. 31, 1928, to be paid in three equal instalments on July 1 & Nov. 1, 1928, & Feb. 1, 1929, & the first instalment was paid on July 1, 1928. On July 30, 1928, F. exercised his option to purchase the whole of the shares & debentures for £30,000. At that date there was four months' interest due upon the debentures. The purchase was completed on Nov. 5, 1928. On a summons being taken out to determine the rights of the parties in the unpaid instalments of the dividend, & the debenture interest, as between vendors & purchaser:—*Held:* (1) the four months' accrued interest on the debentures passed to the purchaser; (2) the declaration of the dividend on the shares having created a debt to the trustees as the then registered shareholders, the postponement of the payment did not operate to deprive them of their rights, & therefore the remaining instalments belonged to them & not to the purchaser.—*Re* KIDNER, KIDNER *v.* KIDNER, [1929] 2 Ch. 121; 98 L. J. Ch. 247; 141 L. T. 195.

2228. *Add. Annotation:*—**Reld.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B. 447.

2228a. Condition for ascertainment of solvency of company—Duty of accountant.]—Upon a proposed sale of 50,000 shares in a limited co., it was agreed that the sale should be subject to an accountant appointed by the purchasers being "satisfied that the financial position" of the vendor co. was "solvent": —*Held:* the agreement meant that the accountant had to be satisfied as to the solvency of the co., & his evidence as to what he understood to be the meaning of "solvent was irrelevant. It was not for the ct. to determine the meaning of "solvent."—DIAMANTIDI *v.* GROSVENOR SECURITIES, LTD., & GUILDHALL TRUST, LTD., [1937] 1 All E. R. 703; 81 Sol. Jo. 236, C. A.

2237. *Add. Annotation:*—**Dbtd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

2244a. Securities deposited for sale & re-investment—Misrepresentation—Right to return of securities.]—*Re* BROAD STREET PRESS, LTD. (1933), 77 Sol. Jo. 448.

2250a. —— **Valid tender of stock.**]—A. contracts with B. for the sale of £200 South-Sea stock, for £1,360 to be paid on or before the day of shutting the transfer books, in order to make the Christmas dividend. The money not being paid, A. brought his action upon the covenant, & in his declaration alleged, that he attended at the South-Sea house, for the space of an hour before the shutting of the books, & was ready to transfer the stock to deft., but that he was not ready to receive it. On a demurrer, judgment was given for deft., pltf. not having made a sufficient tender of the stock. In an action upon a contract for the sale of stock, it is necessary for pltf. to show, that he had made a legal tender of the stock before he can claim the money; for his attending at the office upon the day, & being ready to transfer, is not sufficient. He ought to set out in his declaration, the manner of transferring stock, & the time & place when & where it is usually transferred; these being matters which the ct. cannot judicially take notice of.—STAPLETON *v.* SHELBURNE (1725), 1 Bro. Parl. Cas. 215; 1 E. R. 523; *sub nom.* WIVELL *v.* STAPLETON, 8 Mod. Rep. 68, H. L.

Annotation:—**Consd.** Russen *v.* Coleby (1736), Ridg. *temp.* H. 154.

---

transfer.]—ONTARIO JOCKEY CLUB, LTD. *v.* MCBRIDE, [1927] A. C. 916; 137 L. T. 751, P. C.—**CAN.**

m i. —— *Isolated transaction.*]—MOROZ *v.* KILDONAN ICE & FUEL CO., [1930] 1 D. L. R. 138.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—A.

p i. —— *To comply with provision to furnish statement of company's "liabilities"—Meaning of "liabilities."*]—BUTLER *v.* FAIRHALL, [1927] 4 D. L. R. 976; 61 O. L. R. 305.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—B.

sp. *Sale of Goods Act, R. S. N. B.*, 1927, *s.* 4 (1)—*Not applicable to purchase of shares through stockbroker.*]—BEYEA *v.* JOHNSTON & WARD, [1930] 4 D. L. R. 421; *affg.*, [1930] 1 D. L. R. 219.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (a).

c i. —— *On failure of transferee to take up shares.*]—*Re* COMPANIES ACT, *Re* BRITISH PETROLEUMS, LTD. (B.C.), [1925] 1 W. W. R. 236.—**CAN.**

d i. —— *Repudiation—Laches of purchaser's nominee.*]—NESBITT *v.* MCCARTNEY (Alta.) (1922), 63 D. L. R. 93.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (d) iii.

st. *Waiver.*]—DOLL *v.* HOWARD (1897), 11 Man. L. R. 577.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (e) i.

2251 **i.** *Nature of remedy.*]—Action by seller for purchase price is not an action for specific performance, but a common law action to enforce a money demand. —MCTAVISH *v.* LANGER, [1933] 4 D. L. R. 609.—**CAN.**

sv. *Injunction—Breach of pooling agreement—Covenant not to encumber shares.*]—REED *v.* MCVEIGH, [1931] 1 W. W. R. 257.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (e) ii.

m i. ——.]—GRICE *v.* BARTRAM (1912), 22 O. W. R. 182; 3 O. W. N. 1312; 3 D. L. R. 868.—**CAN.**

m ii. —— *Contract between employer & employee.*]—In an action claiming specific performance of a contract for the repurchase of shares, in which the contracting parties were employer & employee:—*Held:* (1) employee may prove an agreement on the part of the principal shareholder to repurchase on termination of the employment; & (2) employee may also prove an agreement by the principal shareholder to pay dividends at a minimum rate, upon the shares.—MACDONALD *v.* SOULIS, [1925] 2 D. L. R. 926.—**CAN.**

m iii. —— —— *Sale by vendor to third party without notice of prior agreement.*]—DUFF *v.* RUDOLPH & LUNENBURG GAS CO., ADAMS *v.* LUNENBURG GAS CO. (N. S.), [1930] 2 D. L. R. 801; *revsg.*, [1929] 4 D. L. R. 813.—**CAN.**

2263. *Add. Annotation:*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

2269a. —— ——.]—Upon the breach of a contract for the sale of shares, the proper measure of damages is, the difference between the contract price & the market price at the time of the breach.—POWELL *v.* JESSOPP (1856), 18 C. B. 336; 139 E. R. 1400.

2269b. —— ——.]—Under a contract for the sale of shares in a co. the measure of damages upon a breach by the buyer is the difference between the contract price & the market price at the date of the breach, with an obligation on the part of the seller to mitigate the damages by getting the best price he can upon that date. If the seller retains the shares after the breach, he cannot recover from the buyer any further loss if the market falls, nor is he liable to have the damages reduced if the market rises.—JAMAL *v.* MOOLLA DAWOOD, SONS & Co., [1916] 1 A. C. 175; 85 L. J. P. C. 29; 114 L. T. 1; 32 T. L. R. 79; 60 Sol. Jo. 139, P. C.

Annotations:—**Refd.** Hill *v.* Showell (1918), 87 L. J. K. B. 1106; Lebeaupin *v.* Crispin, [1920] 2 K. B. 714.

2274a. —— ——.]—The vendee of shares in a projected railway, under a contract to be completed at a future day, may recover, as damages for the non-delivery the difference between the price agreed on & the market price of the day on which the sale should have been completed; but he is not entitled to damages in respect of a further advance of price taking place afterwards at the time of the actual issuing of the scrip.—TEMPEST *v.* KILNER (1846), 3 C. B. 249; 136 E. R. 100.

2280. *Add. Annotation:*—**Refd.** Fleetwood-Hesketh *v.* I. R. Comrs., [1936] 1 K. B. 351.

2283a. Appointment of new trustee.]—*Re* HOBSON, HOUGHTON & Co., No. 2585a, *post.*

2299a. ——.]—An allottee of shares in a completely registered joint stock co. but who has not executed the deed of settlement of the co. cannot under 7 & 8 Vict. c. 110, s. 26, enter into a contract for the sale of his shares. W. was the allottee of shares in a completely registered joint stock co., but had not executed the deed of settlement; his brother T., acting under the authority of a power of attorney, desired Messrs. N., stockbrokers, to sell these shares, & they entered into contracts with purchasers accordingly; before the transfers were registered W. became bkpt. & the brokers were obliged at their own cost to complete the contracts with the purchasers:—*Held:* dismissing a petition by the brokers claiming to have the bkpt.'s shares transferred to them, under the terms of 7 & 8 Vict. c. 110, s. 26, the contracts were null & void, & that the assignees of the bkpt. were entitled to the shares as part of his estate & effects.—*Re* EDMOND, *Ex p.* NEILSON (1853), 3 De G. M. & G. 556; 23 L. J. Bcy. 12; 22 L. T. O. S. 190; 18 Jur. 297; 2 W. R. 121; 43 E. R. 218, L. C. & L. J.; *previous proceedings* (1850), 15 L. T. O. S. 435.

2299b. ——.]—Where a transfer of shares is not returned to the registrar's office the transferor will be liable to the creditor of the company, but not liable to contribute as between himself and the other shareholders.—*Re* BRITISH PROVIDENT LIFE & FIRE ASSURANCE CO., ORPEN'S CASE (1863), 2 New Rep. 225; 9 Jur. N. S. 615; *sub nom. Re* BRITISH PROVIDENT LIFE & FIRE ASSURANCE SOCIETY, *Re* ORPEN, 32 L. J. Ch. 633; 8 L. T. 596; 11 W. R. 741; *on appeal*, 33 L. J. Ch. 67, L. JJ.

Annotation:—**Consd.** *Re* General Provident Assce., Cross's Case (1869), 38 L. J. Ch. 583.

2332. *Add. Annotation:*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

2332a. —— ——.]—IRVING *v.* SOUTH EASTERN RY. CO. (1857), 29 L. T. O. S. 64.

2343a. ——.]—SPENCER *v.* ASHWORTH PARTINGTON & Co., No. 2070a, *ante.*

2344. *Add. Annotation:*—**Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2344a. —— **Transfer of whole interest in company—Indemnity against "outstanding liabilities"—Whether unpaid income tax included.**]—On the purchase by pltfs. in Aug. 1928, of the shares & interests of defts. in a co., defts. undertook to indemnify pltfs. against all outstanding liabilities of co. up to the date of the completion of the purchase:—*Held:* the words "outstanding liabilities" included the payment of the income tax & property tax which ultimately became payable by the co. in respect of the period from Apr. 5, 1928, to the date of the completion of the purchase in Aug. 1928.—UNITED KINGDOM ADVER-

---

2260 i. —— *Against purchaser.*]—FRANKLIN *v.* REARDON (N. S.) (1917), 55 S. C. R. 613; 39 D. L. R. 176.—CAN.

2266 i. *Loss of right to relief—Laches—Right to relief from forfeiture of money paid.*]—A purchaser who has never in fact abandoned or receded from his contract, but yet, by reason of laches, or otherwise from causes not falling within abandonment or recession, has deprived himself of the right to specific performance is, if the vendor refuses to accede to specific performance, *prima facie* entitled to relief from forfeiture of the money paid unless some facts are shown which would render this relief inequitable. The jurisdiction to grant this relief is not limited to cases where the overdue payment has been tendered; & the relief granted will not necessarily be the return of the whole amount of the purchase money; the seller is entitled to have such damages deducted as he is proved to have sustained because of the buyer's default; & if he can be so fully compensated that is enough to justify the remedy.—MOSDELL *v.* JARDINE (B. C.), [1929] 4 D. L. R. 617; 3 W. W. R. 95.—CAN.

PART III. SECT. 23, SUB-SECT. 2.—C. (c) iii.

2269 i. *Measure of damages—Misrepresentation as to liabilities of company.*]—SISSONS *v.* HASSARD (Alta.), [1923] 4 D. L. R. 186; [1923] 3 W. W. R. 105.—CAN.

PART III. SECT. 23, SUB-SECT. 3.—D. (b).

2331 ii. —— ——.]—ABDUL VAHAD, ETC. *v.* HASANALLI ATIBHAI, ETC. (1925), I. L. R. 50 Bom. 229.—IND.

2331 iii. —— ——.]—MCLEOD *v.* BRAZILIAN TRACTION LIGHT & POWER CO., LTD., [1927] 2 D. L. R. 875; 60 O. L. R. 253.—CAN.

2337 iii. —— —— —— *Cancellation of restrictive endorsement by transferee.*]—MATHERS *v.* ROYAL BANK OF CANADA (1913), 29 O. L. R. 141; 4 O. W. N. 1481.—CAN.

PART III. SECT. 23, SUB-SECT. 4.

2344 i. *Inter se—Transfer subject to understanding as to assets of company—Transferee bound.*]—*Re* HOBRECKER'S ESTATE, [1926] 1 D. L. R. 655; 58 N. S. R. 378.—CAN.

sg. *Right to transferee to reject or return transfer.*]—A provision of the agreement gave the transferee of the shares an option or right, on the happening of two conditions, to reject or return the transfer & to demand back the money paid by him, the conditions being the failure of the transferor to exercise the option given her to repurchase the shares & the discovery that her title to the shares was defective:—*Held:* said provision gave deft. the transferor, no rights, but merely imposed additional obligations on her.—MCRAE *v.* LAW, [1936] 2 W. W. R. 60.—CAN.

sk. *Shares transferred by instalments—Company struck off—Reinstatement—Duty to accept subsequent instalment.*]—BEATON *v.* COOPER, [1938] 1 W. W. R. 604; 2 D. L. R. 191; 7 F. L. J. (Can.) 293.—CAN.

TISING Co., LTD. *v.* WHITING (1931), 47 T. L. R. 420, C. A.

2344b. As between transferee & other shareholders.]—The holders of shares, bought in open market, although they may have been fraudulently issued by the directors, cannot on that ground claim relief against the other shareholders, whatever may be their rights & remedies against the directors.—*Re* MEXICAN & SOUTH AMERICAN CO., GRISEWOOD & SMITH'S CASE, DE PASS'S CASE (1859), 4 De G. & J. 544; 28 L. J. Ch. 769; 33 L. T. O. S. 322; 5 Jur. N. S. 1191; 7 W. R. 681; 45 E. R. 211, L. JJ.

Annotations:—**Consd.** *Re* Athenæum Life Assce. Soc., Chinnock's Case (1860), John. 714; *Re* Phœnix Life Assce., *Ex p.* Hatton (1862), 31 L. J. Ch. 340; *Re* Discoverers Finance Corpn., [1908] 1 Ch. 111. **Refd.** *Re* Royal British Bank, Mixer's Case (1859), 4 De G. & J. 575; *Re* Mexican & South American Co., Costello's Case (1860), 2 De G. F. & J. 302; *Re* Esgair Mwyn Mining Co., Alexander's Case (1861), 3 L. T. 883; *Re* Consols Insce. Assocn., Benham's Case (1865), 11 Jur. N. S. 381; *Re* National & Provincial Marine Insce., *Ex p.* Parker (1867), 2 Ch. App. 685; *Re* Smith, Knight, Weston's Case (1868), L. R. 6 Eq. 238; Spackman *v.* Evans (1868), 19 L. T. 151; *Re* Asiatic Banking Co., *Ex p.* Collum (1869), 21 L. T. 350; *Re* Bank of Hindustan, China & Japan, *Ex p.* Kintrea (1869), 5 Ch. App. 95; *Re* Consols Insce. Assocn., Glanville's Case (1870), L. R. 10 Eq. 479; *Re* Smith, Knight, Battie's Case (1870), 39 L. J. Ch. 391; *Re* European Bank, Masters' Case (1871), 7 Ch. App. 292; *Re* Great Wheal Busy Mining Co., King's Case (1871), 40 L. J. Ch. 361; R. *v.* Lambourn Valley Ry. (1888), 22 Q. B. D. 463; *Re* Discoverers Finance Corpn., Lindlar's Case, [1910] 1 Ch. 312.

2347. *Add. Annotation:*— **Refd.** Delavenne *v.* Broadhurst, [1931] 1 Ch. 234.

2356. *Add. Annotation:*—**Followed.** Conybear *v.* British Briquettes, Ltd., [1937] 4 All E. R. 191.

2356a. —— —— ——.]—CONYBEAR *v.* BRITISH BRIQUETTES, LTD., No. 2590a, *post.*

2389. For the paragraph in the original volume substitute the following paragraph:—

—— **Board equally divided.**]—Under an art equivalent to Table A, art. 22, the extrix. of a deceased member of a co. had the right to be registered as a member, subject to the directors' absolute discretionary right to decline such registration. At a board meeting of the two directors to consider the extrix.'s application for registration, one director proposed & the other opposed registration. The board being equally divided, & there being no casting vote, the proposal was not carried, & the secretary was instructed to write to the extrix.'s solrs. accordingly & to return all the documents, namely, a transfer by the extrix. to herself certificates & registration fee:—*Held:* the board's right of declining registration required to be actively exercised by a vote of the board *ad hoc*, & the mere failure to pass the proposed resolution for registration was not a formal active exercise of the right to decline; the extrix.'s absolute right to registration therefore remained intact, & the register must be rectified accordingly.—*Re* HACKNEY PAVILION, LTD., [1924] 1 Ch. 276; 93 L. J. Ch. 193; 130 L. T. 658.

2390a. Presumption of bona fides.]—By one of the articles of assocn. of deft. co. it was provided that: "The directors may decline to register any transfer of shares made by a member who is indebted to the co., or in case the transferee shall be a person of whom the directors do not approve or shall be considered by them to be objectionable or the transfer shall be considered as having been made for purposes not conducive to the interest of the co. & the directors shall not be bound to specify the grounds upon which the registration of any transfer is declined under this article." A shareholder sought to transfer a number of his shares, but the directors declined to register the transfer. By another article the holder of 1 share and 1 vote, the holder of 5 shares had 2 votes & there was an additional vote for every additional 10 shares, with the result that by splitting a holding of shares, the voting power could be increased. It was alleged that the directors had systematically rejected transfers in order to prevent an increase in the voting power of the shareholders. In an action to enforce registration of the transfer it was sought to adduce evidence that the directors had refused registration in accordance with that systematic practice:—*Held:* (1) evidence as to the rejection of transfers on previous occasions was inadmissible, as it could not be material to the issue in the present case; (2) in the absence of evidence to the contrary the directors must be taken to have acted reasonably & *bonâ fide*, & as they were not bound to disclose their reasons, there was no ground for interfering with their exercise of their discretion.—BERRY & STEWART *v.* TOTTENHAM HOTSPUR FOOTBALL & ATHLETIC CO., LTD., [1936] 3 All E. R. 554; 53 T. L. R. 100; 80 Sol. Jo. 954.

2408. *Add. Annotation:*—**Refd.** Berry *v.* Tottenham Hotspur Football & Athletic Co., [1936] 3 All E. R. 554.

2409. After this case add:—

——.]—*Compare* DISCOVERY, Nos. 1705a, 1705b, *post.*

2412. *Add. Annotation:*—*As to* (1) **Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

2419. *Add. Annotations:*—**Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1934), 151 L. T. 1, H. L. **Distd.** Peterborough Trust, Ltd. *v.* Steel Industries of Great Britain, Ltd. (1934), 78 Sol. Jo. 861. **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

2419a. —— ——.]—Where in fact the secretary of a co. is permitted to certify transfers, his authority in that behalf only extends to acknowledging the receipt of certificates which are in fact lodged, &, if he certifies a transfer when no certificate has in fact been lodged, his statement in that behalf is not in law the statement of the co.—KLEINWORT, SONS & CO. *v.* ASSOCIATED AUTOMATIC MACHINE CORPN., LTD. (1934), 151 L. T. 1; 50 T. L. R. 244; 78 Sol. Jo. 153; 39 Com. Cas. 189, H. L.

Annotation:—**Distd.** Peterborough Trust, Ltd. *v.* Steel Industries of Great Britain, Ltd. (1934), 78 Sol. Jo. 861.

PART III. SECT. 23, SUB-SECT. 5.—B. (a).

b i. ——.]—A provision in the charter of a co. incorporated under Ontario Cos. Act, that "the shares of the co. shall not be transferred without the consent of the board of directors" is valid.—*Re* PHILLIPS & LA PALOMA SWEETS, LTD. (1921), 66 D. L. R. 577; 51 O. L. R. 125.—**CAN.**

PART III. SECT. 23, SUB-SECT. 5.—B. (b) ii.

2373 ii. —— ——.]—*Re* PHILLIPS & LA PALOMA SWEETS, LTD. (1921), 66 D. L. R. 577; 51 O. L. R. 125.—**CAN.**

2427a. Party registered as executor—Subsequently becoming owner—Duty of company to register without formality of transfer.]—Pltf. was the exor. of a testator who died in 1928 possessed of four debentures in the deft. co. He gave the residue of his estate to pltf. & to his widow in equal shares. Pltf. in due course was registered with the co. in his representative capacity on production of the probate, & on a division of the estate later on he claimed to be registered as owner, he having accepted the debentures as part of his share. The co. refused & required a transfer to be executed to himself under condition 4 endorsed. Pltf. refused to comply & commenced this action, claiming a declaration that he was entitled to be registered as owner without any such formality as required:—*Held:* in the circumstances, the transfer asked by the co. was an idle formality. They were bound to register the person entitled, & had already registered pltf. in his representative capacity & ought now to do so as owner. He was entitled to the declaration asked.—EDWARDS *v.* RANSOMES & RAPIER, LTD. (1930), 143 L. T. 594.

2452a. —— —— Transfer to director of overpayments made to vendor by company.]—A partnership business was sold to a co. for a sum of money which was satisfied by an allotment to the vendors of a number of fully paid shares in the co. It was subsequently discovered that, owing to mistake in the valuation, the partners had been overpaid by the co., &, in order to adjust the matter, two of them, on behalf of themselves & their co-vendors, voluntarily transferred to the chairman of the board of directors of the co. 3,000 shares upon trust to use or sell them for the benefit of the co. An action was commenced against the chairman of the board of directors & the co. in which the pltfs. claimed that he held the shares as trustee for the individual shareholders & in which they sought an injunction restraining him from voting, at any meeting of the co., as the holder of the shares:—*Held:* (1) on the evidence, the chairman of the board of directors held the shares, not for the benefit of the individual shareholders, but for the benefit of the co., & that he held them on trust, at his discretion, to sell them; (2) the transfer did not offend against any principle laid down by any of the decided cases, & that the transaction was not made invalid by reason of the transfer having been made to a nominee on trusts which involved an obligation on the trustee to vote in respect of the shares as the co. might from time to time direct.—KIRBY *v.* WILKINS, [1929] 2 Ch. 444; 142 L. T. 16.

Annotation:—**Refd.** Lowe *v.* Peter Walker (Warrington) & Robert Cain & Sons, Ltd. (1935), 80 Sol. Jo. 32.

2456a. Provision of financial assistance by company for purchase of own shares—1929 Act, s. 45—What amounts to.]—Deft., being a director & manager of pltf. co., who carried on business as garage proprietors & motor-car dealers, entered into a written agreement with the co. in consideration of a cash payment to resign both positions, covenanting also not to carry on or assist in carrying on a similar business within a certain radius for a period of five years. The agreement further provided that he should transfer his shareholding in the co. to another director for £250, & this sum was paid to him by a cheque drawn on the co.'s account:—*Held:* (1) assuming the agreement to be one between employer & employee, the restrictive covenant was not rendered invalid as being contrary to public policy by reason of the fact that it was entered into on the termination of the employment instead of at the beginning; (2) if the payment for the shares by co.'s cheque was such as to contravene sect. 45 (1) of 1929 Act & to render the co. liable to a fine under sub-sect. (3), which was not proved, the agreement was not thereby rendered invalid.—SPINK (BOURNEMOUTH), LTD. *v.* SPINK, [1936] Ch. 544; [1936] 1 All E. R. 597; 105 L. J. Ch. 165; 155 L. T. 18; 52 T. L. R. 366; 80 Sol. Jo. 225.

2463. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* Allan (1925), 9 Tax Cas. 234; Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

2473a. ——.]—*Re* SMITH, KNIGHT & CO., HAKIM'S CASE (1869), 7 Ch. App. 296, n.

2475. *Add. Annotation:*—**Apld.** Delavenne *v.* Broadhurst, [1931] 1 Ch. 234.

PART III. SECT. 23, SUB-SECT. 8.—A. (b).

2428 ii. —— ——.]—An agreement for the sale of shares does not imply a further agreement to have the transferee's name registered as the holder.—DOMINGO *v.* DE SOUZA (1928), I. L. R. 50 All. 695.—**IND.**

r i. —— *Claim to registration by assignee of insolvent member.*]—The arts. of assocn. of a proprietary co. provided that the regulations in Table A, in the Companies Act should not apply, but contained no transmission clause providing for the registration as a member of the co. of any person becoming entitled to shares in consequence of the insolvency of a member. The directors were given power in their discretion to refuse to register the transfer of shares to any person they should not approve as transferee. On the insolvency of one of the members the directors declined to register his assignee in insolvency as a member in respect of the insolvent's shares. The assignee applied to the ct. to order rectification of the register of members by inserting therein his name as the holder of the shares:—*Held:* the application must be refused.—*Re* W. & G. DEAN PROPRIETARY, LTD. (1929), V. L. R. 140.—**AUS.**

sd. *Certificate stolen.*]—WHITEHEAD *v.* BRIDGER HEVENOR & CO., [1936] 3 D. L. R. 408; 6 F. L. J. (Can.) 5.—**CAN.**

PART III. SECT. 23, SUB-SECT. 12.—A.

2455 i. *Loss of right to impeach—Transfer acted on by parties & company.*]—WAIRAKEI, LTD. *v.* CLEAVE, [1925] N. Z. L. R. 624.—**N.Z.**

PART III. SECT. 23, SUB-SECT. 13.—A.

so. *Transfer of shares of director's wife.*]—Resp. was the holder of shares not fully paid up in the bkpt. co. Her husband was a director of the co., & she had given him a power of attorney authorising him to indorse & transfer her certificates & transact any business with the co. which she could transact in person. Resp. was also a shareholder in another co. of which her husband was a director. Under the constitution of the bkpt. co. its shareholders could not sell or dispose of their shares except with the leave of the directors evidenced by a resolution of the board. All the directors of the bkpt. co. except one were indebted to it on their shares. At meetings of the directors where as a result of a pre arrangement each director in turn except the one not indebted, refrained from voting on resolutions in which he was interested, resolutions were passed, in pursuance of the pre-arranged scheme, which resolutions authorised the exchange of resp.'s shares in the bkpt. co. for shares in the other co. & the purchase from her by the bkpt. co. of the shares so received by her from the other co., the purchase-price being payable by crediting her with full settlement of the amount owing by her to the bkpt. co. Similar resolutions were passed with respect to the shares & indebtedness of the indebted directors. Her husband voted on the resolutions affecting her:—*Held:* apart from the question of the validity of the resolutions, the transaction should be set aside on the ground that it was a sham & did not fall within the cases in which it has been held that a *bonâ fide* out-&-out transfer of partially paid shares on the eve of insolvency of a co. will be upheld, even though made to an insolvent & for the purpose of getting rid of the liability thereon.—CLARK (R. P.) & Co., *Re*, SHIMMIN *v.* CLARK, [1932] 2 W. W. R. 370; [1933] 3 D. L. R. 702; 45 B. C. R. 355.—**CAN.**

2523. *Add. Annotations :*— **Distd.** *Re* Park Ward, [1926] Ch. 828. **Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

2578. *Add. Annotation :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

2580. *Add. Annotation :*— **Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

2585a. Article restricting right of transfer—Construction.]—Arts. of assocn. restricting transfer of shares must be so construed as not unreasonably to prevent shareholders from fairly & reasonably exercising their powers as members of the co.

Testator appointed his wife, a son, & two other persons exors. & trustees of his will, whereby he bequeathed his residuary estate to the trustees on trust to sell & convert & to hold the proceeds, after the wife's death, upon trust as to one-third thereof for the said son, & as to the remaining two-thirds for the other children of testator alive at testator's death. The residue included shares in the co., some in testator's name, the remainder in the name of another as his nominee or as trustee for him. The will was proved by the widow & the son only. They caused these shares to be registered in their own names without qualification, as the arts. of the co. disqualified transferees from receiving notice of or voting at meetings. Later they appointed an additional trustee of the will; & in order to vest the shares jointly in them & him, all three executed a transfer. This was presented to the co. for registration, but registration was refused on the ground that the restrictions on transfer imposed by the articles applied :—*Held :* the transfer could be justified under the arts.—*Re* HOBSON, HOUGHTON & Co., [1929] 1 Ch. 300; 98 L. J. Ch. 140; 140 L. T. 496.

2585b. —— —— **Right to transfer to another member of company.**—Certain shareholders in a private co. commenced an action to restrain certain members of the co. from transferring shares otherwise than in accordance with the arts. of assocn. The substantial question, which came before the ct. upon motion, was whether one member was entitled, under the articles, to transfer shares to another member. The material articles were as follows :—

Art. 5 : "The directors may in their absolute & uncontrolled discretion refuse to register any proposed transfer of shares, & clause 20 of Table A shall be modified accordingly. No shares shall in any circumstances be transferred to any infant, bkpt., or person of unsound mind. Save as hereby otherwise provided, no share shall be transferred to any person who is not a member of the co. so long as any member or failing such member any person selected by the directors is willing to purchase the same at the fair value which shall be determined as hereinafter provided." Art. 6 : "In order to ascertain whether any member or person selected as aforesaid is willing to purchase a share at the fair value, the person whether a member of the co. or not proposing to transfer the same, hereinafter called 'the retiring member,' shall give notice in writing, hereinafter described as a 'sale notice,' to the co. that he desires to sell the same, & until otherwise determined by the co. in general meeting the same shall be offered among the holders of ordinary shares in proportion as near as may be to their existing holdings thereof and any not accepted by them shall be offered to such other persons as the directors shall determine. Such notice shall constitute the co. the agent of the retiring member for the sale of such shares to any member of the co. or a person selected as aforesaid at the fair value. No sale notice shall be withdrawn except with the sanction of the directors" :—*Held :* there was nothing in the language of arts. 5 & 6 which gave rise to the necessity of implying any restriction upon the right of a member of the company to transfer shares therein to another member. —DELAVENNE *v.* BROADHURST, [1931] 1 Ch. 234; 100 L. J. Ch. 112; 144 L. T. 342.

2589a. —— —— **Finance Act, 1927 (c. 10), s. 55.—What amounts to "issue" of shares**]—In connection with a scheme for the reconstruction of a company a new co. was formed to enter into a sale agreement to acquire the undertaking of the existing co. The consideration for the agreement was to consist, in addition to the discharge by the new co. of certain liabilities of the old co. of the allotment of shares in the new co. to the shareholders in the old co. Letters of allotment were sent to these shareholders, accompanied by a form of renunciation. Before the original allottees were registered some of them renounced in favour of other persons, with the result that of the first registered shareholders in the new co. those who had been shareholders in the old co. held less than 90 per cent. of the shares in the new co. The question of the stamp duty payable on the sale agreement & other documents was submitted for adjudication, the co. contending that the sending of the letters of allotment constituted an "issue" of shares to the original allottees, & that the conditions of exemption from *ad valorem* duty laid down in the Finance Act, 1927

PART III. SECT. 23, SUB-SECT. 14.—A.

2521 1. *Contract for sale of shares—Before presentation of petition—Whether void.*]—A share being a *jus in personam*, the mere fact that liquidation has intervened cannot, in the absence of a clear agreement to that effect, prevent enforcement of a purchase of shares concluded at a prior date, the purchaser taking the chance of any depreciation in market value meanwhile.—UNION SHARE AGENCY LIQUIDATORS *v.* HATTON, [1927] App. D. 240.—S. AF.

PART III. SECT. 23, SUB-SECT. 15.—A. (b) 1.

ss. *Purchase in name of infant—Whether complete gift of shares to infant.*]—In 1920 resp. purchased out of his own funds shares in a limited co., & directed that the shares should be registered in the name of his son who was then ten years old. The son attained his minority, in Scots law, in Sept. 1923. The share certificates were held by resp. until July, 1925, when he deposited them with his law agents on behalf of the son. Dividend warrants were issued regularly in the son's name. Resp., on behalf of the son, claimed repayment for the year ended Apr. 5, 1925, of the tax deducted from the dividends on the shares. The Crown contended (*a*) that to make a gift by a father to his son effective there must be a delivery either to the donee or to some third person for him; (*b*) that as the son was a pupil child at the date of the alleged gift he was incapable of acting or consenting, & that resp., as tutor of the pupil child, was the only person who could act for him; (*c*) that as resp. had done nothing beyond taking the title to the shares in the son's name, the shares remained under the control & at the disposal of resp. The claim was allowed by the General Comrs. who held that the shares had been effectively donated to the son & were his sole property :—*Held :* an effective donation of the shares had been made.—INLAND REVENUE COMRS. *v.* WILSON, [1928] S.C. (H. L.) 42; 13 Tax Cas. 789.—SCOT.

(c. 10), s. 55, were complied with. The Comrs. of Inland Revenue decided that *ad valorem* duty was payable:—*Held:* the allotment letter accompanied by the form of renunciation was not an issue of shares, but only notice that the allottee was entitled to demand that shares should be issued either to himself or, if he preferred it, to his nominee to be named in the form of renunciation. Therefore the Comrs. were right in claiming *ad valorem* duty.—OSWALD TILLOTSON, LTD. *v.* INLAND REVENUE COMRS., [1933] 1 K. B. 134; 101 L. J. K. B. 737; 147 L. T. 481; 48 T. L. R. 628, C. A.

Annotation:—**Reld.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567.

2589b. —— —— ——.]—In 1919 applt. co. acquired for cash nearly 42 per cent. of the issued share capital of the C. co. In 1936, in connection with a scheme for the amalgamation of the two cos., applt. co. acquired a further 55 per cent. of the issued share capital of the C. co. in exchange for the allotment to the shareholders of the C. co. of unissued share capital of applt. co.:—*Held:* the transfers of shares which were executed to carry out the latter transaction were not exempt from stamp duty under sect. 55 (1) (B) of Finance Act, 1927 (c. 10), since the subsect. contemplated the acquisition under a scheme of amalgamation by an issue of unissued capital of not less than 90 per cent. of the share capital of an existing co. The acquisition in this manner of the balance required over & above shares previously acquired for cash to make up not less than 90 per cent. of the share capital of an existing co. did not fall within the sub-sect.—LEVER BROS., LTD. *v.* INLAND REVENUE COMRS., [1938] 2 K. B. 518; [1938] 2 All E. R. 808; 107 L. J. K. B. 669; 159 L. T. 136; 54 T. L. R. 892; 82 Sol. Jo. 452, C. A.

2590a. —— —— ——.]—Those in control of deft. co. were desirous of converting it into a private co., & pltfs. were anxious to prevent this being done. With this purpose in view pltfs. executed 44 transfers, each being a transfer of five £1 shares for a stated consideration of £5. Each transfer was stamped 1*s.* (which is the correct duty on a transfer for £5), but bore no adjudication stamp. It was proved that no consideration money passed, & that the transfers were not transfers upon a sale of the shares. The co. refused to register the transfers for the reason that they were not duly stamped:—*Held:* (1) the co. was justified in refusing to register the transfers. The transfers, not being conveyances on sale, must be stamped either as voluntary conveyances, in which case Finance (1909–10) Act, 1910 (c. 8), s. 74 (2), required that the stamp duty should be adjudicated, or under Sched. to the Stamp Act, 1891 (c. 39), as conveyances or transfers of any kind not thereinbefore described, in which case that Act required them to be stamped 10*s.*; (2) following *Maynard* v. *Consolidated Kent Collieries Corpn.*, [1903] 2 K. B. 121; 9 Digest 370, *3256*, the directors, in considering whether the transfer was duly stamped, were entitled to go behind the consideration stated in the transfer.—CONYBEAR *v.* BRITISH BRIQUETTES, LTD., [1937] 4 All E. R. 191; 81 Sol. Jo. 943.

2608. *Add. Annotation:*—**Reld.** *Re* Cooper (Cuthbert) & Sons, Ltd., [1937] Ch. 392.

2637. *Add. Annotation:*—**Reld.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2646. *Add. Annotation:*—**Reld.** Ellis Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

2658. *Add. Annotation:*—**Reld.** Weld *v.* Petre, [1929] 1 Ch. 33.

2667a. —— **What amounts to sale.**]—Stock transferred as a security for a floating balance, & under an agreement to continue it transferred & re-transferred by & to the creditor by way of loan:—*Held:* a sale.—*Ex p.* DENNISON (1797), 3 Ves. 552; 30 E. R. 1152, L. C.

Annotation:—**Apld.** Langton *v.* Waite (1868), L. R. 6 Eq. 165.

2669. *Add. Annotation:*—**Reld.** Ellis Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

2689a. —— **Whether mortgagee bound to obtain best price.**]—*Semble:* a mtgee. of shares is not bound to watch the market so as to sell them at the highest price; & he does not by failing to sell at the most favourable opportunity lose his right to prove against the estate of the mtgor.—*Re* MCMURDO, PENFIELD *v.* MCMURDO, [1902] 2 Ch. 684; 71 L. J. Ch. 691; 86 L. T. 814; 50 W. R. 644, C. A.

2694. *Add. Annotation:*—**Apld.** Weld *v.* Petre, [1929] 1 Ch. 33.

2703a. —— **No lien conferred by articles of association.**]—Bye-laws of applt. bank, made under its Act of incorporation, provided: (44.) "the directors may decline to register any transfer of a share made by a shareholder who is indebted to the bank"; (57.) "the directors may deduct from the dividends payable to any shareholder all sums of money due by him to the bank on account of calls or otherwise." In Nov. 1924, the registered holder of two shares assigned them in writing to resp. as security for money due; he executed no transfer but deposited the share certificate with resp. In May 1925, the bank, which had no notice of the assignment, obtained judgment against the shareholder for money due from him, & seized the shares in execution. There was no evidence that the shareholder's liability to the bank existed at the date of the assignment:—*Held:* the bye-laws gave the bank no lien on the shares for the debt to them, & resp. was entitled under the assignment to a charge in priority to the bank's rights under the execution.—BANK OF N. T. BUTTERFIELD & SON, LTD. *v.* GOLINSKY, [1926] A. C. 733; 95 L. J. P. C. 162; 135 L. T. 584, P. C.

2705. *Add. Annotation:*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2706. *Add. Annotation:*—*As to* (1) **Distd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2707. *Add. Annotation:*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

PART III. SECT. 24, SUB-SECT. 5.

2645 1. *Whether gift complete.*]—Gifts of shares:—*Held:* not complete until at least the transfers were handed to the respective transferees.—COMMISSIONER OF STAMPS *v.* TODD, [1934 N. Z. L. R. 345.—N.Z.

PART III. SECT. 26, SUB-SECT. 1.—A.

ss. *Surrender for cancellation—Failure of company to observe terms—Whether enforceable by injunction.*]—McDOUGALD *v.* WILSON, [1933] 3 D. L. R. 111.—CAN.

2715. *Add. Annotation :*—**Expld.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2748a. Forfeiture contrary to scheme of arrangement.]—SRIMATI PREMILA DEVI *v.* PEOPLES BANK OF NORTHERN INDIA, LTD., [1938] 4 All E. R. 337, P. C.

2769. *Add. Annotation :*—**Distd.** *Re* Burradon & Coxlodge Coal Co., Martin's Bank *v.* The Co. (1930), 23 B. W. C. C. 7.

2793. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2798a. —— For what amount—Shares reissued.]—(1) Where a co. in pursuance of its arts. of assocn. has forfeited shares for non-payment of moneys due on allotment & calls, & the arts. provide that notwithstanding forfeiture the ex-shareholder shall be liable to pay all calls or other money owing upon the shares at the time of the forfeiture, & the shares are subsequently sold & reallotted to other persons with the result of a loss to the co., the co. on the subsequent bpkcy. of the ex-shareholder is only entitled to prove for the actual loss suffered, that is the difference between the amount received on the reallotment of the forfeited shares & the amount due at the date of the forfeiture.

(2) Any payment of the uncalled capital by the new allottees must enure for the benefit of the original allottee who has forfeited the shares & release him *pro tanto* in respect of the damages for which his breach of contract in failing to pay the calls rendered him liable. —*Re* BOLTON, *Ex p.* NORTH BRITISH ARTIFICIAL SILK, LTD., [1930] 2 Ch. 18; 99 L. J. Ch. 209; 143 L. T. 425; [1929] B. & C. R. 141.

2799. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2820a. —— ——.]—*Re* BOLTON, *Ex p.* NORTH BRITISH ARTIFICIAL SILK, LTD., No. 2798a, *ante*.

2821. *Add. Annotation :*—**Consd.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

2822. *Add. Annotation :*—**Apld.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

2823. After this case add :—

——.]—*See, now*, Companies Act, 1929 (c. 23), s. 142.

2833a. —— Appointment by majority—Validity.]—The rule of corpn. law that when a duty is delegated to a body of persons those persons can act at a meeting does not apply to the case of arts. of assocn. of cos. incorporated under Cos. Act.

By Art. 90A of the arts. of assocn. of a co. it was provided as follows : "the governing directors shall have power from time to time & at any time to appoint & remove at will additional directors & to define & limit their powers & duties provided that the total number of directors shall not exceed the prescribed maximum. Any director so appointed shall retire from office at the next general meeting, but shall be eligible for re-election subject to the approval of the governing directors. In all questions arising the opinion of the governing director or directors shall prevail." Two out of the three governing directors of the co. having, against the will of the third, by a resolution purported to appoint additional directors :—*Held :* on the construction of Art. 90A, the powers conferred on the governing directors by that article were to be exercised by all of them, & the resolution was, therefore, invalid.—PERROTT & PERROTT, LTD. *v.* STEPHENSON, [1934] Ch. 171; 103 L. J. Ch. 47; 150 L. T. 189; 50 T. L. R. 44; 77 Sol. Jo. 816.

2839. *Add. Annotations :*—**Distd.** Worcester Corsetry, Ltd. *v.* Witting, [1936] Ch. 640; **Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

2840. *Add. Annotation :*—*As to* (2) **Apld.** Worcester Corsetry, Ltd. *v.* Witting, [1936] Ch. 640.

2841a. ——.]—The arts. of a co. provided (art. 12): "Until otherwise determined by a general meeting the number of directors shall not be less than two nor more than seven." The arts. also adopted arts. 83 & 85 of Table A, 1908 Act :—*Held :* the power of appointing additional directors had not been delegated to the directors so as to exclude the inherent power of the co. in general meeting to appoint directors.—WORCESTER CORSETRY, LTD. *v.* WITTING (1932), [1936] Ch. 640; 105 L. J. Ch. 385, C. A.

2844. *Add. Annotation :*—**Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

2850. *Add Citation :*—13 Mans. 316.

2854. *Add. Annotation :* — **Refd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

2856. *Add. Annotation :*—*As to* (3) **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

2879a. —— ——.]—(1) A private co. was governed partly by special arts. & partly by Table A. Table A, art. 70, fixed the qualification of a director as "the holding of at least one share." Special art. 20 empowered the directors to appoint any other "qualified person" either to fill a casual vacancy or as an addition to the board. At a full board meeting on Saturday, Nov. 14, transfers of shares to two outsiders were duly passed for registration, after which the transferees were forthwith elected directors. The transfers were registered on the following Monday :—*Held :* though before their appointment the transferees had acquired an absolute right to registration, they were not "qualified persons" before actual registration, & their appointment as directors was invalid.

(2) A director was due to retire by rotation at the annual general meeting on Wednesday, Nov. 11, & part of the business of which notice was given was the election of a director in his place. The retiring director's re-election was moved at the meeting, but the matter, though discussed, was not finally dealt with, & the meeting was

---

PART III. SECT. 26, SUB-SECT. 1.—C.

sb. *Fraudulent cancellation by company—Bar to action—Laches.*]—PATTERSON *v.* VULCAN IRON WORKS, LTD. (B. C.), [1929] 4 D. L. R. 508; *on appeal*, [1930] 1 W. W. R. 640; 2 D. L. R. 961; 42 B. C. R. 300.—**CAN.**

PART III. SECT. 27, SUB-SECT. 5.—A. m i. —— *Plea of limitation.*]—HABIB ROUJI *v.* STANDARD ALUMINIUM & BRASS WORKS, LTD. (1925), I. L. R. 49 Bom. 715.—**IND.**

PART III. SECT. 28, SUB-SECT. 1.—C. q i. —— *Omission of bye-law authorising alteration in number.*]—MCKENNA *v.* SPOONER OILS, LTD., [1934] 1 W. W. R. 255.—**CAN.**

PART III. SECT. 28, SUB-SECT. 1.—D. c. Add "*varied*, 38 O. L. R. 414; 33 D. L. R. 487."

PART III. SECT. 28, SUB-SECT. 2.—A. a. Add "*varied*, 9 A. R. 620."

adjourned successively to Thursday, Nov. 12, Saturday, Nov. 14, & Tuesday, Nov. 17. At the last adjournment the original motion for the retiring director's re-election was put & lost, & another shareholder was proposed & elected in his place:—*Held:* as the adjourned meeting was merely a continuation of the original meeting at which the question of the retiring director's re-election or replacement was considered, the proceedings were in order, & Table A, art. 82, had no application. (3) *Semble:* Table A, art. 82, only applies to a case where the retirement of a director by rotation & the necessity for his re-election or replacement is entirely lost sight of at the annual meeting.—SPENCER *v.* KENNEDY, [1926] Ch. 125; 95 L. J. Ch. 240; 134 L. T. 591.

Annotation:—As to (3) **Dbtd.** Holt *v.* Catterall (1931), 47 T. L. R. 332. (I am not satisfied that Mr. JUSTICE ASTBURY, by his remarks at p. 135, meant to say anything of the kind, *per* MAUGHAM, J.)

2889. *Annotations:*—For "Howard *v.* Sadler, [1895] 1 Q. B. 1" read "Howard *v.* Sadler, [1893] 1 Q. B. 1.

2895a. Transfers of shares passed before election—Transfers not registered until after election.]—SPENCER *v.* KENNEDY, No. 2879a, *ante*.

2905. Add the following paragraph:—

(3) As to the shares taken for attendance fees, I am also of opinion that applts. are not liable to contribute in respect of those shares. They were taken, &, s it seems to me, improperly taken, as paid-up shares, but the same principles which apply to the 100 shares apply, as I think, to these shares also (TURNER, L.J.).

2922. *Add. Annotations:*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576; *Re* Farrer (T. N.), Ltd., [1937] Ch. 352.

2944. *Add. Annotations:*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; *Re* Etic, [1928] Ch. 861.

2965a. Remuneration not authorised by general meeting.]—Pltf. was a director of deft. co., which had adopted Table A with some modifications, & at a meeting of the board a service agreement was approved, signed, & sealed appointing pltf. "overseas director" at a salary of £1,800 a year. Pltf. proceeded overseas & performed his duties under the agreement till differences arose & he resigned. In an action by pltf. for salary due under the agreement:—*Held:* the agreement was *ultra vires* the board, & since pltf.'s remuneration had never been determined by the co. in general meeting, as required by Table A, art. 69, he could not recover, but must repay to the co. on their counterclaim the money paid to him under the agreement.—KERR *v.* MARINE PRODUCTS, LTD. (1928), 44 T. L. R. 292.

2972. *Add. Annotations:*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

2973. *Add. Annotation:—As to* (2) **Refd.** Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

2977. *Add. Annotation:*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

2988a. Remuneration dependent upon determination of proportions by directors.]—KNIGHT *v.* WORLD BARTER & TRADING CO., LTD. (1935), 79 Sol. Jo. 214, C. A.

2996. *Add. Annotation:*—**Refd.** *Re* Farrer (T. N.), Ltd., [1937] Ch. 352.

3005. *Add. Annotations:—Generally,* **Refd.** Knight *v.* World Barter & Trading Co. (1934), 78 Sol. Jo. 840; *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

3014. *Add. Annotation:*—**Distd.** Williams *v.* Barton, [1927] 2 Ch. 9.

3022. *Add. Annotation:*—**Refd.** *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

PART III. SECT. 28, SUB-SECT. 2.—B.

sd. *Shares not required to be held in own right—How far beneficial ownership necessary—Effect of bankruptcy.*]—An insolvent, who is registered as a member of a co. in respect of shares therein, is the holder of the shares & is the person who must be taken to be referred to in an agreement or an art. which declares the tenure of the managing director to depend on his being the "holder of shares." In this respect there is a distinction between the words "holder" & "holder in his own right."—*Re* CAMBERWELL MOTORS PTY., LTD., [1926] V. L. R. 539; [1926] Argus L. R. 421.—AUS.

PART III. SECT. 28, SUB-SECT. 3.—A.

2958 ii. —— —— *Director acting as secretary-treasurer.*]—*Held:* Cos. Act, R. S. A., 1922 (c. 156), Table A, art. 54, did not deal with the remuneration of a secretary-treasurer, performed by one who was also a director.—ANDERSON *v.* HERBERT PAINT & VARNISH CO., LTD. (Alta.), [1927] 3 W. W. R. 809.—CAN.

2958 iii. —— —— *Gratuity—Not by way of remuneration for services.*]—Bye-laws passed by the directors of deft. co., & said to have been confirmed by the shareholders at a special general meeting, providing for the transfer by deft. co. to the three individual defts. of shares in another co. as remuneration for past services as directors & officers, were attacked in this action by shareholders in deft. co.:—*Held:* there was no agreement binding on deft. co. to pay for the services rendered by the co-defts. & the payments provided for in the bye-laws must be treated as gratuities.—LUMBERS *v.* FRETZ, [1929] 1 D. L. R. 51; 63 O. L. R. 190.—CAN.

PART III. SECT. 28, SUB-SECT. 3.—B. (a).

c i. *Services requiring expert & technical knowledge.*]—Where the services of a director did not fall within the scope of the ordinary unpaid duties of director, but were of a highly technical character, & the proper conduct of the business required expert & technical knowledge which it was not easy to obtain:—*Held:* he was entitled to a reasonable remuneration for such services.—DUROST *v.* HOME-MIXED FERTILIZERS, LTD., [1924] 4 D. L. R. 241; 51 N. B. R. 357.—CAN.

PART III. SECT. 28, SUB-SECT. 3.—B. (d).

i. ——— ———.]—Two of the directors of an Alberta co. who, at the time in question, owned in the aggregate all but 40 of its 1,000 issued shares, & who managed its business virtually as a partnership, agreed to, & did, pay themselves a bonus, in cash & in shares owned by the co., as extra remuneration for their services. Under the arts. of assocn. the bonuses in question could have been authorised by the directors of the co. The only remaining director on learning of the arrangement approved of it; & it appeared that all the shareholders had been willing that all the business of the co. should be carried on by said two directors without consultation with the shareholders. The payment of the bonuses was not, however, authorised at a directors' meeting or by a resolution signed by the directors; nor was any shareholders' meeting held to pass on it, & it was not proven that both of the two remaining shareholders other than the directors had individually assented thereto. Subsequently under an agreement to which the co. was a party, deft. C., one of said two directors, sold his shares to the other at an agreed valuation based on the assumption that the bonuses had been legally paid. In an action by the co. to compel the return of the shares received by C. as such bonus or for damages in lieu thereof:—*Held:* in the absence of a directors' meeting or resolution signed by the directors, the payment of the bonuses was invalid, & the co. was entitled to judgment.—GRAY & FARR, LTD. *v.* CARLILE, [1931] 2 W. W. R. 526; 3 D. L. R. 785; *affd.*, [1932] 1 D. L. R. 391.—CAN.

PART III. SECT. 28, SUB-SECT. 3.—C.

3019 i. Add "*varied*, [1902] A. C. 83."

am. *Increase of liabilities—Mortgage—Fraud on creditors—Ultra vires.*]—PLAIN, LTD. (TRUSTEE) *v.* KENLEY & ROYAL TRUST CO., [1931] 1 D. L. R. 468; 66 O. L. R. 179; *affd.*, [1931] 2 D. L. R. 801; O. R. 75; 12 C. B. R. 492.—CAN.

3025a. —— Company thereby induced to carry on business.]—F. was the governing director of a limited co. In Feb. 1934, at F.'s suggestion, a resolution was passed by the directors that no fees should be paid to the directors from Oct. 1, 1933, until it should be resolved otherwise. A minute of this resolution was read & confirmed on May 7, 1934, & it was acted upon by the co. F. having subsequently become bkpt., & the co. having passed a resolution that it be voluntarily wound up, the trustee in F.'s bkpcy. sought to prove in the liquidation for F.'s fees as a director subsequent to Oct. 1, 1933 :—*Held :* the resolution was not a mere act of benevolence on the part of the directors, but was intended to induce the co. to carry on its business, & the co. having carried on its business in reliance on the resolution, no claim could now be made by a director in respect of his fees subsequent to Oct. 1, 1933. —*Re* PORTER (WILLIAM) & Co., LTD., [1937] 2 All E. R. 361.

3033. *Add. Annotation :*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

3055a. —— Tranfer to director of overpayments made to vendoi by company—Discretionary trust for sale.]—KIRBY *v.* WILKINS, No. 2452a, *ante.*

3059. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3059a. —— ——.]—(1) The manner in which the work of a co. is to be distributed between the board of directors & the staff is a business matter to be decided on business lines. The larger the business carried on by the co. the more numerous & the more important the matters that must of necessity be left to the managers, the accountants, & the rest of the staff.

(2) In ascertaining the duties of a director of a co., it is necessary to consider the nature of the co.'s business & the manner in which the work of the co. is, reasonably in the circumstances & consistently with the arts. of assocn., distributed between the directors & the other officials of the co.

(3) In discharging those duties, a director (*a*) must act honestly, & (*b*) must exercise such degree of skill & diligence as would amount to the reasonable care which an ordinary man might be expected to take, in the circumstances, on his own behalf. But, (*c*) he need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge & experience ; in other words, he is not liable for mere errors of judgment ; (*d*) he is not bound to give continuous attention to the affairs of his co. ; his duties are of an intermittent nature to be performed at periodical board meetings, & at meetings of any committee to which he is appointed, & though not bound to attend all such meetings he ought to attend them when reasonably able to do so ; & (*e*) in respect of all duties which, having regard to the exigencies of business & the arts. of assocn., may properly be left to some other official, he is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly.

(4) A director who signs a cheque that appears to be drawn for a legitimate purpose is not responsible for seeing that the money is in fact required for that purpose, or that it is subsequently applied for that purpose, assuming, of course, that the cheque comes before him for signature in the regular way, having regard to the usual practice of the co. A director must of necessity trust to the officials of the co. to perform properly & honestly the duties allocated to them.

Before any director signs a cheque, or parts with a cheque signed by him, he should satisfy himself that a resolution has been passed by the board, or committee of the board, as the case may be, authorising the signature of the cheque ; & where a cheque has to be signed between meetings, he should obtain the confirmation of the board subsequently to his signature.

The authority given by the board or committee should not be for the signing of numerous cheques to an aggregate amount, but a proper list of the individual cheques, mentioning the payee & the amount of each, should be read out at the board or committee meeting & subsequently transcribed into the minutes of the meeting.

(5) It is the duty of each director to see that the co.'s moneys are from time to time in a proper state of investment, except so

PART III. SECT. 28, SUB-SECT. 4.—A.

3028 i. *Right to act as director—Attendance of meetings—Conviction for criminal offence.*]—BOAK *v.* WOODS, [1926] 1 D. L. R. 1186 ; 36 B. C. R. 456.—**CAN.**

3029 i. *Right to act as director—Right to injunction.*]—An injunction may be granted on the application of a director restraining pltf.'s co-directors from wrongfully excluding him from acting as a director.—SARAT CHANDRA CHAKRAVARTI *v.* TARAH CHANDRA CHATTERJEE (1924), I. L. R. 51 Calc. 916.—**IND.**

PART III. SECT. 28, SUB-SECT. 4.—B.

3039 ii. ——.]—R., in his lifetime while acting in the capacity of managing director of a joint stock co., used moneys of the co. in commercial adventures & other investments for his personal gain & profit. After R.'s death his exors. paid back to the co. the principal money so used, but declined to account for the profits which R. had derived from the use thereof :—*Held :* as R. was to be regarded as a trustee of the co.'s moneys, his executors were liable to the co. in respect of such profits, which, or the equivalent interest, must be paid over to the co.—ROGERS HARDWARE CO. *v.* ROGERS (P. E. I.) (1913), 12 E. L. R. 493 ; 10 D. L. R. 541.—**CAN.**

3039 iii. —— *Shares acquired in new company by shareholder director—Paid for out of assets of old company in liquidation.*]—CHANDLER & MASSEY *v.* IRISH (1911), 20 O. W. R. 649 ; 3 O. W. N. 383 ; 25 O. L. R. 211.—**CAN.**

b i. —— —— —— *To other directors.*]—Sale by a director of his shares in good faith to other directors is not an act of misfeasance.—RICHARDS & CO.'S TRUSTEE *v.* COULSON, [1937] 3 D. L. R. 304 ; O. R. 568.—**CAN.**

d i. —— —— ——.]—Pltf., who was a director & vice-president of deft. co., acted as its solr., although not formally appointed as such, in a great number of matters, & was consulted, & his advice sought, by his co-directors & the officers of the co. His co-directors were aware of his so acting, & he was paid substantial amounts on account of the legal services rendered from time to time. He sued on an account for legal services rendered :—*Held :* he could not recover ; his position as director of the co. incapacitated him from engaging as its solr.—CAPE BRETON COLD STORAGE CO., LTD. *v.* ROWLINGS [1929] 3 D. L. R. 577 ; S. C. R. 505 ; *revg.*, [1929] 2 D. L. R. 519 ; 60 N. S. R. 460.—**CAN.**

3055 i. —— *Benefits of contract diverted to directors.*]—CONSOLIDATED COAL CO., LTD. *v.* BIG CHIEF WOODYARD, LTD. & MACFARLANE, [1934] 2 W. W. R. 433 ; 3 D. L. R. 668 ; 48 B. C. R. 241.—**CAN.**

PART III. SECT. 28, SUB-SECT. 4.—C.

3058 i. —— *Reasonable diligence.*]—In discharging his duties, a director must act honestly & must exercise such degree of skill & diligence as would amount to the reasonable care which an ordinary man might be expected to take in the circumstances in his own behalf.—GOVIND NARAYAN *v.* RANGNATH GOPAL (1929), I. L. R. 54 Bom. 226.—**IND.**

far as the arts. of assocn. may justify him in delegating that duty to others.

(6) Before presenting their annual report & balance sheet to their shareholders, & before recommending a dividend, directors should have a complete & detailed list of the co.'s assets & investments prepared for their own use & information, & ought not to be satisfied as to the value of their co.'s assets merely by the assurance of their chairman, however apparently distinguished & honourable, nor with the expression of the belief of their auditors, however competent & trustworthy.

(7) It is not the duty of a director of a big insurance co. to supervise personally the safe custody of the securities of the co. It would be impracticable, on every purchase of securities, for actual delivery thereof to be made to the directors, or, on every sale, for the delivery to the brokers of the securities sold to await a meeting of the board or of a committee of directors. The duty of seeing that the securities are in safe custody must of necessity be left to some official of the co. in daily attendance at the office of the co., such as the manager, accountant, or secretary.

(8) A co.'s stockbrokers, however respectable & responsible they may be, are not proper persons to have the custody of its securities except on such occasions when, for short periods, securities must of necessity be left with them; but immediately such necessity ceases the securities should be lodged in the co.'s strong room or with its bank, or placed in other proper & usual safe keeping.

(9) A director is not responsible for declaring a dividend unwisely. He is liable if he pays it out of capital, but the *onus* of proving that he has done so lies upon the liquidator who alleges it.

Art. 150 of the co.'s arts. of assocn. provided (*inter alia*) that none of the directors, auditors, secretary or other officers for the time being of the co. should be answerable for any loss, misfortune, or damage which might happen in the execution of their respective offices or trusts, or in relation thereto, unless the same should happen by or through their own wilful neglect or default respectively:—*Held:* (10) an act, or an omission to do an act, is wilful where the person who acts, or omits to act, knows what he is doing & intends to do what he is doing, but if that act or omission amounts to a breach of that person's duty, & therefore to negligence, he is not guilty of wilful neglect or default unless he knows that he is committing, & intends to commit, a breach of his duty, or is recklessly careless in the sense of not caring whether his act or omission is or is not a breach of his duty; (11) the immunity afforded by art. 150 was one of the terms upon which the directors held office in the co., & availed them as much on a misfeasance summons by the Official Receiver under 1908 Act, s. 215, as it would have done in an action by the co. against them for negligence; (12) upon the evidence & in accordance with the principles enunciated above, none of the resp. directors, other than the managing director, was liable.

(13) The measure of the auditor's responsibility depends upon the terms of his engagement. There may be a special contract defining the duties & liabilities of the auditors. If there is, then that contract governs the question. The arts. will, however, be looked at if there is no special agreement, because the auditors will presumably have taken their duties upon the terms, among others, set out in the arts. That is not to say that auditors can set aside a statutory obligation. No agreement or art. of assocn. can remove an imperative or statutory duty.

(14) Sect. 113 does not lay down a rigid code. The duty imposed on the auditors by it is not absolute, but depends upon the information given & explanations furnished to them, so that there is abundant scope for discretion. Art. 150 is not in conflict with the sect. The *onus* lies upon the auditors, who would not be excused for total omission to comply with any of the requirements of the sect., or for any consequences of deliberate or reckless indifferent failure to ask for information on matters which call for further explanation.

(15) An auditor is not justified in omitting to make personal inspection of securities that are in the custody of a person or co. with whom it is not proper that they should be left, whenever such personal inspection is practicable.

(16) When an auditor discovers that securities of the co. are not in proper custody, it is his duty to require that the matter be put right at once, or, if his requirement is not complied with, to report the fact to the shareholders, & this whether he can or cannot make a personal inspection.

Auditors should not be content with a certificate that securities are in the possession of a particular co., firm, or person unless the co., etc., is trustworthy, or, as it is sometimes put, respectable, & further is one that in the ordinary course of business keeps securities for its customers. In all these cases the auditor must use his judgment.

Where the auditors did not personally inspect the securities of the co. in the hands of the stockbrokers of the co., & accepted from time to time the certificate of the brokers that they held large blocks of such securities, & did not either insist upon those securities being put in proper custody or report the matter to the shareholders:—*Held:* (17) they committed a breach of duty, but, inasmuch as throughout the audit the auditors honestly & carefully discharged what they conceived to be the whole of their duty to the co., such negligence was not wilful, & art. 150 applied to exonerate them from liability.

Where the auditors after a full investigation in which they were misled & deceived, & their reports to the board suppressed, by the chairman of the co., (*a*) described large sums of money left in the hands of the co.'s stockbrokers & lent to the general manager of the co. as "Loans at call or short notice," "Loans" or "Cash at hand & in bank"; (*b*) failed to discover that the co.'s stockbrokers, in order to reduce their indebtedness to the co. for the purposes of the audit, made purchases, on behalf of the co., immediately before the close of the co.'s financial year, of Treasury Bills which in fact never came into the possession of the co. & were sold

immediately the new financial year had opened:—*Held:* (18) they were not guilty of any breach of duty as auditors.

(19) Sect. 215 is a procedure sect. only & creates no new or additional liability.—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., [1925] 1 Ch. 407; 94 L. J. Ch. 445; 133 L. T. 520; 40 T. L. R. 853; [1925] B. & C. R. 109, C. A.

Annotations:—As to (10) **Distd.** *Re* City of London Insce. (1925), 41 T. L. R. 521. **Consd.** *Re* Munton, Munton *v.* West, [1927] 1 Ch. 262; *Re* Windsor Steam Coal Co. (1901), Ltd., [1929] 1 Ch. 151; *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572. *As to* (13) **Refd.** Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

3060a. —— —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3062. *Add. Annotation:*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3063a. —— —— **Proper & honest performance of duties.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3063b. —— **Reliance on chairman—Accuracy of balance-sheet.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3065. *Add. Annotation:*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3068. For "—— **Signature of cheques to company's prejudice**" read "—— **Signature of cheques—To company's prejudice.**"

3068a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3071. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3077. *Add. Citation:—previous proceedings, sub nom. Re* SOUTH ESSEX GAS LIGHT & COKE CO., *Ex p.* STEARS (1859), John. 480.

3092a. —— **Act by two directors for benefit of one—No right to contribution.**]—Where two directors of a limited co. join in signing a cheque whereby a part of the co.'s funds is used for a purpose not authorised by the arts. of assocn. & one of the directors is subsequently compelled to replace the money so used, he cannot recover contribution from the other if the money has been applied for the sole benefit of the director claiming contribution, even if the other director has assented to its being so used.—WALSH *v.* BARDSLEY (1931), 47 T. L. R. 564.

3100a. —— —— **Money advanced at request of secretary.**]—One of the directors of a co. advanced money at the request of the secretary & for the benefit of the co. to two subsidiary cos. The secretary was also the secretary of the subsidiary cos. At a meeting of the directors of the co., at which there was no independent quorum, the co. purported to confirm some of the advances as having been made for its benefit & they were so treated in the books of the co. The co. subsequently went into voluntary liquidation:—*Held:* the director was not entitled to recover the money so advanced. The secretary had no power to borrow on behalf of the co. & the co. could not be held liable to repay money paid for its benefit at the request of its secretary; the request not having been made or confirmed by a properly constituted meeting of the directors, the co. did not know of & acquiesce in the payments being made for its benefit.—*Re* CLEADON TRUST, LTD., [1938] Ch. 660; 107 L. J. Ch. 218; 159 L. T. 328; 54 T. L. R. 746; 82 Sol. Jo. 414; *affd.*, [1938] 4 All E. R. 518, C. A.

3105a. Payment of rates due from company—Right to stand in place of overseers.]—The director of a co. in voluntary liquidation guaranteed & paid to the overseers of the poor the rates due from the co. before the date of the liquidation:—*Held:* (1) he was entitled to stand in the place of the creditor & to use all remedies, &, if need be, the name of the creditor in any action or other proceeding in order to obtain indemnification from the principal debtor for the loss sustained; (2) in so far as the payment by the surety was made in respect of rates that became due & payable within twelve months before the date of the commencement of the liquidation, it would rank in priority of payment to the other debts of the co., by virtue of 1908 Act, s. 209.—*Re* LAMPLUGH IRON ORE CO., [1927] 1 Ch. 308; 96 L. J. Ch. 177; 136 L. T. 501; [1927] B. & C. R. 61.

3107. After this case add:—

—— ——.]—*See, now,* 1929 Act, s. 152.

3109. *Add. Annotations:*—**Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

3109a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3112a. —— **Necessity for board-meeting.**]—*Re* ATHENÆUM LIFE ASSCE. SOCIETY, *Ex p.* EAGLE INSCE. CO., No. 4094a, *post*.

3062 i. *Standard of diligence—Reliance on company's officials—Where no ground for suspicion—Examination of company's books.*]—*Re* LOGAN (H. J.) CO. (Ont.), [1926] 2 D. L. R. 946; 7 C. B. R. 325.—**CAN.**

o. Add "*varied*, 38 O. L. R. 414; 33 D. L. R. 487."

PART III. SECT. 28, SUB-SECT. 4.—D.

3075 i. *Capacity to contract—General rule.*]—A director has a right to contract with the co. subject to certain qualifications involving cases of misrepresentation, bad faith or secret profits, & not where ordinary relation of employer & employee exist. The ordinary objections to such contracts do not apply where all the shareholders were directors, as no question can arise as to directors prejudicing the rights of the shareholders.—DUROST *v.* HOME-MIXED FERTILIZERS, LTD., [1924] 4 D. L. R. 241; 51 N. B. R. 357.—**CAN.**

3076 iii. —— ——.] — CANADIAN GUARANTEE TRUST CO. *v.* YOUNG, [1933] 1 D. L. R. 256; [1932] 3 W. W. R. 671.—**CAN.**

PART III. SECT. 28, SUB-SECT. 4.—F.

sg. *Expenses of rebutting charge of fraud.*]—Expenses incurred by a director in defending himself against a charge of fraud as a director are too remote to form the subject of indemnity either under an indemnity clause in the articles, or at common law.—TOMLINSON *v.* LIQUIDATORS OF SCOTTISH AMALGAMATED SILKS, LTD., [1934] S. C. 85.—**SCOT.**

sk. *Expenses of defence against charge of fraud.*]—An indemnity clause in the articles of a co. provided for the indemnification of any director against all losses & expenses which he might incur by reason of any act done by him as director.

The co. went into voluntary liquidation, & thereafter a director was indicted & tried for alleged fraud in relation to acts done by him as director prior to the date of the liquidation, the charges being that he had issued a fraudulent prospectus, & had fraudulently misapplied funds of the co. He was acquitted; & thereupon he lodged a claim in the liquidation for the expenses incurred by him in his defence. The liquidators rejected his claim:—*Held:* he was not entitled to his expenses either under the indemnity clause or at common law, in respect that expenses incurred in defending himself against an allegation that he did something, which he did not in fact do & which it was not his duty to do, were not expenses incurred by him as a director or as an agent of the co. in the discharge of his duties.—TOMLINSON *v.* SCOTTISH AMALGAMATED SILKS, LTD. (LIQUIDATORS), [1935] S. C. (H. L.) 1.—**SCOT.**

3126a. Adoption of balance sheet — Including directors' fees.]—Balance sheets including fees due to directors, & signed by directors pursuant to Cos. Act, 1908, s. 113, are not acknowledgments of those fees within Statute of Frauds Amendment Act, 1828 (c. 14).

After an order for the compulsory winding up of the co. appct. put in a proof for £950 in respect of directors' fees. The liquidator rejected the proof to the extent of £350, allowing only £600 on the ground that all directors' fees which had accrued due more than six years before the date of the winding-up order were barred by Stat. Limitations. The directors' fees due to appct. appeared from balance sheets duly signed by two directors & passed by the co. Upon a summons taken out by appct. asking that the decision of the liquidator rejecting his proof to the extent of £350 might be reversed, & that the proof might be allowed in the full sum of £950 :—*Held :* (1) a board of directors, acting as a board, & passing a resolution adopting a balance-sheet which includes directors' fees, does not bind the co. to pay those fees ; (2) a balance-sheet so adopted & signed by directors pursuant to Cos. Act, 1908, s. 113, is not a written promise by the co. or its agents to pay the directors' fees.—*Re* COLISEUM (BARROW), LTD., [1930] 2 Ch. 44 ; 99 L. J. Ch. 423 ; 143 L. T. 423 ; [1929-30] B. & C. R. 218.

3126b. Payment to director personally.]—CLAY HILL BRICK & TILE CO., LTD. *v.* RAWLINGS, [1938] 4 All E. R. 100 ; 159 L. T. 482 ; 82 Sol. Jo. 909.

3127a. —— Delegation of duty.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3128a. Safe custody of company's securities—Delegation of duty—Securities with company's stockbrokers.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3150a. Debt owing by ordinary directors—Action by permanent directors.]—Defts., who were directors of & were indebted to pltf. co., agreed to Terms of Settlement by which (*inter alia*) the first deft. should resign his office as governing director, that the co. should appoint independent persons as permanent directors, that the two defts., with three others, should be ordinary directors, that the co.'s articles should be altered so as to provide that defts. should have no control over, & have no right to vote in respect of, their debts, that an accountant should certify the amount of the defts.' liability, that the dividends payable to defts. should be retained by the co. on account of those debts, which, however, were not to be called in for twenty years, & that these terms should be embodied in an agreement under seal & sanctioned by special resolutions of the co. Special resolutions embodying that agreement were thereafter passed which provided also that the ordinary directors should have no right at directors' meetings to vote in respect of the co.'s financial affairs, & that with regard to other business they were to have only such rights of voting & control over the management as might be conferred upon them by the permanent directors. An accountant prepared a balance-sheet which showed the amount due to the co. by each of the two defts., & that balance-sheet, which was signed thus : "Peter Shaw, John Shaw, Directors," was adopted at a general meeting of the co. at which defts. were present.

The agreement under seal containing the above Terms of Settlement was sealed by the co., but defts. having declined to execute it, as they objected to certain of its terms, the permanent directors, at a meeting to which none of the ordinary directors was summoned, resolved that instructions be given for writs to be issued against defts. for the recovery of the debts owing by them, & although by a resolution passed subsequently by the shareholders at an extraordinary meeting of the co. the chairman was directed to discontinue proceedings, a writ was issued against each deft. claiming the amount as "found & admitted by deft. to be due to pltfs. as shown by pltfs.' balance-sheet." To these actions defts. pleaded that they had been brought without proper authority, & they denied that the alleged or any account was stated between pltfs. & them :—*Held :* (1) as to authority to bring the actions : *per* GREER, L.J., under the co.'s articles the power to give instructions for the bringing of the actions was vested not in the directors generally but in the permanent directors, whose decision could not be overridden by the mere resolution of the

---

PART III. SECT. 28, SUB-SECT. 5.—A.

3115 i. *Exercise of powers—Control by members.*]—The directors of a co. constitute its governing & managing body, & except to the extent that their powers are expressly restricted by statute or the arts. of assocn. or otherwise, they possess authority to exercise all the powers of the co., subject to the control of the shareholders.—MID-WEST COLLIERIES, LTD. *v.* MCEWEN, [1925] 2 D. L. R. 529.—CAN.

3115 ii. —— *Effect of specifying method in articles.*]—(1) For the purpose of binding a co. in its corporate capacity individual assents of directors or shareholders given separately are not equivalent to the assent of a meeting.

(2) Where the arts. of assocn. of a co. authorise a certain method of procedure by the directors as the equivalent of a formal meeting there is by implication a denial of the validity of any other procedure other than a meeting.—TORONTO GENERAL TRUSTS CORPN. *v.* CARLILE, [1931] 3 W. W. R. 671 ; 26 Alta. L. R. 374.—CAN.

PART III. SECT. 28, SUB-SECT. 5.—C. (a).

d i. *S. P. Re* PACIFIC COAST COAL MINES, LTD. & HODGES (B. C.), [1926] 4 D. L. R. 759 ; [1926] 3 W. W. R. 378.—CAN.

s1. *Contract not authorised by all directors.*]—Where L., a director of deft. co., purporting to act on behalf of the co., agreed with pltf. to enter into a lease, & the directors neither authorised L. to enter into the agreement nor expressly ratified his action : —*Held :* the co. was not bound by the agreement.—LEGG & CO. *v.* PREMIER TOBACCO CO., [1926] App. D. 132.—S. AF.

PART III. SECT. 28, SUB-SECT. 5.—C. (d).

3132 i. *Necessary formalities.*]—Where the directors of a co. had power to borrow & mortgage :—*Held :* the president & managing director were, by virtue of their offices, *prima facie* proper officers to execute mtges., & the mtge., which had the common seal of the co. attached, & was executed by the president & managing director, was properly executed.—CANADIAN BANK OF COMMERCE *v.* SMITH (1911), 17 W. L. R. 135 ; 3 Alta. L. R. 299.—CAN.

3132 ii. ——.]—Where a mtge by a co. had the seal of the co. affixed in the presence of two directors, one of whom was the secretary, & of M., assistant secretary, there being no appointment proved authorising M. as an assistant secretary, or otherwise, to sign the mtge., or authenticate the affixing of the seal :—*Semble :* the execution was bad.—INNES & GRIFFITH *v.* CAMERON VALLEY LAND CO. (B. C.), [1919] 1 W. W. R. 752.—CAN.

3133 i. *Mortgage to directors.*]—Set aside at instance of simple contract creditors of the co. — NORTHERN ELECTRIC & MANUFACTURING CO., LTD. *v.* CORDOVA MINES, LTD. (1914), 31 O. L. R. 221 ; 6 O. W. N. 210.—CAN.

3133 ii. ——.]—GREENSTREET *v.* PARIS HYDRAULIC CO. (1874), 21 Gr. 229.—CAN.

PART III. SECT. 28, SUB-SECT. 5.—C. (e).

t. Add "*varied*, 9 A. R. 620."

shareholders, & therefore that the bringing of the actions was duly authorised; *per* SLESSER, L.J., the bringing of the actions was not authorised, as authority to do so could not be given at a meeting of directors to which the ordinary directors were not summoned; *per* ROCHE, L.J., as a rule objection to the right to bring an action should be taken, not at the trial but by interlocutory motion or summons, & if that course is not followed, the ct. should not entertain an application at the trial to dismiss the action, but where want of capacity or authority to sue plainly appears at any stage the ct. may order the action to be struck out. In this case, however, the ct. had not with regard to matters of fact the information necessary for deciding whether effect should be given to the objection to the competency of the actions & the objection therefore failed; (2) as to the cause of action relied upon: by the whole ct., the balance-sheet was not an account stated involving a fresh promise by defts. to pay the amounts debited to them therein, inasmuch as it was signed by them not *animo contrahendi* but in performance of their duties as directors.—SHAW (JOHN) & SONS (SALFORD), LTD. *v.* SHAW, [1935] 2 K. B. 113; 104 L. J. K. B. 549; 153 L. T. 245, C. A.

3157a. —— **Presumption of authority.**]—Pltfs. were a firm of fruit brokers. Defts. & the P. Co. were two cos. engaged in the fruit trade. M. was a director of both cos. By art. 28 of the arts. of deft. co. the directors were empowered to "delegate any of the powers for the time being vested in the directors." The arts. also incorporated Table A. M. purported to make on behalf of defts. an agreement with pltfs. that in consideration of pltfs. advancing a sum of money to the P. Co., pltfs. should have the right to sell on commission all the fruit imported both by defts. & the P. Co., & that pltfs. should be entitled to retain the proceeds of sale of defts.' fruit as well as of that of the P. Co. as security for the advance. M. had no authority from defts. to make such a contract. Pltfs. requiring confirmation of the agreement by deft. co., the secretary of defts. wrote a letter purporting to confirm the agreement on behalf of defts., & pltfs., treating that as a sufficient confirmation, made the advance. The secretary had no authority to give such confirmation. Defts. subsequently repudiated the agreement as made without their authority. At the time that they made the advance pltfs. had no knowledge of the terms of defts.' arts. or that they incorporated Table A:—*Held:* whether the agreement was to be treated as having been made by M. as an ordinary "director" of deft. co., or by the secretary as "agent," or by the two combined, pltfs. were not entitled to assume that any authority to make it had been delegated to them by the board, because (1) although a person who contracts with an individual director or servants of a co., knowing that the board of directors has power to delegate its authority to such an individual, may in certain circumstances assume that power of delegation has been exercised & that he may safely deal with the individual in question as representing the co., he cannot rely on the supposed exercise of such power if he did not know of the existence of the power at the time that he made the contract; (2) there was something so unusual in an agreement to apply the money of one co. in payment of the debt of another that pltfs. were put upon inquiry to ascertain whether the person or persons making the contract had any authority in fact to make it; (3) even if pltfs. had known of the existence of the express power of delegation, they would not have been entitled to assume that it had been exercised in favour of M. or the secretary to any greater extent than was to be inferred from the positions which M. & the secretary respectively occupied or were held out by the co. as occupying.—HOUGHTON & CO. *v.* NOTHARD, LOWE & WILLS, [1927] 1 K. B. 246; 96 L. J. K. B. 25; 136 L. T. 140, C. A.; *affd. on other grounds*, [1928] A. C. 1, H. L.

Annotations:—As to (1) **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826. **Dbtd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356. *Generally*, **Refd.** Evans *v.* Employers' Mutual Insurance Association, Ltd., [1936] 1 K. B. 505.

3160. *Add. Annotation:*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

3160a. ——.]—A co. is bound in a matter *intra vires* the co. by the unanimous agreement of all its corporators.

If all the individual corporators in fact assent to a transaction that is *intra vires* the co., though *ultra vires* the board, it is not necessary that they should hold a meeting in one room or one place to express that assent simultaneously.—PARKER & COOPER, LTD. *v.* READING, [1926] Ch. 975; 96 L. J. Ch. 23; 136 L. T. 117.

Annotation:—**Refd.** E. B. M. Co. *v.* Dominion Bank, [1937] 3 All E. R. 555.

3162. *Add. Annotation:*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

3166. *Add. Annotation:*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

PART III. SECT. 28, SUB-SECT. 5.—E.

r i. —— *Must be with full knowledge of transaction.*]—HINDUSTAN ASSURANCE & MUTUAL BENEFIT SOCIETY, LTD., LAHORE *v.* KHALSA BANK, LTD., GUJRANWALA (1927), I. L. R. 9 Lah. 360.—**IND.**

d i. ——.]—DAVISON *v.* VICKERY'S MOTORS, LTD. (1925), 37 C. L. R. 1.—**AUS.**

PART III. SECT. 28, SUB-SECT. 6.—A.

g i. ——.]—B. C. TIMBER INDUSTRIES JOURNAL, LTD. *v.* BLACK, [1934] 2 W. W. R. 161; 3 D. L. R. 31.—**CAN.**

sk. *Personal liability—Wrong committed by company.*]—A director of a co. who is a party to a fraud or other wrong committed by the co. is personally liable for the damage caused thereby.—JOHNSON *v.* SOLLOWAY, [1932] 1 W. W. R. 481; 45 B. C. R. 420; *revsd. on other grounds*, [1934] 2 D. L. R. 241, P. C.—**CAN.**

PART III. SECT. 28, SUB-SECT 6.—B (a).

so. *Misrepresentation of unauthorised sales agent.*]—Directors of a corpn. are not liable for misrepresentations of a sales agent unauthorisedly marketing its securities or for statements in a prospectus not issued under their authority.—CHAPMAN *v.* WARREN, [1936] 2 D. L. R. 157; O. R. 145.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—B. (d).

s i. —— *Essentials.*]—A conviction under sect. 414 of the Criminal Code which deals with false statements by directors & promoters of cos. can only be secured if proof is given that (1) the statements are in themselves false in some material particular, & (2) not only so but false to the knowledge of the accused, & (3) made with intent to defraud.—R. *v.* BOWEN (1930), 43 B. C. R. 507.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—C. (b).

sm. *Commission.*]—Cos. Act, 1908, s. 57, does not authorise the directors to make presents of the co.'s capital in the guise of commission. Such presents are *ultra vires* of the directors, & recoverable by the co.—WAIRAKEI, LTD. *v.* CLEAVE, [1925] N. Z. L. R. 624.—**N.Z.**

3201. *Add. Annotation :*—**Refd.** *Re* Etic, [1928] Ch. 861.

3216. *Add. Annotation :*—**Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3231. *Add. Annotation :*—**Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

3240. *Add. Annotation :*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

3248. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3249. *Add. Annotation :*—**Apld.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658.

3250. *Add. Annotation :*—*As to* (2) **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

3252. *Add. Annotation :*—**Refd.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658.

3257. *Add. Annotations :*—**Apld.** Parker & Cooper *v.* Reading & James (1926), 96 L. J. Ch. 23. **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292 ; *Re* Lee Behrens & Co. (1932), 48 T. L. R. 248.

3259. *Add. Annotation :*—**Consd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

3261. *Add. Annotations :*—*Generally*, **Refd.** *Re* Etic, [1928] Ch. 861 ; *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

3280a. —— Directors relying on chairman's assurance as to value of assets.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3282a. Dividends paid out of capital.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3284. *Add. Annotation :*—*As to* (3) **Apld.** *Re* A Debtor, [1927] 1 Ch. 410.

3285. *Add. Annotation :*—*As to* (2) **Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3287. *Add. Annotation :*—*Generally*, **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

3291. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3305. *Add. Annotation :*—*As to* (2) **Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

3320. *Add. Annotation :*—**Apld.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3327. *Add. Annotation :*—**Distd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33.

3327a. —— ——.]—The directors of a co. cannot be made liable for an infringement of a patent by the co. merely by reason of their position as directors, even in a case where they are the sole directors & shareholders of the infringing co.—BRITISH THOMSON-HOUSTON CO. *v.* STERLING ACCESSORIES, LTD., BRITISH THOMSON-HOUSTON CO. *v.* CROWTHER & OSBORN, LTD., [1924] 2 Ch. 33 ; 93 L. J. Ch. 335 ; 131 L. T. 535 ; 40 T. L. R. 544 ; 68 Sol. Jo. 595 ; 41 R. P. C. 311.

Annotation :—**Apld.** Prichard & Constance *v.* Amata (1924), 42 R. P. C. 63.

3327b. —— ——.]—Deft. co., incorporated in 1924 for the purpose of carrying on business as manufacturers of toilet preparations & publishers of medical books & publications relating thereto, on letter paper described themselves as "wholesale manufacturers of Amata Toilet Preparations." Pltf. co., who had for many years distinguished their goods

PART III. SECT. 28, SUB-SECT. 6.—D. (d) ii.

c i. —— *Extent of liability.*]—Deft., a director of pltf. co., in that he had failed in his duty to hand over to the co. certain shares, was ordered to account to the co. for their value as at the date when he received them : —*Held :* such value was not the intrinsic value at the specified date, but the value in money which pltf. co. could reasonably have obtained on the market, & as pltf. co. had discharged the *onus* of proving that it could have obtained the market price, the value would be fixed at that amount.—ROBINSON *v.* RANDFONTEIN ESTATES GOLD MINING CO., LTD., [1924] App. D. 151.—**S. AF.**

PART III. SECT. 28, SUB-SECT. 6.—E. (d).

sd. *Validity.*]—Upon a petition by applt., as liquidator of the Crédit Canadien Incorporé, alleging the illegality & irregularity of certain resolutions of its directors making a call on the shareholders & later declaring the forfeiture of these shares when the call was not paid, & further asking for a declaration that the directors had thus acted *ultra vires* & against the interests of the co. :—*Held :* upon the evidence, no adequate ground was disclosed for holding the call was not a valid call of which payment could have been enforced, the charge had not been established by evidence that, in exercising the power of forfeiture, the directors had been availing themselves of that power for some purpose for which it could not be legitimately employed, &, under the circumstances of this case, it was impossible to conclude that the forfeiture was not in the interest of the co.—*Re* CRÉDIT CANADIEN INCORPORÉ, SUN TRUST CO., LTD. *v.* BÉGIN, [1937] S. C. R. 305 ; 3 D. L. R. 81.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—E. (f).

3301 i. *Estoppel of shareholders.*]—Deft. brewing co. was incorporated under Dominion Cos. Act in 1924. In 1926 the C. co. was organised, also with a Dominion charter & with substantially the same incorporators & officers, to act as the agent of the brewing co. to promote the sales of its products. By an agreement between the two cos., the prices which the C. co. was to collect from customers upon sales, as well as the rates at which they were to remit when so collected, were fixed, the difference in favour of the C. co. constituting their remuneration for services to be rendered. Pltf. a shareholder & director of both cos. brought this action on behalf of himself & all other shareholders of the two cos. against the two cos. & four individual defts., who were shareholders directors & officers of both cos. to compel the individual defts. to pay back into the treasury or either or both cos. sums alleged to have been improperly paid to them by the cos. in 1927, 1928, & 1929. These sums were paid to the individual defts. for "promotion expenses" :—*Held :* in so far as the action rested upon the contention that the moneys paid by the brewing co. to the C. co. were improperly paid, it failed for the reason that pltf. himself received & still retained a portion of those moneys, & was not therefore in a position to complain either individually, or as a shareholder of the brewing co.—SHIESEL *v.* KIRSH, [1931] 1 D. L. R. 460 ; 66 O. L. R. 174 ; *affd.*, [1931] 2 D. L. R. 791 ; O. R. 41.—**CAN.**

g i. ——.]—The penalty enacted against directors of a co. who participate in the payment of a dividend where the co. is insolvent, & whereby they are made jointly & severally liable to creditors for debts of the co. then existing, is incurred only when they knew, or were bound to know, the insolvency of the co. at the time the dividend was declared.—SMITH *v.* HENDERSON, [1924] 1 D. L. R. 863 ; Q. R. 62 S. C. 270.—**CAN.**

sn. *Dividend disposing of entire assets of company.*]—Judgment given against directors.—THOMAS *v.* GALE, [1927] 1 D. L. R. 593 ; S. C. R. 314.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—F. (c).

sn. *Loan intra vires & bonâ fide—Director interested in land on which loan obtained.*]—The fact that a director of a mtge. & trust co. was interested in land on which he applied to the board of directors for & obtained, in the name of his vendor, a loan which resulted in a loss to the co. :—*Held :* not to give the co. a right of action against him & his co-directors for damages where the co. was not prohibited from making loans to directors, & the said director's interest in the land was found to have been disclosed to his co-directors & they had applied their minds to the facts before approving of the loan, & the question whether there was fraud or negligence or improvidence in making the loan was not raised in the action.—CANADIAN GUARANTY TRUST CO. *v.* YOUNG, [1932] 3 W. W. R. 671.—**CAN.**

sp. *Loans to shareholders—Liability of directors to creditors.*]—*Held :* Cos. Act, R.S.C., 1927, c. 27, s. 112, renders the directors of a co. liable to its creditors not only for debts of the co. existing at the time a loan is made to its shareholders but also for debts contracted between the time of the making of such loan & that of its reimbursement.—R. *v.* KUSSNER & KUSSNER, [1936] S. C. R. 206 ; 4 D. L. R. 752.—**CAN.**

by the word "Amami," & in July, 1909, had registered that word as a trade mark to be applied to perfumery, etc., commenced an action against deft. co. & the two only directors thereof who were signatories of their memorandum of assocn. for an injunction:—*Held:* there was no evidence that deft. co. had been formed by the other two defts. for the purpose of doing a wrongful act & no claim had been established by pltfs. against these defts. personally; & the action as against them must be dismissed with costs.—PRICHARD & CONSTANCE (WHOLESALE), LTD. *v.* AMATA, LTD. (1924), 42 R. P. C. 63.

3335a. —— Loan for expenses in connection with promotion.]—ADAMS (FRANCIS), LTD. *v.* FISHWICK (1928), 72 Sol. Jo. 122.

3345a. —— Relief under 1929 Act, s. 372—Application by director—No evidence of shareholders' wishes.]—A director failed to obtain his qualification shares within the time fixed, thinking that he had them at the date of his appointment, & having either overlooked or forgotten the definition of "qualification shares" in the co.'s arts. of assocn. At the end of the time he ceased, in accordance with sect. 141 (3) of 1929 Act, to be a director, but continued to act & to receive remuneration as a director, thus incurring penalties under sub-sect. (5). Later, he was re-appointed by the board pursuant to the co.'s arts. of assocn., retired, & was re-elected by the shareholders. He applied to the ct. by petition under sect. 372 (2) for relief against any liability which he had incurred by acting & receiving remuneration as a director after he had ceased to be a director: —*Held:* the ct. has jurisdiction under sect. 372 (1) to relieve a director who has acted as a director without having obtained qualification shares within the prescribed period from the penalties imposed by sect. 141.

But *semble*, the ct. will in general decline to relieve a director from liability to repay money to a co. or its liquidator in the absence of evidence as to the wishes of the shareholders or, if the co. is insolvent, of the creditors.—*Re* BARRY & STAINES LINOLEUM, LTD., [1934] Ch. 227; 103 L. J. Ch. 113; 150 L. T. 254.

3345b. —— —— Invalid appointment of director.]—L. F. owned the greater part of the shares of J. F. & Son, Ltd. His wife was appointed director in his lifetime, & also in his lifetime one C. C. was appointed a director. The latter never took up his qualification shares, &, although he continued to act & was treated as a director, he in law ceased to be such in 1933. L. F. died in 1934, & his wife, being in bad health, then went to the South of France, it being expected that her stay there would be a temporary one, but in fact she never returned. The directors at their meeting in the autumn of 1934 proposed to recommend to the annual general meeting of the co. that she should receive remuneration at the rate of £8 per week as from Feb. 10, 1934, & that proposal was accepted & confirmed at the annual general meeting. It appeared, however, that there was not a quorum at that meeting, & payments made under the resolution were sought to be recovered from L. F.'s wife & the two persons who voted at the meeting. It was contended that this was a proper case for relief under 1929 Act, s. 372, as the persons in question had acted honestly & reasonably, & ought fairly to be excused:—*Held:* though the defect in the resolution was a mere technicality, the appointment of the director being invalid, this was not a case in which, in all the circumstances of the case, any of the parties ought fairly to be excused for the breach of trust in making the improper payments.—*Re* FRANKLIN (J.) & SON, LTD., [1937] 4 All E. R. 43; 157 L. T. 188.

3347. *Add. Annotations:—As to* (4) **Apld.** *Re* A Debtor, [1927] 1 Ch. 410. **Consd.** *Re* Etic, [1928] Ch. 861. **Reld.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

3353. After cross-ref. following this case add:—

(*l*) *Declaration of Liability.*

See 1929 Act, s. 275.

3353a. Carrying on business with "intent to defraud creditors"—What amounts to.]—(1) The declaration of liability in 1929 Act, s. 275 (1) should state the amount for which the director is liable.

(2) A co. carrying on business & incurring debts when to the knowledge of the directors there is no reasonable prospect of the debts being paid may, in general, be properly inferred to be carrying on business "with intent to defraud creditors" within 1929 Act, s. 275 (1).

(3) *Semble:* sect. 275 is a punitive provision, & the ct. on making a declaration in the winding-up of a co. that a director is personally responsible for all or any of the debts or other liabilities of the co. may in its discretion make an order not limiting his liability to the amount of the debts due to creditors held to be defrauded within the sect.—*Re* LEITCH (WILLIAM C.) BROS., LTD., [1932] 2 Ch. 71; 101 L. J. Ch. 380; 148 L. T. 106.

Annotation:—As to (2) **Reld.** *Re* Patrick & Lyon, Ltd., [1933] Ch. 786.

3353b. —— ——.]—*Held:* (1) in 1929 Act, sect. 275, the references to "intent to defraud" & to "fraudulent purpose," unlike the words "fraudulent preference" in sect. 265, import actual dishonesty; (2) for the purposes of sect. 266 a co. is not solvent if it is unable to pay its debts as they become due.—*Re* PATRICK & LYON, LTD., [1933] Ch. 786; 102 L. J. Ch. 300; 149 L. T. 231; 49 T. L. R. 372; 77 Sol. Jo. 250; [1933] B. & C. R. 151.

3353c. Amount for which director liable—Should be stated in declaration of liability.]—

PART III. SECT. 28, SUB-SECT. 6.—F. (g).

m. For "26 W. L. R. 626" read "7 Alta. L. R. 245; 28 W. L. R. 250."

b (p. 509) l. —— —— ——.]—Pltfs. sued directors of asso., alleging that judgments recovered by them were for "wages due for services performed for the co." The evidence showed that pltfs. were hired to prospect for oil when so instructed, & they were not to do anything but hold themselves in readiness:—*Held:* the judgments were not for wages due for services performed, as they did no more than wait for the chance of performing them.—MULLEN *v.* MILLAR (1924), 55 O. L. R. 563.—CAN.

m (p. 509) l. —— —— —— —— ——.]—An action based on sect. 35 of Cos. Act, R. S. M., 1913, against a director of a co. for wages alleged to be due a servant of the co. is an action upon the original debt, not one upon the judgment against the co., & pltf. must prove the employment, performance of services & debt.—DERBACH *v.* SHAW, [1933] 2 W. W. R. 605; 4 D. L. R. 461; 41 Man. L. R. 379.—CAN.

Re LEITCH (WILLIAM C.) BROS., LTD., No. 3353a, *ante*.

3353d. —— **Whether limited to amount of debts due to creditors defrauded.**]—*Re* LEITCH (WILLIAM C.) BROS., LTD., No. 3353a, *ante*.

3353e. —— **General assets for all creditors.**]—A declaration under Cos. Act, 1929 (c. 23), s. 275, having been made by the ct. in the course of the winding-up of a co., that W., a governing director of the co. had been knowingly a party to carrying on the co.'s business with intent to defraud creditors between certain dates, fixing the liability of the director at £6,000, & charging a debenture for £4,000 issued to the director with that liability, the liquidator recovered the sum of £3,356 from the director in respect of the declaration, & asked for directions as to the application of that sum, & any further sum he might recover under the judgment, among the creditors of the co.:—*Held:* the moneys so recovered & to be recovered were not to be exclusively applied for the benefit of creditors whose debts were contracted during the period when the business of the co. was carried on with intent to defraud creditors, but formed part of the general assets of the co. available for all the creditors, on the same principle as that applicable to moneys recovered from "B" contributories. —*Re* LEITCH (WILLIAM C.) BROS., LTD. (No. 2), [1933] Ch. 261; 102 L. J. Ch. 81; 148 L. T. 108; 49 T. L. R. 74; 76 Sol. Jo. 888; [1933] B. & C. R. 31.

Annotation:—**Refd.** *Re* Patrick & Lyon, Ltd., [1933] Ch. 786.

3364. *Add. Annotation:*—**Refd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

3365. *Add. Annotation:*—**Refd.** Bendir *v.* Anson, [1936] 3 All E. R. 326.

3376. *Add. Annotation:*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

3377. *Add. Annotation:*—*As to* (1) **Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

3389. *Add. Annotation:*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

3391. *Add. Annotation:*—*Generally*, **Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

3398. *Add. Annotation:*—*As to* (2) **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

3405. *Add. Annotations:*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

3407. *Add. Annotation:*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

3419a. —— ——.]—The directors of a co. personally guaranteed an overdraft granted to the co. by a bank. They subsequently passed a resolution that, subject to the approval of the bank, debentures be issued to the bank as security for the overdraft, & debentures were issued in accordance with the resolution:—*Held:* the directors were "interested" in the arrangement come to with the bank in regard to the issue of the debentures, & the resolution providing for the issue was a nullity.—VICTORS, LTD. *v.* LINGARD, [1927] 1 Ch. 323; 96 L. J. Ch. 132; 136 L. T. 476; 70 Sol. Jo. 1197.

3423. *Add. Annotation:*—**Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3432a. —— **Meaning of "book."**]—Entries made in a number of loose leaves fastened together in two covers are not admissible in evidence as minutes entered in books within 1929 Act, s. 120.—HEARTS OF OAK ASSURANCE CO., LTD. *v.* FLOWER (JAMES) & SONS, [1936] Ch. 76; 105 L. J. Ch. 25; 154 L. T. 156; 52 T. L. R. 5; 79 Sol. Jo. 839.

3434. *Add. Annotation:*—*As to* (5) **Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

3444. *Add. Annotation:*—*As to* (1) **Distd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

3451a. —— **Oral resignation—Articles requiring written resignation.**]—A co.'s acceptance of the oral resignation of a director constitutes a binding contract, even though the co.'s articles require the resignation of a director to be in writing.—LATCHFORD PREMIER CINEMA, LTD. *v.* ENNION, [1931] 2 Ch. 409; 100 L. J. Ch. 397; 145 L. T. 672; 47 T. L. R. 595.

3455a. —— **Re-election of retiring director—Adjournment of meeting.**]—SPENCER *v.* KENNEDY, No. 2879a, *ante*.

3455b. —— **Failure to re-elect or replace.**]—By art. 97 of a co.'s arts., "At the second ordinary general meeting in each calendar year, one-third of the directors . . . shall retire from office. A retiring director shall retain office until the dissolution of the meeting at which his successor is elected." By art. 100, "If at any meeting at which an election of directors ought to take place the places of the retiring directors or some of them are not filled up, then, subject to any resolution reducing the number of directors, the retiring directors, or such of them as have not had their places filled up & may be willing to act, shall be deemed to have

---

PART III. SECT. 28, SUB-SECT. 6.—G. (a).

n i. —— *By servant of company—Unsatisfied return of execution.*]—CROWDER *v.* COLEMAN, [1924] 1 D. L. R. 849; 1 W. W. R. 374; 20 Alta. L. R. 1.—**CAN.**

n ii. —— —— ——.]—When a return of *nulla bona* has been made by the sheriff without a *bona fide* attempt having been made to ascertain whether or not there were assets available to satisfy the execution, & there were in fact exigible assets sufficient for that purpose, the return is not such a return as is contemplated by Cos. Act, 1927, s. 113.—STEVENS *v.* SPENCER (Alta.), [1929] 4 D. L. R. 838; 3 W. W. R. 129.—**CAN.**

PART III. SECT. 28, SUB-SECT. 7.—A.

3385 ii. —— *Proceedings ratified at subsequent meeting properly convened.*]—A director's meeting authorised an action by the co. No notice was given to one director, but at a subsequent meeting properly called a resolution was passed ratifying the first meeting:—*Held:* the action was properly commenced.—LYTTON GOLD MINES, LTD. *v.* MUNRO (1933), 49 B. C. R. 18.—**CAN.**

PART III. SECT. 28, SUB-SECT. 7.—C. (b) i.

g i. ——.]—In the case of a co. subject to Trust Cos. Act, R. S. C., 1927, seven forms a *quorum* for a meeting of directors.—PREMIER TRUST CO. *v.* MCALISTER, [1933] 2 D. L. R. 192; O. R. 195.—**CAN.**

PART III. SECT. 28, SUB-SECT. 7.—C. (c).

l i. —— *What constitutes interest—Financial interest.*]—The personal interest which disqualifies a director from voting must be a financial interest, not merely a friendly spirit or a feeling of affection, *e.g.*, that of a husband for his wife.—*Re* CLARK (R. P.) & CO. (VANCOUVER), LTD. (No. 2), [1931] 3 W. W. R. 306.—**CAN.**

PART III. SECT. 28, SUB-SECT. 7.—D.

oi. —— *Meeting not in fact held.*]—DAVIS *v.* P. PALLESEN DAIRY & CREAMERY CO., [1935] 3 W. W. R. 305; 4 D. L. R. 518; 5 F. L. J. (Can.) 180.—**CAN.**

been re-elected" :—*Held:* if a retiring director was not re-elected, & if his place was not filled up at the same meeting, he retained office until his retirement by rotation, since by art 100 he was to be deemed to have been re-elected & therefore there was no vacancy to which a successor could subsequently be elected.—HOLT *v.* CATTERALL (1931), 47 T. L. R. 332.

3455c. —— **Construction of articles.**]—Art. 85 of a co.'s arts. of assocn. provides that "at the ordinary meeting in 1925 & every subsequent year, one-third, or the nearest number next below one-third, of the whole number of directors shall retire from office," that a retiring director is to be eligible for re-election at the meeting at which he retires & shall act as director throughout that meeting, & that the directors to retire in 1925, "unless the directors agree among themselves, shall be determined by ballot" & those to retire in every subsequent year "shall be those who have been longest in office since their last election & when two or more of such directors shall have served for an equal period, then their retirement shall be determined by ballot." In 1925 the board consisted of the chairman & seven other directors. Of these the managing director was by art. 101 not liable to retire by rotation or be taken into account in determining the rotation of retirement, & two others were additional directors appointed under art. 90, which provided that any additional director should hold office "only until the next following ordinary general meeting of the co." No question arose as to the first director to retire, but if a second director had to retire a selection had to be made between the pltf. & the chairman who had held office as directors for an equal period :—*Held:* (1) the words "by ballot" in art. 85 meant "by lot"; (2) "the whole number of directors" under art. 85 of whom a proportion was to retire did not include the additional directors, who by art. 90 only held office until the ordinary general meeting, seeing that the directors to retire fell by art. 85 to be determined at that meeting. It followed that one director only had to retire.—EYRE *v.* MILTON PROPRIETARY, LTD., [1936] Ch. 244; 105 L. J. Ch. 121; 154 L. T. 120; 52 T. L. R. 208; 80 Sol. Jo. 15, C. A.

3455d. Effect on contract of service.]—Pltfs. entered into an agreement with deft. co., a private co. under 1929 Act, to act as managers, buyers & supervisors for a term of 5 years. The agreement provided that it should be *ipso facto* determined upon either of pltfs. at any time vacating his or her office as director, but neither of them should at any time during its continuance resign his or her directorship or disqualify himself or herself from holding such office. At the first ordinary general meeting of the co., when pltfs. would, under Table A, art. 73, which was incorporated in the co.'s articles, automatically vacate their offices as directors, but be eligible for re-election, the chairman, who was the governing director, proposed a resolution that another person be appointed director in place of one of pltfs. & that the remaining vacancy be left unfilled. This resolution was after adjournments passed. Deft. co. then treated the agreement as terminated, & pltfs. brought this action for wrongful dismissal :—*Held:* (1) if pltfs. had been re-elected, or not being re-elected there had been no resolution to fill up the vacated office, there would have been no vacation of their offices; (2) the provision in the agreement for its termination did not apply only to voluntary resignation, & pltfs.' offices as directors had by reason of the passing of the resolution been *ipso facto* determined under the first part of the clause.—WALKER *v.* KENNS, LTD., [1937] 1 All E. R. 566, C. A.

3475. *Add. Annotation :—As to* (1) **Refd.** *Re* Patrick & Lyon, Ltd., [1933] Ch. 786.

3490. *Add. Annotations :—As to* (2) **Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743. *As to* (4) **Refd.** Ramsden *v.* David Sharratt & Sons, Ltd. (1930), 35 Com. Cas. 314. *Generally*, **Refd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

3491a. —— —— **Effect of voluntary winding-up.**]—By an agreement in writing made between pltf. & deft. co. pltf. was appointed managing director of the co. for a term of 5¼ years at a fixed salary. Before the expiration of that period the co. passed a resolution, which was assented to by pltf., for the voluntary winding up of the co. on the ground that by reason of its liabilities it could not continue its business. Pltf. thereupon brought an action claiming damages for repudiation of the agreement :—*Held:* a term could not be implied in the agreement that if the co. should be wound up voluntarily & pltf. should vote for that course being adopted, his employment should cease so as to disentitle him to damages for breach of the agreement. Pltf. was therefore entitled to damages for breach of the agreement.—FOWLER *v.* COMMERCIAL TIMBER CO., LTD., [1930] 2 K. B. 1; 99 L. J. K. B. 529; 143 L. T. 391, C. A.

Annotation :—**Refd.** *Re* Farrer (T. N.), Ltd., [1937] Ch. 352.

3492. *Add. Annotations :*—**Consd.** *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583. **Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3494. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

3497a. —— **Failure to obtain qualification shares—Recovery on quantum meruit.**]—Pltf. was appointed managing director of a co. by an agreement under the co.'s seal which also provided for his remuneration. By the arts. of assocn. of the co. each director was required to obtain his qualification shares within two months after his appointment. Neither pltf. nor the other directors obtained

---

PART III. SECT. 28, SUB-SECT. 8.—B.

si. —— *Not during term of appointment.*]—LONDON FINANCE CORPN. *v.* BANKING SERVICE CORPN. (Ont.), [1925] 1 D. L. R. 319.—**CAN.**

PART III. SECT. 28, SUB-SECT. 9.—C.

so. *Remuneration voted by directors—Validity—Action by shareholder—Onus of proof.*]—When a pltf. complains of directors voting a salary & travelling expenses to the managing director, he must show that their action was either *ultra vires* or of a fraudulent character, & although it is beyond the powers of directors to vote the salary & travelling expenses, this defect can be remedied at a shareholders' meeting where the managing director is a majority shareholder.—HOUSTON *v.* VICTORIA MACHINERY DEPOT, LTD., [1924] 2 D. L. R. 657; 33 B. C. R. 425.—**CAN.**

sq. *Remuneration of profits—Meaning of "profits."*]—CARLTON HOTEL CO., LTD. *v.* GARDINER, [1934] 3 W. W. R. 97; 4 D. L. R. 713; 48 B. C. R. 441.—**CAN.**

their qualification shares within two months or at all. Pltf. having done work for the co. claimed to recover the remuneration provided for in the agreement, or, alternatively, on the basis of a *quantum meruit*:—*Held*: the fact that pltf. did the work under an agreement which was in the fact void did not disentitle him from recovering on a *quantum meruit*.—CRAVEN-ELLIS *v.* CANONS, LTD., [1936] 2 K. B. 403; [1936] 2 All E. R. 1066; 105 L. J. K. B. 767; 155 L. T. 376; 52 T. L. R. 657; 80 Sol. Jo. 652, C. A.

3500a. Power to provide for employees—Grant of pension.]—A private co., the articles of which authorised the directors to provide for the welfare of employees & their widows & children, entered into a deed of covenant by which it granted a pension of £500 a year to the widow of a former managing director five years after his death. Some three years later the co. passed a resolution for voluntary winding-up. The widow lodged a proof in the winding-up for the capitalised value of the annuity, but the liquidator rejected it:—*Held*: the transaction was not one for the benefit of the co. or reasonably incidental to the co.'s business. The pension did not come within the terms of the co.'s articles, as a managing or other director is not a person in the employment of a co., & the action of the directors was not confirmed by the shareholders in general meeting convened for the purpose of doing so. The grant of the pension was therefore void & *ultra vires* the co.—*Re* LEE, BEHRENS & Co., LTD., [1932] 2 Ch. 46; 101 L. J. Ch. 183; 147 L. T. 348; 48 T. L. R. 248; [1931] B. & C. R. 160.

3502. *Add. Annotations*:—**Consd.** Underwood *v.* **Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

3505. *Add. Annotation*:—**Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

3506. *Add. Annotation*:—*Generally*, **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

3506a. —— —— Cheque — Presumption of authority.]—STEWART (ALEXANDER) & SON, OF DUNDEE, LTD. *v.* WESTMINSTER BANK, LTD., [1926] W. N. 271, C. A.

3526. *Add. Annotations*:—*As to* (2) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58. *Generally*, **Refd.** I. R. Comrs. *v.* Fisher's Exors., [1926] A C. 395.

3526a. "Person in the employment of the company"—Director.]—No managing or other director is a "person in the employment of the company."—NORMANDY *v.* IND COOPE & Co., LTD. [1908] 1 Ch. 84; 77 L. J. Ch. 82; 97 L. T. 872; 24 T. L. R. 57; 15 Mans. 65.

3532. *Add. Annotations*:—**Refd.** Thomas *v.* Todd, [1926] 2 K. B. 511. **Consd.** Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1. **Followed.** *Re* Gramophone Records, Ltd. (1930), 69 L. Jo. 201.

3532a. —— ——.]—By the articles of a private co. a governing director, who also held practically the whole of the share capital, was so appointed for his life, or until he should resign or be removed by special resolution of the co., at a salary of £300 a year. After he had continued in office for some years the

PART III. SECT. 28, SUB-SECT. 9.—D.

sp. *Extent of powers.*]—Where a general manager is chosen from the directors & is therefore a managing director, there is an implication of further & larger authority than in the case of a general manager who is not a director; but when directors appoint a "managing director," they may be taken to have *ipso facto* delegated to him some of their powers as a board of directors.—MID-WEST COLLIERIES, LTD. *v.* MCEWEN, [1925 2 D. L. R. 529.—CAN.

3501 v. —— —— ——.]—Persons dealing with a managing director need only satisfy themselves that he has the power to do what he does, even though it be for his personal advantage.—*Re* J. STANLEY WEDLOCK, LTD., *Ex p.* ROYAL BANK, [1924] 4 D. L. R. 1178; 5 C. B. R. 103.—CAN.

3501 vi. —— —— ——.]—Where under the arts of assocn. of a co. its managing director might have the power which he purported to exercise, a person contracting with the co. through him is entitled to assume that he actually did have such power.—*Re* BRITISH COLUMBIA BOND CORPN., LTD., & LANG, [1931] 1 W. W. R. 286; 2 D. L. R. 985.—CAN.

3501 vii. —— —— ——.]—*Held*: the evidence proved R.'s position to be that of managing director, &, therefore, it must be presumed, especially since there was nothing adduced by the co. to negative his authority, that he had authority to contract on behalf of the co. to pay pltf. a commission.—WRATHALL *v.* RIPSTEIN & MANITOWAN EXPLORATION CO., LTD., [1932] 1 W. W. R. 801; 40 Man. L. R. 272; 3 D. L. R. 64; *affg.*, [1931] 3 W. W. R. 741.—CAN.

f i. —— —— *Presumption as to borrowing power.*]—Money was advanced by pltf. to F., a director, & not to the co. F. was in control of the co.'s business, but the directors had not delegated their borrowing power to him:—*Held*: one director alone had no actual authority from the co. to borrow, & pltf. was not entitled to assume that the directors had delegated their borrowing powers to the one director who had been left in full control of the business.—MERCANTILE FINANCE CORPN., LTD. *v.* FRANCIS & TAYLOR, LTD., [1929] N. Z. L. R. 731.—N.Z.

sq. *Fraud of managing director—Secret arrangement for sale of property.*]—LASELL *v.* HANNAH (B. C.) (1906), 37 S. C. R. 324.—CAN.

st. *Position as trustee—Advantage to company from misconduct.*]—A managing director acting in a way whereby he derives an improper advantage to himself financially or otherwise cannot justify it by showing that his action was of benefit to the co.—BRITISH COLUMBIA TIMBER INDUSTRIES JOURNAL, LTD. *v.* BLACK (1934), 48 B. C. R. 209.—CAN.

PART III. SECT. 28, SUB-SECT. 10.

r i. —— *Effect of bye-law.*]—The president of a co. has no authority without the authorisation by the board to engage solrs. in the co.'s business, though there be a bye-law giving him a general oversight over the business of the co.—*Re* PETRIE MANUFACTURING CO., *Ex p.* HUGHES, [1924] 4 D. L. R. 1308; 4 C. B. R. 311.—CAN.

c i. —— *Cheque—Unsatisfied judgment against company.*]—*Held*: the creditor, to whom the cheque was paid, was not prevented from proceeding against the president upon it.—WRIGHT *v.* RITCHIE, [1925] 4 D. L. R. 1050.—CAN.

sb. *Not a trustee—As regards funds & securities in his custody.*]—*Ex p.* GIROUX, [1926] 2 D. L. R. 900; 45 Can. Crim. Cas. 315; (1925), Q. R. 40 K. B. 362.—CAN.

PART III. SECT. 29, SUB-SECT. 1.—A.

h i. —— *Mining engineer—Companies Act, 1927, s. 113.*]—STEVENS *v.* SPENCER (Alta.), [1930] 2 W. W. R. 271; 3 D. L. R. 993; *affg.*, [1929] 4 D. L. R. 838; 3 W. W. R. 129.—CAN.

sc. *Clerk, labourer, servant or apprentice—Director also field manager of mining company.*]—Sect. 113 of Cos. Act, 1934, does not make the other directors of a co. liable for the wages of a director for work performed by him as a "clerk, labourer, servant or apprentice" of the co.

Qu.: whether, even if pltf. had not been a director, his position as field manager for a gold mining co., interpreted in the light of the authority he had, the work he did & the place & circumstance of its performance, would have put him in the class of "labourers or servants," within the meaning of said sect.—MULLIGAN *v.* LANCASTER, [1937] 1 W. W. R. 73; 1 D. L. R. 414.—CAN.

PART III. SECT. 29, SUB-SECT. 1.—B.

e i. —— *By president—Confirmation.*]—Where a servant had been orally hired by the president of a co., & his services had been accepted for three & a half years without the president's authority to hire him being questioned:—*Held*: the co. could not repudiate the agreement, on the mere ground that it was not formally authorised or adopted by bye-law.—BLOOMFIELD *v.* MONARCH OVERALL MANUFACTURING CO., LTD. (No. 2), [1927] 2 W. W. R. 18; [1927] 3 D. L. R. 146; *affd.*, [1927] 3 W. W. R. 502; [1927] 4 D. L. R. 1137.—CAN.

co. passed a resolution for voluntary winding-up, & he ceased to act as director. His assignees sought to prove in the liquidation for compensation due to him for loss of office, but the liquidator rejected the claim :— *Held :* as the only contract between the director & the co. was that contained or evidenced in the articles, his employment as such was conditional on the continued existence of the co., & ceased automatically when it was wound up. But assuming there had been any breach of contract it was one in respect of which, in the circumstances, no damages were recoverable.—*Re* FARRER (T. N.), LTD., [1937] Ch. 352 ; [1937] 2 All E. R. 505 ; 106 L. J. Ch. 305 ; 157 L. T. 431 ; 53 T. L. R. 581 ; 81 Sol. Jo. 357.

3535. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

3536. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

3536a. —— ——.]—*Re* LEE, BEHRENS & CO., LTD., No. 3500a, *ante*.

3536b. Remuneration payable out of profits—Whether profits available for dividend.]—In consideration of services rendered & of the transfer of certain rights to the co. by him, the co. agreed as purchasers "to pay to [pltf.] out of the first profits of the purchasers & in priority to all dividends payable in respect of any shares in the purchasers' capital the sum of £1,000." The balance sheet of the co., for the year ending Mar. 31, 1935, showed a profit of £698 11*s.* 10*d.*, which sum the directors used for writing off preliminary expenses & in making a transfer to certain reserve accounts. Pltf. contended that the £698 11*s.* 10*d.*, being the first profit of deft. co., he was entitled to payment of that sum in part satisfaction of the £1,000 : & that the co. by the publication of the balance sheet were estopped from denying that the £698 11*s.* 10*d.* was a first profit :— *Held :* upon the true construction of the contract the words "the first profits in priority to all dividends" means profits available for dividends ; & the test is whether the purpose to which the directors have applied the sum in dispute is one to which the shareholders could not object if such application deprived them of what would otherwise have been a dividend.—STEWART *v.* SASHALITE, LTD., [1936] 2 All E. R. 1481 ; 52 T. L. R. 712.

3537a. Superannuation—Alteration of scheme—Whether ultra vires.]—*Re* ELDER DEMPSTER SUPERANNUATION FUND ASSOCN. (1933), 78 Sol. Jo. 13.

3540a. —— —— **Presumption of authority—Due delegation of authority.**]—HOUGHTON & CO. *v.* NOTHARD, LOWE & WILLS, No. 3157a, *ante*.

3549. *Add. Annotations :*—**Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1934), 151 L. T. 1. **Distd.** Peterborough Trust, Ltd. *v.* Steel Industries of Great Britain, Ltd. (1934), 78 Sol. Jo. 861. **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

3549a. —— —— ——.]—KLEINWORT, SONS & CO. *v.* ASSOCIATED AUTOMATIC MACHINE CORPN., LTD., No. 2419a, *ante*.

3553. *Add. Annotation :*—**Refd.** The Hayle, [1929] P. 275.

3560. *Add. Annotations :*—**Consd.** Chibbett *v.* Robinson (1924), 132 L. T. 26. **Distd.** Mudd *v.* Collins (1925), 133 L. T. 186 ; Reed *v.* Seymour (1927), 11 Tax Cas. 625 ; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225. **Expld. & Distd.** Shipway *v.* Skidmore (1932), 16 Tax Cas. 748. **Consd.** Denny (H. & A.) *v.* Reed (1933), 18 Tax Cas. 254. **Refd.** Stedeford *v.* Beloe, [1931] 2 K. B. 610 ; Dewhurst *v.* Hunter (1932), 146 L. T. 510.

3560a. Remuneration by commission—Amount recoverable—How calculated.]—Applt., pltf. in the action, was for many years secretary of resp. co. Originally he received a fixed salary per week, but in 1916 an agreement was made between him & one A. S., managing director of resp. co., to the effect that in addition to his weekly salary he was to receive 10 per cent. on the balance of profits after payment of 12½ per cent. dividend. In 1926 applt. quarrelled with A. S. & left the service of resps., & shortly afterwards he brought this action for an account of the sums due to him as commission & for payment of the amount found to be due. It appeared that nearly all the capital of the resp. co. was held by A. S. & his family, & that he, as managing director, had entire control of the co.'s business. During applt.'s tenure of office A. S., with the connivance & assistance of applt., habitually appropriated funds of the co. to his own purposes. Applt. in framing his claim for commission contended (i) that the 12½ per cent. dividend referred to in the agreement must be a dividend subject to income-tax ; (ii) that the 12½ per cent. dividend must be limited to an amount representing 12½ per cent. on the capital of the co. at the date of the agreement & had no application to subsequent increases of capital ; & (iii) that for the purpose of calculating his commission he was entitled to

---

PART III. SECT. 29, SUB-SECT. 1.—C.

sd. *By whom fixed—Directors.*]—The remuneration of an officer of a co. must be fixed by the directors, & cannot be fixed by the shareholders.—WILSON *v.* WOOLLATT, [1928] 4 D. L. R. 403 ; 62 O. L. R. 620.—**CAN.**

se. *Who liable for — Directors — Whether manager included in "labourers, servants & apprentices."*]—DOMANSKI *v.* WILSON, [1935] 4 D. L. R. 17 ; O. R. 400 ; 5 F. L. J. (Can.) 69.—**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—D.

g i. —— —— *Contracts for purchase of stock.*]—*Held :* the co., in order to avoid liability, must show that their officers were, to the knowledge of the brokers, abusing their powers & giving directions they had no power to give.—TICONDEROGA PULP & PAPER CO. *v.* COWANS, [1925] 4 D. L. R. 1.—**CAN.**

g ii. —— —— *Agreement for non-shareholders to gain advantages of shareholders.*]—*Held :* express authority necessary.—MCLEOD *v.* UNITED CANNERS, LTD. (P.E.I.), [1925] 3 D. L. R. 767.—**CAN.**

g iii. —— —— *Cancellation of subscription for stock.*]—*Held :* express authority necessary.—*Re* SUN RAY MANUFACTURING CO., *Ex p.* ROBSON (Ont.), [1925] 1 D. L. R. 175 ; 5 C. B. R. 303 ; *affd.*, 4 C. B. R. 597.—**CAN.**

sl. *Liabilities — Investigation into conduct.*]—Act 46, 1926, s. 184 (1), is not designed for the purpose of enabling the ct. to hold a general investigation into the conduct of an officer of the co. The examination there intended is for the purpose of fixing liability in respect of a particular claim then before the ct. The sect. does not create any new liability or any new right, but only provides a summary mode of enforcing rights which would otherwise have been enforced by the ordinary procedure of the cts. A person cannot therefore be held liable under the sect. unless he is already liable to pay a sum of money by some principle of ordinary law, or by virtue of a special clause of Cos. Act imposing upon him a particular liability.—ZULULAND MOTOR CO. *v.* SHORT, LIQUIDATOR, ETC. (1928), 49 N. L. R. 368.—**S. AF.**

reintroduce into the accounts all the sums which had been unlawfully applied for the benefit of A. S. personally :—*Held :* (1) the 12½ per cent. dividend must be a dividend subject to income-tax ; the 12½ per cent. dividend must be measured on the capital as it stood in each year when the accounts were made up ; & in reckoning the amount on which commission must be paid no account could be taken of the sums which ought to have been included in the profits but had been misappropriated by A. S. ; (2) although applt. had been guilty of misconduct in relation to the affairs of resps., he was entitled to recover moneys which were already due to him for work done on resps.' behalf, & the remedy of resps. was an action or counterclaim for damages for breach of duty.—RAMSDEN *v.* SHARRATT (DAVID) & SONS, LTD. (1930), 35 Com. Cas. 314, H. L.

Annotation :—As to (2) **Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

3560b. —— —— **Effect of misconduct.**]—RAMSDEN *v.* SHARRATT (DAVID) & SON, LTD., No. 3560a, *ante*.

3565. *Add. Annotations :*—**Consd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255 ; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd *v.* Goukassow (1924), 40 T. L. R. 837 ; Todd *v.* Egyptian Delta Land & Investment Co., [1928] 1 K. B. 152 ; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

3567a. —— **Presumption of authority—Due delegation of authority.**]—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, No. 3157a, *ante*.

3568a. —— **Purchase of goods for company's benefit.**]—LEVY *v.* METROPOLITAN CAB CO. (1854), 23 L. T. O. S. 67.

3573. *Add. Annotation :*—**Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730.

3576. *Add. Annotation :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

3586. *Add. Annotation :*—**Refd.** Reid & Sigrist, Ltd. *v.* Moss & Mechanism, Ltd. (1932), 49 R. P. C. 461.

3590. *Add. Annotation :*—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500.

3595. *Add. Annotation :*—**Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

3599. *Add. Annotation :—As to* (1) **Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

3603a. —— —— **Bills of exchange drawn by branch manager.**]—The arts. of assocn. of a co. empowered the directors to determine who should be entitled to sign & make, draw, accept & indorse on the co.'s behalf bills, notes, receipts, acceptances, indorsements, cheques, etc. The co., whose business was that of forwarding agents, had a branch at Manchester under a branch manager, C. This branch manager, without having in fact received any authority from the co., & acting in fraud of the co., drew seven bills of exchange on behalf of the co. signed "S.C., Manchester manager." The bills were drawn to the order of the co., they were accepted by C. & W. & indorsed on behalf of the co. "S.C., Manchester manager." In an action on the bills by the holders in due course against the co. as drawers :—*Held :* (1) pltfs. were not entitled to act on bills drawn by a person in the position of the branch manager ; (2) the bills were forgeries under which pltfs. could have no title.—KREDITBANK CASSEL G. m. b. H. *v.* SCHENKERS, [1927] 1 K. B. 826 ; 96 L. J. K. B. 501 ; 136 L. T. 716 ; 43 T. L. R. 237 ; 71 Sol. Jo. 141 ; 32 Com. Cas. 197, C. A.

Annotations :—As to (1) **Consd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48. *As to* (2) **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587 ; South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496 ; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

3608. *Add. Annotation :*—**Dbtd.** Wurzel *v.* Houghton Main Home Delivery Service, Ltd., Wurzel *v.* Atkinson, [1937] 1 K. B. 380.

3613. *Add. Annotation :*—**Refd.** Beattie *v.* Beattie, Ltd., [1938] 3 All E. R. 214.

3652. *Add. Annotation :*—**Refd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

3656. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3657. *Add. Annotation :*—**Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

PART III. SECT. 29, SUB-SECT. 2.—C. (b).

q i. —— *By acts of secretary-treasurer.*]—*Held :* (1) a secretary-treasurer, as such, has no authority to bind his co. ; (2) on the facts, there was nothing to show that the authority of the secretary-treasurer in this case was other or more extensive than that of any other secretary.—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

PART III. SECT. 29, SUB-SECT. 3.—B.

3596 i. *Remuneration by commission—Based on profits—& weekly sum—Provision for fixed minimum—Right to minimum although no profits.*]—GALLEGHER *v.* WATERLOO MOTORS, LTD., [1931] 2 D. L. R. 310 ; 3 M. P. R. 137.—**CAN.**

sb. *Right to remuneration—Absence of bye-law authorising payment—Action not maintainable—Companies Act, R. S. M.*, 1913 (c. 35), *s.* 32.]—MENZIES *v.* TYNDALL QUARRIES CO. (Man.), [1926] 4 D. L. R. 350 ; [1926] 2 W. W. R. 864.—**CAN**

PART III. SECT. 29, SUB-SECT. 3.—C.

g i. —— —— ——.]—Where the manager of a co., acting in good faith under the authority which he thought was vested in him & which could have vested in him under the co.'s arts. of assocn., executes a contract on the co.'s behalf, & the other party accepts him as having authority, the co. is bound by his act.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871 ; [1925] 1 W. W. R. 505 ; 34 B. C. R. 533.—**CAN.**

sd. *Manager conducting personal business—Payment by party having dealings with company.*]—FAWCETT *v.* PETITCODIAC BLACK FOX CO., LTD. (1932), 5 M. P. R. 442.—**CAN.**

3602 i. —— —— *By misrepresentation—Question of authority.*]—RAVENE PLANTATIONS, LTD. *v.* ESTATE H. ARRAY (1927), 48 N. L. R. 174.—**S. AF.**

PART III. SECT. 29, SUB-SECT. 3.—D.

sl. *For judgment against company—In action brought on manager's instructions.*]—*Held :* the manager was not liable.—PACIFIC COAST COAL MINES, LTD. *v.* ARBUTHNOT, [1926] 1 D. L. R. 670 ; [1926] 1 W. W. R. 478 ; 36 B. C. R. 321.—**CAN.**

sm. *Undue preference.*]—An officer of a co. who grants an undue preference to himself is guilty of misfeasance & breach of trust within the meaning of Act 46, 1926, *s.* 184 (1). A part-time secretary is an officer of the co. within the same sect.—ZULULAND MOTOR CO. *v.* BOSWELL, LIQUIDATOR, ETC. (1928), 49 N. L. R. 376.—**S. AF.**

PART III. SECT. 29, SUB-SECT. 4.—A.

sn. *Contract to appoint on obtaining control of company—Construction.*]—PURDOM *v.* DOHERTY (Can.), [1929] 3 D. L. R. 719 ; *affg.*, 33 O. W. N. 425.—**CAN.**

PART III. SECT. 29, SUB-SECT. 4.—D.

g i. —— —— ——.]—*Re* ALPHA MORTGAGE & INVESTMENT CO. (1916), 34 W. L. R. 483 ; 10 W. W. R. 652.—**CAN.**

3661. *Add. Annotation :*—**Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3661a. ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3662a. Inspection of securities—Whether in proper custody.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3664. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3665. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3668. *Add. Annotation :*—*As to* (1) **Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

3670a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3674a. Duty to report to members—Extent of duty.] —The duty of the auditors of a co. to make a report to the members, under 1929 Act, sect. 134 (1), is confined to forwarding their report to the secretary of the co.—*Re* ALLEN, CRAIG & CO. (LONDON), LTD., [1934] Ch. 483; 103 L. J. Ch. 193; 151 L. T. 323; 50 T. L. R. 301; 78 Sol. Jo. 223.

3675. Before this case add "*See, now*, 1929 Act, s. 152."

3684a. Application of Interpretation Act, 1889 (c. 63), s. 1 (1)—To special articles used with Table A.]—By the arts. of assocn. of a co. which was incorporated in 1906 it was provided that Table A in the first sched. to the Cos. Act, 1862, should apply to the co., but that certain clauses of Table A should be excluded. In an action by a director against the co. & its directors, in which he claimed a declaration that a notice purporting to remove him from the office of director was invalid, the question arose whether Interpretation Act, 1889 (c. 63), s. 1 (1), which provides that words in the singular shall include the plural & words in the plural shall include the singular applied to the special articles which were used with Table A :—*Held :* sect. 1 (1), which governed Table A, also governed the special articles which were used with Table A, &, applying this principle to the notice in question, pltf. was validly removed from his office of director & the action failed.—FELL *v.* DERBY LEATHER CO., LTD., [1931] 2 Ch. 252; 100 L. J. Ch. 311; 145 L. T. 356.

3692. *Add. Annotation :*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

3693. *Add. Annotations :*—*As to* (1) **Refd.** Batu Pahat Bank, Ltd. *v.* Tan Keng Tin, Official Assignee of Property, [1933] A. C. 691. *As to* (2) **Consd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3695. *Add. Annotation :*—**Refd.** Campbell *v.* Rofe, [1933] A. C. 91.

3696a. —— **Increase in voting rights of preference shareholders.**]—ST. DAVIDS (LORD) *v.* UNION CASTLE MAIL SS. CO., LTD. (1934), 78 Sol. Jo. 877.

3698. *Add. Annotation :*—**Expld. & Distd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

PART III. SECT. 29, SUB-SECT. 5.—B.

3661 i. *General rule.*]—Persons who continue from year to year to assume the duties of auditors must be held to have agreed to conduct their work in a reasonably skilful & careful manner. In an action in which deft. auditors were held liable in damages for negligence in not detecting defalcations by the pltf.'s accountant, it was held that there was ample justification for the belief of pltf.'s shareholders that the report pltf. was receiving annually from defts. provided for such an audit as would reasonably catch such thefts & manipulations of the books as said employee had been guilty of. Defts. were not justified in taking directions from another employee, the manager, whom also they were required to check, as to whether it was necessary to do certain work of checking. Since defts. were aware that pltf.'s system of checking was faulty & that the danger of theft was always present, the default of pltf., or of its employees other than the accused in not remedying that situation did not excuse the continuing negligence of defts. The fact that pltf. had received from bonding cos. the greater part of the loss it had sustained was not a defence to the action. Any possible issue arising from such payment might be left to be determined between pltf. & said cos. on defts. making payment, or, alternatively, if defts. so required, the form of judgment might provide for notice to any parties, such as the bonding cos., presumed to have an interest therein.—INTERNATIONAL LABORATORIES, LTD. *v.* DEWAR, [1932] 3 W. W. R. 174; [1933] 1 D. L. R. 34; *revsd.*, [1933] 2 W. W. R. 529; 3 D. L. R. 665; 41 Man. L. R. 329.—**CAN.**

3661 ii. ——.]—The extent of the duty & liability of an auditor depends on the terms of his employment in the particular case, & on the book-keeping methods used, to the knowledge of his employer, by the latter's officials.—JAMIESON, AUSTIN & MITCHELL, LTD. *v.* BATTRUM, [1934] 1 W. W. R. 334.—**CAN.**

3668 i. *As to balance sheet.*]—Although an auditor of a co. is not an insurer, & does not guarantee that the books of the co. show the true position of its affairs or that his balance-sheet is accurate according to the books, it is his duty to ascertain & certify to the shareholders the true financial position of the co. at the time of the audit so far as reasonable care & skill on his part discloses it; it is not sufficient for him to ascertain that the balance-sheet corresponds to the books, he must take reasonable care to ascertain that the books themselves show the true position. It is his duty to report & comment on any item in the balance-sheet furnished by the directors which either appears or is found from investigation to call for comment or explanation. An auditor who gives shareholders means of information instead of information in respect of a co.'s financial position does so at his peril, & runs the very serious risk of being held, judicially, to have failed to have discharged his duty. When it is shown that the audited balance-sheets do not show the true condition of the co. & that damage has resulted the onus is on the auditor to show that such damage is not the result of any breach of duty on his part.—BLUE BAND NAVIGATION CO., LTD. (TRUSTEE) *v.* PRICE, WATERHOUSE & CO. (NO. 2), [1933] 3 W. W. R. 53; *revsd. on the facts*, [1934] 2 W. W. R. 49; 3 D. L. R. 404; 48 B. C. R. 325.—**CAN.**

PART III. SECT. 29, SUB-SECT. 5.—C.

3679 i. *Misfeasance—Failure to audit.*]—*Held :* the failure to audit & report on the balance sheets of a co., & the sending of summaries purporting to be audited to the registrar of cos. were wilful acts or defaults on the part of the auditor, & he was liable to make good certain sums paid as preference dividends as a result of such default.—*Re* FULTON (JOHN) & CO., LTD., [1932] N. I. 35.—**IR.**

PART III. SECT. 30, SUB-SECT. 2.—C. (b) ii.

sp. *Rights of members—Forcing additional shares on dissenting member.*] —An art. of assocn. of a co. providing that the directors might require a shareholder to take up additional shares in a certain ratio was altered by a resolution of the majority of the shareholders, applt. (*inter alios*) dissenting. The alteration struck out the words "three shares for every 250 lb. of butter fat" supplied by a member & substituted "one share for every 60 lb. of butter-fat." Applt. was called upon to take up additional shares in accordance with the alteration, but refused to do so :—*Held :* the art. was not one that could be amended under Cos. Act, 1908, s. 122, so as to force additional shares on a dissenting member, & applt. was not bound by the alteration objected to.—MACDONALD *v.* NORMANBY CO-OPERATIVE DAIRY FACTORY CO., LTD., [1923] N. Z. L. R. 122.—**N.Z.**

3698 i. *Alteration a breach of contract.*]—A shareholder in a co. must be taken to know that one of the incidents of membership of a co. is that the co. may, by adopting the proper method, *bonâ fide* alter its articles in a way which may prejudicially affect his interest, & provided that the alteration in the article is not inconsistent with the objects set out in the memorandum of association, & is *bonâ fide* made in the interest of the co., the shareholder would be bound by such an alteration.

A co. cannot commit a breach of contract by altering its articles.—HARI CHANDANA JOGA DEVA *v.* HINDUSTAN CO-OPERATIVE INSURANCE SOCIETY, LTD. (1924), I. L. R. 52 Calc. 239.—**IND.**

3698 ii. ——.]—Resp., a member of applt. co. for a number of years, sup-

3702. *Add. Annotation :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3703. *Add. Annotation :*— **Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3704. *Add. Annotation :—As to* (2) **Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3704a. —— **Interference by court.**]—It is for the shareholders, & not for the ct., to say whether an alteration of the articles is for the benefit of the co., provided that it is not of such a character as that no reasonable men could so regard it.

The arts. of assocn. of a co. provided that pltf. & four others should be the first directors of the co., & that they should be permanent directors, & that each of them should be entitled to hold office so long as he should live unless he should become disqualified from any one of six specified events. Owing to irregularities in the accounts furnished by pltf. of sums received by him on the co.'s account an extraordinary general meeting of the co. was held & a special resolution was passed that the articles should be altered by adding a seventh event disqualifying a director, namely, a request in writing by all his co-directors that he should resign his office. Such a request was subsequently made to the pltf. There was no evidence of bad faith on the part of the shareholders. In an action by pltf. for breach of an alleged contract contained in the original articles that he should be a permanent director, & for a declaration that he was still a director of the co. :—*Held :* the contract, if any, between pltf. & the co. contained in the articles in their original form was subject to the statutory power of alteration & that if the alteration was *bonâ fide* for the benefit of the co. it was valid & there was no breach of that contract ; there was no ground for saying that the alteration could not reasonably be considered for the benefit of the co. ; therefore, there being no evidence of bad faith, there was no ground for questioning the decision of the shareholders that the alteration was for the benefit of the co. ; &, consequently, pltf. was not entitled to the relief claimed.—SHUTTLEWORTH *v.* COX BROTHERS & CO. (MAIDENHEAD), LTD., [1927] 2 K. B. 9 ; 96 L. J. K. B. 104 ; 136 L. T. 337 ; 43 T. L. R. 83, C. A.

Annotation :—**Folld.** Sugden *v.* Urban Fire Insurance Co. (1930), 75 Sol. Jo. 60.

3704b. —— ——.]—SUGDEN *v.* URBAN FIRE INSURANCE CO., LTD. (1931), 75 Sol. Jo. 60 (Vice-Chancellor of Lancashire).

3724. *Add. Annotations :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258 ; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

3729. Before this case insert " *Compare* CORPORATIONS, Vol. XIII., pp. 339 *et seq.*"

3734a. —— **Preference shareholders whose dividends " in arrear."**]—A co.'s articles of assocn. provided that the original preference shares, carrying a cumulative preferential dividend of 7 per cent., should not confer upon the holders the right to attend & vote at any general meeting or to have notice thereof unless (*inter alia*) the dividend thereon was " in arrear " for more than three months. Subsequently the capital of the co. was increased by the issue of preferred ordinary shares with the right to a non-cumulative preferential dividend of 10 per cent. payable in respect of each year exclusively out of the profits earned in each year & to rank after the preference shares. It was further provided that the holders of these preferred ordinary shares should, *mutatis mutandis*, be subject to the same restrictions as to receiving notices of & attending & voting at general meetings as the holders of original preference shares. Since 1920 no profits had been available to pay dividends, & for the general meeting of 1926 the holders of preferred ordinary shares received no summonses. In an action by holders of such shares against the co. for a declaration that they were entitled to have notice of & to attend & vote at the general meetings :—*Held :* the words " in arrear," in the context in which they appeared in the articles, could not be construed to cover the non-payment of a non-cumulative preference dividend payable out of the profits of each year & not paid because there were no profits available for the dividend, & the action failed.—COULSON *v.* AUSTIN MOTOR CO., LTD. (1927), 43 T. L. R. 493.

3736. *Add. Citation :*—13 Mans. 316.

3740. *Add. Annotation :*—**Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

3746. *Add. Annotation :*—**Folld.** *Re* Newcastle United Football Co., [1932] W. N. 109.

3749a. Where twenty-one days' notice required—Shareholders resident abroad—Notice unnecessary.]—*Re* NEWCASTLE UNITED FOOTBALL CO., LTD., [1932] W. N. 109 ; 173 L. T. Jo. 344.

---

plied produce to the co. upon terms set out in certain of the co.'s arts. of assocn. The co. altered the arts. in question in a manner which subsequently proved to be prejudicial to resp., &, declining to be bound by such alteration, he took action to recover the balance due to him on the basis of the original articles :—*Held :* it not having been shown that resp. had in any way assented to the alteration in question, he was not bound thereby, & was entitled to be paid for his produce on the basis of the original arts. as unaltered.—JOHNSON *v.* ELTHAM CO-OPERATIVE DAIRY FACTORY CO., LTD., ELTHAM CO-OPERATIVE DAIRY FACTORY CO., LTD. *v.* JOHNSON, [1931] N. Z. L. R. 216.—N.Z.

PART III. SECT. 30, SUB-SECT. 2.—C. (b) iii.

3701 l. *For benefit of company as whole.*]—If a majority of shareholders carry a resolution to alter the articles not in the interests of the co. at large, but entirely for their own benefit & in their own interests, they have not acted *bonâ fide*, & that is fatal to the validity of the alteration. The co. had rescinded an article whereby the " dry " shareholders were entitled to interest on their capital, & substituted another which had the effect of depriving the " dry " shareholders of interest :—*Held :* the article was invalid.—GEARY *v.* MELROSE CO-OPERATIVE DAIRY CO., LTD., [1930] N. Z. L. R. 768.—N.Z.

PART III. SECT. 30, SUB-SECT. 3.—A.

sd. *Misdescription of meeting—Effect.*]—A meeting was erroneously described as a directors' meeting instead of a shareholders' meeting. The three shareholders present were also directors. An act done at such meeting, being *intra vires*, bound the co. notwithstanding the misdescription.—E. H. MCGUIRE & H. J. FORESTER, LTD. *v.* CADZOW, [1932] 3 W. W. R. 337 ; [1933] 1 D. L. R. 192 ; 26 Alta. L. R. 518.—CAN.

PART III. SECT. 30, SUB-SECT. 3.—B. (f).

e i. ——.]—A shareholder, who is present at a meeting of shareholders, can waive his right to be given notice of the intention to move a special resolution ; the giving notice of such intention is only prescribed in order to give shareholders time to consider the matter.—*Re* EXCEL FOOTWEAR CO., *Ex p.* NOVA SCOTIA TRUST CO., [1933] 3 D. L. R. 213 ; 56 N. S. R. 195 ; 3 C. B. R. 748.—CAN.

3753. *Add. Annotation :—Generally,* **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

3770. *Add. Annotation :—***Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3771. *Add. Annotations :—***Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83; Batu Pahat Bank, Ltd. *v.* Tan Keng Tin, Official Assignee of Property, [1933] A. C. 691.

3771a. Shareholder with no registered address—No address in United Kingdom for service of notices.]—DICKSON *v.* HALESOWEN STEEL Co., [1928] W. N. 33.

3775. *Add. Annotations :—As to* (1) **Consd.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567. *As to* (2) **Apld.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

3779. *Add. Annotation :—***Expld.** & **Apld.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3787a. —— —— ——.]—WALL *v.* EXCHANGE INVESTMENT CORPN., No. 3811a, *post.*

3802. *Add. Annotation :—***Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

3803a. —— —— **Although proxy given.**]—A co.'s arts. of assocn. provided, art. 74, that votes might be given personally or by proxy; art. 75, that the instrument appointing a proxy should be deposited at the office not less than forty-eight hours before the time of holding the meeting at which it was to be used; &, art. 76, that "a vote given in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous . . . revocation of the proxy . . . provided no intimation in writing of the . . . revocation . . . shall have been received at the office before the meeting":—*Held :* in a case where a proxy had not been validly revoked in accordance with art. 76, the shareholder who had given the proxy was free to attend at the meeting & vote personally; &, when he had done this, the vote tendered by the proxy was properly rejected.—COUSINS *v.* INTERNATIONAL BRICK CO., LTD., [1931] 2 Ch. 90; 100 L. J. Ch. 404; 145 L. T. 471; 47 T. L. R. 217, C. A.

3811. *Add. Annotation :—***Apld.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

3811a. —— —— —— **Whether decision of chairman final.**]—An art. provided that no objection should be made to the validity of any vote except at the meeting at which it was tendered, & that every vote, whether given in person or by proxy, not disallowed at any meeting should be deemed valid for all purposes :—*Held :* the decision of the chairman, who, in the *bonâ fide* exercise of the power conferred upon him by the art., had refused to disallow a vote by proxy to which objection had been taken at the meeting, was final & would not be reviewed by the ct.—WALL *v.* EXCHANGE INVESTMENT CORPN., [1926] Ch. 143; 95 L. J. Ch. 132; 134 L. T. 399, C. A.

3822. *Add. Annotation :—***Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

3823. *Add. Annotations :—As to* (1) **Distd.** Worcester Corsetry, Ltd. *v.* Witting, [1936] C. R. 640. **Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

3826. *Add. Annotation :—***Consd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

3829. *Add. Annotation :—As to* (1) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

3841a. —— **Revocation of proxy received after commencement of meeting but before poll taken — Vote valid.**]—SPILLER *v.* MAYO (RHODESIA) DEVELOPMENT CO. (1908), LTD., [1926] W. N. 78.

*Annotation :—***Consd.** Cousins *v.* International Brick Co., [1931] 2 Ch. 90.

3847a. —— —— **Vote valid unless disallowed at meeting — Whether decision of chairman final.**]—WALL *v.* EXCHANGE INVESTMENT CORPN., No. 3811a, *ante.*

3847b. Right of member to vote although proxy given.]—COUSINS *v.* INTERNATIONAL BRICK CO., LTD., No. 3803a, *ante.*

3853. *Add. Annotation :—***Refd.** *Re* Jones (R. E.), Ltd. (1933), 50 T. L. R. 31.

3858a. —— **Two resolutions put to meeting en bloc.**]—Where on a show of hands there are

---

PART III. SECT. 30, SUB-SECT. 3.—D. (b).

sq. *Necessity for quorum at commencement—& at time of voting.*]—At the outset a majority of the issued shares were represented at the meeting, but some of the shareholders withdrew & at the time of the voting there was no longer a quorum :—*Held :* meetings of shareholders are to be governed by the same rules as to quorum & procedure as apply to parliamentary & municipal bodies except where the statute or bye-laws otherwise provide; & the shareholders' meeting therefore was a nullity failing for want of a quorum, & the bye-laws were not properly passed.—LUMBERS *v.* FRETZ, [1929] 1 D. L. R. 51; 63 O. L. R. 190. —CAN.

PART III. SECT. 30, SUB-SECT. 3.—D. (c).

3785 ii. —— *To give casting vote—For what purposes to be exercised.*]—*Re* CITIZEN'S COAL & FORWARDING CO. (Ont.), [1927] 4 D. L. R. 275.—CAN.

3796 ii. —— ——.]—At an extraordinary general meeting of a co. a special resolution to increase capital was declared by the chairman to have been carried by the requisite majority. Among the majority voting for the resolution were two shareholders who, in terms of the articles of assocn. were not qualified to vote, in respect that they had been registered owners of their shares for less than a month. If their votes had not been included, the requisite majority in favour of the resolution could not have been obtained. No poll was demanded at the meeting :—*Held :* under 1929 Act, s. 117 (3), as no poll had been demanded at the meeting, the declaration of the chairman that the resolution had been carried by the requisite majority was final & conclusive.—*Re* GRAHAMS' MOROCCO CO., [1932] S. C. 269.—SCOT.

PART III. SECT. 30, SUB-SECT. 3.—D. (d) i.

3801 i. —— —— *Interested directors & shareholders.*]—Directors & other shareholders, implicated in a breach of trust with respect to the co.'s property, are not entitled to use their votes at a general meeting, called for the purpose of deciding whether the co.'s name be retained as pltf. or struck out in an action begun in the name of the co. & in that of a shareholder suing on behalf of himself & all other shareholders with respect to such breach.—LEAVENS & CANADA NATIONAL FIRE INSURANCE CO. *v.* GREAT WEST PERMANENT LOAN CO. (No. 2) (Man.), [1927] 3 W. W. R. 486. —CAN.

sr. *Necessity for concurrence of joint shareholders.*]—Joint holders of shares must concur in voting upon them unless the bye-laws of the co. otherwise provide. Defts. were not entitled to vote upon shares held by them as trustees jointly with other persons, who were not present or assenting.—LUMBERS *v.* FRETZ, [1929] 1 D. L. R. 51; 63 O. L. R. 190.—CAN.

PART III. SECT. 30, SUB-SECT. 3.—D. (d) iii.

st. *No amendment of vote—After vote cast.*]—BARBER, ETC. *v.* NEW ZEALAND SOUNDS HYDRO ELECTRIC CONCESSIONS, LTD., [1927] N. Z. L. R. 589.—N.Z.

sv. *How demanded—Demand by specified number of members—Proxies not included.*]—Cos. Act, 1892, s. 48 (3), provides that a demand for a poll of members of a co. must be made by at least two members :—*Held :* a demand by a member personally present & holding proxies for two other members not personally present was not a demand within this sect.—*Re* RHODESIAN MANUFACTURING CO., LTD., [1927] S. A. S. R. 310.—AUS.

two resolutions before a meeting of shareholders, one for the reduction of capital & another for the conversion of the preference shares into ordinary shares, & where there is a right to a poll, the chairman may put the resolutions *en bloc* if no shareholder requires him to put them separately.—*Re* JONES (R. E.), LTD. (1933), 50 T. L. R. 31.

3866a. Notice of intention to propose—Twenty-one days—How calculated.]—The period of not less than twenty-one days prescribed by 1929 Act, s. 117 (2), relating to notices of meetings in connection with the passing of special resolutions, means a period of not less than twenty-one clear days, exclusive of the day of service of the notice & exclusive of the day on which the meeting is to be held.

Provisions in the articles regulating the date on which a notice is to be deemed to be served must be considered; but an article which provides that the day of service of a notice is to be counted in the relevant number of days must be disregarded.—*Re* HECTOR WHALING, LTD., [1936] Ch. 208; 105 L. J. Ch. 117; 154 L. T. 342; 52 T. L. R. 142; 79 Sol. Jo. 966.

3874. *Add. Annotation:*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

3874a. —— —— Adjournment of second meeting to date more than month from date of first meeting.]—Where a meeting, held for the purpose of confirming as special resolutions resolutions passed as extraordinary resolutions at a meeting held less than a month before, is adjourned, for *bonâ fide* reasons, to a date more than a month from the date of the meeting at which the resolutions were passed, & the resolutions are confirmed at the adjourned meeting, they are valid within 1908 Act, s. 69 (2).—NEUSCHILD *v.* BRITISH EQUATORIAL OIL CO., [1925] 1 Ch. 346; 94 L. J. Ch. 201; 133 L. T. 227; 41 T. L. R. 414; 69 Sol. Jo. 446.

—— —— ——.]—*See, now,* 1929 Act, ss. 117 (2), 119, 287.

3878. Before this case insert "*Compare* CORPORATIONS, Vol. XIII., p. 346."

3880. *Add. Annotations:*—*As to* (1) **Consd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58. **Refd.** Cox *v.* National Union of Foundry Workers of Great Britain & Ireland (1928), 44 T. L. R. 345.

3881a. —— ——.]—SPILLER *v.* MAYO (RHODESIA) DEVELOPMENT CO. (1908), LTD., [1926] W. N. 78.

Annotation:—**Refd.** Cousins *v.* International Brick Co., [1931] 2 Ch. 90.

3882. *Add. Annotation:*—**Refd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

3882a. —— —— Re-election of retiring director.]—SPENCER *v.* KENNEDY, No. 2879a, *ante.*

3890. *Add. Annotation:*—**Consd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

3916a. —— —— Whether "knowingly" party to default.]—BECK *v.* BOARD OF TRADE (SOLICITOR), GOODCHILD *v.* BOARD OF TRADE (SOLICITOR) (1932), 76 Sol. Jo. 414, D. C.

3917. *Add. Annotation:*—*As to* (2) **Refd.** Glanvill, Enthoven *v.* I. R. Comrs. (1924), 131 L. T. 818.

3925. *Add. Annotation:*—**Consd.** R. *v.* Cory, [1927] 1 K. B. 810.

3933. *Add. Annotations:*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1932), 48 T. L. R. 296. **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579; Denby & Sons, Ltd. *v.* Minister of Health, [1936] 1 K. B. 337.

3934a. Locality of debt created.]—An English trust investment co. held 3,712 ordinary £1 shares in deft. co., also an English co. with a registered office in London, & deriving its revenue entirely from its shares in four cos. carrying on business exclusively in Australia. Deft. co. had its head office & board of directors in Australia, but had also a register of shares in London. Deft. co. having been assessed to Australian income tax was required by the Deputy Federal Comr. of Taxation, to deduct an amount sufficient to pay the income tax from the dividend payable to the English trust investment co., as being an "absentee" taxpayer for the year ending June 30, 1921. The investment co. sued deft. co. for the amount deducted, & contended that such dividends were not assessable to Australian income tax:—*Held:* the shares held by pltf. co. in deft. co., were locally situate in England, & the dividend due in respect of them was an English debt. The Commonwealth Govt. had therefore no power to impose or alter the incidence of taxation upon the dividend, & the deft. co was not entitled to deduct any Australian income tax from any dividend payable to English shareholders.—LONDON & SOUTH AMERICAN INVESTMENT TRUST, LTD. *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., [1927] 1 Ch. 107; 96 L. J. Ch. 58; 136 L. T. 436;

PART III. SECT. 30, SUB-SECT. 3.—G.

3897 i. *When court will interfere—To summon meeting.*]—If on an application to strike out the name of a co. which has been used as pltf. without authority, there is any reasonable doubt as to the wishes of the shareholders, the ct. has power to order the directors to summon forthwith a general meeting of the shareholders to ascertain their wishes.—LEAVENS *v.* GREAT WEST PERMANENT LOAN CO., [1927] 2. W. W. R. 606; 36 Man. L. R. 606.—**CAN.**

3899 i. *When court will interfere—To prevent meeting being held.*]—Injunction may be granted restraining the meeting of a co. where a *primâ facie* case of fraud or oppression is made out.—FULLER *v.* BRUCE, [1935] 3 D. L. R. 256; 9 M. P. R. 437; 5 F. L. J. (Can.) 101; *on appeal,* [1936] S. C. R. 124; 2 D. L. R. 273.—**CAN.**

sg. *Motion by cestui que trust—To restrain trustee from voting—Whether company necessary party.*]—PETRIE *v.* BROWN & LOVE, [1934] 3 W. W. R. 380; 49 B. C. R. 299.—**CAN.**

PART III. SECT. 30, SUB-SECT. 7.—A.

sa. *Must apply rateably to all shareholders of same class.*]—It is of the essence of a dividend that it shall apply rateably to all shareholders of the same class.—PRICEVILLE FOX CO. *v.* JORDAN, [1929] 3 D. L. R. 907; 64 O. L. R. 172.—**CAN.**

sc. *What amounts to dividend—Dividend Duty Act,* 1902 (*W. A.*).]—Dividend Duty Act, 1902 (Western Australia), provides by sect. 6 that a co. carrying on business in Western Australia & not elsewhere which declares any dividend shall pay a duty equal to one shilling for every twenty shillings of the amount or value of such dividend. Sect. 2 of the above Act, as amended by the Dividend Duties Amendment Act, 1906, s. 2, provides that "dividend" shall include "every dividend, profit, advantage or gain intended to be paid or credited to or distributed among any members or directors of any co. except the salary or other ordinary remuneration of directors." Applts., a co. within the above statutes, passed resolutions that (1) the capital of the co. should be increased by £101,450 divided into 81,160 new shares of £1 5*s.* each; (2) that the sum of £101,450, being a portion of accumulated profits standing to the credit of the reserve fund, should be transferred to the credit of the share capital account; (3) that the new shares should be allotted as fully paid up among the shareholders *pro rata.* The above resolutions were all carried into effect:—*Held:* these transactions were in effect a declaration of a dividend amounting to £101,450, within Dividend Duties Act, 1902, & that applt. co. was liable to pay duty upon that amount under that Act.—SWAN BREWERY CO., LTD. *v.* R., [1914] A. C. 231, P. C.—**AUS.**

70 Sol. Jo. 1024; *sub nom.* PASS *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., 42 T. L. R. 771.

3934b. Every payment other than authorised reduction of capital.]—A limited co. not in liquidation can make no payment by way of return of capital to its shareholders except as a step in an authorised reduction of capital. Any other distribution of money, whether called dividend or bonus or any other name, can only be made by way of dividing profits. —HILL (R. A.) *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LTD., [1930] A. C. 720; 144 L. T. 65; *sub nom. Re* HILL (RICHARD), HILL *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WAKES, 99 L. J. P. C. 191, P. C.

Annotations:—**Distd.** *Re* Ward, Ringland *v.* Ward, [1936] 2 All E. R. 773. **Refd.** Briggs *v.* I. R. Comrs. (1932), 17 Tax Cas. 11.

3936. *Add. Annotation:*—**Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

3939. *Add. Annotation:*—**Refd.** Angostura Bitters, Ltd. *v.* Kerr, [1933] A. C. 550.

3943a. ——— ——— ———.]—A co. was incorporated as a trust investment co., the objects as defined by clause 3 of its memorandum of assocn. including (*a*) to acquire & hold stocks, shares & securities of the classes therein specified & from time to time to change such investments for others of the like nature, & (*b*) to borrow on debenture stock & to redeem or pay off any moneys so borrowed. The business & accounts of the co. were conducted & kept, as required by the articles of assocn., on the footing that profit or loss on a change of investment was carried to capital account, & net receipts over expenditure were carried to revenue account & became available for payment of dividends without regard to any depreciation in the market value of the co.'s investments. In 1900 the co. issued at par debenture stock. In 1918, owing to the general fall in the value of securities, the directors were enabled to redeem some of this debenture stock at a discount, & they claimed the right to carry the whole amount of this discount to revenue account. The investments forming the assets of the co. had fallen to an extent approximately equivalent to the discount at which the debenture stock had been redeemed:—*Held:* (1) apart from the special provisions of the articles of assocn., the single item of gain by redemption of debenture stock could not be dissociated from the loss of capital assets, & that the amount of the discount was not distributable as dividend; (2) the issue of loan capital was not one of the objects or part of the business of the co., but was a power to be exercised incidentally to, & in furtherance of, its objects, & even if the discount was otherwise divisible as net profit, such a division would be prohibited by the fact that it did not arise out of the co.'s business.—WALL *v.* LONDON & PROVINCIAL TRUST, LTD., [1920] 2 Ch. 582; 90 L. J. Ch. 43; 125 L. T. 57; 36 T. L. R. 729; 64 Sol. Jo. 635.

3944a. ———.]—A co. with a capital of some £16,000,000 & operating to a large extent through subsidiary & sub-subsidiary cos., proposed to pay a dividend on its preference shares. There had admittedly been a loss of £780,000. Against this there were available two sums of £362,000 & £500,000. The former was admittedly profits available for dividend. The £500,000 was made up in part of premiums on the issue of shares & in part of profits carried to reserve, but which had in fact been invested in the assets of the co. Pltf. asked for an injunction to restrain the co. from paying the dividend:—*Held:* (1) the onus was on pltf. to establish that in paying such dividend the co. would trench upon assets of the co. representing capital paid up upon the shares; (2) the assets of the co., properly valued, must in such a case be treated as notionally divisible into two parts, those representing subscribed capital & those representing reserve. These two parts must be proportionately reduced in respect of any diminution of value & the reserve so reduced will be available for dividend; (3) that part of a reserve fund consisting of moneys paid by way of premiums on shares, unless set aside in some particular fund which has been wholly spent, is available for dividend purposes.—DROWN *v.* GAUMONT-BRITISH PICTURE CORPN., LTD., [1937] Ch. 402; [1937] 2 All E. R. 609; 106 L. J. Ch. 241; 157 L. T. 543.

3948. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1927] 1 Ch. 410.

3952. *Add. Annotation:*—**Distd.** Investment Trust Corpn., Ltd. *v.* Singapore Traction Co., [1935] Ch. 615.

3959a. Arrears of dividend—Distribution.]—The memorandum of assocn. of a co. provided for the payment on the ordinary shares of the co. of a cumulative dividend not exceeding 5 per cent. *per annum* & for any balance of profits being applied for the benefit of a garden city or its inhabitants. Art. 129 of the arts. of assocn. provided that, subject to the rights of holders of debentures &

PART III. SECT. 30, SUB-SECT. 7.—B.

3935 ii. ——— *Resolution sufficient—Bye-law unnecessary.*]—JAMES *v.* BEAVER CONSOLIDATED MINES, LTD., [1927] 3 D. L. R. 163; 60 O. L. R. 420.—CAN.

PART III. SECT. 30, SUB-SECT. 7.—D. (a).

3b. *General rule.*]—A co. cannot realise its entire assets &, having set aside an amount to its nominal capital & discharged its liabilities, divide the surplus as income or profits under the guise of declaring a dividend. —DAVISON *v.* KING, [1926] N. I. 1.—IR.

PART III. SECT. 30, SUB-SECT. 7.—E. (a).

3958 ii. ——— ——— ———.]—Deft. co. was created by letters patent under Dominion Cos. Act, R. S. C., 1906. Its capital was divided into preferred & common shares & the letters patent provided that the preferred shares "shall confer the right to receive out of the profits of each year a preferential dividend for such year at the rate of eight per centum *per annum* on the capital for the time being paid up thereon & shall rank as regards return of capital in priority to the common shares, but shall not confer the right to any further participation in profit or assets." The by-laws of the co. provided that the directors might before declaring any dividend set aside out of profits such sums as they should think proper as a reserve. Pltf., the owner of both preference & common shares, sought a declaration that the co. had earned profits during certain specified years sufficient to pay said preferred dividends & that it was bound to apply such profits in payment thereof & had no discretion to apply them in providing for a reserve fund or contingencies:—*Held:* whether or not profits had been shown out of which the preferred dividend could be paid, the discretion of the directors to withhold the declaration of a dividend had not been taken away by the letters patent.—DEVALL *v.* WAINWRIGHT GAS CO., LTD., [1932] 1 W. W. R. 281; 2 D. L. R. 145; 26 Alta. L. R. 274; *revsg.*, [1931] 3 W. W. R. 251.—CAN.

preference shares, the net profits of the co., after providing for a reserve fund & for depreciation, "shall be divided by way of dividend among the members in proportion to the amount paid on the ordinary shares held by them respectively, but so that the dividends upon the ordinary shares for any year shall not exceed the aggregate rate of 5 per cent. *per annum*. The surplus of the net profits of the co. after payment of such dividends & the amount necessary to make up dividends for past years to the rate of 5 per cent. *per annum* shall be applied" for the benefit of the town or its inhabitants as therein mentioned. The co. from time to time over a number of years issued ordinary shares. From 1904 to 1917 no dividend was paid on the ordinary shares, & it was only since 1923 that a full dividend of 5 per cent. had been paid. There were now profits available for payment of arrears of dividend, after payment of the dividend for the current year, but not sufficient to pay the whole of the arrears:—*Held:* the fund available should be distributed ratably among the shareholders according to the respective amounts of the arrears of dividend payable on the shares held by them respectively.—FIRST GARDEN CITY *v.* BONHAM-CARTER, [1928] Ch. 53; 97 L. J. Ch. 52; 138 L. T. 222.

3966. *Add. Annotation:*—**Distd.** *Re* Hyde, Hyde *v.* Bryce (1930), 74 Sol. Jo. 467.

3976a. —— —— **Calculation on wrong principle—Acquiescence.**]—The ct. will not grant an injunction to restrain the declaration of a dividend on the co.'s stock, etc., on the ground that the dividend so to be declared was calculated upon an erroneous principle with reference to various accounts of several amalgamated lines of railway, & the profits realised, where the same principle as to the matters of account had been adopted & acted upon for several successive years & acquiesced in by the respective shareholders. A motion for an injunction to this effect directed to stand over until the hearing of the cause, as no immediate injury could accrue to pltfs. (shareholders) until that time. —YOOL *v.* GREAT WESTERN RY. CO. (1869), 20 L. T. 74.

3984. *Add. Annotations:*—**Consd.** *Re* Speir, Holt *v.* Speir, [1924] 1 Ch. 359; I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395. **Folld.** I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982; *Re* Taylor, Waters *v.* Taylor, [1926] Ch. 923. **Distd.** *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682; Parker *v.* Chapman (1928), 138 L. T. 729; Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, [1930] A. C. 720. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52; I. R. Comrs. *v.* Doncaster (1924), 93 L. J. K. B. 338; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364; Income Tax Comr., Bengal *v.* Mercantile Bank of India, Ltd., [1936] 2 All E. R. 857; *Re* Joel, Johnson *v.* Joel, [1936] 2 All E. R. 962; *Re* Ward, Ringland *v.* Ward, [1936] 2 All E. R. 773.

3988a. —— ——.]—THORNYCROFT (J. I.) & CO.' LTD. *v.* THORNYCROFT (1927), 44 T. L. R. 9.

3990. *Add. Annotation:*—**Refd.** Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771.

3991. *Add. Annotations:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Refd.** Steel Co. of Canada *v.* Ramsay, [1931] A. C. 270.

3992. *Add. Annotations:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Dbtd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

3993. *Add. Annotations:*—*As to* (2) **Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Folld.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594.

3994. *Add. Annotations:*—**Consd.** First Garden City *v.* Bonham-Carter, [1928] Ch. 53; *Re* Joel, Johnson *v.* Joel, [1936] 2 All E. R. 962. **Apld.** *Re* Smith's Will Trusts, Smith *v.* Melville, [1936] 2 All E. R. 1210. **Refd.** *Re* Sandbach, Royds *v.* Douglas, [1933] Ch. 505; MacIver's Settlement, *Re*, MacIver *v.* Rae, [1936] Ch. 198.

4003. *Add. Annotation:*—*As to* (1) **Refd.** Rhokana Corpn., Ltd. *v.* I. R. Comrs., [1938] A. C. 380.

4016a. —— —— **Application of profits in reduction of adverse balance.**]—A co. issued notes which entitled the noteholders to a fixed amount per cent. & to an additional share in the "profits available for dividend":—

PART III. SECT. 30, SUB-SECT. 7.—G. (a).

q i. —— *Valid.*]—A co. purported to allot unissued shares to a director in consideration of his services to the co.:—*Held:* there being a surplus available for distribution by way of dividend among the shareholders, it was open to the co. to deal with the surplus as they thought fit, & the shares were validly issued.—*Re* DORENWENDS, LTD., [1924] 3 D. L. R. 118; 55 O. L. R. 413.—CAN.

sl. *Allotment of shares held in another company—Validity.*]—JAMES *v.* BEAVER CONSOLIDATED MINES, LTD., [1927] 3 D. L. R. 163; 60 O. L. R. 420.—CAN.

PART III. SECT. 30, SUB-SECT. 7.—I.

3991 i. *Rights of shareholders of cumulative preference shares—Company in liquidation.*]—*Re* NEW ZEALAND HARDWARE CO., LTD., [1926] N. Z. L. R. 76.—N.Z.

sh. *Undeclared dividend—Whether liability of company—Contract for sale of shares.*]—F. gave an option to purchase a block of common shares of a company, which purchase would give the purchaser control of the co. The optionee required that F. furnish an accountant's statement showing the company's assets & liabilities & profit & loss to Aug. 31, 1926, & an affidavit that the co.'s liabilities would not exceed the amount shown by such statement. A statement & affidavit were furnished, & the acceptance of the option was expressed to be based on said statement. Preference shares had been issued by the co. non-participating & non-assessable, entitling the holders thereof to a first, fixed, cumulative dividend of 8 per cent. *per annum*:—*Held:* cumulative dividends on preference shares, to Aug. 31, 1926, undeclared & unpaid, constituted a liability of the co. within the meaning of the contract, & should have been included as such in the said statement. —FAIRHALL *v.* BUTLER, [1928] 3 D. L. R. 161; [1928] S. C. R. 369.—CAN.

sk. *Right to participate in profits in excess of fixed preferential dividend—Construction of charter.*]—The letters patent of a co. incorporated in 1910 under Cos. Act of Canada provided that the net profits from time to time distributed should be applicable first to paying a fixed cumulative dividend at the rate of 7 per cent. *per annum* on the preference shares, & that the holders of those shares should participate rateably with the holders of the ordinary shares in the distribution of net profits after the holders of the ordinary shares should have received "dividends equal to those paid on the preferred shares." Further, that no dividends should be paid on the ordinary shares until after the co. had to the credit of a reserve fund a sum equal to one year's dividend on the issued preference shares:—*Held:* the preference shareholders were not entitled to receive in dividend more than 7 per cent. *per annum* until the ordinary shares should have received dividends which gave them that percentage on their shares since the incorporation of the co.—STEEL CO. OF CANADA, LTD. *v.* RAMSAY (THOMAS), [1931] A. C. 270; 100 L. J. P. C. 81; 144 L. T. 532, P. C.; *affg.*, [1930] 3 D. L. R. 555; 65 O. L. R. 250; *affg.*, [1929] 4 D. L. R. 879; 64 O. L. R. 327.—CAN.

Held: the directors were entitled to apply the whole of the profits of any one year, after payment of the fixed amount per cent. to the noteholders, in reduction of the adverse balances of previous years, & the noteholders were not entitled to claim a share in such profits.—LONG ACRE PRESS, LTD. *v.* ODHAMS PRESS, LTD., [1930] 2 Ch. 196; 99 L. J. Ch. 479; 143 L. T. 562.

Annotation:—**Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

4017. *Add. Annotation:*—**Refd.** Long Acre Press *v.* Odhams Press, [1930] 2 Ch. 196.

4019. *Add. Citation:*—93 L. J. Ch. 49.

4020. *Add. Annotations:*—*As to* (1) **Refd.** I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395; Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58. *As to* (2) **Refd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

4021. *Add. Annotations:*—**Folld.** Long Acre Press *v.* Odhams Press, [1930] 2 Ch. 196. **Refd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

4023a. —— ——.;—By its memorandum of assocn. a co. as an attraction to participating preference shareholders, provided for the constitution of a reserve fund of £50,000 to be accumulated from the profits of the co. after certain dividend payments had been made. The arts. of assocn. of the co., however, also authorised the setting aside of a reserve fund out of profits, in addition to the reserve fund empowered by the memorandum, & the fund set aside under the arts. was, according to the arts., to be used to meet contingencies, or for special dividends, or for repairing, improving, & maintaining the property of the co. & for such other purposes as the directors should in their absolute discretion think conducive to the interests of the co. The arts. also provided that the reserve fund to be set aside under the memorandum should be kept invested outside the business "until required for any of the above purposes":—*Held:* the memorandum & the arts. might be read together to explain any ambiguity appearing in the terms of the memorandum or to supplement it on any matter on which it was silent, but that in the present case, as there was no ambiguity, the reserve fund authorised by the memorandum having been created for the benefit & protection of the preference shareholders, the two documents could not be read together, & it was *ultra vires* the directors of the co. to use the memorandum reserve fund of £50,000 for any of the purposes set out in the arts. of assocn.—ANGOSTURA BITTERS (DR. J. G. B. SIEGERT & SONS), LTD. *v.* KERR, [1933] A. C. 550; 102 L. J. P. C. 161; 149 L. T. 313; 49 T. L. R. 533, P. C.

4023b. —— **Writing back to profit account—Profits written off in excess of requirements.**]—A co. which applies its profits in writing off a corresponding amount of the value of the goodwill, instead of carrying them to a goodwill depreciation reserve fund, but which has not finally & unreservedly capitalised those profits, may write back to profit account so much of the depreciation written off goodwill as proves to be in excess of proper requirements.—STAPLEY *v.* READ BROTHERS, LTD., [1924] 2 Ch. 1; 93 L. J. Ch. 513; 131 L. T. 629; 40 T. L. R. 442; 68 Sol. Jo. 519.

Annotation:—**Refd.** Long Acre Press *v.* Odhams Press, Ltd., [1930] 2 Ch. 196.

4026. *Add. Annotations:*—**Refd.** Parker & Cooper *v.* Reading & James (1926), 96 L. J. Ch. 23; Kerr *v.* Marine Products (1928), 44 T. L. R. 292; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

4035. *Add. Annotation:*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

4037. *Add. Annotations:*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

4037a. ——.]—PARKER & COOPER, LTD. *v.* READING, No. 3160a, *ante*.

4046. *Add. Annotation:*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

4048. *Add. Annotations:*—**Distd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444. **Apld.** *Re* Walters' Deed of Guarantee, Walters' "Palm" Toffee, Ltd. *v.* Walters (1933), 49 T. L. R. 192. **Refd.** Investment Trust Corpn., Ltd. *v.* Singapore Traction Co., [1935] Ch. 615.

4050a. —— **Under agreement—To repurchase shares—Allotted in consideration of advance to company—Lender requiring repayment of loan.**]—Pltf., with the view to assist his son-in-law in obtaining the appointment of business manager of a limited co. of which the two defts. were directors & shareholders, entered into a written agreement with the co. & defts. to advance to the co. a sum of £1,500 by the purchase of 1,500 £1 preference shares of the co., the repayment of that sum being secured by the co.'s undertaking, in the event of pltf. or his son-in-law terminating that agreement, to procure the repurchase of the shares at par & to secure the purchase

---

PART III. SECT. 31, SUB-SECT. 2.—A.

ad. *Fruit company—Regulation by statute.*]—A statutory power of a fruit co. to regulate any matter connected with its internal affairs & the sale, barter or disposition of fruit grown by shareholders, does not confer the right to regulate the storage of fruit.—NEILY *v.* BROOKLYN FRUIT CO., [1937] 3 D. L. R. 198; 11 M. P. R. 419.—**CAN.**

PART III. SECT. 31, SUB-SECT. 2.—B.

n 1. —— ——.]—*Re* INBIG SHOE CO., [1924] 4 D. L. R. 625; 5 C. B. R. 157.—**CAN.**

o 1. —— ——.]—The holder of 1,500 £1 shares in a co., on which 5*s.* per share had been paid & on which a call of a further 2*s.* 6*d.* per share had been made but not paid, being unable to pay his debts as they fell due agreed with the co. that the money already paid should be applied towards payment in full of 750 shares, & that he should pay a further amount sufficient to pay those 750 shares in full, & that thereupon the other 750 shares should be cancelled:—*Held:* the transaction amounted to a purchase by the co. of the shares cancelled, & the shareholder was still a member of the co. in respect of the 1,500 shares.—*Re* GREATER MELBOURNE REALTY CO., PTY., LTD., [1931] Argus L. R. 276; *affd. sub nom.* UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v.* GREATER MELBOURNE REALTY CO. PROPRIETARY, LTD. (IN LIQUIDATION), [1932] Argus L. R. 178; 5 A. L. J. 433; 47 C. L. R. 44.—**AUS.**

q 1. —— *No reduction of assets.*]—Where the extinguishment of co. shares by their surrender & cancellation involves no actual reduction of assets, the transaction is not illegal. Real capital is not diminished by relinquishing something of no value or by securing relief from liabilities. Each case must be decided on its own facts & the diminution in capital must be, not fanciful nor theoretical, but actual & substantial, before the transaction can be successfully attacked.—BRITISH COLUMBIA RED CEDAR SHINGLE CO., LTD. *v.* STOLTZE MANUFACTURING CO., LTD., [1932] 1 W. W. R. 164; D. L. R. 762; 44 B. C. R. 458; *revsd.*, [1931] 3 D. L. R. 379.—**CAN.**

money therefor by accepting bills drawn by pltf.: & in that arrangement the two defts. joined as sureties guaranteeing the due performance by the co. of its part of the agreement. Pltf., accordingly, advanced £1,500 to the co., & accepted transfers from the co. of the same number of its preference shares. Upon the son-in-law desiring to withdraw from the managership, pltf. in pursuance of a power in that behalf contained therein gave the co. notice to terminate the agreement & required the co. to procure the repurchase of the shares & to accept his bills for £1,500; but the co. refused to comply with those requirements & denied liability under the agreement on the ground that the performance of it would involve a purchase by the co. of its own shares, & would therefore be *ultra vires* & illegal. In an action against defts. under their guarantees:—*Held:* the agreement, having been entered into between the parties in good faith & in the honest belief that it was *intra vires* & legal, the defence that the agreement was, upon the grounds above mentioned, *ultra vires* the co. & therefore unenforceable could not be maintained; & pltf. was entitled to judgment for £1,500 with interest.—GARRARD *v.* JAMES, [1925] 1 Ch. 616; 94 L. J. Ch. 234; 133 L. T. 261; 69 Sol. Jo. 622.

4052a. Provision of financial assistance to buy own shares—1929 Act, s. 45.]—1929 Act, s. 45, was declaratory of the law & did not create a new offence.—R. *v.* LORANG (1931), 22 Cr. App. Rep. 167; 75 Sol. Jo. 121, C. C. A.

4064a. —— Guarantee of payment by French firm to French Treasury.]—REPUBLIC OF FRANCE (MINISTER OF FINANCE) *v.* PERRY & Co. (BOW), LTD. (1929), 73 Sol. Jo. 268.

4070. *Add. Annotation:—Generally,* **Refd.** Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn., Ltd., [1931] A. C. 677.

4072a. —— Subscribing towards costs of litigation between members—Company for protection of interests of medical practitioners.]—BLOXHAM *v.* MEDICAL DEFENCE UNION, LTD. (1894), 10 T. L. R. 384; 38 Sol. Jo. 288, C. A.

4074. After this case for "—— **Remuneration of directors.**]" read "—— **Remuneration—Of directors.**]"

4080. *Add. Annotations:—Generally,* **Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

4087. *Add. Annotation:*—**Refd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

4094. *Add. Annotations:* — **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4094a. ——].—(1) A question might arise under the 38th clause of the deed, as to whether what the directors are there authorised to do under their general powers must not be done by them at a Board; & it appears to me that it would not be competent to any one, two, or even three directors, by putting their signature to an instrument, to enter into a contract for the society; for, by the 38th section, the contract must be executed at a Board.

(2) I do not think it at all an unreasonable requisition on the part of joint stock cos., that every instrument required in their transactions should be under their common seal. The 44th section of the Act makes such a requisition of the utmost importance; for, according to that section, every contract entered into by an instrument not under their common seal would be unilateral as regards them—a contract under which they would be liable, but of which they could not claim the benefit against those with whom it was entered into.

(3) There is, no doubt, an important distinction to be drawn, & it is drawn in the case of *Royal British Bank* v. *Turquand*, No. 4094, *ante*, between that which, upon the face of it, is manifestly imperfect when tested by the requirements of the deed of settlement

---

4051 ii. ——.]—It is not *ultra vires* a co. to receive a transfer of its shares to itself in compromise of an action. At least the co. is estopped from setting up such a plea after taking the benefit of the compromise.—*Re* E. J. LANE, LTD., *Ex p.* MILLIGAN, [1924] 1 D. L. R. 269; 4 C. B. R. 308.—**CAN.**

4051 iii. ——.]—KNECHTEL MOTOR CO., LTD. *v.* WORDEN (Sask.), [1923] 2 D. L. R. 839; [1923] 2 W. W. R. 154.—**CAN.**

PART III. SECT. 31, SUB-SECT. 2.—I.

n i. ——.]—Where a co. assigned money to secure payment of a debt owing to the assignee by another co., with which the assignor co. had no prior or contemporaneous agreement:—*Held:* the co.'s memorandum of assocn. gave it no such power.—ABBOTSFORD LUMBER CO. *v.* STEVENSON, [1925] 4 D. L. R. 560; [1925] 3 W. W. R. 451.—**CAN.**

PART III. SECT. 31, SUB-SECT. 2.—K.

sh. *Power limited to negotiation of investments—No right to registration of mortgage charge.*]—*Re* MUTUAL INVESTMENTS, LTD., [1924] 4 D. L. R. 1070; 56 O. L. R. 29.—**CAN.**

PART III. SECT. 31, SUB-SECT. 3.—C.

4083 iii. —— ——.]—*Re* PACIFIC COAST COAL MINES, LTD. & HODGES (B. C.), [1926] 4 D. L. R. 759; [1926] 3 W. W. R. 378.—**CAN.**

4083 iv. —— *By injunction.*]—CARR *v.* BRITISH COLUMBIA NICKEL MINES, LTD., [1937] 2 W. W. R. 399.—**CAN.**

PART III. SECT. 31, SUB-SECT. 3.—D.

4094 i. *Presumption that powers properly exercised.*]—The president & manager of a co., who was personally indebted to a bank, informed it that the co. was indebted to him for salary, & the bank induced him to give it the co.'s note made payable to him & indorsed to the bank. In an action on the note the co. contended that there was no debt due to the manager because no resolution authorising payment of a salary to him had been passed:—*Held:* the passing of such resolution was a matter of internal management, & the bank was not bound to see that it had been passed.—CANADIAN BANK OF COMMERCE *v.* PIONEER FARM CO., LTD. & HALL (Sask.), [1927] 4 D. L. R. 772; [1927] 3 W. W. R. 312.—**CAN.**

4094 ii. ——.]—Deft. co., the owner of mining lands, by an agreement in writing, executed by its president & secretary-treasurer under the co.'s seal, gave L. an option to purchase a portion of the lands. Pltf., a shareholder of deft. co., sought to have the agreement declared null & void because it was not sanctioned by a bye-law of the directors, confirmed by a vote of the shareholders. It appeared that the directors in fact sanctioned the transaction & by a bye-law authorised the president & secretary-treasurer to sell the portion of the lands referred to & to execute documents in connection with any sale, & to affix the co.'s seal thereto:—*Held:* the sale came within the rule in *Royal British Bank* v. *Turquand.*—HERRMANN *v.* CANADIAN NICKEL CO., [1929] 4 D. L. R. 42; 64 O. L. R. 190.—**CAN.**

4094 iii. ——.]—PACIFIC BERRY GROWERS, LTD. *v.* WESTERN PACKING CORPN., LTD., [1929] 1 D. L. R. 814; 1 W. W. R. 426; 41 B. C. R. 78.—**CAN.**

of the co., & that which contains nothing to indicate that those requirements have not been complied with. Thus, where the deed requires certain instruments to be under the common seal of the co., every person contracting with the co. can see at once whether that requisition is complied with, & he is bound to do so; but where, as in the case I have last referred to, the conditions required by the deed consist of certain internal arrangements of the co. for instance resolutions at meetings, & the like, if the party contracting with the directors find the acts which they undertake to do to be within the scope of their powers under the deed, he has a right to assume that all such conditions have been complied with. In the case last supposed, he is not bound to inquire whether the resolutions have been duly passed, or the like, otherwise he would be bound to go further back, & to inquire whether the meetings have been duly summoned, & to ascertain a variety of other matters, into which if it were necessary to make such inquiry, it would be impossible for the co. to carry on the business for which it is formed.—*Re* ATHENÆUM LIFE ASSURANCE SOCIETY, *Ex p.* EAGLE INSURANCE CO. (1858), 4 K. & J. 549; 27 L. J. Ch. 829; 4 Jur. N. S. 1140; 6 W. R. 779; 70 E. R. 229.

4095a. ——.]—Deft. bank negligently & in breach of the instructions given by their customer, pltf. co., paid cheques drawn on the co.'s account signed by one director only:—*Held:* the bank being put on inquiry & being negligent, as the jury found, were not entitled to rely on the rule in *Royal British Bank* v. *Turquand*, No. 4094, & assume that a signature purporting to be that of a new director was that of a person duly appointed.—LIGGETT (B.) (LIVERPOOL), LTD. *v.* BARCLAYS BANK, LTD., [1928] 1 K. B. 48; 97 L. J. K. B. 1; 137 L. T. 443, 43 T. L. R. 449.

4100. *Add. Annotation:*—**Consd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

4104a. —— —— **Disputes between directors.**]—STANFIELD *v.* GIBBON, [1925] W. N. 11.

4107a. —— —— **Merger of English companies—Opposition by American company.**]—INTERNATIONAL MERCANTILE MARINE CO. (INC.) *v.* OCEANIC STEAM NAVIGATION CO., LTD. (1934), 78 Sol. Jo. 350.

4117a. —— —— ——.]—PARKER & COOPER, LTD. *v.* READING, No. 3160a, *ante*.

4129. *Add. Annotation:*—**Reld.** Leyton U. D. C. *v.* Wilkinson, [1927] 1 K. B. 853.

4129a. —— **Borrowing.**]—A trading co. was by its memorandum of assocn. empowered, *inter alia*, to raise capital & to borrow money by deeds of hypothecation, & to act through agents. The only reference to borrowing contained in the arts. of assocn. was a provision that the directors might borrow money. There was no express power of delegation by the directors. By various powers of attorney, the co. appointed agents, not directors, who were empowered, *inter alia*, to borrow money on the security of the co.'s goods, railway receipts, bills of lading or other documents of title. These agents borrowed money principally upon the security of letters of hypothecation relating to goods & produce in the co.'s go-downs. The co. was free to deal with the goods & produce in the ordinary course of business, & the contents of the go-downs therefore changed frequently. In some of the printed forms of letter of hypothecation the spaces for the names of the places at which the go-downs were situated were left blank, & at the end of the form, after the signature, a list of places was set out. One of the co.'s agents borrowed sums in excess of the value of the goods. A bank which held certain letters of hypothecation, acting upon a licence to seize contained in letters from the co., seized all the goods to which it had access by the terms of such letters of hypothecation:—*Held:* (1) the fact that the arts. of assocn. empowered the directors to borrow, did not restrict the co.'s general power to borrow, which it could exercise through properly authorised agents; (2) in the absence of anything in the memorandum or arts. of assocn. restricting the co.'s power to borrow through agents, borrowing by such agents was within their ostensible authority, the precise limits of the agents' power to borrow being a matter of internal management into which a lender would not be required to inquire. The co. was, therefore, bound even by the excessive borrowings of the appointed agents, so long as those borrowings were within the ostensible authority of the agents; (3) the letters of hypothecation constituted floating charges, which ought to have been registered, but upon seizure, before the liquidation of the co., under the licence to seize, a specific charge came into being, which had been perfected by the seizure of the goods. The seizure was, therefore, in the circumstances a rightful one, & valid against the liquidator; (4) the produce which could be seized under the letters of hypothecation, in which the spaces were left blank, was limited to produce in the go-downs specified at the end of the form.—MERCANTILE BANK OF INDIA, LTD. *v.*

PART III. SECT. 31, SUB-SECT. 3.—E.

d i. —— ——.]—In an action against a co. & its directors, pltf., who was suing on behalf of himself & the other shareholders, applied for an order to continue an interim injunction until after the trial restraining defts. from carrying on as a board of directors. The act complained of was that some of defts. did not wish certain of the other shareholders to be present or represented at the annual general meeting, & prevented such presence or representation by having the meeting take place in an inner office of the place of meeting while some of the other shareholders were waiting to attend in the outer office to the knowledge of defts.:—*Held:* if irregularities were committed in the conduct of the meeting at which resolutions complained of were passed, it could be regularised by the passing of fresh & effective resolutions. The ct. will not interfere in the internal management of the co. Application dismissed.—WATSON *v.* BARRETT (1929), 41 B. C. R. 478.—**CAN.**

d ii. —— ——.]—Whatever should be done by a co. itself through its own internal organisation ought to be left to the co. to do & ought not to be interfered with by the ct. Accordingly, an order, made in an action by a shareholder against the co. appointing a receiver for the co., & a subsequent order, made on an *ex parte* application by the receiver, authorising him to commence an action in the name of himself & the co. to recover property of the co. & for an account of moneys received by two directors of the co. were set aside & the action brought in pursuance of the latter order dismissed, on the motion of one of said two directors.—YOUNG *v.* ALBERTA PETROLEUM CONSOLIDATED, PATTERSON *v.* OKALTA OILS, LTD., & CULBERT, [1930] 1 W. W. R. 86; 1 D. L. R. 903; *sub nom.* PATTERSON *v.* OKALTA OILS, LTD., 24 Alta. L. R. 370.—**CAN.**

d iii. —— ——.]—The cts. do not interfere with the internal management of private cos. not formed for profit unless there is illegality or fraud.—PARDEE *v.* HUMBERSTONE SUMMER RESORT CO. OF ONTARIO, LTD., [1933] 3 D. L. R. 277; O. R. 580.—**CAN.**

CHARTERED BANK OF INDIA, AUSTRALIA & CHINA & STRAUSS & CO., LTD., CHARTERED BANK OF INDIA, AUSTRALIA & CHINA *v.* MERCANTILE BANK OF INDIA, LTD. & STRAUSS & CO., LTD., [1937] 1 All E. R. 231.

4136a. ——.]—BRIGHTEN *v.* BOWMAN (1929), 73 Sol. Jo. 748.

4142. *Add. Annotation :*—**Refd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33.

4144. *Add. Annotation :*—**Consd.** Havana Cigar & Tobacco Factories *v.* Oddenino, [1924] 1 Ch. 179.

4145. *Add. Annotations :*—**Refd.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721 ; Howard *v.* Odhams Press, Ltd., [1938] 1 K. B. 1.

4159. *Add. Annotation :*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

4166. *Add. Annotations :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4167. *Add. Annotation :*—**Refd.** Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231.

4170. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4170a. —— —— —— ——.]—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, No. 3157a, *ante*.

4170b. —— —— —— ——.]—By the articles of assocn. of a co. the directors had power to delegate to one or more of their own body such of the powers conferred on the directors as they might consider requisite for carrying on the business of the co., & to determine who should be entitled to sign contracts & documents on the co.'s behalf. A document purporting to be a guarantee was given to pltfs. executed by the co. in this form : "The F. E. B., Ltd., signed N. P." N. P. was a director of the co. During the negotiations for the giving of the guarantee he had written to pltfs., signing the letter "for & on behalf of" the co., "N. P., Chairman." On these facts, in an action on the guarantee : —*Held :* pltfs. were entitled to presume that the directors of the co. had authorised N. P. to sign contracts on behalf of the co., & the co. was liable on the guarantee.—BRITISH THOMSON-HOUSTON CO., LTD. *v.* FEDERATED EUROPEAN BANK, LTD., [1932] 2 K. B. 176 ; 101 L. J. K. B. 690; 147 L. T. 345, C. A.

4193. *Add. Annotation :*—**Refd.** National Carbonising Co. *v.* British Coal Distillation, Ltd., [1936] 2 All E. R. 1012.

4209. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

4211. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

4226. *Add. Annotation :*—**Consd.** Consolidated Entertainment, Ltd. *v.* Taylor, [1937] 4 All E. R. 432.

4232. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4236. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4237. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

PART III. SECT. 31, SUB-SECT. 4.—B. (a).

f i. ——.]—*Held :* there was something so out of the ordinary in one co. undertaking to purchase the entire outstanding stock of another as to put pltfs. upon inquiry to ascertain whether the person or persons making the contract had authority in fact to make it.—BROOKS, LTD. *v.* CLAUDE NEON GENERAL ADVERTISING, LTD., [1931] 2 D. L. R. 743 ; O. R. 92.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—B. (b).

sl. *Negligence—Arrest by constable employed by company.*]—Where a co. has statutory power to employ &, practically, to appoint constables & a constable so appointed acts negligently in attempting to effect an arrest in the course of his employment by the co. he renders the co. liable for the damage caused thereby.—VIGNITCH *v.* BOND & CANADIAN PACIFIC RY. CO., [1928] 1 W. W. R. 449 ; 50 Can. Crim. Cas. 273 ; 37 Man. L. R. 435.—**CAN.**

sp. ——.]—A co. is not liable in damages for injuries caused during a trip in a motor boat, when the sailing was advertised in the co.'s name by the secretary without the co.'s authority.—BIANCO *v.* MATHERS (I. H.) & SON, LTD., [1938] 2 D. L. R. 175 ; 12 M. P. R. 444.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—C.

kl. —— *Agent for sale of bonds—Bonds not issued in compliance with Acts.*]—Where bonds are actually executed by a co. they cannot be said not to exist as bonds even though, because of non-compliance with the requirements of the Cos. Act, they are not legally valid ; &, therefore, a person who as agent for the co. & without fraudulent intent induces another to buy such bonds from it cannot be liable in damages merely on the ground of an implied representation that the bonds are legally valid, since, even if such representation can be implied & it proves to be false it is a representation in point of law.—KAVANER *v.* BOWHEY (Alta.), [1928] 4 D. L. R. 907 ; [1928] 3 W. W. R. 267.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—D.

4154 i. *Whether valid.*]—PRICE *v.* INDIANA-ALBERTA OIL CO. (Alta.), [1926] 3 D. L. R. 82.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—A. (b) ii.

4176 iv. —— ——.]—*Re* RED DEER MILLING & ELEVATOR CO., STRATFORD MILL BUILDING CO.'S CLAIM (1907), 7 W. L. R. 284 ; 1 Alta. L. R. 237.—**CAN.**

b i. ——.]—*Re* RED DEER MILLING & ELEVATOR CO., STRATFORD MILL BUILDING CO.'S CLAIM (1907), 7 W. L. R. 284 ; 1 Alta. L. R. 237.—**CAN.**

c. Read "**4178 i.**"

PART III. SECT. 31, SUB-SECT. 5.—A. (f).

sp. *Whether company may plead contract ultra vires.*]—A co. incorporated under Ontario Cos. Act, R. S. O., 1927, by letters patent, cannot escape from the consequences of a contract by setting up a breach of its bye-laws or regulations.—*Re* MCEACHREN (W. N.) & SONS, LTD., MCGIBBON *v.* IMPERIAL TRUST CO., [1933] 2 D. L. R. 558; O. R. 349.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—B. (a).

s i. —— ——.]—Before the incorporation of a co. a partner in the name of the partnership entered into an agreement with pltf., under which pltf. undertook the sale of products on a commission basis. The agreement on its face showed that pltf. was to operate on behalf of the co. then in process of incorporation :—*Held :* commissions earned after incorporation of the co. were not recoverable against the partnership ; but to recover from the co. pltf. would not be bound to prove an express contract by the co., as the performance & acceptance of his services raised an implied contract to pay.—POWER *v.* EDMONTON LUMBER EXCHANGE (1920), 3 W. W. R. 10 ; 53 D. L. R. 468.—**CAN.**

a i. —— *Sale of goods.*]—*Re* J. R. MORGAN, LTD., *Ex p.* J. & G. GARMENT MFG. CO. (Ont.), [1926] 1 D. L. R. 882 ; 8 C. B. R. 52.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—B. (b).

4209 vii. ——.]—Prior to the incorporation of pltf. co., a document containing the terms of a proposed contract between it & deft. co. was executed & handed to the organisation committee of pltf. co. as evidence of the fact that defts. were willing to enter into the contract as soon as pltf. co. should have become incorporated. After pltf. co. had become incorporated & received its certificate entitling it to commence business it duly executed the document, & the contract was thereafter acted on :—*Held :* pltf. co. was entitled to sue for damages for breach of such contract.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871 ; [1925] 1 W. W. R. 505 ; 34 B. C. R. 533.—**CAN.**

4239. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775 ; Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826 ; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176 ; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246 ; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48 ; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231.

4256. *Add. Annotation :*—**Refd.** The Hayle, [1929] P. 275.

4257. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

4267. *Add. Annotations :*—**Appld.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76. **Refd.** Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

4267a. —— ——.]—Two rival cos., the N. Co. & the W. Co., formed resp. co. to take over certain branches of their business of fruit importers, the shares of the new co. being equally divided between the two old cos., & the board consisting of two directors of the N. Co., namely, M. & G. Lowe, & two directors of the W. Co. By a brokerage agreement embodied in a letter dated in July, 1924, between M. Lowe & applts., a firm of fruit brokers, it was arranged that applts. should make certain advances to the N. co. & should receive all fruit consigned either to the N. co. or to resp. co. & keep back 70 per cent. of the net proceeds in reduction of the advances, & it was stipulated that resp. co. should subscribe to this arrangement. Applts. also obtained a guarantee of the loan from the two Lowes & a third director of the N. Co., who was also the secretary of resp. co. This arrangement was not ratified by any agreement under the seal of resp. co., but the secretary wrote to applts. purporting to confirm the arrangement on behalf of his co. The directors of resp. co., other than the two Lowes, first became aware of the arrangement after it had been in operation for some months, & it was then put an end to. Applts. had obtained fruit consigned to resp. co. on board several ships without production of the bills of lading, on giving an indemnity to the ships, & they sued resp. co. for delivery of the bills of lading. Resps. counterclaimed for the proceeds of fruit belonging to them & not accounted for :—*Held :* (1) the arrangement contained in the agreement of July was not authorised by resp. co. ; (2) resp. co. were not estopped from denying the existence of the arrangement by the knowledge of the Lowes, inasmuch as they were parties to the wrong done to the co., or by the omission of the other directors to inspect the accounts of the co., which would have disclosed the arrangement.—HOUGHTON (J. C.) & Co. *v.* NOTHARD, LOWE & WILLS, LTD., [1928] A. C. 1 ; 97 L. J. K. B. 76 ; 138 L. T. 210 ; 44 T. L. R. 76, H. L.

Annotations :—As to (1) **Consd.** Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231. *As to* (2) **Apld.** Evans *v.* Employers' Mutual Insurance Association, Ltd. (1935), 152 L. T. 333. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, Ltd., [1927] 1 K. B. 826 ; Liggett (Liverpool), Ltd. *v.* Barclays Bank, Ltd., [1928] 1 K. B. 48 ; Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

4272. *Add. Annotation :*—**Refd.** The Hayle, [1929] P. 275.

4278. *Add. Annotations :—As to* (1) **Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711 ; Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

PART III. SECT. 31, SUB-SECT. 5.—C.

4233 i. *Whether company bound—Promissory note—Signed by president or vice-president.*]—Where the endorsement of promissory notes purported to be that of a co. executed by the signature of its president or vice-president, signing as such, & the indorsee had given good consideration therefor, held that neither the co. nor the maker could dispute the authority of said officers to make the indorsement.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1 ; 4 D. L. R. 699.—**CAN.**

4233 ii. —— —— *For director's private liability.*]—S. & other members of a syndicate retained pltf. as their solr. in an action brought by them. S., on the advice of pltf., transferred his business of a timber-merchant to a proprietary co., of which he became managing director & principal shareholder. Pltf. procured from S. the co.'s promissory note, payable to pltf., on account of pltf.'s charges & outgoings in connection with the litigation. When the promissory note fell due, it was retired upon part payment & the giving of a new promissory note for the balance, made by the co. & payable to pltf. In an action by pltf. upon this promissory note :—*Held :* since pltf. had failed to show, as in the circumstances he must show, that the promissory note was given by the co. for good consideration & as part of or in aid of some business transaction of the co., the co. was not liable to pltf. on the note.—WOOLF *v.* SNIPE S. L. PTY. LTD., [1936] V. L. R. 22 ; 42 Argus L. R. 92.—**AUS.**

4239 i. *Signature—Promissory note—Authority—Whether bank bound to inquire.*]—The co. was incorporated by Dominion Letters Patent on May 25, 1927, & went into liquidation in June, 1929. Applt. bank filed its claim in respect of five promissory notes made by S., as president, on behalf of the co. & amounting to $28,768.02. The liquidator called upon the bank to prove its claim before the Superior Ct. The notes were signed in blank by S. alone & were handed to L., the New York buying agent of the co., to be filled in & used by L. in payment of goods bought or to be bought by the co. L. filled the blank note forms with the names of two other cos. owned & controlled by him, being also at that time the owner of all the shares of the insolvent co. The notes were indorsed to applt. bank, & it is admitted that the bank was a holder in due course. S. was the only witness at the trial ; he produced a by-law of the insolvent co. providing *inter alia* that "all cheques . . . notes . . . shall be signed by such officer . . . of the co. & in such manner as shall from time to time be determined by resolution of the Board of Directors," & he also produced a resolution of the directors pursuant to the by-law which provides "that all notes . . . be signed by the president & countersigned by the auditor . . ." of which resolution applt. bank had no knowledge :—*Held :* applt. bank, being a holder in due course, was entitled to rank as a creditor of the insolvent co. The notes were made in general accordance with the authority of the president under the by-law of the co., & it was not necessary for applt. bank to inquire into the authority of the president to sign the notes on behalf of the co. Under sect. 106*d* of the Dominion Cos. Act, the president had to be one of the directors ; &, under sect. 37, the only persons who could make notes on behalf of the co. would be those designated in the by-law. Persons dealing with a co. are presumed to have notice of what is contained in the Act under which the co. was incorporated & the Letters Patent ; &, in a case like the present, where the Act refers specifically to the by-laws as the place where the authority of an officer or an agent to sign promissory notes is to be found, the person taking a note made by an officer is under obligation to ascertain from the by-laws that the officer who signed the note might have been authorised to make such note in the course of the co.'s business ; but he is not obliged to go further & inquire whether the directors passed the resolution which would give the officer express authority. That constitutes part of the co.'s "indoor management." If the officer might, under the by-laws, have been authorised to make the note, the making of it was within his ostensible powers & was "in general accordance with his powers as such under the by-laws."—*Re* ALMUR FUR TRADING CO., BANK OF UNITED STATES *v.* ROSS, [1932] S. C. R. 150 ; 2 D. L. R. 128.—**CAN.**

PART III. SECT. 31, SUB-SECT. 6.—A. (c).

k i. —— *Solicitor.*]—BANK OF BRITISH NORTH AMERICA *v.* ST. JOHN & QUEBEC RY. CO. (N. B.) (1920), 52 D. L. R. 557.—**CAN.**

4282. *Add. Annotations:*—**Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711; Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

4283. *Add. Annotations:*—**Refd.** Isaacs *v.* Cook, [1925] 2 K. B. 391; Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

4291. *Add. Annotation:*—**Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

4297a. —— —— Compulsory form of document to be used by members.]—*Re* NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCN. (1929), 45 T. L. R. 296.

4307a. Extension of objects to new trades.]—A co. incorporated for the primary object of acquiring & carrying on two businesses, one that of a private co. making & selling footwear & clothing, but with other wide powers, & the other that of a retailer of footwear, petitioned the ct. for sanction to an extension of its objects, as set out in its memorandum of association, to the carrying on of a large number of different retail trades, including that of universal stores. The extension was approved by the co. in general meeting without opposition, but the petition was opposed by certain preference shareholders: —*Held:* there being no evidence that the proposed alterations were necessary or proper to enable the co.'s business to be carried on more efficiently, & as the trades it was proposed to take power to work were entirely outside the original objects of the co., the ct. would refuse to sanction the petition.

On appeal additional evidence was adduced to show that a large number of the trades to which it was sought to extend the co.'s objects were already being carried on by the co., & that to this extent the object of the petition was to regularise the position, & further that during the year 1934 a small profit had been made by the co. as opposed to the loss suffered in 1933:—*Held:* in view of the further evidence the alterations in the objects, when limited so as to give power to carry on only those trades which were already being carried on by the co., should be sanctioned.—*Re* BOLSOM BROS. (1928), LTD., [1935] Ch. 413; 104 L. J. Ch. 267; 152 L. T. 477; 79 Sol. Jo. 214, C. A.

4320. After this case add "*See, now,* 1929 Act, s. 5 (1) (f), (g)."

4321a. Society not for profit.]—A provision in a memorandum of assocn. of a society not for profit, registered under 1867 Act, & authorised by the Board of Trade under sect. 23 of that Act to dispense with the word "limited," that in certain events the liability of members shall be unlimited, is not a provision in the memorandum "with respect to the objects of the co." under 1908 Act, s. 9 (1), & the cancellation of such a provision cannot be confirmed by the ct.—*Re* SOCIETY FOR PROMOTING EMPLOYMENT OF WOMEN (1927), 71 Sol. Jo. 583.

Annotation:—**Distd.** *Re* Scientific Poultry Breeders' Assocn., Ltd., [1933] Ch. 227.

4321b. —— Alteration permitting remuneration of governing body.]—The memorandum of a co. limited by guarantee, formed to improve & encourage the breeding of poultry, contained a provision that no remuneration should be paid to members of the governing body of the co. Owing to the increase in the co.'s business it became impossible for those members to give their time to the co.'s affairs without some remuneration, & the co. in general meeting passed resolutions providing for equitable remuneration for services rendered. Upon petition to the ct. to sanction the consequent modifications of the

PART III. SECT. 31, SUB-SECT. 9.—A.

p i. ——.]—*Held:* (1) 1908 Act, s. 9, did not limit alteration of the memorandum of assocn. to an alteration of the objects clause, inasmuch as the whole objects of a co. were not necessarily contained in that clause; (2) a proposed alteration being designed for the better attainment of the objects of the co., a petition for confirmation of the alteration should be granted.—INCORPORATED GLASGOW DENTAL HOSPITAL *v.* LORD ADVOCATE, [1927] S. C. 400.—**SCOT.**

q i. —— *Incorporation abroad.*]—A co., registered under Cos. Acts, presented a petition for an alteration of its memorandum of assocn. by the addition of a power "to procure the co. to be incorporated, registered, or recognised in any foreign country." The ct., while sanctioning the power to procure the registration or recognition of the co. in a foreign country, refused to confirm the power to procure its incorporation there.—*Re* TAYSIDE FLOORCLOTH CO., LTD., [1923] S. C. 590.—**SCOT.**

4308 iv. ——.]—A cemetery co. sought additional power to act as "stone & marble cutters, masons, quarriers & sculptors, florists, gardeners, & undertakers." The ct., in the absence of evidence of any convenience or advantage to the co., restricted the new powers by limiting them to powers to be used in connection with, & as incidental to, the co.'s main business of cemetery owners.—EDINBURGH SOUTHERN CEMETERY CO., LTD., [1923] S. C. 867.—**SCOT.**

4308 v. ——.]—A reversionary co. presented a petition for confirmation of a special resolution by which it was proposed to alter its memorandum of assocn. by adding powers to carry on, along with its existing business, that of trust investment, & to sell or otherwise dispose of the whole or any part of its property & assets for such consideration as it might think fit, &, in particular, for shares, stock, debentures, debenture stock, or securities of any company purchasing the same. The ct. confirmed the alteration holding, with regard to the proposed power to sell, that it did not involve a sale of the undertaking but merely of assets, & in view of the extension of the co.'s business, was germane to its operations as an investment co.—METROPOLITAN REVERSIONS, LTD., [1928] S. C. 480.—**SCOT.**

4308 vi. ——.]—The additional business which a co., by an alteration of its objects effected under Cos. Act, 1908, s. 162 (5), is permitted to carry on may be one which is wholly different from & which has no relation to the then existing business of the co., & it may yet be quite capable of being conveniently & advantageously combined with it, provided the new business is not destructive of or inconsistent with the existing business.—*Re* MATAKANA CO-OPERATIVE DAIRY CO., LTD., [1929] N. Z. L. R. 721.—**N.Z.**

4308 vii. ——.]—A co. whose objects, as stated in its memorandum, were "to manufacture, sell, & trade in ginger beer, lemonade, soda water, & other aerated waters & drinks, & to do all such other acts as might be incidental to the attainment of these objects, presented a petition under sect. 5 craving confirmation of a resolution altering its memorandum by inserting after the word "drinks" the words "& also to bottle, sell & trade in all alcoholic beers." A reporter to whom the petition was remitted stated that, in his view the proposed new line of business could conveniently & advantageously be combined with the existing business. The ct. granted the prayer of the petition.—*Re* DUNDEE AERATED WATER MANUFACTURING CO., [1932] S. C. 473.—**SCOT.**

4308 viii. ——.]—A co., incorporated to carry on the business of maltsters & hop merchants, presented a petition under 1929 Act, s. 5, craving the ct. to confirm a resolution altering its memorandum of assocn., by the insertion of a clause enabling the co. to carry on, along with its existing business, the business of fruit merchants & canners, & preserve manufacturers. It appeared that, in the course of its existing business, the co. was in the habit of purchasing hops from persons who also grew fruit, & of selling hops, malt, & barley to persons engaged in the refreshment trade; & in these circumstances, the co. maintained that it could conveniently engage in business of the character proposed. The ct. confirmed the proposed alteration.—*Re* BAIRD & SONS, [1932] S. C. 455.—**SCOT.**

r i. ——.]—A co. sought the addition of a power to sell, let on rent, or lease the undertaking of the co., or any branch or part thereof. The ct. restricted the power to any branch or part of the undertaking . . . being an adjunct to the main undertaking.—*Re* TAYSIDE FLOORCLOTH CO., LTD., [1923] S. C. 590.—**SCOT.**

memorandum of assocn.:—*Held:* the proposed alterations did not affect the real object of the co., which was the improvement of poultry husbandry; they were ancillary to the main object, & were alterations within the words "with respect to the objects of the co." in Cos. Act, 1929 (c. 23), s. 5 (1); they appeared to be to enable the co. "to carry on its business more economically or more efficiently" within sub-clause (*a*) of that sub-sect. & therefore the petition must be granted.—*Re* SCIENTIFIC POULTRY BREEDERS' ASSOCN., LTD., [1933] Ch. 227; 101 L. J. Ch. 423; 148 L. T. 68; 49 T. L. R. 4; 76 Sol. Jo. 798, C. A.

4361. *Add. Annotation:*—**Reld.** *Re* Bolsom Bros. (1928), Ltd., [1935] Ch. 413.

4362a. Extension of objects of benevolent association—By amalgamation—Amalgamation of funds.]—A benevolent assocn. desired to extend its objects to include the members & their dependants of any society with which it might amalgamate. The assocn. proposed an early amalgamation & wished to be enabled to give relief to the members of the society with which it proposed to amalgamate:—*Held:* the ct. ought not to confirm the alteration of the objects of the assocn. unless the assocn. undertook to amalgamate only upon the terms that there should be an amalgamation of funds as well as of members. The undertaking was given & the alteration confirmed.—*Re* CHARTERED SURVEYORS' BENEVOLENT FUND (INCORPORATED), [1936] 2 All E. R. 1631; 80 Sol. Jo. 705.

4369a. Affidavit of notice—Omission to exhibit register of members.]—On an application by petition made by a co. for confirmation of an alteration of the objects of the co., the secretary's affidavit of the posting of notices, contrary to the usual practice, did not exhibit the register of members:—*Held:* the petition would be granted notwithstanding the omission to exhibit the register, the ct. being of opinion that no useful purpose was served by exhibiting it, provided that, as in the present case, the affidavit of the secretary proved that the register was duly kept & contained the name & last known address of every person who was a member of the co. on the material date.—*Re* DEBENTURE CORPN., LTD. (1931), 47 T. L. R. 399.

4377. *Add. Annotation:*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

4380. *Add. Annotation:*—**Reld.** Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn., Ltd., [1931] A. C. 677.

4389. *Add. Annotation:*—**Overd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

4389a. —— Simple contract debts recoverable out of United Kingdom.]—An agreement for the sale of, amongst other things, simple contract debts owed by debtors resident out of the United Kingdom is exempt from *ad valorem* stamp duty in respect of such debts upon the ground that they are "property locally situate out of the United Kingdom" within Stamp Act, 1891 (c. 39), s. 59 (1).—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* INLAND REVENUE COMRS., [1932] A. C. 238; 101 L. J. K. B. 193; 146 L. T. 330; 48 T. L. R. 170, H. L.

Annotations:—**Reld.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745; I. R. Comrs. *v.* Broome's Executors (1935), 19 Tax Cas. 667.

4393. *Add. Annotation:*—*As to* (1) **Reld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

4423. *Add. Annotations:*—**Reld.** Keren Kayemeth Le Kisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465; *Re* Oceanic Steam Navigation Co., [1938] 3 All E. R. 740.

PART III. SECT. 31, SUB-SECT. 9.—B. (c).

sc. *Alteration causing breach of lease.*]—The corpn. of G. possessed statutory powers to make & maintain tramways in the streets of G. Sect. 26 of their statute provided that animal power alone should be used on the tramways. The corpn. leased the tramways to a limited co. which was promoted for the purpose of acquiring the lease, & whose objects as specified in the memorandum of assocn., were to carry on the working of the tramways & omnibus traffic in connection therewith under the lease & after the expiration of the lease to carry on the business of omnibus proprietors in the city & vicinity. The co. acquired a large stock of horses & plant, the greater part of which would be rendered useless in the event of the lease not being renewed & accordingly, when about three years of the lease had still to run, the co. applied for an alteration of its memorandum to include (*inter alia*) these objects: "(10) to exercise the powers & carry on the business of a tramway co.: (13) to work & move all or any of the vehicles by means of electrical power, steam power or any other mechanical power." Application opposed by corpn. as being breach of contract to alter constitution & because object (13) was inconsistent with Parliamentary prohibition:—*Held:* promoting & disposing of tramways was an object foreign to the purposes of the memorandum & could not be sanctioned, & that *quoad ultra* the alterations fell to be confirmed.—GLASGOW TRAMWAY & OMNIBUS CO., LTD. *v.* GLASGOW MAGISTRATES (1891), 18 Rettie, 675.—**SCOT.**

PART III. SECT. 32, SUB-SECT. 1.—C.

q i. —— ——.]—Deft. co. bought land from pltfs., & in payment therefor transferred to pltfs. a block of shares in another co., agreeing to re-purchase from pltfs. at a fixed price, on or before a fixed day, the shares, or as many of them as should not have been previously sold or transferred by pltfs.:—*Held:* the agreement to re-purchase was *ultra vires* deft. co. as Cos. Act, s. 44, expressly prohibits a purchase of shares in another co.—GRANT *v.* DOMINION LOOSE LEAF CO. (1924), 56 O. L. R. 43.—**CAN.**

PART III. SECT. 32, SUB-SECT. 2,—A.

a i. —— *To directors.*]—A sale by directors of the co.'s property to themselves & a third party as trustee for them is valid if such a transaction is *intra vires* the co. & if, as in this case, the purchasing directors constitute a majority of the shareholders.—FERGUSON *v.* WALLBRIDGE, [1934] 2 D. L. R. 270.—**CAN.**

sm. *Whether power implied from power to purchase land.*]—Where a joint stock co. is given by its memorandum express power to purchase land, it is implied as part of its constitution that it has power to let the land, & if necessary to sell it.—GUJERAT GINNING & MANUFACTURING CO. *v.* MOTILAL HIRABHAI SPINNING CO. (1928), I. L. R. 53 Bom. 792.—**IND.**

PART III. SECT. 32, SUB-SECT. 2.—B. (a).

4401 i. —— *Under power in memorandum—For shares in another company.*]—Such sale does not necessarily involve winding up, &, where the directors' authority is derived from a vote of the shareholders, a majority vote is sufficient.—HEMSTREET *v.* NORTH WEST BISCUIT CO., [1926] 2 D. L. R. 829; [1926] 2 W. W. R. 150; 22 Alta. L. R. 233.—**CAN.**

g i. —— *Land acquired for carrying on company's undertaking—Companies Act, R. S. O.*, 1914 (c. 178), s. 24.]—*Re* ALLAN BROWN'S, LTD. & DRYALL, [1927] 2 D. L. R. 991; 60 O. L. R. 267.—**CAN.**

PART III. SECT. 32, SUB-SECT. 2.—B. (c).

o i. ——.]—DADSON *v.* GREST (Sask.), [1927] 3 D. L. R. 530.—**CAN.**

sg. *On sale of undertaking—Vendor owning all shares except one—Duty not to make secret profit.*]—A person owning all shares except one in a co. cannot deny his identity as vendor & make a secret profit on sale of the co. to another.—PATTON *v.* YUKON CONSOLIDATED GOLD CORPN., LTD., [1934] 3 D. L. R. 400.—**CAN.**

PART III. SECT. 33, SUB-SECT. 1.

sn. *Institution of proceedings—Necessity to employ solicitor.*]—A co. cannot issue a writ of summons by any one but a solr.—WESTERN PRODUCERS MUTUAL HAIL INSURANCE CO. *v.* STEWART (Sask.), [1928] 1 W. W. R. 320.—**CAN.**

PART III. SECT. 33, SUB-SECT. 3.—A.

e i. —— ——.]—Deft. "as the largest shareholder" of a co. claimed damages for false representations made as to the business of the co., which had the effect of depriving the co. of its clients:—*Held:* the cause of action alleged was not defamation but an *injuria* done merely to the co. for which the co., & not an individual shareholder, was entitled to sue.—GOODALL *v.* HOOGENDOORN, LTD., [1926] App. D. 11.—**S. AF.**

k i. —— —— —— —— *Refusal unnecessary where no one to authorise use of name.*]—MASON *v.* LIVINGSTONE (Alta.), [1928] 2 D. L. R. 799.—**CAN.**

p i. —— —— ——.]—A shareholder suing on behalf of himself & all other shareholders can maintain an action alleging illegal use of the co.'s money, when it clearly appears that an application to the co. to authorise such an action would be futile.—HOUSTON *v.* VICTORIA MACHINERY DEPOT, LTD., [1924] 2 D. L. R. 657; 33 B. C. R. 425.—**CAN.**

q i. —— ——.]—FARRELL *v.* MAGIC SILVER-BLACK FOX CO., [1924] 3 D. L. R. 132.—**CAN.**

q ii. —— ——.]—SHAW *v.* WAINWELL OILS, LTD. (Alta.), [1929] 3 D. L. R. 621.—**CAN.**

t i. *Using company's name as plaintiff—No authority to use name—Doubt as to wishes of shareholders.*]—If on an application to strike out the name of a co. which has been used as pltf. without authority, there is any reasonable doubt as to the wishes of the shareholders, the name will be allowed to remain until their wishes are ascertained.—LEAVENS *v.* GREAT WEST PERMANENT LOAN CO., [1927] 2 W. W. R. 606; 36 Man. L. R. 606.—**CAN.**

4446 i. *Internal management—Conduct of majority ultra vires—Or fraudulent.*]—Although the rule that in order to redress a wrong done to a co. or to recover money or damages due to the co. the action should be brought by the co. itself is subject to the exception that the complaining shareholders may sue in their own names where the persons against whom the relief is sought themselves hold & control the majority of the shares in the co., & will not permit an action to be brought in its name, yet in such an action pltfs. cannot have a larger right to relief than the co. itself would have if it were pltf., & cannot complain of acts which are valid if done with the approval of the majority of the shareholders, or are capable of being confirmed by the majority; therefore, the cases in which the minority can maintain such an action are confined to those in which the acts complained of are of a fraudulent character or beyond the powers of the co.—MASON *v.* LIVINGSTON, [1929] 1 D. L. R. 608; 1 W. W. R. 295; 24 Alta. L. R. 69; *varg.*, [1928] 3 D. L. R. 468.—**CAN.**

so. *Several groups of shareholders claiming to represent company—Stay of proceedings.*]—In company cases where there is an internecine warfare between factions, each claiming to be entitled to represent the co., the practice is to direct the proceedings be stayed until after a meeting of shareholders has been held, & the will of the majority ascertained.—DUMART PACKING CO., LTD. *v.* DUMART, [1928] 1 D. L. R. 640; 61 O. L. R. 478.—**CAN.**

PART III. SECT. 33, SUB-SECT. 3.—D. (a).

k i. —— *Action by beneficial owner on behalf of himself & all other shareholders.*] —*Held:* it was not open to pltfs. in a suit framed on behalf of themselves & all other shareholders of the co. to bring a suit as beneficial owners of shares, against the co. for enforcement of their beneficial rights & that the whole of the allegations & relief asked with respect to such suit must be struck out.—MAAS *v.* MCINTOSH (1928), 28 S. R. N. S. W. 441; 45 N. S. W. W. N. 107.—**AUS.**

o i. —— —— *Loss of right by winding up.*]—The right of a minority shareholder to maintain a representative action against the co. & the majority shareholders to compel an accounting by the latter for property of the co. unlawfully appropriated by them ceases as soon as the co. goes into liquidation.—FERGUSON *v.* WALLBRIDGE, [1935] 1 W. W. R. 673; 3 D. L. R. 66.—**CAN.**

o ii. —— *Effect of lapse of time.*]—Minority shareholders cannot attack, after the lapse of years, the legality of salaries paid to officers of the co., & approved by resolutions of a majority of the shareholders.—FISHER *v.* ST. JOHN OPERA HOUSE CO., [1937] 4 D. L. R. 337; 12 M. P. R. 7.—**CAN.**

PART III. SECT. 33, SUB-SECT. 3.—D. (b).

sq. —— *Unregistered shareholder.*]—In an action wherein pltf. alleged that he was a shareholder in deft. co. & sued on behalf of himself & all the other shareholders to compel the individual defts. to account to the co. for shares alleged to have been illegally obtained by them, it was held that, although pltf. was not a registered shareholder, he had a *status* to bring the action whether he was the beneficial owner outright of the shares alleged to be his or owned them subject to a charge in favour of the registered holder.—GOODBUN *v.* MITCHELL (Man.), [1928] 1 W. W. R. 495.—**CAN.**

PART III. SECT. 33, SUB-SECT. 4.

t i. —— ——.]—HINI *v.* ANDERSON, [1933] 2 W. W. R. 176.—**CAN.**

PART III. SECT. 33, SUB-SECT. 6.

ki. —— *Essential condition.*]—Service of a statement of claim on a co. is not good unless the officer or agent served is a person who is likely to bring it to the co.'s notice, even though he is one who under the rules may be served as representing the co.—ROYAL TRUST CO. *v.* SPILLERS CANADIAN MILLING CO., [1931] 2 W. W. R. 841; 4 D. L. R. 430; 25 Alta. L. R. 542.—**CAN.**

PART III. SECT. 33, SUB-SECT. 12.

4535 i. *Out of what fund—Action by company for benefit of directors.*]—While it is a well established rule that directors may not use the co.'s funds in payment of their own costs, although such costs would not have been incurred if they had not been directors, yet it is equally well established that directors acting as such within such of the co.'s powers as are confided to them & without gross negligence, cannot be called upon to pay out of their own funds the costs of defending resolutions passed by them in the interests of the co., simply because a pltf. has chosen to make them individually co-defts.—NORTHERN LIFE ASSURANCE CO. OF CANADA *v.* MCMASTER, [1928] 3 D. L. R. 497; [1928] S. C. R. 512.—**CAN.**

PART III. SECT. 33, SUB-SECT. 13.—A. (a).

ak. *Return of nulla bona not necessary.*]—On an application under sect. 223 of Cos. Act, 1933, for an order that

4568. *Add. Annotations :*—**Refd.** A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

4570a. Assignment to secure personal debt of directors—Directors sole shareholders.]—As additional security for an advance to three partners, who, in addition to & apart from the partnership, were directors of a limited co., a bank accepted a document charging the co.'s interest in certain bonds which had been deposited with the bank to meet any judgment which might be obtained against the co. in then impending litigation. The document was signed by the three partners & the co.'s seal was affixed thereto, accompanied by the signature of one of the partners as president & of another as secretary of the co. No resolution was ever passed, either by the co. or by the directors, authorising the creation of the charge. The partners held all the shares in the co. except two which were held by two other directors of the co. There were also persons equitably interested in the shares. The litigation against the co. was concluded substantially in the co.'s favour, & the bank claimed the balance of the proceeds of sale of the bonds in reduction of the partners' indebtedness :—*Held :* as the co., acting through its directors, & not by its shareholders in general meeting, had purported to apply its property for the benefit of those directors, the transaction was unenforceable, & the ct. would not inquire whether the co. had derived any benefit from it. The bank was, therefore, bound to account to the co. for the balance of the proceeds of sale of the bonds.—E. B. M. Co., Ltd. *v.* Dominion Bank, [1937] 3 All E. R. 555; 81 Sol. Jo. 814, P. C.

4607. *Add. Annotations.*—**Consd.** Garrard *v.* James, [1925] Ch. 616; *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536.

---

pltf. give security for costs :—*Held :* a return of *nulla bona* was not necessary & deft. had on the material filed satisfied the onus on it.—R. M. Buchanan-Sumner Co., Ltd. *v.* Scottish Co-operative Wholesale Society, Ltd., [1936] 1 W. W. R. 491. —**CAN.**

PART III. SECT. 33, SUB-SECT. 13.—A. (b) ii.

p i. ——— ———.]—On appeal from the dismissal of an application by defts. for security for costs under sect. 223 of Cos. Act, 1933, held they were entitled to security.—Christian Community of Universal Brotherhood, Ltd. *v.* Trafimenkoff, [1937] 2 W. W. R. 340, C. A.—**CAN.**

sv. " *Credible testimony " of inability to pay—What is.*]—In an action for reduction of a lease, brought by a co., defender was assoilzied & obtained an award of expenses. Pursuers having reclaimed, defender, founding upon an unfavourable balance-sheet of pursuers which was about a year old, moved that pursuers should be required to find caution for expenses under 1908 Act, s. 278. The ct. refused the motion, as it did not appear by " credible testimony " that pursuers would be unable to pay defender's expenses if he were successful, in respect that a later balance-sheet showed that the financial depression from which pursuers had been suffering was passing off, &, further, in respect that pursuers had a responsible directorate & a profitable record in the past, & that there was no suggestion that any creditor was pressing them for payment which he was unable to get.—Edinburgh Entertainments, Ltd. *v.* Stevenson, [1925] S. C. 848.—**SCOT.**

PART III. SECT. 34, SUB-SECT. 1.—A. (a).

4569 ii. ———.] — Zimmerman *v.* Andrew Motherwell of Can., Ltd. (Trustee) [1925], 3 D. L. R. 953; 3 W. W. R. 42.—**CAN.**

PART III. SECT. 34, SUB-SECT. 1.—A. (b).

sw. *Elevator company—Bond for price of elevator.*]—A co. whose charter provides that it " may acquire, own, lease & sell real estate," & " build, sell, lease & otherwise deal with elevators, etc.," & further " may issue bonds bearing interest to an amount not exceeding the cost of any elevator built by it," has the power to issue such bonds for the price of an elevator bought by it.—Royal Trust Co. *v.* Great Northern Elevator Co. (1906), Q. R. 30 S. C. 499.—**CAN.**

s i. ——— ———.]—Although under Rural Telephone Act, 1920 (c. 96), s. 31, deft. co. is impliedly prohibited from borrowing money otherwise than by the issue & sale of debentures, & has no power to make or give a promissory note, yet, held in an action on a promissory note, &, in the alternative for money borrowed, that, since the money was used by deft. in paying its legitimate debts incurred in carrying out the purposes of the co. pltf. was entitled to recover on the alternative claim with interest at the legal rate.—Smith *v.* Elrose Rural Telephone Co., Ltd., [1928] 3 D. L. R. 51; [1928] 1 W. W. R. 970; 22 Sask. L. R. 414.—**CAN.**

sd. *Co-operative livestock company incorporated under Companies Act.*]—*Held :* to have power to borrow.—Canadian Bank of Commerce *v.* Johnson (Alta.), [1926] 4 D. L. R. 1179; [1926] 3 W. W. R. 613.—**CAN.**

PART III. SECT. 34, SUB-SECT. 1.—B.

sk. *Power to borrow & raise money—Mortgage.*]—*Held :* a mtge. over part of a co.'s real estate as security for a loan was justified.—Unique Properties, Ltd. *v.* Endean, [1927] N. Z. L. R. 244.—**N.Z.**

PART III. SECT. 34, SUB-SECT. 1.—D. (b).

4594 i. *Capital only capable of being called up in winding up—Company limited by guarantee.*]—A co. limited by guarantee was formed for the purpose of promoting an exhibition. Among its objects were the formation of a guarantee fund; the receipt of subscriptions thereto from persons, whether members of the co. or not, for the purpose of carrying out its objects & defraying its expenses; & the assignation of the letters of guarantee to any corporation which might give it credit. The co. obtained an undertaking from a firm, which was not one of its members, to pay a proportion of any loss arising in connection with the holding of the exhibition. It subsequently assigned the undertaking to a bank which had given it credit. A loss having occurred, the bank sued the firm upon the guarantee. The defenders contended that the assignation was *ultra vires*, having been made at a time when the co. was not in liquidation :—*Held :* the assignation was valid, in respect that the guarantee fund was not capital of the co. within the meaning of sects. 2 & 4 (1) (*v*) of 1908 Act, which could only come under the control of the co. or its directors in the event of liquidation, but formed an independent fund of credit to which an assignee could make good his right on the happening of the event on which the guarantee was contingent.—Lloyds Bank, Ltd. *v.* Morrison & Son, [1927] S. C. 571.—**SCOT.**

PART III. SECT. 34, SUB-SECT. 2.—A.

sm. *Agreement postponing lien of bondholders to lien of lender—Agreement not signed by all bondholders.*]—*Held :* binding on the bondholders.—Greene *v.* Ruggles (1891), 31 N. B. R. 679.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—B.

sp. *Form of bonds—Whether approval of directors necessary.*]—Where the directors of a limited co. at a proper meeting authorise the issue of bonds on the security of the assets of the co. & the shareholders confirm the decision of the directors, it is proper to leave the form of the bonds to the duly appointed or elected officers of the co. In such a situation no approval of the form of the bonds at a formal meeting of the directors is necessary, & the absence of such a meeting is not an irregularity affecting the validity of the bonds.—Reid *v.* Purity Farms, Ltd., [1937] 1 D. L. R. 725; O. R. 248.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (a) ii.

m i. ———.]—Merchants Bank of Canada *v.* Hancock (1884), 6 O. R. 285.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (b) i.

r i. ——— *Issue before prospectus filed.*] —Martin *v.* Clarkson, [1926] 3 D. L. R. 29; 58 O. L. R. 618; 7 C. B. R. 619.—**CAN.**

b i. ——— *For price of shares sold by one member to another.*]—The mtge. in question herein made by deft. co. held to be *ultra vires*, since it was made for the purpose of enabling one of the shareholders to purchase for his own benefit the shares of another & no case of necessity for the transaction had been established, there being no evidence of any disagreement among the shareholders or that the co. was in jeopardy or that it needed funds to carry on its operations. The mtgee. was held entitled, however, to recover the amount actually advanced with interest thereon.—Martin *v.* Northern Hotel Co., Ltd., [1932] 1 W. W. R. 242.—**CAN.**

sn. *Unauthorised loan—Recoverable.*] —Douglas *v.* Maritime United Farmers Co-op., Ltd., Wilson *v.* Maritime United Farmers Co-op. Ltd. (N. B.), [1928] 3 D. L. R. 166.—**CAN.**

4623. *Add. Annotations:—As to* (2) **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4625. *Add. Annotations:—As to* (1) **Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4630. *Add. Annotation:—As to* (2) **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

4637. *Add. Annotations:*—**Refd.** Lemon *v.* Austin Frairs Investment Trust, [1926] Ch. 1; Knightsbridge Estates Trust, Ltd. *v.* Byrne, [1938] 2 All E. R. 444.

4637a. Whether certificate securing income stock is debenture.]—Defts., a limited co., issued certificates for securing income stock, & a certificate was issued to pltfs. whereby the co. certified that it was indebted to them in a certain amount. The certificate stated that three-fourths of the net profits of the co. in each year or a sum equal thereto were to be applied in paying off the income stock *pari passu*. Under conditions indorsed on each certificate a register of the certificates was to be kept at the co.'s registered office, wherein would be entered the names & addresses of the registered holders & particulars of the certificates held by them & by clause 9 of the conditions the rights of the holders might be modified with the consent of the holders of three-fourths in value of the certificates. Pltfs. were refused inspection of the register, & brought an action for an injunction to restrain defts. from interfering with their right, under 1908 Act, s. 102, to inspect the register:—*Held:* (1) the certificates were debentures within the sect., & pltfs. were entitled to the injunction; (2) all the holders of income stock certificates were entitled to inspection of the register thereof kept by the co. in accordance with the conditions.—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., [1926] Ch. 1, 95 L. J. Ch. 97; 133 L. T. 790; 41 T. L. R. 629; 69 Sol. Jo. 762, C. A.

4639. *Add. Annotation:*—**Refd.** Fenton Textile Assocn. *v.* Lodge, [1928] 1 K. B. 1.

4651a. ——.]—*Re* PRIESTMAN (ALFRED) & CO. (1929), LTD., No. 7007a, *post*.

4652a. Whether prospectus may be considered.]—*Re* CHICAGO & NORTH WEST GRANARIES CO., LTD., No. 814, *ante*.

4652b. ——.]—In determining a question as to the construction of a debenture the ct. can not refer to the prospectus pursuant to which the debenture was issued.—*Re* TEWKESBURY GAS CO., TYSOL *v.* TEWKESBURY GAS CO., [1911] 2 Ch. 279; 80 L. J. Ch. 590; 105 L. T. 300; 27 T. L. R. 511; 55 Sol. Jo. 616; 18 Mans. 301; *affd.*, [1912] 1 Ch. 1, C. A.

Annotations:—**Distd.** Jacobs *v.* Batavia, & General Plantations Trusts, Ltd., [1924] 1 Ch. 287; 93 L. J. Ch. 520. **Refd.** Eyre *v.* Milton Proprietary, Ltd., [1936] Ch. 244.

4652c. ——.]—JACOBS *v.* BATAVIA & GENERAL PLANTATIONS TRUST, No. 814a, *ante*.

——.]—*Compare* DEEDS, Vol. XVII., p. 342, No. 1537.

4676. *Add. Annotation:*—**Refd.** Fenton Textile Assocn. *v.* Lodge, [1928] 1 K. B. 1.

4677a. —— **Right to issue originating summons under R. S. C., Ord. 55, r. 3—To ascertain persons entitled.**]—*Re* CHILLAGOE RY. & MINES, LTD., TRUST DEED (1930), 46 T. L. R. 242.

4678a. —— **General rule.**]—*Re* MAGADI SODA CO., LTD., No. 7409a, *post*.

4678b. —— **Wilful neglect or default—What amounts to.**]—*Re* LEEDS CITY BREWERY, LTD.'S TRUSTS, LEEDS CITY BREWERY, LTD. *v.* PLATTS, [1925] 1 Ch. 532, n., C. A.

Annotations:—**Apld.** *Re* City Equitable Fire Insce. Co., [1925] 1 Ch. 407. **Refd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

4688a. —— —— **Refusal to give information to debenture-holders—Acquisition of debentures from cestuis que trust at inadequate prices.**]—*Re* MAGADI SODA CO., LTD., No. 7409a, *post*.

4690. *Add. Annotations:*—**Refd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412; *Re* Priestman

---

PART III. SECT. 34, SUB-SECT. 2.—C. (b) ii.

k i. —— —— ——.]—Persons lending money to a co. have a right to assume that the essentials of internal management have been carried out by the co.—MARTIN *v.* CLARKSON, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 835.—CAN.

PART III. SECT. 34, SUB-SECT. 2.—C. (c).

m i. ——.]—Where debentures were issued before the co. had filed a prospectus:—*Held:* even if the debentures were not valid in the hands of the debenture-holder, they were valid in the hands of the pledgee to whom they had been assigned.—MARTIN *v.* CLARKSON, [1926] 3 D. L. R. 29; 58 O. L. R. 618; 7 C. B. R. 619.—CAN.

PART III. SECT. 34, SUB-SECT. 3.—A. (b) i.

p i. —— —— *Whether misfeasance claims included.*]—Where a debenture purports to create a charge on "the undertaking of the co. & all its property present & future including uncalled capital," misfeasance claims are included in such charge.—*Re* BUICK SALES, LTD., [1926] N. Z. L. R. 24.—N.Z.

sg. "*Powers, rights, revenues, privileges, exemptions & franchises.*"]—In a bond mtge. the words "powers, rights, revenues, privileges, exemptions & franchises" cannot be extended beyond their ordinary & natural meaning in the absence of suitable words to convey the whole property of the co.—MCDOUGALL *v.* SCOTT & EASTERN TRUST CO., [1934] 4 D. L. R. 607.—CAN.

PART III. SECT. 34, SUB-SECT. 3.—B. (b).

r i. ——.]—A trustee for bondholders is responsible for the conduct of the trust & is accountable therefor to each individual bondholder & he cannot divest himself entirely of such responsibility by calling bondholders' meetings. The position of such a trustee under the law in the United States is different from his position under our law.—NATIONAL TRUST CO., LTD. *v.* VANCOUVER KRAFT CO., LTD., [1938] 2 W. W. R. 32.—CAN.

sn. *Reimbursement of trustee—Grounds for refusing.*]—The trustee under a trust deed, under which certain bondholders were the *cestuis que trust* & by which certain land was mortgaged to the trustee as security for the payment of the bonds, sued for the determination of the trust deed & for reimbursement by the bondholders or from the property itself for moneys disbursed by the trustee for taxes, losses sustained in conducting farming operations on the land & for interest paid the bondholders but not collected from the mtgors. or realised out of the land:—*Held:* since, after the creation of the trust, the trustees had acquired a beneficial interest in the land for themselves & the moneys sued for had been expended after the acquirement of that interest, it could not be said that the expenditures had been made wholly in the interest of the bondholders & not in the trustee's interest as well, &, therefore, the action could not succeed.—VERMONT LOAN & TRUST CO. *v.* ENNIS, [1933] 2 W. W. R. 397.—CAN.

PART III. SECT. 34, SUB-SECT. 3.—C. (a).

sq. *Mortgage of specific assets.*]—A co. deposited & pledged with & to a bank as security for repayment of a loan all the liquid assets, including stock-in-process now or at any time

(Alfred) & Co. (1929), Ltd., [1936] 2 All E. R. 1340.

4697. *Add. Annotation :—As to* (2) **Refd.** National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 241.

4698. *Add. Annotations :*—**Refd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co., [1937] 1 All E. R. 231.

4699. *Add. Annotation :—As to* (1) **Expld. & Distd.** *Re* Matthew Ellis, Ltd. (1933), 102 L. J. Ch. 65.

4699a. Effect of section—Redemption of debenture—Remedies of liquidator.]—A co., which had become insolvent, issued to a trustee, as security for some of their debts, a debenture which was to rank as a first charge on the co.'s assets & as a floating security only. Subsequently the co. sold the goodwill of its business, & out of the proceeds paid to the trustee the amount required to discharge the debenture. Within three months from the issue of the debenture a different creditor of the co. obtained a winding-up order. The liquidator took out a summons to set aside the charge created by the debenture & to recover the money paid under it :—*Held :* though under 1908 Act, s. 212, the charge was invalid, the amount paid could not be recovered on the summons, but it would be open to the liquidator either to apply to set aside the payment as a fraudulent preference within sect. 210, or to question the validity of the debenture on any other ground.—*Re* Parkes Garage (Swadlincote), Ltd., [1929] 1 Ch. 139 ; 98 L. J. Ch. 9 ; 140 L. T. 174; 45 T. L. R. 11 ; [1928] B. & C. R. 144, D. C.

4700. *Add. Annotation :* — **Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

4705a. ——.]—*Re* Patrick & Lyon, Ltd., No. 3353b, *ante.*

4707a. "Cash paid"—Need not be unconditional payment.]—Early in 1932 a co. which was in financial difficulty & insolvent obtained a loan from its chairman, who was also a partner in a firm which supplied the bulk of its stock of goods to the co. He thought that an advance might save the co., but before making any advance ascertained from his partners that they would only consent to continue to supply the co. with goods on credit if the past debt to the firm of £1,954 was paid. He therefore advanced to the co. £3,000 on the security of a third debenture, dated Mar. 24, 1932, after arranging with the co. that out of this sum £1,954 should be applied in paying the past debt to the firm. In July, 1932, a compulsory order for the winding-up of the co. was made :—*Held :* the sum of £1,954 out of the total sum of £3,000 was "cash paid to the co. at the time of . . . the creation of, & in consideration for, the charge" within Cos. Act, 1929 (c. 23), s. 266, & there was, therefore, a valid floating charge in respect of the whole sum of £3,000.—*Re* Matthew Ellis, Ltd., [1933] Ch. 458 ; 102 L. J. Ch. 65 ; 148 L. T. 434 ; 77 Sol. Jo. 82 ; [1933] B. & C. R. 17, C. A.

4708. *Add. Annotation :—As to* (1) **Apld.** *Re* Stanton, [1929] 1 Ch. 180.

4709a. —— ——.]—Moneys were advanced on the security of debentures creating a floating charge on the property & assets of the co. Fifty-four days elapsed after the first advance & five days after the last advance before the issue of the debentures on Jan. 20, 1926. The delay in the issue of the debentures was not acquiesced in by the lenders, who when they sent cheques for the advances wrote that the money was in further payment on account of debentures to be issued as arranged. The co. went into liquidation on Jan. 25, 1926. During the period in which the bulk of the advances were made the lenders were unaware that the co. was on the verge of liquidation. The debentures were issued when the co. was unable to pay its debts :—*Held :* the debentures were valid, the payments being made "at the time of" the creation of the charge & in consideration for the charge within 1908 Act, s. 212, & consequently the debentures were not a fraudulent preference within 1908 Act, s. 210.—*Re* Stanton (F. & E.), Ltd., [1929] 1 Ch. 180 ; 98 L. J. Ch. 133 ; 140 L. T. 372 ; [1928] B. & C. R. 161.

4710. *Add. Annotation :*—**Distd.** *Re* Matthew Ellis, Ltd. (1933), 102 L. J. Ch. 65.

4716. *Add. Annotation :*—**Folld.** Heaton & Dugard *v.* Cutting, [1925] 1 K. B. 655.

4716a. —— —— ——.]—Judgment having been recovered in an action against a limited co., which had issued debentures giving a floating charge over its property, execution was issued under a *fi. fa.*, & the sheriff went into possession. In order to avoid a sale the co.'s managing director paid the judgment debt & costs, whereupon the sheriff withdrew. Thereafter, & before the sheriff paid the amount of the debt & costs to the execution creditors, the debenture-holders in deft. co. appointed a receiver, who claimed to be

---

hereafter to be stored by the co. in its godowns, the keys of which had been delivered to the bank :—*Held :* the charge was not a floating charge, but a mtge. of specific assets, with a licence to the mtgor. to dispose of them in the course of the business subject to prescribed conditions.—Bank of Baroda, Ltd. *v.* H. B. Shivdasani (1926), I. L. R. 50 Bom. 547.—**IND.**

PART III. SECT. 34, SUB-SECT. 3.—C. (c).

sr. "*Cash paid.*"]—Deft. co. was owned by S., who was its managing director. In Feb. 1930, he obtained a loan of £300 from pltfs. for his co. on the security of his own promissory note & also of deft. co.'s debenture for £300, which should have been registered within 21 days, viz., on or before Mar. 13, 1930. As S. was endeavouring to effect a flotation of his co. as a public co., he requested pltfs. not to register the debenture until the last moment, which they agreed to do. On Mar. 13, S. asked for further time, & it was ultimately agreed that in lieu of such registration pltfs. should advance S. £400 on the security of a new promissory note & a debenture for that amount, out of which sum he should forthwith repay the £300 previously borrowed with interest thereon. This was intended to give S. the additional time he required without prejudicing pltfs.' security. In pursuance of this arrangement pltfs. gave S. their own cheque for £400. W., who acted as solr. to both parties, attended with S. at the bank on Mar. 15, when the cheque was presented for payment, & when the latter received the £400 he immediately in pursuance of the agreement handed to W. the sum of £310 in payment of principal & interest on foot of the first loan, which sum the latter immediately lodged to the credit of pltf. co. The debenture for £400 was duly registered. The contemplated flotation did not materialise & the deft. co. went into voluntary liquidation :—*Held :* under Cos. (Consolidation) Act, 1908, s. 212, the mtge. debenture for £400 was invalid except to the extent of £90, the nett amount received by deft. co. on foot of the promissory note & debenture for £400, with interest thereon at 5 per cent.—Revere Trust, Ltd. *v.* Wellington Handkerchief Works, Ltd., [1931] N. I. 55.—**IR.**

entitled to the money in the hands of the sheriff:—*Held:* the money was paid to the sheriff as a debt owing by defts. to the execution creditors, who were therefore entitled to retain it as against the receiver.—HEATON & DUGARD, LTD. *v.* CUTTING BROTHERS, LTD., [1925] 1 K. B. 655; 94 L. J. K. B. 673; 133 L. T. 41; 41 T. L. R. 286, D. C.

4720. *Add. Annotation:—As to* (1) **Folld.** Westminster Bank, Ltd. *v.* Residential Properties Improvement Co., [1938] Ch. 639.

4730a. —— **Floating charge over part of assets already charged.**]—Where a debenture trust deed, creating a general floating charge over all the undertaking & assets of the co. both present & future, reserves power to the co. in the ordinary course of its business to create specific charges over any of those assets, then although a second general floating charge over all the property comprised in the first charge but ranking *pari passu* with or in priority to that charge, is, under the general law, incompatible with the first charge & ranks subject to it, yet there is no principle of law which forbids the creation of a second floating charge over part only of those assets ranking *pari passu* with, or in priority to, the earlier floating charge, so long as the later floating charge is within the limits of the power reserved.

A debenture trust deed created a general floating charge over all its undertaking & assets both present & future, but reserved to the co. power to create in priority to that charge such mtges. or charges as the co. should think proper "by the deposit of any dock warrants, bills of lading, or other similar commercial documents, or upon any raw materials, or finished or partly finished products & stock for the purpose of raising money in the ordinary course of the business of the co." In pursuance of the power & in the course & for the purposes of its business, the co. raised £12,000 & secured payment thereof by charging all the before-mentioned documents, materials & stock, both present & future, by way of a floating security to rank in priority to the floating charge created by the trust deed:—*Held:* the power reserved to the co., except as to subject-matter & purpose, was unlimited; it enabled the co. to choose the form of a floating charge, if required, & the second charge was valid & entitled to priority over the first charge.—*Re* AUTOMATIC BOTTLE MAKERS, OSBORNE *v.* AUTOMATIC BOTTLE MAKERS, [1926] Ch. 412; 95 L. J. Ch. 185; 134 L. T. 517; 70 Sol. Jo. 402, C. A.

4739a. —— ——.]—By a lump sum building contract entered into in 1922 between S. & Co., the contractors, & defts., provision was made for interim payments on the architect's certificates, to be given monthly at the rate of 90 per cent. of the value of all work executed. The remaining 10 per cent., the retention moneys, was to be retained & deposited in a bank until the final adjustment of accounts. The contract was varied by consent, & in the events which happened the retention moneys amounted to £1,000 at the beginning of 1924; this was never deposited in a bank & remained a merely notional fund, but both parties treated it as a separate sum capable of being earmarked. It was included, without distinction, in the architect's final certificate for £1,848 10*s.* 2*d.* on Jan. 28, 1927. Meanwhile, pltfs., who were supplying cement to the contractors, found that the latter were getting into arrears with their payments, & to obtain further credit the contractors, being then indebted to pltfs. in the sum of £671 on Apr. 7, 1924, assigned to them the retention moneys by a document in these terms: "In reduction of the amount now or to be owing from us to you for goods supplied by you, we hereby assign to you all moneys now or hereafter to become due to us from the H.R.D.C. for retention moneys in respect of the G. Housing Scheme, & for which your receipt shall be a sufficient discharge. . . ." Of that assignment due notice was given by pltfs. to defts. next day. The contractors had at various dates between 1900 & Feb. 2, 1924, issued to the Manchester & County Bank, Ltd., a number of debentures charging the undertaking of the contractors & all their property, both present & future, the charge being a specific charge on the contractors' freehold & leasehold property, machinery, goodwill, & uncalled capital, & a floating charge on all the co.'s other assets, subject to a proviso that the contractors were not to be at liberty to create any mtge. or charge for any of their assets in priority to the debentures. On Oct. 13, 1924, a receiver for the debenture-holders was appointed, who duly entered into possession. On Oct. 20, 1924, a resolution was passed for the voluntary winding-up of the co. The receiver refused to recognise the right of pltfs. to payment under their assignment in priority to the debenture-holders, & on the architect's final certificate being given, in Jan. 1927, defts. declined to interplead & paid the retention moneys to the receiver for the debenture holders, & pltfs. thereupon brought their action upon their assignment:—*Held:* (1) the debentures only created a floating charge on the retention moneys, which the contractors could therefore assign or charge in spite of the clause in the debentures prohibiting the creation of charges in priority to the debentures; (2) pltfs. had no express notice of that clause in the debentures; (3) though the registration of the debentures affect pltfs. with constructive notice that debentures existed, it did not affect them with notice of the terms, including the limitation on prior charges, of those debentures.—EARLE (G. & T.), LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL (1928), 44 T. L. R. 605; *affd.*, 140 L. T. 69; 44 T. L. R. 758, C. A.

4747. *Add. Annotation:*—**Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

4755. *Add. Annotations:—As to* (1) **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. *Generally*, **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Mentd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

4767a. —— —— **Validity of appointment—Onus of proof.**]—An execution creditor having seized certain goods of the debtor, the goods were claimed by a receiver appointed under a power given by a debenture deed. The appointment was dated the day after the execution of the deed. It was contended that such appointment was *primâ facie* valid, & that it was for the creditor to show that none of the events specified in the deed as giving rise to the power had happened:—*Held:* it was for the receiver to prove the happening of one of the events so specified in the debenture deed, & the maxim *omnia rite esse acta præsumuntur* had no application to such a case.—KASOFSKY *v.* KREEGERS, [1937] 4 All E. R. 374, D. C.

4781. *Add. Citations:*—93 L. J. Ch. 27; 130 L. T. 93.

4783a. —— **Delay in issue to retain credit.**]—Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not voidable under 13 Eliz. c. 5, when the co. goes into liquidation.—*Re* LLOYD'S FURNITURE PALACE, LTD., EVANS *v.* LLOYD'S FURNITURE PALACE, LTD., [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 29.

4785a. —— **Validity—Charge given as compensation for loss of management share.**]—By an agreement dated Sept. 23, 1925, after a recital that a management share of £1 of the T. Co. had been allotted to the S. Co. as manager of the T. Co. it was agreed that the S. Co. should be entitled to act as manager during the T. Co.'s operation of a certain undertaking & to receive in respect of each financial period of the T. Co. 50 per cent. of its net profits. The management share entitled the S. Co. to a majority of the voting power of the shareholders at any meeting & to a share of the surplus assets of the T. Co. in a winding-up after payment off of the preference share capital. In 1933 the rights of the management share were varied, & it became known as a reversionary share. The T. Co. having become desirous of putting an end to the management of the S. Co., a draft agreement had been prepared terminating the management in consideration of the payment to the S. Co. of £100,000 to be raised by the T. Co. by the issue of debenture stock. Incidentally the reversionary share was to be converted into an ordinary share. On the application of a shareholder of the T. Co. to test the legality of the proposed agreement:—*Held:* it was not *ultra vires* the T. Co. to enter into the proposed agreement. It was no objection to the agreement that it involved the redemption of the annual charge on the T. Co.'s net profits out of capital raised for the purpose.—INVESTMENT TRUST CORPN., LTD. *v.* SINGAPORE TRACTION CO., LTD., [1935] Ch. 615; 105 L. J. Ch. 319; 153 L. T. 83; 51 T. L. R. 476; 79 Sol. Jo. 402, C. A.

4796. *Add. Annotation:*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

4808. *Add. Annotation:*—**Distd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412.

4809. *Add. Annotation:*—**Consd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412.

4818. *Add. Annotation:*—**Refd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4821. *Add. Annotation:*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

4825a. ——.]—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., No. 4637a, *ante.*

4829a. Right of transferee to accrued interest.]—*Re* KIDNER, KIDNER *v.* KIDNER, No. 2224a, *ante.*

4833. *Add. Annotation:*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4838. *Add. Annotation:*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4839. *Add. Annotation:*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4852a. Transferee informed that registration unnecessary.]—The debentures of a co. payable to K. or his "registered assigns" were transferred by him. At the time of the transfer K. was indebted to the co. to a larger amount than the sum secured by the debentures. The co. kept no books for registering transfers, & on K. & his transferee applying to the secretary for registration, he told them it was unnecessary, & made no mention of the co.'s claim against K. On the co. being wound up:—*Held:* the transferee was entitled to prove as a creditor in respect of the debentures.—*Re* COLONIAL & GENERAL GAS CO., LISHMAN'S CLAIM (1870), 23 L. T. 40.

4858. *Add. Annotation:*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

4858a. —— ——.]—A co. issued mtge. bonds secured by a trust deed, which gave power to a majority of the bondholders, consisting of not less than three-fourths in value, to sanction any modification of the rights of

---

PART III. SECT. 34, SUB-SECT. 3.—G. (c).

s i. —— —— ——.]—The Apatco, Ltd., gave a debenture to M. to secure a certain sum, constituting a floating charge over all the assets of the co. present or future, & prohibiting the creation of any mtge. or charge in priority to it. Afterwards the co. gave a debenture to W. to secure portion of the purchase money of certain goods sold to it by W., & constituting a floating charge over the assets so sold. Subsequently, W. recovered a judgment against the co. for portion of the money secured by his debenture, & issued execution, under which the sheriff seized goods of the co. M. claimed the goods & the sheriff interpleaded. M. then instituted a suit to restrain the sale of the goods by the sheriff:—*Held:* as regards the goods comprised within the second debenture, the rights of deft. under the said debentures were paramount to those of pltf.—MATHIESON *v.* WAHLEN (1923), 28 S. R. N. S. W. 189; 45 N. S. W. W. N. 47.—AUS.

PART III. SECT. 34, SUB-SECT. 3.—I.

s*t. Grounds for allowing or refusing—Under Sale of Shares Act,* 1916 (c. 15).]—*Re* SALE OF SHARES ACT, UNITED GRAIN GROWERS, LTD.'S CASE (Sask.), [1918] 3 W. W. R. 92.—CAN.

s*v. Who may be "bearer."*]—There cannot be "a bearer" of a debenture consisting of two or more persons holding the document in severalty, nor can the bearer of a debenture assign a part of the principal sum or sums secured by the debenture so as to create independent rights therein to different persons at one & the same time.—JAFFE (R.), LTD. *v.* JAFFE, [1932] N. Z. L. R. 168.—N.Z.

PART III. SECT. 34, SUB-SECT. 3.—K. (a) i.

s*w. By extraordinary resolution—Adjourned meeting—No notice of adjournment—Whether adjournment continuation of original meeting.*]—*Re* ARGYLE MOTOR SERVICES, LTD., [1932] 1 D. L. R. 81; 4 M. P. R. 88.—CAN

[1921] 2 K. B. 66. **Refd.** St. Magnus, etc., Parochial Church Council *v.* London Diocese (Chancellor), [1923] P. 38; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

259. *Add. Annotations :*—**Apld.** Bradshaw *v.* Air Council, [1926] Ch. 329. **Refd.** Ellesmere *v.* I. R. Comrs. (1918), 88 L. J. K. B. 337; Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

264. After this case add as follows :—
See, further, Sect. 3, sub-sect. 3*b*, *post*.

SUB-SECT. 1*a*.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING.

A. Compensation to Tenant.

See A. H. Act, 1923, s. 9.

B. Compensation to Landlord.

See A. H. Act, 1923, s. 10.

264a. Notice of claim—Time for giving—Agriculture Act, 1920 (c. 76).]—*Held :* the meaning of sect. 19 of the above Act taken as a whole was that the landlord should have a right of compensation for deterioration under the sect. if he gave a notice before the termination of the tenancy & not otherwise; but if he had a right under contract to claim for deterioration apart from the sect., nothing in the sect. should interfere with that right.

A tenant held a farm as a yearly tenant under the landlord upon the terms, as the arbitrator found, of an agreement in writing under which the father of the tenant had originally held the farm. On Aug. 20, 1920, the landlord served a notice to quit upon the tenant, which expired as to the land, other than the boozy pasture, on Feb. 2, 1922. The tenant gave up possession of the land except the boozy pasture, the tenancy of which did not expire until May 1, 1922, upon that date. On Mar. 28, 1922, the landlord gave notice of & particulars of a counterclaim against the tenant for waste wrongly committed or permitted by the tenant & for breach of contract or otherwise, whereby he claimed for neglect in the care of hedges & ditches on the land & dirty land :—*Held :* (1) the landlord's claim was not barred by sect. 19 of the above Act; (2) the boozy pasture & the rest of the farm were held under one contract of tenancy; the contract did not finally cease under sect. 10 (7) of the above Act until May 1, 1922, the date of the termination of the boozy tenancy, & the landlord's notice was therefore in time.—*Re* ARDEN & RUTTER, [1923] 2 K. B. 865; 130 L. T. 51; *sub nom.* ARDEN *v.* RUTTER, 92 L. J. K. B. 894, C. A.

Annotations :—*As to* (1) **Consd.** Olive *v.* Paynter, [1932] 2 K. B. 666. **Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

264b. —— —— Agricultural Holdings Act, 1923 (c. 9), s. 16 (2)—Claims independent of Agricultural Holdings Acts.]—As the term of a lease of an agricultural holding was coming to an end the lessee made a claim in respect of tenant right, & the lessor made various counterclaims in respect of dilapidations. An arbitrator appointed under Agricultural Holdings Act, 1923 (c. 9), to settle all matters & questions between the parties in respect of the holding, stated a case under sect. 16 (4), for the opinion of the county ct. in which he found that particulars of some of the lessor's claims were given within two months of the end of the lease, but that particulars of others of the claims were not given within that time. The claims related in whole or in part to acts & omissions which were in fact breaches of agreements in the lease. The county ct. judge held that the arbitrator could only entertain those claims of which particulars were given within the two months : —*Held :* the provision in sect. 16 (2) of the Act, barring claims unless particulars are given within the time therein specified, does not apply to claims arising from breaches of the agreement of tenancy & giving ground for actions at law independently of the Agricultural Holdings Acts, & the arbitrator must deal with those claims without attributing importance to the fact that particulars thereof were not given within the time specified in the sub-sect.

With regard to the sufficiency of the particulars, I am of opinion that in the present case, as in most other cases, that is a question of fact which the arbitrator should decide for himself (SCRUTTON, J.).—OLIVE *v.* PAYNTER, [1932] 2 K. B. 666; 101 L. J. K. B. 786; 148 L. T. 65, C. A.

Annotation :—**Refd.** Farrow *v.* Orttewell, [1933] Ch. 480.

265a. —— Right to compensation—Tenant holding over after notice to quit.]—A tenancy was determined by notice to quit on a certain day. The tenant remained on in possession for about nine months, & was finally ejected. Two days before his ejectment he furnished details of his claim for compensation :—*Held :* the tenant, from the date when his notice expired, was not holding under a contract of tenancy, & the land which he persisted in

CAMERON *v.* NICOL, [1930] S. C. 1.—**SCOT.**

sj. *What questions arbitrator may determine—Termination of tenancy—Agricultural Holdings (Scotland) Act*, 1923 (*c.* 10), *s.* 15.]—In a note of suspension & interdict brought by the landlords of a farm, craving the ct. to interdict proceedings in an arbn. under the above Act upon a claim by the tenant, who had vacated the farm in favour of a new occupier, for compensation for improvements, the complainers maintained that the tenancy had not terminated, & that the appointment of an arbiter under the Act was illegal :—*Held :* the question of the claimant's title to present a claim was not one of the matters remitted by the Act to the exclusive jurisdiction of the arbiter, but was a question precedent to the existence of a statutory claim, & the ct. had jurisdiction to entertain the action of interdict.—DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES *v.* ESSLEMONT, [1925] S. C. 199; *on appeal*, [1926] S. C. (H. L.) 68.—**SCOT.**

sk. *Form of arbitration—Arbitration between outgoing & incoming tenants—Agricultural Holdings (Scotland) Act*, 1908 (*c.* 64).]—There is nothing illegal in the outgoing & incoming tenants entering into an agreement for a common law arbn.—ROGER *v.* HUTCHESON, [1922] S. C. (H. L.) 140, 170.—**SCOT.**

257 ii. —— —— ——.]—Charges for preparing & adjusting a special case fall to be dealt with by the arbiter.—THOMSON *v.* GALLOWAY, [1919] S. C. 611; 56 Sc. L. R. 521.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 2.

sl. *Agricultural Holdings (Scotland) Act*, 1908 (*c.* 64)—*What questions arbitrator must determine.*]—Under s. 10 of the above Act it falls to the arbiter to determine questions connected with the time & validity of notices to quit & notices to claim compensation.—COWDRAY *v.* FERRIES, [1919] S. C. (H. L.) 27.—**SCOT.**

sm. *Agriculture Act*, 1920 (*c.* 76), *s.* 10—*Claim exceeding one year's rent—Damage proved less than one year's rent.*]—A tenant claimed compensation for disturbance to an amount exceeding one year's rent, & the claim went to arbn., in which it was proved that the damage sustained by him was less than one year's rent :—*Held :* the minimum amount of compensation payable to a tenant under Agriculture Act, 1920

the bondholders. A scheme for reconstruction of the co. provided for the mtge. bonds being exchanged for income bonds subject to an issue of first income bonds; also that a committee, one only of whom was to be appointed by the mtge. bondholders, should have power to modify the scheme without confirmation by the bondholders. The scheme was sanctioned by the majority of the bondholders requisite under the trust deed. The required majority would not have been obtained but for the vote of the holder of a large number of bonds, whose support of the scheme was obtained by the promise of a large block of ordinary stock, an arrangement which was not mentioned in the scheme:—*Held:* the resolution was invalid, both because the bondholder in voting had not treated the interest of the whole class of bondholders as the dominant consideration, & because the scheme, so far as it provided for a committee, was *ultra vires*.—BRITISH AMERICA NICKEL CORPN. *v.* O'BRIEN, [1927] A. C. 369; 96 L. J. P. C. 57; 136 L. T. 615; 43 T. L. R. 195, P. C.

4872a. —— **Redemption at figure below par but above market price.**]—MEADE-KING *v.* USHER'S WILTSHIRE BREWERY, LTD. (1928), 44 T. L. R. 298.

4879. *Add. Annotations:*—**Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635. **Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

4883. *Add. Annotation:*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

4891. *Add. Annotation:*—**Refd.** Knightsbridge Estates Trust, Ltd. *v.* Byrne, [1938] 2 All E. R. 444.

4896. *Add. Annotation:*—**Refd.** Knightsbridge Estates Trust, Ltd. *v.* Byrne, [1938] 2 All E. R. 444.

4901. *Add. Annotation:*—**Refd.** Hunter *v.* Hunter, [1936] A. C. 222.

4904a. After twenty years—Reference to debentures in company's published accounts.]—A co. at various dates between 1890 & 1902 issued debentures payable within two years, but paid no part of the principal or interest. The co.'s published accounts habitually referred to the debenture debt as outstanding, & in 1925 the accounts, which were signed by two directors & the secretary, stated the amount of the arrears of interest:—*Held:* the statement in the accounts was a written acknowledgment within Civil Procedure Act, 1833 (c. 42), s. 5, & an action to recover the principal & interest was not barred by the twenty years limitation fixed by sect. 3 of that Act.—*Re* ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., LTD., BURNHAM (VISCOUNT) *v.* ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., LTD., [1928] Ch. 836; 97 L. J. Ch. 369; 140 L. T. 18; 44 T. L. R. 702; 72 Sol. Jo. 598.

4906. *Add. Annotation:*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

4925. *Add. Annotation:*— **Consd.** Employers' Liability Assce. *v.* Sedgwick (Collins) (1926), 95 L. J. K. B. 1015.

4928a. —— **Holder of income-stock certificate.**]—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., No. 4637a, *ante*.

4931. *Add. Annotation:*—**Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431

4933. For the paragraph in the original volume substitute the following paragraph:—

—— —— **Due registration—Particulars of property charged insufficiently entered.**]—A co. with the object of securing payment of its overdraft at pltf. bank "demised" to the bank a certain leasehold factory with all the movable "plant used in or about the premises" for a term of about 996 years. The bank sent the indenture to the registrar of companies for registration under 1098 Act, s. 93. In the particulars required to be filed

---

PART III. SECT. 34, SUB-SECT. 3.—K. (a) ii.

4863 ii. —— ——.]—NATIONAL TRUST CO. *v.* MARITIME COAL, RAILWAY & POWER CO., [1930] 2 D. L. R. 309.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—K. (b).

sg. *Effect of Companies Creditors Arrangement Act, 1933.*]—Companies Creditors Arrangement Act, 1933, does not affect the rights of separate classes of secured creditors in regard to schemes of arrangement.—*Re* WELLINGTON BUILDING CORPN., LTD., [1934] 4 D. L. R. 626; O. R. 653.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—L. (a) i.

sl. *Whether property must be restored.*]—The equitable doctrine that "a mtgee. is bound on payment to restore the property to the mtgor., & if by the act of the mtgee. unauthorised by the mtgor. it has become impossible to restore the estate on payment of all that is due the mtgee. will be prevented from suing the mtgor. at law" has no application to a floating charge created by debenture where nothing is vested in or handed over to the creditor.—O'DAY *v.* COMMERCIAL BANK OF AUSTRALIA, LTD. (1934), 40 C. L. R. 200; 40 Argus L. R. 80.—**AUS.**

PART III. SECT. 34, SUB-SECT. 3.—L. (b).

sb. *Debenture stock issued by loan company.*]—Debenture stock issued by a loan co. proceeding under Loan Companies Act, 1914 (c. 40), as amended by 12 & 13 Geo. 5, c. 31, s. 4, is not redeemable at the option of the holder.—SCOTTISH WIDOWS' FUND & LIFE ASSURANCE SOCIETY *v.* CANADA PERMANENT MTGE. CORPN., [1929] 3 D. L. R. 405; 63 O. L. R. 637.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—M.

sd. *Stamp Act,* 1891 (c. 39), *s.* 82 (1) (b) (i)—*Marketable security—Debenture.*]—A Canadian co. had agents in the United Kingdom for the purpose of recovering money for loans on debenture. On receipt of the money the agents granted an interim receipt therefor, & informed the co. The debenture was then made out & completed by the co. in Canada, & was dispatched to the co.'s agents in the United Kingdom, for delivery to the lender there in exchange for the interim receipt:—*Held:* the debenture was assessable to duty as a marketable security under Stamp Act, 1871, s. 82 (1) (b) (i) as being issued in the United Kingdom, in respect that it did not pass beyond the co.'s control, so as to create an obligation against the co. upon it, until delivery by the co.'s agents in the United Kingdom to the lender.—CANADA PERMANENT MORTGAGE CORPN. *v.* I. R. COMRS., 1932] S. C. 123.—**SCOT.**

PART III. SECT. 34, SUB-SECT. 4.—A. (a).

4920 iii. —— ——.]—*Re* HOLMES SAMUEL), LTD. (1923), 58 I. L. T. 9.—**IR.**

PART III. SECT. 34, SUB-SECT. 4.—B. (b).

sl. *Agreement to give security.*]—Deft. co., having agreed to purchase from pltf. co. a motor, paid £100 on delivery, & agreed to give security over the motor for the balance, & a bill of sale was prepared, but was not executed:—*Held:* the agreement to give security had not created an equitable mtge., which, not being within the definition of "mtge." in Cos. Act, 1908, s. 130 (11), was not rendered void by that sect. by reason of non-registration.—NEW ZEALAND SERPENTINE CO., LTD. *v.* HOON HAY QUARRIES, LTD., [1925] N. Z. L. R. 73.—**N.Z.**

sm. *Assignment of book debts.*]—Where the assignor is a co. the assignment of book debts must be registered in the offices of the County Court of the county in which the head office of the co. is situate & the head office means the head office designated in the letters patent incorporating the co., or in any bye-law that may be passed by the co. pursuant to Cos. Act, s. 32.—*Re* SMITH TRANSPORTATION CO., [1928] 2 D. L. R. 508; 62 O. L. R. 203; 10 C. B. R. 48.—**CAN.**

pursuant to that sect. the instrument was described as a mtge. of the leasehold premises, no mention being made of the chattels. The registrar entered the description of the instrument in the register in similar terms, identifying it by its date, & omitting all mention of any charge on the chattels. Subsequently the sheriff, in execution of a judgment recovered by deft. against the co., seized certain chattels of the co. upon the mortgaged premises, including certain motor vans. The bank claimed the goods in question under their mtge., & obtained from the registrar a certificate "that a mtge. or charge dated "—specifying the date & the parties to the instrument—"was registered pursuant to Cos. Act, s. 93." On an interpleader issue to try the title of the bank as against the execution creditor:—*Held:* as the certificate identified the instrument of charge, & stated that the mtge. or charge thereby created had been duly registered, it must be understood as certifying the due registration of all the charges created by the instrument, including that of the chattels, & it was conclusive evidence of the due registration of the chattels none the less because the register in omitting to mention them was not merely defective but misleading.—NATIONAL PROVINCIAL & UNION BANK OF ENGLAND *v.* CHARNLEY, [1924] 1 K. B. 431; 93 L. J. K. B. 241; 130 L. T. 465; 68 Sol. Jo. 480; [1924] B. & C. R. 37.

4941. *Add. Annotation:*—*Generally*, **Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

4943. *Add. Annotation:*—**Refd.** Ashby, Warner & Co. *v.* Simmons, [1936] 2 All E. R. 697.

4944. *Add. Annotations:*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53; Lloyds Bank, Ltd. *v.* Bank of America National Trust & Savings Assocn., [1938] 2 K. B. 147; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia & China & Strauss & Co. (No. 2), [1937] 4 All E. R. 651.

4944a. Assignment of goods to discount company—Financing hire-purchase agreements.]—A co. carried on a furniture business largely by means of hire-purchase agreements, & in order to provide the capital for the purpose entered into a series of agreements with a discount co. by which they assigned to a discount co. the goods comprised in the hire-purchase agreements subject to & with the benefit of the hire-purchase agreements on an immediate payment of 75 per cent. of the total purchase price, which was the same as that payable by the hirer if he continued payments of hire long enough to become the purchaser. From that 75 per cent. there was, however, deducted a percentage called the finance charge, which represented the discount co.'s profit. The balance of 25 per cent. of the purchase price was retained by the vendor co. out of the payments made by the hirer, 75 per cent. of such payments being secured collaterally to the discount co. by the issue of a series of bills of exchange which were equal in number to the instalments payable by the hirer & which were accepted by the vendors. The agreements with the discount co. provided that no notice thereof was to be given to the hirer, so long as there was no breach of the hire-purchase agreement. The vendor co. went into voluntary liquidation, being insolvent:—*Held:* the agreements in this form were assignments on sale & purchase & not charges &, therefore, did not require registration under 1929 Act, s. 79.—*Re* GEORGE INGLEFIELD, LTD., [1933] Ch. 1; 101 L. J. Ch. 360; 147 L. T. 411; 48 T. L. R. 536; [1931] B. & C. R. 220, C. A.

Annotations:—**Consd.** Ashby, Warner & Co. *v.* Simmons, [1936] 2 All E. R. 697; Olds Discount Co. *v.* Cohen, [1938] 3 All E. R. 281, n.; Olds Discount Co. *v.* John Playfair, Ltd., [1938] 3 All E. R. 275.

4944b. Contractor employed by local authority—Authorisation to authority to pay sub-contractor.]—A firm A. contracted with the L.C.C. to install steam plant in a hospital. It subcontracted with another firm B. to do some of the work. A. fell into financial difficulty & gave B. an authority addressed to the L.C.C. to pay B. a named sum against the chief engineer's next certificate. The L.C.C. took interpleader proceedings against B. & the receiver of A., appointed by the debenture holder after the authority was given, & the Div. Ct. ordered the sum to be paid to B. The receiver appealed on the ground: (i) that the authority was a charge on the book debts of a co. &, not having been registered under 1929 Act, s. 79, was invalid; (ii) that he ought to have credit for the expense he incurred in completing the work that was to have been done by B.:—*Held:* (1) the authority was an absolute equitable assignment & not a charge within 1929 Act, s. 79; (2) the receiver could not by any subsequent conduct alter the nature of the authority or the subcontractor's rights under it, & his remedy in respect of the expense incurred if any was by action for breach of contract.—ASHBY, WARNER & CO., LTD. *v.* SIMMONS, [1936] 2 All E. R. 697; 106 L. J. K. B. 127; 155 L. T. 371; 52 T. L. R. 613; 80 Sol. Jo. 552, C. A.

4945. *Add. Annotation:*—**Refd.** Ashby, Warner & Co. *v.* Simmons, [1936] 2 All E. R. 697.

4946. *Add. Annotations:*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53; Mercantile Bank of India, Ltd. *v.* Chartered Bank of India, Australia

---

PART III. SECT. 34, SUB-SECT. 4.—C. (a).

sy. *Power of court—To impose terms.*]—In making an order under Cos. (Registration of Securities) Act, 1918, s. 7, granting an extension of time for the registration of debentures, the ct. will, in a proper case, impose terms for the protection of the unsecured creditors of the co., although it will not do so except where the circumstances so require.—*Re* A LIMITED COMPANY (1928), 28 S. R. N. S. W. 364; 45 N. S. W. W. N. 91.—AUS.

sz. *What must be shown.*]—Where the time prescribed by Cos. Act, 1908, s. 130, within which a mtge. given by a co. is to be registered has expired it is essential that a co. applying for an extension of such time should in the supporting affidavit, in addition to giving full particulars relating to the grounds upon which the application is made, give a very full & complete statement of the financial position of the co., with information (i) as to the amount owing to unsecured creditors & the nature of the accounts, *i.e.* whether ordinary monthly accounts or of long standing; (ii) as to whether there are any judgments outstanding against the co.; (iii) as to whether any proceedings are pending for winding up the co. & generally such full & complete information as may be necessary to enable the ct. to be fully seised of the position & to enable it to determine whether it is necessary to insert in the order any words specifically protecting unsecured creditors.—*Re* DALGETY & CO., [1928] N. Z. L. R. 731.—N.Z.

& China & Strauss & Co. (No. 2), [1937] 4 All E. R. 651.

4958. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4960. *Add. Annotations :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542. **Reld.** *Re* Charles & Co., [1935] W. N. 15.

4963. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4964. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4967. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4967a. —— ——.]—(1) The usual proviso added to an order for extension of time for registration under 1929 Act, sect. 85—namely, that the order is to be without prejudice to the rights of parties acquired prior to the date of actual registration—only protects creditors who have acquired security on the property the subject-matter of the charge ; (2) the ct. will not insert in the order any terms for the protection of unsecured creditors of the co.—*Re* M. I. G. TRUST, LTD., [1933] Ch. 542 ; 102 L. J. Ch. 179 ; 149 L. T. 56 ; 49 T. L. R. 299 ; [1933] B. & C. R. 91, C. A. ; *affd. on other grounds, sub nom.* PEAT (SIR WILLIAM HENRY) *v.* GRESHAM TRUST, LTD., [1934] A. C. 252, H. L.

4967b. —— —— **Winding up pending.**]—*Re* CHARLES (L. H.) & CO., LTD., [1935] W. N. 15 ; 179 L. T. Jo. 120.

4968. *Add. Annotation :*—**Reld.** *Re* Charles & Co., [1935] W. N. 15.

4969. *Add. Annotation :*—**Consd.** *Re* M. I. G. Trust, Ltd., [1933] Ch. 542.

4969a. —— ——.]—*Re* M. I. G. TRUST, LTD., No. 4967a, *ante*.

4974. *Add. Annotation :*—**Consd.** Consolidated Entertainments, Ltd. *v.* Taylor, [1937] 4 All E. R. 432.

4975. *Add. Annotations :*—**Apld.** Thomas *v.* Todd, [1926] 2 K. B. 511. **Reld.** Gough's Garages, Ltd. *v.* Pugsley, [1930] 1 K. B. 615 ; I. R. Comrs. *v.* Thompson, [1936] 2 All E. R. 651 ; Telsen Electric Co. *v.* Eastick & Sons, [1936] 3 All E. R. 266.

4976. *Add. Annotation :*—**Reld.** I. R. Comrs. *v.* Thompson, [1936] 2 All E. R. 651.

4977. *Add. Annotation :*—**Reld.** Fenton Textile Assocn. *v.* Lodge (1927), 96 L. J. K. B. 1016.

4979. *Add. Citations :*—93 L. J. Ch. 42 ; 130 L. T. 178.

4979a. —— **Effect of voluntary winding up.**]—Where under a debenture deed in the common form made by a limited co. the debenture-holder has appointed a receiver to carry on the business of the co., the authority of the receiver so to do is terminated by the voluntary winding up of the co., & on a contract thereafter made by the receiver as such he will be personally liable.—THOMAS *v.* TODD, [1926] 2 K. B. 511 ; 95 L. J. K. B. 808 ; 135 L. T. 377 ; 42 T. L. R. 494.

4982. *Add. Annotation :*—**Consd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

4982a. —— **Claim believed invalid—Notice to debenture holder—Duty to refund.**]—A sole debenture holder appointed a receiver. The latter proceeded to realise the assets of the co., & paid four sums of £25, £50, £10 & £10 respectively to an agent of the debenture holder. Between the time of the first & second payment the receiver received a claim for rates in respect of certain premises occupied by the co. The receiver till then had been quite unaware that the co. had occupied these premises & he therefore inquired of the managing director of the co. & the agent of the debenture holder whether the claim was valid. Both assured him it was not. He therefore made the second payment but the claim being repeated, he stopped the cheque sent in payment & made further inquiries of the agent of the debenture holder. He was again assured that the claim was invalid but he only allowed the cheque to be paid upon the agent giving an indemnity. Ultimately the local authority sued the receiver for the amount of the rates & he joined the agent & the debenture holder as third parties. The claim of the local authority was subsequently admitted, & the action proceeded as to the liabilities of the third parties to the receiver. For the third parties it was contended that the receiver in making payments to the debenture holder without first satisfying that claim for rates had acted in contravention of 1929 Act, s. 78, & was therefore setting up his own wrong & basing his claim on his own contravention of a statute :—*Held :* (1) the payment to the debenture holder was not *per se* an illegal act but only illegal in certain circumstances, & as the agent had misrepresented the facts & induced the receiver to believe he was acting quite legally the defence of illegality failed ; (2) the agent was liable upon the indemnity to repay the receiver the amount he had paid in respect of the claim & costs ; (3) the debenture holder was liable to refund to the receiver the payments made after she had notice of the claim for rates ; (4) notice to the agent was notice to the debenture holder & the latter must therefore refund the last three payments ; (5) the receiver could not receive from the agent & the debenture holder a greater sum than the total amount he had paid in respect of the claim & costs.—WESTMINSTER CITY COUNCIL *v.* TREBY, [1936] 2 All E. R. 21 ; 80 Sol. Jo. 465.

4982b. Debenture containing floating charge & fixed charge—Priority given only in respect of assets subject to floating charge.]—*Held :* when the receiver is appointed by a debenture holder whose debenture is secured by both a fixed charge & a floating charge, the priority given to the preferential debts by 1908 Act, s. 107 (1), applies only in respect of assets subject to the floating charge & not to assets subject to the fixed charge.—*Re* LEWIS MERTHYR CONSOLIDATED COL-

---

PART III. SECT. 34, SUB-SECT 4.—C. (c) i.

sb. *May not be made ex parte.*]—An application made under sect. 83 of Cos. Act (Northern Ireland), 1932, to extend the time for the registration of the charge in the Co.'s register may not be made *ex parte* but must be made upon notice of motion or summons.—*Re* COATES BUILDINGS, LTD., & LAW UNION & ROCK INSURANCE CO., LTD., [1936] N. I. 156.—IR.

PART III. SECT. 34, SUB-SECT. 4.—C. (c) ii.

4968 i. *Effect of order—How far creditors protected.*]—*Re* BOEHNER'S, LTD. (1932), 5 M. P. R. 43.—CAN.

LIERIES, LTD., LLOYDS BANK *v.* THE CO., [1929] 1 Ch. 498; 98 L. J. Ch. 353; 140 L. T. 321; 73 Sol. Jo. 27; 22 B. W. C. C. 20, C. A.

4982c. Preferential payment of income tax—Assessment after appointment or taking possession of receiver.]—Under 1908 Act, s. 107, where a receiver of a co. is appointed on behalf of holders of debentures secured by a floating charge, or possession is taken by or on behalf of debenture holders of property subject to such a charge, certain debts, including income tax assessed on the co. up to the fifth day of Apr. next before the date of the appointment of the receiver or of possession being taken as aforesaid, but not exceeding one year's assessment, are under 1908 Act, s. 209, to be forthwith paid by the receiver or person taking possession out of any assets coming to his hands in priority to any claim for principal or interest in respect of the debentures:—*Held:* the expression in sect. 209 "assessed up to the fifth day of Apr." means "assessed for a period ending on the fifth day of Apr.," & therefore the right to preferential payment of one year's assessment remains, notwithstanding that the assessment is not made until after the date of the appointment of the receiver or of his taking possession, as the case may be.—GOWERS *v.* WALKER, [1930] 1 Ch. 262; 99 L. J. Ch. 138; 142 L. T. 404; 46 T. L. R. 150; 74 Sol. Jo. 41; 15 Tax Cas. 165; [1929] B. & C. R. 125.

Annotation:—**Apld.** *Re* Cockell, Jackson *v.* A.-G. (1932), 76 Sol. Jo. 495.

4982d. Preferential payment of rates—Increase in rates after taking possession by receiver.]—Where in the assessment of property relief has been claimed & in the first instance allowed in the valuation list under the derating provisions of the Local Government Act, 1929 (c. 17), but subsequently disallowed, the resulting change in the amount of a rate payable in respect of that property takes effect as from the date of the making of the rate, as if the change had been caused by a proposal for the amendment of the rateable value. Consequently, where a receiver for debenture holders has taken possession of the property of the co. which issued the debentures, an increase in the amount of the rates due at the date of taking possession, which increase has been subsequently ascertained by reason of such an alteration in the assessment, is payable by the receiver as a preferential debt.—*Re* AIREDALE GARAGE CO., ANGLO-SOUTH AMERICAN BANK *v.* AIREDALE GARAGE CO., [1933] Ch. 64; 101 L. J. Ch. 289; 147 L. T. 372; 96 J. P. 312; 48 T. L. R. 477; 30 L. G. R. 286, C. A.

4983. *Add. Annotation:*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

4987a. —— Same receiver appointed by court—Form of order as to accounts.]—*Re* ARCTIC ELECTRIC SUPPLIES, LTD., ANSELL *v.* THE CO. (1932), 48 T. L. R. 350; *sub nom.* PRACTICE NOTE, [1932] W. N. 79; 173 L. T. Jo. 281.

5011a. —— Not appointed if hostile to debenture-holders.]—GILES *v.* NUTTALL, *Re* HOUSE IMPROVEMENT ASSOCN., LTD. (1885), 78 L. T. Jo. 352, C. A.

5025. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Thompson, [1936] 2 All E. R. 651.

5036a. Right to sue—On bills of exchange drawn by receiver—For goods supplied by company to acceptor.]—Where bills of exchange, signed by "R., Receiver, F. Ltd.," as drawer, had been accepted in respect of goods supplied by the co. to defts., & pltf. had stated that it must be "clearly understood that I am in no way accepting any liability or responsibility whatever in respect of the orders themselves":—*Held:* the words "Receiver, F. Ltd.," were words of description only, & the bills did not purport to have been drawn on behalf of the co., & pltf. was entitled to recover against defts. upon the bills.—KETTLE *v.* DUNSTER & WAKEFIELD (1927), 138 L. T. 158; 43 T. L. R. 770.

5036b. Power of sale—Contract subject to approval of court—Time for obtaining approval—Before completion.]—Where, in a debenture-holders' action, the receiver contracts to sell property included in the debentures, subject to the contract being approved & sanctioned by the ct. & no date is fixed for obtaining such approval, it must be obtained before the date fixed for completion of the contract.

On Oct. 31, 1927, the receiver in a debenture-holders' action entered into a conditional contract to sell land & cottages included in the debentures. The contract provided that the purchase should be completed on or before Dec. 31, 1927. By clause 14 it was provided that the contract was subject to its being approved & sanctioned by the ct., & in the event of its not being so approved it was to become void, & the purchasers were to be entitled to be repaid their deposit. The receiver took no effective steps to obtain the sanction of the ct., & on Jan. 10, 1928, the purchasers' solrs. wrote to the debenture-holders' solrs. repudiating the contract & demanding the return of the deposit money under clause 14. On an application for an order that the conditional contract should be confirmed:—*Held:* the purchasers were entitled to repudiate the contract & to be

---

PART III. SECT. 34, SUB-SECT. 6.—B. (b) i.

4988 i. *Discretion of court—Interference by appellate court.*]—EASTERN TRUST CO. *v.* NOVA SCOTIA STEEL & COAL CO., LTD., [1927] 1 D. L. R. 421; 59 N. S. R. 123.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—B. (b) ii.

ss. *What amounts to default in payment of interest.*]—It cannot be said that there has been default until demand has been made for payment at the place, or one of the places, named in the bond for payment of interest.—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMHELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—B. (f).

sc. *On occupation of company.*]—A receiver appointed by debenture-holders under a debenture deed constituting him agent of the co. that gave the debenture, does not exercise an independent possession of his own, but his entry on & the assumption of control over the co.'s property leaves the co. still in occupation in point of law.—AUSTRALIAN MUTUAL PROVIDENT SOCIETY *v.* PUBLIC CURATOR OF QUEENSLAND, [1931] Argus L. R. 294; 5 A. L. J. 213.—**AUS.**

PART III. SECT. 34, SUB-SECT. 6.—B. (g).

sl. *Distinguished from receiver appointed by shareholders.*]—There is no analogy between a receiver & manager in a debenture-holders' action & the receiver & manager in question herein who was appointed at the instance of the shareholders of a co. in order that the business might be continued as a going concern on their behalf & to enable the co., if possible, to effect a sale of its undertaking & thus avoid a winding-up order.—ANDERSON *v.* NEWTON, [1934] 1 W. W. R. 636; 3 D. L. R. 224; 42 Man. L. R. 107.—**CAN.**

repaid their deposit money, together with all interest earned by such deposit, from the date of its payment to the vendor.—*Re* SANDWELL PARK COLLIERY CO., FIELD *v.* THE CO., [1929] 1 Ch. 277 ; 98 L. J. Ch. 229 ; 140 L. T. 612.

5036c. Power to pay commission to agent for sale—Necessity for sanction of court.]—A receiver appointed by the ct. in a debenture-holders' action employed an agent for the purpose of introducing a purchaser of certain property belonging to the co. The receiver did not apply to the ct. for leave to employ the agent. The agent was successful in finding a purchaser for the property. On an application by the agent for an order directing the receiver to pay him commission :—*Held :* where a receiver has not applied to the ct. for leave to employ an agent, the agent is not entitled to any commission ; but the ct. has a discretion to award him such compensation for his efforts as the ct. considers just in the circumstances of the particular case.—*Re* NATIONAL FLYING SERVICES, LTD., COUSINS *v.* NATIONAL FLYING SERVICES, LTD., [1936] Ch. 271 ; 105 L. J. Ch. 145 ; 154 L. T. 493 ; 52 T. L. R. 37 ; [1934-5] B. & C. R. 338.

5037. *Add. Annotation :*—**Consd.** Consolidated Entertainments, Ltd. *v.* Taylor, [1937] 4 All E. R. 432.

5038a. ——.]—Deft. was in Nov. 1934, appointed receiver & manager of a co., which was the lessee of a cinema. As such receiver he paid the rent for the Dec. quarter. On Jan. 15, 1935, he was appointed receiver & manager of the co. by the ct. He was sued as such receiver for the quarter's rent of the premises due in June, 1935, it being contended that, as he was appointed by the ct., he was not the agent of the debenture holders but was personally liable for the rent :—*Held :* although the receiver was appointed by the ct., he would not be liable on a contract which he had not made himself, & was therefore not liable for the rent sued for.—CONSOLIDATED ENTERTAINMENTS, LTD. *v.* TAYLOR, [1937] 4 All E. R. 432.

5042a. Breach of price maintenance agreement.]—By certain agreements between pltfs., manufacturers of radio sets, & defts., wholesale dealers in such radio sets, it was agreed that the retail prices of the radio sets should be maintained at prices fixed by pltfs. The order form provided that the wholesalers were to be compensated for any loss that might occur through any alteration of list prices by pltfs., & that if a receiver should be appointed or pltfs. should go into liquidation, defts. should have the right to return any of the goods which they might have in stock. On Oct. 5, 1934, a receiver for the debenture holders of pltfs. was appointed & the appointment was notified to defts. on the same day. On the same day a large number of radio sets was invoiced to defts. On Oct. 9 defts. were informed that business was being carried on & that the co.'s policy of price maintenance was unaffected. Defts. thereupon ordered further goods from the receiver. On Nov. 3, 1934, a creditor presented a petition for winding up pltf. co., & on Nov. 20 the receiver stopped manufacture, no further goods being ordered by the wholesalers after that date. The receiver proceeded to negotiate for the sale of pltfs.' business, & on Nov. 30, 1934, an offer to purchase a large number of sets was accepted, the receiver imposing no conditions as to price maintenance. On Dec. 3 an order was made for winding up the co. & a provisional liquidator appointed, & on the same day possession of the stock was given by the receiver's agent to the purchasers, with the result that a large number of radio sets was put on the market at prices much below the list prices. Defts. wrote to the receiver referring to their right to return the goods, but no arrangement for their actual return was made. The liquidator then brought an action for the balance due on the radio sets delivered to defts., who counterclaimed damages for breach of contract, contending that the receiver had broken his contract to maintain prices. Pltfs. contended that, assuming there was such a contract between the receiver & the wholesalers, there was no breach before the winding up order on Dec. 3, & that after that date the receiver had no authority to bind the co., & that therefore the counterclaim could not be set off. The wholesalers contended alternatively that the liquidator was guilty of breach of contract in refusing or not accepting the return of the sets :—*Held :* (1) the agreement for the sale of pltfs.' business on Nov. 30, 1934, constituted a breach of the receiver's agreement to maintain prices ; (2) alternatively the liquidator ought to have accepted the return of the goods, as at the date of his appointment the wholesalers were entitled to return them.—TELSEN ELECTRIC CO., LTD. *v.* EASTICK & SONS, [1936] 3 All E. R. 266.

5064a. —— —— ——.]—A deed of floating charge on the assets of a co. gave power to the trustee to appoint a receiver & manager, who was expressed to be the agent of the mtgor. :—*Held :* on a receiver duly appointed under the power entering into possession of the premises & commencing to carry on the business of the co., there was a change of occupancy within Poor Rate Assessment & Collection Act, 1869 (c. 41), s. 16, & Public Health Act, 1875 (c. 55), s. 211 (3).—RICHARDS *v.* KIDDERMINSTER OVERSEERS ; RICHARDS *v.* KIDDERMINSTER CORPN., [1896] 2 Ch. 212 ; 65 L. J. Ch. 502 ; 74 L. T. 483 ; 44 W. R. 505 ; 12 T. L. R. 340.

Annotations :—**Consd.** *Re* Marriage Neave & Co., North of England Trustee, Debenture & Assets Corpn. *v.* Marriage, Neave & Co., [1896] 2 Ch. 663. **Distd.** National Provincial Bank *v.* United Electric Theatres (1915), 85 L. J. Ch. 106., **Refd.** I. R. Comrs. *v.* Thompson, [1936] 2 All E. R. 651.

5067a. —— ——.]—Pltf. assocn. brought an action against defts., C. & Co., & L., managing director of the co. Since the matters relevant to the action the debenture-holders of C. & Co. had gone into possession under the powers of their debentures, & had appointed L. as receiver & manager. L. filed an affidavit of discovery disclosing certain documents which he declined to produce, on the ground that though he had them in his possession at the time when he was managing director of the co., he now held them as

sb. *Duty to preserve & carry on undertaking as going concern.*]—NATIONAL TRUST CO. *v.* DOMINION IRON & STEEL CO. (N. S.), [1927] 3 D. L. R. 1063.—CAN.

receiver & manager of the debenture-holders, & an order could not be made against C. & Co., to produce them :—*Held :* there might be documents which were such that C. & Co. itself would have the right to inspect for the purposes of the action, C. & Co. having a right to redeem them, & the right of inspection of C. & Co. could be used by pltf. assocn. as L., though an agent for the debenture-holders, was also for some purposes the agent of C. & Co.—FENTON TEXTILE ASSOCN., LTD. *v.* LODGE, [1928] 1 K. B. 1 ; 96 L. J. K. B. 1016 ; 137 L. T. 241, C. A.

5067b. —— —— **Right to sue.**]—A debenture of a co. empowered the holder to appoint a receiver & manager, & provided : " A receiver & manager so appointed shall be the agent of the co. & shall have power to take possession of & get in the property hereby charged." A receiver & manager having been appointed, brought an action in the name of the co. for the rescission of an agreement by deft. for the purchase of land from the co. & forfeiture of the deposit, & alternatively for specific performance :—*Held :* the debenture empowered the receiver & manager to bring the action without the co.'s consent.—M. WHEELER & CO., LTD. *v.* WARREN, [1928] Ch. 840 ; 97 L. J. Ch. 486 ; 139 L. T. 543 ; 44 T. L. R. 693, C. A.

5069a. —— ——.]—FENTON TEXTILE ASSOCN., LTD. *v.* LODGE, No. 5067a, *ante.*

5091. *Add. Annotations :*—**Apld.** Thomas *v.* Todd, [1926] 2 K. B. 511. **Consd.** Stead, Hazel & Co. *v.* Cooper (1933), 49 T. L. R. 200 ; Consolidated Entertainments, Ltd. *v.* Taylor, [1937] 4 All E. R. 432.

5095a. —— ——.]—*Re* NEW ZEALAND MIDLAND RY. CO., SMITH *v.* LUBBOCK, [1901] W. N. 105 ; *revsd.* on other grounds, [1901] 2 Ch. 357, C. A.

Annotation :—**Refd.** *Re* Glasdir Copper Mines, Ltd., English Electro Metallurgical, Ltd. *v.* Glasdir Copper Mines, Ltd., [1906] 1 Ch. 365.

5105a. —— —— **All debenture-holders not before court—Sale subject to approbation of judge.**]—In a debenture-holders' action, when the property comprised in debentures is in jeopardy, an immediate sale will be ordered under R. S. C., Ord. 51, r. 1B, on motion for judgment on admissions in the pleadings, but, unless all the debenture-holders subsequent to pltfs. are parties to the action, the order will be for sale with the approbation of the judge, so that the absent debenture-holders may be brought in in chambers on the application to approve the conditional contract for sale.—*Re* CRIGGLESTONE COAL CO., STEWART *v.* CRIGGLESTONE COAL CO., [1906] 1 Ch. 523 ; 75 L. J. Ch. 307 ; 94 L. T. 471 ; 54 W. R. 298 ; 50 Sol. Jo. 240 ; 13 Mans. 181.

5110. *Add. Annotations :*—**Apld.** MacCarthy *v.* Agard, [1933] 2 K. B. 417. **Refd.** Powell Dyffryn Steam Coal Co. *v.* Griffiths (1934), 27 B. W. C. C. 408.

5111a. Short cause—Copies of affidavit in support—Necessity for.]—*Re* CHURCH STRETTON MINERAL WATER CO., LTD. (1904), 52 W. R. 375 ; 48 Sol. Jo. 299.

5115. *Add. Annotation :* — **Folld.** Westminster Bank, Ltd. *v.* Residential Properties Improvement Co., [1938] Ch. 639.

5117a. —— ——.]—In an action against a co. to enforce a mtge. by foreclosure, all the holders of debentures which have been issued by the co. & which rank after the mtge., must be made parties, as persons interested in the equity of redemption. There is no provision made either by statute or any rule of ct. which would enable a single debenture holder to be appointed to represent as a deft. in the action all debenture holders belonging to the same class.—WESTMINSTER BANK, LTD. *v.* RESIDENTIAL PROPERTIES IMPROVEMENT CO., LTD., [1938] Ch. 639 ; [1938] 2 All E. R. 374 ; 107 L. J. Ch. 305 ; 159 L. T. 82 ; 54 T. L. R. 675 ; 82 Sol. Jo. 335.

5120a. Conduct of action—To whom given—Independent party—When desirable.]—The conduct of a debenture holder's action begun by a person whose transactions with the co. the ct. considers to require investigation, or whose interests are shown to be adverse to those of the remaining debenture holders, may be given by the ct. to an independent party.

One of the objects of the co. was to buy & let premises for use as flats & clubs. Its first directors were pltf. & his nominee, but it was in substance a " one man " co. with pltf. as managing director. It granted leases of certain premises to the S. syndicate, of which the directors were pltf. & the same nominee. The co. agreed to pay a yearly salary to pltf. & guaranteed the issue of debentures by the syndicate. The syndicate soon failed to pay rent, but pltf. took no steps either to enforce payment or forfeit the leases : &, although the co. was carrying on business at a loss, he bought a quantity of furniture with its money on its behalf. The syndicate issued debentures, pltf. becoming the holder of a number of them, & also holding debentures issued by the co. Later, a receiver & manager of the property of the syndicate charged by the debentures was appointed, & pltf. began a debenture holder's action against the co., subsequently selling the furniture which he had bought & the leasehold premises at a loss. Ultimately, he resigned his directorship : & this summons

PART III. SECT. 34, SUB-SECT. 6.—D. (a).

sd. *Jurisdiction of court to order—In winding-up proceedings—On petition for conveyance to mortgagee of company's equity of redemption.*]—*Re* ESSEX LAND & TIMBER CO., TROUT'S CASE (1891), 21 O. R. 367.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—D. (b).

se. *Jurisdiction of court to order—In winding-up proceedings—On petition for conveyance to mortgagee of company's equity of redemption.*]—*Re* ESSEX LAND & TIMBER CO., TROUT'S CASE (1891), 21 O. R. 367.—**CAN.**

so. *Jurisdiction to order sale—Foreign immovables.*]—A mining co. incorporated in Victoria executed a debenture whereby it charged all its undertaking & assets. The assets included mineral leases & mineral easement licences in respect of land situate in Tasmania & fixtures on that land. Pursuant to the terms of the debenture the debenture-holder appointed a receiver & manager of the property charged, with power to sell. The debenture-holder took out an originating summons for an order sanctioning the sale of the property by the receiver & manager :—*Held :* there was jurisdiction to entertain the application.—BOND *v.* NORTH MOUNT FARRELL CO., NO LIABILITY, [1931] V. L. R. 144 ; Argus L. R. 88.—**AUS.**

sq. *Confirmation by court—Sale by receiver.*]—In approving a sale by a receiver in the interests of bondholders the ct. must have regard to the interests of all parties.—NATIONAL TRUST CO. *v.* GREAT LAKES PAPER CO., [1936] 2 D. L. R. 239.—**CAN.**

sr. *Alteration of order.*]—In an action by the trustee for a bondholder to foreclose the mtge. deed, the ct. has a right later to change & correct the order for sale & distribution.—ROYAL TRUST CO. *v.* BAINBRIDGE LUMBER CO., [1937] 4 D. L. R. 94.—**CAN.**

asked that the conduct of the proceedings should be vested in appct., another debenture holder, on the ground that pltf. against whom gross negligence was alleged, had an interest adverse to that of the remaining debenture holders:—*Held:* as the transactions of pltf. with the co. had never been investigated, & as it had so far been impossible to investigate them, it was desirable that the conduct of the action should be given to an independent person.—*Re* SERVICES CLUB ESTATE SYNDICATE, LTD., MCCANDLISH *v.* THE COMPANY, [1930] 1 Ch. 78; 99 L. J. Ch. 33; 142 L. T. 127.

5134a. —— ——.]—*Re* GUTTA PERCHA CORPN., LTD., THORNTON *v.* GUTTA PERCHA CORPN., LTD., [1899] W. N. 251; 44 Sol. Jo. 133.

5149a. —— **Application of assets—Deficiency.**]—In a debenture-holders' action where there is a deficiency, the assets must be applied in the following order: (1) costs of realisation, (2) costs including remuneration of receiver, (3) costs, charges & expenses of debenture trust deed including the trustees' remuneration, (4) pltfs.' costs of action, (5) preferential creditors, (6) debenture-holders.—*Re* GLYNCORRWG COLLIERY CO., RAILWAY DEBENTURE & GENERAL TRUST CO. *v.* THE CO., [1926] Ch. 951; 96 L. J. Ch. 43; 70 Sol. Jo. 857; *sub nom. Re* GLYNCORRWG COLLIERY CO., *Re* RAILWAY DEBENTURE & GENERAL TRUST CO., 136 L. T. 159.

5149b. ——.]—*Re* BURRADON & COXLODGE COAL CO., LTD. [1929], W. N. 15.

5170. *Add. Annotation:*—**Refd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

5184a. On authority of receiver—To carry on business of company.]—THOMAS *v.* TODD, No. 4979a, *ante*.

5184b. —— **To enforce rights under Landlord & Tenant Act, 1927 (c. 36), s. 5.**]—A co. was the lessee of certain premises under a lease expiring on June 24, 1930. In 1925 the co. issued a debenture by which it charged all its undertaking & all its property, present & future, including its uncalled capital in favour of the debenture holders. On Apr. 22, 1929, the co. gave notice to the landlords under above sect., requiring them to grant to it a new lease of the premises. In July, 1929, the debenture holders in exercise of the power on that behalf in the debenture appointed a receiver of the property & assets therein comprised. The landlords having failed to comply with the co.'s request for the grant of a new lease the receiver on Sept. 23, 1929, commenced an action in the county court in the name of the co. to obtain the grant of a new lease. On Oct. 15 a compulsory order was made to wind up the co. & a liquidator was appointed:—*Held:* the right to apply for a renewal of the lease under above sect. was a right given by the co. to the debenture holders as part of their security, & the receiver was entitled to enforce that right notwithstanding the liquidation of the co.—GOUGH'S GARAGES, LTD. *v.* PUGSLEY, [1930] 1 K. B. 615; 99 L. J. K. B. 225; 143 L. T. 38; 46 T. L. R. 283; 74 Sol. Jo. 215; 28 L. G. R. 239.

Annotation:—**Refd.** Smith *v.* Metropolitan Properties Co., [1932] 1 K. B. 314.

5186a. —— —— —— **Who should sue for contribution—Liquidator.**]—Where in a winding up the general assets are insufficient for the payment of the preferential creditors of the co., the proper pltf., in an action under sect. 209 of 1908 Act, to recover contribution from a debenture-holder with a floating charge towards payment of a preferential debt is the liquidator acting in the name of the co.—WESTMINSTER CORPN. & UNITED TRAVELLERS CLUB CO., LTD. *v.* CHAPMAN, [1916] 1 Ch. 161; 85 L. J. Ch. 334; 114 L. T. 63; 80 J. P. 74; [1916] H. B. R. 12.

5186b. Debenture given for money bonâ fide advanced—After knowledge of presentation of petition for winding up.]—The fact that a person to whom a debenture was granted after a petition to wind up the co. had been launched had knowledge of the launching of such petition does not prevent the ct. from validating the debenture, if it was given for money advanced by the debenture-holder for the purpose of *bonâ fide* assisting the co. to pay wages, & the costs of appct. to such an application to validate his debenture, notwithstanding 1908 Act, s. 205 (2), & of the liquidator, may be paid out of the assets of the co.—*Re* PARK WARD & CO., LTD., [1926] Ch. 828; 95 L. J. Ch. 584; 135 L. T. 575; 70 Sol. Jo. 670; [1926] B. & C. R. 94.

5194. *Add. Annotation:*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

PART III. SECT. 34, SUB-SECT. 6.—E. (c) ii.

5122 i. *Who may sue.*]—DOWNER *v.* BOUGHNER (1930), 66 O. L. R. 279.—CAN.

PART III. SECT. 34, SUB-SECT. 6.—E. (d).

sk. *Affidavits — Made before institution of proceedings—Inadmissible.*]—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMHELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—CAN.

5130 i. *Ex parte application.*]—A receiver ought not to be appointed *ex p.*, especially for the purpose of taking possession of & managing a going business, except in extraordinary circumstances.—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMHELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—CAN.

PART III. SECT. 34, SUB-SECT. 6.—E. (f) ii.

5148 i. *Form of judgment.*]—MARTIN *v.* CLARKSON, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 835.—CAN.

PART III. SECT. 34, SUB-SECT. 7.

sj. *Competition between liquidator & receiver—Liquidator preferred.*]—Where there is a question of competition between a liquidator & a receiver appointed by the ct., at the instance of debenture-holders or mtgees., the ct. will ordinarily, in the exercise of its jurisdiction, give preference to the liquidator.—*Re* KHARKHAREE COLLIERIES, LTD. (1930), I. L. R. 58 Calc. 646.—IND.

PART III. SECT. 34, SUB-SECT. 8.

sk. *Whether interest payable after maturity of bond—Combined effect of trust deed, debenture & bonds.*]—TRUSTS & GUARANTEE CO., LTD. *v.* CONTINENTAL SUPPLY CO., LTD., [1932] 1 W. W. R. 921.—CAN.

PART III. SECT. 35.

sm. *Meaning of "being wound up"—Under Companies Ordinance,* 1901 (*c.* 20), *s.* 47.]—The words do not refer to a winding up under any particular Act in the sense of a dissolution, but mean a winding up of a co. in the sense of a realisation of the assets, a distribution of the proceeds among creditors & an adjustment of the rights of shareholders among themselves, & therefore a co. may be "being wound up" in this sense under Bkpcy. Act, as well as under either Dominion or provincial Winding-up Acts.—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—CAN.

sn. *Whether proceedings under Bankruptcy Act condition precedent.*]—Leave may be given a co. to institute proceedings under Winding-up Act, & a winding-up order made, although proceedings have not been instituted in bkpcy. by petition for a receiving order or by authorised assignment.—*Re* MCARTHUR LUMBER & FUEL CO., LTD., [1931] 3 W. W. R. 162; 40 Man. L. R. 299.—CAN.

5314. *Add. Annotations :*—**Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

5316. *Add. Annotations :*—**Consd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

5316a. —— May decide validity of debentures.]—Less than three months before the commencement of its compulsory winding up in a county ct., a co. having a paid-up capital of less than £10,000 issued debentures to the extent of £4,500 in favour of two persons. The liquidator moved in the county ct. for a declaration that the debentures were invalid either as a fraudulent preference under 1908 Act, s. 210, or as a floating charge created otherwise than for cash under sect. 212, & that the persons named in the debentures had no rights in respect of the sums expressed to be secured thereby except as unsecured creditors :—*Held :* the county ct. judge had jurisdiction to entertain the liquidator's application, &, as he had done so, his discretion could not be interfered with.—*Re* F. & E. Stanton, Ltd., [1928] 1 K. B. 464; 97 L. J. K. B. 131; 138 L. T. 175; 44 T. L. R. 118; [1927] B. & C. R. 187, D. C.

5328. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

5324. *Add. Annotation :*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

5337. *Add. Annotation :*—**Refd.** Loch *v.* Blackwood, [1924] A. C. 783.

5338. *Add. Annotation :*—**Refd.** *Re* Cooper (Cuthbert) & Sons, Ltd., [1937] Ch. 392.

5346. *Add. Annotation :*—**Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

5354. *Add. Annotation :*—**Refd.** Loch *v.* Blackwood, [1924] A. C. 783.

5357. *Add. Annotation :*—**Refd.** Loch *v.* Blackwood, [1924] A. C. 783.

5357a. ——.]—A co. was registered in Barbados under Cos. Act, 1910, of Barbados, as a public co., in order to carry on testator's business & to divide the profits of it between members of his family entitled under his will to share them; the managing director had a preponderating voting power. Upon a petition for winding up by shareholders who were not directors, it appeared that the directors had omitted to hold general meetings, or to submit accounts, or recommend a dividend, & that they had laid themselves open to the suspicion that their object in so omitting was to keep petitioners in ignorance of the co's. position & affairs & to acquire petitioners' shares at an under-value :—*Held :* the power to wind up the co. under sect. 127 (vi) of that Act [which was identical with 1908 Act, s. 129] was not confined to cases in which there were grounds analogous to those mentioned earlier in the sect.; & in the circumstances of the case, regard being had to the domestic character of the co., petitioners were entitled under that provision to a winding-up order.—Loch *v.* Blackwood (John), Ltd., [1924] A. C. 783; 93 L. J. P. C. 257; 131 L. T. 719; 40 T. L. R. 732; 68 Sol. Jo. 735; [1924] B. & C. R. 209, P. C.

Annotation :—**Consd.** Davis & Co. *v.* Brunswick (Australia), Ltd., Brunswicke-Balke-Collender Co. & Brunswick Radio Corpn., [1936] 1 All E. R. 299.

5357b. Control acquired by one director.]—Where the capital of a private co. is so owned as to make the co. in substance a partnership & one director has purported by means of irregularities to acquire complete control of the co. & to exclude the other director or directors from the management of it, it may be "just & equitable" that the co. should be wound up.—*Re* Davis & Collett, Ltd., [1935] Ch. 693; 104 L. J. Ch. 340; 153 L. T. 329; 79 Sol. Jo. 609; [1934–5] B. & C. R. 274.

Annotation :—**Refd.** *Re* Cooper (Cuthbert) & Sons, Ltd. [1937] Ch. 392.

5357c. Private company—Refusal to register transfer to executors.]—A private co. was formed

---

PART III. SECT. 36, SUB-SECT. 1.—A.

c i. —— *To remit to Sheriff Court.*]—*Held :* under Cos. Act, 1929, s. 116 (3), the ct. has power to remit a petition for the winding-up of a co. to the sheriff ct. only where the capital of the co. paid up or credited as paid up does not exceed £10,000.—*Re* Chaney & Bull, [1930] S. C. 759.—**SCOT.**

t. Add "*revsd.* 14 S. C. R 624."

PART III. SECT. 36, SUB-SECT. 1.—C. (c).

l i. ——.]—*Re* Albion Machine Co. (N. S.), [1929] 1 D. L. R. 274; 10 C. B. R. 240.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—B.

n i —— *Delay not accounted for.*]—*Re* Southland Woollen Mills, Ltd., [1929] N. Z. L. R. 289.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 2.—C. (a).

s i. ——.]—Where the notice provided for by Winding-up Act, R. S. C., 1906 (c. 144), s. 4, has not been served, & a petition for a winding-up order is presented, the question whether the co. is "unable to pay its debts as they become due," within sect. 3 (a), must be determined by the ct. upon the material filed.—*Re* Milo Wheat Co., Ltd., [1925] 2 D. L. R. 1170; [1925] 1 W. W. R. 1142; 35 Man. L. R. 1; 5 C. B. R. 707.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—D. (a).

d i. —— ——.]—*Re* James Lumbers Co., Ltd., [1926] 1 D. L. R. 173; 58 O. L. R. 100.—**CAN.**

d ii. —— ——.] — *Re* British Empire Steel Corpn., Ltd. (N. S.), [1927] 2 D. L. R. 964.—**CAN.**

e i. —— ——.]—A shareholder of a limited co. filed a petition for winding up on the grounds set out in Winding-up Act, R. S. C., s. 10 (*d*). Subsequently to the petition, a meeting of the shareholders of the co. was called & the shareholders, by a large majority, voted that the co. should continue in business :—*Held :* a winding-up order should be made.—*Re* Base-O-Lite Products, Ltd., [1933] O. R. 156; 1 D. L. R. 746.—**CAN.**

e ii. ——.]—On an application for the winding up of a co., made by the A.-G. pursuant to sect. 6 of Co.s (Special Investigations) Act, 1935, which provides that on such application the ct. shall have the same powers, & the provisions of the Cos. Act shall apply as on a winding up petition presented by the co., it appeared that the business of the co. could not be carried on consistently with candid & straightforward dealings with the public, from whom further capital was required if the co. were to continue to exist :—*Held :* it was just & equitable that the co. should be wound up.—*Re* Producers Real Estate & Finance Co., Ltd., [1936] V. L. R. 235.—**AUS.**

sp. *Control by one shareholder.*]—Under sect. 162 (vi) of Indian Co.'s Act, 1913, which provides that a co. may be wound up by the ct. if the ct. is of opinion that that course is just & equitable, the fact that one shareholder has a preponderating voice in the co.'s affairs, by reason of owning or controlling a large number of shares, is of itself no reason for a winding-up order.—Ripon Press & Sugar Mill Co. *v.* Gopal Chetti (1931), 58 L. R. Ind. App. 416.—**IND.**

sr. *Application by fully-paid shareholder.*]—In spite of sect. 172 (1) of Cos. Act, 1933, a fully-paid shareholder, who petitions solely in that character, & who cannot show that there will be a tangible surplus of assets in which he will participate, should establish as part of his ground for the order that the substratum of the co. has gone or that there is a case for investigation in the affairs of the co., or that there is some other good reason for incurring the costs which are the consequence of a winding-up order of the ct.—*Re* Taranaki Amusements (Hawera), Ltd., [1935] N. Z. L. R. 33.—**N.Z.**

in 1913 with a capital of £10,000 in £1 shares, half of which belonged to C. C. & half to his two elder sons. C. C. & his two elder sons were the first directors of the co. & continued to be so until 1930, when C. C. died, leaving his two elder sons sole directors. By his will C. C. appointed his three younger sons, who were employed in the business but were not members of the co., exors. thereof & bequeathed his 5,000 shares equally between them.

The arts. of the co. provided that the directors might in their absolute discretion refuse to register any transfer of shares, & without assigning any reason for such refusal, & that this power should extend to the registration of the personal representatives of a deceased shareholder. The directors refused to register the exors. in their capacity of beneficiaries under the will as members of the co. Subsequently the directors dismissed the exors. from their employment with the co. & refused to supply them with copies of the balance-sheet & accounts for the year ending June 30, 1936. The exors. presented a petition for the winding-up of the co. on the ground that in the circumstances above stated it was just & equitable that the co. should be wound up:—*Held:* though the principles applicable to the case were those which would be applied in an action for dissolution of partnership, there were no grounds shown in the petition on which it would be "just & equitable" within 1929 Act, s. 168, to make a winding-up order.—*Re* COOPER (CUTHBERT) & SONS, LTD., [1937] Ch. 392; [1937] 2 All E. R. 466; 106 L. J. Ch. 249; 157 L. T. 545; 53 T. L. R. 548; 81 Sol. Jo. 338; [1936-37] B. & C. R. 219.

5364a. —— —— ——.]—*Re* ELECTRIC ARMS & AMMUNITION SYNDICATE (1891), 35 Sol. Jo. 818.

5372. *Add. Annotation:*—**Refd.** Loch *v.* Blackwood, [1924] A. C. 783.

5379a. —— **Subsidiary company.**]—The New South Wales Cos. Act, 1899, s. 84 (*e*), is identical with the English Cos. Act, 1929, s. 168 (6), & provides for winding up by the ct. when, in the opinion of the ct., it is just & equitable that the co. should be wound up.

A large American co. trading in gramophone records formed a subsidiary co. in Australia. The directors of the subsidiary co. who had previously been agents to the parent co., were interested in a competing co. & by a special agreement they were entitled to compete with the subsidiary co. These directors were also the holders of all the preference shares in the subsidiary co. & had been guaranteed by the parent co. or its nominees that the interest on the preference shares should be fully paid for two years after the date of allotment, & that in the event of the subsidiary co. being wound up within the said two years 20*s.* in the £1 would be paid in respect of the capital of the preference shares. Within the period mentioned in the guarantee & at a time when, owing to the general depression in trade, business was bad & the subsidiary co. was being carried on at a loss the directors presented a petition to wind up the subsidiary co.:—*Held:* (1) the existence of the guarantee was only material in considering whether a compulsory order shall be made in so far as it biassed the evidence on either side; (2) in considering whether it was just & equitable to wind up the co. the criterion was not whether the directors were seeking to obtain the benefit of the guarantee or whether the parent co. were seeking to carry on the co. until such time as the guarantee had expired & thus avoid liability thereunder; but whether, having regard to all the circumstances, there was at the date of the presentation of the petition a reasonable hope that in time the subsidiary co. could be carried on at a profit.—DAVIS & CO., LTD. *v.* BRUNSWICK (AUSTRALIA), LTD., BRUNSWICKE-BALKE-COLLENDER CO. & BRUNSWICK RADIO CORPN., [1936] 1 All E. R. 299, P. C.

PART III. SECT. 36, SUB-SECT. 2.—D. (b) i.

f i. —— *Property of speculative value.*]—Appct. was a minority shareholder, holding 37,500 shares of the total capitalisation of 2,000,000 shares. The property owned by the co. was an undeveloped mining location of merely speculative value. The location was intact & there were practically no liabilities, but the actual cash in the treasury was trifling:—*Held:* the case was not brought within the class of cases in which a winding-up is ordered, because the whole substratum of the undertaking has disappeared.—*Re* JURY GOLD MINE DEVELOPMENT CO., LTD., [1928] 4 D. L. R. 735; 63 O. L. R. 109.—**CAN.**

f ii. ——.]—The mere fact that there has been depreciation in the value of its assets, or that the assets had become frozen instead of liquid, did not establish the disappearance of the substratum.—*Re* TORONTO FINANCE CORPN., [1930] 3 D. L. R. 882; 65 O. L. R. 351.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—D. (b) ii.

l i. —— ——.]—*Re* DOMINION STEEL CORPN. (N. S.), [1927] 4 D. L. R. 337.—**CAN.**

m i. ——.]—Where a co. having for its main object the manufacturing & dealing in cement had failed to commence business for a period of 5 years following its incorporation, but an apparent majority of shareholders were then desirous to commence the manufacture of hydrated lime in accordance with one of the subsidiary objects, on a petition by a shareholder for compulsory winding up on the grounds of delay in commencing business, & that it was just & equitable that the co. should be wound up:—*Held:* the delay not having been satisfactorily explained, & it appearing that there was no prospect of the co. commencing business either in accordance with its main object or the subsidiary object, the substratum of the co. had gone & petitioner would appear entitled to an order for compulsory winding-up on either ground alleged.—*Re* NATIONAL PORTLAND CEMENT CO., LTD., [1930] N. Z. L. R. 564.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 2.—D. (d).

5384 ii. ——.]—Although a co. may be wound up where there is a complete deadlock in its management, where a substantial majority of the shareholders are opposed to the making of the order, where the petition is the outcome of a mere domestic quarrel, & where no substantial advantage will accrue from the granting of the order, an order will not be made.—*Re* SHIPWAY IRON BELL & WIRE MANUFACTURING CO., LTD., [1926] 2 D. L. R. 887; 58 O. L. R. 585.—**CAN.**

r i. —— *Question of fact.*]—Although a majority shareholder may not tyrannously or fraudulently or for an ulterior purpose dominate a minority shareholder yet in deciding on a petition for an order for the winding up of the co. on the ground that it is just & equitable that such an order should be made, each case must be decided on its own facts.—*Re* SOVEREIGN OIL CO., LTD., [1934] 3 W. W. R. 317.—**CAN.**

t i. ——*Differences between two sole members.*] Where resp. had treated the co. as his own business in such a way as to destroy his fellow-shareholder's confidence in the impartiality of his administration:—*Held:* it was just & equitable that the co. should be wound up.—THOMSON *v.* DRYSDALE, [1925] S. C. 311.—**SCOT.**

t ii. —— *Deadlock caused by petitioners.*]—Winding-up order refused.—*Re* JAMES LUMBERS CO., LTD., [1926] 1 D. L. R. 173; 58 O. L. R. 100.—**CAN.**

t iii. —— ——.]—At the time of the presentation of the petition there were only four directors, whereas the co. under its bye-laws should have five. The two petitioning directors had recently refused to attend meetings or to discuss with the other directors the management of the co.'s affairs:—

5388. *Add. Annotations :*—**Consd.** Loch *v.* Blackwood, [1924] A. C. 783. **Apld.** *Re* Davis & Collett, Ltd., [1935] Ch. 693. **Reld.** *Re* Cooper (Cuthbert) & Sons, Ltd., [1937] Ch. 392.

5397a. —— Omission to hold general meetings or to submit accounts.]—LOCH *v.* BLACKWOOD (JOHN), LTD., No. 5357a, *ante*.

5454a. Petition for winding up of unregistered foreign company dissolved before 1929 Act.]—*Re* RUSSIAN & ENGLISH BANK, No. 8548b, *post*.

5580a. —— Whether vacation included in calculation.]—The seven days required by General Orders No. 2 made upon the Cos. Act, 1862, may be counted in the vacation.—*Re* LONDON INDIA RUBBER CO. (1866), 14 W. R. 594, L. C.

5585. *Add. Citation :*—[1889] W. N. 1.

5590a. —— Effect on right to costs.]—PRACTICE NOTE, [1929] W. N. 66 ; 167 L. T. Jo. 245.

5605. After this case add :—

—— ——.]—*See, now*, 1929 Act, s. 295 (5).

5634a. —— Affidavit by assistant secretary]—Under Cos. (Winding-up) Rules, 1929, r. 29 where the petition is presented by a corpn., the affidavit verifying it is to be made by some director, secretary or other principal officer. The assistant secretary of a co. is not a principal officer for the purpose of this rule.—PRACTICE NOTE, [1937] W. N. 350 ; 184 L. T. Jo. 350.

5648. *Add. Annotation :*—**Reld.** *Re* City Life Assce., [1926] Ch. 191.

5654a. Discretion of court to allow appearance although no notice given.]—PRACTICE NOTE (1930), 69 L. Jo. 268 ; [1930] W. N. 78.

5703. *Add. Citation :*—[1889] W. N. 1.

5711. After this case add :—

—— —— ——.]—*See, now*, Winding-up Rules, 1929, r. 36.

Held : if any deadlock existed it was created by the petitioners & was not a ground for ordering winding-up.—*Re* TORONTO FINANCE CORPN., [1930] 3 D. L. R. 882 ; 65 O. L. R. 351.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—D. (e).

5397a i. —— —— *Managing director conducting affairs as though company his private business.*]—BAIRD *v.* LEES, [1924] S. C. 83.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 3.—A.

sg. *Leave to appeal from order—When granted.*]—Winding-up Act, 1927, s. 103, applies to an application for leave to appeal from an order allowing or dismissing a petition to wind up a co. Leave to appeal should not be granted, however, unless there appears to be some reason for doubting the validity of the judgment in review. "Future rights" in sub-sect. (*a*) of said sect. 103 should be given a wide interpretation ; & the question to be raised on the intended appeal from an order dismissing a winding-up petition may involve future rights although the applicant for leave to appeal is merely a shareholder & not a creditor.—*Re* CANADA NATIONAL FIRE INSURANCE CO., [1930] 3 W. W. R. 209 ; 39 Man. L. R. 195.—**CAN.**

sh. *Security on appeal—Extension of time for giving.*]—The Ct. of Appeal has no power to extend the time for the giving of the security which Companies Winding-up Act, R. S. S. 1920 (c. 82), requires to be given when an appeal is taken from an order or decision in a proceeding under that Act. Resp.'s approval of the appeal book prior to the expiration of the time within which the security had to be given was held not to have been a waiver of his right to the security.—SHAUNAVON BUTCHERS, LTD. *v.* BURNESS, [1930] 1 W. W. R. 760 ; 3 D. L. R. 656 ; 24 S. L. R. 399.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—B. (b) ii.

c i. —— ——.]—Petitioner herein, the holder of bonds of the co., which gave him in the words thereof a "first floating charge" on "the undertaking & all the assets of the co., both present & future" :—*Held :* to have a right to apply for a winding-up order & to have made out a case therefor. He was not obliged to proceed on the covenant to pay in the bonds & by way of judgment & execution rather than by way of the proceedings for a winding-up order.—*Re* MID-WEST GLASS CO., LTD., [1931] 3 W. W. R. 165 ; 40 Man. L. R. 289.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—B. (b) iv.

q i. —— —— ——.]—A petition for the winding up of a co., filed by a creditor with the view of enforcing payment of a disputed debt, is an abuse of the process of the ct. & should be dismissed.—PYDA SATYARAZU *v.* GUNTUR COTTON & PAPER MILLS CO., LTD. (1924), I. L. R. 48 Mad. 267.—**IND.**

5439 ii. —— ——.]—SMITHFIELD COLD STORAGE & EXPORT CO. OF SOUTH AFRICA, LTD. *v.* LEVER (1924), 45 N. L. R. 73.—**S. AF.**

PART III. SECT. 36, SUB-SECT. 3.—B. (c) i.

5484 i. *Executor of deceased shareholder.*]—*Held :* entitled to present a winding-up petition, although his name had not been entered in the books of the co. as the holder of the shares, & notwithstanding that the co.'s Act of incorporation provided that certain formalities must be observed before the co. was obliged to recognise as a shareholder a person who had become such by transmission by law.—*Re* GREAT WEST PERMANENT LOAN CO. & WINDING-UP ACT (Man.), [1927] 2 W. W. R. 15.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—D. (a) i.

l i. *General rule—Winding up detrimental to all concerned.*]—Winding-up order set aside.—*Re* SHIPWAY IRON BELL & WIRE MANUFACTURING CO., LTD., [1926] 2 D. L. R. 887 ; 58 O. L. R. 585.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—D. (a) ii.

q i. —— *Exceptional circumstances.*]—A creditor of a co. presented a petition for the winding up of the co. by the ct. The co. had gone into voluntary liquidation, & the petition was opposed on the ground that the majority of the creditors desired the voluntary winding up to be continued. A statement of the co.'s affairs showed that its liabilities amounted to £335,000, while its assets were estimated at £9,300 ; that about £116,000, stated to be irrecoverable, had been advanced to directors of the co. ; & that the co. had received large advances from associated cos., part of which were completely secured. Creditors to the extent of £300,000, including one whose claim amounted to about two-thirds of the co.'s whole indebtedness, had assented to the voluntary winding up, & petitioner, who was a creditor to the extent of £5,000 only, was the sole creditor who objected to the co. being wound up voluntarily :—*Held :* although as a general rule the co. would have regard to the wishes of a majority of creditors, the circumstances were of such a special character that an exception to the general rule should be made, & a winding-up order pronounced.—BOUBOULIS *v.* MANN, MACNEAL & CO., LTD., [1926] S. S. 637.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 3.—D. (c).

sd. *Possibility of restoration of lost capital.*]—On an application for winding-up under R. S. C., 1927, on the ground of impairment of capital the ct. must determine the extent of the impairment, & whether the lost capital is likely to be restored within one year.—*Re* EASTERN FUR FINANCE CORPN., LTD., [1934] 1 D. L. R. 611 ; 7 M. P. R. 201.—**CAN.**

s. *Impairment of capital.*]—Under sect. 352 of Cos. Act, 1932, impairment of capital alone is not a ground for winding-up a solvent trading co.—*Re* WINNIPEG SADDLERY CO., LTD., [1934] 3 W. W. R. 1 ; 42 Man. L. R. 448.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—E. (a).

sl. *Creditor's petition—Statement of debt.*]—A petition presented by a creditor for the winding up of a co. under Cos. Act, 1863, s. 81, ought to set forth the debt in respect of which the petitioner claims to be a creditor, together with the particulars of such debt, but, *semble*, he is not precluded from alleging *simpliciter* that he is a creditor. Where a petitioner alleges one debt & gives evidence of another the irregularity may, in case of surprise, be cured by the amendment of the petition or the adjournment of the hearing.—*Re* BARRIER REEF TRADING CO., LTD. (1929), S. R. (Q.) 177.—**AUS.**

PART III. SECT. 36, SUB-SECT. 3.—E. (h).

sm. *Examination of petitioner—Application by shareholders for second application.*]—Application refused.—*Re* WINDING-UP ACT, *Re* GREAT WEST PERMANENT LOAN CO. (Man.), [1927] 2 W. W. R. 433.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—E. (i.) ii.

st. *Dispute as to petitioning creditor's debt.*]—Where a co. is insolvent the ct. will not stay the proceedings on the ground that there is a *bonâ fide* dispute as to the petitioning creditor's debt.—*Re* PRIVATE CO., [1935] N. Z. L. R. 120.—**N.Z.**

5815a. ——.]—*Re* KATHERINE ET CIE, LTD., No. 5959c, *post.*

5819. After this case add :—

——.]—*See, now,* 1929 Act, s. 175.

5829. *Add. Annotation :—As to* (3) **Folld.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

5841a. Issue of debenture—For money advanced to company for payment of wages.] — *Re* PARK WARD & CO., LTD., No. 5186b, *ante.*

5881. *Add. Annotations :—* **Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

5890. *Add. Annotation :—* **Refd.** Hearts of Oak Assurance Co., Ltd. *v.* A.-G. (1931), 47 T. L. R. 579.

5908a. Application for order under 1908 Act, s. 175 (6), for exculpation—Right of successful applicant to costs.]—*Re* AMUSEMENTS CONSTRUCTION CO., LTD., [1927] W. N. 7.

5938. *Add. Annotation :—As to* (2) **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

5943. *Add. Annotation :—* **Refd.** *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

5948a. —— On contracts.]—STEAD, HAZEL & CO. *v.* COOPER, No. 5959d, *post.*

5959a. Duty to refund sum paid to company without consideration.] — *Re* REGENT FINANCE & GUARANTEE CORPN., LTD. (1930), 69 L. Jo. 283 ; 169 L. T. Jo. 305 ; [1930] W. N. 84.

5959b. Duty of liquidator of private company.]—The question arose in this case whether resp. had shown through a private co. a title under which he had become the assign of leasehold premises within sect. 95 of St. John's Municipal Act, 1921, & as such entitled on the expiration of the term granted by the lease to compensation for the unexhausted value of improvements made during the term. Resp.'s title was faulty & certain transactions under which he traced his title from the private co. irregular, but he was held by the Supreme Ct. to be an assign, a private co. not being regarded as a corpn. distinct from the persons composing it & irregularities in connection with its liquidation being regarded as permissible :—*Held :* the duties & responsibilities of the liquidator of a private co. are as serious as of any other co., & a private co. is distinct from the persons composing it ; a liquidator of a private co. was therefore not justified in paying the creditors merely a dividend on their debts when large surplus assets remained in hand, & in then allowing the contributories without any deed of assignment to take possession for themselves of the surplus assets, & for the future in Newfoundland such irregularities should be without judicial countenance. Resp. had not established his claim to be legal assign of the property, having regard to such irregularities.—DITCHAM *v.* MILLER (1931), 100 L. J. P. C. 177 ; [1931] B. & C. R. 86, P. C.

Power to disclaim onerous property.]—*See* 1929 Act, s. 267.

5959c. —— Application for leave—What court will consider—Effect on interested parties.]—(1) Where the liquidator of a co. applies for leave to disclaim leasehold property of the co., the ct., in exercising its discretion, may take into consideration the effect of the disclaimer on interested parties.

The liquidator of a co. holding a lease applied for liberty to disclaim the lease. The lessors, who were relying on certain guarantors for the payment of the rent & performance of the covenants, opposed the application, on which the registrar made no order save as to payment of costs. On a motion before the ct. by way of appeal :—*Held :* as the lessors, who were entitled to appear, would suffer substantial injury if the disclaimer were allowed, the ct., in the exercise of its discretion, would not allow it.

(2) The winding up of a co. does not effect a *cessio bonorum,* & the property of the co. remains vested in the co. as before ; whilst in a bkpcy. the property of the bkpt. vests in the trustee (MAUGHAM, J.).—*Re* KATHERINE ET CIE, LTD., [1932] 1 Ch. 70 ; 101 L. J. Ch. 91 ; 146 L. T. 226 ; [1931] B. & C. R. 121.

5959d. —— Failure to disclaim—Whether personal liability.]—When a liquidator appointed by the ct. performs a contract of the co. without disclaimer or purports to make a

---

PART III. SECT. 36, SUB-SECT. 4.—B. (b) i.

5829 i. *General rule—Property becomes affected with trust for creditors.]*—A winding-up order establishes a *quasi*-trust of which the creditors are the beneficiaries & which for the purpose of set-off, is an entity essentially distinct from the original corpn. when carrying on business for the benefit of its shareholders.—LYALL (P.) & SONS CONSTRUCTION CO., LTD. *v.* BAKER, [1933] O. R. 286 ; 2 D. L. R. 264.—**CAN.**

PART III. SECT. 36, SUB-SECT. 4.—B. (g).

m i. —— *Sale of goods—Monthly deliveries—Company in default of payment for previous deliveries.]*—HAMILTON *v.* HAMILTON STEEL CO. (1911), 18 O. W. R. 739 ; 2 O. W. N. 779 ; 23 O. L. R. 270.—**CAN.**

PART III. SECT. 36, SUB-SECT. 8.—B.

5948 i. *Personal liability—For rates.]*—A liquidator whose name has not been entered on the assessment roll cannot be held personally responsible for the payment of taxes incurred during the winding-up.—TORONTO CITY & TORONTO HYDRO-ELECTRIC COMMISSION *v.* WADE, [1932] O. R. 500 ; 3 D. L. R. 509.—**CAN.**

sp. *Officer of company—Becomes functus offico on dissolution of company.]*—KRISHNASWAMI NAIDU *v.* ANDI CHETTI (1927), I. L. R. 51 Mad. 681.—**IND.**

st. *Liability to justify expenditure—Necessity for proof of misfeasance.]*—Before a liquidator can be called upon to justify an expense incurred by him in the course of liquidation, some particular evidence of negligence or breach of trust must be adduced before the case can be left to a jury.—NEW BRILLIANT FREEHOLD GOLD MINING CO., LTD. *v.* MILLS, [1928] St. R. Qd. 120.—**AUS.**

PART III. SECT. 36, SUB-SECT. 8.—C. (a).

sl. *Power to apply to court for directions—As to what matters—Ownership of bonds.]*—*Re* RANT & KER, LTD., [1930] 2 W. W. R. 274.—**CAN.**

so. *Duty in regard to trust company.]*—Where a trust co. is in liquidation, a first duty of the liquidator is to preserve the trust property & the accounts & forthwith apply to the proper ct. of the province submitting the facts fully & completely as an officer of the ct. should do, & apply for directions as to the disposal thereof. A co. in liquidation cannot continue to exercise the duties of trustee unless directed to do so by a ct. having jurisdiction over the trust, & a liquidator who undertakes to do so without such an application or any direction accepts responsibility for any consequence that may ensue. He has no right to assume that he as liquidator can continue in the name of the co. to function as trustee, but in accepting the office of liquidator he accepts the above-mentioned responsibility of applying forthwith to the ct. for directions with respect to the trust, even in the case where the co. has so conducted the affairs of the trust that its assets are wasted & no reasonable accounting can be made.—*Re* HIEBERT ESTATE, [1934] 3 W. W. R. 193 ; 4 D. L. R. 799.—**CAN.**

sr. *Technical defect in mortgage.]*—A mtge. should not be contested by a liquidator because of a mere technicality involving no fraud or misconduct.—MONTREAL TRUST CO. *v.* ABITIBI POWER & PAPER CO., [1937] 4 D. L. R. 369 ; O. R. 939.—**CAN.**

new contract on its behalf, there is no presumption that he does so in his personal capacity, even though he does not describe himself as liquidator; & his position in this respect is not altered by Cos. Act, 1929 (c. 23), s. 267, which gives him the right to disclaim any contract which he thinks onerous.—STEAD, HAZEL & Co. *v.* COOPER, [1933] 1 K. B. 840; 102 L. J. K. B. 533; 148 L. T. 384; 49 T. L. R. 200; 77 Sol. Jo. 117; [1933] B. & C. R. 72.

5972. *Add. Annotation:*—**Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

5973. After this case add:—

—— ——.]—*See, now,* 1929 Act, s. 191.

6047. *Add. Annotation:*—**Refd.** *Re* Leitch (William C.) Bros., Ltd. (No. 2), [1933] Ch. 261.

6048a. —— —— —— **After declaration of liability.**]—*Re* LEITCH (WILLIAM C.) BROS., LTD. (No. 2), No. 3353e, *ante.*

6055. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* City of Buenos Ayres Tramways Co. (1904), Ltd. (1926), 12 Tax Cas. 1125; Madras & Southern Mahratta Ry. Co., Ltd. *v.* I. R. Comrs. (1926), 12 Tax Cas. 1111.

6056a. —— **Damages & costs paid by insurance company in respect of judgment obtained against insured company.**]—Appct. obtained judgment against a co. for damages for personal injuries & costs. Afterwards the co. went into liquidation, & the insurance co. with which the co. in liquidation was insured paid the amount of the damages & costs to the liquidator:—*Held:* appct. was not entitled to have the amount paid to him direct by the liquidator, but it formed part of the assets for distribution among the general creditors, including appct.—*Re* HARRINGTON MOTOR CO., *Ex p.* CHAPLIN, [1928] Ch. 105; 97 L. J. Ch. 55; 138 L. T. 185; 44 T. L. R. 58; 72 Sol. Jo. 48; [1927] B. & C. R. 198, C. A.

Annotations:—**Apld.** Hood's Trustees *v.* Southern Union General Insce. Co. of Australasia, [1928] Ch. 793. **Consd.** Ward *v.* British Oak Insurance Co., [1932] 1 K. B. 392; *Re* Nautilus Steam Shipping Co., *Ex p.* Gibbs & Co., [1936] Ch. 17.

—— ——.]—*See, now,* Third Parties (Rights Against Insurers) Act, 1930 (c. 25).

6056b. Third Parties (Rights against Insurers) Act, 1930 (c. 25)—Whether retrospective.]—*Held:* Third Parties (Rights against Insurers) Act, 1930 (c. 25), s. 1 (1) is not retrospective so as to affect cases in which the liability had been incurred before July 10, 1930, when the Act came into operation.—WARD *v.* BRITISH OAK INSURANCE CO., LTD., [1932] 1 K. B. 392; 101 L. J. K. B. 240; 146 L. T. 323; 48 T. L. R. 13, C. A.

Annotations:—**Distd.** *Re* Nautilus Steam Shipping Co., *Ex p.* Gibbs & Co., [1936] Ch. 17. **Refd.** Croxford *v.* Universal Insurance Co., [1935] 2 K. B. 409.

6056c. —— —— **Liquidation after Act.**]—On Sept. 21, 1925, a policy of insurance was taken out by a co. insuring it against third-party risks. On Oct. 6, 1925, an accident to a third party occurred & the insurers thereupon became liable to the co. in respect of the accident. On July 10, 1930, Third Parties (Rights against Insurers) Act, 1930 (c. 25), came into operation. On Oct. 13, 1931, an order was made for the compulsory winding up of the co. On a summons taken out by the third party in the winding up of the co. asking to be subrogated to the rights of the co. against the insurers:—*Held:* the winding up of the co. having supervened after the Act of 1930 came into operation, sect. 1 of that Act became operative & enured to transfer the benefit of the policy of insurance from the co. to the third party.—*Re* NAUTILUS STEAM SHIPPING CO., LTD., *Ex p.* GIBBS & CO., [1936] Ch. 17; 105 L. J. Ch. 42; 153 L. T. 273; 18 Asp. M. L. C. 554; [1934-5] B. & C. R. 308, C. A.

6056d. —— **Policy obtained by fraud.**]—Where under Road Traffic Act, 1930 (c. 43), an insurance co. has issued a certificate that a driver is insured & the co. afterwards ascertains that the policy was obtained from it by fraud, the co. is entitled to succeed in this defence against a claim under Third Parties (Rights against Insurers) Act, 1930 (c. 25).—MCCORMICK *v.* NATIONAL MOTOR & ACCIDENT INSURANCE UNION, LTD. (1934), 50 T. L. R. 528; 78 Sol. Jo. 633; 40 Com. Cas. 76, C. A.

Annotation:—**Consd.** Tattersall *v.* Drysdale, [1935] 2 K. B. 174.

6058a. —— —— **Money borrowed from company by share-brokers.**]—The share-brokers of a provisionally registered co., who were also holders of shares, & had signed the co.'s

---

PART III. SECT. 36, SUB-SECT. 8.—C. (b).

k 1. —— *Action by company—To recover purchase price of shares—What defences available—Fraud.*]—FARMERS PACK CO., LTD. *v.* TULLY & TULLY, FARMERS PACK CO., LTD. *v.* HAVERS (Man.), [1927] 2 D. L. R. 749; [1927] 1 W. W. R. 902.—**CAN.**

so. *Extent of duty.*]—A liquidator owes no duty to the co., or to those interested in the liquidation, to prosecute, or facilitate the prosecution of, any claim, whether against himself or a third party, unless he believes or has reason to believe, that such prosecution has a reasonable prospect of success or will serve some useful purpose. Where the claim is against the liquidator himself for an alleged misfeasance, particularly where he is a bare trustee, & neither believes, nor ought to believe, that the claim has any reasonable prospect of success, or that any useful purpose will be served by its prosecution, his duty as liquidator can be put no higher than a duty to take no advantage of his position as liquidator to impede the prosecution of such claim, & to take such action as will permit of such prosecution.—*Re* BOND (GEORGE A.) & CO., LTD. (1932), 32 S. R. N. S. W. 301; 49 N. S. W. W. N. 96.—**AUS.**

PART III. SECT. 36, SUB-SECT. 8.—C. (c).

sa. *Change of solicitor — When permissible—Under order of court.*]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 3 D. L. R. 9; 2 W. W. R. 440; 34 Man. L. R. 482.—**CAN.**

PART III. SECT. 36, SUB-SECT. 8.—E. (c).

6026 l. *When ordered—Misfeasance summons.*]—MONTREAL TRUST CO. *v.* MCDOUGALL, [1930] 1 W. W. R. 784; 3 D. L. R. 159.—**CAN.**

PART III. SECT. 36, SUB-SECT. 9.—A.

sb. *Notice of meeting — To shareholders.*]—It is the duty of the trustee to give shareholders of an insolvent co. the same notice of the first meeting of creditors as is sent to those who are ordinarily deemed to be creditors, but the trustee's failure to do so does not invalidate the meeting, unless the irregularity has prejudiced the shareholders. — *Re* PATRICIA APPLIANCE SHOPS, LTD., [1923] 3 D. L. R. 1160; 52 O. L. R. 215; 2 C. B. R. 466.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—A.

e 1. —— —— *Trust funds.*]—Trust property in the hands of a co. in its capacity as a trustee or fiduciary cannot be used to satisfy a judgment against that co. in its own right. Therefore where a trust co. had obtained judgment against its directors who appealed & obtained a reversal of the judgment with costs throughout, & the liquidator, who had been appointed in the meantime & had opposed the appeal, was ordered to pay said costs "out of the assets in his hands":—*Held:* the costs in question should be paid out of the co.'s own assets & not out of those of any trust estate.—CANADIAN GUARANTY TRUST CO. *v.* YOUNG (No. 2), [1933] 1 W. W. R. 659; 3 D. L. R. 558; 41 Man. L. R. 177.—**CAN.**

deeds, borrowed of the directors part of the co.'s monies, to enable them to complete a large purchase of shares in the market, & deposited as a security the purchased shares & some of their original shares :—*Held :* the moneys borrowed were not due from them as members & contributories of the co., so as to authorise the master summarily to order them, in that character, to pay the amount under Joint-Stock Cos. Act, 1848 (c. 45), s. 66.—*Re* TRING, READING & BASINGSTOKE RY. CO., COX'S CASE (1850), 3 De G. & Sm. 180 ; 19 L. J. Ch. 167 ; 14 L. T. O. S. 484 ; 14 Jur. 387 ; 64 E. R. 435 ; *affd.*, 15 L. T. O. S. 389, L. C.

Annotation :—**Refd.** *Re* United English & Scottish Assurance Co., *Ex p.* Hawkins (1868), 3 Ch. App. 787.

6064. *Add. Annotations :*—**Consd.** *Re* Stanton, [1928] 1 K. B. 464. **Refd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118.

6111a. —— Discretion of court.]—The discretionary power of allowing a question to be put at a public examination given to the ct. by Cos. (Winding-up) Act, 1890 (c. 63), s. 8 (7), is in no way limited by the other provisions of that sect., but is a discretion that must be judicially & carefully exercised under all the circumstances of each particular case.—*Re* LONDON & GLOBE FINANCE CO., LTD. (1902), 50 W. R. 253.

6133. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

6137a. —— —— —— ——.] —*Re* OXFORD & WORCESTER EXTENSION & CHESTER JUNCTION RY. CO., POTTER'S CASE (1849), 1 De G. & Sm. 728 ; 5 Ry. & Can. Cas. 628 ; 18 L. J. Ch. 247 ; 13 L. T. O. S. 320 ; 13 Jur. 691 ; 63 E. R. 1270.

Annotations :—**Consd.** *Re* South Essex Estuary & Reclamation Co., *Ex p.* Pain & Layton (1869), 17 W. R. 275. **Refd.** *Re* Shrewsbury & Leicester Ry., *Re* Vardy (1851), 20 L. J. Ch. 325 ; Hope *v.* Liddell (1855), 20 Beav. 438.

6150. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; *Re* Etic, [1928] Ch. 861.

6150a. ——.] —*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

6150b. ——.]—(1) The liquidators of a co. issued a summons under 1908 Act, s. 215, against the secretary of the co., asking for a declaration that he was indebted to the co. for sums overdrawn with the consent of the managing director :—*Held :* the operation of sect. 215 was not applicable to all cases in which a co. had a right of action against an officer of the co., but was limited to cases where there had been something in the nature of a breach of duty by an officer of the co. as such, which had caused pecuniary loss to the co., & no order would be made on the summons under the summary jurisdiction under sect. 215.

(2) No set-off is permissible as against a claim under sect. 215.—*Re* ETIC, LTD., [1928] Ch. 861 ; 97 L. J. Ch. 460 ; 140 L. T. 219 ; [1928] B. & C. R. 81.

6154. *Add. Annotations :*—**Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

6154a. Discretion of court—As to sum payable by person liable.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858b, *post*.

6158. *Add. Annotation :*—**Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

6161. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Etic, [1928] Ch. 861. *As to* (2) **Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853. *Generally*, **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

6169. *Add. Annotation :*—**Consd.** *Re* Etic, [1928] Ch. 861.

6173. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

6173a. —— Article relieving directors from loss—Unless arising from wilful neglect or default.] —*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

6173b. ——.]—*Re* ETIC, LTD., No. 6150b, *ante*.

6176a. Transactions in cotton futures.]—*Re* DAVID HEALEY & SON, LTD., DISTRICT BANK, LTD. *v.* HEALEY (1929), 74 Sol. Jo. 41.

6180a. Wrongful admission of proof—Failure to

PART III. SECT. 36, SUB-SECT. 10.—B. (a).

sc. *Use of information—In subsequent criminal proceedings.*]—Information derived in the course of an examination under Indian Companies Act, s. 195, can be used by a public servant charged with the investigation of a criminal offence, & such officer should be allowed to inform himself as to anything which might have come to light on such examination.—*Re* REGENT PARK SYNDICATE, LTD. (1929), I. L. R. 57 Calc. 424.—**IND.**

PART III. SECT. 36, SUB-SECT. 10.—B. (f) iii.

6110 i. *Whether justified—Examination of officer.*]—An officer of a co. summoned for examination must, on the examination, disclose the information he has concerning the trade, dealings, estate or effects of the co. in liquidation, regardless of whether he acquired it in his official capacity or otherwise, subject to his right to object to incriminating questions & those involving professional privilege.—*Re* MCMILLAN GRAIN CO. & WINDING-UP ACT, [1927] 3 D. L. R. 229 ; [1927] 1 W. W. R. 899 ; 36 Man. L. R. 454.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—C. (a).

6154 i. *Extent of jurisdiction of court.*]—The ct., during winding up proceedings, may examine into the conduct of any director or officer who appears to have misapplied moneys.—*Re* SOLLOWAY MILLS & CO., [1935] 2 D. L. R. 459 ; O. R. 275.—**CAN.**

sa. *When leave refused—Failure of former action.*]—The ct. will not give leave to a liquidator to proceed against officers & shareholders to recover assets, when a former similar action has failed.—LLOYD-OWEN *v.* BULL, [1936] 1 D. L. R. 433 ; 50 B. C. R. 370 ; *revsd.*, [1936] 3 W. W. R. 146 ; 4 D. L. R. 273 ; 6 F. L. J. (Can.) 83, P. C.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—C. (d) i.

sd. *Something in nature of misconduct.*]—To make a person liable under Cos. Act, 1908, s. 254, he must be shown to have been guilty of some misconduct by which the co. has suffered loss. There must be actual loss or damage measurable in terms of money.—*Re* BUICK SALES, LTD., [1926] N. Z. L. R. 24.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 10.—C. (d) iii.

se. *Payments to discharge directors' liability on guarantee.*]—When a co. is insolvent to its directors' knowledge, & the directors cease payment of all but small & pressing accounts & pay all the rest of the co.'s takings into the bank to wipe out the co.'s overdraft, not with intention to prefer the bank, but in order to wipe out the directors' liability as sureties under their personal guarantee of the overdraft, such payments do not amount to a misfeasance or breach of trust within Cos. Act, 1908, s. 254.—*Re* LINNEY (H.) & CO., LTD., [1925] N. Z. L. R. 907.—**N.Z.**

sf. *Failure to have balance sheet prepared—Giving guarantees—Improper payment of dividends.*]—In the winding up of the F. co. under order of ct. it was disclosed, *inter alia*, that its liabilities included a large sum due on foot of guarantees in respect of the debts of the C. co., in which the F. co. owned all the shares, & also that substantial sums had been withdrawn from reserve & utilised in the payment of dividends on preference shares :—*Held :* (1) the failure to have proper balance sheets prepared, & the giving of guarantees to the C. co. & the payment of the preference dividends were wilful acts or defaults on the part of all the directors, & they were accordingly liable to make good the amount payable on foot of the guarantees & also to replace the amounts paid as preference dividends.—*Re* FULTON (JOHN) & CO., LTD., [1932] N. I. 35.—**IR.**

investigate claim.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858b, *post.*

6180b. Extent of liability—Discretion of court.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858, *post.*

6182. *Add. Annotations:—As to* (1) **Consd.** *Re* Etic, [1928] Ch. 861. *As to* (2) **Apld.** *Re* A Debtor, [1927] 1 Ch. 410. **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

6183. *Add. Annotation:—***Apld.** *Re* A Debtor' [1927] 1 Ch. 410.

6183a. ——.]—*Re* ETIC, LTD., No. 6150b, *ante.*

6189. *Add. Annotation:—As to* (1) **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

6195a. Particulars—In respect of what matters ordered.]—In a misfeasance summons by the liquidator of a co. against two directors it was alleged in the points of claim that certain dividends were paid wholly out of the capital of the co. & not out of profits, & that there were in fact no profits of the co. out of which the dividends could properly & lawfully have been paid. The directors asked for an order for further & better particulars of the facts relied upon in support of these allegations, contending that under R. S. C., Ord. 19, r. 6, the fullest particulars are necessary where a breach of trust is alleged:—*Held:* the fact that the dividends were paid wholly out of capital was a material fact within R. S. C., Ord. 19, r. 4, & the fact upon which the liquidator relied. The liquidator ought not to be ordered to give particulars of that fact, as to give any further particulars would be merely to disclose the evidence by which it was intended to be proved.—*Re* DEPENDABLE UPHOLSTERY, LTD., [1936] 3 All E. R. 741.

6198a. Duty to give notice of intention to call witness.]—Two misfeasance summonses were called on for hearing together, appct. on each being the liquidator of the same co. It was stated that the liquidator desired to call a witness who had not made any affidavit in the proceedings, & that he had subpœnaed that witness, but had not given to resps. to either summons notice of his intention to call him. It was stated that resps. did not object to his being called. MAUGHAM, J., in allowing the witness to be called, said that misfeasance summonses were rather peculiar methods of procedure. They were summary proceedings, & brought out matters of great importance. An appct. on a misfeasance summons ought to give notice to resps. of intention to call a witness who had made no affidavit in the proceedings. Misfeasance summonses ought to be conducted with complete fairness to resps.—PRACTICE NOTE, [1933] W. N. 284.

6212. *Add. Annotation:—***Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

8217. *Add. Annotation:—***Distd.** *Re* Aidall, Ltd., [1933] Ch. 323.

6217a. —— —— ——.]—In the winding-up of a co., A. was placed on the list of contributories as the holder of 994 fully paid shares of £1 each out of a total capital of 1,000 shares. A. was assessed by the Comrs. under the powers given to them under Finance Act, 1922 (c. 17), s. 21, to the amount of £2,069 as his share of the profits of the co. during two assessing periods before the winding-up. On Oct. 18, 1929, a notice of assessment under the Income Tax Acts was given by the Special Comrs. of Income Tax. It was addressed to A. in the name of the co. (in liquidation). It was an assessment to super-tax of £568 19*s.* 6*d.* in respect of the £2,069. The notice contained the words: "You are requested to inform the Comrs. if you elect to pay this tax." On Oct. 19, A. returned the notice with a statement that he entirely repudiated it. On Nov. 30, the sum of £9,070 5*s.* was paid to A. in respect of his share of the surplus assets of the co. by the liquidator. The Comrs. made an application under Cos. Act, 1908 (c. 69), s. 165, asking for an order that A. might be ordered to refund to the co. or the liquidator the sum of £568 19*s.* 6*d.* out of the £9,070 5*s.*, & that that sum, being the amount of super-tax which had been assessed upon the co. under Finance Act, 1922 (c. 17), s. 21, as amended by Finance Act, 1927 (c. 10), s. 31, might be paid out of the moneys so refunded. A. disputed both the jurisdiction of the ct. & the propriety, if there were a jurisdiction, of making the order, or any part of the order, asked for:—*Held:* A. had properly been put upon the list of contributories, notwithstanding the definition of "contributory" in Cos. Act, 1908 (c. 69), s. 124; (2) having received moneys from the liquidator upon a distribution of surplus assets of the co. in liquidation, with notice that the liquidator had not provided for payment of a debt due by the co., ought to be ordered to pay the amount of the debt to the credit of the liquidator's account at the Bank of England.—*Re* AIDALL, LTD., [1933] Ch. 323; 102 L. J. Ch. 150; 148 L. T. 233; 18 Tax Cas. 617; [1933] B. & C. R. 56, C. A.

6222. *Add. Annotation:—***Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

6229. *Add. Annotation:—***Refd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

PART III. SECT. 36, SUB-SECT. 10.—C. (g).

6201 i. *Position of liquidator on summons—Security for costs—Whether court will order.*]—On a summons for an order requiring the liquidator to give security for costs:—*Held:* although the ct., in the exercise of its general jurisdiction, could order security to be given, nevertheless the established practice in the English cts. should be followed, & the summons must be dismissed.—*Re* NEW ZEALAND GUN MACHINE CO., LTD. (IN LIQUIDATION), [1927] N. Z. L. R. 100.—N.Z.

sd. *Refusal to set aside summons—Appeal.*]—There is no appeal without leave from refusal to set aside a misfeasance summons issued by an assistant master.—*Re* SOLLOWAY MILLS & CO., [1935] 1 D. L. R. 340; O. R. 37.—CAN.

PART III. SECT. 36, SUB-SECT. 10.—E. (a) iii.

6221 i. *When liable as contributory—General rule.*]—A past member of a limited co. may be liable to contribute to its assets in a winding up, notwithstanding the fact that the existing members at the date of the commencement of the liquidation hold fully-paid shares only.—*Re* SOUTHERN CROSS MOTOR FUELS, LTD., *Ex p.* KELLEWAY, [1926] V. L. R. 527; 48 A. L. T. 100; [1926] Argus L. R. 427.—AUS.

sg. *Who are past members—Deceased joint shareholder.*]—Upon the death of one of several joint holders of a share in a limited co., deceased becomes a past member within Cos. Act, 1899, s. 33, &, in the event of the co. going into liquidation prior to the expiration of a period of one year from his death, his personal representatives are liable to be placed upon the B. list of contributories of the co.—*Re* WOOL TRADING CO., LTD. (NO. 2) (1920), 28 S. R. N. S. W. 435; 45 N. S. W. W. N. 113.—AUS.

6293a. —— Excess of liability of contributories—Right to refund.]—An insurance co., the bulk of the shares of which were only partly paid up, was ordered to be wound up by the ct. These shares being held at the date of winding-up by another co., also in liquidation & insolvent, the liquidator of the insurance co, made two calls, the first of 1*s.* a share in 1925. & the second, described as a "final call," of 1*s.* 6*d.* a share in 1927, on the B. contributories who held the shares before they had been transferred to the insolvent co. The proceeds of these calls, together with the other assets of the co., were insufficient to pay all its creditors in full, but, apart from the other assets, exceeded by some £10,000 the total amount of the debts & liabilities of the co. contracted at the date when the B. contributories ceased to be members of the co. :—*Held :* the surplus did not form part of the assets of the co., but must be refunded to the B. contributories. The call must first be enforced against all B. contributories who had not paid it, so as to produce equality of contribution & distribution.—*Re* CITY OF LONDON INSURANCE CO., LTD., [1932] 1 Ch. 226 ; 101 L. J. Ch. 124 ; 146 L. T. 296 ; 48 T. L. R. 169 ; 76 Sol. Jo. 29 ; [1931] B. & C. R. 129.

6293b. Enforcement of call—Notwithstanding right to refund—Necessity for equality of contribution & distribution.]—*Re* CITY OF LONDON INSURANCE CO., LTD., No. 6293a, *ante.*

6315. After this case add :—

iii. *Other Cases.*

6315a. Order for repayment to liquidator—Receipt of surplus assets with notice that debt unpaid.]—*Re* AIDALL, LTD., No. 6217a, *ante.*

6346. *Add. Annotation :—As to* (1) **Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

6352a. Breach of contract to carry safely.]—Applt., who was a paying passenger on a tramcar, suffered serious injuries owing to the tramcar getting out of control, &, the tramway co. having subsequently been ordered to be wound up, applt. lodged a proof, claiming damages for breach of contract to carry her safely on the journey as a paying passenger. The liquidator rejected the proof on the ground that within Bkpcy. Act, 1914 (c. 59), s. 30, & Cos. Act, 1929 (c. 23), s. 262, it was a claim for unliquidated damages "arising otherwise than by reason of a contract," in other words, that it was a claim based on tort :—*Held :* as the proof was based on contract it must be allowed, & there must be an inquiry as to the damages.—*Re* GREAT ORME TRAMWAYS CO. (1934), 50 T. L. R. 450.

PART III. SECT. 36, SUB-SECT. 10.—E. (b).

6288 i. *Termination of liability—Whether Statute of Limitations applicable.*]—A co.'s Act of incorpn. provided that every shareholder should be liable to the creditors of the co. for the amount not paid up on his shares. The co. was ordered to be wound up under the Winding-up Act (Dom.) :—*Held :* the liability of a shareholder with respect to the amount unpaid on his shares was a statutory one & not dependent on the terms of the contract under which he took the shares, &, therefore, the Statute of Limitations could not be relied on as a defence.—*Re* IMPERIAL CANADIAN TRUST CO. & MCKEAGUE, [1929] 4 D. L. R. 381 ; 2 W. W. R. 423 ; 38 Man. L. R. 249 ; *affg.*, [1929] 1 W. W. R. 588.—**CAN.**

sj. *How enforced—Right of liquidator to bring action.*]—Cos. Winding-up Act (Sask.), ss. 15 & 22, which establish a summary statutory procedure, enabling a liquidator to get payment from a contributory under the Act instead of proceeding by action, are only permissive & not obligatory, & the liquidator is not bound to have recourse to that procedure but may proceed by way of action.—MASECAR *v.* MCKENZIE & SON, [1924] 2 D. L. R. 1242 ; 2 W. W. R. 521.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—E. (c).

t i. —— ——.]—There is nothing in Winding-up Act to justify the suggestion that in settling the list of contributories regard is to be had only to those shareholders whose liability is subject to call.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

sk. —— *Deceased shareholder.*]—*Re* CANADIAN CORDAGE & MANUFACTURING CO. (1923), 54 O. L. R. 486.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—E. (e) ii.

6296 ii. —— ——.]—A member of a co. in liquidation is liable in respect of unpaid calls, even though, as against the co., the realisation of such calls may have become barred by limitation.—*Re* DEHRA DUN-MUSSOORIE ELECTRIC TRAMWAY CO., LTD., *Re* PANNA LAL (1927), I. L. R. 50 All. 476.—**IND.**

6298 i. —— *Power of liquidator to make immediate call—For whole of unpaid balance on shares.*]—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27 ; [1924] 3 W. W. R. 850.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—F.

p i. —— *Without consent of general creditors—Or of Accountant of Court.*]—An English co. in compulsory liquidation owned heritable estate in Scotland burdened with hereditable securities to an extent admitting of no reversion for its general creditors. The liquidator having sold the property privately with the consent of the heritable creditors, the purchasers maintained that the sale was invalid without the concurrence also of the general creditors & of the Accountant of Ct., as required by Bkpcy. Act, 1913, s. 111 :—*Held :* Bkpcy. Act, 1913, s. 111, as incorporated into Cos. Act, 1929, by sect. 270 (1) (c) thereof, did not have the effect of derogating from the liquidator's powers under sect. 191 (2) (*a*) of 1929 Act, by which sub-sect. he was entitled to carry through the sale without the concurrence either of the general creditors or of the Accountant of Ct.—STYLE & MANTLE, LTD.'S LIQUIDATOR *v.* PRICES TAILORS, LTD., [1934] S. C. 548.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 11.—A. (a).

6357 ii. —— ——.]—In Oct. 1907, R., J., I., G., & H., five directors of C. & Co., Ltd., entered into agreements under which they became employees of the co., each receiving a salary & one-fifth of the net profits. The agreements were to remain in force for ten years, unless terminated as therein provided. R., being unable to attend to the business of the co., entered into a new agreement dated June 14, 1911, whereby his prior agreement was annulled, & it was agreed that he & his personal representatives should continue to be paid one-fifth of the net profits, so long as he or they retained the share interest in the capital of the co., which he then held, in one undivided holding. The agreements with the other directors were not cancelled, but, by supplemental agreements, it was provided that if they gave up their employment with the co. they also would continue to receive their respective one-fifth shares of the net profits, so long as their respective shares in the co. were retained in one holding. H. died in 1913 ; G. in 1914 ; R. in 1919. In 1920 £3,000 was appropriated in respect of directors' shares of the net profits, payable under their agreements, & was placed to the credit of a directors' remuneration account. This sum was subsequently divided into five sums of £600 & placed to the credit of their respective deposit accounts with the co. The co. had power under its arts. of assocn. to fix the remuneration of directors, & in pursuance of a resolution passed at the annual meeting of the co. on June 11, 1920, a sum of £3,500 was placed at the disposal of the managing directors, then J. & I., & two others, as a bonus for the year 1919-20. Of this sum £1,300 was allotted to J. & I. respectively. These amounts were not paid out, but were retained by the co. & placed to the credit of their deposit accounts in 1925. The co. having become insolvent, went into voluntary liquidation, & up to that time the five sums of £600 & the two sums of £1,300 had not been paid to the persons who claimed them :—*Held :* (1) the sums of £600 claimed by the personal representatives of H., G., & R., were sums due to members of the co. in their character of members by way of dividends, profits, or otherwise, within Cos. Act, 1908, s. 123 (1) (vii), & accordingly the persons claiming these sums were not entitled to compete with the ordinary creditors of the co. in respect thereof ; (2) J. & I., having continued their employment with the co. until after June 11, 1920, the sums of £600 claimed on their behalf were payable to them under their contracts of employment, & not in their character of members of the co., & so did not come within Cos. Act, 1908, s. 123 (1) (vii) ; (3) the sums of £1,300 due to I., & to the personal representatives of J.,

6359. *Add. Annotation :*—**Refd.** Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

6361. After this case add :—

——.]—*Compare* FOWLER *v.* COMMERCIAL TIMBER CO., LTD., No. 3491a, *ante*.

6362. *Add. Annotation :*—**Apld.** *Re* Snow (W. R.) & Co. (1930), 74 Sol. Jo. 201.

6368a. —— **For salary for dismissal without notice.**]—Where a clerk claimed to be paid out of the assets for services rendered, & a year's salary for dismissal without notice, contrary to agreement :—*Held :* he was entitled to the salary as claimed.—*Re* MADRID BANK, *Ex p.* WILLIAMS (1866), L. R 2 Eq. 216 ; 35 L. J. Ch. 474 ; 14 W. R. 706 ; *sub nom. Re* MADRID BANK, LTD., *Ex p.* HOLDER, *Ex p.* WILLIAMS, 14 L. T. 456.

Annotations :—**Refd.** *Re* Madrid Bank, Wilkinson's Case (1867), 15 W. R. 331 ; *Re* General Exchange Bank, Preston's Claim (1868), 19 L. T. 138.

6384a. Proof by holder against drawer—Dissolution of drawer before maturity—Limitation of action.]—In Oct. 1915, in order to rehabilitate Russian credit in London, an arrangement was made by the Bank of England, with the authority of the Treasury, under which approved Russian banks were to draw three months' sterling bills & remit them through the Banque de l'Etat, Petrograd, to London for acceptance by certain banks & accepting houses, who agreed to renew the bills until one year after the termination of the War, the Banque de l'Etat undertaking to provide to meet the acceptances on maturity. Imperial Russian Treasury Bills to the amount of the acceptances were to be lodged with the Bank of England as collateral security. No accepting house was to be liable for more than £100,000, unless otherwise agreed. In pursuance of this arrangement the Russio-Asiatic Bank in 1916 drew 151 bills of exchange on twenty-one accepting houses maturing in Feb. & Mar. 1918, which were presented through Baring Bros. & Co. as agents for the Banque de l'Etat & accepted by the banks & financial houses under a form of agreement with the Banque de l'Etat which carried out the above arrangement more completely ; & authorised the issue by the Treasury of sterling Treasury Bills of the Imperial Russian Govt. to the amount of the acceptances to cover any default in payment on maturity. In Jan. 1918, shortly before maturity, all the acceptances were assigned to the Bank of England in consideration of the issue of Exchequer bonds to the accepting houses to the amount thereof. Notice of the assignment was despatched by the Bank of England to the Russo-Asiatic Bank in Petrograd, but according to the evidence never reached its destination in consequence of the Bolshevist revolution in Russia. By a decree issued by the Soviet Govt. in Dec. 1917, all private banks in Russia were abolished & the whole of their assets transferred to a State bank. The Russo-Asiatic Bank, whose head office was in Petrograd, was one of the banks so abolished. Its London branch was opened in 1908 & was ordered to be wound up by the ct. in 1926, under 1929 Act, s. 338. The Bank of England, on behalf of the Crown, lodged a proof of debt in the liquidation for £752,500, proceeds of the above named bills. The liquidator rejected the proof of the Bank of England on several grounds, the most important being that the claim was barred by the Statutes of Limitation :—*Held :* (1) the bills had been assigned to the Bank of England with the authority & on behalf of the Crown, & had passed to the bank an equitable title to all the rights under the agreements made with the acceptors, including the right of action for breach of contract, if the bills were not paid at maturity ; (2) the obligation being to pay in sterling in London at maturity the debt was located in England & not in Russia, & therefore English law must be applied ; (3) the Russian Imperial Treasury bills were only a collateral security & being of no value at any material time were not a discharge of the debt ; (4) on the evidence of experts & documents, the Russo-Asiatic Bank ceased to have any corporate existence in Russia as the result of decrees of the Soviet Govt. made on or before Jan. 26, 1918, a date before the bills matured, & as from that date there was no debtor who could be sued. The Statute of Limitations therefore was no defence to the application, & the Bank of England was entitled to be admitted to prove for the debt in the winding up of the London branch of resp. bank. There being no evidence, however, that notice of the assignment had reached the drawers, the assignors must be joined in the application.—*Re* RUSSO-ASIATIC BANK, *Re* RUSSIAN BANK FOR FOREIGN TRADE, [1934] Ch. 720 ; 103 L. J. Ch. 336 ; 152 L. T. 142 ; 78 Sol. Jo. 647 ; [1934] B. & C. R. 71.

6392. *Add. Annotation :*—**Consd.** *Re* Agricultural Wholesale Soc., [1929] 2 Ch. 261.

6394a. —— ——.]—The society, under a loan stock trust deed, issued loan stock bearing interest at 7 per cent. with a quinquennial bonus of 2½ per cent. Under the trust deed, entered into by the society with trustees for the stockholders, an amount equal to 7½ per cent. on the par value of the stock was to be paid to the trustees, for apportionment to the interest & to a fund for the bonus. At the date of an order for the winding up of the society, most of the stockholders had received payment in full of interest at 7 per cent. on the amount of loan stock issued, up to & including a date seven months before the order. The trustees lodged with the liquidator a proof stated to be for cash advanced on loan ; & this summons asked (i) whether the proof should be rejected to the extent of interest proved for above 7½ per

---

were sums given to them, not by agreement, but under the arts. of assocn., & so were not payable to them in their character of members within Cos. Act, 1908, s. 123 (1) (vii).—*Re* CINNAMOND PARK & CO., LTD., [1930] N. I. 47.—**IR.**

PART III. SECT. 36, SUB-SECT. 11. —A. (f).

si. —— ——.]—The liquidator of a co. in voluntary liquidation carried on the business on demised premises, paying rent. In Nov. he ceased to carry on business & removed the co.'s goods, except fixtures, the property of the liquidator, from the premises, but retained the keys until the following May, refusing payment :—*Held :* during the period the liquidator was liable out of the co.'s assets for rent. A liquidator's liability for rent out of the co.'s assets is not dependent on or to be measured by the degree to which the use of the demised premises has been profitable to him or the co. Liability for rent of premises taken into use by a liquidator continues until the liquidator unambiguously determines the case.—*Re* FLOUR & GRAIN EXCHANGE, LTD., *Ex p.* RIX, [1934] S. A. S. R. 386.—**AUS.**

cent. up to the date of the commencement of the winding up; (ii) whether interest should be calculated, at 5 per cent., to the date of the order or to the commencement of the winding up; & (iii) whether Bkpcy. Act, 1914 (c. 59), s. 66 (2) (*b*), had any application to proof or dividend in respect of the loan stock:—*Held:* (1) the amounts proved for by the trustees were to be computed only to the date of the commencement of the winding up; (2) Bkpcy. Act, 1914 (c. 59), s. 66, was not incorporated by 1908 Act, s. 207, so as to apply in the winding up of an insolvent co., & that the trustees' proof was therefore calculable at the rate of 7½ per cent.—*Re* AGRICULTURAL WHOLESALE SOCIETY, [1929] 2 Ch. 261; 98 L. J. Ch. 396; 141 L. T. 551; 45 T. L. R. 467; [1929] B. & C. R. 54.

Annotations:—As to (2) **Apld.** *Re* Wells, [1929] 2 Ch. 269. **N.F.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202; *Re* Parent Trust & Finance Co., [1936] 1 All E. R. 641.

6396a. —— **Whether bankruptcy rules applicable.**]—*Re* AGRICULTURAL WHOLESALE SOCIETY, No. 6394a, *ante*.

6399a. Adoption of balance sheet including directors' fees—Whether acknowledgment within Statute of Limitations.]—*Re* COLISEUM (BARROW), LTD., No. 3126a, *ante*.

6400. *Add. Annotation:*—**Consd.** *Re* Nautilus Steam Shipping Co., *Ex p.* Gibbs & Co., Ltd., [1936] Ch. 17.

6403. *Add. Annotation:*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6407. *Add. Annotation:—Generally,* **Refd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6408. *Add. Annotation:*—**Refd.** *Re* White Star Line, Ltd., [1938] Ch. 458.

6409. *Add. Annotation:*—**Consd.** *Re* Pitchford, [1924] 2 Ch. 260.

6409a. Rule limiting rate of interest.]—*Re* AGRICULTURAL WHOLESALE SOCIETY, No. 6394a, *ante*.

6409b. Rule relating to copyright or interest in copyright vested in bankrupt.]—A book was published by Co. No. 1 under an ordinary royalty agreement. Thereafter Co. No. 1, with the consent of the author, granted to Co. No. 2 the exclusive right of publishing a cheap edition subject to the payment of a royalty to Co. No. 1, & Co. No. 1 agreed with the author to pay to him a half share of such royalty. Co. No. 1 went into voluntary liquidation, & the liquidator contended that the author was not entitled to payment in full of a half share of the royalty received or to be received from Co. No. 2, but must prove in the liquidation for the value of his contract:—*Held:* the author was entitled to payment in full of the half share of royalty received or to be received by the liquidator from Co. No. 2.—HENHAM *v.* ALSTON RIVERS, LTD. (1916), Macgillivray, Copyright Cases (1911–16) 330.

Annotation:—**Distd.** *Re* Health Promotion, Ltd., [1932] 1 Ch. 65.

6409c. ——.]—Bkpcy. Act, 1914 (c. 59), s. 60, does not apply in the winding up of an insolvent co.

Two authors entered into agreements with a publishing co. for the exclusive right to print & publish certain books written by them. The copyright in some of the books was to go to the co., in others, to remain to the authors: & royalties were payable to the authors as in the agreements provided. The co. went into voluntary liquidation, & the liquidator sold its assets, including copies of the books: & it was agreed by a later agreement between him & the purchaser that nothing in the agreement should prejudice the purchaser's right to sell them. The co. became insolvent. On a summons to determine whether, where the copyright or some interest in it was vested in the co. at the date of the resolution to wind up, the sale was subject to Bkpcy. Act, 1914 (c. 59), s. 60, & whether, where the copyright was not then vested in the co., the consent of the authors was necessary to the sale:—*Held:* Bkpcy. Act, 1914 (c. 59), s. 60, is not incorporated in Cos. Act, 1929 (c. 23), s. 262, & therefore did not apply to the rights of the authors.—*Re* HEALTH PROMOTION, LTD., [1932] 1 Ch. 65; 101 L. J. Ch. 58; 146 L. T. 211; [1931] B. & C. R. 97.

6414. *Add. Annotations:*—**Refd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70; James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

6421. *Add. Annotation:*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6423. *Add. Annotation:—As to* (2) **Refd.** *Re* White Star Line, Ltd., [1938] Ch. 458.

PART III. SECT. 36, SUB-SECT. 11.—B. (a).

ad. *Right of creditor under Bankruptcy Act, 1927, s. 69.*]—A shareholder in a bkpt. co. has not the right given by sect. 69 of Bkpcy. Act, R.S.C., 1927, to a creditor.—RICKERD & POWELL *v.* WEBER & WEBER. [1934] 1 W. W. R. 116.—**CAN.**

af. *Effect of Supreme Court Act, 1878, s. 6 (1).*]—The provisions of sects. 92, 93 of Federal Bkpcy. Act, 1924, are not imported into the winding up of a co. under the provisions of Cos. Act, 1892, by the language of sect. 6 (1) of Supreme Ct. Act, 1878.—*Re* MILLINGEN'S, LTD., [1934] S. A. S. R. 72.—**AUS.**

PART III. SECT. 36, SUB-SECT. 11.—C. (a).

6423 i. ——.]—Shareholders are not entitled to set off against their liability for immediate payment of the amounts unpaid on their shares any dividends owing to them.—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—**CAN.**

o. Add "*revsd.* 16 S. C. R. 456.

o i. —— *Claim to indemnity in respect of shares held as trustee.*]—D. & F. were joint managers of the M. Bank, &, while so acting, a number of stocks, shares, & other securities, & amongst others, £40,000 Consols, & £60,000 New Three Per Cent. Stock, were transferred into their names, as trustees for the bank. There was also assigned to them by certain customers of the bank 801 shares in the bank itself, as security for moneys due, or to become due, from them to the bank; & these shares were, at the date of the liquidation, standing in the names of D. & F. During the years 1883 & 1884 the £40,000 Consols, & £60,000 New Three Per Cent. Stock, were transferred to the Bank of Ireland, as security for advances to the M. Bank on an account entitled in the name of the Governor & Co. of the Bank of Ireland, "in collateral account with D. & F., both of the M. Bank." The M. Bank stopped payment in July, 1885, & was being wound up. F. absconded, & on Oct. 1, 1885, an order was made that the estate & interest of D. & F. in the £40,000 Consols & £60,000 New Three Per Cent. Stock should vest in D. & the liquidators of the M. Bank. The Bank of Ireland having been paid off, the £40,000 Consols & £60,000 New Three Per Cents. were, on Oct. 5, 1885, transferred into the names of D. & the liquidators. The liquidators placed D. on the list of contributories in respect of the 801 shares, & made a call thereon; & they also required D. to join with them in realising the stock. D. claimed to be indemnified against the calls out of these stocks:—*Held:* as against creditors, D. had no such right of indemnity.—*Re* MUNSTER BANK, LTD. (DILLON'S CLAIM) (1886), 17 L. R. Ir. 341.—**IR.**

6427. *Add. Annotation :*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

6428. *Add. Annotation :*—**Refd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

6431. *Add. Annotation :*—**Refd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

6435. *Add. Annotation :*—**Refd.** *Re* White Star Line, Ltd., [1938] Ch. 458.

6436a. ——.]—In a common law action by a co. in liquidation against a shareholder for a call made before the liquidation, deft. has no right of set-off in respect of sums alleged to be due to him from the co.—ALLIANCE FILM CORPN., LTD. *v.* KNOLES (1927), 43 T. L. R. 678.

6442. *Add. Annotation :*—*As to* (1) **Refd.** Telsen Electric Co. *v.* Eastick & Sons, [1936] 3 All E. R. 266.

6442a. ——.]—Applt., the managing director of a co. which was insolvent, recovered judgment against the co. for repayment of money lent by him to the co. Shortly afterwards, the provisional liquidator of the co., which was subsequently, in Apr. 1925, ordered to be wound up, paid to applt. the amount for which he had recovered judgment, & in Apr. 1926, an order was made in the winding up upon applt. to repay to the liquidator that amount, on the ground that the payment to him by the liquidator was void as a fraudulent preference. In consequence of applt.'s non-compliance with that order, a bkpcy. notice was served upon him, & a receiving order made against him, the registrar refusing to allow applt. to set off against the amount he had been so ordered to repay to the liquidator the sum for which he had recovered judgment against the co. :—*Held :* the indebtedness of applt. having been incurred under an order made after the date of the winding up, there were at that date no mutual debits capable of set-off ; the payment by the liquidator being void as a fraudulent preference, applt. had not any valid or effectual right of set-off in respect of the sum he had been ordered to repay to the liquidator, & his only right was to prove in the winding up with the other creditors.—*Re* A DEBTOR (82 of 1926), [1927] 1 Ch. 410 ; 136 L. T. 349 ; *sub nom. Re* MUMFORD, DEBTOR *v.* PETITIONING CREDITOR, *Ex p.* OFFICIAL RECEIVER, 96 L. J. Ch. 75 ; [1926] B. & C. R. 165, D. C.

6442b. No set-off against sums paid in fraudulent preference.]—A co. carrying on the business of road contractors purchased its materials from two supply cos. By the custom of the trade the supply cos. made advances from time to time to the co. One of the supply cos. was indebted to the co. on tar-paving contracts. Within three months of the winding-up of the co. the co. paid to the supply cos. sums for goods supplied by them in circumstances which made any payment by the co. to the supply cos. a fraudulent preference, & during the same period one of the supply cos. made advances from time to time to the co. & the other supply co. paid to the co. sums due on account of the tar-paving contracts. There was no identity of dates or amounts between the payments & the advances & all the transactions were entered in separate accounts :—*Held :* as there had been no attempt to set-off the advances & payments to the co. against the payments made by the co., all the payments by the co. were a fraudulent preference.—*Re* FOWLER (B. P.), LTD., [1938] Ch. 113 ; [1937] 3 All E. R. 781 ; 107 L. J. Ch. 97 ; 158 L. T. 369 ; [1936-7] B. & C. R. 246.

6444. *Add. Annotations :*—**Folld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

6445. *Add. Annotations :*—**Apld.** *Re* A Debtor, [1927] 1 Ch. 410. **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

6446. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. *As to* (2) **Refd.** *Re* City Life Assce., [1926] Ch. 191 ; Telsen Electric Co. *v.* Eastick & Sons, [1936] 3 All E. R. 266.

6447. *Add. Annotations :*—*As to* (2) **Apld.** *Re* City Life Assce., [1926] Ch. 191. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. *Generally*, **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6448. *Add. Annotations :*—**Consd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6455a. —— **Joint partnership debt — Creditor member of firm.**]—In the winding up of a co. the liquidator sought to set off against a debt due by the co. to a creditor a debt alleged to be due to the co. by a partnership firm of which the creditor was a member :—*Held :* the alleged debt of the partnership firm being a joint & not a joint & several debt, it could not be set off against the separate debt due by the co. to the partner.—*Re* PENNINGTON & OWEN, LTD., [1925] Ch. 825 ; 95 L. J. Ch. 93 ; 134 L. T. 66 ; 41 T. L. R. 657 ; 69 Sol. Jo. 759 ; [1926] B. & C. R. 39, C. A.

6456. *Add. Annotation :*—**Refd.** *Re* Clemmons Aluminium (1924), 94 L. J. K. B. 487.

PART III. SECT. 36 SUB-SECT. 11.—D. (a).

f i. —— ——.]—In the distribution of the assets of a bkpt. co. (consisting of personal property, insufficient to pay in full all claims now in question), which co. had carried on business in Toronto, Ontario, the following claimants were, for reasons stated below, held entitled to payment according to the following order of priority : (1) the Treasurer of the Province of Ontario (for tax under Corpns. Tax Act, R. S. O., 1927) ; (2) the City of Toronto (for business tax imposed under Assessment Act, R. S. O., 1927), & the Toronto Electric Comrs. (for supply of electrical energy under Public Utilities Act, R. S. O., 1927) ; (3) the landlord ; (4) the custodian & the trustee (for costs, fees & expenses) ; (5) the Workmen's Compensation Board (for indebtedness under the Workmen's Compensation Act, R. S. O., 1927, c. 179) ; (6) the Minister of National Revenue (for sales tax imposed under the Special War Revenue Act, R. S. C., 1927, c. 179).—*Re* GENERAL FIREPROOFING CO. OF CANADA, LTD., [1937] S. C. R. 150 ; 2 D. L. R. 30.—**CAN.**

h i. —— *Rent.*]—A landlord of a co. in liquidation has a preferential claim to payment up to three months' rent, where there are goods on the premises to that value at the date of liquidation.—*Re* SHRIVES & MCKENZIE PTY., LTD., [1926] V. L. R. 563 ; 48 A. L. T. 99 ; [1926] Argus L. R. 442.—**AUS.**

h ii. *S. P. Re* CARPENTER HALES & CO., LTD. (1926), 26 S. R. N. S. W. 420 ; 43 N. S. W. W. N. 116.—**AUS.**

sk. *Insolvency Act*, 1928—*Whether applicable.*]—In the winding up of an insolvent co., sect. 207 of Cos. Act, 1928, does not apply the rules as to priority of debts contained in the Insolvency Act, 1928.—*Re* EUTROPE (W. H.) & SONS PTY., LTD., [1932] V. L. R. 124 ; Argus L. R. 151.—**AUS.**

6457a. Lump sum compensation payable to workman—"Rights capable of being transferred."] —An injured workman received weekly payments of compensation from his employer, who was a limited co. insured with a mutual indemnity co., until the date of commencement of winding it up. The indemnity co. was only liable under its contract of insurance to indemnify the employer for six weeks after it commenced to be wound up, & accordingly only paid compensation to the workman for a further six weeks, when its liability to the employer under the contract ceased. The workman took out a summons in the winding-up of the employing co. claiming priority to all other debts for the lump sum for which, at the commencement of the winding-up his weekly payments could have been redeemed to the extent to which the liability of the insurers to the workman was less than the liability of the co. to the workman. He claimed that that was the combined effect of sect. 264 of Cos. Act, 1929 (c. 23), & sect. 7 of Workmen's Compensation Act, 1925 (c. 84). The contract between the indemnity co. & the employer was such as was mentioned in sect. 7 of 1925 Act, though the rights of the employers capable of being transferred to & vested in the appct. were in fact less than his rights against his employers, in other words, his employer was not fully insured. Sect. 264 of Cos. Act, 1929 (c. 23), provides for compensation to be paid in priority, unless there is a contract with insurers under which by virtue of sect. 7 of 1925 Act there are rights capable of being transferred to the workman:—*Held:* in view of the fact that there were "rights capable of being transferred" within sect. 264 (1) (*d*) of Cos. Act, 1929 (c. 23), such sect. gave no priority right in the winding-up.

Summons dismissed.—*Re* WHITEHAVEN COLLIERY CO., LTD. (1935), 28 B. W. C. C. 1.

6460. *Add. Citations:*—130 L. T. 1; [1923] B. & C. R. 114; *affg.* S. C. *sub nom. Re* WEBB (H. J.) & CO. (SMITHFIELD, LONDON), LTD., [1922] 2 Ch. 369.

Add. Annotations:—**Refd.** *Re* Winget, Burn *v.* Winget, [1924] 1 Ch. 550; *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

6462. *Add. Annotations:*—**Refd.** *Re* Winget, Burn *v.* Winget, [1924] 1 Ch. 550; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

6465a. —— Rates paid by director—Preferential rights of director.]—*Re* LAMPLUGH IRON ORE CO., No. 3105a, *ante.*

6466. *Add. Annotation:*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

6467. *Add. Annotation:*—**Refd.** *Re* Clemmons Aluminium (1924), 94 L. J. K. B. 487.

PART III. SECT. 36, SUB-SECT. 11.—D. (b).

sm. *Price of wheat supplied under State wheat scheme.*]—The Minister charged with the administration of Wheat Marketing Acts sold a quantity of wheat to a co. which before payment went into liquidation:—*Held:* the debt being a Crown debt, the Minister was entitled to priority of payment in the administration of the assets of the co. In the winding up of a co. the Crown is not bound by the provisions of Cos. Act, 1893, & its amendments.—*Re* OCKERBY & CO., LTD. (1922), 25 W. A. L. R. 25.—**AUS.**

sn. *Price of coal from State coal mine.*]—The Victorian Railways Comrs. supplied coal from the Victorian State Coal Mine to a co. which subsequently went into voluntary liquidation. The Comrs. lodged a proof of debt with the liquidator in respect of the price of the coal, but, after having received two dividends, they claimed priority over the other creditors on the ground that the amount due was a debt due to the Crown:—*Held:* the debt was one due to the Crown, & was entitled to priority over the other debts of the co., Cos. Act, 1928, ss. 186, 208, not affecting Crown debts.—*Re* ORIENTAL HOLDINGS PTY., [1931] V. L. R. 279; Argus L. R. 266.—**AUS.**

so. *Debt due to public Board.*]—Meat Industry Act, 1915, No. 69 (N. S. W.), established a Board to administer the Act. The Governor had power to veto certain of its actions. The Board had wide powers, which it exercised at its discretion; any power of interference which a Minister of the Crown possessed was not such as to make the acts of administration his acts. Money received by the Board was not paid into the general funds of the State, but to its own fund:—*Held:* a debt due to the Board was not a debt due to the Crown.—METROPOLITAN MEAT INDUSTRY BOARD *v.* SHREDY, [1927] A. C. 899; 137 L. T. 782; 43 T. L. R. 701, P. C.—**AUS.**

sp. *Contributions under Unemployment Insurance Acts.*]—A co. was being wound up by the ct. under the provisions of the Companies (Consolidation) Act, 1908, &, in answer to the advertisement for claims against the co., the liquidator received from the Department of Industry & Commerce a claim in respect of unpaid contributions under the Unemployment Insurance Acts in respect of workmen employed by the co. Portion of the amount was claimed as a preferential payment under Unemployment Insurance Act, 1920, s. 26 (1), in respect of contributions payable by the co. during the four months before the commencement of the winding up as specified in that sect., & the balance was claimed as a State debt to rank next after the preferential debts & in priority to the ordinary creditors:—*Held:* the claim of the Department other than such portion as was payable under sect. 26 (1), was not payable in priority to the claims of the general creditors of the co.—*Re* A. & B. TAXIS, LTD., [1931] I. R. 87.—**IR.**

sq. *Damages for breach of contract.*]—*Held:* the Crown, in the right of the Dominion Govt., had priority, in respect of its claim for unliquidated damages for breach by the shipbuilding co. of a contract for the building of ships, over the claims of a city corpn. & electric comrs. for taxes & the price of power supplied.—TORONTO (CITY) & TORONTO ELECTRIC COMRS. *v.* WADE, [1931] 4 D. L. R. 928; O. R. 470; *affd.*, [1932] 3 D. L. R. 509; O. R. 500.—**CAN.**

sr. *Extent of priority.*]—Creditors whose claims have arisen subsequently to the liquidation & have been properly incurred by the liquidator in the course of the winding up have priority over the claims of the creditors which arose before the liquidation, except claims by the Crown of equal or higher degree, & except the claims of the execution creditor to the amount of the value of his security. Debts due to the Postmaster-General, the Deputy Federal Comr. of Taxation, & the State Comr. of Taxation are entitled to priority over the claims of unsecured creditors of equal degree, but are postponed to the debts of secured creditors, & to the extent of their security.—*Re* MILLINGEN'S, LTD., [1934] S. A. S. R. 72.—**AUS.**

PART III. SECT. 36, SUB-SECT. 11.—D. (c).

st. *Municipal taxes & taxes due to Public Utilities Commission—Payable before Crown claims.*]—*Re* INTERNATIONAL METAL WORKS, LTD., *Ex p.* R., [1925] 1 D. L. R. 309; 5 C. B. R. 378.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—D. (d).

a i. ——.]—*Held:* a director of the co., the secretary, a floor-manager & host, an entertainer & the members of a band of musicians did not come within the definition of "clerk or servant" in s. 208 (i) (*c*) of Cos. Act, 1915, & were therefore not entitled under the section to preferential claims for salary or wages.—*Re* ESPLANADE THEATRE, LTD. (IN LIQUIDATION) (1929), V. L. R. 237; Argus L. R. 198.—**AUS.**

s (p. 946) **i.** —— *Meaning of "going into liquidation."*]—Bkpcy. is a "going into liquidation" within sect. 100 (1) (*b*) of Cos. Act, R. S. O., 1927.—DAVEY *v.* GIBSON, [1930] 3 D. L. R. 606; 65 O. L. R. 379; 11 C. B. R. 341; *affg.*, [1930] 2 D. L. R. 139; 64 O. L. R. 627; 11 C. B. R. 138.—**CAN.**

st. *Effect of Bankruptcy Act, s.* 48 (4).]—The above sect. does not restrict the amount of the debt for which an officer, director or shareholder of a co., which has made an authorised assignment, may in the first instance prove, & postpone the right to prove for the balance until all other creditors have been paid in full, but while allowing him to prove for the full amount of his claim, it merely restricts the amount of payment or satisfaction in the aggregate which he may receive on account of his claim as proven until claims of other creditors have been satisfied.—*Re* CALGARY FURNITURE STORE, LTD. & HIGGS, [1924] 2 D. L. R. 308; [1924] 1 W. W. R. 1137; 4 C. B. R. 533.—**CAN.**

6472a. —— —— **No exclusive employment—Or fixed hours.**]—ANGLO-AUSTRIAN CONFECTIONARY CO., LTD., BARTLETT *v.* THE COMPANY (1912), Y. S. C. P.

6477a. —— —— ——.]—*Re* GENERAL RADIO CO., LTD., FIRST CO-OPERATIVE INVESTMENT TRUST, LTD. *v.* THE CO., [1929] W. N. 172.

6500. *Add. Annotation :*—**Reld.** *Re* Houlder, [1929] 1 Ch. 205.

6506. *Add. Annotation :*—**Apld.** *Re* Agricultural Wholesale Soc., [1929] 2 Ch. 261.

6518a. —— **From rejection of proof.**]—A claim was made against a co. in liquidation for damages. The liquidator issued a summons to have it determined whether the claims should be allowed & the judge made an order for an inquiry into the amount of damage sustained & that the claimant be permitted to prove for the sum so ascertained. The damages were so ascertained by the registrar & a proof carried in. The liquidator rejected the proof on the ground that a shareholder, while retaining his shares, cannot claim damages in respect of any loss in respect of his shares :—*Held :* this objection was too late. It should have been taken on the hearing of the summons or on appeal therefrom.—*Re* AYNEK SYNDICATE, LTD., [1930] 1 All E. R. 406.

6517a. Right to consider set-off.]—A liquidator, when examining a proof of debt with a view to its admission or rejection, is entitled also to examine a set-off to such proof, if it is a matter of account, in order to arrive at the amount, if any, for which the proof is to be allowed.—*Re* NATIONAL WHOLE MEAL BREAD & BISCUIT CO., [1892] 2 Ch. 457 ; 67 L. T. 293 ; 40 W. R. 591 ; 36 Sol. Jo. 540.

6533a. —— **On footing that company insolvent—Company found solvent—Right to prove for balance.**]—A compulsory order having been made for the winding up of a co. on the ground of its being just & equitable to make such an order, the costs of the co. of the petition were taxed & paid out of the assets on the basis that it was insolvent. The co. was ultimately found to be solvent, & the solr. claimed to prove in the liquidation for the balance of his bill of costs, being solr. & client costs incurred upon the instructions of the co. & its directors in opposing the petition. The liquidator rejected the proof on the ground that the amount claimed represented costs already taxed off the bill, & the registrar upheld his decision on the ground that there was no right of proof for any costs beyond the taxed costs of the petition under r. 192 of the Winding-up Rules, 1929 :—*Held :* the solr. was entitled to prove for any unpaid balance of costs due to him from the co., there being nothing to the contrary contained or implied in r. 192, which was concerned with the priorities of different sets of costs incurred in winding up. There being sufficient to pay all creditors in full, the co.'s solr. was entitled to be paid his costs as between solr. & client, & the liquidator was ordered to admit the proof, subject to taxation if he so desired.—*Re* C. B. & M. (TAILORS), LTD., [1932] 1 Ch. 17 ; 101 L. J. Ch. 6 ; 146 L. T. 118 ; [1931] B. & C. R. 69 ; 75 Sol. Jo. 797.

6549a. —— **Costs of summons by debenture-holders.**]—The directors of a co. registered under 1862 Act, being empowered by their articles to borrow on debenture bonds any sums " necessary " for the business of the co., in Dec. 1865, issued twenty debentures of £100 each, all in the same form, by which they pledged " the property belonging to us for the time being during the subsistence of the debenture, with all the buildings & stock on, & connected with, our said property, & all the receipts & revenues to arise therefrom " ; & declared that the entire debenture loan & interest should be a first charge on " our undertaking & property & receipts & revenues aforesaid." The business of the co. was to buy & sell land, to build, buy, & sell houses, to furnish houses for hotels, & to carry on the business of hotel keepers. A winding-up order having been made, the liquidator proceeded to sell certain freehold & leasehold estate belonging to the co. ; but the purchaser refused to complete unless the debenture-holders were satisfied. The debenture-holders thereupon took out a summons in Chambers :—*Held :* after making all just allowances to the liquidator in realising the fund, the debenture-holders, applying by way of summons in the matter of the winding up, were entitled to their costs, as well as to their principal & interest, out of the fund, in priority to all other charges.—*Re* MARINE MANSIONS CO. (1867), L. R. 4 Eq. 601 ; 37 L. J. Ch. 113 ; 17 L. T. 50.

Annotation :—**Folld.** *Re* Oriental Hotels Co., Perry *v.* Oriental Hotels Co. (1871), L. R. 12 Eq. 126.

PART III. SECT. 36, SUB-SECT. 11.—E. (a).

sv. *Not bondholders under unregistered trust mortgage.*]—*Re* BEAVER TRUCK CO. (Ont.), [1926] 1 D. L. R. 71. —**CAN.**

sw. *Bondholders — Notwithstanding abandonment of lien against purchaser of assets.*]—*Re* ST. JOHN RIVER LOG DRIVING CO. (N. B.), [1927] 3 D. L. R. 800.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—E. (b).

6490 i. *Whether proof for total sum due at time of claim—Where securities realised before claim.*]—Where a secured creditor realises on his securities himself without sending in a claim to the liquidator or valuing his securities, he is debarred from ranking on the estate for any deficiency, & must be regarded as standing outside the liquidation proceedings.—MCFARLAND *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. (Can.), [1927] 3 D. L. R. 67.—**CAN.**

sy. *Whether interest on balance after security exhausted can be added.*]—In the liquidation proceedings of an insolvent co. a secured creditor after having exhausted his security cannot in proving as regards the balance of his debt unsatisfied include interest after the date of the winding up order.—OPPENHEIMER *v.* MOOLA (1929), I. L. R. 7 Ran. 514.—**IND.**

PART III. SECT. 36, SUB-SECT. 12.—B. (d).

6528 i. *Lien on fund recovered by his exertions—Costs incurred before winding up—Fund not under control of court.*]—A petition for a charging order was presented by a law agent who had recovered a fund for a company registered in England. The ct. granted the order, notwithstanding the voluntary liquidation of the company & the payment over of the fund to the liquidator in England.—PHILIP *v.* WILSON (1911), 48 Sc. L. R. 947.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 12.—C.

sz. *Judgment creditor — Right to interest.*]—On the liquidation of a co. judgment creditors who obtained their judgments after the commencement of the liquidation as well as those who obtained their judgments prior thereto held alike entitled to interest out of any surplus remaining after payment of all the principal debts.—*Re* COLONIAL ASSURANCE CO. (Man.), [1928] 3 W. W. R. 703.—**CAN.**

sb. —— *Seizure before winding up—Priority.*]—In the winding up of a co. judgment creditors of the co., in respect of whose debts a seizure of the assets of the co. has been made prior to the presentation of the petition for winding up, are entitled to be paid their claims in priority to petitioner's & liquidator's costs & the liquidator's remuneration, notwithstanding that no sale has been effected prior to the presentation of the petition.—*Re* WHITEROCK QUARRIES, LTD., [1933 I. R. 363.—**IR.**

6555a. Payment of dividend to creditors of private company—Surplus assets handed over to contributories—Validity.]—DITCHAM *v.* MILLER, No. 5959b, *ante*.

6558a. Deduction of sur-tax from shares of members.]—A private co. to which Finance Act, 1922 (c. 17), s. 21, applied, having gone into voluntary liquidation, there was a large surplus for distribution amongst the holders of preference & ordinary shares. The Special Comrs. of Income Tax having given a direction under that sect. that the surplus must be deemed to be the undistributed income of the members for the purposes of sur-tax, assessed the co. to sur-tax for the previous financial year, & apportioned the tax among the members in accordance with their holdings, some being liable to pay sur-tax, & others not so liable. Notices of the charge were served upon the members liable, but none of them elected to pay the tax within the prescribed period of twenty-eight days, & notice having then been served upon the co., the liquidator paid the tax so assessed :—*Held :* in distributing the balance of the surplus among the members the liquidator, having regard to Finance Act, 1922 (c. 17), Sched. I., para. 8, must bring into account the sur-tax so paid against the amounts receivable by the members in respect of their incomes from their holdings of preference & ordinary shares in the co.—*Re* DREW (ALEXANDER) & SONS, LTD., [1935] Ch. 93 ; 104 L. J. Ch. 78 ; 152 L. T. 281 ; 51 T. L. R. 113 ; 78 Sol. Jo. 876 ; [1934-5] B. & C. R. 230.

6563. *Add. Annotation :*—**Apld.** Sugden *v.* Urban Fire Insurance Co. (1930), 75 Sol. Jo. 60.

6565. *Add. Annotations :*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576; *Re* Wilts & Somerset Farmers (1928), 98 L. J. Ch. 17.

6567. *Add. Annotations :*—*As to* (2) **Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Foll.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594.

6569a. —— What are.]—A limited co.'s memorandum of assocn. provided that the preference shareholders should be entitled "in a winding up to such a share of the surplus assets as shall provide for the holders of preference shares an amount per share equal to one-half of the amount per share provided for the holders of ordinary shares, but so that the total sum so provided for the holders of the preference shares shall not exceed five shillings per share, the preference shareholders being entitled to no further participation in the profits or assets" :—*Held :* the expression "surplus assets" meant what was left after the payment of debts & the repayment of the whole of the preference & ordinary capital.—*Re* DUNSTABLE PORTLAND CEMENT CO., LTD. (1932), 48 T. L. R. 223 ; 76 Sol. Jo. 95.

6576. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6578. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6579. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6579a. —— —— ——.]—1929 Act, s. 177, by which no action or proceeding shall be continued or begun without the ct.'s leave against a co. after the making of a winding-up order against, or the appointment of a provisional liquidator of, the co., does not apply to proceedings abroad. But proceedings abroad by a person or corpn. within the ct.'s jurisdiction can be restrained by the ct., in the exercise of its equitable jurisdiction *in personam*, if that person has been properly served, within the jurisdiction, with the ct.'s order restraining the proceedings. Where, however, a foreign co. registered in a foreign country & also in England, or other foreign creditor within the ct.'s jurisdiction, has given credit to an English co. registered & trading in the foreign country, knowing the English co. to have attachable assets there, the ct. will not exercise its equitable jurisdiction *in personam* to restrain proceedings abroad, since it would not be just or equitable to restrain them on the ground either that the foreign co. or creditor is within the ct.'s jurisdiction or that the foreign co. or creditor can be served with proceedings in England. If the English co. is wound up by the ct., & its foreign branch is wound up by the foreign ct., the foreign co. or other creditor is free to prove the debt in the foreign country &, subject to the *lex fori*, to bring an action there.—*Re* VOCALION (FOREIGN), LTD., [1932] 2 Ch. 196 ; 102 L. J. Ch. 42 ; 148 L. T. 159 ; 48 T. L. R. 525 ; [1933] B. & C. R. 1.

6581. *Add. Citation :*—*affd.*, [1867] W. N. 178, L.JJ.

6591. *Add. Annotation :*—**Refd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

PART III. SECT. 36, SUB-SECT. 12.—D. (c).

m i. ——.]—*Re* SMEETONS, LTD. (IN LIQUIDATION), [1928] N. Z. L. R. 190. —N.Z.

PART III. SECT. 36, SUB-SECT. 13.—A.

p i. —— —— *Sale by mortgagees in possession.*]—A co. being in liquidation, the mtgees. went into possession prior to the issue of the winding-up order. The liquidator sought to restrain the mtgees. from selling without the sanction of the ct., on the ground that such sale would be a "proceeding against the co." :—*Held :* the mtgees. were proceeding rightfully.—*Re* BRITISH COLUMBIA TIE & TIMBER CO. (1908), 14 B. C. R. 81 ; 9 W. L. R. 495.—CAN.

PART III. SECT. 36, SUB-SECT. 13.—C. (a).

sg. *Action for negligence.*]—Where it is alleged that through the negligent handling of an asset of a co. a tort was committed after the making of a winding-up order, the claim of the injured party for damages does not fall within the language of sect. 136 of Winding-up Act ; &, therefore, leave should be granted under sect. 21 of said Act to commence an action against the co. if such action is not barred by a statutory limitation. Where such an action has been begun without leave before the expiration of the time prescribed by statute for bringing such an action, a *nunc pro tunc* order giving leave to bring the action should not be granted after said period has expired.—*Re* G. B. WOOD, LTD., SPIVAK *v.* LEE, [1932] 3 W. W. R. 525 ; 40 Man. L. R. 613.—CAN.

PART III. SECT. 36, SUB-SECT. 13.—C. (b) ii.

sk. *Action against insurance company—By injured third party.*]—In an action for damages for personal injuries through being run down by a car, pursuer obtained a decree in absence against the owner of the car & on his failing to make payment, used arrestments in the hands of the insurance co. with whom defender was insured against third party risks & brought an action of forthcoming. While this action was pending the insurance co., which had its registered office in England & a place of business in Scotland, was ordered to be wound up :—*Held :* in view of Cos. Act, 1929, sects. 177 & 380, the action could not proceed without the leave of the ct. which had pronounced the winding-up order, & action sisted until leave of the English ct. should be obtained.—MARTIN *v.* PORT OF MANCHESTER INSCE. CO., [1934] S. C. 143.—SCOT.

PART III. SECT. 36, SUB-SECT. 13.—D. (a).

n. Add "*revsd.* 23 A. R. 426."

6610. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6616. *Add. Annotation :*—**Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

6619. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

6624a. —— **Delivery to liquidator—1929 Act, s. 269—Charge for costs of execution—What costs included.**]—The costs of the execution referred to in Cos. Act, 1929, s. 269 (1), are limited to the sheriff's costs & do not include the judgment creditors' costs of issuing & serving the writ on the sheriff.—*Re* WOODS (BRISTOL), LTD., [1931] 2 Ch. 320; 100 L. J. Ch. 335; 145 L. T. 444; 47 T. L. R. 464; 75 Sol. Jo. 458; [1931] B. & C. R. 17.

6627. After this case add :—*See, now,* 1929 Act, s. 268.

6649. After this case add :—

——.]—*See, now,* 1929 Act, s. 268.

6663. *Add. Annotations :*—**Refd.** *Re* South Rhondda Colliery Co. (1898), Ltd. (1928), 72 Sol. Jo. 453; Gerard *v.* Worth of Paris, Ltd., [1936] 2 All E. R. 905.

6669. *Add. Annotation :*—**Refd.** *Re* Beni-Falkai Mining Co., [1934] Ch. 406.

6717a. ——.]—The High Ct. has jurisdiction to transfer winding-up proceedings from the High Ct. to any ct. which has jurisdiction to wind up cos., & can transfer proceedings in the winding up of a co. with a capital exceeding £10,000 to a county ct. having winding-up jurisdiction. — *Re* VERNON HEATON CO., LTD., [1936] Ch. 289; 105 L. J. Ch. 115; 154 L. T. 374; 52 T. L. R. 156; 80 Sol. Jo. 33; [1934–5] B. & C. R. 305.

6718. *Add. Annotation :*—**Distd.** *Re* Vernon Heaton Co., [1936] Ch. 289.

6727. *Add. Annotation :*—**Refd.** *Re* Yagerphone, Ltd., [1935] Ch. 392.

6727a. —— —— ——.]—The joint liquidators in the voluntary winding up of a co. recovered a sum of money alleged to have been paid to a creditor by the co. by way of fraudulent preference. A debenture holder took out a summons in the liquidation for an order that the money recovered from the creditor should be paid to the receiver of the property charged by the debenture :—*Held :* the money did not become part of the general assets of the co., but was a sum of money received by the liquidators & impressed in their hands with a trust for those creditors among whom the assets of the co. were distributable.—*Re* YAGERPHONE, LTD., [1935] Ch. 392; 104 L. J. Ch. 156; 152 L. T. 555; 51 T. L. R. 226; 79 Sol. Jo. 162; [1934–5] B. & C. R. 240.

6731. After this case add :—

-.]—*See, now,* 1929 Act, s. 265 (2).

6731a. Necessity for dishonesty.]—*Re* PATRICK & LYON, LTD., No. 3353b, *ante.*

6740. *Add. Annotation :*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

6741. *Add. Annotations :*—**Consd.** *Re* A Debtor, [1927] 1 Ch. 410. **Expld.** *Re* Fowler (B. P.), Ltd., [1937] 3 All E. R. 781.

6745. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

6746. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6746a. Payment to principal creditor—To relieve surety.]—Where a payment has been made to a principal creditor with the intent to prefer a guarantor of the debt, Bkpcy. Act, 1914 (c. 59), s. 44, enables the liquidator in a compulsory winding up to recover payment from the person actually preferred.

A private co., of which a father & son were the only directors & shareholders, was ordered to be wound up, & within the preceding three months the son paid a sum of £1,503 odd into the co.'s bank to reduce an overdraft of the co. to secure which his father had given a guarantee. The liquidator claimed repayment of the sum as being a fraudulent preference within 1908 Act, s. 210, & a preliminary objection being raised that in any event no order for repayment could be made :—*Held :* the motive of the son in making the payment being to keep the business going, there was no fraudulent preference, & the summons must be dismissed.—*Re* STANLEY (G.) & Co., [1925] Ch. 148; 94 L. J. Ch. 187; 133 L. T. 37; 69 Sol. Jo. 36; [1925] B. & C. R. 1.

Annotation :—**Consd.** *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

6746b. Withdrawal of opposition—To motion for extension of time for registration of charge.]—The debtor co. of which applt. became the liquidator, deposited with resp. Trust title deeds of certain property to secure a sum of money owing by it to the Trust, agreeing to execute any necessary deed in respect of the property charged. The Trust did not register the charge within the prescribed time, & ten months afterwards applied to the Chancery Div. under 1929 Act, sect. 85, for an extension of the time for registration on the ground of inadvertence. The co., at the time of that application, was unable to pay its debts, & counsel were briefed on behalf of the co. to oppose the application for extension of time, but before the hearing of the application the instructions to oppose were withdrawn, an order was made for an extension of the time, & the charge was

PART III. SECT. 36, SUB-SECT. 13.—D. (c).

sb. *Writ filed after winding-up order.*]—*Held :* not to constitute a lien, even for costs, against the property of a co. in liquidation.—*Re* LEITCH COLLIERIES, LTD. (Alta.), [1926] 1 D. L. R. 1183; [1926] 1 W. W. R. 528.—**CAN.**

PART III. SECT. 36, SUB-SECT. 15.—B.

6741 i. *Debt due to directors—Set-off against amount unpaid on shares.*]—MICHELL *v.* BOOTH (1928), S. A. S. R. 367.—**AUS.**

sd. *General rule.*]—In order to establish a fraudulent preference it must be clear that the substantial & dominant view of debtor was to give a preference, & it is not sufficient that the creditor was in fact preferred.—*Re* NEW ZEALAND ELECTRICAL APPLIANCE & ENGINEERING CO., LTD., [1927] N. Z. L. R. 16.—**N.Z.**

sf. *Deposit of lease—To prevent creditor cashing post-dated cheque.*]—Within the period of three months prior to the bkpcy. of a co. a lease was deposited with a creditor of the co. by way of security & to prevent the creditor from cashing a post-dated cheque which he held from the co. :—*Held :* as the purpose of the payment was to benefit debtor & to save him from creditors' pressure, there was no fraudulent preference.—*Re* DROGHEDA & DISTRICT CO-OPERATIVE SOCIETY, LTD. (1924), 58 I. L. T. 42.—**IR.**

sg. *Loan of stock by directors to company—Mortgage of stock—Assignment of equity of redemption to directors.*]—MICHELL *v.* BOOTH, [1927] S. A. S. R. 576.—**AUS.**

registered. An order for the compulsory winding up of the co. was made shortly afterwards, & the liquidator issued a summons in the winding up claiming that the withdrawal of the opposition of the co. was the suffering by it of a judicial proceeding with a view of giving a creditor a preference, & therefore must be deemed fraudulent & void as against the liquidator, having regard to the provisions in Bkpcy. Act, 1914 (c. 59), s. 44, & 1929 Act, sect. 265. W., who gave instructions for the withdrawal of the opposition by the co., was a director of the co. & managing director of the Trust :— *Held :* the onus was on the liquidator to satisfy the ct. that the dominant intention of the co. in withdrawing its opposition to the application for an extension of time was to prefer resps. &, there being no direct evidence of such an intention, an intent to prefer could not be inferred.—PEAT (SIR WILLIAM HENRY) *v.* GRESHAM TRUST, LTD., [1934] A. C. 252 ; 151 L. T. 63 ; 50 T. L. R. 345 ; *sub nom. Re* M. I. G. TRUST, LTD., 103 L. J. Ch. 173 ; [1934] B. & C. R. 33, H. L.

Annotation :—**Consd.** *Re* Lyons, *Ex p.* Barclays Bank, Ltd. *v.* Trustee (1934), 152 L. T. 201.

6756a. Order made without jurisdiction.]—By the rules of a mutual marine insurance assocn., which was not registered under the Companies Act, it was provided that all persons who effected an insurance with the assocn. should be members. No ship was to be insured for more than three-fourths of its value, the person insuring paid a deposit of 25*s.* per cent. on the amount of the insurance, & in case of the total loss of a vessel, the members were to pay the loser the amount for which he had insured it rateably, according to the amounts assured to them respectively. The assocn. consisted of more than twenty members. A vessel insured by R. was lost, & the amount of the loss was referred to arbitration. R. assigned his claim to his bankers, who obtained judgment in R.'s name on the award, &, not obtaining payment, presented a petition to wind up the assocn., the petition stating that the assocn. consisted of more than seven members, but not stating that it consisted of more than twenty. The petition was served at the abandoned office of the assocn. which had ceased to carry on business, & the proper advertisements were issued. On May 28, 1880, a winding-up order was made, no one appearing to oppose. In Nov. 1881, another member of the assocn. heard, for the first time, of the winding-up order, & within a week applied for leave to appeal against it :— *Held :* the order having been made by a superior ct. having jurisdiction in winding up, & having authority to decide as to its own competency, must, if the assocn. was one which ought not to be wound up, be treated merely as an erroneous order, & not as an order void for want of jurisdiction, & that the proper manner of getting rid of it was by appeal.—*Re* PADSTOW TOTAL LOSS & COLLISION ASSURANCE ASSOCN. (1882), 20 Ch. D. 137 ; 51 L. J. Ch. 344 ; 45 L. T. 774 ; 30 W. R. 326, C. A.

Annotation :—**Consd.** *Re* Bowling & Welby's Contract, [1895] 1 Ch. 663.

6756b. Order of county court.]—This ct. will not entertain appeals from county ct. orders, unless the order appealed against has been completed & an office copy is produced for our inspection (EVE, J.).—*Re* PARKES GARAGE (SWADLINCOTE), LTD., [1929] 1 Ch. 139 ; 98 L. J. Ch. 9 ; 140 L. T. 174 ; 45 T. L. R. 11 ; [1928] B. & C. R. 144, D. C.

6775. *Add. Annotations :*—**Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281 ; Greenberg *v.* Cooperstein, [1926] Ch. 657 ; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 135 L. T. 673.

6787a. ——— ——— ———.]—*Re* CONSOLIDATED SOUTH RAND MINES DEEP, LTD., [1909] 1 Ch. 491 ; 78 L. J. Ch. 326 ; 100 L. T. 319 ; 16 Mans. 81, C. A.

6823a. —— Motion to validate debenture.]—*Re* PARK WARD & CO., LTD., No. 5186b, *ante*.

6830. After this case add :—

On property.]—*See, now*, 1929 Act, s. 296.

PART III. SECT. 36, SUB-SECT. 17.

sk. *Order of province.*]—To enforce an order of the ct. of another province made under Winding-up Act the registrar should, on production thereof, enter it without direction as an order of the Supreme Ct. of British Columbia & proceed upon it as an ordinary record of that ct.—*Re* HOME BANK OF CANADA & WINDING-UP ACT, [1925] 1 D. L. R. 734 ; 34 B. C. R. 321.—**CAN.**

PART III. SECT. 36, SUB-SECT. 18.—C.

t. Add " *revsd.* 14 S. C. R. 624."

sl. *Order dismissing winding-up petition.*]—*Re* CANADA NATIONAL FIR INSURANCE CO., [1931] 1 D. L. R. 751. —**CAN.**

sm. *Order placing name on list of contributories.*]—A Judge of the Supreme Ct. of Canada has jurisdiction to grant leave of appeal to this ct., under sect. 108 of Winding-Up Act, from a judgment ordering that the name of a person should be put on the list of contributories, its effect being to fix his liability at an amount over $2,000, although such judgment does not condemn him to pay immediately a definite sum of money.—*Re* JOYCE DRESS CORPN., LTD., HOROWITZ *v.* GREENBERG, [1934] S. C. R. 212 ; 3 D. L. R. 160.—**CAN.**

sp. *Order refusing security for costs—Application by liquidator.*]—An order refusing security for costs on application by a liquidator is not appealable.—*Re* SOLLOWAY MILLS CO., *Re* SOLLOWAY, [1936] 3 D. L. R. 504 ; O. R. 416.—**CAN.**

PART III. SECT. 36, SUB-SECT. 18.—D. (a).

e 1. *S. P. Re* DOMINION SHIPBUILDING & REPAIR CO., LTD., [1926] 3 D. L. R. 274 ; 59 O. L. R. 89.—**CAN.**

PART III. SECT. 36, SUB-SECT. 18.—H.

sp. *Of directors appealing against order.*]—The directors of a co. that was ordered to be wound up under Cos. Act retained in their hands certain moneys belonging to the co. & spent them on an appeal filed by the co. against the order of the winding up. The appeal was unsuccessful & there was no order of appellate ct., allowing the costs of the co.'s advocates out of the estate :—*Held :* the official liquidator could, under the directions of the ct., allow the expenditure, if incurred *bonâ fide*, & up to a reasonable extent.—MOOLLA *v.* OFFICIAL LIQUIDATOR (1928), I. L. R. 7 Ran. 34.—**IND.**

PART III. SECT. 36, SUB-SECT. 19.—I.

so. *Of creditor—Obtaining charging order.*]—*Re* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., DAVIDSON *v.* SWANSON (Sask.), [1928] 2 W. W. R. 256.—**CAN.**

sp. *Amount—Application of K. B. rule* 951.]—Although a petition for the winding-up of a co. under Winding-up Act, R. S. C., 1927, is dismissed, it is a proceeding under said Act, & K. B. rule 951, which limits certain costs to $300 & disbursements, does not apply thereto.—*Re* CANADIAN NATIONAL FIRE INSURANCE CO. & BROWNSTONE, [1931] 1 W. W. R. 753 ; 2 D. L. R. 875 ; 39 Man. L. R. 539 ; 12 C. B. R. 338.—**CAN.**

sq. ——— ———.]—*Re* CANADA NATIONAL FIRE INSURANCE CO. (No. 2), [1931] 2 W. W. R. 538.—**CAN.**

PART III. SECT. 36, SUB-SECT. 20.

m 1. ——— *On powers of liquidator—Power to complete formal act after dissolution of company.*]—KRISHNASWAMI NAIDU *v.* ANDI CHETTI (1927), I. L. R. 51 Mad. 631.—**IND.**

q 1. ——— *Grounds for granting or refusing.*]—*Re* ALBERNI PACIFIC LUMBER CO., THOMAS *v.* LAWSON (B. C.),

6857. *Add. Annotation:*—**Consd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

6857a. ——.]—A voluntary liquidator of a co. is not a trustee within Trustee Act, 1925 (c. 19), s. 68 (17), & is not entitled to the indemnity given to trustees by sect. 30 (1).—*Re* Windsor Steam Coal Co. (1901), Ltd., [1928] Ch. 609; 97 L. J. Ch. 238; 72 Sol. Jo. 335; [1928] B. & C. R. 36; *affd.* on other grounds, [1929] 1 Ch. 151, C. A.

Annotation:—**Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

6858a. —— **When investigating proof.**]—*Re* Home & Colonial Insurance Co., Ltd., No. 6858b, *post.*

6858b. Whether liable for negligence—On wrongful admission of proof.]—The H. Co. entered into an agreement for reinsuring marine risks with the L. Co. Later, it was voluntarily wound up, & B., the liquidator, agreed the L. Co.'s claim for a large sum, & paid dividends in respect of the claim. Following the practice of the co., B., notwithstanding the provisions of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1903 (c. 41), treated the agreement & the claim under it as valid. After the dissolution of the H. Co. he was advised that he should have disallowed the claim, & the dissolution was annulled, but an action to recover the money was dismissed, as no mistake of fact by B. was proved. On a misfeasance summons by a creditor of the co.:—*Held:* (1) a liquidator in the voluntary winding up of a limited co. is not, apart from negligence, liable for wrongly admitting a claim by an alleged creditor; (2) the liquidator did not, in the circumstances, fulfil his duty of investigating the claim of the L. Co., & was therefore liable as for misfeasance under Cos. Act, 1908, s. 215, for admitting the claim of the L. Co. since it was in fact an invalid one; (3) the Arts. of a limited co. cannot amount to a contract between the co. & its liquidator, & he could not therefore rely on an Art. absolving officers of the co. from liability except for fraud; (4) the position of a liquidator examining a proof for admission or rejection in a winding-up is the same as that of a trustee in bkpcy.; (5) in fixing the amount which a person liable for misfeasance under Cos. Act, 1908, s. 215, should be ordered to pay or contribute to the assets of the company, the ct. has a discretion, &, in the special circumstances, the liquidator should be ordered to contribute, by way of compensation, only such a sum as would enable all creditors to be paid in full with interest at 5 per cent.—*Re* Home & Colonial Insurance Co., Ltd., [1930] 1 Ch. 102; *sub nom. Re* Home & Colonial Insurance Co., May *v.* Barham, 99 L. J. Ch. 113; 142 L. T. 207; [1929] B. & C. R. 85.

6874. *Add. Annotations:*—**Consd.** Chibbett *v.* Robinson (1924), 132 L. T. 26; Mudd *v.* Collins (1925), 133 L. T. 186. **Distd.** Reed *v.* Seymour (1927), 11 Tax Cas. 625; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph) (1931), 145 L. T. 225. **Expld. & Distd.** Shipway *v.* Skidmore (1932), 16 Tax Cas. 748. **Refd.** Seymour *v.* Reed, [1927] A. C. 554; Benyon *v.* Thorpe (1928), 97 L. J. K. B. 705; Dewhurst *v.* Hunter (1932), 146 L. T. 510; Stedeford *v.* Beloe, [1931] 2 K. B. 610.

6875. *Add. Annotation:*—**Consd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All E. R. 1066.

6875a. —— **Profit costs—Solicitor co-liquidator.**]—One of two liquidators in the voluntary winding up of a limited co. was a solr., who acted on behalf of the other liquidator & himself in certain proceedings. The proceedings resulted in a compromise by which, *inter alia*, the liquidators' costs were to be paid. On taxation of the costs it was objected that as the solr. was one of the liquidators he could not charge any profit costs for the work done by him in the proceedings. The liquidators contended that profit costs should be allowed on the principle that where one of two trustees acts on behalf of himself & his co-trustee in litigious proceedings he is entitled to charge his profit costs. The registrar held that that principle did not apply to one of two joint liquidators, on the ground that it was excluded by the Cos. (Winding-up) Rules, 1929, r. 158:—*Held:* (1) the Cos. (Winding-up) Rules, 1929, r. 158, prohibits any arrangement for any remuneration beyond the remuneration to which a liquidator is entitled under 1929 Act, or the Cos. (Winding-up) Rules, 1929; (2) there must have been some arrangement made between the two liquidators, whereby the solr. had become entitled to some remuneration beyond that to which he was entitled under the Act or rules, & the solr. was therefore prohibited from receiving profit costs whilst acting as solr. for himself & his co-liquidator.—*Re* Gertzenstein, Ltd.,

---

PART III. SECT. 37, SUB-SECT. 3.—B.

d i. —— *Sufficiency of resolution.*]—An extraordinary resolution for the winding up of a co., that it cannot "by reason of the passing & enforcement of Prohibition Act continue its business" is not the equivalent of the extraordinary resolution, authorised by Cos. Act, R. S. B. C., 1911 (c. 39), s. 226 (3), as it stood prior to Nov. 1917, to the effect that the co. cannot by reason of its liabilities continue its business.—Duncan & Gray, Ltd. *v.* Silver Spring Brewery, [1925] 4 D. L. R. 724; [1925] 3 W. W. R. 675.—**CAN.**

d ii. —— *Resolution providing for liquidator to act under supervision of directors.*]—*Held:* highly objectionable.—Parashuram Dattaram Sham-Dasani *v.* Tata Industrial Bank, Ltd. (1928), 55 L. R. Ind. App. 274.—**IND.**

PART III. SECT. 37, SUB-SECT. 4.—B.

sm. *Payment to person purporting to be liquidator.*]—Where, after payment made to one purporting to be a liquidator, deft. discovered that the payee was not legally a liquidator:—*Held:* the doctrine of estoppel was not applicable.—Duncan & Gray, Ltd. *v.* Silver Spring Brewery, [1925] 4 D. L. R. 724; [1925] 3 W. W. R. 675.—**CAN.**

sp. *Liability for negligence—Sale of assets.*]—An unsecured creditor of a limited co., which had gone into voluntary liquidation & had been dissolved, sued the sole liquidator, in negligence, alleging, as a breach of duty to pltf., that the assets had been greatly in excess of the amounts secured thereon, & that the liquidator had sold the equity of redemption of the co. in those assets at a price far below its real value:—*Held:* pltf. had no right of action in negligence.—Franklin (Thomas) & Sons, Ltd. *v.* Cameron (1936), 36 S. R. N. S. W. 286; 53 N. S. W. W. N. 30.—**AUS.**

PART III. SECT. 37, SUB-SECT. 4.—C.

o i. —— *Whether in own name.*]—A receiver, as such, is not entitled to bring an action in his own name, since no property is vested in him. A liquidator of a co. in voluntary liquidation is not, as such, entitled to bring an action in his own name, but must do so in the name of the co.—Bolton & Downs Building Co., Ltd. *v.* Darling Downs Building Society, [1935] Q. S. R. 237.—**AUS.**

PART III. SECT. 37, SUB-SECT. 4.—D.

sp. *Increase by court.*]—Where the remuneration of a liquidator in a voluntary winding up has been fixed by a general meeting the ct. has power to increase that remuneration in a proper case.—*Re* Brighton Motors Pty., Ltd., [1932] V. L. R. 241; Argus L. R. 181.—**AUS.**

[1937] Ch. 115; [1936] 3 All E. R. 341; 155 L. T. 573; 53 T. L. R. 89; 80 Sol. Jo. 933; [1936–7] B. & C. R. 146.

6878a. Review—Voluntary winding-up superseded by compulsory order.]—Where a members' voluntary liquidation of a co. is superseded by compulsory liquidation, the ct. is empowered by r. 192 (1) of Cos. (Winding-up) Rules, 1929, to review the amount of remuneration fixed by the members of the co., during the voluntary liquidation, as payable to the voluntary liquidator.—*Re* MORTIMERS (LONDON), LTD., [1937] Ch. 289; [1937] 2 All E. R. 364; 106 L. J. Ch. 164; 157 L. T. 544; 53 T. L. R. 493; 81 Sol. Jo. 295; [1936–7] B. & C. R. 131.

6880a. Costs of opposing petition for compulsory winding up—Disallowed on taxation.—Allowed to voluntary liquidator.]—A co. passed a resolution for voluntary winding up Five days later a petition was presented by a creditor for a compulsory order, & a month later the usual compulsory order with the usual order as to costs was made. The voluntary liquidator appeared on the petition in opposition to it. On the taxation of costs the registrar disallowed certain items of costs incurred by the liquidator after the resolution but before the petition was heard, including the costs of consultations by the liquidator & of obtaining counsel's opinion. The solr. to the liquidator then brought in a further bill of costs, including items disallowed on the previous taxation, but allowable on a taxation between solr. & client:—*Held:* these costs, which were costs incurred by the liquidator in opposing a compulsory order, were properly allowed, in the discretion of the ct.—*Re* ADLER (WILLIAM) & CO., LTD., [1935] Ch. 138; 104 L. J. Ch. 58; 152 L. T. 251; 78 Sol. Jo. 898; [1934] B. & C. R. 150, C. A.

6895. *Add. Annotation:*—**Apld.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658.

6904a. —— —— By receiver—Liability of receiver.]—THOMAS *v.* TODD, No. 4979a, *ante*.

6916a. Order to produce books—Oppressive exercise of discretion.]—A co. issued two debentures to an associated co. to secure £2,000 & £4,000 respectively. The associated co. had guaranteed certain payments which might become due from the first co. Subsequently the first co. went into liquidation, & an order was made by the registrar upon the application of the liquidator for the attendance for examination of one of the directors of the associated co. The order, which was made under Cos. Act, 1929, s. 214, went on to order the director at the same time to produce the bank books of the co. & all statements of account & all documents showing a loan by the associated co. or relating to the circumstances of the issue of the debentures:—*Held:* (1) the proper way to contest the validity of that part of the order which ordered the production of documents was to move the ct. to discharge it, & not to attend & refuse production of the documents; (2) in so far as the order ordered the production of books & documents, it was, in the circumstances of this case, oppressive, & a wrong exercise of the discretion of the ct. under Cos. Act, 1929 (c. 23), s. 214 (3).—*Re* MAVILLE HOSE, LTD., [1938] 3 All E. R. 621; 159 L. T. 410; 54 T. L. R. 1056; 82 Sol. Jo. 625.

6916b. —— Motion to discharge.]—*Re* MAVILLE HOSE, LTD., No. 6916a, *ante*.

6922a. —— Premiums paid to company—In respect of ultra vires extension of objects.]—A joint stock co. was formed under a deed describing its business as life assurance. Resolutions of extraordinary general meetings were regularly passed & confirmed for extending the business to marine insurance. The marine business was mentioned in the annual returns to the registry office, & referred to in reports & circulars, & on one occasion a report on the marine business was sent out with the dividend warrants. A deed extending the purposes of the co. to sea risks was executed by some only of the shareholders; but it did not appear that any shareholder had objected to the marine business being carried on. About one & a half years after the commencement of the marine business the co. was wound up:—*Held:* (1) there was no such acquiescence by the shareholders as to entitle the holders of marine policies to prove in respect of them; (2) the premiums paid might be proved against the co.—*Re* PHŒNIX LIFE ASSURANCE CO., BURGES & STOCK'S CASE (1862), 2 John. & H. 441; 31 L. J. Ch. 749; 7 L. T. 191; 9 Jur. N. S. 15; 10 W. R. 816; 70 E. R. 1131.

Annotation:—**Consd.** Sinclair *v.* Brougham, [1914] A. C. 398.

6924a. —— Claim by manager for loss of salary.]—*Re* SNOW (W. R.) & CO., LTD. (1930), 74 Sol. Jo. 201.

6933. *Add. Annotation:*—**Refd.** *Re* White Star Line, Ltd., [1938] Ch. 458.

6934. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce. Co., [1930] 2 Ch. 293.

6936. *Add. Citations:*—130 L. T. 1; [1923] B. & C. R. 114; *affy.* S. C. *sub nom. Re* WEBB (H. J.) & CO. (SMITHFIELD, LONDON) LTD., [1922] 2 Ch. 369.

Add. Annotations:—**Refd.** *Re* Winget, Burn *v.* Winget, [1924] 1 Ch. 550; *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389, C. A.

PART III. SECT. 37, SUB-SECT. 8.

6936 i. *Preferential debts—Crown debts.*]—A co., which had given a mtge. to the Crown under Fruit Preserving Industry Act, 1913, which mtge. was transferred to the State Advances Account, went into voluntary liquidation:—*Held:* the Crown debt had priority.—TASMAN FRUIT PACKING ASSOCN., LTD. *v.* R., [1927] N. Z. L. R. 518.—N.Z.

—— **ii.** —— ——.]—C. A. S. E., Ltd., a co. incorporated in South Australia, went into voluntary liquidation in South Australia. The co. owed debts (*inter alia*) to the Department of Agriculture & the Railways Comr. in South Australia:—*Held:* in the winding-up, these debts took priority as owing to the Crown. The co. also owed debts to the Railways Comrs. of New South Wales & Queensland:—*Held:* in the winding-up, these debts were due to the Govts. of the two States, & were entitled to priority equally with the debts above mentioned. The co. also owed debts to officers who were carrying out their contracts of employment in New South Wales:—*Held:* in the winding-up, these servants were entitled to priority equally with the South Australian officers.—*Re* COMMONWEALTH AGRICULTURAL SERVICE ENGINEERS, LTD. (1928), S. A. S. R. 342.—AUS.

st. *Application of bankruptcy rules—Negotiable instrument.*]—Voluntary liquidation of a limited co. does not accelerate the due date of a negotiable instrument payable on a date subsequent to the commencement of the winding up, sect. 246 of the Cos. Act, 1908, making the rules in bkpcy. applicable in the winding up of insolvent cos.—*Re* MACKY, LOGAN CALDWELL, LTD., [1934] N. Z. L. R. 1034.—N.Z.

6936a. —— Deduction of income tax from payment of interest by company on mortgage.]—A co. having mortgaged all its property & assets, subsequently passed a resolution for voluntary winding up. Between the date of the mtge. & the commencement of the winding up the co. made no profits, but paid three several sums by way of interest on the mtge. less income tax. The co. never paid or accounted for such deductions of tax to the Inland Revenue Comrs. :—*Held :* inasmuch as such deductions could not be said to answer the description of a tax "assessed" on the co. within 1908 Act, s. 209 (1), the Crown could not be treated as having any preferential rights over other creditors in respect of it, & there was nothing in the language of the sub-sect. giving any priority to the debt.—*Re* LANG PROPELLER, LTD., [1927] 1 Ch. 120 ; 95 L. J. Ch. 516 ; 136 L. T. 48 ; 42 T. L. R. 702 ; 70 Sol. Jo. 836 ; 11 Tax Cas. 46 ; [1926] B. & C. R. 127, C. A.

6936b. —— Rates—Payment by director—Preferential rights of director.] — *Re* LAMPLUGH IRON ORE CO., No. 3105a, *ante.*

6943. *Add. Annotation :*—**Apld.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

6944a. ————.]—In Sept. 1925, certain premises were demised under two leases to a co., & each of the leases contained a personal covenant on the part of the co. as tenants, to pay the rent during the currency of the lease. In Jan. 1933, notice was given by the co. to determine the leases, with the result that they would come to an end at Michaelmas, 1938. In Jan. 1933, the premises

1933, the co. went into voluntary liquidation & the liquidator distributed its assets without making provision for future rent due under the leases. In an action brought by the lessors against the liquidator for a declaration that, in distributing the assets without making provision for the liabilities of the co. under the two leases, he had acted wrongfully & negligently & in breach of his duty as liquidator, & for damages :—*Held :* the liability was one which ought to have been admitted to proof by the liquidator under 1929 Act, s. 261, & he had committed a breach of his statutory duty under sect. 274 of the Act to pay or provide for the liabilities of the co., in not taking steps to have the value of the contingent liability ascertained, & he was liable in damages to pltfs.—JAMES SMITH & SONS (NORWOOD), LTD. *v.* GOODMAN, [1936] Ch. 216 ; 105 L. J. Ch. 70 ; 154 L. T. 113 ; [1934–5] B. & C. R. 283, C. A.

6947. *Add. Annotation :*—**Consd.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

6950a. —— Postponed to income tax on profits made by liquidator.]—A co. incorporated in 1907 owned & worked mines & transport facilities in Algeria under concessions from the French Govt. In Dec. 1925, the ct. sanctioned a scheme for the transfer to two French cos. of the whole of the co.'s undertaking & assets, except cash & assets sufficient to repay the co.'s preference share capital, & a resolution for voluntary liquidation was passed. The co.'s manager was appointed liquidator at a salary of £1,000 a year & its creditors were told that the liquidation was purely formal & they would be paid in full. The assets excepted from the undertakings to be acquired by the French cos. were not enough to repay the whole of the co.'s preference share capital &, under a provision in the scheme, payments on account amounting altogether to five shillings in the pound were made to preference shareholders in 1925 & 1926. Owing to various difficulties created by causes which included the general strike of 1926, the scheme could be carried out only by allowing the French cos. to work the mines & transport facilities by means of moneys which the co. provided by realising the ores. The amount of the disbursements which the co. had to make exceeded that produced by realising the ores, & from June, 1928, the liquidator could preserve the assets only by borrowing & by means of an overdraft granted by the co.'s bank. In 1929 an assessment under Sched. D of the Income Tax Act, 1918, was made on the co. for the year 1929–1930 ; in Mar. 1930, an assessment was made on it for the year 1926–1927 ; & in Oct. 1930, another assessment was made on it for the year 1929–1930. None of the amounts due under those assessments were paid. Before the liquidator had received the notice of the last assessment the co.'s mine had been closed down, & before the date of this summons the French cos. had gone into liquidation & the French liquidator on their behalf claimed & took possession of the assets in Algeria out of which the amounts due under the assessments could otherwise have been paid. Included in the disbursements made by the co. were sums which the liquidator had retained as remuneration & on account of travelling expenses. The liquidator stated in an affidavit that he had received no remuneration since 1931, that he had had no funds in hand since June, 1928, & that he had since Apr. 1931, spent all his assets to maintain himself & was practically destitute at the date of this summons :—*Held :* (1) income tax to which a co. has been assessed in respect of profits earned after the commencement of the winding up is not within the words " . . . fees & actual expenses incurred in realising or getting in the assets . . . " in rule 187, par. 1, of the Cos. (Winding up) Rules, 1909, but that income tax is part of the expenses of the winding up ; (2) when the assets of a co. in voluntary liquidation are insufficient to discharge its liabilities, the ct. has power, under sects. 171 & 196 of 1908 Act (now sects. 213 & 254 of 1929 Act), to make an order, in the exercise of its discretion, as to the payment thereout of the " costs, charges, & expenses " (including the

PART III. SECT. 37, SUB-SECT. 9.—A.

sn. *Restraint of distribution—At instance of lessor—Until covenant to build completely performed—Notwithstanding assignment of lease with consent of lessor.*]—*Re* VICTORIA STREET PROPERTIES, LTD. (IN VOLUNTARY LIQUIDATION), [1927] N. Z. L. R. 95.—N.Z.

PART III. SECT. 37, SUB-SECT. 9.—B.

6949 i. *Liquidator's remuneration & costs—Realisation of security belonging to debenture-holders.*]—The costs of a liquidator properly incurred by him in realising any property comprised in a security belonging to debenture-holders are payable out of the amount so realised upon such securities, but the remaining costs of the liquidator must be borne by the free assets, if any, of the co.—*Re* WILLIS C. RAYMOND, LTD. (IN LIQUIDATION), [1928] N. Z. L. R. 115.—N.Z.

liquidator's remuneration) in such order of priority as it thinks just, & that *prima facie* all the expenses ought to be paid before the liquidator's remuneration; (3) *semble:* the ct. in a proper case may authorise a liquidator to keep remuneration which he retained when he had no reason to believe that the co.'s assets would not be sufficient to discharge all costs, charges & expenses of the liquidation; in the present case the liquidator should be authorised to retain the remuneration received by him before the date of the notice of the assessment of Oct. 1930.—*Re* BENI-FELKAI MINING CO., LTD., [1934] Ch. 406; 103 L. J. Ch. 187; 150 L. T. 370; 78 Sol. Jo. 29; 18 Tax Cas. 632; [1934] B. & C. R. 14.

Annotation:—**Refd.** Wilson Box (Foreign Rights), Ltd. *v.* Brice, [1936] 2 All E. R. 452.

6956a. Priorities—Jurisdiction of court to settle.]—*Re* BENI-FELKAI MINING CO., LTD., No. 6950a, *ante*.

6958. *Add. Annotations:*—*As to* (1) **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52. *As to* (2) **Refd.** Naval Colliery Co. *v.* I. R. Comrs. (1928), 138 L. T. 593.

6960. *Add. Annotation:*—**Refd.** Knightsbridge Estates Trust, Ltd. *v.* Byrne, [1938] 2 All E. R. 444.

6965. *Add. Annotations:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144; *Re* Metcalfe (William) & Sons, Ltd. (1932) 48 T. L. R. 651.

6974. *Add. Citation:*—[1923] B. & C. R. 139.

6977. *Add. Annotations:*—*As to* (1) **Distd.** *Re* Madame Tussaud, [1927] 1 Ch. 657. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

6980. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52.

6984. *Add. Annotations:*—*As to* (1) **Expld.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. *As to* (3) **Foll.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594. **Refd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

6984a. —— —— Provision in articles for equal ranking with deferred shareholders.]—(1) The arts. of assocn. of a limited co. whose capital was divided into preferred & deferred shares provided that, subject to the difference in dividing the profits, the preferred & deferred shares should rank equally in the co., & that there should be no difference between a preferred & deferred shareholder in respect of his status & liability to the debts & engagements of the co. The articles also provided for the dissolution of the co. On the voluntary winding up of the co. under 1862 Act, s. 133:—*Held:* the two classes of shareholders were in the same position, & entitled to the capital *pro rata*.

(2) People who enter into these partnerships under articles of assocn., that is, articles of partnership, must be taken to have read them, & must be taken to have understood them, & if they are to be taken to have read them, & to have understood them, which they ought to do before entering into these contracts, they cannot complain if the contract is afterwards carried out (JESSEL, M.R.).—GRIFFITH *v.* PAGET (1877), 6 Ch. D. 511; 37 L. T. 141; 25 W. R. 821.

Annotations:—*As to* (1) **Consd.** Sheppard *v.* Seinde Punjaub & Delhi Rail. Co. & Abbott (1887), 56 L. J. Ch. 558; Bishop *v.* Smyrna & Cassaba Rail. Co., [1895] 2 Ch. 265. **Refd.** *Re* Bridgewater Navigation Co., Ltd. (1888), 39 Ch. D. 1.

6986. *Add. Annotations:*—*As to* (1) **Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Refd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

6987. *Add. Annotation:*—**Apld.** *Re* Dominion Tar & Chemical Co., [1929] 2 Ch. 387.

6988. *Add. Annotations:*—**Apld.** *Re* Dominion Tar & Chemical Co., [1929] 2 Ch. 387. **Refd.** Coulson *v.* Austin Motor Co. (1927), 43 T. L. R. 493.

6988a. —— —— —— No dividend declared.]—The memorandum of assocn. of a co. provided that in the event of a winding-up the preference shareholders should be entitled to receive in full out of the assets the amount of capital paid up on their shares, & also all arrears of dividend due thereon at the date of winding-up. A resolution was passed for the winding-up of the co. in Apr. 1925, at which date no dividends on the preference shares had been declared or paid for over four years past. After the winding up there was a surplus sufficient to pay arrears of dividend due:—*Held:* no dividends having been declared between 1921 & 1925, none were due, & the preference shareholders were not entitled to be paid anything in respect of arrears.—*Re* ROBERTS & COOPER, LTD., [1929] 2 Ch. 383; 98 L. J. Ch. 450; 141 L. T. 636; [1929] B. & C. R. 74.

6988b. —— —— —— —— Right to payment without deduction of income tax.]—Where upon the winding up of a co. the preference shareholders are entitled to payment of all arrears of dividend, & there is a fund available for payment, they are entitled to receive the full amount of the dividends in arrear without any deduction of income tax, in priority to any payment to the ordinary shareholders.—*Re* DOMINION TAR & CHEMICAL CO., LTD., [1929] 2 Ch. 387; 98 L. J. Ch. 448; 142 L. T. 15; 45 T. L. R. 601; [1929] B. & C. R. 71.

Annotation:—**Consd.** *Re* Home Grown Sugar, Ltd., [1938] Ch. 219.

6988c. —— —— —— ——.]—A co. formed to develop the sugar-beet industry with the assistance of a Govt. grant, entered into a contract with the Minister of Agriculture & Fisheries under which the Minister was to subscribe for & be allotted 250,000 shares of £1 each (being one-half of the capital of the co.) upon certain special conditions, the principal one being that for a period of ten

---

PART III. SECT. 37, SUB-SECT. 9.—D. (a).

6975 i. *As between different classes of shares—Right of preference shareholders.*]—*Held:* on the construction of a memorandum & arts. of assocn. in the event of a winding-up or liquidation of the co. the preference shareholders would be entitled to participate rateably with the ordinary shareholders in any distribution of surplus assets remaining after payment of the co.'s liabilities & repayment of all capital paid up on the preference & ordinary shares, since the provision in Art. 10 giving the preference shareholders a fixed cumulative preferential dividend & the right in the winding up of the co. to priority in payment of capital over ordinary shareholders was not an exhaustive statement of the rights of the preference shareholders, excluding any other right or privilege. Further, on construction of the memorandum & arts. on a distribution of surplus assets the preference shareholders were entitled to participate in such distribution *pro rata* with the ordinary shareholders.—CORK ELECTRIC SUPPLY CO., LTD. *v.* CONCANNON, [1932] I. R. 314.—IR.

years the Minister was to receive no dividend, but after that period a dividend of 5 per cent. *per annum* might be paid to him. Art. 10 of the arts. of assocn. provided that in the event of the winding-up of the co. any surplus assets were to be applied, firstly, in repayment to the shareholders (including the Minister) of the issued capital; secondly, in payment to the Minister or his nominees of a sum equivalent to the amount of dividend on the shares issued originally to the public, less the amount of dividend received on the shares held by the Minister or his nominees. The co. having gone into voluntary liquidation & there being surplus assets for distribution:—*Held:* the sum so payable was not the gross amount of the dividend before deduction of tax but the net amount actually received by the shareholders other than the Minister, after deduction of the appropriate amount of income tax.—*Re* HOME GROWN SUGAR, LTD., [1938] Ch. 219; [1938] 1 All E. R. 85; 107 L. J. Ch. 145; 158 L. T. 170; 54 T. L. R. 230; 82 Sol. Jo. 36; [1936-7] B. & C. R. 250.

6988d. —— —— —— & **repayment of capital.**]—A clause in a co.'s memorandum of association in force at the date of a resolution for voluntary winding up provided that the co.'s preference shares should confer the right to a fixed cumulative preferential dividend & to half the surplus profits for each year after payment (or provision for the payment) of a specified dividend on the co.'s ordinary shares, & that the preference shares should rank with regard both to dividends & to capital in priority to the ordinary shares. The co.'s arts. of assocn. in force at the date of the resolution for winding up provided (*inter alia*) that the co.'s profits which it should be determined to divide in any year should be applied, first, in paying a fixed cumulative preferential dividend to the preference shareholders, secondly, in paying a specified dividend to the ordinary shareholders, & thirdly, as to half in paying a further dividend to the preference shareholders, & as to half in paying a further dividend to the ordinary shareholders. The arts. further provided (*inter alia*) that capital paid up on shares in advance of calls upon the footing that it should carry interest should not while carrying interest confer a right to participate in profits, that the co. in general meeting might declare a dividend to be paid to the members according to their rights & interests in the profits, that no larger dividend should be declared than was recommended by the directors but that the co. in general meeting might declare a smaller dividend, & that no dividend should be payable except out of the co.'s profits or should carry interest against the co.

Dividends were paid on the preference shares up to & including the year ending Mar. 31, 1930, but not for the years ending Mar. 31, 1931, & Mar. 31, 1932, or for the period from Apr. 1, 1932, to Sept. 30, 1932, the date of the resolution for winding up. Certain preference shareholders claimed to be paid, out of the assets available for distribution, sums representing dividends on their shares for the period since Mar. 31, 1930, &/or otherwise to share in those assets in priority to any repayment of capital to the ordinary shareholders:—*Held:* on the true construction of the memorandum & articles of association, the preference shareholders were entitled, in priority to the ordinary shareholders, to payment of arrears of fixed cumulative preferential dividend & to repayment of capital.—*Re* WALTER SYMONS, LTD., [1934] Ch. 308; 103 L. J. Ch. 136; 150 L. T. 349; [1933] B. & C. R. 237.

6989. *Add. Annotations:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Folld.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594. **Consd.** *Re* Metcalfe (William) & Sons, Ltd., [1933] Ch. 142.

6989a. —— ——.]—A co. issued preference shares, which entitled the holders to a fixed cumulative preference dividend in priority to the ordinary shares, but not conferring any priority as regards capital. By the arts. of assocn. it was provided that subject to the rights of members entitled to shares issued upon special conditions the profits of the co. should be divisible among the members in proportion to the amount paid up on the shares held by them respectively. The co. was wound up voluntarily & the liquidator having paid all dividends & debts, & returned the whole of the paid-up capital to the shareholders, there remained surplus assets:—*Held:* (1) as long as the co. was a going concern the preference shareholders were entitled only to the preferential dividend, but on the voluntary winding up this preference was determined, & thenceforward the preference shares retained no preference or priority over the ordinary shares; (2) according to the constitution of the co. the *primâ facie* presumption in favour of equality of distribution amongst all the shareholders ought to obtain, & the surplus assets, including deposit interest, would be distributed amongst all the shareholders *pro rata* in proportion to the amount paid up on their shares.—*Re* MADAME TUSSAUD & SONS, LTD., [1927] 1 Ch. 657; 96 L. J. Ch. 328; 137 L. T. 516; 43 T. L. R. 289; [1927] B. & C. R. 112.

6989b. —— ——.]—By the memorandum & arts. of assocn. of a co. it was provided that the preference shares should "confer the right to a fixed cumulative dividend" at a certain rate, "& shall rank, both as regards dividends & capital, in priority to the ordinary shares." By the arts. it was provided in the same terms as to the dividends, & that the preference shares should "confer the right in a winding up to repayment of capital in priority to the ordinary shares":—*Held:* the full rights of the holders of preference shares, both as to dividends & capital, were delimited by the contract between them & the co., & they were entitled to no further rights; nothing being said in the contract as to surplus assets, in the event of a winding up they were not entitled to share in any surplus assets.—COLLAROY CO., LTD. *v.* GIFFARD, [1928] Ch. 144; 97 L. J. Ch. 69; 138 L. T. 321; [1927] B. & C. R. 217.

Annotations:—**N.F.** *Re* John Dry Steam Tugs, Ltd., [1932, 1 Ch. 594. **Dbtd.** *Re* Metcalfe (William) & Sons, Ltd.] [1933] Ch. 142.

6989c. —— ——.]—A co. was incorporated in 1909 with a capital of £25,000, divided equally into preference & ordinary shares of £10 each, a small proportion of which only

were fully paid. Under clause 5 of the articles of assocn. the preference shareholders were entitled (1) to a fixed cumulative dividend at the rate of 5 per cent. *per annum* on their paid up capital, & after payment of 5 per cent. on the ordinary shares to an additional one-half per cent. for each 1 per cent. in excess of 5 per cent. paid on the ordinary shares, & (2) to priority in the event of a winding up both as to the cumulative dividend & return of capital.

In 1929, the co. went into voluntary liquidation, & after payment of all debts & return to the shareholders of the capital paid up on their shares there was a surplus available for distribution of £10,000 :—*Held :* on a summons taken out by the liquidator, there being nothing in the articles to modify or exclude the normal right of the preference shareholders to share in the distribution of the surplus assets, they were entitled to rank *pari passu* with the ordinary shareholders in such distribution.—*Re* JOHN DRY STEAM TUGS, LTD., [1932] 1 Ch. 594 ; 101 L. J. Ch. 271 ; 147 L. T. 493 ; [1931] B. & C. R. 157.

6989d. —— ——.]—A co. incorporated in 1897 with a capital of £24,000 divided into preference & ordinary shares of £10 each, in 1928 passed a resolution for voluntary winding-up, having previously entered into a contract to sell the bulk of its business to another co. At the date of the commencement of the winding-up 800 preference & 1,400 ordinary shares had been issued fully paid. Preference dividends had been regularly paid, but since 1918 the profits had been insufficient to allow of any declaration or payment of dividend on the ordinary shares.

By clause 5 of the co.'s memorandum of assocn. it was provided that the preference shares should confer the right to a fixed cumulative dividend of 5 per cent. *per annum* on the capital paid up thereon, & should rank as to capital as well as dividends in priority to the other shares present & future. Art. 12 of the articles of assocn. provided that the initial capital should be divided into 1,000 preference shares of £10 each & 1,400 ordinary shares of £10 each, & that the preference shares should confer the right to a fixed cumulative dividend at the rate of £5 per cent. *per annum*, & the right in a winding-up to payment of capital in priority to all other shares. After payment off of debentures & all other liabilities & repayment of the paid-up capital to the shareholders, there remained surplus assets available for distribution to the value of £21,000, the bulk of which represented accumulated profits :—*Held :* the memorandum & articles could not be construed as either expressly or impliedly depriving the preference shareholders of their right as contributories to share in the distribution of these surplus assets *pari passu* with the ordinary shareholders.—*Re* METCALFE (WILLIAM) & SONS, LTD., [1933] Ch. 142 ; 102 L. J. Ch. 121 ; 148 L. T. 82 ; 49 T. L. R. 23 ; [1933] B. & C. R. 35, C. A.

6991. *Add. Annotation :*—**Reld.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

7001. *Add. Annotations :*—**Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Reld.** *Re* Stanton, [1928] 1 K. B. 464.

7007a. —— —— **Secured creditor—Debenture holder.**]—The holder of a debenture issued by a co. in 1930, & which was in voluntary liquidation under an extraordinary resolution passed on Dec. 23, 1935, made an application to the ct. under 1929 Act, s. 252, for a declaration that upon the true construction of his debenture the co. had charged with repayment to the debenture holder of the sum thereby secured all stock as therein defined, which was in the possession of the co. on Dec. 23, 1935, the date of the appointment by the debenture holder of a receiver & manager of the property thereby charged & all the machinery & loose plant which was at that date the property of the co. He further applied for an order that the liquidators should pay to him or to the receiver the proceeds realised by the sale of the said stock, machinery & plant. The debenture, which was dated Aug. 26, 1930, provided, *inter alia :* "The co. hereby charges with the said payments by way of floating charge, first, all stock in the possession of the co. which has been purchased, acquired or appropriated by the co. for the purpose of executing orders obtained by the co., for the delivery of piece goods to [the debenture holder] . . . &, secondly, all the machinery & the loose plant of the co." The registrar dismissed the summons upon the ground that the debenture holder was not a creditor within sect. 252. The liquidators contended that the property charged by the debenture was confined to property in the possession of the co. on Aug. 26, 1930, the date of the debenture :—*Held :* (1) the debenture holder, although a secured creditor, was a creditor within 1929 Act, s. 252, & was entitled to make the application ; (2) the property charged by the debenture included all property of the kinds described therein in the possession of the co. on Dec. 23, 1935.—*Re* PRIESTMAN (ALFRED) & CO. (1929), LTD., [1936] 2 All E. R. 1340 ; 80 Sol. Jo. 720.

7014a. —— **Validity of winding-up order in question.**]—The validity of a winding up cannot be questioned on a motion in the winding up, but must be challenged in independent proceedings.—*Re* EMPIRE BUILDERS, LTD., *Re* TRANSVAAL UNITED TRUST & FINANCE CO., LTD. (1919), 88 L. J. Ch. 459 ; 121 L. T. 238 ; 63 Sol. Jo. 608.

7022. *Add. Annotation :*—**Reld.** Craven *v.* Blackpool Greyhound Stadium & Racecourse, Ltd., [1936] 3 All E. R. 513.

7022a. —— **Appeal from liquidator's decision proper procedure.**]—A director of a limited co., which went into voluntary liquidation, put

---

PART III. SECT. 37, SUB-SECT. 10. s. 1. —— *To give directions to liquidator —What questions may be submitted.*]—*Re* HAMILTON & CO., LTD. (IN LIQUIDATION), [1928] N. Z. L. R. 419.—**N.Z.**

PART III. SECT. 37, SUB-SECT. 11.—C.

sm. *When stay ordered—Action for malicious prosecution.*]—P. commenced an action against deft. co. for malicious prosecution. Before the action could come on for hearing the co. went into voluntary liquidation. Thereafter, on the ground that no claim based purely on tort could be proved for in the liquidation of a co. unless it had been prosecuted to judgment before the resolution for liquidation was passed, the co. asked that the proceedings in the action should be stayed.—*Held :* the action should not be stayed. PAGE *v.* COMMONWEALTH LIFE ASSURANCE SOCIETY, LTD. (1936), 36 S. R. N. S. W. 85 ; 53 N. S. W. W. N. 21.—**AUS.**

in a proof in the liquidation in respect of arrears of salary & damages for dismissal. The liquidator allowed the proof. The director being dissatisfied with the amount awarded to him brought an action for damages against the co. in the King's Bench Division. The co. applied for a stay of the action on the ground that the director, if dissatisfied with the liquidator's decision, should appeal to a judge in the Ch. Div. The judge refused to stay the action. The co. appealed:—*Held:* (1) a creditor who has selected one method of having his claim adjudicated upon, which gives him the right to question the decision, ought not then to be in a position to select another method of adjudication; (2) in any event a decision in the action would have no result, as the liquidator's adjudication, until reversed by a judge in the Ch. Div.; (3) the action ought to be stayed.—CRAVEN *v.* BLACKPOOL GREYHOUND STADIUM & RACECOURSE, LTD., [1936] 3 All E. R. 513; 81 Sol. Jo. 14, C. A.

7034. For the paragraph in the original volume substitute the following paragraph:—

—— **Judgment after winding up—Right of company to recover money from third party based on company's liability to judgment creditor—No ground for not staying execution.**]—The manager of a co. fraudulently & without authority accepted bills of exchange in the co.'s name, & upon those bills the co. was sued to judgment by the holders. After the commencement of the action the co. went into voluntary liquidation. The co. subsequently recovered judgment in an action against a third party for damages for having wrongfully facilitated the commission of the above fraud, & for having thereby rendered the co. liable on the bills. The judgment creditors in the first action then sought to attach under a garnishee order the money so payable to the co. by the third party. On an application by the co. to stay the garnishee proceedings:—*Held:* where a judgment is recovered against a co. which is in voluntary liquidation the invariable practice of the ct. is to stay execution of the judgment unless there are very exceptional reasons for exercising its discretion otherwise, & the fact that the only right of the co. to recover the money claimed from the garnishees was based upon the co.'s liability to the judgment creditors was not such an exceptional circumstance as to take the case out of the general rule.—ANGLO-BALTIC & MEDITERRANEAN BANK *v.* BARBER & Co., [1924] 2 K. B. 410; 93 L. J. K. B. 1135; 132 L. T. 1; [1924] B. & C. R. 224, C. A.

Annotation:—**Consd.** Gerard *v.* Worth of Paris, Ltd., [1936] 2 All E. R. 905.

7036. After this case add:—

—— ——.]—*See, now,* 1929 Act, s. 268.

7037a. —— —— **Bank account in name of liquidator.**]—A co. went into liquidation under a resolution for a member's voluntary winding up. The liquidator summarily discharged its manageress, who sued the co. for wrongful dismissal & obtained judgment in default of defence. She applied for a garnishee order on a bank account in the name of the liquidator. There was no evidence of any other claims on the co. The master refused to make the order absolute, but the judge in chambers reversed his decision. The liquidator appealed:—*Held:* (1) this being a members' voluntary winding up, it must be taken that the co. was solvent, as there was no evidence to the contrary. There was therefore no question of all creditors being paid in full & the ct. might properly refuse to exercise its discretion to stay an execution, & make the garnishee order absolute; (2) the fact that the account was in the name of the liquidator was immaterial; (3) the liquidation did not in the circumstances dissolve the employee's existing contract with the co.—GERARD *v.* WORTH OF PARIS, LTD., [1936] 2 All E. R. 905; 80 Sol. Jo. 633, C. A.

7042. *Add. Annotation:*—**Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

7043a. —— —— **Preferential debts exceeding assets.**]—*Re* SOUTH RHONDDA COLLIERY CO. (1898), LTD., [1928] W. N. 126.

7043b. —— —— **Landlords directors of company.**]—Two directors of a co. were also the landlords of premises occupied by the co. Rent was 5¼ years in arrear. The landlords levied a distress upon the goods of the co., but the distress had not been completed when the co. passed a resolution for a voluntary winding up. The liquidator sought to prevent the completion of the distress:—*Held:* in the circumstances it was inequitable that the landlords should complete their distress. They should be allowed to proceed with the distress only to the extent necessary to meet two years' arrears of rent due, a figure based upon the sum which might have been allowed to accrue due, by a landlord who was not also a director of the co.—*Re* WINTERBOTTOM (LEEDS), LTD., [1937] 2 All E. R. 232; 81 Sol. Jo. 377.

7044a. —— ——.]—*Re* NATIONAL STORES, LTD. (1898), 42 Sol. Jo. 740.

7051. After this case add:—

—— —— ——.]—*See, now,* 1929 Act, s. 234 (1).

7056. *Add. Annotations:*—**Apld.** *Re* Walker's Settlement, Royal Exchange Assurance *v.*

PART III. SECT. 37, SUB-SECT. 11.—D.

q i. —— —— *Uncompleted by sale.*]—Where a co. is being wound up voluntarily, the general practice of the ct. is to grant an order staying execution of decrees against the co., except in very special circumstances.

A distinction must be drawn between a seizure under an English writ of *fi. fa.* & an attachment under Indian law. An attachment, which has not yet been completed by sale, cannot be treated as if the execution had been completed before the commencement of the winding-up without statutory provision to that effect analogous to the provisions of sect. 268 of English Cos. Act, 1929.—*Re* RAJBARI ICE FACTORY, LTD., I. L. R., [1937] 1 Cal. 632.—**IND.**

sp. *Power of court to order stay—Under Indian Companies Act,* 1913, *s.* 215.]—*Re* SRI YOGASHRAM PHARMACY, LTD. (IN LIQUIDATION), *Re* MOHAN LAL MEHTA (1927), I. L. R. 50 All. 482.—**IND.**

PART III. SECT. 37, SUB-SECT. 11.—E.

sq. *Order rejecting scheme—Appeal.*]—An appeal lies from an order rejecting a scheme of re-organisation both under sect. 202 of Cos. Act (VII. of 1913) & clause 13 of the Letters Patent.—DAWSON *v.* HORMASJI; BALDWIN *v.* HORMASJI (1932), I. L. R. 10 Ran. 438.—**IND.**

PART III. SECT. 37, SUB-SECT. 13.—A.

sr. *Trustee under voting trust agreement—Extent of powers of voting.*]—A trustee under a voting trust agreement, the object of which is the re-organisation of the co., has no right to vote upon bye-laws terminating the trust agreement.—*Re* FIRSTBROOK BOXES, LTD., [1936] 1 D. L. R. 92; O. R. 15.—**CAN.**

Walker, [1935] Ch. 567. **Consd.** *Re* West Yorkshire Partial Amalgamation (Coal Mines) Scheme (1935), 153 L. T. 167.

7064. *Add. Annotation :*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

7074. *Add. Annotations :* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Refd.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

7076. *Add. Annotations :*—**Consd.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567. **Refd.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

7082. *Add. Annotation :—As to* (1) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

7083. *Add. Annotation :* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

7102. *Add. Citation :*—130 L. T. 256.

7119a. 1929 Act, s. 155—Power to acquire shares of dissentient shareholders—When court will order.]—C. & Co., Ltd., made an offer to the shareholders in H. & Co., Ltd., to acquire their shares in the latter co. This offer was accepted by shareholders representing 99·62 per cent. of the total issued share capital of H. & Co., Ltd. The balance of ·38 per cent. consisted of 7,465 shares. Of these 4,665 were acquired compulsorily under 1929 Act, s. 155, by C. & Co. without objection by the holders. The remaining 2,800 shares, representing ·14 per cent. of the issued share capital of the co., were the subject of this application under sect. 155 for an order that resps., C. & Co., Ltd., were not entitled to acquire the shares of appcts. in H. & Co., Ltd. :—*Held :* where not less than nine-tenths of the shareholders in the transferor co. approve a scheme involving the transfer of the co.'s shares to a transferee co., *primâ facie* the offer must be taken to be a fair one, & the ct. will not " order otherwise " unless it is affirmatively established that, notwithstanding the views of a very large majority of shareholders, the scheme is unfair.—*Re* HOARE & Co., LTD. (1933), 150 L. T. 374.

7136a. —— —— **Discretion of court.**]—*Re* EUSTACE MILES FOODS (1921), LTD. (1934), 78 Sol. Jo. 238.

7155a. Exemption—Finance Act, 1927 (c. 10), s. 55—Issue of shares in transferee company to holders of shares in existing company—Issue to nominees.]—A new co. was formed for the purpose of acquiring from the " B." co. its property & assets. An agreement for sale was entered into on Oct. 22, 1928, by which the " B." co. agreed to sell & the new co. agreed to purchase all the undertaking & assets of the " B." co., the consideration being the allotment to the liquidator of the " B." co. or his nominees of 600,000 preference shares of the new co. of £1 each fully paid & 3,600,000 ordinary shares of the new co. of 1*s.* each fully paid. On Nov. 22, 1928, the appointment of the liquidator was confirmed, & he adopted the agreement for sale. On Oct. 22 about 26 shareholders in the " B." co. held the whole of the 120,000 shares in that co. On Nov. 22, 88,000 shares out of those 120,000 shares were held by the solrs. of the " B." co. as bare trustees for the transferors, who were, as to 45,500 shares, eight shareholders, & as to 42,500 shares, the purchaser of those shares from seven shareholders in the " B." co. Shares in the new co. were allotted to the registered holders of 11,200 shares of the " B." co. in respect of those shares. The holders of the remaining 108,800 shares of the " B." co. requested the liquidator of the " B." co. to procure the allotment of the shares in the new co. to which they were entitled to persons other than themselves, & the shares were so allotted by the new co. In the case of a considerable number of shares, exceeding 10 per cent. of the total consideration for sale to the new co. under the agreement for sale, they were allotted to persons who had agreed to purchase either shares of the " B." co. or shares of the new co. to which registered holders of shares in the " B." co. were entitled. As a consequence the first registered holders of shares in the new co. were to an extent far exceeding 10 per cent. of such shares, & far exceeding 10 per cent. of the total consideration for the sale, persons who were not holders of shares in the " B." co. The Comrs. of Inland Revenue held that the agreement for sale was liable to *ad valorem* duty under Stamp Act, 1891 (c. 39), s. 59 :—*Held :* the issue of shares to purchasers from, or other nominees of, holders of shares in the " B." co. was not the issue of shares to holders of shares in the " B." co. within Finance Act, 1927 (c. 10), s. 55, & therefore the new co. were not entitled to exemption under that sect.—BROTEX CELLULOSE FIBRES, LTD. *v.* INLAND REVENUE COMRS., [1933] 1 K. B. 158 ; 102 L. J. K. B. 211 ; 148 L. T. 116.

Annotations :—**Refd.** Murex, Ltd. *v.* I. R. Comrs., [1933] 1 K. B. 173 ; *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567.

7155b. —— —— —— ——.]—The I. C. I. co. were the holders of 79,900 shares of the P. co., & two persons were each the holders of 200 shares in the P. co. as the nominees of the I. C. I. co. The share capital of the P. co. was divided into 87,500 shares. The I. C. I. co. & their two nominees agreed to sell to the M. co. the 80,300 shares in the P. co., which they held in consideration of the allotment by the M. co. to the I. C. I. co. or their nominees of 30,000 ordinary shares in the M. co. The agreement & subsequent transfers were executed as part of a scheme for the amalgamation of the P. co. & the M. co. The I. C. I. co. & their two nominees

---

PART III. SECT. 37, SUB-SECT. 13.—E. (b).

st. *Whether member of old company.*]—In 1917 a deed to carry into effect a scheme of liquidation was drawn up, but it was never in fact registered nor executed, although its terms were actually carried out, in that the great majority of shareholders in the co. surrendered their shares & received others in exchange. In 1924 certain of these shareholders held a meeting & appointed two of their number as liquidators & attempted to assume the direction of the liquidation :—*Held :* the shareholders, who in 1917 had relinquished their shares, accepting shares in the other cos. in exchange, had ceased to be either shareholders or contributories & had no right to take any part in the management of the co.'s affairs.—HUNTER *v.* DAMODAR DAS (1924), I. L. R. 46 All. 759.—IND.

PART III. SECT. 37, SUB-SECT. 13.—E. (f).

o. Add " *revsd.* 1 O. L. R. 480."

p i. *On contract—To pay commission.*]—BETHEL *v.* AUTOMATIC TOTALISATORS, LTD. (1927), 28 S. R. N. S. W. 76 ; *affd.* 1 A. L. J. 386.—AUS.

sv. *On right of shareholder in old company—To contingent asset realised after reconstruction.*]—ANDERSON *v.* NOR-WEST MOTORS, [1929] 2 D. L. R.

executed three transfers by which they transferred to the M. co. three blocks of shares in the P. co. amounting in all to 800,300 shares, in consideration of the allotment of the M. co. to the I. C. I. co. or their nominees of 30,000 ordinary shares in the M. co. Subsequently the M. co., in accordance with a previous request, allotted those 30,000 shares to five nominees of the I. C. I. co. The Comrs. of Inland Revenue decided that the three transfers were liable to *ad valorem* duty under the heading "Conveyance or transfer on sale" in the First Sched. to the Stamp Act, 1891 (c. 59):—*Held:* the issue of the 30,000 shares in the M. co. to the five nominees of the I. C. I. co. was not the issue of shares to the holders of shares in the P. co. in exchange for shares held by them in the P. co. within Finance Act, 1927 (c. 10), s. 55 (1) (*c*) (ii.), & therefore the conditions laid down in that sect. for exemption from duty did not exist; although it was necessary to look at the surrounding circumstances in order to see whether there was an amalgamation of two cos. or a reconstruction of a co. within meaning of sect. 55, yet in considering whether a particular instrument executed in purported performance of such amalgamation or reconstruction was subject to stamp duty, or whether it was exempt from duty, regard could only be had to the terms of that instrument.—MUREX, LTD. *v.* INLAND REVENUE COMRS., [1933] 1 K. B. 173; 102 L. J. K. B. 219; 148 L. T. 164.

Annotation:—**Refd.** *Re* Walker's Settlement, Royal Exchange Assurance *v.* Walker, [1935] Ch. 567.

7158. *Add. Annotation:*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

7159. *Add. Annotation:*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

7161. *Add. Annotation:*—**Refd.** Soc. Anon. Pecheries Ostendaises *v.* Merchants Marine Insce., [1928] 1 K. B. 750.

7168. *Add. Annotation:*—**Refd.** Morris *v.* Harris, [1927] A. C. 252.

7169. *Add. Annotations:*—**Expld. & Distd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29. **Refd.** Morris *v.* Harris, [1927] A. C. 252; *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

After this case add:—*See, now,* 1929 Act, s. 296.

7169a. Agreement to transfer land & equitable interest—Vesting order.]—*Re* C. & H. CRICHTON (1921), LTD., [1932] W. N. 208; 174 L. T. Jo. 306.

7169b. —— Whether new trustee necessary—Trustee Act, 1925 (c. 19), s. 44, para. (ii) (c), s. 51 (1), para. (ii) (c).]—*Re* C. & H. CRICHTON (1921), LTD., [1932] W. N. 208; 174 L. T. Jo. 306.

7169c. 1929 Act, s. 296—Equity of redemption.]—In 1899 a limited co. mortgaged to the trustees of a will certain leasehold properties by way of absolute assignment subject to the equity of redemption. In 1910 the co. went into liquidation, & in 1913, the trustees having called in the mtge., the co. made default & the trustees appointed a receiver. In 1916 the co. was dissolved, the income of the property being at that time insufficient to meet the mtge. interest, & nothing was done in respect of the equity of redemption as the liquidator considered it to be of no value. The value of the property having since largely increased, the surviving trustee claimed to be entitled to the property absolutely, & the Crown claimed the equity of redemption as *bona vacantia:—Held:* (1) Cos. Act, 1929 (c. 24), s. 296, did not apply, as that sect. was not retrospective; (2) after the disappearance of the legal entity which had had the right of redemption the Crown was entitled to the property as *bona vacantia.* — *Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD, [1933] Ch. 29; 101 L. J. Ch. 346; 148 L. T. 5; 48 T. L. R. 617, C. A.

7169d. —— Whether retrospective.]—*Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD, No. 7169c, *ante.*

7174a. —— Mode of application for order.]—(1) Where a co. has been dissolved, & on the subsequent discovery of assets a motion is made under 1908 Act, s. 223 (1), to declare the dissolution void, notice of the motion ought to be given to the Treasury Solr., since on dissolution the undistributed assets pass to the Crown as *bona vacantia.* (2) Under sect. 242, as to removal of defunct cos. from the register, the same practice should be adopted where there are undistributed assets.—*Re* HOME & COLONIAL INSURANCE CO., LTD. (1928), 44 T. L. R. 718.

7176. *Add. Annotation:*—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

7177a. —— Effect of.]—An order of the ct., declaring the dissolution of a co. to have been void, does not affect the validity of proceedings taken during the interval between

---

175; 1 W. W. R. 804; 24 Alta. L. R. 90.—**CAN.**

PART III. SECT. 37, SUB-SECT. 14.—B.

sw. *Avoidance—Jurisdiction to order—For limited purpose only.*]—A co. went into voluntary liquidation, & was dissolved. Thereafter intimation was received from the Inland Revenue that a sum was repayable to the co. in respect of excess profits duty, & a petition was presented to the ct. by the co. & the liquidator for an order declaring the dissolution of the co. to have been void, for the purpose of the exercise by the liquidator of authority to receive the payment & to grant receipt therefor:—*Held:* it was incompetent under 1908 Act, s. 223, to declare the dissolution of a co. void for a limited purpose only. The petition was amended by the deletion of all reference to the purpose, & the ct. granted it as amended.—*Re* CHAMPDANY JUTE CO., LTD., [1924] S. C. 209.—**SCOT.**

sz. —— *Application more than two years after dissolution.*]—Eight years after a co. was dissolved by order of the ct., it was discovered that the liquidator had not dealt with a feu held by the co. The superior & the liquidator presented a petition craving the ct. to declare the dissolution void, & to authorise the liquidator to grant a disposition of the feu *ad perpetuam remanentiam* in favour of the superior. The ct. refused the order craved.—MACDONALD'S (LORD) CURATOR, [1924] S. C. 163-4.—**SCOT.**

sb. —— ——.]—A co. was dissolved for the purpose of reconstruction after the liquidator had entered into an agreement for the transfer of the assets, including certain heritable property, to a new co. The new co. entered into possession of the heritable property, but did not obtain a conveyance, & itself subsequently went into liquidation. More than two years after the dissolution of the old co., a petition was presented to the ct. by the liquidators of both cos. praying the ct. to declare the dissolution of the old co. to have been void, & to empower the liquidator of that co. to grant such titles as might be requisite to vest the heritable property in the new co. The ct. refused the order craved.—FORTH SHIPBREAKING CO., LTD., PETITIONERS, [1924] S. C. 489-90.—**SCOT.**

the dissolution & its avoidance.—MORRIS *v.* HARRIS, [1927] A. C. 252; 96 L. J. Ch. 253; 136 L. T. 587; [1927] B. & C. R. 65, H. L.

7203a. Charges of fraud on public.]—Where charges have been made against a co. of having committed frauds, not in any way connected with its promotion or formation, in its dealings with members of the outside public, not being dealings with shareholders as regards their membership in the co., the desirability of investigating such charges under a compulsory winding up is not a ground for saying that creditors will be "prejudiced by a voluntary winding-up" within sect. 145 of 1862 Act.—*Re* MEDICAL BATTERY Co., [1894] 1 Ch. 444; 63 L. J. Ch. 189; 69 L. T. 799; 42 W. R. 191; 38 Sol. Jo. 81; 1 Mans. 104; 8 R. 46.

7269. *Add. Annotation:*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

7290. For existing citation read following paragraph & citations & anno.:—

A creditor cannot obtain an order to continue a voluntary winding up under the supervision of the ct. unless he possesses all the qualifications required of a creditor petitioning for a compulsory winding-up order. Therefore, a debt incurred by a co. under an agreement entered into after it has gone into voluntary liquidation is no ground for a petition for a supervision order, although the voluntary liquidation & the agreement formed parts of one scheme.—*Re* BANK OF SOUTH AUSTRALIA, [1894] 3 Ch. 722; 64 L. J. Ch. 44; 43 W. R. 299.

Annotation:—**Dbtd.** *Re* Bank of South Australia, [1895] 1 Ch. 578.

7368. *Add. Annotation:*—**Refd.** *Re* Beni-Falkai Mining Co., [1934] Ch. 406.

7370. *Add. Annotation:*—**Refd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

7371a. —— Scheme involving reduction of capital —Modification of rights of different classes of shareholders.]—*Re* ODHAMS PRESS, LTD., [1925] W. N. 10.

7372. *Add. Annotation:*—**Refd.** *Re* Garner Motors, Ltd., [1937] 1 All E. R. 671.

7373. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

7373a. Arrangement between creditors & voluntary company "about to be wound up"—Meaning of.]—*Held:* (1) 1929 Act, s. 251 (1), applies only to an arrangement entered into during a voluntary winding-up or shortly before the passing of a resolution for a voluntary winding up; (2) a composition by a co. with its creditors, intended to make the co. solvent & therefore to prevent a voluntary winding up, is not an "arrangement" within the sect.

Qu.: whether the word "arrangement" in the sect. is intended to include a compromise.—*Re* CONTAL RADIO, LTD., [1932] 2 Ch. 66; 101 L. J. Ch. 377; 148 L. T. 109; 48 T. L. R. 458; 76 Sol. Jo. 359; [1931] B. & C. R. 255.

7373b. —— Whether compromise included.]—*Re* CONTAL RADIO, LTD., No. 7373a, *ante.*

7373c. Circulars—Sufficiency of.]—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., No. 7377a, *post.*

7373d. —— Duty of court to scrutinise.]—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., No. 7377a, *post.*

7374a. ——.]—*Re* STAR TEA COMPANY (1930), 69 L. Jo. 80; 169 L. T. Jo. 101; [1930] W. N. 4.

7377a. —— ——.]—In 1933, Dorman, Long & Co., Ltd., & South Durham Steel & Iron Co., Ltd. (hereinafter respectively called "Dormans" & "South Durham"), provisionally agreed that Dormans should acquire South Durham's undertaking & assets. Two schemes of arrangement were prepared, one between Dormans, its 5½ per cent. debenture stockholders & its shareholders, & the other between South Durham & its debenture stockholders & shareholders, each scheme being conditional on the ct.'s sanctioning the other before the end of 1933. On June 19, the ct. ordered that Dormans & South Durham should convene separate meetings of their interested debenture stockholders & of their classes of shareholders, to consider & if

---

PART III. SECT. 37, SUB-SECT. 15.—A. (b) ii.

sf. *Rule in India.*]—Petitioner prayed that the People's Bank of Northern India be wound up by the ct. It was contended by counsel for the Bank that the Bank should not be compulsorily wound up by the ct., & that the opinion of the creditors & shareholders in meeting, which had been consistently in favour of the present directors carrying on the liquidation, should be allowed to continue:—*Held:* the rule generally applied in England, should not apply strictly to India where limited liability cos. are in their infancy & shareholders & creditors easily misled. While the opinions of shareholders & creditors ought to be taken into consideration these classes of persons in India at present require to be protected against themselves.—MADAN GOPAL *v.* PEOPLES BANK OF NORTHERN INDIA (1935), I. L. R. 16 Lah. 1029.—**IND.**

PART III. SECT. 37, SUB-SECT. 15.—A. (b) iii.

sh. ——.]—*Held:* in the absence of proof that creditors' rights or those of the contributories would be prejudiced by the voluntary winding up, applications for compulsory winding up must be dismissed.—SANSAR CHAND *v.* KARAM CHAND (1925), I. L. R. 6 Lah. 340.—**IND.**

PART III. SECT. 37, SUB-SECT. 15.—A. (c).

sg. *Handing over of books by voluntary to compulsory liquidator—Lien of voluntary liquidator over books.*]—*Re* STOCKBRIDGE & CO., LTD., [1923] N. Z. L. R. 221.—**N.Z.**

PART III. SECT. 39, SUB-SECT. 1.—B.

t i. —— *Preferential treatment of creditor.*]—Where a co. proposed a scheme of arrangement, under which a bank appeared to be secured to the extent of 20*s.* in the pound:—*Held:* the scheme was not one which, in view of the apparent preferential treatment accorded to the bank, the ct. should sanction.—LAINIÈRE DE ROUBAIX *v.* GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.—**SCOT.**

t ii. —— *Views of preference shareholders not represented.*]—Co. arrangement refused sanction as not fairly & accurately representing the views of the preference shareholders.—*Re* LANGLEY'S, LTD., [1938] O. R. 123.—**CAN.**

t iii. —— *Proxies invalid.*]—Compromise or arrangement between co. & its shareholders refused sanction because of (*inter alia*) invalidity of proxies.—*Re* NATIONAL GROCERS CO., LTD., [1938] O. R. 142.—**CAN.**

st. *What court must consider.*]—On an application to sanction a scheme of arrangement it is the duty of the judge to ascertain whether all statutory requirements have been complied with, & whether it is fair & reasonable.—*Re* DAIRY CORPN. OF CANADA, LTD., [1934] O. R. 436; 3 D. L. R. 347.—**CAN.**

sw. ——.]—*Held:* it could not be found that the proposed plan of reorganisation & resolutions were incapable of being for the benefit of the co. or such that no reasonable men could consider them for the benefit of the co.; & therefore it could not be held that, if the majority shareholders should vote for such plan of reorganisation or resolutions, they would be abusing their powers & depriving the minority of their rights. Therefore, pltf. was not entitled to have an injunction restraining the co. from approving such plan of reorganisation or passing the resolutions on the ground of oppressiveness or an abuse of their powers by the majority shareholders.—CARR *v.* BRITISH COLUMBIA NICKEL MINES, LTD. (No. 2), [1937] 3 W. W. R. 61.—**CAN.**

thought fit approve the respective schemes, by letter enclosing a print of the scheme & a proxy in the form settled in chambers. On June 30, a circular signed by South Durham's secretary, a notice of the meetings, & forms of proxy settled in chambers, were sent to South Durham's debenture stockholders & shareholders. The circular stated (*inter alia*) that a revaluation of South Durham's assets had been made by its auditors & confirmed by two named gentlemen. The forms of proxy purported to appoint a certain person as proxy, leaving the donor of the proxy to write " for " or " against " before the words " the scheme." The meetings were to be held on July 19, & a note at the foot of the proxy stated that the proxy must be lodged not later than noon on July 15. On July 3 a circular signed by Dormans' secretary, notices of the meetings ordered by the ct. of its debenture stockholders & shareholders, proxies in the form settled in Chambers, & voting cards, were sent to Dormans' debenture stockholders & shareholders. The circular stated (*inter alia*) that the whole of Dormans' assets had been revalued upon the basis of their earning power & that the revaluation had been confirmed by two named gentlemen. These were the gentlemen who had confirmed the revaluation of South Durham's assets. The circular stated also that the trustees for the stockholders, after careful investigation, recommended the scheme for the stockholders' approval. It did not state the figures arrived at in the revaluation, nor did it state that, as was the fact, the trustees for the stockholders, who were a bank which had financed Dormans, stood to benefit by the scheme. The forms of proxy were substantially the same as those sent out with South Durham's circular, the date of the meetings being July 27, & the proxies being required to be lodged not later that 6 p.m. on July 25. Along the side of each voting card was written in red ink " If you are voting as proxy for other holder(s), please write the name of holder(s) on the back of this card." July 3 & July 10, H., a shareholder in South Durham, wrote to its shareholders criticising the scheme & asking them not to sign proxies in favour of it but to sign proxies against it which he enclosed with his second letter. At South Durham's meetings H.'s proxies were rejected as being in a form different from that settled in Chambers, & certain proxies also were rejected as having been lodged after the time fixed for lodging proxies. The chairman reported that, if H.'s proxies were excluded, the scheme would be carried by the requisite statutory majority, & that if they were admitted there would be a majority in number, but not the three-fourths' majority in value, in favour of the scheme. On July 19, a committee of debenture stockholders in Dormans who opposed the scheme, among whom was L., sent a circular to about half the total number of holders of £200 or more 5½ per cent. debenture stock, asking them to vote against it. Many replied that they wished to revoke the proxies they had lodged & vote against the scheme, but feared that it would be too late. At the meeting of Dormans' debenture stockholders, voting cards with the red ink sidenote on them were handed to those attending, & the chairman asked that they would record their votes on them. At the meeting certain proxies were rejected on the ground that they had been lodged after the time fixed for lodging proxies. The chairman reported that at all of Dormans' meetings resolutions approving the scheme without modification were passed. Petitions asking for the ct.'s sanction to the respective schemes came on for hearing on Nov. 22, Dormans' petition being opposed by the debenture stockholders, of whose committee L. was a member, & South Durham's by H. On the hearing of Dormans' petition L. stated in an affidavit that he had no instructions with his voting card, that by request he (L.) took a vote by show of hands on the chairman's refusing to do so & declared the resolution approving the scheme lost, & that the chairman left the room. The chairman gave evidence denying that he left the meeting before the vote was taken & another witness denied that the statements in L.'s affidavit about the meeting were accurate. The confirmation of the schemes by the ct. was sought under 1929 Act, sects. 153 & 154, sects. giving power to compromise with creditors & members & providing for facilitating reconstruction & amalgamation of cos. :—*Held:* (1) in determining whether a compromise or arrangement should be sanctioned, the ct. must be satisfied that the resolutions in favour of it are passed by the statutory majority in value & number, in accordance with 1929 Act, sect. 153 (2), & that the proposal is such as intelligent & honest members of the classes concerned, acting in respect of their own interests, would approve; (2) 1929 Act, sect. 153, gives a general right to vote by proxy, using any proper form of proxy, & the proxies need not be sent to the co.'s offices before the meeting; (3) directors who, pursuant to the ct.'s order, receive proxies for or against a scheme, must use them; (4) it is the ct.'s duty carefully to scrutinise complicated schemes &, in the circumstances, Dormans' circular was insufficient, & misleading in its reference to the approval of the scheme by the trustees for the stockholders, & should have stated the amount of the revaluation; (5) the description in South Durham's circular of the auditors' report as if it were a valuation of South Durham's assets was justified only if the report was prepared solely in order to ascertain the relative values of the assets of Dormans & South Durham, the opinions of South Durham's board were justified on an optimistic view, & the board had acted reasonably & in the best interests of those concerned.—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., [1934] Ch. 635; 103 L. J. Ch. 316; 151 L. T. 347; 78 Sol. Jo. 12.

Annotation:—Generally, **Reld.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

7382a. —— Scheme involving reduction, reorganisation & increase of capital.] — *Re* WALTERS (STEPHEN) & SONS, LTD., No. 839a, *ante.*

7385. *Add. Annotation:*—**Reld.** *Re* Oceanic Steam Navigation Co., [1938] 3 All E. R. 740.

7385a. —— Scheme ultra vires.]—An insolvent co. asked the ct., in the exercise of its jurisdiction under Cos. Act, 1929 (c. 23), ss. 153, 154, to sanction a scheme whereby its whole undertaking would be transferred to a

realisation co., all the shares of which were to be allotted to creditors of the co. As the memorandum of assocn. of the co. did not give the co. as a going concern power to sell or transfer its undertaking, objection was taken that the scheme was *ultra vires* the co. Objection was also taken on the ground that the scheme could not possibly benefit the shareholders, & that, therefore, the directors ought not to call in aid the machinery of sect. 153 for the benefit of the creditors without the creditors conceding some benefit to the shareholders. The scheme had been approved as required by the section:—*Held:* (1) in the absence of such a power in the memorandum, the scheme was *ultra vires* the co., & the ct. had no power to sanction the same under Cos. Act, 1929 (c. 23), ss. 153, 154; (2) as the jurisdiction under sect. 153 had been constantly exercised without regard to the interests of shareholders or classes of creditors having no interest in the assets of the co., no effect could be given to the second objection.—*Re* OCEANIC STEAM NAVIGATION CO., LTD., [1938] 3 All E. R. 740; 159 L. T. 457; 54 T. L. R. 1100; 82 Sol. Jo. 646.

7385b. Discretion of court as to acquisition of shares of dissentient shareholders—Terms must be adequate & reasonable.]—Upon a petition to sanction a scheme of arrangement & amalgamation under Cos. Act, 1929 (c. 23), s. 155, the ct. has power to determine the terms upon which the shares of shareholders who have dissented from the scheme approved by the majority shall be acquired, notwithstanding that since the original offer was made the scheme has been superseded by a later amalgamation which has absorbed the transferee co., & the fact that petitioners cannot offer to the dissentients the original shares accepted by the majority makes no difference to the jurisdiction of the ct., which is only bound to decide whether the terms offered are adequate & reasonable, & if not, to substitute such other terms of purchase as, in its discretion, are fair & just.—*Re* CASTNER-KELLNER ALKALI CO., LTD., [1930] 2 Ch. 349; 99 L. J. Ch. 453; 144 L. T. 26; 46 T. L. R. 592.

7391. *Add. Annotation:*—**Refd.** James Smith & Sons (Norwood), Ltd. *v.* Goodman, [1936] Ch. 216.

7398a. —— Acquisition of shares of—Discretion of court.]—*Re* CASTNER-KELLNER ALKALI CO., LTD., No. 7385a, *ante*.

7402. *Add. Annotations:*—*As to* (2) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635. **Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

7404a. —— Different classes of creditors—Meaning of.]—By sect. 2 of the Joint Stock Cos. Arrangement Act, 1870 (c. 104), where an arrangement is proposed between a co. in the course of being wound up & "the creditors of such co., or any class of such creditors," the ct. may order that a meeting of "such creditors or class of creditors" shall be summoned, & if a majority in number, representing three-fourths in value of "such creditors or class of creditors," agree to the arrangement, it shall, if sanctioned by an order of the ct., be binding on "all such creditors or class of creditors, as the case may be," & also on the liquidator & contributories of the co. The persons summoned to the meeting under the above sect. were the policy-holders of the co., & no separate meeting was summoned of those whose policies had, as distinct from those whose policies had not, matured:—*Held:* the insured persons whose policies had matured formed a distinct class of creditors from those whose policies had not matured; a separate meeting of such class ought to have been held under the Act in order to make the arrangement binding upon the members of that class; & the arrangement did not, therefore, operate as a release by deft. of his claim against pltfs.—SOVEREIGN LIFE ASSURANCE CO. *v.* DODD, [1892] 2 Q. B. 573; 62 L. J. Q. B. 19; 67 L. T. 396; 41 W. R. 4; 8 T. L. R. 684; 36 Sol. Jo. 644; 4 R. 17, C. A.

7404b. Objections to—Should be taken on petition for sanction.]—In proceedings under 1929 Act, sect. 153, for the sanction by the ct. of a compromise or arrangement between a

---

PART III. SECT. 39, SUB-SECT. 1.—D.

7387 ii. ——.]—The ct. refused to approve of a scheme of arrangement proposed by the insolvent debtor, an incorporated co., & accepted by a majority of its creditors, whereby the preferred & secured creditors were to be paid by debtor, & the unsecured creditors paid in full by the allotment & issue to them of fully paid-up preference shares in the debtor co. or in a new co. to be incorporated. The scheme was not one which should be forced upon an unwilling creditor.—*Re* LINDNERS, LTD. (1921), 64 D. L. R. 717; 51 O. L. R. 116; 2 C. B. R. 49.—**CAN.**

PART III. SECT. 39, SUB-SECT. 1.—E.

ai. *Object of scheme—Clarification of rights.*]—(1) The existence of reasonable doubts as to the rights of shareholders under the memorandum of assocn. of a co. is a ground warranting the ct. in sanctioning a scheme of arrangement the effect of which is to remove those doubts.

A limited co. consisted of three classes of shareholders, viz. A., B. & C., whose respective rights were determined by clause 5 of the memorandum of assocn. Questions having arisen as to the rights of the A. shareholders under clause 5, the co. proposed a scheme of arrangement by which clause 5 was to be replaced by a new clause, the effect of which was to determine exactly the rights of the A. shareholders:—*Held:* as the proposed scheme was one which would commend itself to a reasonable business man, it would receive the sanction of the ct.

(2) The unsuccessful objector then moved that the co. should be found liable for his expenses, on the ground that dissentient shareholders should not be discouraged from bringing to the notice of the ct. considerations which might reasonably influence the ct. in arriving at a right decision. The ct. refused this motion, but, on consent of petitioners, found no expenses due to or by either party in connection with the discussion on the objector's note.—EDINBURGH RAILWAY ACCESS & PROPERTY CO. *v.* SCOTTISH METROPOLITAN ASSURANCE CO., [1932] S. C. 2.—**SCOT.**

PART III. SECT. 39, SUB-SECT. 1.—F. (a).

7399 ii. —— —— ——.]—Where a bank, being a secured creditor, improperly voted with the unsecured creditors:—*Held:* in the absence of the bank as a voting creditor, the necessary three-fourths in value would not have been obtained, & the procedure had not complied with 1908 Act, s. 120(2).—LAINIÈRE DE ROUBAIX *v.* GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.—**SCOT.**

o i. —— *Majority necessary.*]—Under sect. 122 (2) of Cos. Act, 1934, which provides for the sanctioning of a proposed compromise or arrangement between a co. & its shareholders, the number of shareholders present in person or by proxy at the meeting & voting in favour of the arrangement must be three-fourths of the total number of shares of each class, not merely three-fourths of each class voting at the meeting unless the latter amounts to three-fourths of the total of the shares of each class of shareholders.—*Re* WESTERN GROCERS, LTD., [1936] 2 W. W. R. 81; 2 D. L. R. 762; *on appeal*, [1936] 3 W. W. R. 334. 4 D. L. R. 816.—**CAN.**

o ii. —— ——.]—Sect. 122 (2) of Cos. Act, 1934, is satisfied if shareholders holding three-fourths of the shares of each class held by shareholders present in person or by proxy at the meeting approve the proposed scheme; shareholders not present or represented by proxy should be disregarded.—*Re* PROVINCIAL APARTMENTS, LTD., [1936] 3 W. W. R. 327.—**CAN.**

co. & its creditors, or any class of them, EVE, J., said that the responsibility for determining what creditors are to be summoned to any meeting, as constituting a class, is the appct.'s, & if the meetings are incorrectly convened or constituted, or an objection is taken to the presence of any particular creditors as having interests competing with the others, the objection must be taken on the hearing of the petition for sanction, & the appct. must take the risk of having it dismissed.—PRACTICE NOTE, [1934] W. N. 142; 178 L. J. Jo. 28.

7407a. —— Omission to advertise—Sufficient majority present.]—Where there was an inadvertent omission to advertise a scheme of arrangement under 1908 Act, s. 120, but it was satisfactorily proved that thirty out of thirty-one shareholders of the co. had received the notices:—*Held:* the meetings had in substance been held in manner prescribed, & the ct. would not insist on further meetings being convened.—*Re* ANGLO-SPANISH TARTAR REFINERIES, LTD. (1924), 68 Sol. Jo. 738.

7408. *Add. Annotation:*—**Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

7409. *Add. Annotation:*—**Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

7409a. ——.]—(1) Proxy papers to be used at meetings to consider schemes of arrangement should follow the form settled by the judge, which empowers the proxy "to vote for me & in my name [ ] the said scheme either with or without modification as my proxy may approve," & contains opposite the blank a marginal note as follows: "If for, insert 'for,' if against, insert 'against,' & strike out the words after 'scheme' & initial alterations." Proxies not according to this form will be properly rejected.

(2) On a scheme of arrangement being sanctioned, the ct. refused to re-appoint the original trustees for the debenture-holders, it having been proved that they had refused to give information to the debenture-holders as to the trust estate, & had in fact acquired debentures from their *cestuis que trust* at inadequate prices, & not in their own names, but in the names of cos. controlled by them.

(3) Trustees for debenture-holders are in no different position from other trustees, except that, unlike many other trustees, they are remunerated for their services, & whether the mtgor. co. is a going concern, or whether the security is being realised for the benefit of debenture-holders, the conduct of the trustees is controlled by the same rules, subjected to the same restrictions, & measured by the same standards as are applied to other fiduciary agents (EVE, J.).—*Re* MAGADI SODA CO., LTD. (1925), 94 L. J. Ch. 217; 41 T. L. R. 297; 69 Sol. Jo. 365; [1925] B. & C. R. 70.

Annotation:—*As to* (1) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635

7409b. ——.]—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., No. 7377a, *ante*.

7409c. ——.]—At a meeting to consider a scheme of arrangement a number of shareholders had appointed proxies "to act for me at the meeting . . . for the purpose of considering &, if thought fit, approving, with or without modification, the proposed scheme of arrangement . . . & at such meeting or at any adjournment thereof to vote for me & in my name" either for or against the scheme. At the meeting a shareholder moved an amendment to the resolution approving the scheme that the consideration of the scheme should be deferred until after the publication of the accounts for the year. Upon a show of hands there was a majority in favour of the amendment, but the chairman demanded a poll, & using the proxies given to him, secured a majority to defeat the amendment:—*Held:* the form of proxy did not restrict the holder of the proxy, so far as voting was concerned, to voting either for or against the scheme of arrangement, & the chairman was entitled to use the proxies which he held to vote upon the amendment.—*Re* WAXED PAPERS, LTD., [1937] 2 All E. R. 481; 156 L. T. 452; 53 T. L. R. 676; 81 Sol. Jo. 397, C. A.

7410. *Add. Annotations:*—*As to* (2) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635. **Refd.** *Re* Imperial Chemical Industries, Ltd., [1936] Ch. 587.

7411a. Duty of directors to use.]—*Re* DORMAN, LONG & CO., LTD., *Re* SOUTH DURHAM STEEL & IRON CO., LTD., No. 7377a, *ante*.

7412. *Add. Annotation:*—**Refd.** Torrens *v.* I. R. Comrs. (1933), 18 Tax Cas. 262.

7415a. Release of joint debtor—Other joint debtors not released.]—Although an accord & satisfaction between a creditor & one of several joint & several debtors discharges the other joint & several debtors unless it appears from the terms of agreement or the surrounding circumstances that the creditor intended to reserve his right against them, yet when the debt of one of the joint & several debtors, being a co., is released by a scheme of arrangement in the liquidation of that co., that scheme does not release the other debtors. The scheme has a statutory operation & is quite different from an agreement signed by the parties, & it is not necessary for the scheme to reserve the rights of those debtors.—*Re* GARNER'S MOTORS, LTD., [1937] Ch. 594; [1937] 1 All E. R. 671; 106 L. J. Ch. 365; 157 L. T. 258; 81 Sol. Jo. 218.

7415b. Transfer of "property"—What included—Contract of personal service.]—In Jan. 1937, applt. entered into a written contract of service with a colliery co. to serve the co. as a coal-miner at their colliery. No notice to terminate the said contract was ever given to or by applt., & applt. did not enter thereafter into any written contract of service with any other person or co. On June 4, 1937, an order was made under 1929 Act, s. 154, transferring to resp. co. the property, rights

---

PART III. SECT. 39, SUB-SECT. 1.—F. (b).

sf. *Time for lodging.*]—Creditors' proxies need not be lodged at any particular date.

Where proxies lodged by creditors within forty-eight hours of a meeting to approve a scheme of arrangement had been disallowed:—*Held:* the rejection of the proxies was wrong.—LAINIÈRE DE ROUBAIX *v.* GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.—SCOT.

& liabilities of the colliery co., which was dissolved under sect. 153 of the Act. The order was duly published as directed by the ct., but did not in fact come to the notice of applt. Applt. duly worked at the colliery until Oct. 7, 1937, & received his wages, which were paid weekly by resp. co. as from June 4, 1937. On Oct. 7, 1937, applt. absented himself without cause from his work at the colliery, & resp. co. sustained a loss of not less than 15*s.* in consequence thereof. Applt. was charged, under Employers & Workmen Act, 1875 (c. 90), s. 4, with having wrongfully absented himself from, or neglected, the service of resp. co., who claimed the sum of 15*s.* for damages for breach of contract. Between the date of the issue of the summons & the day of the hearing before the justices, applt. continued to work for, & receive wages from, resp. co. The justices found that there had been a breach of contract, & ordered applt. to pay the damages claimed & costs. Thereupon this appeal was brought, & applt. contended, *inter alia*, that no contract of service existed between him & resp. co., & that the order of the ct. of June 4, 1937, could not & did not effect a transfer of a contract of personal service, which was by law incapable of assignment :—*Held :* the definition of "property" in 1929 Act, s. 154 (4), whereby it "includes property, rights & powers of every description," was wide enough to include rights connected with, or arising out of, contractual rights as to service, & therefore a contract of service did exist between applt. & resp. co. on Oct. 7, 1937, by virtue of the order of the ct. of June 4, 1937.

Per LORD HEWART, L.C.J. : for the purpose of this subject-matter, it is quite artificial to draw the distinction which is suggested between a contract for personal service & a contract of any other kind.—NOKES *v.* DONCASTER AMALGAMATED COLLIERIES, LTD., [1938] 4 All E. R. 6 ; 102 J. P. 492 ; 55 T. L. R. 1 ; 82 Sol. Jo. 853, D. C.

7440. After this case add :—

—— —— ——.]—*See, now*, 1929 Act, s. 295 (5).

7452a. Notice of motion to be given to Treasury Solicitor — Where undistributed assets.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 7174a, *ante*.

7452b. —— Filing of affidavit of notice.]—PRACTICE NOTE, [1931] W. N. 199 ; 172 L. T. Jo. 299.

Part IV.—Banking Companies.

7462a. —— —— Defences available—Liability for calls.]—*Assumpsit* on a money demand against a joint stock banking co. Plea, after setting out the deed of settlement, to which pltf. was a party, a set-off for calls due on shares held by pltf. Replication, "not indebted" :—*Held :* (1) the replication was bad, the set-off being founded entirely on the deed ; (2) the plea was good.—MILVAIN *v.* MATHER (1850), 5 Exch. 55 ; 1 L. M. & P. 220 ; 19 L. J. Ex. 227 ; 14 L. T. O. S. 446 ; 155 E. R. 24.

Annotation :—Generally, **Refd.** Smith *v.* Trowsdale (1854), 18 Jur. 552.

7479. *Add. Annotation :*—**Consd.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B 447.

7479a. ——.]—BARCLAY *v.* PEARSE (1884), *Times*, Aug. 4, C. A.

Annotations :—**Distd.** Perry *v.* Barnett (1885), 14 Q. B. D. 467. **Apld.** Seymour *v.* Bridge (1885), 14 Q. B. D. 460.

PART III. SECT. 40, SUB-SECT. 2.—A.

7449 v. —— ——.]—A co. formed for the purpose of money-lending, which, having discontinued business, had been struck off the register, applied for an order to have its name restored thereto, the main ground of its application being that it desired to recover from a bkpt. estate a dividend which had become payable since the date of striking off :—*Held :* the application should be granted.—CHARLES DALE, LTD., [1927] S. C. 130.—**SCOT.**

ci. —— *Dissolution of company on non-compliance with statutory formalities.*]—A co. which failed to comply with Cos. (Reconstitution of Records) Act (N.I.), 1923, & was thereupon dissolved, may be "replaced on" & "restored to" the register in accordance with sect. 5 (4).—*Re* CLONARD BRICK & ESTATE CO., LTD., [1926] N. 47.—**IR.**

si. *Effect of.*]—Where a co. has defaulted in complying with Cos. Act, ss. 80-85, & its letters patent have been revoked & cancelled, & the default can be waived by showing that it was due to inadvertence, accident or neglect, the revocation is not complete but conditional, &, on the revival of the charter, the co.'s existence must be considered to have been at no time interrupted. — BANQUE CANADIENNE NATIONALE *v.* SAWCHUK, [1926] 3 D. L. R. 964 ; [1926] 2 W. W. R. 771 ; 36 Man. L. R. 1.—**CAN.**

sp. ——.]—A co. which had been struck off the register was restored thereto by an order of the ct. which in pursuance of sect. 200 of Cos. Act, 1929, provided that it should be "without prejudice to the rights of parties acquired prior to the date" of the restoration but contained no further directions or provisions. The Act provided that the effect of an order for restoration was that "the co. shall be deemed to have continued in existence . . . as if it had not been struck off" :—*Held :* the Crown was not entitled to moneys which were on deposit in a bank to the co.'s credit at the date of the striking off & which were still held by the bank when the co. was restored. The "rights" protected by the "without prejudice" clause did not include such rights as the Crown's right to *bona vacantia*.—A.-G. FOR BRITISH COLUMBIA *v.* ROYAL BANK OF CANADA & ISLAND AMUSEMENT CO., LTD., [1936] 1 W. W. R. 108 ; 50 B. C. R. 268 ; *affd.*, [1937] 1 W. W. R. 273 ; 1 D. L. R. 637 ; *affd.*, [1937] S. C. R. 459 ; 3 D. L. R. 393.—**CAN.**

PART IV. SECT. 4.

ar. *Position of depositors.*]—If a co. is deprived of the power to receive money on deposit, then in a subsequent bkpcy. liquidation of the co. the depositors claiming for moneys on deposit prior to its losing such powers will be paid in full, before depositors claiming for deposits made after it lost such powers. Withdrawals made by one of the second class of depositors will be appropriated by the ct. to his deposits made before the loss of such powers.—*Re* NIPPON KINYN SHA, LTD., *Ex p.* TOTARO FUJINO, [1923] 1 D. L. R. 1156 ; 32 B. C. R. 56 ; [1923] 1 W. W. R. 880 ; 3 C. B. R. 973.—**CAN.**

Part V.—Insurance Companies.

7482. *Add. Annotation :*—**Reld.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

7482a. Power of company to vary rate of interest on loans to policy-holders.]—In an action by a policy-holder against an insurance co. for a declaration that the co. were not entitled to charge more than 4 per cent. interest on sums advanced on security of their policies, pltf. based his case on an alleged collateral contract or on established practice :—*Held :* there was no collateral contract, & the practice proved was to make loans at the rate of interest fixed by the board, & not to charge one fixed rate for all time.—THISELTON *v.* COMMERCIAL UNION ASSURANCE CO., [1926] Ch. 888 ; 95 L. J. Ch. 447 ; 136 L. T. 114 ; 70 Sol. Jo. 892.

7484a. Shareholders—Liability to execution.]—Affidavits of a director of the co. stating, that, on a certain day, the co. discontinued to carry on its business, & was wholly insolvent, & that its funds, property, & assets were & had since continued totally exhausted, & that there were no funds, property, or assets of or belonging to the co., or any other means whatsoever from or by which the pltf. could recover or enforce payment of the judgment-debt ; & of the sheriff's officer to whom a *fi. fa.* against the co. had been delivered for execution, stating that he went to the only place in London where the co. had carried on its business, & found the place deserted, & from information & personal inspection ascertained that they had no goods or property there :—*Held :* sufficient to entitled the judgment-creditor to execution against a shareholder under 7 & 8 Vict. c. 110, s. 68.—RIDGWAY *v.* SECURITY MUTUAL LIFE ASSURANCE SOCIETY (1856), 18 C. B. 686 ; 139 E. R. 1540.

7485a. Companies to which Assurance Companies Act, 1909 (c. 49), applies—Employers' liability insurance company—Carrying on business outside United Kingdom—What is.]—The above Act applies to employers' liability insurance business carried on in the United Kingdom, though the risks run, & the liability insured against, originated outside the United Kingdom, as sect. 33 (1) (*i*) of the above Act refers to the place where the business is carried on & not to the place where the risks are run, the act of issuing the policies constituting the carrying on or transacting business.—*Re* UNITED GENERAL COMMERCIAL INSURANCE CORPN., [1927] 2 Ch. 51 ; 96 L. J. Ch. 231 ; 136 L. T. 653 ; 71 Sol. Jo. 141, C. A.

Annotation :—**Reld.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922.

7485b. Liability of assets.]—A policy of insurance under the common seal of a joint stock co. contained the following proviso : " That the said policy, or any thing therein contained, shall in no case extend, or be deemed or construed to extend, to charge or render liable the respective proprietors of the said co., or any of them," etc., " to any claim or demand whatsoever in respect of the said policy or of the assurance thereby made, beyond the amount of their, his or her individual shares or share in the capital stock of the said co. ; but that the capital stock & funds of the said co. shall alone be charged & liable to answer all claims & demands by virtue of the said assurance, or incident thereto " :—*Held :* the terms of the policy precluded the assured from any remedy at law against individual shareholders ; &, consequently, that, after using due diligence to obtain satisfaction of a judgment recovered against the co. in an action on such policy, by execution against their property, he was not entitled to issue execution against an individual shareholder, under sects. 66 & 68 of Stat. 7 & 8 Vict. (c. 110), ss. 66, 68.—HALKET *v.* MERCHANT TRADERS' SHIP LOAN & INSCE. ASSOCN. (1849), 13 Q. B. 960 ; 19 L. J. Q. B. 59 ; 14 Jur. 222 ; 116 E. R. 1530.

7490. After this case add :—

—— **Company carrying on motor vehicle business.**]—*See* Road Traffic Act, 1930 (c.43), s. 42.

7490a. —— **" Policy on human life "—What amounts to.**]—The co., now in liquidation, in addition to ordinary life assurance business issued endowment policies consisting of assurances of sums of money maturing at the expiration of a stated number of years. Amongst other such policies the co. issued a form of certificate whereby in consideration of an annual premium it assured payment to the certificate-holder (which expression included his exors., administrators & assigns) of a fixed sum at a future date, subject to a condition that the legal personal representatives of any certificate-holder should be at liberty to surrender the certificate to the co. within six months of the death of the holder, in which case the co. should pay to them the total amount of all premiums then paid thereunder :—*Held :* looking to the option of surrender given to the legal personal

---

PART V. SECT. 1.

s1. *Grounds for granting or refusing licence—Whether company carrying on business in good faith.*]—*Re* ALL RISK INSURANCE AGENCIES, LTD. (B. C.), [1927] 3 D. L. R. 245 ; [1927] 3 W. R. R. 58.—**CAN.**

7483 i. *Power of directors to contract—Contract to stand surety for debt due by third party.*]—*Held :* not within the co.'s arts. of assocn.—HINDUSTAN ASSURANCE & MUTUAL BENEFIT SOCIETY, LTD., LAHORE *v.* KHALSA BANK, LTD., GUJRANWALA (1927), I. L. R. 9 Lah. 360.—**IND.**

sx. *Superintendent of insurance—Powers—To alter annual statement of company.*]—*Re* SUN LIFE ASSURANCE CO., [1927] 4 D. L. R. 287.—**CAN.**

sy. *Power to write off capital—Extent of power.*]—The power conferred by sect. 70 of Insurance Act, R. S. C., 1927 (c. 101), of writing off paid-up capital is not limited to the writing off of the precise amount of the lost capital.—*Re* CANADA NATIONAL FIRE INSURANCE CO., [1930] 3 W. W. R. 113 ; 4 D. L. R. 572 ; 39 Man. L. R. 188 ; 12 C. B. R. 21.—**CAN.**

PART V. SECT. 5.

sa. *British company doing business in Irish Free State.*]—A British insurance co. doing business in the Irish Free State after Dec. 1922, claimed not to be liable to make any deposits in the Irish Free State in consequence of Constitution & Adaptation of Enactments Act, 1922, art. 73, & External Cos. Adaptation Order, 1923, on the ground that the Act had been complied with in 1914, when deposits were made in England :—*Held :* the co. was bound to make such deposits in the Irish Free State.—WESTERN AUSTRALIAN INSURANCE CO., LTD. *v.* A.-G. & MINISTER FOR INDUSTRY & COMMERCE, [1926] I. R. 57 ; 59 I. L. T. 109.—**IR.**

representatives in case of the death of the holder, the form of certificate was a " policy on human life " within the statutory definition contained in Assurance Cos. Act, 1909 (c. 49), s. 30 (*a*), entitling the holder to resort to the statutory deposit in the liquidation of the co.—*Re* NATIONAL STANDARD LIFE ASSCE. CORPN., [1918] 1 Ch. 427 ; 87 L. J. Ch. 283 ; 118 L. T. 621.

7490b. —— **Reinsurance of fire risks.**]—The business of reinsuring fire risks is fire insurance business within Assurance Companies Act, 1909 (c. 49), & a foreign co., which carries on the business of reinsurance of fire risks in the United Kingdom, but does not otherwise carry on insurance business in England, is bound to deposit with the Paymaster-General the sum prescribed by s. 2 (1) of the Act.—FORSIKRINGSAKT. NATIONAL (OF COPENHAGEN) *v.* A.-G., [1925] A. C. 639 ; 94 L. J. K. B. 712 ; 133 L. T. 151 ; 41 T. L. R. 473 ; 69 Sol. Jo. 543 ; 30 Com. Cas. 252, H. L. ; *affg.* S. C. *sub nom.* A.-G. *v.* FORSIKRINGSAKT. NATIONAL (OF COPENHAGEN) (1924), 93 L. J. K. B. 679, C. A.

Annotations :—**Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922 ; *Re* National Benefit Assce., *Ex p.* English Insce., [1928] Ch. 74.

7490c. —— **Company carrying on accident insurance business—Charitable association.**]—The ct. held that the British Provident Assocn. for Hospital & Additional Services was not a co. carrying on accident insurance business within Assurance Cos. Act, 1909 (c. 49), s. 1 (c).—HALL D'ATH *v.* BRITISH PROVIDENT ASSOCN. FOR HOSPITAL & ADDITIONAL SERVICES (1932), 48 T. L. R. 240 ; 76 Sol. Jo. 111.

7493a. —— —— —— **By summons under R. S. C., Ord. 50, r. 2 (8).**]—*Re* CANADA LIFE ASSURANCE CO., [1929] W. N. 46 ; 167 L. T. Jo. 156.

7493b. —— —— —— ——.]—A co. carrying on a general insurance business deposited, under the combined provisions of Assurance Cos. Act, 1909 (c. 49), & Road Traffic Act, 1930 (c. 43), s. 42, & rules thereunder, securities to the value of £15,000 in respect of motor vehicle insurance. The securities so deposited increased in market value, & the co. sought to exchange them for other securities to the value of £15,000. The questions arose whether an application to the ct. should be made by petition or by summons in Chambers, & whether the co. had any such right :—*Held :* (1) if the £15,000 deposit had been made in cash, no variation could occur, &, therefore, if securities were deposited in lieu of cash, on the one hand the co. could not demand as of right to change those securities if they appreciated in value, nor, on the other hand, could the Paymaster-General demand further security in case of a depreciation in value of the securities deposited ; (2) if the application were to withdraw the securities, the application must be by petition to the ct., but if it were for a mere change of investment it must be by summons ; (3) in either case the Board of Trade must be consulted in the first place, & the ct. has discretion to pass such order as it may deem just in the particular circumstances.—*Re* GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPN., LTD., [1933] Ch. 349 ; 102 L. J. Ch. 98 ; 148 L. T. 451 ; 49 T. L. R. 107.

7493c. —— —— —— **Appreciation or depreciation of securities—Whether grounds for variation.**]—*Re* GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPN., LTD., No. 7493b, *ante*.

7493d. —— —— —— **Notice to Board of Trade.**]—*Re* GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPN., LTD., No. 7493b, *ante*.

7498. *Add. Annotation :*—**Refd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7500. *Add. Annotations :*—**Refd.** *Re* South East Lancashire Insurance Co., [1935] Ch. 225 ; *Re* Hearts of Oak Assurance Co., [1936] Ch. 558.

7500a. —— **Deposit by company carrying on motor vehicle business.**]—(1) The deposit of £15,000 made by a co. under Assurance Companies Act, 1909 (c. 49), as amended by Road Traffic Act, 1930 (c. 43), s. 42, is primarily applicable in satisfaction of claims under motor vehicle insurance policies issued by the co. in priority to the claims of its general creditors.

(2) The deposits dealt with in Road Traffic Act, 1930 (c. 43), s. 43, are primarily applicable for the payment of claims arising in respect of third party risks only, the £15,000 deposit being a security for the holders of policies coming within the motor vehicle insurance business.—*Re* SOUTH-EAST LANCASHIRE INSURANCE CO. (1932), 102 L. J. Ch. 27 ; 49 T. L. R. 25 ; 76 Sol. Jo. 815.

Annotation :—**Consd.** *Re* South East Lancashire Insurance Co., [1934] Ch. 374.

7500b. —— ——.]—In the winding up of an insurance co. carrying on motor vehicle insurance business, the deposit of £15,000 made by the co. with the Accountant-General of the Supreme Ct. under the Assurance Cos. Act, 1909 (c. 49), as amended by Road Traffic Act, 1930 (c. 43), s. 42, forms assets of the co. available for distribution among all its creditors generally, & is not primarily applicable to the satisfaction of the claims of the holders of motor vehicle insurance policies issued by the co.—*Re* SOUTH EAST LANCASHIRE INSURANCE CO., LTD., [1935] Ch. 225 ; 104 L. J. Ch. 158 ; 152 L. T. 245 ; 51 T. L. R. 143 ; 78 Sol. Jo. 859, C. A.

Annotation :—**Apld.** *Re* Hearts of Oak Assurance Co., [1936] Ch. 558.

7500c. ——.]—(1) Where a statutory deposit has been made by an assurance co., the policy holders of the class in respect of which the deposit was made & the general creditors of the co. whose claims arise in connection with the business of that class have, in a liquidation, a claim in priority to other creditors over the investments made by the co. representing that deposit.

(2) Where an assurance co. goes into liquidation the holder of an industrial policy entered into before the year 1924, must, before he can make a claim against the deposit made under Life Assurance Cos. Act, 1870 (c. 61), show that, if he is only admitted to prove against the deposit made under the Act of 1923 & against the general assets, he would

receive less than he would have received if the Act of 1923 had not been passed.—*Re* HEARTS OF OAK ASSURANCE CO., LTD., [1936] Ch. 558; 105 L. J. Ch. 211; 155 L. T. 407; [1937-7] B. & C. R. 65.

7508a. —— —— ——.] — *Re* UNITED BRITISH INSURANCE CO., No. 7526a, *post*.

7510a. Insurance companies—Separate funds—Distribution of surplus of one fund among members of society.]—In Assurance Companies Act, 1909 (c. 49), as applied to industrial life assurance by the Industrial Assurance Act, 1923 (c. 8), there is nothing to prevent a society, which is carrying on industrial life assurance as well as ordinary life assurance, from distributing among its members such part of the surplus of the industrial life assurance fund as it may be determined to distribute in accordance with the provisions of its rules.—WESLEYAN & GENERAL ASSURANCE SOCIETY *v.* A.-G., [1933] Ch. 591; 102 L. J. Ch. 145; 148 L. T. 403; 49 T. L. R. 140; 77 Sol. Jo. 48.

7526a. ——.]—Where an assurance co. having power under its memorandum of assocn. to transfer its business or any part thereof to another co. has agreed to transfer all its life business to another assurance co., & the proposed transfer has been sanctioned by the ct. upon a petition presented under Assurance Companies Act, 1909 (c. 49), s. 13, & all statutory requirements in connection with the transfer have been duly complied with, the effect is that all liability of the transferring co. towards its policy holders is completely discharged, & the ct. can order payment out of the deposit money to the transferring co.—*Re* UNITED BRITISH INSURANCE CO., [1929] 2 Ch. 430; 98 L. J. Ch. 444; 142 L. T. 12.

7536. *Add. Annotation:*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

7542a. —— —— —— ——.]—*Re* BRITANNIC ASSURANCE CO., LTD. & ASSURANCE COMPANIES ACT, 1909 (1927), 71 Sol. Jo. 729.

7549. *Add. Annotation:*—*As to* (1) **Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281.

7551. After this case add:—
——.]—*See* Assurance Cos. (Winding-up) Act, 1933 (c. 9).

7551a. Winding-up of reinsurer—Claim against insuring company—Set-off.]—By a treaty of reinsurance dated Apr. 13, 1920, between two insurance cos. the reinsurer accepted a share of all insurances accepted by or renewed by the insuring co. in its fire department. By Art. VIII. of the treaty the insuring co. was entitled to retain & accumulate out of money due to the reinsurer a sum equal to 40 per cent. of the share of all premiums credited to the reinsurer in the first year, this sum to remain as a deposit to secure the due performance of the reinsurer's obligation. The insuring co. was to be entitled to retain the deposit, or any balance remaining after satisfying any obligation in respect of which the reinsurer might make default, until the determination of the agreement, paying the reinsurer interest at 3½ per cent. *per annum* on any part of the deposit not used in manner aforesaid. By Art. IX. the agreement was immediately determinable by notice on the reinsurer going into liquidation. On Jan. 31, 1922, the reinsurer presented its own winding-up petition, & on Feb. 1, 1922, the insuring co. gave notice determining the agreement. On Feb. 14, 1922, a compulsory order was made for the winding up of the reinsurer. After all obligations under the treaty had been satisfied, there remained in the possession of the insuring co. a sum of over £8,000 out of the deposit & a sum of accrued interest. The liquidator of the reinsurer took out a summons for a declaration that the insuring co. was bound to pay over the deposit & interest in full. The insuring co. claimed to be entitled to set them off against sums due to it from the reinsurer under other treaties & policies of insurance & reinsurance:—*Held:* (1) the interest was a debt due from the insuring co. to the reinsurer & fell therefore within Bkpcy. Act, 1914 (c. 59), s. 31, as being one of a number of mutual credits or debts arising between the parties, & that there was therefore a right of set-off in regard to it; (2) the deposit being money handed over to the insuring co. for a specific purpose, the balance remaining after satisfying the specific purpose continued to be excluded from the course of account between the parties & could not be the subject of a set-off.—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD. (2), [1930] 2 Ch. 293; 99 L. J. Ch. 530; 143 L. T. 444; [1929-30] B. & C. R. 233, C. A.

7551b. Rights of creditors where different classes of business—Priorities.]—Assurance Cos. Act, 1909 (c. 49), s. 3, requires that separate accounts shall be kept of all receipts in respect of each class of assurance business, & shall be carried to, & form, a separate assurance fund with an appropriate name. By sects. 31 (*c*), 32 (*d*), these provisions do not apply to fire or accident business. An insurance co. carried on life assurance business, bond investment & endowment certificate business, motor, fire & general accident insurance business. At the time when an order was made for its compulsory winding up, it had creditors in connection with each of those classes of business, & also general creditors, & it was alleged that these funds had become so mixed up that it was impossible to allocate any asset to any particular fund:—*Held:* all the creditors of the co., in respect of whatever class of business their claims might be, were to rank *pari passu* against the assets of the co., except in so far as any particular assets could be traced to the life assurance fund or the bond investment fund respectively.—*Re* LONDON GENERAL INSURANCE CO., LTD., [1938] 3 All E. R. 748; 159 L. T. 585; 54 T. L. R. 1121; 82 Sol. Jo. 697.

7593. *Add. Annotation:*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

PART V. SECT. 8, SUB-SECT. 1.

a i. —— —— *Meaning of "liabilities" in Victoria.*]—On the proper construction of the sect. the "liabilities of the co. in Victoria" referred to in sect. 448 of Cos. Act, 1928, include a liability incurred elsewhere than in Victoria which is to be satisfied in Victoria.—*Re* FEDERAL BUILDING ASSURANCE CO., LTD., [1932] V. L. R. 301; Argus L. R. 324.—**AUS.**

PART V. SECT. 8, SUB-SECT. 4.—A.

c i. —— *Dominion Winding-up Act.*]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 1 W. W. R. 132.—**CAN.**

c ii. —— ——.]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 1 W. W. R. 1080.—**CAN.**

7600. *Add. Annotations:—As to* (1) **Expld.** *Re* Hearts of Oak Assurance Co., [1936] Ch. 558. *As to* (2) **Consd. & Apld.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7609. *Add. Annotations:* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Refd.** Hole *v.* Garnsey, [1930] A. C. 472.

7611a. —— **Former actuary—In receipt of pension.**] —On the resignation of the actuary & secretary of an insurance co. which, in addition to other branches of insurance business, carried on the business of ordinary life assurance, both by the issue of policies upon human life & by the granting of annuities upon human life, the directors passed a resolution granting him a pension. The co. was subsequently ordered to be wound up compulsorily, & the late actuary, having lodged a proof in respect of his pension, died before the proof was dealt with:—*Held:* that the annuity was an annuity within the meaning of the Assurance Cos. Act, 1909 (c. 49), & must be valued, as at the date of the winding-up order, in the manner indicated in that statute.—*Re* PROFITS & INCOME INSURANCE CO., [1929] 1 Ch. 262; 98 L. J. Ch. 155; 140 L. T. 526; [1929] B. & C. R. 17.

7612a. ——.]—*Held:* the liquidator had rightly rejected a proof, in that the contract in respect of which the proof of debt was advanced, was a contract of marine insurance & no stamped policy was issued as required by law, so that the contract was invalid.—ENGLISH INSURANCE CO. *v.* NATIONAL BENEFIT ASSURANCE CO. (OFFICIAL RECEIVER), [1929] A. C. 114; 98 L. J. Ch. 1; 140 L. T. 76; [1928] B. & C. R. 67, H. L.; *affg.* S. C. *sub nom. Re* NATIONAL BENEFIT ASSURANCE CO., *Ex p.* ENGLISH INSURANCE CO., [1928] Ch. 74, C. A.

Annotations:—**Distd.** *Re* Norske Lloyd Insce., [1928] W. N. 99. **Refd.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658; *Re* National Benefit Assurance Co., Ltd., [1931] 1 Ch. 46; Motor Union Insurance Co., Ltd. *v.* Mannheimer Versicherungs Gesellschaft, [1933] 1 K. B. 812.

7612b. —— **Effect of compromise under 1908 Act, s. 214, accepted & acted on by parties.**]—*Re* NORSKE LLOYD INSURANCE CO., LTD., [1928] W. N. 99.

7620. *Add. Annotation:*—**Consd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7622. *Add. Annotation:*—**Refd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7622a. —— ——.]—An insurance co. carrying on a marine & general insurance business but excluding from its objects (*inter alia*) fire insurance business, insured, through agents in Germany, a consignment of wool whilst in transit from quay to warehouse & whilst stored in a warehouse, against all damage or loss for one month. The policy was on a printed marine form in the German language, & the risks of fire & pilferage were included by indorsement. The policy was twice renewed whilst the wool was in storage upon payment of the same premium. After the second renewal a fire occurred causing serious damage to the wool. The owners claimed under the policy & recovered judgment in Germany, & afterwards in the King's Bench Division, suing on the foreign judgment.

The insurance co. having gone into liquidation, appcts. presented a proof for the amount of the judgment, but the liquidator rejected it:—*Held:* the policy, though on a marine form, was in substance one of fire insurance, the transit risks compared to the risk of fire in storage being relatively negligible, & therefore the policy was *ultra vires* the co., & the liquidator was right in rejecting it. The qualification of sect. 1 contained in Assurance Cos. Act, 1909 (c. 49), s. 28 (3), did not apply to the case.—*Re* ARGONAUT MARINE INSURANCE CO., LTD., [1932] 2 Ch. 34; 101 L. J. Ch. 217; 147 L. T. 350; 48 T. L. R. 331; 18 Asp. M. L. C. 306.

7623. *Add. Annotations:—As to* (1) **Consd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45. *Generally*, **Refd.** *Re* Parent Trust & Finance Co., [1936] 1 All E. R. 641.

7625. *Add. Annotations:*—**Distd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. **N.F.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

7626. *Add. Annotation:*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

7627. *Add. Annotations:*—**Overd.** *Re* City Life Assce. (1925), 42 T. L. R. 45. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339.

7627a. ——.]—A policy-holder in a life assurance co. borrowed money from the co. on his policy. Before the death of the assured the co. was wound up, & the policy was valued under Assurance Companies Act, 1909 (c. 49). The policy-holder claimed to set off the value of the policy against his debt:—*Held:* Bkpcy. Act, 1914 (c. 59), s. 31, applied, there having been at the date of the winding up contractual obligations the breach of which might give rise to a claim for damages provable in the winding up, & the policy-holder was entitled to set off the value of his policy against his debt.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., [1924] 2 Ch. 339; 94 L. J. Ch. 33; 132 L. T. 50; 40 T. L. R. 755; 68 Sol. Jo. 753; [1924] B. & C. R. 231.

Annotation:—**Apprvd. & Folld.** *Re* City Life Assce. Co. (1925), 42 T. L. R. 45.

7627b. ——.]—In the liquidation of a life insurance co. policy holders who have mortgaged their policies to the co. to secure advances are entitled under Bkpcy. Act, 1914 (c. 59), s. 31, as made applicable by 1908 Act, s. 207, to set off the statutory value of their policies in full against the money due on their mtges., if the co. held the mtges. at the date of the commencement of the winding up, but not if, before that

---

PART V. SECT. 8, SUB-SECT. 5.—A.

sg. Full amount insured—No right to repayment of premiums.]—In Jan. 1930, an order was made for the winding up of a life assurance co. In May, 1930, the official liquidator of the co. informed all policy-holders in the co. that the co. would not carry out its obligations under the policies. Between Jan. & May, 1930, certain policy-holders paid their premiums as they became due to the official liquidator. He placed the moneys so received in a special account. The policy-holders claimed that the moneys should be repaid to them. The liquidator now applied to the ct. for directions as to how he should deal with these moneys:—*Held:* the winding-up order did not determine the policies, & as by virtue of paying the premiums the policy-holders had become entitled to prove in the liquidation for the full amount insured, in the event of the policy maturing prior to repudiation they were not now entitled to the repayment of the premiums, &, therefore, the moneys should be retained by the liquidator as assets of the co.—*Re* FEDERAL BUILDING ASSURANCE CO., LTD. (1934), 34 S. R. N. S. W. 499; 51 N. S. W. W. N. 160.—**AUS.**

date, the co. had equitably assigned the mtges. to trustees to secure a trust fund for the payment of a certain class of the policies. —*Re* CITY LIFE ASSURANCE CO., LTD., [1926] Ch. 191; 95 L. J. Ch. 65; 134 L. T. 207; 42 T. L. R. 45; 70 Sol. Jo. 108; [1925] B. & C. R. 233, C. A.

Annotations:—**Refd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262; *Re* City Equitable Fire Insurance Co., [1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

Part VI.—Companies Registered Under Repealed Statutes.

7647a. —— Alteration in objects.]—*Re* HEWITT BROTHERS, LTD. (1931), 75 Sol. Jo. 615.

Part VII.—Unregistered Companies.

7650. *Add. Annotation*:—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

7663. *Add. Annotation*:—**Refd.** *Re* Russian & English Bank (1932), 48 T. L. R. 282.

7669a. —— —— Representatives of deceased members.]—An unregistered co. cannot be wound up under Cos. Act, 1862 (c. 89), s. 199, unless there are more than seven existing members at the date of the winding-up petition. Representatives of deceased members, trustees of bkpt. members, & past members, although liable to contribute to the debts of the co., are not members within the sect.—*Re* BOWLING & WELBY'S CONTRACT, [1895] 1 Ch. 663; 64 L. J. Ch. 427; 72 L. T. 411; 39 Sol. Jo. 345; 43 W. R. 417; 2 Mans. 257; 13 R. 125, C. A.

Annotations:—**Apld.** *Re* James *v.* Buena Ventura Nitrate Grounds Syndicate, Ltd. (1895), 11 T. L. R. 568. **Folld.** *Re* New York & Continental Line (1909), 54 Sol. Jo. 117. **Consd.** Llewellyn *v.* Kasintoo Rubber Estates, Ltd., [1914] 2 Ch. 670.

7669b. —— —— Trustees of bankrupt members.]—*Re* BOWLING & WELBY'S CONTRACT, No. 7669a, *ante*.

7687. *Add. Annotation*:—**Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505.

Part VIII.—Cost-Book Companies and Mining Companies in the Stannaries.

7723a. —— —— ——.]—COURTEIS *v.* JOHNSON (1853), cited 10 Exch. 242, n.; 156 E. R. 433.

Annotation:—**Refd.** Watson *v.* Spratley (1854), 10 Exch. 222.

7726. *Add. Annotation*:—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

7737. *Add. Annotation*:—*As to* (2) **Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

PART VII. SECT. 2, SUB-SECT. 1.

7654 1. *Power of court—Under Companies Acts — Discretionary.*] — The general partner in a limited partnership consisting of two members presented a petition for the winding up of the partnership by the ct. & for the appointment of a liquidator:—*Held*: although it was competent for the ct. to appoint a judicial factor to wind up a limited partnership, the averments of parties showed that questions as to the liability of the limited partner were likely to arise, & it was more expedient that the partnership should be wound up by the ct.—MUIRHEAD *v.* BORLAND, [1925] S. C. 474.—SCOT.

PART VII. SECT. 2, SUB-SECT. 2.—A.

7658 1. *"Unregistered company"—Benevolent society.*]—A co. & its directors instituted & endowed a benevolent society, which was not registered under Friendly Societies Act, 1896, & made it a condition in the contract of employment of its manual labourers that they should be members of the society. In addition to income derived from the endowment fund, further income was provided, in terms of the constitution, by the members paying small weekly sums to the society, which were deducted from their wages, & by the co. paying an equal amount. The members & their dependants were respectively entitled to sickness & death benefits. The management was vested in a committee which was elected by the members in annual general meeting. The co., having been bought up by a larger concern, went out of business, & the works were eventually closed down. A special meeting of the society was thereafter held, at which it was resolved to cease receiving contributions & paying benefits. Subsequently certain officers of the society presented a petition for the winding up of the society as an "unregistered co.":—*Held*: the society was not a "partnership, assocn., or co." within Cos. Act, 1908, Part VIII., s. 267, in respect that there was no contractual relation between the members *inter se*, &, accordingly, that it could not be wound up under the Act as an "unregistered co."—*Re* CALEDONIAN EMPLOYEES' BENEVOLENT SOCIETY, [1928] S. C. 633.—SCOT.

PART VII. SECT. 2, SUB-SECT. 2.—D.

7670 1. *Association of less than seven members—At date of petition.*]—*Held*: the ct. may not under Cos. Act, s. 271, order the winding up of an unregistered co. if it is composed at the date of the application for its winding up, of not more than 7 members.—V. E. R. M. CHETTYAR *v.* HORMASJI (J.) (1930), I. L. R. 8 Ran. 658, *revsg.* S. C. *sub nom. Re* INDIAN COMPANIES ACT, 1913 (1930), I. L. R. 8 Ran. 409.—IND.

Part IX.—Statutory Companies for Public Purposes.

7843a. —— **Capital expenditure out of reserve funds.**]—Sums expended by the railways upon capital works, & furnished by drawing upon their own undistributed profits, pension funds & reserves, are not additional capital " raised or provided " within Railways Act, 1921 (c. 55), s. 58 (1) (*b*). Therefore the companies are not entitled to include those sums as capital for the purpose of fixing the standard rates & charges necessary to produce the revenue sufficient to remunerate them upon their capital valuation.—*Re* STANDARD CHARGES SCHEDULE (1925), 94 L. J. K. B. 364; 132 L. T. 682; 89 J. P. 90; 41 T. L. R. 247; 69 Sol. Jo. 326; 23 L. G. R. 209; 18 Ry. & Can. Tr. Cas. 133, C. A.

7862. *Add. Annotation :—As to* (1) **Consd.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756.

7904a. —— ——.]—The ct. will not grant a rule under 8 & 9 Vict. c. 16, s. 36, for a *scire facias* against a party as a shareholder in a joint stock co., upon a judgment obtained against the co., unless the affidavits disclose reasonable grounds for believing that the party sought to be charged is a shareholder. The fact of his having applied for & received an allotment of shares, & paid a deposit thereon, is not enough.—EDWARDS *v.* KILKENNY & GREAT SOUTHERN & WESTERN RY. Co. (1863), 14 C. B. N. S. 526; 143 E. R. 526.

7953a. —— —— **Extent of statutory powers as to preference shares.**]—A statutory co. under its special Acts with which Part II. of the Cos. Clauses Act, 1863 (c. 118), was incorporated, issued certain preference shares. By the conditions endorsed on the certificates it was provided that, in the event of the co. being wound up, the holders of the preference shares should be entitled to have the surplus assets applied, in the first place, in repaying to them the amount paid up on their preference shares, but should not be entitled to any further participation in such surplus assets :—*Held :* Cos. Clauses Act, 1863 (c. 118), ss. 13, 14, limited a co. to which Part II. of that Act applied in respect of their powers to attach rights of dividend to their preference shares, but did not limit a co. in respect of their powers to attach other privileges; the privilege of having a priority as regards repayment of capital in a winding-up was a privilege which the co. was entitled to attach to the preference shares; &, consequently, the further condition restricting the holders of preference shares in the case of a winding-up to repayment out of the surplus assets of the capital paid up on such shares was not *ultra vires* & was not invalid. —WINDERMERE DISTRICT GAS & WATER CO. *v.* WHITEHEAD, [1931] 1 Ch. 558; 100 L. J. Ch. 147; 144 L. T. 636; [1929-30] B. & C. R. 276.

7956. *Add. Annotation :—As to* (2) **Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

8045. *Add. Annotations :*—**Distd.** Aylott *v.* West Ham Corpn., Sisson *v.* Same (1926), 95 L. J. Ch. 533. **Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602; Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

8091. *Add. Annotation :*—**Refd.** Lovibond *v.* Grand Trunk Ry. Co. of Canada, [1936] 2 All E. R. 495.

8126. *Add. Annotation :—As to* (2) **Refd.** Cotter *v.* National Union of Seamen [1929] Ch. 58.

8129. *Add. Annotations :—Generally,* **Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

8150. *Add. Annotation :*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

8176. *Add. Annotations :*—**Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

8179. *Add. Annotation :*—**Refd.** Worcester Corsetry, Ltd. *v.* Witting, [1936] Ch. 640.

8193. *Add. Annotation :—As to* (2) **Refd.** Central London Railway *v.* I. R. Comrs., London Electric Railway *v.* I. R. Comrs., Metropolitan Railway *v.* I. R. Comrs. (1934), 151 L. T. 333.

8207. *Add. Annotation :—As to* (3) **Refd.** Rhokana Corpn., Ltd. *v.* I. R. Comrs., [1938] A. C. 380.

8225. *Add. Annotations :*—**Consd.** Hartland *v.* Diggines (1924), 41 T. L. R. 131. **Refd.** Michelham's Trustees *v.* I. R. Comrs., Michelham (Lady) Exors. *v.* I. R. Comrs. (1930), 144 L. T. 163; Hamilton *v.* I. R. Comrs., [1931] 2 K. B. 495; Thompson *v.* Trust & Loan Co. of Canada (1932), 48 T. L. R. 209; Weight *v.* Salmon (1934), 151 L. T. 410; I. R. Comrs. *v.* National Mortgage & Agency Co. of New Zealand, Ltd., [1938] A. C. 524.

8243. *Add. Annotations :*—**Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Lee, Behrens & Co., Ltd. (1932), 48 T. L. R. 248.

8246. *Add. Annotations :*—**Refd.** Morris *v.* Harris, [1927] A. C. 252; *Re* Glyn Valley Tramway Co., [1937] Ch. 465.

8302. *Add. Annotation :*—**Distd.** Garrard *v.* James, [1925] Ch. 616.

8321. *Add. Citation :*—2 Macq. 391.

8325. *Add. Annotation :*—**Consd.** Consolidated Entertainment, Ltd. *v.* Taylor, [1937] 4 All E. R. 432.

8339. *Add. Citation :*—1 Macq. 461.

Add. Annotations :— **Apld.** *Re* Thomson, Thomson *v.* Allen, [1930] 1 Ch. 203; **Bell** *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

PART IX. SECT. 8, SUB-SECT. 5.—B.

b i. —— *Necessity for.*]—Where the directors of a railway co. at one meeting made several calls, payable at intervals of two months from each other :—*Held :* bad, for the calls cannot be made at less intervals than two months; & a stockholder who had paid the first call thus made, & then transferred his shares, was not responsible for the subsequent calls thus illegally made.—MOORE *v.* MCLAREN (1862), 11 C. P. 534.—**CAN.**

b ii. —— *How calculated.*]—Where calls on stock were to be made " at periods of not less than three months' interval," & one call was made payable on Aug. 10, & another on Nov. 10 :—*Held :* an interval of three months had not elapsed between the two calls, & that the second call was therefore bad.—STADACONA FIRE & LIFE INSURANCE CO. *v.* MACKENZIE (1878), 29 C. P. 10.—**CAN.**

8361. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

8365. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

8366. *Add. Annotation :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

8375. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Glyn Valley Tramway Co., [1937] Ch. 465.

8389. *Add. Annotations :*—*As to* (1) **Apld.** Garrard *v.* James, [1925] Ch. 616. **Consd.** *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536. **Refd.** Staffs Motor Guarantee, Ltd. *v.* British Wagon Co., [1934] 2 K. B. 305.

8390. *Add. Annotations :*—**Refd.** *Re* George Inglefield, Ltd., [1933] Ch. 1 ; *Re* Lovegrove, *Ex p.* Lovegrove & Co. (Sales), Ltd., *Re* Lovegrove, *Ex p.* Trustees, [1935] Ch. 464.

8412a. —— ——.]—*Re* MERSEY RY. CO., GIBBS *v.* MERSEY RY. CO. (1895), 11 T. L. R. 390.

8416. *Add. Annotation :*—**Consd.** *Re* Glyn Valley Tramway Co., [1937] Ch. 465.

8420a. As between lenders & unsecured creditors.]—A tramway co., created by private Act of Parliament incorporating the Cos. Clauses Acts, was closed down, &, after being registered as a limited co. under Part IX. of the Cos. Act, 1929, was voluntarily wound up. The liquidator took out a summons to determine (*inter alia*) the rights of debenture-holders as against unsecured creditors, & the extent of the charge created by the debentures :—*Held :* the tramway having altogether ceased to exist as a going concern, the debenture-holders were entitled to a charge on all the assets, including proceeds of sale of realised assets & uncalled capital, in priority to the claims of unsecured creditors.—*Re* GLYN VALLEY TRAMWAY CO., [1937] Ch. 465 ; [1937] 3 All E. R. 15 ; 106 L. J. Ch. 238 ; 157 L. T. 36 ; 53 T. L. R. 743 ; 81 Sol. Jo. 479 ; [1936-37] B. & C. R. 240.

8444a. —— ——.]—A receiver & manager was appointed of the undertaking of a tramways co.—BARTLETT *v.* WEST METROPOLITAN TRAMWAYS CO., [1893] 3 Ch. 437 ; 63 L. J. Ch. 208 ; 69 L. T. 560.

Annotation :—**Dbtd.** Marshall *v.* South Staffordshire Tram. Co., [1895] 2 Ch. 36.

8463. *Add. Annotation :*—**Refd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs., [1933] 1 K. B. 134.

8481a. —— Priority in winding-up—Validity.]—WINDERMERE DISTRICT GAS & WATER CO. *v.* WHITEHEAD, No. 7953a, *ante*.

8481b. Condition restricting rights of preference shareholders—Limitation to repayment out of surplus assets paid up on share—Validity.]—WINDERMERE DISTRICT GAS & WATER CO. *v.* WHITEHEAD, No. 7953a, *ante*.

8481c. Surplus assets — Distribution between original & surplus capital.]—No provision was made in the memorandum or articles of a statutory co., which had a capital of £10,000, either for the distribution of surplus assets in the event of a winding up or for dividends, except that the directors could declare a dividend to the members in proportion to their shares. In 1902 an order, which was confirmed by statute, was made providing for an increase of the capital to £18,000 by an issue of additional shares. The order provided that the undertakers should not make a larger dividend payment than one of 10 per cent. on the original capital & one of 7 per cent. on the additional capital. There was no provision with regard to the distribution of surplus assets & there was nothing else to distinguish the two classes of capital. In 1936 the co.'s undertaking was sold & the co. was wound up. A question arose as to the distribution of surplus assets in the hands of the liquidator after payment of the debts of the co. & after paying to the shareholders the amount paid up on their shares. The surplus assets represented *inter alia* the proceeds of the carrying on of the undertaking since the last dividend was declared & paid :—*Held :* (1) as no dividend had been declared by the directors before the winding up, the surplus assets could not be distributed partly as dividend & partly as capital ; (2) the surplus assets should be distributed *pari passu* between the holders of both classes of share capital.—*Re* SYSTON & THURMASTON GAS, LIGHT & COKE CO., LTD., [1937] 2 All E. R. 322.

Part XII.—Foreign Companies.

8510. *Add. Annotations :*—**Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255 ; A.-G. *v.* Belilios, [1928] 1 K. B. 798.

8512. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

8513. *Add. Annotation :*—**Refd.** Sturtevant Engineering Co. *v.* Sturtevant Mill Co. of U.S.A., Ltd., [1936] 3 All E. R. 137.

PART IX. SECT. 14, SUB-SECT. 1.

8370 i. *By issue of debentures—On completion of portion of railway—Issue before completion.*]—The B. & W. Ry. Co., whose borrowing powers were not to arise until a certain portion of their line should have been open for traffic, entered into an agreement with the S. & W. Ry. Co. that, if the latter co. would advance them a sufficient sum to enable them to complete that portion of the line, they, the B. & W. Co., would, when their borrowing powers arose, issue & deliver to the S. & W. Co. a sufficient amount of debentures to enable them to repay themselves the sum which they should so advance. In pursuance of this agreement, the S. & W. Co. paid, from time to time, the contractor's accounts, until the portion of the line required by the B. & W. Co.'s special Act to be open for traffic before the borrowing powers should arise was completed. The S. & W. Co. advanced in that way £12,000. The B. & W. Co.'s borrowing powers having arisen, they issued & delivered to the S. & W. Co. debentures to secure that advance :—*Held :* there was nothing illegal in that contract, & the debentures were valid to the extent of £12,000, the sum actually advanced.—*Re* BAGNALSTOWN & WEXFORD RY. CO. (1870), 4 I. R. Eq. 505.—IR.

PART X. SECT. 6.

sb. *Effect of Act respecting Capacity of Companies*, 1917 (c. 12).]—The above Act deals only with the capacity of cos. to exercise their powers, & does not enlarge the powers themselves.—*Re* NORTH WESTERN TRUST CO., *Ex p.* PURE OIL CO., LTD. (Man.), [1926] 1 D. L. R. 689 ; [1926] 1 W. W. R. 426 ; 35 Man. L. R. 433.—CAN.

PART XII. SECT. 4.

t. (top of p. 1200). Read now "**w.**"

w (p. 1200) **i.** —— *Company holding no licence in mortmain.*]—An insurance co., incorporated in a foreign State & holding no licence under Ontario

8514. *Add. Annotation:*—**Refd.** Gilbert *v.* Gilbert & Bougher (1927), 96 L. J. P. 137.
After this case add :—
—— ——.]—*See, now*, 1929 Act, s. 234 (1).

8520. *Add. Annotation:*—**Refd.** Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

8523. For the portion of the paragraph in the original volume commencing with " *Held:* " substitute the following paragraph :—
Held: (1) upon the construction of the decrees of the Soviet Govt., defts. had not proved that pltf. bank was dissolved or that the property in the bonds was no longer in the bank ; (2) it was not open to defts. to raise by way of defence to the action the objection that the London branch manager had no authority to bring the action in the name of pltf. bank, but they ought to have moved to strike out the name of the bank as pltf.—RUSSIAN COMMERCIAL & INDUSTRIAL BANK *v.* COMPTOIR D'ESCOMPTE DE MULHOUSE, [1925] A. C. 112 ; 93 L. J. K. B. 1098 ; 132 L. T. 99 ; 40 T. L. R. 837 ; 68 Sol. Jo. 841, H. L.

Annotations :—*As to* (1) **Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015. **Distd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd., [1933] A. C. 289. **Consd.** Russian & English Bank *v.* Baring Bros. & Co. (1932), 48 T. L. R. 193. *As to* (2) **Folld.** Banque Internationale de Commerce de Petrograd *v.* Goukassow, [1925] A. C. 150. **Consd.** The Jupiter (No. 2), [1925] P. 69 ; The Jupiter (No. 3) (1927), 137 L. T. 333. **Distd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308. **Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120 ; Shaw & Sons (Salfo'd), Ltd. *v.* Shaw, [1935] 2 K. B. 113. *Generally*, **Refd.** Banco de Bilbao *v.* Rey, [1938] 2 All E. R. 253 ; Deutsche Bank und Disconto Gesellschaft *v.* Banque des Marchands de Moscou (1938), 107 L. J. K. B. 386.

8523a. —— ——.]—A bank incorporated in Russia in 1911, with British shareholders holding a majority of the shares, established a branch in London under separate management in 1915. In 1917 the Bolshevist revolution took place, & the bank ceased to carry on any business in Russia, its last general meeting being held at Petrograd in June, 1917. In 1921 an action was commenced in the name of the bank by British shareholders to recover two sums of £100,000 & £80,000, forming part of a credit lodged by the former Russian Govt. with defts., an English bank, & alleged to have been assigned to pltfs. Pleadings were delivered, but the action lay dormant for several years, after which pleadings were amended & the A.-G. was added as a deft. At some uncertain date, either before or shortly after the action was launched, pltfs. were dissolved & ceased to exist as a corpn. at Russian law by virtue of a decree of the Soviet Government :—*Held:* on a procedure summons taken out by defts., the action must be stayed indefinitely, as pltfs. no longer existed either in Russia or in Great Britain.
Semble: although extinguished in the country of its origin, there is power in the ct. to wind up the English branch of a foreign corpn. as an unregistered co. under 1929 Act, s. 338.—RUSSIAN & ENGLISH BANK *v.* BARING BROS. & Co., LTD., [1932] 1 Ch. 435 ; 101 L. J. Ch. 157 ; 146 L. T. 424 ; 48 T. L. R. 193 ; 76 Sol. Jo. 68.

Annotations :—**Consd.** *Re* Russian & English Bank, [1932] 1 Ch. 663 ; Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120.

8523b. —— —— **Application for removal of stay —After making of winding-up order.**]—A Russian banking co., which had established a business in England, was dissolved by Soviet law before the coming into operation of 1929 Act. The co. was pltf. in an action which was stayed in 1932 by an order of the ct., pltf. co. being treated as having been dissolved. A compulsory winding-up order was subsequently made under sect. 338 of 1929 Act :—*Held:* 1929 Act, sect. 338 (2), did not operate to revive pltf. for the purposes of the action to which an end had been put by the order of the ct. or to avoid the dissolution brought about by the foreign law.—RUSSIAN & ENGLISH BANK *v.* BARING BROS. & Co., LTD., [1934] Ch. 276 ; 103 L. J. Ch. 111 ; 150 L. T. 353 ; 77 Sol. Jo. 913 ; [1933] B. & C. R. 213.

Annotation :—**Consd.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120.

8523c. —— ——.]—A foreign co. which after carrying on business in this country has been dissolved in the country of its incorporation may, notwithstanding its dissolution in that country, be wound up as an unregistered co. under 1929 Act, s. 338 (1), (2), although the dissolution took place before the passing of

---

Mortmain & Charitable Uses Act, but registered as authorised to do business in Ontario, applied to be registered as the transferee of a charge upon land :—*Held:* the co. was entitled to be registered without any qualification as to proceedings that might be taken under that Act or any other Act affecting the holding of land by corpns. —*Re* NEW YORK LIFE INSURANCE CO. (1924), 55 O. L. R. 408.—**CAN.**

q (p. 1200) **i.** —— —— *Burden of proof of status to carry on business.*]—LA SALLE EXTENSION UNIVERSITY *v.* FREEMAN (Man.), [1926] 3 W. W. R. 474.—**CAN.**

o. (p. 1202). Add " *revsd.* 56 S. C. R. 539."

g. (p. 1202) **i.** —— —— ——.]—NEWS PUBLISHING CO. *v.* ARMSTRONG STAGE & TAXI CO., [1933] 3 D. L. R. 568.—**CAN.**

PART XII. SECT. 5.

ss. *General rule.*]—In the absence of evidence of the law of the foreign state in question, the ct. cannot hold that a doctrine of English law applicable to a co. incorporated under local statutes applies to a co. incorporated under a foreign statute.—CLARK *v.* THOMAS J. GAYTEE STUDIOS INCORPORATED, [1930] 3 W. W. R. 89 ; 4 D. L. R. 1038. —**CAN.**

PART XII. SECT. 7, SUB-SECT. 1.—A.

ll. —— *Necessity for proof of incorporation.*]—The provisions of Cos. Act, 1933, requiring foreign cos. to be registered & licensed in Saskatchewan before commencing to carry on business therein do not prevent an unregistered foreign co. from suing in the province on a contract made out of the province with respect to property situate outside of the province ; but the pltf. foreign co. must prove its incorporation under the laws of the country in which it alleges it is incorporated.
A certificate, purporting to be under the hand & seal of the Secretary of State for a certain state of the United States of America, to the effect that the document attached thereto contains a true & correct copy of the charter of the pltf. co. is not receivable in evidence to prove that the co. is incorporated in that state. But applying K. B. rule 343, leave was given pltf. to establish its incorporation by an affidavit of said Secretary of State or of some official connected with his office who can testify as to the incorporation & verify an examined copy of the charter.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1; 4 D. L. R. 699.—**CAN.**

n i. ——.]—The Supreme Ct. of New South Wales has no jurisdiction to entertain an action against a co. registered & carrying on business wholly outside the State & Service & Execution of Process Act, 1901–1928 (Cth.), does not extend its jurisdiction. —BRAEMAR WOOLLEN MILLS CO-OP., LTD. *v.* POINSETTIA HOSIERY MILLS PTY., LTD. (1934), 51 N. S. W. W. N. 16.—**AUS.**

ss. *Action by creditor—Liquidation in country of domicil.*]—A liquidation in the country of domicil of a co. registered in New South Wales as a foreign co. gives this ct. no jurisdiction to interfere with the rights of creditors in this State.—PRIMARY PRODUCERS BANK OF AUSTRALIA, LTD. *v.* HUGHES (1931), 48 N. S. W. W. N. 240.—**AUS.**

that Act; &, with the leave of the Registrar in Cos. Winding-up, on the instruction of the liquidator with the approval of the committee of inspection, an action may be brought in the name of the foreign co. to recover sums which at the date of its dissolution were due to the co. & unpaid.—RUSSIAN & ENGLISH BANK & FLORANCE MONTEFIORE GUEDALLA *v.* BARING BROS. & CO., LTD., [1936] A. C. 405; [1936] 1 All E. R. 505; 105 L. J. Ch. 174; 154 L. T. 602; 52 T. L. R. 393; [1936–7] B. & C. R. 28, H. L.

8523d. —— ——.]—By a decree dated June 20, 1936, the Italian government purported to dissolve the Bank of Ethiopia. The Emperor Haile Selassie had left Abyssinia on May 1 or 2, 1936. In an action begun on Sept. 29, 1936, the Bank of Ethiopia made claims against the National Bank of Egypt (its correspondent in Cairo & London), & against the liquidator appointed pursuant to the Italian decree. In the action direction was made for the trial of the issue whether the Bank of Ethiopia had been dissolved or had otherwise ceased to exist by virtue of the laws of the country under the laws whereof it was incorporated, or, if it had not so ceased to exist, whether the action had been brought with its authority. On Apr. 28, 1937, the Emperor Haile Selassie, in England, signed a decree purporting to empower all cos. incorporated under Ethiopian law to hold valid meetings of their members & of their councils of administration & to carry on business outside Abyssinia. On Apr. 29, 1937, the issue came before the Ct. for trial. During the hearing there was put before the ct. a certificate from the Foreign Office showing that the British government, in Dec. 1936, recognised the Italian government as being in fact (*de facto*) the government of the area of Abyssinia then under Italian control:—*Held:* (1) the decree of June 20, 1936, was made by a *de facto* government having the occupied territory completely under its control & therefore under its full governmental authority; (2) the action could not be held to have been authorised by the Bank of Ethiopia, as it had not been brought by the liquidator's authority.

Semble: a *de facto* government has necessarily full responsibility, & its acts have the status of acts of a government with full responsibility.—BANK OF ETHIOPIA *v.* NATIONAL BANK OF EGYPT & LIGUORI, [1937] Ch. 513; [1937] 3 All E. R. 8; 106 L. J. Ch. 279; 157 L. T. 428; 53 T. L. R. 751; 81 Sol. Jo. 479.

Annotations:—**Consd.** Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 677. **Reid.** Banco de Bilbao *v.* Rey, [1938] 2 All E. R. 253.

8524. For the paragraph in the original volume substitute the following paragraph:—

—— ——.]—A Russian bank having a head office in Petrograd & a branch in Paris had, through its Paris branch, a series of financial transactions with a customer as the result of which the customer was largely indebted to the bank. In 1920 the Paris manager brought an action in the name of the bank against the customer to recover the amount of the debt. Deft. pleaded that by virtue of the nationalisation of the Russian banks under decrees of the Soviet Govt. pltf. bank had ceased to exist, & that no one had authority to sue in the name of the bank:—*Held:* the case was governed by *Russian Commercial & Industrial Bank* v. *Comptoir d'Escompte de Mulhouse*, No. 8523, *ante*, & the defence failed.—BANQUE INTERNATIONALE DE COMMERCE DE PETROGRAD *v.* GOUKASSOW, [1925] A. C. 150; 93 L. J. K. B 1084; 132 L. T. 116; 40 T. L. R. 837; 68 Sol. Jo. 841, H. L.

Annotations:—**Distd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65. **Consd.** Russian & English Bank *v.* Baring Bros. & Co. (1932), 48 T. L. R. 193. **Reid.** The Jupiter (No. 3) (1927), 137 L. T. 333; Russian & English Bank *v.* Baring Bros. & Co., [1936] 1 All E. R. 505; Gackwar Baroda State Railway *v.* Habib-Ul-Haq (1938), 107 L. J P. C. 46.

8527a. —— —— **Whether company in existence.**]—A Russian insurance co., having its principal office in Petrograd & a branch office in London, in accordance with 1908 Act, s. 274, filed with the registrar the name of C. as its authorised representative to accept service of process on its behalf. By a series of decrees passed in 1918 the Soviet Govt. purported to put all insurance cos. in Russia into liquidation & to appropriate their property. In the spring of 1923 C. sent a notice to the registrar that the co. which he represented had ceased to exist, & at his request this notice was placed upon the file. In the summer of the same year resps. brought an action against the co. by specially indorsed writ for payment of a sum of money claimed to be due to them in respect of certain insurance transactions. The writ was served upon C., who protested that he had no power to act for the co., & judgment was signed in default of appearance:—*Held:* (1) at the date of the writ the co. had not ceased to exist by virtue of the decrees of the Soviet Govt.; (2) the service of the writ on C. was valid; (3) the co. by putting on the file the name of a person authorised to accept service of process on its behalf agreed to submit to the jurisdiction of the ct., & it must be assumed that the Russian Govt. would, according to the comity of nations, recognise the judgment as effective.—EMPLOYERS' LIABILITY ASSURANCE CORPN. *v.* SEDGWICK COLLINS & CO., [1927] A. C. 95; 95 L. J. K. B. 1015; 42 T. L. R. 749; *sub nom.* SEDGWICK COLLINS & CO., LTD. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, 136 L. T. 72, H. L.; *affg.* S.C. *sub nom.* SEDGWICK COLLINS & CO. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1, C. A.

Annotations:—*As to* (1) **Consd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94. **Reid.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922. *As to* (3) **Apld.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495. *Generally*, **Reid.** The Jupiter (No. 3) (1927), 137 L. T. 333; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

8527b. —— **Company extinct—Judgment by default—Garnishee proceedings—Invalid.**]—On Oct. 29, 1930, a writ was issued by applts. against a Moscow bank, hereinafter called the Industrial Bank, claiming £362,396 15*s.* as a debt & interest; an affidavit was sworn on which an order was made for service of notice of the writ on the Industrial Bank at Moscow. On Nov. 24, 1930, judgment was entered for applts. in default of appearance. On Nov. 28, 1930, applts. received a letter from the Soviet Embassy, dated Nov. 27, 1930, returning the notices of the writ & stating that they could not be delivered as

the Industrial Bank went out of existence during the 1917 Oct. revolution. On Dec. 12, 1930, the applts. obtained a garnishee order *nisi* against resps., who were indebted to the Industrial Bank for a sum in excess of the sum for which applts. had obtained judgment. A copy of the order was sent on the same day to the Industrial Bank but was returned marked "unknown."

On the questions whether the garnishee order *nisi* should be set aside on the ground that the judgment was a nullity, having been signed against a non-existent deft., since the Industrial Bank had ceased to exist as a juristic person before the date of the writ, & further whether the order should not also be set aside on the ground that there was no proper service on defts. even if existent:—*Held:* (1) the English ct. recognised that the governing authority in Russia was, & had been since Oct. 1917, the Soviet State, & the Russian Soviet law, as to whether the Industrial Bank was in Oct. 1930, an existing juristic person, was a question of fact which must be proved by qualified expert evidence as to the foreign law & decided by the judge alone; the evidence compelled the conclusion that the Industrial Bank was by Soviet law non-existent in Russia in 1930, & therefore the judgment & garnishee proceedings must be set aside; (2) the discretion of the ct. ought to be exercised to set aside the order for service of the writ, & in refusing to treat the judgment as of sufficient foundation for a garnishee order, as the affidavit had not properly disclosed the position, & because no reference was therein made to the procedure provided for such cases by R. S. C., Ord. 11, r. 8, which, if it had been complied with would have resulted in the judge becoming aware of the impossibility of service of the notice of the writ; (3) at the material time the procedure under R. S. C., Ord. 11, was mandatory, the relevant words being "the following procedure shall be adopted" & not as now permissive by the substitution since made by the Rules Committee of the word "may" for the word "shall." Accordingly, apart from the want of accuracy in the affidavit, the order for substituted service was made by an incompetent procedure & was a nullity. The judgment, therefore, based on such service & the subsequent garnishee proceedings failed.—LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., [1933] A. C. 289; 102 L. J. K. B. 191; 148 L. T. 242; 49 T. L. R. 94; 76 Sol. Jo. 888, H. L.; *affg.* S. C. *sub nom.* LAZARD BROS. & CO. *v.* BANQUE INDUSTRIELLE DE MOSCOU, [1932] 1 K. B. 617, C. A.

Annotations:—As to (1) **Refd.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120; Deutsche Bank und Disconto Gesellschaft *v.* Banque des Marchands de Moscou (1938), 107 L. J. K. B. 386; Gaekwar Baroda State Railway *v.* Habib-Ul-Haq (1938), 107 L. J. P. C. 46. *Generally*, **Refd.** Burr *v.* Anglo-French Banking Corpn. Ltd. (1933), 49 T. L. R. 405; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745; MacCarthy *v.* Agard, [1933] 2 K. B. 417.

8527c. —— —— —— **Setting aside.**]—If it comes to the knowledge of the ct. that it has entered judgment in default of appearance against a man who was at the time dead, or a co. which was at the time dissolved, or non-existent according to the law of its country of origin, the ct. is bound, after hearing the parties interested, of its own motion to set the judgment aside (SCRUTTON, L.J.).—LAZARD BROS. & CO. *v.* BANQUE INDUSTRIELLE DE MOSCOU; LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., [1932] 1 K. B. 617; 101 L. J. K. B. 65; 146 L. T. 240, C. A.; *affd.*, [1933] A. C. 289, H. L.

Annotation:—**Refd.** MacCarthy *v.* Agard, [1933] 2 K. B. 417.

8527d. —— —— **Setting aside judgment.**]—A Chilean co. was formed under Chilean law by the making of two decrees in Mar. & Apr. 1931. On Jan. 2, 1933, a Presidential decree was issued declaring that the two former decrees creating the co. were repealed & left without effect. On Jan. 19, 1933, a judgment in favour of the then pltfs. (the present defts.) was given in an action in the English High Ct. against the co. Pltfs. in the present action, members of a Liquidation Commission appointed to take over the assets lately belonging to the Chilean co., claimed a declaration that the judgment given in the English High Ct. was null & void:—*Held:* the effect of the Presidential decree was that the co., although it had had a *de facto* existence, never came into legal existence & was not a *de jure* entity, & was non-existent at the time when the judgment was given against it. The present pltfs. were therefore entitled to a declaration that the judgment against the co. was null & void as having been given against a non-existent deft.—BURR *v.* ANGLO-FRENCH BANKING CORPN., LTD. (1933), 149 L. T. 282; 49 T. L. R. 405; 77 Sol. Jo. 448.

8542. *Add. Annotations:*—**Refd.** Sedgwick Collins *v.* Rossia Insce. of Petrograd, [1926] 1 K. B. 1; *Re* Russian & English Bank (1932), 48 T. L. R. 282.

8543. *Add. Annotations:*—**Refd.** Sedgwick Collins *v.* Rossia Insce. of Petrograd (1925), 133 L. T. 808; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

8548a. —— **Company dissolved before 1929 Act—Power to wind up as unregistered company—**

PART XII. SECT. 8, SUB-SECT. 1.

• i. —— —— ——.]—A winding-up order by a Canadian ct. in the matter of a Scotch co. doing business in Canada, & having assets & owing debts in Canada, which order was made on the petition of a Canadian creditor, with the consent of the liquidator previously appointed by the ct. in Scotland, as ancillary to the winding-up proceedings there:—*Held:* a valid order.—*Re* SCOTTISH CANADIAN ASBESTOS CO., ALLEN *v.* HANSON (1890), 18 S. C. R. 667.—**CAN.**

• ii. —— —— ——.]—Where a winding-up order had been made in England against an English co. prior to the making of a Canadian winding-up order:—*Held:* a double liquidation should be avoided, by treating the duties of the Canadian liquidator as ancillary to the English winding-up proceedings.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., PACIFIC GREAT EASTERN RY. CO.'S CASE, [1927] 3 D. L. R. 289; [1927] 2 W. W. R. 348; 36 Man. L. R. 549.—**CAN.**

• iii. —— *Remission of funds to foreign liquidator.*]—A co., incorporated in New South Wales & carrying on business in Victoria, was ordered by the Supreme Ct. of New South Wales to be wound up. A similar order, subsequently made by the Supreme Ct. of Victoria, provided that the Victorian winding up should be conducted as ancillary to that in New South Wales. The Victorian liquidator had in hand £1,665, proceeds of realisation:—*Held:* upon the New South Wales liquidator giving security to the satisfaction of the prothonotary in the sum of £1,500 that the Victorian assets would be applied to the satisfaction of the claims of the Victorian creditors *pari passu* with other claims of the same class, all moneys in the hands of the Victorian liquidator, after deducting the costs of the winding-up, including the liquidator's remuneration, should be remitted to the New South Wales liquidator.—*Re* AUSTRALIAN FEDERAL LIFE & GENERAL ASSURANCE CO., LTD. (No. 2), [1931] V. L. R. 317; Argus L. R. 291 (Victoria).—**AUS.**

Winding up of English branch.]—RUSSIAN & ENGLISH BANK *v.* BARING BROS. & CO., LTD., No. 8523a, *ante*.

8548b. —— —— ——.]—A petition was presented by creditors, whose debt was disputed, for the compulsory winding-up of an unregistered foreign co. which had a branch in England & which was dissolved by the laws of Russia before the 1929 Act came into operation :—*Held :* (1) the provisions of 1929 Act, s. 338, notwithstanding sub-sect. 2 of sect. 338, did not alter the law as it existed, before that statute came into operation, under the corresponding sects. of the Acts of 1862 & 1908, & the ct. had therefore jurisdiction to make an order for the compulsory winding-up of the co. under sect. 338 (1) (*d*) ; (2) notwithstanding the general rule that a disputed debt may not form the basis of a creditor's petition for the winding-up of a co., petitioners would in the circumstances be otherwise without a remedy & were entitled to proceed by a winding-up petition ; & they were entitled to a compulsory order for the winding-up of the co.—*Re* RUSSIAN & ENGLISH BANK, [1932] 1 Ch. 663 ; 101 L. J. Ch. 226 ; 147 L. T. 57 ; 48 T. L. R. 282 ; 76 Sol. Jo. 201 ; [1931] B. & C. R. 140.

Annotations :—As to (2) **Follid.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745. **Consd.** Russian & English Bank *v.* Baring Bros. & Co., [1935] Ch. 120.

8548c. —— —— ——.]—The bank was established in Russia in 1871 as a limited co. & was authorised by its statutes to open branches in Russia & elsewhere, which it did in, among other places, London & Paris. In 1909 it began business in London, filed particulars with the Registrar of Cos., & registered the names & addresses of persons authorised to accept service in England on its behalf. The bank at all material times consisted of more than eight members. Petitioner claimed to be a creditor for over £23,000, & asked that the bank should be wound up. Expert evidence for him expressed the view that the bank had ceased to exist as a result of decrees made under the laws of the Union of Socialist Soviet Republics, which decrees had transferred its assets to the Soviet Govt., & that payment could not be demanded from any person or body of persons. Petitioner's debt was disputed & the bank opposed the petition on the ground, also supported by expert evidence, that it could not have ceased to exist as long as it had, as it claimed to have in London & Paris, branches with which the Soviet Govt. had not dealt & which it had not taken over. Pursuant to an order of the Registrar the petition had been served upon the persons registered as authorised to accept service in England, & no question was raised before the ct. as to the validity of the service :—*Held :* (1) the result of the Russian revolutionary legislation of 1917 & the following years was to put an end to the juristic existence of banking companies incorporated in Russia, including those which had branches established in England ; (2) apart from that conclusion, the impossibility of a branch of such a Russian bank continuing to function according to its incorporating statutes was a sufficient ground for a winding-up order ; (3) such an order might be made even if the debt of the petitioning creditor was in dispute ; (4) the Soviet decrees could not have the effect of extinguishing or transferring debts regarded in English law as being locally situate in England ; (5) the ct.'s jurisdiction was not affected by the circumstance that the Soviet Govt. which, up to the date of the judgment on the petition, had not intervened, might possibly establish a claim to some part of the assets.—*Re* RUSSIAN BANK FOR FOREIGN TRADE, [1933] Ch. 745 ; 102 L. J. Ch. 309 ; 149 L. T. 65 ; 49 T. L. R. 253 ; 77 Sol. Jo. 197 ; [1933] B. & C. R. 157.

Annotations :—Generally, **Refd.** Companhia Naviera Vasconcada *v.* Cristina S.S., [1938] A. C. 485 ; Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 384.

8548d. —— —— —— **Service of petition.**]—The ct. can wind up a foreign co. which has carried on business within the jurisdiction, even if the co. has ceased to exist, & if there is no member, officer, or servant of the co. on whom the petition to wind up can be served, the service must be effected, not under R. S. C., Ord. 67, r. 6, but under Companies (Winding Up) Rules, 1929, r. 28, by leaving a copy of it at the co.'s "last known principal place of business" within the jurisdiction.—*Re* TEA TRADING CO. K. & C. POPOFF BROS., [1933] Ch. 647 ; 102 L. J. Ch. 224 ; 149 L. T. 138 ; 77 Sol. Jo. 215 ; [1933] B. & C. R. 120.

8554. *Add. Annotation :*—**Refd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

8556. *Add. Annotation :—As to* (1) **Consd.** *Re* Dorman, Long & Co., *Re* South Durham Steel & Iron Co., [1934] Ch. 635.

Part XIII.—Illegal Companies.

8571. *Add. Annotations :*—**Refd.** *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383 ; R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

8574a. —— **Company selling Irish lottery tickets.**]—A co. was formed in England for the sale there of tickets & chances in the Irish lottery :—*Held :* the object of the co. was unlawful, & the Registrar of Joint Stock Cos. was right in refusing to register the co.—R. *v.* REGISTRAR OF JOINT STOCK COMPANIES, *Ex p.* MORE, [1931] 2 K. B. 197 ; 100 L. J. K. B. 638 ; 145 L. T. 522 ; 95 J. P. 137 ; 47 T. L. R. 383 ; 29 L. G. R. 452, C. A.

8576a. ——.]—HARVEY *v.* COLLETT (1846), 15 Sim. 332 ; 4 Ry. & Can. Cas. 387 ; 15 L. J. Ch. 376 ; 10 Jur. 603 ; 60 E. R. 646.

Annotation :—**Refd.** Stewart *v.* Austin (1866), 36 L. J. Ch. 162.

8581a. —— **Action against treasurer & secretary —Illegality will not prevent account.**]—GREENBERG *v.* COOPERSTEIN, No. 272a, *ante*.

8582. *Add. Annotation :*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

8583. *Add. Annotation :*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

8587. *Add. Annotations :*—**Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281; Greenberg *v.* Cooperstein, [1926] Ch. 657; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal Owners' Assocn. (1926), 135 L. T. 673.

Part XIV.—Companies under Private Acts.

8595a. —— **Name of member omitted from memorial of names of members—Deed not executed.**]—SCOTT *v.* BERKELEY (1847), 3 C. B. 925 ; 5 Ry. & Can. Cas. 51 ; 16 L. J. C. P. 107 ; 8 L. T. O. S. 389 ; 11 Jur. 242 ; 136 E. R. 371.

Annotations :—**Refd.** Portal *v.* Emmens (1876), 1 C. P. D. 201 ; Kipling *v.* Todd (1878), 3 C. P. D. 350 ; *Re* South London Fish Market Co., Plimsoll's Case (1888), 1 Meg. 92.

8615. Add following para. :—*Held :* in an action against the co. for improperly withholding the shares after a tender of the sum due for calls & interest, A. was entitled to recover their value at the market price of the day of the tender, deducting the amount of the calls & interest.—VAN DIEMAN'S LAND CO. *v.* COCKERELL (1857), 1 C. B. N. S. 732.

8621a. —— ——.]—BROWNE *v.* LONDON NECROPOLIS & NATIONAL MAUSOLEUM CO. (1857), 6 W. R. 188.

8633. *Add. Annotations :*—**Consd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443. **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

PART XIII. SECT. 2, SUB-SECT. 2.

8a. *Illegality as ground for winding up.*]—The objects of a co. as disclosed in its memorandum were unobjectionable, & one of its objects was to raise donation funds to carry out charitable objects. By its Arts. of Assocn. certain objects were introduced which had the effect of making the co. conduct a lottery or keep an office for the purpose of drawing a lottery or publish proposals relating to the drawing of such a lottery :—*Held :* the co. should be wound up, since its main object was an illegal purpose. A lottery is "a distribution of prizes by lot or chance." —UNIVERSAL MUTUAL AID & POOR HOUSES ASSOCN., LTD. *v.* THOPPA NAIDU (1933), I. L. R. 56 Mad. 26.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 3.

8d. *Subscription books—Conditions as to.*]—MARMORA FOUNDRY CO. *v.* MURNEY (1850), 1 C. P. 29.—**CAN.**

COMMONS AND RIGHTS OF COMMON.

NOTE.—As to commons & rights of common after 1925, *see* Law of Property Act, 1925 (c. 20), ss. 193, 194.

Part II.—Different Kinds of Rights of Common.

18. *Add. Annotation :—As to* (1) **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

224. *Add. Annotation :—Generally,* **Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

226. *Add. Annotation :—As to* (2) **Refd.** Hodgson *v.* McCreagh (1923), 92 L. J. Ch. 426.

Part V.—Right of Free Warren.

323. *Add. Annotation :*—**Consd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

323a. —— **In demesne land—Is warren in gross.**]—Deft., lord of the manor of B., claimed sporting rights over pltfs.' freehold farms within the manor, basing his claim on a franchise of free warren appurtenant to the manor granted by the Crown to J., in 1301 ; alternatively, on a lost grant, presumed from immemorial user :—*Held :* the grant to J. in 1301 was of a franchise in gross, & even if not in gross, it would have passed by J.'s subsequent alienation of the land, or become a franchise in gross by J.'s reserving the franchise upon the occasion of that alienation ; there was therefore no title in deft. by the grant of the manor, & there was no evidence supporting his claim by prescription to the presumption of a lost grant.—HODGSON *v.* MCCREAGH (1923), 93 L. J. Ch. 339 ; 131 L. T. 340 ; 40 T. L. R. 10 ; 68 Sol. Jo. 58, C. A.

329. *Add. Annotation :*—**Refd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

347. *Add. Annotation :*—**Consd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

347a. **Alienation reserving franchise of free warren.**]—HODGSON *v.* MCCREAGH, No. 323a, *ante.*

349a. —— **By alienation of soil—Although soil reacquired.**]—R. *v.* SHIRLAND (1314), Y. B. 6 & 7 Edw. 2, VIII. Sel. Soc. (Vol. III., Eyre of Kent) 181.

Part VI.—Creation and Proof of Rights of Common.

366. *Add. Annotations :—As to* (2) **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465 ; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

452. *Add. Annotation :*—**Refd.** Green *v.* Matthews & Co. (1930), 46 T. L. R. 206.

454. *Add. Annotation :*—**Distd.** Wade (Gabriel) & English, Ltd. *v.* Dixon & Cardus, Ltd., [1937] 3 All E. R. 900.

Part XIII.—Inclosure of Commons and Common Fields.

884. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

886. *Add. Annotation :*—**Refd.** Back *v.* Daniels, [1925] 1 K. B. 526.

893. *Add. Annotations :—As to* (4) **Refd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. *As to* (5) **Refd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

896. *Add. Annotation :—As to* (2) **Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

899. *Add. Annotation :—As to* (1) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

900. *Add. Annotation :*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

901. *Add. Citation :*—[1922] 2 Ch. 187, n.

Add. Annotations :— **Folld** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. **Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

903. For the paragraph in the original volume substitute the following paragraph :—

—— —— —— —— ——.]—By the Lanchester Inclosure Act, 1773, the moors & commons of the manor of Lanchester, Durham, were divided & allotted. The Act provided that the lord of the manor & his assigns should have, hold & enjoy all mines & minerals within & under the allotments, with full & free liberty of searching for, draining, winning & working the mines & minerals by any ways or means then in use or thereafter to be invented as fully & freely as he might or

could have had, held, used & enjoyed the same in case that Act had not been made without paying any damages or making any satisfaction for so doing; & also that the annual rental of a certain allotment to the justices should be applied in or towards the compensation of those allottees whose allotments were damnified by the exercise of the lord's mining rights, & that any deficiency should be made up by means of a rate levied upon all the allottees:—*Held:* (1) the case was governed by the decision of the Ct. of Appeal in *Consett Waterworks Co.* v. *Ritson*, No. 901, *ante*, which was a decision on the identical question arising on the construction of the same Act & in the same circumstances, & although the reasoning upon which that decision was founded had been disapproved of by the House of Lords in *Butterknowle Colliery Co.* v. *Bishop Auckland Industrial Co.*, No. 905, *post*, the decision itself had not been overruled & was therefore binding upon the ct., & defts. had a right to work the mines so as to let down the surface of the land without paying damages or making any compensation to pltfs.; (2) (YOUNGER, L.J.) the decision at which the Ct. of Appeal had felt itself compelled to arrive in deference to authority binding upon it might quite well have been reached on the construction of the Act itself apart altogether from the decision by which it was bound.—CONSETT INDUSTRIAL & PROVIDENT SOCIETY, LTD. *v.* CONSETT IRON CO., [1922] 2 Ch. 135; 91 L. J. Ch. 630; 127 L. T. 383; 38 T. L. R. 584; 66 Sol. Jo. 452, C. A.

905. *Add. Annotations:*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135; Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488. **Apld.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

906. *Add. Annotation:*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

909. *Add. Annotations:*—*As to* (2) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135; Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488. *As to* (3) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

911. *Add. Annotations:*—*As to* (2) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. **Overd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

913. *Add. Annotations:*—**Refd.** Taylor **v.** British Legal Life Assce., [1925] Ch. 395; Todrick *v.* Western National Omnibus Co., [1934] Ch. 561.

929a. Power to stop up highway through "old enclosure."]—By Inclosure Act, 1845 (c. 118), s. 62, power is given to the valuer acting in the matter of any inclosure to set out & make public roads & ways, & widen public roads & ways, in or over the land to be inclosed, & to stop up, divert or alter any of the roads or ways passing through the land to be inclosed, or "through any old inclosures in the parish or respective parishes in which the land to be inclosed shall be situate":—*Held:* the power of stopping up roads so given is not confined to roads passing through old inclosures or intakes from the waste or common, the subject of inclosure, but extends to roads passing through any old inclosures within the parish.—HORNBY *v.* SILVESTER (1888), 20 Q. B. D. 797; 57 L. J. Q. B. 558; 59 L. T. 666; 52 J. P. 408; 36 W. R. 679, C. A.

939a. As to fences—Power to direct maintenance.]—Notwithstanding the omission from Inclosure Act, 1836 (c. 115), of an express power for the comrs. to direct the repair & maintenance of fences, the erection of which by the respective allottees of land that Act empowers them to direct, such a power is nevertheless conferred upon them by the Act by implication.—GARNETT *v.* PRATT, [1926] Ch. 897; 95 L. J. Ch. 453; 135 L. T. 471; 70 Sol. Jo. 736.

942a. Trespass—Power to maintain—Interference with stake.]—DRIVER *v.* SIMPSON (1818), 8 Taunt. 614, n.; 2 Moore, C. P. 682, n.; 129 E. R. 523

Annotation:—**Distd.** Newcastle *v.* Clark (1818), 2 Moore, C. P. 666.

983. *Add. Annotation:*—*Generally*, **Refd.** *Re* Simeon, [1937] 3 All E. R. 149.

1000. *Add. Annotation:*—**Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

1012. *Add. Annotation:*—*As to* (2) **Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

1012a. —— Extent of dedication to public.]—Where the lord of a manor encloses a strip of land by the side of a public highway & within a few feet only from the metalled portion of the road, then, whatever the presumption might have been before, a presumption thereafter arises that what he has left between the metal & his fence is dedicated to the public.—COPESTAKE *v.* WEST SUSSEX COUNTY COUNCIL, [1911] 2 Ch. 331; 80 L. J. Ch. 673; 105 L. T. 298; 75 J. P. 465; 9 L. G. R. 905.

1015. *Add. Annotation:*—**Refd.** Todrick *v.* Western National Omnibus Co., [1934] Ch. 561.

1023. *Add. Annotations:*—*As to* (1) **Refd. Consett Industrial & Provident Soc. *v.* Consett Iron Co.,** [1922] 2 Ch. 135; I. R. Comrs. *v.* New Sharlston Collieries Co., [1937] 1 K. B. 583.

Part XIV.—Regulation of Commons.

1078. *Add. Annotation:*—**Consd.** Mitcham Golf Course Trustees *v.* Ereaut, [1937] 3 All E. R. 450.

1089. After this case add "—— **Injunction to restrain promotion—Scheme inconsistent with prior conveyance.**]—*See* INJUNCTION, Vol. XXVIII., pp. 469, 470, No. 789."

COMPULSORY PURCHASE OF LAND AND COMPENSATION.

Part I.—Compulsory Powers over Land.

4. *Add. Annotations :—As to* (2) **Distd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Folld.** *Re* Heywood's Conveyance, Cheshire Lines Committee *v.* Liverpool Corpn., [1938] 2 All E. R. 230. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

4a. —— ——.]—In 1876, a railway co. acquired by compulsory purchase a plot of land for the purposes of their undertaking. The co. entered into a covenant with the vendor, his heirs & assigns that "no engine works or sheds locomotive works or sheds fitting-sheds or any buildings for the purpose of manufacture or business other than goods or passenger stations or signal-boxes or sidings in connection with the railway or stations shall be erected on any lands belonging to or to be acquired [by the co.] from J. P. H. his heirs or assigns without the consent of the said J. P. H. his heirs & assigns." The co. desired to sell the plot of land to persons who wished to erect a public-house thereon. In 1920, & in 1924, the Liverpool Corpn. acquired the adjacent land formerly owned by J. P. H., & claimed to be able to enforce the covenant & prevent the erection of the public-house :—*Held :* (1) the covenant, even if originally valid, was not a covenant which ran with the land so as to enure for the benefit of the purchasers, because there was no sufficient description of the land to be benefited ; (2) there was no enforceable covenant in any event, because the covenant originally entered into was void under the rule in *Ayr Harbour Trustees* v. *Oswald* (1883), 8 App. Cas. 623 ; 11 Digest 103, *4.*—*Re* Heywood's Conveyance, Cheshire Lines Committee *v.* Liverpool Corpn., [1938] 2 All E. R. 230 ; 82 Sol. Jo. 352.

7. *Add. Annotations :—As to* (3) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686 ; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

19. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co., [1924] 1 K. B. 171.

Part II.—Conditions attached to the Powers.

28. *Add. Annotations :—As to* (2) **Consd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315 ; *Re* Simeon, [1937] 3 All E. R. 149. **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

56. *Add. Annotation :*—**Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

62a. ——.]—The Board of the Railway Comrs. for Canada made an order directing a railway co. to construct a subway so that, owing to the increased traffic the existing roadway should be lowered & pass under the railway instead of crossing it on the level, & ordering that detailed plans be filed for the approval of the chief engineer of the Board :—*Held :* (1) the subway was not part of the undertaking of the railway, so as to enable the co. to take possession of land under Expropriation Act, R. S. C., 1906 (c. 143), for the purpose of the railway proper, & the lowered road still remained part of the road belonging to the municipality ; (2) detailed plans must be detailed plans of what was actually lodged as the general plan, & it was not within the liberty of the co. to enlarge the scope of the original plan & provide for a new access to the subway & the taking of land. Detailed plans were only to show the precise way in which the construction was to be made.—Boland *v.* Canadian National Ry. Co., [1927] A. C. 198 ; 95 L. J. P. C. 209 ; 136 L. T. 197, P. C.

Annotation :—Generally, **Refd.** Bell Telephone Co. of Canada *v.* Canadian National Rys., [1933] A. C. 563.

67. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

PART I. SECT. 1.

c i. ——.]—The right to expropriate must be clear, & if there is a doubt it will be settled in favour of the landowner.—*Re* Caldwell & Toronto, [1935] 2 D. L. R. 623 ; O. R. 255.—**CAN.**

sa. *What amounts to compulsory taking.*]—The acquisition of the International Ry., on the expiration of its franchise, by the Niagara Parks Commission, was not a compulsory taking.—International Ry. Co. *v.* Niagara Parks Commission, [1936] 1 D. L. R. 737 ; O. R. 195 ; *on appeal,* [1937] 3 All E. R. 181, P. C.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

sc. *Land in use "otherwise for more convenient occupation" of building —Municipal Act, s.* 325.]—Surrey District Corpn. *v.* Caine (1920), 67 D. L. R. 794 ; 28 B. C. R. 321.—**CAN.**

m i. —— *Public Works Act, R. S. B. C.,* 1911 *(c.* 189*)—Validity of contract by Minister of Public Works.*]—A contract made by the Minister for the purchase of land for a public purpose does not bind the Crown unless the acquisition of the land has been authorised by an Order in Council, or a resolution in Council amounting to an order, even if the contract is sealed with the seal of the Department.—Mackay *v.* A.-G. for British Columbia, [1922] 1 A. C. 457.—**CAN.**

m ii. —— *Expropriation Act,* 1906 *(c.* 143*)—Discretion of Minister.*]—As to the propriety & necessity of expropriation the Minister is the sole judge & the ct. has no jurisdiction to interfere with his discretion.—R. *v.* Imperial Bank of Canada, [1923] 3 D. L. R. 345.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.—A.

sd. *Bye-law expropriating excessive land—Severable.*]—A bye-law expropriating land in excess of that allowed by statute is severable.—Riches *v.* Richmond Township, [1933] 3 D. L. R. 437.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.—B. (a).

sf. *Land taken for building Toronto Viaduct — What Act applicable.*]—Canadian National Ry. Co. *v.* Toronto Iron Works, [1926] Exch. C. R. 133.—**CAN.**

88. *Add. Annotations :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686 ; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

91. *Add. Annotations :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283 ; Roberts *v.* Hopwood, [1925] A. C. 578.

98. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

99a. —— **Subway.**] — BOLAND *v.* CANADIAN NATIONAL RY. CO., No. 62a, *ante*.

109. *Add. Annotation :*—*As to* (1) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

110. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

111. *Add. Annotations :*—*As to* (1) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283. *As to* (2) **Refd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

114. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

116. *Add. Annotation :*—**Refd.** Sydney Municipal Council *v.* Campbell, [1925] A. C. 338.

116a. —— **Land not bonâ fide intended to be taken for purpose.**]—Applts. had statutory power to acquire compulsorily land required for the purpose of making or extending streets, also land required for "carrying out improvements in or remodelling any portion of the city." In connection with the extension of a street, they resolved to acquire resps.' land for the latter purpose. They had previously been restrained from acquiring the land for the extension, on the ground that it was not really required for that purpose, but that its purchase was desired because of its probable increase in value. No plan for improving or remodelling the area was considered or proposed, & evidence as to proceedings in the council showed that applts. were endeavouring to give a new form to the transaction previously decided upon, rather than considering whether resps.' land was required for improving or remodelling :—*Held :* the evidence sustained the lower ct.'s conclusion of fact that applts. were exercising their powers for a purpose differing from those specified by the statute, & they had rightly been restrained from acquiring resps.' land.—SYDNEY MUNICIPAL COUNCIL *v.* CAMPBELL, [1925] A. C. 338 ; 133 L. T. 63 ; *sub nom.* SYDNEY MUNICIPAL COUNCIL *v.* CAMPBELL, SAME *v.* HUGHES MOTOR SERVICE, LTD., 94 L. J. P. C. 65, P. C.

Annotation :—**Refd.** *Re* Brighton (Everton Place Area) Housing Order, 1937, Robins & Son, Ltd.'s Application, [1938] 2 All E. R. 146.

116b. **Whether land required—Right of local authority to decide.**]—A local authority which has acquired land under its statutory powers must, acting in good faith, be the sole judge, under either Public Health Act, 1875 (c. 55), s. 175, or Public Health Acts Amendment Act, 1907 (c. 53), s. 95, of whether the land is "not required" or "not required for the purposes for which it has been acquired."—A.-G. *v.* MANCHESTER CORPN., [1931] 1 Ch. 254 ; 100 L. J. Ch. 33 ; 144 L. T. 112.

126. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

129. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

131. *Add. Annotation :*—**Apld.** A.-G. *v.* Poole Corpn., [1936] 3 All E. R. 852.

133. *Add. Annotation :*—**Consd.** A.-G. *v.* Poole Corpn., [1936] 3 All E. R. 852.

133a. —— **For pleasure gardens & street widening—Part used for pleasure garden—May be subsequently used for street widening.**]—A local authority bought land in 1896 for the purposes of : (1) street widening ; (2) making new streets ; (3) providing public walks & pleasure gardens. The land was conveyed to the local authority for the purposes authorised by the Public Health Acts. A plan & specifications were submitted to the Local Government Board, & subsequently the scheme was carried out in accordance with the plan & specifications. The pleasure gardens were surrounded by railings, & were not dedicated or open to the public. In 1927 the local authority resolved to utilise one of the pleasure grounds for the purpose of street widening & providing a parking place for motor cars. Objections were raised by some of the occupiers of adjoining premises, & an action was brought to restrain the local authority from carrying out their resolution : —*Held :* as one of the purposes for which the land was acquired was street widening, the local authority was not acting *ultra vires* in using part of the pleasure gardens for that purpose.—A.-G. *v.* SUNDERLAND CORPN., [1929] 2 Ch. 436 ; 45 T. L. R. 618 ; 93 J. P. Jo. 480 ; *affd.*, [1930] 1 Ch. 168, C. A.

134. *Add. Annotation :*—**Consd.** A.-G. *v.* Sunderland Corpn. (1929), 142 L. T. 61.

135. *Add. Annotations :*—*As to* (1) **Distd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10. *As to* (2) **Consd.** A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254.

136. *Add. Annotation :*—**Distd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

138. *Add. Annotation :*—**Refd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

139. *Add. Annotations :*—*As to* (1) **Distd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Consd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

140. *Add. Annotation :*—*Generally*, **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

142. *Add. Annotations :*—**Consd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

PART II. SECT. 3, SUB-SECT. 4.

119 ii. —— —— *To construct tunnel under river.*]—A co. incorporated for the purpose of constructing a tunnel under a river desired to expropriate a parallelopipedon beneath the surface : —*Held :* what the co. desired to take was not a mere easement, but a hereditament & it had power under its Act of incorporation to do so.—*Re* KOLODZI & DETROIT & WINDSOR SUBWAY CO., [1930] 4 D. L. R. 10 ; 37 C. R. C. 4 ; 65 O. L. R. 398 ; *affd.*, [1931] 3 D. L. R. 337 : S. C. R. 523.—CAN.

sd. *Use cannot be restricted.*]—Where an easement is expropriated the municipality cannot restrict the use of it as it exists at the time, & the arbitrator must fix the damages occasioned by the right acquired in terms of the bye-law.—*Re* CONGER LEHIGH COAL CO., LTD. & TORONTO CITY, [1934] O. R. 35 ; 1 D. L. R. 476.—CAN.

143. *Add. Annotations :*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557; Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

145. *Add. Annotation :*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

146. *Add. Annotation :*—*As to* (4) **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

Part III.—Principles of the Law of Compensation.

153. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

155. *Add. Annotations :*—**Consd.** Clore *v.* Theatrical Properties, Ltd. & Westby & Co., [1936] 3 All E. R. 483. **Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

155a. —— **Right to erect electric advertisement sign.**]—The lessees of a hotel entered into two contracts with a firm of advertising agents, under the terms of which the latter were entitled to erect and exhibit, for a term of years, upon the roof of the hotel, electrically illuminated advertisements. An electric sign was duly erected. Before the expiration of the term the local authority, in exercise of its statutory powers, served the lessees with a notice to treat for the purchase of their estate & interest in the hotel, &, ultimately, having acquired the reversion to the lessees' term, took possession, closed the hotel, & began to demolish it. The electric sign was removed by arrangement with the advertising agents, who subsequently commenced an action against the lessees to recover damages for breach of the two contracts :—*Held :* the local authority had acquired defts.' interest in the premises by compulsion; the two contracts did not confer upon pltfs. any proprietary interest or estate in the hotel; &, as it could not be said that both parties to those contracts had made their bargain upon the footing that if the local authority exercised their powers & took the

PART III. SECT. 1, SUB-SECT. 2.—A.

149 ii. —— *Subsequent conveyance unregistered.*]—If a municipal corpn. takes expropriation proceedings for a highway under Municipal Act, s. 362, & compensation is awarded to the registered owner, the municipal corpn. cannot refuse payment to the registered owner on the ground that after filing his claim he executed a conveyance which remains unregistered.—NORTH COWICHAN CORPN. *v.* GORE-LANGTON, [1921] 2 W. W. R. 484.—**CAN.**

149 iii. —— *Unless right to compensation reserved by vendor.*]—*Re* CODVILLE (1907), 5 W. L. R. 140; 16 Man. L. R. 426.—**CAN.**

o i. —— *After expropriation.*]—The Crown expropriated the right to flood property which belonged to V., who subsequently sold to H. together with V.'s right to recover the compensation from the Crown for all damages caused by flooding & expropriation :—*Held :* H. was entitled to recover compensation for damages to his land by flooding, & by the expropriation of the easement to flood.—R. *v.* HYR (1921), 21 Exch. C. R. 76.—**CAN.**

sk. *Surface owner—Compulsory taking of mining rights.*]—The compensation payable a surface-rights owner for a right of entry for the purpose of drilling for oil should cover not only the value of land taken or destroyed, but also any damage or loss that may reasonably be expected to be caused him, in the use of his remaining land, as a result of the drilling or other operations on the parcel taken. But the special value which because of the underlying minerals the surface rights possess for the compulsory taker cannot be taken into consideration in fixing the compensation. The board's duty being merely to follow the regulations of the Department of Lands & Mines, it proceeded on the assumption that compensation was payable to the surface-rights owner, notwithstanding any reservations as to mines & minerals in his title.—*Re* MERCURY OILS, LTD. & HARTELL, [1936] 3 W. W. R. 679.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—A.

156 ii. ——.]—*Re* SCOTT & OSHAWA TOWN (1922), 52 O. L. R. 504.—**CAN.**

156 iii. ——.]—The right to receive compensation for land taken depends upon the statute or order which authorises the taking, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.—*Re* POWELL & TORONTO CORPN., [1925] 2 D. L. R. 796; 56 O. L. R. 541.—**CAN.**

156 iv. ——.]—*Re* POWER COMMISSION ACT (Sask.), [1930] 1 D. L. R. 900.—**CAN.**

f (p. 124) i. —— —— ——.]—Where a county corpn. expropriated certain toll roads :—*Held :* the value to the owner & not to the taker was the basis upon which the compensation should be awarded, & while the roads had become a burden instead of a benefit to their owners, they were entitled to be paid for the physical assets they possessed—road material in place, bridges, culverts, ditches & parts of roads owned in fee.—*Re* OTTAWA & GLOUCESTER ROAD CO. & COUNTY OF CARLETON (1921), 69 D. L. R. 486; 51 O. L. R. 467.—**CAN.**

f (p. 124) ii. —— —— ——.]—*Re* NEW BRUNSWICK POWER COMMISSION & INGLEWOOD PULP & PAPER CO. (N. B.), [1927] 3 D. L. R. 967.—**CAN.**

g (p. 124) i. —— ——.]—Deft. derived its title to the lands expropriated under a grant from the Crown subject to two conditions : (*a*) that the building now being or lately erected by deft. on said lands be such as would be suitable for exhibition purposes & available at all times for the same, & (*b*) that certain water pipes on the lands should be diverted and relaid outside the area of said building :—*Held :* as property may under certain circumstances have a specially high value to the owner over & above its market value, & as it is the value to the owner which the party expropriated is entitled to receive & as the above mentioned conditions or servitudes would be less onerous to the owner than to any one else in the community, the market value of the property in question was not the proper criterion of the amount to be allowed him for the same.—R. *v.* QUEBEC SKATING CLUB, [1931] Ex. C. R. 103; *affd.*, [1932] 2 D. L. R. 799; S. C. R. 539.—**CAN.**

l (p. 124) i. —— *Conflicting evidence.*]—R. *v.* ARCHER, [1925] 3 D. L. R. 355; [1925] S. C. R. 684.—**CAN.**

l (p. 124) ii. —— ——.]—Where the evidence of expert witnesses as to value is conflicting, neither the arbitrators nor the ct. should endeavour to arrive at the true result by "averaging of witnesses," or "splitting the difference."—*Re* LENNOX & TORONTO BOARD OF EDUCATION (1926), 58 O. L. R. 427.—**CAN.**

l (p. 124) iii. —— ——.]—While the "averaging of witnesses" or "splitting the difference" is an improper way of reaching an award, some discretion & freedom may nevertheless be allowed the arbitrators; they are bound to exercise their judicial functions in dealing with the evidence.—WINNIPEG *v.* CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—**CAN.**

q i. —— —— ——.]—REDDIAR & SAN CHIEN *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL & COLLECTOR OF RANGOON (1927), I. L. R. 5 Ran. 799.—**IND.**

s (p. 125) i. —— —— *Equivalent to value to owner.*]—The market value of the land acquired is the price that the owner willing, & not obliged, to sell might reasonably expect from a willing purchaser. There is no difference between the term "value to the owner" as used in the Land Clauses Act, in England, & the expression "market value" as used in Land Acquisition Act, s. 23.—SWARNA MANJURI DASSI *v.* SECRETARY OF STATE FOR INDIA (1927), I. L. R. 55 Calc. 994.—**IND.**

k (p. 125) i. —— —— ——.]—Where by reason of expropriation by the Crown the owners of the property taken suffer materially & are put to great trouble in moving, & the site so taken was most advantageous & it took several years of negotiating before they were able to find a new & suitable place for their operation, the ct. should add ten per cent. to the fair market value of the property taken, for contingent losses & inconveniences, in fixing the compensation. —R. *v.* ROYAL NOVA SCOTIA YACHT SQUADRON (1921), 21 Exch. C. R. 160. —**CAN.**

k (p. 125) ii. —— —— ——.]—*Re* TORRANCE & PROVINCE OF ONTARIO, *Re* NOBLE & PROVINCE OF ONTARIO, *Re* PARKDALE BOULEVARD, LTD. & PROVINCE OF ONTARIO, [1923] 3 D. L. R. 1136; 52 O. L. R. 325.—**CAN.**

hotel the contracts were to be discharged, there must be a declaration that defts. were liable to pltfs. for damages for breach of those contracts.—WALTON HARVEY, LTD. *v.* WALKER & HOMFRAYS, LTD., [1931] 1 Ch. 274; 144 L. T. 331; 29 L. G. R. 241, C. A.

160. *Add. Citation:*—*Sub nom.* R. *v.* MIDLAND, ETC. RY. Co., *Ex. p.* BROWN, 8 B. & S. 456.

Add. Annotation:—**Reld.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

169. *Add. Annotations:*—*As to* (2) **Reld.** Swift *v.* Board of Trade, [1925] A. C. 520; Swift *v.* Board of Trade, [1926] 2 K. B. 131.

171. *Add. Annotation:*—**Reld.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

---

k (p. 125) iii. —— —— ——.]—There is no foundation for the view that the "allowance for disturbance" usually added in awards to the value found is arbitarily fixed at ten per cent.; an award of six per cent. may be ample.—*Re* LENNOX & TORONTO BOARD OF EDUCATION (1926), 58 O. L. R. 427.—**CAN.**

k (p. 125) iv. —— —— ——.]—An "allowance for disturbance," & the amount thereof, seem to be in the discretion of the arbitrators.—WINNIPEG *v.* CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—**CAN.**

k (p. 125) v. —— —— ——.]—R. *v.* MCPHERSON (1914), 15 Exch. C. R. 215; 20 D. L. R. 988.—**CAN.**

p (p. 125) i. —— —— *Not value according to quantity survey.*]—R. *v.* IMPERIAL BANK OF CANADA, [1923] 3 D. L. R. 345.—**CAN.**

p (p. 125) ii. —— —— *Not "value in use."*]—*Held:* the productive value of land, or the value of the land to its owner based on the income he is able to derive from its use, is not the measure of compensation, for land expropriated, & is not material, except in so far as it throws light upon the market value. "Value in use" is to be repudiated as a test.—DUSSAULT *v.* R., [1929] Ex. C. R. 8.—**CAN.**

p (p. 125) iii. —— —— *Evidence of.*]—*Held:* although under certain circumstances the price paid for land cannot properly be taken as the market value thereof, nevertheless, where a careful purchaser, not obliged to buy, parts with his money, without pressure or inducement from the owner, willing but not obliged to sell, & after carefully considering the matter, & more especially the special advantages the land in question offered for the carrying on of the business he proposed to start, then the price so paid is cogent evidence of market value.—R. *v.* BERUBE, [1930] Ex. C. R. 218; [1931] 1 D. L. R. 685.—**CAN.**

sc. —— *Value of assets necessary to operation of undertaking.*]—TORONTO (CITY) CORPN. *v.* TORONTO RAILWAY CORPN., [1925] A. C. 177; 94 L. J. P. C. 25; 132 L. T. 401.—**CAN.**

sd. —— *Where land of college taken for street—Under disputed agreement.*]—ST. MICHAELS COLLEGE *v.* TORONTO CITY CORPN., [1926] 2 D. L. R. 244; [1926] S. C. R. 318; *varying*, 27 O. W. N. 474; *varying*, 26 O. W. N. 413.—**CAN.**

se. —— *Value for commercial purposes.*]—Where the residence & adjoining consulting rooms of a medical practitioner were situated in a position which was more suitable for a business site than a medical practitioner's residence, & compensation was assessed on the basis of the value of the land for a commercial purpose:—*Held:* the correct method of assessing compensation had been adopted.—GUNSON *v.* MUNICIPAL TRAMWAYS TRUST, [1927] S. A. S. R. 276.—**AUS.**

sg. *Cost of plans.*]—*Held:* the cost of the plans, & other expenditures claimed, either made the lands that much more valuable to deft. or, they constituted a loss or damage arising directly from the taking of the land & for which compensation should be allowed.—FEDERAL DISTRICT COMMISSION *v.* DAGENAIS, [1935] Ex. C. R. 25.—**CAN.**

sk. *Land subject to agreement to convey—Not amounting to option to purchase.*]—R. *v.* DEAN & BARONI, [1936] Ex. Cr. 120.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—B.

u i. ——.]—R. *v.* KELLY (1921), 63 D. L. R. 402; 21 Exch. C. R. 205.—**CAN.**

u ii. ——.]—An owner of property is not entitled to claim some prospective value of the property remote in its character & only realisable upon the expenditure of enormous sums of money.—R. *v.* COLEMAN, [1926] Exch. C. R. 121.—**CAN.**

b (p. 125) i. —— *How estimate to be made.*]—In determining the market value of land acquired under Land Acquisition Act, 1894, the value should be estimated with reference to the most lucrative & advantageous manner in which the land might be used.

The operative effect of the special adaptability of the land or its future utility must be estimated not by idle speculation or unpractical imagination, but by prudent business considerations such as would weigh with a purchaser intending to buy the land in the open market.—MAHARAJADHIRAJA SIR RAMESHWAR SINGH BAHADUR *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1929), I. L. R. 8 Pat. 793.—**IND.**

n (p. 126) i. —— *Electric light undertaking.*]—An electric light franchise was granted by applt. municipality to resp. co. for the period of 50 years, subject to the privilege of the municipality to purchase the "undertaking, property & rights" of the co. at any time at a price to be agreed on or, in default of agreement, found by arbitrators. The municipality elected to exercise this privilege & an arbitration ensued in which the co. was awarded $74,000 & the award stated that $36,000 thereof was the value of the physical assets. The municipality, without complaining as to the amount awarded for the physical assets, objected to the allowance of the balance, which was referred to in letters between the solicitors as compensation for prospective profits:—*Held:* since the only right of the municipality was to take over, not merely the physical assets, but the undertaking as a whole, including its privileges, the appeal should be dismissed.—CUMBERLAND (CITY) *v.* CUMBERLAND ELECTRIC LIGHT CO., LTD., [1931] 2 W. W. R. 377; 3 D. L. R. 70; 43 B. C. R. 525; *affd.*, [1931] 4 D. L. R. 459; S. C. R. 718.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—C.

o i. ——.]—R. *v.* LYNCH'S, LTD. & COZZOLINO (1920), 20 Exch. C. R. 158.—**CAN.**

o ii. ——.]—*Re* NEW BRUNSWICK POWER COMMISSION & INGLEWOOD PULP & PAPER CO. (N. B.), [1927] 3 D. L. R. 967.—**CAN.**

a i. —— ——.]—"Special value" refers to the present use of the land, & means its added worth to the owners for the actual & peculiar use to which it is being put & for which it is specially fit: while "special adaptability" refers to an apparent but future use to which the property may be put.—*Re* CANADIAN STEAMSHIP LINES, LTD. & TORONTO TERMINALS RY. CO., [1930] 3 D. L. R. 626; 36 C. R. C. 301; 65 O. L. R. 494.—**CAN.**

e i. —— ——.]—A parcel of land upon part of which were erected a restaurant, boat-house, & dance-hall, in which a profitable business had been carried on for several years by the claimants, was expropriated by a municipal corpn. The property was peculiarly suited for the purposes of the business; there was no other property to which it could be transferred, & it had to be discontinued:—*Held:* as the profits depended not only on the locality, but also on the personal talents of the proprietors, the damages could not properly be arrived at by capitalising the profits & adding an allowance for possible enlargement of the business.—*Re* MEYER & TORONTO (1914), 30 O. L. R. 426.—**CAN.**

169 i. For "**169 i.**" read "**170 i.**"

n i. ——.]—CANADIAN PROVINCIAL POWER CO. *v.* NOVA SCOTIA POWER COMMISSION, [1929] 1 D. L. R. 674; 60 N. S. R. 479.—**CAN.**

si. *Special use by owner.*]—*Held:* the arbitrator did not err in considering certain earnings of the land owner in respect of a special use of a portion of the property for parking cars.—*Re* FORBES & TORONTO, [1930] 2 D. L. R. 650; 65 O. L. R. 34.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—D.

p i. —— ——.]—*Re* LETROS & TORONTO CORPN. (1924), 56 O. L. R. 175.—**CAN.**

r i. —— *Flooding of neighbourhood.*]—The Crown expropriated the right to flood a part of L.'s property, on the erection of a dam, a public work. L. claimed, besides compensation for easement taken on his property, that he should be compensated for damages to his trade, resulting from the decrease of population, due to the flooding of neighbouring farms:—*Held:* no claim could arise in respect of an inconvenience common to the public generally.—R. *v.* LAFOND (1921), 69 D. L. R. 127; 21 Exch C. R. 55.—**CAN.**

r ii. —— *Valuation upon basis of non-existence of buildings.*]—The value of buildings & compensation for business disturbance cannot be considered if valuation has been upon the basis that the buildings have disappeared.—STANDARD FUEL CO., *v.* TORONTO TERMINALS RY. CO., [1935] 3 D. L. R. 657; 5 F. L. J. (Can.) 35.—**CAN.**

176 iii. —— *Cost of removal.*]—While allowance ought not to be made for loss of business or estimated profits, yet where a lessee of a store has suffered a diminution of good-will, he is entitled to compensation although it is in the nature of a business loss. In addition, allowance must be made for the reasonable cost of moving, seeking a new location, loss of time, storage of furniture, depreciation in fixtures & dislocation of business occasioned by such removal.—R. *v.* GOLDSTEIN, [1924] Exch. C. R. 55.—**CAN.**

sk. *Loss of profits—Municipal Act, R.S.O.*, 1927.]—Under Municipal Act, R.S.O., 1927, no compensation for loss of profits can be awarded to the claimant.—*Re* CONGER LEHIGH COAL CO. & TORONTO CITY, [1934] O. R 35; 1 D. L. R. 476.—**CAN.**

186. *Add. Annotations :*—**Consd.** Godstone Rural District Council *v.* Croydon Corpn. (1932), 48 T. L. R. 447. **Refd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

187. *Add. Annotations :—As to* (1) **Apld.** Swift *v.* Board of Trade, [1926] 2 K. B. 131. *As to* (2) **Refd.** Consett Iron Co. *v.* Clavering, [1935] 2 K. B. 42. *Generally*, **Refd.** Cross *v.* Gatineau Power Co., [1936] 3 All E. R. 52.

197. *Add. Annotation :—As to* (2) **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

213. *Add. Annotation :* — **Consd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

PART III. SECT. 1, SUB-SECT. 3.—E.

179 i. —— *Cost of acquiring new site.*]—In the course of arbn. proceedings to determine compensation for the portion of a lot taken & injury to the remainder, the corpn. offered to transfer part of an adjoining lot, which it did not own & had as yet taken no steps to expropriate :—*Held :* the offer should be taken into account & dealt with by the arbitrator in his award.—*Re* GARLAND & TORONTO (1924), 55 O. L. R. 646.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—I.

187 vi. —— *Subsequent improvements by owner.*]—Where an owner remains on the property after expropriation, & makes repairs to the buildings, & puts up temporary structures, he must assume the responsibility of such a course & its consequences, & nothing will be allowed him therefor.—R. *v.* LYNCH'S, LTD. & COZZOLINO (1920), 20 Exch. C. R. 158.—**CAN.**

187 vii. —— ——.]—R. *v.* MOREAU (1921), 21 Exch. C. R. 82.—**CAN.**

m i. —— *Buildings erected by expropriator before notice to treat given—Whether value of buildings to be considered.*]—The Govt. having resolved to acquire under Land Acquisition Act, 1894, land belonging to applts., took possession by arrangement with sutidars, who occupied part of the land, & erected buildings partly on land occupied by applt. & partly on land occupied by the sutidars. Only after doing so the Govt. notified a declaration under sect. 6 of the Act that the land was required for a public purpose. Applt. was awarded under the Act the value of the land, & interest thereon from the date when possession had been taken :—*Held :* applt. was not entitled to the value of the buildings, since by the law of India they did not form part of the soil, &, even if applt. would have been entitled to compensation for them, if the Govt. had acted as mere trespassers, & without colour of title, the Govt. had not so acted.—VALLABHDAS NARANJI *v.* BANDRA DEVELOPMENT OFFICER (1929), 56 L. R. Ind. App. 259.—**IND.**

sm. *On abandonment—Time of taking & of revesting to be considered.*]—Expropriation Act, R. S. C., 1906, s. 23, gives power to the Minister of Railways & Canals, by a registered notice, to abandon land which has been taken for a public purpose but which, before the compensation has been actually paid, has been found not to be required, & the land thereupon is to revest. By sub-sect. (4), "the fact of such abandonment or revesting shall be taken into account, in connection with all the other circumstances of the case, in estimating or assessing the amount to be paid to any person claiming compensation for the land taken." On Jan. 24, 1911, land belonging to applts. in Quebec was appropriated for a public purpose, & became vested in the Crown; the amount of compensation was subsequently agreed but not paid. On Dec. 30, 1912, the Minister registered a notice abandoning the land. By a petition of right applts. claimed as compensation the difference between the sum originally agreed & the value of the land when it revested; they recovered only their loss of rentals :—*Held :* (1) applts. were entitled to the sum originally agreed, subject to the revesting being taken into account with the other circumstances; (2) the petition of right was maintainable under sect. 20 of Exchequer Ct. Act; & (3) there should be a new trial.—GIBB *v.* R., [1918] A. C. 915, P. C.—**CAN.**

so. —— ——.]—In Mar. 1929, land belonging to suppliant in Montreal was expropriated for a public purpose, & became vested in the Crown; the amount of compensation was not agreed upon. After the expropriation, suppliant was permitted to continue in occupation of his property, & was authorised to receive & collect rents. In Mar. 1932, the Crown abandoned the expropriation. The suppliant claims *inter alia* as compensation the difference between the value of the property at the date of expropriation, & its value at the date it reverted back to him :—*Held :* the value of the land at the time of taking, & at the time of the revestment, must be taken into account in connection with all the other circumstances in determining the amount to be paid.—MATHYS *v.* R., [1934] Ex. C. R. 213.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—J.

s i. ——.]—*Held :* where the evidence of value relied upon had reference to a number of sales in the vicinity, only a few of which were for cash, others were never perfected, & others against had been completely abandoned; & further where it is established that there are large areas of land available for building purposes in the vicinity at reasonable prices; such sales must be considered in such a case as made under special circumstances & at prices that cannot establish a market value & cannot be taken as a criterion of the value of property.—R. *v.* CYR., [1929] Ex. C. R. 225.—**CAN.**

sg. *Conflicting evidence—Duty of court.*]—Where, in expropriation cases, the ct. is faced with conflicting evidence of the optimists on the one hand & the pessimists on the other, it must be guided, in arriving at the true market value of the property, by the reasons supporting each witness' views, bearing in mind the soundness of the same, & the balance of probabilities.—R. *v.* FROST, [1931] Ex. C. R. 176.—**CAN.**

PART III. SECT. 2.

191 i. *What constitutes severance—Part of land taken—Premises not contiguous—No legal right over intervening land.*]—Where by a previous expropriation property was severed by the right of way of a railway co. crossing it, & the use of a culvert under the tracks as a passage was only by sufferance & without legal right or title :—*Held :* if expropriation takes land on each side of the right of way & thus closes access to the culvert it is not a severance of the property which would entitle to compensation.—R. *v.* LOONAN (1920), 20 Exch. C. R. 131.—**CAN.**

a i. —— ——.]—*Held :* the right to additional value & the right to damages for severance must depend on the existence at the time of acquisition of the property of some right of passage between the pieces of land.—*Re* CANAL CO., LTD., & MINISTER OF MARINE, [1927] S. A. S. R. 106.—**AUS.**

PART III. SECT. 3. SUB-SECT. 1.

205 ii. *Canadian National Railways Act—Sufficient to confer right to compensation.*]—Pltf. owned lands in the city of Montreal & sought damages for injury to its property resulting from the construction of a subway by deft. co. under its railway lines near pltf.'s property. No land belonging to pltf. had been taken by deft. for its work. The ct. found that pltf.'s property had been injuriously affected & awarded it compensation :—*Held :* Canadian National Railways Act does not deprive the owner of lands injuriously affected by the construction of a public work, of the compensation awarded by the Expropriation Act; the damage must result from an act rendered lawful by statutory powers of the co.; the damage must be such as would have been actionable under the common law, but for the statutory powers; the damage or loss must be to the property itself; personal injury inconvenience, injury to trade or business are no grounds for compensation; the damage must be occasioned by the construction of the public work, not by its user.—AUTOGRAPHIC REGISTER SYSTEMS, LTD. *v.* CANADIAN NATIONAL RY. CO., [1933] Ex. C. R. 152.—**CAN.**

sf. *General rule.*]—The right to receive compensation for land injuriously affected depends upon the statute or order which authorises the injurious affection, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.—*Re* POWELL & TORONTO CORPN., [1925] 2 D. L. R. 796; 56 O. L. R. 541.—**CAN.**

n i. *Claim must be made within prescribed time.*]—Under Edmonton Charter a claim for compensation, because claimant's land will be injuriously affected by the closing of a street, is absolutely extinguished unless filed within the time fixed by the council in the notice which sect. 506 requires it to publish.—*Re* EDMONTON CHARTER, MICHAEL HRUSHEVSKY UKRAINIAN INSTITUTE *v.* EDMONTON CORPN., [1925] 1 W. W. R. 780.—**CAN.**

sg. *Railway Act*, 1919—*Spur track constructed along streets—Measure of compensation to adjacent landowners.*]—BRITISH COLUMBIA PERMANENT LOAN CO. *v.* CANADIAN NORTHERN RY. (NO. 3), [1923] 2 D. L. R. 802; [1923] 1 W. W. R. 1072; 30 Can. Ry. Cas. 71; 16 Sask. L. R. 298.—**CAN.**

sk. *Road laid through land—Expense of keeping up fences.*]—R. *v.* KENT JJ. (1854), 8 N. B. R. (3 All.) 118.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.

t i. —— *Injury to other land by erection of viaduct.*]—Pltfs. sought to recover compensation for part of their lands taken by expropriation & for damages for injury to an adjoining lot owned by them, due to the construction of a viaduct for which the other part of the land was expropriated :—*Held :* sect. 17 of 19 & 20 Geo. 5, c. 10, amending the Canadian National Railway Co. Act, does not limit the scope of sect. 23 of Expropriation Act, & the Canadian National Railway Co. must pay, not only the value of the land actually taken by expropriation, but also the damages caused to lands injuriously affected by the construction of the public work, in this case a viaduct. The damages recoverable for injurious affection are such as are attributable to the construction of the public work & not such as would flow from its operation, & only to the extent to which such injurious

215. *Add. Annotation :—As to* (1) **Apld.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

216. *Add. Annotation :* — **Follid.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

216a. —— —— ——.]—Applts. owned land immediately on the west side of a public road & a railway, & had thereon a school ; on the east side they owned two small promontories of land on the margin of a public harbour. They had made on the promontories a bathing house & wharf, both of which they used in connection with the school, but no legal right of way across the railway was proved. The Crown took the two promontories for a public purpose, & upon an area wholly to the east of the railway, & including the two small promontories, made a large railway shunting yard. A claim by applts. to compensation for the damage to their property on the west of the railway by reason of the construction of the shunting yard having been rejected :—*Held :* the possession & control of the two promontories gave an enhanced value to applts.' land on the west side of the railway, & in respect of depreciation in value of those lands due to the anticipated legal use of works which might be constructed upon the two promontories, applts. were owners whose lands had been injuriously affected, & accordingly they were entitled to compensation ; further, the ct. in assessing the compensation should have regard to the anticipated use of the promontories as part of a shunting yard, not to the actual use at the time of the assessment.—ROCKINGHAM SISTERS OF CHARITY *v.* R., [1922] 2 A. C. 315 ; 91 L. J. P. C. 198 ; 127 L. T. 608 ; 38 T. L. R. 782, P. C.

223. *Add. Annotation :*—**Refd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

225. *Add. Citation :*—3 Macq. 833.

231. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

245. *Add. Annotation :*— **Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

259. *Add. Annotation :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

261. *Add. Annotation :* — **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

263a. —— ——.]—By a private Act the President of the Air Council was authorised to enter upon, take & use all or any of certain lands, & also to construct a certain new thoroughfare. By sect. 2 he was authorised to stop up a portion of a certain lane known as Plough-lane. By sect. 5, "subject as hereinafter provided the Lands Clauses Acts are for the purpose of the acquisition of land under this Act incorporated with this Act." Then followed several exceptions, which did not specify sect. 68 of the Lands Clauses Consolidation Act, 1845, which deals with injurious affection. Lands were taken by the President under the special Act, & the said portion of Plough-lane was stopped up.

The claimant owned a dwelling-house in Plough-lane, not the part stopped up. No lands of the claimant were taken by the President under the Act, but his premises were depreciated in value to the extent of £100, through the stopping up of a portion of Plough-lane, rendering his premises less accessible in one direction. The claimant claimed compensation in respect of the stopping up of this portion of Plough-lane. On the hearing of an award in the form of a special case stated by an official arbitrator under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 6 (1), it was contended for the President of the Air Council that the claimant had no right to claim compensation on the ground that no portion of the Lands Clauses Consolidation Act, 1845, was incorporated with the special Act as regards sect. 2 thereof, which was not a sect. for the purpose of the acquisition of land, but one merely authorising the closing of a thoroughfare ; & also on the ground that sect. 68 of the Act of 1845 was not incorporated with the Special Act as its provisions

affection depreciates said land & makes it less valuable. No damage can be recovered for personal inconvenience or loss of trade, nor damages which the owner of the land suffers in common with the public generally.—RENAUD *v.* CANADIAN NATIONAL RY. CO., [1933] Ex. C. R. 230.—**CAN.**

sl. *Adjoining land occupied with hotel —Loss of water supply.*]—*Re* BUSH *v.* NIAGARA FALLS PARK COMRS. (1887), 14 A. R. 73.—**CAN.**

sm. *Land adjoining water-lot — Water-lot taken—Loss of riparian rights.*]—*Re* SNOW & TORONTO, [1924] 4 D. L. R. 1023 ; 56 O. L. R. 100.—**CAN.**

sp. *Land divided into lots —Some lots sold—Five lots taken for sewage plant.*]—*Held :* the owner of the unsold plots was entitled, over & above the actual value of the lots expropriated, to compensation for consequent depreciation in the value of the adjacent lands.—MONTREAL (CITY) *v.* MCANULTY REALTY CO., [1923] 2 D. L. R. 409 ; [1923] S. C. R. 273.—**CAN.**

sn. *Land taken for lowering road— Obstruction of access by road to other land.*]—*Held :* claimant entitled to compensation.—M. E. MOOLLA *v.* COLLECTOR OF RANGOON (1926), I. L. R. 4 Ran. 350.—**IND.**

so. *Land taken for power line— Intention to use adjoining land as aviation ground.*]—*Held :* claimant entitled to compensation.—SHAWINIGAN WATER & POWER CO. *v.* GAGNON, [1931] S. C. R. 518 ; 3 D. L. R. 665.—**CAN.**

sl. *Ownership of two islands—One taken for penitentiary.*]—Deft. owned two islands named P. & K., separated from each other a distance of 1,250 feet, in the Gulf of Georgia. The Crown expropriated P. for a term of five years for use as a penitentiary. Deft., in addition to rental, claimed compensation for injurious affection to K. :—*Held :* in determining the compensation under the circumstances here existing, the value of the freehold must be considered in order to reach a fair & just conclusion as to the amount of compensation ; there was no unity of property in the two islands, they being separate holdings or estates ; it was not a case of the severance of a single holding or estate ; the fact of common ownership did not constitute the two islands one estate ; to entitle a person to recover compensation for injurious affection, the damage must arise from something which would, if done without statutory authority, have given rise to a cause of action.—R. *v.* O'HALLORAN, [1934] Ex. C. R. 67.—**CAN.**

sk. *Flooding—Level of lake raised— Rights in bed of lake not considered.*]—Where compensation for flooding due to raising the level of a lake is in question, the ct. will not consider the rights of the owner in the bed of the lake. — TREMBLAY *v.* DUKE-PRICE POWER CO., [1935] 4 D. L. R. 87.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—A. (a).

227 iv. —— —— ——.]—The Crown not having expropriated any part of suppliant's property or any easement to flood the same :—*Held :* the case did not come within Exch. Ct. Act, s. 20, & the ct. had no jurisdiction to entertain the claim under Expropriation Act or any other provision of law.—YATES *v.* R. (1920), 20 Exch. C. R. 175.—**CAN.**

227 v. —— ——.]—ALEXANDER BROWN MILLING CO. *v.* CANADIAN PACIFIC RY. CO., [1923] 4 D. L. R. 1136 ; 29 Can. Ry. Cas 345 ; 52 O. L. R. 528.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (a).

ti. ——.]—*Re* OGILVIE FLOUR MILLS CO., LTD. & WINNIPEG CITY, [1927] 2 D. L. R. 606 ; [1927] 1 W. W. R. 833 ; 33 Can. Ry. Cas. 92 ; 36 Man. L. R. 412.—**CAN.**

for " injurious affection " were not for the acquisition of land. The official arbitrator asked the following question of the ct. : Was the claimant entitled to be paid compensation in respect of the stopping up of this portion of Plough-lane ? The ct. answered the question in the affirmative.—WRIGHT *v.* AIR COUNCIL, PRESIDENT (1929), 143 L. T. 43.

265. For (" LORD WESTBURY ") read (" LORD WESTBURY, *dissenting* ").

Add. Annotations :—As to (1) **Distd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Consd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6. **Refd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

268. *Add. Annotation :—***Consd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

269. *Add. Annotation :—As to* (1) **Distd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

269a. —— —— ——.]—Where a highway is obstructed for building operations, & the obstructor has obtained the appropriate licence from the local authority, a person suffering inconvenience or loss from the inconvenience can only recover damages in a case where the obstruction is unreasonable, either as to quantum or duration.

Per LAWRENCE, L.J. : When the owner of a house abutting on a public street desires to undertake building operations, & has obtained the appropriate licence from the local authority under Metropolis Management Act, 1855 (c. 20), or similar statutes relating to other places, it cannot be contended that the necessary scaffolding & hoardings are illegal & a public nuisance unless they were erected in a manner or place not authorised by the licence, or maintained for a longer period than by the licence authorised.—HARPER *v.* HADEN (G. N.) & SONS, [1933] Ch. 298 ; 102 L. J. Ch. 6 ; 148 L. T. 303 ; 96 J. P. 525 ; 76 Sol. Jo. 849 ; 31 L. G. R. 18, C. A.

270. *Add. Annotations :—***Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401 ; Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

272. *Add. Annotation :—As to* (1) **Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

274a. —— —— **By construction of bridge.**]—Resps., a county council, were empowered by a private Act to build a bridge across a navigable river giving access to a wharf, which was resorted to by sea-going vessels & was also used for the storage of goods. The bridge, when built, constituted an obstruction to the navigation & interfered with access to the wharf, so that goods destined for the wharf had to be transhipped from sea-going vessels into barges below the bridge, & the owners of the wharf had to acquire a new wharf below the bridge. The owners of the old wharf, *i.e.*, the freeholders, & a mtgee., & the occupiers, who were tenants at will, claimed compensation under the following heads : depreciation of freehold value of the old wharf ; cost of the new wharf ; damage through loss of traffic ; damage through extra cost of handling traffic at the new wharf ; damage to river sailing-barge traffic ; damage through total stoppage of dumb craft with goods for overseas ; damage through loss of storage rents :—*Held :* claimants were entitled to compensation only under the first head, & were not entitled to compensation under the other heads.—HEWETT *v.* ESSEX COUNTY COUNCIL (1928), 138 L. T. 742 ; 44 T. L. R. 373 ; 72 Sol. Jo. 241.

275a. —— **River frontage of private house.**]—BUCCLEUGH (DUKE) *v.* METROPOLITAN BOARD OF WORKS, No. 215, *ante*.

284a. Reservation of water—Coupled with grant of easements & restrictions.]—By agreements made in 1904 & subsequent years a local authority agreed with the then owner of the S. estate for a supply of water from a pumping station & well on the S. estate. In 1932, S., who had become entitled to the S. estate, sold & conveyed a portion of it, not including the pumping station & well, to X. in fee simple. The conveyance to X. contained certain reservations & a covenant so framed as, if enforceable, to run with the land conveyed for the benefit of the remaining portion of the S. estate. The reservations purported to reserve all water (whether surface or underground) in or under any portion of the property so conveyed to X., & all necessary easements rights privileges advantages powers & liberties necessary for the enjoyment of that reservation. The covenant was not to

PART III. SECT. 3, SUB-SECT. 4.—B. (c) ii.

266 vi. —— ——.]—Where direct to land on which a business is conducted is not cut off by the closing of a street, the fact that such closing will oblige persons going to & from such place of business & neighbouring properties to use a slightly less convenient route does not give the owner of such land a right to compensation.—*Re* EDMONTON CHARTER, FREEMAN CO., LTD. *v.* EDMONTON CORPN., [1925] 1 W. W. R. 778.—**CAN.**

k ii. —— *Compensation payable for damage done by bye-law—Closure before bye-law—No right to compensation.*]—Where a statute empowering a city to pass bye-laws for the closing of streets provided for arbn. proceedings to determine the compensation to be paid to land owners for damages caused " by reason of anything under the bye-law " :—*Held :* claimants thereunder were not entitled to damages caused by the closing of a street long before the passing of the bye-law.—*Re* MICHAELIS, [1933] 1 W. W. R. 465.—**CAN.**

k iii. —— —— —— —— *Effect of judgment on damages awarded by arbitrator.*]—*Re* MICHAELIS (No. 2), [1933] 1 W. W. R. 751.—**CAN.**

sw. *Allcration of position of bridge—Cold storage company thereby relegated to back street.*]—An award was given as compensation for the injurious affecting of lands by the building of a highway traffic bridge over the railway yards of the C.P.R. The claim for compensation arose from the fact that while the old bridge ended at an avenue on which applt. co.'s buildings faced the new bridge runs a city block further north with the result that the co.'s buildings which were formerly on a " front " street are now on a " back " street over-shadowed by the new bridge. The co. was a cold storage co. The accessibility & appearance of its plant were seriously affected, & its facilities for loading & unloading railway cars & trucks were hampered, while the construction of the subway in front of the buildings prevents future structural changes & adaptations to a serious degree :—*Held :* after referring to the various items of compensation & the evidence as to damage, the amount of the award was increased to $25,000, & the appeal allowed with costs.—*Re* WINNIPEG COLD STORAGE CO., LTD. & WINNIPEG CITY, [1934] 2 W. W. R. 354 ; 4 D. L. R. 681 : 42 Man. L. R. 176.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (c) iii.

sb. —— —— *Depreciation in value of land.*]—NELSON *v.* PACIFIC GREAT EASTERN RY. CO., OBLATE ORDER OF MARY IMMACULATE *v.* PACIFIC GREAT EASTERN RY. CO., LEFFAUX & CARLISLE *v.* PACIFIC GREAT EASTERN RY. CO. (1919), 67 D. L. R. 792 ; 27 B. C. R. 420.—**CAN.**

do anything on the property so conveyed whereby the water supply then obtained therefrom or any part thereof or any supply thereafter to be obtained therefrom in addition to or in substitution therefor should be in any way diminished or the purity impaired. In Apr. 1934, the local authority made a compulsory purchase order under Public Works Facilities Act, 1930 (c. 50), s. 2, for the compulsory purchase of part of the property so conveyed to X. for the purpose of obtaining water therefrom & for the construction of a reservoir & certain works. This order incorporated Lands Clauses Consolidation Act, 1845 (c. 18), s. 68.

S. claimed compensation on the ground that the S. estate & the reservations & restrictions imposed for the benefit of the S. estate by the conveyance of 1932 would be injuriously affected by the proposed works on the land comprised in the compulsory-purchase order. The parties having failed to come to terms, an official arbitrator was appointed, who subsequently acted as an agreed arbitrator under Lands Clauses Consolidation Act, 1845 (c. 18).

In his award the arbitrator found (*a*) that a pumping station if erected on the portion of X.'s land comprised in the compulsory-purchase order would probably tap water which would otherwise percolate to the area tapped by the local authority's existing pumping station & well on the S. estate & might affect the quantity of water reaching such area, & (*b*) that a pumping station on the proposed site would not be likely to tap water which, in the absence of such a pumping station, could not be tapped by pumping at the local authority's existing works. He consequently awarded S. a certain sum by way of compensation, but made his award in the form of a special case, referring to the ct. the question whether S. was entitled to be compensated for the injurious affection of his adjoining estate & the interests easements & restrictions appertaining thereto by reason of the proposed works of the local authority & the facts so found by him:—*Held:* (1) though the attempt to reserve percolating water out of the land conveyed by the conveyance of 1932 failed, the reservation therein contained ought to be construed as a reservation of all necessary rights to enable S. to obtain water from the land conveyed; & the covenant imposed a contractual prohibition on X. & those deriving title under him from doing anything to interfere with the existing & future water supply at the existing works on the S. estate. The claimant therefore had an interest in land which was affected by the compulsory-purchase order; (2) the injury to the S. estate arose from the "execution of the works" within Lands Clauses Consolidation Act, 1845 (c. 18), s. 68; since the statutory powers vested in the local authority under Public Health Act, 1875 (c. 55), s. 51, authorised the construction & maintenance of waterworks for the supply of water, & in order to supply water, it was necessary to draw water from the land taken. The claimant therefore was entitled to recover by way of compensation the amount awarded to him under the arbitrator's award.—*Re* SIMEON & ISLE OF WIGHT RURAL DISTRICT COUNCIL, [1937] Ch. 525; [1937] 3 All E. R. 149; 106 L. J. Ch. 335; 157 L. T. 473; 101 J. P. 447; 53 T. L. R. 854; 81 Sol. Jo. 526; 35 L. G. R. 402.

288a. —— **Wharf.**]—HEWETT *v.* ESSEX COUNTY COUNCIL, No. 274a, *ante.*

289a. ——.]—HEWETT *v.* ESSEX COUNTY COUNCIL, No. 274a, *ante.*

299. *Add. Annotation:—As to* (1) **Consd.** *Re* Simeon, [1937] 3 All E. R. 149.

323a. —— ——.]—ROCKINGHAM SISTERS OF CHARITY *v.* R., No. 216a, *ante.*

Part IV.—Compensation for Mines and Minerals.

328. To the existing paragraph add as follows:—
(3) Limestone is a mineral within the above sects.

Annotation:—As to (1) **Refd.** A.-G. for Isle of Man *v.* Moore, [1938] 3 All E. R. 263.

331. *Add. Annotation:*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

332. *Add. Annotation:*—**Refd.** Waring *v.* Foden,

PART III. SECT. 3, SUB-SECT. 4.—B. (g).

s1. *Loss of privacy.*]—The owner of a house, the privacy of which has been affected by the acquisition of another property made for public purposes under Land Acquisition Act, is entitled to compensation by reason of the acquisition injuriously affecting his property.—PRASANNAKUMAR DATTA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1933), I. L. R. 61 Cal. 245.—**IND.**

PART III. SECT. 3, SUB-SECT. 4.—C. (a).

292 v. ——.]—The general depreciation of property resulting from being in the vicinage of a public work does not give rise to a claim by any particular owner.—R. *v.* LAFOND (1921), 21 Exch. C. R. 55.—**CAN.**

PART III. SECT. 3, SUB-SECT. 5.

sc. *Payment of mortgage on part of land.*]—The Crown expropriated five lots of land belonging to applt. A mtge. in favour of M. upon four of the lots had been discharged by the Crown by payment to M. of $22,000:—*Held:* the above payment, although satisfying any claim in respect of the four lots covered by the mtge., could not be applied towards compensation for the fifth lot.—STUART *v.* R., [1926] 2 D. L. R. 260; [1926] S. C. R. 284; [1926] Exch. C. R. 101, n.—**CAN.**

sd. *No right to interest.*]—Under Municipal Act, R. S. M., 1913, what is to be paid the owner of land injuriously affected by the construction of municipal works is due compensation for any damage. No provision is made for interest in addition thereto; & neither the arbitrators, nor a judge under an application to him under sect. 706 of the Act to increase the award, have power to award interest.—*Re* BANNATYNE (*Re* TAYLOR ESTATE) & ASSINIBOIA RURAL MUNICIPALITY (No. 2), [1932] 1 W. W. R. 754; 2 D. L. R. 703; 40 Man. L. R. 253.—**CAN.**

PART III. SECT. 4.

s i. —— ——.]—*Held:* the only increase which should be deducted under Public Works Act (Alta.), s. 24 (8), is the increase so caused in the value of the land through which the public work is constructed over & above any such increase as is common to said land & to the land in the immediate vicinity.—*Re* CENTRAL CANADA RY. CO. ARBITRATIONS, [1929] 4 D. L. R. 333; 2 W. W. R. 445; 24 Alta. L. R. 209.—**CAN.**

s ii. —— —— *Municipal Act, R. S. O.*, 1927, *s.* 342 (1).]—ROMAN CATHOLIC EPISCOPAL CORPN. OF LONDON & SANDWICH (TOWN), [1930] 4 D. L. R. 955; 65 O. L. R. 514.—**CAN.**

Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

333. *Add. Annotations :*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33 ; A.-G. for Isle of Man *v.* Moore, [1938] 3 All E. R. 263.

334. *Add. Annotations :*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33. **Refd.** A.-G. for Isle of Man *v.* Moore, [1938] 3 All E. R. 263.

335. *Add. Annotations :*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33. **Refd.** A.-G. for Isle of Man *v.* Moore, [1938] 3 All E. R. 263.

336a. —— —— **Within Act.**]—MIDLAND RY. CO. & KETTERING, THRAPSTON & HUNTINGDON RY. CO. *v.* ROBINSON, No. 328, *ante*.

337. *Add. Annotation :*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

345. *Add. Annotation :*—**Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

349. *Add. Annotation :*—**Consd.** Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All E. R. 959.

353. *Add. Annotation :*—**Refd.** London & North Eastern Ry. Co. *v.* Hardwick Colliery Co., [1935] Ch. 203.

355. *Add. Annotations :*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. **Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172; Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All. E. R. 959.

355a. —— —— **Purchase by predecessor of undertaker—Common law right of support—Effect of Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (c. 37).**]—Pltf. council, being the statutory undertakers for the supply of water to the urban district of Wath-upon-Dearne, purchased by agreement in 1901, from trustees for sale under a settlement, certain land in Wath-upon-Dearne which had been allotted to the vendors' predecessors in title in 1810 under an Inclosure Act. This allotment was subject to the reservation to the lord of the manor of Wath-upon-Dearne of coal & other minerals, with power to work the same upon making compensation to the allotment owners for damage to the surface of the lands caused by working. Shortly after the purchase, pltfs. erected two reservoirs & three filter beds on the land purchased. Deft. co. were lessees from the lord of the manor of a seam of coal lying under & adjacent to pltfs.' land. In 1911 deft. co., in pursuance of Waterworks Clauses Act, 1847 (c. 17), & the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (c. 37), gave notice to pltfs. of their intention to work the coal under & within forty yards of pltfs.' waterworks. This notice was duly acknowledged, but no counter-notice was given by pltfs. of willingness to treat or to make compensation for or of their intention to prevent or interfere with the working of the coal either within or outside the forty yards area. In 1914, pltfs. purchased from the same vendors further lands adjoining the land bought in 1901 & subject to the same reservation of minerals to the lord of the manor of Wath-upon-Dearne. Pltfs. constructed on this land two further reservoirs, two more filter beds & other works. Damage to one of the reservoirs having appeared between Oct. 1926, & Jan. 21, 1929, caused, as was alleged, by the working of the adjacent & subjacent minerals by defts., pltfs. had the damage repaired. In 1930 a further notice of intention to work minerals near another part of pltfs.' lands & reservoirs was served on the pltfs. by defts., but again no counter-notice was given by pltfs. Pltfs. thereupon issued a writ claiming an injunction & damages or compensation. His Lordship having held on the evidence that the damage to the waterworks was caused by subsidence of the surface directly due to the working of the minerals by defts. & that the surface would have been damaged by subsidence if the waterworks had not been constructed on it, the question arose whether the vendors to pltfs. in 1901 & 1914, when they conveyed the land, had any right of support for the surface of those plots from the subjacent minerals & adjacent land & minerals, & if so, whether this right passed to pltfs. :—*Held :* (1) on the true construction of the Inclosure Act, 1810, the common law right of support was not excluded by necessary implication & the vendors to pltfs. had a common law right to have the surface supported by the subjacent minerals & adjacent land & minerals ; (2) this right passed to pltfs. by the conveyances of 1901 & 1914, & deft. co. was not entitled to ignore this right although pltfs. failed to give any counter-notice under Waterworks Clauses Act, 1847 (c. 17), ss. 22, 23. Further, there was nothing in Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (c. 37), s. 3 (2), which gives the local authority an option to extend their counter-notice to minerals outside the forty yards area to deprive the local authority of the rights they possessed outside the forty yards area, if the option conferred by that section was not exercised.—WATH-UPON-DEARNE URBAN DISTRICT COUNCIL *v.* BROWN (JOHN) & CO., LTD., [1936] Ch. 172 ; 105 L. J. Ch. 81 ; 154 L. T. 295 ; 51 T. L. R. 353 ; 79 Sol. Jo. 342.

356. *Add. Annotations :*—**Consd.** Walton Harvey Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145. **Apld.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172 ; Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All. E. R. 959.

356a. —— —— **Enfranchised copyholds.**]—Under conveyances made in 1879, 1922, & 1927 deft. corpn. acquired land for the purposes of sewage works & a gas undertaking. So far as the present case was concerned, these lands were enfranchised copyholds subject to a custom whereby the lord of the manor had the right to work mines subject to making compensation for damage done including that arising from subsidence. The pltf. co. were the lessees of the minerals under such enfranchised copyholds & also under the adjoining land. In 1934 pltfs. gave the corpn. notice in writing that they desired to work seams of coal under or within 40 yds. of such enfranchised copyholds. Defts. gave no counter-notice under Waterworks Clauses Act, 1847 (c. 17), s. 23, to treat for the payment of compensation for such mines, & it became lawful for pltfs. to work the mines.

In an action for a declaration as to the rights of the parties, the Vice-Chancellor of the County Palatine of Lancaster, after making a declaration of pltfs.' right to work the mines & let down the surface subject to payment of compensation for damage done including damage due to subsidence provided pltfs. did no wilful damage & did not work the mines in an unusual manner, added that defts. were not entitled to any greater protection in respect of the greater weight imposed upon the land by their sanitary works except where they had acquired a prescriptive right of support for such works: —*Held:* (1) defts. not having served a counter-notice, their rights in relation to the minerals were the same as those of their vendor & were therefore governed by the custom of the manor; (2) the addition to the declaration stated above could not be supported.—HARGREAVES, LTD.'S EXECUTORS *v.* BURNLEY CORPN., [1936] 3 All E. R. 959; 156 L. T. 41; 101 J. P. 87; 53 T. L. R. 231; 81 Sol. Jo. 56, C. A.

359. *Add. Annotation:*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

367. *Add. Annotation:*—**Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

374. *Add. Annotation:*—**Consd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

378. To the existing paragraph add as follows:—

(3) The word "lands" in sect. 6 of the above Act includes mines.

Add. Annotation:—*Generally*, **Consd.** Graigola Merthyr Co. *v.* Swansea Corpn. (1927), 71 Sol. Jo. 681.

381. *Add. Annotation:*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

383. *Add. Annotation:*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

403. *Add. Annotation:*—**Refd.** Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All E. R. 959.

412. *Add. Annotation:*—**Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

438. *Add. Annotation:*—**Refd.** Newton *v.* Lambton, Hetton & Joicey Collieries, Ltd., [1937] 2 All E. R. 150.

Part VI.—Procedure to acquire Land otherwise than by Agreement.

470. *Add. Annotation:*—**Apld.** Goodwin Foster Brown, Ltd. *v.* Derby Corpn., [1934] 2 K. B. 23.

475. For existing citations and annotations, substitute (1851), 9 Hare, 436; 7 Ry. & Can. Cas. 92; 18 L. T. O. S. 116; 68 E. R. 580, L.JJ.; *subsequent proceedings* (1852), 2 De G. M. & G. 94, L.JJ.

Annotations:—**Refd.** Salisbury *v.* G. N. Ry. (1852), 17 Q. B. 840; Hedges *v.* Met. Ry. (1860), 28 Beav. 109.

478. *Add. Annotation:*—**Refd.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

484. For citations read the following para. & citations:—

A ry. co. having given notice of their intention to purchase lands for the undertaking, deposited the purchase-money, & delivered the bond according to sect. 35 of Lands Clauses Act, before the expiration of the period prescribed for the exercise of their compulsory powers; neither their power to purchase the land, nor their power to enter, is gone by the subsequent expiration of that period.—SPARROW *v.* OXFORD, WORCESTER & WOLVERHAMPTON RY. CO. (1851), 9 Hare, 436; 18 L. T. O. S. 116; 68 E. R. 580.

500. *Add. Annotation:*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

526. *Add. Annotation:*—*As to* (1) **Refd.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

531. *Add. Annotation:*—**Refd.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

533a. —— —— **Rights of assignee.**]—A landowner has a right to deal with his property after a notice to treat, although the right must be exercised subject to the rights acquired by the undertakers by virtue of the notice & so as not to increase their obligations, & he is also entitled before acceptance to withdraw & amend his claim. But where a landowner, possessed of a leasehold interest, who has claimed £550 for compensation for disturbance & valued his leasehold interest at nil, subsequently, but before his claim is accepted, assigns his leasehold interest, his assignee stands in the same position as the landowner & can withdraw or amend the claim, either expressly or by sending in a claim in respect of the leasehold interest wholly inconsistent with the original claim, & the undertakers are not then at liberty to disregard the assignee & continue to treat & contract with the original landowner.—CARDIFF CORPN. *v.* COOK, [1923] 2 Ch. 115; 92 L. J. Ch. 177; 128 L. T. 530; 87 J. P. 90; 67 Sol. Jo. 315; 21 L. G. R. 279.

534. *Add. Annotation:*—**Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

540. *Add. Annotation:*—**Apld.** Goodwin Foster Brown, Ltd. *v.* Derby Corpn., [1934] 2 K. B. 23.

540a. Within clause in lease.]—(1) Under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 6 (1), the official arbitrator is entitled to state his award in the form of a special case raising the question what is

the title or interest of the person claiming compensation.

(2) A local Act having authorised a corpn. to acquire certain premises compulsorily, the owners granted a lease for a term of years, containing a clause that the demise was made & granted "subject to the termination of such demise by reason of the exercise by the said corpn. of such compulsory powers as may hereafter become effective." The corpn. served a notice to treat upon the lessor in respect of his reversionary interest in the premises, & they afterwards served a notice to treat upon the lessee, who claimed compensation in respect of his interest:—*Held:* neither of the notices to treat was, within the clause in the lease or at all, such an exercise by the corpn. of their compulsory powers as was effective to terminate the lease or to put an end to the lessee's interest in the premises, &, consequently, he was entitled to compensation in respect of his interest in the premises as at the date of the service of notice, to treat upon him.—GOODWIN FOSTER BROWN, LTD. *v.* DERBY CORPN., [1934] 2 K. B. 23; 103 L. J. K. B. 603; 151 L. T. 402; 32 L. G. R. 17, D. C.

558a. Misdescription as to nature of property—Abatement of purchase-money—Not ordered.]—*Re* STEPNEY BOROUGH COUNCIL & SMART'S CONTRACT (1902), 47 Sol. Jo. 159.

562. *Add. Annotation:—As to* (1) **Refd.** Greswolde-Williams *v.* Newcastle-upon-Tyne Corpn. (1927), 91 J. P. Jo. 968.

595a. Building consisting of several blocks of offices—Constitutes one "building."]—GRESWOLDE-WILLIAMS *v.* NEWCASTLE-UPON-TYNE CORPN. (1927), 92 J. P. 13; 26 L. G. R. 26.

Part VII.—Assessment of Purchase Price and Compensation.

650. For existing paragraph & citations substitute the following:—

The Blackpool Improvement Act, 1917, s. 70, enacted that the provisions of the sect. should, unless otherwise agreed in writing, apply for the benefit & protection of a certain co. as owners of the land referred to in the section. By its terms the owners were to sell & the corpn. was to buy the land therein described at a price to be determined, in default of agreement, by arbitration in the manner provided by the Lands Clauses Acts as modified by that Act, & a notice to treat was to be served by the corpn. within a defined time. It was further provided that the corpn. should not use the land so acquired for certain purposes which might cause a nuisance or annoyance to the owners. By Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), where by any statute, whether passed before or after the passing of this Act, land is authorised to be acquired compulsorily by any local authority, any question of disputed compensation is to be determined in the manner thereby provided, & the provisions of the Act by which the land is authorised to be acquired, or of any Act incorporated therewith, so far as inconsistent with this Act, shall cease to have effect. Notice to treat was served on the owners by the corpn. shortly before the coming into operation of the Act of 1919, but no arbitrator had been appointed to fix the price. A question having arisen whether the compensation was to be assessed under the Act of 1919 or under the private Act of 1917:—*Held:* the Act of 1919 did not apply, & the compensation was to be ascertained in the manner provided by the Lands Clauses Acts as modified by the Act of 1917; by VISCOUNT FINLAY, VISCOUNT CAVE, & LORD PHILLIMORE on the grounds, (*a*) that sect. 70 of the private Act embodied an agreement between the parties for the sale & purchase of the land & that the land was not "authorised to be acquired compulsorily"; (*b*) that the general language of the Act of 1919 ought not, in the absence of clear words, to be construed as affecting the special provisions of sect. 70 of the private Act of 1917; by VISCOUNT HALDANE on the second ground; by LORD SHAW OF DUNFERMLINE (dissenting as to the second ground) on the first ground only.—BLACKPOOL CORPN. *v.* STARR ESTATE CO., LTD., [1922] 1 A. C. 27; 91 L. J. K. B. 202; 126 L. T. 258; 86 J. P. 25; 38 T. L. R. 79; 66 Sol. Jo. 17; 19 L. G. R. 721, H. L.

Annotations:—**Distd.** Thurrock Grays & Tilbury Joint Sewerage Board *v.* Thames Land Co., Ltd. (1925), 90 J. P. 1. **Refd.** Thornely *v.* Leconfield (Lord), [1925] 1 K. B. 236; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1931), 101 L. J. K. B. 229; Drapers Co. *v.* London Passenger Transport Board, [1937] Ch. 344.

650a. —— Acquisition of land & appointment of arbitrator under Public Health Act, 1875, (c. 55.)]—A land co. was the owner in fee simple of certain land through which a sewerage board, under Public Health Act, 1875 (c. 55), after duly serving on the co. notice of intention to do so, carried a sewer & a rising main. Subsequently an agreement in writing was entered into between the parties regarding what had been done. Differences having arisen regarding the compensation to be paid by the board to the co., recourse was had to arbn. The arbitrator was appointed under Public Health Act, 1875, & before entering on the arbn. made the statutory declaration under that Act. Having considered the disputes he made an alternative award in the form of a special case for the opinion of the ct. If the ct. was

---

PART VI. SECT. 4, SUB-SECT. 1.—B. (a).

566 ii. *Includes all that is necessary for enjoyment of house.*]—The word "house" in Lands Act, 1847, s. 92, is not limited to the four walls of the building, but includes all that is necessary to the convenient occupation of the house.

Promoters of an undertaking:—*Held:* not entitled to take a strip of land immediately in front of a house between it & the wall & containing a tank & fruit trees, when the owner was willing & able to convey the whole of the house.—DRAPER *v.* SOUTH AUSTRALIAN RAILWAYS COMR. (1901), 3 S. A. L. R. 150.—**AUS.**

PART VII. SECT. 1.

sg. *Public Works Act, s. 22—Acquisition of toll road under Provincial Highways Act, 1917.*]—*Re* COBOURG & GRAFTON TOLL ROAD CO. (1921), 64 D. L. R. 241; 50 O. L. R. 125.—**CAN.**

of opinion that compensation was to be assessed solely under Public Health Act, 1875, he awarded the co. £5,090; if the arbitration was under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the basis on which compensation was to be awarded was to be governed by the principles in s. 2 of that Act, he awarded the co. £2,148:—*Held:* as the land had been acquired under powers conferred by Public Health Act, 1875, before the agreement between the parties was entered into, it had been acquired compulsorily, & as there was nothing in the agreement which affected the primary basis of the value of the land nor any other matter, including the appointment of the arbitrator expressly under Public Health Act, 1875, which was inconsistent with the rules laid down by s. 2 of the Act of 1919, that Act applied to the arbn., & the co. should be awarded £2,148.—THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD *v.* THAMES LAND CO., LTD. (1925), 90 J. P. 1; 23 L. G. R. 648.

650b. —— **Power to purchase given to railway company—Transfer to public authority.**]—Pltfs. were the estate owners in fee simple of certain land & buildings in the City of London. Defts., a public authority established in accordance with the provisions of London Passenger Transport Act, 1933, in Oct. 1935, gave notice to pltfs. to treat for the compulsory purchase of the premises, & subsequently took possession. By the Act of 1933 certain passenger transport undertakings were transferred to defts. including the C. L. Railway. It was provided by the Act that such transfer should include all lands & other property, assets, powers, rights, and privileges held or enjoyed therewith, & further that defts. might exercise all the rights, powers, & privileges which immediately before the appointed day, July 1, 1933, were vested in the C. L. Railway as one of the undertakers & should be subject to all liabilities & obligations to which the C. L. Railway were subject immediately before the appointed day. Among the powers conferred on the C. L. Railway in existence on July 1, 1933, was a power conferred by an Act of 1931 to purchase the premises of pltfs. The time for the exercise of this power was, after the passing of the Act of 1933, extended to Oct. 1937, by sect. 68 of London Passenger Transport Act, 1934. Defts. contended that being a public authority authorised to acquire the particular land in question compulsorily, the provisions of Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), as to the compensation payable, applied.

Pltfs. denied this on the ground (*a*) that if the C. L. Railway (the "undertakers") had purchased compulsorily before July 1, 1933, the purchase price must have been fixed as provided for by the Lands Clauses Acts as modified by the Act of 1931, & that this was therefore a liability or obligation of the C. L. Railway to pltfs.; (*b*) that by virtue of sect. 68 of the Act of 1934, the time limited for the exercise of compulsory purchase by the Act of 1931 was extended subject to the provisions for the protection or benefit of (*inter alia*) any co., body or person mentioned in (among others) the Act of 1931, & that the provisions of that Act with regard to the assessment of compensation in cases of compulsory purchase were provisions for pltfs.' benefit, & (*c*) that the provisions of the Act of 1931 were not affected by the provisions of the Acts of 1933 & 1934 in the absence of clear words showing that it was the intention of the two later Acts to abrogate the provisions of the Act of 1931:—*Held:* pltfs.' contentions failed because (*a*) as the C. L. Railway had not served any notice to treat on or before July 1, 1933, there was no liability or obligation of the C. L. Railway on that date towards pltfs. or their property to which defts. could be subjected in respect of a notice given by defts. subsequently to July 1, 1933, (*b*) pltfs. were not expressly mentioned as a co., body or person for whose protection or benefit provision was made in the Act of 1931, & (*c*) the provisions for compensation in the Act of 1931 were general provisions & accordingly the maximum "*generalia specialibus non derogant*" did not apply.

PART VII. SECT. 2, SUB-SECT. 1.

sh. *Jurisdiction of Exchequer Court*].—Property & civil rights being matters within the exclusive powers of the Provincial Legislature, the Exch. Ct. of Canada in ascertaining the estate or interest of persons claiming compensation for property expropriated by the Dominion Crown will have regard to the laws affecting such estate & interest in the province where the property is situated.—R. *v.* HUDSON'S BAY CO. (1921), 20 Exch. C. R. 413.—CAN.

sk. *Cannot inquire into validity of mutual agreement for compensation.*]—*Held:* where one of the parties set up an agreement purporting to fix the compensation a dispute as to the existence, validity, & applicability of such agreement must be settled by agreement of the parties or determined by the ct. before a case for arbn. arises; & the arbitrators exceeded their jurisdiction when they entered upon an inquiry as to the existence & validity of the agreement alleged.—*Re* HARMANS, LTD., & TORONTO CITY, *Re* PORTER & TORONTO CITY, *Re* STEWART & TORONTO CITY, [1928] 4 D. L. R. 781; 62 O. L. R. 475.—CAN.

sl. *Assessment by resolution of city council.*]—After the passing of an expropriating bye-law the amount of the purchase price may be settled by resolution of the city council & no further bye-law is necessary.—PRINCE *v.* TORONTO, [1933] 3 D. L. R. 201; O. R. 442; *revsd.*, [1934] 3 D. L. R. 81; S. C. R. 414.—CAN.

sm. *Practice of appellate court.*]—The general rule adopted by appellate cts. in dealing with a question of quantum on an awardby an arbitrator is the same as the rule adopted in dealing with a question of quantum of damages in a judgment by a trial judge sitting without a jury, & the ct. will not interfere except in a case of very serious error.—*Re* WINSETT & C. N. R., [1933] O. R. 237; 2 D. L. R. 438.—CAN.

sp. —— *Variation of award.*]—Applt. owned property on the Gatineau River, including a saw mill used for his timber business & a plant for the production & distribution of electricity both worked by water power. Resps. were attempting to expropriate for the purposes of a scheme for development of hydro-electric power on the river, & had erected a dam with the result that much of his property was submerged & other seriously affected. An action in respect of this damage had proceeded to trial, & judgment had been reserved, when a special Act was passed by the Quebec Legislature to prevent any disturbance of resps.' operations. Resps. were by the Act to make just & fair compensation to applt. for all his properties & rights taken or affected, & the ct. was to determine what properties & rights should upon payment of the compensation become vested in resps.:—*Held:* (1) the Act did not require the ct. to vest in resps. all lands or properties affected, if in its discretion, it thought compensation for injurious affection sufficient; (2) the amount of an award may be varied by an appeal ct. where it is clear that it is based upon a wrong principle of calculation or not justified by the admitted facts; (3) although undertakers cannot offer remedial works in lieu of compensation, the offer of land taken or easements over land taken for the restoration of a piling ground & a ry. siding was a proper one & ought to be taken into consideration.—CROSS *v.* GATINEAU POWER CO., [1936] 3 All E. R. 52. P. C.—CAN.

The compensation must therefore be ascertained under & in accordance with the Act of 1919.—DRAPERS CO. *v.* LONDON PASSENGER TRANSPORT BOARD, [1937] Ch. 344; [1937] 2 All E. R. 12; 106 L. J. Ch. 121; 156 L. T. 272; 53 T. L. R. 448; 81 Sol. Jo. 199.

702a. Arbitrator incapable of continuing—Power to replace.]—Where an arbitrator, appointed by the Reference Committee under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 1, becomes incapable of continuing a particular arbn., the authority of the Reference Committee includes the power to replace him by some one else.—GROSS, SHERWOOD & HEALD, LTD. *v.* ESSEX COUNTY COUNCIL, [1927] 1 Ch. 205; 96 L. J. Ch. 21; 136 L. T. 371; 91 J. P. 17; 43 T. L. R. 5; 70 Sol. Jo. 1196; 25 L. G. R. 135.

702b. Effect of appointment under protest—Whether right to compensation admitted.]—*Semble:* a co. does not, by nominating under protest an arbitrator in pursuance of the Lands Act, 1845, admit that the case is one entitling the claimant to any compensation.—SUTTON HARBOUR IMPROVEMENT CO. *v.* HITCHENS (1851), 1 De G. M. & G. 161; 21 L. J. Ch. 73; 18 L. T. O. S. 163; 16 Jur. 70; 42 E. R. 514, L. JJ.

727a. Question of title involved.]—GOODWIN FOSTER BROWN, LTD. *v.* DERBY CORPN., No. 540a, *ante*.

727b. Hearing — Entry in Crown Paper.] — An award made by an official arbitrator under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), in the form of a special case, is rightly entered in the Crown Paper.—HEWITT *v.* ESSEX COUNTY COUNCIL (1927), 97 L. J. K. B. 249; 92 J. P 36; 44 T L. R. 111; 72 Sol. Jo. 50; 26 L. G. R. 48 D. C.

761a. —— Award embodying decision of court on special case.]—An official arbitrator stated a case under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the Div. Ct. decided adversely to the contention of claimants for compensation. The arbitrator then made his award, embodying therein the decision of the Div. Ct. Claimants applied to another Div. Ct. to set the award aside, on the ground that the award was on the face of it erroneous in law, but the ct. dismissed the application. Claimants appealed:—*Held:* no appeal could be entertained.—NORTHWOOD *v.* LONDON COUNTY COUNCIL (No. 2) (1927), 96 L. J. K. B. 520; 137 L. T. 49; 91 J. P. 93; 43 T. L. R. 347; 25 L. G. R. 254, C. A.

PART VII. SECT. 5, SUB-SECT. 1.

n i. —— —— *Passing of bye-law by local authority—Submission before bye-law passed ultra vires.*]—KOEHMSTEDT *v.* RURAL MUNICIPALITY OF EYE HILL, NO. 382, [1923] 2 W. W. R. 669.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.

f i. —— *Extent of duty.*]—On an application under sect. 408 of Town Act, R. S. S., 1930, for the appointment of an arbitrator of a claim for compensation for lands taken or injuriously affected, it is not the duty of the judge applied to to decide whether or not the claimant has a claim.—MCGILLIVRAY *v.* MELVILLE TOWN [1932] 2 W. W. R. 635.—**CAN.**

sl. *Under Dominion Railway Act*, 1919.]—Where a judge of the Supreme Ct. of Ontario has made an order for possession, under the above Act, with a term that the ry. co. shall pay money into ct. as security, any judge of the Supreme Ct. has jurisdiction to appoint an arbitrator; & under sect. 220 the judge of the county ct. of the county wherein the expropriated lands lie is the proper person to appoint.—*Re* LITTLE & CAMPBELLFORD LAKE ONTARIO & WESTERN RY. CO. (1924), 55 O. L. R. 581.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 4.

713 iii. —— *Jurisdiction of court.*]—*Re* TAYLOR ESTATE & ASSINIBOIA RURAL MUNICIPALITY, [1931] 2 W. W. R. 719; 4 D. L. R. 249; 29 Man. L. R. 563.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 7.

sm. *Appeal under Municipal Arbitrations Act*, 1927.]—An appeal to a Divisional Ct. of the Appellate Division from an award made under Municipal Arbitrations Act, R. S. O., 1927, lies, but not unless the award is appealed from within six weeks after notice that it has been filed; & the ct. has no jurisdiction to give leave to appeal, or to extend the time for appealing after the time has expired, even in a case where there was fraud in procuring the award. Sect. 3 of Arbn. Act, R. S. O., 1927, is not applicable.—*Re* FAIR & TORONTO, [1930] 3 D. L. R. 76; 65 O. L. R. 176.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 8.

736 i. —— *Claim in respect of several interests—Award not apportioning sums between several interests—Insufficient.*]—STEWART MUNICIPAL DISTRICT *v.* BLIESNER, [1934] 2 W. W. R. 1217.—**CAN.**

s i. —— *Arbitrator not entitled to allow interest.*]—*Re* LEITCH & TORONTO CORPN. (1924), 56 O. L. R. 175.—**CAN.**

s ii. —— *Award referring to "present value"—Value at time of expropriation.*]—An award is good, although it contains the words "present value," if it is clear from the award as a whole that the arbitrators made their valuation as at the date of the expropriation.—R. *v.* VANCOUVER CITY (1932), 47 B. C. R. 243.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 10.

j (p. 196) i. ——.]—On an application, under sect. 706 of Municipal Act, R. S. M., 1913, to vary or increase an award the judge is in the position of sole arbitrator or umpire as well as having the power to set aside or remit the award.—*Re* TAYLOR ESTATE & ASSINIBOIA RURAL MUNICIPALITY (NO. 2), [1931] 3 W. W. R. 408; *on appeal*, [1932] 1 W. W. R. 754.—**CAN.**

m (p. 196) i. —— *Under Dominion Railway Act*, 1906 (*c.* 37).]—*Re* KITSILANO INDIAN RESERVE, VANCOUVER HARBOUR COMRS. *v.* R., [1918] 2 W. W. R. 411.—**CAN.**

m (p. 196) ii. —— *Under Dominion Railway Act*, 1919 (*c.* 68).]—*Re* ARBITRATION UNDER THE RAILWAY ACT, BRITISH COLUMBIA PERMANENT LOAN CO. *v.* CANADIAN NORTHERN RY. CO. (NO. 1), [1922] 2 W. W. R. 577; 65 D. L. R. 735; 15 Sask. L. R. 431.—**CAN.**

m (p. 196) iii. —— ——.]—CEDAR RAPIDS MANUFACTURING & POWER CO. *v.* LACOSTE, [1927] 2 D. L. R. 83.—**CAN.**

r (p. 196) i. —— *Award determined on wrong principle.*]—Where damages were recoverable by reason of lowering of the sidewalk in front of a building, consisting in the decreased value of the property, but were assessed at the cost of lowering the store floor:—*Held:* the award must be set aside as determined upon a wrong principle.—RADISSON TOWN *v.* AMSON, [1919] 3 W. W. R. 580.—**CAN.**

x i. —— ——.]—WINTER *v.* TORONTO (CITY) (1922), 70 D. L. R. 458.—**CAN.**

x ii. —— *Sum awarded inadequate.*]—ARMSTRONG *v.* NEW WESTMINSTER HARBOUR BOARD, [1929] 2 D. L. R. 150; 1 W. W. R. 755; 41 B. C. R. 1.—**CAN.**

y i. —— *Lump sum awarded—Award good on its face.*]—NORTH COWICHAN CORPN. *v.* GORE-LANGTON, [1921] 2 W. W. R. 484.—**CAN.**

y ii. —— *Arbitrator not qualified.*]—An award will be set aside if one of the arbitrators is disqualified by not being a freeholder as required by statute.—NEW GLASGOW *v.* MILLIGAN, [1933] 1 D. L. R. 748.—**CAN.**

c (p. 197) i. —— ——.]—NASH & WILLIAMS *v.* EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY. CO., [1917] 3 W. W. R. 553; 36 D. L. R. 601.—**CAN.**

c (p. 197) ii. —— ——.]—An appellate ct. should not interfere to vary an award unless it is satisfied that the award does not truly represent the honest opinion of the arbitrators as to damages, or that the basis of valuation was erroneous.—*Re* SCOTT & OSHAWA TOWN, [1922] 52 O. L. R. 504.—**CAN.**

c (p. 197) iii. —— ——.]—WINNIPEG *v.* CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—**CAN.**

c (p. 197) iv. —— ——.]—*Re* SULLIVAN & TOWNSHIP OF BERTIE, [1927] 2 D. L. R. 74; 60 O. L. R. 107.—**CAN.**

e (p. 197) i. —— ——.]—*Re* ARBITRATION ACT, *Re* WOODS, [1923] 2 D. L. R. 1000; 32 B. C. R. 211; [1923] 1 W. W. R. 1344.—**CAN.**

m (p. 197) i. —— ——.]—*Re* DIXON & TORONTO CORPN. (1924), 56 O. L. R. 167.—**CAN.**

o (p. 197) i. —— ——.]—Where a large number of witnesses give evidence to the same effect on a question of value the award of an arbitrator based thereon will not be set aside.—CANADIAN NORTHERN RY. CO. *v.* KETCHESON (1918), 21 Can. Ry. Cas. 104; 32 D. L. R. 629.—**CAN.**

762. *Add. Annotation :—As to* (2) **Apprvd. & Apld.** Matthey *v.* Curling, [1922] 2 A. C. 180.

773a. Award of lump sum—Validity.]—Claimant was the owner of certain land with regard to the acquisition of which an arbn. was held under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57). He claimed £17,362, &, before the hearing of the arbn., the President of the Air Council made an unconditional offer of £10,000. The sum awarded to claimant by the official arbitrator in respect of his interest in the land & the consequential damage thereto was £11,415. In dealing with the costs the arbitrator directed the Council "to pay £100 towards the costs of claimant." Claimant applied to the ct. by motion for the award to be remitted to the arbitrator on the ground that he had, in making the above order as to costs, not properly exercised the discretion conferred upon him by sect. 5 (4) of the above Act :—*Held :* in awarding the lump sum of £100, the arbitrator had in terms awarded to claimant part of his costs of the arbn. within sect. 5, & as it seemed reasonably clear from the Act that, when a sum was awarded by the arbitrator in excess of the amount offered by the authority but less than the sum which claimant had offered to accept, the arbitrator had an absolute discretion as to the costs, the motion to review the award failed.—BRADSHAW *v.* AIR COUNCIL, [1926] Ch. 329 ; 95 L. J. Ch. 499 ; 135 L. T. 538 ; 42 T. L. R. 197 ; 70 Sol. Jo. 367 ; 24 L. G. R. 351.

785. For "No. 749, *ante*," read "No. 372, *ante*."

863. For existing citations read "(1865), 19 C. B. N. S. 139 ; 144 E. R. 739 ; *previous proceedings* (1863), 4 B. & S. 315."

875. *Add. Citation :—sub nom. Re* HAYNE (CHARLES), 13 W. R. 492.

930. *Add. Citation :—Sub nom.* R. *v.* NORTH LONDON RY. CO. & WILSON, 51 L. J. Q. B. 241.

948. *Add. Citation :—Sub nom.* R. *v.* NORTH LONDON RY. CO. & WILSON, 51 L. J. Q. B. 241.

966. *Add. Annotation :*—**Refd.** Simbro Trading Co. *v.* Posograph Parent Corpn., [1929] 2 K. B. 266.

Part VIII.—Entry on Lands by Promoters.

1005. *Add. Annotation :—As to* (1) **Refd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

1035. *Add. Annotation :—As to* (1). **Refd.** R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

Part IX.—Assessment of Compensation after Entry or Injurious Affection.

1097. *Add. Annotation :—As to* (1) **Refd.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

---

q (p. 197) i. —— —— *Question only one of quantum.*]—*Re* LETTOS & TORONTO CORPN. (1924), 56 O. L. R. 175.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 11.

sp. *By motion—Damages "allowed" —Amounts to direction to pay.*]—Where an award determines the amount of the compensation to be paid by a municipality as damages for land taken & "allows" them to the claimant, that is a sufficient direction to pay. In any event, a direction to pay is not necessary to enable the award to be enforced by motion.—*Re* BANNATYNE & ASSINIBOIA RURAL MUNICIPALITY (No. 3), [1934] 1 W. W. R. 497 ; 41 Man. L. R. 640.—**CAN.**

sm. *Purchase of easement—Execution of conveyance not condition precedent to enforcement.*]—Where an easement was expropriated by a municipal corpn. under sect. 338 of Municipal Act, R. S. O., 1927, it was held that the corpn. was not entitled to withhold payment of the compensation money until the claimant had executed a conveyance of the easement, for the easement had automatically vested in the corpn.—*Re* MAYO & TORONTO CITY, [1929] 3 D. L. R. 890 ; 64 O. L. R. 139.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 12.—A.

e i. —— —— *Solicitor & client costs —New Brunswick Electric Power Act.*] —*Re* INGLEWOOD PULP & PAPER CO., LTD., & NEW BRUNSWICK ELECTRIC POWER COMMISSION (1929), 3 M. P. R. 91.—**CAN.**

sn. *Costs follow event—Subject to discretion of court—Principles governing exercise of discretion.*]—The ordinary rule is that costs should follow the event. But the ct. has a discretion to depart from this rule, & such discretion is to be exercised on well recognised principles.—ASSISTANT COLLECTOR SALSETTE *v.* DAMODARDAS TRITHUVANDAS (1928), I. L. R. 53 Bom. 178.—**IND.**

sx. *Application to set aside award—Liability for costs.*]—Where on an application under sect. 332 of the Municipal Act appcts. succeeded in having an award set aside, there is no power in the ct. to order the unsuccessful party to pay the costs of appcts. in connection with the arbn. proceedings.—*Re* ELDRIDGE ESTATE & DISTRICT OF SUMAS CORPN., [1931] 3 W. W. R. 223 ; 44 B. C. R. 194.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.

so. *Payment or tender of compensation not necessary.*]—CANADIAN PACIFIC RY. CO. *v.* PAUL (1921), 27 Can. Ry. Cas. 417.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.—A.

a i. —— *Or expropriation proceedings completed.*]—GODDARD *v.* BAINBRIDGE LUMBER CO. (1920), 29 B. C. R. 186.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

sp. *Application for warrant of possession — Jurisdiction of Exchequer Court to hear.*]—*Re* EXCHEQUER COURT JURISDICTION, [1925] 4 D. L. R. 673.—**CAN.**

sq. —— ——.]—CANADIAN NATIONAL RY. CO. *v.* BOLAND, [1925] 4 D. L. R. 703 ; [1925] Exch. C. R. 173.—**CAN.**

Part X.—Conveyance of Land and Payment of Purchase-Money.

1122. *Add. Annotation :*—**Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1125. *Add. Annotations :—As to* (1) **Refd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529 ; Swift *v.* Board of Trade, [1925] A. C. 520 ; Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1158. *Add. Annotation :*—**Consd.** Berners *v.* Fleming, [1925] Ch. 264.

1163. *Add. Annotation :*—**Refd.** Newton *v.* Lambton Hetton & Joicey Collieries, Ltd., [1937] 2 All E. R. 150.

1184a. **In Act—Right of vendor to costs of opposing Bill.**]—A vendor of land to a ry. co. having filed a bill for specific performance, opposed three Bills in Parliament, & by an Act which was eventually obtained his lien was provided for. It was then arranged that he should be paid principal, interest, & costs :—*Held :* the taxing-master in taxing the costs should allow all reasonable costs, charges, & expenses of appearing before the committee & opposing the Bills in Parliament.—Cooper *v.* London, Chatham & Dover Ry. Co. (1867), 17 L. T. 283.

1205a. ——.]—Upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest on the principal sum awarded from the date when possession was taken, unless the Act clearly shows a contrary intention.—Inglewood Pulp & Paper Co. *v.* New Brunswick Electric Power Commission, [1928] A. C. 492 ; 97 L. J. P. C. 118 ; 139 L. T. 593, P. C.

1227. After this case add :—

—— ——.]—*See, further,* Charities, Vol. VIII., pp. 359, 360, Nos. 1558–1565.

1237. *Add. Annotation :*—**Refd.** Clark *v.* Barnes, [1929] 2 Ch. 368.

1242a. ——.]—*Re* Bromley Guardians (1845), 4 L. T. O. S. 430.

Part XI.—Application of Money Deposited in Bank.

1275a. **Order for purchase-money to remain on deposit in court—In lieu of investment.**]—*Ex p.* Trinity College, Cambridge (1897), Y. S. C. P.

1279a. ——.]—*Re* St. Mary Magdalen, Oxford (1898), Y. S. C. P.

1382. *Add. Annotation :*—**Apld.** *Ex p.* Burdett Coutts, [1927] 2 Ch. 98.

1384. *Add. Annotation :*—**Consd.** *Ex p.* Burdett Coutts, [1927] 2 Ch. 98.

1384a. —— **Title not proved to be defective—Payment out ordered.**]—*Ex p.* Burdett Coutts, [1927] 2 Ch. 98 ; 96 L. J. Ch. 453 ; 137 L. T. 404 ; 71 Sol. Jo. 389.

1500. *Add. Annotation :*—**Consd.** *Re* Williams' Settlmt., Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

1560a. —— **Encumbrancers otherwise secured need not be served.**]—Where a petition was presented for payment out of ct. of purchase-money paid in in respect of real estate purchased under the General Metropolitan Paving Act, service of the petition upon parties entitled to certain small rent-charges charged on the property purchased, but which were amply secured on other property not included in the purchase, was held to be unnecessary.—*Ex p.* Mercers' Co. (1879), 10 Ch. D. 481 ; 18 L. J. Ch. 384 ; 27 W. R. 424.

1560b. —— **Summons by Representative Body of the Welsh Church.**]—*Re* Great Western Railway Act, 1911, *Ex p.* Great Western Ry., [1922] W. N. 148 ; 153 L. T. Jo. 339.

Part XII.—Costs when Money Deposited—Liability of Promoters.

1597. *Add. Annotation :—As to* (2) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

1604. *Add. Annotation :*—**Refd.** *Re* Letters Patent No. 139207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

1614a. —— ——.]—*Re* London Bridge Acts, *Ex p.* Tatham (1838), 3 Y. & C. Ex. 67 ; 7 L. J. Ex. Eq. 64 ; 2 Jur. 440 ; 160 E. R. 617.

PART X. SECT. 1, SUB-SECT. 2.—B. (c) i.

y i. ——.]—R. *v.* McKenzie (1890), 2 Exch. C. R. 198.—CAN.

PART X. SECT. 1, SUB-SECT. 4.

p i. —— *From filing of caveat—Owner remaining in possession.*]—*Re* Arbitration Act, *Re* Rosheo & Winnipeg School District No. 1, [1924] 4 D. L. R. 1017 ; 3 W. W. R. 614.—CAN.

z i. —— *Sydney Corporation (Amendment) Act (No. 7 of 1924), s. 17.*]—Sydney Municipal Council *v.* Troy, [1927] A. C. 706 ; 96 L. J. P. C. 124 ; 137 L. T. 707, P. C.—AUS.

PART XII. SECT. 8, SUB-SECT. 5.—A.

z i. —— ——.]—*Re* Ford & Canadian Pacific Ry. Co. (1926), 32 Can. Ry. Cas. 319.—CAN.

1686a. —— ——.]—*Ex p.* NORFOLK RY. CO. (1860), 1 Drew. & Sm. 48, n.; 62 E. R. 296.

Annotation :—**Apld.** *Re* Cleveland's Harte Estates (1860), 1 Drew. & Sm. 46.

1707. *Add. Citation :*—*Sub nom. Re* BENYON'S TRUSTS, 8 W. R. 425.

1974. *Citations :*—Delete 5 Ch. App. 1, & add 20 L. T. 940.

1985. *Add. Annotation :*—**Refd.** *Re* Booth & Southend-on-Sea Estates Co.'s Contract, [1927] 1 Ch. 579.

1997a. Transfer of fund from charity trustees to official trustees of charitable funds—Costs to be borne equally by promoters.]—*Ex p* SUNBURY-ON-THAMES URBAN DISTRICT COUNCIL, *Ex p.* STAINES RESERVOIRS JOINT COMMITTEE (1922), 86 J. P. Jo. 153.

Part XIII.—Purchase of Particular Interests in Land.

2017a. Agreement with mortgagor—Binding on mortgagee entering into possession.]—MOLD *v.* WHEATCROFT (1859), 27 Beav. 510; 29 L. J. Ch. 11; 1 L. T. 226; 6 Jur. N. S. 2; 54 E. R. 202.

2033. For existing citations substitute the following paragraph & citations :—

A bill filed against a railway co. by the grantee of an annuity charged on land taken by the co. stated that before the grant of the annuity the land was subject to a mtge. in fee, which had since been paid off, but that there had been no reconveyance; that the defts., under the powers of their act, had given the pltf. notice to treat for the land charged with the annuity, but without any further proceeding had taken possession of the land. The prayer was that the co. might be decreed to pay the arrears of the annuity & to secure the future payment of it. The defence made by the answer & evidence was that the co. had purchased from the prior incumbrancer under a power of sale :—*Held :* pltf. could not on such pleadings enforce a specific performance of the notice to treat regarded as a contract to purchase pltfs.' interest. The prayer for general relief is not available for the purpose of obtaining a decree at variance with the case made by the statements of the bill.—HILL *v.* GREAT NORTHERN RY. CO. (1854), 5 De. G. M. & G. 66; 2 Eq. Rep. 1069; 23 L. J. Ch. 524; 18 Jur. 685; 2 W. R. 335; 43 E. R. 794, L.JJ.

2035a. —— **Lease granted after conveyance to promoters—Reference to ascertain validity of agreement for lease.**]—NORFOLK RY. CO. *v.* BAYES (1849), 14 L. T. O. S. 170; 13 Jur. 435.

2037. *Add. Annotations :*—**Apld.** Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63. **Refd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177.

2038. *Add. Annotations :*—**Apld.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115; Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63.

PART XIII. SECT. 3.

2022 i. *Interest—Rate of—Application to reduce—R. S. O.*, 1897 (c. 110), ss. 15, 16.]—*Re* KINGSTON LIGHT, HEAT & POWER CO. & KINGSTON CORPN. (1904), 24 C. L. T. 358; 8 O. L. R. 258; 3 O. W. R. 769.—**CAN.**

so. *Bonus to mortgagee on payment of loan before maturity—Must be considered in compensation.*]—By a clause in the deed of hypothec affecting a property expropriated, the owner (mtgor.) was obliged to pay to the mtgee. a certain sum as bonus, in the event of the loan being paid before maturity :—*Held :* the expropriating party must assume the payment of such bonus, to the exoneration of the owner (mtgor.) as part of the compensation to be paid him for the lands taken under the Expropriation Act.—R. *v.* PICKLEMAN, [1932] Ex. C. R. 202.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 1.

2044 i. —— *Under invalid lease.*]—Land expropriated by the Dominion Crown was leased for a period of five years under an instrument not registered as required :—*Held :* the unregistered lease did not vest any estate or interest in the lessee & he was not entitled to compensation in respect of the expropriation.—R. *v.* HUDSON'S BAY CO. (1921), 65 D. L. R. 569; 20 Exch. C. R. 413.—**CAN.**

si. —— *Disturbance of sporting rights.*]—In arbn. proceedings following upon the compulsory acquisition by the Dept. of Agriculture for Scotland of a deer forest which was let for purposes of sport under a ninety-nine years' lease, the tenant made a claim for personal loss in respect of dispossession of the subjects. His claim was opposed by the Dept., who maintained that a claim based on disturbance at the instance of a sporting tenant was incompetent :—*Held :* rules (2) & (6) of Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 2, did not have the effect of displacing in any way the rule, now well settled in the construction of Lands Clauses Consolidation (Scotland) Act, 1845 (c. 19), that, where lands have been taken under compulsory powers, a tenant is entitled to full compensation for all loss resulting to him from dispossession; &, further, there was no distinction, in principle, between a claim for disturbance such as was here in question & a claim for ordinary business disturbance.—VENABLES *v.* DEPARTMENT OF AGRICULTURE FOR SCOTLAND, [1932] S. C. 573.—**SCOT.**

PART XIII. SECT. 5, SUB-SECT. 3.

sr. *General rules.*]—The rights conferred by a lease being a matter of property & civil rights, within the exclusive powers of the provincial legislature, the ct. in ascertaining the estate or interest of persons claiming compensation thereunder in an expropriation by the Dominion Crown, will have regard to the laws affecting such estate or interest in the province where the property is situated, notwithstanding Expropriation Act, ss. 25, 26. The compensation to be made to the lessee for the unexpired term of his lease should cover all reasonable cost of moving, refitting & settling the new premises; loss of time in seeking new location; depreciation of valuable business fixtures & fittings & damage thereto due to moving, etc., & a certain amount for dislocation or disturbance of business, which, however, cannot be fixed with mathematical certainty. The customary test of market value is no test of value in arriving at the compensation to be allowed for a leasehold interest expropriated.—R. *v.* ELITE CAFE, LTD., [1929] Ex. C. R. 56.—**CAN.**

zi. —— ——.]—The information herein was filed to have the compensation to which deft. was entitled fixed by the ct. Deft. was lessee of the property expropriated, & by the terms of his lease was given an option to purchase the freehold :—*Held :* as a lessee is entitled to compensation for the loss of his lease & as the option to purchase was one of the covenants of the lease, the right to purchase the freehold is an element to be considered in computing the compensation to be allowed deft.—R. *v.* NORTH-EASTERN LUNCH CO., LTD., [1933] Ex. C. R. 64.—**CAN.**

bi. —— —— ——.]—*Re* UNION FOUNDRY & MACHINERY WORKS, LTD., & ST. JOHN HARBOUR COMRS. (1929), 1 M. P. R. 267.—**CAN.**

sx. *Building to be erected by lessee.*]—*Held :* in assessing the damages resulting from the expropriation of real property by the Crown, the fact that the owner of the property expropriated had entered into a lease whereby the lessee was to erect a building on the land, which, after the expiration of the lease, was to become the property of the owner of the land expropriated, must be considered.—R. *v.* PIERCE & GIFFORD, [1938] Ex. C. R. 129.—**CAN.**

2059. *Add. Citation :*—66 L. J. Q. B. 80.

2067. *Add. Annotations :*—**Consd.** Matthey *v.* Curling, [1922] 2 A. C. 180; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

2068. *Add. Annotation :*—**Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

2075. *Add. Annotations :*—**Refd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177; Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63.

Part XIV.—Superfluous Lands.

2136. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2174. *Add. Annotations :*—*As to* (1) **Consd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172. **Refd.** Hargreaves, Ltd., Executors of, *v.* Burnley Corpn., [1936] 3 All E. R. 959.

2175. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

2177. *Add. Annotation :*—*As to* (1) **Expld. & Distd.** *Re* Glyn Valley Tramway Co., [1937] Ch. 465.

Part XV.—Compensation for Land taken or used for Special Purposes.

2201. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

2203a. ——.]—THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD *v.* THAMES LAND CO., LTD., No. 650a, *ante*.

2209. *Add. Annotation :*—**Consd.** Holt Bros. & Whitford *v.* Axbridge Rural District Council (1931), 95 J. P. 87.

ii. *Basis of Compensation* (p. 293).

2211a. On withdrawal of notice to treat—National Economy (Road Services) Order, 1931—What are "expenses."]—On the withdrawal by a county council of a notice to treat in respect of certain premises resps. became entitled to compensation "equal to the amount of any expenses . . . reasonably incurred by [them] by reason or in consequence of the service of the notice to treat."

Before the date of such service resps. had become lessees of the premises at a ground rent, & had also borrowed money wherewith to purchase the lease. They claimed as such "expenses" a proportionate part of the ground rent & of the interest on the said borrowed money for the period of the currency of the said notice :—*Held :* these payments were not expenses "incurred . . . by reason or in consequence of the service of the notice to treat" but by reason of antecedent contractual liability, & were not, therefore, the subject matter for compensation.—LONDON COUNTY COUNCIL *v.* MONTAGUE BURTON, LTD., [1934] 1 K. B. 360; 103 L. J. K. B. 86; 150 L. T. 178; 97 J. P. 318; 31 L. G. R. 885, D. C.

Before Sub-sect. 2 (p. 293), add :—

(*d*) *By Action.*

2212a. Admission of liability—Right to continue action.]—Where a local authority have intimated that they do not dispute their liability for damage done to premises, the owner of such premises is entitled to continue the action instituted by him before the defts. admitted liability, claiming a declaration that defts. are liable to pay compensation.—HOLT BROS. & WHITFORD *v.* AXBRIDGE RURAL DISTRICT COUNCIL (1931), 95 J. P. 87.

2214. *Add. Annotation :*—**Apld.** Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63.

2218. *Add. Annotations :*—**Refd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177; Chocolate Express Omnibus Co. *v.* London Passenger Transport Board (1934), 152 L. T. 63.

2222a. —— —— Loss of trade & licence & value of trade fixtures not considered.]—NORTHWOOD *v.* LONDON COUNTY COUNCIL, [1926] 2 K. B. 411; 95 L. J. K. B. 862; 135 L. T. 159; 90 J. P. 128; 42 T. L. R. 508; 24 L. G. R. 415, D. C.; *on appeal* (1927), 96 L. J. K. B. 520, C. A.

2225a. —— —— Must be within three years of confirmation of Order.]—It is insufficient to serve notice to treat within the three years, & where that had been done, but the hearing of the arbitration to determine compensation was not held within the three years :—*Held :* the powers of the local authority had lapsed, & prohibition would lie to the official arbitrator.—R. *v.* WEBSTER, *Ex p.* MARSHALL (1931), 95 J. P. 226; 30 L. G. R. 29, D. C.

PART XIII. SECT. 6, SUB-SECT. 1. —A.

11. —— *Entitled to offer—As well as owner.*]—R. *v.* MUSGRAVE, [1924] Exch. C. R. 218.—CAN.

PART XIII. SECT. 6, SUB-SECT. 2.

82. *Measure of compensation—Licencee.*]—Where one is in occupation of part of a street under licence from the municipality, by the provisions of which licence he was obliged to vacate upon notice before a given date, & when by reason of the expropriation of the property he was forced to vacate before such date, he becomes entitled to compensation for his loss of the use & occupation, as well as for the extra inconvenience & expense occasioned by reason of having to make an immediate move instead of having the whole life of the licence to do so, but not to include the cost of moving.—VALENCOURT *v.* R., [1928] Exch. C. R. 118.—CAN.

2225b. Under Housing, Town Planning, etc., Act, 1919 (c. 35)—Acquisition of land—Extent of powers.]—Under the above Act, defts. made an order, subsequently confirmed by the Minister of Health, for the compulsory acquisition for the purposes of a scheme under sect. 1 of the Act, of three thousand acres for the erection of working-class houses for the accommodation of one hundred & twenty thousand persons. They also proposed to acquire compulsorily a beerhouse within the area with the objects, (*a*) of controlling or regulating the traffic in intoxicating liquor on the site, that control to be based on management by some co. or assocn. whose servants were not to have a pecuniary interest in the sale of alcohol, & (*b*) of providing for the general entertainment & refreshment of the population:—*Held:* the Act contemplated extensive schemes for the provision of working-class houses by local authorities, involving in many cases the acquisition of considerable areas of land & extending even to the creation of a new town; sect. 12 (1), treated the land within the selected area as a whole, & as something in the nature of a building estate, &, as incidental to the complete control of the development of the building scheme, empowered the local authority to acquire any houses or other buildings, whether the same were or were not required for use as, or as a site for, workmen's dwellings, or for roads or other purposes mentioned in the earlier Housing Acts; & that power was not limited to houses which it was proposed to adapt for working-class accommodation under the power to alter contained in the later part of the sub-sect.; upon the above construction of the Act, subject to confirmation by the Minister of Health, defts. had power under sect. 12 (1) of the Act to acquire compulsorily the beerhouse in question for the attainment of the objects above-mentioned.

Semble: both under sect. 12 (2) of the Act, & under Housing of the Working Classes Act, 1903 (c. 39), s. 11, defts. had a similar power for effecting the like objects.—CONRON *v.* LONDON COUNTY COUNCIL, [1922] 2 Ch. 283; 91 L. J. Ch. 386; 126 L. T. 791; 87 J. P. 109; 38 T. L. R. 380; 20 L. G. R. 131; *sub nom.* CONSON *v.* LONDON COUNTY COUNCIL, 66 Sol. Jo. 350.

2225c. Under Housing Act, 1925 (c. 14)—Assessment of compensation—Whether under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 7.]—Housing Act, 1925 (c. 14), s. 46, provides for the assessment of compensation for land acquired compulsorily under an improvement or reconstruction scheme made under that Act in a manner differing in certain respects from that prescribed by the Act of 1919:—*Held:* even on the assumption that Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 7 (1), purports to apply to future Acts, Housing Act, 1925 (c. 14), s. 46, in so far as its provisions for the assessment of compensation for land acquired thereunder are inconsistent with the provisions of the earlier Act of 1919, repeals by implication these provisions of that earlier Act.

Per AVORY, J.: Sect. 7 (1) of the 1919 Act on its true construction applies only to Acts which existed at the time when that Act was passed, & not to future Acts.—VAUXHALL ESTATES, LTD. *v.* LIVERPOOL CORPN., [1932] 1 K. B. 733; 101 L. J. K. B. 779; 95 J. P. 224; 48 T. L. R. 100; 75 Sol. Jo. 886; *sub nom.* VAUXHALL ESTATES, LTD. *v.* LIVERPOOL CORPN., GROSVENOR ESTATES, LTD. *v.* LIVERPOOL CORPN., WHITECHAPEL ESTATES, LTD. *v.* LIVERPOOL CORPN., RYMER *v.* LIVERPOOL CORPN., 146 L. T. 167; 30 L. G. R. 22.

Annotation:—Apprvd. Ellen Street Estates, Ltd. *v.* Minister of Health, [1934] 1 K. B. 590.

2225d. —— —— ——.]—*Held:* (1) Parliament cannot bind itself as to the form of subsequent legislation & cannot effectively enact that a provision in one statute shall not be altered by a subsequent Act save by express words; (2) Housing Act, 1925 (c. 14), s. 46, so far as its provisions are inconsistent with those of Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), has repealed by implication the provisions of that Act.—ELLEN STREET ESTATES, LTD. *v.* MINISTER OF HEALTH, [1934] 1 K. B. 590; 103 L. J. K. B. 364; 150 L. T. 468; 98 J. P. 157; 32 L. G. R. 233, C. A.

2225e. —— Notice to treat—Whether service necessary before service of notice of entry.]—(1) It is proper to serve the two notices simultaneously.

(2) If a notice to enter is served before a notice to treat has been served, that notice operates as a notice of intention to enter not less than twenty-eight days after the service of both notices, that is, not less than twenty-eight days after the subsequent service of the notice to treat.—LIVERPOOL CORPN. *v.* ROSE (1935), 100 J. P. 62; 79 Sol. Jo. 839; 34 L. G. R. 181, C. A.

2225f. —— Open space within London Open Spaces Act, 1893, c. lxxi.]—By London Open Spaces Act, 1893 (c. lxxi.), Hackney Marshes was vested in the L.C.C. in fee simple as & for an open space for the perpetual use thereof by the public for exercise & recreation. Sect. 12 of that Act provided that the council might from time to time exchange any lands forming part of Hackney Marshes for any other lands "adjoining." In 1935, the L.C.C., in purported exercise of their powers under sect. 65 of Housing Act, 1925 (c. 14), of appropriating for housing lands vested in them, resolved that, subject to the certificate of the Minister under sect. 103 (1) of that Act, thirty acres of Hackney Marshes should be appropriated for housing & that fifty acres of land at Chigwell, about seven miles away, should be given in exchange. Appct. having addressed a protest to the Minister against the proposed appropriation & exchange was informed that the Minister proposed to hold a public inquiry under sect. 103 (2) of Housing Act, 1925 (c. 14).

The appct. then obtained a rule *nisi* for a writ of prohibition to prohibit the Minister from (*a*) consenting to the appropriation by the L.C.C. of a portion of Hackney Marshes, (*b*) issuing his certificate under sect. 103 (1) of Housing Act, 1925 (c. 14), approving the giving in exchange of an area of land at Chigwell, & (*c*) holding a public local inquiry in relation to those matters under sect. 103 (2) of Housing Act, 1925 (c. 14):—*Held:* (1) prohibition would lie; (2) in exercising its powers of appropriation of land under

sect. 65, a local authority need not act by an "order," & therefore the resolution of the L.C.C. was not bad merely because it was not under seal; (3) Housing Act, 1925 (c. 14), which is a consolidating Act repealing & re-enacting Housing of the Working Classes Act, 1890 (c. 70), & Housing, Town Planning, etc., Act, 1909 (c. 44) (from which ss. 65 & 103 are respectively taken), did not affect an Act passed between the original enactment of sect. 57 (3) of the Act of 1890 & its re-enactment in sect. 65 of the consolidating Act. It was manifest that the council could not, immediately after the Act of 1893 had vested Hackney Marshes in them as an open space, have appropriated part of the Marshes for housing under the Act of 1890. They had no greater powers under the Act of 1925; (4) the maxim "*generalia specialibus non derogant*" also applied to prevent the Housing Act, 1925 (c. 14), overriding the special provisions of London Open Spaces Act, 1893 (c. lxxi.), with regard to Hackney Marshes.—R. *v.* MINISTER OF HEALTH, *Ex p.* VILLIERS, [1936] 2 K. B. 29; [1936] 1 All E. R. 817; 105 L. J. K. B. 792; 154 L. T. 630; 100 J. P. 212; 52 T. L. R. 408; 80 Sol. Jo. 426; 34 L. G. R. 203, D. C.

2225g. —— Whether local authority must act by order.]—R. *v.* MINISTER OF HEALTH, *Ex p.* VILLIERS, No. 2225f, *ante*.

2225h. Under Housing Act, 1936—"Park, garden or pleasure ground"—What is.]—For the purpose of building houses, a local authority made an order for the compulsory purchase of a field some 70 yards distant from a mansion, & mainly used for pasturing stock. The field had also been used from time to time for the festivities of local societies, & the children of the village were allowed to play there at such times. It was contended that the land was part of a park, garden or pleasure ground, or was otherwise required for the amenity or convenience of the mansion:—*Held:* the land in question was not part of any park, garden or pleasure ground, nor was it required for the amenity or convenience of the mansion, & the order was properly made.—*Re* NEWHILL COMPULSORY PURCHASE ORDER, 1937, PAYNE'S APPLICATION, [1938] 2 All E. R. 163; 102 J. P. 273; 82 Sol. Jo. 375; *sub nom.* PAYNE *v.* MINISTER OF HEALTH, 158 L. T. 523; 36 L. G. R. 280.

2252. *Add. Annotation:—As to* (3) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2259. *Add. Annotation:*—**Consd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2262. *Add. Annotation:*—**Apld.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2265. *Add. Annotation:*—**Apld.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2268. *Add. Annotation:*—**Consd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2268a. —— Uncompleted building.]—A local authority purporting to act under the powers conferred by Metropolitan Paving Act, 1817, served on deft. a written notice to treat for the compulsory purchase of part of a piece of land on which a house then uncompleted was in course of erection:—*Held:* (1) the principle that a notice to treat for the compulsory purchase of part of a building is bad if the purchase of the part will cause a substantial interference with or alteration in the character of the whole building, applies where the building, part of which it is proposed to purchase compulsorily, is not complete at the time the notice is given, being in course of construction; (2) the notice is bad if it refers to "land" only, being the site of the building part of which it is proposed to purchase compulsorily.—SILCOCK & SONS *v.* GREEN, [1936] 1 K. B. 478; 105 L. J. K. B. 170; 154 L. T. 176; 100 J. P. 91; 52 T. L. R. 156; 79 Sol. Jo. 988; 34 L. G. R. 71.

2269. *Add. Annotation:*—**Consd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2269a. Notice to treat referring to "land"—Validity.]—SILCOCK & SONS *v.* GREEN, No. 2268a, *ante*.

2283. *Add. Annotation:*—**Consd.** Silcock & Sons *v.* Green, [1936] 1 K. B. 478.

2286a. Compensation for damage to land by severance not included.]—COURTAULDS, LTD. *v.* CITY OF LONDON CORPN., [1926] 2 K. B. 506; 95 L. J. K. B. 972; 136 L. T. 275; 90 J. P. 164; 42 T. L. R. 781; 70 Sol. Jo. 1024; 24 L. G. R. 538, D. C.

2298. *Add. citation:*—[1921] 1 Ch. 299.

Add. Annotations:—**Refd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

SUB-SECT. 3.—UNEMPLOYMENT.

See Public Works Facilities Act, 1930 (c. 50).

2300a. Validity of order—Inclusion of name of owner of easement.]—By a conveyance made in 1932 appct. sold land to a purchaser in fee simple subject to reservations in favour of himself & his grantees of certain rights to surface & underground water. Subsequently the local district council as water authority

---

PART XV. SECT. 3, SUB-SECT. 6.

sv. *Amount of land—Amount necessary for contemplated works.*]—Deft. corpn. issued to pltf. notice of its intention to take the whole of her land for a certain public work, although it admitted that the area was larger than that actually required for the contemplated work. It also refused pltf.'s application for a permit to build on the land, on the ground of its intention to take same for the work:—*Held:* it had no power under Public Works Act, 1908, to take a larger area than it actually required for the public work.—QUINLAN *v.* WELLINGTON CORPN., [1929] N. Z. L. R. 491.—**N.Z.**

sw. *Time for valuation—Successive declarations relating to different land.*]—The local government published under Land Acquisition Act, 1894, s. 6, a declaration that land belonging to applts. respectively & land belonging to other persons were required for public purposes. Five months later the govt. published another declaration for the acquisition of applts.' lands only; the declaration stated that the earlier declaration was thereby cancelled:—*Held:* having regard to Land Acquisition Act, 1894, s. 23 (1), the compensation should have been based upon the value of the land at the date of the publication of the later declaration.—MA SIN *v.* RANGOON COLLECTOR (1929), 56 L. R. Ind. App. 210.—**IND.**

PART XV. SECT. 3, SUB-SECT. 7.—C.

sx. *Land taken under Winnipeg Charter—Time for making claim.*]—Defts.' claim was for compensation for their land injuriously affected by the exercise of the powers of the City under the Charter, & had been expressly recognised by a bye-law of the council:—*Held:* the Charter had, under the circumstances, no application to the claim of defts., & they had all the time allowed them by the general law applicable to the case for making their claims.—WINNIPEG CORPN. *v.* TORONTO GENERAL TRUSTS CORPN. (1911), 20 Man. L. R. 545.—**CAN.**

acting ostensibly under the Public Works Facilities Act, 1930 (c. 50), s. 2, made an order purporting to be a compulsory purchase order in the prescribed form authorising them to purchase a part of the land comprised in the conveyance, there being inserted in the schedule to the order under the heading " Owners or Reputed Owners " not only the name of the purchaser under the conveyance but also the name of appct., & under the heading " Quantity, Description & Situation of the lands " a full description of the land but no mention of appct.'s easement over it; & the council served upon appct. a notice of the making of the order purporting to be a notice in accordance with the Act & in the prescribed form, the schedule to which notice contained a full description of the lands but made no mention of the easement. Appct. gave notice of objections to the confirmation of the order by the Minister of Health, & by direction of the Minister a public local inquiry was held in regard to the matter before an officer of the Ministry, who stated that the objections raised points of law which could not be dealt with by him but must be considered by the Minister. Having considered the objections & read the report of the officer, the Minister confirmed the order. Appct. thereupon made an application to the High Ct. under Sched. I., Part III., para. 2, of the Act that the order might be set aside on the grounds: (1) that the order was not within the powers of the Act, inasmuch as, though the Act authorised only the purchase of land, the order included the name of appct. who had merely an easement over the land & therefore purported to acquire what was not land; (2) the property to be acquired was not sufficiently described in the order or the notice thereof, as no mention was made in them of appct.'s easement; &, further, that the notice of the order did not, pursuant to Sched. I., Part II., para. 3 (*b*), of the Act state the " effect of the order," because it did not bring home to the applicant what effect the order would have upon him or his property; & (3) that the Minister did not before deciding whether or not the order should be confirmed give appct. an opportunity of coming before him & stating his legal arguments in support of the objections:—*Held:* the application could not be supported on any of these grounds, & must therefore be refused.—*Re* SIMEON (J. W. B.), [1935] 2 K. B. 183; *sub nom.* SIMEON *v.* MINISTER OF HEALTH, 104 L. J. K. B. 330; 152 L. T. 372; 99 J. P. 167; 51 T. L. R. 235; 79 Sol. Jo. 109; 33 L. G. R. 75.

2300b. —— Description of property—Omission of easement.]—*Re* SIMEON (J. W. B.), No. 2300a, *ante.*

2300c. Notice of order—Omission to state effect of order.]—*Re* SIMEON (J. W. B.), No. 2300a, *ante.*

2300d. Confirmation of order by Minister—Applicant not heard on objection on point of law.]—*Re* SIMEON (J. W. B.), No. 2300a, *ante.*

2300e. Public inquiry—Appointment of technical assessor—Validity.]—*Re* MANCHESTER CITY (RINGWAY AIRPORT) COMPULSORY PURCHASE ORDER, 1934, No. 2300f, *post.*

2300f. Quashing order—Order ultra vires—No prejudice.]—(1) Under Public Works Facilities Act, 1930 (c. 50), Sched. I., Part III. (2), the High Ct. has power to quash a compulsory purchase order, " if satisfied that the order is not within the powers of the Act or that the interests of the appct. have been substantially prejudiced by any requirement of this Act not having been complied with." The provision that appct. must have been substantially prejudiced applies to both the above grounds of objection to an order. Accordingly, if an order is not within the powers of the Act, by reason of the Minister having failed to act judicially in some particular or for some other cause, the order will not be quashed, unless it is also shown that the interests of appct. have been prejudiced thereby. (2) *Held:* further, on the facts, a tentative approval of a scheme contemplated as a result of the order, expressed in a letter written by the Minister to the promoters of the scheme, did not prevent the Minister from bringing a judicial mind to bear on the matters in issue, & the public local inquiry, which under the Act the Minister is bound to hold before confirming the order, was not invalidated by the appointment of a technical assessor to sit with the inspector who held the inquiry,—*Re* MANCHESTER CITY (RINGWAY AIRPORT) COMPULSORY PURCHASE ORDER, 1934 (1935), 153 L. T. 219; 99 J. P. 319; 79 Sol. Jo. 503; 33 L. G. R. 314.

Annotation:—Generally, **Reid.** Horn *v.* Minister of Health, [1936] 2 All E. R. 1299.

COMPTROLLER.

See PATENTS; TRADE MARKS.

CONDONATION.

See HUSBAND AND WIFE

CONFLICT OF LAWS.

Part I.—Principles of Jurisdiction.

1. *Add. Annotation :*—**Refd.** Whitney *v.* I. R. Comrs. (1925), 42 T. L. R. 58.

6. *Add. Annotation :*—**Folld.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

6a. ——.]—The English cts. will not entertain an action for the enforcement of the revenue law of a foreign State.—*Re* VISSER, QUEEN OF HOLLAND *v.* DRUKKER, [1928] 1 Ch. 877 ; 97 L. J. Ch. 488 ; 139 L. T. 658 ; 44 T. L. R. 692 ; 72 Sol. Jo. 518.

8. —— ——.]—The Spanish Govt. declared deft. the ex-King of Spain, to be a traitor, & decreed that all his property & grounds of action should be seized for the benefit of the State, & that all bankers in Spain having in deposit any such property should make delivery thereof to the Spanish Treasury. Certain securities, the private property of deft. had been deposited at the W. Bank in London to the order of pltfs. a Spanish bank in Spain, as deft.'s agents. Both pltfs. & deft. claimed the delivery up of these securities & the W. Bank interpleaded :—*Held :* as pltfs. claimed no personal title to the securities, were not asserting their contractual rights as they originally existed but those rights as altered by the above decrees, upon which they must rely, & as, in substance, they were not asserting their own right at all, but that of the Spanish State, a judgment in their favour would involve the execution of a foreign penal law. Therefore pltfs.' claim failed.—BANCO DE VIZCAYA *v.* DON ALFONSO DE BORBON Y AUSTRIA, [1935] 1 K. B. 140 ; 104 L. J. K. B. 46 ; 151 L. T. 499 ; 50 T. L. R. 284 ; 78 Sol. Jo. 224.

11. *Add. Annotation :*—**Refd.** Kramer *v.* A.-G., [1923] A. C. 528.

12. *Add. Annotation :*—*As to* (1) **Apprvd.** Kramer *v.* A.-G. (1922), 92 L. J. Ch. 1.

After this case add "Who are foreign nationals within Treaties of Peace & consequent Orders generally, *see* ALIENS, Nos. 49a *et seq.*, *ante*.

13. *Add. Citation :*—2 T. L. R. 116, D. C.

14. *Add. Annotation :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

17. *Add. Annotations :*—*As to* (1) **Consd.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8 ; The Avantzazu Mendi, [1938] 3 All E. R. 333. **Refd.** The Jupiter (1924), 93 L. J. P. 156 ; Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte De Mulhouse (1924), 93 L. J. K. B. 1098 ; Banco de Bilbao *v.* Rey, [1938] 2 All E. R. 253 ; Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 384. *As to* (2) **Folld.** White, Child & Beney *v.* Simmons ; White, Child & Beney *v.* Eagle Star & British Dominions Insce. (1922), 127 L. T. 571. **Refd.** Fenton Textile Assocn. *v.* Krassin (1921), 38 T. L. R. 259 ; Banque Internationale De Commerce De Petrograd *v.* Goukassow (1924), 40 T. L. R. 837 ; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94. *As to* (3) **Consd.** The Jupiter (No. 3) (1927), 137 L. T. 333. *Generally*, **Refd.** Musmann *v.* Engelke (1927), 43 T. L. R. 685 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745 ; Compania Naviera Vascongada *v.* Cristina S.S., [1937] 4 All E. R. 313.

17a. —— —— ——.] — Pltfs. were an English limited co. of engineers & merchants. Part of its business was transacted in Russia, & for the purpose of that business pltfs., through their London bankers, deposited moneys & Russian Treasury Bonds with the Petrograd branch of the Banque de Commerce de l'Azoff-Don. Having done so, pltfs. took out two policies of insurance to insure themselves against loss or damage to the insured property "directly caused by fire, rioters, civil commotions, war, civil war, revolutions, rebellions, military or usurped power. . . ." No claim was to attach under the policy (*inter alia*) "for confiscation or destruction by the Govt. of the country in which the pro-

---

PART I. SECT. 1.

2 iii. ——.]—A husband obtained decree of divorce against his wife in an undefended action in Scotland. Therefore, while he was resident in England, his former wife brought an action against him in Scotland for reduction of the decree, on (*inter alia*) the ground that the ct. had had no jurisdiction to entertain the action of divorce, the husband being domiciled in England. At a proof it was established that, in the divorce proceedings, the husband had deliberately misled the ct. as to his domicile, & had thereby procured the decree of divorce :—*Held :* even though the decree of divorce was one the ct. had had no jurisdiction to grant & which had been obtained only through the husband's false evidence, yet the ct. could not competently entertain the action to reduce that decree, the defender not being personally subject to its jurisdiction ; action dismissed.—ACUTT *v.* ACUTT, [1936] S. C. 386.—**SCOT.**

h i. —— ——.]—A foreign subject comes within the purview of all Acts in force in British India, if he chooses to come into the country, unless such Act specially exempts him. Ignorance of law enforceable in British India might be pleaded in mitigation of sentence but affords him no sort of privilege or immunity.—JITENDRANATH GHOSH *v.* CHIEF SECRETARY TO BENGAL GOVT. (1932), I. L. R. 60 Cal. 364.—**IND.**

sb. *Tort committed within jurisdiction—By party resident outside.*]—An action founded on tort committed within the jurisdiction by a party resident outside the jurisdiction may be tried by an Ontario ct.—ANDERSON *v.* THOMAS, [1935] 3 D. L. R. 286.—**CAN.**

sc. —— ——.]—A judge of the circuit ct. has no jurisdiction to try an action for tort where deft. does not ordinarily reside or carry on any profession, business or occupation in any part of the Irish Free State.—GALLEN *v.* LEE, [1936] I. R. 142.—**IR.**

se. *Proceedings in tort against foreign executors—One executor temporarily resident in jurisdiction.*]—In an action of damages for personal injuries arising out of a motor car accident in Scotland, pursuers sought (*inter alia*) to establish that the accident was due to the fault of the driver of the car in which they were travelling, who had died as a result of the accident, & they called his exors. as defenders. Deceased was a domiciled Englishman, his executry estate was wholly situated in England, & the exors., two in number, were domiciled & resident there. Personal service of the summons was made upon one of the exors. in his executorial capacity, while he was temporarily in Scotland. Both exors. having lodged defences to the action, & having pleaded that they were not subject to the jurisdiction of the Ct. of Session :—*Held :* jurisdiction had not been established against the exors., in respect that only one of them had been personally cited in Scotland.—DALZIEL *v.* COULTHURST'S EXORS., [1934] S. C. 564.—**SCOT.**

perty is situated." In Dec. 1917, during the currency of the policy, the Banque de Commerce was occupied by soldiers & sailors of the Red Guard, & by the Bolshevists, purporting to act under the authority of an executive committee of the Commissaries of the People. They demanded & obtained control & possession of the bank & everything contained in it, including the insured property. Two actions were brought claiming for losses under the policies, & the question arose with regard to the recognition of the Soviet Govt. as a sovereign power:—*Held:* on the information then available, the act of the military in seizing the insured property was an act of confiscation by the Govt. of Russia which was in existence at the material time, & had since been recognised by His Majesty's Govt. as the *de facto* Govt. of Russia, & was not an act of a usurped authority; therefore the claim failed by reason of the clause which provided that no claim was to attach under the policy ". . . for confiscation or destruction by the Govt. of the country in which the property is situated."—WHITE, CHILD & BENEY, LTD. *v* SIMMONS, WHITE, CHILD & BENEY, LTD. *v.* EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. (1922), 127 L. T. 571; 38 T. L. R. 616, C. A.

Annotations:—**Refd.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8; Banco de Bilbao *v.* Roy, [1938] 2 All E. R. 253.

Part II.—Domicil.

19. *Add. Annotations:—As to* (2) **Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669. *As to* (3) **Consd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692; Boldrini *v.* Boldrini & Martini, [1932] P. 9; Abraham *v.* A.-G., [1934] P. 17; Gulbenkian *v.* Gulbenkian, [1937] 4 All E. R. 618; I. R. Comrs. *v.* Cohen (1937), 21 Tax Cas. 301. *As to* (4) **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259. *Generally,* **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

22. *Add. Annotation:—As to* (2) **Apld.** Bryce *v.* Bryce (1932), 49 T. L. R. 177.

32. *Add. Annotation:—As to* (1) **Consd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

34. *Add. Annotations:—As to* (1) **Refd.** I. R. Comrs. *v.* Cohen (1937), 21 Tax Cas. 301. *As to* (3) **Refd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588.

36. *Add. Annotations:—As to* (1) **Refd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9; Abraham *v.* A.-G., [1934] P. 17; I. R. Comrs. *v.* Cohen (1937), 21 Tax Cas. 301. *Generally,* **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259; Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; Boldrini *v.* Boldrini & Martini, [1932] P. 9. **Refd.** Herd *v.* Herd, [1936] 2 All E. R. 1516.

37. *Add. Annotation:*—**Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669.

38. *Add. Annotations:*—**Consd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; Peal *v.* Peal (1930), 143 L. T. 768; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9. **Refd.** Rudd *v.* Rudd, [1924] P. 72; Ross *v.* Ross, [1930] A. C. 1; Boldrini *v.* Boldrini & Martini, [1932] P. 9; Herd *v.* Herd, [1936] 2 All E. R. 1516; Gulbenkian *v.* Gulbenkian, [1937] 4 All E. R. 618; I. R. Comrs. *v.* Cohen (1937), 21 Tax Cas. 301.

40. *Add. Annotation:—As to* (2) **Refd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

44. *Add. Annotation:*—**Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

45. *Add. Annotation:—As to* (1) **Refd.** Gulbenkian *v.* Gulbenkian, [1937] 4 All E. R. 618.

48a. —— ——.]—Where a man leaves the country of his domicil of choice with the fixed & settled intention to give up residence there, & thereupon reverts to his domicil of origin, if he afterwards changes his mind, & forms the intention of returning to that country, as permanently residing there, he re-acquires a domicil of choice there, only when with that intention he again resides there. The domicil of choice must be re-acquired by fulfilment of the same conditions as when it was formerly acquired.—FLEMING *v.* HORNIMAN (1928), 138 L. T. 669; 44 T. L. R. 315.

50. *Add. Annotation:—As to* (6) **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

51. *Add. Annotations:—As to* (2) **Apld.** Bryce *v.* Bryce (1932), 49 T. L. R. 177. **Refd.** Rudd *v.* Rudd, [1924] P. 72.

PART II. SECT. 1.

sq. *Person settled in province.*]—For purposes of divorce the domicil of a person settled in one of the provinces of Canada is that particular province though the Dominion Parliament has legislative power to dissolve the marriage.—A.-G. FOR ALBERTA *v.* COOK, [1926] A. C. 444; 95 L. J. P. C. 102; 134 L. T. 717; 42 T. L. R. 317.—**CAN.**

PART II. SECT. 2. SUB-SECT. 1.

40 iii. —— ——.]—Where a person whose domicil of origin was outside of the United States & who has acquired a domicil of choice in one of the states thereof, resides temporarily in another country with the intention of returning to some place in the United States, though not necessarily to the state in which he formerly lived, he does not revert to his domicil of origin, even with respect to divorce.—NELSON *v.* NELSON, [1925] 3 D. L. R 22; [1925] 2 W. W. R. 1.—**CAN.**

40 iv. —— ——.]—R. *v.* MILKHA SINGH (1931), 44 B. C. R. 278; 56 Can. C. C. 211.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A.

51 ii. —— ——.]—A domicil of origin differs from a domicil of choice mainly in this, that its character is more enduring, its hold stronger & less easily shaken off. Such a domicil continues unless it is shown with perfect clearness & satisfaction that there was a fixed & settled purpose to acquire a new domicil. This *onus* is a heavy one, & is upon those who assert a change of domicil.—*Re* MURRAY'S ESTATE, [1921] 3 W. W. R. 874; 31 Man. L. R. 362.—**CAN.**

51 iii. —— ——.]—A domicil of origin is not easily shaken off. Mere absence from home, roving & wandering, however long pursued, are not in themselves sufficient to effect a change; to do so there must be a fixed & settled purpose to abandon the domicil of origin & to settle in the country of choice.—BARRY *v.* JAMES (1921), *Times*, Apr. 29; [1921] 3 W. W. R. 182.—**S. AF.**

51 iv. ——.]—TAYLOR *v.* TAYLOR (1928), Q. R. 45 K. B. 184.—**CAN.**

52a. ——.]—(1) In questions of domicil, less weight is given by the cts. to a testator's declarations than to his acts, & no one act is necessarily *per se* paramount in importance; but the relative importance of all his acts, however trivial, must be considered as evidence of the *animus manendi* or *revertendi*.

(2) The cts. are now slower to hold a change of the domicil of origin, & must be satisfied that testator intended *quatenus in illo exuere patriam*.

(3) The decisions that persons going to India in the service of the East India Co. thereby acquire an Anglo-Indian domicil, are excrescences upon, & anomalous to, the principles of domicil.

(4) The *animus* to change an acquired domicil is not sufficient without the factum of return.—DREVON *v.* DREVON (1864), 4 New Rep. 316; 34 L. J. Ch. 129; 10 L. T. 730; 10 Jur. N. S. 717; 12 W. R. 946.

Annotation:—As to (1) **Consd.** Doucet *v.* Geoghegan (1878), 9 Ch. D. 441.

53a. ——.]—HORN *v.* HORN (1929), 142 L. T. 93; *previous proceedings, sub nom.* H. *v.* H., [1928] P. 206.

54. *Add. Annotation:—As to* (3) **Refd.** Gulbenkian *v.* Gulbenkian, [1937] 4 All E. R. 618.

54a. —— —— **After revival of domicil on abandonment of domicil of choice.**]—FLEMING *v.* HORNIMAN, No. 48a, *ante*.

55a. ——.]—RUDD *v.* RUDD, No. 903a, *post*.

58a. **Life to be considered as a whole**].—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA, No. 155a, *post*.

59. *Add. Annotations:—As to* (2) **Distd.** *Re* Ross Ross *v.* Waterfield (1929), 46 T. L. R. 31. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

64a. ——.]—DREVON *v.* DREVON, No. 52a, *ante*.

65a. —— **Effect of deportation order.**]—VEITH *v.* VEITH (1929), 73 Sol. Jo. 235.

66. *Add. Annotation:*—**Follid.** *Re* Cunnington, Healing *v.* Webb, [1924] 1 Ch. 68.

67. *Add. Annotations:*—**Consd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9. **Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669.

67a. ——.]—DREVON *v.* DREVON, No. 52a, *ante*.

68. *Add. Annotations:—As to* (1) **Consd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; Peal *v.* Peal (1930), 143 L. T. 768. **Refd.** Rudd *v.* Rudd, [1924] P. 72. *Generally*. **Refd.** Ross *v.* Ross, [1930] A. C. 1.

68a. —— ——.]—Applt. was the proprietor of a Scotch estate, but left Scotland for America in 1895 to earn his living. In 1901 he married resp., an American lady, & in 1902 they went to Quebec where he carried on the business of manufacturing arms. They lived together there till 1917 with occasional visits to England. In 1917 applt. went to Washington, staying there as an expert adviser on munitions till Sept. 1918, when he stayed a certain time in Great Britain & in 1918 leased a house in London. In 1922 he took a lease of a flat in New York of which he remained tenant when these proceedings for divorce began in Dec. 1923. Up to the year 1920 there was no statement by applt. of his intention to abandon his Scottish domicil, & as late as Dec. 1920, he stated in an affidavit that he was a domiciled Scotchman. Between Dec. 1920, & the institution of these proceedings he was trying for the purposes of taxation to become a resident alien in the United States, & in Apr. 1923, succeeded. In Jan. 1924, after these proceedings he sought to be naturalised as an American citizen. He spent increasing periods of time at his Scottish estate & referred to it as his home in a letter written to resp. in Nov. 1922. Since 1920, however, he had made statements in documents & verbally that he intended to live permanently in New York, though such statements were never made to his wife, nor, with one exception, to any personal friend:—*Held:* the evidence of declared intention of change of domicil was not established, as such declarations must be examined by considering the person to whom, the purposes for which, & the circumstances in which they were made, & be carried into effect by conduct & action consistent with the declared intention.—ROSS *v.* ELLISON (OR ROSS). [1930] A. C. 1, H. L.; 96 L. J. P. C. 163; 141 L. T. 666, H. L.

Annotations:—**Refd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9; I. R. Comrs. *v.* Cohen (1937), 21 Tax Cas. 301.

68b. —— ——.]—On an issue as to domicil the declarations of a living person as to his intention of acquiring a domicil of choice are not subject to the usual common law rule which excludes evidence of statements of intention unless they are against the interest of the party making them. The declarations in question are to be duly weighed along with the rest of the evidence on the issue, although they have been properly described as being, unless they are accompanied by acts, the "lowest species of evidence, especially when encountered by conflicting declarations" of another party.—BRYCE *v.* BRYCE, [1933] P. 83; 102 L. J. P. 1; 148 L. T. 351; 49 T. L. R. 177; 77 Sol. Jo. 49.

68c. —— ——.]—Testator, who died in 1935, declared by his will, which was in English form: "I have not relinquished & do not intend to relinquish my English domicil." Testator's domicil of origin was England, where he was born, but in 1897 he moved with his parents to Scotland, where his father had bought certain property. Testator's father continued to live in Scotland until his death in 1905, when by his will, which was in English form, his residuary estate, including the property in Scotland & other property in England, passed to testator. With the

---

PART II. SECT. 3, SUB-SECT. 1.—B.

60 iii. ——.]—GROTHKOP *v.* GROTHKOP, [1922] N. Z. L. R. 1.—N.Z.

60 iv. ——.]—HARRIS *v.* HARRIS (Sask.), [1929] 2 D. L. R. 546.—CAN.

60 v. ——.]—The intention necessary to constitute a domicile of choice excludes all contemplation of any event on the occurrence of which the residence would cease.

The domicile of origin of a man found not to have been abandoned at the time of his marriage, despite the facts that he had actually resided & been employed in a certain State in the U.S.A. for over a year & a half; that while there he had sent for his fiancée to join him; that he had married her there & had become a naturalised American citizen.—JOHNSON *v.* JOHNSON, [1931] A. D. 391.—S. AF.

PART II. SECT. 3, SUB-SECT. 2.—A.

67 ii. —— ——.]—CROSBY *v.* THOMSON (N. B.), [1926] 4 D. L. R. 6.—CAN.

exception of brief visits to England & an occasional trip abroad, testator lived in Scotland from 1897 until his death. He had a great love for his property in Scotland & was anxious that after his death it should remain in his family & not be sold. At his own request testator was buried in Scotland. The exors. of the will took out a summons to determine (*inter alia*) whether testator was at the time of his death domiciled in England or in Scotland :—*Held :* as all the evidence showed that the testator's residence was in Scotland & that he intended that such residence should be permanent, the testator was domiciled in Scotland at the time of his death.—*Re* LIDDELL-GRAINGER'S WILL TRUSTS, DORMER *v.* LIDDELL-GRAINGER, [1936] 3 All E. R. 173 ; 53 T. L. R. 12 ; 80 Sol. Jo. 836.

68d. **Declarations as to intention—Purpose & circumstances must be considered.**]—ROSS *v.* ELLISON (OR ROSS), No. 68a, *ante*.

69. *Add. Annotations :—As to* (1) **Expld.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Reld.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

79a. ——.]—Resp. was born in England in 1860, his domicile of origin being English. He went to Australia in 1878 & remained there continuously till 1910. In 1911 he retired from business on medical advice &, after a trip round the word, came to England with his wife, an Australian, & daughter. He never spent an entire year in England (apart from the war years) from 1911 to 1931, & during that time visited many parts of the world. In 1922 he had the intention of living permanently in England, but it was stated that later he was eager to preserve an Australian domicle & expressed the intention of returning to Australia when his health permitted. Resp. had no fixed permanent residence in the United Kingdom but lived for some time with a brother as a guest, & later in a furnished flat on a monthly tenancy. He had a large amount of furniture & effects stored in Australia & had reserved a plot for himself & his wife in an Australian cemetery. The whole of his commercial interests were in Australia & he owned no investments outside Australia. On appeal by resp. against a decision of the Comrs. of Inland Revenue under r. 2 (*a*) of Case IV. & r. 3 (*a*) of Case V. of Sched. D of 1918 Act, that they were not satisfied that he was not domiciled in the United Kingdom for the years 1931–32 & 1932–33, the Special Comrs. decided that he had adopted a domicile of choice in Australia before his retirement from business in 1911 & that he had not abandoned it :—*Held :* the evidence was not sufficient to displace resp.'s English domicile of origin.—INLAND REVENUE COMRS. *v.* COHEN (1937), 21 Tax Cas. 301.

80a. ——.]—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA, No. 155a, *post*.

84. *Add. Annotation :*—**Reld.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588.

84a. —— —— **Although subject to Aliens Order.**—In a husband's suit for dissolution of marriage the wife objected to the jurisdiction on the ground that the domicil of the husband was not English. The husband was a waiter of Italian nationality & was registered as an alien in England, & as such was subject to the restrictions & liabilities by the Aliens Restriction Act, 1914 (c. 12), & the Aliens Order, 1920 :—*Held :* (1) the provisions of the Act of 1914 & the Order of 1920 did not preclude the petitioner from acquiring an English domicil of choice ; (2) on the facts, petitioner had discharged the *onus* on him of proving that he had acquired an English domicil of choice.—BOLDRINI *v.* BOLDRINI & MARTINI, [1932] P. 9 ; 101 L. J. P. 4 ; 146 L. T. 121 ; 48 T. L. R. 94 ; 75 Sol. Jo. 868, C. A.

88a. —— ——.]—It being settled that a change of domicil must be made *animo et facto*, the *animus* may be inferred by the *factum* of residence within the new domicil, but in order to warrant that inference the quality of the residence must be taken into account ; mere length of residence is not of itself sufficient.

A testator who died in Liverpool in 1927, aged eighty-two & unmarried, left a holograph will, valid by the law of Scotland but invalid by the law of England. Testator's domicil of origin was Scottish, & he lived the greater part of his life in Glasgow. Originally employed there as a commercial traveller he gave up that employment in 1882 & never worked again. In 1892 he went to Liverpool to be near a brother & sister, & lived there for the last thirty-five years of his life. He was supplied with the means of subsistence by his brother & sister, & on the death of his sister he succeeded to the whole of her estate. With the exception of family ties he had few, if any, ties in either England or Scotland. In an action by beneficiaries under the will against testator's next of kin for a declaration that testator was domiciled in Scotland at the date of his death :—*Held :* in the absence of independent evidence of an intention on the part of testator to change his domicil, the burden which lay on the next of kin of proving that he had abandoned his domicil of origin had not been discharged.—BOWIE OR RAMSAY *v.* LIVERPOOL ROYAL INFIRMARY, [1930] A. C. 588 ; 99 L. J. P. C. 134 ; 143 L. T. 388 ; 46 T. L. R. 465, H. L.

Annotations :—**Reld.** *Re* Liddell-Grainger's Will Trusts, Dormer *v.* Liddell-Grainger, [1936] 3 All E. R. 173 ; I. R. Comrs. *v.* Cohen (1937), 21 Tax Cas. 301.

100a. —— ——.]—Resp., a domiciled Englishman, was an officer in the Indian Army, & consequently, although his true matrimonial & conjugal home had been in England, he was temporarily resident in India when a petition for judicial separation was served upon him :—*Held :* without deciding whether resp.'s English domicile was sufficient to found jurisdiction, in the circumstances, as resp.'s temporary residence in India was independent of his personal volition, but was determined by his superior officers, he had a sufficient matrimonial residence in this

PART II. SECT. 3, SUB-SECT. 2.—B. (b).

97 l. *Naval service.*] — There is no rule of law that a sailor in the Australian Navy cannot, while on service in Australia, acquire a domicile of choice in one of the Australian States. —SCHACHE *v.* SCHACHE & STREETER (1931), 31 S. R. N. S. W. 633 ; 48 N. S. W. W. N. 230.—AUS.

country to give jurisdiction to the ct.—WARD *v.* WARD (1923), 39 T. L. R. 440.

104. *Add. Annotations :—As to* (1) **Expld.** Graham *v.* Graham, [1923] P. 31. **Refd.** Eustace *v.* Eustace, [1924] P. 45.

112. *Add. Annotation :*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

113. *Add. Annotation :*—**Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

114. *Add. Annotations :—As to* (2) **Consd. & Expld.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

115. *Add. Annotations :*—**Refd.** Rudd *v.* Rudd, [1924] P. 72; Bartlett *v.* Bartlett, [1925] A. C. 377; *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

120a. **Health of wife.**]—Deceased was born in Germany of German parents in 1852. His father had a large interest in a starch & sugar manufacturing business in Germany, & his son was brought up in that business. In 1877 deceased married a German lady & had two sons who were both born in Germany. In 1879 he came to England where he resided at various places until 1884, when he applied for & obtained naturalisation as a British subject under the Aliens Act, 1870. In his memorial he stated that he intended to continue to reside permanently within the United Kingdom of Great Britain & Ireland & had no intention of permanently leaving the United Kingdom. Having divorced his wife he married in 1886 in England his second wife, a lady of English birth, & lived with his wife & children for two years in England. He then returned to Germany for two years & was there engaged on business connected with his father's firm. His wife having become an invalid, he took a house for her in Hampstead, & in it she died in 1906. In 1901 the father of the deceased, who had been the head of the firm at Cüstrin, died & was succeeded in the management of the business by the deceased, who paid frequent visits to Germany lasting for considerable periods, in attendance at meetings of the board, & made the old family house his residence when at Cüstrin on business. On the death of his mother in 1908 at Neuwied he used her house as a second residence when in Germany. Deceased died in 1915 at his house in Hampstead which he had endeavoured to dispose of, though without success :—*Held :* the true inference to be drawn from the circumstances under which the house in Hampstead was taken & maintained by the deceased was that it was an emergency measure dictated by the condition of his wife & not one which should be held to indicate an intention to establish a family home & thus to adopt a new domicile in this country. The evidence was wholly insufficient to establish the abandonment by the deceased of his German domicile.

Per Lord ATKIN : It is not the law either that a change of domicile is a condition of naturalisation, or that naturalisation involves necessarily a change of domicile.—WAHL *v.* A.-G. (1932), 147 L. T. 382, H. L.

128. *Add. Citation :*—4 Notes of Cases, 698, n.

134. *Add. Annotation :*—**Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

142. *Add. Annotations :—As to* (2) **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; H. *v.* H., [1928] P. 206.

145. *Add. Annotation :*—**Consd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

147. *Add. Annotations :*—**Refd.** Bryce *v.* Bryce, [1933] P. 83; I. R. Comrs. *v.* Cohen (1937), 21 Tax Cas. 301.

150. *Add. Citation :*—3 Macq. 852.

PART II. SECT. 3, SUB-SECT. 2.—B. (d).

116 iv. ——— ——— ———.]—Application of maxim *ubi uxor, ubi domus* applied.—HILLS *v.* HILLS (1933), N. L. R. 84.—**S. AF.**

116 v. ——— ———.]—In a suit by a wife for dissolution of marriage on the ground of desertion, resp. entered an appearance under protest & disputed the jurisdiction of the ct. on the ground that the parties were not domiciled in New South Wales. It appeared that about the end of 1926 resp. whose domicile of origin was in Victoria, applied for, & was appointed to, a permanent position in the New South Wales Postal Department of the Commonwealth Public Service. In 1929 he married in New South Wales; subsequently he took & furnished a house in this State, & in 1931 was resident in the house with his wife & child at the time of his alleged desertion. Prior to 1923 resp., whilst a minor & after coming of age, had been employed & had resided in New South Wales :—*Held :* at the time of the alleged desertion resp. was domiciled in New South Wales, & that at the time of the institution of the suit petitioner was domiciled, & had been domiciled for three years & upwards, in this State.—PERKINS *v.* PERKINS (1934), 51 N. S. W. W. N. 175.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—B. (e).

120 i. *General rule.*]—The fact that a person has taken up residence in New South Wales solely for reasons of health does not prevent the acquisition by him of a domicile of choice in this State; for, if the residence was taken up with the intention of residing permanently or indefinitely, he thereby acquired a domicile in this State.—BROWN *v.* BROWN (1933), 50 N. S. W. W. N. 33.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—B (f).

133 ii. ———.]—When a person voluntarily accepts employment, the duties of which necessarily require residence in another country & there is no stipulated period of service, & he proceeds to that country, the law presumes an intention consistent with his duty & holds his domicil to be in the country to which he goes, even though he has real property, but provided he has no residence in his domicil of origin.—RUSSELL *v.* RUSSELL, [1935] S. A. S. R. 85.—**AUS.**

133 iii. ———.]—The fact that pltf. was employed by the C. P. R. as a constable & might be ordered by his superiors to move from the province held not to be a reason for holding that he had not acquired a domicile of choice in Saskatchewan where he had resided ever since he had asked to be transferred there. Pltf. had no contract of service & could leave the co.'s service if he should not wish to move in compliance with its orders.—LOWRY *v.* LOWRY, [1936] 2 W. W. R. 217.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (j).

146 i. *House or apartments rented in another country—Family estate kept up.*]—Deft., whose domicil of origin was Scottish & who held a Scottish title & owned large landed estates in Scotland, left Scotland in 1895 for Canada, & carried on business there until 1917. Thereafter he took a flat in New York, where he resided for a part of each year, in order to supervise his financial interests, which were in America, & to avoid British income tax. He retained his Scottish estates, & resided on them during some part of each year. In correspondence with his wife, who lived in London, he referred to the family residence on his Scottish estates as "home," & in an affidavit signed by him in 1920 he described himself as a domiciled Scotsman :—*Held :* deft. had failed to prove an intention to abandon his Scottish domicil & to acquire a domicil of choice in America.—ROSS *v.* ROSS, [1926] S. C. 1038.—**SCOT.**

ar. *Residence in country of origin retained—Residence in another country—Connections with country of origin continued.*]—*Re* MURRAY'S ESTATE, [1921] 3 W. W. R. 874; 31 Man. L. R. 362.—**CAN.**

st. ——— ——— ———.]—DONALD *v.* DONALD, [1922] N. Z. L. R. 237.—**N.Z.**

154. *Add. Annotations :*—**Consd.** Abraham *v.* A.-G., [1934] P. 17. **Refd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9.

155a. —— **Material consideration.**]—D.. who was born in Edinburgh in 1858, went out to Calcutta, India, in 1875 & worked in his uncle's cotton mills, becoming a partner in his uncle's firm in 1880. In 1883 he returned for a few months, but from 1883 to 1900 remained working in India, making his business his life. He seldom went into society, but was fond of Indians, & chiefly associated with them. In 1900 he returned to England & married his cousin, & took her out with him to Calcutta in 1901, but, the climate not suiting her, she returned in Nov. 1901, to England. From Jan. 1903 to 1910, he paid visits for a substantial time each year to be with his wife in England, where he had bought a house. In 1903 a child was born. From Jan. 1912 to Nov. 1915, D. remained in England, being, it was said, detained by litigation. In 1916 his wife went out to Calcutta, & she & her daughter lived with her husband in his flat over his offices. She returned with her daughter after two months. In 1917 D. followed his wife home, & until his death on July 3, 1928, remained in England, except for short visits to India in 1919, 1920, 1922, 1924, & 1925. In his will dated June 28, 1922, he made a declaration of Indian domicile. On his death, the Crown, on the ground that he was domiciled in the United Kingdom, claimed death duties on his estate, the value of which was many millions of pounds. On the question whether, as the exors. of the will alleged, he had acquired a domicile of choice in India & lost his domicile of origin :—*Held :* the earlier period of D.'s life up to the year 1900 could not be estimated in deciding whether he had acquired a domicile of choice in India in a compartment separate from his later years, & the declaration in his will did not decide the point, but where his wife & children had their permanent residence was material as to a man's domicile. There was a distinction between residence & domicile, & it could not be inferred from the fact of residence that domicile resulted. On the facts there was no clear evidence, as was necessary, of any manifest & concluded intention of change of domicile to overcome the domicile of origin. Therefore the onus of proof of a domicile of choice was not discharged, & D. died domiciled in the United Kingdom.—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA (1931), 145 L. T. 9, C. A.

Annotations :—**Consd.** Abraham *v.* A.-G., [1934] P. 17. **Refd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9 ; I. R. Comrs. *v.* Cohen (1937), 21 Tax Cas. 301.

169a. —— **Declaration of change of domicil.**]—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA, No. 155a, *ante.*

173a. ——.]—A husband & wife, both born in England of English parents, were married in England in 1905, where they resided together until in 1923 the husband left his wife & went to the United States of America. The husband corresponded regularly with his wife & sent her money until 1932, when she discovered that he was living with another woman as his wife. In reply to an inquiry the husband wrote that he had no thought of returning to England. The wife petitioned for divorce in England, alleging that she & her husband were domiciled in England. The husband did not enter an appearance. At the adjourned hearing, when the King's Proctor had entered an appearance in the suit to argue the question of domicil & of the ct.'s jurisdiction to grant a decree of divorce, a certificate from the U.S. Department of Labour was put in, to the effect that the husband was naturalised in New York in 1930. By the law in the United States of America, the husband in order to have obtained such a certificate must have declared on oath at least two years before his admission as a citizen of the United States that it was *bona fide* his intention to become a citizen & to renounce for ever allegiance to the state of which he might at the time be a citizen. He must also have stated in writing his intention to reside permanently within the United States :—*Held :* (1) at the time when the petition was filed, the husband was domiciled in the United States of America, & had lost his domicil in England ; (2) there was no jurisdiction in the ct. in England to grant a decree of divorce.—HERD *v.* HERD, [1936] P. 205 ; [1936] 2 All E. R. 1516 ; 105 L. J. P. 108 ; 155 L. T. 355 ; 52 T. L. R. 709 ; 80 Sol. Jo. 837.

176a. Declaration in application—Evidence of intention.]—Resp. in a divorce suit was an Armenian by birth, a subject of the Ottoman Empire, but left Turkey for England at the age of three months. In 1902, his father, in an application for naturalisation, stated in a statutory declaration that he intended to reside permanently in the United Kingdom. The father, who was still alive, & living in Paris, was not called to give evidence, having refused to have anything to do with the divorce proceedings. Resp. received an English education from 1906 onwards, & led a life which alternated between London & places of interest & amusement on the continent. He had become a naturalised Persian subject & a commercial attaché to the Iranian Legation in London. It was found as a fact that his father had not formed any intention to reside permanently in Paris before the resp. came of age. Resp. had attained forty years of age, living for the most part in England, a member of one English social club & of several English sporting clubs, but wholly dependent upon his father. He had on one occasion successfully resisted the efforts of his father to make him reside in Paris :—*Held :* (1) the evidence established that resp. had acquired a domicil of choice in England ; (2) resp.'s father had acquired a domicil of choice in England which he had never abandoned until after his son had attained his majority. The last domicil which resp. had received as a dependent person not having been changed by his own act, his domicil was clearly English ; (3) the statutory declaration of 1902 was admissible in evidence to show that resp.'s father then intended to acquire an English domicil.—GULBENKIAN *v.* GULBENKIAN, [1937] 4 All E. R. 618 ; 158 L. T. 46 ; 54 T. L. R. 241 ; 81 Sol. Jo. 1003.

191. *Add. Annotation :*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

192. *Add. Annotation :*—**Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669.

214. *Add. Annotations :*—**Apld.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. **Refd.** Mitford *v.* Mitford & Von Kuhlmann, [1923] P. 130; Inverclyde *v.* Inverclyde, [1931] P. 29.

217a. —— —— ——.]—*Re* Borwick, Holland *v.* Woodman (1937), 81 Sol. Jo. 587.

218. *Add. Annotations :*—*As to* (1) **Consd.** H. *v.* H., [1928] P. 206. **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. *As to* (3) **Apld.** Nachimson *v.* Nachimson, [1930] P. 217. *Generally*, **Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

220. *Add. Annotations :*—*As to* (3) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444. *Generally*, **Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; H. *v.* H., [1928] P. 206.

221. *Add. Annotations :*—*As to* (2) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Herd *v.* Herd, [1936] 2 All E. R. 1516. **Refd.** Nachimson *v.* Nachimson, [1930] P. 217.

223. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

225. *Add. Annotation :*—**Expld.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

228. *Add. Annotations :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44; Inverclyde *v.* Inverclyde, [1931] P. 29; Herd *v.* Herd, [1936] 2 All E. R. 1516. **Refd.** Mitford *v.* Mitford & Von Kuhlmann, [1923] P. 130; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; H. & H., [1928] P. 206.

236a. —— ——.]—Bowie or Ramsay *v.* Liverpool Royal Infirmary, No. 88a, *ante*.

243a. —— **Nature of doctrine.**]—Drevon *v.* Drevon, No. 52a, *ante*.

248. *Add. Annotations :*—**Consd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Dbtd.** *Re* Askew, Marjoribanks *v.* Askew, (1930), 2 Ch. 259. **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

249. *Add. Annotation :*—**Dbtd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

249a. —— ——.]—The question whether a person is or is not domiciled in a foreign country is to be determined in accordance with the requirements of English law as to domicil, irrespective of the question whether the person in question has or has not acquired a domicil in the foreign country in the eyes of the law of that country.

Where an Englishwoman had never taken the steps prescribed by French Civil Code, art. 13 :—*Held :* (1) she had nevertheless on the evidence acquired a French domicil of choice, & the ct. would apply the law of France in administering her estate; (2) on the evidence as to the French law, the French cts. in administering the movable property of deceased would apply French municipal law, & the testamentary disposing power of deceased was governed by that law.—*Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692; 95 L. J. Ch. 404; 135 L. T. 508; 42 T. L. R. 584.

Annotations :—*As to* (1) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259. *As to* (2) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

251a. —— —— ——.]—*Re* Annesley, Davidson *v.* Annesley, No. 249a, *ante*.

265. *Add. Annotation :*—**Refd.** Kramer *v.* A.-G., [1923] A. C. 528.

Part III.—Nature of Property.

290. *Add. Annotations :*—**Distd.** *Re* Anziani, Herbert *v.* Christopherson, [1930] 1 Ch. 407. **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

PART II. SECT. 3, SUB-SECT. 2.—G.

sw. *Income tax paid in country of choice—Claims for income tax in country of origin successfully resisted.*]—*Held :* facts of great importance in determining question of domicil.—Barry *v.* James (1921), *Times*, Apr. 29; [1921] 3 W. W. R. 182.—**S. AF.**

sx. *Missionary.*]—The Oxford Mission Brotherhood was founded at Oxford in 1880 & E. F. Brown, who was one of the founders, was chiefly responsible for drawing up its constitution. The objects were, *(inter alia)*, to remain in intimate contact with the people of Bengal & to bring the Kingdom of Christ amongst the more educated natives of the Province. The constitution made it obligatory on every member of the Brotherhood to strive to attain these objects, by working throughout his life in Bengal, unless his health broke down or he wished to leave the Brotherhood. E. F. Brown went out to India in 1880 & except for short visits to England remained working as a missionary until his death in 1933 :—*Held :* he had acquired an Indian domicil of choice.—Shore *v.* Morgan (1935), I. L. R. 62 Cal. 869.—**IND.**

PART II. SECT. 3, SUB-SECT. 4.

230 x. —— ——.]—Boyle *v.* Boyle, [1925] 1 W. W. R. 829.—**CAN.**

230 xi. —— ——.]—Jones *v.* Jones (1923), I. L. R. 1 Ran. 705.—**IND.**

230 xii. —— ——.]—To establish change of domicil, it must be proved that the change was made with a clear intention of settling there, as a person whose ultimate & permanent home was to be in that country. The entire burden of proving change of domicil lies on him who wants to establish it.—Linton *v.* Gudekian (1928), I. L. R. 56 Calc. 530.—**IND.**

230 xiii. —— ——.]—Harrison *v.* Harrison, [1929] N. Z. L. R. 608.—**N.Z.**

230 xiv. —— ——.]—Brown *v.* Brown, [1928] S. C. 542.—**SCOT.**

PART II. SECT. 4.

239 iii. —— ——.]—The doctrine of Anglo-Indian domicile forms no part of the law of Scotland; held, therefore, the fact of residence in India in the service of the East India Co. was not *per se* sufficient to cause loss of Scottish domicile.—Grant *v.* Grant, [1931] S. C. 238.—**SCOT.**

sz. *What may be considered.*]—In the case of a European claiming to be domiciled in India it will be pertinent to inquire where his father lived & died or resides, as the case may be, where he & his father were born, the circumstances in which he came to & resides in India, which will assist in ascertaining whether there exists an *animus revertendi* or *animus manendi* his object in residing in India & generally as to the conditions under which he lives & his habits of life.—Wright *v.* Wright (1930), I. L. R. 58 Calc. 259.—**IND.**

PART III. SECT. 2.

p i. ——.]—Although land for purposes of succession may be regarded as personal property, it is not a movable.—Alexander *v.* A.-G., [1927] 1 D. L. R. 602; [1927] 1 W. W. R. 143; 38 B. C. R. 28.—**CAN.**

p ii. —— *Interest in land agreed to be*

297. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

300. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

302. For the paragraph in the original volume substitute the following paragraph :—

—— **Interest in proceeds of sale of English freeholds—By English law.**]—When a person domiciled in a foreign country dies intestate leaving an interest in the proceeds of sale of English freeholds which are subject to a trust for sale but not yet sold, such an interest is an immovable, & the succession thereto is governed by the *lex situs.*—*Re* BERCHTOLD, BERCHTOLD *v.* CAPRON, [1923] 1 Ch. 192 ; 92 L. J. Ch. 185 ; 128 L. T. 591 ; 67 Sol. Jo. 212.

303. For the paragraph in the original volume substitute the paragraph numbered **302** in the original volume.

308. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

309. *Add. Annotation :*—**Consd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

Part IV.—Immovables.

331. *Add. Annotation :*—**Consd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

334. *Add. Annotation :*—**Consd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

334a. —— ——.]—MURRAY *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL, [1931] W. N. 91 ; 171 L. T. Jo. 308, C. A.

336a. —— —— **Action for declaration as to currency in which payable.**]—Applts. (defts. in the action), two English cos. having their head offices in London but carrying on business exclusively in South America, were jointly liable to resps. (the pltfs. in the action) for rent in respect of premises occupied by one of them in Chile under a lease drawn in the Spanish language according to Chilean law & executed by all parties in Paris, by which also all parties elected domicil in Chile. The rent stipulated by the lease was 93,500 pesos of 183,057 millionths of a gramme of fine gold monthly, which was to be paid at the option of the lessors either in Chile or remitted to Europe according to their instructions. Disputes having arisen between the parties in view of Chilean legislation which applts. contended prevented them remitting the rent from Chile without official authorisation by the Chilean Government, which authorisation had been refused, applts. commenced proceedings in Chile, which were still pending, claiming a declaration that the rent could lawfully be paid in notes of the Banco Central de Chile. Resps. having brought the present action in England claiming payment of the rent in sterling equivalent to 183,057 millionths of a gramme of fine gold, applts. applied under sect. 41 of Jud. Act, 1925 (c. 49), to have it stayed as being vexatious & oppressive :—*Held :* (1) the

sold.]—Where on the death intestate of an owner of land situate in Saskatchewan his title is subject to the interest of a purchaser under an outstanding agreement for sale, the interest of deceased in the land is immovable property, & devolves according to the law of Saskatchewan & is to be administered by the representative of the estate in that province, even though deceased died domiciled elsewhere.—*Re* BURKE ESTATE (Sask.), [1927] 3 W. W. R. 718.—**CAN.**

p iii. —— *Sale of settled land under compulsory powers.*]—Capital moneys the proceeds of land, situate in England, sold under the Settled Land Acts, 1882-1890, which land at the time of sale was settled on a tenant for life, with remainders over, & subject to a trust for conversion at the death of the tenant for life, & the investments representing the same, are, at any rate until the death of the tenant for life, immovables for the purposes of private international law & devolve according to the law of descent in England.—*Re* CROOK (1936), 36 S. R. N. S. W. 186 ; 53 N. S. W. W. N. 49.—**AUS.**

sb. *Immovable—Interest in proceeds of sale of Tasmanian freeholds—Insolvency in Natal.*]—Testator by his will devised land in Tasmania to trustees to pay his widow out of the income an annuity, & to pay the residue of the income to his sons in equal shares, & he directed that upon the death of his widow the trustees should sell the land, with a discretionary power to postpone the sale for seven years, & divide the proceeds equally among the sons. One of the sons having gone to Natal, in South Africa, before the death of his mother, became insolvent there, &, according to the Law of Natal, his trustee would have priority over subsequent incumbrances of insolvent's choses in action without the necessity of giving notice. Insolvent having returned to Tasmania, executed an assignment of his interest in his father's estate to an assignee who had no notice of the insolvency & who gave notice to the trustee of the property :—*Held :* from the date of testator's death until the date of the sale of the land the interest of each son was an immovable, & the insolvency in Natal did not operate in Tasmania as an assignment of insolvent's interest in his father's estate.—AUSTRALIAN MUTUAL PROVIDENT SOCIETY *v.* GREGORY (1908), 5 C. L. R. 615.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 1.

314 iv. —— ——.]—*Re* HICKSON, [1927] 4 D. L. R. 607 ; 61 O. L. R. 180.—**CAN.**

t i. —— ——.]—A judgment of a ct. of the state of California on a question of title & ownership of real property situate in British Columbia cannot be recognised as final & be enforced by the cts. of that province in accordance with the general rule that the cts. of any country have no jurisdiction to adjudicate on the right & title to lands not situate in such country.—DUKE *v.* ANDLER, [1932] S. C. R. 734 ; 4 D. L. R. 529.—**CAN.**

t ii. —— ——.]—The ct. of a foreign country has no right to deal with real property within Alberta or with the title thereto ; although where the owner is domiciled within the jurisdiction of the foreign ct. it can proceed against him *in personam.*

Pltf. had obtained in the state of Washington a decree of divorce which purported to award her a half interest in certain land in Alberta. The husband was then domiciled in Montana. The husband having died, pltf. sought by this action, brought against her husband's exor. to have the decree enforced against said land. Both parties admitted that the decree was valid with respect to the divorce :—*Held :* the decree had no force here as against the land ; & there is nothing in the authorities making it incumbent upon this ct. to grant any alimony to pltf., much less to grant in amount or kind the same alimony that was granted by the foreign ct.—HASPEL *v.* HASPEL, [1934] 2 W. W. R. 412.—**CAN.**

334 i. *Trespass to land—Land situate abroad—Injury by fire spreading into foreign State.*]—BOSLUND *v.* ABBOTSFORD LUMBER MINING & DEVELOPMENT CO., [1925] 1 D. L. R. 978 ; [1925] 1 W. W. R. 475 ; 34 B. C. R. 485.—**CAN.**

334 ii. —— ——.]—An action founded on trespass to realty in a foreign country cannot be tried in New Brunswick. The Province of Quebec is, for this purpose, a foreign country.—ALBERT *v.* FRASER COMPANIES, LTD., [1937] 1 D. L. R. 39 ; 11 M. P. R. 209.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 2.

sd. *Breach of covenant as to title.*]—In determining whether there has been a breach of a warranty deed as to title by the vendor of foreign land, the ct. is not infringing the rule which forbids it to adjudicate upon the title to foreign land ; it is not deciding a disputed title but whether or not the vendor has performed his contract.—FINDLAY *v.* ROSE, [1933] 1 W. W. R. 814 ; 2 D. L. R. 334 ; 46 Man. L. R. 25.—**CAN.**

action was a personal action, transitory in its nature, which the English ct. could competently entertain notwithstanding that incidentally it related to an immovable out of England; (2) the legal effect of the clause in the lease by which all parties elected domicil in Chile could not properly be determined upon affidavits; (3) though some inconvenience might be caused to applts. by having to call evidence as to Chilean law with regard to the mode in which the rent could be paid, this did not amount to an injustice sufficient to entitle the applts. to a stay of the action; (4) the fact that an action by applts. against resps. was pending in Chile was not in itself a ground entitling applts. to a stay.—ST. PIERRE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD., [1936] 1 K. B. 382; 105 L. J. K. B. 436; 154 L. T. 546, C. A.

339. *Add. Annotation :*—**Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

342. *Add. Annotation :*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

345. *Add. Annotation* — **Consd.** Liddell's Settlement Trusts, *Re*, Liddell *v.* Liddell, [1936] 1 All E. R. 239.

349. *Add. Annotations :*—**Refd.** Hunter *v.* Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61; Robinson *v.* Speakman or Robinson (1929), 69 L. Jo. 61.

350a. —— —— —— ——.]—ROBINSON *v.* SPEAKMAN OR ROBINSON (1929), 69 L. Jo. 61, H. L.

352. *Add. Citation :—sub nom.* ANON., 1 Salk. 404.

352a. —— —— **Mortgage of Isle of Man.**]—Upon a mtge. made of this Isle, & both mtgor. & mtgee. resident within the jurisdiction of this ct., upon a bill concerning it, the ct. would hold jurisdiction of it (HARDWICKE, L.C.).—DERBY (EARL) *v.* ATHOL (DUKE) (1749), 1 Ves. Sen. 201; 27 E. R. 982, L. C.

356. *Add. Annotation :*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

357. *Add. Annotation :*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

361. *Add. Annotation :—As to* (2) **Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

363. *Add. Annotation :*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

368. For "(2) an order giving leave to serve a writ in an action for rescission" read "(2) an order giving leave to serve out of the jurisdiction a writ in an action for rescission." *Add. Citation :*—127 L. T. 209.

373. *Add. Annotation :*—**Refd.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

374. After this case for "**Foreign judgments generally.**]—*See* Part XIV., *post*," read "Foreign judgments generally, *see* pp. 444 *et seq.*, *post*."

380. *Add. Annotations :—As to* (1) **Consd.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15; Guatemala (Republica de) *v.* Nunez, [1927] 1 K. B. 669.

395a. —— **Floating charge on land in Scotland.**]—A shipping co., registered in England, but owning heritable & movable property in Scotland, in pursuance of a previous agreement with all its secured creditors, in Mar. 1934, executed a charge in Glasgow in favour of a Scottish bank, whereby, after reciting the agreement, charged with payment of sums advanced by the bank by way of floating security its undertaking & all its property & assets both present & future. By the deed the charge was to rank as a first charge on the co.'s undertaking & all its property & assets whatsoever & wheresoever both present & future subject to specific mtges., & was to be a floating security, but so that the co. should not have power to create any further mtges. or charges ranking in priority to or *pari passu* with the charge thereby created. This charge was registered in England. Subsequently an agreement for sale of all the co.'s property & assets was entered into but before it was carried into effect the co. was compulsorily wound up & a liquidator was appointed. The liquidator took out an originating summons to determine whether a valid & effectual charge had been created over the heritable & movable property & assets of the co. therein specified in so far as such assets were at the commencement of the liquidation of the co. locally situate in Scotland. The bulk of the property having been sold & the proceeds of sale only left in the hands of the liquidator, the question before the ct. was whether in the distribution of the assets of the co. effect ought to be given to the charge executed in Glasgow in Mar. 1934, so far as the proceeds of sale represented heritable & movable property in Scotland at the date of the liquidation :—*Held :* (1) the charge must be construed according to English law & was a valid equitable security according to English law; (2) Cos. Act, 1929 (c. 23), s. 270, does not place heritable or other property in Scotland belonging to a co. registered in England in a different position from property belonging to it in England or in any other part of the world. The proceeds of sale therefore of all the property of the co. expressed to be subject to the floating charge (including the proceeds of sale of the heritable or movable property in Scotland) were payable to the Scottish bank in or towards satisfaction of the moneys secured by the charge of Mar. 1934.—*Re* ANCHOR LINE (HENDERSON BROS.), LTD. (NO. 2), [1937] Ch. 483; [1937] 2 All E. R. 823; 106 L. J. Ch. 211; 156 L. T. 481; 53 T. L. R. 806; 81 Sol. Jo. 437; [1936-7] B. & C. R. 225.

PART IV. SECT. 2, SUB-SECT. 2.

349 i. —— *Scottish heritage.*]—Testator, domiciled in England, left a will made in England & in English form disposing of his whole estate, which consisted of the most part of real & personal property in England, but also included Scottish heritage :—*Held :* the Scottish cts. had exclusive jurisdiction in an action dealing with competing claims to the Scottish heritage.—FOSTER *v.* FOSTER'S TRUSTEES, [1923] S. C. 212.—SCOT.

PART IV. SECT. 3, SUB-SECT. 2.

si. *Assignment must comply with lex situs.*]—A person's capacity to transfer immovables situate in Ontario is determined by the law of Ontario & not by the law of the domicil of the person.—LANDREAU *v.* LACHAPELLE, [1937] 1 D. L. R. 87; [1936] O. R. 569; *affd.*, [1937] O. R. 444; *sub nom.* LANDRY *v.* LACHAPELLE, [1937] 2 D. L. R. 504.—CAN.

Part V.—Movables.

417. *Add. Annotation :*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

417a. —— —— ——.]—The Q. Co. was a co. incorporated & carrying on business in Queensland. In Sept. 1886, the Q. Co. issued & deposited with the U. Bank, as security for moneys due & to become due, two debentures, the one for £10,000, & the other for £50,000 ; both debentures assigned the uncalled capital of the co., & were, as the ct. held, valid according to the law of Queensland. In Dec. 1886 the Q. Co. made a call of £50 a share payable in four instalments, in Feb., Apr., June, & Aug. 1887. The co. had many shareholders domiciled in Scotland & some in England. On Oct. 20, 1887, an order was made for winding up the co. in Queensland, & on June 14, 1888, a similar order was made in England. On Feb. 24, 1887, the A. Co., a co. domiciled in Scotland, commenced proceedings in Scotland to recover from the Q. Co. large sums entrusted to them for investment. Immediately after the institution of the action the call moneys due under the call made by the Q. Co. as above, from shareholders resident in Scotland, were arrested by the Scotch process called arrestment on the dependence of the action. Proceedings in this action were restrained by the High Ct. in England on Feb. 24, 1888, on the motion of the English liquidator of the Q. Co., but the order was expressly made without prejudice to the security, if any, upon the amounts payable by the Scotch shareholders in the Q. Co. which the A. Co. had acquired by their proceedings, & the amounts received from the Scotch shareholders were directed to be carried by the liquidator to a separate account. On Sept. 6, 1889, an order was made in the Queensland winding up allowing the claim of the A. Co. for £12,662 4*s.* 5*d.* The U. Bank, whose claim against the Q. Co. had been allowed for £74,000, but who had valued their security at £31,000, took out a summons claiming that the liquidator should pay over to the bank all the moneys in his hands representing proceeds of the said call. The A. Co. claimed to be paid in priority out of the money received from Scotch shareholders. The evidence stated that, according to the law of Scotland, the arrestment had the effect of attaching the fund in favour of the creditor obtaining it, & upon the decree being pronounced in the suit the security would become complete, & that such an arrestment operated as an assignment of the fund duly intimated ; that an admission of the sum due in the winding up of a co. was for this purpose equivalent to a decree ; & that, according to the law of Scotland, in order to create a competent security over incorporeal personal property, the assignment thereof must be duly intimated to the debtor :—*Held :* without deciding the point whether the maxim "*Mobilia sequuntur personam*" made the assignment of the calls by the Q. Co. domiciled in Queensland valid in Scotland, the case was governed by the principle that, if a transfer of personal property is carried out validly according to the law of the country where the property is situated, it cannot be made invalid by anything in the law of the assignor's domicil ; & as the evidence proved that the arrestment operated as an assignment by the Q. Co., completed by intimation according to the law of Scotland, that assignment could not be made invalid by the prior assignment, which could only have effect by the law of Queensland.—*Re* QUEENSLAND MERCANTILE & AGENCY CO., *Ex p.* AUSTRALASIAN INVESTMENT CO., *Ex p.* UNION BANK OF AUSTRALIA, [1892] 1 Ch. 219 ; 61 L. J. Ch. 145 ; 66 L. T. 433 ; 8 T. L. R. 177, C. A.

Annotations :—**Consd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955. **Refd.** Kelly *v.* Selwyn, [1905] 2 Ch. 117.

418. *Add. Annotations :*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652.

421. *Add. Annotations :*—**Refd.** Sedgwick Collins *v.* Rossia Insce. of Petrograd (1925), 133 L. T. 808 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

423. *Add. Annotations :*—**Apld.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955. **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15.

424. *Add. Annotation :*—**Distd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

434a. —— —— ——.]—An English woman domiciled in England, being possessed of certain moneys & securities in a bank in Monaco, gave her son a power of attorney in respect of them. Subsequently, having in mind a pending operation which might prove fatal, she directed him to get this property into his own name because she wished it to be his in the event of her death, & he accordingly gave instructions to this effect to the bank, which complied with them. The testatrix died as a result of the operation, & her estate was administered in England :—*Held :* (1) the question whether there was a valid *donatio mortis causa* was one arising in the administration of the estate of the deceased & must, therefore, be determined

---

PART V. SECT. 2, SUB-SECT. 1.—A.

sc. *Jains in British India—Hindu law.*]—In British India, Jains are governed by Hindu law in matters of succession & inheritance unless a custom to the contrary is proved. It is of the essence of special usages modifying the ordinary law of succession that they should be ancient & invariable, & it is further essential that they should be established to be so by clear & unambiguous evidence.—BHIKABAI *v.* MANILAL (1930), I. L. R. 54 Bom. 780.—IND.

PART V. SECT. 3, SUB-SECT. 1.

409 i. *Mobilia sequuntur personam.*]—A., whose domicil was in Ontario, died in Michigan. Certain securities were, at the time of his death, in a bank in Michigan :—*Held :* the securities, although physically situated in Michigan, had an artificial or legal status in Ontario.—A.-G. FOR ONTARIO *v.* BABY, [1926] 3 D. L. R. 998 ; 59 O. L. R. 181.—CAN.

409 ii. —— *Not applicable to income tax.*]—The maxim *mobilia sequuntur personam* does not afford a test of liability to income tax in respect of transactions relating to personal property outside Queensland, unless the Legislature has clearly made it applicable.—UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v.* COMR. OF TAXES, [1929] S. R. (Q.) 145.—AUS.

according to English law; (2) the question whether the acts relied on as constituting a parting with the dominion over the property were effective for that purpose must be determined according to the law of Monaco; (3) (both by English law & by the law of Monaco as proved), though the giving of a power of attorney was not by itself such a parting with the donor's dominion over her property as to support a valid *donatio mortis causa*, the subsequent instructions upon which her son acted were sufficient.—*Re* CRAVEN'S ESTATE, LLOYDS BANK *v.* COCKBURN (No. 1), [1937] Ch. 423; [1937] 3 All E. R. 33; 106 L. J. Ch. 308; 157 L. T. 283; 53 T. L. R. 694; *sub nom. Re* CRAVEN'S ESTATE, LLOYDS BANK, LTD. *v.* CRAVEN, 81 Sol. Jo. 398.

Part VI.—Succession.

439. *Add. Annotation:*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

439a. —— **Interest in proceeds of sale of English freeholds.**]—*Re* BERCHTOLD, BERCHTOLD *v.* CAPRON, No. 302, *ante*.

440a. —— **Will of Egyptian realty made by British subject domiciled in Egypt—Ottoman Order in Council, 1910, art. 90.**]—A Moslem British subject domiciled in Egypt died in 1918 possessed of property which was all in Egypt. He was survived by his mother, who according to the Moslem law of inheritance was entitled to a one-sixth share of his estate. Deceased executed a will in the English form leaving all his property to his widow & children:—*Held:* having regard to the proviso to the above art. testator had no testamentary power over the share of his estate to which his mother was entitled by Moslem law.—BARTLETT *v.* BARTLETT, [1925] A. C. 377; 94 L. J. P. C. 100; 133 L. T. 23, P. C.

440b. —— **Will of Italian realty by British subject domiciled in Italy.**]—*Re* ROSS, ROSS *v.* WATERFIELD, No. 457a, *post*.

448. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

PART VI. SECT. 1, SUB-SECT. 1.

436 iii. ——.]—Where on the death intestate of an owner of land situate in S. his title is subject to the interest of a purchaser under an outstanding agreement for sale the interest of the deceased in the land is immovable, not movable, property &, therefore, devolves according to the law of S., & is to be administered by the representative of the estate in that province, even though the deceased died domiciled elsewhere.—*Re* BURKE ESTATE, [1928] 1 D. L. R. 318; 22 Sask. L. R. 142; [1927] 3 W. W. R. 718.—**CAN.**

436 iv. ——.]—In an action of accounting, brought by a daughter against her deceased father's executrix for the purpose of ascertaining the legitim payable to her out of her father's estate, the pursuer averred that her father at his death was the owner of land in Canada; that by the Canadian law applicable such estate vested in the owner's personal representatives, & was dealt with & distributed among them as personal estate; & that its value, therefore, fell to be added to deceased's movable estate in estimating the legitim fund. She admitted that, by the local law, the distinction between real & personal property was recognised, & that land was real estate; & also that, by that law, the devolution on intestacy of real & personal property was the same:—*Held:* the land in Canada did not fall to be included in computing legitim, in respect that, as it was immovable by the law of Canada, the succession to it fell to be regulated by Canadian law, & the right of legitim did not form part of that law.—MACDONALD *v.* MACDONALD, [1932] S. C. 79.—**SCOT.**

436 v. ——.]—The rule of adopting the *lex loci* for the discovery of the right heir to land is not confined to England. It appears to be the law of India also.—AYUSHA *v.* BABALAL, I. L. R., [1938] Bom. 150.—**IND.**

PART VI. SECT. 1, SUB-SECT. 2.—A.

440 iii. —— *Scottish holograph will of Irish realty.*]—*Held:* a holograph will of a British subject executed in Scotland according to the law of Scotland, but not executed according to the formalities prescribed by Wills Act, 1837, is inoperative to convey registered freehold land of a testatrix purchased under Land Purchase Acts (Ireland) & situate in Northern Ireland, such land being real estate although it vests in the personal representative of the registered owner as if it were a chattel real, & though on intestacy the beneficial interest in it devolves as if it were personal estate. The doctrine of the *lex situs* applied thereto.—M'GINN *v.* DELBEKE (1926), 61 I. L. T. 117.—**IR.**

441 iv. —— ——.]—Testatrix, who was domiciled in England, died possessed of movable & immovable property in New South Wales. The exor. named in the will obtained a grant of probate in common form in England, &, as a person entitled to probate who was out of the jurisdiction, brought a suit in the Supreme Ct. of New South Wales for the grant to his attorney of administration with the will annexed. The suit was contested by a caveator who claimed that the will was invalid:—*Held:* the validity of the will as a disposition of immovables & as a title to administer them must be determined independently of the English grant, & the caveator's objection should, therefore, be heard & determined upon the merits.—LEWIS *v.* BALSHAW (1936), 54 C. L. R. 188; 9 A. L. J. 345; 42 Argus L. R. 92.—**AUS.**

ay. *Will of Chinese Buddhist domiciled in Burma—Whether Chinese customary law applicable—Right to make will.*]—Chinese customary law governs the succession to the estate of a Chinaman domiciled in Burma. The right of the Chinese to make wills has also been recognised.—CHAN PYY *v.* SAW SIN (1928), I. L. R. 6 Ran. 623.—**IND.**

PART VI. SECT. 2, SUB-SECT. 1.—A.

453 ix. ——.]—Testator who had formerly resided in N.Z. went to Victoria, where according to an affidavit filed by his exor. he acquired & at his death retained a domicil. The bulk of his property was invested in bonds & in mtges. of land in N.Z.:—*Held:* the mtges. were movable property, & the intestate succession to them was governed by the law of deceased's domicil.—*Re* O'NEILL, ETC., [1922] N. Z. L. R. 468.—**N.Z.**

453 x. ——.]—War Stock & National War Bonds are Imperial or British investments, although administered in England, & where testator was domiciled in Scotland:—*Held:* the effect of the destinations fell to be ascertained according to Scots law, & not according to English law.—CUNNINGHAM'S TRUSTEES *v.* CUNNINGHAM, [1924] S. C. 581.—**SCOT.**

453 xi. ——.]—A domiciled Scotsman died leaving a will in Scottish form, by which he conveyed his estate to Scottish trustees, & directed them to set aside a certain sum for the use of a liferentrix, & on her death to pay a legacy out of it to a named legatee. He further directed that, in the event of the legatee predeceasing the period of division without leaving issue, the legacy should be paid to the legatee's "nearest heirs." The legatee predeceased the liferentrix without leaving issue. Both at the date of testator's death & his own death he was a domiciled Englishman. On the death of the liferentrix:—*Held:* in the absence of any indication of a contrary intention on the part of testator, the legatee's heirs fell to be ascertained by the law of his domicil, *i.e.*, the law of England.—SMITH'S TRUSTEES *v.* MACPHERSON, [1926] S. C. 983.—**SCOT.**

sk. *Effect of Legitimacy Act.*]—The commencement of Legitimacy Act, 1926, was Jan. 1, 1927. L. D. was born in 1910. His parents were married in 1911. At both the times of his birth & the marriage of his parents L. D.'s father was domiciled in England. L. D. became legitimate in England & Wales by virtue of the provisions of the said Act, on Jan. 1, 1927, on which date his father was domiciled in New Zealand. L. D. had never been legitimated in New Zealand under the provisions of the Legitimation Act, 1908 (N.Z.). On originating summons for determination whether L. D. was entitled to share in a legacy of £1,000 bequeathed by his grandmother, who was domiciled in New

456. *Add. Annotation :*—**Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

457. *Add. Annotations :—Generally,* **Refd.** Taxes Comr. *v.* Union Trustee Co. of Australia, Ltd., [1931] A. C. 258 ; Straits Settlements Commissioner of Stamps *v.* Oei Tjong Swan, [1933] A. C. 378 ; Alberta Provincial Treasurer *v.* Kerr, [1933] W. N. 205 ; Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710.

457a. ——.]—(1) The succession to movable property, wherever situate, is governed by the law of testator's domicil, that is to say, the whole law of the country of domicil, including the rules of private international law administered by its tribunals. The inquiry in an English ct. before which such a question of succession comes is, therefore, what the cts. of the country of domicil would decide in the particular case. The result is that, where by the law of the domicil the succession to the movables of a testator depends on the law of that testator's nationality, an English ct. will hold that the succession is governed by the law of the nationality & not by the municipal law of the domicil.

(2) The succession to the immovable property situate in Italy of an English testator domiciled in Italy is to be determined by Italian law, namely, in the same manner as English Courts would determine it if the property belonged to an Englishman & was situate in England.—*Re* Ross, Ross *v.* WATERFIELD, [1930] 1 Ch. 377 ; 99 L. J. Ch. 67 ; 142 L. T. 189 ; 46 T. L. R. 61.

Annotation :—As to (1) & (2) **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

461. *Add. Annotations :*—**Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** Papadopoulos *v.* Papadopoulos, [1930] P. 55.

463. *Add. Annotations :—As to* (1) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. *As to* (2) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

467a. —— **Law of nationality.**]—*Re* Ross, Ross *v.* WATERFIELD, No. 457a, *ante*.

468a. ——.]—English subject resident & dying in England, where his will was proved, but having debts & choses in action in Scotland : —*Held :* the latter were distributable as the rest of his effects.—THORNE *v.* WATKINS (1750), 2 Ves. Sen. 35 ; 28 E. R. 24, L. C.

481. *Add. Annotations :—As to* (3) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61 ; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

490. *Add. Annotation :*—**Refd.** *In the Estate of* Musurus, [1936] 2 All E. R. 1666.

490a. —— —— —— ——.]—A Turkish woman domiciled in Turkey died intestate & without heirs in 1915, leaving (*inter alia*), certain personal property in England. The British Crown claimed that as this property was ownerless in Turkish law, it must be treated as *bona vacantia*. The Turkish govt. claimed that, under the law of the Ottoman Empire as it was in 1915, the property would have passed to the Bait al-mál, the treasury of the Moslems, which would have applied the property for the relief & benefit of the Moslems, & that as the application of the property was thus limited to certain objects, it was impressed with something in the nature of a trust, & it was impossible to liken it to *bona vacantia*, & it claimed the property. If for any reason the Bait al-mál did not take any uninherited property, there was no ultimate right in anyone else :—*Held :* (i) the property was ownerless, & the limited application of the property under Turkish law made no difference to its character ; (ii) as the authority by which the Turkish govt. claimed was in substance the same as that by which the British Crown claimed, the Crown was entitled to the property as *bona vacantia*. —*In the Estate of* MUSURUS, [1936] 2 All E. R. 1666 ; 80 Sol. Jo. 637.

511. For the paragraph in the original volume substitute the following paragraph :—

—— **Share in proceeds of sale of freeholds—Held on trust for sale but not converted.**]—An interest in the proceedings of sale of real estate settled upon a trust for sale, which has not been executed, is personal estate within Wills Act, 1861 (c. 114), s. 1.—*Re* LYNE'S SETTLEMENT TRUSTS, *Re* GIBBS, LYNE *v.* GIBBS, [1919] 1 Ch. 80 ; 88 L. J. Ch. 1 ; 120 L. T. 81 ; 35 T. L. R. 44 ; 63 Sol. Jo. 53, C. A.

Annotation :—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

Zealand, to her grandchildren living at her decease :—*Held :* the status of legitimacy conferred by the Legitimacy Act, 1926 (Eng.), upon L. D. could not be recognised in New Zealand as entitling L. D. to share in a legacy given to legitimate grandchildren by the will of a testatrix domiciled in New Zealand, as L. D.'s father was not domiciled in England at the date of the commencement of the said English statute. —*Re* DAVEY, PUBLIC TRUSTEE *v.* WHEELER, [1937] N. Z. L. R. 56 ; 13 N. Z. L. J. 31.—**N. Z.**

PART VI. SECT. 2, SUB-SECT. 2.

468 vii. ——.]—Indian Succession Act, therefore, governs the succession to the estates of " Chinese Buddhists," whether born in China or born in Burma, who were domiciled & died in Burma. Even if " Chinese Buddhists " are Buddhists within Burma Laws Act, s. 13 (1), Chinese customary law cannot be applied to their estates, because it is not Buddhist law. The law of justice, equity, & good conscience must, therefore, be applied under Burma Laws Act, s. 13 (3), & Indian Succession Act should govern the succession to the estates of " Chinese Buddhists," as being the law of justice, equity, & good conscience, in view of the fact that it is the general law of succession in India & is the law which governs the succession to the estates of all other Chinese domiciled & dying in Burma, whose personal law is identical with that of " Chinese Buddhists."—PHAN TIYOK *v.* LIM KYIN KAUK (1930), I. L. R. 8 Ran. 57.—**IND.**

468 viii. ——.]—Succession to the estate of a Chinese Buddhist domiciled in Burma, is governed by Chinese customary law.—MA SEIN BYU *v.* KHOO SOON THYE (1933), I. L. R. 11 Ran. 310.—**IND.**

468 ix. —— *Effect of Legitimacy Act.*] —The status of legitimacy, retrospectively conferred by Legitimacy Act, 1926, 16 & 17 Geo. V., c. 60, upon a child born in England out of wedlock but whose parents, domiciled there, have subsequently married, cannot be recognised in Victoria as entitling such child to share, as one of the next of kin, in the division of an intestate's estate in Victoria, when that Act did not come into force during the lifetime of the father of the child, though it was in operation at the date of the death of the intestate.—*Re* WILLIAMS, CURATOR OF ESTATES OF DECEASED PERSONS *v.* WILLIAMS, [1936] V. L. R. 223 ; 42 Argus L. R. 348.—**AUS.**

468 x. ——.]—In 1904, deft., domiciled in Quebec, married deceased in Quebec, no ante-nuptial contract being made. In 1905 the couple moved to Ontario where they became domiciled until the wife's death in 1935 :—*Held :* the change of domicil did not affect the community of property created by the law of Quebec & on the wife's death the community was dissolved & partition took place. But the succession of the wife's share of the community property was governed by the law of her last domicil, i.e., Ontario.—BEAUDOIN *v.* TRUDEL, [1937] 1 D. L. R. 216 ; O. R. 1.—**CAN.**

sd. ***Intestate domiciled abroad leaving shares in Canadian company—Issue as to ownership of shares—By what court determined.***]—*Re* FENWICK (1915), 35 O. L. R. 29 ; 9 O. W. N. 227.—**CAN.**

511a. —— **Investments—Proceeds of sale of settled land.**]—The testator effected a settlement of real property on his marriage in 1908, but most of the trusts of that settlement failed by reason of there being no issue of the marriage. The only subsisting trusts at any material time were for the payment of certain annuities & rentcharges & the ultimate trust which was in favour of the right heirs of the testator. During the lifetime of the testator, the real property was sold & the proceeds invested. During the latter years of his life, the testator, without relinquishing his English domicil, resided in France, & there executed three holograph wills, which were admitted to probate in England. By the Wills Act, 1861 (c. 114), s. 1, these wills would be valid to pass personalty but not realty situate in England. The question was, therefore, whether the investments representing the proceeds of sale of the settled land were realty or personalty, & the Settled Land Act, 1925 (c. 18), s. 75 (5), was relied upon to show that they were realty :—*Held :* these investments were personalty, & not realty, & were therefore capable of being disposed of by a will admitted to probate under Wills Act, 1861 (c. 114), s. 1.—*Re* CARTWRIGHT, CARTWRIGHT *v.* SMITH, [1938] 3 All E. R. 391 ; 107 L. J. Ch. 296 ; 54 T. L. R. 1015 ; 82 Sol. Jo. 584 ; *revsd.*, [1938] 4 All E. R. 209, C. A.

517. *Add. Annotation :*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

521. *Add. Annotation :*—**Folld.** *Re* Cunnington, Healing *v.* Webb, [1924] 1 Ch. 68.

526a. —— ——.]—By his will made in English form in England testator, who described himself as a British subject residing in France, bequeathed to his sole exor., who was English, all his estate upon trust for conversion, & after payment of certain legacies to domestic servants, to divide all the residue of his estate equally between ten named legatees ; & if any of such legatees died in his lifetime the legacy was to belong to the issue of such person. Testator died in France, & his will was proved in England. Two of the residuary legatees died in his lifetime, but neither left any issue. There was no realty & the property comprising the residue was in England. The residuary legatees were all English. On a summons the domicil of testator at his death was held to be French. By French law there was no lapse of the shares of those legatees who had died, & the survivors were entitled :—*Held :* the domicil being French & there being no sufficient indication in the will, either express or implied, that testator desired that it should be construed by English law, the *primâ facie* general rule applied, & the will must be construed by French law.—*Re* CUNNINGTON, HEALING *v.* WEBB, [1924] 1 Ch. 68 ; 93 L. J. Ch. 95 ; 130 L. T. 308 ; 68 Sol. Jo. 118.

528. *Add. Annotation :—As to* (1) **Refd.** *Re* Manners, Manners *v.* Manners, [1923] 1 Ch. 220.

536. *Add. Annotation :*—**Consd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174.

548a. —— ——.]—Funds in ct. standing to the credit of an infant, having a foreign domicil, ordered to be paid out to her on her attaining the age of eighteen, being her full age according to the law of her domicil.—*Re* SCHNAPPER, [1928] 1 Ch. 420 ; 97 L. J. Ch. 237 ; 139 L. T. 42 ; 72 Sol. Jo. 137.

549. *Add. Annotation :*—**Consd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

563a. —— ——.]—Administration, with a copy of the will annexed, of a party domiciled in Scotland, granted, in conformity with the grant of the ct. of competent jurisdiction in Scotland, though great doubt entertained as to the correctness of the grant in Scotland. —*In the Goods of* HENDERSON (1850), 2 Rob. Eccl. 144 ; 7 Notes of Cases, 378 ; 163 E. R. 1271.

574. *Add. Annotation :*—**Refd.** *Re* McLaughlin, [1922] P. 235.

576a. —— —— —— **Foreign grant to next of kin as administratrix.**]—In following a foreign grant to the estate of a deceased person domiciled abroad, this ct. will make the English grant to the person clothed by the ct. of the domicil with the power of administration "no matter who he is or on what ground he has been clothed with that power." Appct. for an English grant had been constituted administratrix by the ct. of the domicil of deceased. By a power of attorney given by the administratrix to obtain a grant in this jurisdiction it appeared that by English law she was also entitled to a grant in the character of next of kin :—*Held :* her attorneys should take the grant for her as administratrix & not as next of kin.—*In the Estate of* HUMPHRIES, [1934] P. 78 ; 103 L. J. P. 31 ; 150 L. T. 220 ; 50 T. L. R. 126 ; 78 Sol. Jo. 83.

580a. —— **Foreign grant of will & unattested codicil—Followed.**]—*In the Goods of* FOY (1839), 2 Curt. 328 ; 163 E. R. 428.

587a. —— —— **Will made after death according to directions of deceased—Valid under Spanish law—Grant made.**]—*In the Goods of* OSBORNE (1855), Dea. & Sw. 4 ; 26 L. T. O. S. 128 ; 1 Jur. N. S 1220 ; 4 W. R. 164.

PART VI. SECT. 2, SUB-SECT. 3.—D. (a).

521 iv. ——.]—*Re* ROPER (Deceased), [1927] N. Z. L. R. 731.—**N.Z.**

sg. *Governed by lex situs—Where will made.*]—The will of testatrix, who was a British subject & who at the date of her death was domiciled in Switzerland, was drawn in Ontario relative to Ontario property & during a visit by her to Ontario :—*Held :* testatrix wrote her will with reference to the law of Ontario & the law of Ontario as to the interpretation of her will should be applied.—*Re* WILKISON, [1934] 1 D. L. R. 544 ; O. R. 6.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.—D. (b).

sm. *"Heirs"—In Canadian will—Whether adopted children included.*]—Where in a will of testator domiciled in British Columbia a gift of personalty is made to a person "or his heirs" & such person dies domiciled in a foreign country before the death of testator, the word "heirs" includes an adopted child, where under the law of that country the effect of adoption is to confer on an adopted child all the rights & status of a child born in lawful wedlock.—PURCELL *v.* HENDRICKS & MARKS, (B.C.), [1925] 3 D. L. R. 854 ; [1925] 2 W. W. R. 689.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—A. (c).

so. *Grant to attorney of executrix.*]—Where a testator domiciled in Quebec made an "authentic will" under the law of that province & the sole executrix resided therein & the attorney appointed by her filed a duly authenticated copy of said will with the Surrogate ct. in Saskatchewan letters of administration with the will annexed were granted to him for the use & benefit of the executrix & until she should duly apply for & obtain probate. —*Re* POIRIER ESTATE (Sask.), [1929] 4 D. L. R. 1080 ; 1 W. W. R. 904.—**CAN.**

587b. *S. P. In the Goods of* GUTTIEREZ (1869), 38 L. J. P. & M. 48; 17 W. R. 742; *sub nom. In the Goods of* GUTIERES, 20 L. T. 758; 33 J. P. 535.

590. *Add. Annotation:*—**Consd.** *In the Goods of* Grewe (1922), 127 L. T. 371.

594. *Add. Annotations:*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

594a. —— ——.]—A British born subject, domiciled in Malta, having made his will in England, according to English law, & not according to the law of Malta applicable to wills made in that island, the ct. refused to pronounce against the validity of the will, there being no evidence to show that the cts. at Malta would consider it invalid, but rather the contrary.—FRERE *v.* FRERE (1847), 5 Notes of Cases, 593.

Annotation:—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R 61.

606. *Add. Annotation:*—**Refd.** Velasco *v.* Coney, [1934] P. 143.

610. *Add. Annotation:*—**Refd.** Velasco *v.* Coney, [1934] P. 143.

615. *Add. Annotation:*—*As to* (2) **Follid.** *Re* Cunnington, Healing *v.* Webb (1923), 68 Sol. Jo. 118.

621a. —— —— —— ——.]—Testator gave a share of his residuary estate to trustees upon trust for sale & to stand possessed of the proceeds to pay the income to M. for life & then for such persons as she should by will appoint, & in default of appointment for her children at twenty-one in equal shares. M. married a German in 1880 & died in 1922, leaving two daughters who attained twenty-one. By her will, made in German form, she appointed the elder her heiress, the younger to receive only her legal portion:—*Held:* the will was an effectual exercise of the power.—*Re* STRONG, STRONG *v.* MEISSNER (1925), 95 L. J. Ch. 22: 69 Sol. Jo. 693.

621b. Revocation valid by lex domicilii—English law not complied with.]—Testatrix domiciled in Italy purported to exercise a special power to appoint English assets by a will validly executed according to English & Italian law alike. She subsequently revoked the will, complying with Italian law, but without the complete formality necessary for its revocation according to English law. The appointee contended that a will exercising the power could be revoked only according to the formalities imposed by English law. A party entitled to share in the appointed assets in default of appointment relied on the effectual revocation of the will according to Italian law:—*Held:* in the absence of authority the policy of the ct. must lean towards giving effect to the intention of testatrix & ought not to impose upon her as necessary a compliance with English requirements as to revocation which was unknown to the law of her domicil, & the party entitled in default of appointment must succeed.—VELASCO *v.* CONEY, [1934] P. 143; 103 L. J. P. 76; 151 L. T. 307; 50 T. L. R. 444; 78 Sol. Jo. 431.

626a. Over stock representing proceeds of sale of real estate in England—& liable to be laid out in purchase of land.]—An Englishwoman, domiciled in France, having a general power of appointment over a sum of stock, representing a share of proceeds of real estate in England sold under the judgment in a partition action, such proceeds being liable to be laid out in the purchase of land under Settled Estates Act, 1877 (c. 18), s. 34, by her will in the French language gave "all her properties & chattels (*tous les biens et droits mobiliers*)" to T. absolutely:—*Held:* the will must be construed as disposing of everything in the form of personal estate over which testatrix had a general power of disposition, & the fund being personal estate in form, it passed by the will.—*Re* HARMAN, LLOYD *v.* TARDY, [1894] 3 Ch. 607; 63 L. J. Ch. 822; 71 L. T. 401; 8 R. 549.

Annotation:—**Refd.** *Re* Scholefield, Scholefield *v.* St. John, *Re* Young, Smith *v.* St. John, [1905] 2 Ch. 408.

638. *Add. Citation:*—127 L. T. 117.

638a. Infant beneficiaries—Power of administrators to postpone sale.]—W., domiciled in Ontario, Canada, died possessed of estates in Canada, the United States of America, France & England. He left wills disposing of his estates in Canada, the United States & France, but no will could be found disposing of his estate in England. Letters of administration were granted to his widow & pltf. He left him surviving his wife & three infant children. Included in his English estate were a large block of shares in an English private co. According to the law of Ontario the sale of the portion of these shares to which the infants were entitled could not be postponed by administrators appointed in Ontario. The English administrators were anxious to postpone the sale of the shares, & pltf. took out this summons asking whether they were entitled, by virtue of Administration of Estates Act, 1925 (c. 23), s. 33, to postpone the sale:—*Held:* the English administrators were entitled to exercise the power to postpone given to them by sect. 33, until they could get a good discharge for the money in their hands from the persons beneficially entitled to it.—*Re* WILKS, KEEFER *v.* WILKS, [1935] Ch. 645; 104 L. J. Ch. 297; 153 L. T. 255; 51 T. L. R. 489.

PART VI. SECT. 3.

631 iii. —— ——.]—The Supreme Ct. has no jurisdiction to grant letters of administration of a deceased person domiciled in New Zealand but leaving no estate there.—*Re* MINIFIE, [1936] N. Z. L. R. S. 13; G. L. R. 78; 12 N. Z. L. J. 6.—**N. Z.**

635 iv. —— ——.]—*Re* BURKE ESTATE, [1928] 1 D. L. R. 318.—**CAN.**

635v. —— ——.]—Where there was an administration of the estate of a deceased person in South Australia & also in Queensland the Queensland administrator merely collected certain moneys under a policy of assurance effected by deceased on his own life in Queensland & transmitted those moneys to the South Australian administrator:—*Held:* an Act of the South Australian Parliament could operate to enforce the South Australian administrator to treat policy moneys wherever collected as protected under Policies Protection Act, 1887.—*Re* FLOOD, [1933] S. A. S. R. 203.—**AUS.**

Part VII.—Contracts.

639. To the cross-reference before this case add "No. 1981a."

639a. ——.]—Pltf. was received by defts., a British co., under a contract made in Detroit, to be carried in one of their steamships from New York to Southampton. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. It was further provided that all questions arising under the clause should be decided according to English law. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:—*Held:* the language of the contract showed that it was the intention of the parties that it should be wholly governed by English law; the clause relieving defts. from liability for the negligence of their servants, though void by the law in force in Detroit, was valid & enforceable, by English law, but, applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury. —JONES *v.* OCEANIC STEAM NAVIGATION CO., LTD., [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

640. *Add. Annotation:*—**Apld.** Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771.

640a. —— **Inclusion of provisions of local Ordinance.**]—Certain parcels of oranges were shipped at Jaffa upon an Esthonian steamship for carriage to Hull. The ship was under time charter to a British firm, who ran a line of steamships called the Jaffa Union Line. The bills of lading, which were signed by directors of a Palestine corporation, the Jaffa Union Line, Ltd., contained the following clause: "This bill of lading wherever signed is to be construed in accordance with English law." Pltfs. were Hull fruit merchants, two of whom were indorsees of certain of the bills of lading & sued as owners of the cases of fruit therein mentioned; nine others had merely paid the freight & sued on an implied contract with deft. shipowners to deliver the cases in good order & condition according to the terms of the bills of lading. The Palestine Carriage of Goods by Sea Ordinance, No. 43 of 1926, incorporated the rules relating to bills of lading adopted by the International Conference on Maritime Law held at Brussels in 1922–23, generally known as the Hague Rules. Clause 4 of the Ordinance was in the following terms: "Every bill of lading . . . issued in Palestine which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provision of the said Rules as applied by this Ordinance, & shall be deemed to have effect subject thereto, notwithstanding the omission of such express statement." Pltfs.' action was in respect of damage &/or short delivery. Defts. set up various exceptions in the bills of lading, & pltfs. pleaded in reply that the contracts were governed by the Palestine Ordinance; that accordingly, notwithstanding the omission of a statement to that effect, the Hague Rules should be deemed to be written into the contracts, &, therefore, that the exceptions relied on were of no avail. The question whether the bills of lading were subject to the provisions of the Ordinance was set down for trial as a preliminary issue. The judge held that they were so subject, & that all pltfs. were entitled to succeed on the preliminary issue. Defts. appealed:—*Held:* (1) the express terms of the Ordinance, based on an international convention, could not be defeated by the insertion of a clause in the bills of lading that they were to be construed according to English law, & the bills of lading were subject to the provisions of the Ordinance & the Rules thereunder, &, with those terms read into them, should then be construed according to English law; but (2) the ct. had not sufficient information as to the facts to determine the effect of that decision on the nine pltfs. who sued on implied contracts, &, while the appeal would be dismissed, the judgment must be varied to that extent.—THE TORNI, [1932] P. 78; 101 L. J. P. 44; 147 L. T. 208; 48 T. L. R. 471; 18 Asp. M. L. C. 315, C. A.

Annotation:—As to (1) **Distd.** The St. Joseph, [1933] P. 119.

640b. **Agreement for contract to be subject to foreign law—Contract cancelled by decree of foreign Government.**]—In May, 1903, pltf. took out a 20 year endowment life insurance policy with defts. for 10,000 roubles payable at defts.' office in St. Petersburgh, & by the terms of the policy all premiums were to be paid in Russia. Pltf. paid all the premiums in Russia down to 1917, & then in London down to 1919. By the terms of an Imperial Decree of the Russian Empire, dated July 7, 1889, which were incorporated in the policy, it was provided (*inter alia*) that all disputes in connection with insurance operations should be settled according to Russian laws & in Russian cts. of justice. By a Monopolisation Decree of the Russian Soviet Govt., dated Dec. 1918, insurance in all its forms was declared a State monopoly, & in Nov. 1919, a Decree of Cancellation abolished life assurance altogether in the Soviet Republic, & all existing contracts were annulled. In those circumstances pltf., who was prevented by the above decrees of 1918 & 1919 from suing on the policy in Russia, brought an action in England for a declaration that defts. were liable to him under the policy:—*Held:* the proper law of the contract was, according to the policy rules, the law of Russia, & the effect of the Cancellation Decree of Nov. 1919, was that the contract, if in fact there was any contractual *nexus*

left in existence between the parties after the Monopolisation Decree of 1918 came into force, was annulled, & pltf. could not recover on it.—PERRY *v.* EQUITABLE LIFE ASSURANCE SOCIETY OF U.S.A. (1929), 45 T. L. R. 468.

641. *Add. Annotations :—As to* (2) **Consd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171. **Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604; Bfoken Hill Proprietary Co. *v.* Latham (1932), 49 T. L. R. 137. *As to* (3) **Refd.** The Njegos, [1936] P. 90; R. *v.* International Trustee for Protection of Bondholders Akt., [1937] A. C. 500.

642. *Add. Annotations :—As to* (1) **Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525. *As to* (2) **Consd.** British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516.

643. *Add. Annotations :*—**Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730: N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604; The Njegos, [1936] P. 90.

644. *Add. Annotation :—As to* (2) **Refd.** Cayzer Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

645a. ——.]—The master of a North German ship, lying at Constantinople, entered into a charterparty with North German subjects, there resident, to carry a cargo to a port in the United Kingdom or on the continent, to be delivered to English consignees. The charterparty & the bill of lading given under it were in the English language, & it was stipulated that the ship should call at one of three ports of the United Kingdom for orders. The ship duly called at F., & was ordered to proceed to an English port to discharge :—*Held :* as the intention of the parties as to what law should govern was to be gathered from the circumstances of the case, &, as the giving of the orders fixed the seat of the contract in England, the law of England applied. —THE WILHELM SCHMIDT (1871), 25 L. T. 34; 1 Asp. M. L. C. 82.

Annotations :—**Consd.** The Adriatic (1931), 47 T. L. R. 638. **Refd.** The San Roman (1872), L. R. 3 A. & E. 583; The Dannebrog (1874), 31 L. T. 759.

646. *Add. Annotations :*—**Apld.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730. **Consd.** The Adriatic (1931), 47 T. L. R. 638. **Expld. & Distd.** The Torni (1932), 48 T. L. R. 471. **Consd.** The Njegos, [1936] P. 90. **Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604.

647. *Add. Annotation :*— **Refd.** International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56.

(c) Application of Lex loci solutionis (Vol. XI., p. 392).

650a. Contract by State—Loan.]—When the Govt. of a State contracts a loan in another country, the contract is governed by the law of the State whose Govt. contracts the loan, & not by the law of the country in which the contract is made.—SMITH *v.* WEGUELIN (1869), L. R. 8 Eq. 198; 38 L. J. Ch. 465; 20 L. T. 724; 17 W. R. 904.

Annotations :—**Folld.** International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56. **Refd.** Goodwin *v.* Robarts (1876), 1 App. Cas. 476.

PART VII. SECT. 2, SUB-SECT. 1.—B. (a).

sc. *Contract relating to foreign immovable—Application of lex situs.*]—Pltf., a co. incorporated in Victoria, whose principal office was situated in Victoria, by an agreement in writing made in Victoria, agreed to sell a station property, together with chattels, in New South Wales to persons resident in New South Wales, as agents for a co. to be formed. The proposed co. was incorporated in Victoria. It adopted the contract, & was subsequently joined as deft. in an action in the Supreme Ct. of Victoria by pltf. co. for instalments of purchase money & interest on the unpaid balance of purchase money. Pltf. co. & deft. co. were both registered in New South Wales for the purpose of carrying on business there. The contract of sale provided that it should be stamped, & it was in fact stamped in New South Wales. The purchase money was payable in Victoria :—*Held :* the proper law of the contract was the law of New South Wales; the Moratorium Act, 1930–1931 (N.S.W.), consequently applied, & the personal obligation was extinguished by that Act.—MERWIN PASTORAL CO. PROPRIETARY, LTD. *v.* MOOLPA PASTORAL CO. PROPRIETARY, LTD.; MOOLPA PASTORAL CO. PROPRIETARY, LTD. *v.* MCKINDLAY, [1933] Argus L. R. 401; 7 A. L. J. 167; 48 C. L. R. 565.—**AUS.**

PART VII. SECT. 2, SUB-SECT. 1.—B. (b).

652 vi. —— *Assessment of damages.*]—The right to damages for breach of a contract made in a foreign country & to be executed there is governed by the *lex loci contractus* & not by the *lex fori.*—LIVESLEY *v.* HORST, [1924] S. C. R. 605; [1925] 1 D. L. R. 159; *affg.* S. C. *sub nom.* HORST *v.* LIVESLEY, [1924] 2 D. L. R. 1002; [1924] 2 W. W. R. 443; 34 B. C. R. 19.—**CAN.**

652 vii. ——.]—LUCAS & CO. *v.* MONCTON SUPPLY CO., [1924] 4 D. L. R. 376.—**CAN.**

652 viii. ——.]—The validity of a contract must be decided by the law of the place where it was made. If valid there, it will be held valid everywhere, by the tacit or implied consent of the parties. The law of the transfer of negotiable instruments rests on this foundation.—HANSON *v.* COLLETTE (1931), 5 M. P. R. 363.—**CAN.**

652 ix. ——.]—A contract of conditional sale having been made in Saskatchewan & the goods sold thereunder, a motor car, having been delivered there :—*Held :* in the absence of proof of a contrary intention, the rights & obligations of the parties were governed by the law of Saskatchewan.

The car was seized in Alberta on default by the buyer & resold; & an action was brought in Saskatchewan to recover the deficiency on the resale :—*Held :* the fact that the car had been seized in Alberta did not render Extra-Judicial Seizures Act of that province, which had not been complied with, applicable to prevent the recovery of the deficiency, where, at least the action for the deficiency was brought, as it was in this case, in Saskatchewan. *Qu. :* whether the non-compliance with said Act would have prevented recovery had the action been brought in Alberta.—COMMERCIAL CORPN. SECURITIES, LTD. *v.* NICHOLS (OTHERWISE BUTTERFIELD), [1933] 1 W. W. R. 484; 3 D. L. R. 56.—**CAN.**

652 x. ——.]—The rights & liabilities, as distinguished from the remedies, of the parties to a mercantile contract must be determined by the proper law of the contract; which is, *prima facie*, the *lex loci contractus*, a presumption which applies with particular force when the contract is to be performed wholly in the country wherein it is made. On the other hand, whatever relates to the remedy which may be enforced is governed by the *lex fori*, for litigants must take the procedure as they find it in the country in which they sue.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1; 4 D. L. R. 679.—**CAN.**

652 xi. ——.]—By an agreement in writing made in Victoria between pltf., a Victorian co. carrying on business in Victoria, & P., a resident of New South Wales, P. agreed to repay in Victoria all moneys due by him to pltf. & to execute securities for the same over his station property situate in New South Wales. Payment of the moneys was guaranteed by defts., who resided in Victoria. In an action on the guarantee defts. pleaded that the rights of pltf. were barred by reason of the Moratorium Acts of New South Wales : —*Held :* the rights of the parties in the action were not to be ascertained by reference to the law of New South Wales.—DENNYS LASCELLES, LTD. *v.* BORCHARD, [1933] V. L. R. 46; Argus L. R. 128.—**AUS.**

sn. *Offer made & accepted by post—Governed by law of country of offeror.*]—RENFREW FLOUR MILLS *v.* SANSCHAGRIN (1928), Q. R. 45 K. B. 29.—**CAN.**

sp. *Mortgage.*]—Where a mtge. of land in New Zealand is collaterally secured by an equitable mtge. of an interest in land in England, both being executed in New Zealand by parties there resident & domiciled, & securing moneys advanced & repayable in New Zealand, the law of the contract to be applied is the *lex loci contractus*, & not the *lex situs*. Accordingly, the Mortgagors Relief Act, 1931, applies both to the mtge. & the collateral security.—*Re* J. TO A., A MORTGAGE, 1933] N. Z. L. R. 1512.—**N.Z.**

Before 659 add as follows :—

658a. General rule.]—Where a contract made in one country is to be performed in another, the law governing the contract is the law of the country where the performance is to take place.

A contract for the sale of goods, made in Malta, was to be performed by the delivery of the goods on board a ship at Gibraltar selected by the purchaser :—*Held :* as from the moment of such delivery, the vendor had no further control over the goods, & had parted with their possession of & property in them, & the purchaser had, after their arrival in Malta, dealt with them in a manner inconsistent with the ownership of the vendor, he had no right to reject the goods & rescind the contract, which was governed by the law of Gibraltar.—BENAIM & Co. *v.* DEBONO, [1924] A. C. 514 ; 93 L. J. P. C. 133 ; 131 L. T. 1, P. C.

Annotations :—**Refd.** Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373 ; British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516.

664. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

668. *Add. Annotations :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669 ; *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

669. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

670. *Add. Annotations :*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

672. *Add. Annotations :*—**Consd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171. **Refd.** Farr, Smith *v.* Messers, [1928] 1 K. B. 397.

676. *Add. Annotation :*—**Refd.** Russian Commercial & Industrial Bank *v.* Comptoir D' Escompte de Mulhouse, [1923] 2 K. B. 630.

683. *Add. Annotation :*—**Refd.** The Colorado, [1923] P. 102.

684. *Add. Annotation :*—*Generally*, **Refd.** Grein *v.* Imperial Airways, Ltd., [1936] 2 All E. R. 1258.

688. *Add. Annotations :*—**Refd.** Benaim *v.* Debono, [1924] A. C. 514 ; Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373 ; International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56 ; British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516 ; Mount Albert Borough Council *v.* Australasian Temperance & General Mutual Life Assurance Society, Ltd., [1938] A. C. 224.

689a. —— Agreement by German in Germany—Enforcement by third parties.]—HARTMANN *v.* KONIG (1933), 50 T. L. R. 114, H. L.

691a. —— Charterparty in English—Entered into by master of German ship with Germans abroad—To take cargo to England.]—THE WILHELM SCHMIDT, No. 645a, *ante*.

692. *Add. Annotation :*—**Consd.** The Adriatic (1931), 47 T. L. R. 638.

694. *Add. Annotations :*—*As to* (2) **Consd.** The Adriatic (1931), 47 T. L. R. 638 ; The Njegos, [1936] P. 90.

694a. —— Charterparty made in Egypt—Documents & consignees English—Ship Swedish.]

sq. *Contract of agent appointed in Bombay—To purchase cotton in New York or Liverpool.*]—Where a person in Bombay employs another person in Bombay as commission agent to effect transactions of purchase & sale of cotton in New York or Liverpool, the transactions are not governed by the Bombay Cotton Contracts Act XIV. of 1922 & the bye-laws thereunder.—PIROJSHAW *v.* BANDEALI ISMAIL & Co. (1931), I. L. R. 57 Bom. 225.—**IND.**

PART VII. SECT. 2, SUB-SECT. 1.—B. (c).

m. Read now "**658a i.**"

PART VII. SECT. 2, SUB-SECT. 2.

t i. ——.]—The weight of authority supports the view that capacity to enter into an ordinary mercantile contract is governed, not by the *lex domicilii*, but by the *lex loci contractus*. Therefore judgment cannot be recovered here against a married woman as maker of a promissory note if under the *lex loci contractus* a married woman is not legally competent to make a promissory note.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—A.

677 iv. ——.]—The obligations of trustees of a deed to secure payment of a bond issue were held to be governed by the law of British Columbia, although the trustees were resident in Oregon, U.S.A., where the contract was made in British Columbia & was substantially to be performed there. The property also was situated, & the mtgor. resident, in British Columbia.—HARRIS INVESTMENTS, LTD. *v.* SMITH, [1934] 1 D. L. R. 748 ; 48 B. C. R. 274.—**CAN.**

st. *Jurisdiction of court to enforce—Contract to be performed abroad—Defendants resident within jurisdiction.*]—Where defts. in a suit reside in this country & the principal office of pltfs. is in England, & a contract is entered into there between the parties which is to be executed in New York, a suit in respect thereof may be instituted in this Province.—DIRECT CABLE CO. *v.* DOMINION TELEGRAPH CO. (1881), 28 Gr. 648 ; (1883) 8 A. R. 416.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—B. (b).

f i. —— —— *Incorporation of Harter Act.*]—Pltf. contracted with deft. ship for the carriage of a cargo of wheat from Buffalo to Montreal. Pltf. was an American, the ship was an American ship, & the contract was made in the United States. Deft. alleged that the contract or bill of lading was issued subject to the Harter Act, the terms & conditions of which applied to & formed part of such contract, while pltf. alleged that as this Act was not referred to or made part of the contract it did not apply :—*Held :* the obligations of the parties under this contract were governed by the laws of the United States. Under the laws of the United States the Harter Act did not need to be referred to in the bill of lading to become binding on the parties, & said Act was to be applied in this case.—J. RICHARDSON & SONS, LTD. *v.* SS. BURLINGTON (Que. Adm.), [1931] S. C. R. 96 ; [1930] 4 D. L. R. 527 ; *affg.*, [1929] Ex. C. R. 186.—**CAN.**

f ii. —— —— ——.]—Each of two bills of lading, which were similar, for certain goods to be carried from the United States of America to the Irish Free State in a ship, the property of the United States Shipping Board, stated that the shipments were subject to all the terms & provisions of, & all the exemptions from liability contained in, the Harter Act, an Act of Congress of the United States of America :—*Held :* the bills of lading were American contracts, & as such should be construed by American law, & that law must be proved or admitted before the ct. would be competent to decide the questions of law submitted in the special case.—MACNAMARA *v.* S.S. HATTERAS, [1931] I. R. 337.—**IR.**

f iii. —— —— ——.]—The contract of carriage in question herein was made in the United States of America, both pltfs. were United States corpns., & the contract contained a clause valid & necessary according to such law, but not necessary under the Canadian or English law. Moreover, the insurance certificates issued by one of pltfs. contained an express reference to the Harter Act, a law of the United States which the pltfs. now contend should not be applied :—*Held :* in the above circumstances, inasmuch as the intention of the parties is to govern, it must be presumed that the parties to the contract intended to be governed by the law of the United States (the Harter Act), & that such law applied. The best criterion of what law is to be applied is to be found in the intention of the parties, & where such intention is not expressed it is to be gathered from the terms of the contract itself & from the surrounding circumstances. Where a bill of lading contains special clauses, not necessary or valid under other laws, but necessary & valid under the laws of the country where the contract was made, the parties are presumed to have contracted subject to the law which gives effect to such clauses.—BUNGE NORTH AMERICAN GRAIN CORPN. & FIRE ASSOCN. OF PHILADELPHIA *v.* S.S. SKARP, [1933] Ex. C. R. 75.—**CAN.**

—By two freight engagement notes made in Egypt between pltfs., a firm carrying on business in Egypt, & defts., a British co. with a branch office in Egypt, pltfs. agreed to reserve room for certain cottonseed for shipment to London by a steamer to be specified. Under a charterparty made between the owners of the Swedish steamship *A.* & pltfs. as charterers the *A.* loaded the cargo at Alexandria for delivery in London; & pltfs., "as agents only," issued bills of lading whereby the cargo was to be delivered in London to the order of the defts. on payment of freight by them at the specified rate. In the course of the voyage the *A.* came into collision with another vessel, & was so badly injured that she had to be towed to Cadiz, where she was found to be a constructive total loss. The cargo, accordingly, was discharged at Cadiz & delivery was taken there by defts. Pltfs., suing on behalf of the shipowners, claimed distance (*i.e. pro rata*) freight, which they alleged was payable either under the law of the flag (Swedish) or the *lex loci contractus* (Egypt). Defts. alleged that the law of England applied, under which *pro rata* freight is not payable:—*Held:* all the authorities showed that the best criterion of what law was to be applied was to be found in the intention of the parties, &, if the parties intended otherwise, the presumption was rebutted that a contract for the carriage of goods by sea was governed by the law of the flag; looking at the circumstances broadly, & having regard (*inter alia*) to the facts that all the documents were in English & on English forms, that delivery & payment were to be in England, the freight engagement notes did not specify a ship of any particular nationality, defts. were a British firm, & the British position in Egypt had for many years been predominant, the inference was that the parties, who as business people must be taken to have intended what was most convenient, intended English law to apply; & consequently the claim for distance freight failed.—THE ADRIATIC, [1931] P. 241; 100 L. J. P. 138; 145 L. T. 580; 47 T. L. R. 638; 18 Asp. M. L. C. 259.

Annotations:—**Consd.** The Njegos, [1936] P. 90. **Refd.** The Torni (1932), 147 L. T. 208.

—— **Charterparty governed by English law—Incorporation of charterparty in bill of lading.**] —*See* ARBITRATION, No. 141a, *ante*.

697a. —— **Delivery of goods against bill of lading—Property in goods passing by contract with third party.**]—In Jan. 1929, pltfs., the Government of Guatemala, purchased aeroplanes & war material from a French firm in Paris for delivery at Guatemala City. By the contract of sale the goods were to be accepted by the purchasers before departure from the sellers' works, & payment therefor was to be made as to 34 per cent. by cash with order & as to the balance of 66 per cent. by a confirmed irrevocable credit with a first-class bank. The sellers undertook to insure the goods & also arrange for their transport to Guatemala City *via* Puerto Barrios. For these transport services the pltfs. agreed to pay a lump sum. The sellers, by their agents in Antwerp, chartered the Norwegian steamship *St. Joseph*, owned by defts. for the transport of a portion of the goods from Antwerp to Puerto Barrios. By the bill of lading, which was mainly in English, the goods were to be delivered unto the "Gouvernement de Guatemala or to his/their assigns." The bill of lading contained no reference to the Hague Rules or to the article of the Belgian Code which embodied those rules. On the arrival of the ship at Puerto Barrios pltfs. presented the bill of lading & took delivery of the goods, which were then sent on by rail to Guatemala City. The goods were found to have been damaged during sea transit by reason of the bad stowage of a part cargo of patent fuel also carried in the *St. Joseph*, & the Guatemala Government sued the shipowners for the damage. The shipowners admitted liability, but contended that their contract with pltfs. was governed by Belgian law, which embodied the Hague Rules, & that therefore their liability was limited:—*Held:* that pltfs. became the owners of the goods by acceptance, & payment to the sellers, before shipment, & not as consignees or indorsees of the bill of lading within the meaning of Bills of Lading Act, 1855 (c. 111); the only contract between pltfs. & defts. was made by pltfs.' offering the bill of lading to the shipmaster & getting delivery of the goods, & it was a contract made in Guatemala, with which no Belgian had anything to do, except as agent; pltfs. were bound by the terms contained in the bill of lading & nothing more; there was nothing to show that either party intended or contemplated the application of Belgian law to the contract, & it was impossible to import into such a contract, between such parties, a term of Belgian law to which no reference was made therein; even if the contract was made in Antwerp, & pltfs., by taking delivery, incurred the same liabilities as the shipper, who took the bill of lading, they only incurred a liability to which the section of the Belgian Code had no application, for it could not be that a document which, in its inception, had nothing to do with Belgian law could afterwards become subject to it; &, therefore, there must be judgment for pltfs. on their claim, subject to a reference.—THE ST. JOSEPH, [1933] P. 119; 102 L. J. P. 49; 149 L. T. 352; 49 T. L. R. 367; 18 Asp. 375.

699. *Add. Annotations:*—**Consd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172. **Apld.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569. **Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470; Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122; International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56. **Refd.** Equitable Trust Co. of New York *v.* Henderson (1930), 47 T. L. R. 90; British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516.

PART VII. SECT. 2, SUB-SECT. 4.—B. (c).

701 i. *Marine policy—Governed by lex loci contractus.*]—PATTERSON *v.* CONTINENTAL INSURANCE CO. (1859), 18 U. C. R. 9. —CAN.

702a. —— **Contract between foreign broker & English broker—Right of cancellation as between foreign broker & principal—Governed by lex loci contractus.**]—By English law, an underwriter acknowledging in a policy of marine insurance that the assured has paid the premiums, the policy cannot be cancelled by the insurance broker on the ground that he has not received the premiums from the assured, without the authority of the assured. But where a Canadian assured instructs in the United States an American insurance broker to effect an insurance in England, which he must do through an English broker, the law applicable on this question of right of cancellation is that of the country where the relation of principal & agent is created—that of the United States. In such a case, the English broker, who is liable to the English underwriter for the premium, cannot sue the assured, but looks to the American broker, who, in turn, looks to the assured for payment:—*Held:* the question in such a case was one of foreign law—here, that of New York State—& therefore of fact; the ct. accordingly found that the American broker could cancel such a policy on the ground that the assured had failed to supply him with the premium, with the assent of the underwriter, but without the assent of the assured who had failed to pay the premium.—RUBY S.S. CORPN., LTD. *v.* COMMERCIAL UNION ASSURANCE CO. (1933), 150 L. T. 30; 39 Com. Cas. 48; 18 Asp. M. L. C. 445, C. A.

702b. —— **Reinsurance with foreign company—No policy issued.**]—MARITIME INSURANCE CO., LTD. *v.* UNION VON ASSECURANZ, 1865 (1935), 79 Sol. Jo. 403.

703a. —— —— **Policy effected in England by foreigner—With foreign company through English office.**]—Pltf. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe, were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were expressed to be payable in London, but all premiums were payable either at the central office in New York or at the office where the insurance was payable, & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law:—*Held:* it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be recoverable; applying that test in the present case, the debts were recoverable in London where they were expressed to be payable.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

Annotations:—**Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

705. *Add. Annotation:*—*As to* (1) **Refd.** The Colorado, [1923] P. 102; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

705a. Insurance against loss by forged document—Governed by English law—Insurance in London—Business carried on in New York.]—Pltfs., who carried on business in New York, took out a policy of insurance in London against loss which they might incur by having acted upon any document which might prove "to have been forged." During the currency of the policy pltfs. were induced to lend money to a firm by a document containing a false statement of the firm's assets & liabilities. Before the whole of the loan had been repaid the firm became bkpt., & the pltfs. sued an underwriter on the policy. By the law of the State of New York forgery includes "a false statement of financial condition." A member of the firm had since been convicted in New York of forgery. Pltfs. contended that the word "forged" in the policy must be construed by the law of New York where the loss occurred, & that therefore it was immaterial if the document was not a forgery according to English law:—*Held:* even if the document was a forged document according to the law of New York the word "forged" was used in the policy merely to describe an existing state of fact & not as a term of art to be construed according to the law of the place where the loss happened, & accordingly the action failed.—EQUITABLE TRUST CO. OF NEW YORK *v.* HENDERSON (1930), 47 T. L. R. 90.

707a. Governed by lex loci rei sitæ—Lease executed in France—Relating to land in Chile.]—ST. PIERRE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD., No. 756a, *post.*

709. *Add. Annotation:*—**Refd.** Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

709a. —— **Contract cancelled by decree of foreign Government.**]—PERRY *v.* EQUITABLE LIFE ASSURANCE SOCIETY OF U.S.A., No. 640b, *ante.*

711. *Add. Annotation:*—*As to* (1) **Refd.** The Colorado, [1923] P. 102.

716. *Citations:*—For "5 De G. M. & G. 604" read "1 De G. M. & G. 604."

719. *Add. Annotation:*—**Refd.** The Colorado, [1923] P. 102.

721. *Add. Annotation:*—*Generally,* **Refd.** Ruby S.S. Corpn., Ltd. *v.* Commercial Union Assurance Co. (1933), 150 L. T. 38.

730. *Add. Annotation:*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

732. *Add. Annotation:*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

732a. —— **Goods to be smuggled into foreign country—Not enforceable in England.**]—F., a financier, L., a distiller, D. & M., a firm of shipbrokers, & one A. were minded to load a ship with a cargo of whisky to be carried across the Atlantic & sold in the U.S. or at some point from which it could easily be smuggled into the U.S., in violation of the laws of that country. D. & M. entered into

a contract to buy a steamer for £2,565; F. advanced £256 as a deposit on the purchase. On Oct. 26, 1927, an agreement was entered into between F., L. & D. & M., whereby L. agreed to sell to D. & M. 7,500 cases of whisky at 27*s.* 6*d.* a case free on board at Leith or Glasgow to be delivered *ex* warehouse not later than Nov. 26. D. & M. were to take delivery on board a vessel of a regular line of steamers. Payment was to be made by a bill for £5,500 drawn by F., accepted by A. & indorsed to L., & a second bill for £4,812 accepted by A. & D. & M., both bills to be payable ninety days from Nov. 26, & to be drawn & accepted on Oct. 26, & handed to L. to hold as security until he should hand the shipping documents or delivery order from bond on or before Nov. 26. L. agreed to lend D. & M. £2,500 (£1,000 at 8 per cent. *per annum* & £1,500 at 40 per cent. *per annum* interest) for the purchase of the steamer, the loan to be secured by a first mtge. on the steamer. F. agreed to lend D. & M. £1,000 at 40 per cent. *per annum* interest to be secured by a second mtge. on the steamer. D. & M. agreed to insure the steamer for £1,000 against all risks including seizure or confiscation & £2,500 against marine risks & deliver to L. cover notes for £1,500 & £1,000 & to F. a cover note for £1,000. F. & L. agreed jointly to underwrite the insurance for £1,000 against confiscation at a figure to be agreed in the event of the ordinary market rate exceeding thirty guineas per cent. D. & M. agreed to provide £1,600, the estimated balance required for the equipment of the steamer for the voyage:—*Held:* the object to be attained by this agreement being a breach of international comity, the agreement was contrary to public policy & void.—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, [1929] 1 K. B. 470; 98 L. J. K. B. 282; 140 L. T. 479; 45 T. L. R. 185, C. A.

Annotation:—**Refd.** Carling Export Brewing & Malting Co., Ltd. *v.* R., [1931] A. C. 435.

733. *Add. Annotation:*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

738a. **Payment of rent by bills on London—Illegal exchange transaction.**]—Resps. were jointly bound to fulfil the obligations contained in leases of premises in Santiago de Chile granted by the predecessors in title of applts. The leases provided the following way in which the rents should be payable: "Payment shall be effected monthly in advance in Santiago de Chile on the first day of each month by first class bills on London." In 1931, Chilean legislation supervened which resps. maintained prevented them from acquiring foreign exchange in Chile or from paying the rents in Chile by drafts on London without the authorisation of the committee established by the legislation to control exchanges, & that requests by them for such authorisation from time to time had been refused by the committee. The Chilean legislation established a control of international operations of exchange & the transfer of funds abroad, entrusting such control to a committee or commission. The legislation defined international exchange transactions as "the purchase & sale of all kinds of currency & gold in any form & the bills of exchange, cheques, drafts, letters of credit, telegraphic orders, & documents of any other nature requiring the transfer of funds from Chile or vice versa." Conflicting evidence by Chilean experts was given as to the meaning in Chile of first class bills on London. The evidence accepted was that "payable in Chile in first class bills on London" had a special mercantile meaning in Chile—namely, "bills drawn in Chile by one or other of a select list of bankers & mercantile houses in Chile upon one or other of a select list of bankers & mercantile houses in London" & these were known technically as F. C. L. bills. An advocate in Chile who had been Minister of Justice gave evidence that the F. C. L. bills came within the mischief of the Chilean legislation:—*Held:* the Chilean legislation made it impossible for the rent to be paid as directed, as the mode of payment as already interpreted would have been an international exchange transaction within the meaning of the Chilean legislation.—DE BEÉCHE *v.* SOUTH AMERICAN STORES, LTD., & CHILIAN STORES, LTD., [1935] A. C. 148; 104 L. J. K. B. 101; 152 L. T. 309; 51 T. L. R. 189; 40 Com. Cas. 157, H. L.

740. *Add. Annotation:*—*As to* (2) **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

748. *Add. Annotations:*—*As to* (1) **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254. *Generally,* **Mentd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates de Medulla (1923), 92 L. J. K. B. 455.

750. *Add. Annotations:*—**Apld.** Soc. Anon. de-Grands Etablissements de Touquet Paris. Plage *v.* Baumgart (1927), 96 L. J. K. B, 789. **Refd.** Carlton Hall Club *v.* Laurences [1929] 2 K. B. 153; Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

752. *Add. Annotations:*—**Apld.** Soc. Anon. de-Grands Etablissements de Touquet Paris. Plage *v.* Baumgart (1927), 96 L. J. K. B, 789. **Refd.** Carlton Hall Club *v.* Laurences [1929] 2 K. B. 153.

752a. —— —— —— ——.]—Where money is lent in a foreign country for the purposes of gaming & gaming in that country is not illegal, & cheques payable in England are given for the money lent, pltf. can ignore the security & sue as for money lent to deft.—SOCIÉTÉ ANONYME DES GRANDS ETABLISSEMENTS DE TOUQUET PARIS-PLAGE *v.* BAUMGART (1927), 96 L. J. K. B. 789; 136 L. T. 799; 43 T. L. R. 278.

Annotation:—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

PART VII. SECT. 2, SUB-SECT. 6.—D.

sp. *Contract to indemnify bail.*]—Where a contract of indemnity against loss with respect to bail given in proceedings in a ct. of a foreign country, is lawful under the law of that country the contract, & the security, if any, given "in implement of the contract," can be enforced in Canada, even though the contract was executed in Canada & said security is a mtge. on Canadian land.—NATIONAL SURETY CO. *v.* LARSEN (B. C.), [1929] 4 D. L. R. 913; 3 W. W. R. 299; *revg.*, [1929] 3 D. L. R. 79; 2 W. W. R. 152.—CAN.

PART VII. SECT. 2, SUB-SECT. 8

756 i. *By act of parties—Payment—In what currency.*]—EHMKA *v.* BORDER CITIES IMPROVEMENT CO. (1922), 52 O. L. R. 193.—CAN.

756 ii. —— —— ——.]—MYERS *v.*

756a. —— —— —— **Option as to place.**]—Pltfs., successors of the owner of premises in Santiago de Chile, by a lease executed at the Chilean consulate in Paris & drawn in the Spanish language, let the premises to the Chilean Stores for a term of 10 years from 1935, at a rental of 93,500 pesos of 183,057 millionths of a gramme of fine gold monthly, to be paid at the option of the owner either in Santiago de Chile or remitted to Europe, according to the instructions which the owner might give, one month in advance on the first working day of each month. The second deft., the South American Stores, joined in the lease as guarantor, but so as to become jointly responsible as primary obligor under the contract. The South American Stores carried on business in the Argentine. All parties by the lease elected domicil in Chile. There was evidence that there was no verbal agreement that the rental should be fixed on a gold basis. In July, 1935, the owner served a notice as follows: "Please take note, till further notice, of my option & of the following instructions," & then followed instructions for payment in sterling on a gold basis:—*Held:* (1) the contract must be construed according to Chilean law, even though part of the performance of it was to be in England; (2) evidence of the intention of the parties which would be admissible in a Chilean ct. to interpret the contract is admissible in England; (3) neither party had any intention other than that expressed in the contract as interpreted by experts on Chilean law; (4) the rent to be paid had been specified as an amount of Chilean money, & not as an amount of gold; (5) the rent was to be remitted from Chile, & no claim could be made to have it remitted from the Argentine by the guarantors.—ST. PIERRE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD. & CHILEAN STORES (GATH & CHAVES), LTD., [1937] 3 All E. R. 349; 42 Com. Cas. 363, C. A.

757. *Add. Annotation:—As to* (1) **Apld. Swiss Bank Corpn. *v.* Boehmische Industrial Bank. [1923] 1 K. B. 673.**

762a. ——.]—Applts., a New Zealand borough council, pursuant to an agreement of Sept. 4, 1926, borrowed money for public works from resps., a life insurance co. incorporated in Victoria, & carrying on business in Australia & New Zealand, & as security therefor issued in New Zealand debentures repayable in Victoria & bearing interest payable half-yearly in that State. The debentures were issued under the Local Bodies' Loans Act, 1913 (now 1926) of New Zealand, & the loan & interest were secured on a special rate of threepence in the pound on the rateable value of all rateable property in the borough, provision being made for a sinking fund:—*Held:* the obligation of applts. to pay the interest in Victoria was not affected by Financial Emergency Act, 1931, of Victoria, as amended, which by sect. 19 (1) provided for the compulsory reduction of interest payments on mtges. which, by sect. 14 (1), were defined as including "any debenture . . . issued by any public or local authority." The Victorian Acts did not apply to the debentures or to the interest payable under them, & did not therefore afford a defence to a claim for the payment of interest at the full agreed rate. To hold that the Acts did apply would be to attribute to the Victorian Legislature an intention to legislate in regard to matters lying outside its territorial jurisdiction, because the land charged under the debenture—a charge on the rates being a charge on land—was in New Zealand; &, further, to change the amount of the debt would be to affect the security on the land, which was extra-territorial so far as Victoria was concerned.

The proper law of the contract was that of New Zealand. The extent of the security was defined by the debt, & both the debt & the security were fixed by the New Zealand Act, so that to hold that the Victorian Acts applied would be to treat a New Zealand statute as varied in regard to a New Zealand contract by Acts of the Victorian Legislature. Clear & precise words would be needed before an intention could be attributed to the Victorian Legislature to purport to exercise a jurisdiction of that character, whereas a consideration of the relevant sects. of the Acts showed their territorial limitation to Victoria. Further, the New Zealand cts. were not required to treat the Acts of the New Zealand Legislature as varied by the Legislature of

---

UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

756 iii. —— —— ——.]—Where a payment originating in one country is to be made in another country, & the currency denomination specified is the same in both countries, the rule is that the payment must be made in the currency of the country where the money is payable, unless by express terms or necessary implication payment in some other currency is required.—SIMMS *v.* CHERNENKOFF, [1922] 1 W. W. R. 967; 62 D. L. R. 703; 15 Sask. L. R. 185.—**CAN.**

PART VII, SECT. 8.

a i. —— *Debentures payable in particular place.*]—Deft., a municipal corpn. in New Zealand, duly constituted under the Municipal Corps. Act, 1933, borrowed from pltf., a life assurance society incorporated in the State of Victoria, moneys by way of special loans, & issued to the pltf. debentures for the amount so borrowed, whereby the principal & interest was made payable in Victoria. The loan was made & secured by a special rate on rateable property in New Zealand & the debentures given under & in accordance with the Local Bodies' Loans Act, 1913 (now 1926). The loan-moneys were paid in New Zealand, the debentures were executed in New Zealand, &, in the event of default by deft., pltf. could not effectively obtain relief except in the Supreme Ct. of New Zealand. The Financial Emergency Act, 1931 (Victoria), s. 19 (1), enacted that except as therein provided every mtge. shall . . . be construed & take effect as if it were a term of the mtge. that on & from the coming into operation of Part III . . . the interest payable under the mtge. should be reduced at a rate equivalent to four shillings & sixpence for every pound of such interest. It was provided by sub-s. (2) that the provisions of the sect. or of any order made under that particular Division of the Act should not operate so as to reduce the interest payable under any mtge. to a rate less than five pounds per centum per annum. It was enacted by sect. 22 (1) that every payment of interest made in pursuance of that particular Division of the Act or of an order made thereunder should be a full discharge of the mtgor.'s liability for interest under his mtge. in respect of the period to which such payment related. Pltf. sued deft. for the difference between the amount of interest payable under the debentures & the amount actually paid by defts.—viz., the reduced amount that would be payable if the Victorian Act applied:—*Held:* (1) deft. was not entitled to the reduction enacted by the Victorian Act; (2) the proper law of the contract as to its nature & effect was the law of New Zealand, including the obligation to pay interest & the quantum thereof; (3) even if the law of Victoria governed the mode of performance, the Victoria Act did not relate to the mode of performance but effected a variation of an obligation imposed & of an amount payable fixed by the Legislature of New Zealand (as well as by the intention of the parties), which could not be overriden by foreign law.—AUSTRALASIAN TEMPERANCE & GENERAL ASSURANCE CORPN., LTD. *v.* MOUNT ALBERT BOROUGH, [1936] N. Z. L. R. 54.—**N.Z.**

another State. The debentures, though mtges. within the definition in sect. 14 (1), were not mtges. to which the Acts applied.—MOUNT ALBERT BOROUGH COUNCIL *v.* AUSTRALASIAN TEMPERANCE & GENERAL MUTUAL LIFE ASSURANCE SOCIETY, LTD., [1938] A. C. 224; [1937] 4 All E. R. 206; 107 L. J. P. C. 5; 157 L. T. 522; 54 T. L. R. 5, P. C.

Annotation :—**Reld.** British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516.

Part VIII.—Torts.

777. *Add. Annotation :*—**Reld.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

788. *Add. Citation :*—*sub nom.* BADTOLPH *v.* BAMFEILD, Cas. *temp.* Finch, 186.

789. *Add. Annotation :*—**Reld.** The Fagernes, [1927] P. 311.

796. *Add. Annotation :*—*As to* (2) **Reld.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

Part IX.—Marriage.

800. *Add. Annotations :*—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217. **Reld.** Apted *v.* Apted & Bliss (1930), 143 L. T. 353; Fender *v.* Mildmay, [1936] 1 K. B. 111.

801. *Add. Annotations :*—**Expld. & Distd.** Nachimson *v.* Nachimson, [1930] P. 217. **Reld.** Apted *v.* Apted & Bliss (1930), 143 L. T. 353.

802. *Add. Annotations :*—**Reld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4; Spivack *v.* Spivack (1930), 99 L. J. P. 52.

803. *Add. Annotation :*—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217.

803a. —— —— **Facilities for dissolution under local law immaterial.**]—Marriage is a voluntary union for life of one man & one woman to the exclusion of all others, & where a marriage in a foreign country complies with these requirements it is immaterial that under the local law dissolution can be obtained by mutual consent or at the will of either party with merely formal conditions of official registration.

A man & a woman, both domiciled Russians, entered in Russia into a contract accepted by the local law as one of marriage. The marriage could, according to the same law, be dissolved by mutual consent or at the will of one of the parties, with merely formal conditions of official registration :—*Held :* on an issue directed in a suit by the woman for judicial separation, that as the union so formed was of one man to one woman to the exclusion of all others, it constituted a valid marriage according to English law, notwithstanding that it could, according to the local law, be dissolved as stated above.—NACHIMSON *v.* NACHIMSON, [1930] P. 217; 99 L. J. P. 104; 143 L. T. 254; 94 J. P. 211; 46 T. L. R. 444; 74 Sol. Jo. 370; 28 L. G. R. 617, C. A.

Annotations :—**Reld.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378; Spivack *v.* Spivack (1930), 99 L. J. P. 52; Fender *v.* Mildmay, [1936] 1 K. B. 111.

806. *Add. Annotations :*—*As to* (3) **Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Reld.** Mitford *v.* Mitford, [1923] P. 130; Nachimson *v.* Nachimson, [1930] P. 217.

PART VIII. SECT. 1.

775 xii. —— —— ——.]—Appellant, resident in Ontario, in the course of his employment was injured in that province owing to the negligence of a fellow servant. He sued for damages in Saskatchewan, in which province common employment was not a defence, although a defence to an action in Ontario :—*Held :* the action could not be maintained.—MCMILLAN *v.* CANADIAN NORTHERN RY. Co., [1923] A. C. 120; 92 L. J. P. C. 44; 128 L. T. 293; 39 T. L. R. 14.—**CAN.**

775 xiii. —— —— ——.]—An application under K. B. Act, 1920 (Sask.), for leave to bring an action for damages for personal injuries incurred in the province of Alberta in the course of pltf.'s employment was refused, on the ground that the acts complained of were not "unjustifiable" according to Alberta law, & an essential condition to found the action was not fulfilled.—WARD *v.* BRITISH AMERICAN OIL CO., LTD., [1923] 1 W. W. R. 1240; 16 Sask. L. R. 526.—**CAN.**

775 xiv. —— —— ——.]—O'CONNOR *v.* WRAY, BOYD *v.* WRAY, [1930] 2 D. L. R. 899; S. C. R. 231, *affg.* [1929] 2 D. L. R. 24; 46 Que. K. B. 199.—**CAN.**

775 xv. —— —— ——.]—CALDWELL *v.* REILLY & BELL, [1931] 3 W. W. R. 513.—**CAN.**

775 xvi. —— —— —— *Effect of Criminal Code, ss.* 1143, 1144.]—Sects. 1143 & 1144 cannot be invoked as a bar to an action for a tort committed in a foreign country.—CALDWELL *v.* REILLY & BELL, [1932] 3 D. L. R. 149; 1 W. W. R. 890; *affg.*, [1931] 3 W. W. R. 513.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

780 i. *Trespass to person—Damages—Granting of compensation entrusted to special tribunal in country where tort committed.*]—Since in B. C. the board appointed under Workmen's Compensation Act has exclusive jurisdiction in matters of compensation in lieu of all rights of action of a workman or his dependents against his employer for any accident arising out of & in the course of his employment, no action can lie in Saskatchewan on behalf of a widow & child of a workman for his death while domiciled in B. C.—WALPOLE *v.* CANADIAN NORTHERN RY. Co., [1923] A. C. 113; 92 L. J. P. C. 39; 128 L. T. 289; 39 T. L. R. 16.—**CAN.**

b. For "*Trespass — Negligence — Common employment—Lex loci actus*" read "—— *Negligence—Common employment—Lex loci actus.*"

f. After this case add "*See, also,* No. 775 xii., *ante.*"

f i. —— ——.]—Defender, whose domicile of origin was Scottish, but who had resided abroad for some years without, however, losing his Scottish domicile, was sued in respect of a delict committed while on a visit to Scotland. The delict consisted in the negligent driving of his motor car, resulting in a collision with another motor car, the owners of which were also cited as defenders. At the date when the action was brought against him he had gone abroad again & he was not personally cited, but he had intimated the claim to an insurance co. with whom he was insured against third-party risks, & they were themselves conducting the defence :—*Held :* defender's Scottish domicile of origin, coupled with the commission of a delict in Scotland, did not suffice to found jurisdiction against him in the absence of personal citation in Scotland.—KERR *v.* FERGUSON (R. & W.), [1931] S. C. 736.—**SCOT.**

f ii. —— ——.]—The rights of a minor residing in a foreign state to sue in Quebec for injuries sustained in an accident in Quebec are governed by the laws of the foreign state.—SCHATZ *v.* MCENTYRE, [1935] S. C. R. 238; 1 D. L. R. 608.—**CAN.**

814. *Add. Annotation :—As to* (2) **Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

817. *Add. Annotation :*—**Refd.** Berthiaume *v.* Dastous (1929), 45 T. L. R. 607.

821. *Add. Annotation :*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

827. *Add. Annotations :—As to* (1) **Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44. *As to* (2) **Refd.** Mitford *v.* Mitford, [1923] P. 130.

828a. —— —— —— ——.]—PAPADOPOULOS *v.* PAPADOPOULOS, No. 946b, *post.*

828b. —— —— **Incapacity by lex domicilii.**]—Petitioner & resp., Portuguese subjects domiciled in Portugal, & first cousins to each other, came to reside in England in 1858, & in 1866 they went through a form of marriage before the registrar of the district of the City of London. In 1873 they returned to Portugal, & their domicil throughout continued to be Portuguese. By the law of Portugal a marriage between first cousins is illegal, as being incestuous, but may be celebrated under a Papal dispensation :—*Held :* the parties being by the law of the country of their domicil under a personal disability to contract marriage, their marriage ought to be declared null & void.—SOTTOMAYOR *v.* DE BARROS (1877), 3 P. D. 1 ; 47 L. J. P. 23 ; 37 L. T. 415 ; 26 W. R. 455, C. A.

Annotations :—**Consd.** Ingham (falsely called Sachs) *v.* Sachs (1886), 56 L. T. 920 ; Hay *v.* Northcote, [1900] 2 Ch. 262 ; *Re* Bozzelli's Settlement, Husey-Hunt *v.* Bozzelli, [1902] 1 Ch. 751. **Expld.** Ogden *v.* Ogden, [1907] P. 107. **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** Bloxam *v.* Favre (1884), 50 L. T. 766 ; Viditz *v.* O'Hagan (1899), 68 L. J. Ch. 553 ; Mitford *v.* Mitford & von Kuhlmann, [1923] P. 130.

829. *Add. Annotations :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; Sloggett *v.* Sloggett, [1928] P. 148 ; Nachimson *v.* Nachimson, [1930] P. 217.

835a. ——.]—If there is one question better settled than any other in international law, it is that as regards marriage—putting aside the question of capacity—*locus regit actum.* If a marriage is good by the laws of the country where it is effected, it is good all the world over, no matter whether the proceeding or ceremony which constituted marriage according to the law of the place would or would not constitute marriage in the country of the domicil of one or other of the spouses. If the so-called marriage is no marriage in the place where it is celebrated, there is no marriage anywhere, although the ceremony or proceeding if conducted in the place of the parties' domicil would be considered a good marriage (*per* CUR.).—BERTHIAUME *v.* DASTOUS, [1930] A. C. 79 ; 99 L. J. P. C. 66 ; 142 L. T. 54, P. C.

Annotation :—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217.

836. *Add. Annotations :*—**Followed.** Mitford *v.* Mitford, [1923] P. 130. **Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641 ; Berthiaume *v.* Dastous (1929), 45 T. L. R. 607 ; Inverclyde *v.* Inverclyde, [1931] P. 29.

840. *Add. Annotation :—As to* (2) **Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

853. *Add. Annotations :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Mentd.** Perlak Petroleum Maatschappij *v.* Deen, [1924] 1 K. B. 111 ; R. *v.* Moscovitch (1927), 138 L. T. 183.

858a. —— —— **Marriage of Roman Catholics in India — Within prohibited degree — Indian statutes inapplicable.**]—(1) Two British Roman Catholics assumed to be domiciled in India went through a ceremony of marriage, though they were within the prohibited degrees of consanguinity according to English law, but a dispensation had been obtained from the local Roman Catholic ecclesiastical authorities for the couple to contract the marriage notwithstanding :—*Held :* there was no sanction in the Indian statutes relating to the marriage of Christians in India for British Roman Catholics to enter into a valid union, & the marriage was declared null & void.

(2) There is no legal impossibility, as far as I know, in retention of domicil of origin during successive generations (LORD MERRIVALE, P.).—PEAL *v.* PEAL, [1931] P. 97 ; 100 L. J. P. 69 ; 143 L. T. 768 ; 46 T. L. R. 645 ; 74 Sol. Jo. 612.

859a. **Marriage at embassy—Between foreigners not of ambassador's country.**]—Marriage in the public church, or some public chapel, required by Marriage Act, 1753 (c. 33), s. 1. Exception, as to the chapel of a foreign ambassador, between foreigners, not being of the ambassador's country, not admitted.—PERTREIS *v.* TONDEAR (1790), 1 Hag. Con. 136.

860. *Add. Annotation :*—**Refd.** Berthiaume *v.* Dastous (1929), 45 T. L. R. 607.

861a. —— —— **Marriage in Turkey before Treaty of Lausanne.**]—MARTIN *v.* MARTIN & MAY (1928), 72 Sol. Jo. 612.

861b. —— —— ——.]—DOUST *v.* DOUST (1929), 168 L. T. Jo. 113.

868. *Add. Annotation :* — **Applied.** Matthews *v.* Matthews (1930), 99 L. J. P. 143.

PART IX. SECT. 1, SUB-SECT. 1.

811 i. —— *Marriage solemnised according to law of state.*]—If a person domiciled in a country whose laws permit polygamous marriages is, in accordance with its laws, married there to two wives, citizens of that country, & dies while still domiciled there though temporarily residing in B. C., the status of the wives will be recognised by the cts. of B. C. for the purpose of fixing the succession duty payable on movable property in B. C. going under deceased's will to each of the wives.—YEW *v.* A.-G. FOR BRITISH COLUMBIA, [1924] 1 D. L. R. 1166 ; 1 W. W. R. 753 ; 33 B. C. R. 109 ; *revsg.* S. C. *sub nom. Re* LEE CHEONG, [1923] 1 W. W. R. 867.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—B.

814 iii. ——.]—FAFARD *v.* BEAUPRE (1927), Q. R. 66 S. C. 24.—**CAN.**

814 iv. ——.]—The fact that the ceremony of marriage was solemnized in a foreign country wherein such a marriage is valid does not render it valid in a province in which 5 & 6 Will. 4, c. 54, is in force, if the parties were British subjects & only temporarily resident, but not domiciled, abroad.—DEJARDIN *v.* DEJARDIN, [1932] 2 W. W. R. 237.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—C.

827 ii. ——.]—In 1911 H., domiciled in the Transvaal, married his deceased wife's sister, W., who was domiciled in Natal. By the common law prevailing in T. at the time, marriage between a man & his deceased wife's sister was prohibited. In N. such a marriage was permitted by statute :—*Held :* the marriage was valid inasmuch as the domicil of W. was in N. & the marriage was celebrated in N., & the N. cts. would not regard the validity of the marriage as affected by an incapacity imposed by the law of the husband's domicil not recognised by the law of N.—FRIEDMAN *v.* FRIEDMAN'S EXECUTORS (1922), 43 N. L. R. 259.—**S. AF.**

Part X.—Divorce and other Matrimonial Causes.

873a. ——.]—The jurisdiction in divorce is limited to England & Wales & depends upon domicil there, & it does not necessarily confer any authority over the property of a person domiciled in a foreign country.—TALLACK *v.* TALLACK & BROEKEMA, [1927] P. 211; 96 L. J. P. 117; 137 L. T. 487; 43 T. L. R. 467; 71 Sol. Jo. 521.

Annotation :—**Consd.** Goff *v.* Goff, [1934] P. 107.

Under Judicature (Consolidation) Act, 1925 (c. 49), s. 191.]—*See* HUSBAND & WIFE, No. 5542a, *post.*

878. To the cross-reference following this case add "*See, now,* Indian & Colonial Divorce Jurisdiction Act, 1926 (c. 40)."

878a. —— —— —— —— **Registration of decree.**]—Where a decree absolute of divorce has been granted in India under Indian & Colonial Divorce Jurisdiction Act, 1926 (c. 40), either party may, on production of the necessary certificate, secure the registration of such decree in the High Ct. in England.—WILKINS *v.* WILKINS (1932), 101 L. J. P. 35; 147 L. T. 17; 48 T. L. R. 425; 76 Sol. Jo. 345.

884. *Add. Annotations :*—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

885. *Add. Annotations :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Graham *v.* Graham (1923), 128 L. T. 639; Eustace *v.* Eustace, [1924] P. 45; Rudd *v.* Rudd, [1924] P. 72; Sasson *v.* Sasson, [1924] A. C. 1007; Herd *v.* Herd, [1936] 2 All E. R. 1516.

PART X. SECT. 1, SUB-SECT. 1.

sq. *To make order for custody of children—Children living with mother outside province.*]—KILPATRICK *v.* KILPATRICK (B. C.), [1929] 3 W. W. R. 463; [1930] 1 D. L. R. 288; 42 B. C. R. 88.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—A. (a).

b i. ——.]—*Held :* it is the duty of the district judge, when a petition for dissolution of marriage comes before him, to satisfy himself that the parties to the marriage were domiciled in India at the time when the petition was presented & to see that the petition itself contains a declaration to that effect; & before hearing the suit, to satisfy himself that the parties are in fact domiciled in India.—MURPHY *v.* MURPHY (1929), I. L. R. 10 Lah. 607.—**IND.**

b ii. —— *Under Indian Divorce (Amendment) Act,* 1926.]—Under Indian & Colonial Divorce Jurisdiction Acts, s. 1 (1), & Indian Divorce Act, 1869, s. 3, the High Ct. has jurisdiction to grant a decree for dissolution of a marriage; the words in sect. 1 (1) (*a*) of the Act of 1926 are intended to mean that the grounds on which a decree for the dissolution of the marriage of British subjects domiciled in England may be granted by a High Ct. in India shall be those on which such a decree might be granted by the Divorce Ct. in England according to the law for the time being in force in England, *i.e.* according to Supreme Ct. of Judicature (Consolidation) Act, 1925, s. 176.—BARNARD *v.* BARNARD (1928), I. L. R. 56 Calc. 89.—**IND.**

b iii. —— ——.]—In cases under the Indian Divorce Act, the ct. should always raise the following issues: (*a*) is the marriage between the parties proved; (*b*) do the parties or either of them profess the Christian religion; (*c*) was the domicil of origin of the husband Indian; if yes, is it proved that he had changed such domicil at the date of the presentation of the petition; if no, is it proved that at the date of the presentation of the petition he had acquired an Indian domicil; (*d*) do the parties reside or did they last reside together within the local limits of the ordinary jurisdiction, or the jurisdiction under the Indian Divorce Act of this ct.—ROOKE *v.* ROOKE (1934), I. L. R. 58 Bom. 502.—**IND.**

b iv. ——.]—A wife cannot have a domicil distinct from that of her husband, while they continue married, even though the wife has left him for cause or the husband has deserted her; &, in order to give the ct. jurisdiction to decree a divorce, it must be established that the husband was domiciled within the province at the commencement of the proceedings.—BREEN *v.* BREEN (Man.), [1929] 4 D. L. R. 649; 2 W. W. R. 345; *revsd. on facts,* [1930] 1 W. W. R. 30; 1 D. L. R. 1006; 38 Man. L. R. 409.—**CAN.**

b v. ——.]—Act 25 of 1926 prevents any decree of dissolution of a marriage except where the parties are domiciled in India.—BONHIEM *v.* KA TROLIMON (1929), I. L. R. 57 Calc. 1159.—**IND.**

b vi. ——.]—Before exercising jurisdiction under the Indian Divorce Act, the ct. ought carefully to inquire, on proper legal principles, into the question of domicil of the parties.—CRESSWELL *v.* CRESSWELL (1932), I. L. R. 60 Cal. 601.—**IND.**

b vii. —— *Statutory domicile of wife—Validity of Divorce & Matrimonial Causes Act,* 1930, *s.* 3.]—Subject to the limitations imposed by the Legislature of Great Britain, the New Zealand Legislature enjoys complete independence & may legislate as it pleases; & Divorce & Matrimonial Causes Amendment Act, 1930, s. 3, being for the peace, order, & good government of the country, & not being repugnant to any statute law relating to New Zealand by the Imperial Legislature, or ambiguous so as to permit the rules of international law to prevail, is *intra vires* the New Zealand Legislature. A wife petitioning under that statute for a divorce from her husband, who was never resident or domiciled in New Zealand :—*Held :* entitled to a decree *nisi.*—WORTH *v.* WORTH [1931] N. Z. L. R. 1109.—**N.Z.**

b viii. —— ——.]—Sect. 43 of the Matrimonial Causes Act, 1929, provides that for the purposes of this Act a deserted wife who was domiciled in the State at the time of desertion shall be deemed to have retained her South Australian domicile, although since the desertion her husband may have acquired another domicile.—IRELAND *v.* IRELAND, [1935] S. A. S. R. 217.—**AUS.**

b ix. ——.]—There is no authority for the proposition that the jurisdiction of the ct. to make an order for divorce or judicial separation depends upon domicil at the time when the order is made. The relevant time is the time when the action is begun.—RUSSELL *v.* RUSSELL, [1935] S. A. S. R. 85.—**AUS.**

b x. ——.]—A decree of divorce made in a foreign country without regard to domicile may according to the law of that country be valid within the limits of that country; but to a divorce so pronounced the cts. of Northern Ireland deny validity within their jurisdiction.—*Re* E. E. L., [1938] N. I. 56.—**IR.**

878 i. —— —— —— *Indian marriage.*]—Petition by the wife for dissolution of marriage. The husband was a subject of the U.S.A. & domiciled in that country; the marriage was celebrated & both parties resided in India until Jan. 1923, when the husband left for America where he remained. Adultery & cruelty were committed within the jurisdiction of the ct. sufficient to entitle petitioner to a decree *nisi :*—*Held :* the ct. had jurisdiction to pass the decree.—MILLER *v.* MILLER (1924), I. L. R. 52 Calc. 566.—**IND.**

879 iv. —— —— ——.]—The domicil of the married pair at the time when the question of divorce arises is the test of jurisdiction to dissolve their marriage, & the ct. of the *bonâ fide* existing domicil has jurisdiction over persons originally domiciled in another country to undo a marriage solemnised in that other country; & such a divorce will be recognised by the cts. of Ontario, even if granted for a cause which would not be sufficient to obtain a divorce in Ontario.—CROMARTY *v.* CROMARTY (1917), 38 O. L. R. 481; 33 D. L. R. 151.—**CAN.**

879 v. —— —— ——.]—A Mahomedan domiciled in India who marries in Scotland, with Scottish ceremonies, a Christian Scotch woman domiciled in Scotland can, if the woman becomes a Muslim, divorce her in India by pronouncing a *talak.*—KHAMBATTA *v.* KHAMBATTA (1934), I. L. R. 59 Bom. 278.—**IND.**

887 ii. —— —— ——.]—MYANDUK *v.* MYANDUK, [1931] 1 W. W. R. 755; 2 D. L. R. 673.—**CAN.**

890 iv. —— ——.]—An action by a husband, who had been married in Ontario, in a foreign State for a divorce resulted in favour of the wife, & judgment dissolving the marriage was granted to her, & by it she was awarded alimony. Subsequently the wife sought by action to recover the amount of alimony, & the husband contended that as he had never acquired the necessary domicil to give the foreign ct. jurisdiction to grant the divorce the judgment was invalid :—*Held :* as he had invoked & submitted to the jurisdiction of the foreign ct., he had precluded himself from setting up want of jurisdiction.—SWAIZIE *v.* SWAIZIE (1899), 51 O. R. 324.—**CAN.**

890 v. —— ——.]—In order to found jurisdiction to entertain a suit

894. *Add. Annotations :*—**Consd.** Graham *v.* Graham, [1928] P. 31; Salvesen (or von Lorang) *v.* Austrian Property Administrator [1927] A. C. 641. **Refd.** Mitford *v.* Mitford, [1923] P. 130. **Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

894a. ——.]—(1) The competent jurisdiction to dissolve a marriage is that of the husband's domicil & deft. must be domiciled in that jurisdiction at the commencement of proceedings. Independent authority to dissolve the marriage cannot exist in two sovereign States simultaneously.

(2) A husband by deserting his wife in one domicil does not become estopped from alleging another domicil after acquiring it, & the wife so deserted is not thereby entitled to determine the forum of her proceedings for dissolution. A decree of judicial separation by reason of a matrimonial offence of the husband does not as from its date fix matrimonial domicil or render it incapable of alteration without the consent of the wife.—H. *v.* H., [1928] P. 206; 97 L. J. P. 116; 139 L. T. 412; 44 T. L. R. 711; 72 Sol. Jo. 598; *subsequent proceedings: sub nom.* Horn *v.* Horn (1929), 142 L. T. 93.

Annotation :—As to (2) **Consd.** Herd *v.* Herd, [1936] 2 All E. R. 1516.

894b. ——.]—Herd *v.* Herd, No. 173a, *ante*.

895. *Add. Annotations :—As to* (1) **Refd.** Graham *v.* Graham, [1923] P. 31; Eustace *v.* Eustace, [1924] P. 45.

896. *Add. Annotations :*—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29; Bryce *v.* Bryce (1932), 49 T. L. R. 177.

899a. —— —— ——.]—A decree for judicial separation made under Matrimonial Causes Act, 1857 (c. 75), s. 16, does not enable the wife to acquire a domicil different from that of her husband, & thus entitle her to sue for a divorce in a ct. other than that of the husband's domicil. The effect of sects. 25 & 26 of the above Act upon the legal relationship of the spouses after a decree for judicial separation is confined within the precise terms of those sects.—A.-G. for Alberta *v.* Cook, [1926] A. C. 444; 95 L. J. P. C. 102; 134 L. T. 717; 42 T. L. R. 317, P. C.

Annotations :—**Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Herd *v.* Herd, [1936] 2 All E. R. 1516. **Refd.** H. *v.* H., [1928] P. 206.

899b. —— —— —— **Subsequent change of domicil by husband.**]—H. *v.* H., No. 894a, *ante*.

903a. —— —— ——.]—(1) The burden of proving a change of the domicil of origin is strongly on those alleging it.

(2) In this case resp. had not been proved to have acquired at the material time an American domicil, so the American ct., which had granted him a decree of divorce, had no jurisdiction.

(3) Even if the American ct. had jurisdiction petitioner would have not have been bound by proceedings, of which she had no notice or knowledge.

(4) *Semble :* even if resp. has now acquired an American domicil, petitioner can still as a deserted wife obtain relief from the English cts.—Rudd *v.* Rudd, [1924] P. 72: 93 L. J. P. 45; 130 L. T. 575; 40 T. L. R. 197.

Annotation :—As to (3) **Refd.** Hughes *v.* Hughes (1932), 48 T. L. R. 328.

903b. —— —— —— **Subsequent change of domicil by husband.**]—H. *v.* H., No. 894a, *ante*.

905. *Add. Annotation :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

906. *Add. Annotation :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

916. *Add. Annotation :*—**Refd.** Graham *v.* Graham, [1923] P. 31.

---

for divorce it must be shown that the husband was domiciled in South Australia at the commencement of the proceedings. Unconditional submission to the jurisdiction by the husband is insufficient.—Slater *v.* Slater, [1928] S. A. S. R. 161.—**AUS.**

ss. *Under Deserted Wives Maintenance Act, R.S.B.C.* 1924.]—Under Deserted Wives' Maintenance Act, R.S.B.C., 1924, the magistrate has jurisdiction when a wife has been deserted within the Province, but the husband is domiciled outside the Province.—Gagen *v.* Gagen, [1934] 4 D. L. R. 409; 3 W. W. R. 84; 48 B. C. R. 481.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—A. (b).

ff i. —— —— ——.]—The words in Marriage Act, 1928, s. 75, "No person shall be entitled to petition under this section who has resorted to Victoria for that purpose only," do not preclude a person from petitioning unless he has resorted to Victoria for the purpose of qualifying himself to present a petition, &, in the absence of collusive arrangement, do not debar a wife who resides abroad from petitioning when her husband is domiciled in Victoria.—Bell *v.* Bell, [1931] V. L. R. 373; Argus L. R. 304.—**AUS.**

ff ii. —— *Must be within territorial limits of province.*]—The domicil necessary to confer jurisdiction to dissolve a marriage must be within the territorial limits of the province whose cts. are appealed to.—Marriaggi *v.* Marriaggi, [1923] 3 W. W. R. 849; 4 D. L. R. 463.—**CAN.**

899 iii. —— —— ——.]—Where a wife has obtained a decree of judicial separation, she is entitled to acquire a domicil independently of her husband.—Hastings *v.* Hastings, [1922] N. Z. L. R. 273.—**N.Z.**

903 iv a. —— —— ——.]—The law of domicil governing divorce is that the domicil of the husband is the domicil of the wife; but circumstances may arise, as a result of that rule, which will justify the intervention of the cts. so as to give a deserted wife relief from her marriage tie.—Payn *v.* Payn, [1924] 3 D. L. R. 1006; 3 W. W. R. 111.—**CAN.**

903 iv b. —— —— ——.]—Although a married woman has been deserted by her husband & he is moving about from place to place, she cannot acquire an independent domicil; &, therefore, an action for divorce, brought by her in a province in which she is residing & was residing when he deserted her but which is not his domicil at the time of the action must be dismissed.—Nelson *v.* Nelson & Andrews (Sask.), [1928] 4 D. L. R. 910; [1928] 3 W. W. R. 291; *affd.*, [1930] 1 W. W. R. 189; 3 D. L. R. 522; 24 S. L. R. 250.—**CAN.**

903 vi. —— —— ——.]—Pltf. husband, when domiciled in N., married deft. in that State. She deserted him while in that State in 1907. In 1917 he came to Q. & acquired a domicil there. Deft. continued to reside in N. In 1927 he brought this action for dissolution of the marriage on the ground of desertion continuously without cause for five years:—*Held :* the ct. had jurisdiction to entertain the action.—Roche *v.* Roche, [1928] St. R. Qd. 11.—**AUS.**

903 vii. —— —— ——.]—The facts that a wife has been deserted by her husband & he has acquired another domicile while she has continued to reside in the domicile which was his at the time of the desertion, do not afford an exception to the rule that it is only the ct. of his domicile at the time the action is begun which has jurisdiction to grant her a decree of divorce.—Harris *v.* Harris & Harris, [1930] 1 W. W. R. 173; 4 D. L. R. 736; 24 S. L. R. 234; *affd.*, [1929] 2 D. L. R. 546.—**CAN**

st. *In Ireland—Power to elect to be domiciled either in Northern Ireland or in Irish Free State.*]—Egan *v.* Egan, [1928] N. I. 159.—**IR.**

PART X. SECT. 1, SUB-SECT. 2.—B.

sv. *Co-respondent not domiciled in country where divorce sought—Liability to damages & costs.*]—In Manitoba where an action for divorce is based on adultery committed outside the province, & the co-resp. is neither a resident of nor domiciled in Manitoba & has no assets therein, the ct. has no jurisdiction to decree either costs or damages against the co-resp. where he has not submitted himself to its jurisdiction.—Ruta *v.* Ruta & Samuliak (Man.), [1929] 4 D. L. R. 1053; 1 W. W. R. 744.—**CAN.**

917. *Add. Annotations :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; H. *v.* H., [1928] P. 206. **Refd.** Graham *v.* Graham, [1923] P. 31; Raeburn *v.* Raeburn (1928), 138 L. T. 672.

918. *Add. Annotations :*—**Distd.** Eustace *v.* Eustace, [1924] P. 45. **Refd.** Graham *v.* Graham, [1923] P. 31; Mitford *v.* Mitford, [1923] P. 130.

918a. —— ——.]—It is established by the cases of *Armytage* v. *Armytage*, No. 917, *ante*, & *Anghinelli* v. *Anghinelli*, No. 918, *ante*, that, according to the practice of the ecclesiastical cts., a suit for judicial separation, which is now substituted for the divorce *a mensâ et thoro*, can be entertained in a case where both parties are resident but not domiciled within the jurisdiction. But the ct. has no jurisdiction to maintain a suit against a resp. who at the time of his citation or of the institution of the suit is resident out of the jurisdiction. Statute of Citations, 1531 (c. 9), s. 2, which forbade the ecclesiastical cts. to cite any person out of the diocese where he was inhabiting or dwelling, must be taken to have limited the jurisdiction & not only the power of service of the ecclesiastical cts.; & Matrimonial Causes Act, 1857 (c. 85), which permits service within or without His Majesty's Dominions, cannot extend the jurisdiction.—GRAHAM *v.* GRAHAM, [1923] P. 31; 92 L. J. P. 26; 128 L. T. 639; 39 T. L. R. 139; 67 Sol. Jo. 316.

Annotations :—**Distd.** Eustace *v.* Eustace, [1924] P. 45. **Refd.** Raeburn *v.* Raeburn (1928), 138 L. T. 672; Johnstone *v.* Johnstone [1929] P. 165.

918b. —— ——.]—Where the parties are not domiciled in England, in a suit for judicial separation the question must be, in order to give jurisdiction in such a suit, whether, at the time when the petition indorsed with the citation was issued out for service, resp. was resident within the jurisdiction.—RAEBURN *v.* RAEBURN (1928), 138 L. T. 672; 44 T. L. R. 384.

918c. —— **Respondent domiciled in England.**]—There is jurisdiction in the Probate, Divorce & Admlty. Div. to decree judicial separation at the suit of the wife where the husband is domiciled in England, although at the date of the institution of the suit he is not resident in this country.—EUSTACE *v.* EUSTACE, [1924] P. 45; 93 L. J. P. 28; 130 L. T. 79; 39 T. L. R. 687; 67 Sol. Jo. 807, C. A.

924. *Add. Annotations :*—*As to* (1) **Expld.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. *As to* (2) **Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

925. *Add. Annotation :*—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

926. *Add. Annotations :*—**N.F.** Graham *v.* Graham, [1923] P. 31. **Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Folld.** White (otherwise Bennett) *v.* White, [1937] P. 111. **Refd.** Mitford *v.* Mitford [1923] P. 130.

926a. Parties domiciled in country where decree sought — Validity of marriage in dispute.]—(1) Where the validity of a marriage is in dispute the ct. of the domicil of the parties

---

PART X. SECT. 1, SUB-SECT. 3.

917 v. —— —— *Indian Divorce Act.*]—Under the Indian Divorce Act, ss. 2, 3, on a petition by a wife for a decree of judicial separation from her husband, the Bombay High Ct. has jurisdiction to grant the relief asked for, if petitioner, when she last resided in India, stayed with her husband in any place within the jurisdiction of the ct.—DE SOUZA *v.* DE SOUZA (1935), I. L. R. 59 Bom. 570.—**IND.**

g i. —— ——.]—Where a wife brings an action of separation & aliment against her husband on the ground of a matrimonial offence committed by the husband while domiciled in Scotland, the ct. in Scotland has jurisdiction to entertain the action, although prior to the bringing of the action the husband has taken up his permanent residence & acquired a domicil in a foreign country.—RAMSAY *v.* RAMSAY, [1925] S. C. 216.—**SCOT.**

st. *Separation for cruelty—Cruelty within jurisdiction.*]—In a suit for judicial separation on the ground of cruelty, the ct. will not necessarily demand proof of matrimonial domicil within its jurisdiction, but at least there must be acts of cruelty committed or apprehended within its jurisdiction, from which it is the function of the ct. to protect the suppliant.—SMITH *v.* SMITH, [1934] N. L. R. 67.—**S. AF.**

sx. *Protest to jurisdiction — Procedure.*]—MILLER *v.* MILLER (Man.), [1929] 3 W. W. R. 167.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.

921 ii. ——.]—The High Ct. of Bombay has jurisdiction to entertain a petition for restitution of conjugal rights by a Christian wife of a Parsi husband if the wife was at the date of the petition residing in Bombay.—DALAL *v.* DALAL (1930), I. L. R. 54 Bom. 877.—**IND.**

921 iii. —— *Or domicil.*]—The ct. has jurisdiction to entertain a suit for restitution of conjugal rights where the parties were domiciled or were both both *bonâ fide* resident in New South Wales at the time of the institution of the suit.—BOARDMAN *v.* BOARDMAN (1936), 36 S. R. N. S. W. 474; 53 N. S. W. W. N. 182.—**AUS.**

l i. ——.]—On petition by a wife for restitution of conjugal rights :—*Held :* resp. had an Irish domicil, & the ct. had jurisdiction to give relief, it being immaterial whether resp. was or was not an American citizen.—BELL *v.* BELL, [1922] 2 I. R. 152.—**IR.**

m i. ——.]—Petitioner was married in New Zealand to resp. The evidence established that resps.' domicile of origin was New Zealand, & negatived any inference that he had acquired a fresh domicile. In 1923, resp. went to the Federated Malay States as an employee of the English Civil Service, residing there with petitioner from 1923 to 1934, when she returned to New Zealand, where he wished her to remain with the child of the marriage. Resp. remained in the Malay States. Petitioner applied for a decree for restitution of conjugal rights :—*Held :* granting the decree, in the circumstances, the ct. should exercise the discretion conferred by sect. 8 of the Divorce & Matrimonial Causes Act, 1928, in favour of petitioner.—BEST *v.* BEST, [1935] N. Z. L. R. 593.—**N. Z.**

PART X. SECT. 1, SUB-SECT. 5.

n i. —— ——.]—An application in a nullity of marriage suit to determine the question of the jurisdiction of the Ct. of K. B. of S. to entertain the action. The marriage was celebrated in S.; the husband, pltf., was domiciled & resident in A. at the time of the commencement of the action, & the wife was residing in M. :—*Held :* the Ct. of K. B. of S. had jurisdiction to make a decree of the nullity of a marriage entered into in S.—G. *v.* G., [1928] 1 W. W. R. 651; 22 Sask. L. R. 376.—**CAN.**

n ii. —— ——.]—HINDS *v.* MCDONALD, [1932] 1 D. L. R. 96.—**CAN.**

n iii. —— ——.]—Where petitioner, who had married as her first husband a man who was domiciled in England, sought an annulment of her second marriage which was solemnised in India & petitioner was resident in India :—*Held :* the cts. in India had jurisdiction to deal with the matter—TAYLOR *v.* WENKENBACH I. L. R., [1937] 1 Cal. 417.—**IND.**

n iv. —— ——.]—A Scots woman married an Indian in Scotland. There was one child of the marriage. After the parties had lived together for several years, latterly in India, the woman returned to Scotland & brought an action of declaration of nullity of marriage. At the date of the action the man was domiciled & resident in India. The summons was served personally on him, & he did not defend the action :—*Held :* the ct. had jurisdiction to try the action.

Observed that the question of jurisdiction was not free from difficulty, & the general question whether the ct. of the man's domicil had not exclusive jurisdiction in actions of nullity might require to be reconsidered.—MACDOUGALL *v.* CHITNAVIS, [1937] S. C. 390.—**SCOT.**

n v. ——.]—The Ct. of King's Bench of Saskatchewan has jurisdiction to entertain an action for the annulment of a marriage celebrated in Saskatchewan whether or not the husband was domiciled in Saskatchewan at the time of the issue of the writ.—REID (OTHERWISE FRANCIS) *v.* FRANCIS (Sask.), [1929] 4 D. L. R. 311; 3 W. W. R. 102.—**CAN.**

has jurisdiction, whether it is an exclusive jurisdiction or not, to pronounce a decree of nullity of marriage.

(2) A decree of nullity of marriage pronounced by a ct. of competent jurisdiction, whatever be the ground of the decree, is a judgment determining status & is equivalent to a judgment *in rem*.

(3) Where the parties are domiciled in a foreign country a decree of nullity of marriage pronounced by a competent ct. of that country will, in the absence of fraud or collusion, be recognised as binding & conclusive by the cts. of England & Scotland, unless it offends against British notions of substantial justice.—SALVESEN (OR VON LORANG) *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1927] A. C. 641; 96 L. J. P. C. 105; 137 L. T. 571; 43 T. L. R. 609, H. L.

Annotations:—As to (1) **Folld.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Distd.** White (otherwise Bennett) *v.* White, [1937] P. 111. *As to* (3) **Reld.** H. *v.* H. (No. 2) (1928), 97 L. J. P. 116; Nachimson *v.* Nachimson, [1930] P. 217, C. A.

926b. Jurisdiction dependent on domicil.]—A decree annulling a marriage on the ground of impotence is a judgment *in rem* altering the status of the parties, & can be pronounced only by the ct. of their domicil. A decree annulling a marriage on this ground deals with a marriage which till the date of the decree was voidable only & not void. In substance it is a decree for the dissolution of that marriage, & is thus distinguished from decrees annulling marriages for illegality or informality.—INVERCLYDE (OTHERWISE TRIPP) *v.* INVERCLYDE, [1931] P. 29; 100 L. J. P. 16; 144 L. T. 212; 95 J. P. 73; 47 T. L. R. 140; 74 Sol. Jo. 863; 29 L. G. R. 353.

Annotation:—**Consd.** White (otherwise Bennett) *v.* White, [1937] P. 111.

926c. Marriage not celebrated in country where decree sought—Marriage in country where former decree of dissolution invalid.]—PAUL *v.* PAUL (1936), 80 Sol. Jo. 555.

926d. —— Proceedings where wife petitioner resident & domiciled—Bigamous marriage.]—On a petition by a woman for nullity of a form of marriage contracted in a foreign country on the ground of the bigamy of the man, the domicil of the man is not an essential ingredient to found jurisdiction. A woman, petitioner for nullity, went through a form of marriage abroad with a man whose wife was living, & two days later left the place of the marriage without consummation. Petitioner was domiciled & resident in England; the man, resp., was domiciled either in Malta, his domicil of origin, or Australia, his domicil of choice, & had never resided here. The man was served with notice to appear. He acknowledged service, but did not enter appearance. He also signed a written admission that when he went through the form of marriage with petitioner he was a married man:—*Held:* the woman never acquired the domicil of the man & in the circumstances of the case the ct. had jurisdiction & the woman was entitled to a decree nisi of nullity.

Qu.: whether the ct. would have had jurisdiction if the man had entered appearance under protest.—WHITE (OTHERWISE

o i. —— *Respondent residing in country where decree sought—Petitioner not residing in country where decree sought.*]—While residence only is sufficient to found jurisdiction in nullity actions, as distinguished from divorce actions, such residence must be *bonâ fide*. Where a petition setting up grounds for a declaration of nullity was erroneously dismissed, the ct. declined to reinstate the petition, as petitioner was merely a casual visitor although his wife was a resident, in British Columbia.—PURDY *v.* PURDY, [1919] 2 W. W. R. 551.—**CAN.**

o ii. —— ——.]—VAMVAKIDIS *v.* KIRKOFF, [1929] 4 D. L. R. 1060.—**CAN.**

o iii. —— *Necessity for domicile or residence of parties.*]—In the case of a marriage void *ab initio*, the ct. has no jurisdiction to entertain a suit for a declaration of nullity of marriage unless the marriage in question was celebrated in this State, or both parties to the ceremony of marriage either were domiciled or resident in the State at the time of the institution of the suit.—SMART *v.* MAXWELL (1929), 47 N. S. W. W. N. 100.—**AUS.**

p i. ——.]—The ct. cannot entertain a suit for a declaration of the nullity of a marriage where resp. is neither domiciled nor resident within the province & the marriage was not celebrated therein. Where such a suit is brought by the man its dismissal on the ground that resp. has not his domicile is, necessarily, a recognition by the ct. that the alleged marriage is null.—HUTCHINGS *v.* HUTCHINGS (OR BROWNING), [1930] 2 W. W. R. 565; 4 D. L. R. 673; 39 Man. L. R. 66.—**CAN.**

p ii. ——.]—The ct. of pltf.'s domicile has exclusive jurisdiction in suits for nullity upon the ground of impotence.—FLEMING *v.* FLEMING, [1934] 4 D. L. R. 90; O. R. 588.—**CAN.**

p iii. ——.]—W. *v.* W., [1935] 1 W. W. R. 293; 42 Man. L. R. 578.—**CAN.**

s1. *Nullity based on invalidity of foreign divorce decree—Necessity for proof of law.*]—An action for nullity based on an allegation of previous marriage owing to the invalidity of a previous divorce dismissed, in the absence of proof of the law of the place of the previous divorce proceedings.—LEIGH *v.* LEIGH, [1937] 1 D. L. R. 773; O. R. 239.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.—A.

q i. ——.]—POTRATZ *v.* POTRATZ (Sask.), [1926] 1 D. L. R. 147.—**CAN.**

q ii. ——.]—A divorce obtained by a wife in a foreign State, when her husband was domiciled in Saskatchewan, not recognised as valid.—BURNFIEL *v.* BURNFIEL, [1926] 2 D. L. R. 129; [1926] 1 W. W. R. 657; 20 Sask. L. R. 407.—**CAN.**

q iii. ——.]—SHEASER *v.* SHEASER, [1926] 3 D. L. R. 196; [1926] 2 W. W. R. 389; 22 Alta. L. R. 261; *varying*, [1926] 2 D. L. R. 906; [1926] 2 W. W. R. 129.—**CAN.**

q iv. ——.]—BROWN *v.* MCINNESS, [1927] 2 D. L. R. 655; [1927] 1 W. W. R. 597; 38 B. C. R. 324.—**CAN.**

q v. ——.]—MCNUTT *v.* CREE (1928), Q. R. 66 S. C. 332; 34 R. de J. 370.—**CAN.**

q vi. ——.]—A decree of divorce obtained in a foreign country is not recognised as valid in Canada if at the time of the decree the husband was domiciled in Canada, even though he had then resided in said foreign country long enough to give the cts. thereof jurisdiction under the law of that country to grant the decree. Where subsequently to such a divorce one of the parties thereto goes through a form of marriage while the other party is still living & the original marriage still subsisting under the law of their domicil, said purported marriage will be declared null & void.—MACDONALD *v.* NASH (Man.), [1929] 4 D. L. R. 1051; 2 W. W. R. 84.—**CAN.**

q vii ——.]—Petitioner & resp., both born in British Columbia, were married in Vancouver in 1917. In the fall of 1923 resp. went to Portland, Oregon, & after remaining there a few weeks went to Los Angeles, California, where he remained until Jan. 1925. Late in 1924 he commenced divorce proceedings in Portland & a decree of divorce was granted him in Apr. 1925. He then returned to Vancouver & in Apr. 1926, he, with another woman, went to Bellingham in Washington, where they went through a form of marriage before a magistrate & returned to Vancouver. Petitioner filed her petition herein in May, 1929. The law of the State of Oregon requires that pltf. in a divorce action must have been a resident & inhabitant of the State of Oregon one year next prior to the commencement of the suit & the Supreme Ct. of the State has defined domicil, residence & inhabitance as synonymous in relation to divorce proceedings:—*Held:* on the evidence, resp. did not renounce his British Columbia domicil, he was not in the ordinary meaning of the words a "resident" or "inhabitant" of the State of Oregon & did not acquire a domicil there. Domicil being the governing factor, there was no jurisdiction in the cts. of the State of Oregon to grant a decree of divorce, & petitioner herein should be granted a decree absolute.—BIGGAR *v.* BIGGAR, [1930] 2 D. L. R. 940; 42 B. C. R. 329.—**CAN.**

q viii. ——.]—The cts. in Canada will recognise the binding effect of a decree of divorce obtained in a foreign country against a husband domiciled outside Canada although he was not domiciled in the country of the ct. which granted the decree, if the cts. of the country of his domicile would recognise the validity of the decree.

BENNETT) *v.* WHITE, [1937] P. 111; [1937] 1 All E. R. 708; 106 L. J. P. 49; 156 L. T. 422; 53 T. L. R. 442; 81 Sol. Jo. 280.

928. *Add. Annotation:*—**Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

929. *Add. Annotation:*—**Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

930. *Add. Annotations:*—**Refd.** Rudd *v.* Rudd, [1924] P. 72; Hughes *v.* Hughes (1932), 48 T. L. R. 328.

932. *Add. Annotations:*—*Generally*, **Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Nachimson *v.* Nachimson, [1930] P. 217.

935. *Add. Annotations:*—*As to* (1) **Follid.** Mitford *v.* Mitford (1923), 92 L. J. P. 90. **Consd.** Crowe *v.* Crowe, [1937] 2 All E. R. 723. *As to* (2) **Apld.** Vardy *v.* Smith (otherwise Vardy) (1932), 148 L. T. 124. **Refd.** Nachimson *v.* Nachimson, [1930] P. 217. *As to* (3) **Refd.** Eustace *v.* Eustace, [1924] P. 45.

935a. —— —— ——.]—RUDD *v.* RUDD, No. 903a, *ante*.

943a. ——.]—In an action for revocation of letters of administration granted in 1916 pltf. claimed that she was the lawful widow of the deceased inasmuch as a decree of divorce granted to the deceased in Paris in 1911 was invalid by reason of his not being domiciled there at the time & of substantial injustice in the proceedings of the French Ct. Defd., whom the deceased had married in 1915, & who had obtained a grant of administration, claimed that she was his lawful widow:—*Held:* the proceedings of the French Ct. could not be declared irregular or contrary to natural justice, & therefore the action failed.—VARDY *v.* SMITH (OTHERWISE VARDY) (1932), 148 L. T. 124; 49 T. L. R. 36, C. A.

944. *Add. Annotations:*—**Expld.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. **Refd.** Mitford *v.* Mitford, [1923] P. 130; Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44. **Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

944a. ——.]—The husband, of British nationality & domicil, married a woman of German nationality & domicil in Berlin in accordance with German law on Jan. 5, 1914. On Oct. 23, 1914, a German ct. annulled the marriage under a provision of the German Civil Code, & this decree of nullity was upheld on appeal. On Mar. 4, 1920, the woman, resp. in the present suit, contracted in Germany a second marriage, in respect of which the first husband, the present petitioner, claimed relief:—*Held:* the German decision was a conclusive adjudication between the parties, & no marriage was at the commencement of the suit or now subsisting.—MITFORD *v.* MITFORD & VON KUHLMANN, [1923] P. 130; 92 L. J. P. 90; 129 L. T. 153; 39 T. L. R. 350.

Annotation:—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

944b. ——.]—SALVESEN (OR VON LORANG) *v.* AUSTRIAN PROPERTY ADMINISTRATOR, No. 926a, *ante*.

946a. —— —— **No cohabitation.**]—An Englishman married an Englishwoman in England, but there was no cohabitation, & the wife went almost immediately to Canada & the United States, and on her application a ct. in Michigan, U.S.A., granted her a decree of nullity of marriage on the ground that it was a marriage in form of law but not in legal effect. The husband had agreed to the decree being made. Thinking herself free, the wife went through a form of marriage with another man & lived with him as his wife. The first husband, who was domiciled in England, now petitioned for the dissolution of his marriage, citing the second man as co-

In the present case the husband was domiciled in the English legal sense in Oregon when the wife obtained a decree of divorce in California on the ground of wilful desertion:—*Held:* after receiving expert evidence of the law of Oregon & of the effect of "the full faith & credit clause" of the U.S. Constitution, that under the law of Oregon the wife could not claim a separate residence from that of her husband so as to transfer jurisdiction over a divorce action between them to another state than that of his domicile unless he had given her cause by wilful desertion; &, since the question whether the wife had acquired the right on said ground to establish a separate domicile or residence in California was one going to the root of the jurisdiction of the California Ct., said "full faith & credit clause" would not compel the Oregon Ct. to recognise the California decree without inquiring whether she had acquired said right.—WYLLIE *v.* MARTIN, [1931] 3 W. W. R. 465; 44 B. C. R. 486.—**CAN.**

q ix. ——.]—Resp. herein, a native & citizen of Switzerland, who had lived since 1927 in Alberta & British Columbia, & had married the petitioner herein, also a Swiss, in British Columbia, obtained in 1935 a decree of divorce from petitioner herein in the Cts. of the Republic & Canton of Neuchatel, Switzerland. Almost immediately thereafter resp. returned to his farm in British Columbia. The Swiss consul at Vancouver who had sent notice of the proceedings to petitioner herein was informed in writing by her that she denied the jurisdiction of the Swiss Ct. It was found, upon the evidence, that the Canton of Neuchatel was never the domicile of resp. herein & that petitioner herein did not in fact submit to the jurisdiction of the ct. thereof:—*Held:* even if the entry of a plea & cross-demand in the cts. of Neuchatel on behalf of petitioner had been authorised by her, that fact would not preclude her from denying the validity of the Neuchatel decree; also, the contention that because the decree granted by the Cts. of the Republic of Neuchatel was one which would be recognised as valid by the cts. of the Swiss domicile of resp. herein, it must be recognised as valid here, could not be upheld, since, in order to sustain the contention it must be established that when he launched the proceedings in Switzerland he had a domicile in some one of the republics of Switzerland.—CHATENAY *v.* CHATENAY, [1938] 1 W. W. R. 885.—**CAN.**

q x. ——.]—A wife who has sued for & obtained a divorce in a foreign ct. cannot be heard, in proceedings to determine her right to share in her divorced husband's estate upon his death intestate, to question the jurisdiction of said ct. to grant the divorce. It having been found herein that the deceased husband was domiciled in British Columbia at the time his first wife obtained a divorce in the State of Washington:—*Held:* his subsequent marriage was therefore invalid & the woman he then married could not share in his estate in British Columbia. —*Re* GRAHAM ESTATE, NOLAN *v.* GRAHAM, [1937] 3 W. W. R. 413.—**CAN.**

q xi. ——.]—A French divorce dissolving a Canadian marriage between Canadian citizens domiciled in Quebec will be deemed valid until properly vacated by a decree of ct.—STEPHENS *v.* FALCHI, [1937] 3 D. L. R. 605.—**CAN.**

927 v. —— —— ——.]—As the domicil of a wife is the husband's domicil & foreign proceedings cannot affect the legal status of a marriage in Canada, where the grounds supporting a foreign decree would not support a decree under Canadian law:—*Held:* a wife's divorce & re-marriage in Minnesota constituted legal adultery, & furnished ground for the husband's claim for dissolution of the Canadian marriage.—CAMPBELL *v.* CAMPBELL, [1921] 2 W. W. R. 849.—**CAN**

927 vi. —— —— ——.]—Where a husband had left Manitoba for the purpose of obtaining a divorce which he could not have obtained there, & had obtained a divorce abroad & married again:—*Held:* the wife's prayer for divorce should be granted.—YATES *v.* YATES, [1924] 4 D. L. R. 835; 3 W. W. R. 578.—**CAN.**

936 ii. —— —— ——.]—CROMARTY *v.* CROMARTY, No. 879 iv., *ante*.—**CAN.**

respondent. The suit was undefended, but was referred by the Assize Comr. to the King's Proctor on the question of connivance: —*Held:* the American decree was invalid.—CLAYTON *v.* CLAYTON & SHARMAN, [1932] P. 45; 101 L. J. P. 23; 146 L. T. 327; 48 T. L. R. 191; 76 Sol. Jo. 96.

Annotation:—**Reld.** Hughes *v.* Hughes (1932), 147 L. T. 20.

946b. Foreign court without jurisdiction to grant decree of nullity.]—The disability of a foreigner to marry in England otherwise than in accordance with the law of his country as regards matters of form is a disability of which he can divest himself at will & therefore constitutes no objection to the validity of a marriage contracted by him in England in English form. A decree of a foreign ct. invalidating such a marriage is recognisable in England only if the foreign ct. has jurisdiction over the marriage & even then is open to examination. Want of jurisdiction cannot be cured by mere consent of the parties. A decree of a foreign ct. purporting to annul an English marriage under these circumstances is not severable, & if it is incompetent to annul the marriage, neither is it competent to award maintenance or a lump sum in lieu of maintenance.

The husband, a domiciled Cypriot, married a Frenchwoman in England in English form. Afterwards he repudiated the marriage on the ground that it was not in form in accordance with the law of his domicil. Later, on proceedings by the wife in a Cypriot ct., the marriage was declared null on the same ground by consent of the parties, & it was further declared that the husband should pay the wife a lump sum in satisfaction of all claims, including maintenance. The Cypriot ct. by the terms of its constitution had no jurisdiction to annul a marriage. Still later, the wife, finding the husband in England, took out a summons against him for neglect to maintain her under the Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925. The summary jurisdiction ct., upholding the marriage, ordered the husband to pay maintenance:—*Held:* the marriage was good & the agreement to set it aside illegal, that the decree of the ct. in Cyprus was pronounced without jurisdiction in compromising maintenance as well as in annulling the marriage, & that the order of the ct. of summary jurisdiction must stand, the measure of maintenance within the limits of the Summary Jurisdiction Act being the means of the parties at the time of the proceedings.—PAPADOPOULOS *v.* PAPADOPOULOS, [1930] P. 55; 99 L. J. P. 1; 142 L. T. 237; 94 J. P. 39; 28 L. G. R. 73.

Annotation:—**Apld.** Marcovitch *v.* Marcovitch (1934), 151 L. T. 139.

947. *Add. Citation:*—*sub nom.* SUGDEN *v.* LOLLEY, 2 Cl. & Fin. 567, n.

Add. Annotation:—**Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

949a. ——.]—In 1935 a maintenance order was made in a ct. of summary jurisdiction in England against M., a German subject. In 1936 a decree of divorce was pronounced between M. & his wife in Germany. Both parties had submitted to the jurisdiction of the ct. & the decree was pronounced on grounds that by insulting behaviour & incompatibility of temper the wife had failed to fulfil her marriage obligations. M. then applied for a revocation of the maintenance order. The justices refused the application for the following reasons: (i) they considered that the fact that the marriage had been dissolved in Germany on grounds which would not be recognised in England was not a sufficient reason for them to discharge the order, & (ii) the wife's financial position had not changed & was such that she required the maintenance payable under the order for her support, & the justices therefore exercised their discretion in her favour. The husband appealed:—*Held:* (1) the decree of the German ct. was valid & binding throughout the world & the justices were not concerned with the question whether the grounds of divorce were recognised in England; (2) in the case of a foreign divorce where the parties could not make any application to the Divorce Ct. in England the continuance of the award of maintenance is not a judicial exercise of the magistrates' discretion.

Observations on procedure on proof of a decree of dissolution of marriage by a foreign ct.—MEZGER *v.* MEZGER, [1937] P. 19; [1936] 3 All E. R. 130; 106 L. J. P. 1; 155 L. T. 491; 100 J. P. 475; 53 T. L. R. 18; 80 Sol. Jo. 916; 34 L. G. R. 608; 30 Cox C. C. 467.

951a. ——.]—A husband & wife were married in 1916. In 1922 they went to America, where they settled, the husband getting employment. In 1925 the husband deserted his wife & in 1926 at the husband's request the wife visited certain lawyers in America, where she saw the husband. He said he had decided to take divorce proceedings against her & that he would pay her a certain weekly sum & give her the custody of the child of the marriage. The wife agreed to this, & a divorce petition was duly filed by the husband alleging cruelty by the wife, & alleging that he "resides in & is an inhabitant of the State of Michigan." No answer was put in by the wife, she did not take the point that the husband was not domiciled in that State, & she did not defend the case. A decree was duly made. The wife returned to England &, in order to test the validity of the American divorce, she brought a petition for divorce in England alleging adultery by the husband with the woman whom he had married since the American divorce:—*Held:* (1) it was clear from the evidence that the husband was

---

PART X. SECT. 2, SUB-SECT. 2.

947 iii. ——.]—CROMARTY *v.* CROMARTY, No. 879 iv., *ante.*—**CAN.**

u i —— *Decree for alimony.*]—BURPEE *v.* BURPEE (B. C.), [1929] 3 D. L. R. 18; 2 W. W. R. 128.—**CAN.**

u ii. —— *Marriage of minor without consent.*]—Petitioner was deemed to be domiciled in New Zealand by virtue of Divorce & Matrimonial Causes Amendment Act, 1930. Resp. was an American sailor domiciled in California. All matters were proved to entitle petitioner to a divorce if her marriage with resp. was subsisting, but in 1927 resp.'s father, acting on his behalf, obtained a decree of nullity of marriage in California on the ground that at the time of the marriage resp. was a minor & did not obtain the consent required by the law of that State:—*Held:* the marriage was, in the contemplation of the law of this country, still subsisting, & that a decree *nisi* for its dissolution should be granted.—CARTER *v.* CARTER, [1932] N. Z. L. R. 1104.—**N.Z.**

domiciled in the State of Michigan when he filed his petition for divorce, & the decree granted in that State was a valid one. The wife, being a single woman, could not, therefore, bring a petition for divorce in England; (2) the American decree was not invalidated by the fact that the interview between the parties at the lawyers might in England be considered to amount to collusion.—CROWE *v.* CROWE, [1937] 2 All E. R. 723; 157 L. T. 557; 81 Sol. Jo. 399.

952. *Add. Annotations:* — **Consd.** Jacobson *v.* Frachon (1927), 44 T. L. R. 103; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. **Refd.** Mitford *v.* Mitford, [1923] P. 130; Rudd *v.* Rudd, [1924] P. 72; Papadopoulos *v.* Papadopoulos, [1930] P. 55; Hughes *v.* Hughes (1932), 48 T. L. R. 328.

952a. Decree made by mistake—Authority to appear for petitioner withdrawn.]—In this undefended suit the wife petitioned for the dissolution of her marriage on the ground of her husband's adultery in Egypt. Resp., who was engaged in business in Egypt, appeared under protest to the jurisdiction & said that he was domiciled in Egypt. An order was made for the trial of the issue prior to the hearing of the suit, but later resp. abandoned his plea to the jurisdiction. At the hearing the judge drew the attention of counsel to the fact that petitioner had in 1930 petitioned for divorce in Egypt, & had been granted in May, 1930, a decree *nisi* of divorce in H.M. Ct. at Alexandria; that the husband had given evidence in that suit, though it was undefended, & had given evidence that he was domiciled in Egypt. The hearing was adjourned for the production of the ct. record from Alexandria, which was forthcoming at the resumed hearing:—*Held:* the proceedings in Egypt amounted to nothing at all, because petitioner had withdrawn all authority from anybody to appear in the cts. of that country. The judge at Alexandria was not informed of that fact, & he proceeded with the suit on the footing that she was represented, whereas she was not. The domicile was really English. A decree *nisi* was pronounced.—HUGHES *v.* HUGHES (1932), 147 L. T. 20; 48 T. L. R. 328; 76 Sol. Jo. 344.

953a. Order for maintenance—No jurisdiction to grant divorce.]—SIMONS *v.* SIMONS, [1938] 4 All E. R. 436; 159 L. T. 576; 55 T. L. R. 120; 82 Sol. Jo. 933.

954a. Award of maintenance by foreign court—Court incompetent to annul marriage.]—PAPADOPOULOS *v.* PAPADOPOULOS, No. 946b, *ante*.

956. *Add. Annotation:* — **Refd.** Nachimson *v.* Nachimson, [1930] P. 217.

Part XII.—Assignment of Property on Marriage.

966. *Add. Annotation:*—**Refd.** Rudd *v.* Rudd, [1924] P. 72.

969. *Add. Annotations:*—*As to* (2) **Refd.** Banque Internationale de Commerce de Petrograd *v.* Goukassow, [1923] 2 K. B. 682. *Generally*, **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1000. *Add. Annotation:*—**Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

1007. For existing citations read "(1854), 18 Beav. 128; 2 Eq. Rep. 593; 23 L. J. Ch. 265; 23 L. T. O. S. 318; 18 Jur. 736; 52 E. R. 51; *affd. on other grounds* (1855), 7 De G. M. & G. 78, L. C."

1009. *Add. Annotation:*—**Consd.** Goff *v.* Goff, [1934] P. 107.

1010. *Add. Annotation:*—**Consd.** Goff *v.* Goff, [1934] P. 107.

PART X. SECT. 2, SUB-SECT. 3.

952 i. For "14 O. L. R. 234" read "14 O. L. R. 434."

952 ii. ——.]—OWEN *v.* ROBINSON (OTHERWISE OWEN), [1925] N. Z. L. R. 591.—**N.Z.**

sw. *Presumption in favour of validity of proceedings.*]—FIELDS *v.* FIELDS, [1925] 2 D. L. R. 256; 58 N. S. R. 65.—**CAN.**

sx. *Foreign court without jurisdiction—Doubt as to husband's domicil.*]—A decree of divorce granted to a wife by a ct. of a foreign state wherein the husband was born & had lived continuously up to a time shortly before the date of the commencement of the divorce proceedings should not be pronounced invalid by our cts., when collaterally attacked years afterwards on the ground that at said date the husband had acquired another domicil, unless there is the clearest possible proof that the new domicil had then been acquired by him.—GILBERT *v.* STANDARD TRUST CO. (Alta.), [1928] 4 D. L. R. 371; [1928] 3 W. W. R. 111.—**CAN.**

sy. —— *No domicil in country of court granting decree—Decree not recognised.*]—DRAKE (OTHERWISE MACLAREN) *v.* MACLAREN (Alta.), [1929] 3 D. L. R. 159; 2 W. W. R. 87.—**CAN.**

PART X. SECT. 2, SUB-SECT. 4.

954 iv. —— ——.]—By decree of the Michigan ct. the mother of infants was granted a divorce from the father & awarded the custody of the infants, until they reached a certain age or until the further order of the ct. The infants were in the custody of the father in Ontario:—*Held:* the decree was not conclusive upon an application to an Ontario ct. for an order for custody, more especially as the judgment of the Michigan ct. was not final. —*Re* GAY, [1926] 3 D. L. R. 349; 59 O. L. R. 40.—**CAN.**

954 v. —— ——.]—Where children were residing with their father in a province where he was engaged in business, & their welfare would be best served by leaving them in his custody:—*Held:* his application to be appointed their guardian should be granted, notwithstanding the fact that their mother, in securing a divorce in an undefended action in a foreign ct., had also obtained as incidental thereto an order giving her their custody.—*Re* SNYDER, SNYDER *v.* SNYDER, [1927] 3 D. L. R. 151; [1927] 2 W. W. R. 240; 38 B. C. R. 336.—**CAN.**

954 vi. —— *On orders for alimony.*]—A judgment of a foreign ct. awarding alimony to a husband is enforceable in Ontario, although the Ontario ct. does not know or recognise any right to alimony in a husband against his wife.—BURCHELL *v.* BURCHELL, [1926] 2 D. L. R. 595; 58 O. L. R. 515.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 1.—F.

n i. —— —— *Marriage to domiciled Englishman—Effect of English divorce decree.*]—A domiciled Englishman & a domiciled Scotswoman entered into an ante-nuptial marriage contract which contained this clause, "It is hereby declared that these presents shall be interpreted & the rights of the parties regulated by the law of Scotland." The wife obtained decree of divorce in the English cts.:—*Held:* the rights of parties under the contract arising on divorce fell to be regulated in the same manner as if decree of divorce had been pronounced by the Scottish cts.—DRUMMOND *v.* BELL-IRVING, [1930] S. C. 704.—**SCOT.**

Part XIV.—Foreign Judgments.

See, now, Foreign Judgments (Reciprocal Enforcement) Act, 1933 (c. 13).

1033. For " No. 383, *ante* " read the following :—The judgment of a foreign ct. [in this case the exors.' Ct. of Dealing at St. Croix], consisting of persons interested in the property in dispute, will be disregarded in the cts. of this country.—PRICE *v.* DEWHURST (1837), 8 Sim. 279 ; Donnelly, 264 ; 6 L. J. Ch. 226 ; 59 E. R. 111 ; *affd. on other grounds* (1838), 4 My. & Cr. 76.

1033a. Due constitution of court—Necessity for strict proof.]—R. *v.* BEECH, POLLITT & STRUDWICK (1928), 20 Cr. App. Rep. 175, C. C. A.

1039. *Add. Annotation :—As to* (1) **Consd.** Dreyfus (C. L.) *v.* I. R. Comrs., Dreyfus (L. L.) *v.* I. R. Comrs. (1929), 14 Tax Cas. 560.

1041. *Add. Annotation :—Generally,* **Refd.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95.

1044a. Judgment of horning.]—(1) An action lies in the English cts. on a Scotch judgment of horning against a Scotchman born. (2) Where a Scotch decree adjudges interest to be paid, but does not fix the time from which it is to run, it is payable from the day of citation.—DOUGLAS *v.* FORREST (1828), 4 Bing. 686 ; 1 Moo. & P. 663 ; 6 L. J. O. S. C. P. 157 ; 130 E. R. 933.

Annotations :—As to (1) **Refd.** Don *v.* Lippmann (1837), 5 Cl. & Fin. 1 ; Cowan *v.* Braidwood (1840), 9 Dowl. 26 ; Schibsby *v.* Westenholz (1870), L. R. 6 Q. B. 155 ; Rousillon *v.* Rousillon (1880), 14 Ch. D. 351 ; Emanuel *v.* Symon, [1908] 1 K. B. 302 ; Gavin Gibson *v.* Gibson, [1913] 3 K. B. 379.

1052. *Add. Annotation :—* **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1054. *Add. Annotation :—* **Apld.** Rudd *v.* Rudd, [1924] P. 72.

PART XIII. SECT. 2.

1015 i. *As to property—Father entitled by law of infant's domicil.*]—An infant domiciled in Indore, India, was absolutely entitled to a fund in ct., & by the law of the Indore State her father as legal guardian both of her person & property was entitled to receive & give legal discharges for all moneys coming to her during minority. The father applied for payment out of the fund to him for the benefit of the infant :—*Held :* the father was not entitled as of right to the fund, but the ct. must be satisfied by evidence that the fund was to be applied for the benefit of the infant & in what manner. —DHARAMAL *v.* HOLM PATRICK (LORD), [1935] I. R. 760.—**IR.**

r i. ——.]—The only ct. with jurisdiction over the custody of an infant is the ct. of the domicil of the infant.—CODY *v.* CODY, [1927] 3 D. L. R. 349 ; [1927] 1 W. W. R. 603 ; 21 Sask. L. R. 391.—**CAN.**

r ii. —— *Divorce proceedings commenced in Alberta—Removal of children by father to another Province.*]—Where the husband is domiciled in Alberta at the time an action for divorce is begun, the Supreme Ct. of Alberta has jurisdiction in such action to make an order awarding the custody of the children to the mother even though they have been removed by the father to a foreign State & are residing therein at the time of the application for the order.—GOFORTH *v.* GOFORTH (Alta.), [1929] 1 D. L. R. 58 ; [1928] 3 W. W. R. 483.—**CAN.**

Compare No. 1117 i., *post.*

s i. —— *Decree by Serbian court—Whether Scottish court will enforce.*]—Decree of divorce & for the custody of the child of the marriage had been obtained in the Serbian cts. by a Serbian, resident in Belgrade, against his wife, who was a Scotswoman. The child, a girl of 8 years of age, was resident with her mother in Scotland. In a petition to the ct. in Scotland by the father for custody of the child, the mother averred that it would be prejudicial to the health, welfare, & interests of the child that the petition should be granted :—*Held :* while petitioner's right to custody of the child had already been settled by a competent ct., the Scottish ct. was entitled, before ordering delivery of the child, to be informed of petitioner's arrangements for the conveyance of the child to Belgrade, & for her reception there.—RADOYEVITCH *v.* RADOYEVITCH, [1930] S. C. 619.—**SCOT.**

PART XIII. SECT. 3.

t i. —— —— *Court of husband's domicil.*]—In a petition brought by the wife of a domiciled Scotsman for custody of the only child of the marriage, or otherwise for access, the husband maintained that the Scottish ct., even if it had jurisdiction, could not pronounce any effective order. The husband, when the question of jurisdiction was raised, was residing in New York, where he held a professional appointment ; petitioner was living in London, & the child, under the care of her paternal grandmother, was in France :—*Held :* the Ct. of Session, as the ct. of the husband's domicil, had jurisdiction to determine the questions of custody & access ; the mere fact that the parties were outwith Scotland did not render ineffectual any decree which it might pronounce since such decree being a decision as to status, was a judgment *in rem* universally binding.—PONDER *v.* PONDER, [1932] S. C. 233.—**SCOT.**

PART XIV. SECT. 1.

a i. —— *Order conferring rights on committee of lunatic.*]—The rights conferred upon the committee of a lunatic by a ct. of the lunatic's domicil, with reference to personalty, are entitled to world-wide recognition.—*Re* HICKSON, [1927] 4 D. L. R. 607 ; 61 O. L. R. 180.—**CAN.**

sg. *Judgment in default of appearance.*]—A judgment of the King's Bench Div. in London passed in default of appearance of deft. under the summary procedure, without any evidence being called, is not a judgment on the merits within sect. 13 (*b*) of the Code of Civil Procedure & a suit cannot be brought solely on such a judgment in British India.—DERBY MCINTYRE & CO. *v.* MITTER & CO. (1935), I. L. R. 62 Calc. 682.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—A.

1034 iii. ——.]—Where a suit is brought on a foreign judgment, it is not open to deft. to plead that the ct. which passed the judgment had no jurisdiction to do so, when he himself had submitted to the jurisdiction & had not challenged it.—GANGA PRASAD *v.* GANESHI LAL (1923), I. L. R. 46 All. 119.—**IND.**

1039 i. *Essentials to establishment of jurisdiction.*]—*Held :* the provisions in Jud. Act, 1927 (c. 88), ss. 51, 52, must be confined to actions upon judgments obtained in the Province of Q., which, according to the principles of international law, applicable as between the different Provinces of the Dominion, are entitled to extra-territorial recognition, *i.e.* to those cases in which the writ was served within the Province of Q. upon a person domiciled & resident therein & who owed allegiance to the laws of Q.—LUNG *v.* LEE, [1929] 1 D. L. R. 130 ; 63 O. L. R. 194.—**CAN.**

1039 ii. ——.]—Deft. must be a subject or resident in the country of the forum, or have selected it as pltf. or have voluntarily submitted to its jurisdiction.—WEBSTER *v.* CONNORS BROS., LTD., [1935] 2 D. L. R. 483 ; 5 F. L. J. (Can.) 37 ; *sub nom.* WEBSTER MCLANCHLAN CO. *v.* CONNORS BROS., [1935] 4 D. L. R. 205 ; 9 M. P. R. 345. —**CAN.**

1042 i. *Absence of jurisdiction—Effect of.*]—A judgment was obtained in Florida without jurisdiction. A judgment was given in New Jersey upon this, without inquiry as to the merits. In an action upon the New Jersey judgment :—*Held :* both the Florida & the New Jersey judgments were nullities.—FREDERICK A. JONES INC. *v.* TORONTO GENERAL INSCE. CO., [1933] 2 D. L. R. 660.—**CAN.**

si. *Subject-matter of judgment out of jurisdiction.*]—Pltf.'s husband purchased a ticket which drew a horse in a sweepstake in the Irish Free State entitling the purchaser to a certain sum as prize money. Pltf. obtained a decree of divorce in the State of California & a declaration that she was entitled to the money, the ticket having been " community property " :—*Held :* the decree of the Californian Court could not have any effect in the Irish Free State as the subject-matter of the decree was not within the control of the State of California.—MCKIE *v.* MCKIE [1933] I. R. 464.—**IR.**

PART XIV. SECT. 2, SUB-SECT. 2.—C.

1054 xiv. —— ——.]—A judgment on an award obtained in England by default cannot be sued on in India, since it is not a judgment " on the merits " within Code of Civil Procedure (Act V. of 1908), s. 13.—OPPENHEIM & CO. *v.* MAHOMED HANEEF, [1922] 1 A. C. 482 ; 91 L. J. P. C. 205 ; 127 L. T. 196 ; 49 L. R. Ind. App. 174.—**IND.**

1069. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1073. *Add. Annotation :—As to* (1) **Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1080. *Add. Citation :*—[1921] B. & C. R. 195.

1090a. ——.]—RUDD *v.* RUDD, No. 903a, *ante.*

1098a. General rule.] — A plea of judgment recovered in a foreign ct. of competent jurisdiction must show that the judgment so recovered is final & conclusive between the parties according to the law of the place where such judgment is pronounced.—FRAYES *v.* WORMS (1861), 10 C. B. N. S. 149 ; 142 E. R. 407.

1108. *Add. Annotation :*—**Apld.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1112. *Add. Annotation :*—**Consd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1113. *Add. Annotation :*—**Consd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1113a. Judgment for payment of sum of money—Amount not subject to variation—Alimony.] —By the law of the State of New York, where a judgment has been pronounced by the proper ct. of that State for the payment of alimony, & instalments under that judgment are due & in arrear, it is not competent for that ct. to vary its judgment in respect of the instalments so accrued due :—*Held :* such a judgment is in that respect a final judgment & an action may be brought to enforce payment of those arrears in this country.—BEATTY *v.* BEATTY, [1924] 1 K. B. 807 ; 93 L. J. K. B. 750 ; 131 L. T. 226, C. A.

1114. *Add. Annotation :*—**Refd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1118. *Add. Annotation :—As to* (1) **Consd.** Banco de Vizcaya *v.* Don Alfonso de Borbon y Austria, [1935] 1 K. B. 140.

1122a. Judgment founded on immoral agreement.]—PAPADOPOULOS *v.* PAPADOPOULOS, No. 946b, *ante.*

1126. For " No. 383, *ante* " read " No. 1033, *ante*, & Supp."

1054 xv. —— ——.]—Deft., who was resident & domiciled in Ontario, was served there with a writ of summons by which an action for the price of goods sold & delivered was commenced against him in the Superior Ct. of Quebec. The cause of action arose partly at least in Ontario. He did not appear & judgment was entered against him by default. In an action upon that judgment brought in Ontario by same pltf. against same deft., the latter pleaded that the Quebec judgment was of no effect in Ontario :—*Held :* the provisions of Judicature Act, R. S. O., 1927, ss. 51, 52, enacted by an Act of the Province of Canada, 1860, must be confined to actions upon judgments obtained in Quebec which, according to the principles of international law are entitled to extra-territorial recognition, *i.e.* to those cases in which the writ was served within Quebec upon a person domiciled & resident therein & who owed allegiance to the laws of Quebec.—LUNG *v.* LEE, [1929] 1 D. L. R. 130 ; 63 O. L. R. 194.—**CAN.**

1065 i. *Judgment recognised—Defendant served—No appearance or defence—Proceedings regular.*]—*Held :* a judgment of the High Ct. of Justice in England against a deft. in India, who had been duly served with a writ of summons but who did not enter appearance or deliver a defence, must be regarded as a judgment passed on the merits of the case when the proceedings had been strictly in accordance with the Rules of the Supreme Ct. —KULWANT *v.* DHAN RAJ DUTT (1934), I. L. R. 16 Lah. 768.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—E.

e i. —— *Judgment based on joint petition presented by both parties.*]—MUHAMMAD MOIDEEN *v.* CHINTHAMANI CHETTAR (1929), I. L. R. 52 Mad. 503.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—F.

e i. —— *Execution of power of attorney—Authorising agent to appear as plaintiff or defendant—Failure of agent to appear.*]—JANOO HASSAN SAIT *v.* MAHAMAD OHUTHU (1924), I. L. R. 47 Mad. 877.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—G.

h i. ——.]—On an application under Ord. 14 for leave to sign judgment in an action on a foreign judgment :—*Held :* the defence that deft. had not been served with process in the foreign action, & that the proceedings therein did not come to his knowledge or notice raised a triable issue which must be tried, in the ordinary way.—ROMANO *v.* MAGGIORA, [1935] 2 W. W. R. 524 ; 50 B. C. R. 66.—**CAN.**

n i. ——]—In an action on a foreign judgment a statement in said judgment that deft. was " duly & personally served with the summons & a copy of the complaint " is at least *primâ facie* evidence that the formalities required by the law of the foreign state to effect service were observed. In the present case, wherein it was found that deft. was resident of the foreign state at the time of said alleged service :—*Held :* he had not discharged the onus on him of displacing the *primâ facie* case that he was served, & if the service in question consisted, as on the evidence it apparently did, of the handing the suit papers in an envelope to deft. such service would not be against " natural justice." The ct. is not entitled to presume, in the absence of evidence, that the foreign practice is the same as ours.—ROMANO *v.* MAGGIORA (No. 3), [1937] 1 W. W. R. 490 ; 51 B. C. R. 352.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 3.

o. Read now " **1098a i.**"

p. Read now " **1098a ii.**"

1098a iii. —— *Presumption of finality.*]—The finality & conclusiveness of a foreign judgment will be presumed in favour of a pltf. relying on it, unless it is put in issue by deft.'s pleadings, but a Ct. of Appeal in ordering a new trial can allow such amendments to be made as will enable deft. to raise the issue.—SMITH *v.* SMITH, [1923] 2 D. L. R. 896 ; 2 W. W. R. 389.—**CAN.**

q. Read now " **1098a iv.**"

r. Read now " **1098a v.**"

1098a vi. ——.]—AINSLIE *v.* AINSLIE (1927), 39 C. L. R. 381 ; 27 S. R. N. S. W. 524 ; [1927] Argus L. R. 301. —**AUS.**

1113 iii. —— —— ——.]—Where there did not appear to be any difference proved between the effect in the foreign State & in Ontario of such a judgment :—*Held :* a decree for alimony not being an absolute judgment, pltf. was not entitled to recover upon the foreign judgment in respect of arrears of alimony.—MAGUIRE *v.* MAGUIRE (1921), 64 D. L. R. 180 ; 50 O. L. R. 100.—**CAN.**

1113 iii. —— —— ——.]—PERRY *v.* PERRY, [1924] 4 D. L. R. 1177 ; 54 O. L. R. 613 ; *revsg.*, [1924] 1 D. L. R. 665 ; 53 O. L. R. 502.—**CAN.**

ss. *Judgment made award of court—No notice given to party—No notice required by law of country where judgment given.*]—In an action in Ontario upon a judgment recovered in Holland, it appeared that the judgment was pronounced by a ct. of record & directed that an award of arbitrators should be executed after its form & contents & in the ordinary way of execution ; & that no notice was given to defts. who were parties to the arbn. :—*Held :* the requirement of notice or no notice is a matter of procedure ; as it was shown that in Holland no notice was necessary, the lack of notice did not affect the validity of the judgment in Holland, which was final & conclusive & could be sued on in Ontario. —STOLP & CO. *v.* BROWNE & CO., [1930] 4 D. L. R. 703 ; 66 O. L. R. 73.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 5.

1117 i. *Orders in respect of foreign infant—Custody.*]—The ct. will give effect to the judgment of the ct. of a foreign State awarding the custody of an infant to one of the parents.—*Re* AYERS, [1921] 2 W. W. R. 171 ; *affd.*, [1921] 2 W. W. R. 625.—**CAN.**

—— ——.]—*See, also,* Nos. 954 i-954 v, *ante.*

1117 ii. —— *Appointment of guardian.*]—Where a child, whose parents had died, was removed from the province of its domicil of origin, its maternal grandfather, resident in that province, obtained from the cts. of that province letters of guardianship of the child & thereafter applied to the cts. of the province to which the child had been removed for a writ of *habeas corpus.* The application was granted on the ground that, other things being equal, the cts. of one province will recognise the proceedings of the cts. of another province in such a case.—*Re* BERGMAN & WALDRON, *Re* INFANTS ACT, [1923] 4 D. L. R. 56 ; 3 W. W. R. 70.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 7.

1124 iv. —— *Necessity for strict proof.*]—The defence that a foreign judgment was obtained by fraud must be clearly proved.—BOGA *v.* CHAMBERLEN, [1936] 1 D. L. R. 660 ; 9 M. P. R. 565.—**CAN.**

1132. *Add. Annotations :*—**Apld.** Ellerman Lines *v.* Read (1927), 44 T. L. R. 7. **Refd.** Jacobson *v.* Frachon (1927), 44 T. L. R. 103.

1135a. ——.]—Pltfs.' steamer stranded in the Black Sea, & L. agreed to try to salve her on the terms that security for payment of his remuneration should be arranged in London, & that he would not arrest the ship unless there was an attempt to remove her before the security had been given. Security was given in London in accordance with the salvage contract, & the ship was refloated & taken to Constantinople for temporary repairs. Before she was ready to leave, L. brought an action against the master in the Turkish ct. on the ground that the ship was about to be removed without security having been given. By order of the Turkish ct. the ship was arrested, &, as the master had no evidence of what had been done in London & L. took an oath that security had not been given, the Turkish ct. awarded L. £23,890. L. then disposed of the ship, & pltfs. brought an action (1) for damages for breach of contract, (2) for a declaration that the Turkish judgment was invalid, & (3) for an injunction to prevent the judgment from being enforced :—*Held :* (1) the Turkish judgment was invalid ; (2) an injunction restraining the enforcement of the judgment abroad should be granted.—ELLERMAN LINES, LTD. *v.* READ, [1928] 2 K. B. 144; 97 L. J. K. B. 366; 138 L. T. 625; 44 T. L. R. 285; 17 Asp. M. L. C. 421; 33 Com. Cas. 219, C. A.; *revsg.* (1927), 44 T. L. R. 7.

1136. *Add. Annotation : — Generally,* **Refd.** Macaulay *v.* Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.

1141. For " No. 383, *ante* " read " No. 1033, *ante*, & Supp."

1147. *Add. Annotation :*—**Refd.** Jacobson *v.* Frachon (1927), 44 T. L. R. 103.

1147a. ——.]—In an action by buyers against foreign sellers for breach of contract alleging failure to deliver goods in the quantity & of the quality agreed to be sold, the defence was set up that the matter had been litigated in the French ct., which had given judgment for defts., & that the judgment was a bar to the action. Pltfs. replied that the judgment was obtained by proceedings contrary to natural justice. The action in France was brought by the sellers against the buyers for cancellation of the contract, & for damages, & the ct. made an order appointing an expert to go to London to examine the goods, compare them with the samples delivered, hear & take down in writing all evidence, & make a full report in writing to the French ct. It was proved in the English action that the expert appointed made a hurried & incomplete examination of the goods, refused to look at certain documents or to hear the evidence of pltfs. & their witnesses, & ultimately made a biased & erroneous report to the ct. :—*Held :* there being evidence that according to French law the ct. was not bound by the expert's report but could reject it, & that pltfs.' case had been properly argued before the French ct., & their evidence heard, there was no defect in the proceedings, &, there being no fraud proved, the judgment in the French action was valid & could not be impeached, & was a complete defence to the English action.—JACOBSON *v.* FRACHON (1927), 138 L. T. 386; 44 T. L. R. 103; 72 Sol. Jo. 121, C. A.

1151. *Add. Annotation :*—**Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

1170. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1187. *Add. Annotation :—Generally,* **Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

1127 i. ——.]—DELAPORTE *v.* DELAPORTE, [1927] 4 D. L. R. 933; 61 O. L. R. 302.—**CAN.**

1133 iii. —— —— *Not where involving retrial of questions adjudicated on by foreign court.*]—MANOLOPOULOS *v.* PNAIFFE, [1930] 2 D. L. R. 169; 1 M. P. R. 366; *revsg.*, [1929] 4 D. L. R. 48.—**CAN.**

1133 iv. ——.]—MANOLOPOULOS *v.* PNAIFFE (N. S.), [1929] 4 D. L. R. 48.—**CAN.**

1135 ii. —— ——.]—If it be alleged & proved that a party has obtained a judgment in his favour by some extraneous fraud, such as the clandestine substitution of a false exhibit for the real exhibit, or the deliberate suborning of a witness to testify to the genuineness of false documents or to give any material false testimony, or the giving of false oral testimony material & relevant to the issues, such judgment if a domestic judgment, can be set aside in a new action, or if it is a foreign judgment the fraud may be set up as a defence to an action thereon.—LOCKE *v.* HULETT (Alta.), [1929] 3 D. L. R. 572; 2 W. W. R. 558.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 8.

1140 i. *What amounts to repugnancy to " natural justice "—Not merely following lex fori—Lex fori different from law in force in British India.*]—GANGA PRASAD *v.* GANESHI LAL (1923), 1 L. R. 46 All. 119.—**IND.**

sg. *Judgment based on judgment in proceedings of which no notice given.*]—Pltf. recovered a default judgment against deft. in Florida, U.S.A. The writ of summons was not served on deft. co., but was served on an individual resident in Florida who was assumed to be, but who was not, an agent of deft. co. Deft. co. did not carry on business in Florida & knew nothing about the Florida action until after judgment by default had been entered. Subsequently pltf. brought action in New Jersey on the Florida judgment. The action in New Jersey was commenced by attachment against the assets of deft. co. in New Jersey & deft. co. entered an appearance in the New Jersey action. The New Jersey ct. gave judgment in favour of pltf. on the Florida judgment without inquiring into the merits of the dispute. Pltf. brought action in the Supreme Ct. of Ontario on the New Jersey judgment & the action was dismissed. On appeal this judgment was affirmed. —FREDERICK A. JONES INC. *v.* TORONTO GENERAL INSURANCE CO., [1933] O. R. 428.—**CAN.**

PART XIV. SECT. 3, SUB-SECT. 1.—A.

1155 iii. —— ——.]—In an action in Manitoba upon a foreign judgment the fact that defences have been raised & tried in the foreign ct. does not prevent their being raised & tried again, but there is a discretion in the ct. to allow the defences or to strike them out on the ground of embarrassment or delay ; the fact that the case has been tried out in a foreign ct., that an unsuccessful appeal has been taken, or that a consent judgment has been entered will have a very strong bearing, but in each case the discretion must be exercised upon the merits of that case alone.—CALLAGHAN *v.* NICHOLLE, [1921] 3 W. W. R. 476; 31 Man. L. R. 331.—**CAN.**

1167 v. —— —— —— ——.]—The ct. will not entertain defences in an action on a foreign judgment that should have been raised in the foreign ct. or which might properly have been made the subject of appeal in the foreign jurisdiction.—HUTTON *v.* DENT (1922), 70 D. L. R. 582.—**CAN.**

sd. *Test of judgment on merits.*]—The true test whether a foreign judgment has been passed on the merits is whether the judgment has been given as a penalty for any conduct of deft. or whether it is based on a consideration of the truth or otherwise of pltf.'s case.—MEHR SINGH *v.* ISHAR SINGH (1932), I. L. R. 14 Lah. 58.—**IND.**

PART XIV. SECT. 3, SUB-SECT. 2.—A.

1189 i. *What is foreign judgment in rem—Adjudication on distribution of personal estate.*]—Where a ct. of the country of domicil adjudicates upon the distribution of personal property that adjudication is binding upon all

1195. *Add. Annotations:—As to* (2) **Refd.** The Goulandris, [1927] P. 182. *As to* (3) **Refd.** Ingenohl *v.* Wing On (Shanghai) (1927), 44 R. P. C. 343; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

1205a. —— **Inquiry abroad into loss of ship—Report not confirmed by governor of colony.**]—*Held:* the inquiry was not conclusive.—*Re* QUEEN OF THE THAMES (1872), 36 J. P. 72.

1214. After this case add "*See, also,* ESTOPPEL, Vol. XXI., pp. 154–156, Nos. 165–190."

1240. *Add. Annotation:*—**Consd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

1241. After the last cross-reference following this case add "—— **Maintenance order made in Dominion—Under Maintenance Orders (Facilities for Enforcement) Act, 1920 (c. 33).**]—*See* HUSBAND & WIFE, Nos. 6233b, 6233c, 6233d."

1241a. —— **Judgment severable.**]—RAULIN *v.* FISCHER, No. 1120, *ante.*

1243a. —— **Since constitution of Irish Free State.**]—Judgments Extension Act, 1868 (c. 54), ceased to operate in Southern Ireland on Dec. 5, 1922.—WAKELY *v.* TRIUMPH CYCLE Co., [1924] 1 K. B. 214; 93 L. J. K. B. 331; 130 L. T. 269; 40 T. L. R. 15; 68 Sol. Jo. 117, C. A.

Annotations:—**Folld.** Banfield *v.* Chester (1925), 94 L. J. K. B. 805. **Refd.** Performing Right Society *v.* Bray U. D. C., [1930] A. C. 377.

1243b. —— ——.]—Judgments Extension Act, 1868 (c. 54), has, since Dec. 5, 1922, ceased to apply to the Irish Free State. A certificate of an English judgment can, therefore, no longer be issued under Judgments Extension Act, 1868, s. 1, for registration in the Irish Free State cts.

Semble: such certificate will be registered in the Irish Free State cts., but the application to the English ct. should be for a certificate of the judgment *simpliciter* under R. S. C., Ord. 61, r. 7, & not supported by an affidavit having reference to Judgments Extension Act, 1868.—BANFIELD *v.* CHESTER (1925), 94 L. J. K. B. 805; 133 L. T. 623; 41 T. L. R. 563; 69 Sol. Jo. 692, C. A.

SUB-SECT. 2.—OF SUPERIOR COURTS OF UNITED KINGDOM AND DOMINIONS (p. 471).

Order to secure lump sum.]—*See* HUSBAND & WIFE, No. 5469a, *post.*

1252a. Foreign Judgments (Reciprocal Enforcement) Act, 1933 (c. 13), s. 1—Canadian judgment—No order relating to Canada—Right to bring action on judgment.]—An Order in Council was made on Nov. 10, 1933, under Foreign Judgments (Reciprocal Enforcement) Act, 1933 (c. 13), s. 7 (1), applying Part I. of the Act of 1933 generally to His Majesty's Dominions outside the United Kingdom:—*Held:* that, until an Order in Council had been made, extending

---

the world & is not subject to review in the cts. of another country.

It is for the ct. of the domicil to determine whether its own proceedings are *in rem* or merely *in personam*, & when that ct. determines that its proceedings are *in rem* all foreign cts. must so treat the proceedings, although they would not be so recognised by the law of the country where the judgment is set up.—JONES *v.* SMITH, [1925] 2 D. L. R. 790; 56 O. L. R. 550.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 1.

1215 iv. —— ——.]—*Re* HAMAR, *Ex p.* MCGUINTY & Co. (1921), 63 D. L. R. 241; 2 C. B. R. 137.—**CAN.**

1215 v. —— ——.]—MARSHALL *v.* HOUGHTON, [1923] 2 W. W. R. 553; 33 Man. L. R. 166.—**CAN.**

PART XIV. SECT. 4 SUB-SECT. 3.

sb. *Action in Ontario against Ontario administrator—On foreign judgment against foreign administrator.*]—Where administrations are granted to different persons in different states, they are so far deemed independent of each other that a judgment obtained against one will furnish no right of action against the other, to effect assets received by the latter in virtue of his own administration.—BONN *v.* NATIONAL TRUST Co., [1930] 4 D. L. R. 820; 65 O. L. R. 633.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 4.

sd. *Defence on merits—Application to strike out.*]—LESPERANCE *v.* LEISTIKOW, [1935] 3 W. W. R. 1: 4 D. L. R. 125; 43 Man. L. R. 322.—**CAN.**

sf. *Statute of Limitations.*]—Manitoba Statute of Limitations cannot be invoked as a defence to an action on a foreign judgment.—HARBICAN *v.* KENNEDY, [1937] 2 D. L. R. 541.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 5.

sg. *Effect of—Foreign decree of divorce.*]—On a petition for divorce it was shown that a decree of divorce to the parties had been granted by a foreign ct. on the cross-complaint of petitioner herein, that resp. subsequently married the co-resp. in said suit, & that petitioner had allowed 12 years to elapse without doing anything to question the validity of the foreign decree:—*Held:* even though that decree was invalid here, the petition should be dismissed on the grounds that petitioner had been "accessory to" the adultery of which he now complained & had been guilty of "unreasonable delay" in presenting his petition.—LITTLE *v.* LITTLE, [1930] 3 W. W. R. 222; 39 Man. L. R. 170; *revsd.*, [1931] 1 W. W. R. 5: 1 D. L. R. 823; 39 Man. L. R. 264.—**CAN.**

PART XIV. SECT. 5.

1233 iii. —— ——.]—While her husband, who had deserted her, was domiciled in Alberta, pltf. obtained against him in Colorado, where they had formerly lived, a judgment in the nature of a decree of judicial separation & alimony. She sued in Alberta on that judgment, but abandoned that claim & asked for relief under an alternative claim for alimony:—*Held:* she was not estopped by the foreign judgment, & alimony granted.—DETRO *v.* DETRO, [1922] 3 W. W. R. 690; 70 D. L. R. 61.—**CAN.**

k i. —— *Identity of subject-matter—Onus of proof.*]—QUICKSTAD *v.* MCNEILL, [1932] 4 D. L. R. 427; 46 B. C. R. 81.—**CAN.**

PART XIV. SECT. 6.

1241a i. *Effect of judgment to be considered by enforcing court—Judgment severable.*]—The judgment of a foreign ct. comprising two parts, one of which may be enforced in Canadian cts., but the other not, is deemed to be severable, & one part will be enforced though the other rejected.

It is the duty of the ct. to decide for itself the substance of the right sought to be enforced, irrespective of the opinion which may have been expressed by the foreign ct.—BURCHELL *v.* BURCHELL, [1926] 2 D. L. R. 595; 58 O. L. R. 515.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 1.—A.

1243a i. *To what judgments Act applicable—Since constitution of Irish Free State.*]—The certificate of an English judgment may be registered under Judgments Extension Act, 1868 (c. 54), in the Irish Free State.—GIEVES *v.* O'CONOR, [1924] 2 I. R. 182.—**IR.**

PART XIV. SECT. 7, SUB-SECT. 2.

sm. *By registration of English High Court judgment—No submission to jurisdiction.*]—In a suit for divorce in the Divorce Div. of the High Ct. of Justice in England, an appearance was entered by London agents, on behalf of a co-respondent residing in New Zealand, in error & without any instructions to that effect. On an application to have the judgment for costs of the High Ct. registered in the Supreme Ct. so that it might be enforced in New Zealand:—*Held:* (1) co-respondent did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that ct.; (2) even if such entry of appearance did amount to submitting to the High Ct.'s jurisdiction, it would not be just & convenient for the judgment to be enforced in New Zealand.—REDHEAD *v.* REDHEAD & CROTHERS, [1926] N. Z. L. R. 131.—**N.Z.**

so. *Reciprocal Enforcement of Judgments Act, 1925—Scope of Act.*]—Reciprocal Enforcement of Judgments Act, 1925, does not permit the registration of a judgment obtained in a province or territory of the Dominion of Canada to which the Act applies unless the judgment is one which could be enforced by action thereon in Alberta. The Act does not make the judgments to which it applies any less "foreign" judgments or any more directly enforceable than before the Act was passed, & does not alter the

Part I. of the Act of 1933 to a specific part of His Majesty's Dominions, reciting that reciprocal provisions had been made for the enforcement in that Dominion of judgments given in the superior cts. of the United Kingdom & specifying the cts. of that part of His Majesty's Dominion which shall be deemed to be superior cts. of that Dominion for the purposes of that Act, judgments obtained in that part of His Majesty's Dominions could not be registered, & consequently such judgments could be enforced by proceedings in the cts. of the United Kingdom for the recovery of the money payable under such judgments.

Deft. brought an action in the cts. of Ontario against pltf. co., in which action judgment was given for pltf. co. with costs. Subsequently an action was brought by pltf. co. against deft. in the High Ct. in England to recover the amount of the costs. No Order in Council had been made extending Part II. of the Administration of Justice Act, 1920 (c. 81), or Part I. of the Foreign Judgments (Reciprocal Enforcement) Act, 1933 (c. 13), to the Province of Ontario:—*Held:* pltf. co. were not prevented by either the Act of 1920 or the Act of 1933 from bringing their action in the cts. of this country upon the judgment obtained in Ontario.—YUKON CONSOLIDATED GOLD CORPN., LTD. *v.* CLARK, [1938] 2 K. B. 241; [1938] 1 All E. R. 366; 107 L. J. K. B. 240; 158 L. T. 330; 54 T. L. R. 369; 82 Sol. Jo. 134, C. A.

1262a. Date from which interest runs—No date fixed in judgment.]—DOUGLAS *v.* FORREST, No. 1044a, *ante*.

Part XVI.—Practice and Procedure.

1272a. —— Not payment under garnishee order in England.]—SWISS BANK CORPN. *v.* BOEHMISCHE INDUSTRIAL BANK, No. 1307a, *post*.

1277a. ——.]—(1) Questions of procedure are to be determined by the *lex fori*, not by the *lex loci contractus*.

(2) *Semble:* set-off is matter of procedure, &, as such, determinable by the *lex fori*.—MACFARLANE *v.* NORRIS (1862), 2 B. & S. 783; 31 L. J. Q. B. 245; 6 L. T. 492; 9 Jur. N. S. 74; 121 E. R. 1263.

Annotation:—As to (2) **Refd.** Maspons y Hermano *v.* Mildred (1882), 9 Q. B. D. 530.

1280. *Add. Annotation:—As to* (4) **Apld.** Banco de Vizcaya *v.* Don Alfonso de Borbon y Austria, [1935] 1 K. B. 140.

1285a. —— Foreign receivers or assignees in bankruptcy.]—Foreign receivers or assignees in bkpcy., who have, according to the law of the country in which they have been appointed, a right to sue in their own names for a chose in action due to a person in respect of whose property they have been appointed, have a similar right of action in England.—MACAULAY *v.* GUARANTY TRUST CO. OF NEW YORK (1927), 44 T. L. R. 99.

1289. *Add. Annotation:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1290. *Add. Annotation:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1292a. —— —— ——.]—WRIGHT *v.* SIMPSON (1802), 6 Ves. 714; 31 E. R. 1272, L. C.

Annotations:—**Consd.** Newton *v.* Chorlton (1853), 2 Drew. 333. **Refd.** The Vreede (1811), 1 Dods. 1; Pennell *v.* Roy (1853), 3 De G. M. & G. 126; Jackson *v.* Digby (1854), 2 W. R. 540; Strong *v.* Foster (1855), 4 W. R. 151; Madden *v.* M'Mullen (1860), 4 L. T. 180; Bailey *v.* Edwards (1864), 4 B. & S. 761; Belfast Banking Co. *v.* Stanley (1867), 15 W. R. 989; Liverpool Marine Credit Co. *v.* Hunter (1867), L. R. 4 Eq. 62; Barber *v.* Mackrell (1892), 68 L. T. 29.

1306a. Governed by lex fori.]—MACFARLANE *v.* NORRIS, No. 1277a, *ante*.

1307. *Add. Annotations:*—**Distd.** Swiss Bank Corpn. *v.* Boehmische Industrial Bank, [1923] 1 K. B. 673. **Consd.** Sedgwick Collins *v.* Rossia Insce. of Petrograd (1925), 133 L. T. 808; Richardson *v.* Richardson, [1927] P. 228.

---

rules of private international law as to the recognition to be given to foreign judgments. Therefore a judgment obtained in another province, under the rules thereof permitting service *ex juris*, against a deft. who was not resident or present in that province & did not submit to the jurisdiction of the ct. by contract or appearance is not one which is registrable under the Act. A partnership is not a "person," within the meaning of the Act, against whom a judgment may be registered.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* RYAN (Alta.), [1930] 1 D. L. R. 280; [1929] 3 W. W. R. 403.—**CAN.**

sg. *Reciprocal Enforcement of Judgments Act*, 1929 *(Ont.)—Application of Act.*]—Where deft. would have a good defence to an action in Ontario on a British Columbia judgment, the registration of the judgment under Reciprocal Enforcement of Judgments Act, 1929 (Ont.) is forbidden.—*Re* TANGYE & SMITH, LTD. & PELICAN CARBON CO., [1935] 1 D. L. R. 759; O. R. 123.—**CAN.**

PART XIV. SECT. 8.

1254 i. *Authentication by seal of court—Or signature of judge.*]—To satisfy Evidence Act, N. B., c. 127, s. 58, if the document sought to be proved be a foreign judgment, the authenticated copy must either be sealed with the seal of the ct. in which the original is filed, or, in the event of such ct. having no seal, be signed by the judge, or one of the judges of such ct. with a statement from him in writing that the ct. has no seal.—HARRIS *v.* GARSON (1921), 67 D. L. R. 682; 49 N. B. R. 91.—**CAN.**

PART XVI. SECT. 1.

1266 i. *What are matters of procedure—Disability to sue—Statutes of limitation.*]—The question whether the enforcement of a right of action is barred by a statute of limitations, as distinguished from the question whether the right has been absolutely extinguished, is one of procedure only, & is governed wholly by the *lex fori*.—COLONIAL INVESTMENT & LOAN CO. *v.* MARTIN (Man.), [1927] 3 D. L. R. 360; [1927] 2 W. W. R. 94.—**CAN.**

1266 ii. —— —— ——.]—Any rule limiting the time within which an action may be brought, *i.e.* any limitation in the strict sense of that word, is a matter of procedure; & is governed by the *lex fori*. Therefore a law of a foreign country in which a debt was contracted which limits the time within which an action may be brought thereon, but does not extinguish the debt, does not affect the right of action here.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE, [1933] 3 W. W. R. 1; 4 D. L. R. 679.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 1.

sd. —— *Liability to action for damages within jurisdiction—Attempt to return to country of residence.*]—Pltf. claimed $20,000 damages from deft., the cause of action being criminal conversation with pltf.'s wife. Deft. lived in U.S., but was here for a temporary purpose when pltf. had him arrested under an order to hold to bail. Pltf. in his affidavit sworn on Jan. 30, on which the order was granted, stated that deft. had arrived in Toronto that morning, & that he intended to leave for his own country that night, with intent to defraud pltf. of the damages he had sustained:—*Held:* in leaving Ontario he was not doing so with intent to defraud pltf., & was therefore entitled to be discharged.—RICE *v.* FLETCHER (1889), 13 P. R. 46.—**CAN.**

1307a. Garnishee proceedings — Payment of debt situate in England — Recognised by international law.]—Judgment having been recovered against a foreign corpn., who submitted to the jurisdiction, a garnishee summons was issued to attach a debt due from a London bank to the foreign corpn.:—*Held:* the judgment creditors were entitled to have an order *nisi* made absolute, inasmuch as payment under a garnishee order operated as a discharge of the amount paid & was recognised by international law as having that effect, & consequently there was no real risk of the garnishees being obliged to pay the debt over again to the foreign corpn., & there was, therefore, nothing inequitable in making the order absolute.

The debt in this case is situate in England, & is discharged in whole or in part by payment under a garnishee order in England, which is not mere procedure & is recognised in international law (BANKES, L.J.).—SWISS BANK CORPN. *v.* BOEHMISCHE INDUSTRIAL BANK, [1923] 1 K. B. 673; 92 L. J. K. B. 600; 128 L. T. 809; 39 T. L. R. 179; 67 Sol. Jo. 423, C. A.

Annotations:—**Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015. **Consd.** Richardson *v.* Richardson, [1927] P. 228.

1307b. —— —— ——.]—Defts., a co. incorporated in Russia, had a branch office in London, & had registered C. as their agent to accept service of any judicial process that might be issued against them. In 1918 defts.' business & its assets were by revolutionary legislation transferred to the Soviet Govt. In 1923 an action was brought in England to recover a debt alleged to be due from defts. to pltfs., the writ being served on C., & in default of appearance judgment was signed against defts. Pltfs. having obtained a garnishee order *nisi* to attach a debt due to defts. from third parties in England:—*Held:* as the debt owing from the garnishees to defts. was governed by English law, payment by the garnishees of the amount of the judgment debt would be a discharge *pro tanto* of the debt due from them to defts., & it must be assumed that the Soviet Govt. would follow the ordinary rules of international comity & admit the validity of that payment, & the garnishee order ought to be made absolute.—SEDGWICK COLLINS & CO. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1; 95 L. J. K. B. 7; 133 L. T. 808; 41 T. L. R. 663, C. A.; *affd. sub nom.* EMPLOYERS' LIABILITY ASSURANCE CORPN. *v.* SEDGWICK COLLINS & CO., [1927] A. C. 95, H. L.

Annotations:—**Refd.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; *Re* Russian & English Bank (1932), 48 T. L. R. 282; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745; The Madrid, [1937] P. 40.

1308. *Add. Annotation:*—*As to* (2) **Refd.** The Stream Fisher, [1927] P. 73.

1309a. —— **Rights of mortgagee of ship under French hypothèque—Claim for necessaries.**]—According to French law, the mtgee. of a ship under a French *hypothèque*, although he has not the same right of property as that given by Merchant Shipping Act, 1894 (c. 60), in respect of an English mtge., has a right to arrest the ship in the hands of a subsequent owner. His claim, however, is postponed to that of a necessaries man.

On a motion to determine priorities between English claimants, in respect of necessary repairs effected upon a French ship & claimants under a French *hypothèque* upon the ship:—*Held:* as the rights under the *hypothèque* must be determined according to French law, which gave greater rights than those given by English law to a necessaries man who had merely the right to sue *in rem*, the claim of the necessaries men, according to the *lex fori* by which the question of priorities must be determined, was postponed to the claim of the mtgees.—THE COLORADO, [1923] P. 102; 92 L. J. P. 100; 128 L. T. 759; 16 Asp. M. L. C. 145, C. A.

Annotations:—**Distd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556. **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1309b. Rights of "ship's creditors" under German code—As against mortgagee & other necessaries men.]—A German firm supplied bunker coal to a Latvian steamship in a German port under a contract which was said to confer upon them a status known to German law as that of "ship's creditors." The ship was subsequently arrested in England at the suit of other necessaries men & sold by order of the English ct. Further claims were brought against her by a mtgee. & other necessaries men, & these, as well as the German firm, in due course obtained judgment, in default of appearance, against the proceeds of the sale of the ship. On a motion to determine priorities it was argued for the German suppliers of bunkers that the law applicable was the German Commercial Code, by which "ship's creditors" were given priority not only over other necessaries men but also over a mtgee., & also were given the equivalent of a maritime lien, which entitled them to follow the ship or her proceeds into the hands of subsequent owners:—*Held:* any rights possessed by the claimants under German law were of no value unless & until they were enforced by the arrest of the vessel in the German cts.; the question of priorities must be determined by the *lex fori*, under which the claimants as necessaries men had no maritime lien or special rights over the heads of a mtgee. or other necessaries men.—THE ZIGURDS (NO. 1), [1932] P. 113; 101 L. J. P. 75; 148 L. T. 72; 48 T. L. R. 556; 18 Asp. M. L. Cas. 324.

1310. *Add. Annotations:*—**Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382; Oppenheimer *v.* Louis Rosenthal & Co., A. G., [1937] 1 All E. R. 23.

1312. *Add. Annotation:*—**Consd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1313. *Add. Annotations:*—**Distd.** The London, [1931] P. 14. **Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1315a. —— **Action relating to same subject-matter.**]—An action *in personam* for damage occasioned by a collision in Scottish waters was commenced in the cts. of Scotland by the owners of the *L.* against the owners of the *G.* Subsequently the owners of the *G.* commenced proceedings *in rem* in England for the damage to their vessel against the owners of the *L.* & under threat to arrest

obtained security from the owners of the *L.*, who thereupon applied by summons to stay the proceedings in the action in England :— *Held :* the ct. will not, as a matter of course, where there is an action pending in the United Kingdom or any of the British Dominions, stay a second action commenced in respect of the same subject-matter, whether pltf. is or is not the same in both actions ; & the matter being one of discretion, in the circumstances of the present case no stay to be granted.—THE LONDON, [1931] P. 14 ; 100 L. J. P. 57 ; 144 L. T. 375 ; 47 T. L. R. 170 ; 18 Asp. M. L. C. 180.

Annotation :—**Apld.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1319a. —— —— Difficulty of proving foreign law in England.]—ST. PIERRE *v.* SOUTH AMERICAN STORES (GATH & CHAVES), LTD., No. 336a, *ante.*

1321. *Add. Annotation :*—**Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1325a. —— Plaintiff in England defendant abroad.] —A Greek vessel & an Argentine vessel came into collision in the River Parana ; the Argentine vessel sank, &, it was alleged, became a total loss.

On Sept. 30, 1936, proceedings were instituted in the Argentine by the owners of the sunken ship, an Argentine corpn. ; the owner of the Greek ship put in a counter-claim, but on Oct. 27 withdrew it. Meanwhile, on Sept. 30, he had issued the writ in the present proceedings in this country, & served it by leaving a copy at the London office of the Argentine Corpn. which had been established for the purpose of the transfer & registration of shares. The Argentine Corpn. moved to set aside the writ, or alternatively to stay the proceedings, on the grounds, amongst others, (*a*) that the corpn. only carried on business within the jurisdiction so far as claims connected with the share register were concerned ; (*b*) that the proceedings were vexatious & oppressive as there was an action pending in Argentina, where all the corpn.'s witnesses as well as the chief witnesses for the Greek ship resided ; & further that pltf. had no effective remedy, inasmuch as Argentine law must be applied in this country, under which, if a vessel was a total loss, liability being limited to the property available, her owners were under no liability at all. By Cos. Act, 1929 (c. 23), s. 352, the expression " place of business " includes a share transfer office :—*Held :* (1) as the corpn. had a place of business within the jurisdiction it was amenable to the jurisdiction for all purposes & not merely to the limited jurisdiction suggested ; (2) pltf.'s action could not be stayed merely because he was deft. elsewhere ; it could not be said, as in *Dawkins* v. *Prince Edward of Saxe Weimar* (1876), 1 Q. B. D. 499 ; 38 Digest 79, *566*, that on the facts of the declaration no cause of action was shown ; & the question whether pltf.'s claim was groundless depended on facts which he was entitled to have tried, & accordingly the motion failed.—THE MADRID, [1937] P. 40 ; [1937] 1 All E. R. 216 ; 106 L. J. P. 39 ; 53 T. L. R. 237.

1328. *Add. Annotations :*—**Consd.** The Golaa, [1926] P. 103. **Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1331. *Add. Annotation :*—**Refd.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

1332. *Add. Annotation :*—**Apld.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

1332a. ——.]—ELLERMAN LINES, LTD. *v.* READ, No. 1135a, *ante.*

1340. *Add. Annotations :*—**Consd.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144 ; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

1342. *Add. Annotation :*—**Refd.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382.

1345. *Add. Annotation :*—**Apld.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

1348a. —— —— Scottish action for rectification of settlement.]—WILSON *v.* WILSON (1895), *Times*, Feb. 14 & Mar. 5.

1351. *Add. Annotation :*—**Consd.** Vardy *v.* Smith (1932), 148 L. T. 124.

1370. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

1372. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

1375. *Add. Annotation :*—*As to* (1) **Refd.** Lindsay *v.* Lindsay, [1934] P. 162.

1376. *Add. Annotation :*—**Refd.** Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485.

1378. *Add. Annotation :*—**N.F.** The London, [1931] P. 14.

1378a. —— ——.]—In respect of a collision in the Red Sea the owners of the *J.* issued a writ in the Egyptian cts. against the owners of the *M.* & obtained bail. Shortly afterwards the owners of the *M.* instituted a cross-action against the owners of the *J.*, also in Egypt. In Oct. 1927, the owners of the *M.* issued a writ *in personam* in England against the owners of the *J.*, who entered appearance under protest & set down a motion to set aside the writ. In Dec. the owners of the *M.* discontinued their cross-action in Egypt : —*Held :* if the cross-action had still been pending the owners of the *M.* might have been put to their election, but as they had already elected there was no justification for staying the action in England, merely because they were defts. to an action in another country in respect of the same subject-matter.—THE JANERA, [1928] P. 55 ; 97 L. J. P. 58 ; 138 L. T. 557 ; 44 T. L. R. 193 ; 17 Asp. M. L. C. 416.

Annotations :—**Distd.** The London, [1931] P. 14. **Apld.** St. Pierre *v.* South American Stores (Gath & Chaves), Ltd., [1936] 1 K. B. 382. **Consd.** The Madrid, [1937] P. 40.

1378b. Action in rem in one country—Whether stayed pending proceedings in personam by defendant in another country.]—THE LONDON, No. 1315a, *ante.*

PART XVI. SECT. 5, SUB-SECT. 2.—B.

b i. —— *Indian courts.*]—The case of *Carron Iron Co.* v. *Maclaren* is not an authority for the proposition that a ct. will not grant an injunction against a person who is not within its jurisdiction, so that he would be subject to process of contempt.

The position of cts. in India *inter se* is quite different from that of English cts. as regards foreign cts.—A. MILTON & CO. *v.* OJHA AUTOMOBILE ENGINEERING CO. (1930), I. L. R. 57 Calc. 1280.—IND.

1379a. —— —— —— ——.]—In 1924 pltfs. instituted an action *in rem* in the United States in respect of damage done by defts.' ship to some pipe lines belonging to pltfs. in the bed of the river at Tampico, & the ship was arrested & released on bail being given by defts. Before the action in America had been brought to trial pltfs. issued a fresh writ *in rem* in England, & on Feb. 27, 1926, re-arrested the ship in the Thames. On Mar. 4 defts. served notice of motion to set aside the writ & all subsequent proceedings in the English action. The American action was discontinued on Mar. 8 :—*Held :* having obtained bail & so released the ship from any further claim in respect of the particular damage alleged, pltfs.' subsequent discontinuance of the action in America after the re-arrest in England did not cure their breach of good faith in instituting proceedings in England & causing the ship to be arrested again, & the writ & all subsequent proceedings must be set aside.—THE GOLAA, [1926] P. 103; 95 L. J. P. 60; 135 L. T. 208; 42 T. L. R. 414; 70 Sol. Jo. 776; 17 Asp. M. L. C. 35.

1380. *Add. Annotations :*—**Distd.** The Juno (1922), 128 L. T. 671. **Apld.** The Golaa, [1926] P. 103. **Consd.** The London, [1931] P. 14. **Refd.** The Goulandris, [1927] P. 182; The Baarn (1933), 150 L. T. 50.

1381. *Add. Annotation :*—**Consd.** The Juno (1922), 128 L. T. 671.

1383. *Add. Annotations :*—**Folld.** The Juno (1922), 128 L. T. 671. **Refd.** The Golaa, [1926] P. 103.

1383a. — — —— ——.]—On June 13, 1922, a British steamer & a Finnish steamer were in collision in the river Maas, Holland. After the collision the Finnish owners threatened arrest in a Dutch port. The owners of the British steamer who were anxious that the litigation should take place in England, reluctantly instructed their agents in Holland to provide bail, & although no proceedings were begun, documents in identical terms in the nature of bank guarantees to provide bail if proceedings were commenced within three months were exchanged on July 29 between the owners. On Sept. 6 the Finnish vessel came within the jurisdiction of the English cts., & an action was commenced, & the ship arrested & bail given under protest at the suit of the owners of the British ship. At that time no proceedings had been begun in Holland, but on Sept. 14 an action was commenced in Holland by the Finnish owners. The Finnish owners moved that the writ & all proceedings in the action by the British owners should be stayed, on the ground that their action was oppressive because it required the Finnish owners to give bail in two cts., & was inequitable as a breach of faith of the agreement in Holland :—*Held :* no legal proceedings having been commenced when the writ was issued in England, & there being no arrest & no bail given prior to the writ now sought to be set aside, there was nothing to debar the British owners from carrying on proceedings in England.—THE JUNO (1922), 128 L. T. 671; 16 Asp. M. L. C. 118.

1387. *Add. Annotation :*—**Refd.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622.

1393. *Add. Annotation :—As to* (1) **Consd.** Societe Anonyme Metallurgique de Prayon, Trooz, Belgium *v.* Koppel (1933), 77 Sol. Jo. 800.

1395a. —— —— —— ——.]—SOCIETE ANONYME METALLURGIQUE DE PRAYON, TROOZ, BELGIUM *v.* KOPPEL (1933), 77 Sol. Jo. 800.

PART XVI. SECT. 6, SUB-SECT. 2.

s. Add "*varied on appeal,* 4 A. R. 267."

CONSECRATION.

See BURIAL AND CREMATION; ECCLESIASTICAL LAW.

CONSERVANCY.

See WATERS AND WATERCOURSES.

CONSISTORY COURT.

See ECCLESIASTICAL COURT.

CONSORTIUM.

See HUSBAND AND WIFE.

CONSPIRACY.

See CRIMINAL LAW; TORT; TRADE AND TRADE UNIONS.

CONSTABLE.

See CRIMINAL LAW; POLICE.

CONSTITUTIONAL LAW.

Part II.—The Title to the Crown.

2. *Add. Annotation:—As to* (2) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

Part III.—Relations between the Crown and the Subject.

7a. —— **In foreign parts.**]—There is no legal duty on the Crown to afford by its military forces protection to British subjects in foreign parts. If, in the exercise of its discretion, the Crown decides to afford such protection, it may lawfully stipulate that it will do so only on the condition that the cost shall be borne by those asking for it.

Pltfs., an English shipping co. trading in the China seas, requested the Crown to provide armed guards to be placed on board their ships as a protection against internal piracy, which was a serious menace at the material time. Armed guards having been provided on the terms that they should be paid for by the pltfs., the latter claimed a declaration that as British subjects they were entitled to protection without payment:—*Held:* there was no duty on the Crown to afford military protection to pltfs. in foreign parts, & if it did afford protection it was entitled to do so on such terms as it thought fit.—CHINA NAVIGATION CO., LTD. *v.* A.-G., [1932] 2 K. B. 197; 101 L. J. K. B. 478; 147 L. T. 22; 48 T. L. R. 375; 18 Asp. M. L. C. 288, C. A.

17. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

Part IV.—The Royal Family.

25. *Add. Annotation:*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

Part V.—The Royal Prerogative.

53. *Add. Annotation:—As to* (2) **Consd.** Nadan *v.* R., [1926] A. C. 482.

54. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

58a. **Crown cannot seize subject's property without compensation—What amounts to seizure.**]—Assuming that the Crown has no right at common law to take a subject's property for reasons of State without paying compensation, that rule can only apply, if it does apply, to a case where property is actually taken possession of or used by the Govt., or where, by the order of a competent authority, it is placed at the disposal of the Govt., & a mere negative prohibition, though it involves interference with an owner's enjoyment of property, does not, merely because it is obeyed, carry with it at common law any right to compensation.—FRANCE FENWICK & CO. *v.* R., [1927] 1 K. B. 458; 96 L. J. K. B. 144; 136 L. T. 358; 43 T. L. R. 18; 32 Com. Cas. 116.

Annotations:—**Refd.** Ensign Shipping Co. *v.* I. R. Comrs. (1927), 139 L. T. 111; Ensign Shipping Co. *v.* I. R. Comrs. (1928), 12 Tax Cas. 1169.

Part VI.—The Crown in relation to the Executive.

78. *Add. Annotation:*—**Consd.** Venkata Rao *v.* Secretary of State for India, [1937] A. C. 248.

79. *Add. Annotations:*—**Consd.** Reilly *v.* R., [1934] A. C. 176; Venkata Rao *v.* Secretary of State for India, [1937] A. C. 248. **Refd.** Nix *v.* A.-G., [1930] 1 Ch. 566.

79a. —— —— ——.]—Applt., who held office in the civil service of the Crown in India as a reader in the Govt. Press, Madras, fell under suspicion of being concerned in a leakage of information in respect of certain examination papers, & was dismissed from the service. On a claim against the Secretary of State for India in Council for damages for wrongful dismissal:—*Held:* the procedure prescribed by rule XIV. of the Civil Services

Classification Rules, 1920–24, made under sect. 96B (2) of Govt. of India Act, 1919 (c. 101), was not followed at the official inquiry which preceded the dismissal. Applt.'s employment, however, was not of a limited & special kind during pleasure with an added contractual term that the procedure prescribed by the Rules must be observed; it was by the express terms of sect. 96B held "during His Majesty's pleasure," & no right of action as claimed by the applt. existed. The terms of sect. 96B assure that the tenure of office, though at pleasure, will not be subject to capricious or arbitrary action, but will be regulated by the rules, which are manifold in number, most minute in particularity & all capable of change, but there was no right in applt., enforceable by action, to hold his office in accordance with with those rules, & he could therefore be dismissed notwithstanding the failure to observe the procedure prescribed by them. Sect. 96B & the rules make provision for the redress of grievances by administrative process.—VENKATA RAO *v.* SECRETARY OF STATE FOR INDIA, [1937] A. C. 248; 106 L. J. P. C. 53; 156 L. T. 261, P. C.

80. *Add. Annotations:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737; Nixon *v.* A.-G., [1930] 1 Ch. 566; Kynaston *v.* A.-G. (1933), 49 T. L. R. 300.

81. *Add. Annotation:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

83. *Add. Annotations:*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737; Nixon *v.* A.-G., [1930] 1 Ch. 566; Kynaston *v.* A.-G. (1933), 49 T. L. R. 300.

---

81 ii. —— —— ——.] — Pltf., manager of a railway under a contract made with the Govt. to be paid a stated salary & six months' salary if at any time he should be dismissed without notice, was dismissed without notice:—*Held:* (1) he was entitled to recover his six months' wages; (2) the Crown was not liable for interest.—NOBLE *v.* NEWFOUNDLAND GOVERNMENT (1902), 8 Nfld. L. R. 571, 601.—**NFLD.**

83 iii. —— —— ——.]—If the terms of the appointment to a public office definitely prescribe a period of employment & expressly provide for a power to determine "for cause" it appears necessarily to follow that any implication to dismiss at pleasure is excluded. *Qu.:* whether the relations between the Crown & the holder of a public office are not, at least in respect to some offices, constituted in some degree by contract.—REILLY *v.* R., [1934] 1 W. W. R. 298; 1 D. L. R. 434.—**CAN.**

83 iv. —— —— ——.]—Apart from some special statutory provision, no action will lie against the Crown for the wrongful dismissal of a servant of Govt. This rule of law is based upon public policy & the prerogative right of the Sovereign. In Government of India Act, 1919, s. 96B, the words "subject to the provisions of this Act & of rules made thereunder every person in the Civil Service of the Crown in India holds office during His Majesty's pleasure," read together with r. 14 of the rules regarding the Civil Services in India made by the Secretary of State providing for—proper departmental inquiry, indicate that certain formalities must be observed before a civil servant can be dismissed. In so far as these formalities are alleged not to have been followed, pltf. has a cause of action.—BARONI *v.* SECRETARY OF STATE FOR INDIA (1929), I. L. R. 8 Ran. 215.—**IND.**

83 v. —— —— ——.]—At common law, where the Crown is the employer, & the office is not an ancient office with special incidents, the employment, whether it be permanent or temporary, is during pleasure only, & the Crown servant may be dismissed at any time without notice. This right in the Crown exists, notwithstanding any provision in the contract of employment to the contrary unless, in a particular case, it is excluded by Statute. Such exclusion may be implied where a Statute prescribes special conditions for dismissal as the case may be. Where there is a suspension of an officer, this may operate not to vacate the office, but to relieve the officer from the performance of his duties whilst leaving him absolutely or conditionally entitled to his salary; or it may operate as a temporary suspension of the whole contract of employment.—BROWNE *v.* RAILWAYS COMR. (1936), 36 S. R. N. S. W. 21; 53 N. S. W. W. N. 1.—**AUS.**

83 vi. —— —— ——.]—Sect. 96B of Govt. of India Act, 1919, does not abrogate the rule that a Govt. servant has no right of action for damages for wrongful dismissal.—SECRETARY OF STATE FOR INDIA *v.* MAURICE, I. L. R., [1937] Ran. 35.—**IND.**

p i. —— —— ——.]—The Crown can dismiss its servants at pleasure & without notice unless the power of dismissal has been limited by some statutory provision, the general rule being that a Government servant holds office during pleasure & is liable to be dismissed at any time without notice & without reason assigned. The rule is subject to exceptions, but they must be statutory exceptions.—SECRETARY OF STATE FOR INDIA *v.* YADAVGI (1935), I. L. R. 60 Bom. 42.—**IND.**

r i. —— —— ——.]—G. was hired as a seasonal fireman for a term of seven months from Oct. 1, 1935, to Apr. 30, 1936. The contract contained no stipulation that G. could be dismissed for cause only. On Dec. 7, 1935, he was dismissed without notice & without cause, & now claimed damages for loss of salary for the balance of his term of hire:—*Held:* the right of the Crown to dismiss its servants at will may be restricted by law or by contract for a fixed term, explicity stipulating that the servant can only be dismissed for cause; & as the contract in question failed to provide expressly for dismissal for cause only, G. was not entitled to any part of the relief sought by his petition of right.—GENOIS *v.* R., [1937] Ex. C. R. 176; [1938] 1 D. L. R. 807.—**CAN.**

s. *Affd. sub nom.* YOUNG *v.* ADAMS, [1898] A. C. 469, P. C.

o i. —— —— *Ordinance made under Northern Territory Acts.*]—Pltf. was a classified officer in the public service of Queensland in 1917. He was then appointed to the Commonwealth office of Director of Lands in the Northern Territory, & he continued to hold the position until 1921, when the Governor-General in Council dispensed with his services:—*Held:* the Crown had power to dispense, at will, with the services of pltf., who was appointed under Ordinance No. 6 of 1913, made under the above Acts, & not under Commonwealth Public Service Act.—TROWER *v.* THE COMMONWEALTH (1924), 34 C. L. R. 587.—**AUS.**

t i. —— —— *Effect of Government of India Act, 1919.*]—Govt. of India Acts, 1919, s. 96B, does not abrogate the right of the Crown to dismiss its civil servants at its pleasure, but reiterates that right & enacts that the same is only limited in so far as there are definite & special or particular rules laying down the method by which, or the circumstances in which, that right is to be exercised.—BIMALACHARAN BATABYAL *v.* INDIAN MUSEUM TRUSTEES (1929), I. L. R. 57 Calc. 231.—**IND.**

t ii. —— —— *Failure to observe conditions precedent—Remedy.*]—Where a public servant has been discharged contrary to Act 27, 1923, that is to say, where the statutory conditions precedent to his lawful discharge have not been observed, he is entitled, notwithstanding that his discharge is a nullity, to claim damages against the Crown for wrongful dismissal & is not limited to the remedy of having the irregular procedure set aside or the proper procedure enforced.

A Minister of the Crown, in discharging or purporting to discharge a public officer under Act 27, 1923, does not act as a servant of the Legislature, but as a servant of the Crown.—BRAMDAW *v.* UNION GOVERNMENT (1931), 52 N. L. R. 57.—**S. AF.**

t iii. —— —— *Refusal to be transferred.*]—A public servant received notice of transfer from Auckland to New Plymouth to which he objected. He failed to comply with a final notice to go to the latter place, & was thereupon dismissed by the Public Service Comr. In an action against the Crown for wrongful dismissal:—*Held:* the effect of sect. 50 of Public Service Act, 1918, is that if it is desirable that an officer be transferred from one place to another that officer has no alternative but to obey, unless he can satisfy the Comr. that the transfer should not take place. The Comr. by that sect. is made the sole judge of the sufficiency of the reasons against the transfer, & from his decision there is no appeal.—BARNES *v.* R., [1933] N. Z. L. R. Supp. 117.—**N.Z.**

t iv. —— ——.]—F. was gazetted a member of the Unemployment Board for a period of two years from Nov. 20, 1930. He performed his duties as a member of the Board for eight months, during which time he received an allowance of £2 2*s. per diem* as the Board sat continuously. On July 31, 1931, his occupancy of the position was terminated by sect. 26 of Unemployment Amendment Act, 1931. F. claimed damages for the wrongful termination of his employment:—*Held:* (1) the office of membership of the Unemployment Board as constituted by Unemployment Act, 1930, was abolished by sect. 26 of the Amendment Act, 1931; (2) even if the office had not been abolished, the

83a. —— —— ——.]—If the terms of an appointment prescribe its period & provide expressly that it may be terminated for cause, a power to dismiss at pleasure cannot be implied.—REILLY *v.* R., [1934] A. C. 176; 103 L. J. P. C. 41; 150 L. T. 384; 50 T. L. R. 212, P. C.

85. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Nixon *v.* A.-G., [1930] 1 Ch. 566; Kynaston *v.* A.-G. (1933), 49 T. L. R. 300.

86. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

100. After the cross-reference following this case add as follows :—

—— **Extension of British jurisdiction in British protectorate.**]—*See* DEPENDENCIES, No. 10a.

—— **Effect of recitals in.**]—*See* ESTOPPEL, Vol. XXI., p. 331, No. 1247.

107. *Add. Annotation :*—**Refd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459.

110. *Add. Annotation :*—**Refd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

119. *Add. Annotation :*—**Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

122. Before this case add "*See, also,* CROWN PRACTICE, Vol. XVI., pp. 481-491."

136a. Statement of fact—Whether binding on court.]—Where a collision took place in the Bristol Channel, some 10½ or 12½ miles from the English coast & 9½ or ½ miles from the Welsh coast, & the judge decided that the waters where the collision occurred were within the *fauces terræ* & within the bodies of the counties of Devonshire & Glamorganshire, &, on appeal, the ct. was informed by the A.-G. that he was instructed by the Secretary of State for Home Affairs that the spot where the collision was alleged to have occurred was not within the limits to which the territorial sovereignty of His Majesty extended :—*Held :* (1) (ATKIN & LAWRENCE, L.JJ.) the statement of the A.-G. was binding on the ct.; (2) (BANKES, L.J.) the ct. was not necessarily bound to accept the information as conclusive, but having regard to the absence of authority & to the general trend of modern jurists to limit the width of the *fauces terræ* within which there was territorial sovereignty, the ct. should be guided by the information so given.—THE FAGERNES, [1927] P. 311; 96 L. J. P. 183; 138 L. T. 30; 43 T. L. R. 746; 17 Asp. M. L. C. 326; *sub nom.* THE FAGERNES, CORNISH COAST (OWNERS) *v.* SOCIETA NAZIONALE DI NAVIGAZIONE, 71 Sol. Jo. 634, C. A.

136b. —— ——.]—ENGELKE *v.* MUSMANN, No. 418a, *post.*

152. *Citations :*—For "[1920] 1 Ch. 107" read "[1921] 1 Ch. 107."

153a. Admiralty—Action against—Description in writ.]—By 1 & 2 Geo. 4, c. 93, s. 9, the principal officers & comrs. of the navy for the time being were empowered to bring & maintain any action of ejectment or other proceeding for recovering possession of lands, etc., vested in them, & to bring, maintain, or defend any other action in respect of the said

Crown's absolute power of dismissal of a servant of the Crown at any time without incurring liability for damages or compensation was not restricted by Unemployment Act, 1930, or by the Amendment Act, 1931; (3) there was no contractual relationship between the Crown & the suppliant as appointee to the office—he was simply gazetted as appointed to the Unemployment Board of 1930; he could resign at any time, & there was no provision for his remuneration; &, since there was no *animus contrahendi,* a valid claim could not be established against the Crown.—FINN *v.* R., [1933] N. Z. L. R. 1018.—**N.Z.**

f v. —— —— *Municipal employee.*]—*Qu. :* whether a municipal employee is in the same position as a civil servant with regard to dismissal at pleasure.—MUNICIPAL BOARD OF SHAHJAHANPUR *v.* SUKHA SINGH, I. L. R., [1937] All. 434.—**IND.**

g i. —— *Retirement by Order in Council—No office named in Order—Retirement from all public offices.*]—BRYCE *v.* R. (Can. Ex.), [1929] 3 D. L. R. 138.—**CAN.**

PART VI. SECT. 3.

100 i. *Order in Council—Under War Measures Act,* 1914, *s.* 6—*Validity.*]—PUGSLEY *v.* GARSON (1922), 50 W. B. R. 414.—**CAN.**

100 ii. —— *Under Dominion Lands Act, R. S. C.,* 1886 (*c.* 54)—*Validity.*]—STARLEY *v.* NEW MCDOUGALL-SEGUR OIL CO., [1927] 2 W. W. R. 379; *affd.,* [1927] 3 W. W. R. 464.—**CAN.**

100 iii. —— *Whether contract constituted.*]—*Held :* Orders in Council issued pursuant to 46 Vict. c. 17, ss. 49 & 50, authorising the Minister of the Interior to grant licenses to cut timber, did not constitute contracts between the Crown & proposed licensees, such Orders in Council being revocable by the Crown until acted upon by the granting of licenses under them.—BULMER *v.* R. (1894), 23 S. C. R. 488.—**CAN.**

100 iv. —— ——.]—STEWART *v.* JONES (1900), 19 P. R. 227.—**CAN.**

100 v. —— *Based on mistake of fact—Whether binding on Crown.*]—The Crown is not bound by an Order in Council passed inadvertently & on mistake of fact.—QUEBEC, MONTREAL & SOUTHERN RY. CO. *v.* R. (1914), 15 Exch. C. R. 237.—**CAN.**

100 vi. —— *Sufficient memorandum in writing of agreement.*]—*Held :* an Order in Council ought to be regarded as a sufficient expression in writing of an agreement to pay on the part of the Crown.—LAMARRE & CO. *v.* R., [1923] Exch. C. R. 174.—**CAN.**

100 vii. —— *Authorising contract—Scope of authority.*]—*Held :* an Order in Council authorising the Minister to enter into a contract for the removal of clay, sand & gravel, tendered for at a given price, does not carry with it any authority to add anything to or to vary the scope of the contract beyond the ambit of the Order in Council. The introduction of a clause purporting to be part of the authorised contract, throwing upon the contractor the obligation to remove, at the same price, material of another class than that mentioned in the Order in Council, is beyond the authority conferred by said Order in Council.—NATIONAL DOCK & DREDGING CORPN., LTD. *v.* R., [1929] Ex. C. R. 40.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—A.

sm. *Whether power to begin action in county court by information.*]—R. *v.* COLMAN, [1930] 1 D. L. R. 523; [1929] 3 W. W. R. 385; 52 Can. C. C. 186; 38 Man. L. R. 330.—**CAN.**

so. *Department of Attorney-General—Manitoba Temperance Act, s.* 68.]—The Department of the A.-G. referred to in the above sect. is to be distinguished from the A.-G.—R. (THOMPSON) *v.* HAMMATT (Man.), [1926] 3 W. W. R. 350.—**CAN.**

sp. *Meaning of—In statute.*]—Wherever the words "Attorney-General" are used without qualification in a code or in a statute of Quebec, they have reference to the Attorney-General for Quebec.—PEOPLE'S HOLDING CO., LTD. *v.* A.-G. OF QUEBEC, [1931] S. C. R. 452.—**CAN.**

sq. *Misapplication of powers delegated by Provincial Legislature.*]—The delegate of a provincial Legislature can no more usurp indirectly the functions of the Parliament of Canada than can the Legislature itself, & it is the duty of the cts. to interfere to protect the subject from such an illegitimate exercise of powers founded upon oblique motives. On appeal from the dismissal of an action for an injunction restraining the defts. from taking further proceedings under Security Frauds Prevention Act, 1930, in alleged pursuance of "delegated authority" under sect. 10 of said Act :—*Held :* deft. A.-G. by & through his delegated representative had unconstitutionally misapplied the powers delegated to him, in that the purpose of his proceedings was to aid a criminal prosecution, something which was not contemplated by the Act, with the result that the federal field had been just as much invaded, even if indirectly, as if the primary invasion had been accomplished directly by the passing of an Act which in its terms was a violation of the B. N. A. Act.—MCGEE *v.* POOLEY, [1931] 3 W. W. R. 65, 140; 4 D. L. R. 475; 56 Can. C. C. 325; 44 B. C. R. 338.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 4.

st. *Acting Deputy Attorney-General.*]—R. (GOODMAN) *v.* OLSON, [1933] 2 W. W. R. 449.—**CAN.**

lands, etc.; & it was enacted that, in any such action, they should be called by the name of "the principal officers & comrs. of His Majesty's navy," without naming any of them; & that such action or suit should not abate by the death, resignation, or removal of such comrs., or any of them. By subsequent statutes, the powers & authorities of those comrs. were transferred to & vested in "the comrs. for executing the office of Lord High Admiral of the United Kingdom." A writ of summons, addressed to "the comrs. for executing the office of Lord High Admiral of the United Kingdom," requiring them to appear in an action of debt at the suit of the pltf., was served upon A., one of the comrs., & upon no one else. Upon a motion, on behalf of A., to set aside the writ, & the copy & service thereof, for irregularity, the affidavits disclosed that the action was brought to recover arrears of half-pay alleged to be due to pltf.:—*Held:* that it was not competent to the ct., in dealing with such a motion, to enter into the consideration of whether the action was maintainable or not; for that, inasmuch as 1 & 2 Geo. 4, c. 93, s. 9, enabled some actions to be brought against the comrs. by the description contained in this writ, there was no irregularity in the process itself; & to determine, upon a summary application, that the cause of action was not within the statute, would be to deprive pltf. of his right to review their decision by writ of error.

The comrs. of the navy are not a corpn.: *semble*, therefore, that the proper mode of serving them with process would be by delivering a copy to each of them.—WILLIAMS *v.* ADMIRALTY COMRS. (1851), 11 C. B. 420; 2 L. M. & P. 456; 20 L. J. C. P. 245; 17 L. T. O. S. 200; 16 Jur. 42; 138 E. R. 536.

153b. —— —— **Service of writ.**]—WILLIAMS *v.* ADMIRALTY COMRS., No. 153a, *ante*.

155. *Add. Annotation:*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

157a. **Air Council — Whether corporation.**]—*Semble:* the Air Council is not a corpn.—MACKENZIE-KENNEDY *v.* AIR COUNCIL, [1927] 2 K. B. 517; 96 L. J. K. B. 1145; 138 L. T. 8; 43 T. L. R. 733; 71 Sol. Jo. 633, C. A.

Part IX.—The Crown in relation to the Law.

175a. ——.]—ROOKEWOOD'S CASE (1696), Holt, K. B. 683; 90 E. R. 1277; *sub nom.* R. *v.* ROOKWOOD, 13 St. Tr. 139, 186.

Annotations:—**Refd.** R. *v.* Kinloch (1746), 18 State Tr. 39[illegible]; Howard *v.* Shipley (1803), 4 East, 180; R. *v.* Duffy (1849), 7 State Tr. N. S. 795; Mulcahy *v.* R. (1867), 15 W. R. 446.

214a. ——.]—R. *v.* CROSBY (*alias* PHILIPS) (1695), 1 Ld. Raym. 39; 5 Mod. Rep. 15; 12 Mod. Rep. 72; 2 Salk. 689; 12 State Tr. 1291; Holt, K. B. 753; Skin. 578; 91 E. R. 923.

Annotations:—**Refd.** R. *v.* Davis & Carter (1695), 5 Mod. Rep. 74; The Ville de Varsovie (1817), 2 Dods. 174; Hinks' Case (1845), 1 Den. 84; *Re* Barber (1850), 15 L. T. O. S. 500.

218a. —— —— ——.]—In 1833, A. was convicted of felony & transported. At this time his wife was entitled to a fund, contingently on her surviving her mother. In 1846, A. obtained a conditional pardon, available in all places except the United Kingdom. The mother died in 1838, & the wife in 1852. On a petition by the Crown for payment, the ct., without deciding the right, merely ordered payment to the administrator of the wife.—*Re* HARRINGTON'S TRUSTS (1860), 29 Beav. 24; 54 E. R. 533.

233. *Add. Annotations:*—**Refd.** Nichol *v.* Fearby, Nichol *v.* Robinson, [1923] 1 K. B. 480; A.-G. *v.* Still (1927), 44 T. L. R. 102.

240a. **Claim that right of administration of premises vested in Crown—Crown must be represented.**]—Government House, Sydney, was built upon Crown land about 1845 as a residence for the Governor of New South Wales, &, with the stables of a former residence, was continuously so used until 1900. From 1900 to 1912, by an arrangement between the Governments of the

---

PART VI. SECT. 10.

sb. *No power to waive statutory conditions.*]—A department of the Govt. cannot waive the performance of any of the conditions imposed by the legislature.—PECK *v.* R. (1884), 1 B. C. R. pt. 2, 11.—**CAN.**

sc. *Land Settlement Board.*]—The Land Settlement Board created by Land Settlement & Development Act, 1924 (c. 128), is a department of the Government, & there being nothing in said Act or other statutes which gives it a right to sue or be sued, no action lies against it for acts done in its official capacity.—RATTENBURY *v.* LAND SETTLEMENT BOARD, [1928] 3 D. L. R. 382; [1928] 2 W. W. R. 475; 39 B. C. R. 523; *on appeal*, [1929] 1 D. L. R. 242.—**CAN.**

sf. *Education Board.*]—An Education Board is not a Department of State, a servant or statutory agent of the Crown, or *in consimili casu*, & so is not entitled to the prerogatives of the Crown, including the prerogative of not being bound by a statute unless so provided in the statute.—CHRISTCHURCH CITY CORPN. *v.* CANTERBURY EDUCATION BOARD, [1933] N. Z. L. R. Supp. 22.—**N.Z.**

sk. *No right of action inter se.*]—The Administrator of Natal sued the South African Railways & Harbours in delict for damages. On exception to the declaration that it showed no cause of action:—*Held:* the Provincial administration represents the Crown in the Provincial govt. of Natal, &, as the Railways & Harbours administration is also a department of the Crown, & one department cannot sue another, the exception was well founded.—NATAL PROVINCIAL ADMINISTRATION *v.* SOUTH AFRICAN RAILWAYS & HARBOURS, [1936] N. L. R. 643.—S. **AF.**

PART IX. SECT. 2, SUB-SECT. 1.

sb. *Power to pardon—By whom given.*]—*Qu.:* is the power of conferring by legislation upon the representative of the Crown, such as a Colonial Governor, the prerogative of pardoning, in the Imperial Parliament only, or, if not, in what legislature does it reside.—A.-G. FOR CANADA *v.* A.-G. OF PROVINCE OF ONTARIO (1893), 23 Can. S. C. R. 458.—**CAN.**

sc. *Not dependent on consent.*]—The Governor-General on the exercise of the royal prerogative may release a convict from prison without his consent.—*Re* ROYAL PREROGATIVE OF MERCY UPON DEPORTATION PROCEEDINGS, [1933] 2 D. L. R. 248; S. C. R. 269; 59 C. C. C. 301.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.

sk. *Amnesty—Terms exceeding six months—Sentence imposed after amnesty but including imprisonment served before.*]—An amnesty reducing terms exceeding 6 months applies to a 20 months sentence imposed after the amnesty but including imprisonment served prior to the sentence.—JACOBS *v.* SEGUIN, [1936] 2 D. L. R. 21; 65 Can. C. C. 147.—**CAN.**

Commonwealth & of the State, the premises were occupied by the Governor-General, & another residence was provided for the Governor of the State. In 1912, this arrangement having come to an end, the State Government threw the grounds attached to the house open to the public & took steps to convert the stables into a school of music. By the New South Wales Constitution Act, 1855 (c. 54), s. 2, all "waste lands" in the then colony were placed under the control of the local Legislature. The A.-G. for New South Wales, at the relation of residents in the State, filed an information praying for declarations that the house & grounds were vested in His Majesty, dedicated to the public purpose of a residence for the Sovereign's representative in New South Wales, & that neither the Governor of New South Wales nor the Governor in Council had power to interfere with or alter that purpose, & for an injunction restraining the resp. (as representing the State Government & ministers) from otherwise using the house & grounds:—*Held:* (1) the suit was not maintainable, since no trust had been declared or charity established, & the action complained of was that of the State Executive & within its competence, whether the house & grounds were "waste lands" within above sect. or not; (2) the proceedings were not properly constituted since it was claimed that the right of administration of the premises was in the Crown in the right of the United Kingdom, but the Crown in that right was not represented before the cts.—A.-G. FOR NEW SOUTH WALES *v.* WILLIAMS, [1915] A. C. 573; 84 L. J. P. C. 92; 112 L. T. 785; 31 T. L. R. 171, P. C.

264a. —— ——.]—BIDGOOD *v.* DAVIES (1826), 6 B. & C. 84; 9 Dow. & Ry. K. B. 153; 5 L. J. O. S. K. B. 64; 108 E. R. 384.

266. For "—— **Chaplain to King**" read "—— **Royal chaplain.**"

266a. *S. P.* WINTER *v.* DIBDIN (1844), 13 M. & W. 25; 2 Dow. & L. 211; 13 L. J. Ex. 263; 3 L. T. O. S. 164; 153 E. R. 11.

Annotation:—**Apld.** Harvey *v.* Dakins (1849), 3 Exch. 266.

272. *Add. Citation:*—48 L. J. Q. B. 455.

284. *Add. Citations:*—66 Sol. Jo. 218; *affd.*, [1922] P. 122.

287. *Add. Annotations:*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704; *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

289. *Add. Annotation:*—*As to* (2) **Refd.** *Re* Carnarvon Harbour Acts, 1793-1903, Thomas *v.* A.-G., [1937] Ch. 72.

290. *Add. Annotation:*—**Refd.** Wigg *v.* A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.

291. *Add. Annotation:*—**Consd.** A.-G. for Straits Settlmts. *v.* Pang Ah Yew, [1925] A. C. 555.

PART IX. SECT. 5, SUB-SECT. 5.

sd. *In proceedings concerning questions of legislative jurisdiction.*]—Where, in proceedings between private suitors, the validity of an Act of a provincial legislature is questioned, the A.-G. of the province will be heard on the question of provincial legislative jurisdiction.—CITIZENS INS. CO. *v.* JOHNSTON, Cass. Dig. 2nd. ed. 678.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 1.

h (p. 523) i. —— *For tort.*]—An action sounding in tort does not lie against the Crown.—CREELMAN & VERGE *v.* R. (1920), 62 D. L. R. 390; 20 Exch. C. R. 198.—**CAN.**

h (p. 523) ii. *S. P.* YATES *v.* R. (1920), 20 Exch. C. R. 175.—**CAN.**

h (p. 523) iii. *S. P.* MANSEAU *v.* R., [1923] 1 D. L. R. 25; [1923] Exch. C. R. 21.—**CAN.**

h (p. 523) iv. —— ——.]—An action in tort does not lie against the Crown, except under special statutory authority.—THERIAULT *v.* R. (Que.) (1917), 16 Exch. C. R. 253; 39 D. L. R. 705.—**CAN.**

h (p. 523) v. —— —— ——.]—In an action against the Govt. of Ceylon to recover for damage caused to a steamship by grounding in Colombo harbour in a berth to which she had been taken by a Govt. pilot:—*Held:* it was not necessary to decide whether in Ceylon the Crown could be made liable in tort under Roman Dutch law, but having regard to the considered decision of the Supreme Ct. of Ceylon in *Colombo Electric Tramway Co.* v. *A.-G.*, & inasmuch as the question in Ceylon was whether any particular part of Roman Dutch law had been recognised there, very clear arguments would be required to induce the Judicial Committee to reverse that decision.—BRITISH PETROLEUM CO., LTD. *v.* A.-G. FOR CEYLON, [1926] A. C. 147; 95 L. J. P. C. 86; 134 L. T. 305; 42 T. L. R. 166.—**CEYLON.**

h (p. 523) vi. —— *For fraud.*]—It is not competent to prove that the Crown has been guilty of fraud; nor can the Crown be held liable for the fraud of its officers.—*Re* FROST BROTHERS, [1925] 2 D. L. R. 339; [1925] 2 W. W. R. 459.—**CAN.**

291 xiv. —— —— ——.]—An action of damages does not lie against the Crown in respect of a wrongful act committed by one of its servants.—MACGREGOR *v.* LORD ADVOCATE, [1921] S. C. 847.—**SCOT.**

291 xv. —— —— ——.]—*Held:* (1) no action in tort will lie against the Crown except where & when such right of action is given by Statute; (2) the act of the Crown in paying the expenses of & incidental to the funeral & burial, is referable to the grace & bounty of the Crown & did not constitute an acknowledgment by it of a right of action.—JOUBERT *v.* R., [1931] Ex. C. R. 113; 4 D. L. R. 164.—**CAN.**

j (p. 524) i. —— —— —— ——.]—WELDEN *v.* SMITH, [1924] A. C. 484.—**AUS.**

j (p. 524) ii. —— —— —— ——.]—ROBINSON *v.* STATE OF SOUTH AUSTRALIA, [1929] A. C. 469, P. C.—**AUS.**

y (p. 524). Add "*revsd.*, 30 S. C. R. 42."

y (p. 525) i. —— —— —— ——.]—LECLERC *v.* R. (1920), 62 D. L. R. 324; 20 Exch. C. R. 236.—**CAN.**

y (p. 525) ii. —— —— —— ——.]—*Held:* the Crown was liable in damages under Public Utilities Act, s. 31, for an accident caused by a fallen telephone wire lying on the public highway, being part of a system of wires erected & maintained by the provincial Department of Railways & Telephones.—ZORNES *v.* R., HAMILTON *v.* R., [1922] 2 W. W. R. 1179; 67 D. L. R. 733.—**CAN.**

y (p. 525) iii. —— —— —— ——.]—The suppliant was wounded by a bullet fired, during target practice, from the rifle range at Cote St. Luc, in the District of Montreal. He filed a petition of right claiming damages for the injury he thereby sustained:—*Held:* the rifle range was not a "public work," within Exchequer Ct. Act, 50 & 51 Vict. c. 16 (D.), s. 16 (c), & the Crown was not liable.—LAROSE *v.* R. (1900), 6 Exch. C. R. 425.—**CAN.**

y (p. 525) iv. —— —— ——.]—About 11.30 a.m. on Feb. 10, 1928, suppliant, while entering the Ottawa Post Office to purchase stamps, was struck on the head by an icicle falling from the coping of that building, causing her injury. An employee of the Public Works Dept. who had full charge & care of the roofs of Govt. buildings, especially that of the Post Office, & whose duty it was to remove snow & icicles therefrom, passed the building twice on the morning of the accident, first between 8 & 8.30 & again between 9.30 & 10 o'clock, but claims no snow or ice needed to be removed:—*Held:* the omission of the officer, whose duty it was to keep roofs free of snow & ice, to notice the presence of icicles & to remove them, when he had ample time to do so before the accident, constituted negligence, making the Crown liable for the damage resulting from such careless omission.—JOHNSON *v.* R., [1931] Ex. C. R. 163.—**CAN.**

y (p. 525) v. —— —— —— ——.]—*Contributory negligence.*]—At about 9 p.m. on Nov. 15, 1921, one C. drove on to a wharf, Montreal Harbour, with his two children to visit some friends who were employed in transferring freight from a shed on the wharf, rented to private companies, to a warehouse in the city. C. had not been sent by his employer, had no business there & went solely to amuse himself. C. had been drinking & was under the influence of liquor. He was making a nuisance of himself & when told to go, got into his car and drove straight into the canal, & all were drowned:—*Held:* as C. had no business on the wharf on the evening of the accident & was there by tolerance, the Crown under such circumstances was under no obligation or duty to him. The accident was the result of deceased's inebriated condition & he was the victim of his own condition & conduct.—LEGAULT *v.* R., [1931] Ex. C. R. 167.—**CAN.**

y (p. 525) vi. —— —— —— ——.]—There is no recourse against the Crown for injury to the person, except in cases coming within the ambit of

292. *Add. Annotations :—As to* (1) **Refd.** Wigg *v.* A.-G. for Irish Free State, [1927] A. C. 674. *As to* (2) **Distd.** Kynaston *v.* A.-G. (1933), 49 T. L. R. 300. **Consd.** *Re* Carnarvon Harbour Acts, 1793–1903, Thomas *v.* A.-G., [1937] Ch. 72. **Refd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217; Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208; Thomas *v.* A.-G., [1936] 2 All E. R. 1325. *Generally*, **Refd.** Jaeger *v.* Jaeger Co. (1927), 44 R. P. C. 437.

293. *Add. Annotation :*—**Expld.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

293a. Indemnity Act as defence.]—In 1918 the suppliant, who was then a jewelry dealer in Petrograd, deposited certain jewelry with the British consul, who was in charge of the embassy premises, & owing to difficulties in the way of the consular officers obtaining money the suppliant agreed that the consul might sell the jewelry & use the proceeds for His Majesty's service. The jewelry was put in a locked leather bag kept in a safe at the embassy. Persons claiming to be representatives of the Soviet Govt. entered the embassy & arrested everybody, & afterwards the bag was found to have been cut open & the contents taken. In 1926 the suppliant claimed the value of the jewelry, but the Foreign Secretary repudiated liability, & the suppliant brought a petition of right. The A.-G., by demurrer, submitted that there was no ground of claim as the facts disclosed showed the absence of negligence, &, secondly, he put in an answer & plea that the claim was barred by the Indemnity Act, 1920 (c. 48) :—*Held :* (1) the facts stated in the petition did not negative the possibility of the proof of negligence & the demurrer must be overruled; (2) the claim was barred by the Indemnity Act, 1920 (c. 48), & there must be judgment for the Crown on the answer & plea relating to that Act.—BUCKNALL *v.* R. (1930), 46 T. L. R. 449, C. A.

305. *Add. Citation :*—48 L. J. Q. B. 455.

---

sub-sect. (c) of sect. 19 of Exchequer Ct. Act, R. S. C., 1927 (c. 34).—ROCHON *v.* R., [1932] Ex. C. R. 161.—**CAN.**

y (p. 525) **vii.** —— —— —— ——.]—Suppliant's motor-boat collided with a buoy at the mouth of the Bracebridge river, in the Muskoka Lakes region, on which there was no light, & by his petition sought to recover $500 by way of damages to the boat, alleged to be the result of the negligence of an officer or servant of the Crown while acting within the scope of his duties or employment upon a public work, to wit, in not seeing that the buoy carried a light :—*Held :* the buoy in question, was not a public work within the meaning of sect. 19, ss. "C" of Exchequer Ct. Act, &, in consequence, suppliant was not entitled to the relief sought by his petition of right.—CAPON *v.* R., [1933] Ex. C. R. 54.—**CAN.**

y (p. 525) **viii.** —— —— —— ——.]—Specially equipped motor cars, owned by the Govt. of Canada, are employed by the Radio Branch of the Department of Marine, in the detection & elimination of radio inductive interference. Two employees of the Radio Branch were returning to Ottawa in such a car, from a tour of inspection, when they stopped the car on one side of the travelled road to wipe the windshield which had become clouded due to weather conditions. An oncoming car, in which the son of the suppliants was a passenger, collided with the Govt. car, & he was killed :—*Held :* the Govt. owned motor car, in occupation & control of the Govt. employees on the occasion in question, was a "public work" within Exchequer Ct. Act, R. S. C., 1927, s. 19 (*c*); the Govt. employees in the said car were, at the time of the collision in question, officers or servants of the Crown acting within the scope of their duties or employment upon a public work, within Exchequer Ct. Act; the ct. has jurisdiction to entertain the action.—DUBOIS *v.* R., [1934] Ex. C. R. 195; [1935], 2 D. L. R. 314; *revsd.*, [1935] S. C. R. 378; 3 D. L. R. 209.—**CAN.**

y (p. 525) **ix.** —— —— —— ——.]—One K., an enlisted soldier in the Canadian Army Service Corps, engaged as a transport driver, stationed at Kingston, drove a motor truck, loaded with supplies, from Kingston & delivered the same to the Royal Air Force at Trenton. Whilst returning to Kingston the motor truck driven by K. negligently collided with a motor truck in which M. was a passenger, causing his death. Suppliants are the widow & step-mother of M. :—*Held :* K. was engaged in a public work & was acting within the scope of his duties as a servant of the Crown, at the time of the accident.—MOSCOVITZ *v.* R., [1934] Ex. C. R. 188; [1935] 2 D. L. R. 308; *revsd.*, [1935] S. C. R. 404; 3 D. L. R. 231.—**CAN.**

y (p. 525) **x.** —— —— —— ——.]—An automobile belonging to R. C. M. P. is not a public work & the Crown is not liable for injuries caused by the negligence of the constable driving it.—TOMAN *v.* R., [1935] 2 D. L. R. 289.—**CAN.**

y (p. 525) **xi.** —— —— —— ——.]—The immunity of the Crown in respect of tortious acts of the Crown's servants is not destroyed by the fact that the Temiskaming & Northern Ontario Railway Commission administering a public undertaking of the Crown may sue & be sued.—PECCIN *v.* LONEGAN, [1934] 4 D. L. R. 776; O. R. 701.—**CAN.**

y (p. 525) **xii.** —— —— —— ——.]—About 9 a.m. on Jan. 23, 1934, M. when going to the Post Office in the town of St. Laurent on business & while walking on the sidewalk leading to the Post Office fell & broke his wrist. It had been raining during the night & the sidewalk was covered with ice. At the place where M. fell there was a depression in the cement walk which held the water on the ice. The caretaker had spread sawdust on the walk instead of the sand provided for the purpose, & this did not adhere to the ice but floated on the water :—*Held :* a Post Office is a public work within the statute; the act of the caretaker in spreading sawdust where water was lying when instructions had been given to put sand, was negligence on his part which bound the Crown & rendered it liable in damages.—LUDGER MARCOUX *v.* R., [1937] Ex. C. R. 23.—**CAN.**

y (p. 525) **xiii.** —— —— —— ——.]—Suppliant suffered personal injuries & loss by breaking through a plank on the sidewalk of a roadway leading to & from the north end of Chaudiere bridge, an interprovincial bridge crossing the Ottawa river, & connecting the city of Ottawa, Ontario, & the city of Hull, Quebec. By her petition of right suppliant charged "that the injuries & loss so caused to suppliant are a direct result of the negligence of an officer or servant of the Crown while acting within the scope of his duties or employment upon a public work. The said negligence consists particularly of failure to maintain or keep in proper repair the plank sidewalk aforesaid" :—*Held :* liability of the Crown for damages for any death, or injury to the person or to property, is qualified & limited by the Exchequer Ct. Act & cannot be enlarged except by express words or necessary implication, & liability for injury resulting from nonfeasance is excluded.—JOKELA *v.* R., [1937] Ex. C. R. 132; [1938] 1 D. L. R. 559.—**CAN.**

y (p. 525) **xiv.** —— —— —— ——.]—The penitentiary of St. Vincent de Paul is a "public work" within Exchequer Ct. Act.—LABELLE *v.* R., [1938] 1 D. L. R. 808.—**CAN.**

h (p. 525) **i.** —— *Services rendered to committee.*]—The Crown is not liable upon a claim for the services rendered by any one to a committee.—KIMMITT *v.* R. (1896), 5 Exch. C. R. 130.—**CAN.**

ff **i.** —— *For excess of salaries fixed & approved by Governor-General in Council.*]—BURROUGHS *v.* R. (1891), 20 S. C. R. 420.—**CAN.**

ff **ii.** —— *Wrongful acts of police in course of duty.*]—Members of the police force are *prima facie* servants of the Crown, & by virtue of the Crown Liabilities Act, 1910, the Crown is *prima facie* liable for wrongful acts committed by a member of that Force in the course of his duty. In order to escape liability it is not sufficient for the Crown to show that the police officer was performing a statutory duty. To take the case out of the Act there must be a lack of one or more of the essentials of the law relating to master & servant such as that the police officer was performing a duty of a personal nature which made him independent of the control of the Crown *pro hac vice*.—UNION GOVT. *v.* THORNE, [1930] App. D. 47.—**S. AF.**

PART IX. SECT. 6, SUB-SECT. 2.

304 ii. ——.]—R. *v.* PERREAULT (1922), 66 D. L. R. 671; 21 Exch. C. R. 355.—**CAN.**

sd. —— *Reference to head of department.*]—Under Exchequer Ct. Act of Canada, s. 38, any claim against the Crown may be prosecuted by petition of right or referred to the ct. by the head of the department in connection with the administration of which the claim arises. A claim by applts. for compensation in respect of the repudiation of a contract was so referred by the Minister of Railways & Canals. Subsequently the Crown applied for leave

317. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

324a. Civil action against Crown servant—By private person—Discretion of court to order trial at bar.]—ANDERSON *v.* GORRIE (1894), 10 T. L. R. 383, C. A.

339a. ——.]—In proceedings by information on the revenue side of the K. B. Div. claiming payment of income tax, the taxpayer cannot set off a debt due to him from the Crown.—A.-G. *v.* GUY MOTORS, LTD., [1928] 2 K. B. 78; 97 L. J. K. B. 421; 139 L. T. 311.

SUB-SECT. 7.—COSTS (p. 530).

See, now, Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36).

344. *Add. Annotations :*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. **Refd.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

345. *Add. Annotation :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

346. *Add. Annotation :*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

348a. —— **In proceedings under Patents & Designs Acts.**]—Appcts. applied by originating summons under Patents & Designs Act, 1907 (c. 29), s. 29, as amended by Patents & Designs Act, 1919 (c. 80), s. 8, for an inquiry as to the remuneration proper to be paid to them for the user by a Govt. department of the patented invention of which they were the registered owners. In the course of the proceedings, preliminary to hearing of the motion, orders were made in which the litigation was treated, with the acquiescence of both litigants, as subject to the ordinary rule as to costs, & on two occasions orders were made requiring appcts. to give security for costs. After the hearing had proceeded for some time appcts. withdrew their claim in view of a prior trial of the invention found to have been made on behalf of the Govt. which, by virtue of the proviso to Patents & Designs Act, 1919, s. 8, entitled the Govt. to make use of it thereafter without payment. On the question how the costs ought to be borne :—*Held :* (1) under that part of Patents & Designs Act, 1919, which authorised proceedings against a Govt. department, there was no express mention of costs, & the authority to deal with them was derived from the general jurisdiction of the ct., & the ct. had, therefore, no authority to depart from the common law rule that the Crown neither paid nor received costs, unless the special circumstances of the particular case justified it in so doing; (2) having regard to the orders that had been made before the hearing of the motion, & particularly to the two orders for security for costs, the ct. would infer an agreement between the parties that each of them should be treated as ordinary litigants as regarded liability for costs.—*Re* LETTERS PATENT NO. 139,207, *Re* CARBONIT AKT.,

to withdraw the reference :—*Held :* the claim arose "in connection with the administration" of the Department of Railways & Canals & came within sect. 38, & leave must be refused.—DOMINION BUILDING CORPN., LTD. *v.* R., [1930] A. C. 90; 46 T. L. R. 22, P. C.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 3.

s1. *Right to plead & demur together.*]—In a common law action the Crown is entitled to plead & demur together without obtaining leave of the ct.—DEMPSTER *v.* RICHARDSON (1931), 24 Tas. L. R. 75.—**AUS.**

PART IX. SECT. 6, SUB-SECT. 4.

317 i. *Addition of Attorney-General—Action affecting rights of Crown—Petition of right not applicable.*]—This was an appeal by the A.-G. for Manitoba from an order by which he was added as a deft. to an action brought against the University of Manitoba to enforce agreements under which pltfs. had agreed to donate certain land as a site for the University on the condition that the University expended a certain amount of money on the grounds & in the erection of buildings. Pltfs. had transferred to the University all of the land originally contemplated except 25 acres which, under an agreement with the provincial Govt., they transferred to the province as a site for a school for the deaf. The agreements with the University were confirmed by an order-in-council which also authorised the execution of the agreement made with the Crown. Pltfs. alleged that these agreements were interdependent, & that there was in reality a tri-partite bargain whereby the Govt. entered into the arrangement previously made by the Governors of the University, furnishing $500,000 for a school for the deaf as part of the general scheme for the erection of educational buildings. This contention the A.-G. denied. Pltfs. asked for specific performance & for an injunction restraining the University from doing anything at variance with its contract with pltfs., & from accepting any money from the Crown for the erection or maintenance of university buildings elsewhere than on said site. No relief was asked for against the Crown; all that was sought with respect to it was a declaratory judgment that the contracts & order-in-council were not *ultra vires :*—*Held :* the appeal should be dismissed, for the reasons : (*a*) the A.-G. should be a party to this action to represent public interests which he alone can serve. Moreover his presence was necessary to make any declaratory judgment which might be given binding upon the Crown; (*b*) petition of right is not the proper remedy in this case, for there was no direct claim made against the Crown; (*c*) the case falls within the ambit of cases where the A.-G. is properly joined.—TUXEDO HOLDING CO., LTD. *v.* UNIVERSITY OF MANITOBA & A.-G. FOR MANITOBA, [1930] 1 W. W. R. 464; 3 D. L. R. 250; 38 Man. L. R. 506; *affg.*, [1930] 1 D. L. R. 435.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 6.

337 vi. ——.]—Estoppel cannot be invoked against the Crown.—R. *v.* TESSIER (1921), 21 Exch. C. R. 150.—**CAN.**

339 iii. ——.]—A subject has no right to set off in an action brought by the Crown.—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) *v.* BOURKE, [1925] 3 D. L. R. 537; [1925] 2 W. W. R. 397; 19 Sask. L. R. 483.—**CAN.**

339 iv. ——.]—A right of set-off does not exist against the Crown.—R. *v.* BRITISH AMERICAN BANK NOTE CO. (1901), 7 Exch. C. R. 119.—**CAN.**

o i. ——.]—A counterclaim cannot be pleaded against the Crown as of right.—A.-G. FOR ONTARIO *v.* RUSSELL (1921), 64 D. L. R. 59; 49 O. L. R. 103.—**CAN.**

o ii. ——.]—A subject has no right to counterclaim in an action brought by the Crown.—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) *v.* BOURKE, [1925] 3 D. L. R. 537; [1925] 2 W. W. R. 397; 19 Sask. L. R. 483.—**CAN.**

sm. *Whether action brought in right name.*]—In an action concerning transactions under Soldiers Settlement Act, defts. contended that the action should have been brought in the name of the Soldiers Settlement Board & not in that of the Crown :—*Held :* action properly instituted in that of the Crown.—R. *v.* SAYWARD TRADING & RANCHING CO., LTD., [1924] Exch. C. R. 15.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 7.—A.

sp. *Crown Costs Act, R. S. B. C.,* 1911 (*c.* 61)—*Effect of.*]—*Held :* not to apply to the Crown in right of Dominion, the statute not making it clear in express terms or by necessary intendment that the reference is to the Crown other than in right of the province only.—MONTREAL TRUST CO. *v.* R., [1924] 1 D. L. R. 1030; 1 W. W. R. 657; 33 B. C. R. 280.—**CAN.**

sq. *Crown Costs Act,* R. S. B. C., 1924.]—Crown Costs Act, R. S. B. C., 1924, forbids the awarding of costs either in favour of or against the Crown as represented by the Govt. of the province of British Columbia.—R. *v.* CONWAY (B. C.), [1929] 3 W. W. R. 268; 52 Can. Crim. Cas. 161.—**CAN.**

st. ——.]—Crown Costs Act, R. S. B. C., 1924, does not apply to a prosecution under a Dominion Act. On dismissing an appeal from a conviction under such an Act, costs were, therefore, given to the Crown.—R. *v.* TRONSON, [1932] 1 W. W. R. 537; 57 C. C. C. 383.—**CAN.**

[1924] 2 Ch. 53; 93 L. J. Ch. 309; 131 L. T. 89; 40 T. L. R. 421; 68 Sol. Jo. 476; 41 R. P. C. 203, C. A.

Annotation:—As to (1) **Consd.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

—— ——.]—*See, generally,* PATENTS.

348b. —— —— **As to validity of patent—Action against Air Council.**]—*Held:* there was no reason for departing from the ordinary rule that the Crown neither paid nor received costs.—ROWLAND *v.* AIR COUNCIL, [1923] W. N. 72.

367. *Add. Annotation:*—**Apld.** Pathe of France *v.* Harris, Same *v.* Mansbridge (1926), 42 T. L. R. 760.

368. *Add. Annotation:*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

373. *Add. Annotations:—As to* (1) **Apld.** Sterling Trust *v.* I. R. Comrs., I. R. Comrs. *v.* Sterling Trust (1925), 12 Tax Cas. 868. **Consd.** Birmingham Corpn. *v.* I. R. Comrs., [1929] 2 K. B. 187; Central London Railway *v.* I. R. Comrs., London Electric Railway *v.* I. R. Comrs., Metropolitan Railway *v.* I. R. Comrs. (1934), 151 L. T. 333. **Refd.** Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs. (1930), 99 L. J. K. B. 330.

373a. —— **Arbitration to assess compensation for requisitioned goods.**]—In assessing the compensation to be paid for bacon requisitioned by the Food Controller under Defence of the Realms Regulations:—*Held:* the arbitrator had no power to order the Crown to pay the costs of the reference & award.—SWIFT & Co. *v.* BOARD OF TRADE, [1926] 2 K. B. 131; 95 L. J. K. B. 834; 135 L. T. 391; 42 T. L. R. 461, C. A.

Annotation:—**Refd.** Inglewood Pulp & Paper Co. *v.* New Brunswick Electric Power Commission, [1928] A. C. 492.

376. *Add. Annotation:*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

382. *Add. Annotation:*—**Refd.** R. *v.* Provisional Government (General of the Forces) (1922), 67 Sol. Jo. 125.

384a. —— ——.]—WOLFE TONE'S CASE (1798), 27 State Tr. 613.

Part XII.—The Crown in Foreign Relations.

387. *Add. Annotations:—As to* (1) **Folld.** White, Child & Beney *v.* Simmons, White, Child & Beney *v.* Eagle, Star & British Dominions Insce. (1922), 127 L. T. 571. **Consd.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8; The Arantzazu Mendi, [1938] 3 All E. R. 333. **Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte de Mulhouse (1924), 93 L. J. K. B. 1098; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94; Banco de Bilbao *v.* Rey, [1938] 2 All E. R. 253; Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 384. *As to* (2) **Apld.** The Jupiter (1924), 93 L. J. P. 156. *Generally,* **Refd.** Musmann *v.* Engelke (1927), 43 T. L. R. 685; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745; Compania Naviera Vascongada *v.* Cristina S.S., [1937] 4 All E. R. 313.

387a. —— —— ——]—The Bank of Ethiopia was formed under the law of Ethiopia in 1931. It was a bank of issue & was the only bank in the Ethiopian Empire. In the autumn of 1935 hostilities began between Italy & the Ethiopian govt. & on May 1, 1936, the Emperor left the country. On May 5, 1936, the Italian army entered the capital & thereafter the affairs of the bank were carried on under the supervision of the representative of the Italian authorities. In Dec. 1936, the British govt. recognised the Italian govt. as being the *de facto* govt. of the area then under Italian control. On June 20, 1936, a govt. decree, valid according to the law as recognised & administered by the *de facto* govt., had placed the bank in liquidation & appointed a liquidator:—*Held:* (1) it was the duty of the ct. to treat the acts of the *de facto* govt. with all the respect due to the acts of a duly recognised foreign sovereign state, & this was not affected by the fact that the British govt. in addition to recognising a *de facto* govt., recognised the Emperor as a *de jure* monarch; (2) the Bank of Ethiopia had been dissolved under or by virtue of the laws of the country under which it was incorporated, & had accordingly ceased to exist, except in so far as might be necessary for the liquidation of its affairs; (3) no action could be brought in the name of the Bank of Ethiopia otherwise than by or under the authority of the duly constituted liquidator of the bank.—BANK OF ETHIOPIA *v.* NATIONAL BANK OF EGYPT & LIGUORI, [1937] Ch. 513; [1937] 3 All E. R. 8; 106 L. J. Ch. 279; 157 L. T. 428; 53 T. L. R. 751; 81 Sol. Jo. 479.

Annotations:—As to (1) **Consd.** Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 677. **Refd.** Banco de Bilbao *v.* Rey, [1938] 2 All E. R. 253.

PART IX. SECT. 6, SUB-SECT. 7.—C.

† i. —— *On appeal.*]—Under Crown Costs Act, R. S. B. C., c. 61, costs of an appeal cannot be given against the Crown, though costs in the lower ct. may by direction of the ct.—R. *v.* CASKIE (1922), 70 D. L. R. 215; 38 Can. Crim. Cas. 198.—**CAN.**

† ii. —— —— *Under Fire Marshal Act,* 1921 (c. 15).]—A local assistant to the fire marshal in carrying out the duties imposed on him by the above Act is an "officer, servant or agent of & acting for the Crown" within Crown Costs Act, R. S. B. C., 1911 (c. 61), & costs of an appeal to the county ct. may be given against a local assistant to the fire marshal.—WATSON *v.* HOWARD, [1924] 4 D. L. R. 564; [1924] 3 W. W. R. 494; 34 B. C. R. 449.—**CAN.**

† iii. —— —— *Under Summary Convictions Act, R. S. B. C.,* 1924 (c. 245).]—Crown Costs Act, R. S. B. C., 1924 (c. 62), is a bar to the awarding of costs against the Crown on an appeal under Summary Convictions Act, R. S. B. C., 1924, form a conviction for an offence against Govt. Liquor Act, R. S. B. C., 1924 (c. 146). —R. *v.* MCLANE, R. *v.* NOON, [1927] 1 W. W. R. 701; 47 Can. Crim. Cas. 208; 38 B. C. R. 306.—**CAN.**

† iv. —— *In proceedings by creditor—Crown administrator of intestate's estate. —Held:* neither the Crown nor the A.-G. liable for costs.—CARVER *v.* A.-G. OF PRINCE EDWARD ISLAND, [1926] 4 D. L. R. 1106.—**CAN.**

387b. —— —— ——.]—The cts. of this country are bound to treat the acts of a govt., which His Majesty's Govt. recognises as the *de facto* govt. of a certain area in a foreign country, as acts which cannot be impugned as being the acts of an usurping govt., & the cts. are bound to treat the acts of a rival govt. claiming jurisdiction over the same area, even though the latter govt. is recognised by His Majesty's Govt. as the *de jure* govt. of the whole country, as a mere nullity in that area.

Pltf. bank was a co. constituted under the laws of Spain having its corporate home at Bilbao. It had a branch in London, of which the two defts. were the managers. Until 1937 the affairs of the bank were conducted by a board of directors elected by the shareholders in accordance with the articles regulating the bank. On Oct. 6, 1936, the Basque country, in which Bilbao is situated, was constituted an autonomous State within the Spanish State. On Dec. 23, 1936, the Basque autonomous State made a decree under which, by an order dated Jan. 5, 1937, a new board was appointed for pltf. bank in substitution for the existing board. The new board desired to obtain control of the London branch, & accordingly purported to determine the power of the two defts. as agents for the bank & appointed a new manager. The two defts., however, refused to hand over the branch to the new manager. Two actions were thereupon brought in the name of the bank to restrain the two defts. from continuing in control of the London branch & its assets. LEWIS, J., on June 4, 1937, held that according to the law of Spain the decrees of the Basque govt. were ineffective, & that consequently the new board set up by the order of Jan. 5, 1937, had no legal right to act as the board of the co., & that therefore the new manager had no mandate from the co. He accordingly gave judgment for the two defts. Pltf. bank appealed. Meanwhile the insurgents under General Franco had been approaching Bilbao, & on June 15, 1937, the new board left the office of the bank at Bilbao, & removed the bank's documents ultimately to Barcelona. On June 19, 1937, Bilbao was occupied by the insurgent forces under General Franco. It appeared from a letter written by the Foreign Office on Feb. 17, 1938, that the govt. set up by General Franco in the Basque country after the capture of Bilbao was recognised by the British Govt. as being the govt. which exercised *de facto* administrative control over the Basque country, including Bilbao. At the same time the British Govt. recognised the Republican Govt. of Spain as the *de jure* govt. of the whole of Spain, including the area over which it recognised General Franco's Govt. as exercing *de facto* administrative control. On Aug. 22, 1937, the President of the Spanish Republic made a decree that the registered office of all cos. which had been established in the Basque country should be deemed to be transferred to either Valencia or Barcelona. On Sept. 30, 1937, the President made a decree valiting all the decrees of the Basque Govt. which LEWIS, J. had declared invalid. This decree was subsequently ratified by the Cortes:—*Held:* by the Ct. of Appeal, the question as to what body of directors had the legal right to represent pltf. bank must depend upon the articles under which it was constituted, & the construction of those articles must be governed by the law from time to time prevailing at the place where the corporate home was set up, & that must be the law of the govt. recognised by the British Govt. as being the *de facto* govt. of the territory in which Bilbao was situated, & the laws purporting to affect pltf. bank, which had been made by the Republican Govt. of Spain at a time when it was no longer in *de facto* control of the Basque territory, must be disregarded.—BANCO DE BILBAO *v.* SANCHA, BANCO DE BILBAO *v.* REY, [1938] 2 K. B. 176; [1938] 2 All E. R. 253; 107 L. J. K. B. 681; 159 L. T. 369; 54 T. L. R. 603; 82 Sol. Jo. 254, C. A.

Annotations:—**Consd.** The Arantzazu Mendi, [1938] 3 All E. R. 333. **Refd.** Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 677.

387c. —— **Decrees of Russian Soviet Government —Effect of.**]—The English cts. will not inquire into the validity of acts done by a recognised foreign Govt. against its own subjects in respect of property situate in its own territory.

In 1918 a section of Russian revolutionaries took & retained possession of movables in Russia belonging to pltf. against her will. The act of those revolutionaries was subsequently adopted by the Soviet Govt. as the *de jure* Govt. of Russia. In 1928 the movables in question were sold in Russia by the Soviet Republic to defts., who brought them to England. In an action by pltf. to recover those movables or damages for their detention or conversion:—*Held:* the action failed, as the ct. could not inquire into the validity of the acts of a foreign sovereign Power which had been recognised by the Govt. of this country.—PALEY (PRINCESS OLGA) *v.* WEISZ, [1929] 1 K. B. 718; 98 L. J. K. B. 465; 141 L. T. 207; 45 T. L. R. 365; 73 Sol. Jo. 283, C. A.

Annotations:—**Refd.** *Re* Russian Bank for Foreign Trade, [1933] Ch. 745. De Beéche *v.* South American Stores, Ltd., & Chilian Stores, Ltd., [1935] A. C. 148.

—— —— ——.]—*See, also,* COMPANIES, Nos. 8523, 8523a–8523d, 8524, 8527a–8527d, *ante.*

—— —— —— **On liability of Russian reinsurance company under reinsurance treaties.**]—*See* INSURANCE, No. 712a, *post.*

—— —— —— **Cancellation of life assurance.**]—*See* CONFLICT OF LAWS, No. 640b, *ante.*

387d. Declaration by representative of foreign Sovereign as to ownership of property—How far conclusive.]—A declaration by the representative of a foreign Sovereign as to ownership of personal property in this country is not conclusive in an action between private persons, when no question of the immunity of the sovereign State from the jurisdiction of the ct. is concerned.—THE JUPITER (No. 3), [1927] P. 250; 97 L. J. P. 33; 137 L. T. 333; 43 T. L. R. 741; 17 Asp. M. L. C. 250, C. A.

Annotations:—**Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

388. *Citations:*—For "Coop. Pr. Cas. 501; 9 L. J. O. S. Ch. 215; 47 E. R. 619, L. C.," read "Coop. Pr. Cas. 501; 47 E. R. 619; *sub nom.* THOMPSON *v.* BARCLAY, 9 L. J. O. S. Ch. 215, L. C.; *previous proceedings* (1828), 6 L. J. O. S. Ch. 93."

389. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

391. *Add. Annotations :*—**Refd.** The Tervaete, [1922] P. 259; Engelke *v.* Musmann, [1928] A. C. 433.

392. *Add. Annotation :—As to* (2) **Refd.** The Tervaete, [1922] P. 259.

394. *Add. Annotations :*—**Consd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485; Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 384. **Refd.** The Tervaete, [1922] P. 259; *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673; Compania Mercantile Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; The Jupiter (1924), 93 L. J. P. 156; The Jupiter (No. 3) (1927), 137 L. T. 333; Engelke *v.* Musmann, [1928] A. C. 433.

395. *Add. Annotation :—As to* (2) **Refd.** Dickinson *v.* Del Solar (1929), 45 T. L. R. 637.

396. *Add. Annotation* — **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

401. *Add. Annotation :*—**Apld.** The Tervaete, [1922] P. 259.

408. *Add. Annotation :*—**Refd.** Fenton Textile Assocn. *v.* Krassin (1921), 38 T. L. R. 259.

409. *Add. Annotation :*—**Consd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

411. *Add. Annotation :*—**Consd.** Engelke *v.* Musmann, [1928] A. C. 433.

412a. Chief of mail department—Within privilege.]—*Held :* the rule as to immunity from civil proceedings, on the ground of diplomatic privilege, extended to a domiciled subject of the United States who was the chief of the mail department of the United States Embassy in London.—ASSURANTIE COMPAGNIE EXCELSIOR *v.* SMITH (1923), 40 T. L. R. 105, C. A.

413. Transfer paragraphs (2) to (5) to No. 421, *post.*

Annotations :—For the existing annotations read "**Refd.** *Re* Republic of Bolivia Exploration Syndicate, [1914] 1 Ch. 139."

418a. Evidence—Settlement by Attorney-General on instructions of Foreign Office.]—A statement made to the ct. by the A.-G., on the instructions of the Foreign Office, as to the status of a person claiming immunity from judicial process on the ground of diplomatic privilege, whether as ambassador or as a member of the ambassador's staff, is conclusive.

Deft. in an action in the K. B. Div. for arrears of rent took out a summons to set aside the writ, on the ground that he was a member of the staff of the German Embassy, & filed two affidavits in support of his application. Pltf. applied for leave to cross-examine deft. upon his affidavits. The judge ordered deft. to attend for cross-examination. On appeal the A.-G. attended at the request of the Foreign Office, & on the invitation of the ct. informed them that deft. had been appointed a member of the staff of the German Ambassador under the style of consular secretary, & had been received in that capacity by the British Govt. :—*Held :* (1) the statement of the A.-G. was binding on the ct., & deft. was entitled to diplomatic privilege; (2) (LORD DUNEDIN) apart from that statement, the order for the cross-examination of deft. would have been justified.—ENGELKE *v.* MUSMANN, [1928] A. C. 433; 97 L. J. K. B. 789; 139 L. T. 586; 44 T. L. R. 731, H. L.; *revsg.* S. C. *sub nom.* MUSMANN *v.* ENGELKE, [1928] 1 K. B. 90, C. A.

421. After the catchwords insert paragraphs (2) to (5) from No. 413, *ante*, substituting the numbers "(1), (2), (3), (4)," for "(2), (3), (4), (5)."

Citations : — For "No. 413, *ante*," read "(1832), 1 Cr. & M. 117; 1 Dowl. 588; 3 Tyr. 184; 2 L. J. Ex. 13; 149 E. R. 338."

Annotations :—As to (1) **Consd.** Parkinson *v.* Potter (1885), 16 Q. B. D. 152. *As to* (3) **Consd.** Parkinson *v.* Potter (1885), 16 Q. B. D. 152. **Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

421a. —— Liability to be cross-examined to ascertain status.]—ENGELKE *v.* MUSMANN, No. 418a, *ante.*

422. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

425. *Add. Annotation :* — **Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

427. For "No. 413, *ante*," read "No. 421, *ante.*"

429. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

430. *Add. Annotation :* — **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

431. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

432. *Add. Annotation :*—**Refd.** Musmann *v.* Engelke, [1928] 1 K. B. 90.

435. *Add. Annotation :—As to* (2) **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

436. For "No. 413, *ante*," read "No. 421, *ante.*"

445. For "No. 413, *ante*," read "No. 421, *ante.*"

447. *Add. Annotation :* — **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

447a. ——.]—ENGELKE *v.* MUSMANN, No. 418a, *ante.*

462a. —— No waiver of privilege from execution.]—An ambassador in this country is entitled to complete immunity from the jurisdiction of the local cts. except in cases in which he submits to or invites the jurisdiction. Where an ambassador, sued as administrator to an intestate's estate, has submitted to the jurisdiction down to judgment, & an order has been made determining his liability to pay money into ct., he can still assert his immunity from process by way of execution & set up Diplomatic Privileges Act, 1708 (c. 12), as an answer to an application for leave to issue execution against his personal property.—*Re* SUAREZ, SUAREZ *v.* SUAREZ, [1917] 2 Ch. 131; 86 L. J. Ch. 673; 117 L. T. 239; 33 T. L. R. 405; 61 Sol. Jo. 524.

465. *Add. Annotations :*—**Consd.** Dickinson *v.* Del Solar (1929), 45 T. L. R. 637. **Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

465a. —— By order of diplomatic superior.]—Deft., who was First Secretary of the Peruvian Legation, took out a policy of insurance against legal liability to members of the public in connection with the driving of his motor car, the policy providing that "the

assured . . . shall not in any way act to the detriment or prejudice of the (insurance) co.'s interests," & that "the co. is entitled to take absolute control of all negotiations & proceedings." Pltf. brought an action for personal injuries against deft., & the latter served on the insurance co. a third-party notice claiming an indemnity. An appearance without protest was entered in the action on behalf of deft., &, as the Peruvian Minister forbade deft. to raise the plea of diplomatic immunity, no such plea was inserted in the defence. The jury found a verdict for pltf. for damages, & the insurance co. repudiated liability on the ground that deft. had broken the conditions of the policy by insisting that the plea of diplomatic immunity should not be raised :—*Held :* the privilege of diplomatic immunity was waived by the entry of appearance without protest.—DICKINSON *v.* DEL SOLAR, [1930] 1 K. B. 376; 99 L. J. K. B. 162 142 L. T. 66; 45 T. L. R. 637.

SECT. 5.—**PASSPORTS** (Vol. XI., p. 543).

474a. Property of the Crown.]—A passport issued by the British Passport Office on behalf of the Secretary of State for Foreign Affairs to a person who afterwards becomes bkpt. is the property of the Crown & not the "property" of the bkpt. within Bkpcy. Act, 1914 (c. 59).—*Re* SUWALSKY, SUWALSKY *v.* TRUSTEE & OFFICIAL RECEIVER, [1928] B. & C. R. 142.

474b. Order for custody of child—Notice to Passport Office.]—PRACTICE NOTE, [1938] W. N. 136.

Forgery of.]—*See* Criminal Justice Act, 1925 (c. 86), s. 36.

Part XIII.—The Crown in relation to War and Peace.

477. *Add. Annotation :—Generally,* **Refd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

483. *Add. Annotation :—As to* (1) **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

487a. —— ——.]—By a policy of insurance effected on Nov. 2, 1918, during the European War, deft. agreed to pay to pltf. a certain sum "in the event of peace between Great Britain & Germany not being concluded on or before June 30, 1919." On June 28, 1919, these Powers signed a treaty of peace, but they did not exchange & deposit ratifications of the treaty until Jan. 1920. In an action brought by pltf. against deft. upon the policy in Aug. 1919 :—*Held :* peace had not been concluded between these Powers on or before June 30, 1919, within the policy, & pltf. was therefore entitled to succeed in the action.—KOTZIAS *v.* TYSER, [1920] 2 K. B. 69; 89 L. J. K. B. 529; 122 L. T. 795; 36 T. L. R. 194; 15 Asp. M. L. C. 16.

Annotation :—**Folld.** Lloyd *v.* Bowring (1920), 36 T. L. R. 397.

487b. —— ——.]—For the purpose of a contract to pay a sum of money "if peace is not declared" by a certain date between two nations at war, peace is not declared until the ratification of the treaty of peace.—LLOYD *v.* BOWRING (1920), 36 T. L. R. 397.

487c. —— **Whether subject's debt discharged.**]—TRONER *v.* HASSOLD (1670), 1 Cas. in Ch. 173; 22 E. R. 748.

487d. *S. P.* WEYMBERG *v.* TOUCH (1669), 1 Cas. in Ch. 123; 22 E. R. 724.

PART XII. SECT. 3.

469 i. *Whether consent of legislature necessary—Interference with private rights.*]—In Canada or Great Britain a treaty does not confer, as between the state & the subject, or as between subjects, any rights upon the latter :—*Held :* therefore, the Ashburton Treaty relating to water rights, never having been validated by statute, is no part of the law of this country, but it is binding in honour on the Crown & its successors.—*Re* ARROW RIVER & TRIBUTARIES SLIDE & BOOM CO., [1932] S. C. R. 495; 2 D. L. R. 250.—**CAN.**

PART XII. SECT. 5.

sk. *Power to refuse.*]—Under the Passports Act, 1920, the Minister has either a discretionary power to refuse to issue a passport or at least a discretionary power to cancel any passport which has been issued, & he is not under any duty to hear representations of any other person on the subject, & while he carries out his duties honestly, the ct. will not review the exercise of his discretion. The absence of the consent by a husband or wife to the departure of the other spouse does not preclude the Minister from granting a passport.—R. *v.* PATERSON, *Ex p.* PURVES (1937), 43 Argus L. R. 144; 10 A. L. J. 468.—**AUS.**

PART XIII. SECT. 2.

487 i. *Treaty of peace—Ratification by sovereign authority necessary.*]—*Re* 90TH BATTALION, WINNIPEG RIFLES, [1923] 1 W. W. R. 37.—**CAN.**

487 ii. —— *Between Great Britain & enemy countries—Date of signing—Effect on option to purchase.*]—PARRY *v.* DUNCAN (1921), 65 D. L. R. 761; [1921] 2 W. W. R. 879.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.

sf. *Order in Council under War Measures Act,* 1914, *s.* 6—*Validity.*]—*Held :* the omission of an averment that the Governor in Council deemed an Order advisable for the welfare of Canada by reason of the existence of real or apprehended war, did not render the Order in Council invalid.—PUGSLEY *v.* GARSON (1922), 50 N. B. R. 414.—**CAN.**

sg. *Calling out militia—Liability for expenses—Whether on Dominion or Province.*]—The question referred to this ct. was whether the province of Nova Scotia was liable, or not, to pay to the Dominion of Canada all expenses & costs incurred by the latter by reason of part of the active militia of Canada being called out & serving in aid of the civil power in the county of Cape Breton in 1925, in a case of riot, upon a requisition, made by the A.-G. of Nova Scotia in the form prescribed by s. 85 of the Militia Act, which included an undertaking by him that these expenses & costs would be paid to the Dominion Govt. by the province :—*Held :* the question should be answered in the negative. Sects. 80 to 90 of the Militia Act repose certain powers in the person occupying the position of A.-G. in the province for the time being, but the exercise of these powers does not in any way depend upon the consent of the Lieutenant-Governor or of the provincial legislature. The Militia Act envisages the A.-G., not in his capacity as A.-G. to His Majesty as the Sovereign Head of the province, but as a person in whom certain powers are vested & on whom certain duties are laid by the statute. These sects. apply to every province & go into operation independently of the scope of the A.-G.'s authority to bind the province in respect of the expenditure of moneys for such purpose. Therefore these enactments do not contemplate a duty to pay, proceeding from a contract between the province & the Dominion. The revenues of the province are vested in His Majesty as the supreme head of the province, & the right of appropriation of all such revenues belongs to the legislature of the province exclusively. *Semble :* the A.-G., whose duties, in so far as now material, include the supervision of the administration of justice within the

496. *Add. Annotation :*—**Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

498. *Add. Annotation:*—**Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

499. *Add. Annotations :—As to* (1) **Refd.** Federated Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42. *As to* (4) **Refd.** A. & B. Taxis *v.* Secretary of State for Air, [1922] 2 K. B. 328 ; Matthey *v.* Curling, [1922] 2 A. C. 180 ; *Re* Colnbrook Chemical & Explosives Co., A.-G. *v.* The Co., [1923] 2 Ch. 289 ; Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271 ; Rowland & Mackenzie-Kennedy *v.* Air Council (1927), 96 L. J. Ch. 470. *Generally*, **Refd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81 ; France Fenwick *v.* R., [1927] 1 K. B. 458. *Generally*, **Refd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

499a. —— **Under Indemnity Act, 1920 (c. 48)—"Direct loss or damage"—What is.**]—Claimants carried on business as motor garage proprietors in Dublin, where they owned & occupied extensive premises peculiarly well suited to their purposes. These premises were taken by the Govt. under powers conferred by statute for the defence of the realm. Claimants, having tried & failed to acquire premises temporarily, took the only reasonable course ; they bought other premises, fitted them for use as a garage, & transferred to them all the appliances of their business which they thus continued to carry on as well as they could. When the Govt. retired from possession of the original premises claimants sold the substituted premises. They alleged that the difference between the amount they had expended in acquiring the substituted premises & fitting them for use as a garage on the one hand, & the sum they received on the sale of the substituted premises on the other hand amounted to £3,429. They claimed this sum as an item of "direct loss or damage incurred or sustained by reason of interference with" their "property or business" within sect. 2 (1) (*b*) of the above Act :—*Held :* "direct loss or damage" may include consequential damage, & the item claimed could not be entirely excluded as indirect loss, but the amount to which claimants might be entitled in respect thereof must be assessed by the War Compensation Ct.—A. & B. Taxis, Ltd. *v.* Secretary of State for Air, [1922] 2 K. B. 328 ; 91 L. J. K. B. 779 ; 127 L. T. 478 ; 38 T. L. R. 671 ; 66 Sol. Jo. 633, C. A.

499b. —— —— **Duty of tribunal assessing compensation.**]—Observations on the question of the extent of the duty of the War Compensation Ct., in deciding a claim for compensation under the above Act, to differentiate between their findings on issues of fact & their findings on issues of law, in view of there being, under sect. 2 (1) of the Act, no right of appeal except on a point of law.—Moffat Hydropathic Co., Ltd. *v.* Secretary of State for War (1924), 40 T. L. R. 543 ; 68 Sol. Jo. 535, H. L.

501. *Add. Annotation :*—**Apprvd.** University College, Oxford (Master & Fellows) *v.* Secretary of State for Air, [1938] 1 K. B. 648.

501a. —— —— ——.]—A piece of land in the middle of an estate belonging to University College, Oxford, was acquired compulsorily for the purpose of an aerodrome by the Secretary of State for Air under the Defence Acts :—*Held :* the Master & Fellows of the College were entitled, under Defence Act, 1842 (c. 94), s. 19, to recover compensation for injurious affection of the adjoining land by the use to which the acquired land might be put.—University College, Oxford (Master & Fellows) *v.* Secretary of State for Air, [1938] 1 K. B. 648 ; [1938] 1 All E. R. 69 ; 107 L. J. K. B. 237 ; 159 L. T. 31 ; 54 T. L. R. 258 ; 82 Sol. Jo. 16, D. C.

505a. —— **Certificate that taking necessary—Mode of granting.**]—(1) Where land is being acquired compulsorily for military purposes under the above Act, the certificate that the taking of the land is necessary or expedient is duly granted, although the person whose land is being acquired has not been heard ; for the granting of such a certificate is not a judicial, but a merely administrative act.

(2) It is not a condition precedent to the summoning of a jury under sect. 19 of the above Act to assess the compensation payable to the owner of the land, that the Secretary of State for War shall have been put into possession of the land under the sect. ; but even if it was, that condition precedent would have no application to the assessment of compensation in such a case under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57).—Hutton *v.* A.-G., [1927] 1 Ch. 427 ; 96 L. J. Ch. 285 ; 137 L. T. 20 ; 43 T. L. R. 166 ; 71 Sol. Jo. 159.

505b. —— **Conditions precedent to assessment of compensation—Whether Crown in possession.**]—Hutton *v.* A.-G., No. 505a, *ante*.

507a. Costs of establishing claim to fund in Court.]—Three guineas is a proper sum to allow to each successful claimant to a fund in ct. for the costs of establishing his claim.—Waterton *v.* Burt (1870), 39 L. J. Ch. 425.

512. *Add. Annotations :—As to* (2) **Refd.** Federated Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42 ; Rowland *v.* Air Council (1923), 39

---

province, has no statutory authority to undertake the payment now demanded by the Dominion : the subject matters comprised within the supervision of the administration of justice would not embrace authority to enter into such an undertaking.—*Re* Troops in Cape Breton, Reference, [1930] S. C. R. 55 ; *sub nom.* A.-G. of Canada *v.* A.-G. of N.S., [1930] 4 D. L. R. 82.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 3.—A.

499 i. *Whether owner entitled to compensation—Possession taken or purposes of defence.*]—R. *v.* Brown (1920), 56 D. L. R. 312 ; 20 Exch. C. R. 39.—**CAN.**

499 ii. ——.]—*Held :* a portion of a building occupied by the Govt. as a recruiting station was not a "public work" within Exch. Ct. Act, s. 20 (c).—*Wolfe Co. v. R., Powers v. R.* (1921), 63 D. L. R. 647 ; 63 S. C. R. 141.—**CAN.**

499a i. —— *Under Indemnity Act*, 1920 (*c.* 48)—*Basis of assessment.*]—A distillery requisitioned during the war, owing to a fire while it was in the Govt.'s possession, could not be used for distilling for nearly three years after Jan. 19, 1919, at which date the prohibition against distilling was withdrawn. The proprietors having claimed compensation for loss of profits during the three years :—*Held :* the loss of profits was due, not to the war, but to the requisition & the fire, & the basis upon which compensation fell to be assessed was the prices obtainable for whisky during the three years, taken in conjunction with the other circumstances actually existing during that period.—Mackenzie Brothers *v.* The Admiralty, [1925] S. C. (H. L.) 32.—**SCOT.**

T. L. R. 228. *Generally*, **Refd.** France Fenwick *v.* R., [1927] 1 K. B. 458; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1930] A. C. 549; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

515a. —— —— **Closing of public footpath over land acquired.**]—The ct. refused an application by the Air Ministry under sect. 6 (3) of the above Act, for leave to close permanently a public footpath over land which they had purchased under sect. 3 of the Act for an air depot.—SECRETARY OF STATE FOR WAR *v.* MIDDLESEX COUNTY COUNCIL (1923), 39 T. L. R. 357; 21 L. G. R. 291.

521. *Add. Annotation:—Generally*, **Refd.** France Fenwick *v.* R., [1927] 1 K. B. 458.

526. *Add. Citation:*—15 Asp. M. L. C. 205.
Add. Annotation:—As to (3) **Distd.** A.-G. *v.* Royal Mail Steam Packet Co., [1922] 2 A. C. 279.

526a. **Power to impose payment for licence to sell ship to foreigner—Recovery of money paid—Indemnity Act, 1920 (c. 48), s. 1 (1).**]—The Shipping Controller, purporting to act in pursuance of his powers under Defence of the Realm Regulations, imposed upon suppliants as a condition of granting them a licence to sell a steamship to a foreigner the payment to him by suppliants of £30,800. By their petition of right suppliants alleged that the Shipping Controller had no lawful authority to impose a condition or to exact the payment, which suppliants had paid under protest, & that the Shipping Controller thereby became liable to repay the money to suppliants as money had & received to their use. The petition of right was not brought within one year from the termination of the war or within one year from the exaction of the money. The Crown demurred to the petition, on the ground that the case if founded on the alleged tort of the Shipping Controller was barred by the above sub-sect., & if based on an alleged breach of contract, the proceedings not having been brought within the prescribed time failed under proviso (b) of that sub-sect. A further ground of demurrer was that a petition of right would not lie against the Crown for tort, for the King could do no wrong. Suppliants contended that they were entitled to waive the tort & to sue for money had & received by the Shipping Controller & now in the hands of the Crown, & that their claim so grounded was not a proceeding for or in respect or on account of any act of the Shipping Controller, & therefore was not within the terms of the Act:—*Held:* the allegation that suppliants' money had been extorted from them by the wrongful act of the Shipping Controller was an essential part of suppliants' case, from which the claim for money had & received arose; & as such act was one to which the above sub-sect. applied, the petition of right was barred by that sub-sect.—BRISTOL CHANNEL STEAMERS, LTD. *v.* R. (1924), 131 L. T. 608; 40 T. L. R. 550; 68 Sol. Jo. 771.

526b. —— —— ——.]—The Shipping Controller, purporting to act under the authority of Defence of the Realm Regulations, required as a condition of a licence to suppliants to sell one of their ships to a foreign firm that they should pay a percentage of the purchase money to the Ministry of Shipping, & suppliants paid the percentage. On a petition of right to recover back the money so paid:—*Held:* (1) the imposition of the condition was illegal, & the payment was not a voluntary payment; (2) the petition of right was barred by the above sub-sect.; it was not open to suppliants, by waiving the tort of the illegal exaction & suing for money had & received, to bring the case within par. (b) of the proviso to the sub-sect., for the case fell within the exception to the proviso as being one in which a claim for compensation could have been brought under sect. 2 (1) (*b*); (3) (BANKES & SARGANT, L.JJ.) suppliants failed to bring the case within the proviso upon the further ground that the contracts referred to in paragraph (b) are limited to express contracts, & do not include the fictitious contract to repay money improperly extorted, the implication of which arises upon a waiver of the tort.—BROCKLEBANK, LTD. *v.* R., [1925] 1 K. B. 52; 94 L. J. K. B. 26; 132 L. T. 166; 40 T. L. R. 869; 69 Sol. Jo. 105; 16 Asp. M. L. C. 415, C. A.; *revsg.*, [1924] 1 K. B. 647.

Annotations:—As to (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. *As to* (2) **Folld.** Marshal Shipping Co. *v.* R. (1925), 41 T. L. R. 285. **Consd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542. *Generally*, **Refd.** Bristol Channel Steamers *v.* R. (1924), 131 L. T. 608; Hardie & Lane *v.* Chilton (1927), 96 L. J. K. B. 1040.

526c. —— —— ——.]—Suppliants were required in 1919 by the Shipping Controller to pay £20,000 to the Exchequer as a condition of his giving them permission to sell a steamship to a foreigner, & they made the payment accordingly. On a petition of right to recover back the amount from the Crown on the ground that the demand was unlawful:—*Held:* as the demand was made in the *bonâ fide* belief that the Shipping Controller was entitled to make it & as he was purporting to act in the execution of his duty the Crown was protected by the above sub-sect.—MARSHAL SHIPPING CO. (IN LIQUIDATION) *v.* R. (1925), 41 T. L. R. 285.

PART XIII. SECT. 3, SUB-SECT. 7.

sm. *Requisition under Order in Council—Powers of Dominion Government.*]—In virtue of Order in Council dated Nov. 24, 1916, passed under War Measures Act, 1914:—*Held:* the Dominion Govt. was empowered to requisition ships in its own name & as principal & not as agent for the British Govt., & the Minister of Marine & Fisheries, acting thereunder, had no power to vary same by adding to or derogating therefrom.—*Re* GASTON, WILLIAMS & WIGMORE & GASTON, WILLIAMS & WIGMORE STEAMSHIP CORPN. *v.* R. (1922), 66 D. L. R. 242; 21 Exch. C. R. 370.—**CAN.**

525 i. *Compensation for requisitioned ship—To what amount claimant entitled—Comparison with rate in United States better guide than English rate.*]—*Re* GASTON, WILLIAMS & WIGMORE & GASTON, WILLIAMS & WIGMORE STEAMSHIP CORPN. *v.* R. (1922), 66 D. L. R. 242; 21 Exch. C. R. 370.—**CAN.**

525 ii. —— ——.]—LEMAY *v.* R. (1922), 68 D. L. R. 489; 21 Exch. C. R. 364.—**CAN.**

525 iii. —— *Who entitled—Charterer or owner.*]—Whereas the right of action against the Crown is at common law in the owner & not in the charterer:—*Held:* the true intent, meaning & spirit of War Measures Act, 1914, s. 7, is to maintain & preserve to the subject any rights possessed by him at common law, & which he previously had notwithstanding that Act; & that sect. does not confer upon him any new rights to compensation in addition to those which he otherwise enjoyed.—WARNER QUINLAN ASPHALT CO. *v.* R., [1923] Exch. C. R. 195.—**CAN.**

526d. **——— ——— ——— Transfer of liabilities incurred by Shipping Controller to Board of Trade—Whether action maintainable against Board of Trade.**]—(1) Pltfs. in 1922 brought an action against the Board of Trade for money had & received. The money which it was sought to recover was alleged to have been wrongfully extorted from pltfs. in 1919 by the Shipping Controller under colour of his office, & it was alleged that, on pltfs. electing to waive the tort, he would have been personally liable to refund the money as having been received to their use. By Ministry of Shipping (Cessation) Order, 1921, it was provided that the office of Shipping Controller should cease to exist, & that "All . . . liabilities . . . incurred by the Shipping Controller . . . shall be transferred to the Board of Trade." The "Board of Trade" is the name given by statute to an unincorporated committee of the Privy Council. On an application to strike out the writ on the ground that the Board of Trade, as a department of the Crown, could not be sued:—*Held:* the intention of the Order was to transfer to the Board of Trade as a Govt. department the personal liabilities, if any such there were, of the Shipping Controller for any wrongful acts committed by him in his office, & the Board was liable to be sued in respect of those acts notwithstanding that it was an unincorporated body.

(2) Although the Board of Trade may in the above-mentioned circumstances be sued as a Govt. department, service of the writ must, unless the solr. to the Board accepts service on their behalf, be effected upon the individual constituent members of the Board personally.

(3) Where an official of a Govt. department wrongfully extorts a sum of money from a subject for the use of the Crown & the injured party waives the tort:—*Qu.:* whether he can sue the official personally as for money had & received, or whether his only remedy is not by petition of right against the Crown.—MARSHAL SHIPPING CO. *v.* BOARD OF TRADE, [1923] 2 K. B. 343; 92 L. J. K. B. 901; 129 L. T. 644; 39 T. L. R. 415; 67 Sol. Jo. 639; 16 Asp. M. L. C. 210, C. A.

Annotations:—As to (1) **Refd.** G. S. & W. Ry. of Ireland *v.* R., [1924] 2 K. B. 450. *As to* (3) **Refd.** Brocklebank *v.* R., [1924] 1 K. B. 647. *Generally,* **Refd.** Bristol Channel Steamers *v.* R. (1924), 131 L. T. 608.

Actions against Departments of State generally, *see* AGENCY, Vol. I., pp. 654, 655; PUBLIC AUTHORITIES.

527. *Add. Annotation:—Generally,* **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

530. *Add. Annotations:—As to* (1) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271. *Generally,* **Refd.** Newcastle Breweries *v.* I. R. Comrs. (1927), 137 L. T. 426; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

531. *Add. Annotations:—As to* (5) **Refd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529. *Generally,* **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

534. *Add. Annotation:—***Consd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

534a. **——— ——— ——— ———.**]—A British ship lying in a neutral port & laden with a cargo of timber belonging to neutrals of another country was requisitioned during the war by the British Govt. & brought home with her cargo to England without the consent & against the protest of the cargo owners. The timber was then requisitioned by the Controller of Timber Supplies on behalf of the Board of Trade avowedly under Defence of the Realm Regulations, 2B & 2JJ. The owners of the cargo made a claim in the War Compensation Ct. for compensation & contended that it should be assessed under Indemnity Act, 1920 (c. 48), s. 2 (2) (iii.) (*a*), on the ground that in the circumstances they would but for the Act have had a legal right to compensation:—*Held:* (1) the regulations did not apply to a seizure of goods of a neutral brought into England against his will; (2) the requisition of the timber was justifiable as an exercise of the royal prerogative right of angary & was, therefore, made "in exercise of" a "prerogative right to His Majesty" within s. 2 (1) (*b*) of the Act, & inasmuch as that right involved the obligation to pay full compensation to the owner of the property seized, claimants "would have had apart from" the Act a valid claim for compensation by petition of right, &, the Crown admitting that such a claim constituted "a legal right to compensation," compensation was to be assessed according to the principle laid down in s. 2 (2) (iii.) (*a*) of the Act.—COMMERCIAL & ESTATES CO. OF EGYPT *v.* BOARD OF TRADE, [1925] 1 K. B. 271; 94 L. J. K. B. 50; 132 L. T. 516, C. A.

Annotation:—As to (2) **Consd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

535a. Right to compensation—Under Indemnity Act, 1920 (c. 48)—Exercise of right of angary.]—COMMERCIAL & ESTATES CO. OF EGYPT *v.* BOARD OF TRADE, No. 534a, *ante.*

539. *Add. Annotations:—As to* (1) **Refd.** R. *v.* Cannon Row Police Station Inspector, *Ex p.* Brady (1921), 91 L. J. K. B. 98. *Generally,* **Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603; Brown *v.* Dagenham U. C. (1929), 98 L. J. K. B. 565; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

558a. Restriction on right of action.]—Reg. 2A (2) of Defence of the Realm Regulations, which provides that "no person shall, without the consent of the Minister of Munition, take . . . any proceedings for the purpose of obtaining an order or decree for the recovery of possession of, or for the ejectment of a tenant of, any dwelling-house" in which a munition worker is living, & which is situate in an area declared by order of the Minister of Munitions to be a "special area," is not authorised by Defence of the Realm Consolidation Act, 1914 (c. 8), s. 1 (1), & is, therefore, invalid.

The only question for decision is whether this portion of the regulation is *ultra vires* the statute under which it purports to be made, that is to say, Defence of the Realm Consolidation Act, 1914. This depends upon whether it can be said, on any reasonable construction of the statute, to be a regulation for securing the public safety & the defence

of the realm, &, particularly under sect. 1 (1) (*e*), whether it can be said to be a regulation to prevent the successful prosecution of the war being endangered (AVORY, J.).

It is true that the power to make a regulation to prevent the successful prosecution of the war being endangered is of a wide & sweeping character, but I decline to hold that Parliament intended by these general words to give to the executive the right to close any of the King's cts. against his subjects unless they obtained the sanction of a minister to resort thereto (SANKEY, J.).—CHESTER *v.* BATESON, [1920] 1 K. B. 829; 89 L. J. K. B. 387; 122 L. T. 684; 84 J. P. 65; 36 T. L. R. 225; 18 L. G. R. 212; 26 Cox, C. C. 591, D. C.

Annotations :—**Consd.** Fowle *v.* Monsell (1920), 90 L. J. K. B. 105; Hudson's Bay Co. *v.* Maclay (1920), 36 T. L. R. 469; Newcastle Breweries, Ltd. *v.* R., [1920] 1 K. B. 854; R. *v.* Wormwood Scrubs Prison Governor (1920), 84 J. P. 94; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

Part XIV.—The Crown as the Fountain of Honour.

563. *Add. Annotation* :—**Consd.** Rhondda's Claim, [1922] 2 A. C. 339.

Part XV.—The Crown in relation to Ports and Harbours.

568. *Add. Annotation* :—**Distd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 48 T. L. R. 491.

Part XVI.—The Crown in relation to the Coinage.

570. *Add. Annotation* :—**Refd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

Part XIX.—Royal Grants.

661. *Add. Annotation* :—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

706. *Add. Annotation* :—**Refd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

PART XIX. SECT. 1, SUB-SECT. 1.

e i. ——.]—R. *v.* NEW ENGLAND Co. (1922), 63 D. L. R. 537; 21 Exch. C. R. 245.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 2.

m i. ——.]—The recital in a Crown grant made under the Great Seal of Canada & duly recorded, *i.e.* enrolled, that it is made "under & by virtue of the statutes in that behalf & pursuant to authority duly granted by our Governor-in-Council," is sufficient to establish a *primâ facie* case of the existence of such an Order in Council, or at least to bring into operation the maxim *omnia præsumuntur rite esse acta*.—BURRARD INLET TUNNEL & BRIDGE Co. *v.* THE SS. EURANA (B. C. Adm.), [1929] 3 D. L. R. 161; 2 W. W. R. 275; *on appeal*, [1931] A. C. 300.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 3.—A.

602 ii. ——.]—Where a Crown grant of land has been issued by error, but without false misrepresentation on the grantee's part, & whereby he obtains more than that to which he was entitled, the ct. need not set aside the whole grant, but may declare it void only in so far it purported to convey such portion improvidently granted, & will order the grant to be delivered up to be rectified.—R. *v.* SEAMAN, [1927] Exch. C. R. 201.—**CAN.**

q. Add "*revsd.* on other grounds, 9 Gr. 224."

sa. *As to Crown's title—Crown ousted by adverse possession.*]—**A.** has been in possession of land at T. for over sixty years without having obtained a grant for the same from the Crown. B., a stranger, upon application, obtains a grant of said land. A. takes action to have grant declared null & void :—*Held* : the rights of the Crown in the land have been ousted, & the grant should be set aside.—MILLER *v.* SMITH (1900), 8 Nfld. L. R. 399.—**NFLD.**

sb. *Mistake in description—Cancellation of erroneous patent—Right to new patent.*]—R. *v.* SINCLAIR (1912), 11 E. L. R. 367.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 3.—B.

607 iii. ——.]—LAWRENCE *v.* POMEROY (1863), 9 Gr. 474.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 3.—C.

h. Add "*revsd.* on other grounds, 19 A. R. 329."

PART XIX. SECT. 2, SUB-SECT. 4.

sd. *Grants for homesteads—To men only.*]—By R. S. O. 1877, c. 24, free grants of lands for homesteads are authorised to be made only to men.—ROGERS *v.* LOWTHIAN (1880), 27 Gr. 559.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 2.

656 i. Add "*revsd.* on other grounds, 19 A. R. 329."

662 ii. Add "*revsd.* on other grounds, 19 A. R. 329."

PART XIX. SECT. 3, SUB-SECT. 3.—A.

r i. ——.]—A Crown grant of land, as to part of the land granted, used the words "grant, convey & assure," & as to other land granted, "grant, release & quit claim" :—*Held* : both conveyed the fee simple, & the grantee could convey the fee simple subject to conditions & reservations in the grant.—NORTHERN TRUST Co. *v.* TURNER, [1923] 2 D. L. R. 1176.—**CAN.**

se. *Land subject to existing timber lease.*]—Pltf. obtained a Crown grant to certain lands, to the timber on which a lease for twenty-one years had been previously given. The grant from the Crown was silent as to the timber lease. At a date subsequent to the said grant, the timber lease had to be surrendered for renewal under the Land Act :—*Held* : the rights given the grantee under his Crown grant were subject to the existing timber lease.—BROHM *v.* BRITISH COLUMBIA MILLS, TIMBER & TRADING Co. (1907), 13 B. C. R. 123. —**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—C.

sf. "*Water-power*" — *Water-power from artificial channels.*]—KEEWATIN POWER Co. *v.* KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER Co. *v.* LAKE OF THE WOODS MILLING Co., [1928] 1 D. L. R. 32; 61 O. L. R. 363; *affd.*, [1929] 3 D. L. R. 199; 63 O. L. R. 667; 1930] A. C. 640.—**CAN.**

sg. *Grant of land to Indians—"Customs & usages"—Fishing with seine net.*]—In an action by an Indian living on an Indian reserve against a

728a. Grant of land reserving strip of coast land—Effect of confirming grant.]—A.-G. FOR NEW SOUTH WALES *v.* DICKSON, [1904] A. C. 273; 73 L. J. P. C. 48; 90 L. T. 213, P. C.

749. *Add. Annotation :*—**Refd.** British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

754. *Add. Annotation :—Generally,* **Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

780. *Add. Annotation :—Generally,* **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

785a. —— Grant of sole right to draw bills & informations.]—MOUNSON *v.* LYSTER (1632), W. Jo. 231; 82 E. R. 122.

786. *Add. Annotations :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1930] A. C. 549.

Part XXI.—Hereditary and Private Revenues of the Crown.

857. Before this case add " *See* Crown Lands Act, 1927 (c. 23)."

857. *Add. Annotations :—As to* (4) **Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. *As to* (5) **Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

862. After this case add :—
Petroleum.]—*See* Petroleum (Production) Act, 1934 (c. 36).

927. Substitute the following paragraph & citations :—

By virtue of Assessionable Manors Act, 1844 (c. 105), s. 54, His Royal Highness the Prince of Wales, as Duke of Cornwall, was absolutely entitled to the mines & minerals within certain manors including that of C. Sect. 55 of the Act empowered the Duke, his agents & lessees, to enter upon all lands within the said manors, & all mines belonging to the Duke, & to open & work the same, &

---

fishery inspector & a game & fishery overseer in trover, to recover the value of a seine fishing net, the property of pltf. seized by defts. upon the reserve : —*Held :* the land of the band of Indians occupying the reserve was the property of the King, & the only rights they have in the land came through royal grant—the Simcoe deed of 1793, a grant of land " to be held & enjoyed by them in the most free & ample manner & according to the several customs & usages " with a proviso against alienation. " Customs & usages " are words of tenure & not indicative of the manner in which the Indians are to use the land; moreover, there was no evidence that fishing with a seine was one of the customs of the Indians in 1793. There is nothing in the grant suggesting exclusion from the ordinary laws, & the Indians are subject to those laws.—SERO *v.* GAULT (1921), 50 O. L. R. 27; 64 D. L. R. 327.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—E.

l i. —— ——.]—The reservation in a Crown grant of the mines & minerals " with full power to work the same & for this purpose to enter upon & use or occupy the lands or so much thereof & to such an extent as may be necessary for the effectual working of the said minerals ":—*Held :* this confers greater powers than is implied in a bare reservation in an agreement for the sale of the land so granted of " all mines & minerals."—FULLER *v.* GARNEAU (1920), 61 S. C. R. 450; 58 D. L. R. 642.—**CAN.**

l ii. —— —— *Includes petroleum & natural gas.*]—CREIGHTON *v.* UNITED OILS, LTD., [1927] 2 W. W. R. 458; *affd.*, [1927] 3 W. W. R. 463.—**CAN.**

l iii. *S. P.* STARLEY *v.* NEW MCDOUGALL-SEGUR OIL CO. (No. 2), [1927] 2 W. W. R. 466; *affd.*, [1927] 3 W. W. R. 464.—**CAN.**

l iv. —— —— *Effect of Act to amend Public Lands Act,* 1908 (c. 16).]—*Re* COX, [1927] 4 D. L. R. 556; 61 O. L. R. 182.—**CAN.**

sh. *Exception of lots—Conflict between plan & description—Evidence of physical features of alleged exceptions.*]—THOMPSON *v.* FRASER COMPANIES, LTD. (Can.), [1929] 3 D. L. R. 778; *revg.*, [1929] 1 D. L. R. 168.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—F.

729 li. ——.]—*Semble :* the Crown may grant a tract of land by a sufficient description to designate the portion meant, although the township within which the land lies has not been surveyed & laid out into lots & concessions; & the grantee will be entitled to hold it although a subsequent survey made by authority of the Crown makes it by name a different lot, or places it in a different concession, from that named in the patent, or the surveyor laying it out projects a road through it.—HORNE *v.* MUNRO (1857), 7 C. P. 433.—**CAN.**

PART XIX. SECT. 5, SUB-SECT. 1.

t i. —— *Derogation of rights under earlier grant.*]—KEEWATIN POWER CO., LTD. *v.* KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO. (Ont.), [1928] 1 D. L. R. 32; *affd.*, [1929] 3 D. L. R. 199; 63 O. L. R. 667; [1930] A. C. 640.—**CAN.**

PART XIX. SECT. 5, SUB-SECT. 6.

c i. —— ——.]—COSTIN *v.* CHAPPELL (1875), 10 N. S. R. (1 R. & C.) 40.—**CAN.**

sk. *Unoccupied land.*]—Land unoccupied in the island of Newfoundland at the time of passing 5 Geo. 4, c. 51, is within that statute, & may be granted out as waste lands under sect. 15, notwithstanding it has been occupied & enclosed before any grant of it was made.—A.-G. OF NEWFOUNDLAND *v.* RYAN (1836), 2 Nfld. L. R. App. 8.—**NFLD.**

sl. *Right of pre-emption.*]—HOGGAN *v.* ESQUIMALT & NANAIMO RY. CO., WADDINGTON *v.* ESQUIMALT & NANAIMO RY. CO. (1892), 20 S. C. R. 235; *affd.*, [1894] A. C. 429.—**CAN.**

sm. ——.]—HESELWOOD *v.* JONES (1910), 16 B. C. R. 485.—**CAN.**

PART XIX. SECT. 8.

p i. —— *Evidence of invalidity of first grant—Not admissible.*]—DOE d. MCKAY *v.* RYKERT (1823-1900), 1 Ont. Dig. 1726.—**CAN.**

PART XIX. SECT. 9.

r i. —— *Cancellation for incompetency—Soldiers' settlement—Functions of Minister for Repatriation.*]—*Held :* the Minister had a merely administrative function, & might form an opinion on such materials as he himself thought sufficient without giving resp. an opportunity of being heard or of meeting allegations to his prejudice.—LAFFER *v.* GILLEN (1927), 40 C. L. R. 86.—**AUS.**

so. *Whether Attorney - General necessary party.*]—The bill alleged that the patentees obtained their patent by false representations to the Government, & showed a case in which the patentees would not be entitled to compensation if the patent were set aside & the land given to another :—*Held :* to such a bill the A.-G. was not a necessary party.—REES *v.* A.-G. (1869), 16 Gr. 467.—**CAN.**

sp. *Whether Attorney-General entitled to take proceedings—Soldier Settlement Act,* 1919—*Notwithstanding Dominion Lands Act, s.* 94.]—*Held :* Sect. 94 does not give the Minister of the Interior the exclusive right to institute such actions & does not take away the usual right & power of the A.-G.—R. *v.* RICHARDS, [1930] Ex. C. R. 222.—**CAN.**

PART XX. SECT. 6.

n i. —— —— *When in possession of Crown lessee or licensee.*]—The prerogative of the Crown & its freedom from interference by a council in the matter of building operations do not extend to Crown lessees or licensees.—HORNSBY, COUNCIL OF THE SHIRE OF *v.* DANGLADE (1928), 29 S. R. 118.—**AUS.**

st. *Sale of land under Soldier Settlement Act,* 1919—*Failure of soldier to perform agreement—Crown not entitled to warrant of possession.*]—A.-G. FOR CANADA *v.* PUGH, [1924] Exch. C. R. 62.—**CAN.**

PART XXI. SECT. 1, SUB-SECT. 2.

858 iii. —— ——.]—The right to precious metals in the land now held by the Hudson's Bay Co. belongs not to the co., but to the Crown.—HUDSON'S BAY CO. *v.* A.-G. FOR CANADA, [1929] A. C. 285; 98 L. J. P. C. 28; 45 T. L. R. 47, P. C.—**CAN.**

to erect all such buildings, machinery, etc., & do all such acts as should be "necessary or convenient for working the same mines," on making compensation to the surface owners. By sect. 69 it was provided that it should be lawful for the Duke, his agents & lessees, to pull down & remove all buildings, machinery, etc., no longer used for the purposes aforesaid, or to allow the same to remain, & no buildings should, by non-user or otherwise, be deemed to be abandoned, so as to vest any right or title therein in the owner of the land. Deft. was the owner by purchase of garden land adjoining two cottages at W. E. in the manor of C., & was also in possession of a house & garden at W. Z., the site of which she had purchased in 1902. This house was subsequently enlarged from one of six rooms into one of eleven rooms, with an additional wing. These alterations & some improvements to the garden cost £500, & were known to the mineral agent of the Duchy, who remained passive. The Duchy claimed that under the provisions of sects. 55 & 69 of the Act the two cottages & land at W. E. & the house & land at W. Z. had been originally erected, entered upon, & used in connection with the mines at W. E. & W. Z. respectively, & were now vested in the Duchy. From 1846 onwards licences & leases had been granted by the Duchy for the working of the two mines, but neither had been in fact worked for many years. Upon an information by the A.-G. to His Royal Highness the Prince of Wales claiming declarations of title to the lands & buildings, & an injunction to restrain the deft. from asserting any title to the same:—*Held:* (1) the effect of sect. 55 was not to vest any land in the Duchy, but only compelled the surface owner to permit his land to bear certain burdens, & did not divest him of his title; nor did it follow from the power in that section to erect "buildings" that a power was given to take land for gardens; (2) the effect of sect. 69 was not to vest any title in the Duchy, but to prevent the surface owner from resuming full enjoyment of land once taken; & consequently the Duchy had established no right over, or title to, these lands.—A.-G. TO PRINCE OF WALES *v.* COLLOM, [1916] 2 K. B. 193; 85 L. J. K. B. 1484; 114 L. T. 1121; 32 T. L. R. 448.

CONSTRUCTIVE NOTICE.

See EQUITY.

CONSTRUCTIVE TRUST.

See TRUSTS AND TRUSTEES.

CONTRABAND.

See PRIZE LAW.

CONTRACT.

Part I.—Definitions and Classification.

3. *Add. Annotation :*—**Reld.** Rose & Frank Co. *v.* Crompton, [1923] 2 K. B. 261.

4. For the existing paragraph substitute the following paragraph :—

—— —— **Legal effect expressly excluded.**]—By successive arrangements made before 1913 between an American firm & an English co. the American firm were constituted sole agents for the sale in the United States & Canada of tissues for carbonising paper supplied by the English co. The greater part of these tissues was manufactured for this English co. by another English co. By an arrangement made between the American firm & both English cos. in 1913 the English cos. expressed their willingness that the existing arrangements with the American firm, which were then for one year only, should be continued on the same lines for three years & so on for further periods of three years, subject to six months' notice. This document, after setting out the understanding between the parties, including several modifications of the previous arrangements, proceeded as follows : " This arrangement is not entered into, nor is this memorandum written, as a formal or legal agreement, & shall not be subject to legal jurisdiction in the law cts. either of the United States or England, but it is only a definite expression & record of the purpose & intention of the three parties concerned, to which they each honourably pledge themselves, with the fullest confidence—based on past business with each other—that it will be carried through by each of the three parties with mutual loyalty & friendly co-operation. This is hereinafter referred to as the ' honourable pledge ' clause." Disputes having arisen between the parties, the English cos. determined this arrangement without notice. Before the relations between the parties were broken off the American firm had given & the first-mentioned English co. had accepted certain orders for goods. In an action by the American firm for breach of contract & for non-delivery of goods :—*Held :* (1) the arrangement of 1913 was not a legally binding contract ; (2) at the date of the arrangement of 1913 all previous agreements were determined by mutual consent ; (3) the orders given & accepted constituted enforceable contracts of sale.—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., [1925] A. C. 445 ; 94 L. J. K. B. 120 ; 132 L. T. 641 ; 30 Com. Cas. 163, H. L.

Annotation :—As to (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51. **Reld.** Jones *v.* Vernon's Pools, Ltd., [1938] 2 All E. R. 626.

4a. —— —— ——.]—Pltf. alleged that he had duly filled in a coupon in respect of a pool on football matches organised by defts., & defts. alleged that they had never received that particular coupon. The conditions of the pool, which pltf. admitted were well known to him, stated that it was a basic condition of the relationship between the parties that the sending in of the coupon or any transaction entered into in respect of the pool should not be attended by or give rise to any legal relationship, rights, duties or consequences whatsoever, or be legally enforceable or the subject of litigation, but that all such arrangements, agreements & transactions should be binding in honour only :—*Held :* the conditions of the pool prevented pltf. from bringing any action to enforce payment or otherwise.—JONES *v.* VERNON'S POOLS, LTD., [1938] 2 All E. R. 626.

4b. —— ——.]—Certain builders requested a firm of publishers to publish a builders' guide in connection with their estate, & by the terms of documents signed by both parties it was agreed that the publishers should prepare & publish the guide free of charge to the builders. It was further agreed that the publishers should be freed from the obligation of publishing the guide should in their opinion insufficient advertisement be obtained to justify publication. The publishers proceeded to carry out the terms of the documents thereby incurring expense. The builders then passed a resolution for a voluntary winding up, & the liquidators informed the publishers that they did not wish them to proceed with the guide. The publishers sought to be admitted as creditors in the winding up, alleging breach of the contract embodied in the above-mentioned documents, & they claimed damages in respect of the expenses incurred & loss of profits. The liquidators contended that the discretion given to the publishers by the terms of the document was so wide & of such a nature that no real obligation rested upon them, & that there was no binding contract between the parties :—*Held :* it must be implied in the documents that the publishers should only be freed from their obligations if in their reasonable & honest opinion insufficient advertisements were obtained & the obligations under the documents could not under this clause be arbitrarily determined by them. There was therefore a binding contract & the publishers were entitled to be admitted as creditors in the winding up.—*Re* BRAND ESTATES, LTD., [1936] 3 All E. R. 374.

5. *Add. Annotation :*—**Reld.** *Re* Wait, [1927] 1 Ch. 606.

5a. —— —— ——.]—SNOW *v.* FIREBRASS (1700), Holt, K. B. 609 ; 2 Salk. 557 ; 1 Ld. Raym. 611 ; 12 Mod. Rep. 434 ; 90 E. R. 1237.

PART I.

2 i. ***Definitions—Must be capable of being enforced in court of justice.***]—**An arrangement between intending husband & wife for a dress allowance to the wife held not to be a contract because not intended to affect or give rise to legal relations or to be attended with legal consequences.—COHEN *v.* COHEN (1929), 42 C. L. R. 91 ; [1929] Argus L. R. 204.—AUS.**

5 i. —— —— *Vagueness & uncertainty as to subject-matter & terms.*]—Applt. in writing authorised resp. to sell his motor car & agreed that if he did so, he would purchase another car, either new or second-hand, from resp. & take delivery of it when convenient

5b. —— —— ——.]—Pltfs., the freeholders of certain property, entered into an agreement with defts. to give them the "first option" of purchasing any premises that might be designated for dairy purposes on the said property:—*Held:* this agreement was void through uncertainty as to the intention of the parties as to the meaning of the words "first option."—RYAN *v.* THOMAS (1911), 55 Sol. Jo. 364.

Annotation:—**Refd.** County Hotel & Wine Co. *v.* London & North Western Ry. Co., [1918] 2 K. B. 251.

5c. —— —— ——.]—On Mar. 15, 1934, pltf. co. by a formal contract in writing agreed with deft. K. that pltf. co. should have the exclusive right to the services of K. & his band for the purposes of making gramophone records for twelve months, & also piano solo recordings by K. during the same period. The first clause in the agreement was: "This agreement shall be in force for a period of twelve months with an option on the part of the co. or the principal" (K.) "to extend the same for a further period of twelve months on terms to be hereinafter" (an inadvertent change upon the word in an earlier agreement "hereafter") "agreed": —*Held:* the so-called option had no binding effect. It was impossible to read into the option any implied terms, which would make it effective as a contract. A term might be implied that for the further period of twelve months K. was to continue to record & procure to be rendered to pltf. co. services similar to those which were the subject-matter of the existing agreement, but beyond that everything was left to the imagination.—BRITISH HOMOPHONE, LTD. *v.* KUNZ & CRYSTALLATE GRAMOPHONE RECORD MANUFACTURING CO., LTD. (1935), 152 L. T. 589.

7. *Add. Annotation:*—*As to* (1) **Refd.** Harmer *v.* Armstrong, [1934] Ch. 65.

Part II.—Parties to Contract.

12. *Add. Annotation:*—**Refd.** Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402.

17. *Add. Annotations:*—**Refd.** Johnson *v.* Stephens & Carter & Golding, [1923] 2 K. B. 857; *Re* Phillips, Public Trustee *v.* Mayer (1931), 76 Sol. Jo. 10; Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402; Ridley *v.* Lee, [1935] Ch. 591.

25. *Add. Annotation:*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

48. *Add. Annotations:*—*As to* (1) **Refd.** Clarkson *v.* Davies, [1923] A. C. 100; Duffner *v.* Bowyer (1924), 40 T. L. R. 700; *Re* Pennington & Owen, [1925] Ch. 825. *As to* (2) **Refd.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., [1926] A. C. 761.

51. *Add. Annotation:*—**Refd.** Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402.

52. *Add. Annotations:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307; Holder *v.* I. R. Comrs. (1932), 48 T. L. R. 365.

55. *Add. Annotation:*—**Apld.** Berry *v.* Berry, [1929] 2 K. B. 316.

93. *Add. Annotation:*—**Refd.** Ridley *v.* Lee, [1935] Ch. 591.

103. *Add. Annotation:*—**Distd.** Way *v.* Bishop, [1928] Ch. 647.

129. After this case add "*See, also,* No. 36, *ante.*"

150. *Add. Annotation:* — **Consd.** Johnson *v.* Stephens & Carter & Golding, [1923] 2 K. B. 857.

151. *Add. Annotation:*—**Refd.** Jenkins *v.* Deane (1933), 103 L. J. K. B. 250.

163. After this case add "—— **Effect of judgment against one.**]—*See* ESTOPPEL, Vol. XXI., pp. 218–221."

163a. Action brought against all—Successful defence by one—Unsuccessful defences by others.]—In an action for breach of contract brought against A., B. & C. as joint contractors, A. set up the defence that pltf. had not performed his part of the contract. B. & C. set up other defences which failed. The judge decided that A. having established an effective defence, the action failed as against him, but succeeded against B. & C.:—*Held:* B. & C. though they had not pleaded it, were entitled to the benefit of a defence set up by A. which went to the whole cause of action, & the action failed altogether.

Where the ct. has before it a fact common to the whole contract & not involving statutory illegality, it is bound to take notice of that fact as applicable to every joint debtor whether he has pleaded it or not.

to himself. He authorised resp. to place the net proceeds from the sale, less commission, to his credit with resp. as a deposit on the other car, & agreed that the balance owing by him on the purchase of the other car should be paid in cash or on terms to be decided by resp. if he desired terms. Resp. sold applt.'s car, but applt. refused to purchase from resp. another car in terms of the agreement, & claimed from resp. the proceeds of the sale, less commission:—*Held:* the agreement was void for uncertainty & did not constitute a binding contract, & applt. was entitled to recover from resp. the proceeds of the sale of his motor car, less commission.—WILLESDEN *v.* WEBB (1936), 30 Q. J. P. R. 138.—**AUS.**

sg. *Necessity for mutuality.*]—An arrangement by which one party gets the exclusive right to sell machines, but he does not promise to sell any, is not a contract because it lacks mutuality.—TOBIAS *v.* DICK & T. EATON CO., [1937] 4 D. L. R. 546.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—D.

124 ii. —— —— *Effect of admission by survivor on liability of representatives.*]—On the severance of a joint contract by the death of one of the joint contractors his personal representatives are not bound by anything subsequently done or said by the surviving joint contractors.—BENNETT *v.* FRASER, [1936] 2 W. W. R. 616.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—E.

130 iii. —— *Disclaimer by one.*]—If a contract purports to be made with two covenanters jointly, the disclaimer of one of them, to which the covenantor is not also a party, does not convert it into a contract with the other & entitle him to sue alone, even though the joint covenantor who has disclaimed is an infant.—BENNETT *v.* GREENSILL, [1927] N. Z. L. R. 167.—**N.Z.**

PART II. SECT. 2, SUB-SECT. 2.—F.

151 iii. —— ——.]—In an action to rescind a contract deft. applied to add W. as co-deft.:—*Held:* deft. had no right to force W. upon pltf. as deft., in the character of a joint contractor.—TORONTO & HAMILTON NAVIGATION CO. *v.* SILCOX (1888), 12 P. R. 622.—**CAN.**

There can only be one judgment against joint contractors, except upon a matter peculiar to one of the contractors.—PIRIE *v.* RICHARDSON, [1927] 1 K. B. 448; 96 L. J. K. B. 42; 136 L. T. 104; 70 Sol. Jo. 1023, C. A.

165. *Add. Annotation :*—**Consd.** United Dairies *v.* Public Trustee, [1923] 1 K. B. 469.

169. *Add. Annotation :*—**Refd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

192. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chiltern (1927), 96 L. J. K. B. 773.

197. *Add. Annotation :*—**Refd.** Key *v.* Bastin, [1925] 1 K. B. 650.

209. *Add. Annotation :*—**Consd.** York Glass Co. *v.* Jubb (1925), 42 T. L. R. 1.

218. *Add. Annotations :*—**Refd.** *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221; Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70; Harmer *v.* Armstrong, [1934] Ch. 65.

223. *Add. Annotation :*—**Consd.** Harmer *v.* Armstrong, [1934] Ch. 65.

231a. ——— ———.]—GILBERT (F.) (BOURNEMOUTH), LTD. *v.* MACKAY (1930), 74 Sol. Jo. 788.

255. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

256. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

257. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

259. *Add. Annotation :*—**Refd.** *Re* Franklin & Swathling, [1929] 1 Ch. 238.

264. *Add. Annotations :*—**Consd.** Harmer *v.* Armstrong, [1934] Ch. 65. **Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

267. *Add. Annotation :*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

268. *Add. Annotation :*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

272. *Add. Annotation :*—**Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

273. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494; Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960. **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455; Wilchick *v.* Marks & Silverstone, [1934] 2 K. B. 56.

274. *Add. Annotations :*—**Consd.** Otto *v.* Bolton & Norris, [1936] 1 All E. R. 960. **Refd.** Cunard *v.* Antifyre, Ltd. (1932), 49 T. L. R. 184.

275. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

Part III.—Formation of Contract.

297a. Offer & acceptance—Though in pursuance of unenforceable agreement.]—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., No. 4, *ante*.

298. After this case add "**Course of conduct.**]—*See* pp. 52, 67, 114, 115, Nos. 289, 389, 747-751; ESTOPPEL, Vol. XXI., pp. 290, 291, No. 1034."

PART II. SECT. 5.

8a. *Buddhist monk.*]—A Buddhist monk is a person competent to contract within Contract Act, s. 11. There is nothing immoral, although it would be so from the standpoint of his religious Order, or forbidden by law, within Contract Act, s. 23, for a Buddhist monk to enter into a contract for the sale of land. This is a question of contract only & not a question relating to a religious institution or usage.—U PYINNYA *v.* MAUNG LAW (1929), I. L. R. 7 Ran. 677.—**IND.**

PART II. SECT. 6, SUB-SECT. 1.

218 vi. —— ——.]—There is ample authority for saying that the administration of the law of contract in British India is not affected by the doctrine laid down in *Tweddle* v. *Atkinson* that only a person who is a party to the contract can sue upon it. In British India the aim is to do complete justice in one suit.—KSHIRODEBIHARI DATTA *v.* MANGOBINDA PANDA (1934), I. L. R. 61 Calc. 841.—**IND.**

218 vii. —— ——.]—No person can sue or be sued in an action at law upon a contract under seal unless he is a party to the contract.—MARGOLIUS *v.* DIESBOURG, [1937] S. C. R. 183; 2 D. L. R. 145.—**CAN.**

218 viii. —— ——.]—If a party to a contract is a trustee of rights under the contract for a third party, that third party can in equity sue on the contract. But when it is sought to show that a trust for the benefit of a third party has been created by means of a contract between two other parties, it is not sufficient to show merely that the contract was entered into by one of the parties to the contract with a view to the benefit of that third party. To entitle the third party to sue it must be shown that the parties to the contract, or one of them, intended at the time the contract was entered into to confer upon the third party some interest in the subject matter of the contract, & to confer that interest in such a way that it could not be destroyed or varied solely by the actions of the parties to the contract.—RYDER *v.* TAYLOR (1936), 36 S. R. N. S. W. 31; 53 N. S. W. W. N. 40.—**AUS.**

PART II. SECT. 6, SUB-SECT. 2.

238 xvi. —— ——.]—An agreement between a dealer in automobiles & the maker thereof, providing that it should be construed as an agreement between the dealer signing it & all other dealers "who have signed a similar agreement":—*Held:* to bring about a contractual relationship between such dealers involving an obligation for breach of which an action would lie by one dealer against another who signed such agreement.—MCCANNELL *v.* MABEE MCLAREN MOTORS, LTD., [1926] 1 D. L. R. 282; [1926] 1 W. W. R. 353; 36 B. C. R. 369.—**CAN.**

238 xvii. —— ——.]—Under authority given it by its Charter the City of Winnipeg enacted a bye-law requiring bailiffs (*inter alia*) to be licensed & to "furnish to the City a bond of indemnity for the purpose of indemnifying the City or any other person or corpn. who may suffer loss owing to the default of such licensee." Deft. co. entered into a bond in conformity with the terms of the licensing bye-law to indemnify persons who might employ certain bailiffs & suffer loss owing to their default. Pltf., alleging that he had employed these bailiffs to collect certain moneys which they had collected but had not turned over to him, sought to recover the amount from deft. co., basing his claim on the bond. There was a demurrer to the statement of claim on the ground of privity:—*Held:* under the terms of the statute which were given effect to by the bye-law & carried into the bond, pltf. had a statutory right against the co. which he was entitled to enforce by his own action.—METROPOLITAN LOAN CO. *v.* CANADA SECURITY ASSURANCE CO., LTD., [1934] 2 W. W. R. 422; 3 D. L. R. 649; 42 Man. L. R. 272.—**CAN.**

238 xvii. —— ——.]—Where an American corpn. agreed to buy shares of a Canadian corpn. from the corpn. & from other persons not party to the agreement:—*Held:* the other persons obtained a right of action against the American corpn. to enforce the contract.—VIPOND *v.* RAMSAY, [1934] 4 D. L. R. 84.—**CAN.**

sc. ——— *Member of public—Agreement between street railway & municipality.*]—*Ex p.* NEW BRUNSWICK POWER CO. (N. B.), [1928] 1 D. L. R. 332.—**CAN.**

PART III. SECT. 1.

m i. *Promise of subscription.*]—A written promise to contribute a certain sum of money towards the erection of a building for the Young Men's Christian Association, in reliance on which advances have been made & liabilities

307. *Add. Annotations:*—**Consd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503. **Refd.** May & Butcher, Ltd. *v.* R., [1934] 2 K. B. 17, n.; British Homophone, Ltd. *v.* Kunz & Crystallate Gramophone Record Manufacturing Co. (1935), 152 L. T. 589.

310. *Add. Annotation:*—**Refd.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426.

324. *Add. Annotation:*—**Refd.** Clark's Appeal (1937), 26 Ry. & Can. Tr. Cas. 61.

339a. ——.]—HORSFALL *v.* GARNETT (1858), 6 W. R. 387.

---

incurred, forms a valid & binding contract which cannot thereafter be revoked by the promisor & is enforceable against him on behalf of the assocn.—SARGENT *v.* NICHOLSON (1915), 25 D. L. R. 638.—**CAN.**

m ii. ——.]—A subscription whereby a certain sum of money is promised towards the erection & equipment of a building for the Young Men's Christian Association, in reliance on which liabilities are incurred & other subscriptions obtained, forms a sufficient consideration for a contract & is enforceable even before the completion of the building.—Y.M.C.A. *v.* RANKIN (1916), 27 D. L. R. 417.—**CAN.**

m iii. ——.]—In the course of a canvass for raising a fund to increase the general resources & usefulness of a college, B. signed a subscription as follows: "For the purpose of enabling Dalhousie College to maintain & improve the efficiency of its teaching, to construct new buildings & otherwise to keep pace with the growing need of its constituency & in consideration of the subscription of others, I promise to pay" $5,000 to the treasurer of the college. B. died without making any payment, & the college claimed against his estate:—*Held:* the subscription was not binding. The only basis for sustaining it as a binding promise could be as a contract supported by a good & sufficient consideration; & such a consideration could not be found in the subscription paper itself, or in the circumstances as disclosed by the evidence. The words "in consideration of the subscription of others" in the subscription were insufficient to support the promise if, in point of law, the subscriptions of others could not provide a valid consideration therefor; & the fact that others had signed separate subscription papers for the same common object or were expected to do so did not of itself constitute a legal consideration.—DALHOUSIE COLLEGE *v.* BOUTILIER ESTATE, [1934] S. C. R. 642; 3 D. L. R. 593; *affg.* S. C. *sub nom. Re* BOUTILIER, [1933] 1 D. L. R. 699.—**CAN.**

m iv. ——.]—Testator offered a subscription to a college building fund, in consideration of the subscription of others, but did not pay in his lifetime:—*Held:* this was a debt binding on his estate for which there was a consideration in law.—*Re* LORLAW, [1933] 4 D. L. R. 264; O. R. 764.—**CAN.**

m v. ——.]—In Prince Edward Island an action lies for a voluntary subscription when the work is a "public undertaking." — PROVINCIAL SANATORIUM *v.* MCARTHUR (1934), 7 M. P. R. 225; *affd.*, [1935] 4 D. L. R. 255; 10 M. P. R. 199; 5 F. L. J. (Can.) 70.—**CAN.**

sf. *Contract subject to approval—Effect of approval.*]—*Held:* the effect of a clause in a contract, which made the agreement subject to the approval of the Governor-General in Council, was to suspend the contract pending the giving of such approval, & upon such approval being given the contract took effect & became enforceable.—BANKS PENINSULA ELECTRIC-POWER BOARD *v.* ARAROA BOROUGH COUNCIL, [1923] N. Z. L. R. 880.—**N.Z.**

sj. —— *Sufficiency of approval.*]—A contract contained a provision that it should be deemed executed & become binding only when approved by the proper officers of the vendor co. Beneath the signatures of the contracting parties a form of approval was signed by certain persons as managers. There was evidence that they occupied these positions, but no evidence that they were the proper officers of the vendors for approval of the contract:—*Held:* approval could be shown by the subsequent conduct of the vendors.—GENERAL SUPPLY CO. OF CANADA *v.* O'NEILL MORKIN MACHINERY CO., [1924] 2 D. L. R. 183; 1 W. W. R. 1047.—**CAN.**

sk. *Contract for carriage of goods—Letter expressing wish for insurance of goods.*]—*Held:* the contract was complete when the agent received the goods & gave a receipt, which contained the terms of the contract, & the letter was only a request to insure, & formed no part of the contract.—MCGOLDRICK *v.* EASTERN EXPRESS CO. (1872), 14 N. B. R. (1 Pug.) 138.—**CAN.**

sl. *Statutory debt for taxes.*]—A statutory debt for taxes is not a contract.—A.-G. FOR CANADA *v.* O'REILLY, [1930] 1 W. W. R. 929; 3 D. L. R. 638; 24 Alta. L. R. 450.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—A. (a)

s i. ——.]—ACME GRAIN CO., LTD. *v.* WENAUS, [1917] 3 W. W. R. 157; 36 D. L. R. 347; 10 Sask. L. R. 305.—**CAN.**

b i. ——.]—In an action brought against exor. of a farmer who had died intestate, the pursuer averred that deceased, a childless widower & an invalid, proposed to him that, if he gave up a situation which he then had, resided with him at the farm, & looked after him & the farm, he would make the pursuer his heir; that, after consideration & induced by the representations of the deceased, he accepted the proposal, lived with the deceased for sixteen years as his companion & nurse without remuneration, & successfully managed the farm; & that, owing to the failure of deceased, in spite of his representations, to make a will in favour of pursuer, he had suffered material loss. He accordingly claimed to be indemnified for this loss, which he estimated at £6,000, or, alternatively, to be recompensed in so far as the estate had benefited from his services. The ct. dismissed the action as irrelevant, holding that pursuer's averments did not import a legal claim enforceable against the deceased's executry, in respect (*a*) that nothing more was disclosed than a mere expression of intention on the part of the deceased to make the pursuer his heir; (*b*) that, even on the assumption that a definite promise of heirship was averred, such a promise could have been proved only by the writ of the deceased, & here admittedly no writ existed; (*c*) that no *primâ facie* case for indemnification on ground of equity was disclosed, the loss averred by the pursuer as a result of the deceased's representations being based solely on hypothetical calculations & not on actual outlay.—GRAY *v.* JOHNSTON, [1928] S. C. 659.—**SCOT.**

sm. *Construction—Ambiguous offer.*]—Where a written offer is ambiguous, it may be construed according to the contemporaneous interpretation put upon it by the maker & receiver.—MANNING *v.* CARRIQUE (1915), 9 O. W. N. 61; 34 O. L. R. 453.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C. (a).

328 i. *What amounts to—Counter offer.*]—Specific counter offer or rejection puts an end to an offer.—SHAW *v.* JONES, [1924] N. Z. L. R. 1133.—**N.Z.**

328 ii. —— ——.]—Deft., through his agent, sent pltf. an offer to sell him land for $1,800 on terms. Pltf. wired the agent: "Send lowest cash price. Will give $1,600 cash. Wire." The agent replied by wire: "Cannot reduce price." Pltf. then wrote accepting the offer:—*Held:* the telegram reading "Cannot reduce price" was a renewal of the original offer, not merely a rejection of pltf.'s counter offer, & pltf.'s acceptance of it completed a contract of sale.—LIVINGSTONE *v.* EVANS, [1925] 4 D. L. R. 769; [1925] 3 W. W. R. 453.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C. (c) i.

337 viii. ——.]—Where a document was no more than an offer & was withdrawn before acceptance:—*Held:* there was no contract.—GOODISON THRESHER CO. *v.* DOYLE (1925), 57 O. L. R. 300.—**CAN.**

PART III. SECT. 2, SUB-SECT 1.—C. (c) iv.

p i. ——.]—Pltf. a member of & holder of a seat upon a Stock & Mining Exchange, in July, 1927, entered into an agreement with defts. S. & M. for the sale to them of his seat for the price of $20,000. In the course & as part of this transaction, a letter was written by deft. M. to pltf. dated July 27, 1927, stating: "I hereby give you an option, & guarantee same, for you to repurchase the . . . seat on or before Sept. 15, 1927, at the price of $21,000:—*Held:* the giving of the option was in consideration of the sale, & an option so given for a valuable consideration, cannot be revoked, & is open for acceptance by the optionee at any time within the period for which the option is given; all that was necessary to operate as an effectual exercise of the option was that pltf., not later than Sept. 15, should notify deft. M. of his acceptance of the offer.—FORREST *v.* SOLLOWAY, [1928] 3 D. L. R. 374; 62 O. L. R. 341.—**CAN.**

p ii. ——.]—An option given for value is an offer, together with a contract that the offer will not be revoked during the time, if any, specified in the option. If the offer is accepted within the time specified a contract is made & the parties are bound. If the offeror, in breach of his agreement, purports to revoke his offer, his revocation is ineffectual to prevent the formation of a contract by the acceptance of the offer within the time specified.—TAXES COMR. (Q.) *v.* CAMPHIN (1937), 57 C. L. R. 127; 43 Argus L. R. 401; 11 A. L. J. 104; 4 A. T. D. 315.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.—A.

366 vi. —— —— *Intention to discuss terms with third party.*]—Where parties have discussed terms, but one before finally accepting them intends to discuss the matter with others:—*Held:* there cannot be said to be a binding contract.—CARBON COAL & CLAY CO. *v.* NANOOSE-WELLINGTON COLLIERIES, [1923] 1 D. L. R. 1160.—**CAN.**

366 vii. —— ——.]—PATERSON (A. & G.), LTD. *v.* HIGHLAND RY. CO., [1927] S. C. (H. L.) 32.—**SCOT.**

366 viii. —— ——.]—BIGELOW *v.*

379a. Knowledge of terms of contract immaterial.] —The buyer of an automatic slot machine signed & handed to the sellers an order form containing in ordinary print & writing the essential terms of the contract, & in small print certain special terms, one of which was "any express or implied condition, statement, or warranty, statutory or otherwise not stated herein is hereby excluded." The sellers thereupon signed & handed to the buyer a printed order confirmation assenting to the terms in the order form. The machine was delivered by the sellers to the buyer, who paid to the sellers an instalment of the price. The machine did not work satisfactorily, & the buyer brought an action against the sellers in the county ct. claiming (*inter alia*) damages for breach of an implied warranty that the machine was fit for the purpose for which it was sold. The sellers pleaded (*inter alia*) that the contract expressly provided for the exclusion of all implied warranties. The buyer replied that at the time when she signed the order form she had not read it & knew nothing of its contents, & that the clause excluding warranties could not easily be read owing to the smallness of the print. There was no evidence of any misrepresentation by the sellers to the buyer as to the terms of the contract:—*Held:* as the buyer had signed the written contract, & had not been induced to do so by any misrepresentation, she was bound by the terms of the contract, & it was wholly immaterial that she had not read it & did not know its contents; the action failed & the sellers were entitled to judgment.—L'ESTRANGE *v.* GRAUCOB (F.), LTD., [1934] 2 K. B. 394; 103 L. J. K. B. 730; 152 L. T. 164.

387a. —— Sale of annuity—Execution of release.]—KENNEDY *v.* THOMASSEN, No. 3081a, *post*.

396. *Add. Annotations:*—**Apld.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Jones (Holloway) *v.* Woodhouse, [1923] 2 K. B. 117; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Farrow *v.* Orttewell, [1933] Ch. 480; Square *v.* Square, Cowan *v.* Cowan, [1935] P. 120; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85.

397. *Add. Annotations:*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258. **Refd.** Sullivan *v.* Constable (1932), 48 T. L. R. 369.

CRAIGELLACHIE-GLENLIVET DISTILLERY CO. (1905), 26 C. L. T. 186; 37 S. C. R. 55.—**CAN.**

366 ix. ——.]—WILSON & CO., LTD. *v.* FARQUHARSON (1906), 3 E. L. R. 146.—**CAN.**

370 xiii. —— *Acceptance stating understanding of offer made.*]—The Halifax Graving Dock & plant were wrecked by explosion in 1917, & in Jan. 1918, the Canadian Govt. passed an Order in Council providing that the work of repair should be entrusted to applts. on the condition (*inter alia*) that the latter should contribute the amount of insurance it carried & the Govt. pay the balance. A letter was sent to the co. enclosing a copy of the Order & stating "an agreement is being prepared & will be submitted shortly for signature," but no agreement was ever executed. Two days later the co. wrote to the Minister of Public Works that the terms of the Order were satisfactory & adding, "but in order that all will be quite clear our understanding is that we are to assign our insurances & policies to the Govt., & that the temporary buildings now being constructed are to be replaced by permanent buildings of the same kind as the original":—*Held:* the letter of the co. to the Minister did not contain an unqualified acceptance of the terms set out in the Order in Council. —HALIFAX GRAVING CO. *v.* R. (1921), 62 S. C. R. 338.—**CAN.**

370 xiv. ——.]—CANADA PERMANENT MORTGAGE CORPN. *v.* BARNARD Sask.), [1926] 1 D. L. R. 153.—**CAN.**

370 xv. ——.]—LEFEBVRE *v.* MOREAU (Alta.), [1928] 1 D. L. R. 1019.—**CAN.**

xp. *Time for—Time limited by contract.*]—Where applt. had not notified his acceptance within the fixed time, & in the absence of proof that resp. had waived his right to demand definite written notice as stipulated:—*Held:* there was no valid acceptance, —LAWS *v.* RUTHERFORD, [1924] App. D. 261.—**S. AF.**

st. —— *Within reasonable time.*]—SHATFORD *v.* B. C. WINE GROWERS, LTD., [1927] 2 D. L. R. 759; 38 B. C. R. 419.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B. (a).

380 i. *Necessity.*]—BARRETT *v.* RAPELJE (1835), 4 O. S. 175.—**CAN.**

388 iii. ——.]—SHEADY & SMITH *v.* JOHN GILLESPIE & CO., LTD. (Alta.), [1931] S. C. R. 232; 1 D. L. R. 918; *revsg.*, [1929] 4 D. L. R. 745; 3 W. W. R. 247; 24 Alta. L. R. 245; *affg.*, [1929] 4 D. L. R. 23.—**CAN.**

388 iv. —— *Exercise of option.*]—Payment of the purchase-price made by a party purporting to exercise an option to purchase within the time & in the manner provided in the option is insufficient to create a binding contract where acceptance has not been communicated to the other party before the expiry of the option.

Deft., in consideration of payment of £5, gave pltf. "an option of ten days to purchase" his share in a motor-vessel for £150. The agreement provided that the £5 was to be forfeited unless the purchase was completed in the said ten days. Pltf. was given the right to pay the purchase-money into deft.'s bank account at W. instead of paying the same personally to deft. at K. Pltf. told deft. on the telephone that he was paying the money into the bank, & subsequently did pay the money within the ten days & posted a letter of advice which reached the deft. after the expiry of the option. Deft. then refused to transfer his share to pltf.:—*Held:* payment did not amount to communication of acceptance & there was no binding contract. —SOARES *v.* SIMPSON, [1931] N. Z. L. R. 1079.—**N.Z.**

388 v. —— *Order in Council authorising acceptance by Minister.*]—*Held:* No acceptance on behalf of the Crown communicated to F. by any one having authority to do so had been shown; &, therefore, no contract binding on the Crown had been established. The Order in Council did not in itself constitute an acceptance.—R. *v.* DOMINION CORPN., LTD., & FORGIE, [1932] S. C. R. 511; 2 D. L. R. 810.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B. (b) ii.

396 ii. —— ——.]—If a person to whom an offer is made so conducts himself that a reasonable man would believe that he is accepting that offer & the offeror acts upon that belief the offeree will be held to have accepted the offer &, therefore, to have contracted on the terms proposed.

This principle was applied where the owner of an automobile, subject to a chattel mtge., had placed the automobile with deft. co. for sale, but objected to the terms of a sale proposed by deft. & then the mtgee. with, it was held, the concurrence of the owner, made an offer to deft. which deft. by his conduct was held to have accepted.—GREENBERG *v.* MANITOBA HUDSON-ESSEX, LTD., [1934] 1 W. W. R. 790.—**CAN.**

sz. *Delivery of goods—Before time laid down in order.*]—Applt. sent an order on June 7 to resp. to send him on hire a binder, to be delivered on or about Oct. 1. The order contained a term that it was not to be binding on resp. until received & ratified in writing or by actual delivery of the goods to applt., & that the order might be cancelled by applt. giving notice to resp. by registered letter at least thirty days prior to date for delivery, with a proviso that if prior to that date or six months thereafter applt. ordered a binder from any other person, resp. might by registered notice revive the order, & deliver the binder within thirty days. An agent of resp. was told by applt. that he wished to cancel the order, as he was buying a harvester, & the agent notified resp., but no notice was given by applt. to resp. On Sept. 2, resp. forwarded by rail a binder to applt., & wrote him stating that the binder had been forwarded per rail. The machine arrived, & applt. refused to take delivery, but admitted he had received the letter:—*Held:* the letter did not amount to a ratification of the order, & a delivery on Sept. 2 did not necessarily imply a delivery pursuant or referable to the stipulation in the contract for delivery on or about Oct. 1, & there was no acceptance of the order.—BLACKETT *v.* CLUTTERBUCK BROTHERS (ADELAIDE), LTD., [1923] S. A. S. R. 301.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.—C.

403 ii. —— —— *Whether motive for informing material.*]—A reward was publicly offered by the Govt. of Western Australia "for such information as shall lead to the arrest & conviction of the person or persons who committed the murders" of two police officers. C. who knew of the offer, gave information that led to the arrest of one person, & the conviction of that

415. *Add. Annotation :*—**Distd.** Neale *v.* Merrett (1930), 70 L. Jo. 95.

416. To the existing paragraph, after the word " accepting," add " ' subject to the terms of a contract being arranged.' "

418a. —— —— **" Orders to be acknowledged by return."**]—Defts.' departmental manager orally agreed on their behalf to buy certain goods from pltf. & signed an order form on which was printed the clause, " orders to be acknowledged by return," but this term had not been orally agreed & no acknowledgment was sent to defts. In an action for breach of the contract defts. pleaded that there was merely an offer & no contract, as the only document contained a clause which had not been agreed :—*Held :* (1) the words on the order form, " orders to be acknowledged by return," were not intended to be words of contract ; (2) the words " by return " related only to the time within which, & not to the method by which, acknowledgment was to be made, & therefore there was a concluded contract, & pltf. was entitled to recover.—WILLIS *v.* BAGGS & SALT (1925), 41 T. L. R. 453 ; 69 Sol. Jo. 543.

419a. —— —— **Acceptance " subject to the terms of a lease."**]—Deft. employed house-agents to let shop premises at 155 High Street, Bromley, Kent, & on Dec. 9, 1930, pltf., after inspecting the premises, offered to take a lease. In reply the house-agents wrote to him on the same day : " Corner shop, 155 High Street, Bromley. Referring to our conversation this morning on the telephone, we confirm that, subject to the terms of a lease, our client is prepared to accept your offer to take the above premises on a 7, 14 or 21 years' lease at a rent of £350 *per annum* for the first 14 years, rising to £375 for the last 7 years. . . . We have instructed Mr. B.'s solrs. to put the draft lease in hand immediately to forward to your solrs. . . ." The draft lease was forwarded on the same day, & after negotiations as to its terms deft.'s solrs. wrote on Dec. 29, 1930, to pltf.'s solrs. : " We have now received our client's instructions on the draft lease, & he is prepared to accept your client's alterations. We are, therefore, having the lease engrossed, & will forward you a counterpart for execution by your client in due course." This was done, but deft. then refused to execute the lease, & on Jan. 24, 1931, granted a lease of the premises to some one else. On Feb. 3, 1931, pltf. commenced proceedings for specific performance, or, alternatively, damages :—*Held :* there was no binding contract to grant a lease, as the expression " subject to the terms of a lease " in the letter of Dec. 9, 1930, meant " subject to the terms to be contained in a lease executed by the lessor." It followed that even if deft.'s solrs. were the agents of deft. to communicate by their letter of Dec. 29, 1930, the fact that deft. had himself agreed to the terms of the lease, so that this letter was a sufficient memorandum of the agreement signed by deft.'s duly authorised agents within Law of Property Act, 1925 (c. 20), s. 40, there was no binding contract, because the result of the letter of Dec. 9, 1930, was that there could be no concluded agreement until the lease had been executed.—RAINGOLD *v.* BROMLEY, [1931] 2 Ch. 307 ; 100 L. J. Ch. 337 ; 145 L. T. 611.

420. *Add. Annotations :*—*As to* (2) **Dbtd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224. **Refd.** Caney *v.* Leith, [1937] 2 All E. R. 532.

420a. —— —— ——.]—LORD CAIRNS indeed seems to have considered that, if the phrase [" subject to the title being approved by our solrs."] meant what the Ct. of Appeal thought it meant, it would follow that the purchaser was at liberty through the medium of his solr. to decline the title from mere caprice ; but none of the judges accepted this extreme view. It is reasonable, they thought, to imply good faith as a necessary ingredient. On the other hand, it seems to be putting an undue strain on the words to construe them, when used by a layman, as connoting not the approval of his own solr., which is their plain, ordinary meaning, but the decision of a ct. of justice after an unknown delay & at an unascertainable cost (MAUGHAM, J.).—CURTIS MOFFAT, LTD. *v.* WHEELER, [1929] 2 Ch. 224 ; 98 L. J. Ch. 374 ; 141 L. T. 538.

Annotation :—**Consd.** Caney *v.* Leith, [1937] 2 All E. R. 532.

422. *Add. Annotation :*—**Distd.** Neale *v.* Merrett (1930), 70 L. Jo. 95.

422a. —— —— **Acceptance of purchase-price—Terms as to method of payment.**]—NEALE *v.* MERRETT (1930), 70 L. Jo. 95 ; 170 L. T. Jo. 99 ; [1930] W. N. 189.

422b. —— —— **Acceptance " subject to surveyor's report."**]—MARKS *v.* BOARD (1930), 46 T. L. R. 424 ; 74 Sol. Jo. 354.

---

person & another for the murder of one of those officers. By petition of right under Crown Suits Act, 1898, C. claimed payment of the reward :—*Held :* unless petitioner had performed the condition of the offer acting on the faith of or in reliance upon the offer, there was no acceptance of the offer, &, therefore, no contract between the parties.—R. *v.* CLARKE (1927), 40 C. L. R. 227 ; [1928] Argus L. R. 97.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.—D.

425 viii. ——.]—Deft., through his agent, offered pltf. 300 tons of hay at $22 per ton. Pltf. accepted, & the agent wired his principal asking that shipment be rushed. Deft. replied that he could not confirm the order for immediate delivery, but would book for delivery the last of the month :—*Held :* a contract valid in law was then completed, & deft. could not subsequently vary it by demanding a deposit of $2 per ton as a condition of shipping.—BALLAM *v.* HATFIELD (1922), 55 N. S. R. 508.—**CAN.**

so. *Variation in covering letter to offeror's agent.*]—T., who was desirous of floating a gold mining co. in England, sent, through his broker F., a letter to D., a Dublin stockbroker, offering him a specified fee in consideration of the co. going to allotment, & D. allowing his name to be used as stockbroker, D. signed a letter of acceptance, which had also been forwarded to him by T., through F., & sent the acceptance to F. in a covering letter addressed to F., in which D. mentioned that he signed the acceptance on the distinct understanding that Messrs. H. (an English firm of stockbrokers) also joined. The co.'s prospectus was issued, but instead of the Messrs. H., G. & Co., stockbrokers of equally high standing, appeared as the English stockbrokers of the intended co. D., who was only interested in not being associated with what were commonly known as mining brokers, under no objection to the substitution, did not withdraw his name, & acted as Dublin broker until the co. went to allotment. In an action for the fee :—*Held :* (1) the complete contract in T.'s letter & D.'s acceptance could not be varied by the covering letter addressed to F. as T.'s agent ; (2) the covering letter was not intended to make the contract conditional upon H. being the English brokers ; (3) even if such a condition were imported into the contract, it could be waived by D., being one for his benefit solely.—MACONCHY *v.* TROWER, [1894] 2 I. R. 663.—**IR.**

429a. —— **What amounts to—Offer of house & "furniture"—Acceptance of house & "furniture & fittings as it stands."**]—Pltf. having an option from deft. to purchase a freehold house "with furniture for £4,000," wrote accepting deft.'s offer to sell the house "with the furniture & fittings as it stands":—*Held:* there was a concluded contract between pltf. & deft.—GOFFIN *v.* HOULDER (1920), 90 L. J. Ch. 488; 124 L. T. 145.

430a. ——.]—By the arts. of assocn. of the T. Co., a private co., any member desiring to sell any of his shares must notify the Board of the number of shares, the price, & the name of the proposed transferee, & the Board must offer to the other shareholders the number of the shares offered at the price, & if the offer is accepted the shares shall be transferred to the acceptors. It is provided that "if the shares or any of them are not so accepted the holder may sell or transfer them or any of them at the same or any higher price . . . to third parties approved by the Board." The capital of the T. Co. was £600,000 in 600,000 shares of £1 each, which shares were held in equal parts by the O. Co., & the P. Co. The P. Co. gave notice to the Board that they were desirous of selling 135,000 of their shares to third parties at the price of £2 per share. The Board offered the 135,000 shares to the O. Co., & the O. Co. desired to exercise their option as regards 5,000 shares only at the proposed price. The P. Co. contended that the whole of the 135,000 shares must be accepted, & that the acceptance of 5,000 shares was not good:—*Held:* the proposed acceptance was not good & the P. Co. were entitled to sell the whole 135,000 shares to third parties; the offer was of the whole 135,000 shares at a certain price per share, & not of 135,000 separate shares at that price; the price to be paid for the whole number of shares might well be less than that payable for a lesser number; & an offer must be accepted according to its terms.—OCEAN COAL CO., LTD. *v.* POWELL DUFFRYN STEAM COAL CO., LTD., [1932] 1 Ch. 654; 101 L. J. Ch. 253; 147 L. T. 10; 48 T. L. R. 290.

437. *Add. Annotation:*—**Folld.** Willis *v.* Baggs & Salt (1925), 41 T. L. R. 453.

448a. —— ——.]—WILLIS *v.* BAGGS & SALT, No. 418a, *ante*.

465. *Add. Annotations:*—**Consd.** Schiller *v.* Petersen, [1924] 1 Ch. 394; Phipps (Northampton & Towcaster Breweries) *v.* Rogers, [1925] 1 K. B. 14.

466. *Add. Annotation:*—**Refd.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

467a. Offer & acceptance by telegram.]—Where an offer is made & accepted by telegram, the contract is complete, & the party accepting cannot repudiate the contract on the ground that his telegram had a meaning which would not be apparent to the other contracting party.—ROTH (L.) & Co., LTD. *v.* TAYSEN, TOWNSEND & Co. & GRANT & GRAHAME (1896), 12 T. L. R. 211; 1 Com. Cas. 306, C. A.

Annotations:—**Refd.** Nickoll & Knight *v.* Ashton, Edridge, [1900] 2 Q. B. 298; Tredegar Iron & Coal Co. *v.* Hawthorn (1902), 18 T. L. R. 716.

467b. Acceptance by telegram—Effect of word "writing" in telegram.]—HOWARTH *v.* FORDER (1903), 48 Sol. Jo. 52.

476. *Add. Annotation:*—**Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

478. *Add. Annotation:* — **Consd.** Rawlinson *v.* Ames, [1925] Ch. 96.

480. *Add. Annotation:*—**Refd.** Edwards *v.* Porter, [1925] A. C. 1.

481. *Add. Annotation:*—*Generally*, **Refd.** Watson *v.* Davies, [1931] 1 Ch. 455.

487. For "**Question of law—Not question of fact**" in the catchwords read "**Whether question of law or fact.**"

487a. —— ——.]—Where a contract is made, not in express terms, but is to be collected from a variety of letters between the parties, it is for the jury, & not for the ct., to determine, with reference to the situation & intention of the parties, whether a contract has actually been completed.—RICHARDS *v.* HAYWARD (1841), 2 Man. & G. 574; 2 Scott, N. R. 670; Drinkwater, 136; 10 L. J. C. P. 108; 133 E. R. 875.

487b. —— ——.]—CADDICK *v.* TERRY (1864), 5 New Rep. 137.

489. After the cross-references following this case insert "**Construction of contracts by correspondence.**]—*See* DEEDS, Vol. XVII., p. 245, Nos. 588–592."

PART III. SECT. 2, SUB-SECT. 3.—B. (b).

451 iii. —— *Offer not made by post—Acceptance binding only at time of receipt.*]—CHARLEBOIS *v.* BARIL, [1927] 3 D. L. R. 762.—**CAN.**

8a. *At place of posting—Contract under Farm Implement Act, R. S. S.*, 1920 (*c.* 128).]—ELLARD *v.* WATERLOO MANUFACTURING Co., [1926] 3 D. L. R. 207; [1926] 2 W. W. R. 294; 20 Sask. L. R. 601.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.

471 xii. ——.]—BRUCE *v.* TOLTON (1879), 4 A. R. 144.—**CAN.**

471 xiii. ——.]—Where it is sought to establish a contract by correspondence, the whole of the correspondence relating to the matter in question must be looked at for the purpose of finding out at what stage there was, if at all, a complete contract between the parties. Where the cardinal points are definitely agreed upon, the mere fact that reference has been made to a more formal agreement, or subsidiary non-essential stipulations, will not prevent the ct. from considering the agreement arrived at by the letters as concluded.—CURRIMBHOY & Co., LTD. *v.* CREET (1929), I. L. R. 57 Calc. 170.—**IND.**

471 xiv. ——.]—CLARKE *v.* PEABODY OVERALL Co., [1931] 2 D. L. R. 832.—**CAN.**

479 v. —— —— *Acceptance by telegram—Fresh term inserted in letter of confirmation.*]—ST. DENIS *v.* WESTERN PRODUCTS, LTD., [1923] 3 W. W. R. 858.—**CAN.**

489 iii. —— *Effect of correspondence coupled with conduct—Substantial par of goods delivered.*]—*Held:* a contract was established whereby pltfs. became bound to deliver the remainder of the goods.—HAMILTON GEAR & MACHINE Co. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367; 54 O. L. R. 585.—**CAN.**

PART III. SECT. 2, SUB-SECT. 5.

490 x. ——.]—Where a proposal to manufacture certain steel rails was accepted in writing by the party to whom it was sent, such acceptance stating that it would be followed by a formal contract, & where it appeared that the formal contract was intended solely to embody the agreement already arrived at:—*Held:* in such a case, looking to the intentions of the parties, the contractual relations between them should be regarded as based upon the terms so agreed upon.—DOMINION IRON & STEEL Co. *v.* R. (1920), 67 D. L. R. 609; 20 Exch. C. R. 245.—**CAN.**

490 xi. ——.]—HARICHAND MANCHARAM *v.* GOVIND LUXMAN GOKHALE (1922), L. R. 50 Ind. App. 25.—**IND.**

490 xii. ——.]—Persons who have been put into possession of land under an agreement which contemplates the execution of a formal contract do not

492. *Add. Annotations :*—**Folld.** Chillingworth *v.* Esche, [1924] 1 Ch. 97. **Consd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503 ; May & Butcher, Ltd. *v.* R., [1934] 2 K. B. 17, n. ; **Refd.** Astor Properties, Ltd. *v.* Tunbridge Wells Equitable Friendly Society, [1936] 1 All E. R. 531.

496. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

501a. —— **"Subject to terms of contract being arranged."**]—HONEYMAN *v.* MARRYATT, No. 416, *ante*.

504a. —— **Lease "to be drawn by counsel."**]—STURGION *v.* PAINTER (1608), Noy, 128 ; 74 E. R. 1092.

Annotation :—**Refd.** Goodtitle d. Estwick *v.* Way (1787), 1 Term Rep. 735.

511. *Add. Annotations :*—**Folld.** Todd *v.* Jones Bros. (1930), 15 Tax Cas. 396. **Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544. **Refd.** Chillingworth *v.* Esche, [1924] 1 Ch. 97 ; Keppel *v.* Wheeler, [1927] 1 K. B. 577.

511a. —— ——.]—During Mar. 1928, there were negotiations & detailed correspondence between resp. co. & another co. who were proposing to purchase the business of the resp. co., culminating in a letter dated Mar. 21, 1928, in which the prospective purchasers indicated that the terms contained in the correspondence, & as arranged at interviews between the parties, were generally accepted "subject to such terms being fully set out in a formal contract or agreement, to be submitted to us & finally approved of." On Mar. 29, 1928, two of the directors of resp. co. resigned & entered the service of the purchasers. On Mar. 30 resps. gave notice to their foreign agents terminating their engagements. The formal contract was dated Apr. 16, 1928 :—*Held :* the correspondence did not constitute a contract.—TODD (H.M. INSPECTOR OF TAXES) *v.* JONES BROS., LTD. (1930), 15 Tax Cas. 396.

513a. —— **"The usual public-house contract to be entered into."**]—LUCAS *v.* HALL, [1899] W. N. 92.

514. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

531. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576.

532. *Add. Annotation :*—**Consd.** Caney *v.* Leith, [1937] 2 All E. R. 532.

534. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

539a. —— ——].—Pltf. wrote to deft. an offer to sell a house to her for a certain sum subject to certain unspecified covenants, & deft. signed at the foot this statement : "I accept the above offer subject to contract." The solrs. of both parties approved a draft formal contract, but deft. refused to execute it. In an action for specific performance :—*Held :* the words "subject to contract" did not mean that deft. bound herself if the parties' solrs. approved a formal contract, but meant, in the circumstances, "subject to the execution by the parties of a formal contract," & therefore the action failed.—WILSON *v.* BALFOUR (1929), 45 T. L. R. 625.

540. *Add. Annotations :*—**Apld.** Chillingworth *v.* Esche, [1924] 1 Ch. 97 ; Lockett *v.* Norman-Wright (1924), 69 Sol. Jo. 125 ; Wilson *v.* Balfour (1929), 45 T. L. R. 625. **Refd.** Nevile Reid *v.* I. R. Comrs. (1922), 12 Tax Cas. 545.

540a. —— ——.]—An agreement subject to contract is merely in the stage of negotiation (SARGANT, L.J.).—KEPPEL *v.* WHEELER, [1927] 1 K. B. 577 ; 96 L. J. K. B 433 ; 136 L. T. 203, C. A.

Annotations :—**Apld.** Raymond *v.* Wooten (1931), 47 T. L. R. 606. **Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros., [1934] 2 K. B. 436 ; Musson *v.* Moxley, [1936] 1 All E. R. 64.

545. *Add. Annotations :*—**Consd.** Chillingworth *v.* Esche, [1924] 1 Ch. 97. **Apld.** Lockett *v.* Norman-Wright (1924), 69 Sol. Jo. 125; Wilson *v.* Balfour (1929), 45 T. L. R. 625. **Folld.** Todd *v.* Jones Bros. (1930), 15 Tax Cas. 396. **Refd.** Nevile Reid *v.* I. R. Comrs. (1922), 12 Tax Cas. 545.

546a. —— **"Subject to suitable agreements being arranged between your solicitor & mine."**]—The words "subject to suitable agreements being arranged between your solr. & mine" are indistinguishable in their effect from such words as "subject to formal contract," "subject to contract," or "subject to proper contract to be prepared by the vendor's solr.," & do not import a binding agreement between the parties.—LOCKETT *v.* NORMAN-WRIGHT, [1925] Ch. 56 ; 94 L. J. Ch. 123 ; 132 L. T. 532 ; 69 Sol. Jo. 125.

546b. —— **"Subject to a proper contract to be prepared by the vendor's solicitors."**]—By a document of July 10, 1922, the purchasers agreed to purchase certain freehold land & a nursery from the vendor "subject to a proper contract to be prepared by the vendor's solrs." & acknowledged having paid £240 "as deposit & in part payment of the

---

become trespassers (as being in breach) upon failing to execute a contract when required to do so ; if the agreement, upon its true construction, makes the execution of a contract a condition or term there is no enforceable contract, either because the condition is unfulfilled or because the law does not recognise a contract to enter into a contract.—CURRIMBHOY & Co. *v.* CREET (1932), 60 L. R. Ind. App. 297.—**IND.**

490 xiii. ——.]—The mere fact that an agreement complete in itself provides that its terms shall be embodied in a formal contract does not render the execution of the formal contract a condition precedent to the enforceability of the original agreement.—BRITISH AMERICAN TIMBER CO., LTD. *v.* ELK RIVER TIMBER CO., LTD., [1934] 2 W. W. R. 658.—**CAN.**

f i. —— ——.]—An option for sale read as follows : "The owners agree to give H. the option to purchase the lands herein leased at any time within the period of lease for $25 per acre, $2,000 cash & the balance at six per cent. interest & half crop payments, by agreement to be drawn up" :—*Held :* the words "by agreement to be drawn up" had the same effect as the words "subject to an agreement to be drawn up," &, since the agreement was to be on the crop-payment plan, the ct. could not supply the details necessary to complete it, & the option did not of itself constitute an enforceable contract.—BOCALTER *v.* HAZLE, [1925] 4 D. L. R. 948 ; [1925] 3 W. W. R. 577 ; *revsg.* 19 Sask. L. R. 417 ; [1925] 2 W. W. R. 436.—**CAN.**

n i. —— *Contract for purchase of timber limits—All terms agreed upon—Provision for formal contract after survey.*]—Where all the terms of a contract for the purchase of timber limits are agreed upon it constitutes a binding contract, notwithstanding a provision for the execution of a formal contract after a preliminary survey & cruise of the limits.—BRITISH AMERICAN TIMBER CO. *v.* ELK RIVER TIMBER CO., [1933] 4 D. L. R. 286.—**CAN.**

543 i. —— *Solicitor to approve form of contract.*]—An option agreement provided that in the event of the purchaser deciding to accept the option by entering into an agreement to purchase the land, "such agreement to purchase shall be on a form approved by the vendor's solr." :—*Held :* the execution of a further contract was not necessary to the existence of an enforceable contract to purchase.—VITALY *v.* BRYAN (Alta.), [1927] 1 D. L. R. 244 ; [1926] 3 W. W. R. 785.—**CAN.**

said purchase-money." Completion was fixed for Nov. 2. The purchasers signed the document & the vendor added & signed a receipt for the deposit confirming the sale. A proper contract was subsequently prepared by the vendor's solrs., approved by the purchasers' solr., executed by the vendor, & tendered to the purchasers for execution. The purchasers, however, refused to sign it, declined to proceed with the transaction, & claimed the return of the deposit:—*Held:* the document of July 10, 1922, was only conditional, & did not constitute a firm contract, & the purchasers were in the circumstances entitled to recover the deposit.—CHILLINGWORTH *v.* ESCHE, [1924] 1 Ch. 97; 93 L. J. Ch. 129; 129 L. T. 808; 40 T. L. R. 23; 68 Sol. Jo. 80, C. A.

Annotations:—**Apld.** Lockett *v.* Norman-Wright, [1925] Ch. 56; Wilson *v.* Balfour (1929), 45 T. L. R. 625. **Refd.** Keppel *v.* Wheeler, [1927] 1 K. B. 577; May & Butcher, Ltd. *v.* R., [1934] 2 K. B. 17, n.; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

546c. —— **"Formal contract to be signed in due course."**]—RONALD FRANKAU PRODUCTIONS, LTD. *v.* BELL (1927), 65 L. Jo. 33; 164 L. T. Jo. 504.

555. *Add. Annotation:*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

559. *Add. Annotation:*—**Refd.** Berners *v.* Fleming, [1925] Ch. 264.

563a. ——.]—GUILDFORD TRUST, LTD. *v.* POHL & MARITCH (1928), 72 Sol. Jo. 171.

567. *Add. Annotation:*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. **Consd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389. **Refd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

567a. Knowledge of brother's liability to prosecution—No direct threat.]—A guarantee was obtained from a family co. under an implied threat to prosecute a member of the family who was alleged to have forged the signature of the co. to a previous guarantee. It was known to the receiver of the guarantee that it was only given because the father of the alleged forger was in such a state of health that the shock of the prosecution of his son was likely to endanger his life:—*Held:* the guarantee was obtained by undue influence, & the guarantors were entitled to repudiate it.—MUTUAL FINANCE, LTD. *v.* WETTON & SONS, LTD., [1937] 2 K. B. 389; [1937] 2 All E. R. 657; 106 L. J. K. B. 778; 157 L. T. 536; 53 T. L. R. 731; 81 Sol. Jo. 570.

568. *Add. Annotations:*—**Consd.** Hardie & Lane *v.* Chilton, [1936] 2 K. B. 306. **Refd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

569. *Add. Annotation:*—*As to* (1) **Consd.** With *v.* O'Flanagan, [1936] Ch. 575.

570. *Add. Annotation:*—**Refd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

572. *Add. Annotation:*—**Refd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

573. *Add. Annotation:*—**Consd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

576. *Add. Annotation:*—**Refd.** Brocklebank *v.* R., [1924] 1 K. B. 647.

581. *Add. Annotation:*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

587. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

588. *Add. Annotation:*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

592. *Add. Annotation:*—*As to* (2) **Consd.** Hussein (otherwise Blitz) *v.* Hussein, [1938] P. 159.

596. *Add. Annotation:*—**Refd.** De Pret-Roose *v.* Pret-Roose (1934), 78 Sol. Jo. 914.

PART III. SECT. 3, SUB-SECT. 1.

555 xiv. ——.]—COLE *v.* SUMNER (1900), 30 S. C. R. 379.—**CAN.**

555 xv. ——.]—GRAHAM *v.* GRAHAM (Man.) (1914), 27 W. L. R. 263; 16 D. L. R. 485.—**CAN.**

555 xvi. ——.]—Where a person seeks in obtaining another's signature to a printed form to impose an obligation to pay for a service which for many years had been furnished gratuitously, notice of the terms & conditions on which the latter is asked to sign the document should be given in no uncertain language & in no uncertain way; if the document is so printed & arranged that when read it gives the signer thereof the impression that he is merely supplying information when as a matter of fact it contains an obligation to pay money, & the signature is induced by that impression, the ct. will not enforce the obligation.—INTERNATIONAL TRANSPORTATION CO. *v.* WINNIPEG STORAGE, LTD., [1931] 2 W. W. R. 664.—**CAN.**

o i. —— *Burden of proof.*]—It is never necessary to prove in the first instance that either party to a contract understood the legal effect of a term thereof; if a party seeks to escape the liability imposed by a term of the contract, he must adduce evidence to establish grounds of excuse.—THORESON *v.* BLAIRMORE SCHOOL DISTRICT BOARD OF TRUSTEES, [1927] 1 D. L. R. 1178; [1927] 1 W. W. R. 449; 22 Alta. L. R. 415.—**CAN.**

p i. —— —— *Failure to read over whole contract.*]—Where a purchaser of a large farm implement does not read English, Farm Implement Act, R. S. S., 1920 (c. 128), s. 18, is not complied with unless the whole contract is read over & explained to him in his own language, even though he understands some English &, after the whole contract has been read to him in English, those portions of it which he says he does not understand in English are read over & explained to him in his language, & he says he understands it all.—ADVANCE RUMELY THRESHER CO. *v.* YORGA, [1926] 3 D. L. R. 517; [1926] S. C. R. 397.—**CAN.**

p ii. —— —— *No request for reading over or explanation.*]—If a person who cannot read a document signs it without requesting to have it read or explained to him & it is not read or explained he is bound by it, where, at least, there is no evidence that the other party knew that the illiterate party was signing under a misunderstanding of its effect.—CANADIAN BANK OF COMMERCE *v.* DEMBECK (Sask.), [1929] 4 D. L. R. 220; 2 W. W. R. 586.—**CAN.**

p iii. —— —— *Burden of proof.*]—Where a contract was drawn up by a magistrate, who was employed for that purpose, &, after being reduced to writing, it was read over to deft., who signed by his mark:—*Held:* the burden was upon deft. of establishing that the document was not his agreement.—KEDDY *v.* DAUREY (1913), 47 N. S. R. 229; 12 D. L. R. 621; 13 E. L. R. 163.—**CAN.**

p iv. —— ——.]—MILLAR *v.* ELLARD, [1927] 2 D. L. R. 102.—**CAN.**

p v. —— *Party intoxicated.*]—SCHOFIELD *v.* TUMMONDS (1858), 6 Gr. 568.—**CAN.**

564 i. —— *Contract of sale silent as to time & mode of payment.*]—Defts. having ratified by telegram a contract made by their agents, afterwards attempted to repudiate it on the ground of an alleged variation in the terms of the bought note as to the time of delivery. Defts.' letter of repudiation to their agents attempted to impose terms as to the time for payment as a condition of accepting the alleged variation:—*Held:* the contract was complete notwithstanding that the particular mode or time of payment was not stated.—CAMPBELL *v.* MAHLER (1919), 43 O. L. R. 395; 14 O. W. N. 348; *affd.*, 15 O. W. N. 339.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—A. (b).

b i. ——.]—An agreement to pay a debt made by a debtor while under arrest on a *capias* previously issued for said debt, will not be cancelled for duress when the arrest was not illegal & the bare fact of the arrest was the only evidence of duress.—THOMPSON *v.* SCHNEIDER, [1929] 1 D. L. R. 989; 60 N. S. R. 329.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—C. (a).

599 i. *Contract voidable.*]—An agreement in writing by a wife to the provi

611. *Add. Annotations :*—**Apld.** *Re* Lloyds Bank, Bomze *v.* Bomze (1930), 47 T. L. R. 38. **Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380. **Refd.** Shears *v.* Jones (1922), 128 L. T. 218.

613. *Add. Annotations :—As to* (3) **Apld.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127. *Generally*, **Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

614. After this case add " *See, also,* FRAUDULENT & VOIDABLE CONVEYANCES, No. 834a."

616. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

620. *Add. Annotation :—As to* (2) **Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

622. *Add. Annotation :—As to* (1) **Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

628. *Add. Annotation :—As to* (1) **Consd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

630. *Add. Annotations :*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

633a. —— —— —— **Daughter married.**]—There is no rule of law that the marriage of a daughter, coupled with her departure from the parental home, necessarily puts an end to the domination of her parents. Whether or not the parental dominion has completely ceased is a question of fact depending on the particular circumstances of each case.

A daughter married at the age of eighteen & thereupon left her parental home & lived with her husband. Her mother was very extravagant & frequently borrowed money from moneylenders. When the daughter came of age she, at her mother's request, raised £2,000 on her reversionary interest under her grandfather's will in order to pay off her mother's debts to moneylenders. The mother continued to borrow money from moneylenders, & a year later the mother asked the daughter to sign a document so that she (the mother) might be able to borrow some more money. The mother & daughter signed a joint & several promissory note for £775 at 85 per cent. interest. Of the £775 £200 was a fresh loan to the mother & £575 was acknowledged by the mother & daughter to be then due & owing to the moneylenders. In reality £410 was money which had actually been advanced to the mother, £90 was for interest, & £75 supposed interest or bonus because the loans were renewed before they were due. The daughter also gave a second charge on her vested interest in remainder without which the moneylenders would not lend the money. The daughter, who did not understand the transaction, signed the document at the request of her mother. The only advice which the daughter received was that of a solr. who also acted for the mother & the moneylenders, & who prepared the documents. In an action by the moneylenders on the promissory note against both the mother & daughter the judge held that the daughter was emancipated by reason of her marriage & was not under the influence of her mother, but he held the transaction was harsh & unconscionable & re-opened all the transactions & gave judgment against both mother & daughter for the sums actually lent with interest at a reduced rate. On appeal by the daughter :—*Held :* the daughter was under the influence of her mother when she entered into the transaction in question, & also that she had no independent advice, & that as the moneylenders had notice of the facts which constituted undue influence on the part of the mother they were in no better position than the mother, & therefore the transaction must be set aside so far as the daughter was concerned.—LANCASHIRE LOANS, LTD. *v.* BLACK, [1934] 1 K. B. 380; 103 L. J. K. B. 129; 150 L. T. 304, C. A.

636. *Add. Annotation :*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

650. *Add. Annotation :*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

662. *Add. Annotation :*—**Folld.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

663. *Add. Annotation :*—**Folld.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

664. *Add. Annotation :*—**Folld.** *Re* Lloyds Bank, Ltd., Bonze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

664a. General rule.]—An agreement of May 6, 1929, between B. & L., who were betrothed, provided that L. should deposit at a bank, in her own name & B.'s, the sum of £4,000, to be re-deposited upon the marriage in a current account in their joint names, & to be used in paying off a mtge. on B.'s premises & in buying him a practice. The amount of the mtge. was stated to be about £1,200. The agreement had been drawn up on the instructions of L.'s brother, who had provided the £400 as her dowry. Despite the terms of the agreement, sums were withdrawn

---

sions of her husband's will in lieu of the statutory provisions :—*Held :* to have been obtained by duress & not a bar to her application for relief under Devolution of Estates Act, 1920, s. 24. —*Re* BURSAW'S ESTATE, [1924] 3 W. W. R. 807.—**CAN.**

599 ii. ——.]—BURRIS *v.* RHIND (1899), 29 S. C. R. 498.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A. (a).

611 vi a. ——.]—RAGHUNATH PRASAD *v.* SARJU PRASAD (1923), L. R. 51 Ind. App. 101.—**IND.**

r i. ——.]—Where by reason of the confidential relationship existing between pltf. & deft. & the influence he was able to exert over her by asserting knowledge of matters which he alleged could be used to her prejudice, which at the trial he admitted had no existence, he was enabled to procure from pltf. an excessive amount for services performed, which was paid by her even after she had obtained independent advice, pltf. was held entitled to recover the same back, less a reasonable amount for the services performed.—DISHER *v.* CLARRIS (1894), 25 O. R. 493.—**CAN.**

r ii. ——.]—*Re* WHITE, KERSTON *v.* TANE (1876), 24 Gr. 224.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A. (b) i.

s i. ——.]—An aged woman asked her son to inquire into the state of her property. By his report thereon she was induced to make a transfer of the property to him & a daughter :—*Held :* the mother was clearly capable of fully understanding what she was doing, & there was no undue influence or misrepresentation, & proof of independent advice was unnecessary to support the deed.—WEIR *v.* WEIR (B. C.), [1920] 3 W. W. R. 725.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A. (b) iii.

ss. *Donatio mortis causa to parish priest—Valid.*]—BOHAN *v.* WALKER (N. B.), [1928] 4 D. L. R. 630.—**CAN.**

before the marriage, which took place on June 16. On May 15 B. & L. withdrew £1,000, with which the practice was bought, & on June 5 they withdrew £2,350. They also withdrew other sums at later dates. B. had the money, & L. signed documents authorising the withdrawals. The marriage was unhappy, & the parties separated on Sept. 27. There was then only the sum of £150 in the joint account, B. having had £3,850. At the date of the agreement he owed £2,000 to his bank secured by charge on his premises, a fact which he had not told L.'s brother. In an action by L. & her brother to recover the money from B., & asking that the agreement of May 6, 1929, should be set aside or rectified, on the ground that L. was induced by B.'s undue influence to sign the documents authorising the withdrawals:—*Held:* the agreement must stand, but the doctrine of *Huguenin* v. *Baseley*, No. 611, applies to the relation between persons engaged to be married; it had not been established that the sum of £2,000, part of the £2,350, withdrawn from the joint account, was a proper gift to deft.; & pltfs. were entitled to judgment for £1,000, half of the £2,000.—*Re* LLOYDS BANK, LTD., BOMZE & LEDERMAN *v.* BOMZE, [1931] 1 Ch. 289; 100 L. J. Ch. 45; 144 L. T. 276; 47 T. L. R. 38.

671. *Add. Annotation:*—**Refd.** Mitchell *v.* Alexander (1935), 79 Sol. Jo. 381.

698. *Add. Annotation:*—**Refd.** With *v.* O'Flanagan, [1936] Ch. 575.

After this case add "*See, also,* FRAUDULENT & VOIDABLE CONVEYANCES, No. 834a."

717. *Add. Annotations:*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127; Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

739. *Add. Annotations:*—**Consd.** Pontypridd Grdns. *v.* Drew (1926), 90 J. P. 169. **Refd.** Doyle *v.* White City Stadium, Ltd., [1935] 1 K. B. 110.

741. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

743a. —— —— **Outdoor relief afforded to pauper.**]—Guardians who supply goods to a pauper by way of ordinary poor relief have no right to recover from the pauper the reasonable value of the goods so supplied.—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

See, further, POOR LAW.

745. *Add. Annotation:*—**Refd.** Winkworth *v.* Raven, [1931] 1 K. B. 652.

747. *Add. Annotation:*—**Refd.** Brandt *v.* Liverpool, Brazil & River Plate Steam Navigation Co., [1924] 1 K. B. 575.

748. *Add. Annotation:*—**Refd.** Rederiakt. Transatlantic *v.* Compagnie Française des Phosphates de l'Oceanie (1926), 136 L. T. 619.

750. *Add. Annotation:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

755a. ——.]—Covenant for 2*s.* for copying every quire of paper. Breach that he copied four quires & three sheets, for which 8*s.* 3*d.* was due. And that there could be no opportionment, for the covenant was to allow him 2*s.* a quire, but not *pro rata*. If he had averred 3*d.* to be the usual fees for copying three sheets he might have helped himself.—NEEDLER *v.* GUEST (1647), Aleyn, 9; Sty. 12; 82 E. R. 886.

759. *Add. Annotations:*—**Refd.** Pockney *v.* Atkinson (1929), 142 L. T. 135; Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532.

763. *Add. Annotation:—Generally,* **Refd.** Meyrick *v.* Dyson (1925), 41 T. L. R. 368.

766. *Add. Annotation:*—**Refd.** Importers Co. *v.* Westminster Bank, [1927] 1 K. B. 869.

PART III. SECT. 3, SUB-SECT. 3.—B.

696 i. *Onus on party alleging—Unless transaction prima facie unconscionable.*]—RAGHUNATH PRASAD *v.* SARJU PRASAD (1923), L. R. 51 Ind. App. 101. —**IND.**

PART III. SECT. 3, SUB-SECT. 3.—C. (a).

715 i. *Principles on which relief granted.*]—UNDERWOOD *v.* COX (1912), 21 O. W. R. 757; 3 O. W. N. 1112; 26 O. L. R. 303.—**CAN.**

722 i. *Transaction voidable.*]—COLP *v.* HUNTER (1911), 1 W. W. R. 314.—**CAN.**

722 ii. ——.]—ERWIN *v.* SNELGROVE Ont.), [1927] 4 D. L. R. 1028.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.

741 xii. —— ——.]—KILBORN *v.* FORESTER (1831), 1 Dra. 344.—**CAN.**

741 xiii. —— ——.]—Pltf. having entered into a contract for the supply of horses' food with the Officer Commanding the depot of a cavalry regiment sued the Secretary of State for the balance due to him under the contract:—*Held:* an Officer Commanding a depot, not being one of the officers authorised by the Governor-General in Council under Government of India Act, 1915, s. 30 (2), to enter into contracts on behalf, of the Secretary of State, the contract sued upon was *ultra vires* & could not be enforced against the latter. However, under Indian Contract Act, s. 70, pltf., having lawfully supplied foods for the horses belonging to the Secretary of State, not intending to do so gratuitously & the latter having enjoyed the benefit thereof, was entitled to compensation.

Sect. 70 of the Contract Act, although founded on English law, must be interpreted according to its clear & explicit terms & not in reference to the provisions of English law relating to the matter. The sect. is much wider than the English law & goes beyond it.—SECRETARY OF STATE *v.* SARIN & CO. (1929), I. L. R. 11 Lah. 375.—**IND.**

744 i. —— *From circumstances.*]—RICE *v.* BURCKHARDT (1925), 36 B. C. R. 161.—**CAN.**

744 ii. —— ——.]—NORTHERN RY. CO. *v.* LISTER (1867), 27 U. C. R. 57.—**CAN.**

747 ii. —— ——.]—*Held:* an agreement by a co. to repurchase shares was established, as the conduct of the co. was quite inconsistent with any other reason than that it intended & agreed to repurchase the shares.—CLARKE *v.* LANGS & RODDIS, LTD. (1926), 37 B. C. R. 77.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.—C.

u i. —— *Contract to dig well.*]—When a party contracts to bore a well, with a proviso that he is to be paid a proportion of the price if it is a dry hole, there is an implied promise to go the distance his machinery will bore, & if because of a rock he does not go that distance it is not a "dry hole," & he is not entitled to payment.—WINKLER & MARTIN *v.* HUTTON, [1920] 2 W. W. R. 982; 13 Sask. L. R. 335.—**CAN.**

u ii. —— ——.]—Where a hole is caving in & rendering it dangerous for him to work, & a well-digger abandons the work without having obtained water & without having gone to the full depth of his machine, he is not entitled to payment for the work already performed. A well-digger knows, & must be held to have assumed, these risks when he has not in his contract protected himself against such contingencies.—SAVIDAN *v.* LAPLANTE, [1924] 3 D. L. R. 1089; 2 W. W. R. 1222.—**CAN.**

u iii. —— *Contract for removal of night soil—Special provisions as to cleansing.*]—*Held:* the contract was one entire contract & every provision in it for strict cleanliness & disinfection was of the very essence & nature of the contract.—HUNTER *v.* WEST MAITLAND MUNICIPAL COUNCIL (1923), 23 S. R. N. S. W. 420.—**AUS.**

763 i. *Failure of plaintiff to perform whole contract.*]—The contract of an undertaker is an entire one to conduct the funeral in a reverend manner, & therefore where the bottom of the

Part IV.—The Statute of Frauds.

769. *Add. Annotation :*—**Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

772. *Add. Annotation :*—**Refd.** Monnickendam *v.* Leanse (1923), 39 T. L. R. 445.

775. *Add. Annotation :*—**Refd.** Newman *v.* Slade, [1926] 2 K. B. 328.

793. *Add. Annotation :*—**Expld.** Scott *v.* Pattison, [1923] 2 K. B. 723.

801. *Add. Annotation :*—**Refd.** *Re* Savile Settled Estates, Savile *v.* Savile, [1931] 2 Ch. 210.

803. *Add. Annotations :*—*As to* (1) **Refd.** Lewis *v.* Cammell, Laird & Co. (1929), 22 B. W. C. C. 410 ; Smith *v.* Union Castle S.S. Co. (1931), 24 B. W. C. C. 71 ; *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

810. *Add. Annotations :*—*As to* (3) **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142 ; Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

819. *Add. Annotations:*—*As to* (1) **Refd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769 ; Beattie *v.* Beattie, Ltd., [1938] 3 All E. R. 214.

824a. —— **Termination within a year.**]—VERNON *v.* FINDLAY, [1938] 4 All E. R. 311 ; 55 T. L. R. 77.

837a. —— **Goodwill & stock-in-trade included—Entire.**]—Deft. orally agreed to buy from pltfs., who were the exors. of a deceased merchant, the business carried on at a named address, including the goodwill, stock in trade, & an interest in the premises, but he failed to carry out his agreement. In an action for damages deft. pleaded that the contract related to an interest in land & that by Law of Property Act, 1925 (c. 20), s. 40 (1), it could not be enforced against him as there was no written evidence of it. Pltfs. contended in answer that there had been part performance by them in looking after the premises and keeping the staff together until the defendant should take possession :—*Held :* that part of the contract which related to the goodwill, etc., was not severable from the part which dealt with taking over the premises, & that there was no part performance sufficient to take the case out of the statute, & the action failed.—HAWKESWORTH *v.* TURNER (1930), 46 T. L. R. 389.

837b. —— **Contract to construct road over land—Divisible.**]—An estate co., by their agent, orally promised an intending purchaser of

casket falls out during the funeral the undertaker can recover nothing for goods sold & delivered.—SCHAFFER (M.), LTD. *v.* VICKERS, [1934] 4 D. L. R. 548—**CAN.**

763 ii. —— *Owing to fire.*]—Where a contractor is unable to complete his contract for supply of pulpwood owing to fire he cannot recover for the destroyed wood on a *quantum meruit* where he has elected to sue on the contract.—GAGNON *v.* COULOMBE, [1938] 2 D. L. R. 162.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.—D.

c i. ——.]—ANDERSON *v.* MCINTYRE, [1925] 3 D. L. R. 948.—**CAN.**

c ii. —— *Agreement to live on & work farm in consideration of father promising to devise farm.*]—*Held :* the father having prevented the son from performing the work contracted for & discharged him from service, the son was entitled to recover on a *quantum meruit* for the work done by him & money & materials furnished.—RENTON *v.* RENTON (1925), 52 N. B. R. 356.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.

h i. —— *Agreement to accept land in satisfaction of debt.*]—*Held :* binding, though not in writing.—FLEMING *v.* DUNCAN (1870), 17 Gr. 76.—**CAN.**

h ii. —— *Agreement to share commission.*]—*Held :* Alberta Statutes, 1906 (c. 27), not applicable.—HEATON *v.* FLATER (1914), 27 W. L. R. 98 ; 16 D. L. R. 78 ; 8 Alta. L. R. 21.—**CAN.**

h iii. *S. P.* KARRAR *v.* SCHUBERT (1914), 29 W. L. R. 540 ; 7 W. W. R. 189 ; 8 Alta. L. R. 21 ; 19 D. L. R. 804.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—A.

770 i. *Partnership agreement.*]—A contract for a partnership to last longer than a year is within Stat. Frauds.—HOFFMAN *v.* COHEN (Man.) (1914), 27 W. L. R. 127.—**CAN.**

sp. *Agreement to be performed before fixed date — Fixed date more than one year from agreement—Effect of renewals.*]—In 1921 deft. promised to marry pltf. at a date not later than May, 1923. The promise was renewed from time to time up to May, 1922 :—*Held :* the contract was one to be performed within a year, & a memorandum in writing to satisfy Stat. Frauds was unnecessary.—CYR *v.* DUFAULT (1923), 55 O. L. R. 90.—**CAN.**

sq. —— *Whether statute bar to action for dissolution of partnership.*]—WONG *v.* HOU, [1928] 1 W. W. R. 480 ; 39 B. C. R. 425.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—B. (a).

793 ii. *Agreement for maintenance of parent—For indefinite period.*]—Masters & Servants Act, R. S. S., 1920, s. 2, provides that a contract of personal service for a period of more than one year shall be signed by the contracting parties ; &, since a contract of hire of personal services during a lifetime is one which *prima facie* is not to be performed within a year, a contract by which a father & mother agreed in consideration of maintenance to work for their children as long as the parents should live & their health continue, but which was not signed by the father was void & no answer to the father's claim to financial support as a "dependent" under Parents Maintenance Act.—STE. MARIE *v.* STE. MARIE (Sask.), [1929] 4 D. L. R. 1076 ; 1 W. W. R. 890.—**CAN.**

st. *Agreement for partnership — For indefinite period.*]—A written contract, which provides for the continuance of a partnership from its date until dissolved by mutual consent, unless previously determined by a specified notice, is not an agreement that is not to be performed within the space of one year from the making within Instruments Act, 1915, s. 228.—GIBB *v.* SELL, [1922] V. L. R. 561 ; 28 Argus L. R. 305 ; 44 A. L. T. 1.—**AUS.**

sv. *Agreement not to practise medicine —No time mentioned.*]—A contract by which a party thereto agrees that he will not do a certain thing but which does not mention any time & under which the time is uncertain is not within sect. 4 of Stat. Frauds. A contract not to practise medicine in a certain locality, without more, leaves the time uncertain, because death may occur within the year.—MACINTOSH *v* HOTHAM, [1933] 2 W. W. R. 383.—**CAN.**

sz. *Agreement to take milk.*]—A verbal agreement between a dairy co. & the owner of cows to take their milk is not void under Stat. Frauds, for the cows may die or be sold before the year has expired, or may have no milk.—SHAVER *v.* HAMILTON CO-OPERATIVE CREAMERIES, LTD., [1937] 1 D. L. R. 489.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—C.

806 ii. *S. P.* DICKSON *v.* JACQUES (1871), 31 U. C. R. 141.—**CAN.**

812 i. —— *To commence on following day.*]—A contract to serve for one year, the service to commence on the day next after that on which the contract is made, is not a contract not to be performed within a year within Stat. Frauds, s. 4.—BELLER *v.* KLOTZ (Sask.), [1917] 1 W. W. R. 585.—**CAN.**

820 ii. —— ——.]—A contract for service, under which deft. is to receive "$700 a year, to be increased per year until it reaches $1,000," is a contract not to be performed within a year within Stat. Frauds.—FAIRGRIEVE *v.* O'MULLIN (1896), 40 N. S. R. 215.—**CAN.**

823 ii. —— *Share-milking agreement—Commencement & termination not stated.*]—*Held :* the contract was one for services not to be performed within one year from the making thereof, & therefore came within the statute.—HALL *v.* GOLDSTONE, [1923] N. Z. L. R. 916.—**N.Z.**

PART IV. SECT. 1, SUB-SECT. 7.

832 i. *Agreement for sale of land—Part of contract in alternative—Divisible.*]—Although one part of a contract for the sale and purchase of land may not be binding under Stat. Frauds, another part of it, if in the alternative & distinct from the agreement to purchase (*e.g.* that either party will pay to the other a named sum if he does not fulfil his agreement to sell or purchase), may, on his refusal to do so, be enforced against the party refusing.—MERCIER *v.* CAMPBELL (1907), 14 O. L. R. 639.—**CAN.**

a building plot that a road, marked on a plan shown to him & giving access to the plot, would be constructed by them & be ready for use within a reasonable time. Relying on this promise, the purchaser entered into a written agreement to purchase, & the plot was duly conveyed to him. The co. did not construct the road within a reasonable time, or at all, & the purchaser brought an action claiming damages for breach of contract:—*Held:* a promise to construct a road, apart from any conveyance of the land over which it was intended to run, was not a "contract for the sale or other disposition of land or any interest in land," & consequently an action would lie upon it, although it was oral, without infringing Law of Property Act, 1925 (c. 20), s. 40 (1).—JAMESON *v.* KINMELL BAY LAND CO., LTD. (1931), 47 T. L. R. 593, C. A.

Annotation:—**Refd.** Hodges *v.* Jones, [1935] Ch. 657.

840. *Add. Annotations:*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 1 Ch. 287. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142.

841. *Add. Annotations:*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 1 Ch. 287. **Followed.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 593. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142; Hodges *v.* Jones, [1935] Ch. 657.

844. *Add. Annotations:*—**Refd.** Michael *v.* Phillips (1923), 130 L. T. 142; Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

845. *Annotations:*—For "**Refd.** Heilbut, Symons *v.* Buckleton, [1913] A. C. 30," read "**Dbtd.** Heilbut, Symons *v.* Buckleton, [1913] A. C. 30."

Add. Annotations:—**Consd.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 410; Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113. **Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

845a. —— **Parol warranty to let for certain purposes.**]—Pltf., in an action for damages for breach of warranty in connection with the letting to him of certain premises, alleged that as a basis of negotiations which culminated in an agreement in writing whereby defts. agreed to let & pltf. agreed to take the premises in question, defts. verbally warranted to let the premises for dancing purposes. Defts. had no power to let the premises for such purposes without the consent of the superior landlord, & such consent was never in fact obtained. Pltf. took possession under the agreement & expended considerable sums in alterations, & now claimed to recover the amount of such expenses less the sums received by him during his possession of the premises. There was no fraudulent misrepresentation:—*Held:* pltf. had failed to establish the alleged parol agreement, & even if the evidence had established that before the contract was entered into pltf. had asked whether the premises could be let for dancing & had been answered in the affirmative, it would only have been evidence as to the subject-matter of the contract & could not control, vary, or add to the terms of the written contract.—CRAWFORD *v.* WHITE CITY RINK (NEWCASTLE-ON-TYNE), LTD. (1913), 29 T. L. R. 318; 57 Sol. Jo. 357; 77 J. P. Jo. 111.

—— **Implied warranties.**]—*See, generally,* LANDLORD & TENANT, Vol. XXXI., pp. 176-181.

859. *Add. Annotation:*—**Applied.** Farr, Smith *v.* Messers (1927), 44 T. L. R. 48.

859a. —— **What amounts to—Reconstitution of action.**]—Defts. on Jan. 9, 1924, agreed to sell a quantity of wood to a partnership firm. The firm, being in financial difficulties, formed a limited co., & duly notified defts. On July 9 it was orally agreed that the new co. should give defts. a cheque & three bills in respect of the indebtedness of the old firm, & that defts. should supply to the new co. the goods sold under the contract of Jan. 9, & accept the new co. as buyers of the goods. The new co. subsequently gave to defts. the cheque & three bills, but defts. did not deliver the goods under the contract of Jan. 9 to the new co. The two partners in the old firm then brought an action against defts. for breach of the contract of Jan. 9. To that action defts. put in a defence signed by counsel in which they pleaded, in par. 3, that it had been agreed by the contract of July 9 that the new co. should give defts. on the following Monday a cheque & three drafts, & that defts. would supply to the new co. instead of to the old firm the goods sold under the contract of Jan. 9, & accept that co. as buyers of the goods. The pleadings were then amended & the action was reconstituted, the partners in the old firm being struck out & the new co. substituted as pltfs., & the cause of action was stated to be a breach of the agreement of July 9. Defts. then amended their defence & relied upon Sale of Goods Act, 1893 (c. 71), s. 4, as a defence to that amended action:—*Held:* (1) par. 3 of the original unamended defence which was signed by counsel constituted a sufficient note or memorandum in writing of the contract signed by an agent of the party to be charged to satisfy the above sect., inasmuch as (2) the new departure with regard to the parties & the cause of action when the action was reconstituted must be treated as the commencement of the action within the rule in *Lucas* v. *Dixon*, No. 859, *ante*.—FARR, SMITH & CO. *v.* MESSERS, LTD., [1928] 1 K. B. 397; 97 L. J. K. B. 126; 138 L. T. 154; 44 T. L. R. 48; 72 Sol. Jo. 14; 33 Com. Cas. 101.

862. *Add. Annotation:*—**Refd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

888. *Add. Annotation:*—*As to* (2) **Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

892. *Add. Annotations:*—**Distd.** McDonald *v.* Nash, [1924] A. C. 625. **Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

---

838 1. *Promise to pay debt of another—Subsequent credit given to guarantor as principal debtor—Not entire.*]—*Held:* as to goods supplied before the alleged promise, the promise was one to answer for the debt of another & under Stat. Frauds was unenforceable because of the absence of a memorandum in writing to support it; but as to goods supplied subsequently, although the account was continued in the buyer's name, it was established that the surety became the principal debtor & the goods were supplied on his account, & no memorandum in writing was required to enforce the claim.—BATEMAN & MATTHEWS *v.* SPENCER, [1923] 4 D. L. R. 170; 16 Sask. L. R. 474; [1923] 1 W. W. R. 1281.—**CAN.**

893. *Add. Annotations :*—**Consd.** National Sales Corpn. *v.* Bernardi, Bernardi *v.* National Sales Corpn., [1931] 2 K. B. 188. **Dbtd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** McDonald *v.* Nash, [1924] A. C. 625.

893a. —— ——.]—Bills of exchange drawn by pltfs. to their own order, on & accepted by W. S. & Co., a co. of which deft. was a director, were indorsed by deft. in pursuance of a verbal agreement under which pltfs. sold & delivered goods to the acceptors, in consideration of deft. indorsing the bills with the intention of making himself liable to pltfs. in case of default by the acceptors. Pltfs. subsequently indorsed the bills, writing their name underneath that of deft. Pltfs. sued deft. as indorser :—*Held :* although the verbal contract found to have been made between deft. & pltfs. was in one sense a contract of guarantee, the Statute of Frauds could not be set up as an answer to a claim under the bills.—McCALL BROS., LTD. *v.* HARGREAVES, [1932] 2 K. B. 423 ; 101 L. J. K. B. 733 ; 147 L. T. 257 ; 48 T. L. R. 450 ; 76 Sol. Jo. 433.

900. *Add. Annotation :*—**Consd.** Farr, Smith *v.* Messers (1927), 44 T. L. R. 48.

900a. ——.]—FARR, SMITH & Co. *v.* MESSERS, LTD., No. 859a, *ante*.

900b. Contract rectified by court—On ground of mistake.]—Where owing to a mistake common to both parties to a contract in writing it does not express the true bargain between the parties, the ct. in England has jurisdiction, since Jud. Act, 1873 (c. 66), to rectify the contract & to order specific performance of it as rectified, although apart from the rectified contract there is no memorandum to satisfy Stat. Frauds.—U.S.A. *v.* MOTOR TRUCKS, LTD., [1924] A. C. 196 ; 93 L. J. P. C. 46 ; 130 L. T. 129 ; 39 T. L. R. 723, P. C.

914. *Add. Annotation :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

923a. Agreement to remain in force so long as another agreement continued.]—Defts. agreed in writing to purchase from pltfs. all the stores that they required in the United Kingdom for their vessels, pltfs.' profits on the net price invoiced by the manufacturers to pltfs. to be discussed every six months, & the agreement was to remain in force as long as another agreement between a third co. & defts. continued. This other agreement had been previously made on the same day, but it was not signed till the following day, & it was to remain in force for ten years unless certain payments were sooner made. After observing the agreement with pltfs. for five months defts. repudiated it :—*Held :* the two agreements were sufficiently connected to enable the second to be read with the first, & Stat. Frauds did not prevent pltfs. from contending that the first agreement was to last for ten years.—FRANCO-BRITISH SHIP STORE CO., LTD. *v.* COMPAGNIE DES CHARGEURS FRANCAISE (1926), 42 T. L. R. 735.

924. *Add. Annotation :*—**Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

930. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

933. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

954. *Add. Annotation :*—**Refd.** Turton *v.* Turnbull, [1934] 2 K. B. 197.

956. *Add. Annotation :*—**Refd.** Reading Trust *v.* Spero (1929), 46 T. L. R. 117.

980. *Add. Annotation :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

983. *Add. Annotation :*—*As to* (2) **Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

995. *Add. Annotation :*—**Apld.** *Re* Howden & Hyslop's Contract, [1928] Ch. 479.

999. *Add. Annotations :*—*As to* (2) **Apld.** Chillingworth *v.* Esche, [1923] 1 Ch. 576. **Folld.**

PART IV. SECT. 2, SUB-SECT. 3.—A.

900a i. *Contract rectified by court.*]—As against a defence of Stat. Frauds, the ct. has no power to reform a writing & then decree specific performance of it as reformed.—SWEITZER *v.* GRANGER (1923), 54 O. L. R. 70.—**CAN.**

ss. *Order in Council.*]—*Held :* an Order in Council ought to be regarded as a sufficient expression in writing of an agreement to pay on the part of the Crown.—LAMARRE & Co. *v.* R., [1923] Exch. C. R. 174.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—B.

sb. *Contract not absolutely recognised—Alleged variation of terms.*]—Deft.'s agents in A., on Oct. 14, 1914, telegraphed to deft. in business in O., that they had sold to pltfs. a carload of apples for shipment on opening of navigation. On Oct. 16, deft. answered accepting. On that day the agents sent deft. a bought note, stating the terms of contract as in the telegram, with additions. On Oct. 20, deft. wrote to the agents : "I will return contract, as I find you have worded contract 'opening of navigation 1915.' I will not accept contract on these terms unless they will pay for the goods when packed" :—*Held :* if the terms of the contract had not sufficiently appeared by the telegrams & the bought note, the letter of Oct. 20 would have supplied a sufficient memorandum to satisfy Stat. Frauds, although it contained a repudiation of the contract.—CAMPBELL *v.* MAHLER (1919), 43 O. L. R. 395 ; 14 O. W. N. 348 ; *affd.*, 15 O. W. N. 339.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

923 i. *Letter referring to previous correspondence—Contract constructively asserted to therein.*]—Vendor's solr. wrote to purchaser's solr. : "B. informs me that he has agreed with R. for the sale to him of his holding in fee-simple for £10,000. Under these circumstances we think it would be possible to reasonably limit the title." The next day purchaser's solr., in acknowledging the letter, stated : "The simple agreement arrived at herein appears in the first part of your letter, & I suggest that we can dispense with any further agreement" :—*Held :* the latter letter constituted a note or memorandum sufficient to satisfy Stat. Frauds, although the writer had no intention to sign one.—CLONCURRY (LORD) *v.* LAFFAN, [1924] 1 I. R. 78.—**IR.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (b).

ii. —— *From purchaser to partner—Stating terms of purchase.*]—In an action against D., claiming damages for breach of contract to purchase bonds, a telegram from D. to his partner was produced saying, "I absolutely bought them yesterday after our phone conversation, they agreeing to our terms" :—*Held :* parol evidence was properly received to show that terms had been stated by D., over his signature, that they were the only terms & were those referred to in the telegram, & the two constituted a sufficient memorandum within Stat. Frauds.—DORAN *v.* MCKINNON (1916), 53 S. C. R. 609.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.—A. (a).

971 i. *General rule.*]—A writing is not sufficient to make a contract of purchase of land comply with Stat. Frauds unless the parties to the contract are specified in the writing, either nominally or by description or reference, & in such a manner that there can be no fair or reasonable dispute as to their identity. A letter signed by a purchaser, addressed to persons who are the vendor's agents, but not mentioning the vendor, & there being nothing creating a contract binding upon the agents personally, is not sufficient to make a contract enforceable against purchaser under Stat. Frauds.—MAHLER *v.* BARKER, [1924] 3 D. L. R. 292 ; 2 W. W. R. 796 ; 34 B. C. R. 136.—**CAN.**

Monnickendam *v.* Leanse (1923), 39 T. L. R. 445. *Generally*, **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

1002. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

1017. *Add. Annotations :*—**Refd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340; Myers (G. H.) & Co. *v.* Brent Cross Service Co., [1934] 1 K. B. 46; Robinson *v.* Graves, [1935] 1 K. B. 579.

1022a. ——.]—On Nov. 21, 1918, pltf. paid deft. £10 & received the following receipt: "Received of Mr. A. £10 on account of house being sold for £500 from Mr. N. Possession to be taken in six weeks after date." Pltf. proved that on Nov. 21, 1918, before signing the receipt deft. verbally agreed to sell him his house & residence, N. Lodge, for £500 with possession in six weeks, & that the £10 was paid as a deposit on account of the purchase-money :—*Held :* the receipt was a sufficient memorandum of the verbal contract.—AUERBACH *v.* NELSON, [1919] 2 Ch. 383; 88 L. J. Ch. 493; 122 L. T. 90; 35 T. L. R. 655; 63 Sol. Jo. 683.

1027a. ——.]—HOWARD *v.* OKEOVER (1778), 3 Swan. 482; 36 E. R. 933.

1031. *Add. Annotations :*—**Refd.** Koskas *v.* Standard Marine Insce. (1927), 137 L. T. 165; L'Estrange *v.* Graucob (F.), Ltd., [1934] 2 K. B. 394.

1032. *Add. Citations :*—92 L. J. Ch. 598; 129 L. T. 659; 39 T. L. R. 576; 67 Sol. Jo. 638, C. A.

1033a. Purchase of three lots—Memorandum of one contract.]—Deft.'s solrs., acting upon deft.'s instructions, bid for & purchased three separate lots of freehold property at an auction. No separate memorandum in respect of each lot was made, but there was one memorandum duly signed by such agents of deft. whereby deft. agreed to purchase the three lots at the price of £775. The agents had no authority to combine the three purchases into one. In an action for specific performance of an agreement to purchase the three lots for £775 :—*Held :* as the facts showed three separate agreements to purchase the three separate lots & no authority to combine these separate agreements into one indivisible agreement, the memorandum was not a proper memorandum of any of the contracts shown to have been entered into, & therefore did not satisfy the statute.—SMITH *v.* MACGOWAN, [1938] 3 All E. R. 447; 159 L. T. 278; 82 Sol. Jo. 605.

1051. *Add. Annotation :*—*As to* (2) **Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

1059. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 92 L. J. Ch. 461.

1063. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

1068. *Add. Annotation :*—**Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142.

1074. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1077. *Add. Annotations :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945; Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

1078. *Add. Annotation :*—*As to* (1) **Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1087. *Add. Annotations :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945; Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

1089. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1092. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1104. *Add. Annotation :*—**Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

1107. After this case add "*See, also*, No. 1123a, *post*."

1109. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1112. *Add. Annotation :*—*As to* (2) **Consd.** Raingold *v.* Bromley, [1931] 2 Ch. 307.

1119. *Add. Annotations :*—**Refd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576; Monnickendam *v.* Leanse (1923), 39 T. L. R. 445.

1121. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1123a. —— **Purporting to enclose engrossment—Coupled with engrossment.**]—Circumstances (*see* LANDLORD & TENANT, No. 396a, *post*) in which :—*Held :* there was a sufficient memorandum of an oral contract.—HORNER *v.* WALKER, [1923] 2 Ch. 218; 92 L. J. Ch. 573; 129 L. T. 782.

1125. *Add. Annotation :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1170. *Add. Annotation :*—**Apld.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1172. *Add. Annotations :*—**Refd.** Farr, Smith *v.* Messers, [1928] 1 K. B. 397; Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

1176. *Add. Annotations :*—*As to* (1) **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. *As to*

PART IV. SECT. 2, SUB-SECT. 4.—B. (b).

1027 ii. —— *Admission of existence of contract.*]—Vendor's solr. wrote to purchaser's solr.: "B. informs me that he has agreed with R. for the sale to him of his holding in fee-simple for £10,000. Under these circumstances we think it would be possible to reasonably limit the title." The next day purchaser's solr. in acknowledging the letter, stated: "The simple agreement arrived at herein appears in the first part of your letter, & I suggest that we can dispense with any further agreement" :—*Held :* this letter constituted a note or memorandum signed by purchaser's agent sufficient to satisfy Stat. Frauds, although he had not been specifically authorised to sign such a memorandum, & in writing the letter had no intention to sign one.—CLONCURRY (LORD) *v.* LAFFAN, [1924] 1 I. R. 78.—**IR.**

PART IV. SECT. 2, SUB-SECT. 4.—B. (d).

q. Read now "**1034 i.**"

1034 ii. —— *Share-milking agreement.*]—*Held :* an incomplete memorandum of the terms of the contract, & the result was the same as if there were no memorandum at all.—HALL *v.* GOLDSTONE, [1923] N. Z. L. R. 916.—**N.Z.**

1035 ii. —— *Share-milking agreement.*]—HALL *v.* GOLDSTONE, No. 1034 ii., *ante*.—**N.Z.**

PART IV. SECT. 2, SUB-SECT. 5.—A.

1062 i. —— *Parol acceptance of written offer.*]—Subsequent oral recognition of a memorandum previously signed, as containing all the terms of the contract, is a sufficient compliance with Stat. Frauds.—FRIEDMAN *v.* MAYER (1913), 25 W. L. R. 551; 5 W. W. R. 168; 14 D. L. R. 154; 7 Alta. L. R. 60.—**CAN.**

sc. Sale & resale—No signature by sub-purchaser.]—*Held :* where Stat. Frauds applied liability could only be established by an acknowledgment in writing.—WORDDINGTON *v.* BUSH, [1923] 3 D. L. R. 884; 32 B. C. R. 434.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 6.—A.

1144 ii. —— ——.]—Parol evidence received to show that terms had been stated by a purchaser over his signature & were those referred to in a telegram from him to his partner.—DORAN *v.* MCKINNON (1916), 53 S. C. R. 609.—**CAN.**

(2) **Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142. As to (3) **Refd.** Besseler, Waechter, Glover & Co. *v.* South Derwent Coal Co., [1938] 1 K. B. 408. *Generally*, **Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76; Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

1178a. —— —— ——.]—In cases under Stat. Frauds the general principle has been, not that the legislature has avoided contracts which are not made in accordance with the forms prescribed in the Act, but merely that those contracts shall only be proved in that particular way. In every single case under Stat. Frauds, except in the case of contracts relating to an interest in land, it has been held authoritatively that part performance of a contract which is within the terms of the Act is not sufficient to preclude the party who has made the part performance, or who has received a part performance, from taking advantage of the Act (ATKIN, L.J.).—*Re* A BANKRUPTCY NOTICE, [1924] 2 Ch. 76; 93 L. J. Ch. 497; 131 L. T. 307; 68 Sol. Jo. 458; [1924] B. & C. R. 188, C. A.

Annotation :—**Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82.

1184a. *S. P.* CROYSTON *v.* BANES (1702), Prec. Ch. 208; 24 E. R. 102.

Annotation :—**Consd.** Rondeau *v.* Wyatt (1792), 2 Hy. Bl. 63.

1185. *Add. Citation :—sub nom.* CHILD *v.* COMBER, 3 Swan. 423, n.

1186a. ——.]—HOSIER *v.* READ (1724), 9 Mod. Rep. 86; 88 E. R. 332.

1207. *Add. Annotations :—As to* (2) **Refd.** Firm Bishun Chand *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465; Siqueira *v.* Noronha, [1934] A. C. 332. *Generally*, **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

1208. *Add. Annotation :*—**Refd.** *Re* Chetwynd's Estate, Dunn's Trust, Ltd. *v.* Brown, [1937] 3 All E. R. 530.

1213a. —— **Refusal to pay for instalments until whole work published.**]—A purchaser contracted to purchase a series of engravings from pltfs., the publishers, by signing a circular to the following effect: "Please enter my name as a subscriber for 'The Cries of London,' to be sent to me as published, the price of each of the thirteen plates, £10 10*s*." After pltfs. had delivered the first four plates of the series, they called on deft. to pay for them, but he refused to do so till the entire set was published & delivered :—*Held :* the words "to be sent to me as published" made it clear that the contract was an instalment contract, & not an indivisible contract for the entire set, & the fact that the price of each plate was stated to be ten guineas, while there was no mention of the price of the whole set, showed that each instalment was to be paid for separately.—HOWELL *v.* EVANS (1926), 134 L. T. 570; 42 T. L. R. 310, D. C.

1214. *Add. Annotation :*—**Apld.** Way *v.* Latilla, [1937] 3 All E. R. 759.

1214a. *Add. Citations :*—[1923] 2 K. B. 723; 92 L. J. K. B. 886; 129 L. T. 830.

1217a. ——.]—ANON (*circa* 1678), 1 Eq. Cas. Abr. 20, pl. 5, L. C.

1217b. ——.]—ANON. (*circa* 1680), cited in 1 Eq. Cas. Abr. 20, pl. 5; 21 E. R. 842, L. C.

Annotation :—**Refd.** Maxwell *v.* Montacute (1720), Prec. Ch. 526.

1222. *Add. Annotation :*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

1224. *Add. Annotation :*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

1234a. ——.]—Stat. Frauds not pleadable where the agreement is executed in part.—AYLESFORD'S (EARL) CASE (1727), 2 Stra. 783; 93 E. R. 845.

Annotation :—**Consd.** Whitchurch *v.* Bevis (1789), 2 Bro. C. C. 559.

1235. *Add. Annotation :*—**Consd.** Rawlinson *v.* Ames, [1925] Ch. 96.

PART IV. SECT. 3, SUB-SECT. 3.—A.

1195 ii. ——.]—A common law action for a balance of the purchase money of land sold under a verbal agreement cannot be maintained, although the deed has been delivered.—MCMILLAN *v.* WILLIAMS (1894), 9 Man. L. R. 627.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—B. (a).

1200 ii. ——.]—An item in an account stated, being a sum charged for the price of a lot of land, does not make it incumbent on pltf. to prove the agreement respecting such land to have been made in writing.—DALTON *v.* BOTTS (1826), Tay. 281.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—B. (d).

f i. —— *Agreement to work in consideration of employer promising to devise really—Liability for services rendered.*]—*Held :* the employee was entitled to compensation on a *quantum meruit* for work performed & services rendered for deceased employer.—*Re* MESTON, MESTON *v.* GRAY (Sask.), [1925] 4 D. L. R. 887; [1925] 3 W. W. R. 656.—**CAN.**

f ii. —— *Value of services—Admissibility of contract.*]—In an action brought on a *quantum meruit* for work done & services rendered evidence was given of an agreement, not in writing, whereby deft. agreed to pay a certain weekly salary & also a sum of £200 at the end of two years; it was also proved that deft. had paid the weekly salary but had refused to pay the sum of £200 :—*Held :* although the parol agreement was one to which the provisions of Stat. Frauds were applicable, it was nevertheless admissible as evidence of the value of pltf.'s services.—WARD *v.* GRIFFITHS BROTHERS, LTD. (1928), 28 S. R. N. S. W. 425; 45 N. S. W. W. N. 130.—**AUS.**

PART IV. SECT. 3, SUB-SECT. 4.—A.

1217 i. *General rule.*]—Stat. Frauds & Mineral Act, B. C., s. 19, will not be allowed to be made instruments of fraud.—ROBERTS *v.* ROBERTS, [1923] 2 W. W. R. 137.—**CAN.**

1225 i. *Conveyance of interest in land—Whether evidence of trust admissible.*]—SMITH *v.* BENOR (1913), 24 O. W. R. 521; 4 O. W. N. 985; 10 D. L. R. 824.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 4.—B. (a).

1237 viii. —— —— ——.]—The act of part performance relied on must be unequivocally referable to the agreement alleged.—TILLEY *v.* CLEARY & HENDERSON (1887), 7 Nfld. L. R. 209.—**NFLD.**

1237 ix. —— —— ——.]—In order to enforce specific performance of an oral contract, whereby deceased promised to devise land to another in consideration of the latter working for deceased until the latter's death, the acts relied on as part performance excluding Stat. Frauds must be unequivocally referable to the contract asserted.

The fact that a son left his employment & lived & worked on his father's farm for ten years without drawing wages :—*Held :* not to point unmistakably to a contract by the father to leave his property to the son, & the alleged contract, not being evidenced by writing, was not enforceable.—*Re* MESTON, MESTON *v.* GRAY (Sask.), [1925] 4 D. L. R. 887; [1925] 3 W. W. R. 656.—**CAN.**

1237 x. —— —— ——.]—A mother undertook verbally to make a will leaving to her son W. two farms in D., & thereby induced W. to convey his farm in B. to A. & to pay A. £200. She afterwards made a will which gave effect to this verbal undertaking, but subsequently revoked it, leaving W. merely a life interest in the two farms : —*Held :* there was a sufficient act of part performance by W. to take the case out of the operation of Stat. Frauds.—LOWRY *v.* REID, [1927] N.142.—**IR.**

1237 xi. —— —— ——.]—Where there was a parol agreement between pltf. & deft. to the effect that pltf. would grant a permanent lease to deft. in respect of a piece of land, & where no lease was either executed or registered, but deft. was put into

1245. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

1247. *Add. Annotation :*—**Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142.

1248a. ——.]—*Re* A BANKRUPTCY NOTICE, No. 1178a, *ante*.

1263a. —— ——.]—In an action for the specific performance of an agreement, where it does not appear from the statement of claim whether the agreement was in writing or not, a defence founded on the Stat. Frauds cannot be raised by demurrer.—FUTCHER *v.* FUTCHER (1881), 50 L. J. Ch. 735 ; 45 L. T. 306 ; 29 W. R. 884.

1265. *Add. Annotation :*—**Folld.** Hills & Grant, Ltd. *v.* Hodson, [1934] Ch. 53.

1269. *Add. Annotations :*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155 ; L. *v.* L. (1934), 50 T. L. R. 441 ; Lindsay *v.* Lindsay (1934), 103 L. J. P. 100 ; British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516.

Part V.—Consideration.

1274. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670 ; *Re* Cuthbert, *Ex p.* Monnoyer British Construction Co. *v.* Trustees, [1936] 1 All E. R. 342.

1276. *Add. Annotation :*—**Refd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

1285a. —— **Promise to pay debt for which promisor not liable — Agreement void.**]—BREALEY *v.* ANDREW (1837), 7 Ad. & El. 108 ; 2 Nev. & P. K. B. 114 ; Will. Woll. & Dav. 481 ; 6 L. J. K. B. 199 ; 1 Jur. 526 ; 112 E. R. 411.

1285b. —— **Promise to employ person— No obligation on promisee to act.**]—*Held :* there was no consideration for the agreement.—PAYNE *v.* NEW SOUTH WALES COAL & INTERCOLONIAL STEAM NAVIGATION CO. (1854), 10 Exch. 283 ; 24 L. J. Ex. 117 ; 156 E. R. 450.

Annotation :—**Refd.** Kolner *v.* Baxter (1866), L. R. 2 C. P. 174.

1299. *Add. Annotations :*—**Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1350. *Add. Annotation :*—**Refd.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426.

1352. *Add. Annotations :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447 ; Western Power Co. of Canada, Ltd. *v.* Matsqui Corpn., [1934] A. C. 322.

1354a. Communication of confidential information.]—Patentees of a system of mechanical fittings for the bodies of motor-cars applied in May, 1928, for provisional protection in England in respect of certain particulars of the system. In July, 1928, the patentees approached certain manufacturers in this country & gave them certain information verbal & documentary with a view to development of the system & its application to the manufacturers' cars to the advantage of both parties. The information was given in confidence & for the purposes of a future agreement that the patentees should give & the manufacturers should accept a licence to use the patent rights of the patentees. In an action tried before a judge & jury the jury found that the two following agreements had been entered into between the patentees & the manufacturers : (*a*) that the manufacturers should accept a licence from the patentees, & (*b*) that the manufacturers should use the information disclosed only for the purposes of the licence. They also

---

possession & erected structures thereon to pltf.'s knowledge, where it appeared that pltf. must have realised deft. would not have constructed the same unless he was assured of the possession of a permanent right in the land, & that if the intention of pltf. was not to grant such a lease it might reasonably be expected that he would have objected to the construction of such a building :—*Held :* in a suit of ejectment by the lessor, that deft. not having obtained a lease in conformity with the provision of Transfer of Property Act, s. 107, read with Registration Act, s. 49, can resist ejectment, only if the case can be brought within the range of one or other of those principles of equity which have been held to apply to this country.—ANIFF *v.* JADU NATH MAJUMDAR (1928), I. L. R. 55 Calc. 1090.—**IND.**

1237 xii. —— —— ——.]—CHIPUKE *v.* SHANDRO, [1930] 2 D. L. R. 567.—**CAN.**

1237 xiii. —— —— ——.]—Specific performance of an oral contract within Statute of Frauds cannot be decreed on the ground of part performance unless the acts relied on to take the contract out of the statute are "unequivocally, in their own nature, referable to some such agreement as that alleged."

Pltfs., sons of deft., who had remained at home & worked on his farm for a number of years, alleged that they had done so without wages under an oral contract that they would be compensated by the transfer by him to them of a certain quarter section of land. They sued for specific performance &, alternatively, for compensation by way of *quantum meruit* :—*Held :* applying the above-stated principle, pltfs. could not succeed on their claim for specific performance.—KORYCKI *v.* KORYCKI, [1937] 3 W. W. R. 419 ; 7 F. L. J. (Can.) 148.—**CAN.**

PART IV. SECT. 4.

1258 i. *Since Judicature Acts—Necessity for pleading statute.*]—In an action claiming damages for conversion of goods, if it appears that the title to the goods is based on a contract, deft. may urge that such contract is void under Stat. Frauds, though no such defence is pleaded. It is only where the action is between the parties to the contract, which one of them seeks to enforce against the other, that deft. must plead Stat. Frauds if he wishes to avail himself of it.—KENT *v.* ELLIS (1900), 31 S. C. R. 110 32 N. S. R. 549.—**CAN.**

1258 ii. —— ——.]—The defence of Stat. Frauds cannot be raised, unless it has been pleaded.—DOMINION MEAT CO. *v.* JAMESON (1917), 12 Alta. L. R. 353.—**CAN.**

sb. *Half of net profits in freight savings.*]—MCKENZIE *v.* JOSEPH AZAR, LTD., [1931] 3 M. P. R. 265.—**CAN.**

PART V. SECT. 1.

1274 iv. ——.]—A good cause of action can be founded on a promise made seriously & deliberately & with the intention that a lawful obligation should be established.—CONRADIE *v.* ROUSSOUW, [1919] App. D. 279.—**S. AF.**

PART V. SECT. 2.

1275 xiv. ——.]—Pltf.'s goods being about to be sold under a distress for rent, it was agreed between pltf. & deft. that if deft. would go to the sale & purchase the goods, pltf. would at a future day repay him the price & interest, when deft. was to give him the goods. Deft. went to the sale & purchased the goods ; but, although some months afterwards pltf. tendered the amount & interest, deft. did not deliver the goods :—*Held :* there was no contract on which deft. could be held liable for damages.—TIMMINS *v.* SURPLES (1876), 26 C. P. 49.—**CAN.**

found that the manufacturers had committed breaches of both the agreements, & they awarded heavy damages in respect of both breaches. The manufacturers appealed. The Ct. of Appeal held that the first agreement was not proved, & that the second had been proved, but that the damages for the breach were only nominal. The patentees appealed to this House to establish the first agreement or to restore the verdict of the jury as to the damages for breach of the second agreement. There was a cross-appeal by the manufacturers to reverse the decision of the Ct. of Appeal upholding the second agreement & the breach thereof:—*Held:* the first agreement was not proved; the second agreement was proved, for that there was ample evidence to support the findings of a contract & the breach thereof, the giving of the information for a particular purpose being, on the analogy of a contract of bailment, good consideration for a promise not to use it for any other purpose, & its use for another purpose being a breach. The verdict of the jury assessing damages for breach of the second agreement must be restored.—MECHANICAL & GENERAL INVENTIONS CO., LTD. & LEHWESS *v.* AUSTIN & AUSTIN MOTOR CO., LTD., [1935] A. C. 346; 104 L. J. K. B. 403; 153 L. T. 153, H. L.

1383. *Add. Annotations:*—*Generally,* **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 53[illegible]; Riley *v.* Brown (1929), 98 L. J. K. B. 739.

1421. *Add. Annotation:*—**Refd.** Halliwell *v.* Ven ables (1930), 99 L. J. K. B. 353.

1421a. —— By agent of joint owner of chattel to co-owner—Part of proceeds of sale of chattel.]—*Held:* sufficient consideration for a promise to deliver to the agent a bill of exchange or the equivalent amount in cash.—SURTEES *v.* LISTER (1861), 7 H. & N. 1; 30 L. J. Ex. 309; 158 E. R. 367.

1432a. Agreement to grant annuity.]—A mutual agreement by several to grant an annuity to a third party may be a consideration sufficient to support the grant.—BENTLEY *v.* MACKAY (1862), 31 Beav. 143; 31 L. J. Ch. 697; 6 L. T. 632; 8 Jur. N. S. 857; 10 W. R. 593; 54 E. R. 1092; *affd.*, 4 De G. F. & J. 279, L. JJ.

1440. *Add. Annotations:*—**Distd.** Siveyer *v.* Allison, [1935] 2 K. B. 403. **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1441. *Add. Annotation:*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1459a. ——.]—S., a customer of bkpt., a stock-broker, became indebted to him in respect of Stock Exchange transactions in a sum for which bkpt., on Dec. 18, 1923, recovered judgment. Later, S. became similarly indebted to bkpt. in a further sum. On Jan. 15, 1924, bkpt. assigned both debts to W. to secure £500, & covenanted with him that, in the event of his refraining from giving notice of the assignment to S., he, bkpt., would, on payment of the debts or any part thereof, hand the cheque or other form of payment to W. In Mar. 1924, J., who acted as solr. for both bkpt. & W. in the matter of the assignment, on the instructions of both & without disclosing same, made an agreement with S. for the liquidation of the two debts, whereby S. undertook to pay the aggregate amount thereof by monthly instalments, the first instalments being allocated to the payment of the later of the two debts & the subsequent ones to the payment of the judgment debt; & S. further agreed to deliver promissory notes payable to bkpt. or order to cover the instalments allocated to the later debt. J. received the notes from S. &, as agent of W., collected the amounts as they fell due on the notes & paid part thereof to W. & retained the balance. After payment J. returned the notes to S. to be cancelled:—*Held:* the forbearance of W. on the strength of the deposit of the notes to sue & his acceptance of the instalments constituted sufficient consideration for the deposit of the notes.—*Re* WETHERED, *Ex p.* SALAMAN, [1926] Ch. 167; 70 Sol. Jo. 324; *sub nom. Re* WETHERED, *Ex p.* SALAMAN'S TRUSTEE, TRUSTEE *v.* BANCE, 95 L. J. Ch. 127; 134 L. T. 264; [1925] B. & C. R. 265.

1460. *Add. Annotations:*—**Consd.** Burrell *v.* Leven (1926), 42 T. L. R. 407. **Refd.** Poteliakhoff *v.* Teakle, [1938] 3 All E. R. 686.

PART V. SECT. 3, SUB-SECT. 2.—A.

sd. *Promise to allow offer of option to promisor.*]—A promise to allow a third party to offer the promisor an option on shares does not constitute a valuable consideration.—GIBSON *v.* MCVEIGH (No. 1), [1922] 1 W. W. R. 151.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—B. (a).

sl. *Abandonment of claim.*]—Where any question arising between the parties on a previous verbal agreement had been compromised, & the compromise embodied in a written agreement; *Held:* sufficient consideration for the compromise was an abandonment of a claim by each party.—BILODEAU *v.* MCLEAN, [1924] 3 D. L. R. 410; 2 W. W. R. 631; 34 Man. L. R. 239.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—B. (c).

sk. *Agreement to make another contract.*]—There may be a contract the consideration for which is the making of some other contract. "If you will make such & such a contract I will give you one hundred pounds" is in every sense of the word a complete legal contract. It is collateral to the main contract, but each has an independent existence, & they do not differ in respect of their possessing to the full the character & status of a contract. But such collateral contracts must from their very nature be rare &, since their sole effect is to vary or add to the terms of the principal contract, they are viewed with suspicion by the law. They must be proved strictly. Not only the terms of such contracts but the existence of an *animus contrahendi* on the part of all the parties to them must be clearly shown.—LYSNAR *v.* NATIONAL BANK OF NEW ZEALAND LTD., [1935] 1 W. W. R. 625.—**N.Z.**

sm. *Promise to offer prayers.*]—Pltf. sued for the sum of £1,105 3*s.* 0*d.*, being the balance alleged to be due for work & labour done, moneys expended & services rendered as architect for deft., Canon M. & the C. & P. Religious Order, in connection with the planning & erection of buildings at B., in the County of A. Defts. pleaded: (*a*) an agreement in which it was a term that the Religious Order should perform certain services in the nature of prayers for the benefit of pltf. & his family, & that pltf. would accept performance of the said services, together with the payment of a sum of £200 in full satisfaction of this portion of his claim; (*b*) that the labour & work were done, the money expended & the services rendered voluntarily & as an act of courtesy by pltf.; (*c*) that pltf.'s claim in so far as it related to all items prior to Jan. 15, 1928, was barred by Stat. of Limitations:—*Held:* there was no sufficient consideration in law for the agreement.—O'NEILL *v.* MURPHY, [1936] N. I. 16.—**IR.**

PART V. SECT. 3, SUB-SECT. 3.—A.

1445 iii. ——.]—MOBERLY *v.* BAINES & SHORTIS (1857), 15 U. C. R. 25.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.—B. (a).

1453 iii. ——.]—Where a creditor grants an extension of time for payment of a past due debt & at the same time obtains from debtor security for the debt, the proper inference to be drawn, in the absence of evidence to the contrary, is that the extension was granted as a result of the creditor's obtaining the security.—O'BRIEN *v.* STEBBINS & MULLEN, [1927] 3 D. L. R. 274; [1927] 2 W. W. R. 176; 21 Sask. L. R. 478.—**CAN.**

1462. *Add. Annotations :*—**Refd.** Hyde *v.* Tyler (1926), 42 T. L. R. 442 ; Poteliakhoff *v.* Teakle, [1938] 3 All E. R. 686.

1475. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

1525. *Add. Annotations :*—**Consd.** Latter *v.* Colwill, [1937] 1 All E. R. 442. **Refd.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

1526. *Add. Annotation :*—**Refd.** Poteliakhoff *v.* Teakle, [1938] 3 All E. R. 686.

1527. *Add. Annotations :*—**Distd.** Eldridge & Morris *v.* Taylor, [1931] 2 K. B. 416. **Consd.** Latter *v.* Colwill, [1937] 1 All E. R. 442. **Refd.** Burrell *v.* Leven (1926), 42 T. L. R. 407 ; Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32 ; Poteliakhoff *v.* Teakle, [1938] 3 All E. R. 686 ; R. *v.* Bernhard, [1938] 2 K. B. 264.

1536. *Add. Annotation :*—**Refd.** Latter *v.* Colwill, [1937] 1 All E. R. 442.

1542. *Add. Annotations :*—**Refd.** Burrell *v.* Leven (1926), 42 T. L. R. 407 ; Poteliakhoff *v.* Teakle, [1938] 3 All E. R. 686.

1550. *Add. Annotation .*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

1567. *Add. Annotation :*—**Consd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

1569. *Add. Annotation :*—**Refd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330.

1575. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

1578. *Add. Annotation :*—**Consd.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

1588. *Add. Annotation :*—**Consd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330.

1589. *Add. Annotation :*—**Consd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330.

1590. *Add. Annotations :*—**Consd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330. **Refd.** Hall *v.* I. R. Comrs. (1926), 135 L. T. 759 ; Lewis *v.* Cammell, Laird & Co. (1929), 22 B. W. C. C. 410 ; Smith *v.* Union Castle S.S. Co. (1931), 24 B. W. C. C. 71 ; *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

1630. *Add. Annotation :*—**Consd.** Rose & Frank Co. *v.* Crompton, [1923] 2 K. B. 261.

1631. *Add. Annotation :*—**Refd.** Warner Brothers Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

1641. *Add. Annotation :*—**Consd.** Brandt *v.* Liverpool, Brazil & River Plate Steam Navigation Co., [1924] 1 K. B. 575.

1643a. ——.]—The ct. does not inquire into the adequacy of the consideration for a contract & where a party leaves the determination of all matters under a contract in the discretion of the other party that does not in all circumstances constitute a total want of consideration. — GAUMONT-BRITISH PICTURE CORPN., LTD. *v.* ALEXANDER, [1936] 2 All E. R. 1686 ; 80 Sol. Jo. 816.

Annotation :—**Consd.** Warner Bros. Pictures, Incorporated *v.* Nelson, [1937] 1 K. B. 209.

1660. *Add. Annotations :*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70 ; Harmer *v.* Armstrong, [1934] Ch. 65.

1662. *Add. Annotations :*—**Refd.** The Lord Strathcona, [1925] P. 143 ; Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70 ; Harmer *v.* Armstrong, [1934] Ch. 65.

1669. *Add. Annotation :*—**Consd.** *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

1685. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1688. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

PART V. SECT. 3, SUB-SECT. 4.—A.

1570 i. *Discontinuance of action.*]—T. a member of a solrs.' partnership, borrowed money on the credit of the partnership, without the knowledge or consent of the remaining partner, W. A demand having been made by the lender against both partners for repayment of the amount of the loan, a compromise was arranged between the lender & W. of the claim against the latter. Subsequently the lender took action against W. to recover the balance of the loan on the ground that the compromise arranged was without consideration & he was not bound thereby : —*Held :* W. entered into the compromise in the honest belief that he had a good defence to the claim, & this fact was sufficient to constitute a valid consideration for the compromise.—O'CONNOR *v.* WALDEGRAVE, [1928] N. Z. L. R. 480.—**N.Z.**

PART V. SECT. 3, SUB-SECT. 4.—B.

1581 ii. ——.]—The abandonment of a *bond fide* claim of right is a consideration sufficient to support a promise by the other party, even though the claim was in truth unfounded.—MCCONNELL *v.* DETWEILLER, [1930] 1 W. W. R. 79 ; 1 D. L. R. 888 ; 24 S. L. R. 202.—**CAN.**

PART V. SECT. 4.

a i. —— ——.]—Inadequate consideration alone is not sufficient to justify setting aside a settlement, the inadequacy not being so gross as to prove fraud or imposition.—GISSING *v.* EATON (T.) CO. (1911), 20 O. W. R. 324 ; 3 O. W. N. 219 ; 25 O. L. R. 50. —**CAN.**

1653 i. *Whether consideration adequate.*]—GREENHAM *v.* WATT (1866), 25 U. C. R. 365.—**CAN.**

PART V. SECT. 5.

1659 v. ——.]—One who voluntarily & meaning to do so pays the debt of another cannot get his money back from the creditor.—BENSON *v.* GRAND UNION HOTEL CO. [1937] 2 W. W. R. 253 ; 3 D. L. R. 221 ; 45 Man. L. R. 201.—**CAN.**

sk. *Third party to be allowed to offer option.*]—M. gave G. an option on shares owned by M. in a co. ; the consideration expressed in the option was G.'s agreement " to make a similar proposition " to another shareholder :— *Held :* the alleged consideration was in effect a mere promise by G. to let such other shareholder give him an option similar to that given by M., & such promise did not constitute a valuable consideration.—GIBSON *v.* MCVEIGH (No. 1), [1922] 1 W. W. R. 151.—**CAN.**

PART V. SECT. 6, SUB-SECT. 2.—A.

1689 i. *Promise to perform existing agreement.*]—Plff. agreed to build a house for deft. for $6,464. When the house was nearly finished a fire took place in it, doing considerable damage. Deft. had insured the building & received $2,150 from the insurers. Plffs. effected no insurance. After the fire, deft. asked plffs. to go on with & complete the work, & gave them to understand that she would pay over the $2,150 to them :—*Held :* plffs. were bound to complete the work, & the promise, if there was one, to pay for the work which it was their duty to do, was not binding for want of consideration.—SMITH *v.* DAWSON (1923), 53 O. L. R. 615.—**CAN.**

k i. —— *Although unenforceable under Statute of Frauds.*]—Plffs. acted as housekeepers for deft. in pursuance of an oral agreement that if they would do so his home would become theirs upon his death. Later he promised them that if they would give up their rights under said agreement & leave his home he would pay them $1,000 on or about Oct. 1, 1934. That offer was accepted & plffs. left. Plffs. sued for the $1,000 :—*Held :* although the agreement first made was unenforceable because of sect. 4 of Stat. Frauds & although plffs. could not rely on part performance since the acts performed were not necessarily referable to said agreement, yet there was good consideration to support the promise to pay the $1,000 & plffs. were entitled to succeed thereon.—FAIRORIEF *v.* ELLIS, [1935] 1 W. W. R. 363 ; 2 D. L. R. 806 ; 49 B. C. R. 413. —**CAN.**

1693. *Add. Annotation :*—**Consd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

1701. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

1740a. —— ——.]—Promise by a father to his son-in-law after the marriage raises a consideration.—MARSH *v.* KAVENFORD (1587), Cro. Eliz. 59; 78 E. R. 319; *sub nom.* MARSH & RAINSFORD'S CASE, 2 Leon. 111.

Annotations :—**Consd.** Townsend *v.* Hunt (1635), Cro. Car. 408. **Refd.** Riggs *v.* Bullingham (1599), Cro. Eliz. 715; A.-G. *v.* Royal College of Physicians (1861), 30 L. J. Ch. 757.

1744. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

1762. *Add. Annotation :*—**Refd.** Morgan *v.* Ashcroft, [1938] 1 K. B. 49.

1780. *Add. Annotation :*—**Refd.** Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

1788. *Add. Annotation :*—**Refd.** Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793.

1817. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1822a. ——.]—R. *v.* LOPEN (INHABITANTS) (1788), 2 Term Rep. 577; 100 E. R. 310.

1828a. —— ——.]—GARBREY *v.* BROWN (1588), Gouldsb. 94; 75 E. R. 1018; *sub nom.* BROWNE *v.* GARBOROUGH, Cro. Eliz. 63.

1837. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

1838. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

1839. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

1856. *Add. Annotation :*—**Consd.** De Parrell *v.* Walker (1932), 49 T. L. R. 37.

1856a. ——.]—DE PARRELL *v.* WALKER (1932), 49 T. L. R. 37; 76 Sol. Jo. 850.

1871. *Add. Annotations :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

1876. *Add. Annotations :*—**Refd.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134; Morgan *v.* Ashcroft, [1938] 1 K. B. 49.

1877. *Add. Annotation :* — **Consd.** Rowland *v.* Divall, [1923] 2 K. B. 500.

1878. *Add. Annotations :* — **Consd.** Rowland *v.* Divall, [1923] 2 K. B. 500; Suhr (R. F. H.) *v.* Crofts (Engineers), Ltd. (1932), 49 R. P. C. 359.

1887a. *Add. Citations :*—[1923] 2 Ch. 452; 92 L. J. K. B 944; 129 L. T. 624; 67 Sol. Jo. 656.

1888. *Add. Annotations :*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321; *Re* Simms, *Ex p.* Trustee *v.* William Simms, Ltd. & Gillett, [1934] Ch. 1; Morgan *v.* Ashcroft, [1938] 1 K. B. 49.

1903. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

1905. *Add. Annotations :*—**Consd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576. **Refd.** Monnickendam *v.* Leanse (1923), 39 T. L. R. 445; Bernard *v.* Williams (1928), 139 L. T. 22; Low *v.* Fry (1935), 152 L. T. 585.

1914a. *S. P.* ANON (1538), Bro. N. C. 16; 73 E. R. 853.

1919. *Add. Annotation :*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

1927. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

Part VI.—Void and Illegal Contracts.

1938. *Add. Annotations :*—*As to* (1) **Refd.** L. *v.* L., [1931] P. 63. *Generally,* **Refd.** Sorrell *v.* Smith, [1925] A. C. 700; Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1940. *Add. Annotations :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470. **Refd.** Nash *v.* Stevenson Transport, Ltd., [1936] 2 K. B. 128.

1952. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1959. *Add. Annotations :*—**Apld.** Alexander *v.* Rayson, [1936] 1 K. B. 169. **Refd.** Haseldine *v.* Hosken, [1933] 1 K. B. 822; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

1961. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

PART V. SECT. 12, SUB-SECT. 1.

1867 i. *Non-performance of condition.*]—A condition in a special timber licence under Land Act (B. C.), 1908, that no Chinese or Japanese should be employed in connection therewith is a part of the consideration, & the observance thereof is a condition precedent to the renewal of the licence.—A.-G. FOR BRITISH COLUMBIA *v.* BROOKS, BIDLAKE & Co., [1922] 3 W. W. R. 9; 63 S. C. R. 466.—**CAN.**

si. *Correspondence course in law—Not a qualification for practice.*]—A. signed a contract to receive a correspondence course in law. In Canada this is not sufficient to qualify a person to practice in the law. In an action for the fees agreed to be paid :—*Held :* this insufficiency did not amount to a failure of consideration.—RULE *v.* BRADNER, [1923] 4 D. L. R. 81.—**CAN.**

sm. *Alteration to building—Removed under bye-law.*]—An alteration made to a building proved to be in violation of a bye-law & had to be removed. The owner set up a defence to an action for payment for such alteration that there had been a failure of consideration :—*Held :* the owner was bound to pay.—ORPHEUM THEATRICAL CO. *v.* VULCAN ENGINEERING CONSTRUCTION CO., [1923] 3 D. L. R. 52.—**CAN.**

PART V. SECT. 12, SUB-SECT. 2.

sp. *Option-contract—Non-completion.*]—GOULDING *v.* RABINOVITCH, [1927] 3 D. L. R. 820; 60 O. L. R. 607.—**CAN.**

PART V. SECT. 12, SUB-SECT. 3.—A.

1888 ii. ——.]—BUTTERFIELD *v.* CORMACK & MACKIE (1913), 25 W. L. R. 457; 13 D. L. R. 817; 7 Alta. L. R. 26.—**CAN.**

PART VI. SECT. 2.

c i. *S. P.* KANWAR RHAN-SUKHA NAND *v.* GANPAT RAI-RAM JIWAN (1926), I. L. R. 7 Lah. 442.—**IND.**

PART VI. SECT. 3.

1950 iv. ——.]—A.-G. FOR BRITISH COLUMBIA *v.* BROOKS, BIDLAKE & Co., [1922] 3 W. W. R. 9; 63 S. C. R. 466; 66 D. L. R. 475.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 1.—A

st. *Manufacture of goods with false description.*]—Plff. co.'s salesman purported to enter into contracts for the sale to deft. of quantities of "All British" motor tyres & tubes. The goods would be manufactured in Melbourne, but each contract stipulated that the words "English Manufacture" should be branded upon them, & deft. intended to sell the goods, relying upon the brand to imply that they had been manufactured in England :—*Held :* at common law the proposed brand would be a fraud on the public, & the maxim *ex turpi causa non oritur actio* applied.—BARNET GLASS RUBBER CO., LTD. *v.* MCDONALD, [1922] N. Z. L. R. 767; Gaz. L. R. 213.—**N.Z.**

1967. *Add. Annotations :*—**Refd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340 ; Robinson *v.* Graves, [1935] 1 K. B. 579.

1971. *Add. Annotations :*—**Consd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402. **Refd.** James *v.* British General Insce., [1927] 2 K. B. 311 ; *Re* Hanlon, Heads *v.* Hanlon, [1933] Ch. 254 ; Beresford *v.* Royal Insurance Co., [1936] 2 All E. R. 1052 ; Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

1978. *Add. Annotations :—As to* (1) **Apld.** Palmolive Co. (of England) *v.* Freedman (1927), 44 T. L. R. 86. **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402. *As to* (3) **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174 ; Gilford Motor Co. *v.* Horne, [1933] Ch. 935. *Generally*, **Refd.** Wyatt *v.* Kreglinger & Fernau (1833), 49 T. L. R. 264.

1976. *Add. Annotation :*—**Refd.** Beresford *v.* Royal Insurance Co., [1938] A. C. 586.

1977. *Add. Annotations :—As to* (2) **Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470 ; Beresford *v.* Royal Insurance Co., [1936] 2 All E. R. 1052.

1979. *Add. Annotation :—As to* (2) **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1981. *Add. Annotations :—As to* (1) **Consd.** James *v.* British General Insce., [1927] 2 K. B. 311. **Refd.** Beresford *v.* Royal Insurance Co., [1936] 2 All E. R. 1052. *As to* (2) **Consd.** Beresford *v.* Royal Insurance Co., [1938] A. C. 586. **Refd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546 ; *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89. *Generally*, **Refd.** Cousins *v.* Sun Life Assurance Society (1932), 48 T. L. R. 614.

1983. *Add. Annotation :—As to* (4) **Consd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1984. *Add. Annotations :*—**Refd.** Burrell *v.* Leven (1926), 42 T. L. R. 407 ; Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

1986. *Add. Annotation :*— **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1992. *Add. Annotations :—As to* (3) **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174. *As to* (4) **Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44 ; Beresford *v.* Royal Insurance Co., [1936] 2 All E. R. 1052. *Generally*, **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

1998. *Add. Annotation :*—**Consd.** Beresford *v.* Royal Insurance Co., [1938] A. C. 586.

2011. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2011a. —— **Knighthood.**]—If a contract which is illegal as being contrary to public policy has any element of turpitude in it the parties to the contract are *in pari delicto*, & if one of the parties to the contract has been defrauded, no action for damages can be maintained by the party defrauded, even though the contract is not of a criminal nature.

The secretary of a charity fraudulently represented to P. that he or the charity was in a position to undertake that P. would receive a knighthood if P. made a large donation to the funds of the charity, & undertook that the title would be conferred if the donation was made. P., relying upon those representations & in the belief that the secretary was authorised by the charity to give the undertaking, made a large donation to the funds of the charity. As P. did not receive the knighthood he brought an action against the charity & its secretary to recover back the money he had paid as money had & received or as damages for deceit or breach of contract :—*Held :* a contract for the purchase of a title, however the money is to be expended, is an improper & illegal contract, as being against public policy, & as P. knew that he was entering into an improper & illegal contract he could not recover back the money he had paid from the charity as money had & received, nor recover damages from the charity or its secretary, nor claim to repudiate the contract as being still executory & recover back the money paid.—PARKINSON *v.* COLLEGE OF AMBULANCE, LTD. & HARRISON, [1925] 2 K. B. 1 ; 93 L. J. K. B. 1066 ; 133 L. T. 135 ; 40 T. L. R. 886 ; 69 Sol. Jo. 107.

Annotation :—**Refd.** *Re* Gregory, *Ex p.* Norton, [1935] Ch. 65.

(*k*) *Agreements Relating to Bankruptcy* (Vol. XII., p. 248).

To the existing cross-references add as follows :—

Agreement for withdrawal of petition.]—*See* BANKRUPTCY, No. 1366a, *ante*.

Agreement for improper distribution of estate.]—*See* BANKRUPTCY, No. 4366a, *ante*.

Agreements not to oppose discharge.]—*See* BANKRUPTCY, Vol. IV., pp. 546, 547.

Agreements for payment of debts barred by discharge.]—*See* BANKRUPTCY, Vol. IV., pp. 589–592.

Agreements for procuring assent of creditors to composition deeds.]—*See* BANKRUPTCY, Vol. V., pp. 1120, 1139–1145.

2028. *Add. Annotation :*—**Refd.** *Re* Lanyon, Lanyon *v.* Lanyon, [1927] 2 Ch. 264.

PART VI. SECT. 4, SUB-SECT. 2.—A.

1977 iv. ——.]—A contract will not be declared unenforceable as being against public policy, unless it belongs to a class of contracts that the law recognises as being within that category. The ct. cannot invent a new head of public policy.—WADGERY *v.* FALL (Sask.), [1926] 4 D. L. R. 333; [1926] 2 W. W. R. 657.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (*f*) iii.

xx. ***Assignment of money due under mail-contract.***]—A mail-contract prohibited the assignment of moneys due thereunder without the consent of the Postmaster-General :—*Held :* such an assignment was not void as contrary to public policy, on the analogy of assignments of salaries of public servants.—HODDER & TOLLEY, LTD. *v.* CORNES, [1923] N. Z. L. R. 876.—**N.Z.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (*g*).

xx. ***Evasion of revenue laws—False invoice—Claim by vendor particeps criminis.***]—Where merchants residing in the United States sold goods to deft., & combined with him in furnishing false invoices to evade the revenue laws of this Province in respect of the amount of duties to be paid on the importation of such goods :—*Held :* plffs. could not recover their value from deft. in this country.—MULLEN *v.* KERR (1841), 6 O. S. 171.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (l) i.

2034 ii. —— ——.]—Deft., a married woman, & known to plff., with whom she had had illicit relations, to be married, promised him in writing that she would pay him $10,000 if he would "delay getting married until she becomes a widow." Deft. became a widow & plff. brought an action for the $10,000 :—*Held :* the agreement

2075. *Add. Annotation :*—**Refd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

2084a. —— **Marine insurance—Not expressed in sea policy.**]—No contract for sea insurance is valid unless it is expressed in a sea policy. The contract in this case was a contract for sea insurance &, not being expressed in a policy, was unenforceable.

The expression of an agreement for sea insurance otherwise than in a policy is a thing forbidden in the public interest (LORD SUMNER).—NAGOREMULL *v.* TRITON INSURANCE CO., LTD. (1924), 41 T. L. R. 168, P. C.

2089. *Add. Citation :*—15 Asp. M. L. C. 566.

Add. Annotation :—**Distd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690.

2089a. Agreement for recovery of betting debt.]—Pltf. carried on business as the "Turf Register," which in a prospectus issued by him was called a "society"; but he was the sole proprietor of the business, though he described himself in the prospectus as secretary. In consideration of a subscription, & of a commission on the amounts recovered, he undertook to collect for the subscribers betting debts which, under the provisions of the Gaming Acts, were not recoverable. It was agreed between him & deft., in the terms of the prospectus, that in consideration of pltf. putting up all the necessary disbursements for the institution & conduct of legal or other proceedings, the net profits accruing directly or indirectly was to be equally divided between claimant & the society. Pltf. brought an action to recover the amount of debts alleged to have been wrongfully collected by deft. in breach of the agreement :—*Held :* the agreement was illegal & void, being contrary to pubilc policy, & pltf. could not recover.—FORD *v.* RADFORD (1920), 36 T. L. R. 658; 64 Sol. Jo. 571.

2089b. Agreement in breach of trade usage.]—The fact that the rules of the London Metal Exchange prohibit a clerk to a member from participating in dealings on the Exchange as a principal does not make the contracts void as being against public policy.—BARNETT *v.* SANKER (1925), 41 T. L. R. 660; 69 Sol. Jo. 824.

2098. *Add. Annotation :*—**Consd.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

2102a. ——.]—GUIBORN *v.* FELLOWS (1717), 2 Eq. Cas. Abr. 160; 5 Vin. Abr. 408, pl. 20; 22 E. R. 136, L. C.

2112. *Add. Annotation :*—**Consd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2114. *Add. Annotation :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

---

was unenforceable, on the ground that it was contrary to public policy & morals.—HLIBCZUK *v.* MINUK, [1933] 2 W. W. R. 20.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (l) iii.

sg. *Contract to pay alimony—Collusive divorce.*]—A contract to pay alimony, based on agreement for collusive divorce, the consideration being that after divorce deft. should marry pltf.'s daughter, is illegal as against public policy.—CAMPBELL *v.* CAMPBELL, [1936] 4 D. L. R. 52; 11 M. P. R. 79.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (t).

2086 iii. ——.]—Deft. employed pltf., a land agent & member of a municipal council, to sell his land to the Closer Settlement Board under Discharged Soldiers Settlement Acts. Pltf. submitted the land to the Board, but before the sale he had resigned his position on the council. Under the above Acts pltf., as a member of the council, could be called upon to advise the Board in connection with purchase of land within the municipality. In an action by pltf. to recover from deft. commission on the sale :—*Held :* the private interest of pltf. under his agreement with deft. had a tendency to interfere with the proper discharge by pltf. of his public duty, & the agreement was illegal & void as being against public policy.—WOOD *v.* LITTLE, [1922] V. L. R. 11; 29 C. L. R. 564; 27 Argus L. R. 400.—**AUS.**

2086 iv. ——.]—*Held :* a contract by which pltf. was to use his supposed influence with members of the Govt. for obtaining contracts in return for a commission was contrary to public policy & void.—CARR-HARRIS *v.* CANADIAN GENERAL ELECTRIC CO. (1920), 48 O. L. R. 231; 55 D. L. R. 506; 19 O. W. N. 591.—**CAN.**

2086 v. ——.]—Where a contract to pay a commission on the sale of property to a provincial Govt. is entered into on the understanding that the agent is a person having influence with the employees of the Govt. & that he will exercise such influence to bring about the sale :—*Held :* the contract is illegal.—MACMILLAN *v.* MOONEY, [1924] 4 D. L. R. 762; 3 W. W. R. 458.—**CAN.**

sh. *Agreement between soldier & vendor of land to Soldier Settlement Board for payment to vendor by soldier of additional sum.*]—*Held :* not unenforceable as being against public policy.—WADGERY *v.* FALL (Sask.), [1926] 4 D. L. R. 333; [1926] 2 W. W. R. 657.—**CAN.**

si. *Agreement to offer prayers for the success of litigation.*]—An agreement, whereby one party consents to remunerate another for the latter to offer prayers to God for the success of litigation in which the former is engaged, is not contrary to public policy.—BALASUNDARA MUDALIAR *v.* MAHAMED OOSMAN SAHEB (1929), I. L. R. 53 Mad. 29.—**IND.**

sj. *Indemnity bond between subject & State.*]—An indemnity bond between a subject & the State, *e.g.* to make good the loss of working a telegraph office, is not opposed to public policy.—KISHORI PRASAD BHAKAT *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL, I. L. R., [1938] 1 Cal. 463.—**IND.**

PART VI. SECT. 4, SUB-SECT. 4.—B. (a).

2091 viii. ——.]—HENRY *v.* DICKIE (1896), 27 O. R. 416.—**CAN.**

2091 ix. ——.]—*Held :* a deed was an illegal consideration as being the outcome of a bargain to stifle a prosecution against B. for an indictable offence, & was void. The offence for which B. was liable to prosecution was in the nature of larceny, & was an indictable offence of a public nature.—GOLDSBROUGH, MORT & CO., LTD. *v.* BLACK (1926), 29 W. A. L. R. 37.—**AUS.**

2091 x. ——.]—*Held :* an agreement the consideration of which was the compounding of a compoundable offence was not forbidden by law & was valid; (2) an agreement to compound a non-compoundable offence is void in law.—AHMED HASSAN *v.* HASSAN MAHOMED MALEK (1928), I. L. R. 52 Bom. 693.—**IND.**

2091 xi. ——.]—Pltf. paid deft. $100 & made in deft.'s favour a chattel mtge. for $400 in order to stifle a prosecution for a public offence :—*Held :* pltf. was entitled to a judgment setting aside the chattel mtge.; for pltf., upon the evidence, was not *in pari delicto* with deft.—STEINBERG *v.* COHEN, [1930] 2 D. L. R. 916; 64 O. L. R. 545.—**CAN.**

2091 xii. ——.]—A transaction entered into in consequence of a threat to prosecute criminally one of the parties to it :—*Held :* to justify the finding that the threatening party agreed by implication not to prosecute if the other party complied with his demand; &, therefore, the transaction was illegal as constituting an agreement to stifle a prosecution.—FULLER *v.* STOLTZE, [1938] 1 W. W. R. 241; 1 D. L. R. 635.—**CAN.**

sd. *Compromise signed in hope of avoiding prosecution—No promise not to prosecute.*]—DIKUR *v.* SHAVCHOOK (Alta.), [1929] 2 D. L. R. 232.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 4.—B. (b).

2096 i. ——.]—A contract is not vitiated because it was induced by a threat of criminal proceedings, for which there was sufficient ground, provided there is no agreement to stifle the prosecution.—BOW *v.* PFEIFFER & GILBERT, [1924] 3 D. L. R. 854; 2 W. W. R. 1149.—**CAN.**

2098 iv. —— —— ——.]—D. was in the employ of pltfs. & was charged with criminal breach of trust in respect of a cheque for Rs.30,000 which he cashed for pltfs. D. paid pltfs. Rs.15,000, & D. & his brother R. executed a mtge. in favour of pltfs. with a view to withdrawal of the prosecution. Pltfs. put in a petition stating the facts, & the prosecution was dropped :—*Held :* the agreement was not against public policy.—DWIJENDRA NATH MULLICK *v.* GOPIRAM GOBINDARAM (1925), I. L. R. 53 Calc. 51.—**IND.**

2118. *Add. Annotation :*—**Consd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

2122. *Add. Annotations :—As to* (1) **Refd.** Wylie *v.* Lawrence Wright Music Co. (1932), 96 J. P. 156; Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509. *As to* (2) **Apld.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470. **Consd.** Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

2127. *Add. Annotation :*—**Consd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

2129. *Add. Annotation :*—**Refd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

2136. *Add. Annotation :*—**Consd.** R. *v.* Manley (1932), 97 J. P. 6.

2147. *Add. Annotation :*—**Refd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

2152. *Add. Annotation :*—**Consd.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509.

2153. *Add. Annotation :*—**Apld.** Mansfield *v.* Robinson, [1928] 2 K. B. 353.

2154a. Agreement not to disclose confession of misdemeanour.]—Pltf. was a workman in the printing trade, & until he lost his membership as hereinafter stated he was a member of the trade union of that trade. Defts. were the printers & publishers of a newspaper in which for several years they had organised weekly crossword competitions for large money prizes. Pltf. had for several years been employed by defts. as a sorter in their competition department, & thereafter in a similar capacity on another newspaper, but subsequently he was unemployed. Defts., suspecting that systematic fraudulent cheating was going on among their sorters, made inquiries & got into touch with pltf. In the result pltf., on the faith of a verbal promise of secrecy by defts.' representative, signed & left with the latter a typed document containing statements made by him to the effect that he had taken part in a fraud against the other newspaper on which he had been employed; that two further frauds in which he was to share had been proposed but not yet committed; that the method of the frauds was as therein particularly described; that there were groups of persons in defts.' competition department staff working the swindle regularly every week, & that certain named persons were suspected by pltf. to belong to these groups: & that pltf. was making the statement on the definite understanding that it was not to be used against him or divulged to any third party. Subsequently defts., being dissatisfied with the conduct of pltf., handed a copy of the said document to pltf.'s union. Pltf. was thereupon expelled from the union & had since failed to obtain work in his trade & lost unemployment pay & other benefits from membership of the union. In these circumstances pltf., asserting a valid contract between himself & defts. under which he had given to defts. the information contained in the above-mentioned document in consideration of a promise of secrecy on their part, brought an action against defts. alleging that they had committed a breach of that contract by disclosing the document to pltf.'s union & claiming as damages the loss sustained by him in consequence of his explusion from the union :—*Held :* the contract sued upon was invalid as being against public policy, inasmuch as it purported to prevent defts. from giving information to third parties which might assist them to secure the conviction of persons who had defrauded them in the past or to prevent the commission of frauds against them in the future; (2) on the assumption that the contract sued upon was valid, that the damage to pltf. consequent upon his expulsion from the trade union was not caused by defts.' breach of that contract by disclosing pltf.'s statement to the union, but by his own wrongful conduct, &, no other substantial damage being claimed, pltf. could only recover nominal damages from defts. for that breach of contract.—Howard *v.* Odhams Press, Ltd., [1938] 1 K. B. 1; [1937] 2 All E. R. 509; 106 L. J. K. B. 675; 157 L. T. 191; 53 T. L. R. 570; 81 Sol. Jo. 376, C. A.

2156. *Add. Annotations :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v* Driscoll, [1929] 1 K. B. 470; Alexander *v.* Rayson, [1936] 1 K. B. 169. **Refd.** Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

2170. *Add. Annotation :*— **Refd.** R. *v.* Bernhard, [1938] 2 K. B. 264.

2185a. —— Contract between wife & third party—Valid.]—Mather *v.* Rhodes (1934), 78 Sol. Jo. 414.

2186. *Add. Annotations :*—**Distd.** Siveyer *v.* Allison, [1935] 2 K. B. 403. **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2187. *Add. Annotation :*—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2188. *Add. Annotations :*—**Consd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402. **Refd.** Davies *v.* Elmslie, [1938] 1 K. B. 337.

2189. *Add. Annotations :*—**Apld.** Siveyer *v.* Allison, [1935] 2 K. B. 403. **Consd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402. **Refd.** Davies *v.* Elmslie, [1938] 1 K. B. 337.

2190a. —— —— Inference of new promise after divorce.]—Pltf., who at the time was a married woman, accepted deft.'s proposal of marriage, provided that she obtained a divorce. Pltf. did obtain a divorce, & deft. then gave her an engagement ring & the date of the wedding was arranged. Ultimately deft. married another woman. In an action for breach of promise of marriage deft. pleaded that the contract was void in law as being contrary to public policy :—*Held :* although the original promise was void yet a new promise, after pltf. had become a free woman, could be inferred from the giving of the ring & the arrangement of the date of

---

PART VI. SECT. 4, SUB-SECT. 5.—C.

1 i. ——.]—Money advanced by a man to a woman with whom he lived in illicit relationship is founded on immoral consideration & is irrecoverable.—Rosentzweig *v.* Swartz, [1937] 3 D. L. R. 256.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 5.—G.

2190 i. *Promisee married—Promise to marry conditioned on divorce.*]—Where a promise of marriage was made after the hearing of a petition for divorce, but before the passage of the bill of divorce :—*Held :* any promise of marriage to be performed contingently upon a divorce being obtained was against public policy, & no action could be maintained thereon.—Caulfield *v.* Arnold (No. 1), [1925] 1 D. L. R. 295; [1925] 1 W. W. R. 664; 34 B. C. R. 404.—**CAN.**

the wedding, & pltf. was entitled to recover.—SKIPP *v.* KELLY (1926), 42 T. L. R. 258, P. C.

Annotation :—**Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

2190b. Promisor married—Promise made after decree nisi—Immoral relationship before promise.]—A promise made by one spouse, after a decree *nisi* for the dissolution of the marriage has been pronounced, to marry a third person after the decree has been made absolute is not void as being against public policy, & an action for damages for breach of the promise is maintainable by the third person.—FENDER *v.* ST. JOHN-MILDMAY, [1938] A. C. 1 ; 53 T. L. R. 885 ; 81 Sol. Jo. 549 ; *sub nom.* FENDER *v.* MILDMAY, [1937] 3 All E. R. 402 ; 106 L. J. K. B. 641 ; 157 L. T. 340, H. L.

2190c. —— Promise to marry conditioned on obtaining decree of nullity.]—*Semble :* an agreement between a married man & an unmarried woman, who knows that he is married, that they will marry if & when he obtains a decree of nullity of his marriage, is illegal & void as being contrary to public policy.

Semble : where an unmarried woman, in reliance on representations by a married man that he can obtain a decree of nullity of his marriage & will marry her thereafter, enters into an immoral association with him & thereby suffers damage, she cannot, on the representations proving to have been false, maintain against him an action for deceit, being herself a party to the immoral association.—SIVEYER *v.* ALLISON, [1935] 2 K. B. 403 ; 104 L. J. K. B. 597 ; 153 L. T. 239 ; 51 T. L. R. 534 ; 79 Sol. Jo. 479.

2195. *Add. Annotation :*—**Distd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

2195a. ——.]—Pltfs., a private inquiry agency, carried on the business of providing to approved subscribers confidential reports on cos., firms & persons engaged in trade. The terms upon which the reports were issued were (*inter alia*) that all statements were strictly confidential, & that every subscriber should indemnify p ltfs. against any loss or damage they might suffer from the breach by the subscriber of any of the conditions of the contract. Deft. co., an approved subscriber, through its managing director, requested pltfs. to furnish information regarding the X. Co. for whom they were agents. The report, being of an unfavourable nature, was communicated by deft. co. to their own solrs. Deft. M., a director of deft. co., with the approval of its managing director, applied for & was furnished with similar information regarding the X. Co., & on the same terms & conditions. M. at once informed the managing director of deft. co. of its contents. The matter having been brought to pltfs.' notice by the co. reported on, both defts. at the request of pltfs. returned the unfavourable reports. Pltfs., an action for libel having been brought against them in the King's Bench Division, commenced proceedings against both defts. for an injunction to restrain disclosure of the unfavourable reports which had been furnished, & a declaration that they were liable to indemnify pltfs. against any loss or damage arising from this disclosure. They also claimed damages :—*Held :* (1) deft. co. did not disclose the report to any person other than its own solrs. & that this did not constitute a breach of contract with pltfs. within the meaning of the agreement ; (2) deft. M. became a subscriber to pltfs.' confidential reports for the purpose of obtaining a report on the X. Co. & communicating the result to the managing director of deft. co. ; (3) neither M. nor the managing director of deft. co. was acting as the agent of the deft. co. & no breach of contract committed by M. was induced by deft. co. The action against deft. co. therefore failed ; (4) the agreement entered into by M. not to disclose the confidential information furnished to him & to indemnify pltfs. for any loss or damage which they might suffer from a breach by a subscriber of the conditions upon which reports were furnished, was not void as being against public policy ; (5) the disclosure by deft. M., although a breach of this contract, did not create the liability of pltfs. to be sued for libel ; this liability did not arise directly or indirectly out of any act of deft. M., & was not therefore within the scope of the express indemnity contained in pltfs.' agreement with M. The only liability for damages, therefore, resulted from M.'s own breach of contract, & that in the circumstances such damages were merely nominal.—BRADSTREETS BRITISH, LTD. *v.* MITCHELL & CARAPANAYOTI & CO., LTD., [1933] Ch. 190 ; 102 L. J. Ch. 34 ; 148 L. T. 111 ; 48 T. L. R. 670.

2199. *Add. Annotation :*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1. K. B. 470.

PART VI. SECT. 4, SUB-SECT. 5.—H.

sf. *Agreement for support of adulterine bastard.*]—*Held :* a contract by a third party to pay the mother for the support of a child alleged by her to be the result of adultery with him while she was living with her husband is against public policy, void & unenforceable.—KIJKO *v.* BACYZSKI (1922), 51 O. L. R. 225.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.

2200 iii. ——.]—If a person contracting to operate a boiler & engine has not a certificate or permit under Boilers Act, R. S. A., 1922 (c. 191), authorising him to operate that particular kind of boiler & engine, the contract is prohibited by the Act, & is unenforceable, & such person is not entitled to recover on a *quantum meruit*.—MILNE *v.* PETERSON, [1925] 1 D. L. R. 271 ; [1924] 3 W. W. R. 957.—**CAN.**

2200 iv. ——.]—Where the legislature has prohibited the making of a contract, & has expressly provided, or, having regard to the language in which the Act is couched, has manifested its intention, that the contract should be void for all purposes, such contract is utterly null & void.—MURSHIDABAD (NAWAB) *v.* BILAS ROY CHOUDHURI (1928), I. L. R. 56 Calc. 252.—**IND.**

p i. —— *Action for transport of goods —No certificate held.*]—Pltf.'s claim against deft. was for a balance due for goods sold & delivered & for services rendered by pltf. by the transportation in their motor truck of deft.'s store stock & furniture. Deft. contended that pltfs. could not recover for this transportation service because at the time it was rendered they did not hold a certificate or permit under Public Service Vehicles Act, 1933. Judgment for deft.—WASEL BROS. *v.* LASKIN, [1934] 2 W. W. R. 577 ; 3 D. L. R. 798.—**CAN.**

p ii. —— *Contract in contravention of Liquor Act, s.* 252.]—Pltf.'s statement of claim alleged that the personal defts. acting for themselves, or, in the alternative, on behalf of Drewrys (Regina) Limited, entered into an agreement with him under which he was to obtain a lease of hotel premises from the owner to a nominee of the personal defts., defts. were to obtain a licence for the sale of beer on said premises, & pltf. was to be appointed manager of the licensed premises. He alleged breach of the contract, & prayed for

2214. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel (1924), 130 L. T. 418.

2215. *Add. Annotation :*—**Apld.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2217. *Add. Annotation :*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2220. *Add. Annotation :*—**Refd.** Siveyer *v.* Allison, [1935] 2 K. B. 403; Nash *v.* Stevenson Transport, Ltd., [1936] 2 K. B. 128.

SUB-SECT. 2.—PARTICULAR CONTRACTS RENDERED VOID OR ILLEGAL BY STATUTE (Vol. XII., p. 272).

Add the following cross-reference :—

Sale by other than imperial weights & measures.]—*See* WEIGHTS & MEASURES.

2226. *Add Citation :*—*See*, [1906] 1 Ch. 747, n.

Add. Annotation : — **Apld.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2227. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2228. *Add. Annotations :*—**Apld.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97; *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2229. *Add. Annotation :*—**Consd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2231. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2232. *Add. Annotations :*—**Consd.** Anderson *v.* Daniel, [1924] 1 K. B. 138. **Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2233. *Add. Annotation :*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2234. *Add. Annotation :*—**Refd.** Harte *v.* Williams, [1934] 1 K. B. 201.

2236. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel (1924), 130 L. T. 418.

2241. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

2245. *Add. Annotation :*—**Apld.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

2248a. ——.]—**Pltf.** cannot recover for goods sold which he knows are to be applied to an illegal purpose, though he be not active himself in their being so applied, & be no sharer in the advantage to be derived therefrom.—HUTTON *v.* WEY (1827), 5 L. J. O. S. K. B. 220.

2251. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

2265. *Add. Annotation :*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

2267. *Add. Annotation :*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

2268. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

2269. *Add. Annotations :*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 160. **Refd.** Day *v.* Davies, [1938] 2 K. B. 74.

2269a. —— **Totalisator club.**]—Pltfs. claimed a quarter's rent in advance for premises let to defts. to be used by them as a tote (totalisator) club. Defts. pleaded that the contract was unenforceable as made for an illegal purpose—namely, the carrying on of a tote club :—*Held :* a tote club can be conducted in a legal manner on a credit basis, *i.e.* where no money or valuable thing is staked at the time the bet is made, but all that takes place is that the customer at that time promises to pay if he loses in consideration of the promise that he is to be paid if he wins, & pltfs. were entitled to assume that the tote would be conducted in a legal manner only, & there was no evidence that they knew that in fact it had been conducted in an illegal manner, *i.e.* on a cash basis, which, at the date of the quarter's rent becoming due, it had ceased to be.—STREATHAM CINEMA, LTD. *v.* JOHN MCLAUCHLAN, LTD., [1933] 2 K. B. 331; 102 L. J. K. B. 536; 149 L. T. 447; 97 J. P. 273; 49 T. L. R. 471; 31 L. G. R. 219.

---

specific performance or damages or a *quantum meruit*. On a motion to have the statement of claim struck out & the action dismissed :—*Held :* the motion must succeed, since according to the statement of claim, not only was deft. co. a brewer, but the personal defts. were also brewers, within the definition of "brewer" in Liquor Act, R.S.S., 1930, & the agreement sued on was, therefore, one that contemplated a violation of sect. 252 of said Act & was, therefore, void.—POPOFF *v.* CAIL, [1936] 3 W. W. R. 689.—**CAN.**

2218 i. *Action arising out of illegal contract—Recovery of money paid.*]—Money paid under an illegal contract cannot be recovered back.—MERKEL *v.* MCKENDRY, [1926] 2 D. L. R. 995; [1926] 2 W. W. R. 7; 35 Man. L. R. 506.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 1.

s i. —— ——.]—In an action upon the covenants for payment contained in two mtgees. made by deft. in favour of pltf. C., it was found upon the evidence that the real consideration for the advances made by C. in respect of which the mtges. were professedly made was deft.'s participation in a scheme which involved the defrauding of the Govt. of Canada in the matter of sales tax or income tax, & the smuggling of intoxicating liquor into the United States :—*Held :* to establish the illegality of an agreement it is not necessary that the illegality should be an integral part of it; it is enough if one of the parties contemplated an illegal act or transaction, & that the other party was aware of it.—HARWOOD & COOPER *v.* WILKINSON, [1929] 4 D. L. R. 734; 64 O. L. R. 392; *revsd.*, [1930] 2 D. L. R. 199; 64 O. L. R. 658.—**CAN.**

c. *Revsd. sub nom.* DOMINION FIRE INSURANCE CO. *v.* NAKATA, 52 S. C. R. 294; 26 D. L. R. 722.

PART VI. SECT. 7, SUB-SECT. 2.

2248 i. *General rule.*]—A contract for the sale of goods that is in violation of the law will not be enforced by the ct.—ERNST *v.* CHRISTIAN, [1929] 1 D. L. R. 207; 60 N. S. R. 447.—**CAN.**

2250 i. *Goods supplied for illegal purpose—To knowledge of vendor—Smuggling.*]—An action brought by a brewery co. against the owners of a dock on the Ontario side of the D. river to restrain defts. from shipping from their dock beer other than that brewed by pltfs. in violation of a contract between the parties was dismissed upon the ground that the ct. should not entertain it. It is common knowledge that for several years there has existed in Ontario an industry known as the "liquor export business" or "rum-running," consisting in the exportation of intoxicating liquors to the United States by smuggling & in contravention of the laws of that country. The ct. is bound to take judicial notice of that which is commonly & publicly known. Viewing the evidence before the ct. in the light of that knowledge it clearly indicated that pltfs. were not only the lessees of a dock & warehouse that were being used by them for "rum-running" purposes, but were the employers or abettors of one of the gang of smugglers that infested the D. river frontier.—WALKERVILLE BREWING CO. *v.* MAYRAND, [1928] 4 D. L. R. 500; 63 O. L. R. 5; *revsd.*, [1929] 2 D. L. R. 945; 65 O. L. R. 573.—**CAN.**

2253 i. —— —— *Sale of intoxicating liquor for use in place where Temperance Act in force.*]—Price not recoverable.—FURLONG *v.* RUSSELL (1885), 24 N. B. R. 478.—**CAN.**

2253 ii. —— —— ——.]—SMITH *v.* BENTON (1890), 20 O. R. 344.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 3.

sg. *Letting premises for storage of goods to be smuggled to foreign country.*]—WESTGATE *v.* HARRIS, [1929] 4 D. L. R. 643; 64 O. L. R. 358.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 5.

sj. *Money advanced to carry on gaming house.*]—An action does not

2283. *Add. Annotation :*—**Consd.** Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

2285. *Add. Annotations :*—**Folld.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886. **Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

2288. *Add. Annotations :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470. **Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46; Hasceldine *v.* Hosken, [1933] 1 K. B. 822; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

2292a. ——.]—NAGOREMULL *v.* TRITON INSURANCE CO., LTD., No. 2084a, *ante*.

2297. *Add. Annotations :*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169. **Refd.** Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

2301a. —— **Recovery of wages—Contract in breach of Shops Act.**]—A shop assistant was employed under a contract of employment which had no reference to holidays. An order under Shops Act, 1912 (c. 3), s. 11 (1), had been made by the local authority for the district in which the shop was situated, suspending the general obligation to close shops on the weekly half-holiday, but only on condition that all the assistants in any shop which remained open were given a holiday of not less than two weeks in each year, & a notice to that effect was affixed in the shop. The employers kept the shop open on the weekly half-holiday, but did not fulfil the above conditions. The assistant, who had no holiday for a number of years, brought an action against his employers, claiming wages in lieu of statutory holidays: —*Held :* as the terms of the assistant's employment were in contravention of the Act, both the assistant & his employers had been parties to an illegal contract & neither could have any claim against the other in respect of it. The assistant was, therefore, not entitled to recover.—WYLIE *v.* LAWRENCE WRIGHT MUSIC CO. (1932), 96 J. P. 156; 48 T. L. R. 295; 76 Sol. Jo. 249; 30 L. G. R. 197.

2306. *Add. Annotation :*—**Dbtd.** Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793.

2310a. ——.]—Where goods become forfeited in consequence of any fraud or neglect in respect of the revenue laws, the loss, as between the buyer & seller, must fall upon him whose fraud or neglect occasioned the forfeiture; but if the seller be a party to the intended fraud or neglect, or connive at it, he shall not recover, although the act of fraud or the neglect was committed by, or was chargeable upon, the buyers.—STUDDY *v.* SANDERS (1826), 5 B. & C. 628; 8 Dow. & Ry. K. B. 403; 4 L. J. O. S. K. B. 290; 108 E. R. 234.

Annotation :—**Refd.** Johnson *v.* Kirkaldy (1840), 4 Jur. 988.

2317. *Add. Annotations :*—*As to* (2) **Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92. **Refd.** Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Bowling *v.* Cox, [1926] A. C. 751.

2319. *Add. Annotations :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169; Berg *v.* Sadler & Moore, [1937] 2 K. B. 158.

2325. *Add. Annotation :*—**Refd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2329a. —— **Contract contrary to public policy.**]—PARKINSON *v.* COLLEGE OF AMBULANCE, LTD. & HARRISON, No. 2011a, *ante*.

2333. *Add. Annotations :*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46. **Consd.** Berg *v.* Sadler & Moore, [1937] 2 K. B. 158. **Refd.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97.

---

lie for the recovery of money lent with the knowledge that the borrower would use it in participating in the carrying on of a common gaming house.—MILLER *v.* WALL, [1933] 2 W. W. R. 574; 4 D. L. R. 422; 41 Man. L. R. 325.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—B.

2288 ii. ——.]—TURNER & JONES *v.* CURRAN (1891), 2 B. C. R. 61.—**CAN.**

2288 v. —— *Sale of land for immoral purpose.*]—Knowledge of the vendor under a contract for the sale of property, real or personal, that the purchaser intends to apply it to an illegal or immoral purpose will not avoid the contract unless, from the circumstances, such as the particular nature of the property & the character, condition in life & occupation of the purchaser, a just inference can be drawn from the facts in evidence that the agreement was made with the intent & for the purpose, operating in the mind of the vendor, that the property should be applied to the illegal purpose alleged. In other words, if there is a consent to or a participation by the vendor in the subsequent illegal user or if the contract of sale was for the purpose of enabling the purchaser to carry out the illegal, or immoral, purpose the ct. will not aid either party.—ROSE *v.* DONALDSON, ROSE *v.* BRISCOE, ROSE *v.* YATES, [1931] 3 W. W. R. 480.—**CAN.**

sm. *Imposing terms on defendant—At what stage of proceedings.*]—While equitable terms may be imposed on deft. seeking relief from a contract on the ground of illegality, they can be given only when asked for on the dismissal of the action to enforce the contract; they cannot be enforced as a cause of action, or allowed when first asked for on appeal from such dismissal.—DEMCHENKO *v.* FRICKE, [1926] 2 D. L. R. 1096; [1926] 2 W. W. R. 221; 20 Sask. L. R. 492.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—C. (b).

2318 iii. ——.]—*Held :* where money paid for an illegal purpose might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON *v.* FARLEY, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—**CAN.**

2318 iv. ——.]—*Held :* where an executory contract is made for illegal sale of goods & the contract has not been carried out but remains totally unperformed, it is open to a party to repudiate the illegal contract & on avoidance to recover any moneys deposited.—HIRJEE DEVRAJ & CO. *v.* MAUNG LYUN SHEIN (1924), I. L. R. 2 Ran. 414.—**IND.**

sp. *Pleading.*]—Where a suit, brought on a contract for illegal sale of goods, was framed for enforcement of the contract & not for damages for breach :—*Held :* a decree for repayment of the money paid could not be passed, unless the plaint was amended.—HIRJEE DEVRAJ & CO. *v.* MAUNG LYUN SHEIN (1924), I. L. R. 2 Ran. 414.—**IND.**

PART VI. SECT. 9, SUB-SECT. 1.—C. (c) i.

2326 iv. ——.]—Pltf., an insurance agent, induced deft. to apply for insurance on the promise that he would share his commission with deft. :—*Held :* the promise to share commission was prohibited by Insurance Act, 1917 (Can.), & the transaction was illegal.—BERNSTEIN *v.* ERICKSON, [1921] 1 W. W. R. 834; 56 D. L. R. 616.—**CAN.**

2326 v. ——.]—*Held :* while money paid for an illegal purpose might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON *v.* FARLEY, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—**CAN.**

2326 vi. *Contract of carriage at prohibited rate.*]—In an action brought by a railway co. to recover from the shipper the difference between the minimum tariff freight rate under the Dominion Railway Act, 1927, s. 330, & a lower rate mistakenly quoted to the shipper by an agent of the railway co. & paid by the shipper :—*Held :* pltf. could not recover the difference as the contract was illegal & the parties were *in pari delicto*.—CANADIAN NATIONAL RAILWAY *v.* KOVINSKY & SONS, [1932] 3 D. L. R. 451; O. R. 529.—**CAN.**

2337. For the cross-reference following this case, "**Whether parties in pari delicto.**]—*See* Nos. 2356, 2363, *post*," read "Whether parties *in pari delicto*, *see* Nos. 2353–2363, *post*."

2339. *Add. Annotations:*—**Distd.** Hill *v.* Fox (1858), 31 L. T. O. S. 118. **Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

2350a. —— **Subscription to charity—On promise of knighthood—Promise by secretary.**]—PARKINSON *v.* COLLEGE OF AMBULANCE, LTD. & HARRISON, No. 2011a, *ante*.

2351. *Add. Annotation:*—**Refd.** Parkinson *v.* College of Ambulance & Harrison, [1925] 2 K. B. 1.

2356. *Add. Annotation:*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2358. *Add. Annotation:*—**Consd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2359a. —— **Marine insurance—Breach of Marine Insurance Act, 1906 (c. 41), s. 84, & Stamp Act, 1891 (c. 39).**]—In 1920 the E. co. & the Y. co. entered into a participation agreement effective as from Jan. 1, 1920, which was a reinsurance treaty binding the E. co. to cede & the Y. co. to accept a participation of all risks therein mentioned of the share retained by the E. co. accepted after Jan. 1, 1920. In Sept. 1921, the E. co. arranged that the N. co. should take over the Y. co.'s position as from Jan. 1, 1920; & in Jan. 1922, an agreement, hereinafter called "the Outwards Treaty," on the same lines & with the same provisions as those of the agreement with the Y. co. was entered into between the E. co. & the N. co. In 1921 the N. co. & the E. co. entered into another participation agreement, hereinafter called "the Inwards Treaty," the N. co. ceding & the E. co. accepting a share of all marine risks. The Inwards Treaty had no provisions for the issuing of policies, or for particulars sufficient to make possible the issuing of policies, to satisfy the provisions of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1906 (c. 41). No stamped policies were in fact issued under any of the three agreements, & no premiums were ever actually paid to the N. co., which was credited with the proper proportion of the net premiums received by the E. co. On the compulsory winding-up of the N. co. the E. co. claimed to be entitled to prove for sums paid by it for premiums under the Outwards Treaty, after allowing for sums paid or credited to it by the N. co. under the Inwards Treaty. The Official Receiver rejected the claim on the ground that both treaties were invalid & inadmissible in evidence, because they were contracts of marine insurance which did not comply with the requirements of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1906 (c. 41), & were unlawful; & upon a summons asking for an order that the proof should be allowed:—*Held:* money paid by the E. co. upon the N. co.'s taking over the reinsurance treaty with the Y. co. could not be recovered on the ground of total failure of consideration, as both parties knew that a continuous breach of the law was contemplated, & as the treaty, assuming it to be illegal, had been partially carried into effect.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., [1931] 1 Ch. 46; 100 L. J. Ch. 38; 144 L. T. 171; [1929–30] B. & C. R. 256.

2360. The cross-reference following this case should follow No. 2359.

2372. *Add. Annotation:*—**Refd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2375. *Add. Annotations:*—*As to* (1) **Refd.** Thompson *v.* British Medical Assocn. (New South Wales Branch), [1924] A. C. 764. *As to* (2) **Consd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102. *Generally*, **Refd.** Palmolive Co. (of England) *v.* Freedman (1927), 44 T. L. R. 86.

2387. *Add. Annotation:*—**Consd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

2391. *Add. Annotation:*—**Refd.** Putsman *v.* Taylor, [1927] 1 K. B. 637.

2391a. ——.]—A promise may be enforceable, notwithstanding that the promisor has in the same document made promises, supported by the same consideration, which are void, provided that the severed parts are independent & that not the kind but only the extent of the promisor's obligations will be changed by the partial enforcement.—PUTSMAN *v.* TAYLOR, [1927] 1 K. B. 637; 96 L. J. K. B. 315; 136 L. T. 285; 43 T. L. R. 153, D. C.; *affd.*, [1927] 1 K. B. 741, C. A.

2401. *Add. Annotation:*—**Refd.** Papadopoulos *v.* Papadopoulos, [1930] P. 55.

2402. *Add. Annotation:*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

2407. *Add. Annotation:*—**Refd.** *Re* A Debtor (No. 229 of 1927), [1927] 2 Ch. 367.

2412. *Add. Annotation:*—**Distd.** Milsted *v.* Hamp & Ross & Glendinning (1927), 71 Sol. Jo. 845.

2427. *Add. Annotation:*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

PART VI. SECT 9, SUB-SECT. 1.—D.

2373 i. *Damages for breach.*]—Pltf. agreed to sell certain leasehold premises to deft., a person of enemy origin within War Legislation & Statute Law Amendment Act, 1918, s. 6, of which fact pltf. was ignorant:—*Held:* pltf. might either (1) sue on the contract & claim damages for deft.'s breach of contract in which case deft. would be estopped from alleging that the contract was illegal & void, or (2) sue for restitution of compensation in respect of acts of part performance by him while ignorant of the illegal nature of the contract, & before its repudiation by deft.—BRANIGAN *v.* SABA, [1923] N. Z. L. R. 97.—**N.Z.**

PART VI. SECT. 9, SUB-SECT. 3.

2384 ii. ——.]—Pltf. in ignorance that deft. was of enemy origin sold to him certain premises, the price to be paid by instalments. Deft. was given possession, but before all instalments were paid he repudiated the agreement. An action by pltf. for unpaid purchase-money having failed on the ground that the contract was illegal:—*Held:* pltf. might either (1) sue deft. on the contract & claim damages for the breach, in which case deft. would be estopped from alleging that the contract was illegal, or (2) sue for restitution of compensation in respect of acts of part performance by him while ignorant of the illegality, & before repudiation of the contract.—BRANIGAN *v.* SABA, [1923] N. Z. L. R. 97.—**N.Z.**

PART VI. SECT. 9, SUB-SECT. 4.—A.

2388 vii. ——.]—FLANNAGHAN *v.* HEALY (1900), 4 Terr. L. R. 391.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 6.

sq. *Contract partly illegal—Performance of illegal part waived—Illegality no defence to action on security.*]—ENGLEBLOM *v.* BLAKEMAN, [1930] 1 W. W. R. 565; 2 D. L. R. 824; 42 B. C. R. 259; *affg.*, [1929] 4 D. L. R. 377; 41 B. C. R. 456.—**CAN.**

2435a. ——.]—In order to deprive pltf. of his right to relief in equity on the ground of illegality in the transaction in respect of which such relief is sought, there must be such a degree of illegality as is free from all doubt. —BARTON *v.* MUIR (1874), L. R. 6 P. C. 134; 44 L. J. P. C. 19; 31 L. T. 593; 23 W. R. 427, P. C.

Annotations:—**Distd.** Tooth *v.* Power, [1891] A. C. 284. **Reld.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

2443. *Add. Annotations:*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. **Reld.** Howard *v.* Odhams Press, Ltd., [1937] 2 All E. R. 509; Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

2444. *Add. Annotation:*—**Reld.** Mutual Finance, Ltd. *v.* Wetton & Sons, Ltd., [1937] 2 K. B. 389.

2454. *Add. Annotation:*—**Reld.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

2456. *Add. Annotation:*—**Reld.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

2496. *Add. Annotations:*—**Reld.** Crown Milling Co. *v.* R., [1927] A. C. 394; English Hop Growers *v.* Dering, [1928] 2 K. B. 174; Palmolive Co. (of England) *v.* Freedman, [1928] Ch. 264.

Part VII.—Performance and Excuses for Non-Performance.

2505a. —— **" Unforeseen contingencies excepted " —Goods obtainable from source not contemplated by sellers.**]—A contract provided for the delivery of goods " unforeseen contingencies excepted." No particular source from which they were to come was stipulated. Unforeseen political complications prevented the supply of the goods from the source contemplated by the sellers, but it was not shown that the goods could not have been procured from other sources:—*Held:* the above clause did not protect the sellers from liability to deliver the goods.—WILLS (GEORGE) & SONS, LTD. *v.* CUNNINGHAM (R. S.) SON & Co., [1924] 2 K. B. 220; 93 L. J. K. B. 1008; 131 L. T. 400; 40 T. L. R. 108.

2533. *Add. Annotation:*—**Reld.** Fisher, Ltd. *v.* Eastwoods, Ltd., [1936] 1 All E. R. 421.

2536. *Add. Annotation:*—**Consd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

2544. *Add. Annotations:*—**Reld.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172; Hogarth *v.* Cory (1926), 95 L. J. P. C. 204; United States Shipping Board *v.* Strick, [1926] A. C. 545; Vergottis *v.* Cory (1926), 95 L. J. K. B. 1002.

2545. *Add. Annotations:*—**Reld.** Rederi Akt. Acolus *v.* Hillas (1925), 42 T. L. R. 69; United States Shipping Board *v.* Strick, [1926] A. C. 545.

2547. *Add. Annotations:*—**Consd.** Verelst's Administratrix *v.* Motor Union Insce., [1925] 2 K. B. 137. **Reld.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127; Anastasia S.S. Owners *v.* Ugleexport Charkow (1933), 149 L. T. 342; Dampskibsselskabet Heimdal *v.* Russian Wood Agency, Ltd. (1933), 149 L. T. 342; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158.

2553. *Add. Annotations:*—**Consd.** Verelst's Administratrix *v.* Motor Union Insce., [1925] 2 K. B. 137. **Reld.** Hall *v.* Pim (1927), 137 L. T. 585.

2560. *Add. Annotations:*—**Consd.** Bernard *v.* Williams (1928), 139 L. T. 22. **Reld.** Lock *v.* Bell, [1931] 1 Ch. 35.

2564. *Add. Annotation:*—**Consd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2567. *Add. Annotation:*—*As to* (2) **Reld.** Bernard *v.* Williams (1928), 139 L. T. 22.

2579. *Add. Annotation:*—**Reld.** Bernard *v.* Williams (1928), 139 L. T. 22.

2585. *Add. Annotation:*—**Reld.** Bernard *v.* Williams (1928), 139 L. T. 22.

2590. *Add. Annotation:*—**Reld.** Akt. Reidar *v.* Arcos, [1927] 1 K. B. 352.

2594. *Add. Annotation:*—**Reld.** Harold Wood Brick Co. *v.* Ferris, [1935] 2 K. B. 198.

2597. *Add. Annotation:*—**Reld.** Lock *v.* Bell, [1931] 1 Ch. 35.

2607. *Add. Annotation:*—**Consd.** *Re* Wait, [1927] 1 Ch. 606.

PART VII. SECT. 1.

c. *Revsd.*, 51 D. L. R. 509.

f i. —— *Breach of collateral contract—Strict proof necessary.*]—BOURDON *v.* SELWYN, [1926] 3 D. L. R. 561.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

2506 iv. ——.]—Where W. agreed to pay H. £10 as damages for assault & give an admission in writing that the assault was unjustified:—*Held:* a tender of £10 under protest coupled with a statement that the assault was justified was not a compliance with the agreement.—WARREN *v.* HESLOP (1925), 46 N. L. R. 89.—**S. AF.**

PART VII. SECT. 3, SUB-SECT. 1.—A.

2532 vi. ——.]—Where on the sale of a piano to be manufactured for the buyer there was a failure to deliver in four months, no time being specified for delivery:—*Held:* this was not a lapse of a reasonable time.—FOSTER *v.* HEINTZMAN & Co., [1923] 4 D. L. R. 166.—**CAN.**

2532 vii. ——.]—WEBBER *v.* COPEMAN (Sask.) (1912), 21 W. L. R. 961.—**CAN.**

2532 viii. ——.]—HOPE (HENRY) & SONS, LTD. *v.* CANADA FOUNDRY CO. (1917), 40 O. L. R. 338; 39 D. L. R. 308.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.—A.

n i. ——.]—Where time is of the essence of the contract, it is the business of the party, who has promised to pay, to see that the money reaches the other party by or before the due date.—RAGHBIR DAS *v.* SUNDAR LAL (1930), I. L. R. 11 Lah. 699.—**IND.**

PART VII. SECT. 3, SUB-SECT. 2.—C. (b).

st. *Extension of contract.*]—JONES *v.* CUSHING (1909), 7 E. L. R. 190.—**CAN.**

sw. *Sale of shares.*]—ROUNTREE *v.* WOOD (1920), 56 D. L. R. 395.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.—D. (b).

2607 ii. ——.]—Pltf. contracted to sell to deft. certain Oregon timbers to be procured from America:—*Held:* the contract being a mercantile one, & therefore *prima facie* one in which time was of the essence of the contract, & there being nothing in the contract or the surrounding circumstances to show that the parties had a different intention, time was of the essence of the contract.—JACKSON & Co., LTD. *v.* CO-OPERATIVE FREEZING CO. OF SOUTH CANTERBURY, LTD., [1922] N. Z. L. R. 2; Gaz. L. R. 176.—**N.Z.**

2621. *Add. Annotation :*—**Consd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2621a. —— **From indefinite to definite date.**]—*Held :* in the circumstances, time was of the essence of the contract.—BERNARD *v.* WILLIAMS (1928), 139 L. T. 22 ; 44 T. L. R. 437, D. C.

2624. *Add. Annotation :*—**Consd.** Martin *v.* Stout, [1925] A. C. 359.

2652. *Add. Citation :—sub nom.* MUFFATT *v.* PARSONS, 1 Marsh, 55.

2693a. ——.]—KRAUS *v.* ARNOLD (1822), 7 Moore, C. P. 59.

2698. *Add. Annotation :—As to* (1) **Consd.** Farquharson *v.* Pearl Assurance Co., [1937] 3 All E. R. 124.

2703. *Add. Annotation :*—**Refd.** Farquharson *v.* Pearl Assurance Co., [1937] 3 All E. R. 124.

2705. *Add. Annotation :*—**Consd.** Farquharson *v.* Pearl Assurance Co., [1937] 3 All E. R. 124.

2734. *Add. Annotation :*—**Refd.** Broken Hill Proprietary Co. *v.* Latham (1932), 48 T. L. R. 630.

2737. *Add. Annotation :* —**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

2738. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

2825. *Add. Annotation :* —**Refd.** British & Benington*s v.* North Western Cachar Tea Co., [1923] A. C. 48.

2828. *Add. Annotation :*—**Refd.** British & Benington*s v.* North Western Cachar Tea Co., [1923] A. C. 48.

2829a. Subsequent agreement unenforceable at law.]—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., No. 4, *ante.*

2830. *Add. Annotations :*—**Apprvd.** Martin *v.* Stout, [1925] A. C. 359. **Consd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169. **Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

2831. *Add. Annotations :* — **Consd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169, C. A. **Refd.** The British Trade, [1924] P. 104 ; Berners *v.* Fleming, [1925] Ch. 264 ; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

2832a. —— ——.]—Under agreements made in 1923 & 1925, pltfs. were granted the right to occupy sufficient land of defts. for the purpose of constructing & working a railway until the termination of the exhibition to be held on the grounds of defts. at W. during 1924 & 1925, whereupon pltfs. were to be at liberty to sell all their property & other assets at W. to a purchaser to whom defts. agreed to grant an option to occupy the land for the further period of one year thereafter & a further option to continue such occupation from year to year for a total period not exceeding six years from the closing of the exhibition. Pltfs. constructed a railway on the ground of defts., & worked it until the closing of the exhibition on Oct. 31, 1925. On Dec. 30 defts. purported to terminate their agreements with pltfs. on the ground that same had lapsed owing to pltfs.' delay in exercising the option of calling for a renewal of the licence to occupy defts.' land in favour of a purchaser of the railway undertaking :—*Held :* by purporting to terminate the agreements defts. had committed an anticipatory breach thereof, & pltfs. were entitled to damages. — NEVER-STOP RY. (WEMBLEY) *v.* BRITISH EMPIRE EXHIBITION (1924) INCORPORATED, [1926] Ch. 877 ; 95 L. J. Ch. 411 ; 135 L. T. 405 ; 70 Sol. Jo. 735.

PART VII. SECT. 3, SUB-SECT. 2.—G.

2620 iii. ——.]—Where the evidence showed no binding agreement to enlarge the time for delivery, but defts. merely permitted pltfs. for their own convenience to postpone the time for delivery :—*Held :* defts. were entitled at any time before delivery to require pltfs. to perform the contract according to its original terms.—JACKSON & CO., LTD. *v.* CO-OPERATIVE FREEZING CO. OF SOUTH CANTERBURY, LTD., [1922] N. Z. L. R. 2 ; Gaz. L. R. 176.—**N.Z.**

PART VII. SECT. 4, SUB-SECT. 2.—A.

2628 i. *Duty of promisee to attend.*]—GREAT WEST SADDLERY CO., LTD. *v.* PRIME, [1929] 2 D. L. R. 274 ; 23 S. L. R. 276 ; [1928] 3 W. W. R. 705. —**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.

2640 i. *Stranger.*]—Where a creditor refuses to entertain the idea of payment by his debtor or by some one acting on his behalf, & puts it out of the power of the tenderor to offer payment in a manner acceptable to the creditor, the offer of performance by a person then able to carry out the promise in its entirety is a valid tender, in spite of the form of it being itself not legal tender.—VENKATRAMA AYYAR *v.* GOPALAKRISHNA PILLAI (1928), I. L. R. 52 Mad. 322.—**IND.**

PART VII. SECT. 5, SUB-SECT. 6.—C.

2704 ii. —— —— ——.]—Deft., an owner of land, informed D. & M., prospective purchasers, that he would sell it at a certain price to that one of the two who would first deposit the purchase-money with deft.'s solr. ; & he so instructed his solr. D., pltf., obtained the amount in currency & called on the solr., telling him that he had come to pay the money. The solr. informed him that he was too late, since the night before he had agreed with M.'s solr., who had telephoned him that M. wished to pay the money, that he would treat that as an offer if completed in the morning. A few minutes later a letter arrived from M.'s solr. containing a cheque (there was no evidence adduced that it was certified) & the solr. informed D., pltf., that M. had got the land :—*Held :* what pltf. did constituted a legal tender & therefore brought him within the terms of deft.'s offer & entitled him to the land.—DUNN *v.* HANSON (Alta.), [1928] 4 D. L. R. 606 ; [1928] 3 W. W. R. 178.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 7.

2778 i. *General rule.*]—A valid tender on a contract of debt is as much a performance & discharge of debtor's duty as an actual payment.—DASHARATHI GHOSE *v.* KHONDKAR ABDUL HANNAN (1927), I. L. R. 55 Calc. 624. —**IND.**

PART VII. SECT. 6, SUB-SECT. 2.

2809 v. ——.]—PENMAN MANUFACTURING CO. *v.* BROADHEAD (1892), 21 S. C. R. 713.—**CAN.**

q i. —— ——.]—*Held :* the agreements relied on to establish a new contract were only in the nature of security.—MCCUTCHEON BUICK CO. *v.* GARDINER (Man.) (1912), 21 W. L. R. 72 ; 4 D. L. R. 487.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—A. (a) i.

2833 viii. ——.]—Although repudiation by a party to a contract of sale entitles *de facto* the other party to recover damages thus incurred, the vendor has the right to insist on preserving the integrity of the contract & to tender the goods for delivery according to the terms of the sale, in which case his claim for damages will be more easily & readily assessed upon refusal to accept by the buyer.—BRILLIANT SILK MANUFACTURING CO. *v.* KAUFINAN, [1925] 2 D. L. R. 91 ; [1925] S. C. R. 249.—**CAN.**

2833 ix. ——.]—Where a co. renounced a contract before breach & the other party made a new arrangement with the co. with the object of minimising his damages :—*Held :* he had adopted the renunciation & was entitled to damages.—GARRISON *v.* THOMSEN & CLARKE TIMBER CO., [1926] 2 D. L. R. 803 ; [1926] 2 W. W. R. 81 ; 37 B. C. R. 224.—**CAN.**

2833 x. ——.]—Y. P. BARLEY PRODUCERS, LTD. *v.* E. C. ROBERTSON PTY., LTD., [1927] V. L. R. 194 ; 48 A. L. T. 151 ; [1927] Argus L. R. 116. —**AUS.**

2833 xi. ——.]—Under an agreement between pltf. & defts. the former agreed to cut a certain number of railway ties & saw lumber, & the work was to be begun on Dec. 15 & completed by the following Mar. 15. After pltf. had carried on the work for some weeks defts., on Jan. 31, instructed pltf. to stop work & put their own men on the land to take charge of the work ; —*Held :* the fact that at the end of Jan. pltf. did not appear to have completed a proper proportion of the contract did not warrant defts. in concluding that he could not fulfil it by Mar. 15. Defts.' conduct was an inexcusable breach of the contract which justified pltf. in treating it as at

2835. *Add. Annotations :*—**Consd.** Martin *v.* Stout, [1925] A. C. 359; Guy-Pell *v.* Foster, [1930] 2 Ch. 169. **Refd.** Tyldesley U. D. C. *v.* Leigh R. D. C. (1925), 23 L. G. R. 243; Robert B. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312; Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179.

2835a. ——.]—A party to a contract who desires to avail himself of an act of repudiation by the other party must evidence his election to do so with every reasonable dispatch.—BERNERS *v.* FLEMING, [1925] 1 Ch. 264; 94 L. J. Ch. 273; 132 L. T. 822, C. A.

Annotation :—**Refd.** Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

2838. *Add. Annotations :*—**Refd.** Maple Flock Co. *v.* Universal Furniture Products (Wembley), Ltd., [1934] 1 K. B. 148; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863.

2841. *Add. Annotations :* — **Consd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169. **Refd.** Berners *v.* Fleming, [1925] Ch. 264; Martin *v.* Stout, [1925] A. C. 359; Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

2846. *Add. Annotation :*—**Refd.** Akt. Reidar *v.* Arcos, [1927] 1 K. B. 352.

2847. *Add. Annotation :*—**Refd.** Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737.

2861. *Add. Annotation :*—**Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

2861a. —— **For fixed period—Afterwards determinable on notice—Time for giving notice.**]—By an agreement dated July 12, 1927, pltfs. & defts. agreed that pltfs. were to deal with defts.' entire output of Jarrow pig iron available for delivery in Scotland, pltfs. undertaking to push the sale of the same in Scotland in preference to any other brand. They were to base their prices on the current prices for Middlesbrough pig iron, free on truck makers' works or f.o.b. makers' wharf, excluding Tees dues, & to pay cash on Mondays for the previous week's shipments. The agreement also contained the following clause: "It is understood that the above agreement is to hold good for the period of twelve months from Apr. 22, 1927, with six months' notice thereafter on either side to terminate, & that should any misunderstanding arise in connection with this agreement, an arbitrator should be appointed by the president for the time being of the London Chamber of Commerce." Disputes having arisen between the parties about the prices which pltfs. ought to charge for the pig iron which they sold, defts. notified pltfs. that they terminated the agreement as from Apr. 22, 1928. Pltfs. acknowledged the notice & accepted it as a notice terminating the agreement at a date six months after Apr. 22, 1928, but defts. insisted that the agreement

---

an end, & entitled him to recover as damages the amount of the profits which he would have made had he been allowed to complete the work, as well as the contract price for the ties completed.—BOON *v.* BELL & BELL, [1932] 2 W. W. R. 304.—**CAN.**

2838 i a. ——.]—Where the conduct of one of the parties to a contract has been such as would lead a reasonable person to the conclusion that he does not intend to fulfil his part of the obligation, the other party to the contract, whatever in fact may have been the actual intention of the former, may treat such conduct as an intimation that the contract has been repudiated. — FARSHIND, ETC. *v.* BECHELY-CRUNDALL, [1922] S. C. (H. L.) 173.—**SCOT.**

2838 v. ——.]—On the facts :—*Held :* deft. did not refuse to carry out the real contract & what he did in the circumstances did not amount to a repudiation of the real contract so as to entitle pltf. to terminate it.—FREEDMAN *v.* FRENCH (1921), 50 O. L. R. 432.—**CAN.**

2838 vi. ——.]—If a party declares his intention not to be further bound by a contract, this is an anticipatory breach upon acceptance by the other party. It does not matter that the party so declaring is misinstructed at the time as to the facts upon which he bases such declaration.—CLAUSEN *v.* CANADA TIMBER & LANDS, LTD., [1923] 4 D. L. R. 751.—**CAN.**

2838 vii. ——.]—Where a buyer knowing that the seller could not deliver, failed to pay the deposit agreed upon :—*Held :* not a breach of contract nor repudiation.—TOWNSEND *v.* MOON MOTOR CO., [1924] 1 D. L. R. 511.—**CAN.**

2838 viii. —— *Partial non-performance—Agreement substantially performed.*]—By a tripartite agreement between the two applts., A. & B., & resp., it was agreed that A. should grant a sub-lease of one theatre to resp., that B. should grant a lease of another theatre to resp., & that resp. should grant a sub-lease of a third theatre, including all offices, to B. The parties entered into possession, except that B. was excluded from a room which applts. alleged to be an office which B. was entitled to under the agreement :—*Held :* the possession of the office was not essential to the use of the premises as a theatre, & a refusal to give it did not entitle applts. to rescind.—FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524.—**AUS.**

2838 ix. ——.]—ALBERT MINING CO. *v.* SPURR (1883), 22 N. B. R. 346.—**CAN.**

2838 x. ——.]—ROBINSON *v.* PETERS (Sask.), [1927] 3 D. L. R. 131.—**CAN.**

2838 xi. ——.]—STEIN *v.* KILEEL (1929), 1 M. P. R. 263.—**CAN.**

2838 xii. ——.]—DOOLAN *v.* SCHAFFER, LTD. (1932), 5 M. P. R. 424.—**CAN.**

sx. *Contract with Commonwealth—Reasonable belief that contract not being carried out—Powers of Minister.*]—An agreement between the Commonwealth & applt. whereby applt. agreed to provide & maintain an efficient coastal shipping service in the Northern Territory contained a provision that, if at any time the Minister for Home & Territories should "have reason to believe" that the agreement was not being carried out by applt. in accordance with the agreement, the Minister might determine the contract :—*Held :* in exercising the power the Minister's function was administrative & not quasi-judicial, & therefore he might determine the contract without giving applt. an opportunity of being heard.—BOUCAUT BAY CO., LTD. *v.* THE COMMONWEALTH (1927), 40 C. L. R. 98.—**AUS.**

PART VII. SECT. 6, SUB-SECT. 3.—A. (a) ii.

sa. *Contract by correspondence — Refusal to sign formal contract.*]—Certain correspondence & memoranda were relied on by pltfs. to prove an agreement by defts. Subsequently a formal contract was sent to defts., which they refused to sign, objecting to its terms :—*Held :* assuming that the previous documents were sufficient to establish a contract, the terms of the proposed formal contract modified materially to defts.' prejudice the previous undertaking as to time of shipment, & defts. had rejected it & clearly intimated their intention to consider the contractual relations at an end, which they were entitled to do. — FUJITA & CO., LTD. *v.* NORTHERN FRUIT CO., LTD., [1923] 1 D. L. R. 402; 16 Sask. L. R. 414; [1923] 1 W. W. R. 59.—**CAN.**

sc. *Contract for correspondence course —Refusal to accept papers sent.*]—Where pltfs. were ready & willing to carry out their contract to give a correspondence course in accounts & were only prevented by the refusal of deft. :—*Held :* pltfs. were entitled to judgment for fees.—ALEXANDER HAMILTON INST. *v.* MCNALLY (1919), 53 N. S. R. 303.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—A. (a) iii.

2851 ii. ——.]—Pltf. contracted with deft. for advertising & agreed to pay a weekly rent in advance, if the rent fell into arrears, the agreement to be cancelled. In an action for breach of agreement, deft. pleaded that the contract had been avoided by pltf.'s default in payment of rent :—*Held :* pltf.'s default did not *ipso facto* avoid the contract, & in the absence of an allegation that pltf. had elected to treat the contract as void, the plea was bad.—MANNINGTON *v.* CLIFFORD (1921), 17 Tas. L. R. 13.—**AUS.**

h i. —— *Endurance test—Agreement among competitors to drop out in turn.*]—The last eleven couples of a walking endurance competition agreed to drop out in turn by drawing lots & then divide the prize money :—*Held :* this was a breach of the original contract which justified the promoters in terminating the contest & giving no prize money.—ZAVAGLIA *v.* ROGERS (1932), 45 B. C. R. 471.—**CAN.**

was terminated on Apr. 22, 1928. Pltfs. brought an action for breaches of contract, (*a*) in terminating the contract before the expiry of the agreed term, & (*b*) because, as they alleged, defts. refused to supply them at "the current prices for the Middlesbrough pig iron":—*Held:* defts. were not entitled to terminate it on Apr. 22, 1928. It could only be terminated by a six months' notice, which could not be given before twelve months had elapsed, but could be given at any time after the expiration of the twelve months.—JACKS (WILLIAM) & Co. *v.* PALMER'S SHIPBUILDING & IRON Co. (1928), 98 L. J. K. B. 366; 140 L. T. 473; 34 Com. Cas. 107, C. A.

2877a. ——.]—Deft. was the chairman of the S. Co. which at the end of 1921 was seeking to issue £15,000 First Lien Debentures to rank *pari passu* with a previous issue of first lien debentures of the same amount; & deft. having interested pltf. in the matter, sent him a letter of indemnity dated Feb. 17, 1922, in these terms: "Regarding the issue of £15,000 First Lien Debentures of the S. Co. at the price of £80 per £100 . . . I understand you are subscribing for £3,000 of the same at a cost to you of £2,400. In consideration of your giving me one-fourth of any profit you may receive on such investment, I hereby indemnify you against any loss thereon. The expression 'any profit' only refers to the redemption price of £100 per £80 which, when received, will show a profit of £20 per bond & the bonus out of the proceeds of any royalties on oil sales from the co.'s properties during the currency of the debentures. . . . The interest you will be entitled to receive from the co. is excluded from the consideration of profits." The debentures were redeemable on July 1, 1925, but they were secured by two debenture trust deeds which gave power to extend the due date, & in Apr. 1925, steps were taken which resulted in its extension to July 1, 1930. In May & June, 1925, a correspondence took place between pltf. & deft. in which pltf. announced his intention of selling the debentures, & deft. protested against this, claiming that they must be kept till their due date. On July 16, 1925, pltf. put the debentures up for sale, & in the absence of other bidders sold them to his son for £25. He then commenced proceedings to recover the amount of his loss, but the House of Lords decided that nothing was payable under the indemnity until the due date arrived. On July 18, 1928, the co. went into liquidation & pltf. having repurchased the debentures from his son, brought these proceedings to recover his loss:—*Held:* in selling the debentures pltf. had committed a breach of an implied term of the contract & having failed to maintain the position essential to enable deft. to receive the consideration for the indemnity, he had committed a breach of a term going to the root of the contract. Deft. had elected by his pleadings in the previous action to treat the contract as at an end & pltf. could not therefore maintain the present action.—GUY-PELL *v.* FOSTER, [1930] 2 Ch. 169; 99 L. J. Ch. 520; 143 L. T. 247, C. A.

2884. *Add. Annotation:*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

2885a. —— **Necessity for licence to operate vessel—Election to operate another vessel.**]—Resps. were owners & applts. were charterers of a steam trawler which was fitted with, & could operate as a trawler only with, an otter trawl. By the charterparty the vessel could be used only in the fishing industry. The charterparty was renewed for a year from Oct. 25, 1932. At that date both parties knew that a Canadian statute, which was applicable, made it an offence to leave a Canadian port with intent to fish with a vessel using an otter trawl, except under licence from the Minister. In Mar. 1933, applts. applied to the Minister for licences for five trawlers which they were operating. The Minister intimated that only three licences would be granted, & requested applts. to name the three trawlers in respect of which the three licences should be granted. Applts. named three trawlers, excluding the trawler now in question, & accordingly licences were granted for those three only. Applts. thereupon claimed that they were no longer bound by the charterparty, & to an action claiming the charter hire pleaded that the charterparty had become impossible of performance & their obligations under it ended:—*Held:* there had been no frustration of the charterparty, as the absence of a licence was due to the election of applts., who remained liable for the hire.—MARITIME NATIONAL FISH, LTD. *v.* OCEAN TRAWLERS, LTD., [1935] A. C. 524; 104 L. J. P. C. 88; 153 L. T. 425; 79 Sol. Jo. 320; 18 Asp. M. L. C. 551, P. C.

2888. *Add. Annotations:*—**Apld.** *Re* Gramophone Records, Ltd. (1930), 69 L. Jo. 201. **Refd.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1.

2896. *Add. Annotations:*—**Consd.** Meyrick *v.* Dyson (1925), 41 T. L. R. 368. **Refd.** Evans *v.* Employers' Mutual Insurance Association, Ltd., [1936] 1 K. B. 505.

2899a. Effect of part-performance—Major part of consideration received.]—Pltf., a mental specialist, & the proprietor of a nursing home, sued deft. for medical attendance & board & lodgings of deft.'s son, a patient certified to be insane; & deft. counterclaimed for negligence & unskilful treatment. The jury found for pltf. on the claim; & on the counterclaim they awarded deft. 20*s.*, finding that pltf. was guilty of negligence or breach of duty in not entering in a book the occasions when the patient was confined to a bedroom with the door locked, such entries being required by rr. 13 & 16 of the rules made by the Comrs. in Lunacy under Lunacy Act, 1890 (c. 5), s. 338:—*Held:* as deft. had received a substantial part of the consideration, pltf.'s breach of duty did not go to the root of the contract so as to be a defence to pltf.'s entire claim, & judgment must be entered in accordance with the verdict.

PART VII. SECT. 6, SUB-SECT. 3.—A. (c).

sb. Provision in contract for liquidated damages.]—A clause in an agreement provided that a certain sum of money to be paid by resp. should be treated as the amount of compensation in case of his failure to carry out the contract:—*Held:* not to authorise resp. to determine the agreement by a notice to determine & an offer to pay that sum.—FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524. —AUS.

—MEYRICK *v.* DYSON (1925), 41 T. L. R. 368; *subsequent proceedings*, 41 T. L. R. 575, C. A.

2906. *Add. Annotation :*—**Refd.** Thomas *v.* Hammersmith Borough Council, [1938] 3 All E. R. 203.

2911. *Add. Annotation :*—**Refd.** Fisher, Ltd. *v.* Eastwoods, Ltd., [1936] 1 All E. R. 421.

2911a. —— —— —— **Election to treat contract as at an end.**]—In 1929 defts. contracted to deliver to pltf. 25,000 tons of cement to be delivered as & when required at 28*s.* per ton. Pltf. at that time anticipated the completion of a contract which would enable him to dispose of this cement, but the contract never materialised. The contract was then allowed to sleep till 1931 when, after correspondence, the contract was revived or a new contract entered into upon the old terms as to about 24,000 tons of cement. Some deliveries were made, but in 1933 there was such a slump in the trade that it was not profitable for the pltf. to take the cement at 28*s.* He did by arrangement take several deliveries at a lower figure. In 1935 pltf., upon prices improving, again attempted to revive the contract. Defts. at no time gave pltf. notice to take delivery or determine the contract :—*Held :* (1) the acceptance of deliveries at a figure below the contract price in 1933 was an election on the part of pltf. to treat the contract as at an end ; (2) the contract had been abandoned.—FISHER, LTD. *v.* EASTWOODS, LTD., [1936] 1 All E. R. 421.

2927. *Add. Annotation :*—**Consd.** Berry *v.* Berry, [1929] 2 K. B. 316.

2932. *Add. Annotation :*—**Consd.** Berry *v.* Berry, [1929] 2 K. B. 316.

2934. *Add. Annotation :*—**Refd.** Berry *v.* Berry, [1929] 2 K. B. 316.

2936a. —— ——.]—By a deed of separation dated Mar. 4, 1920, the husband covenanted to pay a monetary allowance to the wife. By an agreement in writing not under seal dated June 25, 1928, the parties agreed that the terms of the deed regarding the allowance should be varied in certain respects. In Mar. 1929, the wife instituted proceedings claiming arrears of allowance under the deed : —*Held :* applying the rules of equity which must prevail when there is any conflict or variance between them & the rules of the common law with reference to the same matter, the plea by the husband of the simple contract of June 25, 1928, was a good defence to the wife's action under the deed.—BERRY *v.* BERRY, [1929] 2 K. B. 316 ; 98 L. J. K. B. 748 ; 141 L. T. 461 ; 45 T. L. R. 524.

2938. For "**Validity of rescission of parol.**]" read "**Validity of rescission by parol.**]"

2938a. *S. P.* INGE *v.* LIPPINGWELL (1772), 2 Dick. 469 ; 21 E. R. 352.

2938b. *S. P. Ex p.* ILCHESTER (EARL) (1803), 7 Ves. 348 ; 32 E. R. 142.

Annotations :—**Refd.** Andrew *v.* Andrew (1855), 3 Sm. & G. 130 ; Dickenson *v.* Stidolph (1861), 11 C. B. N. S. 341 ; Louis *v.* Louis (1864), 3 New Rep. 369 ; *In the Estate of* Tollemache, [1917] P. 246 ; Ward *v.* Van Der Loeff, Burnyeat *v.* Van Der Loeff, [1924] A. C. 653.

2941. *Add. Annotations :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48 ; Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356 ; Besseler, Waechter Glover & Co. *v.* South Derwent Coal Co., [1938] 1 K. B. 408.

2944. *Add. Annotation :*—**Refd.** Knapp-Fisher *v.* Crisp, [1936] 3 All E. R. 560.

2945. *Add. Annotations :*—**Apld.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48 ; Rose & Frank Co. *v.* Crompton, [1925] A. C. 445. **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179 ; Besseler, Waechter, Glover & Co. *v.* South Derwent Coal Co., [1938] 1 K. B. 408.

2946a. ——.]—In a contract for the sale of goods a term as to delivery of the goods is a term of the sale, & an alteration of that term is an alteration of the contract, which must be evidenced in writing, if the goods are of the value of £10 or upwards, in accordance with the Sale of Goods Act, 1893 (c. 71), s. 4 The general principle to be deduced from the authorities is that if the parties agree to substitute a new contract for the original contract, or to vary its terms, that agreement

---

PART VII. SECT. 6, SUB-SECT. 3.—C.

2900 v. ——.]—Where applt. had an election to rescind :—*Held :* he had by his conduct in going on with the agreement & taking advantage under it, irrevocably exercised his election to affirm the agreement.—FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524.—**AUS.**

2900 vi. ——.]—Defts. ordered certain goods manufactured by pltfs. With some trifling exceptions all the goods were in accordance with the requirements of the contract & reasonably fit for the purpose for which they were supplied. Some of the goods were returned & an adjustment made concerning them :—*Held :* defts. had waived any right they might have had to repudiate the contract because of the delivery of defective goods.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—D.

2e. *Contract absolutely terminated.*]—Where there was a distinct & unequivocal refusal by pltfs. to perform their contract :—*Held :* so long as defts. were continuing to urge or demand compliance with the contract, it could not be said to have been terminated, but where finding that pltfs.' attitude was unalterable, defts. decided to acquiesce in it, & communicated such acquiescence to pltfs., the contract between the parties was put an end to.—JHANDOO MAL-JAGAN NATH *v.* PUHL CHAND-FATEN CHAND (1924), I. L. R. 5 Lah. 497.—**IND.**

2f. —— *Collateral contract not terminated.*]—MURRAY *v.* DELTA COPPER CO., LTD., [1925] 4 D. L. R. 1061.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 4.

2e. *Agreement under seal.*]—Long delay in bringing action cannot defeat the enforcement of an agreement under seal where the twelve years specified by Stat. Limitations have not expired. —MCCORMACK *v.* ROBINSON, [1924] 3 D. L. R. 876 ; 2 W. W. R. 1110.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 5.

2f. *Rights of parties—Indemnification if party misled from obligations of contract.*]—Where rescission of a contract is ordered the ct. has full power to make a just allowance & to do what is practically just, although it may not be able to restore the parties precisely to the state they were in prior to the contract. The right of the party misled to be put into the position in which he was before the contract, includes the right to be indemnified from the consequences & obligations which are the result of the contract set aside.—LEWIS & LEWIS *v.* HOWSON, [1928] 4 D. L. R. 207 ; [1928] 2 W. W. R. 197 ; 22 Sask. L. R. 624.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (a).

2938 iii. *S. P.* STANLAKE *v.* RINGHAND (Sask.), [1922] 3 W. W. R. 758 ; 70 D. L. R. 546.—**CAN.**

2938 iv. ——.]—Where the real nature of the transaction is a compromise of a claim for breach of warranty, an agreement to rescind a sale of goods of the value of £10 or upwards by the mutual return of the consideration is enforceable although not in writing.—BOOTH, MCDONALD & CO., LTD. *v.* HALL, [1931] N. Z. L. R. 1086.—**N.Z.**

2938 iii. ——.]—A verbal contract, whether enforceable or not, is sufficient to rescind a written contract.—MASON *v.* SCOTT, [1934] 3 D. L. R. 769 ; 8 M. P. R. 219 ; *revsd.*, [1935] S. C. R. 656 ; 2 D. L. R. 641.—**CAN.**

must be in writing. But if the variation is a mere voluntary forbearance to insist on delivery or acceptance according to the strict terms of the contract, the original contract is not affected, & the obligation to deliver & to accept the full contract quantity still continues.—BESSELER, WAECHTER GLOVER & Co. *v.* SOUTH DERWENT COAL CO., LTD., [1938] 1 K. B. 408; [1937] 4 All E. R. 552; 107 L. J. K. B. 365; 158 L. T. 12; 54 T. L. R. 140; 43 Com. Cas. 86.

2958a. *Add. Citation :*—28 Com. Cas. 265.

Add. Annotations :—As to (1) **Consd.** Rose & Frank Co. *v.* Crompton, [1925] A. C. 445. **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

2960. *Add. Annotation :*—**Refd.** Besseler, Waechter Glover & Co. *v.* South Derwent Coal Co., [1938] 1 K. B. 408.

2962. *Add. Annotation :*—**Refd.** Besseler, Waechter Glover & Co. *v.* South Derwent Coal Co., [1938] 1 K. B. 408.

2963. *Add. Annotations :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48; Besseler, Waechter Glover & Co. *v.* South Derwent Coal Co., [1938] 1 K. B. 408.

2964. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2965. *Add. Annotation :*—**Refd.** Rose & Frank Co. *v.* Crompton, [1923] 2 K. B. 261.

2966. *Add. Annotation :*—**Refd.** Besseler, Waechter Glover & Co. *v.* South Derwent Coal Co., [1938] 1 K. B. 408.

2967. *Add. Annotations :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48; Besseler, Waechter Glover & Co. *v.* South Derwent Coal Co., [1938] 1 K. B. 408.

2968. *Add. Annotation :*—**Refd.** Besseler, Waechter Glover & Co. *v.* South Derwent Coal Co., [1938] 1 K. B. 408.

2970. *Add. Citation :*—28 Com. Cas. 244.

2975. *Add. Annotations :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 1 Ch. 287; Berners *v.* Fleming, [1925] Ch. 264.

2991. *Add. Annotation :—As to* (2) **Consd.** Koch *v.* Dicks, [1933] 1 K. B. 307.

3033. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

3038. *Add. Annotation :*—**Refd.** Hong Kong & Shanghai Bank *v.* Lo Lee Shi, [1928] A. C. 181.

3040. *Add. Annotation :*—**Refd.** *Re* Whitrod, Burrows *v.* Bax (1925), 70 Sol. Jo. 209.

3041. *Add. Annotation :*—**Refd.** *Re* Spollon & Long's Contract, [1936] 2 All E. R. 711.

3042a. ——.]—An alteration in a deed is presumed to have been made before execution.—*Re* SPOLLON & LONG'S CONTRACT, [1936] Ch. 713; [1936] 2 All E. R. 711; 105 L. J. Ch. 347; 155 L. T. 554; 80 Sol. Jo. 510.

3069. *Add. Annotation :*—**Consd.** Hong Kong & Shanghai Bank *v.* Lo Lee Shi, [1928] A. C. 181.

3077. *Add. Annotations :*—**Apld.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426. **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3078. *Add. Annotations :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

3078a. ——.]—BARROW, LANE & BALLARD, LTD. *v.* GILBERT J. MCCAUL & CO. (1929), 73 Sol. Jo. 451.

3080. *Add. Annotation :—As to* (1) **Refd.** Tatem, Ltd. *v.* Gamboa, [1938] 3 All E. R. 135.

3081a. ——.]—Under the will of her then husband made in 1902, & a separation deed & settlement made in 1903, V. was entitled to two annuities of £200 each. Testator, who was also the settlor, died in 1913, & V. afterwards married a Dutch subject, & for the remainder of her life resided in Holland. In 1927 the trustees of the will offered to redeem both annuities, & after some negotiations were

---

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) i.

2947 iii. ——.]—KAULBACH *v.* EICHEL, [1930] 1 D. L. R. 983; 1 M. P. R. 383.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) ii.

c i. ——.]—A contract required to be in writing cannot be varied by a new oral agreement, even if the variation relates to a part of the contract which, if it stood by itself, would not be required to be in writing.—NUGENT *v.* DAVIES, [1923] 1 D. L. R. 1040; 53 O. L. R. 458.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) iii.

2962 i. *Extension of time—For delivery of goods.*]—*Held :* since the contract of sale was one which was required by Stat. Frauds to be in writing, a verbal postponement of the date of delivery was not a variation of the contract.—DOWLING *v.* RAE, H. G. HAMILTON PTY., LTD. *v.* RAE, KELLY *v.* RAE (1927), 39 C. L. R. 363; [1927] V. L. R. 294; [1927] Argus L. R. 149.—**AUS.**

e i. —— *For cutting & removal of timber.*]—LAWRENCE *v.* ERRINGTON (1874), 21 Gr. 261.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) iv.

sa. *Contract relating to log scaling.*]—GODO *v.* GALBRAITH & SONS, [1930] 1 D. L. R. 484.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—C. (a).

sb. *What amounts to.*]—Where a clause in an agreement provided that a certain sum of money should be treated as the amount of compensation if the contract was not carried out :—*Held :* the giving of such an offer & notice to determine the agreement did not constitute a rescission by mutual consent.—FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524.—**AUS.**

PART VII. SECT. 6, SUB-SECT. 7.

2988 vii. ——.]—After repudiation by mutual consent, a contract cannot be revived by a unilateral act.—WELLINGTON OIL & GAS CO. *v.* ALBERTA PIPE LINE CO., [1934] 2 D. L. R. 440; *affd.*, [1936] 2 D. L. R. 335.—**CAN.**

sc. *On good shipped under contract.*]—BELGIAN INDUSTRIAL CO., LTD. *v.* CANADA CEMENT CO., LTD., [1926] 1 D. L. R. 496; [1926] S. C. R. 244.—**CAN.**

PART VII. SECT. 7.

sj. *Distinguished from rescission.*]—There is a difference between cancellation & rescission. The logical consequences of true rescission are the returning by each party of the benefits he has received, or *restitutio in integrum*. Cancellation means determination of the contract without restitution.—PRIMEAU & IMPERIAL LUMBER YARDS, LTD. *v.* MEAGHER, [1923] 4 D. L. R. 1096; 3 W. W. R. 1308.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 3.

sk. *Substitution of party.*]—To effect a sale an agent decided to buy the article himself & then sell to the buyer. To do this he altered a contract by substituting his own name for that of his principal :—*Held :* the contract was avoided by this alteration.—ROYAL BANK OF CANADA *v.* FRANK, [1923] 4 D. L. R. 1213.—**CAN.**

sl. *Addition of provision for payment of compound interest.*]—*Held :* an alteration in a material respect.—PARBATI CHARANMUKHERJEE *v.* AMARENDRA NATH BHATTACHARJEE (1925), I. L. R. 53 Calc. 418.—**IND.**

sm. *Alteration in writing of printed form.*]—In the case of a conflict between different clauses of an agreement arising from the expunging or alteration by pen & ink of certain provisions of a printed form in general use, a greater effect is to be attributed to the writing than to the printed words.—KNIGHT SUGAR CO., LTD. *v.* WEBSTER, [1929] 4 D. L. R. 591; 2 W. W. R. 505; 24 Alta. L. R. 174; *revsd. on facts*, [1930] S. C. R. 518; 4 D. L. R. 343.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 8.—A.

3045 i. *General rule.*]—THORNE *v.* WILLIAMS (1887), 13 O. R. 577.—**CAN.**

informed by V.'s solrs. that they would advise her to accept £6,000 for redemption, the annuities to be paid in full up to the date of redemption. The trustees sent the solrs. a draft release for their approval. V. having informed her solrs. that she would accept the offer of £6,000, they sent her the release engrossed for her execution, & she executed it on Jan. 12, 1928. On Jan. 17 she died, but no notification of her death was received by her solrs. in London until Jan. 31. In the meantime the trustees having been informed by V.'s solrs. on Jan. 24 that she had accepted the £6,000, on Jan. 30 paid the money to them, being in ignorance of V.'s death :—*Held :* (1) there was no concluded contract for the sale & purchase of the annuities, as the purchasers could not have intended their offer to be accepted by the vendor merely executing a document; (2) even assuming there was a concluded contract, there was a total failure of consideration, owing to the death of the annuitant before completion, & the trustees were entitled to recover back the £6,000.—KENNEDY *v.* THOMASSEN, [1929] 1 Ch. 426; 98 L. J. Ch. 98; 140 L. T. 215; 45 T. L. R. 122.

3082a. ——.]—SHALES *v.* SEIGNORET, No. 3103a, *post.*

3083. *Add. Annotations :—As to* (1) **Distd.** Siveyer *v.* Allison, [1935] 2 K. B. 403. *As to* (2) **Refd.** Fender *v.* Mildmay, [1937] 3 All E. R. 402.

3084. *Add. Annotation :*—**Refd.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

3088. *Add. Annotations :*—**Refd** G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3090. *Add. Annotation :*—**Refd.** Ilford U. D. C. *v.* Beal & Judd, [1925] 1 K. B. 671.

3090a. For the existing paragraph substitute the following paragraph :—

—— **Absolute contract.**]—By a contract dated Aug. 16, 1922, the sellers sold to the purchasers about one thousand boxes of Smyrna sultanas at 60*s.* a cwt. c.i.f. London, to be shipped from Smyrna by steamer to London during Sept. 1922. Smyrna at the date of the contract was in the occupation of the Greeks. On Sept. 9, 1922, it was taken by Turkish forces & shipment became impossible, with the result that the sellers did not ship any of the goods. The buyers claimed damages, & the dispute went before arbitrators, who stated a case for the opinion of the ct. under Arbn. Act, 1889 (c. 49), s. 7. The sellers said that they were excused from performance on the grounds (1) that the contract became illegal when the port of shipment came under Turkish control, as a state of war at that time existed between England & Turkey; & (2) that a state of circumstances had arisen which made the contract impossible of performance & that differed totally from the conditions with reference to which the contract was made :—*Held :* mere impossibility of performance did not discharge a party where performance was not naturally impossible, unless such a state of affairs had arisen as displaced the fundamental basis of the contract; in the absence of any strike, war or *force majeure* clause, the buyers were entitled to damages for failure of the sellers to deliver.—SARGANT (W. J.) & SONS *v.* PATERSON (ERIC) & Co. (1923), 129 L. T. 471; 39 T. L. R. 378.

3093. *Add. Annotations :*—**Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569; *Re* Wait, [1926] Ch. 962; May *v.* May, [1929] 2 K. B. 386; Graves *v.* Cohen (1929), 46 T. L. R. 121; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242; D/S A/S Gulnes *v.* Imperial Chemical Industries, Ltd., [1938] 1 All E. R. 24; Tatem, Ltd. *v.* Gamboa, [1938] 3 All E. R. 135.

3094. *Add. Annotation :*—**Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604.

3094a. —— ——.]—SARGANT (W. J.) & SONS *v.* PATERSON (ERIC) & Co., No. 3090a, *ante.*

3095. *Add. Annotations :*—**Refd.** Cantiere Navale Triestina *v.* Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

PART VII. SECT. 9, SUB-SECT. 2.—B

3096 v. ——.]—Where a contract to thresh a whole crop does not provide for the rights & liabilities of the parties in the event of the threshing being interrupted by weather conditions, it will be held that the contract was based on the assumption that the state of the weather would remain such as to permit the threshing being done with nothing more than temporary interruption, &, therefore, although the contract will not be determined by a slight storm, a permanent break in the weather making threshing impossible for an indefinite period will put an end to it; & when so ended the thresher is entitled to recover for the threshing which he has already done.—KLEIN *v.* SANDERSON, [1928] 3 D. L. R. 294; [1928] 2 W. W. R. 289; 23 Alta. L. R. 467.—CAN.

sd. *Earthquake.*]—On July 14, 1927, pltf. & deft. entered into a written contract for the supply of electrical energy by the former to the latter. The agreement was to be for a period of five years from the date of commencement of supply (Nov. 1, 1927), & "therefore shall be continued subject to its being determinable by either party giving to the other six months' notice in writing from the first day of any month." The agreement contained clauses providing that deft. agreed to pay the minimum amount of £1,000 *per annum*, during the currency of the agreement, whether the deft. took electrical energy to such value or not from pltf.; that if, as the result of action by constituted authority, deft. was prevented from operating or passing over the contract, the contract was to determine; & providing also as to failure of supply due to accidents to mains & suchlike, & for rebate in price of current for interruptions. There was no exemption provided for in the event of fire in deft.'s works. On the contrary, deft. agreed to indemnify pltf. from injury or destruction by fire or otherwise of pltf.'s meters or apparatus on deft.'s premises; & express provision was inserted in respect of certain specified untoward interruptions so far as pltf. was concerned. The earthquake on Feb. 3, 1931, extensively damaged deft.'s meat-freezing works, & it would have involved some nine or ten months' work & the expenditure of £33,000 to have reinstated the premises ready for use as a meat-freezing works. Deft. did not reinstate, & from Feb. 3 (except for a trifling immaterial supply) took no power from pltf. Deft.'s contentions in pltf.'s action claiming moneys alleged to be due under contract were, *inter alia*, that the contract was for five years only, & that frustration by the damage caused by the earthquake had excused performance on deft.'s part :—*Held :* (1) the earliest time

3099. *Add. Annotation :—As to* (1) **Distd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3099a. —— ——.]—The lessees of a hotel entered into two contracts with a firm of advertising agents, under the terms of which the latter were entitled to erect & exhibit, for a term of years, upon the roof of the hotel, electrically illuminated advertisements. An electric sign was duly erected. Before the expiration of the term the local authority, in exercise of its statutory powers, served the lessees with a notice to treat for the purchase of their estate & interest in the hotel, &, ultimately, having acquired the reversion to the lessees' term, took possession, closed the hotel, & began to demolish it. The electric sign was removed by arrangement with the advertising agents, who subsequently commenced an action against the lessees to recover damages for breach of the two contracts :—*Held :* the local authority had acquired defts.' interest in the premises by compulsion ; the two contracts did not confer upon pltfs. any proprietary interest or estate in the hotel ; &, as it could not be said that both parties to those contracts had made their bargain upon the footing that if the local authority exercised their powers & took the hotel the contracts were to be discharged, there must be a declaration that defts. were liable to pltfs. for damages for breach of those contracts.—Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274 ; 144 L. T. 331 ; 29 L. G. R. 241, C. A.

Annotation :—**Refd.** Mussett *v.* Standen (1935), 79 Sol. Jo. 816.

3100a. Abolition of office.]—In pursuance of an Order in Council applt. was appointed by letters patent to be a member of a Board established by a statute of Canada which specified the period of the appointment & the salary attaching to it. During the currency of the appointment, as extended by subsequent Orders in Council, the Parliament of Canada abolished the office by repealing the provision which established the Board ; no compensation to the member was provided. By a petition of right applt. claimed damages for breach of contract :—*Held :* the claim failed, because so far as applt.'s rights were contractual further performance of the contract had become impossible by statute ; as any right under the appointment was subject to determination in that manner, the Interpretation Act, R.S.C., 1927, s. 19 (*c*), which preserves rights acquired under a repealed enactment, did not assist applt., & the repealing statute did not interfere with any civil right in the Province.—Reilly *v.* R., [1934] A. C. 176 ; 103 L. J. P. C. 41 ; 150 L. T. 384 ; 50 T. L. R. 212, P. C.

3101a. —— **All available shipping requisitioned.**]—In an action brought in Singapore in Aug. 1917, defts. counterclaimed damages for failure by pltf. to deliver sugar sold by him to be shipped & delivered at Bombay. The shipment of the sugar had been prevented by the requisitioning of ships by the British Govt. :—*Held :* Civil Law Ordinance No. III (Str. Sett. No. VIII. of 1909), s. 5 (1), which provides that in all questions which arise for decision in the Colony " with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, unless in any case other provision is, or shall be made, by statute," made Defence of the Realm Amendment Act No. 2, 1915 (c. 37), & Courts (Emergency Powers) Act, 1917 (c. 26), applicable to the case, & the latter Act gave a good defence to the counterclaim whether the requisitioning was under Defence of the Realm Act, 1914 (c. 29), or under the prerogative power.—Seng Djit Hin *v.* Nagurdas Purshotumdas & Co., [1923] A. C. 444 ; 92 L. J. P. C. 141 ; 128 L. T. 780 ; *sub nom.* Hin *v.* Purshotumdas & Co., 39 T. L. R. 226, P. C.

Annotation :—**Consd.** Shaik Sahied Bin Abdullah Bajeral *v.* Sockalingam Chettiar, [1933] A. C. 342.

3103a. ——.]—(1) If a man covenants to accept £1,000 bank stock on three days' notice upon or before a particular day, it is no excuse for him that the party to make the transfer had no stock before the day on which he was to make it. (2) A man cannot be sued for money he covenanted to pay on the performance of a particular act if he prevents such performance.—Shales *v.* Seignoret (1699), 1 Ld. Raym. 440 ; 12 Mod. Rep. 248 ; 91 E. R. 1192.

3115. *Add. Annotations :*—**Consd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522. **Refd.** Maloney *v.* St. Helens Industrial Co-operative Society, Ltd., [1933] 1 K. B. 293 ; Lind *v.* Johnson, [1937] 4 All E. R. 201.

3121. *Add. Annotations :*—**Refd.** The Penelope, [1928] P. 180 ; Lind *v.* Johnson, [1937] 4 All E. R. 201.

3122. *Add. Annotations :*—**Refd.** Maloney *v.* St. Helens Industrial Co-operative Society, Ltd. [1933] 1 K. B. 293 ; Lind *v.* Johnson, [1937] 4 All E. R. 201.

3123. *Add. Annotation :*—**Refd.** The Penelope, [1928] P. 180.

3124. *Add. Annotation :*—**Refd.** The Penelope, [1928] P. 180.

within which the contract could be determined by notice was five years & six months ; (2) the defence of frustration by the Napier earthquake had not been established, & the contract had not been discharged by reason of the damage to deft.'s freezing works by that earthquake, on the following grounds : earthquakes occur frequently in New Zealand, & most business men in charge of large business premises either insure or consider whether the risk shall be taken by the business itself. The clauses referred to above, the fact that no exemption was provided for in the event of fire in deft.'s premises, & the circumstances of the case, made it impossible to apply the test propounded by Lord Loreburn in *Tamplin S.S. Co., Ltd.* v. *Anglo-Mexican Petroleum Products Co., Ltd.*, [1916] 2 A. C. 404, *viz.*, " Were the altered circumstances such that, had they thought of them, they would . . . as sensible men have said, ' If that happens, of course, it is all over between us.' "—Hawke's Bay Electric-Power Board *v.* Thomas Borthwick & Sons (Australia), Ltd., [1933] N. Z. L. R. 873.—**N.Z.**

PART VII. SECT. 9, SUB-SECT. 2.—D. (c).

sk. *Sale of apparatus to be installed—Apparatus dismantled by purchaser.*]—On sale of a heating apparatus the vendor failed to complete the installation in minor details. The purchaser dismantled the unit :—*Held :* he had rendered performance of the contract impossible, & was liable for the contract price, less the costs of completing installation.—Dominique *v.* Workman, [1935] 4 D. L. R. 726.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 2.—H. (b).

sk. *Crop-sharing lease—Weather rendering tillage impossible.*]—*Held :* applying the principle established by the cases as to the legal effect of the frustration of a contract, the proper

3137. *Add. Annotations:—As to* (2) **Consd.** Haskell *v.* Marlow, [1928] 2 K. B. 45. *Generally,* **Refd.** Cruse *v.* Mount, [1933] Ch. 278.

3143. *Add. Annotation:—***Consd.** Jardine *v.* A.-G. for Newfoundland (1932), 48 T. L. R. 199.

3149. *Add. Annotation:—***Expld.** *Re* Wait, [1927] 1 Ch. 606.

3153. *Add. Annotation:—***Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3162. *Add. Annotation:—As to* (3) **Apld.** Sargant *v.* Paterson (1923), 129 L. T. 471.

3166. *Add. Annotations:—***Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922. **Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497; The Penelope, [1928] P. 180; May *v.* May, [1929] 2 K. B. 386; Ottoman Bank *v.* Chakarian, [1930] A. C. 277; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145; Barras *v.* Aberdeen Steam Trawling & Fishing Co., Ltd., [1933] A. C. 402; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179.

3166a. Contract for band performances—Public mourning.]—Pltf. was the leader of an orchestra whose performance was of a light & comic nature. His contract of employment with the defts. contained a "no play, no pay" clause. On Mon. Jan. 20, 1936, the news having spread that the condition of His Majesty King George V. was serious, pltf. was informed by defts. that his performance would not be required; & following upon the King's death, pltf.'s performance was again postponed until the end of the same week. Pltf. & his orchestra were at all these times ready & willing to perform. In answer to pltf.'s claim for the contract fee for the six days defts. alleged that circumstances over which defts. had no control had intervened to make the performance impossible:—*Held:* the refusal of deft. to allow the performance on the Mon. & Tues. was reasonable, but there was no good reason for the refusal on the other four days, & pltf. was entitled to be paid his fee for those days.—MINNEVITCH *v.* CAFÉ DE PARIS (LONDRES), LTD., [1936] 1 All E. R. 884; 52 T. L. R. 413; 80 Sol. Jo. 425.

3166b. Contract for aerial advertising—Commercially unreasonable to continue.]—Pltfs. & defts. entered into a contract whereby pltfs. were to advertise defts.' goods by flying over various towns trailing behind the aeroplane words advising the public to buy defts.' products. Defts. agreed to pay £500 for two tours of twenty-four hours each, excluding dead time, the hours to be distributed as defts. wished, & at dates & times which they approved. There were to be 25 miles of free flying between each town, & any extra mileage was to be paid for. Scheds. of times & places were agreed, but it was recognised that exact compliance with these was dependent on the weather. It was agreed that the pilot was to keep in close touch with defts. & was each day to telephone to get their approval of what he proposed to do, & to send a report of what he had done. This he did until Nov. 10, 1937. No telephone communication was received from the pilot after Nov. 9, nor were any arrangements made for flights on Nov. 11. At about 10.45 a.m. on Nov. 11, defts.' representative saw the pilot flying over Manchester & Salford while the Armistice services were in progress, & the pilot flew over the crowded main square in Salford during the two minutes' silence, to the horror & indignation of the thousands of people there. The result of this flight was a vigorous denunciation of defts. & the receipt of many letters announcing that their goods would be boycotted. Defts. immediately placed advertisements in several of the chief newspapers circulating in the district, & letters of explanation & apology were written to the newspapers by pltfs. & the pilot. As a result of this flight there was a marked drop in the demand for defts.' goods. Pltfs. sued defts. for £170 7*s.* 11*d.* in respect of part of the advertising done under the contract & defts. counterclaimed for damages, & for a declaration that they were no longer bound by the contract. Pltfs. contended that unreasonable expense had been incurred by defts. in advertising, & that only special & not general damages should be given for pecuniary loss in respect of breach of contract. They contended that the contract could still be performed at a later date & in a different locality:—*Held:* (1) the expenditure incurred in advertising was reasonable in the circumstances; (2) general damages were recoverable for pecuniary loss sustained in respect of the breach of contract; (3) it was commercially wholly unreasonable to carry on with the contract & defts. were released from further performance.—AERIAL ADVERTISING CO. *v.* BATCHELORS PEAS, LTD. (MANCHESTER), [1938] 2 All E. R. 788; 82 Sol. Jo. 567.

3168. *Add. Annotations:—***Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Cohen *v.* Sellar, [1926] 1 K. B. 536; The Penelope, [1928] P. 180; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May, [1929] 2 K. B. 386; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Tatem, Ltd. *v.* Gamboa, [1938] 3 All E. R.

---

order to make was to declare that the circumstances which were the basis of & essential to the fulfilment of the agreements between the parties ceased to exist & performance became impossible prior to the commencement of the action.—COOKE *v.* MOORE, [1935] 1 W. W. R. 374; *affd.*, [1935] 3 W. W. R. 256.—CAN.

PART VII. SECT. 9, SUB-SECT. 2.—I.

sa. *Contract to instal furnace & maintain specified temperature of heat—Change of furnace.*]—MILLS *v.* GLACE BAY HOUSING COMMISSION, [1926] 1 D. L. R. 608; 58 N. S. R. 317.—CAN.

sp. *Covenant to pay under separation agreement—Alteration of income.*]—In an action for payments due a wife under a separation agreement the defence was set up that it was an implied condition that deft.'s income should continue unchanged & that, as it had been substantially reduced, the contract was frustrated:—*Held:* it could not be said that the purpose of the contract was frustrated. Moreover the parties contemplated during the negotiations the contingency in question although they considered its occurrence improbable; & the taking place of a thing known to be possible & considered by the parties when making the agreement is not "frustration."—LANE *v.* LANE, [1935] 3 W. W. R. 592; [1936] 1 D. L. R. 655.—CAN.

3170. *Add. Annotations :—As to* (2) **Refd.** The Lord Strathcona, [1925] P. 143; The Penelope, [1928] P. 180; Tatem, Ltd. *v.* Gamboa, [1938] 3 All E. R. 135.

3171. *Add. Annotation :*—**Refd.** The Penelope, [1928] P. 180.

3172a. ——.]—(1) By a charterparty made in Nov. 1916, resps. agreed to place their steamship at the disposal of applts. on Mar. 1, 1917, & applts. agreed to employ her on specified terms for ten months from the date when she was delivered to them. The ship was requisitioned by the Govt. before Mar. 1, 1917, & was not released until Feb. 1919. Applts. then refused to take delivery of her :—*Held :* there had been in 1917 a frustration of the charterparty which forthwith brought to an end the whole contract.

(2) The legal effect of the frustration of a contract does not depend upon the intention of the parties, or their opinions or even knowledge, as to the event which has brought about the frustration, but upon its occurrence in such circumstances as to show it to be inconsistent with the further prosecution of the adventure.—HIRJI MULJI *v.* CHEONG YUE S.S. Co., [1926] A. C. 497; 95 L. J. P. C. 121; 134 L. T. 737; 42 T. L. R. 359; 17 Asp. M. L. C. 8; 31 Com. Cas. 199, P. C.

Annotations :—Generally, **Refd.** De la Garde *v.* Worsnop (1927), 96 L. J. Ch. 446; Stevens & Sons *v.* Timber & General Mutual Accident Insurance Assocn., Ltd. (1933), 102 L. J. K. B. 337; Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524.

3175. *Add. Annotation :*—**Refd.** Hirji Mulji *v.* Cheong Yue S. S. Co., [1926] A. C. 497; Carras *v.* London & Scottish Assurance Corpn., Ltd., [1936] 1 K. B. 291; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242; Tatem, Ltd. *v.* Gamboa, [1938] 3 All E. R. 135.

3177. *Add. Annotations :*—**Refd.** Paterson Zochonis *v* Elder Dempster, [1923] 1 K. B. 420; The Erik Boye (1929), 142 L. T. 335.

3178a. ——.]—In a charterparty there was a marginal memorandum that in the event of "war, blockade, or prohibition of export preventing loading, this charter to be cancelled" :—*Held :* the charterparty was put an end to *ipso facto* by the happening of any or either of the contingencies mentioned in the memorandum to the charterparty.—ADAMSON *v.* NEWCASTLE STEAMSHIP FREIGHT INSURANCE ASSOCN. (1879), 4 Q. B. D. 462; 48 L. J. Q. B. 670; 41 L. T. 160; 27 W. R. 818; 4 Asp. M. L. C. 150, D. C.

Annotations :—**Consd.** Mercantile S.S. Co. *v.* Tyser (1881), 7 Q. B. D. 73; Moel Tryvan Ship Co. *v.* Weir Andrew, [1910] 2 K. B. 844. **Apld.** Capel *v.* Soulidi (1916), 114 L. T. 921. **Refd.** *Re* Jamieson & Newcastle Steamship Freight Insce. Assocn. (1895), 11 T. L. R. 196.

3178b. ——.]—A time charter was entered into on Mar. 24, 1926, whereby it was agreed that deft.'s ship, during twelve months from a date to be fixed between May 20 & June 20, 1926, should be employed in carrying successive cargoes of coal for pltfs. from one of the South Wales ports to one of certain specified Mediterranean ports. There were various exceptions relating to strikes & stoppages of labour, &, by an additional clause, the ship was not to be ordered to any loading port at which there was a strike in force, & she was to be free to interpose a substantially similar voyage if the charterers were unable forthwith to order her to another loading port stipulated in the charter free of strike. On May 1, 1926, the general coal strike began, & no coal could be exported from any of the named ports until towards the end of Dec. 1926. Meanwhile, the ship performed two voyages with the assent of pltfs. & one to which they did not assent. At the end of December pltfs. ordered the ship to go to Mumbles Road for orders. Deft. refused to comply with the order on the ground that the strike had frustrated the commercial object of the adventure. Pltfs claimed damages for breach of contract :—*Held :* the strike provisions in the charter contemplated an interruption of work due to a local withdrawal of labour & not the total impossibility of any export of coal for upwards of eight months; that the change of circumstances prevented performance of the charter according to its true intent, & that the action failed.—THE PENELOPE, [1928] P. 180; 97 L. J. P. 127; 139 L. T. 355; 44 T. L. R. 597; 72 Sol. Jo. 557; 17 Asp. M. L. C. 486.

3179. *Add. Annotation :*—**Refd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3181. *Add. Annotation :*—**Consd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3182. *Add. Annotation :*—**Distd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3183. *Add. Annotation :*—**Distd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3183a. —— —— **Ship ordered to leave port—Subsequent permission to return & load.**]—A charterparty of an Italian ship provided that 216 running hours, Sundays & holidays excepted, weather permitting, should be allowed the charterers for loading & discharging, & that the lay days should commence from the time the steamer was ready to receive or discharge her cargo, the captain giving six hours' notice to the charterers' agents, berth or no berth. The exceptions clause excepted "restraint of princes, rulers & people." The ship arrived at Batoum, & notice of readiness to load was given, & the lay days began to run. Owing, however, to a dispute between the Russian & Italian Govts. the ship was ordered by the port authorities to leave Batoum & also Russian waters, & accordingly the ship went to Constantinople. Subsequently permission was obtained to load the ship at Batoum, & she returned after being absent from the port a little over a fortnight. The owners subsequently claimed demurrage from the charterers, on the basis that the lay days continued to run during the period the ship was absent from Batoum :—*Held :* interference by the Russian Govt. did not amount to such an illegality as to excuse the performance of the contract.—CANTIERE NAVALE TRIESTINA *v.* HANDELSVERTRETUNG DER RUSS. SOZ. FÖD. SOVIET REPUBLIK NAPHTHA EXPORT, [1925] 2 K. B. 172; 94 L. J. K. B. 579; 133 L. T. 162; 41 T. L. R.

355; 69 Sol. Jo. 443; 16 Asp. M. L. C. 501; 30 Com. Cas. 172, C. A.

Annotation:—**Refd.** *Re* Ropner Shipping Co. & Cleeves Western Valleys Anthracite Collieries, [1927] 1 K. B. 879.

3184. *Add. Annotation:*—**Refd.** Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737.

3185. *Add. Annotations:*—**Refd.** Sargant *v.* Paterson (1923), 129 L. T. 471; Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

3188. *Add. Annotations:*—**Consd.** Snia Soc. di Navigazione Industria e Commercio *v.* Suzuki (1924), 29 Com. Cas. 284; Cantiere Navale Triestina *v.* Handelsvertretung der Russ. Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579. **Refd.** Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

3188a. —— —— **Forces not recognised as belligerents.**]—By a charterparty in "Baltime" form, dated June 25, 1937, it was agreed between pltfs., the owners of the *M.*, & deft., the charterer, that the ship should be hired for a period of thirty days from the date of delivery at Santander at the rate of £250 per day, which was about three times the market rate then prevailing for vessels of that size not trading with Spanish ports. The hire was to be payable until the vessel was returned to the owners at a selected port in France. The object of the transaction was the evacuation of civilian refugees from Santander to French Bay ports. The hire for the thirty days was paid in advance, in accordance with the charterparty, & the ship was taken over by the charterer on July 1. The *M.* made one trip with refugees to France, & returned for more. On July 14, in endeavouring to enter the port, she was stopped within territorial waters by a nationalist cruiser, and taken to Bilbao, where she was detained until Sept. 9. She was then allowed to go, & arrived at Bordeaux on Sept. 11. In accordance with the charterparty, various arrangements had to be made before re-delivery to the owners, which was alleged in the points of claim to have been made on Sept. 16. The Spanish nationalist forces had never been recognised as belligerents, & they had not established any prize ct. It was alleged that deft. failed to pay hire in respect of the period from July 31 to Sept. 16. The defence was that the contract was frustrated as from July 14, the date the vessel was seized by the nationalists, & that from that date the contract became impossible of performance. To this contention pltfs. replied that the risk of capture was known to the parties when the charterparty was entered into, & that consequently the doctrine of frustration did not arise:—*Held:* the further performance of the contract became impossible upon the seizure of the ship, & the doctrine of frustration applied. —TATEM (W. J.), LTD. *v.* GAMBOA, [1938] 3 All E. R. 135; 82 Sol. Jo. 569; 43 Com. Cas. 343.

3189. *Add. Citations:*—92 L. J. K. B. 455; 129 L. T. 65; 16 Asp. M. L. C. 133; 29 Com. Cas. 1.

Add. Annotations:—**Consd.** Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524. **Refd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497; Tatem, Ltd. *v.* Gamboa, [1938] 3 All E. R. 135.

3193. *Add. Annotation:*—**Refd.** Perry *v.* Equitable Life Assce. Soc. of U.S.A. (1929), 45 T. L. R. 468.

3194. *Add. Annotations:*—**Consd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274. **Refd.** Willis *v.* Willis (1927), 96 L. J. P. 177; The Penelope, [1928] P. 180; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May, [1929] 2 K. B. 386; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179; Kirk *v.* Eustace, [1937] 1 K. B. 278.

3195. *Add. Annotation:*—**Consd.** Tatem, Ltd. *v.* Gamboa, [1938] 3 All E. R. 135.

3198. *Add. Annotations:*—*As to* (1) **Apld.** Snia Soc. di Navigazione Industria e Commercio *v.* Suzuki (1924), 29 Com. Cas. 284. **Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180; Tatem, Ltd. *v.* Gamboa, [1938] 3 All E. R. 135. *As to* (2) **Apld.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497. **Refd.** May *v.* May, [1929] 2 K. B. 386. *Generally*, **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Maritime National Fish, Ltd. *v.* Ocean Trawlers, Ltd., [1935] A. C. 524; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179; Kulukundis *v.* Norwich Union Fire Insurance Society, [1937] 1 K. B. 1.

3199. *Add. Annotation:*—*As to* (1) **Refd.** Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226.

3199a. —— ——.]—HIRJI MULJI *v.* CHEONG YUE S.S. Co., No. 3172a, *ante*.

3201. *Add. Annotations:*—**Refd.** Benaim *v.* Debono, [1924] A. C. 514; Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373; International Trustee for Protection of Bondholders Aktiengesellschaft *v.* R. (1935), 154 L. T. 56.

3202. *Add. Annotation:*—*As to* (2) **Consd.** Cantiere Navale Triestina *v.* Handelsvertretung der Russ. Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579.

3206. *Add. Annotation:*—**Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

3207. *Add. Annotation:*—**Refd.** Finlay *v.* Kwik Hoo Tong Handel Maatschappij (1928), 98 L. J. K. B. 251.

3208. For "national" read "notional."

PART VII. SECT. 9, SUB-SECT. 3.—B.

3194 i. *Time charter—Ship requisitioned by Government.*]—*Held:* a condition was not to be implied in the contract that an interruption should excuse the party from the further performance of it, unless substantially the whole contract became impossible of performance.—DOMINION COAL CO. *v.* LORD STRATHCONA S.S. Co., [1924] 2 D. L. R. 66; 57 N. S. R. 113.—CAN.

PART VII. SECT. 9, SUB-SECT. 3.—C.

3204 v. *Revsd.*, [1924] A. C. 226; 93 L. J. P. C. 86; 130 L. T. 610.

3211. *Add. Annotations:—As to* (1) **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

3216. *Add. Annotation:*—**Refd.** Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

3218. *Add. Annotations:—As to* (2) **Refd.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. *Generally*, **Refd.** Kulukundis *v.* Norwich Union Fire Insurance Society, [1937] 1 K. B. 1.

3220. *Add. Annotation:*—**Consd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3221. *Add. Annotation:*—**Refd.** Compagnie Continentale d'Importation *v.* Handelsvertretung der Union der Russian Soviet Republic in Deutschland (1928), 138 L. T. 663.

3225a. Confiscation by foreign Government.]—By a contract the vendors agreed to sell & the purchasers to purchase the timber then standing uncut in a forest in the Republic of Latvia, the purchasers to have fifteen years in which to cut & remove it, such time to be extended if the purchasers were prevented by an act of the Govt., or otherwise by *force majeure*, or by war, from cutting or disposing of the timber. The purchasers took possession of the forest, but shortly afterwards an agrarian law was passed in Latvia under which the forest & all the timber therein became the property of the Latvian State, the agreement became annulled, & all the rights of vendors & purchasers in the forest & the timber became entirely confiscated:—*Held:* the performance of the contract was entirely frustrated by the act of the Latvian State, & the parties were released from it.—KURSELL *v.* TIMBER OPERATORS & CONTRACTORS, [1927] 1 K. B. 298; 95 L. J. K. B. 569; 135 L. T. 223; 42 T. L. R. 435, C. A.

3226. *Add. Annotation:*—**Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

2331. *Add. Annotation:*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

3233. *Add. Annotations:—As to* (2) **Consd.** Cantiere Navale Triestina *v.* Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569; The Penelope, [1928] P. 180; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May (1929), 98 L. J. K. B. 770. *As to* (2) **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3238. *Add. Annotation:*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

3239. *Add. Annotation:*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

3240. *Add. Annotations:*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522; The Bathori, [1933] P. 22.

3243. *Add. Annotations:*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522; Robson *v.* Sykes, [1938] 2 All E. R. 612.

3249. *Add. Annotation:*—**Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

3275. *Add. Annotations:*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528; Pockney *v.* Atkinson (1929), 142 L. T. 135; Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532.

3276. *Add. Annotation:*—*As to* (2) **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1.

3280. *Add. Annotations:*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532.

3282. *Add. Annotations:*—**Consd.** Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Graves *v.* Cohen

---

3217 i. —— *Difficulties in way of shipment.*]—By a contract, made in 1916, deft. sold certain goods, shipment to be from a continental port in six approximately equal monthly parcels:—*Held:* the long delay in shipment caused by war did not frustrate the commercial object of the contract & so put an end to it.—RINGSTAD *v.* GOLLIN & CO. PROPRIETARY, LTD. (1925), 35 C. L. R. 303; 31 Argus L. R. 221.—**AUS.**

3224 i. *Importation restricted by Government.*]—Applt., a manufacturer of yeast, entered into a written contract under which he undertook to supply a certain portion of his output to resp. during 1927. Clause 8 of the contract provided that "in the event of legislation being passed . . . which may in any wise restrict or prohibit the sale of yeast in any quantity or to any class or race, this agreement shall become void," while clause 9 provided that "if such legislation . . . relates only to imported yeast then your selling price . . . may be increased at your option" in certain respects. In June, 1927, by Act 24 of 1927, the importation of yeast into the Union was prohibited except with the permission of the Comr. of Police. Applt. thereupon repudiated the contract, pleaded it was null & void under clauses 8 & 9 thereof:—*Held:* legislation prohibiting the importation of yeast did not fall within the terms of either clause of the contract, inasmuch as it did not prohibit or restrict the sale of yeast.—COMPRESSED YEAST, LTD. *v.* DISTRIBUTING AGENCY, LTD., [1928] App. D. 301.—**S. AF.**

k i. ——.]—A contract being for export only:—*Held:* its object was frustrated.—MAYER & LAGE INC. *v.* ATLANTIC SUGAR REFINERIES, LTD., [1926] 2 D. L. R. 783; 58 O. L. R. 531.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 3.—D.

sp. *Strike of workmen—Lease of salt works.*]—*Held:* the contract to pay rent had not become impossible of performance.—HARI LAXMAN JOSHI *v.* SECRETARY OF STATE FOR INDIA (1927), I. L. R. 52 Bom. 142.—**IND.**

sq. *Refusal of municipal licence for business contemplated.*] — FONG *v.* KERWIN (Ont.), [1929] 3 D. L. R. 612.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 3.—F.

sr. *Child performer—Prohibited by Labour Department.*]—A. agreed to furnish a theatre, & to pay a specified amount to a booking agency for the services of a fourteen-year-old pianist:—*Held:* performances was not excused either by the prohibition of the Department of Labour or by the death of the King, & damages can therefore be recovered for non-performance.—MANAGEMENT CHAS. L. WAGNER, INC. *v.* BOURDON, [1937] 2 D. L. R. 473.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 5.

ll. —— *Lease of hotel.*]—The lessees of an hotel property, upon prohibition coming into force in Alberta, sued for a declaration that the lease of the premises & an agreement to purchase the chattels in the hotel were terminated through failure to obtain a licence:—*Held:* the abolition of the bar was a risk that must be undertaken by the lessee, it being a case not of total destruction of the subject-matter, but a case of sterility.—CHERRIER & ORTON *v.* MCCREIGHT & PENNINGTON, [1917] 2 W. W. R. 8; 11 Alta. L. R. 270; 33 D. L. R. 689.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 6.

3278 i. *Revsd.*, [1924] A. C. 226; 93 L. J. P. C. 86; 130 L. T. 610.

(1929), 46 T. L. R. 121. **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1.

3303. *Add. Annotation :*—**Refd.** Tredegar *v.* Harwood, [1929] A. C. 72.

3305. *Add. Annotation :*—**Distd.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., Ltd., [1933] 2 K. B. 141.

3306. *Add. Annotation :*—**Refd.** Tredegar *v.* Harwood (1927), 44 T. L. R. 17.

3309. *Add. Annotation :*—**Refd.** Edmonson *v.* Ropner (Sir R.) & Co. (1935), 79 Sol. Jo. 777.

3310. *Add. Annotation :*—**Refd.** London & North Eastern Ry. Co. *v.* Blundy, Clark & Co. (1931), 20 Ry. & Can. Tr. Cas. 92.

3314. *Add. Annotation :*—**Refd.** London & North Eastern Ry. Co. *v.* Blundry, Clark & Co. (1931), 20 Ry. & Can. Tr. Cas. 92.

3324. *Add. Annotations :*—**Consd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224; Caney *v.* Leith, [1937] 2 All E. R. 532.

3324a. —— ——.]—In an agreement for the assignment of a certain lease it was stated that the agreement was "subject to the purchaser's solr. approving the lease." The purchaser's solr. did not approve the existing lease by reason of various terms therein contained. The vendors sought to enforce the agreement by specific performance :—*Held :* the agreement was conditional on the purchaser's solr. approving the lease, &, in the absence of *mala fides* or unreasonable conduct on the part of the solr., there was no enforceable contract unless & until the solr.'s approval was obtained.

Per FARWELL, J. : it is not, in a case of this sort, for the ct. to consider & hear evidence from the solr. with regard to what view he took of the matter, or anything of that sort. The ct. has to look at the document of which the solr. has expressed disapproval, &, if that disapproval can be given *bonâ fide* & without any unreasonable conduct on the part of the solr., then the ct. is bound to say that the condition has not been fulfilled.—CANEY *v.* LEITH, [1937] 2 All E. R. 532; 156 L. T. 483; 53 T. L. R. 596; *sub nom.* CAREY *v.* LEITH, 81 Sol. Jo. 357.

3326. *Add. Annotation :*—**Consd.** Caney *v.* Leith, [1937] 2 All E. R. 532.

3327. *Add. Annotations :*—*As to* (2) **Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. *As to* (5) **Apld.** Meyrick *v.* Dyson (1925), 41 T. L. R. 368. *Generally*, **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

3328. *Add. Annotations :*—**Apld.** Baldry *v.* Marshall, [1925] 1 K. B. 260; Barker *v.* Agius (1927), 43 T. L. R. 751; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528. **Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Andrews Bros. (Bournemouth), Ltd. *v.* Singer & Co., [1934] 1 K. B. 17; Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1934] A. C. 402.

After this case add "*See, also*, COMPANIES, No. 814a."

3330. To the cross-references following this case add "**As regards bills of exchange.**]—*See* BILLS OF EXCHANGE, Vol. VI., pp. 79–93."

3339a. ——.]—It is a general rule that covenants are to be treated as independent rather than as conditions precedent, especially where some benefit has been derived by the covenantor (POLLOCK, C.B.).—NEWSON *v.* SMYTHIES (1858), 3 H. & N. 840; 28 L. J. Ex. 97; 32 L. T. O. S. 110; 157 E. R. 707.

Annotation :—**Refd.** Kidner *v.* Stimpson (1918), 34 T. L. R. 434.

3340. *Add. Annotations :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

3346. *Add. Annotations :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

3351. *Add. Annotations :*—**Consd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528. **Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169.

3379a. —— **Provided "undertaking" carried out.**]—BRUFF *v.* CONYBEARE (1868), 17 L. T. 664, Ex. Ch.; *revsg.* (1862), 13 C. B. N. S. 263.

Annotation :—**Consd.** London Corpn. *v.* Sandon, London Corpn. *v.* Met. Ry., Met. Ry. *v.* London Corpn. (1872), 26 L. T. 86.

3382. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

3406. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

3407. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

PART VII. SECT. 11, SUB-SECT. 1.—A.

3305 i. *Performance by one to satisfaction of other party—Whether party bound to decide reasonably or entitled to decide arbitrarily—Bonâ fide decision.*]—Pltf. agreed to place sods around defts.' power house to their satisfaction. Defts., not being satisfied with the sods or the work, cancelled the contract. In an action for damages for breach of contract, the jury found that defts. had acted honestly but unreasonably :—*Held :* the judgment of defts. honestly arrived at was final, & pltf. was not entitled to recover.—TRUMAN *v.* FORD MOTOR CO. OF CANADA, LTD., [1926] 1 D. L. R. 960; 58 O. L. R. 317.—**CAN.**

st. *Receipt of money — Duty to collect.*]—A contract provided for a percentage of the moneys received by one party to be paid to the other :—*Held :* liability could not be evaded by failure to collect the moneys; but where there was good reason to suppose that litigation for the purpose of collection would be useless, there was no duty to litigate.—NORTHERN PIPE LINE CO. *v.* CANADIAN GAS CO., [1924] 4 D. L. R. 1111.—**CAN.**

PART VII. SECT. 11, SUB-SECT. 1.—B. (a).

a i. —— *Agreement to sell dealer's business subject to granting of licence by licensing officer.*]—RAJAH *v.* SULIMAN (1927), 48 N. L. R. 309.—**S. AF.**

PART VII. SECT. 11, SUB-SECT. 1.—D. (a).

c i. ——.]—HALIFAX & CAPE BRETON COAL & RY. CO. *v.* GREGORY, Cass. Dig. 2nd ed. 727.—**CAN.**

PART VII. SECT. 11, SUB-SECT. 1.—D. (c).

3375 i. *Promise by party to pay—Out of particular fund.*]—Deft. insurance assocn. was incorporated on Apr. 10, 1929. Two days later, in a letter on the assocn.'s notepaper, signed by the deft. M. as chairman of directors & by the secretary, & addressed to pltf. co., an agreement was made, in consideration of an advance by pltf. of a sum not exceeding £500 for preliminary expenses to secure members, "to refund the amount advanced as moneys are received from the members' applications." The last paragraph of the letter stated (*inter alia*). "In consideration of your doing this we agree to refund the full amount of money received for expenses." Pltf. co. sued both M. & the assocn. to recover the money so advanced :—*Held :* the letter contained an unequivocal undertaking by deft. assocn. to refund the amount advanced, & did not make the receipt of moneys from members' applications a condition precedent to its liability.—ASSOCIATED INVESTMENT UNDERWRITERS (N.Z.), LTD. *v.* MACKENZIE & DOMINION MUTUAL INSURANCE ASSOCN., [1932] N. Z. L. R. 221.—**N.Z.**

3408. *Add. Annotations :*—**Consd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528. **Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169.

3447. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

3467. *Add. Annotations :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48; Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

3490. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

3494. *Add. Annotations :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739; Anglo-Newfoundland Development Co. *v.* Pacific Steam Navigation Co., [1924] A. C. 406; Cohen *v.* Sellar, [1926] 1 K. B. 536; Millar's Machinery Co. *v.* Way & Son (1935), 40 Com. Cas. 204.

3495. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

3500. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

3505. *Add. Annotation :*—**Refd.** Suhr (R. F. H.) *v.* Crofts (Engineers), Ltd. (1932), 49 R. P. C. 359.

3508. *Add. Annotation :*—**Distd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576.

3509. *Add. Annotation :*—**Refd.** Samuel *v.* Dumas, [1924] A. C. 431.

3513. *Add. Annotations :*—**Consd.** Acties Nord-Osterso Rederiet *v.* Casper, Edgar (1923), 28 Com. Cas. 222. **Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48; Foley *v.* Classique Coaches, Ltd., [1934] 2 K. B. 1.

3514. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* Chekiang (Owners), [1926] A. C. 637.

3519. *Add. Annotations :*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605; *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221.

3520. *Add. Citation :*—*Revsd. sub nom.* NICHOLS *v.* NORTH METROPOLITAN RAILWAY & CANAL Co. (1804), 71 L. T. 836, C. A.

Part VIII.—Defences to Actions for Breach of Contract.

3553. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3555. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3556. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3560. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3561. *Add. Annotations :*—**Consd.** Rose & Frank Co. *v.* Crompton, [1925] A. C. 445; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616. **Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48. **Mentd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

3563. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

PART VII. SECT. 11, SUB-SECT. 1.—D. (q).

ss. *Timber licence—Condition against employment of Chinese or Japanese.*]—A condition in a special timber licence under Land Act (B. C.), 1908, that no Chinese or Japanese should be employed in connection therewith is one of the essential terms of the licence.—A.-G. FOR BRITISH COLUMBIA *v.* BROOKS, BIDLAKE & Co., [1922] 3 W. W. R. 9; 63 S. C. R. 466.—**CAN.**

sd. *Contract for sale of currency—Payment condition precedent to delivery.*]—WALSH *v.* BROWN (1868), 18 C. P. 60.—**CAN.**

sf. *Selling agency agreement.*]—AUCHTERLONIE *v.* ARMS (1875), 25 C. P. 403.—**CAN.**

sk. *Agreement to sell land for church—If congregation brought together.*]—*Held :* although at first conditional, the contract, by reason of a congregation having assembled, became absolute.—A.-G. *v.* CHRISTIE (1867), 13 Gr. 495.—**CAN.**

PART VII. SECT. 11, SUB-SECT. 1.—E.

3522 i. *General rule.*]—Where a document is sufficiently clear & certain, & payment depends on some simple condition or event, it is sufficient for pltf. to allege that the condition has been complied with or the event has happened. The *onus* then lies on deft. to show that what was intended by the document sued on to be a condition precedent to entitle pltf. to succeed has not been complied with.—UNION SHARE AGENCY & INVESTMENT, LTD. (LIQUIDATORS) *v.* SPAIN (1927), 48 N. L. R. 348.—**S. AF.**

PART VII. SECT. 11, SUB-SECT. 3.—A. (b).

p i. ——.]—The consideration for a quit-claim deed was the maintenance of the grantor & pltf. during their lives. After the death of the grantor, deft. married, & pltf. left & lived elsewhere :—*Held :* as it was clearly meant that pltf. would live in deft.'s house & be maintained there by him, & as she had no valid excuse for leaving him, deft. was not obliged to provide for her support elsewhere.—COMEAU *v.* LEBLANC, [1923] 2 D. L. R. 1076; 56 N. S. R. 201.—**CAN.**

PART VII. SECT. 11, SUB-SECT. 3.—A. (c).

3509 i. *What amounts to waiver.*]—BOWES *v.* CHALEYER, [1923] V. L. R. 295; 32 C. L. R. 159.—**AUS.**

PART VII. SECT. 11, SUB-SECT. 3.—C.

3521 i. *Right of defaulting party to sue other party—Recovery of deposit.*]—Defts. contracted to supply pltf. with a quantity of lumber to be loaded on cars in July, 1920. Defts. hauled the lumber to the railway siding ready for shipment, but pltf. failed to provide cars, as it was his duty to do, upon which the lumber could be loaded :—*Held :* an action by pltf. to recover a deposit paid on the contract must be dismissed.—GLENNIE *v.* RUSHTON (1922), 55 N. S. R. 530.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—A.

3542 i. *General rule.*]—WHITEFORD *v.* MCLEOD (1868), 28 U. C. R. 349.—**CAN.**

3547 ii. ——.]—Prior to foreclosure proceedings on a mtge. given by deft., pltf.'s solr. wrote deft.'s solr. that the registered owner was willing to give a quit-claim deed to pltf. to clear up the title & avoid litigation if deft. would give a quit-claim deed to pltf. This was agreed to, but subsequently deft.'s solr. received a letter from pltf.'s solr. purporting to withdraw from all negotiations to accept a quit-claim deed :—*Held :* there was an accord but no satisfaction.—CAIRNS *v.* BROWN, [1924] 4 D. L. R. 590; 3 W. W. R. 409.—**CAN.**

3569. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3573. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3575. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3576. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3578. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3585. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3586. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3587. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3593a. ——.]—Accord & satisfaction is the purchase of a release from an obligation arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged, & the satisfaction is the consideration which makes the agreement operative. It is not necessary that the consideration should be executed; the consideration on each side may be an executory promise, the two mutual promises making an agreement enforceable at law.

T., who owned a paper, formed a co. with a capital of £500 in £1 shares, & transferred his paper to the co. in consideration of the allotment to him of the 500 shares. T. gave Miss P., who was the editor of the paper, 475 shares, retaining 25 shares himself. T. & Miss P. were the directors of, & the only shareholders in the co. Defts. published in one of their papers two articles which T. considered to be a libel upon himself & the co. to which he had transferred his paper. T. & the co. commenced actions for libel against defts. There was a meeting between T. & H., a representative of defts., with the object of settling the litigation, & eventually terms of settlement were arranged on Oct. 10, 1932, & initialled by T. & H. The terms, which were headed with the names of the two actions, provided: "I accept the sum of 1,000 guineas on account of costs & expenses incurred in full discharge & settlement of my claims against" defts. "& the claims of the" co. "& the officers of that co., arising out of the articles published in the *Daily Mail* . . . & I will forthwith instruct my solrs. to serve notice of discontinuance, or to take such other steps or to agree to such other steps being taken to end the proceedings now pending." Provision was also made for a letter in the terms of an agreed draft to be written to T. by H. Pltf. co. & Miss P. did not agree to the proposed settlement, although defts. were ready & willing to carry out the settlement, & the actions proceeded to trial. Defts. counterclaimed against T. for breach of warranty of authority. The jury returned a verdict for both T. & pltf. co., & judgment was entered for each of pltfs. with costs. The Ct. of Appeal, however, held that the alleged libel was not a libel on pltf. co., & set aside the judgment in favour of pltf. co. The judge at the trial held that T. represented & warranted that he had authority to settle the action on behalf of pltf. co. whereas in fact he had no such authority, & defts. were entitled to an inquiry as to the damages they had thereby sustained. Defts. appealed (*inter alia*) by leave of the trial judge, on the question of costs in both actions. Pltf. T. appealed against the judgment against him for damages for breach of warranty of authority on the ground that he had never represented that he had authority to settle the action on behalf of pltf. co., & because the transaction relied on in the counterclaim was only an executory accord giving rise to no rights:—*Held:* the document initialled by T. & H. on Oct. 10, 1932, was an agreement in which the consideration on each side was an executory promise by the other side, & further, a third party was included in the promise. The agreement was therefore enforceable in law, at any rate, by counterclaim.—BRITISH RUSSIAN GAZETTE & TRADE OUTLOOK, LTD. *v.* ASSOCIATED NEWSPAPERS, LTD., TALBOT *v.* ASSOCIATED NEWSPAPERS, LTD., [1933] 2 K. B. 616; 102 L. J. K. B. 775; 149 L. T. 545, C. A.

3606. *Add. Annotation :*—**Apld.** Berry *v.* Berry, [1929] 2 K. B. 316.

3614. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

3622. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

PART VIII. SECT. 2, SUB-SECT. 3.—D.

3l. *Discharge of mortgage on execution of agreement between mortgagor & mortgagee.*]—WEST *v.* ACCIDENTAL FIRE INSURANCE CO., [1927] 3 D. L. R. 260.—CAN.

PART VIII. SECT. 2, SUB-SECT. 5.—C.

3614 l. *Satisfaction by one.*]—Judgments recovered by pltf. & another against eleven defts. were assigned to a co. These judgments remaining unpaid, T., one of defts., under a compromise agreement arrived at in 1925 after negotiations with the co., paid to the co. a sum which he contended was paid to & accepted by the co. in full satisfaction of his indebtedness. Originally all defts. were jointly & severally liable in respect of the judgment debts. After the agreement was made, the co. sought to examine deft. W. as a judgment debtor:—*Held:* the effect of the agreement was to release T. unqualifiedly in respect of the two judgments & to release his co-defts. also; &, therefore, W. was not examinable as a judgment debtor.—LUGSDIN *v.* BALL, [1929] 4 D. L. R. 543; 64 O. L. R. 251.—CAN.

PART VIII. SECT. 3, SUB-SECT. 3.

3m. *Payment by instalments—First payment to be expedited.*]—The question was as to the meaning of the following clause: "It is hereby agreed that the said E. will, upon the 11th day of every month, beginning upon the 11th day of Aug., A.D. 1927 (with the exception of the first payment, which is to be made upon the signing, sealing, & delivery of these presents) pay to the said L. the sum of $40 per month," etc. A payment was made on July 11, the date of the agreement:—*Held:* the payments were to be made on the

3641. *Add. Annotations :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612. **Refd.** Barclay *v.* Malcolm (1925), 133 L. T. 512.

3646. *Add. Annotations :*—*As to* (1) **Distd.** The Baarn (1933), 49 T. L. R. 554. **Refd.** *Re* British American Continental Bank, Lisser & Rosenkranz's Claim, [1923] 1 Ch. 276; *Re* Chesterman's Trusts, Mott *v.* Browning, [1923] 2 Ch. 466; Peyrae *v.* Wilkinson, [1924] 2 K. B. 166; The Baarn (No. 2), [1934] P. 171.

3654. *Add. Annotation :*—**Consd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

3658. *Add. Annotation :*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

3661. *Add. Annotation :*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

3667. *Add. Annotations :*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492; Bremer *v.* Oeltransport G.M.B.H. & Drewry, [1933] 1 K. B. 753.

3671. *Add. Annotation :*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

3673. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

3680. *Add. Annotations :*—**Refd.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256; Vanbergen *v.* St. Edmunds Properties, Ltd., [1933] 2 K. B. 223.

3701. *Add. Annotation :*—**Apld.** Vanbergen *v.* St. Edmunds Properties, Ltd., [1933] 2 K. B. 223.

3707. *Add. Annotation :*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3709. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3713. *Add. Annotation :*—**Consd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

3715a. Forbearance—Agreement for payment by instalments—Whole sum due on default of one instalment.]—Deft. owed pltf. £266 17*s.* 6*d.* for gaming debts. In consideration of pltf.'s forbearance to press his claim at Tattersalls, deft. agreed that in settlement of the debt he would give pltf. two bronzes, & pay him two instalments of £20 each on specified dates. The agreement provided that, upon default in due payment of any instalment: "the whole then remaining balance of the original sum above-mentioned shall become due & payable forthwith." Deft. defaulted in payment of the second instalment of £20, & pltf. sued him for £218 17*s.* 6*d.*, giving credit for the first instalment & the two bronzes at a valuation of £28 :—*Held :* (1) the expression "the original sum above-mentioned" meant the original debt of £226 17*s.* 6*d.*, & could not be regarded as the two bronzes & the two money instalments of £20; (2) to ascertain the balance of the original sum payable on default, a money value would have to be put upon the bronzes, & evidence of such value was therefore admissible; (3) the clause which provided that the remaining balance of the original sum should become payable in the event of default was not a penalty clause.—LATTER *v.* COLWILL, [1937] 1 All E. R. 442; 53 T. L. R. 383; 81 Sol. Jo. 79, C. A.

3749. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

3751. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

3752. *Add. Annotation :*—**Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

3763. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3781. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3784. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3784a. ——.]—HALL *v.* PADLEY (1923), 156 L. T. Jo. 83.

3784b. ——.]—Pltf. granted a bill of sale over certain furniture to a moneylender, &, as she was unable to pay him the first instalment when it became due, defts. agreed to advance to her £1,000 on another bill of sale for the purpose of paying him off & of having her furniture released from the first bill of sale. Pltf. accordingly received a cheque for £1,000 from defts. & after receiving it she executed the second bill of sale, which stated that the consideration for it was £1,000 paid to pltf. In an action by pltf. to restrain defts. from disposing of the furniture comprised in the second bill of sale, pltf. relied on Bills of Sale (1878) Amendment Act, 1882 (c. 43), s. 8, & she contended that the real consideration was the payment off of the moneylender & the release of her furniture from the first bill of sale :—*Held :* the consideration for the second bill of sale was the loan of £1,000, & as a cheque was a good payment until dishonoured there was no need to state in the second bill of sale that the payment was by cheque, & therefore, as the consideration was correctly stated in the second bill of sale, the action failed.—D'USEZ *v.* TRAFFICS & DISCOVERIES, LTD. (1924), 40 T. L. R. 441.

11th day of every month, beginning upon Aug. 11. The payment due on Aug. 11 was to be expedited, &, therefore, no fresh payment would be due on Aug. 11.—ATKINSON *v.* ATKINSON (1928), 60 N. S. R. 138.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 4.

3655 viii. —— ——.]—If there is no special covenant for payment of a debt elsewhere, the presumption of law is that the borrower ought to seek out the lender for payment.—GOKUL DAS *v.* NATHU (1925), I. L. R. 48 All. 310.—**IND.**

3656 i. —— —— *Unless creditor abroad.*]—The duty which English law imposes upon a debtor to find his creditor & pay him is imposed upon him only if the creditor is within the realm. If in India a debtor is subject to the same duty, it is similarly limited.—BANSILAL ABIRCHAND *v.* GHULAN MAHBUB KHAN (1925), 53 L. R. Ind. App. 58.—**IND.**

p i. —— ——.]—PLATT *v* MCFAUL (1854), 4 C. P. 293.—**CAN.**

p ii. —— ——.]—DORNBERG *v.* SOMERVILLE, [1929] 1 D. L. R. 811; 40 B. C. R. 415.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 5.—F.

sp. *Manager of debtor agent of creditor—Fraudulent entry of payment.*]—MCMORRIS *v.* EMPRESS THEATRE CO., LTD., [1923] 2 D. L. R. 555; 16 Sask. L. R. 504; [1923] 1 W. W. R. 1144.—**CAN.**

PART VIII. SECT. 3, SUB-SECT 5.—G. (b) i.

3766 iv. ——.]—BABINEAU *v.* BOURQUE, [1925] 1 D. L. R. 252.—**CAN.**

3784c. ——.]—If a bill of exchange or note be taken on account of a debt & nothing be said at the time, the legal effect of the transaction is that the original debt remains, but the remedy for it is suspended till the maturity of the instrument in the hands of the creditor, If the bill or note is given not by the debtor but by a stranger, the action for the original debt is equally suspended.—ALLEN *v.* ROYAL BANK OF CANADA (1925), 95 L. J. P. C. 17; 134 L. T. 194; 41 T. L. R. 625, P. C.

3803. *Add. Annotation :*—**Consd.** Vanbergen *v.* St. Edmunds Properties, Ltd., [1933] 2 K. B. 223.

3806. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3813. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

3817. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3818. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3820. Add the following para. :—

Deft. sold to pltf. co. his business as existing on Dec. 31, 1887, with the goodwill, stock-in-trade, & " all book & other debts due to the vendor in connection with the said business, & the full benefit of all securities for such debts." On Jan. 1, 1888, deft. had in his possession cheques & bills of exchange, given for trade debts, which had been received by him before that date & were subsequently honoured :—*Held :* the trade debts, having been paid, did not pass to the co., & that the cheques & bills were not securities within the meaning of the agreement.—HADLEY (FELIX) & Co. *v.* HADLEY, [1898] 2 Ch. 680.

3833. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3864. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

3869a. Payment into bank to account of creditor's solicitors.]—Variation in the performance of a promise is no consideration for forbearance by the promisee where in fact it is allowed at the promisor's own request.

Pltf., being indebted to defts., an agreement was made between him & defts.' solrs. that, if he would pay the amount of the debt into a bank in the country for the credit of defts.' solrs. in London, that payment would satisfy all sums which he owed to defts. & a bkpcy. notice which they had issued in respect of part of the debt would not be served on him. Pltf. alleged that he carried out his part of the agreement, but that, in breach thereof, defts., by a clerk of their solrs., served him with the bkpcy. notice. In an action for damages for breach of the agreement it was held, that, as pltf. by the agreement was not to pay his debt to his creditors, but was to pay the money to the account of defts.' solrs., which he was not under any obligation to do, there was sufficient consideration to prevent the agreement being *nudum pactum* & pltf. was entitled to maintain an action for breach of the agreement. On appeal :—*Held :* on the evidence the concession made by defts. as to time & place of payment of the debt was entirely to oblige pltf. & that no benefit thereby accrued to defts. ; &, that being so, the agreement was a mere *nudum pactum* & gave no cause of action for breach of contract.—VANBERGEN *v.* ST. EDMUNDS PROPERTIES, LTD., [1933] 2 K. B. 223 ; 102 L. J. K. B. 369 ; 149 L. T. 182, C. A.

3869b. Assignment of funds—Orders for foreign Government.]—During the Great War a number of ships belonging to pltfs., a group of Finnish shipowners, then Russian subjects, were requisitioned by the Russian Govt. & placed at the disposal of the British Govt., who paid the Russian Govt. for the use of the ships. Pltfs., having received no payment from the Russian Govt., either before or since the revolution of 1917, in respect of the sums which they claimed to be due to them for hire of the ships & as compensation for those which were lost, sued defts., an English bank, who held funds deposited with them by the Russian Govt. before the revolution. Pltfs. claimed that they were the legal assignees of a specified part of those funds equal to the sums due to them in respect of the ships. As evidence constituting assignments pltfs. produced copies of orders duly issued by the responsible department of the Russian Govt. :—*Held :* the documents did not constitute an agreement between the Russian Govt. as represented by that department & pltfs. for the assignment to the latter of any part of the funds in question ; the documents amounted to no more than a direction that the necessary steps should be taken to direct payment to pltfs. out of the funds ; there was no evidence that the steps directed to be taken were ever taken ; & no intention to make an assignment to pltfs. could be inferred from the documents.—FINSKA ANGFARTYGS A/B *v.* BARING BROS. & Co., LTD. (1938), 54 T. L. R. 1031 ; 82 Sol. Jo. 603, C. A.

3869c. —— ——.]—RUSSIAN & ENGLISH BANK *v.* BARING BROS. & Co., LTD. (1938), 54 T. L. R. 1035, C. A.

Annotation :—**Refd.** Finska Angfartygs A/B *v.* Baring Bros. & Co., Ltd. (1938), 54 T. L. R. 1031.

PART VIII. SECT. 3, SUB-SECT. 5.—G. (b) ii.

3799 i. *Acceptance in satisfaction question of fact.*]—The keeping & using of a cheque handed to a creditor on debtor's condition that it is to be taken in satisfaction of a claim for a larger amount, & with words on the cheque so intimating, is not conclusive in law of an accord & satisfaction ; whether it was accepted in satisfaction of the claim is a question of fact.—PETERSON *v.* FLACK, [1923] 3 D. L. R. 132 ; 16 Sask. L. R. 493 ; [1923] 1 W. W. R. 1289.—CAN.

PART VIII. SECT. 3, SUB-SECT. 5.—G. (e) i.

3822 iv. ——.]—In an action for damages pltf. alleged that deft. had negligently set out a fire which destroyed pltf.'s granary & wheat therein. The defence pleaded was that deft. had given pltf. a promissory note in satisfaction of his claim. The note had not been paid :—*Held :* in the absence of evidence of an express or implied agreement under which pltf. took the note in satisfaction of his claim, the action lay ; the only effect of the note being to convert the claim from an unliquidated one to a liquidated one, the amount of the note being taken to be the amount which the parties had agreed on as that for which the tortfeasor was liable, subject, in the present case, to a deduction of the net amount received by pltf. on a sale of part of the wheat which the parties had agreed pltf. should deduct from the note.—GJESDAL *v.* BERGH, [1935] 3 W. W. R. 296.—CAN.

PART VIII. SECT. 3, SUB-SECT. 5.—K.

ir. *Agreement by creditors to work mine—Conditional on mine proving*

SUB-SECT. 6.—IN WHAT CURRENCY AND AT WHAT RATE OF EXCHANGE PAYMENT MUST BE MADE.

See MONEY AND MONEY-LENDING, Vol. XXXV., pp. 169–176, & Supp.

3874. *Add. Annotation :*—**Refd.** Abram S.S. Co. *v.* Westville Shipping Co., [1923] A. C. 773.

3880. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

3882. *Add. Annotation :—As to* (2) **Consd.** Stepney Corpn. *v.* Osofsky, [1936] 3 All E. R. 494.

3883a. ——.]—On Sept. 17, 1935, a certain sum was owing by resp., a licensed street trader, to applt. corpn., in respect of removal of refuse & other services. During the period from Sept. 18, 1935, to Mar. 17, 1936, further sums became due for similar services, &, during the same period, certain payments were made by resp. to applt. corpn. Resp. did not specifically appropriate any of these payments to any particular charges. Applt. corpn. purported to appropriate the payments in satisfaction of the arrears of earliest date, &, on Mar. 17, 1936, sought to recover the balance alleged to be due. The justices thought that resp. believed that he was making payments towards current dues, & decided that the appropriation by applt. corpn. was not, & could not be properly made, & they held that applt. corpn. could not recover a sum larger than the difference between the money due in respect of the period from Sept. 18, 1935, to Mar. 17, 1936, & the amount paid by resp. during that period. Applt. corpn. appealed, conceding that, in the absence of specific appropriation by resp., applt. corpn. was entitled to appropriate the payments, to satisfy any arrears, even though the arrears might be irrecoverable at law :—*Held :* the justices had not found that there has been any appropriation by resp.—STEPNEY CORPN. *v.* OSOFSKY, [1937] 3 All E. R. 289, C. A.

3905. *Add. Annotations :*—**Apld.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652. **Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307; Stepney Corpn. *v.* Osofsky, [1936] 3 All E. R. 494.

3909. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

3929. *Add. Annotation :*—**Refd.** Stepney Corpn. *v.* Osofsky, [1936] 3 All E. R. 494.

3930. *Add. Annotations :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307; *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

3946. *Add. Annotations :*—**Consd.** Leeson *v.* Leeson, [1936] 2 K. B. 156. **Refd.** Stepney Corpn. *v.* Osofsky, [1936] 3 All E. R. 494.

3949a. —— —— ——.]—Where a creditor appropriates his debtor's payments in his books without communicating the appropriation to the debtor, the creditor is not bound by the appropriation.—LONDON & WESTMINSTER BANK *v.* BUTTON (1907), 51 Sol. Jo. 466.

3950a. ——.]—An appropriation of a payment cannot be inferred from an intention in the mind of the debtor uncommunicated to the creditor. It can only be inferred from circumstances known to both parties.

A husband & wife separated under an oral agreement by which the husband agreed to pay his wife £3 a week for the maintenance of herself & their child, B. Later the parties entered into a written agreement by which

---

valuable—Mine valueless—Formation of company by creditors—Whether conclusive as to accord & satisfaction.]—WHITLA *v.* PHAIR (1898), 12 Man. L. R. 122.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 7.—A.

3871 i. *By debtor—How far creditor bound by debtor's appropriation.*]—A creditor cannot appropriate in opposition to his debtor's expressed intention.—DASHARATHI GHOSE *v.* KHONDKAR ABDUL HANNAN (1927), I. L. R. 55 Calc. 624.—**IND.**

3871 ii. —— ——.]—KAULBACH *v.* EICHEL, [1930] 1 D. L. R. 983; 1 M. P. R. 383.—**CAN.**

3876 i. ——.]—A debt owing from a creditor to his debtor cannot be considered as a payment by debtor until he consents to the creditor retaining it & applying it on his indebtedness.—MATTHEWSON *v.* THOMPSON, [1925] 2 D. L. R. 1211; [1925] 2 W. W. R. 161; 19 Sask. L. R. 420.—**CAN.**

3876 ii. ——.]—A person who pays money has a right to apply that payment to any of the debts which he owes.—ALBERT *v.* STOREY, [1925] 4 D. L. R. 374.—**CAN.**

3884 iii. ——.]—Where a debtor, who owes more than one debt to the same creditor, makes a payment without appropriating it towards the discharge of any particular debt, the right of the creditor to appropriate the amount paid towards any of the debts due to him continues up to the time when he applies the payment towards the discharge of a particular debt.—MANISTY *v.* JAMESON (1925), I. L. R. 5 Pat. 326.—**IND.**

3884 iv. —— ——.]—Where a debtor owes several debts to one person & makes a payment to him, but has not taken advantage of the privilege conferred upon him by Indian Contract Act, s. 59, the creditor is at liberty to apply the payment in liquidation of any lawful debt actually due & payable to him from debtor.—RELU MAL *v.* AHMAD (1925), I. L. R. 7 Lah. 17.—**IND.**

3884 v. —— ——.]—FRASER *v.* LOCIE (1863), 10 Gr. 207.—**CAN.**

3884 vi. —— ——.]—DASHARATHI GHOSE *v.* KHONDKAR ABDUL HANNAN (1927), I. L. R. 55 Calc. 624.—**IND.**

m i. —— *Appropriation to interest.*]—When payments are received generally on account of a debt, which is in part interest & in part principal & no specific appropriation is made, they are treated as applicable to interest in priority to principal.—FALK *v.* HAUGH (1935), 53 C. L. R. 163; [1935] V. L. R. 238; 41 Argus L. R. 255; 9 A. L. J. 70.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 7.—C.

3913 i. —— *Mortgage debt—Or simple contract debt.*]—A mtgee., in receipt of the rents & profits of the mortgaged premises, sold goods to the mtgor., & the latter assented to the receipts being applied first in payment of the account for goods sold :—*Held :* an incumbrancer, whose rights accrued after the settlement, was not entitled to take the position that the rents & profits necessarily & irrevocably reduced the mtge. as they were received.—MITCHELL *v.* SAYLOR (1901), 21 C. L. T. 224; 1 O. L. R. 458.—**CAN.**

3913 ii. —— —— ——.]—*Re* BROWN (A BANKRUPT) (1851), 2 Gr. 111.—**CAN.**

n i. —— *Running account.*]—PETRIE (L.), LTD. *v.* FRIZZLE, [1925] 4 D. L. R. 845; *on appeal*, [1926] 2 D. L. R. 419; [1926] 1 W. W. R. 905.—**CAN.**

3926 ii. —— —— ——.]—Although, in the absence of an appropriation by the debtor, a creditor may apply a payment or part thereof towards satisfaction of a statute-barred debt, such an appropriation will not revive the residue of that debt.—BURTON *v.* HUNTER, [1931] 2 W. W. R. 301.—**CAN.**

3934 i. —— *Earlier debt.*]—Under an agreement whereby defts. undertook to pay through a co-operative assocn. for goods supplied up to a certain amount by pltf. to the assocn. :—*Held :* money paid to pltf. by the assocn. after the execution of the agreement could not be appropriated to a debt owing to pltf. under a former agreement of the same kind.—CONVILLE CO., LTD. *v.* GODDARD, [1926] 1 W. W. R. 602; 22 Alta. L. R. 41.—**CAN.**

3934 ii. —— —— *Arrears of salary—Unless appropriation by debtor to current salary.*]—*Re* LOGAN (H. J.) CO. (Ont.), [1926] 2 D. L. R. 946; 7 C. B. R. 325.—**CAN.**

q i. —— ——.]—MCGREGOR *v.* GAULIN (1848), 4 U. C. R. 378.—**CAN.**

s i. —— *Disputed debt.*]—*Semble :* where a creditor is owed more than one debt by the same debtor, but the amount of one of the debts is disputed, a payment made by the debtor generally cannot be appropriated by the creditor to the disputed debt.—JONES *v.* UZELMAN, [1929] 2 D. L. R. 464; 1 W. W. R. 143; 23 S. L. R. 354.—**CAN.**

t i. —— ——.]—ROSS *v.* PERRAULT (1867), 13 Gr. 206.—**CAN.**

the husband agreed to pay the wife £300 by weekly instalments of £2 a week in respect of certain premises which belonged to them jointly. The agreement provided that on the failure of the husband to pay any instalment he became liable to pay forthwith the balance of the £300 then due. The husband afterwards sent to his wife £5 each week under the two agreements. The wife subsequently obtained a decree *nisi* for the dissolution of her marriage, & the husband after the lapse of a week, on the advice of his counsel in the Divorce Ct., sent each week to the wife £3 only. The wife sued the husband to recover £92 as being due under the written agreement in respect of the purchase of the house. The husband alleged that he had appropriated the £3 which he sent each week as to £2 in respect of the weekly instalments due under the written agreement, & as to £1 for the maintenance of the child B., & he alleged that he sent a slip to his wife with the first payment of £3 containing the words: "This is for the house & B." The wife, however, denied having received the slip. No notice to produce it was given. The county ct. judge, however, admitted secondary evidence of its contents, & held that, even if the slip was not sent, the husband had appropriated the payments to the weekly instalments due in respect of the house. On appeal by the wife it was admitted that secondary evidence as to the contents of the slip was inadmissible:—*Held:* there must be something more than an intention of the debtor uncommunicated to the creditor to amount to an appropriation by the debtor; there must be a notice, express or implied, to the creditor to inform him of the appropriation. There was no evidence upon which the county ct. judge could find that there had been an appropriation by the debtor.—LEESON *v.* LEESON, [1936] 2 K. B. 156; [1936] 2 All E. R. 133; 105 L. J. K. B. 362; 154 L. T. 710; 52 T. L. R. 461; 80 Sol. Jo. 424, C. A.

Annotation:—**Consd.** Stepney Corpn. *v.* Osofsky, [1936] 3 All E. R. 494.

3961. *Add. Annotations:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307; Holder *v.* I. R. Comrs. (1932), 48 T. L. R. 365; Philadelphia National Bank *v.* Price, [1937] 3 All E. R. 391; Taylor *v.* Taylor, [1938] 1 K. B. 320.

3977. *Add. Annotations:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307; Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

3990. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

3998. *Add. Annotation:*—**Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

4000. *Add. Annotations:*—**Refd.** *Re* Wait, [1927] 1 Ch. 606; Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432; Taylor *v.* Taylor, [1937] 3 All E. R. 571.

4001. *Add. Annotation:*—**Refd.** *Re* Wheeler & Co., Trustee *v.* Kirby & Grainger (1933), 102 L. J. Ch. 341.

4003. *Add. Annotation:*—**Refd.** Madras Official Assignee *v.* Krishnaji Bhat (1933), 49 T. L. R. 432.

4008. *Add. Annotation:*—**Refd.** Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

4009. *Add. Annotation:*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

4017. *Add. Annotation:*—**Refd.** Smith *v.* Wood, [1929] 1 Ch. 14.

4048. *Add. Annotation:*—**Refd.** Lind *v.* Johnson, [1937] 4 All E. R. 201.

4059a. ——.]—FEENEY *v.* FIRBECK MAIN COLLIERIES, LTD., [1926] 2 K. B. 218; 95 L. J. K. B. 689; 134 L. T. 745; 19 B. W. C. C. 33, C. A.

4077. *Add. Annotations:*—**Refd.** Saunders *v.* Young's Brewery (1925), 42 T. L. R. 136; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

4095a. Loan by director to private company—Part of loan remitted—Agreement that full loan provable in winding up.]—The managing director of a private co. lent to the co. £3,400. In Mar. 1935, he agreed that of that sum £1,612 6*s.* 8*d.*, being the amount of the loss incurred in the first trading year of the co., should only be repaid to him by the co. while it was a going concern out of profits, but, if the co. went into liquidation, the whole debt was to rank on a par with the other unsecured creditors of the co. The agreement was set out in a minute of a board meeting & accounts drawn up by the accountants to give effect to that minute

PART VIII. SECT. 3, SUB-SECT. 7.—E. (a).

3961 i. *Statement of rule.*]—SCOTT & PEDEN *v.* ELLIOTT, [1926] 2 D. L. R. 504; [1926] 2 W. W. R. 154; 37 B. C. R. 143.—**CAN.**

3961 ii. ——.]—The rule in *Clayton's Case* is at best merely a presumption.—CANADIAN BANK OF COMMERCE *v.* SMITH (1911), 17 W. L. R. 135; 3 Alta. L. R. 299.—**CAN.**

3962 v. —— ——.]—CANADIAN BANK OF COMMERCE *v.* SMITH (1911), 17 W. L. R. 135; 3 Alta. L. R. 299.—**CAN.**

3962 vi. —— ——.]—LAKE *v.* CROSBIE (1911), 9 Nfld. L. R. 490.—**NFLD.**

3962 vii. —— ——.]—A debtor has the right to apply a payment in any way he thinks fit, & if there are several debts he has a right to say to which of the debts the payment shall be applied. When there is no appropriation by the debtor, the creditor has the right to appropriate, & it seems that he may appropriate a payment to an unguaranteed debt. If neither the debtor nor the creditor makes any appropriation, the law appropriates the payment upon equitable principles, & *primâ facie* to the earliest debt.—NASH-SIMINGTON CO., LTD. *v.* CALDWELL, [1931] 1 W. W. R. 183.—**CAN.**

a i. ——.]—PARADIS & SONS *v.* SILESSE, [1931] 3 M. P. R. 565.—**CAN.**

PART VIII. SECT. 3. SUB-SECT. 8.

g i. —— *Defence to action on I.O.U.*]—A. & B. were in partnership for some years up to 1907. In that year the partnership was dissolved, &, as the result of an arbn. for the settlement of matters outstanding between the partners, A. paid B. £2,000. Thereafter the two were on unfriendly terms, & B. was in poor circumstances. B. died in 1923, & A. in 1927. In 1928, when the arbiter & the clerk to the arbn. were both dead, & the papers relating to it could not be traced, B.'s executrix found, lying among some papers of no value, an I.O.U. for £200, dated 1897, granted by A. in favour of B. She thereupon brought an action against A.'s trustees for payment of the sum in the I.O.U.:—*Held:* in order to establish that the debt had been discharged, it was sufficient to prove a state of facts inconsistent with its continued subsistence, &, particularly in view of the creditor's delay in asserting the claim, defenders had discharged that onus.—M'KENZIE'S EXECUTRIX *v.* MORRISON'S TRUSTEES, [1930] S. C. 830.—**SCOT.**

PART VIII. SECT. 3, SUB-SECT. 9.—A. (a).

4028 iv. ——.]—ONTARIO EQUITABLE LAW & ACCIDENT INSURANCE CO. *v.* BAKER, [1926] 2 D. L. R. 289; [1926] S. C. R. 297.—**CAN.**

4050 iii. ——.]—GJESDAL *v.* BERGH, [1935] 3 W. W. R. 296.—**CAN.**

were signed by the managing director & his co-director. On the assets side of the account there was a statement with respect to general profit & loss account "Net loss. £1,612 6*s*. 8*d*. less T.S. loan fund £1,612 6*s*. 8*d*.," & nothing was carried into the assets column in respect of the debit balance of the profit & loss account. The liquidator postponed the director's proof as to this sum of £1,612 6*s*. 8*d*. until all creditors had been paid in full:—*Held:* in the absence of proof that any creditor had acted to his own detriment after having seen the balance sheet, there was no case of estoppel & the managing director was entitled to prove for the sum in question in competition with the ordinary creditors.—*Re* GENERAL PRESERVING CO., LTD., [1937] 1 All E. R. 693; 81 Sol. Jo. 237.

4119. *Add. Annotation:*—**Consd.** *Re* Porter (William) & Co., [1937) 2 All E. R. 361.

4130. *Add. Annotation:*—**Refd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

4132. *Add. Annotation:*—**Refd.** Josselson *v.* Borst, [1938] 1 K. B. 723.

4133. *Add. Annotation:*—*As to* (2) **Consd.** Smith *v.* Wood, [1929] 1 Ch. 14.

4193. *Add. Annotation:*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

4203. *Add. Annotation:*—**Folld.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

4285. *Add. Annotations:*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111; Humphery *v.* Wilson (1929), 141 L. T. 469.

4317a. ——.]—(1) One bond, be it of record or not, cannot merge another bond.—HIGGENS. CASE (1605), 6 Co. Rep. 44 b; 77 E. R. 320'

Part IX.—Constructive Contracts.

4325. *Add. Annotation:*—**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

4340a. Double payment by bank to client's order.]—Pltfs., a London bank, on telegraphic instructions from a bank in Warsaw, which was acting for a Polish co., paid to defts. £2,000 on account of a sum of over £4,000 owed by the Polish co. to defts. The Warsaw bank then wrote a letter of confirmation, but pltfs. mistook the letter for a direction to pay defts. a further sum of £2,000 & did so. Afterwards the Polish co., believing the sum paid off to be £2,000, told the Warsaw bank to arrange for the payment of another £1,000, but the instructions accordingly sent by the Warsaw bank to pltfs. were lost in transmission & were never received. On discovering the facts pltfs. were willing to credit defts. with the above-mentioned £1,000 & brought an action to recover £1,000, the balance of the £2,000, as money paid under a mistake of fact:—*Held:* (1) there was no such mistake of fact as entitled pltfs. to maintain that the amount claimed was money paid to their use, & the action failed; (2) pltfs. had been negligent as between themselves & defts.—BARCLAY & CO., LTD. *v.* MALCOLM & CO. (1925), 133 L. T. 512; 41 T. L. R. 518; 69 Sol. Jo. 675.

4341. *Add. Annotation:*—**Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

4351. *Add. Annotation:*—**Consd.** *Re* Chetwynd's Estate, Dunn's Trust, Ltd. *v.* Brown, [1937] 3 All E. R. 530.

4358a. Payment of rates on tithe rentcharge by occupier—Demand after Tithe Act, 1891 (c. 8).]—At the date of the passing of the above Act rates upon a tithe rentcharge were due & in arrears, owing to the omission of the overseers to demand payment thereof from the occupiers of the land out of which the tithe rentcharge issued. The tithe rentcharge for the period in respect of which the rates in arrear were due had been paid to the tithe-owner in full. After the passing of the Act, the overseers, purporting to act under Tithe Act of 1837 (c. 69), s. 8, demanded payment of the arrears of rates from the occupiers of the land, who paid them, & were allowed the amount thereof by their landlord, the owner of the land, out of the half-year's rent next becoming due. Subsequently thereto a half-year's tithe rentcharge became payable by the landowner. The landowner claimed to deduct therefrom the amount which he had allowed to the occupiers out of their rent in respect of the arrears of rates paid

---

PART VIII. SECT. 4, SUB-SECT. 5.—A.

4134 ii. ——.]—MOODIE *v.* MACKENZIE, [1925] 1 D. L. R. 801.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 7.—A. (a).

4200 iii. ——.]—Where several debtors are bound jointly, a release given to one discharges the others unless the creditor, when granting the release, reserves his right against them; this rule applies as much to a judgment debt as to any other obligation.—CASTLE *v.* BILSKY (1921), 50 O. L. R. 536.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 9.

sr. *On security for debt.*]—The release of a debt operates as a release of any security held in respect of it.—A.-G. *v.* SMITH & FRANCE, [1925] N. Z. L. R. 217.—**N.Z.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (a).

4282 i. *Whether court will give effect to intention—Gathered from instrument.*]—MCKEIGAN *v.* MCQUEEN, [1931] 2 D. L. R. 993; 3 M. P. R. 235.—**CAN.**

PART IX. SECT. 1, SUB SECT. 1.—A.

4325 i. *General rule.*]—WILSON *v.* MASON, LAMB *v.* WILSON (1876), 38 U. C. R. 14.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—C.

st. *Payment to enable fulfilment of contract.*]—Where a timber contract contained the terms that Govt. & all other dues should be paid by the contractor, & deft. co. reserved the right to retain Govt. dues from the contractor until clearance had been furnished:—*Held:* money paid by deft. co. to furnish the clearance was paid on behalf of the contractor to fulfil his contract & was chargeable against him.—KEANE *v.* CANADIAN PACIFIC RY. CO. (1924), 34 B. C. R. 127.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—D. (a).

4341 iii. ——.]—A volunteer cannot recover over the debt of another paid without request of such other & without any legal obligation on his part.—MARTELL *v.* WHITTEM (1867), 5 Nfld. L. R. 200.—**NFLD.**

4341 iv. ——.]—The principle that a payment made by one person for the benefit of another cannot be recovered from the latter, no matter how clearly he has benefited therefrom, if he had not expressly or impliedly requested the making of it or has not elected to adopt its benefit; & that the mere fact that he accepted the benefit of that which he had no opportunity to refuse is not evidence of his adoption or ratification was applied herein in an action brought to recover amounts paid for freight & for the feeding in transit of cattle shipped by deft.—MCKISSICK ALCORN, MAGNUS & CO. *v.* HALL (Sask.), [1929] 1 D. L. R. 48; [1928] 3 W. W. R. 509.—**CAN.**

by them :—*Held :* having regard to the Act of 1891, s. 6, the payment of the arrears of rates by the occupiers was a voluntary payment, & they were not entitled to deduct the amount so paid from their rent consequently the landowner was not entitled to deduct the amount which he had allowed to the occupiers from the tithe rentcharge due by him.—*Re* TITHE ACT, 1891, ROBERTS *v.* POTTS, JONES *v.* COOKE, [1894] 1 Q. B. 213; 58 J. P. 333; 42 W. R. 294; 9 R. 230; *sub nom.* JONES *v.* POTTS, JONES *v.* COOKE, 63 L. J. Q. B. 381; 69 L. T. 849; 10 T. L. R. 111, C. A.

Annotation :—**Distd.** Lewis *v.* Hughes, [1916] 1 K. B. 831.

4359. For "—— **Payment to clear off maritime lien—No request from mortgagees**" read "**Payment to clear off maritime lien—No request from mortgagees.**"

Add. Annotations :—**Refd.** The St. George, [1926] P. 217; The Goulandris, [1927] P. 182; The Stream Fisher, [1927] P. 73.

4360. For "—— **Premiums on husband's life policy paid by wife—First life interest under settlement of policies taken by wife**" read "**Premiums on husband's life-policies paid by wife—First life interest under settlement of policies taken by wife.**"

4367a. Advance to company—Resolution requesting advance invalid.]—*Re* CLEADON TRUST, LTD., [1938] 4 All E. R. 518; 55 T. L. R. 154; 82 Sol. Jo. 1030, C. A.

4372. *Add. Annotation :*—**Refd.** Christoforides *v.* Terry, [1924] A. C. 566.

4377a. Double payment by bank.]—BARCLAY & CO., LTD. *v.* MALCOLM & CO., No. 4340a, *ante*.

4379. *Add. Annotations :*—**Consd.** Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534. **Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

4382. *Add. Annotation :*—**Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

4385. *Add. Annotations :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

4390. *Add. Annotation :*—**Consd.** Smith, Hogg *v.* Bamberger, [1929] 1 K. B. 150.

4400. *Add. Annotation :*—*As to* (1) **Refd.** Eaton *v.* Donegal Tweed Co. (1935), 79 Sol. Jo. 342.

4410. *Add. Annotation :*—*As to* (2) **Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

4418. *Add. Annotation :*—**Dbtd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

4429. *Add. Annotation :*—*As to* (1) **Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

4432. *Add. Annotation :*—**Consd.** *Re* Chetwynd's Estate, Dunn's Trust, Ltd. *v.* Brown, [1937] 3 All E. R. 530.

4435. *Add. Annotations :*—**Consd.** The Chekiang, [1925] P. 80. **Apprvd.** Admiralty Comrs. *v.* Chekiang (Owners), [1926] A. C. 637.

4437. *Add. Annotation :*—**Overd.** Spencer *v.* Ash worth Partington, [1925] 1 K. B. 589.

4438. After this case add "*See, further*, COMPANIES, Vol. IX., pp. 328–331."

4440a. Unenforceable promissory note to moneylender paid by surety—Promise by debtor to repay surety.]—On Oct. 24, 1930, S. signed a joint & several promissory note. The other signatory to the note was the testator, C. The terms of the note were to pay to a moneylending co. or order "the sum of £156 for value received by five equal consecutive monthly instalments of £6, the first of such monthly payments to commence & become due & payable on Nov. 24, 1930, & the balance of £126 to become due & payable on Apr. 24, 1931." There was a default clause under which the whole of the principal became payable on default of payment of the first or any of the succeeding £6 instalments. C., who was the principal debtor, paid the first instalment but omitted to pay any of the subsequent instalments. The consequence was that S., after making some investigations, paid on Jan. 27, 1931, the sum of £138 in full discharge of the note, which was then handed back to him. The promissory note did not comply with the requirements of sect. 6 of Moneylenders Act, 1927 (c. 21), & therefore could not have been enforced by the moneylenders against either C. or S. Neither of them, however, was aware of that defect or had any doubt about his liability under the note. C. died in 1935, but no part of the debt was paid by him during his lifetime to S. BENNETT, J., held that S. was entitled to rank as a creditor against the estate of C. for the sum of £138. On appeal by the pltfs. in the administration action :—*Held :* S. was entitled to prove as a creditor against the estate of C. for the money paid by him to the moneylenders, notwithstanding that the promissory note did not comply with the requirements of sect. of the Moneylenders Act, 1927 (c. 21), since the only request which could be implied by law as a term of the transaction was merely one by C. to S. to pay, if C. did not, & not "to pay this sum or so much of it (if any) as is not made irrecoverable by the Moneylenders Act."—*Re* CHETWYND'S ESTATE, DUNN'S TRUST, LTD. *v.* BROWN, [1938] Ch. 13; [1937] 3 All E. R. 530; 106 L. J. Ch. 330; 157 L. T. 125; 53 T. L. R. 917; 81 Sol. Jo. 626, C. A.

4444. *Add. Annotation :*—**Refd.** *Re* Cleadon Trust, Ltd., [1938] Ch. 660.

4455. *Add. Annotation :*—**Refd.** Hillen *v.* I. C. I. (Alkali), Ltd., [1934] 1 K. B. 455.

4471. *Add. Annotation :*—*Generally*, **Refd.** *Re* Debtor (No. 627 of 1936), [1937] Ch. 156.

4472. *Add. Annotation :*—**Refd.** Hay *v.* Carter, [1935] Ch. 397.

4478. *Add. Annotations :*—**Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1. **Refd.** *Re* Mason (1928), 97 L. J. Ch. 321; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

PART IX. SECT. 1, SUB-SECT. 2.—D.

4441 i. *Action defended at request of defendant.*]—SPLAN *v.* BARRETT-LENNARD, [1931] 2 D. L. R. 857.—CAN.

PART IX. SECT. 2, SUB-SECT. 1.—A.

sv. *Effect of arrangement between co-contractors.*]—Where co-contractors arrange between themselves that one of them, although liable to their creditor, is not to be called upon by the others to pay any portion of the debt, no action lies against him for contribution with respect to payments made by one of said others to the creditor.—STAINSLEIGH *v.* FISHER (Alta.), [1928] 3 D. L. R. 136; [1928] 2 W. W. R. 205.—CAN.

PART IX. SECT. 2, SUB-SECT. 1.

m i. ——.]—BARNHART *v.* ROBERTSON (1842), 6 O. S. 542.—CAN.

4487. *Add. Annotations :*—**Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92. **Refd.** Holt *v.* Markham, [1923] 1 K. B. 504; Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Bowling *v.* Cox, [1926] A. C. 751; Anchor Donaldson *v.* Crossland, [1929] A. C. 297; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

4520. *Add. Annotation :*—**Refd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142.

4523. *Add. Annotation :*—**Distd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

4534. *Add. Annotations :*—**Apld.** Holt *v.* Markham, [1923] 1 K. B. 504. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

4534a. —— ——.]—By certain military regulations officers in the Royal Air Force were on demobilisation entitled to a gratuity varying in amount according to circumstances. If their names were on a certain list, called the Emergency List, they were only entitled to a gratuity at a lower rate than if they were not on that list. Deft. was a demobilised officer of the Royal Air Force. Pltfs., who acted as Govt.'s agents for the payment (*inter alia*) of gratuities to demobilised officers of that force, in ignorance of the fact that deft. was on the Emergency List, but also in forgetfulness of the regulation which provided that the gratuities of officers on the Emergency List should be paid at the lower rate, & not appreciating the materiality of an officer being on that list, paid deft. his gratuity at the higher rate to which he would have been entitled if he had not been on that list. More than a year afterwards, & before notice of the mistake, deft. spent the money. In an action to recover back the excess payment as money paid under a mistake of fact; —*Held :* pltfs. could not recover on the grounds that pltfs.' mistake was not a mistake of fact causing the payment; & that as deft. had been led by pltfs.' conduct to believe that he might treat the money as his own, & in that belief had altered his position by spending it, pltfs. were estopped from alleging that it was paid under a mistake.—HOLT *v.* MARKHAM, [1923] 1 K. B. 504; 92 L. J. K. B. 406; 128 L. T. 719; 67 Sol. Jo. 314, C. A.

Annotations :—**Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92; Reckitt *v.* Barnett, Pembroke & Slater (1927), 44 T. L. R. 63; Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92.

4542. *Add. Annotations :*—*Generally*, **Refd.** Holt *v.* Markham, [1923] 1 K. B. 504; British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328; Jones *v.* Waring & Gillow, [1926] A. C. 670.

4558a. Goods consigned to two agents for sale—Sale by one.]—Goods were consigned to two for sale by commission; upon a dissolution of partnership the commission to sell was assumed by one :—*Held :* he, having sold, was rightly sued for money had & received, which action could not have been maintained against both, although an action for not accounting would have lain against both.—WELLS *v.* ROSS (1817), 7 Taunt. 403; 129 E. R. 161.

4563. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

4569a. Damages recovered by holder of bill of exchange against sheriff—Bill held in trust for plaintiff.]—Where the holder of a bill of exchange, who held it in trust for pltf., sued the drawer, &, pending that suit, became bkpt., & his assignees afterwards brought an action against the drawer in bkpt.'s name, in which action, the sheriff having been guilty of an escape on mesne process, the assignees recovered against the sheriff in an action for the escape, damages to the amount of the bill :—*Held :* pltf. might maintain money had & received against the assignees for the damages so recovered, allowing to them the costs & expenses.—RANDOLL *v.* BELL (1813), 1 M. & S. 714; 105 E. R. 266.

Annotation :—**Distd.** Neale *v.* Reid (1823), 1 B. & C. 657.

4578. *Add. Annotation :*— **Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

4578a. Solicitor acting as banker—Cheque paid out of funds belonging to plaintiff—To party indebted to plaintiff.]—Pltfs. were a limited co. formed to amalgamate certain firms & cos. controlled by F., two of the directors of pltfs. being F. & deft. T. The latter was a member of the firm of T. & C., who were the solrs. of pltfs. & also of F. Pltfs. had moneys standing to their credit in the books of T. & C., & F. also had a running account with T. & C. During a period when F. was in debt to pltfs. he drew for his own purposes on the moneys standing to the credit of pltfs. in the books of T. & C. At the time of these

---

PART IX. SECT. 3, SUB-SECT. 2.—A.

sw. *Company & municipality.*]—A suit by a co. for the recovery of a sum wrongfully collected by a municipality under Madras Municipalities Act, V. of 1920, s. 92, is essentially an equitable action for "money had & received" & not a suit for "damages & compensation."—DINDIGUL MUNICIPAL COUNCIL *v.* BOMBAY CO. (1928), I. L. R. 52 Mad. 207.—IND.

PART IX. SECT. 3, SUB-SECT. 3.—C.

4556 i. *General rule.*]—The corpn. by one resolution directed that $300 should be granted to each councillor, deft. being one, to be by them expended on the roads; & by another, that $100 should be placed to the credit of each councillor, to be expended by them on the roads & bridges in their respective divisions. This was in accordance with an established practice, by which the councillors superintended the laying out of moneys in their respective divisions. Deft. granted several orders on the treasurer to different persons as for "work done," which were paid, & it appeared that such work, though contracted for, had not been performed. There was no evidence, however, of any fraud or collusion on deft.'s part, or of any gain to himself, except the usual charge to the corpn. of the commission on such moneys as were expended :—*Held :* there could be no recovery on the common counts, for deft. had received no money.—CHATHAM TOWNSHIP CORPN. *v.* HOUSTON (1868), 27 U. C. R. 550.—CAN.

PART IX. SECT. 3, SUB-SECT. 3.—D.

sx. *General rule.*]—Deft. having sold a cargo & remitted the proceeds to C. & S., an action was brought by pltfs. on the common counts as for money received to their use :—*Held :* after the sale deft. held the proceeds for the benefit of pltfs., & in remitting them to C. & S. did so in his own wrong, & the verdict for deft. should be set aside.—MORTON *v.* MCLEOD (1874), 10 N. S. R. (1 R. & C.) 71.—CAN.

sy. *Money paid to revenue officer—Representing value of seizure & fine—Action by informer for share.*]—WRIGHT *v.* CURLESS (1889), 21 N. S. R. 232.—CAN.

transactions deft. T. was not aware of F.'s indebtedness to pltfs., but the ct. found that deft. T. knew enough of F.'s methods to be put on inquiry as to what F. was doing. Subsequently pltfs. brought the present action against T. in respect of these moneys on the ground of conversion & for money had & received & for breach of duty & negligence as one of their directors & as their solr. Deft. T. pleaded acquiescence by pltfs.:—*Held:* deft. T. was liable in conversion, & even if there had been acquiescence he was liable for money had & received, & pltfs. were entitled to recover.—FENTON TEXTILE ASSOCN., LTD. *v.* THOMAS (1929), 45 T. L. R. 264, C. A.

4582. *Add. Annotation:*—**Refd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

4583. *Add. Annotations:*—**Refd.** Underwood *v.* Bank of Liverpool & Martins, Same *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

4587. *Add. Annotation:*—**Refd.** Brocklebank *v.* R., [1925] 1 K. B. 52.

4590a. —— —— **To bank named by principal—Money returned by bank to agent.**]— Pltfs. in London sold to a New York co. a quantity of Belgian francs to be delivered to defts. as the purchasers' agents in Brussels on Dec. 31, at a price to be paid in dollars on the same day in New York, & the purchasers instructed defts. to pay the francs when received to the C. Bank. On Dec. 30 bkpcy. proceedings were commenced against the purchasers in New York & a receiver was appointed, & on the same day the purchasers cabled to pltfs. not to pay the francs to defts., as they, the purchasers, were unable to complete their contract. Before that cable arrived pltfs. had already paid the francs to defts., & defts. had paid them to the C. Bank. Pltfs. then requested the C. Bank to return them, & the C. Bank returned them to defts., with an explanation that they did so for the purpose of cancelling defts.' payment to them. In these circumstances defts. claimed that, the money having been returned to them, they were entitled to hold it on behalf of their principals, & refused to pay it over to pltfs., who brought an action to recover the francs as being money had & received by defts. to their use:—*Held:* (1) as at the time pltfs. paid the francs to defts. the purchasers had already repudiated their contract, although pltfs. did not know that fact & consequently had not accepted the repudiation, pltfs. were under no legal obligation to pay, &, having paid under a mistaken belief of legal liability, they would have been entitled to recover the money back if they had discovered their mistake before defts. had paid it to the C. Bank; (2) the effect of the money being returned by the C. Bank was to restore pltfs. to the same position as that which they occupied before defts paid it away, & that position was unaffected by the fact that before redemand of the money by pltfs. the trustee in bkpcy. of the purchasers had directed defts. not to part with it, & defts. in compliance with that direction had credited the purchasers with it in their books; (3) defts. were bound to repay it to pltfs.—BRITISH AMERICAN CONTINENTAL BANK *v.* BRITISH BANK FOR FOREIGN TRADE, [1926] 1 K. B. 328; 95 L. J. K. B. 326; 134 L. T. 472; 42 T. L. R. 202, C. A.

4591. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

4597. *Add. Annotations:*—**Refd.** Abram S.S. Co. *v.* Westville Shipping Co., [1923] A. C. 773; Rowland *v.* Divall, [1923] 2 K. B. 500.

4598. *Add. Annotation:*—**Refd.** Abram S.S. Co. *v.* Westville Shipping Co., [1923] A. C. 773.

4600. *Add. Annotation:*—**Consd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

4617. *Add. Annotation:*—**Refd.** Eaton *v.* Donegal Tweed Co. (1935), 79 Sol. Jo. 342.

4623. *Add. Annotation:*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

4635. *Add. Annotations:*—**Consd.** Brocklebank *v.* R., [1924] 1 K. B. 647; Morgan *v.* Ashcroft, [1937] 3 All E. R. 92. **Refd.** Spanish Govt. *v.* North of England S.S. Co. (1938), 54 T. L. R. 852.

4639. *Add. Annotation:*—**Consd.** China Navigation Co., Ltd. *v.* A.-G. (1932), 48 T. L. R. 375.

4640. *Add. Annotations:*—**Consd.** Brocklebank *v.* R., [1925] 1 K. B. 52; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

4644. *Add. Annotations:*—**Apld.** Marshal Shipping Co. *v.* Board of Trade, [1923] 2 K. B. 343. **Consd.** Brocklebank *v.* R., [1925] 1 K. B. 52; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

4647. *Add. Annotation:*—**Refd.** Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

4649. After this case add "**Payment as condition of licence to sell ship to foreigner.**]—*See* CONSTITUTIONAL LAW, Nos. 526a–526d, *ante*."

PART IX. SECT. 3, SUB-SECT. 3.—H.

4596 i. *General rule.*]—*Re* CAIRNS & MCNAIRN, [1927] 2 D. L. R. 444; 60 O. L. R. 194.—CAN.

PART IX. SECT. 3, SUB-SECT. 4.—B. (a).

4a. *Money paid under decree—Decree unreversed.*]—Money recovered under a decree cannot be recovered back in a fresh suit while the decree remains in force; but if the decree has been reversed or superseded the money paid is recoverable.—NAGANNA *v.* VENKATAPPAYYA (1923), I. L. R. 46 Mad. 895.—IND.

4d. *Money paid to obtain possession of goods.*]—WILSON *v.* MASON, LAMB *v.* WILSON (1876), 38 U. C. R. 14.—CAN.

PART IX. SECT. 3, SUB-SECT. 4.—B. (b).

m i. ——.]—RICHARDS *v.* TAYLOR (1896), 28 N. S. R. (16 R. & G.) 311.—CAN.

PART IX. SECT. 3, SUB-SECT. 4.—B. (c).

4616 ii. ——.]—Pltf.'s action against deft. was dismissed with costs. Pltf. appealed. After service of notice of appeal deft. threatened to distrain for the costs, & pltf.'s solr. paid the amount to deft.'s solr. The appeal was allowed & deft. ordered to pay the costs of the action & of the appeal. Neither deft. nor his solr. would refund the amount paid for the costs:—*Held:* the money could be recovered from deft. as money received to pltf.'s use.—BURKE *v.* BEATTY & WHITE, [1928] I. R. 91.—IR.

PART IX. SECT. 3, SUB-SECT. 4.—B. (f).

se. *Excessive tolls for electric light—Threat to cut off supply.*]—LEWIS *v.* ANDOVER & PERTH ELEC. L. COMRS. (N. B.), [1929] 1 D. L. R. 34.—CAN.

4650. *Add. Annotation :*—**Refd.** Catton *v.* Ashwell & Nesbit, [1928] Ch. 484.

4676a. ——.]—Pltf. cannot abandon his claim in tort & still pursue his claim for money had & received which depends upon the alleged tort.—HARDIE & LANE, LTD. *v.* CHILTERN, [1928] 1 K. B. 663; 96 L. J. K. B. 1040; 138 L. T. 14; 43 T. L. R. 709; 71 Sol. Jo. 664, C. A.

Annotation :—**Refd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

4679. *Add. Annotations :*—**Consd.** Ellis *v.* Stenning & Son, Ltd., [1932] 2 Ch. 81; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

4691. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

4700. *Add. Annotation :*—**Refd.** Woollatt *v.* Stanley (1928), 138 L. T. 620.

4710. *Add. Annotation :*—**Refd.** *Re* Wheeler & Co. Trustee *v.* Kirby & Grainger (1933), 102 L. J. Ch. 341.

4713. *Add. Annotations :*—*As to* (2) **Refd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232; Freshwater *v.* Bubner Rayon Co., [1933] Ch. 162.

4716. *Add. Annotations :*—**Refd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

4725a. —— **Conversion by creditor of bankrupt—Proceeds paid to defendant.**]—A. after committing an act of bkpcy. in order to procure his discharge from an arrest at the suit of B. draws & indorses to B. a bill of exchange, which C. accepts in expectation of receiving goods of A.'s into his hands. C. receives the goods, sells them, & pays the amount of the bill to B.; the assignees of A. cannot maintain an action against B. for this money as money had & received to their use.—WALLER *v.* DRAKEFORD (1816), 1 Stark. 481; 171 E. R. 536.

4731. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

4742. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

4751. *Add. Annotations :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612; *Re* Mason, [1929] 1 Ch. 1; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

4766a. ——.]—An account stated may take the form only of a mere acknowledgment of a debt; in that case though it amounts to a promise from which the existence of a debt may be inferred that inference may be rebutted, & then there is no consideration & no binding promise. But there is another form in which the account stated includes items on both sides, & the parties have agreed that there shall be a set-off & that only the balance shall be paid; in that case there is a promise for good consideration to pay the balance even though some of the debts were barred by limitation. The account stated in the present case being in the latter form, it was unnecessary to decide whether the implied promise was "a promise made in writing" so as to be, by sect. 25 (3) of Indian Contract Act, 1872 (which applied locally), an effective agreement to pay statute barred debts although it was made without consideration.—SIQUEIRA *v.* NORONHA, [1934] A. C. 332; 103 L. J. P. C. 63; 151 L. T. 6, P. C.

Annotation :—**Consd.** Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

4769. *Add. Annotation :*—**Refd.** Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

4770a. ——.]—PRESTON *v.* STRUTTON (1792), 1 Anst. 50; 145 E. R. 797.

Annotation :—**Consd.** Rawson *v.* Samuel (1841), Cr. & Ph. 161.

4824. *Add. Annotation :*—**Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

4824a. Debt owing by directors—Account stated in balance-sheet signed by directors.]—Defts., who were directors of & were indebted to pltf. co., agreed to terms of settlement by which (*inter alia*) the first deft. should resign his office as governing director, that the co. should appoint independent persons as permanent directors, that the two defts. with three others, should be ordinary directors, that the co.'s articles should be altered so as to provide that the defts. should have no control over, & have no right to vote in respect of, their debts, that an accountant should certify the amount of defts.' liability, that the dividends payable to defts. should be retained by the co. on account of those debts, which, however, were not to be called in for twenty years, & that these terms should be embodied in an agreement under seal & sanctioned by special resolutions of the co. Special resolutions embodying that agreement were thereafter passed which provided also that all the ordinary directors should

---

PART IX. SECT. 3, SUB-SECT. 4.—B. (b).

4654 i. *Cause of action known to defendant.*]—BANK OF MONTREAL *v.* WEISDEPP, [1917] 2 W. W. R. 615; 24 B. C. R. 73, 81; 34 D. L. R. 26.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—B. (i).

sf. *Payment made to clear title.*]—Pltf., believing that certain taxes imposed upon his land by the council of the municipality in which he lived were illegally imposed under Local Improvement Act, declined to pay them but subsequently paid them under protest to rid his land of the burden of the taxes, which he was obliged to do in order to obtain a loan upon mtge. of the land :—*Held :* pltf. was under such compulsion as prevented the payment from operating as a voluntary payment & he was entitled to recover the money paid.—PILLSWORTH *v.* COBOURG, [1930] 4 D. L. R. 757; 65 O. L. R. 541.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—C. (i).

sg. *Proceeds of sale of crop—Agreement for delivery of part of crops.*]—DUCAT *v.* SWEENEY (1839), 2 Ont. Dig. 4259.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—E.

sk. *Purpose illegal—Purpose partly fulfilled.*]—If A. gives to another as his agent a cheque to make a purchase forbidden by law, & the agent makes the purchase & indorses the cheque to the vendor, A. cannot recover from the agent an alleged balance unaccounted for of the amount of the cheque as money paid to the agent for A.'s use. While the money might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON *v.* FARLEY, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 1.

4764 vii. ——.]—An account stated may be constituted by an admission of existing indebtedness, although there is no definite balance struck on mutual accounts.—CANADIAN FERTILIZER CO. *v.* MARITIME UNITED FARMERS CO-OPERATIVE, [1931] 4 M. P. R. 106.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 5.—B. (a).

m. *Casual observation to third party—Insufficient.*]—CURTIS *v.* FLINDALL (1847), 3 U. C. R. 323.—**CAN.**

have no right at directors' meetings to vote in respect of the co.'s financial affairs, & that with regard to other business they were to have only such rights of voting & control over the management as might be conferred upon them by the permanent directors. An accountant prepared a balance-sheet which showed the amount due to the co. by each of the two defts., & that balance-sheet, which was signed thus: "Peter Shaw, John Shaw, Directors," was adopted at a general meeting of the co. at which defts. were present. The agreement under seal containing the above terms of settlement was sealed by the co., but defts. having declined to execute it, as they objected to certain of its terms, the permanent directors, at a meeting to which none of the ordinary directors was summoned, resolved that instructions be given for writs to be issued against defts. for the recovery of the debts owing by them, & although by a resolution passed subsequently by the shareholders at an extraordinary meeting of the co. the chairman was directed to discontinue proceedings, a writ was issued against each deft. claming the amount as "found & admitted by deft. to be due to pltfs. as shown by pltfs.' balance-sheet." To these actions defts. pleaded that they had been brought without proper authority, & they denied that the alleged or any account was stated between pltfs. & them:—*Held:* as to the cause of action relied upon, the balance-sheet was not an account stated involving a fresh promise by defts. to pay the amounts debited to them therein, inasmuch as it was signed by them not *animo contrahendi* but in performance of their duties as directors.—SHAW (JOHN) & SONS (SALFORD), LTD. *v.* SHAW, [1935] 2 K. B. 113; 104 L. J. K. B. 549; 153 L. T. 245, C. A.

4853a. ——.]—The H. Co. entered into an agreement for reinsuring marine risks with the L. Co. Later, it was voluntarily wound up, & B., the liquidator, agreed the L. Co.'s claim for a large sum, & paid dividends in respect of the claim. Following the practice of the co. B., notwithstanding the provisions of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1903 (c. 41), treated the agreement & the claim under it as valid. After the dissolution of the H. Co. he was advised that he should have disallowed the claim, & the dissolution was annulled, but an action to recover the money was dismissed, as no mistake of fact by B. was proved. On a misfeasance summons by a creditor of the co.:—*Held:* where an agreement is wholly void, items alleged to be due in respect of it are not a proper basis for an action on an account stated, & that a proof based on an account stated in such circumstances must be rejected. —*Re* HOME & COLONIAL INSURANCE CO., LTD., [1930] 1 Ch. 102; *sub nom. Re* HOME & COLONIAL INSURANCE CO., MAY *v.* BARHAM, 99 L. J. Ch. 113; 142 L. T. 207; [1929] B. & C. R. 85.

Annotation:—**Folld.** Motor Union Insurance Co. *v.* Mannheimer Versicherungs Gesellschaft, [1933] 1 K. B. 812.

4853b. ——.]—MOTOR UNION INSURANCE CO., LTD. *v.* MANNHEIMER VERSICHERUNGS GESELLSCHAFT, [1933] 1 K. B. 812; 102 L. J. K. B. 671; 149 L. T. 94; 48 T. L. R. 522; 76 Sol. Jo. 495; 37 Com. Cas. 407; 18 Asp. M. L. C. 345.

4859. *Add. Annotations:*—**Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102; Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465; Siqueira *v.* Noronha, [1934] A. C. 332.

4868. *Add. Annotations:*—*As to* (1) **Refd.** Thompson *v.* British Medical Assocn. (New South Wales Branch), [1924] A. C. 764. *As to* (2) **Refd.** Wyatt *v.* Kreglinger & Fernau, [1933] 1 K. B. 793. *Generally*, **Refd.** Palmolive Co. (of England) *v.* Freedman (1927), 44 T. L. R. 86.

4873. *Add. Annotations:*—**Refd.** Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465; Siqueira *v.* Noronha, [1934] A. C. 332.

4878. *Add. Annotation:*—**Refd.** Shaw & Sons (Salford), Ltd. *v.* Shaw, [1935] 2 K. B. 113.

Part X.—Personal Contracts.

4907. *Add. Annotations:*—**Refd.** Public Trustee *v.* Elder, [1926] Ch. 776; National Carbonising Co. *v.* British Coal Distillation, Ltd., [1936] 2 All E. R. 1012.

4908. *Add. Annotation:*—**Refd.** National Carbonising Co. *v.* British Coal Distillation, Ltd., [1936] 2 All E. R. 1012.

4908a. ——.]—The element of personal confidence which renders a contract unassignable is not confined to cases where the purchaser relies on the personal skill of the vendor or manufacturer, or where the manufacturer relies on the personal idiosyncrasies of the buyer with regard to his requirements or with regard to his performance to the covenants other than his obligation to pay. Where the ability of the buyer to pay is the subject-matter of personal confidence, the contract is just as much taken out of assignability as where the manufacturing skill of the seller is the subject-matter of the buyer's personal confidence.

Defts. entered into a contract with H. to

PART X. SECT. 1.

sb. *Advertising agreement.*]—An agreement whereby defts. granted to J. S., carrying on business as J. S. Co., the exclusive rights of screen advertising, J. S. Co. to attend to all matters connected with the obtaining of advertising contracts, which it took in its own name:—*Held:* not assignable.—SWINSON (JOHN) CO., LTD. *v.* CRYSTAL PALACE, LTD., [1923] N. Z. L. R. 250; Gaz. L. R. 69.—N.Z.

so. *Agreement for easement—Construction & use of tramway.*]—Deft. & another in 1916 granted to S. a right to lay down a tramway through deft.'s land for the purposes of removing S.'s timber. In 1919 S. assigned his rights under the agreement to pltf. The assignment was known to deft., who raised no objection. Deft. in 1922 put gates across the tramway, removed part of the tramline, & destroyed part of a trestle bridge:—*Held:* the grant or contract was not a personal one, & pltf. had an equitable interest by assignment from S. in the easement.—MACDONALD *v.* PEDDLE, [1923] N. Z. L. R. 937.—N.Z.

supply him with 10,000 tons of coal, the delivery of which was to be extended over two years. H. had been carrying on the business of a coal merchant for some years, the business consisting of carting coals from defts.' depots round the streets of a certain district & there selling it to the working classes by weight in relatively small quantities, it being a regular practice to give short credit. H. assigned the contract to pltf., who up to the time of the assignment had no experience of the coal trade :—*Held :* there was that degree of difference between H.'s & pltf.'s knowledge of the business, which, having regard to the nature of the business, constituted an element of personal confidence in the matter personal to H. which made the contract unassignable.—COOPER *v.* MICKLEFIELD COAL & LIME CO., LTD., COOPER *v.* RAYNER (1912), 107 L. T. 457 ; 56 Sol. Jo. 706.

4913. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co., [1928] 97 L. J. K. B. 251.

4915. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

4916. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

4918. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

4919. *Add. Annotation :*—**Refd.** National Carbonising Co. *v.* British Coal Distillation, Ltd., [1936] 2 All E. R. 1012.

4921. *Add. Annotation :*—**Distd.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

4922a. Agreement as to right to perform play.]—By an agreement pltf. grant to E. " the sole & exclusive right of representing or performing " in certain areas a play, of the music of which pltf. was the composer :—*Held :* the agreement was not limited to performance at a theatre & was not a mere licence, but was an assignment to E. of rights which either he or his exors. could assign.—MESSAGER *v.* BRITISH BROADCASTING CO., LTD., [1929] A. C. 151 ; 98 L. J. K. B. 189 ; 140 L. T. 227 ; 45 T. L. R. 50, H. L.

Annotation :—**Refd.** I. R. Comrs. *v.* Longmans, Green & Co. (1932), 17 Tax Cas. 272.

4929a. Contract by jockey to ride horses.]—A contract by a jockey to ride the horses of an owner is dissolved by the death of either party.

That it was a personal contract . . . is clear beyond words. A jockey is chosen because of the confidence reposed in his personal skill & judgment & his ability in racing (WRIGHT, J.).—GRAVES *v.* COHEN (1929), 46 T. L. R. 121.

4931a. ——.]—COOPER *v.* MICKLEFIELD COAL & LIME CO., LTD., COOPER *v.* RAYNER, No. 4908a, *ante.*

4934. *Add. Annotation :*—**Consd.** Graves *v.* Cohen (1929), 46 T. L. R. 121. (Reference has been made to the headnote, not justified by anything in the judgment, in *Stubbs* v. *Holywell Ry. Co., per* WRIGHT, J.)

4935. *Add. Annotation :*—**Refd.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

4936a. *S. P.* JACKSON *v.* BRIDGE (1702), 12 Mod. Rep. 650 ; 88 E. R. 1580.

Annotations :—**Refd.** Tasker *v.* Shepherd (1861), 6 H. & N. 575 ; Farrow *v.* Wilson (1869), L. R. 4 C. P. 744 ; Hinkins *v.* Alder (1906), 50 Sol. Jo. 258.

4936b. —— ——.]—GRAVES *v.* COHEN, No. 4929a, *ante.*

4947. *Add. Annotation :*—**Refd.** Kirk *v.* Eustace, [1937] 1 K. B. 278.

Part XI.—Ratification and Confirmation of Contracts.

4950. *Add. Annotation :*—**Refd.** International Ry. Co. *v.* Niagara Parks Commission, [1937] 3 All E. R. 181.

Part XII.—Assignment of Contracts.

4956. *Add. Annotations :*—**Refd.** Anderson *v.* Equitable Life Assce. Soc. of the United States (1926), 134 L. T. 557 ; Bennett *v.* Whitehead, [1926] 2 K. B. 380 ; De Bearn (Prince) *v.* La Compagnie D'Assurances La Federale De Zurich (1937), 42 Com. Cas. 189.

4957. *Add. Annotations :*—**Refd.** Public Trustee *v.* Elder, [1926] Ch. 776 ; Skipwith (Sir Grey) *v.* Homewoods Sawmills, Ltd., [1938] 2 All E. R. 733.

4957a. —— —— ——.]—An agreement for the purchase & sale of a newspaper business contained a term or condition that the vendors should sell, & the purchasers should

---

PART X. SECT. 2.

4930 viii. ——.]—Under an agreement for the purchase of bonds of deft. co. one of the considerations for the purchase was a covenant by deft. co. that during the lifetime of the bonds the placing of all insurance taken out by deft. co. should be under the control of the purchasing co. The latter co. thereafter assigned all its insurance business including the benefit of all pending contracts to pltf. co., which had been incorporated for the purpose of taking over all said insurance business. Deft. co. refused to place any of its insurance with pltf. co. :—*Held :* the covenant fell within the rule that a contract which involves in its performance an element of personal skill or personal confidence is not assignable, & the action was dismissed. —ROYAL FINANCIAL INSURANCE, LTD. *v.* NATIONAL BISCUIT & CONFECTION CO., LTD., [1933] 1 W. W. R. 43, 302; 46 B. C. R. 294.—CAN.

PART X. SECT. 3.

4b. *On contract for maintenance of illegitimate children.*]—In a contract for the maintenance of illegitimate children, there is an implied condition that the death of either party shall end the contract.—MCGUIGAN *v.* CAMPBELL (1935), 8 M. P. R. 524.—CAN.

4d. *Payment dependent on approval of plans by Government—Death before approval.*]—A right to payment upon plans being passed & approved by the Dominion Govt. takes effect from such approval, notwithstanding promisee's death.—SIFTON *v.* SWEEZEY, [1938] 2 D. L. R. 1 ; 7 F. L. J. (Can.) 259.—CAN.

PART XII. SECT. 2, SUB-SECT. 1.

4957 i. *When implied.*]—MORRISON *v.* GALE (1872), 1 N. B. R. (Pug.) 203.—CAN.

purchase "the full benefit of all pending contracts & engagements & of all other property to which the vendors are or may be entitled in connection with the said journal": —*Held:* the purchasers took the burden of pending contracts, & did not merely acquire an option to take the benefit of such contracts.—BOWATER & SONS *v.* MIRROR OF LIFE CO., LTD. (1902), 50 W. R. 381.

4959. *Add. Annotation:*—**Refd.** De Bearn (Prince) *v.* La Compagnie D'Assurances La Federale De Zurich (1937), 42 Com. Cas. 189.

4963. *Add. Annotation:*—**Consd.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28.

4966. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Russian & English Bank (1932), 48 T. L. R. 282.

4985. *Add. Citations:*—33 L. T. 760; *sub nom. Re* EUROPEAN ASSURANCE SOCIETY ARBITRATION ACTS, 1872, 1873 & 1875, *Re* ANGLO-AUSTRALIAN & UNIVERSAL FAMILY LIFE ASSURANCE CO., HARMAN'S CASE, PRATT'S CASE, 45 L. J. Ch. 332.

5002. *Add. Annotation:*—**Refd.** Churchill & Sim *v.* Goddard, [1937] 1 K. B. 92.

5022. *Add. Annotation:*—**Refd.** British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616.

Part XIII.—Interpretation of Contracts.

5031. *Add. Annotations:*—**Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Cohen *v.* Sellar, [1926] 1 K. B. 536; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 130; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May, [1929] 2 K. B. 386.

5032. *Add. Annotations:*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Livock *v.* Pearson (1928), 33 Com. Cas. 188; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546; Kulukundis *v.* Norwich Union Fire Insurance Society, [1937] 1 K. B. 1.

5033. *Add. Annotations:*—**Refd.** Sack *v.* Jones, [1925] Ch. 235; O'Cedar *v.* Slough Trading Co., [1927] 2 K. B 123; Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138; Liddiard *v.* Waldron, [1933] 2 K. B. 319; Matania *v.* National Provincial Bank, Ltd. (1935), 154 L. T. 103.

5041a. ——.]—Defts., manufacturers, sold goods to pltfs., retailers, upon condition that pltfs. should not resell the goods to the public at less than a specified price. After business had been carried on upon this condition for three years defts., without giving pltfs. notice of their intention to change their method of business, began to sell goods direct to the public without the intervention of middlemen, at a price very much lower than that which pltfs. were obliged to charge under their contract with defts., & as a result pltfs. were left with goods which they had bought from defts. & had in stock, & could not dispose of the goods except at a loss. They claimed damages on the ground that a term must be implied in the contract that defts. would not themselves sell the goods to the public at a price below that which pltfs. were bound by the contract to charge, or at least that before beginning to sell goods to the public they would give pltfs. sufficient notice to enable them to dispose of their stock of goods at a profit:—*Held:* no such term as pltfs. required could be implied in the contract.—LIVOCK *v.* PEARSON BROTHERS (1928), 33 Com. Cas. 188.

5042. *Add. Annotations:*—*As to* (1) **Apld.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Gaze *v.* Port Talbot Corpn. (1929), 93 J. P. 89. **Refd.** Cockburn *v.* Smith (1923), 40 T. L. R. 113; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Transoceanica Soc. Italiana Di Navigazione *v.* Shipton, [1923] 1 K. B. 31; United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Bentall, Hors-

---

PART XII. SECT. 2, SUB-SECT. 2.—A. (a).

4958 iii. —— ——.]—A business was transferred to a new co. Pltf. brought an action for an unpaid balance against the old firm. Evidence showed that pltf. had disclosed no intention to accept the new co. as the debtor:—*Held:* the old firm were liable.—SIMPSON & ORS *v.* COUSINS, [1923] 1 D. L. R. 106.—CAN.

4958 iv. —— ——.]—SWINSON (JOHN) CO., LTD. *v.* CRYSTAL PALACE, LTD., [1922] N. Z. L. R. 250; Gaz. L. R. 69.—N.Z.

4958 v. —— ——.]—MCCULLY *v.* MARITIME UNITED FARMERS' CO-OPERATIVE, CARTER *v.* MARITIME UNITED FARMERS' CO-OPERATIVE (N. B.), [1926] 4 D. L. R. 727.—CAN.

PART XII. SECT. 2, SUB-SECT. 2.—A. (b) i.

4967 i. *Clear proof of intention required—Onus on party alleging novation.*]—CRAYTHORNE *v.* JENKINS, [1926] N. Z. L. R. 858.—N.Z.

PART XII. SECT. 2, SUB-SECT. 2.—B.

4999 iv. ——.]—MCCANNELL *v.* TYREMAN, [1925] 1 D. L. R. 911.—CAN.

sd. *What constitutes—Bill of exchange of new firm taken in payment—Bill dishonoured.*]—Pltf. co., a creditor of a firm, had no notice of the dissolution of the partnership between the partners, C. & S., until Feb. 7, when H., pltfs.' manager, was told of it. H. took an acceptance of S. for the amount due to pltfs. down to Feb. 1, dating it as of Feb. 7, receipted the bill & continued to supply goods to S. down to Mar. 4 when the business was closed. On Mar. 10 the draft taken by H. was dishonoured, & on Mar. 31, the whole dealing was closed by H. taking a demand note from S. for the whole amount then due to pltf. co.:—*Held:* C. was not released from his liability to pltfs. until after notice of dissolution given by S. on Feb. 7. There was no novation & pltfs. were entitled to recover from the members of the firm their account down to the date of notice.—HANTSPORT FRUIT CO., LTD. *v.* COLDWELL, [1923] 4 D. L. R. 65; 56 N. S. R. 222.—CAN.

PART XIII. SECT. 2, SUB-SECT. 1.—B.

5034 ii. ——.]—In construing a contract, a term or condition not expressly stated may, in certain circumstances, be implied by the ct., if it is clear, from the nature of the transaction, that the contracting parties must have intended such a term or condition to be a part of the agreement between them. The implication is founded upon the presumed intention of the parties & upon reason.—PIONEER BANK *v.* CANADIAN BANK OF COMMERCE (1915), 9 O. W. N. 96; 34 D. L. R. 531.—CAN.

ley & Baldry *v.* Vicary (1930), 47 T. L. R. 99; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544; Owen & Smith (trading as Nuagin Car Service) *v.* Reo Motors (Britain), Ltd. (1934), 151 L. T. 274; Matthews *v.* Hanscombe, [1936] 1 All E. R. 562. *As to* (2) **Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. *Generally*, **Refd.** De Stempel *v.* Dunkels, [1938] 1 All E. R. 238; Hirschhorn *v.* Evans, [1938] 3 All E. R. 491.

5042a. ——.]—By the terms of a registered transfer of certain property, a right was given to the transferors & their successors in title of land adjoining the property transferred at any time within a period of 15 years to make a roadway therein referred to, & the transferees covenanted that as soon as the transferors should exercise their option to make the roadway & give notice thereof to the transferees, the transferees would construct a roadway, a continuation of the roadway above-mentioned, to the reasonable satisfaction of the transferors' surveyor. By the transfer the transferees were granted a licence at any time within 15 years to enter upon a part of the property retained by the transferors for the purpose of carrying out the construction of the said roadway. The transferees also undertook to keep the roadway in repair until it should be taken over by the local authority. The transferees, acting under the licence above-mentioned, entered into a contract with the local authority for the making up of the road which would necessitate dedication of the road to the public:—*Held:* (1) the satisfaction of the transferors' surveyor would not be required if the transferees were to build a roadway under their licence & not under notice from the transferors; (2) inasmuch as it was contemplated that the local authority would take over the maintenance of the roadway at some time, the contract with the local authority necessitating dedication to the public was not a breach of the agreement or a matter of which the transferors could complain.—Matthews *v.* Hanscombe, [1936] 1 All E. R. 562; 80 Sol. Jo. 325.

5045. *Add. Annotations:*—**Consd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739. **Refd.** Anglo-Newfoundland Development Co. *v.* Pacific Steam Navigation Co., [1924] A. C. 406; Cohen *v.* Sellar, [1926] 1 K. B. 536.

5047a. ——.]—Pltfs. & defts. entered into an agreement, which contained a recital that defts. had purchased some land & were intending to build a theatre thereon, & by which it was agreed that pltfs. should contribute in a certain proportion towards the expenses of building, & should become managing directors of the theatre at a salary for a term of years:—*Held:* there was no implied obligation on defts. to build the theatre.—Morell *v.* New London Discount Co. (1902), 18 T. L. R. 507.

5048. *Add. Annotations:*—**Consd.** Cockburn *v.* Smith (1923), 40 T. L. R. 113; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 138 L. T. 286. **Apld.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Wallems Rederij A./S. *v.* Muller, Batavia, [1927] 2 K. B. 99; G. W. Ry. *v.* Durnford (1928), 139 L. T. 145; Livock *v.* Pearson (1928), 33 Com. Cas. 188; G. W. Ry. *v.* Monmouthshire County Council (1929), 93 J. P. 142. **Consd.** Campbell *v.* Hopkins & Sons (Clerkenwell), Ltd. (1931), 49 R. P. C. 38; Lamb & Sons *v.* Goring Brick Co., [1932] 1 K. B. 710. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739; British Petroleum Co. *v.* A.-G. for Ceylon, [1926] A. C. 147; Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522; United States Shipping Board *v.* Strick, [1926] A. C. 545; Marbe *v.* George Edwardes (Daly's Theatre) (1927), 43 T. L. R. 460; Gaze *v.* Port Talbot Corpn. (1929), 93 J. P. 89; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99; Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113; Rogerson *v.* Scottish Automobile & General Insurance Co. (1930), 144 L. T. 460; Akties Steam *v.* Arcos, Ltd., Akties Bruusgaard *v.* Arcos, Ltd. (1933), 39 Com. Cas. 158; Foley *v.* Classique Coaches, Ltd., [1934] 2 K. B. 1; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544; Doyle *v.* White City Stadium, Ltd., [1935] 1 K. B. 110; Lensen Shipping Co. *v.* Anglo-Soviet Shipping Co., Ltd. (1935), 40 Com. Cas. 320; De Stempel *v.* Dunkels, [1938] 1 All E. R. 238.

5051. *Add. Annotations:*—*As to* (1) **Refd.** Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1. *Generally*, **Refd.** Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544.

5052. *Add. Annotations:*—**Refd.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1.

5054. *Add. Citation:*—15 Asp. M. L. C. 544.
Add. Annotations:—**Apld.** Gaze *v.* Port Talbot Corpn. (1929), 93 J. P. 89. **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

5054a. ——.]—Pltf. & defts., who were respective owners of patents for conveying apparatus, entered into an agreement whereby each was granted a licence to use the invention of the

---

PART XIII. SECT. 2, SUB-SECT. 1.—C.

5048 ii. ——.]—While the ct. must not by implication actually make a contract for the parties, yet it may hold that on a reasonable consideration of the terms of the contract there is necessarily implied an obligation for the purpose of giving efficacy to the transaction & preventing such a failure of consideration as cannot have been within the contemplation of either side.—Connors *v.* McGregor, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—CAN.

5048 iii. ——.]—A term or condition may be implied by the ct., if it is clear, on a reasonable & business like consideration of all the terms of the contract, that the parties must have intended such a term or condition.—Wells *v.* Blain, [1927] 1 D. L. R. 687; [1927] 1 W. W. R. 223; 21 Sask. L. R. 194.—CAN.

5048 iv. —— *Whether period of agency included.*]—A contract of agency contained no express stipulation as to the term of the agency:—*Held:* it was not necessary, in order to give business efficiency to the contract or to carry into effect the intention of the parties, to imply a term that the contract could be terminated only on reasonable notice, & such a term could not therefore be implied.—Pollard *v.* Gibson, [1924] 4 D. L. R. 354; 55 O. L. R. 424.—CAN.

5048 v. ——.]—Morgan *v.* Hudson Bay Mining & Smelting Co., [1930] 2 D. L. R. 587.—CAN.

other. The agreement recited the acknowledgment by the parties of the validity of the respective patents of the other, & contained a covenant by defts. not at any time hereafter to dispute the validity of pltf.'s patent. The agreement also contained a clause referring to arbn. any dispute between the parties other than the question of infringement or the recovery of royalties. In an action for royalties under the agreement & damage for infringements committed prior to it defts. pleaded that pltf.'s patent was invalid & that there was an implied term in the agreement that pltf. should accept the same in satisfaction of all claims in respect of infringements then outstanding. The questions as to whether in view of the covenant in the agreement defts. could put the validity of pltf.'s patent in issue, & whether such a term as pleaded in the defence could be implied were set down for hearing as preliminary questions of law:—*Held:* in view of the covenant in the agreement defts. were not entitled to dispute the validity of pltf.'s patent, & such a term as pleaded in the defence must be implied in the agreement in order to give business efficacy to the contract. —CAMPBELL *v.* HOPKINS (G.) & SONS (CLERKENWELL), LTD. (1931), 49 R. P. C. 38.

5056. *Add. Annotations:*—**Reld.** Willis *v.* Willis, (1927), 96 L. J. P. 177; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May, [1929] 2 K. B. 386.

5059. *Add. Annotation:*—**Apld.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

5060. *Add. Annotation:*—**Consd.** A.-G. *v.* G. S. & W. Ry. of Ireland, [1925] A. C. 754.

5066a. Term customary during war.]—The ct. found that since the outbreak of war in 1914 it had been a universal custom in the dried fruit trade to insert in all contracts for the sale of sultanas a clause as follows: "Should shipment be prevented by *force majeure* such as prohibition of export, blockade, war, or any consequence of warlike operations, this contract or the then unfulfilled part thereof to be cancelled without claim." The ct., therefore, rectified certain bought & sold notes by the addition of this clause on the ground that the parties must be taken to have contracted on this basis.—CARAMAN ROWLEY & MAY *v.* APERGHIS (1923), 40 T. L. R. 124.

5067. *Add. Annotation:*—**Reld.** Winkworth *v.* Raven, [1931] 1 K. B. 652.

5073. *Add. Annotation:*—**Reld.** Einar Bugge *v.* Bowater (1925), 31 Com. Cas. 1.

5085. *Add. Annotations:*—**Reld.** Boorne *v.* Wicker, [1927] 1 Ch. 667; Farey *v.* Cooper, [1927] 2 K. B. 384; Livock *v.* Pearson (1928), 33 Com. Cas. 188.

5086. *Add. Annotations:*—**Apld.** Boorne *v.* Wicker, [1927] 1 Ch. 667. **Reld.** Farey *v.* Cooper, [1927] 2 K. B. 384; Livock *v.* Pearson (1928), 33 Com. Cas. 188; Gilford Motor Co. *v.* Horne [1933] Ch. 935; Simpson *v.* Charrington & Co., [1934] 1 K. B. 64.

5087. *Add. Annotation:*—**Reld.** Martin *v.* Stout, [1925] A. C. 359.

5088. *Add. Annotation:*—*As to* (2) **Reld.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

5091. *Add. Annotation:*—**Reld.** Thomas *v.* Hammersmith Borough Council, [1938] 3 All E. R. 203.

5102. *Add. Annotations:*—**Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180. **Reld.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates Des Medulla (1923), 92 L. J. K. B. 455; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569; *Re* Wait, [1926] Ch. 962; May *v.* May, [1929] 2 K. B. 386. **Reld.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532; Kulukundis *v.* Norwich Union Fire Insurance Society, [1936] 2 All E. R. 242.

5103. *Add. Annotations:*—**Reld.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates Des Medulla (1923), 92 L. J. K. B. 455; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532; Chandler Bros., Ltd. *v.* Boswell, [1936] 3 All E. R. 179.

5104. *Add. Annotation:*—**Expld.** *Re* Wait, [1927] 1 Ch. 606.

5105. *Add. Annotation:*—**Reld.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

5107. *Add. Annotation:*—**Reld.** The Penelope, [1928] P. 180.

5113. *Add. Annotations:*—**Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980. **Overd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

5117. *Add. Annotation:*—**Reld.** Sweet *v.* Williams (1922), 128 L. T. 379.

5119. *Add. Annotation:*—**Reld.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

PART XIII. SECT. 2, SUB-SECT. 1. —F.

5073 iii. ——.]—Where having regard to the nature of a contract it is the duty of a party to assist in the fulfilment of a condition in the contract, such condition is deemed to be fulfilled if such party refuses his assistance with the intention of defeating the fulfilment of the condition, whether his refusal is *bonâ fide* or not.—KOEING *v.* JOHNSON & CO., LTD., [1935] App. D. 262.—S AF.

PART XIII. SECT. 2, SUB-SECT. 1.—G. (o).

5101 i. *General rule.*]—Pltf., who had been given an option to purchase shares of a mining co., released the option in consideration of deft. entering into the agreement in question herein. At the same time, & as a result of negotiations between pltf., the mining co. & deft., the mining co. granted deft. an option to purchase the shares not yet taken up under pltf.'s option & an option to purchase an additional block of shares. These options were to run for a period of six months provided deft. carried out the conditions of the said agreement. These conditions were duly fulfilled. By the agreement between deft. & pltf., deft. agreed to pay pltf. two cents on each & every share of the mining co. which it took up under the options granted to it & also one-half of all moneys received by it as commission on sales of such shares covered by said option as should be made by pltf. There was no obligation on pltf. to attempt to sell shares. The market-price for the shares having fallen sharply, deft. & the mining co. cancelled the option & agreement between them before the expiration of the six months. Pltf. alleged that said cancellation was a breach of the agreement between him & deft.:—*Held:* applying the principle of *Lazarus* v. *Cairn Line of Steamships*, No. 5101, that there could not be read into the agreement with pltf. a provision not expressed therein that deft. would retain its option from the mining co. for the life of such option, viz., six months.—CLEGG *v.* PACIFIC STOCK CO., LTD., [1935] 1 W. W. R. 369.—CAN.

5120. ***Add. Annotations :*—Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980. **Distd.** *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583.

5121. ***Add. Annotations :*—Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980; Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

5122a. Acter.]—Applts., theatrical producers, agreed to engage resp., an American actor, to play one of the three leading comedy parts in a musical play about to be produced at the London Hippodrome for six weeks certain at a salary of £55 per week, & the contract contained a provision prohibiting resp. during the continuance of his engagement from acting elsewhere without the consent of the applts. Resp. objected that the part assigned to him was not one of the three leading comedy parts &, on the refusal of applts. to recast him, declined to appear in the play & sued applts. for damages for breach of contract. At the trial of the action before a judge & jury the jury found for resp. for £1,000 damages for loss of publicity & for three weeks' salary, & judgment was entered accordingly. The Ct. of Appeal affirmed the verdict & judgment except as to the salary :—*Held :* (1) upon the construction of the contract, it bound applts. to give resp. an opportunity of appearing in public in a part answering the stipulated description ; (2) it was competent to the jury, having regard to the character of the contract, to give damages to resp. for loss of publicity.—Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209 ; 99 L. J. K. B. 165 ; 142 L. T. 585 ; 46 T. L. R. 230 ; 74 Sol. Jo. 187, H. L.

Annotation :—As to (2) **Foll.** Withers *v.* General Theatre Corpn., Ltd., [1933] 2 K. B. 536.

5123. ***Add. Annotations :*—Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80; Trollope (Geo.) & Sons *v.* Martyn Bros. (1934), 50 T. L. R. 544 ; Kahn *v.* Aircraft Industries Corpn., Ltd., [1937] 3 All E. R. 476 ; Thomas *v.* Hammersmith Borough Council, [1938] 3 All E. R. 203.

5126. ***Add. Annotations :*—Refd.** Sweet *v.* Williams (1922), 178 L. T. 379 ; *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

5132. *Add. Annotations :*—**Consd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522 ; Sagar *v.* Ridehalgh (H.) & Son, Ltd., [1930] 2 Ch. 117. **Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310 ; Thomas *v.* Hammersmith Borough Council, [1938] 3 All E. R. 203.

5134. *Add. Annotation :*—**Refd.** Clark's Appeal (1937), 26 Ry. & Can. Tr. Cas. 61.

5143. *Add. Annotation :*—**Refd.** Foley *v.* Classique Coaches, Ltd., [1934] 2 K. B. 1.

5149a. Contract for lease of advertising space on programmes—Theatre closed.]—Magnet Advertising Co., Ltd. *v.* Arrowsmith (1938), 82 Sol. Jo. 911.

5152. *Add. Annotations :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447 ; Western Power Co. of Canada, Ltd. *v.* Matsqui Corpn., [1934] A. C. 322.

5161. *Add. Annotation :*—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

5167. *Add. Annotation :*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

After this case add "*See, further*, Gifts, Vol. XXV., p. 525."

PART XIII. SECT. 2, SUB-SECT. 1.—G. (e).

sg. *Agreement to buy goods—Obligation to supply.*]—Implied.—Canada Cycle & Motor Co., Ltd. *v.* Mehr (1919), 45 O. L. R. 576 ; 48 D. L. R. 579 ; 16 O. W. N. 253.—**CAN.**

sh. *S. P.* Berliner Gramaphone Co., Ltd. *v.* N. H. Phinney & Co., Ltd. (1921), 54 N. S. R. 295 ; 57 D. L. R. 596.—**CAN.**

si. *Employment of non-union men—Withdrawal from manufacturers' association.*]—A shop agreed to withdraw from its manufacturers' assocn. in consideration of certain workmen withdrawing from their union. The shop was besieged by the union & had to abandon the scheme. In an action for breach of contract by workmen not reinstated by their union & dismissed by the shop :—*Held :* it was an implied term that the shop should keep open as an independent shop, & being unable to do so they were not liable.—Ziger *v.* Shiffer & Hillman, [1933] 2 D. L. R. 691 ; O. R. 407. **CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—H. (a) i.

sm. *Lease of tobacco stall with electric light connected—Implied promise to continue supply.*]—Pltf. took a lease from deft. of a tobacco stall in the city. At the time the lease was granted, the stall was supplied with electric light, connected with the city electricity supply through portion of the premises retained by deft. For some time after the lease, pltf. used the electricity to light the stall for business purposes. The lease was silent as to the supply of electricity. Deft. later cut off the supply. He then brought an action for damages, & in his claim alleged a promise by deft. not to interfere with the supply of electricity nor to prevent the continuance of such supply :—*Held :* there was an implied promise by deft. in the terms sued upon by pltf.—Jenkins *v.* Levinson (1929), 29 S. R. N. S. W. 151 ; 46 N. S. W. W. N. 38.—**AUS.**

PART XIII. SECT. 2, SUB-SECT. 1.—H. (a) iii.

sn. *Commission payable out of purchase-money.*] — Pltf., an agent, made a special contract with deft. whereby he was to obtain a portion of the purchase price :—*Held :* in the absence of express provision, there was no obligation on deft. to keep the contract of sale alive in order that pltf. might obtain his commission, & upon the cancellation of the contract of sale pltf.'s right was determined.—Gowan *v.* Bowern, [1924] App. D. 550.—**S. AF.**

st. *Agreement to sell & share in proceeds of sale of goods—Obligation to supply.*]—Lock *v.* Purdon (1850), 7 N. B. R. (2 All.) 33.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—H. (b).

5133 i. *Agreement fixing prices.*]—The military authorities accepted a tender from pltf. whereby he agreed to supply at prices specified so much of the goods mentioned therein as the officer in charge might require during the period mentioned in the tender :—*Held :* pltfs.' tender amounted merely to an offer to supply the goods mentioned at the prices specified, & the military authorities were not bound by their acceptance of the tender to purchase all or any of the said goods needed by them from pltf. in the absence of a covenant to that effect.—Secretary of State *v.* Madho Ram (1928), I. L. R. 10 Lah. 493.—**IND.**

PART XIII. SECT. 2, SUB-SECT. 1.—N.

sw. *Agreement to furnish planters for fishery with supplies—Obligation to turn in produce to supplier.*]—Implied.—Johnson *v.* Finlay (1882), 6 Nfld. L. R. 303.—**NFLD.**

sy. *Supply of water—For particular period—Expiration of original contract—Continuation under terms of old contract.*]—It. *v.* Public Utilities Board of Combs., *Ex p.* Town of Milltown (N. B.) (1919), 47 D. L. R. 219.—**CAN.**

sz. *Agreement for use of hockey arena—Proceeds divisible between parties—Obligation to use arena.*]—Canada Hockey Club *v.* Arena Amusements, Ltd., [1930] 1 D. L. R. 127.—**CAN.**

sb. *Sale of tickets to queue—Duty of seller to preserve order of priority.*]—Pltf. claimed damages for an alleged breach of contract in that deft. had failed to preserve the order of priority in queue & had failed to offer for sale the full number of tickets stated to be available. Deft. advertised tickets for sale & limited the number to which each person was entitled to four. Pltf. who had been commissioned by a large number of people to secure tickets, employed men who stood with others in a queue all night waiting for the office to open. Others who came later took up positions ahead of pltf.'s men, with the result that some of them failed to secure tickets :—*Held :* the number of tickets sold was but a reasonable shortage of the estimated number & as there was no express contract between the parties & pltf. had not proved a custom binding upon deft. to preserve the order of priority in the queue, the claim must fail.—Bell *v.* New Zealand Rugby Football Union (1931), 26 M. C. R. 39 (New Zealand).—**N.Z.**

5168. *Add. Annotation:*—**Apld.** London & South American Investment Trust *v.* British Tobacco Co. (Australia), [1927] 1 Ch. 107.

5168a. Agreement to "exert influence"—No obligation to pay money if necessary.]—Deft. co. made an agreement with pltf. co. to use such "rights" as they might possess & such influence as they could exercise to procure a third co. to deliver to pltfs. a percentage of the crude oil produced from a concession belonging to the third co., in which defts. had the preponderating shareholders' vote. No delivery of oil from the concession in question was made by defts. to pltfs., &, in answer to an inquiry by pltfs. as to when delivery was to begin, defts. replied that they were not in a position to make delivery as they could not enforce it against the other members of the third co. without making a payment to them & that they were under no obligation to make such payment. In an action for breach of contract defts. admitted that if they gave consideration there would be no impossible barrier to their getting the oil:—*Held:* as defts. could not use their preponderating vote in the third co. to dispose of a product of the third co. in order to satisfy an obligation of their own to the detriment of the interests of the minority shareholders, & as the word "rights" in the agreement did not mean that defts. were bound to exercise their right of spending money to procure the oil, the action failed.—GENERAL ASPHALT CO. *v.* ANGLO-SAXON PETROLEUM CO., LTD. (1932), 48 T. L. R. 276, H. L.; *revsg.*, 75 Sol. Jo. 191.

5168b. Contract to print bank-notes—Implied duty not to use plates for unauthorised purpose.]—Pltfs., a Portuguese bank, made with defts., who were printers, a contract which provided that defts. should print the authorised notes for the bank, the plates being left in defts.' possession & being intended to be available only for the purposes of the bank. By means of an elaborate fraud defts. were induced by an unauthorised person to print from the plates a large quantity of notes & to deliver the notes to him, & the result was that these notes were put into circulation. In consequence of the fraud plts. honoured a large number of the spurious notes, & on learning the facts they found it necessary to withdraw all the genuine notes of the same issue from circulation as they had, at that time, no means of distinguishing the genuine from the spurious notes. In an action for breach of contract, negligence, or conversion:—*Held:* it was an implied term of the contract that there was to be no use of the plates for any purpose not authorised by pltfs., & there was an absolute duty on defts. not to print or deliver notes of pltf. bank without the authority of the bank, &, even if defts. were bound only to take reasonable care to avoid such acts, defts. had, on the facts, fallen short of the standard of care required by the special nature of the business, & pltfs. were entitled to recover.—BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD. (1930), 47 T. L. R. 214; 75 Sol. Jo. 81; *on appeal* (1931), 100 L. J. K. B. 465, C. A.; [1932] A. C. 452.

Annotation:—**Refd.** The Edison (1931), 47 T. L. R. 635.

SUB-SECT. 3.—IMPLIED WARRANTIES (Vol. XII., p. 628).

Add the following case:—

5168c. Of fitness—Turkish baths.]—Defts. were the owners of Turkish baths, & customers who came late at night were permitted to use the beds in the cubicles till early the next morning. Pltf. & his brother slept one night at the baths, & when they woke up they found that they had been bitten badly by insects, proved afterwards to be bugs:—*Held:* there had been a breach of an implied warranty that the beds or couches supplied for the use of customers should be reasonably fit for the purpose, & defts. owed a duty to pltfs. to take reasonable care that no bugs or other dangerous insects should infest their premises.—SILVERMAN *v.* IMPERIAL LONDON HOTELS, LTD. (1927), 137 L. T. 57; 43 T. L. R. 260.

5168d. —— Gridiron berth.]—EASTER *v.* MARVIN (1930), 74 Sol. Jo. 122.

For the cross-reference "**Of fitness—Sale of animals.**]—*See, generally*, ANIMALS, Vol. I., pp. 260 *et seq.*" read "—— **Sale of animals.**]—*See, generally*, ANIMALS, Vol. I., pp. 260 *et seq.*"

COPYHOLDS.

NOTE.—As to copyhold tenure & manorial incidents after 1925, *see* Law of Property Act, 1922 (c. 16), ss. 128–145, scheds. 12–15; Law of Property (Amendment) Act, 1924 (c. 5), sched. 2.

Part I.—The Manor.

41. *Add. Annotation:—As to* (1) **Refd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

122. *Add. Citation:*—92 L. J. Ch. 55.

128. *Add. Annotation:—As to* (1) **Refd.** Jay *v.* Jay, [1924] 1 K. B. 826.

Part III.—Custom of the Manor.

229. For catchwords "—— —— In consideration of assistance to persons wrecked—Good.]" read "To seize best anchor & cable—Of ship wrecked on shore of manor—In consideration of assistance to persons wrecked—Good.]"

Part IV.—Manorial Courts.

325. *Add. Annotation:—As to* (1) **Apld.** *Re* Holliday, [1922] 2 Ch. 698.

Part V.—The Court Rolls and other Manorial Documents.

393. *Add. Annotation:*—**Consd.** Beaumont *v.* Jeffery (1924), 40 T. L. R. 796.

394a. —— **Purchaser for value.**]—(1) Pltf., as lord of the manor of Great Tey, which he acquired by purchase in 1923, brought the present action of detinue to recover possession of certain ancient ct. rolls of that manor, which were of mere historical interest & which before his purchase pltf. had seen advertised for sale by deft., who having purchased them in 1902, from one P., a waste paper dealer, had commenced advertising them for sale ten years before the commencement of the present action:—*Held:* in the absence of evidence to the contrary, it must be presumed that P. acquired the rolls lawfully in the ordinary course of his business from either the lord or the steward of the manor, & as the position of pltf.'s predecessor in title as trustee of the rolls, while they remained in his possession, did not make it illegal for him to part with them to a stranger, who came under the same obligation as the lord to produce them, pltf. was not entitled to recover the rolls.

Held: (2) even if an action of detinue would lie, yet, upon the true construction of Limitation Act, 1623, s. 3, the words "goods & chattels" were mentioned only in reference to actions of replevin, & that as the action was an action of detinue & the cause of action, namely, the assertion by deft. of an adverse title by advertising the rolls for sale, arose more than six years before the commencement of the action, the action was barred by the statute.—BEAUMONT *v.* JEFFERY, [1925] Ch. 1; 93 L. J. Ch. 532; 132 L. T. 246; 40 T. L. R. 796; 68 Sol. Jo. 867.

—— ——.]—*See, now,* Law of Property Act, 1922 (c. 16), s. 144a, *added by* Law of Property (Amendment) Act, 1924 (c. 5), Sched. II., para. 2.

404a. Recovery of possession—Limitation of action—When time begins to run.]—BEAUMONT *v.* JEFFERY, No. 394a, *ante.*

423. *Add. Citation:*—2 Dowl. N. S. 20.

461. *Add. Annotation:*—**Refd.** Love *v.* Bentley (1707), 11 Mod. Rep. 134.

482. *Add. Annotation:* — **Refd.** Beaumont *v.* Jeffery (1924), 40 T. L. R. 796.

Part VI.—Officers of the Manor.

491. *Add. Citations:*—**2 Show. 21; Freem. K. B. 473.**

fee, subject to the equitable rentcharge then vested in Aylmer, subject to proof of his title.

On Jan. 1, 1926, the Law of Property Acts came into operation & the copyhold plots were enfranchised. The ct. being asked to determine in whom the legal estates in the land & the rentcharge vested:—*Held:* (1) under the 1922 Act, Sched. XII., para. 8 (*b*), the freehold estate in the land vested in the first instance in the personal representative of H. C. Abbs & the customary heir of Bryan Abbs as trustees, Bryan Abbs having no known personal representative; (2) either under the 1922 Act, Sched. XII., para. 8 (*d*), or under the 1925 Act, Sched. I., Part II., paras. 4, 6 (*d*), the rentcharge vested as a legal rentcharge in Aylmer or other the persons entitled thereto; (3) on the rentcharge becoming a legal rentcharge the trustees became bare trustees with no longer any active duties to perform; (4) under the 1925 Act, Sched. I., Part II., paras. 3, 6 (*d*), the initial vesting in the trustees was divested, & the legal estate subject to the legal rentcharge vested in Thompson & Collins as joint tenants in fee simple; (5) sect. 36 of the 1925 Act did not come into operation until after the vesting provisions had done their work. It then merely attached a trust for sale to the joint legal estate in Thompson & Collins. It did not previously attach a trust for sale to the initial estate in the trustees so as to put the divesting provisions of the 1925 Act, Sched. I., Part II., out of operation. Still less did it bring in the undivided share provisions of the 1925 Act, Sched. I., Part IV. —*Re* KING'S THEATRE, SUNDERLAND, DENMAN PICTURE HOUSES *v.* THOMPSON & COLLINS ENTERPRISES, [1929] 1 Ch. 483; 98 L. J. Ch. 109; 140 L. T. 463.

2032c. —— —— **Vesting of rentcharge.**]—*Re* KING'S THEATRE, SUNDERLAND, DENMAN PICTURE HOUSES *v.* THOMPSON & COLLINS ENTERPRISES, No. 2032b, *ante*.

COPYRIGHT AND LITERARY PROPERTY.

Part I.—Nature of Copyright.

1. *Add. Annotation:—As to* (2) **Refd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

14. *Add. Annotations:*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

15. *Add. Annotation:*—**Refd.** Mansell *v.* Star Printing & Publishing Co. of Toronto, Ltd., [1937] 3 All E. R. 912.

16. *Add. Annotation:*—**Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

16a. **Dramatic work—No "first publication" within 1911 Act, s. 1 (3)—Owner entitled to substituted copyright under 1911 Act, sched. 1.]** —Under Dramatic Copyright Act, 1833 (c. 15), a foreign author dwelling outside British territory was entitled to secure dramatic copyright within the British Empire of the first performance of his play given in this country. By an agreement in writing dated June 30, 1898, G., the author & sole proprietor of the right to perform a certain play, granted to pltf. the sole & exclusive right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1898, G.'s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a certain place:—*Held:* a copy of the letter of Sept. 22, 1898, the original having been lost, was admissible as evidence in a copyright action between pltf. & third parties who claimed a right to produce cinematograph films of the play under an agreement for value with G., dated Sept. 6, 1919, to prove that the first performance of the play took place in this country as stated in the letter since, (1) being written by G.'s agent, it constituted an admission by G., a person who, although not named on the record, had a substantial interest in the result, & (2) it constituted an admission by defts.' predecessors in title.

(3) An entry in the register of first performances of dramatic productions at Stationers' Hall is admissible in evidence as a public register. If such an entry is incorrect, the party producing a certified copy of it may be precluded from relying on it as *primâ facie* proof of a right to produce or reproduce the play to which it relates, but it can be regarded by the ct. as corroboration of other evidence of title.

(4) 1911 Act, s. 1 (1) (*a*) & s. 1 (3), which provide that copyright shall subsist in every dramatic work if it has been first published in His Majesty's dominions, but that the performance in public shall not be deemed to be publication, prescribe conditions for the future, but do not inflict them on past events so as to destroy existing rights.

(5) Where the owner of dramatic copyright possessed [by assignment] the sole right to perform, or permit the performance of, a certain play before 1911 Act came into operation he acquired, by sect. 2 (1) (*b*), coupled with sects. 24 & 35 of the Act, & sched. 1 to the Act, the right to the cinematograph & film rights of that play also.

An American corpn. made a film & sent a negative & two positives of it to an English co., who made further copies of the film & handed them to another English co., who let them to a British exhibitor. The American corpn. & the two British cos. were interworking organisations linked together by complex agreements, & they all three shared in part of the receipts from the exhibition of the film by the exhibitor. The exhibitor in exhibiting the film, infringed pltf.'s copyright:—*Held:* (6) the American corpn. & the two British cos. had actively directed, counselled or aided the infringement by the exhibitor, & had infringed pltf.'s rights within 1911 Act, s. 2 (1), the operative effect of which sub-sect. is extended & not limited by sect. 2 (2) & (3).

(7) Where an infringement of copyright is proved under 1911 Act, s. 2 (1), the question of knowledge of infringement by the infringer does not arise except possibly with reference to the exemption from penalties for infringement provided by sect. 8 of the Act.—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., [1926] K. B. 393; 95 L. J. K. B. 148; 134 L. T. 246; 42 T. L. R. 91; *affd.*, [1926] 2 K. B. 474; 96 L. J. K. B. 88; 135 L. T. 650; 42 T. L. R. 666; 70 Sol. Jo. 756, C. A.

Annotations:—As to (6) **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174. *Generally,* **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543; *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267; Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489.

PART I. SECT. 1.

1. ——— ——— ———.]—"Copyright" in Commonwealth Copyright Act, 1912, s. 13 (1), includes the right to perform.—POLLOCK *v.* WILLIAMSON (J. G.), LTD., [1923] V. L. R. 225; 29 Argus L. R. 133; 44 A. L. T. 161.—AUS.

8k. *Trust in respect of copyright.*]—An implied or constructive trust in respect of a copyright existing under Copyright Act, 1913, may be enforced; & enforced to the ultimate extent of the acquisition of the title to the copyright by the *cestui qui trust* who is entitled to get in the legal estate. Sect. 44 of Copyright Act, 1913, contemplates that any trust created in the manner which the law permits for personal property may exist in respect of copyright or of any right in copyright, whether the title to those rights is acquired by assignment, license, or transmission. Once a parol transaction in respect of copyright has reached a stage when, by reason of the payment & receipt of the purchase price, the vendor becomes a mere trustee of the property of the purchaser, the only question will be not whether the transaction is in writing or not, but the method of its enforcement.—BROOKER *v.* JOHN FRIEND, LTD., [1936] N. Z. L. R. 743; G. L. R. 560; 12 N. Z. L. J. 249.—N. Z.

Part II.—Subject-Matter.

18. *Add. Annotation:*—**Refd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

22. *Add. Annotation:—As to* (1) **Follid.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

23. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

24a. —— ——.]—There is no copyright in an idea. Where a person communicates an idea to an author & the author clothes the idea in the form of an article or articles, the copyright is in the author. A series of articles entitled "[pltf.'s] racing secrets" was published in a newspaper. Pltf. had done none of the actual writing of any of the articles, but he had related his experiences to F., who had made notes from which F. had written up the articles. The articles were read over to pltf. before publication, & alterations suggested by him were sometimes adopted. F. did not take down pltf.'s information verbatim, but in the articles pltf.'s experiences were in some cases given in the form of dialogues. Articles based upon the original series of articles were later published in another publication & entitled "My Racing Secrets. By Steve Donoghue," *i.e.*, pltf.:—*Held:* (1) pltf. was neither the owner nor the joint owner of the copyright in the original articles; (2) the presumption under Copyright Act, 1911 (c. 46), s. 6 (3), that pltf. was the author of the later articles was rebutted.—DONOGHUE *v.* ALLIED NEWSPAPERS, LTD., [1938] Ch. 106; [1937] 3 All E. R. 503; 107 L. J. Ch. 13; 157 L. T. 186; 53 T. L. R. 907; 81 Sol. Jo. 570.

35. *Add. Annotation:—Generally*, **Refd.** Graves *v.* Pocket Publications, Ltd. (1938), 54 T. L. R. 952.

41. *Add. Annotation:—As to* (3) **Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91; Lane (John), Bodley Head, Ltd. *v.* Associated Newspapers, Ltd., [1936] 1 All E. R. 379.

42. *Add. Annotations:—As to* (1) **Consd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113. **Follid.** Masson Seeley *v.* Embosotype Manufacturing Co. (1924), 41 R. P. C. 160. **Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383. **Refd.** Chabot *v.* Davies, [1936] 3 All E. R. 221. *As to* (5) **Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1. *Generally*, **Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

43a. —— **Letter written by manufacturer to trade customer.**]—(1) A letter written by manufacturers to a trade customer, offering their goods at a low price if the customer agrees to take such goods exclusively from them, is an "original literary work" within 1911 Act, s. 1 (1), & the writers are entitled to copyright therein. Such a letter is not contrary to public policy as being in restraint of trade.

(2) The publication of the letter by rival manufacturers, together with a covering letter of criticism, is not "fair dealing" within sect. 2 (1) (*i*) of the Act.—BRITISH OXYGEN CO. *v.* LIQUID AIR, LTD., [1925] Ch. 383; 95 L. J. Ch. 81; 133 L. T. 282.

Annotation:—As to (2) **Refd.** Cookson *v.* Pountney (1937), 81 Sol. Jo. 528.

43b. —— **Single sentence.**]—Pltf. had, since 1925, dealt with the treatment of the human face, & had advertised extensively in connection with that treatment. He claimed to have the copyright in a slogan in connection with those advertisements. The phrase was, "Beauty is a social necessity, not a luxury." Sometimes there were variations in the words used. Sometimes the words "youthfulness," or "good looks," or "youthful appearance" were substituted for "beauty." In May 1926 deft. inserted an advertisement containing the phrase "A youthful appearance is a social necessity." Some years before 1925 an advertiser had used a similar phrase, "Beauty is a modern necessity":—*Held:* (1) the only originality, if any, in pltf.'s phrase consisted in the substitution of the word "social" for the word "modern," & pltf.'s phrase was not an original composition; (2) although copyright might subsist in an advertisement, to quote a piece of a sentence from a literary work was too small a matter to afford ground for an action for infringement of copyright; (3) the doctrine *de minimis non lex curat* applied, & the matter in which copyright was claimed was too small for the ct. to attach any importance to it.—SINANIDE *v.* LA MAISON KOSMEO (1928), 139 L. T. 365; 44 T. L. R. 574, C. A.

51. *Add. Annotation:*—**Consd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

PART II. SECT. 3, SUB-SECT. 1.

o i. —— *Form of contract for sale of land.*]—*Held:* such a document was capable of copyright, but if copies were sold, there might be an implied authority to reproduce them where necessary in connection with the transaction for which they were purchased.—REAL ESTATE INSTITUTE OF N.S.W. *v.* WOOD (1923), 23 S. R. N. S. W. 349; 40 N. S. W. W. N. 60.—**AUS.**

o ii. —— *Compilation.*]—A compilation may be an "original literary work" within Copyright Act.—PASICKNIAK *v.* DOJACEK, [1928] 2 D. L. R. 545; [1928] 1 W. W. R. 865; 37 Man. L. R. 265.—**CAN.**

o iii. —— *Translation.*]—Translations are original literary works.—PASICKNIAK *v.* DOJACEK, [1928] 2 D. L. R. 545; [1928] 1 W. W. R. 865; 37 Man. L. R. 265.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B.

sd. *Slight alterations — Works of foreign author.*]—Where a publisher in Scotland brought out an edition of the works of a foreign author, which had all been originally published abroad, & in which there was no copyright in this country:—*Held:* alterations upon the writings, neither important nor extensive, made with the assistance of the author, did not create a copyright in the edition, so as to give the publisher a right to prevent the publication of a reprint of it in a different form.—HEDDERWICK *v.* GRIFFIN (1841), 3 Dunl. (Ct. of Sess.) 383.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—C.

54 i. *Immoral works.*]—There is nothing in the Copyright Act to deny an author a copyright on the grounds that his work is indecent, obscene or immoral. Where his work is of such a character that the law will not permit him to publish it, the cts. will deny him damages, since if he cannot sell it he cannot prove damages. But apart from damages, there is no reason why the pirating of an author's original work should not be restrained by injunction, provided it is honest work, & not a fraud on the public.—PASICKNIAK *v.* DOJACEK, [1928] 2 D. L. R. 545; [1928] 1 W. W. R. 865; 37 Man. L. R. 265.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—E.

sg. *Plans & schedules.*]—Plans & schedules for rating fire insurance risks are "books" within Copyright Act.—UNDERWRITERS SURVEY BUREAU, LTD. *v.* MASSIE & RENWICK, LTD., [1938] 2 D. L. R. 31; EX. C. R. 103; 69 Can. C. C. 342.—**CAN.**

55. *Add. Annotation:*—*As to* (5) **Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

60. *Add. Annotation:*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

65. *Add. Annotation:*—**Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

70a. **Blue-print of shop-front—1911 Act, sec. 22.**]—Pltf. sent to defts., at their request, a blueprint plan & elevation of a shop-front & an estimate for the work. No order was given to pltf. for the erection of the shop-front. The shop-front was, however, erected for defts. by a firm which worked on a tracing of pltf.'s plan & elevation. Pltf. brought an action against defts. for infringement of his copyright by authorising the reproduction of the plan. Defts. contended that a plan could not be reproduced by a shop-front:—*Held:* (1) the shop-front was a reproduction of the plan, & as the plan was an original literary work within 1911 Act, defts., by authorising the reproduction, had infringed pltf.'s copyright in the plan; (2) the plan was not a design within 1911 Act, s. 22.—CHABOT *v.* DAVIES, [1936] 3 All E. R. 221; 106 L. J. Ch. 81; 155 L. T. 525; 53 T. L. R. 61; 80 Sol. Jo. 875.

73. *Add. Annotation:*—**Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

74. *Add. Annotation:*—*As to* (1) **Consd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433. *As to* (3) **Refd.** Hawkes & Son (London), Ltd. *v.* Paramount Film Service, Ltd., [1934] Ch. 593.

76. *Add. Annotation:*—**Consd. Sinanide *v.* La Maison Kosmeo (1928),** 139 L. T. 365.

77a. —— —— **For type—Protected.**]—Pltf. co., which carried on the business of supplying cutter-crush machines & type & other materials used therewith, issued a catalogue consisting for the most part of a number of words which illustrated the products of the several sizes & shapes of type supplied by the co. & customers ordered a particular class of type by referring to such words. Nearly all the words were selected by the managing director of the co. In 1922 defts., who were carrying on a similar business, circulated price lists which were practically copies of the price lists of pltf. co., the words used in pltf. co.'s catalogue & price lists to indicate the style of type being copied in defts.' price lists without alteration. Pltf. co. commenced proceedings for an injunction to restrain infringement of copyright in their catalogue & passing off of goods which were not their goods as being their goods. On the question of copyright defts. contended (*inter alia*) that pltfs.' catalogue was a design or collection of designs capable of registration under Patents & Designs Acts, 1907 (c. 29), & 1919 (c. 80), & not the subject of protection under 1911 Act:—*Held:* on the question of copyright the contentions put forward by defts. failed, & an injunction restraining infringement of the copyright of pltfs. in their catalogue was granted.—MASSON SEELEY & CO., LTD. *v.* EMBOSOTYPE MANUFACTURING CO. (1924), 41 R. P. C. 160.

80. *Add. Annotation:*—*Generally*, **Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

85a. **Programmes.**]—Pltfs. were a limited co formed to acquire the Postmaster-General's licence for the establishment & working of broadcasting stations, & to carry on any other business ancillary, incidental, or conducive thereto. Under the terms of their licence & a supplementary agreement pltfs. were required to transmit efficiently every day a programme of broadcast matter to the reasonable satisfaction of the Postmaster-General. They were not allowed to alter their memorandum as to objects without his written consent. He might revoke their licence if they failed to transmit satisfactory programmes, & within one month from their ceasing to hold the licence they were bound to pass a special resolution for voluntary winding up. Their profits from all sources

---

PART II. SECT. 3, SUB-SECT. 3.

sk. *Plan—Of harbour.*]—LYSHAR *v.* GISBORNE HARBOUR BOARD, [1924] N. Z. L. R. 13.—N.Z.

PART II. SECT. 3, SUB-SECT. 4.—A.

77 i. *Illustrated catalogue—Collection of designs—Not protected.*]—Copyright Act, 1912, Sched., s. 22 (1), read in conjunction with sect. 9 (c) of the Act, provides as follows: "This Act shall not apply to designs capable of being registered under Designs Act, 1906, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process":—*Held:* (1) the term "multiplied by any industrial process" in that sub-sect. is not limited to the multiplication of the design as a design, but extends to & includes the multiplication by any industrial process of that design in any material form whatsoever; (2) consequently, a manufacturer of articles of metal who had published a catalogue containing illustrations of designs of those articles, with appropriate letterpress, & was registered under Copyright Act as the owner of the copyright in such catalogue, was not entitled to copyright under that Act in respect of such of the designs as had been or could be registered under Designs Act, 1906-1912.—BUZACOTT & CO., LTD. *v.* DUTCH (1929), 30 S. R. N. S. W. 22.—**AUS.**

PART II. SECT. 3, SUB-SECT. 4.—D.

sl. *List of acceptances for horse race.*]—Pltf. co. carried on the business of horse racing & was registered under Copyright Act, 1912, as the owner of the copyright in a sheet of letterpress entitled "names of horses & weights for horses accepted for races to be held at C. Park Races on Sat., June 6, 1931." Prior to each meeting the co. published a similar list of acceptances & caused itself to be registered as the owner of the copyright therein. In the compilation of those lists, in order to arrive at a final result, various preliminary processes were gone through in which pltfs., the handicapper & secretary of the co. respectively, had a part. Deft. without the permission of pltf. co. published in his newspaper the information contained in the list of acceptances of June 6, 1931, & claimed the right to publish similar lists of acceptances:—*Held:* copyright in the list of acceptances for June 6, 1931, was vested in pltfs. or some one or more of them & that such copyright had been infringed.—CANTERBURY PARK RACE COURSE CO., LTD. *v.* HOPKINS (1932), 49 N. S. W. W. N. 27.—**AUS.**

sd. *Race programme.*]—A published programme showing the names of horses entered for particular races, the weights & the barrier positions, is the subject of copyright under the Copyright Act, 1912 (Cth.). The addition of the names of the sires & dams of the horses, the names of the riders, & the colours to be carried by them do not prevent a publication containing the other particulars appearing in the published programme from being an infringement of the copyright in the programme.—MANDER *v.* O'BRIEN, [1934] S. A. S. R. 87.—**AUS.**

sk. *Forms for use of Road Boards.*]—Regulations made under Road Districts Act, 1919-1933, provide that certain books & records shall be kept by every Road Board, & appropriate forms are prescribed. Pltf. was the printer & publisher of a "combined register," which was a compilation of the prescribed forms & claimed copyright therein:—*Held:* there was no selection or peculiar labour, skill, or experience involved in the compilation, & it was not the subject of copyright.—SAMPSON *v.* BROKENSHA & SHAW, LTD., [1935] W. A. L. R. 90.—**AUS.**

beyond a 7½ per cent. cumulative dividend on their paid-up capital belonged to the Postmaster-General. Nine months after the licence, with the approval of the Postmaster-General pltfs. began publishing the *Radio Times* every Friday, including therein the advance daily programmes for the ensuing week Sunday to Saturday. These programmes gave the day & hour of each performance, the artist's name, appropriate headings for items or groups of items, & translations of unfamiliar foreign titles of songs or music. The preparation, arrangement, & editing of the actual programmes involved considerable time, skill, labour & expense, although the preliminary work of fixing the days & hours, engaging the artists, & choosing the items had all been done some time beforehand. Defts. having selected & copied numerous items from a set of advance programmes so published, pltfs. sued for infringement of copyright:—*Held:* (1) whether there was or was not copyright in an individual programme, there was undoubtedly copyright in the compilation of the seven advance programmes; (2) although the programmes were subject to the approval or veto of the Postmaster-General, who had power to revoke the licence if they included improper matter, they were not a work "prepared or published by or under" his "direction or control" within 1911 Act, s. 18, & so long as pltfs. were allowed to trade & publish them, the copyright belonged to pltfs. & not to the Crown. (3) *Semble:* there may be copyright in an individual programme.—BRITISH BROADCASTING CO. *v.* WIRELESS LEAGUE GAZETTE PUBLISHING CO., [1926] Ch. 433; 95 L. J. Ch. 272; 135 L. T. 93; 42 T. L. R. 370.

86a. Starting prices.]—Where after the start of a horse race lists are prepared on the course of the starting prices of the horses engaged in the race, these are not the subject of copyright.—ODHAMS PRESS, LTD. *v.* LONDON & PROVINCIAL SPORTING NEWS AGENCY (1929), LTD., [1935] Ch. 672; 104 L. J. Ch. 323; 153 L. T. 327; 51 T. L. R. 554; 79 Sol. Jo. 541; *on appeal*, [1936] Ch. 357.

88. *Add. Annotations:—As to* (2) **Refd.** Bowling *v.* Camp (1922), 128 L. T. 342; *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

91a. Slogan or catch-phrase.]—SINANIDE *v.* LA MAISON KOSMEO, No. 43b, *ante*.

92a. Abridgment—May be new work.]—While there may be copyright in an abridgment of a larger work, in a case in which accurate knowledge, sound judgment, & literary skill in presenting in a condensed form the material of the original author are displayed, there can be no copyright in a book consisting merely of extracts taken verbatim from a work in which there is no copyright, & strung together by connecting sentences, so as to make the extracts read as a consecutive narrative. There may, however, be copyright in notes appended to such a book, although there is no copyright in the text.—MACMILLAN & CO. *v.* COOPER (1923), L. R. 51 Ind. App. 109; 93 L. J. P. C. 113; 130 L. T. 675; 40 T. L. R. 186; 68 Sol. Jo. 235, P. C.

Annotation:—**Refd.** Masson Seeley *v.* Embosotype Manufacturing Co. (1924), 41 R. P. C. 160.

After this case for "**Abridgment—May be new work.**]—*See* Nos. 422, 426, *post*," read "——.]—*See, also*, Nos. 422, 426."

95. *Add. Annotation:*—**Consd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

97. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

99a. —— Of descriptive character.]—(1) A song which relates the burning of a ship at sea, & the escape of those on board, describes their feelings in vehement language, & sometimes expresses them in the supposed words of the suffering parties, is dramatic, & therefore at all events within the meaning of the statute, though it be sung only by one person, sitting at a piano, giving effect to the verses by his delivery, but not assisted by scenery or appropriate dress.

(2) A room where the song is performed, & to which persons paying for tickets are admitted for the purpose of hearing it, is, for the time, a place of dramatic entertainment within the meaning of the statutes, though the room be ordinarily used for different purposes.—RUSSELL *v.* SMITH (1848), 12 Q. B. 217; 17 L. J. Q. B. 225; 11 L. T. O. S. 286; 12 Jur. 723; 116 E. R. 849.

Annotations:—As to (1) **Apld.** Clark *v.* Bishop (1872), 25 L. T. 908. **Distd.** Fuller *v.* Blackpool Winter Gardens & Pavilion Co., [1895] 2 Q. B. 429. **Refd.** Hatton *v.* Kean (1859), 29 L. J. C. P. 20. *As to* (2) **Consd.** Wall *v.* Taylor, Wall *v.* Martin (1882), 9 Q. B. D. 727. **Apld.** Duck *v.* Bates (1883), 12 Q. B. D. 79. *Generally*, **Refd.** Lacy *v.* Rhys. (1864), 4 B. & S. 873; Edwardes *v.* Cotton (1902), 19 T. L. R. 34.

PART II. SECT. 3, SUB-SECT. 6.

8m. *Advertisement of dental plate.*]—An advertisement relating to the manufacture & sale of dental plates, which contains sufficient originality of expression & arrangement to entitle it to come within the words "original literary work" as used in sect. 3 (1) of Copyright Act, 1913, may be the subject of copyright. The fact that the claims of such an advertisement amount to no more than that certain standards to which every manufacturer of dental plates may work had been reached is no defence to an action for an injunction for infringement of copyright when the presentation of those claims is novel & reached by a combination of skill, labour, & expenditure contributed by its author & owner.—COTTON *v.* FROST, [1936] N. Z. L. R. 627; G. L. R. 520; 12 N. Z. L. J. 250. —N.Z.

PART II. SECT. 4.

100 l. *Sketch—Radio sketch.*]—Deft. co. employed pltf., a dramatic author & producer, to prepare a radio sketch for use in advertising deft.'s business, deft. suggesting the general outline of the work. Pltf. prepared & procured production of the sketch through deft. G. Pltf. & deft. co. entered into a written agreement covering production of the sketch, the agreement containing (*inter alia*) the following clause: "The feature is only to be used as arranged through Fred W. Kantel." Subsequently deft. co. purported to cancel the agreement & continued to broadcast the sketch under the deft. G.'s direction. Later deft. G. broadcasted the sketch on his own account, for a short time, without pltf.'s consent. In an action for infringement of copyright & for damages:—*Held:* (1) pltf. was the sole author of the sketch, he having given it form & expression although certain ideas had been suggested by the deft.; (2) the sketch was a dramatic work within the meaning of copyright law which does not require that the expression must be in an original or novel form, but that the work must not be copied from another work. Nor did it matter that the original manuscript was departed from in each broadcast as, in the presentation of a dramatic work in whatever form, it is open to the performer to depart from the literal text of the work; (3) there was infringement of pltf.'s copyright since deft. co. for several months caused to be performed or broadcast through deft. G. the sketch originally prepared & broadcasted by direction of pltf. without his consent.—KANTEL *v.* GRANT, NISBET & AULD, LTD., WATSON & DOMINION BATTERY CO., LTD., [1933] Ex. C. R. 84.—CAN.

108a. Frock reproduced from sketch.]—Pltf., B., having made a sketch of a red frock worn upon a lady, pltf. co., with the consent of B., made a frock which followed the lines of the frock which the lady was shown wearing in the sketch. It was the practice of pltf. co. not to sell a frock of the same design to any customer other than the particular customer for whom it was designed. Defts., without the consent of pltfs. or either of them, made a frock which was precisely the same as pltf. co.'s frock & made & offered for sale & sold frocks which were substantially reproductions of the frock made by pltf. co. & threatened to continue so to do :—*Held :* (1) the frock made by defts. whether spread out or held up to view, was not a reproduction of B.'s sketch within 1911 Act, s. 1 (2), & consequently, B.'s copyright in the sketch was not infringed ; (2) the frock copied by pltf. co. from the sketch was not an original " work of artistic craftsmanship " within the definition of " artistic work " in sect. 35 of 1911 Act, as pltf. co. were not the originators of the artistic element in the work.

Qu. : whether, if B. herself made the frock from her own design, she would be entitled to copyright therein.—BURKE & MARGOT BURKE, LTD. *v.* SPICERS DRESS DESIGNS, [1936] Ch. 400 ; [1936] 1 All E. R. 99 ; 105 L. J. Ch. 157 ; 154 L. T. 561 ; 52 T. L. R. 242 ; 80 Sol. Jo. 147.

Annotation :—As to (1) **Consd.** Chabot *v.* Davies, [1936] 3 All E. R. 221.

111a. —— Wolf-cub head for Boy Scouts' pole—1911 Act, s. 22.]—Apart from 1911 Act, s. 22, a model of a wolf-cub's head produced from a mould in papier mache & intended to be displayed as their totem on the tops of poles by the Boy Scouts Assocn., is an artistic work in which copyright would subsist under that Act. But, as the model consisted of " features of shape, configuration, pattern, or ornament applied to any article " of manufacture or artificial substance by an industrial process, & was therefore a design within Patents & Designs Act, 1907 (c. 29), s. 93, as amended by Patents & Designs Act, 1919 (c. 80), s. 19, & consequently was capable of being registered under the Act of 1907 &, further, was not a design which was " not used or intended to be used as a model or pattern to be multiplied by any industrial process," it was by Copyright Act, 1911 (c. 46), s. 22, excluded from the operation of that Act & not the subject of copyright thereunder.

In an action by pltfs. for infringement of copyright which they claimed in the model, against the defts. who admittedly had copied & reproduced the model :—*Held :* for the reasons stated above, pltfs. had no copyright in the model under 1911 Act, & the design not having been registered as a design under the Patents & Designs Act, 1907 (c. 29), the action failed.

Semble : if pltfs. had had copyright in the model, the defts. could not successfully plead, under 1911 Act, s. 8, that they had no reasonable ground for suspecting the subsistence of copyright in the model owing to the absence of registration marks under Patents & Designs Act, 1907 (c. 29), under which they alleged that in their view of the law the model was capable of registration since, relying upon that view, they abstained from making any inquiries whether copyright in the model was claimed.—PYTRAM, LTD. *v.* MODELS (LEICESTER), LTD., [1930] 1 Ch. 639 ; 99 L. J. Ch. 381 ; 143 L. T. 227 ; 46 T. L. R. 290.

118a. Adaptation of old play—Original musical composition.]—1911 Act has extended the protection of copyright, & there is musical copyright in an arrangement of previous music which amounts to a new work.

Pltf. composed music for an opera which was an adaptation of an old play. Defts. prepared an orchestral score from the same source, records of which they offered to the trade. Pltf. complained that defts. were passing off these records as records of pltf.'s music :—*Held :* defts. had borrowed from pltf.'s work in a way which was more than mere coincidence, & had infringed pltf.'s copyright.—AUSTIN *v.* COLUMBIA GRAPHOPHONE CO. (1923), 67 Sol. Jo. 790.

Annotation :—**Refd.** Samuelson *v.* Producers Distributing Co. (1931), 48 R. P. C. 447.

119. *Add. Annotations :*—**Refd.** Austin *v.* Columbia Graphophone Co. (1923), 67 Sol. Jo. 790 ; Gramophone Co. *v.* Stephen Carwardine & Co., [1934] Ch. 450.

120. *Add. Annotations :*—**Consd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474 ; Thompson *v.* Warner Pictures, [1929] 2 Ch. 308.

121a. Right of maker of record to restrain public performance.]—*Held :* (1) owners of a subsisting original copyright under 1911 Act, sect. 1, can restrain public performance by owners of a special copyright under sect. 19, which is subordinate to copyright under sect. 1, though it may co-exist with it ; (2) an owner of a special copyright under sect. 19 in a record has the sole right to use the record for public performance except as against the owner of a subsisting original

---

PART II. SECT. 5, SUB-SECT. 1.

sl. *Design for trade purposes.*]—A firm of advertising agents made a sketch for pltfs. entitled a " Design for Shirt Box." Pltfs. did not use it :—*Held :* pltfs. could not be treated as owners of an artistic work ordered & made for valuable consideration within Copyright Act, 1927, s. 12 (1).—TORONTO CARTON CO. *v.* MANCHESTER, MCGREGOR, LTD., [1935] 2 D. L. R. 94 ; O. R. 144.—**CAN.**

sl. *Sketches prepared from design.*]—The preparation of coloured sketches of a submitted design does not involve artistic skill or come within the definition of sketches with Copyright Act.—COMMERCIAL SIGNS *v.* GENERAL MOTORS PRODUCTS, [1937] 2 D. L. R. 310 ; *affd.*, [1937] 2 D. L. R. 800.—**CAN.**

PART II. SECT. 7.

sp. *Record—Necessity for consent of owner of copyright of original work.*]—The copyright conferred by sect. 19 in Sched. I. of the Indian Copyright Act on the maker of the record of a musical work, by means of which sounds may be mechanically reproduced, only exists where the record is made with the consent of the owner of the copyright in the original work, if such owner exists.—WELLINGTON CINEMA *v.* PERFORMING RIGHT SOCIETY, LTD., I. L. R., [1937] Bom. 724.—**IND.**

PART II. SECT. 9.

m l. —— ——.]—The words " Who's Who " are *publici juris*, & the title " Who's Who in Canada " is purely descriptive. The use of the title " Canadian Who's Who " will not, therefore, be restrained by injunction.—INTERNATIONAL PRESS, LTD. *v.* TUNNELL, [1938] 1 D. L. R. 393.—**CAN.**

st. *Included in " work."*]—" Work " in the Canadian Copyright Act includes the title thereof, & the title of a copyright work cannot be used for motion pictures without the consent of the owners of the copyright.—FRANCIS, DAY & HUNTER, LTD. *v.* TWENTIETH CENTURY FOX CORPN., [1937] 4 D. L. R. 700.—**CAN.**

copyright.—GRAMOPHONE Co., LTD. *v.* STEPHEN CAWARDINE & Co., [1934] Ch. 450; 103 L. J. Ch. 248; 150 L. T. 396; 50 T. L. R. 140; 77 Sol. Jo. 914.

125. *Add. Annotations:*—**Refd.** Rex Co. & Rex Research Corpn. *v.* Muirhead & Comptroller General of Patents (1926), 44 R. P. C. 38; *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

128. *Add. Annotation:*—**Consd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

133. *Add. Annotation:*—**Apld.** Sinanide *v.* La Maison Kosmeo, (1928) 139 L. T. 365.

135a. —— **"Official Guide" — Protected.**]—REUTER'S TELEGRAM Co., LTD. *v.* INTERNATIONAL GUIDE SYNDICATE & INTERNATIONAL EXPRESS, LTD. (1893), 37 Sol. Jo. 325.

137. *Add. Annotation:*—*As to* (2) **Follid.** Ridgway Co. *v.* Hutchinson (1923), 40 R. P. C. 335.

147. *Add. Annotation:*—**Refd.** Odham's Press, Ltd. *v.* London & Provincial Sporting News Agency (1929), Ltd., [1935] Ch. 672.

Part III.—Publication.

151. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

164. *Add. Annotations:*—*As to* (1) **Consd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474. *As to* (8) **Consd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

165. *Add. Annotation:*—**Follid.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

180a. **What documentary evidence admissible—Letters—From author's agent to assignee of performing rights.**]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante*.

180b. —— **Entry in register at Stationers' Hall — Entry incorrect.**]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante*.

Part IV.—Ownership.

190. *Add. Annotation:*—**Refd.** Austin *v.* Columbia Graphophone Co. (1923), 67 Sol. Jo. 790.

194. *Add. Annotations:*—**Consd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113. **Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

196. *Add. Annotation:*—**Apld.** Black *v.* Stacey, [1929] 1 Ch. 177.

196a. —— **By compiler of book of reference—From information received from biographees.**]—Where the compiler of a biographical book of reference receives from the biographees information to be used as material from which the book may be compiled, the persons supplying the information are not, for the purposes of 1911 Act, the authors of the paragraphs containing the information.—A. & C. BLACK, LTD. *v.* CLAUDE STACEY, LTD., [1929] 1 Ch. 177; 98 L. J. Ch. 131; 140 L. T. 402; 44 T. L. R. 347.

197a. **Automatic writing by medium.**]—A woman journalist, engaged as a medium in psychical research, claimed copyright in a production written by her in automatic writing & alleged to be communicated by a spiritual agent. Deft. was present at some of the séances & alleged that the communication was addressed to him. He claimed that the copyright was in him, or that it was a joint copyright, or that there was no copyright in any one:—*Held:* pltf. was the sole owner of the copyright.—CUMMINS *v.* BOND, [1927] 1 Ch. 167; 76 L. J. Ch. 81; 136 L. T. 368; 70 Sol. Jo. 1003.

198. *Add. Annotations:*—**Refd.** Samuelson *v.* Producers' Distributing Co. (1931), 146 L. T. 37; O'Gorman *v.* Paramount Film Service, Ltd., [1937] 2 All E. R. 113.

205. *Add. Annotation:*—**Refd.** Sasha *v.* Stoenesco (1929), 45 T. L. R. 350.

206. *Add. Annotation:*—**Refd.** Sasha *v.* Stoenesco (1929), 45 T. L. R. 350.

206a. —— —— ——.]—SASHA, LTD. *v.* STOENESCO (1929), 45 T. L. R. 350.

210. *Add. Annotation:*—**Refd.** Sasha *v.* Stoenesco (1929), 45 T. L. R. 350.

211. *Add. Annotation:*—**Refd.** Sasha *v.* Stoenesco (1929), 45 T. L. R. 350.

220. *Add. Annotation:*—*As to* (1) **Refd.** Massine *v.* De Basil (1937), 81 Sol. Jo. 670.

226. *Add. Annotation:*—*Generally*, **Refd.** Drabble *v.* Hycolite Manufacturing Co. (1928), 44 T. L. R. 264.

229a. **Sketches for advertisement show cards—Ordered by & made for advertiser for valuable consideration—Design not registered under Patents & Designs Act, 1907 (c. 29).**]—Pltfs. claimed to be the assignees from the author of two sketches for cut-out advertisement show cards representing a pierrot & pierrette respectively with large faces & diminutive bodies. These sketches were shown by the author to defts. with defts.' name upon them with the view of being used by them for advertisement purposes. At the suggestion of defts. the colour of the costumes of the figures was changed from mauve to green & yellow; the colour of the lettering of

---

PART IV. SECT. 1, SUB-SECT. 2.—A. a1. *Contract of service—What amounts to.*]—B. was engaged as an "artist contributor" to a newspaper under agreement to supply each week certain drawings at a weekly remuneration, to comply with all orders, directions & regulations of the co. to properly conduct himself, & to refrain from divulging the co.'s affairs or from accepting engagement in any undertaking in competition with the co.:—*Held:* B. was employed under a "contract of service" within sect. 5 (1) (*b*) of the Sched. to Copyright Act, 1912.—SUN NEWSPAPERS, LTD. *v.* WHIPPIE (1928), 28 S. R. N. S. W. 473; 45 N. S. W. W. N. 126.—AUS.

defts.' name was also changed from red to green & yellow. Defts. ordered a number of the sketches so altered at a price which gave the author a very considerable profit. Subsequently defts. obtained a number of the sketches from sources other than pltfs.' Neither pltfs. nor the author had registered the sketches as designs under the above Act. In an action by pltfs. for infringement of copyright:—*Held:* (1) under 1911 Act, s. 5 (1) (*a*), defts. were the first owners of the copyright in the original sketches, as the sketches were ordered by, & were made for, them for valuable consideration & were "engravings" within that sub-sect.; (2) the sketches were designs which were capable of being registered under Patents & Designs Act, 1907, & as they were used or intended to be used as models or patterns to be multiplied by an industrial process, 1911 Act, by reason of sect. 22, did not apply to them, & as the sketches had not been registered as designs under the Act of 1907 pltfs. could not succeed.—CON PLANCK, LTD. *v.* KOLYNOS INCORPORATED, [1925] 2 K. B. 804; 94 L. J. K. B. 923; 133 L. T. 798.

229b. Advertisement—Prepared by advertisement agent.]—Where an advertisement agent prepares an advertisement on instructions & information given to him by the advertiser, the ct. will, in the absence of evidence to the contrary, draw the inference that it was the intention of both parties that the copyright in the advertisement should belong to the advertiser.—HAROLD DRABBLE, LTD. *v.* HYCOLITE MANUFACTURING CO. (1928), 44 T. L. R. 264; 72 Sol. Jo. 102.

232a. **Choreography.**]—MASSINE *v.* DE BASIL (1938), 82 Sol. Jo. 173, C. A.

234a. **Copyright Act, 1911 (c. 46), s. 17—Application to dispositions after commencement of statute.**]—*Re* DICKENS, DICKENS *v.* HAWKSLEY, No. 275a, *post.*

234b. —— **Ownership of unpublished manuscript—When proof of ownership of copyright.**]—*Re* DICKENS, DICKENS *v.* HAWKSLEY, No. 275a, *post.*

235. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

Part V.—Assignment, Licence and Royalties.

247. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

251. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251

254. *Add. Annotations:*—**Consd.** I. R. Comrs. *v.* Longmans, Green & Co. (1932), 17 Tax Cas. 272. **Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

256. *Add. Annotation:*—*As to* (1) **Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

268. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

270. *Add. Annotation:*—**Consd.** Coleridge-Taylor *v.* Novello & Co., [1938] Ch. 608.

275. After this case add "**Assignment on bankruptcy—Bankruptcy Act, 1914 (c. 59), s. 60—Whether applicable to winding up.**]—*See* COMPANIES, Nos. 6409b, 6409c, *ante.*"

275a. Bequest of private papers—Manuscripts of unpublished work.]—(1) An author's incorporeal copyright in an unpublished work does not necessarily pass with the corporeal paper on which it is written. Therefore, a bequest to A.B. of "all my private papers" in a will (which also contains a bequest of "manuscripts of my published works" & a direction to sell "copyright") operates to pass the property in an unpublished manuscript to A.B. but not the copyright in the work recorded in the manuscript.

(2) Copyright Act, 1911 (c. 46), applies to a bequest of manuscript & copyright in a will although the testator died before the Act came into force.

(3) By sect. 17 (2) of the Act it is provided that ownership acquired under a testamentary disposition of an author of an unpublished manuscript of that author is *primâ facie* proof of the copyright being with the owner of the manuscript. That *primâ facie* proof is displaced by the author bequeathing the copyright independently.—*Re* DICKENS, DICKENS *v.* HAWKSLEY, [1935] Ch. 267; 104 L. J. Ch. 174; 152 L. T. 375; 51 T. L. R. 181; 78 Sol. Jo. 898, C. A.

278. *Add. Annotation:*—**Refd.** The Lord Strathcona, [1925] P. 143.

289. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

290a. ———— **Rights of assignee as to mechanical performance.**]—Where the author of a musical work has made an assignment of his rights in the work before July 1, 1912, the exclusive right conferred upon him by 1911 Act, of making or authorising the making

---

PART V. SECT. 1, SUB-SECT. 1.—A. (c).

sl. *Whether amounting to assignment.*]—By a written agreement, pltf., an author, granted to a publishing co. the sole & exclusive licence to print, publish & sell, in book forms, his poetical non-dramatic works in a volume entitled "Collected Poems." The published price of the book was fixed in the agreement, & the co. agreed to pay to the author 20 per cent. of the published price on all copies of the book which they might sell. All rights in the book other than those granted to the co. were reserved by the author, & it was expressly stated that the entire copyright of the book would remain the property of the author. The first deft. compiled, & the second deft. published, a selection of poems called "Recession of English Poetry" in which two poems from "Collected Poems" were included without pltf.'s permission. In an action by the author of the two poems founded on the alleged infringement of copyright, defts. challenged the *locus standi* of pltf. to bring the action in view of his agreement with the publishing co.:—*Held:* the agreement was not an assignment of the copyright, but a mere publishing agreement &, therefore, pltf., had *locus standi* to sue.—YEATS *v.* DICKINSON, I. L. R., [1938] Lah. 84.—**IND.**

PART V. SECT. 1, SUB-SECT. 1.—A. (e).

sx. *Sale of first edition.*]—A sale of the first edition of a book amounts to an assignment of an interest in the copyright until the last copy of that edition is sold.—KAMALA BOOK DEPOT LTD. *v.* SOUREENDRANATH MUKHERJI (1934), I. L. R. 62 Calc. 57.—**IND.**

of contrivances by means of which the work may be mechanically performed, does not enable him to restrain the assignees from performing or authorising the performance of the work by means of such contrivances.—THOMPSON *v.* WARNER BROTHERS PICTURES, LTD., [1929] 2 Ch. 308; 98 L. J. Ch. 427; 141 L. T. 411; 45 T. L. R. 553, C. A.

Annotations:—**Consd.** Gramophone Co. *v.* Stephen Carwardine & Co., [1934] Ch. 450. **Refd.** Performing Right Society, Ltd. *v.* Hammond's Bradford Brewery Co., [1934] Ch. 121.

290b. Assignment subsequent to passing of Copyright Act—But before Act in operation.]—The effect of proviso (*a*) to sect. 24 (1) of 1911 Act is that, if before the commencement of the Act an author assigned his right in an existing work, then at the date when but for the passing of the Act his right would have expired, the substituted right conferred by the Act is to pass to him, & this proviso is not qualified by the proviso to sect. 5 (2), the effect of which is that, if between the date of the passing of the Act & the date of its commencement the author assigned his copyright under the Act in works to be produced by him after its commencement, there should vest in the assignee no rights with respect thereto beyond the expiration of twenty-five years from the death of the author.—COLERIDGE-TAYLOR *v.* NOVELLO & CO., LTD., [1938] Ch. 850; [1938] 3 All E. R. 506; 107 L. J. Ch. 371; 159 L. T. 297; 54 T. L. R. 1049; 82 Sol. Jo. 623, C. A.

294. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

302. *Add. Annotations:*—**Consd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251. **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

305. *Add. Annotation:*—**Consd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

305a. Grant of licence giving sole & exclusive right of representation—Assignment.]—Applt. was the composer of the music of a French opera, an English version of which was produced at a London theatre on the terms of an agreement of Mar. 23, 1905. By this agreement, made between the composer (the applt.) & the authors of the opera (thereinafter called "the licencors") of the one part & the proprietor of the theatre (thereinafter called "the licencee") of the other part, after reciting that the licencors had delivered the play to the licencee, with the score of the music, with a view to its production in London & elsewhere "on the terms hereinafter mentioned," the licencors granted the licencee the sole & exclusive right of representing the play in the U.K., America, & the British Colonies & Dominions. The agreement further provided that the copyright in the music of the play should remain the property of applt.; that on the failure of the licencee to produce the play in London within a certain time all rights of representation as aforesaid should revert to & become again the absolute property of the licencors; that the licencee should pay to the licencors as royalties certain percentages of the gross profits; that the licencee should keep proper books showing the gross receipts of the theatres at which the play should be represented, & that the licencors should be entitled to inspect the books, so as to enable them to verify the amount of the percentage payable to them. Resps., in pursuance of a permission granted to them by a theatrical co., to whom on the death of the licencee the benefit of the agreement had been assigned by his exors., gave a broadcast performance of the opera at their studio in London. In an action by applt. against resps. for infringement of copyright:—*Held:* upon the construction of the agreement, (1) it operated as an absolute assignment of the performing rights of the opera within the prescribed area & was not a mere licence, & (2) it was not limited to representations on the stage of a theatre, & the action failed.—MESSAGER *v.* BRITISH BROADCASTING CO., [1929] A. C. 151; 98 L. J. K. B. 189; 140 L. T. 227; 45 T. L. R. 50, H. L.

Annotations:—*As to* (1) **Consd.** I. R. Comrs. *v.* Longmans, Green & Co. (1932), 17 Tax Cas. 272. *Generally*, **Refd.** Performing Right Society, Ltd. *v.* Hammond's Bradford Brewery Co. (1933), 49 T. L. R. 410.

308. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

308a. —— —— ——.]—Pltf. was the sole authoress of & owner of the copyright in a novel called "The Scarlet Pimpernel." In 1903 in collaboration with her husband, she composed a dramatic version of the novel. By an agreement dated June 10, 1903, pltf. & her husband, as authors, granted to defts. T., as theatrical managers, the right of production of the play during a then forthcoming tour, & at a first-class West End London theatre, for two years; & the agreement further provided that if the production took place within that period then "the entire rights for the United Kingdom, the United States of America, & the Dominion of Canada in the play became theirs inalienable, & they shall present it when & where they will within the countries aforesaid," paying to the authors 5 per cent. on the gross weekly takings. Defts. fulfilled the specified condition. In an action by pltf. claiming a declaration that she had the sole right to perform the work by means of cinematograph films:—*Held:* the entire performing rights in the play became vested in defts. by virtue of the agreement, & when 1911 Act came into operation the right so vested included the right to the cinematograph reproduction of the play; & therefore pltf.'s action failed.—BARSTOW *v.* TERRY, [1924] 2 Ch. 316; 93 L. J. Ch. 607; 132 L. T. 53.

Annotations:—**Folld.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91. **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

308b. —— —— ——.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante*.

308c. Assignment of sole & exclusive right of representation—Includes right to broadcast.]—MESSAGER *v.* BRITISH BROADCASTING CO., No. 305a, *ante*.

311. *Add. Annotation:*—**Refd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

PART V. SECT. 2, SUB-SECT. 3.—B.

ak. *Exception of motion picture rights—Whether sound pictures included.*]—By an agreement made in Sept. 1924, the owner of the dramatic & performing rights in a musical play granted to pltf. the sole right to produce & perform the play, but the agreement excepted "the motion picture film rights," which were expressly reserved to the grantor. At the time of the agreement both parties knew that sound films had been made but they were not then of commercial import-

323a. Licence for reception of wireless—"For domestic & private use only."]—PERFORMING RIGHT SOCIETY, LTD. *v.* HAMMOND'S BRADFORD BREWERY CO., LTD., No. 483c, *post.*

325. *Add. Annotations :—As to* (1) **Consd.** Gramophone Co. *v.* Stephen Carwardine & Co., [1934] Ch. 450. *Generally*, **Refd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474 ; Thompson *v.* Warner Pictures, [1929] 2 Ch. 308.

325a. —— —— —— Whether labels must be capable of adhering to particular type of record.]—*Held :* when the copyright owner had supplied a maker of gramophone records with "adhesive labels" within the meaning of Copyright Royalty System (Mechanical Musical Instruments) Regulations, 1912, the onus was on the maker to show that there were no means by which the labels could be made to adhere to the records. The words "adhesive labels" in the Regulations could not be construed by implication to mean that the labels should be fitted to adhere & capable of adhering to any substance of which the maker might choose to manufacture his records.—BOOSEY & CO., LTD. *v.* GOODSON GRAMOPHONE RECORD CO., LTD., [1930] 1 Ch. 448 ; 99 L. J. Ch. 192 ; 142 L. T. 417 ; 46 T. L. R. 190 ; 74 Sol. Jo. 89, C. A.

325b. —— —— —— Onus of proof that labels incapable of adhering to particular records.]—BOOSEY & CO., LTD. *v.* GOODSON GRAMOPHONE RECORD CO., LTD., No. 325a, *ante.*

325c. Reproduction of two works in one volume.]—Where a person reproduces in one volume, under the conditions set out in the proviso to 1911 Act, s. 3, two copyright works by the same author, the provision as to the payment of a royalty "of 10 per cent. on the price at which he publishes the work" is satisfied by the payment of a royalty of 10 per cent. on the price at which he publishes the volume, inasmuch as the word "work" includes "works" by Interpretation Act, 1889 (c. 63), s. 1 (1) (*b*).—OSBOURNE *v.* DENT (J. M.) & SONS, LTD., [1925] Ch. 369 ; 94 L. J. Ch. 308 ; 133 L. T. 362 ; 41 T. L. R. 419 ; 69 Sol. Jo. 500.

Part VII.—Crown Copyright.

332a. Programmes prepared by British Broadcasting Company—Whether "published by or under direction or control" of Crown.]—BRITISH BROADCASTING CO. *v.* WIRELESS LEAGUE GAZETTE PUBLISHING CO., No. 85a, *ante.*

332b. Telephone directory—Copyright in Postmaster-General.]—A.-G. *v.* COLMAN'S PUBLICITY SERVICE (1928), *Times*, Mar. 16.

343a. —— Writs, bonds and indentures — Grant void.]—YARMOUTH (EARL) *v.* DARREL (1685), 3 Mod. Rep. 75 ; 87 E. R. 48.

354. After this case add :—

——.]—*See, now*, British Museum Act, 1932 (c. 34).

Part IX.—Letters.

355. *Add. Annotations :*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383 ; *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

360. *Add. Annotation :*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383

364. *Add. Annotations :*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383. **Refd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

366. *Add. Annotations :*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383. **Refd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

367a. —— ——.]—A. brought an action against B., the editor of a newspaper, for stating in his paper that pltf. was the author of a certain libellous article which had appeared in the paper. To this action B. pleaded by way of justification, that the matter from which the article had been drawn up had been furnished by pltf. in letters written to him by deft. Upon the action coming on for trial, deft. submitted to a verdict of 40*s.* in favour of pltf. Deft. afterwards showed some of the letters to third persons. Upon a motion before answer, to dissolve an injunction which pltf. had obtained to restrain the publication & production of the letters, the ct. refused the application ; more especially as upon the motion for the injunction pltf. had produced an affidavit to the effect that the verdict was taken under an arrangement that the letters should be delivered up, which affidavit was not sufficiently contradicted on the motion to dissolve. —PALIN *v.* GATHERCOLE (1844), 1 Coll. 565 ; 4 L. T. O. S. 251 ; 63 E. R. 545.

Annotation :—**Consd.** Philip *v.* Pennell, [1907] 2 Ch. 577.

369. *Add. Annotation :*—**Consd.** *Re* Dickens, Dickens *v.* Hawksley, [1935] Ch. 267.

369a. —— Letters alleging breach of Official Secrets Act.]—COOKSON *v.* POUNTNEY (1937), 81 Sol. Jo. 528.

---

ance :—*Held :* the agreement made a reservation in favour of the grantor of so much of the exclusive performing right as would allow the exploitation of the commercial exhibition of moving pictures as practised at the time & as it might be developed or improved during the life of the copyright, & the reservation covered sound pictures as well as silent films.—WILLIAMSON (J. C.), LTD *v.* METRO-GOLDWYN-MAYER THEATRES, LTD. (1937), 56 C. L. R. 567 ; 11 A. L. J. 112 ; [1937] V. L. R. 140.—**AUS.**

PART V. SECT. 3.

sm. *Gramophone records—Owner of copyright in work on one side unknown —Division of royalties due.*]—ALBERT *v.* GRAMOPHONE CO., LTD. (1927), 28 S. R. N. S. W. 70.—**AUS.**

Part XIa.—Application to British Possessions.

See 1911 Act, ss. 25–28.

389a. Irish Free State.]—(1) As by 1911 Act, s. 25 (1), that Act extended throughout His Majesty's dominions, except to a self-governing dominion which did not adopt it, & s. 35 (1) restricted the meaning of "self-governing dominion" to the dominions which are therein specifically named, Ireland not being included, the Act was in force in the Irish Free State when the constitution came into operation, & consequently by art. 73 thereof continued of full force & effect until it was repealed by the Industrial & Commercial Property (Protection) Act, 1927, of the Irish Free State. Sect. 174 (1) of that Act which provides that rights acquired under the Act of 1911 before Dec. 6, 1921, shall not be affected by the repeal, preserves rights the inception of which was before that date although they have been assigned after it.

The Judicial Committee, although of opinion that the judgment of the Supreme Court was wrong in holding that the appellants were not entitled to any remedy in respect of an infringement in 1926 of their rights under 1911 Act, advised that the judgment should be discharged only so far as it dealt with costs, as the Copyright (Preservation) Act, 1929, passed by the Irish Free State legislature after the grant of special leave to appeal, while enacting that rights under 1911 Act were to be deemed always to have subsisted in the Irish Free State, provided by sect. 4 that no remedy or relief should be granted in respect of any infringement which had there taken place before the passing of the Act.

(2) A local authority commits an infringement under 1911 Act, s. 2 (1), if a band which it has engaged to perform in public plays, without consent, copyrighted musical works which are included in a programme approved by the local authority, & the performance is for the "private profit" of the local authority, within sect. 2 (3), although any profit resulting will be applied to the relief of ratepayers.—PERFORMING RIGHT SOCIETY, LTD. *v.* BRAY URBAN DISTRICT COUNCIL, [1930] A. C. 377; 99 L. J. P. C. 116; 143 L. T. 97; 46 T. L. R. 359; 74 Sol. Jo. 284, P. C.

Annotation :—Generally, **Reid.** Moore *v.* A.-G. for Irish Free State (1935), 104 L. J. P. C. 50.

389b. Canada.]—Sect. 42 of the Canadian Copyright Act, 1921, which came into force on Jan. 1, 1924, is a transitional enactment designed to prevent the loss of rights existing before Jan. 1, 1924, & it achieves this by conferring on those who enjoyed pre-existing rights the substituted rights defined by the Act of 1921. The pre-existing copyright enjoyed must, however, have been copyright in Canada. Where, therefore, it was established that applt., resident in England, who claimed to be entitled to the copyright in Canada in a number of pictures painted & admittedly published outside Canada before Jan. 1, 1924, had not complied with the provisions of sect. 6 of the Canadian Copyright Act, 1906, the Act in force in Canada immediately before the Act of 1921—not having produced or reproduced them in Canada, or recorded the copyhold thereof—& had not therefore acquired copyright in them in Canada under the Act of 1906 :—*Held :* (1) he was not entitled to copyright in Canada in the pictures under the Act of 1921; (2) the certificate of the Secretary of State given under sect. 25 (2) of Imperial Copyright Act of 1911 did not & could not extend the Imperial Act to Canada. The certificate had merely the effect of bringing into operation the provision that Canada should for the purposes of the rights conferred by the Imperial Act (but for those purposes only) be treated as if it were a Dominion to which the Act extended. The Imperial Act conferred no rights in Canada, & it was only for the purposes of the rights conferred by it that Canada was to be treated as if the Act extended to it. The Imperial Copyright Act of 1911, therefore, conferred no rights in Canada on applt.—MANSELL *v.* STAR PRINTING & PUBLISHING CO. OF TORONTO, LTD., [1937] A. C. 872; [1937] 3 All E. R. 912; 106 L. J. P. C. 147; 157 L. T. 445; 53 T. L. R. 1026; 81 Sol. Jo. 764, P. C.

Part XII.—Registration.

To the cross-references in this Part add as follows :—

Effect of—Admissibility of entry in register—To prove first performance of dramatic work in England.]—*See* No. 16a, *ante.*

PART XI.

h 1. —— —— *Effect of Canadian Copyright Act on rights of British subject.*]—In the case of a British subject, whether resident in Canada or not, the protection which he is given under sect. 4 (1) of Copyright Act, R. S. C., 1927, is not dependent upon or qualified by the provisions of the Revised Convention of Berne of 1908, to which, & the protocol thereto of 1914, Canada gave its adherence in 1923. Therefore there is infringement when a newspaper article, of the class which is the subject of copyright, written by a British subject & first published in His Majesty's Dominions is reproduced in a Canadian newspaper, without the consent of the author or the assignee, if any, of his rights, even though it cannot be protected under the Berne Convention because no notice expressly forbidding its reproduction has been given.—GRIBBLE *v.* MANITOBA FREE PRESS CO., LTD., [1931] 3 W. W. R. 570; [1932] 1 D. L. R. 169; 40 Man. L. R. 42.—CAN.

PART XII.

l 1. —— —— —— *Copyright Act, 1921 (c. 24), s. 39 (2).*]—CANADIAN PERFORMING RIGHT SOCIETY *v.* FAMOUS PLAYERS CANADIAN CORPN., [1929] A. C. 456; 98 L. J. P. C. 70; 140 L. T. 657; 45 T. L. R. 232, P. C.—CAN.

Part XIII.—Infringement.

394a. Knowledge of infringement — Whether material.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante.*

After this case for "**As to knowledge as a defence.**]—*See* No. 47, *ante;* Nos. 506. 539, 540, 541, 557, *post,*" read "—— ——.]—*See, also,* No. 47, *ante;* Nos. 506, 539–541, 557, *post.*"

394b. Authorising publication of unpublished work —Sale of rights in manuscript.]—To sell the rights in relation to an MS. to another with the view of its production, it being, in fact, produced as a result of such a sale, is "to authorise" the printing & publication within 1911 Act, s. 1 (2), & it is not necessary that there shall be an actual sanction of the acts being done by the servant or agent of the person affecting to give the authority on his behalf.—EVANS *v.* HULTON (E.) & CO., LTD. (1924), 131 L. T. 534; 40 T. L. R. 489; 68 Sol. Jo. 616.

Annotations:—**Apprvd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474; Donoghue *v.* Allied Newspapers, Ltd., [1937] 3 All E. R. 503. **Refd.** Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489.

See, also, Nos. 489a, 489b, 489c, 510, *post.*

394c. Statutory defence—What must be proved.]—Defts. published in a newspaper of which they were the proprietors & publishers a short story called "The Gods Decide," which had been submitted to them by one S. as his own original work. "The Gods Decide" was in fact a colourable imitation of a short story entitled "The Interlopers," the copyright in which was owned by pltfs. or one of them. Defts. did not know of the existence of "The Interlopers," nor that it was the subject of copyright, & sought to rely on sect. 8 of 1911 Act, as a defence to pltfs.' claim for damages under sects. 6 & 7:—*Held:* sect. 8 afforded no defence in the circumstances. Defts. had not proved that they were "not aware & had no reasonable ground for suspecting that copyright subsisted in the work," but only that they had the authority of S., whom they believed to be the owner of the copyright.—JOHN LANE, BODLEY HEAD, LTD. *v.* ASSOCIATED NEWSPAPERS, LTD., [1936] 1 K. B. 715; [1936] 1 All E. R. 379; 105 L. J. K. B. 326; 154 L. T. 403; 52 T. L. R. 281; 80 Sol. Jo. 206.

Annotation:—**Refd.** Ash *v.* Dickie, [1936] 2 All E. R. 71.

398a. —— By manufacturer—Of letter written by rival manufacturer—Covering letter of criticism.]—BRITISH OXYGEN CO. *v.* LIQUID AIR, LTD., No. 43a, *ante.*

403a. Shop-front reproduced from blue-print.]—CHABOT *v.* DAVIES, No. 70a, *ante.*

406. *Add. Annotation:*—**Refd.** Johnstone *v.* Bernard Jones Publications, Ltd., [1938] Ch. 599.

408a. ——.]—SINANIDE *v.* LA MAISON KOSMEO, No. 43b, *ante.*

413. *Add. Annotation:*—**Refd.** Hawkes & Son (London), Ltd. *v.* Paramount Film Service, Ltd., [1934] Ch. 593.

414. *Add. Annotation:*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

417a. —— Quotation in letter to paper.]—Anything coming within the proviso to 1911 Act, s. 2 (1), is not an infringement of copyright, even if, but for the proviso, it would be: but whether a reproduction is a "fair dealing" within the proviso depends, to some extent, on how much of the work is reproduced. Omission of the author's name does not of itself necessarily prevent a reproduction & criticism of part of a work from being a "fair dealing" within the proviso.

Pltf. was the author, & owner of the copyright, of two original literary works, one published in May, 1934, called "A Summary of some Systems & Tables in dealing with Three Alternative Possibilities or Results applied to Crosswords, Pictures & Pools," the other published in 1935, called "Systematic Football Betting." A material part of each work consisted of certain mathematical tables by the use of which an entrant for football pools was enabled to arrange his entries in what was thought to be an advantageous manner. Defts., the publishers of a weekly paper known as "The Football Forecast," published in the issue of that paper for Dec. 1, 1936, a letter which contained a table headed "Reduced Permutation Table," which was in substance a reproduction of a table which appeared in each of pltf.'s two books. Pltf. contended that the publication & printing of that letter were infringements of his copyright. Defts. denied that the table was a substantial part of pltf.'s books within 1911 Act, s. 1 (2), or that the table complained of was copied therefrom. They contended that it was an independent compilation, & that what was contained in the issue of their paper was a fair dealing with pltf.'s work for the purposes of criticism or review within the proviso to 1911 Act, s. 2 (1):—*Held:* (1) the letter amounted to a publication by defts. of a substantial part of pltf.'s books. The table, although small in bulk, was a substantial part of each book; (2) the letter as it stood, being in the form of a criticism, was not an infringement of pltf.'s copyright, as it was not published with any motive of taking an unfair advantage of pltf.'s work. It was a fair dealing with the work for the purposes of criticism within the proviso to 1911 Act, s. 2 (1), although the table was not attributed to the author;

PART XIII. SECT. 1, SUB-SECT. 1.

c i. —— *No infringement—If works produced independently.*]—DEEKS *v.* WELLS. [1930] 4 D. L. R. 513; *affd.*, [1931] 4 D. L. R. 513; O. R. 818; [1933] 1 D. L. R. 353, P. C.—CAN.

c ii. —— *Biography.*]—Under the guise of copyright a pltf. cannot ask the ct. to close all avenues of scholarship & research & all frontiers of human knowledge. A biography was held, therefore, not to be a colourable imitation of an earlier work, where the later one was much longer & introduced, as a result of further study & research, much extra material & a large number of new incidents.—KARTAR SINGH GIANI *v.* LADHA SINGH (1934), I. L. R. 16 Lah. 103.—IND.

PART XIII. SECT. 1, SUB-SECT. 2.—A.

sd. *Work for use of schools—Quotation of two passages—Meaning.*]—Copyright Act, s. 2 (1), proviso iv., does not say that two passages from *each* work of the same author are permitted to be used in a compilation for the use of schools; what it permits is two passages in all from works by the same author.—EDUCATIONAL BOOK DEPOT *v.* RABINDRA NATH TAGORE (1933), I. L. R. 55 All. 564.—IND.

(3) on the facts, the table in the letter was an independent compilation.—JOHNSTONE *v.* BERNARD JONES PUBLICATIONS, LTD., [1938] Ch. 599; [1938] 2 All E. R. 37; 107 L. J. Ch. 244; 159 L. T. 15; 54 T. L. R. 572; 82 Sol. Jo. 314.

418. *Add. Annotation:*—**Refd.** Hawkes & Son (London), Ltd. *v.* Paramount Film Service, Ltd., [1934] Ch. 593.

420a. Book of selected essays—Second book of selected essays including essays in first book.]—Pltfs. were the publishers of, & owners of the copyright in, a book entitled "Hazlitt's Selected Essays," edited by G. S., which included thirteen essays & notes on the essays. Defts. published & sold a book entitled "Hazlitt's Selected Essays, Edition Hollingworth" containing twenty of such essays, including the thirteen selected by G. S.:—*Held:* there was no infringement of copyright.—CAMBRIDGE UNIVERSITY PRESS *v.* UNIVERSITY TUTORIAL PRESS (1928), 45 R. P. C. 335.

426a. —— ——.]—MACMILLAN & Co. *v.* COOPER, No. 92a, *ante*.

441. *Add. Annotation:*—**Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

442. *Add. Annotation:*—**Refd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

451. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

457. *Add. Annotation:*—**Refd.** Hawkes & Son (London), Ltd. *v.* Paramount Film Service, Ltd., [1934] Ch. 593, C. A.

459. *Add. Annotations:*—**Consd.** Chabot *v.* Davies, [1936] 3 All E. R. 221. **Refd.** Burke *v.* Spicer's Dress Designs, [1936] 1 All E. R. 99.

460. *Add. Annotation:*—**Consd.** Chabot *v.* Davies, [1936] 3 All E. R. 221.

467a. Frock reproduced from sketch.]—BURKE & MARGOT BURKE, LTD. *v.* SPICER'S DRESS DESIGNS, No. 108a, *ante*.

483. *Add. Annotation:*—**Refd.** Harms (Incorporated) *v.* Embassy Club (1926), 43 T. L. R. 21.

483a. —— **In public—What amounts to.**]—The question whether the performance of a musical work was a performance in public, so as to constitute an infringement of copyright, is a question of fact, &, in determining that question, the *quantum* of damage likely to accrue & the number & class of persons having a right to be present at the performance are factors to be noted.—HARMS INCORPORATED & CHAPPELL & Co. *v.* MARTANS CLUB, [1927] 1 Ch. 526; *sub nom.* HARMS INCORPORATED *v.* EMBASSY CLUB, LTD., 96 L. J. Ch. 84; 136 L. T. 362; 43 T. L. R. 21; 70 Sol. Jo. 1219, C. A.

Annotations:—**Consd.** Jennings *v.* Stephens, [1936] 1 All E. R. 409. **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

483b. —— —— —— **Broadcasting.**]—To broadcast an opera by wireless telephony is to "perform" it "in public" within 1911 Act, s. 1 (2).—MESSAGER *v.* BRITISH BROADCASTING Co., [1927] 2 K. B. 543; 97 L. J. K. B. 65; 137 L. T. 810; 43 T. L. R. 818; *revsd.* without touching this point, [1928], 1 K. B. 660 C. A.; [1929] A. C. 151, H. L.

Annotation:—**Consd.** Performing Right Society, Ltd. *v.* Hammond's Bradford Brewery Co., [1934] Ch. 121.

483c. —— —— —— —— **Reproduction by receiving set.**]—(1) A person who by means of a receiving set & loud-speaker makes audible to a public audience musical works, which are being broadcast, gives a "performance" of those works within Copyright Act, 1911 (c. 46), so as to render him, in the absence of consent by the owner of the copyright in the works, liable for infringement of copyright.

(2) *Held:* further, such "performance" was not justified by the licence which had been granted by the owner of the copyright to the broadcasting authorities & which provided (*inter alia*) that it covered "the audition or reception of copyright musical works . . . by means of broadcasting for domestic & private use only."—PERFORMING RIGHT SOCIETY, LTD. *v.* HAMMOND'S BRADFORD BREWERY Co., LTD., [1934] Ch. 121; 103 L. J. Ch. 210; 150 L. T. 119; 50 T. L. R. 16, C. A.

483d. —— —— —— —— ——.]—PERFORMING RIGHT SOCIETY, LTD. *v.* GEORGE (1936), cited in [1936] 3 All E. R. at p. 559.

Annotation:—**Consd.** Performing Right Society, Ltd. *v.* Camelo, [1936] 3 All E. R. 557.

483e. —— —— —— —— ——.]—A loud-speaker was played in a private room adjoining a public restaurant, but the arrangements were such that the door of the room had to be frequently open for the purposes of service. The music broadcast was audible in the restaurant:—*Held:* there was a public performance & an infringement of pltfs.' rights.—PERFORMING RIGHT SOCIETY, LTD. *v.* CAMELO, [1936] 3 All E. R. 557; 80 Sol. Jo. 1015.

483f. —— —— ——.]—An orchestral trio employed at an unlicensed residential hotel played in the lounge of the hotel on a certain evening after dinner. The audience included some of the resident guests & two persons who had dined there, after giving notice of their wish to do so, & who afterwards were in the lounge for the purpose of listening to the music:—*Held:* the performance was a performance "in public" within 1911 Act.—PERFORMING RIGHT SOCIETY, LTD. *v.* HAWTHORNS HOTEL (BOURNEMOUTH), LTD., [1933] Ch. 855; 102 L. J. Ch. 330; 149 L. T. 425; 77 Sol. Jo. 523.

Annotation:—**Consd.** Jennings v. Stephens, [1936] 1 All E. R. 409.

483g. —— **"For private profit"—Local authority engaging band.**] — PERFORMING RIGHT SOCIETY, LTD. *v.* BRAY URBAN DISTRICT COUNCIL, No. 389a, *ante*.

484. *Add. Annotation:*—**Refd.** Austin *v.* Columbia Graphophone Co. (1923), 67 Sol. Jo. 790.

PART XIII. SECT. 1, SUB-SECT. 4.

482 l. *By performance—Permitting place of entertainment to be used.*]—Applt. corpn. let its town hall to W. for a series of four vocal concerts. Resp. informed applt. that a song in which resp. had the copyright would be sung without its authority in the town hall at concerts given by W. The song was sung at two concerts. Applt. did nothing beyond acknowledging the receipt of the information:—*Held:* no inference should be drawn that applt. "permitted" the song to be sung, & therefore there was no infringement of copyright within Copyright Act, 1911 (c. 46), s. 2 (3).—CORPORATION OF CITY OF ADELAIDE *v.* AUSTRALASIAN PERFORMING RIGHT ASSOCN., LTD. (1928), 40 C. L. R. 481; [1928] Argus L. R. 127.—AUS.

486 l. *By mechanical contrivance—Consent to manufacture.*]—Defts. applt. made certain gramophone records in

488a. ——.]—AUSTIN *v.* COLUMBIA GRAPHOPHONE Co., No. 118a, *ante*.

489a. By authorising performance—Director of theatrical syndicate with power to prevent performance.]—Pltfs. were the proprietors of the right of performing in public certain musical pieces, & deft. syndicate were producers of plays at a theatre, & the second deft. was their managing director, & had power to prevent the orchestra from playing any particular piece of music. The orchestra, which was paid by the syndicate, played the pieces in question. In an action for infringement:—*Held:* since on the facts the second deft. had not authorised or permitted the performance within 1911 Act, s. 1 (2), pltfs. were not entitled under sect. 2 (1) of the Act to an injunction or damages against him.—PERFORMING RIGHT SOCIETY *v.* CIRYL THEATRICAL SYNDICATE, [1924] 1 K. B. 1; 92 L. J. K. B. 811; 129 L. T. 653; 39 T. L. R. 460; 68 Sol. Jo. 83, C. A.

Annotations:—**Consd.** Evans *v.* Hulton (1924), 131 L. T. 534. **Reld.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762; Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

489b. —— Effect of 1911 Act, s. 1 (2).]—The word "authorise" in the above sub-sect. is superfluous, & there is nothing in the sub-sect. which cuts down the liability under sect. 2 (1) of the Act, in respect of an infringement of copyright.

Defts., who were the occupiers of a dancing hall, engaged on the terms of a written agreement a band to provide music therein. The agreement provided that the band should not, in the music played, infringe any copyright, & should be liable for damages & costs caused by any infringement. There was also a notice posted in the hall that "only such music as may be played without fee or licence is allowed to be played in this hall." On one occasion the band played certain music, the copyright of which belonged to pltfs., without pltfs.' licence; but defts. did not know, & had no reasonable ground for suspecting, that this infringement would take place. In an action by pltfs. for damages & an injunction:—*Held:* on its true construction, the agreement between defts. & the band constituted the latter the servant of defts., & not independent contractors; the band on the occasion in question were acting in the course of their employment; defts. were liable under 1911 Act, s. 2, for the infringement of copyright; & pltfs. were entitled to damages & an injunction.—PERFORMING RIGHT SOCIETY, LTD. *v.* MITCHELL & BOOKER (PALAIS DE DANSE), LTD., [1924] 1 K. B. 762; 93 L. J. K. B. 306; 131 L. T. 243; 40 T. L. R. 308; 68 Sol. Jo. 539.

Annotations:—**Consd.** Evans *v.* Hulton (1924), 131 L. T. 534; Egginton *v.* Reader, [1936] 1 All E. R. 7. **Reld.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

489c. —— Local authority engaging band.]—PERFORMING RIGHT SOCIETY, LTD. *v.* BRAY URBAN DISTRICT COUNCIL, No. 389a, *ante*.

489d. Reproduction in news film—"Fair dealing."]—The owners of the copyright in a musical composition sued two cos. for infringement. The representatives of one of the cos. had made, developed & printed, & the other co. had distributed to cinema theatres, where it was exhibited, a sound film known as a news reel, recording a moving picture of the scene at the public opening of a new school, together with the accompanying sounds, including the playing by a band of part of the musical composition in question. Defts. denied that this was an infringement:—*Held:* there had been an actionable infringement of pltfs.' copyright, as there had been a reproduction of a "substantial part" of the musical composition within 1911 Act, s. 1 (2), the acts of defts. did not constitute a "fair dealing" with the work within 1911 Act, s. 2 (1) (i.), & damage had been proved.—HAWKES & SON (LONDON), LTD. *v.* PARAMOUNT FILM SERVICE, LTD., [1934] Ch. 593; 103 L. J. Ch. 281; 151 L. T. 294; 50 T. L. R. 363; 78 Sol. Jo. 367, C. A.

Annotation:—**Consd.** Johnstone *v.* Bernard Jones Publications, Ltd., [1938] Ch. 599.

See, also, Nos. 394a, 510, 510a.

502. *Add. Annotation:*—**Reld.** Harms (Incorporated) *v.* Embassy Club (1926), 43 T. L. R. 21.

503. *Add. Annotation:*—**Reld.** Hawkes & Son (London), Ltd. *v.* Paramount Film Service, Ltd., [1934] Ch. 593.

New South Wales of a song in which pltf.'s copyright existed, & which, apart from Copyright Act, 1912, s. 19, would have been an infringement of pltf.'s copyright. Gramophone records of the song in which pltf.'s copyright existed had been made in England, & also in America with the consent of the owner of the copyright before the alleged infringement in New South Wales:—*Held:* proof of the consent given by pltf. resp. to the manufacture of contrivances in England was sufficient to satisfy the condition imposed by British Copyright Act, 1911, s. 19 (2) (a); Federal Copyright Act, 1912, brings into force in Australia British Copyright Act, 1911, & consequently, the making of contrivances, with the consent of the owners of the copyright, in any part of the area to which the Act applies, releases the work throughout the area of the operation of the Act.—GRAMOPHONE Co., LTD. *v.* LEO FEIST INCORPORATED, [1928] V. L. R. 420; 49 A. L. T. 196; [1928] Argus L. R. 257; *affd.*, 41 C. L. R. 1.—**AUS.**

486 ii. —— *Broadcast records.*]—Pltf. was the owner of the performing right in certain musical works. Without the authority of pltf. deft., a wireless broadcasting co., broadcast those works by reproducing them from gramophone records & pianola rolls:—*Held:* deft. had thereby committed an infringement of pltf.'s copyright in the musical works.—AUSTRALASIAN PERFORMING RIGHT ASSOCN., LTD. *v.* 3DB BROADCASTING CO. PROPRIETARY, LTD., [1929] V. L. R. 107; [1929] Argus L. R. 109.—**AUS.**

488 i. *By sale of records.*]—Gramophone records which infringe copyright are "infringing copies" of a work within Imperial Copyright Act, 1911, s. 35.—ALBERT *v.* HOFFNUNG & Co., LTD. (1921), 22 S. R. N. S. W. 75; 39 N. S. W. W. N. 5.—**AUS.**

so. *By broadcasting.*]—Defts., who carried on, for reward, the business of broadcasters, included in their programmes, caused to be sung by vocalists in their studio & broadcast, certain musical works, of the copyright in which pltf. was the owner:—*Held:* defts. had infringed pltf.'s copyright.—CHAPPELL & CO., LTD. *v.* ASSOCIATED RADIO CO. OF AUSTRALIA, LTD., [1925] V. L. R. 350; 47 A. L. T. 12; 31 Argus L. R. 297.—**AUS.**

sp. *Reproduction of broadcast on receiving set.*]—Performance by means of a radio set in an hotel constitutes a public performance.—CANADIAN PERFORMING RIGHT SOCIETY *v.* FORD HOTEL, [1935] 2 D. L. R. 391.—**CAN.**

sr. *"Substantial part"—What is.*]—A "substantial part" does not depend on length: it may consist of a few bars if these were recognised.—CANADIAN PERFORMING RIGHT SOCIETY *v.* CANADIAN NATIONAL EXHIBITION ASSOCN., [1934] 4 D. L. R. 154; O. R. 610.—**CAN.**

st. *"Performance at agricultural exhibition of fair."*]—Performance before the grandstand at the Canadian National Exhibition:—*Held:* not a performance at an agricultural exhibition or fair within Copyright Act, 1927, s. 17 (1) (viii).—CANADIAN PERFORMING RIGHT SOCIETY *v.* CANADIAN NATIONAL EXHIBITION ASSOCN., [1934] D. L. R. 154; O. R. 610—**CAN.**

sw. *Performance under contract with Canadian National Exhibition.*]—Performance of songs by band performing under contract with Canadian National Exhibition, held an infringement.—CANADIAN PERFORMING RIGHT SOCIETY *v.* CANADIAN NATIONAL EXHIBITION ASSOCN., [1938] 2 D. L. R. 621.—**CAN.**

506. *Add. Annotation:*—**Refd.** Jennings *v.* Stephens, [1936] 1 All E. R. 409.

506a. —— —— **Room to which public admitted on payment—Ordinarily used for other purposes.**]—RUSSELL *v.* SMITH, No. 99a, *ante.*

507. *Add. Annotations:*—**Consd.** Harms (Incorporated) *v.* Embassy Club (1926), 43 T. L. R. 21; Jennings *v.* Stephens, [1936] 1 All E. R. 409. **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

508a. —— **In public—Performance by Women's Institute—Confined to members.**]—On Feb. 23rd, 1933, a play was performed by a dramatic society at a monthly meeting of the Duston Women's Institute without the consent of the owner of the copyright, who brought this action for infringement of the copyright. The Women's Institute was one of a large number founded under the rules of the National Federation of Women's Institutes & consisting of voluntary assocns. of country women formed to improve conditions of rural life & to provide opportunities for mutual help & intercourse. There was an annual subscription of 2*s.*, & monthly meetings of an educational or social nature. The village of Duston contained 1,085 females, of whom 109 were members. At the meeting when the performance took place sixty-two members were present; but, apart from the five performers, there were no guests, it having been made a condition of the performance that no guests should be present:—*Held:* the performance was a performance "in public" within sect. 1 (2) of 1911 Act, & therefore it constituted an infringement of pltf.'s copyright. Although the audience was limited to members of the institute, all the adult women of the village could be members, & the mere fact that the audience resided in the same village in different houses was not sufficient to make it a domestic or quasi-domestic audience.—JENNINGS *v.* STEPHENS, [1936] Ch. 469; [1936] 1 All E. R. 409; 105 L. J. Ch. 353; 154 L. T. 479; 52 T. L. R. 343; 80 Sol. Jo. 264, C. A.

509. *Add. Annotation:*—**Consd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

510. *Add. Annotations:*—**Consd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762; Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

510a. ——.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante.*

See, also, Nos. 394a, 489a, 489b, *ante.*

513a. —— —— ——.]—Pltfs. were the publishers of a magazine, published in America at frequent intervals, called "Adventure." Defts. proposed to publish a monthly magazine called "Hutchinson's Adventure Story Magazine." In an action by pltfs. to restrain such publication:—*Held:* where any one adopted a descriptive word, as pltfs. had done, they must not object if other persons made use of it, as descriptive of similar articles; pltfs. had no monopoly of the word "Adventure," & on the evidence no real confusion existed between pltfs.' & defts.' periodicals.—RIDGWAY CO. *v.* HUTCHINSON (1923), 40 R. P. C. 335.

523a. —— **Title of film.**]—(1) Pltfs. who were the trustees of the will of the late S. H., the author of a play called "The Younger Generation," brought this action to restrain defts., Film Booking Offices, Ltd. & Universal Pictures, Ltd., from selling, letting for hire or exhibiting in public a cinematograph film under the title "The Younger Generation" in such a way as to represent to the trade or public that such cinematograph film was a film version of the play by S. H. The play was first performed in Manchester in 1910, & in 1912 it was produced in London & subsequently was performed at intervals by touring companies up to the commencement of the action. The play was published in 1910 & the demand for copies was still active. There was a continuing demand for the play in respect of amateur performances. Three films having nothing in common with the subject-matter of, & from their nature unlikely to be confused with, the pltfs.' play had been shown in this country under the title "The Younger Generation" in the years 1913, 1915, & 1926. Defts.' film was released for exhibition to the public in Sept. 1929:—*Held:* the evidence fell short of establishing the fact that the title "The Younger Generation" used in connection with a film meant in the mind of the film-going public a film based on the play of that name by S. H.

(2) Defts., Universal Pictures, Ltd., by their defence denied all liability to pltfs., & at the same time paid five guineas into ct. in satisfaction of any claim for damages & offered to submit to an injunction or to give an undertaking in the terms claimed by pltfs. Upon the undertaking being drawn up these defts. refused to pay pltfs. the costs of a motion for an interlocutory injunction which they contended should be apportioned between defts. Accordingly the action was continued against these defts. No order was made on the motion except costs to be costs in the action. The action against both defts. was dismissed with costs.—HOUGHTON *v.* FILM BOOKING OFFICES, LTD. (1931), 48 R. P. C. 329.

Annotation:—*As to* (1) **Refd.** Samuelson *v.* Producers Distributing Co. (1931), 48 R. P. C. 447.

523b. —— ——.]—Pltf., whose professional name was L. W., wrote a sketch which was first produced under the title "Washing a Car." He sent it to G. C., a comedian, who thought he could improve it, & only left in eight passages of pltf.'s, the *dramatis personæ* & the *mise-en-scène.* The sketch so altered was produced, & after a time was called "The New Car." In 1928 it was acted for six months by G. C., & in 1930 was acted by him at a Command Performance. Afterwards a paragraph appeared in a newspaper: "The King's Enjoyment. . . . It was George Clarke in Laurie Wylie's capital sketch 'The New Car' who first set the fun going." Pltf. had received payment for the scenic rights of the sketch. Defts. then made a film which in fact did not follow the lines of "The New Car," but in May, 1930, they sent a notice to the newspapers: "The man who made the Queen laugh, George Clarke, in 'His First Car.' Come & see the talking version. A P. D. C. Picture." The writ was then issued by pltf. for damages for passing off & for an injunction; defts. paid £5 into ct. in satisfaction of all claims. On a motion in the action defts. undertook not to repeat the

advertisements until trial. Defts. shortly after giving the undertaking, made an announcement at a trade performance that their film " His First Car " had no connection with a sketch by Laurie Wylie entitled " Washing a Car " or " The New Car." Pltf. had parted with the performing rights of his sketch for five years from 1928. The judge held that pltf. was the owner of the copyright in the sketch " The New Car," & entitled to prevent defts. from passing off their film as a film version of that sketch. The injunction was not granted owing to what was said by the directors of deft. co. at the trial preventing its necessity, but an inquiry was ordered as to damages :—*Held :* in substance the sketch renamed " The New Car " was the production of pltf., who was entitled to the copyright in it ; there had been an attempt to pass off & the action was rightly made a passing off action, &, though by what had taken place at the trial an injunction had become unnecessary, pltf. was entitled to go to trial. The inquiry as to damages was not necessary, however, as the £5 paid into ct. was sufficient, having regard to the fact that pltf. had parted with his film rights for five years & that there had appeared shortly after the advertisements an account in the newspapers of the interlocutory proceedings, & having regard to the announcement made at the trade show. Decision affirmed, with the exception that the order for an inquiry as to damages was held to be unnecessary.—SAMUELSON *v.* PRODUCERS DISTRIBUTING CO., LTD., [1932] 1 Ch. 201 ; 101 L. J. Ch. 168 ; 146 L. T. 37 ; 48 R. P. C. 580, C. A.

Annotations :—**Refd.** O'Gorman *v.* Paramount Film Service, Ltd., [1937] 2 All E. R. 113 ; Illustrated Newspapers, Ltd. *v.* Publicity Services (London), Ltd., [1938] Ch. 414.

523c. —— ——.]—Pltf. was part author & composer of a play entitled *Irish & Proud of It*, & the owner of the copyright in the words & music of it. The play was first produced in 1914 & continued to be produced until 1924. It had never been published in book form. In 1936 defts. produced a film which was given the name of *Irish & Proud of It*. It was admitted that the film had nothing to do with pltf.'s play, & it was found as a fact that no ordinary member of the public would think that the film was an adaptation of the play. Pltf. contended that his copyright gave him the exclusive right to present a film representation of his play, that in doing so he would naturally use the title of the play, that the production of a film under the same title by defts. was an interference with his rights, & that unless his rights were protected he might suffer damage by reason of defts. using that title :—*Held :* as there was no immediate prospect of any film version of the pltf.'s play being produced in public, he was not entitled to an injunction restraining defts. from continuing to produce their film under the title *Irish & Proud of It*.—O'GORMAN *v.* PARAMOUNT FILM SERVICE, LTD., [1937] 2 All E. R. 113.

525. *Add. Annotation :*—**Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

531. *Add. Annotations :*—*As to* (1) **Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91. **Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

536. *Add. Annotation :*—**Refd.** Osbourne *v.* Dent, [1925] Ch. 369.

546a. —— **Joint tortfeasor.**]—Where printers know that what they are printing is a piracy, & the purposes for which it is intended to use the pirated copies when delivered, they are tortfeasors, jointly with the persons for whom such copies are printed, & are jointly liable in damages to the persons whose copyright is infringed.—LAMB *v.* EVANS, [1895] W. N. 156.

547a. Liability for printing—Notwithstanding previous judgment against author.]—ASH *v.* HUTCHINSON & CO. (PUBLISHERS), LTD., No. 559a, *post*.

548. *Add. Annotations :*—*As to* (1) **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. *As to* (2) **Refd.** Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282 ; Hughes *v.* Satchell (1925), 134 L. T. 93. *Generally*, **Mentd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

553. *Add. Annotation :*—**Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1.

555. *Add. Annotation :*—**Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1.

559a. —— **For conversion—Issue of infringing copies.**]—Copyright Act, 1911, gives the owner of the copyright in a literary work the sole right of reproducing the work or any substantial part thereof, & the sole right of authorising such reproduction. Those rights are separate & distinct, & the infringement of each is a distinct & separate tort.

Pltf., the author of a book, sued & obtained judgment against D. for infringement of his copyright therein. Subsequently pltf. sued the publishers of the infringing work claiming damages for infringement under sect. 6 & for conversion under sect. 7 of 1911 Act. He also sued the printers claiming damages in respect of the printing of the infringing copies :—*Held :* (1) the judgment in the previous action against D. for infringement was, by reason of the rule in *Brinsmead* v. *Harrison* (1872), L. R. 7 C. P. 547, a bar to the present action against the publishers, who were joint tortfeasors with D. in the publication of the infringing work ; (2) the publishers were liable in damages for conversion under sect. 7 of 1911 Act, in respect of the issue to the public in Aug. 1933, of copies of the offending work ; (3) the printers were liable in damages for infringement in respect of the

---

PART XIII. SECT. 2.

525 i. *Equitable owner.*]—An equitable owner of copyright is entitled to obtain an injunction against an infringement of his right, in an action in which the legal owner of the copyright is a party. —CLAYTON *v.* VINCENT'S PRODUCTS, LTD. (1934), 34 S. R. N. S. W. 214 ; 51 N. S. W. W. N. 86.—AUS.

531 ii. —— *Of performing rights.*]—An assocn. was the registered owner of the performing rights of two pieces of music, & pltf. in a suit to restrain deft. from permitting the use of his hall for infringing copyrights. Another pltf. was the assignor of those rights, but there was no evidence that he was the legal owner of the remaining part of the copyright :—*Held :* the assocn., as the legal owner of the performing rights, could maintain the suit.—AUSTRALIAN PERFORMING RIGHT ASSOCN. & J. LEIST, INCORPORATED *v.* TURNER & SON (1927), 27 S. R. N. S. W. 344 ; 44 N. S. W. W. N. 76.—AUS.

separate tort of printing the work.—ASH *v.* HUTCHINSON & CO. (PUBLISHERS), LTD., [1936] Ch. 489; [1936] 2 All E. R. 1496; 106 L. J. Ch. 303; 155 L. T. 46; 52 T. L. R. 429, C. A.

Annotations:—**Consd.** Oliver *v.* Dickin, [1936] 2 All E. R. 1004. **Refd.** Sutherland Publishing Co. *v.* Caxton Publishing Co. (No. 2), [1938] Ch. 174.

560a. —— Printer & person ordering pirated copies.]—LAMB *v.* EVANS, [1895] W. N. 156.

560b. —— Action against publisher—After judgment against author—Estoppel.]—ASH *v.* HUTCHINSON & CO. (PUBLISHERS), LTD., No. 559a, *ante*.

561a. Person exhibiting copyright work—What amounts to "knowledge" of infringement.]—Where a deft. acquires the work, in the first instance, in good faith & without any knowledge that it infringes copyright, he is entitled to a reasonable time & opportunity to find out whether or not it does infringe copyright. No offence is committed against 1911 Act, s. 2 (2), unless the infringement is deliberate, in the sense of deliberately continuing to use or exhibit the work when the exhibitor knows that it infringes copyright. A mere complaint by the owner of the copyright, together with copies of the work said to be infringed, will not suffice to impute to a deft. "knowledge" within the sub-sect.

Pltf. was the owner of copyright in fashion illustrations for men's clothes. In 1935, deft., a tailor, cause to be exhibited in his shop, show-cards displaying a man in morning-dress. He also put up posters at railway stations displaying a man in evening-dress. On Oct. 16 pltf. wrote to deft. complaining that the posters & show-cards infringed copyright. On Oct. 18 pltf. supplied deft.'s solr. with copies of the work said to be infringed. Deft. at once removed the show-cards from his premises, & took steps to find out whether or not he was infringing pltf.'s copyright. On Oct. 23 he wrote to pltf. saying that although he did not admit any infringement of pltf.'s copyright, he thought it best to remove any cause of complaint by discontinuing the exhibition. On the same day pltf. issued a writ claiming from deft. damages for infringement of copyright. The judge found on the facts that there had been no unreasonable delay on deft.'s part in investigating pltf.'s complaint:—*Held:* no "knowledge" within the sub-sect. could be imputed to deft. until he had had a reasonable time & opportunity to find out whether he was exhibiting by way of trade any work which infringed copyright. On the evidence, the time when deft. acquired that knowledge was Oct. 23. Therefore, at the time the writ was issued, there was no exhibition by way of trade or any work which, to deft.'s knowledge, infringed pltf.'s copyright. The writ was issued prematurely & the action failed.—VAN DUSEN *v.* KRITZ, [1936] 2 K. B. 176; 105 L. J. K. B. 498; 155 L. T. 258; 80 Sol. Jo. 226.

Part XIV.—Remedies.

564a. Action by publisher—Presumption of ownership—Effect of Copyright Act, 1911 (c. 46), s. 6 (3).]—In 1896, there was published a new edition of a handbook entitled "The Perfect Ceremonies of Craft Masonry" which, for the purposes of Copyright Act, 1842 (c. 45), was a new work, but the name of its author was unknown. That edition & all the subsequent editions, which were mere reprints of the 1896 edition & contained no new or original work, bore on their flyleaves the imprint: "Privately printed for A. Lewis." From about the year 1906 to the date of his death on Aug. 2, 1909, one John Hogg carried on the business of publishing masonic rituals at 13 Paternoster Row, London, under the name of A. Lewis. Thereafter Godfrey Hogg down to the date of his death in 1922 & thenceforth his widow, pltf. Charlotte Hogg, carried on the same business under the name of A. Lewis. In an action by Charlotte Hogg, who claimed to be the owner of the copyright in the work entitled "The Perfect Ceremonies of Craft Masonry," for infringement thereof the defts. put in issue the existence of any copyright in the work & the title of pltf. to copyright, if any, therein; &, in the absence of proof of her derivative title to copyright, pltf. relied on Copyright Act, 1911 (c. 46), s. 6 (3) (*b*), & claimed that she, as publisher, whose name was imprinted on the flyleaves of her editions of the work, must be presumed to be the owner of the copyright in the work:—*Held:* the presumption referred to in sect. 6 (3) (*b*) of the Copyright Act, 1911 (c. 46), s. 6 (3) (*b*), that the person whose name is indicated on an anonymous work as the publisher thereof is the owner of the copyright therein, is based on the hypothesis that the publisher whose name is so indicated is not the real owner of the copyright therein & is raised merely for the purpose of giving such a publisher a *locus standi* in proceedings for infringement taken by him under that sect. on behalf of the real owner of the copyright, & accordingly, & in view of the fact that the reprint. of the 1896 edition issued by pltf. could not be the subject of copyright, the presumption did not enure to the benefit of pltf. further than as aforesaid in the absence of proof of her derivative title to an antecedent copyright.—HOGG *v.* TOYE & CO., LTD., [1935] Ch. 497; 104 L. J. Ch. 232; 152 L. T. 495; 51 T. L. R. 301; 79 Sol. Jo. 270, C. A.

PART XIV. SECT. 1.

ig. *Limitation of action.*]—The prescriptive period for bringing actions for infringement laid down by Copyright Act, 1927, s. 24, applies to claims for recovery of possession of infringing copies or in respect of conversion.—MASSIE & RENWICK LTD. *v.* UNDERWRITERS' SURVEY BUREAU, LTD., [1937] S. C. R. 265; 2 D. L. R. 213.—CAN.

PART XIV. SECT. 2, SUB-SECT. 1.

570 ii. ——.]—A person, whose copyright in a book has been infringed, is entitled to demand delivery of all the copies of the offending work in the possession of the person who has infringed the copyright, & payment of the full price received by such person for all copies of the work which have been sold.—BRABY *v.* DONALDSON, [1926] App. D. 337.—S. AF.

572. *Add. Annotation :—Generally,* **Refd.** Ash *v.* Dickie, [1936] 2 All E. R. 71.

573. *Add. Annotation :—*__Consd.__ Sutherland Publishing Co. *v.* Caxton Publishing Co., [1936] 1 All E. R. 177.

575a. **For infringement & conversion—Cumulative remedies in respect of different torts.**]—In an action for an alleged infringement of pltfs.' copyright in a certain publication, pltfs. claimed (*inter alia*) an inquiry as to (i) damages suffered by reason of the infringement, & (ii) damages for conversion. Defts. admitted the infringement, but contended that the remedies given by 1911 Act, ss. 6, 7 were alternative & not cumulative & that pltfs. must elect their remedy :—*Held :* (1) the remedies were cumulative & not alternative & pltfs. could recover damages under both sects. Each claim was in respect of a different wrong, the former for a wrong done to an incorporeal right, the copyright ; & the latter for conversion of particular chattels, the infringing copies, which by sect. 7 are deemed to be the property of pltf. ; (2) in assessing damages under the two heads, the tribunal making the assessment must avoid any overlap ; but, in general, the damages for conversion will be the value of the chattels converted.—SUTHERLAND PUBLISHING CO., LTD. *v.* CAXTON PUBLISHING CO., LTD., [1936] Ch. 323 ; [1936] 1 All E. R. 177 ; 105 L. J. Ch. 150 ; 154 L. T. 367 ; 52 T. L. R. 230 ; 80 Sol. Jo. 145, C. A. ; *Affd.* [1938] 4 All E. R. 389 H. L.

Annotations :—As to (1) **Apld.** Graves *v.* Pocket Publications, Ltd. (1938), 54 T. L. R. 952. **Consd.** Tallent *v.* Coldwell & Tailor & Cutter, Ltd., [1938] Ch. 653. **Refd.** Sutherland Publishing Co. *v.* Caxton Publishing Co. (No. 2), [1938] Ch. 174. *Generally,* **Refd.** Lane (John), The Bodley Head, Ltd. *v.* Associated Newspapers, Ltd., [1936] 1 All E. R. 379 ; Ash *v.* Dickie, [1930] 2 All E. R. 71 ; Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489.

575b. —— ——.]—ASH *v.* HUTCHINSON & CO. (PUBLISHERS), LTD., No. 559a, *ante.*

575c. —— ——.]—Pltf., an author, wrote & published a literary work entitled "Other People's Money." The first defts. published, & the second defts. printed, from pltf.'s book & without his leave an article in a magazine setting out a number of professions & occupations & stating the average incomes of those professions & occupations :—*Held :* that the article was an infringement of the pltf.'s copyright in the compilation of facts & figures in his literary work &, pltf.'s work being protected by 1911 Act, pltf. was entitled to damages against both defts. for infringement & conversion, & against the publishers for infringement.—GRAVES *v.* POCKET PUBLICATIONS, LTD. (1938), 159 L. T. 471 ; 54 T. L. R. 952 ; 82 Sol. Jo. 415.

575d. —— **Limitation of action.**]—C. having published a book which incorporated part of a book already published by S., S. brought an action against C. for damages both for infringement of copyright & for conversion. C. admitted both infringement & conversion & offered to pay damages for either infringement or conversion but not for both. The Ct. of Appeal decided on a point of law that the damages were cumulative & not alternative, & the action then came before CROSSMAN, J., for assessment of damages & for a decision whether or not damages for conversion came under the limitation of the time for commencement of an action in respect of infringement of copyright to three years next after the infringement, imposed by sect. 10 of 1911 Act. CROSSMAN, J., held (*a*) that as the expression "an action in respect of infringement of copyright" was wide enough to cover the claim for damages for conversion, the limitation by sect. 10 applied to conversion, (*b*) that the time ran from the infringement & that the infringement was the printing of the infringing copies, & the claim for damages was limited to copies printed within three years before the issue of the writ, & (*c*) that the conversion at the date of which the value of the infringing copies must be assessed was the order by C. to the binders to bind the unbound sheets containing the infringing copies into the bound copies of C.'s book. On appeal :—*Held :* (1) the limitation of three years did not apply to an action for damages for conversion under sect. 7 of 1911 Act, but that the limitation of time applicable was six years under Limitation Act, 1623 (c. 16) ; (2) the act of conversion as at the date of which the value of the infringing copies ought to be ascertained was the delivery by C. of the bound copies to purchasers.—SUTHERLAND PUBLISHING CO., LTD. *v.* CAXTON PUBLISHING CO., LTD. (No. 2), [1938] Ch. 174 ; [1937] 4 All E. R. 405 ; 107 L. J. Ch. 99 ; 158 L. T. 17 ; 54 T. L. R. 112 ; 81 Sol. Jo. 942, C. A. *revsd.* [1938] 4 All E. R. 389 H. L.

577a. —— **Value of chattels converted.**]—SUTHERLAND PUBLISHING CO., LTD. *v.* CAXTON PUBLISHING CO., LTD., No. 575a, *ante.*

577b. —— **Newspaper articles infringing copyright in book.**]—When the copyright of a book has been infringed by some of a series of articles appearing in a daily newspaper & the author claims damages for conversion against the newspaper proprietors under sect. 7 of 1911 Act, the basis on which damages should be assessed is by taking the sale price as the value of each copy of the newspaper containing an infringing article & then estimating the proportion of the total value of the infringing copies as so ascertained which should be attributed to the infringing articles appearing therein. The matter must be one of estimate.—ASH *v.* DICKIE, [1936] Ch. 655 ; [1936] 2 All E. R. 71 ; 105 L. J. Ch. 337 ; 154 L. T. 641 ; 52 T. L. R. 534 ; 80 Sol. Jo. 364, C. A.

*Annotation :—*__Distd.__ Sutherland Publishing Co. *v.* Caxton Publishing Co. (No. 2), [1937] Ch. 294.

577c. —— **Sale of book.**]—SUTHERLAND PUBLISHING CO., LTD. *v.* CAXTON PUBLISHING CO., LTD. (No. 2), No. 575d, *ante.*

PART XIV. SECT. 2, SUB-SECT. 4—B.

sg. *Delay—No substantial injury—Injunction refused.*]—*Held :* since the acts complained of by pltfs. as constituting an infringement of their copyright had continued for a number of years, & there was evidence that pltfs. were aware of such, interlocutory injunctions should not be granted as no substantial injury would be done pltfs. by causing them to await the final disposition of the several actions.—UNDERWRITERS SURVEY BUREAU, LTD. *v.* WILLIS, FABER & CO. OF CANADA, LTD., UNDERWRITERS SURVEY BUREAU, LTD. *v.* MASSIE & RENWICK, LTD., UNDERWRITERS SURVEY BUREAU, LTD. *v.* J. E. CLEMENT INCORPORATED, UNDERWRITERS SURVEY BUREAU, LTD. *v.* SHAW & BEGG, LTD., [1936] Ex. C. R. 47 ; 2 D. L. R. 341.—CAN.

601. *Add. Annotation :*—**Consd.** Macmillan *v.* Cooper (1923), 23 L. J. P. C. 113.

603a. **Offer of undertaking before hearing—Right of plaintiff to reject offer.**]—OLIVER v. DICKIN, No. 652a, *post.*

615. *Add. Annotation :*—**Refd.** Johnstone *v.* Bernard Jones Publications, Ltd., [1938] 2 All E. R. 37.

631. *Add. Annotation :*—**Refd.** Ireland *v.* Wilson, [1936] 3 All E. R. 358.

635a. ——.]—MACMILLAN & Co. *v.* COOPER, No. 92a, *ante.*

638. *Add. Annotation :*—**Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

642. *Add. Annotation :*—**Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

644. *Add. Citations :*—*Affd.*, [1924] A. C. 1; 93 L. J. K. B. 33; 130 L. T. 450; 40 T. L. R. 52; 68 Sol. Jo. 99, H. L.

Add. Annotations :—**Consd.** Harmer *v.* Armstrong, [1934] Ch. 65. **Refd.** Imperial Tobacco Co. of India *v.* Bonnan, [1924] A. C. 755; Drabble *v.* Hycolite Manufacturing Co. (1928), 44 T. L. R. 264.

647. *Add. Annotation :*—**Refd.** Bendir *v.* Anson, [1936] 3 All E. R. 326.

652a. **Infringement—Particularity necessary.**]—(1) In an action arising out of an alleged infringement of copyright the pltf., after setting out the literary works in which he claimed the copyright, pleaded that "the deft. has authorised the reproduction of the said works." At the hearing the pltf. proceeded to prove that the deft. had reproduced such substantial parts of the said works as to amount to an illegal act. The deft. objected that if that was the pltf.'s case it ought to have been plainly so stated in the pleadings & the deft. was thereby embarrassed :—*Held :* the pleading was sufficient in law but was undesirable in such a case. (2) The deft. in her defence, while denying liability, offered an undertaking not to repeat the reproduction of copyright matter, referring particularly to one passage, to deliver up all copies & to pay costs & to submit to an order in these terms :—*Held :* the pltf. could disregard such offer & proceed with the action in a case where liability was denied & extensive infringement had been proved.—OLIVER *v.* DICKIN, [1936] 2 All E. R. 1004.

656a. —— **Of whole poem—Proceedings in respect of part.**]—Pltf. sued a printing & publishing co. for infringement of copyright by printing six stanzas of a poem of which he was the author. Defts. in their defence alleged that there were other unpublished stanzas of the poem, which contained something which would disentitle the work to protection as a copyright work. Upon discovery, pltf. disclosed that he had in his possession a complete copy of the poem, but claimed to cover up certain parts, on the ground that they would incriminate him. The ct. ordered that defts. should be at liberty to inspect the document referred to, including the part which pltf. wished to seal up, &, if pltf. failed to produce the document for inspection, or to give notice of appeal, the action should stand dismissed. Pltf. appealed :—*Held :* pltf., having only alleged an infringement of the six stanzas, ought not to be put in a position of incriminating himself or of having his action dismissed, & defts. were not entitled to call upon pltf. to incriminate himself in order to establish their case.—SITWELL *v.* SUN ENGRAVING CO., LTD., [1937] 4 All E. R. 366; 107 L. J. Ch. 68; 158 L. T. 56; 54 T. L. R. 132; 81 Sol. Jo. 942, C. A.

657a. —— ——.]—ASTRA-NATIONAL PRODUCTIONS, LTD. *v.* NEO-ART PRODUCTIONS, LTD., [1928] W. N. 218.

670a. —— —— **After payment into court with denial of liability.**]—HOUGHTON *v.* FILM BOOKING OFFICES, LTD., No. 523a, *ante.*

693. *Add Annotations :*—*As to* (1) **Consd.** Preston *v.* Raphael Tuck, [1926] Ch. 667; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

694a. —— **Sale must be of work represented to be unaltered.**]—Pltf., the author of two original drawings, sold the copyright to defts. Defts. afterwards published & sold two drawings, which were made by alterations of pltf.'s original drawings, but which had titles different from the titles of pltf.'s drawings. Defts. did not in any way expressly represent that the drawings made by such alterations were pltf.'s. Pltf. brought against defts. a passing-off action in which she alleged that her work had a distinctive character & could be recognised without bearing her name, & she claimed an injunction & penalties under sect. 7 of the above Act :—*Held :* to satisfy the sect. there must be a selling or publishing in conditions under which, to the knowledge of the seller or publisher, there was made either expressly or by necessary implication a representation that the author was the author of the work in the form in which it was sold or published, & since, although there was in many of pltf.'s productions a measure of distinctiveness, the mere seeing of defts.' productions did not necessarily suggest the inference that they were the unaltered work of pltf., the action failed.—PRESTON *v.* RAPHAEL TUCK & SONS, [1926] Ch. 667; 95 L. J. Ch. 382; 135 L. T. 93; 42 T. L. R. 440.

700a. **Under Dramatic & Musical Performers' Protection Act, 1925 (c. 46)—Effect of Act—No right of property given.**]—Above Act does not give a right of property to persons who perform a musical work for the purpose of enabling another person to make a record of it.—MUSICAL PERFORMERS' PROTECTION ASSOCN., LTD. *v.* BRITISH INTERNATIONAL PICTURES, LTD. (1930), 46 T. L. R. 485.

PART XIV. SECT. 8.

sp. *Under Copyright Act, R. S. C.*, 1906 (c. 70).]—Pltf. seeking to recover penalties under sect. 39 of the above Act cannot succeed if the ct. is satisfied that, in committing the act or the acts charged as an infringement of copyright, deft. did not act "with intent to evade the law."—NATIONAL BREWERIES *v.* PARADIS, [1925] S. D. L. R. 875; [1925] S. C. R. 666; *affg.*, [1924] 1 D. L. R. 1082; 30 R. L. N. S. 429.—CAN.

CORONERS.

Part I.—Status of Coroner and Coroner's Court.

1. *Add. Annotation :—Generally,* **Reld.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29.

2. *Add. Citation :*—5 Dow. & L. 249.

Part III.—Appointment and Removal of Coroners.

14. After this case add :—
——.]—*See, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 1.

23. After this case add :—
Abolition.]—*See* Coroners (Amendment) Act, 1926 (c. 59), s. 4.

Part IV.—Remuneration and Compensation payable to Coroners.

37. In place of cross-references before this case, " *See, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 5."

48. After this case add :—
——.]—*See* note *after* No. 23, *ante.*

Part VI.—Deputy Coroners.

108. To cross-reference before this case add " *See* Coroners (Amendment) Act, 1926 (c. 59), ss. 9–11."

Part VII.—Inquests.

137. Before this case add " *See, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 13."

147. *Add. Annotation :—As to* (2) **Reld.** R. *v.* Haslewood, *Ex p.* Margerison, [1926] 2 K. B. 468.

152a. **Summoning "regular jurymen" — Improper.**]—(1) *Semble :* for a coroner before an inquest is held to take a person who is subsequently to serve on the jury & privately investigate with him any of the facts of the case, whether or not it can be shown that there was anything in the nature of discussion between them, is contrary to public policy, "misconduct" at common law, & ground for quashing the inquisition under Coroners Act, 1887 (c. 71), s. 6 (1).

(2) *Semble :* the fact that at a view, by a coroner's jury, of the scene of a collision where two vehicles had collided, a police constable, who had already been sworn & given evidence at the inquest, was allowed to point out to the jury where had been the marks in the roadway of the two vehicles which were said to have met, & where one of the vehicles had come to rest, the distance between which points the jury measured, is ground for quashing an inquisition under sect. 6, sub-sect. (1), of the Coroners Act, 1887 (c. 71), s. 6 (1).

The ct. expressed the following opinions :—

(3) The practice of summoning eleven jurors to serve on a coroner's jury from a list or panel of only sixteen or seventeen persons in a large city so that some of the same persons are summoned time after time, is very objectionable, & is contrary to the principle of the jury system. The practice of calling a small panel of "regular jurymen," whether or not it is illegal, is improper.

(4) Probably, as a general rule, it is better that a coroner should not accompany his jury upon a view of the scene of a collision between vehicles or upon a view of the vehicles. (5) But if he does so accompany the jury he should carefully abstain from any discussion of the case with the jury at such view.

(6) A coroner is not bound to allow others, such as those concerned or their representatives, to be present on such a view by the jury. It is a matter for his discretion.

(7) There is no statutory requirement that

PART V. SECT. 1, SUB-SECT. 3.—A. 52 iv. —— —— *Writ of fieri facias.*]—If the sheriff of a jurisdiction is a deft., a writ of *fi. fa.* against his goods may be directed to & executed by the coroner. The right to adopt this practice is not affected by Sheriffs Act. ss. 8, 9, or by the fact that there is a deputy sheriff appointed by the Crown.—WILLIAMS *v.* RICHARDS, [1923] 1 W. W. R. 1021 ; 32 B. C. R. 58.—CAN.

the depositions of a witness at the coroner's ct. should be read over to him. The High Ct. has no right to add such a requirement to those which Parliament has enacted. But if a coroner thinks there is any uncertainty as to what a witness meant, & particularly if a witness, before he signs his deposition, requests that it be read over to him, the coroner ought to do so. No doubt a witness would be entitled to refuse to sign until this had been done.—R. *v.* DIVINE, *Ex p.* WALTON, [1930] 2 K. B. 29; 99 L. J. K. B. 433; 143 L. T. 235; 94 J. P. 129; 46 T. L. R. 321; 28 L. G. R. 283, D. C.

153. To cross-reference before this case add "*See* Coroners (Amendment) Act, 1926 (c. 59), s. 14."

156a. ——.]—The failure by a coroner at an inquest to view the body makes the inquest a nullity, & is not merely an irregularity giving the ct. a discretion as to whether it will order another inquest, &, since on such failure there has been no inquest, the ct. will quash the proceedings before the coroner & order an inquest to be held.—R. *v.* HASLEWOOD, *Ex p.* MARGERISON, [1926] 2 K. B. 468; 95 L. J. K. B. 975; 136 L. T. 276; 90 J. P. 158; 42 T. L. R. 746; 70 Sol. Jo. 906; 24 L. G. R. 505, D. C.

SUB-SECT. 4A.—VIEW OF PLACE.

165a. **Whether coroner should accompany jury.**]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

165b. **Duty of coroner—Not to discuss case with jury at view.**]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

165c. **Presence of persons other than jury—Discretion of coroner.**]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

171a. ——.]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

180. For cross-reference before this case add "*See, now,* Coroners (Amendment) Act, 1926 (c. 59), ss. 21–24."

186. Before this case add "*See, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 20."

193. For cross-reference before this case, "*See, now,* Coroners (Amendment Act, 1926 (c. 59), s. 15."

237. *Add. Annotations:*—*As to* (5) **Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29. *As to* (6) **Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29. *As to* (7) **Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29. *Generally,* **Refd.** R. *v.* Haslewood, *Ex p.* Margerison, [1926] 2 K. B. 468.

308a. **Coroner present during jury's deliberations.**]—At the conclusion of the evidence in an inquest the jury retired, & after some time sent for the coroner, who went into the jury room & remained with the jury in private for a quarter of an hour:—*Held:* in going into the jury room during the deliberations of the jury, the coroner was guilty of misconduct, & the inquisition must be quashed & a fresh inquest held before the coroner for an adjoining district.—R. *v.* WOOD, *Ex p.* ANDERSON, [1928] 1 K. B. 302; 97 L. J. K. B. 113; 138 L. T. 224; 91 J. P. 185; 44 T. L. R. 23; 25 L. G. R. 501; 28 Cox, C. C. 446, D. C.

Annotations:—**Consd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29. **Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

308b. **Private investigation by coroner & member of jury.**]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

310. *Add. Annotation:*—**Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29.

313. *Add. Annotation:*—**Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29.

xi. *Other Cases.*

320a. **Permitting constable to give information to jury at view.**]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

345. After this case add:—
To adjourn inquest until termination of criminal proceedings.]—*See* Coroners (Amendment) Act, 1926 (c. 59), s. 20.

387. *Add. Citation:*—1 E. & B. 8.

403a. —— **As to insanity.**]—*Re* PITTS, Cox *v.* KILSBY (1931), *as reported in* 47 T. L. R. 293.

408. *Add. Annotations:*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284; *Re* Pitts, Cox *v.* Kilsby (1931), 47 T. L. R. 293.

409a. —— —— ——.]—It is undesirable that the depositions taken at an inquest before a coroner should be used by consent as evidence at the trial of an action under Fatal Accidents Act, 1846 (c. 93), arising out of

---

PART VII. SECT. 4, SUB-SECT. 4.

153 i. *Essential to jurisdiction of coroner.*]—Resp., a justice of the peace, began on Oct. 17, 1929, an inquiry into the death of a young woman who had died from taking strychnine on Aug. 20, 1929. Her body had been subjected to a post-mortem examination by the Govt. medical officer, & buried soon afterwards, without having been viewed by resp. At the inquiry, resp. was asked by counsel, on behalf of a subpœnaed witness, whether he had received a request in writing, but refused to give any such information. Upon application by the witness in question for a prohibition directed to resp., & restraining him from proceeding further with the inquiry:—*Held:* it was immaterial whether he had received a written request to hold such inquest, since his jurisdiction arose independently of it; notwithstanding the abolition of the coroner's jury by Inquests of Death Act, 1866, s. 5, he had no jurisdiction to hold the inquiry except *super visum corporis;* & appct. was entitled to prohibition. —R. *v.* STAINES, *Ex p.* O'CONNOR (1930), S. R. (Q.) 142; 24 Q. J. P. 19.—AUS.

153 ii. ——.]—B. was charged with the murder of S. Pending the hearing of the charge against B., a coronial inquiry as to the alleged death of S. was begun. The body of S. had not been viewed by the coroner, but an arm found under extraordinary circumstances had been produced to him, & by means of certain tattoo marks this had been identified as being the arm of S. Objection was taken by counsel for the accused to the jurisdiction of the coroner to hold an inquiry save *super visum corporis,* but the objection was overruled. A rule *nisi* for a prohibition was therefore obtained to restrain the coroner from proceeding:—*Held:* inasmuch as an arm was not sufficient to constitute a body & the coroner had no jurisdiction in the absence of a view of the body, the rule should be made absolute.—*Re* ORAM, *Ex p.* BRADY (1935), 52 N. S. W. W. N. 109.—AUS.

PART VII. SECT. 4, SUB-SECT. 6.

8a. *Refusal of witness to testify—Power of coroner to imprisont for contempt.*]—A coroner has power to imprison for contempt witnesses who refuse to testify when present at an inquisition held by him, even though they were not duly summoned or in any way ordered to appear, but were brought *nolens volens* before him by the police when in their custody after being arrested without warrant.—R. *v.* LITTLE, R. *v.* MILLER (Man.), [1926] 2 W. W. R. 762; 46 Can. Crim. Cas. 136.—CAN.

PART VII. SECT. 5, SUB-SECT. 5.—A. (b) v.

n. Read now "308a i."

the same matter.—CALMENSON *v.* MERCHANTS' WAREHOUSING CO. (1921), 90 L. J. P. C. 134; 125 L. T. 129; 65 Sol. Jo. 341, H. L.

Annotation:—**Folld.** Barnett *v.* Cohen, [1921] 2 K. B. 461.

417a. —— No duty to hold inquest—Death from natural causes.]—Three applts. who were husband, wife & daughter, were convicted of obstructing a coroner in the execution of his duty. Evidence was given that a male child had been born to the daughter on Nov. 3, 1932; that on several occasions during the months of Jan. & Feb. 1933, the family had been seen with this child, & that on all those occasions the child appeared to be suffering from a bad cough; & that on Feb. 16 the dead body of the child was found concealed in a hedge. Subsequently the husband & wife made statements in which they admitted having put the body in the hedge, & the daughter stated that she had seen her parents take the body away & return without it. A medical witness, who had made a post-mortem examination, said that death was due to natural causes:—*Held:* the foundation of a charge of this kind was that the case should be one in which there was a duty on the part of a coroner to hold an inquest; the evidence in the present case had not established that there was any such duty; &, further, even if that had been established, there was no evidence that applts., or any of them, intended to obstruct the coroner. The convictions must, accordingly, be quashed.—R. *v.* PURCY (1933), 149 L. T. 432; 97 J. P. 153; 24 Cr. App. Rep. 70; 29 Cox, C. C. 657, C. C. A.

CORPORATIONS.

Part I.—Nature and Attributes.

41. *Add. Annotations:* — **Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517; Metropolitan Meat Industry Board *v.* Sheedy, [1927] A. C. 899.

54a. ——.]—The canons residentiary of a cathedral who are entitled under 4 & 5 Vict. (c. 39), s. 25, to a fixed share in the corporate revenues, have no freehold qualification in respect of shares in the freehold lands of the corpn.—HARRIS *v.* PHILLIPS, [1891] 1 Q. B. 267; 55 J. P. 281.

73. *Add. Annotations:*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70; Liverpool Corn Trade Association, Ltd. *v.* Hurst, [1936] 2 All E. R. 309.

79. *Add. Annotations:*—**Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941; Aylott *v.* West Ham Corpn., Sisson *v.* West Ham Corpn. (1926), 90 J. P. 99.

133a. —— —— ——.]—A legacy was given to the Provost & Fellows of Queen's College. The proper name of the corpn. was "The Provost & Scholars":—*Held:* the Provost & Scholars were entitled.—QUEEN'S COLLEGE, OXFORD *v.* SUTTON (1842), 12 Sim. 521; 11 L. J. Ch. 198; 6 Jur. 906; 59 E. R. 1233.

176. *Add. Annotations:*—**Distd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

179. *Add. Annotations:*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

181. *Add. Annotations:*—**Apld.** Kreditbank Cassel G. M. B. H. *v.* Schenkers, [1927] 1 K. B. 826. **Followed.** South London Greyhound Racecourses, Ltd. *v.* Wake (1930), 74 Sol. Jo. 820. **Consd.** Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247. **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

After this case add:—

—— —— —— ——.]—*See, also,* COMPANIES, No. 1794a, *ante.*

182. After this case add:—

Presumption of due execution of deed.]—*See* Law of Property Act, 1925 (c. 20), s. 74.

182a. —— **What amounts to deed—Share certificate.**]—I am not prepared to hold that this share certificate is a deed within that sect. (CLAUSON, J.).—SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE (1931), 1 Ch. 496; 100 L. J. Ch. 169; 144 L. T. 607; 74 Sol. Jo. 820.

190. *Add. Annotation:*—**Refd.** Stoke Newington B. C. *v.* Richards (1929), 45 T. L. R. 650.

Part II.—Creation of Corporations.

243. *Add. Annotation:*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

264. *Add. Annotation:*—**Refd.** London Corpn. *v.* Lyons, Son & Co. (Fruit Brokers), Ltd. (1935), 51 T. L. R. 563.

265. *Add. Annotation:*—**Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

304. *Add. Annotation:*—**Refd.** *Re* British Celanese, Ltd., Patents (Nos. 326777 & 326778) (1932), 49 R. P. C. 283.

PART I. SECT. 1.

7 v. ——.]—The effect of incorporating a number of persons into a body corporate is to make that body corporate a separate legal entity or *persona.*

The juridical conception of a body corporate under the Indian law is not different from that under the English law.—HARIHAR PRASAD *v.* BANSI MISSIR (1932), I. L. R. 11 Pat. 174.—**IND.**

PART I. SECT. 2, SUB-SECT. 2.

sa. *Miner's union.*]—CENTRE STAR MINING CO., LTD. *v.* ROSSLAND MINERS' UNION (1902), 9 B. C. R. 190.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.

sd. *Sheriff—Of Bombay.*]—*Held:* not a corpn. sole.—BOMBAY (SHERIFF) *v.* HUKMOJI MOTAJI & Co. (1926), I. L. R. 51 Bom. 749.—**IND.**

PART I. SECT. 4, SUB-SECT. 5.—C.

sf. *Conviction.*]—A corpn. can be convicted of an offence only under the exact name which it legally possesses.—R. *v.* PELISSIERS, LTD., [1926] 1 D. L. R. 574; [1926] 1 W. W. R. 189; 45 Can. Crim. Cas. 161; 35 Man. L. R. 404.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.

sg. *Duplicate seal used—Validity.*]—A deed, purporting to be a conveyance of land by the Montreal Trust Co. (its head office & its seal being both in Montreal) as grantor to applt. as grantee, was refused registration on the ground that it was executed in Vancouver & a duplicate or facsimile seal affixed thereto. Upon a petition under sect. 230 of c. 127 of R. S. B. C., 1924, the trial judge upheld the registrar on the ground that a co. can have only one seal, *i.e.*, its common seal, unless enabled thereto by statutory authority. On appeal, the judgment was affirmed on equal division of the appellate ct.:—*Held:* the appeal should be allowed & there should be judgment directing the registrar to proceed with the registration of the deed under applt.'s application.—BAIRD *v.* DISTRICT REGISTRAR OF TITLES, [1938] S. C. R. 25; 1 D. L. R. 61; 7 F. L. J. (Can.) 291; *revsg.* S. C. *sub nom. Re* BAIRD, [1937] 3 W. W. R. 13.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.

sk. *Commissions created by municipalities—Under New Brunswick Electric Power Act,* 1920.]—ST. JOHN POWER COMMISSION *v.* NEW SYSTEM LAUNDRY, LTD. (N. B.), [1928] 2 D. L. R. 661.—**CAN.**

Part III.—The Members.

326. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

326a. S.P.—BROWNSCOMBE *v.* JOHNSON (1898), 78 L. T. 265; 62 J. P. 326; 19 Cox. C. C. 25; 14 T. L. R. 328 D. C.

327. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

340. *Add. Annotations :*—**Folld.** Dodd *v.* Amalgamated Marine Workers' Union (No. 2) (1923), 93 L. J. Ch. 100. **Consd.** Dodd *v.* Amalgamated Marine Workers' Union (1923), 129 L. T. 401. **Apld.** R. *v.* Bedwellty Urban District Council *Ex p.* Price, [1934] 1 K. B. 333.

340a. —— ——.]—Trade Union Act, 1871 (c. 31), s. 14, & sched. 1 (6), gives every member of a trade union a right to inspect the books of the union, " under proper conditions." That right entitles a member to inspect them by a skilled accountant, but the accountant should not be objectionable to the union on personal grounds, & should undertake not to disclose the information obtained by him except to his client. The fact that the trade union officials believe that the member desiring to inspect the books by an accountant is acting *mala fide*, & for purposes hostile to the union, does not give them an implied discretion to refuse the inspection. The *onus* of establishing that the right of inspection should not be exercised lies on the trade union.—DODD *v.* AMALGAMATED MARINE WORKERS' UNION, [1924] 1 Ch. 116; 93 L. J. Ch. 100; 129 L. T. 819; 40 T. L. R. 44; 68 Sol. Jo. 117, C. A.

Trade unions generally, *see* TRADE & TRADE UNIONS.

341. *Add. Annotation :*—**Consd.** R. *v.* Barnes Borough Council, *Ex p.* Conlan, [1938] 3 All E. R. 226.

345a. —— ——.]—DODD *v.* AMALGAMATED MARINE WORKERS' UNION, No. 340a, *ante*.

346. *Add. Annotation :*—*As to* (1) **Consd.** R. *v.* Barnes Borough Council, *Ex p.* Conlan, [1938] 3 All E. R. 226.

Part IV.—Officers.

416. *Add. Annotation :*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

421. *Add. Annotation :*—**Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

471. *Add. Annotation :*—**Consd.** Perrott & Perrott, Ltd. *v.* Stephenson, [1934] Ch. 171.

474. *Add. Annotation :*—**Refd.** Cayzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269.

512. *Add. Annotations :*—**Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107; Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737; McManus *v.* Bowes, [1938] 1 K. B. 98.

536. *Add. Citation :*—1 Com. 86.

Part V.—Election to Corporate Office.

578a. —— **Enforceable by mandamus—Notwithstanding quo warranto pending against officer.**]—*Mandamus* granted to compel a mayor & the capital burgesses of a corpn. to fill up two vacancies occasioned by the deaths of two capital burgesses, though there was a *quo warranto* information depending against the mayor, questioning his title.—R. *v.* GRAMPOUND CORPN. (1795), 6 Term Rep. 301; 101 E. R. 564.

583. For " **How tested—Not by mandamus directed against person elected.**]" read " **How tested—Not by quo warranto directed against person elected.**]"

596a. Office not vacant—Election not referable to another office.]—An election of A. to a corporate office in place of a supposed vacancy created by B., cannot be referred to an existing vacancy created by G.—R. *v.* SMITH (1814), 2 M. & S. 406; 105 E. R. 432.

Part VI.—Regulations and Bye-laws.

631. *Add. Annotations :*—**Consd.** A.-G. *v.* Denby, [1925] Ch. 596; Roberts *v.* Hopwood, [1925] A. C. 578. **Apld.** Everton *v.* Walker (1927), 137 L. T. 594. **Refd.** Owner *v.* King (1922), 128 L. T. 307; Mills *v.* L. C. C. (1924), 41 T. L. R. 122; R. *v.* Roberts, *Ex p.* Scurr, [1924] 2

PART IV. SECT. 2, SUB-SECT. 2.

sh. *Proceeding by corporation against former member—Whether maintainable.*]—Two of defts. & another were duly elected school trustees in Oct. 1873. In Dec. defts., without the concurrence of the third trustee, removed the school house from its then site. In June, 1874, the comrs. of schools dismissed the three trustees, & appointed three others. The newly appointed trustees brought an action of trespass against the two trustees who had removed the school house, & their servants, for such removal:—*Held :* no action would lie at their suit against defts. for acts committed during their term of office.—SCHOOL SECTION 16 TRUSTEES *v.* CAMERON (1877), 11 N. S. R. (2 R. & C.) 328.—CAN.

PART VI. SECT. 3, SUB-SECT. 2.—A.

631 l. *Test of reasonableness—General rule.*]—Every bye-law, whether made under a power to prohibit or a power to restrain or a power to regulate, must contain adequate information as to the duties of those who are to obey it, & such information must appear from the bye-law itself.—MILLER *v.* CITY OF BRIGHTON, [1928] V. L. R. 375; 49

K. B. 695; Short *v.* Poole Corpn. (1925), 42 T. L. R. 107; Lee *v.* McGrath (1934), 50 T. L. R. 518.

652. *Add. Annotation:*—**Refd.** Everton *v.* Walker (1927), 137 L. T. 594.

691. *Add. Annotation:*—*As to* (1) **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

700a. —— —— —— ——.]—WOOLLEY *v.* IDLE (1766), 4 Burr. 1951; 98 E. R. 16.

Annotations:—**Apld.** York Corpn. *v.* Welbank (1821), 4 B. & Ald. 438. **Refd.** Graves *v.* Colby (1838), 9 Ad. & El. 356.

707a. —— —— ——.]—SHAW *v.* POPE (1831), 2 B. & Ad. 465; 109 E. R. 1215.

736a. ——.]—CLARK'S CASE, No. 751, *post*.

770a. Presumption of—From non-observance.]—A.-G. *v.* MIDDLETON (1751), 2 Ves. Sen. 327; 28 E. R. 210, L. C.

Annotations:—**Refd.** A.-G. *v.* Foundling Hospital (1793), 4 Bro. C. C. 165; A.-G. *v.* Smythies (1836), 2 My. & Cr. 135.

Part VII.—Meetings.

794. *Add. Annotation:*—**Refd.** Neuschild *v.* British Equitorial Oil Co., [1925] Ch. 346.

819a. —— **Exception to rule—Companies under Companies Acts.**]—The common law rule of corpn. law that "where no special provision is made by the constitution of a corpn., the whole are bound by the acts, not only of the major part, but by the major part of those who are present at a regular corporate meeting, whether the number present be a majority of the whole body or not," has no application to cos. under the Cos. Acts.—PERROTT & PERROTT, LTD. *v.* STEPHENSON, [1934] Ch. 171; 103 L. J. Ch. 47; 150 L. T. 189; 50 T. L. R. 44; 77 Sol. Jo. 816.

861a. Validity—Proxy by annual subscriber—What amounts to payment.]—By the rules of an infirmary, which is a voluntary assocn. supported by voluntary contributions, for the purpose of providing medical advice & assistance gratis, the medical officers are to be elected by the governors. Any person subscribing one guinea or more annually is a governor during the continuance of his subscription; on the occasion of the election of a candidate to the office of surgeon, all ladies, who are governors, subscribers of one guinea *per annum*, whose subscriptions are not more than one year in arrear, are allowed to vote by proxy, other governors voting in person; & all annual subscriptions become due on Aug. 1, in each year. Pltf. was a candidate with two others at an election on Dec. 29, of a medical officer; a governor tendered proxies for him which were refused by the chairman, on the ground that they appeared by their dates to have been signed before the persons signing them had become subscribers. The proxies were signed by persons who each, about the time of signing, paid over one guinea as a first subscription to the infirmary, to the governor who tendered the proxies. Just before the meeting this governor gave the treasurer of the infirmary his cheque for the whole amount, the treasurer giving him a separate receipt for each guinea in the name of each person subscribing. The chairman declared one of the other two candidates elected, although pltf. would have the majority of votes, if his proxies had been received. The governor who tendered the proxies that same day stopped the payment of his cheque, but three days afterwards he paid the amount to the treasurer. Pltf. subsequently entered the infirmary, & claimed the right to do the duties of medical officer. Defts., who were the chairman & honorary secretary of the governors, resisted his claim & used force sufficient to turn him out, for which pltf. brought an action for assault at a county ct. The judge found a verdict for defts., on the ground that the subscriptions of those persons, whose proxies were rejected, had not been paid before the election, but reserved the question for the ct. on appeal:—*Held:* these facts constituted payment before the election by the persons whose proxies were rejected, but the validity of the proxies might depend upon the intention of those persons to be annual subscribers; also pltf., not having been in fact elected medical officer, could not question the validity of the election in this action.—WORTHINGTON *v.* HARGOOD (1873), 27 L. T. 786; 37 J. P. 484.

A. L. T. 249; [1928] Argus L. R. 209. —**AUS.**

PART VI. SECT. 3, SUB-SECT. 4.

713 i. *Whether bye-law void in toto.*]—A municipal bye-law may be good in part & bad in part.—BROWN TRANSFER CO. *v.* TOWNSHEND (Sask.), [1927] 1 W. W. R. 916.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.

sk. *Who may sue.*]—Where the law resulting from the exercise of a statutory power to make a bye-law operates for the general advantage of the public at large, none but the A.-G. may sue in respect of its breach.—A.-G. & LUMLEY *v.* T. S. GILL & SON PTY., LTD., [1927] V. L. R. 22; [1927] Argus L. R. 223.—**AUS.**

PART VI. SECT. 7.

sl. *Bye-laws made under statute—Not abrogated by repeal of statute.*]—A bye-law passed by the police comrs. of a city in 1915, admittedly valid when passed, provided that it should not be lawful for any person to use any vehicle in the "jitney bus service" for gain without being licensed so to do. S. had a "jitney" licence, but it expired on June 30, 1928. He continued to operate without a licence, & was convicted of a breach of the bye-law. The comrs. had ceased to issue jitney licences, because of an Ontario Statute passed in 1927, validating an agreement between the city corpn. & a street railway co., which provided that the corpn. should not issue any new jitney licences, & that existing licences should not continue in force after June 30, 1928:—*Held:* the validity of the bye-law was not destroyed.—R. *v.* SHAWRA, [1929] 1 D. L. R. 321; 50 Can. Crim. Cas. 267; 63 O. L. R. 158.—**CAN.**

sm. *Statute forbidding future bye-law—Existing bye-law valid—Where no repeal of existing bye-law.*]—R. *v.* SHAWRA, [1929] 1 D. L. R. 321; 50 Can. Crim. Cas. 267; 63 O. L. R. 158.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.—C.

g i. —— *Voting for improper payment—Municipal Act, R. S. M.* 1913—*Meaning of "any other purpose."*]—WOULD *v.* HERRINGTON, [1932] 2 W. W. R. 385; 4 D. L. R. 308; 40 Man. L. R. 365.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.—D.

836 i. *Must be exercised in accordance with constitution.*]—KAIK *v.* BORASKI (Sask.), [1926] 3 D. L. R. 916.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.

sq. *No powers to authorise by bye-law — Charitable Associations Act, R. S. M.*, 1913.—FITZSIMONS *v.* TESKEY, [1934] 2 W. W. R. 285.—**CAN.**

Part VIII.—Corporation Books and Documents.

865. *Add. Citations :—sub nom.* R. *v.* SANKEY, 5 Ad. & El. 423 ; 6 Nev. & M. K. B. 839 ; 5 L. J. K. B. 255 ; 111 E. R. 1226.

Add. Annotation :—**Distd.** Newington L. B. *v.* Eldridge (1879), 12 Ch. D. 349.

866. *Add. Citations :—sub nom.* R. *v.* RYE (MAYOR), 2 Keny. 485 ; 96 E. R. 1253.

Part IX.—Powers and Liabilities Generally.

880. *Add. Annotations :*—**Apld.** The Devon (1923), 130 L. T. 448. **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Refd.** Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746; British Petroleum Co. *v.* A.-G. for Ceylon, [1926] A. C. 147; Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546; The Neptun, [1938] P. 21.

888. *Add. Annotation :*—**Refd.** Wimbledon & Putney Commons Conservators *v.* Tuely, [1931] 1 Ch. 190.

891. *Add. Annotations :*—**Consd.** A.-G. *v.* Walkergate Press, Ltd.; A.-G. *v.* Bloomfield; A.-G. *v.* Carlton (1930), 142 L. T. 408. **Apld.** Orpen *v.* Haymarket Capitol, Ltd. (1931), 145 L. T. 614; Law Society *v.* United Services Bureau, Ltd. (1933), 103 L. J. K. B. 81. **Refd.** Davies *v.* Winstanley (1930), 47 T. L. R. 104.

898. *Add. Annotation :*—**Apld.** Orpen *v.* Haymarket Capitol, Ltd. (1931), 145 L. T. 614.

901. In line 10 of headnote. after "was" read "not."

902. *Add. Annotations :*—**Consd.** A.-G. *v.* Walkergate Press, Ltd.; A.-G. *v.* Bloomfield; A.-G. *v.* Carlton (1930), 142 L. T. 408. **Refd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

902a. —— ——.]—A limited co. is not liable to the penalties prescribed by the above sect., but directors, who have issued a proposal jointly with a limited co., are liable. They are, however, liable only for one penalty between them in respect of each offence committed.—A.-G. *v.* WALKERGATE PRESS, LTD.; A.-G. *v.* BLOOMFIELD; A.-G. *v.* CARLTON (1930), 142 L. T. 408; 94 J. P. 90; 46 T. L. R. 177; 74 Sol. Jo. 106; 28 L. G. R. 235; 29 Cox, C. C. 68.

Annotation :—**Consd.** Green *v.* Kursaal (Southend-on-Sea) Estates, Ltd., [1937] 1 All E. R. 732.

903a. —— **Settled Land Act, 1925 (c. 18), ss. 19 (1), 20 (1).**]—The above sub-sects. are applicable to a corpn., because the words "person of full age" are used throughout the new legislation in contrast with the word "infant," & merely mean "not being an infant," so that they are appropriate to a corpn.—*Re* CARNARVON'S (EARL) CHESTERFIELD SETTLED ESTATES, *Re* CARNARVON'S (EARL) HIGHCLERE SETTLED ESTATES, [1927] 1 Ch. 138; 96 L. J. Ch. 49; 136 L. T. 241; 70 Sol. Jo. 977.

Annotations :—**Refd.** *Re* Allington & L. C. C.'s Contract, [1927] 2 Ch. 253; *Re* Ogle's S. E., [1927] 1 Ch. 229; *Re* Pedley, Wallace *v.* Wallace, [1927] 2 Ch. 168.

903b. —— **Sunday Observance Act, 1781 (c. 49).**]—A limited co. can be the "keeper" of a house, or a "person managing or conducting an entertainment," within Sunday Observance Act, 1781 (c. 49), s. 1. But, where a co. has committed an offence against that sect., the directors are not liable merely because they are directors. To make the directors liable under sect. 2 of the Act there must be evidence that in respect of a particular Sunday they acted as persons having the management of the house.—ORPEN *v.* HAYMARKET CAPITOL, LTD. (1931), 145 L. T. 614; 95 J. P. 199; 47 T. L. R. 575; 75 Sol. Jo. 589; 29 L. G. R. 615; 29 Cox, C. C. 348.

Annotation :—**Consd.** Green *v.* Kursaal (Southend-on-Sea Estates, Ltd., [1937] 1 All E. R. 732.

PART VIII. SECT. 3.

878 i. *By strangers—Ratepayer—In Ontario.*]—JOURNAL PRINTING CO. *v.* MCVIETY (1915), 33 O. L. R. 166; 7 O. W. N. 633, 796; 21 D. L. R. 81.—**CAN.**

PART IX. SECT. 1.

f i. ——.]—An assocn. of individuals does not always require the special sanction of the State in order to enable it to hold property & to sue in its corporate name in South Africa. Whether it can or cannot depends upon the nature of the assocn., its constitution, its objects, & its activities.—MORRISON *v.* STANDARD BUILDING SOCIETY, [1932] App. D. 229.—**S. AF.**

sa. *Exercise of—Must be by bye-law.*]—In Ontario, when a municipal council is acting under the Municipal Act, its powers must be exercised by bye-law unless it is otherwise expressly authorised.—DONOVAN *v.* BELLEVILLE, [1930] 3 D. L. R. 434; 65 O. L. R. 246; *affd.*, [1931] 4 D. L. R. 288; O. R. 731.—**CAN.**

sd. *Appeal to Court of Appeal—Administrative powers not given to Court.*]—Sect. 57 (1) of Municipal & Public Utility Board Act, 1926, authorising an appeal from the Board thereunder to the Ct. of Appeal does not transfer administrative jurisdiction to the ct.—*Re* GREY GOOSE BUS LINES, LTD. & LIEDERBACH BUS LINES, INCORPORATED, [1936] 1 W. W. R. 221; 1 D. L. R. 438; 43 Man. L. R. 502.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

r i. —— *British Columbia Government Liquor Act, ss. 26, 46—Does not include Army & Navy Veterans in Canada (Victoria Unit)—Branch association established by corporation.*]—R. *v.* VICTORIA UNIT (ARMY & NAVY VETERANS), [1921] 3 W. W. R. 594; 66 D. L. R. 512; 36 Can. Crim. Cas. 285; 30 B. C. R. 248.—**CAN.**

r ii. —— *Liquor Act, 1912, s. 156—Includes corporation.*]—SMITH *v.* TROCADERO DANSANT, LTD., [1927] S. R. O. 39; 21 Q. J. P. 6.—**AUS.**

r iii. —— *Acts Interpretation Act, 1924—Includes company—Order in Council relating to summary offences.*]—On Jan. 11, 1930, an Order in Council, called Samoa Seditious Organisations Regulations, 1930, was made under Samoa Act, 1921, s. 46, being primarily directed at an organisation known as the "Mau," which had been creating very serious trouble in Samoa :—*Held :* except in the particular sub-clauses of clause 3 of the regulations in which it appears from the context that "person" is to be read as meaning only a physical person, in the construction of the Order in Council relating to offences punishable on summary conviction the expression "person" must be construed according to the Acts Interpretation Act, 1924, as including a co.—NELSON (O. F.) & CO., LTD. *v.* POLICE, [1932] N. Z. L. R. 337.—**N.Z.**

907a. —— **Local tramway Act.**]—A local tramway Act authorised the Board of Trade to make bye-laws providing that engines should be brought to a stand at cross streets, & a penalty was imposed on any person offending : —*Held :* the word "person" included a co., & there was no contrary intention to that effect shown in the other words of the sect.—ST. HELENS TRAMWAYS CO. *v.* WOOD (1891), 56 J. P. 71, D. C.

910. *Add. Annotation :*—**Consd.** *Re* Gibbs & Houlder's Lease, Houlder *v.* Gibbs, [1925] Ch. 575.

911. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

914. For cross-references before this case read "*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 161.

922. *Add. Annotations :—As to* (2) **Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426 ; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291 ; A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105 ; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14. *Generally,* **Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

927. *Add. Annotation :—As to* (1) **Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

928. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

932. *Add. Annotations :*—**Apld.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691 ; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291. **Consd.** A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105 ; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34. **Refd.** A.-G. *v.* Tynemouth Union, [1930] 1 Ch. 616.

935. *Add. Annotation :—As to* (2) **Refd.** Morris *v.* Harris, [1927] A. C. 252.

935a. —— ——.]—Pltfs. were by statute entrusted with the control & management of part of the navigations of the Rivers Ouse & Foss, in Yorkshire, with power to charge such tolls, within limits, as the corpn. deemed necessary to carry on the two navigations in which the public had an interest. In 1888 the corpn. entered into two agreements with the firm of H. L. & Sons. By the Ouse agreement the corpn. covenanted to allow the firm, their successors & assigns, the right to carry cargoes on the Ouse in consideration of the annual payment of £600 in place of the authorised dues & charges, with a proviso that there should each year be refunded to the firm, their successors & assigns, the difference between the £600 & the amount ordinarily charged on the traffic actually carried. By the Foss agreement the firm covenanted to pay the corpn. £200 *per annum* for twenty years as a composition for the ordinary tolls, & the corpn. covenanted to allow the firm, their successors & assigns, the free use of the Foss navigation, on payment of £200 *per annum* in lieu of tolls, for such further term or terms as the firm, their successors or assigns, might from time to time desire. Defts. were the successors of H. L. & Sons :—*Held :* the agreements were *ultra vires,* because during their currency, which depended on the wishes of defts., the corpn., no matter what emergency might arise, had disabled itself from exercising its statutory powers to increase the tolls so far as might be necessary ; &, being *ultra vires* at the date of their execution, the agreements did not become *intra vires* by reason of estoppel, lapse of time, ratification, acquiescence or delay.—YORK CORPN. *v.* LEETHAM (HENRY) & SONS, LTD., [1924] 1 Ch. 557 ; 94 L. J. Ch. 159 ; 131 L. T. 127 ; 40 T. L. R. 371 ; 68 Sol. Jo. 459 ; 22 L. G. R. 371.

Annotations :—**Dbtd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Consd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737. **Refd.** *Re* Salvin's Indenture, Pitt *v.* Durham County Water Board, [1938] 2 All E. R. 498.

948. *Add. Annotation :*—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

949a. No power to waive powers & duties.]—If a person or public body is entrusted by the Legislature with certain powers & duties expressly or impliedly for public purposes, those persons or bodies cannot divest themselves of these powers & duties. They cannot enter into any contract or take any action incompatible with the due exercise of their powers or the discharge of their duties.—BIRKDALE DISTRICT ELECTRIC SUPPLY CO., LTD. *v.* SOUTHPORT CORPN., [1926] A. C. 355 ; 95 L. J. Ch. 587 ; 134 L. T. 673 ; 90 J. P. 77 ; 42 T. L. R. 303 ; 24 L. G. R. 157, H. L.

Annotation :—**Refd.** *Re* Heywood's Conveyance, Cheshire Lines Committee *v.* Liverpool Corpn., [1938] 2 All E. R. 230.

952. *Add. Annotations :*—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426. **Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

955. *Add. Annotations :*—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691 ; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34. **Refd.** *Re* Jubilee Cotton Mills, [1923] 1 Ch. 1 ; A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105 ; British Trawlers' Federation, Ltd. *v.* London & North Eastern Ry. Co., [1933] 2 K. B. 14.

962. *Add. Annotation :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

964. *Add. Annotation :*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

970. *Add. Annotation :*—**Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

972. *Add. Annotations :*—**Consd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291. **Refd.** A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

974. *Add. Annotation :*—**Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

986a. Expenses of running omnibuses—Power to run omnibuses on authorised routes—Omnibuses run to connect up authorised routes.]—The corpn. of L., a municipal corpn., had by

---

PART IX. SECT. 5, SUB-SECT. 2.—A. d i. —— *Power to take mortgage.*]—An insurance co. was, by its charter, authorised to hold real estate for the immediate accommodation of the co., "or such as shall have been *bond fide* mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments which shall have been obtained for such debts" ; & having sold & conveyed a vessel, took from their vendee mtges. on real estate for securing the purchase money : —*Held :* a transaction within the charter, the price of the vessel being a debt existing previously to the execution of the mtge.—WESTERN ASSURANCE CO. *v.* TAYLOR (1862), 9 Gr. 471.—CAN.

virtue of their special Act power to maintain & run a service of omnibuses within the city or outside the city boundaries. In the latter case, their special powers only extended to the running of omnibuses along the route of any tramways which the corpn. should be authorised to construct. There were in fact two such authorised tramway routes. The expenditure in connection with the running of these authorised tramways could, under the corpn.'s statutory powers, be borne out of the city fund. The corpn. began an omnibus service in pursuance of their statutory powers, but it appeared that for a very small portion of the omnibus route, namely, for a distance of forty yards, the service of omnibuses ran outside the boundaries of the city, joining up with the tramway routes slightly further on, & that the expenses in connection therewith were borne by the city fund. An action was commenced by a ratepayer for a declaration (*inter alia*) that the running of these omnibuses over this particular stretch, & payment of the expenses in connection therewith out of the city fund, was *ultra vires* the statutory powers of the corpn., & ought to be prohibited. The question at issue was whether, so far as the forty yards stretch was concerned, the corpn. were entitled to spend moneys out of the city fund in connecting an authorised route of omnibuses outside the city with a route of omnibuses within the city boundaries. Under their statutory powers the corpn.'s service of omnibuses along the route of a tramway outside the city which they were authorised to construct was a part of their tramways undertaking, & they were also authorised to apply the city fund in discharging the expenses in connection with the tramways undertaking:—*Held:* the expense of running omnibuses over the forty yards so as to connect the two routes was an expense fairly incidental to the tramways undertaking, & that it was not *ultra vires* the corpn.'s statutory powers to expend any part of the city fund in working & running the omnibuses over the forty yards which connected the two services, & which were branches of the corpn.'s tramways undertaking.—A.-G. *v.* LEEDS CORPN., [1929] 2 Ch. 291; 99 L. J. Ch. 9; 141 L. T. 658; 93 J. P. 153; 27 L. G. R. 351.

991. *Add. Annotations:*—**Consd.** A.-G. *v.* Poole Corpn., [1936] 3 All E. R. 852. **Refd.** A.-G. *v.* Poole Corpn., [1938] Ch. 23.

991a. Purchase of land for street widening & pleasure garden—Subsequent use of pleasure garden for street widening.]—A local authority bought land in 1896 for the purposes of: (*a*) street widening; (*b*) making new streets; (*c*) providing public walks & pleasure gardens. The land was conveyed to the local authority for the purposes authorised by the Public Health Acts. A plan & specifications were submitted to the Local Government Board, & subsequently the scheme was carried out in accordance with the plan & specifications. The pleasure gardens were surrounded by railings, & were not dedicated or open to the public. In 1927 the local authority resolved to utilise one of the pleasure grounds for the purpose of street widening & providing a parking place for motor cars. Objections were raised by some of the occupiers of adjoining premises, & an action was brought to restrain the local authority from carrying out their resolution:—*Held:* as one of the purposes for which the land was acquired was street widening, the local authority was not acting *ultra vires* in using part of the pleasure gardens for that purpose.—A.-G. *v.* SUNDERLAND CORPN., [1929] 2 Ch. 436; 45 T. L. R. 618; 93 J. P. Jo. 480; *affd.*, [1930] 1 Ch. 168, C. A.

991b. Provision of entertainment—Construction of powers.]—A.-G. *v.* EASTBOURNE CORPN. (1934), 78 Sol. Jo. 633, C. A.

994. *Add. Annotations:*—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426. **Refd.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416; Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34.

996. *Add. Annotations:*—**Apld.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. **Consd.** Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67. **Refd.** A.-G. *v.* Gravesend Corpn., [1936] Ch. 550.

997. *Add. Annotation:*—*As to* (1) **Apld.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

997a. Power to erect information bureau on promenade—Discretionary powers to erect "conveniences" for persons using promenade for pleasure or health.]—A.-G. *v.* BLACKPOOL CORPN. (1928), 92 J. P. 50; 26 L. G. R. 160, C. A.

997b. Power to supply gas, water & transport—Payments out of reserve funds for benefit of unemployed.]—Defts. were authorised by the Oldham Corpn. Act, 1925, to supply gas, water & transport services, & their duties as

---

PART IX, SECT. 5, SUB-SECT. 2.—B. (a).

sk. *Excessive powers conferred by statute—Effect on position of members.*]—The members of the Ontario Municipal Board are not unlawfully in office when exercising administrative powers, merely because the legislature has, in excess of its powers, purported to confer certain judicial powers upon the Board—R. (STAMFORD) *v.* MCKEOWN, [1935] O. R. 109.—**CAN.**

PART IX. SECT. 5, SUB-SECT. 2.—D. (b).

sm. *Power to change rates charged for public utilities.*]—*Ex p.* MONCTON TRAMWAY ELECTRICITY & GAS CO. (N. B.), [1927] 3 D. L. R. 1112.—**CAN.**

st. *Power to erect shops—On land vested in corporation.*]—There is no power in a municipal corpn. to expend money in the erection of shops on land vested in it either as endowments or otherwise.—TAURANGA BOROUGH CORPN. *v.* A.-G., [1927] N. Z. L. R. 875.—**N.Z.**

sx. *Power to provide school requisites—Establishment of department to manufacture school requisites.*]—The magistrates & town council of a burgh passed a resolution to establish a department to manufacture & provide exercise books & other school requisites of the education authority. A ratepayer having challenged the resolution as being *ultra vires* of a purely administrative body such as a municipal corpn.:—*Held:* on a construction of sect. 3 (6) of Education (Scotland) Act, 1908, the power therein conferred for "providing" writing materials, stationery, & other articles of a similar nature, included a power to manufacture exercise books & other school requisites, & that, accordingly, the resolution was *intra vires* of the council.—GRAHAM *v.* GLASGOW CORPN., [1936] S. C. 108.—**SCOT.**

sz. *Power to acquire land for public park—Land acquired for "auto-camp."*]—The power given a town by sect. 88 of Town Act, 1927, to acquire land for the purpose of a "public park" does not enable it to acquire land for an auto-camp site.—BRINSON *v.* THREE HILLS TOWN & NIKOLAUS, [1938] 1 W. W. R. 585.—**CAN.**

regards the revenue from & expenses incurred in connection with these services are set out in sects. 310, 311 of that Act. Defts., with the object of providing work for the unemployed, transferred from each of the reserve funds of the gas, water & transport undertakings £5,000 to the general rate fund. An action was brought at the relation of neighbouring councils, in whose areas defts. were authorised to supply the above services, for (i) a declaration that the transfer was contrary to Oldham Corpn. Act, 1925, s. 311, & *ultra vires*, (ii) an order that defts. transfer the sums back to the respective reserve funds, & (iii) for an injunction restraining defts. from transferring any sums from any of those reserve funds to their general rate fund. Defts. contended that the spending of the money was not *ultra vires*. Alternatively they counterclaimed for a declaration that the sums of £5,000 might have been charged against revenue :—*Held :* (1) the language of Oldham Corpn. Act, 1925, s. 311 (1) (*g*) was imperative, & the transfer of the sums of £5,000, not being one of the purposes mentioned in that paragraph, was *ultra vires ;* (2) it would have been *ultra vires* the defts. to have spent money upon the relief works in question out of the revenues of the three undertakings & the declaration asked for in the counterclaim could not be made.—A.-G. *v.* OLDHAM CORPN., [1936] 2 All E. R. 1022 ; 100 J. P. 395 ; 52 T. L. R. 649 ; 80 Sol. Jo. 654 ; 34 L. G. R. 505.

998. *Add. Annotations :*—**Apld.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691 ; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291 **Consd.** A.-G. *v.* Smethwick Corpn. (1932).96 J. P. 105 ; A.-G. *v.* Racecourse Betting Control Board, [1935] Ch. 34. **Refd.** A.G. *v.* Westminster City Council, [1924] 2 Ch. 416 ; A.-G. *v.* Tynemouth Union, [1930] 1 Ch. 616.

1000. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

1000a. —— **By commons conservators.**] — It is within the powers conferred upon the Wimbledon & Putney Commons Conservators, a corpn. constituted under the provisions of the Wimbledon & Putney Commons Act, 1871, c. cciv., to pay pensions, annuities, or superannuation allowances to persons in their service who shall retire from such service by reason of age, infirmity, or otherwise.—WIMBLEDON & PUTNEY COMMONS CONSERVATORS *v.* TUELY, [1931] 1 Ch. 190 ; 100 L. J. Ch. 77 ; 144 L. T. 310 ; 47 T. L. R. 17 ; 74 Sol. Jo. 819 ; 29 L. G. R. 78.

1002. *Add. Annotation :*—*As to* (2) **Refd.** Deuchar *v.* Gas Light & Coke Co., [1925] 5 A. C. 691.

1006. *Add. Annotations :*—**Distd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443 ; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176.

1033. *Add. Annotation :*—**Refd.** Attwood *v.* Llay Main Collieries (1925), 70 Sol. Jo. 265.

1043. *Add. Annotation :*—**Refd.** The Jupiter, No. 3, [1927] P. 122.

Part X.—Contracts.

1103. *Add. Annotations :*—*As to* (1) **Apld.** Higgins *v.* Northampton County Borough (1926), 90 J. P. 82. **Refd.** Shipley Urban District Council *v.* Bradford Corpn. (1935), 179 L. T. Jo. 475.

1126. *Add. Annotation :*—**Refd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 819.

1127a. —— —— **Local authority acting under Housing of Working Classes Act, 1890 (c. 70).**] —The words of sect. 56 of the above Act must be read distributively, & as meaning that if the local authority's district is an urban district it shall have the same power of contracting that an urban sanitary authority has under the Public Health Acts, & if its district is a rural district the power which a rural sanitary authority has under those Acts, with the result that in the former case the authority cannot, when acting under the Act of 1890, contract otherwise than under its common seal if the value or amount of the contract exceeds £50. — NIXON *v.* ERITH URBAN COUNCIL, [1924] 1 K. B. 819 93 L. J. K. B. 756 ; 131 L. T. 303 ; 88 J. P. 115 ; 40 T. L. R. 373 ; 68 Sol. Jo. 537 ; 22 L. G. R. 448, C. A.

1127b. —— ——.]—Pltfs. claimed to have a written contract dated Mar. 17, 1921, under which they agreed to erect fifty-eight concrete workmen's dwellings for deft. borough rectified so as to give effect to what was alleged to have been the common intention " of the

---

PART IX. SECT. 6, SUB-SECT. 5.—B. (a).

sa. *Corporation under Native Land Act, 1909—To member of committee.*]—TATAURANGI, TAIRUAKENA *v.* MUA CARR, [1927] N. Z. L. R. 688.—**N.Z.**

PART IX. SECT. 6, SUB-SECT. 5.—B. (d).

1059 ii. ——.]—Pltfs. had demised by parol for one year the land to F. & put him in possession. Shortly afterwards defts. entered, turned him out & retained possession. On the trial it was contended that F. being tenant in possession the action should have been brought in his name, & not in that of pltfs., & pltfs. were nonsuited. In support of a rule to set this non-suit aside it was contended that the corpn. could only demise under seal & the parol demise to F. was therefore void & the corpn. properly made pltfs. :—*Held :* the demise was void.—ST. ANDREW'S COLLEGE TRUSTEES *v.* GRIFFIN (1853), 1 P. E. I. 80.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.

sd. *Co-operative association—Formed to carry on labour or trade—Right to contract for work or services—R. S. O.*, 1877 (c. 158).]—ONTARIO CO-OPERATIVE STONE CUTTERS' ASSOCN. *v.* CLARKE (1880), 31 C. P. 280.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.

a i. —— —— *Position of purchaser from corporation.*]—TRUST & LOAN CO. *v.* MONK (1868), 14 Gr. 385.—**CAN.**

b i. —— —— *Municipal District Act*, 1926.]—The requirement of the seal under sect. 24 of Municipal District Act, 1926, is not merely directory, but mandatory ; & the fact that the written application for the consent of the Minister was under the seal of deft. municipality is not a sufficient compliance with this requirement.—POOLER *v.* PATRICIA MUNICIPAL DISTRICT, [1934] 3 W. W. R. 754.—**CAN.**

parties " when the contract was drawn up. The contract was entered into between H. & deft. borough & was under their seal. H. subsequently assigned the contract to pltfs. : —*Held :* even if there were a common mistake the contract of Mar. 17, 1921, could not be rectified because, having regard to sect. 174 of the above Act, deft. borough were incapable of entering into a contract with H. other than a contract under seal, so that when a tender was made by H. & accepted, there was no contract come to.—HIGGINS (W.), LTD. *v.* NORTHAMPTON CORPN., [1927] 1 Ch. 128 ; 96 L. J. Ch. 38 ; 136 L. T. 235 ; 90 J. P. 82.

Annotation :—**Refd.** Shipley Urban District Council *v.* Bradford Corpn. (1936), Ch. 375.

1131. *Add. Annotation :*—**Refd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 87.

1133. *Add. Annotation :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

1134a. —— —— —— ——.]—A firm, of which deft. was the sole surviving member, were employed as architects. Four years after the work was completed dry rot broke out in floors laid over concrete, a large area of which was laid on the ground floor of the new buildings. It was alleged that, in correspondence which passed between the parties after the dispute arose, deft., in consideration of the corpn. refraining from suing, undertook to put the work right at his own expense :—*Held :* deft. was liable under the subsidiary contract, although that contract was not under seal, as the seal was unnecessary.—LEICESTER GUARDIANS *v.* TROLLOPE (1911), 75 J. P. 197 ; 2 Hudson's B. C., 4th ed., 419.

1135. *Add. Annotation :*—**Consd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 819.

1143. *Add. Annotation :*—**Refd.** Burnham-on-Sea Urban District Council *v.* Channing (1933), 77 Sol. Jo. 177.

1165. *Add. Annotation :*—**Apld.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

1176. *Add. Annotation :*—**Refd.** Berners *v.* Fleming, [1925] Ch. 264.

1184. *Add. Annotation :*—**Refd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All E. R. 1066.

1185. *Add. Annotation :*—**Refd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All E. R. 1066.

1193. *Add. Annotations :*—**Distd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 87. **Refd.** Craven-Ellis *v.* Canons, Ltd., [1936] 2 All E. R. 1066.

1205. *Add. Annotation :*—**Consd.** Michaud *v.* Montreal (City) (1923), 92 L. J. P. C. 161.

1214. After this case add :—

—— ——.]—*See* Law of Property Act, 1925 (c. 20), s. 180 (3).

PART X. SECT. 2, SUB-SECT. 4.

1128 i. *General rule—Contract over £50 in value—How calculated.*]—The " value or amount " of a contract within Public Health (Ireland) Act, 1878, s. 210 (1), is the amount which, in the light of the facts within the contemplation of the parties, & in reference to which the contract is made, would be recoverable by the contractor from the sanitary authority on completion. —MUNRO *v.* MALLOW URBAN DISTRICT COUNCIL, [1911] 2 I. R. 130.—**IR.**

PART X. SECT. 3, SUB-SECT. 3.

r i. ——.]—Where the purposes of a corpn. requires work to be done or goods supplied the corpn. cannot take the benefit of a contract for work or goods & refuse to pay on the ground that the contract is not under seal.—PURDY & HENDERSON CO., LTD. *v.* ST. PATRICK PARISH CORPN., [1917] 3 W. W. R. 710.—**CAN.**

PART X. SECT. 4, SUB-SECT. 1.—B.

sl. *To restrain city taking script from Province—In lieu of cash.*]—Interim injunction granted to restrain city from taking script in lieu of cash relief from Province.—*Re* WATSON *v.* EDMONTON, [1936] 4 D. L. R. 424.—**CAN.**

PART X. SECT. 5, SUB-SECT. 1.—A. (a).

t i. —— ——.]—Where a workman is hired to do work for a corpn. by a person who has no authority to hire him, & the corpn. has not ratified the employment, the fact that he does the work does not create the relationship of employer & workman between him & the corpn.—STUART *v.* PENNANT SCHOOL DISTRICT, [1927] 2 D. L. R. 940 ; [1927] 1 W. W. R. 949 ; 21 Sask. L. R. 465.—**CAN.**

PART X. SECT. 5, SUB-SECT. 1.—B.

ss. *Right of corporation to enforce contract.*]—The municipal committee held an auction to sell to the highest bidder a contract entitling him to take for one year all the sweepings of that town, that were to be collected regularly in certain godowns belonging to the municipal committee. The contract was knocked down to deft., who paid one-third down & agreed to pay the balance by monthly instalments, & signed the list of bids, as well as a document embodying all the terms of the contracts, both of which documents were also signed by the president of the committee, but neither of which was under the seal of that corporate body. The committee sued deft. for the unpaid balance of the price of the contract :—*Held :* notwithstanding the imperative provisions of Punjab Municipal Act, 1911, s. 47, if deft. had received benefit from the contract at the expense of the committee, he must pay for what he had actually received & enjoyed, as if there was an implied contract between the parties ; & the absence of a contract under the seal of the corpn. was therefore no answer to the action brought by the committee. — GUJRANWALA MUNICIPAL COMMITTEE *v.* FAZAL DUN (1929), I. L. R. 11 Lah. 121.—**IND.**

PART X. SECT. 5, SUB-SECT. 4.

sg. *Sale of land—Part performance.*]—In an action by a town for the balance of the purchase-money under an agreement for the sale of land :—*Held :* there had been sufficient part performance of the agreement to render the defence founded on Town Act, 1927, s. 23, of the lack of the corporate seal, unavailable.—BOW ISLAND *v.* HALPIN, [1936] 1 W. W. R. 401 ; 2 D. L. R. 237.—**CAN.**

PART X. SECT. 7.

sl. *Ultra vires contract — Benefit received by corporation — Duty to account.*]—COUNTY OF HALTON *v.* TOWNSHIP OF TRAFALGAR, [1927] 4 D. L. R. 134 ; 61 O. L. R. 45.—**CAN.**

sp. *Contract for construction of terminal warehouse—Construction.*]—By an agreement, contained in a bye-law, between deft. city & pltf. co., the latter agreed to construct a terminal warehouse in the city & to expend on such construction over $500,000. The co. further covenanted that the amount of securities to be sold by it should be not less than $700,000, of which approximately $500,000 should be used in constructing the warehouse & in the purchase of equipment, the balance to be used " for working capital & operating expenses." The city covenanted that " for & in consideration of the co. constructing & continuously operating a terminal warehouse " in accordance with the agreement the city guaranteed that for ten years the co. would earn a net profit of 7 per cent. on the amount invested in the construction & equipment of the warehouse. The co. constructed & equipped a terminal warehouse & began to operate it. In an action by it on the city's said covenant :—*Held :* since the co. had not borrowed approximately $200,000 to be used " for working capital & operating expenses," the action failed. The contention that the co.'s covenant to provide itself with working capital & operating expenses was an independent & collateral covenant which did not go to the root of the matter was not sustainable.—VICTORIA COLD STORAGE & TERMINAL WAREHOUSE CO., LTD. & PORTER *v.* VICTORIA CITY, [1938] 1 W. W. R. 742.—**CAN.**

Part XI.—Liability and Remedies in Tort.

1218. *Add. Annotation :*—**Distd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

1223. *Add. Annotations :*—**Distd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226. **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85; Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

1224. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1225. *Add. Annotations :*—**Consd.** Scammell *v.* Hurley, [1929] 1 K. B. 419. **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 2 K. B. 832; Lochgelly Iron & Coal Co. *v.* M'Mullan, [1934] A. C. 1; Monk *v.* Warbey, [1935] 1 K. B. 75.

1227. *Add. Annotations :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Refd.** Welden *v.* Smith, [1924] A. C. 484.

1228. *Add. Annotations :*—**Refd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336; Swain *v.* Southern Ry. Co., [1938] 3 All E. R. 705.

1229. *Add. Annotation :*—**Consd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1230. *Add. Annotation :*—**Consd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

1231. *Add. Annotation :*—**Consd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1235. *Add. Annotation :*—**Refd.** Pronek *v.* Winnipeg, Selkirk & Lake Winnipeg Ry. Co., [1933] A. C. 61.

1235a. ——.]—By a local Act a canal was vested in applts., who were required by the Act to keep the navigation & locks, & all works to be thereafter executed for the improvement thereof, in an efficient state for the traffic thereon. Applts. raised the coping on both sides of one of their locks & the banks behind it to prevent the lock from being flooded. Resps., adjacent landowners, objected that the effect of the works was to pen back the water in the part of the canal above the lock & to occasion the flooding of their lands, & applts. removed the coping without prejudice to their rights, but they did not reduce the height of the banks :—*Held :* there being no evidence of negligence, applts., in constructing works in the exercise of their statutory powers for the protection of their navigation, were not liable for the flooding of resps.' lands.—LAGAN NAVIGATION CO. *v.* LAMBEG BLEACHING, DYEING & FINISHING CO., [1927] A. C. 226; 96 L. J. P. C. 25; 136 L. T. 417; 91 J. P. 46; 25 L. G. R. 1, H. L.

1236. *Add. Annotation :*—**Consd.** Howard—Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

1243. *Add. Annotations :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 45 T. L. R. 85. *Re*, Simeon, [1937] 3 All E. R. 149.

1248. *Add. Annotation :*—**Refd.** Herniman *v.* Smith, [1938] A. C. 305.

1261. *Add. Annotations :*—**Apld.** Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299. **Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364. **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1262. *Add. Citations :*—86 J. P. 201; 20 L. G. R. 605.

1262a. —— **By solicitor conducting proceedings for corporation—Corporation not liable.**]—EGGINGTON *v.* LICHFIELD CORPN. (1855), 5 E. & B. 100; 24 L. J. Q. B. 360; 26 L. T. O. S. 27; 19 J. P. 819; 1 Jur. N. S. 908; 119 E. R. 418.

Annotation :—**Refd.** Flood *v.* Jackson, [1895] 2 Q. B. 21.

1262b. —— **By police appointed by watch committee—Borough corporation not liable.**]—The police appointed by the watch committee of a borough corpn., if they arrest & detain a person unlawfully, do not act as the servants or agents of the corpn. so as to render that body liable to an action for false imprisonment.—FISHER *v.* OLDHAM CORPN., [1930] 2 K. B. 364; 99 L. J. K. B. 569; 143 L. T. 281; 94 J. P. 132; 46 T. L. R. 390; 74 Sol. Jo. 299; 28 L. G. R. 293; 29 Cox, C. C. 154.

1263. *Add. Annotations :*—**Refd.** Tolley *v.* Fry (1929), 46 T. L. R. 108; Watt *v.* Longsdon (1929), 98 L. J. K. B. 711; Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

1266. *Add. Annotation :*—**Refd.** Sorrell *v.* Smith, [1925] A. C. 700.

1275a. ——.]—A public corporate body, although not formed for the acquisition of gain & making no profits, is liable to pay damages in respect of injury caused by its negligence.—A.-G. & DOMMES *v.* BASINGSTOKE CORPN. (1876), 45 L. J. Ch. 726; 24 W. R. 817.

Annotation :—**Refd.** Glossop *v.* Heston & Isleworth L. B. (1879), 12 Ch. D. 102.

1277. *Add. Annotations :*—**Consd.** Strangeways-Lesmere *v.* Clayton, [1936] 1 All E. R. 484. **Distd.** Lindsey County Council *v.* Marshall, [1936] 2 All E. R. 1076. **Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364; Dryden *v.* Surrey County Council & Stewart, [1936] 2 All E. R. 535.

1278. *Add. Annotation :*—**Refd.** Knott *v.* London County Council, [1934] 1 K. B. 126.

1279. *Add. Annotations :*—**Refd.** Skilton *v.* Epsom & Ewell Urban District Council, [1936] 2 All E. R. 50; Newsome *v.* Darton Urban District Council, [1938] 1 All E. R. 79.

PART XI. SECT. 4, SUB-SECT. 1.

1252 ii. ——.]—BURRIS *v.* DARTMOUTH CORPN. (1927), 59 N. S. R. 227.—CAN.

PART XI. SECT. 4, SUB-SECT. 2.

1 i. —— ——.]—Hospital liable for the negligence of nurses after an operation.—NYBERG *v.* PROVOST MUNICIPAL HOSPITAL BOARD, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—CAN.

t i. —— *Dangerous step—Of public library.*]—Library Board liable.—NICKELL *v.* CITY OF WINDSOR, [1927] 1 D. L. R. 379; 59 O. L. R. 618.—CAN.

PART XI. SECT. 6.

g i. —— ——.]—A corpn. has no reputation apart from its property or trade. It cannot maintain an action for libel merely affecting personal reputation. It cannot bring a prosecution for words which merely affect its honour or dignity.—MAUNG CHIT TAY *v.* MAUNG TUN NYUN (1935), I. L. R. 13 Ran. 297.—IND.

Part XII.—Criminal and Quasi-Criminal Proceedings.

1286. *Add. Annotations:*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810; Law Society *v.* United Services Bureau, Ltd. (1933), 103 L. J. K. B. 81, D. C.

1288. *Add. Annotations:*—**Consd.** Griffiths *v.* Studebakers, [1924] 1 K. B. 102. **Refd.** R. *v.* Leinster, [1924] 1 K. B. 311; Allen *v.* Whitehead (1929), 45 T. L. R. 655.

1292. *Add. Annotation:*—*As to* (2) **Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

1292a. —— ——.]—(1) An indictment will not lie against a corpn. either for a felony or for a misdemeanour involving personal violence under Offences against the Person Act, 1861 (c. 100), s. 31.

(2) Criminal Justice Act, 1925 (c. 86), s. 33, is mere machinery to avoid the inconvenience arising from the fact that previously a corpn. could not be indicted at assizes, & does not alter the substantive law so as to render a corpn. liable to be indicted where previously it was not liable.—R. *v.* Cory Brothers & Co., [1927] 1 K. B. 810; 96 L. J. K. B. 761; 136 L. T. 735; 28 Cox, C. C. 346.

1293. *Add. Annotation:*—**Refd.** Gough *v.* Rose (1929), 46 T. L. R. 103.

1297. *Add. Annotations:*—**Consd.** R *v.* Cory, [1927] 1 K. B. 810. **Refd.** Griffiths *v.* Studebakers, [1924] 1 K. B. 102.

1298. *Add. Annotation:*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

1303. *Add. Annotation:*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

1303a. —— **Effect of Criminal Justice Act, 1925 (c. 86), s. 33.**]—R. *v.* Cory Brothers & Co., No. 1292a, *ante*.

1304. *Add. Citations:*—27 Cox, C. C. 225; 16 Cr. App. Rep. 131.

After this case add "*See, now*, Criminal Justice Act, 1925 (c. 86), s. 33."

1307. *Add. Annotation:*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1308. After this case add "**Appeal by case stated from justices—Recognisance—How made.**]—*See* Magistrates, Vol. XXXIII., p. 413, No. 1229."

Part XIII.—Delegation of Authority for Particular Purposes.

1313. *Add. Annotation:*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

Part XV.—Legal Proceedings by and against Corporations, their Members and Officers.

1329. *Add. Annotation:*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

1330. *Add. Annotation:*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

1365. *Add. Citation:*—*on appeal* (1880), 5 App. Cas. 473, H. L.

Add. Annotations:—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

1366. *Add. Annotation:*—**Consd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

1370. *Add. Annotations:*—*As to* (1) **Consd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737. **Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

1377. *Add. Annotation:*—**Consd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

PART XII.

n 1. ——.]—Objection to a magistrate proceeding with a preliminary inquiry against an accused on the ground that being a corpn. the offence charged could be prosecuted by indictment only, is without force since the passing of sect. 782 of the Criminal Code.—R. *v.* Robertson's Bakeries, Ltd. (1931), 3 D. L. R. 437; 55 Can. C. C. 163; 43 B. C. R. 377.—**CAN.**

sg. *Possessing skin of protected animal.*]—A limited co. may, under sect. 8 of Birds & Animals Protection Act, 1918, be convicted of the offence of knowingly having in its possession skins of protected animals.—Alford *v.* Riley Newman, Ltd. (1934), 34 S. R. N. S. W. 261; 51 N. S. W. W. N. 32.—**AUS.**

PART XV. SECT. 4.

sa. *For transgression of statutory powers—Action by Attorney-General.*]—If a public body constituted under the laws of the Commonwealth transgresses its statutory power, the A.-G. for the Commonwealth on behalf of the public, whether private injury has or has not been alleged, has a right to complain & to obtain a declaration of transgression, &, if necessary, an injunction.—Commonwealth & A.-G. for Commonwealth *v.* Australian Commonwealth Shipping Board (1926), 39 C. L. R. 1; [1927] Argus L. R. 61.—**AUS.**

sb. *In what name—Trustees of schools.*]—Pltf. brought action against defts. for a *mandamus* to compel them to provide for a debt due to him by the trustees of a school section. The writ was against defts. personally, but contained a statement that they were trustees, etc., & that deft. D. was secretary. Evidence was taken as to the existence of the debt, & the case came on for hearing under the pleadings & evidence:—*Held:* the trustees could only be sued in their corporate name.—Cook *v.* Davidson (1877), R. E. D. 37.—**CAN.**

PART XV. SECT. 5, SUB-SECT. 1.

t 1. —— —— ——.]—Sass *v.* St. Nicholas Mutual Benefit Assocn. of Winnipeg, [1936] 3 W. W. R. 305; 4 D. L. R. 474; 44 Man. L. R. 280; *affd.*, [1937] S. C. R. 415; 2 D. L. R. 761.—**CAN.**

1409. *Add. Annotation :*—**Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

SECT. 9A.—HABEAS CORPUS.

1411a. To whom addressed.]—If it had been necessary to enforce the writ [of *habeas corpus*], the writ would have had to have been amended by adding to it the name of Mr. B. or some other responsible officer of the Society. I am unable to find in the books any record of any case where *habeas corpus* has issued against a corporation *eo nomine*. Crown Office rule 55, which provides for a writ of *mandamus* directed to companies & corporations being served on such & so many persons as are competent to do the act required to be done, is silent with regard to *habeas corpus* (SLESSER, L.J.).—*Re* CARROLL, [1931] 1 K. B. 317; 100 L. J. K. B. 113; 144 L. T. 383; 95 J. P. 25; 47 T. L. R. 125; 75 Sol. Jo. 98; 29 L. G. R. 152, C. A.

1438. *Add. Annotation :*—*As to* (1) **Refd.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

1493. *Add. Annotation :*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

1493a. —— —— ——.]—Pltf. co., which had transferred certain shares in another co. to deft. co. upon certain terms, brought an action against deft. co. in order to recover a certain proportion of those shares, & obtained an order against deft. co. for the "return" of those shares within fourteen days of the date of the order. That order was not served upon deft. co. or its directors until the lapse of six weeks from the date of the order. The copy of the order which was served upon deft. co. & upon its directors did not have indorsed upon it, as required by R. S. C., Ord. 41, r. 5, a memorandum stating the penal consequences of disobedience to the order. Deft. co. having failed to comply with the order pltf. co. sought to enforce the order by attachment of two of the directors of deft. co. under R. S. C., Ord. 42, r. 31 :—*Held :* (1) the order could not be enforced by attachment of the directors of deft. co., because they had not been served with a copy of the order indorsed with a memorandum as to the penal consequences of disobedience, as required by R. S. C., Ord. 41, r. 5; (2) the remedy against a director of a co. by attachment given by R. S. C., Ord. 42, r. 31, was an alternative remedy, & pltf. co. could not pursue that remedy unless they were also in a position to proceed against deft. co., & that they could not do because the copy of the order served upon deft. co. did not comply with R. S. C., Ord. 41, r. 5.—IBERIAN TRUST, LTD. *v.* FOUNDERS TRUST & INVESTMENT CO., LTD., [1932] 2 K. B. 87; 101 L. J. K. B. 701; 147 L. T. 399; 48 T. L. R. 292; 76 Sol. Jo. 249.

1495. *Add. Annotation :*—**Folld.** R. *v.* Poplar B. C., *Ex p.* L. C. C., R. *v.* Poplar B. C. (No. 2), [1922] 1 K. B. 95.

1496. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1502. *Add. Annotation :*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

1503. *Citation :*—For "13 T. L. R. 56" read "[1897] W. N. 7."

1510. *Add. Annotation :*—**Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 102 L. J. K. B. 113.

1520. After this case insert "*See, further*, CROWN PRACTICE, Vol. XVI., pp. 405, 406."

1522. *Add. Annotation :*—**Refd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

1526. *Add. Annotations :*—*As to* (1) **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255. *As to* (2) **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1527. *Add. Annotations :*—**Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1528. *Add. Annotation :*—*As to* (1) **Refd.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495.

1529. *Add. Annotations :*—**Consd.** New Zealand Shipping Co. *v.* Thew (1922), 8 Tax Cas. 208; Bradbury *v.* English Sewing Cotton Co., [1923] A. C. 744; Swedish Central Ry. *v.* Thompson, [1925] A. C. 495. **Apld.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1. **Refd.** Baelz *v.* Public Trustee, [1926] Ch. 863.

1531. *Add. Annotation :*—**Expld. & Distd.** The Lalandia, [1933] P. 56.

1532. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1534. *Add. Annotation :*—**Consd.** The Lalandia, [1933] P. 56.

1536. *Add. Annotations :*—**Consd.** The Lalandia, [1933] P. 56. **Refd.** Wilcocks *v.* Pinto (1924), 69 Sol. Jo. 178.

1536a. Agent primarily carrying on own business.]—Pltfs., the owners of a vessel damaged in collision with a vessel owned by defts., a foreign corpn., served a writ upon a member of an English firm, E. M. & Co., who acted as defts.' agents. The writ was served at E. M. & Co.'s London offices. Defts. moved to set aside the writ & service on the ground that they were not resident within the jurisdiction. It appeared that E. M. & Co. were one of defts.' agents in this country for the booking of freight, issue of passenger tickets, & the ordinary purposes for which ship's brokers are employed. The only remuneration received by them was the customary agents' commission, & they had no concern with the management of deft. corpn. The only name appearing on the door of E. M.

PART XV. SECT. 8.

1394 i. *To whom addressed.*]—When mandamus proceedings lie against a municipal corporation, it is the better practice to make parties the members of council & officers whose alleged delinquencies are involved.—R. (READ) *v.* PEMBINA MUNICIPAL DISTRICT No. 552, [1922] 3 W. W. R. 857; 70 D. L. R. 559.—CAN.

PART XV. SECT. 10, SUB-SECT. 3.—C.

sd. *Bye-laws.*]—A clerk in the office of the treasurer of a municipal corpn., not being the custodian of the bye-laws of the corpn., is not compellable to produce any of them, upon his cross-examination on an affidavit made by him on behalf of the corpn. for use on a motion to which the corpn. is a party.—WILSON *v.* FLEMING (1900), 19 P. R. 203.—CAN.

& Co.'s offices was their own name, but upon the window of the ground floor their name was exhibited as agents for the deft. corpn. together with the names of other foreign shipping cos. for whom E. M. & Co. acted :—*Held :* E. M. & Co. were a firm who "sold" & did not "make" contracts on behalf of defts., & defts. did their business in this country "through" E. M. & Co. & not "by" them ; defts. accordingly, were not resident within the jurisdiction & the writ & service must be set aside.—THE LALANDIA, [1933] P. 56 ; 102 L. J. P. 11 ; 148 L. T. 97 ; 49 T. L. R. 69 ; 18 Asp. M. L. C. 351.

1537. *Add. Annotations :*—**Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101 ; Swedish Central Ry. *v.* Thompson, [1924] 2 2 K. B. 255.

1540. *Add. Annotations :*—**Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101 ; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255.

1544a. —— Manager of London branch.]—Pltf. issued a writ against deft. co. & A., its managing director, & the writ was served upon A. Some years ago the co. had established a branch of their business in London under the management of A., who had, in obedience to Cos. (Consolidation) Act, 1908 (c. 69), s. 274, on behalf of the co. registered himself as a person resident in the United Kingdom authorised to accept service of process, & the evidence showed that, although at the date of the service of the writ upon A. the co. had long ceased to carry on trade in London, yet certain administrative activities, *e.g.*, the remittance of dividends to shareholders, were then being carried out there, & at no other place, on behalf of the co. :—*Held :* (1) upon the evidence, deft. co., at the date of the service of the writ upon A., had a place of business within the United Kingdom, within sect. 274 of the above Act, & service upon A. was effective service upon the co. ; (2) even if the co. had not at the date aforesaid a place of business within the United Kingdom, such service was effective service upon the co.—SABATIER *v.* TRADING Co., [1927] 1 Ch. 495 ; 96 L. J. Ch. 211 ; 136 L. T. 574 ; 71 Sol. Jo. 104.

1544b. —— On person authorised to accept service—Sufficiency of indorsement of writ & affidavit of service.]—FESTER FOTHERGILL & HARTUNG *v.* RUSSIAN TRANSPORT & INSURANCE Co., [1927] W. N. 27, C. A.

See, also, COMPANIES, No. 8527a, *ante.*

1546. *Add. Annotation :*—**Refd.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495.

1548. *Add. Annotations :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669 ; Richardson *v.* Richardson, [1927] P. 228.

1557. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

Part XVI.—Dissolution.

1603a. On equity of redemption—Companies Act, 1929 (c. 23), s. 296.]—In 1899 a limited co. mortgaged to the trustees of a will certain leasehold properties by way of absolute assignment subject to the equity of redemption. In 1910 the co. went into liquidation, & in 1913, the trustees having called in the mtge., the co. made default & the trustees appointed a receiver. In 1916 the co. was dissolved, the income of the property being at that time insufficient to meet the mtge. interest, & nothing was done in respect of the equity of redemption as the liquidator considered it to be of no value. The value of the property having since largely increased, the surviving trustee claimed to be entitled to the property absolutely, & the Crown claimed the equity of redemption as *bonâ vacantia :—Held :* (1) Cos. Act, 1929 (c. 23), s. 296, did not apply, as that sect. was not retrospective, & (2) after the disappearance of the legal entity which had the right of redemption the Crown was entitled to the property as *bonâ vacantia.—Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD, [1933] Ch. 29 ; 101 L. J. Ch. 346 ; 148 L. T. 5 ; 48 T. L. R. 617, C. A.

1604. *Add. Annotations :*—**Distd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29. **Refd.** Morris *v.* Harris, [1927] A. C. 252 ; *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

After this case add :—

—.]—*See, now,* Companies Act, 1929 (c. 23), s. 296.

PART XV. SECT. 12, SUB-SECT. 4.—B. (b).

m 1. —— ——.]—A writ was issued against a co., registered & carrying on business in England, but not registered nor carrying on business in Tasmania. The writ was served in London :—*Held :* the writ must be set aside, as there was no authority for the issue of a writ for service upon the co. in London.—PORT HUON FRUITGROWERS' CO-OPERATIVE ASSOCN., LTD. *v.* LARKINSON (SAMUEL), LTD. (1924), 20 Tas. L. R. 1.—**AUS.**

CORROBORATION.

See BASTARDY ; CRIMINAL LAW ; EVIDENCE.

COUNCILS.

See LOCAL GOVERNMENT ; METROPOLIS.

COUNTY BOROUGH COUNCIL.

See LOCAL GOVERNMENT.

COUNTY COURTS.

Part I.—Courts, Judges and Officers Generally.

14. *Add. Citation :*—15 B. W. C. C. 91.

18. "above Act" in the holding refers to 15 & 16 Vict. c. lxxvii.

19. Before this case add "*See, now,* County Courts Act, 1924 (c. 17)."

21. Before this case add "*See, now,* County Courts Act, 1924 (c. 17)."

22. *Add. Annotation :*—*As to* (1) **Consd.** A. W. *v.* Cooper & Hall, [1925] 2 K. B. 816.

Part II.—Liability and Protection of Judges and Officers of Court.

49. *Add. Annotation :*—**Refd.** Domine *v.* Grimsdall, [1937] 2 All E. R. 119.

61. *Add. Annotations :*—**Apld.** Freeborn *v.* Leeming, [1926] 1 K. B. 160; Morriss *v.* Winter (1929), 45 T. L. R. 643. **Refd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

Part III.—Jurisdiction.

65. *Add. Annotation :*—**Apld.** Parsons *v.* Burgess (1927), 43 T. L. R. 713.

66. *Add. Annotation :*—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526.

70a. Action for breach of promise of marriage.]—Resp. brought a county ct. action against appct. for the return of money & articles, alleging that the parties had promised to marry one another & that appct. had broken the promise. Resp. contended that the action was brought on a bailment, which was within the county ct. jurisdiction :—*Held :* in substance the claim was for damages for breach of promise of marriage, & a writ of prohibition must issue.—Parsons *v.* Burgess (1927), 96 L. J. K. B. 787 ; 138 L. T. 134 ; 43 T. L. R. 713.

71. *Add. Annotation :*—**Folld.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

71a. Question of repairs—Under Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17).]—Deft. was the tenant of a tied public-house with living accommodation, of which pltfs. were the landlords. In 1910, the house was let to deft. at a rent of £75 *per annum* for three years. At all material times the ratable value was £68. After certain intermediate tenancies at rents less than two-thirds of the ratable value, deft. in Dec. 1920, took from pltfs. a new lease : " To hold the said premises with the appurtenances unto the tenant from Mar. 25, 1920, for the term of seven years . . . at the yearly rent of £120." The reason for the increased rent was a trade revival which had caused a great improvement in the licensed trade of the house. The conditions of the new lease as to repairs were more onerous for the tenant than those of the old. In an action by the landlords for rent, the tenant contended that the repairing clause amounted to a prohibited increase :—*Held :* the question as to repairs could only be decided by the county ct., & the High Ct. had no jurisdiction on this point.—Brakspear (W. H.) & Sons, Ltd. *v.* Barton, [1924] 2 K. B. 88 ; 93 L. J. K. B. 801 ; 131 L. T. 538 ; 40 T. L. R. 607 ; 68 Sol. Jo. 718.

83. *Add. Citation :*—*sub nom.* Glennie *v.* Delmar, 1 L. M. & P. 402.

92. *Add. Citation :*—*sub nom.* Sheils *v.* Rait (1849), 7 C. B. 116 ; 137 E. R. 47.

99. *Add. Annotation :*—**Consd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

106. *Add. Annotation :*—**Consd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

138a. Guarantee—Payment by Instalments.]—By a contract in writing between H. H. & a cycle manufacturing co., H. H. requested the co. to supply him with a bicycle & undertook in consideration of their doing so to pay to appct. corpn. a deposit & the balance of the purchase-price by instalments at the address of appct. corpn., which was within the district of the S. county ct. By an agreement in writing between S. H. & appct. corpn., S. H., who did not reside or carry on business within the district of the S. county ct., agreed that, in consideration of the bicycle being supplied to H. H. " on the terms of the said order, should H. H. make default in due payment of any instalment or instalments of the price " of the bicycle " the whole sum shall immediately become due & I will, on demand, pay the same to you in London." The bicycle was supplied to H. H., who paid certain instalments of the purchase-price & then made default. Appct. corpn. then sought to sue S. H. in the S. county ct. on his guarantee for the balance due :—*Held :* the proposed action was founded, mainly if not wholly, on a contract for the sale of goods for which payment

was to be made by instalments within County Ct. Rules, Ord. II., r. 1 (3), & not merely on the guarantee, so that it could not be brought in the S. county ct., but must be brought in the ct. for the district in which deft. resided or carried on business as provided by r. 1 (1) (*a*).—R. *v.* SHOREDITCH COUNTY COURT REGISTRAR, *Ex p.* SAXON FINANCE CORPN., LTD., [1938] 1 K. B. 402; [1937] 4 All E. R. 231; 107 L. J. K. B. 140; 158 L. T. 373; 54 T. L. R. 53; 81 Sol. Jo. 964, D. C.

139a. —— —— **Issue of summons before leave obtained—Irregularity.**]—On Jan. 30, 1924, a tenant of a dwelling-house within the Rent Restrictions Acts lodged two plaints in the West London county ct., the one under sect. 12 (3) of the Act of 1920 for apportionment of rent, & the other under sect. 14 (1) of the same Act for certain sums paid by him in respect of rent which, as he alleged, was irrecoverable by his landlord. These sums were, by sect. 8 (2) of the Act of 1923, recoverable on or before Jan. 31, 1924, but not afterwards. The claim for apportionment could regularly be brought in the West London ct., but the claim for repayment could not be brought in that ct. without the leave of the judge or registrar on an application supported by an affidavit. No affidavit was sworn until Feb. 5, 1924. Notwithstanding this the plaint was entered, a plaint note under the seal of the ct. was given to pltf., & a summons was issued, all bearing the date Jan. 30, 1924. By Ord. 7, r. 2, a summons to appear to a plaint shall be dated of the day on which the plaint was entered, & the date thereof shall be the commencement of the action:—*Held:* (1) the irregular entry of the plaint & issue of the summons before the necessary leave had been obtained did not deprive the county ct. of jurisdiction to hear the action, but the irregularity could be waived by deft.; (2) as deft. had appeared to the summons & raised a defence in no way challenging the jurisdiction of the ct., he had waived the irregularity; the action must therefore be taken to have commenced on Jan. 30, & pltf. was entitled to recover.—PRINGLE *v.* HALES, [1925] 1 K. B. 573; 94 L. J. K. B. 458; 132 L. T. 785, C. A.

143a. **Partnership action—Commencement in wrong county court—Jurisdiction to hear under 1919 Act, s. 10.**]—R. *v.* LAILEY, JUDGE, *Ex p.* KOFFMAN, No. 244a, *post.*

147a. —— **Claim for declaration as to future payments—Involving payment of sums exceeding prescribed limit.**]—Where an action was brought in the county ct. to recover a money claim under an agreement, & also for a declaration as to future payments under the agreement:—*Held:* the county ct. judge had no power to make a declaration which might involve the payment of sums of money by deft. in excess of the limit of £100 prescribed by 1888 Act, s. 56.—SMITH *v.* SMITH, [1925] 2 K. B. 144; 94 L. J. K. B. 813; 133 L. T. 345, D. C.

Annotation:—**Refd.** Humber Conservancy Board *v.* Federated Coal & Shipping Co., [1928] 1 K. B. 492.

148. After this case add "**Sum lent beyond jurisdiction—Action for relief under Moneylenders Act, 1900 (c. 57).**]—*See* MONEY & MONEY-LENDING, No. 377a."

197. *Add. Annotation:*—**Consd.** Dudley & District Benefit Bldg. Soc. *v.* Gordon, [1929] 2 K. B. 105.

198a. **Duty of judge to make order—On proof of right to possession.**]—The words "may order" in 1888 Act, s. 138, are enabling words only, but where the legal right of a landlord to the possession of premises has been established it is the duty of the judge, notwithstanding the permissive form of the sect., to make an order for possession. In exercising the discretion given him as to the period for the coming into operation of the order, the judge must fix a period reasonably adjusted to the circumstances of the case, including the nature & term of the tenancy. The county ct. judge in two cases of weekly tenants whose tenancies had been validly terminated by notice to quit, refused to make any order in one case, & in the other, while making an order, postponed its operation for twelve months:—*Held:* this was not a judicial exercise of his discretion, in either case.—SHEFFIELD CORPN. *v.* LUXFORD, SAME *v.* MORRELL, [1929] 2 K. B. 180; 98 L. J. K. B. 512; 141 L. T. 265; 93 J. P. 235; 45 T. L. R. 491; 73 Sol. Jo. 367, D. C.

198b. **Terms of order—Postponement of operation—What must be considered.**]—SHEFFIELD CORPN. *v.* LUXFORD, SAME *v.* MORRELL, No. 198a, *ante.*

205. *Add. Annotation:*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

206. *Add. Annotation:*—**Refd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

206a. **Claim for declaration.**]—(1) The county ct. has no jurisdiction to entertain a claim for a declaration in an action in which no sum of money is claimed. *Stiles* v. *Ecclestone*, No. 211, *post*, overd.

Upon a contract for the sale of real property at a price exceeding £500 the vendor brought an action in the county ct. against the purchaser, claiming a declaration that deft. had forfeited the deposit paid under the contract by deft. to stake-holders, who were not parties to the action, & that he was entitled to receive payment of the deposit from the stake-holders. No other claim appeared in the plaint or the summons or the particulars of claim:—*Held:* the county ct. had no jurisdiction to entertain the claim, (1) on the above ground, & (2) on the further ground that the claim was for partial specific performance of an agreement for the sale of property within 1888 Act, s. 67, where the purchase-money exceeded £500, the amount limited by that sect.—DE VRIES *v.* SMALLRIDGE, [1928] 1 K. B. 482; 97 L. J. K. B. 244; 138 L. T. 497, C. A.

Annotation:—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526.

206b. ——.]—Observations as to declarations in county cts.—HUMBER CONSERVANCY BOARD *v.* FEDERATED COAL & SHIPPING CO., LTD., [1928] 1 K. B. 492; 97 L. J. K. B. 136; 138 L. T. 334; 17 Asp. M. L. C. 338, D. C.

——.]—*See, also,* Nos. 147a, 212.

208. *Add. Annotation:*—**Consd.** Smith *v* Smith, [1925] 2 K. B. 144.

209. *Add. Annotation:*—**Refd.** Upton *v.* Farmer (1930), 142 L. T. 526.

211. *Add. Annotation:*—**N.F.** De Vries *v.* Smallridge, [1928] 1 K. B. 482.

212. *Add. Annotations:*—**Distd.** Davey *v.* Robinson, [1923] 1 K. B. 563. **Apld.** Smith *v.* Smith, [1925] 2 K. B. 144. **Folld.** De Vries *v.* Smallridge, [1928] 1 K. B. 482. **Consd.** Upton *v.* Farmer (1930), 142 L. T. 526. **Refd.** Humber Conservancy Board *v.* Federated Coal & Shipping Co., [1928] 1 K. B. 492; Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

213. *Add. Annotations:*—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526. **Refd.** De Vries *v.* Smallridge, [1928] 1 K. B. 482; Olive *v.* Paynter, [1932] 2 K. B. 666.

After this case add "**In remitted action.**]—*See* No. 373a, *post.*"

221. To cross-reference before this case add "*See* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 203."

235. For "**Not within jurisdiction**" read "**Within jurisdiction.**"

235a. ——.]—DE VRIES *v.* SMALLRIDGE, No. 206a, *ante.*

240a. —— —— **After mortgage of interest by legatee.**]—Legatees who have mtged. their interest in a legacy will be restrained from prosecuting a suit in the county ct. to obtain payment of the same from the exors.—NEIGHBOUR *v.* BROWN (1857), 26 L. J. Ch. 670.

244a. **Partnership—Action for dissolution or winding up—Effect of denial of partnership on jurisdiction.**]—(1) The jurisdiction conferred by 1888 Act, s. 67 (7), which gives the county ct. power to entertain actions for the dissolution or winding-up of a partnership where the property does not exceed the value specified, is not limited to an action in which the existence of the partnership alleged by pltf. is admitted by the deft., but extends to an action in which it is not so admitted.

(2) An action in which pltf. claims a declaration of partnership between himself & deft. & an account of his share of the profits of the partnership business is in substance an action for the dissolution or winding up of a partnership within 1888 Act, s. 67 (7).

(3) Where, contrary to 1888 Act, s. 75, an action in the county ct. for the dissolution or winding up of a partnership is brought in a district other than that in which the partnership is being carried on, the county ct. judge before whom the action comes has a discretion under 1919 Act, s. 10, to hear & determine it.—R. *v.* LAILEY, JUDGE, *Ex p.* KOFFMAN, [1932] 1 K. B. 568; 101 L. J. K. B. 321; 146 L. T. 316; 48 T. L. R. 208, C. A.

244b. —— —— **What amounts to—Action for declaration & account.**]—R. *v.* LAILEY, JUDGE, *Ex p.* KOFFMAN, No. 244a, *ante.*

249. *Add. Annotations:* — **Consd.** Rossiter *v.* Langley, [1925] 1 K. B. 741; Russoff *v.* Lipovitch (1925), 94 L. J. K. B. 355. **Refd.** De Vries *v.* Sparks (1927), 137 L. T. 441. **Mentd.** Turner *v.* Watts (1927), 44 T. L. R. 105.

257a. **Right of solicitor to practise—Without signing court roll.**]—An admitted solr. of the Supreme Ct. has a statutory right to practise in the county ct. when it is exercising its bkpcy. jurisdiction & may therefore do so without signing the roll of the ct. as required by Ord. 54, r. 7, of the County Ct. Rules, 1903-32.—*Re* DEBTOR (No. 29 of 1931), [1934] Ch. 280; 103 L. J. Ch. 130; 150 L. T. 126; 50 T. L. R. 38; [1933] B. & C. R. 228, C. A.

272a. —— —— ——.]—*Re* BANE *v.* FOXALL & CANFOR IN THE COUNTY COURT OF NORFOLK (1856), 20 J. P. Jo. 293.

295. *Add. Annotation:*—**Refd.** Salter *v.* Lask, [1923] 2 K. B. 798.

297. *Add. Annotation:*—**Refd.** Salter *v.* Lask, [1923] 2 K. B. 798.

315a. —— **Disputes in relation to fishing boats—Merchant Shipping Act, 1894 (c. 60), s. 387.**]—Pltfs., who were the owners of a steam fishing boat, brought an action in the county ct. against deft., who was a member of the crew of the boat, claiming a sum as money lent by them to deft. Deft. alleged in defence that the sum claimed had been paid to him as wages; &, further, that the county ct. had no jurisdiction, the question between the parties being a dispute concerning wages within above sect. which could only be dealt with by a superintendent thereunder. At the trial it was found as a fact that the sum claimed had been lent to deft., & that there was no real dispute concerning wages: —*Held:* the county ct. had jurisdiction to entertain the action notwithstanding the sect., inasmuch as that ct. had all along had jurisdiction to entertain an action for money lent & the sect. did not either expressly or by implication exclude that jurisdiction; &, further, the jurisdiction of the superintendent under the sect. did not arise until a party to the dispute called him to decide it, & here no party had called upon him to do so.—STURLEY *v.* POWELL, [1930] 1 K. B. 677; 99 L. J. K. B. 197; 142 L. T. 484; 46 T. L. R. 236; 18 Asp. M. L, C. 97.

326. *Add. Annotation:*—**Refd.** Bartlam *v.* Evans, [1936] 1 K. B. 202.

327a. —— **Appearance—Raising defence not challenging jurisdiction.**]—PRINGLE *v.* HALES, No. 139a, *ante.*

Part IV.—Remitted Actions.

331. After this case add "**Action for relief under Money-lenders Act, 1900 (c. 51).**]—*See* MONEY & MONEY-LENDING, No. 434a."

335a. —— **Meaning of "amount . . . remaining in dispute"—Discount retained on payment of claim.**]—LEE (A.) & CO., LTD. *v.* BEATRICE STEPHENSON, LTD., [1932] W. N. 33; 173 L. T. Jo. 75, C. A.

341a. —— **Damages for personal injury.**]—In exercising his discretion under County Cts. Act, 1919 (c. 73), s. 2, the judge ought to have serious regard to the gravity of the case & the magnitude of the interests involved & to the question whether deft. has *primâ facie* a good defence to the action.

Where in an action brought by a pltf.

who sustained grave injuries by the overturning of the lorry in which he was a passenger against the owner of the lorry for damages for negligence, deft. applied before delivering her defence for security for costs & in default for the transfer of the action to the county ct., but by her affidavit in support made no allegation that she had a good defence on the merits :—*Held :* there was no sufficient material available for the exercise by the judge of his discretion by making the order asked for, & accordingly that the order must be set aside.—STEVENS *v.* WALKER, [1936] 2 K. B. 215 ; [1936] 1 All E. R. 892 ; 106 L. J. K. B. 683 ; 154 L. T. 550 ; 52 T. L. R. 502 ; 80 Sol. Jo. 404, C. A.

Annotations :—**Consd.** Culver *v.* Beard, [1937] 1 All E. R. 301 ; Berridge *v.* Everard, [1938] 2 K. B. 282 ; Phillips *v.* Lloyd & Sons, Ltd., [1938] 1 All E. R. 226. **Refd.** Evans *v.* Bartlam, [1937] A. C. 473.

341b. —— ——.]—Pltf. in an action for damages for negligence was an infant & a poor person. The injuries alleged were of a serious character, & might result in permanent injury affecting her earning capacity. Defts. applied to have the action transferred to the county ct. The judge who heard the application had before him the statement of claim & the defence ; pltf.'s counsel urged that the transfer should not be ordered on the ground that the injuries were serious. An order was made remitting the case to the county ct. Pltf. appealed :—*Held :* (1) there was a statutory discretion vested in the judge, & his exercise thereof ought not to be disturbed unless it could be clearly shown that he had acted upon a wrong principle ; (2) an order under County Cts. Act, 1919 (c. 73), s. 2, can be made in a poor persons case, since it does not order security for costs to be given but merely orders remission to the county ct. if security is not given.—CULVER *v.* BEARD, [1938] 2 K. B. 292, n. ; [1937] 1 All E. R. 301 ; 81 Sol. Jo. 156, C. A.

Annotations :—*As to* (1) **Consd.** Berridge *v.* Everard, [1938] 1 All E. R. 717 ; Phillips *v.* Lloyd & Sons, Ltd., [1938] 2 K. B. 282.

341c. —— ——.]—On an application to a judge of the High Ct. under County Cts. Act, 1934 (c. 53), s. 46, for the transfer of an action from that ct. to the county ct., the judge has a discretion to order either that the action shall or shall not be transferred ; but, in exercising that discretion, he should have regard to all material considerations whether of fact or law, such, for example, as the amount of the damages which may be recovered in the action, the soundness of the defence, & the probability of difficult questions of law arising at the trial, &, if he fails to have due regard to any of these matters, the Ct. of Appeal has jurisdiction to overrule his discretion & set aside his order.

A girl aged sixteen employed in a factory at a wage of 18*s.* 6*d.* a week, while managing a machine in the course of her employment, had the thumb of her right hand cut off by the machine. She & her stepfather, a dock labourer, as her next friend & also on his own behalf, brought an action in the High Ct. against the proprietors of the factory for damages for alleged negligence & breach of statutory duty. Defts. denied negligence, & pleaded contributory negligence, *volenti non fit injuria* & common employment. There was some uncontradicted evidence tending to show that defts. had been convicted of a statutory offence in respect of the fencing of the machine. On the application of defts. the judge in Chambers made an order to transfer the action to the county ct. On appeal to the Ct. of Appeal :—*Held :* the application raised for consideration important matters of both fact & law, the judge in making the order to transfer the action had apparently exercised his discretion without having given due consideration to all these matters, & his order should be set aside & the action retained in the High Ct.—PHILLIPS *v.* LLOYD & SONS, LTD., [1938] 2 K. B. 282 ; [1938] 1 All E. R. 226 ; 107 L. J. K. B. 593 ; 158 L. T. 234 ; 54 T. L. R. 337 ; 82 Sol. Jo. 111, C. A.

341d. —— ——.]—An order had been made remitting to the county ct. an action in which the administrator of an infant, who had been killed in a motor accident, was claiming damages in respect of loss of expectation of life :—*Held :* the case would involve considering whether a child was entitled to greater damages in respect of loss of expectation of life larger than an adult, & also whether loss of enjoyment of life ought to be taken into account. These were difficult questions of law, which have not yet been decided, & therefore it was desirable that the case should be tried in the High Ct.—BERRIDGE *v.* EVERARD, [1938] 1 All E. R. 717 ; 54 T. L. R. 462 ; 82 Sol. Jo. 173.

343. *Add. Annotation :*—**Consd.** Culver *v.* Beard, [1937] 1 All E. R. 301.

349a. —— —— **Affidavit should contain allegation as to defence.**]—STEVENS *v.* WALKER, No. 341a, *ante.*

351. *Add. Annotation :*—**Refd.** Culver *v.* Beard, [1937] 1 All E. R. 301.

352. *Add. Citation :*—91 L. J. K. B. 771.
Add. Annotation :—**Consd.** Culver *v.* Beard, [1937] 1 All E. R. 301.
After this case add :—
——.]—*See, now,* County Court Rules, Ord. 33, r. 20.

352a. ——.]—CULVER *v.* BEARD, No. 341b, *ante.*

360. *Add. Annotation :*—**Distd.** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

373a. On jurisdiction of county court—Reduction of claim for damages—Alternative claim for injunction.]—Where an action, commenced in the High Ct., has been transferred to a county ct. under 1919 Act, s. 1, the effect of sect. 4 of that Act is to give the county ct. jurisdiction to deal with the matter equal to or the same as that of the High Ct.

Pltf. & deft. entered into an agreement, which provided that in the event of any breach thereof by deft. he should pay to pltf. in respect of each such breach a sum of £150 by way of agreed & liquidated damages. Pltf. alleged that deft. had broken the agreement, & he brought an action in the High Ct. claiming the sum of £150 & an injunction. Pltf. afterwards applied, under 1919 Act, s. 1, to have the action remitted to a county ct., reducing the money claim to £90, & claiming an injunction in the alternative. The master made an order for remittal. Pltf. then delivered particulars of claim,

asking for £90 damages or in the alternative an injunction. He admitted, however, that the real object of the action was to obtain an injunction. On the action coming on for trial the county ct. judge declined jurisdiction on the ground that in substance the action was for an injunction alone. On appeal to a Div. Ct., that ct. held that the county ct. judge had jurisdiction to entertain the action, & sent it back to him for trial:—*Held:* the decision of the Div. Ct. was correct.—DAVEY *v.* ROBINSON, [1923] 1 K. B. 563; 92 L. J. K. B. 336; 128 L. T. 513; 39 T. L. R. 163; 67 Sol. Jo. 246, C. A.

379. *Add. Annotation:*—**Consd.** Davey *v.* Robinson, [1923] 1 K. B. 563.

382. *Add. Annotation:*—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526.

394. *Add. Annotation:*—**Consd.** Culver *v.* Beard, [1937] 1 All E. R. 301.

403a. Discretion of county court judge.]—An action founded on tort was remitted without any special order as to costs by the High Ct. to the county ct. under County Cts. Act, 1934 (c. 53), s. 40, & judgment for pltf. was given by the county ct. for £60 & costs. In the minute of the judgment as recorded no special direction appeared as to costs & the registrar proceeded to tax the costs on the High Ct. scale down to the date of remission & thereafter on column C of the county ct. scales. Thereupon deft. applied to the judge to amend the judgment by making the whole of the costs taxable on column C. This application was successful. On appeal by pltf. against the order of the county ct. judge directing the minute to be so amended:—*Held:* where in the opinion of the county ct. judge the action is one which ought properly to have been commenced in the county ct. it is within his discretion to direct that the whole of the costs (both High Ct. costs before remitter & county ct. costs subsequently) should be taxed on the appropriate county ct. scale. Therefore, in the present case, the whole of the costs were properly taxed on column C of the county ct. scales, & the ct. would not interfere with the exercise of the discretion.—GOADBY *v.* ORRIDGE, [1938] 1 K. B. 641; [1937] 4 All E. R. 610; 107 L. J. Ch. 313; 158 L. T. 51; 54 T. L. R. 239; 82 Sol. Jo. 35, C. A.

404a. Duty of county court judge to specify scale of costs.]—In an action remitted from the High Ct. to the county ct., it is advisable that the county ct. judge should specify the scale on which costs are to be taxed. *Semble:* in the absence of any direction by him as to scale, the costs must be taxed in accordance with the scale applicable to the amount recovered.—GOLD BROTHERS & NASH, LTD. *v.* FULLER (1925), 134 L. T. 151; 70 Sol. Jo. 284, D. C.

Annotation:—**Consd.** Davies *v.* Davies (1927), 96 L. J. K. B. 1066.

404b. —— Order for costs on higher scale—Necessity for certificate.]—A county ct. judge cannot award to pltf. in a remitted action costs on a scale higher than that applicable to the amount recovered without giving a certificate in accordance with 1888 Act, s. 119.—DAVIES *v.* DAVIES, [1928] 1 K. B. 364; 96 L. J. K. B. 1066; 137 L. T. 567, D. C.

407a. Claim reduced by giving credit—Scale of costs—Discretion of Court of Appeal.]—An action was brought in the High Ct. for £94 5*s.* 11*d.* The master in Chambers reduced the claim to £43 5*s.* 11*d.* by giving credit to deft. for £51, gave deft. leave to defend as to the remainder, & remitted the case to the County Ct. Deft. then entered a counterclaim, which the Ct. of Appeal found to be unfounded, but the facts upon which the counterclaim was based further reduced the claim to £14 10*s.* 11*d.*:—*Held:* (1) in the circumstances there was no judgment in the High Ct. upon which costs on the High Ct. scale could be given. (2) The Ct. of Appeal exercising the discretion vested in the County Ct. Judge by the County Cts. Act, 1919 (c. 73), s. 12, awarded costs on Scale "B" throughout the proceedings, refusing to make three separate orders as to costs.—HARDMAN *v.* CAUSTON, [1936] 1 All E. R. 61, C. A.

408. *Add. Annotation:*—**Reld.** Hives *v.* Dawson (1927), 44 T. L. R. 37.

410a. Discretion of county court judge—To deprive successful party of costs.]—Where a pltf. has begun an action in the High Ct. & within twenty-one days from issue of the writ has obtained, under R. S. C., Ord. 14, an order in respect of part of his claim whereby he may sign judgment for £20 or upwards either unconditionally or unless that sum is paid into ct. or to pltf.'s solr., & the remainder of pltf.'s claim is remitted to a county ct. with leave to defend, the judge of the county ct. has the same jurisdiction as a judge of the High Ct. over the costs of the whole proceedings, & he may order them to be taxed on the High Ct. or on the county ct. scale. But in deciding the scale on which they are to be taxed he must exercise his discretion judicially, & he is not entitled to deprive pltf. of the High Ct. costs of the High Ct. proceedings unless pltf. has been guilty of some misconduct.—JENKINS & CO. *v.* SIMON, [1926] 1 K. B. 111; 95 L. J. K. B. 97; 134 L. T. 88; 42 T. L. R. 39; 70 Sol. Jo. 162, D. C.

Annotations:—**Distd.** Hardman *v.* Causton, [1936] 1 All E. R. 61; Goadby *v.* Orridge, [1938] 1 K. B. 641. **Reld.** Gallivan *v.* Warman (1930), 169 L. T. Jo. 327.

420a. Recovery of less than £50—Joinder of actions—Whether total sums recovered to be considered.]—GALLIVAN *v.* WARMAN (1930), 169 L. T. Jo. 327; [1930] W. N. 96.

SUB-SECT. 4.—SCALE.

420b. Costs up to remission costs in cause.]—An action was remitted to the county ct., &, in the order remitting it, it was ordered that the costs up to the time of remission should be costs in the cause:—*Held:* the effect of the order was that the costs up to the time of remission were to be costs on the High Ct. scale, & the county ct. judge has no jurisdiction to vary that order.—SIMMONS & SON, LTD. *v.* WILTSHIRE, [1938] 3 All E. R. 403; 159 L. T. 205; 54 T. L. R. 1018; 82 Sol. Jo. 604, C. A.

Part V.—Procedure.

438. *Add. Annotation :—Generally,* **Refd.** Friern Barnet U. C. *v.* Adams, [1927] 2 Ch. 25.

455. *Add. Citations :*—91 L. J. Ch. 627; [1922] B. & C. R. 155.

472. *Add. Citation :*—20 L. G. R. 567.

472a. Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17), s. 5—Recovery of possession.]—(1) Sect. 5 of Rent (Restrictions) Act, 1920, is not a statutory defence or one of which notice must be given under County Ct. Rules, 1903, Ord. 10, r. 18.

(2) The Div. Ct. thought that as no one had expressly mentioned the Rent (Restrictions) Act in the county ct. they ought not to consider its effect. I do not agree with that decision. In my opinion the Act imposes upon the county ct. judge the duty of deciding whether the property comes within its provisions &, if it does, whether he should make or refuse an order for possession (SCRUTTON, L.J.).—SALTER *v.* LASK, [1924] 1 K. B. 754; 93 L. J. K. B. 685; 130 L. T. 323; 68 Sol. Jo. 420; 22 L. G. R. 296, C. A.

Annotation :—As to (2) **Folld.** Lefevre *v.* Hirst (1931), 100 L. J. K. B. 733.

489. *Add. Annotation :—As to* (2) **Refd.** Morriss *v.* Baines & Co., [1933] 1 K. B. 540.

497a. —— Application under Administration of Justice Act, 1920 (c. 81), s. 3—Discretion of judge to order trial without jury.]—On May 10, 1923, pltf. commenced proceedings claiming from defts. damages for personal injuries caused by the alleged negligence of defts.' servants. Defts. filed a defence denying negligence & afterwards gave pltf. notice of an application to dispense with a jury. The application for trial without a jury was made under the above sect. The county ct. judge, without giving any reasons for his decision, ordered the trial of the action without a jury, & pltf. appealed against that order & alleged that the learned judge had not properly exercised his discretion :—*Held :* the above sect. did not give the county ct. judge an absolute power to order the trial of an action without a jury; the sect. gave him a discretion which must be exercised judicially; in this case there were no proper materials on which the learned judge could exercise his discretion judicially; it would not be a proper exercise of the learned judge's judicial discretion to dispense with a jury merely because it was inconvenient; on the other hand it is not necessary for the judge to give his reasons for dispensing with a jury, but there must be some grounds for so exercising his discretion.—WINN *v.* LONDON COUNTY COUNCIL (1923), 130 L. T. 350; 88 J. P. 31; 40 T. L. R. 106; 68 Sol. Jo. 502, D. C.

497b. —— —— Onus on party objecting to jury.]—On an application in the county ct. for an order that an action be tried with a jury the county ct. judge is bound in law to make the order asked for, unless the party desiring to dispense with a jury under the above sect. establishes to his satisfaction that the action could be as conveniently tried without a jury. Further, the fact that the lists are congested is not a ground on which the county ct. judge is entitled to suspend a litigant's right to trial by jury.—CALCRAFT *v.* LONDON GENERAL OMNIBUS CO., [1923] 2 K. B. 608; 92 L. J. K. B. 1092; 129 L. T. 794; 39 T. L. R. 466; 67 Sol. Jo. 641, D. C.

Annotation :—**Consd.** Winn *v.* L. C. C. (1923), 130 L. T. 350.

499a. —— Action in which fraud alleged—Whether mere allegation sufficient.]—To come within the proviso to Administration of Justice Act, 1920 (c. 81), s. 2 (1), a relevant issue of fraud must be raised, which will have to be decided in order to determine the rights of the parties, & it is not sufficient for pltf. merely to allege that deft. acted fraudulently.—EVERETT *v.* ISLINGTON GUARDIANS, [1923] 1 K. B. 44; 92 L. J. K. B. 250; 128 L. T. 447; 87 J. P. 61, D. C.

Part VI.—Trial, Judgment and Execution.

526a. To refer to registrar—Necessity for consent of parties.]—Apart from the special cases referred to in County Cts. (Amendment) Act, 1934 (c. 17), s. 20, a county ct. judge has no power to make an order referring the whole of an action to the registrar for inquiry & report, unless the parties consent thereto. Such an order if made without consent renders the proceedings void *ab initio* & is not cured by the subsequent conduct of the parties.—MORGAN *v.* CULLEN, [1936] 2 K. B. 324; [1936] 2 All E. R. 147; 105 L. J. K. B. 560; 155 L. T. 245; 80 Sol. Jo. 425, C. A.

534a. —— —— Damages claimed.]—In an action for damages & an injunction in respect of alleged trespass, neither the *præcipe* nor the particulars of claim stated the amount of the damages claimed. The particulars of claim stated that neither the value nor the reserved rent of the dominant tenement exceeded £100 *per annum*, but did not state the value or reserved rent of the servient tenement. The judge allowed two amendments of the particulars of the claim, the first, a statement that the damages claimed were £25; & the second, an allegation that neither the value nor the reserved rent of the servient tenement exceeded the value of £100 by the year :—*Held :* the county ct. judge had power under the above sect. to make the second amendment, & the first amendment also.—UPTON *v.* FARMER (1930), 142 L. T. 526; *sub nom.* FARMER *v.* UPTON, 46 T. L. R. 252; 94 J. P. Jo. 136.

534b. —— —— Rent of servient tenement.]—UPTON *v.* FARMER, No. 534a, *ante.*

535a. Action for ejectment—Action for recovery of possession appropriate.]—Where an action for ejectment is brought in the county ct. under County Courts Act, 1888 (c. 43), s. 59, & the proper course would have been to

claim recovery of possession under sect. 138, the judge has power & ought, under sect. 87, to allow the amendments necessary to enable him to deal with the real rights of the parties.—DAVY *v.* MAGNUS (1931), 47 T. L. R. 609; 75 Sol. Jo. 660, D. C.

554. *Add. Annotation :*—**Consd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

563. *Add. Annotations :*—**Consd.** Jaeger Co. *v.* Jaeger (1929), 46 R. P. C. 336. **Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

565. *Add. Annotations :*—**Consd.** Ord *v.* Ord, [1923] 2 K. B. 432; The Koursk, [1924] P. 140; Debenhams *v.* Perkins (1925), 133 L. T. 252. **Apld.** Conquer *v.* Boot, [1928] 2 K. B. 336.

See, also, ESTOPPEL, No. 447a, *post.*

578. *Add. Annotations :*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419; Desborough *v.* Portsmouth (1934), 27 B. W. C. C. 192.

578a. —— —— ——.]—A county ct. judge has no right to dismiss a workman's claim for arbn., without hearing any evidence, on counsel stating in his opening that money paid into ct. by the employer, representing the full compensation due to date, had already been taken out by the workman.

A judge has no right to non-suit a pltf. on counsel's opening (LORD HANWORTH, M.R.). —DESBOROUGH *v.* PORTSMOUTH (1934), 27 B. W. C. C. 192, C. A.

593. *Add. Annotation :*—*As to* (2) **Refd.** Campbell *v.* Pollak (1927), 43 T. L. R. 495.

606. *Add. Annotation :*—**Consd.** Boyle *v.* Union Coal Storage Co. (1935), 28 B. W. C. C. 49.

608. *Add. Annotation :*—**Consd.** Boyle *v.* Union Coal Storage Co. (1935), 28 B. W. C. C. 49.

617. *Add. Citation :*—15 B. W. C. C. 43.

Add. Annotation :—**Refd.** Moore *v.* Cunard S.S. Co. (No. 2) (1935), 28 B. W. C. C. 469.

619. *Add. Annotations :*—**Consd.** Manners *v.* Manners & Fortescue, [1936] 1 All E. R. 41. **Refd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191; Boyle *v.* Union Coal Storage Co. (1935), 28 B. W. C. C. 49; Moore *v.* Cunard S.S. Co. (No. 2) (1935), 28 B. W. C. C. 469; Rowell *v.* Pratt, [1937] 3 All E. R. 660.

621. *Add. Annotation :*—**Refd.** R. *v.* Newport (Salop) JJ., *Ex p.* Wright, [1929] 2 K. B. 416.

626. *Add. Annotation :*—**Refd.** Manners *v.* Manners & Fortescue, [1936] 1 All E. R. 41.

645a. —— **Goods already in possession of sheriff.**]—A. W., LTD. *v.* COOPER & HALL, LTD., No. 783a, *post.*

648a. —— **Sum deposited by claimant to goods less than value of goods—More than judgment debt & costs.**]—Goods which had been taken in execution under a county ct. judgment were claimed by a claimant. The execution creditor did not admit the claim & claimant deposited with the bailiff under 1888 Act, s. 156, the sum of £26 which was considerably less than the value of the goods claimed, but was more than sufficient to cover the judgment debt & costs of the execution. The money was paid into ct. by the bailiff, who remained in possession of the goods, & an interpleader summons was issued. Before the return day of the interpleader summons the execution creditor gave notice that he admitted the title of claimant to the goods, & the bailiff withdrew from possession. Upon the taxation of the costs the bailiff claimed possession fees up to the date when the execution creditor admitted claimant's title, upon the ground that under sect. 156 he was bound to remain in possession until the amount of the value of the goods was deposited with him :—*Held :* as the £26 was deposited with & taken by the bailiff under sect. 156 of the Act, he must be deemed to have taken it upon the assumption that it represented the amount of the value of the goods, & therefore he had no right to remain in possession or to possession fees after the date of the deposit.—NEWSUM, SONS & CO., LTD. *v.* JAMES, [1909] 2 K. B. 384; 78 L. J. K. B. 761; 100 L. T. 852; 53 Sol. Jo. 521, D. C.

651. *Add. Annotation :*—**Refd.** Domine *v.* Cohen & Co., [1936] 1 All E. R. 55.

652. *Add. Annotation :*—**Refd.** Sheffield Corpn. *v.* Luxford, Same *v.* Morrell, [1929] 2 K. B. 180.

653a. **Debt deposited with bailiff by third party—Pending new instalment order.**]—Pltf. obtained judgment against defts. for the sum of £53 8*s.* payable in instalments of £2 monthly. One of these instalments being in arrear pltf. levied execution for the whole amount then owing & seized certain property. A friend of defts. then paid the bailiff the whole amount outstanding & costs of the execution, & was given a receipt stating that the sum was paid as a deposit pending an application to the ct. It was intended that upon an application to the ct. deft. should pay the one instalment & the costs of execution & that a new order for payment for instalments should be made. The order made by the ct. followed these terms, but went on to add that if deft. did not pay the costs of execution, the so-called deposit should remain in ct. until further order :—*Held :* this course was quite irregular as it did not appear whether the friend paid the money as agent of defts. or otherwise. If he paid as such agent the debt was discharged & the execution was at an end, & no further order could be made with regard to it. If, in fact, he was not an agent of defts. no order could be made in respect of the said sum paid as a deposit as the person paying it was not a party to the action.—DOMINE *v.* COHEN & CO., [1936] 1 All E. R. 55, C. A.

Annotation :—**Refd.** Domine *v.* Grimsdall, [1937] 2 All E. R. 119.

Part VII.—Costs.

677. *Add. Annotation :*—**Refd.** Russoff *v.* Lipovitch (1924), 69 Sol. Jo. 276.

684. **After this case insert "** *See, also,* Nos. 566–573, *ante.***"**

686. *Add. Annotation :*—**Refd.** Temperance Loan Fund *v.* Erwood (1927), 137 L. T. 449.

690. **After this case add "—— —— Action by money-lender.**]—*See* MONEY & MONEY-LENDING, No. 442a.**"**

691. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

691a. —— **Order for costs on lower scale.**]—When the amount found due to pltf. is between £20 & £50 the scale of costs applicable is Scale B, & a county ct. judge has no jurisdiction to make an order for costs on a lower scale unless it be shown that pltf.'s action is frivolous or oppressive, or that there has been misconduct or dishonesty on his part. —HUGHES (W.) & SON *v.* SATCHELL (1925), 134 L. T. 93, D. C.

691b. —— **In remitted action.**]—JENKINS & Co. *v.* SIMON, No. 410a, *ante*.

693. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak (1927), 43 T. L. R. 495.

695a. ——.]—Pltf.'s motor car, whilst being driven by his wife, was injured, as pltf. alleged, through the negligent driving of a motor lorry by a servant of defts. At the trial of the action in the county ct. the judge held that both sides were to blame, & gave judgment for defts., but allowed no costs. On appeal on the question of costs :—*Held :* on the facts found at the trial there had been negligence on the part of pltf.'s wife, & therefore pltf. could not have succeeded whether there had or had not been negligence on the part of defts., & the county ct. judge had no discretion to deprive the successful defts. of their costs.—JACKSON *v.* ANGLO-AMERICAN OIL CO., [1923] 2 K. B. 601 ; 92 L. J. K. B. 1000 ; 129 L. T. 792 ; 67 Sol. Jo. 640, D. C.

695b. —— **Order for costs on lower scale.**]—On a claim by an unsuccessful deft. against an insurance co. as third parties, for indemnity to an amount exceeding £50, judgment was given for the third parties. The county ct. judge, without giving any reasons, ordered the unsuccessful defts. to pay costs to the third parties on Scale B, applicable to cases where the amount does not exceed £50, the scale where that amount exceeds £50 being Scale C. It was not suggested that any facts existed to justify a special direction as to costs under 1888 Act, s. 113 :—*Held :* there was no jurisdiction to make the order.—BEVINGTON *v.* PERKS & BELL ASSURANCE SOCIETY, [1925] 2 K. B. 229 ; 94 L. J. K. B. 829 ; 133 L. T. 511, D. C.

Annotation :—**Apld.** Hughes *v.* Satchell (1925), 134 L. T. 93.

722a. —— **Joined with claim for specific performances & damages.**]—Pltf. sued deft. for breach of contract to let him a house-boat for a short period, claiming specific performance, an injunction & damages, & served deft. with notice of motion for an injunction. Before the motion came on for hearing deft. let the house-boat to another person. This fact was disclosed when the motion came on, & the action proceeded to trial on the question of damages only, judgment being thereat given to pltf. for £25 damages & the costs of the action :—*Held :* the substantial claim being for specific performance & an injunction, which could not be obtained owing to deft.'s having let the boat in breach of her contract, the case was not within County Cts. Act, 1888 (c. 43), s. 116 (1). & pltf. was entitled to costs on the High Ct. scale.—DEVERELL *v.* MILNE, [1920] 2 Ch. 52 ; 89 L. J. Ch. 305 ; 123 L. T. 565.

734a. **Scale maxima exceeded—Powers of judge & registrar.**]—Under the County Ct. Rules, 1936, no discretion is conferred on the county ct. judge to increase any item of costs beyond the maximum allowed in the appropriate scale, except when under County Ct. Rules, Ord. XLVII., express power is given to him to certify for higher costs.

In particular there is no power to increase the amount charged for "instructions to counsel" beyond the maximum scale charge, & the fee for brief to counsel can only be increased beyond the maximum in the scale by a certificate of the county ct. judge given at the hearing under County Ct. Rules, Ord. XLVII., r. 21 (1).—MURRAY *v.* REDPATH, BROWN & Co., [1938] 1 K. B. 449 ; [1937] 4 All E. R. 478 ; 107 L. J. K. B. 166 ; 158 L. T. 54 ; 54 T. L. R. 155 ; 81 Sol. Jo. 1040, C. A.

739a. —— **Recovery of costs paid under protest.**]—Pltf. & deft. by an agreement contracted (*inter alia*), that pltf. should pay certain costs to deft. Deft.'s solrs. sent in the bill to pltf., who paid it, but as to a part of it under protest, stating that the agreement did not cover certain items, for the recovery of which she subsequently brought an action in the county ct. Deft. put in a special defence to the effect that as pltf. had not taken any steps to tax the bill pursuant to Solicitors Act, 1843 (c. 73), ss. 37, 38, 41, the action was not maintainable. The county ct. judge upheld this view, & refused to try the action :—*Held :* he was wrong, & that he had jurisdiction to try the action.—MOSLEY *v.* KITSON (1912), 57 Sol. Jo. 12 ; 1 L. J. (C. C.) 71.

750. *Add. Annotation :*—**N.F.** Warwick *v.* Butler & Lauritzen, [1925] 2 K. B. 294.

750a. ——.]—Where under the above rule the registrar, on the application of a deft. who alleges that he neither resides nor carries on business within twenty miles from the ct., makes an order directing pltf. to deposit in ct. a sum of money as security for the costs of deft., the county ct. judge under r. 11, sub-r. 8, has power to vary or rescind the order so made.—WARWICK *v.* BUTLER & LAURITZEN [1925] 2 K. B. 294 ; 94 L. J. K. B. 657 ; 133 L. T. 240, D. C.

750b. **"Court in which plaint is entered."—Court to which remitted action sent.**]—Where an action of tort commenced in the High Ct. has been remitted to a county ct. in default of security for costs, that county ct. becomes "the ct. in which the plaint was entered," & the judge may order pltf. to give security for costs under Ord. XII., r. 9, of the county ct. rules on the application of a deft. who neither resides nor carries on business within twenty miles of the ct.—RIDDLE *v.* PLAYLE, [1930] 1 K. B. 363 ; 99 L. J. K. B. 64 ; 142 L. T. 92 ; 46 T. L. R. 27 ; 73 Sol. Jo. 796, D. C.

Part VIII.—Appeals.

757. *Add. Annotation :*—**Consd.** Conway *v.* New Ideal Homesteads, Ltd., [1936] 3 All E. R. 78.

761. *Add. Annotation :*—**Refd.** Hives *v.* Dawson (1927), 44 T. L. R. 37.

763a. —— ——.]—Warwick *v.* Butler & Lauritzen, No. 750a, *ante*.

770a. On ground of perverse verdict.]—Creed *v.* Wright (1932), 73 L. Jo. 412, C. A.

776a. Debt or damage claimed not exceeding £20.]—An appeal to the High Ct. against the decision of a county ct. judge granting a new trial is an appeal "in an action" within 1888 Act, s. 120, & where the debt or damage claimed did not exceed £20 the High Ct. has no jurisdiction to hear the appeal unless applt. has obtained leave of the county ct. judge to appeal.—Ward *v.* Sneiman (1925), 133 L. T. 560; 41 T. L. R. 598, D. C.

Annotation :—**Refd.** Hives *v.* Dawson (1927), 44 T. L. R. 37.

779a. —— **Claim less than £20.**]—There is no appeal without leave from a county ct. judge's refusal to review a taxation of costs, where the amount claimed is less than £20.—Hives *v.* Dawson (1927), 138 L. T. 238; 44 T. L. R. 37, D. C.

783a. Order for payment of possession fees of high bailiff—Under Ord. 27, r. 1 (2).]—(1) A Div. Ct. has jurisdiction to hear an appeal from the decision of a county ct. judge who, under the above sub-rule has, on the application of the high bailiff, made an order against the execution creditors, who have directed the high bailiff to withdraw, for the payment of his fees.

On May 15, 1924, the high bailiff of a county ct. under a warrant of execution purported to levy upon the goods of judgment debtors at their premises, & put a man in possession. The sheriff was then in possession of the goods under process of an earlier date, but not to the knowledge of the high bailiff, as the county ct. judge found. The high bailiff on taking possession received from judgment debtors a document which stated that in consideration of his withdrawing from possession they authorised him at any time to re-enter & undertook not to remove any of the goods. On June 12, 1924, the high bailiff on the instruction of the judgment creditors withdrew from possession. The execution was ineffective, except in so far as it brought the parties into negotiation with a view to a settlement. The high bailiff made an application to the county ct. judge under the above rule, for an order for payment by the judgment creditors of his fees for keeping possession from May 15 to June 12. The county ct. judge found that the high bailiff did not withdraw from possession, but was in actual possession & not in mere walking possession of the goods, & made an order for payment of the fees claimed :—*Held :* (2) the possession of the sheriff did not in the circumstances prevent the high bailiff from taking & keeping such possession as would entitle him to claim fees; (3) there was evidence to support the finding of the county ct. judge that the high bailiff did not withdraw from possession, but kept actual as distinct from walking possession; & therefore the order of the county ct. was right.—A. W., Ltd. *v.* Cooper & Hall, Ltd., [1925] 2 K. B. 816; 94 L. J. K. B. 831; 133 L. T. 508.

787a. —— **Preliminary question of law—Whether "judgment" within 1888 Act, s. 120.**]—Daws *v.* Nettleship, Ltd. (1929), 108 L. T. Jo. 518.

789. *Add. Annotations :*—**Consd.** Ward *v.* Sneiman (1925), 133 L. T. 560. **Distd.** Lefevre *v.* Hirst (1931), 100 L. J. K. B. 733. **Refd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

797a. Exception from rule—Appeal under Rent Restriction Acts.]—Salter *v.* Lask, No. 472a, *ante*.

797b. —— ——.]—The general rule that it is a condition precedent to the raising by an applt. of a point of law on appeal from a county ct. that that point should have been raised at the trial of the action does not apply to cases within r. 18 of Increase of Rent & Mtge. Interest (Restrictions) Rules, 1920.—Lefevre *v.* Hirst (1931), 100 L. J. K. B. 733.

809. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

812. *Add. Annotation :*—**Apprvd.** Blewett *v.* Blewett, [1936] 2 All E. R. 188.

812a. —— ——.]—The rule that a point of law cannot be raised on appeal from a county ct. if it was not raised in the ct. below applies only to applt. Resp. can support the judgment at the hearing of the appeal upon any legal ground arising on the evidence.—Waller & Son, Ltd. *v.* Thomas, [1921] 1 K. B. 541; 90 L. J. K. B. 656; 125 L. T. 21; 37 T. L. R. 325; 19 L. G. R. 109.

Annotation :—**Refd.** Isaacs *v.* Keech (1925), 94 L. J. K. B. 676.

818. *Add. Annotation :*—*As to* (1) **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

824a. ——.]—The same principles apply in an appeal such as this on questions of a right of way from a county ct. as have long been applied in regard to such issues where a trial has been before a jury. Indeed, the case of an appeal from a county ct. is, if anything, *a fortiori :* it is the only appropriate tribunal of fact that can decide the issue whether or not a right of way is established, because that issue depends on whether the tribunal is satisfied that there has been, in fact, a dedication, which can only be found if the necessary intention has been made out.—Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310; 104 L. J. K. B. 109; 152 L. T. 133; 99 J. P. 93; 51 T. L. R. 131; 79 Sol. Jo. 11; 33 L. G. R. 39, C. A.

832. *Add. Annotations :*—*As to* (1) **Distd. Martin** *v.* **Stanborough** (1924), 41 T. L. R. 1. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

846. *Add. Annotation :*—**Refd.** Conway *v.* New Ideal Homesteads, Ltd., [1936] 3 All E. R. 78.

847a. Necessity for.]—Pltf. in an action in the county ct. claimed £1 5*s.* 4*d.* damages for breach of contract, & judgment was given in his favour for that amount. Defts. applied to the county ct. judge for leave to appeal, which was refused. Defts. thereupon applied to the Ct. of Appeal for leave to appeal, offering to pay pltfs. costs in any event. The attention of the Ct. of Appeal was not drawn to the County Cts. Act, 1888 (c. 43), s. 120, & *per incuriam* the ct. gave leave to defts. to appeal against the county ct. judge's judgment. At the hearing of the appeal pltf. raised the preliminary objection that the Ct. of Appeal had no jurisdiction to hear an appeal from the judgment of a county ct. judge in an action for breach of contract where the claim was for less than £20, when the county ct. judge had not given leave to appeal:—*Held:* upon a consideration of the County Cts. Act, 1888 (c. 43), ss. 120, 124, there was no jurisdiction in the Ct. of Appeal to hear the appeal—CONWAY *v.* NEW IDEAL HOMESTEADS, LTD., [1936] 3 All E. R. 78; 155 L. T. 483; 53 T. L. R. 12; 80 Sol. Jo. 873, C. A.

851. After this case add the following cross-reference:—**Order directing arbitrator under Agricultural Holdings Acts to state special case.**]—*See* AGRICULTURE, No. 266gg, *ante.*

852. *Add. Annotation:*—**Consd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

890a. —— All circumstances considered.]—Security for costs will be ordered, although there is a point of law reasonably fit for argument, if the ct. considers it necessary, having regard to all the circumstances of the case.—EVERETT *v.* ISLINGTON GUARDIANS, [1923] W. N. 72, D. C.

900. *Add. Citation:*—20 L. G. R. 653.

900a. Statement that no point of law raised.]—Where no point of law is raised at the trial of a county ct. action, the judge is justified in adding a statement to that effect to his note of the evidence taken by him at the trial; & in such a case, if the point of law could have been then raised, there is no right of appeal.—CLIFFORD *v.* THAMES IRONWORKS & SHIPBUILDING CO. (1898), as reported in 67 L. J. Q. B. 314.

903. *Annotations:*—For the existing annotations substitute as follows:—

Annotations:—**Overd.** Abrahams *v.* Dimmock, [1915] 1 K. B. 662. *Cook* v. *Gordon* was wrongly decided (BUCKLEY, L.J.). **Refd.** The Crescent, Great Northern S.S. Fishing Co. *v.* S.S. Crescent (1893), 62 L. J. P. 63.

913. *Add. Annotation:*—**Refd.** Simmons *v.* Crossley, [1922] 2 K. B. 95.

928a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308, D. C.

938. *Add. Annotation:* — **Distd.** Rackham *v.* Tabrum (1923), 129 L. T. 24.

945. *Add. Annotation:*—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

954. *Add. Annotation:*—**Folld.** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

962a. —— Appeal under Poor Persons Rules.]—The ct. may award costs against applt. who appeals under the Poor Persons Rules, if the appeal is entirely frivolous & vexatious & is an abuse of the process of the ct.—DRUMMOND *v.* HERVEY (1927), 138 L. T. 200; 44 T. L. R. 14, D. C.

Part IX.—Certiorari, Prohibition and Mandamus.

979. *Add. Annotations:*—**Apld.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43. **Consd.** *Re* Debtor (No. 29 of 1931), [1934] Ch. 280.

980a. —— Not action voluntarily brought in county court not having jurisdiction.]—(1) A pltf. who voluntarily sues in a county ct. which, owing to a defence there raised, has no jurisdiction, is not entitled to remove the proceedings to the High Ct. by *certiorari.*

(2) If such a pltf. succeeds in obtaining an *ex parte* order for *certiorari* deft. need not enter an appearance in the High Ct. Pltf. is not entitled to judgment in default of appearance, & such a judgment, if obtained by him, will be set aside for irregularity.—GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 40 R. P. C. 199; *sub nom.* GUISTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, 129 L. T. 438.

1008a. On obligation of defendant to appear—Judgment in default of appearance—Validity.]—GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, No. 980a, *ante.*

1012. *Add. Citation:*—15 Jur. 1196.

1016. *Add. Annotations:*—**Consd.** *Re* S ton [1928] 1 K. B. 464. **Refd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

1038. *Add. Annotations:*—**Consd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38. **Refd.** Hunter *v.* Stadtische Hochseefischerei Gemeinnützige Gesellschaft (1925), 133 L. T. 488; Mansfield *v.* Robinson [1928] 2 K. B. 353.

1044. *Add. Citations:—sub nom.* HARDY *v.* WALKER, *Ex p.* M'FEE (1853), 9 Exch. 261; 2 C. L. R. 278; 23 L. J. Ex. 57; 17 J. P. 824; 156 E. R. 112.

1064. *Add. Annotation:*—**Apld.** Pringle *v.* Hales, [1925] 1 K. B. 573.

1076. *Add. Annotation:*—**Expld. & Apld.** Simbro Trading Co. *v.* Posograph Parent Corpn., [1929] 2 K. B. 266.

1085. *Add. Annotation:*—**Folld.** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

1086. *Add. Annotation:*—**N.F** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

1087a. —— —— ——.]—*Held:* 1888 Act, s. 131, enables the High Ct. to make an order as to

costs incurred in the county ct., & not merely as to costs in the proceedings before the ct. itself.—KOFFMAN *v.* SUNSHINE, [1932] 1 K. B. 606; 101 L. J. K. B. 784; 147 L. T. 199.

1093. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

1120a. —— ——.]—In an administration suit in a county ct., the judge decreed a sale, to be carried out by pltf., of a deceased testator's property, & declared that one of defts. was not a trustee under the will. Defts. wished to appeal, & a case was duly settled under the County Ct. Acts & Orders. After some months delay the judge fixed a day for the case to be presented to him for signature, but defts. did not receive notice of this until too late to present the case on that day. On the case being presented for signature a short time afterwards, the judge declined to sign it :—*Held :* defts. were entitled to an order directing the judge to sign the case.—CLARKE *v.* ROCHE (1877), 46 L. J. Ch. 372; 36 L. T. 727; 25 W. R. 309, C. A.

Part XI.—Rules and Fees.

1133. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

1135. For "IRVING *v.* ASKEW, No. 1093, *ante*," read :—

By sect. 15 of 13 & 14 Vict. c. 61, an appeal from a county ct. shall be in the form of a case agreed upon between the parties, " & if they cannot agree, the judge of the county ct. . . . shall settle the case & sign it." Rule 192 of the County Ct. Rules of 1867 provides that " all cases on appeal shall . . . be presented to the judge for signature " within a certain time, " & shall then be signed by the judge & be sealed with the seal of the ct." :—*Held :* Rule 192 was not repugnant to sect. 15, & was therefore valid.—IRVING *v.* ASKEW (1870), L. R. 5 Q. B. 308; 39 L. J. Q. B. 118; 18 W. R. 467.

Part XII.—Statutes Conferring Special Jurisdiction.

1146. In the cross-reference following this case for " *See, generally,* INDUSTRIAL, PROVIDENT & SIMILAR SOCIETIES " read " *See, generally,* INSURANCE."

Add the following cross-reference :—

Landlord & Tenant Act, 1927 (c. 36).]—*See* LANDLORD & TENANT, NOS. 230

CRIMINAL LAW AND PROCEDURE.

NOTE.—After June 1, 1926, *see* Criminal Justice Act, 1925 (c. 86).

Part I.—Principles of Criminal Liability.

3. *Add. Annotations :*—**Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

5a. —— **Prevention of Crimes Act, 1871 (c. 112), s. 20.**]—Attempted burglary is not a "crime" within Prevention of Crimes Act, 1871 (c. 112), s. 20.—R. *v.* BATES (1930), 22 Cr. App. Rep. 49, C. C. A.

21. *Add. Annotation :*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

22. *Add. Annotation :*—**Refd.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

23. *Add. Annotation :*—**Refd.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

36. *Add. Annotation :*—*As to* (1) **Distd.** Abercromby *v.* Morris (1932), 48 T. L. R. 635.

38. *Add. Annotation :*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

40. *Add. Annotation :*—**Consd.** Allard *v.* Selfridge (1924), 88 J. P. 204.

40a. Right of defendant to give evidence—As to his state of mind.]—(1) Evidence that deft. is an accessory after the fact does not support an indictment for being a principal, or accessory before the fact.

(2) On the question of *mens rea*, deft. is entitled to give evidence of the state of his mind at the relevant time.—R. *v.* FITZPATRICK (1926), 19 Cr. App. Rep. 91, C. C. A.

42. *Add. Annotation :*—**Refd.** Square *v.* Model Farm Dairies (Bournemouth), Ltd., [1938] 2 All E. R. 740.

45. *Add. Annotation :*—**Folld.** Bridges *v.* Griffin, [1925] 2 K. B. 233.

53. *Add. Citations :*—[1897] 1 Q. B. 772; 66 L. J. Q. B. 569; 76 L. T. 624; 18 Cox, C. C. 609.

55. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel (1923), 130 L. T. 418.

PART I. SECT. 1.

8a. *Misdemeanour.*] — *Semble :* at common law disobedience to a statute is a misdemeanour.—O'DEA *v.* MIDWIVES REGISTRATION BOARD (1924), 26 W. A. L. R. 129.—**AUS.**

9 i. —— *Proceedings under Liquor Control Act*, 1930 (*N. S.*).]—R. *v.* MACK (1931), 56 Can. C. C. 368.—**CAN.**

24 i. *Statutory offences*—"*Offence*"—*Prevention of Crimes Act*, 1871 (*c.* 112), *s.* 7.]—STRATHERN *v.* PADDEN, [1926] S. C. (J.) 9.—**SCOT.**

24 ii. —— — .]—The word "offence" in Indian Penal Code, s. 149, is confined to offences under the Code & does not include within its meaning offences under Indian Railways Act.—*Re* VASUDEVA MUDALI (1929), I. L. R. 52 Mad. 882.—**IND.**

24 iii. —— "*Crime*"—*Prevention of Crimes Act*, 1871 (*c.* 112), *ss.* 7, 20.]—To be relevant a charge of a contravention of sect. 7 must libel upon its face a conviction on indictment of an offence, & a previous conviction of an offence, both of which offences must be "crimes" as defined in sect. 20.—MURRAY *v.* MACMILLAN, [1927] S. C. (J.) 14.—**SCOT.**

PART I. SECT. 2, SUB-SECT. 1.

29 ii. —— *Criminal Code, s.* 247.]—R. *v.* HUET (1923), 48 Can. Crim. Cas. 82; 55 O. L. R. 48.—**CAN.**

29 iii. —— ——.]—R. *v.* CANADIAN ALLIS-CHAMBERS, LTD. (1923), 48 Can. Crim. Cas. 63; 54 O. L. R. 38.—**CAN.**

30 ii. ——.]—A fish merchant was convicted on a charge of clandestinely taking possession of fish boxes, the property of various fish merchants, well knowing that he had not, & would not have, received permission from the owners to his doing so, & with using the boxes by filling them with fish & dispatching them to the fish market at Glasgow :—*Held :* as there was nothing clandestine in the conduct of accused, he was not guilty of the offence charged.—MURRAY *v.* ROBERTSON, [1927] S. C. (J.) 1.—**SCOT.**

PART I. SECT. 2, SUB-SECT. 2.—A.

38 ii. —— ——.]—R. *v.* CRAWFORD (N. B.), [1927] 2 D. L. R. 565; 47 Can. Crim. Cas. 134.—**CAN.**

o i. —— — —.]—The general rule that when on a trial for murder the Crown succeeds in establishing such a *primâ facie* case as, in the absence of any explanation, will justify the jury in finding the accused guilty of murder, the burden then devolves upon him of making out such circumstances of alleviation, excuse or justification as will afford a foundation for his defence, does not apply to the case where such circumstances arise out of the evidence against him. Therefore, where various circumstances were brought out in the course of the Crown's own case which bore materially on the question of the accused's intent, & the issue was raised thereon whether the Crown had adduced sufficient proof to discharge its own burden of establishing the offence of murder :—*Held :* the judge in charging the jury should have given them to understand, without imposing any *onus* on the accused, that if, in view of such circumstances, they entertained any reasonable doubt as to the prisoner having a murderous intent, they could not properly find him guilty of murder.—R. *v.* PRIMAK, [1930] 1 W. W. R. 755; 3 D. L. R. 345; 53 Can. C. C. 203; 24 S. L. R. 417.—**CAN.**

p i. —— *Assisting police.*]—On a charge of burglary the accused stated he was instructed by a police officer to take part in a burglary in order to assist the police in bringing a criminal to justice. He informed the police before the burglary as to where & when it was to take place, accompanied the real burglar in his breaking into a house & taking goods, then instructed the police where the goods were to be found & gave information leading to the arrest of the criminal. There was conflict between the evidence of the accused & that of the police officer who instructed him. The magistrate convicted the accused, stating he was relieved from weighing the evidence of the police officer & the other witnesses, as the evidence showed that accused helped to commit the crime :—*Held :* reversing the decision of the magistrate, if accused's evidence is believed, what he did was not with the intention of committing felony, but with the intention of helping the police.—R. *v.* GILMORE (1930), 43 B. C. R. 57.—**CAN.**

p ii. —— *Self-defence—& defence of others.*]—An act which would otherwise be a crime may, in some cases, be excused if the accused can show that it was done only in order to avoid consequences which could not otherwise be avoided & which, if they had followed, would have inflicted upon him & upon others, whom he was bound to protect, inevitable & irreparable evil, & no more was done than was necessary for that purpose, & the evil inflicted by it was not disproportionate to the evil avoided.—R. *v.* MAHOMED, [1938] A. D. 30.—**S. AF.**

PART I. SECT. 2, SUB-SECT. 2.—B.

a (p. 34) i. —— *Weights & Measures Act, R. S. C.*, 1927, *s.* 63.]—*Mens rea* is not an essential element of the offence created by sect. 63 of Weights & Measures Act, R. S. C., 1927, which penalises the selling or delivering of anything by weight, measure or number which is short of the quantity ordered or purchased.—R. (GRINDEY) *v.* PIGGLY WIGGLY CANADIAN, LTD., [1933] 2 W. W. R. 475; 4 D. L. R. 491; 60 C. C. C. 104; 41 Man. L. R. 249.—**CAN.**

59 i. *Notification of contagious disease —Public Health Act, R. S. O.*, 1914 (*c.* 218), *s.* 55 (1).]—Where deft., a qualified medical practitioner, honestly believed that a disease was not communicable :—*Held :* there was no *mens rea*, & he could not be guilty of a criminal offence.—R. *v.* GORDON, [1924] 2 D. L. R. 358; 42 Can. Crim. Cas. 26; 54 O. L. R. 355.—**CAN.**

o (p. 38) i. ——.]—*Mens rea* is an essential ingredient of the offence of possessing apparatus suitable for the manufacture of spirits contrary to Inland Revenue Act, s. 180 (*c*). This

72. *Add. Annotations :*—**Distd.** Farey *v.* Welch, [1929] 1 K. B. 388. **Folld.** Cotterill *v.* Penn, [1936] 1 K. B. 53.

72a. —— ——.]—*Held :* above sect. applies the general law of larceny to pigeons so far as it does not apply to them already : & consequently, a taker who honestly believed the pigeon taken to be his own was not within the sect.—FAREY *v.* WELCH, [1929] 1 K. B. 388 ; 98 L. J. K. B. 318 ; 140 L. T. 560 ; 93 J. P. 70 ; 45 T. L. R. 277 ; 27 L. G. R. 153 ; 28 Cox, C. C. 604, D. C.

Annotation :—**Expld. & Distd.** Cotterill *v.* Penn, [1936] 1 K. B. 53.

72b. —— ——.]—To an information under Larceny Act, 1861 (c. 96), s. 23, for unlawfully & wilfully killing a house pigeon it is not a defence, either that deft. killed the pigeon honestly believing that it was a wild pigeon which he might lawfully kill, or that he killed it because he entertained an apprehension that, although it had not as yet done so, it might possibly proceed to damage his crops.—COTTERILL *v.* PENN, [1936] 1 K. B. 53 ; 105 L. J. K. B. 1 ; 153 L. T. 377 ; 99 J. P. 276 ; 51 T. L. R. 459 ; 79 Sol. Jo. 383 ; 33 L. G. R. 307 ; 30 Cox, C. C. 258, D. C.

72c. Refusal to maintain wife & family.]—It is no defence to a charge of " wilfully refusing & neglecting to maintain " a wife & family, whereby they have become chargeable to the common fund of a union, that the husband *bonâ fide* but erroneously believed that he was not legally bound to maintain them in the circumstances. *Mens rea* is immaterial.—BIGGS *v.* BURRIDGE (1924), 89 J. P. 75 ; 22 L. G. R. 555, D. C.

82a. Possession of altered passport—Aliens Order 1920, Art. 18 (4) (d).]—Applt. was convicted of being in possession of an altered passport without lawful authority contrary to art. 18, para. 4 (*d*), of the Aliens Order, 1920. On appeal to quarter sessions it was found as a fact that he did not know that the passport was altered, but honestly believed, on reasonable grounds, that it had been issued to him in the ordinary course by the proper authority in a foreign country :—*Held :* by the Div. Ct., the requirements of art. 18 are imperative, & that, if a person is in fact in possession of an altered passport, it is neither necessary for the prosecution to prove guilty knowledge of the alteration, nor open to the deft. to secure acquittal by proof that he did not know, & had no reason to suspect, that the passport was altered.—CHAJUTIN *v.* WHITEHEAD, [1938] 1 K. B. 506 ; [1938] 1 All E. R. 159 ; 107 L. J. K. B. 270 ; 158 L. T. 277 ; 102 J. P. 117 ; 54 T. L. R. 327 ; 82 Sol. Jo. 175 ; 36 L. G. R. 187, D. C.

100. *Add. Annotation :*—**Refd.** R. *v.* Wicks, [1936] 1 All E. R. 384.

102. *Add. Annotation :*—**Refd.** Orpen *v.* Haymarket Capital, Ltd. (1931), 145 L. T. 614.

112. *Add. Annotation :*—**Refd.** Rudd *v.* Elder Dempster & Co., [1933] 1 K. B. 566.

122. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead, [1930] 1 K. B. 211.

133. *Add. Annotation :*—**Apld.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

134. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

135. *Add. Annotation :*—**Refd.** Square *v.* Model Farm Dairies (Bournemouth), Ltd., [1938] 2 All E. R. 740.

147. *Add. Annotation :*—*As to* (1) **Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

150. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

167. *Add. Annotations :*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258 ; R. *v.* Maughan (1934), 24 Cr. App. Rep. 130.

177. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

178. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

180. *Add. Annotation :*—**Refd.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

181a. —— ——.]—(1) The offence of uttering & publishing an obscene libel is established as soon as the prosecution has proved the publication & obscenity of the matter charged, & a jury should not be directed that, beyond this, they must find an intent to corrupt public morals.

(2) The test of obscenity is that laid down by COCKBURN, C.J., in *R.* v. *Hicklin*, No. 8070, " whether the tendency of the matter charged as obscenity is to deprave & corrupt those whose minds are open to immoral influences."

(3) *Semble :* it is a good defence to the charge that the publication of matter *primâ facie* obscene was for the public good, as being necessary or advantageous to religion, science, literature or art, provided that the manner & extent of the publication does not exceed what the public good requires.—R. *v.* DE MONTALK (1932), 23 Cr. App. Rep. 182, C. C. A.

---

does not mean that guilty motive or intention must be shown. *Mens rea* can be shown by the presumptions of fact which may be raised against accused by the nature of the apparatus found in his possession & the circumstances surrounding that possession.—R. (JACKSON) *v.* HUTCHINSON, [1925] 3 W. W. R. 744.—**CAN.**

s b. *Keeping beer over legal strength—Ontario Temperance Act*, 1916 (c. 50), *s.* 40.]—*Held : mens rea* necessary element.—R. *v.* HYDE, [1925] 2 D. L. R. 958 ; 44 Can. Crim. Cas. 1.—**CAN.**

s c. —— ——.]—*Held : mens rea* not necessary element.—R. *v.* BURKE, [1925] 3 D. L. R. 625 ; 44 Can. Crim. Cas. 234.—**CAN.**

s f. *Using bottle for liquor incorrectly labelled.*]—*Held : mens rea* essential ingredient.—R. *v.* SAVICH (Ont.) (1927), 47 Can. Crim. Cas. 262.—**CAN.**

s j. *Branding animal without authority of owner—Brand Act, R. S. S.*, 1920 (c. 123), *s.* 17(*b*).]—*Held : mens rea* essential ingredient.—CLARK *v.* LAWSON (Sask.), [1926] 1 W. W. R. 173 ; 46 Can. Crim. Cas. 118.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—A.

t i. —— *Driving motor—Breach of provisions of Motor Vehicle Act.*]—R. *v.* DOYLE (Ont.), [1928] 50 Can. Crim. Cas. 233.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—B.

o. Delete the word " not."

PART I. SECT. 4, SUB-SECT. 1.

d i. —— ——.]—A foreign subject comes within the purview of all Acts in force in British India, if he chooses to come into this country, unless such Act specially exempts him. Ignorance of law enforceable in British India might be pleaded in mitigation of sentence, but affords him no sort of privilege or immunity.—JITENDRANATH GHOSH *v.* CHIEF SECRETARY TO BENGAL GOVERNMENT (1932), I. L. R. 60 Calc. 364.—**IND.**

PART I. SECT. 4, SUB-SECT. 2.

o i. —— ——.]—Mistake of fact in order to be a defence in criminal law must not only be a *bonâ fide* belief, but must also be a reasonable belief. The standard to be adopted in deciding whether mistake of fact is reasonable is the standard of the reasonable man & the race & the idiosyncrasies or the superstitions or the intelligence of the person accused do not enter into the question.—R. *v.* MBOMBELA, [1933] App. D. 269.—**S. AF.**

183. *Add. Annotation :*—**Consd.** R. *v.* Walker (1934), 24 Cr. App. Rep. 117.

A. Infants under Seven (p. 53).

Read, now, " Infants under Eight " (*see* Children & Young Persons Act, 1933 (c. 12), s. 50.)

212. *Add. Annotations :*—*As to* (3) **Consd.** R. *v.* Bailey, [1924] 2 K. B. 300. **Refd.** R. *v.* Southern (1929), 142 L. T. 383.

229. *Add. Annotations :*—*As to* (1) **Refd.** R. *v.* Kenneally (1930), 22 Cr. App. Rep. 52. *As to* (2) **Refd.** Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197. *Generally,* **Refd.** Dixon *v.* Sutton Heath & Lea Green Colliery, Ltd. (No. 2) (1930), 23 B. W. C. C. 135 ; Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462 ; Sodeman *v.* R., [1936] 2 All E. R. 1138.

230a. ——— ———.]—The Ct. of Criminal Appeal has no power to alter the rules in *McNaghten's Case,* No. 229, *ante.*—R. *v.* Flavell (1926), 19 Cr. App. Rep. 141, C. C. A.

Annotation :—**Refd.** Sodeman *v.* R., [1936] 2 All E. R. 1138.

237a. ——— ———.]—Petitioner, who was a labourer, took a young girl for a ride on his bicycle, strangled her, tied her hands behind her back, stuffed some of her clothing into her mouth, & left her for dead. The cause of death was suffocation. Petitioner had committed three previous murders in very similar ways. Petitioner's defence was that he was insane at the time. At the trial two government prison doctors & a specialist in mental diseases gave evidence in support of that defence. No expert evidence on that issue was tendered by the Crown :—*Held :* (1) the law with regard to insanity was stated in *M'Naghten's Case,* & there was not to be added to that statement another rule that where a man knew that he was doing wrong, but was forced to do the act by an irresistible impulse produced by disease, he could rely upon a defence of insanity ; (2) the burden in cases in which an accused had to prove insanity might fairly be stated as not being higher than the burden which rested upon a pltf. or deft. in civil proceedings.—Sodeman *v.* R., [1936] 2 All E. R. 1138 ; 80 Sol. Jo. 532, P. C.

244a. *S.P.*—R. *v.* Kopsch (1925), 19 Cr. App. Rep. 50, C. C. A.

Annotation :—**Refd.** Sodeman *v.* R., [1936] 2 All E. R. 1138.

256. *Add. Annotation :*—*As to* (2) **Refd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

260a. ——— **No higher than in civil proceedings.**]—Sodeman *v.* R., No. 237a, *ante.*

PART I. SECT. 5, SUB-SECT. 1.—B. (b).

201 ii. ——— *Proof that accused under fourteen—Onus of proof lies on accused.*]—R. *v.* Schneider (Sask.), [1927] 1 D. L. R. 999 ; [1927] 1 W. W. R. 306 ; 47 Can. Crim. Cas. 61.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—B. (b).

229 xiii. ——— ———.]—A man may appreciate the nature & quality of his deed as an illegal act, & may yet be insane in respect that he fails to recognise that the act is morally wrong ; & it is sufficient to justify a finding that accused is incapable of instructing his defence that, although sane in ordinary matters, he is insane in regard to the particular subject-matter of the charge which is made against him.—H.M. Advocate *v.* Sharp, [1927] S. C. (J.) 66.—**SCOT.**

229 xiv. ——— ———.]—Tola Ram *v.* R. (1927), I. L. R. 8 Lah. 684.—**IND.**

229 xv. ——— ———.]—The word " and " in Criminal Code, R. S. C., 1927, s. 19, should be construed as " or."—R. *v.* Jeanotte, [1932] 2 W. W. R. 283.—**CAN.**

e i. ——— ——— ———.]—A man may be suffering from some form of insanity, in the sense in which the word would be used by an alienist, but may not be suffering from unsoundness of mind, as defined in Indian Penal Code, s. 84. The law recognises nothing but incapacity to realise the nature of the act. & presumes that where a man's mind or his faculties of ratiocination are sufficiently clear to apprehend what he is doing, he must always be presumed to intend the consequences of the action he takes.—Mani Ram *v.* R. (1926), I. L. R. 8 Lah. 114.—**IND.**

PART I. SECT. 5, SUB-SECT. 2.—B. (c).

241 v. ———.]—Accused, who was charged with murder, gave evidence at his trial stating that he remembered nothing from some time shortly before the commission of the crime, when he had a conversation with his wife, until some hours afterwards, when he was charged with the crime in the police station. The defence was that during that period the accused's mind was blank, that he acted unconsciously & automatically, that his mind was so dissociated from his actions that he could not know the nature & quality of his act, or that it was wrong, & that his mind was inactive as a result of mental disease, to which he was predisposed & the onset of which was attributable to his physical & nervous constitution & the happening of certain events. The jury found him guilty & he was sentenced to death. On appeal to the Ct. of Criminal Appeal the trial Judge's charge to the jury was challenged on the ground (*inter alia*) that the Judge did not direct the jury to the question of " irresistible impulse," which, it was contended, was of itself a good defence in law, that was to say, that even if the accused knew the nature & quality of his act & knew it was wrong, he had a complete defence in law if he nevertheless perpetrated the crime in obedience to an uncontrollable or irresistible impulse to do the act :—*Held :* by the Ct. of Criminal Appeal, there was no evidence to sustain this contention ; it was inconsistent with the case made at the trial, & the accused's appeal must be dismissed.—A.-G. *v.* O'Brien, [1936] I. R. 263.—**IR.**

245 iii. ——— ———.]—The driver of a motor car was charged with causing the death of a pedestrian by his reckless driving. He stated that he was not guilty " in respect that by the incidence of temporary mental dissociation due to toxic exhaustive factors he was unaware of the presence of deceased on the highway & of his injuries & death, & was incapable of appreciating his immediately previous & subsequent actions." It was not disputed that the pedestrian's death had been caused by the excessive speed & dangerous manœuvring of the car :—*Held :* if accused was otherwise in a condition which justified his driving a car, & if, through no fault of his own & for some cause outwith his control & which he was not bound to foresee, he became either gradually or suddenly not master of his action, through some mental defect, & was in that state at the time of the accident, the jury were entitled to return a verdict of not guilty.—H.M. Advocate *v.* Ritchie, [1926] S. C. (J.) 45.—**SCOT.**

253 iv. ——— ———.]—R. *v.* Brockenshire & Clarkson, [1932] 1 D. L. R. 156 ; [1931] O. R. 806 ; 56 Can. C. C. 340.—**CAN.**

253 v. ——— ———.]—The accused was found guilty of murder & sentenced to death. At the time of his trial he admitted that he was perfectly sane, but his defence was that when he committed the crime he was insane, & therefore not responsible in law for his act. It was contended on his behalf that the trial judge misdirected the jury as to the onus of proof which rests upon an accused who seeks to establish such a defence, that the judge should have told the jury that if the result of the evidence was to leave them in doubt as to the sanity of the accused they should give the accused the benefit of the doubt & find him to be insane :—*Held :* that contention was unsustainable, & the direction given to the jury by the trial judge was in accordance with the authorities & was clearly right.—A.-G. *v.* Boylan, [1937] I. R. 449.—**IR.**

PART I. SECT. 5, SUB-SECT. 2.—E.

279 i. *Need not be scientific evidence.*]—R. *v.* McCoskey, [1927] 2 D. L. R. 939 ; 47 Can. Crim. Cas. 122 ; 60 O. L. R. 44.—**CAN.**

e i. ———.]—*R. v.* Brockenshire & Clarkson, [1932] 1 D. L. R. 156 ; [1931] O. R. 806 ; 56 Can. C. C. 340.—**CAN.**

PART I. SECT. 5, SUB-SECT. 3.—A.

h i. ——— ———.]—Waryam Singh *v.* R. (1926), I. L. R. 7 Lah. 141.—**IND.**

PART I. SECT. 5, SUB-SECT. 3.—B.

297 iv. ———.]—Evidence of drunkenness falling short of a proved incapacity in accused to form the intent necessary to constitute the crime, & merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.—Sheru & Gama *v.* R. (1923), I. L. R. 7 Lah. 50.—**IND.**

302. *Add. Annotation :—As to* (1) **Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

306. *Add. Annotations :—***Consd.** R. *v.* **Betts &** Ridley (1930), 144 L. T. 526 ; R. *v.* Stone, [1937] 3 All E. R. 920. **Reld.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

359. After this case add :—

—— **Abolition of presumption.**]—*See* Criminal Justice Act, 1925 (c. 86), s. 47.

408. *Add. Annotation :—***Apld.** Calmenson *v.* Merchants' Warehousing Co. (1921), 90 L. J. P. C. 134.

417. *Add. Annotations :—***Consd.** A.-G. for Straits Settlmt. *v.* Pang Ah Yew, [1925] A. C. 555. **Reld.** Badman *v.* R., [1924] 1 K. B. 64.

466. *Add. Annotation :—***Reld.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

476a. Pretence of assistance—Intention to effect arrest.]—If several agree to commit a burglary, but one communicates the intent to an officer, that he may take the other two, & the officer is upon the watch accordingly ; the person who has made that communication to the officer will not be *particeps criminis* in the burglary, though he is present when it is committed, & pretends to assist the other two, but, in fact, expedites their apprehension. Nor will it make any difference, though his object in detecting is to obtain for himself (by previous agreement with the officer) part of a reward that will be payable on conviction.—R. *v.* DANNELLY & VAUGHAN (1816), 2 Marsh. 571 ; *sub nom.* DANNELLY'S CASE, Russ. & Ry. 310, Ex. Ch.

478. *Add. Annotation :—***Reld.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

515. *Add. Annotation :—***Consd.** R. *v.* Donovan (1934), 50 T. L. R. 566.

528. *Add. Annotation :—***Reld.** R. *v.* Betts & Ridley (1930), 144 L. T. 526.

528a. —— Common design to commit robbery with violence.]—Where, in pursuance of a common design to commit robbery with violence, one prisoner strikes a blow which results in death, & another is present aiding & abetting the robbery, as a principal in the second degree, both are guilty of murder, although the latter may have consented to the use of only a limited degree of violence & the former may have departed from the agreed method of attack.—R. *v.* BETTS & RIDLEY (1930), 144 L. T. 526 ; 22 Cr. App. Rep. 148 ; 29 Cox, C. C. 259, C. C. A.

*Annotation :—***Reld.** R. *v.* Martin, Ansell & Ross (1934), 24 Cr. App. Rep. 177.

---

303 viii. —— ——.]—The accused appealed from his conviction for murder. It had been contended in his defence that at the time of his act his condition from drink was such that the act could not be murder ; & he alleged misdirection by the trial judge to the jury on this question, which involved the law as to what state of incapacity resulting from drink will reduce a crime from murder to manslaughter :—*Held :* in the circumstances of the case, an essential question for the jury was : given the existence of some degree of capacity in the accused, & assuming the facts deposed to by Crown witnesses, if credited, in describing the accused's act in striking the fatal blow & his conduct & expressions before & after that act, whether or not he was so affected by drink as to be incapable of having the intent to kill or of having the intent, in reckless disregard of the consequences, to cause some bodily injury, "known" to him to be "likely to cause death." That question was one upon which the jury must pass in order to enable them to determine the existence or non-existence of the intent in fact. As the trial judge, while properly directing the jury's attention to the defence as put forward by accused's counsel, that accused was in such a state that his mind was not functioning, that his "mind was gone," that he was incapable of a degree of "thought" enabling him to be aware of the nature of his physical acts, did not direct them to the question above defined, there should be a new trial.—MACASKILL *v.* R., [1931] S. C. R. 330 ; 3 D. L. R. 166 ; 55 Can. C. C. 81 ; *revsg.*, S. C. *sub nom.* R. *v.* MCASKILL, [1931] 1 D. L. R. 979.—**CAN.**

303 ix. —— ——.]—Prisoner was indicted for the murder of a police officer. The only defence was that he was so drunk as to be incapable of forming an intent & therefore was at most guilty of manslaughter. The judge charged the jury thus : "What you must determine is if this man can show that his mind was so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous & so likely to inflict serious injury. That is your test. If upon the whole evidence you feel honestly that this man was drunk to the extent that he did not know what he was doing was dangerous & likely to cause serious injury, then the offence ought to be reduced to manslaughter, but that is for you" :—*Held :* a misdirection.—R. *v.* KOVACH, [1931] 1 D. L. R. 977 ; 66 O. L. R. 398 ; 55 Can. C. C. 40.—**CAN.**

303 x. —— ——.]—R. *v.* MCASKILL, [1930] 3 M. P. R. 469.—**CAN.**

303 xi. —— ——.]—In cases falling short of insanity a condition of drunkenness at the time of committing an offence causing death can only, when it is available at all, have the effect of reducing the crime from murder to manslaughter.—R. *v.* GARRIGAN, [1937] 3 W. W. R. 109 ; 4 D. L. R. 344 ; 69 Can. C. C. 98.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.—B.

456 iv. —— ——.]—Where several persons join in beating another with *lathis*, & inflict such serious injuries on him that he dies shortly after the beating, all are guilty of the offence of murder without distinction.—R. *v.* UMED (1923), I. L. R. 45 All. 727.—**IND.**

456 v. —— ——.]—The doing to death of one person at the hands of several persons, in circumstances in which it could never be known by which hand life was actually extinguished, amounts to murder, & not merely attempted murder, on the part of each of the persons concerned.—GHOSH *v.* R. (1924), 41 T. L. R. 27 ; L. R. 52 Ind. App. 40.—**IND.**

PART I. SECT. 6, SUB-SECT. 3.—A. (a) i.

f i. —— *Rape—Putting hand over girl's mouth.*]—R. *v.* HEWETON & GODDARD (1930), 55 Can. C. C. 13.—**CAN.**

PART I. SECT. 6, SUB-SECT. 3.—A. (b).

h i. ——.]—The mere standing by ready to render assistance if necessary in the commission of a crime is enough to constitute aiding & abetting, as the fact that help is at hand is of assistance to the actual perpetrator & facilitates the commission of the crime.—R. *v.* MBANDE, [1933] A. D. 382.—**S. AF.**

PART I. SECT. 6, SUB-SECT. 3.—B. (a).

n i. ——.]—A person cannot be said to have aided & abetted another, where the latter had no consciousness of his act & exercised no volition in the matter.—R. *v.* RASOOL, [1924] App. D. 44.—**S. AF.**

n ii. ——.]—*Held :* it did not follow as a matter of law that, if appct. aided & abetted the shopbreaking by keeping watch outside, he was criminally responsible for the homicide committed by his confederates within. Whether it followed from the facts was a question for the jury, depending on the conclusion they drew as to the nature of the plan to which he lent his aid & as to his knowledge of his confederate's intention.—BRENNAN *v.* R. (1936), 55 C. L. R. 253 ; 42 Argus L. R. 318 ; 10 A. L. J. 116.—**AUS.**

512 i. *Larceny.*]—To sustain a conviction against several for taking a car without the owner's consent, it must be shown that each participated or that they were acting together.—R. *v.* RICE, [1936] 1 D. L. R. 141 ; 10 M. P. R. 71 ; 65 Can. C. C. 97.—**CAN.**

PART I. SECT. 6, SUB-SECT. 3.—B. (b).

530 i. *Manslaughter—Death in a fight.*]—R. *v.* SILVERSTONE, [1931] 3 D. L. R. 760 ; O. R. 50 ; 55 Can. C. C. 270.—**CAN.**

530 ii. *Wife drowning herself & children—Husband present & conniving.*]—The prisoner was charged with the murder of his wife & their two young children, who met their deaths by drowning. The jury asked to be directed as to the responsibility of the prisoner on the assumption that his wife took the children into the water without his assistance, while he stood by "conniving to" the act. The jury found the prisoner guilty of the manslaughter of his wife & the children :—*Held :* the verdicts of manslaughter of the children should stand ; the verdict of manslaughter of the wife should also stand. The legal result of that finding was, in the circumstances, that the accused was guilty as a participator or principal in the second degree.—R. *v.* RUSSELL, [1933] V. L. R. 59 ; Argus L. R. 76.—**AUS.**

sd. *Assault.*]—M. assaulted S. with intent to rob him. D. was not present at the assault, but there was evidence that he had been seen earlier in the

572a. —— —— ——.]—To convict a co-deft. of more than one crime on the ground of common design there must be satisfactory evidence that the concert extended to each such crime.—R. *v.* SHORT (1932), 23 Cr. App. Rep. 170, C. C. A.

611. *Add. Annotation :*—**Apld.** Gough *v.* Rees (1929), 46 T. L. R. 103.

612. *Add. Annotation :*—**Distd.** Gough *v.* Rees (1929), 46 T. L. R. 103.

613. *Add. Annotation :*—**Apld.** Gough *v.* Rees (1929), 46 T. L. R. 103.

613a. **Overloading omnibus — Railway Passenger Duty Act, 1842 (c. 79), ss. 13, 15.**]—The conductor of an omnibus was convicted of permitting the omnibus to be overloaded contrary to Railway Passenger Duty Act, 1842 (c. 79), s. 13, which by sect. 15 imposed a penalty for this offence on the "driver, conductor, or guard." His employer was not present at the time :—*Held :* the employer was liable to be proceeded against for "aiding & abetting, counselling & procuring" the commission of the offence.—GOUGH *v.* REES (1929), 142 L. T. 424 ; 94 J. P. 53 ; 28 L. G. R. 32 ; 46 T. L. R. 103 ; 29 Cox, C. C. 74, D. C.

616. *Add. Annotation :*—**Apld.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

616a. —— ——.]—Resp., the proprietor of a refreshment-house was charged with harbouring prostitutes contrary to Metropolitan Police Act, 1839 (c. 47), s. 44. It was proved that, though resp. received the profits of the business, he did not manage it, but left it in charge of a manager, to whom he had given express instructions not to allow prostitutes to assemble on the premises. Resp. only visited the premises once or twice a week, & there was no evidence that any offence had been committed in his presence or with his knowledge :—*Held :* having delegated all his authority to the manager & become a mere absentee, he was responsible for the acts of the manager, & was liable to conviction. — ALLEN *v.* WHITEHEAD, [1930] 1 K. B. 211 ; 99 L. J. K. B. 146 ; 142 L. T. 141 ; 94 J. P. 17 ; 45 T. L. R. 655 ; 27 L. G. R. 652 ; 29 Cox, C. C. 8, D. C.

Annotation :—**Refd.** Wilson *v.* Murphy, [1937] 1 All E. R. 315.

708a. —— **Not supported by evidence that defendant accessory after the fact.**]—R. *v.* FITZPATRICK, No. 40a, *ante*.

732a. ——.]—R. *v.* FITZPATRICK, No. 40a, *ante*.

750. *Add. Annotation :*—**Apld.** R. *v.* Woods (1930), 143 L. T. 311.

751. *Add. Annotation :*—**Consd.** R. *v.* Woods (1930), 143 L. T. 311.

751a. ——.]—On a charge of attempting to obtain by false pretences, "intent" & "attempt" must be carefully distinguished.—R. *v.* PUNCH (1927), 20 Cr. App. Rep. 18, C. C. A.

751b. ——.]—Two letters were written by the accused to a man who had advertised for a situation & were sent to him by post. The letters, which were couched in obscene & lecherous terms, purported to be written by a woman, & invited the recipient to come to the place where the accused lived, & to have immoral relations. The recipient, on reading them, believed they were written by a woman. He did not go to the place where the accused lived, & no meeting between them took place. The accused was charged with attempting to procure the commission of an act of gross indecency by the recipient of the letters with himself. At the trial the jury were asked to say only (i) whether the accused was the writer of the letters, & (ii) if so, whether the letters amounted to an attempt to procure the commission of the offence charged. The jury received no direction in regard to what was necessary in law to constitute an attempt, as distinguished from mere intention, to commit an offence. The jury convicted the accused :—*Held :* the accused's acts were only remotely, & not immediately, connected with the commission of the offence, & the jury should have been directed that such acts did not in law constitute an attempt to procure the commission of the offence charged. The conviction must, accordingly be quashed.—R. *v.* WOODS (1930), 143 L. T. 311 ; 46 T. L. R. 401 ; 29 Cox, C. C. 165 ; 22 Cr. App. Rep. 41, C. C. A.

751c. ——.]—R. *v.* FREEDMAN, No. 10779a, *post*.

755. *Add. Annotation :*—**Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18.

---

evening driving in his car with M., that M., when pursued by S., immediately after the assault, took refuge in D.'s car, in which D. was then seated, & which was stationary by the roadside, with its lights off, in a dark spot close to where the assault had been committed :—*Held :* the jury was entitled to draw the inference that the assault was committed in pursuance of a common purpose agreed upon by M. & D —M. & D. R. *v.* DUNN (1930), 30 S. R. N. S. W. 210 ; 47 N. S. W. W. N. 79.—**AUS.**

sg. *Murder—Attempt to kidnap.*]—In a charge of murder an accomplice in a kidnapping needs no corroboration. Homicide committed during an attempt at kidnapping is murder.—R. *v.* BANNISTER (ARTHUR), [1936] 2 D. L. R. 795 ; 66 Can. C. C. 38 ; 10 M. P. R. 391 ; 6 F. L. J. (Can.) 4.—**CAN.**

sh. —— ——.]—An accomplice to kidnapping cannot be held for murder committed by another accomplice in the absence of proof of common intention or purpose.—R. *v.* BANNISTER (DANIEL), [1936] 3 D. L. R. 540 ; 10 M. P. R. 422 ; 66 Can. C. C. 352 ; 6 F. L. J. (Can.) 52.—**CAN.**

PART I. SECT. 6, SUB-SECT. 3.—B. (f) ii.

se. *Common design to escape—Shooting with intent to murder by one.*]—The mere fact that two men were attempting together to escape arrest does not justify a conviction of both of them for an offence committed by one in resisting apprehension.—R. *v.* SCOTT & KILLICK, [1932] 2 W. W. R. 124.—**CAN.**

PART I. SECT. 6, SUB-SECT. 4.—F.

693 i. *May be indicted as principal.*]—An accessory before the fact to a felony may be indicted as a principal, but if it is sought to prove that he was an accessory & not a principal it is an essential part of the Crown case to prove that there was a felony committed.—R. *v.* SEE LUN & WELSH (1922), 32 S. R. N. S. W. 363 ; 49 N. S. W. W. N. 116.—**AUS.**

PART I. SECT. 6, SUB-SECT. 5.—B.

734 i. *Indictment as accessory to murder—Acquittal of principal.*]—A husband was found guilty on a charge of being an accessory after the fact to the murder of a child by his wife. The wife was subsequently charged with the murder & acquitted :—*Held :* the acquittal of the wife was not sufficient ground for quashing the conviction of the husband.—R. *v.* WILLIAMS (1932), 32 S. R. N. S. W. 504 ; 49 N. S. W. W. N. 144.—**AUS.**

PART I. SECT. 6, SUB-SECT. 6.—B. (a).

750 v. ——.]—R. *v.* RUMP, [1929] 2 D. L. R. 824 ; 1 W. W. R. 649 ; 51 Can. Crim. Cas. 236 ; 41 B. C. R. 36.—**CAN.**

sd. *Overt act followed by change of mind.*]—Where the prisoner has so far prosecuted his criminal purpose as otherwise to be guilty of an attempt, he is not exculpated by the fact that owing to a mere change of mind he desists, of his own free will, from completion of his purpose. With intent to break & enter a shop, a confederate of the prisoner climbed to a suitable position & inserted a lever under a window. Before he exerted any force on the lever he changed his mind & descended :—*Held :* the acts were sufficient to constitute an attempt to break & enter the shop.—R. *v.* PAGE, [1933] V. L. R. 351 ; Argus L. R. 374.—**AUS.**

756. *Add. Annotations:*—**Apld.** R. *v.* Woods (1930), 143 L. T. 311. **Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18.

782. *Add. Annotation:*—**Refd.** R. *v.* Manley (1932), 97 J. P. 6.

788a. —— **Of first marriage—Bigamy.**]—A., a married woman, in the lifetime of her husband, married B., who was a widower, B. having been the husband of A.'s deceased sister:—*Held:* if B. knew at the time of his marriage with A. that she was a married woman, he might be convicted of the felony of counselling A. to commit bigamy.—R. *v.* BRAWN (1843), 1 Car. & Kir. 144; *sub nom.* R. *v.* BAWN (1843), 1 L. T. O. S. 528; 7 J. P. 530; 1 Cox, C. C. 33.

Annotation:—**Consd.** R. *v.* Robinson, [1938] 1 All E. R. 301.

795. *Add. Annotation:*—**Refd.** R. *v.* Manley, [1933] 1 K. B. 529.

799. *Add. Annotation:*—**Distd.** R. *v.* Woods (1930), 143 L. T. 311.

812. *Add. Annotations:*—**Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

814. *Add. Annotations:*—*As to* (1) **Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. *As to* (2) **Consd.** Sorrell *v.* Smith, [1925] A. C. 700. *Generally*, **Refd.** G. W. K. *v.* Dunlop Rubber Co. (1926), 42 T. L. R. 376; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

860. *Add. Annotation:*—**Consd.** R. *v.* Manley (1932), 97 J. P. 6.

861. *Add. Annotations:*—*As to* (1) **Consd.** R. *v.* Manley (1932), 97 J. P. 6. *Generally*, **Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

862a. **Conspiracy to procure admission to Inn of Court—Forged certificates.**]—The Benchers of the Inns of Ct. owe a duty to the public in respect of admission to the Bar: therefore a fraud committed upon them to procure such admission is a mischief against public policy none the less because its intent is not to procure money for the offender.—R. *v.* BASSEY (1931), 47 T. L. R. 222; 75 Sol. Jo. 121; 22 Cr. App. Rep. 160, C. C. A.

902. *Add. Annotation:*—**Refd.** R. *v.* Gordon (1925), 133 L. T. 734.

912a. —— ——.]—On a prosecution for a crime, the proof whereof is supposed to consist wholly or in part of evidence of a conspiracy entered into by the party then indicted, & under trial, so that the conspiracy is to be given in evidence against him, general evidence of the existence of the conspiracy charged, may be received in the first instance, though it cannot affect such deft., unless brought home to him or to an agent employed by him.—THE QUEEN'S CASE (1820), 2 Brod. & Bing. 302; 129 E. R. 983.

930. *Add. Annotation:*—**Refd.** R. *v.* Luberg (1926), 135 L. T. 414.

933a. —— **Though no direct communication between conspirators.**]—R. *v.* MEYRICK, R. *v.* RIBUFFI (1929), 45 T. L. R. 421; 21 Cr. App. Rep. 94, C. C. A.

PART I. SECT. 6, SUB-SECT. 6.—B. (b).

763 vi. ——.]—R. *v.* DUFFY, [1931] 4 M. P. R. 81; 57 C. C. C. 186.—**CAN.**

PART I. SECT. 6, SUB-SECT. 6.—C.

772 i. *Liability for attempt—Larceny.*]—R. *v.* SHAID, [1926] 3 D. L. R. 553; [1926] 2 W. W. R. 319; 46 Can. Crim. Cas. 209; 36 Man. L. R. 64.—**CAN.**

772 ii. —— ——.]—Accused was convicted of attempting to steal money from the person of a man in a public street. It was proved that the accused put his hand towards the man's pocket with the object of stealing money therefrom, but it was not proved that there was anything in the pocket:—*Held:* in order to support a conviction of attempt to steal, it was not necessary to prove the existence of anything which could have been stolen; & conviction sustained.—LAMONT *v.* STRATHERN, [1933] S. C. (J.) 33.—**SCOT.**

PART I. SECT. 6, SUB-SECT. 6.—D.

sf. *Charge of assault with intent to commit rape—Amounts to charge of attempted rape.*]—R. *v.* MACINTYRE (1925), 43 Can. Crim. Cas. 356.—**CAN.**

sg. *Where full offence not proved.*]—Where complete commission is not proved, the depositions must be considered *de novo* in deciding whether the evidence establishes an attempt.—R. *v.* CUTT, [1937] 1 D. L. R. 238; 67 Can. C. C. 240.—**CAN.**

PART I. SECT. 6, SUB-SECT. 7.—A.

h i. —— ——.]—Every person of legal responsibility who knowingly & voluntarily co-operates with, or aids or assists or advises or encourages another in the commission of a crime is an accomplice, without regard to the degree of his guilt.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

h ii. —— ——.]—An accused may be convicted on a charge of counselling an offence, although the person counselled did not actually commit the offence.—R. *v.* YEE JAM HONG (Sask.), [1929] 1 D. L. R. 179; 50 Can. Crim. Cas. 372; [1928] 3 W. W. R. 490.—**CAN.**

h iii. —— ——.]—Under sect. 69 (*d*) of Criminal Code a person who counsels another to commit an offence is guilty of the substantive offence of counselling, even though the offence counselled is not committed or attempted.—R. *v.* GORDON & GORDON, [1937] 2 W. W. R. 455.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—A.

s i. ——.]—Conspiracy cannot exist unless two or more persons are parties to an agreement to do an illegal act, or to do a legal act illegally, both knowing, or being deemed to know, that the carrying out of the purpose involves the commission of an indictable offence.—R. *v.* SEGAL, [1925] 4 D. L. R. 762; Q. R. 39 K. B. 436.—**CAN.**

s ii. *What amounts to—Conspiring with another ignorant of intended fraud.*]—R. *v.* SEGUIRE (Ont.) (1928), 49 Can. Crim. Cas. 266.—**CAN.**

sk. *Conspiracy to effect public mischief.*]—Conspiracy to effect a public mischief, or to prevent the administration of justice, is a crime at common law.—R. *v.* CAMERON, [1935] 4 D. L. R. 447; 64 Can. C. C. 224; 50 B. C. R. 179.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—C.

831 i. *One alone cannot conspire.*]—There can be no conspiracy unless two or more minds are *ad idem* as to their object.—HARRIS *v.* R. (1927), 48 N. L. R. 330.—**S. AF.**

835 i. *Husband & wife.*]—Husband & wife cannot conspire together so as to be guilty of the crime of conspiracy.—R. *v.* MCKECHIE, [1926] N. Z. L. R. 1.—**N.Z.**

PART I. SECT. 6, SUB-SECT. 8.—N.

881 ii. —— ——.]—Although conspiracy to commit a crime, being in itself an indictable offence, may be charged alone in an indictment & independently of the crime conspired to be committed, it is nevertheless necessary that a count charging conspiracy alone, without the setting out of any overt act, should describe it in such a way as to contain in substance the fundamental ingredients of the particular agreement which is charged, or, in other words, in such a way as to specify in substance, the specific transaction intended to be brought against the accused.—BRODIE *v.* R., [1936] S. C. R. 188; 3 D. L. R. 81; 65 Can. C. C. 289.—**CAN.**

894 ii. —— ——.]—R. *v.* BOOKHALTER & LANIN, [1924] 3 D. L. R. 122; 42 Can. Crim. Cas. 186.—**CAN.**

894 iii. —— ——.]—R. *v.* PORTER & MARKS (B. C.), [1928] 4 D. L. R. 825; 50 Can. Crim. Cas. 399.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—O (a).

921 i. *Conspiracy may be inferred from facts proved.*]—R. *v.* SIMINGTON (B. C.) (1926), 45 Can. Crim. Cas. 249.—**CAN.**

921 ii. *S. P.* R. *v.* THORNTON (B. C.) (1926), 46 Can. Crim. Cas. 249.—**CAN.**

q i. —— ——.]—If an information charges a conspiracy between A., B., C. & D., together & with E. & F. & others, & a conviction finds A. guilty of a conspiracy with B. & with E. & F. & others, the conspiracy on which A. is convicted is not a different conspiracy from the one on which he was charged.—R. *v.* MARINO & CRISOFI, [1927] 2 W. W. R. 468; 47 Can. Crim. Cas. 348; 38 B. C. R. 452.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—O. (c).

935 x. —— ——.]—The rule of evidence that, on charges of conspiracy,

Part II.—Original Criminal Jurisdiction.

960a. ——.]—GREY'S (LORD) CASE (1541), 1 State, Tr. 439.

961a. Right of Scotch peer.]—SANCHAR'S (LORD) CASE (1612), 9 Co. Rep. 117a; 77 E. R. 902; *sub nom.* SANQUIRE'S (LORD) CASE, 2 State Tr. 743.

Annotations:—**Consd.** R. *v.* Graham (1791), 2 Leach, 547. **Refd.** Clarendon's Case (1667), 6 State, Tr. 291.

967a. —— **Not by articles exhibited by peer in House of Lords.**]—CLARENDON'S (EARL) CASE (1667), 6 State, Tr. 291.

975a. ——.]—SOMERSET'S (DUKE) CASE (1551), 1 State, Tr. 515.

985a. Right to take advice of judges as to submission of defence.]—DE CLIFFORD'S (LORD) TRIAL, [1936] W. N. 4; 81 L. Jo. 60.

986. *Add. Annotations:*—**Consd.** R. *v.* Judge, *Ex p.* Isle of Ely Justices, [1931] 2 K. B. 442. **Refd.** R. *v.* Edwards, *Ex p.* Welsh Church Temporalities Comrs. (1933), 49 T. L. R. 383.

989. For "R. *v.* ELLIOT" read "R. *v.* ELLIOT, HOLLIS & VALENTINE."

Add. Annotations:—**Refd.** R. *v.* Paty (1704), 2 Ld. Raym. 1105; Burdett *v.* Abbot (1811), 14 East, 1.

990. *Add. Annotation:*—**Refd.** R. *v.* Graham-Campbell (Sir), *Ex p.* Herbert, [1935] 1 K. B. 594.

991. *Add. Annotation:*—**Consd.** R. *v.* Cory, [1927] 1 K. B. 810.

992. *Add. Annotation:*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

1005. *Add. Annotation:*—**Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

1016a. Power to order payment of taxes in respect of honorarium payable to clerk of court.]—An order made by the Central Criminal Ct. directing that any taxes demanded by the Inland Revenue authorities in respect of an honorarium payable to the clerk of that ct. shall be paid by the public bodies by which the salaries of the ct.'s officials are payable is not invalid & not in excess of the powers of the ct. under Central Criminal Ct. Act, 1834 (c. 36).—R. *v.* CENTRAL CRIMINAL COURT JJ., *Ex p.* LONDON COUNTY COUNCIL, [1925] 2 K. B. 43; 94 L. J. K. B. 479; 132 L. T. 666; 89 J. P. 65; 41 T. L. R. 269; 69 Sol. Jo. 381; 27 Cox, C. C. 734, D. C.

1022a. —— ——.]—R. *v.* DEVON JJ., *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, No. 1138, *post.*

1030. *Add. Annotation:*—**Distd.** R. *v.* Teesdale (1927), 138 L. T. 160.

1031. *Add. Annotation:*—**Distd.** R. *v.* Teesdale (1927), 138 L. T. 160.

1031a. —— —— ——.]—It is not necessary in order that a person may be dealt with as an incorrigible rogue under Vagrancy Act, 1824 (c. 33), s. 5, on a second conviction for any of the offences named in sect. 4 of that Act, that the previous conviction should use the actual words "rogue & vagabond," since the statute itself provides that a person convicted of any of those offences "shall be deemed a rogue & vagabond."—R. *v.* TEESDALE (1927), 138 L. T. 160; 91 J. P. 184; 44 T. L. R. 30; 28 Cox, C. C. 438; 20 Cr. App. Rep. 113, C. C. A.

1032. *Add. Annotation:*—**Folld.** R. *v.* Dixon, Southampton Justices, *Ex p.* Porteous (1929), 142 L. T. 597.

1032a. —— —— —— **Before charge gone into.**]—Deft., who was represented by a solr., was charged before a ct. of summary jurisdiction with an offence for which, if convicted, he would be liable to imprisonment for a term exceeding three months. He was not informed of his right to trial by a jury on appearing before the ct., before the charge was gone into, but he was so informed after-

---

the acts & declarations of each conspirator in furtherance of the common object are admissible against the rest, is applicable on a charge of bribery, since the crime of bribery involves corrupt conduct of, & the acting in concert by, & the existence of a common purpose between, the persons concerned. It is immaterial whether the existence of the common purpose or the participation therein of those alleged to have participated in the crime be proved first, though either element is nugatory without the other.—R. *v.* LEVY, [1929] App. D. 312.—**S. AF.**

935 xi. —— ——.]—Evidence of statements made by one conspirator against an alleged co-conspirator after the former had been arrested held not admissible against the latter.—R. *v.* PEPPER, [1937] 1 W. W. R. 62; 1 D. L. R. 517; 44 Man. L. R. 412; 6 L. Jo. 212; 67 C. C. C. 311.—**CAN.**

PART II. SECT 1, SUB-SECT. 5.

sa. *Election for speedy trial.*]—R. *v.* CUMMINS (N. S.) (1928), 50 Can. Crim. Cas. 375.—**CAN.**

sb. ——.]—When a prisoner has elected a speedy trial, his consent to be so tried, on additional charges which it is sought to prefer against him, is required only when they are not founded on the facts or evidence disclosed in the depositions.—R. *v.* DUFF (Sask.), [1929] 1 D. L. R. 152; 50 Can. Crim. Cas. 246; [1928] 3 W. W. R. 550.—**CAN.**

sc. ——.]—R. *v.* YEE JAM HONG (Sask.), [1929] 1 D. L. R. 179; 50 Can. Crim. Cas. 372; [1928] 3 W. W. R. 490.—**CAN.**

sd. ——.]—R. *v.* SPEIDEL (Alta.) (1929), 52 Can. Crim. Cas. 311.—**CAN.**

se. ——.]—When a prisoner has consented to a speedy trial before the district ct. judge's criminal ct. on the charge for which he has been committed for trial, he may be so tried without any further consent on any other charge founded on the facts or evidence disclosed in the depositions.—R. *v.* DIEDERICH & LIBERTY (Alta.), [1929] 3 W. W. R. 748; 52 Can. Crim. Cas. 370.—**CAN.**

sf. ——.]—A good election for a speedy trial was held not to be affected by the fact that a subsequent election, made after a slight correction in the charge, may not have been taken in the proper manner.—R. *v.* WONG CHEUN BEN, [1930] 3 W. W. R. 281.—**CAN.**

sh. ——.]—When a prisoner has elected for a speedy trial on the charge or charges for which he has been committed for trial, his consent to be so tried on additional charges which it is sought to prefer against him is required only when they are not founded on the facts or evidence disclosed in the depositions.—R. *v.* COODIN, [1934] 1 W. W. R. 784; 2 D. L. R. 709; 61 C. C. C. 353; 42 Man. L. R. 322.—**CAN.**

sk. —— *New trial.*]—On appeal by the Crown from the acquittal of the accused on a speedy trial of a charge under Opium & Narcotic Drug Act, 1929, the Ct. of Appeal ordered a new trial. The accused was, without re-election, tried again before the County Ct. Judge's Criminal Ct. & convicted. On an application for *habeas corpus* with *certiorari* in aid:—*Held:* said ct. had become *functus officio* upon the acquittal of the accused, &, in the absence of the consent of the accused, was without jurisdiction to re-try him. Sect. 1014 (4) of the Code applies only to the case of an "applt. convicted"; & the fact that in this case the Ct. of Appeal did not direct the mode of new trial was, presumably, because it had no power to do so.—R. *v.* CHOW WAI YAM, [1937] 1 W. W. R. 435; *revsd.*, [1937] 4. D. L. R. 660; 69 Can. C. C. 86.—**CAN.**

sl. *Right of accused to be tried by jury—Receiving stolen property.*]—(1) Although property alleged to have been stolen or to have been received knowing

wards, when all the evidence had been heard, but before the ct. had announced their decision. Deft. protested twice by his solr. that he could not at that stage be put to this election, but on being informed by the chairman that if he did not elect, the case would be sent for trial, he stated by his solr. that he would be dealt with summarily. Deft. was then convicted & fined:—*Held:* the proceedings were a nullity as the giving of that information to the person charged on his appearing before the ct., "before the charge is gone into," in accordance with Summary Jurisdiction Act, 1879 (c. 49), s. 17, is a condition precedent to the validity of the subsequent proceedings. Accordingly the conviction was quashed.—R. *v.* DIXON, SOUTHAMPTON JUSTICES; *Ex p.* PORTEOUS (1929), 142 L. T. 597, 598; *sub nom.* R. *v.* HAMPSHIRE JUSTICES, *Ex p.* PORTEOUS, 94 J. P. 70; 46 T. L. R. 157; 28 L. G. R. 84; 29 Cox, C. C. 113, D. C.

1034. *Add. Annotation:*—**Folld.** R. *v.* Dixon, Southampton Justices, *Ex p.* Porteous (1929), 142 L. T. 597.

1042. *Add. Annotation:*—*As to* (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1079a. —— **Fraudulent conversion begun abroad—Receipt of proceeds in England.**]—A fraudulent conversion begun abroad, even though triable there, but completed by receipt of the proceeds in this country, is justiciable in this country.—R. *v.* LYLE (1924), 18 Cr. App. Rep. 59, C. C. A.

1090. *Add. Annotation:*—*As to* (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1100. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

1101. *Add. Annotation:*—**Distd.** The Fagernes, [1927] P. 311.

1124. *Add. Annotations:*—*As to* (2) **Refd.** The Fagernes, [1926] P. 185. *As to* (4) **Refd.** The Fagernes, [1926] P. 185. *Generally*, **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1129a. ——.]—CHUNG CHI CHEUNG *v.* R., [1938] 4 All E. R. 786; 55 T. L. R. 184, P. C.

1138. For the existing paragraph in original volume substitute the following paragraph:—

—— —— —— —— ——.]—A person on board one of His Majesty's ships, which was then in commission & lying in the tidal waters of the Firth of Forth above the Forth Bridge, was alleged to have committed larceny as a clerk or servant to the Navy, Army & Air Force Institutes. He was placed under arrest by an executive officer of the ship, &, some days later, by which time the vessel had arrived in Torbay, he was apprehended by the Devon police & charged before the justices, who committed him for trial at the Devon quarter sessions. The indictment charged an offence contrary to Larceny Act, 1916 (c. 50), s. 17 (1) (a), committed on the high seas. Prisoner was arraigned & pleaded not guilty & a jury was impanelled, but quarter sessions declined to proceed with the indictment upon the ground that Larceny Act, 1861 (c. 96), s. 115, which was said to give them jurisdiction, did not extend to offences committed in estuaries or rivers in Scotland, & that the offence charged was properly triable only by the Scottish cts.:—*Held:* quarter sessions had jurisdiction to try the indictment inasmuch as it alleged an offence which, by virtue of Naval Discipline Act, 1866 (c. 109), was committed within the jurisdiction of the Admlty. of England, & therefore, being an offence mentioned in Larceny Act, 1861, it was triable, under sect. 115 of that Act, in the county where the offender was apprehended.—R. *v.* DEVON JJ., *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, [1924] 1 K. B. 503; 93 L. J. K. B. 284; 130 L. T. 640; 88 J. P. 73; 40 T. L. R. 213; 68 Sol. Jo. 422; 27 Cox, C. C. 593, D. C.

---

it to have been stolen does not exceed $10 in value & the offences are, therefore, triable summarily by a police magistrate under Part VI. of the Criminal Code, they are nevertheless indictable offences & need not be tried summarily.

(2) Where there was nothing to suggest that the judge was of the opinion, & he could not properly be of the opinion, that the property alleged to have been received knowing it to be stolen did not exceed $200 in value, the case fell under sect. 67 of North-West Territories Act, 1886 (which is still in force), & when the accused elected for a jury trial a jury of six was a properly constituted tribunal. (3) When the stolen property alleged to have been knowingly received consisted of cancelled share certificates which appeared to be when received by the accused valid certificates with a market value far in excess of $200, & it was not shown that he was implicated in any way in the erasing of the cancellation marks:—*Held:* it could not properly be said, for the purpose of the application of sect. 67, that their value did not exceed $200.—R. *v.* DUSENBERG, [1930] 1 W. W. R. 717; 53 Can. C. C. 166; 24 Alta. L. R. 415.—**CAN.**

PART II. SECT 2, SUB-SECT. 1.

r i. *Offence committed before jurisdiction granted—Trial subsequent to grant.*]—R. *v.* HEISLER (N. S.), [1928] 3 D. L. R. 221; 49 Can. Crim. Cas. 341.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.—A.

ss. *Offence within Admiralty jurisdiction—By alien—Consent to prosecution.*]—Criminal Code, s. 591, requires the consent of the Governor-General to proceedings against an alien for offences within Admiralty jurisdiction. This does not apply to offences against provincial statutes.—R. *v.* FLAHAUT, [1935] 2 D. L. R. 685; 9 M. P. R. 32; 63 Can. C. C. 308.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.—B.

g i. —— *Arrival in Calcutta—Jurisdiction of magistrate.*]—When some sailors committed an offence on board a British ship on high seas, which subsequently arrived in Calcutta, the Chief Presidency Magistrate had jurisdiction under Merchant Shipping Act, 1894 (c. 60), ss. 684, 686, to entertain a complaint against them, in the absence of evidence to show that they were not in Calcutta at the time. In any case, when the accused surrendered before the ct. it had jurisdiction to proceed with the trial.—BENGAL SUPERINTENDENT & REMEMBRANCER OF LEGAL AFFAIRS *v.* RAISALEE (1932), I. L. R. 60 Calc. 44.—**IND.**

PART II. SECT. 2, SUB-SECT. 5.

c i. ——.]—Sect. 591 of the Criminal Code does not apply to an offence committed on a ship moored at Lapointe Pier in Burrard Inlet.

Even where the sect. applies, the leave of the Governor-General is effective if obtained before the committal of the accused for trial.—R. *v.* FURUZAWA (No. 2), [1930] 1 W. W. R. 953, 955; 53 Can. C. C. 398; 42 B. C. R. 541, 548.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A.

1148 iv. —— ——.]—Accused, charged with inflicting grievous bodily harm, was arrested on a warrant & brought before two justices for summary trial in a judicial district other than that in which the offence was committed. Justices of the peace in Saskatchewan have jurisdiction as such throughout the Province. He pleaded to the charge & made his defence, & it was not until he appealed from his conviction that he objected to the place of trial:—*Held:* applying Criminal Code, s. 577, appit. was properly charged & tried, even if s. 884 did apply; & even if he had a right to be tried in the district where the offence was committed, his objection to the place of trial was raised too late.—R. *v.* ROBERTS, [1928] 1 D. L. R. 260; 49 Can. Crim. Cas. 171; 22 Sask. L. R. 242; [1927] 3 W. W. R. 844.—**CAN.**

1162 i. *Where act is act of omission—Embezzlement — Non-accounting for money received—Place to which account should have been rendered.*]—In a case

SUB-SECT. 2.—STATUTORY PROVISIONS.
(Vol. XIV., p. 147.)

See, now, Criminal Justice Act, 1925 (c. 86), s. 11.

SUB-SECT. 3.—CHANGE OF VENUE.
(Vol. XIV., p. 150.)

See, now, Criminal Justice Act, 1925 (c. 86), s. 11 (1).

Part III.—Limitation of Time for Criminal Proceedings.

1269. *Add. Annotation :*—**Apld.** R. *v.* Hewitt (1925), 89 J. P. Jo. 721.

Part IV.—Bail.

1334a. Estreatment — Removal of.] — R. *v.* STEWART (1931), 23 Cr. App. Rep. 82, C. C. A.

1337. *Add. Annotation :*—**Apld.** *Ex p.* Hatry, (1929), 168 L. T. Jo. 303.

1345a. ——— ——— ———.]—*Ex p.* HATRY (1929), 168 L. T. Jo. 303.

---

of criminal breach of trust by a servant whose duty it is to render account at one place, & there is no evidence to show where the alleged misappropriation was committed other than the fact of non-accounting, the *venue* may be laid in the place where the accused failed to account. If, however, there is evidence to show where the misappropriation was committed, the *venue* must be laid either in that place or the place where the property was received or retained. In the latter case there is no alternative *venue* in the place where the account was to be rendered. — PAUL DE FLONDOR *v.* EMPEROR (1931), I. L. R. 59 Calc. 92. —IND.

PART II. SECT. 3, SUB-SECT. 1.—C. (a).

t i. ——— ———.]—*Held :* a letter written by deft. from a city in Pennsylvania to Ontario, enclosing money for travelling expenses & containing instructions to proceed to Montreal, was deft.'s act committed in Ontario, & a taking & enticing away within sect. 316 of the Code.—R. *v.* LOFTUS (1926), 45 Can. Crim. Cas. 390 ; 59 O. L. R. 65.—CAN.

PART II. SECT. 3, SUB-SECT. 1.—C. (b).

e i. ——— ——— ———.]—Where an offence charged is the fraudulent conversion of securities which consists of a continuity of acts, & where the beginning of the operation was in one county, & the continuation & completion in another county, the accused may be proceeded against in either county.—R. *v.* SOLLOWAY, [1934] O. R. 31 ; 61 C. C. C. 297.—CAN.

PART II. SECT. 3, SUB-SECT. 3.

1254 xvi. ——— ———.]—R. *v.* DE BRUGE (1927), 47 Can. Crim. Cas. 311 ; 60 O. L. R. 277.—CAN.

1254 xvii. ——— ———.]—A change of venue will not be granted on the ground of local prejudice against the accused unless it plainly appears that such prejudice exists as will prevent a fair & impartial trial being had at the place where the offence is alleged to have been committed.—R. *v.* BRONFMAN, [1930] 1 W. W. R. 382 ; 53 Can. C. C. 32 ; 24 S. L. R. 321.—CAN.

sd. *Appeal from refusal to change—British Columbia.*]—Accused was convicted at Prince Rupert on a charge of murder. The Supreme Ct. of Canada on appeal set aside the conviction & ordered a new trial. An application was then made by accused to change the venue & was dismissed. An appeal from the order was dismissed for want of jurisdiction, as no appeal has been provided for by the Dominion Statute nor by the law of England applicable to this province.—R. *v.* SANKEY (1927), 49 Can. Crim. Cas. 195 ; 39 B. C. R. 247.—CAN.

PART III. SECT. 1.

se. *Offence for which penalty one year's imprisonment.*]—A prosecution for an offence under a sect. of a Commonwealth Act for which the only penalty provided is imprisonment for one year, may be commenced at any time after the commission of the offence.—*Re* PENTLEY, *Ex p.* O'REGAN (1934), 51 N. S. W. W. N. 93.—AUS.

se. *Vicennial prescription—Scotland.*]—The vicennial prescription of crime does not form part of the law of Scotland.—SUGDEN *v.* H.M. ADVOCATE, [1934] S. C. 103.—SCOT.

PART III. SECT. 2.

1285 xv. ———.]—A prosecution under Lands & Forest Act, 1926, is begun by the laying of the information & not by the issue of the summons.—R. *v.* MCDONNELL, [1934] 3 D. L. R. 146 ; 7 M. P. R. 324 ; 61 C. C. C. 268.—CAN.

PART IV. SECT. 1.

1301 vii. ——— ———.]—R. *v.* COOPERBLOOM (1924), 43 Can. Crim. Cas. 394. —CAN.

1301 viii. ——— ———.]—The main, although not necessarily the only, consideration that should determine the exercise of a magistrate's discretion is the question of securing the attendance of accused.—KOK *v.* R. (1927), 48 N. L. R. 267.—S. AF.

m i. ——— ———.]—Criminal Code, s. 696, provides that where the offence is punishable by imprisonment for more than five years a justice of the peace, jointly with some other justice, may in certain circumstances admit the accused to bail. One justice has no jurisdiction to take the recognisances, &, if he does so, no liability is imposed, at least no liability which can be enforced in a summary manner.—R. *v.* MOORE, [1924] 1 W. W. R. 111 ; 41 Can. Crim. Cas. 164 ; 18 Sask. L. R. 60.—CAN.

m ii. ——— *Justice of the peace.*]—Under s. 664 of the Criminal Code a justice of the peace has jurisdiction to admit an accused to bail before he is brought before the justice in ct. on the charges preferred against him.—R. *v.* MCKENZIE, [1929] 3 D. L. R. 799 ; 2 W. W. R. 421 ; 51 Can. C. C. 423 ; 38 Man. L. R. 241 ; *affg.*, [1929] 1 W. W. R. 249.—CAN.

sf. *Amount of bail—Power to increase.*]—Bail was fixed by a magistrate at the close of a preparatory examination of accused who was committed for trial. The examination was reopened to ascertain whether accused admitted eight previous convictions. Upon his admission, prosecutor applied for an increase of bail, which the magistrate granted. Accused then applied for an order that the bail as originally fixed should stand :—*Held :* it was competent for the magistrate to reconsider the amount of the bail.—SWART *v.* R. (1923), 44 N. L. R. 133.—S. AF.

sg. *Effect of bail—Whether reckoned as part of imprisonment.*]—The time during which prisoner is out on bail under an order for bail made at his request cannot be reckoned as part of his term of imprisonment, even though such order was *ultra vires.*—R. *v.* IACI, [1925] 2 W. W. R. 129 ; 43 Can. Crim. Cas. 363.—CAN.

sh. ——— ———.]—The time of imprisonment for an offence against Manitoba Temperance Act does not continue to run while prisoner is out on bail pending an appeal.—R. *v.* SIPES, [1925] 3 D. L. R. 361 ; [1925] 2 W. W. R. 325 ; 44 Can. Crim. Cas. 60 ; 35 Man. L. R. 151.—CAN.

si. *Estreatment of bail.*]—The procedure to be followed on an application to estreat bail is to be found in Bail Act, s. 12 (2).—R. *v.* BRIGGS (1923), 33 B. C. R. 297.—CAN.

sk. ——— *Application to remit — Appeal.*]—No appeal lies from the refusal by a county ct. judge of a motion to remit & discharge the estreat of appct.'s bail-bond.—R. *v.* SCHNEIDER (1923), 40 Can. Crim. Cas. 206 ; 56 O. L. R. 215.—CAN.

sl. ——— *No right where act of State prevents discharge of bond.*]—R. *v.* GETLIN (1930), 54 Can. C. C. 225.—CAN.

sm. ——— *Record must be before court.*]—R. *v.* GALLIVAN (1930), 54 Can. C. C. 223.—CAN.

so. *Failure to surrender.—Liability of surety.*]—SALTER *v.* OGILVIE, [1931] 2 D. L. R. 384 ; 2 M. P. R. 488.—CAN.

PART IV. SECT. 2.

p i. ———.]—R. *v.* MURRAY (1926), 59 N. S. R. 119.—CAN.

p ii. ———.]—In non-capital criminal cases, the general rule is that an accused person is entitled to bail unless there are reasonable grounds for supposing that he will not answer to his bail at the trial. As to what con-

1410a. Pending appeal to Privy Council—From Colonial Court.]—The accused, who was convicted of manslaughter in Cyprus, was granted special leave to appeal by the Judicial Committee. The latter had no jurisdiction to grant bail, & an application to the Supreme Ct. of Cyprus was also refused for want of jurisdiction. An application to be admitted to bail was then made to the King's Bench Division & was granted.—SUTTON *v.* R., [1932] W. N. 272; 74 L. Jo. 440.

1411a. —— When granted—Only in special circumstances.]—R. *v.* GREGORY (1928), 20 Cr. App. Rep. 185, C. C. A.

1416. *Add. Annotation :*—**Apld.** R. *v.* Williams (1925), 19 Cr. App. Rep. 67.

1416a. Breach of—Powers of court.]—If an applt. breaks a recognisance entered into before this ct. it will, on a further conviction, deal with him although the ct. below may have dealt with him.—R. *v.* HIBBERT (1924), 18 Cr. App. Rep. 36, C. C. A.

1436a. —— When term of imprisonment short.]—In the case of a short sentence, where an appeal cannot be speedily heard, the ct. may grant bail.—R. *v.* SELKIRK (1925), 18 Cr. App. Rep. 172, C. C. A.

1437. After this case add :—

—— —— —— ——.]—*See, now,* Criminal Justice Act, 1925 (c. 86), s. 16 (2).

1442a. —— ——.]—The ct. grants bail only in exceptional circumstances.—R. *v.* KLEIN (1932), 23 Cr. App. Rep. 173, C. C. A.

1442b. —— ——.]—Applications for bail refused after grant of a certificate for appeal from the trial judge, the ct. holding that there were no exceptional circumstances sufficient to justify the granting of bail.—R. *v.* HOWESON, R. *v.* HARDY (1936), 25 Cr. App. Rep. 167, C. C. A.

stitutes such reasonable grounds there is no definite rule. It is in the discretion of the judge, who is entitled to take into consideration, not only matters before him in evidence, but also such things as are matters of common knowledge.—R. *v.* McIVER, [1929] V. L. R. 50.—**AUS.**

1336 iii. ——.]—The fundamental test on bail motions is the probability of prisoner's evading justice.—THE STATE *v.* PURCELL, [1926] I. R. 207; 59 I. L. T. 141.—**IR.**

1336 iv. ——.]—When an accused person who is bailable at discretion in terms of Crimes Act, 1908, s. 368, applies for bail, the ct. should apply the rule & the three tests laid down by Coleridge, J., in *Re Robinson,* No. 1337, & adopted by Stout, C.J., in *R.* v. *Valli,* No. 1336 ii, when the Crown opposes bail in the absence of exceptional circumstances. The fact that conditions such as wireless, passport, restriction, transport development, & the like, have changed since the said rule & tests were laid down & adopted in 1854 & 1903 respectively, does not render the said decisions inapplicable at the present time; & the fact that the accused is a married man with four children, & the Crown's admission that the Crown had no special reason to suppose that the accused would be likely to abscond, are not such exceptional circumstances as to afford sufficient ground for modifying the rule.—*Re* HEWER, [1935] N. Z. L. R. 883.—**N.Z.**

1344 i. —— —— *Severity of punishment.*]—The ct. may have regard to (*a*) the seriousness of the crime charged; (*b*) the severity of the punishment; (*c*) the strength of the case on the depositions; (*d*) the prospect of a reasonably speedy trial; & (*e*) the opposition of the A.-G.—THE STATE *v.* PURCELL, [1926] I. R. 207; 59 I. L. T. 141.—**IR.**

1344 ii. —— —— ——.]—KRISHNA CHANDRA JAGATI *v.* R. (1927), I. L. R. 6 Pat. 802.—**IND.**

d i. —— *Punishable with long term—Rich prisoner.*]—Except in exceptional circumstances persons accused of crimes punishable with long terms of imprisonment should not be released on bail. The richer the accused & the more easy it is for him to find bail, the less it is desirable that he should be released, & in no circumstances whatever, without an order of the High Ct., should any person accused of murder be allowed bail.—HIKAYAT SINGH *v.* KING-EMPEROR (1932), I. L. R. 11 Pat. 280.—**IND.**

1349 i. *Conduct of prisoner—Tampering with Crown witnesses.*]—Tampering with the prosecution witnesses may be a good reason for refusing bail.—KRISHNA CHANDRA JAGATI *v.* R. (1927), I. L. R. 6 Pat. 802.—**IND.**

1349 ii. —— ——.]—Where bail was opposed, on the ground that accused had been arrested before investigations were complete to prevent his tampering with Crown witnesses :—*Held :* the magistrate was not warranted in refusing bail for that reason.—KOK *v.* R. (1927), 48 N. L. R. 267.—**S. AF.**

PART IV. SECT. 4.

1361 v. —— ——.]—R. *v.* STAGG (1925), 44 Can. Crim. Cas. 128.—**CAN.**

1361 vi. —— ——.]—THE STATE *v.* PURCELL, [1926] I. R. 207; 59 I. L. T. 141.—**IR.**

1361 vii. —— ——.]—R. *v.* NGA SAN HTWA (1927), 5 I. L. R. Ran. 276.—**IND.**

1361 viii. —— ——.]—Two persons were charged with murder & committed for trial. The coroner refused an application for bail made in his ct. Whereupon the appcts. applied to a judge in chambers by summons :—*Held :* in capital offences there must be exceptional circumstances to entitle the appcts. to bail.—R. *v.* STRONG & STANNARD (1935), 52 N. S. W. W. N. 179.—**AUS.**

o i. ——.]—The opposition of the A.-G. to the giving of bail, while entitled to great weight, does not bind the discretion of the ct.—THE STATE *v.* PURCELL, [1926] I. R. 207; 59 I. L. T. 141.—**IR.**

PART IV. SECT. 5.

1383 ii. ——.]—After conviction for rape & a new trial ordered bail was refused. Rape is an offence punishable with death, & unless there is unreasonable & unjust delay in bringing on the second trial, bail will not be granted.—R. *v.* AUGER (1929), 52 Can. C. C. 80; 64 O. L. R. 198.—**CAN.**

1383 iii. ——.]—*Re* R. *v.* AUGER (Ont.) (1929), 52 Can. C. C. 281.—**CAN.**

st. *Obtaining by false pretences.*]—R. *v.* GIFFORD, [1931] 2 W. W. R. 414.—**CAN.**

PART IV. SECT. 8.

1401 v. —— ——.]—Where a police magistrate refused to allow accused to be released on bail pending the preliminary hearing, an application by way of *habeas corpus* for accused's release on bail was granted.—R. *v.* MACDONALD, [1925] 2 W. W. R. 643.—**CAN.**

PART IV. SECT. 12.

sb. *Grounds for granting.*]—While it is not possible to lay down an inflexible rule as to when a person convicted of an offence & sentenced to imprisonment, who appeals against his conviction, should or should not be admitted to bail pending the determination of his appeal, it is important to bear in mind that every one is presumed to be innocent until legally convicted, & that so far as is humanly possible the law should be so administered as not to do injustice to an innocent person.—R. *v.* SMITH, R. *v.* BARNARD (1924), 43 Can. Crim. Cas. 24; 56 O. L. R. 244.—**CAN.**

sd. ——.]—A prisoner who had been convicted on a charge of shop & warehouse breaking & sentenced to two years & four calendar months' imprisonment, applied for bail pending the hearing of an appeal against his conviction. The grounds of his application were that he might search for two persons who might prove that his identity had been mistaken; the prisoner did not know the names or addresses of these persons, but knew their descriptions; further grounds were personal to himself & family, such as a statement that he surrendered to his bail during trial & a desire to assist his family. There was little prospect of the appeal being successful :—*Held :* bail should not be granted.—R. *v.* RYAN, [1930] S. A. S. R. 125.—**AUS.**

sf. ——.]—R. *v.* VERIGIN (No. 1), [1932] 2 W. W. R. 489.—**CAN.**

sm. *By Supreme Court of Canada.*]—A judge of the Supreme Ct. has no jurisdiction to admit to bail an accused person pending his appeal, such jurisdiction being conferred by Criminal Code, s. 1019 (1), upon the Chief Justice of the appellate ct. or a judge of that ct. designated by him.—STEELE *v.* R., [1924] 2 D. L. R. 470; [1924] S. C. R. 1; 42 Can. Crim. Cas. 47.—**CAN.**

o i. —— *Time for entering into recognisance.*]—On an appeal from a summary conviction, since there is now no time limit for filing the notice of appeal under Criminal Code, s. 750, there is no time limit for entering into the recognisance which may be given under sub-sect. c.—R. *v.* BARILKO, [1924] 4 D. L. R. 832; 3 W. W. R. 424.—**CAN.**

o ii. —— ——.]—R. *v.* DESJARLAIS, [1924] 3 W. W. R. 145.—**CAN.**

sn. *When application for release can be made—Before return by gaoler showing cause of commitment.*]—*Re* HOOD, [1928] 1 D. L. R. 624; 49 Can. Crim. Cas. 191; 59 N. S. R. 471.—**CAN.**

1443a. —— **Vacation intervening.**]—In considering applications for bail the ct. has regard to the interval of a vacation.—R. *v.* CHARAVANMUTTU (1929), 21 Cr. App. Rep. 184, C. C. A.

1443b. —— ——.]—R. *v.* WAXMAN (1930), 22 Cr. App. Rep. 81, C. C. A.

Annotation :—**Distd.** R. *v.* Starkie (1932), 24 Cr. App. Rep. 1.

1443c. —— —— **Intricate case.**]—Bail granted in view of complexity of the case & of the interval of the Long Vacation.—R. *v.* NEWBERY & ELMAN (1931), 23 Cr. App. Rep. 66, C. C. A.

Annotation :—**Distd.** R. *v.* Starkie (1932), 24 Cr. App. Rep. 1.

1443d. —— ——.]—Bail granted in view of the interval of the Long Vacation.—R. *v.* STEWART (1931), 23 Cr. App. Rep. 68, C. C. A.

Annotation :—**Distd.** R. *v.* Starkie (1932), 24 Cr. App. Rep. 1.

1443e. —— ——.]—The interval of the Christmas vacation before an appeal can be heard may be a ground for the ct.'s granting bail.—R. *v.* HARDING, TURNER & KING (1931), 23 Cr. App. Rep. 143, C. C. A.

Annotation :—**Distd.** R. *v.* Starkie (1932), 24 Cr. App. Rep. 1.

1443f. —— ——.]—The existence of the Long Vacation held, in the circumstances, not to be a sufficient ground for granting bail to an appct.—R. *v.* STARKIE (1932), 24 Cr. App. Rep. 1, C. C. A.

1445. *Add. Citation :*—87 J. P. Jo. 536.

Add. Annotation :—**Refd.** R. *v.* Davidson (1927), 20 Cr. App. Rep. 66.

1445a. ——.]—The ct., in granting an application for leave to appeal against conviction & sentence, offered appct., in view of the interval before the hearing, bail on his own recognisance of £50 & that of a surety in the same sum.—R. *v.* MACDONALD (1928), 21 Cr. App. Rep. 26, C. C. A.

1446a. ——.]—R. *v.* DAVIDSON, No. 3129b, *post.*

Part V.—Proceedings Preliminary to Indictment.

1458. *Add. Annotation :*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

1459. *Add. Annotation :*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo 300.

1467. After cross-references following this case add "**Person outside jurisdiction.**]—*See* Criminal Justice Act, 1925 (c. 86), s. 31."

1467a. —— **Joint trial with another person necessary or expedient.**]—TURF PUBLISHERS, LTD. *v.* DAVIES, [1927] W. N. 190, D. C.

1484. *Add. Citation :*—31 T. L. R. 401.

1512. *Add. Annotation :*—**Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

1513a. ——.]—R. *v.* BOULTON (1871), 12 Cox, C. C. 87.

1536a. ——.]—R. *v.* BOULTON (1871), 12 Cox, C. C. 87.

1549. *Add. Annotation :*—**Refd.** Clubb *v.* Wimpey & Co., [1930] 1 All E. R. 69.

1555a. —— —— ——.]—WHITE *v.* TAYLOR (1801), 4 Esp. 80; 170 E. R. 648.

1562a. —— —— **Grounds for.**]—A constable may arrest a person without a warrant if at the time of effecting the arrest he has reasonable & probable cause to suspect that a crime has been committed, & that the person arrested is guilty of it. The question of whether the constable had reasonable & probable cause for making the arrest is for the judge & not for the jury. Amongst the facts which the constable may properly take into consideration in deciding whether to make the arrest is the fact that clothing belonging to the suspected person has been found near the scene of the crime.

Per LORD WRIGHT: It is doubtful whether the constable may consider the fact that the person arrested was well known to the police & was absent from his home at the material date.—MCARDLE *v.* EGAN (1934), 150 L. T. 412; 98 J. P. 103; 32 L. G. R. 85; 30 Cox, C. C. 67, C. A.

1583. *Add. Annotation :*—**Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

PART IV. SECT. 13.

so. *Refusal by sheriff—Summary complaint.*]—*Held :* an appeal to the High Ct. of Justiciary against a refusal of bail was not confined to cases tried upon indictment. — LIDDELL *v.* STRATHERN, [1926] S. C. (J.) 107.—**SCOT.**

PART V. SECT. 1, SUB-SECT. 2.—A.

1488 ii. —— ——.]—Where a man who knows that he is under detention acquiesces in the situation there is an arrest, even though there has been no actual touching of his person.—HIGGINS *v.* MACDONALD (B. C.), [1928] 4 D. L. R. 241; [1928] 3 W. W. R. 115; 50 Can. Crim. Cas. 353.—**CAN.**

1498 i. *Necessary to inform prisoner under what power constable acting.*]—A person about to be arrested is entitled to know under what power the constable is arresting him &, if he specifies a certain power, which the person knows the constable has not got, he is entitled to object to such arrest & escape from custody, such custody not being a lawful one.—APPASANU MUDALIAR *v.* R. (1924), I. L. R. 47 Mad. 442.—**IND.**

sp. *Second arrest justified—First arrest irregular.*]—*Ex p.* MALATSKY, [1925] 2 D. L. R. 242; 43 Can. Crim. Cas. 306.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—C.

1523 iv. —— —— ——.]—Where an accused has been charged with an offence, *e.g.* murder, over which a District Ct. judge has no jurisdiction, & with respect to which he cannot grant or withhold bail he has no power to order that a chattel, which is in the possession of the accused after his committal for trial & has not been impounded as an exhibit, shall be removed from his possession & delivered to the police, although it is an article which may afford evidence against the accused at the trial.

Semble : a judge of the Ct. of King's Bench has the power to grant the application for such order in such a case.—R. *v.* BOHUN, [1933] 3 W. W. R. 146; 60 C. C. C. 114.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—E. (a).

1534 xvi. ——.]—A police officer is not justified in arresting a person without a warrant where he does not believe that person has committed an offence, even though he suspects that the arrested person has knowledge which will enable him to identify those guilty of an offence which has actually been committed.—WARNOCK *v.* FOSTER, [1936] 3 W. W. R. 625; 51 B. C. R. 179.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—E. (b).

1555 v. —— ——.]—Telegrams from the "police" of a Native State which, in addition to personal description of the fugitive & suggestions of his possible movements, merely alleged that he was wanted for embezzlement of money to the value of two lakhs, do not constitute credible information or reasonable suspicion sufficient to justify his arrest without a warrant in British India.—SUBODH CHANDRA ROY CHOWDHRY *v.* R. (1924), I. L. R. 52 Calc. 319.—**IND.**

1611. *Add. Annotation :*—**Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

1619. *Add. Annotation :*—**Refd.** Ledwith *v.* Roberts, [1937] 1 K. B. 232.

1621. *Add. Annotation :*—**Consd.** Ledwith *v.* Roberts, [1937] 1 K. B. 232.

1622. *Add. Annotations :*—**Folld.** Isaacs *v.* Keech, [1925] 2 K. B. 354. **Consd.** Ledwith *v.* Roberts, [1937] 1 K. B. 232.

1622a. —— **Town Police Clauses Act, 1847 (c. 89), s. 28.**]—Under the above sect. in order to entitle a constable to take a person into custody without a warrant it is not necessary that the person should be in fact committing the offence, provided that the constable honestly & on reasonable grounds believes that the person is committing it.—ISAACS *v.* KEECH, [1925] 2 K. B. 354; 94 L. J. K. B. 676; 133 L. T. 347; 89 J. P. 189; 41 T. L. R. 432; 23 L. G. R. 444; 28 Cox, C. C. 22, D. C.

Annotation :—**Refd.** Ledwith *v.* Roberts, [1937] 1 K. B. 232.

1622b. —— **Vagrancy Act, 1824 (c. 83), s. 4.**]—The special powers of arrest given to constables by Vagrancy Act, 1824 (c. 83), s. 4, are confined to apprehending persons who are of the class of persons described as "suspected persons" or "reputed thieves." Such persons can only be apprehended without warrant if they already are at the time of their arrest & imprisonment suspected persons or reputed thieves. That does not mean that if a constable suspects the person whom he apprehends he is entitled to arrest & imprison him without warrant. The person so apprehended must be some person who belongs to the class of suspected persons by reason of his antecedent conduct. "Suspected person" means a person who has acquired the character of a suspect & does not mean every person whom the apprehending constable suspects to be loitering with intent to commit a felony. Municipal Corpns. Act, 1882 (c. 50), s. 193, empowers a constable to apprehend an idle & disorderly person whom he has just cause to suspect of intention to commit a felony, but if in an action against a constable for false imprisonment it is not pleaded in the defence that the pltf. was an idle or disorderly person the deft. cannot rely on the sect.

Sect. 513 (2), (3) of Liverpool Corpn. Act, 1921, empowers a constable to arrest & detain without warrant any loose, idle, or disorderly person whom he has good cause to suspect of having committed or being about to commit any felony, misdemeanour, or breach of the peace, or who is found between certain hours lying or loitering in any street & not giving a satisfactory account of himself. To justify apprehension & detention under this section it must be established that the person apprehended belongs to the class of loose, idle, or disorderly persons. The power to apprehend does not arise where all that can be proved is that the constable honestly believed on reasonable grounds that the person apprehended was a loose, idle, or disorderly person. Sect. 513 of 1921 Act is contained in a private Act of Parliament which by its title gives no indication that it is an Act dealing with the authority of police-constables, & if a deft. in an action for false imprisonment desires to rest his defence on any part of that section he should give notice of it in the defence.

Per SCOTT, L.J.—Powers of arrest without warrant should be expressed in unambiguous & simple language which anyone can understand & the occasions for reliance on a constable's discretion should be defined with care in any statutory provision conferring such a power.—LEDWITH *v.* ROBERTS, [1937] 1 K. B. 232; [1936] 3 All E. R. 570; 106 L. J. K. B. 20; 155 L. T. 602; 101 J. P. 23; 53 T. L. R. 21; 80 Sol. Jo. 912; 35 L. G. R. 1; 30 Cox, C. C. 500, C. A.

Annotation :—**Expld. & Distd.** Rawlings *v.* Smith, [1938] 1 K. B. 675.

1622c. —— **Municipal Corporations Act, 1882 (c. 50), s. 193.**]—LEDWITH *v.* ROBERTS, No. 1622b, *ante*.

1622d. —— **Private Act.**]—LEDWITH *v.* ROBERTS, No. 1622b, *ante*.

1647. *Add. Annotation :*—**Refd.** Ledwith *v.* Roberts, [1937] 1 K. B. 232.

PART V. SECT. 1, SUB-SECT. 2.—E. (c) ii.

r i. —— ——.]—The keeping of a common gaming house is not an offence which one can be found committing & arrested for by a peace officer without a warrant under sect. 648 of the Criminal Code.—R. *v.* ROACH, [1923] 1 W. W. R. 433.—**CAN.**

r ii. —— ——.]—*Held :* an offence which a police officer can find a person committing & can legally arrest him without warrant.—R. *v.* SELOCK, [1931] 2 W. W. R. 745; 56 Can. C. C. 243; 25 Alta. L. R. 504.—**CAN.**

r iii. —— *Keeping disorderly house.*]—The keeping of a common bawdy house is an offence which a peace officer may find being committed &, therefore, one for which, under sect. 648 of the Criminal Code, he may arrest without a warrant for arrest where he does find the accused committing the offence. It follows that, under sect. 30 of the Code, he is justified in arresting without a warrant for arrest where on reasonable & probable grounds he believes that said offence has been committed.—WHITWORTH *v.* DUNLOP, [1934] 1 W. W. R. 604; 3 D. L. R. 727; 62 C. C. C. 41; 48 B. C. R. 161.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—E. (c) i.

a i. —— *Liquor Act, R. S. A.*, 1922 (c. 226), *s.* 85.]—Two police officers, suspecting that accused sold liquor contrary to the above Act, went to his premises &, without disclosing their identity, asked him to serve them with liquor, which he did. Having consumed the liquor they ordered more, which was being served but not consumed when, disclosing their identity, they arrested accused without a warrant :—*Held :* accused was "found actually committing" an offence, & could be arrested without a warrant.—R. *v.* HILLS, [1924] 1 W. W. R. 651; 44 Can. Crim. Cas. 329; 20 Alta. L. R. 156.—**CAN.**

a ii. —— *Manitoba Temperance Act, C. A.*, 1924 (c. 118), *s.* 114.]—R. *v.* ZENICK (Man.), [1927] 3 W. W. R. 424; 48 Can. Crim. Cas. 398.—**CAN.**

e i. —— ——.]—While where an offence consists not of an individual act but of a course of conduct, *e.g.*, the keeping of a disorderly house, it may be that if a peace officer saw over a period of time all the essential elements of the offence he could be said to have found the accused committing it, &, therefore, would be justified under s. 648 of the Code in arresting without warrant, yet, if the evidence is not sufficient to warrant a conviction it follows that the peace officer who made the arrest could not have found the accused committing the offence.—R. *v.* BOTTLEY, [1929] 3 D. L. R. 766; 2 W. W. R. 76; 51 Can. Crim. Cas. 384; 24 Alta. L. R. 43.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—F. (a)

k i. *Warrant prematurely issued—Discharge on habeas corpus—Re-arrest.*]—*Ex p.* DAVID (N. B.), [1928] 3 D. L. R. 237; 49 Can. Crim. Cas. 381.—**CAN.**

l i. —— ——.]—R. *v.* LEADBETTER (N. S.), [1929] 1 D. L. R. 666; 51 Can. C. C. 66.—**CAN.**

l ii. —— ——.]—*Re* DI LORENZO (1931), 55 Can. C. C. 326; 3 M. P. R. 214.—**CAN.**

l iii. —— —— *Not after pardon.*]—A prisoner was pardoned by the Lieutenant-Governor & discharged :—*Held :* this was a voluntary escape & he could not be retaken on the same warrant.—*Re* MACKIE (JOHN V.) (1932), 5 M. P. R. 333; 59 C. C. C. 68.—**CAN.**

sb. *Warrant must be in constable's*

1663a. ——.]—BROWN'S CASE (1647), cited in 2 Hale, P. C. at p. 111.

Annotation :—**Refd.** Howard *v.* Gossett (1845), 5 L. T. O. S. 144.

1674. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

1675. *Add. Annotation :*—**Refd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

1676. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

1676a. —— Application of Criminal Justice Act, 1925 (c. 86), s. 44.]—Pltf. having left his wife & two children, his wife obtained a maintenance order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), for the payment by him of a weekly sum. Pltf. having failed to comply with the order, his wife made complaint to a magistrate at D., which was within the county of Chester, that £19 12*s.* 6*d.* was then in arrear under the order, & thereupon the magistrate issued a warrant, addressed to each & all of the constables of the county of Chester, commanding them to apprehend pltf. & convey him before a ct. of summary jurisdiction at D. to be dealt with according to law. The warrant showed on its face that £19 17*s.* was payable by pltf. & was in the form prescribed by the Bastardy (Forms) Order, 1915, but it did not contain the words "unless the said sum & all costs & charges be sooner paid" which were directed to be inserted in such warrants by the Bastardy (Forms) Amendment Order, 1921. The warrant was delivered to deft., the superintendent of police at D., & some time later pltf. was arrested by a constable acting under deft.'s orders. Pltf. was taken in custody through the streets & placed in a cell by deft.'s order. At the time the arrest was effected the warrant was in deft.'s possession at the police station & was not in the possession of the constable who made the arrest. Pltf.'s father immediately after the arrest tendered £19 17*s.* to deft. & asked for his son's release, but deft. refused to accept the money. Pltf.'s solr. then sent a letter to deft. enclosing the £19 17*s.* & demanding pltf.'s release, but deft. did not open the letter & pltf. was kept over-night in the cell. Pltf. was brought on the following morning before a court of summary jurisdiction at D., when solr.'s letter was produced & found to contain £19 17*s.*, whereupon the magistrates ordered pltf.'s immediate release. Pltf. brought an action against deft. for false imprisonment, & the jury returned a verdict in pltf.'s favour & awarded £175 as damages for the arrest, & £175 as damages for the unlawful detention at the police station after the tender of the money :—*Held :* (1) the warrant was invalid by reason of the omission therefrom of the words "unless the said sum & all costs & charges be sooner paid," inasmuch as the provision in the Summary Jurisdiction (Married Women) Act, 1895 (c. 39), that "the payment of any sum of money directed to be paid by any order under this Act may be enforced in the same manner as the payment of money is enforced under an order of affiliation," refers not to the date when that Act was passed, but to the date when it was sought to enforce the order, & in the present case at that date the Bastardy (Forms) Amendment Order, 1921, requiring the insertion of those words in the warrant, was in force ; (2) the arrest was wrongful, because the constable had not the warrant in his possession at the time he effected the arrest ; (3) deft. was not protected by Criminal Justice Act, 1925 (c. 86), s. 44, for in order to obtain that protection the warrant must have been lawfully issued, & the person apprehended must have been charged with an "offence," whereas in fact the warrant was invalid & pltf. was not charged with an "offence" within Criminal Justice Act, 1925 (c. 86).—HORSFIELD *v.* BROWN, [1932] 1 K. B. 355 ; 101 L. J. K. B. 177 ; 146 L. T. 280 ; 96 J. P. 123 ; 30 L. G. R. 153 ; 29 Cox, C. C. 422.

1678a. —— ——.]—BLATCHER *v.* KEMP (1782), 1 Hy. Bl. 15, n. ; 126 E. R. 10.

Annotations :—**Consd.** R. *v.* Weir (1823), 1 B. & C. 288. **Apld.** A.-G. *v.* Jefferys (1824), M'Cle. 270.

1678b. —— —— Except when issued to A. & constable.]—WEATHERELL *v.* WATSON (1822), 1 L. J. O. S. K. B. 2.

1683. In line 2 of the headnote, for "assisting" read "arresting."

1694. *Add. Annotation :*—**Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

---

possession.]—Sect. 50 of Police Act, 1916, has not altered the rule that at the time when an officer executes a warrant of commitment for non-payment of a fine imposed under Motor Omnibus Act, 1926, he must have the warrant of commitment in his possession.—BULL *v.* LAING (1929), S. A. S. R. 65.—**AUS.**

sd. *Defective warrant—Habeas corpus—Issue of valid warrant.*]—Previous discharge on *habeas corpus* by reason of defective warrants does not preclude the issue of a subsequent valid warrant.—*Re* RANSOME (1932), 4 M. P. R. 271 ; 57 C. C. C. 282.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—F. (b).

sf. *Inclusion of words not applicable.*]—Where deft.'s arrest was justified, as he was not prejudiced in any way :—*Held :* application for his discharge should be dismissed, notwithstanding the inclusion in the warrant of words which were not applicable & should have been omitted.—OVERSEERS OF THE POOR *v.* MARRYATT (1924), 42 Can. Crim. Cas. 132 ; 57 N. S. R. 315.—**CAN.**

sf. *Description of prisoner—Sufficiency.*]—Appct. was arrested under the name of "Mrs. Richard F. Wade" :—*Held :* the description was sufficient as no one could possibly be misled by the description of the person contained in the warrant.—*Re* WADE (1918), 53 N. B. R. 424.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—F. (c).

1674 iii. ——.]—Where an arrest is not justified without a warrant, it is necessary for the constable making the arrest to have the warrant in his personal possession, even although the person arrested does not demand its production. It is not sufficient that a warrant has been issued directed to "all or any of the police officers" of the province, & is in possession of a constable on whose instructions by telephone another constable at a different place makes the arrest & delivers the person arrested to the constable who holds the warrant.—R. *v.* LINDER, [1924] 3 D. L. R. 505 ; 2 W. W. R. 646 ; 20 Alta. L. R. 415.—**CAN.**

1680 v. ——.]—R. *v.* WARD (1923), 53 O. L. R. 569.—**CAN.**

1685 v. ——.]—An arrest on a Sunday under a warrant issued for an offence against Manitoba Temperance Act, C. A., 1924 (c. 118), is not illegal, —R. *v.* SMITH, [1927] 2 D. L. R. 982 ; [1927] 1 W. W. R. 734 ; 47 Can. Crim. Cas. 345 ; 35 Man. L. R. 386.—**CAN.**

sv. *Accused illegally under arrest without warrant.*]—Where, when a warrant was issued, accused was illegally under arrest because previously arrested without a warrant :—*Held :* it did not affect the validity of the warrant.—R. *v.* BARILKO, [1924] 1 W. W. R. 60 ; 41 Can. Crim. Cas. 193 ; 20 Alta. L. R. 126.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.

d i. —— *By other constables acting in concert.*]—The authority given by a search warrant to the constable to

1700. *Add. Annotation :*—**Consd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

1701. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

1702. *Add. Annotation :*—**Refd.** Roden *v.* Brett, [1936] 2 All E. R. 136.

1702a. Seizure of documents without warrant—At time of arrest—Validity.]—In order to effect the arrest of H., defts., police officers, entered pltfs.' premises. While there they seized & carried away documents found on the premises, being (*a*) documents which were afterwards used on the trial of E., (*b*) a document found on H. & used on his trial, & (*c*) documents which did not constitute evidence on these trials. At the conclusion of the trials the documents under (*a*), & (*b*) were not returned; those under (*c*) were returned soon after seizure :—*Held :* (1) although the original seizure of the documents was unlawful, it was excused as regards documents under (*a*) & (*b*), it being to the interest of the State that material evidence should be preserved; (2) the police had a right to search H. on his arrest, & also to seize any documents in his possession which would form material evidence against him or anybody else on a criminal charge. Any property so taken might be retained by the police until the conclusion of proceedings under any such charge. The police, having lawfully entered the premises to arrest H. did not by reason of the subsequent unlawful seizure of the documents under (*c*) become trespassers *ab initio* as to the land, but only as to the documents.—ELIAS *v.* PASMORE, [1934] 2 K. B. 164; 103 L. J. K. B. 223; 150 L. T. 438; 98 J. P. 92; 50 T. L. R. 196; 78 Sol. Jo. 104; 32 L. G. R. 23.

1704a. —— To rehear charge—Justices equally divided.]—Appct. was charged with the indictable offence of causing grievous bodily harm by the reckless & wanton driving of a motor car. The justices were equally divided on the question whether appct. should be committed for trial, & they decided that appct. was not, in these circumstances, entitled to be discharged, & that they would adjourn & have the case reheard on a later date by a reconstituted bench. Appct. then obtained a rule *nisi* for a mandamus to the justices to order his discharge in pur-

---

whom it is addressed extends to the other constables acting in concert with him under it.—R. *v.* DIAMOND, [1924] 1 D. L. R. 1033; 1 W. W. R. 444; 42 Can. Crim. Cas. 90; 20 Alta. L. R. 60.—**CAN.**

d ii. —— *On Sunday—Invalid unless authorised by statute.*]—R. *v.* BOUGHNER (1930), 53 Can. C. C. 170.—**CAN.**

d iii. —— *Necessity for possession of warrant.*]—A police officer searching on a gaming charge must have his warrant with him. He must use no more force than is reasonably necessary.—WAH KIE *v.* CUDDY (1914), 23 Can. C. C. 383.—**CAN.**

d iv. —— ——.]—A peace officer must have his search warrant with him at the time of execution.—FANNING *v.* GOUGH (1908), 18 Can. C. C. 66.—**CAN.**

l i. —— *Validity of information.*]—The ct. refused to set aside a search warrant issued under the above Act, where the grounds of suspicion were written on a separate piece of paper attached to the information but not initialled.—R. *v.* WILSON, *Ex p.* HARRINGTON (1911), 40 N. B. R. 384.—**CAN.**

l ii. —— ——.]—A search warrant issued under the above Act will be quashed where no grounds of suspicion are stated in the information.—R. *v.* NICKERSON, *Ex p.* WESTON (1911), 40 N. B. R. 382.—**CAN.**

m i. ——.]—A search warrant issued under the Criminal Code which does not state or refer to the offence with respect to which the search is to be made is invalid.—*Re* R. & SOLLOWAY MILLS & CO., LTD., [1930] 1 W. W. R. 779; 3 D. L. R. 293; 53 Can. C. C. 261; 24 Alta. L. R. 410.—**CAN.**

sw. *Necessity for—Seizure of goods.*]—An officer of police, not acting under a search warrant, has no power to seize goods for the purpose of preserving them as evidence in a prosecution which he intends to launch against the person in possession of them, except as an incident of the arrest of that person.—LEVINE *v.* O'KEEFE, [1929] Argus L. R. 330.—**AUS.**

sx. *To search disorderly house—Form of police officer's report.*]—The objection that the police officer's report on which a search warrant was issued under sect. 641 of Criminal Code for an alleged disorderly house stated that the premises are "kept or used as a disorderly house as defined by the Criminal Code," although the words of sect. 641 are "kept or used as disorderly house as defined by sect. 229," was overruled, on the ground that since sect. 229 is the only section of the Code which defines a "disorderly house" the objection was without substance.—R. *v.* PLUMMER (Man.), [1930] 1 D. L. R. 766; 38 Man. L. R. 391; [1929] 3 W. W. R. 518; 52 Can. Crim. Cas. 288.—**CAN.**

sw. *Presumption of proper warrant—On search by constable.*]—R. *v.* MARTIN (Sask.) (1929), 52 Can. Crim. Cas. 367.—**CAN.**

sx. *Duty of magistrate.*]—*Held :* it was the duty of a constable who seized books & papers of defts. under a search warrant to carry them before the magistrate who issued the warrant or some other magistrate in the same territorial division, as required by sect. 629 of the Criminal Code, & it then became the magistrate's duty to deal with them according to law; that duty is a judicial one, not to be exercised arbitrarily, & the owner of the things seized is entitled to be heard by the magistrate before he decides what disposition is to be made of them.—R. *v.* SOLLOWAY & MILLS (1930), 54 Can. C. C. 248; 65 O. L. R. 667; *affg.* Can. C. C. 335; 65 O. L. R. 218.—**CAN.**

sy. —— ——.]—Where a charge was laid in Alberta a search warrant issued by a magistrate for that province with the intention of having it backed by a magistrate in British Columbia & which was so backed was held lawfully issued & backed &, therefore, one which could be lawfully executed in the latter province; & another warrant which was issued by a magistrate for the province of British Columbia authorising a search of a building therein with respect to the same prosecution was also held one which could be lawfully executed.—SOLLOWAY MILLS & CO., LTD. *v.* FRAWLEY, [1930] 2 W. W. R. 231; *sub nom.* SOLLOWAY MILLS & CO. *v.* A.-G. OF ALBERTA, [1930] 4 D. L. R. 235; 53 Can. C. C. 306; 42 B. C. R. 524; *revg.*, [1930] 4 D. L. R. 238; 53 Can. C. C. 234; 42 B. C. R. 513.—**CAN.**

sz. —— ——.]—*Re* R. *v.* SOLLOWAY & MILLS (1930), 54 Can. C. C. 214; 65 O. L. R. 677.—**CAN.**

sc. *Existence of warrant—Presumption from search.*]—When a constable has searched the premises of a person suspected of an offence it will be presumed, in the absence of proof to the contrary, that the constable was armed with the proper authority to make the search, especially when the evidence of the findings of the constable while making the search was admitted without objection.—R. *v.* MARTIN, [1930] 1 W. W. R. 598; 53 Can. C. C. 407.—**CAN.**

se. *Issue in one Province—In aid of prosecution in another.*]—A justice of the peace in the Province of Ontario has power to issue a search warrant in aid of a criminal prosecution in another Province.—R. *v.* SOLLOWAY & MILLS, [1930] 3 D. L. R. 770; 53 Can. C. C. 271; 65 O. L. R. 303.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

a i. —— ——.]—R. *v.* MLAKER, [1923] 2 W. W. R. 296; 39 Can. Crim. Cas. 384.—**CAN.**

a ii. —— *To try charge without inquiring as to arrest.*]—Where an accused person is before a magistrate who has jurisdiction over the offence, the magistrate need not inquire how he came there, but may proceed to try the case, notwithstanding objection by accused that he was wrongfully arrested without warrant.—R. *v.* ALBERTS, [1924] 2 D. L. R. 863; 1 W. W. R. 863.—**CAN.**

c i. —— ——.]—If accused be found guilty of a lesser included offence, it is unnecessary to amend the charge.—QUN *v.* R., [1924] 4 D. L. R. 182.—**CAN.**

e i. —— *To hear charge on subsequent information—Prior illegal arrest.*]—If a person is duly charged with an offence on an information under oath, & is arrested on a warrant duly issued & brought before the magistrate, the magistrate's jurisdiction is not ousted by the fact that at the time of the information & arrest accused was under detention as the result of an illegal arrest without warrant.—R. *v.* JOHNSON, [1924] 3 D. L. R. 470; 1 W. W. R. 828; 34 Man. L. R. 100.—**CAN.**

e ii. —— —— *Prior illegal search.*]—*Held :* assuming a search to have been illegal, it did not affect subsequent proceedings under a warrant, & there was nothing to affect the jurisdiction of the magistrate.—R. *v.* DIPENTA (1924), 42 Can. Crim. Cas. 152; 57 N. S. R. 304.—**CAN.**

suance of Indictable Offences Act, 1848 (c. 42), s. 25 :—*Held :* under that sect. the duty of the justices to discharge the accused arose only when they had reached an actual opinion that the evidence was not sufficient to put the accused upon his trial, &, as they had not reached such an opinion, they were entitled to adjourn the hearing for the purpose of having the bench reconstituted, & the rule must be discharged.—R. *v.* HERTFORDSHIRE JJ., *Ex p.* LARSEN, [1926] 1 K. B. 191; 95 L. J. K. B. 130; 134 L. T. 143; 89 J. P. 205; 42 T. L. R. 77; 28 Cox, C. C. 90, D. C.

1708. After this case add :—

—— **Right to free legal aid.**]—*See* Poor Prisoners' Defence Act, 1930 (c. 32), s. 2.

1714. After this case add :—

—— —— ——.]—*See, now,* Criminal Justice Act, 1925 (c. 86), s. 12; Indictable Offences Rules, 1926, Sched. (N.).

1718. After this case add :—

——.]—*See, now,* Criminal Justice Act, 1925 (c. 86), s. 12.

1720a. Necessity for compliance with statutory requirements.]—Applts. were charged with shopbreaking. Before the committing justices the depositions were not taken in the manner prescribed by Indictable Offences Act, 1848 (c. 42), s. 17, but the witnesses were examined by the chief constable from a typewritten statement which was checked by the clerk & ultimately signed by each witness. Nothing was taken down by the magistrates or their clerk in writing. Defts. were not furnished with copies of the statement. Applts. having been committed for trial & convicted :—*Held :* the proceedings before the committing justices were so defective by reason of non-compliance with Indictable Offences Act, 1848 (c. 42), s. 17, that there was no lawful committal for trial within Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36), s. 2 (2), & consequently no bill of indictment could be preferred against applts. The document purporting to be an indictment was not an indictment, & applts. could not be tried upon it; further, though the trial was a nullity & the ct. had jurisdiction to order a proper trial, in view of the time spent by applts. in custody, the ct. would quash the convictions.—R. *v.* GEE, R. *v.* BIBBY, R. *v.* DUNSCOMBE, [1936] 2 K. B. 442; [1936] 2 All E. R. 89; 105 L. J. K. B. 739; 155 L. T. 31; 100 J. P. 227; 52 T. L. R. 473; 80 Sol. Jo. 536; 34 L. G. R. 265; 30 Cox, C.C. 432; 25 Cr. App. Rep. 198, C. C. A.

Annotation :—**Follд.** R. *v.* Philips, R. *v.* Quayle, [1938] 3 All E. R. 674.

1727a. —— ——.]—The two prisoners, Q. & P., were tried upon an indictment containing 17 counts. The first & ninth count charged both with conspiracy to defraud, the eighth count charged Q. alone with obtaining credit by fraud, & the other counts contained joint charges against both. In the result Q. was acquitted on counts 1 to 8 & convicted on counts 9 to 17, & P. was convicted on all counts against him. The proceedings before the justices were commenced against Q. alone & were so continued for about three months, during which time thirty-five witnesses were called & examined. Their evidence related to counts 1 to 7 only. P. was then joined a a co-deft. & it became necessary to recall the witnesses. Upon the recall of each witness his deposition was read over to him, & he was asked whether it was correct. All answered in the affirmative. The following statement was then added to the deposition : " My deposition has been read over to me & it is correct." P. was then given an opportunity of cross-examining upon this summary statement :—*Held :* (1) the procedure adopted before the justices was prejudicial to the accused person, &, however convenient, was irregular & unlawful; (2) when justices commit on several charges, the committals are several & distinct, &, if one is bad, the others are not necessarily invalidated. The conviction of P. on counts 9 to 17 must, therefore, stand.—R. *v.* PHILIPS, R. *v.* QUAYLE, [1938] 3 All E. R. 674; 159 L. T. 479; 102 J. P. 467; 54 T. L. R. 1110; 82 Sol. Jo. 762; 26 Cr. App. Rep. 200, C. C. A.

1734. *Add. Annotation :*—**Distd.** R. *v.* Philips, R. *v.* Quayle, [1938] 3 All E. R. 674.

1790a. —— **Under Criminal Justice Act, 1925 (c. 86).**]—R. *v.* STROUD, *Ex p.* STROUD (1928), 72 Sol. Jo. 826, D. C.

1790b. —— —— **Meaning of " next assizes."**]—" Next assizes " in the proviso to sect. 14 (1) of above Act means next assizes after the date of committal, & cannot refer to assizes which have already begun at that date.

Applt. was committed for trial to Northamptonshire Autumn Assizes, which began on Oct. 15, 1935, by justices sitting in the county of Bedford. The day on which committal took place was Oct. 11, 1935, which was the commission day for the Bedfordshire Autumn Assizes :—*Held :* the " next assizes " for the purposes of the above proviso were in this case the Bedfordshire Winter Assizes, which would be held in Jan. 1936. The proviso, therefore, did not apply, & the justices were entitled to commit applt. to the Northamptonshire Autumn Assizes, as being more convenient.—R. *v.* MURRAY (1935), 154 L. T. 164; 100 J. P. 57; 52 T. L. R. 141; 79 Sol. Jo. 965; 25 Cr. App. Rep. 129; 34 L. G. R. 4; 30 Cox, C. C. 298, C. C. A.

1793. *Add. Annotations :*—**Consd.** R. *v.* Beebe

PART V. SECT. 2, SUB-SECT. 2.—C.

g i. —— —— ——.]—*Qu. :* whether depositions may be signed by a magistrate after accused has been committed for trial & just before hearing.—R. *v.* MCIVER (1932), 5 M. P. R. 506; 59 C. C. C. 213.—**CAN.**

PART V. SECT 2, SUB-SECT. 2.—E.

sw. *Admissibility of—Whether notice to accused essential.*]—BRUNET *v.* R., [1928] 2 D. L. R. 254; [1928] S. C. R. 161; 49 Can. Crim. Cas. 257.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

1781 i. *When remand granted.*]—On a prisoner being brought before a magistrate for trial on the day of the arrest the magistrate was informed both by the prisoner & by telegram from a counsel that the latter had been retained for the defence & was requested by them to grant an adjournment to permit of the counsel's attendance :—*Held :* the refusal under such circumstances of a reasonable remand was a wrongful denial to the accused of the right given him by the Criminal Code to make a full defence & have his counsel present.—R. *v.* HALLCHUK (ELCHUK) (Man.), [1928] 1 D. L. R. 731; [1928] 1 W. W. R. 646.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

a i. —— —— *Justifiable homicide.*]—R. *v.* DU GUAY, [1928] 2 W. W. R. 596; 50 Can. Crim. Cas. 318; 37 Man. L. R. 403.—**CAN.**

(1925), 133 L. T. 736. **Refd.** Statham *v.* Statham, [1929] P. 131.

1794. *Add. Annotation :*—**Refd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

1798a. Several prisoners charged on same facts—Differentiation of charges—One prisoner punishable summarily—Other prisoner punishable on indictment.]—When charges are to be brought against more than one prisoner on the same set of facts, it is desirable that the charges should not be so differentiated that one prisoner is tried by a jury, while another has no right to such mode of trial, unless there is good reason to the contrary.—R. *v.* COPE (1925), 94 L. J. K. B. 662; 132 L. T. 800; 89 J. P. 100; 41 T. L. R. 418; 27 Cox, C. C. 778; 18 Cr. App. Rep. 181, C. C. A.

1799. *Add. Annotation :*—**Distd.** R. *v.* Sheridan, [1936] 2 All E. R. 883.

1804. *Add. Annotation :*—**Consd.** R. *v.* Ely JJ., *Ex p.* Mann (1928), 93 J. P. 45.

1810a. *Add. Citations :*—[1924] 1 K. B. 248; 93 L. J. K. B. 65; 130 L. T. 414; 27 Cox, C. C. 581.

1810b. —— How proved.]—(1) An appeal lies to the Ct. of Criminal Appeal against a sentence passed on an alleged breach of a recognisance to be of good behaviour for a certain time, on the ground that applt. has not broken the recognisance.

(2) Breach of recognisance must be proved like any other fact alleged in a criminal ct. —R. *v.* SMITH, [1925] 1 K. B. 603; 94 L. J. K. B. 592; 132 L. T. 799; 89 J. P. 79; 41 T. L. R. 359; 27 Cox, C. C. 782; 18 Cr. App. Rep. 170, C. C. A.

Annotation :—As to (2) **Refd.** R. *v.* Haddon (1935), 79 Sol. Jo. 180.

1810c. —— ——.]—Breach of recognisance must be strictly proved.—R. *v.* BUTLER (1926), 19 Cr. App. Rep. 127, C. C. A.

1810d. ——.]—R. *v.* HADDON (1935), 79 Sol. Jo. 180, C. C. A.

Part VI.—Indictments.

1821. *Add. Annotation :*—**Consd.** The Torni (1932), 48 T. L. R. 471.

1823. *Add. Annotations :*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419; Stevens *v.* Aldershot Gas, Water & District Lighting Co. (Now Mid-Southern District Utility Co.) (1932), 102 L. J. K. B. 12.

1826. *Add. Annotation :*—**Apld.** Hart *v.* Hudson, [1928] 2 K. B. 629.

1867. *Add. Annotation :*—**Consd.** The Torni (1932), 48 T. L. R. 471.

1900a. Receiving property—Known to have been obtained by fraud or false pretences.]—To receive goods knowing that the vendor obtained them on credit under false pretences or by means of fraud other than false pretences is not an offence known to the law. —R. *v.* SCHWELLER (1924), 18 Cr. App. Rep. 52, C. C. A.

1801 i. *Form of commitment—Omission of time of offence.]*—A warrant of commitment did not comply with Summary Convictions Act, B.C., 1915, in not fixing the time when the offence was committed :—*Held :* bad.—R. *v.* RODGERS, [1923] 3 W. W. R. 955; 41 Can. Crim. Cas. 190; 33 B. C. R. 16.—**CAN.**

1801 ii. —— *Error in statutory description of offence.]*—The use in the warrant of commitment of the words "ceremony of marriage" instead of "form of marriage," as in the statutory description, is no ground for setting aside a conviction, the meaning in both cases being the same & not distinguishable.—R. *v.* ROOP, [1924] 3 D. L. R. 985; 57 N. S. R. 325.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.

gi. ——.]—R. *v.* MCARTHUR'S BAIL (1897), 3 Terr. L. R. 37.—**CAN.**

sz. *Estreatment of recognisance.]*—The estreating of a recognisance by a magistrate may be carried out under Criminal Code, s. 1099, & any further necessary proceedings follow under the subsequent sects. without the requirement of any order of the cts.—R. *v.* MCCOY & BROWN (1924), 34 B. C. R. 14.—**CAN.**

sb. ——.]—R. *v.* MARRIOTT (1924), 57 N. S. R. 227.—**CAN.**

sc. —— *Notice of motion to accused & sureties necessary.]*—R. *v.* MCTAVISH, *Ex p.* BROWN (Man.), [1927] 1 D. L. R. 893; [1927] 1 W. W. R. 182; 47 Can. Crim. Cas. 251.—**CAN.**

se. —— *When ordered.]*—R. *v.* LEPICKI, [1925] 4 D. L. R. 170; [1925] 2 W. W. R. 726; 44 Can. Crim. Cas. 263.—**CAN.**

sf. —— —— *One surety bound instead of two.]*—R. *v.* CARVERY, *Ex p.* HOWE, [1925] 3 D. L. R. 414; 44 Can. Crim. Cas. 69.—**CAN.**

sg. —— ——.]—R. *v.* SULLIVAN (1914), 29 W. L. R. 115; 18 D. L. R. 535; 23 Can. Crim. Cas. 174.—**CAN.**

sl. —— —— *Within discretion of court.]*—The necessity of notice to an accused & his sureties of a motion for an order to estreat a recognisance does not depend on the existence of a Rule to that effect. Natural justice requires that before such an order be made the accused & his sureties should be given an opportunity of being heard. A judge before whom a motion for the estreat of a recognisance is made has a discretion, in view of all the circumstances, to refuse the order.—R. *v.* MCTAVISH, *Ex p.* BROWN (Man.), [1927] 1 D. L. R. 893; [1927] 1 W. W. R. 182; 47 Can. Crim. Cas. 251.—**CAN.**

sm. —— *Discharge of.]*—R. *v.* SCHRAM (1845), 2 U. C. R. 91.—**CAN.**

so. —— *Avoidance of.]*—R. *v.* MACDONALD (1925), 43 Can. Crim. Cas 381. —**CAN.**

PART VI. SECT. 1.

sq. *Proceedings must be carried on in the King's name.]*—R. *v.* WOO TUCK (1928), 51 Can. C. C. 365; 46 Que. K. B. 437.—**CAN.**

sr. ——.]—CLARK *v.* MACWORTH (1931), 55 Can. C. C. 268.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.—A.

1814 iii. —— *Newly created offence.]*—A statute comes into force on the first moment of the day on which it receives the Royal assent, & if it be one creating a crime, an offence committed on that day, even although before the actual time at which the Royal assent was given, is within the Act.—R. *v.* ROCCO, [1924] 1 D. L. R. 501; 41 Can. Crim. Cas. 101.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

ti. —— ——.]—Where an application for leave to prefer a charge of criminal libel is made after the refusal of a magistrate to commit & the A.-G. to prefer a charge, the judge should not give his consent unless there is a reasonable probability that the person charged will be found guilty.

There is no right of appeal from the exercise of the judge's discretion in refusing his consent to the preferring of a charge of criminal libel although if appct. can adduce further evidence upon which a grand jury should find a true bill any judge of the ct. would have the right to grant the consent notwithstanding its previous refusal. —MALONEY *v.* FILDES, [1933] 1 W. W. R. 33; 3 D. L. R. 752; 60 C. C. C. 7.—**CAN.**

1907 i. *Separate indictments in respect of same transaction—Where act constitutes more than one offence—Attempted carnal knowledge of young girl & indecent assault.]*—R. *v.* LANGLEY (N. B.), [1927] 3 D. L. R. 934; 48 Can. Crim. Cas. 293.—**CAN.**

sw. *Binding over prosecutor—No application to Alberta.]*—None of the provisions of the Criminal Code as to binding over to prefer & prosecute an indictment has any application or force in Alberta. Such provisions are applicable only in those provinces in which there is a grand jury.—MALONEY *v.* FILDES, [1933] 1 W. W. R. 33; 3 D. L. R. 752; 60 C. C. C. 7.—**CAN.**

sy. *New indictment—Loss of indictment previously laid.]*—If the original indictment to which accused pleaded at a former assize has been lost or mislaid, the judge may order a new indictment to be preferred.—R. *v.* MCAULIFFE (1906), 17 Can. C. C. 495.—**CAN.**

SECT. 3.—PREFERRING AN INDICTMENT (p. 208).

See, now, Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36), ss. 1, 2.

1910a. Fresh indictment in respect of another offence—Founded on facts disclosed in depositions.]—Where a person has been committed for trial for one offence a fresh indictment cannot be preferred against him in respect of another offence, which comes within Vexatious Indictments Act, 1859 (c. 17), without the leave of the ct., even though such fresh indictment is founded on facts disclosed in the depositions.—R. *v.* MORGAN, [1925] 1 K. B. 752; 94 L. J. K. B. 672; 133 L. T. 94; 89 J. P. 135; 28 Cox, C. C. 1; 18 Cr. App. Rep. 180, C. C. A.

1913a. Multiplication of indictments—Disapproved.]—(1) The ct. entirely approves of a ct. of trial dealing with all outstanding charges against a convicted prisoner, at his request, whenever it can legally do so.

(2) The ct. disapproves of the multiplication of indictments when the allegations can be conveniently made in one indictment.—R. *v.* TAYLOR (*alias* SAUNDERS, *alias* WALLACE) (1924), 18 Cr. App. Rep. 25, C. C. A.

Annotation:—*Generally*, **Refd.** R. *v.* Taylor (1926), 19 Cr. App. Rep. 146.

1913b. —— ——.]—R. *v.* CLARKE, No. 2115a, *post*.

1913c. —— ——.]—R. *v.* TYREMAN, No. 5359b, *post*.

1913d. —— ——.]—Offences which may lawfully be charged in one indictment ought not to be distributed into more.—R. *v.* SMITH (1926), 19 Cr. App. Rep. 151, C. C. A.

1913e. *S. P.* R. *v.* CARVER (1927), 20 Cr. App. Rep. 3, C. C. A.

1914a. Leave—Discretion of judge.]—The Ct. of Criminal Appeal will not inquire into the exercise of the discretion of a judge in granting leave to prefer a bill of indictment under the Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36).

It is not essential that the bill of indictment shall accompany the application in such a case. It is sufficient that it is before the judge when he deals with the application.—R. *v.* ROTHFIELD, [1937] 4 All E. R. 320; 26 Cr. App. Rep. 103, C. C. A.

1926. *Add. Annotation:*—*As to* (1) **Refd.** R. *v.* Rothfield, [1937] 4 All E. R. 320.

1934. *Add. Annotation:*—**Follid.** R. *v.* Mosley, [1924] 2 K. B. 187.

1937a. —— ——.]—Counts for offences within Vexatious Indictments Act, 1859 (c. 17), may be added to the indictment without the leave of the ct. where they are founded on facts disclosed on the depositions.—R. *v.* MOSLEY, [1924] 2 K. B. 187; 93 L. J. K. B. 894; 130 L. T. 831; 88 J. P. 91; 68 Sol. Jo. 757; 27 Cox, C. C. 635; 18 Cr. App. Rep. 69, C. C. A.

Annotation:—**Refd.** R. *v.* Morgan, [1925] 1 K. B. 752.

1978a. Larceny—Specific articles stolen must be set out.]—R. *v.* DOUGLAS (1926), 19 Cr. App. Rep. 119, C. C. A.

1981a. —— ——.]—An indictment for obtaining by false pretences that omits the false pretence alleged is bad.—R. *v.* THOMAS (1931), 23 Cr. App. Rep. 21, C. C. A.

1985a. Children Act, 1908 (c. 67), s. 12—Omission of "wilfully."]—(1) Applt. was indicted for cruelty to a child, contrary to Children Act, 1908 (c. 67), s. 12 (repealed by the Children & Young Persons Act, 1933 (c. 12), & substantially re-enacted by sect. 1 thereof), the particulars of offence alleged being that she "being a person over the age of sixteen years, having the custody, charge, or care of M., a child, neglected the said child in a manner likely to cause the said child unnecessary suffering or injury to its health." The word "wilfully," which occurs in the sect., was omitted from the particulars, the form employed being substantially Form 6 of the Forms of Indictment in the Appendix to the Rules made under Indictments Act, 1915 (c. 90):—*Held:* as the indictment had followed the above form, it could not be regarded as bad in law, but it is better that in such a case the particulars of offence should include the word "wilfully."

(2) Conviction quashed on the ground that the summing-up contained no proper direction on the meaning of "wilful neglect," the proper direction in such a case being in accordance with the direction in *R.* v. *Senior*, [1899] 1 Q. B. 283, at p. 290.—R. *v.* WALKER (1934), 24 Cr. App. Rep. 117, C. C. A.

1991a. ——.]—Indictment for the murder of a bastard child:—*Held:* a bastard was improperly described by his mother's name, he not having gained that name by reputation.—R. *v.* CLARK (1818), Russ. & Ry. 358.

Annotations:—**Consd.** R. *v.* Sheen (1827), 2 C. & P. 634. **Refd.** R. *v.* Drake (1850), 14 J. P. 483.

1991b. ——.]—In an indictment for the murder of a bastard child, the absence of a name is sufficiently accounted for by the child being described as "then lately before born of the body of J. H." Sentence of death may, since the statute 6 & 7 Will. 4, c. 30, be recorded against a person convicted of murder.—R. *v.* HOGG (1841), 2 Mood. & R. 380; 174 E. R. 324.

Annotation:—**Apprvd.** R. *v.* Willis (1845), 1 Cox, C. C. 136.

1991c. ——.]—Indictment stated that the prisoner, a single woman, on Aug. 27, 1844, brought forth a male child alive; that she afterwards, to wit, on the day & year aforesaid, killed the said child. Objection that the judgment ought to have either stated

---

PART VI. SECT. 4, SUB-SECT. 1.

t i. ——.]—Where the indictment was in the words of the enactment describing the offence:—*Held:* sufficient.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

k i. ——.]—R. *v.* CANADIAN ALLIS-CHALMERS, LTD. (1923), 54 O. L. R. 38.—CAN.

n i. *Identity of language with that of statute creating offence—"Car" used instead of "motor car."*]—R. *v.* YOUNG, [1928] 3 D. L. R. 225; 49 Can. Crim. Cas. 349; 60 N. S. R. 128.—CAN.

o i. —— *Value of stolen property.*]—An information should, therefore, state the value of the property alleged to have been stolen so as to determine to which class of crime the offence belongs & the nature of the proceedings to be taken.—R. *v.* THOMPSON, [1928] 4 D. L. R. 859; 50 Can. Crim. Cas. 133; 62 O. L. R. 610.—CAN.

sa. *Rape.*]—R. *v.* Ross, [1927] 1 D. L. R. 911; 47 Can. Crim. Cas. 71; 59 N. S. R. 55.—CAN.

PART VI. SECT. 4, SUB-SECT. 2.

a i. ——.]—The inclusion of a number of *aliases* unnecessarily in a bill of indictment is contrary to the practice, is a deviation from the ordinary course of criminal justice, & should be deprecated. Whether it amounts to a substantial wrong to the accused is a question of degree.—R. *v.* NOLAN (1930), 43 B. C. R. 357.—CAN.

the name of the child, or that its name was unknown to the jurors; overruled by COLERIDGE, J., at the trial, on the ground that there was no presumption, from the mere fact of birth, that the child had a name, it being a bastard: that the indictment afforded no presumption of its having acquired a name by reputation or baptism: that an averment that the name was unknown, implied the acquisition of some name. Conviction held right.—R. *v.* WILLIS (1845), 1 Car. & Kir. 722; 1 Den. 80; 1 Cox, C. C. 136.

1992a. *S. P.* R. *v.* DRAKE (1850), 14 J. P. 483; 4 Cox, C. C. 333.

2011. *Add. Citation:*—2 Roll. Rep. 225.

2040a. —— ——.]—A prisoner was convicted on a count of an indictment in the following terms: "Statement of Offence. Accessory after the fact. Particulars of Offence. H. Q., . . ., knowing that one J. D. had committed a felony, to wit, housebreaking & larceny, did receive, comfort, harbour, or assist the said J. D." After verdict the judge permitted this count to be amended, the amendment consisting in striking out the words "housebreaking & larceny" in the particulars of offence & substituting the words "receiving stolen property":—*Held:* the count as originally drawn was bad, in that it omitted in the statement of offence to specify any felony, & the amendment was bad in that it did not in the particulars of offence describe the alleged felony as "receiving stolen property well knowing it to have been stolen" & the conviction must be quashed.—R. *v.* QUINTNER (1934), 25 Cr. App. Rep. 32, C. C. A.

2048. *Add. Annotation:*—**Refd.** Joel *v.* Barclay, [1937] 1 All E. R. 309.

2064a. Obtaining by false pretences—"On divers dates."]—R. *v.* ROBERTSON (1936), 80 Sol. Jo. 691; 25 Cr. App. Rep. 208, C. C. A.

2066. In headnote, after the word "forged" add "a bill of lading."

2076. *Add. Annotations:*—**Apld.** R. *v.* Disney (1933), 49 T. L. R. 284; R. *v.* Wilmot (1933), 97 J. P. 149. **Refd.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

2076a. Offences under Night Poaching Act, 1828 (c. 69).]—Applt. was convicted on a count of an indictment which charged that he "by night unlawfully took or destroyed game or rabbits in land at C. . . . or was in the said land by night with a gun, net, or other instrument for the purpose of unlawfully taking or destroying game," contrary to Night Poaching Act, 1828 (c. 69), s. 1:—*Held:* the count was bad, as it alleged two offences in the alternative & it was impossible to say of which offence applt. had been convicted.—R. *v.* DISNEY, [1933] 2 K. B. 138; 102 L. J. K. B. 381; 149 L. T. 72; 97 J. P. 103; 49 T. L. R. 284; 77 Sol. Jo. 178; 24 Cr. App. Rep. 49; 31 L. G. R. 176; 29 Cox, C. C. 635, C. C. A.

Annotation:—**Apld.** R. *v.* Wilmot (1933), 149 L. T. 407.

2076b. Shooting with intent to do grievous bodily harm or to maim, disfigure or disable.]—R. *v.* OTTAWAY (1933), 175 L. T. Jo. 424.

Offence under Road Traffic Act, 1930 (c. 43), s. 11 (1).]—*See* STREET TRAFFIC, No. 222c, *post.*

2102a. —— Prejudice to one defendant.]—Persons arrested together need not be tried together, &, if any one of them is likely to be embarrassed in his defence, ought not to be so tried. —R. *v.* TOWNSEND, R. *v.* HILDER (1924), 18 Cr. App. Rep. 117, C. C. A.

2105a. ——.]—When a statement by one accused intended to be put in evidence implicates another, the ct. should consider whether accused should not be tried separately.—R. *v.* SEYMOUR (1927), 20 Cr. App. Rep. 98, C. C. A.

2108. *Add. Annotation:*—**Folld.** R. *v.* Lonsdale (1930), 47 T. L. R. 80.

2109. *Add. Annotation:*—**N.F.** R. *v.* Lonsdale (1930), 47 T. L. R. 80.

PART VI. SECT. 4, SUB-SECT. 7.

sm. *Indecent exposure*—"*With intent to offend.*"]—Where the facts alleged necessarily implied that the act charged was committed "wilfully":—*Held:* notwithstanding the omission of that word, the information was sufficient.—R. *v.* SMOTHERS (1924), 57 N. S. R. 179.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 8.—B. (a).

f i. ——.]—Where ingredients of two distinct offences had been mixed together in a charge contrary to the settled principles of criminal procedure & in violation of Criminal Code, s. 710 (3):—*Held:* prisoner was entitled to his discharge.—R. *v.* CHUE, [1924] 4 D. L. R. 300; 34 B. C. R. 177.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 9.—B.

2087 iii. ——.]—R. *v.* MCDONALD (Ont.), [1928] 2 D. L. R. 787; 50 Can. Crim. Cas. 65.—**CAN.**

2087 iv. ——.]—R. *v.* JENKINS, [1932] 3 W. W. R. 505.—**CAN.**

st. *In same transaction.*]—Sect. 239 (*d*) of the Criminal Procedure Code, 1898, of India provides that persons who are accused of different offences committed in the course of the same transaction may be charged & tried together. The correctness of the joinder, which depends on the sameness of the transaction, is to be determined by looking at the accusation, & not by looking at the result of the trial under those provisions of sect. 239 (*d*). The sect. must be deemed to read "The persons accused of different offences committed in the course of the same transaction may be charged & tried together." It, therefore, was enough if the conspiracy was found in the accusation, & it need not be so found in the eventual result of the trial, the relevant point of time being that of the accusation. There had been a series of authorities in the Indian Cts. so decided & the question now for the first time had come up to the Judicial Committee for decision. The magistrates must be assumed in such cases to exercise their discretion fairly & honestly.—CHOUKHANI *v.* KING-EMPEROR, MUKHERJEE *v.* KING-EMPEROR (1938), 107 L. J. P. C. 35; 158 L. T. 437; 54 T. L. R. 454; 82 Sol. Jo. 271, P. C.—**IND.**

PART VI. SECT. 4, SUB-SECT. 9.—C

r. Read now "**2102a i.**"

s. Read now "**2102a ii.**"

t. Read now "**2102a iii.**"

u. Read now "**2102a iv.**"

2102a v. —— ——.]—R. *v.* WISER & MCCREIGHT, [1930] 1 W. W. R. 976; 54 Can. C. C. 117; 42 B. C. R. 517.—**CAN.**

2103 iii. ——.]—A man & a woman were tried jointly on the charge of having murdered the husband of the woman. They were convicted & sentenced to death. Each of the accused had applied to the trial judge for a separate trial, on the ground that statements had been made by each which would be admissible in evidence against the person making the statements, but which tended to incriminate the other accused, against whom the statements would be inadmissible. The trial judge had refused the applications:—*Held:* the refusal of the trial judge to grant separate trials did not amount to a miscarriage of justice, & afforded no ground of appeal. —A.-G. *v.* JOYCE, A.-G. *v.* WALSH, [1929] I. R. 526.—**IR.**

se. *Charge of vagrancy.*]—*Ex p.* WRIGHT, *Ex p.* PARKER (1910), 54 Can. C. C. 310.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 10.—A.

g i. —— *Acquittal on two counts—Conviction on third—Validity.*]—*Held:* it was open to the jury to find as they did.—BARTON *v.* R., [1929] 1 D. L. R. 634; S. C. R. 42; 51 Can. C. C. 1; *affg.*, 63 O. L. R. 299.—**CAN.**

se. *Conspiracy—Count relating to one conspirator—Joinder of count relating to all.*]—In an indictment for conspiracy it is improper to try together

2115a. —— ——.]—Indictments should not be multiplied, but where the law permits separate offences should be charged in separate counts of one indictment.—R. *v.* CLARKE (1925), 18 Cr. App. Rep. 166, C. C. A.

2115b. —— ——.]—Observations on the form of indictment where several defts. are charged with various offences of obtaining money by false pretences & conspiracy to defraud.—R. *v.* CARLESS, R. *v.* STAPLEY (1934), 25 Cr. App. Rep. 43, C. C. A.

2119a. Leaving counts on file — Undesirable practice.]—R. *v.* TEAPE-WHITE (1930), 22 Cr. App. Rep. 93, C. C. A.

2119b. —— **When justified.**]—(1) If, on a crucial part of the case, the prosecution intend to ask the jury to disbelieve the evidence of a witness called for the defence, counsel for the prosecution ought to cross-examine that witness or, at any rate, to make it plain, while the witness is in the box, that his evidence is not accepted.

(2) An indictment should be allowed to remain on the file only in exceptional circumstances, as, for example, where it appears that the conviction on the first indictment may be quashed on appeal on some technical ground, & the indictment left on the file relates to a similar matter.—R. *v.* HART (1932), 23 Cr. App. Rep. 202, C. C. A.

2119c. Offence must be of similar character.]—R. *v.* HILL (1930), 22 Cr. App. Rep. 54, C. C. A.

2138. *Add. Annotation :*—**Refd.** R. *v.* Davis, [1937] 3 All E. R. 537.

2140. After this case add :—

—— **Manslaughter & dangerous driving under Road Traffic Act, 1930 (c. 43), s. 11.**]—*See* STREET & AERIAL TRAFFIC, No. 222e, *post.*

2140a. —— **Rape & indecent assault on different persons.**]—Applt. was convicted upon an indictment which charged four offences, two of rape on a young girl on two different occasions, a third with stealing 12*s.* 6*d.* from the girl's father, & a fourth of indecent assault on a totally different person, a married woman. He appealed on the ground that the two charges of rape & the one of indecent assault should not have been tried together :—*Held :* these two dissimilar offences should not have been charged in one indictment, &, if so charged, should not have been tried together.—R. *v.* MUIR, [1938] 2 All E. R. 516; 26 Cr. App. Rep. 164, C. C. A.

2147a. —— —— **Two murders.**]—Applt. was charged upon an indictment which contained two counts, the first charging that on a day between Apr. 20 & Apr. 29, 1937, he murdered his wife, & the second charging that on a day between Apr. 21 & Apr. 29, 1937, he murdered his niece. Applt. was convicted of murder : —*Held :* although the joinder of two murders in one indictment was undesirable, the fact that in the present case there were two counts did not, in the circumstances, invalidate the conviction.—R. *v.* DAVIS, [1937] 3 All E. R. 537; 81 Sol. Jo. 591; 26 Cr. App. Rep. 95, C. C. A.

2150. *Add. Annotation :*—**Consd.** R. *v.* Southern (1929), 142 L. T. 383.

2151. *Add. Annotations :*—**Consd.** R. *v.* Kendrick & Smith (1931), 144 L. T. 748. **Folld.** R. *v.* Carless, R. *v.* Stapley (1934), 25 Cr. App. Rep. 43.

2155a. —— ——.]—R. *v.* LUBERG, No. 3156d, *post.*

---

a count relating to one accused & a count relating to that one jointly with the other two.—R. *v.* CHAMANDY, [1934] 2 D. L. R. 48; O. R. 208; 61 C. C. C. 224.—**CAN.**

sg. *Embezzlement & failure to pay statutory contributions.*]—An employer, who was charged, firstly & secondly, with failure to pay the National Health & the Unemployment Insurance contributions of certain employees, was charged, thirdly, with embezzling sums deducted from wages for that purpose. She pleaded guilty to the statutory charges, but objected to the third charge as irrelevant. The sheriff-substitute having sustained her objection, in respect that the third charge involved a reduplication of liability & penalty :—*Held :* the objection should have been repelled, in respect that the third charge was an entirely separate charge, & did not depend on the same *species facti* as the other charges, with regard to which it was immaterial whether contributions had or had not been obtained from employees.—STRATHERN *v.* CAISLEY, [1937] S. C. (J.) 118.—**SCOT.**

sj. *Several offences charged in the alternative.*]—An indictment is bad which charges several distinct offences in the alternative.—R. *v.* GATTO & TONELLATTO, [1938] 2 D. L. R. 228; 12 M. P. R. 483.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 10.—B.

2120 v. ——.]—Where the trial judge had tried together fifteen charges against the prisoner for different offences :—*Held :* there was no reason disclosed to question his discretion in doing so, since he sat without a jury, & the offences were all of a similar character & connected together by being parts of a systematic course of criminal conduct pursued by prisoner.—R. *v.* DUFF (Sask.), [1929] 1 D. L. R. 152; 50 Can. Crim. Cas. 246; [1928] 3 W. W. R. 550.—**CAN.**

2120 vi. ——.]—The judge has jurisdiction to try separate counts at the same time whether or not the accused consents to their trial together.—R. *v.* NECEMBER, [1931] 2 W. W. R. 810; 56 Can. C. C. 110; 44 B. C. R. 210.—**CAN.**

2120 vii. ——.]—R. *v.* NECEMBER (No. 2), [1931] 3 W. W. R. 356; 56 Can. C. C. 391.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 10.—C.

p i. —— ——.]—R. *v.* CARTER, [1931] 2 W. W. R. 127; 55 Can. C. C. 196.—**CAN.**

p ii. —— *Suborning perjury & fabricating evidence.*]—The accused, who was charged in the one indictment with suborning perjury &, also, with fabricating evidence in connection with said offence, applied for an order requiring the Crown to sever the indictment & elect to proceed first on one or other of the two charges :—*Held :* the joinder was not conducive to the ends of justice &, therefore, the order should be granted.—R. *v.* BRAUN (Sask.), [1928] 3 W. W. R. 226; 50 Can. Crim. Cas. 292.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 10.—D.

r i. —— *Shopbreaking & receiving stolen goods.*]—R. *v.* CROSS (Sask.), [1927] 4 D. L. R. 923; [1927] 3 W. W. R. 432; 49 Can. Crim. Cas. 77.—**CAN.**

a i. —— *Murder & accessory after fact of murder.*]—An indictment may contain a count charging an accused person with murder & also a count charging him with being an accessory after the fact of murder. *Semble :* in such a case the presiding judge may, in his discretion, call upon the prosecutor to elect as to which charge he will proceed with.—R. *v.* WILLIAMS (1932), 32 S. R. N. S. W. 504; 49 N. S. W. W. N. 144.—**AUS.**

a ii. —— *Conspiracy—Arson.*]—Joinder of counts upheld.—R. *v.* KADISHEVITZ, [1934] O. R. 213; 61 C. C. C. 193.—**CAN.**

a iii. —— *Obtaining by false pretences & conversion.*]—Accused was charged on an indictment containing 30 counts, some of which were in respect of obtaining sums of money by false pretences & others were in respect of fraudulently converting to his own use the same sums, being moneys entrusted to him for a particular purpose :—*Held :* the indictment was not bad by reason of Larceny Act, 1916 (c. 50), s. 40 (5) (*d*), which limits the joinder of charges of embezzlement & fradulent application or disposition, that provision being inconsistent with the provisions of Criminal Justice (Administration) Act, 1924.—ATTORNEY-GENERAL *v.* REILLY, [1937] I. R. 118.—**IR.**

PART VI. SECT. 4, SUB-SECT. 10.—E.

2152 i. *Cases requiring separate trial—Indecent assault & theft—Acts forming part of one transaction.*]—R. *v.* CASSIDY (Ont.), [1927] 4 D. L. R. 1106; 49 Can. Crim. Cas. 93.—**CAN.**

2161 i. *Cases not requiring separate trials—Similar acts—Separate indecent assaults.*]—An indictment charged accused with indecent assault upon one

2195. *Add. Annotation :*—**Refd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2201. *Add. Annotation :*—**Refd.** R. *v.* Cleghorn, [1938] 3 All E. R. 398.

2204a. —— —— Wrong statute inserted—Later statute in similar words.]—The accused, who was a trustee under a will, was charged with having in Mar. 1916, fraudulently converted to his own use certain shares deposited with him by a co-trustee. In an affidavit filed by the accused in defence to proceedings for an account commenced against him by the co-trustee in the Ch. Div., the accused swore that he had, with the approval of his co-trustee, invested the capital in his own business. Subsequently, in his preliminary examination in bkpcy., he made admissions to the Official Receiver in regard to the disposition of the capital by him. He was indicted for fraudulent conversion as a trustee under Larceny Act, 1916 (c. 50), s. 21, but the judge, on his notice being brought to the fact that that Act was not in force at the time when the offence was alleged to have been committed, allowed the indictment to be amended by the substitution of Larceny Act, 1861 (c. 96), s. 80, for the later statute. The two statutes define the offence in almost precisely the same words :—*Held :* (1) the indictment was defective within Indictments Act, 1915 (c. 90), s. 5 (1), by reason of the wrong statute having been inserted, but in view of the fact that the offence under the earlier Act was defined in almost the same words as those used in the later Act, applt. could not have been prejudiced by the amendment, nor could injustice have been done to any defence that he might have had. The amendment was, therefore, rightly allowed ; (2) the accused was not protected from prosecution by Larceny Act, 1861 (c. 96), s. 85, either in regard to acts disclosed by his affidavit or in regard to acts disclosed by his preliminary examination in bkpcy., as such disclosures were not "in consequence of any compulsory process of any court of law" ; (3) the admissions in the preliminary examination in bkpcy. were not admissions made "in any compulsory examination or deposition before any ct. on the hearing of any matter in bkcpy.," & could, therefore, be given in evidence at the trial without infringing Larceny Act, 1916 (c. 50), s. 43 (3).—R. *v.* TUTTLE (1929), 140 L. T. 701 ; 45 T. L. R. 357 ; 21 Cr. App. Rep. 85 ; 28 Cox, C. C. 610, C. C. A.

2218. *Add. Annotation :*—**Consd.** R. *v.* Cleghorn, [1938] 3 All E. R. 398.

2219a. ——.]—Applt. was accused of having obtained sums of money by way of deposit from persons, who desired to be employed as managers of public-houses, by representing to them that he would appoint them to those positions. The indictment contained eighteen counts, relating to nine distinct offences, which were charged alternatively as obtaining sums of money by false pretences, & as larceny by a trick of the same sums. In every one of the counts relating to false pretences, the indictment as originally framed ran : "by falsely pretending that he would appoint . . . as manager." At the close of the case for the prosecution the judge thought it right to amend the counts relating to false pretences so as to read "by falsely pretending that he was in a position to appoint," etc. The jury convicted applt. on all counts :—*Held :* (1) the conviction for false pretences must be quashed, as the amendment of an indictment allowed by Indictments Act, 1915 (c. 90), s. 5 (1), is an amendment of a defect in form, & not the alteration & revision of the substance of a charge, such as had taken place in this case, which must necessarily prejudice accused ; (2) the conviction for larceny must be quashed, because there was no evidence of larceny, as the persons seeking employment had in each case intended to part with their money ; (3) Larceny Act, 1916 (c. 50), s. 44 (3), could not apply where the indictment had charged false pretences & was up to the last moment wrong in substance.—R. *v.* HUGHES (1927), 136 L. T. 671 ; 91 J. P. 39 ; 43 T. L. R. 250 ; 28 Cox, C. C. 336, C. C. A.

2222a. Amendment within Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36), s. 2—No application to quash at trial.]—Applt. made an application for, &

---

little girl, & indecent assault, involving murder, upon another little girl. Both offences were libelled as having been committed on the same day at S. :—*Held :* the offences charged were so connected in time, circumstances, & character as to justify their inclusion in one indictment, & no sufficient reason had been shown for separation of the charges.—H.M. ADVOCATE *v.* BICKERSTAFF, [1926] S. C. (J.) 65.—SCOT.

a ii. —— *Indecent assault & carnal knowledge—Second count added in new trial.*]—A new trial having been ordered after conviction on a charge, preferred by the agent of the A.-G., of indecent assault on a young girl :—*Held :* the agent of the A.-G. was entitled on the second trial to arraign the accused on a new charge containing, in addition to counts alleging indecent assault, counts alleging carnal knowledge of the same girl at the same time.

In answer to the contention that by proceeding on the count for carnal knowledge the agent of the A.-G. deprived the accused of the right to elect a speedy trial thereon :—*Held :* the accused had already made a sufficient election to cover that charge ; it was admitted that the charge of carnal knowledge was one which might be founded upon the evidence disclosed in the depositions taken on the preliminary inquiry on which the accused had been committed for trial & that he had been brought before a District Ct. judge to make his election upon the charge in respect to which he had been committed & that he then demanded a jury trial ; therefore, it must be assumed that his demand for a jury trial related to the charge of carnal knowledge as well as to the other offences charged.—R. *v.* DREW (No. 2), [1933] 2 W. W. R. 243 ; 4 D. L. R. 592 ; 60 C. C. C. 229.—CAN.

sg. *Attempted subornation of perjury & attempt to dissuade witness.*]—Counts for attempted subornation of perjury & attempt to dissuade a witness from giving evidence may be joined in the same indictment.—R. *v.* SOLOMON (1932), 5 M. P. R. 67,—CAN.

PART VI. SECT. 4, SUB-SECT. 13.

k i. —— *Attempt to give jurisdiction.*]—A person committed on a charge which a district ct. judge has no jurisdiction to try under any circumstances, cannot be tried by such judge on a substituted charge, over which the judge has jurisdiction, on the election of accused.—R. *v.* CROVI, [1924] 4 D. L. R. 1072 ; 3 W. W. R. 534.—CAN.

r i. —— ——.]—An indictment disclosing no offence & bad in law, was amended at the trial so as to make it an entirely different charge :—*Held :* the amendment ought not to have been made.—R. *v.* LOFTUS (1926), 45 Can. Crim. Cas. 390 ; 59 O. L. R. 65.—CAN.

a (p. 236) **i. —— ——.**]—Defts. were convicted that they "did wrongfully & unlawfully break & enter by night the shop of S. with intent to commit an indictable offence ; to wit, to assault one S. contrary to the form of the statute in that behalf made & provided." The Crown intended to prefer a charge of shop breaking within sect. 461 of the Criminal Code :—*Held :* charge defective as lacking an averment of intent to commit an indictable offence in the shop.—R. *v.* MCNEIL, [1931] 3 M. P. R. 423.—CAN.

obtained, in Mar. 1938, a motor trade policy, & was supplied with two centificates of insurance. Some time afterwards, that policy was cancelled, because the certificates were being used for more persons than were covered. Applt., on being asked to return the certificates, stated that they were lost, & afterwards made a statutory declaration to that effect. On taking out these policies, applt. had given the name of his brother, & the policies were made out in the brother's name. Applt. & his brother were then indicted upon an indictment containing four counts: (i) for conspiracy to obtain a certificate of insurance by a false statement, (ii) for conspiracy to obtain possession of a document resembling a certificate of insurance, (iii) for making a false statement in order to obtain a certificate of insurance, & (iv) for having possession of a document resembling a certificate of insurance. The original indictment had only three counts, there having been an amendment at the instance of the ct. by dividing the first count into two counts The original first count charged the brothers with a conspiracy on divers dates to have in their possession with intent to deceive a document so closely resembling a certificate of insurance as to be calculated to deceive. It was contended that the amendment had the effect of preferring a new charge against applt., & one to which he had not been asked to plead. There had been no application at the trial that the indictment should be quashed:—*Held:* (1) the amendment was within Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36), s. 2, &, if this were not so, it could not be questioned now since no application to quash the indictment was made at the trial, as required by that sect.; (2) the document in question was properly described as one resembling a certificate of insurance, because, although at one time it had been a valid certificate, it had ceased to be so after the cancellation of the policy.—R. *v.* CLEGHORN, [1938] 3 All E. R. 398; 82 Sol. Jo. 731, C. C. A.

SECT. 5.—FINDING OF AN INDICTMENT BY A GRAND JURY (p. 237).

Note:—The grand jury is now abolished by Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36), s. 1.

2265. *Add. Annotation:*—**Refd.** R. *v.* Boothby (1933), 24 Cr. App. Rep. 112.

2295a. Bill for rape—True bill found for indecent assault—Necessity for fresh indictment.]—An indictment for rape was put before the grand jury & they indorsed on it, "No true bill for rape. A true bill for indecent assault (aggravated)," but no indictment for indecent assault was put before the grand jury. The prisoner was convicted:—*Held:* as there was no true bill for rape, & as there was no indictment for indecent assault, the conviction must be quashed.—R. *v.* KITCHING (1929), 141 L. T. 687; 45 T. L. R. 569; 21 Cr. App. Rep. 116, C. C. A.; *subsequent proceedings*, 21 Cr. App. Rep. 144, C. C. A.

2316. For "Criminal Law Amendment Act, 1835 (c. 35)," read "Criminal Law Amendment Act, 1885 (c. 69)."

Part VII.—Trial of Indictments.

2365. *Add. Annotations:*—**Folld.** R. *v.* Dennis, R. *v.* Parker, [1924] 1 K. B. 867. **Apld.** R. *v.* McDonnell (1928), 20 Cr. App. Rep. 163. **Refd.** R. *v.* Williams (1925), 19 Cr. App. Rep. 67; R. *v.* Gee, R. *v.* Bibby, R. *v.* Dunscombe, [1936] 2 All E. R. 89.

2365a. —— ——.]—A criminal ct. has no jurisdiction to try two separate indictments against two defts. at one & the same time, even with the consent of counsel for the prosecution & counsel for defts.—R. *v.* DENNIS, R. *v.* PARKER, [1924] 1 K. B. 867; 93 L. J. K. B. 388; 130 L. T. 830; 88 J. P. 84; 40 T. L. R. 420; 68 Sol. Jo. 563; 27 Cox, C. C. 632; 18 Cr. App. Rep. 39, C. C. A.

2365b. —— ——.]—A simultaneous trial of two indictments is a nullity.—R. *v.* MCDONNELL (1928), 20 Cr. App. Rep. 163, C. C. A.

Annotation:—**Folld.** R. *v.* Wilde (1933), 176 L. T. Jo. 110.

PART VI. SECT. 4, SUB-SECT. 14.

2241 i. *Application must be made to court of trial.*]—R. *v.* HANEY, [1925] 2 D. L. R. 83; 43 Can. Crim. Cas. 297; 65 O. L. R. 293.—**CAN.**

PART VI. SECT. 6.

2338 iii. ——.]—There is no authority in the Criminal Code allowing the A.-G. to grant a stay of proceedings upon an indictment or, as it was formerly termed, to enter a *nolle prosequi*, & then to remove the stay & allow such indictment to be again proceeded with. The proper procedure is for the Crown to prefer another "charge."—R. *v.* TAKAGISHI, [1933] 1 W. W. R. 54; 46 B. C. R. 281; 60 C. C. C. 34.—**CAN.**

2353 i. *Reasons for entering.*]—A *nolle prosequi* is usually granted where any improper & vexatious attempts are made to oppress deft., as by repeatedly preferring defective indictments for the same supposed offence or if it is clear that an indictment is not suitable against deft.—SHER SINGH *v.* JITENDRANATH SEN (1931), I. L. R. 59 Calc. 275.—**IND.**

PART VII. SECT. 1.

2365 i. *Separate indictments—Cannot be tried jointly.*]—A purported trial of two or more persons on separate charges for different offences is a nullity, even though their counsel offers no objection, or consents, thereto.—R. *v.* THEIRLYOCK (Alta.), [1928] 4 D. L. R. 431; [1928] 3 W. W. R. 225; 50 Can. Crim. Cas. 296.—**CAN.**

2365 ii. —— ——.]—R. *v.* HART R. *v.* KOZARUK (1929), 51 Can. Crim. Cas. 145; 24 Alta. L. R. 15; [1929] 1 W. W. R. 425.—**CAN.**

a i. —— *Stealing parcels from mails & receiving parcels so stolen.*]—*Held:* accused entitled to be tried by a jury, even though the value of the property stolen did not exceed $200.—R. *v.* IWANCHUK, [1927] 3 D. L. R. 539; [1927] 2 W. W. R. 325; 48 Can. Crim. Cas. 213; 22 Alta. L. R. 595.—**CAN.**

a ii. —— *Right to elect for trial by judge without jury—After true bill found—Criminal Code, s. 825.*]—R. *v.* THOMPSON, R. *v.* FOULKES (1908), 16 Man. L. R. 608.—**CAN.**

a iii. —— —— *Effect of election.*]—R. *v.* RELF (Alta.), [1927] 1 D. L. R. 874; [1927] 1 W. W. R. 29; 47 Can. Crim. Cas. 38.—**CAN.**

aa. *Offence punishable on indictment or on summary conviction—Decision as to method of trial.*]—Where a statute makes an offence punishable on indictment or on summary conviction, it makes it either an indictable offence or a non-indictable offence, & confers on the Crown prosecutor or on the trial magistrate, perhaps partly on each, the right or "option" of deciding how each particular offence shall be considered, tried & punished.—R. *v.* DENIS (Man.), [1927] 3 W. W. R. 400; 49 Can. Crim. Cas. 8.—**CAN.**

2365c. —— ——.]—Applt. was charged on two indictments, which were tried together, & he was convicted on both :—*Held :* the trial was a nullity &, in the circumstances of the case, the ct. would not exercise its power of ordering a *venire de novo*, but would merely quash the conviction.—R. *v.* WILDE (1933), 24 Cr. App. Rep. 98, C. C. A.

2401a. —— ——.]—The ct., disagreeing with the ct. below on the evidence of corroboration, recommends that persons accused of rape should be defended by counsel.—R. *v.* KELLY (1929), 21 Cr. App. Rep. 151, C. C. A.

2404a. —— **Warranted in case of alibi.**]—(1) The police have no right to suggest by questions to a person detained in custody that they have evidence of his guilt ; answers to such a suggestion are not admissible in evidence. (2) When the defence is an alibi defts. would do well to disclose it in the ct. below. Such a defence usually warrants legal aid.—R. *v.* BROWN & BRUCE (1931), 23 Cr. App. Rep. 56, C. C. A.

2409. After this case add :—

——.]—This Act is now replaced by Poor Prisoners' Defence Act, 1930 (c. 32).

2458a. —— **When necessary.**]—On a plea of guilty to a charge of murder, the judge asked counsel to interview the prisoner & explain the position to him. After interviewing the prisoner, counsel told the judge that the question had occurred to him whether the prisoner was fit to plead to the indictment. The senior medical officer of the prison where the prisoner had been in custody was called, & said that he saw no reason to depart from the view he had put forward in a report, which was before the Judge, & that the prisoner was, in his opinion, fit to plead. The indictment was again put to the prisoner, & he again pleaded guilty, & was sentenced to death :—*Held :* the procedure followed was perfectly proper & there was, in the circumstances, no necessity to empanel a jury to try the issue whether the prisoner was or was not fit to plead.—R. *v.* VENT (1935), 25 Cr. App. Rep. 55, C. C. A.

2567. *Add. Annotations :*—**Folld.** R. *v.* Hussey (1924), 18 Cr. App. Rep. 121 ; R. *v.* Hancock (1931), 145 L. T. 168.

2567a. ——.]—(1) Applt. was charged upon an indictment with breaking & entering a house with intent to commit a felony. At the trial applt. pleaded guilty to entering only, which plea was treated as a plea of guilty generally :—*Held :* there was no plea of guilty & the case must go back, & prisoner asked to plead again to the indictment.

(2) Applt. at the trial asked that five charges of false pretences might be taken into consideration when awarding sentence, but the ct. refused as they were not offences of a similar nature to housebreaking :—*Held :* the ct. would not make an order that the ct. of quarter sessions should take into consideration the five cases of false pretences, but it might take them into consideration if certain conditions were fulfilled.—R. *v.* LLOYD (1923), 130 L. T. 319 ; 27 Cox, C. C. 576 ; 17 Cr. App. Rep. 184, C. C. A.

2571a. Plea of guilty—By person fit to plead but not responsible for his actions—Effect of plea.]—R. *v.* TEBBITT (1912), *Times*, Apr. 26.

2571b. —— **Committal for trial.**]—Applt. was charged before the magistrates with larceny. The evidence for the prosecution was given, &, at the conclusion of that evidence, the chairman of the bench asked him whether he pleaded guilty or not guilty. Applt. pleaded guilty, under the impression, as he alleged upon the appeal, that he was to be dealt with there & then. The chairman at no time asked him whether or not he consented to have his case dealt with summarily, & the procedure prescribed by Criminal Justice Act, 1925 c. 86), s. 24, was not followed. Upon applt. pleading guilty, he was at once committed for trial at the assizes. He contended that a plea of *autrefois convict* would have been maintainable in answer to the indictment at the assizes :—*Held :* the cases of *R.* v. *Sheridan*, [1936] 2 All E. R. 883 ; Digest Supp., and *R.* v. *Grant*, [1936] 2 All E. R. 1156 ; Digest Supp., were distinguishable from the present case, in that in those cases the accused had been asked if he consented to his case being dealt with summarily. Where the procedure under the Criminal Justice Act, 1925 (c. 86), s. 24, is not followed, no plea of *autrefois convict* can be maintained if the accused, after a plea of guilty, is committed for trial.—R. *v.* BRIGGS, [1938] 1 All E. R. 529, C. C. A.

2582. *Add. Annotation :*—**Refd.** R. *v.* Gordon (1925), 133 L. T. 734.

2585a. Crime involving more serious offence in foreign country—Possibility of prosecution by foreign Government.]—R. *v.* FRIEDERIKSEN (1927), 164 L. T. Jo. 45.

PART VII. SECT. 4, SUB-SECT. 1.—B. (b).

2399 i. *Defence by counsel—Accused must consent to representation.*]—No ct. has any authority to force upon a prisoner the services of a counsel if he is unwilling to accept them.—R. *v.* SUKH DEV (1929), I. L. R. 11 Lah. 220. —IND.

PART VII. SECT. 5, SUB-SECT. 1.

2563 ii. ——.]—Acceptance of plea of guilty.—R. *v.* BLISS, [1937] 1 D. L. R. 1 ; 67 Can. C. C. 1.—CAN.

p i. —— *Effect of—Accused estopped from calling on prosecution to establish guilt.*]—R. *v.* ROVONELLI (1925), 44 Can. Crim. Cas. 354.—CAN.

p ii. —— ——.]—A plea of guilty is a plea to the charge & does not necessarily amount to a confession of all the facts alleged.—SUPERINTENDENT & REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* JNANENDRA NATH GHOSH (1929), I. L. R. 56 Calc. 1145.—IND.

p iii. —— *Induced by mistake—Right to withdraw.*]—R. *v.* AH TOM, [1928] 2 D. L. R. 748 ; 49 Can. Crim. Cas. 204 ; 60 N. S. R. 1.—CAN.

p iv. —— *Power of court to enter plea of not guilty.*]—Where an accused pleads guilty the ct. has inherent power to enter a plea of not guilty if for any reason the ct. deems it advisable in the interests of justice to put such a plea on the record.—R. *v.* KUMALO, [1930] App. D. 193.—S. AF.

q i. —— ——.]—Where accused is indicted for murder, the question of insanity is raised by a plea of not guilty as much as the fact of killing.—R. *v.* MCCOSKEY, [1927] 2 D. L. R. 539 ; 47 Can. Crim. Cas. 122 ; 60 O. L. R. 44.—CAN.

PART VII. SECT. 5, SUB-SECT. 2.

2574 ii. ——.]—A plea of guilty under the Motor Vehicles Act, 1923 (N. S.), may be withdrawn.—R. *v.* MCNEIL, [1933] 1 D. L. R. 349 ; 6 M. P. R. 8 ; 59 C. C. C. 169.—CAN.

sm. *Prisoner induced to plead guilty —Failure of inducement.*]—Prisoner pleaded guilty on a promise by the prosecution to cause a minimum fine to be imposed :—*Held :* prisoner could withdraw this plea on appeal, a maximum fine having been imposed.—R. *v.* STONE (1932), 4 M. P. R. 455 ; 58 C. C. C. 262.—CAN.

PART VII. SECT. 6, SUB-SECT. 2.—B.

e i. —— *Evidence must be shown to be material.*]—R. *v.* CARRIER (Sask.) (1929), 51 Can. Crim. Cas. 420.—CAN.

2710. *Add. Annotation :*—**Refd.** R. *v.* Birch (1924), 93 L. J. K. B. 385.

2730. *Add. Annotations :*—**Refd.** R. *v.* Birch (1924), 93 L. J. K. B. 385; R. *v.* Harris (1927), 20 Cr. App. Rep. 144.

2730a. —— —— ——.]—Where, at the trial of an accused person for a criminal offence, a witness for the prosecution denies statements contained in the deposition sworn by the witness at the police ct., & leave has been obtained to treat the witnesses as hostile, counsel for the prosecution is entitled to cross-examine the witness on the statements contained in the depositions taken before the justices. But the depositions are not evidence at the trial, though they may be used to impeach the credit of the witness.—R. *v.* BIRCH (1924), 93 L. J. K. B. 385; 88 J. P. 59; 40 T. L. R. 365; 68 Sol. Jo. 540; 18 Cr. App. Rep. 26, C. C. A.

2731a. After close of case for defence.]—A judge at a criminal trial has the right to call a witness not called by either the prosecution or the defence, without the consent of either the prosecution or the defence, if in his opinion that course is necessary in the interests of justice, but in order that injustice should not be done to accused, a judge should not call a witness in a criminal trial after the case for the defence is closed, except in a case where a matter arises *ex improviso*, which no human ingenuity can foresee, on the part of prisoner.—R. *v.* HARRIS. [1927] 2 K. B. 587; 96 L. J. K. B. 1069; 137 L. T. 535; 91 J. P. 152; 43 T. L. R. 774; 28 Cox, C. C. 432; 20 Cr. App. Rep. 86, C. C. A.

Annotation :—**Distd.** R. *v.* Liddle (1928), 21 Cr. App. Rep. 3.

2731b. —— **Where defence of alibi raised.**]—R. *v.* LIDDLE (1928), 21 Cr. App. Rep. 3, C. C. A.

Annotation :—**Consd.** R. *v.* McMahon (1933), 24 Cr. App. Rep. 95.

2767. *Add. Annotation :*—**Refd.** Jacobs *v.* Jacobs & Solomon, [1936] 1 All E. R. 67.

2808a. Conviction on depositions—Witnesses not heard.]—Applt. was charged before justices with having broken into the pavilion of a bowling club & stolen 11*s*. After the evidence for the prosecution he reserved his defence. The justices then decided to commit him for trial, whereupon he said that he pleaded guilty, & that it would be unnecessary to call witnesses at the trial. The justices committed him for trial, &, acting under Criminal Justice Act, 1925 (c. 86), s. 13, bound the witnesses over to attend the trial conditionally. At the trial at quarter sessions applt. pleaded not guilty, & asked that his trial might be postponed till the next session, in order that he might prove an alibi. The chairman refused the application, & then the depositions, after being first proved in accordance with the Act, were read to the jury, & upon these depositions alone they were invited to convict, & did convict, applt. Further, the chairman, in his summing up to the jury, reminded them that applt. had pleaded guilty before the justices but failed to remind them that he had pleaded not guilty at the trial & gave no further direction to the jury :—*Held :* (1) though evidence offered by depositions alone is undesirable, this course is not contrary to the language of the Act, &, on this alone, the ct. could not quash the conviction; (2) the case was one requiring a careful direction to the jury, but here there was no summing up at all, & for this reason the conviction should be quashed.—R. *v.* COLLINS, [1938] 3 All E. R. 130; 159 L. T. 71; 102 J. P. 328; 54 T. L. R. 842; 82 Sol. Jo. 436; 36 L. G. R. 512; 26 Cr. App. Rep. 177, C. C. A.

2810. *Add. Citation :*—1 Chit. 352.

2822a. —— **To acquaint himself with indictment.**]—R. *v.* PECKHAM, No. 5876a, *post*.

2823. *Add. Annotation :*—**Apld.** R. *v.* Baggott (1927), 20 Cr. App. Rep. 92.

2839a. Reference to fact that photographs of accused shown to witnesses.]—(1) Counsel for the prosecution should not employ as part of his case the fact that certain witnesses have been shown a photograph of prisoner, even if the showing of the photograph was perfectly proper.

(2) Where a police witness has been asked by prisoner "where did I stay on the night of the alleged crime?" &, in his answer, has launched a series of fresh charges against the accused, relating to his stay at that place, but based on mere suspicion & not included in the indictment or referred to in the depositions, an irregularity has occurred which goes to the root of a conviction & necessitates that it should be quashed.

PART VII. SECT. 7, SUB-SECT. 6.—C.

sc. *Effect of cross-examination of party's own witness.*]—Where a party is allowed to cross-examine his own witness, the effect of that cross-examination must be to discredit that witness altogether & not merely to get rid of part of his testimony, & hence that witness's evidence must be excluded altogether. In the case of a witness for the prosecution, this means, so far as it supports the case for the prosecution, for obviously the defence is entitled to rely on so much of his evidence as supports their case.—R. *v.* MOKBUL KHAN (1928), I. L. R. 56 Calc. 145.—**IND.**

PART VII. SECT. 7, SUB-SECT. 6.—D.

se. *After close of case for prosecution—Witness called to supply omission in evidence.*]—R. *v.* HEPWORTH, [1928] App. D. 265.—**S. AF.**

sf. *After plea of guilty—Taking evidence of complainant—For purpose of deciding sentence.*]—While it is within the power of the judge, after a plea of guilty has been entered & before sentence is passed, to hear the evidence of the complainant in order to assist him in deciding on the proper sentence, he must avoid the danger of giving consideration, in passing sentence, to aggravating circumstances disclosed by such evidence which may change the character of the offence charged against the prisoner.—R. *v.* WHEPDALE, [1927] 3 W. W. R. 704; 49 Can. Crim. Cas. 62; 22 Sask. L. R. 148.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 5.

b i. —— ——.]—In the present case the judge applied to hold that there was a violation of the essentials of justice in that at the hearing of a charge of having opium in possession, to which the accused pleaded guilty, the Crown did not make certain he fully understood the charge. On appeal :—*Held :* if the judge was right the order which he made for the discharge of the accused should not be disturbed, but, after reviewing the evidence which was before the judge, it left no reasonable doubt that the accused had full knowledge of the charge to which he pleaded guilty. The appeal was allowed, the writ of *habeas corpus* with *certiorari* in aid set aside, & the re-arrest of the accused to serve the remainder of his sentence ordered.—R. *v.* YUEN YICK JUN, [1938] 2 W. W. R. 274.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 7.—B.

2816 iii. —— ——.]—The duty of a Public Prosecutor is to represent, not the police, but the Crown, & this duty should be discharged fairly & fearlessly & with a full sense of the responsibility attaching to the position. In a capital case the duty of the Crown is to place before the ct. all materials irrespective of the question as to whether they exculpate accused or incriminate him.—KUNJA SUBUDHI *v.* R. (1928), I. L. R. 8 Pat. 289.—**IND.**

(3) Where a successful applt. has a previous unexpired sentence to serve, the ct. will generally order that the time that has elapsed between the notice & the determination of the appeal which has succeeded shall count towards the completion of the earlier sentence, even though there has been no application by applt. to that effect.—R. *v.* HASLAM (1925), 134 L. T. 158; 28 Cox, C. C. 105; 19 Cr. App. Rep. 59, C. C. A.

Annotations:—As to (1) **Refd.** R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845; R. *v.* Hinds, [1932] 2 K. B. 644.

2839b. Second trial—Reference to quashed conviction.]—(1) On an allegation of breaking & entering the jury must be directed on the issue of breaking.

(2) When a trial has been set aside on a *venire de novo* the conviction quashed should not be mentioned to the jury at the second trial.—R. *v.* LLOYD (1924), 18 Cr. App. Rep. 12, C. C. A.

2839c. Overstatements.]—R. *v.* DRISCOLL & ROWLANDS (1928), 20 Cr. App. Rep. 161, C. C. A.

2840a. Duty of prosecution to disclose everything.]—(1) The prosecution ought to disclose at the trial all relevant evidence. (2) Deft. who gives evidence of his previous conviction cannot set up that that evidence has been wrongly admitted.—R. *v.* GUERIN (1931), 23 Cr. App. Rep. 39, C. C. A.

2867. *Add. Annotations:*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587; R. *v.* Liddle (1928), 21 Cr. App. Rep. 3.

E. Reading Deposition of Absent Witness.
(Vol. XIV., p. 276.)

See, now, Criminal Justice Act, 1925 (c. 86), s. 13.

2879a. —— ——.]—On a plea of guilty (1) there must be legal proof of any previous convictions given in evidence, & (2) no deposition of a witness, absent through illness, should be put in if all the statutory requirements in such a case have not been fulfilled.—R. *v.* FINNEY (1924), 18 Cr. App. Rep. 41, C. C. A.

2895a. *S. P.* R. *v.* HUNT (1847), 2 Cox, C. C. 261.

2978. For "R. *v.* WOOD" read "R. *v.* WOODS & MAY."

2986a. Defence of alibi—Should be raised at earliest possible moment.]—R. *v.* JONES (1928), 21 Cr. App. Rep. 27, C. C. A.

2986b. —— **Should be raised in court below.**]—R. *v.* BROWN & BRUCE, No. 2404a, *ante.*

2988a. —— **Should not refer to probable consequences of verdict of guilty in murder trial.**]—R. *v.* FRAMPTON (1928), 21 Cr. App. Rep. 17, C. C. A.

2990a. Right of counsel for accessory to discuss medical evidence.]—MAHADEO *v.* R., No. 8541a, *post.*

2995a. ——.]—If the ct. is of opinion that there is no case against accused, it ought to be withdrawn from the jury.—R. *v.* HASLAM (1926), 19 Cr. App. Rep. 163, C. C. A.

3007a. ——.]—(1) On a trial for larceny as a bailee there must be a direction on the point whether the conversion was fraudulent or not.

(2) An accused person must be asked whether he wishes to give evidence on oath or call witnesses.—R. *v.* MOORE (1924), 18 Cr. App. Rep. 29, C. C. A.

3008. *Add. Annotation:*—**Distd.** R. *v.* Villars (1927), 20 Cr. App. Rep. 150.

PART VII. SECT. 7, SUB-SECT. 7.—D. (a).

2843 ii. ——.]—Counsel need not call all witnesses on the back of the indictment, but they should be in ct., & if called by the defence, become witnesses for the defence.—R. *v.* SING, [1936] 1 D. L. R. 36; 64 Can. C. C. 328; 50 B. C. R. 32.—**CAN.**

2859 i. *Accused may insist on witness being called—By prosecution.*]—R. *v.* MACKINNON, [1930] 3 W. W. R. 548.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 7.—E. (a).

h i. ——.]—*Held:* the mere fact that accused did not have the assistance of a legal adviser did not show that he had not had a full opportunity for cross-examination, as he was present when the deposition was taken & made no request for time or delay.—R. *v.* MCDONALD, [1927] App. D. 110.—**S. AF.**

k i. ——.]—R. *v.* MCDONALD, [1927] App. D. 110.—**S. AF.**

p i. —— —— *Whether attendance procurable under subpœna.*]—G. was indicted for incest. S., a daughter of accused, who had made a deposition at petty sessions in which she swore that accused had committed the alleged offence, was called as a witness at the trial, & failed to appear, having gone into the Irish Free State. Her deposition was read to the jury, who having heard the accused's evidence, convicted him of the offence charged: —*Held:* the conviction should be quashed, as it had not been shown that the attendance of the witness, whose deposition had been put in evidence, could not have been procured by service on her of a writ of subpœna under the Irish Free State Act, 1924.—R. *v.* GILCHRIST, [1925] N. 27.—**IR.**

p ii. —— ——.]—R. *v.* BELL, [1930] 2 D. L. R. 647; 53 Can. C. C. 44; 42 B. C. R. 136.—**CAN.**

p iii. —— —— *Seaman.*]—On applying sect. 999 of the Criminal Code, with respect to the depositions of certain witnesses alleged to have recently left Vancouver as part of the Japanese crew of a steamer bound for the Orient & therefore to be "absent from Canada":—*Held:* the fact that names appeared on the crew list similar to the names of said witnesses was, in the absence of evidence to the contrary, & in view of the regulations governing the landing of Japanese sailors & the other circumstances, sufficient to show the identity of said members of the crew with said witnesses & to justify the inference that the witnesses were absent from Canada.—R. *v.* FURUZAWA (No. 1), [1930] 1 W. W. R. 953; 955; 53 Can. C. C. 398; 42 B. C. R. 541, 548.—**CAN.**

p iv. —— *Witness dangerously ill—Use of.*]—Under Crimes Act, 1900, s. 406, only so much of a deposition tendered in evidence should be read to the jury as is relevant & properly admissible in evidence.—R. *v.* GLOVER (1928), S. R. N. S. W. 482; 45 N. S. W. W. N. 148.—**AUS.**

sp. *Proof of absence.*]—CAUFIELD *v.* R. (1926), 48 Can. Crim. Cas. 109; Q. R. 42 K. B. 449.—**CAN.**

sr. *Evidence given in former trial—Admission by counsel of facts essential to admission.*]—Applts. were convicted of removing, & two of them of importing, goods of over $200 in value & liable to forfeiture, contrary to Customs Act, R. S. C., 1927. At their trial the Crown proposed to put in, under sect. 999 of the Code, evidence given at previous trials, at which the juries had disagreed, by one W. Counsel for the accused admitted "every fact essential to the admission of the evidence," & the evidence offered was put in:—*Held:* the admission of counsel, while it rendered unnecessary the establishment of the various facts required by sect. 999 to be proved before the evidence of W. could have been admitted, did not in any way identify the documents read to the jury as the evidence given by W. on the former trials; &, there being no proof that the statements put in were in fact the evidence of W., & there being no consent that they were, they were wrongly received, & applts. were entitled to a new trial.—MCDONALD, CONTER & O'HEARN *v.* R., [1930] S. C. R. 569; 54 Can. C. C. 349.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 8.—B.

sq. *Full cross-examination impossible through act of prosecution—Right to acquittal.*]—QUEBEC LIQUOR COMMISSION *v.* GOULET (Que.) (1929), 52 Can. Crim. Cas. 392.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 8.—C.

k i. —— ——.]—Where a person is charged with stealing goods, & the fact that the goods were sold & delivered to him is proved in evidence, the case must not be allowed to go to the jury.—R. *v.* FIESEL (1924), 42 Can. Crim. Cas. 150.—**CAN.**

st. *Trial without jury—Defending counsel entitled to make submission that evidence for Crown insufficient.*]—R. *v.* JONES (Sask.), [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380; [1926] 3 W. W. R. 313.—**CAN.**

3009. *Add. Annotation:*—**Folld.** R. *v.* Villars (1927), 20 Cr. App. Rep. 150.

3009a. —— ——.]—A prisoner was charged with breach of recognisance, the Crown relying on a conviction at petty sessions during the period of the recognisance as constituting the breach. Evidence was given by a police officer that he had been present on the occasion of the alleged conviction at petty sessions, but no certificate of any such conviction was produced. The accused was given an opportunity of cross-examining the police officer, but was not given any opportunity of going into the witness-box or of calling witnesses on his behalf or of making any statement in answer to the charge:—*Held:* it was at least doubtful whether there was any proper evidence of the conviction at petty sessions; but, apart from that consideration, the conviction must be quashed on the ground that the accused had been afforded no opportunity of giving evidence or of making any answer to the charge.—R. *v.* Pine (1932), 24 Cr. App. Rep. 10, C. C. A.

3010a. Should give evidence from witness box.]—A deft. is entitled under Criminal Evidence Act, 1898 (c. 36), to give his evidence from the witness box. The ct. in ordering otherwise must exercise a judicial discretion.—R. *v.* Symonds (1924), 18 Cr. App. Rep. 100, C. C. A.

3011a. ——.]—A deft. witness may in a proper case be asked in cross-examination whether he imputes improper motives to the witnesses against him.—R. *v.* Wilson (1924), 18 Cr. App. Rep. 108, C. C. A.

3051. *Add. Annotation:*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

3056. *Add. Annotation:*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

3060. *Add. Annotation:*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

3063. *Add. Annotation:*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

3065. *Add. Annotation:*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

3090. *Add. Citations:*—[1924] 1 K. B. 602; 93 L. J. K. B. 479; 130 L. T. 317; 88 J. P. 24; 68 Sol. Jo. 461; 27 Cox, C. C. 571.

Add. Annotation:—*As to* (2) **Apld.** Lawrence *v.* R., [1933] A. C. 699.

3090a. Accused writing & handing in signature.]—Counsel for the prosecution is not entitled to a second speech against accused, because at the jury's request the latter writes his signature & hands it in.—R. *v.* Baggott (1927), 20 Cr. App. Rep. 92, C. C. A.

3120a. —— **To assist undefended prisoner—To cross-examine.**]—The ct. should assist an undefended prisoner in putting questions by way of cross-examination.—R. *v.* Barker (1927), 20 Cr. App. Rep. 70, C. C. A.

3120b. —— —— **To inform prisoner of right to give evidence on oath.**]—R. *v.* Villars (1927), 20 Cr. App. Rep. 150, C. C. A.

3122a. —— **Does not include making disparaging suggestions.**]—There ought not to be a suggestion from the judge that deft. on trial has previously appeared in a criminal ct.—R. *v.* Miller (1926), 19 Cr. App. Rep. 84, C. C. A.

3123. *Add. Annotation:*—**Consd.** R. *v.* Bernhard, [1938] 2 K. B. 264.

3124. *Add. Annotation:*—**N.F.** R. *v.* Currell (1935), 25 Cr. App. Rep. 116. (*See special anno. to* No. 5919, *post.*)

3129a. ——.]—A direction must make it clear that the *onus* of proof is on the prosecution.—R. *v.* Hayton (1925), 18 Cr. App. Rep. 169, C. C. A.

3129b. ——.]—(1) When the evidence on the facts is in direct conflict, the jury should be directed that, if they are in doubt which version of the facts to accept, they should acquit.

Observations on (2) the granting of bail by the trial judge, & on (3) the relation of his

---

PART VII. SECT. 7, SUB-SECT. 8.—D.

3011 iii. —— *As to previous conviction.*]—R. *v.* Cippola (Ont.) (1928), 49 Can. Crim. Cas. 129.—**CAN.**

o i. —— ——.]—Two panels, tried together on one complaint, each gave evidence under Criminal Evidence Act, 1898, s. 1. In the opinion of the judge the evidence of neither incriminated the other:—*Held:* neither was entitled to cross-examine the other, such right of cross-examination being limited to the case where, in the opinion of the judge, the evidence given incriminated, or tended to incriminate, the fellow panel.—Gemmell & M'Fayden *v.* MacNiven, [1928] S. C. (J.) 5.—**SCOT.**

PART VII. SECT. 7, SUB-SECT. 9.—A.

3061 i. —— *Evidence omitted inadvertently.*]—R. *v.* Gregoire (1927), 47 Can. Crim. Cas. 288; 60 O. L. R. 363.—**CAN.**

k i. ——.]—*Held:* it was incompetent for the prosecutor to recall a witness after the case for the prosecution had been closed; the only circumstances in which a witness might be recalled after the case had been closed being when this was done by the judge *ex proprio motu* in order to clear up an ambiguity in the witness's evidence.—M'Nellie *v.* H.M. Advocate, [1929] S. C. (J.) 50.—**SCOT.**

PART VII. SECT. 7, SUB-SECT. 10.—B.

l i. ——.]—Where it was objected that the A.-G. exercised the right of reply, although deft. had called no witnesses:—*Held:* the A.-G. was not bound to sum up for the Crown on the conclusion of the evidence of the prosecution, but had the right of reply.—R. *v.* McLachlan (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 11.

h i. —— *To decide whether evidence admissible.*]—If evidence is tendered to prove the inadmissibility of evidence *primâ facie* admissible, it is the duty of the judge to receive & to decide the question of admissibility before the evidence is given in the hearing of the jury.—R. *v.* Treanor, R. *v.* Flood, R. *v.* Treanor, R. *v.* Kelly, [1924] 2 I. R. 193.—**IR.**

h ii. —— *To decide whether witness by his admission is accomplice.*]—It is for the judge, & not for the jury, to decide on an admission by a witness whether he is or is not an accomplice.—R. *v.* Young, [1923] S. A. S. R. 35.—**AUS.**

l i. —— ——.]—Since it is competent for a judge trying a criminal case with a jury to express his own opinions on the evidence, provided he makes it clear to them that they are the judges of the facts, including the credibility of the witnesses, the fact that during the cross-examination of a witness the judge interjected without qualification the remark, "She is telling the truth," thereby invading the exclusive province of the jury, was held, in view of his full & very careful charge which left them in no doubt that it was their exclusive duty to pass on the truth of the evidence, not to have brought about a miscarriage of justice within the Criminal Code, s. 1014 (*c*).—R. *v.* Olson, [1929] 2 D. L. R. 300; 1 W. W. R. 431; 51 Can. Crim. Cas. 122; 23 S. L. R. 321.—**CAN.**

3122 i. *Function of judge—Includes asking leading questions—& suggesting to counsel to waive their rights to address jury.*]—R. *v.* West (1925), 44 Can. Crim. Cas. 109; 57 O. L. R. 446.—**CAN.**

3122 ii. —— *Does not include asking leading questions.*]—A judge is not entitled to put leading questions to a witness, the answers to which are calculated to prejudice accused.—R. *v.* Laubscher, [1926] App. D. 276.—**S. AF.**

PART VII. SECT. 7, SUB-SECT. 12.—A.

3129 i. *Direction as to onus of proof.*]—R. *v.* Kolombjyc (Man.), [1926] 2 W. W. R. 126; 46 Can. Crim. Cas. 35.—**CAN.**

opinion of the verdict to the appeal.—R. *v.* DAVIDSON (1927), 20 Cr. App. Rep. 66, C. C. A.

3129c. ——.]—A summing up must make it clear to the jury, especially where there is conflicting evidence, that the *onus* of proof is on the prosecution.—R. *v.* REES (1928), 21 Cr. App. Rep. 35, C. C. A.

3133a. —— —— ——.]—While a judge is entitled to express his view of any evidence, he ought not to " invite " the jury to make a definite finding: any expression of his own views ought to be accompanied by a direction that the right of deciding on the facts is solely theirs.—R. *v.* MASON (1924), 18 Cr. App. Rep. 131, C. C. A.

3136a. Avoidance of unhappy expressions suggesting guilt of accused.]—(1) In a direction upon the evidence of children of tender years, there must be a clear warning about the nature of such evidence.

(2) It is wrong to invite a jury to consider whether deft. is " the sort of person " likely to commit the offence charged.—R. *v.* MARSHALL (1925), 18 Cr. App. Rep. 164, C. C. A.

3136b. Abandoned counts not to be referred to.]—(1) A summing-up must not call attention to counts that have been abandoned.

(2) On an indictment for obtaining by false pretences representations which did not lead to delivery of the property must be carefully distinguished from those which did.

(3) In dealing with intent to defraud the possibility of mistake should be considered in directing the jury.—R. *v.* GREEN (1930), 22 Cr. App. Rep. 46, C. C. A.

3137a. Where identity of accused in issue.]—(1) When the issue is identity of accused, especial care is needed in the charge to the jury; there ought to be a direction to them on his silence, if & when he hears a prejudicial statement.

(2) After notice of appeal, supplementary grounds should only be presented to the ct., if they disclose new matter.—R. *v.* PORTER (1927), 20 Cr. App. Rep. 55, C. C. A.

Annotation :—Generally, **Refd.** R. *v.* Walters, (1927), 20 Cr. App. Rep. 69.

3145a. ——.]—A judge in summing up is bound to put deft.'s case to the jury. A mere expression of the view of the judge is not sufficient to dispense with the duty of putting the case for the defence to the jury.—R. *v.* MARRIOTT (1924), 18 Cr. App. Rep. 74, C. C. A.

3145b. ——.]—A summing-up must deal carefully with statements by deft. which are not necessarily admissions though they may be so construed. Full effect must be given to the evidence of witnesses for the defence.—R. *v.* ROSEN (1931), 23 Cr. App. Rep. 70, C. C. A.

3146. *Add. Annotations :*—**Follid.** R. *v.* Thorpe (1925), 133 L. T. 95. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

3146a. —— ——.]—Where a prisoner is charged with murder, & there is evidence on which a verdict of manslaughter could be found, it is the duty of the judge to leave to the jury the question whether the crime committed has or has not been reduced to manslaughter, even though that defence has not been raised & even though that defence is inconsistent with the defence actually raised; but a judge should not leave the question of manslaughter to the jury, where there is no evidence upon which such a verdict could be based.—R. *v.* THORPE (1925), 133 L. T. 95; 89 J. P. 143; 41 T. L. R. 468; 69 Sol. Jo. 525; 28 Cox, C. C. 4; 18 Cr. App. Rep. 189, C. C. A.

Annotation :—**Consd.** R. *v.* Waddingham (1936), 80 Sol. Jo. 325.

3151a. —— **Defendant's explanation of facts.**]—The direction to the jury should deal with deft.'s explanation of facts alleged against him.—R. *v.* MORDECAI (1930), 22 Cr. App. Rep. 146, C. C. A.

3133 iv. —— —— ——.]—A judge, in summing up to a jury in a criminal case, is entitled to comment strongly on the facts.—R. *v.* SUTHERLAND, [1927] App. D. 88.—**S. AF.**

3133 v. —— —— ——.]—R. *v.* GALLEN (1930), 53 Can. C. C. 396.—**CAN.**

g (p. 297) i. —— *Where jury disagree.*]—A direction which amounted to no more than telling the jury that it was the duty of the minority not to allow any wilful or obstinate adherence to their own view to prevent them from giving full consideration to the view of the majority :—*Held :* not a misdirection.—R. *v.* OLHOLM & MCPHERSON, [1925] V. L. R. 377; 47 A. L. T. 10; 31 Argus L. R. 228.—**AUS.**

g (p. 297) ii. ——.]—It is advisable, but not essential, for the judge to explain to the jury that they are the sole judges of fact & are to rely upon their recollection of the evidence.—R. *v.* BECKETT (1931), 3 D. L. R. 660; 55 Can. C. C. 304; 3 M. P. R. 416.—**CAN.**

h (p. 297) i. —— —— ——.]—A judge's charge must be read as a whole, & leave to appeal will be refused if the ct. is satisfied that no miscarriage can have been caused by the charge taken as a whole.—R. *v.* KITCHEN (1933), 6 M. P. R. 100; 60 C. C. C. 4.—**CAN.**

a i. —— —— *Statements as to powers of Court of Criminal Appeal.*]—A judge in his charge to the jury made statements to the effect that " In the Ct. of Criminal Appeal, in the event of your finding a verdict of guilty, prisoner's counsel is entitled to have the whole matter reviewed," & " When a case goes to the Ct. of Criminal Appeal the natural bent of their minds is to give prisoner the benefit of the doubt " :—*Held :* the statements, taken in their proper context, did not amount to misdirection of such a character as to render the trial unsatisfactory, though it was desirable that such references to the Ct. of Criminal Appeal should not be made.—A.-G. *v.* MURRAY, [1926] I. R. 266.—**IR.**

a ii. —— —— *Reading passages from law reports.*]—Though reading passages from law reports is, as a rule, undesirable, it is not a misdirection.—R. *v.* NGA TIN GYI (1926), I. L. R. 4 Ran. 488.—**IND.**

a iii. —— —— *Reference to opinion in text book.*]—It is irregular & improper for the presiding judge in his summing up to the jury in a criminal trial to refer to an opinion expressed in a text-book, even though another passage in the same book has been put to a witness during the course of the trial.—R. *v.* MOFOKENG, [1928] App. D. 132.—**S. AF.**

k (p. 298) i. —— *Failure to make—Effect.*]—A fair test of the propriety of a trial judge's charge to the jury is that no objection was taken to it at the time it was delivered.—R. *v.* MELYNIUK & HUMENIUK, [1930] 2 W. W. R. 179; 4 D. L. R. 462; 53 Can. C. C. 296; 24 Alta. L. R. 545; *affd.*, [1931] S. C. R. 143; 2 D. L. R. 518.—**CAN.**

g (p. 298) i. —— *Distinction between evidence of facts & expert opinions.*]—Where there is not only no direct testimony of eye-witnesses that an alleged criminal act was committed, but there is the direct testimony of an eye-witness called by the Crown that the act had not been committed, & the Crown relies on a chain of circumstantial evidence in which the opinions of scientific witnesses are referred to as an important link, the charge to the jury should point out the importance of the distinction between evidence of scientific opinion & evidence of actual material facts & sufficiently remind the jury that such opinions were not testimony as to facts, & should specifically direct that the circumstances proven as actual objective facts must not only be consistent with the guilt of accused but must also be inconsistent with any reasonable hypothesis which would leave him innocent.—R. *v.* HISLOP, [1925] 1 W. W. R. 887; 43 Can. Crim. Cas. 384.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 12.—B.

3140 ii. —— ——.]—R. *v.* ARMSTRONG (1933), 59 C. C. C. 172.—**CAN.**

3151b. —— Alibi.]—(1) Detailed evidence of an *alibi* & other evidence must be carefully dealt with in the charge to the jury. (2) The judge should not put questions to a witness suggesting that he, the judge, is satisfied of deft.'s guilt.—R. *v.* RABBITT (1931), 23 Cr. App. Rep. 112, C. C. A.

3151c. Must warn jury against accepting mere suggestion by prosecution in cross-examination—No evidence in support.]—The jury must be warned against the acceptance of a mere suggestion by the Crown in cross-examination unsupported by evidence on a material point.—R. *v.* ALEXANDER (1924), 18 Cr. App. Rep. 139, C. C. A.

3155. *Add. Annotation:*—Consd. R. *v.* Donovan (1934), 50 T. L. R. 566.

3156a. Indictment alleging several offences—Cases must be clearly distinguished.]—When an indictment alleges specific offences on distinct dates the jury should be warned to deal with each occasion separately, & not to permit inadequate evidence in the one to supplement inadequate evidence in the other.—R. *v.* ROSS (1924), 18 Cr. App. Rep. 141, C. C. A.

3156b. —— ——.]—Where an indictment for indecent assault contains a number of counts, each count charging a separate assault on a different person, the jury should be directed not to return a general verdict but to return a verdict on each count, & they should also be warned to draw a careful distinction between the evidence on each count & the evidence on every other count & not to supplement the evidence on any particular count by looking at the evidence as a whole.—R. *v.* BAILEY, [1924] 2 K. B. 300; 93 L. J. K. B. 989; 132 L. T. 349; 88 J. P. 72; 27 Cox, C. C. 692; 18 Cr. App. Rep. 42, C. C. A.

Annotation:—**Apld.** R. *v.* Southern (1929), 142 L. T. 383.

3156c. —— ——.]—If counts for fraudulent conversion & for obtaining by false pretences are left to the jury, they must be directed on each offence.—R. *v.* MACLENNAN (1925), 19 Cr. App. Rep. 37, C. C. A.

3156d. —— —— Indictment containing count for conspiracy.]—(1) Where several prisoners are tried together upon an indictment containing counts for various offences against them individually & also a general count for conspiracy against them all, great care should be taken in directing the jury to keep the issues clear & to explain the relation of each count to the general count for conspiracy. In such a case it is a misdirection for the judge to tell the jury: "You must take the case as a whole & not in bits."

(2) Observations on the practice of charging a specific crime & adding a charge of conspiracy to commit that crime.—R. *v.* LUBERG (1926), 135 L. T. 414; 90 J. P. 183; 28 Cox, C. C. 264; 19 Cr. App. Rep. 133, C. C. A.

3156e. —— ——.]—(1) In cross-examination of a person accused of a sexual offence, questions should not be asked tending to show that he is a person likely to commit the offence alleged.

(2) If separate charges are included in an indictment, the jury should be carefully cautioned against allowing one to corroborate the other.—R. *v.* COULMAN (1927), 20 Cr. App. Rep. 106, C. C. A.

3156f. —— ——.]—(1) A prisoner was charged with two distinct sexual offences, one against a young boy, & the other against a girl aged five. The charges were included in one indictment & were tried together. In his summing-up the judge referred first to the evidence relating to one offence, & subsequently to the evidence relating to the other, but he did not warn the jury that they must be careful to distinguish the evidence relating to one offence from the evidence relating to the other, & that they must not supplement the evidence in regard to one of the offences by looking at the evidence as a whole, nor were the jury directed to find separate verdicts on each charge:—*Held:* the conviction must be quashed.

(2) With regard to the offence against the girl, corroboration was required by Children Act, 1908 (c. 67), s. 30, & there was evidence which might be regarded as corroboration of her story. The judge, in his summing-up, referred to this evidence, but made no reference either to the statute or to the necessity for corroboration in this case:—*Held:* though the mere omission to refer to the statute would not in itself be a ground for quashing the conviction, yet since neither the statute nor the necessity for corroboration had been brought to the attention of the jury, the conviction must be quashed on that ground also.

(3) Where corroboration is not required by statute but only as a rule of practice, the jury should be directed in regard to corroboration in the terms laid down in *R.* v. *Cratchley*, 9 Cr. App. Rep. 235.

(4) *Qu.:* whether the evidence of a young child can be admitted unsworn under Children Act, 1908 (c. 67), s. 30, unless the judge has affirmatively satisfied himself, in the presence of the accused & jury, that the child possesses a degree of intelligence sufficient to justify the reception of its evidence & understands the duty of speaking the truth.—R. *v.* SOUTHERN (1929), 142 L. T. 383; 29 Cox, C. C. 61; 22 Cr. App. Rep. 6, C. C. A.

Annotation:—*As to* (2) **Distd.** R. *v.* Gregg (1932), 102 L. J. K. B. 126.

3156g. Need not include all defendant's evidence.]—(1) A summing-up need not include a reading of the whole of deft.'s evidence.

(2) Severity of sentence in the case of a subordinate acting under orders.—R. *v.* SPELLEN (1931), 23 Cr. App. Rep. 130, C. C. A.

3157. For "second trial before same jury—Clear direction essential—Same defendant" read "Second trial—Before same jury—Clear direction essential—Same defendant."

3157a. —— ——.]—A jury trying a second or other charge against accused should be warned to disregard the evidence in the previous trial.—R. *v.* LEE (1927), 20 Cr. App. Rep. 68, C. C. A.

3158. For "—— —— Different defendants" read "—— —— —— Different defendants."

3152 i. *Need not go into every detail of evidence.*]—R. *v.* BOAK (B.C.) (1925), 44 Can. Crim. Cas. 225.—CAN.
3153 ii. ——.]—DELISLE *v.* R. (Que.) (1929), 51 Can. Crim. Cas. 253.—CAN.

3158a. —— **First trial set aside on venire de novo —Reference to first conviction.**]—R. *v.* LLOYD, No. 2839b, *ante.*

3165a. —— ——.]—(1) When prisoners are tried together, the direction to the jury must carefully discriminate between the respective cases. (2) In Prevention of Crime Act, 1908 (c. 59), s. 10 (4), " seven days " means seven clear days.—R. *v.* DEAN (1924), 18 Cr. App. Rep. 21, C. C. A.

3165b. —— —— **Counts for other offences included.**]—When two persons are jointly indicted for conspiracy, & also, in other counts, for other offences, it is wrong to lead the jury to believe that unless both are convicted, neither may be convicted on one of the other counts.—R. *v.* TAYLOR (1924), 18 Cr. App. Rep. 153, C. C. A.

3165c. —— ——.]—When several accused are jointly charged with knowingly receiving stolen property, there must be a careful ruling about the possession of each.—R. *v.* PECKHAM (THE YOUNGER) (1927), 20 Cr. App. Rep. 72, C. C. A.

3165d. —— ——.]—A charge to a jury trying co-defts. must carefully distinguish between the cases of each.—R. *v.* MACDONALD (1928), 21 Cr. App. Rep. 33, C. C. A.

3165e. —— ——.]—In charging the jury the judge must distinctly put the defence of each prisoner to them.—R. *v.* BROOKS (1929), 21 Cr. App. Rep. 112, C. C. A.

3165f. —— ——.]—On the trial of an indictment for breaking & entering & receiving stolen property against more than one deft., care must be taken to put the defence of each deft. to the jury & to warn them against convicting on mere suspicion of breaking or of possession.—R. *v.* SMITH (1931), 23 Cr. App. Rep. 135, C. C. A.

3165g. —— ——.]—A summing-up on a joint indictment containing several counts must carefully distinguish the evidence against each deft., & when fraudulent intent is the gist of the offence must insist that guilty knowledge must clearly be found to justify a conviction.—R. *v.* NEWBERY & ELMAN (1931), 23 Cr. App Rep. 105, C. C. A.

3172a. Where unsworn statement & evidence on oath of witness in conflict.]—R. *v.* HARRIS (1927), 20 Cr. App. Rep. 144, C. C. A.

3174a. ——.]—On a trial for murder the defence of manslaughter ought not to be withdrawn from the jury where there is evidence to support it.—R. *v.* BALL (1924), 18 Cr. App. Rep. 149, C. C. A.

3178. *Add. Annotation :*—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95.

3179. *Add. Annotation :*—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95.

3179a. ——.]—R. *v.* THORPE, No. 3146a, *ante.*

3179b. —— ——.]—R. *v.* WADDINGHAM (1936), 80 Sol. Jo. 325, C. C. A.

3179c. —— **Where defence of manslaughter raised.**]—R. *v.* HALL, No. 8338a, *post.*

3180. After this case add " *See, also,* Nos. 5933-5938, *post.*"

3180a. —— ——.]—On an indictment for obtaining by false pretences, the jury must be charged that intent to defraud is of the essence of the offence.—R. *v.* MARCK (1928), 21 Cr. App. Rep. 65, C. C. A.

3180b. —— **Possibility of mistake.**]—R. *v.* GREEN, No. 3136b, *ante.*

3180c. Direction as to breaking & entering—Defence of bonâ fide claim of right.]—A defence of breaking & entering under a *bonâ fide* claim of right must be definitely put & explained to the jury, & the issue of felonious intent must be distinctly raised.—R. *v.* CURTISS (1925), 18 Cr. App. Rep. 174, C. C. A.

3180d. Direction as to larceny by trick—Facts pointing to false pretences.]—On the trial of an indictment for larceny by a trick, the essential elements of that offence should be explained to the jury, & if the facts of the case point to an obtaining by false pretences, the difference between the two offences must be made clear to them in view of a possible verdict of guilty of the latter.—R. *v.* FISHER (1926), 19 Cr. App. Rep. 166, C. C. A.

3180e. Direction as to larceny by bailee—Defence of sale on credit.]—R. *v.* WARD (1928), 20 Cr. App. Rep. 167, C. C. A.

3180f. Obtaining by false pretences—Duty to distinguish representations.]—R. *v.* GREEN, No. 3136b, *ante.*

3172a i. *Where unsworn statement & evidence on oath of witness in conflict.*]—When a witness whom the party calling him is allowed to treat as hostile admits making or is proved to have made a previous statement inconsistent with his present testimony said party may be permitted to cross-examine him upon that statement; but the use which may be made before the jury of the statement is a limited one; it can be so used only to impeach the witness' credit & thus remove any prejudicial effect which his present testimony might otherwise have on the case of said party, but not as evidence of the allegations of fact contained in the statement. Therefore the duty devolves upon the trial judge, in summing up, to make the limitation of such use clear to the jury; & his failure to make it clear constitutes a misdirection which may be held to have occasioned a substantial wrong or miscarriage.—R. *v.* FRANCIS & BARBER, [1929] 3 D. L. R. 593; 2 W. W. R. 104; 51 Can. Crim. Cas. 343; 23 S. L. R. 517.—**CAN.**

3177 i. —— *Where defence of manslaughter is not raised.*]—Where, on a trial for murder, there is no evidence which would justify the jury in finding a verdict of manslaughter, there is no duty on the judge to leave to the jury that defence.—R. *v.* BURGESS & MCKENZIE, [1928] 2 D. L. R. 694; [1928] 1 W. W. R. 633; 49 Can. Crim. Cas. 243; 39 B. C. R. 492.—**CAN.**

sa. *Incorrect statement as to effect of evidence.*]—Where in his summing up to the jury in a criminal case the trial judge made a statement of the evidence which was not exactly correct, the fact that there was sufficient evidence apart from that with respect to which the mistake occurred to justify the verdict of guilty does not justify the ct., on appeal, from disregarding the mistake under the Code, s. 1014 (2), if it is impossible for it to say that the jury " must " have reached the same conclusion regardless of the mistake.—R. *v.* BRAND (Alta.), [1929] 1 D. L. R. 815; 51 Can. Crim. Cas. 46; 24 Alta. L. R. 5; [1928] 3 W. W. R. 641.—**CAN.**

3180 i. *Direction as to intent to defraud—Charge of obtaining by false pretences.*]—A jury should, in cases under Crimes Act, 1915, s. 181 (a), be told that an intent to defraud is an essential element of the offence, unless in the exceptional cases where the intent is necessarily involved in the false statements made.—R. *v.* O'SULLIVAN, [1925] V. L. R. 514; 547 A. L. T. 3; 31 Argus L. R. 263a.—**AUS.**

q i. ——.]—R. *v.* TONG WAH (1931), 44 B. C. R. 260; 56 Can. C. C. 194.—**CAN.**

sa. *Evidence as to alibi.*]—Evidence as to alibi must be properly put to the jury.—R. *v.* MCKENZIE (1932), 58 C. C. C. 106.—**CAN.**

sd. *Must inform jury that accused entitled to reasonable doubt.*]—In a trial for perjury :—*Held :* the judge must adequately instruct the jury that the accused is entitled to any reasonable doubt as to his guilt.—R. *v.* FIALKA, [1935] 1 D. L. R. 394; 62 C. C. C. 38.—**CAN.**

3185. *Add. Annotation :*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

3243. After this case add :—

—— ——.]—*See, now,* Criminal Justice Act, 1925 (c. 86), s. 15.

3261. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

3266. *Add. Annotation :*—**Refd.** Ras Behari Lal *v.* King-Emperor (1933),77 Sol. Jo. 571.

3272. *Add. Annotation :*—**Refd.** Broome *v.* Agar (1928), 138 L. T. 698.

3277a. ——.]—R. *v.* MOORE (1931), 23 Cr. App. Rep. 138, C. C. A.

3283a. —— ——.]—R. *v.* ABRAHAMS & GERSTEIN (1928), 20 Cr. App. Rep. 183, C. C. A.

3286a. Effect of rider.]—(1) Mere suspicion of adultery by a wife is not enough to reduce killing by the husband from murder to manslaughter.

(2) A finding of guilty is not affected by a rider to the verdict.—R. *v.* MILLWARD (1931), 23 Cr. App. Rep. 119, C. C. A.

3287a. Necessity for Withdrawal of plea of not guilty.]—After a prisoner charged on indictment has pleaded "Not Guilty" & been given in charge of the jury, he can only be convicted by a verdict of that jury. Until a verdict is given the record is not complete & he can neither be convicted nor sentenced. Where therefore a prisoner who had duly been given in charge of the jury admitted his guilt during the progress of the trial & was thereupon treated as having been convicted on his own confession & was sentenced to a term of penal servitude without any verdict having been given by the jury :—*Held :* the conviction must be quashed & the prisoner re-tried.—R. *v.* HANCOCK (1931), 100 L. J. K. B. 419 ; 145 L. T. 168 ; 75 Sol. Jo. 345 ; 23 Cr. App. Rep. 16 ; 29 Cox, C. C. 294, C. C. A.

3288. *Add. Annotations :*—*As to* (1) **Consd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462. *As to* (3) **Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

3318a. —— ——.]—Where an indictment charges two persons with certain offences "with one another," if one is acquitted the other may sometimes but not always be convicted.—R. *v.* EDWARDS (1924), 18 Cr. App. Rep. 140, C. C. A.

3318b. —— ——.]—Where in separate counts of an indictment a man & a woman are charged with incest, & there are separate trials of each count, the conviction of the man is good although the woman is acquitted. —R. *v.* GORDON (1925), 133 L. T. 734 ; 89 J. P. 156 ; 41 T. L. R. 611 ; 28 Cox, C. C. 41 ; 19 Cr. App. Rep. 20, C. C. A.

3324. Add para. & citation :—

A judge is not entitled to insist on the jury returning a verdict against each or any one of several co-defts. if the jury state that they are unable to agree about any one.—R. *v.* EVANS & PRITCHARD (1920), 15 Cr. App. Rep. 111, C. C. A.

PART VII. SECT. 7, SUB-SECT. 12.—C.

3186 vii. —— ——.]—A judge must not comment on the failure of the prisoner to give evidence, even if his counsel comments to the jury on his reasons for failing to call him.—R. *v.* ZICARI, [1936] 2 D. L. R. 542 ; 65 Can. C. C. 386.—**CAN.**

b i. —— —— ——.]—R. *v.* BRAYDEN (N. B.), [1926] 4 D. L. R. 765 ; 46 Can. Crim. Cas. 336.—**CAN.**

b ii. —— —— ——.]—BIGAOUETTE *v.* R., [1927] 1 D. L. R. 1147 ; [1927] S. C. R. 112 ; 47 Can. Crim. Cas. 271.—**CAN.**

b iii. —— —— ——.]—On the trial of a charge of stealing a pencil from the person by means of violence, it was shown that the pencil had been found in the accused's pocket on his arrest two days after the robbery. The accused's counsel did not call any witness in defence ; & the Crown counsel in his address to the jury said : "I think there should be some explanation. . . ." [The ct. here warned him to "be careful."] He proceeded : "Should not there be some explanation on the part of the defence ?" On appeal from the conviction :—*Held :* said words did not constitute a violation of sect. 4 (5) of Canada Evidence Act, R. S. C., 1927, prohibiting comments by the judge or counsel for the prosecution on the failure of an accused to testify.—R. *v.* FERRIER, [1932] 3 W. W. R. 113 ; 58 C. C. C. 370 ; 46 B. C. R. 136.—**CAN.**

b iv. —— —— ——.]—To say of an accused person's statement from the dock that it is an unsworn statement & one not subject to cross-examination does not amount to comment on the failure of such person to give evidence, which is forbidden by sect. 407 (2) of Crimes Act, 1900.—R. *v.* EARSMAN (1906), 53 N. S. W. W. N. 118.—**AUS.**

sc. *To express his own view.*]—In summing up the judge is entitled to express his own view.—COULTER & TREFFENE *v.* R. (1926), 29 W. A. L. R. 40.—**AUS.**

sd. *To read definitions of law from cases & textbooks.*]—LEBLANC *v.* R. (1927), 49 Can. Crim. Cas. 207 ; Q. R. 42 K. B. 503.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 14.—A.

t i. —— —— *Crown witness kept away.*]—The judge should exercise his discretionary power to discharge the jury & adjourn the trial when it appears that a necessary & material Crown witness is absent through the instrumentality of a labour union.—R. *v.* KENDALL & PITTON (1934), 61 C. C. C. 389.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 14.—B.

3217 ii. ——.]—*Primâ facie* any complete separation of the jury during a trial in a capital case will make the verdict bad, but where the separation occurs through inadvertence, & the result of the trial has not been influenced by what has occurred, the verdict ought to stand.—R. *v.* WALTERS, [1926] 1 D. L. R. 501 ; 45 Can. Crim. Cas. 77 ; 58 N. S. R. 306.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 15.—A.

o i. —— *Evidence ruled inadmissible after it has been given.*]—R. *v.* TREANOR, R. *v.* FLOOD, R. *v.* TREANOR, R. *v.* KELLY, [1924] 2 I. R. 193.—**IR.**

PART VII. SECT. 7, SUB-SECT. 15.—B.

k i. —— ——.]—Where evidence given before a judge in a criminal trial was exhibited in a trial *de novo* before a succeeding judge:—*Held :* such procedure was irregular, & consent of accused did not cure the irregularity.—UMAR HAJEE *v.* R. (1922), I. L. R. 46 Mad. 117.—**IND.**

PART VII. SECT. 7, SUB-SECT. 16.—A.

3270 viii. ——.]—In a criminal trial, with the help of a jury, a judge is not obliged to accept an absurd verdict, either as a verdict of guilty or as a verdict of not guilty. It is no part of a judge's duty to accept & interpret for himself a verdict of an unintelligible character, when the members of the jury are there & can give a proper verdict.—HAMID ALI HALDAR *v.* KING-EMPEROR (1929), I. L. R. 57 Calc. 61.—**IND.**

3275 viii. —— ——.]—On an indictment charging accused with assault the jury returned a verdict of "guilty of common assault under provocation" :—*Held :* the verdict was one of guilty.—R. *v.* BROGAN, [1926] N. Z. L. R. 635.—**N.Z.**

3278 vi. —— —— *Carnal knowledge & indecent assault—Same evidence.*]—Where accused is charged with unlawful carnal knowledge & indecent assault, & the same evidence is given on each count, a verdict of acquittal on the first & guilty on the second cannot be given.—R. *v.* MCLEAN (1931), 57 C. C. C. 239.—**CAN.**

3281 iv. —— ——.]—An indictment contained three separate counts, viz., rape, assault with intent to commit rape, & indecent assault. The jury, although properly instructed, found the prisoner guilty without assigning the verdict to any one or more of the said counts ; & the judge sentenced the prisoner on the assumption that the conviction was one for rape. On appeal :—*Held :* while it was open to the ct. to sustain the verdict on the least of the three counts & to reduce the sentence to one appropriate thereto, it was also open to the ct. to order a new trial ; & that under all the circumstances the latter was the better course to adopt.—R. *v.* Ross (B. C.), [1929] 3 W. W. R. 601 ; 52 Can. Crim. Cas. 315.—**CAN.**

sd. *Verdict given after discharge.*]—A jury which has been discharged is not competent to return a verdict.—R. *v.* SMITH, [1934] 3 W. W. R. 639.—**BERMUDA.**

3362a. Indictment for shooting with intent to murder—Verdict of assault.]—On an indictment for shooting with intent to murder or to cause grievous bodily harm, prisoner cannot be convicted of common assault.—R. *v.* STOKES (1925), 134 L. T. 479; 28 Cox, C. C. 140; 19 Cr. App. Rep. 71, C. C. A.

3366. *Add. Annotation:*—**Refd.** R. *v.* Stokes (1925), 134 L. T. 479.

3388. *Add. Annotation:*—**Apld.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

3389. *Add. Annotation:*—**Apld.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

3389a. —— Of fruit—Verdict of larceny at common law.]—On an indictment for stealing under Larceny Act, 1861 (c. 96), s. 36, larceny at common law cannot be found: hence the direction to the jury must make it clear that fruit, etc., the subject of the charge, was growing & had not been severed at the material time.—R. *v.* FRIEND (1930), 22 Cr. App. Rep. 130, C. C. A.

3391a. —— By trick—Verdict of false pretences—Indictment charging larceny by trick & false pretences alternatively—Indictment for false pretences wrong in substance.]—R. *v.* HUGHES, No. 2219a, *ante*.

3391b. —— Verdict of fraudulent conversion.]—On an indictment for simple larceny there cannot be a conviction of fraudulent conversion, contrary to Larceny Act, 1916 (c. 50), s. 20.—R. *v.* STEVENS (1933), 24 Cr. App. Rep. 85, C. C. A.

3394. *Add. Annotation:*—**Refd.** R. *v.* Stokes (1925), 134 L. T. 479.

3398a. —— Duty of jury to find.]—R. *v.* LLOYD (1927), 20 Cr. App. Rep. 139, C. C. A.

3402. *Add. Annotations:*—**Refd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546; Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

3407. For "**Second indictment to be tried—Right of prosecution to trial by another jury.**" read "**Second indictment to be tried—Whether trial by another jury.**"

3407a. —— ——.]—It cannot be laid down as a general rule that a jury which has acquitted deft. on one indictment should not try him on another, but it must depend on the circumstances of each case; when it occurs they must be warned that the evidence in the two cases is not cumulative.—R. *v.* KLEIN (1926), 19 Cr. App. Rep. 161, C. C. A.

3413. *Add. Annotation:*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

3420. *Add. Annotations:*—**N.F.** R. *v.* Thomas (1933), 49 T. L. R. 546. **Refd.** Ras Behari Lal *v.* King-Emperor (1933), 77 Sol. Jo. 571; R. *v.* Thomas, [1933] 2 K. B. 489.

3424. *Add. Annotation:*—**Refd.** R. *v.* Thorpe (1925), 133 L. T. 95.

3452. After this case add:—

—— ——.]—*See, now*, Sentence of Death (Expectant Mothers) Act, 1931 (c. 24).

3495. *Add. Annotation:*—**Mentd.** Broome *v.* Agar (1928), 138 L. T. 698.

PART VII. SECT. 7, SUB-SECT. 16.—D. (a).

m i. —— —— *Not where prosecution for lesser offence barred by lapse of time.*]—R. *v.* HOSKINS (Alta.) (1929), 52 Can. Crim. Cas. 365.—**CAN.**

m ii. —— ——.]—Where a prosecution for a certain offence created by statute must be begun within a period prescribed by the statute & that time limit has expired without the proper proceedings having been taken pursuant to the enactment creating the offence, it is not competent for the ct. on a prosecution for a greater offence to convict for the offence already barred.—R. *v.* HOSKINS, [1930] 1 W. W. R. 84.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 16.—D. (b).

3348 v. —— —— *Effect of verdict.*]—*Held:* the finding was to be regarded as an acquittal on the charge of murder, & Code of Criminal Procedure, s. 439 (4), precluded the High Ct. from having jurisdiction upon revision to convict on that charge.—KISHAN SINGH *v.* R. (1928), 55 L. R. Ind. App. 390.—**IND.**

b (p. 319) **i.** —— *Verdict of criminal negligence.*]—The driver of a motor car which struck & instantly killed a pedestrian was charged with manslaughter. The jury, after expressly finding the accused not guilty of manslaughter, found him guilty of criminal negligence under sect. 284, Criminal Code:—*Held:* by virtue of sub-sect. (3) added to sect. 951 of the Criminal Code by 1930, c. 11, s. 25, it was open to the jury to so find.—R. *v.* KENNEDY, [1936] 1 W. W. R. 513; 65 Can. C. C. 158; 44 Man. L. R. 8; 5 Can. L. Jo. 276.—**CAN.**

b (p. 319) **ii.** —— ——.]—Where the death of a person is caused by the criminally negligent operation of a motor vehicle & the driver is charged with manslaughter, sub-sect. (3) added to sect. 951 of the Criminal Code leaves it open to the jury to find either manslaughter or criminal negligence under sect. 284, Criminal Code.—R. *v.* PREUSANTANZ, [1936] 1 W. W. R. 520; 65 Can. C. C. 129; 44 Man. L. R. 33; 5 Can. L. Jo. 291.—**CAN.**

n (p. 320). Read now "**3362a i.**"

o (p. 320). Read now "**3362a ii.**"

3371 v. —— ——.]—R. *v.* O'BRIEN (1926), 50 Can. Crim. Cas. 369; 60 N. S. R. 17.—**CAN.**

3371 vi. —— ——.]—On a trial for rape upon G., the latter swore to occurrences which, if true, proved the crime charged, & was corroborated. The jury after retiring announced that they were not inclined to bring in a verdict of guilty, adding that if the charge were indecent assault it would be different. They were informed by the trial judge that it was rape or nothing. They then brought in a verdict of guilty:—*Held:* on the evidence there was nothing upon which to base a charge of a lesser offence, & deft.'s appeal must be dismissed.—R. *v.* O'BRIEN, [1929] 1 D. L. R. 266; 50 Can. Crim. Cas. 369; 60 N. S. R. 17.—**CAN.**

l (p. 322) **i.** —— —— *Carnal knowledge of girl under fourteen—Verdict set aside.*]—R. *v.* MARCUS & RICHMOND (1931), 55 Can. C. C. 322.—**CAN.**

t (p. 323 **i.** *Indictment for robbery—Verdict of receiving stolen property.*]—A verdict of receiving stolen property well knowing it to have been stolen is not competent on an indictment for robbery.—R. *v.* PAPIAH (1929), 50 N. L. R. 19.—**S. AF.**

sa. *Indictment for extortion—Verdict of attempting to obtain by false pretences.*]—On a charge of extortion the jury are entitled to find a verdict of attempting to obtain by false pretences.—HAMMOND *v.* R., [1934] 3 D. L. R. 722; 62 C. C. C. 1.—**CAN.**

sd. *Indictment for theft—Verdict of housebreaking.*]—On a charge of theft accused cannot be found guilty of housebreaking.—R. *v.* DOYLE (1934), 7 M. P. R. 521; 62 C. C. C. 131.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 16.—F.

sf. *What amounts to acquittal.*]—Allowing accused to go upon suspended sentence, without a recognisance, after a plea of guilty, is equivalent to an acquittal.—LAPLANTE *v.* CT. OF SESSIONS OF THE PEACE, [1938] 1 D. L. R. 364; 69 Can. C. C. 291.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 16.—G.

3411 iii. ——.]—R. *v.* WALTERS, No. 3217 ii, *ante*.

PART VII. SECT. 7, SUB-SECT. 16.—K.

g i. —— *Meaning of "new trial."*]—Where by statute provision is made in the case of a jury disagreeing for a new trial, there is meant by the words "new jury" a jury entirely composed of new or fresh jurymen to the exclusion of all the jurymen who formed the first jury.—R. *v.* WONG O. SANG, [1924] 3 W. W. R. 45; 34 B. C. R. 8.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 17.—C.

3481 i. *Felony.*]—It is an essential principle of our criminal law that the trial of an indictable offence has to be conducted in the presence of the accused; & for this purpose trial means the whole of the proceedings, including sentence. There is authority for saying that in cases of misdemeanour there may be special circumstances which permit a trial in the absence of the accused, but on trials of felony the rule is inviolable, unless possibly the violent conduct of the accused himself intended to make trial impossible renders it lawful to continue in his absence. The result is that, except possibly where there has been such conduct by the accused, sentence

3526. *Add. Annotation :—Generally,* **Refd.** R. *v.* Southern (1929), 142 L. T. 383.

3538. *Add. Annotation :—***Consd.** R. *v.* Hertfordshire JJ., *Ex p.* Larsen (1925), 89 J. P. 205.

Part VIII.—Special Pleas.

3555a. ——.]—On Jan. 20, 1937, two summonses came before justices sitting in petty sessions charging appct. with certain motor car offences. When the summonses were called on appct. was not present. The service of the summonses was proved, evidence was given by the police & the justices fined the appct. Before the decision of the justices had been entered in the register of convictions & orders of the ct. kept under Summary Jurisdiction Act, 1879 (c. 49), s. 22 (1), the justices, while they were still sitting, were informed of certain previous convictions of appct. in respect of motoring offences & that there had been delay on his part in paying the fines imposed for those offences. In view of that information the justices formed the opinion that the matters raised by the summonses ought to be dealt with in the presence of appct. & they issued a warrant for his arrest. Appct., accordingly, appeared before a differently constituted bench of justices on Jan. 23, when he pleaded guilty to the two summonses & was ordered to pay fines larger than those imposed on Jan. 20 :—*Held :* the decision of the justices on Jan. 20 constituted a complete & effective conviction of appct., although it had not been entered in the register, &, therefore, on Jan. 23 appct. was entitled to plead *autrefois convict* of the offences with which he was then charged.—R. *v.* MANCHESTER JJ., *Ex p.* LEVER, [1937] 2 K. B. 96 ; [1937] 3 All E. R. 4 ; 106 L. J. K. B. 519 ; 157 L. T. 68 ; 101 J. P. 407 ; 53 T. L. R. 687 ; 81 Sol. Jo. 571 ; 35 L. G. R. 281 ; 30 Cox, C. C. 603, D. C.

3566. *Add. Annotation :—***Consd.** R. *v.* Kendrick & Smith (1931), 144 L. T. 748.

3567. *Add. Annotation :—***Refd.** Nadan *v.* R., [1926] A. C. 482.

3570a. Finding of guilty—No sentence.]—Deft. was charged at petty sessions with an indictable offence & consented to be dealt with summarily. That ct., after hearing the evidence on both sides, announced that it found deft. guilty. Certain previous convictions of deft. were then proved, whereupon the ct., without passing sentence upon him, committed him for trial at quarter sessions. At the trial deft. raised a plea of *autrefois convict*, but the ct. of quarter sessions overruled it & convicted him :—*Held :* by the Ct. of Criminal Appeal, there had been a conviction of deft. at petty sessions ; in order to support the plea of *autrefois convict* it was not necessary that the conviction should have been followed by sentence, & the quarter sessions should have accepted that plea ; & the conviction of deft. by the latter ct. should be quashed.—R. *v.* SHERIDAN, [1937] 1 K. B. 223 ; [1936] 2 All E. R. 883 ; 106 L. J. K. B. 6 ; 155 L. T. 207 ; 100 J. P. 319 ; 52 T. L. R. 626 ; 80 Sol. Jo. 535 ; 34 L. G. R. 447 ; 26 Cr. App. Rep. 1 ; 30 Cox, C. C. 447, C. C. A.

*Annotations :—***Consd.** R. *v.* Grant, [1936] 2 All E. R. 1156. **Distd.** R. *v.* Briggs, [1938] 1 All E. R. 529.

3570b. Plea of guilty.]—Applt. was charged before a metropolitan police magistrate with larceny. He pleaded guilty. The learned magistrate committed him to quarter sessions for trial & wrote to the clerk of the peace for the County of London as follows : "I am committing for trial to-day J. G. He pleaded guilty & consented to my jurisdiction. In view of his record & age I obtained a report during remand on bail from the Institute of Scientific Delinquency. I enclose a copy of that report. I feel it is a case quarter sessions should deal with." At the trial, before quarter sessions, applt. was unrepresented & he did not put forward any defence or cross-examine the witnesses for the prosecution. He stated, however, that he had not had a fair trial as the magistrate told him he would give him six months' hard labour & had then changed his mind & committed him for trial :—*Held :* applt. had already been convicted of the offence charged & therefore a plea of *autrefois convict* should have been entered on the file,

---

passed for felony in the absence of the accused is totally invalid.—R. *v.* LAWRENCE, [1933] 3 W. W. R. 102.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 17.—F.

o i. *Right of public to copy.*]—Any member of the public has a right to obtain a copy of a judgment of any criminal ct.—EMPEROR *v.* LADLI PRASAD ZUTSHI (1931), I. L. R. 53 All. 724.—**IND.**

se. *Omission of essential element of crime—Conviction invalid.*]—R. *v.* ING YICK ING (1924), 43 Can. Crim. Cas. 392.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 17.—G.

3536 ii. —— *In prisoner's absence.*]—*Held :* the ct. was not *functus officio*.—R. *v.* HUGHES (1924), 35 B. C. R. 55.—**CAN.**

3536 iii. —— *After removal of conviction by certiorari.*]—R. *v.* KNAPP (1925), 44 Can. Crim. Cas. 338.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.

g i. ——.]—Where a person has been charged with two offences arising out of the same circumstances, & he pleads guilty to one of the charges, is convicted & fined, & then pleads guilty to the other charge, the previous conviction & penalty cannot be pleaded as a bar to punishment for the other offence.—R. *v.* GEIGER, [1923] 3 W. W. R. 763 ; 41 Can. Crim. Cas. 185 ; 17 Sask. L. R. 412.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.—A.

3567 iv. —— ——.]—A. was prosecuted for selling liquor illegally & convicted. Based on the same facts a second prosecution was brought for keeping liquor for sale. A. pleaded *autrefois convict. :—Held :* a good plea.—QUEBEC LIQUOR COMMISSION *v.* DUBOIS, [1924] 2 D. L. R. 861 ; 42 Can. Crim. Cas. 65.—**CAN.**

3567 v. —— ——.]—REED & ROBERTS (*alias* MCLEAN) *v.* R. (1926), 47 Can. Crim. Cas. 142 ; Q. R. 42 K. B. 35.—**CAN.**

3567 vi. —— ——.]—YEOK KUK *v.* R. (1928), I. L. R. 6 Ran. 386.—**IND.**

3567 vii. —— —— *Offences under different statutes.*]—*Re* WILNEFF (N. S.), [1928] 4 D. L. R. 869 ; 50 Can. Crim. Cas. 196.—**CAN.**

3567 viii. —— ——.]—R. *v.* TRACHUK, R. *v.* KOLYK (No. 2), [1929] 2 W. W. R. 418 ; 51 Can. Crim. Cas. 404 ; 38 Man. L. R. 238.—**CAN.**

sf. *Meaning of "same matter"—Criminal Code, s.* 730.]—R. *v.* BADIUK (No. 2), [1930] 1 W. W. R. 210 ; 2 D. L. R. 318 ; 53 Can. C. C. 63 ; 38 Man. L. R. 421.—**CAN.**

sk. *Offence against bye-law—Acquittal on ground that enabling legislation ultra vires.*]—An acquittal of an offence against municipal bye-law on the ground that the enabling legislation is *ultra vires* is not *res judicta* upon a subsequent prosecution of the same accused for another offence against the same bye-law.—R. *v.* STEINBURG (1934), 63 Can. C. C. 92.—**CAN.**

or the jury should have been directed to find him not guilty.—R. *v.* GRANT, [1936] 2 All E. R. 1156; 106 L. J. K. B. 9; 155 L. T. 209; 100 J. P. 324; 52 T. L. R. 676; 80 Sol. Jo. 572; 34 L. G. R. 452; 30 COX, C. C. 453; 26 Cr. App. 8, C. C. A.

Annotations :—**Distd.** R. *v.* Briggs, [1938] 1 All E. R. 529. **Reid.** R. *v.* Manchester JJ., *Ex p.* Lever, [1937] 2 K. B. 96.

3603. *Add. Annotation :*—**Reid.** R. *v.* Kendrick & Smith (1931), 144 L. T. 748.

3608a. Demanding with menaces—Threatening to print or publish with intent to extort.]—The test whether a plea of *autrefois convict* has been established is not whether the facts relied on by the Crown are the same in the two trials, but whether the accused has been convicted of an offence which is the same, or practically the same, as that with which he is charged on the second trial. The offences of threatening to publish with intent to extort, contrary to Larceny Act, 1916 (c. 50), s. 31 (2), & of uttering a letter demanding money with menaces, contrary to sect. 29 (1) (i), of the same Act, are quite distinct & separate, & the fact that the accused has already been convicted of the former will not sustain a plea of *autrefois convict* if he is subsequently charged with the latter, even though the two charges be supported by the same evidence.—R. *v.* KENDRICK & SMITH (1931), 144 L. T. 748; 23 Cr. App. Rep. 1; 29 Cox, C. C. 285, C. C. A.

3644a. Acquittal for absence of jurisdiction.]—R. *v.* WALLACE (1928), 166 L. T. Jo. 339.

3647a. —— Contradictory endorsement on indictment.]—An indictment against applt. for rape was endorsed by the grand jury: "No true bill for rape. A true bill for indecent assault

PART VIII. SECT. 1, SUB-SECT. 3.—B.

a i. *Indictment for occasioning bodily harm—Previous acquittal for murder.*]—After being acquitted on a trial for murder accused were charged with assault & battery occasioning actual bodily harm to the man whom they had been acquitted of murdering. They pleaded *autrefois acquit :—Held :* the plea of *autrefois acquit* furnished no answer to the charge in question.—R. *v.* GOSSELIN & GOSSELIN (Man.), [1928] 1 W. W. R. 134; 50 Can. Crim. Cas. 287.—**CAN.**

sg. *Indictment for carnal knowledge of girl under fourteen—Previous conviction under Juvenile Delinquents Act.*]—To a charge, under sect. 301 (1) of Criminal Code, of carnally knowing, on or about Apr. 14, 1934, a girl under fourteen years of age, the accused pleaded *autrefois convict*, relying on a prior conviction under sect. 33 of Juvenile Delinquents Act, 1929, for contributing to the juvenile delinquency of the same girl by having sexual intercourse with her on or about Apr. 25, 1934. On the trial under said Act it was established that the girl had had sexual intercourse prior to the occasion with respect to which she had given evidence in support of the charge then being tried. This prior act of intercourse was the basis of the charge under the Code. The girl's fourteenth birthday was Apr. 25, 1934; so that, under sect. 2 (2) of the Code, she was deemed to have been under fourteen until the end of that day. The trial judge, before whom the point was argued in the absence of the jury, upheld the plea & dismissed the charge. The Crown appealed :—*Held :* that the appeal should be allowed & the charge remitted for trial.—R. *v.* PEDERSEN, [1935] 2 W. W. R. 207; 3 D. L. R. 203; 63 Can. C. C. 262.—**CAN.**

si. *Indictment for negligently causing bodily harm to B.—Previous acquittal for same offence to A.*]—An acquittal on a charge of having negligently caused bodily harm to A. is no defence to a charge of having injured B.—R. *v.* ROBBINS (1934), 62 Can. C. C. 273.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.—C.

sh. *Preparation of still—Previous acquittal for possessing still—No bar to prosecution.*]—R. *v.* SLAUGHENWHITE (1930), 54 Can. C. C. 104.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.—D.

3619 i. *Perjury — Previous acquittal for forgery.*]—The accused, who had been acquitted on a charge of forging the endorsement of a cheque, was subsequently tried & convicted on a charge of perjury committed on the first trial in swearing that he had not endorsed the cheque. On the second trial the evidence for the prosecution, apart from that proving the making of the alleged false statements, was confined strictly to the alleged endorsement by the accused. Two witnesses swore on both trials that they had seen the accused sign the endorsement. No evidence was offered for the defence. The accused pleaded *res judicata :—Held :* the conviction must be sustained.—R. *v.* BAYN, [1932] 2 W. W. R. 113; [1933] 1 D. L. R. 497; 59 C. C. C. 89.—**CAN.**

b i. —— *Previous acquittal for assaulting constable while discharging another duty.*]—A mere variation in the nature of the duty, which the officer is alleged to have been engaged in, cannot be considered as a variation in the nature of the offence charged against accused.—R. *v.* DIAMOND, [1924] 3 D. L. R. 359; 2 W. W. R. 621; 20 Alta. L. R. 419.—**CAN.**

sm. *Prosecution under Customs Act, R. S. C.*, 1906 (c. 48), *s.* 215—*Previous conviction under Customs Act, R. S. C.*, 1906 (c. 48), *s.* 185.]—R. *v.* SACCO (Ont.), [1926] 3 D. L. R. 771; 46 Can. Crim. Cas. 243.—**CAN.**

so. *Offences under Lottery & Gaming Act.*]—Resp. was charged with the breach of Lottery & Gaming Act, 1917, s. 39, & the complaint was dismissed owing to the rejection of secondary evidence of a document. Later resp. was charged under s. 63 with being the occupier of a tobacconist shop which was used for the purpose of the occupier betting with persons resorting thereto. Resp. pleaded *autrefois acquit :—Held :* as the two offences were substantially different, this plea did not avail.—ALLCHURCH *v.* BERESFORD, [1928] S. A. S. R. 450.—**AUS.**

sp. *Prosecution under Prohibition Act (P. E. I.), s. 52—Previous acquittal on prosecution under Excise Act, R. S. C.*, 1927, *s.* 181—*Failure of plea.*]—R. *v.* FITZPATRICK (P. E. I.), [1929] 4 D. L. R. 95; 52 Can. Crim. Cas. 119.—**CAN.**

sr. *Conspiracy — Subsequent conspiracy with additional persons.*]—Where a person has been charged with conspiracy, with certain other persons, to commit offences relating to exporting & importing opium & cocaine interprovincially & has been convicted or acquitted, such conviction or acquittal is no bar to a subsequent trial for conspiracy with the same persons, together with others, to commit the same offences together with the offences of exporting from British India & importing into British India opium & cocaine.—ABDUL RAHAMAN *v.* EMPEROR (1935), J. L. R. 62 Cal. 749.—**IND.**

st. *Offences under Natural Products Marketing (British Columbia) Act.*]—A conviction for failure to comply with an order of a marketing board under Natural Products Marketing (British Columbia) Act, R.S.B.C., 1936, & amendments, in that the accused dealer marketed milk on a certain day within a certain area without being registered with & licensed by said board, does not support a plea of *autrefois convict* as a defence to another charge in the same terms with the exception that it was directed to the marketing of milk on a subsequent day.—R. *v.* CRYSTAL DAIRY, LTD., [1938] 1 W. W. R. 800.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 4.

1 i. ——.]—A plea of *autrefois convict* will not lie in respect of a conviction which has been quashed.—R. *v.* PURCELL, [1934] 1 D. L. R. 778; 7 M. P. R. 275; 61 C. C. C. 261.—**CAN.**

p i. ——.]—Unless it can be said on the facts of the particular case that there has been an adjudication on the merits, the permission of the ct. to withdraw a charge is not equivalent to a dismissal which can be pleaded in bar of subsequent proceedings.—R. *v.* SOMERS (B. C.), [1929] 3 D. L. R. 772; 2 W. W. R. 366; 51 Can. Crim. Cas. 356.—**CAN.**

p ii. ——.]—BLANCHARD *v.* JENKINS, [1931] 1 D. L. R. 985; 55 Can. C. C. 77.—**CAN.**

p iii. *Withdrawal of charge.*]—Withdrawal of a charge is not an acquittal which will entitle accused to a certificate of dismissal so as to support a defence of *autrefois acquit.*]—*Re* BOND, [1936] 3 D. L. R. 769; 66 Can. C. C. 271; 10 M. P. R. 506.—**CAN.**

sr. *No conviction—Proceedings adjourned.*]—*Re* R. *v.* ECKER, *Re* R. *v.* FRY, [1929] 3 D. L. R. 760; 51 Can. Crim. Cas. 409; 64 O. L. R. 1.—**CAN.**

st. *Conviction under Provincial statute—No bar to conviction under Federal Statute.*]—BULLER *v.* WINDOVER, [1931] 1 D. L. R. 986; 55 Can. C. C. 143.—**CAN.**

sv. —— ——.]—R. *v.* RUNIONS, R. *v.* MACDONALD (1931), 56 Can. C. C. 390.—**CAN.**

sw. *Prosecution for libel—Award of damages in civil proceedings.*]—In criminal proceedings for libel an award of damages will not support a plea of *autrefois convict.*—MENARD *v.* R., [1934] 1 D. L. R. 155; 60 C. C. C. 334.—**CAN.**

sz. *Carrying offensive weapon with possession of smuggled goods—Previous conviction for possession of same goods.*]—A conviction for unlawfully having possession of goods whereon the duties had not been paid is not a bar to an indictment for carrying an offensive weapon when found with goods (the same goods) liable to seizure.—R. *v.* ROSS, [1934] 2 D. L. R. 237; 7 M. P. R. 84; 61 C. C. C. 67.—**CAN.**

(aggravated)," but no indictment for indecent assault was put before the grand jury. Applt., having been convicted, appealed, & the conviction was quashed on the grounds that there was no true bill for rape & that there was no indictment for indecent assault. On the same facts applt. was afterwards indicted for indecent assault, & he pleaded *autrefois acquit* but was convicted :—*Held :* although the first conviction had been recorded on the first indictment, applt. was never in peril on that self-contradictory document, & the plea of *autrefois acquit* failed, & the second conviction must be affirmed.—R. *v.* KITCHING (1929), 45 T. L. R. 634 ; 21 Cr. App. Rep. 144 ; 28 Cox, C. C. 671, C. C. A.

3650. *Add. Annotation :—As to* (1) **Consd.** Pointon *v.* Cox (1926). 136 L. T. 506.

Part X.—Informations.

3665. *Citations :*—For " 17 W. R. 567 " read " 47 W. R. 567."

3718. *Add. Annotation :*—**Refd.** R. *v.* Evening News, *Ex p.* Hobbs, [1925] 2 K. B. 158.

3751a. By constables to extort money.]—*Held :* there being *bonâ fide* instructions to the constables to watch appct., on which they had acted without unduly harassing him, & there being no evidence of any conspiracy on the part of the constables, no criminal information could be granted.—*Ex p.* WOLFF (1863), 28 J. P. 23.

Part XII.—Evidence and Proof.

3789. *Add. Annotation :*—**Refd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

3790a. —— Identification of handwriting.]—R. *v.* MCCARTNEY & HANSEN (1928), 20 Cr. App. Rep. 179, C. C. A.

3792a. ——.]—R. *v.* TAYLOR, WEAVER & DONOVAN (1928), 21 Cr. App. Rep. 20, C. C. A.

3801. *Add. Annotation :*—**Consd.** R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845.

3801a. —— ——.]—(1) It is permissible for a police officer who is in doubt upon the question who shall be arrested for a particular offence to show a photograph to persons in order to obtain information or a clue.

(2) It is, however, not permissible for a police officer to show beforehand to persons who are afterwards to be called as identifying witnesses photographs of those persons whom they are about to be asked to identify.

(3) Where photographs are used for the purpose of obtaining information a series of photographs, & not merely one or two, ought to be shown to the person who is expected to give the required information.—R. *v.* DWYER, R. *v.* FERGUSON, [1925] 2 K. B. 799 ; 95 L. J. K. B. 109 ; 132 L. T. 351; 89 J. P. 27 ; 41 T. L. R. 186 ; 27 Cox, C. C. 697 ; 18 Cr. App. Rep. 145, C. C. A.

Annotations :—As to (1) **Refd.** R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845. *As to* (2) **Consd.** R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845. **Refd.** R. *v.* Wainwright (1925), 19 Cr. App. Rep. 52. *Generally,* **Consd.** R. *v.* Hinds, [1932] 2 K. B. 644.

PART X. SECT. 1.

sf. *Offence charged under repealed Act.*]—R. *v.* CHEW DEB, [1928] 1 W. W. R. 966 ; 49 Can. Crim. Cas. 332 ; 39 B. C. R. 559.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.

c i. —— *Inland revenue officer—Statement of capacity.*]—Since only inland revenue officers can lay an information for an offence under Excise Act, such an information must state that the person laying the information is an inland revenue officer.—R. *v.* WITSIEWICZ (Man.), [1928] 2 W. W. R. 19 ; 49 Can. Crim. Cas. 330.—**CAN.**

PART XII. SECT. 1.

3786 i a. ——.] — Evidence is not admissible of the actions of dogs while engaged in tracking down a person accused of a crime, even though the owner of the dogs testifies as to their character & training & their fitness for tracking men.—R. *v.* WHITE, [1926] 3 D. L. R. 1 ; [1926] 2 W. W. R. 481 ; 45 Can. Crim. Cas. 328 ; 37 B. C. R. 43.—**CAN.**

3786 iii. ——.]—GHANSHYAM SINGH *v.* R. (1927), I. L. R. 6 Pat. 627.—**IND.**

3786 iv. ——.]—The rule against a mere *scintilla* is especially applicable in a case in which a state of facts is alleged that would make the opposite party guilty of a crime.—TOBER *v.* LAMPMAN, [1930] 3 D. L. R. 269 ; 65 O. L. R. 236.—**CAN.**

3791 i. *Circumstantial evidence—Exclusion of other causes.*]—It is not admissible to convict a person on circumstantial evidence if such evidence can be interpreted to give any other explanation than the accused person's guilt.—R. *v.* TYMKO (1924), 42 Can. Crim. Cas. 147.—**CAN.**

a i. *S. P.* GAUNS *v.* R. (1926), I. L. R. 7 Lah. 561.—**IND.**

b i. —— ——.]—R. *v.* DEMETRIO (1926), 46 Can. Crim. Cas. 133 ; 59 O. L. R. 249.—**CAN.**

b ii. —— ——.]—R. *v.* YOK YUEN' [1930] 1 D. L. R. 716 ; 52 Can. C. C. 300.—**CAN.**

b iii. —— ——.]—The force & effect of circumstantial evidence depend upon its incompatibility with, & incapacity of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove. On appeal from a conviction for arson, after a trial by a magistrate on which he found that the defence of *alibi* was established but that the accused had a motive for starting the fire & that on the evidence it must have been set by some one else with his knowledge & approval & at his suggestion :—*Held :* the *alibi* being established, the other circumstances in evidence did not compel the conclusion that there was an understanding or a concerting or conspiracy between the accused & the unidentified actual perpetrator of the deed, even if the former did profit by the fire, & therefore the conviction must be set aside.—R. *v.* VINEGRATSKY (ALIAS VINE) (No. 2), [1933] 3 W. W. R. 197; 60 C. C. C. 258.—**CAN.**

b iv. —— ——.]—The trial judge, should instruct the jury that, in so far as they relied upon circumstantial evidence in the case before them, they must be satisfied not only that the circumstances proved were all consistent with the guilt of the accused, but also that they were inconsistent with any other rational conclusion.—MCLEAN *v.* R., [1933] S. C. R. 688 ; [1934] 2 D. L. R. 440 ; 61 C. C. C. 9.—**CAN.**

b v. —— ——.]—R. *v.* JONES ; R. *v.* ANDERSON (1933), 47 B. C. R. 473.—**CAN.**

b vi. —— ——.]—R. *v.* MACCHIONE, [1937] 1 W. W. R. 151 ; 1 D. L. R. 593 ; 67 C. C. C. 381.—**CAN.**

sg. *Commercial documents — When admitted.*]—On a charge of theft from railway cars, documents, such as shipping bills, car checkers' records, etc., not made by the accused & of which he had no knowledge, have no probative value *per se ;* &, therefore, should not be admitted as evidence against the accused where it is not shown that the persons who made them are dead.—R. *v.* DUFF (Sask.), [1929] 1 D. L. R. 152 ; 50 Can. Crim. Cas. 246 ; [1928] 3 W. W. R. 550.—**CAN.**

3801b. —— —— **But may be shown before arrest.**]—A prosecutor identified a photograph as that of a prisoner whom the police subsequently arrested. After arrest prisoner was picked out by the prosecutor from a number of men in a room:—*Held:* there was no ground for complaint against the method of identification.—R. *v.* MELANY (1924), 18 Cr. App. Rep. 2, C. C. A.

Annotation:—**Refd.** R. *v.* Dwyer, R. *v.* Ferguson, [1925] 2. K. B. 799.

3801c. —— —— ——.]—R. *v.* DWYER, R. *v.* FERGUSON, No. 3801a, *ante*.

3810. *Add. Annotations:*—**Folld.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38. **Consd.** R. *v.* Tidmarsh (1931), 23 Cr. App. Rep. 79. **Refd.** R. *v.* Chesshire, Lucas & Bottom (1927), 20 Cr. App. Rep. 47.

3817a. —— ——.]—The prosecution is not entitled to put in police photographs for the purpose of identification as part of the evidence in chief. Where identification has been obtained by means of such photographs, the facts of such identification ought not to be given in evidence.—R. *v.* WAINWRIGHT (1925), 19 Cr. App. Rep. 52, C. C. A.

3819. *Add. Annotations:*—**Consd.** R. *v.* Cohen, [1938] 3 All E. R. 380. **Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

3820a. —— **Reference to meritorious discharge from army.**]—A mere reference to a meritorious discharge from the army by an undefended prisoner in a statement handed to the ct. of trial does not necessarily expose him to cross-examination on his character generally, though it may do so on his career in the army. Such a statement should be looked through in his interest & nothing read to the jury of the legal consequences of which he is not aware.—R. *v.* PARKER (1924), 18 Cr. App. Rep. 14, C. C. A.

3820b. —— **Evidence suggesting normal respectability.**]—(1) Questions inviting a witness to make suggestions should not be put in cross-examination, especially when they may have the effect of inducing a prisoner to make an attack on the prosecution, which will let in evidence otherwise inadmissible.

(2) A defending counsel should refrain from putting questions to prisoner giving evidence which suggest normal respectability, but which fall just short of giving evidence of good character.—R. *v.* BALDWIN (1925), 133 L. T. 191; 89 J. P. 116; 69 Sol. Jo. 429; 28 Cox, C. C. 17; 18 Cr. App. Rep. 175, C. C. A.

Annotations:—*As to* (1) **Consd.** R. *v.* Eldinow (1932), 23 Cr. App. Rep. 145. **Refd.** R. *v.* Coulson (1927), 20 Cr. App. Rep. 106.

3820c. ——.]—"Good character" of accused within Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*) (ii), means not only general good character, but any claim to good character incidentally put forward by accused.—R. *v.* WALKER (1927), 20 Cr. App. Rep. 31, C. C. A.

3827. *Add. Annotation:*—**Consd.** R. *v.* Noble (1928), 20 Cr. App. Rep. 191.

3834. *Add. Annotation:*—**Refd.** R. *v.* Noble (1928), 20 Cr. App. Rep. 191.

3834a. *S. P.* R. *v.* NOBLE (1928), 20 Cr. App. Rep. 191, C. C. A.

3835. *Add. Annotation:*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

PART XII. SECT. 2.

3807 iv. —— —— ——.]—Finger-print impressions of accused, compulsorily taken before his committal to gaol, are admissible in evidence against him.—R. *v.* MANGOLD, [1926] App. D. 440.—**S. AF.**

g i. —— —— ——.]—Identification by finger prints is opinion evidence & a matter of expert knowledge & practice.—R. *v.* WISWELL, [1935] 1 D. L. R. 624; 8 M. P. R. 317; 63 C. C. C. 94.—**CAN.**

o i. —— ——.]—Evidence of identification is sufficient although the witness suffered from impaired vision, if she was capable of recognising the prisoners without glasses.—R. *v.* ZARICHNEY (1936), 65 Can. C. C. 214.—**CAN.**

o ii. —— ——.]—Where evidence of the identity of an accused person is given by a witness whose previous knowledge has not made him familiar with the appearance of the accused & where he has been shown the accused alone as a suspect & has on that occasion first identified him, a ct. of criminal appeal should quash the conviction of the accused as unsafe unless his identity is further proved by other evidence, direct or circumstantial.—DAVIES & CODY *v.* R. (1937), 57 C. L. R. 170; 43 Argus L. R. 321; [1937] V. L. R. 205; 11 A. L. J. 69.—**AUS.**

p i. —— *Reference by magistrate to exhibits.*]—A magistrate at a trial was called to prove the identifications of accused in gaol & the methods adopted. Instead of stating the details & results, witness referred to documents, described as exhibits, in which he stated his evidence was to be found. The documents were put on the record as his evidence:—*Held:* the attempt to record evidence in this manner was not only contrary to law, but violated the first principles of evidence, & must be entirely ignored.—LAL SINGH *v.* R. (1924), I. L. R. 5 Lah. 396.—**IND.**

3814 ii. —— ——.]—*Held:* not a ground for allowing accused's appeal against his conviction.—R. *v.* BAGLEY (B. C.), [1926] 3 D. L. R. 717; [1926] 2 W. W. R. 513; 46 Can. Crim. Cas. 257.—**CAN.**

3814 iii. —— ——.]—R. *v.* HARRISON (B. C.), [1928] 3 D. L. R. 224; [1928] 1 W. W. R. 973; 49 Can. Crim. Cas. 356.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 1.—A.

3835 i. *Confined to general reputation—What amounts to.*]—Evidence of general repute does not mean the placing of a heterogeneous mass of more or less general statements by any witness who can be produced to say something on hearsay or otherwise & label it "general repute." A man's general repute is just as much a fact as any other fact which can be proved by a witness, & the witness should be asked questions to show that he is in a position to know what the general reputation of the accused is, & as to when & in what circumstances he has heard the character of accused discussed.—EMPEROR *v.* RAM LAL (1929), I. L. R. 51 All. 663.—**IND.**

PART XII. SECT. 3, SUB-SECT. 1.—B.

3848 vii. ——.]—Evidence cannot be given on a prosecution to prove that the accused is a bad character, or has a propensity to commit criminal acts of similar nature to the offence charged.—TAYLOR *v.* R., 22 Tas. L. R. 22.—**AUS.**

3848 viii. ——.]—For the purpose of determining what will be the appropriate sentence to impose on a convicted accused the judge is justified in taking into consideration statements by the Crown counsel as to previous convictions of, & charges against, the accused, where neither the accused nor his counsel question the correctness of said statements.—R. *v.* SCHEER, [1932] 3 W. W. R. 555; 26 Alta. L. R. 489.—**CAN.**

3848 ix. ——.]—Two prisoners, brother & sister, charged jointly with the murder of another brother, were convicted & sentenced to death. During the course of the trial the following questions were put by the judge to one of the witnesses:—The judge: "What kind of a woman was H. (the female prisoner) in disposition—was she cross?" Witness: "She was not cross to us." The judge: "Had you any opportunity of observing her demeanour about her own place? Was she cross or good-tempered?" Witness: "When she would meet us she would not want to talk. That is how she would treat us." The judge: "Was she different from M. A. (another sister)?" Witness: "Yes, she was." The judge: "M. A. was a good-tempered, pleasant woman?" Witness: "Yes, my Lord." On appeal to the Ct. of Criminal Appeal objection was taken, on behalf of the prisoners, to the admissibility of this as evidence; it was submitted that it was evidence of the bad character or disposition of the female prisoner, which could only be admitted if evidence had first been offered by her as to her own good character; & could only be proved by evidence of general reputation & not by the experience of the particular witness:—*Held:* the evidence & the answers of the witness did not refer to moral character, nor to general

3850a. —— Cross-examination of witness for defence constituting attack on character of accused.]—Questions must not be put in cross-examination to a witness called for the defence in such a way as to have the effect of constituting an attack on the character of the accused, when that is not in issue, even though the object of such questions may be to attack the credit of the witness & not the character of the accused.—R. *v.* McCraig (1925), 134 L. T. 160; 90 J. P. 64; 42 T. L. R. 215; 28 Cox, C. C. 109; 19 Cr. App. Rep. 68, C. C. A.

3855a. —— —— ——.]—Evidence was given that upon the arrest of a prisoner a substantial sum of money in notes was found on him. The prisoner had been previously convicted on several occasions, but the judge, being unaware of this & with a view to ascertaining what explanation of the possession of these notes the prisoner had to offer, put to him a number of questions with regard to his occupation & history for several years past. At the conclusion of this cross-examination, defending counsel felt that he had no alternative but to inform the jury that the prisoner had been in prison during part of that time. The judge subsequently warned the jury not to be influenced adversely towards the prisoner by reason of this disclosure:—*Held:* the trial must be regarded as unsatisfactory & the conviction must be quashed.—R. *v.* Taylor (1934), 25 Cr. App. Rep. 46, C. C. A.

3855b. ——.]—A reference in evidence to accused's previous conviction may become relevant by the nature of the cross-examination.—R. *v.* Lester (1927), 20 Cr. App. Rep. 25, C. C. A.

3856a. Evidence of pending charges.]—In the course of the accused's trial for breaking & entering a dwelling-house & stealing jewellery valued at £200, a police officer, in cross-examination by counsel for the accused, gave certain evidence highly prejudicial to the accused relating to another case & to other police inquiries. The assistant recorder directed the jury that they should not consider this evidence, but refused to discharge them & begin the trial again before another jury:—*Held:* the jury should have been discharged & the trial begun again.—R. *v.* Firth, [1938] 3 All E. R. 783; 26 Cr. App. Rep. 148, C. C. A.

3919a. ——.]—R. *v.* Hobday (1933), 77 Sol. Jo. 915, C. C. A.

3921. *Add. Annotations:*—**Refd.** Maxwell *v.* Director of Public Prosecutions, [1935] A. C. 309; R. *v.* Porter (1935), 25 Cr. App. Rep. 59; R. *v.* Mortimer (1936), 25 Cr. App. Rep. 150.

3924. *Add. Annotations:*—**Apld.** R. *v.* Hobday (1933), 77 Sol. Jo. 915. **Consd.** R. *v.* Mortimer (1936), 25 Cr. App. Rep. 150. **Refd.** Godman *v.* Times Publishing Co., [1926]

reputation, nor to a moral disposition or tendency to commit the crime of murder. & the witness stated nothing but the demeanour & manners of the prisoner & of her sister as manifested to the witness, & accordingly, as the evidence was, in the circumstances, relevant, the objection to its admissibility was unsustainable.—A.-G. *v.* O'Leary, [1926] I. R. 445.—**IR.**

3848 x. ——.]—On the trial of the accused on a charge of unlawfully retaining in his possession certain stolen money knowing that it had been stolen, counsel for the Crown asked one of the police officers who had arrested the accused: "Did you recognise him?" & was answered: "I thought I recognised him as being the subject of a police photograph which was on file at the office"; & the officer later testified that he had shown the accused "the police photographs." The evidence was objected to by counsel for the accused. The accused was found guilty by the jury & appealed:—*Held:* the evidence infringed the rule that the prosecution cannot, in the first instance, give evidence to impeach the character of the accused in order to establish a probability of his guilt; & it was immaterial whether or not it was offered with that object in view, for it could have no other effect on a jury.—R. *v.* McLaren, [1935] 2 W. W. R. 188; 3 D. L. R. 165; 63 Can. C. C. 257; 5 F. L. J. (Can.) 67.—**CAN.**

s i. —— ——.]—The fact that a person has on a previous occasion been bound over may be stated & proved as one of the grounds on which the witnesses to general repute believe the accused to be a habitual offender.—R. *v.* Kumera (1928), I. L. R. 51 All. 275.—**IND.**

ss. *What is evidence of bad character—Not statements by witness as to disposition & demeanour of prisoner & prisoner's sister.*]—A.-G. *v.* O'Leary, [1926] I. R. 445.—**IR.**

PART XII. SECT. 3, SUB-SECT. 2.

c i. *Charge of indecent assault.*]—R. *v.* Bell, [1930] 1 W. W. R. 433; 2 D. L. R. 414; 53 Can. C. C. 80; 24 Alta. L. R. 519.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—A.

1 i. —— ——.]—R. *v.* Bristol (N. S.), [1926] 4 D. L. R. 753; 46 Can. Crim. Cas. 156.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (a).

3920 iii. ——.]—On a charge of theft evidence tending to show that accused has been guilty of criminal acts, other than that upon which he has been charged, is inadmissible, & when allowed entitles accused to a new trial.—R. *v.* Morrison (1923), 33 B. C. R. 244.—**CAN.**

3920 iv. ——.]—Where the only question is whether the accused committed the act charged evidence of similar acts is not admissible.—R. *v.* Boynton (1934), 63 Can. C. C. 95.—**CAN.**

3923 ii. ——.]—Evidence of other similar acts done by accused is not admissible merely for the purpose of proving that accused by reason of his character or habits is likely to have committed the offence with which he is charged, but it is admissible if it is relevant in any other manner whatever to the guilt of accused, & it is not necessary before evidence of other similar but unconnected acts can be admitted that the prosecution should first lay a foundation for such evidence by establishing a *primâ facie* case against accused, sufficient without the help of any such evidence to go to the jury.—R. *v.* Cooper, [1923] N. Z. L. R. 1237; Gaz. L. R. 528.—**N.Z.**

3923 iii. ——.]—R. *v.* Dziwra (Ont.), [1928] 1 D. L. R. 828; 49 Can. Crim. Cas. 229.—**CAN.**

3923 iv. ——.]—Prisoner was indicted for the murder of his wife by strychnine poisoning. Evidence adduced in support of the indictment was that of three children of a former marriage by prisoner, going to show the latter's persistent cruelty towards his wife over a considerable period in the case of two of the children terminating two years & of the third one year before the wife's death. Other evidence of happenings between the time up to which the children were able to testify & the wife's death tended to show that prisoner had become tired of her:—*Held:* the children's evidence was properly admitted both as evidence of the malicious mind with which prisoner killed his wife & of the fact that he killed her, & also as rebutting the possible defences that the wife had taken the poison herself, either suicidally or accidentally.—R. *v.* Munn, [1930] N. Z. L. R. 1017.—**N.Z.**

3926 iii. ——.]—While proof of the commission by an accused of a crime other than that with which he is charged does not prove the crime charged, this rule will not be allowed to stand in the way of the bringing out of admissible facts when the accused's part in the other crime is so interwoven with them that they cannot be established otherwise than by giving evidence of the whole occurrence. On a criminal trial if circumstances other than those connected with the crime charged are relevant to other matters which the Crown has to prove as properly part of its case, evidence of them may be admissible in certain cases even though they incriminate the accused with respect to other offences. At the same time, great care must be taken in determining the immediate purpose in view in tendering such evidence. On the trial of a man on a charge of murdering a newly born infant, the mother of the child who described the alleged murder also testified that the accused had subsequently murdered in a similar way three other newly born children of hers. The accused was convicted, & appealed on the ground (*inter alia*) that the evidence of said subsequent alleged murders should not have been admitted:—*Held:* the appeal should be dismissed.—R. *v.* Stawycznuj, [1933] 2 W. W. R. 495; 4 D. L. R. 725; 60 C. C. C. 153; 41 Man. L. R. 281.—**CAN.**

2 K. B. 273; Maxwell *v.* Director of Public Prosecutions, [1935] A. C. 309; Berry *v.* Tottenham Hotspur Football & Athletic Co., [1936] 3 All E. R. 554.

3925. *Add. Annotations :*—**Consd.** R. *v.* **Tidmarsh** (1931), 23 Cr. App. Rep. 79; R. *v.* Slender, [1938] 2 All E. R. 387. **Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

3925a. —— ——.]—R. *v.* TIDMARSH (1931), 23 Cr. App. Rep. 79, C. C. A.

3940. *Add. Annotation :*—**Refd.** Maxwell *v.* Director of Public Prosecutions (1934), 151 L. T. 477.

3941. *Add. Annotation :*—*As to* (2) **Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

3943a. ——.]—On an indictment for embezzlement evidence that, on a series of occasions before & after those mentioned in the indictment, precisely similar errors [to those alleged against prisoner] had been made, & advantage taken of them, by him :—*Held :* admissible to explain motives & intentions.—R. *v.* RICHARDSON (1861), 2 F. & F. 343; 8 Cox, C. C. 448.

Annotations :—**Consd.** R. *v.* Stephens (1888), 58 L. T. 776. **Refd.** R. *v.* Balls (1871), L. R. 1 C. C. R. 328; R. *v.* Francis (1874), L. R. 2 C. C. R. 128; R. *v.* Bond, [1906] 2 K. B. 389.

3947a. ——.]—Applt. was charged with obtaining money by false pretences, the allegation of the prosecution being that a certain business carried on by him had falsely been represented to be a *bonâ fide* assocn. honestly carried on & in a position to offer advantages in return for the subscriptions of members. Applt. had carried on in 1930 a similar business & had made representations similar to those made in the present case & had, as a result, been convicted of obtaining money by false pretences. He was asked in cross-examination a number of questions about the previous business, but no reference was made by the prosecution to that business having resulted in any charge or conviction :—*Held :* as there was sufficient *nexus* in method & circumstance between the two businesses, the cross-examination on the previous business was admissible.—R. *v.* PORTER (1935), 25 Cr. App. Rep. 59, C. C. A.

3959a. —— **Murder.**]—R. *v.* MORTIMER (1936), 80 Sol. Jo. 227; 25 Cr. App. Rep. 150, C. C. A.

3971. *Add. Annotation :*—**Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

3972. *Add. Annotation :*—**Refd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

3992. *Add. Annotation :*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

4009. *Add. Annotation :*—**Apld.** R. *v.* Hewitt (1925), 89 J. P. Jo. 721.

4009a. —— ——.]—In a charge of unlawful carnal knowledge of a girl under sixteen years of age, evidence independent of the girl's evidence may be given that the accused on a previous occasion indecently assaulted the same girl, & the fact that a considerable time has elapsed since the earlier act of indecency affects only the weight & not the admissibility of the evidence.—R. *v.* HEWITT (1925), 134 L. T. 157; 90 J. P. 68; 42 T. L. R. 216; 28 Cox, C. C. 101; 19 Cr. App. Rep. 64, C. C. A.

4048. *Add. Annotations :*—**Refd.** R. *v.* Stuart, R. *v.* Leonard, R. *v.* Maples, R. *v.* Tannen, R. *v.* Taylor (1927), 43 T. L. R. 715; R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

4049. *Add. Annotation :*—**Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

PART XII. SECT. 4, SUB-SECT. 2.—B. (b).

3943 ii. ——.]—HTIN, GYAW *v.* R. (1927), I. L. R. 6 Ran. 6.—**IND.**

3943 iii. ——.]—Evidence admitted to prove a system or course of conduct.—HARRIS *v.* R. (1927), 48 N. L. R. 330.—**S. AF.**

3943 iv. ——.]—R. *v.* PUBLICOVER (1930), 53 Can. C. C. 265; 1 M. P. R. 333.—**CAN.**

3943. v. ——.]—In criminal cases where evidence of similar acts may be adduced in order to show a plan or system, such evidence is not admissible the less because it relates to a plan or system continued by the prisoner after the date of the offence charged. The evidence proving such a plan or system may point to the prisoner as the perpetrator of the crime so conclusively as to nullify any objection to the mode in which he has been identified.—GRIFFITH *v.* R. (1937), 58 C. L. R. 185; 43 Argus L. R. 653; 11 A. L. J. 73.—**AUS.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (c).

3960 i. *General rule.*]—Evidence admitted to rebut a suggestion of accident or mistake.—HARRIS *v.* R. (1927), 48 N. L. R. 330.—**S. AF.**

sd. *Embezzlement.*]—R. *v.* WILDER, [1933] 1 W. W. R. 191; 60 C. C. C. 81.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) i.

p i. —— *Disguise as revenue officer.*]—B. & others were convicted of the murder of the captain of a boat containing a cargo of liquor intended to be illegally delivered in the United States. It was proved that B. had bought a yachtman's cap with a white top & ornamented with gold braid in order to give himself the appearance of a revenue officer, & in concert with the others had attacked the crew of the boat, under the pretence that he & his associates were officers of the law. Evidence was offered by the Crown that B. on one occasion recently, & on another at a considerably earlier date, had employed similar equipment & precisely the same ruse for the purpose of deceiving & disarming the opposition of bootleggers while he took over their illegal possessions :—*Held :* such evidence was admissible as tending to establish a practice.—BAKER *v.* R., SOWASH *v.* R., [1926] 1 D. L. R. 115; [1926] S. C. R. 92; 45 Can. Crim. Cas. 19.—**CAN.**

sf. *Poison ordered by accused—Delivered at her house.*]—Where a wife is charged with poisoning her husband there is evidence to convict on proof that she ordered the poison & that it was delivered to her house, & that deceased died as the result of such poison.—R. *v.* TILFORD, [1935] 4 D. L. R. 691; O. R. 35; 64 Can. C. C. 356.—**CAN.**

PART XII. SECT 4, SUB-SECT. 2.—B. (h) ii.

r i. —— *Use of instruments on other women.*]—Accused was charged with unlawfully using an instrument on one M. S., "with intent to procure" her miscarriage. The Crown called M. S. as a witness. In further support of the onus on it to establish intent the Crown tendered the testimony of three or more witnesses to prove that accused had unlawfully used on them instruments of the same kind & for the same purpose as the kind & purpose testified to by M. S. :—*Held :* the Crown was justified in tendering the evidence in chief, & the judge should, in the proper exercise of his discretion, have admitted it when so offered or, at least, have reserved the question of its admission for later consideration after the defence had been clearly identified.—R. *v.* ANDERSON, [1935] 3 W. W. R. 272; 4 D. L. R. 432; 64 Can. C. C. 205; 50 B. C. R. 225.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) iii.

4011 iii. ——.]—On a charge of incest, evidence given by the girl of prior alleged acts of incest is admissible, not as further proof of guilt, but to establish guilty relations & that a sexual passion existed.—R. *v.* PEGELO, [1934] 1 W. W. R. 573; 2 D. L. R. 798; 48 B. C. R. 146; 62 C. C. C. 78.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) iv.

k i. —— *Indecent assault involving murder on another child.*]—In reaching a conclusion on a charge of indecent assault, involving murder, upon a little girl :—*Held :* the jury were neither bound, nor entitled, to shut their eyes to what they might consider to have been proved under a charge of indecent assault upon another little girl, in view of the close association in time, character, & circumstances of the incidents alleged with regard to the two charges.—H. M. ADVOCATE *v.* BICKERSTAFF, [1926] S. C. (J.) 65.—**SCOT.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) viii.

4052 xiv. —— ——.]—A person accused of obtaining goods on false pretences from B. & S. was convicted on the two counts. The pretence consisted, in the B. case, of representations that accused was a bank officer, at a certain place, was low in clothes & was

4057. *Add. Annotation :—As to* (2) **Distd.** R. *v.* Boothby (1933), 24 Cr. App. Rep. 112.

4064a. —— ——.]—Applt. was charged with obtaining food from one K. by false pretences, the false pretences alleged being that applt. had certain money, was connected with a certain firm, & was then in a position to buy & pay for K.'s business. Evidence was admitted at the trial that, subsequently to the offence charged, applt. had obtained food & lodging from one C. by falsely representing that he wished to buy C.'s farm & could find the money in a few days :—*Held :* in the circumstances of the particular case, without laying down any general principle, the evidence was inadmissible, & the conviction must be quashed.—R. *v.* Boothby (1933), 24 Cr. App. Rep. 112, C. C. A.

4066a. —— **Previous different pretence.**]—Applt. & another man were convicted of obtaining money by false pretences. They had obtained two sums of 30*s.* each from a lady living in Cheltenham. They said that they had been involved in a lorry accident at Colesbourne, & that they required the money to spend the night in Cheltenham. On this occasion, applt. said his name was Ted Williams. It was proved that the two men were brothers-in-law, each of them was on the dole, neither of them had anything to do with driving a lorry, being at the time engaged upon compulsory relief work for the local authority. P., who lived just outside Cheltenham, gave evidence that, two days before the happening of the facts stated in the charge, the same two men called upon him, said they wanted to go to Rissington, where they had work, & required the money for the journey there. On this occasion, applt. gave the name of Smith. The evidence was admitted, as proving the intent to defraud :—*Held :* the evidence was inadmissible.—R. *v.* Slender, [1938] 2 All E. R. 387 ; 82 Sol. Jo. 455 ; 26 Cr. App. Rep. 155, C. C. A.

4100. *Add. Annotation :*—**Refd.** R. *v.* Tomasso (1934), 25 Cr. App. Rep. 14.

4129a. Statement by wife—In absence of husband.]—A statement by deft.'s wife to third persons is not evidence against deft. on his trial of the facts therein contained, but may be given in evidence with his remarks on them when it is repeated to him.—R. *v.* Finden (1926), 19 Cr. App. Rep. 144, C. C. A.

4129b. Statement by co-defendant—In answer to questions by police]—(1) A statement relative to a pending charge, obtained in the course of a question addressed by a police officer to a person under arrest on that charge, is not a voluntary statement.

(2) Such a statement is not evidence against a co-deft., but if the jury have been adequately warned on that point the ct. will not interfere on the ground of an ambiguous sentence in the summing up.—R. *v.* Turner (1926), 19 Cr. App. Rep. 171, C. C. A.

4151. *Add. Annotation :*—**Refd.** R. *v.* Parker, [1933] 1 K. B. 850.

---

about to take a holiday, & giving an assumed name ; in the S. case, accused wrote a letter with similar false statements of his name & employment & stating that he desired to obtain personal requirements, as he was about to be married. Subsequently accused called & obtained goods at S.'s warehouse. The statements as to the holiday & the marriage were not proved to be untrue. Accused wrote a similar letter to M., but it was not shown that he obtained goods there. Accused also obtained credit from F. The only false representation to F. was the giving of the false name :—*Held :* evidence of the representations to M. & F. was rightly admitted on the question of intent.—R. *v.* Reynolds, [1927] S. A. S. R. 228.—**AUS.**

4052 xv. —— —— *Similar crime abroad.*]—In an indictment the charges against accused were that, having conceived a fraudulent scheme for obtaining money from the public in Scotland & elsewhere by means of counterfeit drafts, he (*a*) on Sept. 21, 1927, uttered in a bank in Dundee a forged document which purported to be a draft of a finance co. in New York, & (*b*) on Sept. 23, in the same bank pretended, by telephone from London, that the draft was genuine. The indictment further charged accused with pretending, in pursuance of the scheme, in an hotel in Brussels, in Oct., that a forged document was a genuine draft of the same finance co. :—*Held :* while admittedly the incident in Belgium could not be made the subject of a substantive charge, that incident & the crime charged were sufficiently closely connected to admit of evidence relating to that incident being used by the prosecution for the purpose of supporting the other charges.—H.M. Advocate *v.* Joseph, [1929] S. C. (J.) 55.—**SCOT.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) ix.

4070 vi. —— ——.]—In a trial on a charge of forging & uttering a cheque with intent to defraud, evidence of other similar offences is admissible both to prove the intent with which the particular act charged was done & to rebut by anticipation a defence open to the accused, *e.g.*, one of accident or mistake ; & the term "similar offences" in this rule means offences of a similar character & not offences precisely similar in nature & fact. Applt., was charged with having forged a cheque with intent to defraud, & with having uttered it. At the trial, evidence was admitted that shortly after the date of the offence charged, applt. forged another cheque, &, yet a little later, also forged two promissory notes :—*Held :* the evidence was admissible as evidence of similar offences both to prove the intent to defraud & to rebut by anticipation the defence raised at the trial that the cheque, the subject of the charge, had been received honestly & without knowledge that it was a forged instrument.—R. *v.* Manning (1933), 33 S. R. N. S. W. 285 ; 50 N. S. W. W. N. 129.—**AUS.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) xi.

t i. —— —— *Previous fires on insured property.*]—R. *v.* Petrisor, [1931] 2 W. W. R. 712 ; 56 Can. C. C. 389.—**CAN.**

t ii. —— *Count for false pretences—Evidence of other fires—Sufficiency of direction to jury.*]—R. *v.* Pinsk, [1934] 3 W. W. R. 762 ; [1935] 1. D. L. R. 307 ; 63 Can. C. C. 201.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) xii.

so. *Conspiracy—Evidence of previous attempt.*]—On a charge of conspiracy evidence of a previous attempt to commit a similar offence is relevant & admissible.—Paradis *v.* R., [1934] S. C. R. 165 ; 2 D. L. R. 88 ; 61 C. C. C. 184.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 5.—A.

4129a i. *Statement by wife — In absence of husband.*]—A statement made by the wife of accused was handed to him at his own request, & he admitted the signature was that of his wife, & made the remark, "I did not think she would let me down like this. Anyhow, it is not true I was sacked from. . . . I got testimonials from both places when I left" :—*Held :* an acknowledgment of the truth of the statement in whole or in part might be inferred, & the contents of the statement were properly submitted to the jury, the question of admission or not of the truth of the contents being left to them.—R. *v.* Grigg, [1926] N. Z. L. R. 784.—**N.Z.**

t i. ——.]—R. *v.* Brown (Sask.), [1927] 4 D. L. R. 779 ; [1927] 3 W. W. R. 335 ; 49 Can. Crim. Cas. 37. —**CAN.**

sa. *May be admissible as showing state of mind.*]—R. *v.* Wysochan (1930), 54 Can. C. C. 172.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 5.—C.

4139 xvi. —— ——.]—Statements made in the presence & hearing of accused are admissible in evidence against him.—R. *v.* McKevitt, [1936] 3 D. L. R. 750 ; 10 M. P. R. 531 ; 66 Can. C. C. 70.—**CAN.**

4147 i. —— —— *Should be excluded unless some evidence of admission by accused.*]—It is only when accused, by "word or conduct, action or demeanour," has accepted what they contain, & to the extent that he does so, that statements made by other persons in his presence have any evidentiary value.—Stein *v.* R., [1929] 1 D. L. R. 143 ; 50 Can. Crim Cas. 311 ; [1928] S. C. R. 553.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 5.—E.

4172 vii. ——.]—In a charge of murder or culpable homicide, words uttered by the deceased person not in

4189. *Add. Citation :*—27 Cox, C. C. 510.

4194. *Add. Annotations :*—**Distd.** R. *v.* Whitehead, [1929] 1 K. B. 99. **Refd.** R. *v.* Coulson (1927), 20 Cr. App. Rep. 106 ; Sutton *v.* R., [1933] A. C. 348.

4199. *Add. Annotations :*—**Distd.** R. *v.* Whitehead, [1929] 1 K. B. 99. **Refd.** R. *v.* Coulson (1927), 20 Cr. App. Rep. 106.

4216a. —— ——.]—On the trial of an indictment for corruptly giving or receiving a gift, a paper found on accused, which may refer to the bribery charged, is admissible in evidence against him.—R. *v.* CHESSHIRE, LUCAS & BOTTOM (1927), 20 Cr. App. Rep. 47, C. C. A.

4222a. ——.]—(1) A disorderly house at common law is a house which is so conducted as to violate law & good order.

(2) Letters, if found in such a house referring to unnatural practices, may be given in evidence against a person charged with keeping such a house.—R. *v.* BERG, BRITT, CARRÉ & LUMMIES (1927), 20 Cr. App. Rep. 38, C. C. A.

4222b. ——.]—Applt. was charged with larceny & conspiracy. The facts of the crime were that with two others applt. obtained £2,300 from a person by a trick in the course of a transaction in which that person intended to purchase a number of Kruger sovereigns for that sum. At the trial evidence, to which objection was taken, was given that Kruger sovereigns had been found in applt.'s flat. In fact these sovereigns belonged to an employee of applt.'s wife. The recorder upheld the objection & in his summing up said more than once that the jury ought to exclude that evidence from their consideration. The jury convicted & applt. appealed on the ground that the evidence ought not to have been admitted :—*Held :* the evidence that Kruger sovereigns were found in applt.'s flat was material & admissible & no objection could be taken to the fact that it was admitted.—R. *v.* KURASCH, [1937] 2 All E. R. 130 ; 53 T. L. R. 441 ; 81 Sol. Jo. 296 ; 26 Cr. App. Rep. 25, C. C. A.

---

the presence or hearing of the accused but to the first person encountered & so immediately as to preclude opportunity to devise a story to the disadvantage of accused, are part of the *res gestæ* & admissible in evidence.—R. *v.* NICHOLLS, [1931] N. L. R. 557. —**S. AF.**

4175 ii. —— ——.]—Applt. & twenty-one others were convicted of faction fighting within Act 11, 1896. In the course of the fight a native was stabbed & subsequently died. At least a quarter of an hour after he was wounded he stated that it was applt. who had wounded him. The magistrate admitted evidence of this statement as part of the *res gestæ* &, in consequence thereof, sentenced applt. to 18 months' imprisonment with hard labour, none of the other accused receiving more than 6 months : —*Held :* the statement was not part of the *res gestæ* & was wrongly admitted. —KAWULA *v.* R. (1929), 50 N. L. R. 39.—**S. AF.**

4175 iii. —— ——.]—*Held :* declarations made by deceased that he had been poisoned by his wife were not admissible as forming part of the *res gestæ*. These declarations were made at the hospital nearly two weeks after the date of the alleged offence & four or five days before his death : therefore they were too much separated by time & circumstance from the actual commission of the alleged criminal act.—CHAPDELAINE *v.* R., [1935] S. C. R. 53 ; [1935] 2 D. L. R. 132 ; 63 C. C. C. 5.—**CAN.**

sd. *Statement by person injured immediately before hurt received.*]—Where deceased fled from her house to a neighbour's & stated that accused had tried to kill her & that he was liable to shoot through the window, & she was then shot through the window, these statements were admitted as part of the *res gestæ*.—R. *v.* WILKINSON, [1934] 3 D. L. R. 50 ; 62 C. C. C. 63 ; 7 M. P. R. 562.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 6.—A.

4182 ii. —— ——.]—The words in Cyprus Criminal Evidence & Procedure Law, 1929, s. 7, that "any ct. before which any person accused of any offence . . . is being tried may receive in evidence, on behalf of the complainant or of the prosecution, the particulars of any complaint or statement," mean that the ct. may receive in evidence the particulars in support of the charge & as evidence of the facts to which the statement relates. Applt. was accused of manslaughter in Cyprus. A witness gave evidence that the man just before he died asked him to ask the accused : "Why did he beat me ? " ; another witness in evidence said that the man said : "Why did he strike me ? " :—*Held :* on the above construction of sect. 7 of the Law of 1929, those two questions were properly admitted not merely as evidence that they were asked, but as evidence of the facts implied therein.—SUTTON *v.* R., [1933] A. C. 348 ; 102 L. J. P. C. 82 ; 148 L. T. 536 ; 49 T. L. R. 346, P. C.—**CYPRUS.**

PART XII. SECT. 4, SUB-SECT. 6.—B.

4200 viii. ——.]—On a charge of incest there was evidence of prosecutrix having complained to her stepmother six days after the alleged crime was committed, & further evidence of prosecutrix & her sister was allowed in that two days later she had complained to her sister of the crime :—*Held :* evidence of the statements made by prosecutrix to her sister eight days after the occurrence when she had had ample opportunity to complain before, was inadmissible, & by its admission a substantial wrong was done to accused, & there should be a new trial.—R. *v.* PROTEAU (1923), 33 B. C. R. 39.—**CAN.**

q i. —— ——.]—Upon appeal from a conviction for rape it was argued that evidence of a complaint, made by complainant to her husband many hours after the alleged offence, was improperly admitted, she having had earlier opportunities to complain to others, though not to her husband :—*Held :* it was for the trial judge to decide whether the complaint was made in circumstances which rendered it properly admissible—the material point was whether it was made on the first reasonable opportunity—& the judge found that it would not have been reasonable for the woman to have complained to other persons.—R. *v.* HILL, [1928] 2 D. L. R. 736 ; 49 Can. Crim. Cas. 161 ; 61 O. L. R. 645. —**CAN.**

4209 vi. —— ——.]—R. *v.* STONEHOUSE & PASQUALE, [1928] 1 D. L. R. 506 ; [1928] 1 W. W. R. 161 ; 49 Can. Crim. Cas. 122 ; 39 B. C. R. 279.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 7.

b i. —— ——.]—The fact that incriminating documents have been obtained from accused does not make them objectionable.—R. *v.* HAWKINS (1923), 42 Can. C. C. 305.—**CAN.**

4221 iii. ——.]—It was objected that the trial judge improperly received in evidence a book found in prisoner's house, entitled "Theses & Statutes of the Third (Communistic) International of Moscow," published in the interests of an organisation with which prisoner had voted to amalgamate :—*Held :* the evidence was admissible.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—**CAN.**

4232 i. *Must be material—Charge of acts of gross indecency—Evidence of possession of lewd pictures—Admitted on general issue.*]—Upon a charge of gross indecency, evidence that indecent photographs were found in accused's possession is not admissible, unless there is some specific connection between the articles & the participation of accused in the crime.—R. *v.* DAVIS, [1925] App. D. 30.—**S. AF.**

PART XII. SECT. 5, SUB-SECT. 1.

l i. *Actual words & not substance of confession should be given.*]—The ct. ought to ascertain as far as possible the very words spoken by accused who is said to have confessed. There is no rule of law which precludes the ct. from holding that a confession has been proved even in cases where the evidence gives the substance, though not the actual words of the statement made by accused, if the ct. believes that evidence.—NUR ALI *v.* R. (1924), I. L. R. 5 Lah. 140.—**IND.**

l ii. ——.]—It is not the law that the statement of accused must be rejected if not in his *ipsissima verba*, but it is a matter for consideration by the judge in arriving at his decision as to the admission or not of the statement.—A.-G. *v.* M'CABE, [1927] I. R. 129.—**IR.**

sd. *Previous written statement inconsistent with prisoner's evidence at trial.*]—*Held :* admissible.—A.-G. *v.* MURRAY, [1926] I. R. 266.—**IR.**

ss. *Statement inculpating co-prisoners.*]—Three applts. together with a woman were convicted of the crime of murder. After arrest the woman had made a statement inculpating applts. under whose compulsion she said she had been acting :—*Held :* the

4254a. —— ——.]—If the judge at the trial is satisfied that deft. was properly cautioned before he made a statement, that statement is admissible in evidence: deft. is not entitled at that stage to give evidence that the statement was improperly obtained.—R. *v.* BALDWIN (1931), 23 Cr. App. Rep. 62, C. C. A.

4254a. —— —— —— **Preliminary examination.**]—R. *v.* TUTTLE, No. 2204a, *ante*.

4279. *Add. Annotation :*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

4286. *Add. Annotation :*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

4308. *Add. Annotations :*—**Refd.** Nadan *v.* R., [1926] A. C. 482; Attygalle *v.* R., [1936] 2 All E. R. 116.

4314a. —— **Proof of inducement.**]—Where an alleged confession by a prisoner is tendered

statement was not a confession, & had been improperly admitted in evidence against applts.—R. *v.* CAMANE, [1925] App. D. 570.—**S. AF.**

sf. *Statement overheard in cells.*]—At the trial of four persons, on charges including a charge of murder against three of the number, a police-officer, who had been on duty on the morning after the murder at the office in which two of the persons charged were being detained, gave evidence. He deponed that prisoners were shouting to each other in the cells to see who was in. He was then asked by counsel for the Crown, "What did you hear?":—*Held :* the question must be disallowed.—H.M. ADVOCATE *v.* KEEN, [1926] S. C. (J.) 1.—**SCOT.**

sg. *What amounts to—Under* 1917 *Act* (c. 31), *s.* 273.]—The test to be applied in determining whether a statement made by accused is a confession within 1917 Act (c. 31), s. 273, is whether the acknowledgment of guilt on the part of the accused is such that, if made in a ct. of law, it would have amounted to a plea of guilty.—R. *v.* BECKER, [1929] App. D. 167.—**S. AF.**

sk. *Written confession—Must be put in if referred to.*]—The jury should not be informed that accused has made a written confession unless it is put in as evidence.—R. *v.* SAMPSON (1934), 8 M. P. R. 237; 62 C. C. C. 49.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 2.

n i. —— ——.]—The accused had been committed for trial on a charge of murdering another man whose remains were for a time thought to be those of the victim in the present case. On the preliminary hearing of that charge the accused, after being asked whether he wished to make any statement, was sworn in & made a statement under oath. There was no doubt that he made the statement of his own free will & after the usual ample warnings. The trial judge in the present case allowed that statement, except that part of it which was extracted on cross-examination, to be read into the record :—*Held :* while the administering of the oath was an irregularity, it did not operate to the accused's prejudice & did not render the statement allowed in invalid as evidence.—R. *v.* BAHREY, [1934] 1 W. W. R. 376.—**CAN.**

o i. —— ——.]—Where a magistrate translated what he had written down to accused, who acknowledged it to be correct & affixed his thumb impression :—*Held :* the confession was admissible, any defects in the mode of recording it being cured by Code of Criminal Procedure, s. 533.—R. *v.* DEO DAT (1922), I. L. R. 45 All. 166.—**IND.**

PART XII. SECT. 5, SUB-SECT. 3.

s (p. 406) i. —— *Document marked for identification only—Not admissible.*]—R. *v.* SMITH (1931), 3 M. P. R. 97.—**CAN.**

t (p. 408) i. ——.]—The evidence of a judgment debtor on an examination for discovery in aid of execution is admissible against him on a subsequent criminal charge, unless he at the time objected to answer on the ground that his answers might tend to incriminate him.—R. *v.* NOZARI, [1926] 4 D. L. R. 955; [1926] 3 W. W. R. 332; 46 Can. Crim. Cas. 168; 37 B. C. R. 305.—**CAN.**

ri. —— *Subsequent charge of perjury.*]—At the preliminary hearing of another charge, accused, who was in custody, was questioned by the magistrate, when asking for an adjournment. He was not represented by counsel, & had not offered himself as a witness or been sworn, & his answers were not taken down in writing. At the trial accused was questioned as to alleged admissions to the magistrate & he denied them. His denial was the subject of the perjury charge :—*Held :* the conviction for perjury should be quashed.—R. *v.* CIESLENSKI, [1924] 1 W. W. R. 82; 41 Can. Crim. Cas. 195.—**CAN.**

sl. *Inquiry by Fire Commissioners.*]—A. was indicted for felony. At the trial the Crown put in evidence depositions sworn to by him, without being cautioned that what he so deposed to might be given in evidence against him, before Fire Comrs. empowered by the Quebec Statutes, 31 Vict. c. 31, & 32 Vict. c. 29, to investigate the origin of any fires occurring in Quebec & before any charge or accusation had been made against him :—*Held :* the depositions were properly admitted as evidence against the prisoner at the trial.—R. *v.* COOTE (1873), L. R. 4 P. C. 599.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 4.

4303 x. ——.]—Neither the fact that accused was not cautioned before making a statement to a person in authority, nor the fact that it was made in answers to questions put by a police officer, is sufficient to render it inadmissible in law, but they are circumstances which the judge should consider in exercising his discretion to exclude or admit the statement.—R. *v.* KOOTEN, [1926] 4 D. L. R. 771; [1926] 1 W. W. R. 178; 46 Can. Crim. Cas. 159; 35 Man. L. R. 461.—**CAN.**

4303 xi. ——.]—*Held :* evidence as to a voluntary statement made by prisoner to the police, after being cautioned, was admissible, although the effect of the statement was to indicate the previous bad character of accused.—H.M. ADVOCATE *v.* M'FADYEN, [1926] S. C. (J.) 93.—**SCOT.**

4303 xii. ——.]—R. *v.* HAGERUP (Sask.) (1927), 48 Can. Crim. Cas. 95.—**CAN.**

4303 xiii. ——.]—BOISSEAU *v.* R. (1927), 49 Can. Crim. Cas. 222; Q. R. 43 K. B. 105.—**CAN.**

4303 xiv. —— *Effect of retraction.*]—A retracted confession is admissible in evidence, but should have no weight attached to it unless it is corroborated in material particulars, or the tribunal comes to the conclusion that the statement as a whole is a truthful statement. In either of these cases the retracted statement must be given full weight, & may be used against a co-accused.—SHEONARAIN SINGH *v.* R. (1928), I. L. R. 8 Pat. 262.—**IND.**

4303 xv. ——.]—R. *v.* RASMUSSEN, [1935] 1 D. L. R. 97; 62 C. C. C. 217; 9 M. P. R. 41.—**CAN.**

4303 xvi. ——.]—There is no general rule of law that a person cannot be convicted of a crime on the sole evidence of a confession by him of his guilt.—MCKAY *v.* R. (1936), 54 C. L. R. 1.—**AUS.**

m p. (411) i. —— ——.]—R. *v.* PRICE, [1931] 3 D. L. R. 155; 55 Can. C. C. 206.—**CAN.**

s (p. 412) i. —— ——.]—If based on an admission or confession to the police, when they were interrogating accused, a conviction on a summary trial will be set aside, unless it can be proved that accused made the admission or confession voluntarily.—R. *v.* WARD (1924), 41 Can. Crim. Cas. 418.—**CAN.**

s (p. 412) ii. ——.]—The burden is upon the prosecution to satisfy the judge that statements made by the prisoner on interrogation by a person in authority were voluntary.—R. *v.* NELSON PRICE, [1931] 3 M. P. R. 303.—**CAN.**

s (p. 412) iii. —— ——.]—When a confession is tendered in evidence, its voluntary character must, apart from Evidence Act, 1928 (Vict.), s. 141, appear before it is admissible. The trial Judge must determine whether a confession is voluntary, &, if a promise or threat has been made, whether it is really calculated to cause an untrue admission of guilt.—CORNELIUS *v.* R. (1936), 55 C. L. R. 235; [1936] V. L. R. 222; 42 Argus L. R. 278; 10 A. L. J. 118.—**AUS.**

b (p. 412) i. —— *Though not in accused's native tongue—Confession read over & explained.*]—R. *v.* IWANCHUK (Alta.), [1929] 1 D. L. R. 279; 50 Can. Crim. Cas. 405.—**CAN.**

4311 vi. ——.]—A confession made to any person under the influence of a promise or threat held out by a person in authority, calculated to induce the confession, is inadmissible, unless it be clearly proved to the satisfaction of the judge, whose duty it is to decide the question, that the promise or threat did not operate upon the mind of the accused, & that the confession was voluntary.—R. *v.* TREANOR, R. *v.* FLOOD, R. *v.* TREANOR, R. *v.* KELLY, [1924] 2 I. R. 193.—**IR.**

4311 vii. —— *Made under influence of mental suggestion.*]—R. *v.* BOOHER (Alta.), [1928] 4 D. L. R. 795; [1928] 3 W. W. R. 203; 50 Can. Crim. Cas. 271.—**CAN.**

4311 viii. —— *Promise or threat by third party—In presence of person in authority.*]—A promise or threat made to an accused by a third person in the presence of a person in authority & with that person's apparent acquiescence renders a confession thereby obtained from the accused inadmissible in the same manner as if the promise or threat had been made directly by the person in authority himself. If the whole of the evidence discloses that a confession by an accused was made as a voluntary statement it ought to be admitted.—R. *v.* BAHREY, [1934] 1 W. W. R. 376.—**CAN.**

4311 ix. ——.]—After entering a house in execution of a search warrant a police officer "called together" the accused & a woman who was there &, without warning them, asked which of the two was the responsible tenant. The accused answered that he was &

in evidence by the prosecution & objection is taken by the defence to its admission on the ground that it has been induced by threats, it is not permissible for the judge to decide the issue whether such threats have been made or not by reference to the depositions. The proper course is for the judge to hear evidence on that issue in the absence of the jury, & upon that evidence rule whether the confession should be admitted or not.—R. *v.* CHADWICK (1934), 78 Sol. Jo. 279; 24 Cr. App. Rep. 138, C. C. A.

4317a. —— ——.]—The fact that an accused person makes a voluntary confession without a caution does not exclude its admissibility at the trial.—R. *v.* PATTISON (1929), 21 Cr. App. Rep. 139, C. C. A.

4348. *Add. Annotation:*—**Apld.** R. *v.* Brown & Bruce (1931), 23 Cr. App. Rep. 56.

4351. *Add. Annotation:*—**Refd** R. *v.* Turner (1926), 19 Cr. App. Rep. 171.

4351a. —— —— ——.]—R. *v.* BOOKER, No. 8793a, *post.*

4351b. —— —— ——.]—R. *v.* TURNER No. 4129b, *ante.*

4351c. —— —— ——.]—R. *v.* BROWN & BRUCE, No. 2404a, *ante.*

4351d. —— —— ——.]—Evidence of conversation between a prisoner in custody & a police officer may not be admissible on the trial of the accused, if the prisoner has not been cautioned.—R. *v.* DWYER (1932), 23 Cr. App. Rep. 156, C. C. A.

4357a. —— **Form of statement.**]—R. *v.* O'DONOGHUE, No. 8266a, *post.*

4359a. ——.]—Larceny. The prosecutor asked the prisoner, on finding him, for the money he, the prisoner, had taken out of the prosecutor's pack, but before the money was produced said, "He only wanted his money, & if the prisoner gave him that, he might go to the devil if he pleased"; upon which the prisoner took 11*s.* 6½*d.* out of his pocket & said it was all he had left of it:—*Held:* the confession ought not to have been received.—R. *v.* JONES (1809), Russ. & Ry, 152; 168 E. R. 733, N. P.

---

that he paid the rent; & the woman stated in the presence of the accused that that was so:—*Held:* although no charge had yet been made against the accused & he was not then under arrest, the question was tantamount to a command &, therefore, accused's answer was not voluntary & should not have been admitted in evidence against him. Consequently, also, the statement made by the woman should not have been admitted.—R. *v.* MINOGUE, [1935] 3 W. W. R. 337; 4 D. L. R. 504; 64 Can. C. C. 318; 50 B. C. R. 259; 5 F. L. J. (Can.) 131.—**CAN.**

l (p. 413) i. —— ——.]—Applt. was convicted of murder. Evidence was given at the trial that in the middle of the night, one day after the murder, the accused was removed from his cell &, escorted by three police officers, was taken on a road in search of the revolver that shot the victim. The accused was cross-examined on the incidents of that trip & one police officer testified in rebuttal as to the course of conduct & the conversation of the accused on that occasion:—*Held:* there should be a new trial. Under the circumstances of the case, such evidence was inadmissible in the absence of proof that the statements made by the accused were voluntary & upon proper warning.—MARKADONIS *v.* R., [1935] S. C. R. 657; 3 D. L. R. 424; 64 Can. C. C. 41.—**CAN.**

m (p. 413) i. —— *Officer must be called.*]—R. *v.* BRYGA (1930), 53 Can. C. C. 198.—**CAN.**

sc. *Admissibility question of law for judge.*]—The question of the admissibility of an alleged confession made by an accused is one of law & for the judge alone. The proper practice is to have all the evidence on the preliminary point whether the confession is admissible taken at one time as a "trial within a trial" & in the absence of the jury.—R. *v.* BASCHUK, [1931] 2 W. W. R. 713; 56 Can. C. C. 208; 39 Man. L. R. 554.—**CAN.**

sm. *Confession to excise officer.*]—An excise officer is not a police officer within Evidence Act, 1872, s. 25, & therefore a confession made to such an officer in course of his investigation is admissible in evidence.—RAHHA KISHUN MARWARI *v.* KING-EMPEROR (1933), I. L. R. 12 Pat. 46.—**IND.**

sp. *Undue detention by police.*]—Undue detention raises a doubt as to whether a statement by the prisoner was voluntary.—CHAPPELAINE *v.* R., [1935] 1 D. L. R. 805; 62 Can. C. C. 209.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 5.

4326 i. *Before accused is in custody—Inquiries as to offences may be made—Answers admissible in evidence—Caution not necessary.*]—R. *v.* KOOTEN, [1926] 4 D. L. R. 771; [1926] 1 W. W. R. 178; 46 Can. Crim. Cas. 159; 35 Man. L. R. 461.—**CAN.**

4326 ii. —— —— ——.]—It is not the law that a statement must be excluded on the sole ground that either the statement was made in answer to questions put by a police officer to accused, or that it was made without a caution having been first administered. It is a matter for the judge to decide whether, in his discretion, he will admit the statement or not, having regard to all the circumstances, & observing the legal requirement that the statement shall be voluntary, though not necessarily volunteered.—A.-G. *v.* M'CABE, [1927] I. R. 129.—**IR.**

4326 iii. —— —— ——.]—Where a statement made by accused, at the time suspected but not then arrested, to a police officer was freely & voluntarily made:—*Held:* the fact that such officer failed to caution accused did not render the statement inadmissible.—R. *v.* BARLIN, [1926] App. D. 459.—**S. AF.**

4326 xvi. —— —— ——.]—A statement made to the police by a boy, between sixteen & seventeen years of age, detained on suspicion of murder, not admitted, in view of the youth of accused, his abnormal physical & mental condition at the time he made the statement, a doubt as to the adequacy of the warning given by the police, the fact that he had not the benefit of the advice of a law-agent, & the fact that the statement had followed upon a conversation with an inspector in which questions put to accused had some bearing on the subject-matter of the charge.—H.M. ADVOCATE *v.* AITKEN, [1926] S. C. (J.) 83.—**SCOT.**

4326 xvii. —— —— ——.]—A statement made to the police by a man detained on suspicion of murder, in reply to a question addressed by one police officer to another, not admitted, as prisoner might have thought that the question was addressed to him, & his statement could not be regarded as voluntary.—H.M. ADVOCATE *v.* LIESER, [1926] S. C. (J.) 88.—**SCOT.**

4336 xviii. —— —— —— *Burden of establishing voluntary character of statement on Crown.*]—R. *v.* BELLOS, [1927] 3 D. L. R. 186; [1927] S. C. R. 258; 48 Can. Crim. Cas. 126.—**CAN.**

4336 xix. —— —— —— *How burden discharged.*]—SANKEY *v.* R., [1927] 4 D. L. R. 245; [1927] S. C. R. 436; 48 Can. Crim. Cas. 97.—**CAN.**

4336 xx. —— —— ——.]—R. *v.* SEABROOKE, [1932] 4 D. L. R. 116; O. R. 575; 58 C. C. C. 328.—**CAN.**

4336 xxi. —— —— ——.]—Determination of any question raised as to the voluntary character of a statement by an accused elicited by interrogatories administered by police officers is not a mere matter of discretion for the trial judge. Where such a statement is elicited in the presence of several officers, the statement ought, as a rule, not to be admitted unless (in the absence of some adequate explanation of their absence) those who were present are produced by the Crown as witnesses, at least for cross-examination on behalf of the accused; &, where the statement professes to give the substance of a report of oral answers given by the accused to interrogatories, without reproducing the questions, then the written report ought not to be admitted in evidence unless the person who is responsible for its compilation is (here again in the absence of some adequate explanation of his absence) called as a witness.—THIFFAULT *v.* R., [1933] S. C. R. 509; 3 D. L. R. 591.—**CAN.**

k i. —— *Duty of police in examining suspect.*]—R. *v.* BOHUN (No. 2), [1933] 3 W. W. R. 609.—**CAN.**

sk. *Before charge laid—After caution.*]—Statements made by an accused in answer to questions put by police officers during their investigation of the crime, & after he had been warned that anything he said might be used as evidence, but before he had been charged with the crime:—*Held:* inadmissible against him, since, on the evidence, it could not be said that they were made voluntarily.—R. *v.* BUCHAM, [1936] 1 W. W. R. 597; 43 Man. L. R. 581.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 6.—A.

4380 xiii. ——.]—Where the village panch told accused that the truth

4394a. ——.]—The prisoners, two children, one aged eight & the other a little older, were tried for attempting to obstruct a railway train. It was proved that, the mothers of the prisoners & a policeman being present, after they had been apprehended, the mother of one of the prisoners said: "You had better, as good boys, tell the truth"; whereupon both the prisoners confessed:—*Held:* this confession was admissible in evidence against the prisoners.—R. *v.* REEVE & HANCOCK (1872), L. R. 1 C. C. R. 362; 41 L. J. M. C. 92; 26 L. T. 403; 20 W. R. 631; 12 Cox, C. C. 179, C. C. R.

Annotations:—**Refd.** R. *v.* Hatts & Culffe (1883), 49 L. T. 780; R. *v.* Jackson (1936), 80 Sol. Jo. 977.

4514a. —— ——.]—Two prisoners, O. & S., were charged with an attempt to procure the commission of an act of indecency. The first count charged them together, the second charged O. as the instigator of the crime, & the third charged S. as the instigator. The jury were told to disregard the first count, & an application for separate trials was refused. The only evidence was that of two police officers who found the prisoners in a public lavatory. S. had made a statement to the police & this was put in, but at the trial S. denied its accuracy. The jury were directed that the statement of S. was not evidence against O. The jury acquitted S. & convicted O.:—*Held:* as the jury acquitted one & convicted the other prisoner, they did not act upon the police evidence, but upon the statement of S. As this was inadmissible against O., the conviction of O. must be quashed.—R. *v.* ORAM, [1938] 3 All E. R. 793; 26 Cr. App. Rep. 213, C. C. A.

4526. *Add. Annotation:*—**Consd** Minter *v.* Priest, [1929] 1 K. B. 655.

4534. *Add. Annotation:*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4536a. —— **False answer in Chancery—Solicitor present when put in.**]—Attorney present at putting in an answer cannot be obliged to swear.—R. *v.* WATKINSON (1739), 2 Stra. 1122; 93 E. R. 1072.

Annotation:—**Consd.** Greenhough *v.* Gaskell (1833), Coop. *temp.* Brough. 96.

4548a. —— ——.]—In a trial for murder the Crown must prove death as the result of a voluntary act of the prisoner & malice of the prisoner. When evidence of death & malice has been given, the prisoner is entitled to show by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted.—WOOLMINGTON *v.* PUBLIC PROSECUTIONS DIRECTOR, [1935] A. C. 462; 104 L. J. K. B. 433; 153 L. T. 232; 51 T. L. R. 446; 79 Sol. Jo. 401; 25 Cr. App. Rep. 72; 30 Cox, C. C. 234, H. L.; *revsg.* S. C. *sub nom.* R. *v.* WOOLMINGTON, 179 L. T. Jo. 256, C. C. A.

Annotations:—**Refd.** Mahadeo v. R., [1936] 2 All E. R. 813; R. *v.* Jackson (1936), 80 Sol. Jo. 977.

4545. *Add. Annotation:*—**Apprvd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 426. **Refd.** R. *v.* Currell (1935), 25 Cr. App. Rep. 116.

4548a. —— **Murder.**]—WOOLMINGTON *v.* PUBLIC PROSECUTIONS DIRECTOR, No. 4543a, *ante.*

4548b. —— ——.]—R. *v.* JACKSON (1936), 80 Sol. Jo. 977, C. C. A.

4552. *Add. Annotation:*—**Apld.** Williams *v.* Russell (1933), 149 L. T. 190.

4564a. —— —— ——.]—The prisoner was charged with the murder of his son, whose body had not been found. The prisoner prior to trial had made several confessions to the effect that he had murdered the boy & disposed of the body, but at the trial he retracted these & gave evidence that he had found the dead body of the boy in a canal. Apart from the prisoner's statements, there was no direct evidence that the boy was dead:—*Held:* the evidence was sufficient to justify a conviction.

Observations on evidence of the *corpus delicti* on a charge of murder.—R. *v.* DAVIDSON (1934), 78 Sol. Jo. 821; 25 Cr. App. Rep. 21, C. C. A.

---

had come out, & that he had better say what he knew, & accused thereupon confessed his guilt:—*Held:* the confession was inadmissible in evidence.—KUNJA SUBUDHI *v.* R. (1928), I. L. R. 8 Pat. 289.—**IND.**

4380 xiv. ——.]—A police officer to whom a confession was said to have been made had said to deft. that "it would be better to tell the truth":—*Held:* such an expression imports the probability of benefit to be derived by the accused from telling the truth & therefore a statement so induced is inadmissible.—R. *v.* BROWN, [1931] 3 D. L. R. 592; O. R. 154; 55 Can. C. C. 258.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 6.—C. (b).

4474 i. *Medical man.*]—R. *v.* ROADHOUSE, [1934] 1 W. W. R. 349; 61 C. C. C. 191; 48 B. C. R. 10.—**CAN.**

q i. ——.]—A collecting & an assistant "panchayet" are persons in authority within Evidence Act, s. 24, when they have taken an important part in the inquiry into the circumstances of the commission of the offence.—R. *v.* GANESH CHANDRA GOLDAR (1922), I. L. R. 50 Calc. 127.—**IND.**

sc. *Authority in relation to inquiry.*]—The words "person in authority" in Evidence Act, 1872, s. 24, have reference to a person who has authority to interfere in the matter under inquiry, as, for example, a person engaged in the apprehension, detention or prosecution of the accused, or who is empowered to examine him.—SANTOKHI BELDAR *v.* KING-EMPEROR 1933), I. L. R. 12 Pat. 241.—**IND.**

sf. *Informant.*]—An informant is a person in authority within the meaning of the rule with respect to the admission in evidence of a confession made by an accused. In order for the Crown to satisfy the burden on it of showing affirmatively that the confession was voluntary it is necessary to show all the circumstances under which the confession was made, not merely what the accused said but also what was said by others & any circumstances which may have had any effect on the accused's mind.—R. *v.* NEWES, [1934] 1 W. W. R. 295; 3 D. L. R. 237; 61 C. C. C. 316.—**CAN.**

PART XII. SECT. 6, SUB-SECT. I.

4540 iii. ——.]—In a criminal prosecution the charge against accused must be proved absolutely. If there is a reasonable doubt the conviction must be quashed.—R. *v.* DERBY (1924), 42 Can. Crim. Cas. 152.—**CAN.**

4540 iv. ——.]—R. *v.* MYERS (Ont.) (1928), 50 Can. Crim. Cas. 350.—**CAN.**

k i. ——.]—R. *v.* BRYANT (Sask.) (1929), 52 Can. Crim. Cas. 410.—**CAN.**

PART XII. SECT. 6, SUB-SECT. 2.

s (p. 430) i. —— *Lawful possession of liquor in lawful place.*]—R. *v.* CAIN (Ont.) (1929), 52 Can. Crim. Cas. 179.—**CAN.**

s (p. 430) ii. —— *When discharged.*]—R. *v.* SMITH (Alta.) (1929), 52 Can. Crim. Cas. 193.—**CAN.**

c (p. 431) i. —— —— ——.]—Where, on a charge of unlawfully wounding a certain person with intent to maim or disable him, the Crown proves that the accused discharged a firearm in the direction of a crowd of persons & wounded the person named, it establishes its case, & the *onus* then shifts to the accused to satisfy the ct. that it was either an accident or that he did not intend to wound.—R. *v.* SMART, [1927] 3 W. W. R. 753; 49 Can. Crim. Cas. 75; 23 Alta. L. R. 349.—**CAN.**

4588. *Add. Annotation :*—**Refd.** Broome *v.* Agar (1928), 138 L. T. 698.

4598. *Add. Annotation :*—**Expld.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

4606. *Add. Annotation :*—**Refd.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

4608. *Add. Annotation :*—**Apprvd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

4610. *Add. Annotation :*—**Consd.** R. *v.* Bernhard, [1938] 2 K. B. 264.

4620. *Add. Annotation :*—**Refd.** Shapiro *v.* La Morta (1923), 130 L. T. 622.

4645. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

4650. *Add. Annotation :*—**Consd.** Pointon *v.* Cox (1926), 136 L. T. 506.

4659. *Add. Citation :*—1 Leach, 300, n.

Add. Annotation :—**Refd.** R. *v.* Elworthy (1867), 37 L. J. M. C. 3.

4662a. —— ——.]—A deft. is entitled to see a written description of himself given by a police officer to his superior, with a view to cross-examining that officer on alleged discrepancies between the contents of that document & his sworn testimony.—R. *v.* CLARKE (1930), 22 Cr. App. Rep. 58, C. C. A.

4662b. —— ——.]—R. *v.* THOMAS, No. 5910a, *post.*

4692. In the cross-reference following this case, for "*See* Part XXIII., Sect. 1, sub-sect. 1, Q. (*b*), *post*," read "*See* Part XXXIII., Sect. 1, sub-sect. 1, Q. (*b*), *post.*"

4693a. —— **During hearing.**]—(1) When one joint deft. pleads guilty to two larcenies, the summing-up must not assume against another only indicted in respect of one that he is implicated.

(2) A witness who has been present at the proceedings before being called is not thereby disqualified from giving evidence.—R. *v.* BRIGGS (1930), 22 Cr. App. Rep. 68, C. C. A.

4697a. Cross-examination by judge.]—Observations on the undesirability of a prisoner when giving evidence-in-chief on his own behalf being unduly subjected to cross-examination by the judge.—R. *v.* CAIN (1936), 25 Cr. App. Rep. 204, C. C. A.

4705a. Duty of counsel—To apply for leave to cross-examine as to character.]—When counsel for the prosecution proposes to cross-examine prisoner on character, under Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*), it is desirable that he should make an express application for leave to the judge before proceeding to that line of cross-examination. —R. *v.* MCLEAN (1926), 134 L. T. 640; 19 Cr. App. Rep. 104, C. C. A.

4705b. —— **To refrain from cross-examining as to character.**]—R. *v.* DUNKLEY, No. 4734a, *post.*

4711a. —— ——.]—R. *v.* BALDWIN, No. 3820b, *ante.*

4712. *Add. Annotation :*—**Consd.** R. *v.* Baldwin (1925), 133 L. T. 191.

4712a. —— **Cross-examination tending to show accused likely to commit offence charged.**]—R. *v.* COULMAN, No. 3156e, *ante.*

4712b. —— **Question suggesting dishonesty.**]—The prisoner was accused of conspiracy & receiving goods obtained by false pretences. In cross-examination he was asked about his bkpcy., &, after a suggestion that he was attempting to put his discharge at a date earlier than it actually was, he was asked in successive questions whether keeping books of account would have made any difference in his bkpcy., in his prosperity, or in his honesty. The last question was objected to as suggesting he had been guilty of dishonesty & tending to show he was of bad character :—*Held :* the question was one tending to show the prisoner was of bad character & therefore inadmissible under the Criminal Evidence Act, 1898 (c. 36), s. 1. The conviction should, therefore, be quashed. —R. *v.* COHEN, [1938] 3 All E. R. 380; 159 L. T. 477; 82 Sol. Jo. 746; 26 Cr. App. Rep. 190, C. C. A.

4712c. What amounts to imputation of crime—Question as to having been at industrial school—Admissible.]—R. *v.* CRAVITZ (1931), 172 L. T. Jo. 324; 23 Cr. App. Rep. 74; 76 Sol. Jo. 50, C. C. A.

4715. *Add. Annotations :*—**Consd.** R. *v.* Pollinger (1930), 22 Cr. App. Rep. 75. **Refd.** R. *v.* Dunkley (1926), 134 L. T. 632; R. *v.* McLean (1926), 134 L. T. 640.

PART XII. SECT. 6, SUB-SECT. 3.—B.

4610 i. *Sufficiency of proof—Question of fact for jury.*]—The question of intent is for the jury & not for the Crown.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—**CAN.**

4620 i. *Whether special intent must be proved—In malicious damage to property.*]—R. *v.* MASHARIGN, [1924] App. D. 11.—**S. AF.**

PART XII. SECT. 6, SUB-SECT. 4.—A.

sh. *Admissibility not affected by means of procuring evidence.*]—R. *v.* PERRY (P. E. I.) (1929), 52 Can. Crim. Cas. 166.—**CAN.**

PART XII. SECT. 6, SUB-SECT. 4.—C.

sm. *Matter for discretion of court.*]—Act 31 of 1917, s. 256 (1), which makes provision for the taking of evidence on commission in criminal proceedings, is permissive & confers on a superior ct. the discretion, whether, under the circumstances of any particular case, it is in the interest of justice to have the evidence of a witness taken on commission or not.—R. *v.* LEVY, [1929] App. D. 312.—**S. AF.**

PART XII. SECT. 12, SUB-SECT. 1.

b i. —— *Policemen or spotters—Sale of intoxicating liquors.*]—R. *v.* CANCILLA, [1928] 2 D. L. R. 783; [1928] 1 W. W. R. 852; 50 Can. Crim. Cas. 48; 37 Man. L. R. 315.—**CAN.**

ff i. —— *Informer.*]—HARRIS *v.* R. (1927), 48 N. L. R. 330.—**S. AF.**

PART XII. SECT. 12, SUB-SECT. 2.—A.

a i. —— —— *Preliminary enquiry.*]—Although sect. 686 of Criminal Code, R. S. C., 1927, does not expressly give an accused the right to give evidence on his own behalf at the preliminary enquiry, he may, nevertheless, exercise that right, by virtue of the competence conferred on him by sect. 4 of Canada Evidence Act, R. S. C., 1927.—R. *v.* ROTELIUK, [1936] 1 W. W. R. 278; 65 Can. C. C. 205.—**CAN.**

b i. *Can be compelled to furnish specimen of handwriting.*]—A witness, in a criminal trial, though he be accused testifying on his own behalf, while under cross-examination may be ordered to write certain words dictated to him, & when accused is the witness an effect of such writing may be that a letter, otherwise unproved, is admitted in evidence against him.—R. *v.* WHITTAKER, [1924] 3 D. L. R. 63; 2 W. W. R. 706; 42 Can. Crim. Cas. 162. —**CAN.**

g i. —— —— *Breach of city bye-law.*]—R. *v.* HART (1891), 20 O. R. 611.—**CAN.**

g ii. —— *By prisoner's counsel—Whether ground for new trial.*]—The refusal of counsel to permit the prisoner to give evidence, against his own wishes, is not ground for a new trial.—R. *v.* MACTEMPLE (FRED), [1935] 3 D. L. R. 436; O. R. 389; 64 Can. C. C. 11.—**CAN.**

4695 i. *May be cross-examined.*]—A.-G. *v.* MURRAY, [1926] I. R. 286.—**IR.**

sg. *Evidence as to character—Warning of consequences—Duty of legal adviser.*]—It is the duty of a person who, at the trial, acts as the legal representative of an accused person who makes a statement from the dock, to warn the accused of the probable consequences of a reference to character &, in such circumstances, there is no duty on the Crown to see that such a warning is given.—R. *v.* BENNETT (1936), S. R. N. S. W. 329; 53 N. S. W. W. N. 57.—**AUS.**

4716. *Add. Annotation :*—**Distd.** R. *v.* King (1927), 20 Cr. App. Rep. 158.

4717b. —— Suggesting other offences.]—A prisoner was asked in cross-examination questions tending to show that he had committed other offences. The jury were warned in the summing up that they ought to disregard the effect of those questions :—*Held :* the mischief caused by the questions was incurable & the conviction must be quashed.—R. *v.* MORRISSEY (1932), 23 Cr. App. Rep. 188, C. C. A.

4717c. ——— ———.]—Applt., who was charged with receiving part of the proceeds of several cases of shopbreaking & housebreaking, put his character in issue at the trial, & was asked in cross-examination a series of questions suggesting that he had feloniously received other portions of the stolen property, of which there was no evidence, & that a sum of money found on him on arrest represented the proceeds of the sale by him of those portions of the property :—*Held :* the cross-examination was inadmissible as offending against the principles laid down by the House of Lords in *Maxwell's Case*, No. 4729a, *post*, & the conviction must be quashed.—R. *v.* SUGARMAN (1935), 79 Sol. Jo. 966 ; 25 App. Rep. 109, C. C. A.

4717d. Prisoner's character in issue—Statement that prisoner struck off Medical Register.]—*Held :* cross-examination as to the prisoner's character was rightly allowed.—R. *v.* STARKIE (1932), 76 Sol. Jo. 780, C. C. A.

4717e. Character not in issue—Question as to previous conviction—Inadmissible.]—R. *v.* TOMASSO (1934), 25 Cr. App. Rep. 14, C. C. A.

4729a. Question as to previous acquittal—Admissibility.]—A person charged with an offence, who has put his character in issue, within Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*) (ii.), as a rule cannot be asked in cross-examination whether he has been charged with an offence other than that wherewith he is then charged when that charge has resulted in an acquittal ; for such a question does not satisfy the crucial test of relevance. In general, no question as to whether a prisoner has been convicted or charged or acquitted should be asked or, if asked, allowed by the judge, who has a discretion under proviso (*f*), unless it helps to elucidate the particular issue or goes to credibility. Such a question, even if it goes to credibility, ought not to be admitted if the jury may be misled by it into thinking that it goes not to credibility but to the probability of his having committed the offence of which he is then charged. The mere fact of a charge cannot in general be evidence of bad character & is no proof that the person charged had committed the offence.—MAXWELL *v.* DIRECTOR OF PUBLIC PROSECUTIONS, [1935] A. C. 309 ; 103 L. J. K. B. 501 ; 151 L. T. 477 ; 98 J. P. 387 ; 50 T. L. R. 499 ; 32 L. G. R. 335 ; 24 Cr. App. Rep. 152 ; 30 Cox, C. C. 160, H. L.

Annotations :—**Distd.** R. *v.* Waldman (1934), 24 Cr. App. Rep. 204. **Consd.** R. *v.* Sugarman (1935), 79 Sol. Jo. 966.

4729b. ——— ———.]—Applt. charged with receiving property knowing it to be stolen had put his character in issue & was asked in cross-examination about a previous conviction & a previous acquittal for the same offence :—*Held :* the conviction must be upheld.—R. *v.* WALDMAN (1934), 78 Sol. Jo. 634 ; 24 Cr. App. Rep. 204, C. C. A.

4729c. ——— ———.]—Applt. was charged with indecent assault on three young girls, & put his character in issue. In cross-examination he was asked a number of questions with regard to previous complaints by other young girls of similar conduct on his part. Those complaints had led to charges which in every case had been either dismissed or not proceeded with. Similar questions were put in cross-examination to a witness called by applt. as to character :—*Held :* the cross-examination was inadmissible, & the conviction must be quashed.—R. *v.* WADEY (1935), 25 Cr. App. Rep. 104, C. C. A.

4733. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4734a. —— Suggestion that witness deliberately committing perjury.]—(1) To suggest that a witness for the prosecution is deliberately committing perjury because he believes that he has a grievance against prisoner is an imputation on the character of that witness within Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*), so as to render cross-examination of prisoner as to character admissible.

(2) Even where such a line of cross-examination is admissible in law, counsel for the prosecution should refrain from adopting it, unless the circumstances are such as to make it appear to be a positive duty on his part so to cross-examine.—R. *v.* DUNKLEY, [1927] 1 K. B 323; 96 L. J. K. B. 15; 134 L. T. 632 ; 90 J. P. 75 ; 28 Cox, C. C. 143 ; 19 Cr. App. Rep. 78, C. C. A.

4735. *Add. Annotations :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632 ; R. *v.* McLean (1926), 134 L. T. 640.

4742. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4747. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4748. *Add. Annotations :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632 ; R. *v.* McLean (1926), 134 L. T. 640.

4749. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4750. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4751a. ———.]—Statements by a defendant in evidence which do not *per se* import "imputations" within Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*) (ii), may do so by reason of "the nature or conduct of the defence."—R. *v.* POLLINGER (1930), 22 Cr. App. Rep. 75, C. C. A.

4754a. ———.]—(1) Questions ought not to be put in cross-examination to a prisoner in such a form as may involve him inadvertently in

PART XII. SECT. 12, SUB-SECT. 2. —C. (c).

4726 ii. ———.]—A prisoner giving evidence on his own behalf, may be cross-examined as to a previous conviction. — R. *v.* DALTON, [1935] 3 D. L. R. 773 ; 9 M. P. R. 481 ; 64 Can. C. C 140 ; 5 F. L. J. (Can.) 84.—**CAN.**

PART XII. SECT. 12, SUB-SECT.—2. C. (d).

4733 ii. ——— ——— ———.]—The fact that a deft. on a larceny charge stated in giving evidence that one of the chief witnesses for the prosecution (the owner of the article stolen) told lies in giving evidence does not involve an imputation on the character of the witness of the prosecution so as to justify a question relating to previous convictions of the deft.—HEWITT *v.* LENTHALL, [1931] S. A. S. R. 314.—**AUS.**

an attack on the character of a witness for the Crown.

(2) A threat to a prisoner-witness that his character may be disclosed as the result of his not withdrawing an imputation on the truthfulness of a witness for the Crown, which leads to such withdrawal is, in effect, preventing his defence being put to the jury. —R. *v.* EIDINOW (1932), 23 Cr. App. Rep. 145, C. C. A.

4756a. Meaning of "same offence."]—Applt. was charged & convicted at Quarter Sessions under the Larceny Act, 1916 (c. 50), s. 20 (1) (iv) (*a*), with fraudulently converting certain property entrusted to him. On the same indictment another prisoner, M., was charged under sect. 32 (1) of the same Act with causing by false pretences money to be paid to applt. Applt. stated in evidence against M. that M. had signed certain documents in his presence. Counsel for M. then cross-examined applt. as to a previous conviction of his :—*Held :* as applt. & M. were not charged with the same offence, it was not open to M.'s counsel by virtue of Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*) (iii), to question applt. on his previous convictions, & the conviction must be quashed.—R. *v.* ROBERTS, [1936] 1 All E. R. 23 ; 154 L. T. 276 ; 100 J. P. 117 ; 52 T. L. R. 234 ; 80 Sol. Jo. 208 ; 25 Cr. App. Rep. 158 ; 34 L. G. R. 147 ; 30 Cox, C. C. 356, C. C. A.

4764a. —— —— Grievous bodily harm.]—Upon an indictment for inflicting grievous bodily harm, the wife of prisoner must not be called as a witness for the Crown. —R. *v.* KING (1925), 19 Cr. App. Rep. 34, C. C. A.

4765a. —— ——.]—A wife is not bound in case of high treason to discover her husband's treason, therefore by the common law she shall not be examined.—ANON. (1612), 1 Brownl. 47 ; 123 E. R. 656.

4770. *Add. Annotation :*—**Refd.** Statham *v.* Statham, [1929] P. 131.

4771a. —— —— ——.]—At common law, on a charge against a husband of assaulting his wife, the wife is not only a competent but a compellable witness.—R. *v.* LAPWORTH, [1931] 1 K. B. 117 ; 100 L. J. K. B. 52 ; 144 L. T. 126 ; 95 J. P. 2 ; 29 L. G. R. 61 ; 29 Cox, C. C. 183 ; 47 T. L. R. 10 ; 74 Sol. Jo. 735 ; 22 Cr. App. Rep. 87, C. C. A.

4789a. —— ——.]—Three prisoners were charged jointly with shopbreaking, & all were convicted. The wife of one of the prisoners was called as a witness for the Crown, &, after stating that she was willing to give evidence, gave evidence which was vital to the case against the other two prisoners. These two prisoners appealed :—*Held :* as the wife of the third prisoner was not a competent witness for the prosecution, the convictions must be quashed.—R. *v.* MOUNT, R. *v.* METCALFE (1934), 78 Sol. Jo. 225 ; 24 Cr. App. Rep. 135, C. C. A.

4799. *Add. Annotation :*—**Refd.** R. *v.* Mount, R. *v.* Metcalfe (1934), 78 Sol. Jo. 225.

4800. *Add. Annotation :*—**Distd.** R. *v.* Lapworth, [1931] 1 K. B. 117.

4804. After this case add :—

—— —— ——.]—*See, now,* Criminal Law Amendment Act, 1912 (c. 20), s. 7 (6).

4816a. —— ——.]—R. *v.* SOUTHERN, No. 3156f, *ante.*

PART XII. SECT. 12, SUB-SECT. 2.—C. (e).

4755 ii. —— ——.]—Two prisoners, tried together on one complaint, each gave evidence under Criminal Evidence Act, 1898 (c. 36), s. 1. In the opinion of the judge the evidence of neither incriminated the other :—*Held :* neither was entitled to cross-examine the other, such right of cross-examination being limited to the case where, in the opinion of the judge, the evidence given incriminated, or tended to incriminate, the fellow prisoner.—GEMMELL & M'FADYEN *v.* MACNIVEN, [1928] S. C. (J.) 5.—**SCOT.**

PART XII. SECT. 12, SUB-SECT. 3.—A. (a).

s c. *Crime affecting property of husband.*]—A married woman was tried on an indictment which charged her with uttering as genuine cheques on which her husband's signature had been forged by her. The husband was adduced by the prosecutor as a witness, his evidence consisting of a repudiation of his signature :—*Held :* there was nothing in principle or on the authorities to warrant the restriction of evidence given by one spouse against the other spouse to cases where the alleged offence involved injury to his person only & not to his property. —FOSTER *v.* H.M. ADVOCATE, [1932] S. C. (J.) 75.— **SCOT.**

PART XII. SECT. 12, SUB-SECT. 3.—B.

q i. —— ——.]—On the trial of a person charged with an offence other than one within the classes of offences excepted by sub-sect. (2) of sect. 4 of Canada Evidence Act from the operation of sub-sect. (1) thereof, neither the accused nor the husband or wife, as the case may be, of the accused is competent to give evidence on behalf of the prosecution ; but either the accused or the husband or wife of the accused may, but *semble* the husband or wife is not compellable, give evidence on behalf of the defence ; provided, however, that in no case shall the husband or wife be compellable to disclose any communication made to him or her by his or her spouse during their marriage. —R. *v.* ARNESON, [1930] 3 W. W. R. 163 ; 54 Can. C. C. 330.—**CAN.**

s i. *Children Act,* 1908 (c. 67)—*Whether competent—Offence involving bodily injury.*]—A man was tried upon a charge of using certain lewd, indecent & libidinous practices towards a girl aged six :—*Held :* an offence involving bodily injury to the child within the above Act, although no actual physical hurt had been done to her, & the wife of accused could under that Act & Criminal Evidence Act, 1898, be called & examined by the Crown as a witness. —H.M. ADVOCATE *v.* LEE, [1923] S. C. J.) 1.—**SCOT.**

s ii. —— —— ——.]—A man was tried upon indictment for striking at, & attempting to cut with a razor, a child aged six weeks :—*Held :* an offence involving bodily injury to the child within the above Act, although the child had not been physically injured or actually touched, & the wife of accused could be called & examined by the Crown as a witness.—H.M. ADVOCATE *v.* MACPHIE, [1926] S. C. (J.) 91.—**SCOT.**

PART XII. SECT. 12, SUB-SECT. 4.—B.

4816 i. *Admissibility under Children Act,* 1908 (*c.* 67), *s.* 30—*Conditions of reception.*]—*Held :* the purpose of sect. 30 of Children Act, 1908, was to enable a child "of tender years," age not defined by the statute, who does not, in the opinion of the ct., understand the nature of an oath, to give evidence not upon oath if, in the opinion of the ct., the child has sufficient intelligence to justify the reception of the evidence & understands the duty of speaking the truth. The sect. did not alter the previous law as to the reception of the evidence of children on oath, which was & is a question, not of age, but of the intelligence & actual mental capacity of the child witness, his sense & reason of the danger & impiety of falsehood. Strictly speaking, the objection to the reception of the child's evidence on oath should be taken, & the witness interrogated by the ct., on the *vraie dire,* but the practice became established that the objection might be taken on facts elicited, after the person was sworn as witness, during the direct examination or even during the cross-examination, &, if it prevailed, the judge would strike out the evidence & withdraw it from the jury.—A.-G. *v.* O'SULLIVAN, [1930] I. R. 552.—**IR.**

a i. —— *Criminal Code, s.* 1003.]—R. *v.* GEMMILL (1924), 43 Can. Crim. Cas. 360.—**CAN.**

f i. —— ——.]—Prisoner was indicted for an indecent assault on a girl under thirteen. At the trial there was admitted the unsworn testimony of the child alleged to have been assaulted & of two other children of tender years, & the evidence of the mother of the girl that she had asked the child what she was crying about, & that the child's reply was a complaint of prisoner's conduct to her :—*Held :* (1) the unsworn testimony of a child of tender years could not be corroborated by the unsworn testimony of any number of such children ; (2) the

4818. *Add. Annotations :*—**Consd.** R. *v.* Bailey, [1924] 2 K. B. 300. **Refd.** R. *v.* Southern (1929), 142 L. T. 383.

4819. *Add. Annotations :*—**Consd.** R. *v.* Gregg (1932), 102 L. J. K. B. 126. **Refd.** R. *v.* Southern (1929), 142 L. T. 383.

4822. *Add. Annotations :*—**Refd.** R. *v.* Southern (1929), 142 L. T. 383 ; R. *v.* Gregg (1932), 102 L. J. K. B. 126.

4823a. —— —— ——.]—R. *v.* SOUTHERN, No. 3156f, *ante*.

4824a. —— —— ——.]—R. *v.* STEVENS (1913), 135 L. T. Jo. 442 ; 9 Cr. App. Rep. 132.

4824b. —— —— ——.]—Where the evidence of a young child requires corroboration as a matter of law or practice, the unsworn testimony of another child, which itself requires to be corroborated, cannot be treated as supplying the requisite corroboration.—R. *v.* MANSER (1934), 78 Sol. Jo. 769 ; 25 Cr. App. Rep. 18, C. C. A.

4826a. —— —— ——.]—Appct. was convicted of unlawful carnal knowledge of a girl under thirteen, & was sentenced to three years' penal servitude. The girl, whose age was eight & a half years, gave unsworn testimony under the above sect., proviso (a) of which renders necessary corroboration of such evidence " by some other material evidence in support thereof implicating the accused." The only corroboration of the child's testimony was the evidence of an older girl to whom she stated her version of what had occurred immediately after the alleged offence had taken place :—*Held :* corroboration must not only connect, or tend to connect, the accused with the crime, but must come from an independent quarter, & the evidence of the older girl originated from prosecutrix herself.—R. *v.* EVANS (1924), 88 J. P. 196 ; 18 Cr. App. Rep. 123, C. C. A.

4826b. —— —— ——.]—Corroboration of the unsworn evidence of a child must be " material evidence implicating accused."—R. *v.* STANLEY (1927), 20 Cr. App. Rep. 58, C. C. A.

4867. Substitute following para. & citations :—

Where two prisoners are jointly indicted for a felony & plead not guilty, but one only is given in charge to the jury, the other is an admissible witness, although his plea of not guilty remains on the record undisposed of.—WINSOR *v.* R. (1866), L. R. 1 Q. B. 390 ; 7 B. & S. 490 ; 35 L. J. M. C. 161 ; 14 L. T. 567 ; 30 J. P. 374 ; 12 Jur. N. S. 561 ; 14 W. R. 695 ; *sub nom.* R. *v.* WINSOR, 10 Cox, C. C. 327, Ex. Ch.

4867a. —— ——.]—Where two prisoners are indicted & tried together, one is not a competent witness for the other.—R. *v.* PAYNE (1872), L. R. 1 C. C. R. 349 ; 41 L. J. M. C. 65 ; 26 L. T. 41 ; 36 J. P. 452 ; 20 W. R. 390 ; 12 Cox, C. C. 118, C. C. A.

Annotations :—**Apld.** R. *v.* Thompson (1872), L. R. 1 C. C. R. 377. **Consd.** R. *v.* Wilde & Taylor (1895), 59 J. P. 296 ; R. *v.* Hadwen, [1902] 1 K. B. 882.

4878a. —— ——.]—R. *v.* SMITH, No. 6066a, *post*.

---

answers of the girl to her mother's questions were not evidence of the facts complained of, & could not constitute corroboration of those facts.—R. *v.* COYLE, [1926] N. 208.—**IR.**

f ii. —— ——.]—A panel was tried before a sheriff & jury upon an indictment which set forth certain lewd, indecent & libidinous practices towards a boy six years of age. The boy gave evidence in support of the charge, & his father & mother deponed to the condition of his person & clothing shortly after the offence, &, also, to the statements which he had made to them *de recenti*. The sheriff charged the jury that the evidence was sufficient in law to entitle them to convict, & the panel was convicted. On appeal :—*Held :* the boy's evidence was sufficiently corroborated in law by the evidence of his parents, & evidence of statements made by a victim *de recenti* afforded corroboration of that victim's evidence.—M'LENNAN *v.* H.M. ADVOCATE, [1928] S. C. (J.) 39.—**SCOT.**

f iii. —— —— *Canada Evidence Act, s.* 16.]—The effect of Canada Evidence Act, s. 16, is that the evidence corroborating a child must show that a crime has been committed & that the accused is implicated.—R. *v.* SILVERSTONE, [1934] 1 D. L. R. 726 ; O. R. 94 ; 61 C. C. C. 258.—**CAN.**

n i. *S. P.* R. *v.* LAMOND, [1926] 1 D. L. R. 826 ; 45 Can. Crim. Cas. 200 ; 58 O. L. R. 264.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 1.

r i. ——.]—The question whether a witness is an accomplice is one of fact for the jury, after the judge has instructed them as to what constitutes an accomplice & has decided that there is evidence from which the jury can reasonably infer that the witness comes within that category.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059 ; 3 W. W. R. 357.—**CAN.**

4828 ii a. *S. P.* R. *v.* RODGERS (Ont.), [1926] 4 D. L. R. 609 ; 46 Can. Crim. Cas. 372.—**CAN.**

4828 ii b. *S. P.* R. *v.* BANDEL (Ont.) (1927), 47 Can. Crim. Cas. 266.—**CAN.**

4828 xvi. ——.]—R. (LESLEY) *v.* MOREL, [1931] 1 W. W. R. 209 ; 25 S. L. R. 269.—**CAN.**

4828 xvii. ——.]—R. *v.* TOMMY, R. *v.* KINNEY, R. *v.* MCKINLEY, [1930] 1 D. L. R. 973 ; 52 Can. C. C. 321 ; *on appeal*, [1931] 3 D. L. R. 668 ; 55 Can. C. C. 350 ; 2 M. P. R. 242.—**CAN.**

o i. *Person giving bribe.*]—A. & B. were charged with conspiring to obtain money from C. by unlawful means. The Crown case was that prisoners had conspired to obtain, & had obtained, a large sum of money from C. as a bribe to refrain from taking criminal proceedings against C. or his daughter, both of whom gave evidence for the Crown. Accused denied having asked for or received any money :—*Held :* C. was not an accomplice.—R. *v.* OLHOLM & MCPHERSON, [1925] V. L. R. 377 ; 47 A. L. T. 10 ; 31 Argus L. R. 228.—**AUS.**

so. *Person implicated in crime—Whether as principal or accessory.*]—A person implicated, either as principal or as accessory in the crime under investigation, is an " accomplice " within the rule.—A.-G. *v.* LINEHAN, [1929] I. R. 19.—**IR.**

sp. *Person cognisant of act of accused.*]—A witness, whose evidence had been admitted as corroborating a girl, was shown to have known of the act of accused & to have assisted him to procure certain drugs to be used to bring about a miscarriage, but there was no evidence to show he knew of the girl's age :—*Held :* there was no evidence to show that the witness was an accomplice & the judge was right in not directing the jury that his evidence was not corroborative.—R. *v.* KENNEWELL, [1927] S. A. S. R. 287.—**AUS.**

sq. *Person taking woman to accused to perform illegal operation.*]—R. *v.* SYNOWIZSWA, [1931] 2 D. L. R. 65 ; 55 Can. C. C. 63.—**CAN.**

sr. *Person purchasing liquor—& reporting purchase to police.*]—A person who purchases liquor from accused & then reports the purchase to the police is neither an accomplice nor an *agent provocateur* & his evidence does not require corroboration.—R. *v.* MCKAY, [1935] 2 D. L. R. 754 ; 8 M. P. R. 563 ; 63 Can. C. C. 355.—**CAN.**

ss. *Person procuring liquor for accommodation of purchaser.*]—A purchaser of liquor is an accomplice of a seller who procured liquor for the accommodation of the purchaser, & requires corroboration.—MCDONALD *v.* R. (1935), 10 M. P. R. 38.—**CAN.**

sz. *Thief—Accomplice of receiver.*]—A thief is to be regarded as an accomplice of the receiver.—GUNDERSEN *v.* MILLER, [1936] S. A. S. R. 206.—**AUS.**

PART XII. SECT. 13, SUB-SECT. 2.

st. *Effect of Criminal Evidence Act, 1898.*]—*Held :* the evidence of one co-accused was admissible as evidence against the others, the provisions of the Criminal Evidence Act, 1898 (c. 36), necessarily implying the admissibility of such evidence.—YOUNG *v.* H.M. ADVOCATE, TODD *v.* H.M. ADVOCATE, [1932] S. C. (J.) 63.—**SCOT.**

PART XII. SECT. 13, SUB-SECT. 4.—A.

sv. *Whether evidence corroborates—Functions of judge & jury.*]—It is a preliminary question of law for the judge to determine whether there is any evidence that does corroborate the story of the approver, so far as the complicity of the accused is concerned. The judge must not tell the jury that such or such witness does in fact corroborate the approver. That is the function of the jury & depends upon whether they believe the witness or not.—REBATI MOHAN CHAKAVARTY *v.* R. (1928), I. L. R. 56 Calc. 150.—**IND.**

4891. *Add. Annotation :*—**Refd.** R. *v.* Beebe (1925), 133 L. T. 736.

4900. *Add. Annotation :*—**Consd.** R. *v.* Beebe (1925), 133 L. T. 736.

4902. *Add. Annotations :*—**Consd.** R. *v.* Beebe (1925), 133 L. T. 736. **Refd.** Statham *v.* Statham, [1929] P. 131.

4903a. ——.]—If this ct. is satisfied, in a case where there ought to be corroboration of a charge, that there is not corroboration, it will quash a conviction.—R. *v.* PARKER (1924), 18 Cr. App. Rep. 103, C. C. A.

4919a. Corroboration required by statute—Case must be withdrawn from jury in absence to corroboration.]—There are, with regard of certain offences, statutory provisions that no person shall be convicted upon the evidence of one witness unless such witness be corroborated in some material particular implicating the accused. In these cases the law is that the judge, in the absence of such corroborative evidence, must stop the case at the close of the prosecution & direct the jury to acquit the accused. Where no such statutory provision is applicable to the offence charged, & the evidence for the prosecution consists of the uncorroborated testimony of an accomplice or accomplices, the law is that the judge should leave the case to the jury after giving them the caution already mentioned (Lord 1 EADING, C.J.).—R. *v.* BASKERVILLE, [1916] 2 K. B. 658; 86 L. J. K. B. 28; 115 L. T. 458; 80 J. P. 446; 60 Sol. Jo. 696; 25 Cox, C. C. 524; 12 Cr. App. Rep. 81, C. C. A.

Annotation :—**Refd.** R. *v.* Manser (1934), 25 Cr. App. Rep. 18.

4934. *Add. Annotations :*—**Apld.** R. *v.* Evans (1924), 88 J. P. 196; R. *v.* Beebe (1925), 133 L. T. 736. **Consd.** Statham *v.* Statham, [1929] P. 131. **Apld.** R. *v.* Charavanmuttu (1930), 22 Cr. App. Rep. 1. **Consd.** R. *v.* Davies (1930), 22 Cr. App. Rep. 33. **Refd.** R. *v.* Ross (1924), 18 Cr. App. Rep. 141; R. *v.* Harris, [1927] 2 K. B. 587; R. *v.* Manser (1934), 25 Cr. App. Rep. 18; Mahadeo *v.* R., [1936] 2 All E. R. 813; R. *v.* Lewis, [1937] 4 All E. R. 360.

4942. *Add. Annotations :*—**Distd.** R. *v.* Whitehead, [1929] 1 K. B. 99. **Consd.** Statham *v.* Statham, [1929] P. 131.

4943a. ——.]—(1) It is an insufficient direction to the jury that material witnesses may be accomplices; it must be added that if this is found, there ought not to be a conviction unless there is corroboration.

(2) The silence of the accused, on being charged, is not a matter to be left to the jury.

(3) Where similar offences are indicted on different dates the greatest care must be taken in charging the jury that evidence concerning one date should not be used as corroboration of that concerning another.—R. *v.* CHARAVANMUTTU (1930), 22 Cr. App. Rep. 1, C. C. A.

PART XII. SECT. 13, SUB-SECT. 4.—B.

4891 xi. ——.]—R. *v.* DAVIDSON (1925), 44 Can. Crim. Cas. 311.—**CAN.**

4891 xii. ——.]—After trial before a judge & jury, deft. was convicted of the offence of stealing cattle. The cattle were in fact stolen—the defence was that deft. was not the thief. The only evidence against deft. was the testimony of an accomplice, one L.; & the trial judge, in charging the jury, told them that if they agreed that there was no evidence, but that of an accomplice, it was not safe to convict upon that, but if they were satisfied they might convict :—*Held :* the jury were properly directed.—R. *v.* SKELLY, [1928] 1 D. L. R. 619; 49 Can. Crim. Cas. 179; 61 O. L. R. 497.—**CAN.**

4904 ii a. *S. P.* R. *v.* RODGERS (Ont.), [1926] 4 D. L. R. 609; 46 Can. Crim. Cas. 372.—**CAN.**

4904 vii a. ——.]—The law as to an accomplice's testimony is the same in British India as in England.—AUNG PE *v.* KING-EMPEROR, I. L. R. [1937] Ran. 110.—**IND.**

4904 xii. ——.]—R. *v.* SWITZER (Ont.) (1925), 45 Can. Crim. Cas. 377.—**CAN.**

4904 xiii. ——.]—A charge cannot be said to be established merely on the unsuported testimony of an accomplice.—R. *v.* SATISH CHANDRA SINGHA (1927), I. L. R. 54 Calc. 721.—**IND.**

4904 xiv. ——.]—*Held :* it is not a rule of law that the evidence of an accomplice must be corroborated, but it is the general practice to require corroboration.—COULTER & TREFFENE *v.* R. (1926), 29 W. A. L. R. 40.—**AUS.**

4904 xv. ——.]—The rule that it is dangerous to convict on the uncorroborated evidence of an accomplice applied in quashing on appeal a conviction for unlawfully purchasing from the Govt. Liquor Board a greater quantity of liquor than is allowed to be purchased on any one day.—R. *v.* BEALE, [1928] 2 D. L. R. 325; [1928] 1 W. W. R. 657; 49 Can. Crim. Cas. 292; 22 Sask. L. R. 293.—**CAN.**

4904 xvi. ——.]—R. *v.* MILLIGAN (Sask.) (1929), 52 Can. Crim. Cas. 400.—**CAN.**

4904 xvii. ——.]—R. *v.* BROWN, [1934] 1 W. W. R. 531; 61 C. C. C. 201.—**CAN.**

4904 xviii. ——.]—R. *v.* MCDONALD (1935), 5 F. L. J. (Can.) 117.—**CAN.**

4904 xix. ——.]—R. *v.* AH JIM (1905), 10 Can. C. C. 126.—**CAN.**

4904 xx. ——.]—In all cases wherein corroborative evidence of the description dealt with in *Rex* v. *Baskerville*, [1916] 2 K. B. 658, is required & the trial is by a judge sitting without a jury, a conviction made on the uncorroborated evidence of an accomplice, without an accompanying statement being made by the judge showing that he convicted with an appreciation of the danger of so doing, should be set aside. If he sees fit to convict in the face of the admonition of cts. past & present as to the danger of convicting upon the uncorroborated evidence of an accomplice he is at liberty to do so & his conviction will stand, provided he shows that the danger of so doing is present to his mind & the judgment is not otherwise objectionable. There may be a case in which a trial judge may fittingly convict upon the uncorroborated evidence of an accomplice, but this would be the very exceptional case.—R. *v.* AMBLER, [1936] 2 W. W. R. 225.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 4.—C.

4941 ii. ——.]—Affidavit of accused contradicting his testimony not sufficient corroboration of one witness.—R. *v.* ROBERTSON, [1936] 3 D. L. R. 508; 66 Can. C. C. 45; 10 M. P. R. 346; 6 F. L. J. (Can.) 69.—**CAN.**

g i. ——.]—General hostility to the victim cannot be considered to be corroboration of a direct statement connecting accused with a particular crime. Corroboration must point to the identification of the person charged with the particular act with which the direct evidence connects him.—R. *v.* KALWA (1926), I. L. R. 48 All. 409.—**IND.**

sb. *Possession of safe-breaker's outfit.*]—Applt. was convicted by a police magistrate of shop-breaking with intent. The only direct evidence was that of a confessed accomplice. In a room occupied by applt. in a rooming house there were found a revolver, sticks of dynamite, a battery & other articles used by safe-breakers :—*Held :* although there was nothing but the accomplice's testimony, & applt.'s lies with respect to some of the articles, to connect the articles so found with the crime, &, although neither the fact that the revolver was identified by the accomplice & proven to be applt.'s property by an independent witness, nor the separate finding of any of the other articles, would in itself constitute corroboration, nevertheless in view of the fact that those articles constituted, as a whole, the usual & complete outfit of a safe-breaker, their finding did constitute corroboration.—R. *v.* WURCH, [1932] 2 W. W. R. 183; 40 Man. L. R. 328; 58 C. C. C. 204.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 4.—E.

4960 viii. ——.]—Where the evidence of an accomplice has not been corroborated, & the charge to the jury merely tells them that if they believe the accomplice they should convict accused, the jury is not properly directed : &, where it is impossible to say that if properly directed they must inevitably have come to the same conclusion, the conviction must be quashed.—R. *v.* STASIUK (Sask.), [1926] 4 D. L. R. 811; [1926] 2 W. W. R 723; 46 Can. Crim. Cas. 129.—**CAN.**

4960 ix. ——.]—In charging the jury the trial judge said : "Unless you are convinced beyond any real doubt that the girl has given testimony which is true in the material particulars, namely : the date & place of connection with the accused, then the accused is entitled to your verdict. But if you are so convinced, then, of course, it

4972a. ——.]—R. *v.* SMITH, No. 6066a, *post.*

4972b. ——.]—R. *v.* BEEBE, No. 6066b, *post.*

4972c. ——.]—The prisoner was charged with receiving property, well knowing the same to have been stolen. The defence was that the prisoner had been the innocent victim of the actual thieves, who had "planted" the property on him. The thieves themselves gave evidence against him & the prisoner gave evidence which was very similar to the story of the prosecution, except that it denied any knowledge on the part of the prisoner that the property had been stolen. The jury received no direction upon the necessity for corroboration of the evidence of accomplices:—*Held:* the case was one where such a direction was undoubtedly necessary, &, though the ct. had power to allow the verdict to stand, this was not a case where there was corroboration of such manifest cogency that the conclusion was not to be resisted that the jury, properly directed, would certainly have arrived at the same conclusion.—R. *v.* LEWIS, [1937] 4 All E. R. 360; 158 L. T. 454; 102 J. P. 35; 36 L. G. R. 15; 26 Cr. App. Rep. 110, C. C. A.

Part XIII.—Punishment and Prevention of Crime.

4974a. ——.]—R. *v.* JONES, R. *v.* POOLE, R. *v.* TERRY (1924), 18 Cr. App. Rep. 135, C. C. A.

4974b. ——.]—R. *v.* WRIGHT (1925), 19 Cr. App. Rep. 19, C. C. A.

4974c. ——.]—R. *v.* BUGGS (1910), 6 Cr. App. Rep. 74, C. C. A.

4985a. —— —— ——.]—A sentence of greater severity than the sentence appropriate to a particular offence ought not to be imposed merely because a prisoner has, in the opinion of the trial judge, committed perjury in the witness-box.—R. *v.* QUINN (1932), 23 Cr. App. Rep. 196, 198, C. C. A.

4994a. —— —— ——.]—The mere fact that a man has been convicted many times is not in itself sufficient reason for passing a heavy sentence on him for an offence which is trivial in itself.—R. *v.* TAYLOR (1924), 18 Cr. App. Rep. 143, C. C. A.

4994b. —— —— ——.]—The fact that a prisoner has committed some serious offences is no reason for giving him a sentence of penal servitude for such an offence as breaking into a railway station booking-office & stealing some cigarettes & bottles of horse medicine.—R. *v.* PRICE (1924), 18 Cr. App. Rep. 138, C. C. A.

4994c. —— —— ——.]—Prisoner obtained various small sums of money from a tobacconist by falsely representing that he had obtained certain appointments, & was sentenced to three years' penal servitude. He had a bad record both in South Africa & in England:—*Held:* in considering whether the sentence was proper the ct. had to beware of treating an offence as serious in itself because it had been committed by a man who previously had committed a series of offences, & the sentence should be reduced to eighteen months' imprisonment with hard labour.—R. *v.* DURAND (1924), 18 Cr. App. Rep. 137, C. C. A.

4994d. —— —— ——.]—R. *v.* WALLS (*alias* RUSSELL) (1925), 19 Cr. App. Rep. 35, C. C. A.

4994e. —— —— ——.]—R. *v.* DENT (1925), 19 Cr. App. Rep. 18, C. C. A.

4994f. —— —— ——.]—R. *v.* GUMBS (1926), 19 Cr. App. Rep. 74, C. C. A.

4994g. —— —— ——.]—In imposing sentence on persons often previously convicted, regard must be had to the gravity of the offence in question.—R. *v.* D'ARCY (1926), 19 Cr. App. Rep. 221, C. C. A.

---

will be your duty to declare your verdict accordingly." *Held*: as there was corroborative evidence, this direction, together with other parts of the summing up, was sufficient.—R. *v.* KENNEWELL, [1927] S. A. S. R. 287.—**AUS.**

b i. —— ——.]—R. *v.* GALLAGHER, No. 6064 vii, *post.*—**CAN.**

h i. —— ——.]—A woman was charged with the murder of the illegitimate child of her granddaughter. The case against her rested entirely on the evidence of her granddaughter, & this evidence, as regards the main facts, was practically wholly uncorroborated. This evidence went to show that the granddaughter was implicated in the crime. The woman was convicted & sentenced to death:—*Held:* the rule requiring corroboration of the evidence of an accomplice applied to the facts of the case, & the jury should have been warned as to the danger of acting upon the granddaughter's evidence alone without corroboration. Accordingly the conviction was reversed, & a re-trial ordered under Courts of Justice Act, 1928, s. 5.—A.-G. *v.* LINEHAN, [1929] I. R. 19.—**IR.**

h ii. —— *Extent of corroboration necessary.*]—It is not sufficient for a trial judge to explain to a jury that, where witnesses are accomplices, they must be corroborated in some material particular before it is safe for a jury to convict. He must go further & explain that the evidence should confirm in some material particular not only the evidence that the crime has been committed but, also, that the prisoner committed it.—R. *v.* GLOVER (1928), 28 S. R. N. S. W. 482; 45 N. S. W. W. N. 148.—**AUS.**

o i. —— ——.]—Where the judge called the attention of the jury to the rule as to the danger of convicting on the uncorroborated testimony of an accomplice, at the same time pointing out that it was within their province to do so:—*Held:* the conviction should be affirmed.—R. *v.* SHEMIT, [1925] 2 D. L. R. 1004; 44 Can. Crim. Cas. 10; 58 N. S. R. 116.—**CAN.**

See, also, cases in Part XIV, Sect. 7, Sub-sect. 7, B, *post.*

PART XIII. SECT. 1, SUB-SECT. 1.

p i. —— ——.]—R. *v.* LEAF, [1926] 1 W. W. R. 888; 45 Can. Crim. Cas. 226; 20 Sask. L. R. 542.—**CAN.**

4991 i. *Sentence must be proportionate to offence—Trifling offence—Previous convictions.*]—R. *v.* CROSS, [1927] 3 W. W. R. 432.—**CAN.**

st. *Power of judge to hear evidence of complainant to decide on proper sentence—After plea of guilty—Must avoid consideration of aggravating circumstances likely to change character of offence charged.*]—R. *v.* WHEPDALE (Sask.), [1927] 3 W. W. R. 704; 49 Can. Crim. Cas. 62.—**CAN.**

sv. *Offence punishable with fine & imprisonment—Power to inflict fine or imprisonment.*]—On trial of an offence for which the punishment is fine & imprisonment the judge may by Criminal Code, s. 1028, impose a fine alone or imprisonment alone.—R. *v.* BLANCHET (1919), 61 D. L. R. 286.—**CAN.**

sx. *Crime of violence—First offender.*]—Appeal against sentence on the ground that serious crimes of violence must be punished even though first offences.—R. *v.* DOW, [1938] O. R. 272.—**CAN.**

4994h. —— —— ——.]—R. *v.* CHARLES (1927), 20 Cr. App. Rep. 129, C. C. A.

4994j. —— —— ——.]—The mere fact that a prisoner has been previously convicted is not necessarily a ground for inflicting a severe sentence for dishonestly obtaining goods of small value.—R. *v.* WOODWARD (1929), 21 Cr. App. Rep. 137, C. C. A.

4994k. —— —— ——.]—R. *v.* SMITH (1929), 21 Cr. App. Rep. 138, C. C. A.

4994l. —— —— ——.]—R. *v.* WILLIAMS (1930), 22 Cr. App. Rep. 78, C. C. A.

4994m. —— —— ——.]—R. *v.* EDWARDS (1930), 22 Cr. App. Rep. 79, C. C. A.

4994n. —— —— ——.]—Sentence mitigated, despite a very bad "record," in view of the trifling nature of the offence.—R. *v.* JONES (1931), 23 Cr. App. Rep. 69, C. C. A.

4998a. —— ——.]—Sentence reduced, in view of the small value of the property stolen & of prisoner's youth.—R. *v.* ROATH (1927), 20 Cr. App. Rep. 138, C. C. A.

4998b. —— ——.]—Sentence reduced, in view of the small value of the property stolen, notwithstanding previous convictions.—R. *v.* WATSON (1927), 20 Cr. App. Rep. 119 C. C. A.

4998c. —— ——.]—Sentence reduced, in view of the small value of the property obtained by false pretences & of prisoner's youth, notwithstanding previous convictions.—R. *v.* BOREHAM (1928), 20 Cr. App. Rep. 182, C. C. A.

5003a. —— ——.]—R. *v.* UPTON (1929), 21 Cr. App. Rep. 156, C. C. A.

5003b. —— ——.]—R. *v.* TEARNE (1930), 22 Cr. App. Rep. 15, C. C. A.

5010a. Manslaughter—Negligent driving.]—Sentence of three years' penal servitude passed upon applt. for manslaughter caused by the negligent driving of a motor car reduced to one of twelve months' imprisonment with hard labour.—R. *v.* STUBBS (1913), 29 T. L. R. 421, C. C. A.

5012a. Offence under Criminal Law Amendment Act, 1922 (c. 56), s. 2—Acquittal on major charge—Conviction on minor charge.]—The ct. declines to lay down a general rule concerning sentence in cases under above sect. where deft. is acquitted of the major charges therein referred to but convicted of a minor charge.—R. *v.* KEECH (1929), 21 Cr. App. Rep. 125, C. C. A.

Annotation:—**Refd.** R. *v.* Blackman (1929), 21 Cr. App. Rep. 132.

5012b. —— —— ——.]—R. *v.* BLACKMAN (1929), 21 Cr. App. Rep. 132, C. C. A.

5014a. ——.]—Sentence of five years' penal servitude imposed upon applt. for receiving reduced to one of three years' penal servitude, on the ground that it did not appear that applt. was habitually a receiver or that he kept any place for the deposit of stolen property.—R. *v.* KNIGHT (1912), 28 T. L. R. 481; 7 Cr. App. Rep. 281, C. C. A.

5014b. Evasion of military service.]—The ct. will usually treat offences committed to escape military service as ordinary crimes.—R. *v.* CHISWELL (1930), 22 Cr. App. Rep. 67, C. C. A.

5018a. ——.]—R. *v.* DEALER (1929), 21 Cr. App. Rep. 165, C. C. A.

5024a. —— ——.]—R. *v.* POWELL (1928), 21 Cr. App. Rep. 67, C. C. A.

5024b. —— ——.]—R. *v.* ATKINSON (1929), 21 Cr. App.Rep. 111, C. C. A.

5028a. —— **Prisoners jointly accused.**] — There should be discrimination between the sentences of persons jointly accused, in view of their previous records & ages, & account should be taken of the period of detention before trial.—R. *v.* ANDREWS (1927), 20 Cr. App. Rep. 37, C. C. A.

5035a. ——.]—(1) Despite a plea of guilty, the ct. will review a conviction when there is a good defence in law.

(2) The ct. does not accept the principle that a sentence must necessarily be severer than that passed on the prisoner on a previous conviction.

(3) A deft. must distinctly consent to the ct. of trial taking into consideration charges other than those in the indictment before it can do so.—R. *v.* GRIFFITHS (1932), 23 Cr. App. Rep. 153; 76 Sol. Jo. 148, C. C. A.

5036a. *S. P.* R. *v.* MOLDON (1926), 19 Cr. App. Rep. 116, C. C. A.

5039a. —— ——.]—Previous convictions of a prisoner on trial must be strictly proved.—R. *v.* TURNER (1924), 18 Cr. App. Rep. 161, C. C. A

Annotation:—**Refd.** R. *v.* O'More (1926), 19 Cr. App. Rep. 175.

5046a. —— ——.]—R. *v.* DRIVER (1926), 19 Cr. App. Rep. 86, C. C. A.

5046b. —— ——.]—R. *v.* O'MORE (1926), 19 Cr. App. Rep. 175, C. C. A.

5046c. —— ——.]—R. *v.* BERRY (1928), 21 Cr. App. Rep. 47, C. C. A.

5046d. —— ——.]—R. *v.* DOBSON (1930), 22 Cr. App. Rep. 141, C. C. A.

PART XIII. SECT. 1, SUB-SECT. 2.

sw. *Perjury.*]—R. *v.* ZIZU NATANSON (No. 2) (Sask.), [1927] 2 W. W. R. 154; 49 Can. Crim. Cas. 89.—**CAN.**

sx. *Attempted theft.*]—On a trial by a magistrate, by consent under sect. 773 (*b*) of the Criminal Code, of a charge of attempted theft, where the sum attempted to be stolen exceeds $200, the accused is liable on conviction to a sentence of two years & six months' imprisonment.—R. *v.* BLACKMAN & SMITH, [1931] 2 W. W. R. 111; 56 Can. C. C. 48; 44 B. C. R. 115.—**CAN.**

sy. *Effect of Prisons & Reformatories Act, 1927, s. 46.*]—A person convicted in Ontario of non-support of his wife, under s. 242 of the Criminal Code, may be lawfully sentenced to the term of imprisonment mentioned in sect. 46 of Prisons & Reformatories Act, R. S. C., 1927. While sect. 242 declares what shall generally be the sentence throughout Canada, sect. 46 enacts an exception applicable to Ontario in the circumstances therein mentioned. — R. *v.* OLDAKER, [1930] 1 D. L. R. 648; 52 Can. C. C. 318; 64 O. L. R. 564.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—A.

5028 ii. ——.]—R. *v.* NGA BA SHEIN (1928), I. L. R. 6 Ran. 391.—**IND.**

5036 i. *Previous acquittals must not influence adversely.*]—R. *v.* JOHNSON (1925), 44 Can. Crim. Cas. 319.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.

d i. ——.]—Previous convictions are to be considered in passing sentence, although not strictly proved, if not challenged by the prisoner.—R. *v.* SCHIER, [1933] 1 D. L. R. 310.—**CAN.**

d ii. ——.]—A judge may consider the previous record to determine sentence although not proved if no objection is taken to statements by the Crown counsel.—R. *v.* SCHIER, [1933] 1 D. L. R. 310; 59 C. C. C. 180.—**CAN.**

sg. *No ground for heavy sentence—Where offence trivial.*]—The mere fact that a man has been convicted many times is not in itself sufficient reason for passing a heavy sentence on him for an offence which is trivial in itself.—R. *v.* WEBB, [1933] 3 W. W. R. 431; 62 C. C. C. 279.—**CAN.**

5046e. —— ——.]—R. *v.* WESTGATE (1931), 23 Cr. App. Rep. 15, C. C. A.

5046f. —— ——.]—R. *v.* BRAY (1931), 23 Cr. App. Rep. 30, C. C. A.

5046g. Subsequent sentence need not be heavier.]—R. *v.* GRIFFITHS, No. 5035a, *ante*.

5049a. —— ——.]—Where prisoner, a young man, had made a real effort to retrieve his character & to get continuous work :—*Held :* (1) a sentence to penal servitude was not necessary, & prisoner's sentence of five years' penal servitude might suitably be reduced to twenty-one months' imprisonment with hard labour.

(2) The term of first sentence to penal servitude must depend on the circumstances : there is no general rule that it is three years. —R. *v.* TOWNSEND (1924), 18 Cr. App. Rep. 99, C. C. A.

5049b. —— ——.]—R. *v.* BOURNE, R. *v.* COLEMAN (1925), 19 Cr. App. Rep. 17, C. C. A.

5049c. —— ——.]—R. *v.* TROTT (1927), 20 Cr. App. Rep. 120, C. C. A.

5049d. —— ——.]—R. *v.* ETTRIDGE (1927), 20 Cr. App. Rep. 126, C. C. A.

5049e. —— ——.]—R. *v.* HINKS (1927), 20 Cr. App. Rep. 137, C. C. A.

5049f. —— ——.]—R. *v.* HILL (1928), 20 Cr. App. Rep. 170, C. C. A.

5049g. —— ——.]—R. *v.* WAYE (1928), 20 Cr. App. Rep. 171, C. C. A.

5057a. —— ——.]—Sentence mitigated in view of a long period of honest work.—R. *v.* WINTER (1924), 18 Cr. App. Rep. 139, C. C. A.

5057b. —— ——.]—Sentence reduced in view of a long period of honest work.—R. *v.* PORTER (1926), 19 Cr. App. Rep. 90, C. C. A.

5057c. —— ——.]—Sentence mitigated in view of an interval of three years' honest life.—R. *v.* GUNTRIP (1925), 19 Cr. App. Rep. 45, C. C. A.

5057d. —— ——.]—R. *v.* WHITBY (1926), 19 Cr. App. Rep. 115, C. C. A.

5057e. —— ——.]—R. *v.* PEARCY (1929), 21 Cr. App. Rep. 160, C. C. A.

5057f. —— ——.]—Sentence for "outstanding charges" should not ignore a long period without conviction.—R. *v.* GREEN (1930), 22 Cr. App. Rep. 94, C. C. A.

5057g. —— ——.]—R. *v.* ROCHE (1931), 23 Cr. App. Rep. 28, C. C. A.

5057h. —— ——.]—R. *v.* SCHOFIELD (1931), 22 Cr. App. Rep. 194, C. C. A.

5057j. —— ——.]—R. *v.* WILLIAMS (1931), 23 Cr. App. Rep. 103, C. C. A.

5065. *Add. Citations :*—130 L. T. 319 ; 27 Cox, C. C. 576.

5065a. ——.]—R. *v.* ANDREWS, No. 5028a, *ante*.

5074a. —— ——.]—R. *v.* LLOYD, No. 2567a, *ante*.

5081a. —— ——.]—R. *v.* TAYLOR (*alias* SAUNDERS, *alias* WALLACE), No. 1913a, *ante*.

5089a. —— —— —— **Truth of charges must be admitted.**]—Where a prisoner asks for outstanding charges to be taken into consideration in a sentence to be passed upon him, the presiding judge should make it clear that this can be done only if the prisoner admits the truth of those charges.—R. *v.* BERKOFSKY (1935), 25 Cr. App. Rep. 66, C. C. A.

5089b. —— **Charges which ought to have been considered in court below.**]—In a proper case, with the consent of applt., the ct. in awarding sentence will take into account outstanding charges which ought to have been considered in the sentence of the ct. below.—R. *v.* MACMILLAN (1921), 16 Cr. App. Rep. 3, C. C. A.

5089c. —— **Jurisdiction to try other offences necessary.**]—The prisoner was convicted at quarter sessions of theft. In passing sentence, there was taken into account a charge of forgery & a charge of obtaining money by false pretences in Ireland :—*Held :* as the ct. of quarter sessions had no jurisdiction to try the charge of forgery, & no jurisdiction over the offence committed in Ireland, it was wrong to purport to take into account such charges.—R. *v.* WARN, [1937] 4 All E. R. 327 ; 158 L. T. 455 ; 102 J. P. 46 ; 54 T. L. R. 182 ; 81 Sol. Jo. 1041 ; 26 Cr. App. Rep. 115 ; 36 L. G. R. 19, C. C. A.

5092a. —— **Duty of police to supply list of charges.**]—Appct. had been convicted at quarter sessions of larceny & had been sentenced to five years' penal servitude. Offences which he admitted & which were other than those charged against him in the indictment were taken into consideration by the ct. of quarter sessions in passing sentence. He applied for leave to appeal against his sentence :—*Held :* as it was difficult to see what other cases had been taken into consideration by the ct. of quarter sessions in passing sentence on appct., it would be convenient if in such a case the police would file at the ct. of trial a list showing (*a*) the places where the other offences had been committed ; (*b*) the dates & (*c*) the nature of such offences ; (*d*) if possible, whether or not warrants had been issued in respect of such offences.—R. *v.* HICKS (1924), 88 J. P. 68 ; 18 Cr. App. Rep. 11, C. C. A.

5092b. Other court should be informed before sentence passed.]—R. *v.* TAYLOR, No. 5314a, *post*.

5097a. —— ——.]—R. *v.* PEACE (1925), 19 Cr. App. Rep. 58, C. C. A.

5099. *Add. Annotation :*—**Refd.** R. *v.* Peace (1925), 19 Cr. App. Rep. 58.

5108a. Mistake of law]—R. *v.* GIBSON (1930), 22 Cr. App. Rep. 13, C. C. A.

5110a. —— **Great provocation.**]— R. *v.* CARMICHAEL (1930), 22 Cr. App. Rep. 142, C. C. A.

5110b. ——.]—R. *v.* CURTIS (1932), 23 Cr. App. Rep. 158, C. C. A.

5111a. ——.]—There is no rule of law or practice that a co-prisoner should receive a lighter sentence, in view of his giving evidence for the Crown.—R. *v.* O'DARE, DAVIS & MORTON (1927), 20 Cr. App. Rep. 79, C. C. A.

5116a. Long interval free from conviction.]—Sentence mitigated.—R. *v.* HODSON (1927), 20 Cr. App. Rep. 11, C. C. A.

5116b. Inability to obtain work.]—R. *v.* POMFRET (1931), 23 Cr. App. Rep. 31, C. C. A.

5116c. Attempt to earn honest living.]—Sentence reduced in view of a period of honest work.—R. *v.* MARTIN (1931), 23 Cr. App. Rep. 52, C. C. A.

5116d. ——.]—Mitigation of sentence in view of a period of honest work.—R. *v.* PHILLIPS (1931), 23 Cr. App. Rep. 127, C. C. A.

5119a. —— ——.]—Applts. treated as first offenders, & sentences reduced.—R. *v.* SEATON & FLANAGAN (1928), 20 Cr. App. Rep. 192, C. C. A.

5125a. ——.]—R. *v.* COX (1924), 18 Cr. App. Rep. 152, C. C. A.

5125b. ——.]—R. *v.* HURRELL (1926), 19 Cr. App. Rep. 89, C. C. A.

5125c. ——.]—R. *v.* WARD (1926), 19 Cr. App. Rep. 126, C. C. A.

5125d. ——.]—Sentence reduced, although the case was serious, in view of the fact that it was prisoner's first offence, & on account of her youth.—R. *v.* CHICK (1925), 19 Cr. App. Rep. 57, C. C. A.

5125e. ——.]—R. *v.* GREENWOOD (1929), 21 Cr. App. Rep. 186, C. C. A.

5125f. ——.]—R. *v.* WOOD (1930), 22 Cr. App. Rep. 53, C. C. A.

5125g. ——.]—R. *v.* FISHER (1931), 22 Cr. App. Rep. 191, C. C. A.

5125h. ——.]—R. *v.* VARLOW (1931), 22 Cr. App. Rep. 189, C. C. A.

5125j. ——.]—R. *v.* BETTS, QUINT, & CRESSET TRUST, LTD. (1931), 23 Cr. App. Rep. 10, C. C. A.

5125k. ——.]—R. *v.* WILSON (1931), 23 Cr. App. Rep. 104, C. C. A.

5125l. ——.]—R. *v.* ORMESHER (1932), 23 Cr. App. Rep. 172, C. C. A.

5129a. —— ——.]—R. *v.* HOLMES (1931), 23 Cr. App. Rep. 46, C. C. A.

5148a. ——.]—Sentence mitigated in view of youth.—R. *v.* HARDY (*alias* EMMETT) (1925), 18 Cr. App. Rep. 168, C. C. A.

5148b. ——.]—R. *v.* CHICK, No. 5125d, *ante*.

5148c. ——.]—Sentence mitigated in view of youth, notwithstanding prisoner had been detained in a Borstal institution & had also served a sentence of three months' imprisonment with hard labour.—R. *v.* LEATHERLAND (1926), 19 Cr. App. Rep. 85, C. C. A.

5148d. ——.]—R. *v.* GETHING (1926), 19 Cr. App. Rep. 112, C. C. A.

5148e. ——.]—R. *v.* GREENWOOD (1929), 21 Cr. App. Rep. 186, C. C. A.

5148f. ——.]—R. *v.* COOK (1931), 23 Cr. App. Rep. 47, C. C. A.

5148g. ——.]—R. *v.* HUGHES & ADAMS (1930), 22 Cr. App. Rep. 145, C. C. A.

5148h. ——.]—R. *v.* FISHER (1931), 22 Cr. App. Rep. 191, C. C. A.

5148j. ——.]—R. *v.* MORGAN (1931), 22 Cr. App. Rep. 177, C. C. A.

5148k. ——.]—R. *v.* MALT (1931), 23 Cr. App. Rep. 45, C. C. A.

5148l. ——.]—R. *v.* HAYWOOD (1931), 22 Cr. App. Rep. 193, C. C. A.

5148m. ——.]—R. *v.* BROWN (1931), 23 Cr. App. Rep. 38, C. C. A.

5148n. ——.]—R. *v.* JONES (1932), 23 Cr. App. Rep. 162, C. C. A.

5148o. ——.]—R. *v.* HANSLOW (1932), 23 Cr. App. Rep. 160, C. C. A.

5148p. ——.]—R. *v.* TROWBRIDGE (1932), 23 Cr. App. Rep. 162, C. C. A.

5148q. ——.]—R. *v.* SCHOLES (1932), 23 Cr. App. Rep. 161, C. C. A.

5155a. ——.]—R. *v.* HURRELL (1926), 19 Cr. App. Rep. 89, C. C. A.

5156a. —— —— **What is post office offence.**]—Where a postman had altered the time on a letter in order to make it appear to have been sent before the result of a competition for which he had entered :—*Held :* a sentence of three years' penal servitude was too severe, as the offence was not a post office offence in the ordinary sense.—R. *v.* TANNER (1910), 6 Cr. App. Rep. 62, C. C. A.

5170a. Failure to make restitution—After postponement.]—The ct. does not approve of a sentence being increased because, after a postponement, prisoner has failed to make fuller restitution.—R. *v.* PRITCHARD (1929), 21 Cr. App. Rep. 152, C. C. A.

5173. *Add. Annotation :*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

5174. *Add. Annotation :*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

5175. *Add. Annotation :*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

5175a. —— ——.]—There is no rule of law or of practice forbidding a sentence of simple imprisonment being given to follow a sentence of two years' imprisonment with hard labour.—R. *v.* ROBERTS & MORRISS (1926), 134 L. T. 635 ; 42 T. L. R. 373 ; 28 Cox, C. C. 150 ; *sub nom.* R. *v.* MORRISS, 90 J. P. 84 ; 42 T. L. R. 373 ; 70 Sol. Jo. 426 ; 19 Cr. App. Rep. 75, C. C. A.

5180. After this case add :—
—— **Substitution of penal servitude.**]—*See* Penal Servitude Act, 1926 (c. 58).

5181. For " in the case of consecutive sentences " read " in the case of concurrent sentences."

PART XIII. SECT. 2, SUB-SECT. 5.—A.

sk. *Station in life—No ground for mitigation.*]—The sentence for criminal negligence in driving a car cannot be affected by the station in life of the accused.—R. *v.* CARR, [1937] 3 D. L. R. 537 ; O. R. 600 ; 68 Can. C. C. 343.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 5.—C.

5142 ii. ——.]—Sentence mitigated in view of youth.—R. *v.* HOPPER & GLAVEEN (1924), 57 N. S. R. 438.—**CAN.**

5142 iii. *S.P.*—R. *v.* HAMILTON (1925), 58 N. S. R. 46.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 6.

sg. *Proof of aggravating circumstances.*]—While aggravating circumstances accompanying a particular offence, such as the age of the victim & the character & previous record of the accused, are matters which may be taken into consideration, after verdict, in determining the appropriate punishment, all such matters must be brought before the ct. properly & regularly.—R. *v.* PILUK (JOHN), R. *v.* PILUK (MIKE), R. *v.* WORONIUK, [1933] 2 W. W. R. 56 ; 60 C. C. C. 92.—**CAN.**

sk. ——.]—In determining the quantum of punishment information as to the general character of the accused & of other material circumstances may be given after conviction, even though not in the form of evidence proper, & it follows that where the accused has pleaded guilty & no evidence has been given the judge or magistrate may hear a statement from a police officer of the facts gathered by him in his investigation of the crime, but all such information or statements must be given in the presence of the accused & his right to challenge them should be protected &, if he exercises that right, proper proof should be required or the information so obtained should be ignored in passing sentence.—R. *v.* MARKOFF, [1936] 3 W. W. R. 667 ; [1937] 1 D. L. R. 77 ; 67 Can. C. C. 308.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.

5182 i. *Concurrent sentences—Imprisonment & penal servitude.*]—A prisoner having been found guilty upon two charges, the ct. sentenced him to five years' penal servitude in respect of the first charge & to imprisonment for one year in respect of the second charge, the two sentences to run concurrently.—H.M. ADVOCATE *v.* CARSON, [1927] S. C. (J.) 70.—**SCOT.**

5184. *Add. Annotation :*—**Refd.** R. *v.* Fielder (1926), 135 L. T. 64.

5190a. —— ——.]—The term of a sentence must precede the serving of a *remanet*.—R. *v.* HARVEY (1927), 20 Cr. App. Rep. 37, C. C. A.

5190b. —— ——.]—A *remanet* term cannot be served concurrently with a fresh sentence.—R. *v.* NALL (1927), 20 Cr. App. Rep. 85, C. C. A.

5190c. —— ——.]—A sentence of penal servitude to run concurrently with a *remanet* cannot be imposed.—R. *v.* REYNOLDS (1932), 23 Cr. App. Rep. 173, C. C. A.

5190d. —— —— **Powers of Prison Commissioners & Secretary of State.**]—Neither the Prison Comrs. nor the Secretary of State has power to order the *remanet* of a sentence, either of imprisonment or penal servitude or preventive detention, to be served concurrently with a fresh sentence.—R. *v.* POWELL (1933), 24 Cr. App. Rep. 88, C. C. A.

5192a. —— **Further charges which could have been considered on previous trial.**—In Oct. 1937, applts. were sentenced to four years' penal servitude and twenty-one months' imprisonment with hard labour, respectively, for shop-breaking offences. In Jan. 1938, they were again sentenced to three years' penal servitude and twelve months' imprisonment with hard labour, respectively, for similar offences, & these sentences were ordered to be consecutive to those of Oct. 1937. In both cases, the sentences were severe on account of the bad record of the prisoners :—*Held :* as the bad record of the prisoners had been taken into account on the first occasion, the latter order was that the sentences passed upon applts. in Jan. 1938, should be concurrent with the sentences passed in Oct. 1937.—R. *v.* AMES, R. *v.* CAREY, [1938] 1 All E. R. 515 ; 26 Cr. App. Rep. 133, C. C. A.

5194. *Add. Annotation :*—**Apld.** Morriss *v.* Winter (1929), 45 T. L. R. 643.

5194a. —— **Not interrupted by period of special treatment pending appeal against another conviction.**]—In a proper case the ct. will order that the period of "special treatment" under Criminal Appeal Act, 1907 (c. 23), s. 14, of an applt. already serving a sentence shall not be added to that term.—R. *v.* FOX (1925), 18 Cr. App. Rep. 192, C. C. A.

5194b. —— ——.]—R. *v.* HASLAM, No. 2839a, *ante*.

5198a. —— —— **No previous conviction.**]—R. *v.* EMMOTT (1928), 21 Cr. App. Rep. 42, C. C. A.

5201a. —— ——.]—The ct. leans against a longer term of imprisonment with hard labour than two years.—R. *v.* LONG (1927), 20 Cr. App. Rep. 101, C. C. A.

5208a. —— ——.]—The fact that a convicted prisoner has undergone terms of penal servitude does not of itself justify sentence to a further term ; all the circumstances of the case must be considered, including the magnitude of the latest offence.—R. *v.* KNELL (1926), 19 Cr. App. Rep. 169, C. C. A.

5208b. —— —— **Second offence of different nature.**]—A previous sentence to penal servitude is not *per se* a ground for the infliction of penal servitude on a subsequent conviction, especially for an offence of a different nature.—R. *v.* FITT (1928), 21 Cr. App. Rep. 41, C. C. A.

5211a. When to be awarded under Penal Servitude Act, 1926 (c. 58).]—R. *v.* ASCOLI (1927), 20 Cr. App. Rep. 156, C. C. A.

5217. *Add. Annotation :*—**Refd.** R. *v.* Townsend (1924), 18 Cr. App. Rep. 99.

5217a. —— ——.]—R. *v.* TOWNSEND, No. 5049a, *ante*.

5217b. —— ——.]—There is no rule of law or practice that the term of a first sentence of penal servitude is limited to three years.—R. *v.* BASIRE (1926), 19 Cr. App. Rep. 174, C. C. A.

PART XIII. SECT. 3, SUB-SECT. 2.

s i. —— —— *Sentence imposed under provincial statute.*]—Sect. 3 of Prisons & Reformatories Act, R. S. C., 1927 (c. 163), & sect. 42 (2) of Penitentiary Act, R. S. C., 1927 (c. 154), which provide that a term of imprisonment shall, unless otherwise directed in the sentence, begin to run from the date of the sentence, do not apply to sentences imposed under a provincial statute unless the provincial statute itself, either directly or indirectly, makes them applicable. At common law the period of imprisonment is reckoned from the time the defendant is received into custody.—HIRSCH *v.* ANDERSON & WEDDERSPOON, [1930] 1 W. W. R. 405 ; 2 D. L. R. 576 ; 53 Can. C. C. 359 ; 24 S. L. R. 358.—**CAN.**

t i. —— *Release on bail—Whether time counts.*]—*Re* HOOD, [1928] 1 D. L. R. 624 ; 49 Can. Crim. Cas. 191 ; 59 N. S. R. 471.—**CAN.**

sy. *Of accused acquitted on ground of insanity—Powers of Lieutenant-Governor.*]—R. *v.* COLEMAN (N. S.) (1927), 47 Can. Crim. Cas. 148.—**CAN.**

sz. *Alternative sentences—Prisons & Reformatories Act, R. S. C.*, 1927, *s.* 46 *—Criminal Code, s.* 242 (3).]—R. *v.* OLDAKER (Ont.) (1929), 52 Can. Crim. Cas. 318.—**CAN.**

sa. *Power of court under Penal Servitude Act.*]—*Opinion*, that under Penal Servitude Act, 1891 (c. 69), s. 1 (2), a judge of the High Ct. has power to award imprisonment on a conviction under Coinage Offences Act, 1936 (c. 16), s. 9 (1).—GALLAGHER *v.* H.M. ADVOCATE, [1937] S. C. (J.) 27. —**SCOT.**

PART XIII. SECT. 3, SUB-SECT. 4.

f i. —— —— ——.]—On a conviction on a charge of robbery with violence the judge ordered prisoner to be whipped, &, not having stated the number of times he was to be whipped, provided for this in the record of conviction in prisoner's absence :—*Held :* the sentence was not illegal.—R. *v.* HUGHES (1924), 35 B. C. R. 56.—**CAN.**

g i. —— *Seduction offences.*]—The maximum punishment under Criminal Code, s. 213, is two years, & whipping is not authorised & cannot be added to the punishment provided.—R. *v.* HIRSCH, [1924] 2 W. W. R. 342 ; 42 Can. Crim. Cas. 153.—**CAN.**

g ii. —— *Assault—By young person under sixteen.*]—MACKAY *v.* LAMB, [1923] S. C. (J.) 16.—**SCOT.**

5230 i. —— *First offenders.*]—Circumstances in which :—*Held :* whipping should not be imposed on a first offender only twenty years old.—R. *v.* WHEPDALE (Sask.), [1927] 3 W. W. R. 704 ; 49 Can. Crim. Cas. 62.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 5.

h i. —— *Power of court.*]—HALIFAX CORPN. *v.* BROWN (1885), 18 N. S. R. (6 R. & G.) 103.—**CAN.**

h ii. —— ——.]—Where an offence is punishable by imprisonment for more than five years, a sentence of a fine & imprisonment in default of payment is improper.—R. *v.* ENGLAND (1925), 43 Can. Crim. Cas. 11 ; 19 Sask. L. R. 165 ; [1925] 1 W. W. R. 237.—**CAN.**

h iii. —— *Jurisdiction of Supreme Court.*]—Applt. was tried in the Supreme Ct. of the Northern Territory on an information charging him with maliciously publishing a defamatory libel, was convicted & was sentenced to pay a fine & directed to be imprisoned until the fine was paid :—*Held :* apart from statutory restriction the direction for imprisonment was lawful, & the direction was not made unlawful by Criminal Law Consolidation Act, 1876 (S. A.), ss. 365–367, for the enforcement of fines.—MCKINNON *v.* R. (1927), 40 C. L. R. 217.—**AUS.**

m i. —— *Fine not paid—Warrant not acted on for five years.*]—Arrest after five years upheld.—R. *v.* MONDSHEIN (Man.), [1927] 1 D. L. R. 964 ; [1927] 1 W. W. R. 101 ; 47 Can. Crim. Cas. 63.—**CAN.**

o i. *Fine for violation of Criminal Code—Judge may not order payment to private individual.*]—R. *v.* ENGLAND (1925), 43 Can. Crim. Cas. 11 ; 19 Sask. L. R. 165 ; [1925] 1 W. W. R. 237.—**CAN.**

sa. *Reduction of fine on appeal—Effect of—On person by whom fine paid.*] —LEVINE *v.* WANLESS (Ont.) (1927), 47 Can. Crim. Cas. 273.—**CAN.**

sc. *Right of municipality to fine.*]—

5238a. —— **Power of court to call for expert reports.**]—R. *v.* HOBBS (1928), 21 Cr. App. Rep. 14, C. C. A.

5239a. When justified—Necessity for compliance with statute.]—The mere fact that accused is within the statutory limits of age does not justify a sentence to Borstal discipline; the other statutory conditions of Prevention of Crime Act, 1908 (c. 59), s. 1 (1), must be fulfilled.—R. *v.* STENSON & WINTERBOTTOM (1930), 22 Cr. App. Rep. 18, C. C. A.

5239b. —— ——.]—Whether a young offender is a person "of criminal habits & tendencies" or in "association with persons of bad character," within Prevention of Crime Act, 1908 (c. 59), s. 1 (1) (*b*), is a question of fact in each case; but, *semble:* the evidence of such facts must be clear & certain: trifling offences or casual association with one criminal are not sufficient to satisfy the statute.—R. *v.* CONNELL & IRVINE (1930), 22 Cr. App. Rep. 102, C. C. A.

5239c. —— ——.]—R. *v.* GREENWOOD (1931), 23 Cr. App. Rep. 55, C. C. A.

5239d. —— ——.]—A number of offences committed on the same day are not conclusive of "criminal habits or tendencies" as they might be if they had taken place at some intervals of time.—R. *v.* STEWART (1931), 23 Cr. App. Rep. 61, C. C. A.

5239e. —— ——.]—In certain circumstances the very nature of the offence of which a young offender is convicted may justify a ct. in drawing the inference that he is of "criminal habits or tendencies," & accordingly amenable to a sentence of detention in a Borstal institution.—R. *v.* WALDING (1931), 144 L. T. 672; 22 Cr. App. Rep. 178; 29 Cox, C. C. 283, C. C. A.

5239f. ——.]—R. *v.* BILLER (1938), 55 T. L. R 272; 82 Sol. Jo. 1032, C. C. A.

5240. *Add. Annotation:*—**Refd.** R. *v.* Scoffin, [1930] 1 K. B. 741.

5240a. —— **Misstatement of age—Subsequent true statement & good conduct—Sentence changed in favour of detention in Borstal.**]—R. *v.* CURRAN (1930), 22 Cr. App. Rep. 57, C. C. A.

5240b. —— **Time for ascertaining age—Date of sentence.**]—Where an accused person is convicted at petty sessions & remitted to quarter sessions or assizes for sentence under Criminal Justice Administration Act, 1914 (c. 58), s. 10, as amended, the material time at which to ascertain his age in connection with the power of the ct. to order his detention in a Borstal institution is that when sentence is passed, not that of his conviction.—R. *v.* SCOFFIN, [1930] 1 K. B. 741; 99 L. J. K. B. 521; 143 L. T. 121; 46 T. L. R. 311; 74 Sol. Jo. 216; 29 Cox, C. C. 151; 22 Cr. App. Rep. 27, C. C. A.

5241a. —— **Youth of prisoner.**]—Detention in a Borstal institution substituted for a sentence of imprisonment with hard labour passed on a boy sixteen years of age.—THORPE'S CASE (1918), 13 Cr. App. Rep. 176, C. C. A.

5241b. —— ——.]—R. *v.* RANKIN (1932), 23 Cr. App. Rep. 200, C. C. A.

5243a. —— ——.]—Sentence of detention quashed.—R. *v.* SMEE (1928), 20 Cr. App. Rep. 192, C. C. A.

5244a. —— **Sentence manifestly excessive.**]—R. *v.* GORE (1929), 21 Cr. App. Rep. 175, C. C. A.

5244b. —— ——.]—R. *v.* THOMPSON (1931), 23 Cr. App. Rep. 76, C. C. A.

5244c. —— ——.]—R. *v.* PHELPS & ROBERTS (1931), 23 Cr. App. Rep. 77, C. C. A.

5244d. —— **Corruption of others in Institute likely.**]—The ct. will not permit youths with very bad records, who are likely to corrupt others, to be sent to Borstal institutions.—R. *v.* KNEALE (1931), 23 Cr. App. Rep. 73, C. C. A.

5246a. —— ——.]—As a general rule, the term of detention in a Borstal institution should be three years.—R. *v.* REVILL (1925), 19 Cr. App. Rep. 44, C. C. A.

5246b. —— ——.]—Term of detention in a Borstal institution increased to the maximum in applt.'s own interest.—R. *v.* FRIER (1927), 20 Cr. App. Rep. 30, C. C. A.

5252a. Report of Prison Commissioners—Duty to state reasons.]—The Prison Commissioners in reporting, under Prevention of Crime Act, 1908 (c. 59), s. 1 (1), that a case is not suitable for Borstal treatment would do well in future to attach their reasons.—R. *v.* NAYLOR, [1937] 2 All E. R. 379; 81 Sol. Jo. 379; 26 Cr. App. Rep. 77, C. C. A.

5255. *Add. Annotation:*—**Apld.** R. *v.* Baxter (1924), 18 Cr. App. Rep. 127.

A municipality has a right to fines where it has paid any part of the expense of proceedings, whether the judge or the Ct. of Appeal imposed the fines.—WINDSOR *v.* A.-G. OF ONTARIO, [1933] 4 D. L. R. 735; 60 C. C. C. 401.—**CAN.**

sf. *Fine under Excise Act—Whether property of Dominion or Province.*]—D. was convicted by an Ontario magistrate under sect. 176 of Excise Act, R.S.C., 1927, & sentenced to imprisonment for one month & a fine of $200, & in default of payment, to a further term of imprisonment for six months. He served the definite term of one month's imprisonment in the common gaol at North Bay & was then transferred to Burwash Industrial Farm, an institution maintained & administered by the Govt. of Ontario. While there, the fine of $200 was paid to that institution & the money was transmitted to the Treasurer of Ont. from whom it was demanded by the Comr. of Excise on behalf of the Receiver General of Canada. This action was brought to determine the ownership of the money:—*Held:* upon a consideration of sect. 1036 of the Criminal Code, sect. 133 of Excise Act, & sect. 40 of Prisons & Reformatories Act, 1927, the money in question is the property of His Majesty in the right of the Dominion.—R. *v.* A.-G. FOR ONTARIO, [1934] Ex. C. R. 25; 3 D. L. R. 483; 61 C. C. C. 359.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 8.

sg. *Under Probation of Offenders Act*, 1907 (*c.* 17).]—A licensed publican pleaded guilty to opening his licensed premises for the sale of intoxicating liquor during prohibited hours. His house was well conducted, & this was his first offence. The magistrate having given deft. the benefit of the above Act:—*Held:* as there was nothing in the evidence as to character to bring the case within sect. 1, & the offence was not a trivial one, & there were no extenuating circumstances, the magistrate was not correct in law in giving deft. the benefit of the Act.

Before a magistrate deals with a case under the above Act, he should be satisfied that the case falls under one of the specific heads of sect. 1, & should state explicitly on which of the grounds he relies if he exercises the discretion conferred on him by the Act.—GILROY *v.* BRENNAN, [1926] I. R. 482.—**IR.**

sm. "*Suspended sentence*"—*Meaning of.*]—The expression as used in Criminal Code, s. 1081, does not mean or infer that sentence must be passed & its operation then suspended; it means that no sentence will be passed unless & until the offender is called upon to appear & receive judgment.—R. *v.* HIRSCH, [1924] 2 W. W. R. 342; 42 Can. Crim. Cas. 153.—**CAN.**

sd. *Release on probation—No power to impose fine.*]—Where an offender is released on probation under Criminal Procedure Code, s. 562 the imposition of a fine is illegal.—KARIM BAKHSH *v.* R. (1928), I. L. R. 10 Lah. 722.—**IND.**

sf. *Applicable to first offenders.*]—The system of indeterminate sentences & parole is primarily applicable to first offenders, & not to habitual criminals.—R. *v.* BOND, [1937] 3 D. L. R. 479; O. R. 535; 68 Can. C. C. 1.—**CAN.**

5257. *Add. Annotation :*—**Consd.** R. *v.* Triffitt, [1938] 2 All E. R. 818.

5258. *Add. Annotations :*—**Folld.** R. *v.* Dean (1924), 18 Cr. App. Rep. 21. **Consd.** R. *v.* Triffitt, [1938] 2 All E. R. 818. **Refd.** *Re* Hector Whaling, Ltd., [1936] Ch. 208.

5261a. —— —— ——.]—R. *v.* Dean, No. 3165a, *ante.*

5269. *Add. Annotation :*—**Refd.** R. *v.* Hayward (1927), 137 L. T. 64.

5274a. —— —— ——.]—The accused was charged, in addition to a charge of a substantive crime, with being a habitual criminal. Upon appeal the objection was taken that no proof of the service of the notice appeared upon the transcript of the trial, although a copy of the notice, dated more than seven days before the date of the trial, was with the papers before the ct. No objection was taken at the trial to the omission of the proof of service :—*Held :* the omission to prove the service of the notice was not a matter which could affect the judgment of the ct. upon the appeal.—R. *v.* Triffitt, [1938] 2 All E. R. 818 ; 159 L. T. 93; 102 J. P. 388 ; 54 T. L. R. 1012 ; 82 Sol. Jo. 477 ; 36 L. G. R. 517 ; 26 Cr. App. Rep. 169, C. C. A.

Annotation :—**Expld.** R. *v.* Vale, [1938] 3 All E. R. 355, C. A.

5279a. —— —— **Effect of failure to refer to remanet.**]—R. *v.* Murray, No. 5309a, *post.*

5279b. —— —— **Allegation of crime—No conviction or admission.**]—(1) In the statutory notice which must be served under Prevention of Crime Act, 1908 (c. 59), s. 10 (4), upon a person whom it is intended to charge with being a habitual criminal, the prosecution are entitled to include an allegation that the accused has committed a crime, although he has neither been convicted of that crime nor admitted his guilt in respect of it.

(2) The argument . . . is that the judge ought not to have discharged the first jury, but the judge in so doing exercised his discretion & we have no power to interfere with the exercise of that discretion, which was exercised entirely in the interests of the accused (Hewart, L.C.J.).—R. *v.* Beadell (1933), 77 Sol. Jo. 158 ; 24 Cr. App. Rep. 39, C. C. A.

5279c. —— —— **Misdescription of one offence.**]—In the statutory notice served under Prevention of Crime Act, 1908 (c. 59), s. 10 (4), on a prisoner who was to be charged as a habitual criminal, in the case of one of the three previous convictions on which it was intended to found the charge the offence was described as "attempted shopbreaking & being in possession of housebreaking implements," whereas in fact the prisoner had been convicted of attempted shopbreaking & being found by night armed with an offensive weapon with intent to break & enter a shop. The date of the conviction, the ct. of trial, & the sentence were correctly set out :—*Held :* the prisoner had not been misled by the wrong description of the offence, & the notice was not thereby invalidated.—R. *v.* Whelan (1934), 24 Cr. App. Rep. 189, C. C. A.

5282. *Add. Annotations :*—**Consd.** R. *v.* Norman, [1924] 2 K. B. 315 ; R. *v.* Triffitt, [1938] 2 All E. R. 818.

5283. *Add. Annotation :*—**Consd.** R. *v.* Triffitt, [1938] 2 All E. R. 818.

5283a. —— —— **Nothing must be stated to jury about charge until substantive offence dealt with.**]—R. *v.* Tyreman, No. 5359b, *post.*

5284a. —— ——.]—The prisoner in this case was put up to plead, & pleaded guilty to certain charges against him. He was also charged with being a habitual criminal. On the next day, before another ct., he was dealt with both on his plea of guilty & on the charge of being a habitual criminal. He appealed, alleging that these facts brought his case within the decision in *R.* v. *Triffitt*, & that his conviction as a habitual criminal should be quashed :—*Held :* as the proceedings on the first day were merely putting the prisoner up to plead, there was no irregularity in them, & the conviction must stand.—R. *v.* Vale, [1938] 3 All E. R. 355 ; 159 L. T. 360 ; 102 J. P. 426 ; 54 L. T. R. 1014 ; 82 Sol. Jo. 715 ; 36 L. G. R. 522 ; 26 Cr. App. Rep. 187, C. C. A.

5285a. —— ——.]—An allegation of being a habitual criminal ought to be tried.—R. *v.* Nash (1927), 20 Cr. App. Rep. 1, C. C. A.

Annotation :—**Folld.** R. *v.* Rutt (1928), 20 Cr. App. Rep. 186.

5285b. —— ——.]—R. *v.* Rutt (1928), 20 Cr. App. Rep. 186, C. C. A.

5288. *Add. Annotation :*—**Folld.** R. *v.* Lonsdale (1930), 47 T. L. R. 80.

5289. *Add. Annotation :*—**N.F.** R. *v.* Lonsdale (1930), 47 T. L. R. 80.

5289a. —— ——.]—No two or more persons should be tried together on charges of being habitual criminals, even though they have been included in one indictment for the purpose of trial for the crime of which they have been convicted immediately before the preferring of the charges of being habitual criminals.—R. *v.* Lonsdale, [1931] 1 K. B. 191 ; 100 L. J. K. B. 212 ; 144 L. T. 192 ; 47 T. L. R. 80 ; 29 Cox, C. C. 209 ; 22 Cr. App. Rep. 122, C. C. A.

5290a. Admission of being habitual criminal—Duty of court to explain charge.]—Before an admission of being a habitual criminal is accepted, it should be made clear to prisoner that the allegation is that he was a habitual criminal at the time of his arrest.—R. *v.* Donovan (1925), 19 Cr. App. Rep. 2, C. C. A.

5290b. Plea of guilty—Meaning should be explained.]—A plea of guilty on the allegation of being a habitual criminal should not be accepted until its meaning has been explained to the prisoner.—R. *v.* Wallace (1929), 21 Cr. App. Rep. 70, C. C. A.

5290c. Direction to jury—Necessary contents.]—R. *v.* Dinsdale (1926), 19 Cr. App. Rep. 123, C. C. A.

5290d. —— ——.]—R. *v.* Weale (1927), 20 Cr. App. Rep. 153, C. C. A.

5290e. Objection to statutory notice—Discharge of jury.]—R. *v.* BEADELL, No. 5279b, *ante*.

5290f. Representation by counsel.]—R. *v.* ANDREWS, [1938] 4 All E. R. 869, C. C. A.

5299. *Add. Annotation:*—**Refd.** R. *v.* Stokell (1924), 18 Cr. App. Rep. 155.

5300. *Add. Annotation:*—**Consd.** R. *v.* Stokell (1924), 18 Cr. App. Rep. 155.

5303a. ——.]—During the trial of accused as a habitual criminal the judge asked a police witness whether he knew anything of accused beyond his participation in the substantive offence which accused had confessed. The answer was: "I know he has been associating with convicted persons." Association with convicted persons was not one of the grounds set out in the statutory notice to accused:—*Held:* evidence of facts not included in the statutory notice to accused must not be given at the trial by the prosecution or by any of its witnesses, & the conviction as a habitual criminal must be quashed. —R. *v.* BAXTER (1924), 132 L. T. 256; 27 Cox, C. C. 689; 18 Cr. App. Rep. 127, C. C. A.

5303b. ——.]—No misconduct, whether criminal or not, may be given in evidence on the trial of an allegation of being a habitual criminal unless the statutory notice thereof has been served.—R. *v.* STOKELL (1924), 18 Cr. App. Rep. 155, C. C. A.

5303c. ——.]—R. *v.* TYREM. N, No. 5359b, *post*.

5303d. ——.]—Evidence that accused is an associate of thieves is not admissible, as an allegation of being a habitual criminal, unless notice has been given of it.—R. *v.* YARWOOD (1928), 21 Cr. App. Rep. 25. C. C. A.

5303e. —— Unless verdict unaffected by admission of other matters.]—Despite irregular admissions in evidence of offences not in the list of the statutory notice to persons alleged to be habitual criminals, the ct. may refuse to interfere if it is satisfied that in the absence of such evidence the jury would have found the same verdict.—R. *v.* HERBERT (1931), 23 Cr. App. Rep. 123, C. C. A.

5304. *Add. Annotation:*—**Consd.** R. *v.* Triffitt, [1938] 2 All E. R. 818.

5304a. Admission of offence made before trial—For particular purpose.]—When a prisoner is charged with being a habitual criminal an admission by the prisoner that he has committed an offence made before the trial may be given in evidence at the trial, & cannot be excluded on the ground that it was made for some particular or limited purpose.—R. *v.* WILLIAMS (1929), 141 L. T. 544; 21 Cr. App. Rep. 121; 28 Cox, C. C. 654, C. C. A.

5304b. Must go to question whether prisoner habitual criminal when charged.]—R. *v.* WINN, No. 5355a, *post*.

5307. *Add. Annotation:*—**Consd.** R. *v.* Hayward (1927), 137 L. T. 64.

5308a. ——.]—When accused is charged with being a habitual criminal, the three convictions forming the basis of the charge under Prevention of Crime Act, 1908 (c. 59), s. 10 (2) (*a*), must be strictly proved; but evidence of other convictions may be given, without production of the record & evidence identifying accused with those convictions, as "evidence of character & repute" under sect. 10 (5), on the question whether accused is or is not leading persistently a dishonest or criminal life. Even apart from the statutory provision, such evidence can be given if there is any evidence that accused has admitted the convictions.—R. *v.* HAYWARD (1927), 137 L. T. 64; 28 Cox, C. C. 342; *sub nom.* R. *v.* HAYWARD, R. *v.* LAWRENCE, 43 T. L. R. 356; 20 Cr. App. Rep. 33, C. C. A.

5309a. —— Conviction in Scotland.]—(1) Upon a charge against a person in England of being a habitual criminal under Prevention of Crime Act, 1908 (c. 59), s. 10, a previous conviction of that person in Scotland upon indictment of a crime may be proved as one of the three previous convictions of a crime which must be proved against him under sect. 10 (2) before he can be found to be a habitual criminal, provided that the offence of which he was convicted in Scotland would also be a "crime" in England within the definition of that expression as set out in the Sched. to Prevention of Crime Act, 1908 (c. 59).

(2) The notice of intention to charge the prisoner with being a habitual criminal wrongly stated the particulars of one of his previous convictions in that the sentence was for two years' imprisonment plus a period of 522 days *remanet*, & in the notice there was no information as to the *remanet*:—*Held:* the notice sufficiently informed the prisoner of what was alleged against him & was therefore a valid notice.—R. *v.* MURRAY, [1932] 1 K. B. 599; 146 L. T. 487; 48 T. L. R. 255; 76 Sol. Jo. 166; 29 Cox, C. C. 441; 23 Cr. App. Rep. 166; *sub nom.* R. *v.* MORRISON (1932), 101 L. J. K. B. 257, C. C. A.

5312a. —— ——.]—Applt. was convicted of shopbreaking, & was sentenced to three years' penal servitude. He was also found to be a habitual criminal on the ground that he had been convicted on three previous occasions & that he was leading persistently a dishonest or criminal life, & he was sentenced to five years' preventive detention. In Sept. 1923 applt. was sentenced to twelve months' imprisonment as a suspected person, & he was released on July 23, 1924. From Sept. to Dec. 1924 he was in honest employment. He committed the shopbreaking for which he had now been sentenced on Jan. 2, 1925:—*Held:* it was questionable whether, on these facts, the jury could properly have found applt. to be a

---

preventive detention, the jury are not bound to convict him; the accused is entitled to lead evidence to show that he is not, at the date of the charge, a habitual criminal, & it is for the jury to determine, as a question of fact, whether, on the whole evidence adduced, the charge has or has not been established.—M'DONALD *v.* H.M. ADVOCATE, [1929] S. C. (J.) 76.—SCOT.

PART XIII. SECT. 4, SUB-SECT. 3.—C.

5307 fi. ——.]—Where a person is charged under Prevention of Crime Act, 1908, with being a habitual criminal, Criminal Procedure (Scotland) Act, 1887, s. 67, does not apply, & the sched. of previous convictions appended to an extract conviction which is itself competently proved cannot be used as evidence of those convictions for the purpose of supporting the charge.—O'DONNELL *v.* H.M. ADVOCATE, [1930] S. C. 1 (J.).—SCOT.

sg. *Conviction twenty-seven years earlier.*]—*Held:* while a person charged with being a habitual criminal who gave evidence on his own behalf laid himself open to cross-examination upon his whole record, examination on a conviction twenty-seven years prior to the date of trial, in the absence of reference to a period of seven years subsequent to his liberation in which no conviction had been recorded against him, was so prejudicial as to be fatal to a conviction.—RAEBURN *v.* H.M. ADVOCATE, [1937] S. C. (J.) 100. —SCOT.

habitual criminal, but if they had done so it must be on a direction to them that the burden of proof always rested on the prosecution to show that during the relevant period applt. had been leading, persistently, a dishonest or criminal life; as there were passages in the summing up which might have conveyed to the jury that, when the prosecution had gone a certain length, the burden rested on applt. to show that he had turned over a new leaf, the conviction must be quashed.—R. *v.* DRISCOLL (1925), 89 J. P. 104; 41 T. L. R. 425; 18 Cr. App. Rep. 184, C. C. A.

5312b. —— ——.]—A jury trying the issue of being a habitual criminal or not must be expressly warned, where the Crown proves such a previous finding, that the onus of proving that the accused is still a habitual criminal at the material period rests on the Crown & not that of disproving it onhim.—R. *v.* KNIGHT (1929), 21 Cr. App. Rep. 72, C. C. A.

5314a. —— ——.]—(1) On the trial of an allegation that prisoner is a habitual criminal the direction that if the three statutory convictions are proved, he must be so found, is incorrect; his whole career must be considered by the jury.

(2) When a ct. in passing a sentence takes into account charges pending in another ct., the latter ought to be informed thereof, before passing sentence upon such other charges.—R. *v.* TAYLOR (1926), 19 Cr. App. Rep. 146, C. C. A.

5319a. —— —— ——.]—R. *v.* HAYWARD, No. 5308a, *ante*.

5322. *Add. Annotation:*—**Refd.** R. *v.* White & Shelton (1927), 20 Cr. App. Rep. 61.

5331a. —— ——.]—On the trial of an allegation of being a habitual criminal, the interval between the last two convictions is only one of several elements to be considered by the jury; others are accused's silence on his life during that interval, the nature of the crime, & the possession of housebreaking instruments & their number & character at the time of arrest.—R. *v.* WHITE & SHELTON (1927), 20 Cr. App. Rep. 61, C. C. A.

5341a. ——.]—R. *v.* WHITE & SHELTON, No. 5331a, *ante*.

5347. *Add. Annotations:*—**Refd.** R. *v.* Lavender (1927), 20 Cr. App. Rep. 10; R. *v.* White & Shelton (1927), 20 Cr. App. Rep. 61.

5352a. —— ——.]—The mere fact that accused has done honest work in his latest interval of liberty is not a defence to the allegation that he is a habitual criminal.—R. *v.* HAYES (1926), 90 J. P. 190; 19 Cr. App. Rep. 157, C. C. A.

5355a. —— —— **Duty of judge.**]—(1) The direction on the allegation of being a habitual criminal must explain the merits of an interval of honest work in each case.

(2) The essential question is whether prisoner is a habitual criminal at the time when he is so charged.—R. *v.* WINN (1925), 69 Sol. Jo. 574; 19 Cr. App. Rep. 1, C. C. A.

5355b. —— —— ——.]—A direction on the allegation of being a habitual criminal must deal with an interval of honest work.—R. *v.* HARRY (1928), 21 Cr. App. Rep. 21, C. C. A.

5355c. —— ——.]—On the charge of being a habitual criminal, it is not a conclusive defence that accused has done honest work since his last release; it is for the jury on all the facts, including the most recent offence proved against him, to say whether he was, at the time of its commission, "leading persistently a dishonest or criminal life."—R. *v.* LAVENDER (1927), 20 Cr. App. Rep. 10, C. C. A.

5356a. Periods without conviction—Should be put to jury.]—R. *v.* MILLICHAMP (1929), 21 Cr. App. Rep. 106, C. C. A.

5357. *Add. Annotation:*—**Consd.** R. *v.* Norman, [1924] 2 K. B. 315.

5358. *Add. Annotation:*—**Consd.** R. *v.* Norman, [1924] 2 K. B. 315.

5359a. For the existing paragraph in original volume substitute the following paragraph:—

—— —— ——.]—Where a person who has been found to be a habitual criminal & has been sentenced to preventive detention subsequently commits another crime & a notice is served upon him under the above sub-sect., the jury are not bound to find prisoner to be at the time when the verdict is given a habitual criminal. In every case it is a question of fact for the jury to say whether or not prisoner is still a habitual criminal, & prisoner is entitled, notwithstanding that he has previously been found to be a habitual criminal & sentenced to preventive detention, to call evidence to show that he is not at the material time a habitual criminal.—R. *v.* NORMAN, [1924] 2 K. B. 315; 93 L. J. K. B. 883; 131 L. T. 29; 88 J. P. 125; 40 T. L. R. 693; 68 Sol. Jo. 814; 27 Cox, C. C. 621; 18 Cr. App. Rep. 81, 119, C. C. A.

Annotation:—**Refd.** R. *v.* Tyreman (1925), 19 Cr. App. Rep. 4.

5359b. —— —— —— **Conviction remitted.**]—(1) There ought not to be two indictments when all charges may be preferred in one.

(2) Nothing must be stated in the presence of jurors about the allegation of being a habitual criminal until the primary charge is disposed of.

(3) When a conviction as a habitual criminal has been remitted in view of the opinion of the Ct. of Criminal Appeal, it ought not to be alleged against prisoner on a subsequent trial.

(4) On the issue whether prisoner has been leading an honest life, no evidence is admissible of periods or of facts which has not been set out in the statutory notice.—R. *v.* TYREMAN (1925), 19 Cr. App. Rep. 4, C. C. A.

5361a. —— ——.]—Before a sentence of preventive detention can be passed three things are requisite: first, that prisoner shall have been convicted of being a habitual criminal; secondly, that the ct. shall have taken such a view of the substantive crime of which prisoner has then been convicted as to think it right, by reason of that crime & not for any other reason, to pass a sentence of penal servitude; & thirdly, that the ct., in the exercise of its independent discretion, shall be of opinion that by reason of the criminal

---

PART XIII. SECT. 4, SUB-SECT. 3.—D. (a).

5328 iii. —— ——.]—To support a charge of habitually consorting with reputed thieves it must be shown that the persons with whom the accused habitually consorts are thieves with the reputation of being thieves, but evidence that they are so reputed amongst the police is sufficient evidence of reputation.—GABRIEL *v.* LENTHALL, [1930] S. A. S. R. 318.—**AUS.**

habits & mode of life of prisoner it is expedient for the protection of the public that he should be kept in detention for a lengthened period of years. Sentence of preventive detention quashed where the judge at the trial had not exercised such independent discretion, but had treated the sentence as necessarily following the conviction as a habitual criminal.—R. *v.* PAUL, [1925] 1 K. B. 77; 94 L. J. K. B. 63; 132 L. T. 159; 88 J. P. 200; 41 T. L. R. 35; 69 Sol. Jo. 293; 27 Cox, C. C. 660; 18 Cr. App. Rep. 128, C. C. A.

Annotation:—**Expld.** R. *v.* Turnbull (1926), 19 Cr. App. 155.

5369a. —— —— ——.]—A term of penal servitude must not be inflicted, merely to found the jurisdiction of the ct. to impose preventive detention; it must be warranted by the primary offence.—R. *v.* TURNBULL (1926), 19 Cr. App. Rep. 155, C. C. A.

5369b. —— —— ——.]—R. *v.* THOMAS (OTHERWISE WILLIAMS) (1928), 20 Cr. App. Rep. 172, C. C. A.

5372a. ——.]—R. *v.* PAUL, No. 5361a, *ante*.

5373a. ——.]—R. *v.* MCCARTHY (1910), 4 Cr. App. Rep. 198, C. C. A.

5373b. ——.]—R. *v.* HENRY (1927), 20 Cr. App. Rep. 117, C. C. A.

5373c. ——.]—Observations upon the term of penal servitude preliminary to preventive detention.—R. *v.* SEARLE (1922), 17 Cr. App. Rep. 35, C. C. A.

5376a. —— ——.]—Sentence of preventive detention on habitual criminal quashed.

Criticism of the practice of charging a prisoner after his release with offences committed prior to the commencement of his term of imprisonment.—R. *v.* SILVERMAN (1935), 25 Cr. App. Rep. 101, C. C. A.

5385a. —— ——.]—R. *v.* BEARD (1927), 20 Cr. App. Rep. 155, C. C. A.

5398. *Add. Annotations:*—**Distd.** R. *v.* Douglas (1926), 19 Cr. App. Rep. 119. **Expld.** R. *v.* Williams (1929), 141 L. T. 544. **Consd.** R. *v.* Beadell (1933), 77 Sol. Jo. 158.

SECT. 6.—**YOUTHFUL OFFENDERS** (p. 491).

See, now, Children & Young Persons Act, 1932 (c. 46), ss. 15-23.

5414a. —— **Not certified lunatic.**]—There is a legal presumption that a certified lunatic is incapable of entering into a recognisance.—R. *v.* GREEN-EMMOTT (1931), 144 L. T. 671; 22 Cr. App. Rep. 183; 29 Cox, C. C. 280, C. C. A.

5415. *Add. Annotation:*—**Consd.** R. *v.* Sandbach, *Ex p.* Williams (1935), 51 T. L. R. 430.

5416. *Add. Annotation:*—**Consd.** R. *v.* Sandbach, *Ex p.* Williams (1935), 51 T. L. R. 430.

5420. *Add. Annotations:*—**Apld.** R. *v.* Sandbach, *Ex p.* Williams, [1935] 2 K. B. 192; Thomas *v.* Sawkins, [1935] 2 K. B. 249.

5420a. ——.]—Appct. was convicted of obstructing a police constable in the execution of his duty, by warning a street bookmaker of the approach of the police & so enabling him to evade arrest. Evidence was given at the police ct. that appct. had already been convicted of similar offences several times & that the infliction of a fine was no deterrent. The magistrate ordered appct. to enter into a recognisance to be of good behaviour in the sum of £20 with two sureties of £10 each, or in default to be imprisoned for two months. Appct. sought a rule for a *certiorari* to quash the magistrate's order on the ground that the magistrate had no jurisdiction to make it, because (*a*) there was no actual or apprehended breach of the peace, by, or as a result of the conduct of the appct., & (*b*) the order, in effect, imposed a penalty different from & possibly more severe than the maximum which would be imposed for the offence of which appct. was actually convicted:—*Held:* the rule must be discharged, because the matter was within the discretion of the magistrate, who had exercised his discretion properly.—R. *v.* SANDBACH, *Ex p.* WILLIAMS, [1935] 2 K. B. 192; 104 L. J. K. B. 420; 153 L. T. 63; 99 J. P. 251; 51 T. L. R. 430; 79 Sol. Jo. 343; 33 L. G. R. 268; 30 Cox, C. C. 226, D. C.

5448a. Recognisance imposed by Court of Appeal—Breach of—Restoration of original sentence.]—R. *v.* WOOD (1930), 22 Cr. App. Rep. 128, C. C. A.

5448b. —— —— **Offence of different character from original offence—Imposition of fresh recognisance.**]—R. *v.* GORE (1930), 22 Cr. App. Rep. 129, C. C. A.

5448c. Possibility of breach of the peace—Right of public to attend public meeting—On private premises.]—Applt. was one of the conveners

---

PART XIII. SECT. 6.

k i. —— *Conviction for assault—May be sentenced to whipping.*]—MACKAY *v.* LAMB, [1923] S. C. (J.) 16.—**SCOT.**

q i. —— ——.]—*Re* R. *v.* SLINN (1926), 47 Can. Crim. Cas. 77; 37 B. C. R. 275.—**CAN.**

ss. *Notice to parent or guardian—Reasonable notice.*]—(1) A child who pleaded guilty to a charge of theft was ordained to appear for sentence on a later date. On the specified date the magistrate, instead of pronouncing sentence, ordered the child to be sent to an industrial school in terms of the Children Act, 1908 (c. 67), on the ground that he had been found wandering, & had a parent who did not exercise proper guardianship over him:—*Held:* this order was a new proceeding under the Children Act, & involved the abandonment of the former proceedings under the charge of theft; & accordingly, the order was not affected by defects which existed in the former proceedings.

(2) It is enough under Children Act, 1908 (c. 67), s. 98 (1), if the parent has reasonable notice of the diets in the proceedings against the child, & it is not necessary formally to cite the parent to attend the ct.—WHITE *v.* JEANS, [1911] S. C. (J.) 88.—**SCOT.**

sb. —— ——.]—The father of a "young person" charged with theft was served by a constable with a written notice, signed by the constable, stating that his son had been summoned to appear at the police ct. on a charge of theft, & that the father or some other guardian must attend the diet. The notice also narrated the powers of the ct. over the parent conferred by Children Act, 1908 (c. 67):—*Held:* the father had been sufficiently certiorated that he must attend, & an objection that, in the case at any rate of a "young person," as opposed to a child, an antecedent warrant of the ct. citing the parent to attend was necessary, repelled.—MONTGOMERY *v.* GRAY, [1915] S. C. (J.) 94.—**SCOT.**

PART XIII. SECT. 8.

f i. —— *Given after illegal arrest.*]—R. *v.* HOLTZER, *Re* LEVINE & PYZER (Man.), [1928] 3 D. L. R. 222; [1928] 1 W. W. R. 910; 49 Can. Crim. Cas 352.—**CAN.**

f ii. —— *Appeal re-opened—No direction as to person to whom surrender to be made.*]—R. *v.* WAH LUNG (*alias* WONG WA) (B. C.), [1928] 3 W. W. R. 232; 50 Can. Crim. Cas. 182.—**CAN.**

f iii. —— *Notice of motion must be given to sureties.*]—R. *v.* RUNNER, [1928] 1 W. W. R. 921; 22 Sask. L. R. 478.—**CAN.**

f iv. —— *Whether discretion in court to refuse application.*]—On an application on behalf of the Crown for the estreat of a recognisance of bail under

of a meeting held to protest against a Bill then before Parliament in a private hall which had been hired for the purpose by one of the other conveners of the meeting. The meeting was extensively advertised & the public were invited to attend it & no charge for admission was made. Resp., a police sergeant, & other police officers were refused admission to the hall, but they insisted on entering it & remaining there during the meeting. No criminal offence was committed by any person at the meeting, nor was there any actual breach of the peace or disorder, but resp. & the other officers had reasonable grounds for believing that, if they were not present at the meeting, seditious speeches would be made & that incitements to violence & breaches of the peace would occur:—*Held:* resp. & the other officers were entitled, in the execution of their duty to prevent the commission of any offence or breach of the peace, to enter & remain on the premises.—THOMAS *v.* SAWKINS, [1935] 2 K. B. 249; 104 L. J. K. B. 572; 153 L. T. 419; 99 J. P. 295; 51 T. L. R. 514; 79 Sol. Jo. 478; 33 L. G. R. 330; 30 Cox, C. C. 265, D. C.

5452. *Add. Annotations:*—**Apld.** Freeborn *v.* Leeming (1925), 89 J. P. 179. **Refd.** Morriss *v.* Winter, [1930] 1 K. B. 243.

5458. *Add. Annotations:*—**Refd.** Lewis *v.* Guest, Keen & Nettlefold, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (Cyfarthfa) (1927), 96 L. J. K. B. 664; North's Navigation Co. (1889), Ltd. *v.* Batten (1933), 150 L. T. 186.

5464. *Add. Annotations:*—**Consd.** R. *v.* Sheridan, [1936] 2 All E. R. 883; R. *v.* Manchester JJ., *Ex p.* Lever, [1937] 2 K. B. 96.

5466a. Prevention of Crimes Act, 1871 (c. 112), s. 20—Attempted burglary.]—R. *v.* BATES, No. 5a, *ante*.

5478a. ——.]—(1) In order that a person may be convicted under Larceny Act, 1916 (c. 50), s. 28 (2), of being "found by night having in his possession without lawful excuse implements of housebreaking", it must be proved that he was found by night, in possession by night, of housebreaking implements. The finding & the possession must both be by night, & the possession must be possession by a free man.

(2) Where a person has pleaded "Not guilty" to an indictment & is about to stand his trial, he ought not to be invited to plead, in the presence of those who, as jurors, will have to try him, to another indictment which recites a previous conviction.—R. *v.* HARRIS (1924), 94 L. J. K. B. 164; 132 L. T. 672; 89 J. P. 37; 41 T. L. R. 205; 27 Cox, C. C. 746; 18 Cr. App. Rep. 157, C. C. A.

5481a. ——.]—*Qu.*: whether in an indictment in which it is necessary to allege a previous conviction under above sect., the fact that at the same time prisoner was convicted of being a habitual criminal should be alleged.—R. *v.* WESTFALL (1928), 21 Cr. App. Rep. 40, C. C. A.

5494. *Add. Annotation:*—**Refd.** Jones *v.* Thomas, [1934] 1 K. B. 323.

5509. *Add. Annotation:*—**Refd.** Williams *v.* Russell (1933), 149 L. T. 190.

Part XIV.—Appeal to Court of Criminal Appeal.

5523. *Add. Annotation:*—**Refd.** R. *v.* Birch (1924), 93 L. J. K. B. 385.

5528. *Add. Annotations:*—**Consd.** R. *v.* Parkin (1928), 20 Cr. App. Rep. 173; R. *v.* Bosley, [1937] 4 All E. R. 100.

5528a. —— ——.]—After a trial at quarter sessions, the recorder granted a certificate, upon counsel submitting that he desired to argue the accuracy of the direction to the jury on one part of the case. The recorder

---

Crown Suits Act, 1908, s. 5, the ct., on proof of the particular case, is bound to estreat, leaving the person affected to the remedy provided by sect. 7 of the Act.—*Re* KING & SCOTT, [1931] N. Z. L. R. 162.—N.Z.

sk. *Breach of recognisance—Whether sentence for original crime may be given.*]—Where accused is bound over for two years & is charged before the expiration of the two years, he cannot be sentenced for the original crime without an information charging breach of recognisance.—R. *v.* GLASGOW, [1937] 1 D. L. R. 659; 11 M. P. R. 142; 67 Can. C. C. 392; 6 F. L. J. (Can.) 229.—**CAN.**

PART XIII. SECT. 10, SUB-SECT. 1.

k i. —— ——.]—Pltf., after conviction for manslaughter, began an action for possession of premises in which she & her husband, deft., lived, he property standing in her name & being registered under Real Property Act:—*Held:* there was no disability or incapacity of bringing the action, by virtue of Forfeiture Act, 1870 (c. 23).—ZAWOJOWSKA *v.* ZAWOJOWSKA (Man.), [1922] 3 W. W. R. 492.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 2.

sq. *Previous conviction — Second offence not identical—Both included in one section.*]—Under Liquor Act, 1925, 1924-25, c. 53, a person convicted for any one of the acts which s. 78 declares to be offences & who is subsequently convicted for another of such acts is guilty of a second offence even though the two offences are not exactly of the same kind.—R. *v.* POLLARD (Sask.), [1928] 4 D. L. R. 623; [1928] 3 W. W. R. 78; 50 Can. Crim. Cas. 157. —**CAN.**

sr. —— *Under repealed Act.*]—"Previous conviction" in Government Liquor Control Act, 1928, c. 31, s. 178, means a conviction under that Act. & does not refer to convictions under prior Acts now repealed.—R. *v.* RICEBERG (Man.), [1929] 1 D. L. R. 220; 50 Can. Crim. Cas. 387; [1928] 3 W. W. R. 534.—**CAN.**

st. *Interval between prosecutions longer than period limited for prosecutions under Act.*]—*Ex p.* WOODS (N. S.), [1928] 2 D. L. R. 771; 49 Can. Crim. Cas. 141.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 4.

b i. ——.]—A document headed "Certificate of Conviction" & purporting to be a copy of a conviction under Manitoba Temperance Act, 1924, is not proof, under s. 151 (4) of Govt. Liquor Control Act, 1928, of a conviction under the former Act.—R. *v.* RICEBERG (Man.), [1929] 1 D. L. R. 220; 50 Can. Crim. Cas. 387; [1928] 3 W. W. R. 534.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 5

5504 i a. ——.]—Deft. was convicted of a second offence against Liquor Licence Act, the only evidence of the previous conviction being the production of a certificate under the Act, from which it appeared that a person of the same name & address as deft. had been previously convicted before the same magistrate:—*Held:* the evidence was sufficient.—R. *v.* ATKINSON (N.S.) (1910), 44 N. S. R. 521; 9 E. L. R. 212.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 1.

p i. —— —— *Sentence already served.*]—A motion on behalf of the Crown under sect. 1013 (2) of Criminal Code for leave to appeal from a sentence is not "a further or other criminal proceeding for the same cause" within sect. 1079 of the Code. Therefore the fact that the term of imprisonment has been suffered before said motion has been made or, if granted, before the appeal comes on for hearing, does not take away the jurisdiction to grant

stated that he adhered to his direction & granted the certificate merely to obviate any injustice :—*Held :* such certificate was wrongly granted. The convicted person was entitled to make an application to the Ct. of Criminal Appeal for leave to appeal, & there was no possibility of injustice.—R. *v.* BOSELEY, [1937] 4 All E. R. 100 ; 26 Cr. App. Rep. 99, C. C. A.

5528b. —— In what circumstances.]—R. *v.* PARKIN (1928), 20 Cr. App. Rep. 173, C. C. A.

Annotation :—**Consd.** R. *v.* Boseley, [1937] 4 All E. R. 100.

---

the leave or entertain the appeal.—R. *v.* KIRKHAM, [1935] 3 W. W. R. 55 ; 4 D. L. R. 333 ; 64 Can. C. C. 255 ; 50 B. C. R. 197.—**CAN.**

t i. ——.]—An appeal lies to the Supreme Ct. of Canada under Criminal Code, s. 1024, read with sect. 1013, only where a dissenting opinion has been expressed by a member of the ct. of appeal, upon a question which that ct. deems a question of law & pursuant to its direction.—DAVIS *v.* R., [1924] 4 D. L. R. 843 ; [1924] S. C. R. 522.—**CAN.**

t ii. ——.]—R. *v.* DE BERTOLI, [1927] 3 D. L. R. 193 ; [1927] S. C. R. 454 ; 48 Can. Crim. Cas. 118.—**CAN.**

t iii. —— *Whether grounds of dissent must be specified in judgment.*]—Applt. was convicted, & upon appeal the conviction was affirmed by a majority of the ct., the dissent of one judge being merely mentioned in the formal judgment. Under a recent amendment sub-sect. (6) was added to sect. 1013 Criminal Code providing that, in case of a dissenting opinion, the formal judgment should specify the grounds in law on which such dissent was based. The Crown contended that, owing to the failure of the appellate ct. so to specify the grounds of dissent, an appeal to this ct. was not open to applt. :—*Held :* this ct. had jurisdiction to entertain this appeal. The only sect. of the Criminal Code dealing with the jurisdiction *de plano* of the Supreme Ct. of Canada is sect. 1023, under which the fact there has been a dissent on a question of law is the sole condition for the foundation of its jurisdiction : the circumstance that the grounds of dissent are not specified in the formal judgment of the appellate ct. does not avoid the fact of there having been a dissent, which is the only requirement contained in Criminal Code, s. 1023.—REINBLATT *v.* R., [1933] S. C. R. 694 ; [1934] 1 D. L. R. 648 ; 61 C. C. C. 1.—**CAN.**

a i. —— ——.]—R. *v.* BOAK, [1926] S. C. R. 481 ; 46 Can. Crim. Cas. 164.—**CAN.**

a ii —— ——.]—GURDITTA *v.* R., [1927] 2 D. L. R. 577 ; [1927] S. C. R. 80 ; 47 Can. Crim. Cas. 154.—**CAN.**

a iii. —— ——.]—BARRE *v.* R., [1927] 2 D. L. R. 1097 ; [1927] S. C. R. 284 ; 48 Can. Crim. Cas. 91.—**CAN.**

a iv. —— ——.]—HOWLEY *v.* R., [1927] 3 D. L. R. 265 ; [1927] S. C. R. 529 ; 48 Can. Crim. Cas. 139.—**CAN.**

a v. —— ——.]—CARDINAL *v.* R., [1927] 4 D. L. R. 325 ; [1927] S. C. R. 541 ; 48 Can. Crim. Cas. 243.—**CAN.**

a vi. ——.]—The general appellate jurisdiction of the Supreme Ct. of Canada is confined to civil matters ; to found an appeal to the ct. in any criminal matter, resort must be had to some special statutory provision enacted by the Dominion Parliament. Save for the special case provided for by sect. 1025 of the Criminal Code, the only right of appeal to the ct. in any criminal cause is that conferred by sect. 1023. For an appeal to come within sect. 1023, the conviction must have been affirmed by the ct. below & there must have been dissent by some member thereof on a question of law.—STEINBERG *v.* R., [1931] S. C. R. 421 ; 4 D. L. R. 8 ; 56 Can. C. C. 9.—**CAN.**

a vii. ——.]—An appeal from the judgment of Appellate Div. Ont. affirming applt.'s conviction for stealing was dismissed, on the ground that there was no jurisdiction to hear the appeal, the questions raised, & on which there was dissent in the Appellate Div., being all questions of fact, in regard to which there was no right of appeal to this ct. Assuming that the question whether there was any evidence to support a conviction should be deemed a question of law, yet the question whether the proper inference has been drawn by the trial judge from facts established in evidence, is not a question of law but one of fact.—GAUTHIER *v.* R., [1931] S. C. R. 416 ; 4 D. L. R. 582 ; 56 Can. C. C. 113.—**CAN.**

a viii. ——.]—Applts. were tried & convicted on a charge of assault occasioning actual bodily harm. On the hearing of their grounds of appeal before the Ct. of Appeal, applts. moved also for leave to admit new evidence. This motion was dismissed by a majority of the Ct. of Appeal, two judges expressing dissenting opinions. Later on, the Ct. of Appeal rendered judgment affirming unanimously the conviction of applts. ; & such judgment contained also a paragraph mentioning the fact that dissenting opinions had been expressed by two members of the ct. on the motion to adduce new evidence :—*Held :* the dissent in the Ct. of Appeal on the motion for leave to introduce new evidence is not a dissent of that ct. against the affirmance of applts.' conviction on a question of law within sect. 1023 of the Criminal Code.—YIP SING *v.* R., [1935] S. C. R. 635 ; 3 D. L. R. 798 ; 64 Can. C. C. 47.—**CAN.**

a ix. —— *Conflict of judgments.*]—Applt. was an insolvent trader & had been convicted under sect. 417*c* Cr. C. for not having kept proper books of account. Application for leave to appeal under sect. 1025 Cr. C. was made on the ground that, inasmuch as sect. 417*c* Cr. C. was alleged to have been virtually abrogated by sect. 193 of Bkpcy. Act subsequently enacted, the decision of the appellate ct. in affirming the conviction failed to apply the principle of law that a subsequent statutory enactment has the effect of abrogating an anterior enactment which is inconsistent with it ; &, at the hearing, counsel for appct. cited three judgments which were alleged to be in conflict with the above decision :—*Held :* the application for leave to appeal should be dismissed as the judgments cited were not rendered "in a like case" & by an "other ct. of appeal" within the provisions of sect. 1025 Cr. C. ; they were not in conflict with the decision intended to be appealed from : the appellate ct. had clearly admitted the principle of law above cited ; but it had held that sect. 193 of the Bkpcy. Act was not inconsistent with the provisions of sect. 417*c* Cr. C.—LIEBLING *v.* R., [1932] S. C. R. 101 ; [1932] 1 D. L. R. 232 ; 57 C. C. C. 113.—**CAN.**

a x. —— ——.]—The provisions of sect. 1025 of the Criminal Code, giving right of appeal to the Supreme Ct. of Canada, upon leave to appeal being granted, "if the judgment appealed from conflicts with the judgment of any other ct. of appeal," must be taken to refer to cts. within the jurisdiction of the Dominion Parliament & not to cts. outside the Canadian territory.—ARCADI *v.* R., [1932] S. C. R. 158 ; [1932] 2 D. L. R. 429 ; 57 C. C. C. 117.—**CAN.**

a xi. —— ——.]—CHALMERS *v.* R. 1933] S. C. R. 196 ; 2 D. L. R. 789. —**CAN.**

a xii. —— ——.]—In order to obtain leave to appeal to the Supreme Ct. of Canada in a criminal case under sect. 1025 of the Criminal Code, it is not necessary that the judgment from which it is sought to appeal & that of any other ct. of appeal should have been rendered in cases in all respects the same ; but there should be a conflict between the two judgments upon a question of law similar in both cases.—THIFFAULT *v.* R., [1933] S. C. R. 242 ; 3 D. L. R. 591 ; 60C. C. C. 97.—**CAN.**

a xiii. —— ——.]—In regard to the right to appeal under sect. 1025 of the Criminal Code, "in a like case" means that the same point of law was involved, with conflicting judgments.—LEVESQUE & GRAVELINE *v.* R., [1934] 4 D. L. R. 416 ; 62 C. C. C. 241.—**CAN.**

a xiv. —— ——.]—When the conviction of an accused is grounded exclusively on circumstantial evidence, the rule acted upon by the decisions of several cts. of appeal throughout Canada has been that "in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused & incapable of any other reasonable hypothesis than that of his guilt" ; & when that principle is compared with the principle expounded in this case by the reasons of judgment of the appellate ct., it must be held that there exists, between the above decisions & the judgment appealed from, the conflict required by sect. 1025 of the Criminal Code ; &, therefore, leave to appeal to this ct. should be granted, as such rule of law is of sufficiently general importance to justify such leave.—FRASER *v.* R., [1936] S. C. R. 1 ; 65 Can. C. C. 1 ; 1 D. L. R. 530 ; 5 Can. L. Jo. 275.—**CAN.**

a xv. —— —— *Criminal proceedings.*]—Under the provisions of sect. 1025 of the Criminal Code, a party applying for leave to appeal must show that "the judgment appealed from conflicts with the judgment of any other Ct. of Appeal in a like case" :—*Held :* (1) a judgment of a Ct. of Appeal "in a like case" must be a judgment rendered in criminal proceedings or upon criminal matters ; (2) the Supreme Ct. of Canada is comprised among the Cts. of Appeal contemplated in that sect.—MINDEN *v.* R., [1935] S. C. R. 609 ; 4 D. L. R. 593 ; 64 Can. C. C. 322.—**CAN.**

a xvi. —— ——.]—Applts. were charged with having conspired together & with others during a certain period & at named places "par la supercherie, le mensonge et d'autres moyens frauduleux, pour frauder le public et les porteurs d'obligations de la Cie Légaré . . ." ; & they were convicted. The appellate ct. unanimously affirmed the conviction ; & applts. sought leave to appeal to this ct. under sect. 1015 Cr. C. on the ground that the judgment intended to be appealed from conflicts with the judgment of some other ct. of appeal in a like case : —*Held :* the application should be refused.—FORTIER *v.* R., [1938] S. C. R. 167.—**CAN.**

a xvii. —— *Plea of autrefois convict.*]—R. *v.* BALLARD, [1932] 4 D. L. R. 461 ; 58 C. C. C. 215.—**CAN.**

co i. —— *Effect of repeal of provisions for stating case pending appeal.*]—Where the trial judge reserved a case for the ct., but before it came on for argument, the sects. of the Code allowing a stated case were repealed,

5532. *Add. Annotations :*—**Refd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546 ; Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

5534. *Add. Annotation :*—**Refd.** R. *v.* Cope (1925), 94 L. J. K. B. 662.

5535. *Add. Annotation :*—**Refd.** R. *v.* Teesdale (1927), 91 J. P. 184.

5536a. —— ——.]—The ct. will not review a summary conviction of an incorrigible rogue, but it will insist that quarter sessions, for the purpose of sentence, shall hear nothing but legal evidence.—R. *v.* DEAN (1924), 18 Cr. App. Rep. 133, C. C. A.

Annotations :—**Refd.** R. *v.* Cope (1925), 94 L. J. K. B. 662; R. *v.* Cadwell (1927), 20 Cr. App. Rep. 60.

5536b. —— ——.]—The machinery of Vagrancy Act, 1824 (c. 83), must not be used merely because a crime is suspected, but the legal evidence to establish it fails. Sentence reduced.—R. *v.* CADWELL (1927), 20 Cr. App. Rep. 60, C. C. A.

5542a. —— **Good defence in law.**]—R. *v.* GRIFFITHS, No. 5035a, *ante*.

5542b. —— **Plea due to improper inducement.**]—Leave to appeal granted where applt. was tricked into pleading guilty by a detective.—R. *v.* CHADWICKE (1932), "The Times," Nov. 22.

5542c. ——.]—The ct. will not grant leave to appeal against conviction after a plea of

& the ct. set aside the conviction & ordered a new trial :—*Held :* the amendment of the Code did not abrogate the rights possessed by prisoners on the date when they were convicted, but such rights must be determined under the old & not under the new provisions of the Code, which were not then in force.—R. *v.* TAYLOR & YOUNG (1924), 41 Can. Crim. Cas. 212 ; 56 N. S. R. 500.—**CAN.**

ff i. —— *By Crown—Principles applicable.*]—On an appeal by the Crown from an acquittal those rules are not appropriate in aid of the Crown which when an accused is appealing from a conviction are applicable in aid of his appeal, since they are based on the traditional policy of the English law for the safeguarding of life & liberty that everything must be assumed in favour of innocence & that guilt must be established beyond reasonable doubt.—R. *v.* CURLETT, [1936] 2 W. W. R. 528 ; 3 D. L. R. 199 ; 66 Can. C. C. 256.—**CAN.**

ff ii. —— —— ——.]—On an appeal by the Crown from an acquittal the ct. should not set aside the verdict or grant a new trial, even if misdirection of the jury on a material matter be shown, if the accused can satisfy it that upon the evidence adduced such room exists for the entertainment of a reasonable doubt as to his guilt that according to every reasonable probability an impartial jury properly instructed would have returned the same verdict ; but in such event the ct. should hold that no "substantial wrong or miscarriage of justice," within the meaning of sect. 1014 (2) of Criminal Code, has occurred. In interpreting "substantial wrong or miscarriage of justice" in sect. 1014 (2) on appeals by accused persons & formulating for that purpose the rule that, misdirection in a material matter having been shown, the onus is on the Crown to satisfy the ct. that the jury, charged as it should have been, could not as reasonable men have done otherwise than find the accused guilty, the cts. have always had in mind the safeguards which under our criminal law accused persons have thrown about them to protect them from the possibility of injustice, such as the presumption in favour of life, liberty & innocence, & the maxim that no one is to be twice placed in jeopardy for the same offence. These safeguards are, however, alien to the status of the Crown, or, in other words, an accused should not lose their benefit on an appeal by the Crown merely because the Crown has now been given the right to appeal & the amendment giving that right says nothing about changing said rule.—R. *v.* BOURGEOIS, [1937] 2 W. W. R. 97 ; 4 D. L. R. 553 ; 69 Can. C. C. 120.—**CAN.**

kk i. ——.]—R. *v.* COWELL (Sask.) (1928), 50 Can. Crim. Cas. 381.—**CAN.**

kk ii. ——.]—R. *v.* WIGGINS (N. B.) (1928), 50 Can. Crim. Cas. 193.—**CAN.**

kk iii. —— *Evidence to support conviction.*]—R. *v.* FLETCHER & PINEL (1930), 54 Can. C. C. 116.—**CAN.**

kk iv. ——.]—On an appeal by the Crown from an acquittal, the ground of appeal being that the trial judge was without jurisdiction, he having been compulsorily retired under sect. 26 of Judges Act, 1927 :—*Held :* since the only ground on which the Crown has a right of appeal under sect. 1013 (4) Criminal Code is one involving a question of fact, the appeal must be dismissed.—R. *v.* GROTSKY, [1936] 1 D. L. R. 128 ; [1935] 3 W. W. R. 257 ; 64 Can. C. C. 345 ; 5 F. L. J. (Can.) 132. —**CAN.**

sd. *Jury illegally constituted—Leave of Court of Appeal necessary.*]—R. *v.* BOAK, [1925] 3 D. L. R. 887 ; [1925] S. C. R. 525 ; 44 Can. Crim. Cas. 218. —**CAN.**

se. *After dismissal of information—Failure of informant to appear.*]—The right of appeal given by Criminal Code, s. 749, against the dismissal of an information or complaint does not exist when the dismissal is due to the complainant's or informant's failure to appear.—GHITTERMAN *v.* RALPH (Sask.), [1928] 2 W. W. R. 631 ; 50 Can. Crim. Cas. 282.—**CAN.**

sf. *Objection to transcript of evidence—Translation.*]—Part of the evidence on a charge of murder was given in Irish, which was translated into English, so that it might be understood by the judge, the jury, & others concerned in the case. This evidence was not officially recorded in Irish as given, but only as it was translated into English, & objection to the transcript was taken on behalf of the accused, who sought leave to amend their notices of application for leave to appeal (which had already been served) by including this objection :—*Held :* as it is not an essential requisite for the purpose of an application for leave to appeal to have a complete transcript or any transcript of the evidence before the ct., the ct., being satisfied that the transcript of the note of the interpreter's rendering of the evidence was a completely accurate record & fully adequate for the purpose of disposing of the applications for leave to appeal, & having regard to all the facts, refused to allow the notices of application for leave to appeal to be amended.—A.-G. *v.* JOYCE, A.-G. *v.* WALSH, [1929] I. R. 526.—**IR.**

sg. *To county court—Under Summary Convictions Act—Whether trial de novo.*] —R. *v.* LAURIENTE (B. C.), [1928] 3 W. W. R. 265.—**CAN.**

5528 i. *Certificate granted — Only where judge has doubt on case.*]—The trial judge must have an opinion or belief of the fitness of the appeal upon questions of fact or mixed questions of law & fact involved ; the burden on him would appear, therefore, to be greater than if he were asked to grant leave to appeal.—R. *v.* PAYETTE, [1925] 1 D. L. R. 112 ; [1924] 3 W. W. R. 863.—**CAN.**

5528 ii. —— *Form of certificate.*]—A certificate stated generally that the case was a fit one for appeal :—*Held :* not such a certificate as 13 & 14 Geo. 5, c. 41, contemplated.—R. *v.* SCOTT & WILLIAMSON (1924), 56 O. L. R. 325 ; 43 Can. Crim. Cas. 364.—**CAN.**

5528 iii. *Whether applicable to trial without jury.*]—R. *v.* TREWS, [1926] 1 W. W. R. 321 ; 45 Can. Crim. Cas. 116 ; 22 Alta. L. R. 161.—**CAN.**

sh. *No formal conviction before court.*] —On an appeal from a summary conviction under the Government Liquor Act, R. S. B. C., 1924, c. 146 :—*Held :* applt. was not deprived of his right to appeal by the fact that on the opening of the appeal no formal conviction had yet been drawn up & returned to the ct. ; nor by the fact that the fine & costs imposed by the magistrate & paid by applt. had been remitted by the magistrate to a government department & were not in his possession when the notice of appeal was served on him. —R. *v.* KAMWAY (B. C.), [1929] 3 W. W. R. 165 ; 52 Can. Crim. Cas. 188. —**CAN.**

si. *Appeal by Crown against acquittal —Power of High Court to review evidence.*]—SHEO SWARUP *v.* KING-EMPEROR (1934), 78 Sol. Jo. 600, P. C.— **IND.**

sm. —— *Question of law & fact.*]—R. *v.* TURNER, [1938] 2 W. W. R. 462.— **CAN.**

so. *Summary conviction—Plea of guilty.*]—The fact that a summary conviction under the Criminal Code was made on a plea of guilty does not deprive the accused of his right of appeal ; &, if he complies with the formalities prescribed for entering the appeal it must be entered.—R. *v.* URIDGE, [1937] 3 W. W. R. 321.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 2.

si. ——.]—Where it was for the trial judge to decide whether prisoner's explanation could reasonably be true, & it was to be assumed from the fact of his finding prisoner guilty that he thought it could not reasonably be true, in which the ct. concurred :—*Held :* not the function of the ct. to retry the case.—R. *v.* COOKE (1923), 57 N. S. R. 362.—**CAN.**

sk. *Meaning of conviction.*]—A conviction, at common law, in strictness, consists of verdict, judgment, & sentence. The word, however, is sometimes used as meaning the verdict of a jury &, at other times, the sentence of the ct. Criminal Procedure Code uses the word in both senses. The meaning of the word "conviction" in sect. 439 (6), in relation to a case like the present, limits the accused to impugning the judgment of the ct. which sentenced him.—SUPERINTENDENT & REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* JNANENDRA NATH GHOSH (1929), I. L. R. 56 Calc. 1145.—**IND.**

guilty pleaded by counsel's advice.—R. *v.* DAWSON (1924), 18 Cr. App. Rep. 111, C. C. A.

5549a. —— ——.]—R. *v.* LAMBERT (1926), 19 Cr. App. Rep. 131, C. C. A.

5550. *Add. Annotation :*—**Consd.** R. *v.* Smith, [1925] 1 K. B. 603.

5550a. ——.]—R. *v.* SMITH, No. 1810b, *ante*.

5554a. Order for payment of compensation—Forfeiture Act, 1870 (c. 23), s. 4.]—There is an appeal to the Ct. of Criminal Appeal against an order made under above sect., for the payment of compensation by a person convicted of felony to a person aggrieved by loss of property suffered by him through the felony, because by the sect. such compensation constitutes & is enforceable as a judgment debt, & is therefore a "sentence" within Criminal Appeal Act, 1907 (c. 23), s. 21.—R. *v.* JONES, [1929] 1 K. B. 211; 98 L. J. K. B. 174; 140 L. T. 144; 21 Cr. App. Rep. 59; 28 Cox, C. C. 572, C. C. A.

5560a. —— —— ——.]—Refusal of applications for an extension of time within which to appeal made after considerable delay & only upon the quashing of the convictions of two co-defts., the ct. holding that it was the practice not to grant any considerable extension of time, unless it appeared on the application that there were such merits that the appeal would probably succeed.—R. *v.* MARSH, R. *v.* BICKERDIKE, R. *v.* GLEN (1935), 25 Cr. App. Rep. 49, C. C. A.

5565a. —— —— ——.]—The fact that a fellow prisoner's conviction has been quashed is no reason for extending the time.—R. *v.* RIGBY (1923), 128 L. T. 800; 87 J. P. 123; 39 T. L. R. 453; 67 Sol. Jo. 681; 17 Cr. App. Rep. 111; 27 Cox, C. C. 411, C. C. A.

5570a. ——.]—R. *v.* MACWILLIAM (1928), 21 Cr. App. Rep. 31, C. C. A.

5570b. —— Computation of time—Whether Sunday included.]—For the purpose of the statutory notice of appeal Sunday is not a *dies non*.—R. *v.* GREVILLE (1929), 21 Cr. App. Rep. 108, C. C. A.

5572. *Add. Annotation :*—**Refd.** R. *v.* Porter (1927), 20 Cr. App. Rep. 55.

5574a. —— —— Registrar must be informed at earliest possible moment.]—When leave is sought to add new grounds of appeal they should be communicated to the registrar at the earliest possible moment.—R. *v.* HODGSON (1924), 18 Cr. App. Rep. 7, C. C. A.

5576. *Citation :*—"For WYMAN *v.* WYMAN" read "R. *v.* WYMAN."

Annotation :—**Consd.** R. *v.* Adler (1923), 17 Cr. App. Rep. 105.

5577a. —— —— ——.]—Substantial particulars of misdirection, & of any other objections to the summing up, must be included in the notice of appeal, or must be sent to the registrar with the notice of appeal.—R. *v.* CAIRNS (1927), 43 T. L. R. 455; 20 Cr. App. Rep. 44, C. C. A.

5577b. —— —— ——.]—R. *v.* FIELDING (1938), 26 Cr. App. Rep. 211, C. C. A.

5577c. —— Supplementary grounds — When allowed.]—R. *v.* PORTER, No. 3137a, *ante*.

5579. *Add. Annotation :*—**Consd.** R. *v.* Van Dyn (1932), 23 Cr. App. Rep. 150.

5581a. ——.]—The ct. permits a notice of abandonment of appeal to be withdrawn only in exceptional circumstances.—R. *v.* SCOTT (1924), 18 Cr. App. Rep. 10, C. C. A.

5581b. ——.]—Only in special circumstances will the ct. allow the abandonment of a withdrawal of a notice of appeal.—R. *v.* VAN DYN (1932), 76 Sol. Jo. 112; 23 Cr. App. Rep. 150, C. C. A.

PART XIV. SECT. 1, SUB-SECT. 3.

c i. —— *What is—Not sentence for rape.*]—R. *v.* DE YOUNG, R. *v.* LIDDIARD, R. *v.* DARLING (1927), 47 Can. Crim. Cas. 207; 60 O. L. R. 155.—**CAN.**

c ii. —— *Death sentence—Reprieve until judgment.*]—Where appeal from death sentence has been heard & judgment reserved, a reprieve will be granted until judgment has been delivered.—R. *v.* MACCHIONE (1937), 69 Can. C. C. 175.—**CAN.**

sl. *Jurisdiction of Supreme Court of Canada—To hear appeal from addition to sentence by lower court.*]—There is no jurisdiction in the above ct. to entertain an appeal against an addition to sentence by appellate cts., as under Criminal Code, s. 1024, the right of appeal is restricted to an appeal against the affirmance of a conviction.—GOLDHAMMER *v.* R., [1924] 3 D. L. R. 1009; [1924] S. C. R. 290; 5 C. B. R. 129.—**CAN.**

sm. *Leave to appeal — Adequate reason must be shown.*]—R. *v.* HARLTON (Ont.) (1929), 52 Can. Crim. Cas. 310.—**CAN.**

sp. —— ——.]—Application for leave to appeal from sentence must be supported by adequate reasons.—R. *v.* MOLLAND, [1938] 1 D. L. R. 770; 69 Can. C. C. 413.—**CAN.**

PART XIV. SECT. 2.

5566 i. —— *Discretion of court.*]—It is not the practice of the Ct. of Criminal Appeal to entertain any application for an extension of time, whether to apply to the trial judge for a certificate for leave to appeal, or to give notice of appeal, or to give notice of application for leave to appeal, if appt. does not, at the time of applying for such extension of time, show that he proposes to rely upon grounds of appeal, or grounds for applying for leave to appeal, which are grounds such as can be entertained by the ct. in the exercise of its statutory jurisdiction.—A.-G. *v.* M'GANN, [1927] I. R. 503.—**IR.**

sn. —— *Notice of appeal defective.*]—R. *v.* MOYLE (Ont.), [1927] 3 D. L. R. 639; 47 Can. Crim. Cas. 349.—**CAN.**

so. *Under Criminal Code, s. 750.*]—R. *v.* NORMAN (Ont.) (1923), 49 Can. Crim. Cas. 405.—**CAN.**

sp. ——.]—R. *v.* FRASER (P. E. I.), [1928] 1 D. L. R. 803; 49 Can. Crim. Cas. 189.—**CAN.**

sq. ——.]—R. *v.* WENN (Ont.) (1928), 49 Can. Crim. Cas. 401.—**CAN.**

sr. *Under Criminal Code, s. 750 (b).*]—R. *v.* BOUTILIER (N. S.) (1928), 50 Can. Crim. Cas. 186.—**CAN.**

t i. —— —— *Want of means.*]—On an application for an extension of time within which to appeal, which was not made until six months after conviction :—*Held :* (1) want of means was not a sufficient ground on which to base the application; & (2) in view of the delay in applying, very exceptional circumstances would have to be established before the ct. would be justified in granting the application.—R. *v.* SUNDERLAND & SUNDERLAND (1927), 28 S. R. N. S. W. 26.—**AUS.**

t ii. —— *After removal to penitentiary — Special reasons must be shown.*]—R. *v.* SCOTT, [1929] 1 D. L. R. 842; 1 W. W. R. 320; 51 Can. Crim. Cas. 104; 24 Alta. L. R. 42.—**CAN.**

t iii. ——.]—A statute required notice of appeal more than fourteen days before a sitting. Notice was filed on Dec. 2, the next sitting being Dec. 16 :—*Held :* the appeal could not be heard.—R. *v.* OGILVIE, *Re* OGILVIE *v.* FINLEY (1931), 57 C. C. C. 195; *sub nom.* OGILVIE *v.* FINLEY (1933), 45 B. C. R. 76.—**CAN.**

t iv. —— *After acquittal—Application ex parte.*]—Leave to extend the time for giving notice of appeal from an acquittal will be granted *ex parte* where are circumstances justifying this course.—R. *v.* CHOW WAI YAM, [1936] 2 D. L. R. 106; 50 B. C. R. 347; 65 Can. C. C. 189.—**CAN.**

st. *Application for—To whom made.*]—When the Ct. of Appeal is sitting an application under sect. 1018 (2) of the Criminal Code for an extension of the time for an appeal should be made to the ct. & not to a judge thereof in Chambers.—R. *v.* HARRY CHOW (B. C.), [1929] 1 W. W. R. 270.—**CAN.**

PART XIV. SECT. 3.

5572 iii. —— ——.]—*Re* R. *v.* LEBLANC, [1928] 1 D. L. R. 539; 49 Can. Crim. Cas. 136.—**CAN.**

sx. *Service—Upon Attorney-General.*]—Notice of appeal must be served upon the Attorney-General, & not upon the Crown Prosecutor.—CONNELLY *v.* R., [1934] 1 D. L. R. 729; 60 C. C. C. 368.—**CAN.**

sz. ——.]—Notice of appeal must be served upon resp. & upon the justice who tried the case, or the appeal is invalid.—ELENIUK *v.* TURNBULL, [1935] 2 D. L. R. 736; 63 Can. C. C. 357.—**CAN.**

5584a. Application for leave to appeal—May be treated as final appeal.]—In a proper case the ct. will treat an application for leave to appeal as the final appeal.—R. *v.* HOBERN (1924), 18 Cr. App. Rep. 110, C. C. A.

5585. *Add. Annotation :*—**Refd.** R. *v.* Thompson (1925), 18 Cr. App. Rep. 167.

5585a. ——.]—An applt. may only in exceptional circumstances consent by counsel to be absent.—R. *v.* THOMPSON (1925), 18 Cr. App. Rep. 167, C. C. A.

5593a. —— **Delay in sending in documents.**]—Statements sent to the ct. at the last moment may cause an application to be adjourned, & the loss of time would run against appct. It is well that appcts. should be reminded of this matter (CHARLES, J.).—R. *v.* WILLMOTT (1933), 24 Cr. App. Rep. 54, C. C. A.

5593b. —— ——.]—In this case the observations made in *R.* v. *Willmott* by CHARLES, J., apply with added force. Appct. was convicted on Jan. 20, & his notice of appeal was dated Jan. 31. The notice contained five paragraphs & was in itself a very long document. On Feb. 9 he sent in a further document of fourteen closely-written sheets which he called "further grounds of appeal." On Feb. 23 he sent in a mass of further documents & a great many pages of further grounds of appeal. This morning there have arrived a great many more documents from appct. & among them twelve or fourteen closely-written pages relating to the old & new grounds of appeal. In these circumstances, the ct. desires me to say that this case is one in which the ct. would normally adopt the course of adjourning the application, with the result that, unless leave to appeal were given, appct. would remain a longer time in prison than otherwise. Such a practice causes the greatest possible inconvenience. In this case, however, for special reasons, the ct. does not propose to take this course (HUMPHREYS, J.).—R. *v.* MCLAREN (1933), 24 Cr. App. Rep. 54, C. C. A.

5595a. Appellant not entitled to be heard—When represented by counsel.]—R. *v.* CHUNG YI MIAO (1928), 21 Cr. App. Rep. 56, C. C. A.

5595b. No argument heard—Appeal pro forma as condition precedent to appeal to House of Lords.]—R. *v.* INMAN (1929), 21 Cr. App. Rep. 159, C. C. A.

5596a. Official transcript of judgment at trial—How far binding.]—The ct. is bound by the official transcript of a judgment of the trial ct., in the absence of evidence of error therein.—R. *v.* MARTIN (1927), 20 Cr. App. Rep. 103, C. C. A.

5604. *Add. Annotation :*—**Refd.** R *v.* Porter (1927), 20 Cr. App. Rep. 55.

5605. *Add. Annotation :*—**Refd.** R. *v.* Porter (1927), 20 Cr. App. Rep. 55.

5605a. Application to three judges—Reference to larger court.]—R. *v.* CHAPMAN (1931), 23 Cr. App. Rep. 45, C. C. A.

5607a. ——.]—In each of the following cases—(1) a convict under sentence of penal servitude & preventive detention who appeals only against the sentence of preventive detention ; (2) a prisoner under sentence of imprisonment & flogging who appeals only against the flogging ; (3) a prisoner under sentence of imprisonment & a recommendation to deportation who appeals only against deportation ; (4) a prisoner under concurrent sentences of imprisonment & penal servitude who appeals only against the penal servitude ; (5) a prisoner under one sentence who appeals only against a sentence consecutive thereon—the person appealing is an applt. within Criminal Appeal Act, 1907 (c. 23), s. 14, & should be treated as such pending the determination of his appeal.—R. *v.* ROSE, R. *v.* FRIEND, R. *v.* BEATTIE, R. *v.* LLEWELLYN, R. *v.* YOUNG (1924), 131 L. T. 26 ; 88 J. P. 90 ; 40 T. L. R. 617 ; 27 Cox, C. C. 615 ; 18 Cr. App. Rep. 55, C. C. A.

5616a. —— ——.]—In a proper case, especially with the concurrence of the Crown, the ct. will allow an application for leave to appeal against conviction to be treated as one for leave to appeal against sentence, & may thereupon deal with it as such.—R. *v.* TOWERS (1929), 21 Cr. App. Rep. 74, C. C. A.

5624a. —— ——.]—Where an application has been adjourned for allegations by applicant to be investigated, the ct. may exceptionally on the hearing of the application allow the time of custody to run for sentence.—R. *v.* SYKES (1930), 22 Cr. App. Rep. 84, C. C. A.

5628a. —— **Not where delay due to misstatement of appellant.**]—The ct. will not permit sentence to run from the date of conviction when the period between conviction & the hearing of the appeal has been prolonged through the mis-statement of applt.—R. *v.* WESTLAKE (1920), 15 Cr. App. Rep. 100, C. C. A.

5628b. —— **Consecutive sentences—One quashed.**]—(1) When consecutive sentences have been passed on two convictions & the ct.

PART XIV. SECT. 4, SUB-SECT. 1.

sb. *Appeal dismissed — Dissenting judgment on point of law—Details to be given in rule.*]—A rule dismissing an appeal should specify the nature of a question of law raised in a dissenting judgment.—R. *v.* SETTLE (1932), 5 M. P. R. 142 ; 58 C. C. C. 152.—**CAN.**

sd. *Affidavit—When necessary.*]—An appeal on the ground that accused was not offered the statutory alternatives under sect. 781 (2) (*b*) of the Criminal Code should be supported by affidavit.—R. *v.* SULLIVAN, [1935] 3 D. L. R. 197 ; 8 M. P. R. 546 ; 63 Can. C. C. 294.—**CAN.**

sf. *Leave to appeal—When granted.*]—Leave to appeal should only be granted after adequate reasons have been given.—R. *v.* LE COURT, [1937] 1 D. L. R. 607 ; 6 F. L. J. (Can.) 213 ; 11 M. P. R. 133.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 2.—A.

sg. *Functions of Court of Criminal Appeal.*]—It is one of the functions of a Ct. of Criminal Appeal to standardise so far as possible the penalties imposed by cts. of first instance. A Ct. of Criminal Appeal does not interfere to reduce a penalty unless it is excessive or awarded upon some erroneous principle. When there has been a manifest departure from "customary penalties imposed in other cts." in respect of like offences, it is the duty of the Ct. of Criminal Appeal to examine the case & to pass upon the propriety of the particular penalty, & for that purpose upon the propriety of the standard suggested by the customary penalties.—WADE *v.* TROTTER, [1934] S. A. S. R. 62.—**AUS.**

sk. *Sentence of five years—Driving car while intoxicated—Manslaughter.*]—Appeal against sentence of five years, applt. having been found guilty on a charge of driving a motor vehicle while intoxicated or recklessly & by doing so causing death & thereby being guilty of manslaughter. Appeal dismissed.—R. *v.* AUMULLER, [1938] 2 W. W. R. 244.—**CAN.**

quashes one of them, it may allow the sentence for the other to run from the date of conviction.

In summing-up larceny & obtaining credit by fraud must be carefully distinguished.—R. *v.* LEE (1930), 22 Cr. App. Rep. 85, C. C. A.

5628c. —— Fresh evidence heard—Appeal dismissed.]—R. *v.* MEDCRAFT (1931), 23 Cr. App. Rep. 116, C. C. A.

5628d. —— Sentence of penal servitude—Sentence of preventive detention set aside.]—R. *v.* TAUMAN (1931), 23 Cr. App. Rep. 125, C. C. A.

5629a. Sentence runs from session in which convicted—Although passed in later session.]—Sentence generally runs from the date of the first sitting of the ct. of trial, at whatever date it may be passed.—R. *v.* ROBERTS (1929), 21 Cr. App. Rep. 69, C. C. A.

5629b. —— No power to antedate beyond commencement of sessions.]—Sentence cannot be antedated beyond the first day of the sessions in which it is inflicted.—R. *v.* CROCKETT (1929), 21 Cr. App. Rep. 164, C. C. A.

5629c. —— ——.]—The ct. below cannot antedate a sentence before the first day of the sessions.—R. *v.* HATCH (1930), 22 Cr. App. Rep. 83, C. C. A.

5629d. Sentence ordered to run from passing of sentence—Abnormal delay in preparing transcripts for court.]—R. *v.* MEYRICK, R. *v.* RIBUFFI (1929), as reported in 21 Cr. App. Rep. 94, C. C. A.

5643a. ——.]—R. *v.* TURKINGTON, No. 5965a, *post*.

5673a. —— ——.]—The ct. will, if it thinks fit, hear a plea of insanity even though it was not raised at the trial.—R. *v.* CANHAM (1925), 18 Cr. App. Rep. 163, C. C. A.

5680a. ——.]—Applt. was convicted on a count of an indictment in the following terms: "Statement of offence. Driving motor vehicle in a manner dangerous to the public, contrary to Road Traffic Act, 1930 (c. 43), s. 11 (1). Particulars of offence. Charles Wilmot . . . on a certain road . . . in the county of Lincoln, drove a motor car recklessly, or at a speed or in a manner which was dangerous to the public, having regard to all the circumstances of the case, including the nature, condition & use of the road, & the amount of traffic which was actually at the time, or which might reasonably have been expected to be, on the said road." Applt. was represented by counsel at the trial, but no objection to the validity of the count was taken until after verdict:—*Held:* the point with regard to the validity of the count was one which under the old practice could have been taken on a writ of error &, although it had not been taken at the trial, the ct. were bound to allow it to be raised on appeal. As the count charged several offences in the alternative, it was bad for duplicity, & the conviction must be quashed.—R. *v.* WILMOT (1933), 149 L. T. 407; 97 J. P. 149; 49 T. L. R. 427; 77 Sol. Jo. 372; 31 L. G. R. 189; 24 Cr. App. Rep. 63; 29 Cox, C. C. 652, C. C. A.

5739a. *S. P.* R. *v.* HATCH & SMITH (1928), 20 Cr. App. Rep. 181, C. C. A.

5746. *Add. Annotation:*—**Refd.** R. *v.* Littleboy, [1934] 2 K. B. 408.

PART XIV. SECT. 5, SUB-SECT. 1.—A

5630 v. ——.]—The ct. hearing an appeal is not warranted in weighing probabilities & substituting its view for that of the jury, to which the greatest weight must still be given.—R. *v.* DE BRUGE, [1924] 4 D. L. R. 496; 55 O. L. R. 507.—**CAN.**

5630 vi. ——.]—R. *v.* BURKE (1924), 44 Can. Crim. Cas. 205.—**CAN.**

5630 vii. ——.]—A ct. of appeal will not retry cases upon issues which have properly been left to the jury, & the fact that the jury might properly have found the other way is in itself no justification for interfering with a verdict.—R. *v.* SETTLE (1932), 5 M. P. R. 142; 58 C. C. C. 152.—**CAN.**

PART XIV. SECT. 5, SUB-SECT. 2.—A.

5666 i. —— *Insanity.*]—At the trial of accused for murder there was, in the ct.'s opinion, evidence which, had the point been taken, would of necessity have raised in the mind of the trial judge a doubt whether accused was then, on account of insanity, capable of conducting his defence: but the point was not brought to the attention of the trial judge, & the course prescribed by Criminal Code, s. 967, was not adopted:—*Held:* the omission of counsel ought not to deprive accused of the right given him by the sect. & new trial directed.—R. *v.* WILLIAMS, [1929] 1 D. L. R. 343; 50 Can. Crim. Cas. 230; 63 O. L. R. 191.—**CAN.**

5666 ii. —— ——.]—R. *v.* SMITH, [1936] 1 W. W. R. 67; 1 D. L. R. 717; 65 Can. C. C. 231.—**CAN.**

PART XIV. SECT. 5, SUB-SECT. 2.—C.

sb. *Objection to conviction on ground of defect in information.*]—R. *v.* BOUTILIER (N. S.) (1928), 50 Can. Crim. Cas. 186.—**CAN.**

PART XIV. SECT. 5, SUB-SECT. 3.

fi. —— *What amounts to.*]—The trial judge prepared, two or three months after the trial, a certificate containing a number of statements made by him in answer to a corresponding number of objections to his charge which formed the grounds of appeal & stating, according to his recollection, that in fact his direction was precisely the contrary of that reported:—*Held:* such certificate of the trial judge was not a report within sect. 1020 Criminal Code: it did not contain the judge's "notes of the trial" nor was it a "report giving his opinion upon the case or upon any point arising in the case."—BARON *v.* R., [1930] S. C. R. 194; 2 D. L. R. 945; 53 Can. C. C. 154; *revsg.* 47 Que. K. B. 371.—**CAN.**

PART XIV. SECT. 6, SUB-SECT. 1.

sd. *In Ireland.*]—Practice & procedure, as to applications to allow fresh evidence on appeal, laid down by the Ct. of Criminal Appeal.—A.-G. *v.* M'GANN, [1927] I. R. 503.—**IR.**

PART XIV. SECT. 6, SUB-SECT. 2.

sf. *Conviction improper—Claim to substitute sentence for lesser offence—Leave to obtain further evidence—Confined to lesser offence.*]—Where on an appeal from a conviction for unlawfully having carnal knowledge of a girl 14 years of age, it appeared that the accused had not been properly convicted, but there being no majority of the ct. in favour of directing a new trial, the Crown asked the ct. to proceed under Criminal Code, s. 1916 (2), & substitute a sentence for indecent assault, whereupon the accused's counsel moved for leave to obtain & present new evidence from one Z., who would have been a compellable witness at the trial:—*Held:* such leave should be granted, the additional evidence to be confined to the charge of indecent assault, & the hearing of the appeal should stand over until further order, &, in the meantime, the evidence of said witness should be taken before the registrar of the Supreme Ct. & forwarded by him to the registrar of the Ct. of Appeal.—R. *v.* SHUMARIN (B. C.), [1928] 1 W. W. R. 300.—**CAN.**

PART XIV. SECT. 6, SUB-SECT. 3.

5740 iii. ——.]—An application must be refused, where the person whom it was sought to call had been present in ct. at the time of the trial & available to be called by accused or his counsel if they desired to do so.—R. *v.* CRONAN (1924), 41 Can. Crim. Cas. 320; 57 N. S. R. 25.—**CAN.**

5766 ii. ——.]—The defence having been permitted for the purpose of securing a new trial to read the affidavit of one who it contended should have been called as a witness by the prosecution:—*Held:* the omission to call such witness did not result in such a miscarriage of justice, or the possibility of it, as to warrant a new trial.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

5766 iii. ——.]—R. *v.* CHOW KEE (1929), 42 B. C. R. 67.—**CAN.**

st. *No opportunity of cross-examining former witness on statement at trial.*]—R. *v.* VYE (1925), 44 Can. Crim. Cas. 249; [1925] 3 W. W. R. 100.—**CAN.**

sw. *On recommendation of Minister of Justice.*]—Ontario Ct. of Appeal will re-open a conviction for conspiracy to defraud the Govt., on recommendation of the Minister of Justice, after 11 years for the purpose of reviewing the case on new evidence.—R. *v.* JARVIS (1936), 66 Can. C. C. 20.—**CAN.**

5783a. Not evidence of appellant.]—R. *v.* MEDCRAFT (1931), 23 Cr. App. Rep. 116, C. C. A.

5783b. Medical evidence—Cause of death.]—Conviction of murder quashed after the ct. had heard fresh medical evidence as to the cause of death, the ct. emphasising the fact that such reception of fresh evidence was to be regarded as wholly exceptional.—R. *v.* HARDING (1936), 25 Cr. App. Rep. 190, C. C. A.

5792a. —— Fresh evidence proving impossibility of guilt.]—R. *v.* BINNEY (1935), 79 Sol. Jo. 419, C. C. A.

5800a. Conflicting medical views.]—The mere fact that conflicting medical views of the evidence in a case were put before the jury is not a ground for granting leave to appeal.—R. *v* THORNE (1925), 69 Sol. Jo. 493; 18 Cr. App. Rep. 186, C. C. A.

5802a. Unsatisfactory identification.]—Conviction quashed.—R. *v.* HITCHCOCK (1926), 19 Cr. App. Rep. 181, C. C. A.

5802b. Photograph of accused published in newspaper.]—R. *v.* MORRISON (1911), 6 Cr. App. Rep. 159, C. C. A.

5802c. Insanity — Supervening after trial.]—R. *v.* DRISCOLL & ROWLANDS (1928), 20 Cr. App. Rep. 161, C. C. A.

5802d. Illegal committal—Conviction quashed.]—R. *v.* GEE, R. *v.* BIBBY, R. *v.* DUNSCOMBE, No. 1720a, *ante*.

5805. *Add. Annotations:*—**Apld.** R. *v.* Disney (1933), 49 T. L. R. 284; R. *v.* Wilmot (1933), 97 J. P. 149. **Refd.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

5806. *Add. Annotation*—**Refd.** R. *v.* Cleghorn, [1938] 3 All E. R. 398.

5806a. —— Indictment alleging offence under repealed section of statute.]—Where a person is convicted on an indictment framed under a repealed section of a statute, the Ct. of Criminal Appeal will quash the conviction. —R. *v.* TAYLOR (1924), 93 L. J. K. B. 912; 88 J. P. 152; 40 T. L. R. 836; 69 Sol. Jo. 12; 22 L. G. R. 681; 18 Cr. App. Rep. 105, C. C. A.

5807. *Add. Annotation:*—**Apld.** R. *v.* Wilmot (1933), 97 J. P. 149.

PART XIV. SECT. 6, SUB-SECT. 4.

sv. *Evidence material & relevant to show verdict wrong.*]—The purpose of the ct. in allowing applt. to lead additional evidence under Criminal Appeal (Scotland) Act, 1926, s. 6 (*b*), is to give him an opportunity of showing that the verdict was pronounced in the absence of matter material & relevant to lead to a contrary result.—SLATER *v.* H.M. ADVOCATE, [1928] S. C. (J.) 94.—**SCOT.**

PART XIV. SECT. 6, SUB-SECT. 5.

m. Read now "5793 i."

5793 ii. —— ——.]—R. *v.* HUBLEY (1925), 57 N. S. R. 537.—**CAN.**

5793 iii. —— *Evidence not incompatible with evidence at trial.*]—R. *v.* ADORE (1930), 54 Can. C. C. 211.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 1.

p i. —— *Criminal Appeal (Scotland) Act*, 1926 (*c.* 15).]—The Ct. of Criminal Appeal is not a ct. of review in the sense in which that term is used in civil procedure; it cannot upset a verdict merely because it disagrees with the view either of the evidence or of the credibility of the witnesses on which it proceeded; it cannot interfere unless it thinks the verdict unreasonable. The test of unreasonableness is similar to that applied to verdicts obtained in civil jury trials, viz., was the verdict so flagrantly wrong that no reasonable jury, acting honestly under proper direction, could have given it.—WEBB *v.* H.M. ADVOCATE, [1927] S. C. (J.) 92.—**SCOT.**

p ii. ——.]—*Held:* an appellate ct. could not, under Criminal Code, s. 1016 (2), substitute for the conviction under s. 405 a conviction under s. 406.—R. *v.* LEROUX, [1928] 3 D. L. R. 688; 50 Can. Crim. Cas. 52; 62 O. L. R. 336.—**CAN.**

p iii. ——.]—Applt. was tried for murder by intentionally causing the death of another native. He was convicted by the Additional Sessions judge & four assessors of culpable homicide not amounting to murder, & was sentenced to a term of rigorous imprisonment. The Govt. applied for a revision of the judgment, & the High Ct. altered the conviction to one of murder & sentenced the applt. to death:—*Held:* on an application for revision, as distinguished from an appeal, the High Court had no jurisdiction to convert the finding of an acquittal of murder into one of conviction & to sentence the man to death.—KISHAN SINGH *v.* R. (1928), 44 T. L. R. 690, P. C.—**IND.**

p iv. ——.]—R. *v.* RIWMY (1930), 53 Can. C. C. 196.—**CAN.**

p v. ——.]—R. *v.* HENDERSON (1929), 1 M. P. R. 277.—**CAN.**

q i. ——.]—On an appeal, from a conviction for theft, based on the ground that a statement made by the trial judge when imposing sentence indicated that he entertained reasonable doubt of the accused's guilt:—*Held:* taking the judgment as a whole, the contention could not be supported, & the appeal should be dismissed.—R. *v.* WALKER, [1931] 1 W. W. R. 584; 55 Can. C. C. 102; 25 Alta. L. R. 336.—**CAN.**

b i. ——.]—Deft. was tried on an indictment charging commission of an offence & was convicted of an "attempt to commit" that offence:—*Held:* the evidence was sufficient to sustain the verdict, & his appeal must be dismissed. —R. *v.* GING (1924), 57 N. S. R. 196. —**CAN.**

b ii. ——.]—Where accused is charged with having committed a crime at a named place in a named county & province, & a place with such name is referred to in the evidence at the trial, the fact that there is nothing in the evidence to show that the place is within such county or province:—*Held:* not such an omission as to give ground for an appeal.—R. *v.* PAYETTE, [1925] 1 D. L. R. 112; [1924] 3 W. W. R. 863. —**CAN.**

b iii. ——.]—Where the Crown's case was founded on the evidence of a very young child, who contradicted herself on the vital point in the trial, & on several minor matters:—*Held:* a conviction founded on such evidence could not be sustained.—R. *v.* GIRONE (1925), 34 B. C. R. 554.—**CAN.**

b iv. ——.]—R. *v.* MCKENZIE (1926), 58 N. S. R. 464.—**CAN.**

b v. ——.]—Findings of the ct. or a jury on questions of fact are only to be set aside where the findings are obviously & palpably wrong, or are unreasonable & cannot be supported by the evidence.—R. *v.* M. (1926), 46 Can. Crim. Cas. 80; 58 N. S. R. 512.—**CAN.**

b vi. ——.]—Appeal dismissed.—R. *v.* DAVIDSON (1926), 47 Can. Crim. Cas. 80; 59 N. S. R. 179.—**CAN.**

b vii. ——.]—Appeal dismissed.—R. *v.* NICHOLSON (1926), 47 Can. Crim. Cas. 113; 59 N. S. R. 323.—**CAN.**

b viii. ——.]—Appeal dismissed.—R. *v.* HADDAD (1927), 47 Can. Crim. Cas. 163; 59 N. S. R. 187.—**CAN.**

b ix. ——.]—Circumstances in which an appeal against a conviction for forgery, by making interlineations in a document, was allowed.—R. *v.* ZEREBKO (Sask.) (1927), 48 Can. Crim. Cas. 87.—**CAN.**

b x. —— *Variance between evidence & charge—As to date of offence.*]—Conviction quashed.—R. *v.* DAVIES (Alta.), [1927] 2 W. W. R. 605; 49 Can. Crim. Cas. 86.—**CAN.**

b xi. ——.]—The Ct. of Criminal Appeal quashed a verdict & sentence, where the evidence was defective in some important respects, & the evidence, such as it was, was not presented to the jury in such a way as to bring sufficiently clearly before them the questions they had to determine.—A.-G. *v.* SMITH, [1927] I. R. 564.—**IR.**

b xii. ——.]—If the evidence is sufficient to justify a conviction, & the jury are properly directed, the Ct. of Appeal cannot interfere with their verdict because in the opinion of the presiding judge it is based on evidence which was untrustworthy & ought not to have been accepted.—R. *v.* THOMAS (1928), 28 S. R. N. S. W. 490; 45 N. S. W. W. N. 146.—**AUS.**

st. *Court may reduce sentence—Although no appeal from sentence.*]—R. *v.* MUSGRAVE (N. S.) (1926), 46 Can. Crim. Cas. 45.—**CAN.**

sv. *Non-indictable offence tried as indictable offence.*]—R. *v.* THOMPSON, [1928] 4 D. L. R. 859; 50 Can. Crim. Cas. 183; 62 O. L. R. 610.—**CAN.**

sw. *Conviction not in form required by Act—Omission of order for forfeiture.*]—Deft. was convicted by a district justice of an offence under Fisheries Act, 1924, but the district justice omitted to order a forfeiture of the fish as required by the Act:—*Held:* the omission invalidated the conviction.—TANGNEY *v.* DISTRICT JUSTICE FOR COUNTY OF KERRY, [1928] I. R. 358.—**IR.**

sb. *Interference with jury — Committal for contempt—Prisoner not prejudiced.*]—R. *v.* STEWART (1930), 2 M. P. R. 400.—**CAN.**

5816a. ——.]—If a judge has distinctly reached the conclusion that the case against a deft. is merely one of suspicion, he ought to withdraw it from the jury.—R. *v.* JOHNSON (1928), 21 Cr. App. Rep. 66, C. C. A.

5816b. ——.]—If the ct. is of opinion that at the close of the case for the prosecution there is no evidence to go to the jury it will, in the absence of evidence of such evidence from the defence, quash a conviction.—R. *v.* HOCHGLICK (1929), 21 Cr. App. Rep. 161, C. C. A.

5840a. —— ——.]—R. *v.* DANIELS (1927), 20 Cr. App. Rep. 127, C. C. A.

5840b. —— ——.]—Conviction quashed on the ground of there being no evidence of guilt.—R. *v.* TAUMAN (1931), 23 Cr. App. Rep. 44, C. C. A.

5840c. —— ——.]—The ct. will quash a conviction founded on mere suspicion.—R. *v.* WALLACE (1931), 75 Sol. Jo. 459; 23 Cr. App. Rep. 32, C. C. A.

5840d. —— ——.]—There ought not to be a conviction when the evidence is equally consistent with innocence & guilt.—R. *v.* BOOKBINDER (1931), 23 Cr. App. Rep. 59, C. C. A.

5840e. —— ——.]—R. *v.* CARTER (1931), 23 Cr. App. Rep. 101, C. C. A.

5845a. —— ——.]—This case turned on the manner in which the witnesses gave their evidence; there was a proper direction to the jury, & the ct. does not see that it can interfere with the verdict without substituting itself for the jury, which was the proper tribunal to decide the matter (PICKFORD, J.). —R. *v.* HANCOX (1913), 29 T. L. R. 331; 8 Cr. App. Rep. 193, C. C. A.

5850. ***Add. Annotation:*—Refd.** R. *v.* Rice (1927), 20 Cr. App. Rep. 21.

5850a. —— ——.]—The exercise of the jurisdiction under Criminal Appeal Act, 1907 (c. 23), s. 4, depends on the circumstances of the particular case, whatever may be the opinion of the judge who tried it.—R. *v.* RICE (1927), 20 Cr. App. Rep. 21, C. C. A.

Annotation:—**Refd.** R. *v.* Davidson (1927), 20 Cr. App. Rep. 66

5850b. —— ——.]—R. *v.* DAVIDSON, No. 3129b, *ante*.

5855a. Conviction of one co-defendant quashed—Quashing conviction of other co-defendant.]—As a general rule if the conviction of one of two defts. only for conspiracy is quashed, that of the other will be quashed.—R. *v.* HILLMAN (1931), 23 Cr. App. Rep. 53, C. C. A.

5856a. ——.]—R. *v.* RICHARDS, No. 6230a, *post*.

5856b. ——.]—Conviction quashed on the grounds of non-direction & of receipt of inadmissible evidence.—R. *v.* HOWARTH (1926), 19 Cr. App. Rep. 102, C. C. A.

5856c. ——.]—R. *v.* BERRY (1926), 19 Cr. App. Rep. 113, C. C. A.

PART XIV. SECT. 7, SUB-SECT. 3.

5811 iv. ——.]—Conviction quashed since evidence at trial was purely circumstantial & equally consistent with guilt or innocence.—R. *v.* COMBA, [1938] O. R. 200.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 4.

5824 v. —— ——.]—R. *v.* BERGER, [1925] 2 D. L. R. 237; 43 Can. Crim. Cas. 301.—**CAN.**

5824 vi. —— ——.]—Defts. were convicted of the offences of conspiring to defraud a city corpn. of money due to the corpn. for taxes:—*Held:* an inference of guilty knowledge or belief could not properly be drawn beyond all reasonable doubt, & with such degree of certainty as would warrant the convictions, which were accordingly quashed.—R. *v.* EPSTEIN, R. *v.* WALKER, R. *v.* SPERON (1925), 43 Can. Crim. Cas. 348; 56 O. L. R. 587.—**CAN.**

5824 vii. —— ——.]—Deft. was convicted of rape:—*Held:* having regard to the evidence, the verdict was unreasonable & could not be supported & must be set aside.—R. *v.* HUBLEY (1925), 58 N. S. R. 113.—**CAN.**

5824 viii. —— ——.]—R. *v.* WAH SING CHOW (B. C.) (1927), 48 Can. Crim. Cas. 144.—**CAN.**

5824 ix. —— ——.]—*Held:* a finding that deft., while intoxicated, was in charge of a motor-vehicle, did not justify a conviction for driving while intoxicated, nor could deft. be convicted of the alternative offence, for Criminal Code, s. 285 (4), cannot apply to a vehicle which is out of commission & cannot be operated by its own power.—R. *v.* HIGGINS, [1929] 1 D. L. R. 269; 50 Can. Crim. Cas. 381; 63 O. L. R. 101.—**CAN.**

5824 x. —— ——.]—R. *v.* J., [1929] 1 W. W. R. 625; 52 Can. Crim. Cas. 72; 38 Man. L. R. 144.—**CAN.**

5824 xi. —— ——.]—Where on an appeal from a conviction by a judge without a jury it was apparent that the evidence of one or both of the two witnesses for the Crown was perjured & in direct conflict with that of two of the defence witnesses, one of whom at least was a completely disinterested witness:—*Held:* the charge had not been proved beyond a reasonable doubt & the conviction was quashed.—R. *v.* SMITH, [1929] 3 W. W. R. 387; 1 D. L. R. 605; 52 Can. C. C. 174; 38 Man. L. R. 325.—**CAN.**

5824 xii. —— ——.]—Appeal from a conviction for shooting with intent to do grievous bodily harm allowed & the conviction quashed on the ground that on the evidence for the Crown there was grave doubt as to the identification of applt. (one of two accused tried jointly) as one of those who took part in the crime & the jury had not given him the benefit of it.—R. *v.* HAYDUK, [1935] 2 W. W. R. 513; 4 D. L. R. 419; 64 Can. C. C. 194; 43 Man. L. R. 209.—**CAN.**

1 i. —— —— *Evidence circumstantial only.*]—R. *v.* YOK YUEN (Ont.) (1929), 52 Can. Crim. Cas. 300.—**CAN.**

1 ii. —— —— *Criminal Code*, 1927, *s.* 1014.]—On an appeal from a conviction for murder, held that the case fell within sect. 1014 of the Criminal Code in that the verdict was one which could not be supported by the evidence, &, therefore, must be set aside. There being no question of a new trial or a verdict of manslaughter, the conviction was quashed.—R. *v.* NAHIRNIAK, [1931] 2 W. W. R. 604; 56 Can. C. C. 225; 39 Man. L. R. 509.—**CAN.**

5843 viii. —— ——.]—R. *v.* NICHOLSON (1926), 47 Can. Crim. Cas. 113; 59 N. S. R. 323.—**CAN.**

5843 ix. —— ——.]—R. *v.* MAY (Sask.), [1927] 1 D. L. R. 753; 47 Can. Crim. Cas. 118.—**CAN.**

5843 x. —— ——.]—Where the evidence in a criminal case is purely circumstantial & the jury has been properly instructed within the rule as to the value of circumstantial evidence, the verdict of the jury finding the accused guilty is equivalent to a finding that, in the minds of the jury, the inferences to be drawn from the evidence were consistent with the guilt of the accused & inconsistent with any other reasonable conclusion, *i.e.*, with the absence of guilt. Likewise, an appellate ct. could also decide, on the evidence, whether the facts were such as to be equally consistent with the innocence as with the guilt of the accused, & accordingly quash the verdict. But, before this ct., when the accused does not urge any ground of complaint against the direction of the trial judge & the evidence is such that the jury might, & could, legally & properly draw an inference of guilt, as held by the appellate ct., it is not for the ct. to decide whether the jury ought or not to have inferred that the accused was guilty.—FRASER *v.* R., [1936] S. C. R. 296; 3 D. L. R. 463; 66 Can. C. C. 240.—**CAN.**

sx. *Conviction for offence not charged in summons.*]—HALIFAX CORPN. *v.* O'CONNOR (1882), 15 N. S. R. (3 R. & G.) 190.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 5.

5856 vii a. *S. P.* R. *v.* CHIN CHONG (1921), 29 B. C. R. 527.—**CAN.**

5856 xvi. ——.]—R. *v.* ORTYNSKY, [1927] 2 D. L. R. 973; [1927] 1 W. W. R. 957; 47 Can. Crim. Cas. 319; 21 Sask. L. R. 448.—**CAN.**

s (p. 522) **i.** —— *Irregularities at former trial—Prosecution for perjury.*]—The ct. can take into consideration circumstances & irregularities as to evidence, which occurred not at the trial, the verdict at which is in appeal, but at a former trial where the perjury for which accused has been convicted was alleged to have been committed.—R. *v.* CIESLENSKI, [1924] 1 W. W. R. 82; 41 Can. Crim. Cas. 195.—**CAN.**

e (p. 523) **i.** —— ——.]—R. *v.* BARCLAY (Ont.) [1930] 1 D. L. R. 489; 52 Can. Crim. Cas. 134.—**CAN.**

k (p. 524) **i.** —— *Evidence of previous bad character.*]—CASSIDY *v.* R., [1931] 4 D. L. R. 192; 56 Can. C. C. 194.—**CAN.**

s (p. 526) **i.** —— *Admission of confession—No prejudice.*]—R. *v.* BARCLAY, [1930] 1 D. L. R. 489; 52 Can. C. C. 134.—**CAN.**

5858. *Add. Annotations :*—**Consd.** R. *v.* Tidmarsh (1931), 23 Cr. App. Rep. 79. **Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59 ; R. *v.* Slender, [1938] 2 All E. R. 387.

5859. *Add. Annotations :*—**Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59 ; R. *v.* Cohen, [1938] 3 All E. R. 380.

5863. *Add. Annotation :*—**Refd.** Maxwell *v.* Director of Public Prosecutions (1934), 151 L. T. 477.

5863a. —— ——.]—It is a misdirection, on a charge of obtaining credit by fraud, that the jury may consider other cases of alleged stealing, which have not been established in evidence.—R. *v.* HILL (1930), 22 Cr. App. Rep. 54, C. C. A.

5867. *Add. Annotation :*—**Distd.** R. *v.* King (1927), 20 Cr. App. Rep. 158.

5870a. —— ——.]—Convictions quashed on the ground of evidence of previous convictions having been wrongly admitted.—R. *v.* GRAHAM, R. *v.* ANDERSON (1924), 18 Cr. App. Rep. 8, C. C. A.

5870b. —— ——.]—R. *v.* KING (1927), 20 Cr. App. Rep. 158, C. C. A.

5870c. —— —— **Disclosed by prisoner.**]—R. *v.* GUERIN, No. 2840a, *ante*.

5870d. —— **Evidence of bad character.**]—R. *v.* FLEMING, No. 6106a, *post*.

5873a. —— ——.]—R. *v.* HASLAM, No. 2839a, *ante*.

5873b. —— **Evidence by witnesses on abandoned charge.**]—R. *v.* DUNNICO (1931), 23 Cr. App. Rep. 77, C. C. A.

5876a. —— ——.]—(1) It is the duty of counsel for the prosecution before opening to acquaint themselves with the contents of the indictment.

(2) Where a statement prejudicial to a prisoner with regard to his previous record has been inadvertently made to the jury by a witness, & counsel for the prisoner applies for the trial to be started afresh, the ct. ought to begin the trial again before a new jury.

A prisoner, who was charged upon two indictments, was given in charge to the jury upon one indictment, but, owing to a misunderstanding, evidence was admitted which was relevant only to the other indictment. In the course of the trial a witness for the prosecution stated in answer to a question put to him in cross-examination that he had been in the prisoner's house while the latter was away in prison. Counsel for the prisoner objected & applied for the trial to be started afresh, but his application was refused & the prisoner was convicted :—*Held :* the conviction must be quashed.—R. *v.* PECKHAM (1935), 154 L. T. 275 ; 100 J. P. 59 ; 52 T. L. R. 159 ; 79 Sol. Jo. 989 ; 25 Cr. App. Rep. 125 ; 34 L. G. R. 1 ; 30 Cox, C. C. 353, C. C. A.

Annotation :—As to (2) **Consd.** R. *v.* Firth, [1938] 3 All E. R. 783.

5877a. —— ——.]—R. *v.* HOMER (1926), 19 Cr. App. Rep. 118, C. C. A.

5877b. —— **Statement prior to trial in hearing of jury.**]—Before the trial of applt., in the presence & hearing of the jury who were to try her, counsel appearing for her son, who had been put up for sentence on another charge, stated by way of mitigation that his client was the son of a notorious shoplifter. In the summing up at applt.'s trial the jury were warned to disregard that statement :—*Held :* in view of the above disclosure with regard to applt.'s character, the proper course would have been to adjourn the case of the applt. & try it before another jury, & in the circumstances the conviction must be quashed.—R. *v.* PALMER (1935), 25 Cr. App. Rep. 97, C. C. A.

5884. *Add. Annotation :*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

5887. *Add. Annotations :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632 ; R. *v.* McLean (1926), 134 L. T. 640 ; R. *v.* Pollinger (1930), 22 Cr. App. Rep. 75.

5906. *Add. Annotation :*—**Consd.** R. *v.* Baldwin (1925), 133 L. T. 191.

5910a. —— ——.]—(1) Rejection of evidence legally admissible may be ground for quashing a conviction. (2) The prosecution, *semble*, should put in at the trial all documents put in below.—R. *v.* THOMAS (1931), 23 Cr. App. Rep. 36, C. C. A.

5910b. —— ——.]—Applt. was charged with incest with his daughter B. The case for the prosecution rested mainly on the evidence of B. & her younger sister I. The defence was that the charge was a fabrication, & that the children had been schooled by their mother, with whom applt. was on bad terms, into giving evidence against him. Applt. had some months previously been convicted of indecent assault on B. before a ct. of summary jurisdiction. Counsel for applt. put to each of the children in turn the suggestion that each of them had admitted to another person that their mother had told them what to say in evidence on that occasion, & that their evidence was not true. Each of the children denied this suggestion, & counsel for applt. sought to call the two persons to whom the alleged admissions were said to have been made. The judge refused to admit their evidence, on the ground that the above questions had been put to the children solely for the purpose of testing their credit : —*Held :* the questions were directed not to the credibility of the witnesses but to the very foundation of applt.'s answer to the charge, & the evidence of the two persons to whom the alleged statements had been made by the children ought to have been admitted. The conviction must, in the circumstances, be

---

PART XIV. SECT. 7, SUB-SECT. 6.

t i. —— *Cross-examination restricted.*]—Applt., the president of a stock-brokerage co. & the owner of all its issued capital stock, was convicted for the theft of bonds & stocks belonging to seven different customers of the co. The indictment also contained four counts charging theft from the co. & conspiracy with B., T. & M., employees of the co., to defraud. These four counts were severed by the trial judge & are still in abeyance :—*Held :* defence counsel's right to cross-examine said B., T. & M., who were Crown witnesses, had been unduly restricted by the rulings of the trial judge, & there should be a new trial, on which the applt. was entitled, if he wished, to have a jury.—R. *v.* ANDERSON, [1938] 2 W. W. R. 49 ; 8 F. L. J. (Can.) 35.—**CAN.**

5909 i. *Conviction quashed—Evidence for defence excluded.*]—WINNING *v.* TORRANCE, [1928] S. C. (J.) 79.—**SCOT.**

sg. *Evidence of ballistic expert.*]—CROCKET, J., took also the ground that the trial judge erroneously refused to allow a certain ballistic expert witness to state his opinion as to whether or not the bullet which caused the death had been fired from the revolver produced. RINFRET, LAMONT & SMITH, JJ., while holding that the trial judge's ruling out was wrong, were of opinion that, in view of later evidence from the same witness, the ruling out had not much effect.—PITRE *v.* R., [1933] S. C. R. 69 ; 1 D. L. R. 417 ; 59 C. C. C. 148.—**CAN.**

quashed.—R. *v.* PHILLIPS (1936), 156 L. T. 80; 101 J. P. 117; 30 Cox, C. C. 536; 35 L. G. R. 36; 26 Cr. App. Rep. 17, C. C. A.

5910c. —— **Cross-examination as to credit disallowed.**]—The legal representative of applt. at the ct. of trial was precluded from cross-examining the chief witness for the Crown, an accomplice, as to credit:—*Held:* the conviction must be quashed.—R. *v.* HUGHES (1933), 24 Cr. App. Rep. 52, C. C. A.

5915a. —— ——.]—An inadequate summing up may be a ground for quashing a conviction.—R. *v.* BREED (1931), 22 Cr. App. Rep. 166, C. C. A.

5915b. —— ——.]—If a direction to the jury treats as corroborative evidence that which is not in fact corroborative, the ct. may quash a conviction.—R. *v.* PHILLIPS (1924), 18 Cr. App. Rep. 115, C. C. A.

5919. *Add. Annotation:*—**N.F.** (It would be better to regard the case of *Newman* as a misprint. LORD HEWART, C.J.). R. *v.* Currell (1935), 25 Cr. App. Rep. 116.

5926a. ——.]—R. *v.* HOWARTH, No. 5856b, *ante*.

5926b. —— **Sexual offence.**]—Applt. was charged on an indictment containing ten counts alleging carnal knowledge of three girls aged ten, eleven & twelve respectively during a period extending over a year. It was alleged that applt. committed the offences upon each of the girls in turn, while the other two kept watch. On four of the counts in the indictment there was no evidence against applt. beyond that of the particular girl on whom it was alleged that the offence had been committed. The judge, in his summing-up, drew no distinction between the different counts, omitted to warn the jury as to the care they should exercise in accepting the evidence of young children, & failed to direct the jury that they ought to consider in the case of each girl whether she was to be regarded as a victim or as a participant in the offence:—*Held:* the summing-up was so inadequate as to necessitate the quashing of the conviction.—R. *v.* BRAMHILL (1933), 24 Cr. App. Rep. 79, C. C. A.

5926c. ——.]—Conviction of receiving stolen property quashed on the ground of non-direction on this charge in the summing-up, the ct. reiterating the rule laid down in *R.* v. *Schama & Abramovitch*, 11 Cr. App. Rep. 45, at p. 49, that "it is essential in cases of this character that there should be a careful & proper direction."

R. v. *Newman*, 9 Cr. App. Rep. 134, is not now to be relied upon as an authority that there may be cases of receiving where a careful summing-up is not essential.—R. *v.* CURRELL (1935), 25 Cr. App. Rep. 116, C. C. A.

5927a. —— ——.]—Where the defence is an *alibi*, the jury must be pointedly directed on the identification.—R. *v.* PHILLIPS (1924), 89 J. P. 16; 41 T. L. R. 190; 18 Cr. App. Rep. 151, C. C. A.

5927b. —— **Direction as to time.**]—R. *v.* SMITH, No. 6066a, *post*.

5927c. ——.]—Where an *alibi* is set up as a defence, the jury must be directed that if it fails they must consider the facts of the case on their merits.—R. *v.* CHEW (1926), 19 Cr. App. Rep. 73, C. C. A.

5927d. Contradictory statements by sole witness to identity.]—Where the only witness to identification of the accused has at one time expressed doubt about his own correctness, the attention of the jury ought to be drawn to this fact.—R. *v.* MCLOCKLIN (1930), 22 Cr. App. Rep. 138, C. C. A.

PART XIV. SECT. 7, SUB-SECT. 7.—A. (a).

a i. —— ——.]—R. *v.* AVERILL, [1927] 2 W. W. R. 310; 48 Can. Crim. Cas. 121; 21 Sask. L. R. 679.—**CAN.**

a ii. —— ——.]—R. *v.* COOPER (Ont.), [1927] 4 D. L. R. 1003; 49 Can. Crim. Cas. 87.—**CAN.**

5920 iii. ——.]—Accused & one M. left a room in an hotel together, both intoxicated. On reaching the rotunda of the hotel M. said to the night clerk "I got hit in the eye, but the other fellow got worse than I did," & the clerk saw that there was blood on both of M.'s hands. Immediately after they had left the hotel, a third man, who came to the hotel with them, was found dead & in a battered condition in the room they had left. On appeal from the conviction of accused for manslaughter:—*Held:* there was non-direction amounting to misdirection in the charge of the judge, to the jury, the result of which was that the strongest evidence in favour of accused, viz., M.'s appearance after coming out of the room & his statement of his actions, was not submitted to the jury's consideration as it ought, & there should be a new trial.—R. *v.* NICHOLSON (1927), 49 Can. Crim. Cas. 228; 39 B. C. R. 264.—**CAN.**

5920 iv. ——.]—An indictment was presented against three accused persons for breaking & entering & for stealing. The trial judge left the case to the jury as being one of breaking & entering only, & did not point out to the jury that it was, under Criminal Code, s. 575, open to the jury to find the prisoners, or some of them, guilty of stealing:—*Held:* this omission was in itself sufficient to amount to a miscarriage of justice.—R. *v.* SHORT, GREALEY & PLINT, [1928] St. R. Qd. 246; 22 Q. J. P. 108.—**AUS.**

5920 v. ——.]—On an appeal from a conviction on a trial for perjury on which an interpreter had been employed it was contended that the judge in his charge to the jury had failed to refer to the fact that objection had been taken by the defence counsel to the ability of the interpreter, & it was contended that this non-direction amounted to misdirection:—*Held:* since even had the judge placed the matter before the jury they could not, as reasonable men, have concluded otherwise than that the interpreter was well qualified & had translated the accused's answers correctly, the objection could not be sustained.—R. *v.* VERIGIN (No. 2), [1932] 2 W. W. R. 491.—**CAN.**

5920 vi. ——.]—Failure of the judge to instruct the jury that, in order to determine the real meaning of a written statement by accused, they were entitled to consider those parts of it which were exculpatory & explanatory of accused's adverse admissions constituted a material non-direction tantamount to a misdirection necessitating a new trial.—R. *v.* JACKSON, [1933] O. R. 522; 60 C. C. C. 52.—**CAN.**

sy. *Direction alleged to be unfair.*]—R. *v.* HUM KING, [1928] 2 D. L. R. 687; 49 Can. Crim. Cas. 174; 60 N. S. R. 5.—**CAN.**

sz. *Failure to direct jury how to view circumstantial evidence.*]—R. *v.* THIBEAULT, [1930] 3 D. L. R. 312; 53 Can. C. C. 178; 1 M. P. R. 345.—**CAN.**

sa. *Conflicting medical evidence.*]—A new trial will be ordered when the conflicting medical evidence as to cause of death is not adequately explained to the jury.—R. *v.* KIRK, [1934] 3 D. L. R. 642; O. R. 443; 62 C. C. C. 19.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—A. (b).

sb. *Bigamy—Felonious intent.*]—Where the trial judge directed the jury that if accused intended to be married a second time, his first wife being alive to his knowledge & the first marriage being a lawful marriage, there was felonious intent:—*Held:* this direction was right.—R. *v.* KENNEDY, [1923] S. A. S. R. 183.—**AUS.**

sc. *Manslaughter—Criminal negligence.*]—New trial ordered because the judge did not explain to the jury the elements of the crime of manslaughter, & did not differentiate between the degree of negligence which is necessary to constitute criminal liability, & also because he did not tell the jury that they were justified in entering upon the inquiry as to the accused's guilt of the offence of criminal negligence under sect. 284 only if they found the accused not guilty of the crime of manslaughter.—R. *v.* MERRITT, [1933] 4 D. L. R. 483; O. R. 786; 60 C. C. C. 295; *affd.*, [1934] 1 D. L. R. 153; 60 C. C. C. 304.—**CAN.**

sd. *Wounding—Intent.*] — Accused was prosecuted under sects. 273 & 274 of the Criminal Code. The jury found him not guilty under sect. 273,

5929a. —— ——.]—When in a trial for larceny asportation of documents has been proved, there must be a direction whether it took place *animo furandi* or not.—R. *v.* JONES (1925), 19 Cr. App. Rep. 39, C. C. A.

5932a. —— **By bailee—Intent to defraud.**]—R. *v.* MOORE, No. 3007a, *ante*.

5932b. —— **Shopbreaking.**]—On an indictment for shopbreaking & larceny the jury should be informed of the various verdicts open to them on the evidence.—R. *v.* NEVILLE (1931), 22 Cr. App. Rep. 163, C. C. A.

5932c. Breaking & entering—Breaking.]—R. *v.* LLOYD, No. 2839b, *ante*.

5932d. —— ——.]—On an indictment charging breaking & entering, a breaking in law must be proved, & the jury must be distinctly charged on this point.—R. *v.* BRIERLEY (1924), 18 Cr. App. Rep. 136, C. C. A.

5934. *Add. Annotation :*—**Folld.** R. *v.* Smith (1931), 22 Cr. App. Rep. 180.

5936. *Add. Annotation :*—**Folld.** R. *v.* Smith (1931), 22 Cr. App. Rep. 180.

5938a. —— ——.]—The gist of the crime of obtaining by false pretences is an intent to defraud : direction on this point must be clear.—R. *v.* RENTON (1925), 19 Cr. App. Rep. 33, C. C. A.

5938b. —— ——.]—On a charge of obtaining by false pretences there must be a direction on the issue of intent.—R. *v.* KAY (1925), 19 Cr. App. Rep. 42, C. C. A.

5938c. —— ——.]—On an indictment for obtaining by false pretences the jury must be explicitly charged that they should not convict unless they find an "intent to defraud," the legal purport of which should, except in the clearest cases, be indicated.—R. *v.* SMITH (1931), 22 Cr. App. Rep. 180, C. C. A.

5938d. —— ——.]—It is a misdirection to suggest that evidence on a charge of obtaining by false pretences which tends to disprove an intent to defraud is "subsidiary" to the real issue, even though that evidence *per se* does not constitute a defence.—R. *v.* PICKUP (1931), 22 Cr. App. Rep. 186, C. C. A.

5938e. —— ——.]—It depends on the circumstances of each case whether a jury must be *expressly* directed that an intent to defraud is an essential ingredient of the offence.—R. *v.* Moss (1931), 23 Cr. App. Rep. 132, C. C. A.

5939a. —— ——.]—R. *v.* NEWBERY & ELMAN, No. 3165g, *ante*.

5943a. —— **Larceny.**]—On a charge of knowingly receiving stolen goods it is imperative that the jury should be directed that the larceny implied must be proved.—R. *v.* MCGUIRE (1930), 22 Cr. App. Rep. 31, C. C. A.

5943b. —— **"For & on account of" person defrauded.**]—On an indictment for fraudulent conversion the jury must be directed on the question whether what was received by deft. was "for & on account of" the person(s) alleged to be defrauded.—R. *v.* BROWN (1931), 23 Cr. App. Rep. 18, C. C. A.

5947. *Add. Annotation :*—**Consd.** R. *v.* Woods (1930), 143 L. T. 311.

5947a. ——.]—R. *v.* WOODS, No. 751b, *ante*.

5947b. ——.]—R. *v.* KILBRIDE (1931), 23 Cr. App. Rep. 12, C. C. A.

5947c. Failure to distinguish larceny & obtaining credit by fraud.]—R. *v.* LEE, No. 5628b, *ante*.

5959. *Add. Annotations :*—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

5965. *Add. Annotation :*—**Refd.** R. *v.* Bernhard, [1938] 2 K. B. 264.

5965a. ——.]—(1) An alternative theory put forward by the defence which is consistent

---

having found the injury was caused "without malicious intent." The second count in the indictment was under sect. 274 which does not contain words making intent material. The judge in his charge to the jury said : "the second count charges the accused with unlawful wounding only. . . . No question of intent involved there." The jury convicted the accused under this count. On appeal, his counsel contended that intent was a fundamental factor in the offence under sect. 274, although not specified as such & that the direction to the jury was misdirection :—*Held :* there was no misdirection & the appeal should be dismissed.—R. *v.* WHITE, [1934] 2 W. W. R. 513 ; 62 C. C. C. 76.—**CAN.**

sf. *Definition of criminal negligence.*]—Where on the trial of a charge of manslaughter arising out of the operation of a motor vehicle the judge directed the jury that it was open to it, under sect. 951 of Criminal Code as amended by 1930 (c. 11), to bring in a verdict of criminal negligence, & the jury did find the accused guilty of criminal negligence :—*Held :* the direction was objectionable on the ground that the judge did not define criminal negligence.—R. *v.* GUDMONDSON (1933), 60 C. C. C. 332.—**CAN.**

sk. *Murder.*]—Where on the trial of a charge of murder the accused relies on provocation & drunkenness as grounds why the verdict should be manslaughter, not murder, the judge is not in error in charging the jury that, on account of the words "to deprive an ordinary person" in sect. 261 (2) of the Code, they should when determining the question of provocation make no more allowance for a man under the influence of liquor than for a sober one. But he should direct the jury's attention to those portions of the evidence which, if believed, might actually show provocation by indicating that the accused was suddenly attacked by the deceased, since under said subsection the question whether any particular wrongful act or insult amounts to provocation is expressly one of fact for the jury. He should also instruct the jury that even if provocation, sufficient to deprive an ordinary person of the power of self-control, has been established to their satisfaction, they will then have to determine whether the accused had acted in the heat of sudden passion or from premeditation, &, if satisfied that he was intoxicated, they may take into account the fact that a man in such a condition is more susceptible to passion than he otherwise would be. Moreover, in addition to telling them that the rigor of the rule as to the presumption of intent has been relaxed to the extent that when a particular intent is of the essence of the crime, as it is in murder, drunkenness is an element to be taken into consideration, so that if they found drink had made the accused incapable of the intent to kill they should return a verdict of manslaughter, he should also explicitly direct their attention to those portions of the evidence which would indicate the existence or non-existence of an intent to cause death or grievous bodily harm.—R. *v.* HARMS, [1936] 2 W. W. R. 114 ; 3 D. L. R. 497 ; 66 Can. C. C. 134 ; 6 F. L. J. (Can.) 21.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—A. (c).

5948 vi. *Whether ground for quashing conviction.*]—BROOKS *v.* R., [1928] 1 D. L. R. 268 ; 48 Can. Crim. Cas. 333 ; [1927] S. C. R. 633.—**CAN.**

5948 vii. ——.]—R. *v.* YOUNG (1931), 3 M. P. R. 221 ; 55 Can. C. C. 372.—**CAN.**

5948 viii. —— *Defence of insanity.*—An appeal from a conviction for murder. The only defence was insanity ; & to establish it the defence called two physicians who were provincial officials & had examined the accused after being instructed by the A.-G. so to do. Since this defence was not raised at the beginning but only in course of the trial, the question of the accused's fitness to take his trial was put to the jury only at the same time as the main issue & the verdicts of fitness & guilt were read together :—*Held :* considering the trial judge's charge to the jury as a whole, its effect might very well have been to cause the jury not to give to the medical testimony the earnest & careful consideration which it called for. A new trial was, therefore, ordered.—R. *v.* MACKIE, [1933] 1 W. W. R. 273 ; 2 D. L. R. 685 ; 59 C. C. C. 254 ; 41 Man. L. R. 9.—**CAN.**

with the evidence ought not to be ignored in the summing-up & the ct. will consider it.

(2) The ct. will not interfere with the findings of fact by a jury if they have been properly directed & could reasonably arrive at the verdict.—R. *v.* TURKINGTON (1930), 22 Cr. App. Rep. 91, C. C. A.

5965b. ——.]—If a summing-up ignores evidence of a prisoner's attempt to get honest work it may be quashed.—R. *v.* COUNTER (1931), 23 Cr. App. Rep. 22, C. C. A.

5965c. ——.]—R. *v.* SMITH, No. 3165f, *ante*.

5965d. ——.]—Conviction of murder quashed in the case of one of two applts. jointly charged, on the ground that his defence had not been adequately put to the jury in the summing-up.—R. *v.* MILLS (1935), 25 Cr. App. Rep. 138, C. C. A.

5976. *Add Annotation :*—**Follď.** R. *v.* Moore (1924), 18 Cr. App. Rep. 29.

5992a. ——.]—R. *v.* TAVENER & TOBITT (1928), 21 Cr. App. Rep. 63, C. C. A.

5992b. ——.]—A misdirection on a material fact is sufficient to invalidate conviction.—R. *v.* DAVIES (1930), 22 Cr. App. Rep. 24, C. C. A.

5992c. ——.]—A definite mistake in a summing-up about the identification of a chattel charged in the indictment to have been stolen may be ground for quashing a conviction.—R. *v.* BRIDGER (1930), 22 Cr. App. Rep. 21, C. C. A.

6013. *Add. Annotation :*—**Refd.** R. *v.* Fisher (1926), 19 Cr. App. Rep. 166.

6019. *Add. Annotations :*—**Follď.** R. *v.* Currell (1935), 25 Cr. App. Rep. 116. **Consd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 426.

6026a. Wilful neglect of child.]—R. *v.* WALKER, No. 1985a, *ante*.

6034a. ——.]—R. *v.* BRIGGS, No. 4693a, *ante*.

6034b. ——.]—A summing-up must distinguish clearly between the charge of larceny & that of knowingly receiving, &, if there is more than one deft., between their respective shares in the offences alleged.—R. *v.* EBBAGE (1930), 22 Cr. App. Rep. 50, C. C. A.

6034c. ——.]—On an indictment against more than one person the summing-up must discriminate carefully the case against each deft.—R. *v.* BROWN (1930), 22 Cr. App. Rep. 139, C. C. A.

6034d. ——].—Applts., who were father & son, were each convicted of receiving stolen property. There was no evidence that the father had even been in physical possession of the property, or that he had ever seen it before the police found it in a shed occupied by him in which the son was at the time sleeping. On being questioned by the police, the father said : " My boy will tell you all about it," but there was a conflict of testimony as to what the son had said. According to his own evidence, he had given the police a detailed account of the circumstances in which the property was brought to the shed. Applts. were represented at the police ct., & neither made any statement or gave evidence. Both applts. appealed on the ground that the summing-up contained misdirection & nondirection in law :—*Held :* the summing-up was unsatisfactory in that

---

PART XIV. SECT. 7, SUB-SECT. 7.—C. (a).

6006 v. —— —— ——.]—In directing the jury, the judge gave them the impression that mere knowledge of the crime without any aiding or abetting thereof was sufficient to make accused a principal offender :—*Held :* a misdirection, & new trial ordered.—R. *v.* DUTCHAK, [1924] 4 D. L. R. 973.—**CAN.**

6016 iv. —— ——.]—It was contended that the judge misdirected the jury in reading to them a sect. of the Criminal Code which had been repealed before the trial took place :—*Held :* as the sect. in question was simply a statement of the common law & could not prejudicially affect prisoner, the case was within the Code, s. 1014 (c), & the objection had no effect.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413 ; 41 Can. Crim. Cas. 249.—**CAN.**

6016 v. —— ——.]—The fact that the trial judge in charging the jury misstated the law will not, in view of his subsequent correction of this statement after the jury were called back, justify the setting aside of the conviction.—STEELE *v.* R., [1924] 4 D.L. R. 175 ; [1924] 1 W. W. R. 1146.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) i.

6019 iii. ——.]—Where homicide was proved & was not denied, but the defence of temporary insanity caused by intoxicating liquor was set up :—*Held :* the omission from the trial judge's charge of an instruction that accused was entitled to the benefit of a reasonable doubt was a substantial wrong entitling him to a new trial.—R. *v.* PAYETTE, [1925] 2 W. W. R. 747 ; 44 Can. Crim. Cas. 209 ; 35 B. C. R. 81.—**CAN.**

6019 iv. ——.]—Upon the trial of an indictment charging receiving stolen goods, knowing them to have been stolen, the jury was charged " the possession of recently stolen property throws on the possessor the *onus* of showing that he got it honestly. If he fail to give a reasonable account of it, he is reasonably presumed to be in possession of it dishonestly" :—*Held :* the charge was not in accordance with the principles of law as laid down in *R.* v. *Schama*, No. 6019, & the conviction must be set aside & a new trial had.—R. *v.* MORTON, [1929] 1 D. L. R. 720 ; 51 Can. Crim. Cas. 96 ; 60 N. S. R. 302.—**CAN.**

6019 v. ——.]—A direction, in effect, that the prisoner must establish his innocence beyond a reasonable doubt, in a charge of perjury, is a misdirection. —R. *v.* FIALKA (1934), 62 Can. C. C. 389.—**CAN.**

6019 vi. ——.]—In any criminal case tried by a jury, the jury must be told that the burden is upon the Crown to prove the guilt of the accused beyond all reasonable doubt & that if they entertain a reasonable doubt of guilt at the close of the case it is their duty to acquit. Although, no doubt, other words than the words " beyond all reasonable doubt " may be used in the telling, & it may be that counsel have relieved the judge of this duty although it is unsafe for him in any circumstances to consider himself relieved from it, yet in every case the jury must be told by some one in clear & appropriate language that the accused is entitled to be acquitted if on the whole case they entertain any reasonable doubt as to guilt.—R. *v.* LABINE, [1937] 3 W. W. R. 241 ; 4 D. L. R. 284 ; 69 Can. C. C. 151.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) ii.

d i. ——.]—The omission to place clearly before the jury the law as to the right of private defence of the person, as bearing on the facts set up, & to direct their attention to the point whether, & how far, accused was justified in attacking deceased, in order to prevent injury to himself :—*Held :* a misdirection vitiating the trial.—R. *v.* ASERUDDIN (1926), I. L. R. 53 Calc. 980.—**IND.**

d ii. ——.]—R. *v.* DELL 'OSPEDALE, [1929] 1 D. L. R. 892 ; 51 Can. Crim. Cas. 117 ; 60 N. S. R. 336.—**CAN.**

se. *Rape.*]—R. *v.* HALL (Ont.) (1927), 49 Can. Crim. Cas. 146.—**CAN.**

sf. *Criminal negligence—Sufficient to read Code with brief comment.*]—DE BEAUJEU *v.* R., [1931] 4 D. L. R. 661 ; 56 Can. C. C. 217.—**CAN.**

sg. *Shooting cattle.*]—The omission to charge the jury that shooting cattle must be wilful, to sustain a charge under sect. 510 of Criminal Code, is not a misdirection, when the defence is a denial of the shooting.—R. *v.* STEWART (1930), 57 C. C. C. 169.—**CAN.**

sk. *Perjury.*]—A new trial ordered of a charge of perjury, on the ground that the trial was an unsatisfactory one because the judge's summing up to the jury was defective in that it did not define perjury or tell the jury that even though it concluded that the accused's statement was false it must also be satisfied that she made it knowing it to be false & with the intention of misleading the ct. ; & also because a part thereof was prejudicial to the defence, & rendered it not unlikely that the jury may have been moved thereby to bring in a verdict against the prisoner for reasons not founded in the evidence.—R. *v.* SAFRONIUK, [1936] 1 D. L. R. 46 ; [1935] 3 W. W. R. 477 ; 64 Can. C. C. 330.—**CAN.**

(*a*) it drew no distinction between the cases of the two applts., though such was essential in a case of this kind; (*b*) the jury were not told that they could convict the father only if they were satisfied either that he knew of the theft beforehand & that some kind of prearrangement between him & the thief, or thieves, existed, or that he subsequently adopted the receiving of the goods by his son, & at the time of such adoption had guilty knowledge; (*c*) adverse comments on the silence of applts. when before the magistrate had been improperly made, & both convictions must be quashed.—R. *v.* SMITH (1935), 25 Cr. App. Rep. 119, C. C. A.

6047a. Comment on failure to disclose defence at preliminary hearing.]—At the preliminary investigation of an indictable offence before a magistrate, at the close of the case for the prosecution, the formula prescribed by Criminal Justice Act, 1925 (c. 86), s. 24, asking the prisoner whether he wished to say anything in answer to the charge, was read to the prisoner, who merely said, "I don't wish to say anything except that I am innocent." In the summing-up at the trial, severe comments were made on the fact that the prisoner had not disclosed his defence in the ct. below:—*Held:* in view of the language of the statutory formula, the comments ought not to have been made, & the conviction must be quashed.—R. *v.* NAYLOR, [1933] 1 K. B. 685; 102 L. J. K. B. 561; 147 L. T. 159; 23 Cr. App. Rep. 177; 29 Cox, C. C. 493, C. C. A.

Annotations:—**Distd.** R. *v.* Parker (1932), 147 L. T. 502. **Expld. & Distd.** R. *v.* Littleboy, [1934] 2 K. B. 408.

6047b. ——.]—At the preliminary investigation of an indictable offence before justices, two of three prisoners who were charged together disclosed their defences, which were *alibis*, & called witnesses. The third prisoner, in answer to the statutory formula, said that he did not wish to give evidence or call witnesses. At the trial he, too, put forward the defence of an *alibi*, & the judge, in his summing up, commented adversely on the fact that this defence, unlike that of the other two prisoners, had not been put forward in the ct. below:—*Held:* the judge was bound, in the interest of the other two prisoners, to point out this difference between their cases & that of the third prisoner, & no exception could, therefore, be taken to the comments.—R. *v.* PARKER, [1933] 1 K. B. 850; 102 L. J. K. B. 766; 147 L. T. 502; 24 Cr. App. Rep. 2; 29 Cox, C. C. 550, C. C. A.

6047c. ——.]—Applt. was charged with an offence against a girl above the age of thirteen & under the age of sixteen years. When formally charged in the police ct. & when asked before being committed for trial if he desired to give evidence on his own behalf or to call witnesses, he said: "I am not guilty. I reserve my defence." At the trial at the assizes, he adduced evidence that, at the material time, he was away from the place where the offence was alleged to have been committed. The trial judge commented on the failure of the accused to disclose his defence in the police ct. & said to the jury that it was unfortunate that the accused did not then & there state where he was at the material time, so as to afford the prosecution an opportunity of making their own inquiries to test the truth of the statement:—*Held:* the comment did not constitute misdirection. Observations on the failure to disclose a defence at some date earlier than the trial should be made with care & with fairness to the accused person in all the circumstances of the case, but there was no general proposition of law that in no circumstances could comment be made on the failure to disclose the defence in the police ct.

Per LORD HEWART, C.J.: there is a great difference between making the comment that silence on the part of the prisoner is unfortunate & a matter to be regarded with reference to the weight of the defence, when

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) iv.

sd. *Direction that evidence as to accused's immoral character relevant—Presumption of innocence.*]—The judge directed the jury that the facts proved with reference to prisoner's character were relevant for their consideration, & that the presumption of innocence applied with less effect to prisoner than to a man of proved good character. The jury found the prisoner guilty by a narrow majority:—*Held:* the judge had misdirected the jury in law, in respect that the immoral character of the panel was irrelevant, & the presumption of innocence applied equally in all cases, & could only be displaced by evidence relevant to prove the crime charged.—SLATER *v.* H.M. ADVOCATE, [1928] S. C. (J.) 94.—**SCOT.**

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) v.

se. *Failure to direct jury as to degree of proof necessary.*]—R. *v.* MEGILL, [1929] 2 D. L. R. 279; 1 W. W. R. 470; 51 Can. Crim. Cas 377; 23 S. L. R. 299.—**CAN.**

sf. *Reference to possibility of commutation.*]—The judge told the jury that, if they found murder the man's sentence would be reduced perhaps to imprisonment for life, but that was not to influence their verdict:—*Held:* a misdirection.—R. *v.* CRACKNELL, [1931] O. R. 634; 4 D. L. R. 657; 56 Can. C. C. 190.—**CAN.**

sh. *Direction as to effect of failure to produce document.*]—On a trial for perjury the trial judge directed the jury that the fact that the accused did not produce a notebook in which he had made a certain entry was a circumstance from which the jury could properly infer that the accused's story was not true. The book was a self-serving document &, apart from the use that might have been made of it by the accused to refresh his memory, the only way in which it could have been lawfully used at the trial was by Crown counsel in the manner provided by the Canada Evidence Act, 1927, s. 10, for the purpose of contradicting the testimony of the accused:—*Held:* a misdirection.—R. *v.* BEAUCHESNE, [1933] 1 W. W. R. 216; 4 D. L. R. 38; 60 C. C. C. 25.—**CAN.**

sj. *Expression of personal opinion.*]—R. *v.* KERVIN (1932), 5 M. P. R. 35; 57 C. C. C. 403; *affd.* (1932), 57 C. C. C. 249.—**CAN.**

sl. *Conflicting stories by prosecutim witnesses—Failure to direct jury as to different legal consequences.*]—The accused was tried on a charge of unlawful wounding with intent to murder. The Crown adduced in evidence two conflicting stories of the occurrence, viz., that of the complainant & that of two witnesses. The complainant, a Chinaman, testified that he was followed by the accused & on being overtaken was shot & robbed. He said that three shots were fired by the accused, two after the robbery. The witnesses, two white English-speaking men, said that they saw two men fleeing from a third & when the pursuer, shouting & gesticulating, came up with the two one of them turned & fired a shot which brought the pursuer to his knees, whereupon the person who fired the shot stopped & stooping toward the pursuer fired two other shots & then continued his flight. It was proved that the accused did the shooting. The accused was convicted, & appealed on the ground of misdirection of the jury in that (*inter alia*) the alleged different legal consequences flowing from the differences between the two stories were not adequately put before the jury. The appeal was dismissed on an equal division of the ct.—R. *v.* WU (*alias* WU CHUCK), [1933] 3 W. W. R. 651; 61 C. C. C. 40; *affd.*, [1934] S. C. R. 609; 4 D. L. R. 459; 62 C. C. C. 90.—**CAN.**

sn. *Comment on alibi.*]—R. *v.* RUSSELL, [1936] 3 W. W. R. 81; *affd. sub nom.* RUSSELL *v.* R., [1936] 4 D. L. R. 744; 67 Can. C. C. 28.—**CAN.**

sq. *Comment on defence relating to absence of common intent.*]—R. *v.* DUNBAR, [1936] 3 W. W. R. 99; *affd. sub nom.* DUNBAR *v.* R., [1936] 4 D. L. R. 737; 67 Can. C. C. 20; 6 F. L. J. (Can.) 211.—**CAN.**

the defence of *alibi* is raised, & saying that the fact that the prisoner was silent may be treated as evidence against him or as corroborating the evidence of an accomplice.—R. *v.* LITTLEBOY, [1934] 2 K. B. 408; 103 L. J. K. B. 657; 151 L. T. 570; 98 J. P. 355; 32 L. G. R. 345; 24 Cr. App. Rep. 192; 30 Cox, C. C. 179, C. C. A.

6047d. ——.]—R. *v.* SMITH, No. 6034d, *ante*.

6048. *Add. Annotation :*—**Apprvd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

6049a. Failure to warn jury that they cannot safely convict.]—R. *v.* O'CONNELL, No. 6112b, *post*.

6049b. Failure to direct jury as to weight of evidence of identification.]—It is not essential to the sufficiency of the summing-up that the judge should state that the evidence of witnesses who have identified the deft. at an identification parade may possibly be of less weight by reason of their having previously picked out his photograph from amongst those of other persons.—R. *v.* HINDS (A. G.), [1932] 2 K. B. 644; 101 L. J. K. B. 762; 147 L. T. 501; 24 Cr. App. Rep. 6; 29 Cox, C. C. 547, C. C. A.

6054a. Direction that complaint might be corroboration—Proviso to Criminal Appeal Act, 1907 (c. 23), s. 4 (1), applied.]—It is a misdirection to refer to a complaint by a person against whom a sexual offence is alleged to have been committed as corroboration of complainant's testimony. Such a complaint may be evidence of the consistency of complainant's story, but is not to be treated as corroboration in the strict sense of that term.

Proviso to Criminal Appeal Act, 1907 (c. 23), s. 4 (1), applied on the ground that in the circumstances of the particular case there had been "no substantial miscarriage of justice."—R. *v.* COULTHREAD (1933), 148 L. T. 480; 97 J. P. 95; 31 L. G. R. 138; 24 Cro. App. Rep. 44; 29 Cox, C. C. 598, C. C. A.

6056. *Add. Annotations :*—**Consd.** R. *v.* Evans (1924), 88 J. P. 196. **Apld.** R. *v.* Beebe (1925), 133 L. T. 736. **Consd.** Statham *v.* Statham, [1929] P. 131. **Apld.** R. *v.* Charavanmuttu (1930), 22 Cr. App. Rep. 1. **Consd.** R. *v.* Davies (1930), 22 Cr. App. Rep. 33; R. *v.* Lewis, [1937] 4 All E. R. 360. **Refd.** R. *v.* Ross (1924), 18 Cr. App. Rep. 141; R. *v.* Harris, [1927] 2 K. B. 587; R. *v.* Manser (1934), 25 Cr. App. Rep. 18.

6063. *Add. Annotation :*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

6064. *Add. Annotations :*—**Consd.** Statham *v.* Statham, [1929] P. 131. **Refd.** R. *v.* Whitehead, [1929] 1 K. B. 99.

PART XIV. SECT. 7, SUB-SECT. 8.—A.

r i. —— *Criminal Code, s.* 1002.]—Deft. was convicted of having had carnal knowledge of a feeble-minded girl :—*Held :* as there was no evidence in corroboration, the conviction must be quashed.—R. *v.* SIMMS (1924), 43 Can. Crim. Cas. 28; 57 N. S. R. 476.—**CAN.**

r ii. —— ——.]—HUBIN *v.* R., [1927] 4 D. L. R. 760; [1927] S. C. R. 442; 48 Can. Crim. Cas. 172.—**CAN.**

r iii. —— ——.]—R. *v.* HAMLIN (Alta.), [1930] 1 D. L. R. 497; 24 Alta. L. R. 296; [1929] 3 W. W. R. 258; 52 Can. Crim. Cas. 149.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 8.—B.

6064 vii. —— ——.]—The rule as to the danger of convicting upon the uncorroborated testimony of an accomplice is not a strict rule of law, but merely one of practical wisdom & carefulness, & the omission of the trial judge to give the customary warning, even if technically an error, does not constitute such a miscarriage of justice or substantial wrong as to vitiate the conviction.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

6064 viii. —— ——.]—A charge to the jury, that, while it was dangerous to convict on the evidence of an accomplice without corroboration, yet in this case it was the right & duty of the jury, if on the accomplice's evidence they felt no reasonable doubt of the guilt of accused, to convict him :—*Held :* a misdirection.

If a judge discusses the evidence of an accomplice & points out its consistency, he should explain to the jury the considerations which prompt an accomplice to testify against accused.—R. *v.* SLEE, [1926] 1 D. L. R. 729; 45 Can. Crim. Cas. 190; 58 O. L. R. 313.—**CAN.**

6064 ix. —— ——.]—When the evidence against a prisoner is the uncorroborated evidence of an accomplice, it is wrong for the judge to tell the jury that, if they are quite certain that the accomplice is telling the truth, they have not only the right to convict prisoner but that it is their duty to do so. In such a case, the judge should follow the rule laid down in *R.* v. *Baskerville*, No. 6056; the judge should warn the jury of the danger of convicting prisoner on the uncorroborated-testimony of an accomplice &, in his discretion, may advise them not to convict upon such evidence, but he should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence.—GOUIN *v.* R., [1926] S. C. R. 539.—**CAN.**

6064 x. —— ——.]—Where the evidence of accomplices is uncorroborated, juries should be instructed as nearly as possible in the language in which the rule of practice laid down in *Gouin* v. *R.*, No. 6064 ix ,*ante*, is expressed.

A charge which in effect puts the evidence of an accomplice on the same footing as that of an ordinary witness amounts to a miscarriage of justice.—R. *v.* BACHIU (Sask.), [1927] 3 D. L. R. 1179; [1927] 2 W. W. R. 171; 48 Can. Crim. Cas. 53.—**CAN.**

6064 xi. —— ——.]—*Held :* it was the first duty of the trial judge to have instructed the jury as to what in law would constitute a man an accomplice; he should then have proceeded to direct their attention particularly to any facts in evidence which would serve to indicate B.'s complicity in the conspiracy at any stage thereof, & to submit to them the issue as to whether what he was proved to have done made him, having regard to the direction in law already given, an accomplice; he should then have instructed the jury that, if they concluded that the witness was, at any stage of the proceedings, an accomplice in the crime charged against the accused, there would be danger in convicting them of that crime upon his evidence standing alone and uncorroborated, although the law did not preclude their doing so.—VIGEANT *v.* R., [1930] S. C. R. 396; 54 Can. C. C. 301; [1931] 3 D. L. R. 512.—**CAN.**

6064 xii. —— ——.]—R. *v.* GAUM (1930), 54 Can. C. C. 166.—**CAN.**

6064 xiii. —— ——.]—Where the judge's charge to the jury, after warning them that it was unsafe to convict on the evidence of an accomplice without corroboration, proceeded to give reasons why the evidence of the accomplice in the case before them should be accepted, & impliedly invited them to act on that evidence if they believed it, the warning was held defective; & the conviction quashed & a new trial ordered.—R. *v.* SEGAL, [1930] 1 W. W. R. 372; 3 D. L. R. 301; 53 Can. C. C. 192; 38 Man. L. R. 474.—**CAN.**

6064 xiv. —— ——.]—BOULIANNE *v.* R., [1931] S. C. R. 621; [1932] 1 D. L. R. 285; 56 Can. C. C. 338.—**CAN.**

6064 xv. —— —— *Question whether witness accomplice left to jury.*]—R. *v.* YAUM, [1930] 3 M. P. R. 464.—**CAN.**

6064 xvi. —— ——.]—*Held :* certain unsatisfactory comments in the judge's warning to the jury as to the danger of convicting on the evidence of an accomplice unless corroborated were not so material as to cause a substantial miscarriage of justice. The fact, also, that after directing their attention to such danger he proceeded to tell them where such corroboration might be found was not objectionable, for in doing so he was only performing his duty.—R. *v.* TODGER, [1932] 1 W. W. R. 328.—**CAN.**

6064 xvii. —— ——.]—It is a misdirection on a material matter for a judge to direct the jury that if he believes the uncorroborated evidence of accomplices it must or should or ought to convict.—R. *v.* HAYMAN, [1932] 1 W. W. R. 86; 2 D. L. R. 525; 40 Man. L. R. 204; 57 C. C. C. 189.—**CAN.**

6064 xviii. —— ——.]—The jury should be told that it is within their legal province to convict, but should be warned that it is dangerous to convict, & may be advised not to convict, on the uncorroborated evidence of an accomplice.—PITRE *v.* R., [1933] S. C. R. 69; 1 D. L. R. 417; 59 C. C. C. 148.—**CAN.**

6064 xix. —— ——.]—An appeal on the ground that the judge failed to warn the jury of the danger of relying on accomplice's evidence will be dismissed if the judge did not believe him to be an accomplice.—R. *v.* WILLIAMS, [1935] 2 D. L. R. 651; 63 Can. C. C. 216; 49 B. C. R. 379.—**CAN.**

6064 xx. —— ——.]—CANNING *v.*

6066a. ——— **Direction that corroboration exists not warranted on facts.**]—(1) It is a ground for quashing a conviction, if the jury is directed that there is corroboration of an accomplice's evidence, when the ct. thinks there is none.

(2) In dealing with the defence of an *alibi*, the ct. of trial ought to direct the jury on any part of the period of time which is relevant.

(3) Without saying that in every case it is proper to sentence an accomplice pleading guilty before he gives evidence for the Crown, it is obvious that where he is not sentenced it is more than ever necessary to warn the jury about accepting his testimony, because his object is to mitigate his own punishment (AVORY, J.).—R. *v.* SMITH (1924), 18 Cr. App. Rep. 19, C. C. A.

6066b. —— ——.]—Where the evidence against a prisoner is the uncorroborated evidence of an accomplice the judge must warn the jury that, while they may convict on such evidence, it is always, not generally, dangerous to do so. It is wrong for the judge to tell the jury that if they are quite certain in such a case that the accomplice is telling the truth they ought to act on it.—R. *v.* BEEBE (1925), 133 L. T. 736; 89 J. P. 175; 41 T. L. R. 635; 28 Cox, C. C. 47; 19 Cr. App. Rep. 22, C. C. A.

Annotation:—**Reld.** R. *v.* Harris, [1927] 2 K. B. 587.

6067a. —— —— ——.]—On a charge of indecent assault, when the corroboration of the prosecutrix is very slight, the desirability of effective corroboration should be made clear to the jury.—R. *v.* KILLICK (1924), 18 Cr. App. Rep. 120, C. C. A.

6067b. —— —— ——.]—The correct direction on a charge of indecent assault is that it is not safe to convict on the uncorroborated evidence of prosecutrix, but that the jury, if they are satisfied of her veracity, may, after paying attention to that warning, nevertheless convict.—R. *v.* JONES (1925), 19 Cr. App. Rep. 40, C. C. A.

Annotation:—**Consd.** R. *v.* Freebody (1935), 25 Cr. App. Rep. 69.

6067c. —— —— ——.]—R. *v.* SOUTHERN, No. 3156f, *ante*.

6067d. —— —— ——.]—On a charge of indecent assault or any sexual offence, even though the person against whom the offence is alleged to have been committed be an adult & not a child of tender years, the jury should be directed that it is not safe to convict upon the uncorroborated testimony of the complainant, but that, if they are satisfied of the truth of the complainant's evidence, they may, after paying attention to that warning, nevertheless convict.—R. *v.* FREEBODY (1935), 25 Cr. App. Rep. 69, C. C. A.

6068a. —— —— —— ——.]—When consent is the defence to a charge of rape, the jury must be warned of the absence of corroboration of the female's story.—R. *v.* SALMAN (1924), 18 Cr. App. Rep. 50, C. C. A.

6068b. —— —— —— ——.]—R. *v.* DRAPER (1929), 21 Cr. App. Rep. 147, C. C. A.

6069a. —— —— —— ——.]—When the only witness for the Crown on a charge of larceny is the receiver of the stolen property, the jury should be warned that they may require corroboration.—R. *v.* DIXON (1925), 19 Cr. App. Rep. 36, C. C. A.

6072a. —— ——.]—Summing up must be emphatic on the danger of accepting the uncorroborated evidence of accomplices & care must be taken that suggested corroboration is in fact adequate.—R. *v.* CLIVE (1930), 22 Cr. App. Rep. 19, C. C. A.

6072b. —— ——.]—R. *v.* CHARAVANMUTTU, No. 4943a, *ante*.

6072c. —— —— **Inadmissible evidence referred to as corroboration.**]—M., A. & R. were jointly charged with murder. The only direct evidence against A. & R. was that of their accomplice M., & the judge properly warned the jury that they should look for corroboration of his evidence. There were certain matters, which the judge enumerated in his summing-up, capable of being regarded as corroboration, but the total effect of those matters taken together was slight. The judge then referred to a further matter as amounting to possible corroboration of M.'s evidence, namely, a conversation between M. & one of the Crown witnesses after the commission of the crime:—*Held:* as this matter was not even admissible evidence against A. & R., in view of the circumstances of the case, the convictions of A. & R. must be quashed.—R. *v.* MARTIN, R. *v.* ANSELL, R. *v.* ROSS (1934), 24 Cr. App. Rep. 177, C. C. A.

6072d. —— **Evidence of young children.**]—R. *v.* MARSHALL, No. 3136a, *ante*.

6073a. —— **Similar offences on different dates.**]—R. *v.* CHARAVANMUTTU, No. 4943a, *ante*.

R., [1937] S. C. R. 421; 3 D. L. R. 375; 68 Can. C. C. 321.— **CAN.**

6064 xxi. —— ——.]—R. *v.* BURNS, [1938] 1 W. W. R. 490.—**CAN.**

See, also, cases in Part XII., Sect. 13, Sub-sect. 4, E., *ante*.

6067 iii. —— —— ——.]—A verdict of indecent assault founded solely on the testimony of prosecutrix not allowed to stand, where the judge did not warn the jury properly with respect to corroboration.—R. *v.* ELLERTON (Sask.), [1927] 4 D. L. R. 1126; [1927] 3 W. W. R. 564; 49 Can. Crim. Cas. 94.—**CAN.**

6067 iv. —— —— ——.]—On the trial of a charge for indecent assault on a girl of under sixteen years, the trial judge, in the course of warning the jury of the danger of convicting on the uncorroborated testimony of the girl, said: "In such a case, it is usual, in fact, necessary, to caution the jury against the danger of acting upon the uncorroborated testimony of the girl," &, also, "unless she is supported by independent testimony which implicates the accused, her evidence is not an entirely safe or satisfactory foundation for a verdict against him":—*Held:* this direction was sufficient.—R. *v.* KENNEWELL, [1927] S. A. S. R. 287.—**AUS.**

6067 v. —— ——.]—R. *v.* MUDGE (Sask.) (1929), 52 Can. Crim. Cas. 402.—**CAN.**

6067 vi. —— —— ——.]—On the trial of a charge of rape there is a misdirection where the judge, although he warns the jury that it is unsafe to convict on the uncorroborated evidence of the prosecutrix, goes on to say in effect that corroboration is necessary only if they are not satisfied from the girl's story alone that she is telling the truth.—R. *v.* MUDGE, [1930] 1 W. W. R. 193; 1 D. L. R. 617; 52 Can. C. C. 402; 24 S. L. R. 257.—**CAN.**

6068 i. —— —— —— *Consenting party.*]—Upon a trial for rape, the vital issue was consent or non-consent, & the only evidence of non-consent was that of prosecutrix, so that her evidence on the vital issue was uncorroborated:—*Held:* while the jury might have convicted upon the uncorroborated evidence of prosecutrix, it was the duty of the trial judge to direct their attention to the absence of corroboration, the danger of convicting on her uncorroborated testimony, &, therefore, the necessity of their exercising great care in determining the weight to be attached to her evidence. His not having done so was non-direction, equivalent to misdirection, & constituted a miscarriage of justice within sect. 1014 of the Criminal Code.—R. *v.* AUGER, [1929] 4 D. L. R. 864; 52 Can. Crim. Cas. 2; 64 O. L. R. 181.—**CAN.**

6076. *Add. Annotations :*—**Apld.** R. *v.* Gregg (1932), 102 L. J. K. B. 126. **Refd.** R. *v.* Southern (1929), 142 L. T. 383.

6078. *Add. Annotations :*—**Refd.** R. *v.* Southern (1929), 142 L. T. 383 ; R. *v.* Gregg (1932), 102 L. J. K. B. 126.

6078a. —— —— ——.]—Even though a summing-up omits express direction on the relation of accomplices to corroboration of their evidence, the ct. may, if it is satisfied that throughout the trial it has been made clear that the issue is whether the testimony of accomplices is adequately confirmed by that of other witnesses, decline to quash a conviction.—R. *v.* DAVIES (1930), 22 Cr. App. Rep. 33, C. C. A.

Annotation :—**Consd.** R. *v.* Lewis, [1937] 4 All E. R. 360.

6078b. —— —— ——.]—R. *v.* MEDCRAFT (1931), 23 Cr. App. Rep. 116, C. C. A.

6078c. —— —— ——.]—Applt. was convicted of indecent assault on a girl aged seven, whose testimony was received without her being sworn. The jury were not warned in the summing-up that it was a case where corroboration of the child's evidence was required by statute, or that it was dangerous to convict unless her evidence was corroborated. There was, in fact, corroboration of the child's evidence consisting, for the most part, in the evidence of another girl aged nine, who had witnessed the offence & who had given evidence on oath :—*Held :* despite the defectiveness of the summing-up, in the circumstances of the case no injustice had been caused, & the conviction must be affirmed.—R. *v.* GREGG (1932), 102 L. J. K. B. 126 ; 96 J. P. 511 ; 24 Cr. App. Rep. 13, C. C. A.

6078d. —— **Corroboration required by rule of practice only.**]—R. *v.* SOUTHERN, No. 3156f, *ante.*

6088a. Offence under Road Traffic Act, 1930 (c. 43), ss. 11, 15—Verdict of guilty of being under influence of drink—Ambiguous verdict.]—R. *v.* HAWKES (1931), 75 Sol. Jo. 247 ; 22 Cr. App. Rep. 172, C. C. A.

6090. *Add. Annotations :*—**Folld.** R. *v.* Dennis, R. *v.* Parker, [1924] 1 K B. 867. **Apld.** R. *v.* Williams (1925), 19 Cr. App. Rep. 67 ; R. *v.* McDonnell (1928), 20 Cr. App. Rep. 163 ; **Refd.** R. *v.* Gee, R. *v.* Bibby, R. *v.* Dunscombe, [1936] 2 All E. R. 89.

6094. *Add. Annotations :*—**Folld.** R. *v.* Hussey (1924), 18 Cr. App. Rep. 121 ; R. *v.* Hancock (1931), 145 L. T. 168.

6097a. —— **Necessity for proof.**]—When no reason is shown to the ct. to believe that a plea of guilty has been improperly accepted, it will decline to interfere.—R. *v.* CLARK (1929), 21 Cr. App. Rep. 81, C. C. A.

6100. *Add. Annotation :*—**Consd.** Ras Behari Lal *v.* King-Emperor (1933), 77 Sol. Jo. 571.

6106a. Disagreement of first jury—Second jury hearing way in which first divided.]—(1) If a jury, unable to agree, has announced in open ct., & therefore in presence of the jurors in waiting, the numbers of their members for & against a conviction, it is wrong to proceed with the second trial before such jurors. Even if there is no other jury available the Bench ought not to threaten to deprive accused of bail, unless he will consent to be tried by those jurors.

(2) Inadmissible evidence of accused's bad character volunteered by a witness may invalidate a conviction.—R. *v.* FLEMING (1929), 21 Cr. App. Rep. 149, C. C. A.

6110. *Add. Annotation :*—**Distd.** R. *v.* Villars (1927), 20 Cr. App. Rep. 150.

6111. *Add. Annotation :*—**Folld.** R. *v.* Villars (1927), 20 Cr. App. Rep. 150.

6112a. Improper question put to prisoner—Prisoner undefended.]—R. *v.* WEEKS (1928), 20 Cr. App. Rep. 188, C. C. A.

PART XIV. SECT. 7, SUB-SECT. 10.

a (p. 538) **l.** *One juryman not sworn.*]—Where one of the additional panel of jurymen summoned, who was present & answered to his name when first called by the clerk, was not called to be sworn by the clerk who announced that the panel was exhausted, which made it necessary to secure an additional juryman from among those who had stood aside :—*Held :* an objection could not be allowed, as no substantial wrong or miscarriage of justice had occurred.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413 : 41 Can. Crim. Cas. 249.—**CAN.**

f (p. 540) **l.** ——.]—A new trial was refused where the informant had communication with the jury during a view of the *locus*, but there was no evidence that the communication was improper or in any way influenced the jury.—R. *v.* WARNER (1933), 7 M. P. R. 174 ; 61 C. C. C. 36.—**CAN.**

k (p. 540) **l.** —— *Conversation with Crown witness.*]—R. *v.* MINNESS & MORAN, [1933] 1 W. W. R. 657 ; [1934] 1 W. W. R. 21 ; 59 C. C. C. 336 ; 61 C. C. C. 169 ; 47 B. C. R. 321.—**CAN.**

r (p. 541) **l.** *Mental incompetence of juror.*]—Apart altogether from the Jury Act it is a fundamental principle of law that where an accused is tried by a jury all the members thereof must be qualified to act. On an appeal from a conviction for murder on the ground that one of the members of the jury was disqualified from acting as such owing to mental infirmity & impairment :—*Held :* the juror in question was afflicted with mental infirmity incompatible with the discharge of duties of a juror & therefore there had been a mistrial.—R. *v.* WESTGATE, [1929] 1 D. L. R. 699 ; 1 W. W. R. 49 ; 51 Can. Crim. Cas. 52 ; 38 Man. L. R. 34.—**CAN.**

k (p. 542) **l.** ——.]—A comment by a judge on the effect of similar prosecutions may be ground for a new trial where the evidence is purely circumstantial.—R. *v.* RICHARDS, [1938] 1 D. L. R. 362 ; 12 M. P. R. 331 ; 69 Can. C. C. 289.—**CAN.**

sf. *Policeman informant making arrest, conducting prosecution & giving evidence—Failure to employ counsel or attorney.*]—The fact that, in a summary conviction proceeding, the informant, who was the policeman in charge of the case, acted as the prosecutor at the hearing, & was also a witness thereon, & had sworn to & executed the search warrant in person & arrested the accused held not a ground for setting aside the conviction.—R. *v.* CRUIT, [1928] 4 D. L. R. 581 ; [1928] 2 W. W. R. 377 ; 50 Can. Crim. Cas. 143 ; 22 Sask. L. R. 525.—**CAN.**

sg. *Failure to call witness.*]—The error of counsel in omitting to call witnesses is no ground for setting aside a verdict or for granting any relief.—R. *v.* FONTAINE & LACASSE (1930), 53 Can. C. C. 164 ; 65 Q. L. R. 173.—**CAN.**

sj. *Disqualification of juror.*]—The conviction of resp. was set aside by the appellate ct. on the ground that one of the jurors at the trial was disqualified to act as such for the reason that he had been convicted of an indictable offence within sect. 6c of Jury Act, R. S. B. C., 1924 :—*Held :* the fact of a defect of that kind in the constitution of the petit jury constituted no ground for an appeal to the appellate ct. in view of the provisions of sect. 1011 Cr. C., the more so as no objection to it had been taken at the trial.—R. *v.* STEWART, [1932] S. C. R. 612 ; 4 D. L. R. 337.—**CAN.**

sl. *Plea of guilty on advice of stranger.*]—The unauthorised advice of a stranger to the accused to plead guilty is no ground for setting aside the conviction.—GUERIN *v.* R. (1933), 60 C. C. C. 350.—**CAN.**

so. *Comment on failure of accused to give evidence—What amounts to.*]—R. *v.* SANFORD (1935), 9 M. P. R. 526.—**CAN.**

sp. —— ——.]—R. *v.* TENEYCK (1937), 68 Can. C. C. 287.—**CAN.**

sq. *Extent of powers of Court of Appeal.*]—The principle applied in *R. v. Steinberg*, [1931] O. R. 222, that a Ct. of Appeal, in considering whether notwithstanding faults in the trial it ought to pass them over under sect. 1014 (2) of the Criminal Code, can take notice of the fact that the accused did not testify, should be confined to cases of faults that do not go to the root of the matter.—R. *v.* DROUX, [1936] 1 W. W. R. 587, 650 ; 2 D. L. R. 780 ; 65 Can. C. C. 221 ; 44 Man. L. R. 75 ; 5 F. L. J. (Can.) 307.—**CAN.**

6112b. Prisoner giving evidence—Unfair treatment.]—When the ct. thinks that at the close of the case for the prosecution the judge, though he cannot hold that there is no case to go to the jury, might well suggest to them that in view of the evidence of the principal witness they could not safely convict & fails to lay sufficient stress on the need of corroboration, it may quash a conviction, as not being supported by the evidence & a miscarriage of justice within sect. 4, sub-sect. (1) of the Criminal Appeal Act, 1907 (c. 23), s. 4 (1). The ct. disapproves of a deft.-witness in the box being treated by any one engaged in the case in such a way that he cannot give his evidence in his own way.—R. *v.* O'CONNELL (1931), 23 Cr. App. Rep. 8, C. C. A.

6114a. Questions by judge implying belief in guilt.]—R. *v.* RABBITT, No. 3151b, *ante*.

6122. *Add. Annotation:*—**Apld.** R. *v.* Wright (1934), 78 Sol. Jo. 879.

6136. *Add. Annotation:*—**Refd.** R. *v.* Morter (1927), 20 Cr. App. Rep. 53.

6141a. ——.]—WOOLMINGTON *v.* PUBLIC PROSECUTIONS DIRECTOR, No. 4543a, *ante*.

6144a. Refusal to permit accomplice to be called in mitigation—Count against accomplice withdrawn.]—Proviso to Criminal Appeal Act, 1907, s. 4, applied despite a manifest error in procedure.—R. *v.* GASKELL (1929), 21 Cr. App. Rep. 83, C. C. A.

6144b. Omission to order production of police report.]—R. *v.* CLARKE, No. 4662a, *ante*.

6148a. Answer by witness implying previous conviction.]—A witness for the Crown, in the course of being examined-in-chief with regard to his identification of the prisoner, made an isolated statement to the effect that he had seen a photograph of him in the "rogues' gallery" at Scotland Yard. No further reference to this statement was made by counsel on either side or by the presiding judge:—*Held:* although such a statement would inevitably convey to the jury the suggestion that the prisoner had been previously convicted or was of bad character, in the circumstances of the case the proviso to sect. 4 of Criminal Appeal Act, 1907 (c. 23), should be applied & the conviction affirmed. Where by accident an isolated statement of this nature has been made by a witness, it may be the best course for the presiding judge to make no reference to the matter.—R. *v.* WRIGHT (1934), 78 Sol. Jo. 879; 25 Cr. App. Rep. 35, C. C. A.

6152. *Add. Citation:*—31 T. L. R. 401.

6169a. —— ——.]—R. *v.* BROMBILLA (1930), 22 Cr. App. Rep. 74, C. C. A.

6169b. —— ——.]—R. *v.* BISHOP (1930), 22 Cr. App. Rep. 136, C. C. A.

6169c. —— ——.]—R. *v.* CANHAM & CUSHING (1929), 21 Cr. App. Rep. 174, C. C. A.

6169d. —— ——.]—R. *v.* O'BRIEN (1930), 22 Cr. App. Rep. 20, C. C. A.

6169e. —— ——.]—R. *v.* BROWN (1931), 23 Cr. App. Rep. 48, C. C. A.

6169f. —— ——.]—The Ct. of Criminal Appeal does not make slight reductions of sentences. The ct. only interferes on matters of principle & on the ground of substantial miscarriages of justice.—R. *v.* DUNBAR (1928), 21 Cr. App. Rep. 19, C. C. A.

6169g. —— ——.]—R. *v.* BROOKS (1931), 22 Cr. App. Rep. 172, C. C. A.

6169h. —— ——.]—R. *v.* JONES (1931), 22 Cr. App. Rep. 165, C. C. A.

PART XIV. SECT. 7, SUB-SECT. 11.—D.

6115 vi. —— ——.]—R. *v.* DE BERTOLI, [1927] 3 D. L. R. 193; [1927] S. C. R. 454; 48 Can. Crim. Cas. 118.—**CAN.**

6115 vii. —— ——.]—BROOKS *v.* R., [1928] 1 D. L. R. 268; 48 Can. Crim. Cas. 333.—**CAN.**

6115 viii. —— ——.]—Conviction not disturbed for error in charge, no substantial wrong being done.—R. *v.* BRYSON, [1936] 4 D. L. R. 801; 67 Can. C. C. 115.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 11.—E.

q i. —— *After juryman called—By person on panel.*]—*Held:* a miscarriage of justice.—R. *v.* MCNAMARA, [1926] 4 D. L. R. 880; 46 Can. Crim. Cas. 230; 59 O. L. R. 342.—**CAN.**

s]. *Disqualification of juror.*]—*Held:* such disqualification did not cause a miscarriage of justice.—R. *v.* BOAK, [1925] 3 D. L. R. 887; [1925] S. C. R. 525; 44 Can. Crim. Cas. 218; *revsg.*, [1925] 2 D. L. R. 803; [1925] 2 W. W. R. 40; 43 Can. Crim. Cas. 402; 35 B. C. R. 256.—**CAN.**

sm. *Untrue statements by Crown counsel.*]—*Held:* in view of the general fairness of counsel's comments, it was impossible to believe that the jury were diverted by certain statements from the main points.—R. *v.* MERRITT (1934), 62 Can. C. C. 57.—**CAN.**

PART XIV. SECT. 8, SUB-SECT. 1.—A.

ak. *Jurisdiction of court.*]—R. *v.* FOX, R. *v.* SANSOME (1925), 44 Can. Crim. Cas. 262.—**CAN.**

h i. ——.]—No definite principle can be laid down upon which a ct. of appeal should proceed in dealing with appeals for the reduction of sentences on the ground of excessive severity; all the circumstances should be carefully taken into account in each instance & full consideration given to matters of mitigation.—R. *v.* FINLAY, [1924] 4 D. L. R. 829; 3 W. W. R. 427.—**CAN.**

h ii. ——.]—A sentence should be interfered with by a ct. of appeal only where the trial judge proceeded on some wrong principle or gave too great weight to particular circumstances; the fact that individual members of the ct. would have imposed a different sentence is not sufficient.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

h iii. ——.]—In considering the adequacy of a sentence, the ct. should be guided by the same considerations whether the appeal be taken for the reduction or increase of the sentence.—R. *v.* HICKS, [1925] 2 D. L. R. 1000; [1925] 1 W. W. R. 1155; 44 Can. Crim. Cas. 13; 19 Sask. L. R. 359.—**CAN.**

h iv. ——.]—DUSTOOR *v.* R. (1927), Q. R. 42 K. B. 520.—**CAN.**

h v. ——.]—Where prisoner was convicted of rape & sentenced to death:—*Held:* circumstances, such as low mentality & baneful environment, which were not brought to the attention of the judge, were sufficient to warrant a reduction of the penalty to twenty years' imprisonment & twenty lashes.—R. *v.* MCCATHERN, [1927] 2 D. L. R. 1142; 48 Can. Crim. Cas. 54; 60 O. L. R. 334.—**CAN.**

k i. —— *Abortion.*]—An appeal by an abortion-monger against a sentence of four years' imprisonment imposed on her on a conviction for abortion, dismissed.—R. *v.* PETCH, [1925] 4 D. L. R. 671; [1925] 3 W. W. R. 434; 35 Man. L. R. 299.—**CAN.**

k ii. ——.]—Deft. was convicted of breaking & entering with intent to commit an indictable offence. On appeal, there was sufficient evidence to support the conviction, & the trial judge having had the advantage of seeing prisoner & hearing his evidence, & no sufficient reason having been shown for reducing the sentence:—*Held:* the conviction be affirmed & deft.'s appeal dismissed.—R. *v.* JOHNSON (1927), 59 N. S. R. 385.—**CAN.**

sl. *Variation of sentence—Assistance given to police.*]—Where an accused, convicted on his own confession, has given assistance to the police by denouncing & giving evidence against a guilty receiver, although there is no evidence of restitution or repentance on the part of the prisoner, the sentence may be reduced.—R. *v.* PAUL, [1928] S. A. S. R. 16.—**AUS.**

so. *Excessive sentence.*]—Appeal lies to the Ct. of King's Bench in Quebec, from an excessive sentence against a prisoner tried without his consent by a magistrate for theft.—AMPLEMAN *v.* COURT OF SESSIONS OF THE PEACE, [1935] 2 D. L. R. 774; 63 Can. C. C. 222.—**CAN.**

sr. *Jurisdiction to reduce sentence—No appeal against sentence.*]—The ct. may reduce sentence on appeal, although there is no appeal as to sentence.—R. *v.* MACKAY (1934), 62 Can. C. C. 188.—**CAN.**

6169j. —— ——.]—R. *v.* ADAMS (1931), 23 Cr. App. Rep. 51, C. C. A.

6169k. —— ——.]—R. *v.* BLAKE & HINES (1931), 22 Cr. App. Rep. 175, C. C. A.

6169l. —— ——.]—R. *v.* WILLIAMS (1930), 22 Cr. App. Rep. 137, C. C. A.

6169m. —— ——.]—R. *v.* SLENDER (1931), 23 Cr. App. Rep. 11, C. C. A.

6169n. —— ——.]—R. *v.* SHARP (1931), 23 Cr. App. Rep. 7, C. C. A.

6169o. —— —— **Subordinate acting under orders.**]—R. *v.* SPELLEN, No. 3156g, *ante*.

6169p. —— ——.]—R. *v.* MCGRATH (1932), 32 Cr. App. Rep. 176, C. C. A.

6169q. —— ——.]—R. *v.* CARR (1932), 23 Cr. App. Rep. 176, C. C. A.

6169r. —— ——.]—Reduction of deterrent sentence of unusual severity passed in view of the prevalence of a particular class of crime in the locality.—R. *v.* WITHERS (1935), 25 Cr. App. Rep. 53, C. C. A.

6177a. —— ——.]—A prisoner was convicted in Jan. 1926, of bigamy committed in 1920. He was already serving a sentence of six months' imprisonment passed in Dec. 1925, for three offences of false pretences committed in 1923. The judge took the view that as the bigamy & the false pretences arose out of the same circumstances there should be one sentence of twelve months' imprisonment to cover both offences, & accordingly sentenced the prisoner to six months' imprisonment, the term to commence at the expiration of the sentence already being served. Subsequently, however, in view of the provisions of Criminal Law Act, 1827 (c. 28), s. 10, the judge, doubting whether the bigamy, having been in fact committed at an earlier date, was a "subsequent offence" within the meaning of that section, altered the sentence to one of eleven months' imprisonment, the first five months to run concurrently with the existing sentence. The result was to lengthen the sentence originally intended by eight days. The prisoner appealed against the sentence:—*Held:* as the effect of the alteration of the sentence was inadvertently to compel the prisoner to serve eight days longer than the judge originally intended, the sentence ought to be reduced by that amount.—R. *v.* FIELDER (1926), 135 L. T. 64; 90 J. P. 96; 28 Cox, C. C. 186; 19 Cr. App. Rep. 87, C. C. A.

6178a. —— **Certificate of insanity after conviction.**]—R. *v.* KENNEALLY (1930), 22 Cr. App. Rep. 52, C. C. A.

6178b. —— **Adjournment of appeal—Accidental delay.**]—When an appeal has been adjourned through no fault of appellant the ct. may for that reason make a reduction in the sentence. —R. *v.* HILDEBRAND & HILDEBRAND (1930), 22 Cr. App. Rep. 79, C. C. A.

6178c. —— **Court in doubt as to facts.**]—R. *v.* SAUNDERS (1931), 22 Cr. App. Rep. 169, C. C. A.

6178d. —— **Other disciplinary action pending—Army deserter.**]—Sentence reduced in view of other disciplinary action.—R. *v.* SOANES (1931), Cr. App. Rep. 142, C. C. A.

6178e. —— **Principles upon which court acts.**]—R. *v.* BARKER (1937), 81 Sol. Jo. 719, C. C. A.

6181a. —— —— **Relative severity.**]—A sentence of three years' penal servitude is now to be regarded as more severe than one of two years' imprisonment with hard labour.—R. *v.* JONES (1932), 23 Cr. App. Rep. 208, C. C. A.

6183a. —— ——.]—The ct. will amend an incorrect record, though it may not vary the sentence.—R. *v.* SHARMAN (1925), 19 Cr. App. Rep. 43, C. C. A.

6186a. —— ——.]—R. *v.* PILLEY (1926), 19 Cr. App. Rep. 101, C. C. A.

6186b. —— ——.]—Rectification of sentence not warranted in law.—R. *v.* TREMAYNE (1932), 23 Cr. App. Rep. 191, C. C. A.

6187a. —— **Sentence illegal.**]—Sentence reduced in view of its illegality.—R. *v.* JACKSON (1926), 19 Cr. App. Rep. 159, C. C. A.

6187b. —— ——.]—R. *v.* IRVING (1927), 20 Cr. App. Rep. 131, C. C. A.

6187c. —— ——.]—R. *v.* MILLICHAMP (1929), 21 Cr. App. Rep. 106, C. C. A.

6187d. —— ——.]—R. *v.* DALE (OTHERWISE MANDERS) (1929), 21 Cr. App. Rep. 114, C. C. A.

PART XIV. SECT. 8, SUB-SECT. 1.—B.

6170 i. *Whether fresh sentence can be substituted—Plea of guilty.*]—On an appeal against sentence in a case wherein accused pleaded guilty the Ct. of Appeal is in as good a position as the trial judge to determine the sentence which should be imposed.—R. *v.* VINEGRATSKY (*alias* VINE), [1928] 3 D. L. R. 201; [1928] 1 W. W. R. 542; 49 Can. Crim. Cas. 298; 37 Man. L. R. 327.—**CAN.**

6170 ii. —— ——.]—R. *v.* ALTOMARE (B. C.), [1928] 3 W. W. R. 487.—**CAN.**

6172 i. *Variation of sentence—Increase of sentence.*]—The Ct. of Appeal is justified in increasing a sentence, if it clearly deems it justice to do so.—R. *v.* GASCO (1927), Q. R. 43 K. B. 116; 8 C. B. R. 291.—**CAN.**

6185 ii. —— ——.]—R. *v.* ROBINSON (1930), 53 Can. C. C. 173.—**CAN.**

n i. —— ——.]—Where an illegal punishment has been imposed, as imprisonment with hard labour where hard labour is not authorised for the offence in question, the ct. will not exercise its powers under Criminal Code, s. 1124, by striking out the unauthorised portion of the penalty in order to uphold the conviction after the illegal punishment has been suffered in whole or in part.—R. *v.* LOW QUONG, [1924] 3 D. L. R. 666; 2 W. W. R. 695; 33 B. C. R. 522.—**CAN.**

n ii. —— *Recommendation to mercy—Effect of misunderstood by trial judge.*]—R. *v.* WHITTAKER (1928), 28 S. R. N. S. W. 411; 45 N. S. W. W. N. 172; [1928] Argus L. R. 303.—**AUS.**

n iii. —— *Petition for leniency—Improperly received.*]—R. *v.* LIM GIM, [1928] 1 D. L. R. 1038; 49 Can. Crim. Cas. 255; 39 B. C. R. 457.—**CAN.**

n iv. ——.]—R. *v.* GASCO, [1928] 2 D. L. R. 751; 49 Can. Crim. Cas. 196; Q. R. 43 K. B. 116.—**CAN.**

n v. —— *Imprisonment substituted for fine—Fine inadequate.*]—R. *v.* SYDORIK & ZOWATSKI (Sask.), [1926] 3 W. W. R. 458.—**CAN.**

n vi. —— *Not after sentence partly served.*]—R. *v.* NORTHUP (N. S.) (1926), 46 Can. Crim. Cas. 74.—**CAN.**

n vii. —— *Imposed by mistake.*]—R. *v.* HALE (1926), 49 Can. Crim. Cas. 253.—**CAN.**

n viii. —— *Youth of prisoner—Previous good character.*]—R. *v.* BURNS (Sask.), [1929] 3 W. W. R. 675; 53 Can. C. C. 87.—**CAN.**

n ix. —— *Sentence inadequate.*]—R. *v.* BURNS [1931] 4 M. P. R. 85.—**CAN.**

sp. —— *Discretion of Court of Criminal Appeal.*]—The Ct. of Criminal Appeal, in the exercise of the powers vested in it by Criminal Appeal Act, 1912, s. 6 (3), has an unfettered judicial discretion to review sentences imposed upon convicted persons without the necessity of considering whether in imposing any sentence under review, the trial judge proceeded upon any wrong principle, or upon any misapprehension of the facts.—R. *v.* GOSPER (1928), 28 S. R. N. S. W. 568; 45 N. S. W. W. N. 165.—**AUS.**

sq. —— *Conviction for perjury.*]—R. *v.* ZIZU NATANSON (No. 2) (Sask.), [1927] 2 W. W. R. 154; 49 Can. Crim. Cas. 89.—**CAN.**

sr. *Reduction of sentence—Mitigating circumstances.*]—R. *v.* ERICKSON, [1931] 2 W. W. R. 710; 57 Can. C. C. 111.—**CAN.**

6199a. ——.]—R. *v.* CLUE (1928), 21 Cr. App. Rep. 68, C. C. A.

6203a. Previous conviction—Court reluctant to hear evidence of in justificaton of sentence—No previous conviction proved at trial.]—R. *v.* GANS (1928), 21 Cr. App. Rep. 1, C. C. A.

6203b. Youth & provocation.]—R. *v.* LINES (1929), 21 Cr. App. Rep. 175, C. C. A.

6209a. Offer of employment—By old employer.]—Sentence reduced.—R. *v.* JACKSON (1927), 20 Cr. App. Rep. 130, C. C. A.

6209b. *S. P.* R. *v.* USHER (1927), 20 Cr. App. Rep. 130, C. C. A.

6209c. Inaccurate statements as to previous record.]—The ct. will revise a sentence when after conviction or plea inaccurate statements by the police about prisoner's record may have influenced that sentence.—R. *v.* BOLTOLPH (1928), 21 Cr. App. Rep. 37, C. C. A.

6209d. Several charges for same offence.]—R. *v.* KENNY (1929), 21 Cr. App. Rep. 78, C. C. A.

6209e. Improper discrimination between co-defendants.]—R. *v.* LEAF (1931), 22 Cr. App. Rep. 171, C. C. A.

6209f. Delay between conviction & appeal.]—When there has been an unusually long interval between the setting down & the hearing of an appeal the ct. may take it into consideration for the purpose of sentence.—R. *v.* TURNER (1932), 23 Cr. App. Rep. 175, C. C. A.

6215a. —— ——.]—R. *v.* READE (1927), 20 Cr. App. Rep. 60, C. C. A.

6215b. —— ——.]—R. *v.* MARTIN (1928), 20 Cr. App. Rep. 187, C. C. A.

6215c. —— ——.]—Increase of sentence to penal servitude in a grave case of uttering a letter demanding money with menaces.—R. *v.* HARRIS (1937), 26 Cr. App. Rep. 22, C. C. A.

6219a. —— ——.]—R. *v.* LLOYD (1927), 20 Cr. App. Rep. 139, C. C. A.

6222a. Full offence—To attempt—Incest.]—R. *v.* KILBRIDE (1931), 23 Cr. App. Rep. 12, C. C. A.

6228a. Attempted larceny—To attempt to obtain by false pretences.]—On an indictment for attempted larceny the ct. has no power to substitute a conviction for an attempt to obtain by false pretences.—R. *v.* GALLAGHER (OTHERWISE HEMINGWAY) (1929), 21 Cr. App. Rep. 172, C. C. A.

6230a. Housebreaking—To receiving stolen property.]—(1) Evidence improperly admitted at the trial may be a ground for quashing a conviction.

(2) On an indictment charging housebreaking, & knowingly receiving stolen property, if the latter count was not effective, the ct., when quashing the conviction in the former, will not substitute a verdict for receiving, as applt. was not, in fact, called upon to explain his possession.—R. *v.* RICHARDS (1924), 18 Cr. App. Rep. 144, C. C. A.

6230b. Breaking, entering & stealing—To breaking & entering with intent to steal.]—When on an indictment for breaking & larceny there is no evidence of the latter, the jury must be directed so to find.—R. *v.* CROSS (1931), 22 Cr. App. Rep. 192, C. C. A.

PART XIV. SECT. 8, SUB-SECT. 1.—C.

6202 i. *Prisoner's state of health.*]—While a convict's physical state may be taken into consideration in passing sentence, yet changes in his health thereafter more properly afford ground for an application for the clemency of the Crown than for an appeal against the sentence.—R. *v.* ZIMMERMAN, [1926] 2 W. W. R. 882; 46 Can. Crim. Cas. 78; 37 B. C. R. 277.—**CAN.**

PART XIV. SECT. 9.

6222 i. *Carnal knowledge—To indecent assault.*]—R. *v.* GIRONE (1925), 34 B. C. R. 554.—**CAN.**

6225 i. *Obtaining by false pretences—To attempting to obtain.*]—Where a party has been convicted of obtaining goods by false pretences, & on the indictment the jury could have found him guilty of some other offence, *e.g.* attempting to obtain, & it clearly appears by the jury's finding that they must have been satisfied of facts which proved him guilty of attempting:—*Held:* a ct. of appeal, instead of allowing or dismissing the appeal, may substitute a verdict of guilty of attempting to obtain.—R. *v.* MCMANUS, [1924] 3 D. L. R. 297; 42 Can. Crim. Cas. 248; 51 N. B. R. 255.—**CAN.**

6a. *Breaking & entering dwelling-house by day—To stealing in dwelling-house.*]—R. *v.* SAM CHIN, [1926] 2 D. L. R. 287; 45 Can. Crim. Cas. 291; 36 B. C. R. 397.—**CAN.**

6b. *Smuggling—Not to attempting to smuggle—Latter offence only triable summarily.*]—R. *v.* JORES (N. S.), [1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—**CAN.**

6c. *Wounding with intent to do bodily harm—To common assault.*]—R. *v.* LEE FOON, [1928] 1 W. W. R. 747; 49 Can. Crim. Cas. 233; 39 B. C. R. 298.—**CAN.**

PART XIV. SECT. 10.

aa i. —— —— *Fresh evidence available not given at trial.*]—R. *v.* MCDONALD (N. S.) (1927), 49 Can. Crim. Cas. 35.—**CAN.**

aa ii. —— —— —— *Raising doubt as to correctness of verdict.*]—R. *v.* HASKINS (Ont.), [1929] 1 D. L. R. 282; 50 Can. Crim. Cas. 412.—**CAN.**

ee i. —— *Insanity—Plea not raised at trial.*]—R. *v.* SLOANE, [1930] 4 D. L. R. 129; 53 Can. C. C. 342.—**CAN.**

ee ii. —— *No objection by counsel at trial.*]—A new trial may be ordered although no objection to the judge's charge was taken by counsel at the trial.—R. *v.* MACTEMPL (FRANK), [1935] 3 D. L. R. 442; 64 Can. C. C. 18.—**CAN.**

ee iii. —— *After sentence served.*]—One who has served his sentence stands in the position of one pardoned, & cannot be retried, but he may waive this right & obtain a new trial.—R. *v.* JARVIS, SR., [1937] 3 D. L. R. 29; 68 Can. C. C. 188.—**CAN.**

ef. —— *Misleading statements in summing up.*]—*Held:* as there was a probability that some statements in the summing up had misled the jury, a miscarriage of justice had occurred; & a new trial was ordered.—R. *v.* WILLIAMS, R. *v.* MCLAUGHLIN, [1928] St. R. Qd. 133; 22 Q. J. P. 53.—**AUS.**

eg. —— *Failure to charge jury as to need for corroboration.*]—R. *v.* GOODFELLOW (N. B.), [1928] 2 D. L. R. 598; 49 Can. Crim. Cas. 268.—**CAN.**

eh. —— *Admission of depositions.*]—A new trial may be directed under Criminal Code, s. 1014 (3) (*b*), on the ground that it was not proved that certain of the conditions precedent prescribed by s. 999 for the admission of depositions had been fulfilled, & one, at least, of the depositions might have turned the scale of the jury's verdict against the accused.—R. *v.* MORELLE, [1928] 1 W. W. R. 68; 49 Can. Crim. Cas. 15; 39 B. C. R. 140.—**CAN.**

ej. —— *Statement by prisoner—Admission of erroneous translation.*]—A written exculpatory statement made by the accused in a foreign language while he was in custody & handed by him to the constable in whose custody he was, was received as evidence & was given to the jury & referred to by the judge in his charge. On appeal from the conviction it was shown that the translation admitted at the trial was erroneous in certain respects alleged to be prejudicial to the accused:—*Held:* since in so far as the translation was incorrect it undoubtedly gave rise to an inference prejudicial to the accused it had resulted in a miscarriage of justice, &, therefore, a new trial must be directed.—R. *v.* FREDERICK, [1931] 3 W. W. R. 747; 44 B. C. R. 547; 57 C. C. C. 340.—**CAN.**

ek. *Duty of court on trial de novo—To give weight to findings of court below.*]—R. *v.* AULENBACH, [1930] 1 D. L. R. 865; 52 Can. C. C. 374; 1 M. P. R. 129.—**CAN.**

el. *Difference between trial & trial de novo.*]—R. *v.* RICE, [1930] 3 D. L. R. 911; 53 Can. C. C. 322.—**CAN.**

em. *Majority in favour of new trial—On different grounds—Effect.*]—The fact that two of the majority (three) of the ct. who held that there should be a new trial gave different grounds for their conclusion that there had been a miscarriage of justice did not prevent the case being one within sect. 1014 (*c*) of the Criminal Code. The new trial was, therefore, properly ordered.—R. *v.* GEORGE (NO. 2), [1935] 2 W. W. R. 657; 2 D. L. R. 765; 63 Can. C. C. 304; 49 B. C. R. 393; 5 F. L. J. (Can.) 67.—**CAN.**

6234a. —— —— **Exclusion of women from jury.** —The discretion which a judge at a trial has of excluding women from a jury must be exercised judicially, & unless it is shown that it has not been so exercised the ct. will not order a *venire de novo*.—R. *v.* VAQUIER (1924), 18 Cr. App. Rep. 112, C. C. A.

6234b. —— —— **Denial of right of challenge.**]—If deft. is wrongfully denied his right to challenge, the ct. will award a *venire de novo*. —R. *v.* WILLIAMS (1925), 19 Cr. App. Rep. 67, C. C. A.

6237a. —— ——.]—R. *v.* LLOYD, No. 2567a, *ante*.

6237b. —— ——.]—*Venire de novo* awarded in the case of a deft. whose plea of guilty had possibly been misunderstood.—R. *v.* HUSSEY (1924), 18 Cr. App. Rep. 121, C. C. A.

Annotation :—**Folld.** R. *v.* Hancock (1931), 145 L. T. 168.

6237c. —— ——.]—R. *v.* HANCOCK, No. 3287a, *ante*.

6238a. —— **Trial of two indictments at same time.**]—R. *v.* WILDE, No. 2365c, *ante*.

6249a. —— —— **Procedure.**]—R. *v.* KNIGHTON (1927), 20 Cr. App. Rep. 45, C. C. A.

6249b. —— —— **Fresh evidence.**]—R. *v.* FRATSON (1930), 22 Cr. App. Rep. 29, C. C. A.

6257. For "R. *v.* BEAUCHAMP, No. 6027, *ante*," read :—

In the event of a discrepancy between the judge's notes & those of the shorthand reporter, the former will generally be preferred. —R. *v.* BEAUCHAMP (1909), 2 Cr. App. Rep. 40, C. C. A.

6261a. —— —— **Plea in one court & trial in another.**]—Where a prisoner's plea is taken in one ct., & the trial takes place in another ct., the transcript of the shorthand note ought to cover the whole of the proceedings from beginning to end.—R. *v.* STRICKSON (1936), 25 Cr. App. Rep. 206, C. C. A.

6261b. —— **Written police report.**]—When at any trial a written police report of the prisoner's record is handed to the presiding judge by a police witness, a copy of the report ought to be handed to the shorthand writer for incorporation in the shorthand note of the case.—R. *v.* MINIGHAN (1935), 25 Cr. App. Rep. 108, C. C. A.

6263. *Add. Annotation* :—**Reld.** R. *v.* Harris, [1927] 2 K. B. 587.

6271. Before this case insert "*See, also*, CROWN PRACTICE, No. 797a."

Add. Annotations :—**Folld.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710. **Reld.** *Re* Carroll (1930), 100 L. J. K. B. 62.

6273. *Add. Annotation* :—**Reld.** *Re* Carroll, [1931] 1 K. B. 104.

6279. *Citations* :—Delete [1892] 1 Q. B. 104.

6284. *Add. Annotation* :—**Reld.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925). 133 L. T. 710.

6293a. Order to repair highway—Highway Act, 1862 (c. 61), s. 18.]—*Held* : not a judgment in a "criminal cause or matter."—LOUGHBOROUGH HIGHWAY BOARD *v.* CURZON (1886), 17 Q. B. D. 344; 55 L. J. M. C. 122; 55 L. T. 50; 50 J. P. 788; 34 W. R. 621; 2 T. L. R. 678, C. A.

Annotations :—**Reld.** R. *v.* Poole Corpn. (1887), 19 Q. B. D. 602; Payne *v.* Wright (1892), 61 L. J. M. C. 114.

6298a. —— **Invalidity of bye-law.**]—Applt. was charged with frequenting a street for the purpose of betting contrary to a bye-law of a borough, but the charge was dismissed on the ground that the bye-law was *ultra vires* & unreasonable. On a case stated, the High Ct. held that the bye-law was valid :—*Held* : this being a "criminal cause or matter," there was no appeal except for error of law apparent on the record, &, even if the bye-law were, on the face of it, invalid, that would not be an error of law apparent on the record.—BURNETT *v.* BERRY (1896), 60 J. P. 550; 12 T. L. R. 464; 40 Sol. Jo. 564, C. A.

Annotations :—**Apld.** McVittie *v.* Bolton JJ., [1924] W. N. 149. **Reld.** Godwin *v.* Walker (1896), 12 T. L. R. 367; Teale *v.* Harris (1896), 60 J. P. 744; Jones *v.* Walters, (1898), 78 L. T. 167; Kitson *v.* Ashe, [1899] 1 Q. B. 425; White *v.* Morley, [1899] 2 Q. B. 34; Thomas *v.* Sutters. [1900] 1 Ch. 10; Sutton Harbour Improvement Co. *v.* Foster (1920), 123 L. T. 549; Everton *v.* Walker (1927), 137 L. T. 594.

6298b. "**Error of law apparent on record.**"]—BURNETT *v.* BERRY, No. 6298a, *ante*.

6298c. ——.]—The effect of Jud. Act, 1873 (c. 66), s. 47, & Criminal Appeal Act. 1907 (c. 23), s. 20, is that there is no right of appeal to the Ct. of Appeal in a criminal cause or matter, even where the error is apparent on the record. —MCVITTIE *v.* BOLTON JJ., [1924] W. N. 149, C. A.

After this case add the following new section :—

SECT. 15.—**APPEALS.**

To House of Lords.]—*See* Part XV.

Part XV.—Appeal to House of Lords and Judicial Committee of the Privy Council.

6301. *Add. Annotations* :—*As to* (1) **Apld.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38. **Distd.** R. *v.* Chesshire, Lucas & Bottom (1927), 20 Cr. App. Rep. 47. **Consd.** R. *v.* Tidmarsh (1931), 23 Cr. App. Rep. 79. *Generally*, **Reld.** Statham *v.* Statham, [1929] P. 131.

PART XIV. SECT. 15.

ad. *To Supreme Court—Condition precedent—Certificate—By what court granted.*]—The ct. to grant a certificate that a decision of the Ct. of Criminal Appeal involves a point of law of exceptional public importance, & that it is desirable in the public interest that an appeal should be taken, is the Ct. of Criminal Appeal, & not the Supreme Ct.—A.-G. *v.* MURRAY (No. 2), [1926] I. R. 300.—IR.

Part XVI.—Costs, Compensation, Rewards and Restitution.

6408. *Add. Annotation:*—**Refd.** R. *v.* Ely JJ., *Ex p.* Mann (1928), 93 J. P. 45.

6434a. —— —— **Case not sent for trial.**]—When justices are sitting as examining justices to inquire whether a person charged with an indictable offence ought to be committed for trial, a refusal by the justices to commit is a "dismissal" within Costs in Criminal Cases Act, 1908 (c. 15), s. 6 (3), entitling deft. to apply for costs. The use of the word "dismiss" in that sect. is inappropriate, for justices have no power to "dismiss" an indictable charge not dealt with summarily, such as is given by Summary Jurisdiction Act, 1879 (c. 49), s. 27 (4), in the case of a charge of an indictable offence which is dealt with summarily.—R. *v.* Essex, JJ., *Ex p.* Churchill (1933), 148 L. T. 498; 97 J. P. 124; 49 T. L. R. 283; 31 L. G. R. 178; 29 Cox, C. C. 602. D. C.

6434b. Practice.]—Practice Note (1936), 26 Cr. App. Rep. 13, C. C. A.

Costs of poor prisoners.]—*See* Poor Prisoners' Defence Act, 1930 (c. 32), s. 3.

6446a. —— —— **Appeal from order—To Court of Criminal Appeal.**]—R. *v.* Jones, No. 5554a, *ante.*

6496a. *S. P.* R. *v.* D'Eyncourt (1888), 21 Q. B. D. 109; 57 L. J. M. C. 64; 52 J. P. 628; 37 W. R. 59; 4 T. L. R. 455, D. C.

Annotations:—**Refd.** Inkpin *v.* Roll (1922), 126 L. T. 517; Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

6505. *Add. Annotation:*—**Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51.

Part XVII.—Offences against the Sovereign.

6722. For "(1628)" read "(1541)."

6723. For "(1628)" read "(1539)."

6726. For "(1628)" read "(1443.")

6727. For "(1628)" read "(1494)."

6732. For "(1628)" read "(1453)."

6733. For "(1628)" read "(1462)."

PART XVI. SECT. 1, SUB-SECT. 3.

6441 i. *Costs of defendant on acquittal—Libel.*]—In Criminal Code, s. 1045, the word "information" means "criminal information," & a dismissal by the magistrate of a charge laid in the usual way by information & complaint is not a "judgment for deft."—Buczko *v.* Chobotar (B. C.), [1926] 1 D. L. R. 1024; [1926] 1 W. W. R. 379; 45 Can. Crim. Cas. 216.—**CAN.**

6441 ii. —— ——.]—The discharge of the accused on a *nolle prosequi* on a charge for criminal libel constitutes a "judgment for deft." within sect. 1045 of Criminal Code; & thereupon entitles the accused "to recover from the prosecutor the costs incurred by him by reason of such indictment or information. . . . The costs of a former abortive trial in the criminal prosecution on which the jury disagreed are legal & proper costs which may be allowed under said sect., & the ct. in the criminal case has jurisdiction to order them to be paid by the private prosecutor. The costs properly ordered by the criminal ct. to be paid under sect. 1045 may be taxed pursuant to said order & then made the subject of a civil action by the accused or by his assignee.—Young *v.* Uchiyama, [1934] 1 W. W. R. 401; 61 C. C. C. 313; 48 B. C. R. 55.—**CAN.**

sg. *Order for payment of costs of prosecution—Speedy trial in county court.*]—R. *v.* Thoem, [1933] 3 W. W. R. 637; 62 C. C. C. 276.—**CAN.**

PART XVI. SECT. 2.

g i. —— —— ——.]—R. *v.* Jackow, [1934] 1 W. W. R. 340; 62 C. C. C. 277; 42 Man. L. R. 121.—**CAN.**

1 i. —— *Liability of money found on prisoner.*]—Although money belonging to an accused found on him at the time of his arrest could not be connected with the offences charged:—*Held:* it became subject at once to compensation orders which, following his conviction, were made under sects. 1044 & 1048 of the Criminal Code; therefore, he could not after his arrest assign or dispose of it to the prejudice of persons in whose favour such orders were made.—R. *v.* Lebansky, Kushner *v.* Williams, [1938] 2 W. W. R. 247; 8 F. L. J. (Can.) 20.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 3.—A.

sk. *Offence tried on summary conviction.*]—Sects. 795, 817, & 1050 of the Criminal Code dealing with the restitution of stolen property do not apply to an offence tried on summary conviction under Part XV. of the Code.—R. *ex rel.* Arnold *v.* Westerland (Alta.), [1929] 3 W. W. R. 408; 52 Can. Crim. Cas. 127.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 3.—C.

sm. *Parent of juvenile delinquent—Condition precedent.*]—Before an order for restitution of stolen property can be made against a parent under sect. (1) 22 of Juvenile Delinquents Act, (c. 46) (Dom.), the parent must be given definite notice, with full opportunity to defend himself, & the complainant must establish his case against the parent on evidence properly given at an open sitting of the ct. Orders for restitution made herein against a parent without said conditions having been complied with:—*Held:* to have been made without jurisdiction or authority, & to be void & ineffectual; & the complaint as against the parent was dismissed, with costs against the complainant.—Lysenko *v.* Cooper, [1938] 1 W. W. R. 366; 1 D. L. R. 781; 45 Man. L. R. 537.—**CAN.**

PART XVII. SECT. 1, SUB-SECT. 1.

6515 i. *Breach of allegiance to the Crown—Status of State possessing internal sovereignty.*]—The crime of high treason can be committed against a State which possesses internal sovereignty, even though its external powers may be limited in certain respects. The Govt. of the Union of South Africa, as mandatory of South-West Africa, possesses sufficient internal sovereignty to warrant a charge of high treason against an inhabitant of the mandated territory who takes up arms with hostile intent against the Govt. of that territory.—R. *v.* Christian, [1924] App. D. 101.—**S. AF.**

PART XVII. SECT. 1, SUB-SECT. 3.—E. (a).

sb. *Conspiracy to establish independence of India.*]—Any conspiracy to establish the complete independence of India, as distinct from obtaining for it the status of a self-governing Dominion within the British Empire, would be tantamount to conspiring to deprive His Majesty of the sovereignty of British India. The same result would follow if there was a conspiracy to establish a perfectly democratic or republican form of government in India outside the British Empire.—Emperor *v.* Jhabwala (1933), I. L. R. 55 All. 1040.—**IND.**

PART XVII. SECT. 1, SUB-SECT. 4.

s i. ——.]—The crime of treason is constituted by the perpetration of armed attacks upon the State or Govt. with hostile intent. The existence or otherwise of such hostile intent is to be gathered from all the circumstances of the case. Where accused committed acts of hostility towards the State by taking up arms with the express intention of coercing the Govt. & enforcing the will of himself & those acting with him upon the Govt.:—*Held:* accused had been properly convicted of treason.—R. *v.* Erasmus, [1923] App. D. 73.—**S.AF.**

s ii. ——.]—When a multitude arises & assembles to attain by force & violence any object of a general public nature, it amounts to levying war against the King. A deliberate & organised attack upon the Crown forces would amount to a waging of war if the object of the insurgents was by armed force & violence to overcome the servants of the Crown & thereby prevent the general collection of the capitation tax.—Aung Hla *v.* King Emperor (1931), I. L. R. 9 Ran. 404.—**IND.**

Part XVIII.—Offences against Public Tranquillity.

6735a. Effecting public mischief—False allegation of robbery.]—Conduct causing or tending to cause public mischief constitutes a misdemeanour at common law.

Where a person makes a false statement to the effect that he has been robbed by a man of a given description, thereby leading officers of the police to waste their time & exposing individuals of that description to suspicion, he commits the misdemeanour of causing a public mischief.—R. *v.* MANLEY, [1933] 1 K. B. 529, 102 L. J. K. B. 323; 148 L. T. 335; 97 J. P. 6; 49 T. L. R. 130; 77 Sol. Jo. 65; 31 L. G. R. 81; 24 Cr. App. Rep. 25; 29 Cox, C. C. 574, C. C. A.

6816. After this case add :—

Unlawful possession.]—*See* Firearms & Imitation Firearms (Criminal Use) Act, 1933 (c. 50).

6839a. —— ——.]—Divers persons assembled in a room, entrance money being paid, to witness a fight between two persons. The combatants fought in a ring with gloves, each being attended by a second, who acted in the same way as a second at prize fights. The combatants fought for about forty minutes with great ferocity, & severely punished each other. The police interfered & arrested defts., who were among the spectators. Upon the trial of an indictment against them for unlawfully assembling together for the purpose of a prize fight, the Chairman directed the jury that, if it was a mere exhibition of skill in sparring, it was not illegal; but, if the parties met intending to fight till one gave in from exhaustion or injury received, it was a breach of the law & a prize fight, whether the combatants fought in gloves or not, & left it to the jury to say whether it was a prize fight or not :—*Held :* the jury were properly directed.—R. *v.* ORTON (1878), 39 L. T. 293; 43 J. P. 72; 14 Cox, C. C. 226, C. C. R.

Annotation :—**Reld.** R. *v.* Coney (1882), 8 Q. B. D. 534.

6854. *Add. Annotation :*—**Consd.** Duncan *v.* Jones, [1936] 1 K. B. 218.

PART XVIII. SECT. 1.

6735a i. *Effecting public mischief—False allegation of motor accident.*]—The making of a false representation to the police that a motor accident had occurred, with the object of causing investigation to be made, constitutes a crime, even though the representation does not include a charge against any individual.—KERR *v.* HILL, [1936] S. C. (J.) 71.—**SCOT.**

6735a ii. —— *False charge against innocent person.*]—A false statement amounting to "public mischief" includes a false charge against innocent person.—R. *v.* LEFFLER (1936), 67 Can. C. C. 330.—**CAN.**

PART XVIII. SECT. 2, SUB-SECT. 3.—A.

6750 iii. —— ——.]—Advocating expressly any form of rebellion is not a necessary element in an offence under Indian Penal Code, s. 124A. It is quite possible by the abuse of Govt. officials to make an endeavour to bring into hatred or contempt the Govt. established by law in British India.—EMPEROR *v.* SATYA RANJAN BAKSHI (1929), I. L. R. 56 Calc. 1085.—**IND.**

6750 iv. —— ——]—R. *v.* EVANS, [1934] 2 W. W. R. 326; 62 C. C. C. 29; 48 B. C. R. 223.—**CAN.**

h i. —— ——.]—Where a book, which professes to be a history of the East India Co., is in no sense merely a history of the times with which it deals, but teems with propaganda directed against British rule, & the intention & general trend of the book is to bring into contempt & hatred the present Govt., the book is rightly prescribed under sect. 99A of the Criminal Procedure Code.—EMPEROR *v.* SAIGAL (1930), I. L. R. 52 All. 775.—**IND.**

PART XVIII. SECT. 6.

sk. *Carrying offensive weapons.*]—It is an offence to carry offensive weapons as defined by sect. 2 (25) of the Criminal Code & it is no answer to the charge that the weapons were intended for defensive purposes.—R. *v.* YASKOWITCH, [1938] O. R. 178.—**CAN.**

PART XVIII. SECT. 7.

6821 ii. —— —— *Meaning of "prize-fight."*]—R *v.* PELKEY (1913), 24 W. L. R. 804; 4 W. W. R. 1055; 11 D. L. R. 701; 6 Alta. L. R. 103.—**CAN.**

6821 iii. —— —— *Restaurant.*]—A restaurant is not a public place within Criminal Code, s. 238 (*f*), since the public has no rights, as such, to resort there; &, therefore, the causing of a disturbance therein by one of the methods referred to in s. 238 (*f*), does not render the disturber subject to conviction thereunder.—R. *v.* BENSON, [1928] 3 W. W. R. 605; 50 Can. Crim. Cas. 426.—**CAN.**

c i. —— *To police officer by motorist.*]—A motorist using abusive language to a police officer cannot be convicted of using language calculated to provoke a breach of the peace.—R. *v.* TWICKER, [1938] 1 D. L. R. 461; 69 Can. C. C. 301.—**CAN.**

PART XVIII. SECT. 8, SUB-SECT. 1.

6841 ii. —— *Unemployed rushing town hall.*]—R. *v.* BEATTIE, [1931] 1 W. W. R. 764; 55 Can. C. C. 380; 39 Man. L. R. 394.—**CAN.**

6841 iii. ——.]—Deft. led a parade of unemployed men through the streets of a city, the purpose being to demonstrate the extent of unemployment & to excite public sympathy. The chief constable forbade deft. to lead the parade through a certain restricted area in the city, but deft. refused to obey & was arrested by the police; he then instructed his followers to enter the restricted area in defiance of the police, & they, pushing the police aside, carried the parade through the restricted area. No physical violence doing bodily harm resulted, apparently because the police realised the wisdom of yielding to a crowd of men who were unarmed & apparently harmless :—*Held :* deft. was a member of an assembly lawful in its inception, but unlawful in its execution, because it was determined to meet force by force & to resist the officers of the law.—R. *v.* PATTERSON, [1931] 3 D. L. R. 267; 66 O. L. R. 461; 55 Can. C. C. 218.—**CAN.**

6841 iv. ——.]—R. *v.* PAVLETICH (1932), 58 C. C. C. 285.—**CAN.**

sn. *Meeting to maintain right bonâ fide believed to be possessed.*]—Where five or more persons assemble for maintaining by force, or show of force, a right which they *bonâ fide* believe they possess, & not for enforcing by such force, or show of force, a right or supposed right of theirs, they do not constitute an unlawful assembly punishable under India Penal Code, s. 143.—*Re* VEERABADRA PILLAI (1927), I. L. R. 51 Mad. 91.—**IND.**

so. *Circumstances to be considered.*]—To constitute an "unlawful assembly" within sect. 87 of Criminal Code there need be no intention on the part of any member of the assembly to commit an offence, but it is the manner in which the assembly conducts itself that brings it within the purview of the sect. All the circumstances, including the conditions of the time, must be considered in determining whether a particular assembly was in the beginning or had become an unlawful one. The common purpose of the members & the likelihood of a disturbance resulting from the assembly are matters which are ordinarily not determined by direct evidence but by inference from the conduct of the meeting & all the circumstances surrounding it. Therefore, the reception of evidence that on the day before the assembly in question a circular, urging the unemployed to refuse to accept relief work & to "strike," was distributed in the city was held not to afford a valid ground of appeal from a conviction on a charge of being a member of an unlawful assembly although no connection of the accused with the circular was shown.—R. *v.* JONES & SHEININ, R. *v.* THERNES, R. *v.* FARBY & DWORKIN, R. *v.* CAMPBELL, [1931] 3 W. W. R. 716; 57 Can. C. C. 81, 90, 92; 26 Alta. L. R. 97.—**CAN.**

sq. *Membership of Communist party.*]—R. *v.* BUCK, [1932] 3 D. L. R. 97 57 C. C. C. 290.—**CAN.**

PART XVIII. SECT. 8, SUB-SECT. 2.

sr. *Whether justices may disperse.*]—A justice of peace has no authority to disperse a meeting not shown to be unlawful because he reasonably believes it to be held with an unlawful intent.—O'KELLY *v.* HARVEY (1883), 15 Cox, C. C. 435.—**IR.**

PART XVIII. SECT. 8, SUB-SECT. 3.

g i. ——.]—No person can be convicted of membership of an unlawful

6870. *Add. Annotation :*—**Consd.** R. *v.* Donovan (1934), 50 T. L. R. 566.

6887. *Add. Annotations :*—**Refd.** Motor Union Insce. *v.* Boggan (1923), 130 L. T. 588; Compania Naviera Bachi *v.* Henry Hosegood & Son, Ltd., [1938] 2 All E. R. 189.

6890. *Add. Annotation :*—**Refd.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

6916. In line eight of headnote, delete " are."

6931. *Add. Annotation :*—**Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

7026. *Add. Annotation :*—**Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

7033a. ——.]—ANON. (1701), 12 Mod. Rep. 495; 88 E. R. 1472.

7095a. —— —— —— **Unauthorised service.**]—The words " divine service " in the earlier part of Ecclesiastical Courts Jurisdiction Act, 1860 (c. 32), s. 2, are used in their widest sense; & the words " any divine service, rite, or office in any cathedral, church, or chapel " in the latter part of the sect. are used to cover all the services in the Church of England in these places, including the celebration of the sacraments, & the special mention immediately preceding these latter words of " any sacrament " refers to the celebration of any sacrament outside a cathedral, church, or chapel.

A parish church, at the time of the service hereinafter mentioned, contained a sanctus bell, a figure of the Madonna & Child, & a blue votive lamp, all of which had been directed to be removed by an order of the Consistory Ct. On a certain Sunday, in the absence through illness of the incumbent of the church, a clergyman in holy orders, being a canon, ministered or celebrated a service in the church in the course of which he performed the ceremony of the Asperges with the use of lighted candles although it was not prescribed or ordered by the Book of Common Prayer; celebrated the holy communion service omitting therefrom the ten commandments & the lengthy exhortation; wore during the sermon or some parts of it an amice, an alb, a maniple, a stole, a cope, & a biretta; & elevated the elements from the altar after consecration. During the service incense was used ceremonially, the sanctus bell was rung before, during, & at the end of the consecration prayer, & during that prayer one of the church bells was rung. It did not appear that any order had been made by lawful authority for the use of the service in question in so far as it differed from the form of service prescribed by the Book of Common Prayer, or for the use of any form of service other than that there prescribed, but it was stated that the service in question had the sanction of the bishop of the diocese : —*Held :* (1) the service in question, assuming it to be legally valid, was not a sacrament only, but a " divine service " within Ecclesiastical Cts. Jurisdiction Act, 1860 (c. 32), s. 2; (2) although the above-mentioned articles, acts & omissions were departures from the laws of the Church of England, yet such departures did not prevent the service from being a " divine service " within that sect.; &, consequently, persons who disturbed the clergymen while conducting the service disturbed a clergyman ministering or celebrating divine service within the sect. & were liable to conviction for an offence thereunder.—MATTHEWS *v.* KING, [1934] 1 K. B. 505; 103 L. J. K. B. 509; 150 L. T. 133; 97 J. P. 345; 50 T. L. R. 62; 31 L. G. R. 379; 30 Cox, C. C. 27, D. C.

Part XIX.—Offences in Respect of Public Offices.

7106a. —— **Who is " person holding office under His Majesty "—Police officer.**]—A police officer, whether he be a member of the Metropolitan Police Force or a member of the police force of a county, city, or borough, holds the office of constable & as such is a " person who holds office under His Majesty " within the Official Secrets Act, 1911 (c. 28), s. 2 (1).—LEWIS *v.* CATTLE, [1938] 2 K. B. 454; [1938] 2 All E. R. 368; 107 L. J. K. B. 429; 159 L. T. 166; 102 J. P. 239; 54 T. L. R. 721; 82 Sol. Jo. 376; 36 L. G. R. 290, D. C.

7153. *Add. Annotation :*—**Refd.** R. *v.* Manley, [1933] 1 K. B. 529.

---

assembly unless he was present, nor of counselling others to become members unless they do in fact do so.—R. *v.* STEWART, [1934] 3 D. L. R. 61; 1 W. W. R. 423; 61 C. C. C. 217.—**CAN.**

PART XVIII. SECT. 9, SUB-SECT. 7.

st. *Whether municipal corporation liable.*]—GLOBE & RUTGERS FIRE INSURANCE CO. *v.* GLACE BAY CORPN. (N. S.), [1927] 1 D. L. R. 80.—**CAN.**

PART XVIII. SECT. 10, SUB-SECT. 1.—A.

r 1. ——.]—A forcible entry made with intent to repossees chattels upon certain lands & not made for the purpose of taking or attempting to take possession of the lands is not a forcible entry within Statute of Forcible Entry 1381, 5 Rich. II., Stat. I., c. 7. An indictment in respect of a charge of forcibly entering upon lands is defective in charging a common law offence if he does not allege a breach of the peace; & it is defective in charging an offence under the Statute of Forcible Entry, 1381, if it does not allege an entry with the strong hand.—R. *v.* WAUGH (1935), 52 N. S. W. W. N. 20.—**AUS.**

PART XVIII. SECT. 10, SUB-SECT. 1.—C.

sv. *Vacant premises.*]—The gist of the offence of forcible entry under sect. 102 of Criminal Code is the forcible depriving of another person of actual & peaceable possession in a manner likely to cause a breach of the peace or reasonable apprehension thereof. An entry by the breaking of the lock of vacant premises is not one likely to cause a breach of the peace &, therefore, not within sect. 102. " Forcible entry " as defined in the decisions under the English statutes is distinguishable from " forcible entry " as defined by sect. 102.—R. *v.* CZEGLEDI, [1931] 1 W. W. R. 480; 55 Can. C. C. 114.—**CAN.**

PART XVIII. SECT. 10, SUB-SECT. 1.—D.

d 1. —— *Entry by police.*]—R. *v.* TRACEY, [1937] 4 D. L. R. 56; 11 M. P. R. 473; 68 Can. C. C. 289.—**CAN.**

PART XIX. SECT. 4.

sb. *Judicial officer—Member of licensing court.*]—*Held :* an attempt to bribe a member of a licensing ct., in order to influence his vote on an application for a licence, was an offence indictable at common law, in respect that the functions & procedure of a licensing ct. were of a judicial character. —LOGUE *v.* H.M. ADVOCATE, [1932] S. C. (J.) 1.—**SCOT.**

Part XX.—Offences relating to Administration of Justice.

7276. *Add. Annotation :*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

7304a. —— ——.]—A. brought an action against B. & his partners, for the price of wheat, & recovered a verdict on the bought & sold notes. B. & his partners filed a bill in equity against A., which stated, that the bought & sold notes did not contain all the terms of the contract, as it had been also agreed by parol between A. & B., that the wheat should be paid for by a draft at three months ; & the prayer of the bill was, that A. should be restrained from suing out execution. A., by his answer, denied the statement in the bill ; & the bill was dismissed :—*Held :* if the denial by A. was wilfully false, it amounted to perjury.—R. *v.* YATES (1841), Car. & M. 132 ; 5 Jur. 636 ; 174 E. R. 441.

7416. *Add. Annotation :*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

7430a. ——.]—On the trial of applt. for perjury, the only witness who gave direct evidence of the falsity of applt.'s statement was herself admittedly a perjured accomplice :—*Held :* the jury should have received the strongest possible warning that her evidence was of no value, & as it was not possible to say that, if that warning had been given, the other evidence relied on by the prosecution was such that the jury must have convicted, the conviction must be quashed.—R. *v.* ATKINSON (1934), 24 Cr. App. Rep. 123, C. C. A.

PART XX. SECT. 1.

sd. *Offer to influence juror—No overt act—Lunacy inquiry.*]—*Held :* the mere offer of services to work upon the jurors in a lunacy inquiry so as to induce them, whatever the evidence might be, to find that X. was of sound mind & capable of managing her own affairs, not followed by any act in attempted fulfilment of that offer, did not amount to an interference, or an attempt to interfere, with the administration of justice by tampering with the jury.—*Re* M. M. & H. M., [1933] I. R. 299.—**IR.**

PART XX. SECT. 2, SUB-SECT. 1.

7236 i. *Nature of the offence.*]—Perjury is in itself a contempt of ct.—R. *v.* ZIZU NATANSON, [1927] 3 D. L. R. 758 ; [1927] 2 W. W. R. 155 ; 48 Can. Crim. Cas. 227 ; 21 Sask. L. R. 532.—**CAN.**

PART XX. SECT. 2, SUB-SECT 2.

7237 v. ——.]—A charge of perjury may be based on an oath consisting of an affirmation to tell the truth followed by kissing the Bible, although there is no invocation of the Deity.—R. *v.* KLINE, [1937] 2 D. L. R. 269 ; 68 Can. C. C. 66.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 5.—A.

r i. —— —— *Absence of examiner—Failure to file affidavit.*]—An examination for discovery in a county ct. action not conducted in the presence of the deputy clerk is not an examination taken pursuant to County Cts. Act, R. S. M., 1913 (c. 44), & perjury does not lie against the person examined, even though the solrs. agreed that the clerk need not remain during the examination.

The fact that no affidavit was filed prior to such examination is not a bar to a prosecution for perjury, where accused voluntarily agreed to submit to & attended the examination & was sworn & examined.—R. *v.* ALLEN, [1925] 1 D. L. R. 57 ; [1925] 1 W. W. R. 718 ; 43 Can. Crim. Cas. 118.—**CAN.**

r ii. *S. P.* R. *v.* KOBEL (Sask.), (1926), 46 Can. Crim. Cas. 279 ; [1926] 3 W. W. R. 478.—**CAN.**

c i. —— *Investigation by Canadian National Railway—Not a judicial proceeding—Although a justice on the Board.*]—BOIVIN *v.* R. (1929), 54 Can. C. C. 290 ; 48 Que. K. B. 81.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 6.

m i. ——.]—In a prosecution for perjury it is not necessary to allege or to prove that the subject-matter of the perjury was material to the issue in which the perjury was committed.—R. *v.* Ross (1884), 28 L. C. J. 261.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 7.

s i. —— ——.]—R. *v.* FERRISH & DE VASSE (1926), 58 N. S. R. 370.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—A.

a i. —— *Witness protected by Evidence Act,* 1912 (c. 27).]—Evidence given at a trial at which the witness is granted the protection of Canada Evidence Act, 1912, is not revelable against him on a prosecution for perjury on other occasions, *e.g.*, on an inquest & preliminary hearing.—R. *v.* KRUSCHKOVSKI, [1925] 2 D. L. R. 167 ; [1925] 1 W. W. R. 426 ; 43 Can. Crim. Cas. 299.—**CAN.**

a ii. ——.]—Accused was convicted of perjury in testifying in a civil action brought by the Crown against his brother for evading the payment of the proper duty on goods introduced into Canada by accused. The perjury was charged in respect of the statement by accused that he had intended such goods for the members of his family :—*Held :* the testimony of customs officials as to statements made by accused's brother to the customs appraiser on the strength of which the goods had been cleared, should not have been admitted.—R. *v.* NATANSON (No. 2) (Sask.), [1927] 4 D. L. R. 1035 ; [1927] 3 W. W. R. 550 ; 49 Can. Crim. Cas. 80.—**CAN.**

sy. *Circumstantial evidence.*]—A conviction for perjury may be founded on circumstantial evidence alone.—R. *v.* NATANSON, [1927] 3 D. L. R. 308 ; [1927] 2 W. W. R. 127 ; 48 Can. Crim. Cas. 158 ; 21 Sask. L. R. 505.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—B.

7380 iv. —— ——.]—On a trial for perjury with respect to testimony taken by a magistrate on a preliminary inquiry based on a sworn information, the information itself must be produced to establish that the magistrate had power to hold the inquiry & that it was, in consequence, a "judicial proceeding" under the Code ; &, in the absence of proof that the original information had been lost or destroyed so as to admit secondary evidence thereof, the oral testimony of the magistrate or of the official reporter on the inquiry as to the nature of the proceedings before the magistrate, although received without objection, is insufficient to prove that the inquiry in which the alleged perjury was committed was held in respect to an indictable offence & was a "judicial proceeding."—R. *v.* CHERER, [1930] 2 W. W. R. 498 ; 54 Can. C. C. 297 ; 24 Alta. L. R. 610.—**CAN.**

sa. *Writ of summons.*]—*Held :* the evidence that the proceeding was a judicial proceeding was sufficient, although the writ of summons therein had not been produced.—R. *v.* GURDITTA, [1927] 1 W. W. R. 273 ; 47 Can. Crim. Cas. 103 ; 38 B. C. R. 66.—**CAN.**

sb. *Certified copy of record—Prior notice not necessary where admission by accused that impeached statements were made in judical proceedings.*]—R. *v.* KOBOLD, [1927] 3 W. W. R. 294 ; 49 Can. Crim. Cas. 290 ; 37 Man. L. R. 37.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—C.

7385 iii. —— ——.]—Where the testimony of an accused on a trial before two justices of the peace is taken down in writing in the manner required by sect. 721 (3) of Criminal Code, R. S. C., 1927, & the accused is afterwards charged with having committed perjury in giving said testimony, the parol testimony of the justices or of other persons as to the accused's alleged false statements is not admissible where there is no reason given to account for the absence of the depositions.—R. *v.* CHASTAKOFF, [1936] 2 W. W. R. 441 ; 4 D. L. R. 74 ; 67 Can. C. C. 129.—**CAN.**

f i. —— *Copy of affidavit.*]—Where deft. was charged with making a false affidavit in the United States of America :—*Held :* a copy of the false affidavit duly authenticated by a witness called before the judge was rightly admitted.—UNITED STATES *v.* SNYDER, [1925] 1 D. L. R. 200 ; 43 Can. Crim. Cas. 692 ; 57 N. S. R. 421.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—D.

m i. ——.]—The dictum of English common law that the testimony of a single witness is not sufficient to sustain an indictment for perjury is not a safe guide for the Indian cts., which are bound by the statute law enacted in sects. 3 & 134 of Evidence Act.—EMPEROR *v.* ARJUN SINGH (1931), I. L. R. 53 All. 598.—**IND.**

7415 iii. ——.]—Although a person charged with perjury cannot be convicted upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused, there need not be two witnesses to prove every fact necessary to make out the offence ; corroboration is required merely for the perjured fact as a whole, & not of every detail or constituent part of it.—R. *v.* MCKENZIE, [1930] 2 W. W. R. 602 ; 54 Can. C. C. 153.—**CAN.**

7434. *Add. Annotation :—As to* (2) **Consd.** R. *v.* Southern (1929), 142 L. T. 383.

7523. *Add. Annotation :*—**Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

7544. *Add. Annotation :*—**Consd.** R. *v.* Manley (1932), 97 J. P. 6.

7548a. No pending proceedings.]—One of the prisoners, when motoring, having knocked down & injured a cyclist, the two prisoners agreed to tell a story which would disprove any charge that the car in question was concerned in the accident. They maintained this story upon police investigations, & induced one other person to make statements corroborative of the invented story. The prisoners were indicted for conspiring together & with other persons to defeat the ends of public justice by concealing & destroying evidence, by attempting to suborn a third person to give perjured evidence supporting the concealment, & by attempting to mislead the police officers then investigating the crime by statements known to be untrue. The indictment was subsequently amended by altering the charge of attempting to suborn a third party to give perjured evidence to a charge of persuading that party to make an untrue statement. It was contended that the indictment disclosed no offence known to the law, as at the time of the alleged conspiracy there were no proceedings pending in respect of the accident :—*Held :* it is not necessary, where the offence of conspiring to obstruct the course of public justice is charged against any person or persons, that proceedings should have already been commenced at the time when the concealment of the crime or the conspiracy with others to conceal it or prevent its prosecution takes place.—R. *v.* SHARPE, R. *v.* STRINGER, [1938] 1 All E. R. 48 ; 159 L. T. 96 ; 102 J. P. 113 ; 82 Sol. Jo. 158 ; 26 Cr. App. Rep. 122 ; 36 L. G. R. 254, C. C. A.

7564a. —— On constables to execute warrant.]—COLEMAN'S CASE (1619), 2 Roll. Rep. 78 ; 81 E. R. 671.

Annotation :—**Refd.** Miller *v.* Knox (1838), 4 Bing. N. C. 574.

7584a. —— ——.]—On an indictment against the stewards, etc., of a benefit society for disobeying an order of two justices, commanding them to re-admit A. B. to be a member of that society, it is no defence, that A. B. was a person, who, by the rules of the society, was ineligible to be a member of it, as that was matter of defence before the justices ; & if it be proved that the order was served on one of the defts., & that the others, when A. B. applied to be re-admitted, said, that they would not admit him, & did not care for the justices' order ; that is presumptive evidence of a service of the order upon them.—R. *v.* GILKES (1827), 3 C. & P. 52.

PART XX. SECT. 2, SUB-SECT. 11.

h i. ——.]—In order to constitute subornation of perjury there must be actual perjury & corroboration of this as well as of counselling.—R. *v.* PICARD (1937), 68 Can. C. C. 82.—**CAN.**

sd. *Evidence—Of falsity of statement—Corrobation unnecessary.*]—R. *v.* MCBETH, [1926] 2 D. L. R. 801 ; [1926] 1 W. W. R. 931 ; 45 Can. Crim. Cas. 357 ; 22 Alta. L. R. 222.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 12.—A.

q i. —— *In bankruptcy proceedings.*]—"Thereupon" in sect. 175 of Criminal Code refers to the statement that the accused is required or authorised by law to make.

Bkpcy. Rule 109 does not, it seems, absolve the official receiver from doing personally what sect. 128 of Bkpcy. Act says he shall do. In any event before the debtor can be held guilty under sect. 175 of the Criminal Code with respect to statements made in answers to questions put under Bkpcy. Rule 109 it must be shown that the official receiver either personally or by delegation ordered said questions to be propounded to the debtor.—R. *v.* DAVIDSON, [1933] 2 W. W. R. 285.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 12.—B.

a i. —— *To obtain permit to purchase liquor.*]—Sect. 176 of Criminal Code does not apply to a statement which is neither under oath nor a statutory declaration made "knowing it to have the same force & effect as if made under oath."—R. *v.* WHITE (B. C.), [1929] 3 W. W. R. 729.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 12.—C.

m i. —— *Affidavit required by foreign law.*]—Where deft. was charged with making in America a false affidavit, which affidavit was required by American law :—*Held :* notwithstanding the affidavit had not been made in a judicial proceeding, the crime charged constituted perjury under the law of Canada.—UNITED STATES *v.* SNYDER, [1925] 1 D. L. R. 200 ; 43 Can. Crim. Cas. 92 ; 57 N. S. R. 421.—**CAN.**

PART XX. SECT. 4.

7496 i. *Persuading witness—To induce complainant to withdraw charge.*]—The essence of the crime of attempting to defeat the course of justice consists in the wilful intent to obstruct the due administration of justice, coupled with an act calculated to further & done in furtherance of that intent. If these elements are present it does not matter that what was done was done under a mistaken belief that it would have the effect intended. An attempt to induce, by threats or other corrupt means, a witness to prevail upon complainant to withdraw a criminal complaint amounts to an attempt to defeat the course of justice, notwithstanding that the attempt was made before a criminal charge had been preferred by the prosecuting authority.—HATTINGH *v.* R. (1929), 50 N. L. R. 105.—**S. AF.**

o i. —— ——.]—An attempt to dissuade "spotters" of the Quebec Liquor Commission from giving evidence, where no proceedings had been taken, is not an offence under sect. 180 (*a*) of the Criminal Code, relating to dissuading witnesses from giving evidence.—ST. JEAN *v.* R., [1938] 1 D. L. R. 165 ; 69 Can. C. C. 240.—**CAN.**

se. *Liability for fabricating—Although no proceeding pending.*]—R. *v.* SEVICK (1930), 54 Can. C. C. 92.—**CAN.**

PART XX. SECT. 7.

sg. *Advice not to prosecute.*]—R. *v.* M., [1936] 2 W. W. R. 494, *sub nom.* R. *v.* MURDOCK (1936), 67 Can. C. C. 142 ; 6 F. L. J. (Can.) 36.—**CAN.**

sl. *Removal of defendant from jurisdiction.*]—Appeal by the Crown from the acquittal of the accused on a charge under sect. 180 (*d*) of Criminal Code of attempting to obstruct, pervert or defeat the course of justice. Accused's wife had been charged under the Female Minimum Wage Act but failed to appear at the adjourned hearing of the charge (the adjournment having been made before the hearing was begun) owing to the fact that accused had taken her to the United States :—*Held :* the appeal must be dismissed.—R. *v.* KADIN, [1937] 2 W. W. R. 345 ; 2 D. L. R. 800 ; 51 B. C. R. 403 ; 68 Can. C. C. 318.—**CAN.**

PART XX. SECT. 12.

b i. —— ——.]—Where a defeated litigant wrote, subsequent to the judgment, insulting letters to the special magistrate presiding, there being no litigation pending :—*Held :* neither an instant order for imprisonment nor a rule for the issue of a writ of attachment should be made, there being no reason why the ordinary remedy of information for criminal libel should not be adopted.—*Ex p.* SANDERSON (1928), S. A. S. R. 448.—**AUS.**

Part XXI.—Offences relating to Arrest, the Prosecution and Punishment of Criminals, and the Execution of Civil Process.

7625. *Add. Annotation :*—**Refd.** Howard *v.* Odhams Press, Ltd., [1938] 1 K. B. 1.

7631. *Add. Annotation :*—**Refd.** Howard *v.* Odhams Press, Ltd., [1938] 1 K. B. 1.

7641. *Add. Annotation :*—**Consd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

7657a. —— ——.]—SMITH *v.* STEVENS (1929), 45 T. L. R. 429.

7662. *Add. Annotation :*—**Refd.** Duncan *v.* Jones, [1936] 1 K. B. 218.

7663a. —— ——.]—Applt. was about to address a number of people in a street when a police officer, who reasonably apprehended that a breach of the peace would occur if the meeting were held, forbade her to do so. Applt. persisted in trying to hold the meeting & obstructed the police officer in his attempts to prevent her doing so. Neither applt. nor any of the persons present at the meeting committed, incited, or provoked a breach of the peace :—*Held :* as it is the duty of a police officer to prevent breaches of the peace which he reasonably apprehends, applt. was guilty of wilfully obstructing the officer when in the execution of his duty.—DUNCAN *v.* JONES, [1936] 1 K. B. 218 ; 105 L. J. K. B. 71 ; 154 L. T. 110 ; 99 J. P. 399 ; 52 T. L. R. 26 ; 79 Sol. Jo. 903 ; 33 L. G. R. 491 ; 30 Cox, C. C. 279, D. C.

7663b. ——.]—Resp., a police officer, believing that an offence had been committed by the servants of applt. in causing an obstruction in the highway with a motor lorry, followed the lorry into applt.'s garage to make inquiries as to the person responsible for the supposed obstruction. Resp. did not obtain applt.'s permission to enter the garage, nor had he a warrant authorising him to enter it. Applt. directed resp. to leave the premises, but resp. claimed to be entitled to remain on them & applt. assaulted him :—*Held :* even if resp. had a right to enter the garage to make inquiries, he became a trespasser after applt. had told him to leave the premises, & he was not therefore acting thenceforward in the execution of his duty, with the result that applt. could not be convicted of assaulting or obstructing him in the execution of his duty.—DAVIS *v.* LISLE, [1936] 2 K. B. 434 ; [1936] 2 All E. R. 213 ; 105 L. J. K. B. 593 ; 155 L. T. 23 ; 100 J. P. 280 ; 52 T. L. R. 475 ; 80 Sol. Jo. 409 ; 34 L. G. R. 253 ; 30 Cox, C. C. 412, D. C.

7674. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

7683. *Add. Annotation :*—**Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

7684. *Add. Annotation :*—**Refd.** Howard *v.* Odhams Press, Ltd., [1938] 1 K. B. 1.

7685a. Assaulting warder on duty.]—A convict who assaults a warder on duty is liable to be sentenced by a ct. of summary jurisdiction to six months' hard labour, that being the punishment provided by Prevention of Crimes Act, 1871 (c. 112), s. 12, for assaulting a constable when in the execution of his duty.—POINTING *v.* WILSON, [1927] 1 K. B. 382 ; 96 L. J. K. B. 309 ; 136 L. T. 307 ; 91 J. P. 5 ; 43 T. L. R. 44 ; 70 Sol. Jo. 1091 ; 28 Cox, C. C. 291, D. C.

PART XXI. SECT. 4.

1 i. —— ——.]—A search warrant issued under Liquor Act, 1922, s. 90, does not authorise the constable, who suspects that a person is leaving the premises with liquor, when no liquor has been found on the premises, to follow him & forcibly bring him back to the premises where the search is being made. If in doing so he is assaulted by such person, the latter cannot be convicted of assaulting the constable while acting in the discharge of his duty under the search warrant.—R. *v.* DIAMOND, [1924] 1 D. L. R. 1033 ; 1 W. W. R. 444 ; 42 Can. Crim. Cas. 90 ; 20 Alta. L. R. 60.—**CAN.**

1 ii. —— *Evidence that person assaulted an officer.*]—Where on a trial on a charge of assaulting a police officer in the discharge of his duty the person alleged to have been assaulted is asked whether he is a constable in a certain police force & answers "yes," there is, in the absence of anything to qualify it, sufficient evidence of his status or occupation as a police officer not only at the time of the trial but also a few days previously.—R. *v.* SMITH, [1930] 3 W. W. R. 287 ; 54 Can. C. C. 359.—**CAN.**

7666 v. —— *Keeping constable at arm's length—Whether flight to avoid arrest.*]—The fact that a person violently assaulted by a police officer who is attempting to arrest him, tries to evade a repetition of the assault by keeping at arms' length from the officer, does not constitute a taking to "flight to avoid arrest" within Criminal Code, s. 41.—VIGNITCH *v.* BOND & C. P. Ry. Co., [1928] 1 W. W. R. 449 ; 50 Can. Crim. Cas. 273 ; 37 Man. L. R. 435.—**CAN.**

7675 vi. —— —— *Failing to stop vehicle when ordered to do so.*]—R. *v.* GALLANT (P. E. I.), [1929] 1 D. L. R. 671 ; 51 Can. Crim. Cas. 209.—**CAN.**

7675 vii. —— —— ——.]—R. *v.* D'ENTREMONT, [1932] 2 D. L. R. 236 ; 4 M. P. R. 142 ; 57 C. C. C. 174.—**CAN.**

7675 viii. —— ——.]—A mere criticism or expression of opinion does not constitute an obstruction of a police officer engaged in regulating the parking of cars.—TITUS *v.* KINCH (1934), 8 M. P. R. 359.—**CAN.**

7675 ix. —— ——.]—Under sect. 20 of Police Act it is an offence to hinder a police constable in the execution of his duty :—*Held :* a constable is "hindered" by any obstruction or interference that makes his duty substantially more difficult of performance.—PLUNKETT *v.* KROEMER, [1934] S. A. S. R. 124.—**AUS.**

7675 x. —— ——.]—Appeal from a conviction for wilfully obstructing a peace officer in the execution of his duty dismissed. The accused, who had been offering flowers for sale on a street, was told by a constable, "I am stopping you now from selling flowers because you have no city licence . . . & you will have to move." Accused then moved across the street to the other corner, & there began again to offer the flowers for sale. The constable followed him & told him that "he was to move off the street altogether & to cease selling the flowers or soliciting," &, on his not doing so, told him he was under arrest, & the accused submitted himself peacefully to the arrest.—R. *v.* GOLDEN, [1937] 1 W. W. R. 337 ; 1 D. L. R. 350 ; 51 B. C. R. 236 ; 67 C. C. C. 292.—**CAN.**

sf. *Obstructing peace officer—Who is.*]—A writ of assistance issued under sect. 79 of Excise Act, 1934, conferred upon a certain corporal of the R.C.M.P. the powers set forth in sect. 77 of said Act :—*Held :* applying sects. 7 & 8 of c. 37, 1932, amending the Royal Canadian Mounted Police Act, & sect. 2 (27) of Criminal Code, defining "peace officer," that said corporal in entering the house of the accused under the powers conferred on him by the writ was a peace officer & carrying out one of his duties as a peace officer, &, therefore, the accused in obstructing him in the search which he was authorised by the writ to make was guilty of a violation of sect. 168 of Criminal Code. The obstruction consisted in the emptying, when the officer entered the accused's house, of a bottle containing a liquid.—R. *v.* HNATIUK, [1937] 1 W. W. R. 666.—**CAN.**

PART XXI. SECT. 6, SUB-SECT. 2.

6 i. —— *Prisoner at large—Unlawful act of magistrate.*]—R. *v.* POKITRUSKI (1931), 55 Can. C. C. 152.—**CAN.**

Part XXII.—Offences affecting the Property and Prerogative of the Crown.

7758. *Add. Annotation :—As to* (2) **Refd.** Best *v.* Butler (1932), 48 T. L. R. 481.

7767. After this case add :—

——.]—*See, now,* Counterfeit Currency (Convention) Act, 1935 (c. 25).

7773. *Annotation :*—For " **Consd.**" read " **Dbtd.**" *Add. Annotation :*—**Overd.** R. *v.* Ion (1852), 2 Den. 475.

7785. *Add. Annotation :*—**Refd.** R. *v.* Stokes (1925), 134 L. T. 479.

7786. *Add. Annotations :*—**Consd.** R. *v.* Manchester JJ., *Ex p.* Lever, [1937] 2 K. B. 96. **Refd.** R. *v.* Sheridan, [1936] 2 All E. R. 883.

7800a. —— **Previous conviction—Whether admissible.**]—Applt., who was charged with possessing counterfeit coins with intent to utter them, contrary to Coinage Act, 1861 (c. 99), s. 11, did not put his character in issue. He admitted possession of the coins, with knowledge that they were counterfeit, but denied that he had any guilty intent. He was cross-examined as to a previous conviction for a similar offence :—*Held :* the cross-examination was inadmissible, & the conviction must be quashed.—R. *v.* TOMASSO (1934), 25 Cr. App. Rep. 14, C. C. A.

7817. *Add. Annotation :*—**Refd.** R. *v.* Tomasso (1934), 25 Cr. App. Rep. 14.

Part XXIV.—Offences on the High Seas.

7840. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375 ; *Re* Piracy Jure Gentium, [1934] A. C. 586.

7841. *Add. Annotation :*—**Refd.** *Re* Piracy Jure Gentium, [1934] A. C. 586.

7850. *Add. Citation :—sub nom. Re* TIVNAN, 5 B. & S. 645 ; 121 E. R. 971 ; *sub nom.* R. *v.* TIVNAN, 10 L. T. 499 ; *sub nom. Re* TURNAN, 12 W. R. 858.

7851a. —— **Distinguished from belligerent act.**]—In time of peace any act of depredation on a ship is *primâ facie* an act of piracy ; but in time of war between two countries the presumption is that depredation by one of them on a ship of the other is an act of legitimate warfare. It is immaterial whether the act was done by soldiers or volunteers, & whether it was commended by the belligerent state, or when done ratified by it.—*Re* TIVNAN (1864), 5 B. & S. 645 ; 122 E. R. 971 ; *sub nom. Ex p.* TIRNAN, 4 New Rep. 225 ; *sub nom. Re* TERNAN, 33 L. J. M. C. 201 ; 28 J. P. 548 ; 11 Jur. N. S. 34 ; 9 Cox, C. C. 522 ; *sub nom. Re* TURNAN, 12 W. R. 858 ; *sub nom.* R. *v.* TIVNAN, 10 L. T. 499.

7851b. —— **Actual robbery not essential.**]—Actual robbery is not an essential element in the crime of piracy *jure gentium.* A frustrated attempt to commit a piratical robbery is equally piracy *jure gentium.*—*Re* PIRACY JURE GENTIUM, [1934], A. C. 586 ; 103 L. J. P. C. 153 ; 152 L. T. 73 ; 51 T. L. R. 12 ; 78 Sol. Jo. 585 ; 18 Asp. M. L. C. 528, P.C.

7864. *Citation :*—Delete 33 J. P. 791.

7866. *Add. Annotation :*—**Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

7878. *Add. Annotation :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

Part XXV.—Offences relating to Foreign Nations.

7899. *Add. Annotation :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

7903. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

PART XXII. SECT. 2, SUB-SECT. 1.

7761 iii. —— ——.]—For a thing to be termed " counterfeit " according to the definition given in Indian Penal Code, s. 28, there should be some sort of resemblance sufficient to cause deception. In a case of counterfeiting currency notes, where the ability of the accused persons, & the capacity of the materials with which they worked, were not such as to produce a currency note which would take in even the most ignorant villager :—*Held :* there could be no conviction under Indian Penal Code, s. 489a, read with s. 511.—R. *v.* JWALA (1928), I. L. R. 51 All. 470.—**IND.**

PART XXII. SECT. 2, SUB-SECT. 3.

si. *Negotiating purchase of counterfeit coin—Coins must be in esse.*]—To constitute the offence of negotiating the purchase of counterfeit money the tokens must be *in esse* at the time of the offence.—R. *v.* GRAVELINE (1938), 69 Can. C. C. 366.—**CAN.**

PART XXII. SECT. 4.

o i. *Possession of package received from unknown source—No proof given that duty not paid.*]—R. *v.* MOYLE (Ont.) (1928), 49 Can. Crim. Cas. 375.—**CAN.**

sf. *What constitutes smuggling—Customs Act, s.* 206.]—R. *v.* MAYALL (1926), 45 Can. Crim. Cas. 366 ; 37 B. C. R. 211.—**CAN.**

sg. —— ——.]—R. *v.* JOBES (N. S.). [1926] 3 D. L. R. 659 ; 46 Can. Crim. Cas. 8.—**CAN.**

sh. *Burden of proof—That goods imported legally—On accused.*]—*Re* R. *v.* MCKENZIE (1926), 45 Can. Crim. Cas. 144 ; 58 N. S. R. 313.—**CAN.**

sk. —— —— ——.]—R. *v.* LE BLANC (N. B.), [1927] 2 D. L. R. 793 ; 47 Can. Crim. Cas. 302.—**CAN.**

sl. —— —— ——.]—*Held :* where goods alleged to have been smuggled are found & seized in the possession of any person, the onus, under Customs Act, s. 264, is upon such person to explain how the goods had come into his possession or how they had been imported into Canada, &, if so, to prove that the duty upon them was paid.—WEISS *v.* R., [1928] Exch. C. R. 106.—**CAN.**

sm. *Indictment for smuggling—No power to substitute conviction for attempting to smuggle—Latter offence only triable summarily.*]—R. *v.* JOBES (N. S.), [1926] 3 D. L. R. 659 ; 46 Can. Crim. Cas. 8.—**CAN.**

Part XXVI.—Offences against Religion.

7932. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

7948. *Add. Annotations :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378 ; *Re* Ogden, Brydon *v.* Samuel, [1933] Ch. 678.

Part XXVII.—Offences relating to Marriage.

7950. In citation delete " 2 F. & F. 551."

7959. *Add. Annotation :*—**Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

7960. *Add. Annotation :*—**Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

7971a. Notice in false name.]—On a prosecution for bigamy it was proved that the prisoner's first marriage had taken place in a register office by certificate after notice & that the prisoner, with the knowledge & consent of the woman, gave the notice in a false name ; & that subsequently the prisoner went through a form of marriage with another woman :—*Held :* the giving of the notice in a false name, with the knowledge & consent of the other party, did not prevent the notice from being " due notice " within Marriage Act, 1836 (c. 85), s. 4. The first marriage was therefore valid & the prisoner could properly be convicted of bigamy.—R. *v.* LAMB (1934), 150 L. T. 519 ; 50 T. L. R. 310 ; 78 Sol. Jo. 279 ; 24 Cr. App. Rep. 145 ; 30 Cox, C. C. 91, C. C. A.

7980. *Add. Annotation :*—**Refd.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

7989a. ——.]—On an indictment for bigamy the validity of a foreign marriage must be proved by the evidence of a professional lawyer, or of a person who is to be deemed by reason of his office to be skilled in the law of the country where it was celebrated.—R. *v.* MOSCOVITCH (1927), 138 L. T. 183 ; 44 T. L. R. 4 ; 28 Cox, C. C. 442 ; 20 Cr. App. Rep. 121, C. C. A.

7991. *Add. Annotations :*—**Refd.** Monckton *v.* Tarr (1930), 23 B. W. C. C. 504 ; R. *v.* Morrison, [1938] 3 All E. R. 787.

7991a. —— ——.]—H. was married in 1919 & went with her husband to live in Canada. She last saw her husband in Canada in 1928. On Mar. 11, 1938, applt. married H. It was stated in evidence that the registrar had been informed of the facts & that he had said that H. could describe herself as a widow. On Mar. 16, 1938, applt. married I., & he was charged with bigamy. The jury were directed that, the first marriage on Mar. 11 being *primâ facie* lawful, it was for them to consider whether the evidence was such as to make it unlawful : in effect, that, if they had any doubt about the legality of the first marriage, they had to acquit the prisoner. H. was cross-examined on the basis that she had said nothing of her first marriage. In fact she had mentioned it to the police in a county different from that in which the trial was held. As this statement, being first mentioned in re-examination, could not be produced, it was contended that its non-production affected the minds of the jury, who found applt. guilty :—*Held :* (1) the direction to the jury was a proper one ; (2) the non-production of H.'s statement provided no reason for interfering with the verdict.—R. *v.* MORRISON, [1938] 3 All E. R. 787, C. C. A.

7992. *Add. Annotation :*—**Refd.** Pilot *v.* Gainfort (1931), 145 L. T. 22.

7995. *Add. Annotation :*—**Consd.** R. *v.* Robinson, [1938] 1 All E. R. 301.

7996. *Add. Annotations :*—**Folld.** R. *v.* Robinson, [1938] 1 All E. R. 301. **Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

7996a. ——.]—The accused, being then a married man, in Sept. 1937, accompanied a woman to Scotland, & there in the presence of witnesses they declared themselves to be man & wife. Such a marriage by declaration is only valid in Scotland if one of the parties has been resident there for a period of twenty-one days, which condition was not fulfilled in this case. It was contended that, the second marriage ceremony being invalid, the offence of bigamy had not been committed :—*Held :* the validity of the second marriage was immaterial, & the accused was rightly convicted.—R. *v.* ROBINSON, [1938] 1 All E. R. 301 ; 26 Cr. App. Rep. 129, C. C. A.

PART XXVI. SECT. 1, SUB-SECT. 1.

p 1. ——.]—A blasphemous libel consists of a written opinion on a religious matter expressed so offensively as to lead to a possible breach of the peace.—R. *v.* RAHARD, [1936] 3 D. L. R. 230 ; 65 Can. C. C. 344.—**CAN.**

sc. *Form of indictment.*]—An allegation that the blasphemous words were published with the intent to revile is not necessary in an indictment for blasphemy.—R. *v.* WEBB, [1934] A. D. 493.—**S. AF.**

PART XXVII. SECT. 1, SUB-SECT. 1.—A.

7956 ii. —— —— ——.]—On an indictment for bigamy the first marriage must be strictly proved, but where the person charged has pleaded guilty, it is an admission that strict proof of the marriage can be made & precludes the necessity for proof.—R. *v.* ROOP, [1924] 3 D. L. R. 985 ; 57 N. S. R. 325.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 1.—B.

sd. *Marriage between Roman Catholics —Domiciled in Quebec—By Protestant clergyman.*]—*Held :* valid, & subsequent marriage therefore bigamous, notwithstanding belief in invalidity of first marriage.—R. *v.* SIMARD (1931), 56 Can. C. C. 269.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 1.—C.

sf. *Necessity for.*]—On a charge of bigamy it must be proved that the previous marriage was still subsisting at the time the offence was committed.—TRUDEAU *v.* R., [1935] 2 D. L. R. 786 ; 63 Can. C. C. 206.—**CAN.**

sl. *Presumption of continuance.*]—Pltf. went through the ceremony of marriage with deft. in June, 1925. Deft. had been lawfully married to N., then twenty-six years of age, in 1914. Deft. assured pltf. prior to the ceremony that her husband had been drowned at sea. This was untrue :—*Held :* there was a presumption of fact of the continuance of the life of N. until 1925.—ARNOLD *v.* NORRIS (FALSELY CALLED ARNOLD), [1936] S. A. S. R. 287.—**AUS.**

8026. *Add. Annotation :*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

8031. *Add. Annotations :* — **Consd.** Spivack *v.* **Spivack** (1930), 99 L. J. P. 52. **Refd.** R. *v.* **Moscovitch** (1927), 44 T. L. R. 4.

8035. *Add. Citation :—sub nom.* SUGDEN *v.* LOLLEY, 2 Cl. & Fin. 567, n.

8038. *Add. Annotation :*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

Part XXVIII.—Offences against Decency and Morality.

8062. *Add. Annotation :*—**Refd.** R. *v.* Porter (1935), 25 Cr. App. Rep. 59.

8070. *Add. Annotation :*—**Folld.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

8070a. ——.]—R. *v.* DE MONTALK, No. 181a, *ante*.

8087a. ——.]—R. *v.* DE MONTALK, No. 181a, *ante*.

8087b. Advancement of literature as defence.]—R. *v.* DE MONTALK, No. 181a, *ante*.

8098. *Add. Annotation :*—**Folld.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

8104. *Add. Annotation :*—**Refd.** Statham *v.* Statham, [1929] P. 131.

8110. *Add. Annotations :*—**Refd.** R. *v.* Bailey, [1924] 2 K. B. 300; R. *v.* Southern (1929), 142 L. T. 383.

8112. *Add. Annotations :*—**Consd.** R. *v.* Whitehead, [1929] 1 K. B. 99; Statham *v.* Statham, [1929] P. 131.

8121a. Offence may be committed by woman.]—(1) A woman can be convicted of an indecent assault on a boy under Offences against the Person Act, 1861 (c. 100), s. 62.

(2) *Semble :* a woman can be convicted of an indecent assault on another female, under sect. 52 of the same Act.—R. *v.* HARE, [1934] 1 K. B. 354; 103 L. J. K. B. 96; 150 L. T. 279; 98 J. P. 49; 50 T. L. R. 103; 24 Cr. App. Rep. 108; 32 L. G. R. 14; 30 Cox, C. C. 64, C. C. A.

8123. *Add. Annotation :*—**Distd.** R. *v.* Woods (1930), 143 L. T. 311.

8123a. —— **By letter purporting to be written by woman.**]—R. *v.* WOODS, No. 751b, *ante*.

8127. *Add. Annotation :*—**Consd.** R. *v.* Kendrick & Smith (1931), 144 L. T. 748.

8128a. —— **What is disorderly house.**]—R. *v.* BERG, BRITT, CARRÉ & LUMMIES, No. 4222a, *ante*.

PART XXVII. SECT. 1, SUB-SECT. 3.—A.

8013 v. —— ——.]—R. *v.* WELCH, [1931] 4 M. P. R. 149; 57 C. C. C. 202.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 3.—C.

n i. —— *Sufficiency of belief—Onus of proof.*]—In Nov. 1924, M. went through a form of marriage with D. & lived with him until 1928 when they separated. In Nov. 1929, she went through a form of marriage with E., who then knew of her marriage with D. & that D. was still alive. M. & E. were prosecuted for bigamy. The defence was that D. was a married man in 1924. In May, 1915, D. married R. In Jan. 1927, she left him & disappeared & he had never since learned whether she was alive or dead. According to his evidence, she had been continuously absent for more than seven years immediately preceding his marriage with M., & it was not proved that he knew his first wife was alive at any time during those seven years :—*Held :* the Crown having proved the unexplained absence of D.'s first wife for seven years immediately preceding his marriage with M., & the presumption that she was then dead arising & discharging the *onus* which was upon the Crown, it was for the accused to rebut it; that they had not done, & therefore were rightly convicted.—R. *v.* MCCRORY; R. *v.* EDDY (1931), 55 Can. C. C. 117; 66 O. L. R. 530.—

p i. ——.]—Accused & his wife were Roman Catholics; they had never lived together as accused left for active service immediately after the marriage. On his return he informed the priest who had performed the ceremony that he & his wife were first cousins, & asked whether the marriage was valid. The priest replied that in the eyes of the Church the marriage was null & void, & as though it had never taken place. Accused, honestly believing he was free, went through the form of marriage with another woman :—*Held :* accused had been under no mistake of law & was rightly convicted.—R. *v.* KENNEDY, [1923] S. A. S. R. 183.—**AUS.**

PART XXVII. SECT. 1, SUB-SECT. 3.—D.

8038 i. *Effect of mistaken belief.*]—It is a defence in law to a charge of bigamy that prisoner, at the time of the alleged bigamous marriage, believed, in good faith & on reasonable grounds, that he had been divorced from the bond of his first marriage, if in fact he had not been divorced.—R. *v.* CARSWELL, [1926] N. Z. L. R. 321.—**N.Z.**

PART XXVIII. SECT. 3.

8079 ii. —— ——.]—The Glasgow Corpn. Order Confirmation Act, 1914, s. 21, penalises the keeping for sale of indecent or obscene prints, photographs, or other representations. In a prosecution of a shopkeeper for a contravention of the section, it was proved that the accused had kept for sale a large number of photographs of nude women, which were exhibited in the windows of his shop. The magistrate, who convicted the accused, stated that he considered that, while a picture similar to those which were the subjects of the complaint might fittingly be exhibited in a public gallery, yet the indiscriminate exposure, sale, & circulation of such prints were calculated to prejudice good morals :—*Held :* the magistrate, in considering whether the photographs were indecent or obscene, was entitled to take into account the circumstances in which they were kept for sale; & assuming that similar pictures might fittingly be exhibited in a public gallery, yet the circumstances in which the photographs were kept for sale by the accused entitled the magistrate to hold that a contravention of the section had been committed.—MCGOWAN *v.* LANGMUIR, [1931] S. C. (J.) 10.—**SCOT.**

m i. —— *Medicine intended to restore virility.*]—R. *v.* DAVIDSON, [1931] 1 W. W. R. 474; 55 Can. C. C. 203; 25 Alta. 332.—**CAN.**

s i. ——.]—An advertiser of means & instruction in birth control is not liable under sect. 207 of the Criminal Code, whatever her motive, on proof that the public good was served by her acts.—R. *v.* PALMER, [1937] 3 D. L. R. 493; 68 Can. C. C. 20.—**CAN.**

PART XXVIII. SECT. 5, SUB-SECT. 1.

8105 ii. —— ——.]—There is no irrebuttable presumption that a boy under the age of fourteen years is physically incapable of committing buggery. — R. *v.* PACKER, [1932] V. L. R. 225; Argus L. R. 212.—**AUS.**

8109 i. —— *Evidence — Complaint — Effect of delay.*]— R. *v.* ELLIOTT, [1928] 2 D. L. R. 244; 49 Can. Crim. Cas. 302; 62 O. L. R. 1.—**CAN.**

PART XXVIII. SECT. 5, SUB-SECT. 2.

8120 vii. ——.]—Consent or non-consent makes no difference so far as accused is concerned in offences against Criminal Code, ss. 202 & 203.—R. *v.* ELLIOTT, [1928] 2 D. L. R. 244; 49 Can. Crim. Cas. 302; 62 O. L. R. 1.—**CAN.**

PART XXVIII. SECT. 6, SUB-SECT. 1.—A.

d i. —— ——.]—Evidence of the general reputation of a house is admissible to show that it is a bawdy house.—R. *v.* THEIRLYNCK, [1931] 1 W. W. R. 352; *affd.*, [1931] S. C. R. 478; 4 D. L. R. 591; 56 Can. C. C. 156.—**CAN.**

d ii. —— ——.]—The decision in *R.* v. *Theirlynck* is not to be taken as laying down a rule that the bare fact that a police officer was delayed in entering a house may be relied upon to support the inference that the house is a common bawdy house & that people found therein must be deemed to be keepers or inmates of such a house. A provincial Ct. of Appeal should set aside a conviction for keeping or being an inmate of a common bawdy house where the conviction is based exclusively upon the fact that there was delay in opening up the

8129. *Add. Annotation :*—**Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

8133. *Add. Annotation :*—**Consd.** Winter *v.* Woolfe, [1931] 1 K. B. 549.

8140. *Add. Annotation :*—**Refd.** Winter *v.* Woolfe, [1931] 1 K. B. 549.

8143. *Add. Annotation :*—**Refd.** Winter *v.* Woolfe, [1931] 1 K. B. 549.

8143a. —— —— By sub-lessee—Whether "lessee" within statute.]—Deft. was & had been for about seven years the lessee of premises consisting of four floors & a basement. He used the ground floor & basement as a shop in which he carried on the business of a tailor. He sub-let unfurnished the first & second floors respectively as flats to two women. These flats were approached not through the shop but by a separate entrance, & apart from his position as landlord deft. had no right to enter them & did not occupy them. It was stated by the police that the women were known to them as prostitutes, each of whom took men to her own flat. Deft. was charged for that he being the lessee of the premises unlawfully & knowingly permitted part of them, namely, the first & second floors, to be used for the purposes of habitual prostitution contrary to Criminal Law Amendment Act, 1885 (c. 69), s. 13 (2): —*Held :* deft. was not the "lessee" of the flats within the sub-sect. & the charge should be dismissed.—SIVIOUR *v.* NAPOLITANO, [1931] 1 K. B. 636; 100 L. J. K. B. 151; 144 L. T. 408; 95 J. P. 72; 47 T. L. R. 202; 75 Sol. Jo. 80; 29 L. G. R. 195; 29 Cox, C. C. 236, D. C.

8143b. —— What must be proved—Frequenting by prostitutes & receipt of money unnecessary.]—On an information under Criminal Law Amendment Act, 1885 (c. 69), s. 13 (2), against the occupier of premises, for unlawfully & knowingly permitting them to be used as a brothel, it is not necessary for the Crown to prove that the women resorting to the premises are prostitutes, known, as such, to the police, or that they received payment for acts of fornication, or of indecency, committed by them with men; it is sufficient to prove that with the knowledge of the occupier persons of opposite sexes were permitted there to have illicit sexual intercourse.—WINTER *v.* WOOLFE, [1931] 1 K. B. 549; 100 L. J. K. B. 92; 144 L. T. 311; 95 J. P. 20; 47 T. L. R. 145; 29 L. G. R. 89; 29 Cox, C. C. 214, C. C. A.

8154. *Add. Citations :—sub nom.* GUAGLIENI *v.* MATTHEWS, 34 L. J. M. C. 116; 29 J. P. 439; 11 Jur. N. S. 636; 13 W. R. 679.
Add. Annotation :—As to (1) **Distd.** R. *v.* Tucker (1877), 2 Q. B. D. 417.

8174. *Add. Annotation :*—**Refd.** A.-G. *v.* Southport Corpn., [1934] 1 K. B. 226.

8175. *Add. Annotation :*—**Refd.** A.-G. *v.* Southport Corpn. (1933), 49 T. L. R. 584.

8176. *Add. Annotations :*—**Consd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215; Kitchener *v.* Evening Standard Co., [1936] 1 All E. R. 48.

premises to police officers. Evidence of the reputation of the house, while admissible to show that the house is a bawdy house, is not by itself sufficient to support a conviction of the people who live therein for being keepers or inmates of a bawdy house. The *Theirlynck* case stands for nothing more than that the cumulative effect of the circumstances proven in that case was sufficient to support the conviction.—R. *v.* MCEWAN & LEE, [1932] 3 W. W. R. 564; [1933] 1 D. L. R. 398; 59 C. C. C. 75.—**CAN.**

sl. *Woman living alone.*]—A woman living alone, & receiving men for purposes of prostitution, cannot be convicted of keeping a common bawdy house.—R. *v.* SORVARI, [1938] 1 D. L. R. 308; O. R. 9; 69 Can. C. C. 281.—**CAN.**

sm. ——.]—A woman renting a room solely for purposes of prostitution is liable as the keeper of a bawdy house, although the room is not used by any other prostitute.—R. *v.* RICHARDS, [1938] 2 D. L. R. 480; O. R. 170.—**CAN.**

sn. ——.]—Where a room is used by a prostitute for purposes of prostitution, the fact that it is her home & that it is not lived in or used by other women does not prevent it from being a common bawdy house within the meaning of sect. 225 of the Criminal Code, R. S. C., 1927.—R. *v.* MIKET, [1938] 2 W. W. R. 459.—**CAN.**

PART XXVIII. SECT. 6, SUB-SECT. 1. —B.

r (p. 755) **i.** ——.]—During a period of six weeks prostitutes resorted to a furnished flat, of which two men were the tenants & occupiers. Some of them went on the invitation of the tenants, others were taken by friends of the tenants, with their knowledge & consent :—*Held :* if the prostitution had been with the occupiers of the flat only, no offence would have been committed, in respect that the occupiers could not "permit" their own acts; & it was immaterial that no profit was made by accused. —GIRGAWAY *v.* STRATHERN, [1925] S. C. (J.) 31.—**SCOT.**

c (p. 756) **i.** —— *Arrest under search warrant.*]—R. *v.* FRIEDMAN (Sask.) (1927), 49 Can. Crim. Cas. 225.—**CAN.**

h (p. 757) **i.** —— *Omission of "knowingly."*]—A conviction which does not state that accused "knowingly" permitted his premises to be used for the illegal purpose described, is materially defective.—R. *v.* ROZONOWSKI, [1926] 1 D. L. R. 732; [1926] 1 W. W. R. 241; 45 Can. Crim. Cas. 193; 36 B. C. R. 327.—**CAN.**

h (p. 757) **ii.** ——.]—On a charge of keeping a bawdy house the precise locality of the house within the magistrate's jurisdiction need not be given unless ordered.—R. *v.* JAMES (1915), 25 Can. C. C. 23.—**CAN.**

h (p. 757) **iii.** ——.]—R. *v.* BADIE, [1935] 3 D. L. R. 75; 63 Can. C. C. 192; 8 M. P. R. 378.—**CAN.**

sf. *House must be "common" & "public."*]—R. *v.* LAPORTE (1931), 56 Can. C. C. 158.—**CAN.**

sg. *Evidence.*]—A common bawdy house may be proved to be such by such facts, circumstances & general reputation as would warrant the inference.—R. *v.* THOMAS, [1938] 1 D. L. R. 127; 12 M. P. R. 333; 69 Can. C. C. 246.—**CAN.**

sh. *Punishment.*]—*Held :* the measure of punishment on summary conviction for keeping a bawdy house is governed by sects. 228 (2), 779 of the Criminal Code, & under sect. 779 there are three alternative punishments: imprisonment for six months, a fine not exceeding $200, or both fine & imprisonment.—*Ex p.* THOMAS, [1931] 3 M. P. R. 350.—**CAN.**

sm. *Form of conviction.*]—A conviction for keeping a bawdy house should show whether a "house," "room," etc., was so used.—R. *v.* SHEPHERD (1902), 6 Can. C. C. 463.—**CAN.**

PART XXVIII. SECT. 7, SUB-SECT. 3.

8176 i. *Concert—Free admission—Collection taken.*]—Applt. corpn. existed for the purpose of disseminating the doctrines of Rationalism. Without a consent of any kind from the Municipal Corpn., it held a concert on a Sunday evening in a picture theatre, to which no charge was made for admission. There was a notice reading, "Unless you contribute sixpence we run at a loss," & a silver-coin collection was made. The concert consisted, in part, of a lecture which might have had some educational value, &, in part, of diversions of a light character. Applt. was convicted of an offence under Municipal Corpns. Act, 1928, s. 309. On an appeal by way of rehearing :—*Held :* an entertainment had been held & applt. had been rightly convicted.—NEW ZEALAND ASSOCN. FOR ADVANCEMENT OF RATIONALISM, INC. *v.* HOGAN, [1931] N. Z. L. R. 907.—**N.Z.**

sn. *Exhibition of films—Integral part of function.*]—Where the exhibition of motion-picture films constitutes an integral, although possibly a merely subsidiary, part of a function to which the public are invited & have access, there is an "entertainment" within Municipal Corpns. Act, 1920, s. 309, which provides as follows: "No concert or entertainment of any kind which is open to the public, whether by the purchase of tickets or otherwise, shall be held or given on any Sunday, Good Friday, or Christmas Day without the written consent of the Council, & then only subject to such conditions in every respect as the Council may impose."—MARTIN *v.* HOGAN, [1932] N. Z. L. R. 427.—**N.Z.**

8177a. —— Company.]—The expressions "keeper" of a house & "person managing or conducting an entertainment" in Sunday Observance Act, 1781 (c. 49), s. 1, must be taken to include a limited co., but the directors are not liable merely because they are directors. To make them liable it must be shown that they acted as persons having the management of the house on the particular Sunday on which the performance complained of took place.—ORPEN *v.* HAYMARKET CAPITOL, LTD. (1931), 145 L. T. 614; 95 J. P. 199; 47 T. L. R. 575; 75 Sol. Jo. 589; 29 L. G. R. 615; 29 Cox, C. C. 348.

Annotation:—**Consd.** Green *v.* Kursaal (Southend-on-Sea) Estates, Ltd., [1937] 1 All E. R. 732.

8177b. —— Promoter.]—KELLY *v.* ALLEN (1936), 80 Sol. Jo. 148.

8177c. —— Manager.]—(1) B. was the general manager of the Ring, Blackfrairs, of which the proprietors were a limited co. A boxing performance to which there was no free admission took place at the Ring on Sunday, May 5, 1935. B. knew of all the arrangements made in connection with the performance & his name appeared as general manager on all advertisements of that performance. A letter dealing with a charitable collection, which was made during that performance, contained in its heading: "General Manager; B.," & was signed with his name. B. was not at the performance complained of:—*Held:* B. had not ceased by reason of his absence to be manager & in control of the performance, & was the "keeper" within Sunday Observance Act, 1780 (c. 49), ss. 1, 2.

(2) H. was alleged to have announced the fights, introduced the boxers, announced the results & to have conducted the collection. H. was not identified as the person who had performed these duties, but he did not give evidence to deny the charge:—*Held:* H. was master of the ceremonies within sect. 1 of above Act.

(3) A handbill bearing the imprint of S.P., Ltd., dated May 5, 1935, & giving details of the performance & of the price of seats was handed to a person awaiting admission:—*Held:* the imprint was not in itself sufficient evidence that S.P., Ltd. had printed the handbill.

(4) F.P., Ltd. in their paper "Boxing" announced one of the contests which was to take place at the performance in question. No price of the seats was mentioned & no payment was received for the announcement:—*Held:* the announcement was an advertisement within sect. 3 of the above Act.

(5) Pltf. in one action sued the four parties above mentioned for penalties under Sunday Observance Act, 1780 (c. 49). It was contended that the four defts. were being sued for four different debts, & that such a joinder was not permitted under R. S. C., Ord. XVI., rr. 3, 4, 6:—*Held:* exercising the discretion of the ct., no inconvenience was shown & the joinder should be allowed.—GREEN *v.* BERLINER, [1936] 2 K. B. 477; [1936] 1 All E. R. 199; 105 L. J. K. B. 662; 155 L. T. 486; 52 T. L. R. 221; 80 Sol. Jo. 247.

Annotation:—**Consd.** Gordon, Mackey & Co. *v.* Watson, [1936] 2 All E. R. 33.

8177d. Who is master of ceremonies.]—GREEN *v.* BERLINER, No. 8177c, *ante*.

8178a. Advertisement—All-in wrestling.]—In an action by a common informer claiming penalties under Sunday Observance Act, 1780 (c. 49), s. 1, against defts. as "persons advertising, or causing to be advertised, any public entertainment on the Lord's day, to which persons are to be admitted by the payment of money":—*Held:* what is to be looked at, in order to ascertain whether the advertisement offends against the sect., is the intention of the advertiser at the time of publication, not what is in fact done afterwards. But the intention of the advertiser, being a question of fact, may be proved, if the wording of the advertisement is not such as to be conclusive, by any relevant evidence, including what was in fact done afterwards.—KITCHENER *v.* EVENING STANDARD CO., LTD., [1936] 1 K. B. 576; [1936] 1 All E. R. 48; 105 L. J. K. B. 313; 154 L. T. 253; 52 T. L. R. 213; 80 Sol. Jo. 166.

8178b. —— Boxing match.]—GREEN *v.* BERLINER, No. 8177c, *ante*.

8178c. —— Whether of place or entertainment.]—A newspaper issued on Aug. 8, 1936, included an advertisement as follows: "Kursaal Gardens. Amusement Park & Attractions open daily (including Sundays). Dancing." An informer claimed penalties under Sunday Observance Act, 1780 (c. 49), against defts. for advertising entertainments on Sundays, they being the printers & publishers of the newspaper:—*Held:* (1) defts were not advertisers within sect. 3 of the Act. The claim should have been brought against defts. as printers or publishers under the same sect.; (2) an amendment of the claim ought not to be allowed as 6 months had elapsed since the alleged offence, & to allow an amendment would be to allow an action to be brought after the expiration of the period of limitation applicable to the proceedings under sect. 5 of the Act; (3) the advertisement in its terms was an advertisement of a place & not of an entertainment, & no offence had been committed against sect. 3 of the Act.—GREEN *v.* KURSAAL (SOUTHEND-ON-SEA) ESTATES, LTD., [1937] 1 All E. R. 732; 81 Sol. Jo. 279.

8178d. —— Proceedings against printer & publisher.]—GREEN *v.* KURSAAL (SOUTHEND-ON-SEA) ESTATES, LTD., No. 8178c, *ante*.

8178e. Evidence of printing—What amounts to.]—Pltf., as a common informer, claimed from deft. a penalty of £50 on the allegation that deft. contrary to Sunday Observance Act, 1780 (c. 49), s. 3, had printed an advertisement of a display of all-in wrestling which was to take place on a Sunday & to which persons were to be admitted against payment of money for tickets:—*Held:* the evidence did not establish that deft. was the printer of the advertisement & the action failed. The ct. ought not to assume in a quasi-criminal matter that, because the name of a person appears on a document as the printer, he is in fact the printer.—TARLING *v.* ROME (1936), 52 T. L. R. 220; 80 Sol. Jo. 166.

Annotation:—**Consd.** Green *v.* Berliner, [1936] 1 All E. R. 199; Gordon, Mackey & Co. *v.* Watson, [1936] 2 All E. R. 33.

8178f. —— ——.]—GREEN *v.* BERLINER, No. 8177c, *ante*.

8460. *Add. Annotation :*—**Consd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

8468. *Add. Annotation :*—**Refd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

8498. *Add. Annotations :*—**Consd.** R. *v.* Betts & Ridley (1930), 144 L. T. 526 ; R. *v.* Stone, [1937] 3 All E. R. 920. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

8498a. —— ——.]—Applt. was charged with the murder of a girl. At the trial the jury asked the judge : " If, as a result of an intention to commit rape, a girl is killed, although there was no intention to kill her, is the man guilty of murder ? " The judge answered, " Yes " : —*Held :* the judge had answered the jury correctly.—R. *v.* STONE, [1937] 3 All E. R. 920 ; 53 T. L. R. 1046 ; 81 Sol. Jo. 735, C. C. A.

8502. *Add. Annotation :*—**Consd.** R. *v.* Stone, [1937] 3 All E. R. 920.

8503. *Add. Annotation :*—**Refd.** R. *v.* Stone, [1937] 3 All E. R. 920.

8505. *Add. Annotation :*—**Refd.** R. *v.* Stone, [1937] 3 All E. R. 920.

8518. *Add. Annotation :*—**Consd.** R. *v.* Donovan (1934), 50 T. L. R. 566.

8541a. —— **Stopping fight.**]—Applt., a lad of 16, in separating two boys who were fighting, caused the death of one of them. The only witness was one S., who was present at the time & was charged as accessory after the fact. At the trial a letter was read from the solrs. acting for defts. asking for the production of all statements made by defts. & S. This was characterised as improper & production was refused. Also at the trial counsel for defts. agreed that the medical aspect of the case should be argued by one counsel only, & it was agreed that this should be done by counsel for an accessory. This counsel was not allowed to deal with this subject, & was told to confine himself to the question whether his client was an accessory : —*Held :* (1) in the circumstances the killing only amounted to manslaughter, there being no presumption of malice ; (2) the letter asking for production of the statements was quite a proper one & the statements should have been produced ; (3) counsel for the accessory was quite entitled to argue whether there had been a murder or not, & this would be so even if the prisoner had pleaded guilty. He was, therefore, fully entitled to discuss the medical aspect of the case ; (4) S. being an accomplice, his evidence required corroboration. The fact that he kept silence as to the death of the boy was not corroboration.—MAHADEO *v.* R., [1936] 2 All E. R. 813 ; 80 Sol. Jo. 551, P. C.

8556. *Add. Annotation :*—**Refd.** Ryan *v.* Fildes, [1938] 3 All E. R. 517.

8575. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8588. *Add. Annotation :*—**Consd.** R. *v.* Walker (1934), 24 Cr. App. Rep. 117.

Constable G. had not notified him of the cause of arrest :—*Held :* there must be a new trial.—R. *v.* GEORGE, [1935] 1 W. W. R. 145 ; 2 D. L. R. 516 ; 63 C. C. C. 225 ; 49 B. C. R. 345.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —I.

8494 viii. —— —— *Attempt to kidnap.*]—Killing during an attempt to kidnap is murder & an accomplice armed & on guard is guilty of murder as having a " common intention."—R. *v.* BANNISTER (DANIEL) (NO. 2), [1936] 4 D. L. R. 417 ; 11 M. P. R. 417 ; 66 Can. C. C. 357.—**CAN.**

8503 iv. —— ——.]—Applt. was convicted on a charge of feloniously slaying one B. Death was due to septicæmia following a miscarriage. There was evidence that applt. had undertaken to perform an operation on B. to procure abortion ; that he had introduced her to, & arranged for her to " lie up " at the house of, a certain nurse ; that he told B. that the nurse " would start on " her " & he would finish her " ; that an illegal operation had taken place ; & that the nurse had been concerned in the operation ; but there was no further evidence to show that applt. had carried out his expressed intention to take part in the operation :—*Held :* as the evidence failed to connect the expressed intention with the actual performance of the operation, the conviction should be quashed. Also that, in the circumstances, the law officers would have been justified in bringing a charge of conspiracy against applt.—R. *v.* BENNETT (1936), 36 S. R. N. S. W. 329 ; 53 N. S. W. W. N. 57.—**AUS.**

8503 v. —— ——.]—The insertion of cotton batting in order to procure abortion, resulting in death, is sufficient to support a conviction for manslaughter.—R. *v.* PICKEN, [1937] 4 D. L. R. 425 ; 69 Can. C. C. 61 ; *revsd.* (1937), 69 Can. C. C. 321.—**CAN.**

8506 iii. —— ——.]—A man who strikes another in the throat with a knife must know that the blow is so imminently dangerous that it must in all probability cause death, & the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. — JUDAGI MALLAH *v.* KING-EMPEROR (1929), I. L. R. 8 Pat. 911.—**IND.**

8506 iv. —— ——.]—R. *v.* CONSTABLE, [1936] 2 W. W. R. 273 ; 3 D. L. R. 391 ; 6 F. L. J. (Can.) 115 ; 66 Can. C. C. 206.—**CAN.**

8a. *Wrongful act.*]—Where, although there is no intent to do injury to the person or property of another, death results from the doing of an act which is merely *malum prohibitum*, the wrongful act is not the kind of act that the criminal law requires as a foundation for a charge of manslaughter, unless the statute or prohibition violated is one designed & intended to prevent injury to the person, or the prohibited act is accompanied by negligence.—R. *v.* D'ANGELO, [1927] 4 D. L. R. 593 ; 48 Can. Crim. Cas. 127 ; 60 O. L. R. 512.—**CAN.**

8d. *Illegal hunting.*]—" Unlawful act " within sect. 252 (2) of the Criminal Code, R. S. C., 1927, c. 36, does not include acts which are merely *mala prohibita*. The act must itself be of a criminal nature, or the prohibition must be for the protection of the public from a dangerous act or conduct or the act must be dangerous or wrong in itself. Acts which are not wrong or dangerous in themselves, & are merely regulations or passed for revenue purposes, or for the protection of game, are not within that class.

The accused, while hunting, accidently shot & killed a fellow-hunter. He & his companions were hunting where it is illegal to carry unsealed firearms ; they were deer hunting, which was also illegal ; they were not dressed in white, as they should have been, had they been hunting legally, & they were using soft-nosed bullets. The accused was charged with manslaughter. The Crown contended that the accused was engaged in an " unlawful act " within the meaning of said sect. 252 (2) &, that being the case, the jury should be instructed that he was guilty of manslaughter :—*Held :* the charge to the jury should be on the broad question of negligence. —R. *v.* LAWSON, [1938] 2 W. W. R. 42 ; 8 F. L. J. (Can.) 4.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —N. (a).

8584 iii. —— —— ——.]—A Christian Science practitioner who gave a sick child " absent treatment," *i.e.* prayer, but who prescribed no medicine or other treatment, & who was not shown to have advised the parents not to call in a physician or to have aided, abetted or counselled them to abstain from providing proper medical attendance for the child :—*Held :* wrongly convicted of manslaughter of the child.—R. *v.* ELDER, [1925] 3 D. L. R. 447 ; [1925] 2 W. W. R. 545 ; 44 Can. Crim. Cas. 75 ; 35 Man. L. R. 161.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —N. (c) i.

8612 i. *Must be calculated to endanger life.*]—Criminal Code, s. 247, attaches no criminal responsibility to the mere omission, without lawful excuse, to perform the duty of taking reasonable precautions against & of using reasonable care to avoid endangering human life. To entail criminal responsibility there must be some physical consequences resulting from such omission ; the danger itself is not a consequence within the sect.—R. *v.* HURT (1923), 55 O. L. R. 48.—**CAN.**

8640. *Add. Annotations :*—**Refd.** James *v.* British General Insce., [1927] 2 K. B. 311; Haseldine *v.* Hosken, [1933] 1 K. B. 822; Beresford *v.* Royal Insurance Co., [1936] 2 All E. R. 1052.

8640a. ——.]—R. *v.* ROSE (1928), 20 Cr. App. Rep. 164, C. C. A.

8644. *Add. Annotation :*—**Refd.** R. *v.* Baldessare (1930), 22 Cr. App. Rep. 70.

8645. *Add. Annotation :*—**Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

8652a. Liability of persons other than driver—Common purpose.]—Both of two persons, in pursuit of a common purpose, may be guilty of criminal negligence by driving, although only one of them actually drives.—R. *v.* BALDESSARE (1930), 144 L. T. 185; 29 Cox, C. C. 193; 22 Cr. App. Rep. 70, C. C. A.

8665. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8666. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8666a. *S. P.* R. *v.* MARKUSS (1864), 4 F. & F. 356.

Annotation :—**Refd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8667. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8667a. —— ——.]—R. *v.* MARKUSS (1864), 4 F. & F. 356.

Annotation :—**Refd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8668. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8671. *Add. Annotation :*—**Refd.** Flint *v.* Lovell, [1935] 1 K. B. 354.

8672a. —— ——.]—Where a doctor is consulted, as possessing medical skill & knowledge, by or on behalf of a patient he owes a duty to that patient to use due caution in undertaking the treatment. If he accepts the responsibility & undertakes the treatment & the patient submits to his direction & treatment accordingly he owes a duty to the patient to use a fair & reasonable degree of diligence, care, knowledge, skill, & caution in administering the treatment. To support an indictment for the manslaughter of a patient, however, the prosecution must satisfy the jury that the negligence or incompetence of the doctor went beyond a mere matter of compensation & showed such disregard for the life & safety of the patient as to amount to a crime against the State & conduct deserving punishment.—R. *v.* BATEMAN (1925), 94 L. J. K. B. 791; 133 L. T. 730; 89 J. P. 162; 41 T. L. R. 557; 69 Sol. Jo. 622; 28 Cox, C. C. 33; 19 Cr. App. Rep. 8, C. C. A.

Annotations :—**Consd.** Andrews *v.* Director of Public Prosecutions, [1937] A. C. 576. **Refd.** Rose *v.* Ford, [1936] 1 K. B. 90.

8674. Delete second para. of headnote.

Add. Annotation :—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8674a. —— ——.]—A person acting as a medical man, whether licensed or unlicensed, is not criminally responsible for the death of a patient, occasioned by his treatment, unless his conduct is characterised either by gross ignorance of his art, or gross inattention to his patient's safety. On an indictment for manslaughter, where the death is occasioned by the application of a lotion to the skin, evidence may be given of the effect of the lotion when applied to other patients.—R. *v.* LONG (1831), 4 C. & P. 398.

8676. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8677. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8679. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8680. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8681. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8682. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8684. *Add. Annotations :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791; Andrews *v.* Director of Public Prosecutions, [1937] A. C. 576.

8688. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

PART XXXIII. SECT. 1, SUB-SECT. 1. —O. (b).

8639 iv. ——.]—Where accused, driving a motor car at night, entered a road which being under repairs was closed to traffic & ran over & killed two coolies, who were sleeping on the road with their bodies completely covered up, except for their faces :—*Held :* accused was not guilty of causing death by a rash & negligent act.—SMITH *v.* R. (1925), I. L. R. 53 Calc. 333.—**IND.**

8639 v. —— *Gross negligence or wanton misconduct necessary.*]—R. *v.* GREISMAN, [1926] 4 D. L. R. 738; 49 Can. Crim. Cas. 172; 59 O. L. R. 156. —**CAN.**

8639 vi. —— ——.]—To constitute criminal negligence within sect. 284 of the Criminal Code, the unlawful act must result in gross negligence or wanton misconduct. Therefore an accused who drove a wagon on the highway a short time after dusk, without a light, contrary to Highway Traffic Act, R. S. O., 1927, was not *ipso facto* guilty under sect. 284.—R. *v.* COSTELLO, [1932] 2 D. L. R. 410; O. R. 213; 58 C. C. C. 3.—**CAN.**

8639 vii. ——.]—A direction to the jury which sufficiently brought to their mind the difference between the quantum of negligence required to be found in a civil & a criminal trial :—*Held :* sufficient.—MOORE *v.* R., [1926] S. A. S. R. 52.—**AUS.**

8639 viii. ——.]—The test of negligence to be applied in criminal trials is the same as that applied in civil cases, namely, the standard of skill & care which would be observed by a reasonable man.—R. *v.* MEIRING, [1927] App. D. 41.—**S. AF.**

8639 ix. ——.]—Proof of ordinary negligence justifies a conviction for manslaughter under Criminal Code, s. 247.—R. *v.* FIELD (Alta.), [1928] 3 W. W. R. 757.—**CAN.**

8639 x. ——.]—R. *v.* COUPLAND, [1930] 3 W. W. R. 410.—**CAN.**

8639 xi. ——.]—In a collision between a motor truck driven by the accused & a motor cycle the cyclist received injuries which resulted in his death. The accident occurred on a country highway on a dark night, when the cyclist, who was riding ahead of the truck, suddenly, & without, it seems, giving any warning, turned to the left in order to cross the road, at the same time as the truck was about to pass him. The truck carried strong headlights; the motor cycle had a headlight & a rear light reflector. The accused's evidence was that he had blown his horn before the accident, but a man who was riding on the truck testified that he was not sure whether the horn was blown then or not. The accused was convicted of manslaughter. On appeal :—*Held :* the appeal should be allowed & the conviction quashed.—R. *v.* DOLYNCHUK, [1934] 1 W. W. R. 200; 2 D. L. R. 96; 61 C. C. C. 275.—**CAN.**

8g. *Injury to passenger alighting from street car.*]—R. *v.* DAHL, [1936] 3 W. W. R. 385; 4 D. L. R. 629; 67 Can. C. C. 37; 6 F. L. J. (Can.) 195.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —O (f).

t i. —— —— ——.]—Where a medical practitioner is charged under sect. 246 of the Code for that he undertook to administer surgical or medical treatment to deceased, & being under a legal duty to use reasonable skill, omitted without lawful excuse to discharge that duty, such omission resulting in death, it is necessary to sustain a conviction to establish that some treatment, operative or medicinal, known (or which should have been known) to a professional man using reasonable skill, was omitted without lawful excuse & that the omission caused the death.—R. *v.* WATSON, [1936] 2 W. W. R. 560; 4 D. L. R. 358; 66 Can. C. C. 233; 50 B. C. R. 531.—**CAN.**

8701. *Add. Anotationn :*—**Refd.** R. *v.* Davis, [1937] 3 All E. R. 537.

8771. *Add. Citation :*—1 Lew. C. C. 79.

8793a. —— ——.]—(1) The question whether or not a statement made by a person on whom a fatal attack has been made is a dying declaration, *i.e.* whether or not it has been made by that person while in a hopeless & settled anticipation of immediate dissolution, is for the judge at the trial of the person charged with the murder or manslaughter of the person in question &, to answer it, all the circumstances of each case must be regarded.

(2) Rules as to questions by police officers to detained persons commented on.—R. *v.* BOOKER (1924), 88 J. P. 75 : 18 Cr. App. Rep. 47, C. C. A.

8794. *Add. Citation :*—2 Cox, C. C. 239.

8863. *Add. Annotation :*—**Refd.** Beresford *v.* Royal Insurance Co., [1938] A. C. 586.

8927. *Add. Annotation :*—**Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18.

9023a. Within Children Act, 1908 (c. 67), s. 12 (1).]—An assault within the above sect. must be one which is likely to cause unnecessary suffering or injury to the health of the child.

Applt., who was the stepfather, & had the custody or care, of a girl of eleven years of age, was charged under the above sect. with wilfully assaulting the girl in a manner likely to cause her unnecessary suffering. The evidence of the girl was that applt. committed acts of indecency, not to her, but in her presence, & that when she screamed he put his hand over her mouth :—*Held :* this was not an assault within the sect.—R. *v.* HATTON, [1925] 2 K. B. 322 ; 94 L. J. K. B. 863 ; 133 L. T. 735 ; 89 J. P. 164 ; 41 T. L. R. 637 ; 28 Cox, C. C. 43 ; 19 Cr. App. Rep. 29, C. C. A.

9025a. ——.]—An act, unlawful *per se* as being criminal, cannot be rendered lawful because the person to whose detriment it is done consents to it.

Applt., being charged with caning a girl of seventeen for purposes of sexual gratifica-

PART XXXIII. SECT. 1, SUB-SECT. 1. —O. (g).

8694 v. ——.]—R. *v.* CHOTEM (1924), 42 Can. Crim. Cas. 156.—**CAN.**

8694 vi. ——.]—The negligence of the victim is not a defence to a charge of manslaughter unless it was the sole cause of the accident.—R. *v.* FIELD (Alta.), [1928] 3 W. W. R. 757.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —Q. (b) i.

8 i. —— ——.]—In a murder trial where the victim's throat had been cut so that he was unable to speak, evidence of questions put to deceased by the prosecution's witnesses & answers giving by nodding the head & making signs, amount to "verbal statements" under Evidence Act, s. 32, & are admissible as a dying declaration. —RANGA *v.* R. (1924), I. L. R. 5 Lah. 305.—**IND.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —Q. (b) ii.

8731 ii. ——.]—Accused was convicted of manslaughter on a charge of murder for having caused the death of K. by counselling or procuring S. unlawfully to use instruments upon her with intent to procure her miscarriage, contrary to the combined effect of sects. 69 & 303 of Criminal Code. The dying declaration was a lengthy narrative by deceased which day by day she related to her mother, who wrote down the story ; this narrative, which concluded with the words "I wish C. punished," appeared to have been read over to deceased shortly before her death & adopted by her at that time as a true statement ; a number of questions at the same time were submitted to her by police officers, & her answers with the questions were the subject-matter of two separate declarations. The narrative, together with the two short statements containing the questions & answers, were all put before the jury. It was common ground that the case against the accused could not be established without evidence of the dying declaration : —*Held :* the dying declaration was inadmissible. Therefore the conviction was quashed & a judgment & verdict of acquittal was directed to be entered. —SCHWARTZENHAUER *v.* R., [1935] S. C. R. 367 ; 3 D. L. R. 711; 64 C. C. C. 1.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —Q. (b) iii.

8741 xix. ——.]—A native when dying from injuries inflicted upon him said that he was "dead" or had been "killed." He then sent for his children & relatives, but did not take farewell of them, saying that he would say more when the pain allowed or when he was better. He then made a statement inculpating applt. :—*Held :* deceased when he made the statement had not a settled hopeless expectation of death, & the statement should not have been admitted in evidence as a dying declaration.—R. *v.* NGCOBO, [1925] App. D. 561.—**S. AF.**

8746 i. *Must believe death to be imminent.*]—A statement made when deceased had no expectation of death, but confirmed when he had a belief in impending death :—*Held :* admissible. —DEBORTOLI *v.* R., [1926] 4 D. L. R. 722 ; [1926] S. C. R. 492 ; 46 Can. Crim. Cas. 115.—**CAN.**

8754 i. —— *Not necessarily immediate.*]—On the trial of a charge of murder based on an alleged abortion or attempts to bring about an abortion, evidence of deceased given on an examination taken more than six weeks before her death was admitted as a dying declaration & evidence given by her husband on cross-examination of an admission made to him by the deceased indicating that she had tampered with herself was withdrawn from the jury :—*Held :* there should be a new trial.—R. *v.* MCINTOSH, [1937] 2 W. W. R. 1 ; [1938] 1 W. W. R. 211 ; 4 D. L. R. 478 ; 69 Can. C. C. 106.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 2.

8838 ii. —— ——.]—The necessity of dispersing a riotous crowd, which would become dangerous unless dispersed, & which threatens serious injury to persons & property, justifies a peace officer in using firearms to prevent violent & felonious outrage to persons & property. A ringleader who, under such conditions & while assaulting a peace officer, is shot dead, dies by justifiable homicide ; & the peace officer who fired is free from any liability in damages.—HEBERT *v.* MARTIN, [1931] S. C. R. 145 ; 2 D. L. R. 484 ; 54 Can. C. C. 257.—**CAN.**

o i. —— —— ——.]—R. *v.* PURVIS (Ont.) (1929), 51 Can. Crim. Cas. 273.—**CAN.**

PART XXXIII. SECT. 6, SUB-SECT. 1. —B.

8923 i. *Attempt to discharge weapon—Condition making discharge impossible.*]—Where although a rifle was loaded & pointed at the body of the complainant the mechanism of the trigger was in such condition that it was impossible to discharge the rifle, & the accused made no attempt to use the trigger, he cannot be convicted under sect. 273 of Criminal Code, R. S. C., 1927, of attempting to discharge a loaded rifle at complainant.—R. *v.* BROOME, [1936] 1 W. W. R. 709 ; 44 Man. L. R. 194.—**CAN.**

PART XXXIII. SECT. 6, SUB-SECT. 1. —C.

d i. —— *Injury resulting in death.*]—Deft. was convicted upon two charges of criminal negligence causing bodily or grievous bodily harm under Criminal Code, ss. 284 & 285 :—*Held :* deft. was properly convicted, notwithstanding that death resulted from the injuries inflicted by his negligence.—R. *v.* STARK, [1927] 3 D. L. R. 433 ; 47 Can. Crim. Cas. 356 ; 60 O. L. R. 375.—**CAN.**

PART XXXIII. SECT. 6, SUB-SECT. 1. —D.

sd. *Meaning of "actual bodily harm."*]—The above words in sect. 295 of the Code mean little, if anything, more than "battery."—R. *v.* TRESEGNE (1926), 45 Can. Crim. Cas. 270 ; 58 O. L. R. 634.—**CAN.**

PART XXXIII. SECT. 6, SUB-SECT. 2. —B.

m i. —— *Burden of proof.*]—Where on a charge of unlawfully wounding a person with intent to maim or disable him, the Crown proves that accused discharged a firearm in the direction of a crowd of persons & wounded the person named, it establishes its case, & the *onus* then shifts to accused to satisfy the ct. that it was either an accident or that he did not intend to wound.—R. *v.* SMART (Alta.), [1927] 3 W. W. R. 753 ; 49 Can. Crim. Cas. 75.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 1

sb. *Running down by motor car—No intent to assault.*]—Prisoner was indicted for assault occasioning bodily harm. The evidence showed that the injury in question, a fracture of the collar bone, was due to an accident caused by a motor car driven by prisoner in a public thoroughfare at 2.50 a.m. There being no evidence of an intention to assault, the indictment was amended, at the suggestion of the learned trial judge, so as to allege negligence in the control of a dangerous thing, in substitution for the charge of assault.—R. *v.* MCIVER, 22 Q. J. P. 173.—**AUS.**

tion, pleaded in defence that the prosecutrix had consented, & the chairman of quarter sessions in summing up directed the jury that "consent or no consent" was the vital issue in the case:—*Held:* there was misdirection, in that the question should have first been put to the jury, whether the blows struck were likely or intended to do bodily harm. If this were answered in the negative, then only would it have been necessary for the jury to consider the further question, whether the prosecutrix had proved absence of consent.—R. *v.* DONOVAN, [1934] 2 K. B. 498; 103 L. J. K. B. 683; 152 L. T. 46; 98 J. P. 409; 50 T. L. R. 566; 78 Sol. Jo. 601; 32 L. G. R. 439; 25 Cr. App. Rep. 1; 30 Cox, C. C. 187, C. C. A.

9030. *Add. Annotation:*—**Consd.** R. *v.* Donovan (1934), 50 T. L. R. 566.

9030a. Direction to jury.]—R. *v.* DONOVAN, No. 9025a, *ante*.

9036. *Add. Annotation:*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

9042. *Add. Annotation:*—**Apld.** R. *v.* Newport (Salop) JJ., *Ex p.* Wright, [1929] 2 K. B. 416.

9042a. —— ——.]—At a school for boys there was a rule prohibiting smoking by pupils during the school term whether on the school precincts or in public. During the term a pupil rather less than sixteen years old, after having left the school for the day & returned home, smoked a cigarette in the public street, & next day the schoolmaster administered to him five strokes of the cane as a punishment for breach of the rule. On the hearing of an information against the schoolmaster for an alleged assault on the boy the justices found that the rule in question was reasonable, that the father of the boy by sending him to the school authorised the schoolmaster to administer reasonable punishment to the boy for breach of a school rule, & that the punishment administered was reasonable; & they dismissed the information. An order *nisi* having been obtained calling upon the justices to show cause why they should not state a case on a question of law:—*Held:* the decision of the justices was right, no question of law arose on which they could state a case, & that the order *nisi* should be discharged.—R. *v.* NEWPORT (SALOP) JJ., *Ex p.* WRIGHT, [1929] 2 K. B. 416; 98 L. J. K. B. 555; 141 L. T. 563; 93 J. P. 179; 45 T. L. R. 477; 73 Sol. Jo. 384; 27 L. G. R. 518; 28 Cox, C. C. 658, D. C.

9043. *Add. Annotations:*—**Consd.** R. *v.* Newport (Salop) JJ., *Ex p.* Wright, [1929] 2 K. B. 416. **Refd.** Ryan *v.* Fildes, [1938] 3 All E. R. 517.

9046. *Add. Citation:*—*sub nom.* BLEKE *v.* GROVE (1664), 1 Keb. 661.

9057. *Add. Annotations:*—**Consd.** Place *v.* Searle (1932), 48 T. L. R. 428. **Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

9103a. —— ——.]—The old law that the owner of a house, or members of his family, may kill a trespasser who would forcibly dispossess him of the house, although such householder, or members of his family, has not previously retreated until no means of escaping his assailant are left to him, has not been amended or modified by modern practice.—R. *v.* HUSSEY (1924), 89 J. P. 28; 41 T. L. R. 205; 18 Cr. App. Rep. 160, C. C. A.

9111. *Add. Annotation:*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

9135a. Removal of interrupter from council meeting.]—MARSHALL *v.* TINNELLY (1937), 81 Sol. Jo. 902.

9154. *Add. Annotation:*—**Apld.** Morriss *v.* Winter (1929), 45 T. L. R. 643.

9154a. —— **Detention after receipt of remission marks.**]—M. was convicted in Dec. 1925, of certain misdemeanours & sentenced to two years' imprisonment with hard labour & twelve months' imprisonment, the sentences to run consecutively. An order was made by the ct. directing that he should be detained in prison in conformity with the sentences passed. He was first detained in Portsmouth Prison & afterwards in Pentonville Prison. In Dec. 1927, after M. had been removed to Pentonville Prison, the Governor of Portsmouth Prison indorsed on M.'s stage card the forfeiture of five remission marks, to make it agree with M.'s record. There was a dispute whether or not the Governor of Portsmouth Prison had ordered the forfeiture of those marks on May 10, 1926, & the jury differed with regard to it. As a result of the forfeiture of those five marks M. was released by the Governor of Pentonville Prison on July 21, 1928, instead of on July 20. On Aug. 2, 1928, M. brought an action against the Governors of both prisons to recover damages for his detention in prison during that one day. The jury found that the Governor of Portsmouth Prison had not acted maliciously nor with intention to

---

PART XXXIII. SECT. 7, SUB-SECT. 2—C. (a).

9041 i. *Schoolmaster & scholar.*]—Teacher entitled to inflict reasonable punishment.—R. *v.* METCALFE (Sask.), [1927] 3 W. W. R. 194.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 2.—C. (b).

9066 iv. ——.]—Punishment causing temporary pain & discolouration of the flesh for a few days:—*Held:* not excessive.—R. *v.* METCALFE (Sask.), [1927] 3 W. W. R. 194.—**CAN.**

9071 ii. ——.]—R. *v.* METCALFE (Sask.), [1927] 3 W. W. R. 194.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 2.—D.

9078 v. ——.]—On appeal from a conviction for an assault occasioning actual bodily harm:—*Held:* the force used by the accused, in defending himself, as he did, against an assailant armed with a hammer, was not disproportionate to the nature of the attack made on him, although it caused the fracture of his assailant's skull, & he had brought himself within, & was justified by, Criminal Code, s. 23.—R. *v.* OGAL, [1928] 3 D. L. R. 676; [1928] 2 W. W. R. 465; 50 Can. Crim. Cas. 71; 23 Alta. L. R. 511.—**CAN.**

9078 vi. ——.]—A blow with an automobile crank during a drunken brawl cannot be justified on the ground of self defence.—R. *v.* RECALLA, [1935] 4 D. L. R. 353; O. R. 479; 64 Can. C. C. 276.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 2.—E.

s). *Defence of son by father.*]—The conviction of a father for assaulting a boy who had been kicking & punching his boy set aside.—R. *v.* WIGGS, [1931] 3 W. W. R. 52; 44 B. C. R. 364.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 2.—G.

9119 i. *To effect arrest—Must not use unnecessary force.*]—A police officer who applies to an arrested person more force than is reasonably necessary to effect his object, even though it be a legitimate one, is guilty of an assault; his belief in the guilt of the arrested person is no extenuation for the use of the excessive force.—R. *v.* MCDONALD; R. *v.* HUNTER, [1932] 3 W. W. R. 418; [1933] 1 D. L. R. 46; 26 Alta. L. R. 460; 59 C. C. C. 56.—**CAN.**

injure M. & that he had not made a false statement:—*Held:* the Prison Rules did not confer upon M. any legal right to an earlier discharge by the obtaining of remission marks, & that therefore the action could not succeed against either of the Governors; having regard to the findings of the jury the action could not succeed against the Governor of Portsmouth Prison; the Governor of Pentonville Prison was protected, as he had merely acted in pursuance of the order of the ct.—MORRISS *v.* WINTER, [1930] 1 K. B. 243; 99 L. J. K. B. 101; 142 L. T. 67; 45 T. L. R. 643; 28 Cox, C. C. 687.

9161. *Add. Annotation:*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

9207a. Operation by qualified surgeon—Reasonable grounds—Danger to life or health.]—A young girl, not quite fifteen years of age, was pregnant as the result of rape. A surgeon, of the highest skill, openly, in one of the London hospitals, without fee performed the operation of abortion. He was charged under the Offences against the Person Act, 1861 (c. 100), s. 58, with unlawfully procuring the abortion of the girl.

The jury were directed that it was for the prosecution to prove beyond reasonable doubt that the operation was not performed in good faith for the purpose only of preserving the life of the girl. The surgeon had not got to wait until the patient was in peril of immediate death, but it was his duty to perform the operation if, on reasonable grounds & with adequate knowledge, he was of opinion that the probable consequence of the continuance of the pregnancy would be to make the patient a physical & mental wreck.—R. *v.* BOURNE, [1938] 3 All E. R. 615, C. C. A.

SUB-SECT. 4.—CHILD DESTRUCTION.

See Infant Life (Preservation) Act, 1929 (c. 34).

9287a. —— Girl under sixteen.]—To a charge of rape upon a girl under sixteen years of age, the defence of consent is not open to the accused.

Where any resistance by a girl of such age would be futile, or where it is clear that the girl would not know whether to resist or not, the prosecution are not required to prove that the accused used force or violence.—R. *v.* HARLING, [1938] 1 All E. R. 307; 26 Cr. App. Rep. 127, C. C. A.

PART XXXIII. SECT. 9.

sk. *Injury caused in attempting to stop breach of peace.*]—A person using the force necessary to prevent a continuance or renewal of a breach of the peace, & struck by the party he was attempting to control:—*Held:* justified in striking back.—R. *v.* MANSON (1925), 43 Can. Crim. Cas. 30; [1925] 1 W. W. R. 671.—**CAN.**

sm. *What is unlawful act—Not breach of municipal bye-law.*]—R. *v.* GOSLING (Alta.) (1927), 47 Can. Crim. Cas. 211.—**CAN.**

sn. *Criminal negligence — Under Criminal Code, s. 284—What amounts to.*]—R. *v.* BAKER, [1929] 2 D. L. R. 282; S. C. R. 354; 51 Can. Crim. Cas. 352; 63 O. L. R. 641; *affg.*, [1929] 1 D. L. R. 785; 51 Can. Crim. Cas. 71; 63 O. L. R. 275.—**CAN.**

sp. —— ——.]—R. *v.* MCCOWAN, [1936] 1 W. W. R. 703; 2 D. L. R. 490; 65 Can. C. C. 203; 44 Man. L. R. 117.—**CAN.**

st. *Police shooting fugitive—Unnecessary force—Spectator injured.*]—A policeman who uses unnecessary force by shooting at a fugitive, & who thereby wounds a spectator, is liable for unlawful wounding.—R. *v.* MITCHELL (1937), 69 Can. C. C. 406.—**CAN.**

sw. *Harm self-inflicted—Mistake as to prisoner's intentions.*]—A person is not responsible for inflicting grievous bodily harm when the injuries are received by jumping from a car through a mistaken apprehension of accused's intentions.—R. *v.* KISSICK (1937), 69 Can. C. C. 403.—**CAN.**

PART XXXIII. SECT. 11, SUB-SECT. 1.

q i. —— ——.]—An indictment set forth that the accused supplied a number of powders, whose nature was unknown to the prosecutor, to a woman who was then pregnant, with intent to cause her to abort, & instigated her to take them, which she did, & that the accused attempted to cause the woman to abort. A further charge regarding another woman set forth that the powders were supplied in the belief that the woman was pregnant, & that this was done with intent to cause her to abort:—*Held:* the first charge was relevant in respect (*a*) that the statement that accused had supplied powders to a pregnant woman & instigated their consumption was a relevant averment of an attempt to procure abortion; (*b*) that it was unnecessary to state that the powders were calculated to cause abortion, if they were supplied with that intent; and (*c*) that it was unnecessary to aver the locus where the powders were consumed. Further, the second charge was irrelevant, in respect that it did not state that the woman was pregnant, & that supplying powders to, & instigating their consumption by, a woman who was not pregnant did not *per se* constitute a crime known to the law of Scotland.

At the trial, direction to the jury by LORD ROBERTSON that, if the accused knew positively that the drugs he was giving would not cause abortion, he could not be convicted of the crime of attempting to procure abortion.—H.M. ADVOCATE *v.* SEMPLE, [1937] S. C. (J.) 41.—**SCOT.**

PART XXXIII. SECT. 11, SUB-SECT. 3.

9206 i. *Woman not pregnant.*]—*Held:* an indictment charging accused with performing an operation on a woman, in the belief that she was pregnant, for the purpose of causing her to abort, & with attempting to cause her to abort, was irrelevant, in respect that it did not set forth that the woman was at the time pregnant.—H.M. ADVOCATE *v.* ANDERSON, [1928] S. C. (J.) 1.—**SCOT.**

sr. *When offence complete.*]—The offence under Crimes Act, 1908, s. 221, of a person who, with intent to procure the miscarriage of any woman or girl, unlawfully uses any instrument is complete as soon as he makes use of the instrument, *i.e.*, as soon as he inserts it; & it is not a continuing offence so long as the instrument remains inserted. Consequently, a person cannot be convicted under sect. 90 of the Act of "aiding" the unlawful use of an instrument who, after the instrument has been used by another, does some act to assist abortion.—R. *v.* BEUTH, [1937] N. Z. L. R. 282; 13 N. Z. L. J. 92.—**N.Z.**

PART XXXIII. SECT. 13, SUB-SECT. 1.—A.

9261 iv. ——.]—An indictment charged accused with ravishing a woman "while she was in a state of insensibility or unconsciousness from the effects of intoxicating liquor":—*Held:* as the crime of rape consisted in having connection with a woman against her will, the indictment did not set forth a relevant charge of the crime of rape.—H.M. ADVOCATE *v.* GRAINGER & RAE, [1932] S. C. (J.) 40.—**SCOT.**

PART XXXIII. SECT. 13, SUB-SECT. 1.—C.

sr. *Physical force essential.*]—Working upon a girl's passions to break down her resistance & induce consent does not constitute either rape or indecent assault, which require physical force.—R. *v.* LANDRY, [1935] 3 D. L. R. 639; 9 M. P. R. 254; 64 Can. C. C. 104; 5 F. L. J. (Can.) 36.—**CAN.**

PART XXXIII. SECT. 13, SUB-SECT. 1.—D.

9281 i. *Consent obtained by fraud—What amounts to fraud.*]—Cohabitation following a feigned marriage is not rape under the law of Canada. It cannot be said as a general proposition, with regard to rape, that fraud vitiates consent. The only sorts of fraud which destroy the effect of a woman's consent are frauds as to the nature of the act itself or as to the identity of the person who does the act.—PEOPLE OF CALIFORNIA STATE *v.* SKINNER, [1924] 2 W. W. R. 209; 33 B. C. R. 555.—**CAN.**

9293 i. *Conditions negativing consent—Drunkenness.*]—Where a man obtains sexual intercourse with a woman while she is insensible owing to intoxication, the crime committed is rape, if the woman has been plied with drink of a deadly kind, the nature of which has been concealed from her, for the purpose of overcoming her resistance or making her incapable of resistance; but the crime is indecent assault only, if the woman through indulgence has voluntarily taken the drink, & it has not been doped or given to her for the purpose of making her insensible, even though she has been invited & coaxed to drink.—H.M. ADVOCATE *v.* LOGAN, [1936] S. C. (J.) 100.—**SCOT.**

9307a. ——.]—On the trial of a prisoner for having had unlawful carnal knowledge of a girl under sixteen years of age, the judge directed the jury that although what the girl said to her mother several months after the offence was committed was not evidence, yet the jury could infer what the girl said, namely, that the prisoner was responsible for her condition, from what the mother did, because the prisoner was at once accused, & that that amounted to corroboration of the girl's story. Further, that the fact that the prisoner when he was charged by a police officer & cautioned made no denial of the charge was also corroboration of her story :—*Held :* both directions were wrong. Any inference as to what the girl told her mother could not amount to corroboration of the girl's story, as it proceeded from the girl herself, & the girl could not corroborate herself. The fact that the prisoner when charged & cautioned made no denial of the charge could not be corroboration.—R. *v.* WHITEHEAD, [1929] 1 K. B. 99 ; 98 L. J. K. B. 67 ; 139 L. T. 640 ; 92 J. P. 197 ; 27 L. G. R. 1 ; 28 Cox, C. C. 547 ; 21 Cr. App. Rep. 23, C. C. A.

Annotations :—**Folld.** R. *v.* Charavanmuttu (1930), 22 Cr. App. Rep. 1. **Extd. & Apld.** R. *v.* Naylor (1932), 23 Cr. App. Rep. 177. **Consd.** R. *v.* Parker, [1933] 1 K. B. 850.

9311. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

9320a. ——.]—In charges of sexual offences corroboration of the testimony of prosecutrix is not in law essential, but is in practice required.

If, on the trial of such a charge, there is corroboration on one count referring to one date, but there is none on another about another date, & the ct. rejects the corroboration on the former, it being possible that the jury gave credit to it on both counts, it may quash a conviction on both.—R. *v.* BERRY (1924), 18 Cr. App. Rep. 65, C. C. A.

9320b. What amounts to corroboration.]—The mere fact that the accused preserves a letter written to him by prosecutrix of a charge of a sexual offence is not corroboration of her evidence : nor is his mere silence when he

c. For "c. *By misrepresentation or fraud—Personation of husband*" read "9295 i. *Conditions negativing consent—Personation of husband.*"

d. Read now "9295 ii."

9295 iii. —— —— *Former husband.*] —*Held :* an indictment for rape was relevant which bore that the woman was the wife of a second husband who was alive, while the person said to be personated was the woman's former husband who had been officially reported as killed in action.—H.M. ADVOCATE *v.* MONTGOMERY, [1926] S. C. (J.) 2.—**SCOT.**

PART XXXIII. SECT. 13, SUB-SECT. 1. —E.

9307 i. *What amounts to corroboration.*] — Evidence of a witness that he saw accused & the girl leave a dance hall under suspicious circumstances at 11.30 on the night of the alleged seduction amounts to corroboration so as to justify the charge going to the jury.—STEELE *v.* R., [1924] 4 D. L. R. 175 ; [1924] 1 W. W. R. 1146.—**CAN.**

9307 ii. ——.]—Evidence of facts which are open to two interpretations is not corroborative of either. To constitute corroboration in a criminal case there must be independent evidence of facts which are not consistent with the innocence of the accused.—R. *v.* GALSKY, [1930] 1 W. W. R. 690 ; 53 Can. C. C. 219 ; 38 Man. L. R. 581, C. A.—**CAN.**

9307 iii. ——.]—R. *v.* GALSKY (No. 2), [1930] 2 W. W. R. 577 ; 54 Can. C. C. 199 ; 39 Man. L. R. 74, C. A.—**CAN.**

9307 iv. ——.]—In order for testimony to constitute corroboration of evidence against an accused it must be independent testimony which affects the accused by connecting or tending to connect him with the crime charged. In the present case, a prosecution for rape, in which the only question in issue was whether the intercourse which took place was without the complainant's consent :—*Held :* there was nothing in the evidence which the trial judge could properly tell the jury they might accept as corroborative of complainant's testimony on that issue. —R. *v.* STERN, [1932] 3 W. W. R. 688.—**CAN.**

PART XXXIII. SECT. 13, SUB-SECT. 2.

9308 v. ——.]—R. *v.* GOSSELIN (Ont.) (1927), 47 Can. Crim. Cas. 318.—**CAN.**

9316 v. ——.]—On a charge of attempting to have carnal knowledge of a girl under fourteen :—*Held :* corroboration was not necessary.—R. *v.* LIZOWYJ (1927), 48 Can. Crim. Cas. 255 ; 61 O. L. R. 93.—**CAN.**

9316 vi. ——.]—Nature of corroboration required under Criminal Code, s. 1002, on a charge of carnally knowing a girl under fourteen.—HUBIN *v.* R., [1927] 4 D. L. R. 750 ; [1927] S. C. R. 442 ; 48 Can. Crim. Cas. 172.—**CAN.**

9316 vii. ——.]—R. *v.* BROWN (N. S.), [1928] 3 D. L. R. 214 ; 49 Can. Crim. Cas. 334.—**CAN.**

9316 viii. ——.]—R. *v.* HAMLIN (Alta.), [1930] 1 D. L. R. 497 ; 24 Alta. L. R. 296 ; [1929] 3 W. W. R. 258 ; 52 Can. Crim. Cas. 149.—**CAN.**

9316 ix. ——.]—Where on a trial on a charge of carnal knowledge the jury can properly find on the evidence that the prisoner had communicated a venereal disease to complainant by sexual contact, & does so find, it is open to the jury to treat complainant's condition as corroboration of her story. Mere proof that the prisoner & complainant were affected with the disease does not, however, amount to corroboration of her story, unless the jury is satisfied on sufficient evidence that she got it from him by sexual contact. —R. *v.* DREW (No. 2), [1933] 2 W. W. R. 243 ; 4 D. L. R. 592 ; 60 C. C. C. 229.—**CAN.**

9316 x. ——.]—On the trial of a charge of having carnal knowledge of a girl under fourteen, evidence merely of an opportunity to commit the offence is not sufficient corroboration to satisfy the Code.—R. *v.* NEWES, [1934] 1 W. W. R. 295 ; 3 D. L. R. 237 ; 61 C. C. C. 316.—**CAN.**

9316 xi. ——.]—On appeal from a conviction & sentence on a summary trial of a charge of having had carnal knowledge of a girl under 14 years of age :—*Held :* the testimony of two other girls who had accompanied the accused & complainant to the place of the alleged offence was sufficient, if believed to corroborate the testimony of complainant as required by sect. 1002 of the Code ; & the appeal should be dismissed.—R. *v.* TAYLOR, [1937] S. C. R. 351 ; 1 D. L. R. 801 ; 67 Can. C. C. 228.—**CAN.**

sp. *Charge of seduction under Criminal Code, s. 211—Burden of proof.*]—R. *v.* SCHEMMER (Sask.), [1927] 3 W. W. R. 417.—**CAN.**

sq. *Seduction under promise of marriage—Sufficiency of promise.*]—R. *v.* SEYMOUR, [1931] 3 W. W. R. 271 ; 57 Can. C. C. 95.—**CAN.**

sr. —— ——.]—To sustain a conviction for seduction under promise of marriage there must be a promise to marry in any event, not merely a promise to marry if the girl should become pregnant as a result of the proposed intercourse.—R. *v.* MCISAAC, [1933] 2 D. L. R. 802 ; 60 C. C. C. 71.—**CAN.**

ss. *Charge of attempted carnal knowledge—Sufficiency of evidence.*]—R. *v.* YELDS, [1928] N. Z. L. R. 18.—**N.Z.**

sw. *Effect of previous intercourse with accused—"Previous chaste character."*]—*Semble :* a woman who has been guilty of unchaste conduct may subsequently become chaste in legal contemplation & be seduced a second time. "Previously chaste character" refers to the actual moral status of the woman.—R. *v.* LOUGHEED (1903), 8 Can. C. C. 184.—**CAN.**

sx. —— ——.]—A resumption of illicit intercourse will not support a charge of seducing a woman of previously chaste character unless there is evidence of intervening conduct amounting to reform & rehabilitation in chastity.—R. *v.* HAUBERG (1915), 24 Can. C. C. 297.—**CAN.**

sz. —— ——.]—On a prosecution for having carnal knowledge of a girl between fourteen & sixteen, she being of "previous chaste character," the fact that he has had intercourse with her before does not prevent her being of "previous chaste character," especially if she submitted through fear.—R. *v.* STINSON, [1934] 2 D. L. R. 544 ; 1 W. W. R. 593 ; 61 C. C. C. 227 ; 48 B. C. R. 92.—**CAN.**

sb. ——.]—The term "seduce" in sect. 366 of Indian Penal Code, 1860, is used in the general sense of "enticing or tempting," & not in the limited sense of committing the first act of illicit intercourse. Hence a person can be guilty of an offence under this sect. even where the girl kidnapped had illicit intercourse with him before the kidnapping took place.—EMPEROR *v.* LAXMAN BALA (1935), I. L. R. 59 Bom. 652.—**IND.**

is charged with the offence.—R. *v.* MARSH (1925), 19 Cr. App. Rep. 27, C. C. A.

9323. *Add. Annotation :*—**Folld.** R. *v.* Harrison, R. *v.* Ward, R. *v.* Wallis, R. *v.* Gooding, [1938] 3 All E. R. 134.

9323a. —— —— —— **All sources of belief must be put to jury.**]—On an indictment for rape & carnal knowledge full & sufficient direction must be given to the jury on the need of corroboration of the story of the prosecutrix, & on the issue of deft.'s belief about her age every source from which the jury may infer her age must be referred to, even though each one separately may be open to criticism.—R. *v.* SIMMONS (1931), 23 Cr. App. Rep. 25, C. C. A.

9323b. —— —— ——.]—Upon the trial of four youths all under the age of twenty-three years upon a charge of having had carnal knowledge of a girl under sixteen years of age, a doctor & a police officer giving evidence for the prosecution stated that the girl appeared to be over sixteen years of age, & the jury found that the youths were ignorant of the law & gave no thought to the age of the girl at the time of the offence. The jury were directed that the point was whether the youths' minds were directed to the question of the girl's age :—*Held :* it is necessary in such a case for the defence to prove that the prisoners had reasonable cause to believe, & did in fact believe, that the girl was over sixteen years of age. The prisoners were therefore rightly convicted.—R. *v.* HARRISON, R. *v.* WARD, R. *v.* WALLIS, R. *v.* GOODING, [1938] 3 All E. R. 134 ; 159 L. T. 95 ; 82 Sol. Jo. 436 ; 26 Cr. App. Rep. 166, C. C. A.

9323c. —— —— **Question for jury.**]—*Held :* upon the trial of a person charged with the offence of having carnal knowledge of a girl under sixteen the question whether the prisoner had reasonable cause to believe that the girl was of or above the age of sixteen is a question of fact for the jury.—R. *v.* FORDE, [1923] 2 K. B. 400 ; 92 L. J. K. B. 501 ; 128 L. T. 798 ; 87 J. P. 76 ; 39 T. L. R. 322 ; 67 Sol. Jo. 539 ; 27 Cox, C. C. 406 ; 17 Cr. App. Rep. 99, C. C. A.

Annotation :—**Consd.** R. *v.* Maughan (1934), 24 Cr. App. Rep. 130.

—— **Reasonable cause for belief in marriage.**] —*See* Age of Marriage Act, 1929 (c. 36), s. 1 (1), proviso.

9323d. Defence that prisoner "of twenty-three years of age or under"—Prisoner between twenty-three & twenty-four—Defence available.]—R. *v.* DUMONT (1930), 69 L. Jo. 234 ; 169 L. T. Jo. 239 (Recorder of London).

9323e. —— —— ——.]—R. *v.* WOOLLEY (1931), 171 L. T. Jo. 209.

9323f. —— —— ——.]—By Criminal Law Amendment Act, 1922 (c. 56), s. 2, a certain defence is open to "a man of twenty-three years of age." The accused was twenty-three years & six months of age at the time the offence charged was committed. He contended that he was "a man of twenty-three years of age" :—*Held :* the language of the sect. being ambiguous, the accused was entitled to the benefit of the doubt, & was entitled to rely on the said defence.—R. *v.* CHAPMAN, [1931] 2 K. B. 606 ; 100 L. J. K. B. 562 ; 146 L. T. 120 ; 95 J. P. 205 ; 47 T. L. R. 620 ; 75 Sol. Jo. 660 ; 29 L. G. R. 487 ; 23 Cr. App. Rep. 63 ; 29 Cox, C. C. 407, C. C. A.

9329. *Add. Citation :*—27 T. L. R. 152.

9333. *Add. Annotation :*—**Consd.** R. *v.* Woods (1930), 143 L. T. 311.

9336. *Add. Annotation :*—**Refd.** R. *v.* Mosley, [1924] 2 K. B. 187.

9337. *Add. Annotation :*—**Consd.** Winter *v.* Woolfe, [1931] 1 K. B. 549.

9340. *Add. Annotation :*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

9340a. —— **What amounts to.**]—A letter to a woman in fact procured, alluding to the writer as her future husband, is corroboration of evidence that he procured her by "false pretences," etc., within Criminal Law Amendment Act, 1885 (c. 69), s. 3.—R. *v.* BROWN (1929), 21 Cr. App. Rep. 185, C. C. A.

9347. In the cross-reference before this case, for "Vagrancy Act, 1878" read "Vagrancy Act, 1898."

9351a. Sentence.]—R. *v.* BODENHAM (1938), 26 Cr. App. Rep. 209, C. C. A.

PART XXXIII. SECT. 13, SUB-SECT. 5. —A.

sp. *Sufficiency of corroboration.*]—An admission of having taken a girl to a café & registered with her is sufficient corroboration of a charge of procuring under Criminal Code, s. 216 (*a*).—R. *v.* SCOTT (1932), 58 C. C. C. 381.—**CAN.**

PART XXXIII. SECT. 13, SUB-SECT. 5. —C.

t i. ——.]—The seduction & illicit connection with a girl under twenty-one & of previously chaste character is "under promise of marriage" & punishable under sect. 212 of Criminal Code, whether it follows immediately after the promise of marriage or afterwards during the engagement if it can be inferred that the subsistence of the promise induced the girl's consent to carnal intercourse.—R. *v.* RONANS (1908), 13 C. C. C. 68.—**CAN.**

sv. *Meaning of seduction.*]—"Seduction" in the sect. is not used in the narrow sense of inducing a girl to part with her virtue for the first time, but includes subsequent seduction for further acts of illicit intercourse.—PRAFULLAKUMAR BASU *v.* EMPEROR (1929), I. L. R. 57 Calc. 1074.—**IND.**

sw. ——.]—A person may be guilty of kidnapping a girl for the purpose of seducing her to illicit intercourse even though he had also had such intercourse prior to the kidnapping.—KRISHNA MAHARANA *v.* KING EMPEROR (1929), I. L. R. 9 Pat. 647.—**IND.**

sa. ——.]—The term "seduction" can only properly be held applicable to the first act of illicit intercourse, unless there be proof of a return to chastity on the part of the girl meanwhile, or unless possibly there is an intention on accused's part that the girl should be seduced by some different man.—EMPEROR *v.* BAIJNATH (1932), I. L. R. 54, All. 756.—**IND.**

sb. —— *Distinguished from mere illicit connection.*]—Illicit connection & seduction do not mean the same thing. Legislative recognition of this distinction is strongly indicated by the history of sect. 211 of Criminal Code. The word "seduces" imports not only illicit connection but also the surrender by a woman of her chastity to a man as the result of his persuasion, solicitation, promises, bribes or other means without the employment of force.—R. *v.* GASSELLE, [1934] 3 W. W. R. 457 ; [1935] 1 D. L. R. 131 ; 62 C. C. C. 295.—**CAN.**

sd. *Girl under eighteen—Necessity for corroboration.*]—Prisoner was tried & convicted before a county ct. judge of having seduced a girl of previously chaste character & under the age of 18 years, contrary to sect. 211 of the Criminal Code :—*Held :* under sect. 1002, the evidence of the girl must be corroborated in some material particular by evidence implicating the accused, & that means that there must be corroboration as to commission of the crime & also as to the prisoner's identity or connection with or implication in that commission.—R. *v.* AUGER (1930), 54 Can. C. C. 209 ; 65 O. L. R. 448.—**CAN.**

sf. *Seduction of girl employee under twenty-one—Whether married woman included.*]—A married woman is not a "girl" within sect. 213 (*b*) of Criminal Code.—R. *v.* JONES, [1935] 2 W. W. R. 270 ; 3 D. L. R. 237 ; 63 C. C. C. 341 ; 49 B. C. R. 537.—**CAN.**

9361a. —— —— **Prosecutrix over sixteen.**]—If on any of the material dates alleged in an indictment for incest the female has reached the age of sixteen, she may be liable as an accomplice &, therefore, if she is a witness she must be corroborated. It is a misdirection in such a trial to tell the jury that they must first decide whether they believe such a female witness; they should be instructed not to make up their minds until they find that she is corroborated.—R. *v.* DRAPER (1929), 21 Cr. App. Rep. 147, C. C. A.

9362a. Evidence of relationship—Admission of accused.]—A father was charged with incest with his daughter, & the only evidence of the relationship on which the Crown relied was a statement by the prisoner to the following effect: "G. is my daughter & I am sorry to say that I have had connection with her & I am responsible for the condition she is now in," to which he subsequently added: "I have never looked on G. as my daughter, more like a sister to me. We (*i.e.* G.'s mother & I) did not get married until five years after G. was born." The prisoner was convicted:—*Held:* there was evidence of relationship to go to the jury & the conviction must be affirmed.—R. *v.* JONES (1933), 149 L. T. 143; 77 Sol. Jo. 236; 24 Cr. App. Rep. 55; 29 Cox, C. C. 637, C. C. A.

9364a. What is an aggravated assault.]—MUNDAY *v.* MAIDEN (1875), 33 L. T. 377; 39 J. P. 742; 24 W. R. 57.

9367. *Add. Annotations:*—**Expld.** R. *v.* Keech (1929), 21 Cr. App. Rep. 125. **Consd.** R. *v.* Maughan (1934), 24 Cr. App. Rep. 130.

9367a. —— ——.]—The ct. disapproves the defence open under above sect. to a charge of carnal knowledge, not being open on that of indecent assault.—R. *v.* LAWS (1928), 21 Cr. App. Rep. 45, C. C. A.

Annotations:—**Consd.** R. *v.* Keech (1929), 21 Cr. App. Rep. 125. **Refd.** R. *v.* Blackman (1929), 2 Cr. App. Rep. 132.

9367b. —— ——.]—R. *v.* MAUGHAN (1933), 76 L. Jo. 338.

9367c. —— ——.]—On a charge of indecent assault on a girl under sixteen years of age, a reasonable & *bonâ fide* belief that the girl was over the age of sixteen can never be an available defence.—R. *v.* MAUGHAN (1934), 24 Cr. App. Rep. 130, C. C. A.

—— **Reasonable cause of belief in marriage.**]—*See* Age of Marriage Act, 1929 (c. 36), s. 1 (1), proviso.

9370. *Add. Annotation:*—**Consd.** R. *v.* Donovan (1934), 50 T. L. R. 566.

9370a. Offence may be committed by woman.]—R. *v.* HARE, No. 8121a, *ante*.

9399a. —— ——.]—Resp. married his wife in 1916 & a child was born in 1917. In 1920 resp. entered into a written separation agreement with his wife, whereby resp. was to pay his wife 25*s.* a week & his wife was to maintain herself & the child, of which she was to have the sole custody & control without any interference by resp., but resp. was entitled to have reasonable access to the child. Resp. failed to make the payments under the agree-

---

PART XXXIII. SECT. 13, SUB-SECT. 6.

9348 i. *Whether corroboration necessary.*]—Since the charge under sect. 216 (*l*) of Criminal Code, viz., that the accused "being a male person" lived wholly or in part on the earnings of prostitution, is one which cannot be laid against the woman involved, she is not an accomplice of the man so charged; &, therefore, her evidence need not be corroborated, but in such a case the judge is justified in warning the jury not to accept it without most careful scrutiny.—R. *v.* WILLIAMS, [1935] 2 W. W. R. 640; 2 D. L. R. 696; 63 C. C. C. 360.—**CAN.**

sk. *Acts of accused must be for own benefit.*]—There cannot be a conviction for living on the profits of prostitution where the acts of the accused are not for his own benefit.—R. *v.* RICHARD, [1935] 2 D. L. R. 640; 8 M. P. R. 544; 63 C. C. C. 366.—**CAN.**

sm. *Living "wholly or in part"—Whether two offences.*]—The offence of living "wholly or in part on the earnings of prostitution" is not two distinct offences but one offence defined in two ways.—R. *v.* JAMES (1938), 69 Can. C. C. 320.—**CAN.**

PART XXXIII. SECT. 13, SUB-SECT. 7.

9362a i. *Evidence of relationship—Mother's evidence of non-access.*]—On a trial for incest by intercourse between a father & his illegitimate daughter:—*Held:* the rule in *Russell* v. *Russell* that neither a husband or wife may give evidence of non-intercourse applies in all cases & in all cts.—R. *v.* SEATON, [1933] N. Z. L. R. 548.—**N.Z.**

k i. ——.]—In relation to the crime of incest, "cohabit" implies sexual intercourse.—R. *v.* FOURNIER (1934), 62 Can. C. C. 397.—**CAN.**

l i. *Sister includes half-sister.*]—A prisoner was convicted of incest with his half-sister. On a case stated by the trial judge:—*Held:* the word "sister" as used in the definition of "incest" contained in sect. 222 of the Criminal Code, included half-sister.—R. *v.* THOMPSON (1933), 27 Q. J. P. R. 93.—**AUS.**

m i. —— ——.]—DAWSON *v.* R. (1927), 40 C. L. R. 206.—**AUS.**

sf. *Daughter of deceased wife's brother.*]—*Held:* sexual intercourse between a man & the daughter of his deceased wife's brother constitutes the crime of incest by the law of Scotland.—C. & W. *v.* H.M. ADVOCATE, [1929] S. C. (J.) 1.—**SCOT.**

sk. *Corroboration of one witness—Unnecessary.*]—BERGERON *v.* R. (1930), 56 Can. C. C. 62.—**CAN.**

sl. ——.]—A panel was charged on an indictment which set forth (*a*) that on various occasions between Apr. 1, 1927, & July 5, 1933, in his dwelling-house at X., & between Nov. 28, 1933, & Jan. 14, 1937, in his dwelling-house at Y., he did have incestuous intercourse with his daughter J., & (*b*) that on various occasions between Feb. 1, 1931, & July 5, 1933, in said house at X., & between Nov. 28, 1933, & July 3, 1936, in said house at Y., he did have incestuous intercourse with his daughter E. At the dates when the alleged improper conduct respectively began the girls were aged eight & ten years:—*Held:* (1) the indictment was not irrelevant for lack of specification notwithstanding the exceptional latitude of time taken by the Crown, when regard was had to the ages of the children when the alleged criminal conduct began & to the fact that the Crown proposed to prove a course of criminal conduct extending over years & not merely isolated instances of such conduct; (2) (the case having gone to trial), if the jury believed the evidence of the two girls, they could take the one as corroborating the other, &, therefore, as competent evidence against the panel on each charge.—H.M. ADVOCATE *v.* A. E. [1937] S. C. (J.) 96.—**SCOT.**

PART XXXIII. SECT. 13, SUB-SECT. 8.

sd. *On child—Corroboration—What amounts to.*]—(1) On an appeal from a conviction under sect. 292 of Criminal Code for an indecent assault on a girl eight years of age:—*Held:* the fact that the child was found to have gonorrhœa & that the accused had that disease at the time of his arrest was not, under all the circumstances, corroboration of the girl's testimony sufficient to satisfy the requirements of sect. 1003 of the Code.

(2) While proof merely of an opportunity for the commission of the offence charged is not corroboration, yet a false statement made by the accused may give to a proved opportunity a different complexion from what it would have borne had no such false statement been made. Therefore, the trial judge charged the jury properly when he told it that if it accepted the testimony of a certain witness, which contradicted the accused's testimony as to his whereabouts on the evening of the alleged offence, it could conclude that there was some corroboration of the girl's story.—R. *v.* DREW, [1933] 1 W. W. R. 225; 4 D. L. R. 329; 60 C. C. C. 37.—**CAN.**

PART XXXIII. SECT. 14, SUB-SECT. 1.—A.

q i. ——.]—A person having a domicil out of Canada, who leaves his family in Canada without means, may be convicted of failing to support his family in Canada.—R. *v.* SCOTT (1925), 44 Can. Crim. Cas. 117.—**CAN.**

PART XXXIII. SECT. 14, SUB-SECT. 1.—B.

sp. "*Without lawful excuse*"—*Onus of proof.*]—The onus of proving that a failure to provide necessaries for an infant was "without lawful excuse," is on the Crown.—R. *v.* JOUDREY, [1935] 3 D. L. R. 754; 64 Can. C. C. 130.—**CAN.**

ment & fell into arrears to the amount of about £100. An information was preferred against resp. for neglecting the child in a manner likely to cause her unnecessary suffering or injury to her health, contrary to Children Act, 1908 (c. 67):—*Held:* the fact of the separation agreement, without regard to the way in which its obligations had been performed, did not get rid of the legal presumption that resp. had the custody of the child, & the case must be remitted to the justices to decide whether in fact resp. had wilfully neglected the child in the manner alleged.—BROOKS *v.* BLOUNT, [1923] 1 K. B. 257; 92 L. J. K. B. 302; 128 L. T. 607; 87 J. P. 64; 39 T. L. R. 168; 67 Sol. Jo. 299; 21 L. G. R. 150; 27 Cox, C. C. 399, D. C.

9405a. Abandonment causing unnecessary suffering or injury—Children & Young Persons Act, 1933 (c. 12), s. 1—Children left in children's court.]—Applt., having to attend a children's ct., took his five children with him. In a moment of passion he left them there. He was charged under Children & Young Persons Act, 1933 (c. 12), s. 1, with wilfully abandoning the children in a manner likely to cause them unnecessary suffering or injury to their health:—*Held:* to leave children in such a place was not an exposure to injury within the section, & the facts did not, therefore, amount to a wilful abandonment under the sect.—R. *v.* WHIBLEY, [1938] 3 All E. R. 777; 158 L. T. 527; 102 J. P. 326; 82 Sol. Jo. 478; 26 Cr. App. Rep. 184; 36 L. G. R. 438, C. C. A.

9412. *Add. Citation:*—1 Lev. 257.

9414. *Add. Annotation:*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

9439a. —— —— **Girl kept secretly.**]—Applt. was charged with taking an unmarried girl, being under the age of sixteen, out of the possession & against the will of her father. The girl left home quite voluntarily, & went to applt. He kept her secretly. The judge persuaded applt. to plead guilty, telling him that he had no defence to the charge if he kept the girl secretly & did not inform her parents:—*Held:* there had been a miscarriage of justice, as applt. had not really pleaded guilty to an offence under Offences against the Person Act, 1861 (c. 100), s. 55, & the conviction must be quashed.—R. *v.* ALEXANDER (1912), 107 L. T. 240; 76 J. P. 215; 28 L. G. R. 200; 23 Cox, C. C. 140; 7 Cr. App. Rep. 110, C. C. A.

9458. *Add. Annotations:*—**Consd.** R. *v.* Maughan (1934), 24 Cr. App. Rep. 130. **Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

9480. *Add. Annotations:*—**Apld.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450. **Refd.** R. *v.* Wilmot (1933), 97 J. P. 149.

9480a. —— —— ——.]—Appct. was summoned under Motor Car Act, 1903 (c. 36), s. 1, for, & convicted of, driving a motor car on a highway "recklessly & at a speed which was dangerous to the public, having regard to all the circumstances of the case, including the nature, condition & use of the said highway, & to the amount of traffic which actually was at the time, or might reasonably have been expected to be, on the said highway":—*Held:* as the driving of the car was one indivisible act which might constitute both the offences charged, the conviction was not bad for duplicity.—R. *v.* JONES, *Ex p.* THOMAS, [1921] 1 K. B. 632; 90 L. J. K. B. 543; 124 L. T. 668; 85 J. P. 112; 37

PART XXXIII. SECT. 15, SUB-SECT. 1.

f i. —— *Girl out of parents' control.*]—R. *v.* JOE (Ont.) (1928), 50 Can. Crim. Cas. 152.—**CAN.**

PART XXXIII. SECT. 15, SUB-SECT. 3.

sz. *Taking from custody of mother.*]—Applt. was convicted of the offence of taking an unmarried girl under the age of 18 from the custody of her mother with the intent that she might be unlawfully carnally known by him. The evidence showed that immoral relations had existed between the applt. & the girl for some prior to the alleged offence, & that when applt. informed the girl that he was leaving N. on a visit to C., she expressed a desire to go with him, so he paid her railway fare & she accompanied him:—*Held:* the conviction should be quashed.—STEPHENS *v.* R. (1930), W. A. L. R. 9.—**AUS.**

PART XXXIII. SECT. 15, SUB-SECT. 4.

9458 i. *Belief that girl over sixteen no defence.*]—It is not a good defence to a charge of kidnapping under sect. 366 of the Penal Code that the accused honestly believed the kidnapped girl to be over 16 years of age.—KRISHNA MAHARANA *v.* KING EMPEROR (1929), I. L. R. 9 Pat. 647.—**IND.**

PART XXXIII. SECT. 18.

f i. —— ——.]—R. *v.* BERNARD (1934), 62 Can. C. C. 326.—**CAN.**

g i. —— ——.]—R. *v.* WILMOT (Ont.) (1929), 52 Can. Crim. Cas. 336.—**CAN.**

g ii. —— ——.]—Deft. was convicted for that he did, having charge of an automobile, by wanton or furious driving, cause bodily harm to N. There was conflicting evidence as to speed & evidence that the cause of the accident was the car "shimmying":—*Held:* there was absence of conclusive evidence that deft. was driving furiously, & he was entitled to the benefit of the doubt.—R. *v.* WILMOT, [1930] 1 D. L. R. 778; 52 Can. C. C. 336; 64 O. L. R. 605.—**CAN.**

g iii. —— *Insufficient brakes.*]—It would not be sufficient merely that a car was insufficiently braked to warrant a charge of reckless or negligent driving. It would depend on the pace of the car & other considerations.—SHERALLY *v.* R. (1929), 50 N. L. R. 309.—**S. AF.**

g iv. —— *Crowded front seat & "shimmying" wheels.*]—R. *v.* STRICKY, [1931] 1 D. L. R. 993; 55 Can. C. C. 68; 2 M. P. R. 448.—**CAN.**

g v. —— *Projecting unlighted load.*]—The mere fact that a motor car is driven at night with materials projecting beyond the body of the car & without lights on the projections is not in itself an unlawful act.—R. *v.* GILBERTSON & FULLER, [1930] 2 W. W. R. 10; 53 Can. C. C. 286; 24 S. L. R. 380.—**CAN.**

g vi. —— *Reduction of sentence.*]—R. *v.* DUGUAY [1933] 1 W. W. R. 590; 59 C. C. C. 328; 41 Man. L. R. 211.—**CAN.**

g vii. —— *Failure to obey "stop" sign.*]—Conviction for wanton & reckless driving in failure to obey "stop" sign.—R. *v.* JACKSON, [1937] 1 D. L. R. 32; [1936] O. R. 594; 67 Can. C. C. 220.—**CAN.**

sa. *Wilful misconduct—Sufficiency of evidence.*]—Where on the trial of a charge under s. 285 of the Criminal Code of causing bodily harm by wanton or furious driving, etc., it is found that anterior to the collision the accused was driving at a very fast rate of speed & was under the influence of liquor, either of these findings is sufficient to show the existence of that anterior wilful misconduct or wilful negligence leading to the collision which the tribunal trying the case must find before convicting on said charge.—R. *ex rel.* KENDALL *v.* O'SULLIVAN (Alta.), [1929] 2 W. W. R. 322; 51 Can. Crim. Cas. 422.—**CAN.**

9478 i. *Motor car—High speed in fog.*]—R. *v.* WILLIS (1931), 55 Can. C. C. 107.—**CAN.**

sb. *Duty of driver to avoid accident.*]—There is an absolute duty on the driver of a motor vehicle to take reasonable precautions to avoid danger, irrespective of the degree of negligence, under sect. 247 of the Criminal Code.—R. *v.* CAHILL (1932), 5 M. P. R. 534.—**CAN.**

sd. *Indictment for manslaughter & causing grievous bodily harm—Acquittal on first count—Conviction on second set aside.*]—Upon an indictment for manslaughter & causing grievous bodily harm by negligently driving an automobile, a conviction on the second count following an acquittal on the first will be set aside.—R. *v.* MONDT, [1934] 1 D. L. R. 382; 60 C. C. C. 273, —**CAN.**

sg. *Driver subject to fits.*]—It may be criminal negligence for a driver to drive a car knowing that he is subject to fainting spells or epilepsy.—R. *v.* SHAW, [1938] O. R. 269; 8 F. L. J. (Can.) 5.—**CAN.**

T. L. R. 299; 19 L. G. R. 354; 26 Cox, C. C. 706, D. C.

Annotation :—**Apld.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450.

9482. *Add. Citation :—sub nom.* HOUGHTON *v.* MANNING (1905), 49 Sol. Jo. 446.

9488. *Add. Annotation :—As to* (1) **Refd.** Pointon *v.* Cox (1926), 136 L. T. 506.

9490. After this case add :—

——.]—*See, now,* Road Traffic Act, 1930 (c. 43), ss. 10, 11, 12.

9490a. —— **Motor coach—Advertised times of departure & arrival—Necessitating speed in excess of statutory maximum.**]—Resps. owned a motor coach which was a heavy motor car fitted with pneumatic tyres, & was restricted under Heavy Motor Car Order, 1904, to a maximum speed limit of twelve miles per hour. The vehicle was driven by a servant of resps. between London & Plymouth. Resps. advertised times of departure & arrival which necessitated an average speed of eighteen miles per hour without allowing for stops. While driving the coach at thirty-five miles per hour on one of the scheduled journeys, resps.' servant was stopped by the police, & resps. were summoned for counselling, procuring, aiding & abetting the commission of the offence :—*Held :* resps. ought to have been convicted of counselling & procuring.—NEWMAN *v.* OVERINGTON, HARRIS & ASH, LTD. (1928), 93 J. P. 46; 27 L. G. R. 85, D. C.

Part XXXIV.—Offences against Property.

9498. *Add. Annotation :*—**Refd.** Lake *v.* Simmons, [1926] 1 K. B. 306.

9499. *Add. Annotations :*—**Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51; Lowther *v.* Harris (1926), 43 T. L. R. 24; Buller & Co., Ltd. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576; London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertsons (London), Ltd., [1934] 2 K. B. 206; Staffs Motor Guarantee, Ltd. *v.* British Wagon Co., [1934] 2 K. B. 305.

9500. *Add. Annotations :*—**Consd.** London Jewellers, Ltd. *v.* Attenborough, London Jewellers, Ltd. *v.* Robertson (London), Ltd., [1934] 2 K. B. 206. **Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586; Lowther *v.* Harris (1926), 43 T. L. R. 24.

9537. *Add. Annotations :*—**Consd.** Lowther *v.* Harris (1926), 43 T. L. R. 24; Lake *v.* Simmons, [1927] A. C. 487. **Refd.** Buller & Co. Ltd., *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

After this case add "*See, also,* INSURANCE, Vol. XXIX., p. 417, No. 3258."

9553. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

9557. *Add. Annotation :*—**Refd.** R. *v.* Fisher (1926), 19 Cr. App. Rep. 166.

9614a. ——.]—R. *v.* HUGHES, No. 2219a, *ante*.

9702a. *S. P.* R. *v.* BANKS (1821), Russ. & Ry. 441, C. C. R.

Annotation :—**Refd.** R. *v.* Stear (1848), 1 Den. 349.

9720. *Add. Annotation :*—**Refd.** R. *v.* Bernhard, [1938] 2 K. B. 264.

9759. *Add. Annotation :*—**Refd.** R. *v.* Bernhard, [1938] 2 K. B. 264.

9764. *Add. Annotation :*—**Refd.** R. *v.* Bernhard, [1938] 2 K. B. 264.

9769. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

9773a. ——.]—Where a clerk or servant, who has the mere custody of goods, disposes of them for his own benefit, & in a manner alien from the purposes for which he was intrusted with them, he is guilty of larceny.—R. *v.* ROBINSON (1840), 4 J. P. 620.

PART XXXIII. SECT. 21.

sc. *Of wife & children—Genuine inability to provide necessaries.*]—*Held :* a "lawful excuse."—R. *v.* BUNTING (1926) 45 Can. Crim. Cas. 135; 58 O. L. R. 373.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 1. —A. (a) iii.

9510 iii. ——.]—Where the driver of a motor car had it supplied with gasoline & oil at a service station without arranging for credit &, on the proprietor requesting payment & stating that the car must be left until the goods were paid for, he drove the car away without paying :—*Held :* he was guilty of theft.—R. *v.* THOMAS, [1928] 2 W. W. R. 608; 50 Can. Crim. Cas. 177; 23 Alta. L. R. 523.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 1. —B.

9587 i. *Property in goods parted with —Induced by fraud.*]—Where the owner of an article, being induced thereto by the fraud of another, delivers the article to that other for the purpose of his endeavouring to find a purchaser, & empowers him to pass the property in the article to the purchaser, the case is not one of larceny by a trick. M. handed a ring to P. "on sale or return on demand," giving P. the power to dispose of it to anybody he chose at a price fixed by M. or at any price provided he accounted to M. for the price fixed. P., who had a fraudulent intent when he received the ring, pledged it with C. :—*Held :* as M. had conferred on P. a power to dispose of the ring, P. had not been guilty of larceny by a trick & was able to pass the property in the ring to C.—LAMBELL *v.* MOORE, [1929] V. L. R. 149; [1929 Argus L. R. 146.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 4. —A.

9647 iii. ——.]—Where the trial judge directed the jury that, where a person is found to be in possession of anything stolen, shortly after it has been stolen, he may be convicted of the stealing or of receiving; that the accused might get rid of this fact by a satisfactory explanation, but the burden is on him to give this explanation :—*Held :* this was sufficient direction when the accused was found guilty of larceny by finding, but would have been insufficient on a conviction for larceny or receiving.—R. *v.* WESTON, [1927] S. A. S. R. 439.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 7. —B.

e i. —— *Taking car without consent of owner.*]—R. *v.* SCHMIDT & EDLUNG, [1930] 2 W. W. R. 497; 54 Can. C. C. 168; 42 B. C. R. 479.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 7. —C.

9762 i. *Retaking own property—Improper execution by sheriff.*]—Where a sheriff has no special property or interest in goods except by virtue of a writ of execution under which he has seized the goods & that writ was improperly issued, a person cannot be convicted for theft for taking the goods from him.—R. *v.* MUDRY, [1935] 2 W. W. R. 225; 4 D. L. R. 358; 64 C. C. C. 177; 43 Man. L. R. 274.—**CAN.**

m i. ——.]—KENNEDY *v.* R. (Que.), (1929), 52 Can. Crim. Cas. 324.—**CAN.**

sg. *Taking property pledged.*]—HAMMOND *v.* R. (1931), 55 Can. C. C. 301.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 8.—B.

9810 ii. ——.]—R. *v.* KRATHY (1931), 55 Can. C. C. 150.—**CAN.**

9847. *Add. Annotation :*—**Refd.** R. *v.* Bernhard, [1938] 2 K. B. 264.

9900. *Add. Annotation :*—**Refd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co. (1930), 143 L. T. 650.

9944. *Add. Annotation :*—**Distd.** Farey *v.* Welch, [1929] 1 K. B. 388.

9954. For " —— ——."] read " **Live animals feræ naturæ—Larcenable if reduced into possession.]**"

9956. *Add. Annotation :*—**Consd.** Farey *v.* Welch, [1929] 1 K. B. 388.

10,013. *Add. Annotation :*—**Apld.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

10,015. *Add. Annotation :*—**Apld.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

10,027. After this case add :—

I. Motor Vehicles.

See Road Traffic Act, 1930 (c. 43), s. 28.

10,050. *Add. Annotation :*—**Apld.** R. *v.* Harding (1929), 46 T. L. R. 105.

10,060a. ——.]—Applt. broke into a dwelling-house which was then occupied only by a maidservant, & he attacked her & demanded money & clothes. The servant handed over a mackintosh belonging to her master. Applt. was convicted of robbing the servant of the mackintosh :—*Held :* as the servant was in charge of her master's belongings she had a special property in the mackintosh, & applt.'s conviction for robbing her of it was right.—R. *v.* HARDING (1929), 142 L. T. 583 ; 94 J. P. 55 ; 46 T. L. R. 105 ; 73 Sol. Jo. 853 ; 28 L. G. R. 69 ; 21 Cr. App. Rep. 166 ; 29 Cox, C. C. 108, C. C. A.

10,116. *Add. Citations :*—93 L. J. K. B. 236 ; 130 L. T. 320 ; 68 Sol. Jo. 389 ; 27 Cox, C. C. 579.

Add. Annotation :—**Consd.** R. *v.* Hughes (1927), 136 L. T. 671.

PART XXXIV. SECT. 1, SUB-SECT. 9. —A.

sk. *Partner.*]—W. & R. carried on business in partnership as customs agents & income tax adjusters. W. attended to the customs agency only. A customer sent the firm a cheque, to be paid for income tax, drawn in favour of the Income Tax Comr., worded " Credit payee's account only," & crossed " Not negotiable." The cheque was received by an employee of the firm, handed to a fellow employee & banked by him, cleared by the bank, & the amount of the cheque paid to the firm's account. R. then drew a cheque on the firm's banking account, for a similar amount & paid it into W.'s banking account. W. subsequently used for his own purposes practically the whole of this amount. There was no evidence that W. knew of either the receipt of the customer's cheque or of the dealings with it until after the cheque drawn by R. had been paid into his account : —*Held :* as, when R.'s cheque was credited to W.'s account, a debt due from the bank to W. was created, which was property of which W. remained a bailee, the jury might find W. guilty of larceny of the original cheque, if, on the evidence, it could find that he knew, after the payment into his account of the cheque drawn by R., of the existence of the bailment, & then converted portion of the debt to his own use.—R. *v.* WALL (1932), 32 S. R. N. S. W. 171 ; 49 N. S. W. W. N. 41.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 9. —B. (b).

sl. *Goods on approval—Conversion of good.*]—Where a person takes goods on approval under an agreement that property therein was to pass only if he exercised his option to take them, & paid cash in full for certain articles & in part for others :—*Held :* the trust continues till the option is exercised & cash payments made, & he commits a criminal breach of trust if he sells them without such payments. — KHITISH CHANDRA DEB ROY *v.* R. (1924. I. L. R. 51 Calc. 796.—**IND.**

sk. *Goods left behind by passenger.*]—A passenger, R., on a tramcar lost her watch on the tram, & the evidence showed that a watch was picked up by another passenger L., & handed to the conductor, who did not report the finding to the trust :—*Held :* on the evidence, larceny by the conductor had not been established beyond reasonable doubt ; also as R. had full right to the possession of the watch, the property in the watch could rightly be laid on her ; on R. leaving the car the watch was in the possession of the Municipal Tramways Trust, & L., in assisting the Trust to protect its possession of the watch, did not take it out of the Trust's possession.—VERCO *v.* CRAFTER, [1935] S. A. S. R. 12.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 11.

9859 i. *What constitutes.*]—A bank official was sorting banknotes on the counter of the bank when the accused entered. The official placed the notes on a shelf under the counter in front of him. One of the accused presented a revolver at him, & another passed round the counter, struck the official on the back of the head with a tyre-lever, & took the money from under the counter. They then left the bank : —*Held :* the statutory offence of larceny from the person had been established.—R. *v.* STEWART (1929), S. A. S. R. 500.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 13.

sm. *Crop-payment lease—Lessee disposing of whole crop & appropriating proceeds—Not offence of theft.*]—R. *v.* HANDSBEE, [1924] 1 D. L. R. 1194 ; 41 Can. Crim. Cas. 177 ; [1923] 2 W. W. R. 661.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 14.—A.

9880 i. *From sheriff—Valid seizure must be proved.*]—R. *v.* LUCIUK (Sask.), [1926] 3 W. W. R. 453.—**CAN.**

sn. *From peace officer—Who is.*]—There is no offence of theft under sect. 348 when the owner of goods removes goods seized by the agent of a landlord who is bailiff only under Landlord & Tenant Act, 1927, as such an agent is not a peace officer.—R. *v.* LIPMAN, [1935] 3 D. L. R. 122 ; 63 C. C. C. 148.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT 14.—B.

so. *By partner.*]—Where there is a partnership agreement by which neither partner could withdraw profits as salary without the other's consent, such withdrawal without authority is theft.—TREMBLAY *v.* R. (1936), 65 Can. C. C. 387.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 17. —C.

sp. *Obtaining signature to promissory note.*]—Deft. was convicted under Criminal Code, s. 405, of the offence of obtaining by false pretences a promissory note for $1,000 from one B. The evidence showed that deft. procured the signature of B. to a form of promissory note, giving his own note in exchange therefor. The printed form was not the property of B. :— *Held :* merely inducing B. to sign his name was not " obtaining anything capable of being stolen " within s. 405. —R. *v.* LEROUX, [1928] 3 D. L. R. 688 ; 50 Can. Crim. Cas. 52 ; 62 O. L. R. 336.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 17.—E.

sr. *Crops.*]—Where a provincial statute provides that in the case of a crop-payment lease the lessor shall be deemed to be & to have been the owner of the share of the crop reserved to him as rent from the moment of the sowing of the crop, his ownership & interest in said share is such as may be the subject of theft thereof by the lessee under sect. 347 & sect. 352 of the Criminal Code.—R. *v.* CASSILS, [1932] 1 W. W. R. 572 ; 26 Alta. L. R. 180 ; 57 C. C. C. 366.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 20.

10,121 i. For " R. *v.* MCINTYRE (1898), 31 N. S. R. 422," read " R. *v.* MCCAFFREY (1900), 33 N. S. R. 232."

10,123 xiii. —— ——.]—R. *v.* ANDREWS (N.B.) (1925), 44 Can. Crim. Cas. 201.—**CAN.**

10,123 xiv. —— ——.]—R. *v.* WILSON (1924), 35 B. C. R. 64.—**CAN.**

10,123 xv. —— ——.]—R. *v.* JONES (Sask.), [1926] 3 W. W. R. 313 ; [1927] 3 D. L. R. 679 ; 47 Can. Crim. Cas. 380.—**CAN.**

10,123 xvi. —— ——.]—Accused was found on May 17 in possession of a bicycle stolen on Feb. 11 :—*Held :* the period of three months was not too long to cast upon accused the duty of accounting, or giving some reasonable explanation, for his possession, & in the absence of a reasonable explanation the ct. might infer guilt & convict. —JAMES *v.* R. (1927), 48 N. L. R. 289. —**S. AF.**

10,123 xvii. —— ——.]—Recent possession of stolen goods is evidence of stealing or of receiving according to the circumstances of the case. It is open to question whether the possession of goods stolen six weeks prior to the finding of them in the possession of the accused can be considered recent under some circumstances.—R. *v.* IWANCHUK & IWANCHUK, [1929] 1 D. L. R. 279 ; 1 W. W. R. 135 ; 50

10,143. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762; R. *v.* Davies, *Ex p.* Penn (1932), 48 T. L. R. 666; R. *v.* Morris (1933), 24 Cr. App. Rep. 105.

10,200a. Steward & clerk to guardians.]—*Held :* guilty of embezzlement, though not duly appointed, nor even appointed at all under the common seal.—R. *v.* BEACALL, R. *v.* WELLINGS (1824), 1 C. & P. 457.

10,279a. —— Meaning of "entrusted."]—A bank clerk employed to post into the ledger & read from the cash-book, bank-notes from £100 in value up to a £1,000, & who in the course of that occupation had, with other clerks, access to a file, upon which paid notes of every description were filed; took from that file a paid bank-note for £50 :—*Held :* the prisoner could not be considered as entrusted with the possession of this note, so as to bring him within 15 Geo. 2, c. 13, s. 12, although he had access to it.—R. *v.* BAKEWELL (1802), Russ. & Ry. 35; 2 Leach, 943; 168 E. R. 670.

Annotation :—**Refd.** R. *v.* Aslett (No. 2) (1803), 2 Leach, 958.

10,315a. —— Question of fact for jury.]—(1) Where a deft. is charged with the fraudulent conversion of money the question whether he has been entrusted with the money or has received it for or on behalf of the persons specified in the indictment is a question of fact for the jury on which the judge must adequately direct them.

(2) Counts charging the fraudulent conversion on a certain date of a general deficiency are bad unless it is the duty of deft., on the date specified, to hand over the lump sum in his hands to the person who is entitled to it.—R. *v.* SHEAF (1925), 134 L. T. 127; 89 J. P. 207; 42 T. L. R. 57; 28 Cox, C. C. 86; 19 Cr. App. Rep. 46, C. C. A.

10,315b. —— ——.]—Whether a transaction is an "entrusting" within Larceny Act, 1916 (c. 50), s. 20 (1), or a loan, entitling the recipient of the property to use it, is a question of fact for the jury.—R. *v.* SMITH, [1924] 2 K. B. 194; 93 L. J. K. B. 1006; 131 L. T. 28; 88 J. P. 108; 69 Sol. Jo. 37; 27 Cox, C. C. 619; 18 Cr. App. Rep. 76, C. C. A.

Annotation :—**Folld.** R. *v.* Sheaf (1925), 89 J. P. 207.

10,315c. ——.]—The true test in a charge under Larceny Act, 1916 (c. 50), s. 20 (1) (iv) (*a*), is whether accused had control of the property charged or not, in circumstances whereby he became entrusted.—R. *v.* MORTER (1927), 20 Cr. App. Rep. 53, C. C. A.

10,316. *Add. Annotations :*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701. **Refd.** R. *v.* Smith, [1924] 2 K. B. 194.

10,317. *Add. Annotation :*—**Refd.** R. *v.* Morter (1927), 20 Cr. App. Rep. 53.

10,322. *Add. Annotation :*—**Dbtd.** R. *v.* Smith, [1924] 2 K. B. 194.

10,326a. Indictment—Necessary averments.]—R. *v.* SHEAF, No. 10,315a, *ante*.

10,326b. —— Count charging conversion of general balance.]—A count in an indictment should not charge the fraudulent conversion of a general balance alleged to be due.—R. *v.* MORRIS (1933), 24 Cr. App. Rep. 105, C. C. A.

10,333. *Add. Annotation :*—**Refd.** R. *v.* Smith, [1924] 2 K. B. 194.

Can. Crim. Cas. 405; 24 Alta. L. R. 8. —**CAN.**

10,123 xviii. —— ——.]—Where on a trial of a charge of theft the Crown relies on the fact that property proved to have been recently stolen was in the accused's possession, he is entitled to an acquittal if his explanation of the possession is one which may reasonably be true, even though the tribunal is not convinced of its truth.—R. *v.* KORINEY, [1931] 2 W. W. R. 566; 56 Can. C. C. 90.—**CAN.**

10,126 i. *Possession of recently stolen property—As evidence of larceny.*]—Unexplained possession of goods recently stolen is evidence of theft by the possessor. He is entitled to acquittal, however, if he gives an explanation consistent with innocence. —R. *v.* WILSON, [1936] 3 D. L. R. 317; 66 Can. C. C. 245; 10 M. P. R. 537; 6 F. L. J. (Can.) 86.—**CAN.**

10,129 i. *Possession of recently stolen property—When explanation required—Reasonableness of explanation for magistrate.*]—R. *v.* MURPHY, KITCHEN & SLEEN, [1931] 4 M. P. R. 158.—**CAN.**

PART XXXIV. SECT. 2, SUB-SECT. 3.

d. For "AUS." read "S. AF."

PART XXXIV. SECT. 2, SUB-SECT. 6.

10,298 iv. ——.]—Where a law-agent did not account for sums collected for a client, notwithstanding repeated applications made for the money, & only remitted the sums after he had been arrested :—*Held :* a conviction for embezzlement was justified.—EDGAR *v.* MACKAY, [1926] S. C. (J.) 94.—**SCOT.**

10,298 v. —— *Sufficient money of agent in possession of principal—No mens rea.*]—PIKE *v.* R. (1930), 54 Can. C. C. 375; 48 Que. K. B. 239.—**CAN.**

PART XXXIV. SECT. 3, SUB-SECT. 1.

10,314 ii. ——.]—H. entered the offices of F., Ltd., in V., & in exchange for $1,000 received £23 in cash & a draft for £200 drawn on P. Bank, Ltd., London, reciting "pay from our credit balance to the order of H. £200," & signed F., Ltd. H. indorsed the draft "pay to the order of L. Bank, Ltd., for deposit to my credit." When H. presented the draft at L. Bank, Ltd., Liverpool, payment was refused. On a charge against F. under Criminal Code, s. 355, for converting the money to his own use & for failing to account for it, it was found by the trial judge that F., Ltd., was an *alias* for F. himself; that F. knew of the transaction carried out by his clerk; that F., Ltd., had no credit either at L. Bank, Liverpool, or at P. Bank, London, & they did not remit H.'s money to London as undertaken :—*Held :* on the facts stated the case did not come within sect. 355, & the conviction was set aside.—R. *v.* FAULDS (1922), 40 Can. Crim. Cas. 300; 31 B. C. R. 421.—**CAN.**

10,314 iii. ——.]—Where a person hands over money to another pursuant to a proposal & undertaking of the latter to invest the money in certain securities, there is in substance a "direction," within Criminal Code, s. 357, so to invest it.—R. *v.* CAMPBELL (1926), 45 Can. Crim. Cas. 159; 22 Alta. L. R. 219; [1926] 1 W. W. R. 671.—**CAN.**

10,314 iv. ——.]—R. *v.* MILES (1931), 56 Can. C. C. 383.—**CAN.**

10,315a i. —— *Question of fact for jury.*]—*Held :* on a charge of fraudulent conversion under sect. 20 (1) (iv) (*b*) of Larceny Act, 1916, the question whether money has been received by the accused "for or on account of" other persons is a fact to be decided by the jury; as it is vital, they must be expressly directed to find on the point, it is not sufficient that it has not been withdrawn from them; accordingly, as no such direction had been given by the trial judge, the trial was unsatisfactory, & the accused must be re-tried.—A.-G. *v.* LAWLESS, [1930] I. R. 247.—**IR.**

sb. *Conversion by stockbroker.*]—There is no authority which justifies a stockbroker in speculating with his customers' margins & securities for his own account. Appeal from the conviction of a stockbroker for theft from a co., a "one man co." of which he had sole control & was practically the sole owner, affirmed. The money in question represented cash & securities which had been deposited with the co by its customers as security for their trading accounts.—R. *v.* MARTIN, [1932] 3 W. W. R. 1; [1933] 1 D. L. R. 434; 40 Man. L. R. 524; 59 C. C. C. 8.—**CAN.**

PART XXXIV. SECT. 3, SUB-SECT. 2.

10,327 iv. ——.]—To be guilty of theft under Criminal Code, s. 355, accused must have received money, valuable security, or other things on terms requiring him to hand over the thing received, or the proceeds thereof, to some person other than the person from whom he received it, & have fraudulently converted it to his own use.—R. *v.* CONNORS (1923), 51 N. B. R. 247.—**CAN.**

10,327 v. ——.]—Where A. delivers goods to B. requiring him to account to him, A., for them, the case is not within Criminal Code, s. 355.—R. *v.* LUCIUK (Sask.), [1926] 3 W. W. R. 453.—**CAN.**

sd. *Intention to repay—Offence committed.*]—R. *v.* THOMSON (1930), 54 Can. C. C. 175.—**CAN.**

10,345. *Add. Annotation :*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

10,345a. —— —— **Preliminary examination in bankruptcy.**]—R. *v.* TUTTLE, No. 2204a, *ante.*

10,345b. —— —— **Affidavit in defence to action for account by co-trustee.**]—R. *v.* TUTTLE, No. 2204a, *ante.*

10,352a. —— **Prospectus to be read as a whole—Effect of omissions.**]—A prospectus for the issue of debenture stock issued by a co. of which applt. was chairman was composed of statements which in themselves were perfectly true, but it omitted information about the co.'s affairs, with the result that the prospectus, taken as a whole, gave a false impression of the position of the co. On the trial of applt. for an offence under Larceny Act, 1861 (c. 96), s. 84, the judge directed the jury that a written statement might be false within the meaning of the section not only because of what it stated, but also because of what it concealed, or omitted, or implied :—*Held :* this was a correct statement of the effect of the section, & applt. was rightly convicted of an offence under it.—R. *v.* KYLSANT (LORD), [1932] 1 K. B. 442; 101 L. J. K. B. 97; 146 L. T. 21; 48 T. L. R. 62; 75 Sol. Jo. 815; 23 Cr. App. Rep. 83; 29 Cox, C. C. 379.

Annotation :—**Consd.** R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy, [1936] 1 All E. R. 586.

10,352b. —— —— ——.]—Applts. were associated in the publication of a certain prospectus, which invited subscriptions for shares in an old-established co. of metal dealers & brokers. Part of the sum to be subscribed was to be used in acquiring a controlling interest in another co. which was said to have similar interests. The prospectus intimated that "the substantial amount of the additional working capital which will now become available should assist materially in extending both the volume & the scope of the co.'s activities." In fact the co. to be acquired was engaged in a gamble to make a corner in pepper :—*Held :* there was such a partial & fragmentary statement of fact in the prospectus that the withholding of that which was not stated made that which was stated false, & the publication of the prospectus was an offence within Larceny Act, 1861 (c. 96), s. 84.—R. *v.* BISHIRGIAN, R. *v.* HOWESON, R. *v.* HARDY, [1936] 1 All E. R. 586; 154 L. T. 499; 52 T. L. R. 361; 25 Cr. App. Rep. 176; 30 Cox, C. C. 379, C. C. A.

10,354. *Add. Annotation :*—**Consd.** R. *v.* Bassey (1931), 47 T. L. R. 222.

10,410a. ——.]—Any violence is sufficient in law to sustain an indictment of robbery with violence.—R. *v.* HARRISON (1930), 22 Cr. App. Rep. 82, C. C. A.

10,411. *Add. Annotation :*—**Refd.** R. *v.* Bernhard, [1938] 2 K. B. 264.

10,433. Add the following para. :—

Where it was proved that a prisoner, to obtain money, said to a prosecutor, "If you do not assist me, I will say you took indecent liberties with me some time ago" :—*Held :* not sufficient to sustain a count which charged that he threatened to accuse the prosecutor of having attempted & endeavoured to commit with him "the abominable crime," etc.

10,471. *Add. Annotation :*—**Refd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

10,475. *Add. Annotation :*—**Refd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157.

10,480. *Add. Annotations :*—**Consd.** Thorne *v.* Motor Trade Assocn., [1937] 3 All E. R. 157. **Refd.** R. *v.* Denyer, [1926] 2 K. B. 258; Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306; R. *v.* Bernhard, [1938] 2 K. B. 264.

10,487a. Demand of money as alternative to inclusion in stop list—Protection of trade interests.]—D., a servant & stop list superintendent of the Motor Trade Assocn., wrote a letter to R., a garage proprietor, stating that the assocn. offered an alternative to R. to inclusion in the stop list of the assocn., namely, the payment of a certain sum, & the publication of an undertaking to observe protected prices of motor cars, etc. :—*Held :*

PART XXXIV. SECT. 3, SUB-SECT. 3.

10,334 v. ——.]—On the trial of a charge under Criminal Code, s. 357, the jury should be instructed to determine, leaving aside any directions which may be in evidence with respect to the disposition of the money alleged to have been misapplied, whether without such directions the relationship of debtor & creditor would exist between the parties, & that if it would the directions must have been in writing, & that, if it would not, oral directions would be sufficient to support the charge.—R. *v.* SWITYK, [1925] 1 D. L. R. 1015; [1925] 1 W. W. R. 656; 43 Can. Crim. Cas. 245.—**CAN.**

10,334 vi. ——.]—Misappropriation of money given to a person to pay off a mtge. & used for other purposes held on the facts not to constitute theft.—R. *v.* POTTER; R. *v.* VAN OUDENAL, [1937] 1 D. L. R. 469; 67 Can. C. C. 249; 51 B. C. R. 361.—**CAN.**

n i. ——.]—Though there may be circumstances under which a person who has paid trust money into his overdrawn banking account may be able to negative the presumption of fact that he intended to convert it to his own use & to deprive the owner of his property in it, yet, if the accused fails satisfactorily to displace this presumption, the ct. is entitled to draw the inference that the crime of theft has been proved.—R. *v.* WEISS, [1934] A. D. 41.—**S. AF.**

sf. *Money must be received as trustee.*] —FOURNIER *v.* R. (1933), 60 C. C. C. 135.—**CAN.**

PART XXXIV. SECT. 4.

s i. —— *Knowledge of falsity.*]—Accused, who was managing director of a mining co., in the statements which he made, adopted & relied upon reports made by the mine manager, which he believed to be accurate & true :—*Held :* his statements did not go beyond the meaning to be attributed to the mine manager's reports of the result of the work upon the ground; & it could not therefore be said that accused published statements which were false to his knowledge in any material particular, within sect. 414 of the Criminal Code.—R. *v.* HARCOURT, [1930] 1 D. L. R. 736; 52 Can. C. C. 342; 64 O. L. R. 566.—**CAN.**

PART XXXIV. SECT. 8, SUB-SECT. 2.

10,459 i. —— *Letter addressed to non-existent person.*]—Deft. was convicted of sending a threatening letter addressed to "Sir James W. Moir" at 40, Duke St., Halifax. There was no such person as "Sir James W. Moir," but 40 Duke St. was the business address of James W. Moir, by whom the letter was received :—*Held :* deft.'s appeal from the conviction failed.—R. *v.* VARBEFF (1922), 57 N. S. R. 415.—**CAN.**

PART XXXIV. SECT. 8, SUB-SECT. 3.—B.

10,465 ii. —— ——.]—Where a person is indicted on a charge under Crimes Act, 1900, s. 99, of having by menaces demanded property with intent to steal the same, & where the threats or menaces used for the purpose of obtaining the property are manifestly of such a character that there can be no doubt that they would operate on the mind, not only of the victim, but of any reasonable person, a judge may in his summing up direct the jury as a matter of law, that if they believe the evidence for the Crown, the threats or menaces used would constitute a menace within the meaning of the sect.—R. *v.* RASMUSSEN & SPIEGELGLASS (1928), 28 S. R. N. S. W. 349; 45 N. S. W. W. N. 87.—**AUS.**

p i. —— —— *Extortion by constable.*] —R. *v.* LAPHAM (1913), 24 O. W. R. 111; 4 O. W. N. 838; 21 Can. Crim. Cas. 79; 10 D. L. R. 315.—**CAN.**

Semble: apart from the circumstances of this particular case, if the evidence had been confined to the fact that marks had been found on doors which might have been made by a similar implement, it would have been admissible.—R. *v.* HATCH (1933), 24 Cr. App. Rep. 100, C. C. A.

10,748. *Add. Annotation:*—**Refd.** R. *v.* King, [1938] 2 All E. R. 662.

10,749. *Add. Annotation:*—**Refd.** R. *v.* King, [1938] 2 All E. R. 662.

10,750. *Add. Annotation:*—**Refd.** R. *v.* King, [1938] 2 All E. R. 662.

10,751. *Add. Annotation:*—**Folld.** R. *v.* King, [1938] 2 All E. R. 662.

10,751a. ——.]—Applt. was convicted, together with a man named Burns, of receiving stolen goods knowing them to have been stolen. A fur coat had been stolen, & shortly afterwards the police went to a flat where they found the man Burns, & told him they were inquiring about some stolen property. He at first denied that there was anything there, but finally admitted the theft, & produced a parcel from a wardrobe. While a policeman was in the act of examining the contents of the parcel, the telephone bell rang. Burns answered it, & the police heard him say "Come along as arranged." The police then suspended operations, & about twenty minutes later applt. arrived, &, being admitted by Burns, said "I have come for the coat. Harry sent me." This was heard by the police, who were in hiding at the time. The coat was handed to applt. by Burns, so that he was actually in possession of it. It was contended that the possession by the police amounted to possession by the owner of the coat, & that, therefore, the coat was not stolen property at the time applt. received it:—*Held:* the coat had not been in the possession of the police, & it was therefore still stolen property when applt. received it.—R. *v.* KING, [1938] 2 All E. R. 662; 82 Sol. Jo. 569, C. C. A.

10,752. *Add. Citation:*—68 Sol. Jo. 254.

Add. Annotation:—**Folld.** R. *v.* Klein (1932), 23 Cr. App. Rep. 185.

10,752a. ——.]—Applt. was convicted on an indictment which charged him with receiving sums of money knowing them to have been obtained under circumstances amounting to misdemeanour, to wit, conspiracy to defraud, contrary to Larcency Act, 1916 (c. 50), s. 33 (1). It was contended on his behalf that, as the actual obtaining of the goods by the conspirators had been effected by a different misdemeanour, namely, false pretences, the indictment was bad in law:—*Held:* as the words of the Act are "obtained . . . under circumstances which amount to . . . misdemeanour" & not "obtained . . . by misdemeanour," the indictment was properly laid & the conviction must be upheld.—R. *v.* KLEIN (1932), 23 Cr. App. Rep. 185, C. C. A.

10,754a. ——.]—R. *v.* HYMAN (1926), 19 Cr. App. Rep. 125, C. C. A.

10,754b. —— **Or obtained—Meaning.**]—"Obtained" in Larceny Act, 1916 (c. 50), s. 33, means obtained physically.—R. *v.* MISSELL, R. *v.* RINGLE, R. *v.* ERRINGTON (1926), 19 Cr. App. Rep. 109, C. C. A.

10,762a. —— **Necessity for.**]—On a charge of knowingly receiving stolen goods there must be unequivocal evidence of the receiving of a chattel proved to be stolen.—R. *v.* EVENS (1930), 22 Cr. App. Rep. 16, C. C. A.

10,779. *Add. Annotation:*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

10,779a. ——.]—(1) To sustain an indictment for knowingly receiving stolen property some possession or control must be proved.

(2) Evidence of intention to commit a crime is not sufficient for a conviction of that crime.—R. *v.* FREEDMAN (1930), 22 Cr. App. Rep. 133, C. C. A.

10,779b. —— **Possession of cheque in payment for stolen goods.**]—Evidence that a prisoner has been in possession of a cheque given in payment for the purchase of stolen goods is not sufficient evidence of possession of the stolen goods to justify a charge of receiving them knowing them to have been stolen.—R. *v.* BARROW (1934), 24 Cr. App. Rep. 141, C. C. A.

PART XXXIV. SECT. 14, SUB-SECT. 1.

c i. —— *Distinct from receiving goods knowingly stolen.*]—R. *v.* YEAMAN, [1924] 2 D. L. R. 1116; 2 W. W. R. 452; 42 Can. Crim. Cas. 78; 33 B. C. R. 390.—**CAN.**

c ii. —— *Effect of participation in theft.*]—On the trial of a charge of retaining stolen goods knowing them to have been stolen, the trial judge found that the three accused had jointly & actually participated in stealing the goods in question, &, therefore, dismissed the charge, on the ground that the accused having themselves stolen the goods, could not be convicted of retaining them. On appeal by the Crown:—*Held:* the appeal must be dismissed.—R. *v.* BROWN, [1936] 1 W. W. R. 539; 2 D. L. R. 265; 65 Can. C. C. 244; 50 B. C. R. 339.—**CAN.**

s i. ——.]—Appeal from a conviction on a charge of unlawfully receiving a cheque knowing it to have been obtained by an indictable offence. The payee of the cheque had obtained cash for it on May 15 from the agent of a grain elevator co. who put it in his safe. That night the cheque was stolen. Its next appearance was on the following June 27 when the accused obtained cash for it from M., the proprietor of a taxi co. The only direct evidence of an explanation by the accused of his possession of the cheque was his testimony at the trial that he had received it from one G. without knowing that it had been stolen. G.'s testimony admitted that he had gone with the accused to the taxi-cab office but denied any knowledge of the cheque. The cheque was a C.N.R. pay cheque & the accused had allowed himself to be introduced to M., when the latter cashed the cheque, as a railway man, which he was not, & there was evidence that he had subsequently avoided M.'s place:—*Held:* there was ample evidence to support the conviction. The case was one in which the rule which makes recent possession of stolen property evidence against the possessor was applicable.—R. *v.* MCDONALD, [1938] 1 W. W. R. 705; 2 D. L. R. 630.—**CAN.**

sp. *Receiving or retaining—Criminal Code, s. 399—Two separate offences.*]—R. *v.* SEARLE, [1929] 1 W. W. R. 491; 51 Can. Crim. Cas. 128: 24 Alta. L. R. 37.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 3. —A.

10,773 iv. —— *Proof of suspicion that goods stolen.*]—Where, on a charge of unlawful possession, neither of the arresting police constables swore that he actually entertained a suspicion that the article had been stolen or unlawfully obtained, & the evidence only rendered it probable that such suspicion existed:—*Held:* deft. could not be convicted.—CORSTEN *v.* NOBLET, [1927] S. A. S. R. 421.—**AUS.**

10,773 v. —— *What evidence necessary.*]—A person cannot be called on to account for his possession of property under Police Act, XIII of 1856, s. 35 (1), unless there is evidence which satisfies, not the police officer, but the ct., after judicial consideration, that such property "may be reasonably suspected of being stolen or fraudulently obtained."—R. *v.* DHANJIBHAI EDULJI (1895), I. L. R. 20 Bom. 348.—**IND.**

ag. *Identification of property.*]—R. *v.* KOLBERG (1935), 51 B. C. R. 535; 68 Can. C. C. 358.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 3. —B.

10,789 iii. ——.]—The mere finding of stolen property in the house where accused lived is not of itself sufficient

10,815a. —— Under Frauds by Workmen Act, 1777 (c. 56), s. 10—"Dwelling-house"—Includes warehouse not attached to dwelling-house.]—R. *v.* EDMUNDSON (1859), 2 E. & E. 77; 28 L. J. M. C. 213; 33 L. T. O. S. 237; 23 J. P. 710; 5 Jur. N. S. 1351; 7 W. R. 565; 8 Cox, C. C. 212; 121 E. R. 30.

10,865. *Add. Annotations:*—**Folld.** R. *v.* Currell (1935), 25 Cr. App. Rep. 116. **Refd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 426.

10,878a. —— ——.]—R. *v.* DAWSON (1926), 19 Cr. App. Rep. 128, C. C. A.

10,878b. —— ——.]—The proper direction on a charge of receiving with guilty knowledge is that, if the jury are satisfied that deft.'s explanation is consistent with his innocence, they ought to, not may, acquit, even if they do not accept the explanation given by a witness for the defence.—R. *v.* KETTERINGHAM (1926), 19 Cr. App. Rep. 159, C. C. A.

10,898. *Add. Annotation:*—**Refd.** Eadie *v.* I. R. Comrs., [1924] 2 K. B. 198.

10,905a. —— ——.]—R. *v.* REYNOLDS (1927), 20 Cr. App. Rep. 125, C. C. A.

10,906a. ——.]—On the trial of an indictment for receiving with guilty knowledge, the jury must be clearly warned that the contents of a statement made by the thief before the trial are not evidence against deft., & if the former is called at the trial before he is sentenced, there must be a careful direction on his testimony.—R. *v.* BAGULEY (1925), 19 Cr. App. Rep. 54, C. C. A.

10,927a. Several accused charged with receiving—Direction as to possession.]—R. *v.* PECKHAM (THE YOUNGER), No. 3165c, *ante*.

10,940. *Add. Annotations:*—**Consd.** R. *v.* Manley (1932), 97 J. P. 6. **Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

10,954. *Add. Annotation:*—*As to* (2) **Apld.** R. *v.* Woods (1930), 143 L. T. 311.

10,997. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

---

to prove possession by him, where there are other inmates of the house. There must be control, exclusive or joint, as well. Especially is this the case where accused was only a casual inmate of the house & where the place where the property was found hidden was accessible, not only to the other inmates of the house, but to outsiders as well.—R. *v.* PAWLETT, [1923] 1 W. W. R. 1453; 40 Can. Crim. Cas. 312; 33 Man. L. R. 103.—**CAN.**

h i. ——.]—Applt. was charged on complaint with having in his possession on premises of which he was the reputed tenant or occupier, gold reasonably suspected of being stolen or unlawfully obtained. He was present when police officers discovered in an old underground working on a mining lease of which he was the holder a lighted furnace, which was well hidden, & a considerable quantity of gold-bearing ore in a crucible in the furnace. Applt. stated he had abandoned the lease, denied all knowledge of the existence of the furnace, expressed his opinion that the gold had been stolen, & blamed some Indian miners who were in the vicinity:—*Held:* (1) applt. was the tenant of premises upon which gold reasonably suspected of being stolen or unlawfully obtained was found, & that by Police Act Amendment Act, 1902, s. 3, the *onus* of proving he was not in possession of such gold lay on applt.; (2) applt. had failed to prove that he was not in possession of such gold.—HOEPNER *v.* MANNING, [1929] W. A. L. R. 42.—**AUS.**

PART XXXIV. SECT. 14, SUB-SECT. 4.—A.

10,823 i. *Inferred from circumstances.*]—Knowledge that goods stolen presumed from purchase from a stranger at less than wholesale price.—R. *v.* POMEROY, [1936] 4 D. L. R. 523; 67 Can. C. C. 71; 51 B. C. R. 161.—**CAN.**

10,828 i. *Onus of proof.*]—R. *v.* BERELOVITCH (N. S.) (1926), 46 Can. Crim. Cas. 148.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 5.

s i. ——.]—While it is true that the recent possession of stolen property raises a presumption of fact that, if not reasonably explained, the possessor is the thief, yet for the raising of such a presumption the exclusiveness of the possession or access is material.—R. *v.* PAWLETT, [1923] 1 W. W. R. 1453; 40 Can. Crim. Cas. 312; 33 Man. L. R. 103.—**CAN.**

10,851 i. *What is recent—Materiality of nature of article.*]—R. *v.* JONES (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—**CAN.**

10,852 iv. —— ——.]—R. *v.* ANDREWS (N.B.) (1925), 44 Can. Crim. Cas. 201.—**CAN.**

10,852 v. —— ——.]—R. *v.* JONES (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 6.

10,861 iv. ——.]—FROZODAS *v.* R. (1933), 60 C. C. C. 324.—**CAN.**

10,861 v. ——.]—There is no common law, or statutory rule that possession of recently stolen goods is *prima facie* evidence of knowledge that they were stolen, although a jury may, with other circumstances, properly infer such knowledge from the recent possession.—R. *v.* WERB; R. *v.* SCHWARTZ, [1936] 1 W. W. R. 225; 1 D. L. R. 685; 65 Can. C. C. 43; 43 Man. L. R. 507.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 8.

10,901 i. *Recent possession of stolen property—As evidence of receiving.*]—R. *v.* JONES (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—**CAN.**

10,903 i. *Evidence of thief—Must be corroborated.*]—It appears to be now undoubted that, on a trial on a charge of receiving, the testimony of the thief should, under said rule of practice, be corroborated.—R. *v.* GALSKY, [1936] 3 W. W. R. 491; 4 D. L. R. 732; 44 Man. L. R. 364; 67 Can. C. C. 108; 6 F. L. J. (Can.) 148.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 9.

sn. *Several articles received by different persons—Receivers triable jointly.*]—MUSSAMMAT GULJANIA *v.* R. (1927), I. L. R. 6 Pat 583.—**IND.**

PART XXXIV. SECT. 16, SUB-SECT. 1.

10,975 ii. ——.]—In order to constitute the offence of obtaining money by false pretences, it is not necessary that the fraud should operate in precisely the way intended or expected by prisoner. If in fact the fraud operated as a direct cause of the payment of money, it is immaterial that the chain of causation was different from that which prisoner intended or expected.—R. *v.* LAMBASSI, [1927] V. L. R. 349; 49 A. L. T. 23; [1927] Argus L. R. 297.—**AUS.**

10,975 iii. ——.]—Obtaining by false pretences involves a false representation of fact made with intent to defraud, inducing the party to part with the money obtained.—R. *v.* BRINE (1936), 11 M. P. R. 131.—**CAN.**

so. *Liability although facts amount to larceny.*]—A charge of unlawfully obtaining goods from F., by false pretences, with intent to defraud. F. was not the owner of the goods, but the bailee for a special purpose:—*Held:* when deft., by fraud, with intent to obtain the goods from F., induced him to part with them, he deprived F. of the special property in them which he had as bailee, as well as of the possession thereof, & he was rightly convicted.—R. *v.* CRAMGLY (1931), 3 D. L. R. 640; O. R. 145; 55 Can. C. C. 292.—**CAN.**

sq. *Included in "theft."*]—Obtaining money by false pretences is included in the offence of theft.—DUPLESSIS *v.* R., [1936] 2 D. L. R. 174; 65 Can. C. C. 255.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT 2.—A.

e i. —— *Waiver of lien rights.*]—*Held:* not a valuable security.—R. *v.* HOLMES (1931), 56 Can. C. C. 353.—**CAN.**

sg. *Bad cheque in payment of account not sufficient.*]—The giving of a bad cheque in payment of an account does not amount to obtaining money by false pretences, unless additional goods & money are obtained thereby.—R. *v.* FREEDMAN, [1936] 1 D. L. R. 763; 65 Can. C. C. 34.—**CAN.**

sl. *Charge of obtaining several sums—Proof of one sum.*]—On an information charging the procuring by false pretences of sums aggregating to $2,000, proof of obtaining one of the sums by false pretences is sufficient to sustain the conviction.—R. *v.* CASTLE (1937), 68 Can. C. C. 78.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 2.—B.

11,001 ii. —— ——.]—Where accused was found guilty of an offence under Crimes Act, 1915, s. 181 (a), for obtaining goods by false pretences:—*Held:* under the above sect. it was not necessary that the property in the goods obtained should pass to accused, the passing of the property from the person defrauded being sufficient.—R. *v.* O'SULLIVAN, [1925] V. L. R. 514; 547 A. L. T. 3; 31 Argus L. R. 263.—**AUS.**

11,032. *Add. Annotation :*—**Folld.** R. *v.* Smith (1931), 22 Cr. App. Rep. 180.

11,038a. ——.]—**False pretences are not proved, unless the falsity of the words used is unequivocal & intentional.**—R. *v.* SEELY (1928), 21 Cr. App. Rep. 18, C. C. A.

11,069a. ——.]—An allegation that a prisoner falsely pretended " that he honestly required [a sum of money] only to secure himself against any breach by [an employee] of a certain contract " is a charge of the representation of an alleged existing fact sufficient to support an indictment for obtaining the money by false pretences.—R. *v.* ALEXANDRA (1937), 26 Cr. App. Rep. 116, C. C. A.

11,116. *Add. Annotation :*—**Distd.** R. *v.* Boothby (1933), 24 Cr. App. Rep. 112.

11,120. *Add. Annotation :*—**Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18.

11,346. *Add. Annotations :*—**Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18; R. *v.* Woods (1930), 143 L. T. 311.

11,375. *Add. Citations :*—[1924] 1 K. B. 311 ; 93 L. J. K. B. 144 ; 130 L. T. 318 ; 27 Cox, C. C. 574 ; [1924] B. & C. R. 78.

SUB-SECT. 1 (p. 1012.)

13 Eliz. c. 5, is now replaced by Law of Property Act, 1925 (c. 20), s. 172.

11,419. *Add. Annotation :*—**Refd.** Alexander *v.* Rayson, [1936] 1 K. B. 169.

11,461. *Add. Annotation :*—**Refd.** Woolmington *v.* Public Prosecutions Director (1935), 104 L. J. K. B. 433.

PART XXXIV. SECT. 16, SUB-SECT. 2. —C.

11,010 ii. —— ——.]—A person may be convicted for obtaining goods by false pretences contrary to sect. 405 of the Criminal Code although the false pretence was not made to the person to defraud him. It is not essential under the Code, as it is in England, that the charge should set out the false pretence or give the name of the person to whom it was made.—R. *v.* PARR, [1937] 1 W. W. R. 49 ; 1 D. L. R. 497 ; 67 C. C. C. 295 ; 6 L. Jo. 275.—**CAN.**

i i. —— *Charge laid as to another person.*]—R. *v.* LEXIER, [1933] 1 W. W. R. 588 ; 59 C. C. C. 343 ; 41 Man. L. R. 78.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 2. —D.

m i. —— ——.]—Where a party is induced by false representation to part with possession of goods, but does not part with the right of property therein, there can be no conviction for obtaining goods under false pretences.—R. *v.* MCMANUS, [1924] 3 D. L. R. 297 ; 42 Can. Crim. Cas. 248 ; 51 N. B. R. 255.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 2. —E.

11,051 ii. ——.]—A contract procured by false pretences, which describes an advance as a loan, is no defence to a charge of obtaining by false pretences.—R. *v.* JAMES (1932), 59 C. C. C. 64.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3. —A.

11,068 xv. ——.]—A statement of intention to do something in the future is not such a pretence as will support a presentment for obtaining property by false pretences. The prisoner was convicted on presentment charging that with intent to defraud he obtained from the prosecutrix £100 by falsely pretending that he desired to marry her & intended to do so :—*Held :* the pretence alleged was insufficient to found the charge, & the conviction must be quashed.—R. *v.* SAWYER, [1936] V. L. R. 1 ; 42 Argus L. R. 43.—**AUS.**

PART XXXIV. SECT. 16, SUB-SECT. 3. —B.

11,114 i. *By advertisement.*]—Advertisements published in newspapers & followed by circular letters addressed to persons who answered the advertisements, related to an alleged puzzle for the correct solution of which prizes were offered, but it was in fact no puzzle & the advertisements & letters contained misrepresentations which deluded those who supposed themselves to be competing for prizes into sending money to deft. :—*Held :* deft. was guilty of obtaining by false pretences with intent to defraud. It is not necessary that the false pretence should be made in express words, if the idea is conveyed.—R. *v.* MARSHALL, [1930] 2 D. L. R. 855 ; 53 Can. C. C. 118 ; 65 O. L. R. 279.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3. —D. (a).

sa. *Property represented as adequate security.*]—R. *v.* HAMILTON, [1931] 3 D. L. R. 121 ; 66 O. L. R. 537 ; 55 Can. C. C. 85.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3. —D. (d).

11,191 i. *Value or extent of business.*]—R. *v.* PENNY (1925), 35 B. C. R. 414.—**CAN.**

11,191 ii. ——.]—R. *v.* BOYD, [1931] 1 W. W. R. 332 ; 55 Can. C. C. 168 ; 25 Alta. L. R. 462.—**CAN.**

sc. *Sale of patent rights—Representation by vendor as to possibility of sales.*]—R. *v.* BAILEY (1931), 55 Can. C. C. 170—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3.—D. (e).

se. *Authority to purchase.*]—Applt. was convicted of theft by false pretences upon evidence which proved that he had obtained goods on credit from the C. Co. by falsely representing that he had authority to purchase them on behalf of the E. Co. Applt. did not give evidence but made an unsworn statement that he had used the E. Co.'s name in order to obtain the goods at a lower price :—*Held :* applt.'s representation that the E. Co. would pay for the goods could only mean that he himself did not intend to pay for them, & he was therefore rightly convicted.—CHIPPS *v.* R. (1931), 52 N. L. R. 18.—**S. AF.**

sg. *Own stock represented as treasury stock.*]—A representation that stock sold is treasury stock when it is stock of accused is a false representation.—R. *v.* JONES & MANLOVE, [1935] 2 D. L. R. 718 ; 63 Can. C. C. 145 ; 49 B. C. R. 422.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3.—D. (h).

so. *Misrepresentation by building company—Property represented as free from mortgages.*]—R. *v.* JOHNSTON, [1932] 1 D. L. R. 655 ; O. R. 79 ; 57 C. C. C. 132.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 4.

11,266 i. —— —— *Reasonable belief in ability to pay.*]—R. *v.* REYNOLDS, [1927] S. A. S. R. 228.—**AUS.**

PART XXXIV. SECT. 16, SUB-SECT. 7.

n i. —— *Alleged false representation of market value of bonds—No averment that market value not as represented.*]—R. *v.* ROBERTSON (N. S.), [1928] 4 D. L. R. 778 ; 50 Can. Crim. Cas. 179. —**CAN.**

sf. *Obtaining contract with hotel to supply banquet—Criminal Code, s. 405, is appropriate section.*]—R. *v.* HALL (1930), 53 Can. C. C. 312.—**CAN.**

PART XXXIV. SECT. 21, SUB-SECT. 2.

11,383 i. *Who is a " creditor."*]—A person who sells goods, other than necessaries, to an infant, & who has no enforceable claim for the price, is not a " creditor " within Criminal Code, s. 417.—R. *v.* RASH (1923), 41 Can. Crim. Cas. 215 ; 53 O. L. R. 245. —**CAN.**

PART XXXIV. SECT. 23, SUB-SECT. 1.

sl. *Personating candidate.*]—Where A. falsely represented himself to be a candidate S. at a University examination, & answered question papers in the name of S., he was held to have caused damage to the University in reputation & thereby committed the offences of cheating by personation & forgery for the purpose of cheating.—ASHWINI KUMAR GUPTA *v.* EMPEROR, I. L. R., [1937] 1 Cal. 71.—**IND.**

PART XXXIV. SECT. 25, SUB-SECT. 1.

sc. *Sale of land.*]—An appeal from a conviction on a charge of conspiring to defraud affirmed. The accused induced one B. to agree to buy for $21,000 certain land, worth not more than $3,300, by representing to B. that another man had already taken an option to buy the land for $31,000. B. had never seen the land & knew nothing of its value. In pursuance of the scheme, the accused had given an option to one W. & introduced him to B. as a *bonâ fide* purchaser at the advanced price, when in fact he was but a dummy with whom it had been arranged that he should make a substantial payment on the purchase from B. practically out of B.'s own money, & then default on the contract. Appeal dismissed.—R. *v.* BURNS, [1931] 2 W. W. R. 58 ; 1 D. L. R. 914 ; 55 Can. C. C. 70 ; 25 Alta. L. R. 306. —**CAN.**

PART XXXIV. SECT. 26, SUB-SECT. 1. —B.

l i —— *Accidental burning of ship.*]—Where a sailor on board a ship entered a part of the vessel where spirits were kept, for the purpose of stealing rum, &, while tapping a cask of rum, a lighted match, held by him, came in contact with the spirits which were flowing from the cask tapped by him, & a conflagration ensued, which destroyed the vessel :—*Held :* a conviction for arson of the ship could not be upheld.—R. *v.* FAULKNER (1877), 13 Cox, C. C. 550.—**IR.**

11,467. *Add. Annotation :*—**Refd.** Shapiro *v.* La Morta (1923), 130 L. T. 622.

11,503a. —— Subsequent experiments.]—Evidence of experiments made subsequently to the fire is admissible in order to show the way in which the building was set fire to.—R. *v.* HESELTINE (1873), 12 Cox, C. C. 404.

11,591a. Form of indictment.]—An indictment for an offence under Malicious Damage Act, 1861 (c. 97), s. 7, is bad in law if it does not contain words corresponding to the words in the sect. " under such circumstances . . . amount to felony."—R. *v.* HYDE (1934), 151 L. T. 20 ; 98 J. P. 213 ; 78 Sol. Jo. 300 ; 32 L. G. R. 200 ; 24 Cr. App. Rep. 149 ; 30 Cox, C. C. 103, C. C. A.

11,612a. ——.]—A person may be tried as an accessory before the fact to the offence of setting fire to a vessel, of which he was at the time a part owner.

There may be a felonious intent to prejudice underwriters in such a case, although the goods insured were never put on board. —R. *v.* WALLACE (1841), Car. & M. 200 ; 2 Mood. C. C. 200, C. C. R.

11,642a. Charge under Metropolitan Police Courts Act, 1839 (c. 71), s. 38—Time for bringing—Existing tenancy.]—Where a landlord, during the existence of a tenancy, charged his tenant under the above sect. with having three months before wilfully damaged his premises : —*Held :* the charge should have been made within one month.—DOWELL *v.* BENINGFIELD (1841), Car. & M. 9.

11,686. *Add. Annotation :*—**Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co. (1926), 95 L. J. Ch. 272.

11,709. *Add. Annotations :*—**Consd.** Cotterill *v.* Penn, [1936] 1 K. B. 53. **Refd.** Barnard *v.* Evans, [1925] 2 K. B. 784.

11,738. *Add. Annotation :*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

Part XXXV.—Forgery.

11,748. To cross-references following this case add " *See, also,* Criminal Justice Act, 1925 (c. 86), s. 35 (1)."

11,770. For existing headnote substitute :—

(1) A. authorised by B., his master, to fill up a cheque for a certain sum, fills it up for a greater sum :—*Held :* a forgery, & the circumstance of the prisoner, alleging a claim on his master for the greater sum, as salary then due, was immaterial, even if true.

(2) Drawer's signature laid as John McNicole & Co., proved to be John McNicoll & Co. :—*Held :* no variance.

11,797. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

11,834. *Add. Annotations :*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Refd.** Goldman *v.* Cox (1924), 40 T. L. R. 423 ; Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924]

---

sd. *Intentional wrongful injury.*]—To constitute the crime of malicious injury to property, all that is necessary is an intentional wrongful injury to another's property. Upon proof of the wrongful intention the ct. will presume malice, though that presumption may be rebutted.—R. *v.* MASHARIGN, [1924] App. D. 11.—**S. AF.**

PART XXXIV. SECT. 26, SUB-SECT. 2. —B.

e i. —— —— ——.]—K. was charged under Malicious Damage Act, 1861 (c. 97), s. 3, with maliciously setting fire to a house with intent to defraud. The house was K.'s own house, & in order to establish an intent to defraud, it was alleged that the house was insured. The policy of insurance was not produced at the trial, & K. objected to secondary evidence of it being given, no notice to produce having been served on him or on any one else. K. was convicted & sentenced. On appeal :—*Held :* it was not necessary that the policy of insurance should have been produced ; certain admissions which had been made by K. constituted admissible evidence proper to be submitted to the jury that the house was in fact insured, & the appeal must be dismissed.—R. *v.* KYLE, [1933] I. R. 15. —**IR.**

PART XXXIV. SECT. 26, SUB-SECT. 6.

se. *Possession of explosive substance—Explosive Substances Act, s. 4—Meaning of " unlawfully " & " maliciously."*]—*Held :* the word " unlawfully " in Explosive Substances Act, s. 4, signifies " not for a lawful object," & the word " maliciously " means & implies an intention to do an act which is wrongful, to the detriment of another person.—DULA SINGH *v.* R. (1928), I. L. R. 9 Lah. 531.—**IND.**

PART XXXIV. SECT. 26, SUB-SECT. 17.

11,699 ii. ——.]—The fact that a stray bull is castrated, in accordance with a local custom among stock breeders to protect pure-bred stock, is not a defence to a prosecution under Criminal Code, s. 510 (B) (b), for maiming or wounding the stray bull.—R. *v.* ENGLAND (1925), 43 Can. Crim. Cas. 11 ; 19 Sask. L. R. 165 ; [1925] 1 W. W. R. 237.—**CAN.**

st. *What is " wilfully " killing.*]—A charge laid under Criminal Code, s. 537, of wilfully killing a silver black fox which had escaped from its cage was dismissed on the ground that the accused's shooting of the fox was not done " wilfully," within the meaning of that term in said section, but was justified to protect his property.—R. *v.* PETERSON (Sask.), [1928] 3 W. W. R. 516.—**CAN.**

PART XXXIV. SECT. 26, SUB-SECT. 19.—C.

d i. ——.]—On appeal from a conviction for wilfully damaging by night one window, two cans of paint & office furniture to the amount of $20, the accused, who had thrown a rock at the office window behind which were the cans of paint, contended that the cost of cleaning up the office was merely consequential & could not properly be taken into account in finding the value of the property damaged, &, as the damage to the window & the cans of paint actually amounted to less than $5, he had been convicted improperly of damaging property to the value of $20 :—*Held :* the contention could not be sustained ; the cost of cleaning up the office was not " consequential damage," but was the value of the direct damage to those premises ; & said damage was part of the " event " which, under the definition of " wilfully " in sect. 509 of the Code, the accused must be held to have known that he would probably cause by throwing the rock through the window.—R. *v.* SLUSAR, [1936] 1 D. L. R. 96 ; [1935] 3 W. W. R. 224 ; 65 C. C. C. 91.—**CAN.**

PART XXXVI. SECT. 26, SUB-SECT. 20.

11. ——.]—The form of conviction should state the amount of injury done, although it should adjudge the whole penalty, including the amount to be applied according to law.—R. *v.* KRUTZEL, [1924] 1 D. L. R. 621 ; 1 W. W. R. 342 ; 41 Can. Crim. Cas. 279 ; 20 Alta. L. R. 19.—**CAN.**

PART XXXV. SECT. 1.

sw. *Effect of Customs Act,* 1927.]—Customs Act, R.S.C., 1927, does not supersede the Criminal Code in the matter of forgery.—R. *v.* LAPIERRE, [1935] 2 D. L. R. 545 ; 63 C. C. C. 114. —**CAN.**

PART XXXV. SECT. 2, SUB-SECT. 2.

11,762 l. *Ante-dating.*]—The ante-dating of a document is not a forgery, unless it has or could have operated to the prejudice of any one.—R. *v.* GOBIND SINGH (1926), I. L. R. 5 Pat. 573.—**IND.**

PART XXXV. SECT. 3, SUB-SECT. 5.

sx. *Wife signing husband's name.*]—Since forgery requires a criminal intent, a wife who signs her husband's name on a promissory note, having a general mandate to conduct household affairs, is not guilty of forgery.—VALLIERES *v.* R. (1936), 65 Can. C. C. 383.—**CAN.**

1 K. B. 775; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

11,837. *Add. Annotation:*—**Refd.** Mason *v.* Lack (1929), 140 L. T. 696.

11,843. *Add. Annotation:*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328.

11,935. To cross-reference before this case add "*See, also,* Criminal Justice Act, 1925 (c. 86), s. 38; Counterfeit Currency (Convention) Act, 1935 (c. 25).

11,946a. —— **Request to pay to third party.**]—A customer in the country had an account open with a wholesale house in London: a letter purporting to come from him was delivered at their place of business; it was in the following form:—"I shall feel obliged by your paying Mr. B. the sum of £2 7*s.* 8*d.* & debiting me with the same. You will please have a receipt, & add the amount to invoice of order on hand." It appeared to be the practice of the house in London to pay to country customers on requests of a similar description. The party who sent it by an innocent agent, & obtained the money on it, was indicted for forging & uttering it. The instrument was described in the indictment as an undertaking—a warrant—& an order, each for the payment of £2 7*s.* 8*d.* The prisoner having been convicted of uttering, the fifteen judges held the conviction wrong, being of opinion that the instrument was neither an undertaking, a warrant, or an order.—R. *v.* THORN (1841), Car. & M. 206; 2 Mood. C. C. 210; 174 E. R. 473.

Annotations:—**Refd.** R. *v.* Vivian (1844), 1 Car. & Kir. 719; R. *v.* Dawson (1851), 5 Cox, C. C. 220.

11,962. *Add. Annotation:*—**Refd.** R. *v.* FERGUSON (1845), 5 L. T. O. S. 458.

12,061a. Certificates procuring admission to Inn of Court.]—R. *v.* BASSEY, No. 862a, *ante.*

12,083a. Delivery of box containing forged stamps.]—Delivering a box containing, among other things, forged stamps, to the party's own servant that he may carry them to an inn to be forwarded by a carrier to a customer in the country, is an uttering. If the delivery is in one county & the inn to which the servant is to carry them in another, the party may be indicted in the former county.—R. *v.* COLLICOTT (1812), Russ. & Ry. 213, 229; 168 E. R. 766.

Annotations:—**Refd.** R. *v.* Burdett (1820), 4 B. & Ald. 95. **Consd.** Pearson *v.* M'Gowran (1825), 3 L. J. O. S. K. B. 95.

12,089. In *Citations*, for "2 Den. 475" read "3 Den. 475."

12,123a. Forged certificates—Obtaining admission to Inn of Court.]—R. *v.* BASSEY, No. 862a, *ante.*

Part XXXVI.—Deceit by Fortune Telling, Witchcraft, Sleight of Hand, etc.

12,167a. —— **In newspaper article.**]—N. was the author of an article in a newspaper, headed "What the Stars Foretell," which purported to forecast general events according to the positions of the stars. It also gave a particular forecast for each dated day of the current week purporting to relate what would be the fortunes of people who were born on these particular dates. N. was charged with pretending to tell fortunes contrary to the Vagrancy Act, 1824 (c. 83), s. 4, & the charge was dismissed upon the ground that the article was too vague to come within the sect.:—*Held:* the article being addressed to the public generally, & stating or forecasting the future of all persons born on a certain day did not purport to tell the fortune of an individual & was not within the above sect.—BARBANELL *v.* NAYLOR, [1936] 3 All E. R. 66; 101 J. P. 13; 80 Sol. Jo. 876; 35 L. G. R. 40, D. C.

12,169a. —— ——.] — The offence under Vagrancy Act. 1824 (c. 83), s. 4, of professing to tell fortunes is complete without any allegation or proof that deft. did not believe in the possession of the powers claimed. Merely to tell fortunes is an offence in itself. whatever the state of mind of deft.—STONEHOUSE *v.* MASSON, [1921] 2 K. B. 818; 91 L. J. K. B. 93; 125 L. T. 463; 85 J. P. 167; 37 T. L. R. 621; 19 L. G. R. 477; 27 Cox. C. C. 23, D. C.

Annotation:—**Folld.** Irwin *v.* Barker (1925), 69 Sol. Jo. 589.

12,169b. —— ——.]—It is not necessary to prove a deceitful purpose or fraudulent intent as a condition precedent to a conviction under Vagrancy Act, 1824 (c. 83), s. 4, of a person professing to tell fortunes.—IRWIN *v.* BARKER (1925), 69 Sol. Jo. 589, D. C.

PART XXXV. SECT. 5, SUB-SECT. 1.

11,882 vii. ——.]—Accused wrote to a rubber stamp co. ordering a bank's acceptance stamp. The letter falsely purported to be signed by the manager of the branch of the bank in question. The stamp was made, delivered to the accused & paid for, but before it could be used the accused was arrested:—*Held:* the accused was properly convicted of forgery under sect. 466 of Criminal Code, even though he did not intend to prejudice anyone by the letter itself.—R. *v.* KENNEY, [1935] 2 W. W. R. 104; 3 D. L. R. 123; 63 C. C. C. 379; 5 F. L. J. (Can.) 86.—**CAN.**

PART XXXV. SECT. 6, SUB-SECT. 9.

sy. *Seal & stamps of Liquor Control Board.*]—R. *v.* MILLER (1931), 56 Can. C. C. 97.—**CAN.**

PART XXXV. SECT. 8, SUB-SECT. 1.

sz. *Utterer need not be actual forger.*]—BARR *v.* H.M. ADVOCATE, [1927] S. C. (J.) 51.—**SCOT.**

CONTEMPT OF COURT, ATTACHMENT AND COMMITTAL.

Part I.—Contempt of Court Generally.

1. *Add. Annotation :—As to* (2) & (3) **Apld.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert, [1930] 2 Ch. 368. *As to* (3) **Refd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

3. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

7. *Add. Annotation :*—**Refd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

Part III.—Jurisdiction to Commit or Fine for Contempt.

28. *Add. Annotation :*—**Consd.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

43. *Add. Annotations :*—**Consd.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350. **Refd.** R. *v.* Edwards, *Ex p.* Welsh Church Temporalities Comrs. (1933), 49 T. L. R. 383.

46. *Add. Citations :—sub nom.* R. *v.* BROWNELL, 1 Ad. & El. 598 ; 3 L. J. M. C. 118 ; 110 E. R. 1335.

Add. Annotation :—**Folld.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

46a. —— —— —— ——.]—The King's Bench Div. has no power to attach for contempt a witness who has disobeyed a *subpœna* from quarter sessions. A clear distinction still exists between contempt which consists in interfering with the administration of justice by acts done or writings published, & contempt which consists in interfering with an order or other process of the inferior cts.—R. *v.* JUDGE, *Ex p.* ISLE OF ELY JUSTICES, [1931] 2 K. B. 442 ; 100 L. J. K. B. 350 ; 144 L. T. 647 ; 95 J. P. 97 ; 47 T. L. R. 263 ; 75 Sol. Jo. 120 ; 29 L. G. R. 418, D. C.

49. *Add. Annotation :*—**Consd.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

54. *Add. Annotation :*—**Consd.** R. *v.* Daily Herald Editor, etc., & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News Editor, etc., & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

54a. **Consistory Court.**]—The publication of a statement tending to prejudice the fair hearing of a complaint preferred in a Consistory Ct. constitutes a contempt of that ct., & the K. B. Div. of the High Ct. has inherent jurisdiction to protect the Consistory Ct. by issuing a writ of attachment for contempt of ct. against the person or persons making the statement with a view to publication or publishing it or causing it to be published.—R. *v.* DAILY HERALD, EDITOR, PRINTERS & PUBLISHERS OF, *Ex p.* NORWICH (BP.), R. *v.* EMPIRE NEWS, EDITOR, PRINTERS & PUBLISHERS OF *v.* NORWICH (BP.), [1932] 2 K. B. 402 ; 101 L. J. K. B. 305 ; 146 L. T. 485 ; 48 T. L. R. 253 ; 76 Sol. Jo. 165, D. C.

54b. **County court.**]—The King's Bench Division has jurisdiction to punish a contempt of a county ct. consisting in an obstruction of a sale under a distraint levied in pursuance of an order of the county ct.—R. *v.* EDWARDS, *Ex p.* WELSH CHURCH TEMPORALITIES COMRS. (1933), 49 T. L. R. 383, D. C.

Part IV.—Criminal Contempt.

98. *Add. Citation :—sub nom. Re* DAVIES, BUTSON *v.* DAVIES, 4 T. L. R. 580.

152. *Add. Annotation :*—**Consd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

PART III. SECT. 2.

25 iii. ——.]—Cts. of Record have an inherent power of punishing in a summary way any act done or writing published, calculated to bring the ct. or judge into contempt, or to lower its authority.—*Re* TUSHARKANTI GHOSH (1935), I. L. R. 63 Calc. 217.—**IND.**

h i. ——.]—Under Letters Patent of the Patna High Ct., clause 28, a Div. Bench has power to issue a rule to show cause against committal for contempt.—*Re* MURLI MANOHAR PRASAD (1928), I. L. R. 8 Pat. 323.—**IND.**

k i. —— *Irish Free State.*]—The High Ct. of Justice of the Irish Free State has jurisdiction to commit for contempt of ct.—A.-G. *v.* O'KELLY, [1928] I. R.—**308. IR.**

k ii. ——.]—The High Ct. of Madras as a ct. of record has jurisdiction in all matters of contempt of ct. arising within its territorial jurisdiction, even if the offender happens to reside outside it.—RAJAH *v.* WITHERINGTON (1934), I. L. R. 57 Mad. 831.—**IND.**

k iii. ——.]—Non-Presidency High Cts. in India as Superior Cts. of Record have an inherent power to punish contempt of themselves & this power has not been taken away or in any wise limited by the Contempt of Cts. Act.—HARKISHEN LAL *v.* R., I. L. R. [1937] Lah. 69.—**IND.**

k iv. ——.]—The power to commit for contempt of ct. was inherited by the High Ct. at Fort William from the Supreme Ct. at Fort William & has since been retained in the High Ct. by subsequent legislation. The jurisdiction is *quasi*-criminal & has in no way been affected by the Codes of Civil & Criminal Procedure.—CHANDAN MALL KARNANI *v.* SARDARI LAL THAPAR, I. L. R. [1937] 1 Cal. 345.—**IND.**

sa. *Supreme Court of Alberta.*]—The Supreme Ct. of Alberta has inherent jurisdiction to punish by summary process a criminal contempt of ct., even though committed outside the courtroom.—*Re* CAMPBELL & COWPER, [1934] 3 W. W. R. 593 ; 63 C. C. C. 36.—**CAN.**

sb. *Contempt of inferior courts.*]—No power to punish for contempt of an inferior ct. now exists independently of the Indian Penal Code & the Contempt of Courts Act.—MAHANT SHANTANAND GIR *v.* MAHANT BASUDEVANAND GIR (1930), I. L. R. 52 All. 619.—**IND.**

PART IV. SECT. 1.

97 iv. —— ——.]—The phrase "contempt of ct." does not in the least describe the true nature of the class of offence committed, viz., interfering with the administration of the law in impeding & preventing the course of justice. Imprisonment for breach of interdict being in vindication of public law, it must not be assumed that an order for release will follow upon an apology & promise of obedience to the orders of the ct., even though

153a. ——.]—Whether the authority & position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises freely the ordinary right of criticising temperately & fairly, in good faith, in private or in public, any episode in the administration of justice. Provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, & are genuinely exercising a right of criticism & not acting in malice, or attempting to impair the administration of justice, they are immune from proceedings for contempt of ct.—AMBARD *v.* A.-G. FOR TRINIDAD & TOBAGO, [1936] A. C. 322; [1936] 1 All E. R. 704; 105 L. J. P. C. 72; 154 L. T. 616; 52 T. L. R. 335; 80 Sol. Jo. 344, P. C.

164a. ——.]—Observations on the distinction between legitimate criticism of a judge & such an imputation of unfairness & lack of impartiality as constitutes contempt of ct.—R. *v.* NEW STATESMAN (EDITOR), *Ex p.* PUBLIC PROSECUTIONS DIRECTOR (1928), 44 T. L. R. 301, D. C.

165a. ——.]—R. *v.* NEW STATESMAN (EDITOR), *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, No. 164a, *ante.*

166. *Add. Annotations:—As to* (1) **Apld.** R. *v.* New Statesman, *Ex p.* Public Prosecutions Director (1928), 44 T. L. R. 301. *As to* (2) **Apld.** R. *v.* New Statesman, *Ex p.* Public Prosecutions Director (1928), 44 T. L. R. 301. **Refd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

167. *Add. Annotation:*—**Refd.** R. *v.* People, *Ex p.* Hobbs (1925), 69 Sol. Jo. 494.

177a. —— —— **Poster implying that charge amounts to murder.**]—R. *v.* DAILY HERALD (EDITOR, PRINTERS & PUBLISHERS), *Ex p.* ROUSE (1931), 75 Sol. Jo. 119.

179. *Add. Annotations:*—**Refd.** R. *v.* Evening Standard, *Ex p.* Public Prosecutions Director, R. *v.* Manchester Guardian, *Ex p.* Same, R. *v.* Daily Express, *Ex p.* Same (1924), 40 T. L. R. 833; R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845.

179a. —— —— ——.]—R. *v.* "SURREY COMET" (EDITOR, PRINTER & PUBLISHER), *Ex p.* BALDWIN (1931), 75 Sol. Jo. 311.

179b. —— —— **Results of investigations of private detectives.**]—When an accused person is under arrest on a criminal charge, it is contempt of ct. for the persons responsible for conducting a newspaper to employ amateur detectives for the purpose of investigating the facts of the alleged crime & to publish the results of that investigation.—R. *v.* EVENING STANDARD, *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, R. *v.* MANCHESTER GUARDIAN, *Ex p.* SAME, R. *v.* DAILY EXPRESS, *Ex p.* SAME (1924), 40 T. L. R. 833, D. C.

180a. Charge to grand jury.]—A charge to the grand jury delivered by the Recorder of London in a place to which the public & reporters are admitted is a public judicial proceeding in a ct. of justice, of which newspapers have a right to publish a fair & accurate report.

Consideration of the question whether or not a report published in a newspaper of a charge by the Recorder of London to the grand jury was a fair & accurate report & should be regarded as privileged.—R. *v.* EVENING NEWS, *Ex p.* HOBBS, [1925] 2 K. B. 158; 94 L. J. K. B. 511; 132 L. T. 767; 41 T. L. R. 291; 27 Cox, C. C. 764, D. C.

180b. Anticipation of defence—Similar statement made by accused before arrest.]—When appct. was under remand on a charge of

such apology is accompanied by a statement on behalf of complainer that he no longer requires the protection which the original interdict gave him.—JOHNSON *v.* GRANT, [1923] S. C. 789.—**SCOT.**

97 v. ——.]—Upon an application made to the High Ct. that the editor & the proprietor of a certain newspaper be punished for contempt of that ct. in publishing certain articles & letters in the newspaper purporting to criticise a decision of the High Ct.:—*Held:* the legal principles applicable in such a case are: (*a*) The High Ct. has ample jurisdiction to punish summarily those responsible for publications calculated to obstruct or interfere with the administration of justice, whether such publications take the form of comment referring to proceedings pending in the ct., or that of unjustified attacks upon the members of the ct. in their public capacity. (*b*) In the case of attacks upon the ct. or its members, the summary remedy of fine or imprisonment is applied only where the ct. is satisfied that it is necessary in the interests of the ordered & fearless administration of justice, & where the attacks are unwarrantable. (c) It is the duty of the ct. to protect the public against every attempt to overawe or intimidate the ct. by insult or defamation, or to deter actual & prospective litigants from complete reliance upon the ct.'s administration of justice. (*d*) The facts forming the basis of the criticism must be accurately stated, & the criticism must be fair & not distorted by malice. (*e*) Even although the criticism exceeds the bounds of fair comment so that other remedies of a civil or criminal nature are or may be available, the ct will not apply the summary remedy unless upon the principles stated above. (*f*) In all cases of contempt the ct. has power to act not only summarily but *ex mero motu*. (*g*) Summary proceedings for contempt are criminal in character; therefore resps. are entitled to invoke the principle that guilt should be proved beyond reasonable doubt.—R. *v.* FLETCHER, *Ex p.* KISCH (1935), 52 C. L. R. 248; 41 Argus L. R. 134; 8 A. L. J. 390.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 10.

sd. *Disposal of subject-matter of action.*]—There is no rule of law or practice which prevents a litigant from disposing of property merely because it is the subject-matter of the action. Unless some proceeding prescribed for the preservation of the property *pendente lite* is availed of, a party disposing of the property after the action has been brought cannot be said to be guilty of contempt of ct.—AUSTMAN & ODDSON *v.* BJARNASON, [1932] 2 W. W. R. 20.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.

sp. *Sending letter to judge containing offensive references to judgment.*]—*Re* MILLER (1921), 54 N. S. R. 529.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.

166 ii. ——.]—A newspaper in the course of an article called a judge "sycophantic," & accused him of having decided a case not according to the dictates of justice but in order to please others:—*Held:* (1) the publication of an article referring to a case which had been decided might amount to contempt; (2) an article scandalising a ct. or judge was a contempt of ct.—R. *v.* SAYYAD HABIB (1925), I. L. R. 6 Lah. 529.—**IND.**

PART IV. SECT. 3, SUB-SECT. 3.—A. (a).

r i. —— ——.]—*Re* SMITH'S NEWSPAPERS, LTD., *Ex p.* HIGGS (1927), 28 S. R. N. S. W. 85.—**AUS.**

170 i. —— *No proceedings pending.*]—Applt. was fined for contempt in respect of matter published by him:—*Held:* (1) there being no attack on any ct. or its members, there could be no contempt of ct. in respect of anything tending to obstruct the course of justice in the absence of any pending proceedings to which the published matter could apply; (2) there was nothing in the published matter which was calculated to prejudice the course of justice; (3) the order must be set aside.—PORTER *v.* R., *Ex p.* CHIN MAN YEE (1926), 37 C. L. R. 433.—**AUS.**

178 i. *Prisoner committed for trial—Antecedent character of prisoner.*]—Appct. was charged with breaking & entering with intent, & on the morning of the hearing of the proceedings in the police ct. & the subsequent morning an account of the alleged crime & other offences apparently connected therewith was published in a newspaper. Appct. was committed for trial at the criminal sessions. The articles contained statements that the accused was concerned in the commission of crimes other than that with which he was charged, & that the arrest of the accused, with another man, was a "clean-up" of many recent burglaries:—*Held:* these statements might prejudice the fair trial of the accused, & constituted a contempt of ct.—*Re* THOMAS (1928), S. A. S. R. 210.—**AUS.**

murdering his son, defts. published, in addition to the formal evidence which had been given before the magistrates, the following statement: "It was suggested that he met his death in an accidental manner through the family dog, Prince, knocking over a fully loaded double-barrelled gun left against the barn door." On an application to commit defts. for contempt of ct. in publishing what purported to be a statement of the defence which would be put forward & so prejudicing the defence, it appeared that a similar statement had been made by the accused man himself to the police before his arrest:—*Held:* in the circumstances the statement complained of did not come within the mischief against which proceedings for contempt were directed.—R. *v.* NEWS OF THE WORLD, EDITOR, PRINTERS & PUBLISHERS, *Ex p.* KITCHEN (1932), 48 T. L. R. 234; 76 Sol. Jo. 147, D. C.

182a. Publication of statement that money paid into court—Libel action against newspaper—Libel Act, 1845 (c. 75), s. 2.]—(1) The amount of a payment into ct. by deft. under Libel Act, 1845 (c. 75), s. 2, amending Libel Act, 1843 (c. 96), s. 2, is not to be communicated to the jury, &, where money has been so paid in, it is contempt of ct. to publish before the trial a statement that a particular sum has been paid by deft. to pltf.'s solr., inasmuch as the publication of such a statement is calculated to prejudice the fair trial of the action.

(2) In such a case the proper procedure to be adopted by deft., who alleges that pending the trial of the action pltf. has been guilty of contempt of court, is not to apply for a rule *nisi* for attachment, but to proceed by notice of motion in the action.—R. *v.* WEALDSTONE NEWS & HARROW NEWS (EDITOR, PRINTER & PUBLISHER), HARLEY *v.* SHOLL (1925), 41 T. L. R. 508; 69 Sol. Jo. 642, D. C.

183a. Caption of news film.]—During a procession in London, in which the King was riding, a revolver fell close to His Majesty's horse. It appeared that it was either thrown by or knocked out of the hand of a man who was subsequently charged with being in unlawful possession of firearms. A news film of the man's arrest was shown with the caption "Attempt on the King's life":—*Held:* the caption was liable to prejudice the accused's fair trial & was a contempt of ct.—R. *v.* HUTCHISON, *Ex p.* MCMAHON, [1936] 2 All E. R. 1514; 155 L. T. 455; 80 Sol. Jo. 723.

190. *Add. Annotations:—As to* (1) **Apld.** R. *v.* Wealdstone News & Harrow News, Harley *v.* Sholl (1925), 41 T. L. R. 508. *As to* (1) **Consd.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368; R. *v.* Daily Herald, *Ex p.* Rouse (1931), 75 Sol. Jo. 119. **Apld.** R. *v.* News of the World, Editor, Printers & Publishers, *Ex p.* Kitchen (1932), 48 T. L. R. 234; R. *v.* Daily Worker (Proprietor, Printer & Publishers), *Ex p.* Goulding, R. *v.* Star, Daily Telegraph & New Leader (Proprietor, Printer & Publishers), *Ex p.* Goulding (1934), 78 Sol. Jo. 860. **Consd.** Gaskell & Chambers, Ltd. *v.* Hudson, Dodsworth & Co., R. *v.* Hudson, *Ex p.* Gaskell & Chambers, Ltd., [1936] 2 K. B. 595; R. *v.* Associated Newspapers, Ltd., *Ex p.* Beyers, R. *v.* Co-operative Press, Ltd., *Ex p.* Beyers, R. *v.* Daily Sketch & Sunday Graphic, *Ex p.* Beyers (1936), 80 Sol. Jo. 247. **Refd.** R. *v.* Evening Standard, *Ex p.* Public Prosecutions Director, R. *v.* Manchester Guardian, *Ex p.* Same, R. *v.* Daily Express, *Ex p.* Same (1924), 40 T. L. R. 833; R. *v.* People, *Ex p.* Hobbs (1925), 69 Sol. Jo. 494; R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845; R. *v.* Daily Mail, *Ex p.* Factor (1928), 44 T. L. R. 303. *As to* (2) **Consd.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas, [1930] 2 Ch. 368.

192a. —— ——.]—A publication made with the clear intention of prejudicing the fair trial of an issue pending before a ct. is obviously a contempt of ct., & will be punished as such. But where the ct. is satisfied that there was no such intention & yet the publication might prejudice a pending trial, the ct. will, in considering whether a writ of attachment should issue, take into account the circumstances of the case, & no attachment will be granted unless (*inter alia*) the ct. is satisfied that the pending proceeding is a genuine proceeding, brought & intended to be prosecuted to effect its avowed purpose.—R. *v.* DAILY MAIL (EDITOR), *Ex p.* FACTOR (1928), 44 T. L. R. 303, D. C.

197a. ——.]—R. *v.* ASSOCIATED NEWSPAPERS, LTD., *Ex p.* BEYERS, R. *v.* CO-OPERATIVE PRESS, LTD., *Ex p.* BEYERS, R. *v.* DAILY SKETCH & SUNDAY GRAPHIC, *Ex p.* BEYERS (1936), 80 Sol. Jo. 247, D. C.

200. *Add. Annotations:*—**Refd.** R. *v.* Daily Mail, *Ex p.* Factor (1928), 44 T. L. R. 303; *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368.

204a. ——.]—R. *v.* "DAILY WORKER" (PROPRIETOR, PRINTER & PUBLISHERS), *Ex p.* GOULDING, R. *v.* "STAR," "DAILY TELEGRAPH" & "NEW LEADER" (EDITORS, PRINTERS & PUBLISHERS), *Ex p.* GOULDING (1934), 78 Sol. Jo. 860, D. C.

218. *Add. Annotation:* — **Consd.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368.

224a. —— —— **Appointment of receiver for**

PART IV. SECT. 3, SUB-SECT. 3.—A. (d) i.

193 ii. ——.]—R. *v.* MCINROY, *Re* WHITESIDE (1915), 32 W. L. R. 764; 9 W. W. R. 846.—**CAN.**

193 iii. ——.]—MERIDEN BRITANNIA CO., LTD. *v.* WALTERS. *Re* LEWIS (1915), 9 O. W. N. 87; 34 O. L. R. 518.—**CAN.**

193 iv. ——.]—The ct. will not in general punish as a contempt a fair & accurate newspaper report of public judicial proceedings, even though such report be likely to prejudice one of the parties to such proceedings.—*Re* CONSOLIDATED PRESS. LTD., *Ex p.* TERRILL (1937), 37 S. R. N. S. W. 255; 54 N. S. W. W. N. 106.—**AUS.**

193 v. ——.]—The publication of comments on a case pending trial in a ct. amounts to contempt of ct., if the comments are such as are likely to prejudice the administration of justice in the case.—R. *v.* MAUNG TIN SAW (1927), I. L. R. 6 Ran. 39.—**IND.**

194 i. —— *Creation of prejudice essence of offence.*]—A contempt of ct. which tends to prejudice the interest of a litigant in pending litigation is criminal contempt.—*Re* CAMPBELL & COWPER, [1934] 3 W. W. R. 593; 63 C. C. C. 36.—**CAN.**

sg. *Charge under sect. 297 (b)—Newspaper article on mob rule.*]—A newspaper article attacking mob rule held not to amount to contempt of ct. because a deft. stands charged with an offence under sect. 297 (*b*) of the Criminal Code.—R. *v.* WALLBRIDGE, [1936] 4 D. L. R. 376; O. R. 482; 67 Can. C. C. 89; 6 F. L. J. (Can.) 53.—**CAN.**

debenture holders.]—Contempt of ct. may include conduct which, while it cannot directly influence a judge's mind, is calculated to affect the conduct of parties to proceedings, & the ct.'s jurisdiction to commit for contempt is not confined to cases in which its orders may directly be affected.

On the application of pltfs. in a debenture holders' action, a receiver of the shipping co. was appointed on the ground of jeopardy. A director of a co. which managed the shipping co.'s business, who was also a guarantor of debentures issued by the shipping co., authorised newspapers to publish interviews in which he adversely criticized the conduct of pltfs. in having obtained the appointment of a receiver, & he further stated that by so doing they had "smashed the goodwill & organisation of the business in a day" & that "no one in shipping circles can understand this line of conduct." The interviews did not state that the appointment was on the ground of jeopardy or that, as was the fact, the co. could not continue to carry on business unless money was immediately found. On a motion by pltfs. for an order to commit the director, & also the managing editor & the owners & publishers of the newspapers:—*Held:* the publication of injurious misrepresentations concerning parties to proceedings in relation to those proceedings may amount to contempt of ct., because it may cause those parties to discontinue or to compromise, & because it may deter persons with good causes of action from coming to the ct., & is thus likely to affect the course of justice.—*Re* WILLIAM THOMAS SHIPPING CO., LTD., DILLON (H. W.) & SONS, LTD. *v.* THE CO., *Re* THOMAS (SIR ROBERT), [1930] 2 Ch. 368; 99 L. J. Ch. 560; 144 L. T. 104.

Annotation:—**Refd.** Gaskell & Chambers, Ltd. *v.* Hudson, Dodsworth & Co., R. *v.* Hudson, *Ex p.* Gaskell & Chambers, Ltd., [1936] 2 K. B. 595.

224b. —— —— **Appeal against Clearance Order.**]—*Re* SOUTH SHIELDS (THAMES STREET) CLEARANCE ORDER, 1931 (1932), 173 L. T. Jo. 76, D. C.

234. *Add. Annotation:*—**Refd.** R. *v.* Daily Mail, *Ex p.* Factor (1928), 44 T. L. R. 303.

236. *Add. Annotation:*—**Dbtd.** R. *v.* Payne, [1896] 1 Q. B. 577. In my opinion, in some instances, the cts. have gone rather too far (LORD RUSSELL, C.J.).

267a. —— ——.]—MULLARD RADIO VALVE CO., LTD. *v.* ROTHERMEL CORPN., LTD. (1933), 51 R. P. C. 1.

270. *Add. Annotation:*—**Refd.** Gaskell & Chambers, Ltd. *v.* Hudson, Dodsworth & Co., R. *v.* Hudson, *Ex p.* Gaskell & Chambers, Ltd., [1936] 2 K. B. 595.

271. *Add. Annotation:*—**Refd.** Gaskell & Chambers, Ltd. *v.* Hudson, Dodsworth & Co., R. *v.* Hudson, *Ex p.* Gaskell & Chambers, Ltd., [1936] 2 K. B. 595.

274. *Add. Annotation:*—**Refd.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368.

274a. —— ——.]—Pltfs. were manufacturers of apparatus for conveying beer from cellar to bar in hotels & public-houses, & defts. were competing manufacturers of different apparatus for the same purpose. Pltfs. brought an action against defts. alleging that defts. had caused to be published to brewers letters disparaging pltfs.' said apparatus, & that pltfs. had thereby been prejudiced in their business, & claiming damages & an injunction. A circular letter, purporting to be issued by defts., was thereupon published to certain brewers which enclosed a copy of pltfs.' statement of claim, & contained further adverse references to apparatus of the kind manufactured by pltfs., & a statement that defts. intended "to contest this 'cock & bull' claim to the uttermost degree." It appeared that the circular letter & the enclosed copies of the statement of claim had been sent out by the publicity agent of defts. without their knowledge. On behalf of pltfs., a motion was made in the action for a writ of attachment against defts. for contempt of ct. in publishing the statement of claim & the covering circular letter, & an order *nisi* was obtained for a similar writ against the publicity agent for circulating these documents, on the ground that his doing so was calculated to prejudice the fair trial of the action. The agent stated that in doing what he had done he had no intention of prejudicing the fair trial of the action, & that if he had acted improperly he made his apologies to the ct.:—*Held:* the motion against defts. should be dismissed, & in the circumstances the order *nisi* against the publicity agent should also be discharged.—

PART IV. SECT. 3, SUB-SECT. 3.—A. (d) ii.

sm. *Charge of dishonesty against director—Pending trial of misfeasance summons.*]—Newspaper article charging deft. with dishonesty pending trial of a misfeasance summons in bkpcy. held, a contempt.—*Re* R. *v.* SOLLOWAY, *Ex p.* CHALMERS, [1936] 4 D. L. R. 321; O. R. 469; 67 Can. C. C. 77.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—A. (d) iv.

sq. *General rule.*]—A newspaper may not, in the guise of reporting public judicial proceedings, indicate the writer's own opinion of the demeanour of a witness & so comment on that demeanour.—A.-G. *v.* DAVIDSON, [1925] N. Z. L. R. 849.—**N.Z.**

PART IV. SECT. 3, SUB-SECT. 3.—A. (e).

i. —— *Liability of printer.*]—A printer cannot escape liability, by alleging a contract with the owner of the press that he was not to be responsible for the contents of the publications.—R. *v.* MAUNG TIN SAW (1927), I. L. R. 6 Ran. 39.—**IND.**

PART IV. SECT. 3. SUB-SECT. 3.—B.

sl. *Pending proceedings relating to patent—Advertisement of other successful proceedings—No reference to patent.*]—M. was pltf. in actions concerning the infringement of a patent pending in the Supreme Ct. against a number of ladies' hairdressers. Resp., News, Ltd., inserted a paragraph in its daily newspaper, *The News*, stating that M. had issued writs for the purpose of protecting the patent rights claimed by him. Some days later M. inserted an advertisement in *The News* which stated that hairdressers in South Africa had taken proceedings there against M., which had terminated by a decision in M.'s favour. The advertisement contained no reference to a patent process:—*Held:* as the advertisement contained no reference to the litigation before the ct., there was no basis for alleging a contempt or that the advertisement contained any matter calculated to prejudice the proper trial of the actions.—R. *v.* MAEDER, *Re* NEWS, LTD. & BONNEY, [1936] S. A. S. R. 200.—**AUS.**

PART IV. SECT. 3, SUB-SECT. 3.—C.

sm. *Will.*]—The publication, as an advertisement, by a newspaper of the copy of a will, with the knowledge that the will was being propounded by one party & impugned by the other in a pending suit, the object of the publication obviously being to create an atmosphere in favour of the will & adverse to the contesting party by making the public believe in the existence & genuineness of the will, was calculated to interfere with the fair administration of justice & amounted to a contempt of ct.—GURU CHARAN PRASAD *v.* BABURAO VISHNU PARARKAR (1931), I. L. R. 53 All. 712. —**IND.**

GASKELL & CHAMBERS, LTD. *v.* HUDSON, DODSWORTH & Co., R. *v.* HUDSON, *Ex p.* GASKELL & CHAMBERS, LTD., [1936] 2 K. B. 595; 105 L. J. K. B. 734; 155 L. T. 507; 80 Sol. Jo. 721, D. C.

274b. —— **With names of parties.**]—R. *v.* FITZHUGH, *Ex p.* LIVINGSTON (1937), 81 Sol. Jo. 258, D. C.

283a. Photograph of prisoner—Identity in issue.]—It is a contempt of ct. in a newspaper to publish the photograph of a person charged with a criminal offence, where it is reasonably clear that the question of the identity of accused with the criminal has arisen or may arise, & such publication is calculated to prejudice a fair trial.—R. *v.* DAILY MIRROR, *Ex p.* SMITH, [1927] 1 K. B. 845; *sub nom.* R. *v.* "DAILY MIRROR" (EDITOR & PROPRIETORS), R. *v.* "DAILY MAIL" (EDITOR & PROPRIETORS), *Ex p.* SMITH, 96 L. J. K. B. 352; 136 L. T. 539; 43 T. L. R. 254; 28 Cox, C. C. 324.

Annotation:—**Refd.** R. *v.* Lawson, *Ex p.* Nodder (1937), 81 Sol. Jo. 280.

283b. —— **Identity not in issue.**]—R. *v.* LAWSON, *Ex p.* NODDER (1937), 81 Sol. Jo. 280, D. C.

298a. Advertisement misrepresenting result of proceedings.]—GILLETTE SAFETY RAZOR Co. *v.* GAMAGE (A. W.), LTD. (1906), 24 R. P. C. 1.

Annotation:—**Refd.** St. Mungo Manufacturing Co. *v.* Hutchison Main (1908), 25 R. P. C. 356.

301. *Add. Annotations:*—*As to* (1) **Consd.** McPherson *v.* McPherson, [1936] A. C. 177. **Refd.** Greenway *v.* A.-G. (1927), 44 T. L. R. 124. *As to* (2) **Consd.** *Re* A. B.'s Petn. (1927), L. J. P. 104. *As to* (6) **Refd.** Hearts of Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

341. *Add. Annotation:*—**N.F.** R. *v.* Jones, *Ex p.* McVittie, [1931] 1 K. B. 664.

341a. —— ——.]—Pltf. obtained judgment in a county ct. against deft. for a sum of money & costs, & an appeal to the Div. Ct. by deft. was dismissed with costs. Pltf.'s solr. made various but futile efforts to obtain the fruits of the judgment. Deft. disobeyed a bkpcy. notice & an order for payment of the judgment debt & costs by instalments. Several judgment summonses were obtained against deft., but deft. evaded service of them. Eventually pltf.'s solr. served deft. with a judgment summons within the precincts of a ct. of justice where deft. was waiting for a case, in which he was pltf., to be called on. Deft. applied for a writ of attachment against pltf.'s solr. for contempt of ct. in so doing:—*Held:* in the circumstances, no contempt had been committed & the rule must be discharged.

The rule laid down in *Cole* v. *Hawkins*, No. 341, that the serving of process upon a party attending his cause in ct. was a contempt of ct. is now obsolete.—R. *v.* JONES, *Ex p.* MCVITTIE, [1931] 1 K. B. 664; 100 L. J. K. B. 193; 144 L. T. 597.

343a. Order for distress for tithe—Obstruction of sale.]—R. *v.* EDWARDS, *Ex p.* WELSH CHURCH TEMPORALITIES COMRS., No. 54b, *ante*.

351a. Dissuading witness from giving evidence.]—The ct. refused to grant an attachment against deft. for an attempt to persuade a material witness for pltf. not to give evidence at the trial, it not being shown that the witness was prevented from being subpœnaed by means of deft.'s interference.—SCHLESINGER *v.* FLERSHEIM (1845), 2 Dow. & L. 737; 14 L. J. Q. B. 97; 4 L. T. O. S. 340; 9 Jur. 282.

377. *Add. Annotation:*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

378. *Add. Annotation:*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

386. *Add. Annotation:*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

389. *Add. Annotation:*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

393a. Exercise of discretion sought by petitioner in divorce—Effect of suppression of facts or false statement.]—A party to a divorce proceeding who is asking to have the discretion of the ct. exercised, & who in doing so acts in such a manner as to obstruct or divert the course of justice is guilty of a contempt of ct. & liable to its consequences.—APTED *v.* APTED & BLISS, [1930] P. 246; 99 L. J. P. 73; 143 L. T. 353; 46 T. L. R. 456; 74 Sol. Jo. 338.

PART IV. SECT. 3, SUB-SECT. 3.—D.

so. *Misleading headlines.*]—Garbled & misleading headlines in a newspaper, amounting to a criticism of the prosecution's case in the guise of a summary of the proceedings in cts. calculated to produce an atmosphere of prejudice in which the proceedings go on, is contempt of ct.—BENGAL GOVERNOR IN COUNCIL *v.* TUSHARKANTI GHOSH (1932), I. L. R. 60 Calc. 603.—**IND.**

PART IV. SECT. 3, SUB-SECT. 3.—E.

283a i. *Photograph of prisoner—Identity in issue.*]—It is a grave contempt of ct. to publish in a newspaper before trial the photograph of a person charged with a criminal offence, where it should have been apparent to the mind of any reasonable person that the necessity, or possible necessity, of proof of identity of the accused person with the criminal has arisen or may arise, & such publication is calculated to prejudice a fair trial.—A.-G. *v.* TONES, [1934] N. Z. L. R. 141.—**N.Z.**

283a ii. ——.]—The test to be applied in order to determine whether the publication of the photograph of an accused person, in such a way as to state or suggest that it is he who is accused, is a contempt of ct. calling for summary action, is to see whether, as at the time when the photograph was published, there was a likelihood that the identity of the accused would come in question in some aspect of the case, so that the publication of the photograph would be likely to prejudice a fair trial. If the ct. is satisfied, beyond reasonable doubt, that there was such a likelihood, a case for intervention is made out. The question is not whether, on the facts then known, a defence based on identity is likely to be successful or likely to be set up; it is whether it is not reasonably probable that identity may come in question.—*Re* CONSOLIDATED PRESS, LTD., *Ex p.* AULD (1936), 36 S. R. N. S. W. 596; 53 N. S. W. W. N. 206.—**AUS.**

PART IV. SECT. 3, SUB-SECT. 4.

sr. *Necessity for interference with administration of justice.*]—It is contempt of ct. to publish an article in a newspaper commenting on the proceedings in a pending criminal prosecution or civil action; but the summary jurisdiction possessed by a High Ct., to punish for contempt, ought only to be exercised when it is probable that the publication will substantially interfere with the due administration of justice.—THE GOVERNMENT ADVOCATE, BURMA *v.* SAYA SEIN (1929), I. L. R. 7 Ran. 844.—**IND.**

PART IV. SECT. 5, SUB-SECT. 1.

sl. *Serving subpœna ad test. on party attending proceedings.*]—Service within the precincts of a ct. of justice of a *subpœna ad testificandum* upon a party attending his cause in ct. does not constitute a contempt of ct.—*Re* TOLE, *Ex p.* TOLE (1933), 50 N. S. W. W. N. 216.—**AUS.**

PART IV. SECT. 5, SUB-SECT. 4.

sm. *Barristers—Slander tending to embarrass conduct of case.*]—Aspersions cast upon an advocate, with reference to the conduct of his case, which tends to embarrass him in the further conduct of his client's case is contempt of ct.—ANANTALAL SINGHA *v.* WATSON (1930), I. L. R. 58 Calc. 884.—**IND.**

Part V.—Contempt in Procedure.

401. *Add. Annotation :—As to* (2) **Consd.** Gower *v.* Gower, [1938] P. 106.

406a. ——.]—OWEN *v.* PRITCHARD, [1876] W. N. 147 ; 3 Char. Pr. Cas. 367.

406b. ——.]—RANSOM *v.* BOYD, [1877] W. N. 236.

429a. —— **Consent order—Breach of scheduled terms.**]—There is a distinction between a case where there is in the body of an order an express direction or undertaking, & a case where the ct. is merely staying an action on terms which the parties have agreed, & only keeping the action alive for the purpose of enforcing those terms. In the latter case the terms are not an order of the ct. capable of being enforced by proceedings for contempt, but must be enforced by an action for specific performance of the terms or for an injunction to restrain breach of the terms, followed by proceedings for contempt in the event of further breach, while in the former case contempt proceedings can be launched forthwith on breach.—DASHWOOD *v.* DASHWOOD (1927), 71 Sol. Jo. 911.

432. Add the following paragraph :—

The proper course was for an order to be made, under R. S. C., Ord. 37, r. 13, before the writ of attachment was issued.

484. *Add. Annotation :*—**Consd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

Part VI.—Attachment and Committal.

487. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

524. *Add. Annotation :*—**Refd.** Brendon *v.* Spiro, [1937] 2 All E. R. 496.

528a. Must be order to do an act.]—Pltf. co., which had transferred certain shares in another co. to deft. co. upon certain terms, brought an action against deft. co. in order to recover a certain proportion of those shares, & obtained an order against deft. co. for the " return " of those shares within fourteen days of the date of the order. That order was not served upon deft. co. or its directors until the lapse of six weeks from the date of the order. The copy of the order which was served upon deft. co. & upon its directors did not have indorsed upon it, as required by R. S. C., Ord. 41, r. 5, a memorandum stating the penal consequences of disobedience to the order. Deft. co. having failed to comply with the order pltf. co. sought to enforce the order by attachment of two of the directors of deft. co. under R. S. C., Ord. 41, r. 31 :—*Held :* (1) the judgment or order for the " return " of the shares was not a judgment or order to do an act & therefore could not be enforced by attachment ; (2) the order was unenforceable also, because it was not served on deft. co. or its directors until after the expiration of the time limited by the order for the " return " of the shares ; (3) the order could not be enforced by attachment of the directors of deft. co., because they had not been served with a copy of the order indorsed with a memorandum as to the penal consequences of disobedience, as required by R. S. C., Ord. 41, r. 5.—IBERIAN TRUST, LTD. *v.* FOUNDERS TRUST & INVESTMENT CO., LTD., [1932] 2 K. B. 87 ; 101 L. J. K. B. 701 ; 147 L. T. 399 ; 48 T. L. R. 292 ; 76 Sol. Jo. 249.

536. *Add. Annotation :—As to* (2) **Consd.** Burrowes *v.* Burrowes (1929), 141 L. T. 201.

537. *Add. Annotation :*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

564. *Add. Annotation :*—**Refd.** Iberian Trust, Ltd.

PART V. SECT. 1, SUB-SECT. 1.—B. (a).

sr. *Discretion of court to commit—Party unable to obey order.*]—Where a party could neither be said to have refused nor neglected to comply with an order of the ct. :—*Held :* he was not guilty of contempt.—R. *v.* OTTY, *Ex p.* ROBERTS, R. *v.* WHITE, *Ex p.* ROBERTS (1922), 50 N. B. R. 401, 411. —**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

sv. *Costs & expenses by husband respondent.*]—An order requiring the husband, resp. in a divorce cause, to lodge money in ct. to cover costs & expenses, or to give a bond therefor, is an order for the payment of money within sect. 2 of Arrest & Imprisonment for Debt Act, R. S. B. C., 1924.—HUMBER *v.* HUMBER, [1936] 2 W. W. R. 414 ; 50 B. C. R. 427.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

sz. *Disobedience must be by party to whom order addressed.*]—If A. is prohibited from doing an act, B. & C. cannot be committed for contempt in doing the act unless they are assisting or aiding A.—BASSEL'S LUNCH, LTD. *v.* KICK, [1937] 1 D. L. R. 235 ; 67 C. C. C. 254.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—K.

sw. *To hand over papers—By one solicitor to another—Offer to comply subject to condition.*]—A solr. was ordered by the ct. to hand over papers to another solr. & failed to do so :—*Held :* guilty of contempt.

An offer was made to hand over subject to certain specified conditions : —*Held :* a refusal of this offer was justified.—*Re* BRYANT, ISARD & CO., *Ex p.* LANGLEY, [1924] 1 D. L. R. 49.—**CAN.**

sx. *To refrain from interference with business.*]—CUMBERLAND RAILWAY & COAL CO. *v.* MCDOUGALL (N. S.) (1911), 9 E. L. R. 289.—**CAN.**

sy. *To re-invest money—In purchase of house—Registration in specified names.*]—An order made in a divorce action commanded resp., in the event of his selling his residue, to reinvest the purchase-moneys " immediately " in the purchase of a new home & to register it in the joint names of the official guardian & resp. in trust for his children :—*Held :* the failure of resp. to comply with the terms of the order as to the registration of the new home in which he had invested the proceeds of the sale of the home referred to in the order constituted a contempt of ct. which under its inherent powers the ct. could punish by committal, although the order was made when the applicable Divorce rules did not contain any provision similar to sect. 79 or sect. 97 of the present Divorce rules.—MIDGLEY *v.* MIDGLEY (B. C.), [1929] 3 W. W. R. 121.—**CAN.**

sz. *Order forbidding picketing.*]—Employees who disobey an injunction forbidding picketing are guilty of contempt.—BASSEL'S LUNCH, LTD. *v.* KICK, [1936] 4 D. L. R. 106 ; O. R. 445 ; 67 Can. C. C. 131.—**CAN.**

sc. ——.]—On a motion for an order that resps., not parties to the action, be committed for contempt in aiding & abetting a breach of an injunction against besetting & watching pltf.'s premises :—*Held :* the order should go.—TSANG *v.* LOCAL NO. 816, HOTEL & RESTAURANT EMPLOYEES INTERNATIONAL ALLIANCE, *Re* NUTTALL & TOMCHUK, [1937] 3 W. W. R. 621.—**CAN.**

PART VI. SECT. 3.

523 i. *Not limited company—Fine appropriate remedy.*]—*Held :* although the ct. cannot order the issue of a writ of attachment against a limited co. for contempt of ct., it can, where it is satisfied that a contempt has been committed, inflict the appropriate punishment, namely, order the co. to pay a fine.—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* TORONTO ELECTRIC SUPPLY CO., LTD., [1935] EX. C. R. 16.—**CAN.**

v. Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

582. Add the following para. :—

But where such an injunction has been granted, it ought, in the absence of unnecessary delay, to be obeyed until the motion is substantially disposed of upon the merits.

607. *Add. Annotation :*—**Refd.** Capron *v.* Capron, [1927] P. 243.

631. *Add. Annotation :*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

631a. —— ——.]—Iberian Trust, Ltd. *v.* Founders Trust & Investment Co., Ltd., No. 528a, *ante*.

689a. —— **Not enforceable by attachment.**]—Iberian Trust, Ltd. *v.* Founders Trust & Investment Co., Ltd., No. 528a, *ante*.

698. *Citations :*—For " 3 Bing. 223 ; 11 Moore, C. P. 55 ; 4 L. J. O. S. C. P. 57 ; 130 E. R. 498 " read " 3 Bing. 223 ; 130 E. R. 498 ; *sub nom.* Thorpe *v.* Gisbourne, 11 Moore, C. P. 55 ; 4 L. J. O. S. C. P. 57."

709. *Add. Annotation :* —**Folld.** R. *v.* Wealdstone News & Harrow News, Harley *v.* Sholl (1925), 41 T. L. R. 508.

709a. ——.]—R. *v.* Wealdstone News & Harrow News (Editor, Printer & Publisher), Harley *v.* Sholl, No. 182a, *ante*.

710. *Add. Annotation :*—*As to* (1) **Refd.** Shrager *v.* Dighton, [1924] 1 K. B. 274.

776a. Substituted service—When ordered.]—*Re* A Solicitor, [1892] W. N. 22 ; 36 Sol. Jo. 271.

781a. On former clerk—At place where solicitor's name on door.]—*Held :* the service was not sufficient.—Bragg *v.* Hatchard (1858), 28 L. J. Ex. 35 ; *sub nom. Re* Bragg & Hatchard, 32 L. T. O. S. 132.

882a. Court of first instance—Enforcement of order of Court of Appeal.]—The appropriate ct. of first instance is the proper tribunal to enforce injunctions granted by the Ct. of Appeal.—Pott *v.* Stuteley, [1935] W. N. 140 ; 180 L. T. Jo. 113 ; 8 L. Jo. 134.

894. *Add. Annotation :*—*As to* (1) **Refd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

Sub-sect. 7.—Second Order.

(Vol. XVI., p. 75.)

926a. First not executed—Whether second irregular.]—It is no objection to the regularity of a writ of attachment that another similar writ has previously issued against the same party, but which has not been acted on.—Andrews *v.* Walton (1845), 1 Ph. 619 ; 41 E. R. 768.

931a. —— **Irregularity of attachment.**]—*Re* Bevan & Girling (1863), 12 W. R. 196, L. JJ.

950a. Accused already in custody—Need not be brought into court.]—It is not necessary to bring up a party who is in custody for non-payment of costs.—Oldfield *v.* Cobbett (1849), 12 Beav. 91 ; 50 E. R. 995.

1005. *Add. Annotation :*—**Consd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

1039a. —— —— ——.]—After an order for a writ of attachment had been made against a solr. in default further time was given by his client, the creditor, on part payment being made. On further default the writ was executed, & the solr. imprisoned :—*Held :* the right to enforce the writ had not been waived.—*Re* A Solicitor (1895), 64 L. J. Ch. 894.

1071a. Deposit of permit or passport in court—Imprisonment for taking infant out of jurisdiction.]—Adami *v.* Adami (1929), 73 Sol. Jo. 557.

PART VI. SECT. 5, SUB-SECT. 3.—B. (a) ii.

574 i. *General rule—Notice sufficient without service.*]—If a person enjoined by a prohibitory injunction becomes aware without personal service of the existence of the order & nevertheless commits a fault, he is just as liable to attachment as if he had been personally served.—Elliott *v.* Appleton (1923), 19 Tas. L. R. 20.—**AUS.**

PART VI. SECT. 5, SUB-SECT. 5.—C.

697 iv. —— ——.]—On an application by notice of motion for committal for an alleged contempt of ct. by publishing an article in a newspaper, it was shown that a space of over three months had elapsed between the publication & the motion :—*Held :* the jurisdiction of the ct. should not be exercised on notice of motion.—R. *v.* Joyce, *Ex p.* Port Pirie Corpn., [1930] S. A. S. R. 56.—**AUS.**

s i. —— *Disobedience by sheriff.*]—An application to commit the sheriff for not paying a sum of money into ct. as ordered by a judgment must be made promptly.—Övern *v.* Strand (No. 2), [1933] 3 W. W. R. 85 ; 4 D. L. R. 541 ; 47 B. C. R. 38.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 8.

p i. ——.]—Before an order for committal for contempt will be made for failing to carry out an undertaking given the ct. there must be the clearest evidence that there has been an actual breach of the undertaking.—Lowe Chong *v.* Gilmore, [1936] 3 W. W. R. 595 ; 51 B. C. R. 157.—**CAN.**

PART V SECT. 6, SUB-SECT. 4.

sz. *Direction to issue writ of attachment may be to clerk of Supreme Court—Writ to be entitled in Supreme Court.*]—*Re* Drought Area Relief Act, Snowden *v.* Baker, [1922] 3 W. W. R. 1002.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 3.

974 i. *Attachment—Whether sheriff can take bail—Before return of writ.*]—Lane *v.* Kingsmill (1850), 6 U. C. R. 579.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—A.

h i. —— *Not breach of undertaking by solicitor.*]—*Re* Kean & Bird, [1927] 4 D. L. R. 561 ; [1927] 3 W. W. R. 369 ; 48 Can. Crim. Cas. 363.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—D.

m i. ——.]—It is competent for the Judicial Committee to give leave to appeal & to entertain appeals against orders of cts. of record overseas imposing penalties for contempt of ct. In such cases the discretionary power of the Board to grant leave to appeal will be exercised with great care. When interferences with the administration of justice amount to contempt of ct., they are *quasi*-criminal acts, & orders punishing them should, generally speaking, be treated as orders in criminal cases, & leave to appeal against them should be granted only on the well-known principles on which leave to appeal in criminal cases is given. Whether the authority & position of an individual judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice.—A.-G. for Trinidad & Tobago *v.* Ambard, [1936] 2 W. W. R. 252.—**CAN.**

n i. ——.]—No appeal lies to the Privy Council against a committal for contempt of ct.—*Re* Tushar-kanti Ghosh (1935), I. L. R. 63 Calc. 287.—**IND.**

PART VI. SECT. 10, SUB-SECT. 6.—A.

b i. ——.]—Harris *v.* Myers (1864), 1 Ch. Ch. 229.—**CAN.**

PART VII. SECT 1, SUB-SECT. 5.

1144 iii. —— *By filing objections to report of official referee.*]—In a case where a deft., having been peremptorily ordered by the ct. to file her accounts before the official referee, failed to do so, but subsequently wanted to file her exceptions to the report of the referee : —*Held :* she could do so even though she continued to be in contempt, confining herself strictly to the defence of her rights.—Chandra Das *v.* Raseswari Chaudhurani (1928), I. L. R. 55 Calc. 1110.—**IND.**

COURTS.

Part I.—What is a Court.

2. *Add. Annotations :*—**Refd.** Collins *v.* Whiteway, [1927] 2 K. B. 378; Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579; O'Connor *v.* Waldron, [1935] A. C. 76.

3. *Add. Annotations :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. **Refd.** Collins *v.* Whiteway, [1927] 2 K. B. 378.

5. *Add. Annotations :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579; O'Connor *v.* Waldron, [1935] A. C. 76. **Refd.** R. *v.* Bath Compensation Authority, [1925] 1 K. B. 685; Collins *v.* Whiteway, [1927] 2 K. B. 378.

6. *Add. Annotations :* — **Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586; R. *v.* Leicester JJ., *Ex p.* Allbrighton, [1927] 1 K. B. 557.

9. *Add. Annotation :*— **Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

10. *Add. Annotations :*—**Consd.** R. *v.* Bath Compensation Authority, [1925] 1 K. B. 685. **Apld.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215. **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 138 L. T. 234; R. *v.* Hendon Rural District Council, *Ex p.* Chorley (1933), 97 J. P. 210.

11. *Add. Annotations :*—**Consd.** Veal *v.* Heard (1930), 46 T. L. R. 448. **Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

11a. —— **Assessment Committee.**]—It may be that, like some kinds of licensing justices, the Assessment Committee is not a " court "; it does not hear evidence on oath, & has no particular rules of procedure, though it acts under a statutory duty & authority (SCRUTTON, L.J.).—BOTTOMLEY *v.* WEST DERBY ASSESSMENT COMMITTEE, MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY ASSESSMENT COMMITTEE, BOTTOMLEY *v.* MERSEY DOCKS & HARBOUR BOARD, BOTTOMLEY *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., [1932] 1 K. B. 40; 145 L. T. 592; 95 J. P. 186; 47 T. L. R. 468; 29 L. G. R. 576, C. A.

15. *Add Annotations :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. **Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

17a. **Court of referees—Under Unemployment Insurance Act, 1920 (c. 30).**]—*Held :* a ct. discharging administrative duties only.—COLLINS *v.* WHITEWAY (HENRY) & Co., [1927] 2 K. B. 378; 96 L. J. K. B. 790; 137 L. T. 297; 43 T. L. R. 532.

Annotation :—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

17b. **Matters for consideration.**]—(1) A tribunal is not necessarily a ct. in the strict sense of exercising judicial power because it gives a final decision; (2) nor because it hears witnesses on oath; (3) nor because two or more contending parties appear before it between whom it has to decide; (4) nor because it gives decisions which affect the rights of subjects; (5) nor because there is an appeal to a ct.; (6) nor because it is a body to which a matter is referred by another body (*per* CUR.).—SHELL CO. OF AUSTRALIA, LTD. *v.* FEDERAL COMR. OF TAXATION, [1931] A. C. 275; 100 L. J. P. C. 55; 144 L. T. 421.

Annotation :—*As to* (2) **Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

Part IV.—Jurisdiction.

22a. **Death of judge during trial—Jurisdiction of another judge to continue hearing.**]—*Semble :* a judge has no jurisdiction to continue the hearing of a case, in which witnesses have been called in ct. in the course of a trial before a jury & another judge.—COLESHILL *v.* MANCHESTER CORPN., [1928] 1 K. B. 776; 97 L. J. K. B. 229; 138 L. T. 537; 92 J. P. 37; 44 T. L. R. 258; 26 L. G. R. 124, C. A.

Annotations :—**Distd.** British Reinforced Concrete Engineering Co. *v.* London & North Eastern Ry. Co. (1928), 20 Ry. & Can. Tr. Cas. 78. **Refd.** Fulker *v.* Fulker, [1936] 3 All E. R. 636.

22b. —— ——.]—Where during proceedings without a jury, after some of the witnesses have been called, the presiding judge dies, another judge, if there is no conflict of evidence, may at the request of the parties preside at the continuation of the hearing, after reading the shorthand notes of the evidence, & need not have the witnesses recalled.—*Re* BRITISH REINFORCED CONCRETE ENGINEERING CO., LTD.'S APPLICATION (1929), 45 T. L. R. 186; 20 Ry. & Can. Tr. Cas. 78.

PART I.

a 1. —— *Commission of inquiry.*]—The inquiry of a Commission appointed to inquire into & report upon the working of any existing law & regarding the necessity or expediency of any proposed legislation is not of such a nature as to admit parties, & such Commission exercises no judicial functions & is not a judicial tribunal in any legal sense, the inquiry is not a judicial inquiry, & therefore prohibition will not lie, & no question of bias or interest on the part of a member of such Commission can arise.—TIMBERLANDS WOODPULP, LTD. *v.* A.-G., [1934] N. Z. L. R. 270; G. L. R. 269.—N.Z.

sa. *Not income tax board of appeal.*]—A board of appeal created under Income Tax Assessment Act, 1922-1923, s. 41, is not a High Ct. or a federal ct.—BRITISH IMPERIAL OIL CO., LTD. *v.* FEDERAL COMR. OF TAXATION (1925), 35 C. L. R. 422; 31 Argus L. R. 129.—AUS.

sb. *Not Medical Council of Physicians.*]—The Medical Council of Physicians & Surgeons of Saskatchewan acting under Medical Profession Act, R. S. S., 1920 (c. 135), s. 40, is not a ct.—HUNT *v.* COLLEGE OF PHYSICIANS & SURGEONS OF SASKATCHEWAN, [1925] 4 D. L. R. 834; [1925] 3 W. W. R. 758.—CAN.

22c. **Retirement of judge after judgment reserved—Judgment read by consent.**]—HALLAM *v.* HALLAM (1930), 47 T. L. R. 207; 75 Sol. Jo. 157.

22d. **Court with local jurisdiction—Acts to be done within jurisdiction—In absence of contrary intention.**]—Where an Act of Parliament establishes a ct. for a particular part of the United Kingdom, the true construction of it is, that everything which is to be done under the authority of the ct. is to be done within the jurisdiction of the ct., unless the Act either in express terms or by necessary implication says that it may be done out of the jurisdiction.—*Re* O'LOGHLEN, *Ex p.* O'LOGHLEN (1871), 6 Ch. App. 406; 40 L. J. Bcy. 28; 23 L. T. 878; 19 W. R. 459, L. JJ.

Annotation:—**Refd.** *Re* Morton, *Ex p.* Robertson (1875), L. R. 20 Eq. 733.

25. *Add. Annotation:*—**Consd.** Sassoon *v.* Graham & Oriental Navigation Co. (1925), 133 L. T. 805.

30. *Add. Annotation:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

33a. **Will not try hypothetical case.**]—It is not the function of a ct. of law to advise parties as to what would be their rights under a hypothetical state of facts (LORD LOREBURN, C.).—GLASGOW NAVIGATION CO. *v.* IRON ORE CO., [1910] A. C. 293; 79 L. J. P. C. 83; 102 L. T. 435; 11 Asp. M. L. C. 387, H. L.

33b. **Will not decide academical question.**]—TINDALL *v.* WRIGHT (1922), 127 L. T. 149; 86 J. P. 108; 38 T. L. R. 521; 66 Sol. Jo. 524; 27 Cox, C. C. 212, D. C.

35. *Add. Annotations:*—**Refd.** Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

37. *Add. Annotation:*—**Consd.** The Fagernes, [1926] P. 185.

37a. —— **Waters within fauces terrae.**]—Defts., an Italian co., moved to set aside an order for service of notice of a writ *in personam* upon them in Italy, in respect of a collision between their vessel, which sank, & pltfs.' vessel in the Bristol Channel some 10½ or 12½ miles from the English coast & 9½ or 7½ miles from the Welsh coast according to the respective cases. The ct. was informed by the A.-G. that he was instructed by the Secretary of State for Home Affairs that the spot where the collision was alleged to have occurred was not within the limits to which the territorial sovereignty of His Majesty extended:—*Held:* having regard to the statement of the A.-G. (*see* CONSTITUTIONAL LAW, No. 136a, *ante*), the place where the collision took place was not within the jurisdiction of the High Ct., & the order for service of notice of the writ on defts. in Italy must be set aside.—THE FAGERNES, [1927] P. 311; 96 L. J. P. 183; 138 L. T. 30; 43 T. L. R. 746; 17 Asp. M. L. C. 326; *sub nom.* THE FAGERNES, CORNISH COAST (OWNERS) *v.* SOCIETA NAZIONALE DI NAVIGAZIONE, 71 Sol. Jo. 631, C. A.

38. *Add. Annotations:*—*As to* (i) **Consd.** The Fagernes, [1926] P. 185. *Generally,* **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

PART IV. SECT. 1.

8b. *Jurisdiction of Debt Adjustment Board—Not possessed by courts.*]—The powers conferred on the Debt Adjustment Board by Debt Adjustment Act, 1933, to act upon compassionate grounds in dealing with disputes between debtors & creditors are not possessed by the cts., & for the cts. to presume to act on such grounds would be to assume a power & a jurisdiction which they do not possess.—TRUST & LOAN CO. OF CANADA *v.* LINDQUIST, [1933] 2 W. W. R. 410.—**CAN.**

8c. *Judgment written on leave—Or in retirement.*]—There does not appear to be any ground for drawing a distinction between the writing of a judgment while a judge is on leave & the writing of a judgment by a judge who has gone on retirement. Both are validly pronounced.—BARAMDEO PANDE *v.* DEBIDATT SINGH (1930), I. L. R. 53 All. 133.—**IND.**

8f. *Jurisdiction to hear case in which judge interested—Application of Income Tax Act to civil servants.*]—"Wages," as defined in said Act, includes the salary "of any judge of any Dominion or provincial Ct." With respect to the consequent apparent disqualification of the judge below & of the Ct. of Appeal to deal with the present case:—*Held:* there being no judges who are not in like position, the ct. must proceed *ex necessitate.*—A.-G. FOR MANITOBA *v.* HARPER; A.-G. FOR MANITOBA *v.* FORBES; A.-G. FOR MANITOBA *v.* BROOKES, [1934] 3 W. W. R. 681; [1935] 1 D. L. R. 410; 42 Man. L. R. 569; *affd.*, [1936] S. C. R. 40; 1 D. L. R. 465.—**CAN.**

8k. ——.]—*Re* CONSTITUTIONAL QUESTIONS ACT, *Re* INCOME TAX ACT, 1932, [1936] 2 W. W. R. 443.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

24 vi. ——.]—The ct. is an institution organised by the people through their representatives for the purpose of giving to those applying to it their rights according to law, the law not being made by the ct. but laid down for it by authority.—SCOTT *v.* SCOTT, [1930] 1 D. L. R. 53; 640 L. R. 422.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.—A.

8d. *Power to act as appeal court from inferior court.*]—Where an inferior ct. is acting within its jurisdiction, the Superior Ct. has no power at common law to assume the function of an appellate ct. & review its conclusions by means of a writ of *habeas corpus* either with or without *certiorari.*—*Re* CHINESE IMMIGRATION ACT & LEE CHOW YING (1928), 49 Can. Crim. Cas. 168; 39 B. C. R. 322.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.

45 vii a. —— —— ——.]—DEPUTY FEDERAL COMR. OF TAXATION FOR TASMANIA *v.* THOMAS (1924), 35 C. L. R. 299.—**AUS.**

45 vii b. —— —— ——.]—Jurisdiction of a county ct. action against a non-resident of the judicial division in which the action is entered cannot be sustained on the ground that the cause of action arose within the division, unless the whole cause of action arose therein.—COMBA *v.* SIMPSON, [1925] 4 D. L. R. 1002; [1925] 3 W. W. R. 541; 35 Man. L. R. 235.—**CAN.**

45 vii c. —— —— ——.]—*Re* NOBLE *v.* CLINE (1839), 18 O. R. 33.—**CAN.**

45 vii d. —— —— ——.]—*Re* LEWIS, *Ex p.* ELECTROLUX, LTD. (1928), 28 S. R. N. S. W. 578; 45 N. S. W. W. N. 185.—**AUS.**

45 vii e. —— —— ——.]—In County Cts. Act, R.S.M. 1913, c. 44, s. 69, which provides that any suit may be entered & tried in the ct. holden in the judicial division in which the cause of action arose, or in which deft. or one of defts. resides or carries on business at the time the action is brought, the words "carries on business" are not to be read literally, but confer jurisdiction only when the business is carried on by deft. in person; *i.e.* if the cause of action did not arise within the division the condition of jurisdiction is presence of deft. within the division either by residence or by carrying on business therein.—MILLER *v.* AIKINS (Man.), [1929] 1 D. L. R. 140; [1928] 3 W. W. R. 520.—**CAN.**

45 xii a. —— —— ——.]—*Re* PIKE *v.* WALKER, [1926] 3 D. L. R. 439; 59 O. L. R. 47.—**CAN.**

45 xiv. —— —— *Municipal Courts Act, R. S.,* 1923 (*c.* 219), *s.* 9 (4).]—BISHOP *v.* KILCUP, [1927] 1 D. L. R. 231; 59 N. S. R. 109.—**CAN.**

45 xv. —— —— *Suit against non-resident foreigner.*]—*Held:* Code of Civil Procedure, s. 21, applied only to cts. which are subject to the provisions of the Code, & does not apply to a suit instituted in a British Indian ct. against a non-resident foreigner on a cause of action which arose wholly outside British territory, &, therefore, the decree passed in this case must be set aside as being without jurisdiction.—BHAMBOO MAL *v.* RAM NARAIN (1928), I. L. R. 9 Lah. 455.—**IND.**

e (p. 105) i. —— ——.]—HUTTON, MCLEA & CO. *v.* KELLY (1818), 1 Nfld. L. R. 105.—**NFLD.**

e (p. 105) ii. —— ——.]—MORRIS *v.* CAMERON (1862), 12 C. P. 422.—**CAN.**

e (p. 105) iii. —— ——.]—FLEMING *v.* LIVINGSTONE (1873), 6 P. R. 63.—**CAN.**

e (p. 105) iv. —— ——.]—CANADIAN OIL COS., LTD. *v.* MARGESON (1917), 51 N. S. R. 331.—**CAN.**

66. *Add. Annotation :—Generally,* **Refd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

72. *Add. Annotation :—***Consd.** *Re* Coletta (1931), 146 L. T. 180.

74. *Add. Annotation :—***Refd.** Owl Mill Co. (1920) *v.* Croft, Elliott *v.* Duchess Mill (1926), 95 L. J. K. B. 635.

137a. ——.]—LEADER *v.* MOXON (1773), 2 Wm. Bl. 924 ; 3 Wils. 461 ; 95 E. R. 1157.

142. *Add. Annotations :—***Apld.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485 ; A.-G. of Trinidad & Tobago *v.* Gordon Grant & Co., [1935] A. C. 532.

143a. ——.]—Where an issue arises upon the proceedings before the Court the jurisdiction of the Court to dispose of that issue can only be ousted by plain words (HAMILTON, J.).—A.-G. *v.* BODEN, [1912] 1 K. B. 539 ; 81 L. J. K. B. 704 ; 105 L. T. 247.

147. *Add. Annotations :—***Consd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287. **Apld.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. **Consd.** Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208. **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941 ; Whitney *v.* I. R. Comrs. (1925), 42 T. L. R. 58 ; Wigg *v.* A.-G. of Irish Free State (1927), 96 L. J. P. C. 88 ; Farrow *v.* Orttewell, [1933] Ch. 480 ; Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

148. *Add. Annotation :—***Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

149. *Add. Annotations :—***Apld.** Hallen *v.* Spaeth, [1923] A. C. 684. **Consd.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774. **Apld.**

---

e (p. 105) v. —— —— *Whether plaintiff may abandon part of claim.*]—CHAPMAN *v.* DOHERTY (1885), 25 N. B. R. 271.—**CAN.**

e (p. 105) vi. —— —— *Application to mining jurisdiction.*]—County Courts Act, s. 34, which provides *inter alia* that, if in any action of tort pltf. shall claim over $250, & deft. objects to the action being tried in the county ct & gives security for trial in the Supreme Ct., the proceedings in the county ct. shall be stayed, applies to proceedings in the county ct. under its mining jurisdiction.—MUIRHEAD *v.* SPRUCE CREEK POWER CO., LTD. (1904), 2 M. M. Cas. 155 ; 11 B. C. R. 1.—**CAN.**

e (p. 105) vii. —— —— *Amount ascertained by act of parties.*]—Deft. employed pltfs. as his brokers to sell on his account 200 shares of stock at a named price, pltfs. undertaking that, in the event of loss, deft.'s liability should not exceed $200. In an action upon this contract pltfs. recovered $200 & interest :—*Held :* the amount of $200 recovered was ascertained by the act of the parties within County Courts Act, R. S. O. 1897, c. 55, s. 23, &, therefore, recoverable in a county ct. —THOMPSON *v.* PEARSON (1899), 18 P. R. 420.—**CAN.**

e (p. 105) viii. —— —— *Legacy charged on land—Value of land beyond limit.*]—A county ct. has jurisdiction under 59 Vict. c. 19 (O.), s. 3 (13), in an action brought by the legatee against the devisee of land, to recover a legacy of $5 charged on the land, as involving equitable relief in respect of a matter under $200. The subject-matter involved in such an action is the amount of the legacy & not the value of the land.—RUSTIN *v.* BRADLEY (1896), 28 O. R. 119.—**CAN.**

f (p. 105) i. ——.]—CURRIE *v.* NICHOLSON (1925), 58 N. S. R. 234.—**CAN.**

f (p. 105) ii. —— *Whether amount liquidated by act of parties.*]—WALLBRIDGE *v.* BROWN (1859), 18 U. C. R. 158.—**CAN.**

f (p. 105) iii. ——.]—WATSON *v.* SEVERN (1881), 6 A. R. 559.—**CAN.**

f (p. 105) iv. ——.]—BROWN *v.* HOSE (1890), 14 P. R. 3.—**CAN.**

f (p. 105) v. ——.]—OSTROM *v.* BENJAMIN (1894), 21 A. R. 467.—**CAN.**

f (p. 105) vi. ——.]—EVANS *v.* CHANDLER (1900), 19 P. R. 160.—**CAN.**

g (p. 106) i. —— *Right of appeal.*]—By Division Courts Act, s. 125, an appeal lies "where the sum in dispute exceeds $100, exclusive of costs." The "sum in dispute" means the sum in dispute at the time of the appeal ; & where in a division ct. action pltf. claimed $55.88 & deft. admitted $17.15, part of pltf.'s claim, disputed the balance, & counterclaimed for $103.55, & the judge in the division ct. allowed pltf. the disputed portion of his claim, & wholly disallowed the counterclaim, & deft. appealed generally :—*Held :* even assuming that deft. could not counterclaim for more than $100, the amount in dispute on the appeal exceeded $100, & the appeal lay.—CAMPBELL *v.* MCGREGOR, [1928] 2 D. L. R. 70 ; 61 O. L. R. 649.—**CAN.**

k (p. 106) i. *May not entertain counterclaim—Amounting to action for specific performance.*]—A counterclaim by a vendor for the moneys alleged to be due under an agreement for the sale of land being in reality an action for specific performance is beyond the jurisdiction of the district ct.—BURRELL *v.* WATT & HARDINGE (Sask.), [1928] 3 D. L. R. 505 ; [1928] 2 W. W. R. 482.—**CAN.**

n i. —— —— *Unconnected items.*]—READ *v.* WEDGE (1870), 29 U. C. R. 456.—**CAN.**

b (p. 107) i. ——.]—Where in matters of tort relating to personal chattels, title to land is brought in question, though incidentally, the ct. has no jurisdiction.—TRAINOR *v.* HOLCOMBE (1850), 7 U. C. R. 548.—**CAN.**

e (p. 107) i. —— *Exceptions to rule—District court of Thunder Bay—47 Vict. c. 14 (O.).*]—MCQUAID *v.* COOPER (1886), 11 O. R. 213.—**CAN.**

e (p. 107) ii. ——.]—Summary Ejectment Act (Consol. Stat. c. 83, s. 22), is not applicable to a case where the title to the land is brought in question. If, in such a case, the question of title is *bonâ fide* raised, the county ct. judge or justices should not continue the trial.—*Ex p.* TOWER (1889), 28 N. B. R. 159.—**CAN.**

63 i. *May set aside judgment—For matters of irregularity.*]—*Re* MOMBROQUETTE (N. S.) (1928), 50 Can. Crim. Cas. 308.—**CAN.**

sk. *Injunction — Power of district court.*]—ROSE *v.* DILKE VILLAGE, [1926] 1 D. L. R. 190 ; [1926] 1 W. W. R. 85 ; 20 Sask. L. R. 259.—**CAN.**

sl. *Action for rescission—Agreement for sale of land—Cannot be entertained by county court.*]—RICHARDS *v.* TROTTIER (1914), 28 W. L. R. 553 ; 18 D. L. R. 508 ; 6 W. W. R. 1123 ; 24 Man. L. R. 473.—**CAN.**

sm. *Action for specific performance—Agreement for sale of land—Cannot be entertained by district court.*]—BYERS *v.* SINGLETON, [1921] 2 W. W. R. 71 ; 14 Sask. L. R. 195.—**CAN.**

sn. *Application under Vendors & Purchasers Act—Cannot be entertained by local judge.*]—*Re* LEVY & JACOBS, [1927] 4 D. L. R. 937 ; 61 O. L. R. 296.—**CAN.**

sp. *Petition for amendment of registered plan of land—Under Registry Act, R. S. O.*, 1897 (c. 136)—*Jurisdiction of county court other than that of county in which land lay.*]—*Re* MCDONALD & LISTOWEL (1903), 24 C. L. T. 8 ; 6 O. L. R. 556 ; 2 O. W. R. 1000.—**CAN.**

st. *Local masters — Jurisdiction —* LORCH *v.* OLSON (Sask.), [1927] 3 W. W. R. 780.—**CAN.**

sw. —— —— *To order transfer of action.*]—HAMELIN *v.* PHILLIPS (Sask.), [1927] 4 D. L. R. 1107 ; [1927] 3 W. W. R. 504.—**CAN.**

sx. *Action for breach of contract—Neglect in using horse.*]—A plaint in a division ct. charging that deft. hired of pltf. a horse, etc., to go from A. to B. & back, & agreed to take good care of the same as bailee, with an averment that deft. so carelessly, etc., drove said horse, etc., that the horse was killed, etc., is a plaint in contract & not in tort, & therefore within the jurisdiction.—*Re* RUMBLE *v.* WILSON (1869), 5 P. R. 38.—**CAN.**

sy. —— ——.]—Pltf. sued in a division ct. for $90 as the value of his horse employed by deft., the injury complained of being that deft. allowed the horse to be worked after he took sick, by which his death was occasioned : —*Held :* this was an action for breach of contract in not taking proper care of the horse, & that the division ct. had jurisdiction.—O'BRIEN *v.* IRVING (1878), 7 P. R. 308.—**CAN.**

sz. *Right to order writ or process outside jurisdiction.*]—Since the passing of Judicature Act, 1909, under County Cts. Act, 11 Geo. 5, 1921 (N. B.), c. 3, s. 71, a county ct. judge can order a writ or process outside the jurisdiction. —SMITH *v.* GORDON (1927), 53 N. B. R. 316.—**CAN.**

PART IV. SECT. 9, SUB-SECT. 1.

137 x. ——.]—The Minister of Pensions & National Health, under sect. 30 (8) of 18-19 Geo. 5, c. 38, referred to this ct. a dispute as to the jurisdiction of the Appeal Board to render a certain judgment :—*Held :* the jurisdiction of a ct. of record, when it has once obtained, cannot be ousted by any forced interpretation, & the jurisdiction of this ct. to proceed with the present reference was not taken away by 20-21 Geo. 5, c. 35.—*Re* SKITCH, [1931] Ex. C. R. 12.—**CAN.**

Cayzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269. **Consd.** Freshwater *v.* Western Australian Insurance Co. (1932), 102 L. J. K. B. 75; Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586. **Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610; Gowar *v.* Hales (1927), 96 L. J. K. B. 1088; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; Sturley *v.* Powell, [1930] 1 K. B. 677; Cipriani *v.* Burnett, [1933] A. C. 83; Israelson *v.* Dawson, [1933] 1 K. B. 301; Paul (R. & W.), Ltd. *v.* Wheat Commission (1935), 152 L. T. 352; Groom *v.* Crocker, [1937] 3 All E. R. 844.

150. *Add. Citations :*—15 Asp. M. L. C. 566; *affg.* S. C. *sub nom.* DREYFUS & Co. *v.* ATLANTIC SHIPPING & TRADING Co. (1921), 37 T. L. R. 417, C. A.

Add. Annotations :—*As to* (1) **Consd.** Ford *v.* Compagnie Furness (France), [1922] 2 K. B. 797. **Refd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690. *As to* (2) **Refd.** Reed *v.* Page & East, [1927] 1 K. B. 743; Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 206.

170. *Add. Annotations :*—**Refd.** St. Magnus Parochial Church Council, etc. *v.* London Diocese Chancellor, [1923] P. 38; Hunter *v.* Städtische Hochseefischerei Gemeinnützige Gesellschaft (1925), 133 L. T. 488; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

172. *Add. Annotation :*—**Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

185. *Add. Annotation :*—**Folld.** Pringle *v.* Hales, [1925] 1 K. B. 573.

199. *Add. Annotation :*—**Refd.** Hunter *v.* Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493.

218. *Add. Annotation :*—**Refd.** Bartlam *v.* Evans, [1930] 1 K. B. 202.

Part VI.—Right of Public to Admission.

260a. ——.]—A judge of a ct. of justice in England (save in a few exceptional cases) has no discretion whether he will sit in private or in public (LAWRENCE, L.J.).—HEARTS OF OAK ASSURANCE Co., LTD. *v.* A.-G., [1931] 2 Ch. 370; 100 L. J. Ch. 340; 145 L. T. 662; 47 T. L. R. 579; 75 Sol. Jo. 615, C. A.; *revsd. on other grounds*, [1932] A. C. 392, H. L.

Annotation :—**Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

276. *Add. Annotations :*—**Folld.** *Re* A. B.'s Petn. (1927), 97 L. J. P. 104. **Consd.** Greenway *v.* A.-G. (1927), 44 T. L. R. 124; Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. **Apld.** McPherson *v.* McPherson, [1936] A. C. 177.

277a. ——.]—In cross suits for divorce the case for the wife having been opened in public & the wife on being called as a witness finding it almost impossible to give her evidence by reason of the presence of people in ct., the President directed this part of the case to be heard *in camerâ*.—MOOSBRUGGER *v.* MOOSBRUGGER, MOOSBRUGGER *v.* MOOSBRUGGER & MARTIN (1913), 29 T. L. R. 658.

277b. ——.]—At the trial of a divorce action, which took place during the luncheon interval in the judges' law library in the Court House of Edmonton, Alberta, not one of the regular cts. in the Court House, neither the judge nor counsel were robed. The judge was attended by the assistant-clerk of the ct. & by an official shorthand writer, & before taking his seat he announced that he was sitting in open ct. The only other persons present throughout the proceedings were petitioner & his two witnesses, the action being undefended.

Access to the judges' law library was through a double swing door in the wall of a public corridor. One wing of that door was always fixed, the other, although swinging close, was usually unfastened. On the

---

PART IV. SECT. 10, SUB-SECT. 1.—A.

153 xv. ——.]—The consent, or request, of the parties concerned does not empower the Supreme Ct. in its equitable jurisdiction to entertain a suit involving the determination of purely legal claims.—PRESCOTT, LTD. *v.* PERPETUAL TRUSTEE Co., LTD. (1928), 28 S. R. N. S. W. 324; 45 N. S. W. W. N. 80.—**AUS.**

PART IV. SECT. 10, SUB-SECT. 1.—B.

sa. *Effect of acquiescence—Accused present but not professionally represented—Objections by judge.*]—At the hearing of a summons charging an offence under Customs Acts, deft. was present, but was not professionally represented. No preliminary objections to the jurisdiction of the district justice were made by her, but certain objections were made by the district justice himself :—*Held :* there had not been any waiver of such objection by deft.—A.-G. *v.* HEALY, [1928] I. R. 460.—**IR.**

PART IV. SECT. 12.

sb. *Claim reduced below amount conferring jurisdiction—Claim dismissed.*]—In an action by pltf., a seaman, to recover a balance of wages alleged to be due to him, the evidence showed that with respect to two months' wages, part of the time claimed for, pltf. had received an amount which reduced his claim below the jurisdiction of the ct., &, as to the balance of the time claimed for, pltf. had forfeited his claim to wages by desertion :—*Held :* pltf.'s claim be dismissed with costs.—FORBES *v.* WASSON (1928), 60 N. S. R. 20.—**CAN.**

PART VI.

259 I. *General rule.*]—A criminal trial must be conducted in open ct. except where justice cannot be secured otherwise than by ordering the ct. to be cleared.—R. *v.* HAMILTON (1929), 30 S. R. N. S. W. 277; 47 N. S. W. W. N. 84.—**AUS.**

259 II. ——.]—The inherent right of the Supreme Ct. to order that its proceedings be conducted *in camera* is recognised by sect. 220 (4) of Criminal Procedure & Evidence Act, & where the ct. is satisfied that there may be some prejudice to the course of justice unless certain witnesses are allowed to give their evidence without the presence of the public, the ct. will order the public to be excluded.—R. *v.* LADBROOKE, [1931] N. L. R. 475.—**S. AF.**

sc. *Right of judge to exclude press.*]—The judge of the Central Supreme Ct., resenting certain criticism that had been published in a local newspaper concerning his exercise of the judicial office, made an order, in the absence of the proprietor, a registered co., forbidding the reporters of that newspaper & of another newspaper owned by the same co. to sit at the reporters' desk or to take notes of the proceedings in his ct. elsewhere than in the public gallery, & directed that this restriction should remain in force until the printer & publisher of both newspapers should apologise to the ct. :—*Held :* on appeals by the printer & publisher & by the co., that representatives of the newspaper press have no greater right of access to the Supreme Ct. than ordinary members of the general public; in the exercise of his right to regulate & control the conduct of his ct., it was competent for the judge to make the order in question; & the order was not a judicial order, but an administrative direction which did not affect any one in his proprietary rights, in his status or in his person, & was therefore not subject to appeal.—*Re* DUNN & MORNING BULLETIN, LTD., [1932] S. R. (Q.) 1.—**AUS.**

fixed wing was a brass plate with the word "Private" in black letters. The double swing door opened on to an inner corridor in which, opposite, was a door of the judges' library. The opening wing of the swing door was unfastened during the trial, & the inner door of the library was kept open throughout. At the conclusion of the proceedings a decree *nisi* was pronounced, which was subsequently made absolute. In an action by resp. in the divorce suit, brought after the expiry of the time for appealing against the decree absolute, & after petitioner had remarried, seeking to have the decrees *nisi* & absolute rescinded & set aside on the ground (*inter alia*) that the trial of the divorce action in the judges' law library had not been a trial in open ct. according to law, & that the resultant decrees *nisi* & absolute were null & void:—*Held:* even although the actual exclusion of the public resulted only from the word "Private" on the outer door, the judge on the occasion of the divorce trial, albeit unconsciously, was denying his ct. to the public in breach of their right to be present.—MCPHERSON *v.* MCPHERSON, [1936] A. C. 177; 105 L. J. P. C. 41; 154 L. T. 221; 52 T. L. R. 166; 80 Sol. Jo. 91, P. C.

280a. In proceedings under Legitimacy Act, 1926 (c. 60).]—A petition filed under the above Act for the legitimation of a person who was born illegitimate, but whose parents were married subsequently to his birth, is not a proceeding which entitles petitioner to a hearing *in camerâ*.—*Re* A. B.'s PETITION (1927), 97 L. J. P. 104; *sub nom. Re* C. D.'s PETITION, 138 L. T. 208; *sub nom.* GREENWAY *v.* A.-G., 44 T. L. R. 124; 71 Sol. Jo. 882.

285a. To inquiry under Industrial Assurance Act, 1923 (c. 8), s. 17.]—An inspector appointed by the Industrial Assurance Comr. under Industrial Assurance Act, 1923 (c. 8), s. 17 (1), for the purpose of examining into & reporting on the affairs of an industrial assurance co. is not entitled to conduct the inspection in public, but this shall not prevent him from admitting from time to time any persons the presence of whom is reasonably necessary to enable him to carry out his duty under the statute; & he is not entitled to make public the information gained by him in the course of such examination or of the exercise of the powers conferred upon him by the said subsect. & by Friendly Societies Act, 1896 (c. 25), s. 76 (5), or otherwise to make use of such information save for the purposes of carrying out his examination & of preparing his report on the affairs of the co. & for purposes ancillary thereto. The same principle applies where the Comr. himself makes the examination.—HEARTS OF OAK ASSURANCE CO., LTD. *v.* A.-G., [1932] A. C. 392; 101 L. J. Ch. 177; 147 L. T. 41; 48 T. L. R. 296; 76 Sol. Jo. 217, H. L.

Annotation:—**Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

289a. —— Includes justices hearing ex parte application for summons.]—KIMBER *v.* PRESS ASSOCN., [1893] 1 Q. B. 65; 62 L. J. Q. B. 152; 67 L. T. 515; 57 J. P. 247; 41 W. R. 17; 9 T. L. R. 6; 37 Sol. Jo. 8; 4 R. 95, C. A.

Annotation:—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

Part VII.—Classification of Courts.

292. *Add. Annotation:*—**Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

293. *Add. Annotation:*—**Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43

302a. Justices.]—ANON. (1523), Y. B. 14 Hen. 8, fo. 16, pl. 3.

Annotations:—**Refd.** Nector *v.* Gennet (1596), Cro. Eliz. 466; Marshalsea Case (1613), 10 Co. Rep. 68b; Butt *v.* Conant (1820), 1 Brod. & Bing. 548; Howard *v.* Gossett (1845), 10 Q. B. 359.

Part IX.—Court of Lord High Steward.

315. *Add. Citation:*—18 State Tr. 441.

320. After this case for "*See, also*, PARLIAMENT," read "*See, also*, CRIMINAL LAW, Vol. XIV., pp. 125, 126, Nos. 965–985."

PART VII. SECT. 3, SUB-SECT. 1.

sd. *Board of Valuation & Revision —Under Winnipeg Charter, s. 341.*]—*Re* WINNIPEG CHARTER, *Re* COMMUNITY OF SISTERS OF THE HOLY NAMES OF JESUS & MARY, [1922] 2 W. W. R. 253; 68 D. L. R. 506.—**CAN.**

se. *Local court continued under Local Courts Act, 1926.*]—The local ct. continued by Local Cts. Act, 1926, s. 6, is the ct. of record, not the officers or instrumentalities by whom the jurisdiction was formerly exercised.—METROPOLITAN ABATTOIRS BOARD *v.* SCHOLE, [1927] S. A. S. R. 444.—**AUS.**

PART IX. SECT. 8, SUB-SECT. 1.

s. i —— ——.]—A notice of motion for leave to appeal to the Privy Council was filed & served within fourteen days after the judgment complained of, but did not come on for hearing until some months later. An affidavit filed on behalf of appct. alleged that the construction of certain Acts was involved in the decision that the judgment would cover a great number of claims made against the appct. none individually exceeding £500, but aggregating a sum exceeding £10,000, & that the decision would affect many future claims against appct. Upon the hearing of the motion:—*Held:* (1) the application was made within the time prescribed by rule 4 of the Order-in-Council of Apr. 2, 1909, although not heard within 14 days; (2) no appeal lay as of right under rule (2) (*a*) of the said Order-in-Council, but the ct. would in its discretion grant leave under rule 2 (*b*) upon terms that appct. should pay the costs of the appeal in any event.—BENSON *v.* ROAD TRANSPORT & RAILWAYS COMR. (1935), 52 N. S. W. W. N. 202.—**AUS.**

Part X.—The Judicial Committee of the Privy Council.

329. *Add. Annotation :*—**Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

339. *Add. Annotation :*—**Apprvd.** Campbell *v.* Pollak, [1927] A. C. 732.

341. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

342. *Add. Annotation :*—**Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

344. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak (1927), 96 L. J. K. B. 1093.

345. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

348a. Interlocutory order.]—As a general rule an interlocutory order is not a suitable subject for review by the Judicial Committee.—BEVOY KRISHNA MUKHERJIR *v.* SATISH CHANDRA GIRI (1927), 55 L. R. Ind. App. 131.

350. *Add. Annotation :*—**Refd.** Ware *v.* Whitlock, [1923] 2 K. B. 418.

352a. Affidavit of service of notice of intended application—Necessity for lodging—Judicial Committee Rules, 1925, r. 4.]—PRACTICE NOTE, [1925] W. N. 164, P. C.

352b. Appeal in forma pauperis—When allowed.]—A professional man making a substantial income & having outstanding book debts cannot be said not to be worth £25 within rule 8 of the Judicial Committee Rules, 1925.—GRANT *v.* AUSTRALIAN KNITTING MILLS, LTD., [1933] W. N. 275; 176 L. T. Jo. 485; 77 L. Jo. 9, P. C.

352c. —— Necessity for statement of grounds.]—PRACTICE NOTE, [1938] W. N. 339, P. C.

355a. Necessity for statement of primâ facie case —Appeal against conviction.]—PRACTICE NOTE, [1935] W. N. 167; 80 L. Jo. 339, P. C.

363a. ——.]—By r. 8, sub-r. (1) of the Rules of the Ct. of Appeal for Eastern Africa as to appeals from the Supreme Ct. of Kenya:

"The memorandum of appeal shall be presented in civil cases within three months . . . from the date of the decree appealed against. . . ." By a judgment delivered in the Supreme Ct. of Kenya on Aug. 19, 1932, applt. was directed to furnish an account of his administration of certain trust property. No formal decree following upon that judgment was drawn up until the account had been taken & confirmed by the ct. on June 26, 1933. A decree was then drawn up on that date, & entered, & ante-dated to Aug. 19, 1932, the date of the judgment. On an application by applt. for leave to appeal out of time against the decree:—*Held:* it was the duty of applt., if he wished to appeal against the judgment of Aug. 19, 1932, & to ensure his appeal being within time, to take steps to have that judgment drawn up in the form of a decree. Having failed in that duty his application was dismissed.—RIBEIRO *v.* SIQUEIRA E FACHO, [1936] A. C. 300; [1936] 1 All E. R. 537; 105 L. J. P. C. 132; 154 L. T. 473; 80 Sol. Jo. 263, P. C.

365a. No application to lower court for leave to appeal.]—Petition for leave to appeal from the decision of a colonial ct. of appeal. No application was made by the petitioner within fourteen days to the ct. of appeal, as required by the rules relating to appeals from the Leeward Islands, to grant leave to appeal, on the ground that the ct. of appeal was not properly constituted to entertain the appli-

---

PART X. SECT. 1.

321 i. *Status of Judicial Committee—Advisers of Crown.*]—The Judicial Committee sit in the capacity of judges; their report is acted on by the Sovereign in full Privy Council, so that proceedings before the Committee are in substance strictly judicial. The Judicial Committee is not an English body in any exclusive sense; it is not a body with any location. The Sovereign is everywhere throughout the Empire in the contemplation of the law. He may as well sit in Dublin, or at Ottawa or in South Africa, or in Australia, or in India, as in London, & it is only for convenience & because the members of the Privy Council are conveniently in London that the Judicial Committee do sit there.—HULL *v.* M'KENNA, "FREEMAN'S JOURNAL" *v.* FERNSTROM & TRAESLIBERI, [1926] I. R. 402.—**IR.**

PART X. SECT. 2, SUB-SECT. 8.

348 ii. ——.]—A question of procedure is not one upon which an appeal to the Privy Council will be entertained.—A.-G. FOR ONTARIO *v.* DALY, [1924] A. C. 1011; 94 L. J. P. C. 21; 132 L. T. 210; 40 T. L. R. 814.—**CAN.**

si. *Maintenance granted to wife—No miscarriage in method of computing.*]—The Judicial Committee is extremely reluctant to interfere with the amount of a decree for maintenance unless there has been some miscarriage in the way the amount has been arrived at.—EKRADESHWARI BAHUASIN *v.* HOMESHWAR SINGH (1929), 56 L. R. Ind. App. 182.—**IND.**

sk. *Income tax reference.*]—Under the provisions of sect. 66A (2) of the Income Tax Act the right of appeal to the Privy Council is restricted to cases of appeals from any judgment of the High Ct. delivered on a reference made under sect. 66, in any case which the High Ct. certifies to be a fit one for appeal to His Majesty in Council. Before the case can be certified to be a fit one for appeal, there must be a judgment of the High Ct. delivered on a reference made under sect. 66. But the stage of a reference made to the High Ct. does not arrive at all when the High Ct. declines to require the Comr. to state the case & refer it.—GURMUKH RAI *v.* SECRETARY OF STATE FOR INDIA (1934), I. L. R. 57 All. 306.—**IND.**

so. *Railway franchise agreement.*]—A railway franchise agreement providing for arbn. & appeal to the Ct. of Appeal, but not expressly limiting a further right of appeal, will not bar an appeal to the Privy Council.—INTERNATIONAL RAILWAY CO. *v.* NIAGARA PARKS COMMISSION, [1936] 2 D. L. R. 405; O. R. 220.—**CAN.**

PART X. SECT. 3, SUB-SECT. 1.—A. (a).

352b i. *Appeal in forma pauperis—What costs allowed.*]—Petitioner, who had been granted special leave to appeal to His Majesty in Council against his conviction of murder & sentence of death, further petitioned for leave to prosecute his appeal *in forma pauperis*, & asked for an order that the India Office should provide for the expenses of printing & binding the record & his case, & the fees of counsel & solr. to prosecute the appeal. The India Office did not dispute that petitioner was a pauper, & they agreed to pay for the printing & binding of the record & case, but were not prepared to pay for his counsel & solr.:—*Held:* in view of rule 81 of the Judicial Committee Rules, 1925, the order asked for in respect of counsel's & solr.'s fees could not be made.—MANGAL-SINGH *v.* KING EMPEROR (1937), L. R. 63 Ind. App. 75.—**IND.**

PART X. SECT. 3, SUB-SECT. 1.—A. (c).

361 ii. —— *When application granted.*]—The Ct. of Appeal has no power to extend the time limited by rule 4 of Order in Council on June 4, 1918, for applying for leave to appeal to His Majesty in Council. Since the question involved in the proposed appeal (what amounts to "fraud" within sect. 216 of the Land Titles Act) was by reason of its great general importance one which ought to be submitted for decision to His Majesty in Council, leave to appeal would have been granted had the application herein been in time.—HACKWORTH *v.* BAKER (No. 2), [1936] 2 W. W. R. 622.—**CAN.**

sg. *Time occupied in prosecuting application for review—Addition to prescribed period.*]—Applt. allowed to add the time occupied by the prosecution in good faith of an application for review to the period prescribed for presenting a petition for leave to appeal.—NARIMAN RUSTOMJI MEHTA *v.* HASHAM ISMAYAL VALAD HAJI KHAMISA (1924), I. L. R. 49 Bom. 149.—**IND.**

cation. The Lords of the Judicial Committee held, that either under protest or perhaps without protest, the petitioner might have applied to the ct. of appeal of the colony without damaging his case, & refused leave to appeal.—*Ex p.* KENNINGTON (1862), 8 Jur. N. S. 1111; *sub nom. Ex p.* KENSINGTON (1863), 15 Moo. P. C. C. 209; 15 E. R. 473, P. C.

373. *Add. Citations:—sub nom. Ex p.* KENSINGTON, 15 Moo. P. C. C. 209; 15 E. R. 473.

388a. —— —— **When further security ordered.**]—CORPORATION AGENCIES, LTD. *v.* HOME BANK OF CANADA, [1926] W. N. 58, P. C.

403a. ——.]—In a suit claiming property by adoption, one of defts. denied the alleged adoption & claimed widow's maintenance. The first ct. found for the alleged adoption but decreed maintenance at a sum less than that claimed. The appellate ct. varied the decree by increasing the amount of maintenance, & refused leave to appeal:—*Held:* special leave to appeal should be granted limited to the question of the maintenance allowance.—ANNAPURNABAI *v.* RUPRAO (1924), L. R. 51 Ind. App. 319, P. C.

427a. —— **Immaterial documents—Inclusion disapproved.**]—Documents not material to an appeal should not be included in the record. If one party wishes a document to be included, but the other party considers it unnecessary, the matter should be referred to the High Ct. or its registrar. It does not follow that because unnecessary documents have been printed in India they should be included in the books for the Judicial Committee. It is the duty of the solr. in England to make a selection of the necessary documents, the other papers being ready in case they are required. In cases of doubt, the solr. should take counsel's advice, for which purpose, on application being made, a fee will be allowed.—SONATON PAL *v.* GALSTAUN (1927), 54 L. R. Ind. App. 118; 43 T. L. R. 224, P. C.

453a. —— —— **Of some respondents—Practice where parties numerous.**]—In an appeal in which there were very numerous resps. whose interests were not conflicting, delay in the hearing having been caused by the death of some of them & the consequent substitution & revivor proceedings in compliance with the rules, & further similar delay being apprehended from that cause, the Judicial Committee ordered & directed (1) that the appeal be set down that day against such of resps. as had appeared or had been served with notice of any Order in Council bringing them upon the record; & (2) all questions how any other resps. should be proceeded against should stand for determination if necessary at the hearing of the appeal.—ZAHID HUSAIN *v.* MOHAMMAD ISMAIL (1929), 57 L. R. Ind. App. 94, P. C.

456a. **Death of respondent before hearing—Notice to Board after hearing—Effect on delivery of judgment.**]—In an appeal to the Privy Council against the making of a decree absolute in a divorce suit resp. died two days before the hearing of the appeal. As resp. had not appeared & was not represented at the appeal, the appeal was heard in ignorance of his death. The Board reserved judgment & when the report of the Board had been prepared & was ready for delivery, the fact of the death of resp. became known:—*Held:* the appeal abated at the moment of the death & the reserved judgment could not be delivered.—HODGE *v.* MARSH, [1936] 1 All E. R. 848; 80 Sol. Jo. 364, P. C.

483a. **Form of case—Necessity for signature of one of counsel appearing at hearing.**]—MONTREAL LIGHT, HEAT & POWER CO. *v.* MONTREAL (CITY) (1924), 68 Sol. Jo. 419, P. C.

486. *Add. Annotations:*—**Consd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155; Green *v.* Weatherill, [1929] 2 Ch. 213. **Refd.** West *v.* Automatic Salesman, Ltd., [1937] 2 K. B. 398.

493. After this case add:—

For bail—Application to High Court.]—*See* SUTTON *v.* R., CRIMINAL LAW, No. 1410a, *ante*.

PART X. SECT. 3, SUB-SECT. 1.—B.

371 iii. ——.]—An order directing a new trial is not a final judgment or order within Order in Council of Jan. 10, 1910, r. 2, & there is consequently no jurisdiction to grant leave to appeal therefrom to the Privy Council.—BLACK & WHITE CABS, LTD. *v.* ANSON, [1928] N. Z. L. R. 613.—**N.Z.**

ah. *Point settled by previous decision.*]—Where their Lordships of the Privy Council have clearly laid down the law which is applicable to a particular set of facts, leave to appeal to His Majesty in Council under such circumstances would be refused.—MAUNG SHWE AN *v.* MA THE NU (1929), I. L. R. 7 Ran. 271.—**IND.**

aj. *Appeal from refusal to grant habeas corpus—Period of detention expiring before appeal can be heard.*]—The ct. will not grant leave to appeal to the Privy Council from a decision refusing a writ of *habeas corpus* where the period of detention will have expired before the appeal can be heard & the matter is not of general or public importance.—HAZLETT *v.* BUTTIMORE (No. 2), [1931] N. Z. L. R. 32.—**N.Z.**

PART X. SECT. 3, SUB-SECT. 1.—C.

379 iia. —— ——.]—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1924] 2 D. L. R. 1238; 54 O. L. R. 629.—**CAN.**

389 iia. —— —— ——.]—The ct. can, under Civil Procedure Code (Act V. of 1908), 1908, Ord. 45, r. 17, read with Privy Council Rules, 1920, r. 9, enlarge the time for furnishing security & making the deposit, beyond the period prescribed by Ord. 45, r. 7.—NILKANTH BALWANT NATU *v.* SHRI SATCHIDANAND VIDYA NARSINHA BHARATI (1927), I. L. R. 51 Bom. 430.—**IND.**

390 i. —— *Form of security.*]—An order to furnish security for costs of resp. in an appeal to the Privy Council in a form other than cash or Govt. Bonds can be made only at the time of granting the certificate & not afterwards.—ARUNACHALA NAIDU *v.* BALAKRISHNA & Co. (1924), I. L. R. 48 Mad. 559.—**IND.**

sg. *Appeal as of right—Conditions.*]—If a party is entitled to appeal to the Privy Council as of right, the ct. can impose only such condition as the rules prescribe.—*Re* LYON, LYON *v.* PUBLIC TRUSTEE (No. 2), [1934] N. Z. L. R. Supp. 156; G. L. R. 413.—**N.Z.**

PART X. SECT. 3, SUB-SECT. 2.

427 ii. —— *Report on value of subject-matter.*]—When on a petition to the High Ct. for a certificate that a case is a fit one for appeal to the Privy Council a question has arisen as to the value of the subject-matter & a report thereon has been ordered under Ord. 45, r. 5, the report & full information on the matter should be included in the record in the appeal to the Privy Council.—ANUP MAHTO *v.* MITA DUSADH (1933), 60 L. R. Ind. App. 366.—**IND.**

PART X. SECT. 3, SUB-SECT. 5.

447 i. *When allowed—Suits involving same question.*]—Actions brought by pltf. against three cos. were based on separate contracts, precisely similar in form. On an appeal to the Privy Council, application was made to the Ct. of Appeal (B.C.) to consolidate the appeals. Application refused.—VAN HEMELRYCK *v.* NEW WESTMINSTER CONSTRUCTION & ENGINEERING CO. (No. 2) (1920), 29 B. C. R. 60.—**CAN.**

PART X. SECT. 3, SUB-SECT. 9.—A.

487 iv. ——.]—The operation of a judgment restraining defts. from selling certain goods under certain trade names is not stayed pending an appeal of defts., to the Privy Council, although under Privy Council Appeals Act, 1914, ss. 3, 4, upon the perfecting of security by defts., execution shall be stayed in the original cause.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO. (1924), 55 O. L. R. 127.—**CAN.**

503a. ——.]—The Code of Civil Procedure does not restrict the power of the Judicial Committee to admit evidence rejected by the High Ct.—PARSOTIM *v.* LAL MOHAR (1931), 58 L. R. Ind. App. 254, P. C.

507. *Add. Annotation :*—**Refd.** Intract *v.* Intract (otherwise Jacobs), [1933] P. 190.

513a. Official translation.]—The practice of the Judicial Committee is to accept an official translation.—RAJENDRA PRASAD BOSE *v.* GOPAL PRASAD SEN. (1930), 57 L. R. Ind. App. 296, P. C.

532a. ——.]—The Judicial Committee does not sit as a ct. of criminal appeal. It will not interfere with a criminal sentence unless there has been something so irregular or so outrageous as to shock the very basis of justice. —PRACTICE NOTE (1932), 48 T. L. R. 300 ; *sub nom.* MOHINDAR SINGH *v.* KING EMPEROR, 59 L. R. Ind. App. 233, P. C.

535a. ——.]—It is no part of the functions of the Judicial Committee, generally speaking, to interpret an Order in Council unless it be brought before them in the ordinary way of appeal. In the present case, however, in which a suit had been remitted to the High Ct. to assess damages & that ct. had adjourned an appeal in order that the parties might apply to the Board to ascertain the intention & effect of the Order made, their Lordships entertained a petition by resp. with that object, though upon the facts the declaration prayed for was refused with costs.—HURNANDRAI FULCHAND *v.* PRAGDAS BUDHSEN, *Ex p.* PRAGDAS BUDHSEN (1925), L. R. 52 Ind. App. 118.

546a. —— —— ——.]—It is only in very exceptional circumstances that an issue dropped in the intermediate ct. of appeal can be revived upon appeal to the Privy Council.—AHAMATH *v.* SARIFFA UMMA, [1031] A. C. 799 ; 100 L. J. P. C. 211 ; 145 L. T. 650, P. C.

548a. ——.]—Where it is sought to raise a point of law for the first time before a ct. of last resort the ct. may exercise a discretion not to entertain the point when it would involve the consideration of matters of fact with which the cts. below were in a more advantageous position to deal & with which they have in fact dealt.—MOOLLA (M. E.) SONS, LTD. (OFFICIAL LIQUIDATOR OF) *v.* BURJORJEE (1932), 48 T. L. R. 279 ; 76 Sol. Jo. 185, P. C.

551. *Add. Annotations :*—**Refd.** Bell *v.* Lever Bros., Ltd., [1932] A. C. 161. **Consd.** Moolla (M. E.) Sons, Ltd. (Official Liquidator) *v.* Burjorjee (P. R.) (1932), 48 T. L. R. 279 ; Ley *v.* Hamilton (1934), 151 L. T. 360.

555. *Add. Annotation :* — **Consd.** Chesebrough Manufacturing Co., Consolidated *v.* Kudhoos (1929), 47 R. P. C. 25.

566a. Abandoned in effect in lower court.]—An Indian patent was granted for " an improved machine for removing the husks & shells from mahsoor & the like." Claim 1 was for " a machine for husking mahsoor or the like comprising a stationary outer casing with a rotatable roller mounted on an axial or longitudinal shaft therein said roller having a roughened or other suitable abrading surface thereon & the outer casing having a perforated panel in its lower part mahsoor being caused to travel through the machine in the annular space between said abrading roller & said casing the husks & particles ground off the grain being rejected through said perforated panel whilst the husked grain is delivered through an opening in the end wall of the casing." In an action for infringement of the patent defts. denied

---

PART X. SECT. 3, SUB-SECT. 10.—A.

so. *Pleadings—Form of.*]—The Judicial Committee are disinclined to stress the structure of pleadings too strictly, if fair notice of pltf.'s case has been given & issue has been joined on an inquiry but faintly adumbrated.—SOMESHWAR DUTT *v.* TIRBHAWAN DUTT 1934), L. R. 61 Ind. App. 224.—**IND.**

PART X. SECT. 3, SUB-SECT. 10.—B.

sk. *Documents not produced at trial.*]—The Judicial Committee has unrestricted power to admit documents where sufficient ground is shown for their not having been produced at the initial stage of the litigation.—INDRAJIT PRATAP SAHI *v.* AMAR SINGH (1923), L. R. 50 Ind. App. 183.—**IND.**

sm. *Document in vernacular—Translation.*]—When the accuracy of an English translation of a document written in the vernacular language is challenged, the Judicial Committee ordinarily accepts as correct the translation made by a translator appointed by a ct. in India & not challenged before the judges who had dealt with the case. If, however, the Judicial Committee is satisfied that there is a genuine doubt about the correctness of the translation, they will remit the matter to the High Ct. in India from which the matter has been brought for an inquiry, & direct that ct., if necessary, to have another translation made under the direction of the ct. & to transmit it to the Registrar of the Judicial Committee.—SARAT CHANDRA BASU *v.* BIJOY CHAND MAHATAB MAHARAJADHIRAJ BAHADUR (1937), L. R. 63 Ind. App. 77.—**IND.**

PART X. SECT. 3, SUB-SECT. 10.—C. (a).

524 i. *To assess damages—Remuneration of agent—Quantum meruit.*]—LEVESQUE *v.* TRUCHON, [1930] 1 D. L. R. 705, P. C.—**CAN.**

529 i. *To order new trial.*]—Where the trial judge after reserving judgment decided the case in deft.'s favour on an issue or plea that had not, throughout the proceedings, been raised or tried, & on appeal the Ct. of Appeal amended the record in favour of defts. & dismissed pltf.'s appeal on the point discovered by the trial judge, but no opportunity had been given pltfs. of dealing with the matters involved on the new basis which the amendment established, the Judicial Committee ordered a new trial.—LUIGI AMBROSINI, LTD. *v.* BAKARE ENKO, [1930] 1 W. W. R. 63.—**CAN.**

PART X. SECT. 3, SUB-SECT. 10.—C. (b).

536 v. ——.]—The Privy Council will only deal with the original issues raised at the trial, & cannot consider new pleadings & the issues raised therein.—BROWN *v.* MOORE, [1924] 2 D. L. R. 545 ; *affg.*, 69 D. L. R. 14 ; 55 N. S. R. 460.—**CAN.**

536 vi. ——.]—A new contention, which involves an amendment of the plaint, cannot be entertained. —GAJADHAR MAHTON *v.* AMBIKA PRASAD TIWARI (1925), I. L. R. 47 All. 459.—**IND.**

536 vii. ——.]—The Privy Council declined to entertain an argument which had not been presented to, or sifted by, the cts. in India, especially as the subject to be decided concerned the diversified & complicated law of India as to tenure of land.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* RAJA JYOTI PRASHAD SINGH (1926), 53 L. R. Ind. App. 100.—**IND.**

536 viii. ——.]—Where a question whether minor members of a family were bound by a decree in a former suit brought by the managing member, has been abandoned in the High Ct., it cannot be raised before the Judicial Committee, as the question is one of mixed law & fact.—LINGANGOWDA *v.* BASANGOWDA (1927), 54 L. R. Ind. App. 122.—**IND.**

536 ix. ——.]—A contention which a party to an appeal to the Privy Council has raised at the trial, but not upon appeal to the High Ct., cannot be raised by him in the appeal to the Privy Council, unless there are exceptional circumstances which make it necessary for doing justice. The rule applies whether the party was applt. or resp. in the High Ct.—SKINNER *v.* BANK OF UPPER INDIA, LTD. (1935), L. R. 62 Ind. App. 115.—**IND.**

536 x. ——.]—S.S. PHILIP T. DODGE *v.* DOMINION BRIDGE CO. (1935), 5 Can. L. Jo. 131.—**CAN.**

546 ii. —— —— ——.]—A contention which a party to an appeal to the Privy Council has raised at the trial but not upon appeal to the High Ct. cannot be raised by him in the appeal to the Privy Council, unless there are exceptional circumstances which make it necessary to the doing of justice. The above rule applies whether the party was applt. or resp. in the High Ct.—SKINNER *v.* BANK OF UPPER INDIA, LTD. (1935), L. R. 62 Ind. App. 115.—**IND.**

infringement & alleged (*inter alia*) that the patent was invalid by reason of prior publication in various British & Indian specifications. Defts. moved to revoke the patent. The trial judges of the High Ct. of Judicature at Patna held that the patent was invalid by reason of anticipation & want of subject-matter & ordered the patent to be revoked. Pltf. appealed by leave to the Privy Council: —*Held:* in the particular circumstances it was not necessary to consider the patent on its merits as applt. had admitted that, if Martin's British Specification (No. 5641 of 1883) was published in India prior to the date of his patent, then his patent was invalid; & the question to be decided was whether applt. could now contend that Martin's Specification was not in fact published in India & was not in law an anticipation of the patent; applt. had in effect, though not expressly, abandoned that contention at the trial, & it would be contrary to natural justice to allow him to maintain a contention not argued in India. The appeal was dismissed with costs.—GHANSHAYAM DAS JAGNANI *v.* RAMNARAYAN GANESHNARAYAN (1935), 53 R. P. C. 160, P. C.

578a. ——— ———.]—Applt. obtained leave to appeal conditionally upon entering into a bond, & the native agent of applt., who had conducted the litigation, executed a bond on his behalf in the presence of the chief registrar of the ct., who accepted it without objection. Upon the appeal coming on for hearing, the appellate ct. dismissed it, upon a preliminary objection that the authority of the agent to execute the bond should have been strictly proved. Under the rules of the ct. there was power to make any order which was considered necessary for doing justice:—*Held:* there had been a failure to do justice between the parties, & the case should be remitted to be heard, the appellate ct. giving an opportunity to prove the authority, if that was deemed necessary in the circumstances.—KOJO PON *v.* ATTA FUA, [1927] A. C. 693; 96 L. J. P. C. 121; 137 L. T. 706, P. C.

585a. ———.]—A Chinese resident in Penang executed a deed settling a fund upon his "sons & grandsons" equally. Applt. having claimed that his father, T., was a "son" of the settlor entitled to share in the gift, an inquiry whether T. was legitimate, as being a son by a "t'sip," or secondary wife, was remitted for rehearing, applt. not having had an opportunity of adducing certain evidence upon which he relied, & because the view of the lower ct. that a Christian woman could not be a "t'sip" required reconsideration, seeing that no ceremony was needed to constitute that status. Further consideration was also needed of the possible jural conceptions: (a) that a child might be legitimate, although its parents were not, & could not be, legitimately married; & (b) that a father might legitimatise his natural child by a mother free to contract a legitimate union.—KHOO HOOI LEONG *v.* KHOO HEAN KWEE, [1926] A. C. 529; 95 L. J. P. C. 94; 135 L. T. 170, P. C.

592a. ——— ———.]—CHEESEBROUGH MANUFACTURING CO. *v.* KUDHOOS (1929), 46 T. L. R. 95; 47 R. P. C. 25, P. C.

599a. ——— ———.]—Where, on an application made *ex parte*, special leave to appeal had been granted on the ground that there was a right of appeal under Code of Civil Procedure, 1908, s. 110, but it appeared at the hearing that applts. had not that right, the Board dismissed the appeal as incompetent, resps. having given due notice of the objection.—MUKHLAL SINGH *v.* KISHUNI SINGH (1930), 57 L. R. Ind. App. 279, P. C.

609. *Add. Citation:*—128 L. T. 10.

611a. Matter of terms.]—In default of evidence the Judicial Committee will accept the decision of the local ct. as to what terms are proper in a particular case, that ct. being better informed on the subject than the Board can be.—SUNDER MULL *v.* SATYA KINDER SAHANA (1927), 55 L. R. Ind. App. 85.

622a. ———.]—Where the trial judge has come to a conclusion upon a pure question of fact, the appellate tribunal cannot, merely because the question is one of fact, & because it has been decided in one way by the trial judge, abdicate their duty to review his decision, & to reverse it, if they deem it to be wrong; but the functions of the appellate tribunal when dealing with a pure question of fact in which questions of credibility are involved are limited in their character & scope.—CALDEIRA (ANTONIO DIAS) *v.* GRAY, [1936] 1 All E. R. 540; 80 Sol. Jo. 243, P. C.

634a. ———.]—CALDEIRA (ANTONIO DIAS) *v.* GRAY, No. 622a, *ante*.

PART X. SECT. 3, SUB-SECT. 10.—C. (c).

sm. *Effect of order—Case remitted "to the jury" for assessment of damages—Not order for assessment by original jury.*]—LEW *v.* WING LEE, [1926] 1 D. L. R. 678: 37 B. C. R. 81.—**CAN.**

PART X. SECT. 3, SUB-SECT. 10.—D. (a).

607 i. *Matter of discretion—Exercised by Indian courts.*]—The Judicial Committee is extremely reluctant to interfere with the amount of a decree for maintenance unless there has been some miscarriage in the way the amount has been arrived at.—EKRADESHWARI BAHUASIN *v.* HOMESHWAR SINGH (1929), 56 L. R. Ind. App. 182.—**IND.**

sk. *Construction of will.*]—The Judicial Committee are slow to disturb an interpretation of a provision in a will unless they are very clearly satisfied that some wrong principle of interpretation has been applied, or some manifest error of interpretation committed.—KAMAKHYA DAT RAM *v.* KUSHAL CHAND (1933), L. R. 61 Ind. App. 145.—**IND.**

PART X. SECT. 3, SUB-SECT. 10.—D. (b) i.

627 ii. ———.]—Where in addition to the oral evidence, a vital part of the evidence in the case consists of the documents & the admitted circumstances:—*Held:* their Lordships, like the judges in the Ct. of Appeal, could not, in view of that other evidence, treat the matter as concluded by the judge's opinion as to the credibility of the oral witnesses. Though it is important to give the fullest possible weight to the findings of a judge who has seen & heard the witnesses every appeal from a judge alone is by way of rehearing.—LYSNAR *v.* NATIONAL BANK OF NEW ZEALAND, LTD., [1935] 1 W. W. R. 625.—**N.Z.**

sn. *Amount of maintenance.*]—The Judicial Committee is extremely reluctant to interfere with the amount of a decree for maintenance unless there has been some miscarriage in the way the amount has been arrived at.—EKRADESHWARI BAHNASIN *v.* HOMESHWAR SINGH (1929), I. L. R. 8 Pat. 840.—**IND.**

sp. *Evidence of experts.*]—In an action against a physician for damages, professional negligence being alleged, two conflicting theories were adduced by the expert witnesses as to the cause of pltf.'s disability. The trial judge sitting without a jury accepted the view of pltf.'s witnesses & rejected that of the witnesses for deft.:—*Held:* the respective theories having been carefully & dispassionately weighed by the trial judge & a clear conclusion of fact having been reached by him, it would not be proper or safe, or in accordance with sound practice, to reverse that conclusion.—GRAY *v.* CALDEIRA, [1936] 1 W. W. R. 615.—**CAN.**

649a. **Compromise affecting minors.**]—Where, in an appeal to the Judicial Committee of the Privy Council, a compromise affecting the interests of minors is submitted for their Lordships' approval, the proposed compromise should be considered by the ct. from which the case comes upon appeal & such ct. should certify to their Lordships whether in their opinion the proposed compromise is or is not in the interests of the minor or minors.—SHAIKH SHUKRULLAH *v.* MUSAMMAT ZOHRA BIBI, [1936] 3 All E. R. 1011; 53 T. L. R. 139; 80 Sol. Jo. 990, P. C.

653. *Add. Annotation:*—**Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

653a. —— **Applicable to appeals from every court in Empire.**]—The rule of practice of the Judicial Committee that concurrent findings of fact will not be interfered with, in the absence of very definite & explicit grounds, applies from whatever ct. in the Empire the appeal is made.—ROBINS *v.* NATIONAL TRUST CO., [1927] A. C. 515; 96 L. J. P. C. 84; 137 L. T. 1; 43 T. L. R. 243; 71 Sol. Jo. 158, P. C.

Annotations:—**Consd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269. **Refd.** Paterson S.S., Ltd. *v.* Canadian Co-operative Wheat Producers, Ltd., [1934] A. C. 538.

653b. ——.]—*Held:* it would be a procedure contrary to the practice of the Privy Council to permit an appeal to succeed where a finding dependent upon a definite fact was agreed to by a Ct. of Appeal, & applt.'s claim could be defeated on other grounds. The appeal was dismissed with costs.—GROAT *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (1929), 47 R. P. C. 1, P. C.

668a. **Separation of joint Hindu family.**]—Whether a member of a joint Hindu family has affected a separation is a question of fact, & the Judicial Committee will not interfere with concurrent findings that he has so separated where they are supported by evidence.—BAL KRISHNA *v.* RAM KRISHNA (1931), 58 L. R. Ind. App. 220, P. C.

671. *Add. Annotation:*—**Consd.** St. Francis Hydro Electric Co. *v.* R., [1937] 2 All E. R. 541.

671a. —— ——.]—In a case where resps. have the benefit of concurrent findings of fact in the ct. below unless there are special circumstances, the Judicial Committee of the Privy Council will not advise His Majesty to interfere. Applts. contended that as the evidence which led to the findings consisted mainly, if not entirely, of documentary or historical evidence, the true effect of which might well be discussed in an appellate ct., the ordinary rule ought not to be applied:—*Held:* if the question were that of the construction of deeds or other documents, it would be one of law; but the question being as to the effect to be given as evidence to certain historical writings the ordinary rule applied.—ST. FRANCIS HYDRO ELECTRIC CO., LTD. *v.* R., [1937] 2 All E. R. 541; 53 T. L. R. 546; 81 Sol. Jo. 396, P. C.

676. *Add. Annotation:*—**Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

679a. **Passing-off action—Improper finding of fraud.**]—Pltfs. in Nov. 1929, began to sell cigarettes in tins of one hundred, which tins bore a trade mark of crossed swords in gold on a red ground, the words "Golden Sword" & a price indication 2 for 1, meaning 2 cigarettes for 1 cent. On the cigarettes themselves was the trade mark of crossed swords & the numerals 2 1 printed in red. In May, 1931, defts. put upon the market cigarettes in packets of ten, which packets bore a representation of an ace & a king of hearts & the words "Twenty One" (that hand in Vingt-et-un & also in a Chinese game counting twenty-one). Each cigarette bore the words "Twenty One Cigarettes" in blue. Pltfs. commenced an action in the Supreme Ct. at Singapore & claimed an injunction to restrain defts. from applying a mark consisting of the words or numbers "Twenty One" to containers for cigarettes sold by them & from passing off, by using such mark, cigarettes not of pltfs.' manufacture as & for pltfs.' cigarettes. Pltfs. also claimed the usual other relief. The trial judge held that pltfs. had established their case, & that they were entitled to the relief which they sought. An injunction was granted. Defts. appealed to the Ct. of Appeal of the Straits Settlements. The findings of fact by the trial judge were unanimously upheld & the appeal was dismissed. Defts. appealed, by special leave, to the Privy Council:—*Held:* having regard to the short time between the appearance in the market of applts.' cigarettes & the issue of the writ the action was in effect a *quia timet* action, resps. had never suggested that there could be any confusion between the cigarettes of resps. & those of applts. so far as concerned dealers & distributors to whom such dealers sold, that the market referred to in certain paragraphs of the statement of claim was admittedly that in which the consumer bought & not that in which dealers & retailers bought; the case was not opened on a footing of fraud, & it was doubtful whether the statement of claim would have justified such an opening; but there was by the lower cts. a finding of fraud although (i.) no plea of fraud had been properly raised on the pleadings, (ii.) fraud had not been opened, & (iii.) no questions had been put to the witnesses to suggest that fraud was being charged; there was no evidence on which a finding of fraud could be based; the trial judge had founded his judgment upon an

---

PART X. SECT. 3, SUB-SECT. 10.—D. (b) ii.

650 vi. ——.]—Where all the cts. below have concurred in the findings of fact, the Judicial Committee will ordinarily accept them & not review them.—LAING *v.* TORONTO GENERAL TRUSTS CORPN., [1924] 4 D. L. R. 1138.—CAN.

650 vii. ——.]—MONTREAL TRANSPORTATION CO., LTD. *v.* R., [1926] 2 D. L. R. 862.—CAN.

650 viii. ——.]—When in a suit to set aside a sale for arrears of revenue both cts. in India have found that there were no arrears, the Judicial Committee, in accordance with its practice as to concurrent findings, will not interfere, although the findings depend upon the meaning & effect of somewhat obscure revenue records, & are based upon the view that the records show payments in advance.—NARENDRA NATH DUTTA *v.* ABDUL HAKIM (1928), 55 L. R. Ind. App. 380.—IND.

650 ix. ——.]—GROAT *v.* ONTARIO HYDRO-ELECTRIC POWER COMMISSION, [1930] 1 D. L. R. 481.—CAN.

650 x. ——.]—It is not a cast-iron rule that the Judicial Committee will not examine the evidence in order to interfere with the concurrent findings of two cts. on a pure question of fact. The rule is one of conduct which the Judicial Committee has laid down for itself, & is not a rule based on any statutory provision.—CANADIAN CO-OPERATIVE WHEAT PRODUCERS, LTD. *v.* PATERSON STEAMSHIPS, LTD., [1935] 1 W. W. R. 5.—CAN.

inaccurate statement of the evidence; this finding of fraud had coloured the minds of the judges when dealing with the question of likelihood of confusion in the relevant market; that in these circumstances the Board ought, notwithstanding concurrent findings of fact by the cts. below, to reconsider the possibility of confusion; upon such reconsideration likelihood of deception had not been proved; & the appeal be allowed with costs.—UNITED KINGDOM TOBACCO CO. (1929), LTD. *v.* MALAYAN TOBACCO DISTRIBUTORS, LTD. (1933), 51 R. P. C. 11, P. C.

684a. Reasons for—Whether read.]—The reasons for a judgment of the Judicial Committee are not read as of course, but only on the application of counsel for special reason, or at the desire of a member of the Board. The printed reasons are handed to the parties & the Press, leaving counsel to ask any questions necessary at the mid-day adjournment or at some other convenient time.—PRACTICE NOTE, [1922] W. N. 169.

685. *Add Annotation :—Generally,* **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

685a. —— ——.]—The Judicial Committee of the Privy Council has jurisdiction to recommend the alteration of a former Order in Council on the ground that, by inadvertence, it did not give effect to the intention of the Board as expressed in their judgment. — RAI JATINDRA NATH CHOWDHURY *v.* UDAY KUMAR DAS (1931), 47 T. L. R. 274; 58 L. R. Ind. App. 141, P. C.

690. *Add. Annotation :—***Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

690a. *Add. Annotation :—***Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

690b. ——.]—There is no inherent incompetency in the Judicial Committee of the Privy Council to order the rehearing of a case which has already been decided by the Judicial Committee, even where a question of a right of property has been involved, but such an indulgence will only be granted in very exceptional circumstances.—*Re* TRANSFERRED CIVIL SERVANTS (IRELAND) COMPENSATION, [1929] A. C. 242; *sub nom. Re* IRISH CIVIL SERVANTS, 98 L. J. P. C. 39; 140 L. T. 254; *sub nom. Re* ARTICLE X. OF ARTICLES OF AGREEMENT FOR TREATY BETWEEN GREAT BRITAIN & IRELAND, 45 T. L. R. 57, P. C.

698. For existing citations read, " As reported in 86 L. T. 506, at p. 507."

701a. —— —— ——.]—Where there has been unexplained delay in proceedings a successful applt. to the Privy Council may be refused costs.—LOUIS DREYFUS & CO. *v.* ARUNACHALA AYYA (1931), 58 L. R. Ind. App. 381, P. C.

774. After this case add :—

—— —— ——.]—*See, now,* Judicial Committee Rules, 1925, r. 81.

Part XI.—The Supreme Court of Judicature.

775. In the cross-reference before this case for " Judicature Acts, 1873 (c. 66) to 1902 (c. 31) " read " Judicature (Consolidation) Act, 1925 (c. 49); Administration of Justice Act, 1928 (c. 26).

776. *Add. Annotation :—***Refd.** R. *v.* Edwards, *Ex p.* Welsh Church Temporalities Comrs. (1933), 49 T. L. R. 383.

779. *Add. Annotation :—***Apld.** Horrell *v.* St. John of Bletso, [1928] 2 K. B. 616.

781. *Add. Annotation :—***Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

784. *Add. Annotation :—As to* (1) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

786. *Add. Annotation :—***Refd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

789. *Add. Annotation :—***Refd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

790. *Add. Annotation :—***Refd.** The Fagernes, [1926] P. 185.

PART X. SECT. 3, SUB-SECT. 10.—D. (c).

680 i. *Want of prosecution—Jurisdiction of Court of Appeal over costs.*]—CLEAVE *v.* MCDONALD, [1927] N. Z. L. R. 433.—**N.Z.**

PART X. SECT. 3, SUB-SECT. 11.

t i. —— ——.]—If execution in the Supreme Ct. is required in respect of an order of His Majesty in Council made in respect of an appeal from a judgment of the Supreme Ct. or Ct. of Appeal, an allocatur under the Ct. of Appeal seal embodying a certificate that the judgment of the Privy Council has been filed in the Ct. of Appeal should be endorsed on a true copy of the King's Order & filed in the Supreme Ct., whereupon, in terms of r. 27 of the Privy Council Rules, execution can issue without any further entry of judgment. There is no power in the Supreme Ct. to order a stay of execution on such a judgment except in exercise of its inherent jurisdiction, which, after judgment, must, if at all permissible, be exercised only in the clearest cases involving impropriety or grave abuse of the procedure of the ct.—LYSNAR *v.* NATIONAL BANK OF NEW ZEALAND, LTD. (No. 3), [1935] N. Z. L. R. 756.—**N.Z.**

t ii. ——*Against legal representatives of respondents.*]—Where some of resps. in the appeal before the Privy Council were dead, & their legal representative had not been brought on the record when the appeal was heard & judgment delivered by the Privy Council:—*Held:* the decree against them was not a nullity under Judicial Committee Act, 1833, s. 23.—KALYANI PILLAI *v.* THIRUVENKADASWAMI AYYANGAR (1924), I. L. R. 47 Mad. 618. —**IND.**

t iii.——*Order directing restitution.*]—Where an application is made to obtain restitution as the necessary result of an order of His Majesty in Council, that application must be taken as one to " enforce " an order in Council & will be governed by Art. 183, & not by the general Art. 181 of Indian Limitation Act, 1908.—SOHAN BIBI *v.* BAIJNATH DAS (1928), I. L. R. 50 All. 767.—**IND.**

PART X. SECT. 3, SUB-SECT. 13.—A. (a) i.

719 ii. —— *Not appearing but lodging case.*]—Resps., who did not appear, but had lodged a case, allowed costs up to the date of doing so.—GAJADHAR MAHTON *v.* AMBIKA PRASAD TIWARI (1925), I. L. R. 47 All. 459.—**IND.**

PART X. SECT. 3, SUB-SECT. 13.—A (c).

sm. *Out of sum deposited as security —Order for payment to solicitors.*]—Solrs. in England may, in a proper case, obtain from the High Ct. an order for payment to them of moneys deposited in the High Ct., as security for their clients' costs of an appeal to the Privy Council.—BIKRAMKISHORE MANIKYA *v.* ALI AHMAD (1930), I. L. R. 58 Calc. 1034.—**IND.**

PART XI. SECT. 2, SUB-SECT. 1.—A. (a).

sp. *To hear action.*]—A judge of the High Ct. may direct the whole of a case which comes before him for hearing to be argued before the Full Ct.—STATE OF NEW SOUTH WALES *v.* COMMONWEALTH (1926), 38 C. L. R. 74.—**AUS.**

809. *Add. Annotations:* — **Refd.** Rackham *v.* Tabrum (1923), 129 L. T. 24; Millensted *v.* Grosvenor House (Park Lane), Ltd., [1937] 1 K. B. 717.

816. To cross-reference before this case add "*See* S. C. J. (Consolidation) Act, 1925 (c. 49), ss. 24, 25."

819. For cross-reference at head of this section read "*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 56 (2)."

820. For cross-reference at head of this section read "*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 56 (1)."

827. For cross-reference before this case read "*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 56 (3)."

Add. Annotation:—**Refd.** Capron *v.* Capron, [1927] P. 243.

831a. —— ——.]—When a judge adjourns a chambers summons into ct. under R. S. C., Ord. 54, r. 22, & does not direct that it is to be heard in ct. as chambers, the matter is in ct. for all purposes & is open to the press.—HARDIE & LANE *v.* CHILTERN (1927), 96 L. J. K. B. 773; 43 T. L. R. 477; *on appeal,* [1928] 1 K. B. 663; 96 L. J. K. B. 1040; 138 L. T. 14, C. A.

834a. —— ——.]—HARDIE & LANE *v.* CHILTERN, No. 831a, *ante.*

840a. To order amendments—Judge trying causes in short cause list.]—Although it may be a condition precedent to the master's power to order a cause to be tried in the short cause list, that the claim specially indorsed on the writ should be for a liquidated demand, yet when once he has made the order giving leave to defend, & has ordered the cause to be put in the short cause list, there is no restriction whatever on the powers of the judge to order such an amendment as he is authorised to make under the rules of ct. The judge trying causes in the short cause list has the full powers of amendment that are given to him by the rules of ct. as though he were hearing the cause in the ordinary list. —THOMAS *v.* ALDERTON, LTD., [1928] 1 K. B. 638; 97 L. J. K. B. 259; 138 L. T. 315, C. A.

865. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

889. For cross-references before this case read "*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), ss. 6–8."

891. For cross-references before this case read "*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), ss. 26–29."

895a. Enforcement of undertaking given to Court of Appeal.]—The Ct. of Appeal have jurisdiction to deal with the enforcement of an undertaking given to that ct.—JONESCO *v.* EVENING STANDARD CO., LTD., *Re* AN UNDERTAKING BY WINGFIELDS, HALSE & TRUSTRAM, [1932] 2 K. B. 340; 110 L. J. K. B. 447; 147 L. T. 49, C. A.

902. *Add. Annotation:*—**Folld.** *Re* Carroll (1930), 47 T. L. R. 20.

903a. —— ——.]—The Ct. of Appeal has no original jurisdiction in *habeas corpus,* & where an appeal is brought from a refusal of a Div. Ct. to give leave to issue a writ of *habeas corpus* the fact that the matter of the appeal is *habeas corpus* will not prevent the Ct. of Appeal from making an order requiring security for the costs of the appeal to be given if applt. is an impecunious person.—*Re* CARROLL, [1931] 1 K. B. 104; 100 L. J. K. B. 62; 144 L. T. 154; 47 T. L. R. 20; 74 Sol. Jo. 770, C. A.

904. *Add. Annotation:*—**Consd.** Rodriques *v.* Bakewell & Salmon, [1934] 1 K. B. 668.

908. *Add. Annotation:*—**Refd.** Rodriques *v.* Bakewell & Salmon, [1934] 1 K. B. 668.

912. *Add. Annotation:*—**Consd.** Butcher Wetherly & Co. *v.* Norman, [1934] 1 K. B. 475.

915. *Add. Annotation:*—**Apld.** Smith *v.* Tsakyris (1929), 167 L. T. Jo. 92.

919. *Add. Citation:*—*sub nom.* R. *v.* ILLINGWORTH, 32 W. R. 451.

After this case add "*See, now,* Judicature (Consolidation) Act, 1925 (c. 49), s. 25."

925. *Add. Annotation:*—**Consd.** Bowater & Sons, Ltd. *v.* Davidson's Paper Sales, Ltd., [1936] 1 All E. R. 110.

944. *Add. Annotations:*—**Refd.** Davey *v.* Robinson, [1923] 1 K. B. 563; Shrager *v.* Dighton, [1924] 1 K. B. 274.

SECT. 5.—OFFICERS AND CENTRAL OFFICE (Vol. XVI., p. 189).

Add the following case:—

949a. Officer—Right to institute suit—Personal interest.]—It is against public policy to allow an officer of the ct. to institute suits, in the conduct of which he may have a direct personal interest.—HOSANNA ARATHOON KERAKOOSE *v.* SERLE (1844), 3 Moo. Ind. App. 329; 4 Moo. P. C. C. 459; 18 E. R. 523.

PART XI. SECT. 2, SUB-SECT. 3.

sr. *To rescind patent—Although voidable or void at law.*]—MARTIN *v.* KENNEDY (1850), 2 Gr. 80.—**CAN.**

sw. *To try validity of will—Important questions involved—Transfer of action from surrogate court.*]—Where the validity of a will relating to both real & personal estate was in dispute, the personal property being worth, at least, £2,000, & it was sworn & not denied that the questions to be determined were of such importance that they could be more effectually tried & disposed of in the ct. of chancery than in the surrogate ct. an order for removal was made.—*Re* ECCLES (1865), 1 Ch. Ch. 376.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 6.—A.

sy. *Local masters—Jurisdiction of.*]—Local masters have no authority to sit on the final hearing & adjudge the merits on applications to the summary jurisdiction of a judge of the K. B. over exors., administrators & trustees, no matter how such applications may be commenced; nor have they jurisdiction to refer such applications to a judge of the K. B. The office of a master or local master in Saskatchewan is to be distinguished from that of a master in England & from that of a county ct. judge exercising jurisdiction as a local judge of the Superior Ct. in those Provinces in which he is appointed a local judge.—LORCH *v.* OLSON (Sask.), [1928] 1 D. L. R. 365; [1927] 3 W. W. R. 780.—**CAN.**

Part XVI.—Consular Courts.

954. *Add. Annotations :*—**Reld.** Rudd *v.* Rudd, [1924] P. 72; Bartlett *v.* Bartlett, [1925] A. C. 377.

956a. —— —— **To make declaration as to validity of divorce—Granted on grounds not authorised by English law.**]—Resp. & his wife, applt., who were British subjects of the Jewish religion & resident in Egypt, were divorced by the Grand Rabbinat at Alexandria in accordance with the Jewish religion, but upon grounds which would not have supported a decree for divorce according to English law. Applt. brought an action against resp. in the Supreme Ct. for Egypt for a declaration that the divorce was effectual to dissolve the marriage. The Order in Council of 1910, by which civil jurisidiction over British subjects was conferred, provided by art. 90 that " in all matters relating to marriage, inheritance, or other questions involving religious law or custom the ct. shall, in the case of persons belonging to non-Christian communities; recognise & apply the religious law or custom of the persons concerned." Art. 103 conferred " all such jurisdiction in matrimonial causes, except the jurisdiction relative to dissolution or nullity or jactitation of marriage, as for the time being belongs to the High Ct. in England " :—*Held :* applt. was entitled to the declaratory decree which she sought.—SASSON *v.* SASSON, [1924] A. C. 1007; 94 L. J. P. C. 13; 132 L. T. 163, P. C.

Annotation :—**Reld.** Bartlett *v.* Bartlett, [1925] A. C. 377.

956b. —— —— **To try action for damages for breach of contract—Breach in England.**]—By the Ottoman Order, 1910, the jurisdiction of the Supreme Ct. thereby established extends, as regards Egypt, to, so far as material : " (i) British subjects, as herein defined, within the limits of this Order. (ii) The property & all personal & proprietary rights & liabilities within the said limits of British subjects, whether the said subjects are within the said limits or not." Rules of ct. made under the order contain a provision for substituted service, but none for service out of the jurisdiction. Applt., a British subject resident in England, contracted in England to buy from resp., who was resident in Egypt, a concession granted by the Egyptian Govt. in connection with irrigation, & for the employment of resp. in Egypt. Applt. repudiated the contracts by a cable despatched from England. Resp. issued a writ in the Supreme Ct. for Egypt claiming damages from applt. for breach of the contracts, & obtained an order for substituted service in Egypt :—*Held :* the cable repudiating the contracts having been despatched in England, the breach took place there, & the Supreme Ct. had no jurisdiction in the case.—MARTIN *v.* STOUT, [1925] A. C. 359; 94 L. J. P. C. 71; 132 L. T. 673; 41 T. L. R. 176, P. C.

969a. —— **Transfer of jurisdiction—Effect of Treaty of Peace (Turkey) Act, 1924 (c. 7).**]—Petitioner, the wife of a British subject domiciled in Turkey, obtained in His Britannic Majesty's Supreme Ct. for the Dominions of the Sublime Porte (Matrimonial Jurisdiction) a decree *nisi* for a divorce on the ground of her husband's adultery. In consequence of the ratification of the Treaty of Lausanne the above ct. ceased to exist before the decree was made absolute :—*Held :* by virtue of the combined effect of the above Act, art. 16 of the Convention between Turkey & Great Britain of the same date as the Treaty, & art. 2 of the Treaty of Peace (Turkey) Order, 1924, the Divorce Division of the High Ct. had jurisdiction to make the decree absolute. —SEAGER *v.* SEAGER, [1925] P. 105; 94 L. J. P. 66; 133 L. T. 319; 69 Sol. Jo. 724.

Part XVII.—Forest Courts.

974a. **Court books—Duty of clerk to produce for inspection.**]—A.-G. *v.* BROWN (1844), 2 L. T. O. S. 424; 8 J. P. 711.

Part XXI.—Palatine Courts.

1014a. —— —— ——.]—DYKE *v.* STEPHENS (1885), 29 Sol. Jo. 682.

1016. For cross-reference after this case read " *See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 28."

Part XXIII.—Borough and Local Courts of Record.

1024a. *S. P.* PENDRED *v.* CHAMBERS (1591), Cro. Eliz. 256; 78 E. R. 512.

Annotation :—**Reld.** Goodson *v.* Duffield (1613), Cro. Jac. 313.

1053. To the reference before this case add " ; Liverpool Corporation Act, 1921 (c. lxxiv), 224-263."

Part XXV.—Judicial Commissioners.

1126. *Add. Annotations:*—**Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566; Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

COUSIN.

See DESCENT; WILLS.

COVER.

See STOCK EXCHANGE.

COWS.

See ANIMALS; DISTRESS; PUBLIC HEALTH.

CREAM.

See FOOD AND DRUGS.

CREW.

See MASTER AND SERVANT; SHIPPING.

CROSS-EXAMINATION.

See EVIDENCE.

CROWN COLONY.

See DEPENDENCIES & DOMINIONS.

CROWN PRACTICE.

Part I.—Proceedings on the Revenue Side of the King's Bench Division.

25. *Add. Annotation :*—**Consd.** A.-G. for Isle of Man *v.* Moore, [1938] 3 All E. R. 263.

35. *Add. Annotation.:*—**Consd.** Toronto (City) Corpn. *v.* R., [1932] A. C. 98.

46a. **Bail to answer & pay penalties—Liability of sureties.**]—Where a person is proceeded against in the High Ct. by writ of *capias*, under Customs Consolidation Act, 1876 (c. 36), s. 247, for the recovery of penalties for offences against the Customs Acts he shall be bound to answer & pay all the penalties sued for with two or more sureties who shall be jointly & severally sufficient for the amount of the bail indorsed on the writ.—*Re* ATTFIELD (1924), 93 L. J. K. B. 1064.

52. *Add. Annotation :*—**Refd.** Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1936] 1 All E. R. 258.

75a. **Writ of subpœna—Service out of the jurisdiction—Effect of R. S. C., Ord. LXVIII., r. 3.**] —*Held :* R. S. C., Ord. XI., is not a prohibitory order but one extending the jurisdiction of the ct., & therefore, though made applicable to proceedings on the Revenue side of the King's Bench Division by R. S. C., Ord. LXVIII., r. 3, it did not abrogate the right conferred by Crown Suits Act, 1865 (c. 104), s. 37, to serve a writ of subpœna on a British subject out of the jurisdiction without the leave of the ct.—A.-G. *v.* PROSSOR, [1938] 2 K. B. 531 ; [1938] 3 All E. R. 32 ; 107 L. J. K. B. 643 ; 159 L. T. 275 ; 54 T. L. R. 933 ; 82 Sol. Jo. 433, C. A.

155a. **Land held in trust for debtor.**]—If one indebted to the king for customs by covin enfeoff his friend of lands purchased with the king's money, himself taking the profits ; it shall be seized into the king's hands until, etc.—DE CHIRTON'S CASE (1558), 2 Dyer, 160 ; 73 E. R. 349.

Annotations :—**Refd.** Coke's Case (1623), Godb. 289 ; R. *v.* Smith (1810), Wight. 34.

166. *Add. Annotation :*—**Refd.** Food Controller *v.* Cork (1923), 130 L. T. 1.

240a. —— **Bills of exchange—Transmitted from abroad by foreign agents.**]—R. *v.* HUNTER (1817), 4 Price, 258 ; 146 E. R. 457.

246a. **Rights of landlord—Not entitled to payment from sheriff of rent due before writ.**]—R. *v.* DE CAUX (1815), 2 Price, 17 ; 146 E. R. 7.

246b. —— **Subsequent arrears of rent—Goods kept locked up by sheriff for long time.**]—The ct. refused to interfere, so far as to order the effects to be sold, & the rent in arrear to be paid out of the produce.—R. *v.* HILL (1818), 6 Price, 19 ; 146 E. R. 729.

248a. —— ——.]—R. *v.* BINGHAM (1831), 2 Cr. & J. 130 ; 2 Tyr. 46 ; 1 L. J. Ex. 62 ; 149 E. R. 55.

293. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

298a. **Secret profits received by agent of Crown.**]—An English information will lie against a servant employed by the Crown in making confidential inquiries, in respect to secret profits alleged to have been made in the course of his employment.—A.-G. *v.* GODDARD (1929), 98 L. J. K. B. 743 ; 45 T. L. R. 609 ; 73 Sol. Jo. 514.

308. *Add. Annotation :*—**Apld.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

309. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

313. *Add. Annotation :*—**Refd.** *Re* Kent Coal Concessions, Burn *v.* The Co., [1923] W. N. 328.

316. After cross-refs. following this case add :—

SECT. 7.—WRIT OF SUMMONS.

For Crown debt.]—*See* Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36), s. 4.

PART I. SECT. 1, SUB-SECT. 4.—A.

sa. *Power of court to give relief to debtor.*]—R. *v.* BONTER (1843), 6 O. S. 551.—**CAN.**

PART I. SECT. 1, SUB-SECT. 4.—C. (c).

sb. *General issue pleaded—Subsequent proof of Crown's title to reversion—Withdrawal of plea—Costs.*]—In an information of intrusion, the rule to plead was served on Nov. 21, 1832. Deft. from time to time obtained further time to plead, & on Apr. 15, 1833, pleaded the general issue. Notice of trial was served for the sittings after Michaelmas term, 1837 ; & the trial was postponed at the instance of deft. On Jan. 23, 1838, deft. discovered certain documents, showing, as he alleged, that the reversion was vested in the Crown. The ct. allowed him to withdraw the plea of the general issue, & plead his title specially, upon payment of all costs incurred by the Crown, consequent on the plea of the general issue.—A.-G. *v.* LANGFORD (LORD) (1838), 2 Jo. Ex. Ir. 619.—**IR.**

PART I. SECT. 1, SUB-SECT. 4.—C. (d).

85ii. ——————.]—R. *v.* WATSON (1828), N. B. Dig. 447.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

sd. *Effect of writ — On accrual of prerogative rights.*]—Prerogative rights which might accrue to the Crown by virtue of a writ of extent are dependent upon the issue of the writ itself. As it was too late to issue the writ :—*Held :* there was no direct liability to the Crown by the insolvent co.—*Re* EXCELSIOR ELECTRIC DAIRY MACHINERY, LTD., [1923] 3 D. L. R. 1176; 52 O. L. R. 225 ; 2 C. B. R. 599.—**CAN.**

Part II.—Petition of Right.

319. *Add. Annotations :*—**Refd.** Constantinesco *v.* R. (1927), 11 Tax Cas. 730 ; Buckland *v.* R. (1933), 102 L. J. K. B. 404.

320. *Add. Annotation :*—**Refd.** Badman *v.* R., [1924] 1 K. B. 64.

322. *Add. Annotations :*—**Distd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439. **Refd.** Rowland *v.* Air Council (1923), 39 T. L. R. 228.

322a. —— —— —— **Ministry of Health.**]—By Ministry of Health Act, 1919 (c. 21), s. 7 (1), " The Minister may sue & be sued by the name of the Minister of Health, & may for all purposes be described by that name " : —*Held :* this provision does not enable an action to be brought against the Minister for alleged breach of a contract made by the Minister as a servant of the Crown, & the proper remedy is against the Crown by petition of right.—GILLEGHAN *v.* MINISTER OF HEALTH, [1932] 1 Ch. 86 ; 101 L. J. Ch. 81 ; 146 L. T. 231 ; 47 T. L. R. 439.

323. *Add. Annotation :*—**Refd.** *Re* Mason, [1928] Ch. 385.

323a. Claim against Dominion.]—A petition of right cannot be brought in the High Ct. of Justice of England which has for its object a judgment against the Crown, which is to be satisfied out of the Exchequer of a Dominion.—A.-G. *v.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND, [1925] A. C. 754 ; 94 L. J. K. B. 772 ; 133 L. T. 568 ; 41 T. L. R. 576 ; 69 Sol. Jo. 744, H. L. ; *revsg.* S. C. *sub nom.* Great Southern & Western Ry. Co. of Ireland *v.* R., [1924] 2 K. B. 450, C. A.

333. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

339. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

347. *Add. Citation :*—15 Asp. M. L. C. 574.

Add. Annotation :—**Refd.** Brocklebank *v.* R., [1925] 1 K. B. 52.

351. *Add. Annotation :*—**Distd.** A.-G. for Straits Settlements *v.* Pang Ah Yew, [1925] A. C. 555.

352. *Add. Annotations :—As to* (1) **Distd.** A.-G. for Straits Settlements *v.* Pang Ah Yew, [1925] A. C. 555. **Refd.** Jamieson *v.* Downie, [1923] A. C. 691 ; Badman *v.* R., [1924] 1 K. B. 64 ; Buckland *v.* R. (1933), 102 L. J. K. B. 404.

353a. —— —— **Detinue.**]—I should like to express my own view that a petition of right lies against the Crown in respect of goods wrongfully detained by its servants (MCCARDIE, J.). —BUCKLAND *v.* R., [1933] 1 K. B. 329 ; 49

PART II. SECT. 1.

317 i. *Purposes.*]—Upon petition of right there is no power in the ct. to compel the Crown to make a grant of land.—KEEWATIN POWER CO., LTD. *v.* KEEWATIN FLOUR MILLS CO., LTD., KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO., LTD., [1926] 4 D. L. R. 531 ; 59 O. L. R. 406.—**CAN.**

317 ii. ——.]—*Qu. :* whether a petition of right lies to test the constitutionality of a Dominion statute.—LOVIBOND *v.* G. T. R., C. N. R., & A.-G. FOR CANADA, [1933] 1 D. L. R. 798 ; *affd.*, [1933] 4 D. L. R. 425 ; O. R. 727.—**CAN.**

317 iii. *Purposes.*]—Except in cases specially provided for by statute, *e.g.*, the provision of the Finance Act of 1894 (Imp.), s. 10, for the recovery back of estate duty, the only way by which a subject is enabled to obtain back out of the hands of the Crown either land, money or goods, upon which the Crown has, rightfully or wrongfully, laid its hands, is by a petition of right ; & where, as in the present instance, declarations are sought as foundations upon which to base a claim that the Crown is wrongfully holding money which of right belongs to plff. the ct. has no jurisdiction to make such declarations except as incidental to a claim which can only be the subject of a petition of right.—ROYAL TRUST CO. *v.* A.-G. FOR ALBERTA (NO. 3), [1936] 2 W. W. R. 337 ; 4 D. L. R. 98. —**CAN.**

petition of right is not an appropriate remedy for obtaining a declaratory judgment against the Crown.—SMITH *v.* A.-G. FOR ONTARIO (1922), 52 O. L. R. 469.—**CAN.**

s i. —— *Claim against Crown—What amounts to.*]—Applt. was the registered holder of certain preference & common stock of the Grand Trunk Ry. Co. of Canada. By virtue of legislation & orders in council, the whole of such stocks were vested in the Minister of Finance of Canada in trust for His Majesty. A new co. called the Canadian National Ry. Co. having been incorporated to amalgamate an old co. of that name & the Grand Trunk Co., the Minister surrendered the stocks in question to the new co. for cancellation & received from the new co. one share for the value of the stock surrendered. Applt. claimed on behalf of himself & all other holders of such stocks that the legislation, orders in council & agreements, whereby the above transaction was carried through were invalid & void, & asked for the rectification of the register of the Grand Trunk Co. He also claimed damages against the ry. cos. for breach of duty in removing his name from the register of the Grand Trunk Co. The question was also raised whether this appeal was a mere question of jurisdiction & procedure, or whether there was a matter in controversy exceeding in value 4,000 dollars & thus giving an appeal as of right to the Privy Council. The damages claimed were greatly in excess of 4,000 dollars :—*Held :* (1) the first claim was a claim against the Crown & could only be prosecuted by petition of right, & the Exchequer Ct. of Canada had exclusive jurisdiction in such a matter ; (2) the claim for damages was not against the Crown, & as to that the action should be allowed to proceed.—LOVIBOND *v.* GRAND TRUNK RY. CO. OF CANADA [1936] 2 All E. R. 495 ; 80 Sol. Jo. 734, P. C.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

o i. —— *Property in possession of third party.*]—A.-G. FOR ONTARIO *v.* MCLEAN GOLD MINES, LTD., [1927] A. C. 185 ; 95 L. J. P. C. 217 ; 136 L. T. 194, P. C.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.

336 i. *General rule.*]—A petition of right is the proper remedy when the Crown has in its hands property to which a subject has a legal title : this does not extend to torts.—COYLE *v.* BLACK (1933), 7 M. P. R. 412.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—A.

346 ii. —— ——.]—MAUNSELL *v.* R., [1925] Exch. C. R. 133.—**CAN.**

346 iii. ——.]—R. *v.* CANADA STEAMSHIP LINES, LTD., [1927] 1 D. L. R. 991 ; [1927] S. C. R. 68.—**CAN.**

346 iv. ——.]—KENNEY *v.* R. (1882), 1 Exch. C. R. 68.—**CAN.**

s i. ——.]—By two contracts in writing suppliant agreed with resp., represented by the Minister of Marine & Fisheries, to construct six steel cargo steamers ; the first contract covered four ships, & the second contract two ships. Both contracts provided that any dispute or difference arising between the parties thereto, during the term of the agreements or within six months after the termination thereof, in relation to the various matters therein set forth, should be referred to three arbitrators to be chosen as therein provided & whose decision should be final & binding. Suppliant claimed that it required certain disputes be submitted to arbn. but that resp. refused to do so. Resp. denied that such request was made or refused, or that any dispute was referred to or settled by arbn., & contended that the arbn. clause in such contracts was a bar to the various claims set forth in the petition :—*Held :* since resp. had granted suppliant a fiat & also had pleaded a defence, the arbn. claims had been waived & another forum substituted.—COUGHLAN & SON, LTD. *v.* R., [1937] Ex. C. R. 29.—**CAN.**

s*f. Refund of part of price of mineral rights in land under sea.*]—KETCHEN *v.* R. (B. C.), [1927] 3 W. W. R. 152.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—C.

351 viii. —— ——.]—KENDALL *v.* R., [1926] Exch. C. R. 34.—**CAN.**

T. L. R. 39; 76 Sol. Jo. 850; *on appeal*, [1933] 1 K. B. 767, C. A.

353b. —— **Compensation for injury to property in Ireland.**]—No claim for compensation for injuries done to property in Ireland is maintainable against the Crown in an English ct.—PRICE *v.* R. (1925), 42 T. L. R. 179.

355. After this case add "—— **Effect of Indemnity Act, 1920 (c. 48).**]—*See* CONSTITUTIONAL LAW, Nos. 293a, 499a, 499b, 526a–526d, 534a, *ante*."

356. *Add. Annotation :*—**Folld.** A.-G. for Straits Settlements *v.* Pang Ah Yew, [1925] A. C. 555.

356a. —— ——.]—Under Crown Suits Ordinance No. 22 of the Straits Settlements a petition of right can be maintained to recover damages arising from a collector of land revenue selling land under Ordinance No. 35 for arrears of revenue without first serving a written notice of demand as required by s. 4. The collector in selling is an agent of the Crown although he acts under statutory authority, & the fact that he has carried out his duties in an unauthorised manner does not prevent the Crown from being liable.—A.-G. FOR STRAITS SETTLEMENTS *v.* PANG AH YEW, [1925] A. C. 555; 94 L. J. P. C. 150; 133 L. T. 106, P. C.

357. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Kynaston *v.* A.-G. (1933), 49 T. L. R. 300.

360. *Add. Annotations :*—**Distd.** Wigg *v.* A.-G. for Irish Free State, [1927] A. C. 674. **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242. **Refd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70.

361. *Add. Annotations :*—**Distd.** Wigg *v.* A.-G. for Irish Free State, [1927] A. C. 674. **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242. **Refd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70.

After this case add :—

——.]—*See, further*, REVENUE, Vol. XXXIX., pp. 307, 308, Nos. 836–841.

363a. Bona vacantia—Recovery by next of kin.]—*Re* MASON, No. 374b, *post*.

364. *Add. Annotation :*—*Generally*, **Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

368. *Add. Annotations :*—**Consd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271. **Refd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

369. *Add. Annotations:*—**Folld.** Civilian War Claimants Assocn. *v.* R. (1930), 46 T. L. R. 581. **Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

370. *Add. Annotations :*—**Consd.** Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383. **Apprvd.** Civilian War Claimants Assocn., Ltd. *v.* R., [1932] A. C. 14. **Apld.** German Property Administrator *v.* Knoop (1932), 49 T. L. R. 109.

370a. —— ——.]—By Art. 232 of the Treaty of Versailles Germany undertook to make compensation for all damage done to the civilian population of the Allied & Associated Powers & to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by the aggression of Germany & her Allies, & moneys were received by the Crown under this article. By a petition of right the suppliants, as assignees of civilian claimants who had suffered loss or damage by German aggression out of the War, claimed on their behalf payment of compensation out of the moneys paid or payable as reparations under the above article. The case made by the petition was that the claimants had sent particulars of their claims, first, to the Foreign Claims Office, &, afterwards, to the Reparation Claims Department in accordance with the instructions of His Majesty's Government, that these claims had been duly verified by the Government, & were included in the agreed total of claims for reparations which Germany was required to pay under the treaty, & that the Crown in inviting the claimants to submit their claims had constituted itself an agent or a trustee for the claimants in respect of any money received by it from Germany on account of reparations, & that any such money was money had & received by the Crown to the use of the claimants :—*Held :* on demurrer by the Crown, the petition afforded no ground for the contention that the money received under the treaty was received by the Crown as an agent or a trustee for the claimants, or as money had & received to their use, & was bad as disclosing no ground of claim cognisable by the ct.—CIVILIAN WAR CLAIMANTS ASSOCN., LTD. *v.* R., [1932] A. C. 14; 101 L. J. K. B. 105; 146 L. T. 169; 48 T. L. R. 83; 75 Sol. Jo. 813, H. L.

Annotation :—**Apld.** German Property Administrator *v.* Knoop (1932), 49 T. L. R. 109.

371. After this case add "**Compensation for use of invention by Crown.**] — *See* PATENTS, No. 1673a, *post*."

372. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

374. *Add. Annotation :*—**Apld.** Badman *v.* R., [1924] 1 K. B. 64.

374a. —— —— **When allowed.**]—Under Petitions of Right Act, 1860 (c. 34), s. 7, the ct. has

---

PART II. SECT. 2, SUB-SECT. 3.—E.

sd. *Sales tax paid by mistake—Under compulsion of legal process.*]—In Oct. 1927, the Crown by information, brought suit against suppliant for the recovery of certain money for sales tax, excise tax, penalties & interest, under Special War Revenue Act, 1915, & amendments thereto, in respect to beer manufactured & sold by suppliant for a period subsequent to Jan. 1, 1924. A settlement was arrived at between the parties & the proceeding was discontinued, the settlement covering a longer period than that actually involved in the information. Suppliant sought to recover from the Crown the money paid under that settlement, together with a further sum, on the grounds that it was never liable to the Crown; that payment was procured under duress; that when payment was made it was understood between the parties that the money so paid would be refunded to suppliant should it later appear that it had overpaid the Crown or that suppliant was not legally liable for any of the taxes claimed in the information. The ct. found that the money paid by suppliant was paid voluntarily & unconditionally in settlement of the suit brought against it by the Crown :—*Held :* money paid under compulsion of a legal process cannot be recovered, although defts. finds he has paid in error what he was not legally bound to pay, & the rule applies even though the process may never have terminated in a final order or judgment, & although it may have been withdrawn at the date when proceedings are taken for the recovery of the money, & although the payment was made under process.—WALKERVILLE BREWERY, LTD. *v.* R., [1937] Ex. C. R. 99; 4 D. L. R. 81.—**CAN.**

PART II. SECT. 3.

374a 1. —— *May be amended by court—When allowed.*]—Where a suppliant seeks to substitute or add a substantially new cause of action, the amendment should not be allowed in

jurisdiction to allow a petition of right to be amended, provided the amendment does not involve a substantial alteration in the cause of action, so that the allowance of it without a fresh fiat would operate in derogation of the prerogative of the Crown. The test whether a particular amendment ought to be allowed is this: if the petition had originally been presented in the form in which it stands after amendment, is there a reasonable probability that the fiat would not have been refused?—BADMAN BROTHERS *v.* R., [1924] 1 K. B. 64; 93 L. J. K. B. 132; 130 L. T. 264; 68 Sol. Jo. 166, C. A.

374b. —— **Service of copy on person in possession of property claimed—Petitions of Right Act, 1860 (c. 34), s. 5.**]—A lunatic, at the date of her death in 1798, was entitled to certain funds in Court representing the residuary estate of her father. In 1794 the master had reported that the lunatic had no heir-at-law or next of kin. In 1798 & 1801 the Crown made *ex gratia* grants of these funds to certain persons & obtained an indemnity in respect of these grants. In 1926 a petition was presented by persons claiming to be the next of kin of the lunatic for the payment to them of the whole of her personal estate. The parties agreed to confine themselves, for the present, to seeking a determination of the following questions: (*a*) whether the petition was maintainable on the assumption that no part of the funds in question ever came into the hands of or was dealt with by his present Majesty or his nominees or grantees or was carried to the Consolidated Fund; (*b*) whether the petition was barred by any Statute of Limitations; (*c*) whether in view of Petitions of Right Act, 1860 (c. 34), s. 5, the suppliants could proceed without serving the petition upon the successors in title of the persons to whom the *ex gratia* grants had been made: —*Held:* Petitions of Right Act, 1860 (c. 34), s. 5, did not apply to the case.—*Re* MASON, [1928] 1 Ch. 385; 97 L. J. Ch. 321; 139 L. T. 477; 44 T. L. R. 225; *on appeal*, [1929] 1 Ch. 1, C. A.

Annotation:—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

375. *Add. Annotations:*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Mentd.** Civilian War Claimants Assocn. *v.* R. (1930), 46 T. L. R. 581.

381. *Add. Annotations:*—*As to* (1) **Refd.** Jamieson *v.* Downie, [1923] A. C. 691. *As to* (3) **Apprvd.** Badman *v.* R., [1924] 1 K. B. 64.

388. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Mason, [1929] 1 Ch. 1. **Refd.** Cayzer, Irvine *v.* Board of Trade (1925), 95 L. J. K. B. 134; Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 388.

the absence of the Lieutenant-Governor's fiat or the consent of the A.-G.; but if the substance of the case is not changed, the ct. can help the suppliant by amendment.—NORTHERN CONSTRUCTION CO. *v.* R., [1923] 3 D. L. R. 1069; 2 W. W. R. 759.—**CAN.**

374a ii. —— —— ——.]—HANSEN *v.* R., [1933] Ex. C. R. 197.—**CAN.**

374a iii. —— —— ——.]—Even if the ct. has power in some cases to amend a petition without the consent of the Crown, that power must be limited to minor matters, & cannot go the length of allowing a suppliant to change the character of his claim against the Crown, either by adding to it or withdrawing part of it or by adding parties as co-defts. with the Crown.—FLEXLUME SIGN CO. *v.* MACEY SIGN CO., [1923] 1 D. L. R. 1185; 51 O. L. R. 595.—**CAN.**

374a iv. —— —— ——.]—A petition cannot be amended, unless one month's notice of the substance of the petition is given to a law officer.—OFFICIAL ASSIGNEE *v.* R., [1922] N. Z. L. R. 265.—**N.Z.**

374a v. —— —— ——.]—FITZPATRICK *v.* R. (1925), 57 O. L. R. 178.—**CAN.**

374a vi. —— —— ——.]—The practice of the ct. permits amendments to a petition of right provided the same do not state a new cause of action. The test whether a particular amendment should be allowed is: If the petition has originally been presented in the form in which it stands after amendment, is there a reasonable probability that the fiat would not have been refused? After a fiat "Let Right be Done" is granted, & the petition is filed in ct., it becomes a pleading, & under the Rules of Ct. is subject to any reasonable amendment, providing it does not involve any substantial alteration in the cause of action, or does not set up a fresh cause of action.—HANSEN *v.* R., [1933] Ex. C. R. 197.—**CAN.**

374a vii. —— —— ——.]—Resp. presented a petition of right, which was granted, praying that she be authorised to bring action against the "Minister of Roads" to recover the sum of $10,000 as damages for the death of her husband who was killed following a collision of his automobile on a provincial highway with a tractor belonging to the Department of Roads. Resp., after the hearing of the case but prior to judgment, made a motion before the trial judge for leave to amend the prayer of her petition of right by replacing the words "Minister of Roads" by the words "His Majesty the King." The motion was granted by the trial judge at the same time that judgment was given awarding damages, which judgment was affirmed by the appellate ct. Applt.'s counsel before this ct. besides denying any liability of the Crown upon the facts of the case, contended that the trial judge should not have allowed the substitution of the name of "His Majesty the King" for the "Minister of Roads" without the previous authority of a new fiat:—*Held:* it was competent to the Superior Ct. to grant the motion to amend the petition of right, if that were considered necessary.—R. *v.* DEMERS, [1935] S. C. R. 485.—**CAN.**

379 i. *Parties—Joinder of—Not Crown with another respondent.*]—I can find no authority in which it has been decided that a resp. may be joined with the Crown in a petition of right, & a. applts. object to being so joined. I think they are entitled to succeed (DRAPER, J.).—MCNEIL'S EXORS. & DE BERNALES *v.* R. & PENDERGAST (1930), W. A. L. R. 4.—**AUS.**

380 iii. —— ——.]—The Crown expropriated certain lands, & in the plan & description deposited in the registry office, named M. as the owner of a part. M., then, having obtained a fiat from the Crown, filed a petition of right in this ct. claiming the value of the land expropriated. M. later discovered that his wife & not himself was the owner of the land expropriated, & a motion was made for leave to amend the petition of right by substituting the wife's name for that of M. as suppliant:—*Held:* as no action can be taken against the Crown without first obtaining its fiat which gives the ct. jurisdiction, such an amendment could not be allowed & the motion was, under the circumstances, dismissed without costs.—MORENCY *v.* R., [1927] Exch. C. R. 238.—**CAN.**

g i. —— *Defence—When particulars ordered.*]—O'BRIEN & DOHENY *v.* R., [1925] Exch. C. R. 1.—**CAN.**

sk. *Claim against individual as well as Crown—Necessity for separate action against individual—Action & petition of right tried together.*]—NORTHERN CONSTRUCTION CO. *v.* R., [1923] 3 D. L. R. 1069; 2 W. W. R. 759.—**CAN.**

393 i. *Discovery—Suppliant's right as against Crown.*]—In proceedings by petition of right against the Crown, an order will not be made for the examination by petitioner of an officer of the Crown for discovery before trial.—CROMBIE *v.* R., [1923] 2 D. L. R. 542; 52 O. L. R. 72.—**CAN.**

393 ii. —— ——.]—A suppliant proceeding by way of petition under Part II. of Crown Suits Act, 1908, is not entitled to an order for discovery of documents against the Crown.—RAYNER *v.* R., [1929] N. Z. L. R. 805.—**N.Z.**

394 i. *Evidence—Burden of proof—Negligence charged against officers & servants of Crown.*]—The burden of proof is upon the suppliant, who must show that there was negligence, & the maxim *res ipsa loquitur* cannot be invoked to relieve him of the *onus* in such actions under Exch. Ct. Act, 1906, s. 20.—MONTREAL TRANSPORTATION CO. *v.* R., [1924] 4 D. L. R. 808.—**CAN.**

Part III.—Scire Facias.

426. *Add. Annotation :*—**Consd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

449. *Add. Annotation :*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

Part V.—Habeas Corpus.

464. *Add. Annotation :*—**Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

469. *Add. Annotations :*—*As to* (1) **Distd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603. *As to* (4) **Refd.** R. *v.* Maidstone Prison, *Ex p.* Maguire, [1925] 2 K. B. 265; R. *v.* Board of Control, East Ham Corpn. & Mordey, *Ex p.* Winterflood, [1938] 1 K. B. 420. *Generally*, **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

470. *Add. Citations :*—[1923] 2 K. B. 361; 92 L. J. K. B. 797; 129 L. T. 419; 87 J. P. 166; 21 L. G. R. 419; 27 Cox, C. C. 433; *sub nom.* O'Brien *v.* Secretary of State for Home Affairs, 67 Sol. Jo. 553; *on appeal, sub nom.* Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603, H. L.

Add. Annotation :—**Refd.** Campbell *v.* Pollak [1927] A. C 732.

492. *Add. Annotation :*—**Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

493. *Add. Annotation :*—*As to* (1) **Consd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

498. *Add. Annotations :*—**Refd.** R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386; Eshugbayi Eleko *v.* Nigeria Government, [1931] A. C. 662.

508. *Add. Annotations :*—*As to* (1) **Apld.** Campbell *v.* Pollak, [1927] A. C. 732. **Refd.** *Re* Carroll (1930), 47 T. L. R. 20. *Generally*, **Refd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459.

PART III. SECT. 1.

sl. *Whether writ will issue against heir—After return of nulla bona by administrator.*]—A *sci. fa.* will not issue against an heir under 5 Geo. 2, although an execution may have issued against the goods & chattels in the hands of the administrator & been returned *nulla bona.*—Paterson *v.* McKay (1823), Tay. 43.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

sm. *Civil proceeding—Appeal to Court of King's Bench.*]—The writ of *habeas corpus* is a civil proceeding whatever may be the cause of detention, whether a criminal or supposed criminal or civil matter or any other illegal detention. A judgment maintaining a writ of *habeas corpus* is a judgment in a civil case, & is susceptible of appeal to the Ct. of K. B.—*Ex p.* Fong, *Ex p.* You, *Ex p.* Chalifoux, [1929] 1 D. L. R. 223; 50 Can. Crim. Cas. 213; Q. R. 44 K. B. 476.—**CAN.**

sn. ——.]—*Ex p.* Fong, *Ex p.* You *Ex p.* Chalifoux, [1929] 1 D. L. R. 223; 50 Can. Crim. Cas. 213; 44 Que. K. B. 476.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—A.

c i. —— —— *Commitment not in any criminal case under any Act of Parliament of Canada.*]—Petitioner was convicted, in July & October, 1928, on charges under Intoxicating Liquor Act of New Brunswick, & was committed to gaol in York County, N.B. He applied to a judge of this ct. for a writ of *habeas corpus*, alleging that, on & prior to Dec. 10, 1917, Canada Temperance Act was in force in said county, that, on that date, an Order in Council, passed pursuant to Statutes of Canada, 1917, c. 30, became effective, suspending the operation of the Canada Temperance Act in said county; that, at the time of the passing of said Order in Council, there was in force the New Brunswick Intoxicating Liquor Act, 1916, referred to in said Order in Council as being as restrictive as the Canada Temperance Act; that, in 1927, New Brunswick Intoxicating Liquor Act, 1927, c. 3, came into force, which repealed the 1916 Act, & was less restrictive than Canada Temperance Act; & he contended that, as a result, the said suspension of the operation of Canada Temperance Act automatically ceased, & that Act came into force in said county, & that the offences for which he was convicted & committed to gaol were offences against that Act & not against the Provincial Act :—*Held :* a judge of this ct. had no jurisdiction to issue the writ applied for, as the commitment was not " in any criminal case under any Act of Parliament of Canada " within Supreme Court Act, s. 57.—Doherty *v.* Hawthorne, [1929] 1 D. L. R. 136; 50 Can. Crim. Cas. 209; [1928] S. C. R. 559.—**CAN.**

c ii. —— —— ——.]—The jurisdiction of the Supreme Ct. of Canada in respect of *habeas corpus* extends only to cases of commitment following upon charges of offences which are criminal by virtue of statutes enacted by the Parliament of Canada; it does not extend to cases of commitment for offences at common law or under statutes enacted prior to Confederation which are still in force, even if these last offences have also been declared to be criminal by a federal statute.—Smith *v.* R., Blackman *v.* R., [1931] S. C. R. 578; 4 D. L. R. 465; 56 Can. C. C. 51.—**CAN.**

so. *Right to apply to different judges successively—Extradition proceedings.*]—The common law right to make successive applications to different judges for a writ of *habeas corpus* still exists with respect to extradition proceedings.—*Re* O'Connor, [1928] 1 D. L. R. 588; [1928] 1 W. W. R. 65; 49 Can. Crim. Cas. 151; 39 B. C. R. 271.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—A.

501 iv. ——.]—Reid *v.* Drake (1867), 4 P. R. 141.—**CAN.**

501 v. —— *Not granted where detention lawful—Not available as means of appeal.*]—A writ of *habeas corpus* will not issue where the accused is being held in custody in virtue of a valid judgment of a ct. having jurisdiction. It is not intended & cannot be used as a means of appeal.—Howley *v.* Pineuze (1927), Q. R. 65 S. C. 483.—**CAN.**

501 vi. —— —— ——.]—*Ex p.* Boucher (Que.) (1928), 50 Can. Crim. Cas. 161.—**CAN.**

501 vii. ——.]—In order to make a case for *habeas corpus* in criminal matters, there must be an actual confinement or, at least, the present means of enforcing it. A person may apply for the writ while in the custody of a constable, immediately upon being arrested, & need not wait until he is actually incarcerated. But a person at large on bail is not so restrained of his liberty as to entitle him to the writ.—*Re* Isbell, [1930] S. C. R. 62; 1 D. L. R. 393; 52 Can. C. C. 170.—**CAN.**

501 viii. ——.]—31 Car. 2, c. 2, which aims at reiterated commitments, has no application to cases where the prisoner is imprisoned under a warrant in execution.—*Re* Ransome (1932), 4 M. P. R. 271.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B. (a).

511 ii. ——.]—It is only where a ct. is wholly without jurisdiction that *habeas corpus* will lie. The Supreme Ct. of New Brunswick has no right to interfere with the record of a county ct. judge's criminal ct. of Nova Scotia, or with an increase of sentence by the Supreme Ct. of Nova Scotia.—*Ex p.* Burns (No. 2), [1932] 3 D. L. R. 29; 4 M. P. R. 564; 58 C. C. C. 231.—**CAN.**

512 v. —— —— *Costs not stated.*]—*Ex p.* Henderson, *Ex p.* Broder. *Ex p.* Stewart, *Ex p.* Joe Go Get (Can.), [1930] 1 D. L. R. 420; 52 Can. Crim. Cas. 95.—**CAN.**

519 i. *Indictment for murder—Committal by magistrate—Evidence disclosing criminal negligence.*]—R. *v.* Riesy (1931), 55 Can. C. C. 328.—**CAN.**

sb. *Detention after purging contempt.*]—*Re* Singer (Ont.) (1929), 52 Can. Crim. Cas. 243.—**CAN.**

sd. *Consent to trial—Not shown in clerk's copy of conviction—Shown in magistrate's original.*]—*Habeas corpus* refused. — *Re* Zwicker (1932), 4 M. P. R. 331.—**CAN.**

553. *Add. Annotation :*—**Refd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

554. *Add. Annotations :*—**Consd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127. **Refd.** R. *v.* Brixton Prison, *Ex p.* Perry, [1924] 1 K. B. 455.

555. *Add. Annotation :*—**Consd.** Kossekechatko *v.* A.-G. of Trinidad, [1932] A. C. 78.

562. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

585a. —— **Form of summons.**]—A summons taken out during the long vacation with a view to obtaining a writ of *habeas corpus* to bring the body of appct. before the High Ct. should require the parties concerned to show cause, not why the writ should not issue, but why an order *nisi* for the writ should not issue, inasmuch as the former procedure does not, whereas the latter does, disclose the grounds upon which the application is made. —R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SHURE, [1926] 1 K. B. 127; 95 L. J. K. B. 361; 134 L. T. 317; 28 Cox, C. C. 126; [1926] B. & C. R. 1, D. C.

601. *Citations :*—For "*sub nom.* R. *v.* HOME SECRETARY, *Ex p.* O'BRIEN, 39 T. L. R. 487, C. A.; *sub nom.* HOME SECRETARY *v.* O'BRIEN; *Times*, May 15, H. L.," read "*sub nom.* R. *v.* SECRETARY OF STATE FOR HOME AFFAIRS, *Ex p.* O'BRIEN, [1923] 2 K. B. 361, C. A.; *sub nom.* SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, [1923] A. C. 603, H. L." *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

611. *Add. Annotations :*—**Consd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459. **Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

PART V. SECT. 1, SUB-SECT. 3.—B. (b).

523 i. *Where warrant primâ facie valid.*]—R. *v.* WONG YUEN (1925), 44 Can. Crim. Cas. 338.—**CAN.**

sf. *Power of court to amend.*]—*Re* MCNEILL (1931), 3 M. P. R. 185.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B. (e).

sq. *Commissioner under Combines Investigation Act.*]—The jurisdiction of a judge of the Supreme Ct. of Canada, under Supreme Ct. Act, 1927, s. 57, to issue a writ of *habeas corpus*, held not to extend to the case of a commitment by a comr. appointed under Combines Investigation Act, 1927, for contempt of an order made by the comr. under sect. 22 thereof.—*Re* SINGER, [1929] 4 D. L. R. 878; S. C. R. 614; 52 Can. Crim. Cas. 1.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B. (h).

sr. *Applicant at liberty on bail—Writ refused.*]—VERRAULT *v.* LACHANCE (Que.), [1929] 2 D. L. R. 900.—**CAN.**

st. —— ——.]—*Re* ISBELL (Can.), [1930] 1 D. L. R. 393; 52 Can. Crim. Cas. 170.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—C.

552 iv. —— ——.]—Where an inferior ct. is acting within its jurisdiction, the superior ct. has no power, at common law, to assume the function of an appellate ct. & review its conclusions by means of a writ of *habeas corpus* either with or without *certiorari*. —*Re* CHINESE IMMIGRATION ACT & LEE CHOW YING (1928), 49 Can. Crim. Cas. 168; 39 B. C. R. 322.—**CAN.**

552 v. —— *Sufficiency of evidence not considered.*]—On an application for *habeas corpus* the ct. has no jurisdiction to consider the sufficiency of the evidence, where jurisdiction exists.—*Re* DAVISON, [1936] 1 D. L. R. 60; 9 M. P. R. 497; 64 Can. C. C. 335; 5 F. L. J. (Can.) 228.—**CAN.**

554 i. —— —— *On ground that decision against weight of evidence.*]—Application by way of *habeas corpus* & *certiorari* in aid to quash a conviction made by a police magistrate on a charge, under Excise Act, s. 181, of unlawful possession of spirits unlawfully manufactured :—*Held :* assuming that the evidence before the magistrate might be examined to determine its sufficiency, the magistrate having had some evidence before him on which to base his finding, the ct. was not justified in interfering with the conclusion or inference drawn by him therefrom.—R. *v.* SCHARF (Man.), [1928] 3 W. W. R. 398.—**CAN.**

554 ii. —— ——.]—R. *v.* HILL (N. S.), [1929] 1 D. L. R. 349; 50 Can. Crim. Cas. 319.—**CAN.**

557 i. —— *Acting without jurisdiction—Magistrate.*]—*Ex p.* MOHAMET ALI (N. S.) (1919), 32 Can. Crim. Cas. 65.—**CAN.**

557 ii. —— —— *County court judge.*] —*Habeas corpus* lies where a county ct. judge sitting in appeal from a summary conviction has exceeded his jurisdiction.—R. *v.* PETIT, [1932] 1 W. W. R. 161; 40 Man. L. R. 207; 57 C. C. C. 216.—**CAN.**

o. For "4 C. L. R. 101" read "4 V. L. R. 101."

r i. —— —— ——.]—R. *v.* MOORE, [1924] 3 W. W. R. 923.—**CAN.**

sv. *Where proceedings so irregular as to preclude fair trial.*]—Accused discharged upon a writ of *habeas corpus*.—R. *v.* CAMPBELL (1924), 43 Can. Crim. Cas. 340.—**CAN.**

sw. *Not decisions of court of record—County court judge's criminal court.*]—*Ex p.* MARTIN, [1927] 3 D. L. R. 1134; 48 Can. Crim. Cas. 23; 60 O. L. R. 577.—**CAN.**

sz. *Conflicting evidence.*]—In *habeas corpus* under Nova Scotia statutes, the cts. will not disturb a conviction because the evidence is conflicting unless there is a total want of evidence.—*Re* HALEY (1937), 68 Can. C. C. 238.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—D. (c).

d i. ——.]—Neither the doctrine that an alien friend has no right enforceable by action to enter British territory nor the prerogative of the King to exclude an alien from his realm can operate to prevent the ct. from entertaining an application of *habeas corpus* to inquire into the legality of the imprisonment of the alien by a private person.—R. *v.* CARTER, *Ex p.* KISCH (1935), 52 C. L. R. 221; 41 Argus L. R. 125.—**AUS.**

sx. *Person outside British India.*]—The High Ct. can issue a writ of *habeas corpus* for the production of a person outside British India, provided he is in the custody, or under the control, of a person within its jurisdiction.—MAHOMEDALLI ALLABUX *v.* ISMAILJI ABDULALI & SARDAR SYEDNA TAHER SAIFUDDIN MULLAJI SAHEB (1926), I. L. R. 50 Bom. 616.—**IND.**

PART V. SECT. 1, SUB-SECT. 4.—A. (b).

sz. *To court in another province—Conviction under Opium & Narcotic Drug Act, 1923—Not without good reason.*]—R. *v.* JUNGO LEE (No. 2), [1927] 1 W. W. R. 578; 47 Can. Crim. Cas. 255; 38 B. C. R. 313.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—A. (c).

595 v. ——.]—An application for *habeas corpus* must be supported by an affidavit of prisoner, or an affidavit showing that his affidavit cannot be obtained.—R. *v.* MURRELL, [1924] 2 D. L. R. 647; 40 Can. Crim. Cas. 298. —**CAN.**

595 vi. ——.]—R. *v.* LEE (B. C.), [1926] 3 W. W. R. 264.—**CAN.**

595 vii. ——.]—In *habeas corpus* proceedings the ct. has jurisdiction notwithstanding the absence of an affidavit from the prisoner.—R. *v.* SLIPP *Ex p.* GARDINER, [1934] 3 D. L. R. 381; 61 C. C. C. 401; 7 M. P. R. 392.—**CAN.**

599 ii a. —— —— ——.]—R. *v.* MURRELL, No. 595 v., *ante*.—**CAN.**

599 ii b. *S. P.* R. *v.* BANNITI, [1926] 1 D. L. R. 424; 45 Can. Crim. Cas. 75; 58 O. L. R. 165.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—A. (d).

611 vi. —— ——.]—An appct. for a writ of *habeas corpus* is not at liberty to go from judge to judge of the Supreme Ct. in his quest of release.—*Re* LOO LEN (No. 2), [1924] 1 D. L. R. 910; 1 W. W. R. 735; 41 Can. Crim. Cas. 388; 33 B. C. R. 213.—**CAN.**

611 vii. —— ——.]—An appct. for a writ of *habeas corpus* whose discharge is refused by one judge, may make another application before another judge, even of the same ct., on the same or on different grounds, & so on from judge to judge, each judge being uncontrolled by the previous decisions. —R. *v.* GEE DEW (No. 1), [1924] 3 D. L. R. 153; 2 W. W. R. 773; 42 Can. Crim. Cas. 188; 33 B. C. R. 524.—**CAN.**

611 viii. —— ——.]—When an application for a writ of *habeas corpus* has been refused on its merits by a judge of the Ct. of K. B. in Manitoba, the only ct. of original jurisdiction in Manitoba in questions of that kind, the application cannot be renewed before any other single judge.—R. *v.* ROMANCHUK, [1924] 3 D. L. R. 229; 2 W. W. R. 351; 42 Can. Crim. Cas. 231; 34 Man. L. R. 371.—**CAN.**

611 ix. —— ——.]—The dismissal of a *habeas corpus* application or applications is not a bar to the making of a new application for *habeas corpus* before the same judge.—R. *v.* IACI, [1925] 2 W. W. R. 129; 43 Can. Crim. Cas. 363.—**CAN.**

613a. May be made to successive judges.]—Each judge of the High Ct. established by Jud. Act, 1873 (c. 66), has jurisdiction to entertain an application for a writ of *habeas corpus*, in term time or in vacation, & is bound to hear & determine the application on its merits, notwithstanding that some other judge has already refused a similar application; & this principle applies in the case of the judges of the Supreme Ct. of Nigeria.—ESHUGBAYI ELEKO *v.* NIGERIA GOVERNMENT (ADMINISTERING OFFICER), [1928] A. C. 459; 97 L. J. P. C. 97; 139 L. T. 527; 44 T. L. R. 632; 72 Sol. Jo. 452, P. C.

Annotation :—**Consd.** *Re* Carroll (1930), 47 T. L. R. 20.

650a. —— Judge abstaining from inquiry into facts.]—CARUS WILSON'S CASE, No. 650, *ante*.

656a. ——.]—RUDYARD'S CASE (1670), 2 Vent. 22; 86 E. R. 286.

Annotations :—**Refd.** R. *v.* Wilkes (1763), 2 Wils. 151; Wood's Case (1771), 3 Wils. 172; R. *v.* Dunn (1840), 12 Ad. & El. 599.

660a. ——.]—Assuming that an order transferring a convict sentenced to penal servitude in Northern Ireland to an English prison was not valid to justify the transfer between the Irish & the English prisons, it is a sufficient answer by the governor of the English prison, to whom a rule *nisi* for a writ of *habeas corpus* has been directed, that appct. was lawfully sentenced to a term of penal servitude, which is still current, & that he detains him under an order lawfully made by the Home Secretary.—R. *v.* MAIDSTONE PRISON (GOVERNOR), *Ex p.* MAGUIRE, [1925] 2 K. B. 265; 94 L. J. K. B. 679; 133 L. T. 710; 89 J. P. 89; 41 T. L. R. 456, D. C.; *on appeal*, 95 L. J. K. B. 55, C. A.

666. *Add. Annotation :*—*As to* (3) **Consd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459.

682a. ——.]—SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, No. 801, *post*.

696a. —— ——.]—Where a commitment is after conviction, the ct. is bound to look at the conviction in order to see whether there is more than a technical defect in the commitment, & a good conviction will cure a defect in the commitment.—R. *v.* LEWES PRISON GOVERNOR, *Ex p.* DOYLE, [1917] 2 K. B. 254; 86 L. J. K. B. 1514; 116 L. T. 407; 81 J. P. 173; 33 T. L. R. 222; 25 Cox, C. C. 635, D. C.

750. *Add. Annotation :*—*As to* (2) **Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

784. *Add. Annotation :*—**Refd.** Kossekechatko *v.* A.-G. of Trinidad, [1932] A. C. 78.

787. *Add. Citation :*—17 Jur. 1163.

---

611 x. *May not be made to successive courts — Allahabad.*] — The common practice of English cts., permitting successive identical applications for a writ of *habeas corpus* to be made to the judges, one after another, of the High Ct., is not applicable to the High Ct. of Allahabad in the case of applications under sect. 491 of the Criminal Procedure Code, inasmuch as the common law of England is not in force in this Province, & this High Ct. has not the common law right of issuing a writ of *habeas corpus*, but only the power, conferred upon it by statute for the first time in 1923, of making directions of the nature of a *habeas corpus*.—HAIDARI BEGAM *v.* JAWAD ALI SHAH (1933), I. L. R. 56 All. 271. —**IND.**

PART V. SECT. 1, SUB-SECT. 4.—B.

sb. *Order nisi—Notification of prosecutor & magistrate not necessary.*]—R. *v.* KUZYCK, [1924] 1 W. W. R. 872; 42 Can. Crim. Cas. 144.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—C. (c).

641 i. *General rule—Original writ.*]—There is nothing in King's Bench Act or Rules which expressly or impliedly provides that a writ of *habeas corpus* in a civil proceeding can be properly served by the delivery of a copy.—BUSSELL *v.* STONER (Man.), [1928] 1 W. W. R. 749.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—C. (d).

g i. —— ——.]—Where a judge of the Ct. of Appeal grants a writ of *habeas corpus*, the Ct. of Appeal has the right to quash the judge's order if granted erroneously.—R. *v.* ROMANCHUK, [1924] 3 D. L. R. 229; 2 W. W. R. 351; 42 Can. Crim. Cas. 231; 34 Man. L. R. 371.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—D. (f) ii.

726 v. —— ——.]—The ct. is entitled, on a *habeas corpus* application, to receive affidavit evidence to show that the magistrate had no jurisdiction or has exceeded his jurisdiction in convicting appct.—R. *v.* MONTEMURRO, [1924] 2 W. W. R. 250.—**CAN.**

726 vi. —— ——.]—If, on an application to make absolute an order for a writ of *habeas corpus*, no want or excess of jurisdiction appears on the face of the documents filed with the return to the rule *nisi*, affidavits are admissible to establish such want or excess of jurisdiction, even although they may directly contradict facts stated in the documents filed with such return.—*Re* CAVENETT, [1926] N. Z. L. R. 755.—**N.Z.**

726 vii. —— ——.]—R. *v.* CHIN YOW HING (B. C.), [1929] 2 W. W. R. 73; 51 Can. Crim. Cas. 407.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—D. (g).

740 iii. ——.]—Where a prisoner is held under an invalid commitment, but before the return to a *habeas corpus* a valid commitment is lodged, he is in proper custody.—*Re* DAUPHINEE (1936), 10 M. P. R. 277.—**CAN.**

740 iv. ——.]—Where a prisoner is illegally arrested, & later held on a valid vagrancy charge, he will not be discharged on *habeas corpus* because of the original illegality.—*Re* GIGLIOTTI, [1936] 1 D. L. R. 319; 65 Can. C. C. 55.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—D. (i).

sm. *Detained person sent to immigration station outside province.*]—Upon the return to a writ of *habeas corpus* directed to F., a certain officer of the R.C.M.P., it was shown that, in pursuance of an order addressed to said officer by the Minister of Immigration & Colonisation, the prisoner in question had been duly arrested & proceeded against under Immigration Act, R. S. C., 1927, & had thereupon been sent under escort from Winnipeg to the custody of the chief immigration officer at Halifax, & was beyond the control of F. :—*Held :* the return made by F. was a sufficient answer to the writ.—R. *v.* HOLMES (OR CHOMICKI) [1932] 3 W. W. R. 76.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—E.

sd. *Duty of court—To consider all evidence, records & proceedings taken.*]—R. *v.* PAGE (1923), 41 Can. Crim. Cas. 59.—**CAN.**

se. *S. P. Re* HILLMAN (N. S.), [1927] 1 D. L. R. 725; 46 Can. Crim. Cas. 308.—**CAN.**

sb. —— *Findings of fact—Right to question.*]—R. *v.* HILL (N. S.), [1929] 1 D. L. R. 349; 50 Can. Crim. Cas. 319.—**CAN.**

sc. —— *To raise technical points—Extradition proceedings.*]—Since the judge must look at the evidence to ascertain whether the conditions of the extradition treaty & statute have been fulfilled, it is not the duty of the *habeas corpus* judge to interfere with the proceedings on merely technical grounds.—*Re* O'CONNOR, [1928] 1 D. L. R. 558; [1928] 1 W. W. R. 65; 49 Can. Crim. Cas. 151; 39 B. C. R. 271.—**CAN.**

sm. *What may be considered—Destruction of notes of evidence—Necessity for certiorari in aid.*]—*Ex p.* WON LAI (1930), 54 Can. C. C. 143.—**CAN.**

sp. *Jurisdiction of judge to refer to appeal court.*]—R. *v.* KEEPER OF KING'S COUNTY GAOL, *Ex p.* DUNN (1929), 2 M. P. R. 37.—**CAN.**

sr. *Reference to Appeal Division for advice—Not permissible.*]—*Ex p.* BURNS (No. 1), [1932] 3 D. L. R. 27; 4 M. P. R. 562; 58 C. C. C. 229.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—G.

788 i. *Re-arrest on same cause—Warrant of commitment prematurely issued.*]—*Ex p.* DAVID (N. B.), [1928] 3 D. L. R. 237; 49 Can. Crim. Cas. 381.—**CAN.**

788 ii. —— *First arrest premature.*]—R. *v.* RANSOME, [1931] 3 D. L. R. 193; 55 Can. C. C. 193.—**CAN.**

f (p. 269) **i.** *Not where prisoner detained under warrant of arrest from another Province—Legality of arrest not questioned.*]—*Re* NETTLETON (B. C.), [1929] 1 D. L. R. 692; 51 Can. Crim.

792. *Add. Annotations :—As to* (1) **Consd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459. *As to* (2) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732. *Generally*, **Refd.** *Re* Carroll (1930). 47 T. L. R. 20.

793. *Add. Annotations :*—**Distd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603. **Refd.** G. *v.* G. (1928), 45 T. L. R. 7; *Re* Carroll, [1931] 1 K. B. 317.

795. *Add. Annotations :*—**Refd.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710; *Re* Carroll (1930), 47 T. L. R. 20.

796. *Add. Annotation :*—**Apld.** *Re* Carroll (1930), 47 T. L. R. 20.

797. After this case add " —— ——.]—*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 31 (1) (*a*)."

797a. —— —— **Person sentenced to penal servitude.**]—Where, on an application for a writ of *habeas corpus*, a Div. Ct. has held that a person sentenced to penal servitude by a ct. in Northern Ireland has been lawfully transferred to a convict prison in England to serve his sentence, no appeal lies to the Ct. of Appeal as the question of the legality of the transfer & detention is one arising out of a criminal cause or matter.—R. *v.* MAIDSTONE PRISON (GOVERNOR), *Ex p.* MAGUIRE (1925), 95 L. J. K. B. 55; 133 L. T. 710; 89 J. P. 161; 41 T. L. R. 554; 69 Sol. Jo. 691, C. A.

801. For the existing paragraph in original volume substitute as follows :—

From order declaring prisoner's right to liberty—Order not directing discharge—Order of Court of Appeal—No appeal to House of Lords.]—No appeal lies from an order of a competent ct. for the issue of a writ of *habeas corpus* where the ct. determines the illegality of appct.'s detention & his right to liberty, although the order does not direct his discharge.

Upon the application of a man whom the Home Secretary had caused to be arrested & deported to Dublin, where he was interned by the Govt. of the Irish Free State, the Ct. of Appeal, reversing the decision of the Div. Ct., granted an order *nisi*, which they subsequently made absolute, for the issue of a writ of *habeas corpus* directed to the Home Secretary, the ct. holding that the detention was illegal as the Home Secretary had no power to order a person to be interned in the Irish Free State; &, owing to a doubt whether the Home Secretary had control of the body, the order allowed him a week within which to make his return to the writ. Before the week had elapsed an appeal by the Home Secretary to the House of Lords was heard on the question of competency :—*Held :* notwithstanding the generality of the language of Appellate Jurisdiction Act, 1876 (c. 59), s. 3, the House had no jurisdiction to entertain the appeal.—SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, [1923] A. C. 603; 92 L. J. K. B. 830; 129 L. T. 577; 87 J. P. 174; 39 T. L. R. 638; 67 Sol. Jo. 747; 21 L. G. R. 609; 27 Cox, C. C. 466, H. L.; *previous proceedings, sub nom.* R. *v.* SECRETARY OF STATE FOR HOME AFFAIRS, *Ex p.* O'BRIEN, [1923] 2 K. B. 361, C. A.

Annotation :—**Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

804a. From refusal to grant—Power of Court of Appeal to order security for costs.]—The Ct. of Appeal has no original jurisdiction in *habeas corpus*, & where an appeal is brought from a refusal of a Div. Ct. to give leave to issue a writ of *habeas corpus* the fact that the matter of the appeal is *habeas corpus* will not prevent the Ct. of Appeal from making an order requiring security for the costs of the appeal to be given if applt. is an impecunious person.—*Re* CARROLL, [1931] 1 K. B. 104; 100 L. J. K. B. 62; 144 L. T. 154; 47 T. L. R. 20; 74 Sol. Jo. 770, C. A.

Cas. 413; 40 B. C. R. 413; [1928] 3 W. W. R. 735.—**CAN.**

g (p. 269) **i.** —— *Commitment for default of payment of fine—Fine partly paid.*]—*Ex p.* WHYNOT (N. S.), [1928] 1 D. L. R. 528; 49 Can. Crim. Cas. 155.—**CAN.**

g (p. 269) **ii.** —— *Unauthorised order as to costs.*]—In making a conviction under Liquor Act, 1925, 1924-25, c. 53, a justice of the peace has no authority to order that the costs be paid to him & such a provision in the conviction cannot be treated as a nullity on an application for *habeas corpus*.—R. *v.* RABIUK, [1928] 1 W. W. R. 588; 50 Can. Crim. Cas. 348; 22 Sask. L. R. 479.—**CAN.**

so. *Discretion of court.*]—*Ex p.* LEADLEY (N. S.) (1926), 46 Can. Crim. Cas. 298.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—H.

q i. —— —— *Keeping liquor for sale.*]—In sect. 36 of Supreme Ct. Act, as amended by 10 & 11 Geo. 5, c. 32 (Dom.), which excepts from the appellate jurisdiction of the Supreme Ct. of Canada " proceedings for or upon a writ of *certiorari* arising out of a criminal charge," the word " criminal " is used in contradistinction to " civil," & is not limited to the sense in which " criminal " legislation is reserved exclusively to the Dominion Legislature by B. N. A. Act, 1867, s. 91. The Supreme Ct. of Canada therefore has not jurisdiction to hear an appeal from a decision of the Supreme Ct. of Alberta upon a motion for a writ of *certiorari* to quash a conviction for unlawfully keeping liquor for sale contrary to sect. 23 of Liquor Act (Alberta).—R. *v.* NAT BELL LIQUORS, LTD., [1922] 2 A. C. 128, P. C.—**CAN.**

q ii. ——.]—The Ct. of Appeal in British Columbia has no jurisdiction to hear an appeal from the refusal of a judge to grant a writ of *habeas corpus* in aid of criminal matters.—R. *v.* MCADAM, [1925] 4 D. L. R. 33; [1925] 3 W. W. R. 257; 44 Can. Crim. Cas. 155; 35 B. C. R. 168.—**CAN.**

s i. —— *Grounds for allowing or refusing.*]—*Re* WOOD (N. S.), [1927] 4 D. L. R. 537; 48 Can. Crim. Cas. 146. —**CAN.**

798 v. —— ——.]—When a judge or the full Ct. of K. B. has granted a writ of *habeas corpus* & discharged prisoner, there is no appeal.—R. *v.* ROMANCHUK, [1924] 3 D. L. R. 229; 2 W. W. R. 351; 42 Can. Crim. Cas. 231; 34 Man. L. R. 371.—**CAN.**

798 vi. —— ——.]—R. *v.* DUNN (N. B.), [1928] 3 D. L. R. 674; 50 Can. Crim. Cas. 37.—**CAN.**

sg. *Appeal from discretionary order as to custody of infants—Whether Court of Appeal will interfere.*]—*Re* PAISLEY (N. B.), [1928] 1 D. L. R. 403.—**CAN.**

sh. *Time for—More than sixty days after date of judgment.*]—On appeal to the Supreme Ct. of Canada in matters of *habeas corpus* the first step is the filing of the case in appeal with the registrar. Judgment of the Ct. of Appeal in a *habeas corpus* proceeding was pronounced Nov. 13, 1888; notice of appeal was immediately given, but the case in appeal was not filed in the Supreme Ct. until Feb. 18, 1889 :—*Held :* the appeal was not brought within sixty days from the date on which the judgment sought to be appealed from was pronounced, & there was no jurisdiction to hear it.—*Re* SMART (Ont.) (1889), 16 S. C. R. 396.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—I.

g i. *Not against informant—Nova Scotia Judicature Act.*]—*Re* BROWN, [1928] 3 D. L. R. 234; 49 Can. Crim. Cas. 402; 60 N. S. R. 76.—**CAN.**

sm. *When not given—Application of Crown Costs Act.*]—R. *v.* TEN CHINAMEN (1924), 34 B. C. R. 349.—**CAN.**

Part VI.—Mandamus.

890. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

892. *Add. Annotation :*—**Consd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 102 L. J. K. B. 113.

893. *Add. Annotation :*—**Consd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 148 L. T. 180.

894. *Add. Annotation :—As to* (2) **Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

894a. Proper practice must be followed.]—Upon an application for a high prerogative writ, such as a writ of *mandamus*, it is important that the proper practice should be followed, & that the precise order asked for & made should be carefully defined.—LOCAL GOVERNMENT LANDS & SETTLEMENT COMR. *v.* KADERBHAI, [1931] A. C. 652; 100 L. J. P. C. 124; 145 L. T. 265, P. C.

Annotation :—**Refd.** Eshugbayi Eleko *v.* Nigeria Government (Officer Administering), [1931] A. C. 662.

899. *Add. Annotations :*—**Consd.** R. *v.* West Norfolk Assessment Committee, *Ex p.* Ward (F. B.) (1930), 94 J. P. 201. **Refd.** R. *v.* Barnes Borough Council, *Ex p.* Conlan, [1938] 3 All E. R. 226.

900. *Add. Annotations :—As to* (1) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345; Tate & Lyle *v.* L. & N. E. Ry. & L. M. & S. Ry. (1926), 43 T. L. R. 49; Sheffield Corpn. *v.* Luxford, Same *v.* Morrell, [1929] 2 K. B. 180; Kilbane *v.* Whitehaven Colliery Co. (1933), 26 B. W. C. C. 76; De Keyser *v.* British Railway Traffic & Electric Co., [1936] 1 K. B. 224.

912. *Add. Annotation :*—**Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

925a. ——.]—It is not appropriate to order a body to hear & determine an application which they had no power to hear (AVORY, J.).—R. *v.* LONDON COUNTY COUNCIL, *Ex p.* ENTERTAINMENTS PROTECTION ASSOCN., LTD. (1930), 47 T. L. R. 111, D. C.

925b. ——.]—The powers of the Ct. of K. B. are not unlimited. That ct. has general power to direct other persons to do that which by law they ought to do; it has no power to require a body to do something which in fact it has no power to do (HUMPHREYS, J.).—R. *v.* STEPNEY CORPN., *Ex p.* WALKER (JOHN) & SONS, LTD. (1932), 96 J. P. 360; 48 T. L. R. 660; 30 L. G. R. 416, D. C.; *on appeal*, [1933] 2 K. B. 273, C. A.; *sub nom.* STEPNEY BOROUGH COUNCIL *v.* WALKER (JOHN) & SONS, LTD., [1934] A. C. 365, H. L.

926a. ——.]—*Re* HEWARD (1845), 2 Dow. & L. 753; *sub nom. Re* BEYWARD, 14 L. J. Q. B. 113.

957. *Add. Annotation :*—**Apld.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

958. *Add. Annotation :*—**Apld.** R. *v.* Harris, [1927] 2 K. B. 587.

965. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

1003. *Add. Annotation :—As to* (3) **Apld.** R. *v.*

PART VI. SECT. 1, SUB-SECT. 1.

80. *Who may issue—Patna High Court.*]—The Patna High Ct., which was constituted long after Specific Relief Act, 1877, had been passed, cannot be said to have inherited any power from the High Ct. of Calcutta to issue a writ of mandamus.—SURAJMULL BRIJLAL *v.* INCOME TAX COMR., BIHAR & ORISSA (1931), I. L. R. 10 Pat. 218.—**IND.**

PART VI. SECT. 1, SUB-SECT. 2.

895 iv. ——.]—The granting or refusal of a mandamus is a matter of discretion.—*Re* PIONEER SAVINGS & LOAN SOCIETY, *Re* REGISTRAR OF COMPANIES, [1928] 1 D. L. R. 830; [1928] 1 W. W. R. 361; 39 B. C. R. 372.—**CAN.**

895 v. —— *Where order not for public benefit.*]—PETERSON *v.* MONTREAL (1928), 31 Q. P. R. 164.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—A.

919 i. *Writ sought for ulterior motive—To satisfy personal enmity & spite—Mandamus refused.*]—*Ex p.* SWIM (1921), 49 N. B. R. 207.—**CAN.**

919 ii. ——.]—Applts. seek a mandamus to compel resp. municipality to accept payment by a third party of an alleged debt of its secretary-treasurer:—*Held:* applts. could not succeed, as they had failed to bring their case within the terms of Article 1141 C.C. or to establish agency of such third party in making the payment for the alleged debtor. On the first point, the debt of the secretary-treasurer was not admitted by resp. & was even contested by the former; it could not then be said that the payment was "for the advantage of the debtor." On the second point, the evidence showed that the payment by the third party was not made by him as agent of the debtor but on his own behalf.—PERRON *v.* CORPORATION DU VILLAGE DU SACRE-CŒUR DE JESUS, [1929] 1 D. L. R. 197; [1928] S. C. R. 326.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—B. (b).

948 ii. ——.]—A writ of *mandamus* will not issue except to command the fulfilment of some duty of a public nature which remains unperformed. If a tribunal, charged by law with the duty of ascertaining or determining facts upon which rights depend, has undertaken the inquiry & announced a conclusion, the prosecutor who seeks a writ of *mandamus* must show that the ostensible determination is not a real performance of the duty imposed by law upon the tribunal: but the correctness or incorrectness of the conclusion reached by the tribunal is beside the question whether the writ lies. It is also beside the question that the determination, although not void, is yet one which, because of some failure to proceed in the manner directed by law, or of some collateral defect or impropriety, is liable to be quashed by a ct. which on appeal, *certiorari* or other process is competent to examine it.—R. *v.* WAR PENSIONS ENTITLEMENT APPEAL TRIBUNAL, *Ex p.* BOTT (1934), 50 C. L. R. 228.—**AUS.**

949 ii. ——.]—An application for a mandamus was dismissed, where it was an attempt to secure the performance of an alleged private right by a public body, & not to secure the performance of any public duty.—R. (BUTLER) *v.* NAVAN URBAN DISTRICT COUNCIL, [1926] I. R. 92, 466.—**IR.**

PART VI. SECT. 1, SUB-SECT. 3.—C.

954 vi. ——.]—Before a mandatory order can be obtained, appct. must show that he has some specific right in law to enforce the duty, performance of which he asks the aid of the ct. to compel.—*Re* WATSON & COBOURG TOWN, [1924] 4 D. L. R. 459; 55 O. L. R. 531.—**CAN.**

954 vii. ——.]—R. *v.* REGISTRAR OF TITLES, *Ex p.* MOSS, [1928] V. L. R. 411; 49 A. L. T. 275; [1928] Argus L. R. 293.—**AUS.**

954 viii. ——.]—When the extraordinary remedy of mandamus is sought to compel a municipality to issue a building permit the applicant must show that there was a reasonably strict compliance with the provisions of the bye-law regulating the issue of such permits. In the present case an order granting such a mandamus was set aside on appeal because the bye-law was not complied with in that the application for the permit was not made by the "owner"; although on the application for the mandamus the relator, who was the owner, swore that the permit application was made on his behalf.—R. *v.* WINNIPEG, [1930] 1 W. W. R. 914; 4 D. L. R. 205; 38 Man. L. R. 621.—**CAN.**

L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

1022. *Add. Annotation :*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

1063. For the words "the affidavit on which it was granted was irregular" read "there was no affidavit & the proceedings were irregular."

1066. *Add. Citation :—sub nom.* R. *v.* POPLAR BOROUGH COUNCIL, *Ex p.* LONDON COUNTY COUNCIL, R. *v.* POPLAR BOROUGH COUNCIL, *Ex p.* METROPOLITAN ASYLUMS BOARD, 2 B. R. A. 810.

Add. Annotation :—As to (2) **Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

1088. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

1090. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

1091. *Add. Annotation :*—**Refd.** R. *v.* Leicester JJ., *Ex p.* Allbrighton, [1927] 1 K. B. 557.

1092. *Add. Annotation :*—**Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker (John) & Sons, Ltd. (1934), 151 L. T. 42.

1095. *Add. Annotation :*—**Consd.** *Re* Wingate's Patent (1931), 47 T. L. R. 541.

1108. *Add. Annotation :—As to* (1) & (2) **Consd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 102 L. J. K. B. 113.

1141a. Income Tax Act, 1918 (c 40), s. 125, Sched. A., No. V., rr. 7, 8—Remedy by way of appeal.]—As a result of information disclosed in connection with a claim to relief for the year 1920–21 under the above r. 8 the Inspector of Taxes discovered that the rents of certain properties had been increased during that year & that, by the above r. 7 (2), the owners were not entitled to the deductions in respect of repairs which had previously been granted from the Sched. A. assessments on the properties for that year. Additional assessments to income tax, Sched. A., were accordingly made in respect of the tax undercharged, & the Inspector of Taxes refused to certify the claim under r. 8 on the ground that relief under that rule applied only to assessments which were reduced for purposes of collection under r. 7. Notice of appeal was given by the owners against the additional assessments & against the refusal of the Inspector to certify the claim under r. 8, but at the owners' request the hearing of the appeals was postponed pending the decision of the ct. on rules *nisi*, which the owners had applied for & obtained, calling upon (*a*) the General Comrs. & the Inspector of Taxes to show cause why a writ of prohibition should not issue, prohibiting them from proceeding with the additional assessments ; & (*b*) the Inspector of Taxes to show cause why writs of *certiorari* & mandamus should not issue, quashing his refusal to certify the claim under r. 8, & commanding him to furnish the requisite certificate in connection with the claim :—*Held :* discharging the rules *nisi*, the General Comrs. & the Inspector of Taxes had acted within their jurisdiction, &, as the statute prescribed procedure for appealing against the additional assessments & against the Inspector's refusal to certify the claim under r. 8, prohibition, *certiorari* & mandamus would not lie.—R. *v.* KINGSLAND PARISH INSPECTOR OF TAXES, *Ex p.* PEARSON, KINGSLAND ESTATE, R. *v.* INCOME TAX COMRS. & KINGSLAND PARISH INSPECTOR OF TAXES (1922), 8 Tax Cas. 327.

Annotations :—**Refd.** R. *v.* Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co., [1925] 2 K. B. 250 ; Anderton & Halstead, Ltd. *v.* Birrell, [1932] 1 K. B. 271.

1147. *Add. Annotation :*—**Consd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 102 L. J. K. B. 113.

1150. *Add. Annotations :*—**Consd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287. **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 2 K. B. 832; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485 ; Stepney Borough Council *v.* Walker (John) & Sons, Ltd. (1934), 103 L. J. K. B. 380.

1152. *Add. Annotations :*—**Refd.** R. *v.* Lancashire JJ., *Ex p.* Tyrer, [1925] 1 K. B. 200; Ashton *v.* Wainwright, [1936] 1 All E. R. 805.

1156. *Add. Annotation :—As to* (1) **Apld.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

1162. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1185. *Add. Annotations :—As to* (2) **Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38, *Generally*, **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

1186. *Add. Annotation :*—**Consd.** R. *v.* Central

PART VI. SECT. 1, SUB-SECT. 3.—E. (a).

1004 viii. ——.]—CONDS *v.* KABOTA, [1925] 3 D. L. R. 376; [1925] 2 W. W. R. 620.—**CAN.**

1004 ix. ——.]—A writ of mandamus will not issue unless the party to whom it is directed has power to obey it.—R. *v.* MINSHULL & RHIND (1932), 4 M. P. R. 251 ; 57 C. C. C. 192. —**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—E. (c).

1027 ii. ——.]—Mandamus will not be granted if the person to whom it is directed has no power to obey its directions.—R. *v.* MINSHULL & RHIND (1932), 4 M. P. R. 251 ; 57 C. C. C. 192.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—F. (a).

1038 iv. ——.]—An application for a mandamus was dismissed, where appts. had an adequate alternative remedy.—R. (JOHANNESSON) *v.* CARTIER RURAL MUNICIPALITY, [1922] 2 W. W. R. 670; 68 D. L. R. 741.—**CAN.**

1038 v. ——.]—A mandamus is not available if another remedy is given by statute.—*Re* VIKING MUNICIPAL HOSPITAL DISTRICT NO. 10, [1923] 4 D. L. R. 1123.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—F. (b) viii.

1110 ii. ——.]—Mandamus to a city to remove certain gasoline curb pumps refused since an indictment for nuisance provided the proper remedy. *Re* METRO OIL, LTD. & TORONTO, [1935] 3 D. L. R. 303 ; O. R. 338.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 4.—A.

1157 iv. —— —— ——.]—A mandamus lies against a minister of the Crown to compel the discharge of a duty laid upon him in the interest of the public.—MORIN *v.* PERRON (1927), Q. R. 44 K. B. 181.—**CAN.**

a i. *Income Tax Commissioner—To perform a discretionary act.*]—*Held :* inasmuch as Specific Relief Act, s. 45, did not apply to this High Ct. it has no power to issue a mandamus directing the Income Tax Comr. to do what the Act gives him a discretion to do.—MOHAMMAD FARID-MOHAMMAD SHAFI *v.* LAHORE INCOME TAX COMR. (1927), I. L. R. 9 Lah. 317.—**IND.**

a ii. —— *To state case on points of law not raised at hearing.*]—*Held :* where an assessee seeks for a mandamus from the High Ct. against the Comr. of Income Tax requiring him to state a case on points of law different from those he had urged before the Comr. to state a case, his application cannot be entertained.—A. K. A. C. T. V. CHETTYAR (FIRM) *v.* INCOME TAX COMR. (1926), I. L. R. 6 Ran. 492.—**IND.**

Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

1213. *Add. Annotation :*—**Distd.** Port of London Authority *v.* I. R. Comrs. (1919), 12 Tax Cas. 122.

1217. *Add. Annotations :*—**Refd.** R. *v.* Roberts, *Ex p.* Scurr, [1924] 2 K. B. 695 ; Roberts *v.* Hopwood, [1925] A. C. 578 ; Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

1219. *Add. Annotation :*—**Refd.** Short *v.* Poole Corpn., [1926] Ch. 66.

1221. *Add. Citations :*—3 Nev. & M. K. B. 802 ; 3 L. J. M. C. 117.

1225. *Add. Citations :*—3 L. T. O. S. 180 ; 8 J. P. 662.

1228. *Add. Citation :—sub nom.* R. *v.* LEICESTER, DEPUTIES OF FREEMEN, 15 Q. B. 671 ; 117 E. R. 613.

Add. Annotations :—**Folld.** R. *v.* Monmouth Corpn., R. *v.* Bolton Corpn. (1870), L. R. 5 Q. B. 251. **Refd.** *Ex p.* Portingell, [1892] 1 Q. B. 15 ; R. *v.* Somerset JJ. (1900), 16 T. L. R. 166.

1230a. —— **No fresh grounds for rehearing advanced.**]—Appct. was the owner of certain houses situated in West Norfolk. These houses were entered in the valuation list for 1929 at £30 gross & at £22 rateable value. On July 30, 1929, appct. made a proposal in writing to the rating authority for the amendment of the list under Rating & Valuation Act, 1925 (c. 90), s. 37 (1), with the result that the assessments were reduced to £25 gross & £18 rateable value. Not being satisfied with that decision, appct., acting under sect. 37 (8) of the Act, on Nov. 18, gave notice of appeal to the clerk of the peace, but by reason of delay a copy of such notice was not served on the assessment committee within the period specified in Sched. V., Part I. of the Act & the appeal was withdrawn. A second proposal was then made by appct. on Dec. 30, 1929, for the amendment of the valuation list upon the ground (*inter alia*) that the assessment was excessive, but without proposing what the amendment should be. On Feb. 7, 1930, the rating authority caused notice to be served on the appct. that they intended to object to appct.'s proposal on the ground that the present assessments were fair & reasonable. The proposal then came before the assessment committee on Feb. 18, 1930, when the chairman intimated that the committee refused to give a decision or to hear & determine the said proposal, whereupon the appct. applied for a rule *nisi* for a *mandamus :—Held :* the assessment committee ought in fulfilment of their statutory duty to have heard & determined the application made to them, but appct. had not satisfied the ct. that there were any merits additional to those put forward at the first hearing, & on that ground the ct. in its discretion refused to make the rule absolute. —R. *v.* WEST NORFOLK ASSESSMENT COMMITTEE, *Ex p.* WARD (F. B.) (1930), 94 J. P. 201 ; (1926-31), 1 B. R. A. 418, C. A.

1231. *Add. Citation :*—(1857), 3 W. R. 447.

1247. *Add. Citation :*—6 Ry. & Can. Tr. Cas. 60, D. C.

1269. *Add. Annotation :*—**Consd.** *Re* Barnes Corpn., *Ex p.* Hutter (1932), 97 J. P. 76.

1269. After this case add :—

—— ——.]—*See Re* BARNES CORPN., *Ex p.* HUTTER, ELECTIONS, No. 1109a, *post.*

1269a. —— **After void election.**]—If it appear with sufficient certainty to the ct. that a person has been elected mayor of a borough who is not qualified to accept the office, they will grant a mandamus to the electors to proceed to a new election.—R. *v.* BEDFORD CORPN. (1800), 1 East. 79 ; 102 E. R. 31.

Annotation :—**Consd.** R. *v.* Stoke Damerel, Minister & Churchwardens (1836), 5 Ad. & El. 584.

PART VI. SECT. 1, SUB-SECT. 5.—A. (b).

n i. —— *Architects Registration Board.*]—Where an application by resp. for registration as an architect had been refused by the above Board : —*Held :* mandamus would not lie directing the Board to register resp.—ARCHITECTS REGISTRATION BOARD OF VICTORIA *v.* HUTCHISON, [1925] V. L. R. 195 ; 35 C. L. R. 404 ; 31 Alta. L. R. 93.—**AUS.**

PART VI. SECT. 1, SUB-SECT. 5.—A. (d).

1221 vii. —— *Not to hear case without its jurisdiction.*]—R. *v.* BRINDA, [1924] 3 D. L. R. 1092 ; 57 N. S. R. 323.—**CAN.**

1221 viii. —— *In criminal matter.*]—The Supreme Ct. of Ontario has jurisdiction to mandamus a county ct. judge's criminal ct. to try, according to the procedure of Criminal Code, s. 827, a person against whom an indictment has been found by a grand jury for the county. The fact that no rules have been made as to the issue of a mandamus in a criminal matter does not preclude the Supreme Ct. from exercising its full powers.—A.-G. FOR ONTARIO *v.* DALY, [1924] A. C. 1011 ; 94 L. J. P. C. 21 ; 132 L. T. 210 ; 40 T. L. R. 814.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—A. (e).

e i. ——.]—The Supreme Ct. of Ontario has jurisdiction to grant a mandamus to a judge of a division ct. to hear an appeal from a conviction of deft., by a police magistrate, of an offence contrary to Inland Revenue Act, 1906, s. 180 (f).—R. *v.* SPEIRS (1924), 55 O. L. R. 290.—**CAN.**

f i. —— *Rating appeal.*]—The Council of a municipal corpn. had from time to time delayed the hearing of an appeal against an assessment for rates, & finally refused to hear it until after the determination of the Local Ct. of an appeal from the decision of the Council on an appeal against rates made by another ratepayer in respect of different land :—*Held :* a mandamus lay to compel the Council to hear the appeal.—*Re* PORT PIRIE CORPN., *Ex p.* EXECUTOR TRUSTEE & AGENCY CO. OF SOUTH AUSTRALIA, LTD., [1934] S. A. S. R. 97.—**AUS.**

PART VI. SECT. 1, SUB-SECT. 5.—A. (g).

1237 ii. —— ——.]—*Re* HOLLAND (1875), 37 U. C. R. 214.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—A. (h).

sp. *To sign record of acquittal—After retirement of judge.*]—A retired judge of a county ct. criminal ct. cannot be compelled by mandamus to sign a record of acquittal for lack of jurisdiction, after a long interval of time. If there is any right to have the record signed, the only competent person is the present judge.—*Re* HALL (1922), 38 Can. Crim. Cas. 55.—**CAN.**

sq. *To grant administration—Surrogate Court.*]—The Surrogate Ct. is subject to mandamus from the Ct. of King's Bench.

On the application by the daughter & sole heir of an intestate for a grant of administration, the Surrogate Ct. judge offered to grant temporary administration to a trust co. The appct. refused to accept this offer, & applied to the Ct. of King's Bench for a mandamus requiring the Surrogate Ct. to issue letters of administration in the terms of her petition. No material was produced at the hearing of this application contradicting the statements in the affidavit filed in support of the application or showing that there was any lack of qualification or capacity in the appct., or that there was in fact any opposition to her petition, or that any one else had any interest in the estate :—*Held :* an order directing the judge of the Supreme Ct. & the clerk thereof to issue letters of administration to the appct. should be granted.—*Re* MACDONALD ESTATE, *Re* SURROGATE COURTS ACT (Man.), [1929] 3 W. W. R. 693 ; *varied*, [1930] 1 W. W. R. 242 ; 2 D. L. R. 177 ; 38 Man. L. R. 446.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—B.

1270 iv. —— *Not where dismissal justified.*]—*Re* MONAGHAN (1924), 57 N. S. R. 242.—**CAN.**

1270 v. ——.]—ADAMS RIVER LUMBER CO. *v.* KAMLOOPS SAWMILLS, LTD. (1921), 70 D. L. R. 863 ; 30 B. C. R. 354.—**CAN.**

1290a. —— Papers relating to litigation—Right of councillor.]—A borough council & a club, the owners of a large estate in the borough, made an agreement with regard to the development of the land. The matter attracted public interest, & an action against the council was commenced by the A.-G. at the relation of a private individual claiming a declaration that the agreement was *ultra vires*. Appct., a councillor of the borough, complained that he had been refused access to the papers having reference to the action. The conduct of the action was referred to a special committee of the council, upon which appct. was invited to serve, but he declined to do so. Appct. then asked for production of the Town Clerk's notes on certain documents connected with the case, minutes of the committee which had negotiated the agreements with the club, & all correspondence with the club. Production of these documents was refused, the council acting upon the advice of leading counsel:—*Held:* the right of a councillor to production is restricted to the production of such documents as will enable him properly to carry out his duties as councillor, &, upon the facts, appct. had not by the refusal to disclose the documents here in question been prevented from the proper discharge of any of his duties. On the other hand if the documents had been disclosed, the interests of the council in the pending litigation might have been prejudiced. Appct. was not, therefore, entitled to production of the documents.—R. *v.* BARNES BOROUGH COUNCIL, *Ex p.* CONLAN, [1938] 3 All E. R. 226; 82 Sol. Jo. 626; 36 L. G. R. 524.

1293. *Add. Annotation:—As to* (1) **Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1308. *Add. Annotation:*—**Refd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

1310. *Add. Annotation:*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd. (1934), 103 L. J. K. B. 380.

1317. *Add. Annotation:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

1323. *Add. Annotation:* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1337. *Add. Annotation:* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1375. *Add. Annotation:—As to* (2) **Apld.** R. *v* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

1433a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

PART VI. SECT. 1, SUB-SECT. 5.—D.

1292 i. *General rule—Bill pending to repeal Act.*]—Where a duty is imposed upon a local authority to carry out an Act, the fact that a bill has been introduced to repeal that Act does not justify the local authority in refusing to carry out the duty, & mandamus lies to compel performance.—R. *v.* RATHMINES URBAN DISTRICT COUNCIL, [1928] I. R. 260.—**IR.**

1294 ii. ——.]—Health Act, 1919, s. 147, gives the Commission of Public Health power to order a municipal council to combine with other councils in providing, equipping & maintaining a common hospital. On the refusal by a council to obey such an order the Commission obtained an order *nisi* for the issue of a writ of mandamus:—*Held:* where the issue of a writ is obligatory under the statute, vagueness in the order sought to be enforced is immaterial & the writ must issue.—R. *v.* ROCHESTERSHIRE COUNCIL, *Ex p.* PUBLIC HEALTH COMMISSION, [1928] V. L. R. 492; [1928] Argus L. R. 315.—**AUS.**

PART VI. SECT. 1, SUB-SECT. 5.—E.

e i. —— *To register transfer.*]—R. *v.* REGISTRAR OF TITLES, *Ex p.* MOSS, [1928] V. L. R. 411; 49 A. L. T. 275; [1928] Argus L. R. 293.—**AUS.**

sr. *Municipal council—Imposing conditions to permission to erect petrol pump outside legitimate scope of council's functions.*]—*Held:* a mandamus should be granted.—*Re* RANDWICK MUNICIPAL COUNCIL, *Ex p.* BOWSER & CO. (1927), 27 S. R. N. S. W. 209; 44 N. S. W. W. N. 57.—**AUS.**

st. *Mayor—Refusing to put motion to meeting.*]—R. *v.* FOLEY, *Ex p.* MILLER, [1928] V. L. R. 1.—**AUS.**

sv. *Municipal corporation—Refusal to accept payment of money.*]—Applts. sought a mandamus to compel the resp. municipality to accept payment by a third party of an alleged debt of its secretary-treasurer:—*Held:* applts. could not succeed, as they had failed to bring their case within the terms of art. 1141 C. C. or to establish agency of such third party in making the payment for the alleged debtor.—PERRON *v.* CORPN. DU VILLAGE DU SACRE-KŒUR DE JESUS, [1929] 1 D. L. R. 197; [1928] S. C. R. 326; *affg.*, 44 Que. C. B. 400.—**CAN.**

sw. *Local authority—To take proceedings under local Act.*]—A writ of mandamus will not issue against a local authority to compel it to institute legal proceedings for alleged contravention of a local Act.—ELWOOD *v.* BELFAST CORPN. (1923), 57 I. L. T. 138.—**IR.**

sz. *Official seat outside jurisdiction of court.*]—In respect of a function which must be performed by a State official in respect of a person domiciled within Natal, the ct. has jurisdiction to order the exercise of that function by him, notwithstanding that the official seat of that official is outside the jurisdiction of the ct.—*Ex p.* GREET, [1934] N. L. R. 118.—**S. AF.**

sd. *As to manner of performance—Mandamus not granted.*]—Mandamus does not lie as to the *manner* in which a public duty is to be performed, *e.g.* the proper method of assessment of corporate income.—*Ex p.* MCSWEENEY, [1935] 4 D. L. R. 237; 10 M. P. R. 122; 5 F. L. J. (Can.) 84.—**CAN.**

sf. *Council levying rate insufficient to meet bond interest.*]—R. (LARSON) *v.* DAVISON & CALGARY CITY, [1936] 3 W. W. R. 23.—**CAN.**

PART VI. SECT. 2.

1326 iv. —— ——.] — CASTLEMAN *v.* JOHNSON, [1921] 3 W. W. R. 830; 70 D. L. R. 862; 30 B. C. R. 354.—**CAN.**

sk. *To levy tax to pay full interest on municipal bonds.*]—Mandamus does not lie to compel a city council to enact a bye-law levying a tax to pay full interest on municipal bonds.—*Re* LARSEN, [1936] 3 D. L. R. 753; *revsd. sub nom.* R. (LARSEN) *v.* DANSON, [1936] 4 D. L. R. 816.—**CAN.**

PART VI. SECT. 3.

1341 i. *When action for mandamus pending.*]—An interlocutory mandamus should not be granted, unless it can be shown that pltf. will suffer injury by waiting for the result of the trial. Proof of the claim for damages is not a condition precedent to the granting of an interlocutory mandamus.—RIDINGS *v.* ELMHURST SCHOOL TRUSTEES (Sask.), [1926] 4 D. L. R. 81; [1926] 2 W. W. R. 752.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.—A. (a).

1350 i. *Necessary parties — Mandamus against municipal corporation.*]—In mandamus proceedings against a municipal corpn. it is the better practice to make parties to the proceedings the members of council & officers whose alleged delinquencies are involved.—R. (READ) *v.* PEMBINA MUNICIPAL DISTRICT NO. 552, [1922] 3 W. W. R. 857; 70 D. L. R. 559.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.—A. (b).

sd. *Not judge in chambers.*]—Order *nisi* for mandamus must be granted by a full ct., not by a judge in chambers.—*Ex p.* MCSWEENEY, [1935] 3 D. L. R. 780; 9 M. P. R. 276; 5 Can. L. Jo. 53.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.—A. (d) i.

1371 i. *Application must be prompt.*—It is within the discretion of the ct. to grant or refuse a writ of *mandamus*. It will be refused if there is serious unexplained delay in prosecuting the claim, although the Statute of Limitations is not applicable to an action for *mandamus*.—CANADIAN FERTILIZER CO., LTD. *v.* MARITIME FARMERS CO OPERATIVE, LTD., [1934] 2 D. L. R. 424; 7 M. P. R. 10.—**CAN.**

1373 i. *Effect of delay—Poverty of applicant.*]—An appct. for a writ of mandamus must apply to the ct. within a reasonable time of the happening of the event on which he grounds his claim, &, in view of the benefits conferred on poor persons by Poor Persons Legal Remedies Act, 1918, want of means is not a sufficient excuse for unreasonable delay.—*Re* MANUFACTURERS' MUTUAL INSURANCE, LTD., *Ex p.* ANLEZARK (1931), 31 S. R. N. S. 53; 48 N. S. W. W. N. 24.—**AUS.**

1466a. —— **Cross-examination of deponent—When ordered—Only in very special circumstances.**] —R. *v.* KENT JJ., *Ex p.* SMITH, [1928] W. N. 137, D. C.

1486a. —— ——.]—R. *v.* HANCOCK, ALDERMAN OF NORTH WEST WARD OF BOROUGH OF POOLE (1839), 3 J. P. 723.

1517. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd. (1934), 103 L. J. K. B. 380.

1566. On sixth line of headnote, after " borough " insert " to raise a rate."

1580a. —— ——.]—Undoubtedly the principle i true, that returns must be certain, & not argumentative (LORD MANSFIELD, C.J.).—R. *v.* LYME REGIS CORPN. (1779), 1 Doug. K. B. 177 ; 99 E. R. 116.

Annotations :—**Refd.** R. *v.* Brewer's Case (1824), 4 Dow. & Ry. K. B. 492 ; R. *v.* Bowman (1834), 6 C. & P. 337.

1644a. —— ——.]—The mandamus issued, reciting the book to be in deft.'s custody, power, & control ; & was tested the day on which the rule for the mandamus was made absolute. Return, that the book was not at the time of the *teste*, nor since, nor at the time of the return, in the custody, etc. The ct. refused to take the return off the file, or quash it, on motion, upon affidavit of the facts as above stated, & of the belief of deponents that deft.'s object was to evade the process of the ct. But the ct. refused deft. the costs of the last motion, though moved with costs.—R. *v.* PAYN (1837), 6 Ad. & El. 392 ; 1 Nev. & P. K. B. 524 ; Nev. & P. M. C. 214 ; Will. Woll. & Dav. 142 ; 6 L. J. M. C. 62 ; 1 J. P. 37 ; 1 Jur. 54 ; 112 E. R. 150.

1726a. —— ——.]—A peremptory writ of mandamus was duly served on ten members of a borough council in 1897, commanding the corpn. to obey an order of the Local Govt. Board limiting a time for the carrying out of a sewerage scheme, pursuant to a local Act passed in 1885. The writ after service was left in the hands of one of the members, who lost it. In Mar. 1903, of the forty-eight members of the council only seven remained who were originally served in 1897, & in that month all forty-eight members were served with an order of the ct. to make a return to the peremptory writ served in 1897, a copy of which accompanied the order. On a rule *nisi* to show cause why the return should not be taken off the file, & calling on the forty-eight individual members to show cause why writs of attachment should not issue against them for disobedience to the peremptory writ, the ct. was of opinion that, under the circumstances, all forty-eight members were duly served with the peremptory writ in Mar. 1903. It was ordered that writs of attachment should issue against the seven members originally served, the writs to lie in the Crown Office until a certain date, leaving the onus on the seven members to satisfy the ct. that the writ was obeyed. The matter was allowed to stand over as against the other forty-one.—R. *v.* WORCESTER CORPN. (1903), 68 J. P. 130 ; 2 L. G. R. 51, D. C.

1736. *Add. Annotation :*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

1739. After this case add " —— ——.]—*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 31 (1) (*a*)."

1740. *Add. Citation :*—2 B. R. A. 639.

Add. Annotation :—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

1745a. ——.]—Where a party, required by law to pronounce a decision on certain points, is brought before the ct. by a motion impugning such decision, the general rule is that he shall have costs if the application fails.—R. *v.* BRIDGNORTH CORPN. (1839), 10 Ad. & El. 66 ; 2 Per. & Dav. 317 ; 8 L. J. M. C. 86 ; 8 L. J. Q. B. 236 ; 3 J. P. 674 ; 3 Jur. 384 ; 113 E. R. 26.

Annotation :—**Apld.** R. *v.* Chipping Wycombe Corpn. (1875), 44 L. J. Q. B. 82.

1749a. —— ——.]—R. *v.* VAYLE (1844), 8 J. P. Jo. 212.

1766. *Add. Citation :*—1 Q. B. 751.

1805a. —— **Costs of obtaining writ.**] — Two parishioners, for themselves & other parishioners, entered traverses to the denials to a writ for mandamus. In taxing the costs, the costs of obtaining the writ were included, without applying to the ct. :—*Held :* to be right.—R. *v.* FALL (1842), 1 Q. B. 653 ; 13 L. J. Q. B. 187 ; 113 E. R. 1282 ; *sub nom.* FALL *v.* R., 2 Gal. & Dav. 803, Ex. Ch.

1809. *Add. Annotations :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53 ; Swift *v.* Board of Trade, [1926] 2 K. B. 131.

Part VII.—Quo Warranto.

1837. *Add. Annotations :*—**Refd.** Metcalfe *v.* Boyce, [1927] 1 K. B. 758 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686.

For cross-reference at end of section read " *See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 48."

PART VI. SECT. 6, SUB-SECT. 5.—C. (e).

sw. *To named county court judge—To hear appeal from conviction—Compliance by another judge—Prohibition.*]—*Re* R. *v.* POCHREBNY, R. *v.* STACPOOLE & STUBBS, [1930] 3 W. W. R. 48 ; *sub nom. Ex p.* POCHREBNY, 54 Can. C. C. 185 ; 39 Man. L. R. 177.—CAN.

PART VI. SECT. 6, SUB-SECT. 9.

sm. *Affidavit of Minister—Whether admissible.*]—On appeal from an order that a writ of *mandamus* do issue directed to the Minister of Lands commanding him to determine the rights of an appct. for a lease of a certain lot & of an objection thereto, & to proceed in accordance with sect. 139 of Land Act, an application to put in an affidavit of the Minister to show what actually took place before him was refused.—R. *v.* MINISTER OF LANDS (1926), 37 B. C. R. 106.—CAN.

1846. *Add. Annotation:* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1847. *Add. Annotation:* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1848. *Add. Citation:—sub nom.* Carter's (Sir John) Case, Lofft, 516.

1852. *Add. Annotation:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

1876. *Add. Annotation:*—**Consd.** *Re* Barnes Corpn., *Ex p.* Hutter (1932), 97 J. P. 76.

1952. *Add. Annotation:* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1954. *Add. Annotation:* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1960. Add the following para.:—

The ct. will not make such a rule absolute where a relator appeared to be a man in low & indigent circumstances, & there were strong grounds of suspicion that he was applying, not on his own account, or at his own expense, but in collusion with a stranger.

2007. *Add. Annotation:* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

2046a. —— **Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.**]—PRACTICE NOTE, [1926] W. N. 308.

2088. *Add. Citation:*—5 Dow. & L. 249.

2093. *Add. Annotation:*—**Apld.** R. *v.* L. C. C., *Ex p.*, Swan & Edgar (1927) (1929), 141 L. T. 590.

PART VII. SECT. 2.

1840 i. *Discretion of court—Court bound to consider all circumstances.*]—On application for a *quo warranto*, the ct. will consider whether in all the circumstances the public interest calls for the exercise of its discretion in favour of appct.—R. (BOUDROT) *v.* JOHNSTON, [1923] 2 D. L. R. 278; 56 N. S. R. 214.—**CAN.**

1840 ii. —— ——.]—Where an application for *quo warranto* is made to the Ct. of K. B., the granting or withholding of leave is in the discretion of the ct., & the discretion ought to be exercised upon a sound consideration of the particular circumstances of each case.—R. (MATHESON) *v.* HUBER, [1924] 2 D. L. R. 905; 2 W. W. R. 596.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.—A. (d).

1871 iii. ——.]—An application for a *quo warranto*, to test the validity of the appointment of an inspector, on the ground that the appointment was illegal because there was already an inspector in office, was dismissed, as the municipality had power to appoint "one or more inspectors."—R. *v.* THIBAULT (1926), 59 N. S. R. 93.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.—F.

1908 iiia. —— —— ——.]—On a motion for an order *nisi* for information in the nature of *quo warranto* in respect of a recount on the election of a member of the House of Commons the ct. should not exercise its discretion to grant the order, since the Dominion Controverted Elections Act provides another remedy.—R. *v.* ELLIS (1935), 50 B. C. R. 325.—**CAN.**

sx. —— *Failure to post name of candidate.*]—Where after being legally nominated as a councillor for a rural municipality, a candidate informs the clerk & returning officer that he is considering withdrawing, but does not withdraw, & the returning officer does not post his name as one of the nominees but declares another candidate elected by acclamation, a *quo warranto* proceeding is the correct method for testing the latter's right to the office.—R. (MACKAY) *v.* GOOD, [1922] 1 W. W. R. 712; 66 D. L. R. 763.—**CAN.**

sy. —— *Disqualification of candidate.*]—Where a person elected to a municipal office is at the time of his election disqualified for election, the election can only be attacked by an election petition; but where he is disqualified from holding municipal office his case comes under the category of continuing disqualifications which afford good ground for a proceeding by *quo warranto*.—R. (NUTTALL) *v.* BROWN [1923] 2 W. W. R. 511; 33 Man. L. R. 184.—**CAN.**

sz. —— *Statutory remedy available.*]—The remedy by *quo warranto* is not excluded by another statutory remedy, unless the Legislature has so declared expressly or by necessary implication.—R. (MCARTHUR) *v.* MAYCOCK, [1924] 4 D. L. R. 1222; 3 W. W. R. 540.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.—B. (a).

t i. —— —— *Proof of interest.*]—R. *v.* MCKENZIE (1851), 2 C. L. Ch. 36.—**CAN.**

sc. *Validity.*]—Notwithstanding the repeal in Victoria of provisions corresponding to those of 9 Anne, c. 25, proceedings by way of information of *quo warranto* are maintainable in Victoria at the suit of a private person as relator under the provisions of Ord. LIII., rr. 31–39, of the Rules of the Supreme Ct., 1916.—LISTON *v.* DAVIES (1937), 57 C. L. R. 424; 43 Argus L. R. 305; [1937] V. L. R. 222; 11 A. L. J. 75.—**AUS.**

PART VII. SECT. 4, SUB-SECT. 2.—B. (b).

c i. ——.]—R. (MATHESON) *v.* HUBER, [1924] 2 D. L. R. 905; 2 W. W. R. 596.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.—B. (c).

1958 iii. —— ——.]—R. *v.* ADAMS (1850), 1 C. L. Ch. 203.—**CAN.**

1969 i. *What is acquiescence.*]—Acquiescence by a relator in the alleged offence, to be fatal, must be acquiescence at the time the alleged offence is committed. The subsequent conduct of a relator in agreeing to overlook the equal alleged guilt of others does not constitute disqualifying acquiescence.—R. (MATHESON) *v.* HUBER, [1924] 2 D. L. R. 905; 2 W. W. R. 596.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.

1990 i. *Effect of delay.*]—Unnecessary delay in making an application for a rule *nisi* for *quo warranto* is a bar to that remedy. A delay from Oct. to Apr., the ct. having sat twice in the meantime, is a delay of such length.—*Re* CROSMAN & MCLEOD'S, ELECTION, *Ex p.* HOWARD (1922), 70 D. L. R. 589.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 4.—A

sa. *Necessity for — That motion made at instance of relator.*]—On a motion for a *quo warranto*, an affidavit stating that the motion is made at the instance of the relator must be filed before the service of the notice of motion or petition, & where it has not been so filed the motion will fail.—R. (MACKAY) *v.* GOOD, [1922] 1 W. W. R. 712; 66 D. L. R. 763.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 4.—C.

2017 i. *Acceptance of office—Acceptance or acting in office need not be stated.*]—R. *v.* STEPHENSON (1851), 1 C. L. Ch. 270.—**CAN.**

PART VII. SECT. 5.

2025 ii. —— ——.]—An appeal from an order *nisi* for a *quo warranto* information. Appct. sought the removal of a police comr. from his office on the ground that he had been convicted of a criminal offence. The objections to the order appealed from were: (*a*) that there had been too long a delay, about seven weeks, in making the application after the relator discovered the alleged disqualification; (*b*) that an amendment to the notice of motion, by which the citation of the sects. of the Act which applied to the case were changed, should not have been allowed; (*c*) that the alleged convictions, which were by a police magistrate, were not properly proved:—*Held:* all the objections should be overruled & the appeal dismissed.—R. (JONES) *v.* BURGESS, [1932] 1 W. W. R. 662; 2 D. L. R. 181; 45 B. C. R. 132; 58 C. C. C. 38.—**CAN.**

1 i. —— ——.]—R. (MCARTHUR) *v.* DOUCET, [1924] 3 D. L. R. 812.—**CAN.**

1 ii. —— *Burden of proof.*]—On the hearing of an information in the nature of *quo warranto* proceedings to oust resp. from his office as one of the committee of adjustment under Dairy Products Sales Adjustment Act, the onus is on resp. to prove that he is entitled to hold the office so attacked.—R. *v.* SHANNON (1930), 43 B. C. R. 129.—**CAN.**

sb. *Defence—Failure to answer objection—Is admission of truth of objection.*]—R. *v.* SCOTT (1851), 2 C. L. Ch. 98.—**CAN.**

sc. *Service of notice of motion—Time for—Mistake as to day of week subsequently amended.*]—R. *v.* PONSFORD (1902), 3 O. L. R. 410; 22 C. L. T. 146; 1 O. W. R. 645.—**CAN.**

Part VIII.—Prohibition.

2109. *Add. Annotation :*—**Consd.** R. *v.* Daily Herald, Editor, etc., & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News, Editor, etc., & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

2110. *Add. Annotations :*—**Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38; Hunter *v.* Stadtische Hochseeflscherei Gemeinnützige Gesellschaft (1925), 133 L. T. 488; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

2112. *Add. Annotation :*—*As to* (1) **Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38.

2121. *Add. Annotation :*—*As to* (2) **Folld.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2129. *Add. Annotations :*—**Apld.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38. **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2130. *Add. Annotations :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Powell, *Ex p.* Camden, [1925] 1 K. B. 641; *Ex p.* Wenham (1934), 78 Sol. Jo. 414.

2132. *Add. Annotations :*—**Consd.** R. *v.* Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co., [1925] 2 K. B. 250; R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397. **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2132a. —— —— ——.]—R. *v.* KINGSLAND PARISH, INSPECTOR OF TAXES, *Ex p.* PEARSON, KINGSLAND ESTATE, R. *v.* INCOME TAX COMRS. & KINGSLAND PARISH INSPECTOR OF TAXES, No. 1141a, *ante*.

2142a. ——.]—A writ of prohibition will not lie to restrain justices in petty sessions from enforcing a warrant of imprisonment on an order for payment of rates where no remedy of a preventive, as distinct from a corrective, nature can result from the issue of the writ.—R. *v.* NORFOLK JJ., *Ex p.* DAVIDSON (1925), 69 Sol. Jo. 558, D. C.

2149a. ——.]—Appcts. having obtained a rule for a writ to prohibit the General Comrs. from making, allowing, confirming, enforcing, or otherwise proceeding upon an assessment to income tax :—*Held :* prohibition would not lie to the General Comrs., who had acted in accordance with their statutory duty in making the assessment & had not exceeded their jurisdiction.—R. *v.* SWANSEA INCOME TAX COMRS., *Ex p.* ENGLISH CROWN SPELTER CO., [1925] 2 K. B. 250; 94 L. J. K. B. 718; 133 L. T. 143; 41 T. L. R. 505; 9 Tax Cas. 437; *sub nom.* R. *v.* INCOME TAX GENERAL COMRS., *Ex p.* ENGLISH CROWN SPELTER CO., LTD., 69 Sol. Jo. 606.

2168. *Add. Annotations :*—**Apprvd.** R. *v.* North, *Ex p.* Oakey, [1927] 1 K. B. 491. **Consd.** Estate & Trust Agencies (1927), Ltd. *v.* Singapore Improvement Trust, [1937] 3 All E. R. 324.

PART VIII. SECT. 1.

2109 i. *Whether grantable ex debito justitiæ—On excess or want of jurisdiction—Apparent from proceedings.*]—Where want of jurisdiction is apparent on the face of the proceedings a stranger is entitled to a writ of prohibition, *ex debito justitiæ*.—R. *v.* KNYVETT, *Ex p.* WEBER (1928), 22 Q. J. P. 138.—**AUS.**

PART VIII. SECT. 2.

2127 ii. —— —— ——.]—A candidate aggrieved by proceedings of the judge on a recount cannot resort to prohibition as he has other statutory remedies.—PLANTE *v.* FOREST, [1936] 1 D. L. R. 706; *revsd.*, [1936] 4 D. L. R. 627.—**CAN.**

h i. —— —— ——.]—MINISTER FOR LABOUR & INDUSTRY (N. S. W.) *v.* MUTUAL LIFE & CITIZENS ASSURANCE CO., LTD. (1922), 30 C. L. R. 488; 28 Argus L. R. 252; 22 S. R. N. S. W. 610; 39 N. S. W. W. N. 94; (1922), N. S. W. Ind. Arbn. Cas. 20.—**AUS.**

PART VIII. SECT. 4, SUB-SECT. 1.

a i. —— *Interference with discretion of judge.*]—*Ex p.* BORG (1928), 28 S. R. N. S. W. 564; 45 N. S. W. W. N. 167. —**AUS.**

a ii. ——.]—Until a charge is preferred & dealt with by trial or stay in the ct. to which an accused has been committed for trial, he cannot be committed for trial again for the same offence. Where a right of appeal exists, an order of prohibition will issue only if something has been done contrary to the laws of the land or so vicious as to violate some fundamental principle of justice. Once it is conceded that a magistrate has jurisdiction, a mistaken exercise thereof is a ground for appeal & not for prohibition. Prohibition has always been used to prevent inferior cts. from acting without authority & not to remedy wrong decisions by them.—*Re* FRASER & HALPIN, [1933] 1 W. W. R. 255; 1 D. L. R. 781; 59 C. C. C. 230.—**CAN.**

a iii. ——.]—R. *v.* FODOR, [1938] 1 W. W. R. 497; 2 D. L. R. 290; 8 F. L. J. (Can.) 19.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 2.

2150 vi. ——.] — Prohibition is granted where there is want of jurisdiction in an inferior ct.—ROSENBERG *v.* THE MACCABEES, [1923] 2 W. W. R. 320.—**CAN.**

2150 vii. ——.]—*Re* WOODROOF, [1925] 3 D. L. R. 966; 44 Can. Crim. Cas. 199.—**CAN.**

2150 viii. ——.]—*Re* R. *v.* LAMBTON (Ont.) (1926), 46 Can. Crim. Cas. 13.—**CAN.**

2150 ix. ——.]—Prohibition should not issue, unless it is clear on the face of the proceedings that there is want of jurisdiction. — CHILDREN'S AID SOCIETY OF ST. ADELARD *v.* STE. ROSE RURAL MUNICIPALITY (Man.), [1926] 4 D. L. R. 466; [1926] 3 W. W. R. 8; 46 Can. Crim. Cas. 305.—**CAN.**

2150 x. ——.]—The writ of prohibition may be resorted to only where there is a complete lack of jurisdiction. —R. *v.* DER (Man.), [1927] 4 D. L. R. 1065; [1927] 3 W. W. R. 529; 49 Can. Crim. Cas. 57.—**CAN.**

2150 xi. *S. P.* R. *v.* JOYCE, *Ex p.* MEREDITH, [1927] V. L. R. 481; 49 A. L. T. 57; [1927] Argus L. R. 348.—**AUS.**

2150 xii. ——.]—GREVAS *v.* ALMAS, [1936] 2 W. W. R. 644.—**CAN.**

c ii. —— —— *Court having power to amend—No prohibition.*]—In the style of cause in a county ct. action the word "company" in plff.'s name was abbreviated as "co." A default judgment was entered, & five years thereafter deft. applied for an order for a writ of prohibition on the ground that there was no plff., in that there was no such person or co. by said name, & therefore the county ct. was without jurisdiction. An order was made staying all further proceedings in the action & directing the issue of a writ of prohibition. On appeal :—*Held :* the appeal should be allowed; the case was one where jurisdiction was apparent on the face of the proceedings, with deft. alleging a latent want of jurisdiction; & this latent want of jurisdiction, if it be such, was well within the powers of amendment under sect. 25 of County Cts. Act, R. S. B. C., 1924; the writ of prohibition should not have issued but the application should have been enlarged or refused to give plff. an opportunity to amend. —CONTINENTAL MARBLE CO., LTD. *v.* LANGS, [1937] 3 W. W. R. 336; 4 D. L. R. 39; 52 B. C. R. 47.—**CAN.**

2161 ix. ——.]—Prohibition does not lie to a magistrate where there is no lack of jurisdiction.—R. (FRASER) *v.* HALPIN, [1933] 1 D. L. R. 781; 59 C. C. C. 230; [1933] 1 W. W. R. 255.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 4.—A

2184 iv. —— ——.]—*Re* WILTON FARMERS' CO-OPERATIVE ASSOCN. *v.* BURGESS, [1924] 4 D. L. R. 435; 55 O. L. R. 534.—**CAN.**

2184 v. —— ——.]—The extraordinary remedy of prohibition cannot be invoked as a means of appealing from the decision of a county ct. judge when the question which he decided was within his jurisdiction to determine. The procedure proper to be adopted is an appeal to this ct.—MCKEE *v.* HALVERSON, [1938] 1 W. W. R. 465; 2 D. L. R. 201; 7 F. L. J. (Can.) 276.—**CAN.**

2187a. ——.]—In the case of the misinterpretation of an Act by an inferior ct., the consideration of which arises incidentally in the course of a proceeding which is confessed to be within its jurisdiction, a prohibition will not lie, unless it be made appear to the superior ct. that the party applying for the prohibition has, in the course of the proceedings in the inferior ct., alleged the grounds for a contrary interpretation of the Act on which he applies for the prohibition, & that the inferior ct. has proceeded notwithstanding such allegation.—HOME *v.* CAMDEN (EARL) (1795), 6 Bro. Parl. Cas. 203; 2 Hy. Bl. 533; 126 E. R. 687; *affg.* S. C. *sub nom.* CAMDEN (LORD) *v.* HOME (1791), 4 Term Rep. 382.

Annotations:—**Consd.** Gould *v.* Gapper (1804), 5 East, 345. **Distd.** Wadsworth *v.* Spain (1851), 17 Q. B. 171. **Apld.** R. *v.* Greenwich County Court Judge (1888), 60 L. T. 248. **Refd.** Gare *v.* Gapper (1803), 3 East, 472; Veley *v.* Burder (1841), 12 Ad. & El. 265; *Re* Appledore Commutation (1845), 8 Q. B. 139; Egyptian Bonded Warehouses Co. *v.* Yeyasu Goshi Kaisha, [1922] 1 A. C. 111.

2196. *Add. Annotation:*—**Apld.** McPherson *v.* McPherson, [1936] A. C. 177.

2200. *Add. Annotations:*—**Consd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38; R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2206. Add the following para.:—

But at the suit of the King, prohibition lies.

2220. *Add. Annotations:*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Health Minister, *Ex p.* Davis (1929), 141 L. T. 6.

2221. *Add. Annotations:*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Health Minister, *Ex p.* Davis, [1929] 1 K. B. 619.

2237. *Add. Annotation:*—**Consd.** R. *v.* Daily Herald, Editor, etc., & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News, Editor, etc., & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

2254. *Add. Annotations:*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Health Minister, *Ex p.* Davis (1929), 141 L. T. 6.

2287. *Add. Annotation:*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2287a. Assessment committee.]—A rating authority had appointed a sub-committee to fix the values of properties in the district for the purpose of the preparation of the valuation list. They appointed P. & G. members thereof, & subsequently appointed the same two persons as their representatives on resp. assessment committee. The applicant had given notice of objections to his assessment to resp. committee, & on learning the above facts, obtained a rule *nisi* for a prohibition to that committee from hearing & determining his objection:—*Held:* a writ of prohibition would lie to an assessment committee.—R. *v.* NORTH WORCESTERSHIRE ASSESSMENT COMMITTEE, *Ex p.* HADLEY, [1929] 2 K. B. 397; 98 L. J. K. B. 605; 141 L. T. 557; 93 J. P. 199; 45 T. L. R. 525; 27 L. G. R. 458; (1926-31), 1 B. R. A. 279.

Annotation:—**Refd.** R. *v.* Salford Assessment Committee, [1937] 2 K. B. 1.

2289. *Add. Annotation:*—**Consd.** *Re* Wingate's Patent, [1931] 2 Ch. 272.

2290. *Add. Annotations:*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1932), 48 T. L. R. 296; Denby & Sons, Ltd. *v.* Minister of Health, [1936] 1 K. B. 337.

2303. For the existing paragraph in original volume substitute as follows:—

Electricity Commissioners.]—The powers of the Electricity Comrs. are to be exercised judicially & not ministerially, & a writ of prohibition will issue if they make an order giving effect to an *ultra vires* scheme.—R. *v.* ELECTRICITY COMRS., *Ex p.* LONDON ELECTRICITY JOINT COMMITTEE CO. (1920), LTD., [1924] 1 K. B. 171; 93 L. J. K. B. 390; 130 L. T. 164; 88 J. P. 13; 39 T. L. R. 715; 68 Sol. Jo. 188; 21 L. G. R. 719, C. A.

Annotations:—**Apld.** R. *v.* Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68; R. *v.* Health Minister, *Ex p.* Davis, [1929] 1 K. B. 619; R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397. **Consd.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1920] 1 Ch. 513; R. *v.* Hendon Rural District

---

2187 iii. ——.]—TUFTS *v.* THOMSON, [1929] 1 D. L. R. 896; 1 W. W. R. 329; 38 Man. L. R. 51; *affd.*, [1928] 3 W. W. R. 666.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 4.—B.

2192 iii. ——.]—Prohibition does not lie where the lower ct., having properly entered upon an inquiry, has erroneously found a fact which, though essential to the validity of its order, it was competent to try.—R. *v.* MAGISTRATES COURT & ESMOND, *Ex p.* BRAZLEY, [1928] St. R. Qd. 349; 22 Q. J. P. 97.—**AUS.**

PART VIII. SECT. 5, SUB-SECT. 1.

sc. *Before hearing.*]—A writ of prohibition prohibiting a district ct. judge from hearing an appeal from a summary conviction, on the ground of want of jurisdiction:—*Held:* good.—R. (LAMSON) *v.* SHARPE & INGLIS, [1921] 3 W. W. R. 674; 66 D. L. R. 521; 36 Can. Crim. Cas. 326; 15 Sask. L. R. 35.—**CAN.**

sd. ——.]—A motion for prohibition being commenced before the magistrate has heard the evidence in a charge may be dismissed without prejudicing appct. as to any motion he may make at a later stage.—R. *v.* JAEGER CO. (1922), 38 Can. Crim. Cas. 180.—**CAN.**

se. *Before appeal.*]—After an appeal has been launched to a ct. which can grant relief, prohibition will not be granted.—GREAVAS *v.* ALMAS, [1936] 2 D. L. R. 191; 50 B. C. R. 491.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 2.

2217 vi. ——.]—The want of jurisdiction appearing on the face of the proceedings, prohibition may be granted either before or after judgment.—*Re* MONARCH DRESS CO. *v.* AARONSON, [1929] 2 D. L. R. 514; 63 O. L. R. 525.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—A.

sf. *Before defence filed or matter dealt with.*]—Where want of jurisdiction does not appear on the face of the proceedings, the application should be made before judgment. The fact that a defence has not been filed, or that the matter has not been dealt with by the inferior ct., is not a ground against deft. applying for prohibition.—ROSENBERG *v.* THE MACCABEES, [1923] 2 W. W. R. 320.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—B.

2257 ii. ——.]—NEARLY *v.* CREDIT SERVICE EXCHANGE (B. C.), [1929] 3 D. L. R. 107; 2 W. W. R. 287.—**CAN.**

PART VIII. SECT. 6.

2287 i. —— *Not to persons without lawful authority purporting to act as court.*]—R. (KELLY) *v.* MAGUIRE & O'SHEIL, [1923] 2 I. R. 58.—**IR.**

n i. *S. P.*—WATERSIDE WORKERS' FEDERATION OF AUSTRALIA *v.* GILCHRIST, WATT & SANDERSON, LTD. (1927), 34 C. L. R. 482.—**AUS.**

b. Add "*revsd.* on other grounds, 16 S. C. R. 707."

sk. *Recorder's Court.*]—Prohibition refused when applied for against Recorder's Ct. for proceeding in respect of violations of sales tax ordinance.—FERLAND CORSET CO. *v.* MONTREAL, [1936] 1 D. L. R. 124.—**CAN**

Council, *Ex p.* Chorley (1933), 97 J. P. 210. **Refd.** R. *v.* Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 91 J. P. 191; Shell Co. of Australia, Ltd. *v.* Federal Comr. of Taxation (1930), 47 T. L. R. 115; R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215; R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226; R. *v.* Milk Marketing Board, *Ex p.* North (1934), 50 T. L. R. 559; Errington *v.* Minister of Health, [1935] 1 K. B. 249; Estate & Trust Agencies (1927), Ltd. *v.* Singapore Improvement Trust, [1937] 3 All E. R. 324.

2309. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2309a. Milk Marketing Board.]—Order *nisi* for prohibition directed to Milk Marketing Board. We think that you may take a rule, but it must be clearly understood that the ct. expresses no opinion that prohibition will lie to this particular body (HUMPHREYS, J.).—*Ex p.* WENHAM (1934), 78 Sol. Jo. 414, D. C.

2310. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2310a. —— ——.]—Prohibition will not lie against the Comptroller-General in respect of any act or decision which is either done or taken at the direction of the Law Officer, or which is subject to an appeal to him, nor in these respects against the Law Officer.—*Re* WINGATE'S PATENT, [1931] 2 Ch. 272; 100 L. J. Ch. 370; 145 L. T. 572; 47 T. L. R. 541; 48 R. P. C. 416.

2310b. —— **Law officer.**]—*Re* WINGATE'S PATENT, No. 2310a, *ante*.

2312. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2321. *Add. Citation :*—[1923] P. 38.

2322. *Add. Annotation :—Generally,* **Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

2326a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

2345. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

2382. *Add. Annotation :*—**Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38.

2388. *Add. Annotations :*—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 43 T. L. R. 659; R. *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746; R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927), (1929), 141 L. T. 590.

2400. *Add. Annotation :*—**Consd.** Simbro Trading Co., Ltd. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

2401. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

Part IX.—Certiorari.

2421. *Add. Annotations :—As to* (1) **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. *As to* (1) **Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215. *As to* (3) **Consd.** R. *v.* Hendon Rural District Council, *Ex p.* Chorley (1933), 97 J. P. 210. **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

PART VIII. SECT. 7.

2319 via. —— —— ——.]—Circumstances in which :—*Held :* resp., by applying to the judge of the Division Ct., under Division Cts. Act, to set aside a judgment, had not waived his rights to move for prohibition.—*Re* ORR *v.* KREPSKY, [1925] 3 D. L. R. 1018; 57 O. L. R. 353.—**CAN.**

2319 viii. —— ——.]—Where a person appears at the hearing of an affiliation summons only to protest & to object to the jurisdiction, he does not, by remaining there after his objection is overruled, & by endeavouring to discredit complainant's story, voluntarily submit himself to the jurisdiction or deprive himself of the right to apply for a prohibition.—*Ex p.* HOLMES (1927), 27 S. R. N. S. W. 253; 44 N. S. W. W. N. 82.—**AUS.**

PART VIII. SECT. 8, SUB-SECT. 3.

sd. *Calcutta High Court.*]—The Calcutta High Ct. has power to issue a writ of prohibition.—*Re* NATIONAL CARBON Co. (1934), I. L. R. 61 Cal. 450.—**IND.**

PART VIII. SECT. 8, SUB-SECT. 4.

sg. *Against parties.*] — Prohibition lies against parties as well as against the judge of the inferior ct.—ROSENBERG *v.* THE MACCABEES, [1923] 2 W. W. R. 320.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 6.

sh. *Admissibility of statements made on information & belief.*]—An application for prohibition is not an interlocutory motion, hence, under K. B. Rule 392, statements made on information & belief in the affidavits filed thereon are not admissible.—BEAUCHIENE & PELTIER *v.* GUNSON (Sask.), [1928] 3 D. L. R. 692; [1928] 2 W. W. R. 497; *sub nom. Ex p.* BEAUCHIENE, 50 Can. Crim. Cas. 57.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 10.

2401 i. *Not from order as to costs.*]—On granting a writ of prohibition preventing a magistrate from proceeding with the hearing of a charge, costs were given against the informant. On appeal as to costs: —*Held :* the appeal should be dismissed.—R. *v.* LEONARD, [1921] 3 W. W. R. 708; 66 D. L. R. 497; 36 Can. Crim. Cas. 255; 15 Sask. L. R. 29.—**CAN.**

2402 i. *Not from order in "criminal cause or matter"—Supreme Court of Judicature Act (Ireland),* 1877.]—By a proclamation dated Dec. 10, 1920, the Lord-Lieutenant of Ireland proclaimed certain counties, including County Cork, to be under martial law. By a proclamation dated Dec. 12, 1920, the Commander-in-Chief in Ireland declared the unauthorised carrying of arms to be punishable by death, & he authorised the general officer commanding in Cork to issue orders for the holding of military cts. as might be necessary. In May, 1921, appits., who were civilians, were tried by a military ct. held by order of the general under the authority of the Commander-in-Chief on a charge of improperly carrying arms, & were convicted & sentenced to death, subject to confirmation. Appits. applied in the Chancery Division for a writ of prohibition against the military ct., the Commander-in-Chief, & the general commanding in Cork to prohibit them from proceeding further with the trial of appits. or from carrying into execution any judgment against them, on the ground that the ct. was illegal & had no jurisdiction to deal with the matter. POWELL, J., refused the application, & the Ct. of Appeal in Ireland dismissed an appeal from his order as incompetent upon the ground that it was an order made in a criminal cause or matter within sect. 50 of the Supreme Ct. of Judicature Act (Ireland), 1877 :—*Held :* the order of POWELL, J., was not made in a criminal cause or matter within the Act, because the proceedings before the military ct. were in no sense criminal proceedings, & that an appeal lay from that order. —*Re* CLIFFORD & O'SULLIVAN, [1921] 2 A. C. 570; 90 L. J. P. C. 244; 126 L. T. 97; 37 T. L. R. 988; 65 Sol. Jo. 792; 27 Cox, C. C. 120.—IR.

PART IX. SECT. 1.

g i. —— ——.]—R. *v.* DENNY (1921), 61 D. L. R. 663; 36 Can. Crim. Cas. 77; 51 O. L. R. 121.—**CAN.**

g ii. —— ——.]—R. *v.* WOODSTOCK, TOWN ASSESSORS, *Ex p.* BANK OF

2422a. —— **Remedy by way of appeal—Notice of appeal given.**]—R. *v.* KINGSLAND PARISH INSPECTOR OF TAXES, *Ex p.* PEARSON, KINGSLAND ESTATE, R. *v.* INCOME TAX COMRS. & KINGSLAND PARISH INSPECTOR OF TAXES, No. 1141a, *ante.*

2448. *Add. Annotation :*—**Folld.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2449a. —— **Not to quash order.**]—The K. B. Div. of the High Ct. of Justice has no jurisdiction to issue a writ of *certiorari* for the purpose of removing into that ct. an order of the Central Criminal Ct. with a view to its being quashed. —R. *v.* CENTRAL CRIMINAL COURT JJ., *Ex p.* LONDON COUNTY COUNCIL, [1925] 2 K. B. 43; 94 L. J. K. B. 479; 132 L. T. 666; 89 J. P. 65; 41 T. L. R. 269; 69 Sol. Jo. 381; 27 Cox, C. C. 734, D. C.

2458. *Add. Annotations :—As to* (3) **Apld.** R. *v.* Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68. **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2458a. Milk Marketing Board.]—On a rule *nisi* for a *certiorari* to bring up & quash a resolution of the Milk Marketing Board established under the Milk Marketing Scheme (Approval) Order, 1933, imposing a penalty on a registered retailer:—*Held:* the Milk Marketing Board was a body to which *certiorari* would lie.—R. *v.* MILK MARKETING BOARD, *Ex p.* NORTH (1934), 50 T. L. R. 559; 78 Sol. Jo. 536, D. C.

2509. *Add. Annotation :*—**Refd.** Stevens *v.* Walker, [1936] 2 K. B. 215.

2521. *Add. Annotation :*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

2522. *Add. Annotation :*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

2533a. —— —— ——.]—The prisoners were charged at Caernarvon Assizes with arson & malicious damage to govt. property & buildings at an aerodrome. Great local feeling had been aroused against the aerodrome on religious & nationalist grounds, & the prisoners, who were members of a Welsh nationalist movement, admitted that they had set fire to the buildings. While on bail, the prisoners had prepared addresses to be delivered to the jury at the trial; the addresses contained matters & appeals on religious, nationalist & conscientious grounds. One of the prisoners had given numerous sermons in various churches in North Wales & had received many ovations because of his share in the burning. A pamphlet had also been circulated by two of the prisoners giving their reasons for their share in the burning. At the trial the jury disagreed. Large groups of people had assembled outside the ct. & disturbances had occurred :—*Held :* (1) this was a proper case for the removal of the trial to the Central Criminal Ct. under the Central Criminal Ct. Act, 1856 (c. 16), s. 3; (2) as the application was made under the Act the ct. ought not to direct a trial at another circuit town.—R. *v.* LEWIS, *Ex p.* DIRECTOR OF PUBLIC PROSECUTIONS; R. *v.* WILLIAMS, *Ex p.* DIRECTOR OF PUBLIC PROSECUTIONS; R. *v.* VALENTINE, *Ex p.* DIRECTOR OF PUBLIC PROSECUTIONS, [1936] 3 All E. R. 1008; 80 Sol. Jo. 1037.

2541. *Add. Annotation :*—**Consd.** R. *v.* Lewis, *Ex p.* Director of Public Prosecutions, R. *v.* Williams, *Ex p.* Director of Public Prosecutions, R. *v.* Valentine, *Ex p.* Director of Public Prosecutions, [1936] 3 All E. R. 1008.

2556. *Add. Citation :*—4 Jur. 151.

2566. *Add. Annotation :*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

2699a. ——.]—*Ex p.* KYLSANT & MORLAND (1931), 75 Sol. Jo. 489, D. C.

NOVA SCOTIA (1922), 68 D. L. R. 48.—**CAN.**

g iii. —— ——.]—R. *v.* WOOD (1924), 43 Can. Crim. Cas. 382.—**CAN.**

g iv. —— ——.]—MAHAMMAD RAZA SAHEB BELGAMI *v.* SADASIVA RAO (1925), I. L. R. 49 Mad. 49.—**IND.**

g v. —— ——.]—R. *v.* O'BRIEN, *Ex p.* THERIAULT (1917), 45 N. B. R. 275; 29 Can. Crim. Cas. 141; 41 D. L. R. 97.—**CAN.**

g vi. —— ——.]—Where a party has ample remedy by appeal *certiorari* will not be granted unless some satisfactory reason is given why the remedy by way of appeal was not taken advantage of.—R. *v.* LEBLANC, *Ex p.* MCDONALD (1926), 53 N. B. R. 37.—**CAN.**

g vii. —— ——.]—*Ex p.* GAUTREAU (N. B.), [1928] 1 D. L. R. 271; 49 Can. Crim. Cas. 182.—**CAN.**

z i. —— ——.]—R. *v.* OLSEN (1923), 32 B. C. R. 516.—**CAN.**

PART IX. SECT. 3.

sk. *County court judge in Nova Scotia—Imprisonment on civil process.*] *Re* METZLER (1930), 53 Can. C. C. 244.—**CAN.**

sl. *High Courts in India.*]—Subject to a statutory exception in respect of the Acts or orders of the Governor-General & Council & of the Governor & Council, done or made by them in their public capacity, the High Cts. in India possess the same jurisdiction to issue writs of *certiorari* as the Ct. of King's Bench in England.—VENKATARATNAM *v.* SECRETARY OF STATE FOR INDIA (1930), I. L. R. 53 Mad. 979.—**IND.**

PART IX. SECT. 4.

sm. *General rule — Persons illegally purporting to act as court.*]—Where the assumption of authority by a tribunal is illegal from the beginning, it is not subject to *certiorari.*—R. (KELLY) *v.* MAGUIRE & O'SHEIL, [1923] 2 I. R. 58.—**IR.**

PART IX. SECT. 5, SUB-SECT. 2.—A.

2495 ii. —— ——.]—A writ of *certiorari* is not granted *ex debito justitiæ* or as a matter of legal right, but is an application to the sound discretion of the ct., & where there are disputed questions of fact which cannot be satisfactorily tried out on affidavits, but should be tried by *viva voce* testimony, & the questions involved are pending for decision in the Ct. of K. B., the application for *certiorari* will not be granted.—WORKMEN'S COMPENSATION BOARD *v.* BATHURST LUMBER CO., [1923] 4 D. L. R. 84.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 1.—A.

t i. ——.]—Where the inferior ct. has, & the ct. above has not, jurisdiction, *certiorari* cannot be had.—PINSENT *v.* BOYD & MCDOUGALL (1865), 4 Nfld. L. R. 727.—**NFLD.**

t ii. —— *One of judges prejudiced.*]—Where a legal practitioner, having no direct interest in a local ct. action, on the morning on which judgment in the action was to be delivered, discussed the action with one of the justices who heard the action, & made certain statements calculated to prejudice him against one of the parties:—*Held:* an order in the nature of a writ of *certiorari* should be granted removing the hearing of the action into the Supreme Ct.—*Re* AN ACTION IN THE LOCAL COURT OF ADELAIDE, BURKE *v.* STAEHR, [1927] S. A. S. R. 180.—**AUS.**

PART IX. SECT. 6, SUB-SECT. 2.—A.

2711 i. —— —— *Distress warrant for liquor exportation tax.*]—Where the duty of assessing a tax rested with the A.-G. for the province, & the provincial Secretary-Treasurer had power only to determine whether the tax should be recovered by distress or by action:—*Held: certiorari* would not lie to bring into the Supreme Ct. a distress warrant signed by the Secretary-Treasurer for an amount so assessed, his act being ministerial & not judicial.—HETHERINGTON *v.* SECURITY EXPORT CO., LTD., [1924] A. C. 988; 94 L. J. P. C. 1; 132 L. T. 215. —**CAN.**

d i. —— *Decision of county court reversing dismissal of offender.*]—Where on the trial of an offence punishable by summary conviction the magistrate dismisses the charge, & on appeal to

2713. *Add. Annotations :*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2730. *Add. Annotations :*—**Refd.** R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193; R. *v.* Southampton County Confirming Committee, *Ex p.* Slade, [1929] 1 K. B. 263.

2734. *Add. Annotation :*—*As to* (2) **Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

2735. *Add. Annotations :*—**Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586; Maclean *v.* Workers' Union, [1929] 1 Ch. 602; R. *v.* Huntingdon Confirming Authority, [1929] 1 K. B. 698.

2735a. —— **Order of County Council—Improper grant of cinematograph licence.**]—It was the practice of a certain County Council, in granting licences to use premises for cinematograph exhibitions, to impose the condition that the premises should not be so used on Sundays, Christmas Day or Good Friday; but also to entertain applications for permission to open the premises for cinematograph entertainments on those days. A co. applied for a licence to open & use premises for cinematograph entertainments, & also for permission to open the premises for such purposes on Sundays, Christmas Day & Good Friday. In compliance with this application the County Council made an order to the effect that, "subject to arrangements at the premises being completed to its satisfaction, the Council will take no action for the present in the event of the above named premises being opened for cinematograph entertainments on Sundays, Christmas Day & Good Friday as from & including Sunday, July 6, 1930, provided: (i.) that a sum of £35 be paid to charity in respect of each Sunday, Christmas Day & Good Friday on which the premises are opened for cinematograph entertainments." The permission was also subject to conditions relating to the auditing of receipts & expenses, the character & hours of the entertainments, & the employment of servants :—*Held :* a writ of *certiorari* should issue to bring up & quash the order of the County Council as having been made without jurisdiction, the council having no power to dispense with the provisions of the Sunday Observance Act, 1780 (c. 49).

I am unable to distinguish in principle between the application for a licence under Cinematograph Act, 1909 (c. 30), & an application made with regard to a licence for a public-house, which for many years . . . has been held to be a judicial act (Slesser, L.J.).—R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215; 100 L. J. K. B. 760; 144 L. T. 464; 95 J. P. 89; 47 T. L. R. 227; 75 Sol. Jo. 138; 29 L. G. R. 252, C. A.

2736a. —— **Certificate of Post Office medical officer—Workmen's Compensation Act, 1925 (c. 84).**]—Appct., a telegraphist in the employment of the Postmaster-General, complained to the Post Office medical officer at G. that she was suffering from telegraphist's cramp. In accordance with the regulations of the Post Office medical service, the case was referred to the chief medical officer, who had special knowledge of telegraphist's cramp, & he certified that appct. was not suffering from it :—*Held :* (1) the giving of a certificate was a judicial act, in respect of which *certiorari* would lie; (2) it issued *ex debito justitiæ* at the instance of an aggrieved person; (3) an appeal to a medical referee under sect. 43 (1) (*f*) of the above Act was not equally beneficial, since he could only deal with the medical correctness of the certificate & could not inqure into its validity.—R. *v.* Postmaster-General *Ex p.* Carmichael, [1928] 1 K. B. 291; 96 L. J. K. B. 347; 137 L. T. 26; 91 J. P. 43; 43 T. L. R. 228; 21 B. W. C. C. 226, D. C.

2736b. —— **Grant of permission to build by local authority.**]—Where a draft town planning scheme has been proposed for an area, & the Minister has made an interim development order authorising the local council to grant permission for the development of the area, the decision of the council on an application for such permission (which may confer on appct. contingently a legal right to compensation if his building is found to contravene the scheme when it comes into force) is a judicial & not an administrative decision. If, therefore, one of the councillors voting in favour of the resolution to grant permission has such an interest in the matter as to disqualify him from voting on account of bias, *certiorari* will lie to quash the decision. —R. *v.* Hendon Rural District Council, *Ex p.* Chorley, [1933] 2 K. B. 696; 102 L. J. K. B. 658; 149 L. T. 535; 97 J. P. 210; 49 T. L. R. 482; 31 L. G. R. 332, D. C.

2771. *Add. Citation :*—2 B. R. A. 612.

---

the county ct. he is reversed & accused convicted, redress may be sought by *certiorari*.—R. *v.* Meehan, [1925] 2 D. L. R. 411; [1925] 1 W. W. R. 819; 43 Can. Crim. Cas. 325.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (a).

2763 i. *General rule.*]—R. *v.* Barry, *Ex p.* Lindsay (1922), 70 D. L. R. 193; 38 Can. Crim. Cas. 190.—**CAN.**

2763 ii. ——.]—The question whether a decision of a wreck comr. sitting as a ct. under Canada Shipping Act, R. S. C., 1906 (c. 113), Part X., was made in excess of his jurisdiction can be inquired into on *certiorari*.—*Re* Berquist, [1925] 2 D. L. R. 696; [1925] 1 W. W. R. 1084.—**CAN.**

2763 iii. ——.]—*Ex p.* Jones (N.B.), [1926] 1 D. L. R. 587; 45 Can. Crim. Cas. 169.—**CAN.**

2789 i. *Sufficiency of evidence in court below—Conviction under Temperance Act, R. S. C.*, 1920 (c. 194).]—Application for a *certiorari* to quash a conviction under the above Act on the above grounds, dismissed.—R. *v.* Grant (Sask.), [1922] 2 W. W. R. 624; 69 D. L. R. 718; 38 Can. Crim. Cas. 234.—**CAN.**

2789 ii. ——.]—When a county ct. judge has acted entirely within his jurisdiction & has decided a question of fact upon evidence properly before him, *certiorari* does not lie to remove & quash such decision, merely upon the ground that it is not warranted by the evidence or weight of evidence.—*Ex p.* Smith Lumber Co., Ltd. (1924), 51 N. B. R. 440.—**CAN.**

2789 iii. ——.]—*Re* Hillman (N. S.) 1926), 46 Can. Crim. Cas. 308.—**CAN.**

sm. *Plea of "guilty" disputed.*]—Deft. having pleaded guilty & being summarily convicted by a police magistrate, moved for a *certiorari*, denying that he had so pleaded :—*Held :* deft. had pleaded guilty, & the motion was dismissed.—R. *v.* Armstrong (1922), 38 Can. Crim. Cas. 98. —**CAN.**

sn. ——.]—Where deft. had been summarily convicted by a magistrate, who had been informed by a sworn interpreter that deft. pleaded guilty :—*Held : certiorari* was not available, unless the presumption that the proceedings were regular was rebutted.—R. *v.* Lee Wah Dai (1923), 41 Can. Crim. Cas. 152.—**CAN.**

sp. ——]—The ct. on *certiorari* will quash a conviction by a magistrate, made without evidence being taken but on the statement of the sworn interpreter that accused pleaded guilty,

2795. *Add. Citation :*—27 Cox, C. C. 253.

Add. Annotation :—**Refd.** R. *v.* Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192.

2797. *Add. Annotation :*—**Refd.** R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193.

2812. *Add. Annotation :*—**Expld. & Distd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2822. *Add. Annotations :*—*As to* (2) **Apld.** R. *v.* Postmaster-General, *Ex p.* Carmichael (1927), 96 L. J. K. B. 347. **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2830. *Add. Annotation :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

2834. *Add. Annotations :*—**Refd.** R. *v.* Adams, *Ex p.* Pope, [1923] 1 K. B. 415; Palmer *v.* Crone, [1927] 1 K. B. 804.

2846. *Add. Annotation :*—**Consd.** Andrews *v.* Carlton (1928), 93 J. P. 65.

2862. *Add. Annotations :*—**Apld.** R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397. **Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

2869. *Add. Annotations :*—**Consd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586. **Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

2923. *Add. Annotation :*—**Refd.** Kenney *v.* Kenney (1925), 133 L. T. 400.

2931. Add para. :—

A *certiorari* will not lie to the sessions to remove a conviction for a misdemeanour before judgment, for the fine being uncertain, the ct. cannot tell how to assess it. Otherwise where the punishment is certain.

2941. *Add. Citation :*—7 Dowl. 616.

2955. *Add. Annotation :*—**Distd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

3058. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

3069. *Add. Annotation :*—**Refd.** R. *v.* Adams, *Ex p.* Pope (1923), 128 L. T. 597.

3075. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

3099a. Before jury sworn.]—*Procedendo* denied though *certiorari* not delivered till after notice of inquiry.

The practice has been to allow a *habeas corpus* at any time before the jury is sworn (Lord MANSFIELD, C.J.).—COX *v.* HART (1759), 2 Burr. 758; 97 E. R. 550.

Annotation :—**Consd.** Godley *v.* Marsden (1830), 6 Bing. 433.

3131a. Who may apply—Not plaintiff.]—SOWTON *v.* CUTLER & CLERKE (1675), 2 Rep. Ch. 108; 21 E. R. 630.

Annotation :—**Apld.** Giusti Patents & Engineering Works *v.* Maggs, [1923] 1 Ch. 515.

3131b. *S. P.* GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 129 L. T. 438; 40 R. P. C. 199.

3142a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

3144. *Add. Citation :*—5 Dowl. 416.

3168a. —— Removal of cause applied for by plaintiff.]—SOWTON *v.* CUTLER & CLERKE (1675), 2 Rep. Ch. 108; 21 E. R. 630.

Annotation :—**Apld.** Giusti Patents & Engineering Works *v.* Maggs, [1923] 1 Ch. 515.

3168b. —— —— No appearance by defendant in proceedings in superior court.]—GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 129 L. T. 438; 40 R. P. C. 199.

3185a. —— —— ——.]—GUNN *v.* MACKHENRY (1750), 1 Wils. 277; 95 E. R. 617.

---

where it appears to the ct. that accused did not really understand what offence he was charged with. In such a case, accused cannot be taken to have pleaded guilty & the magistrate had no jurisdiction to convict.—R. *v.* MLAKER, [1923] 3 W. W. R. 988; 40 Can. Crim. Cas. 287.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (b) i.

2801 i. *General rule.*]—Want of jurisdiction in a magistrate & irregularities in procedure which touch the substantial rights of appct. constitute those exceptional circumstances which justify relief by way of *certiorari*, even though appct. has a right of appeal.—OKREY *v.* SPANGLER, [1925] 1 D. L. R. 859; [1925] 1 W. W. R. 518; 19 Sask. L. R. 256.—**CAN.**

2801 ii. ——.]—R. *v.* RYAN, [1925] 1 D. L. R. 877; 43 Can. Crim. Cas. 223; 52 N. B. R. 104.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (b) iii.

2826 i. *General rule.*]—Where the jurisdiction of an inferior ct. depends upon a fact collateral to the actual matter which that ct. has to try, it cannot by a wrong decision with regard to that fact give itself jurisdiction which it would not otherwise possess. The lower ct. must decide as to the collateral fact in the first instance, but the superior ct. may upon *certiorari* inquire into the correctness of that decision.—R. (GREENAWAY) *v.* ARMAGH JJ., [1924] 2 I. R. 55.—**IR.**

2826 ii. ——.]—The prosecutors were convicted at the N. petty sessions before the justices of D. for harbouring certain cattle unlawfully imported from the Irish Free State, with intent to defraud. It was admitted that no evidence had been given before the justices proving that the cattle had been unlawfully imported but reliance was placed by the justices on the description of the cattle, & the contradictory statements of the prosecutors. On behalf of the prosecutors it was submitted that they were entitled to a direction, as no evidence had been given that the cattle had been imported. The justices refused this application & convicted the prosecutors. The prosecutors obtained a conditional order for the issue of a writ of *certiorari* to remove into the K. B. D. for the purpose of being quashed the orders made by the justices :—*Held :* in making the conditional order absolute, the justices had no power to make an order convicting the prosecutors of harbouring cattle, unless it was proved that the cattle had been unlawfully imported, & that it was the duty of the justices before entering on jurisdiction to inquire if the necessary conditions existed to give them that jurisdiction, & their decision & the evidence on which it was based, could be reviewed. They could not by a wrong decision upon a fact collateral to the actual matter which they had to try give themselves jurisdiction which they would not otherwise possess.—R. (PETER MAGEE & BERNARD MAGEE) *v.* DOWN JUSTICES, [1935] N. I. 51.—**IR.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (d).

2870 i. *General rule.*]—Where a conviction was bad on its face :—*Held :* a writ of *certiorari* should issue & the conviction be quashed.—R. (EUSTACE) *v.* TIPPERARY COUNTY DISTRICT JUSTICE, [1924] 2 I. R. 69.—**IR.**

2888 i. *Convictions—Formal defect in.*]—It is the duty of the ct. on *certiorari* to see that convictions are perfectly regular in form.—R. *v.* HING HOP, [1926] 1 W. W. R. 799; 45 Can. Crim. Cas. 239; 37 B. C. R. 158.—**CAN.**

2888 ii. —— —— *Unauthorised sentence.*]—CHIN KOW *v.* MOQUIN (1927), Q. R. 44 K. B. 1.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (e).

st. *Perjury.*]—A conviction can be attacked on *certiorari* on the ground of perjury or other fraud.—R. *v.* SAFRUK, [1924] 1 D. L. R. 695; 40 Can. Crim. Cas. 222; 19 Alta. L. R. 677; [1923] 2 W. W. R. 1126.—**CAN.**

PART IX. SECT. 7, SUB-SECT. 2.—C. (a).

3042 i. *Right not taken away—Unless expressly stated.*]—Where a statute takes away the right of *certiorari*, it does not disentitle the Crown to *certiorari*, where the Crown is not named & there are no words necessarily implying a reference to the Crown.—R. *v.* ON SING, [1924] 2 W. W. R. 268.—**CAN.**

3185b. —— —— ——.]—On the removal of a cause from an inferior to a superior ct., if pltf. declares *de novo*, he is not bound to declare in the same form of action as that in the inferior ct.—BOWERBANK *v.* WALKER (1787), 2 Chit. 517.

3201a. Security for costs—Failure to give—Action removed from Mayor's Court.]—A cause was removed by *certiorari* from the Ct. of the Lord Mayor of London. Deft. paid a sum of money into ct., in lieu of bail, & shortly afterwards obtained a rule for security for costs on the ground that pltf. resided out of England. The security for costs was never given, & a period of nearly two years elapsed without any proceeding in the cause. The ct., under these circumstances, made absolute a rule calling on pltf. to give security for costs within a fortnight; otherwise deft. to be at liberty to take the money paid in, in lieu of bail, out of ct.—TASSIE *v.* KENNEDY (1848), 5 Dow. & L. 587; 17 L. J. Q. B. 215; 11 L. T. O. S. 156.

3209a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

3350. *Add. Annotation :—Generally,* **Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

3352a. *S. P. Re* KAYE (1822), 1 Dow. & Ry. K. B. 436; 1 Dow. & Ry. M. C. 114.

3420. *Add. Annotation :*—**Refd.** Ras Behari Lal *v.* King-Emperor (1933), 77 Sol. Jo. 571.

3427. *Add. Citations :—sub nom.* R. *v.* Cartworth (Inhabitants) (1843), 5 Q. B. 201; 1 Dow. & L. 837; 13 L. J. (M. C.) 26; 8 J. P. 6; 7 Jur. 1129.

3433a. —— Cross-examination of deponent—When ordered—Only in very special circumstances.]—R. *v.* KENT JJ., *Ex p.* SMITH, [1928] W. N. 137.

3447. *Add. Citation :*—8 Ad. & El. 413.

3456a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

3550. *Add. Citation :*—6 Dow. & L. 303.

3560. *Add. Citation :*—2 L. M. & P. 130.

3581. After this case add "*See, now,* Judicature (Consolidation) Act, 1925 (c. 49), s. 25."

3581a. Writ of certiorari quashed—Issue of writ of supersedeas & procedendo.]—When a rule *nisi* for a writ of *certiorari* has been made absolute by the King's Bench Div. & an appeal to the Ct. of Appeal from the order absolute has been allowed; *Qu.:* whether it was necessary to sue out writs of *supersedeas & procedendo* to avoid the writ.—GREAT WESTERN RY. CO. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, [1936] A.C.128; 105 L. J. K. B. 37; 52 T. L. R. 44; 79 Sol. Jo. 941; 24 Ry. & Can. Tr. Cas. 1; *sub nom.* R. *v.* WEST MIDLAND TRAFFIC AREA LICENSING AUTHORITY, *Ex p.* GREAT WESTERN RY. CO., 154 L. T. 39, H. L.

3596. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

PART IX. SECT. 9, SUB-SECT. 2.—I.

3287 i. *No appeal lies—Criminal matter.*]—The Ct. of Appeal in British Columbia has no jurisdiction to hear an appeal from the refusal of a judge to grant a writ of *certiorari* in aid in criminal matters.—R. *v.* MCADAM, [1925] 4 D. L. R. 33; [1925] 3 W. W. R. 257; 44 Can. Crim. Cas. 155; 35 B. C. R. 168.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 2.—J. (a).

si. *Crown Costs Act, R. S. B. C.,* 1924 *—British Columbia Lower Mainland Products Board—Whether officer, servant or agent of Crown.*]—The B.C. Lower Mainland Products Board, which was a local board set up under a milk-marketing scheme under Natural Products Marketing (British Columbia) Act, 1934, is not an "officer, servant, or agent of & acting for the Crown," within sect. 2 of Crown Costs Act, R. S. B. C., 1924.—R. (MACGINNIS) *v.* HASSELL, [1937] 1 W. W. R. 726.—**CAN.**

PART IX. SECT. 9 SUB-SECT. 3.—A. (a).

3336 i. *Who may apply—"Person aggrieved."*]—A licensing inspector lodged notice of intention to object to an application for the grant of a licensed victualler's licence, &, on the hearing of the application, stated that the objection was lodged as a mere formal objection, & that he did not desire to give or offer evidence or to address the ct., &, after the licence had been granted by the ct., treated the licence as being valid in subsequent proceedings before the licensing ct. He subsequently moved for a writ of *certiorari* to quash the grant of the licence :—*Held :* he was a person aggrieved, & competent to make the application.—R. *v.* DALBY LICENSING AUTHORITY, *Ex p.* KELLY, [1928] St. R. Qd. 151.—**AUS.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (b).

g i. —— *Application more than thirty days after conviction — Intoxicating Liquor Act,* 1927.]—*Ex p.* CROWLEY, *Ex p.* KENNETH STAPLES DRUG CO. (N. B.), [1928] 4 D. L. R. 561; 50 Can. Crim. Cas. 378.—**CAN.**

g ii. —— —— ——.]—R. *v.* BEGIN, *Ex p.* CARON (N. B.) (1928), 50 Can. Crim. Cas. 69.—**CAN.**

h i. —— *Alberta—No jurisdiction.*]—*Re* BROWN & MACHINE MOTORS, LTD., [1931] 2 W. W. R. 114.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (c).

3373 ii. —— *May be amended.*]—Leave may be given to amend a notice of motion to quash a conviction by including additional particulars intended to be relied upon.—R. (LESLIE) *v.* MARCOVICH, [1923] 2 W. W. R. 975.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (d) ii.

3410 i. *Absence or excess of jurisdiction—May be shown by affidavit.*]—While on *certiorari* the depositions before the magistrate cannot be considered by the ct. in determining whether his jurisdiction was established, yet appct. who seeks to quash a conviction, on the ground of want of or excess of jurisdiction, may incorporate in proper material, & thus present to the ct., any facts, whether within or outside the depositions, which would affect the jurisdiction of the magistrate.—R. *v.* ROZONOWSKI, [1926] 1 D. L. R. 732; [1926] 1 W. W. R. 241; 45 Can. Crim. Cas. 193; 36 B. C. R. 327.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (e).

sw. *Affidavits tending to establish guilt of accused—Not admissible.*]—R. *v.* MLAKER, [1923] 3 W. W. R. 988.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—K.

3556 i. *General rule—Whether court will examine evidence—Summary conviction.*]—In the case of a summary conviction for an indictable offence the ct. on *certiorari* is not precluded from examining the evidence to ascertain if there was any legal evidence upon which accused could be or ought to have been convicted.—R. *v.* OAKES, [1923] 1 W. W. R. 1220; 39 Can. Crim. Cas. 329.—**CAN.**

3556 ii. —— —— ——.]—R. *v.* JACKSON, [1924] 1 W. W. R. 847; 41 Can. Crim. Cas. 416.—**CAN.**

3556 iii. —— —— ——.]—R. *v.* BRANDELINA, [1927] 1. W. W. R. 832; 47 Can. Crim. Cas. 166; 38 B. C. R. 87.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—M.

sy. *Whether appeal lies—Criminal proceedings.*]—No appeal lies to the Ct. of Appeal from an order made by a judge of the King's Bench on an application for *certiorari*, with respect to a conviction under the Criminal Code.—*Re* NAGY, NAGY *v.* GALL (Sask.), [1926] 3 W. W. R. 759; 46 Can. Crim. Cas. 333.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—N.

d i. —— ——.]—*Re* HIGGINBOTHAM, [1932] 4 M. P. R. 140.—**CAN.**

Part X.—The Attorney-General.

3637. *Add. Annotations :*—**Folld.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416. **Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

3637a. ——.]—Where the A.-G. has exercised his discretion by issuing his fiat for the prosecution of an action against a public body to restrain an unauthorised exercise of its powers, the ct. will not consider whether the action is one proper to be brought in the circumstances.—A.-G. *v.* WESTMINSTER CITY COUNCIL, [1924] 2 Ch. 416 ; 93 L. J. Ch. 573 ; 131 L. T. 802 ; 88 J. P. 145 ; 40 T. L. R. 711 ; 68 Sol. Jo. 736 ; 22 L. G. R. 506, C. A.

3651. *Add. Annotations :—As to* (1) **Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

3678a. —— ——.]—In cases of *ultra vires*, delay is not a ground for refusing relief in a suit by the A.-G.—A.-G. *v.* SOUTH STAFFORDSHIRE WATERWORKS CO. (1909), 25 T. L. R. 408.

3682. *Add. Annotations :*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

3684. *Add. Annotations :*—**Refd.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416 ; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

3686. *Add. Annotation :*—**Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

3688. *Add. Annotations :*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

3705. After this case add :—

—— **Forfeiture of funds of alien—Construction of Treaty of Peace Order.**]—*See* ALIENS, No. 49c, *ante*.

3708. *Add. Annotation :*—**Refd.** R. *v.* Copestake, *Ex p.* Wilkinson, [1927] 1 K. B. 468.

3715. *Add. Annotation :*—**Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

3718. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chiltern (1927), 96 L. J. K. B. 773.

3719. *Add. Annotation :*—**Apld.** Hurley *v.* Stepney B. C. (1923), 67 Sol. Jo. 767.

3720. *Add. Annotations :*—**Consd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566 ; A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441, C. A.

3722a. Proceedings to restrain borough council from reducing wages of employees.]—In an action by three members of a borough council for a declaration that a resolution of the council reducing the wages of the council's employees was *ultra vires* & invalid, on the ground that the resolution was not passed by a two-thirds majority in accordance with the council's bye-laws :—*Held :* the A.-G. must be a party to the action.—HURLEY *v.* STEPNEY BOROUGH COUNCIL (1923), 67 Sol. Jo. 767.

PART X. SECT. 3, SUB-SECT. 1.

3674 iii. —— ——.]—The defences of laches & estoppel cannot avail against the A.-G. alleging that a corpn. is acting *ultra vires*.—A.-G. *v.* GEELING HARBOR TRUST COMRS., [1933] V. L. R. 244.—**AUS.**

3z. *Cannot sue in official name on behalf of himself personally.*]—A.-G. FOR ONTARIO *v.* RUSSELL (1921), 64 D. L. R. 59 ; 49 O. L. R. 103.—**CAN.**

3a. *Right to issue summons under Customs Acts—No prosecution instituted by Minister, Department of State, or authorised person.*]—A district justice raised a preliminary objection to the hearing of a summons charging an offence under Customs Acts, viz. that the complainant was the A.-G., the district justice being of opinion that under Customs & Inland Revenue Act, 1879, s. 11, an officer of the customs & excise must be the complainant :—*Held :* the objection was unsustainable as Criminal Justice Administration Act, 1924, s. 9 (2), authorised the A.-G. to prosecute in any ct. of summary jurisdiction in all cases in which a prosecution is not instituted by a Minister, Dept. of State, or authorised person.—A.-G. *v.* HEALY, [1928] I. R. 460.—**IR.**

3d. *Right to represent State—Action to restrain ultra vires Commonwealth Act.*] The Commonwealth Govt. established a clothing factory in Melbourne for the purpose of making naval & military uniforms for the defence forces & uniforms for postal employees. In time of peace, the operations of the factory included the supply of uniforms for other departments of the Commonwealth & also for State officers & for employees in various public utilities & institutions in the State & for some private persons. The Governor-General deemed such peace time operations of the factory necessary for the efficient defence of the Commonwealth inasmuch as the maintenance intact of the trained complement of the factory would assist it in meeting war time demands. In an action by the A.-G. for Victoria, *ex relatione*, for a declaration that such operation of the factory was *ultra vires* the Commonwealth, & for an injunction :—*Held :* the A.-G. of a State has a sufficient title to invoke a provision of the Constitution for the purpose of challenging the validity of Commonwealth legislation which extends to, & operates within, the State whose interests he represents, & that the action was properly brought in the name of the State A.-G.—A.-G. FOR VICTORIA *v.* COMMONWEALTH (1935), 52 C. L. R. 533 ; 9 A. L. J. 76 ; 41 Argus L. R. 246.—**AUS.**

PART X. SECT. 3, SUB-SECT. 2.

3681 i. *General rule.*]—The A.-G. is exclusively the legal representative of the public & the rights of the public, whether for the purpose of bringing an action to assert those rights, or of defending an action, in which the rights of the public are assailed.—MOORE *v.* A.-G., [1930] I. R. 471.—**IR.**

3683 ii. —— ——.]—*Semble :* a bill to remove a fixed bridge across a navigable river as impeding navigation, & to erect instead a drawbridge, as provided for by statute, should be by the A.-G., where the statute was passed for the general benefit of the public.—CULL *v.* GRAND TRUNK RY. CO. (1864), 10 Gr. 491.—**CAN.**

3683 iii. ——.]—The Crown, as *parens patriæ*, represents the interests of His Majesty's subjects, & the A.-G. for a province, acting as the officer of the Crown, is empowered to go before the cts. to prevent the violation of the rights of the public of that province, even if the perpetrator of the deeds complained of be a creature of the federal authority. In other words, the A.-G. of a province has not only the right, but the duty, to suppress the civil offences committed within the limits of the province.—PEOPLE'S HOLDING CO., LTD. *v.* A.-G. OF QUEBEC, [1931] S. C. R. 452 ; 4 D. L. R. 317.—**CAN.**

PART X. SECT. 4.

3b. *Questions raised as to jurisdiction of Provincial Court—Or right of Provincial Attorney-General to intervene—Notice to Attorney-General before appeal heard.*]—VALOIS *v.* BOUCHERVILLE, [1928] 1 D. L. R. 343.—**CAN.**

PART X. SECT. 5.

3723 i. *Effect of fiat—On amount recoverable.*]—An award for a sum in excess of that named in the A.-G.'s fiat :—*Held :* void, even though A.-G.'s consent was afterwards obtained.—BEACH *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1925] 4 D. L. R. 513 ; *affd.*, [1924] 4 D. L. R. 995 ; 56 O. L. R. 35.—**CAN.**

3 i. —— *To maintain set-off or counterclaim.*]—*Held :* to allow a counterclaim or set-off the ct. must as a condition precedent be vested with the jurisdiction of hearing both the action & the counterclaim or set-off, & that this ct. has no jurisdiction to hear the counterclaim until a fiat has been given to hear the same.—R. *v.* COSGRAVE EXPORT BREWING CO., LTD., R. *v.* JOHN LABATT, LTD., [1928] Exch. C. R. 103.—**CAN.**

3 ii. —— *To action by ratepayer—Representative action.*]—LOGGIE *v.* CHATHAM MUNICIPALITY (N. B.), [1928] 2 D. L. R. 583.—**CAN.**

3 iii. —— *To prosecution for falsify-*

3733. *Add. Annotations:*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53; R. *v.* Copestake, *Ex p.* Wilkinson (1926), 96 L. J. K. B. 65.

3736. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

3736. After this case add:—

Under Legitimacy Act, 1926 (c. 60).]—*See* BASTARDY, No. 130g, *ante.*

ing pedigree—Whether applicable to pedigrees of animals.]—The offences contemplated by Criminal Code, s. 597, which require the consent of the A.-G. before certain prosecutions are commenced, are those created by s. 419 thereof, & the pedigree referred to therein is one which is of importance in determining the title to property. Such consent is not necessary to a prosecution under Live Stock Pedigree Act, R. S. C. 1927, c. 121, s. 17, with respect to a false or fraudulent statement of the pedigree of an animal.—R. *v.* DAVENPORT (Alta.), [1928] 2 D. L. R. 852; [1928] 1 W. W. R. 876; 50 Can. Crim. Cas. 40.—**CAN.**

PART X. SECT. 6.

b i. —— *Attorney-General represented by salaried officer.*]—Where costs are awarded the A.-G. in litigation in which he was represented by a barrister who is a salaried officer of the A.-G.'s department & who has no agreement with the A.-G. that he is to have costs in addition to his salary, & there is no statute which enables him to recover on his own account, the costs which the A.-G. is entitled to tax are limited to disbursements.—BRANDON CITY *v.* MANITOBA MUNICIPAL COMR. & A.-G. FOR MANITOBA (No. 2), [1932] 1 W. W. R. 41; 1 D. L. R. 478; 40 Man. L. R. 100.—**CAN.**

17
18

CUSTOM AND USAGES.

Part I.—Custom.

48. *Add. Annotation :*—**Refd.** The Harkaway, [1928] P. 199.

65. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

74. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

75. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

77. *Add. Annotation :*—**Consd.** Busby *v.* Avgherino, [1928] A. C. 290.

164. *Add. Annotation :*—**Refd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

166. *Add. Annotation :*—**Refd.** Liddle *v.* North Riding of Yorkshire County Council, [1934] 2 K. B. 101.

202. *Add. Annotation :—As to* (1) **Consd.** Elof Hansson Agency, Ltd. *v.* Victoria Motor Haulage Co., Ltd. (1938), 54 T. L. R. 666.

244. *Add. Annotation :*—**Refd.** *Re* Simeon, [1937] 3 All E. R. 149.

245. *Add. Annotation :*—**Refd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

Part II.—Usages Generally.

303. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

304. *Add. Annotations :*—**Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662; Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

338. *Add. Annotation :*—**Refd.** Madras Official Assignee *v.* Mercantile Bank of India, Ltd., [1935] A. C. 53.

359. *Add. Annotation :—As to* (7) **Apprvd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

396. *Add. Annotation :*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

434. *Add. Annotation :*—**Refd.** Schiller *v.* Petersen (1924), 130 L. T. 810.

462. *Add. Annotation :*—**Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

492a. *Add. Annotation :*—**Consd.** Smith, Hogg *v.* Bamberger, [1929] 1 K. B. 150.

497. *Add. Annotation :*—**Refd.** Scriven *v.* Schmoll Fils Insce. (1924), 40 T. L. R. 677.

501. *Add. Annotation :*—**Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184.

506. *Add. Annotation :*—**Refd.** Reardon Smith Lines, Ltd. *v.* Black Sea & Baltic General Insurance Co., Ltd., [1938] 2 All E. R. 706.

510. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

537. *Add. Annotations :*—**Consd.** Smith, Hogg *v.* Bamberger, [1929] 1 K. B. 150. **Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184.

543. *Add. Citation :—affg.* S. C. *sub nom.* THE TURID, [1921] P. 146, C. A.

Add. Annotations :—**Folld.** Hillas *v.* Rederi Akt. Acolus (1926), 43 T. L. R. 67. **Consd.** Dampsselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521; Smith, Hogg & Co. *v.* Bamberger & Sons, [1929] 1 K. B. 150. **Refd.** The Rensfjell, The Ornesfjell, The Uppland, The Fritioff, The Svein Jarl (1924), 131 L. T. 764; Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533; Dalgliesh Steam Shipping Co. *v.* Williamson & Son, Ltd. (1935), 79 Sol. Jo. 453.

544. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

544a. ——.]—Pltfs., shipowners, chartered a steamer to defts. to carry a cargo of timber from the Baltic to Hull. The charter-

---

PART I. SECT. 5, SUB-SECT. 1.—A.

50 iv. *Not essential to validity of custom.*]—The English common law rule of immemorial user is not required to establish a custom in India. It is sufficient if the ct. is satisfied of its reasonableness, certainty, & existence for a sufficiently long time to have become the customary law of the particular locality, the user being neither permissive nor fraudulent.—PRANNATH KUNDU *v.* EMPEROR (1929), I. L. R. 57 Calc. 526.—**IND.**

57 i. *Time of legal memory.*]—The legal recognition of a custom in British India depends upon its antiquity, certainty & uniformity. As to antiquity or the period of "legal memory," a British ct. need not extend its inquiries beyond its own establishment. Moreover a series of legal decisions confirming a custom is cogent evidence that such custom has the force of law.—CHAN PYV *v.* SAW SIN (1928), I. L. R. 6 Ran. 623.—**IND.**

PART I. SECT. 9, SUB-SECT. 1.

p i —— *Riwaj-i-am—Unsupported by instances.*]—A *riwaj-i-am* is admissible in evidence to prove the facts entered thereon, subject to rebuttal, & that the statements therein may be accepted, even if unsupported by instances. Manuals of customary law, in accordance with *riwaj-i-am*, issued by authority for each district, stand on much the same footing as the *riwaj-i-am* itself as evidence of custom.—VARSHNO DITTI *v.* RAMESHRI (1928), L. R. 55 Ind. App. 407.—**IND.**

sb. *Question of fact.*]—The question of the existence of a custom is substantially a question of fact.—RAM SARAN DAS *v.* PEAREY LAL (1930), I. L. R. 53 All. 308.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.—A.

303 vii. ——.] — The question whether a trade custom or usage exists is one of fact, & clear & convincing testimony is required to prove its existence; it must be shown that the custom or usage relied on is certain & reasonable, & so universally recognised that everyone engaged in the trade knows, or should know, of it. —YEATES *v.* BARRETT (Sask.), [1927] 3 D. L. R. 812; [1927] 3 W. W. R. 286.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.

340 iv. ——.]—YEATES *v.* BARRETT, No. 303 vii, *ante*.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.

350 ii. ——.]—YEATES *v.* BARRETT, No. 303 vii, *ante*.—**CAN.**

PART II. SECT. 6, SUB-SECT. 2.—B. (a).

472 ii. ——.]—HOLMES, WILSON & Co., LTD. *v.* BATA KRISTO DE (1927), I. L. R. 54 Calc. 549.—**IND.**

party contained a clause as follows: "Cargo to be loaded & discharged with customary steamship dispatch according to the custom of the respective ports. The cargo to be brought to & taken from alongside the steamer at charterer's risk & expense as customary." The steamer discharged the cargo at Hull in due course, but disputes arose between pltfs. & defts. as to the division of the cost of discharging the cargo. Pltfs. brought an action to recover a sum which they had paid in effecting the discharge which they said should have been paid by defts. Defts. refused to pay on the ground that by the custom of the port of Hull the expense in question should be borne by the shipowners: —*Held:* the custom relied on by defts. was inconsistent with the language of the charterparty & was not admissible in order to decide upon whom the expense in question should rest.—REDERI AKT. ACOLUS *v.* HILLAS & CO., LTD. (1926), 96 L. J. K. B. 186; 136 L. T. 385; *sub nom.* HILLAS (W. N.) & Co., LTD. *v.* REDERI AKT. ACOLUS, 43 T. L. R. 67; 32 Com. Cas. 69; 17 Asp. M. L. C. 193, H. L.

Annotations:—**Consd.** Smith, Hogg & Co. *v.* Bamberger & Sons, [1929] 1 K. B. 150. **Refd.** Dampsselskab Svendborg *v.* London Midland & Scottish Ry. Co. (1929), 141 L. T. 521; Dalgliesh Steam Shipping Co. *v.* Williamson & Son, Ltd. (1935), 79 Sol. Jo. 453.

545. *Add. Annotations:*—**Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184; Reardon Smith Line, Ltd. *v.* Black Sea & Baltic General Insurance Co., [1938] 2 All E. R. 706.

546. *Add. Annotation:*—**Consd.** Rederi Akt. Acolus *v.* Hillas (1925), 42 T. L. R. 69.

587. *Citations:*—For "9 App. Cas. 508," read "8 App. Cas. 508."

588. *Add. Annotations:*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458; Dampsselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521.

Part III.—Particular Usages.

602. *Add. Annotation:*—**Refd.** Sagar *v.* Ridehalgh (H.) & Son, Ltd., [1930] 2 Ch. 117.

616. *Add. Annotation:*—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

625. *Add. Annotations:*—**Consd.** Michalinos *v.* Drefus (1924), 131 L. T. 177; Bunge y Born Co. *v.* Brightman, [1925] A. C. 799. **Refd.** Brightman *v.* Bunge y Born, [1924] 2 K. B. 619; Matheos S.S. *v.* Dreyfus, [1925] A. C. 654.

635a. Lancashire—Weaving trade—Deduction for bad work in estimating value of work to be paid for.]—Pltf. was a weaver in defts.' employment & his wages were calculated on the amount & kind of cloth woven in each week in accordance with a uniform list of prices

---

PART III. SECT. 1, SUB-SECT. 8.

ss. *Contract of grain grower with wheat pool—Failure to deliver—Remedies.*]—The refusal of a member of the Manitoba Wheat Pool to deliver his grain to the Pool constitutes a breach of his contract with the Pool. In view of the nature of the Pool & the terms of the contract, the Pool's appropriate remedy is by way of injunction & decree for specific performance.—MANITOBA WHEAT POOL *v.* TRACEY, [1931] 1 W. W. R. 745; 2 D. L. R. 805; 39 Man. L. R. 385.—**CAN.**

sb. —— —— *What amounts to.*]—In an action against a farmer for breach of the Wheat Pool contract, under which he agreed to deliver to the Pool all the wheat produced or acquired by him during a certain year, except such as he might retain for his own food, seed, etc., the Pool makes out a *primâ facie* case when it shows that he had in that year a very large quantity of wheat in his possession & that he delivered only a very small part of it to the Pool.—SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD. *v.* LUCIUK, [1931] 2 W. W. R. 51; 2 D. L. R. 981.—**CAN.**

sc. *Grain broker—Authority to close transactions—Margin running out.*]—Pltf., who had been carrying wheat on margin with deft. brokers & had been sold out by them had on the occasion of his first transaction with them signed a printed buying order which provided that: "It is further understood & agreed that on all marginal business the right is reserved to close the transactions when margins are running out without further notice," & on subsequent occasions during the course of the transactions sale & purchase accounts & confirmations of orders, all of which contained said words, were sent to him by the brokers:—*Held:* the question whether the customer must be taken to have assented to this condition being a term of his contract with the brokers was one of fact, & under the circumstances, it should be found that he had so assented.—PATTERSON *v.* BRANSON BROWN & CO., LTD., [1930] 2 W. W. R. 236; 4 D. L. R. 222; 43 B. C. R. 26.—**CAN.**

sf. —— *Bankruptcy — Priority of customers.*]—*Re* KERN AGENCIES, LTD. (No. 4), [1932] 1 W. W. R. 660.—**CAN.**

sk. —— *Action for balance due—Speculation in futures.*]—Grain brokers who know that their client is speculating in futures cannot recover the balance due when they sell at a loss.—RICHARDSON (JAMES) & SONS, LTD. *v.* GILBERTSON (1917), 39 O. L. R. 423.—**CAN.**

sl. —— *Action by client for negligence.*]—TURNER *v.* ALBERTA PACIFIC GRAIN CO., LTD., [1938] 1 W. W. R. 97; 1 D. L. R. 277; 69 Can. C. C. 258; 7 F. L. J. (Can.) 258.—**CAN.**

sq. *Certificate of membership of grain exchange—Lien of other members.*]—A bye-law of a grain exchange providing that certificates of memberships in the exchange shall be subject to a lien with respect to the claims of other members arising out of contracts made on the exchange held valid.—NEWTON *v.* WHITE, [1930] 2 W. W. R. 1; 3 D. L. R. 930; 11 C. B. R. 348; *affd.*, [1931] 1 W. W. R. 836; 2 D. L. R. 733; 39 Man. L. R. 455; 12 C. B. R. 332.—**CAN.**

sr. —— ——.]—NEWTON & Co. *v.* WOLVIN, [1930] 2 W. W. R. 194; 4 D. L. R. 1028; 11 C. B. R. 414; *on appeal*, [1931] 1 W. W. R. 55; 2 D. L. R. 337; 39 Man. L. R. 285.—**CAN.**

ss. *Buying corn on margin—Rules of Chicago Board of Trade—Whether binding on buyer.*]—Where a person who had previous experience in the buying & selling of grain on the exchanges gave an order to brokers in Regina to buy on margin corn for future delivery & expected that they would buy it through their Winnipeg agents who in turn would buy it through their agents on the Chicago Board of Trade, & this course was in fact followed:—*Held:* he was bound by the rules & regulations of said exchange governing the carrying out of such contracts.—*Re* GALLOWAY & CLEARY, GIBSON *v.* CANADA PERMANENT TRUST CO., [1935] 2 W. W. R. 385.—**CAN.**

st. *Canada Grain Act*, 1930—*Liability of surety under dealer's bond.*]—Pltf., who had an unpaid judgment against a licensed grain dealer for the price of grain bought from him, sued deft. co. on the bond executed by it. The conditions of the bond were (*inter alia*) that the dealer should account & pay over to all persons entitled thereto the full purchase price of the grain bought by it & "unreservedly comply with all the enactments & requirements of the Canada Grain Act, & any Order in Council, & any or all rules & regulations of the Board of Grain Comrs. for Canada." In dealing with pltf., the deal being one which an unlicensed person is prohibited from making, said licensed dealer used Form 8 but with some unauthorised alterations:—*Held:* non-compliance by the dealer with provisions of the Act or of the regulations of the Board, such as that contained in sect. 151, could not relieve it or its surety, nor could the surety escape liability even if the dealer's contract with pltf. was one which any unlicensed grain dealer or buyer could make.—MCLEOD *v.* CANADIAN INDEMNITY CO., [1936] 3 W. W. R. 586; 6 F. L. J. (Can.) 228; *revsd.*, [1937] 2 W. W. R. 266; 3 D. L. R. 72; 7 F. L. J. (Can.) 35.—**CAN.**

agreed between the employers' & workmen's unions. According to the list of prices, pltf. became entitled for the week ending Aug. 1, 1928, after agreed deductions, to a sum of £2 5*s.* 0½*d.*, but defts. only paid him £2 4*s.* 0½*d.*, claiming the right to deduct 1*s.* in respect of three yards of cloth woven with a fault rendering them unmerchantable. The evidence showed that it had been the practice of the mill for many years to make deductions for work not done with reasonable care & skill, the deductions not exceeding in amount the loss sustained by the employers & often not being exacted. A similar usage existed in the bulk of the mills carrying on the Lancashire weaving trade, though some of the mill owners were trying to do without deductions :—*Held :* the established practice in defts.' mill resulted in the incorporation in the contract of employment of pltf. as of all other weavers employed at the mill of a term enabling the employers to make a deduction, not exceeding the actual or estimated loss occasioned, from the specific sum payable for each piece of cloth woven, if the workman did not exercise reasonable care & skill in weaving the cloth.

A usage in the Lancashire weaving mills allowing an employer to make at his discretion deductions from wages for bad work, not exceeding a certain defined limit, is neither unreasonable nor uncertain ; & the fact that it at present exists at about 85 per cent. only of the mills does not prevent it from being a good legal usage on the ground of want of universality (*per* CUR.).—SAGAR *v.* RIDEHALGH (H.) & SON, LTD., [1931] 1 Ch. 310 ; 100 L. J. Ch. 220 ; 144 L. T. 480 ; 95 J. P. 42 ; 47 T. L. R. 189 ; 29 L. G. R. 421, C. A.

635b. Gamble in futures—Whether gaming contract.]—Pltfs. were cotton merchants who (*inter alia*) transacted business in the cotton market on behalf of members of the public who wished to gamble in cotton futures. Only members of the Liverpool Cotton Association are permitted to buy & sell cotton futures on the Liverpool market, & by the regulations of the assocn. pltfs., who were members, when buying on behalf of a customer, were required to enter into a contract with a selling member of the assocn., binding themselves on the terms of a printed contract which they were obliged to use. Pltfs. then filled in another printed form, under which in form they sold to the customer at the same price at which they had bought with, in addition, an amount for brokerage. A duplicate of this sale note, in the form of a bought note from the customer to pltfs., was sent to the customer at the same time for signature & return. Deft. requested pltfs. to deal in cotton futures on his behalf, & pltfs. duly carried out the transactions set out above. In an action to recover sums owing in respect of certain transactions deft. contended that as there was a contract made by pltfs. directly with deft. of purchase & sale as principals & as there was an express understanding that there should be no question of deliveries on either side, but only an eventual payment of differences, the claim was one in respect of gaming & wagering contracts & was therefore unenforceable at law :—*Held :* (1) the true relationship between the parties was that of principal & broker, & there was no gaming or wagering contract between them ; (2) pltfs. were entitled to recover the sums claimed.—WOODWARD *v.* WOLFE, [1936] 3 All E. R. 529 ; 155 L. T. 619 ; 53 T. L. R. 87 ; 80 Sol. Jo. 976.

636. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

643. *Add. Annotation :*—**Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

646. *Add. Annotations :*—**Apld.** Hart *v.* Riversdale Mill Co. (1927), 96 L. J. K. B. 691. **Folld.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310. **Consd.** Pratt *v.* Cook Son & Co. (St. Paul's), Ltd., [1938] 2 K. B. 51.

700. *Add Annotation :*—**Distd.** Mikkelsen *v.* Arcos (1925), 42 T. L. R. 3.

703a. Usage as to arbitration.]—Pltfs. sold to defts. a quantity of paraffin wax under a contract providing, "any dispute arising under this contract to be settled by arbitrators in London in the usual way." A claim was made by defts. against pltfs., & the arbitrators, being unable to agree, appointed an umpire by a document headed, "the use of this form constitutes a submission to the rules of the assocn.," *i.e.* the London Oil & Tallow Trades Assocn. The umpire awarded that defts.' claim failed & that they were to pay the costs of the arbitration. The rules of the assocn. provided for an appeal to an appeal committee, & defts. claimed a right of appeal. Pltfs. thereupon brought an action against defts. to recover the costs of the arbn., & the evidence was that in the trade in paraffin wax the usual way of settling a dispute by arbn. was to appoint arbitrators who could appoint an umpire whose decision would be final :—*Held :* the heading did not apply & the umpire was really appointed in pursuance of the original agreement as to arbn. & not under the rules of the assocn., & pltfs. were entitled to recover.—PALMER & CO., LTD. *v.* PILOT TRADING CO., LTD. (1929), 45 T. L. R. 214.

710. *Add. Annotations :*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461 ; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497 ; The Varing, [1931] P. 79.

712. *Add. Annotation :*—**Refd.** Williams *v.* Manissalian Frères (1923), 29 Com. Cas. 42.

PART III. SECT. 1, SUB-SECT. 12.

8a. *Allowance by broker to buyer for shrinkage.*]—In an action by a shipper of Australian oranges against a commission broker for an accounting :—*Held :* the evidence established a trade custom or usage that must be taken to have been incorporated into the contract between the parties, pursuant to which the broker was entitled to charge back to the shipper any allowance made by the broker to the wholesalers, to whom the broker sold the oranges, for "shrinkage," where the oranges sold were in bad condition & the complaint was "registered" by the wholesaler immediately upon delivery or within two or three days thereafter & the exact amount of the claim was afterwards reported to the broker for adjustment within a time which was reasonable under the circumstances of each particular transaction. The contention was not agreed with that the wholesaler was not obliged under the custom to make his complaint until after the retailer was heard from.—PIERCY LUMBER CO., LTD. *v.* OPPENHEIMER BROS. & WOOD, LTD., [1933] 3 W. W. R. 300.—**CAN.**

PART III. SECT. 1, SUB-SECT. 33.

8d. *Rice market—Postponement of milling from day to day.*]—In an action for the sale of rice a right was claimed to postpone the milling & delivery from day to day under an usage of the Rangoon rice market :—*Held :* the evidence did not establish the alleged usage.—STEEL BROS. & CO., LTD. *v.* TOKERSEE MOOLJEE (1932), I. L. R. 10 Ran. 373.—**IND.**

729a. Carriage of wool.]—The contract of carriage customary in the trade for the carriage of wool from import ship in London to Bradford *via* Goole is one by which the carrier undertakes to deliver the wool in a good condition as he receives it, the act of God & the King's enemies excepted.—FRANCE, FENWICK & Co. *v.* MANNHEIM INSURANCE Co. (1905), 10 Com. Cas. 242.

734a. Metal trade—Rules of London Metal Exchange—Clerk prohibited from dealing as principal.]—The fact that the rules of the London Metal Exchange prohibit a clerk to a member from participating in dealings on the Exchange as a principal does not make the contracts void as being against public policy.—BARNETT *v.* SANKER (1925), 41 T. L. R. 660; 69 Sol. Jo. 824.

740a. Practice of conveyancers.]—A rule of conveyancing law generally recognised & acted upon by conveyancers for a number of years ought not to be set aside, even though originally incorrect & unsupported by any judicial decision.—*Re* ROSHER, ROSHER *v.* ROSHER (1884), 26 Ch. D. 801; 53 L. J. Ch. 722; 51 L. T. 785; 32 W. R. 821.

DAIRY.

See FOOD AND DRUGS; PUBLIC HEALTH.

DAMAGES.

Part I.—Definitions, Nature and Classification.

1. *Add. Annotations :*—**Apld.** *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583. **Consd.** Withers *v.* General Theatre Corpn., Ltd., [1933] 2 K. B. 536. **Refd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 43 T. L. R. 460 ; Groom *v.* Crocker, [1938] 2 All E. R. 394.

1a. **Damages compared with statutory compensation.**]—Compensation under Cos. Act, 1908 (c. 69), s. 84, is not, either as to the amount recoverable or the mode of measuring it something different from or even greater than damages.—CLARK *v.* URQUHART, STRACEY *v.* URQUHART, [1930] A. C. 28 ; 99 L. J. P. C. 1 ; 141 L. T. 641, H. L.

4. *Add. Annotation :*—**Consd.** The Arpad, [1934] P. 189.

6. *Add. Annotations :*—**Consd.** The Arpad (1934), 50 T. L. R. 505. **Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

8. *Add. Annotations :*—**Consd.** The Baarn (1933), 49 T. L. R. 554. **Refd.** Peyrae *v.* Wilkinson, [1924] 2 K. B. 166.

9. *Add. Annotations :*—**Consd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637 ; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655. **Refd.** The Edison, [1932] P. 52 ; The West Wales, [1932] P. 105 ; Owen & Smith (Trading as Nuagin Car Service) *v.* Reo Motors (Britain), Ltd. (1934), 151 L. T. 274 ; The London Corporation, [1935] P. 70.

12. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., [1931] 2 K. B. 393.

14. *Add. Annotations :*—**Refd.** Performing Right Society *v.* Mitchell & Booker, [1924] 1 K. B. 762 ; Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

15. *Add. Annotations :*—**Consd.** Shapiro *v.* La Morta (1923), 130 L. T. 622. **Refd.** Ormond Engineering Co. *v.* Knopf (1932), 49 R. P. C. 634.

17. *Add. Annotation :*—**Refd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

19. *Add. Annotation :*—**Consd.** Ilford U. D. C. *v.* Beal, [1925] 1 K. B. 671.

Part II.—Rules and Principles in Awarding Damages.

20. *Add. Annotation :*—**Refd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

22. *Add. Annotations :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609 ; The Arpad (1934), 50 T. L. R. 505.

23. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

26. *Add. Annotations :*—**Consd.** The Chekiang, [1925] P. 80 ; The Susquehanna, [1925] P. 196; A.-G. *v.* Glen Line, Ltd., & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309. **Refd.** The Edison (1932), 48 T. L. R. 224 ; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1 ; The Arpad, [1934] P. 189.

28. *Add. Annotation :*—**Refd.** Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

29. *Add. Annotations :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404. **Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359 ; Townend *v.* Askern Coal & Iron Co., [1934] Ch. 463.

29a. —— —— **Property destroyed by fire.**]—A cottage was almost completely destroyed by fire caused by a spark emitted from a steam-roller which was found to constitute a nuisance. In assessing the damages recoverable by the owner of the cottage :—*Held :* the measure of damage was not the fair cost of rebuilding the cottage & making it as good & habitable as before the fire, but the difference between the money value of the owner's interest before & after the fire.—MOSS *v.* CHRISTCHURCH RURAL DISTRICT COUNCIL, ROGERS *v.* SAME, [1925] 2 K. B. 750 ; 95 L. J. K. B. 81 ; 23 L. G. R. 331.

30. *Add. Annotations :*—**Refd.** York Glass Co. *v.* Jubb (1925), 134 L. T. 36 ; Harold Wood Brick Co. *v.* Ferris, [1935] 1 K. B. 613.

PART I.

7 i. *Nominal damages—Defined.*]—Nominal damages does not necessarily mean small damages.—McGEE *v.* CLARKE, [1927] 1 W. W. R. 593 ; 38 B. C. R. 156.—**CAN.**

9 i. —— ——.]—LUNDY & McLEOD *v.* POWELL (Sask.), [1922] 3 W. W. R. 991 ; 70 D. L. R. 659.—**CAN.**

PART II. SECT. 3.

27 i. *Application of rule—In tort—Property destroyed by fire.*]—Where damages were recovered for loss through destruction of property by fire caused by deft.'s negligence :—*Held :* the measure of damages was not the cost of replacing the property destroyed, but the value of the property as it stood at the time of the destruction. The cost of replacing may be taken into account in arriving at such value.—STEVENS *v.* ABBOTSFORD LUMBER CO., [1924] 1 D. L. R. 1163 ; 1 W. W. R. 660 ; 33 B. C. R. 299.—**CAN.**

27 ii. —— —— ——.]—Where there had been misdirection as to the damages, viz. that they should be assessed on a replacement basis :—*Held :* there should be a new trial.—O'NEIL *v.* DOMINION COAL CO., [1924] 1 D. L. R. 961 ; 57 N. S. R. 126.—**CAN.**

27 iii. —— —— *Depreciation in selling value.*]—In an action for damages in respect of injury done to the land, the trial judge assessed pltf.'s damages at $4,500, estimating the actual damage which flowed from deft.'s wrong-doing at $3,500 ; but, taking into account deft.'s whole course of conduct & persistence in the wrong which he was doing, fixed the total damages at $4,500 :—*Held :* having regard to the evidence & to the fact that the measure of damages is not the sum necessary to restore the property, but the depreciation in its selling value, the finding of $3,500, for the actual damage done, could not be said to be clearly wrong.—PAFFARD *v.* CAVOTTI, [1929] 1 D. L. R. 111 ; 63 O. L. R. 171. —**CAN.**

30 v. —— ——.]—AICKIN *v.* BAXTER (B. C.), [1929] 4 D. L. R. 327.—**CAN.**

30 vi. —— *Where plaintiff has alternative claim—Duty to elect.*]—Damages cannot be recovered both in tort & for breach of contract, when the tort & the breach of contract result

32. *Add. Annotation :*—**Refd.** Steedman *v.* Frigidaire Corpn., [1932] W. N. 248.

33. *Add. Annotation :*—**Consd.** The Arpad (1934), 50 T. L. R. 505.

34. *Add. Annotation :*—**Apprvd.** Swift *v.* Board of Trade, [1925] A. C. 520.

43. *Add. Annotation :*—**Refd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

44. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

49. *Add. Annotation :*—**Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

53. *Add. Annotations :*—**Consd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637 ; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655. **Refd.** The West Wales, [1932] P. 165 ; Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

54. *Add. Annotations :*—**Consd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637 ; The West Wales, [1932] P. 165. **Refd.** Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655 ; The Edison, [1932] P. 52 ; The London Corpn., [1935] P. 70.

57. *Add. Annotation :*—**Consd.** The Chekiang, [1925] P. 80.

58. *Add. Annotations :*—**Refd.** Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655 ; The Edison (1931), 47 T. L. R. 635 ; The Edison (1932), 147 L. T. 141.

59. *Add. Annotation :*—**Refd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

61. *Add. Annotation :*—**Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

63. *Add. Annotations :*—**Consd.** Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139 ; Marginson *v.* Blackburn Borough Council, [1938] 2 All E. R. 539. **Refd.** The Koursk, [1924] P. 140 ; Debenham *v.* Perkins (1925), 133 L. T. 252 ; Conqeur *v.* Boot, [1928] 2 K. B. 336 ; Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90 ; Rose *v.* Ford, [1937] 3 All E. R. 359 ; British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516.

64. *Add. Annotations :*—**Refd.** Huyton & Roby Gas Co. *v.* Liverpool Corpn. (1925), 42 T. L. R. 116 ; Conquer *v.* Boot, [1928] 2 K. B. 336.

66a. ——.]—A firm of contractors agreed to construct a new & enlarged dock. Deft. co. gave the dock board a bond in the sum of £50,000 to guarantee the performance of the contract. The contractors defaulted, & the dock board brought an action against deft. co. upon the bond. They relied upon an engineer's certificate showing that the contractors owed them £78,000, which they had failed to pay. The action was dismissed. The dock board then started a second action, claiming damages caused by delay, owing to the contractors not having proceeded with due diligence & expedition. Deft. co. applied to have the proceedings stayed, on the ground that the same matter had already been finally settled in the first action :—*Held :* as the second action was based on precisely the same breaches as those in the first action, & claimed the same damages, although supported by different evidence, a plea of *res judicata* would succeed, & the second action ought therefore to be dismissed.—WORKINGTON HARBOUR & DOCK BOARD *v.* TRADE INDEMNITY CO., LTD. (NO. 2), [1938] 2 All E. R. 101 ; 82 Sol. Jo. 412 ; 43 Com. Cas. 235, H. L.

Annotation :—**Refd.** British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516.

78. *Add. Annotations :*—**Refd.** Elliott *v.* Burn, [1934] 1 K. B. 109 ; *Re* Beckermet Mining Co., Ltd.'s Application, [1938] 1 All E. R. 389.

---

from the same act ; in such a case pltf. must elect or be deemed to have elected ; &, if he seeks to recover damages for breach of contract, they must be measured upon that basis, & not upon the basis of any coincident or concomitant act of tort.—TORONTO HOCKEY CLUB *v.* ARENA GARDENS, LTD., [1924] 4 D. L. R. 384 ; 55 O. L. R. 509 ; *affd.*, [1925] 4 D. L. R. 546 ; 57 O. L. R. 610 ; *affd.*, [1926] 4 D. L. R. 1 ; [1926] 3 W. W. R. 26.—**CAN.**

30 vii. ——.]—AICKIN *v.* BAXTER (B. C.), [1929] 4 D. L. R. 327.—**CAN.**

PART II. SECT. 4.

38 xii. —— —— *Goods not of warranted description—Allowance made.*]—Certain goods supplied under a contract not answering the warranted description were taken back & an adjustment made in respect of them :—*Held :* the purchaser could not claim damages for the breach.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367 ; 54 O. L. R. 583.—**CAN.**

38 xiii. —— ——.]—FRENCH *v.* PARIS, [1928] 3 D. L. R. 555.—**CAN.**

42 iv. —— ——.]—In an action for wrongfully obstructing the flow of a river by increasing the height of a weir, whereby pltf.'s lands, abutting on the river, were flooded, the judge declined to direct the jury that actual damage was essential to maintain the action :—*Held :* the direction was right.—M'GLONE *v.* SMITH (1888), 22 L. R. Ir. 559.—**IR.**

51 iv. —— *No reasonable expectation of pecuniary benefit—Death of young child in accident.*]—*Held :* a verdict of damages awarded to parents of young children killed in an accident arising from negligence could not stand, where there was no reasonable expectation of future pecuniary benefit. In a case of this kind damages are not awarded as a solatium nor from sentimental considerations.—HOGAN *v.* R., [1924] 2 D. L. R. 1211 ; 2 W. W. R. 307 ; 17 Sask. L. R. 37.—**CAN.**

51 v. —— *Accident to wife—No deprivation of services or society.*]—Pltf. having suffered physical injury through a street accident causing nervous shock :—*Held :* an award of damages to pltf.'s husband could not stand as he had not been deprived of his wife's services or society.—HOGAN *v.* R., [1924] 2 D. L. R. 1211 ; 2 W. W. R. 307 ; 17 Sask. L. R. 37.—**CAN.**

51 vi. —— *Furnishing false news to newspaper.*]—One who intentionally & fraudulently causes a newspaper to become the innocent disseminator of false news does its proprietor a wrong for which substantial damages are recoverable without proof that pecuniary harm was an actual result of the fraud.—CALGARY HERALD, LTD. *v.* BARNES CORPN., [1929] 1 D. L. R. 114 ; [1928] 3 W. W. R. 543.—**CAN.**

PART II. SECT. 5.

59 vii. ——.]—Pltf. cannot recover damages on the ground of the permanence of existing personal injuries unless the evidence goes the length of showing that there is no reasonable prospect of permanent recovery. The test is the same in the case of consequences non-existent at the date of action, but which may or may not supervene.—HARMSWORTH *v.* SMITH (1928), 49 N. L. R. 174.—**S. AF.**

74 i. *Cause of action independent of damage—Whether prospective damage recoverable—Repudiation of contract.*]—Defts., the owners of a cotton ginning mill, contracted in Oct. 1919, that, for a period of six months, they would put their mill at the disposal of pltf., a cotton merchant, for half its working time, at fixed rates in order to gin raw cotton which pltf. contemplated buying & which he agreed to supply to them for the purpose. In Nov. before any of pltf.'s cotton had been taken by the mill, defts. repudiated the contract. Pltf. sued defts. for damages :—*Held :* the breach being anticipatory the damages recoverable were not confined to the extra cost which pltf. had paid to the other millers for ginning such cotton as he had tendered to defts., but were the estimated loss of profit to pltf. by reason of the contract not being carried out ; pltf. was not bound to buy cotton & have it ginned at other mills under his obligation to mitigate the damages.—RAMGOPAL *v.* DHANJI JADHAVJI BHATIA (1928), L. R. 55 Ind. App. 299.—**IND.**

83a. —— ——.]—Deft. having purchased twelve sixteenths of the East India ship *M.* commanded by pltf., & chartered by the co. for four voyages, proposed to pltf., & pltf. consented, to resign the command in favour of deft.'s nephew, upon receiving in exchange the command of another ship, *E.*, then chartered for one voyage. If the co. acceded to the exchange, it was agreed, that in case the nephew died or resigned before the expiration of the four voyages, pltf. should succeed him; as a further inducement to pltf. to resign the command of the *M.*, deft. undertook to procure a beneficial alteration in the destination of the *E.*, & the person who negotiated the affair on the part of pltf. undertook (as he asserted, without pltf.'s knowledge) to pay deft. £2,000 if pltf. should refuse to resign. The exchange was approved of by the co., & the destination of the *E.* altered. Pltf. & nephew sailed on their respective voyages. Pltf. became bkpt. on his return from his voyage in the *E.*, & the nephew died in the course of his second voyage in the *M.* Deft. having refused to appoint pltf. to succeed him was sued in *assumpsit* for breach of agreement, & the value of a voyage having been proved to vary from £4,000 to £8,000, the jury gave £7,500 damages. On motion for a new trial & in arrest of judgment:—*Held:* the jury might give damages for the loss of the two remaining voyages, though the second had not been accomplished at the time of the action.—RICHARDSON *v.* MELLISH (1824), 2 Bing. 229; 1 C. & P. 241; 9 Moore C. P. 579; Ry. & M. 66; 3 L. J. O. S. C. P. 265; 130 E. R. 294.

85. *Add. Annotation:*—**Consd.** *Re* Beckermet Mining Co., Ltd.'s Application, [1938] 1 All E. R. 389.

98. *Add. Annotations:*—*As to* (1) **Consd.** Domine *v.* Grimsdall, [1937] 2 All E. R. 119. **Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

100. *Add. Annotation:*—**Refd.** Solanite Signs, Ltd. *v.* Wood (1933), 50 R. P. C. 315.

Part III.—Directness and Remoteness.

101. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Hall & Pim (1928), 139 L. T. 50. **Distd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739. **Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404. **Apld.** The Edison, [1932] P. 52; Vaile Bros. *v.* Hobson, Ltd. (1933), 149 L. T. 283. **Consd.** The Arpad (1934), 50 T. L. R. 505; Flint *v.* Lovell, [1935] 1 K. B. 354. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535; Dobell (C. G.) & Co., Ltd. *v.* Barber & Garratt (1930), 47 T. L. R. 66; Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209; The Edison (1931), 47 T. L. R. 635; British Russian Gazette & Trade Outlook, Ltd. *v.* Associated Newspapers, Ltd., Talbot *v.* Associated Newspapers, Ltd., [1933] 2 K. B. 616; Haynes *v.* Harwood, [1935] 1 K. B. 146; Millar's Machinery Co. *v.* Way & Son (1935), 40 Com. Cas. 204; Archie Parnell & Alfred Zeitlin, Ltd. *v.* Theatre Royal (Drury Lane), Ltd. (1936), 80 Sol. Jo. 284; Domine *v.* Grimsdall, [1937] 2 All E. R. 119. *As to* (2) **Consd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404. **Apld.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154.

104. *Add. Annotation:*—**Consd.** The Arpad (1934), 50 T. L. R. 505.

105. *Add. Annotation:*—**Consd.** The Arpad (1934), 50 T. L. R. 505.

110. *Add. Annotation:*—**Refd.** The Edison (1932), 147 L. T. 141.

113. *Add. Annotations:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; The Edison (1932), 147 L. T. 141.

114. *Add. Annotations:*—**Consd.** Sorrell *v.* Smith, [1925] A. C. 700; Place *v.* Searle (1932), 101 L. J. K. B. 465. **Refd.** Black *v.* Admiralty Comrs. (1924), 93 L. J. K. B. 341; Rely-A-Bell Burglar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609; Scammell *v.* Attlee (1928),

---

83 i. *Damages caused the gist of the action—Prospective damage—Whether recoverable.*]—A married woman having suffered from nervous shock as the result of an accident, but not so as to deprive her husband of her services or society:—*Held:* that he might be put to expense in the future was a consideration too remote to entitle him to damages.—HOGAN *v.* REGINA CITY, [1924] 2 D. L. R. 1211; 2 W. W. R. 307; 17 Sask. L. R. 37.—**CAN.**

83 ii. —— —— ——.]—In an action for damages resulting, not from the construction of works, but from the operating thereof, as, *e.g.*, the putting of water into a canal, damages are assessable only for the injury done up to the trial, & prospective damages cannot be assessed, but pltf. must seek further damages from time to time as he suffers injury.—LETHBRIDGE NORTHERN IRRIGATION DISTRICT BOARD TRUSTEES *v.* MUNSELL, [1926] 4 D. L. R. 690; [1926] S. C. R. 603.—**CAN.**

PART II. SECT. 8.

97 i. *Ascertainment difficult — No ground for refusal to award.*]—H. passed a mtge. bond over his farm, a condition being that H. would, on demand by the mtgee., pass a collateral bond over his movable property on the farm. In breach of this condition, H. sold & delivered such movables to a third party:—*Held:* although the damages, if any, were difficult to assess, the mtgee. was entitled to some damages for a wilful invasion of his rights.—CATO *v.* ALION (1923), 44 N. L. R. 113.—**S. AF.**

97 ii. —— ——.]—What pltf. lost by the refusal of deft. to bore two more wells was a sporting or gambling chance that valuable oil or gas would be found when two more wells were bored. It might not be easy to compute what that chance was worth to pltf., but the difficulty in estimating the quantum was no reason for refusing to award any damages.—CARSON *v.* WILLITTS, [1930] 4 D. L. R. 977; 65 O. L. R. 456.—**CAN.**

PART III. SECT. 1.

101 v. —— —— ——.]—Damages must be limited to such as arise naturally from the breach of contract or such as might reasonably be supposed to have been in the contemplation of the parties.—TORONTO HOCKEY CLUB *v.* ARENA GARDENS, LTD., [1924] 4 D. L. R. 384; 55 O. L. R. 509; *affd.*, [1925] 4 D. L. R. 546; 57 O. L. R. 610; *affd.*, [1926] 4 D. L. R. 1; [1926] 3 W. W. R. 26.—**CAN.**

101 vi. —— —— ——.]—The ct. cannot as a matter of law presume intention from the natural consequences of the act. This is a fiction of the English law, & is inapplicable to the Indian law of trespass.—BIRD *v.* KING-EMPEROR (1934), I. L. R. 13 Pat. 268.—**IND.**

45 T. L. R. 75; Scammell G. & Nephew *v.* Hurley, [1929] 1 K. B. 419; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1; De Jetley Marks *v.* Greenwood, [1936] 1 All E. R. 863; McManus *v.* Bowes, [1937] 3 All E. R. 227.

114a. —— **Admiralty cases.**]—Damages must be the direct & natural consequence of the breach of obligation complained of. The law is the same in this respect with regard both to contract & to tort, subject to the qualification that, in the case of the former, the law does not consider too remote damage which may be reasonably supposed to have been in the contemplation of the parties when the contract was made. Speaking generally, the measure of damages is the same in Admiralty as at common law.—THE EDISON, [1932] P. 52; 101 L. J. P. 12; 147 L. T. 141; 48 T. L. R. 224; 37 Com. Cas. 182; 18 Asp. M. L. C. 276; *on appeal*, [1933] A. C. 449, H. L.

Annotations :—**Consd.** The Arpad (1934), 50 T. L. R. 505. **Refd.** The Castor (1932), 147 L. T. 359; Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154; Buckland *v.* R. (1933), 102 L. J. K. B. 404; Rose *v.* Ford, [1937] 3 All E. R. 359.

116. *Add. Annotation :*—**Refd.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

118. *Add. Annotations :*—**Consd.** The Edison, [1932] P. 52. **Refd.** The Arpad (1934), 50 T. L. R. 505.

122. *Add. Annotation :*—**Refd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

123. *Add. Annotations :*—**Consd.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154. **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

126. *Add. Annotation :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

131. *Add. Annotation :*—**Refd.** Astor Properties, Ltd. *v.* Tunbridge Wells Equitable Friendly Society, [1936] 1 All E. R. 531.

131a. Breach of agreement for loan—Commission on arranging temporary loan.]—By an agreement contained in letters defts. undertook to lend pltfs. £14,000 to be secured on certain property at Edgware. The repayment was to be at the rate of £70 per quarter for the first ten years & the amount of such repayment was to be reconsidered at the end of that period. Defts. subsequently refused to proceed with the loan. Pltfs. claimed as special damage the amount of commission paid on arranging a temporary loan & a negotiating fee on arranging the final loan :—*Held :* (1) there was a complete agreement for the loan & the fact that the repayments were to be reconsidered at the end of ten years did not make it an agreement to make an agreement; (2) the negotiating fee was not recoverable as special damage in addition to the commission.—ASTOR PROPERTIES, LTD. *v.* TUNBRIDGE WELLS EQUITABLE FRIENDLY SOCIETY, [1936] 1 All E. R. 531; 80 Sol. Jo. 366.

131b. —— **Negotiating fee for final loan.**]—ASTOR PROPERTIES, LTD. *v.* TUNBRIDGE WELLS EQUITABLE FRIENDLY SOCIETY, No. 131a, *ante*.

132a. Negligent repair of car—Damage due to negligent driving.]—In an action to recover damages for breach of contract deft. cannot rely on the defence that the damage was caused or increased by the antecedent negligence of pltf., unless the alleged negligence is the breach of a duty owed by pltf. to deft. Where, therefore, the owners of a motor lorry claimed damages for breach of a contract to repair the carburettor, alleging that owing to the defective state of the carburettor the lorry had been damaged, & the repairers contended that the owners had failed to connect the engine switch of the lorry, & that if that had been done the damage could have been prevented or minimised :—*Held :* the owners of the lorry owed no duty to the repairers to connect the engine switch, & accordingly the repairers could not rely on the failure to do so as a defence to the action.—VAILE BROS. *v.* HOBSON, LTD. (1933), 149 L. T. 283.

141. *Add. Annotation :*—**Consd.** Finlay James & Co. *v.* N. V. Kwik Hoo Tong H. M., [1929] 1 K. B. 400.

141a. Agreement not to arrest ship—Arrest & disposal of ship.]—Circumstances (*see* CONFLICT OF LAWS, No. 1135a, *ante*), in which :—*Held :* pltfs. were entitled to damages, & were entitled to recover the value of the ship as at the date when pltfs. were first deprived of her use by arrest.—ELLERMAN LINES, LTD. *v.* READ, [1928] 2 K. B. 144; 97 L. J. K. B. 366; 138 L. T. 625; 44 T. L. R. 285; 17 Asp. M. L. C. 421; 33 Com. Cas. 219, C. A.; *revsg.* (1927), 44 T. L. R. 7.

146a. —— —— **As result of shock.**] — Defts.' servant had a motor lorry at the top of an incline in a street, with the handbrake on, the engine running, & the wheels straight. The lorry began to run down the incline & it struck & injured pltf.'s daughter, a child. & pltf.'s wife suffered a severe shock & died in hospital about ten days later. Pltf. claimed damages under Fatal Accidents Act, 1846 (c. 93), for negligence causing the death of his wife :—*Held :* pltf. would establish a cause of action if he established that the death of his wife resulted from the shock

---

PART III. SECT. 2, SUB-SECT. 2.

115 iii. ——.]—In an action claiming damages for breach of contract the damages recoverable are such as naturally would be the result of the breach.—KEITH *v.* LINCOLN PULPWOOD CO. (1927), 59 N. S. R. 466.—**CAN.**

ia. *Sale of goods—Refusal to take delivery—Loss of time in urging acceptance.*]—In an action for damages for breach of contract by refusal to take delivery of goods :—*Held :* a claim for time lost in going to deft.'s residence to urge him to take delivery could not stand.—BRADLEY *v.* BAILEY & JASPERSON, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—**CAN.**

ib. *Contract for work & labour—Work unperformed—Cost of performance.*]—Resp. gave applt. an option to purchase a mine. On the first instalment falling due, applt. negotiated for an extension of time for payment, which was granted by resp. on condition that applt. should do certain development work not mentioned in the option. Applt. failed to pay, & subsequently relinquished possession of the mine & surrendered the option without having done the work :—*Held :* resp. entitled to recover damages amounting to the cost of the work.—CUNNINGHAM *v.* INSINGER, [1924] 2 D. L. R. 433; [1924] S. C. R. 8.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.

142 i. *Injury to feeling — General rule.*]—Mental anguish is properly taken into consideration in awarding damages in an action for tort based on a wilful or wrongful act, *e.g.* an action for assault, trespass, defamation, seduction, malicious prosecution, false imprisonment.—EDMONDS *v.* ARMSTRONG FUNERAL HOME, LTD., [1931] 1 D. L. R. 676; [1930] 3 W. W. R. 649; 25 Alta. L. R. 173; *revsg.*, [1930] 4 D. L. R. 901; 3 W. W. R. 290.—**CAN.**

occasioned by negligence involved in the running away of the lorry, that the shock resulted from what pltf.'s wife either saw or realised by her unaided senses & not from something which some one told her, & that the shock was due to a reasonable fear of immediate personal injury either to herself or to her children.—HAMBROOK *v.* STOKES BROTHERS, [1925] 1 K. B. 141 ; 94 L. J. K. B. 435 ; 132 L. T. 707 ; 41 T. L. R. 125, C. A.

149. *Add. Annotation :*—**Consd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125.

150. *Add. Annotation :*—**Consd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125.

151. *Add. Annotation :*—**Apprvd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125.

152. *Add. Annotation :*—**Consd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125.

152a. —— ——.]—OWENS *v.* LIVERPOOL CORPN., [1938] 4 All E. R. 727 ; 55 T. L. R. 246 ; 82 Sol. Jo. 1010, C. A.

—— Claims under Law Reform (Miscellaneous Provisions) Act, 1934 (c. 41).]—*See* NEGLIGENCE, Nos. 953b, 953c, *post.*

155. *Add. Annotation :*—**Refd.** Buckland *v.* R. (1933), 102 L. J. K. B. 404.

161. *Add. Annotation :*—**Consd.** The Edison, [1932] P. 52.

---

147 i. *Pain & suffering.*]—In an action for damages for personal injuries arising from negligence :—*Held :* items which should go to make up pltf.'s damages were (*inter alia*) a sum, not to compensate for, but to represent the inconvenience of his condition, & his pain & suffering, past & future.—COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818 ; 3 W. W. R. 1152.—**CAN.**

147 ii. —— *Ejectment from tramcar—Illness from exposure to cold.* —*Held :* not too remote a cause for damages.—TORONTO RY. CO. *v.* GRINSTED (1895), 24 S. C. R. 570.—**CAN.**

147 iii. ——.]—In an action for damages for personal injuries pltf. if successful is entitled to fair compensation for pain & suffering ; & a charge to the jury which tells them that they may make an allowance therefor but are not bound to do so is a misdirection which, if the jury make no such allowance, may afford ground for ordering a new trial, even though not objected to at the trial.—HEITNER *v.* GILLSTROM, [1930] 2 W. W. R. 113 ; 3 D. L. R. 860 ; 24 S. L. R. 462 ; *revsg.*, [1929] 4 D. L. R. 670 ; 3 W. W. R. 227 ; 24 S. L. R. 53.—**CAN.**

149 i. —— *Nervous shock—Actual impact.*]—Damages claimed for nervous shock, as a result of an accident arising from negligence, cannot be recovered where the nervous shock produces only a mental disturbance unaccompanied by any actual physical injury. If impact is not necessary, it is a question of fact in each case whether or not pltf. sustained physical injury & whether such injury was the natural & reasonable result of deft.'s negligence. —HOGAN *v.* REGINA CITY, [1924] 2 D. L. R. 1211 ; 2 W. W. R. 307 ; 17 Sask. L. R. 37.—**CAN.**

149 ii. —— —— ——.]—Damages cannot be recovered for nervous shock unaccompanied by any physical impact.—PENMAN *v.* WINNIPEG ELECTRIC RY. CO., [1925] 1 D. L. R. 497 ; [1925] 1 W. W. R. 156.—**CAN.**

149 iii. —— —— *False statement.*]—Deft. falsely stated that pltf.'s son had hanged himself. The report was told to pltf., who, believing it, suffered a violent shock & became ill :—*Held :* the damage was the natural & probable cause of deft.'s act, & pltf. had a good cause of action.—BIELITSKI *v.* OBADISK, [1922] 2 W. W. R. 238 ; 65 D. L. R. 627 ; 15 Sask. L. R. 155 ; *affg.*, 61 D. L. R. 494.—**CAN.**

149 iv. —— ——.]—A man & a woman to whom he was engaged were knocked down by a motor omnibus. The man was struck by the omnibus & received considerable physical injury. The woman did not appear to have been actually struck, & she received no direct physical injury, but she suffered severely from shock. In an action of damages at her instance the judge directed the jury that, if by the fault of defts. pursuer had suffered nervous shock through apprehension for her own safety, they were entitled, in assessing damages, to include any aggravation of that shock occasioned by the fact that her companion was involved in the catastrophe. The jury found that pursuer had suffered personal injury resulting in nervous shock involving apprehension for her own safety, aggravated by anxiety for the safety of her companion, & awarded damages :—*Held :* in the circumstances the jury could not be asked to discriminate between the amount of shock suffered by pursuer due to apprehension for her own safety & the amount due to anxiety for her companion.—CURRIE *v.* WARDROP, [1927] S. C. 538.—**SCOT.**

149 v. —— —— *Assault on husband in wife's presence—Loss of consortium.*]—An action lies for mental anguish, ill health or shock sustained by reason of acts done to a third person, & not causing any apprehension of danger to pltf., & an action *quare consortium amisit* lies at the suit of a wife.—JOHNSON *v.* COMMONWEALTH (1927), 27 S. R. N. S. W. 123 ; 44 N. S. W. W. N. 54.—**AUS.**

149 vi. —— —— ——.]—As the result of an unprovoked & violent assault made by deft. on her husband in her presence the female pltf. suffered a nervous shock which caused a permanent injury to her nervous system, & she was still so ill at the time of the trial, three years after the event, that she was unable to attend :—*Held :* she had a good cause of action which entitled her to damages for said injury to her health, that the damages awarded her, $500, were not excessive, & her husband was entitled to recover the expenses to which he was put because of her illness.—PURDY *v.* WOZNESENSKY, [1937] 2 W. W. R. 116.—**CAN.**

149 vii. —— ——.]—WALKER *v.* PITLOCHRY MOTOR CO., [1930] S. C. 565.—**SCOT.**

149 viii. ——.]—Pltf. purchased some bread from deft. co. Pltf., while eating the bread, discovered that it contained broken pieces of glass. He was able to remove the glass from his mouth without sustaining more serious injury than a slight scratch upon his throat. However, he became excited, & as a result the fear of serious consequences combined with shock, produced a condition of nausea which was renewed whenever he attempted to eat bread :—*Held :* pltf. was entitled to damages.—NEGRO *v.* PIETRO'S BREAD CO., LTD., [1933] O. R. 112; 1 D. L. R. 490.—**CAN.**

149 ix. —— ——.]—In an action for damages arising out of a collision between two vehicles at an intersection :—*Held :* there being some evidence of physical injury as well as of nervous shock, pltf. was entitled to recover something therefor under his claim for general damages.—PIPER & PIPER *v.* BUSSEY & EMERSON, [1930] 2 W. W. R. 452.—**CAN.**

149 x. —— ——.]—Applt. visited a dwelling-house which was occupied by resps. & demanded possession at the same time threatening the male resp. that he would burn him out. The latter's wife was in bed unwell, but heard the words spoken, & became seriously upset as a result of the threat. She had been pregnant for about three months, & as a result of applt.'s statement suffered a miscarriage :—*Held :* applt. was liable in damages.—STEVENSON *v.* BAGHAM, [1922] N. Z. L. R. 225.—**N.Z.**

149 xi. —— ——.]—A declaration alleged, in substance, that deft. administered the Invalid & Old Age Pensions Act, 1908-1933, whereunder the pltf.'s husband received a pension ; that an officer in deft.'s employment negligently & wrongfully wrote a letter to pltf. stating, what was in fact untrue, that her husband had been admitted to a mental asylum ; & that, upon reading the letter in ignorance of its falsity, pltf. suffered from shock, & was thereby damaged. On demurrer :—*Held :* the declaration alleged matters which constituted a cause of action.—BARNES *v.* COMMONWEALTH (1937), 37 S. R. N. S. W. 511 ; 54 N. S. W. W. N. 164.—**AUS.**

152 i. —— ——.]—An infant a few days after birth sustained, through negligence, injuries by burning in the hospital where the mother was confined. The matron informed the mother, who had not seen the accident, & as a consequence the mother suffered from shock, discomfort, & inconvenience in caring for the child both at the hospital & after :—*Held :* it was a necessary consequence of the negligence that the mother should be told of the accident, &, accordingly, a breach of the duty of the hospital authorities to avoid so far as reasonably practicable all things that might prejudice her health or comfort or increase her need for exertion or care. *Qu. :* whether mere mental or nervous shock, which did not cause any physical disturbance, would be damage in law.—BROWN *v.* MOUNT BARKER SOLDIERS' HOSPITAL INCORPORATED, [1934] S. A. S. R. 128.—**AUS.**

1621. *Loss of or injury to property—Collision at sea—Loss of musical manuscripts.*]—In an action of damages against steamship owners, arising out of the sinking of one of their ships, pursuer claimed £15,000 in respect of the loss of certain music & orchestral settings in manuscript used by a concert party of which she was manager. She averred that the lost manuscripts were the sole copies of the compositions in question, & that she had the sole right to publish, perform, or issue mechanical reproductions, & to obtain copyright thereof. The compositions had cost pursuer about £2,000, but she averred that, through her concert party, they had acquired a reputation among the public which had greatly enhanced their value, & she further averred that she would have made substantial profits from the lost music in respect of copyright royalties,

165. *Add. Annotations :*—**Refd.** Leeds Industrial Co-op. Soc. *v.* Slack, [1924] A. C. 851 ; Lane, The Bodley Head, Ltd. *v.* Associated Newspapers, Ltd., [1936] 1 All E. R. 379.

166. *Add. Annotations :*—**Consd.** Harper *v.* Haden & Sons, Ltd. (1932), 102 L. J. Ch. 6. **Refd.** Leeds Industrial Co-op. Soc. *v.* Slack, [1924] A. C. 851.

167. *Add. Annotations :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Refd.** Harper *v.* Haden & Sons (1932), 102 L. J. Ch. 6.

172. *Add. Annotations :*—**Consd.** The Edison, [1932] P. 52. **Refd.** The Arpad (1934), 50 T. L. R. 505.

174. *Add. Annotation :*—**Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535.

176a. —— **Withdrawal of appointment as school outfitters.**]—The authorities at a convent school informed the parents of their scholars that the girls must wear certain clothes, that these could only be obtained from pltf., a dressmaker, & that the girls must be in possession of the clothes by Apr. 21. Pltf. was informed that these instructions had been given to the parents. No formal appointment was given to pltf. in writing & nothing was said as to the duration of the appointment. Pltf. ordered dress materials from deft. co., telling them that she had an appointment to supply these clothes at the school & that they were wanted by Apr. 21. Pltf. was not ready to supply all the parents' demands by Apr. 21, & on Apr. 28 the Mother Superior wrote to pltf., that on that ground & on the ground of defects in some of the clothes supplied, no further orders would be placed with her. Pltf. claimed damages against deft. co. (*inter alia*) for loss of her appointment as school outfitter, on the ground that there was a breach of contract by not keeping dress material in stock, so causing delay in delivery to pltf. by deft. co., & that this delay caused the Mother Superior to write her letter of Apr. 28 :—*Held :* by SCRUTTON, L.J. & SLESSER, L.J., the damages for loss of appointment were not in the contemplation of both parties to the contract, & so were too remote. On the facts, by GREER, L.J. & SLESSER, L.J., accepting the finding of the trial judge that there was a contract between pltf. & deft. co. that the latter should get & maintain a stock of certain dress materials ready for pltf., whenever she chose to give an order, although it was admitted that deft. co. did not get & maintain such a stock, the loss of pltf.'s appointment was not due to this breach, but to pltf.'s own failure to obtain in time the material elsewhere.—SIMON *v.* PAWSON & LEAFS, LTD. (1932), 148 L. T. 154 ; 38 Com. Cas. 151, C. A.

181. *Add. Annotations :*—**Dbtd.** Marbé *v.* George Edwardes (Daly's Theatre), [1928] 1 K. B. 269. **Overd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209. **Refd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.

181a. —— ——.]—Pltf., an actress, was engaged by defts. to play in a play for the period of rehearsal & for the run of the play, & there was a collateral agreement that defts. would advertise her in a prominent position. Defts. refused to allow pltf. to play, but they paid her the whole of her salary down to the end of the run of the play. In an action for breach of contract the jury awarded to pltf., over & above her salary already paid, damages for loss of reputation through her not being employed to play the part :—*Held :* as there was an express agreement to advertise pltf. this necessarily implied an obligation to give pltf. an opportunity of acting, & pltf. was entitled, in addition to her salary already paid, to the damages awarded by the jury for loss of reputation.—MARBÉ *v.* GEORGE EDWARDES (DALY'S THEATRE), LTD., [1928] 1 K. B. 269; 96 L. J. K. B. 980 ; 138 L. T. 51 ; 43 T. L. R. 809, C. A.

Annotation :—**Consd.** Withers *v.* General Theatre Corpn., Ltd., [1933] 2 K. B. 536.

181b. —— ——.]—Applts., theatrical producers, agreed to engage resp., an American actor, to play one of the three leading comedy parts in a musical play about to be produced at the London Hippodrome for six weeks certain at a salary of £55 per week, & the contract contained a provision prohibiting resp. during the continuance of his engagement from acting elsewhere without the consent of the applts. Resp. objected that the part assigned to him was not one of the three leading comedy parts &, on the refusal of applts. to recast him, declined to appear in the play & sued applts. for damages for

---

publication & sale, & disposal of performing & mechanical rights, apart from the use of it by her concert party : —*Held :* (1) pursuer's averments as to loss of contingent profits from copyright royalties, publication & sale, & disposal of performing & mechanical rights, were irrelevant ; (2) the measure of her damages in respect of the lost music was the cost of its replacement as nearly as might be, ascertained either by the market price of actual replacement, or by consideration of the commission which would have to be paid to composers of music of the class to which the lost compositions belonged. —REAVIS *v.* CLAN LINE STEAMERS, LTD., [1926] S. C. 215.—SCOT.

sd. *Loss of earning power—Physical or mental.*]—In an action for damages for personal injuries arising from negligence :—*Held :* items which should go to make up pltf.'s damages were (*inter alia*) a sum to compensate for loss of earning power by reason of physical injury & any incidental mental injury. — COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818 ; 3 W. W. R. 1152.—CAN.

st. *Loss of time—Injury in motor-car collision.*]—In an action for damages for injuries arising out of a motor collision, where it was found that the accident was caused by pltf.'s negligence :—*Held :* damages should be given deft. for loss of time, repairs to the car & costs.—TIEMAN *v.* MCKENZIE, [1923] 1 D. L. R. 1189.—CAN.

sw. *Loss of wages—Injury to place of work.*]—WHEELER *v.* UNITED GAS & FUEL CO. (1935), 5 F. L. J. (Can.) 116.—CAN.

PART III. SECT. 3, SUB-SECT. 2.

sk. *Depreciation in price—Machinery components purchased by vendor to perform contract.*]—*Held :* the vendor was not entitled, as damages for breach of contract to purchase an ammonia gas compressing outfit, to a sum for loss through decrease in price of the parts purchased for the purpose of the contract, this not being a loss "directly & naturally resulting in the ordinary course of events from the buyer's breach of contract," as there was nothing in the negotiations for the contract to give the purchaser to understand that the vendor would have to go into the market & buy the various parts to make up the plant.—GENERAL SUPPLY CO. OF CANADA *v.* O'NEILL MORKIN MACHINERY CO., [1923] 2 W. W. R. 928.—CAN.

sl. *Loss of custom—Defective goods sold but replaced.*]—Certain goods supplied under contract not complying with the warranted description :—*Held :* it could not reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, that pltfs. were to compensate defts. for such loss of business as defts. might incur by the withdrawal of their customers on account of a few of the articles resold being defective, such articles being replaced when complaint was made.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367 ; 54 O. L. R. 585.—CAN.

breach of contract. At the trial of the action before a judge & jury the jury found for resp. for £1,000 damages for loss of publicity & for three weeks' salary & judgment was entered accordingly. The Ct. of Appeal affirmed the verdict & judgment except as to the salary:—*Held:* it was competent to the jury, having regard to the character of the contract, to give damages to resp. for loss of publicity.—HERBERT CLAYTON & JACK WALLER, LTD. *v.* OLIVER, [1930] A. C. 209; 99 L. J. K. B. 165; 142 L. T. 585; 46 T. L. R. 230; 74 Sol. Jo. 187, H. L.

Annotation:—**Folld.** Withers *v.* General Theatre Corpn., Ltd., [1933] 2 K. B. 536.

181c. —— ——.]—Pltf., who was a variety artiste, was engaged by deft. co. to appear & perform a certain sketch at the London Palladium for three consecutive weeks, commencing July 6, 1931, at a gross salary of £300 per week, he providing the supporting actors & properties. The contract contained a clause by which pltf. agreed, should defts. so desire, to transfer the engagement to any hall owned, controlled by or associated with defts. either in London or the provinces. Pltf. had a preliminary trial week at Portsmouth, & after viewing a performance there defts. on July 2, 1931, gave pltf. notice that they would not allow him to perform at the London Palladium under the agreement. Pltf. sued defts. claiming damages for breach of contract, including loss of publicity & reputation. At the trial counsel for pltf. suggested to the jury that pltf. had thereby suffered damage to his reputation. The judge in summing up the case told the jury that they must put some figure upon the loss of publicity because pltf. was not allowed to perform at the Palladium. He did not refer in his summing-up to the option in the contract. The jury returned a verdict for pltf. for the salary he had lost & £1,000 for loss of publicity. On appeal by defts.:—*Held:* (1) damage to a reputation already existing by not allowing an actor to appear in accordance with his contract was not a matter which could be taken into consideration by a jury in assessing damages for breach of contract. What had to be taken into consideration was whether if the actor had been allowed to appear that appearance would have given him an enhanced reputation. That distinction had not been explained to the jury by the judge, & therefore there would have to be a new trial on the question of damages; (2) pltf. had under the contract no absolute right to appear at the Palladium; defts. had an option as to the halls at which he should appear; in assessing damages for the breach of a contract which defts. could at their option perform in alternative ways it must be assumed that defts. would perform it in the way most beneficial to themselves & not in the way that would be most beneficial to pltf.; & as there had been no direction by the judge with regard to this there must be a new trial on this ground also.—WITHERS *v.* GENERAL THEATRE CORPN., LTD., [1933] 2 K. B. 536; 102 L. J. K. B. 719; 149 L. T. 487, C. A.

181d. —— **Author.**]—Pltfs. were engaged by defts. to write a screen play based upon a novel & by a collateral agreement defts. were to give pltfs. screen credit & their names were to be thrown upon the screen with a statement that they were joint authors of the work. Defts. wrongfully refused to accept pltfs.' work & pltfs. sued them for breach of contract:—*Held:* an author, as well as an actor, is entitled to recover damages for loss of publicity. Substantial damages should be awarded, & there must be a separate assessment in respect of each pltf.—TOLNAY *v.* CRITERION FILM PRODUCTIONS, LTD., [1936] 2 All E. R. 1625; 80 Sol. Jo. 795.

181e. —— ——.]—Defts. had purchased a song lyric from pltf., the author of the song. In a film they ascribed the authorship of the song to a third party:—*Held:* there was an implied contract that defts. would not give screen credit to anyone other than author of the song & pltf. was entitled to damages.—MILLER *v.* CECIL FILM, LTD., [1937] 2 All E. R. 464; 53 T. L. R. 544; 81 Sol. Jo. 318.

182. *Add. Annotations:*—**Consd.** The Kate, [1935] P. 100. **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Dobell (C. G.) & Co., Ltd. *v.* Barber & Garratt (1930), 47 T. L. R. 66; Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

189. *Add. Annotations:*—**Refd.** Dobell (G. C.) & Co., Ltd. *v.* Barber & Garratt (1930), 46 T. L. R. 420; Kubach *v.* Hollands, [1937] 3 All E. R. 907.

193. *Add. Annotations:*—**Distd.** *Re* Hall & Pim (1928), 139 L. T. 50. **Consd.** Simon *v.* Pawson & Leafs, Ltd. (1932), 148 L. T. 154; The Arpad (1934), 50 T. L. R. 505. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535.

194. *Add. Annotation:*—**Refd.** Hall *v.* Pim (1927), 137 L. T. 585.

PART III. SECT. 3, SUB-SECT. 3.

194 i. —— *Loss of profit.*]—W. entered into a contract to supply a paper co. with pulpwood. He had previously made a contract with M., who agreed to deliver certain pulpwood at a lower price & who was informed of the first-mentioned contract, though not of all its terms. At the end of the season M. was short of the quantity he agreed to deliver:—*Held:* W. was entitled to recover damages from M. for non-performance of his contract, & the measure of those damages was the profit W. would have made under his contract with the paper co.—MONDOR *v.* WILLETS, [1923] 2 D. L. R. 964; [1923] S. C. R. 433; 2 W. W. R. 486.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.

p (p. 107) i. —— ——.]—In an action for damages for breach of contract by refusal to take delivery of goods:—*Held:* a claim for expenses incurred in going to deft.'s residence to urge him to take delivery could not stand.—BRADLEY *v.* BAILEY & JASPERSON, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—**CAN.**

k (p. 108) i. —— —— *Medical attendance.*]—In an action for damages for personal injuries arising from negligence:- *Held:* the items which should go to make up pltf.'s damages were (*inter alia*) medical & hospital bills. — COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818; 3 W. W. R. 1152.—**CAN.**

k (p. 108) ii. —— —— —— *On wife.*]—S. & his wife brought an action against deft. for damages for personal injuries. Deft. was found guilty of negligence, but the action by S. was dismissed on account of contributory negligence. The ct. awarded damages to the wife against deft. It was sought to give in evidence the wife's medical & hospital bills:—*Held:* the bills had been contracted by the wife as her husband's agent & were his liability alone.—SCOBLE *v.* WOODWARD, [1924] 1 W. W. R. 1040.—**CAN.**

r (p. 108) i. —— *Injury to chattel—Costs of repairs—& depreciation.*]—*Held:* recoverable. — WALTER *v.* SEIBEL, [1927] 2 D. L. R. 1005; [1927] 1 W. W. R. 967 21 Sask. L. R. 452.—**CAN.**

214. *Add. Annotations :*—**Follld.** Bennett *v.* Kreeger (1925), 41 T. L. R. 609. **Apld.** Slavonski *v.* La Pelleterie de Roubaix Soc. Anon. (1927), 137 L. T. 645. **Consd.** *Re* Hall & Pim (1928), 139 L. T. 50; Dobell (C. G.) & Co., Ltd. *v.* Barber & Garratt (1930), 47 T. L. R. 66. **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Kasler & Cohen *v.* Slavouski (1927), 96 L. J. K. B. 850; Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535; Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604; Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141; Domine *v.* Grimsdall, [1937] 2 All E. R. 119.

215. *Add. Annotations :*—**Follld.** Bennett *v.* Kreeger (1925), 41 T. L. R. 609. **Consd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83. **Refd.** Kasler & Cohen *v.* Slavouski (1927), 96 L. J. K. B. 850.

215a. —— —— ——.]—Pltfs. bought a coat with fur collar attached, for re-sale, from deft. & sold it to a customer. Owing to the colouring matter with which the fur was dyed, the customer contracted a skin disease & brought an action against pltfs., claiming damages. Pltfs. informed deft. thereof & requested him to undertake the defence of the action. Deft. denied liability but never suggested that pltfs. had no answer to the action, with the result that pltfs. defended the action & a jury awarded the customer damages for her suffering, & pltfs. had to pay the costs of the action :—*Held :* pltfs. were entitled to recover from deft. the damages so awarded, together with the customer's taxed costs of the action & their own costs of defending the action as between solr. & client.—BENNETT (SIDNEY) LTD. *v.* KREEGER (1925), 41 T. L. R. 609.

217. *Add. Annotation :*—**Refd.** Sheppy Glue & Chemical Works *v.* Medway River Conservators (1926), 24 L. G. R. 457.

220. *Add. Annotation :*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

223. *Add. Annotation :*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

227a. —— **Several sub-sales.**]—Defts. sold skins to pltfs., who resold to a sub-vendee. That sub-vendee sold to a second sub-vendee, who sold one of the skins, which had been made into the collar of a fur coat, to a third sub-vendee. The third sub-vendee sold to a woman who wore the coat & developed dermatitis on the face in consequence of antimony contained in the skin. In each sale the vendor knew the particular purpose for which the goods were required by the purchaser, & there was an implied warranty that the goods were reasonably fit for such purpose. The ultimate purchaser brought an action for breach of contract against her supplier, the third sub-vendee. The third sub-vendee defended the action, & in so doing acted reasonably; but in the result the ultimate purchaser recovered damages & costs against him. The third sub-vendee, who had incurred certain additional costs in connection with the action, claimed to be reimbursed by the second sub-vendee, & after some resistance, incurring further costs, the second sub-vendee paid. The second sub-vendee then claimed against the first sub-vendee, who after some dispute incurring further costs, also paid. The first sub-vendee claimed against pltfs., who, after taking advice, occasioning further costs, paid. Pltfs. sued defts. for breach of contract, claiming as damages the damages recovered by the ultimate purchaser, the costs on both sides in that action, & the costs of the intermediate actions :—*Held :* pltfs. were entitled to recover the damages which might reasonably be supposed to have been in the contemplation of the parties at the time of the contract; the parties must have contemplated that damages would be claimed, if there were a breach of contract of the kind that had occurred, by parties separated by several contractual steps from each of the immediate parties to each of the contracts along the line; pltfs.' damages should include (1) the damages recovered by the ultimate purchaser, (2) the costs on both sides in that action, inasmuch as it was reasonably defended, & (3) the costs of the intermediate actions, in so far as they were reasonably incurred.—KASLER & COHEN *v.* SLAVOUSKI, [1928] 1 K. B. 78; 96 L. J. K. B. 850; 137 L. T. 641; *subsequent proceedings, sub nom.* SLAVONSKI *v.* LA PELLETERIE DE ROUBAIX SOCIETE ANONYME (1927), 137 L. T. 645.

235a. —— **Costs awarded in previous proceedings, but not recovered.**]—Pltfs. sought to recover from defts., as special damage, the costs which they themselves had incurred in previous litigation in which they were defts. Pltfs. in the present action sent a motor lorry to be overhauled by defts. The repairs were carried out & the lorry was returned. Very shortly afterwards, while the lorry was in use on the highway, one of the wheels came off & damaged the van of pltf. in the previous litigation, who brought an action in the county ct. to recover damages against present pltfs. He won the action at the hearing, but the decision was reversed on appeal. He was a man of straw & unable to pay the costs incurred. Present pltfs. sued present defts. for damages for alleged breach of contract & negligence, & a common jury found in pltfs.' favour. After argument as to the right of pltfs. to recover as special damage against defts., on account of their breach of contract & negligence, the costs of all previous litigation :—*Held :* such damage was not too remote.—BRITANNIA HYGIENIC LAUNDRY CO. *v.* THORNYCROFT & CO. (1925), 94 L. J. K. B. 858; 41 T. L. R. 667; *on appeal,* 95 L. J. K. B. 237; 135 L. T. 83; 42 T. L. R. 198.

237. *Add. Annotations :*—**Consd.** Harnett *v.* Bond [1924] 2 K. B. 517. **Apld.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670. **Consd.** Howard *v.* Odhams Press, Ltd.,

---

PART III. SECT. 4, SUB-SECT. 2.

209 v. ——.]—Solr. & client costs incurred by the driver of a motor car in successfully defending an action brought against him by a passenger in another car with which his car had collided cannot be recovered by him in an action for negligence brought against the driver of the other car.—LONDON GUARANTEE & ACCIDENT CO., LTD. *v.* GIBSON, [1928] 3 D. L. R. 610; [1928] 2 W. W. R. 532; 23 Alta. L. R. 518.—**CAN.**

[1936] 2 All E. R. 40. **Refd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135; The Edison (1932), 147 L. T. 141; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

237a. ——.]—A contract between a mercantile inquiry agency, which furnishes reports on the financial stability of companies, firms, & persons engaged in trade, & a trading co., providing that all information furnished by the agency to its subscriber, the trading co., is supplied in strict confidence for the exclusive use of the subscriber in the subscriber's business, & that the subscriber shall indemnify the agency in respect of any loss or damage which it may suffer or incur from the breach by the subscriber of any of the conditions of the contract, is not void as being against public policy on the ground that the fundamental element of the contract is the desire on the part of the agency to protect itself against the risk of actions for libel resulting from reports issued by it to subscribers. If, however, a subscriber does disclose information supplied by the agency with the result that the agency has to pay to a third party damages for a libel on that third party contained in the information in question, no special damage being suffered by the third party, the only damages recoverable by the agency from the subscriber in an action for breach of contract are nominal damages, the *causa causans* of the liability to pay damages being the unlawful act of the agency in publishing a libel & the disclosure by the subscriber being only the *causa sine qua non*.—BRADSTREETS BRITISH, LTD. *v.* MITCHELL, [1933] Ch. 190; 102 L. J. Ch. 34; 148 L. T. 111; 48 T. L. R. 670.

Annotation:—**Consd.** Howard *v.* Odhams Press, Ltd., [1938] 1 K. B. 1.

260a. *S. P.* HARRISON *v.* MCSHEEHAN, [1885] W. N. 207.

262. *Add. Annotation:*—**Consd.** The Kate, [1935] P. 100.

265. *Add. Annotations:*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

268. *Add. Annotations:*—**Consd.** Addie R. & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358; Domine *v.* Grimsdall, [1937] 2 All E. R. 119. **Refd.** Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746; Compania Mexicana De Petroleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106; Coates *v.* Rawtenstall Borough Council, [1937] 3 All E. R. 602.

276. *Add. Annotation:*—**Consd.** Haynes *v.* Harwood, [1935] 1 K. B. 146.

279. *Add. Annotations:*—**Consd.** Marchant Manufacturing Co. *v.* Leonard D. Ford & Teller, Ltd. (1936), 154 L. T. 430. **Refd.** Noble *v.* Harrison, [1926] 2 K. B. 332; Smith *v.* G. W. Ry. (1926), 135 L. T. 112; Pontardawe Rural Council *v.* Moore-Gwyn, [1929] 1 Ch. 656; Northwestern Utilities, Ltd. *v.* London Guarantee & Accident Co., [1936] A. C. 108; Hale *v.* Jennings Bros., [1938] 1 All E. R. 579.

280. *Add. Annotations:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; The Edison (1932), 147 L. T. 141.

282. *Add. Annotations:*—*As to* (1) **Distd.** Martin *v.* Stanborough (1924), 41 T. L. R. 1. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

284. *Add. Annotation:*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

287a. —— ——.]—On the morning of Nov. 22, 1922, the *P.*, the *S. A.*, & the *S.* were moored by their sterns to the quay in Valetta Harbour, Malta, in the order named from east to west, & the vessels had their anchors down forward. There was a strong wind blowing from E.N.E. & there was a swell in the harbour. At 8 a.m. the *P.* dragged her anchors & the fore part of the vessel fell down upon the *S. A.* & remained in contact with her. In endeavouring to get free from the *S. A.* the *P.* broke away from her moorings & fell bodily upon the *S. A.* & parted her moorings, & the *S. A.* in turn fell down upon the *S.* & cast her adrift. The *S. A.* & the *S.* then manœuvred in the harbour under their own steam to keep away from the shore & brought up heading to the wind. Twenty minutes later the *S.* got under the starboard quarter of the *S. A.*, when the revolving propeller of the *S. A.* struck the *S.*, with the result that the *S.* was sunk & the propeller was damaged. The *P.* was clear of both ships at the time. In an action by the *S. A.* against the *P.*, there being no appeal from the decision of the President that the *P.* was liable for the earlier collisions, the only questions now at issue was whether she was also liable for the final collision between the *S. A.* & the *S.* The President, acting on the advice of two of the Elder Brethren of the Trinity House, found that the final collision was directly caused by the negligence of the *P.*, but his decision was reversed on appeal. The nautical assessors in the Ct. of Appeal advised (*a*), agreeing with the Elder Brethren, that there was no fault on the part of the *S.*; & (*b*), differing from the Elder Brethren, that the master of the *S. A.* was guilty of want of reasonable care in not stopping his engines in time to avert the collision:—*Held:* the final collision was not directly caused by the negligence of the *P.*, but that the action of the *S.* constituted a *novus actus interveniens*, the *S. A.* having failed to prove that the *S.*, in acting as she did, was free from blame.

Per Lord SUMNER. The miscalculation of the master of the *S. A.* in not stopping his engines sooner also broke the chain of causation.—SINGLETON ABBEY S.S. OWNERS *v.* PALUDINA S.S. OWNERS, THE PALUDINA, [1927] A. C. 16; 95 L. J. P. 135, H. L.

Annotation:—**Refd.** Canadian Pacific Ry. Co. *v.* Kelvin Shipping Co., Ltd. (1927), 138 L. T. 369.

288. *Add. Annotations:*—**Consd.** The St. Nicolai (1925), 133 L. T. 640. **Distd.** G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57. **Refd.** British-American Tobacco Co. *v.* Jones (1925), 134 L. T. 405; Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756. **Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

Part IV.—Aggravation and Mitigation.

290. *Add. Annotation :*—**Refd.** Martin *v.* Stout, [1925] A.C. 359.

298. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

301. *Add. Annotations :*—**Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739. **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

302. *Add. Annotation :*—**Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

304. *Add. Annotations :*—**Refd.** Curtis Moffat, Ltd. *v.* Wheeler, [1929] 2 Ch. 224; Barnes *v.* Cadogan Developments, Ltd., [1930] 1 Ch. 479.

306. *Add. Annotation :*—**Refd.** Vanbergen *v.* St. Edmunds Properties, Ltd. (1933), 149 L. T. 182.

327. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

330. *Add. Annotation :*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

341. *Add. Annotations :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson (1924), 131 L. T. 652; Martin *v.* Stout, [1925] A. C. 359; Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

342. *Add. Annotation :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

343. *Add. Annotations :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359. **Refd.** Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604; Ebbw Vale Steel, Iron & Coal Co. *v.* Tew, Ebbw Vale Steel, Iron & Coal Co. *v.* Lewis (1935), 79 Sol. Jo. 593.

347a. ——.]—**Pltf.'s duty to minimise damage is limited to doing what is reasonable in all the facts of the case, the *onus* of showing a breach of that duty being on deft.**—FINLAY (JAMES) & CO. *v.* N. V. KWIK HOO TONG HANDEL MAATSCHAPPIJ, [1928] 2 K. B. 604; 97 L. J. K. B. 817; 139 L. T. 582; 44 T. L. R. 643; 72 Sol. Jo. 468; 17 Asp. M. L. C. 566; *affd.*, [1929] 1 K. B. 400, C. A.

Annotations :—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404; The Edison (1932), 147 L. T. 141.

347b. ——.]—BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD., WATERLOW & SONS, LTD. *v.* BANCO DE PORTUGAL, No. 411a, *post*.

349. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

350a. Contract of employment for fixed period—Voluntary liquidation of employer before end of period.]—*Re* GRAMOPHONE RECORDS, LTD. (1930), 69 L. Jo. 201; 169 L. T. Jo. 193; [1930] W. N. 42.

351. *Add. Annotation :*—**Refd.** Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604.

352. *Add. Annotation :*—**Refd.** Martin *v.* Stout, [1925] A. C. 359.

356. *Add. Annotation :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson (1924), 131 L. T. 652.

PART IV. SECT. 1, SUB-SECT. 2.

d i. —— —— *Serious injury.*]—$12,000 damages held not excessive for a comminute fracture of the skull by a bullet fired by a constable of the Royal Canadian Mounted Police.—WILSON *v.* MAINLAND, [1933] 2 D. L. R. 539; 6 M. P. R. 482; 59 C. C. C. 385.—**CAN.**

d ii. —— —— *Absence of provocation.*] — In an action for assault in which pltf. appealed for a larger amount for both special & general damages it was proved that deft. had assaulted pltf. twice. There was evidence of provocation for the first assault but none for the second, which was committed when pltf. was lying on the ground as the result of the first: —*Held :* the general damages should be increased from $50 to $500 & the special damages by an item of $11.35. — GUILLET *v.* CHARLEBOIS, [1935] 3 W. W. R. 438.—**CAN.**

d iii. —— *Trespass—Abusive conduct.*]—An appeal from a judgment whereby pltf., in an action for trespass, was awarded vindictive damages in addition to special damages:—*Held :* in view of deft.'s persistence in trespassing in defiance of pltf.'s requests to desist, his violent & abusive conduct towards pltf., & the particularly injurious & malicious manner in which certain of the trespasses were committed, the allowance of vindictive damages was justified & the amount thereof should not be reduced.—SPENCER *v.* GRANT, [1928] 1 D. L. R. 820; [1928] 1 W. W. R. 190; 22 Sask. L. R. 365.—**CAN.**

d iv. —— —— *Violent behaviour.*]—A city corpn., constructing a sewer, expropriated an easement over pltf.'s land for that purpose. Deft. contracted with the corpn. to construct that part of the sewer which ran through pltf.'s land. In performing his contract, deft. did not confine himself to that part of the land which was subject to the easement, but unlawfully cut down trees & deposited sand & silt upon the land outside the part subject to the easement, & thereby depreciated the value of the land:—*Held :* the amount of damages in such an action as this may be indefinitely enhanced by evidence of violent & arrogant conduct on the part of deft.—PAFFARD *v.* CAVOTTI, [1929] 1 D. L. R. 111; 63 O. L. R. 171.—**CAN.**

d v. —— —— *High-handed behaviour.*]—In an action for damages for trespass founded on the wrongful seizure of a motor car which pltf. had bought from deft. under a conditional-sale agreement:—*Held :* because of the high-handed conduct of deft. which injured pltf.'s feelings, the trial judge was justified in awarding exemplary damages.—GRIFFITHS *v.* FORDYCE MOTORS, LTD., [1930] 2 W. W. R. 698; 4 D. L. R. 451; 43 B. C. R. 119.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B.

341 x. ——.]—CANADIAN FLEXIBLE SKATE CO., LTD. *v.* MONARCH BRASS MANUFACTURING CO., LTD., [1925] 2 D. L. R. 387; 56 O. L. R. 362.—**CAN.**

341 xi. ——.]—MCKENNY *v.* DRUMMOND & DVORETSKY (1926), 29 W. A. L. R. 6.—**AUS.**

352 i. *Sale of goods—Refusal to accept.*]—Unless a purchaser has by the contract of sale a right to repudiate, he cannot repudiate the sale. If he does so, the vendor may sue the purchaser for the price, or re-sell the article; & if by such sale he incurs a loss, then the purchaser must make it good. But the vendor must take into consideration such payments as the purchaser may have made on account.—FOSTER *v.* HEINTZMAN & CO., [1923] 4 D. L. R. 166.—**CAN.**

352 ii. —— ——.] — BRADLEY *v.* BAILEY & JASPERSON, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—**CAN.**

354 i. —— *Anticipatory breach.*]—Where there had been a breach of contract by defts.:—*Held :* pltfs. were entitled to nominal damages only, as when pltfs. found that defts. would not carry out the contract, they should have gone into the market & done the best they could with a similar contract.—CAMPBELL *v.* MAHLER (1919), 43 O. L. R. 395; 14 O. W. N. 348; *affd.* 15 O. W. N. 339.—**CAN.**

sm. —— *Trouble & risk attending performance of contract.*]—In allowing damages for wrongful repudiation of a contract to accept delivery of poles not yet cut:—*Held :* there should be taken into consideration the risks of disappointment & difficulty in cutting & delivery that might arise from unexpected sources; & an allowance in reduction of damages should be made for the release from the care, trouble & risk attending a full execution of the contract.—CONNORS *v.* MCGREGOR, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.

364 iv. —— —— *To assault.*]—On appeal from a judgment for pltf. in an action for assault the damages were reduced to $10, the assault having been merely a technical one, which

376. *Add. Annotation :—As to* (1) **Apprvd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

377. *Add. Annotation :—***Reld.** Martin *v.* Benson, [1927] 1 K. B. 771.

Part V.—Measure of Damages.

389a. —— **General damages.**]—Pltfs. & defts. entered into a contract whereby pltfs. were to advertise defts.' goods by flying over various towns trailing behind the aeroplane words advising the public to buy defts.' products. Defts. agreed to pay £500 for two tours of twenty-five hours each, excluding dead time, the hours to be distributed as defts. wished, & at dates & times which they approved. There were to be 25 miles of free flying between each town, & any extra mileage was to be paid for. Scheds. of times & places were agreed, but it was recognised that exact compliance with these was dependent on the weather. It was agreed that the pilot was to keep in close touch with defts. & was each day to telephone to get their approval of what he proposed to do, & to send a report of what he had done. This he did until Nov. 10, 1937. No telephone communication was received from the pilot after Nov. 9, nor were any arrangements made for flights on Nov. 11. At about 10.45 a.m. on Nov. 11, defts.' representative saw the pilot flying over Manchester & Salford while the Armistice services were in progress, & the pilot flew over the crowded main square in Salford during the two minutes' silence, to the horror & indignation of the thousands of people there. The result of this flight was a vigorous denunciation of defts. & the receipt of many letters announcing that their goods would be boycotted. Defts. immediately placed advertisements in several of the chief newspapers circulating in the district, & letters of explanation & apology were written to the newspapers by pltfs. & the pilot. As a result of this flight there was a marked drop in the demand for defts.' goods. Pltfs. sued defts. for £170 7*s.* 11*d.* in respect of part of the advertising done under the contract, & defts. counterclaimed for damages, & for a declaration that they were no longer bound by the contract. Pltfs. contended that unreasonable expense had been incurred by defts. in advertising, & that only special & not general damages should be given for pecuniary loss in respect of breach of contract. They contended that the contract could still be performed at a later date & in a different locality :—*Held :* (1) the expenditure incurred in advertising was reasonable in the circumstances ; (2) general damages were recoverable for pecuniary loss

---

apparently had been courted by pltf. with a view to an action for damages.—HODGKINSON *v.* MARTIN, [1928] 3 W. W. R. 763.—**CAN.**

m i. —— *Continuing contract with doctor.*]—Where a person has a contract with a doctor whereunder he is entitled to the doctor's services when they are required as a result of disease, accident or other causes, he cannot, in an action for damages for personal injuries, recover as damages the amount which such services would have cost had he not entered into such contract.—TAYLOR *v.* TURNER, [1925] 3 D. L. R. 574 ; [1925] 2 W. W. R. 490.—**CAN.**

PART IV. SECT. 3.

q i. —— *Conversion—Onus of proof.*]—Where it was found that there was no authority in deft. bank to sell shares pledged as collateral security without judicial process :—*Held :* as to damages, the burden was on the bank to show it got full value for the shares.—GEORGESON *v.* DOMINION BANK, [1924] 3 D. L. R. 607 ; 2 W. W. R. 931.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

380 xi. ——.]—In an action for damages for breach of contract, the measure of damage is the estimated loss directly & naturally resulting from the breach thereof.—HATFIELD & CO. *v.* CRONKHITE (1922), 50 N. B. R. 456.—**CAN.**

380 xii. ——.]—In an action for damages for non-acceptance of goods, the measure of damages is the estimated loss directly & naturally resulting in the ordinary course of events from the buyer's breach of contract.—RECORD FOUNDRY & MACHINE CO. *v.* GARSON, [1923] 2 D. L. R. 142 ; 50 N. B. R. 110.—**CAN.**

380 xiii. —— *Goods manufactured or partly manufactured.*]—In respect of goods manufactured or partly manufactured & ready or partly ready for delivery, before defts. repudiated their contract :—*Held :* pltfs. were entitled to recover, as damages for breach of contract, a sum equal to the contract price of the finished or partly finished goods, less their value at the time of or within a reasonable time of the breach.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367 ; 54 O. L. R. 585.—**CAN.**

380 xiv. ——.]—In an action for negligence causing damage to goods the measure of damages is the depreciation in the value of the goods as the result of the accident.—COPLEY *v.* FINKELSTEIN, [1928] 3 D. L. R. 671 ; [1928] 3 W. W. R. 89.—**CAN.**

sb. *Nominal damages.*]—Nominal damages awarded where breach of contract, but no substantial damage.—CANADIAN WOODMEN OF THE WORLD *v.* HOOPER, [1935] 2 D. L. R. 802.—**CAN.**

sn. *Consignment of wheat for sale—Failure to sell.*]—Where grain is consigned for sale & the consignee is instructed to sell it as soon as it is unloaded, if the price be then a certain figure or better, but he neglects to carry out such instructions, the consignor is entitled in damages to the difference between the price at the time of unloading & the lower price on the day when he learns that the grain has not been sold, even though he does not immediately notify the consignee that his instructions have not been carried out.—PARADIS *v.* FEDERAL GRAIN CO., LTD., [1925] 2 W. W. R. 164.—**CAN.**

sw. *Agreement to exchange & sell timber berths—Loss of profits—Substantial damages.*]—KNOX & LEWIS *v.* HALL, [1927] 2 D. L. R. 1128 ; [1927] 3 W. W. R. 27 ; 38 B. C. R. 348 ; *revsd. sub nom.* HALL *v.* KNOX, [1928] 1 D. L. R. 193 ; [1928] S. C. R. 87.—**CAN.**

sb. *Agreement to pay for mineral claim & keep up assessment work—Claim allowed to lapse.*]—*Held :* the measure of damages was the value, if any, of the property lost.—MCGEE *v.* CLARKE, [1927] 1 W. W. R. 593 ; 38 B. C. R. 165.—**CAN.**

sd. *Wrongful eviction of lessee.*]—In regard to damages recoverable by a wrongfully evicted lessee, the case is governed by the general rule applicable to all breaches of contract, namely, that the party wronged is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed. Compensation to the lessee will not be confined to the value of the unexpired term, but will include all loss naturally resulting from the eviction.—HAACK *v.* MARTIN, [1927] 3 D. L. R. 19 ; [1927] S. C. R. 413.—**CAN.**

sf. *Lease of racehorse to trainer for specified period—Owner taking horse away before expiration of period—Loss of prospective winnings recoverable.*]—HOWE *v.* TEEFY (1927), 27 S. R. N. S. W. 301 ; 44 N. S. W. W. N. 102.—**AUS.**

sg. *Measure selected by plaintiff.*]—BURKARD & CO., LTD. *v.* WAHLEN (1928), 28 S. R. N. S. W. 607 ; 45 N. S. W. W. N. 201.—**AUS.**

sh. *Breach of contract to summerfallow.*]—A lessee under a crop-payment lease broke his covenant to summerfallow. The lessor, who had the work done at his own expense, contended that the delay in doing it would reduce the crops to be grown & claimed damages on that head :—*Held :* since it was impossible to say with any degree of certainty that the crops in the subsequent years would be less than they would have been had deft. performed his covenant, such damages could not be awarded.—UGLUM *v.* TORKELSON, [1930] 3 W. W. R. 26 ; 4 D. L. R. 1022.—**CAN.**

sustained in respect of the breach of contract; (3) it was commercially wholly unreasonable to carry on with the contract, & defts. were released from further performance.—AERIAL ADVERTISING CO. *v.* BATCHELORS PEAS, LTD. (MANCHESTER), [1938] 2 All E. R. 788; 82 Sol. Jo. 567.

391. *Add. Annotations :*—**Apld.** Kaye Steam Navigation Co. *v.* Barnett, Ltd. (1932), 48 T. L. R. 440; Withers *v.* General Theatre Corpn., Ltd., [1933] 2 K. B. 536.

393a. ——— ———.]—WITHERS *v.* GENERAL THEATRE CORPN., No. 181c, *ante*.

393. For the cross-reference following this case, "**As to interest under Civil Procedure Act, 1833 (c. 42), s. 28, & damages in lieu of such interest.**]—*See* MONEY & MONEY LENDING," read "As to interest under Civil Procedure Act, 1833 (c. 42), s. 28, & damages in lieu of such interest, *see* MONEY & MONEY-LENDING."

393a. Agreement to pay debt into bank—Subsequent issue of bankruptcy notice by creditor.]—Pltf., a trader, being indebted to defts., an agreement was made between him & defts.' solrs. that, if he would pay the amount of the debt into a bank in the country for the credit of defts.' solrs. in London, that payment would satisfy all sums which he owed to defts., & a bkpcy. notice which they had issued in respect of part of the debt would not be served on him. Pltf. carried out his part of the agreement, but, in breach thereof, defts., by a clerk of their solrs., served him with the bkpcy. notice :—*Held :* as pltf., by the agreement, was not to pay his debt to his creditors, but was to pay the money to the account of defts.' solrs., which he was not under any obligation to do, there was sufficient consideration to prevent the agreement being *nudum pactum* & pltf. was entitled to maintain an action for breach of the agreement.

The service of the bkpcy. notice having been effected within the knowledge of two business associates of pltf. :—*Held :* defts. were liable to pltf. in substantial, though reasonable & temperate, damages.—VANBERGEN *v.* ST. EDMUNDS PROPERTIES, LTD., [1933] 1 K. B. 345; 102 L. J. K. B. 177; *revsd. on another point*, [1933] 2 K. B. 223, C. A.

404a. Contract to replace stock.]—Pltf. being possessed of £3,000 4 per cent. stock, empowered deft. to sell the same, for his own benefit, in consideration of which, deft. agreed to transfer at the next opening £3,000 4 per cent. into pltf.'s name :—*Held :* on failure of deft.'s engagement pltf. might maintain an action against him to recover the value of that stock on the day appointed for the transfer.—SANDERS *v.* KENTISH (1799), 8 Term Rep. 162.

404b. ——.]—In estimating the measure of damages in an action for breach of an engagement to replace stock on a given day, it is not enough to take the value of the stock on that day, if it have risen in the meantime; but the highest value as it stood at the time of the trial; there being no offer of the deft. to replace it in the intermediate time while the market was rising.—SHEPHERD *v.* JOHNSON (1802), 2 East, 211; 102 E. R. 349.

Annotations :—**Consd.** Gillingham *v.* Waskett (1824), M'Cle. 198. **Reld.** Gainsford *v.* Carroll (1824), 2 B. & C. 624.

404c. ——.]—On a bond conditioned for replacing stock, the obligee is not entitled to special damages for a profit he might have made if it had been sooner replaced, unless he shows that he actually would have made it. On a failure to replace stock, the measure of damage is the price at the day when it ought to have been replaced, or the price at the day of the trial, at the option of pltf., but, *semble*, not the highest price at any intermediate day.

Pltf. gave a bond conditioned to replace 5 per cent. stock on a given day. After that day government gave the holders of that stock an option, to be paid off at par, or to commute their stock for 3 per cents. Pltf. expressed to deft. a wish to have the stock replaced, that he might be paid at par, but no wish to take 3 per cent. stock :—*Held :* he was not entitled to recover the price of so much 3 per cent. stock as he might have obtained in exchange for the 5 per cents.—M'ARTHUR *v.* SEAFORTH, LORD (1810), 2 Taunt. 257; 127 E. R. 1076.

Annotations :—**Consd.** Gillingham *v.* Waskett (1824), M'Cle. 198. **Distd.** Gainsford *v.* Carroll (1824), 2 B. & C. 624; Williams *v.* Peel River Land & Mineral Co., Ltd. (1886), 55 L. T. 689.

404d. ——.]—In assessing damages on a writ of inquiry, on a bond to replace stock, the fair rule is to take the price of the stock on the day of the trial, or the day previous.—HARRISON *v.* HARRISON (1824), 1 C. & P. 412.

404e. ——.]—The true measure of damages in an action for not re-delivering shares lent to deft. upon a contract to return them on a given day, is, not the market-price at the time of the breach, but the market-price at the time of the trial.—OWEN *v.* ROUTH & OGLE (1854), 14 C. B. 327; 2 C. L. R. 365; 23 L. J. C. P. 105; 22 L. T. O. S. 260; 18 Jur. 356; 2 W. R. 222; 139 E. R. 134.

408a. Option to purchase—Profit on resale lost by improper withdrawal.] — Pltf., having an option from deft. to purchase a freehold house for £4,000, agreed to sell the property to S. for £4,500, & then wrote accepting deft.'s offer to sell the house. In the meantime deft. had sold the property to B. for £4,000 :—*Held :* as specific performance of the contract was impossible by reason of deft.'s own act, pltf. was entitled to recover from deft. as damages £500, the difference between the price at which the property was offered to pltf. & that at which pltf. contracted to sell it.—GOFFIN *v.* HOULDER (1920), 90 L. J. Ch. 488; 124 L. T. 145.

411a. Contract to print bank-notes—Unauthorised use of plates.]—A firm of printers employed by the Bank of Portugal to print a series of bank notes known as Vasco da Gama 500 escudo notes delivered to the Bank 600,000 notes which were put into circulation in Portugal. Subsequently, in breach of their contract of employment, the printers delivered to one M., the head of a band of criminals, 580,000 notes of the same type, printed from the original plates or from plates made from the same die, in the belief that he had the authority of the Bank. M. & his associates introduced these false notes into Portugal & put a large number of them into circulation. The Bank on discovering that unauthorised notes were in circulation issued notices withdrawing the whole of this issue

of Vasco da Gama notes & undertaking, within a limited time, to exchange all notes of this type presented to the Bank for other notes. The Bank had an exclusive licence to issue bank notes as legal tender in Portugal, but the amount of the notes to be issued was controlled by law. At all material times the currency was inconvertible. In an action by the Bank against the printers for breach of contract defts. maintained (*a*) that the loss suffered by the Bank was due to their own voluntary action in paying the unauthorised notes; (*b*) that the loss to the Bank was limited to the cost of printing & paper in regard to the new issue:—*Held:* (1) the loss arose naturally from the breach of contract; (2) the proper measure of damages was the exchange value expressed in sterling of the genuine currency given in exchange for the spurious notes, together with the cost of printing the genuine notes withdrawn.

(3) Where the sufferer from a breach of contract finds himself in consequence of that breach placed in a position of embarrassment the measures which he may be driven to adopt in order to extricate himself ought not to be weighed in nice scales at the instance of the party whose breach of contract has occasioned the difficulty. It is often easy after an emergency has passed to criticise the steps which have been taken to meet it, but such criticism does not come well from those who have themselves created the emergency. The law is satisfied if the party placed in a difficult situation by reason of the breach of a duty owed to him has acted reasonably in the adoption of remedial measures, & he will not be held disentitled to recover the cost of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken (Lord Macmillan). — Banco de Portugal *v.* Waterlow & Sons, Ltd., Waterlow & Sons, Ltd. *v.* Banco de Portugal. [1932] A. C. 452; 101 L. J. K. B. 417; 147 L. T. 101; 48 T. L. R. 404; 76 Sol. Jo. 327, H. L.

Annotations:—As to (1) **Consd.** The Edison (1932), 147 L. T. 141. *As to* (3) **Refd.** Hall, Ltd. *v.* Barclay, [1937] 3 All E. R. 620.

412a. Continuation of contract depending on third party.]—Defts. agreed in writing to purchase from pltfs. all the stores that they required in the United Kingdom for their vessels, pltfs.' profits on the net price invoiced by the manufacturers to pltfs. to be discussed every six months, & the agreement was to remain in force as long as another agreement between a third co. & defts. continued. This other agreement had been previously made on the same day, but it was not signed till the following day, & it was to remain in force for ten years unless certain payments were sooner made. After observing the agreement with pltfs. for five months defts. repudiated it:—*Held:* as the continuation of the agreement between pltfs. & defts. for more than six months depended on the volition of a third party, & as the agreement contained nothing to prevent defts. from buying their stores outside the United Kingdom, pltfs. were entitled only to damages in respect of a period of one month.—Franco-British Ship Store Co., Ltd. *v.* Compagnie des Chargeurs Française (1926), 42 T. L. R. 735.

413. *Add. Annotations:*—**Consd.** Ley *v.* Hamilton (1934), 151 L. T. 360. **Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711; Tolley *v.* Fry (J. S.) & Sons, Ltd., [1930] 1 K. B. 467.

418. *Add. Annotations:—As to* (1) **Apld.** Smith *v.* Schilling, [1928] 1 K. B. 429. **Consd.** Ley *v.* Hamilton (1934), 151 L. T. 360. **Refd.** Mechanical & General Inventions Co. *v.* Austin & Austin Motor Co., [1935] A. C. 346. *As to* (2) **Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

Part VI.—Liquidated Damages or Penalty.

424. *Add. Annotations:—Generally,* **Refd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637; Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 481; Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay, [1936] 2 All E. R. 515.

PART V. SECT. 1, SUB-SECT. 2.

414 ii. *Revsd.* on other grounds, Q. R. 15 K. B. 11; [1907] A. C. 454.

414 viii. ——.]—Paffard *v.* Cavotti, [1929] 1 D. L. R. 111; 63 O. L. R. 171. —**CAN.**

PART VI. SECT. 1, SUB-SECT. 1.

422 iii. ——.]—Acting under the provisions of the Diamond Cutting Act, 1919, the Govt. of the Union of South Africa, by the Under-Secretary for Mines & Industries, on May 28, 1928, entered into an agreement with certain diamond cutters whereby in effect the cutters undertook to set up a diamond cutting industry in the Union & within a period of six months to erect & complete a diamond cutting factory or factories, to provide the necessary machinery therefor, & to conduct all necessary operations in connection therewith. The contract was for five years, & the cutters, by clause 14, undertook to deposit with the Union, if so required, a total guarantee of £10,000, which sum, according to the agreement, was to be considered as liquidated damages & to be paid to the Union in the event of the cutters' failure to carry out the obligations imposed on them under the agreement. The agreement was ratified by Parliament & the full guarantee was called for, & the cutters arranged with applt. assurance co. to give the Union a guarantee for £10,000. The cutters, in pursuance of the agreement, proceeded to erect a factory, but on Dec. 31, 1931, they repudiated the agreement & closed down the factory. In Mar. 1932, the business of the cutters was sequestrated as insolvent by the Supreme Ct. of South Africa. On a preliminary point arising on a claim by the Union against applt. assurance co. as guarantors:—*Held:* on the construction of the Roman Dutch law, as at present developed, the sum claimed was a penalty & actual proved damage (up to the total sum guaranteed) could alone be recoverable in respect of it, & therefore it would fall to the Union to prove damage & to give before trial such particulars thereof as might be asked for & as the appropriate ct. in South Africa might see fit to allow.—Pearl Assurance Co., Ltd. *v.* Union of South Africa Government, [1934] A. C. 570; 103 L. J. P. C. 174; 152 L. T. 4; 50 T. L. R. 563, P. C.—**S. AF.**

PART VI. SECT. 1, SUB-SECT. 2.

424 vii. ——.]—A rate of damages provided for in a contract between a co-operative co. & a grower of fruits & vegetables, under which the latter agreed to deliver all his products to the co. to be marketed by it, for the breach thereof:—*Held:* to be liquidated damages & not a penalty.—Associated Growers of British Columbia, Ltd. *v.* British Columbia Fruit Land, Ltd., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

424 viii. ——.]—A contract between pltfs. & deft. provided that should deft.

425. *Add. Annotations :—As to* (1) **Consd.** Pearl Assurance Co. *v.* South Africa Union Government, [1934] A. C. 570. *As to* (2) **Consd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373 ; Pearl Assurance Co. *v.* South Africa Union Government (1934), 50 T. L. R. 563.

426. *Add. Annotations :—As to* (1) **Apld.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 481. *As to* (2) **Apld.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174. **Consd.** Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay, [1936] 2 All E. R. 515.

426a. ——.]—Deft. was a member of pltf. society, which was formed to organise the marketing of home-grown hops by their sale through pltfs., & by a written agreement deft. undertook to deliver to pltfs. all hops grown or produced by him in 1926 on certain land. The agreement also provided that if deft. failed to deliver to pltfs. the hops or disposed of them otherwise than through pltfs., he would pay to pltfs. as & for liquidated damages £100 per acre or proportionately on a less acreage :—*Held :* as a breach of the agreement might occasion serious damage which it might be difficult to value exactly or ascertain beforehand, the sum fixed by the parties as a pre-estimate of the damage, namely, £100 per acre, was not a penalty but liquidated damages.—ENGLISH HOP GROWERS *v.* DERING, [1928] 2 K. B. 174 ; 97 L. J. K. B. 569 ; 139 L. T. 76 ; 44 T. L. R. 443, C. A.

Annotation :—**Consd.** Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay, [1936] 2 All E. R. 515.

426b. ——.]—A contract entered into by pltfs. for the manufacture, delivery & erection of an acetone recovery plant for defts. to be used by defts. in the process of manufacturing artificial silk, provided that the plant should be delivered & erected in 18 working weeks from the receipt of final approval of the drawings. The contract stipulated by clause 10 that : "If this period of 18 working weeks is exceeded you (pltfs.) to pay by way of penalty the sum of £20 per working week you exceed the 18 weeks. . . ." There was a delay of 30 weeks by pltfs. in delivering & erecting the recovery plant ; & in an action by them claiming the agreed price defts. counterclaimed for damages for delay, the actual loss which they suffered having considerably exceeded the "penalty" of £20 for each of the 30 weeks :—*Held :* the sum of £20 a week was agreed damages & was the only sum that defts. were entitled to recover.—CELLULOSE ACETATE SILK CO., LTD. *v.* WIDNES FOUNDRY (1925), LTD., [1933] A. C. 20 ; 101 L. J. K. B. 694 ; 147 L. T. 401 ; 48 T. L. R. 595 ; 38 Com. Cas. 61, H. L. ; *affg.*, S. C. *sub nom.* WIDNES FOUNDRY (1925), LTD. *v.* CELLULOSE ACETATE SILK CO., LTD., [1931] 2 K. B. 393, C. A.

452a. —— ——.]—Deft., who had been placed upon the "stop list" of pltfs., entered into a "price-maintenance" agreement with them that he would not sell their goods at prices lower than those set out in printed schedules from time to time issued by them. The agreement contained a clause that for every breach thereof by deft. he would pay to pltfs. the sum of £15 as liquidated damages in respect of each sale. Deft. committed breaches of the agreement & an action was brought for an injunction & to recover £165 as agreed & liquidated damages in respect of 11 such breaches. At the trial the learned judge held that the disparity between the price of the article sold & the sum to be paid as damages prevented such damages from being liquidated damages & were a penalty :—*Held :* the only question to be considered was whether the sum claimed as liquidated damages was a fair pre-estimate of the damage likely to flow from the breach, & not unconscionable. Neither the fact that pltfs. were a powerful & influential co. & the trader a man in a very small way of business nor the fact that there was considerable disparity between the sum claimed as liquidated damages & the price of the article sold was relevant.—IMPERIAL TOBACCO CO. (OF GREAT BRITAIN & IRELAND), LTD. *v.* PARSLAY, [1936] 2 All E. R. 515 ; 52 T. L. R. 585 ; 80 Sol. Jo. 464, C. A.

455. *Add. Annotation :*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

461. *Add. Annotations :*—**Consd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373 ; Imperial Tobacco Co. (of Great Britain & Ireland), Ltd. *v.* Parslay (1935), 52 T. L. R. 61. **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

483. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373.

487. *Add. Annotation :*—**Folld.** Lock *v.* Bell, [1931] 1 Ch. 35.

487a. —— —— ——.]—By a contract dated Oct. 19, 1928, pltf. agreed to sell to deft. all her right, title, & interest in a licensed house known as T. of which she was the licensee.

fail to deliver to pltfs. all the wheat covered by the contract, he would pay to pltfs. as liquidated damages 25 cents per bushel for all wheat which he should have failed to deliver :—*Held :* the 25 cents per bushel was not a penalty but liquidated damages.—SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD. *v.* ZUROWSKI (Sask.), [1926] 3 D. L. R. 810 ; [1926] 2 W. W. R. 604.—**CAN.**

424 ix. ——.]—BOUCAUT BAY CO., LTD. *v.* THE COMMONWEALTH, [1927] Argus L. R. 415.—**AUS.**

PART VI. SECT. 1, SUB-SECT. 3.

442 i. —— —— *Onus of disproof.*]—If the sum mentioned in a bond is expressed to be a penalty, the *onus* of showing that it was intended as liquidated damages is on the person asserting it.—R. (A.-G. OF CANADA) *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1920] 2 W. W. R. 83.—**CAN.**

448 iii. —— ——.]—Where a sum is stipulated to be paid as liquidated damages, & is payable, not on the happening of a single event, but of one or more of a number of events, some of which might result in inconsiderable damage, the ct. may decline to construe the words "liquidated damages" according to their ordinary meaning & may treat such a sum as a penalty. — SHATILLA *v.* FEINSTEIN, [1923] 3 D. L. R. 1035 ; 16 Sask. L. R. 454 : [1923] 1 W. W. R. 1474.—**CAN.**

453 iv. —— ——.]—*Held :* having regard to the language in a clause of a contract of service, fixing a sum as liquidated damages for violation by deft. of any or all of the provisions of the contract, the sum fixed was not in the nature of a penalty.—DOMINION ART CO., LTD. *v.* MURPHY (1923), 54 O. L. R. 332.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.

471 ii. —— —— ——.]—The sum mentioned in a bond given under Canada Grain Act by one licensed to operate a country elevator :—*Held :* to be a penalty & only recoverable to the extent of the actual loss shown, there being no evidence to show it was intended as liquidated damages, & because the conditions of the bond consisted in the performance of many acts, some of which might be of great & others of trifling importance.—R. A.-G. OF CANADA) *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1920] 2 W. W. R. 83—**CAN.**

† i. —— ——.]—FRIED *v.* GEORGES, [1930] 3 D. L. R. 664.—**CAN.**

The contract provided that the purchase-money should be paid "on or about" Nov. 10, 1928, & that deft. should forfeit the deposit of £120 which he had paid if he should fail to fulfil his part of the contract; also that either party refusing to comply with or neglecting to perform any part of the agreement should pay to the other, on demand, the sum of £200. On Oct. 3, 1928, deft. had given to the brewers who were the freeholders of T. references which they had accepted by Oct. 10. He went to the magistrates' clerk & signed the ordinary notices on reference to a request for a temporary transfer on Nov. 10, & for full transfer on Dec. 8. At least a week before Nov. 10 deft. knew that he would be unable to complete the purchase of T. unless he could raise a loan. His brokers acting in the matter sent him a notice to attend on Nov. 10. He did so, & first saw the brewers, telling them that he could not complete, & that the notice of application for transfer would have to be withdrawn & another one given. He then arranged with pltf that completion should take place on Dec. 8. Deft., however, did not attend to complete. On Dec. 22 deft. stated that he would complete on Jan. 30. In an action by pltf. for a declaration that the contract had been rescinded & the deposit of £120 forfeited, & for damages:—*Held:* under the terms of the contract, the sum of £200 damages was in the nature of a penalty, & therefore not recoverable.—LOCK *v.* BELL, [1931] 1 Ch. 35; 100 L. J. Ch. 22; 144 L. T. 108.

506. *Citation:*—For "*on appeal*" read "*subsequent proceedings.*"

Annotation:—Delete "*Generally,* **Mentd.** *Re* Hall (1864), 11 L. T. 579."

527a. Covenant to pay excess over given amount—Penalty.]—A covenant by deft. that the debts of a certain firm into which pltf. was about to be admitted as partner did not exceed a specific sum, & that if they did deft. would pay on demand of the pltf. the sum by which the debts might exceed the specific amount:—*Held:* (1) to be a covenant for an unliquidated sum; (2) it was properly left to the jury to say what loss pltf. had sustained by a breach of the covenant by deft.—WALKER *v.* BROADHURST (1853), 8 Exch. 889; 23 L. J. Ex. 71.

Annotation:—**Consd.** Johnson *v.* Diamond (1855), 11 Exch. 73.

542. *Add. Annotation:*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., Ltd. (1931), 47 T. L. R. 373.

543. *Add. Annotation:*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., [1931], 2 K. B. 393.

544. *Add. Annotations:*—**Consd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373. **Refd.** The Arpad, [1934] P. 189.

Part VII.—Pleading, Proof and Assessment.

550. *Add. Annotation:*—**Refd.** *Re* Simms, *Ex p.* Trustee (1933), 103 L. J. Ch. 67.

551. *Add. Annotation:*—**Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

557. *Add. Annotation:*—**Follcd.** Hinton *v.* Hinton & Spillett (1930), 46 T. L. R. 585.

557a. —— —— —— ——.]—In a divorce case, where co-resp. has not appeared, & where the jury award damages in excess of the amount claimed, the claim should not be amended until a summons for leave to amend has been served on the co-resp.—HINTON *v.* HINTON & SPILLETT (1930), 46 T. L. R. 585, C. A.

562. *Add. Annotations:*—**Consd.** Groom *v.* Crocker, [1938] 2 All E. R. 394. **Refd.** Aerial Advertising Co. *v.* Batchelors Peas, Ltd. (Manchester), [1938] 2 All E. R. 788.

PART VI. SECT. 1, SUB-SECT. 6.

p i. —— *Agreement for share of profits under option—Failure to take up option—Liquidated damages.*]—KENNEDY *v.* HARRIS (1912), 23 O. W. R. 179; 4 O. W. N. 183; 7 D. L. R. 291.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 7.

529 iii. —— ——.]—Pltf. gave deft. the exclusive agency for six months for the sale of certain land. Deft. covenanted that if he failed to effect a sale of 1,000 acres in the first six months he would pay as liquidated damages an amount equal to $2 per acre for each acre of the 1,000 acres unsold. Deft. failed to effect a sale:—*Held:* not a penalty, but liquidated damages arising on proof of failure to make the sales, without having to show actual loss.—NORTHERN TRUSTS CO. *v.* RASMUSSEN, [1924] 2 W. W. R. 1015.—**CAN.**

529 iv. —— ——.]—OLIVER *v.* BELIK, [1931] 1 W. W. R. 24.—**CAN.**

PART VII. SECT. 1.

549 xv. —— ——.]—To recover special damages, a pltf. must expressly claim them in his pleadings & prove them strictly at the trial.—CARROLL *v.* BAER, [1924] 2 D. L. R. 452; 1 W. W. R. 1249; 18 Sask. L. R. 292.—**CAN.**

549 xvi. *S. P.* BUTT *v.* OSHAWA CORPN., WILKINSON *v.* OSHAWA CORPN., [1926] 4 D. L. R. 1138; 59 O. L. R. 520.—**CAN.**

549 xvii. —— ——.]—In an action for breach of covenant by delaying the completion of a railway crossing, which afforded the best road to pltf.'s saw mill:—*Held:* evidence of special damage was not admissible, none being alleged in the declaration, & pltf. not having notified defts. at the time of the fact of his suffering the loss of profit, which constituted the alleged damages.—SHAVER *v.* GREAT WESTERN RY. CO. (1857), 6 C. P. 321.—**CAN.**

PART VII. SECT. 2.

559 i. *Necessity for proof of special damage.*]—On a claim for damages for personal injuries, pltf. cannot claim for special damages for nursing where he fails to show that he has either paid or is under any legal obligation to pay for the nursing done; the fact that he intends to pay a sum to his nurse is not sufficient.—CARROLL *v.* BAER, [1924] 2 D. L. R. 452; 1 W. W. R. 1249; 18 Sask. L. R. 292.—**CAN.**

c i. —— ——.]—CLAUSEN *v.* CANADIAN TIMBER & LANDS, LTD. (1925), 35 B. C. R. 461.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.

sa. *Default judgment—Assessment by master—No jurisdiction.*]—PIERSON & PIERSON *v.* LAY, [1931] 1 W. W. R. 398.—**CAN.**

sb. *Necessity for judgment.*]—An assessment of damages should not be ordered except under a judgment declaring the plaintiff entitled thereto.—STONE *v.* VULCAN MUNICIPAL HOSPITAL DISTRICT, [1930] 1 W. W. R. 839; 3 D. L. R. 210.—**CAN.**

sd. *Order for inquiry—Report of referee—Powers of judge.*]—Where under his formal judgment as entered a trial judge ordered that an inquiry be made to ascertain what, if any, damages had been caused pltf. by certain acts of defts., & no appeal was taken from said judgment or application made to vary it:—*Held:* that it was not open to the trial judge, on receiving the report of the referee, to vary the scope or operation of the

574a. —— —— **Contingent damages.**]—When a verdict is found for deft. upon an issue which bars the action, the jury cannot assess contingent damages for pltf., without the assent of deft.—NEWTON *v.* HARLAND (1840), 1 Man. & G. 644; 1 Scott, N. R. 474; 2 Jur. 350; 133 E. R. 490.

576. After this case add "—— **In matrimonial causes.**]—*See* HUSBAND & WIFE, No. 4677a."

573a. Assessment by Court of Appeal—Case tried without jury.]—REANEY *v.* CO-OPERATIVE WHOLESALE SOCIETY, LTD., [1932] W. N. 78; 73 L. Jo. 292; 173 L. T. Jo. 262, C. A.

592a. ——.]—Where a jury has improperly awarded an annuity by way of damages instead of a lump sum the judge should redirect the jury; he has no power to enter judgment for the capitalised amount of the annuity.—FOURNIER *v.* CANADIAN NATIONAL RY. CO., [1927] A. C. 167; 95 L. J. P. C. 177; 135 L. T. 609; 42 T. L. R. 629, P. C.

594. *Add. Annotation:*—**Refd.** Martin *v.* Stout, [1925] A. C. 359.

598. *Annotation:*—For "**Refd.** S.S. Celia *v.* S.S. Volturno, [1921] 2 A. C. 544," read "**Expld.** S.S. Celia *v.* S.S. Volturno, [1921] 2 A. C. 544."

Add. Annotation:—**Refd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

599. *Add. Annotation:*—**Expld.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

601. *Add. Annotation:*—**N.F.** Peyrae *v.* Wilkinson, [1924] 2 K. B. 166.

602. *Add. Annotations:*—**Apld.** The Baarn, [1933] P. 251. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

604. *Add. Annotations:*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465. **Mentd.** Richardson *v.* Richardson, [1927] P. 228.

608. *Add. Annotation:*—**Consd.** *Re* Parent Trust & Finance Co., [1936] 1 All E. R. 641.

609. *Add. Annotation:*—**Refd.** The Baarn, [1933] P. 251.

611. *Add. Annotation:*—**Folld.** Peyrae *v.* Wilkinson, [1924] 2 K. B. 166.

612. For the existing paragraph in original volume substitute the following paragraph:—

—— ——.]—In an action in this country for a debt payable in a foreign currency the debt must be converted into English currency at the rate of exchange prevailing at the date when the debt became due & payable, & not at the rate of exchange prevailing at the date of judgment. — PEYRAE *v.* WILKINSON, [1924] 2 K. B. 166; 93 L. J. K. B. 121; 130 L. T. 511.

Annotation:—**Refd.** The Baarn, [1933] P. 251.

612a. —— ——.]—Between 1903 & 1909 pltfs., Russian subjects, effected with defts., an American insurance co. then having a branch in Russia, insurances in the form of four endowment life policies & paid the premiums in Russia in roubles down to 1918. The amounts secured by two of the policies having become payable:—*Held:* judgment should be entered for pltfs. for the sterling equivalent of the amounts due in chervonetz roubles at the date when those amounts became due.—BUERGER *v.* NEW YORK LIFE ASSURANCE CO. (1927), 96 L. J. K. B. 930; 137 L. T. 431; 43 T. L. R. 601, C. A.

Annotation:—**Refd.** Perry *v.* Equitable Life Assce. Society of U. S. A. (1929), 45 T. L. R. 468.

613. *Citations:*—Add "15 Asp. M. L. C. 570." Delete "*revsg.* S. C. *sub nom.* DREYFUS & CO. *v.* ATLANTIC SHIPPING & TRADING CO. (1921), 37 T. L. R. 417, C. A."

Annotations:—Delete "**Mentd.** Czarnikow *v.* Roth, Schmidt (1922), 92 L. J. K. B. 81; Ford *v.* Compagnie Furness (France), [1922] 2 K. B. 797; Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690."

614. *Add. Annotation:*—**Consd.** Anderson *v.* Equitable Life Assce. Soc. of United States (1926), 134 L. T. 557.

615. After this case add "*See, also,* INSURANCE, Vol. XXIX., p. 389, No. 3104."

618. *Add. Citations:*—93 L. J. Ch. 263; 130 L. T. 109.

Add. Annotations:—*As to* (1) **Consd.** Anderson *v.* Equitable Life Assce. Soc. of United States (1926), 134 L. T. 557; Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Refd.** Broken Hill Proprietary Co. *v.* Latham, [1933] Ch. 373. *Generally,* **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451; Ottoman Bank of Nicosia *v.* Chakarian, [1938] A. C. 260.

order for reference by placing a construction on it other than that which it clearly bore.—BRODT *v.* WEARMOUTH & PYLE, [1937] 1 W. W. R. 777; 2 D. L. R. 457; 51 B. C. R. 344. —**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.

575 ii. —— *On same principles as jury.*]—In assessing damages against a member of the Winnipeg Grain Exchange for wrongfully closing out the account of a customer, a judge is not bound to take the highest peak as the measure thereof, but may base his assessment upon the principal adopted by juries.—NELSON *v.* BAIRD & BOTTERELL (1915), 30 W. L. R. 822; 8 W. W. R. 144; 25 Man. L. R. 244.—**CAN.**

579 vi. ——.]—When the writ in an action, under Wrongs Act, 1915, Part III., has been endorsed for trial with a jury, sect. 16 of that Act makes the jury the tribunal to assess the damages. If interlocutory judgment be entered in default of appearance, Ord. XIII., r. 5, does not, in the absence of consent of the parties, enable the prothonotary to ascertain the damages. The deft. is entitled to notice of the assessment of damages by the jury.—WALSH *v.* MCMICHAEL, [1928] V. L. R. 345; [1928] Argus L. R. 195.—**AUS.**

PART VII. SECT. 3, SUB-SECT. 3.—B.

598 i. *Amount due in foreign currency —Date of judgment sued on.*]—Where deft. in a suit in Bombay contended that the rate of exchange should be that on the day on which the ct. pronounced judgment:—*Held:* the rate to be taken was that prevailing on the day judgment was given in the High Ct. in England, which gave pltf. the cause of action for the suit in Bombay. —MADHAVJI VISRAM *v.* RAMNIKLAL VADILAL (1921), I. L. R. 47 Bom. 487.—**IND.**

si. —— ——.]—*Held:* the rate for conversion of dividends payable in foreign currency was the rate ruling on the date when each dividend became due.—THE CUSTODIAN *v.* BLUCHER, [1927] 3 D. L. R. 40; [1927] S. C. R. 420.—**CAN.**

603 iii. —— ——.]—In cases of breach of contract, the date on which the rate of exchange is to be taken for the purpose of converting one set of currency into another is the date on which under the agreement the money was to be paid & on which a breach occurred by its not being paid.—SHAKOOL & CO. *v.* FINLAY FLEMING & CO. (1923), I. L. R. 1 Ran. 339.—**IND.**

625. *Add. Annotations :—As to* (1) **Refd.** Chapman *v.* Ellesmere (1932), 146 L. T. 538. *As to* (2) **Consd.** Ley *v.* Hamilton (1934), 151 L. T. 360. **Refd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108. *Generally*, **Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711.

625a. —— ——.]—In assessing damages against joint tortfeasors one set of damages will be fixed ; & they must be assessed according to the aggregate amount of the injury resulting from the common act.—CHAPMAN *v.* ELLESMERE (LORD), [1932] 2 K. B. 431 ; 101 L. J. K. B. 376 ; 146 L. T. 538 ; 48 T. L. R. 309 ; 76 Sol. Jo. 248, C. A.

626. *Add. Annotation :*—**Refd.** The Koursk, [1924] P. 140 ; Pirie *v.* Richardson, [1927] 1 K. B. 448.

631. *Add. Annotations :*—**Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309 ; Crozier *v.* Wishart & Co. & Western Printing Services, Ltd., [1936] 1 All E. R. 1.

633. *Add. Annotation :*—**Refd.** Crozier *v.* Wishart & Co. & Western Printing Services, Ltd., [1936] 1 All E. R. 1.

637. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons. Ltd. (1932), 48 T. L. R. 404.

638. *Add. Annotation :*—**Consd.** The Koursk, [1924] P. 140.

648. *Add. Annotations :*—**Consd.** Wing Lee *v.* Lew, [1925] A. C. 819. **Distd.** Reaney *v.* Co-operative Wholesale Society, Ltd. (1932), 173 L. T. Jo. 262. **Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1 ; Ley *v.* Hamilton (1934), 151 L. T. 360 ; Owen *v.* Sykes, [1936] 1 K. B. 192.

648a. ——.]—An appeal from a judge trying a case without a jury is a rehearing by the Ct. of Appeal with regard to all the questions involved in the action, including the question what damages ought to be awarded. But the Ct. of Appeal will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that the Ct. of Appeal should be convinced either that the trial judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of the Ct. of Appeal, an entirely erroneous estimate of the damage to which pltf. is entitled.

A doctor, in general practice, who was thirty-nine years of age & an athlete, sustained severe injuries in an accident through the negligence of deft.'s servant, the injuries having permanent results which necessitated the doctor employing an assistant to help him carry on his practice & also prevented him from following his athletic career. The doctor brought an action against deft. to recover damages for his personal injuries, which action was tried by a judge without a jury, & the judge awarded pltf. the sum of £10,000 as damages. Deft. appealed against the decision on the ground (*inter alia*) that the damages were excessive :—*Held :* by the Ct. of Appeal, although if they had tried the case in the first instance they would probably have awarded a smaller sum as damages, yet they would not review the finding of the trial judge as to the amount of damages, as they were not satisfied that the trial judge acted upon a wrong principle of law, or that the amount awarded as damages was so high as to make it an entirely erroneous estimate of the damage to which pltf. was entitled.—OWEN *v.* SYKES, [1936] 1 K. B. 192 ; 105 L. J. K. B. 32 ; 154 L. T. 82 ; 80 Sol. Jo. 15, C. A.

673. *Add. Annotations :*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369 ; Liesbosch S.S. Owners *v.* Edison S.S. Owners, [1933] A. C. 449.

PART VII. SECT. 3, SUB-SECT. 4.

627 ii. ——.]—GAY CO., LTD. *v.* TRICK, [1927] 1 D. L. R. 1091 ; 60 O. L. R. 8.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 5.

gi. —— *Right of—Defendant not entitled to examine plaintiff with view to assessment of damages.*]—FONG YOUNG *v.* SHING WAH, [1928] 3 D. L. R. 481 ; 62 O. L. R. 370.—**CAN.**

gi. *When assessment must be by master.*]—HENNIGAR *v.* HENNIGAR (N. B.), [1926] 1 D. L. R. 891.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 1.

gv. *Trial without jury—Power of appellate court to assess.*]—An appellate ct., where an action has been tried without a jury, has power, without the consent of counsel, to assess damages itself without ordering a new trial.—GENDERS *v.* SOUTH AUSTRALIAN RYS. COMR., [1928] S. A. S. R. 272.—**AUS.**

PART VII. SECT. 4, SUB-SECT. 3.—A.

661 x. —— ——.]—COGHLIN *v.* LA FONDERIE DE JOLIETTE (1903), 34 S. C. R. 153.—**CAN.**

661 xi. —— ——.]—Where damages are claimed for the depreciation in value of an article, the basis of assessment is the difference between the value of the article immediately before it was damaged & its value immediately afterwards. Where damages have been assessed on a wrong principle a new trial will be ordered.—DRYDEN *v.* ORR (1928), 28 S. R. N. S. W. 216 ; 45 N. S. W. W. N. 44.—**AUS.**

661 xii. —— ——.]—BRENNER *v.* CISEK, [1929] 3 D. L. R. 457 ; 2 W. W. R. 158 ; 23 S. L. R. 573.—**CAN.**

661 xiii. —— ——.]—MIDDLETON *v.* MCMILLAN (B. C.), [1929] 1 D. L. R. 977.—**CAN.**

661 xiv. —— ——.]—MACNAMARA *v.* DESBRISAY, [1930] 4 D. L. R. 73.—**CAN.**

PART VII. SECT 4, SUB-SECT. 3.—B. (a).

680 v a. —— ——.]—*Held :* although the damages were excessive, the ct. would not interfere upon that account. —MCMONAGLE *v.* ORTON (1888), 5 Man. L. R. 193.—**CAN.**

680 xi. ——.]—New trial granted on payment of costs on the ground of excessive damages.—STOCK *v.* GREAT WESTERN RY. CO. (1858), 7 C. P. 526.—**CAN.**

689 i. —— *Misconduct of jury.*]—Where an assessment of damages is not thought to be unconscionable but only excessive, it ought to be set aside if the jury took into account something which they ought not to have taken into account & failed to take into account something which they ought to have taken into account.—COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818 ; [1923] 3 W. W. R. 1152.—**CAN.**

692 viii a. —— —— ——.]—Where the damages were excessive :—*Held :* there should be a new trial, unless pltf. consented to reduce his verdict.—CLARKE *v.* MURRAY (1877), *temp.* Wood, 127.—**CAN.**

692 xviii. —— —— ——.]—In an action for damages for breach of contract, the jury awarded pltf. £30 for special damages, including law costs, £250 for loss of profits, & £20 for general damages. Deft. moved for a new trial upon the ground that the award of anything more than a merely nominal sum as general damages was excessive :—*Held :* as no substantial wrong or miscarriage of justice had been occasioned, a new trial ought not to be ordered, but the judgment should stand, subject to pltf. consenting to the elimination of the amount awarded as general damages.—STEWART *v.* O'BRIEN, [1925] N. Z. L. R. 400.—**N.Z.**

692 xix. —— —— ——.]—GOLDMAN *v.* KIRBY & SONS, LTD., [1927] S. R. S. 58.—**AUS.**

q i. ——.]—Damages will not be reduced on appeal unless the jury were misled or have erred badly.—PETERSON *v.* MCINTOSH, [1934] 1 D. L. R. 289.—**CAN.**

830. After this case add "*See, also*, JURIES, Vol. XXX., pp. 245, 246."

832a. ——.]—SMITH *v.* SCHILLING, No. 721a, *ante*.

833a. Jury directed to award sum in addition to special damages—Special damages only awarded.]—KAPUR *v.* TRENTHAM (PERCY), LTD. (1938), 55 T. L. R. 176.

PART VII. SECT. 4, SUB-SECT. 3.—C. (d).

831 vii. ——.]—A Ct. of Appeal will not increase the amount of damages awarded by a trial judge on the verdict of a jury unless it appears that the jury has failed to consider some element of damage which should have been considered.—STROUD *v.* DESBRISAY & COLGAN (1930), 42 B. C. R. 507.—**CAN.**

DANGEROUS GOODS.

See CARRIERS; NEGLIGENCE; SALE OF GOODS; SHIPPING, ETC.

DATE.

See BILLS OF EXCHANGE; BILLS OF SALE; DEEDS; STATUTES; TIME.

DEAD BODIES.

See BURIAL AND CREMATION; CORONERS.

DEEDS AND OTHER INSTRUMENTS.

Part I.—Deeds.

8. After this case add :—

—— —— **Share certificate.**]—*See* SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE, CORPORATIONS, No. 182a, *ante*.

28. *Add. Annotation :*—**Refd.** Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

57. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

61. *Add. Annotation :*—**Consd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

74. *Add. Annotation :*—**Refd.** Importers Co. *v.* Westminster Bank, [1927] 1 K. B. 869.

108. For cross-reference before this case read " *See, now*, Law of Property Act, 1925 (c. 20), s. 73."

133. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Leighton's Conveyance, *Re* Land Registration Act, 1925, [1936] 1 All E. R. 667.

149. *Add. Annotation :*—**Consd.** Westminster Bank, Ltd. *v.* Wilson, [1938] 3 All E. R. 652.

150a. Delivery by one party—Refusal of execution by other party—Effect.]—In a deed executed in 1923, A. covenanted to pay B. a weekly sum to be applied to the maintenance of herself & a son then expected to be, & afterwards in fact, born. By that deed A. had an option to execute a settlement by which similar benefits should be secured to B. & the son, such settlement to be in satisfaction of the weekly sum payable under the deed. A settlement was engrossed to which A. & B. were parties, pltf. bank also being named as a party as the trustee. The settlement secured to B. & the infant benefits similar to those in the deed of 1923, & also contained a release of the covenant in the deed. The settlement was executed by A. & unconditionally delivered to B., who, however, refused to execute it, & eventually returned it unexecuted. The property settled was India Stock, &, after the execution of the settlement by A., this was sold by the bank & the proceeds paid to A. The bank did not execute the settlement. B. sought a declaration that the handing over of the proceeds of sale constituted a breach of trust :—*Held :* (*per* SCOTT & CLAUSON, L.JJ.) in the circumstances, the execution of the settlement by A. was analogous to a written offer by him to contract, & the failure of B. to execute the settlement was analogous to a failure to accept that offer. The settlement was, therefore, wholly inoperative, & the bank were under no liability to B. or the infant ; (*per* SIR WILFRID GREENE, M.R.) the execution of the settlement bound A. ; but, as he executed it upon the faith that B. would execute it, the failure of B. to execute it rendered it inoperative to bind A.—WESTMINSTER BANK, LTD. *v.* WILSON, [1938] 3 All E. R. 652 ; 82 Sol. Jo. 695, C. A.

166. *Add. Annotation :* — **Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

169. *Add. Annotation :*—**Refd.** Westminster Bank, Ltd. *v.* Wilson, [1938] 3 All E. R. 652.

267. *Add. Annotation :*—**Refd.** Brown *v.* Brown, [1936] 2 All E. R. 1616.

364. *Add. Annotation :*—**Folld.** *Re* Morton, Morton *v.* Morton, [1932] 1 Ch. 505.

366. *Add. Annotation :*—**Refd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432.

PART I. SECT. 2, SUB-SECT. 1.

17 li. —— *Whether gift intended.*]—Where a conveyance or mtge. is expressed to be for valuable consideration, but the fact is that none was paid, nothing but the clearest evidence can avail to show that a gift was intended. —JOHN DEERE PLOW CO., LTD. *v.* PETERS & SPOHN, [1929] 2 D. L. R. 103 ; 23 S. L. R. 218 ; [1928] 3 W. W. R. 686. —**CAN.**

PART I. SECT. 5, SUB-SECT. 1.—A.

sa. *Proof of execution—Deeds within county*—9 *Vict. c.* 34, *s.* 7.]—*Re* YORK COUNTY REGISTRAR (1847), 3 U. C. R. 188.—**CAN.**

PART I. SECT. 5, SUB-SECT. 1.—E.

183 lii. —— *Attestation required by statute—Deed improperly attested—Execution admitted by grantor.*]—*Held :* as the mtge. deed was not attested within Transfer of Property Act, s. 59, it was invalid in spite of the grantor's admission.—HIRA BIBI *v.* RAM HARI LAL (1925), L. R. 52 Ind. App. 362.—**IND.**

189 li. ——.]—The manager of a bank, a justice of the peace, is not incapacitated from acting as attesting witness to the execution of a mtge., under the Transfer of Land Statute (No. 301) to his bank.—BANK OF VICTORIA *v.* MICHALL (1882), 8 V. L. R. 11.—**AUS.**

193 v. —— *Necessity for intention to attest.*]—The mere fact that a person sees, or receives an acknowledgment of, the execution of a document & signs it does not make him an attesting witness, unless he signs with the idea of bearing testimony to the execution & with the idea further of permitting himself to be cited as a witness to prove the execution.—LACHMAN SINGH *v.* SURENDRA BAHADUN SINGH (1932), I. L. R. 54 All. 1051.—**IND.**

sb. *Certificate of—Sufficiency of—Absence of date.*]—*Held :* the deed was properly recorded.—MCKENZIE *v.* LAMONT (1877), 11 N. S. R. (2 R. & C.) 517.—**CAN.**

sd. *Effect of.*]—The attestation of a deed proves no more than that the signature of an executing party had been made to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed, nor fix him with notice of its provisions.—FAZAL HUSSAIN *v.* JIWAN SHAH (1932), I. L. R. 14 Lah. 369.—**IND.**

PART I. SECT. 5, SUB-SECT. 2.—C.

231 vii. —— ——.]—HUGGARD *v.* ONTARIO & SASKATCHEWAN LAND CORPN. (1908), 1 Sask. L. R. 526 ; 6 W. L. R. 645 ; 8 W. L. R. 866.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—D.

d i. —— *Whether deed revocable.*]—HEBERT *v.* GALLIEN, [1931] 2 D. L. R. 150 ; 66 O. L. R. 554 ; 3 M. P. R. 67.—**CAN.**

250 i. *Deed conditioned to take effect from death of grantor—Deed reserving rent for life.*]—RIDDELL *v.* JOHNSTON, [1931] 2 D. L. R. 479.—**CAN.**

PART I. SECT. 5, SUB-SECT. 3.

f i. ——.]—MCDONALD *v.* MCDONALD [1931] 1 D. L. R. 93.—**CAN.**

PART I. SECT. 5, SUB-SECT. 4.

h i. —— —— *Land Act*, 1888, *s.* 26.] —HJORTH *v.* SMITH (1897), 5 B. C. R. 369—**CAN.**

PART I. SECT. 5, SUB-SECT. 7.—A.

e i. ——.]—Some of the persons named as joining in a covenant cannot be bound, where the others who are named, & whose concurrence is necessary to the accomplishment of the object recited in the deed, have not joined.—MOORE *v.* IRWIN, [1926] 4 D. L. R. 1120 ; 59 O. L. R. 546.—**CAN.**

370. *Add. Annotation :*—**Consd.** Westminster Bank, Ltd. *v.* Wilson, [1938] 3 All E. R. 652.

370a. Uncertain whether one party alive—Execution by others—Subsequent refusal to concur.]—A family arrangement for the division of an estate entered into in the absence or without the knowledge of one of the parties or persons interested in & affected thereby is not binding on any of the parties unless his concurrence is subsequently obtained. On the death of W. M. without having made an effective will, & leaving his five brothers his next of kin, four of them joined with a niece in executing a deed of family arrangement, whereby the niece, who had been living with W. M. & his wife, who predeceased him, & for whom W. M. desired to make provision, was to be given an equal one-fifth share with the four brothers. The fifth brother T. M. was not a party to the deed, as at the date thereof he had not been heard of for over twelve years, and it was uncertain whether he was living or dead. Since the date of the deed the whereabouts of T. M. had been discovered, and he refused to concur in it :—*Held :* the arrangement was not binding on any of the parties thereto.—*Re* MORTON, MORTON *v.* MORTON, [1932] 1 Ch. 505 ; 101 L. J. Ch. 269 ; 146 L. T. 527.

384. *Add. Annotation :*—**Refd.** Westminster Bank, Ltd. *v.* Wilson, [1938] 3 All E. R. 652.

401. *Add. Annotation :*—**Refd.** *Re* Spollon & Long's Contract, [1936] 2 All E. R. 711.

449. *Add. Annotations :*—**Consd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628. **Refd.** Guildford Trust *v.* Pohl & Maritch (1928), 72 Sol. Jo. 171.

453. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

457. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

464. *Add. Annotation :*—**Apld.** *Re* Clout & Frewer's Contract, [1924] 2 Ch. 230.

470. *Add. Annotation :*—**Refd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529.

479. *Add. Annotation :*—**Refd.** Westminster Bank, Ltd. *v.* Wilson, [1938] 3 All E. R. 652.

490. *Add. Annotation :*—**Refd.** *In the Estate of* Southerden, Adams *v.* Southerden, [1925] P. 177.

500. *Add. Annotation :*—*As to* (1) **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

501. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

501a. Where deed voidable.]—In all cases where a bond is voidable, & so remains at the time of the pleading, as in the case of infancy & duress, the obligee cannot plead *non est factum.*—WHELPDALE'S CASE (1604), 5 Co. Rep. 119a ; 77 E. R. 239.

527. *Add. Annotation :*—**Refd.** Lancashire Loans, Ltd. *v.* Black, [1934] 1 K. B. 380.

533. For " distinction " read " destruction."

Part II.—Instruments Under Hand—Non-Testamentary.

555. *Add. Annotations :*—**Consd.** Swift *v.* Board of Trade, [1925] A. C. 520. **Refd.** Maine & New Brunswick Electrical Power Co. *v.* Hart, [1929] A. C. 631 ; Simpson *v.* Maurice's Exors. (1929), 45 T. L. R. 581.

PART I. SECT. 6, SUB-SECT. 1.

406 iv. ——.]—A deed under seal cannot bind a person who is not a party to the deed.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1923 4 D. L. R. 543.—**CAN.**

406 v. ——.]—FAULKNER *v.* FAULKNER (1893), 23 O. R. 252.—**CAN.**

PART I. SECT. 7.

425 v. —— ——.]—BENNETT *v.* KIDD, [1926] N. 50.—**IR.**

PART I. SECT. 8, SUB-SECT. 3.

b i. ——.]—DYNES *v.* BALES (1878), 25 Gr. 593.—**CAN.**

PART I. SECT. 8, SUB-SECT. 5.

454 vi. —— ——.]—Under an agreement between pltf. & defts. for the sale of a business the latter undertook to incorporate a co. & to assume & pay the amount due on a chattel mtge. In carrying out the agreement pltf. signed what he thought was a mere transfer of the business to the co., but which was in fact a new agreement which expressly released defts. from its obligation to pay off the chattel mtge. There was no evidence of anything being said to or by pltf. with respect to such release, & the evidence as to whether he read the new agreement over before signing it was conflicting :—*Held :* the release had been fraudulently inserted, & pltf. was entitled to be indemnified by defts. against his liability on the mtge.—JACK *v.* NANOOSE WELLINGTON COLLIERIES, LTD., [1925] 3 D. L. R. 398 ; [1925] 2 W. W. R. 267 ; 35 B. C. R. 295.—**CAN.**

PART I. SECT. 8, SUB-SECT. 16.

499 ii. —— ——.]—The success of a plea of *non est factum* does not necessarily depend on the establishing of fraud. If it can properly be said that the mind of the signer of the document in question did not accompany his signature, & there is no estoppel, the plea succeeds.

M., the female deft., while the vice-president of a co., signed a document by which she personally guaranteed payment of the co.'s indebtedness to pltf. bank. On the faith of said guarantee & of a similar guarantee by her husband the bank gave up a guarantee of another person & continued to make advances to the co. M. never intended to sign, & did not know she was signing, a personal guarantee ; she did not read the document or make any inquiries about it & was not informed of its contents, but thought she was signing a co. form as an official of the co. for the co. :—*Held :* although there was no fraud or misrepresentation involved & M. did not exercise reasonable care in signing the guarantee, & although the bank had acted upon it, she was not liable thereon. The signature thereto was not in contemplation of law her signature ; she did not owe the bank the duty necessary to support an estoppel by negligence ; & on the evidence the essentials of estoppel by representation as distinct from estoppel by negligence, were not established.—IMPERIAL BANK OF CANADA *v.* MCLELLAN, [1934] 1 W. W. R. 65.—**CAN.**

Part III.—Interpretation of Deeds and Non-Testamentary Instruments.

581. *Add. Annotations :*—**Refd.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1927), 44 R. P. C. 367; British Thomson-Houston Co. *v.* Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1; Société Anonyme Servo-Frein Dewandre *v.* Citroen Cars, Ltd. (1929), 47 R. P. C. 221.

582. *Add. Annotation :*—**Refd.** Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1929] 1 K. B. 400.

587. *Add. Annotations :*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Livock *v.* Pearson (1928), 33 Com. Cas. 188; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546; Kulukundis *v.* Norwich Union Fire Insurance Society, [1937] 1 K. B. 1.

592. After this case insert "*See, generally,* CONTRACT, Vol. XII., pp. 79 *et seq.*"

597. *Add. Annotation :*—**Refd.** Schiller *v.* Petersen (1924), 130 L. T. 810.

608. *Add. Annotation :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

621. *Add. Annotations :*—**Consd.** *Re* Arden, Short *v.* Camm, [1935] Ch. 326. **Refd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96.

622. *Add. Annotations :*—**Apld.** G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57. **Refd.** Abrahams *v.* MacFisheries [1925] 2 K. B. 18; British-American Tobacco Co. *v.* Jones (1925), 134 L. T. 405; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

626. *Add. Annotations :*—**Refd.** North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328; Reardon Smith Lines, Ltd. *v.* Black Sea & Baltic General Insurance Co., Ltd., [1938] 2 All E. R. 706.

627. *Add. Annotation :*—**Refd.** Greenhill *v.* Federa Insce. (1926), 95 L. J. K. B. 717.

631. *Add. Annotations :*—**Consd.** Sherwood *v.* Tucker, [1924] 2 Ch. 440. **Refd.** Batchelor *v.* Murphy (1924), 41 T. L. R. 153.

659. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

662. *Add. Annotation :*—**Consd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

665. *Add. Annotations :*—**Apld.** Saunders *v.* Young's Brewery (1925), 42 T. L. R. 136; *Re* Société Intercommunale Belge d'Electricité, Feist *v.* Société Intercommunale Belge d'Electricité, [1933] Ch. 684.

667. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96.

666. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

688. *Add. Annotations :*—**Apld.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715. **Consd.** Shipley Urban District Council *v.* Bradford Corpn. (1936), 154 L. T. 444.

697. *Add. Annotations :*—**Consd.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224. **Refd.** Samuel *v.* Dumas, [1924] A. C. 431; Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

700. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

701. *Add. Annotation :*—**Refd.** The Penelope, [1928] P. 180.

702. *Add. Annotation :*—**Consd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

PART III. SECT. 1.

sd. *Parent & child bearing same name —No addition of "senior" or "junior" —Presumption in favour of parent.*]—NEW BRUNSWICK POWER CO. *v.* PRICE HATT (1924), 52 N. B. R. 1.—**CAN.**

PART III. SECT. 2.

576 x. ——.]—INCHES *v.* FOGG & DOWLING (1870), 13 N. B. R. (2 Han.) 149.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A.

632 ii. —— ——.]—MANUFACTURERS LIFE INSURANCE CO. *v.* SWINNEY, [1925] 2 D. L. R. 503.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—B.

686 vi. —— —— *Contract with Crown.*]—*Held :* (1) where the real intention of the parties can be clearly collected from the language within the four corners of a deed or instrument in writing, ots. are bound to give effect to it by supplying anything necessarily to be inferred from the terms used, & by rejecting as superfluous what is repugnant to the real intention so gathered; (2) a contract ought to receive that construction which will best effectuate the intention of the parties to be collected from the whole agreement, greater regard being had to the clear intention of the parties than to any particular words which may have been used in the expression of their intent. The terms of the agreement are to be drawn partly from the written document & partly from all the surroundings of the written document, such as the nature of the transaction with regard to which the document is brought into life; (3) the Crown is not bound by the error or inadvertence of its officers, nor by any deliberate intention of its officers without proper authority to alter the terms of a written agreement.—R. *v.* PEAT FUELS, LTD., [1930] Ex. C. R. 188.—**CAN.**

705 xi. —— —— ——.]—In deciding whether a given transaction is an out & out sale with a condition for re-purchase or a mtge. by conditional sale, it is the intention of the parties at the time of entering into the transaction which must be regarded. That intention must be gathered from the terms of the deed itself & the surrounding circumstances.—ISKAWBAD *v.* MUKAMNAD (1923), I. L. R. 45 All. 58.—**IND.**

705 xii. —— —— ——.]—The intention of the parties to an instrument must be collected from the language of the instrument, & may be elucidated by the conduct they have pursued.—MIDNAPORE ZAMINDARI CO., LTD. *v.* MUKTAKESHI PATRANI (1926), I. L. R. 6 Pat. 51.—**IND.**

PART III. SECT. 3, SUB-SECT. 4.

716 xxi. ——.]—When a person agrees to purchase, he impliedly covenants to pay in the absence of terms exhibiting a different intention, but the whole document must be construed & may show that such implication is not to be drawn.—GRIEVE MCGLORY, LTD. *v.* DOME LUMBER CO., LTD. & THOMPSON, [1923] 2 D. L. R. 154; 1 W. W. R. 989.—**CAN.**

716 xxii. ——.]—BARTEL *v.* BEYEA (N. B.), [1926] 1 D. L. R. 1196.—**CAN.**

716 xxiii. ——.]—When under the terms of a Kabuliyat a rent in kind is reserved & its price is also mentioned the intention is to be gathered with reference to expressions used in other parts of the document.—JURAM MANDAL *v.* RAM MANDAL (1927), I. L. R. 55 Calc. 808.—**IND.**

716 xxiv. ——.]—The rule governing the interpretation of a deed is that the deed must be read as a whole in order to ascertain the true meaning of several clauses, & that the words of each clause should be so construed as to bring them into harmony with the other provisions of the deed, if that

743. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

750. *Add. Annotation :*—**Refd.** *Re* Hammond, Parry *v.* Hammond, [1924] 2 Ch. 276.

773. Before this case add "*See, now,* Law of Property Act, 1925 (c. 20), s. 61."

786. *Add. Annotations :*—**Apld.** *Re* Jenkins, Jenkins *v.* Davies (1931), 100 L. J. Ch. 265. **Consd.** Barras *v.* Aberdeen Steam Trawling & Fishing Co., Ltd., [1933] A. C. 402; *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858. **Refd.** The Ruapehu, [1927] P. 47; Shaw *v.* Public Trustee (1929), 141 L. T. 465; Reardon Smith Lines, Ltd. *v.* Black Sea & Baltic General Insurance Co., [1938] 2 All E. R. 706.

792. *Add. Annotation :*—**Consd.** Lorden *v.* Brooke-Hitching, [1927] 2 K. B. 237.

798. *Add. Annotation :*—**Refd.** Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1.

810. *Add. Annotation :*—**Refd.** *Re* Morgan & Provincial Insurance Co., [1932] 2 K. B. 70.

812a. —— ——.]—Under an agreement dated May 6, 1912, applt. corpn. agreed to supply certain additional water to resp. council if the council required it, subject to the right which the corpn. retained of drawing water not exceeding 250,000 gallons "a day," at "a *pro rata* charge as is £540 for 450,000 gallons subject to measurement"; the agreement also provided that certain water rights of the council under prior agreements should be preserved. Under those agreements the council were entitled to draw water from land of the corpn. during terms expiring in 1945 at annual rentals of £250 & £290. Other water rights granted under the agreement of May 6, 1912, were made payable for by the council at the same rate as was paid by the council under the prior agreements. In June, 1934, the council wished to take the benefit of the agreement for the supply of additional water, but contended that the charge for the same therein expressed should be amended so as to be read as "a *pro rata* charge as is £540 *per annum* for 450,000 gallons *per diem* subject to measurement." The council brought this action for a declaration that the clause should so be read :—*Held :* the principle of construction laid down by COLERIDGE, J. in *Shore* v. *Wilson*, 9 Cl. & F. 355, at p. 525, that where language was used in a deed which in its primary meaning was unambiguous such primary meaning must be taken conclusively to be that in which the writer used it, was qualified by that learned judge by excepting the case in which the primary meaning was excluded by the context & was not sensible with reference to the extrinsic circumstances in which the writer was placed at the time of writing. In *Neale* v. *Neale*, 79 L. T. 629, the Ct. of Appeal objected only to extrinsic evidence being introduced where the words of the document only admitted of one meaning; the primary meaning in the present case was excluded by the context, & was therefore not decisive. In proper cases, if necessary, words could be supplied to give effect to the obvious & apparent purpose of the document where the language as a whole carried with it the meaning sought to be attached to it. Therefore the words "*per annum*" & "*per diem*" must be read into the clause in question.—SHIPLEY URBAN DISTRICT COUNCIL *v.* BRADFORD CORPN., [1936] Ch. 375, 399; (1936), 105 L. J. Ch. 225, 232; 154 L. T. 444; 80 Sol. Jo. 185, C. A.

815. *Add. Annotation :*—**Consd.** Stewart *v.* Sashalite, Ltd., [1936] 2 All E. R. 1481.

815a. Recurring words—Same construction.]—There is no rule of general application that in construing a document the same meaning must be assigned to an expression throughout; it is only in cases of doubt or ambiguity that it is necessary or permissible to resort to the device.—WATSON *v.* HAGGITT, [1928] A. C. 127; 97 L. J. P. C. 33; 138 L. T. 306; 44 T. L. R. 90; 71 Sol. Jo. 963, P. C.

824a. Donor old & deaf.]—TAYLOR *v.* TAYLOR & BARCLAYS BANK, LTD. (1933), 77 Sol. Jo. 319.

825. *Add. Annotations :*—**Consd.** Schiller *v.* Petersen, [1924] 1 Ch. 394. **Refd.** Phipps *v.* Rogers, [1925] 1 K. B. 14.

842. *Add. Annotation :*—**Refd.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

852. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., [1931] 2 K. B. 393.

853. *Add. Annotation :*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

875. *Add. Annotation :*—**Consd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

877. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

882. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

883. *Add. Annotation :*—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

893. *Add. Annotation :*—**Consd.** *Re* Ellwood, [1927] 1 Ch. 455.

895. *Add. Annotation :*—**Refd.** Wilston S.S. Co. *v.* Weir (1925), 31 Com. Cas. 111.

900. *Add. Annotations :*—**Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730; A.-G. *v.* Blackpool Corpn. (1928), 92 J. P. 50; Lazard Bros. & Co. *v.* Brooks (1932), 38 Com. Cas. 46.

---

interpretation does no violence to the meaning of which they are naturally susceptible. Indeed, it is competent to the ct. to disregard the literal meaning if the words are sufficiently flexible to bear that interpretation. The duty of the ct. is to find out the intention of the executant from the language used by him, but parol evidence to vary the contents of the document cannot be admitted.—YUSAF ALI *v.* ALIBHOY (1928), I. L. R. 10 Lah. 671.—IND.

PART III. SECT. 3, SUB-SECT. 8.—A.

773 xxx. ——.]—*Held :* the words "net proceeds" did not mean "net profits."—SCOTT *v.* MONTGOMERY, [1920] 1 W. W. R. 140; 50 D. L. R. 394; 30 Man. L. R. 90.—**CAN**

773 xxxi. ——.]—An expression having no technical meaning in an agreement between laymen should not be strictly construed.—CARLTON HOTEL CO. *v.* GARDINER, [1934] 4 D. L. R. 421.—**CAN.**

d. Read now "**815a i.**"

815a ii. —— ——.]—*Held :* evidence to show that a word was used in a different sense in one sentence from that in which it was used in a preceding sentence, was rightly excluded.—MCDONALD *v.* HALIFAX CORPN. (1895), 28 N. S. R. (16 R. & G.) 84.—**CAN.**

PART III. SECT. 3, SUB-SECT. 9.

874 ii. ——.]—SHUKIN *v.* DEMOSKY (Sask.), [1927] 1 D. L. R. 649.—**CAN.**

969. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

970. *Add. Annotation :*—**Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

975. *Add. Annotation :*—**Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

976. After this case add :—

Age of parties to conveyance.]—*See* Law of Property Act, 1925 (c. 20), s. 205 (1) (ii).

981. *Add. Annotation :—Generally,* **Refd.** Berners *v.* Fleming, [1925] Ch. 264.

988. *Add. Annotation :—As to* (1) **Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

991. *Add. Annotation :*—Refd. *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

1002. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

1007. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

1015. *Add. Annotation :*—**Refd.** Westminster Bank *v.* Hilton (1926), 136 L. T. 315.

1028. *Add. Annotations :*—**Consd.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442. **Refd.** R. *v.* Bishirgian, R. *v.* Howeson, R. *v.* Hardy, [1936] 1 All E. R. 586.

1032. *Add. Annotation :*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

1062. *Add. Annotation :—As to* (1) **Consd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

1065. *Add. Annotation :*—**Consd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

1067. *Add. Annotation :*—**Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

1075. *Add. Annotation :*—**Refd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

1076a. —— ——.]—I do not see that a guarantor stands in any better position than any other contractor, & I do not see that this contract is to be construed in any different way from any other contract. . . . It is to be construed with reasonable & proper strictness, as every other contract has to be construed (SWIFT, J.). —ESHELBY *v.* FEDERATED EUROPEAN BANK, LTD., [1932] 1 K. B. 254 ; *on appeal,* [1932] 1 K. B. 423, C. A.

1081. *Add. Annotations :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4. **Mentd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

1090. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

1093. *Add. Annotation :*—**Consd.** Aldridge *v.* Wright (1929), 98 L. J. K. B. 582.

1097. *Add. Annotation :*—**Refd.** Jardine *v.* A.-G. for Newfoundland (1932), 48 T. L. R. 199.

1098. *Add. Annotation :*—**Refd.** Gregg *v.* Richards, [1926] Ch. 521.

1099. *Add. Annotation :*—**Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

1106. *Add. Annotation :*—**Refd.** Gregg *v.* Richards, [1926] Ch. 521.

1107. *Add. Annotations :*—**Refd.** Gregg *v.* Richards, [1926] Ch. 521 ; Inland Revenue Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542 ; Diggins *v.* Forestal Land, Timber & Railways Co. (1930), 142 L. T. 509 ; I. R. Comrs. *v.* Dalgety & Co., [1930] A. C. 527.

1109. *Add. Annotations :*—**Refd.** Reed *v.* Page & East (1926), 42 T. L. R. 744 ; Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

PART III. SECT. 3, SUB-SECT. 13.—B. (b).

948 vi. ——.]—As soon as there is an adequate & sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it.—DARAPALE, ETC. *v.* NAZIR (1923), I. L. R. 50 Calc. 394.—**IND.**

949 xvi. ——.]—WILSON *v.* R., [1926] Exch. C. R. 8.—**CAN.**

PART III. SECT. 3, SUB-SECT. 14.

951 ii. ——.]—PRICE BROTHERS & Co., LTD. *v.* R., [1926] 3 D. L. R. 642. —**CAN.**

PART III. SECT. 3, SUB-SECT. 15.

1 i. —— *Crown grants.*]—The doctrine of *omnia præsumuntur rite esse acta* should apply in its fullest extent in respect to the compliance with statutory conditions in the obtaining of Crown grants for purchase or pre-emption under the Land Act, &, though it may be shown in a proper case that irregularity, error or deception have in fact led to the issuance of such a grant, yet before it can be attacked the Crown must be, at least, a party to the proceedings & the issue will, in many cases, depend upon the attitude taken by the Crown.—NORTH PACIFIC LUMBER CO. *v.* SAYWARD, [1918] 2 W. W. R. 771 ; 24 B. C. R. 273.—**CAN.**

PART III. SECT. 3, SUB-SECT. 16.

r i. —— *Grant of easement—Reference to plan—Plan omitted.*]—*Held :* where there was no plan, parol evidence was admissible to identify the land.—BANKS PENINSULA ELECTRIC POWER BOARD *v.* AKAROA BOROUGH COUNCIL, [1923] N. Z. L. R. 880.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 18.—A

988 vi. ——.]—Where there are two possible interpretations of a contract & one would lead to an obvious absurdity or injustice, the other interpretation is to be accepted.—THOMPSON *v.* NORTH BATTLEFORD, [1924] 1 D. L. R. 159 ; 1 W. W. R. 51.—**CAN.**

988 vii. ——.]—*Re* FORD & HARDY (Ont.), [1926] 2 D. L. R. 749.—**CAN.**

988 viii. ——.]—CANADIAN STEVEDORING CO., LTD. *v.* ROBIN LINE S.S. CO., CANADIAN STEVEDORING CO., LTD. *v.* SEAS SHIPPING CO. (B. C.), [1927] 4 D. L. R. 614 ; [1927] 2 W. W. R. 737.—**CAN.**

PART III. SECT. 3, SUB-SECT. 21.

b i. —— *Award—Computation of hours worked.*]—An award made by the Commonwealth Ct. of Conciliation & Arbitration between the Seaman's Union & various resps., of whom deft. co. was one, provided in respect of deckhands that "the time taken for meals partaken while the vessel is under way shall not be included." Deft. co. in reckoning the hours worked by an employee claimed to deduct the time occupied by him at meals while the vessel was in port :—*Held :* in the absence of a custom or usage to support such a deduction, the maxim *expressio unius est exclusio alterius* applied, & the appeal was allowed.—THE FEDERATED SEAMEN'S UNION OF AUSTRALASIA *v.* THE HUON, CHANNEL & PENINSULA STEAMSHIP CO., LTD., [1925] Tas. L. R. 1.—**AUS.**

PART III. SECT. 4, SUB-SECT. 1.

1144 x. —— *Blanks in printed form not filled in.*]—*Re* DEMPSEY & MIDLAND L. & S. Co., [1925] 4 D. L. R. 570.—**CAN.**

1144 xi. ——.]—CANADIAN COLLIERIES (DUNSMUIR), LTD. *v.* DUNSMUIR, DUNSMUIR *v.* MACKENZIE (1911), 18 B. C. R. 538.—**CAN.**

1144 xii. ——.]—LACHMAN DAS *v.* RAM PRASAD (1927), I. L. R. 49 All. 680.—**IND.**

1144 xiii. ——.]—Parol evidence to vary a written instrument rejected, although it was doubtful if it contained all the agreement between the parties. —MCALPINE *v.* HOW (1862), 9 Gr. 372. —**CAN.**

h i. ——.]—WILLARD *v.* MCNAB (1851), 2 Gr. 601.—**CAN.**

h ii. ——.]—PAPINEAU *v.* GUARD (1851), 2 Gr. 512.—**CAN.**

h iii. ——.]—MCGILL *v.* MCGLASHAN (1857), 6 Gr. 324.—**CAN.**

h iv. ——.]—*Held :* under the circumstances of this case, oral testimony was admissible. As both parties were admitting the existence of some contract for the transfer of shares, parol evidence could be adduced to determine whether the transfer was conditional or unconditional & whether the shares were to be returned to the resp. & his associates as having been merely loaned.—SISCOE GOLD MINES, LTD. *v.* BIJAKOWSKI, [1935] S. C. R. 193 ; 1 D. L. R. 513.—**CAN.**

1152. *Add. Annotation :*—**Refd.** Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1.

1157a. ——]—ANON. (1849), 13 L. T. O. S. 325.

1162. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

1171. *Add. Citation :*—109 L. T. 820.

1172. *Add. Annotation :*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

1175. *Add. Annotation :*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

1177a. ——.]—DAVIS *v.* SYMONDS (1787), 1 Cox, Eq. Cas. 402 ; 29 E. R. 1221.

1185. *Add. Annotation :*—**Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

1192. *Add. Annotation :*—**Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

1205. *Add. Annotations .*—**Consd.** United States Shipping Board *v.* Bunge & Born (1924), 41 T. L. R. 73. **Refd.** Frenkel *v.* MacAndrews, [1929] A. C. 545 ; Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48 ; The Torni, [1932] P. 27 ; The Njegos, [1936] P. 90 ; Reardon Smith Lines, Ltd. *v.* Black Sea & Baltic General Insurance Co., [1938] 2 All E. R. 706.

1223. *Add. Annotation :*—**Refd.** Reardon Smith Lines, Ltd. *v.* Black Sea & Baltic General Insurance Co., [1938] 2 All E. R. 706.

1230. *Add. Annotation :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

1235. *Citations :*—For the existing citations substitute "GREVILLE *v.* ATTKINS (1829), as reported in 4 Man. & Ry. K. B. 372 at p. 379."

1237. *Add. Annotation :*—**Refd.** *Re* Gardner, Ellis *v.* Ellis, [1924] 2 Ch. 243.

1248. *Add. Annotation :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

1304. *Add. Annotation :*—**Refd.** Eldon (Lord) *v.* Hedley Bros., [1935] 2 K. B. 1.

1307. *Add. Annotation :*—**Refd.** Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1.

1174 i. *As to nature of transaction—Absolute conveyance—Relationship of mortgagor & mortgagee.*]—Where a registered instrument clearly shows a transaction between the parties to be a sale, oral evidence to show that it was intended to be a mtge is inadmissible in evidence.—MAUNG SHWE PHOO *v.* MAUNG TUN SHIN (1927), I. L. R. 5 Ran. 644.—**IND.**

PART III. SECT. 4, SUB-SECT. 2.

1176 xxviii. ——.]—Where parties to a contract have set out its terms & conditions in writing, which is presumably intended to be a record of the transaction, the law does not permit the introduction of other terms by means of oral evidence.—STEINE *v.* MATHIEU, [1923] 3 W. W. R. 493.—**CAN.**

1176 xxix. ——.]—Where an original agreement has complied with Stat. Frauds, evidence of an alleged parol variation of its terms is inadmissible.—HALL *v.* GOLDSTONE, [1923] N. Z. L. R. 916.—**N.Z.**

1176 xxx. ——.]—KASTER *v.* COWAN, [1925] 2 D. L. R. 742 ; [1925] 2 W. W. R. 186 ; 21 Alta. L. R. 366 ; *revsg.*, [1923] 4 D. L. R. 491 ; [1923] 3 W. W. R. 610.—**CAN.**

1176 xxxi. ——.]—Defts. excepted to a declaration on the ground that pltf. could not vary the terms of a written deed of transfer by evidence of a prior agreement, unless or until he expressly claimed a cancellation, ratification, or reformation of the deed of transfer :—*Held :* the exception should be upheld.—ADAM *v.* JHAVARY (1925), 46 N. L. R. 190.—**S. AF.**

1176 xxxii. ——.]—BARTEL *v.* BEYEA (N. B.), [1926] 1 D. L. R. 1196.—**CAN.**

1176 xxxiii. ——.]—TYSON *v.* ABERCROMBIE (1888), 16 O. R. 98.—**CAN.**

1176 xxxiv. ——.]—LILLY *v.* PITTMAN (1899), 8 Nfld. L. R. 170.—**NFLD.**

1176 xxxv. ——.]—Where an agreement signed by deft. was not accepted by pltf., & there was no memorandum in writing of the agreement actually entered into between the parties :—*Held :* the rule prohibiting the introduction of oral evidence to vary the terms of a writing had no application.—DOREY *v.* GRAY (1908), 42 N. S. R. 259.—**CAN.**

1176 xxxvi. ——.]—The rule of law that extrinsic evidence is not, in general, admissible to contradict, vary or explain written instruments, must be enforced in cases that fairly come within it.—FORMAN *v.* UNION TRUST CO., LTD., [1927] S. C. R. 1.—**CAN.**

1176 xxxvii. ——.]—KEEWATIN POWER CO. *v.* KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER CO. *v.* LAKE OF THE WOODS MILLING CO., 1928] 1 D. L. R. 32 ; 61 C. L. R. 363 ; *affd.*, [1929] 3 D. L. R. 199 ; 63 O. L. R. 667.—**CAN.**

1176 xxxviii. ——.]—LAKE OF THE WOODS MILLING CO. *v.* VINCENT, [1928] 2 D. L. R. 145.—**CAN.**

1176 xxxix. ——.]—SOURCE RESEARCH BUREAU *v.* FOSTER, [1931] 2 D. L. R. 335 ; 2 M. P. R. 537.—**CAN.**

1189 i. ——.]—*Held :* parol evidence was not admissible to contradict a statement in a document as to ownership by showing that a wife, in signing it, was acting as agent of her husband.—KATZMAN *v.* OWNAHOME REALTY CO., [1924] 1 D. L. R. 201 ; [1924] S. C. R. 18.—**CAN.**

1222 iv. —— ——.]—ADVANCE RUMELY THRESHER CO. *v.* MANSKE, [1920] 3 W. W. R. 78.—**CAN.**

1228 ii. —— ——.]—BLAKIE *v.* MCLENNAN (1901), 33 N. S. R. 558.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.

1237 v. ——.]—When the ct. infers that a written document was not intended by the parties to contain the whole agreement, evidence of other terms not included in it may be given if they are not inconsistent with what is written. This intent must be sought in the conduct & language of the parties & the surrounding circumstances.—CONNORS *v.* MCGREGOR, [1924] 2 D. L. R. 86 ; 2 W. W. R. 294 ; 20 Alta. L. R. 289.—**CAN.**

1237 vi. ——.]—Extrinsic evidence to add a condition to a concluded contract :—*Held :* not admissible.—FORMAN *v.* UNION TRUST CO. (Can.), [1927] 1 D. L. R. 68.—**CAN.**

1237 vii. ——.]—BAKKER *v.* WINKLER, [1931] S. C. R. 233 ; [1930] 4 D. L. R. 266 ; *revsg.*, [1930] 1 D. L. R. 557 ; 24 Alta. L. R. 258 ; [1929] 3 W. W. R. 465 ; *revsg.*, [1929] 4 D. L. R. 107.—**CAN.**

1237 viii. ——.]—In a vendor's action for specific performance of an agreement for the sale of land deft. pleaded (*inter alia*) that pltf. had represented that the lands in question included a certain number of acres of irrigated land for which she held water rights, whereas the fact was that she knew that the quantity of water she was entitled to receive was sufficient for only a part of said acreage. The formal agreement for sale made no reference to any of the lands as irrigated or to any water rights with respect to the land sold. It was contended, although the point had neither been raised by the pleadings nor any amendment thereof sought, that the written agreement did not contain all of the contract, but that the correspondence preceding the agreement should be treated as part of the contract :—*Held :* there was nothing in the present case to bring it within any of the exceptions to the rule that extrinsic evidence is not admissible to add to an agreement reduced to writing.—WHITNEY *v.* MACLEAN, [1932] 1 W. W. R. 417 ; 26 Alta. L. R. 209.—**CAN.**

PART III. SECT. 4, SUB-SECT. 4.

e i. ——.]—LIVELY *v.* SHUBENACADIE LUMBER CO., [1931] 1 D. L. R. 985.—**CAN.**

1265 xix. —— ——.]—A latent defect in a grant cannot be remedied by parol evidence. In order to correct an error in the descriptive part of a grant by parol evidence, the evidence must be such as to leave no doubt of the intention of the grantor.—BRENNOCK *v.* FRASER (1853), 2 N. S. R. (James), 178.—**CAN.**

PART III. SECT. 4, SUB-SECT. 5.—A.

m i. ——.]—*Held :* oral evidence was admissible to explain the surrounding circumstances.—SCHECTER *v.* SCHNIER, SCHNIER *v.* SCHECTER (Man.), [1927] 3 D. L. R. 1167 ; [1927] 3 W. W. R. 111.—**CAN.**

o i. ——.]—HERRON *v.* MAYLAND (Alta.), [1927] 4 D. L. R. 171 ; [1927] 2 W. W. R. 768 ; *affd.*, [1928] 2 D. L. R. 858 ; [1928] S. C. R. 225.—**CAN.**

1307a. ——.]—The ct., though in construing a document it is entitled to be put in possession of the circumstances in which it was executed, is not entitled to receive evidence for the purpose of contradicting a document which is unambiguous (RUSSELL, J.).—DAVIES *v.* POWELL DUFFRYN STEAM COAL Co., [1920] W. N. 114; *affd.* (1921), 91 L. J. Ch. 40, C. A.

1322. *Add. Annotation :*—**Refd.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168.

1325. *Add. Annotation :*—**Refd.** Eldon (Lord) *v.* Hedley Bros., [1935] 2 K. B. 1.

1327. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1329a. —— ——.]—Parol evidence is admissible to show that a party to a written agreement to purchase entered into it as agent to another.—MARSTON *v.* ROE d. FOX (1838), 8 Ad. & El. 14; 2 Nev. & P. K. B. 504; Will. Woll. & Dav. 712; 8 L. J. Ex. 293; 112 E. R. 742, Ex. Ch.

Annotations :—**Consd.** Israell *v.* Rodon (1839), 2 Moo. P. C. C. 51. **Refd.** Matson *v.* Magrath (1849), 1 Rob. Eccl. 680.

1338. *Add. Annotation :*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

1364. *Add. Annotations :*—**Consd.** Boot *v.* Uttoxeter U. D. C. (1924), 88 J. P. 118. **Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503; Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1.

1383. *Add. Annotation :*—**Consd.** Stumbles *v.* Whitley (1929), 46 T. L. R. 37.

1386. *Add. Annotations :*—**Consd.** Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1. **Refd.** Hillas & Co. *v.* Arcos, Ltd. (1932), 147 L. T. 503.

1401. *Add. Annotation :* — **Refd.** Sherwood *v.* Tucker, [1924] 2 Ch. 440.

1413. *Add. Annotation :*—**Refd.** Hvalfangerselskapet Polaris Aktieselskap *v.* Unilever, Ltd., Hvalfangerselskapet Globus Aktieselskap *v.* Unilever, Ltd. (1933), 39 Com. Cas. 1.

1424. *Add. Annotation :*—**Refd.** Adelaide Electric Supply Co. *v.* Prudential Assurance Co., [1934] A. C. 122.

1430. *Add. Annotation :*—**Refd.** Portofino Tank Steamer Owners *v.* Berlin Derunaptha (1934), 39 Com. Cas. 330.

1443. *Add. Annotation :*—**Refd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.

1451. *Add. Annotation :*—**Refd.** Reading Trust *v.* Spero (1929), 46 T. L. R. 117.

1459. *Add. Annotations :*—**Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264; Smith *v.* Thompson (1931), 146 L. T. 14.

1469. *Add. Annotation :*—**Distd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

1471. *Citations :*—For the existing citations read "MILDMAY'S CASE (1584), 1 Co. Rep. 175 a; Jenk. 247; 76 E. R. 379; *sub nom.* MILDMAY *v.* STANDISH, Cro. Eliz. 34; Moore, K. B. 144."

1485. *Add. Annotation :*—**Refd.** Bird *v.* I. R. Comrs. (1924), 12 Tax Cas. 785.

1513. *Add. Annotations :*—**Refd.** Michael *v.* Phillips (1923), 130 L. T. 142; Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

1515. *Add. Annotations :*—**Refd.** Coleridge-Taylor *v.* Novello & Co., [1938] Ch. 608; Knight Sugar Co. *v.* Alberta Railway & Irrigation Co., [1938] 1 All E. R. 266.

1516. *Add. Annotations :*—**Consd.** Lawrence *v.* Cassel, [1930] 2 K. B. 83. **Refd.** Knight Sugar Co. *v.* Alberta Railway & Irrigation Co., [1938] 1 All E. R. 266.

1526. *Add. Annotation :*—**Refd.** Coleridge-Taylor *v.* Novello & Co., [1938] Ch. 608.

PART III. SECT. 4, SUB-SECT. 6.—B.

1341 xiii. ——.]—LEWIS & SILLS *v.* HUGHES (1906), 13 B. C. R. 228.—**CAN.**

1341 xiv. ——.]—An agreement for the sale of land was evidenced by a receipt, which did not specify the land: —*Held :* parol evidence was admissible, in an action for specific performance of the agreement, to show what was the subject-matter.—BAXTER *v.* ROLLO (B. C.) (1912), 21 W. L. R. 892; 5 D. L. R. 764; 2 W. W. R. 786.—**CAN.**

sp. *Account.*]—*Held :* parol evidence was admissible, to show what an account referred to in an agreement was, & to indentify such account.—DES BRISAY *v.* GLENCROSS (1850), 12 N. B. R. (1 Han.) 105.—**CAN.**

PART III. SECT. 4, SUB-SECT. 7.

g i. —— "*Right of way clearing.*"]—*Held :* extrinsic evidence was properly admitted to show that amongst railway contractors, & in railway construction work, the above words had acquired a special & technical meaning, & applied only to land requiring to be cleared & not to the full area of the right of way.—LAINE *v.* KENNEDY (1914), 43 N. B. R. 173.—**CAN.**

g ii. —— "*Wood cutting voyage.*"]—Where an insurance policy contained an exception that the ship was not covered if lost when engaged on a wood cutting voyage, the ct. refused to allow parol evidence to be given in explanation of the word "wood."—THOMAS *v.* MARINE INSURANCE Co. (1857), 4 Nfld. L. R. 173.—**NFLD.**

g iii. —— "*Stock-in-trade.*"]—By a contract in writing applts. sold to resp. "the business . . . including the goodwill & stock-in-trade in connection therewith":—*Held :* the word "stock-in-trade" might in certain circumstances mean something more than merchandise, & evidence was therefore admissible to explain its meaning.—KAJEE BROS. *v.* MOOSA (1930), 51 N. L. R. 273.—**S. AF.**

PART III. SECT. 4, SUB-SECT. 8.—A.

1396 x. —— —— ——.]—The doctrine of *contemporanea expositio* is applied, speaking generally, only where the contract is ambiguous.—MYERS *v.* UNION NATURAL GAS Co. (1922), 53 O. L. R. 88.—**CAN.**

1396 xi. —— —— ——.]—*Re* CANADIAN NORTHERN RY. Co. & OTTAWA, [1924] 4 D. L. R. 1217; 56 O. L. R. 153.—**CAN.**

PART III. SECT. 4, SUB-SECT. 11.—D.

st. *To prove illegality of consideration —Evidence inadmissible.*]—DAUPHINEE *v.* DAUPHINEE (1924), 57 N. S. R. 506.—**CAN.**

PART III. SECT. 4, SUB-SECT. 11.—E. (a).

1496 iv. —— ——.]—AVERBACH *v.* BLOOM & DWORKIN (Can.), [1927] 3 D. L. R. 721.—**CAN.**

1509 vi. —— ——.]—Where a party enters into a written agreement, under seal, for the sale for a certain sum of all his right, title, share & interest in a certain business, evidence is inadmissible to prove a prior verbal agreement for the sale of the goodwill of the business for a sum in addition to the amount so specified in the written agreement. In this case the prior collateral agreement was not interfered with by the subsequent written agreement. It was a parol condition on which the written agreement depended.—AUSTIN *v.* BOONE (1866), 6 N. S. R. (2 Old.) 149.—**CAN.**

1509 vii. —— ——.]—As between the actual parties to an outright conveyance a contemporaneous oral agreement to allow repurchase cannot be proved, but if the party who alleges the contemporaneous oral agreement was not actually a party to the conveyance, although the conveyance was given on his behalf, he can prove that there was such an agreement.—MA MI *v.* MAUNG AUNG DUN (1928), I. L. R. 6 Ran. 376.—**IND.**

PART III. SECT. 4, SUB-SECT. 11.—E. (b).

1529 ii. —— ——.]—*Held :* the trial judge had been in error in construing a deed in the light of antecedent correspondence between the parties, it being well settled that even a formal antecedent contract cannot be looked at to control the terms of a conveyance.—WADIA *v.* SECRETARY OF STATE FOR INDIA (1928), L. R. 56 Ind. App. 51.—**IND.**

1534. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725.

1537. *Add. Annotation :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

1562. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

1576. *Add. Annotations :*—**Folld.** Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113. **Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617; Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 410.

1576a. —— —— **Condition of houses on building estate.**]—A representation by builders in conversation with a prospective buyer, that all houses on the estate are of the best material & workmanship, may amount to a warranty collateral to a subsequent formal contract, for breach of which an action will lie.—MILLER *v.* CANNON HILL ESTATES, LTD., [1931] 2 K. B. 113; 100 L. J. K. B. 740; 144 L. T. 567; 75 Sol. Jo. 155.

Annotations :—**Consd.** Hoskins *v.* Woodham, [1938] 1 All E. R. 692. **Refd.** Perry *v.* Sharon, [1937] 4 All E. R. 390.

1582. *Add. Annotations :* — **Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142.

1583. *Add. Annotations :*—**Folld.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 593. **Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142; Hodges *v.* Jones, [1935] Ch. 657.

1588a. —— **Sale of land—Agreement to construct road.**]—An estate co., by their agent, orally promised an intending purchaser of a building plot that a road, marked on a plan shown to him & giving access to the plot, would be constructed by them & be ready for use within a reasonable time. Relying on this promise, the purchaser entered into a written agreement to purchase, & the plot was duly conveyed to him :—*Held :* the oral promise did not form part of the contract to purchase, but was a separate contract, & that evidence of its terms could be given without contravening the rule that parol evidence may not be given to vary the provisions of a written agreement.—JAMESON *v.* KINMELL BAY LAND CO., LTD. (1931), 47 T. L. R. 593, C. A.

Annotation :—**Refd.** Hodges *v.* Jones, [1935] Ch. 657.

1591. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

1607. *Add. Annotations :*—**Consd.** United States Shipping Board *v.* Bunge y Born Limitada Sociedad (1925), 134 L. T. 303; Felston Tile Co. *v.* Winget, Ltd., [1936] 3 All E. R. 473. **Refd.** Cunard S.S. Co. *v.* Buerger (1926), 135 L. T. 494; Frenkel *v.* McAndrews & Co., [1929] A. C. 545; Kaufmann *v.* British Surety Insce. Co. (1929), 45 T. L. R. 399; Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127; Connolly Shaw, Ltd. *v.* Nordenfjeldske S.S. Co. (1934), 50 T. L. R. 418; North & South Insurance Corpn., Ltd. *v.* National Provincial Bank, Ltd., [1936] 1 K. B. 328; Reardon Smith Lines, Ltd. *v.* Black Sea & Baltic General Insurance Co., [1938] 2 All E. R. 706.

1622a. Deed of separation.]—Articles of separation between John Wright Henniker Wilson & Mary Wright Henniker Wilson, his wife, provided that all the rents, taxes, & other outgoings in respect of certain estates, which were originally the property of the latter, should be paid by the former up to a day named, & that, after that day, they should be paid by Mary Wright Henniker Wilson, & that John Wright Henniker Wilson should be indemnified therefrom, *& from all the present debts & liabilities of the said John Wright Henniker Wilson :*—*Held :* as the words in italics made the clause inconsistent with & repugnant to itself, they ought to be disregarded.—WILSON *v.* WILSON (1847), 15 Sim. 487; 11 Jur. 340; 60 E. R. 708.

1628. *Add. Annotation :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

1652. *Add. Annotation :*—**Refd.** *Re* Carnarvon's Chesterfield S. E., *Re* Carnarvon's Highclere S. E. (1926), 70 Sol. Jo. 977.

1660. *Add. Annotation :*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

1675. *Add. Annotations :*— **Refd.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 43; Gurney *v.* Grimmer (1932), 38 Com. Cas. 7.

1678a. Printed words deleted.]—Words deleted in a printed form of mercantile contract are to be treated as if they had not formed part of the printed contract; they cannot be used to construe added words.—SASSOON (M. A.)

PART III. SECT. 4, SUB-SECT. 11.—G. (a).

h i. ——.]—MCLEAN *v.* JOHNSON, [1923] 4 D. L. R. 178; 32 B. C. R. 495; [1923] 3 W. W. R. 913.—**CAN.**

h ii. —— *Contemporary oral agreement acted on by parties.*]—In an action for foreclosure & sale on default in payment of principal, according to the written terms of a mtge. :—*Held :* an oral agreement that payment would not be exacted until a subsequent date could be proven & enforced.—JOHNSON INVESTMENTS, LTD. *v.* PAGRITIDE. [1923] 2 D. L. R. 985; [1923] 2 W. W. R. 736.—**CAN.**

m i. —— *Mortgage.*]— DICK *v.* SCHWARTZ (Man.), [1926] 3 D. L. R. 894.—**CAN.**

PART III. SECT. 4, SUB-SECT. 11.—G. (b).

1673 i. *Evidence admissible—Proof of consideration.*]—Regard may be had to a collateral oral agreement to show that a deed is in fact founded on a valuable consideration.—KIRK *v.* GREAVES, [1924] N. Z. L. R. 260.—**N.Z.**

m i. —— —— ——.]—Where a complete agreement was contained in a written contract & it satisfied Stat. Frauds :—*Held :* an oral arrangement as to remuneration was a separate collateral agreement.—PERRY *v.* ESPLEY, [1924] 4 D. L. R. 1280; 3 W. W. R. 674.—**CAN.**

m ii. —— —— ——.]—When the ct. infers that a written document was not intended by the parties to contain the whole agreement, evidence of other terms not included in it may be given if they are not inconsistent with what is written.—CONNORS *v.* MCGREGOR, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—**CAN.**

q i. —— ——.]—The rule that evidence of a collateral oral contract is admissible although the principal contract is in writing is subject at least to one definite limitation, viz., though the collateral contract must inevitably, it seems, add to the written contract it must not vary it in the sense of being inconsistent with, or contradictory of, the written contract.—LYSNAR *v.* NATIONAL BANK OF NEW ZEALAND, LTD., [1935] 1 W. W. R. 625.—**N.Z.**

PART III. SECT. 5, SUB-SECT. 1.

f i. ——.]—Parties to a written contract are not bound by its punctuation.—WALKER *v.* BOTHWELL, [1931] App. D. 70.—**S. AF.**

PART III. SECT. 5, SUB-SECT. 4.

r i. —— *Meaning to words given though grammatical construction faulty.*]—*Re* DEMPSEY & MIDLAND L. & S. Co., [1925] 4 D. L. R. 570.—**CAN.**

& SONS, LTD. *v.* INTERNATIONAL BANKING CORPN., [1927] A. C. 711; 96 L. J. P. C. 153; 137 L. T. 501, P. C.

1735a. Incorporation of guarantee clause—Identity of clause uncertain—Clause not available.]—Pltfs., a ship-repairing co., requiring a new intermediate pressure cylinder for the engines of a steamer which they had contracted to repair, obtained a quotation from defts., marine engineers. At the head of defts.' letter was a printed notice, "All offers are subject to our usual strike & guarantee clauses, accidents, etc." Pltfs. ordered the cylinder, but after it had been delivered & fitted it was found to be defective. A new cylinder was subsequently supplied by defts., but owing to the delay pltfs. were not able to complete the repairs in accordance with their contract with the shipowners & had to pay them damages. In an action to recover the amount of the damages defts. alleged that the contract for the supply of the cylinder was made subject to "our usual" guarantee clause & that their guarantee clause provided (*inter alia*) that "the contractors shall not in any case be liable for any detention of the vessel or other consequential damages howsoever arising":—*Held:* as it was not clear what guarantee clause was incorporated, since the clause suggested by defts. was the clause in their usual engine agreement which was drawn to meet the case of engines being supplied to a shipowner & not to meet such a case as the present, & as it was not proved that defts. had made it clear that they intended to limit their liability, pltfs. were entitled to recover.—ALISON (J. GORDON) & Co., LTD. *v.* WALLSEND SLIPWAY & ENGINEERING CO., LTD. (1927), 43 T. L. R. 323, C. A.

1736a. Letter from town clerk—Reference to resolution of corporation to pay costs.]—The chief clerk of a hospital conducted by deft. corpn. wrote a letter to the proper quarter in respect of the conduct of the steward of the hospital, as a result of which the steward was dismissed. The steward thereupon brought an action for libel against the chief clerk, who approached certain solrs. with a view to their acting for him. The chief clerk was not in a position to pay the costs of an action. The solrs. received a letter from the town clerk of deft. corpn. in the following terms: "As I understand that you are acting for [the chief clerk] in this action, I beg to inform you that the Town Council . . . confirmed the recommendation of the health committee . . . to assist [the chief clerk] in paying or contributing to his costs in defending the action." Shortly before the trial of the action, upon the advice of counsel, & after consulting the town clerk, a settlement was effected, the chief clerk consenting to judgment against him with costs & undertaking to withdraw his allegations:—*Held:* the terms of the letter were not too vague to be enforced & there was a contract by the corpn. to pay the whole of the solrs.' costs, or such part thereof as was not obtainable elsewhere, & the fact that the action was settled did not relieve the corpn. from its liability.—ARMSTRONG, TAYLOR & WHITTAKER *v.* OLDHAM CORPN., [1937] 2 All E. R. 577.

1737a. ——.]—Testator directed that unless a beneficiary of his residuary estate settled other property of his on the lines of the settlement of testator's residue, such beneficiary should forfeit any interest under the will. A settlement was made by a beneficiary reciting his intention to settle his property on the same trusts as the trusts of the settled share of residue, but the operative part did not do so:—*Held:* it was not possible to imply words in the unambiguous operative part of the settlement so as to make it have the effect which, according to the recitals, was intended. The settlement was therefore void, the beneficiary had taken no interest in the residue, & estate duty which had been paid on the subsequent death of the beneficiary, in the belief that he had in fact taken an interest, was repayable by the Crown.—INLAND REVENUE COMRS. *v.* RAPHAEL, INLAND REVENUE COMRS. *v.* EZRA, [1935] A. C. 96; 51 T. L. R. 152; *sub nom. Re* SASSOON, INLAND REVENUE COMRS. *v.* RAPHAEL, *Re* SASSOON, INLAND REVENUE COMRS. *v.* EZRA, 104 L. J. Ch. 24; 152 L. T. 217, H. L.

Annotation:—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1935] W. N. 111.

1740. *Add. Annotation:*—**Refd.** *Re* Sassoon, I. R. Comrs. *v.* Raphael, *Re* Sassoon, I. R. Comrs. *v.* Ezra, [1933] Ch. 858.

1744. *Add. Annotations:*—**Consd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96. **Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007; Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

1745. *Add. Annotation:*—**Consd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96.

1787. *Add. Annotation:*—**Refd.** Shipley Urban District Council *v.* Bradford Corpn., [1936] Ch. 375.

PART III. SECT. 6.

t i. —— ——.]—The date mentioned in a deed is not conclusive, & the actual date of the execution may be shown.—DOE d. CONNEL *v.* DICKINSON (1869), 12 N. B. R. (1 Han.) 456.—**CAN.**

PART III. SECT. 7, SUB-SECT. 1.—A. (a).

t i. —— —— —— *Such other part as may from time to time be required.*]—RENE *v.* CARLING EXPORT BREWING & MALTING CO., [1929] 2 D. L. R. 881; 63 O. L. R. 582.—**CAN.**

PART III. SECT. 7, SUB-SECT. 2.

sw. "*Et cetera.*"]—The phrase "*et cetera*" does not render a contract uncertain, if its application appears from the context.—AVERBACH *v.* BLOOM & DWORKIN (Can.), [1927] 3 D. L. R. 721—**CAN.**

PART III. SECT. 8, SUB-SECT. 1.—A. (a).

1737 i. *General rule.*]—If both the recitals & the operative part of a deed are clear & unambiguous, but are inconsistent with each other, the operative part must prevail.—HUSSAIN *v.* CHIN CHONG (1924), 1. L. R. 3 Ran. 53.—**IND.**

1738 vii. ——.]—A deed is effective if the operative part is clear, although the recitals are incorrect.—SKOV LUMBER CO. *v.* CLARK, [1932] 3 D. L. R. 780.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—A.

r i. —— *Registration of statutory memorial.*]—By a deed of 1917 resp. assigned leasehold premises in Hong Kong to A. & B. as joint tenants, the deed stating that the property had been sold to them for $16,000 the receipt of which was acknowledged. The deed was registered under the Hong Kong Land Registration Ordinance, 1844, with a memorial which, as required by the Ordinance, was verified on oath & gave full particulars of the deed, including the receipt. In 1929 B. mortgaged a half interest in the property to applt. as security for an advance of $25,000: the mtge. was registered under the Ordinance. Before the advance was made, applt.'s solr. inspected the registered memorial of

1818. *Add. Annotation :*—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

SUB-SECT. 2 (Vol. XVII., p. 372).

NOTE.—*Conveyancing Act*, 1881 (*c.* 41), *s.* 55, *is now replaced by Law of Property Act*, 1925 (*c.* 20), *s.* 68.

1826. *Add. Annotation :*—**Consd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

1865. For cross-reference before this case, *See, now*, Law of Property Act, 1925 (c. 20), s. 62.

1869a. —— Curtilage, garden & adjoining close.]—ANON. (1531), Bro. N. C. 86 ; 73 E. R. 885.

1871. *Add. Annotation :*—**Consd.** Trim *v.* Sturminster R. D. C., [1938] 2 All E. R. 168.

1892. *Add. Annotations :*—**Refd.** Todrick *v.* Western National Omnibus Co., [1934] Ch. 561 ; Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

1902. After this case add :—

Reservation operates immediately.]—*See* Law of Property Act, 1925 (c. 20), s. 65 (1), (2).

1913. *Add. Annotation :*—**Apprvd.** Public Trustee *v.* Lancaster Duchy, [1927] 1 K. B. 516.

1930. After this case add :—

——.]—*See, now*, Law of Property Act, 1925 (c. 20), s. 63.

1944. *Add. Annotation :*—**Refd.** Cadogan (Earl) *v.* Guinness, [1936] Ch. 515.

1944a. Limitation to commence after existing lease—Lease void.]—A conveyance which is limited to commence after an existing lease takes effect presently, if that lease is void.—BLACKMORE *v.* CUMBERFORD (1680), 1 Freem. K. B. 527 ; 89 E. R. 395.

Part IV.—Covenants and Provisoes.

2006. *Add. Annotation :*—**Refd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

2011. *Add. Annotation :*—**Refd.** Saunders-Jacobs *v.* Yates, [1933] 2 K. B. 240.

2096. *Add. Annotation :*—**Refd.** Greer *v.* Kettle, [1938] A. C. 156.

2111. *Add. Annotation :*—**Refd.** Wise *v.* Whitburn, [1924] 1 Ch. 460.

2131. *Add. Annotation :*—**Consd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

2163. *Add. Annotation :*—**Refd.** Leeming *v.* Jones (1929), 141 L. T. 472.

---

the deed of 1917, but he did not demand production of the original. B., unknown to applt. or his solr., was a son of resp. Resp. brought an action claiming to be entitled to the property freed from the mtge. By his evidence, which the cts. in Hong Kong accepted as reliable after an objection to its admissibility, resp. stated that the name A. was an alias for himself, that there was no consideration for the deed of 1917, & that it had remained in his possession, no beneficial interest being intended to be conveyed to his son B. :—*Held :* the action failed, both because resp.'s evidence was inadmissible to contradict the plain terms of the deed, & because the registered memorial estopped resp. from alleging a trust ; having regard to the full particulars contained in the statutory memorial, there was no negligence in not having required production of the deed itself.—TSANG CHUEN *v.* LI PO KWAI, [1932] A. C. 715 ; 101 L. J. P. C. 193 ; 148 L. T. 44.—**HONG KONG.**

PART III. SECT. 10, SUB-SECT. 1.—D.

1 i. ——.]—DAVISON *v.* BENJAMIN (1874), 9 N. S. R. (3 G. & O.) 474.—**CAN.**

PART III. SECT. 10, SUB-SECT. 1.—E.

1840 ii. —— ——.]—In case of conflict the description in the text of a grant of land when clear & unambiguous must prevail over the diagram attached to the grant.—UNION GOVT. *v.* LOVEMORE, [1930] App. D. 13.—S. AF.

1844 ii. —— ——.]—Pltf. held a certificate of indefeasible title to lots 1 & 2, part of the north-east quarter of a certain section of land, & the Crown grant to his predecessor in title described the land by reference to a plan annexed & numbered the north-east quarter of said section. Deft.'s title was as purchaser under the grantee from the Crown of land, also described in the grant by reference to a plan annexed & numbered the south-east quarter of the same section. Neither quarter was a full quarter section, & the plans showed that pltf.'s land had for its southerly boundary a certain creek & that said creek was the northerly boundary of deft.'s land. Pltf. claimed a small point of land in possession of deft. which extended into the creek & north of the quarter-section line :—*Held :* while the quarter sections were referred to in words in the deeds, yet on the true construction of them it was clear that the plans were to govern.—KIPP *v.* SIMPSON, [1928] 4 D. L. R. 421 ; [1928] 3 W. W. R. 331.—**CAN.**

1844 iii. —— —— *Grant of easement.*]—BROWN *v.* NORBURY, [1931] 2 W. W. R. 863 ; 4 D. L. R. 507 ; 25 Alta. L. R. 591.—**CAN.**

PART III. SECT. 10, SUB-SECT. 2.—D.

1877 ii. ——.]—Where a contract for the sale of land rests *in fieri*, the purchaser, if the quantity be considerably less than it was stated, will be entitled to an abatement, although the agreement contains the words " more or less " or " by estimation."—MURPHY *v.* HORN, [1929] 4 D. L. R. 693 ; 64 O. L. R. 354.—**CAN.**

1880 ii. *Add. citation* " *affd.*, 23 O. L. R. 253."

PART IV. SECT. 1, SUB-SECT. 2.—A.

1990 i. *General rule.*]—Cts. always construe clauses in deeds as covenants rather than conditions if they reasonably do so.—WOLFE *v.* CROFT (N. S.) (1911), 9 E. L. R. 402.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 9.—B. (b).

b. *revsd.* 10 I. L. R. 137.

PART VII. SECT. 8, SUB-SECT. 3.

sb. *Insertion of consideration.*]—The alteration, without authority from the promisors, of the sealed instrument in question herein, by the insertion of a certain statement of consideration :—*Held :* not to have been merely a case of the writing into the document of the intended consideration, but to have constituted a substitution of another contract for the original contract, &, therefore, to have nullified the deed.—NYKIFORUK & NYKIFORUK *v.* CONROY, [1931] 1 W. W. R. 522 ; 2 D. L. R. 407 ; 25 S. L. R. 265.—**CAN.**

DEPENDENCIES.

INCLUDING DOMINIONS, DEPENDENCIES, COLONIES AND BRITISH POSSESSIONS.

Part I.—In General.

1. After this case add "*See, now,* Statute of Westminster, 1931 (c. 4), s. 11."

3. *Add. Annotation :*—**Refd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

4a. **Right of Crown to legislate for protectorate—Notwithstanding grant of territory within protectorate.**]—The legislative authority over the territory of a Crown Protectorate belongs to the Crown & is controllable only by the Imperial Parliament.

Under the Foreign Jurisdiction Act, 1890 (c. 37), the prerogative power of legislation in respect of Protectorates is exercised by Orders in Council, & these Orders have statutory effect. A grant of land in a Protectorate by the Crown is an executive & not a legislative act, & cannot by itself impose a fetter on the legislative power of the Crown. Where therefore by a subsequent Order in Council the Crown has exercised legislative powers in respect of the land previously granted, the legislative power so exercised is valid. The doctrine of derogation from grant cannot be applied in the case of a grant by the Crown so as to deprive it of its paramount right to legislate for the Protectorate in which the subject of the grant is situate. The Crown cannot renounce or fetter its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which the legislative authority exists.—NORTH CHARTERLAND EXPLORATION CO. (1910), LTD. *v.* R., [1931] 1 Ch. 169 ; 99 L. J. Ch. 483 ; 143 L. T. 623 ; 46 T. L. R. 566.

5. *Add. Annotations :—As to* (1) **Consd.** Abeyesekera *v.* Jayatilake (1931), 146 L. T. 193 ; Sammut *v.* Strickland, [1938] 3 All E. R. 693. *As to* (6) **Distd.** North Charterland Exploration Co. (1910) *v.* R. (1930), 99 L. J. Ch. 483.

7. *Add. Annotation :*—**Refd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

10a. —— ——.]—An extension of British jurisdiction in a British protectorate by Orders in Council may be referred to an exercise of power by an act of State, unchallengeable in any British ct., or to statutory powers given by Foreign Jurisdiction Act, 1890 (c. 37), under which the jurisdiction acquired by the Crown in a protected country is indistinguishable in legal effect from that acquired by conquest. The Crown cannot, except by statute, deprive itself of freedom to make Orders in Council, even such as are inconsistent with previous Orders.

Before the conquest & annexation of the South African Republic Swaziland was an independent native State, treated as a protected dependency of that Republic, by which it was administered under a Convention made in 1894 between Great Britain & the Republic. The Convention provided for the preservation of native law, & the agricultural & grazing rights of the natives. The annexation did not extend to Swaziland. Subsequently under Orders in Council certain lands in Swaziland were expropriated to the Crown, to the extinguishment of the use & occupation of them by natives under native law, certain lands being allotted exclusively to the natives :—*Held :* the Orders in Council were effective, even if they were not within the powers recognised by the Convention.—SOBHUZA II. *v.* MILLER, [1926] A. C. 518 ; 95 L. J. P. C. 137 ; 135 L. T. 215 ; 42 T. L. R. 446, P. C.

13. *Add. Annotation :* — **Refd.** Netherlands, American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

Part II.—Colonial and Dominion Government.

17a. **Order imposing liability to penalty—Power to make action void—Ceylon.**]—An Order in Council of 1923 made provision as to the Legislative Council in Ceylon, but reserved to His Majesty power to revoke, alter or amend the Order. Applt., as common informer, brought an action to recover penalties under the Order from resp., who he alleged had sat and voted after his seat had become vacant under its provisions by reason of his having a pecuniary interest in a contract with the Govt. In 1928, after the action had been brought, but before its trial, an amending Order in Council was made providing that the action should be dismissed ; it also amended the Order of 1923 so as to except the office held by the respondent from its operation :—*Held :* the Order of 1928 was valid, having regard to the power reserved by the Order of 1923, & was an effective defence to the action, although it was retrospective in its operation.—ABEYESEKERA *v.* JAYATILAKE, [1923] A. C. 260 ; 101 L. J. P. C. 40 ; 146 L. T. 193. 48 T. L. R. 71 ; 75 Sol. Jo. 884, P. C.

20a. **Power of expropriation in mandated territory.**]—By the Mandate for Palestine, dated July 24, 1922, the Council of the League of Nations, acting under art. 22 of the Covenant of the League, entrusted to Great Britain the administration of Palestine. Art. 2 of the Mandate provided that Great Britain should be responsible for "safeguarding the civil & religious rights of the inhabitants of Palestine irrespective of race & religion."

In 1923 an Order in Council authorised the High Comr. for Palestine to promulgate such ordinances as might be necessary for the peace, good order, & government of the country, & were not inconsistent with the Mandate. The High Comr. promulgated an ordinance expropriating certain springs for the purpose of supplying water to Jerusalem, with certain provisions for compensation In an action by the owners of the springs the Supreme Ct., sitting as a ct. of first instance, held that the ordinance was *ultra vires*, on the ground that it was inconsistent with the Mandate in that the provisions for compensation were inadequate. Special leave to appeal was granted, all questions of jurisdiction being left open. An Order in Council had made provision for appeals to the Privy Council, but only from orders of the Supreme Ct. sitting as a Ct. of Appeal:—*Held:* (1) the appeal was competent, since the jurisdiction under the Mandate was jurisdiction in a foreign country within the description in the preamble to Foreign Jurisdiction Act, 1890 (c. 37); (2) it was the right & duty of the ct. to consider whether the ordinance was consistent with the Mandate, but art. 2 had been misconstrued, & the ordinance was valid; (3) art. 2 did not mean that in every case of expropriation for a public purpose full compensation must be given. Natural justice required that in the absence of exceptional circumstances, fair provision should be made for compensation, but that depended not upon civil right, but upon the principles of sound administration, & it was not within the province of the ct. to consider whether an ordinance was within those principles. Further, the ordinance did make adequate provision for compensation.—JERUSALEM-JAFFA DISTRICT GOVERNOR *v.* SULEIMAN MURRA, [1926] A. C. 321; 95 L. J. P. C. 46; 134 L. T. 609; 42 T. L. R. 299, P. C.

23. *Add. Annotation:*—**Consd.** A.-G. *v.* G. S. & W. Ry. of Ireland, [1925] A. C. 754.

24a. —— **Grant of proprietary right in river—Canada.**]—By letters patent issued by the Lieutenant-Governor of Quebec in 1910 under Companies Act of that province, applt. co. was incorporated for the purpose of carrying on the business of producers of electricity, & with power to construct & maintain dams in a river of the province within certain limits, after having acquired from the riparian proprietors the properties necessary for that purpose. In 1923 applts. not having then constructed any works, the provincial Govt. granted to resps. a lease of the water power & bed of the river within limits which overlapped those referred to in applts.' letters patent. Applts. brought an action against resps., claiming a declaration that applts. had a vested right in the river to construct dams, & an injunction:—*Held:* the action failed, since the letters patent contained no grant of a proprietary right in, or power to take possession of, any part of the river or its bed.—UNITED MANUFACTURING CO. *v.* ST. MAURICE POWER CO., [1926] A. C. 708; 95 L. J. P. C. 149; 135 L. T. 389; 42 T. L. R. 495, P. C.

PART II. SECT. 1.

sl. *Order in Council—Revocability.*]—An Order in Council is an act of the Crown & can always be revoked.—R. *v.* OTTAWA ELECTRIC RY. CO., [1933] 1 D. L. R. 695.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—A.

sp. *Duty to accept advice of Executive Council—Decision by Governor-General in Council.*]—Where a statute directs that a matter shall be decided by the Governor-General in Council, the Governor-General is bound to accept the advice of the Executive Council, there being no discretion in the Governor-General personally, & there is no legal duty upon him to peruse documents placed before him & make up his mind upon them.—SCHIERHOUT *v.* UNION GOVERNMENT, [1927] App. D. 94.—**S. AF.**

o (p. 418) **i.** —— *Power of disallowance.*]—The power to disallow provincial legislation, vested in the Governor-General in Council by sect. 90 of the British North America Act, 1867, is still a subsisting power. Its exercise is not subject to any limitations or restrictions, save that the power shall be exercised within the prescribed period of one year after the receipt of an authentic copy of the Act by the Governor-General. The fact that, as is the practice in some provinces, the Lieutenant-Governor assents to a Bill in the name, not of the Governor-General but of His Majesty, does not impair the legal validity of his assent, nor does it affect the said power of disallowance vested in the Governor-General in Council.—*Re* DISALLOWANCE & RESERVATION POWERS REFERENCE, [1938] S. C. R. 72; 2 D. L. R. 8.—**CAN.**

t (p. 419) **i.** —— *Proclamation fixing importation duties.*]—The Governor-General purporting to act under Act 35 of 1922, s. 5, issued two proclamations, the first fixing an exchange duty for asbestos cement sheets imported from Belgium & the second confining the first to certain cheaper kinds of asbestos sheets:—*Held:* the proclamations were *intra vires* the Governor-General.—CUSTOMS COMR. *v.* AIRTON TIMBER CO., LTD., [1926] App. D. 1.—**S. AF.**

t (p. 420) **i.** —— *No liability to entertain.*]—There is no legal obligation upon a Lieutenant-Governor, flowing from his appointment as such, to entertain socially; & no implied contract exists between him & the Crown, by reason of his appointment & the taking of the oath of office, from which flows any obligation with respect to expenditures for social entertainments. Such expenditures are voluntary, & the failure to so entertain could not be a cause for removal or dismissal.—*Re* LIEUTENANT-GOVERNORS SALARY, [1931] Ex. C. R. 232.—**CAN.**

p (p. 420) **i.** —— *Government of India Act, 1910, s. 72—State of "emergency."*]—The power of legislation by Ordinance, conferred by s. 72 of Government of India Act, on the Governor-General, is subject to threefold restrictions. There must be an "emergency" to justify the exercise of the power; the power can only be exercised for the peace & good government of British India or any part thereof; the Ordinance must not go beyond the power of the Indian Legislature to make laws. There being nothing in the language of sect. 72 to indicate that the Governor-General's opinion on the points referred to above is to be taken as final, the initial presumption is that a ct. of law will have jurisdiction to go into such matters if it becomes necessary to do so, in order to determine any question properly coming before it for decision.—DES RAJ *v.* R. (1930), I. L. R. 12 Lah. 26.—**IND.**

p (p. 420) **ii.** —— —— ——.]—The High Ct. has power, on application for *habeas corpus*, to inquire into the legality of sentences passed by the military authorities unless such acts were validated by a Bill of Indemnity; but held, on account of an Ordinance promulgated by the Governor-General validating the sentences, the ct. could not question their legality. Under Government of India Act, 1910, s. 72, the Governor-General is the sole judge of the existence of the emergency, & all cts. can do is to inquire whether there was evidence upon which the Governor-General might reasonably conclude that an emergency existed.—EMPEROR *v.* CHANAPPA SHANTHAPPA (1930), I. L. R. 55 Bom. 263.—**IND.**

p (p. 420) **iii.** —— —— ——.]—In proceedings under an Ordinance promulgated by the Governor-General under Government of India Act, 1915, s. 72, it cannot be disputed that an emergency existed & that the Ordinance is one for the peace & good government of British India, as those are matters of which the Governor-General is the sole judge.—BHAGAT SINGH *v.* CROWN (1931), I. L. R. 12 Lah. 280.—**IND.**

sb. *Invalidity of Ordinance when repugnant to Commonwealth Act.*]—*Held:* the Governor-General in Council could not confer upon the Federal Capital Commission the powers contained in the Building & Services Ordinance by recourse to sect. 12 of Seat of Government (Administration) Act, 1910, as the Ordinance was repugnant to the provisions of Seat of Government (Administration) Act, 1924-28.—FEDERAL CAPITAL COMMISSION *v.* LARISTAN BUILDING & INVESTMENT CO. PROPRIETARY, LTD. (1929), 2 C. L. R. 5842.—**AUS.**

25. Add the following para. :—

If a governor of a colony has the authority of the ordinary, he has no power to commit a churchwarden who refuses to account, he ought to proceed upon a citation, & must excommunicate.

31a. Authority to promulgate Ordinance under Government of India Act, 1915, s. 72—Validity of Ordinance.]—In proceedings under an Ordinance promulgated by the Governor-General under the Government of India Act, 1915, s. 72, which authorises him in cases of emergency to promulgate Ordinances for the peace & good government of British India, it cannot be disputed that an emergency existed & that the Ordinance is one for the peace & good government of British India. Those are matters of which the Governor-General is sole judge; he is not bound to give any reasons for promulgating an Ordinance under the sect. An Ordinance so promulgated constituting a special tribunal for the trial of a criminal case is not invalid in that it deprives the accused of the right of appeal to the High Ct. which they would otherwise have had.—BHAGAT SINGH *v.* KING EMPEROR (1931), 58 L. R. Ind. App. 169, P. C.

31b. Authority to promulgate Berar Alienated Villages 192 Tenancy Law, 1.]—Having regard to Foreign Jurisdiction Act, 1890 (c. 57), s. 1, & the authority delegated to the Governor-General in Council by the Indian (Foreign Jurisdiction) Order, 1902, the Governor-General in Council had power to promulgate the Berar Alienated Villages Tenancy Law, 1921, relating to territory of H.H. the Nizam leased in perpetuity to the British Govt. The said Law of 1921 is not void under sect. 12 of the Act of 1890 so far as it is repugnant to the Waste Land Rules, 1865 (Berar), because the Acts, Orders & Regulations referred to in that sect. are Acts, Orders & Regulations applying to British subjects & do not include the said rules of 1865, which did not purport so to apply. Further, the said rules of 1865 were merely administrative orders. The Law of 1921, so promulgated, accordingly operates as a legislative Act, & effectively interferes with rights in property held under leases granted pursuant to the rules of 1865.—DATTATRAYA KRISHNA RAO KANE *v.* SECRETARY OF STATE FOR INDIA (1930), 57 L. R. Ind. App. 318, P. C.

31c. Power to deport—Construction of Deposed Chiefs Removal Ordinance (Nigeria).]—ESHUGBAYI ELEKO *v.* NIGERIA GOVERNMENT (ADMINISTERING OFFICER), No. 284a, *post.*

34. For "(1774)" read "(1775)".

Add. Annotation :—**Refd.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

47. *Add. Annotations :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

52a. Legislative Council of Nova Scotia—Appointment to.] — The Lieutenant-Governor of Nova Scotia, acting by & with the advice of the Executive Council of Nova Scotia, has power to appoint in the name of the Crown so many members of the Legislative Council of Nova Scotia that the total number would (*a*) exceed twenty-one or (*b*) exceed the total number at the union mentioned in British North America Act, 1867 (c. 3), s. 88. The membership of the Council is not limited in number. The tenure of office of members of the Council appointed before May 7, 1925, is during the pleasure of His Majesty the King, represented in that behalf by the Lieutenant-Governor of Nova Scotia acting by & with the advice of the Executive Council of Nova Scotia.—A.-G. FOR NOVA SCOTIA *v.* NOVA SCOTIA LEGISLATIVE COUNCIL, [1928] A. C. 107; 97 L. J. P. C. 27; 138 L. T. 114; 44 T. L. R. 1; 71 Sol. Jo. 864, P. C.

52b. —— Membership of—Tenure of office.]—A.-G. FOR NOVA SCOTIA *v.* NOVA SCOTIA LEGISLATIVE COUNCIL, No. 52a, *ante.*

52c. Canadian Senate—Membership of—Who are qualified persons—Women.]—(1) The words "qualified persons" in British North America Act, 1867 (c. 3), s. 24, include women, & therefore women are eligible for membership of the Senate of Canada.

(2) The provisions of British North America Act, 1867 (c. 3), enacting a constitution for Canada should not be given a narrow & technical construction, but a large & liberal interpretation, so that the Dominion to a great extent, but within certain fixed limits, may be mistress in her own house, as the Provinces to a great extent, but within certain fixed limits, are mistresses in theirs.—EDWARDS *v.* A.-G. FOR CANADA, [1930] A. C. 124; 99 L. J. P. C. 27; 142 L. T. 98; 46 T. L. R. 4; 73 Sol. Jo. 711, P. C.

Annotation :—As to (2) **Apld.** British Coal Corpn. *v.* R., [1935] A. C. 500.

PART II. SECT. 2, SUB-SECT. 2.

sr. *Executive regulation—Inapplicable to pending proceedings.*]—Judgment having been postponed in an appeal against assessment to land tax pending calculation of the amount due, a new regulation was promulgated relating to calculation :—*Held :* this regulation was inapplicable.—SENDALL *v.* LAND TAX FEDERAL COMR. (1911), 12 C. L. R. 653, 664.—**AUS.**

ss. ——.]—The Board of Trade (Cinematograph Films) Regulations, 1932, are *ultra vires* of the Governor-General in Council, since the words "in any other manner whatsoever" in Board of Trade Act, 1919, s. 26 (1), refer to matters *ejusdem generis* as those in the preceding paragraphs, which deal with unfair trading.—KERIDGE *v.* GIRLING-BUTCHER, [1933] N. Z. L. R. 646.—**N.Z.**

sw. *Contract by executive—Effect of ex post facto authority.*]—An Appropriation Act of the Commonwealth Parliament appropriating money towards payment in respect of an agreement made by the Executive Government on behalf of the Commonwealth & which without Parliamentary authority would be invalid, does not validate that agreement.—COMMONWEALTH *v.* COLONIAL AMMUNITION CO. (1924), 34 C. L. R. 198.—**AUS.**

sz. *Amendment of legislation—Validity.*]—Legislation cannot be amended merely by Order in Council. Therefore, the Order in Council herein which purported without statutory authority to amend Judicature Act, R. S. A., 1922, was invalid & of no effect.—STEEN *v.* WALLACE, [1937] 3 W. W. R. 654; 7 F. L. J. (Can.) 259.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—A.

sl. *Cannot suspend Habeas Corpus Act.*]—The Imperial Parliament alone can suspend the above Act.—*Re* BLANSHAY (Que.) (1918), 24 R. de J. 578.—**CAN.**

sl. *Disqualified member voting—Liability to penalties.*]—Since Constitution Act, R. S. B. C., 1924 (c. 45), imposes but one penalty for each day on which a disqualified person sits & votes as a member of the Legislative Assembly, there is but one cause of action for each such day, & where an action is brought on such cause of action that penalty, if recovered, belongs to pltf. therein, who thereby attaches or appropriates it to himself. Such action, even though dismissed, is a bar to a subsequent action for the same penalty, unless such prior action was collusive.—KEENE *v.* COLLEY, [1925] 4 D. L. R. 229; [1925] 3 W. W. R. 250.—**CAN.**

56a. —— **Future exercise—Cannot be fettered.**]—Acting within the constitution, the legislature of a self-governing Colony or State is supreme, & no act of the executive Govt. can fetter in any legal sense the future exercise of its powers, or give to any person a title other than such as could be conferred under existing legislation.

When New South Wales Constitution Act, 1855, was enacted, Garden Island, in Port Jackson, was part of the waste lands of the Crown, the entire management & control of which were vested by sect. 2 of that Act in the legislature of the Colony. By notices published in 1865 & 1866, pursuant to Crown Lands Alienation Act, 1861 (N.S.W.), the island was dedicated as a naval depot. It continued to be so used by the Imperial naval authorities until 1913, but since that date it had been occupied by the Commonwealth naval authorities for the use of the naval forces which it provided & maintained. An Imperial Order in Council made in 1899 under Colonial Fortifications Act, 1877, recited an agreement by which the Government of New South Wales were to erect buildings & carry out works, partly on Garden Island, & the Imperial Government agreed that when the buildings & works were completed & the sites "conveyed, granted, or dedicated in perpetuity for the use of Her Majesty's navy in the same way as Garden Island had been," the Imperial Government would surrender certain lands which were not within 1855 Act, s. 2; the Order then, in consideration of the agreement, vested the lands in the Government of New South Wales. In 1923 the Minister administering the Crown Lands Consolidation Act, 1913 (N.S.W.), acting under sect. 25 of that Act, revoked the dedication of Garden Island:—*Held:* the recital in the Order in Council of 1899 did not preclude the Minister from revoking the dedication in the manner provided by the Act of 1913, & the revocation was effectual under sect. 25 of that Act, although the notice did not state the manner in which it was proposed to deal with the island. Judgment of the High Ct. affirmed, subject to the declaration made, that resp. State was entitled to possession of Garden Island, being varied to a declaration, in the words of Crown Lands Consolidation Act, 1913, s. 25, that by virtue of the revocation the island had become Crown lands within that Act, & liable to be dealt with in accordance therewith.—AUSTRALIA COMMONWEALTH *v.* NEW SOUTH WALES STATE, [1929] A. C. 431; 98 L. J. P. C. 81; 140 L. T. 587; 45 T. L. R. 216, P. C.

60. After this case add:—

—.]—*See, now,* Statute of Westminster, 1931 (c. 4), s. 2.

60a. ——.]—MOORE *v.* A.-G. FOR IRISH FREE STATE, No. 447a, *post.*

60b. ——.]—BRITISH COAL CORPN. *v.* R., No. 447b, *post.*

66. After this case add:—

——.]—*See, now,* Statute of Westminster, 1931 (c. 4), s. 3.

68. *Add. Annotation:*—*As to* (1) **Refd.** The Fagernes, [1927] P. 311.

90. *Add. Annotations:*—**Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; Croft *v.* Dunphy (1932), 48 T. L. R. 652. **Apld.** British Coal Corpn. *v.* R., [1935] A. C. 500.

90a. Principle of construction of British North America Act, 1867 (c. 3).]—EDWARDS *v.* A.-G. FOR CANADA, No. 52c, *ante.*

91. *Add. Annotation:*—**Consd.** British Coal Corpn. *v.* R., [1935] A. C. 500.

91a. Enactment preventing King in Council from granting leave to appeal—Criminal case.]—Sect. 1025 of the Criminal Code of Canada, if & so far as it is intended to prevent the King in Council from giving effective leave to appeal against an order of a Canadian ct. in a criminal case, is invalid. The legislative authority of the Parliament of Canada as to criminal law & procedure, under British North America Act, 1867 (c. 3), s. 91, is confined to action to be taken in Canada. Further, an enactment annulling the royal prerogative to grant special leave to appeal would be inconsistent with Judicial Committee Acts, 1833 (c. 41) & 1844 (c. 69), & would be invalid under Colonial Laws Validity Act, 1865 (c. 63), s. 2. The royal assent to the Criminal Code could not give validity to an enactment which was void by Imperial statute; exclusion of the pre-

---

PART II. SECT. 3, SUB-SECT. 2.—B.

59 iv. ——.]—When an Act of the Dominion Parliament is in part repugnant to an imperial Act, effect will be given to its enactments in so far as they agree.—*Re* THE RAREWELL (1881), 7 Q. L. R. 380.—**CAN.**

59 v. *Transfer of schools—By Education Act (Northern Ireland),* 1923 (c. 21) *—Whether repugnant to Government of Ireland Act,* 1920 (c. 67).]—Education Act (Northern Ireland), 1923 (c. 21), which relates to the transfer of schools, is not void under Govt. of Ireland Act, 1920, c. 67, s. 5.—LONDONDERRY COUNTY COUNCIL *v.* M'GLADE, [1929] N. I. 47.—**IR.**

60 i. *Effect of Colonial Laws Validity Act,* 1865 (c. 63)—*Invalidity of Navigation Act,* 1912–1920 (*Aus.*).]—The Navigation Act, 1912–1920, is a colonial law within the meaning & operation of sect. 2 of Colonial Laws Validity Act, 1865, & therefore any provision in the former Act or in regulations made thereunder which is repugnant to the provisions of Merchant Shipping Acts, 1894–1906, is to the extent of such repugnancy void & inoperative. —UNION STEAMSHIP CO. OF N. Z. *v.* THE COMMONWEALTH (1925), 36 C. L. R. 130.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—C.

64 vi. —— —— *Application to ship in foreign port.*]—An award made under the authority of the Industrial Conciliation & Arbitration Act, 1905, purporting to regulate the relations between the employers & employees on a New Zealand ship in a foreign port is valid & not too widely expressed.

The words of sect. 53 of the Constitution Act are wide enough to include by implication the power for the New Zealand legislature to pass laws for the control of its shipping. If the legislature had not such power the peace, order, & good government of New Zealand would be seriously impaired (STOUT, C.J.).—*Re* AWARD OF WELLINGTON COOKS & STEWARDS UNION (1906), 26 N. Z. L. R. 394.—**N.Z.**

64 vii. ——.]—There is a presumption that Parliament does not design its statutes to operate on its subjects beyond the territorial limits of the Union, in the absence of any contrary intention, express or implied. —WILSHIN *v.* WILSHIN (1936), N. L. R. 280.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 4.—A. (a).

sn. *Recital in preamble to private Act —Effect of.*]—A recital in the preamble to a special private Act enacted by the Parliament of Canada is not such a declaration as that contemplated by B. N. A. Act, 1867, s. 92 (10) (c), in order to bring the subject-matter of the legislation within the jurisdiction of Parliament.—HEWSON *v.* ONTARIO POWER CO. (1905), 36 S. C. R. 596.—**CAN.**

sp. *Incidental subjects included.*]—BENNETT *v.* QUEBEC PHARMACEUTICAL ASSOCN. (1881), 1 D. C. A. 336; 2 Cart. 250.—**CAN.**

rogative could be accomplished only by an Imperial statute.

According to the well-settled practice of the Judicial Committee His Majesty is advised to intervene in a criminal case only if it is shown that, by a disregard of the power of legal process, or by some violation of natural justice, or otherwise, substantial & grave injustice has been done.

Applt. was convicted in Alberta of an offence under Govt Liquor Control Act of Alberta, which did not incorporate sect. 1025 of the Criminal Code of Canada, & of an offence under Canada Temperance Act, R. S. Can., 1906 (c. 152). For each offence he was sentenced to a fine, & in default imprisonment. The Supreme Ct. of Alberta, rejecting contentions as to the construction & invalidity of the material sects., affirmed the convictions, but gave leave to appeal to the Privy Council. The Crown petitioned the Judicial Committee to quash the appeals as incompetent, having regard to sect. 1025. Applt. petitioned for special leave to appeal. The petitions were heard with the appeals:—*Held:* (1) each appeal was in a "criminal case" to which sect. 1025 applied, so far as it was valid; (2) in the absence of argument to the contrary, sect. 1025 prevented the Appellate Div. from giving effective leave to appeal: (3) sect. 1025 did not exclude the prerogative right to give leave to appea; (4) the cases were clearly not within the category of the exceptional cases in which special leave to appeal was advised in a criminal matter.—NADAN *v.* R., [1926] A. C. 482; 95 L. J. P. C. 114; 134 L. T. 706; 42 T. L. R. 356; 28 Cox, C. C. 167, P. C.

Annotations:—As to (3) **Follid.** Chung Chuck *v.* R., [1930] A. C. 214. **Expld.** British Coal Corpn. *v.* R., [1935] A. C. 500. *Generally,* **Refd.** Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936.

91b. —— ——.]—BRITISH COAL CORPN. *v.* R., No. 447b, *post.*

94. *Add. Annotation:*—**Refd.** Croft *v.* Dunphy (1932), 48 T. L. R. 652.

96. *Add. Annotations:*—**Apld.** British Coal Corpn. *v.* R., [1935] A. C. 500. **Refd.** Lord's Day Alliance of Canada *v.* A.-G. for Manitoba, [1925] A. C. 384; *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54.

97. *Add. Annotations:*—**Apld.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328. **Distd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; Proprietary Articles Trade Assocn. *v.* A.-G. for Canada, [1931] A. C. 310; **Refd.** A.-G. for Canada *v.* A.-G. for Ontario, [1937] A. C. 326.

98. For the paragraph in the original volume substitute the following paragraph:—

Bona vacantia—Right of Crown in right of province.]—*Bona vacantia* are "royalties" within British North America Act, 1867 (c. 3), s. 109, & accordingly belong to the province in which they are situate or arise, & not to the Dominion. The word "royalties" is used in the sect. as the equivalent of *jura regalia.* Its meaning is not limited by its association with the words "lands, mines, minerals."—R. *v.* A.-G. OF BRITISH COLUMBIA, [1924] A. C. 213; 93 L. J. P. C. 76; 130 L. T. 231; 40 T. L. R. 13; 68 Sol. Jo. 138, P. C.

Annotation:—**Consd.** Toronto (City) Corpn. *v.* R., [1932] A. C. 98.

98a. —— ——.]—(1) Land in Alberta granted by the Crown either before or after Sept. 1, 1905, when Alberta Act, 1905 (c. 3 Dom.), came into force, in the absence of heirs, escheats to the Crown in the right of the Dominion.

(2) Effect of Land Titles Act, 1894 (c. 28, Dom.), & Land Titles Act, 1906 (Alta.).

(3) Meaning of "royalties" in Alberta Act, s. 21.

(4) *Bona vacantia* in Alberta belong to the Crown in the right of the province. The effect of Alberta Act, s. 3, was to place the Province of Alberta in the same position in regard to property as the provinces previously constituted save so far as the Act provided otherwise, either expressly or by reasonable implication

(5) Ultimate Heir Act, R. S. A., 1922 (c. 144), is *ultra vires* so far as it purported to affect real property.—A.-G. FOR ALBERTA *v.* A.-G. FOR CANADA, [1928] A. C. 475; 97 L. J. P. C. 106; 139 L. T. 532; 44 T. L. R. 651, P. C.

Annotation:—As to (1) **Consd.** *Re* Natural Resources (Saskatchewan), [1932] A. C. 28.

99. *Add. Annotation:—As to* (2) **Refd.** A.-G. for Canada *v.* A.-G. for British Columbia (1929), 46 T. L. R. 1.

101. *Add. Annotations:*—**Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; Gallagher *v.* Lynn, [1937] 3 All E. R. 598; Shannon *v.* Lower Mainland

98 i. *Bona vacantia—Right of Crown in right of Dominion—Saskatchewan.*]—In 1916, H. domiciled in the province of S. died, leaving no heirs or other persons legally entitled to his estate. Both the Dominion & the province claimed the estate as *bona vacantia* by right of escheat:—*Held:* as the province of S. was not at the date of its establishment owner of the lands, nor had any vested rights in any duties or revenues in respect to the lands from which the province was carved, differing in this respect from the original provinces of Confederation, B. N. A. Act, ss. 102, 109 did not apply, notwithstanding Saskatchewan Act, s. 3, & in any event, these sects. did not purport to transfer any "property" or rights to the provinces.—R. *v.* WESTERN TRUST CO., A.-G. OF PROVINCE OF SASKATCHEWAN & SHULZE (1921), 21 Exch. C. R. 1; 59 D. L. R. 597.—**CAN.**

sr. "*Royalties*" — *British North America Act,* 1867, s. 109—*Construction.*]—"Royalties," in this sect. does not embrace all kinds of royalties, but is limited in its meaning by the text to such as are connected with lands, mines & minerals; such as (*inter alia*) the right to *bona vacantia* & of escheat arising by reason of a failure of heirs.—R. *v.* WESTERN TRUST CO., A.-G. OF PROVINCE OF SASKATCHEWAN & SHULZE (1921), 21 Exch. C. R. 1; 59 D. L. R. 597.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—A. (b) i.

h i. ——.]—R. *v.* HANEL, R. *v.* YELLE (Que.) (1925), 45 Can. Crim. Cas. 381.—**CAN.**

h ii. ——.]—Provincial legislation repugnant to B. N. A. Act, 1867, s. 93 (2), is "absolutely void & inoperative," & is not appealable under sub-sect. 3 to the Governor in Council.—HIRSCH *v.* MONTREAL PROTESTANT BOARD SCHOOL COMRS., [1926] 2 D. L. R. 8; [1926] S. C. R. 246; *varying,* 31 R. de J. 440; *on appeal,* [1928] A. C. 200, P. C.—**CAN.**

h iii. ——.]—Any provincial ___ lation repugnant to B. N. A. Act, 1867, s. 93 (1), is to the extent of such repugnancy absolutely void & inoperative.—TINY SEPARATE SCHOOL TRUSTEES *v.* R. (1926), 59 O. L. R. 96.—**CAN.**

h iv. ——.]—*Held:* there is a conflict between Bkpcy. Act, 1927 (c. 11), s. 64 & Fraudulent Preferences Act, R. S. B. C., 1924 (c. 97), s. 3 (2); & the Dominion enactment prevails.—CANADIAN CREDIT MEN'S TRUST ASSOCIATION, LTD. *v.* HOFFAR, LTD., [1929] 2 D. L. R. 73; 1 W. W. R. 557; 40 B. C. R. 454; 10 C. B. R. 369.—**CAN.**

k. For "**k.** ——.]—" substitute "**101 ii.** —— ——.]—"

Dairy Products Board (1938), 54 T. L. R. 1090.

102. *Add. Annotations:*—**Refd.** A.-G. for Canada *v.* A.-G. for British Columbia (1929), 46 T. L. R. 1; A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 238.

105. *Add. Annotations:*—**Apld.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328. **Consd.** *Re* Insurance Act of Canada, [1932] A. C. 41. **Refd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396.

106. *Add. Annotations:*—**Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260; A.-G. for Canada *v.* A.-G. for British Columbia (1929), 46 T. L. R. 1; A.-G. for Canada *v.* A.-G. for Ontario, [1937] A. C. 326.

108. *Add. Citations:*—93 L. J. P. C. 101; 130 L. T. 101.

Add. Annotations:—**Distd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396. **Consd.** *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54.

108a. —— —— **Question of substance, not of form.**]—(1) The Parliament of Canada cannot, by purporting to create penal sections under head 27 of the above sect., appropriate to itself exclusively a field of jurisdiction in which, apart from that procedure, it could exert no legal authority; if, when examined as a whole, legislation in form criminal is found, in aspects & for purposes exclusively within the provincial sphere, to deal with matters committed to the provinces, it cannot be upheld as valid.

Reciprocal Insurance Act 1922, of Ontario, authorised any person to exchange, through the medium of an attorney, with persons, whether in Ontario or elsewhere, reciprocal contracts of insurance, subject to provisions as to licences & other conditions; & it was provided that actions in respect of such contracts might be maintained in the cts. of the province. A Dominion Act of 1917 inserted in the Criminal Code (R. S. Can. 1906, c. 146), sect. 508c, by which it was made an indictable offence for any person to solicit or accept any insurance risk except on behalf of a co. or assocn. licensed under Insurance Act, 1917, of Canada. In answer to questions referred by the Lieutenant-Governor of Ontario to the Appellate Div.:—*Held:* (2) the Act of 1922 was *intra vires* the province, since (a) its provisions were capable of receiving a meaning according to which, whether enabling or prohibitive, they applied only to persons & acts within the territorial jurisdiction of the province, & (b) although it might incidentally affect aliens & dominion cos., it did not deal with them as such, but was an Act dealing with contracts of insurance; (3) the making & carrying out of contracts licensed pursuant to the Act were not rendered illegal, or otherwise affected, by Criminal Code, s. 508c; that sect. was invalid, since, in substance though not in form, it was in regulation of contracts of insurance, subjects not within the legislative competence of the Dominion; (4) the answers under (2) & (3) would be the same if any of the persons subscribing to a reciprocal insurance contract was (a) a British subject not resident in Canada immigrating into Canada, or (b) an alien. In so answering this question no opinion was expressed as to the competence of the Dominion Legislature to enact Insurance Act, 1917, ss. 11 & 12 (1), whereby restrictions were placed upon aliens & British cos. in the matter of carrying on insurance business in Canada; but sect. 12 (2) was held to be invalid in relation to the subject of immigration.—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, [1924] A. C. 328; 130 L. T. 738; 68 Sol. Jo. 383; *sub nom.* A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, CRAIGON *v.* R., OTTE *v.* R., 93 L. J. P.C. 137; 40 T. L. R. 273, P. C.

Annotations:—*As to* (1) **Followed.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; *Re* Insurance Act of Canada, [1932] A. C. 41. **Refd.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475. *Generally,* **Refd.** British Coal Corpn. *v.* R., [1935] A. C. 500.

101 iii. —— ——.]—Where both the Dominion Parliament & a provincial legislature have legislated on the same subject & with the same object, & the legislation is within the powers of the Dominion Parliament, the provincial legislation is inoperative.—R. *v.* SHENDAN, [1924] 3 D. L. R. 339; 3 W. W. R. 617; 34 B. C. R. 161.—**CAN.**

106 i. —— *Power to repeal local Act.*]—RUMSEY *v.* HARE (1877), 3 R. & C. 4.—**CAN.**

st. *Creation of new province—Restriction of legislative powers.*]—In exercising the authority to establish new provinces given to it by B. N. A. Act, 1871, the Dominion Parliament had power to enact Alberta Act, s. 17 with its protective provisions restricting full legislative power as to education, notwithstanding that those provisions are a modification of B. N. A. Act, 1867, s. 93.—R. (BROOKS) *v.* ULMER, [1923] 1 D. L. R. 304; 1 W. W. R. 1; 38 Can. Crim. Cas. 207; 19 Alta. L. R. 12.—**CAN.**

sv. *Legislation inconsistent with provincial rights—Powers conferred on Board of Commerce.*]—The Dominion Parliament cannot confer on the Board of Commerce jurisdiction that would restrict the liberty of the inhabitants of a province.—A.-G. FOR ONTARIO *v.* CANADIAN WHOLESALE GROCERS ASSOCN., [1923] 2 D. L. R. 617; 39 Can. Crim. Cas. 272.—**CAN.**

sy. *Regulations under Live Stock Act—Incapacity of Dominion or Province to enlarge jurisdiction of each other.*]—In so far as the provisions of Live Stock & Live Stock Products Act, R. S. C., 1927, & regulations thereunder purport to control & regulate sales & purchases of eggs which begin & end within a province they are *ultra vires.* Neither the Dominion nor a province can enlarge the legislative jurisdiction of the other or surrender jurisdiction.—R. *v.* ZASLAVSKY, [1935] 2 W. W. R. 34; 3 D. L. R. 788.—**CAN.**

sb. ——.]—The regulations made under Live Stock & Live Stock Products Act, R. S. C., 1927, requiring dealers in eggs to mark, label or tag the egg containers with the correct grade, etc., of the eggs, & the provisions of said Act under which said regulations purported to be made, are in so far as they relate to the sale or delivery of eggs by one person to another within the same province, *ultra vires.*—R. *v.* BRODSKY, [1936] 1 W. W. R. 177; 1 D. L. R. 578; 65 Can. C. C. 4; 43 Man. L. R. 522; 5 Can. L. Jo. 244.—**CAN.**

sc. *Dominion & Provincial Bankruptcy Acts—Conflicting rights of creditors.*]—If Dominion legislation, in its operation & within the scope of its own field, interferes with the rights of creditors of a bkpt. acquired under a provincial statute, & if it is incidental & necessary to the enforcement of the Dominion statute that the powers thereunder be exercised, without restriction, then the rights acquired under the provincial legislation must give way to the Dominion legislation, if by so doing any benefit is to accrue to the bkpt.'s estate. If, however, no such benefit is to accrue to the bkpt.'s estate, then the Dominion statute should be so construed as not to interfere with or deprive any creditor of any right which he may have acquired under provincial legislation.—CROWN COAL CO., LTD. *v.* SWANSON LUMBER CO., LTD. & CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1935] 3 W. W. R. 244; *on appeal,* [1935] 4 D. L. R. 707; 3 W. W. R. 487; 5 F. L. J. (Can.) 211.—**CAN.**

110a. Legislation in performance of treaty obligations.]—A.-G. FOR CANADA *v.* A.-G. FOR ONTARIO, *Re* WEEKLY REST IN INDUSTRIAL UNDERTAKINGS ACT, *Re* MINIMUM WAGES ACT, *Re* LIMITATION OF HOURS OF WORK ACT, No. 130p, *post.*

115. *Add. Annotation :*—**Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260.

116. *Add. Annotations :*—**Consd.** A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 235. **Refd.** A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

117. *Add. Annotations :*—**Apld.** A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260. **Consd.** *Re* Insurance Act of Canada, [1932] A. C. 41. **Distd.** Lymburn *v.* Mayland (1932), 48 T. L. R. 231. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; Proprietary Articles Trade Assocn. *v.* A.-G. for Canada, [1931] A. C. 310.

117a. —— —— ——.]—Sale of Shares Act, 1924, & Municipal & Public Utility Board Act, 1926, both of Manitoba, are *ultra vires* under British North America Act, 1867 (c. 3), s. 92, in so far as they purport to prohibit Dominion cos. from selling their own shares within the Province without the consent of a Provincial Comr. or Board, since thereby they interfere, directly & substantially, with the status & capacity conferred on the cos. by Dominion legislation *intra vires* under British North America Act, 1867 (c. 3), s. 91.—A.-G. FOR MANITOBA *v.* A.-G. FOR CANADA, [1929] A. C. 260; 98 L. J. P. C. 65; 140 L. T. 386; 45 T. L. R. 146, P. C.

Annotation :—**Distd.** Lymburn *v.* Mayland (1932), 48 T. L. R. 231.

119. *Add. Annotations :*—*As to* (1) **Refd.** Montreal Corpn *v.* Montreal Harbour Comrs., Tetreault *v.* Montreal Harbour Comrs., A.-G. for Quebec *v.* A.-G. for Canada (1925), 42 T. L. R. 98; A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715. *Generally*, **Refd.** *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54; R. *v.* Jalbert, A.-G. of Quebec *v.* R. (1938), 82 Sol. Jo. 252.

119a. —— ——.]—(1) Fisheries Act, 1914, ss. 7a, 18, requiring persons who operate for commercial purposes a fish cannery, & in British Columbia a salmon cannery or salmon curing establishment, to obtain a licence from the Canadian Minister of Fisheries are *ultra vires* of the Parliament of Canada.

(2) The Special Fishery Regulations made for British Columbia under sect. 45 of the same Act do not give the Minister a discretion to refuse an application by a properly qualified person for such a fishing licence as is required by those regulations.—A.-G. FOR CANADA *v.* A.-G. FOR BRITISH COLUMBIA, [1930] A. C.

PART II. SECT. 3, SUB-SECT. 4.—A. (b) ii.

m (p. 431) i. ——.]—KINNEY *v.* DUDMAN (1876), 2 R. & C. 19; 2 Cart. 412.—**CAN.**

m (p. 431) ii. ——]—PEEK *v.* SHIELDS (1881), 6 A. R. 639; 3 Cart. 266.—**CAN.**

o (p. 431) i. —— *Bankruptcy Act*, 1920 (c. 34), s. 11 (1) (10)—*Intra vires.*] —On the true construction of Bkpcy. Act of Canada, sect. 11 (10), a judicial hypothec upon real assets of a debtor, resulting from registration under art. 2121 of the Civil Code of Quebec, was thereby postponed to an authorised assignment subsequently made by the debtor for the benefit of his creditors. It was within the powers of the Parliament of Canada so to enact, since the legislative power of that Parliament under sect. 91, head 21, of the British North America Act, 1867, in relation to "bankruptcy & insolvency," enables it to determine by legislation the relative priorities of creditors under a bkpcy. or authorised assignment; that power prevails over the legislative power of a Province under sect. 92, head 2, in relation to property & civil rights in the Province.—ROYAL BANK OF CANADA *v.* LARUE & A.-G. FOR CANADA, [1928] A. C. 187; 139 L. T. 562, P. C.; *affy.* S. C. *sub nom.* BELANGER, ETC. *v.* ROYAL BANK OF CANADA, [1926] S. C. R. 218.—**CAN.**

o (p. 431) ii. —— *Companies' Creditors Arrangement Act*, 1933—*Intra vires.*]—*Re* COMPANIES CREDITORS ARRANGEMENT ACT REFERENCE, [1934] S. C. R. 659; 4 D. L. R. 75.—**CAN.**

o (p. 431) iii. ——.]—Sects. 157, 159 of Bkpcy. Act, are *intra vires.*—*Re* COLLINGS, [1936] 4 D. L. R. 28.—**CAN.**

o (p. 431) iv. ——.]—The power of the Dominion Parliament under sect. 91 (21) to deal with insolvent estates includes the right to legislate for insolvent cos. notwithstanding the existence of provincial legislation.—MONTREAL TRUST CO. *v.* ABITIBI POWER & PAPER CO., [1938] 1 D. L. R. 548; O. R. 81.—**CAN.**

o (p. 431) v. ——.]—Sects. 112 & 125 of the Winding-up Act, R. S. C., 1927, are *intra vires*, so far as they provide for the reference of causes under the Act, & give authority for an officer of the ct. to make an order requiring a director to repay moneys on a misfeasance summons.—*Re* SOLLOWAY MILLS & CO., [1937] 4 D. L. R. 26.—**CAN.**

sw. *Building societies—In Quebec—Liquidation of—Ultra vires.*]—MCCLANAGHAN *v.* ST. ANN'S MUTUAL BUILDING SOCIETY (1880), 24 L. C. J. 162; 2 Cart. 237.—**CAN.**

sy. *Cheese factories—Act to prevent fraud against—Valid.*]—R. *v.* STONE (1892), 23 O. R. 46.—**CAN.**

sz. *Copyright.*]—SMILES *v.* BELFORD (1877), 1 A. R. 436; 1 Cart. 576.—**CAN.**

sb. *Education.*]—*Held :* Alberta Act (D., 1905, c. 3), s. 17, was within the powers of the Dominion Parliament.—*Re* ALBERTA ACT, SECTION 17, [1927] 2 D. L. R. 993; [1927] S. C. R. 364.—**CAN.**

114 iv. —— ——.]—Part IV. added to Canada Temperance Act, prohibiting the importation of intoxicating liquor into those provinces where its sale for beverage purposes is forbidden by provincial law, is *intra vires* the Dominion Parliament.—GOLD SEAL, LTD. *v.* DOMINION EXPRESS CO. & A.-G. FOR ALBERTA PROVINCE (1921), 62 D. L. R. 62; 62 S. C. R. 424; [1921] 3 W. W. R. 710; *affg.* 58 D. L. R. 51; 34 Can. Crim. Cas. 259; 16 Alta. L. R. 113.—**CAN.**

114 v. —— ——.]—Canada Temperance Act, R. S. C., 1927, is *ultra vires.*—R. *v.* JONES, [1937] 1 D. L. R. 193; 67 Can. C. C. 228; 11 M. P. R. 240; 6 F. L. J. (Can.) 164.—**CAN.**

115 iii. —— *By 45 Vict. c. 119—Valid.*]—*Re* QUEBEC TIMBER CO. (1882), Cout. 43.—**CAN.**

a (p. 432) i. —— *Regulation of time & manner.*]—The regulation of the manner of fishing & the establishing of close seasons are within the exclusive legislative jurisdiction of the Dominion Parliament. Sect. 29 of Fisheries Act, R. S. C., 1927, is *intra vires.*—R. *v.* TOMASSON, [1932] 2 W. W. R. 176; 40 Man. L. R. 321.—**CAN.**

r (p. 432) i. —— *Regulations as to inland fisheries—Valid.*]—BAYER *v.* KAIZER (1894), 26 N. S. R. 280.—**CAN.**

r (p. 432) ii. —— ——.]—The provisions of Fisheries Act, 1914 (c. 8) (Dom.), ss. 7A, 18, for the licensing & taxing of fish canneries :—*Held : ultra vires.*—R. *v.* SOMERVILLE CANNERY CO., LTD. (B. C.), [1927] 4 D. L. R. 494; [1927] 3 W. W. R. 215; 49 Can. Crim. Cas. 65.—**CAN.**

r (p. 432) iii. —— ——.]—A regulation made by Order in Council pursuant to the power given by Dominion Fisheries Act, s. 45, & adopted from a provincial regulation, to the effect that no one shall fish by means other than by angling & trolling except under license from a duly authorised officer of the Provincial Govt. was not open to objection on the principle that Parliament has no power to divest the Dominion in favour of the Province of a legislative power conferred on it by the B. N. A. Act.—SERO *v.* GAULT (1921), 50 O. L. R. 27; 64 D. L. R. 327.—**CAN.**

r (p. 432) iv. —— *Customs & Fisheries Protection Act, s. 10 (c)—Intra vires.*]—R. *v.* AUXILIARY FISHING SCHOONER NATALIE S., [1932] Ex. C. R. 155.—**CAN.**

h (p. 432) i. —— *Guarding of crossings.*]—*Re* CANADIAN PACIFIC RY. CO. & COUNTY & TOWNSHIP OF YORK (1896), 27 O. R. 559.—**CAN.**

y i. —— *Dominion Insurance Act, ss. 11, 12 (1), 71, 71A, 134, 134A—Ultra vires.*]—*Re* INSURANCE CONTRACTS, [1926] 2 D. L. R. 204; 58 O. L. R. 404.—**CAN.**

sd. *Interest—Amount of—R. S. C., 1886 (c. 127), s. 7—Intra vires.*]—BRADBURN *v.* EDINBURGH LIFE ASSURANCE CO. (1903), 23 C. L. T. 199; 5 O. L. R. 657; 2 O. W. R. 253.—**CAN.**

o (p. 433). For "o" substitute "128b i."

111; 99 L. J. P. C. 20; 142 L. T. 73; 46 T. L. R. 1, P. C.

Annotations:—Generally, **Consd.** Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54; A.-G. for Quebec *v.* A.-G. for Canda (1932), 48 T. L. R. 238.

120. *Add. Annotation:*— **Refd.** The Fagernes, [1927] P. 311.

121. *Add. Annotation:*—**Refd.** A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

121a. —— —— **Safeguarding navigation of river obstructed by bridge included.**]— British North America Act, 1867 (c. 3), s. 91 (10), gives to the Parliament of the Dominion exclusive legislative authority over navigation & shipping, & sect. 92 (10) excludes from the jurisdiction of the provincial legislatures railways & other works extending beyond the limits of the province, & any works which, although wholly situate within the province, have been declared by the Parliament of Canada to be for the general advantage of Canada. In the case of two railway bridges, one of them authorised by dominion statute, which fell within the exception:—*Held:* (1) the right & power of safeguarding the navigation of the river passing under & alleged to be obstructed by them was also in the hands of the Dominion; (2) the rights & powers of the Dominion were not affected by the provisions of a treaty entered into between Great Britain & the United States in 1842, the Ashburton Treaty, which proceeded on the assumption that the Govt. of New Brunswick had power to make regulations as to the navigation of the river in question, there being no undertaking or guarantee, either to the United States or to New Brunswick, that such powers should remain unaltered for all time, & the change made being wholly consistent with the treaty.—A.-G. FOR NEW BRUNSWICK *v.* CANADIAN PACIFIC RY. CO., A.-G. FOR CANADA INTERVENING (1925), 94 L. J. P. C. 142; 133 L. T. 436, P. C.

122. *Add. Annotations:*—**Refd.** A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada. [1926] A. C. 715; R. *v.* Jalbert, A.-G. of Quebec *v.* R. (1938), 82 Sol. Jo. 252.

122a. —— **Expropriation of provincial Crown lands.**]—Railway Act, 1919 (c. 68), s. 189, which empowers any railway co., with the consent of the Governor-General, to take for the use of the railway provincial Crown lands as well as Dominion Crown lands, was within the legislative powers of the Parliament of Canada under British North America Act, 1867 (c. 3), ss. 91 (29), 92 (10).—A.-G. FOR QUEBEC *v.* NIPISSING CENTRAL RY. CO. & A.-G. FOR CANADA, [1926] A. C. 715; 95 L. J. P. C. 221; 135 L. T. 520; 42 T. L. R. 591, P. C.

Annotation:—**Distd.** A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 238.

124. *Add. Annotations:*—**Refd.** Canadian Pacific Ry. Co. *v.* Toronto Transportation Commission; Toronto Transportation Commission *v.* Canadian National Railways, [1930] A. C. 686; Canadian Electrical Assocn. *v.* Canadian National Railways, [1934] A. C. 551.

125. *Add. Annotations:*—**Refd.** *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54; A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 235.

125a. —— **Regulation of running rights.**]—Applts. owned a short railway line in Alberta branching from a line which branched from the Canadian Northern Railway at a point within the province. Both branches were operated by the Canadian Northern Railway Co. under agreements, & traffic could pass from applts.' line without interruption into such other provinces as were served by that co.'s railway. The Railway Board made an order declaring its power to grant an application by first resp. for running rights over applts.' line, with permission to construct a short track joining it:—*Held:* the Railway Board had power to grant the application, since applts.' line was part of a system of railways operated together, & connecting one province with another, & it was within the legislative authority of the Dominion under British North America Act, 1867 (c. 3), s. 92 (10) (*a*).—LUSCAR COLLIERIES *v.* MCDONALD, [1927] A. C. 925; 97 L. J. P. C. 21; 137 L. T. 779; 43 T. L. R. 801, P. C.

125b. —— **Powers not delegated to Board of Railway Commissioners.**]—The Parliament of Canada, for the purpose of securing effective railway administration, may encroach upon the Provincial domain in respect of property & civil rights, but Parliament does not appear to have delegated that legislative power to the Board of Railway Comrs., unless possibly by sect. 34 (3) of the Canadian Railway Act.—CANADIAN ELECTRICAL ASSOCN. *v.* CANADIAN NATIONAL RAILWAYS, [1934] A. C. 551; 103 L. J. P. C. 127; 151 L. T. 453; 51 T. L. R. 25, P. C.

126. *Add. Annotations:*—**Consd.** British Coal Corpn. *v.* R., [1935] A. C. 500. **Refd.** Croft *v.* Dunphy (1932), 48 T. L. R. 652.

128a. —— **Question of substance, not of form.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

128b. —— **Insurance Act, 1927, ss. 11, 12, 65, 66 —Validity.**]—By sect. 11 of the Insurance Act of Canada, R. S. C., 1927, c. 101, a licence was made necessary from the Minister of Canada for any Canadian co. or any alien to carry on insurance business within Canada, &, by sect. 12, a licence was also required for any British co. or subject not resident in Canada who immigrated into Canada to carry on insurance business, & sects. 65 & 66 imposed penalties for insuring without such licences. The Special War Revenue Act, R. S. C., 1927, c. 179, imposed taxation on persons who insured with insurers so prohibited. British & foreign insurers obtained

---

128b ii. —— *Imposition of additional customs duties.*]—*Held:* 53 Vict. c. 20, s. 19, was not *ultra vires* the Dominion Parliament.—A.-G. OF CANADA *v.* FOSTER (1892), 31 N. B. R. 153.—**CAN.**

si. *Migratory Birds Protection Act,* 1917 (c. 18)—*How far intra vires.*]—R. *v.* STUART, [1925] 1 D. L. R. 12; [1924] 3 W. W. R. 648.—**CAN.**

sj. *Soldier Settlement Act, ss.* 33, 34—*Intra vires.*]— R. *v.* POWERS, [1923] Exch. C. R. 131.—**CAN.**

sk. *Judges Act, R. S. C.,* 1906 (c. 138), *ss.* 33–35.]—In so far as the above sects. attempt to disqualify or prohibit a judge of the King's Bench from acting as an arbitrator in matters lying wholly within provincial control, they are *ultra vires.*—WINNIPEG CORPN. *v.* CROSS (Man.), [1926] 4 D. L. R. 318; [1926] 2 W. W. R. 868.—**CAN.**

sl. *Live-stock & Live-stock Products Act,* 1923, *& regulations made thereunder—How far ultra vires.*]—R. *v.* COLLINS, [1926] 4 D. L. R. 548; 46 Can. Crim. Cas. 282; 59 O. L. R. 453. —**CAN.**

licences under the Quebec Insurance Act, & the Govt. of Canada required them to take out licences under sects. 11 & 12, & attempted to recover taxes from persons who had insured with them under the Special War Revenue Act. The Lieutenant-Governor of Quebec referred to the ct. the questions: "(1) Is a foreign or British insurer who holds a licence under the Quebec Insurance Act to carry on business within the Province obliged to observe & subject to sects. 11, 12, 65, 66 of the Insurance Act of Canada, or are those sections unconstitutional as regards such insurer? (2) Are sects. 16, 20 & 21 of the Special War Revenue Act within the legislative competence of the Parliament of Canada? Would there be any difference between the case of an insurer who has obtained or is bound to obtain under the Provincial law a licence to carry on business in the Province and any other case?":—*Held:* the answers must be to the first part of question 1, "No"; & to the second part, "Yes"; to the second question in both branches, "No." The conduct of insurance had been declared to be exclusively subject to Provincial law, & the Insurance Act of Canada, 1927, was not properly framed alien legislation within sect. 91 of the British North America Act, 1867 (c. 3), & therefore was not within the legislative powers of the Dominion, neither was that Act properly framed law as to immigration within the meaning of sect. 95 of the Act of 1867. The taxation imposed by the Special War Revenue Act was void in that the tax was linked up with a Dominion licence which had already by this decision been held illegal.—*Re* INSURANCE ACT OF CANADA, [1932] A. C. 41; *sub nom.* A.-G. OF QUEBEC *v.* A.-G. OF CANADA, BELDING CORTICELLI, LTD., A.-G. OF CANADA *v.* A.-G. OF QUEBEC (1931), 101 L. J. P. C. 26; 146 L. T. 28; 48 T. L. R. 173; 76 Sol. Jo. 10, P. C.

128c. Power to impose customs duty—Alcoholic liquor imported by province.]—Customs & other duties imposed by the Dominion of Canada upon alcoholic liquors imported into Canada can be levied upon alcoholic liquors imported by the Govt. of British Columbia for the purpose of sale by it. The power of the Dominion under British North America Act, 1867 (c. 3), s. 91, heads 2 & 3, to impose duties upon the importation of goods into Canada is not limited by sect. 125, which exempts the "property" of a province from taxation.—A.-G. OF BRITISH COLUMBIA *v.* A.-G. OF CANADA, [1924] A. C. 222; 130 L. T. 257; 40 T. L. R. 4; 68 Sol. Jo. 58, P. C.

128d. —— What is—Export tax.]—A.-G. FOR BRITISH COLUMBIA *v.* MCDONALD MURPHY LUMBER CO., LTD., No. 135e, *post.*

128e. Customs legislation—Extension of extra-territorial limit—Validity.]—If a matter is within the legislative authority of the Parliament of Canada under sect. 91 of B. N. A. Act, 1867, the permitted legislation is not limited by any other consideration than is applicable to the legislation of a sovereign State. The authority so conferred upon that Parliament in relation to customs duties extends to enacting anti-smuggling provisions similar in scope to the provisions, operating beyond territorial limits, which had long formed part of Imperial customs legislation, & presumably were regarded as necessary for its efficacy. Consequently, the Parliament of Canada was competent to provide by sects. 151 & 207 of Customs Act, R. S. C., 1927 (c. 42), as amended in 1928, that if any vessel registered in Canada was hovering within twelve miles of the Canadian coast, having on board dutiable goods, the vessel & her cargo were to be seized & forfeited. It was not necessary to determine whether sect. 3 of the Statute of Westminster, 1931 (c. 4), by which "it is declared & enacted that the Parliament of a Dominion has full power to make laws having extra-territorial effect" was retrospective.—CROFT *v.* DUNPHY, [1933] A. C. 156; 102 L. J. P. C. 6; 148 L. T. 62; 48 T. L. R. 652; 18 Asp. M. L. C. 370, P. C.

Annotation:—**Refd.** Forbes *v.* A.-G. for Manitoba, [1937] A. C. 260.

—— —— ——.]—*See, now,* Statute of Westminster, 1931 (c. 4), s. 3.

---

129 i. *Pilotage.*]—R. *v.* PETERS (1873), N. B. Dig. 138.—**CAN.**

l (p. 434) i. ——.]—*Held:* Criminal Code, 1892, ss. 865 & 866, were *intra vires* the Dominion Parliament.—FLICK *v.* BRISBIN (1895), 26 O. R. 423.—**CAN.**

o (p. 434) i. ——.]—If an act prohibited by the Dominion Parliament is one that may be considered a criminal matter, its prohibition & the subject of evidence establishing such act are within the powers of Parliament, even though the act is one that relates to property & civil rights.—R. *v.* POULIN (Alta.), [1925] 1 D. L. R. 618; [1925] 1 W. W. R. 16; 43 Can. Crim. Cas. 242.—**CAN.**

o (p. 434) ii. ——.]—Criminal Code, s. 734:—*Held: intra vires.*—DOWSETT *v.* EDMUNDS (Alta.), [1926] 4 D. L. R. 796; [1926] 3 W. W. R. 447; 46 Can. Crim. Cas. 330.—**CAN.**

o (p. 434) iii. ——.]—Sect. 734 of the Canadian Criminal Code, so far as it purports to prohibit civil proceedings in respect of an assault after the discharge of the penalty imposed in a criminal prosecution under the Code, is *ultra vires* of the Parliament of Canada.—RICE *v.* MESSENGER, [1929] 2 D. L. R. 669; 51 Can. Crim. Cas. 147; 60 N. S. R. 399.—**CAN.**

o (p. 434) iv. ——*Issue of certificate releasing from all further proceedings civil or criminal.*]—*Held:* 32 & 33 Vict. c. 20, s. 45, is not *ultra vires.*—WILSON *v.* CODYRE (1866), 26 N. B. R. 516.—**CAN.**

q (p. 434) i. —— ——.]—O'BRIEN *v.* ROYAL GEORGE CO., LTD., [1921] 1 W. W. R. 559; 57 D. L. R. 301; 16 Alta. L. R. 373; 35 Can. Crim. Cas. 22.—**CAN.**

q (p. 434) ii. —— ——.]—Legislation of a prohibitive character passed for the purpose of compelling observance of the Lord's Day falls within B. N. A. Act, s. 91 (27), which confers on the Dominion Parliament exclusive jurisdiction to legislate with respect to criminal law.—CLARKE *v.* WAWKEN RURAL MUNICIPALITY, [1930] 2 D. L. R. 596; 1 W. W. R. 319; 53 Can. C. C. 366; *sub nom. Ex p.* CLARKE, 24 S. L. R. 327.—**CAN.**

q (p. 434) iii. —— *Food & Drugs Act,* 1927.]—Food & Drugs Act, R.S.C., 1927, is *intra vires.*—R. *v.* GOLDSMID (1932), 45 B. C. R. 435.—**CAN.**

q (p. 434) iv. —— ——.]—Food & Drugs Act, R. S. C., 1927, including sects. 3, 4 & 23 thereof & the regulations made thereunder, is *intra vires,* even with respect to the prohibition by said sects. & regulations of the adulteration of food where the prohibited adulteration is not injurious to health. Such legislation is a valid exercise of the Dominion's power to legislate with respect to criminal law; its real primary object is the protection of the public health & the prevention, in the interests of the public generally, of fraud; & for centuries the adulteration of food has been contrary to the criminal law of England.—STANDARD SAUSAGE CO., LTD. *v.* LEE, [1934] 1 W. W. R. 81; [1933] 4 D. L. R. 501; 60 C. C. C. 265; 47 B. C. R. 411.—**CAN.**

s (p. 434) i. —— *Canada Grain Act,* 1919, s. 95 (7)—*Whether ancillary to or necessary for operation of Dominion law.*]—The above Act is not in the nature of an ancillary provision which, whilst encroaching upon matters assigned to the provincial legislatures, is required to prevent a scheme of a Dominion law being defeated; nor is it a case where, in order to operate a validly enacted law, procedure must be adopted to make effective that law even though it invades the legislative fields of the provinces in respect of property or civil rights.—R. *v.* EASTERN TERMINAL ELEVATOR CO., [1925] S. C. R. 434.—**CAN.**

s (p. 434) ii. —— ——.]—The provisions of the above Act, requiring a

130a. "Peace, order & good government of Canada"—Whether trade disputes included.] —TORONTO ELECTRIC COMRS. *v.* SNIDER, No. 179a, *post.*

130b. Taxation—Income tax.]—(1) The Parliament of Canada had power under British North America Act, 1867 (c. 3), s. 91, head 3, to enact Income War Tax, 1917, & the primary grain-dealer to take out a licence thereunder, & prescribing the form of contract to be used on the purchase of grain, are *ultra vires.*—TRIMBLE *v.* CAPLING, [1927] 1 D. L. R. 717; [1927] 1 W. W. R. 188; 22 Alta. L. R. 536.—**CAN.**

s (p. 434) iii. —— *War legislation—Establishment of Canada Wheat Board.*]—*Held:* the legislation & Orders in Council establishing the Board were *intra vires* the Dominion Parliament as being either (a) legislation arising out of war, or (b) regulation of trade & commerce.—A.-G. FOR CANADA *v.* ALEXANDER BROWN MILLING & ELEVATOR CO., [1923] 4 D. L. R. 443; 53 O. L. R. 298.—**CAN.**

s (p. 434) iv. ——.]—The Dominion Parliament is without legislative competence to so interfere with civil rights as to preclude the making of contracts in respect of grain except in so far as they become a matter of Dominion concern. It is a matter of Dominion concern to exercise control over persons making contracts for the purchase of western grain by reference to a grade name, since such contracts relate to grain for export trade, it being a matter of Dominion-wide interest that in the markets of the world Canadian grain may measure up to known standards designated by grade names or numbers as provided for by Canada Grain Act, 1930: but it cannot be said that the making of grain contracts without reference to grade names is a matter which comes within Dominion legislative control.—MCLEOD *v.* CANADIAN INDEMNITY CO., [1937] 2 W. W. R. 266; 3 D. L. R. 72; 7 F. L. J. (Can.) 35—**CAN.**

dd i. *Courts—Power to establish—Maritime court—Jurisdiction limited to Ontario—Valid.*]—THE PICTON (1879), 4 S. C. R. 648; 1 Cart. 557.—**CAN.**

dd ii. —— *Power to extend jurisdiction—Court created by Imperial Act—Valid.*]—A.-G. OF CANADA *v.* FLINT (1884), 16 S. C. R. 707; 4 Cart. 288.—**CAN.**

dd iii. —— ——.]—*Held:* the Dominion Parliament had power to confer jurisdiction on a ct. to try offences against Inland Revenue Act, R. S. C. c. 34.—R. *v.* KENNEDY (1902), 35 N. S. R. 266.—**CAN.**

sp. *Appeal to Supreme Court of Canada—42 Vict. c. 39, s. 6—Ultra vires.*]—GRAND TRUNK RY. CO. *v.* CREDIT VALLEY RY. CO. (1875-1908), 1 Cout. Dig. 282.—**CAN.**

st. *Jury—Selection of jurors—In criminal cases.*]—R. *v.* O'ROURKE (1882), 32 C. P. 388.—**CAN.**

sw. *Opium & Narcotic Drug Act.*]—The Opium & Narcotic Drug Act, 1923, now R. S. C. 1927, c. 144, is *intra vires.*—R. *v.* GORDON, [1928] 2 D. L. R. 315; [1928] 1 W. W. R. 678; 49 Can. Crim. Cas. 272.—**CAN.**

sx. ——.]—R. *v.* WAKABAYASHI, R. *v.* LORE YIP [1928] 3 D. L. R. 226; [1928] 1 W. W. R. 487; 49 Can. Crim. Cas. 392; 39 B. C. R. 310—**CAN.**

sy. *Agriculture—Live Stock Pedigree Act.*]—"Agriculture" within B. N. A. Act, s. 95, is not restricted to the cultivation of the fields. The purpose of Live Stock Pedigree Act being to improve the quality of live stock on the farms of the Dominion, it is *intra vires* of the Dominion under said section.—R. *v.* DAVENPORT, [1928] 2 D. L. R. 852; [1928] 1 W. W. R. 876; 50 Can. Crim. Cas. 40.—**CAN.**

sz. *Gold & Silver Marking Act intra vires.*]—*Held:* Gold & Silver Marking Act, 7 & 8 Edw. 7, c. 30, s. 16 (*b*), is *intra vires* of the Dominion Parliament.—R. *v.* LEE (1911), 18 O. W. R. 845; 2 O. W. N. 933; 23 O. L. R. 490; 18 Can. Crim. Cas. 480.—**CAN.**

sc. *Power to prohibit harbouring goods within territorial waters.*]—The Parliament of Canada, in legislating for the effective observance of its customs law & the protection of its revenue, may prohibit the harbouring of goods within the territorial waters of Canada, & thus s. 217 (4) of the Customs Act, R. S. C., 1927 (c. 42), is *intra vires.*—R. *v.* BOUTILIER, [1929] 2 D. L. R. 849; 51 Can. Crim. Cas. 314; 60 N. S. R. 492.—**CAN.**

sd. *Water power—Powers relating to.*]—*Re* WATERS & WATER POWERS REFERENCE, [1929] 2 D. L. R. 481; S. C. R. 200.—**CAN.**

sf. —— *Regulation—Condition as to wages—Intra vires.*]—Regulation 83A, under the Dominion Water Power Act, R. S. C., 1927 (c. 210), is *intra vires*, if interpreted as conditional, *i.e.* as imposing on the licensee an obligation (as to the payment of wages), the observance of which is a condition of the licence; & not as a general legislation governing rates of wages & conditions of employment. Under the latter interpretation it would be *ultra vires.*—OUTEN *v.* STEWART, GRANT & WINNIPEG CITY, [1932] 3 W. W. R. 193; 40 Man. L. R. 557.—**CAN.**

sk. *Sales tax.*]—Special War Revenue Act, s. 58:—*Held: intra vires.*—R. *v.* MILLER COURT & Co., [1930] 3 D. L. R. 745.—**CAN.**

so. *Federal District Commission Act.*]—The Federal District Commission Act, 1927, is within the powers of the Parliament of Canada & the Commission's bye-law forbidding the operation upon the Commission's driveway of any vehicle for the transportation of passengers for hire, & its bye-laws providing a penalty for non-compliance, & its agreement giving the Ottawa Electric Ry. Co. the exclusive right to operate sight-seeing busses for hire on the driveway, are within the powers of the Commission.—R. *v.* RED LINE, LTD. (1930), 54 Can. C. C. 271; 66 O. L. R. 53.—**CAN.**

sq. *Customs Act, 1927—Liability of vessel hovering within twelve miles to seizure—Intra vires.*]—TRENHOLM *v.* MCCARTHY, [1930] 1 D. L. R. 674.—**CAN.**

sr. *Trade Unions Act, 1927.*]—The Trade Unions Act is a statute dealing solely with property & civil rights, & therefore *ultra vires* of the Dominion Parliament & quite ineffectual to confer any valid status on a trade union.—AMALGAMATED BUILDERS COUNCIL *v.* HERMAN, [1930] 2 D. L. R. 513; 65 O. L. R. 296.—**CAN.**

sv. *Civil servants—Exclusive powers of salaries—Who are.—Not harbour commissioners.*]—*Re* HAMILTON HARBOUR COMRS., [1930] 2 D. L. R. 509; 65 O. L. R. 149.—**CAN.**

sw. *Power to authorise inter-provincial endorsement of search warrants.*]—The Dominion Parliament has power to authorise peace officers & others to act beyond the limits of the ordinary scope of their provincial duties & can, in a criminal prosecution or for the purpose thereof, under sect. 91 of the British North America Act, deal with the personal property of citizens in any Province & authorise its seizure by a constable or peace officer acting under sect. 629 of the Criminal Code.—*Re* R. *v.* SOLLOWAY & MILLS (1930), 54 Can. C. C. 214; 65 O. L. R. 677.—**CAN.**

sb. *Soldier Settlement Act—Security to Board — Priorities.*]—Those provisions of the "Soldier Settlement Act," 1919, purporting to provide security to the Board without registration of said security and in priority to other *bonâ fide* creditors whose security has been registered are *intra vires* of the powers of the Parliament of Canada.—R. *v.* RICHARDS, [1930] Ex. C. R. 222.—**CAN.**

sc. *Companies Act, 1927, s. 110.*]—Dominion Cos. Act, R. S. C., 1927, s. 110, is *ultra vires* as being repugnant to the statutory right of the Provinces to legislate in respect of property & civil rights.—MEYER MALT & GRAIN CORPN. *v.* COOMBS, [1933] 2 D. L. R. 374; O. R. 259.—**CAN.**

sd. ——.]—Sect. 110 of Dominion Cos. Act, R. S. C., 1927, as to directors' liability for declaring & paying dividend when co. is insolvent, or when payment of the dividend renders co. insolvent or impairs capital, is *intra vires* of the Parliament of Canada. The enactment is of a character that brings it within the class of topics that must be supposed to have been contemplated, in the light of existing experience, as falling within the subject of "incorporation of cos" within the meaning thereof as used in B. N. A. Act.—*Re* COMPANY'S ACT, s. 110, REFERENCE, [1934] S. C. R. 653; 4 D. L. R. 6.—**CAN.**

sg. *Companies Act, 1927, s. 113.*]—Sect. 113 of Cos. Act, R. S. C., 1927, is a limited exception from the exemption to liability as shareholders granted by sect. 180 of said Act, & is valid & binding.—SCHUMACHER *v.* MOORE, [1934] 2 W. W. R. 588; 4 D. L. R. 585; 42 Man. L. R. 385.—**CAN.**

sj. *Property & Civil Rights—Abolition of office.*]—*Held:* legislation abolishing the office of membership of the Federal Appeal Board office without compensation was not an interference with "Property & Civil Rights." Either the Act did not interfere with any civil right since the right was in itself determinable by statute, or, if it did interfere, its interference was necessarily incident to the undoubted power of the Dominion to abolish the old & create the new office.—REILLY *v.* R., [1934] 1 W. W. R. 298; 1 D. L. R. 434.—**CAN.**

sl. *Income Tax War Act, 1927, s. 19.*]—Income War Tax Act, R. S. C., 1927, s. 19, is *intra vires.*—MCLAREN *v.* MINISTER OF NATIONAL REVENUE, [1934] Ex. C. R. 13.—**CAN.**

so. *Trading stamps—Unlawful sale.*]—Criminal Code, s. 505, is *intra vires.*—R. *v.* WESTERN AUTOMOBILE CLUB, LTD., [1934] 2 W. W. R. 431; 3 D. L. R. 592; 62 C. C. C. 10.—**CAN.**

sr. *Inheritance by aliens.*]—*Qu.*: whether Dominion legislation purporting to empower aliens to hold property in Canada does not, in order to confer the right of succession to property in a particular province require to be supplemented by ancillary provincial legislation, especially in those cases where, in the absence of such right, there would be an escheat to the Crown in the right of the province.—*Re* DANILUK ESTATE, [1935] 1 W. W. R. 142.—**CAN.**

sw. *Natural Products Marketing Act, 1934.*]—Since the answer of the Privy Council to the question submitted in the Reference *Re* The Natural Products Marketing Act, 1934 (Dom.), could not be affected by the circumstances of the present action, therefore, with respect to the questions arising for decision herein the opinion expressed on said reference that the Act & its amending Act of 1935 are *ultra vires* is binding

amending Act of 1919, whereby every person residing, or ordinarily residing, or carrying on business in Canada is rendered liable to pay income tax.

(2) A minister of the Govt. of a province is liable under the Acts in respect of the salary & sessional indemnity payable to him under statutes of the province.—CARON *v.* R., [1924] A. C. 999; 94 L. J. P. C. 9; 132 L. T. 218; 40 T. L. R. 874, P. C.

Annotation :—As to (1) **Refd.** Forbes *v.* A.-G. for Manitoba, [1937] A. C. 260.

130c. —— Salary of provincial official—Whether liable.]—CARON *v.* R., No. 130b, *ante.*

130d. Navigation of river—Formerly considered as in provincial control—Ashburton Treaty.]—A.-G. FOR NEW BRUNSWICK *v.* CANADIAN PACIFIC RY. CO., A.-G. FOR CANADA INTERVENING, No. 121a, *ante.*

130e. Criminal Code, s. 1036 (1)—Disposal of fines—Intra vires.]—Assuming, without deciding, that the term " royalties " in British North America Act, 1867 (c. 3), s. 109, includes fines imposed for infractions of the criminal law, any right conferred by sect. 109 on the Province of Ontario to claim fines as " royalties " extends only to such fines as have not been otherwise appropriated by competent authority, & the Parliament of Canada, having by sect. 91, head 27, exclusive authority as to the criminal law, is competent to direct that fines shall be otherwise appropriated, & in what manner. Parliament therefore had power to enact the proviso to sect. 1036 (1) of the Criminal Code of Canada directing that in the Province of Ontario fines are to be paid over to a municipal or local authority bearing, in whole or in part, the expense of administering the law under which the fine was imposed.—TORONTO (CITY) CORPN. *v.* R., [1932] A. C. 98; 101 L. J. P. C. 33; 146 L. T. 74; 48 T. L. R. 69, P. C.

130f. Combines Investigation Act, 1927—Validity.]—Combines Investigation Act, R. S. Can., 1927 (c. 26), by sect. 36 makes it an indictable offence, punishable by fine or imprisonment, to be a party to the formation or operation of a " combine " as defined by sect. 2, that is, shortly stated, a combine which is to the detriment of the public & restrains or injures trade or commerce. Inquiries whether a combine exists are to be conducted by appointed officials, who are given powers to examine books, demand returns, & summon witnesses. By sects. 29 & 30, customs duties may be reduced, & licences revoked, where the duties are used to facilitate a combine, or when the holder of a patent uses it so as unduly to limit manufacture or increase the price of any article. The Criminal Code, R. S. Can., 1927 (c. 36), s. 498, makes it an indictable offence, punishable by fine or imprisonment, to conspire, combine, or agree unduly to limit transportation facilities, restrain commerce, or lessen manufacture or competition :—*Held :* sect. 498 of the Code & the Act, excepting sects. 29 & 30, were *intra vires* the Parliament of Canada under British North America Act, 1867, s. 91, head 27 (criminal law), & sects. 29 & 30 could be supported under sect. 91, heads 3 & 22. The legislation being in its path & substance within enumerated heads of sect. 91, it was not material that it affected property & civil rights in the Provinces (sect. 92, head 13), or if it affected, which it did not, the administration of justice in the Provinces (sect. 92, head 14). The Dominion could employ its own executive officers to carry out legislation which was within its constitutional authority. It was unnecessary to discuss whether the legislation was *intra vires* also under sect. 91, head 2 (the regulation of trade & commerce), but the Judicial Committee did not assent to a contention that the power under that head was confined to the furtherance of a general power which the Dominion possessed independently of it. —PROPRIETARY ARTICLES TRADE ASSOCN. *v.* A.-G. FOR CANADA, [1931] A. C. 310; 100 L. J. P. C. 84; 144 L. T. 577; 47 T. L. R. 250, P. C.

Annotations :—**Consd.** O'Connor *v.* Waldron, [1935] A. C. 76. **Apld.** A.-G. for British Columbia *v.* A.-G. for Canada, [1937] A. C. 368. **Refd.** Toronto City Corpn. *v.* York (Township) & A.-G. for Ontario, [1938] A. C. 415.

130g. Aviation—Exclusive power of Dominion Legislature.]—The whole field of legislation in relation to aerial navigation in Canada belongs to the Dominion.

Having regard to (*a*) sect. 132 of the British North America Act, 1867 (c. 3), which gives to the Parliament & Govt. of Canada all powers necessary or proper for performing the obligations of Canada, or of any Province thereof, under treaties between the British Empire & foreign countries, (*b*) the fact that an international Convention of 1919, a treaty under sect. 132, covered almost every conceivable matter relating to aerial navigation, & (*c*) the further powers of the Parliament of Canada under sect. 91, heads 2 (trade & commerce), 5 (postal services) & 7 (military & naval services), substantially the whole field of legislation in regard to the subject belongs to the Dominion. Any small portion not vested in the Dominion by specific words in the Act of 1867 is not so vested in the Provinces, & necessarily belongs to the Parliament of Canada under its authority to make laws for the peace, order and good government of Canada. Further, the subject of aerial navigation, & the fulfilment of Canadian obligations under sect. 132, are matters of national interest & importance; aerial navigation is a class of subject which has attained such dimensions as to affect the body politic of the Dominion. Consequently, the Dominion powers under sect. 132 in relation to the obligations under the Convention were exclusive powers, & the Parliament of Canada had authority to enact the Aeronautics Act, R. S. C., 1927 (c. 3), s. 4, & the Air Regulations, 1920, respecting the licensing of pilots, navigators, etc., & the regulation & licensing of all aircraft,

on the ct. in respect to this case.—VANCOUVER GROWERS, LTD. *v.* BRITISH COLUMBIA COAST VEGETABLE MARKETING BOARD, [1937] 1 W. W. R. 670; 51 B. C. R. 433; *on appeal*, [1937] 3 W. W. R. 119, 121.—**CAN.**

sa. —— *Recovery of invalid assessments.*]—No action lies against the Board constituted under the Natural Products Marketing Act, 1934 (B. C.), for the recovery of assessments paid to it before the statute was declared *ultra vires.*—VANCOUVER GROWERS, LTD. *v.* SNOW, LTD., [1937] 3 W. W. R. 121; 4 D. L. R. 128; 52 B. C. R. 32; 7 F. L. J. (Can.) 164.—**CAN.**

sb. —— *Action for account.*]—No action for an account & injunction may be brought against the Board constituted under the Natural Products Marketing Act, 1934 (B. C.).—VANCOUVER GROWERS, LTD. *v.* MCLENAN, [1937] 4 D. L. R. 143; 52 B. C. R. 42; 7 F. L. J. (Can.) 163.—**CAN.**

aerodromes & air stations.—*Re* AERONAUTICS IN CANADA (REGULATION & CONTROL OF), [1932] A. C. 54, P. C.; *sub nom.* A.-G. OF CANADA *v.* A.-G. OF ONTARIO, A.-G. OF QUEBEC & A.-G. OF MANITOBA, 101 L. J. P. C. 1; 146 L. T. 76; 48 T. L. R. 18; 75 Sol. Jo. 796, P. C.

Annotations :—**Apld.** *Re* Radio Communication in Canada, [1932] A. C. 304. **Consd.** A.-G. for Canada *v.* A.-G. for Ontario, [1937] A. C. 326. **Refd.** A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 235.

130h. Special War Revenue Act, 1927, ss. 16, 20, 21—Validity.]—*Re* INSURANCE ACT OF CANADA, No. 128b, *ante*.

130i. Special War Revenue Act, 1922, s. 17—Validity.]—There is only one Crown, but by legislation assented to by the Crown revenue & property vested in the Dominion are distinguished from revenue & property vested in a Province. There are two separate statutory purses; in each the ingathering & expending authority is different.

By sect. 17 of the (Dominion) Special War Revenue Act, 1915, as amended in 1922, but since repealed, liability to the Crown for the excise taxes thereby imposed was to rank for payment in priority to all other claims of whatsoever kind save administration expenses. By sect. 1357 of the R. S. Que., 1909, all sums due to the Crown in respect of Provincial taxes are to constitute a privileged debt ranking after law costs. By sect. 16 of the Interpretation Act (R. S. Can., 1906, c. 1) no provision in any Act is to affect the Crown unless it is expressly stated therein that the Crown is to be bound thereby. In a bkpcy. in the Province of Quebec the assets were insufficient to discharge both a sum due for tax under the Dominion statute above mentioned & a sum due for Provincial taxes: —*Held :* that it would have been competent to the Parliament of Canada under the British North America Act, 1867, s. 91, head 21 (bankruptcy), or head 3 (taxation), to enact the statute of 1915 so as to prejudice the rights of the Province, but having regard to sect. 16 of the Interpretation Act the statute had to be read as though it provided that the priority enacted should not operate so as to diminish any right of the Crown in any Province; the result was that the two debts would run *pari passu* as claimed by the Province.—*Re* SILVER BROS., LTD., A.-G. FOR QUEBEC *v.* A.-G. FOR CANADA, [1932] A. C. 514; 101 L. J. P. C. 107; 146 L. T. 556; *sub nom.* A.-G. FOR QUEBEC *v.* A.-G. FOR CANADA, 48 T. L. R. 238.

130j. —— Effect of Interpretation Act, 1906, s. 16—On priority of Crown debt.]—*Re* SILVER BROS., LTD., A.-G. FOR QUEBEC *v.* A.-G. FOR CANADA, No. 130i, *ante*.

130k. Radio communication—Exclusive power of Dominion Legislature.]—The Parliament of Canada has exclusive legislative power to regulate & control radio communication in Canada.

Great Britain, Canada, & other Dominions & Colonies, having entered separately into a convention on the subject with foreign countries, the Parliament of Canada, under the general powers conferred upon it by sect. 91 of the British North America Act, 1867 (c. 3), to make laws for the peace, order, & good government of Canada, had in relation to the obligations under the convention power similar to that which it would have had under sect. 132 if the convention had been a treaty between the British Empire as an entity & foreign countries. The legislative power of the Dominion extended to inter-provincial radio communication on the same grounds that it extended to inter-provincial aeronautics, & because the matter was within "telegraphs" & "works & undertakings connecting the Provinces with any other, etc.," subjects which sect. 92, head 10 (*a*), excepted from the authority of the Provincial legislatures, & sect. 91, head 29, brought within the Dominion authority.—*Re* RADIO COMMUNICATION IN CANADA, A.-G. OF QUEBEC *v.* A.-G. OF CANADA, A.-G. OF ONTARIO, A.-G. OF NEW BRUNSWICK, A.-G. OF MANITOBA, A.-G. OF SASKATCHEWAN, A.-G. OF ALBERTA & CANADIAN RADIO LEAGUE, [1932] A. C. 304; 101 L. J. P. C. 94; 146 L. T. 409; 48 T. L. R. 235, P. C.

Annotation :—**Consd.** A.-G. for Canada *v.* A.-G. for Ontario, [1937] A. C. 326.

130l. Natural Products Marketing Act—Ultra vires.]—Natural Products Marketing Act, 1934, of the Parliament of Canada, as amended by Natural Products Marketing Act Amendment Act, 1935, which provided (*inter alia*) for the establishment of a Dominion Marketing Board whose powers included powers to regulate the time & place at which, & the agency through which, natural products to which an approved scheme related should be marketed, & to determine the manner of distribution, & the quantity, quality, grade or class of the product that should be marketed by any person at any time, was *ultra vires* of the Dominion Parliament.

The provisions of the Act, in addition to dealing with the regulation of foreign export & inter-Provincial trade, also covered transactions in any natural product which were completed within the Province & which had no connection with inter-Provincial or export trade. The regulation of "trade & commerce" by the Dominion under head 2 of sect. 91 of the British North America Act, 1867, did not permit the regulation of individual forms of trade or commerce confined to the Province, & the legislation in question, therefore, in so far as it related to matters which were in substance local & Provincial & affected "property & civil rights," a subject-matter exclusively reserved to the Provincial Legislature under head 13 of sect. 92 of the British North America Act, was beyond the competence of the Dominion Parliament.

The whole texture of the Act was inextricably interwoven & neither sect. 9, which dealt with inter-Provincial or export trade, nor Part II., which was a genuine exercise of the Dominion legislative authority over criminal law, could be contemplated as existing independently of the main legislation & must fall with it as being in part merely ancillary to it.—A.-G. FOR BRITISH COLUMBIA *v.* A.-G. FOR CANADA, *Re* NATURAL PRODUCTS MARKETING ACT, [1937] A. C. 377; 106 L. J. P. C. 64; 156 L. T. 311; 53 T. L. R. 330; 81 Sol. Jo. 235, P. C.

Annotation :—**Refd.** Shannon *v.* Lower Mainland Dairy Products Board (1938), 54 T. L. R. 1090.

130m. Criminal Code, sect. 498A—Intra vires.]—*Held :* the sect. was *in toto intra vires* of the

Parliament of Canada under sect. 91, head 27, of British North America Act, 1867—" The Criminal Law, . . ." There was no reason for supposing that the Dominion were using the criminal law as a pretence or pretext for invading the Provincial legislative field, or that the legislation was in pith & substance only interfering with civil rights in the Province.

The only limitation on the plenary power of the Dominion to determine what should or should not be criminal was the condition that Parliament should not in the guise of enacting criminal legislation in truth & in substance encroach on any of the classes of subjects enumerated in sect. 92 of the British North America Act. It was no objection that it did in fact affect them, for if it was a genuine attempt to amend the criminal law it might obviously affect previously existing civil rights.

There was no other criterion of " wrongness " than the intention of the Legislature in the public interest to prohibit the act or omission made criminal.

There seemed to be nothing to prevent the Dominion, if it thought fit in the public interest, from applying the criminal law generally to acts & omissions which so far were only covered by Provincial enactments. —A.-G. FOR BRITISH COLUMBIA *v.* A.-G. FOR CANADA, *Re* CRIMINAL CODE, SECT. 498A, [1937] A. C. 368 ; 106 L. J. P. C. 34 ; 156 L. T. 308 ; 53 T. L. R. 340 ; 81 Sol. Jo. 255, P. C.

130n. Farmers' Creditors Arrangement Act—Intra vires.]—By Farmers' Creditors Arrangement Act, 1934, of the Parliament of Canada, as amended by the Farmers' Creditors Arrangement Act Amendment Act, 1935, a procedure was provided whereby (*inter alia*) a farmer who was unable to meet his liabilities as they became due might make a proposal for a composition, extension of time or a scheme of arrangement to his creditors. If the proposal was not accepted by the creditors the matter was referred to a Board of Review to formulate a proposal. If the creditors or the debtor declined to approve the Board's proposal the Board might nevertheless confirm it, & it was thereupon binding on the creditors & the debtor :—*Held :* that the Act was genuine legislation relating to " bkpcy. & insolvency " & was accordingly *intra vires* of the Dominion Parliament under sect. 91, head 21, of the British North America Act, 1867.

The statutory conditions of insolvency which enabled a creditor or a debtor to invoke the aid of the bkpcy. laws, or the classes to which those laws applied, were not intended to be stereotyped under head 21 of sect. 91 of the British North America Act so as to confine the jurisdiction of the Parliament of Canada to the legislative provisions then existing as regarded those matters.

Legislative provisions as to compositions, by which bkpcy. was avoided, but which assumed insolvency, were properly within the sphere of bkpcy. legislation.—A.-G. FOR BRITISH COLUMBIA *v.* A.-G. FOR CANADA, *Re* FARMERS' CREDITORS ARRANGEMENT ACT, [1937] A. C. 391 ; 106 L. J. P. C. 67 ; 156 L. T. 313 ; 53 T. L. R. 334 ; 81 Sol. Jo. 115, P. C.

130o. Employment & Social Insurance Act—Ultra vires.]—Employment & Social Insurance Act, 1935, of the Parliament of Canada, which in substance provided for a system of compulsory unemployment insurance throughout Canada, was *ultra vires* of the Dominion Parliament. In pith & substance the Act was an insurance Act affecting the civil rights of employers & employed in each Province & was accordingly within the exclusive competence of the Provincial Legislatures under sect. 92, head 13, of the British North America Act, 1867, which provided that " In each Province the Legislature may exclusively make laws in relation to . . . (13) Property & civil rights in the Province."

The Act did not purport to deal with, & could not be supported on the ground of, any special emergency arising from the degree of unemployment in Canada at the relevant date.

The other parts of the Act were so inextricably mixed up with the insurance provisions of Part III. that it was impossible to sever them, & the whole Act was therefore *ultra vires* & invalid.—A.-G. FOR CANADA *v.* A.-G. FOR ONTARIO, *Re* EMPLOYMENT & SOCIAL INSURANCE ACT, [1937] A. C. 355 ; 106 L. J. P. C. 37 ; 156 L. T. 307 ; 53 T. L. R. 332 ; 81 Sol. Jo. 215, P. C.

130p. Weekly Rest in Industrial Undertakings Act —Ultra vires.]—Weekly Rest in Industrial Undertakings Act, 1935, the Minimum Wages Act, 1935, & the Limitation of Hours of Work Act, 1935, of the Parliament of Canada, which in substance gave effect to draft conventions adopted by the International Labour Organisation of the League of Nations in accordance with the Labour Part of the Treaty of Versailles, 1919, & ratified by the Dominion of Canada, were *ultra vires* of the Parliament of Canada & invalid in that the legislation related to matters coming within the class of subject " Property & civil rights in the Province " which was assigned exclusively to the Legislatures of the Provinces by head 13 of sect. 92 of the British North America Act, 1867.

The legislation could not be justified under sect. 132 of British North America Act, which provided that the Parliament of Canada should have " all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire & such foreign countries," because the obligations under the ratified conventions were not the obligations of Canada as part of the British Empire, but of Canada by virtue of her new status as an international juristic person, & they did not therefore arise under a treaty between the British Empire & foreign countries.

Jurisdiction to legislate for the purpose of performing the obligations of a Canadian treaty does not reside exclusively in the Parliament of Canada : *In re The Regulation & Control of Aeronautics in Canada*, [1932] A. C. 54, & *In re The Regulations & Control of Radio Communication in Canada*, [1932] A. C. 304, do not afford a warrant for the contrary view.

For the purposes of the distribution of

legislative powers between the Dominion & the Provinces under sects. 91 & 92 there is no such thing as treaty legislation as such. The distribution is based on classes of subjects, & as a treaty deals with a particular class of subject so would the legislative power of performing it be ascertained. No further legislative competence was obtained by the Dominion from its accession to international status & the consequent increase in the scope of its executive functions. There was no existing constitutional ground for stretching the competence of the Dominion Parliament so that it became enlarged to keep pace with enlarged functions of the Dominion executive. If the new functions affected the classes of subjects enumerated in sect. 92 legislation to support the new functions was within the competence of the Provincial Legislature only; if they did not, the competence of the Dominion Legislature was declared by sect. 91 & existed *ab origine*. The Dominion could not, merely by making promise to foreign countries, clothe itself with legislative authority inconsistent with the constitution which gave it birth.

Further, the present legislation was not concerned with matters of such general importance as to justify the overriding of the normal distinction of powers in sects. 91 & 92.

Lastly, in totality of legislative powers, Dominion & Provincial together, Canada was fully equipped to legislate in performance of treaty obligations, but the legislative powers remained distributed, & if in the exercise of her new functions derived from her new international status Canada incurred obligations, they must, so far as legislation was concerned, when they dealt with Provincial classes of subjects, be dealt with by the totality of powers—by co-operation between the Dominion & the Provinces.—A.-G. FOR CANADA *v.* A.-G. FOR ONTARIO, *Re* WEEKLY REST IN INDUSTRIAL UNDERTAKINGS ACT, *Re* MINIMUM WAGES ACT, *Re* LIMITATION OF HOURS OF WORK ACT, [1937] A. C. 326; 106 L. J. P. C. 72; 156 L. T. 302; 53 T. L. R. 325; 81 Sol. Jo. 116, P. C.

130q. Minimum Wages Act—Ultra vires.]—A.-G. FOR CANADA *v.* A.-G. FOR ONTARIO, *Re* WEEKLY REST IN INDUSTRIAL UNDERTAKINGS ACT, *Re* MINIMUM WAGES ACT, *Re* LIMITATION OF HOURS OF WORK ACT, No. 130p, *ante*.

130r. Limitation of Hours of Work Act—Ultra vires.]—A.-G. FOR CANADA *v.* A.-G. FOR ONTARIO, *Re* WEEKLY REST IN INDUSTRIAL UNDERTAKINGS ACT, *Re* MINIMUM WAGES ACT, *Re* LIMITATION OF HOURS OF WORK ACT, No. 130p, *ante*.

130s. Dominion Trade & Industry Commission Act.]—Sects. 15 (2), 16, 17, & 23 to 26, inclusive, of Dominion Trade & Industry Commission Act, 1935, of the Parliament of Canada, which was passed for the purpose of giving effect to certain recommendations contained in the Report of the Royal Commission on Price Spreads, were *intra vires* of the Dominion Parliament. Sects. 20, 21 & 22 of the Act, so far as they were applicable to such of the enactments,. or to offences created by such of the enactments, enumerated in sect. 2 (*h*) of the Act as might be *intra vires*, were not *ultra vires*.

Sect. 18 of the Act, which provided that the words "Canada Standard" or the initials "C. S." should be a national trade mark, vested in His Majesty in right of the Dominion, & that the application of that national trade mark to any commodity warranted it to conform to the relevant Dominion commodity standard, & sect. 19, by which any producer or manufacturer or merchant was given permission to apply the national trade mark to any commodity provided it conformed to the appropriate statutory specification, were *intra vires* of the Dominion Parliament under head 2 of sect. 91 of the British North America Act, 1867, "the regulation of trade & commerce." The substance of that legislation was to define a national mark, & to give the exclusive use of it to the Dominion so as to provide a logical basis for a system of statutory licences to producers, manufacturers & merchants. The method adopted in sect. 18 was to create a civil right of a novel character, but there seemed to be no reason why the legislative competence of the Dominion Parliament should not extend to the creation of juristic rights in novel fields if they could be brought fairly within the classes of subjects confided to Parliament by the constitution.—A.-G. FOR ONTARIO *v.* A.-G. FOR CANADA, *Re* DOMINION TRADE & INDUSTRY COMMISSION ACT, [1937] A. C. 405; 106 L. J. P. C. 59; 156 L. T. 310; 53 T. L. R. 337; 81 Sol. Jo. 276, P. C.

131. *Add. Annotation:*—**Refd.** Royal Bank of Canada *v.* Larne, [1928] A. C. 187.

132. *Add. Annotations:*—**Apld.** Royal Bank of Canada *v.* Larne, [1928] A. C. 187. **Refd.** A.-G. for Canada *v.* A.-G. for British Columbia, [1930] A. C. 111.

134. *Add. Annotations:*—**Consd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45.

135. *Add. Annotations:*—**Consd.** A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45. **Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; Erie Beach Co. *v.* A.-G. for Ontario (1929), 46 T. L. R. 33.

135a. —— Direct—What is.]—A tax is not "direct taxation" within British North

---

PART II. SECT. 3, SUB-SECT. 4.—A. (b) iii.

w i. —— *Nova Scotia Railway Arrangement Act—Ultra vires.*]—MURDOCH *v.* WINDSOR & ANNAPOLIS RY. CO. (1877), 3 Cart. 368.—**CAN.**

w ii. —— *Nova Scotia Winding-up Act—Valid.*]—*Re* WALLACE HUESTIS GREY STONE CO. (1881), 3 Cart. 374.—**CAN.**

a (p. 435). For "**a.** *Taxation—Direct—Power to impose.*]—" substitute "**135a i.** *Taxation—Direct—What is.*]—"

b (p. 435). For "**b**" substitute "**135a ii.**"

c (p. 435). For "**c**" substitute "**135a iii.**"

135a iv. —— —— ——.]—City Act (Sask.), s. 415a, which empowers the city council to enact a bye-law requiring every person attending a place of amusement to pay a tax upon each admission to such place, is *intra vires*, as it is a direct tax & comes within the taxation powers of B. N. A. Act, s. 92 (2).—CLARKE *v.* MOOSE JAW (CITY), [1923] 2 D. L. R. 216; 16 Sask. L. R. 332; [1923] 1 W. W. R. 1126.—**CAN.**

135a v. —— —— ——.]—A municipal tax sought to be imposed on a trustee on assessment under Ontario Assessment Act, R. S. O., 1914 (c. 195), s. 13 (3), as enacted by 1922 (c. 78), s. 12, in respect of income "not

America Act, 1867 (c. 3), s. 92, head 2, unless in substance it is one which is demanded from the person who it is intended should pay it, even if the Act imposing it declares that it is to be a direct tax upon the person who pays.

In answer to questions referred by the Governor-General, namely: (1) whether the legislature of Manitoba had authority to enact c. 17 of its statutes for 1923, entitled "An Act to provide for the collection of a tax from persons selling grain for future delivery," & (2), if the Act was *ultra vires* in certain parts, then in what particulars it was *ultra vires*:—*Held:* the Act was wholly *ultra vires*, since in many transactions to which it related the person paying the tax would indemnify himself at the expense of others, & it was not possible to assume that the legislature intended to pass it in a truncated form.—A.-G. FOR MANITOBA *v.* A.-G. FOR CANADA, [1925] A. C. 561; 94 L. J. P. C. 146; 133 L. T. 193; 41 T. L. R. 409; 69 Sol. Jo. 445, P. C.

Annotation:—**Consd.** A.-G. for British Columbia *v.* Canadian Pacific Ry., [1927] A. C. 934.

135b. —— —— ——.]—A tax imposed by a provincial legislature, in respect of a commodity, is an indirect tax, & *ultra vires* under British North America Act, 1867 (c. 3), s. 92 (2), if from the terms of the Act there appears an expectation & intention that the person required to pay the tax will indemnify himself upon a resale of the commodity taxed, even if in the case under consideration no resales have taken place.

An Act of the legislature of British Columbia, Fuel-Oil Tax Act, R. S. B. C., 1924 (c. 251), requiring that every person who shall purchase within the province fuel-oil for the first time after its manufacture in, or importation into, the province, shall pay a tax thereon, is invalid.—A.-G. FOR BRITISH COLUMBIA *v.* CANADIAN PACIFIC RY. CO., [1927] A. C. 934; 96 L. J. P. C. 149; 137 L. T. 745; 43 T. L. R. 750; 71 Sol. Jo. 761, P. C.

Annotations:—**Consd.** Erie Beach Co. *v.* A.-G. for Ontario (1926), 46 T. L. R. 33. **Refd.** Lower Mainlands Dairy Products Sales Adjustment Committee *v.* Crystal Dairy, Ltd., [1933] A. C. 168.

135c. —— —— ——.] —The Halifax Corpn. charter provided that the owner of property let to the Crown, or to any person exempt from taxation, should be deemed to be in occupation thereof, & should be assessed & rated to business tax if the premises were used for business purposes:—*Held:* the tax was a direct tax falling within the authority of British North America Act, 1867 (c. 3), s. 92 (2), & was within the powers of the province.—HALIFAX CORPN. *v.* FAIRBANKS' ESTATE, [1928] A. C. 117; 97 L. J. P. C. 11; 138 L. T. 162; 44 T. L. R. 5; 71 Sol. Jo. 946, P. C.

Annotations:—**Consd.** A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45. **Refd.** Forbes *v.* A.-G. for Manitoba, [1937] A. C. 260.

—— —— —— **Succession duty.**]—*See* Nos. 140-142b, *post*.

135d. —— —— ——.]—Mine Owners Tax Act, 1923 (c. 33), of Alberta, purported to impose upon every mineowner, as therein defined, a percentage tax upon the gross revenue of his mine during each preceding month:—*Held:* the tax was not direct taxation within British North America Act, 1867 (c. 3), s. 92 (2), & the Act was *ultra vires*.—R. *v.* CALEDONIAN COLLIERIES, [1928] A. C. 358; 97 L. J. P. C. 94; 139 L. T. 525; 44 T. L. R. 622, P. C.

Annotation:—**Refd.** A.-G. for British Columbia *v.* McDonald Murphy Lumber Co., [1930] A. C. 357.

135e. —— —— ——.]—Forest Act, 1924, s. 58, of British Columbia, imposed a tax upon all timber cut within the Province, except that upon which a royalty was payable, but provided that in the case of timber used or manufactured in the Province there should be a rebate of nearly the whole tax. The Act prohibited under penalty the export of any timber without a certificate that the tax due in respect of it had been paid:—*Held:* (1) the tax was invalid because it was an export tax, & so fell within the category of duties of customs & excise, which the

---

wholly distributed annually," is an indirect tax & *ultra vires*.—CITY OF WINDSOR CORPN. *v.* MCLEOD, [1926] 2 D. L. R. 97; [1926] S. C. R. 450; 57 O. L. R. 15.—**CAN.**

135a vi. —— —— ——.]—Deft., the body incorporated by the British Columbia Land Settlement & Development Act, took proceedings under ss. 46-55 of the Act, R. S. B. C., 1924, c. 128, with respect to lands of which pltf. was the registered owner, & penalty taxes provided for by s. 53 were imposed. Pltf. sued deft., attacking said legislation as *ultra vires*, as providing for indirect taxation, & claimed damages, an injunction, etc.:—*Held:* the taxation effected upon the land & the owner was direct & *intra vires*.—RATTENBURY *v.* LAND SETTLEMENT BOARD, [1929] 1 D. L. R. 242; S. C. R. 52; *affg.*, [1928] 3 D. L. R. 382; 2 W. W. R. 475; 39 B. C. R. 523.—**CAN.**

135a vii. —— —— ——.]—By sect. 3 of the Produce Marketing Act of British Columbia, 1926-27, a "Committee of Direction" was constituted, "with the exclusive power to control & regulate the marketing of all tree fruits & vegetables . . . being products grown or produced in that portion of the province contained within" boundaries therein specified. By sect. 10 (1), it was provided that, "for the purpose of controlling & regulating, under this Act, the marketing of any product within its authority, the Committee shall, so far as the legislative authority of the province extends, have power to determine at what time & in what quantity, & from & to what places, & at what price the product may be marketed, & to make orders & regulations in relation to such matters." By sect. 10 (*k*), the committee was also given the power "for the purpose of defraying the expenses of operation, to impose levies on any product marketed." By sub-sect. (3) of sect. 16, as enacted by Amendment Act of 1928, it was provided that "the committee may fix licence fees to be paid by shippers":—*Held:* this legislation is *ultra vires* of the provincial legislature.—LAWSON *v.* INTERIOR TREE FRUIT & VEGETABLE COMMITTEE OF DIRECTION, [1931] S. C. R. 357; 2 D. L. R. 193; *revsg.*, [1930] 2 W. W. R. 23; 4 D. L. R. 1027; 42 B. C. R. 493.—**CAN.**

135a viii. —— —— ——.]—The taxes which under Municipal Commissioners' Act, R. S. M., 1913, he may require municipal councils to levy & collect are direct taxes on property & *intra vires*.]—BRANDON CITY *v.* MUNICIPAL COMR., [1931] 3 D. L. R. 397; 2 W. W. R. 65; *affd.*, [1931] 3 W. W. R. 225; 4 D. L. R. 830; 3 W. W. R. 225; 39 Man. L. R. 582.—**CAN.**

135 x. —— —— ——.]—Tax on non-resident contractors held indirect & *ultra vires*.—CHARLOTTETOWN *v.* FOUNDATIONS MARITIME, LTD., [1932] 3 D. L. R. 353; 3 M. P. R. 196.—**CAN.**

135 xi. —— —— ——.]—The official guardian of an infant appointed under Official Guardian Act, R. S. B. C., 1924, is entitled to a commission on moneys voluntarily paid to the infant's estate by foreign trustees. This commission, if a tax, is *intra vires* the provincial Legislature.—HADDON *v.* FILLMORE, [1933] 4 D. L. R. 582; 47 B. C. R. 299.—**CAN.**

135 xii. —— —— ——.]—Sects. 4, 10 & 13 (1), (4), (5), (6) of Assessment Act, R. S. O., 1927, are *intra vires*.—GOODERHAM *v.* TORONTO CORPN., [1934] S. C. R. 158; 2 D. L. R. 44.—**CAN.**

135 xiii. —— —— ——.]—The tax on wages imposed by Special Income Tax Act, 1933 (Man.), is a direct tax, &, therefore, *intra vires*.—A.-G. FOR MANITOBA *v.* HARPER; A.-G. FOR MANITOBA *v.* FORBES; A.-G. FOR MANITOBA *v.* BROOKES, [1934] 3 W. W. R. 681; [1935] 1 D. L. R. 410; 42 Man. L. R. 569; *affd.*, [1936] S. C. R. 40; 1 D. L. R. 465.—**CAN.**

e (p. 435) i. —— —— ——.]—PLUMMER WAGON CO. *v.* WILSON (1885), 3 Man. L. R. 68.—**CAN.**

Dominion legislature had exclusive power to impose by British North America Act, 1867 (c. 3), s. 122; (2) also because it was indirect taxation, & therefore not within the legislative power of the Province under sect. 92, head 2, of that Act; (3) a tax levied on a commercial commodity upon the occasion of its exportation in pursuance of trading transactions cannot be described as a tax whose incidence, by its nature, is such that it is finally borne by the first payer & is not susceptible of being passed on.—A.-G. FOR BRITISH COLUMBIA *v.* MCDONALD MURPHY LUMBER CO., LTD., [1930] A. C. 357; 99 L. J. P. C. 113; 143 L. T. 1; 46 T. L. R. 266, P. C.

Annotation:—*As to* (2) **Consd.** A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45.

135f. —— —— ——.]—In an action by applts., the Lower Mainland Dairy Products Sales Adjustment Committee, appointed under Dairy Products Sales Adjustment Act of British Columbia of 1929, for a mandamus commanding resps., distributors as defined by the Act, to make to applt. committee returns of all milk or manufactured products purchased or received by them from dairy farmers:—*Held:* the "adjustment levy," the share of the appointment contributed by each farmer to the committee, & the "expenses levy," the compulsory levy collected from the farmers to meet the expenses of the committee, were both taxes within B. N. A. Act, 1867 (c. 3), ss. 91, 92, & did not constitute direct taxation, & the Act of 1929 was therefore *ultra vires* & beyond the competence of the Legislature of the Province of British Columbia. —LOWER MAINLAND DAIRY PRODUCTS SALES ADJUSTMENT COMMITTEE *v.* CRYSTAL DAIRY, LTD., [1933] A. C. 168; 102 L. J. P. C. 17; 148 L. T. 300; 49 T. L. R. 104, P. C.

135g. —— —— ——.]—The Fuel-oil Tax Act, 1930, of British Columbia, which imposes a tax upon every consumer of fuel-oil according to the quantity which he has consumed, is valid under sect. 92, head 2, of the B. N. A. Act, 1867; the tax is direct taxation, because it is demanded from the very persons who it is intended or desired should pay it. As the tax does not relate to any commercial dealing with the commodity it does not fall within the category of customs & excise duties, which are within the legislative powers of the Dominions, both because they are by nature indirect taxes & having regard to sect. 122 of the Act. The Act being within the legislative power given by sect. 92, head 2, & not purporting to regulate trade & commerce, is not invalid as infringing the Dominion authority under sect. 91, head 2, to legislate for that purpose.—A.-G. FOR BRITISH COLUMBIA *v.* KINGCOME NAVIGATION CO., LTD., [1934] A. C. 45; 103 L. J. P. C. 1; 150 L. T. 81; 50 T. L. R. 83, P. C.

135h. —— —— ——.]—Applt., a Dominion civil servant employed as a meat inspector in the Health of Animals Branch of the Dominion Department of Agriculture, was resident within the Province of Manitoba & performed his official duties there:—*Held:* the Special Income Tax Act, 1933, of Manitoba, which (*inter alia*) imposes a tax of 2 per cent. on the wages of every employee in the Province, is valid Provincial legislation, & a Dominion civil servant resident in & working in the Province is taxable thereunder equally with all other employees in the Province.

The tax is a direct tax on employees in respect of that portion of their income which consists of wages, & the legislation is therefore valid under head 2 of sect. 92 of British North America Act, 1867, which enumerates "direct taxation within the Province in order to the raising of a revenue for Provincial purposes" as within the exclusive powers of Provincial Legislatures.

Applt. was an "employee" within the meaning of sect. 2 (1) (*b*) & (*d*) of the Act of 1933, & the Dominion Govt. was his "employer" within the meaning of sect. 7 of the Act, which provides that in the case of wages paid without deduction of the tax "by his employer" the employee shall forthwith pay the tax. That provision does not impose any duty on any employer outside the Province, & the comprehensive meaning of the term "employer" is free to operate. It is not *ultra vires* of the Provincial Legislature to provide that if a wage-earner within the Province receives his wages from an employer outside Province without deduction of tax, the wage-earner shall himself pay the tax, whether the outside employer is the Dominion Govt. or any one else.

The provisions of sects. 4, 5 & 6 of the Act, however, by which the duties of deduction, of accounting, of making returns & of keeping records are imposed upon "every employer" under penalties, do not apply to the Dominion Govt.

Lastly, there is here no conflict between the Dominion & Provincial income tax legislation. Both income taxes may co-exist & be enforced without clashing, & there is therefore no room for the application of the doctrine of the "occupied field," which only applies where there is a clash between Dominion & Provincial legislation within an area common to both.—FORBES *v.* A.-G. FOR MANITOBA, [1937] A. C. 260; [1937] 1 All E. R. 249; 106 L. J. P. C. 17; 156 L. T. 201; 53 T. L. R. 211; 81 Sol. Jo. 77, P. C.

136. *Add. Annotations:*—**Consd.** Halifax Corpn. *v.* Fairbanks' Estate (1927), 44 T. L. R. 5; R. *v.* Caledonian Collieries, [1928] A. C. 358; Erie Beach Co. *v.* A.-G. for Ontario (1929), 46 T. L. R. 33; A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45. **Refd.** Caron *v.* R., [1924] A. C. 999; A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; A.-G. for British Columbia *v.* Canadian Pacific Ry., [1927] A. C. 934; A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260; Lower Mainland Dairy Products Sales Adjustment Committee *v.* Crystal Dairy, Ltd., [1933] A. C. 168; Forbes *v.* A.-G. FOR MANITOBA, [1937] A. C. 260.

136a. —— —— ——.]—A.-G. FOR ALBERTA *v.* A.-G. FOR CANADA (1938), 159 L. T. 609; 55 T. L. R. 65; 82 Sol. Jo. 1029, P. C.

138. *Add. Annotations:*—**Consd.** A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45. **Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; A.-G. for British Columbia *v.* Canadian Pacific Ry., [1927] A. C. 934.

139. *Add. Annotation:*—**Consd.** Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710.

140. *Add. Annotations:*—**Distd.** Alberta Provincial

Treasurer *v.* Kerr, [1933] W. N. 205. **Refd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

141. *Add. Annotations:*—**Consd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710; A.-G. for British Columbia *v.* Kingcome Navigation Co., [1934] A. C. 45. **Refd.** Halifax Corpn. *v.* Fairbanks' Estate (1927), 44 T. L. R. 5; Erie Beach Co., Ltd. *v.* A.-G. for Ontario (1929), 46 T. L. R. 33.

142. *Add. Annotations:*—**Consd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; Erie Beach Co., Ltd. *v.* A.-G. for Ontario (1929), 46 T. L. R. 33; Alberta Provincial Treasurer *v.* Kerr, [1933] A. C. 710. **Refd.** Brassard *v.* Smith, [1925] A. C. 431.

142a. —— —— ——.]—Certain shares in applt. co., which was registered in Ontario, were registered in the name of a person domiciled in the State of New York. By Ontario Succession Duty Act, s. 10 (2), "No property in Ontario belonging to any deceased person at the time of his death . . . whether such deceased person was at the time of his death domiciled in Ontario or elsewhere shall be transferred . . . until the duty, if any, is paid, or security given therefor, & any corporation or person allowing such property to be so transferred . . . contrary to this subsection shall be liable for such duty":—*Held:* on the death of the shareholder, as the co.'s share register was required by law to be kept in Ontario & as the shares could therefore be effectively dealt with only in Ontario, the shares were situate in Ontario & subject to succession duty there, & that as there was no provision for reimbursement of the co. the statute did not impose indirect taxation & was not *ultra vires* of the Provincial Legislature.—ERIE BEACH CO., LTD. *v.* A.-G. FOR ONTARIO, [1930] A. C. 161; 99 L. J. P. C. 38; 142 L. T. 156; 46 T. L. R. 33, P. C.

142b. —— —— ——.]—Under B. N. A. Act, 1867, sect. 92, head 2, a Province is not entitled to impose taxation payable on the death of a person therein domiciled in respect of his personal property locally situate outside the Province, but is entitled to impose taxation on persons domiciled or resident within the Province in respect of the transmission to them under the Provincial law of personal property so situate. Personal property outside the Province cannot be treated for the above purpose as within it by an application of the principle *mobilia sequuntur personam:* that principle relates to the law governing the devolution of personal property, not to its local situation.

If a Provincial statute imposing succession duties makes the exor. personally liable for the duties the taxation is indirect & therefore invalid; that rule is not confined to the case of property within the Province.

Upon the true construction of Succession Duties Act of Alberta the exor. is made personally liable for the duties, & as to personal property outside the Province the duties are imposed upon the property itself, not upon its transmission. Consequently, as to property within the Province the taxation is invalid, because it is not direct, & as to

141 iii. —— —— ——.]—The tax under Succession Duty Act (B. C.), as applied to "movables" outside the province belonging to a person who died domiciled within the province, is a direct tax & *intra vires.*—*Re* INVERARITY ESTATE, [1924] 1 D. L. R. 1020; 1 W. W. R. 901; 33 B. C. R. 318.—**CAN.**

141 iv. —— —— ——.]—Succession Duty Act, R. S. O., 1914 (c. 24):—*Held: intra vires.*—A.-G. FOR ONTARIO *v.* BABY, [1926] 3 D. L. R. 928; 59 O. L. R. 181.—**CAN.**

141 v. —— —— ——.]—Succession Duty Act, 1915, s. 10 (6):—*Held: intra vires.*—R. *v.* DONEGAL (MARCHIONESS) (1923), 51 N. B. R. 309; [1924] 2 D. L. R. 1191.—**CAN.**

141 vi. —— —— ——.]—*Held:* the taxation imposed under Succession Duty Act, R. S. B. C., 1924, was direct taxation, & *intra vires.*—UNTERMYER ESTATE *v.* A.-G. FOR BRITISH COLUMBIA, [1929] 1 D. L. R. 315; S. C. R. 84; *affg.*, [1928] 3 D. L. R. 311; 2 W. W. R. 209; 39 B. C. R. 533.—**CAN.**

141 vii. —— —— ——.]—Quebec Succession Duties Act, R. S. Q., 1925, s. 5, is *ultra vires* as amounting to a tax on property not within the Province.—R. *v.* NATIONAL TRUST CO., [1933] 2 D. L. R. 474; S. C. R. 670.—**CAN.**

141 viii. —— —— ——.]—Sects. 21-24 of British Columbia Succession Duty Act is *ultra vires* & the duty imposed thereby indirect taxation.—COL *v.* A.-G. FOR BRITISH COLUMBIA, *Re* PROMIS & FRANK ESTATE, [1934] 2 W. W. R. 481; 3 D. L. R. 488; 48 B. C. R. 171.—**CAN.**

j i. —— *Exemption from.*]—*Held:* the power & authority to raise revenue for Dominion purposes was specially given to the Parliament of Canada, & any legislation passed by the Old Province of Canada, denying the right to tax or exempting any subject in Ontario to pay such tax, could not be valid after the passing of B. N. A. Act, 1867.—HOLMSTEAD *v.* MINISTER OF CUSTOMS & EXCISE, [1927] Exch. C. R. 68.—**CAN.**

l (p. 436) **i.** —— ——.]—Hawkers & Pedlers Act, R. S. S., 1920 (c. 147), applies to a hawker & pedler acting as such as the agent of a Dominion co., even though its letters patent give it the power to sell & make known its products through "salesmen & agents going from house to house & displaying samples," etc., the licence fee imposed by the Act not being an indirect tax, & not being made so by the fact that an employer pays it for his agents.—R. (SINCLAIR) *v.* GEBHARDT, [1926] 2 D. L. R. 950; [1926] 2 W. W. R. 235; 45 Can. Crim. Cas. 321; 20 Sask. R. L. 485.—**CAN.**

m (p. 436) **i.** —— —— *Land registry fees.*]—The *ad valorem* fee which Land Registry Act, R. S. B. C., 1924, requires to be paid on an application for registration of title thereunder is a fee which must be paid by the Dominion if it applies for such registration of title to land to which it has obtained title under Expropriation Act, R. S. C., 1927, since with respect at least to the title to such lands the Dominion has no need of the assistance of said provincial Act, &, therefore, the payment of the fee is not compulsory &, therefore, not "taxation" within sect. 125 of B.N.A. Act. Moreover said fee is not a tax at all.—A.-G. FOR CANADA *v.* REGISTRAR OF TITLES OF VANCOUVER LAND REGISTRATION DISTRICT, [1934] 3 W. W. R. 165; 4 D. L. R. 764; 48 B. C. R. 544.—**CAN.**

n (p. 436) **i.** —— *Of Dominion notes forming part of bank reserve—Valid.*]—WINDSOR *v.* COMMERCIAL BANK OF WINDSOR (1882), 3 R. & G. 420; 3 Cart. 377.—**CAN.**

n (p. 436) **ii.** —— *Companies.*]—A province can place all cos. carrying on business in the province, howsoever or wheresoever they have been incorporated, on the same basis of taxation.—*Re* PROCTOR & GAMBLE CO. OF CANADA, LTD., [1937] 3 W. W. R. 680; 2 D. L. R. 597.—**CAN.**

n (p. 436) **iii.** —— *Income within province.*]—Since a province's power of taxation is restricted by a territorial limitation, *i.e.* the taxation must be "within the province," it follows that, if the subject of the taxation is income, then income which originated outside the province & which never came within the province is not taxable. The tax imposed by the Income Tax Act, 1932 (c. 5) (Alta.), is a tax on income not a personal tax computed on the basis of income.—KERR *v.* INCOME TAX SUPERINTENDENT & A.-G. FOR ALBERTA, [1938] 2 W. W. R. 144.—**CAN.**

q (p. 437) **i.** ——.]—Ontario Insurance Act, 1924, ss. 168, 180:—*Held: intra vires.*—*Re* INSURANCE CONTRACTS, [1926] 2 D. L. R. 204; 58 O. L. R. 404.—**CAN.**

q (p. 437) **ii.** ——.]—*Held:* the right to empower the imposition of license fees on insurance cos. was *intra vires.*—HALIFAX CITY CORPN. *v.* WESTERN ASSURANCE CO. (1885), 18 N. S. R. (6 R. & G.) 387.—**CAN.**

q (p. 437) **iii.** ——.]—*Held:* Ordinance incorporating City of Calgary (No. 33 of 1893), s. 117 (41), was *intra vires.*—ENGLISH *v.* O'NEILL (1899), 4 Terr. L. R. 74.—**CAN.**

q (p. 437) **iv.** ——.]—*Held:* sect. 85 (1) of Insurance Act, R. S. O., 1927 (c. 222), is *ultra vires* of the Ontario Legislature.—YORKE *v.* CONTINENTAL CASUALTY CO. OF CAN., [1929] 3 D. L. R. 662; 64 O. L. R. 109; *on appeal*, [1930] S. C. R. 180; 1 D. L. R. 609.—**CAN.**

personal property outside the Province it is invalid, both because it is not direct & because it is not within the Province.—ALBERTA PROVINCIAL TREASURER *v.* KERR, [1933] A. C. 710; 102 L. J. P. C. 137; 149 L. T. 563; 50 T. L. R. 6, P. C.

Annotation:—**Refd.** Public Trustee of New Zealand *v.* Lyon, [1936] A. C. 166.

144. *Add. Annotation:*—**Refd.** Halifax Corpn. *v.* Fairbanks' Estate (1927), 44 T. L. R. 5.

145. *Add. Annotations:*—**Consd.** *Re* Insurance Act of Canada, [1932] A. C. 41. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; Caron *v.* R., [1924] A. C. 999; Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260; Proprietary Articles Trade Assocn. *v.* A.-G. for Canada, [1931] A. C. 310; Shannon *v.* Lower Mainland Dairy Products Board (1938), 54 T. L. R. 1090.

145a. —— **Construction of legislation—Limitation to provincial jurisdiction.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

148. *Add. Annotation:*—**Refd.** A.-G. for Manitoba *v.* A. G. for Canada, [1929] A. C. 260.

149. *Add. Annotations:*—**Consd.** Chung Chuck *v.* R., [1930] A. C. 244. **Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

150. *Add. Annotations:*—**Consd.** Chung Chuck *v.* R., [1930] A. C. 244. **Refd.** Nadan *v.* R. [1926] A. C. 482.

153. *Add. Annotations:*—**Refd.** The Fagernes, [1927] P. 311; *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54.

154a. —— **No power to confirm transfer of federal railway.**]—BOURGOIN *v.* COMPAGNIE DU CHEMIN DE FER DE MONTRÉAL, OTTAWA, ET OCCIDENTAL (1880), 5 App. Cas. 381; 49 L. J. P. C. 68; 42 L. T. 414, P. C.

158. *Add. Annotations:*—**Consd.** Canadian Pacific Ry. Co. *v.* Toronto Transportation Commission; Toronto Transportation Commission *v.* Canadian National Railways (1930), 144 L. T. 37.

159. *Add. Annotations:*—**Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; *Re* Insurance Act of Canada, [1932] A. C. 41.

---

146 iii a. —— ——.]—LEPINE *v.* LAURENT (1891), 17 Q. L. R. 226.—**CAN.**

146 xii. —— ——.]—Govt. Liquor Act, 1921 (c. 30), which vests in a Board of Control the exclusive sale of intoxicating liquor within the province, is *intra vires*.—R. *v.* FERGUSON (B.C.), [1922] 2 W. W. R. 473; 69 D. L. R. 153; 37 Can. Crim. Cas. 89.—**CAN.**

146 xiii. —— ——.]—The imposition by Govt. Liquor Act, 1921 (c. 30), s. 55, of a tax upon any liquor not purchased from a vendor at a govt. liquor store, is *intra vires* the provincial legislature.—LITTLE *v.* A.-G. FOR BRITISH COLUMBIA (B.C.), [1922] 2 W. W. R. 359; 65 D. L. R. 297; 37 Can. Crim. Cas. 189; *affg.*, 60 D. L. R. 335; 30 B. C. R. 343.—**CAN.**

146 xiv. —— ——.]—Saskatchewan Temperance Act, R. S. S., 1920 (c. 194), s. 11 (2), requiring every brewer, distiller, & liquor exporter to make certain returns to the Commission is *intra vires* the provincial legislature, even in respect to a liquor export co. incorporated by the Dominion Parliament.—R. *v.* REGINA WINE & SPIRIT, LTD., R. *v.* PRAIRIE DRUG CO., LTD., [1922] 1 W. W. R. 195; 65 D. L. R. 258; 36 Can. Crim. Cas. 348; 15 Sask. L. R. 100.—**CAN.**

146 xv. —— —— *Suspension of Canada Temperance Act.*]—SHEEHAN *v.* SHAW, [1928] 2 D. L. R. 468; 49 Can. Crim. Cas. 357.—**CAN.**

146 xvi. —— ——.]—*Held:* reading sect. 141 of Liquor Control Act (Ontario), 17 Geo. 5, c. 70, in connection with sect. 72 (1), the latter must be regarded as limited to cases over which the Ontario Legislature had jurisdiction, & not as an attempt to invade the field of Dominion Legislature.—R. *v.* RUDDICK, [1928] 3 D. L. R. 208; 49 Can. Crim. Cas. 323; 62 O. L. R. 248.—**CAN.**

146 xvii. —— ——.]—Nova Scotia Liquor Control Act, 1930, is *intra vires*.—R. *v.* ROCHE, [1934] 3 D. L. R. 782; 62 C. C. C. 11; 8 M. P. R. 197.—**CAN.**

146 xviii. —— ——.]—Nova Scotia Liquor Control Act, 1930, is *intra vires*.—R. *v.* SLAUGHENWHITE (1934), 8 M. P. R. 214; 62 C. C. C. 207.—**CAN.**

146 xix. —— ——.]—Sect. 52 of Prohibition Act, 1918, P. E. I. is *ultra vires*.—R. *v.* FLOOD (1922), 38 Can. C. C. 403.—**CAN.**

146 xx. —— ——.]—Ontario Liquor Control Act, R. S. O., 1927, is *intra vires*, since Canada Temperance Act is now superseded & *ultra vires*.—R. *v.* VARLEY, [1936] 1 D. L. R. 771; 65 Can. C. C. 192.—**CAN.**

t (p. 438) **i.** —— —— ——.]—KEEFE *v.* MCLENNAN (1876), 2 R. & C. 5; 2 Cart. 400.—**CAN.**

o (p. 438). For "—— *Prohibition Act—Confiscatory provisions*" read "—— *Confiscatory provisions—Prohibition Act.*"

o (p. 438) **i.** —— —— *Act of* 1886 (c. 3), *s.* 55.]—*Held:* the right to impose forfeiture under the above sect. of an offender's goods as punishment was within the powers of the provincial legislature.—R. *v.* GARDNER (1892), 25 N. S. R. (13 R. & G.) 48.—**CAN.**

d (p. 438) **i.** —— *Alberta Liquor Control Act*, 1924 (c. 14).]—*Held:* sect. 113 (3) of the above Act was *ultra vires*.—R. *v.* FORHAN (Alta.), [1927] 1 W. W. R. 689; 48 Can. Crim. Cas. 86.—**CAN.**

f (p. 438) **i.** —— *Restrictions on export.*]—The requirements in Saskatchewan Temperance Act, that all warehouses in which liquor is kept for export be located in cities having a population of 10,000, is *intra vires*.—CANADA DRUGS, LTD. *v.* A.-G. FOR SASKATCHEWAN (SASK.), [1922] 2 W. W. R. 1089; 67 D. L. R. 3; 38 Can. Crim. Cas. 69; 15 Sask. L. R. 506; *varying*, 66 D. L. R. 815; 37 Can. Crim. Cas. 367.—**CAN.**

k (p. 438) **i.** —— *Creation of criminal offences.*]—Saskatchewan Temperance Act, R. S. S., 1920 (c. 194), s. 68 (2), as amended, is *ultra vires* the provincial legislature, in so far as it professes to set up certain acts as a criminal offence, namely, the obstruction of the "officer" mentioned in sect. 2 (7a) in the execution of his duties under the Act.—R. (WILBUR) *v.* MAGEE (Sask.), 1923] 3 W. W. R. 55.—**CAN.**

k (p. 438) **ii.** —— *Imposition & recovery of fines & penalties—Valid.*]—R. *v.* MCMILLAN (1873), 2 Pug. 110; 2 Cart. 489.—**CAN.**

k (p. 438) **iii.** *S. P.* R. *v.* RONAN (1891), 23 N. S. R. 421.—**CAN.**

k (p. 438) **iv.** —— *Amendment of Temperance Act*, 1884 (c. 18)—*Validity.*]—COOEY *v.* BROME MUNICIPALITY (1877), 2 Cart. 385.—**CAN.**

151 i. *Barristers — Provision authorising remuneration by share of proceeds of action.*]—It is *ultra vires* a provincial legislature to alter the law relating to champerty, authorising barristers & solrs. within the province to contract with clients for payment for professional services by way of a share of the proceeds of actions in lieu of the usual costs.—TAYLOR *v.* MACKINTOSH, [1924] 3 D. L. R. 926; 3 W. W. R. 97; 34 B. C. R. 56.—**CAN.**

151 ii. *S. P. Re* CONSTITUTIONAL QUESTIONS DETERMINATION ACT, *Re* LEGAL PROFESSIONS ACT (B. C.), [1927] 4 D. L. R. 195; [1927] 2 W. W. R. 808; 48 Can. Crim. Cas. 278.—**CAN.**

152 i. *Fisheries — Powers of provincial legislature.*]—The Dominion Parliament has exclusive jurisdiction to legislate with respect to the time, mode & manner of fishing; but, subject thereto, any proprietary rights, *e.g.* the leasing of fishing rights, & rights over fish as an article of commerce within the province are within provincial jurisdiction. Sect. 100 (1) if Game & Fisheries Act, 1930 (Man.), so *ultra vires*.—R. *v.* WAGNER (No. 2), [1932] 2 W. W. R. 162; 3 D. L. R. 679; 40 Man. L. R. 305; 58 C. C. C. 132.—**CAN.**

o (p. 439) **i.** —— —— ——.]—It is not competent to the legislature of the Province of Alberta to enact legislation authorising the construction & operation of railways in such a manner as to interfere with the physical structure or with the operation of railways subject to the jurisdiction of the Parliament of Canada.—*Re* ALBERTA RAILWAY LEGISLATION (1913), 24 W. L. R. 630; 4 W. W. R. 608; 48 S. C. R. 9; 12 D. L. R. 150; 15 Can. Ry. Cas. 213.—**CAN.**

o (p. 439) **ii.** —— *Nova Scotia Railway Arrangement Act—Valid.*]—*Re* WINDSOR & ANNAPOLIS RY. CO. (1885), 4 R. & G. 312; 3 Cart. 387.—**CAN.**

160 i. —— ——.]—Coal Mines Regulation Act, s. 4, as amended by Coal Mines Regulation Amendment Act, 1890, s. 1, provides that "no Chinaman shall be employed in, or allowed to be for the purpose of employment in, any mine to which this Act applies, below ground," is within the constitutional power of the provincial Legislature as being a regulaton of Coal Mines, & is not *ultra vires* as an interference with the subject of aliens.

161. *Add. Citations:*—[1924] A. C. 203; 93 L. J. P. C. 33; 130 L. T. 227.

162a. —— **Legislation incidentally affecting.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante.*

164. *Add. Annotations:*—**Distd.** Lord's Day Alliance of Canada *v.* A.-G. for Manitoba, [1925] A. C. 384. **Refd.** Proprietary Articles Trade Association *v.* A.-G. for Canada, [1931] A. C. 310.

164a. ——.]—Lord's Day Act (R. S. Can., 1906, c. 153) made it a punishable offence to run or conduct Sunday excursions "except as provided by any provincial Act or law now or hereafter in force." An Act passed by the legislature of Manitoba in 1923 to amend Lord's Day Act of that province, enacted that it should be lawful to run or conduct Sunday excursions to resorts within the province. Sunday excursions were not unlawful by the laws of England existing in 1870, which were part of the law of Manitoba by 51 Vict. c. 33 (Dom.):—*Held:* the Manitoba statute of 1923 being merely permissive, & not dealing with a matter brought within the criminal law, was competent to the provincial legislature under British North America Act, 1867 (c. 3), s. 92, heads 13, 16; &, that being so, the Act was a provincial Act "now or hereafter in force" within Lord's Day Act of Canada; it was unnecessary to consider whether the Act of 1923 could be justified as Dominion legislation by delegation or reference.—LORD'S DAY ALLIANCE OF CANADA *v.* A.-G. FOR MANITOBA, [1925] A. C. 384; 94 L. J. P. C. 84; 132 L. T. 678; 41 T. L. R. 225, P. C.

—*Re* COAL MINES REGULATION AMENDMENT ACT, 1890 (1896), 5 B. C. R. 306; 1 M. M. Cas. 116.—**CAN.**

q (p. 440) i. —— *Chinese Regulation Act*, 1884, *s.* 14—*Ultra vires.*]—R. *v.* GOLD COMR. OF VICTORIA DISTRICT (1886), 1 B. C. R. pt. 2, 260.—**CAN.**

164 v. ——.]—*Held:* Lord's Day Ordinance, s. 3, was *intra vires.*—FALLIS *v.* DALTHASER (1912), 21 W. L. R. 171; 2 W. W. R. 132; 4 D. L. R. 705; 4 Alta. L. R. 361.—**CAN.**

165 vi. —— ——.]—KERLEY *v.* LONDON & LAKE ERIE RY. & TRANSPORTATION CO. (1913), 28 O. L. R. 606; 4 O. W. N. 1234.—**CAN.**

165 vii. —— *Restrictions on sale of shares.*]—Sale of Shares Act, R. S. S. (1920), s. 4, in so far as it purports to apply to the sale of its own shares by a Dominion co., is *ultra vires* the provincial legislature.—LUKEY & A.-G. FOR SASKATCHEWAN *v.* RUTHENIAN FARMERS ELEVATOR CO., LTD., [1924] 1 D. L. R. 706; [1924] S. C. R. 56; 1 W. W. R. 577.—**CAN.**

165 viii. —— ——.]—Sale of Securities Act, 1923 (N. B.), s. 4, so far as it purports to apply to sales of shares of Dominion cos., is *ultra vires* the provincial legislature.—R. *v.* HENDERSON, *Ex p.* QUEEN (1924), 51 N. B. R. 346.—**CAN.**

165 ix. —— ——.]—Sale of Shares Act, 1924 (c. 175) (Man.), & Municipal & Public Utility Board Act, 1926 (c. 33) (Man.), so far as they purport to apply to the sale of its own shares by a Dominion co.:—*Held: ultra vires.*—*Re* SALE OF SHARES ACT & MUNICIPAL & PUBLIC UTILITY BOARD ACT, [1927] 2 W. W. R. 480; 36 Man. L. R. 583.—**CAN.**

165 x. —— ——.]—Security Frauds Prevention Act, 1930 (Ont.), does not in any way impair the status or powers of a Dominion co. coming within its provisions, & is therefore *intra vires.*—R. *v.* HAZZARD, SECURITY FRAUDS PREVENTION BOARD *v.* CONROY, [1932] 1 D. L. R. 575; O. R. 139.—**CAN.**

165 xi. —— *Provincial legislation as to foreign companies.*]—(1) Since the provincial Legislature's jurisdiction with respect to Dominion cos. is limited, it cannot delegate to an official an unfettered discretion which it does not itself possess. Therefore the power given the registrar by sect. 135 of Companies Act, 1929 (Alta.), which requires certain information to be given by a foreign co. when applying for registration, cannot apply to a Dominion co.

(2) The latter part of sub-sect. (1) of sect. 145 of said Companies Act & sub-sect. (2) of sect. 145, dealing with prospectuses, are invalid with respect to Dominion cos.

(3) A provision that foreign cos. shall pay such fees for registration as may be prescribed by order in council is invalid with respect to Dominion cos., since the fees being subject to order in council, may be altered at any time & may be increased so as to make it practically impossible for foreign cos. to come into the province at all & in that way prevent a Dominion co. from carrying on its business in the province.

(4) Requirements of a provincial Act for the payment of fees by foreign cos. & the furnishing of statements & returns are valid with respect to Dominion cos. if reasonable & uniform & if not such as to prevent such cos. from carrying on business in the province.

(5) Sect. 141 of Companies Act, 1929 (Alta.), requiring the painting, affixing & legible printing of a co.'s name, can be interpreted as intended, although not so expressed, to apply only to transactions within the province & to that extent it is valid with respect to Dominion cos.—*Re* ROYALITE OIL CO., LTD., [1931] 1 W. W. R. 484; 2 D. L. R. 418; 25 Alta. L. R. 206.—**CAN.**

—— *Provincial legislation as to Dominion companies.*]—*See* No. 165 xi, *ante.*

165 xii. —— ——.]—The basic idea underlying the Confederation scheme is that there shall be co-ordinate governments, the Dominion on the one hand & the provinces on the other, dividing between them all legislative power in Canada, the one not subordinate to the other, but each enjoying sovereign power within its own field of legislative competency as fixed & limited by the B. N. A. Act. A provincial Legislature may enact laws, province-wide, of general application in respect of any of the subjects enumerated in sect. 92, & in so doing may completely paralyse all activities of a Dominion trading co., provided that in enacting such laws it does not enter the field of co. law & in that field encroach upon the status & powers of a Dominion co. as such. An enactment of a provincial Legislature, limited in direct effect by provincial boundaries, which relates to a particular trade or business carried on within its boundaries, regardless of whether or not that trade or business is carried on by natural persons or cos., is valid; but the moment that a provincial Legislature legislates concerning cos. as such, then, if such legislation constitutes regulation or impairment or sterilisation of the powers & capacities which the Dominion has conferred, the legislation is invalid. Such last-mentioned legislation is not saved by the fact that all kinds of cos., provincial as well as Dominion, are aimed at without special discrimination against Dominion cos. The distinction between provincial enactments affecting Dominion cos. that are of general application & those that may be termed co. law is this: In the former case there is no attempt to interfere with powers validly granted to the co. by the Dominion nor with the status of the co. as such. The circumstance that because of the general laws of the province the co. may not exercise those powers does not destroy or impair the powers. In the latter case the enactment prohibits or imposes conditions upon the exercise of the powers of Dominion cos. as such. It is aimed at & affects Dominion co. powers as distinguished from being aimed at & affecting a trade or business in the province which Dominion cos. may happen to be engaged in in common with provincial cos. & natural persons. In the one case the legislation has to do with a provincial matter, Dominion cos. being only incidentally affected; in the other case the legislation is aimed either at Dominion cos. or at all cos., which includes Dominion cos., & so the province with power to legislate only as to provincial cos. must be said to have entered the Dominion field. Coal Miners' Wages Security Act, 1928 (Alta.), as amended by 1930 (c. 23), s. 2, is *intra vires*, even with respect to Dominion cos. operating coal mines in the province & shipping coal therefrom to places outside the province. It is legislation provincial in character applicable to all mine owners, whether cos. or natural persons; it does not affect the status and powers of Dominion cos. as such; & it does not encroach upon the Dominion's power to regulate "trade & commerce" as judicially defined.—R. *v.* ARCADIA COAL CO., LTD., [1932] 1 W. W. R. 771; 2 D. L. R. 475; 26 Alta. L. R. 348; 58 C. C. C. 17.—**CAN.**

f (p. 442) i. —— —— .]—*Held:* the Dominion Parliament had power under B. N. A. Act, 1871, to enact Alberta Act, s. 17 with its protective provisions restricting full legislative power as to education, notwithstanding that those provisions are a modification of B. N. A. Act, 1867, s. 93, & School Attendance Act does not violate any of the protective provisions preserved by Alberta Act, s. 17.—R. (BROOKS) *v.* ULMER, [1923] 1 D. L. R. 304; 38 Can. Crim. Cas. 207; 19 Alta. L. R. 12; [1923] 1 W. W. R. 1.—**CAN.**

m (p. 442) i. —— ——.]—The appointment of a magistrate to deal with applications under the Deserted Wives' Maintenance Act is *intra vires.*—DIXON *v.* DIXON (1932), 46 B. C. R. 375.—**CAN.**

o (p. 442) i. —— ——.]—*Ex p.* JOHNSTON (1930), 54 Can. C. C. 99.—**CAN.**

o (p. 442) ii. —— —— *Jurisdiction of judge of Division Court to appoint deputy.*]—Sect. 19 of Division Cts. Act, authorising "the judge" to appoint a barrister to act as his deputy, is

168. *Add. Annotations :*—**Apld.** A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260. **Distd.** Lymburn *v.* Mayland (1932), 48 T. L. R. 231. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328 ; Canon *v.* R., [1924] A. C. 999.

170a. —— **Legislation incidentally affecting.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

176a. —— **Protection of denominational schools—Meaning of Protestant.**]—The Quebec Legislature in 1903 passed an Act, 3 Edw. 7, c. 16,

within the powers of the Ontario Legislature.—FRENCH *v.* MCKENDRICK [1931] 1 D. L. R. 696 ; 66 O. L. R. 306.—**CAN.**

o (p. 442) iii. —— ——.]—Workmen's Compensation Commission Act, 1928 (Que.), & sect. 36 of Workmen's Compensation Act, 1928 (Que.), are *intra vires*.—A.-G. FOR QUEBEC *v.* SLANEC, [1933] 2 D. L. R. 289 ; *revsg.* S. C. *sub nom.* SLANEC *v.* GRIMSTEAD, [1932] 3 D. L. R. 81.—**CAN.**

o (p. 442) iv. —— ——.]—Any judicial body, whether it be called a ct. or a commission or a board, which is exercising a jurisdiction like unto that exercised by the cts. named in sect. 96 of B.N.A. Act, at the time of Confederation, must have as its presiding officer or officers a person appointed by the Governor-General. Therefore a province cannot confer upon a magistrate the jurisdiction in alimony which Part IV. of Domestic Relations Act, 1927 (Alta.), purports to confer. Sect. 26 of Domestic Relations Act, 1927, as amended is *ultra vires*.—KAZAKEWICH *v.* KAZAKEWICH & A.-G. FOR ALBERTA, [1936] 3 W. W. R. 699 ; [1937] 1 D. L. R. 548 ; 37 Can. C. C. 346 ; 6 F. L. J. (Can.) 243.—**CAN.**

o (p. 442) v. —— ——.]—The provisions of Deserted Wives' & Children's Maintenance Act, R. S. O., 1927, which confer unlimited jurisdiction as a family ct. upon police magistrates appointed by the Province, are *ultra vires*, following *Kazakewich* v. *Kazakewich*.—CLUBINE *v.* CLUBINE, [1937] 3 D. L. R. 754 ; O. R. 636 ; 68 Can. C. C. 327.—**CAN.**

o (p. 442) vi. —— ——.]—A province cannot give an inferior ct. jurisdiction in matters of alimony, regardless of whether the jurisdiction purported to be given is limited or unlimited. Therefore, the contention that *Kazakewich* v. *Kazakewich*, [1936] 3 W. W. R. 699, which was agreed with in *Clubine* v. *Clubine*, [1937] O. R. 636, was wrongly decided because the Act there in question gave the inferior ct. only a strictly limited jurisdiction, while the *Clubine Case* could be upheld on the ground that the Act in question therein purported to give the inferior ct. an unlimited jurisdiction, was not acceded to.—KRASSMAN *v.* KRASSMAN & A.-G. FOR SASKATCHEWAN, [1937] 3 W. W. R. 349.—**CAN.**

q (p. 442) i. —— ——.]—A local legislature can fix the number of grand jurors who shall compose the panel, but not the number of grand jurors necessary to find a good bill of indictment.—R. *v.* **Cox** (1898), 31 N. S. R. 311.—**CAN.**

a (p. 442) i. —— *Remuneration of judges.*]—Having regard to B. N. A. Act, 1867, ss. 92 (14), 96-101, the matters dealt with in Judges Act, R. S. C. 1906, s. 34 are within the exclusive authority of the provincial legislatures in so far as the judges of the provincial cts. are concerned.—*Re* JUDGES ACT, [1923] 2 D. L. R. 604 ; 52 O. L. R. 105.—**CAN.**

a (p. 442) ii. —— *Appointment of commissioner with judicial powers.*]—MCLEAN GOLD MINES, LTD. *v.* A.-G., [1923] 1 D. L. R. 10 ; 54 O. L. R. 573.—**CAN.**

a (p. 442) iii. —— *Alteration of constitution of court.*]—An amendment altering the quorum of the Ct. of Appeal, making it unnecessary for the judge ordinary to sit as a member of the ct. :—*Held : intra vires.*—KING *v.* KING (1904), 37 N. S. R. 204.—**CAN.**

a (p. 442) iv. —— *Power to restrict bringing of action.*]—A local legislature can enact that no civil action for damages shall be brought against any particular person or persons, including members of the legislature.—THOMAS *v.* HALIBURTON (1893), 26 N. S. R. 55.—**CAN.**

a (p. 442) v. —— *Payment of debt by instalments.*]—An Act authorising the making of a judge's order for such a payment :—*Held : intra vires.*—GOULD *v.* RYAN (1894), 26 N. S. R. 461.—**CAN.**

a (p. 442) vi. —— *Imprisonment of fraudulent judgment debtors—Valid.*]—*Ex p.* ELLIS (1878), 1 P. & B. 593 ; 2 Cart. 527.—**CAN.**

a (p. 442) vii. —— *Interference with pending proceedings.*]—6 Edw. 7, c. 15, as to electrical power, 7 Edw. c. 19, superseding the former, except as to contracts already entered into, 8 Edw. 7, c. 22, & 9 Edw. 7, c. 19, both providing for the validation of bye-laws & contracts made under the former Acts, are *intra vires* the Ontario legislature. Sect. 8 of 9 Edw. 7, c. 19, which provides that every action therefore brought & then pending wherein the validity of a contract or bye-law validated by the Act is attacked, shall be for ever stayed, is within the competence of the legislature.—SMITH *v.* LONDON CITY (1909), 20 O. L. R. 133.—**CAN.**

a (p. 442) viii. ——.]—A Province cannot confer upon a tribunal created & appointed by it power to determine purely judicial questions such as are normally determined by cts. of justice. —TORONTO *v.* YORK TOWNSHIP, [1937] 1 D. L. R. 175 ; O. R. 177.—**CAN.**

ll (p. 442) i. —— *Poor Persons' Rules.*]—Rule 9A of the Rules relating to poor persons or needy litigants, which provides that "no poor person or any solr. conducting the proceedings for him shall discontinue, settle or compromise such proceedings without the leave of the ct. or a judge," is *intra vires* of the authority given the Lieutenant-Governor in Council by sect. 38 of Judicature Act, R. S. A., 1922, to promulgate Rules governing practice & procedure, it being merely a condition attached to only a small class of litigants who ask for & obtain privileges in the conduct of their legislation.—WERLEY *v.* ROWE, [1936] 1 W. W. R. 294 ; 1 D. L. R. 653 ; 5 F. L. J. (Can.) 307.—**CAN.**

t (p. 443) i. —— ——.]—38 Vict. c. 88 :—*Held :* not *ultra vires* as being an interference with trade & commerce —*Ex p.* FAIRBAIRN (1878), 18 N. B. R. (2 P. & B.) 4.—**CAN.**

t (p. 443) ii. —— ——.]—JONAS *v.* GILBERT (1881), 5 S. C. R. 356.—**CAN.**

t (p. 443) iii. *S. P.* JONAS *v.* MARSHALL (1880), 20 N. B. R. 61.—**CAN.**

a (p. 443) i. —— ——.]—FORTIER *v.* LAMBE (1895), 25 S. C. R. 422.—**CAN.**

a (p. 443) ii. —— —— *Company incorporated abroad.*]—HALIFAX CITY *v.* JONES (1896), 28 N. S. R. 452.—**CAN.**

a (p. 443) iii. —— —— *Licensing of music teachers.*]—R. *v.* BURNETT, [1930] 3 W. W. R. 347 ; 54 Can. C. C. 405.—**CAN.**

a (p. 443) iv. —— ——.]—SEGAL *v.* MONTREAL CITY, [1931] S. C. R. 460 ; 4 D. L. R. 603 ; 56 Can. C. C. 114.—**CAN.**

a (p. 443) v. —— ——.]—BRIDGETOWN *v.* PATTERSON, [1930] 3 D. L. R. 830.—**CAN.**

m (p. 443) i. —— ——.]—Female Employment Act, R. S. S. 1920, c. 185, is supportable only as a police regulation & not under the Legislature's power of making laws with respect to licences.—YEE CLUN *v.* CITY OF REGINA, [1925] 4 D. L. R. 1015 ; [1925] 3 W. W. R. 714.—**CAN.**

n (p. 443) i. —— *Vancouver Island Settlers Rights Act*, 1904—*Intra vires.*]—MCGREGOR *v.* ESQUIMALT & NANAIMO RY. CO., [1907] A. C. 462.—**CAN.**

o (p. 443) i. —— —— ——.]—CANADIAN PACIFIC RY. CO. *v.* OTTAWA FIRE INSURANCE CO. (1907), 39 S. C. R. 405.—**CAN.**

o (p. 443) ii. —— *Works wholly within province.*]—R. *v.* MOIR (1881), 7 Q. L. R. 183 ; 2 Cart. 257.—**CAN.**

o (p. 443) iii. —— *Conservation of natural gas.*]—Turner Valley Gas Conservation Act, 1932 (Alta.), which defines & applies to a certain area in Alberta & constitutes a Board & invests it with powers purporting to effect the conservation of natural gas, is *intra vires*. Its pith & substance is the restriction of the wastage of gas in the production of naphtha in said area ; it, therefore, deals with a matter of a "merely local or private nature in the province" & does not infringe on the Dominion's powers over the "regulation of trade & commerce," & its effect on Dominion cos. engaged in said area is merely to prescribe the way in which their business shall be carried on therein.—SPOONER OILS, LTD., & SPOONER *v.* TURNER VALLEY GAS CONSERVATION BOARD & A.-G. FOR ALBERTA, [1933] 2 S. C. R. 629 ; 4 D. L. R. 545.—**CAN.**

oo (p. 443) i. —— *Penalties for fraudulent conveyances.*]—Stat. 13 Eliz. c. 5, s. 3, is not in force in Alberta. 13 & 14 Geo. v, c. 5 (Alta.), s. 46, declaring this stat. to have been in force, could not have the effect of introducing s. 3. The Federal Parliament having made the commission of fraudulent acts a crime, the subject-matter is criminal law & beyond the competence of the provincial legislature. — CONNORS *v.* EGLI, [1924] 2 D. L. R. 59 ; 1 W. W. R. 1050 ; 20 Alta L. R. 205.—**CAN.**

oo (p. 443) ii. —— *Collection of freight & wharfage & warehouse charges—Ultra vires.*]—EASTERN DEVELOPMENT CO. *v.* MCKAY (1888), 20 N. S. R. (8 R. & G.) 325.—**CAN.**

dd (p. 443) i. —— ——.]—A provincial Legislature has power to prohibit the carrying on of a particular business within the province as well as the power to prohibit certain persons from carrying it on within the province ; & it may authorise a municipal council to pass bye-laws imposing such prohibitions within the municipality.—MICAS *v.* A.-G. FOR SASKATCHEWAN, [1928] 3 W. W. R. 523.—**CAN.**

dd (p. 443) ii. —— ——.]—Produce Marketing Act, 1926-27, c. 54, amended 1928, c. 39, is *intra vires* with respect to sales made within the province whether delivery thereunder is made therein or by shipping the goods beyond the province to purchasers residing outside it ; even, *semble*, though the contract of sale was made outside the province.—R. *v.* CHUNG CHUCK, R. *v.* WONG KIT, R. *v.* SALES SERVICES, LTD., R. *v.* ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD., [1929] 1 D. L. R. 756 ; 1 W. W. R. 394 ; 51 Can. Crim. Cas. 260 ; 40 B. C. R. 512.—**CAN.**

d (p. 444) i. —— ——.]—MURNE *v.* MORRISON (1882), 1 B. C. R. pt. 2, 120.—**CAN.**

which provided that persons professing the Jewish religion should, for school purposes, be treated as Protestants & have the same rights & privileges; that their children should have the same right of education as Protestant children; & that school taxes paid by them should go to the support of the Protestant schools. Under statutes of Lower Canada consolidated in 1861 by 24 Vict., c. 15, there were outside the cities of Quebec & Montreal (the rural area) common schools & dissentient schools, & within those cities Roman Catholic separate schools & Protestant separate schools. British North America Act, 1867, by s. 93, conferred on Provincial Legislatures exclusive power to make laws in relation to education, but, by proviso 1, preserved "any right or privilege with respect to denominational schools which any class of persons had by law," & by proviso 2 enacted that privileges conferred by law on separate Roman Catholic schools in Upper Canada should be extended to dissentient schools of Roman Catholics & Protestants in Quebec:—*Held:* (1) the word "Protestant" in the statutes consolidated in 1861 could not be construed as "non-Catholic," & so as including Jews; & the Protestant community, though divided for certain purposes into denominations, was itself a denomination & capable of being regarded as "a class of persons" within British North America Act, 1867 (c. 3), s. 93 (1); (2) having regard to the provisions of the Act of 1861 as to management & control, the dissentient schools in the rural area, & the separate schools in the two cities, had rights & privileges within sect. 93, proviso 1, but that the common schools in the rural area had not, as although each school might in fact be controlled by persons of the faith of the majority, that was not a right or privilege which "a class of persons had by law"; (3) the Act of 1861 impliedly reserved the right of attendance at dissentient schools in the rural area to children of the religion of the dissentients; in any case sect. 93, proviso 2, of the Act of 1867 had that effect; (4) the provisions as to the management & control of separate schools in the two cities gave them a denominational stamp which could not be effaced by the attendance of a certain number of children of a divergent faith; (5) 3 Edw. 7, c. 16 (Quebec), although otherwise *intra vires*, was *ultra vires* so far as it would enable persons professing the Jewish religion to be appointed to the Protestant Board of School Comrs. in the cities of Quebec or Montreal or on any Protestant Board of Examiners, or take part with Protestants in the establishment of a dissentient school outside those cities, & except so far as it would confer the right of attendance at dissentient schools outside those cities upon persons of religious faith different from that of the dissentient minority; (6) it would be possible to frame legislation for establishing separate schools for non-Christians without infringing the rights of the two Christian communities, & that legislation so limited would be valid.—HIRSCH *v.* MONTREAL PROTESTANT SCHOOL COMRS., [1928] A. C. 200; 97 L. J. P. C. 40; 138

---

p (p. 444) i. *Power to limit jurisdiction of courts.*]—No exercise by a provincial legislature of the legislative, powers given it by the B. N. A. Act can be questioned or interfered with by the cts., no matter how arbitrary or unjust it may be. Therefore, where a provincial statute empowers a municipal council to grant, refuse, & revoke trade licences, in its discretion, a provision therein that the council's actions with respect thereto "shall not be open to question or review by any ct." is not *ultra vires.*—MICAS *v.* CITY OF MOOSE JAW & A.-G. FOR SASKATCHEWAN, [1929] 3 D. L. R. 89; 1 W. W. R. 725; 23 S. L. R. 422; *revg., sub nom.* MICAS *v.* A.-G. FOR SASKATCHEWAN, [1928] 3 W. W. R. 523; 23 S. L. R. 412.—CAN.

aa (p. 444) i. *Power to authorise erection of booms.*]—MCMILLAN *v.* SOUTHWEST BOOM CO. (1878), 17 N. B. R. (1 P. & B.) 715; 2 Cart. 542.—CAN.

gg (p. 444) i. —— *Jurisdiction—Power to define.*]—The power given to provincial Govts. to legislate regarding the constitution, maintenance, & organisation of provincial cts. includes the power to define the jurisdiction of such cts. territorially as well as in other respects, & also to define the jurisdiction of the judges who constitute such cts.—*Re* COUNTY COURTS OF BRITISH COLUMBIA (1892), 21 S. C. R. 446; 5 Cart. 490.—CAN.

l (p. 445) i. —— —— *No power to alter or amend.*]—*Held:* Revised Statutes (3rd series), c. 159, being part of the criminal law of Canada, the legislature of Nova Scotia had no power to alter or amend any of its provisions.—R. *v.* HALIFAX ELECTRIC TRAMWAY CO. (1898), 30 N. S. R. 499.—CAN.

m (p. 445) i. —— *What are—Not Act to prevent fraud against cheese factories.*]—R. *v.* WASON (1890), 17 A. R. 221; 4 Cart. 578.—CAN.

m (p. 445) ii. —— —— *Not Act respecting appeals on prosecutions to enforce penalties & punish offences under provincial Acts.*]—R. *v.* WASON (1890), 17 A. R. 221; 4 Cart. 578.—CAN.

m (p. 445) iii. —— —— *Dental Association Act, R. S. M.*, 1913, *s.* 33.]—*Held:* not *ultra vires* as relating to criminal law within sect. 91 of B. N. A. Act.—R. *v.* SIRKIS, [1930] 2 W. W. R. 93.—CAN.

m (p. 445) iv. —— —— *Regulation of traffic.*]—Sect. 52 of Vehicles & Highway Traffic Act, 1924 (Alta.), which provides that a motorist involved in an accident who fails to return to the scene thereof shall be liable to a fine, is *intra vires*; since its purpose is to effect the regulation of traffic on a highway & of motor vehicles being operated thereon, subjects which fall within the province's jurisdiction over "Property & Civil Rights in the Province."—R. (TAYLOR) *v.* CORRY, [1932] 1 W. W. R. 853; 4 D. L. R. 399; 26 Alta. L. R. 390; 58 C. C. C. 198.—CAN.

m (p. 445) v. —— —— ——.]—Since, by sect. 285 (4) of the Criminal Code, the Dominion Parliament has made it a crime to drive or be in control of a motor car while intoxicated or under the influence of narcotics, a provincial Act which deals with the same kind of conduct by prohibiting it under penalty of fine & imprisonment & suspension or cancellation of the offender's licence, is invalid, except with respect to the provision for suspending or cancelling the licence.—R. *v.* OTTENSON, [1932] 1 W. W. R. 36; 57 C. C. C. 234.—CAN.

m (p. 445) vi. —— —— *Ill-treatment of children.*]—Where the object of a provincial Act, *e.g.* Infants Act, R. S. B. C., 1924, is to implement the jurisdiction of the cts. to deal with the care, custody, control & charge of children, a sect. thereof which makes it an offence punishable by fine or imprisonment for any person having the care, custody, etc., of a child to ill-treat, neglect, etc., such child, is not *ultra vires* as an invasion of the Dominion Parliament's jurisdiction over criminal law; since the field of legislation as to offences relating to children, & especially their care, welfare & treatment, is not so "fully & clearly occupied" by the Criminal Code as to invalidate such a provision.—R. *v.* DOWDELL, [1932] 3 W. W. R. 297; [1933] 4 D. L. R. 794; 60 C. C. C. 164; 46 B. C. R. 267.—CAN.

m (p. 445) vii. —— *Creation of offence by local legislature—Already an offence by Criminal Code—Ultra vires.*]—R. *v.* GALLANT (P. E. I.), [1929] 1 D. L. R. 671; 51 Can. Crim. Cas. 209.—CAN.

s (p. 445) i. —— *Powers of medical council.*]—Medical Profession Act. R. S. S., 1920 (c. 135), s. 40, is not *ultra vires* on the ground that it infringes on the powers of the Governor-General under B. N. A. Act, 1867. s. 96.—HUNT *v.* COLLEGE OF PHYSICIANS & SURGEONS OF SASKATCHEWAN, [1925] 4 D. L. R. 834; [1925] 3 W. W. R. 758.—CAN.

s (p. 445) ii. *Powers of Optometry Board.*]—Optometry Act, R. S. O., 1927, s. 8, giving power to the Board of Examiners in Optometry to revoke certificates for professional misconduct is *intra vires.*—*Re* HAYWARD, [1934] 2 D. L. R. 210; O. R. 133; 61 C. C. C. 239.—CAN.

d (p. 445) i. ——.]—A provincial enactment altering the law relating to champerty, by authorising solrs. within the province to contract with clients for payment for professional services by way of a share of the proceeds of actions in lieu of the usual costs, is an invasion of the legislative domain of the Dominion Parliament relative to criminal law.—TAYLOR *v.* MACKINTOSH, [1924] 3 D. L. R. 926; 3 W. W. R. 97; 34 B. C. R. 56.—CAN.

L. T. 650; 44 T. L. R. 287; 72 Sol. Jo. 137, P. C.

Annotation:—Generally, **Reld.** Roman Catholic Separate School Trustees *v.* R., [1928] A. C. 363.

177a. —— Separate schools—Roman Catholic separate schools—Courses of study & grades of education in—Right to share in legislative grants.]—The trustees of a Roman Catholic separate school in Ontario, by a petition of right, claimed that certain Acts of the legislature of Ontario, & regulations made thereunder, were *ultra vires*, in that, & so far as, they prejudicially affected rights which the suppliants asserted that Roman Catholics had by law at Confederation in respect of separate schools, & which consequently were preserved by sect. 93 (1) of the B. N. A. Act, 1867. They claimed: (*a*) the right to establish & conduct courses of study & grades of education such as are conducted in continuation schools, collegiate institutes, & high schools; (*b*) the right of supporters of Roman Catholic separate schools to exemption from rates for the support of continuation schools, collegiate institutes, & high schools not conducted by their own board of trustees; (*c*) that separate schools were entitled under the Separate Schools Act, 1863, to share on the basis therein enacted, in all legislative grants for common schools, including all grants for the support of secondary schools; they prayed for judgment for the difference between the sum which they would have received out of the legislative grant for 1922 if their contentions were right, & the amount paid to them:—*Held:* statutes passed before Confederation gave to the educational authorities full power to regulate separate schools, including power to determine the courses of study & grades of education therein; also, the fund in which separate schools were entitled to share as enacted by Separate Schools Act, 1863, s. 20, excluded moneys "otherwise appropriated by law," as expressed in the Common Schools Act, 1859, s. 106, & that it was not *ultra vires* after Confederation to make new appropriations, although they diminished what otherwise would have come to the separate schools. That consequently suppliants' claim failed in law, but that it was open to them to appeal under sect. 93 (3) of B. N. A. Act, 1867, to the Governor-General in his *quasi*-administrative capacity even if the legislation complained of was *ultra vires*, since the words "any Provincial authority" in that sub-section included the Provincial legislatures.—ROMAN CATHOLIC SEPARATE SCHOOL TRUSTEES *v.* R., [1928] A. C. 363; 97 L. J. P. C. 69; 139 L. T. 493; 44 T. L. R. 611, P. C.

177b. —— Act affecting Protestant or Roman Catholic minority—Appeal to Governor-General in Council.]—Where the Roman Catholic minority of Manitoba appealed to the Governor-General in Council against the Manitoba Education Acts of 1890, on the ground that their rights & privileges in relation to education had been affected thereby:—*Held:* (*a*) such appeal lay under Manitoba Act, 1870, s. 22 (2), which applies to rights & privileges acquired by legislation in the province after the date thereof; (*b*) the Roman Catholics having acquired by such legislation the right to control & manage their denominational schools, to have them maintained out of the general taxation of the province, to select books for their use, & to determine the character of the religious teaching therein, were affected as regard that right by the Acts of 1890, under which State aid was withdrawn from their schools, while they themselves remained liable to local assessment in support of non-sectarian schools to which they conscientiously objected; (*c*) the Governor-General in Council has power to make remedial orders in the premises within the scope of sect. 22 (3)—*e.g.* by supplemental rather than repealing legislation.—BROPHY *v.* A.-G. OF MANITOBA, [1895] A. C. 202; 64 L. J. P. C. 70; 72 L. T. 163; 11 T. L. R. 198; 11 R. 385, P. C.

Annotations:—**Consd.** Hirsch *v.* Protestant School Comrs. of Montreal, [1928] A. C. 200; Roman Catholic Separate School Trustees *v.* R., [1928] A. C. 363. **Reld.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

177c. —— —— ——.]—ROMAN CATHOLIC SEPARATE SCHOOL TRUSTEES *v.* R., No. 177a, *ante*.

177d. —— Abolition of denominational education.]—According to the true construction of the Constitutional Act of Manitoba, 1870 (33 Vict. c. 3), having regard to the state of things which existed in Manitoba at the date thereof, the legislature of that province did not exceed its powers in passing Public Schools Act, 1890. Sect. 22 of 1870 Act authorises the provincial legislature exclusively to make laws in relation to education so as not to "prejudicially affect any right or privilege with respect to denominational schools which any class of persons have, by law or practice in the province, at the Union":—*Held:* the 1890 Act, which abolished the denominational system of public education established by law since the Union, but which did not compel the attendance of any child at a public school, or confer any advantage in respect of attendance other than that of free education, & at the same time left each denomination free to establish, maintain, & conduct its own schools, did not contravene the above proviso; & accordingly certain bye-laws of a municipal corpn. which authorised assessments under the Act were valid.—WINNIPEG CITY *v.* BARRETT, WINNIPEG CITY *v.* LOGAN, [1892] A. C. 445; 61 L. J. P. C. 58; 67 L. T. 429; 8 T. L. R. 745, P. C.

Annotations:—**Consd.** Brophy *v.* A.-G. of Manitoba, [1895] A. C. 202; Ottawa Separate Schools Trustees *v.* Mackell, [1917] A. C. 62; Hirsch *v.* Protestant School Comrs. of Montreal, [1928] A. C. 200; Roman Catholic Separate School Trustees for Tiny *v.* R., [1928] A. C. 363.

177e. Building & public health—Application to denominational schools.]—British North America Act, 1867 (c. 3), s. 93, does not prevent the provisions of Municipal Act of Ontario with reference to building, & other matters relating to the health & convenience of the population, from applying to denominational schools.—TORONTO CORPN. *v.* ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES, [1926] A. C. 81; 95 L. J. P. C. 12; 133 L. T. 779; 41 T. L. R. 658, P. C.

178. *Add. Annotation:*—**Reld.** Nadan *v.* R., [1926] A. C. 482.

178a. Property & civil rights—Ultimate Heir Act, R.S.A., 1922 (c. 144)—Ultra vires.]—A.-G. FOR ALBERTA *v.* A.-G. FOR CANADA, No. 98a, *ante*.

178b. —— Procedure relating to expropriation—Intra vires.]—Having regard to sect. 129 of British North America Act, 1867 (c. 3), the

178a i. *Property & civil rights—Closing disorderly house.*]—10 Geo. V., c. 81 (Q.), authorising a judge to order the closing of a disorderly house, is *intra vires* the provincial legislature, as it deals with matter of property & civil rights by providing for the suppression of a nuisance & not with criminal law by aiming at the punishment of a crime.—BEDARD *v.* DAWSON & A.-G. FOR QUEBEC, [1923] 4 D. L. R. 293; [1923] S. C. R. 681; 3 W. W. R. 412.—**CAN.**

178a ii. —— *Prevention of fraudulent sale of shares.*]—A provincial statute which aims at preventing by injunction such trading in securities, or attempts to trade therein, as are founded on fraud, or fraudulent practices as defined by the Act, is *intra vires*, even in so far as it applies to the selling of, or the attempting to sell, shares in a Dominion co. Such a statute does not impair in a substantial degree the essential capacities of a Dominion co., nor does it invade the Dominion's jurisdiction over criminal law, but deals with a matter within provincial jurisdiction under the headings "property & civil rights in the province" & "matters of merely local or private nature in the province."—A.-G. FOR MANITOBA *v.* ROSENBAUM (Man.), [1930] 1 D. L. R. 152; [1929] 1 W. W. R. 148; 40 Man. L. R. 179.—**CAN.**

178a iii. —— *Claim for damages against co-respondent.*]—A claim for damages against a co-resp. is a matter of "Property & Civil Rights in the Province" & not a matter of "Marriage & Divorce" within the jurisdiction of the Dominion.—MITCHELL *v.* MITCHELL & CROOME, [1936] 1 W. W. R. 553; 2 D. L. R. 374; 44 Man. L. R. 23; 5 F. L. J. (Can.) 292.—**CAN.**

178a iv. —— *Maintenance & alimony.*]—Maintenance & alimony are matters of property & civil rights & therefore within the jurisdiction of the province.—LANGFORD *v.* LANGFORD, [1936] 1 W. W. R. 174; 50 B. C. R. 303; 5 F. L. J. (Can.) 227.—**CAN.**

sb. *Labour in industrial undertakings.*]—The matter of labour in industrial undertakings in Canada is primarily within the competence of provincial legislatures, but Parliament can legislate as to labour in territories not yet organised into, or forming part of, a province, & as to labour of servants of the Dominion, if these are within the scope of the draft convention adopted by the International Labour Conference of the League of Nations in 1919.—*Re* TREATY OF VERSAILLES, *Re* HOURS OF LABOUR, [1925] 3 D. L. R. 1114; [1925] S. C. R. 505.—**CAN.**

sk. *Marriage.*]—Marriage Act, R.S.O., 1914 (c. 148), ss. 15 & 36, as amended by Marriage Law Amendment Act, 1919 (c. 35), ss. 2 & 4, are within the powers of the provincial legislature.—STEWART *v.* STEWART, [1925] 1 D. L. R. 1; 56 O. L. R. 57.—**CAN.**

sl. ——.]—Marriage Act, R. S. O., 1914 (c. 148), & its amendments, are *intra vires* the provincial legislature, in so far as they provide for dissolution or nullity of a marriage.—DOYLE *v.* DEADY, [1925] 3 D. L. R. 317; 57 O. L. R. 44.—**CAN.**

sm. —— *Affecting status of husband & wife.*]—*Held:* Married Women's Act, R. S. A., 1922, is *ultra vires* as affecting marital status, but, on appeal: —*Held:* the Act does not enable a married woman to sue her husband in tort, &, *semble*, so far as the Act purports to give this right, it is *intra vires*. —HILL *v.* HILL, [1929] 2 D. L. R. 735; 2 W. W. R. 41; 24 Alta. L. R. 105.—**CAN.**

sn. —— ——.]—Married Women's Property Act, R. S. M., 1913, is *intra vires* of the Province.—ROYAL BANK OF CANADA *v.* DIAMOND, [1929] 3 D. L. R. 390; 2 W. W. R. 267; 38 Man. L. R. 301.—**CAN.**

sa. —— *Consent of parents.*]—Ontario Marriage Act, 1927, s. 34 (1), makes the consent of parents a condition precedent to the marriage of an infant under eighteen years of age, & the ct. may annul a marriage celebrated without consent. It is a matter of doubt whether this provision is *intra vires* of the Province.—MARQUARDT *v.* GORR, [1929] 1 D. L. R. 206.—**CAN.**

sb. —— ——.]—KERR *v.* KERR, [1932] O. R. 289; 2 D. L. R. 349; *on appeal* [1932] O. R. 601; 4 D. L. R. 289.—**CAN.**

sc. —— ——.]—Sect. 20 of Solemnisation of Marriage Act, Alberta, 1925, requiring parental consent to marriage under a certain age, as amended in 1931, c. 16, making the consent a condition precedent to a valid marriage except in certain circumstances is *intra vires*. "Solemnisation of marriage" is not confined to the ceremony itself. It legitimately includes the various steps or preliminaries leading to it. The said statute, in its essence, deals with those steps or preliminaries in the province. The requirement, in the statute, of parental consent is one similar in quality to the other requirements therein concerning the banns or the marriage licences. It is one of the forms to be complied with for the marriage ceremony, & it does not relate to capacity. It is a requirement which a provincial legislature may competently prescribe in the exercise of its jurisdiction in relation to "the solemnisation of marriage in the province" & to which it may "attach the consequence of invalidity absolutely or conditionally."—A.-G. FOR ALBERTA & NEILSON *v.* UNDERWOOD & A.-G. OF CANADA, [1934] S. C. R. 635; 4 D. L. R. 167; *revsg.* S. C. *sub nom.* NEILSON (OTHERWISE UNDERWOOD) *v.* UNDERWOOD, [1933] 2 W. W. R. 609; 4 D. L. R. 154.—**CAN.**

sd. ——.]—A provincial Legislature can make the consent of the parents of a minor to his or her marriage a condition precedent to the marriage, & provide that where a ceremony of marriage has been performed without compliance with said condition the ct. shall have jurisdiction to declare the marriage invalid. Sect. 5 of c. 70, 1937, amending the Marriage Act, 1933 (c. 59), by adding sects. 52*a*, 52*b*, 52*c*, 52*d*, thereto, is therefore *intra vires*.—GRAHAM (OTHERWISE BRUCE) *v.* GRAHAM, [1938] 1 W. W. R. 155.—**CAN.**

sp. *Wide Tire Act*, 1889 (c. 22)—*Intra vires.*]—R. *v.* HOWE, MCNEIL *v.* HOWE (1890), 2 B. C. R. 36.—**CAN.**

sq. *Habeas corpus.*]—The provincial statute known as "An Act Respecting *Habeas Corpus*," R. S. P. Q. 1925, c. 167, is *intra vires*, & has general application to all judgments, irrespective of the cause of detention.—*Ex p.* FONG, *Ex p.* YOU, *Ex p.* CHALIFOUX, [1929] 1 D. L. R. 223; 50 Can. Crim. Cas. 213; *sub nom.* MOQUIN *v.* FONG, Q. R. 44 K. B. 476.—**CAN.**

sr. *Water power—Powers relating to.*] *Re* WATERS & WATER POWERS REFERENCE, [1929] 2 D. L. R. 481; S. C. R. 200.—**CAN.**

ss. *Grain Marketing Act*, 1931.]—Grain Marketing Act, 1931 (Sask.), is *ultra vires*, since in its true nature & character it is legislation enacted with the object of controlling the export of grain from Saskatchewan to other provinces & foreign countries, & it is, therefore, an interference with the Dominion Parliament's exclusive powers over the "Regulation of Trade & Commerce."

The right of a resident of a province to export therefrom & sell elsewhere grain grown therein is not a matter of "Property & Civil Rights within the Province," within clause 13 of sect. 92 of B. N. A. Act, nor is it a "matter of merely local or private nature in the Province," within clause 16 thereof.—*Re* GRAIN MARKETING ACT, 1931, [1931] 2 W. W. R. 146; 25 S. L. R. 273.—**CAN.**

sv. *Soldiers' Taxation Relief Act.*]—A provincial Act, such as Soldiers' Taxation Relief Act, 1924, the object of which is to assist ex-soldiers because of their disabilities, is not an Act which falls within the Dominion Parliament's exclusive legislative authority with respect to "Militia, Military & Naval Services & Defence."—BRANDON CITY *v.* MUNICIPAL COMR., [1931] 3 D. L. R. 397; 2 W. W. R. 65; *affd.*, [1931] 3 W. W. R. 225; 4 D. L. R. 830; 3 W. W. R. 225; 39 Man. L. R. 582.—**CAN.**

sx. *Navigation.*]—The Lakes & Rivers Improvement Act does not purport to restrict or interfere with the navigation of the river & cannot be regarded as invading the rights of the Dominion in its control over navigation; it is therefore *intra vires* of the Ontario legislature.—*Re* ARROW RIVER & TRIBUTARIES SLIDE & BOOM CO., [1932] S. C. R. 495; 2 D. L. R. 250.—**CAN.**

sy. *Domestic Relations Act*, 1927 (*Alta.*)—*Ultra vires.*]—A provincial Act which purports to invest a magistrate appointed by the province with powers theretofore exercisable only by a judge of a Superior Ct., as that term is understood in sect. 96 of the B. N. A. Act, is *ultra vires*. Therefore, sect. 26 of Domestic Relations Act, 1927 (Alta.), is *ultra vires*.—ROSKIWICH *v.* ROSKIWICH (No. 2), [1931] 3 W. W. R. 614; [1932] 1 D. L. R. 135; 26 Alta. L. R. 137; 57 C. C. C. 226; *on appeal, sub nom.* A.-G. FOR ALBERTA *v.* ROSKIWICH (1932), 58 C. C. C. 346.—**CAN.**

sz. *Deserted Wives' Maintenance Acts.*]—Deserted Wives' Maintenance Act, R. S. B. C., 1924 (B. C.), is *intra vires*.—GAGEN *v.* GAGEN, [1934] 4 D. L. R. 409; 3 W. W. R. 84; 48 B. C. R. 481; 62 Can. C. C. 286.—**CAN.**

sa. ——.]—Deserted Wives & Children Act, R. S. N. B., 1927, is *intra vires*.—R. *v.* VESEY, *Ex p.* VERHILLE, [1938] 2 D. L. R. 70; 12 M. P. R. 307; 69 Can. C. C. 371; 7 F. L. J. (Can.) 180.—**CAN.**

sf. *Game laws.*]—Accused, who was not an Indian, was convicted under Game Act, R. S. B. C., 1924, for killing a pheasant during a close season. The act was committed on an Indian Reserve. The accused did not hold a permit from the superintendent of the reserve to hunt thereon:—*Held:* the Act was *intra vires* with respect to its application to the accused & the conviction should be sustained.—R. *v.* MORLEY, [1932] 2 W. W. R. 193; 4 D. L. R. 483; 58 C. C. C. 166.—**CAN.**

sg. *Financial administration of municipalities.*]—Quebec Municipal Commission Act, 1932 (Que.), is *intra vires*. —QUEBEC MUNICIPAL COMMISSION *v.* AYLMER TOWN, [1933] 2 D. L. R. 638. —**CAN.**

sd. *Debt Adjustment Act*, 1933.]—Sect. 11 of Debt Adjustment Act, 1933,

president or acting-president of the commission appointed under the (Quebec) Public Service Commission Act by the Lieutenant-Governor in Council, when assessing, under art. 429 of the City of Montreal Charter, the compensation to be paid for land expropriated by the city, does not act as a judge of a superior district or county ct., so as to make the appointment invalid under sect. 96 of the Act in that it is not by the Governor-General, & the tribunal consequently incompetent. At confederation compensation was assessed by comrs., appointed by the Superior Ct. under an Act of 1864, who did not act as judges of any ct. referred to in sect. 96; they were a legal commission or authority within sect. 129, so that the legislature of Quebec under that section, combined with sect. 92, head 13, had exclusive authority to repeal the Act of 1864 & to assign the assessment of compensation to the present commission, the alteration in the mode of appointment being a matter of procedure within the legislative competence. As by art. 429 awards made thereunder are to be final & not open to appeal, they can be questioned only for want of jurisdiction.—MARTINEAU (O.) & SONS, LTD. *v.* MONTREAL (CITY), [1932] A. C. 113; 101 L. J. P. C. 49; 146 L. T. 291; 48 T. L. R. 95, P. C.

does not enable the board, on issuing a permit for the continuance of an action already begun, to control in any way the functions of the ct. in dealing with that action. The " terms & conditions " that may be prescribed by the permit must be limited to those that may be imposed on the parties to the action, not upon the ct. *Qu.:* whether or to what extent said Act is *ultra vires?* At any rate, the Act does not, & cannot, apply to any action in which there is a *bonâ fide* dispute on any question of law or fact.—KOYL SECURITIES, LTD. *v.* YOUNG, [1933] 2 W. W. R. 452.—**CAN.**

sf. ——.]—Sect. 11 of Debt Adjustment Act, 1933 (Sask.), which provides that no legal or other proceeding of certain enumerated classes shall be taken, made or continued against a " resident " as defined by the Act while the Act remains in force, *i.e.* until Mar. 1, 1936, unless the Debt Adjustment Board issues a permit authorising the proceeding, is *intra vires*, at least in so far as it applies to the classes of proceedings involved in the present case, which was an action for debt & for the enforcement of a mechanics' lien. Sect. 11 is severable from certain other provisions of the Act not in issue in the present case & the ct. expressly stated that it was not passing on the validity of such other provisions.—MALEY *v.* CADWELL, [1934] 1 W. W. R. 51, C. A.—**CAN.**

sg. *Workmen's Compensation Act,* 1931 (*Que.*).]—Workmen's Compensation Act, 1931 (Que.) is *intra vires.*—RICARD *v.* CRETE & A.-G. FOR QUEBEC, [1933] 3 D. L. R. 660.—**CAN.**

sh. *Ontario Municipal Board—Effect of judicial powers.*]—Ontario Municipal Board is lawfully in office even though the legislature may have purported to confer judicial powers on the Board.—R. *v.* STAMFORD TOWNSHIP & MCKEOWN, [1935] 2 D. L. R. 157.—**CAN.**

si. *Act disposing of rights sub lite.*]—A provincial Act disposing of mining rights *sub lite* held *intra vires.*—FLORENCE MINING CO., LTD. *v.* COBALT LAKE MINING CO., LTD. (1908), 18 O. L. R. 275.—**CAN.**

sl. *Slot machines.*]—The Slot Machine Act, 1935 (Man.), is *intra vires.*—R. *v.* MAGID, [1936] 1 W. W. R. 163; 1 D. L. R. 638; 65 Can. C. C. 78; 43 Man. L. R. 563; 5 F. L. J. (Can.) 243.—**CAN.**

sn. ——.]—Slot Machine Act, 1935 (Alta.), is *intra vires.*—R. *v.* STANLEY, [1935] 3 W. W. R. 517; 64 Can. C. C. 385; [1936] 1 D. L. R. 100; 5 F. L. J. (Can.) 259.—**CAN.**

sp. ——.]—The Slot Machine Act, 1935 (Sask.), is *ultra vires.*—R. *v.* KARMINOS, [1936] 1 W. W. R. 433; 2 D. L. R. 353; 65 Can. C. C. 165.—**CAN.**

sq. ——.]—New Brunswick Slot Machine Act, 1936, is *intra vires.*—R. *v.* LANE, *Ex p.* GOULD, [1937] 1 D. L. R. 212; 11 M. P. R. 232; 67 Can. C. C. 273.—**CAN.**

sr. *Imposition of fines—Failure to remit sales tax.*]—A Provincial Legislature has power to impose a fine for failure to remit sales tax.—FERLAND CORSET CO. *v.* RECORDER'S COURT, [1936] 1 D. L. R. 121; 64 Can. C. C. 347.—**CAN.**

ss. *Dairy Products Act,* 1933 (*Que.*).]—Dairy Products Act, 1933 (Que.), is *intra vires.*]—R. *v.* SIMONEAU, [1936] 1 D. L. R. 143; 65 Can. C. C. 19.—**CAN.**

sz. *Natural Products Marketing Acts,* 1934 (*B. C.*).]—Pltfs., potato growers within a district defined by Natural Products Marketing (British Columbia) Act, 1934 (B.C.), were bringing a load of potatoes to Vancouver to be delivered to a broker there, when an official of the B. C. Coast Vegetable Marketing Board appointed under said Act stopped them & demanded their authority from the Board to proceed with the potatoes. Pltfs. said that the potatoes were for export & that authority to proceed was, therefore, not required. It was evident that the potatoes were not tagged, as the regulations of the Board required them to be. The potatoes were thereupon seized & sent to the Board's warehouse to be sold. Pltfs. obtained an interim injunction restraining the Board from preventing pltfs. transporting potatoes on the highways for marketing without complying with the regulations:—*Held:* what the Board had done was within the authority given it by said Act, as amended, & that said authority was not, as applicable to the facts of this case, *ultra vires* of the province; & therefore the appeal should be allowed.—CHUNG CHUCK & MAH LAI *v.* GILMORE, [1936] 3 W. W. R. 575; [1937] 1 D. L. R. 119; 67 Can. C. C. 264; 51 B. C. R. 189.—**CAN.**

sb. ——.] — Natural Products Marketing (B. C.) Act, 1934 (B. C.), & said Act as amended are *ultra vires.* Interference with interprovincial & export trade in natural products was the substantial & not merely the ancillary or incidental effect of their operation. Moreover they purported to delegate legislative functions to the Lieutenant-Governor in Council & to give jurisdiction to the Dominion Parliament to function in the provincial field.—HAYWARD *v.* BRITISH COLUMBIA LOWER MAINLAND DAIRY PRODUCTS BOARD, [1937] 2 W. W. R. 401.—**CAN.**

sc. *Criminal legislation—Towns Incorporation Act* (*N. S.*).]—Towns Incorporation Act, N. S., empowering municipalities to regulate closing hours of shops & enforce the regulations by fine or imprisonment is not *ultra vires* as being legislation on criminal law.—R. *v.* AWAD, [1937] 2 D. L. R. 136; 11 M. P. R. 389; 68 Can. C. C. 100.—**CAN.**

sd. *Unfair Competition Act.*]—The Parliament of Canada under para. 2 of sect. 91 of the B. N. A. Act has the necessary competence to legislate in connection with trade names & sects. 3, 7 & 11 of Unfair Competition Act are *intra vires* of the Canadian Parliament.—GOOD HUMOR CORPN. OF AMERICA *v.* GOOD HUMOR FOOD PRODUCTS, LTD., & BRADLEY, [1937] EX. C. R. 61; 4 D. L. R. 145.—**CAN.**

se. *Power Commission Act,* 1935 (*Ont.*).]—Power Commission Act, 1935 (Ont.), s. 2, is *ultra vires.*—OTTAWA VALLEY POWER CO. *v.* A.-G. FOR ONTARIO, [1936] 4 D. L. R. 594; *sub nom.* OTTAWA VALLEY POWER CO. *v.* HYDRO-ELECTRIC POWER COMMISSION.—**CAN.**

sh. *Ontario Statute,* 1937 (*c.* 58).]—This statute, which affects civil rights outside the Province, by the abrogation of water franchises, is *ultra vires.*—BEAUHARNOIS LIGHT, HEAT & POWER CO. *v.* HYDRO-ELECTRIC POWER COMMISSION, [1937] 3 D. L. R. 458; O. R. 796.—**CAN.**

sk. *Reduction & Settlement of Debt Act* (*Alta.*).]—Reduction & Settlement of Debts Act, 1936 (Alta.), is *ultra vires* because (1) it is essentially legislation on the subject of " Interest " assigned by sect. 91 (19) of B. N. A. Act to the Dominion; (2) it purports to add to the functions of the Lieutenant-Governor; (3) it is in conflict with Bkpcy. Act, R. S. C., 1927, & Farmers' Creditors Arrangement Act, 1934. An additional reason for its invalidity in respect to civil rights existing outside the province is that it purports to affect such rights.—CRÉDIT FONCIER FRANCO-CANADIEN *v.* ROSS & A.-G. FOR ALBERTA, NETHERLANDS INVESTMENT CO. OF CANADA, LTD. *v.* FIFE & A.-G. FOR ALBERTA, [1937] 2 W. W. R. 353; 3 D. L. R. 365; 7 F. L. J. (Can.) 51; *affg.* S. C. *sub nom.* ROYAL TRUST CO. *v.* A.-G. FOR ALBERTA, [1937] 1 D. L. R. 709; 6 F. L. J. (Can.) 131.—**CAN.**

sp. *Provincial Securities Interest Act,* 1936 (*Alta.*).]—The Provincial Securities Interest Act, 1936, is *ultra vires.*—INDEPENDENT ORDER OF FORESTERS *v.* LETHBRIDGE NORTHERN IRRIGATION DISTRICT, [1937] 1 W. W. R. 414; 2 D. L. R. 109.—**CAN.**

st. *Provincially Guaranteed Securities Proceedings Act,* 1937 (*Alta.*)—*Ultra vires.*]—INDEPENDENT ORDER OF FORESTERS *v.* LETHBRIDGE NORTHERN IRRIGATION DISTRICT (NO. 2), [1938] 2 W. W. R. 194.—**CAN.**

sw. *Saskatchewan Milk Control Act.*]—*Held:* *intra vires.*—R. *v.* CHERRY, [1938] 1 W. W. R. 12; 1 D. L. R. 156; 69 Can. C. C. 219.—**CAN.**

sz. *Alberta legislation.*]—The Alberta Social Credit Act, the Credit of Alberta Regulation Act, the Taxation of Banks Act, & the Press Bill, are *ultra vires.*—*Re* ALBERTA LEGISLATION REFERENCE, [1938] S. C. R. 101; 2 D. L. R. 81.—**CAN.**

178c. —— Security Frauds Prevention Act, 1930 (Alta.).]—Security Frauds Prevention Act, 1930, of Alberta, provided that no person might trade in securities unless he was registered with the approval of the A.-G.; a corpn. could be registered, & in that case its officials did not need registration. In effect, the Act precluded a public co. from selling its shares unless it did so through a registered person or was itself registered. By sect. 9 the A.-G., or his delegate, could examine any person or co. to ascertain whether any "fraudulent act," which was very widely defined, had been, was being, or was about to be, committed. The Act imposed penalties for breaches of its provisions, & by sect. 20 made it an offence to commit any "fraudulent act" not punishable under the Criminal Code of Canada:—*Held:* the Act was within the scope of the powers of the Provincial legislature under sect. 92 of the British North America Act, 1867. It was not invalid in relation to Dominion cos., as it did not wholly preclude them from selling their shares unless they were registered, but merely subjected them to competent provisions applying to all persons trading in securities. Nor was it, as a whole, a colourable attempt to encroach upon the legislative power of the Dominion as to the criminal law; so far as sect. 20 was invalid as so encroaching it was clearly severable.—LYMBURN *v.* MAYLAND, [1932] A. C. 318; 101 L. J. P. C. 89; 146 L. T. 458; 48 T. L. R. 231, P. C.

179. *Add. Annotation:*—**Refd.** Lower Mainland Dairy Products Sales Adjustment Committee *v.* Crystal Dairy, Ltd., [1933] A. C. 168.

179a. Trade disputes.]—Industrial Disputes Investigation Act, 1907, of Canada, provided that upon a dispute occurring between employers & employees in any of a large number of important industries in Canada the Minister for Labour for the Dominion might appoint a board of investigation & conciliation. The board was to make investigations, with power to summon witnesses & inspect documents & premises, & was to try to bring about a settlement; if no settlement resulted, they were to make a report with recommendations as to fair terms, but the report was not to be binding upon the parties. After a reference to a board, a lock-out or strike was to be unlawful & subject to penalties:—*Held:* the Act was not within the competence of the Parliament of Canada under British North America Act, 1867 (c. 3); it clearly was in relation to property & civil rights in the provinces, a subject reserved to the provincial legislatures by sect. 92 (13), & was not within any of the overriding powers of the Dominion Legislature specifically set out in sect. 91; the Act could not be justified under the general power in sect. 91 to make laws "for the peace, order, & good government of Canada," as it was not established that there existed in the matter any emergency which put the national life of Canada in anticipated peril.—TORONTO ELECTRIC COMRS. *v.* SNIDER, [1925] A. C. 396; 94 L. J. P. C. 116; 132 L. T. 738; 41 T. L. R. 238; 69 Sol. Jo. 325, P. C.

Annotation:—**Refd.** A.-G. for Canada *v.* A.-G. for Ontario, [1937] A. C. 326.

179b. Regulation of business—Natural Products Marketing (British Columbia) Act, 1936.]—Natural Products Marketing (British Columbia) Act, 1936, of British Columbia, which enables the Lieutenant-Governor in Council to set up a central British Columbia Marketing Board to establish or approve schemes for the control & regulation within the Province of the transportation, packing, storage & marketing of any natural products, to constitute marketing boards to administer such schemes, & to vest in those boards any powers considered necessary or advisable to exercise those functions, including the power to fix & collect licence fees, is *intra vires* the Provincial Legislature under sect. 92 of the B. N. A. Act, 1867, as being in pith & substance an Act to regulate particular businesses entirely within the Province. The Act can further be supported as *intra vires* the Legislature of the Province as coming within the classes of subjects exclusively reserved to the Province under sect. 92, heads (9), (13) & (16), of the B. N. A. Act.—SHANNON *v.* LOWER MAINLAND DAIRY PRODUCTS BOARD, [1938] A. C. 708; 54 T. L. R. 1090; 82 Sol. Jo. 728, P. C.

179c. Conferring of judicial powers on local authority—What amounts to.]—In 1916 resp. corpn. entered into an agreement with applt. corpn. whereby the latter agreed to supply water to resps. on terms including payment at the rate of 20 cents per 1,000 gallons. In 1936, on an application by resps. to the Ontario Municipal Board to vary the rate for water supplied, made pursuant to sect. 2 of the Township of York Act, 1936, which provided (*inter alia*) that notwithstanding the provisions of the agreement of 1916 the Municipal Board should have jurisdiction to vary & fix the rates, & to hear & determine any such application, the Municipal Board made an order directing applts. to make discovery on oath of documents, authorising resps. to enter upon & inspect applts.' waterworks system, & directing applts. Comr. of Works to submit to be examined upon oath. Applts. having alleged that the Ontario Municipal Board was invalidly constituted to make such an order:—*Held:* the Ontario Municipal Board is primarily, in pith & substance, an administrative body. The members of the Municipal Board not having been appointed in accordance with the provisions of sects. 96, 99 & 100 of B. N. A. Act, which regulate the appointment of judges of Superior, District & County Cts., the Board is not validly constituted to receive judicial authority. Assuming that the Ontario Municipal Board Act, 1932, which set up the Board, does by some of its sections purport to constitute the Board a Ct. of Justice analogous to a Superior, District or County Ct., it is to that extent invalid. There is, however, nothing to suggest that the Board would not have been granted its administrative powers without the addition of the alleged judicial powers, & although, therefore, such parts of the Act of 1932 as purport to vest in the Board the functions of a ct. have no effect, they are severable, & the Board is validly constituted for the performance of its administrative functions. The Municipal Board's powers of examination, inspection & discovery of documents, even though couched in terms of similar powers of a Ct. of Justice, are not inconsistent

with the powers of an administrative body whose duty it is to ascertain the facts with which they are dealing. Further, assuming that the first part of sect. 2 of the Township of York Act, 1936, purported to confer a judicial function on the Board, it was inoperative, but the second part related to an administrative function—the varying & fixing of the rate—& was severable. The order made by the Ontario Municipal Board was accordingly valid.—TORONTO CORPN. *v.* YORK CORPN. & A.-G. FOR ONTARIO, [1938] A. C. 415; [1938] 1 All E. R. 601; 107 L. J. P. C. 43; 54 T. L. R. 386; 82 Sol. Jo. 212, P. C.

180. *Add. Annotation :*—**Consd.** Martineau (O.) & Sons, Ltd. *v.* Montreal (City), [1932] A. C. 113.

181a. Appointment of judges.]—Judicature Act, 1924, of Ontario, s. 2 (2—6), & s. 4 (1) & (2), are *ultra vires* the legislature of the province, since their effect is to authorise the Lieutenant-Governor of the province to assign, that is to say to appoint, certain judges of the High Ct. Div. of the Supreme Ct. to be judges of the Appellate Div. of that ct., & also to designate, that is to say to appoint, certain judges to hold the offices of Chief Justice of Ontario & Chief Justice of the High Ct. Div., & consequently the provisions are inconsistent with British North America Act, 1867 (c. 3), s. 96, under which the powers of appointment referred to are given to the Governor-General of Canada. Sect. 4 (3), however, which provided that upon a vacancy occurring among the judges of the Appellate Div. or of the High Ct. Div. before the provisions of the Act came fully into force, the Divs. were to consist of the remaining judges, was not open to objection.—A.-G. FOR ONTARIO *v.* A.-G. FOR CANADA, [1925] A. C. 750; 94 L. J. P. C. 132; 133 L. T. 434, P. C.

181b. —— Members of Quebec Public Service Commission.]—MARTINEAU (O.) & SONS, LTD. *v.* MONTREAL CITY, No. 178b, *ante*.

PART II. SECT. 3, SUB-SECT. 4.—A. (o).

a i. —— —— ——.]—*Held :* 37 Vict. c. 32, was *ultra vires*.—SEVERN *v.* R. (1878), 2 S. C. R. 70; 1 Cart. 414.—**CAN.**

a i. —— *Liquor Act*, 1902, s. 2.]—*Held :* although unusual, it was well within the powers of the legislature.—R. *v.* WALSH (1903), 23 C. L. T. 186; 5 O. L. R. 527; 2 O. W. R. 222; 3 O. W. R. 31.—**CAN.**

b i. —— *Right to appeal to Supreme Court of Canada—Restrictions on—Ultra vires.*]—CLARKSON *v.* RYAN (1890), 17 S. C. R. 251; 4 Cart. 439.—**CAN.**

d i. —— *Betting Information Act*, 1923 (c. 5)—*Ultra vires.*]—R. *v.* LICHTMAN (1923), 42 Can. Crim. Cas. 1; 54 O. L. R. 502.—**CAN.**

l i. —— *Succession Duties Act*, 1914 (c. 10)—*Valid.*]—BARTHE *v.* SHARPLES (1918), O. R. 55 S. C. 301.—**CAN.**

l ii. —— *Liquor laws relating to navigable rivers & wharves—Wharves property of Federal Government—Validity.*]—COTE *v.* QUEBEC LIQUOR COMMISSION, FORTIN *v.* QUEBEC LIQUOR COMMISSION, [1931] 4 D. L. R. 137; 56 Can. C. C. 371.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—B. (a).

o (p. 447) i. ——.]—Customs Tariff (Industries Preservation) Act, 1921-1922, deals only with the imposition of taxation, & does not infringe the first paragraph of sect. 55 of the Constitution. Customs Tariff (Industries Preservation) Act, 1921-1922, s. 8, deals with duties of customs only, & does not infringe the second paragraph of sect. 55 of the Constitution. The tax imposed by sect. 8 is imposed by the Commonwealth Parliament, & is not an infringement of sect. 90 of the Constitution.—NOTT BROTHERS & CO., LTD. *v.* BARKLEY (1925), 36 C. L. R. 20; 31 Argus L. R. 256.—**AUS.**

o (p. 447) ii. ——.]—*Held :* neither Income Tax Assessment Act, 1922-1924, nor Income Tax Assessment Act, 1922-1925, nor either of Income Tax Acts which incorporated those Assessment Acts, was obnoxious to any of the provisions of sect. 55 of the Constitution.—FEDERAL TAXATION COMR. *v.* MUNRO, BRITISH IMPERIAL OIL CO., LTD. *v.* FEDERAL TAXATION COMR. (1926), 38 C. L. R. 153.—**AUS.**

o (p. 447) iii. ——.]—*Held :* Wartime Profits Tax Assessment Act, 1917-1918, s. 14 (5), was not obnoxious to sect. 55 of the Constitution.—FEDERAL TAXATION COMR. *v.* HIPSLEYS, LTD. (1926), 38 C. L. R. 219.—**AUS.**

r (p. 447) i. —— *Discrimination between States.*]—Administration Act of Western Australia (1903, No. 13), s. 86, imposes a duty on the final balance of the real & personal estate of deceased according to fixed rates, & contains a proviso that in so far as beneficial interests pass to persons *bonâ fide* residents of & domiciled in Western Australia & occupying towards deceased a certain relationship, duty shall be calculated so as to charge only one-half of the percentage upon the property so acquired by such persons: —*Held :* the real ground of the discrimination was domicil & not residence, & consequently, the enactment was not void under sect. 117 of the Constitution, as setting up a discrimination between the residents of different States.—DAVIES & JONES *v.* WESTERN AUSTRALIA (1905), 2 C. L. R. 29.—**AUS.**

r (p. 447) ii. —— ——.]—Excise Tariff, 1906 (No. 16), is not an Act imposing duties of Excise, but is an Act to regulate the conditions of manufacture of agricultural implements, & is therefore not an exercise of the power of taxation conferred by the Constitution. If otherwise valid, it is invalid on the ground that it authorises discrimination, & therefore discriminates, between States or parts of States within sect. 51 (ii.) of the Constitution, & authorises the giving, & therefore gives, preference to one State or a part thereof over another State or a part thereof within sect. 99 of the Constitution.—R. *v.* BARGER (1908), 6 C. L. R. 41.—**AUS.**

r (p. 447) iii. —— ——.]—Under Factories Act, 1904, it was a condition of the employment of Asiatics that they should have been employed on or before Nov. 1, 1903 :—*Held :* the provision was *ultra vires* as discriminating between residents of different States.—FAY *v.* VINCENT (1908), 7 C. L. R. 389.—**AUS.**

r (p. 447) iv. —— ——.]—Sect. 75 of the Constitution provides that "In all matters . . . (iv.) between States, or between residents of different States, or between a State & a resident of another State . . . the High Court shall have original jurisdiction" :—*Held :* the words "residents" & "resident" in sect. 75 (iv.) refer to natural persons only & not to artificial persons or corporations. Therefore, a co. formed in Victoria under Victorian law & having its management & control there & carrying on business in each of the other States, was not entitled to bring an action in the High Ct. against a resident of a State other than Victoria.—AUSTRALASIAN TEMPERANCE & GENERAL MUTUAL LIFE ASSURANCE SOCIETY, LTD. *v.* HOWE (1922), 31 C. L. R. 290.—**AUS.**

r (p. 447) v. —— ——.]—*Held :* Regs. 46 & 46A & Table III. of the Income Tax Regulations, 1917, discriminate between States & parts of States, & are therefore invalid as being an infringement of sect. 51 (ii.) of the Constitution.—CAMERON *v.* DEPUTY FEDERAL COMR. OF TAXATION (1923), 32 C. L. R. 68.—**AUS.**

r (p. 447) vi. —— *Federal tax of State servants.*]—The three applts. claimed exemption from taxation under Income Tax Assessment Act, 1915-1921 (Federal), on the ground that the Commonwealth Constitution Act did not confer upon the Parliament of the Commonwealth power to impose an income tax in respect of official salaries received by officers who were (*a*) employed by the Railway Comrs. for New South Wales; or (*b*) employees in the Public Trust Office, which is administered as a branch of the Dept. of the A.-G. & Justice; or (*c*) employed by the State of New South Wales as clerks in the Public Works Department. On cases stated under the "Income Tax Assessment Act" :—*Held :* the assessment of Federal Income Tax in respect of the salaries of applts. was valid, applts. were not exempt from such taxation, & the Commonwealth Parliament had power to impose income tax upon them.—DAVOREN *v.* COMMONWEALTH COMRS. OF TAXATION (1922), A. L. R. 129.—**AUS.**

c (p. 447) i. —— *Exemption of members of force from State legislation.*]—There is nothing in the Constitution that expressly or impliedly exempts members of the defence force from State motor car legislation, & sect. 6 of Motor Car Act, 1915 (Vict.), is not inconsistent with any provision of Air Force Act, 1923, or Defence Act, 1903-1918.—PIRRIE *v.* MCFARLANE (1925), 36 C. L. R. 170.—**AUS.**

d (p. 447) i. —— ——.]—The provisions of sect. 4 of Seamen's Compensation Act, 1909, in so far as they purport to regulate purely inter-State trade, are *ultra vires* sect. 51 (1) of the Constitution, sect. 98 of the Constitution does not enlarge the ambit of the trade & commerce clause in sect. 51 (1), but is merely explanatory of the trade & commerce powers.—KALIBIA (OWNERS) *v.* WILSON (1910), 11 C. L. R. 689.—**AUS.**

e (p. 447) i. —— *Commonwealth Shipping Act, 1923—Validity.*]—COMMONWEALTH & A.-G. FOR COMMONWEALTH *v.* AUSTRALIAN COMMONWEALTH SHIPPING BOARD (1927), 39 C. L. R. 1; [1927] Argus L. R. 61.—**AUS.**

g (p. 447) i. *State court exercising Federal jurisdiction—Appeal to High Court.*]—Sect. 39 of the Judiciary Act, 1903–1920 (the ct. expressing no opinion as to the provisions in subsect. (2) (*a*)) is a valid exercise of the powers conferred upon the Parliament of the Commonwealth, & therefore under it an appeal will lie to the High Ct. from a decision of a police magistrate of a State upon an information charging an offence against the provisions of the Crimes Act, 1914–1915. —LORENZO *v.* CAREY (1921), 29 C. L. R. 243.—**AUS.**

h (p. 447) i. ——.]—Judiciary Act, 1903–1920, s. 39 (2) (a) [as interpreted in No. 605 i, *post*], is a valid exercise of the power conferred by sect. 77 (iii.) of the Constitution.—LIMERICK S.S. Co. *v.* COMMONWEALTH OF AUSTRALIA (1924), 25 S. R. N. S. W. 293; 35 C. L. R. 69; 31 Argus L. R. 153.—**AUS.**

h (p. 447) ii. ——.]—An action having been brought against the Commonwealth in the Supreme Ct. of Victoria & judgment having been given for the Commonwealth, on appeal to the Full Ct. of the Supreme Ct. by pltf. a contention was raised by the Commonwealth that under Judiciary Act, 1903–1920, s. 39 (2) (*a*), the only right of appeal was to the High Ct. The Full Ct., on the ground that sect. 39 (2) (*a*) was *ultra vires*, rejected the contention, & then heard the appeal & dismissed it. On the hearing of an application by pltf. to the Full Ct. for leave to appeal to the Privy Council pursuant to the Imperial Order in Council of Jan. 23, 1911, the Full Ct., accepting as binding on it the decision that sect. 39 (2) (*a*) was invalid, made an order granting the leave asked. On appeal to the High Ct. from the order granting leave:—*Held:* on the hearing of the appeal to the Full Ct. a question arose as to the limits *inter se* of the constitutional powers of the Commonwealth & those of the State of Victoria, within sect. 74 of the Constitution & sects. 38A, 40A of the Judiciary Act; under sect. 40A the cause was removed to the High Ct., &, therefore, the Full Ct. had no jurisdiction to entertain the appeal or to make the order granting leave to appeal to the Privy Council. Whether the Full Ct. had or had not jurisdiction to entertain the appeal, sect. 39 (2) (*a*) of Judiciary Act is a valid exercise of the power conferred by sect. 77 (iii.) of the Constitution, & therefore the Full Ct. had no jurisdiction to make the order granting leave to appeal to the Privy Council.—THE COMMONWEALTH *v.* KREGLINGER & FERNAU, LTD. & BARDSLEY (1926), 37 C. L. R. 393; [1926] V. L. R. 331; [1926] Argus L. R. 161.—**AUS.**

o (p. 448) i. —— *Election for Senate.*]—*Held:* Commonwealth Electoral Act, 1918–1925, s. 128A (12), was a valid exercise of the power conferred by sect. 9 of the Constitution upon the Commonwealth Parliament to make laws "prescribing the method of choosing senators."—JUDD *v.* MCKEON (1926), 38 C. L. R. 380.—**AUS.**

r (p. 448) i. ——.]—Customs Act, 1901, being a valid exercise by the Commonwealth of the exclusive power to impose, collect, & control duties of Customs & Excise conferred by sects. 52 (ii.), 86, & 90 of the Constitution, applies to goods imported by the Government of a State as well as to those imported by private persons. —R. *v.* SUTTON (1908), 5 C. L. R. 789. **AUS.**

r (p. 448) ii. ——.]—Special leave to appeal from a judgment of the High Ct. of Australia holding that goods imported by the State Governments are liable to duties of customs under the laws of the Commonwealth was refused although the case was within sect. 74 of Commonwealth of Australia Constitution Act.—A.-G. FOR NEW SOUTH WALES *v.* NEW SOUTH WALES, COLLECTOR OF CUSTOMS FOR, [1909] A. C. 345, P. C.—**AUS.**

c (p. 448) i. *Prevention of industrial disputes—What is "industrial dispute."*]—The Parliament of the Commonwealth has power, under sect. 51 (xxxv.) of the Constitution, to make laws binding on the States with respect to conciliation & arbn. for the prevention & settlement of industrial disputes extending beyond the limits of one State. A dispute between an organisation of employees & a Minister of the Crown for a State acting under a Statute of that State as an employer which, if it existed between the organisation & a private employer, would be an industrial dispute within sect. 51 (xxxv.), is such an industrial dispute. —AMALGAMATED SOCIETY OF ENGINEERS *v.* ADELAIDE S.S. Co. (1920), 28 C. L. R. 129.—**AUS.**

c (p. 448) ii. —— ——.]—*Held:* the educational activities of the States carried on under the appropriate statutes & statutory regulations of each State relating to education did not constitute an "industry" within sect. 4 of Commonwealth Conciliation & Arbn. Act, 1904–1928; the occupation of the teachers so employed was not an "industrial" occupation, & the dispute which existed between the States & the teachers employed by them was therefore not an "industrial dispute" within sect. 51 (xxxv.) of the Constitution. — FEDERATED STATE SCHOOL TEACHERS ASSOCN. OF AUSTRALIA *v.* VICTORIA (1929), 41 C. L. R. 569.—**AUS.**

c (p. 448) iii. —— ——.]—*Held:* the words in the Constitution, sect. 57 (xxxv.) "extending beyond the limits of any one State" as applied to a dispute mean that the dispute is one "existing in two or more States" or, in other words, "covering Australian territory comprised within two or more States." To constitute an industrial dispute there must be disagreement between people or groups of people who stand in some industrial relation upon some matter which affects or arises out of the relationship. Such a disagreement may cause a strike, a lock-out & disturbance & dislocation of industry, but these are the consequences of the industrial dispute & not the industrial dispute itself, which lies in the disagreement. Upon this conception of an industrial dispute, it cannot extend beyond the limits of any one State unless in each of two or more States, at one time, the disagreement exists between people or groups who stand in some industrial relation. — CALEDONIAN COLLIERIES, LTD. *v.* AUSTRALASIAN COAL & SHALE EMPLOYEES' FEDERATION (1930), 42 C. L. R. 527.—**AUS.**

c (p. 448) iv. —— *Courts.*]—The power conferred by the Commonwealth Conciliation & Arbn. Act, 1904–1915, upon the Commonwealth Ct. of Conciliation & Arbn. to enforce awards made by it is part of "the judicial power of the Commonwealth" within sect. 71 of the Constitution, & can only be vested in the cts. mentioned in that sect.—WATERSIDE WORKERS FEDERATION *v.* ALEXANDER (1918), 25 C. L. R. 434.—**AUS.**

c (p. 448) v. —— *Conciliation Committees.*]—*Held:* a law which established a body of persons to settle a dispute by issuing a decree arrived at by discussion amongst themselves without any hearing or determination between the disputants as the Commonwealth Conciliation & Arbn. Act, 1904–1930, by sect. 34 (8–12), purported to do, was not a law with respect to conciliation & arbn. for the prevention & settlement of industrial disputes, & was not authorised by sect. 51 (xxxv.) of the Constitution, & therefore such sub-sects. were invalid. — AUSTRALIAN RAILWAYS UNION *v.* VICTORIAN RYS. COMRS. (1930), 44 C. L. R. 319.—**AUS.**

c (p. 448) vi. —— *Inconsistency between State & Commonwealth legislation.*]—The same conduct by the same persons was punishable differently under Commonwealth Conciliation & Arbn. Act, 1904–1928; & the New South Wales Masters & Servants Act, 1902:—*Held:* the State Act was invalid, *pro tanto*, by virtue of sect. 109 of the Constitution.—*Ex p.* MCLEAN (1930), 43 C. L. R. 472.—**AUS.**

c (p. 448) vii. —— *Prohibition by High Court.*]—Original jurisdiction has been conferred by sect. 75 (v.) of the Constitution, by the phrase "officer of the Commonwealth," upon the High Ct. to issue prohibition to the President of the Commonwealth Ct. of Conciliation & Arbn., & sect. 31 (1) of Commonwealth Conciliation & Arbn. Act, 1904–1911, so far as it purports to take away from the High Ct. the power to issue prohibition in respect of an award or order of the Commonwealth Ct. of Conciliation & Arbn., is invalid.—TRAMWAYS CASE (No. 1) (1913), 18 C. L. R. 54.—**AUS.**

c (p. 448) viii. —— *Extent of powers.*]—The provisions of the Commonwealth Conciliation & Arbn. Act, 1904–1910, which purport to authorise the Commonwealth Ct. of Conciliation & Arbn. to declare a common rule in any particular industry, & direct that the common rule so declared shall be binding upon the persons engaged in that industry, are *ultra vires*.—AUSTRALIAN BOOT TRADE EMPLOYEES FEDERATION *v.* WHYBROW & CO. (1910), 11 C. L. R. 311.—**AUS.**

c (p. 448) ix. —— ——.]—An award made by the Federal Arbitration Ct. purported to bind named employers, including appct. co., in respect of each & every person employed by them in the clothing & allied trades & industries, whether members of the union making the claim or not, & the union & the members thereof. Appct. had never employed any member of the union or of any organisation or union of employees in the clothing or allied trades or industries:—*Held:* in so far as the award of the Arbitration Ct. purported to bind appct. in respect of every person employed by it, whether a member of the union or not, it was *ultra vires*.—AMALGAMATED CLOTHING & ALLIED TRADES UNION OF AUSTRALIA *v.* ARNALL & SONS (1929), 43 C. L. R. 29.—**AUS.**

st. *Removal of proceedings to High Court.*]—Judiciary Act, 1903–1920, s. 40, is a valid exercise of the powers conferred by sects. 76 & 77 of the Constitution.—*Re* YATES, *Ex p.* WALSH, *Re* YATES, *Ex p.* JOHNSON (1925), 37 C. L. R. 36; [1926] Argus L. R. 46.—**AUS.**

sv. ——.]—Judiciary Act, 1903–1920, s. 40A, is a valid exercise of the power conferred by sects. 77 (ii) & 51 (xxxix) of the Constitution.—PIRRIE *v.* MCFARLANE (1925), 36 C. L. R. 170. —**AUS.**

sw. *Trading by Commonwealth—Through agents—War Precautions (Wool) Regulations.*]—During the war & after the making of the above regulations, the Executive Govt. of the Commonwealth entered into agreements with a co., engaged in the manufacture & sale of wool tops. Each of these agreements was either an agreement to give consent to a sale of wool tops by the co. in return for a share of the profits, called by the parties a "licence fee," or an agreement that the business of manufacturing wool tops should be carried on by the co. as agent

184a. —— Power to compel British company to deduct income tax from dividends on shares situate in England.]—Pltfs., a British co., held shares in deft. co., which was a British co., but which had its head office & board of directors in Australia, though it had a London committee for registering transfers of shares & issuing certificates. Deft. co. having declared a dividend, the Australian income tax authorities, acting under Australian Income Tax Acts, required deft. co. to deduct the Australian income tax from the dividend due to pltf. co. In an action claiming the amount so deducted:—*Held:* the debt created by the declaration of a dividend was situate in England, & the Commonwealth legislature had no power to impose taxation on pltf. co. in respect of such debt, & the action succeeded.—LONDON & SOUTH AMERICAN INVESTMENT TRUST, LTD. *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., [1927] 1 Ch. 107; 96 L. J. Ch. 58; 70 Sol. Jo. 1024; *sub nom.* PASS *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD. (1926), 42 T. L. R. 771.

in consideration of an annual sum from the Commonwealth, or a combination of both these agreements:—*Held:* apart from any authority conferred by an Act of Parliament of the Commonwealth or by regulations thereunder, the Executive Govt. had no power to make or ratify any of the agreements. —COMMONWEALTH & CENTRAL WOOL COMMITTEE *v.* COLONIAL COMBING, SPINNING & WEAVING CO., LTD. (1922), 31 C. L. R. 421.—**AUS.**

sy. *Power to confer judicial powers.*]—The powers which Income Tax Assessment Act, 1922-1933, by ss. 44, 50 & 51, purports to confer upon a Board of Appeal created under the Act are part of the judicial power of the Commonwealth, which under sect. 71 of the Constitution can only be vested in the High Ct. or a federal ct., & a Board of Appeal not being such a ct., the conferring of those powers is *ultra vires* the Commonwealth Parliament.—BRITISH IMPERIAL OIL CO., LTD. *v.* FEDERAL COMR. OF TAXATION (1925), 35 C. L. R. 422; 31 Argus L. R. 129.—**AUS.**

sz. *Power to give appellate jurisdiction to High Court—Appeal from non-federal court.*]—The Commonwealth Parliament may confer upon the High Ct. jurisdiction to entertain an appeal from a ct. established by the Parliament in a territory, notwithstanding that the ct. so established is not a federal ct. within sect. 71 of the Constitution; & jurisdiction to entertain an appeal from the Supreme Ct. of the Northern Territory is lawfully conferred upon the High Ct. by Supreme Ct. Ordinance, 1911-1922, s. 21, & Northern Territory (Administration) Act, 1910, s. 13.—PORTER *v.* R., *Ex p.* CHIN MAN YEE (1926), 37 C. L. R. 433. —**AUS.**

sa. *Discovery—Against State.*]—Judiciary Act, 1903-1920, s. 64, in so far as it gives pltf., resident of one State, in an action against another State, the right to obtain discovery of documents from, & to administer interrogatories to, defts., is within the legislative power of the Commonwealth Parliament.—GRIFFIN *v.* SOUTH AUSTRALIA (STATE) (1924), 35 C. L. R. 200; 31 Argus L. R. 81.—**AUS.**

sb. *Immigration.*]—Immigration Act, 1901-1925, s. 8AA, is a valid exercise of the power conferred by sect. 51 (xxvii) of the Constitution.—*Re* YATES, *Ex p.* WALSH, *Re* YATES, *Ex p.* JOHNSON (1925), 37 C. L. R. 36; [1926] Argus L. R. 46.—**AUS.**

sc. ——.]—Immigration Act, 1901-1925, s. 5 (3) (3A) (3B):—*Held:* valid.—WILLIAMSON *v.* AH ON (1927), 39 C. L. R. 95; [1927] Argus L. R. 13.—**AUS.**

sd. *Power to grant financial aid to States.*]—*Held:* Federal Aid Roads Acts, 1926, was a valid exercise of the power conferred upon the Commonwealth Parliament by sect. 96 of the Constitution, to grant financial assistance to any State on such terms & conditions as the Parliament might think fit.—STATE OF VICTORIA *v.* COMMONWEALTH (1926), 38 C. L. R. 399.—**AUS.**

se. *Bankruptcy—State Acts not affected as to matters not dealt with in Commonwealth Act—Or as to pending proceedings.*]—*Re* PARSONS (1928), 28 S. R. N. S. W. 575; 45 N. S. W. W. N. 158.—**AUS.**

sf. *Interference with freedom of inter-State trade.*]—The Primary Producers' Organisation & Marketing Acts, 1926-1932, & Orders in Council made thereunder provide for a system of collective marketing:—*Held:* neither the Acts nor the Orders in Council are in conflict with sect. 92 of the Commonwealth Constitution.—MUNRO (A. C.) & SONS PTY., LTD. *v.* SHEEHY, [1934] S. R. (Q.) 251.—**AUS.**

sh. *Powers as to State Courts.*]—(1) Sect. 77 (III) of the Constitution does not enable the Parliament to make a Commonwealth officer a functionary of a State Court & authorise him to act on its behalf & administer part of its jurisdiction; (2) although sect. 51 (XXXIX) of the Constitution confers power upon the Parliament to make laws with respect to matters which attend, or arise in, the execution of any power vested by the Constitution in the Federal Judicature, as distinct from matters incidental to the subjects assigned to the Commonwealth, nevertheless it does not authorise the reconstitution of a State Court which is invested with Federal jurisdiction or of the organisation through which its powers & jurisdiction are exercised, because sect. 77 (III) contemplates the selection by the Parliament of an existing judicial organ which depends alike for its structure & its being upon State law & the grant to it of powers of adjudication upon specified subjects of Federal jurisdiction.—LE MESURIER *v.* CONNOR (1930), 42 C. L. R. 481.—**AUS.**

sk. *Bankruptcy.*]—*Held:* sects. 12 (5), 18 (1) (*b*), 23 & 24 of Bkpcy. Act, 1924-1928, are *ultra vires*. —LE MESURIER *v.* CONNOR (1930), 42 C. L. R. 481.—**AUS.**

sl. *Immigration—Extent of powers.*]—The power of Parliament to make laws with respect to immigration enables it to impose upon the ship's agent, who is authorised on its behalf to perform the duties imposed by laws in force in the port, an absolute liability to a penalty upon entry of an immigrant from the vessel.—ORIENT STEAM NAVIGATION CO., LTD. *v.* GLEESON (1931), 44 C. L. R. 254; [1931] Argus L. R. 61; 4 A. L. J. 371. —**AUS.**

sn. *Forfeiture of fishing boat — Whether Admiralty jurisdiction.*] —*Held:* jurisdiction to condemn a fishing boat as forfeited was not in its nature Admiralty jurisdiction & therefore it was not necessary to reserve Fisheries Act, 1925, for Royal assent in order validly to confer such jurisdiction on a ct. of petty sessions.—CHALLENGER *v.* RAE (1931), 24 Tas. L. R. 53.—**AUS.**

sp. *Prohibition of State referendum on day of federal election.*]—Sect. 14 of Commonwealth Electoral (War-time) Act, 1917, provides that "On the day appointed as polling day for an election of the Senate or a general election of the House of Representatives, no referendum or vote of the electors of any State or part of a State shall be taken under the law of a State:—*Held:* sect. 14 is a lawful exercise of the power conferred on the Parliament of the Commonwealth by sects. 10, 51 (xxxvi.), (xxxix.) of the Constitution.—R. *v.* BRISBANE LICENSING CO. (1923), 28 C. L. R. 23.—**AUS.**

sr. *Delegation of powers to make regulations under Transport Workers Act, 1928-1929—Validity of regulations.*]—Sect. 3 of Transport Workers Act, 1928-1929, purports to confer a power upon the Governor-General of making regulations not inconsistent with that Act with respect to the employment of transport workers, & in particular for regulating the engagement, service & discharge of such workers, & the licensing of persons engaged as transport workers & for the protection of transport workers:—*Held:* (1) within the legislative power of the Commonwealth Parliament to confer such power; (2) regulations made in the exercise of such power, although they restricted the loading & unloading of inter-State & overseas vessels to members of a specified industrial union & to returned sailors & soldiers, & may have been made in pursuance of the industrial policy of the executive were, nevertheless, within the trade & commerce power conferred by sect. 51 (i.) of the Constitution & did not exceed the power given by sect. 3 of the Transport Workers Act, & were therefore valid.—VICTORIAN STEVEDORING & GENERAL CONTRACTING PTY., LTD. *v.* DIGNAN (1931), 46 C. L. R. 73.—**AUS.**

st. ——.]—Sect. 3 of Transport Workers Act, 1928-1929, operates to authorise a regulation made by the Governor-General requiring that in the employment, engagement or picking up of transport workers (being waterside workers) for overseas & inter-State vessels at the port to which Part III. of the Act applies, priority shall be given to those workers available for employment, engagement or picking up at those ports who are members of the Waterside Workers' Federation, &, to that extent at least, is a valid exercise of the powers of the Commonwealth Parliament.—HUDDART PARKER, LTD. *v.* COMMONWEALTH (1931), 44 C. L. R. 492.—**AUS.**

sv. *Financial Agreements Enforcement Act, 1932.*]—The provisions of Part II. of Financial Agreements Enforcement Act, 1932, are a valid exercise of the legislative powers of the Federal Parliament.—NEW SOUTH WALES, STATE OF *v.* THE COMMONWEALTH (1932), 46 C. L. R. 155; [1932] Argus L. R. 245; 5 A. L. J. 433; 6 A. L. J. 38.—**AUS.**

sw. ——.]—Sect. 15 of Financial Agreements Enforcement Act, 1932, is a valid exercise of the power conferred upon the Commonwealth by sect. 105A of the Constitution. In addition to ordinary revenue the State of New South Wales deposited with its bankers moneys received by it under certain statutes & orders of ct. for specific purposes & to meet particular claims,

186a. Commonwealth Acts—Presumption in favour of validity.]—SHELL CO. OF AUSTRALIA, LTD. *v.* FEDERAL COMR. OF TAXATION, No. 205a, *post.*

186b. Interference with freedom of inter-State trade.]—Sect. 92 of Commonwealth of Australia Constitution Act, 1900, which provides that trade, commence & intercourse among the States shall be " absolutely free," binds the Parliament of the Commonwealth of Australia equally with the States. The language of the sect., which is quite general & is in terms not subject to any exception or limitation, affords no countenance for the contrary view: it is the declaration of a guaranteed right. By " free " is meant freedom as at the State frontier or barrier, the crucial point in inter-State trade, or freedom in respect of goods passing into or out of the State, & in every case it is a question of fact whether there is an interference with this freedom of passage. On that interpretation of " free " in sect. 92, Dried Fruits Act, 1928–35, of the Commonwealth Parliament & Dried Fruits (Inter-State Trade) Regulations, 1934, made pursuant thereto, which either prohibit inter-State trade entirely if there is no licence, or partially prohibit it if a licence is granted in accordance with the Act & Regulations, contravene sect. 92 of the Constitution & are invalid.—JAMES *v.* COMMONWEALTH OF AUSTRALIA (No. 2), [1936] A. C. 578; [1936] 2 All E. R. 1449; 105 L. J. P. C. 115; 155 L. T. 393; 52 T. L. R. 696; 80 Sol. Jo. 688, P. C.

---

such as, for example estates administered by the Master-in-Lunacy, the Public Trustee & the Registrar of Probates respectively, & claims by suitors & litigants. The accounts were kept by the banks under various descriptive headings, moneys deposited being allocated to the relevant accounts upon the receipt, subsequent to payment in, from the State of a " distribution sheet " & by an agreement between the State & the banks the accounts were treated as one account, withdrawals being permitted from any account, whether in debit or otherwise, provided the combined account was in credit, interest being allowed by each of the banks on any amount held by it in excess of £100,000. The banks stated that they had not been informed, & were unaware, that any of the moneys deposited by the State were " trust " moneys:—*Held:* such moneys were not received by the Crown in right of the State in a fiduciary capacity so as to remain specifically the property in equity of the suitors or others concerned, but went into the general resources of the State; & accordingly the sums at credit of the bank account were attachable under sect. 15 of the Financial Agreements Enforcement Act, 1932. —NEW SOUTH WALES, STATE OF *v.* THE COMMONWEALTH (1932), 46 C. L. R. 246; 6 A. L. J. 42.—**AUS.**

sz. —— *Whether constitutional validity question for Privy Council.*]—On an application to the High Ct. for a certificate under sect. 74 of the Constitution that questions of law as to the limits *inter se* of the constitutional powers of the Commonwealth & of the State of New South Wales involved in the case of *New South Wales* v. *The Commonwealth* (*No.* 1), were questions which ought to be determined by His Majesty in Council:—*Held:* the application must be refused.—NEW SOUTH WALES, STATE OF *v.* THE COMMONWEALTH (1932), 46 C. L. R. 235; 6 A. L. J. 41.—**AUS.**

sb. —— *Declaration that amount " due & payable & unpaid "—No right of set-off by the State.*]—In an application by the Commonwealth for a declaration, under sect. 6 (3) of the Financial Agreements Enforcement Act, 1932, that an amount stated in a resolution passed by both Houses of the Commonwealth Parliament, or any part thereof, is " due & payable & unpaid " by a State to the Commonwealth the State is not permitted by the Act to claim a set-off.—*Re* NEW SOUTH WALES, STATE OF, *Ex p.* A.-G. FOR THE COMMONWEALTH (1932), 47 C. L. R. 58; 6 A. L. J. 44.—**AUS.**

sd. *Officer transferred to Commonwealth — Pension rights cannot be affected.*]—By the operation of sect. 84 of the Constitution the pension rights of an officer transferred from the service of a State to that of the Commonwealth cannot be affected by legislation of the Commonwealth or of the State after the transfer.—FLINT *v.* THE COMMONWEALTH, [1932] Argus L. R. 391; 6 A. L. J. 237.—**AUS.**

sf. *Agreement between Commonwealth & State—Whether member of public may challenge.*]—A member of the public as such has not a sufficient interest to entitle him to maintain an action for a declaration of the invalidity of, or for an injunction to restrain the Commonwealth from carrying out the agreement between the Commonwealth & the State of Queensland, known as the Sugar Agreement.—ANDERSON *v.* THE COMMONWEALTH, [1932] Argus L. R. 177; 5 A. L. J. 434; 47 C. L. R. 50.—**AUS.**

sk. *Bankruptcy legislation.*]—Since the relevant provisions of the Bills of Sale Act, 1898 (N.S.W.), must be regarded as a Bkpcy. Act within the meaning of sect. 6 (*a*) of the Commonwealth Bkpcy. Act, & since its provisions are not dealt with expressly or by necessary implication in the latter Act, & since the Commonwealth is now the recognised legislative authority to deal with bkpcy. in the State of N.S.W., the reference to " bkpt. estate " in sect. 5 of the former Act must be treated as a reference to an estate which is bkpt. under the laws of bkpcy. for the time being in force in N.S.W. & now includes estates bkpt. under the provisions of the Commonwealth Bkpcy. Act.—ROFE *v.* GRANT (1932), 32 S. R. N. S. W. 354; 4 A. B. C. 168.—**AUS.**

so. *Income tax.*]—Sect. 20 (2) (*b*) of the Income Tax Assessment Act, 1922–1932, is a valid exercise of the legislative power of the Commonwealth.—COLONIAL GAS ASSOCN., LTD. *v.* TAXATION COMR. (1934), 40 Argus L. R. 187; 2 A. T. D. 457; 8 A. L. J. 69.—**AUS.**

sp. *Estate duty.*]—Sect. 8 (4) (*a*) of Estate Duty Assessment Act, 1914–1928 (Cth.), is *intra vires* the Commonwealth Parliament.—TRUSTEES EXECUTORS & AGENCY CO., LTD. *v.* FEDERAL COMR. OF TAXATION (1934), 49 C. L. R. 220.—**AUS.**

sv. *Validity of New Guinea Act.*]—*Held:* the Commonwealth Parliament had power to pass New Guinea Act, 1920–1926.—JOLLEY *v.* MAINKA (1934), 49 C. L. R. 242.—**AUS.**

sx. *Immigration.*]—Sect. 3 (*gh*) of Immigration Act, 1901–1930 is a law with respect to immigration, & is therefore within the legislative power of the Commonwealth Parliament conferred by sect. 51 (XXVII.) of the Constitution.—R. *v.* CARTER, *Ex p.* KISCH (1935), 52 C. L. R. 221; 41 Argus L. R. 125.—**AUS.**

sd. *Legislation relating to broadcasting.*]—Sect. 51 (v) of the Constitution confers on the Commonwealth Parliament power to legislate with respect to radio broadcasting.—R. *v.* BRISLAN, *Ex p.* WILLIAMS (1936), 54 C. L. R. 262; 9 A. L. J. 348; 42 Argus L. R. 45.—**AUS.**

PART II. SECT. 3, SUB-SECT. 4.—B. (b).

r i. —— *Power to impose customs & excise duties.*]—*Held:* Taxation (Motor Spirit Vendors) Act, 1925 (S. A.), was invalid.—COMMONWEALTH & COMMONWEALTH OIL REFINERIES, LTD. *v.* STATE OF SOUTH AUSTRALIA, LTD. (1926), 38 C. L. R. 408, [1927] Argus L. R. 40.—**AUS.**

r ii. —— ——.]—*Held:* Finance (Newspapers Taxation) Act, 1926 (N. S. W.), & Finance (Taxation Management) Act, 1926 (N. S. W.), ss. 2, 3, 5, 6 & 7, were invalid.—FAIRFAX (JOHN) & SON, LTD. & SMITH'S NEWSPAPERS, LTD. *v.* NEW SOUTH WALES STATE (1927), 39 C. L. R. 139; [1927] Argus L. R. 87.—**AUS.**

r iii. —— *Taxation of federal loans.*] —*Held:* (1) the effect of sect. 7 (12) of Income Tax Acts, 1902–1920 (Qd.), is to make interest derived from Commonwealth stock or treasury bonds " liable to income tax " within meaning of sect. 52B of Commonwealth Inscribed Stock Act, 1911–1918, & that the subsect. is to that extent invalid; (2) an action lies by the A.-G. of the Commonwealth for a declaration that sect. 7 (12) of the Income Tax Acts, 1902–1920 (Qd.), is invalid *pro tanto;* (3) sect. 52B of the Commonwealth Inscribed Stock Act, 1911–1918, is valid under the power conferred by sect. 51 (iv.) of the Constitution to make laws with respect to " borrowing money on the public credit of the Commonwealth."—COMMONWEALTH *v.* QUEENSLAND (1920), 29 C. L. R. 1.—**AUS.**

t i. ——.]—JAMES *v.* THE STATE OF SOUTH AUSTRALIA (1927), 40 C. L. R. 1. —**AUS.**

t ii. —— *Prohibition of importation of stock—Validity of Stock Act,* 1901 (*N. S. W.*).]—Sect. 154 of the Stock Act, 1901, does not violate the provision in sect. 92 of the Constitution that trade, commerce & intercourse among the States shall be absolutely free.—*Ex p.* NELSON (NO. 1) (1928), 42 C. L. R. 209; [1929] Argus L. R. 21.—**AUS.**

t iii. —— *Validity of Farm Produce Agents Act,* 1926 (*N. S. W.*).]—*Held:* the provisions of Farm Produce Agents Act, 1926 (N. S. W.), were not obnoxious to the provisions of sect. 92 of the Constitution.—ROUGHLEY *v.* THE STATE OF NEW SOUTH WALES, *Ex p.* BEAVIS (1928), 42 C. L. R. 162; 1929 A. L. R. 1.—**AUS.**

t iv. —— *Profiteering Prevention Act,* 1920 (*Qd.*).]—The Profiteering Prevention Act of 1920 (Qd.) provides, by sect. 12 (1), that it shall be unlawful for any trader whether as principal or agent to sell or agree to sell or offer for sale any commodity at a price higher than a price declared in the Queensland Government Gazette; &,

188a. Interference with freedom of inter-State trade.]—(1) Dried Fruits Act, 1924, s. 28, of South Australia, does not authorise the Minister of Agriculture to make orders for the compulsory acquisition of dried fruits with the object of forcing the surplus of dried fruits off the Australian market, as that object involves directly, & not merely incidentally, an interference with the freedom of inter-State trade contrary to sect. 92 of the Commonwealth Constitution, to which section the powers given by sect. 28 of the Dried Fruits Acts are expressly subject.

(2) The decision of the High Ct. of Australia as to the validity of the orders was not a decision as to the limits *inter se* of the constitutional powers of the Commonwealth & of any State or States within sect. 74 of the Commonwealth Constitution so as to render an appeal to the Privy Council incompetent in the absence of a certificate by the High Ct.; that was so whether or not sect. 92 of the Constitution bound the Commonwealth as well as individual States.—JAMES *v.* COWAN, [1932] A. C. 542; 101 L. J. P. C. 149; 147 L. T. 321; 48 T. L. R. 564, P. C.

Annotation:—As to (1) **Consd.** James *v.* Commonwealth of Australia, [1936] 2 All E. R. 1449.

191a. Reform of Legislative Council—Creation of electoral college—Validity.]—The legislature of New South Wales amended the Constitution Act, 1902 (as already amended) by Act 2 of 1933, entitled the Constitution Amendment (Legislative Council) Act, 1932,

---

by sect. 3, defines "trader" as including "the agent" of any person carrying on the business of selling any commodities. Pltf., a Sydney co., had its travellers in Queensland, & they sold calicoes, etc., at a price higher than the declared price for delivery in Queensland:—*Held:* so far as regards the sales by the travellers of goods stipulated to come from Sydney the Queensland Act was invalid as being in conflict with sect. 92 of the Constitution.—M'ARTHUR (W. & A.), LTD. *v.* QUEENSLAND (1920), 28 C. L. R. 530, 556.—**AUS.**

t v. —— *Milk Act.*]—*Held:* (1) neither the provisions of the Milk Act, 1931, generally, nor the provisions of sects. 23 (1), 26 (1), (3) & 28 (2) particularly, contain a scheme which involves the imposition of a duty of excise within sect. 90 of Commonwealth of Australia Constitution Act; (2) the scheme of compulsory acquisition of milk under sect. 26 of Milk Act, 1931, does not contravene the provisions of sect. 92 of Commonwealth of Australia Constitution Act as to the freedom of inter-State trade.—CROTHERS *v.* SHEIL (1934), 49 C. L. R. 399.—**AUS.**

t vi. —— *Motor Car Act, sect.* 4.]—Resp. laid an information against applt. under sect. 4 of Motor Car Act, 1928–1930 (Vict.), alleging that applt. was the driver of a motor car which was used on a public highway without being registered. Applt. was a carrier residing in New South Wales & was the owner of a motor truck registered in that State, but not registered in Victoria. At the time in question applt. was using the truck for the purpose of carrying goods from a town in New South Wales to Melbourne. There were no goods in the truck which were being carried from any place in Victoria to any other place in Victoria, & applt. had never used the truck save for the purpose of carrying goods for hire from places in New South Wales to places in Victoria or from places in Victoria to places in New South Wales:—*Held:* sect. 4 of Motor Car Act did not infringe sect. 92 of the Constitution, & applt. was rightly convicted.—WILLARD *v.* RAWSON, [1933] Argus L. R. 209; 7 A. L. J. 57; 48 C. L. R. 316.—**AUS.**

t vii. —— *State Transport (Co-ordination) Act (N.S.W.).*]—*Held:* the provisions of the State Transport (Co-ordination) Act do not contravene sect. 92 of the Constitution as interfering with the freedom of inter-State trade, commerce, & intercourse.—R. *v.* VIZZARD, *Ex p.* HILL (1934), 50 C. L. R. 30; 40 Argus L. R. 16; 7 A. L. J. 362.—**AUS.**

t viii. —— *Motor Spirit Vendors Act,* 1933 (Q.).]—Above Act contravenes sect. 92 of the Constitution.—VACUUM OIL CO. PROPRIETARY, LTD. *v.* STATE OF QUEENSLAND (1934), 51 C. L. R. 108; 40 Argus L. R. 154; 8 A. L. J. 29.—**AUS.**

t ix. —— *Dairy Produce Stabilisation Act.*]—*Held:* Dairy Produce Stabilisation Act of 1933 was not in conflict with sect. 92 of the Constitution if *McArthur* v. *Queensland* correctly stated the law to be that the Commonwealth was not bound by sect. 92, so that the Dairy Produce Act (Cth.) was validly enacted.—QUEENSLAND DAIRY PRODUCTS STABILISATION BOARD *v.* MUNRO (A. C.) & SONS PTY., LTD. (1937), Q. S. R. 347. —**AUS.**

sg. *Validity of Secret Commissions Prohibition Act,* 1919, *s.* 3.]—*Held:* the provisions of the Secret Commissions Prohibition Act, 1919 (N. S. W.), s. 3, were not invalid.—R. *v.* GATES, *Ex p.* MALING (1928), 41 C. L. R. 519; 2 A. L. J. 330.—**AUS.**

sh. *Power to alter Federal award.*]—When an award has been made by the Commonwealth Ct of Conciliation & Arbn. pursuant to Commonwealth Conciliation & Arbn. Act, 1904–1921, the Parliament of a State cannot alter the terms of the award, or confer or impose on the parties to it rights or obligations which are inconsistent with such terms.—CLYDE ENGINEERING CO., LTD. *v.* COWBURN, METTERS, LTD. & LEVER BROTHERS, LTD. *v.* PICKARD (1926), 37 C. L. R. 466; [1926] Argus L. R. 214.—**AUS.**

sk. *Federal award inconsistent with State law.*]—The Commonwealth Ct. of Conciliation & Arbn. has no jurisdiction under sect. 51 (xxxv.) to make an award inconsistent with a State law. The determination of a Wages Board empowered by a State Statute to fix a minimum rate of wages may be such a law; it depends upon the terms of the Statute under which it is made.—AUSTRALIAN BOOT TRADE EMPLOYEES FEDERATION *v.* WHYBROW & CO. (1910), 10 C. L. R. 266.—**AUS.**

sl. *State Act repugnant to Commonwealth Act—Invalid.*]—On an information for an offence under sect. 4 of Masters & Servants Act, 1902, N.S.W., deft. was convicted & fined for neglecting to fulfil the contract made between the informant, his employer, & himself in pursuance of an award, made by the Commonwealth Ct. of Conciliation & Arbn., which bound both parties & required them to perform the contract. The very same conduct by the same persons was therefore punishable, but somewhat differently, under Commonwealth Conciliation & Arbn. Act, 1904–1928, & the New South Wales Masters & Servants Act, 1902:—*Held:* the State Act was invalid, *pro tanto,* by virtue of sect. 109 of the Constitution.—*Ex p.* MCLEAN (1930), Argus L. R. 377; 4 A. L. J. 103; 43 C. L. R. 472.—**AUS.**

sp. *Masters & Servants Act,* 1902, *s.* 4.]—*Held:* sect. 4 of Masters & Servants Act, 1902, was inconsistent with the provisions of Commonwealth Conciliation & Arbn. Acts, 1904–1928, & was, to the extent of such inconsistency, invalid.—MCKECHNIE *v.* RAY (1931), 31 S. R. N. S. W. 67; 48 N. S. W. W. N. 12.—**AUS.**

sr. *Stamp duties — Receipts — For salary of federal officer.*]—Tasmanian Act (2 Edw. 7, No. 30), which prescribes *inter alia,* that from Jan. 1, 1903, there shall be levied in respect of . . . every receipt where the sum received amounts to £5 & under £50 . . . a stamp duty of 2*d.* must be construed so as not to apply to a receipt given by a federal officer in Tasmania for his salary, such receipt being required to be given by the Commonwealth law & practice regulating the dept. to which the officer belongs.—D'EMDEN *v.* PEDDER (1904), 1 C. L. R. 91.—**AUS.**

st. —— *Reconveyance—By Commonwealth.*]—The Commonwealth as registered proprietor of land which it had acquired under Lands Acquisition Act, 1906, reconveyed the land to the persons from whom it had been acquired:—*Held:* the Commonwealth was liable to pay stamp duty under Stamp Duties Act, 1898 (N.S.W.).—COMMONWEALTH *v.* NEW SOUTH WALES (1918), 25 C. L. R. 325.—**AUS.**

sw. *Bill for abolition of Legislative Council—Voting—Validity.*]—*Held:* a Bill for abolishing the Legislative Council was submitted to the electors within the meaning of sect. 7A of Constitution Act, 1902, if a vote of the whole of the electors upon the Bill was taken by the Electoral Commissioner on a day fixed by the Legislature not earlier than two months after the passing of the Bill through both Houses; further, the Bill was approved in accordance with sect. 7A if a majority of the electors voting on that day signified their approval of the Bill.—PIDDINGTON *v.* A.-G. (1935), 33 S. R. N. S. W. 317; 50 N. S. W. W. N. 108.—**AUS.**

sz. *Companies (Death Duties) Act,* 1901, *s.* 10.]—Sect. 10 of Cos. (Death Duties) Act, 1901, as amended by the Stamp Duties (Amendment) Act, 1931, is valid & its provisions are within the powers of the legislature of New South Wales.—A.-G. *v.* AUSTRALIAN AGRICULTURAL CO. (1934), 51 N. S. W. W. N. 197.—**AUS.**

sc. *Income tax.*]—Income Tax Act, 1924 (Que.) after making provision that the taxable income of a foreign co. shall be the amount of the profits made by the co. in Queensland, further provides by the second paragraph of sect. 14 (4) (iv) that "If such profits cannot, in the opinion of the Comr. be otherwise satisfactorily determined, the taxable income of the co. may be assessed by the Comr. at a sum which bears the same proportion to the total profits made by the co. as the sales made in Queensland bear to the total sales made by the co., or, if there are no

& by Act No. 5 of 1933, entitled the Constitution Further Amendment (Legislative Council Elections) Act, 1932. Act No. 2 of 1933 provided that the members of the Legislative Council, instead of being nominated by the Governor for life, should be elected for a period of twelve years by the members of the Legislative Council & the Legislative Assembly, voting at sittings of the respective houses by secret ballot; also, that there should be omitted from the Act of 1902, s. 16, which provided for the Governor being authorised by the Crown to summon the members by an instrument under the Great Seal. The Act of 1902 was further amended by inserting sect. 17A, which provided by sub-sect. (6) that the elections should be held & conducted " as may be provided by law," & by adding to sect. 7A a sub-sect. (7), which provided that where that phrase was used in the Act the law might be made as if sect. 7A (requiring a referendum) was not in force. The Bill for Act 2 of 1933 had been approved upon a referendum. Act 5 of 1933 provided for the conduct of elections held under Act 2 of 1933. The Bill, which had been passed by both houses when Act 2 of 1933 came into force, was not submitted to a referendum :—*Held :* (1) objections raised by applt. to the validity of the Acts were not sustainable as to Act 2 of 1933; (2) it was competent to the legislature to make the Legislative Council elective, & to provide a special electoral body; the members of the two houses when voting were not exercising the functions of members of their respective house; (3) the Bill had been duly submitted to the electors upon the referendum although no copy of it had been put before each elector, & although the electoral comr. had not inserted in the notification of the receipt of the writ a copy of the Bill, nor any statement annexed to the writ; (4) the deletion of sect. 16 of the Act of 1902 did not impinge upon any prerogative, right, or duty of the Crown to summon the elected members; as to Act 5 of 1933 (5), having regard to the provisions of Act 2 of 1933, it was not required to be submitted to a referendum, although it had been passed by both houses before Act 2 of 1932 came into force.—DOYLE *v.* A.-G. FOR NEW SOUTH WALES, [1934] A. C. 511; 103 L. J. P. C. 121; 151 L. T. 381; 50 T. L. R. 552, P. C.

191b. —— **Referendum—What amounts to.**]—DOYLE *v.* A.-G. FOR NEW SOUTH WALES, No. 191a, *ante*.

191c. —— **Machinery Act—Intra vires.**]—DOYLE *v.* A.-G. FOR NEW SOUTH WALES, No. 191a, *ante*.

192a. Bill relating to abolition of Legislative Council—Condition precedent to presentation.] —The Constitution Act, 1902, enacted by the legislature of New South Wales, was amended in 1929 by adding sect. 7A, which provided that no Bill for abolishing the Legislative Council should be presented to the Governor for His Majesty's assent until it had been approved by a majority of the electors voting upon a submission to them made in accordance with the section; & that the same provision was to apply to a Bill to repeal the section. In 1930 both houses of the legislature passed two Bills, one to repeal sect. 7A & the other to abolish the Legislative Council. By Colonial Laws Validity Act, 1865 (c. 63), s. 5, the legislature of the State had full power to make laws respecting the constitution, powers & prodecure of the legislature, provided that the laws should have been passed in such " manner and form " as might from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law in force in the colony :—*Held :* the whole of sect. 7A of the Constitution Act, 1902, was within the competence of the legislature of the State under Colonial Laws Validity Act, 1865 (c. 63), s. 5; the provision that Bills of the nature stated must be approved by the electors before being presented was a provision as to " manner & form " within the proviso; & accordingly the Bills could not lawfully be presented unless & until they had been approved by a majority of the electors voting.—A.-G. FOR NEW SOUTH WALES *v.* TRETHOWAN, [1932] A. C. 526; 101 L. J. P. C. 158; 147 L. T. 265; 48 T. L. R. 514; 76 Sol. Jo. 511, P. C.

Annotation :—**Refd.** Doyle *v.* A.-G. for New South Wales, [1934] A. C. 511.

---

sales, in the same proportion as the total revenue derived from Queensland bears to the total revenue derived by the co.";—*Held :* the second para. of sect. 14 (4) (iv.) did not constitute an interference with trade & commerce among the States of the Commonwealth & did not infringe the provisions of sect. 92 of the Constitution.—AUSTRALIAN SCALE CO., LTD. *v.* COMR. OF TAXES (1935), 53 C. L. R. 534; 41 Argus L. R. 353; 3 A. T. D. 171; 9 A. L. J. 30; [1935] Q. S. R. 159.—**AUS.**

sl. *Bill not reserved—Emergency.*]—A petitioner, being the recipient of a superannuation allowance from the Crown which had been reduced by the Financial Emergency Acts, 1931, & succeeding years, claimed that such Acts had not been validly assented to as the Bills should have been reserved for the signification of His Majesty's pleasure, & that consequently the deductions from his pension were improperly made. Each Bill in question had been assented to by His Excellency the Lieutenant-Governor, after he had declared himself to be satisfied that an urgent necessity existed requiring that such Bill be brought into immediate operation, & that the Bill was not repugnant to the law of England, or inconsistent with treaty obligations :—*Held :* under the Australian States Constitution Act, 1907 (Imperial), the Bills were not required to be reserved, & had been properly assented to by the Lieutenant-Governor.—BURT *v.* THE CROWN, [1935] W. A. L. R. 68.—**AUS.**

sk. *Legislation relating to assets available in bankruptcy.*]—When State legislation invalidates in favour of his creditor a disposition by the bkpt. which, otherwise, would form part of his estate, what it in substance does is to nullify, in the event of bkpcy., a transaction which depends for its efficacy entirely upon State law. The State legislation, in other words, withdraws from the transaction the support of the law lying within the State legislative power contingently upon an adjudication of bkpcy. By doing so, it makes way for the vesting provision of the Federal law to operate upon property which, otherwise, would have been alienated by the bkpt. It thus swells the assets which it is the policy of the bkpcy. law to make available for debts. There is nothing in such an enactment *prima facie* repugnant to a general law of bkpcy.—PRICE *v.* PARSONS (1936), 54 C. L. R. 332; 8 A. B. C. 252; 42 Argus L. R. 115; 9 A. L. J. 421.—**AUS.**

sm. *Gift Duty Act*, 1926 (*Q.*).]—Domicil in a territory constitutes a sufficient connection with that territory to enable its legislature to impose a tax on personal property situated outside the territory of persons so domiciled. Consequently sect. 3 of the Gift Duty Act of 1926 (Q.) is a valid exercise of the powers of the Queensland Parliament.—STAMPS COMR. (Q.) *v.* COUNSELL (1937), 57 C. L. R. 248; 43 Argus L. R. 420; 11 A. L. J. 239.—**AUS.**

sp. *Dried Fruits Act*, 1928 (*Vict.*). *s.* 18.]—*Held :* this sect. was not *ultra vires* as imposing a duty of excise contrary to sect. 90 of the Constitution.—HARTLEY *v.* WALSH (1937), 57 C. L. R. 372; 43 Argus L. R. 480; 11 A. L. J. 147.—**AUS.**

197. *Add. Annotations :*—**Refd.** Croft *v.* Dunphy (1932), 48 T. L. R. 652 ; James *v.* Commonwealth of Australia, [1936] 2 All E. R. 1449.

199. *Add. Annotation :*—**Refd.** Bhagchand Dagdusa Gujrathi *v.* Secretary of State for India in Council (1927), 43 T. L. R. 617.

PART II. SECT. 3, SUB-SECT. 4.—C.

sj. *Samoa Act,* 1921—*Valid.*]—TAGALOA *v.* INSPECTOR OF POLICE, FUATAGA *v.* INSPECTOR OF POLICE, [1927] N. Z. L. R. 883.—**N. Z.**

sn. *Divorce & Matrimonial Causes Amendment Act,* 1930, *s.* 3—*Intra vires.*]—Subject to the limitations imposed by the Legislature of Great Britain, the New Zealand Legislature enjoys complete independence & may legislate as it pleases ; & Divorce & Matrimonial Causes Amendment Act, 1930, s. 3, being for the peace, order, & good government of the country, & not being repugnant to any statute law relating to New Zealand by the Imperial Legislature, or ambiguous so as to permit the rules of international law to prevail, is *intra vires* the New Zealand Legislature. A wife petitioning under that statute for a divorce from her husband, who was never resident or domiciled in New Zealand : —*Held :* entitled to a decree *nisi.*—WORTH *v.* WORTH, [1931] N. Z. L. R. 1109.—**N.Z.**

sp. *Power to legislate for mandated territory of Western Samoa.*]—*Held :* New Zealand had been constituted the mandatory Power of Western Samoa, & the Samoa Act, 1921, was a valid exercise of jurisdiction effectively conferred on the legislature of New Zealand by Order in Council of His Majesty the King, made in pursuance of the Foreign Jurisdiction Act, 1890, notwithstanding the limits of jurisdiction prescribed by the New Zealand Constitution Act, 1922.—TAGALOA *v.* INSPECTOR OF POLICE, FUATAGA *v.* INSPECTOR OF POLICE, [1927] N. Z. L. R. 883.—**N.Z.**

sr. *Mandated territory—Samoa Act,* 1921, *s.* 45.]—Sect. 45 of Samoa Act, 1921, is *intra vires* the New Zealand Legislature because by the mandate New Zealand has full & exclusive power of administration & legislation over Samoa, subject only to the terms of the mandate. Therefore, the Parliament of New Zealand may delegate all or any of its powers to the Governor-General in Council.—NELSON *v.* BRAISBY (No. 2), [1934] N. Z. L. R. 559 ; G. L. R. 433.—**N.Z.**

PART II. SECT. 3, SUB-SECT. 4.—D.

h i. —— —— *Distribution of dividends.*]—The tax imposed upon financial cos. by Transvaal Provincial Ordinance 8 of 1923, s. 3, of one shilling for each pound of dividend distributed after a certain date, is a direct tax *intra vires* the Provincial Council under South Africa Act, s. 85 (1).—JOHANNESBURG CONSOLIDATED INVESTMENT CO., LTD. *v.* TRANSVAAL PROVINCIAL ADMINISTRATION. [1925] App. D. 477.—**S. AF.**

h ii. —— —— *Receipt of premiums.*]—The tax imposed by Tax Ordinance of 1923 (Transvaal) upon insurance cos., on premiums received, is a direct tax *intra vires* the Provincial Council under South Africa Act, s. 85 (1).—INLAND REVENUE COMR. *v.* ROYAL EXCHANGE ASSURANCE CO., [1925] App. D. 223.—**S. AF.**

h iii. —— *Control of trading licences.*]—*Held :* Transvaal Provincial Ordinance 12 of 1926 was *ultra vires* the Provincial Council.—RELOOMAL *v.* RECEIVER OF REVENUE, [1927] App. D. 401.—**S. AF.**

k i. —— *Proclamation of local areas.*]—Natal Provincial Ordinance 7 of 1923, which confers on the Administrator power to proclaim local areas & provides for the election of committees to function therein, such committees being established with the sole object of carrying out Public Health Act 36 of 1919, & not of creating any form of local self-government, is *ultra vires* the Provisional Council under South Africa Act, s. 85 (6).—ISIPINGO HEALTH COMMITTEE *v.* JADWAT, [1926] App. D. 113. —**S. AF.**

k ii. —— *Municipal franchise.*]—Ord. 19. 1924, s. 13 (1) :—*Held : intra vires.*—ABRAHAM *v.* DURBAN CORPN. (1926), 47 N. L. R. 356.—**S. AF.**

k iii. —— *Enrolment of burgesses.*]—*Held :* Natal Ordinance 19 of 1924, s. 13 (1), was *intra vires* the Provincial Council.—ABRAHAM *v.* DURBAN CORPN., [1927] App. D. 444.—**S. AF.**

k iv. —— *Qualification of attorneys.*]—The proviso to R. S. C., Ord. 32, r. 47, as originally framed in 1909 provided that any person admitted as an attorney by virtue of qualifications acquired by him elsewhere than in South Africa should not be entitled to practise as an advocate until he had served under articles in Natal for at least 18 months. In 1923 the words "Province of Natal," were substituted for "South Africa" by a rule framed by Judge-President & Judges of Natal Provincial Division : — *Held :* the amending rule was not *ultra vires* as being repugnant to sect. 115 of South Africa Act. — INCORPORATED LAW SOCIETY OF NATAL *v.* VAN AARDT, [1930] N. L. R. 69 ; *affd.,* [1930] App. D. 385.—**S. AF.**

sk. *Rhodesia—Taxation of non-residents carrying on business within territory.*]—Under the power conferred upon the legislature of Southern Rhodesia by the Order in Council of 1898, s. 35, it is *intra vires* for that legislature to levy a tax upon income accruing to a non-resident from a source not within the territory, where such non-resident carries on business within the territory.—RHODESIA RYS. *v.* COMR. OF TAXES, [1925] App. D. 438.—**S. AF.**

sl. *Transkeian Territories — Immigration of Asiatics.*]—*Held :* Proclamation 264 of 1904 was *ultra vires.*—R. *v.* BARMANIA, [1927] App. D. 537.—**S. AF.**

sm. *Qualifications of voters—Powers of Union Parliament.*]—The powers of the Union Parliament to prescribe the qualifications of voters are derived from sect. 35 of the South Africa Act & are strictly limited by the provisions of that sect. By that sect. the Union Parliament, as usually constituted, is vested with plenary powers of making laws dealing with that subject-matter except in the cases mentioned in the two sub-sects. These exceptions only arise where the new law would have the effect of disqualifying a person on the ground of race or colour only.—R. *v.* NDOBE, [1930] App. D. 484.—**S. AF.**

sp. *Status of Provincial Councils.*]—The status of Provincial Councils under the South Africa Act is analogous to that of the Canadian Provincial Legislatures. . . . The fact that under the South Africa Act Provincial statutes may be overriden by a Union statute does not make the Provincial Councils subordinate legislatures to the Union Parliament. Within the scope of their authority their powers are as plenary as those of the Dominion Provincial legislatures.—WILLIAMS *v.* JOHANNESBURG MUNICIPALITY, [1915] T. P. D. 106.—**S. AF.**

sr. *Provincial legislation—Presumption of validity.*]—Where an Ordinance passed by a Provincial Council is not patently invalid & its invalidity is not in issue, the ct. will assume it to be valid.—JOHANNESBURG MUNICIPALITY *v.* MASEROWITZ, [1914] T. P. D. 439.—**S. AF.**

st. —— *Proof of.*]—The statutory law of one Province is a matter of fact & not of law in the cts. situated in another Province, & when material must be alleged & proved as fact. *Semble :* the production of a copy of a statute of one Province would be sufficient proof thereof in the cts. situated in another Province.—ISMAIL *v.* SKRADLING, [1911] T. P. D. 428.—**S. AF.**

sv. —— *Extent of powers.*]—The power of regulation of horse-racing & betting conferred by Act of Parliament or a Provincial Council does not empower the Council to prohibit betting in a partial but most substantial manner, *e.g.* by making betting otherwise than by a totalisator a criminal offence.—R. *v.* WILLIAMS, [1914] App. D. 460.—**S. AF.**

sw. —— ——.]—Sect. 114 of Ord. 9 of 1912, which gives power to a magistrate to state a case where a bye-law or regulation is in question, is *ultra vires* of the Transvaal Provincial Council as conferred by sect. 85 of South Africa Act, 1909.—GERMISTON MUNICIPALITY *v.* ANGEHRN & PIEL, [1913] T. P. D. 135.—**S. AF.**

sz. —— ——.]—Sects. 88, 90, 91 of Ord. 9 (Transvaal) of 1912, so far as they relate to cycle dealers, are *ultra vires* the Provincial Council of the Transvaal under sects 85 (1), 89 of the South Africa Act, as that Act confers no power on Provincial Councils to regulate trade. A power to control local trade, commerce or industries is not a necessary or incidental function of local government.—MASEROWITZ *v.* JOHANNESBURG TOWN COUNCIL, [1914] W. L. D. 139.—**S. AF.**

sb. —— ——.]—Sub-sects. 32, 35 of sect. 38 of Ord. 9 of 1912, empower municipal councils to make bye-laws for regulating, restricting, & licensing the use of motor cars, within the municipality & for licensing & regulating private vehicles :—*Held :* (1) the sub-sects. were *ultra vires* the Provincial Council ; (2) the municipal council in making such bye-laws was entitled to charge a fee for such licence. —WILLIAMS *v.* JOHANNESBURG MUNICIPALITY, [1915] T. P. D. 362.—**S. AF.**

sd. —— ——.]—*Held :* the provisions of an Ordinance relating to the disqualification for the franchise of persons of non-European origin were *intra vire,* & the fact that the effect was to discriminate between one race & another did not affect its validity. —ABRAHAM *v.* DURBAN CORPN., [1927] App. D. 444.—**S. AF.**

sf. *Mandated Territory of South-West Africa—Liability for Protectorate Loans.*]—Assuming that prior to the Treaty of Versailles the Protectorate of German South-West Africa was a juristic entity separate from the German Reich & that that entity was liable in respect of Protectorate loans raised under the German Act of May 18, 1908, the Mandated Territory of South-West Africa is not the same juristic entity, & is consequently not liable in respect of such loans.—VEREIN FÜR SCHUTZGEBIETSANLEIHEN E. V. *v.* CONRADIE, N. O., [1937] A. D. 113.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 4.—E.

so. *Crown grants.*]—Crown Grants Act, XV. of 1895, which enacts that grants by the Crown of estates unknown to the law are not invalid, is not *ultra vires* the Indian legislature.—SECRE-

200a. Appointment — What constitutes.] — A.-G. FOR ONTARIO *v.* A.-G. FOR CANADA, No. 181a, *ante*.

200b. —— Rights of existing judge—On constitution of new court.]—Judicature Act, 1919, of Alberta, s. 6, requires for its working the appointment of two Chief Justices, one of the Appellate Div., & the other of the Trial Div., of the Supreme Ct., & the fact that before the passing of the Act the Chief Justice was Chief Justice of the Supreme Ct. did not necessarily entitle him to be, or to be appointed, Chief Justice of the Appellate Div., & his non-appointment to that office did not constitute an infringement of any legal right to which he was entitled.—SCOTT *v.* A.-G. FOR CANADA (1923), 40 T. L. R. 6, P. C.

205a. Right to hold office for life—Members of Board of Review under Australian Income Tax Assessment Acts, 1922-25—Commonwealth of Australia Constitution Act, 1900, ss. 71, 72.]—An Act of the Commonwealth Parliament should not be held to infringe the Constitution of Australia unless it is clear beyond reasonable doubt that it does so. In that view, the Board of Review created by sect. 41 of the Federal Income Tax Assessment Act, 1922–1925, to review the decisions of the Comr. of Taxation, & whose members are to hold office for seven years, is not a ct. exercising the judicial power of the Commonwealth within sect. 71 of the Constitution of Australia, but is an administrative tribunal. Although it became unnecessary so to decide, the Judicial Committee desired to make it quite clear that, as at present advised, they were not prepared to assent to the view that it was competent, either with or without legislation of the Federal Parliament, to appoint justices of the High Ct., or of the other cts. created under sect. 71 of the Constitution, with other than a life tenure of their office, subject to the power of removal contained in sect. 72.—SHELL CO. OF AUSTRALIA, LTD. *v.* FEDERAL COMR. OF TAXATION, [1931] A. C. 275; 100 L. J. P. C. 55; 144 L. T. 421; 47 T. L. R. 115, P. C.

Annotation :—**Consd.** Martineau (O.) & Sons, Ltd. *v.* Montreal (City), [1932] A. C. 113.

208. *Add. Annotation :*—**Reld.** Palmer *v.* Crone, [1927] 1 K. B. 804.

TARY OF STATE FOR INDIA *v.* RAJA PARTHASARATHY APPA RAO (1926), I. L. R. 49 Mad. 349.—**IND.**

sp. *Taxation.*]—*Held :* Income Tax Act, s. 67, was not *ultra vires*.—DR. R. N. SINGHA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1927), I. L. R. 5 Ran. 825.—**IND.**

sq. *Acts of local Legislatures—Extent of operation.*]—The United Provinces Ct. of Wards, like the Acts of many other local Legislatures dealing with the local Ct. of Wards, has no effect beyond the jurisdiction of its own Legislature. Civil Procedure Code (Act V. of 1908) gives a local Act local validity & special procedure validity in its own sphere. No local Legislature can prescribe procedure for any ct. beyond its territorial jurisdiction, & any Act passed by a local Legislature for its own cts. cannot be enforced beyond those territories.—CHHATTOO LAL MISSER *v.* NARAINDAS BALNATH PRASAD (1928), I. L. R. 56 Calc. 704.—**IND.**

sr. *Bengal Criminal Law Amendment Act, 1930—Validity.*]—The Bengal Criminal Law Amendment Act, 1930, does not contravene the Government of India Act, 1915 (c. 61).—JITENDRANATH GHOSH *v.* CHIEF SECRETARY TO BENGAL GOVERNMENT, [1932] I. L. R. 60 Calc. 364.—**IND.**

PART II. SECT. 4, SUB-SECT. 1.—A.

o i. —— *Powers of judge conferred on master by Province—Ultra vires.*]—Judges are to be appointed by the Governor-General in Council, under sect. 96 of the B. N. A., & a Provincial statute conferring upon a master the powers of a judge is therefore *ultra vires*.—COLONIAL LOAN & INVESTMENT CO. *v.* GRADY (1915), 24 D. L. R. 176; 8 Alta. L. R. 496.—**CAN.**

o ii. —— *Who is "judge"—Not master.*]—A master is not a judge so as to require appointment by the Governor-General in Council within sect. 96 of B. N. A. Act.—POLSON IRON WORKS *v.* MUNNS (1915), 24 D. L. R. 18.—**CAN.**

o iii. —— —— *Not judge of Surrogate Court.*]—Judges of Surrogate Cts. are not within sect. 96 of B. N. A. Act, & may therefore be appointed by the Provincial Legislatures.—RIMMER *v.* HANNON (1921), 60 D. L. R. 637.—**CAN.**

o iv. —— *Whether presumed—Commissioner with judicial powers.*]—To appoint a comr. under Mining Act (Ont.), s. 123, & then invest him with powers exercisable by a superior ct., as that term is to be understood in B. N. A. Act, is to enable the provincial authority in effect to appoint a judge of a superior ct., which is beyond its power; & it could not be presumed that the Governor-General had given the provincial appointee a patent designating him a judge of a superior ct.—*Re* MCLEAN GOLD MINES, LTD. *v.* A.-G., [1923] 1 D. L. R. 10; 54 O. L. R. 573.—**CAN.**

o v. ——.]—COLONIAL LOAN & INVESTMENT CO. *v.* GRADY (1915), 24 D. L. R. 176; POLSON IRON WORKS *v.* MUNNS (1915), 24 D. L. R. 18; RIMMER *v.* HANNON (1921), 60 D. L. R. 637.—**CAN.**

o vi. —— *Judges of Superior Court—Board of Public Utility Commissioners.*]—The Board of Public Utility Comrs. established under Public Utilities Act, 1923, is not a ct. within sect. 96 of B. N. A. Act. It is an administrative, not a judicial, body, even though it may have *quasi*-judicial duties to perform.—BOARD OF PUBLIC UTILITY COMRS. *v.* MODEL DAIRIES, [1936] 3 W. W. R. 601; [1937] 1 D. L. R. 95; 68 Can. C. C. 148; 6 F. L. J. (Can.) 228.—**CAN.**

st. *Remuneration — Restrictions on.*]—*Held :* Judges Act, R. S. C. 1906, s. 34, has no application to the remuneration of a judge whose appointment to perform the duty or service was made before the enactment of that sect.—*Re* JUDGES ACT, [1923] 2 D. L. R. 604; 52 O. L. R. 105.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.—A.

sw. *Canada—Districtcourt.*]—Except as to matters for which particular statutory directions provide otherwise, a district ct. has jurisdiction over persons & property throughout the province & may entertain an action irrespective of where within the province the cause of action arose, the property is situated, or defts. reside.—POLAR AERATED WATER WORKS *v.* WINNIKOFF, [1921] 3 W. W. R. 370; 62 D. L. R. 403; 17 Alta. L. R. 150.—**CAN.**

sx. —— ——.]—When a district ct. action is not commenced in the ct. of that district in which deft. or one of defts., dwells or carries on business, the ct. has now no jurisdiction unless the action is one with respect to which the District Courts Act or some particular statutory direction provides otherwise, or unless deft. by his conduct has submitted to the jurisdiction.—KULYK *v.* KLEIN, [1929] 4 D. L. R. 159; 2 W. W. R. 334; 24 Alta. L. R. 200.—**CAN.**

sb. —— *Exchequer Court.*]—Exchequer Ct. Act, s. 22 (*c*), means that where the subject-matter of the action primarily, but not incidentally, concerns a patent of invention, trademark or copyright, the ct. may grant any appropriate remedy known to the common law or equity.—MCCRACKEN *v.* WATSON, [1932] Ex. C. R. 83.—**CAN.**

sc. —— ——.]—CREAMETTE CO. *v.* FAMOUS FOODS, LTD., [1933] Ex. C. R. 200.—**CAN.**

sf. —— ——.]—Exchequer Ct. in a civil action has no jurisdiction to try the issue raised by pleading the Dominion Food & Drugs Act.—CREAMETTE CO. *v.* FAMOUS FOODS, LTD., [1933] Ex. C. R. 200.—**CAN.**

sz. *Prince Edward Island.*]—The ct. of last resort in Prince Edward Island is the Supreme Ct. in that province.—KELLY *v.* SULLIVAN (1876), 1 S. C. R. 1.—**CAN.**

sl. *Northern Ireland — Power to make order against "neighbouring counties"—Limited to counties in Northern Ireland.*]—Under Grand Jury (Ireland) Act, 1836, s. 140, the expression "neighbouring counties" must be taken to mean "neighbouring counties" in Northern Ireland. The jurisdictions respectively set up by Govt. of Ireland Act, 1920, are mutually independent & exclusive of each other within the respective areas.—PLUMB & ORR *v.* FERMANAGH COUNTY COUNCIL, [1923] 2 I. R. 54.—**IR.**

sm. *High Court of Australia—Proceedings involving the interpretation & application of Commonwealth of Australia Constitution Act, s. 92.*]—The question of the validity of determinations made pursuant to the Dried Fruits Acts fixing the quantity of dried fruits which might be marketed within the Commonwealth raises an issue directly involving the interpretation & application of s. 92 of the Constitution, & the question of the validity of acquisitions of dried fruits pursuant to those Acts, also, raises an issue directly involving the interpretation of the Constitution, & an action raising those questions is, therefore, within the

216a. Exchequer Court — Revenue bonds.] — Sect. 30 (*d*) of Exchequer Ct. Act of Canada, which provides that that ct. shall have original jurisdiction " in all other actions & suits of a civil nature . . . in which the Crown is pltf. or petitioner," should be read, in view of the preceding sub-sects., as confined to actions & suits in relation to some subject-matter in regard to which legislation is within the competence of the Dominion. So read the provision is *intra vires* under B. N. A. Act, 1867 (c. 3), s. 101, & gives the Exchequer Ct. jurisdiction in an action by the Crown upon a bond entered into pursuant to the Inland Revenue Act of Canada upon the withdrawal of goods from a bonded warehouse for the purpose of export. —CONSOLIDATED DISTILLERIES, LTD. *v.* R., [1933] A. C. 508; 102 L. J. P. C. 66; 149 L. T. 318; 49 T. L. R. 506, P. C.

228a. —— Appeal by local government against acquittal — Power to review facts.] — The Indian Code of Criminal Procedure, which provides (*inter alia*) that an appeal by a local government through the public prosecutor lies from any order of acquittal passed by any ct. other than a High Ct., & that such an appeal (the trial not being by jury) will lie upon a matter of fact, contains no indication of any limitation or restriction on the High Ct. in the exercise of its powers as an appellate tribunal. The High Ct. has, under the Code, full power to review at large the evidence on which the order of acquittal was founded & to reach, if it think fit, the conclusion that on that evidence the order of acquittal should be reversed.—SHEO SWARUP *v.* KING-EMPEROR (1934), 51 T. L. R. 10; 78 Sol. Jo. 600, P. C.

228b. —— To increase sentence.]—CHUNBIDYA *v.* R. (1934), 78 Sol. Jo. 897.

228c. Suit against sovereign prince.] —Pltf. claimed damages in regard to certain contracts under which he was to supply sleepers for applt. railway. His suit was filed against the Baroda State Railway through its manager & engineer-in-chief. Deft. pleaded that the suit was not filed against the proper party, as the railway was owned by H.M. The Gaekwar of Baroda, a sovereign prince, & was man-

---

original jurisdiction of the High Ct. conferred by Judiciary Act, 1903-1926, s. 30.—JAMES *v.* THE STATE OF SOUTH AUSTRALIA (1927), 40 C. L. R. 1.—**AUS.**

sn. —— *To make order refused by court of co-ordinate jurisdiction.*]—JONES *v.* JONES (1928), 40 C. L. R. 315; [1928] V. L. R. 112; [1928] Argus L. R. 45.—**AUS.**

so. —— *Proceedings between residents of different States—One plaintiff & defendant resident in same State.*]—An action instituted in the High Ct. in which there is on each side of the record a resident of the same State who is a necessary party to the action is not a matter between residents of different States within the Constitution, s. 75, & the High Ct. has no jurisdiction to entertain it.—WATSON & GODFREY *v.* CAMERON (1928), 40 C. L. R. 446; [1928] Argus L. R. 44.—**AUS.**

sp. —— *Actions between States—Relating to boundaries.*]—The boundary between two States having been fixed by an Imperial Act of Parliament before federation:—*Held:* the High Ct. had jurisdiction by sect. 75 of the Constitution to entertain an action by one of these States against the other seeking a declaration that certain land adjoining that boundary & in the *de facto* occupation of the other State formed part of the territory of the former State.—SOUTH AUSTRALIA *v.* VICTORIA (1911), 12 C. L. R. 667; *on appeal*, [1914] A. C. 283, P. C.—**AUS.**

sr. —— *Tort—Action by Commonwealth against State.*]—*Held:* the High Ct. has jurisdiction to entertain an action for a tort brought by the Commonwealth against a State without the consent of that State.—COMMONWEALTH *v.* NEW SOUTH WALES (1923), 32 C. L. R. 200.—**AUS.**

st. —— *No right of appeal from Central Court of New Guinea.*]—Sect. 103B of Mining Ordinance, 1922-1926 (N.G.), as inserted by sect. 18 of Mining Ordinance (No. 2), 1926, provides that on the hearing of an appeal from the Warden's Ct. to the Central Ct. " the Central Ct. may make an order reversing or varying the decision of the Warden's Ct., or dismissing the appeal, & all such orders shall be final & conclusive on the parties ":—*Held:* by the whole ct., as such orders are " final & conclusive," leave to appeal therefrom to the High Ct. cannot be granted under sect. 24 of the Judiciary Ordinance, 1921-1927 (N. G.).—EDIE CREEK PTY. *v.* SYMES (1929), 43 C. L. R. 53. —**AUS.**

sv. —— *Principles applied.*]—In an action for libel in the Supreme Ct. of New South Wales a verdict had been given for deft. which, on appeal by pltf. had as to one count been set aside & a new trial ordered. Deft. applied to the Supreme Ct., under rule 2 of the Order in Council of Apr. 2, 1909, for leave to appeal to the Privy Council, but leave was refused:—*Held:* leave to appeal to the High Ct from the order of the Supreme Ct. directing a new trial should be refused.—SMITH'S WEEKLY PUBLISHING CO. *v.* MYERSON (1924), 34 C. L. R. 141.—**AUS.**

sw. —— ——.]—Special leave to appeal in cases involving less than the appealable amount will not be granted by the High Ct. as of course, but the conditions laid down by the Privy Council will be considered.—NORTON *v.* TAYLOR (1905), 2 C. L. R. 291.—**AUS.**

sy. —— ——.]—The High Ct. has no jurisdiction to entertain an application by way of appeal for a new trial after a verdict of a jury in an action in the Supreme Ct. of a State exercising federal jurisdiction.—COMMONWEALTH *v.* BRISBANE MILLING CO. (1916), 21 C. L. R. 559.—**AUS.**

sz. —— ——.]—The jurisdiction conferred by Lands Clauses Consolidation Act, 1881 (S. A.), ss. 5-10, is conferred, not upon the Supreme Ct., but upon a judge of the Supreme Ct. as a *persona designata* with a right of appeal to the Full Ct. of the Supreme Ct. & therefore, a decision of a judge exercising the jurisdiction so conferred is not a judgment of the Supreme Ct. within sect. 73 of the Constitution from which an appeal will lie as of right to the High Ct.—MACDONALD *v.* SOUTH AUSTRALIA RY. COMRS. (1911), 12 C. L. R. 221.—**AUS.**

sb. —— ——.]—Conviction quashed by Supreme Ct. Special leave to appeal granted, & motion to rescind special leave refused, notwithstanding that accused was no longer in custody. —A.-G. FOR NEW SOUTH WALES *v.* JACKSON (1906), 3 C. L. R. 730.—**AUS.**

sd. —— ——.]—The High Ct. has jurisdiction to entertain an appeal from the Supreme Ct. of a State in a case of *habeas corpus*.—A.-G. FOR COMMONWEALTH *v.* AH SHEUNG (1906), 4 C. L. R. 949.—**AUS.**

PART II. SECT. 4, SUB-SECT. 2.—J.

228 ii. —— —— *" Suit for land."*]—HATIMBHAI HASSANALLY *v.* EDULJEE DINSHAW (1927), I. L. R. 51 Bom. 516.—**IND.**

c i. —— *At Calcutta—To direct appellant to Privy Council to provide funds to enable minor to be represented.*]—The High Ct. is not entitled after the final admission of a Privy Council appeal to make an order directing applt. in the Privy Council case to put the guardian of the minor resp. in funds to have the case argued on behalf of the minor before the Judicial Committee.—BIR BIKRAM KISHORE MANIKYA *v.* ALI AHAMAD (1927), I. L. R. 55 Calc. 758.—**IND.**

c ii. —— *Allahabad.*]—The inherent powers of the Supreme Ct. of Calcutta were not conferred on the Allahabad High Ct. by the Indian High Courts Act, 1861.—MAHANT SHANTANAND GIR *v.* MAHANT BASUDEVANAND GIR (1930), I. L. R. 52 All. 619.—**IND.**

sp. *Jurisdiction of Supreme Court of Bengal—Limitation to British subjects—Who are.*]—Sect. 14 of 13 Geo. 3, c. 63, confines the jurisdiction of the Supreme Ct. beyond the limits of Calcutta to British subjects. In the early statutes relating to India, the words " British subject " mean a subject of the King of British birth.—*Re* PHANINDRA-CHANDRA SET (1930), I. L. R. 58 Calc. 919.—**IND.**

sr. *Foreign courts—What included.*] —In the contemplation of the general law of British India there are only two kinds of cts.—British Indian Cts & Foreign Cts.—& whatever is not a British Indian Ct. is a Foreign Ct. Therefore, *quoad* the cts. of British India, the cts. of foreign countries, British Colonies, & assigned tracts like Secunderabad stand upon an equal footing as Foreign Cts.—SECUNDERABAD OFFICIAL RECEIVER *v.* LAKSHMINAREYANA (1930), I. L. R. 54 Mad. 727.—**IND.**

sw. *Civil courts in Burma—Exclusive jurisdiction over civil rights.*]—The Civil Cts. as constituted by law in Burma alone are vested with jurisdiction to determine disputes respecting civil rights as cts. of law, & will remain so vested unless and until then jurisdiction is abrogated by a statutory enactment passed by an authority duly constituted in that behalf.—U PYINNYA THIHA *v.* U OTTAMA (1935), I. L. R. 13 Man. 648. —**IND.**

aged by his Govt The trial judge recorded the admission by pltf. that the railway was neither a statutory railway nor a co. railway, but was owned & managed by the Gaekwar of Baroda, whom the pltf. had declined to make a deft. He made a decree in pltf.'s favour as he held that the railway was a corpn. within the Civil Procedure Code, 1908, & could be sued in its own name through the head of the railway department. Pltf. died before appeal & the present resps. were his heirs & representatives. On appeal the High Ct. came to the same conclusion & held that deft. railway was a corpn. of which the Gaekwar was the owner, & the owner of the corpn. carried on business under an assumed name & the suit therefore could be instituted against that assumed name without infringing the provisions of sect. 86 of the Civil Procedure Code :—*Held :* there was no evidence to support the finding that the railway was a legal entity or a corpn. though its owner was one person, the Gaekwar, & not several persons, & it was not capable of being sued as a corpn. Two notifications by the Gaekwar, No. 77 dated Apr. 16, 1922, & No. 92 dated June 17, 1922, afforded no evidence that the Gaekwar intended to make the railway administration a legal entity, or to establish it as a corpn. The suit was in fact, though not in form, a suit against the Gaekwar, & if the judgments of the cts. in India were allowed to stand they would have far-reaching results & might have the effect of nullifying the provisions of sects. 86 & 87 of the Civil Procedure Code, 1908, allowing suits to be instituted against a sovereign prince, but only with the consent of the Governor-General, which had not been obtained. The provisions of those sections were statutory & imperative & could not be waived by the Gaekwar as suggested. The Gaekwar of Baroda was a ruling prince within the meaning of sects. 86 & 87 of the Indian Civil Procedure Code, 1908, & the suit was not maintainable in the cts. of British India as no certificate permitting the bringing of the suit had been obtained under sect. 86 (1) of the Code & could not have been obtained as none of the conditions laid down in sect. 86 (2) (*a*), (*b*) & (*c*) were applicable in this case.—GAEKWAR BARODA STATE RAILWAY *v.* HAFIZ HABIB-UL HAQ (1938), 107 L. J. P. C. 46 ; 159 L. T. 294 ; 54 T. L. R. 618 ; 82 Sol. Jo. 392, P. C.

234a. Court of civil judge of Secunderabad—Limitation of action.]—Applt. sued resps. in the ct. of the civil judge at Secunderabad to recover money lent to a deceased relative. Both the borrower & the alleged surety & their representatives were residents in Hyderabad, in which the civil judge's ct. had no jurisdiction. If the suit had been brought in the Nizam's ct. at Hyderabad, it would have been barred by Stat. Limitations, but, in the Secunderabad ct. foreign residence could be claimed by way of exemption from limitation. Judgment of the Resident at Hyderabad dismissing the suit affirmed, no part of the cause of action having arisen within the local limits of the ct. of the civil judge at Secunderabad.—RAI BAHADUR BANSILAL ABIRCHAND *v.* GHULAM MAHBUB KHAN (1925), 42 T. L. R. 5, P. C.

K. Other Particular Courts.

234b Bechuanaland Protectorate — Magistrates' Court—Limited to criminal matters.]—By a proclamation issued in 1891 pursuant to Foreign Jurisdiction Act, 1890 (c. 37), Magistrates' & other cts. were established in the Bechuanaland Protectorate. By clause 8 the jurisdiction of the cts. was not to extend to any matter in which natives only were concerned, unless exercise of the jurisdiction was necessary in the interests of peace, or for the prevention or punishment of acts of violence. By clause 9 where jurisdiction was exercised the decision was to follow the laws & customs of the natives concerned, unless those laws & customs were incompatible with peace, order, & good government. Three natives were parties to an armed & murderous attack upon their tribal chief. As punishment the chief, after consulting & with the approval of his native council, caused their houses to be burnt. The action of the chief was in accordance with the custom of the tribe in the case of an armed rebellion. Two of the natives were convicted by a Magistrate of attempted murder, & sentenced to imprisonment ; the sentences were reduced, as the houses of the accused had been burnt. Subsequently the three natives brought civil suits in the Magistrates' ct. against the chief for damages in respect of the house burning, & the chief counterclaimed :—*Held :* the ct. had no jurisdiction in the civil suits having regard to clause 8 of the proclamation, as the matter was one in which natives only were concerned, & there was no evidence of the probability of any further breach of the peace or acts of violence.

Semble : the custom of house burning, above referred to, was incompatible with peace, order, & good government within the meaning of clause 9.—KHAMA *v.* RATSHOSA, [1931] A. C. 784 ; 100 L. J. P. C. 229 ; 145 L. T. 657, P. C.

234c. Lagos—District Court—Jurisdiction of commissioner—Validity of order of Chief Justice.]—Applt. was charged in the District Ct. of Lagos (*a*) with forging a Govt. tender, & (*b*) with fraudulently uttering the forged tender, contrary to sects. 467 & 468 of the Criminal Code Ordinance. He was tried summarily before a police magistrate, who on Mar. 20, 1933, found him guilty on both charges & sentenced him to nine months' imprisonment with hard labour in respect of the first charge & to six months' imprisonment with hard labour in respect of the second charge, the sentences to run concurrently. Sect. 45 of the Supreme Ct. Ordinance gave every comr. in criminal matters jurisdiction for summary trial where a person was charged with an offence punishable by imprisonment not exceeding six months, & where any person was charged with an offence punishable upon summary conviction, & where any person was charged with an offence which, if proved, could be adequately punished with imprisonment for not more than six months. Sect. 46 gave power to the Chief Justice by special order to authorise an increased jurisdiction to be exercised by a comr., & to revoke such special order, but no such revocation should prejudice the issue of a new special order to the same

commissioner. By an order dated Feb. 24, 1928, purporting to be made under sect. 46 the Chief Justice authorised all police magistrates & comrs. to inflict punishment of imprisonment for a term not exceeding twelve months :—*Held :* sect. 46 of the Supreme Ct. Ordinance empowered the Chief Justice to make a special order, to be exercised by a comrs., but did not empower him to make a general order in the terms of the order of Feb. 24, 1928, increasing the criminal jurisdiction of all police magistrates indiscriminately ; consequently the decision of the police magistrate to try the case summarily under the discretion given to him by the third para. of sect. 45, as purporting to be extended by the order of Feb. 24, 1928, & the sentence of nine months' imprisonment in respect of the first charge were unjustified.—AKERELE (DAVID EVARISTO) *v.* R., [1934] A. C. 523 ; 103 L. J. P. C. 91 ; 151 L. T. 530 ; 30 Cox, C. C. 174, P. C.

234d. Gold Coast—Paramount Chief's Tribunal—Appeal—Conditions precedent.]—Having regard to sect. 77 (2) of Native Administration Ordinance of the Gold Coast Colony, there is no jurisdiction to hear an appeal from a Paramount Chief's Tribunal unless before leave to appeal was granted the taxed costs of the hearing have been paid in money, or a sum sufficient to satisfy them has been deposited in ct. ; the Appellate ct. cannot waive compliance with the above statutory requirements. Appeal dismissed.—OHENE MOORE *v.* AKESSEH TAYEE, [1935] A. C. 72 ; 104 L. J. P. C. 38 ; 152 L. T. 241, P. C.

234e. Eastern Africa—Court of Appeal—Appeal from—Conditions precedent.]—BRACIA CZECZOWICZKA *v.* MARKUS, [1935] W. N. 127 ; 80 L. Jo. 77 ; 180 L. T. Jo. 113, P. C.

Part III.—Laws of the Colonies.

238a. Rule of English law as to parliamentary control of revenue—Application in New Zealand.]—It is a principle of the British constitution, inherited in the constitution of New Zealand, that no money can be taken out of the Consolidated Fund into which the revenues of the State have been paid, except under a distinct authorisation by Parliament itself ; a payment made without that authority is illegal & *ultra vires*, & the money, if it can be traced, can be recovered by the Govt.

An agreement made in 1913 provided (*inter alia*) that the Minister of Railways of New Zealand, representing the Crown, should pay to applts. £7,500 when applts. granted a lease to B. & Co. The making of the agreement had been authorised by an Act of 1912, which empowered the Minister, without further appropriation, to pay to applts. out of the Public Works Fund such sum as might be payable in accordance with the agreement. Owing to an alteration in the scheme to which the agreement related, the Minister did not require applts. to grant the lease, & it was not granted. Nevertheless the £7,500 was paid by the Minister of Railways to applts. in 1914 out of a vote included in the Public Works Schedule to the Appropriation Act for the year, & the Controller & Auditor-General passed the sum as being so payable : —*Held :* as the lease had not been granted the payment of the £7,500 was not authorised by the Act of 1912, & it was recoverable by the Govt. & could be deducted from a larger sum admittedly due to applts.—AUCKLAND HARBOUR BOARD *v.* R., [1924] A. C. 318 ; 93 L. J. P. C. 126 ; 130 L. T. 621, P. C.

Annotations :—**Refd.** A.-G. *v.* G. S. & W. Ry. of Ireland, [1925] A. C. 754 ; North Charterland Exploration Co. (1910) *v.* R. (1930), 99 L. J. Ch. 483.

241. *Add. Annotation :*—**Consd.** Arseculeratne *v.* Perera, [1928] A. C. 173.

242. *Add Annotations :*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444 ; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

243. *Add. Annotation :*—**Refd.** Abeyesekera *v.* Jayatilake, [1932] A. C. 260.

PART III. SECT. 1, SUB-SECT. 1.

239 i. *Introduction of English law by colonial statute.*]—The custom whereby, when marine insurance was effected through a broker, the broker & not the assured was liable to the underwriter for the premium, while the underwriter was directly responsible to the assured for the loss, was not so firmly established as part of the law of England in 1792 that it was to be deemed to have been introduced into Upper Canada by 32 Geo. 3, c. 1.—O'KEEFE & LYNCH OF CANADA, LTD. *v.* TORONTO INSURANCE & VESSEL AGENCY, LTD., [1926] 4 D. L. R. 477 ; 59 O. L. R. 235.—**CAN.**

239 ii. ——.]—The rule in *Shelley's Case* is not part of the law of Alberta, since it was not "applicable" within North-West Territorities Act, 1884, to the Territories.—*Re* SIMPSON ESTATE (Alta.), [1927] 4 D. L. R. 817 ; [1927] 3 W. W. R. 534.—**CAN.**

239 iii. ——.]—*Held :* the English common law, as it was established on July 15, 1870, was introduced into the North-West Territories by Statute of Canada, 1886, c. 25, s. 3, & the same was neither expressly nor by implication altered or amended, in its application to riparian rights, by any subsequent Canadian legislation.—FARES *v.* R., [1929] Ex. C. R. 144 ; *on appeal*, [1932] S. C. R. 78 ; 1 D. L. R. 421.—**CAN.**

239 iv. ——.]—The provisions of Land Titles Act, R. S. S., 1930, respecting leases do not apply to premises situated in a national park subject to Saskatchewan Natural Resources Act, 1930. In the absence of any other Saskatchewan statute dealing with said leases the law applicable thereto is the law of England as introduced by North-West Territories Act.—CHERRY *v.* SMITH, [1933] 1 W. W. R. 205.—**CAN.**

sa. *Legal & equitable estates—British India.*]—There is no distinction between legal & equitable estates in British India.—SURENDRAMOHAN RAY CHANDHURI *v.* MAHENDRANATH BANERJI (1931), I. L. R. 59 Calc. 781.—**IND.**

PART III. SECT. 1, SUB-SECT. 2.—A.

k i. —— *Inapplicability to specified community.*]—In order to show that the English law on its introduction to India in 1726 was inapplicable to a particular community, it is not enough to prove that the community had, prior to that date, been governed by a law differing from English law. What must be shown is that the English law is based on or presupposes social or political conditions peculiar to the country of its origin & it is impossible or inexpedient to apply the provisions of it to the community in question.—*In the Goods of* EZRAH (1930), I. L. R. 58 Calc. 761.—**IND.**

k ii. —— *Common law not engrafted on local statutes.*]—In India, where there are definite statutes enacted, they have to be followed. The rules of the common law of England, or the legal maxims embodying certain judicial principles, however wholesome they may be, cannot be engrafted upon the Indian Penal Code.—EMPEROR *v.* JOTI PRASAD GUPTA (1931) I. L. R. 53 All. 642.—**IND.**

248a. —— **Mode of cession.**]—In 1813 the sovereignty of the island of Malta passed to the British Crown, & in 1921 letters patent were issued by His Majesty establishing in Malta a legislature to deal with local matters. Subsequently, in July, 1936, the Malta (Letters Patent) Act was passed, providing that the letters patent of 1921 should have effect as if there were thereby reserved to His Majesty full power to revoke or amend any or all of their provisions by any further letters patent. In 1936, the letters patent of 1921 were revoked by letters patent of Aug. 12, 1936, & art. 15 thereof empowered the governor to make laws for the peace, order & good govt. of Malta. Resp. imported into Malta certain articles of the value of 3*s.* 9*d.* suitable for use in connection with Coronation festivities, & under protest paid a duty on these articles exacted by the first applt., a collector of customs, under the Temporary Additional Duties Ordinance, 1936 (No. 27 of 1936), enacted by the governor of Malta under the powers conferred on him by the letters patent of Aug. 12, 1936. Resp. instituted proceedings against the first applt. & the governor (the second applt.) for the refund of the duty so paid, contending that there was no power in the Crown on that date to confer on the governor the power of making laws in the exercise of which Ordinance No. 27 was made & promulgated by him. The contention of resp. was founded on the proposition that the prerogative of the Crown so to legislate for the govt. of a possession was restricted to cases where the possession was acquired either by conquest or by cession, the meaning of the word "cession" being restricted so as to exclude a voluntary cession by the general consent of the people, &, further, that, whenever responsible govt. was conceded by the Crown to a colony or possession, the royal prerogative to legislate by letters patent or orders in council came to an end, unless a special reservation had been made in the grant:—*Held:* (1) there was no authority for the division of ceded territories into two classes, those acquired by an action of cession from some sovereign power & those ceded by the general consent of the people. The Crown had no prerogative right to legislate in the case of settlements, but the principle which excluded settlements from the royal prerogative had no application to cases where there had been a cession in the popular sense, whether with or without the assent of the inhabitants, & there was no valid ground for the distinction suggested between the case of Malta & other cases of cession; (2) there was no valid ground, either on principle or on authority, for holding that the royal prerogative had been so far extinguished when the letters patent were issued in 1921 that, after they were revoked, the prerogative did not exist. The right of the Crown to legislate in relation to local matters was doubtless suspended while the letters patent were in force, but there was nothing in the instrument granting the powers to preclude the exercise of the royal prerogative as soon as the letters patent in that respect ceased to be in force.—SAMMUT *v.* STRICKLAND, [1938] A. C. 678; [1938] 3 All E. R. 693; 107 L. J. P. C. 105; 159 L. T. 442; 54 T. L. R. 1080; 82 Sol. Jo. 778, P. C.

250. *Add. Annotation:*—**Distd.** Performing Right Society, Ltd. *v.* Bray U. D. C., [1930] A. C. 377.

251. *Add. Annotation:*—**Refd.** Khoo Hooi Leong *v.* Khoo Chong Yeok, [1930] A. C. 346.

252a. —— **Revenue laws.**]—When a foreign colony becomes a British colony the British laws of revenue immediately attach.—THE FRIENDSHIP (1814), 1 Dods. 373; 165 E. R. 1346.

263. *Add. Annotation:*—**Refd.** Berthiaume *v.* Dastous (1929), 45 T. L. R. 607.

265a. Recognition of existing proprietary rights—Effect of proclamation.]—After a sovereign State has acquired territory, either by consent, or by cession under treaty, or by the occupation of territory theretofore unoccupied by a recognised ruler, or otherwise, an inhabitant of the territory can enforce in the municipal cts. only such proprietary rights as the Sovereign has conferred or recognised. Even if a treaty of cession stipulates that certain inhabitants shall enjoy certain rights that gives them no right which they can so enforce. The meaning of a general statement in a proclamation that existing rights will be recognised is that the Govt. will recognise such rights as upon investigation it finds existed. The Govt. does not thereby renounce its right to recognise only such titles as it considers should be recognised, nor confer upon the municipal cts. any power to adjudicate in the matter.

Applts. brought a suit for a declaration that they were proprietors of certain lands situated within territory which in 1860 had been ceded to the British Govt. under a treaty:—*Held:* upon the facts, & applying the above principles, the suit failed.—VAJESINGJI JORAVARSINGJI *v.* SECRETARY OF STATE FOR INDIA (1924), L. R. 51 Ind. App. 357, P. C.

270. Add the following para.:—

There is no authority for saying that the Roman-Dutch law of Holland, which was in force in Ceylon at the date of its conquest by the British, & has not since been abrogated, empowered the subject to sue the Government. Since the conquest a very extensive practice of suing the Crown has sprung up & been recognised by the legislature:—*Held:* therefore, such suits are now incorporated into the law of the land. Further, where the Crown is pltf. & defts. sue in reconvention, the ct. is not bound to give separate judgments, but may set off the amount awarded to defts. against that awarded to the Crown, & give judgment for the balance.—HETTIHEWAGE SIMAN APPU *v.* QUEEN'S ADVOCATE (1884), 9 App. Cas. 571, P. C.

271a. —— ——.]—WIJEYEWARDENE *v.* JAYAWARDENE (1924), 94 L. J. P. C. 44; 132 L. T. 161; 69 Sol. Jo. 793.

281a. —— —— ——.]—By Art. 1384 of the *Code Civil*, the law prevailing in Mauritius, it is provided that *Les Maîtres et les Commettants [sont responsables] du dommage causé par leurs domestiques et préposés dans les fonctions auxquelles ils les ont employés:*—*Held:* in order to make the *Commettant* responsible for damages occasioned by the negligence of the *Préposé*, it is necessary to establish that the *Préposé* was acting *sous les ordres, sous la direction et la surveillance*

du Commettant.—SÉRANDAT *v.* SAISSE (1866), L. R. 1 P. C. 152; 3 Moo. P. C. C. N. S. 534; 34 L. J. P. C. 35; 12 Jur. N. S. 301; 14 W. R. 487; 16 E. R. 202, P. C.

283a. Lagos—Validity of native custom.]—If the occupier of a dwelling in one of the native compounds at Epetedo, Lagos, asserts a right therein inconsistent with the lawful rights of the chief, the chief is entitled by native law & custom to evict not only the offending occupier but also those of his relatives who have supported or sided with him against the chief. The custom, thus limited as to the relatives liable to be evicted, is not repugnant to natural justice, equity & good conscience so as to be one from which judicial sanction must be withheld. The Judicial Committee were not prepared, without further argument, to uphold the custom so far as it was stated to include a right to evict all the relatives; that extension was not necessary for the decision of the case. A chief should not proceed to eviction without obtaining from the ct. a declaration of forfeiture; if he does so he will be required very strictly to justify his conduct if it is called in question in subsequent proceedings.—IDEWU INASA *v.* SAKARIYAWO OSHODI, [1934] A. C. 99; 103 L. J. P. C. 9; 150 L. T. 183; 50 T. L. R. 168, P. C.

Annotation:—**Refd.** Sakariyawo Oshodi *v.* Brimah Balogun & Scottish Nigerian Mortgage & Trust Co., [1936] 2 All E. R. 1632.

284a. Native custom originally barbarous—Recognition by court on modification.]—(1) The Governor of Nigeria, purporting to act under the Deposed Chiefs Removal Ordinance, ordered applt. to leave a specified area, & upon his failing to comply ordered his deportation to another place in the Colony. Applt applied to the Supreme Ct. of Nigeria for a writ of *habeas corpus*, contending (*a*) that he was not a native chief; (*b*) that he had not been deposed; (*c*) there was no native law or custom which required him to leave the area, & consequently the conditions did not exist entitling the Governor to make the orders:—the powers of the Governor under the Ordinance were purely executive & it was the duty of the ct. to investigate the questions raised by applt.'s contentions & to come to a judicial decision thereon.

(2) The Governor can make a deportation order under sect. 2 (2) of the Ordinance without previous proceedings before a magistrate.

(3) A native custom which originally was barbarous, & therefore one to which a ct. could not give effect, may have become recognised by the native community in a milder & acceptable form without losing its essential character of custom, but the ct. cannot itself transform a barbarous custom into a milder one.—ESHUGBAYI ELEKO *v.* NIGERIA GOVERNMENT (ADMINISTERING OFFICER), [1931] A. C. 662; 100 L. J. P. C. 152; 145 L. T. 297, P. C.

290. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

293. *Add. Annotation:*—**Distd.** Performing Right Society, Ltd. *v.* Bray U. D. C., [1930] A. C. 377.

297. Before this case add "*See, now*, Statute of Westminster, 1931 (c. 4), s. 4."

PART III. SECT. 1, SUB-SECT. 2.—C.

284 ii. —— *New Guinea.*]—The meaning & effect of the provision in sect. 16 of Laws Repeal & Adopting Ordinance 1921-1933 (N.G.) that "the principles & rules of common law & equity that were in force in England on 'May 9, 1921' shall be in force in the Territory" of New Guinea, discussed.—BOOTH *v.* BOOTH (1925), 52 C. L. R. 1; 41 Argus L. R. 183; 8 A. L. J. 460.—**AUS.**

284 iii. —— —— *Married women.*]—The capacity of a married woman in the Territory of New Guinea to acquire & enjoy property is not limited as at common law prior to Married Women's Property Acts.—BOOTH *v.* BOOTH (1925), 53 C. L. R. 1; 41 Argus L. R. 183; 8 A. L. J. 460.—**AUS.**

PART III. SECT. 2, SUB-SECT. 1.—A.

h i. *Mode of exclusion — Subject-matter covered by colonial legislation.*]—The provisions, relating to fraudulent & preferential assignments, of Assignments Act, 1907, repealed in 1921, re-enacted in 1922, & consolidated in Fraudulent Preferences Act, R. S. A. 1922, constituted a complete code upon the subject which had the effect of excluding Stat. 13 Eliz. c. 5, s. 3, as to a penal action.—CONNORS *v.* EGLI, [1924] 2 D. L. R. 59; 1 W. W. R. 1050; 20 Alta. L. R. 205.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—B.

a (p. 462) l. *Administrator—Appointment—Court of Probate Act, 1857, s. 73—Applicable in New Zealand.*]—Ct. of Probate Act, 1857 (c. 77), s. 73, is, *mutatis mutandis*, in force in New Zealand, & is equally applicable to real estate as to personal estate.—*Re* HUNTER, HUNTER *v.* HUNTER & HUNTER, [1932] N. Z. L. R. 911.—**N.Z.**

gg (p. 462) i. *Crown Suits Act, 1855.*]—Crown Suits Act, 1855, is not in force in Saskatchewan.—R. (A.-G. FOR SASKATCHEWAN) *v.* MEILICKE (No. 2), [1938] 2 W. W. R. 97.—**CAN.**

l (p. 463) i. —— *Examination of petitioner—Evidence Amendment Act, 1869.*]—Sect. 43 of Divorce & Matrimonial Causes Act, 1857, was, *semble*, completely superseded & covered by Evidence Amendment Act, 1869; &, in any event, is not in force in Alberta since it is in direct conflict with sect. 8 of Alberta Evidence Act, R. S. A., 1922, c. 87.—EMENY *v.* EMENY (Alta.), [1929] 1 D. L. R. 253; [1929] 3 W. W. R. 577; 24 Alta. L. R. 303.—**CAN.**

p (p. 463) l. *Expropriation—Land Clauses Act, 1845—Not applicable in Ontario.*]—*Re* MAYO *v.* TORONTO CITY, [1929] 3 D. L. R. 890; 64 O. L. R. 139.—**CAN.**

r (p. 463) i. —— *Not applicable to New South Wales.*]—REID *v.* FITZGERALD (1931), 48 N. S. W. W. N. 25.—**AUS.**

s (p. 463) l. —— *Applicable to British Columbia.*]—14 Geo. 3, c. 78, is, I think, in force in this Province (CLEMENT, J.).—LAIDLAW *v.* CROW'S NEST RY. (1909), 14 B. C. R. 169; *affd.*, 42 S. C. R. 355.—**CAN.**

w (p. 463) l. *Forfeiture Act, 1870 (c. 23)—Not applicable to Saskatchewan.*]—*Re* NOBLE (Sask.), [1927] 1 W. W. R. 938.—**CAN.**

g (p. 463) l. —— *Applicable to New Brunswick.*]—9 Anne, c. 41, as amended by 5 & 6 Will. 4, c. 41, s. 1, is in force in New Brunswick.—LE BLANC *v.* THOMAS (1932), 5 M. P. R. 401.—**CAN.**

g (p. 463) ii. —— *Applicable in Manitoba.*]—WINDSOR HOTEL CO. *v.* SILVERMAN, [1934] 3 W. W. R. 249; [1935] D. L. R. 616; 62 C. C. C. 247.—**CAN.**

g (p. 463) iii. *Habeas Corpus Act & Bill of Rights—Not applicable to British India.*]—Neither the Habeas Corpus Act nor the Bill of Rights forms part of the law of British India.—JITENDRANATH GHOSH *v.* CHIEF SECRETARY TO BENGAL GOVT. (1932), I. L. R. 60 Cal. 364.—**IND.**

i (p. 463) l. *Insurance—Life Assurance Act, 1774—Not applicable in Saskatchewan.*]—*Held:* impliedly repealed by the Saskatchewan Insurance Act as enacted in 1915 & re-enacted in 1924-1925.—CROWN BAKERY, LTD. *v.* PREFERRED ACCIDENT INSCE. CO. OF NEW YORK, [1933] 2 W. W. R. 33; 4 D. L. R. 117.—**CAN.**

t (p. 463) l. —— *Not applicable to New South Wales.*]—HAZELWOOD *v.* WEBBER (1925), 52 C. L. R. 268; 35 S. R. N. S. W. 140; 52 N. S. W. W. N. 53; 41 Argus L. R. 76; 8 A. L. J. 345.—**AUS.**

dd (p. 463) l. —— *Apportionment Act, 1870.*]—*Held:* not in force in Saskatchewan.—UGLUM *v.* TORKELSON, [1930] 3 W. W. R. 26; 4 D. L. R. 1022.—**CAN.**

oo (p. 463) l. —— —— *Applicable to Alberta.*]—The "prohibited degrees of consanguinity or affinity" referred to in 5 & 6 Will. 4, c. 54, are those set out in Archbishop Parker's Table of 1563, which is printed in the Book of Common Prayer of the Church of England, & this Act is in force in Alberta, except in so far as said table is altered by R. S. C., 1927, c. 127.—*Re* SEIDLER & MACKIE (Alta.), [1929] 4 D. L. R. 478; 2 W. W. R. 645.—**CAN.**

ooo (p. 463) ii. —— —— *Applicable to Alberta.*]—5 & 6 Will. 4, c. 54, is in force in Manitoba.—DEJARDIN *v.*

307. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

310a. Moneylenders Act, 1927 (c. 21)—Not applicable in Straits Settlements.]—A moneylender carrying on business in the Straits Settlements sued there on a promissory note & post-dated cheque given in respect of a loan. Deft. pleaded that the suit could not be maintained, as there was no note or memorandum in writing of the contract in accordance with English Moneylenders Act, 1927 (c. 21), s. 6; he contended that that sect. applied by virtue of sect. 5 (1) of Ordinance No. 111 (Civil Law) of the Colony :—*Held :* the defence failed, because no question arose in the suit "with respect to mercantile law" so as to make English law apply under the terms of the Ordinance.—SHAIK SAHIED BIN ABDULLAH BAJERAI *v.* SOCKALINGHAM CHETTIAR, [1933] A. C. 342; 102 L. J. P. C. 111; 149 L. T. 26, P. C.

Annotation :—**Refd.** Nihalchand Navalchand *v.* McMullan, [1934] 1 K. B. 171.

315a. —— Limitation Act, 1623 (c. 16)—Extends to India.]—EAST INDIA CO. *v.* ODITCHURN (1850), 7 Moo. P. C. C. 85; 5 Moo. Ind. App. 43; 14 Jur. 253; 13 E. R. 811, P. C.

Annotation :—**Followed.** Ruckmaboye *v.* Mottichund (1853), 8 Moo. P. C. C. 1.

315b. *S. P.* RUCKMABOYE *v.* LULLOOBHOY MOTTICHUND (1853), 8 Moo. P. C. C. 4; 5 Moo. Ind. App. 234; 22 L. T. O. S. 203; 14 E. R. 2, P. C.

316. *Add. Annotation :*—**Distd.** Shaik Sahied Bin Abdullah Bajerai *v.* Sockalingam Chettiar, [1933] A. C. 342.

324. After this case add :—

——.]—*See, now,* Statute of Westminster, 1931 (c. 4), s. 3.

Part IV.—Ecclesiastical Law.

325. *Add. Annotation :*—**Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

327. *Add. Annotation :*—**Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

337. *Add. Annotation :*—**Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

After this case add :—

—— —— **Application of Colonial Bishoprics Fund, 1841.**]—*See* CHARITIES, No. 981d, *ante.*

345a. Canada—United Church of Canada—Decision not to enter union—Subsequent decision to enter in accordance with provincial legislation—Invalid.]—By an Act to come into force on June 10, 1925, the Dominion legislature incorporated the United Church of Canada so as to give effect to an agreed basis of union between the Presbyterian, Methodist, & Congregational Churches throughout Canada. The congregations of the uniting Churches were to become congregations of

---

DEJARDIN, [1932] 2 W. W. R. 237.—**CAN.**

q (p. 464) **i.** —— *Set-off.*]—Statutes of Set-off, 1729 & 1735, are still in force in New Zealand.—BUSHILL *v.* MELVILLE, [1934] N. Z. L. R. Supp. 211; G. L. R. 809.—**N.Z.**

r (p. 464) **i.** —— *Judicature Acts—Rules under—Not applicable in Ontario.*]—The effect of rule 2 of the rules of 1913 is to make those rules a complete code of procedure, either by special provisions or by analogy, & the practice in England no longer obtains in Ontario.—KEMP *v.* BEATTIE, [1929] 1 D. L. R. 55; 63 O. L. R. 176.—**CAN.**

r (p. 464) **ii.** —— *Procedure in forma pauperis—11 Hen. 7, c. 12—Applicable in British Columbia.*]—BLAND *v.* AGNEW, [1932] 3 W. W. R. 222; 4 D. L. R. 464; 46 B. C. R. 230.—**CAN.**

r (p. 464) **iii.** —— —— ——.]—The statute of 11 Hen. 7, c. 12, entitled "A mean to help & speed poor persons in their suits," is in force in British Columbia.—BLAND *v.* AGNEW (No. 3), [1933] 3 W. W. R. 88; 4 D. L. R. 756; 47 B. C. R. 7.—**CAN.**

t (p. 464) **i.** *Real Estate Charges Act, 1867 (c. 69), s. 2—Applicable to Saskatchewan.*]—*Re* MACDOUGALL, [1927] 3 D. L. R. 464; [1927] 1 W. W. R. 612; 21 Sask. L. R. 397.—**CAN.**

ee (p. 464) **i.** —— —— *Application in Canada.*]—*Held :* the question of limitation of liability was governed by Merchant Shipping Act, 1894, & not by the Canada Shipping Act, since the Colonial Laws Validity Act had not been abrogated by British North America Act & the Statute of Westminster, has no retroactive effect.—CANADA STEAMSHIP LINES, LTD. *v.* EMILE CHARLAND, LTD., [1933] Ex. C. R. 147.—**CAN.**

gg (p. 464) **i.** —— *Charging order.*]—Solicitors Act, 1860, s. 28, is in force in Saskatchewan & must be given full effect in matters of practice & procedure in the cts. thereof. Under its provisions, the ct. has power, in any proceedings, to make a charging order in favour of a solr., with respect to his taxed costs, against any property recovered through his instrumentality; & the charge may be granted not only upon the interest in the preserved property of those by whom the solr. was employed but also upon the interests of others interested in the preserved property who get the benefit of its preservation, even though they were not parties to the action.—BLOOMAERT *v.* DUNLOP, [1930] 1 W. W. R. 270; 2 D. L. R. 30; 24 S. L. R. 261.—**CAN.**

mm (p. 464) **i.** —— *Applicable to Alberta.*]—LAMB *v.* LAMB, [1925] 4 D. L. R. 526; [1925] 3 W. W. R. 397.—**CAN.**

b (p. 465) **i.** —— —— *Applicable to India.*]—The above Act extends to India, & applies to Hindoos & Mahomedans as well as Europeans, in civil actions in the Supreme Ct.—RUCKMABOYE *v.* LULLOOBHOY MOTTICHUND (1853), 5 Moo. Ind. App. 234.—**IND.**

e (p. 465) **i.** —— *Mercantile Law Amendment Act, 1856, s. 14—Applicable in Saskatchewan.*]—IMPERIAL BANK OF CANADA *v.* KUSZKS, [1932] 3 W. W. R. 186.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.

hh i. —— —— *Previously in force in another Province.*]—Where a statutory provision had been in force in another province before its enactment in this province it will be presumed to have been adopted with the construction placed upon it by the cts. of that province.—*Re* WINNIPEG SADDLERY CO., LTD., [1934] 3 W. W. R. 1; 42 Man. L. R. 448.—**CAN.**

hh ii. —— —— ——.]—The interpretation put by the cts. of another province on a statute of that province which was afterwards introduced into Manitoba should be followed by the Cts. of Manitoba.—BROADBENT *v.* 1600 CLUB OF SOUTHERN MANITOBA, [1935] 1 W. W. R. 353; 2 D. L. R. 802; *on appeal,* [1935] 2 W. W. R. 539; 2 D. L. R. 227; 43 Man. L. R. 221.—**CAN.**

kk i. —— *Provincial statute taken from Imperial statute.*]—In interpreting a taxing provision taken by the legislature of Ontario from an Imperial statutory provision as amended, but without previous legislative history in Ontario, it is not permissible to consider the evolution of the Imperial provision or decisions based thereon.—A.-G. FOR ONTARIO *v.* PERRY, [1934] A. C. 477; 51 T. L. R. 1; 78 Sol. Jo. 488, P. C.—**CAN.**

PART IV.

s i. —— *Requisites of conversion to Hinduism.*]—In the Indian Succession Act (XXXIX. of 1925), the term "Hindu" is used in a theological, as distinguished from a national or racial sense. A person of non-Hindu origin can become a Hindu by conversion. Membership of a caste is not a necessary pre-requisite for being a Hindu. It is a question of fact in each case whether a given person is a Hindu or not. A European does not become a Hindu merely because he professes a theoretical allegiance to the Hindu faith, or is an ardent admirer & advocate of Hinduism, & its practices; but if he resides long in India, abdicates his religion by a clear act of renunciation, & adopts Hinduism by under-

the United Church, & their property was to vest therein. By sect. 10, however, if any congregation voted at a meeting held within six months before June 10, 1925, not to enter the union it was not to be affected by the Act, &, by sect. 4 (*c*), it was to be deemed not to have become a member of the United Church. The legislature of Nova Scotia had passed an Act, to come into force upon the United Church being incorporated, enacting that property of uniting congregations in the Province should vest in the United Church. Sect. 8 (*a*) provided that if a congregation, at a meeting held within six months after the incorporation, voted not to enter the union its property was not to be affected, but that if the congregation decided later to enter the union the Act was to apply to it & its property. A Presbyterian congregation in Nova Scotia voted at a meeting held within six months before June 10, 1925, not to concur in the union, but at a meeting held within six months after that date voted to enter the United Church :—*Held :* as by the Dominion Act which incorporated the United Church of Canada the effect of the earlier vote was that the congregation was not a constituent member of that body, it could not by virtue of Provincial legislation become a member, nor could its property vest upon the footing that it was so ; further, that the later vote could not be treated as a decision to apply to the United Church for admission, with the effect that, if the application was acceded to, its property vested therein under s. 8 (*a*). The earlier vote, however, did not necessarily for ever debar the congregation from entering the United Church, as the Dominion Act recognised that a non-concurring congregation might become a member at a later time, though the Dominion legislature at present had not provided means whereby a later union could be effected.—ST. LUKE'S PRESBYTERIAN CONGREGATION OF SALTSPRINGS TRUSTEES *v.* CAMERON, [1930] A. C. 673 ; 99 L. J. P. C. 206 ; 143 L. T. 601, P. C.

349. For " No. 325, *ante* " read :—

It is the undoubted prerogative of the Crown to receive appeals in all Colonial causes, & by 25 Hen. 8, c. 19 (by which the mode of appeal to the Crown in Ecclesiastical causes is directed), it is by sect. 4 enacted, that " for lack of justice at or in any of the cts. of the Archbishops of this realm, or in any of the King's dominions, it shall be lawful to the parties grieved to appeal to the King's Majesty in the King's Ct. of Chancery," an enactment which gave rise to the Commission of Delegates, which was abolished by 2 & 3 Will. 4, c. 92, & for which the Judicial Committee of the Privy Council is by 3 & 4 Will. 4, c. 41, now substituted.—*Re* NATAL (BISHOP) (1864), 3 Moore, N. S. 115 ; 5 New Rep. 471 ; 12 L. T. 188 ; 11 Jur. N. S. 353 ; 13 W. R. 549 ; 16 E. R. 43, P. C.

---

going formal conversion, gives up, along with Christianity, his Christian name & deliberately assumes a Hindu name, marries, in accordance with Hindu religious rites, a person who is a Hindu by race & religion, & cuts himself off from his old environments, & takes to the Hindu mode of life, in such a case the Ct. may justly come to the conclusion that he is a Hindu within Indian Succession Act. A European who becomes a Hindu is governed by Hindu law, the test in such case being not domicil, but religion.—MORARJI *v.* ADMINISTRATOR-GENERAL OF MADRAS (1928), I. L. R. 52 Mad. 160.—**IND.**

s ii. ——.]—Whether a Chinese is a Buddhist or not is a question of fact.—TAN MA SHWE ZIN *v.* TAN MA NGWE ZIN (1932), I. L. R. 10 RAN. 97.—**IND.**

Canada—United Church of Canada.]—*See cases* in ECCLESIASTICAL LAW, Part VIII., Sect. 9.

sg. *South Africa—Property originally vested in Lord Bishop of Cape Town as trustee—Appointment of new trustee.*]—Petitioners, who were churchwardens & members of Trinity Church, Cape Town, applied for an order appointing trustees to administer the trusts attaching to the property upon which the church was built. The property in question was transferred on Nov. 7, 1849, to " the Lord Bishop of Cape Town & his successors in the said See as trustees in perpetuity, for ecclesiastical use in connection with the Church of England in this colony." Notice of the application had been given to the present Archbishop of Cape Town & the Registrar of the Diocese of Cape Town, who were cited as resps. on an objection *in limine* taken by resps. the ct. held that inas much as there was no natural person filling the office of Lord Bishop of Cape Town as it existed in 1849, the trusteeship was vacant. The objection *in limine* was accordingly overruled, & the matter postponed to allow resps. to place further evidence before the ct. further evidence having now been produced on affidavit :—*Held :* (1) assuming that Act No. 3 of 1873 had no application in the present case, the ct. had power under the common law on failure of original trustees to appoint trustees ; (2) the Lord Bishop of Cape Town was originally a bare trustee & no more, the congregation of Trinity Church, as the beneficial owners of the property, had sufficient interest in the property to entitle them to make the present application, & appcts. being duly authorised by the congregation to make the application accordingly had *locus standi* to apply ; (3) the decision in *Merriman* v. *Williams* (Foord, 203), that the Church of the Province of S. A. was not part of the Church of England was unaffected by the fact that the former church had adopted a new canon, No. 34, providing for a final appeal in matters of faith & doctrine to a consultative body of which the Archbp. of Canterbury was president, & that therefore the ct. was bound to hold the Church of the Province of S. A. was a different religious association from the Church of England ; (4) though the Crown had refused to exercise its power of appointment of bishops in self-governing colonies or dominions & had left the churches in such countries to organise themselves as voluntary assocns., nothing had been placed before the ct. to show that the Crown had delegated its power of appointment in the Cape Province to the Church of the Province of S. A., or that it had recognised the persons appointed bishops of Cape Town by that church as legal successors to the Lord Bishops of Cape Town created by the Letters Patent of 1847 or 1853 ; (5) in none of the cases of *Re Trinity Church* (1 S. C. 174), *Cape Divisional Council* v. *Bishop of Cape Town* (4 S. C. 485) & an order of 1886 authorising Bishop West-Jones to mtge. Trinity Church, had the ct. recognised bishops elected by the Church of the Province of S. A. as successors to the Lord Bishop of Cape Town ; (6) the Legislature had not by the passing of Acts Nos. 30 (1860), 9 (1891), 11 (1891), 21 (1897), 27 (1909) recognised bishops elected by the Church of the Province of S. A. as legal successors to the Lord Bishop of Cape Town more particularly by reason of the fact that all such Acts were private bills introduced into Parliament by the parties interested ; (7) no acts amounting to acquiescence or estoppels on the part of the congregation of Trinity Church so as to debar them from making the present application had been placed before the ct. ; (8) as it therefore appeared that there was no living person occupying the position of trustee, it was incumbent on the ct. to appoint some fit & proper person to execute the trust under which the property was held, & in making such appointment the persons beneficially interested in the trust were the persons whose interests were mainly to be considered ; (9) though the Archbp. of Cape Town was the person most nearly corresponding to the successor in title to the Lord Bishop of Cape Town, in view of certain differences between the church of which he was head, & the congregation in question, it was not desirable to appoint him trustee, but that certain trustees for the congregation in connection with other property held by it should be appointed, the appcts. to pay the costs of the application & the resps. *ex officio* the costs occasioned by their opposition.—DARROLL *v.* TENNANT, [1932] S. C. 406.—**S. AF.**

Part V.—Extradition and Fugitive Offenders.

353. *Add. Annotation :*—**Refd.** R. *v.* Brixton Prison Governor, *Ex p.* Bidwell, [1937] 1 K. B. 305.

Part VIII.—Property in Land.

369. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

372a. —— —— **Vesting of lands now forming Saskatchewan.**]—The effect of the Order in Council of June 23, 1870, whereby Rupert's Land & the North-Western Territory were admitted into & became part of the Dominion of Canada, & of sect. 5 of the Rupert's Land Act, 1868, was that the lands therein which were then vested in the Crown, & now are within the boundaries of the Province of Saskatchewan, became so vested in the right of the Dominion, & the Dominion was given full control to administer them for the purposes of Canada as a whole, not merely for the inhabitants of the area. The Dominion Lands Act, 1872, & sect. 21 of the Alberta & Saskatchewan Acts, 1905, were therefore validly enacted by the Parliament of Canada. —*Re* NATURAL RESOURCES (SASKATCHEWAN), [1932] A. C. 28, P. C.; *sub nom.* A.-G. OF SASKATCHEWAN & A.-G. OF ALBERTA *v.* A.-G. FOR CANADA, 101 L. J. P. C 11; 146 L. T. 50, P. C.; 48 T. L. R. 24; 75 Sol. Jo. 780, P. C.

374. *Add. Annotation :*—*As to* (1) **Refd.** R. *v.* Jalbert, A.-G. of Quebec *v.* R. (1938), 82 Sol. Jo. 252.

374a. —— —— —— **What amounts to.**]—R. *v.* JALBERT, A.-G. OF QUEBEC *v.* R. (1938), 82 Sol. Jo. 252, P. C.

378a. —— **Foreshore & bed of navigable river—St. Lawrence.**]—The King, as representing the Province of Quebec, is the sole owner of the foreshore & bed of the St. Lawrence River at the place where the Montreal harbour comrs. constructed works which necessitated the outlet of a sewer in the city of Montreal being changed. The Dominion statutes did not authorise the harbour comrs. to take possession of the lands of the Province of Quebec without compensation.—MONTREAL CORPN. *v.* MONTREAL HARBOUR COMRS., TETREAULT *v.* MONTREAL HARBOUR COMRS., A.-G. FOR QUEBEC *v.* A.-G. FOR CANADA,

PART VIII. SECT. 1.

370 i. *Canada—Respective rights of Dominion & Province—Territory ceded to Indians—British North America Act*, 1867 (c. 3).]—PROVINCE OF QUEBEC *v.* DOMINION OF CANADA, *Re* DOMINION OF CANADA & PROVINCES OF ONTARIO & QUEBEC, *Re* INDIAN CLAIMS (1898), 30 S. C. R. 151.—**CAN.**

e i. —— *Rights of Dominion & private person—Grant of land by province before confederation.*]—Where pltf. claimed under a grant issued by the province, in 1857, prior to confederation :—*Held :* the Crown, as represented by the Dominion under B.N.A. Act, 1867, s. 91 (12), could not grant by licence power to erect a weir on private property.—DELAP *v.* HAYDEN, [1924] 3 D. L. R. 11; 57 N. S. R. 346. —**CAN.**

e ii. —— *Public harbours—Ship Island.*]—The ct. found upon the evidence that it was open to serious doubt if Ship Island was in 1867 situate within the bounds of what was then known as Goderich Harbour. In any event, it did not then form part of the said harbour & was not then a harbour or river improvement :—*Held :* even assuming that Ship Island was in 1867 situate within the bounds of the harbour of Goderich, inasmuch as it was not part of the said harbour & was not at that time a harbour or river improvement, it did not pass to the Crown in right of the Dominion of Canada under sect. 108 of the B. N. A. Act.—R. *v.* A.-G. OF ONTARIO & FORREST, [1935] Ex. C. R. 44; *affd.*, [1934] 1 D. L. R. 657; S. C. R. 133.—**CAN.**

e iii. —— —— *What are.*]—"Public harbours" within B. N. A. Act, s. 108, must be used by boats in exercise of a public right, & must have been public harbours at the time of Confederation. —OWEN SOUND TRANSPORTATION CO. *v.* TACKABERRY, [1936] 3 D. L. R. 272.—**CAN.**

e iv. —— *Indian Reserves—Indians not entitled to alienate by lease or sale—Right of Crown to recover possession.*]—R. *v.* MCMASTER, [1926] Exch. C. R. 68.—**CAN.**

e v. —— —— ——.]—By a document dated Mar. 10, 1821, "the British Indian Chiefs of St. Regis," "for themselves & on behalf of their tribe, whom they represent," purported to lease to C., his heirs & assigns, certain land, part of Crown land reserved for the Indians, & not ceded or surrendered to the Crown by the Indians, on Cornwall Island in the river St. Lawrence, for 99 years, "& at the expiration thereof for another & further like period of 99 years & so on until the full end & term of 999 years shall be fully ended & completed." The Chiefs covenanted "that they are the representatives of the said tribe of St. Regis as well as trustees of their estate & as such that they have a perfect right" to make the lease. The consideration was $100 cash & a yearly rent of $10. C. entered into possession on Mar. 10, 1821, & possession was continued in successive assignees, & it was admitted in this action that deft. was in possession as assignee of whatever rights C. had under the lease. The rent was paid yearly to Mar. 10, 1920, when the Crown refused to accept further rents. From about 1875 the rent was paid to the Department of Indian Affairs, for the benefit of the Indians. The lease was registered at the Department of Indian Affairs in 1875. There was in evidence a letter of Feb. 26, 1875, from an official of the Department to one B., an Indian, in reply to a letter from B., not produced, in terms apparently recognising rights of C. under the lease. The Crown notified deft. to give up possession at the expiration, Mar. 10, 1920, of the term of 99 years; &, deft. not complying, it took proceedings to recover possession of the land, as ungranted Crown lands reserved for the Indians :—*Held :* the Crown was entitled to possession. The lease was invalid in law the chiefs had no power to make it, & the taking of it violated the Proclamation of 1763 respecting Indians & Indian lands, & subsequent enactments.—EASTERBROOK *v.* R., [1931] S. C. R. 210; 1 D. L. R. 628; [1929] Ex. C. R. 28.—**CAN.**

e vi. —— —— *Boundaries—Whether extended by acts of possession by Indians.*]—R. *v.* HEISLER (N. S.) (1913), 13 E. L. R. 375.—**CAN.**

e vii. —— —— *Right to sell cordwood cut on unsurrendered reserve land.*]—FEGAN *v.* MCLEAN (1869), 29 U. C. R. 202.—**CAN.**

e viii —— ——*Sale by Indian before receipt of Crown patent—Indian Act, R. S. C.* 1906, *c.* 81, *s.* 102.]—SANDERSON *v.* HEAP (1909), 11 W. L. R. 238. —**CAN.**

e ix. —— —— *Power of Crown to grant licence.*]—The legal title to lands in an Indian reserve is in the Crown, & the Crown may grant a licence of such lands for the purpose of constructing a highway.—POINT *v.* DIBBLEE CONSTRUCTION CO., [1934] 2 D. L. R. 785; O. R. 142.—**CAN.**

e x. —— *St. Francis River.*]—St. Francis River, or the thirty-mile stretch of it above Lake St. Peter, is a navigable & floatable river within Art. 400 C. C. (Quebec), & is part of the Crown domain in the right of the Province of Quebec. The banks & bed are the property of the Province.—ST. FRANCIS HYDRO ELECTRIC CO. *v.* R., [1937] 2 D. L. R. 353.—**CAN.**

f i. —— *Compulsory acquisition of land—Rights against State—Mines & minerals.*]—All lands acquired by the Commonwealth by compulsory process, including royal metals & other minerals therein, vest in the Commonwealth freed & discharged from all reservations, rights, royalties, conditions, & obligations of any kind whatever to the State wherein they were situated, subject to payment of compensation. — COMMONWEALTH *v.* NEW SOUTH WALES (1923), 33 C. L. R. 1.—**AUS.**

[1926] A. C. 299; 95 L. J. P. C. 60; 134 L. T. 578; 42 T. L. R. 98, P. C.

378b. —— **Boundary between Canada & Newfoundland.**]—The effect of various Orders in Council, Proclamations, & Statutes being to give the Govt. of Newfoundland, not mere rights of inspection & regulation upon a line of shore, but territory which became as much a part of the colony as the island of Newfoundland itself & was capable of being defined by metes & bounds:—*Held:* the boundary between Canada & Newfoundland in the Labrador Peninsula was along the crest of the watersheds of the rivers flowing into the sea on the shore of Labrador.—*Re* BOUNDARY BETWEEN CANADA & NEWFOUNDLAND IN LABRADOR PENINSULA (1927), 137 L. T. 187; 43 T. L. R. 289, P. C.

Annotation:—**Refd.** Jardine *v.* A.-G. for Newfoundland (1932), 48 T. L. R. 199.

379a. **West Africa—Extent of tribal lands—Validity of award.**]—In an action involving the extent of the tribal lands of two neighbouring chiefs in West Africa the appellate ct. by consent referred to the final decision of a named arbitrator the question whether a tract of land shown on the survey plan belonged to pltf. or deft. The arbitrator, after hearing evidence & inspecting the disputed area, which was about 100 square miles in extent, awarded to pltf. the land on one side of a line which he drew upon the plan, being about a quarter of the whole, & awarded the rest to the deft. From his award, which referred in detail to the evidence, it appeared that he based his award upon evidence of occupation & possession of seventeen small hamlets or places; of these three were within the part awarded to deft. although the evidence mentioned was in favour of pltf.:—*Held:* it was competent to the arbitrator to award part of the area to the pltf. & part to deft., but the award should be set aside, because the evidence upon which it was based was not evidence of title to any area larger than that possessed nor as to any boundary, & the arbitrator had misconceived his duty under the reference in that he had based his award not upon title but upon what he considered was a fair division between the parties.—KOBINA FOLI *v.* OBENG AKESSE, [1934] A. C. 340; 103 L. J. P. C. 86; 151 L. T. 3, P. C.

381. *Add. Annotations:*—**Apld.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475. **Refd.** Toronto (City) Corpn. *v.* R., [1932] A. C. 98.

381a. —— —— ——.]—A.-G. FOR ALBERTA *v.* A.-G. FOR CANADA, No. 98a, *ante*.

385. After this case add:—
—— ——.]—*See, also*, British North America Act, 1930 (c. 26).

385a. —— **Sale of—Acceptance of offer—By making Order in Council.**]—(1) Sect. 15 of the Department of Railways & Canals Act, R. S. C., 1906, which provides that no deed, contract, document or writing relating to a matter under the control or direction of the Minister shall be binding upon His Majesty unless signed in accordance with the sect., does not apply to a contract which is not embodied in an instrument or instruments in writing intended to be signed by some one on behalf of the Crown. Where, therefore, a written offer for the purchase of Crown land which has come under the control of the Minister provides that the offer, if accepted by an Order in Council, shall constitute a binding contract in the terms of the offer, there is a binding contract if the Order in Council is made, whether or not it is communicated to the purchaser, provided that the Minister has consented to the contract so as to satisfy sects. 3 (2), 7 of the above Act.

(2) Although the Crown is not named in sect. 17 (7) of Ontario Judicature Act, 1881, reproduced in sect. 14 of Mercantile Law Amendment Act (R. S. Ont., 1927), the sect. prevents the Crown from treating time as being of the essence of a contract if before the Act of 1881 it would not have been so regarded in a ct. of equity in an action between subjects. The expression "the rights of His Majesty" in sect. 10 of Interpretation Act (R. S. Ont., 1927), means the accrued rights of His Majesty, & does not cover mere possibilities such as rights which, but for the alterations made by sect. 17 (7) of 1881 Act in the general law, might have accrued thereafter under some future contract.—DOMINION BUILDING CORPN., LTD. *v.* R., [1933] A. C. 533; 102 L. J. P. C. 176; 149 L. T. 337; 49 T. L. R. 516, P. C.

385b. —— —— **Completion—Whether time of essence of contract.**]—DOMINION BUILDING CORPN., LTD. *v.* R., No. 385a, *ante*.

385c. —— **Timber—Refund of dues to entrant for homestead—Liability of Province.**]—Sect. 47 (*f*) of the Timber Regulations, made under Dominion Lands Act, R. S. C., 1927, c. 113, required the holder of an entry for a homestead to pay dues upon timber cut

---

379 i. *South Africa—Restriction of prospecting & mining—Whether Proclamation ultra vires.*]—R. *v.* NOLTE, [1928] App. D. 377.—**S. AF.**

sp. *India—Land held by East India Company.*]—A village not permanently assessed was granted by the East India Co. in 1843 to the predecessor of pltf. with a condition restraining its alienation without the Govt.'s previous sanction:—*Held:* though the formal assumption of sovereignty in India by the Crown was only in 1858, yet the possessions were, as provided by the previous Charter Acts, held by the East India Co. only as the delegates of & in trust for the Crown.—SECRETARY OF STATE FOR INDIA *v.* RAJA PARTHASARATHY APPA RAO (1926), I. L. R. 49 Mad. 349.—**IND.**

PART VIII. SECT. 2.

q i. —— —— *Whether sale of ordnance land cancelled.*]—MURPHY *v.* R. (1892), 3 Exch. C. R. 75.—**CAN.**

q ii. —— *Timber cut on Crown lands—Necessity for marking.*]—HARRISON BAY CO., LTD. *v.* GAUTHIER (1925), 35 B. C. R. 498.—**CAN.**

q iii. —— *Decision of Minister of Lands, Forests & Mines—Effect of.*]—The decision of the above Minister in favour of the issuing of a patent is merely an intimation that he will recommend such issue; it is not a final adjudication & does not bind the Crown.—FITZPATRICK *v.* R., [1926] 4 D. L. R. 239; 59 O. L. R. 331.—**CAN.**

r i. —— *Canal Reserve, Ottawa.*]—*Held:* legislation with respect to Ordnance lands vested in the Province of Canada the lands comprised in 19 Vict. c. 45, sched. 2, & any trust with which the lands were impressed was put an end to as to the lands under that schedule by such legislation, & 7 Vict. c. 11 gave power to sell any vacant land not required for military or canal purposes or for the Ordnance Dept.—OTTAWA (CITY) *v.* GRAND TRUNK RY. CO., OTTAWA (CITY) *v.* OTTAWA & NEW YORK RY. CO. (1920), 64 D. L. R. 337; 50 O. L. R. 239.—**CAN.**

t i. *S. P.* R. *v.* CUDDIHY (1831), 2 Nfld. L. R. 8.—**NFLD.**

t ii. *S. P.* R. *v.* RYAN (1831), 2 Nfld. L. R. 47.—**NFLD.**

s i. —— *Agreement to exchange—Necessity for consent of Commissioner of Crown Lands—Duty of transferor.*]—MAY *v.* DALY, [1927] S. A. S. R. 428.—**AUS.**

& sold by him to persons who were not actual settlers, but provided that the dues paid should be refunded upon the entrant obtaining a patent for the homestead. Subsequently agreements were made, & obtained statutory effect in 1930, whereby the Dominion transferred the Crown lands in Manitoba, British Columbia, Saskatchewan, & Alberta to those respective Provinces. The agreements each provided that the transfer should be subject to any trust existing, & to any interest other than that of the Crown, in respect of the lands; that any payments already received by the Dominion in respect thereof should continue to belong to the Dominion; & that the Province would carry out every contract to purchase or lease the land transferred, & "every arrangement whereby any person has become entitled to any interest therein as against the Crown": —*Held:* the obligation to refund the dues was an "arrangement" within the above cited words of the agreements, & accordingly it was binding upon the respective Provinces. —*Re* TIMBER REGULATIONS, REFUND OF DUES UNDER, [1935] A. C. 184; *sub nom.* A.-G. FOR MANITOBA *v.* A.-G. FOR CANADA, 104 L. J. P. C. 41; 152 L. T. 362; 51 T. L. R. 242, P. C.

390a. —— —— **Dedication as naval depot—Revocation of dedication.**]—AUSTRALIA COMMONWEALTH *v.* NEW SOUTH WALES STATE, No. 56a, *ante*.

390b. —— **Land held under Discharged Soldiers' Settlement Acts—Eviction.**]—If a person holding Crown land in South Australia under Australian Discharged Soldiers' Settlement Act, 1917, & amending Acts, fail to carry out the conditions laid down in his agreement with the Govt., he can be ejected without a judicial or quasi-judicial inquiry.—LAFFER *v.* GILLEN, [1927] A. C. 886; 96 L. J. P. C. 166; 137 L. T. 701; 43 T. L. R. 694, P. C.

391. *Add. Annotations:*—**Apld.** Sunmonu *v.* Disu Raphael, [1927] A. C. 881. **Distd.** Sakariyawo Oshodi *v.* Moriamo Dakolo, [1930] A. C. 667, P. C. **Refd.** Sobhuza II. *v.* Miller, [1926] A. C. 518; Bakare Ajakaiye *v.* Southern Provinces Lieutenant-Governor, [1929] A. C. 679; Eshugbayi Eleko *v.* Nigeria Government (Officer Administering), [1931] A. C. 662.

391a. —— **Lands acquired under Public Lands Acquisition Ordinance—Right of chief to compensation.**]—The Govt. of Nigeria acquired under the Public Lands Acquisition Ordinance a compound in Lagos, which with other compounds was held by applt. as paramount chief for the use of his family & household, members of which occupied houses in the compound & used the land in common. The occupants had heritable rights in their holdings subject to a reversion in the chief in the event of the family of an occupant becoming extinct. A Govt. grant had been made to a headman placed in charge of the compound:—*Held:* the occupants were entitled to the compensation awarded, but subject to applt. receiving some small portion of it in respect of his reversionary right; the Govt. grant did not affect the respective rights of the chief & the occupants to the compensation.—SAKARIYAWO OSHODI *v.* MORIAMO DAKOLO, [1930] A. C. 667; 99 L. J. P. C. 233; 144 L. T. 35; 46 T. L. R. 599, P. C.

Annotations:—**Refd.** Idewu Inasa *v.* Sakariyawo Oshodi, [1934] A. C. 99; Sakariyawo Oshodi *v.* Brimah Balogun & Scottish Nigerian Mortgage & Trust Co., [1936] 2 All E. R. 1632.

392a. **Kenya—Sale of Crown lands by auction—Restriction to Europeans.**]—Under the terms of the Crown Lands Ordinance, No. 12 of 1915 of Kenya, for the lease or sale of Crown lands:—*Held:* there was power for the Comr., whether the sale was by auction or not, to restrict the user of a house to Europeans, except such Asiatics or Africans as were employed therein as domestic servants, & the sale or lease might be confined by him to bidding by Europeans only. Restricted auction could be held under the ordinance, & whether the restriction should be based on racial distinctions was not a question of law but of policy. The procedure followed of postponing the sale ordered by the Comr. for Aug. 11, 1928, on an *ex parte* application for *mandamus* by appct. who was an Indian subject of His Majesty resident in Mombasa, made by him on Aug. 8 not approved.—LOCAL GOVERNMENT LANDS & SETTLEMENT COMR. *v.* KADERBHAI, [1931] A. C. 652; 100 L. J. P. C. 124; 145 L. T. 265, P. C.

Annotation:—**Refd.** Eshugbayi Eleko *v.* Nigeria Government (Officer Administering), [1931] A. C. 662.

392b. **Lagos—Alienation of native land—Acquiescence by chief.**]—Certain lands in Lagos were granted by the British Crown as family lands to Chief Oshodi Tappa, head of the Oshodi family, in 1862. Subsequently he divided the lands into 21 compounds & appointed a head, at that date a slave, who upon emancipation later became an arota, to each compound & in 1869 the Government issued a series of Crown grants absolute in form to the various heads of the compounds so appointed. In 1913 an arota purported of himself, & without reference to the Oshodi family to convey or transfer an absolute or fee simple interest in part of his compound, & in 1927 the purchaser in 1913 claimed to be entitled to the fee simple as the result of a subsequent acquiescence by certain members of the Oshodi family. There was in fact no chief of the Oshodi family for about twenty years of the relevant period:—*Held:* as there was no consent by the chief & his family as a whole to the transfer, an absolute fee simple title in the property did not pass, & there was no sufficient subsequent acquiescence by the family. Observations as to the application of the doctrine of laches to places where native law is in a fluid state.—SAKARIYAWO OSHODI *v.* BRIMAH BALOGUN & SCOTTISH NIGERIAN MORTGAGE & TRUST CO., LTD., [1936] 2 All E. R. 1632; 80 Sol. Jo. 753, P. C.

392c. **Gold Coast—Ownership—Exclusive jurisdiction of Divisional Court.**]—After notice has been given under the Public Lands Ordinance

386 i. *Australia—Right of New South Wales—To Garden Island.*]—*Held:* New South Wales was entitled as against the Commonwealth, which claimed in right of the Imperial Govt., to possession to Garden Island.—STATE OF NEW SOUTH WALES *v.* COMMONWEALTH (1926), 38 C. L. R. 74.—**AUS.**

sc. *India — Transfer — Necessity for deed.*]—A deed duly executed by the officers named in 22 & 23 Vict. c. 41, is necessary in order to transfer the ownership of Crown lands.—RUPAN SINGH *v.* AKHAJ SINGH (1930), I. L. R. 10 Pat. 203.—**IND.**

(c. 142 of the Laws of the Gold Coast Colony) by the Colonial Secretary of the Colony of the proposed acquisition of lands for the public service the Divisional Ct. of the Gold Coast is, under the Ordinance, & particularly sects. 6 & 7 thereof, the proper tribunal to determine the amount of compensation due in respect of the lands, & also any case of disputed interest in or title to the lands.

Where, therefore, an action had been begun in the Native Tribunal of Cape Coast involving a claim to land which was the subject of a notice issued by the Colonial Secretary of the Colony, & proceedings under the Lands Ordinance, in which deft. in the action before the Native Tribunal was a party, were pending in the Divisional Ct., the proceedings before the Native Tribunal were misconceived & should have been stayed.—JACKSON *v.* COOKE, [1937] A. C. 205; [1936] 3 All E. R. 680; 106 L. J. P. C. 8; 156 L. T. 225; 81 Sol. Jo. 12, P. C.

Part IX.—Judicial Committee of the Privy Council.

393a. —— **Not refusal of Governor-General of Canada to grant fiat under Petition of Right Act.**]—The Governor-General of Canada, in deciding under sect. 4 of Petition of Right Act of Canada whether to grant his fiat, does not act as a "judicial officer" within the meaning of Judicial Committee Act, 1833 (c. 41), s. 3, & consequently an appeal from his refusal does not lie to His Majesty in Council.—LOVIBOND *v.* CANADA, GOVERNOR-GENERAL, [1930] A. C. 717; 99 L. J. P. C. 178; 144 L. T. 47; 46 T. L. R. 618; 75 Sol. Jo. 278, P. C.

394. *Add. Annotations :*—**Folld.** Strickland (Lord) *v.* Grima, [1930] A. C. 285. **Refd.** Nadan *v.* R., [1926] A. C. 482.

394a. —— —— **Special jurisdiction given by Letters Patent.**]—The Malta Constitution Letters Patent, 1921, provide by art. 33 "all questions which may arise as to the right of any person to be or remain a member of the senate or the legislative assembly shall be referred to & decided by our Ct. of Appeal in Malta." The Ct. of Appeal having held that the election of the second & third applts. to the senate was null & void, & special leave to appeal to His Majesty in Council having been granted :—*Held :* the intention of the above article of the letters patent was to designate the Ct. of Appeal a special tribunal finally to determine all questions of the nature stated without annexing to the jurisdiction the ordinary incident of an appeal to the Crown under the prerogative to admit an appeal; & accordingly that the appeal should be dismissed.—STRICKLAND (LORD) *v.* GRIMA, [1930] A. C. 285; *sub nom.* PARNIS *v.* AGIUS, 99 L. J. P. C. 81; 142 L. T. 386; 46 T. L. R. 194, P. C.

398a. Supreme Court of Palestine—Sitting as court of first instance.]—JERUSALEM-JAFFA DISTRICT GOVERNOR *v.* SULEIMAN MURRA, No. 20a, *ante*.

401. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

402. *Add. Annotation :*—**Refd.** Seneviratne *v.* R., [1936] 3 All E. R. 36.

405. *Add. Annotation :*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

406. *Add. Annotation :*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

423. *Add. Annotation :*—**Consd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

426. *Add. Annotation :*—**Consd.** Ambard *v.* A.-G. for Trinidad & Tobago, [1936] 1 All E. R. 704.

430a. —— **Penalties.**]—On a preliminary objection raised by resp. as to the competency of the appeal :—*Held :* it is competent to His Majesty in Council to give leave to appeal & to entertain appeals against orders of cts. of record overseas imposing penalties for contempt of ct.—AMBARD *v.* A.-G. FOR TRINIDAD & TOBAGO, [1936] A. C. 322; [1936] 1 All E. R. 704; 105 L. J. P. C. 72; 154 L. T. 616; 52 T. L. R. 335; 80 Sol. Jo. 344, P. C.

439a. Not concerned with matters of procedure.]—ATTA MOHAMMAD *v.* R., No. 532a, *post*.

442a. —— ——.]—BRITISH COAL CORPN. *v.* R., No. 447b, *post*.

442b. —— ——.]—RENOUF *v.* A.-G. FOR JERSEY, No. 659a, *post*.

444a. —— **Creation of special tribunal—To try election petitions.**]—STRICKLAND (LORD) *v.* GRIMA, No. 394a, *ante*.

445. *Add. Annotations :*—**Consd.** British Coal Corpn. *v.* R., [1935] A. C. 500. **Refd.** Nadan *v.* R., [1926] A. C. 482.

446a. —— ——.]—The (Indian) Scheduled Districts Act (XIV. of 1874) gives the ct. of the collector power to try & determine suits of every description, & under the Act the ct. is to be considered as the district & principal ct. of original jurisdiction, & the Act gives a right of appeal from the ct. of the collector to the ct. of the Comr. as the highest Ct. of Appeal. However, the Act provides (r. 9): "It shall be in the power of the Local Government to refer to the Board of Revenue any case in which the Comr., on appeal from the collector, may have reversed the decision of the lower ct., & the orders of the Board in such case shall be final." On a preliminary objection taken to the competence of the appeal :—*Held :* the effect of rule 9 was to enable the Local Government to constitute *pro hac vice* the Board of Revenue a ct. of second appeal with full appellate jurisdiction, but this could not affect His Majesty's prerogative to grant special leave to appeal.—SINGH (RAJA SARDA MAHESH PRASAD) *v.* BADRI LAL SAHU, [1936] 1 All E. R. 361; 80 Sol. Jo. 322, P. C.

447a. By Dominion Act—Irish Free State.]—The prerogative right of appeal to His Majesty in Council from the Supreme Ct. of the Irish Free State has been effectively abrogated by the Irish Free State Constitution (Amendment) Act, 1933. The Treaty & Constituent Act scheduled to the Irish Free State Constitution Act, 1922, being parts of an Imperial Act, form parts of the statute law of the United Kingdom. Before the passing of the Statute of Westminster it was not competent for the Irish Free State Parliament to pass an Act abrogating the Treaty, because the Colonial Laws Validly Act, 1865 (c. 63), forbade a Dominion Legislature to pass a law repugnant to an Imperial Act. The effect of the Statute of Westminster was to remove the fetter which lay upon the Irish Free State Legislature by reason of the Colonial Laws Validity Act. The Irish Free State Legislature can now pass Acts repugnant to an Imperial Act. Petition dismissed. —MOORE *v.* A.-G. FOR IRISH FREE STATE, [1935] A. C. 484; 104 L. J. P. C. 50; 153 L. T. 266; 51 T. L. R. 504; 79 Sol. Jo. 501, P. C.

447b. —— Canada.]—On a preliminary objection to the competency of a petition for special leave to appeal to the King in Council from a judgment of the Ct. of King's Bench (Appeal Side) of the Province of Quebec in a criminal matter on the ground that the petition was incompetent by reason of the prohibition of appeals to His Majesty in criminal matters by the Canadian Statute 23 & 24 Geo. 5, c. 53, s. 17:—*Held:* the petition was incompetent. Before the Statute of Westminster, the Canadian Legislature was subject to the limitations imposed by Colonial Laws Validity Act, 1865 (c. 63), by which legislation repugnant to an Act of the Imperial Parliament was declared void by sect. 129 of B. N. A. Act, 1867 (c. 3), & also by the doctrine forbidding extra-territorial legislation. These limitations were abrogated by the Statute of Westminister. The extent of the legislative competence conferred on the Canadian Legislature in regard to appeals to the King in Council in criminal matters must now be ascertained from its constituent Act, the B. N. A. Act, 1867 (c. 3). The right of appeal to the King in Council is a prerogative right, & the prerogative cannot be restricted or qualified save by express words or necessary intendment. Sect. 91 of the Act read with the rest of the Act, not by express words, but by necessary intendment, does invest the Canadian Legislature with power to regulate or prohibit appeals to the King in Council in criminal matters. Appeal to the King in Council is prohibited in precise words by sect. 17 of the Canadian Statute 23 & 24 Geo. 5, c. 53.—BRITISH COAL CORPN. *v.* R., [1935] A. C. 500; 104 L. J. P. C. 58; 153 L. T. 283; 51 T. L. R. 508; 79 Sol. Jo. 541, P. C.

Annotation:—**Refd.** Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936.

462a. —— —— Freedom of speech of members of legislature.]—MAHOMED ABDUL CADER *v.* KAUFMAN, [1928] W. N. 264; 66 L. Jo. 425, P. C.

465. *Add. Annotation:*—**Apld.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

466a. —— —— Patent cases.]—As no question of general importance usually arises in a patent case, their Lordships deprecated the granting of special leave to appeal in cases of that nature in which there were concurrent judgments.—POPE. APPLIANCE CORPN. *v.* SPANISH RIVER PULP & PAPER MILLS, LTD., [1929] A. C. 269; 98 L. J. P. C. 50; 140 L. T. 409; 46 R. P. C. 23, P. C.

467a. —— ——.]—The case decided by the High Ct. of Australia followed a decision given fifteen years ago in Australia, where the point now decided arose incidentally, & the decision in that case was by a bare majority & had been a matter of considerable judicial doubt ever since. In this case some of the judges had expressed a strong view that it was desirable that the matter should be considered & finally set at rest by the decision of the Judicial Committee. The question decided involved matters of great public interest & difficult questions of law:—*Held:* though the Board did not desire to encourage appeals from the High Ct. of Australia, or from any one of the Dominions, or enlarge the class of cases in which such appeals were entertained, this case was eminently one in which special leave to appeal to the Judicial Committee should be granted.—JAMES *v.* COMMONWEALTH OF AUSTRALIA (NO. 1) (1935), 105 L. J. P. C. 57; 154 L. T. 363; 80 Sol. Jo. 109, P. C.

PART XI. SECT. 3, SUB-SECT. 5.

447a i. *By Dominion Act—New Zealand.*]—Cos. (Special Liquidations) Act, 1934-35, held not to be unconstitutional or void, but to be operative, because (1) it was within the competence of the New Zealand Legislature to make new law, the making of which had rendered a further continuance of certain legislation useless or impossible; (2) the statute in question was not unconstitutional, as it did not purport to deprive a litigant of his right to ask the Judicial Committee of the Privy Council for leave to appeal, & was therefore, not repugnant to Judicial Committee Act, 1833, & Judicial Committee Act, 1844, of the Imperial Parliament.—TRANSPORT MUTUAL & GENERAL INSURANCE CO., LTD. (IN LIQUIDATION) *v.* WEBBER, [1936] N. Z. L. R. 11.—N. Z.

PART IX. SECT. 4, SUB-SECT. 2.—A.

448 i. *General rule.*]—Special leave to appeal should only be granted where the case involves matters of public interest or some important question of law.—RICHES *v.* CITY OF MOOSE JAW, [1925] 4 D. L. R. 326; [1925] 3 W. W. R. 399.—**CAN.**

e i. ——.]—The main question for decision was whether a certain agreement between the Muhammedan & Hindu communities of a town regarding religious processions which had been brought about by the Sub-Divisional Officer a few years ago, & which had been signed by certain persons of each community was of permanent effect & binding on all members of both communities:—*Held:* the case involved a matter which was of general importance to both communities, & although the valuation was very small the case was "otherwise a fit one for appeal to His Majesty in Council."—SUBHAN' *v.* BABURAM SINGH (1929), I. L. R. 52 All. 329.—**IND.**

466 i. —— *Not if important only to parties.*]—Ordinarily none but the parties to a litigation are concerned with the result of a case. In every such case, where the valuation is less than the prescribed limit, there is no right of appeal to His Majesty in Council. It is only when a case is of larger importance & the principle when finally decided by the Privy Council will be of benefit, not only to the people who are directly involved, in the litigation, but to a considerable body of other people, that leave to appeal should be granted.—RUCHCHA SAITHWAR *v.* HANSRANI (1928), I. L. R. 50 All. 640.—**IND.**

468 v. ——.]—Where in a petition for leave to appeal to His Majesty in Council the subject-matter of the suit is more than Rs. 10,000, & the High Ct. affirmed the decision of the trial ct., &, therefore, the only question to be determined was whether there was a substantial question of law involved in the case:—*Held:* the certificate for leave to appeal could not be granted, as the question involved, whether, if the

482a. —— ——.]—In the Code of Civil Procedure, 1908, s. 110, dealing with appeals to the King in Council from a decree or final order of a High Ct., the words " the amount or value of the subject-matter of the suit in the ct. of first instance " mean the amount or value at the institution of the suit, not at the date of the decree in the ct. of first instance, & that meaning is not affected by the alternative condition which follows in the sect.—GUDIVADA MANGAMMA *v.* MADDI MAHALAKSHMAMMA (1929), 57 L. R. Ind. App. 56; 99 L. J. P. C. 78; 142 L. T. 313; 46 T. L. R. 130, P. C.

485a. —— **Directly or indirectly involved—Successful appeal rendering possible prosecution of claim for larger sum.**]—Upon a dispute as to a contract for the sale of goods, arbitrators awarded Rs. 18,000 to petitioner & Rs. 3,000 to resps. The award in favour of petitioner having been set aside, he brought a suit to set aside the award in favour of resps. The appellate ct. in India made a decree dismissing the suit & refused to certify under Code of Civil Procedure, 1908, s. 110, that the case was a fit one for appeal to the Privy Council in that it would " involve, directly or indirectly, some claim or question to or respecting property " of Rs. 10,000, or upwards. Petitioner contended that he had a right of appeal under the above words of sect. 110, since if the appeal succeeded he could proceed with a suit, which had been stayed, claiming Rs. 81,000 damages under the contract:—*Held:* without defining the meaning of " property " as used in sect. 110 petitioner's claim upon the contract was too remote to be considered as being property indirectly involved, & his petition should be dismissed.—UDOYCHAND PANNALAL *v.* GUZDAR (P. E.) & Co. (1925), L. R. 52 Ind. App. 207, P. C.

497. *Add. Annotation:*—**Refd.** Gudivada Mongamma *v.* Maddi Mahalakshmamma (1929), 99 L. J. P. C. 78.

501. *Add. Annotations:*—**Refd.** Nadan *v.* R., [1926] A. C. 482; British Coal Corpn. *v.* R., [1935] A. C. 500.

502. *Add. Annotation:*—**Expld. & Distd.** Davis (Lady) *v.* Shaughnessy (Lord), [1932] A. C. 106.

525. *Add. Annotations:*—**Consd.** Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936. **Refd.** Nadan *v.* R., [1926] A. C. 482.

526a. —— **From Canadian court.**]—NADAN *v.* R., No. 91a, *ante*.

---

marriage of the mother has been positively disproved, the acknowledgment by the father is sufficient for the legitimation of a son, having been definitely settled by their Lordships of the Privy Council, was not a substantial question of law within Civil Procedure Code, s. 110.—FEROZE DIN KHAN *v.* NAWAB KHAN (1928), I. L. R. 9 Lah. 582.—**IND.**

476 i. *Leave granted on terms—By what court imposed.*]—Where leave to appeal to the Privy Council is granted, the conditions attached to such leave, & the terms on which it is allowed, should be left to the Judicial Committee.—STEVENSON *v.* FLORANT, [1926] 1 D. L. R. 601; [1926] S. C. R. 90.—**CAN.**

477 i. —— *Security—By whom allowed—Privy Council Appeals Act, R. S. O.*, 1914 (*c.* 54), *s.* 11.]—MCBRIDE *v.* ONTARIO JOCKEY CLUB, LTD., [1926] 1 D. L. R. 743; 58 O. L. R. 267.—**CAN.**

479 ii. ——.]—R. (A.-G. FOR SASKATCHEWAN) *v.* MEILICKE (NO. 3), [1938] 2 W. W. R. 424.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 2.—B. (a).

483 iv. —— *Partnership suit.*]—Where leave to appeal to the Privy Council was applied for, petitioner contending that the decree involved a claim respecting property of Rs. 10,000 within the meaning of Civil Procedure Code, 1908, s. 110 (2):—*Held:* it was the value of applt.'s share in the partnership that must be looked to, & not the value of the whole of the partnership property.—NARIMAN RUSTOMJI MEHTA *v.* HASHAM ISMAYAL VALAD HAJI KHAMISA (1924), I. L. R. 49 Bom. 149.—**IND.**

483 v. —— *" Property "—Loss of trade & goodwill.*]—Where the result of a judgment was to destroy or prevent defts. from trading by depriving them of goodwill & of trade names which they had hitherto used:—*Held:* these were " property "; & as any of the matters in controversy was worth more than $4,000, the matter was a " pecuniary amount " exceeding that sum within Privy Council Appeals Act, s. 2.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1924] 2 D. L. R. 1238; 54 O. L. R. 629.—**CAN.**

483 vi. ——.]—In a suit for an easement of light & air claimed by the owner of property A. against the owner of property B., it is the value of the easement & not the value of property A. that determines the appealable value for leave to appeal to the Privy Council under Civil Procedure Code, 1908, s. 110.—LALLUBHAI PRAGJI *v.* BHIMBAI DAJIBHAI (1929), I. L. R. 53 Bom. 552.—**IND.**

483 vii. ——.]—In Code of Civil Procedure, 1908, s. 110, dealing with appeals to the King in Council from a decree or final order of a High Ct., the words " the amount or value of the subject-matter of the suit in the ct. of first instance " mean the amount or value at the institution of the suit, & not at the date of the decree in the ct. of first instance; & that meaning is not affected by the alternative condition which follows in the sect.—MANGANNA *v.* MAHALAKSHMAMMA (1929), I. L. R. 53 Mad. 167.—**IND.**

483 viii. ——.]—*Semble:* if a plaint merely claims a sum of or under Rs. 10,000 as rent, the recurring nature of rent does not make the case fit for appeal to the Privy Council under sect. 110 of the Code of Civil Procedure, 1908.—JOGESH CHANDRA ROY *v.* EMDAD MEAH (1931), 59 L. R. Ind. App. 29.—**IND.**

h ii. —— ——.]—On an application for leave to appeal to the Privy Council mesne profits subsequent to the date of the High Ct. decree cannot be taken into account in making an estimate of value under Civil Procedure Code, 1908, s. 110 (2).—SESHGIRI SHAMBHULINGAM *v.* MANJAYYA (1925), I. L. R. 50 Bom. 160.—**IND.**

k i. —— —— ——.]—Pltf. cannot insist upon the award of post-plaint interest as something to which he possesses a legal right. Such interest cannot therefore be included in ascertaining the " amount or value of the subject-matter in dispute on appeal to His Majesty in Council."—VENKATATHIRISAMI *v.* APPASWAMI (1933), I. L. R. 56 Mad. 886.—**IND.**

sr. *Not amount of penalty imposed by fine or forfeiture under penal statute.*]—R. *v.* REGINA WINE & SPIRIT, LTD. (No. 2), [1922] 2 W. W. R. 1166; 67 D. L. R. 436.—**CAN.**

sw. *Judgment for sum less than appealable amount—Sufficient sums subsequently accruing.*]—OCEAN TRAWLERS *v.* MARITIME NATIONAL FISH, LTD. (No. 2) (1934), 8 M. P. R. 233.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 2.—B. (b).

e i. —— *Motion for injunction—Passing-off action.*]—These were motions on behalf of resps. for conditional leave to appeal to the Privy Council. Resps. brought passing-off actions against applts., to obtain an injunction against each of them to prevent them from keeping their taxicabs painted in such a manner as to be calculated to deceive the public into thinking that their cabs were those of resps. The actions came on for trial & injunctions were granted against both applts. Defts. appealed, & the Ct. of Appeal in April last allowed the appeals in both cases & dissolved the injunctions. Resps moved for conditional leave to appeal to the Privy Council against this order:—*Held:* proposed appeal did not directly or indirectly involve a claim or question to or respecting a civil right of the value of £500, & the motion should accordingly be dismissed.—NICHOLSON *v.* BLACK & WHITE CABS, LTD., [1928] N. Z. L. R. 610.—**N.Z.**

e ii. —— *Questions of public importance involved—Power to grant publicans' licences.*]—On a motion for conditional leave to appeal to the Privy Council from a decision of the Ct. of Appeal in which the question involved was the right of a licensing committee to grant publicans' licences in a district originally forming part of a no-license district, but which by an alteration of boundaries had become merged in a license district:—*Held:* even if the proceedings did not involve a civil right of the value of £500 or upwards, the questions involved were of such general & public importance that conditional leave to appeal should be granted without special terms.—SCALES *v.* YOUNG, [1930] N. Z. L. R. 327.—**N.Z.**

527. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

531. *Add. Annotation :*—**Consd.** Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936.

531a. —— **Abrogation by Canadian Statute.**]—BRITISH COAL CORPN. *v.* R., No. 447b, *ante.*

532a. ——.]—Their Lordships do not act as a Ct. of Criminal Appeal, & are not concerned to regulate the procedure of cts. in India, or to criticise what is mere matter of procedure.—ATTA MOHAMMAD *v.* R. (1929), 57 L. R. Ind. App. 71, P. C.

534. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

534a. Whether venire de novo ordered.]—RAS BEHARI LAL *v.* KING-EMPEROR, No. 554f, *post.*

538a. Question of jurisdiction of colonial court—To issue mandamus to inferior court.]—The Supreme Ct. of Ontario has jurisdiction to mandamus a county ct. judges criminal ct. to try, according to the procedure provided by Criminal Code of Canada, s. 827, a person against whom an indictment has been found by a grand jury for the county. The fact that no rules have been made as to the issue of a mandamus in a criminal matter does not preclude the Supreme Ct. from exercising its full powers.

Special leave to appeal to the Privy Council was granted upon a petition alleging two grounds: (1) that the Supreme Ct. had not jurisdiction to issue a mandamus in the circumstances above referred to, & (2) that under the Criminal Code the persons indicted had not the option given by sect. 827 to be tried without a jury. Special leave was granted on the first ground; the question whether the appeal could be entertained was reserved :—*Held :* the appeal should be dismissed, since the ground upon which special leave was given failed, & the second ground was merely a question of procedure & was not one upon which an appeal would be entertained.—A.-G. FOR ONTARIO *v.* DALY, [1924] A. C. 1011; 94 L. J. P. C. 21; 132 L. T. 210; 40 T. L. R. 814, P. C.

Annotation :—**Refd.** Nadan *v.* R., [1926] A. C. 482.

538b. Question of procedure.]—A.-G. FOR ONTARIO *v.* DALY, No. 538a, *ante.*

540a. —— **As to construction of statute.**]—A difference of judicial opinion in the High Cts. of India in reference to a sect. of the Code of Criminal Procedure may be a ground for granting special leave to appeal in a criminal case.—NAZIR AHMAD *v.* KING-EMPEROR (1936), 154 L. T. 362; 80 Sol. Jo. 243; 30 Cox, C. C. 359, P. C.

541. *Add. Annotation :*—**Refd.** Seneviratne *v.* R., [19] 3 All E. R. 36.

542. *Add. Annotations :*—**Distd.** Practice Note (1932), 48 T. L. R. 300. **Apld.** Lawrence *v.* R., [1933] A. C. 699. **Refd.** Umra *v.* R. (1924), 41 T. L. R. 86; Nadan *v.* R., [1926] A. C. 482; Kishan Singh *v.* R. (1928), 44 T. L. R. 690; Knowles *v.* R., [1930] A. C. 366; Mahadeo *v.* R., [1936] 2 All E. R. 813; Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936; Seneviratne *v.* R., [1936] 3 All E. R. 36; Choukhani *v.* King-Emperor, Mukherjee *v.* King-Emperor (1938), 107 L. J. P. C. 35.

545. *Add. Annotation :*—**Refd.** Seneviratne *v.* R., [1936] 3 All E. R. 36.

549. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

549a. ——.]—NADAN *v.* R., No. 91a, *ante.*

549b. —— —— **Misinterpretation of statute.**]—The contention that in a criminal case a ct. in India has come to a wrong conclusion upon the interpretation of an Indian statute is not necessarily tantamount to an allegation of substantial & grave injustice such as to induce the Privy Council to give special leave to appeal.—UMRA *v.* R. (1924), 41 T. L. R. 86, P. C.

549c. —— ——.]—RENOUF *v.* A.-G. FOR JERSEY, No. 659a, *post.*

551. *Add. Annotations :*—**Refd.** Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936; Seneviratne *v.* R., [1936] 3 All E. R. 36.

554a. —— **As to onus of proof—No miscarriage of justice.**]—Ceylon Evidence Ordinance, No. 14 of 1895, provides by sect. 106 that: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him." At the trial of two persons accused respectively of performing an illegal operation & of abetting its performance, the judge in the course of his summing-up, after stating that the person on whom the operation was alleged to have been performed was at the time unconscious under chloroform, & that what took place was a fact especially within the knowledge of the accused who were there, directed the jury that the law said that the burden of proving that no criminal operation took place was upon the accused :—*Held :* that direction did not correctly state the law. It is not the law of Ceylon that the burden is cast upon an accused person of proving that no crime has been committed. The facts of the case were such, however, as to point irresistibly to the guilt of the accused quite independently of that direction to the jury, & there had been no such substantial injustice, no such deprivation of the substance

PART IX. SECT. 4, SUB-SECT. 3.—A.

532 i. *Not a court of criminal appeal.*]—The Judicial Committee will neither accept nor share the responsibility for the administration of criminal justice in India, unless there has been some violation of the principles of justice or some disregard of legal principles.—RUSTOM *v.* R., RANDIR SINGH *v.* R., TABA SINGH *v.* R., RHUDA BAKSH *v.* R. (1923), I. L. R. 48 Bom. 515.—**IND.**

532 ii. ——.]—The power of the Judicial Committee to entertain appeals from a lower ct. is not that of a ct. of criminal appeal, but as the Privy Council advising the Sovereign with regard to the exercise of the prerogative, which is a remnant of the powers of the Crown to interfere with tribunals of justice, which do not exist in this country at all. There must be proof that there was no proper trial & that the forms of all judicial procedure were disregarded, not only according to local ordinances, but according to the unvarying character which is common to all.—HUNMANTRAO *v.* R. (1924), I. L. R. 49 Bom. 455.—**IND.**

532 iii. ——.]—The Judicial Committee does not sit as a ct. of criminal appeal. It will not interfere with a criminal sentence unless there has been something so irregular or so outrageous as to shock the very basis of justice. —MOHINDAR SINGH *v.* R. (1932), I. L. R. 13 Lah. 479.—**IND.**

PART IX. SECT. 4, SUB-SECT. 3.—B. (a).

538 ii. ——.]—R. *v.* SCOTT (No. 2) (1924), 57 N. S. R. 201.—**CAN.**

538 iii. —— *Evidence improperly admitted.*]—*Held :* the use made in evidence of books & documents found in the library of a suspected person presented a question of "great general & public importance."—R. *v.* MCLACHLAN, [1924] 1 D. L. R. 1109; 42 Can. Crim. Cas. 86; 56 N. S. R. 549.—**CAN.**

of fair trial, as to justify the grant of special leave to appeal to His Majesty in Council.—ATTYGALLE *v.* R., [1936] A. C. 338; [1936] 2 All E. R. 116; 105 L. J. P. C. 79; 154 L. T. 620; 52 T. L. R. 390; 80 Sol. Jo. 571; 30 Cox, C. C. 390, P. C.

Annotation :—**Consd.** Seneviratne *v.* R., [1936] 3 All E. R. 36, P. C.

554b. —— ——.]—Applt. was charged in Ceylon with having murdered his wife. The evidence of applt.'s servants, if believed, established that applt. was not in his wife's room immediately before her death, & there was no evidence that applt. was in his wife's room at any material time. There was strong evidence, both in letters written by deceased & of conversations, pointing to a tendency or inclination on the part of deceased to commit suicide. Although there had been quarrels, applt. had never been seen to threaten his wife with any form of physical violence. Evidence was given by a number of medical witnesses, which established that chloroform was the cause of death, but the medical evidence was completely ambiguous in its effect, with no preponderance of opinion among the doctors that the physical conditions of deceased apparent at the post-mortem were such as to be consistent only with the hypothesis of homicide. The doctors were divided in their opinions as to whether death was due to asphyxia or syncope, whether certain marks on the face of the deceased were such as would be caused by burns from chloroform, whether pressure on the face would be necessary to cause such burns & as to the behaviour of persons during the administration of chloroform. At the trial, the prosecution called all available eye-witnesses, even though their names appeared in the list of defence witnesses, & witnesses who gave evidence favourable to applt. were extensively cross-examined as to other & previous oral statements, such procedure being permissible with the leave of the judge under the Ordinance (Law of Evidence) 14 of 1895, ss. 154 & 155. In other cases evidence of what a witness had said was given apparently without previous cross-examination of the witness as to such statements. After the evidence of all the witnesses had been taken, the judge & jury with applt. & counsel went to applt.'s house where the servant witnesses were questioned further & certain experiments were conducted. The jurors were not all together, but were divided up for the purpose of the experiments, each being asked his impressions. The judge in the course of his summing up, discussing the medical evidence intimated that if the jury could not make up their minds from the doctors' evidence, it was still their duty to come to a conclusion on their own observations. The judge in giving his direction as to the facts generally said: "He (applt.) has got to explain. . . . In the absence of explanation, the only inference is that he is guilty" & finally the judge said: "the verdict, whether it is a conviction or an acquittal, I hope it will be unanimous, . . . but if you cannot agree please remember that I have got the full power to ask you to reconsider your verdict, but four to three means an unacceptable verdict. That means you have to go through the trial again. I hope you will not have this misfortune." The jury convicted by five to two, one of the five recommending the applt. to mercy. Applt. appealed:—*Held :* (1) there being points both for & against applt. but the greater number merely ambiguous & no medical or other circumstantial evidence justifying a conviction, no tribunal as a matter of legitimate inference could arrive at the conclusion that the applt. was guilty; (2) it is not incumbent upon the prosecution in a murder case to call every available eye-witness, & while witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution, it is undesirable that the prosecution should call witnesses & at once proceed to cross-examine them; (3) in a criminal prosecution the onus of proof is upon the prosecution & there is no obligation upon the prisoner of proving facts especially within his own knowledge; (4) where a view by the jury is necessary the statutory procedure under Criminal Procedure Code, s. 238 must be strictly followed, & any serious departure therefrom tends "to divert the due & orderly administration of the law." The procedure here followed was altogether irregular; (5) references in a summing up to the necessity for a unanimous verdict in order to prevent a new trial are apt to be misconstrued by the jury & are to be avoided.—SENEVIRATNE *v.* R., [1936] 3 All E. R. 36, P. C.

554c. Non-direction of jury.]—On the appeal of an applt. who had been convicted in Nigeria of stealing & false accounting it was established by reference to the shorthand record of the judge's summing-up at the trial that he did not give the jury any direction at all as to the onus of proof resting on the prosecution, or that the accused was entitled to have the benefit of a reasonable doubt:—*Held :* (1) such an omission was as grave an error as active misdirection on the elements of the offence, & a verdict of guilty given by a jury who had not taken that fundamental principle into account was given in a case where the essential forms of justice had been disregarded, & the conviction should be set aside; (2) the general sentence of three years' imprisonment passed on applt. was invalid, for it was applicable to each count, whereas for the offences charged in the counts for false accounting the maximum punishment was two years; (3) when the judge in chambers, in the absence of applt., varied the sentence on the record so that applt. was to receive two years' imprisonment on the counts for stealing & one year on the counts for false accounting, this was a new & different sentence passed in circumstances in which the judge had no jurisdiction to pass any sentence, & the sentence purported to have been thus passed should accordingly be set aside.—LAWRENCE *v.* R., [1933] A. C. 699; 102 L. J. P. C. 148; 149 L. T. 574; 50 T. L. R. 13, P. C.

Annotations :—As to (1) **Reld.** Attygalle *v.* R., [1936] 2 All E. R. 116; Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936.

554d. Excessive sentence.]—LAWRENCE *v.* R., No. 554c, *ante*.

554e. Alteration of sentence in absence of prisoner.]—LAWRENCE *v.* R., No. 554c, *ante*.

554f. Juror unable to understand English.]—(1) A number of accused persons in India were convicted of murder & in some cases were sentenced to death & in others to transportation for life. It subsequently transpired that at the trial one of the jury did not understand English, the language in which some of the evidence, counsel's addresses, & the judge's charge were given:—*Held:* on appeal, the convictions & sentences must be set aside on the grounds that the effect of the incompetence of the juror was to deny to the accused persons an essential part of the protection afforded to them by law, & that the result of the trial was a miscarriage of justice.

(2) In England the ordinary order would be in such circumstances to award a *venire de novo*. Their Lordships, however, think it desirable that any discretion as to any consequential order should be exercised by the High Ct., & they content themselves, therefore, with humbly advising His Majesty that the appeal should be allowed (*per* CUR.).—RAS BEHARI LAL *v.* KING-EMPEROR (1933), 102 L. J. P. C. 144; 150 L. T. 3; 50 T. L. R. 1; 77 Sol. Jo. 571; 30 Cox, C. C. 17, P. C.

558a. Trial for murder—Failure to consider possibility of verdict of manslaughter.]—KNOWLES *v.* R., No. 564a, *post.*

559. *Add. Annotations:—As to* (1) **Consd.** Umra *v.* R. (1924), 41 T. L. R. 86; Nadan *v.* R., [1926] A. C. 482.

560. *Add. Annotations:*—**Refd.** Nadan *v.* R., [1926] A. C. 482; Knowles *v.* R., [1930] A. C. 366; Attygalle *v.* R., [1936] 2 All E. R. 116; Renouf *v.* A.-G. for Jersey, [1936] 1 All E. R. 936; Seneviratne *v.* R., [1936] 3 All E. R. 36.

561a. —— What amounts to "verbal" evidence—Ceylon Evidence Ordinance, No. 14 of 1895.]—A woman whose throat had been cut was unable to speak owing to the nature of the wound. She was fully conscious, however, & able to understand what was said to her, to make signs & to nod her head slightly. After making certain signs which, it was alleged, possibly indicated applt., she was asked the direct question whether it was the applt. who had cut her throat, & in answer to that question she nodded her head. She died shortly afterwards from asphyxia resulting from the injury to her throat:—*Held:* evidence as to signs made in answer to questions put to the deceased was admissible, but statements of witnesses as to what interpretation they put upon the signs were not admissible; further, the direct question to deceased whether it was applt. & her nod of assent constituted a verbal statement made by her within sect. 32 of Ceylon Evidence Ordinance, 1895, & as such was admissible in evidence under the section. There was proper & sufficient evidence of a verbal statement by deceased to the effect that it was applt. who had cut her throat.—CHANDRASEKERA (otherwise ALISANDIRI) *v.* R., [1937] A. C. 220; [1936] 3 All E. R. 865; 106 L. J. P. C. 30; 156 L. T. 204; 53 T. L. R. 137; 80 Sol. Jo. 1012; 30 Cox, C. C. 546, P. C.

562a. Irregular view by jury.]—SENEVIRATNE *v.* R., No. 554b, *ante.*

564a. Trial for murder by judge alone—Trial by jury impracticable or not permitted by local circumstances.]—Applt. was convicted of the murder of his wife, & sentenced to death upon a trial in Ashanti without a jury. By sect. 9 of Ashanti Administration Ordinance, 1902, "so far as it is practicable & local circumstances permit" the procedure, civil & criminal, in the Ashanti ct. was to be the same as in the Supreme Ct. of the Gold Coast Colony; in that ct. it was imperative by Ordinance that a trial for murder should be with a jury. The trial judge had not stated that a trial with a jury was not practicable or not permitted by local circumstances. It appeared on the appeal that there never had been trial by jury in Ashanti. The death of applt.'s wife resulted from a wound inflicted by a shot from a revolver while she & the applt. were together alone in a room. By a dying declaration she had stated that the revolver had been fired accidentally by herself in a manner which she described. The applt. in his evidence also attributed the wound to an accident by her. There was much circumstantial evidence:—*Held:* it should be presumed that a trial with a jury was not practicable, or was not permitted by local circumstances, & accordingly that the appeal failed so far as it was based upon want of jurisdiction; but the appeal should be allowed upon the ground that the applt. had not the substance of fair trial, & had suffered substantial & grave injustice, in that the trial judge, having come to the conclusion that the revolver had been fired by the applt., had entirely failed to consider whether the evidence justified a conviction for murder as opposed to manslaughter, & the Board was clearly of opinion that it did not.—KNOWLES *v.* R., [1930] A. C. 366; 99 L. J. P. C. 108; 143 L. T. 28; 46 T. L. R. 276; 29 Cox, C. C. 199, P. C.

564b. Reduction of sentences—Failure to observe statutory requirements.]—R. *v.* DAHU RAUT (1935), 51 T. L. R. 338; 79 Sol. Jo. 231, P. C.

586a. Discretion of court below—Judicial Committee will not interfere—Though members of court below disagree.]—Under Civil Code of Quebec, art. 189, a husband or wife may demand a separation on the ground of "outrage, ill-usage, or grievous insult"; & by art. 190: "The grievous nature & sufficiency of such outrage, ill-usage & insult, are left to the discretion of the ct., which, in appreciating them, must take into consideration the rank, condition & other circumstances of

---

PART IX. SECT 7.

m i. —— *Plaintiff domiciled abroad.*]—On an application by pltf. for leave to appeal *per saltum* to the Judicial Committee of the Privy Council:—*Held:* the question involved in the proposed appeal was one of great general & public importance & leave to appeal should be given; but since pltf. had established his domicile abroad, he should be required to give security for the costs of the trial & of the appeal to the Ct. of Appeal, as well as the usual security on appeals to the Judicial Committee.—YOUNG *v.* CANADIAN NORTHERN RY. CO., [1930] 1 W. W. R. 764; 3 D. L. R. 413; 37 C. R. C. 1; 38 Man. L. R. 567.—**CAN.**

m ii. —— *Powers of Privy Council.*]—Rule 9 of Privy Council Rules does not empower the ct. to extend, beyond the limit fixed by Ord. 45, r. 7 of the Civil Procedure Code, the time for furnishing the security & depositing the translative, etc., charges required by that rule in connection with an appeal to the Privy Council.—BAHADUR LAL *v.* JUDGES OF ALLAHABAD HIGH COURT (1933), I. L. R. 55 All. 432.—**IND.**

the parties." In such a case the Judicial Committee will be very reluctant to interfere with the discretion of the ct. below, even where there has been a great difference of judicial opinion; unless it appears that there has been a miscarriage of justice.—BALDWIN *v.* BALDWIN (1922), 91 L. J. P. C. 208; 128 L. T. 10, P. C.

598. *Add. Annotation:*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

606. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

608. *Add. Annotation:*—**Refd.** A.-G. of British Columbia *v.* A.-G. of Canada, [1924] A. C. 222.

609. *Add. Annotation:*—**Distd.** James *v.* Cowan, [1932] A. C. 542.

610a. —— —— ——.]—JAMES *v.* COWAN, No. 188a, *ante.*

613. *Add. Annotation:*—**Refd.** Eurana S.S. *v.* Burrard Inlet Tunnel & Bridge Co., [1931] A. C. 300.

618a. —— **From Court of King's Bench of Quebec—In respect of what matters.**]—(1) In Art. 68 of the Code of Civil Procedure of Quebec, which provides that an appeal lies to the Privy Council from final judgments rendered in appeal by the Ct. of King's Bench in cases, among others, "concerning titles to lands or tenements, annual rents or other matters in which the rights in future of the parties may be affected," the "other matters" are not necessarily *ejusdem generis* with the matters previously mentioned.

(2) Upon an application to admit an appeal it is the duty of the ct. to decide whether there is a right of appeal under the statutory provisions applicable.—DAVIS (LADY) *v.* SHAUGHNESSY (LORD), [1932] A. C. 106; 101 L. J. P. C. 37; 146 L. T. 289.

618b. —— —— **Duty of court on application to admit appeal.**]—DAVIS (LADY) *v.* SHAUGHNESSY (LORD), No. 618a, *ante.*

621. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

621a. —— **From Court of Appeal of British Columbia—No power to grant leave in criminal matter — What is "criminal matter."**] — Upon the true construction of the Order in Council of Jan. 23, 1911, regulating appeals from the Ct. of Appeal of British Columbia to His Majesty in Council, the power of that ct. under r. 2 (*b*), in conjunction with the definition of "judgment" in r. 1, to grant leave so to appeal from any "decree, order, sentence, or decision" does not apply to a criminal matter. A prosecution under a statute of British Columbia, whereby a person summarily convicted of an offence thereunder is liable to a penalty & imprisonment, & consequent proceedings by way of *habeas corpus certiorari*, or case stated, raising the question whether the statute is *ultra vires*, are criminal matters for the above purpose.—

PART IX. SECT. 8, SUB-SECT. 1.

o i. —— —— —— *Question relating to freedom of inter-State trade.*]—On applications to the High Ct. for certificates under sect. 74 of the Constitution that questions of law as to the limits *inter se* of the constitutional powers of the Commonwealth & of the State of New South Wales involved in the decision in *Ex p. Nelson* (No. 1), 42 C. L. R. 209, were questions which ought to be determined by His Majesty in Council:—*Held:* the applications should be refused.—*Ex p.* NELSON (No. 2) (1929), 42 C. L. R. 258; 3 A. L. J. 66; 1929 A. L. R. 177.—**AUS.**

605 i. —— —— *Operation of Australian Judiciary Act,* 1903.]—Judiciary Act, 1903-1920, s. 39 (2) (a), excludes an appeal as of right to the Privy Council from a decision of the Supreme Ct. exercising Federal jurisdiction, & gives to the High Ct. jurisdiction to entertain an appeal from such a decision.—LIMERICK S.S. Co. *v.* COMMONWEALTH OF AUSTRALIA (1924), 35 C. L. R. 69; 25 S. R. N. S. W. 293; 31 Argus L. R. 153.—**AUS.**

PART IX. SECT. 8, SUB-SECT. 2.

sb. *Competency of appeal — From Divisional Court of Appellate Division.*]—No appeal lies, unless the case falls within Privy Council Appeals Act, R. S. O., 1914 (c. 54), or unless leave to appeal is granted by the Judicial Committee.—BOLAND *v.* CANADIAN NATIONAL RY. CO., [1926] 1 D. L. R. 420; 58 O. L. R. 225.—**CAN.**

sd. —— *From advisory opinion—"Final judgment."*]—Where questions were referred to the ct. for its consideration, & the matter was heard before a ct. composed of four judges who were equally divided in opinion:—*Held:* (1) for the purpose of appeal to the Privy Council the opinion of the ct., although advisory only, could be treated as a final judgment between parties; (2) the words "final judgment" in the Privy Council Rules mean that which is regarded as a final judgment under Canadian law.—*Re* NOVA SCOTIA LEGISLATIVE COUNCIL (No. 2) (1926), 58 N. S. R. 49.—**CAN.**

se. —— *Order for trial by jury.*]—Leave to appeal to the Privy Council from an order refusing to set aside an order providing for a jury trial of an action for damages for personal injuries, refused.—BRADSHAW *v.* BRITISH COLUMBIA RAPID TRANSIT CO., LTD., [1927] 1 W. W. R. 425; 38 B. C. R. 111.—**CAN.**

q i. —— *Necessity for.*]—Ever since 34 Geo. 3, c. 2, s. 36, now found, substantially unchanged, in Privy Council Appeals Act, R. S. O., 1914 (c. 54), s. 2, the right of appeal in cases falling within its terms has stood unchallenged, & no leave to appeal, either to be given by the Judicial Committee or by the ct. below, has been regarded as necessary. Although the Act is absolute in prohibiting an appeal in cases which do not fall within it, this does not deprive his Majesty of the prerogative right to grant leave to appeal in any case in which he sees fit to exercise that right.—MCBRIDE *v.* ONTARIO JOCKEY CLUB, LTD., [1926] 1 D. L. R. 743; 58 O. L. R. 267.—**CAN.**

t i. ——.]—Applt. co., having been held liable for approximately $7,000, appealed giving security only for $500 for the costs of the appeal. The appeal having been dismissed, applts. applied for a stay of proceedings pending a projected appeal to the Judicial Committee of the Privy Council:—*Held:* the application as made could not be granted.—FIDELITY PHENIX FIRE INSURANCE CO. OF NEW YORK *v.* MCPHERSON, [1925] 3 D. L. R. 131; [1925] S. C. R. 104.—**CAN.**

f i. —— ——.]—An application for special leave to appeal to the Privy Council, & even the granting of such leave, do not *ipso facto* operate as a suspension of proceedings in execution of the judgment rendered by Supreme Ct. of Canada.—STEVEN *v.* FLORANT, [1926] 1 D. L. R. 601; [1926] S. C. R. 90.—**CAN.**

k (p. 498) i. ——.]—(1) Leave to appeal to the Privy Council should not be granted in a criminal case, but parties desiring to appeal should be left to their remedy by application to the Privy Council for such leave.

(2) Assuming the ct. to have power to grant leave to appeal, such leave should be refused in any case not coming within the principles laid down in *Re Dillet,* No. 542, *ante.*—R. *v.* R. (1926), 46 Can. Crim. Cas. 367; 58 N. S. R. 457.—**CAN.**

l (p. 498) i. —— *Reducing arbitrator's award—Expropriation of land.*]—There is a right of appeal to the Privy Council from the judgment of the Ct. of Appeal reducing the arbitrator's award in regard to lands expropriated under Dominion Ry. Act, R. S. C., 1927.—*Re* BOULTON & TORONTO TERMINALS RY. CO., LTD., [1933] 4 D. L. R. 621; O. R. 816.—**CAN.**

sk. *Appeals pending in Supreme Court & before Privy Council—Stay of proceedings in Canadian appeal.*]—Where, A. & B. being co-defts., A. had first inscribed an appeal for hearing in the Supreme Ct. of Canada, & B. later on had inscribed an appeal to the Judicial Committee of the Privy Council, upon motion on behalf of B. the proceedings on the first appeal were stayed pending the decision of the Privy Council upon B.'s appeal.—ASHBRIDGE *v.* SHAVER & HARRISON, [1925] 4 D. L. R. 1048; [1925] S. C. R. 694.—**CAN.**

so. *Appeal without leave—Not on question of jurisdiction.*]—An appeal which raises only a question of jurisdiction & does not involve a pecuniary amount, is not a matter in controversy within Privy Council Appeal Act, R. S. O., 1927, entitling pltf. to appeal as of right to the Privy Council.—LOVIBOND *v.* GRAND TRUNK RAILWAY & CANADIAN NATIONAL RAILWAY, [1935] 1 D. L. R. 179; O. R. 725; *affd.,* [1936] 2 All E. R. 495, P. C.—**CAN.**

CHUNG CHUCK *v.* R., [1930] A. C. 244; *sub nom.* CHUNG CHUCH *v.* R., WONG KIT *v.* R., 99 L. J. P. C. 71; 142 L. T. 266; 46 T. L. R. 134, P. C.

626. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

631a. —— **Report to High Court should be included in appeal.**]—PRACTICE NOTE, [1933] W. N. 148; 75 L. Jo. 421.

640. *Add. Annotation :*—**Refd.** Hem Sing *v.* Mahant Basant Das, [1936] 1 All E. R. 356.

640a. —— —— **If merely advisory.**]—Applts. claimed to deduct from the income on which they had been assessed a sum paid to underwriters on an issue of preference shares on the ground that it was "expenditure incurred for making profits in their business" within Indian Income Tax Act, 1918. The collector of taxes, the chief revenue authority, & the High Ct. successively decided against them. They then appealed to His Majesty in Council :—*Held :* on a preliminary objection, the decision, judgment, or order made by the High Ct. under Indian Income Tax Act, 1918, s. 51, was merely advisory & not final, & the appeal to His Majesty in Council was, therefore, incompetent.—TATA IRON & STEEL Co. *v.* BOMBAY CHIEF REVENUE AUTHORITY (1923), L. R. 50 Ind. App. 212; 39 T. L. R. 288, P. C.

640b. —— **Order of High Court—On appeal from application to district judge to file award.**]—An appeal to the Privy Council lies under Code of Civil Procedure, 1908, s. 109, from a decree or final order of a High Ct. made upon appeal from an order of a district judge upon an application to him to file an award in ct. The appeal is not precluded by sect. 104 (2)

PART IX. SECT. 8. SUB-SECT. 8.

p i. —— —— ——.]—A judgment of the High Ct. on the Appellate Side, granting probate to a person, is a final decree, from which an appeal lies to His Majesty in Council.—VELLASAWMY SERVAI *v.* L. SIVARAMAN SERVAI (1926), I. L. R. 5 Ran. 119.—**IND.**

† i. —— —— —— ——.]—SYED KHAN *v.* SYED EBRAHIM (1927), I. L. R. 6 Ran. 169.—**IND.**

† ii. —— —— —— ——.]—Where competing applications under Probate & Administration Act, 1881, for probate of different alleged wills of a testator, have been heard by the district judge as a regular suit, an appeal from the decree or final order passed on appeal by the High Ct. lies to the Privy Council under, & subject to the requirements of, the Code of Civil Procedure, 1908, ss. 109, 110.—VELLASAWMY SERVAI *v.* SIVARAINAN SERVAI (1929), I. L. R. 8 Ran. 179.—**IND.**

† iii. —— —— —— ——.]—An appeal does not lie from an order under Ord. 41, r. 23, reversing a decree which dismissed a suit upon a preliminary point, & remanding the suit for trial, as this is not a "final order" within sect. 109 of Code of Civil Procedure, 1908.—ABDUL RAHMAN *v.* D. K. CASSIM & SONS (1932), L. R. 60 Ind. App. 76, P. C.—**IND.**

† iv. —— —— —— ——.]—An order dismissing an appeal on the ground that, owing to applt.'s failure to implead the representatives of a deceased resp., it had abated *in toto*, is a final order within sects. 109, 110 of the Code of Civil Procedure.—CHUNI LAL-TULSI RAM *v.* AMIN CHAND (1933), I. L. R. 14 Lah. 609.—**IND.**

a i. —— *From interlocutory judgments.*]—Appeals on matters interlocutory in their nature should be allowed to be preferred to His Majesty in Council only when their decision will practically put an end to the litigation & finally decide the rights of the parties.—BHAGWATI DAYAL *v.* DHAN KHUNWAR (1925), I. L. R. 48 All. 329.—**IND.**

a ii. —— *Not from High Court—Sitting in criminal appeal from Court of Sessions.*]—No appeal lies to the Privy Council against a judgment of the High Ct. sitting in criminal appeal from a trial by the Ct. of Sessions.—HEMAYETUDDIN AHMED *v.* EMPEROR (1930), I. L. R. 58 Calc. 344.—**IND.**

a iii. —— *Suspension of advocate from practice.*]—Where an advocate has been suspended from practice for breach of rule 1 of Chapter 21 of the General Rules for civil cts., & he raises the question of the correct interpretation of the rule, this is a fit & proper case for granting leave to appeal to the Privy Council.—SHIVA NARAIN JAFA *v.* ALLAHABAD HIGH CT. JUDGES (1933), I. L. R. 56 All. 702.—**IND.**

639 ii. —— *From order refusing to enrol legal practitioner.*]—An order of the High Ct. refusing to enrol a person as a legal practitioner under Legal Practitioners Acts, 1879, is not one from which the High Ct. has jurisdiction to grant leave to appeal to the Privy Council.—*Re* MISS (1922), I. L. R. 1 Pat. 590.—**IND.**

b i. —— ——.]—*Re* AN ADVOCATE (1929), I. L. R. 8 Ran. 40.—**IND.**

b ii. —— *Valuation of property compulsorily acquired.*]—In appeals involving the valuation of property in India, the Judicial Committee will entertain an appeal under Act XIX, 1921, s. 2, as to the value of property compulsorily acquired only upon questions of principle, including errors in appreciating or applying the rules of evidence, or the judicial methods of weighing evidence.—NOWROJI RUSTOMJI WADIA *v.* BOMBAY GOVERNMENT (1925), I. L. R. 49 Bom. 700.—**IND.**

b iii. —— *Not from decree affirming court below—What amounts to.*]—Pltfs. obtained a mtge. decree in the ct. of the subordinate judge, but their claim to interest *pendente lite* was disallowed. Defts. appealed to the High Ct. while pltfs. preferred a cross-appeal in respect to interest *pendente lite*. Defts.' appeal was dismissed while pltfs.' cross-appeal was allowed, the decree of the High Ct. being in the following terms: "The decree of the Ct. below be modified to this extent that interest at the bond rate shall run on the principal up to the expiry of the period of grace." Defts. applied for leave to appeal to His Majesty in Council. The value of the subject-matter of the suit & the appeal was above ten thousand rupees: —*Held :* the decree of the High Ct. was not one "affirming the decision of the ct. immediately below" within Code of Civil Procedure, 1908, s. 110, & appcts. were entitled as of right to appeal to His Majesty in Council. Further, the appeal could not be limited to the question of interest only, upon which point there was variation in the decree, but appcts. were entitled to appeal from the entire decree.—THAKUR JAMUNA PRASAD SINGH *v.* JAGARNATH PRASAD SINGH (1929), I. L. R. 9 Pat. 558.—**IND.**

b iv. —— —— ——.]—Matters in dispute in a pending suit having been referred to arbn., an award was made to the effect that deft. should, within a time fixed, give possession of a certain factory to pltf., & in default should pay pltf. Rs. 13,000. Objections to the award were made by deft. which were disallowed, & the award was ordered to be filed, but as the time fixed for delivery of the factory had by then expired, the ct. considering it unnecessary to incorporate in its decree a direction relating to the delivery of the factory, granted a decree to pltf. only for the Rs. 13,000. Deft. appealed to the High Ct. & his appeal was accepted only to the extent that the decree of the trial ct. was modified to bring it into conformity with the award. Deft. then applied for leave to appeal to His Majesty in Council :—*Held :* as the High Ct. had in substance affirmed the decision of the trial ct. the alteration made by it in the decree not being of a substantial nature, leave to appeal to His Majesty in Council under Code of Civil Procedure, s. 110, could not be granted.—BANSI LAL *v.* GOPAL LAL (1928), I. L. R. 10 Lah. 688.—**IND.**

b v. —— *Order of High Court under Provincial Insolvency Act.*]—In a case where Provincial Insolvency Act, 1920, gives a right of appeal to the High Ct., an appeal from the decision of the High Ct. lies to the Privy Council under, & subject to, the Code of Civil Procedure.—MAUNG BA THAW *v.* MA PIN (1934), L. R. 61 Ind. App. 158.—**IND.**

b vi. —— *Order suspending pleader from practice.*]—Leave to appeal may be granted from an order of the High Ct. suspending a pleader from practising for a period of six months.—*Re* A PLEADER (1932), I. L. R. 55 All. 246.—**IND.**

f i. —— ——.]—The question of law involved need not be of general importance; it is sufficient if there is a substantial question of law between the parties.—RAGHUNATH PRASAD SINGH *v.* PARTABGASH DEPUTY COMRS. (1927), 54 L. R. Ind. App. 126.—**IND.**

f ii. —— ——.]—DELHI CLOTH & GENERAL MILLS CO., LTD. *v.* DELHI INCOME TAX COMRS. (1927), 54 L. R. Ind. App. 421.—**IND.**

f iii. —— ——.]—MATHURA, KURMI *v.* JAGDEO SINGH (1927), I. L. R. 50 All. 208.—**IND.**

f iv. —— —— *Order made without jurisdiction.*]—KISHAN SINGH *v.* THE KING EMPEROR (1928), L. R. 55 Ind. App. 390.—**IND.**

f v. —— *Matter of general importance.*]—*Held :* a case was a fit one for appeal to the Privy Council, where the question in dispute was of general importance, as the execution of documents with an option of re-purchase was very common & a considerable amount of litigation came before the cts. in connection therewith.—JIVANGIRI GURU CHAMELGIRI *v.* GAJANAN NARAYAN PATKAR (1926), I. L. R. 50 Bom. 753.—**IND.**

of the Code; that provision applies only to an appellate order of a district judge where the application has been made to a subordinate judge.—RAMLAL HARGOPAL *v.* KISHANCHAND (1923), L. R. 51 Ind. App. 72, P. C.

640c. —— **Probate suit.**]—Where competing applications under Probate & Administration Act, 1881, for the probate of different alleged wills of a testator have been heard by the District judge as a regular suit, an appeal from the decree or final order passed on appeal by the High Ct. lies to the Privy Council under, & subject to the requirements of, the Code of Civil Procedure, 1908, ss. 109, 110.—VELLASAWMY SERVAI *v.* SIVARAMAN SERVAI (1929), 57 L. R. Ind. App. 96, P. C.

640d. —— **Not on question of compensation for land compulsorily acquired.**]—Act XIX. of 1921 has not the effect of giving a right of appeal to the Privy Council from a decision of the High Ct. upon an appeal from an award of the Tribunal appointed under Calcutta Improvement Act, 1911, assessing compensation in respect of land acquired under the provisions of that Act.—SECRETARY OF STATE FOR INDIA *v.* HINDUSTHAN CO-OPERATIVE INSCE. SOCIETY (1931), 58 L. R. Ind. App. 259, P. C.

641a. —— **Lahore High Court—Jurisdiction under special Act.**]—An Act gave power to a tribunal set up thereunder to decide questions which in substance concern the nature of the trusts under which the endowments of certain religious institutions were held. They also included questions of compensation for loss of office & questions as regards claims to property in respect of which the tribunal's powers were not limited by any provisions as to value. Under the Act the tribunal was given the same powers as are vested in the ordinary cts. of the country, & its proceedings were to be conducted in accordance with the ordinary rules of civil procedure of the country. The formal expression of its decision was described by the Act as a decree or order. The Act, however, provided that appeals from the tribunal were to be heard by a Div. Ct. & not by a single judge. On a preliminary objection taken to the competency of the appeal:—*Held:* the jurisdiction conferred upon the High Ct. was intended to include the new subject-matter as part of the ordinary appellate jurisdiction of the High Ct., & the case was within the general principle laid down by VISCOUNT HALDANE, L.C. in *National Telephone Co., Ltd.* v. *Postmaster-General*, [1913] A. C. 546, at p. 552, that "when a question is stated to be referred to an established ct. without more, it . . . imports that the ordinary incidents of the procedure of that ct. are to attach, & also that any general right of appeal from its decisions likewise attaches," & the objection could not be sustained.—HEM SINGH *v.* MAHANT BASANT DAS, [1936] 1 All E. R. 356; 80 Sol. Jo. 303, P. C.

641b. **High Court of Bengal—Claim relating to cantonment land.**]—BARRACKPORE CANTONMENT COMMITTEE SECRETARY *v.* SATISH CHANDRA SEN (1930), 47 T. L. R. 3, P. C.

656a. **Gold Coast—Native tribunal—Attitude of Judicial Committee to decision.**]—The Native Jurisdiction Ordinance, 1883, of the Gold Coast provides by sect. 11 that the civil jurisdiction of a native tribunal shall extend to hearing & determining certain classes of suits, including all suits relating to the ownership or possession of lands held under native tenure & situated within its jurisdiction; & by sect. 17 that when it appears to any ct. that a case brought before it is one cognisable by a native tribunal the ct. shall, unless satisfactory reasons to the contrary be shown, refer the parties thereto. A suit of the class mentioned above having been tried & decided by a native tribunal, the decision was reversed upon the evidence by the Provincial Comr., & his judgment was affirmed upon a further appeal to the Supreme Ct.:—*Held:* having regard to the provisions of the Ordinance the decision of a native tribunal in a matter of the above kind, being one peculiarly within its knowledge, if arrived at after a fair hearing & on relevant evidence, should not be disturbed without very clear proof that it was wrong, & in the present case there was no such proof.—ABAKAH NTHAH *v.* ANQUAH BENNIEH, [1931]

---

651 i. *Sum below appealable value—When appeal lies.*]—MAUNG BA. THAN. *v.* PEGU DISTRICT COUNCIL (1927), I. L. R. 6 Ran. 43.—**IND.**

sl. *Limitation of right to appeal—Letters Patent of Calcutta High Court of* 1927.]—The new clause of the Letters Patent of the Calcutta High Ct., passed 1927, takes away, in all second appeals decided by a single judge, without his giving a certificate that the case is a fit one for appeal, the right to go to the Privy Council under the ordinary law, though the right of the Judicial Committee to give special leave is not of course affected. The new Letters Patent cannot be applied to pending cases without taking away existing rights of appeal.—SADAR ALI *v.* DALIMUDDIN (1928), I. L. R. 56 Calc. 512.—**IND.**

sp. *Desirable to avoid two appeals.*]—It is desirable that in some manner recourse to two appeals to the Privy Council should be avoided where one is from a decree of the High Ct. under sect. 98 (2) of the Code of Civil Procedure & the other is from the decree in a Letters Patent Appeal varying the former decree.—JATONDRANATH CHANDHURI *v.* UDAYKUMAR DAS (1931), I. L. R. 58 Calc. 1281.—**IND.**

PART IX. SECT. 8, SUB-SECT. 4.

a (p. 502) i. —— —— —— *No power to extend.*]—The ct. has no discretion to depart from the rules regulating appeals to His Majesty in Council, & is *functus officio* as regards granting leave to appeal when the time prescribed by the rules has expired. The only remedy of either the Crown or a subject who desires to appeal from a decision of the ct., but is out of time, is to apply to His Majesty in Council for special leave to appeal.—RHODES-MOORHOUSE *v.* STAMP DUTIES COMR. (NO. 2), [1933] N. Z. L. R. 1413.—**N.Z.**

k (p. 503) i. —— —— —— *Judges equally divided.*]—The Ct. of Appeal granted leave to appeal to the Privy Council from a decision of the Ct. of Appeal reversing an order for a new trial, the verdict of the jury being for more than £500, & the judges, including the trial judge, being equally divided.—TREMAIN *v.* MANAWATEE DRAINAGE BOARD, [1926] N. Z. L. R. 416.—**N.Z.**

sm. *Irish Free State—Leave to appeal—When granted.*]—The general principles governing applications for leave to appeal stated.—HULL *v.* M'KENNA, "FREEMAN'S JOURNAL" *v.* FERNSTROM & TRAESLIBERI, [1926] I. R. 402.—**IR.**

sn. —— —— ——]—Leave to appeal refused. — O'CALLAGHAN *v.* O'SULLIVAN, [1926] I. R. 586.—**IR.**

—— —— ——]—*See, also,* No. 715.

so. *High Court of Western Samoa—Criminal matter—No public interest involved—Leave refused.*]—SLIPPER *v.* BRAISBY (No. 2), [1931] N. Z. L. R. 268.—**N.Z.**

sq. ——]—The Supreme Ct. of New Zealand has no jurisdiction to grant leave to appeal to the Privy Council from a judgment of the Supreme Ct. on an appeal from the High Ct. of Western Samoa.—NELSON *v.* BRAISBY (NO. 3), [1934] N. Z. L. R. 636; G. L. R. 474.—**N.Z.**

PART IX. SECT. 9.

sp. *Stay of execution pending appeal—What must be shown—Ability of plaintiff to pay in event of reversal.*]—GEORGIA CONSTRUCTION CO., LTD. & BANK OF TORONTO *v.* PACIFIC GREAT EASTERN RY. CO. (B. C.), [1929] 4 D. L. R. 607; 3 W. W. R. 92.—**CAN.**

A. C. 72; 100 L. J. P. C. 47; 144 L. T. 161, P. C.

659a. —— ——.]—(1) There is no appeal as of right to His Majesty in Council from the decision of the Royal Ct. of Jersey in a criminal case. There is no trace in any legislation, or in an authoritative work, of any such right of appeal. The Ordinances of Pyne & Napper, 1591, which, in the light of present evidence, must be regarded as having been properly confirmed by Order in Council & registered, & as having become part of the law of Jersey, support the view that there is no appeal as of right in criminal matters. There is, however, no Order in Council, charter, or other instrument of authority from which it can be inferred that the Crown's prerogative right to grant special leave to appeal, & to allow an appeal, in a criminal case from Jersey has been taken away. That prerogative right still exists.

(2) The prerogative right of entertaining appeals can only be taken away by express words or the necessary intendment of a statute or other equivalent act of State.

(3) The Board treats applications for special leave to appeal in criminal cases & the hearing of criminal appeals so admitted as being on the same footing, &, in the case of misdirection, or in any other case of an alleged failure in the proper trial of a criminal case, will advise His Majesty to intervene only if there is shown to have been such a violation of the principles of justice that grave & substantial injustice has been done.—RENOUF *v.* A.-G. FOR JERSEY, [1936] A. C. 445; [1936] 1 All E. R. 936; 105 L. J. P. C. 84; 155 L. T. 1; 52 T. L. R. 455; 80 Sol. Jo. 304; 30 Cox, C. C. 397, P. C.

662. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

662a. —— **Appeal from deportation order made by Administration of Western Samoa.**]—NELSON *v.* R., [1928] W. N. 197, P. C.

665a. —— —— **Appeal under Ordinance No. 103, sect. 80.**]—Under the terms of the charter of 1855 of the ct. then having jurisdiction, & sect. 1154 of the Civil Procedure Code of the Straits Settlements, an appeal lies to H.M. in Council from a decision of the Ct. of Appeal of the Straits Settlements upon an appeal under sect. 80 of Ordinance No. 103 (Stamps).—STRAITS SETTLEMENTS COMR. OF STAMPS *v.* OEI TJONG SWAN, [1933] A. C. 378; 102 L. J. P. C. 90; 149 L. T. 145; 49 T. L. R. 428, P. C.

Part X.—The Channel Islands.

688a. —— **Validity of will of immoveables.**]—By art. 28 of the Law of Jersey, 1851: "Les actions touchant la validité des Testamens contenant des legs d'immeubles seront instituées à la Cour du Samedi, et aussi les actions en partage des immeubles d'une succession, lorsque ces immeubles auront été légués en tout ou en partie par Testament":—*Held:* that art. 28 of the Law of 1851, which for the first time authorised, subject to conditions, the disposition of immovables in the Island of Jersey by will, conferred jurisdiction to entertain proceedings relating to the validity of such wills upon the Cour du Samedi (which sits weekly) to the exclusion of the Cour d'Héritage (which sits only twice a year). The Cour d'Héritage, a very ancient ct., had no original jurisdiction to decide as to the validity of wills disposing of immovables in Jersey, because before the Law of 1851 such disposition by will was forbidden & unknown, & there is no ground for conferring any implied jurisdiction on the Cour d'Héritage.—GILBERT *v.* CHING, [1936] A. C. 145; 105 L. J. P. C. 27; 154 L. T. 195, P. C.

Part XI.—Isle of Man.

712a. **Right of Crown to minerals—Shale.**]—By an Act of Tynwald, known as the Act of Settlement, 1703-1704, s. 16, all mines & minerals, quarries & delfs of flagg, slate or stone are reserved to His Majesty as Lord of the Isle & Manor of Man. Applt. claimed a declaration that a certain mineral commonly called shale was within the reservation in the Act of Settlement, 1703-1704. Resp. by her answer, while admitting that her estate of customary freehold was subject to the Crown's legal rights, denied that the shale was a mineral within that Act. She contended that it was the ordinary subsoil of the estate & district, & her absolute property, & was composed essentially of clay & sand. It was admitted by applt. that the contention that shale was a mineral could not be maintained, but it was contended that it was covered by the specific words "flagg, slate or stone":—*Held:* the question was an issue of fact to be decided according to the particular circumstances, the duty of the ct. being to determine what the words meant in the vernacular of mining men, commercial men & landowners in 1703 when the Act of Settlement was passed. As there was no evidence that the words "flagg, slate or stone," or any one of them, had ever been so used, that substance was not within the terms of the Act of Settlement.—A.-G. FOR ISLE OF MAN *v.* MOORE, [1938] 3 All E. R. 263; 159 L. T. 425; 82 Sol. Jo. 520, P. C.

Part XIa.—Other Islands.

712b. Lundy Island—Whether part of Great Britain.]—On a charge of an offence on Lundy Island against Coinage Act, 1870 (c. 10), s. 5, the justices for the Bideford Division of Devon held that they had jurisdiction & convicted the defendant, in spite of his contention that Lundy Island was not part of Great Britain:—*Held:* there was evidence before the justices to support the conclusion that Lundy Island was part of Great Britain, & their decision must be affirmed. *Semble:* if the justices had found the contrary, the ct. would have reversed their finding on the ground that there was no evidence to support it.—HARMAN *v.* BOLT (1931), 47 T. L. R. 219; 75 Sol. Jo. 99, D. C.

712c. Ceylon—Validity of Order in Council.]—ABEYESEKERA *v.* JAYATILAKE, No. 17a, *ante*.

Part XII.—Irish Free State.

713. *Add. Citation:*—21 L. G. R. 419, C. A.

714. For the paragraph in the original volume substitute the following paragraph:—

—— **Transference of liabilities of British Government to Irish Free State.**]—By agreements made in 1917, during the war with Germany, it was agreed between the British Govt. & resp. co., that the co. should make certain alterations in their railway lines in order to facilitate the carriage of coal from certain collieries for purposes connected with the war, the Govt. undertaking to reinstate the lines after the conclusion of the war. In 1922, Irish Free State (Agreement) Act, 1922 (c. 4), & Irish Free State Constitution Act, 1922 (session 2) (c. 1), were passed. At the date of the passing of these Acts the contracts with the Govt. were still executory:—*Held:* the effect of these Acts, & of the Orders made under them, was to transfer the liability under the contracts of 1917 from the British Govt. to the Govt. of the Irish Free State.—A.-G. *v.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND, [1925] A. C. 754; 94 L. J. K. B. 772; 133 L. T. 568; 41 T. L. R. 576; 69 Sol. Jo. 744, H. L.; *revsg.* S. C. *sub nom.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND *v.* R., [1924] 2 K. B. 450, C. A.

714a. —— **Effect of on Judgments Extension Act, 1868 (c. 54).**]—The effect of Irish Free State Constitution Act, 1922 (session 2) (c. 1), s. 1, & art. 73 of the Schedule thereto, & of Irish Free State (Consequential Provisions) Act, 1922 (session 2) (c. 2), s. 1 (1), is that Judgments Extension Act, 1868, has, since Dec. 5, 1922, ceased to apply to the Irish Free State.—BANFIELD *v.* CHESTER (1925), 94 L. J. K. B. 805; 133 L. T. 623; 41 T. L. R. 563; 69 Sol. Jo. 692, C. A.

—— ——.]—*See, also*, No. 716.

714b. Government of Ireland Act, 1920 (c. 67), s. 56 (6), Sched. VIII—Constitution of Irish Free State (Saorstat Eireann) Act, 1922 (No. 1 of 1922), Sched. I, art. 78—Right of transferred civil servants to compensation on retirement in consequence of change of government.]—WIGG *v.* A.-G. OF IRISH FREE STATE, [1927] A. C. 674; 96 L. J. P. C. 88; 137 L. T. 460; 43 T. L. R. 457, P. C.

Annotations:—**Folld.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242. **Refd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70.

714c. *S.P. Re* TRANSFERRED CIVIL SERVANTS (IRELAND) COMPENSATION, [1929] A. C. 242; *sub nom. Re* IRISH CIVIL SERVANTS, 98 L. J. P. C. 39; 140 L. T. 254; *sub nom. Re* ARTICLE X OF ARTICLES OF AGREEMENT FOR TREATY BETWEEN GREAT BRITAIN & IRELAND, 45 T. L. R. 57, P. C.

Annotation:—**Consd.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

715. After this case add "*See, also*, cases in Part IX., Sect. 8, sub-sect. 4, *ante*."

716. *Add. Citations:*—[1924] 1 K. B. 214; 93 L. J. K. B. 331; 130 L. T. 269.

Add. Annotations:—**Folld.** Banfield *v.* Chester (1925), 94 L. J. K. B. 805. **Refd.** Performing Right Society, Ltd. *v.* Bray U. D. C., [1930] A. C. 377.

PART XII

714 i. *Irish Free State Constitution Act, 1922 (session 2) (c. 1)—Transference of assets of British Government to Irish Free State.*]—*Held:* a debt due to the Land Commission, although incurred in 1922, was an "asset" that had been transferred from the former Govt. of the United Kingdom of Great Britain & Ireland to the Govt. of the Irish Free State.—*Re* MALONEY, [1926] I. R. 202.—**IR.**

714 ii. —— *Effect on jurisdiction of existing courts—Pending establishment of courts for Irish Free State.*]—R. *v.* WICKLOW COUNTY COURT JUDGE, [1924] 2 I. R. 139.—**IR.**

714 iii. —— *Public Safety Act, 1927 (c. 31)—Ordinary legislation.*]—A.-G. *v.* M'BRIDE, [1928] I. R. 451.—**IR.**

714 iv. —— *Effect of on Fugitive Offenders Act, 1881.*]—*Held:* the Fugitive Offenders Act, 1881, continues to be of full force & effect in the Irish Free State by virtue of the provisions of Art. 73 of the Constitution, & it is not inconsistent with the provisions of the Constitution.—IRISH FREE STATE *v.* LITTLE, [1931] I. R. 39.—**IR.**

714b i. *Government of Ireland Act, 1920 (c. 67), ss. 54, 55, Sched. VIII—Constitution of Irish Free State (Saorstat Eireann) Act, 1922 (No. 1 of 1922), Sched. I, Art. 78—Right of transferred civil servants to compensation on retirement in consequence of change of Government.*]—LONSDALE *v.* A.-G., [1928] I. R. 35.—**IR.**

714b ii. —— —— ——.]—CASSIDY *v.* A.-G. OF THE IRISH FREE STATE, [1930] I. R. 65.—**IR.**

714b iii. —— —— ——.]—FITZGIBBON *v.* A.-G. OF THE IRISH FREE STATE, [1930] I. R. 49.—**IR.**

714b iv. —— —— ——.]—A claim to compensation under Art. 10 of the Treaty by a civil servant, who, having served under the Govt. of the United Kingdom, served under the Provisional Govt., & subsequently was transferred to the service of the Free State Govt., is maintainable.—DE LACY SMYTH *v.* A.-G., [1934] I. R. 139.—**IR.**

716 i. *Liability to give security for costs—Resident in position of foreigner.*]—Application on behalf of defts., resident in Northern Ireland that pltfs., who resided in the Irish Free State, might be ordered to give security for costs on the ground that in the event of defts. obtaining judgment, they would be unable to have it extended in the Irish Free State, as Judgments Extensions Act, 1868, no longer applied to that country:—*Held:* pltfs. must give security for costs.—CALLAN *v.* M'KENNA, [1929] N. I. 1.—**IR.**

st. *Irish Free State (Agreement) Act, 1922 (c. 4)—Effect on Companies Acts.*]—On petition by a shareholder

716a. Summons relating to bequests to Irish parishes—Whether Attorney-General of Irish Free State proper defendant.] — *Re* LOVE, NAPER *v.* BARLOW, [1932] W. N. 17; 173 L. T. Jo. 116; 73 L. Jo. 168.

716b. Treaty scheduled to Irish Free State (Constitution) Act, 1933 (session 2) (c. 1)—Part of statute law of United Kingdom.]—MOORE *v.* A.-G. FOR IRISH FREE STATE, No. 447a, *ante*.

716c. —— Power of Irish Free State to abrogate.]—MOORE *v.* A.-G. FOR IRISH FREE STATE, No. 447a, *ante*.

Part XIII.—Northern Ireland.

Validity of statute—Whether tax of substantially same character as income tax.]—Sect. 3 of Finance Act (Northern Ireland), 1934, which provides that there shall be paid to the Exchequer of Northern Ireland by the council of every county & county borough an annual contribution, to be raised by means of the poor rate, towards the cost to the Exchequer of educational services, is within the legislative competence of the Parliament of Northern Ireland. Even assuming that under that sect. a tax is imposed on the ratepayers by the central authority, such tax is not "substantially the same in character" as income tax, which, by Govt. of Ireland Act, 1920 (c. 67), s. 21 (1), is expressly excepted as *ultra vires* the Parliament of Northern Ireland. It is the essential characteristic of the particular tax that is to be regarded, & the essential difference in character between income tax & rates is that the former is a tax on income generally, whereas the latter are levied in respect of the occupation of hereditaments irrespective of the ratepayer's income generally & irrespective of whether he is in fact deriving profits or gains from such occupation.—*Re* REFERENCE UNDER GOVT. OF IRELAND ACT, 1920, *Re* SECT. 3 OF FINANCE ACT (NORTHERN IRELAND), 1934, [1936] A. C. 352; [1936] 2 All E. R. 111; 105 L. J. P. C. 81; 154 L. T. 614; 52 T. L. R. 388; 80 80 Sol. Jo. 404, P. C.

716e. Government of Ireland Act, 1920 (c. 57), s. 4 —Interference with trade—What amounts to.]—Milk & Milk Products Act (Northern Ireland), 1934, is not a statute "in respect of" trade within the meaning of sect. 4 (7) of Govt. of Ireland Act, 1920 (c. 57), but is an Act for the peace, order & good govt. of Northern Ireland "in respect of" precautions for the securing of the health of the inhabitants of Northern Ireland by protecting them from the dangers of an unregulated supply of milk. The Act was therefore within the competence of the Parliament of Northern Ireland to enact, though its provisions preclude a person whose premises are outside Northern Ireland from obtaining a licence for the sale of Grade A, B or C milk in Northern Ireland. If, in considering whether a statute is within the competence of a subordinate legislature to pass, it is found that the substance of the legislation is within the express powers, it is not invalidated merely because incidentally it affects matters which are outside the authorised field. The legislation must not, however, under the guise of dealing with one matter encroach upon the forbidden field.—GALLAGHER *v.* LYNN, [1937] A. C. 863; [1937] 3 All E. R. 598; 106 L. J. P. C. 161; 157 L. T. 374; 53 T. L. R. 929; 81 Sol. Jo. 609, H. L.; *affg.* S. C. *sub nom.* R. *v.* GALLAGHER, [1936] N. I. 131.

Add. Annotation :—**Consd.** Shannon *v.* Lower Mainland Dairy Products Board (1938), 54 T. L. R. 1090.

Part XIV.—Palestine.

716f. Registration of land—Jurisdiction of settlement officer.]—A settlement order was issued under Palestine Land Settlement Ordinance, s. 3, that a settlement of rights in land & registration thereof should be effected in the area included within the boundaries of, *inter alia*, the village of Hudeira in the Haifa sub-district & of the lands of Attil & Zeita in the Tulkarem sub-district. A settlement officer was duly appointed & a preliminary notice issued of the intended settlement & registration of rights in the village of Hudeira. A dispute arose with regard to certain land known as Khor al Wasa', of which applts.

for the compulsory winding up of a co. as an unregistered co.:—*Held:* notwithstanding the provisions of the above act & of the Orders thereunder, the Cos. Acts remain in full force until revoked or altered by a competent legislature, & the cts. of Southern Ireland had no jurisdiction to make the order.—*Re* PORTARLINGTON ELECTRIC LIGHT & POWER CO., LTD., [1922] 1 I. R. 100.—**IR.**

sw. *Power of Oireachtas.*]—Within the whole area of the Irish Free State, the Oireachtas is a free & unfettered legislature, & there is nothing in the treaty, the constitution, or the statute confirming them, to limit the power of the Oireachtas to authorise the detention of untried persons.—R. [illegible]. HARE PARK CAMP (MILITARY GOVERNOR), [1924] 2 I. R. 104.—**IR.**

sz. —— *Public Safety (Powers of Arrest & Detention) Temporary Act (I. F. S.), 1924—Intra vires.*]—R. (O'CONNELL) *v.* HARE PARK CAMP (MILITARY GOVERNOR), [1924] 2 I. R. 104.—**IR.**

sb. *Duty of Attorney-General to represent the State.*]—The A.-G. alone could be heard making any claim on behalf of the State or community of citizens of the Irish Free State under Art. 11 of the constitution.—MOORE *v.* A. G., [1930] I. R. 471.—**IR.**

sc. *Illegal arrest & removal from jurisdiction—Right to injunction.*]—The provisions of this Art. 6 of the Constitution of the Irish Free State do not exclude jurisdiction to grant an injunction in an appropriate case, *e.g.*, if it were sought to arrest a person illegally & remove him out of the jurisdiction before he could apply for a writ of *habeas corpus*.—O'BOYLE & RODGERS *v.* A.-G. & GENERAL O'DUFFY [1929] I. R. 558.—**IR.**

sf. *Succession Duty Act*, 1853 (c. 51), s. 50—*Whether repealed by Government of Ireland Act*, 1920 (c. 67).]—*Held:* there is an implied repeal of Succession Duty Act, 1853 (c. 51), s. 50, by Government of Ireland Act, 1920 (c. 67), so far as sect. 50 gives any appeal to the English cts. over Northern Ireland succession duty.—A.-G. *v.* JAFFÉ, [1935] N. I. 97.—**IR.**

were registered in the land registry of Haifa as absolute owners. The entry in the registry described the area as being within the village of Hudeira. The settlement officer found that the area in dispute was included within the boundaries of Zeita &/or Attil musha' lands, & he ordered that the entries in the Haifa land registry relating to the area in dispute be separated from the entries in respect of the lands of Hudeira, & that an observation be made in respect of such entries that in accordance with the judgment of the settlement officer those lands were held to be situated within the musha' lands of Zeita &/or Attil & were recorded as such in the Tulkarem land registry, & that a corresponding entry be recorded in the Tulkarem land registry. Applts. appealed. The competency of the appeal was challenged on the ground that the decision was not one " as to any right to land " within Land Settlement Ordinance, 1928, s. 56 (1). The Land Ct. upheld the competency of the appeal & dismissed the appeal. On appeal to the Supreme Ct., the appeal was held not to be competent & applts.' application was dismissed. Applts. appealed to the Privy Council :—*Held :* (1) the decision of the settlement officer was a decision as to rights to land in so far as it held that the lands of Khor al Wasa' were musha' lands ; (2) the judgment of the settlement officer was *ultra vires* in so far as it dealt with questions of rights to land outside the village of Hudeira, which was under settlement, & accordingly the finding that the area of Khor al Wasa', which he held to be outside the boundaries of Hudeira, was musha' land, along with the consequential entries in the land registries of Haifa & Tulkarem, was *ultra vires ;* (3) in defining the boundaries of the village of Hudeira, the settlement officer was entitled to find that the area of Khor al Wasa' was not in Hudeira, but his judgment ought to be varied by excluding from the findings any finding that the area was musha' land, & also the orders as to entries in the land registries. AARONSON *v.* GHADIEH, [1936] 2 All E. R. 1670 ; 80 Sol. Jo. 815, P. C.

Notes on Canadian Constitutional Cases

(Vol. XVII., p. 508).

The cases referred to in the late Mr. Cameron's Note are digested in Vol. XVII., pp. 427–455, or in other relevant Titles. Cases coming under this head decided since the publication of the original volume therefore appear in their appropriate sections & not as supplementary to the Notes in Vol. XVII., p. 508.

DEPOSITARY.

See BAILMENT.

DESCENT AND DISTRIBUTION.

NOTE.—For the references to Law of Property Act, 1922 (c. 16), substitute references to Administration of Estates Act, 1925 (c. 23), ss. 45-52.

For cases decided under 1925 Act, *see* new Part Va., *post*.

Part II.—Intestacy.

8a. Contingent partial intestacy.]—*Re* McKEE, PUBLIC TRUSTEE *v.* McKEE, No. 283b, *post*.

Part III.—Devolution of Real and Personal Estate.

9. *Citations :*—Delete " C. A."

10. *Add. Annotation :*—**Refd.** Macleay *v.* Treadwell, [1937] A. C. 626.

After this case add "—— —— **Death after 1925.**]—*See, now*, Administration of Estates Act, 1925 (c. 23), s. 9."

Part IV.—Descent of Real Estate.

17. For cross-reference before this case read "*See* Law of Property (Amendment) Act, 1924 (c. 5), s. 9, Sched. IX. (1), by which Inheritance Act, 1833, remains in force for certain purposes."

74. *Add. Annotation :*—**Refd.** *Re* Price, [1928] Ch. 579.

102a. —— ——.]—PHILPOTTS d. PHILPOTTS *v.* JAMES (1784), 3 Doug. K. B. 425; 99 E. R. 730.

Annotations :—**Distd.** *Re* Sheppard, Sheppard *v.* Manning, [1897] 2 Ch. 67. **Expld.** *Re* Inman, Inman *v.* Inman, [1903] 1 Ch. 241.

113a. Lease pur autre vie—To A. & his heirs—Heir special occupant.]—PHILPOTTS d. PHILPOTTS *v.* JAMES (1784), 3 Doug. K. B. 425; 99 E. R. 730.

Annotations :—**Distd.** *Re* Sheppard, Sheppard *v.* Manning, [1897] 2 Ch. 67. **Consd.** *Re* Inman, Inman *v.* Inman, [1903] 1 Ch. 241.

132a. —— ——.]—RAWLINSON *v.* MONTAGUE (DUCHESS) (1710), 2 Vern. 667; 3 P. Wms. 264, n.; 23 E. R. 1035.

Annotation :—**Consd.** Bearpark *v.* Hutchinson (1830), 7 Bing. 178.

133. After this case insert "—— **Liability to legacy duty.**]—*See* ESTATE & OTHER DEATH DUTIES, Vol. XXI., p. 58, No. 377."

133a. *S. P.* LOCK *v.* LOCK (1710), 2 Vern. 666; 23 E. R. 1035.

PART I.

a i. *Meaning of " legally represent " & " legal representatives of "—Ontario Devolution of Estates Act, s.* 30.]—*Re* MACKENZIE, [1927] 4 D. L. R. 825; 61 O. L. R. 230.—**CAN.**

aa. *Murderer—Not entitled to share in estate of victim.*]—*Re* MEDAINI ESTATE, [1927] 4 D. L. R. 1137; [1927] 2 W. W. R. 38; 38 B. C. R. 319.—**CAN.**

ad. —— *Insane.*]—A man killed his wife & child, & thereafter committed suicide. The evidence showed that the man was an apparently normal individual, & was on the best of terms with his wife & child. Shortly prior to the tragedy he had been worried over business affairs & had been suffering from melancholia. Apart therefrom there was no prior evidence of insanity :—*Held :* the man had committed the crime whilst insane, &, therefore, there was no bar to his representatives succeeding on the intestacies of his wife & child.—*Re* PLAISTER, PERPETUAL TRUSTEE CO. *v.* CRAWSHAW (1934), 34 S. R. N. S. W. 547; 51 N. S. W. W. N. 141.—**AUS.**

af. *Marriage Ordinance, 1884, of Southern Nigeria, ss.* 38, 39—*Construction.*]—MARTINS *v.* FOWLER, [1926] A. C. 746; 95 L. J. P. C. 189; 135 L. T. 582.—**NIGERIA.**

PART II.

ag. *What constitutes an intestacy—Surplus income not vesting in anyone.*]—Surplus or accumulated income of trust fund which does not vest in anyone under the will passes as on an intestacy.—*Re* HAMMOND, [1935] 1 D. L. R. 263; *affd.*, [1935] S. C. R. 550; 4 D. L. R. 209.—**CAN.**

PART III. SECT. 1.

ah. " *Devolve*"—*Local Registration of Title Act, s.* 84.]—M'DONNELL *v.* STENSON, [1921] 1 I. R. 80.—**IR.**

am. —— ——.]—COLLINS *v.* COLLINS, [1924] 1 I. R. 72.—**IR.**

PART IV. SECT. 1.

h i. ——.]—MACLEAN & GRAHAM *v.* SMITH & MACKINTOSH, [1927] N. 109.—**IR.**

h ii. —— *Who are.*]—LEE *v.* BRANSCOMBE (1925), 52 N. B. R. 239.—**CAN.**

aj. *Effect of Dominion Land Titles Act.* 1894 (c. 28), *s.* 3.]—*Re* JENSEN (Alta.), [1927] 1 D. L. R. 76; [1926] 3 W. W. R. 737.—**CAN.**

am. *Effect of Ontario Devolution of Estates Act,* 1927.] The effect of Ontario Devolution of Estates Act, 1927, is not to transform real property into personalty for purposes of descent, but to abolish the former distinction between the course of descent of realty & personalty.—*Re* SMITH, [1938] 1 D. L. R. 94; O. R. 16; 7 F. L. J. (Can.) 181.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—A. (a).

ak. *Heir of half-blood—Onus of proof.*]—Where a party claims as one of the heirs of the half-blood of an intestate, & in his bill professes to set out how his interest arises, it is necessary for him to negative the fact of the intestate having obtained the land by gift or devise from his ancestor; or, if he did so obtain it, the claimant must show that he is of the blood of such ancestor.—TRYON *v.* PEER (1867), 13 Gr. 311.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—B. (a).

ao. " *Otherwise than by descent*"—*Widow acquiring land under Intestates' Estates Act.*]—Premises held under a fee farm grant, subject to a yearly rent were conveyed for value to B. The purchaser died intestate leaving his widow but no issue surviving. His real & personal estate amounted to less than £500 in value, & all passed under sect. 1 of Intestates' Estates Act, 1890, to his widow, who entered into & remained in possession until she died intestate. Thereupon her brother, deft., entered into possession as her heir at law. Pltf., who was heir at law of her husband, claimed possession, contending that title must be traced from B. as the last purchaser. He brought a civil bill for ejectment on the title of the premises :—*Held :* the widow acquired the land " otherwise than by descent," & being the last person to do so she was therefore under Inheritance Act, 1833, the purchaser from whom descent should be traced. Deft., the widow's heir at law, was therefore entitled to remain in possession of the premises.—BRADLEY *v.* MCATAMNEY, [1936] N. I. 74.—**IR.**

PART IV. SECT. 4, SUB-SECT. 2.

h. Read now " **113a i.**"

k. Read now " **113a ii.**"

l. Read now " **113a iii.**"

134a. Construction of ancient customary — "Nepos."]—WHITLOCK *v.* WHITLOCK (1924), 40 T. L. R. 566, D. C.

144. *Add. Annotation :*—**Consd.** *Re* Smith, Bull *v.* Smith, [1933] Ch. 847.

150a. Copyholds subject to custom of gavelkind—Enfranchisement by Law of Property Acts—Destruction of custom of gavelkind.]—T. died on Jan. 28, 1926, without issue & without having confirmed or republished his will which he had made on July 20, 1925. He was, before Jan. 1, 1926, when the Law of Property Act, 1925, came into operation, tenant of one undivided ninth share in customary tail special by descent in land formerly of copyhold tenure subject to the custom of gavelkind, but at that date by virtue of sect. 128 & Sched. 12, para. 1, sub-s. (*a*), of Law of Property Act, 1922 (c. 16), & sect. 202 of the Law of Property Act, 1925 (c. 20), of freehold tenure, the entirety of the land which then became vested by virtue of Part IV. of Sched. I. para. 1, sub-para. 4 of Law of Property Act, 1925 (c. 20), in the Public Trustee, having subsequently become vested in trustees appointed in his place upon the statutory trusts mentioned in sect. 35 of Law of Property Act, 1925 (c. 20):—*Semble :* in the absence of a statutory conversion of land into personal estate, the share of T. in the land on his death descended under the Inheritance Act to the heir at common law of the body of the last purchaser & not to the heir in gavelkind of the last purchaser ; the effect of the enfranchisement having been to destroy the gavelkind custom. —*Re* PRICE, [1928] 1 Ch. 579 ; 97 L. J. Ch. 423 ; 139 L. T. 339.

Annotations :—**Refd.** *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15 ; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409 ; *Re* Thomas's Will Trusts, Powell *v.* Thomas, [1930] 2 Ch. 67 ; *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42 ; *Re* Hind, Bernstone *v.* Montgomery, [1933] Ch. 208 ; *Re* Jones, Public Trustee *v.* Jones, [1934] Ch. 315.

Part V.—Distribution of Personal Estate.

161. *Citation :*—For "Skin. 212" read "Skin. 218."

165. *Add. Annotation :*—**Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

165a. —— Subject to interest of posthumous child.]—Distributory share vests on the intestate's death, but not so as to exclude a posthumous child.—EDWARDS *v.* FREEMAN (1727), 2 P. Wms. 435 ; 24 E. R. 803, L. C.

Annotations :—**Folld.** Wallis *v.* Hodson (1740), Barn. Ch. 272. **Refd.** Villar *v.* Gilbey, [1907] A. C. 139.

165b. —— ——.]—J. W. died intestate in 1724, & left issue T. W. who died within a week after his father, & his wife enceinte, & on May 29 following pltf. was born ; she is entitled to her share under the Statute of Distributions, as much as if she had existed in his lifetime.—WALLIS *v.* HODSON (1740), 2 Atk. 114 ; Barn. Ch. 272 ; 26 E. R. 472, L. C.

Annotations :—**Folld.** Burnet *v.* Mann (1748), 1 Ves. Sen. 156 ; Thellusson *v.* Woodford (1799), 4 Ves. 227. **Refd.** Thellusson *v.* Woodford (1805), 1 Bos. & P. N. R. 357 ; Villar *v.* Gilbey, [1907] A. C. 139.

165c. —— ——.]—A child *en ventre sa mère* may take under the Statute of Distribution.—THELLUSSON *v.* WOODFORD (1799), 4 Ves. 227 ; 31 E. R. 117, L. C. ; *affd.* (1805), 1 Bos. & P. N. R. 357, H. L.

Annotations :—**Refd.** Blackburn *v.* Stables (1814), 2 Ves. & B. 367 ; *Re* Burrows, Cleghorn *v.* Burrows, [1895] 2 Ch. 497 ; *Re* Wilmer's Trusts, Moore *v.* Wingfield, [1903] 1 Ch. 874 ; Villar *v.* Gilbey, [1907] A. C. 139.

See, now, Administration of Estates Act, 1925, (c. 23), ss. 47 (1), 55 (2).

170. *Add. Annotations :*—**Dbtd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546. **N.F.** *Re* Sigsworth, Bedford *v.* Bedford, [1925] Ch. 89.

173. *Add. Annotation :*—**Consd.** *Re* Jones, Johnson *v.* A.-G., [1925] Ch. 340.

175. *Add. Annotation :*—**Refd.** *Re* Vaux, Nicholson *v.* Vaux, [1938] 1 Ch. 581.

180. *Add. Annotation :*—**Refd.** *Re* Bower Williams, *Ex. p.* Trustee, [1927] 1 Ch. 441.

181. *Add. Annotation :*—**Consd.** *Re* Bower Williams, *Ex. p.* Trustee, [1927] 1 Ch. 441.

187. *Add. Annotation :*—**Consd.** *Re* Bower Williams, *Ex. p.* Trustee, [1927] 1 Ch. 441.

PART V. SECT. 1.

n i. —— *As amended by* 17 *Geo.* 5, *c.* 35, *s.* 2—*Effect of.*]—*Re Shier, ante,* not overruled, & the practice adopted since that decision not altered. —*Re* ALLISON, [1927] 4 D. L. R. 729 ; 61 O. L. R. 261.—**CAN.**

sc. *When next of kin entitled to delivery in specie.*]—After payment of debts, the administrator of the estate of an intestate holds the estate in trust to convert & divide among those entitled under the statute to distribution. Where there is only one *cestui que trust,* or where the *cestuis que trust* are all of one mind & no complication arises from disability, the right to demand the delivery of the estate *in specie* is incontrovertible. But where the parties beneficially entitled are not of one mind, those of them who so desire are entitled to insist upon the normal course of administration being pursued to the end.—*Re* HARRIS (1914), 33 O. L. R. 83.—**CAN.**

sd. *Statutory rights of concubine.*]—*Held :* appct. herein, who had lived in the province with the intestate as his wife for a number of years & had been maintained by him, was his "concubine" within sect. 102 of Administration Act, R. S. B. C., 1936, & was entitled to the benefits thereof.—*Re* WILSON'S ESTATE, [1938] 1 W. W. R. 856.—**CAN.**

PART V. SECT 2.

sf. *Divorced husband — Foreign divorce.*]—CARTER *v.* PATRICK, [1935] 1 W. W. R. 383 ; 2 D. L. R. 811 ; 49 B. C. R. 411.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

e i. —— —— *Effect of separation agreement.*]—After being married for three months a husband & wife, then domiciled & resident in Saskatchewan, made a separation agreement under which, as varied by a subsequent agreement, he paid her $2,500 & she agreed to relinquish her rights to any & all lands then or thereafter belonging to him & in particular her rights in the homestead. She also agreed not to take any proceedings against him arising out of the marriage except divorce, & in the event of her suing for divorce that she would make no claim for alimony. The husband died leaving a will in which he was described as of Calgary, Alberta. After making certain specific bequests he left the residue of his estate to his sister. The only reference in the will to his wife was a clause releasing her from any claims which the estate might have against her :—*Held :* the ct. was empowered to make such allowance as it thought proper to the widow without begin hampered by the provisions of Saskatchewan Widows' Relief Act ; the widow had not so contracted in the agreement as to deprive herself of the benefit of Widows' Relief Act even if she could so contract.—*Re* ANDERSON ESTATE, [1934] 1 W. W. R. 430 ; 2 D. L. R. 484.—**CAN.**

e ii. —— —— ——.]—Appct. sought relief under Widows Relief Act, R. S. A., 1922, from the provisions of her husband's will. She married deceased a little over eight years before his death. After living together for sixteen months they separated by agreement, but

221. *Add. Annotation :*—**Folld.** *Re* Ashton, Sier *v.* Ashton (1934), 78 Sol. Jo. 803.

221a. —— —— ——.]—*Re* ASHTON, SIER *v.* ASHTON (1934), 78 Sol. Jo. 803.

232. *Add. Annotation :*—**N.F.** *Re* Brooks, Public Trustee *v.* White, [1928] Ch. 214.

234. In the cross-reference following this case for " p. 148, No. 374," read " p. 374, No. 148."

thereafter made frequent motor trips together & visits to one another, & on these trips & visits lived as man & wife. She also at regular intervals rendered household services for him without remuneration :—*Held :* appct. was entitled to relief under the Act, &, under all the circumstances, to substantial relief.—*Re* MAGI ESTATE, [1935] 2 W. W. R. 422.—**CAN.**

e iii. —— ——.]—Application for relief under Widows Relief Act, R. S. A., 1922. Nothing was left to appct. by her husband's will but he stated therein that his reasons for not leaving her anything by the will was that he had already provided for her by transferring certain property to her. This property had at the time of the application deteriorated in value & the rentals therefrom were being collected by the mtgee. Appct. lived in a small house at the rear of the property & had been obliged to apply to the city for relief. The cost of an annuity of $50 per month for appct. would probably be as much or more than could be realised in cash for the estate :—*Held :* the estate should be charged, next after debts & encumbrances & the costs of the application, with the payment of $50 per month to appct. during her lifetime & should the revenues from the estate be insufficient to provide for this payment the exors. are empowered to encroach upon the corpus of the estate for the purpose of meeting the same.—*Re* MCDONALD ESTATE, [1937] 2 W. W. R. 22.—**CAN.**

e iv. —— ——.]—Application under Widows Relief Act, R. S. A., 1922. Appct., who had obtained a decree of judicial separation in 1920, had shortly thereafter returned to her husband at his request & in reliance on promises made by him which she alleged he did not keep. In 1923 she left him again & lived thereafter with her son or daughter until her husband's death in 1936, & had refused to see him or communicate with him when he was afflicted with paralysis. She had contributed $1,000 to the farming operations in 1907 & from 1893 to 1923 not only did her own house work but also worked in the fields. She was without any means & the will bequeathed her one dollar ; the residue of the estate was left to testator's sister & to charities :—*Held :* in view of all the evidence, that it was just & equitable that appct. should be allowed a share of the estate equal to that to which she would have been entitled had her husband died intestate.—*Re* WILSON ESTATE, [1937] 1 W. W. R. 161.—**CAN.**

e v. —— —— *Testator with foreign domicile.*]—In the case of a testator who dies domiciled out of Saskatchewan the ct.'s jurisdiction to grant his widow relief under Widows' Relief Act, R. S. S., 1930, is confined to that part of his property which is subject to the laws of Saskatchewan, *i.e.*, his immovables within Saskatchewan.—WILLIAMS *v.* MOODY BIBLE INSTITUTE OF CHICAGO, [1937] 2 W. W. R. 316 ; 4 D. L. R. 465 ; 7 F. L. J. (Can.) 38.—**CAN.**

sx. *Right to share of child dying intestate.*]—Construction of sect. 9 of Devolution of Estates Act, R.S.M., 1913, as amended by 1917, c. 5, s. 7. The intestate died in 1920, leaving him surviving a widow & two children, of whom one, an infant & unmarried, died in 1933 :—*Held :* the share of the deceased child passed to the mother.—*Re* BALABUK ESTATE, [1934] 2 W. W. R. 647 ; 4 D. L. R. 539 ; 42 Man. L. R. 372.—**CAN.**

f i. *Provision made for widow—Less than amount receivable on intestacy—What relief granted.*]—The discretion conferred on the ct. in favour of the widow, who applies for relief under Married Women's Relief Act is restricted by implication to the portion of her deceased husband's estate which she would have received on an intestacy.—MCBRATNEY *v.* MCBRATNEY (1919), 59 S. C. R. 550 ; [1919] 3 W. W. R. 1000 ; 50 D. L. R. 132.—**CAN.**

sd. *Ascertainment of net value of estate—Time for.*]—For the purpose of determining who is or are entitled pursuant to the Administration Act, R.S.B.C., 1924, to share in an estate the net value of the estate is to be ascertained as of the date of the death of the deceased.—*Re* COLLINS ESTATE, [1935] 1 W. W. R. 295 ; *affd. sub nom. Re* COLLINS ESTATE, TORONTO GENERAL TRUSTS CORPN. *v.* A.-G. FOR BRITISH COLUMBIA & COLLINS, [1935] 2 W. W. R. 550 ; 50 B. C. R. 122 ; *affd. sub nom.* CORKINGS *v.* COLLINS, [1936] S. C. R. 37 ; 2 D. L. R. 193 ; 5 F. L. J. (Can.) 291.—**CAN.**

sg. *Wife living in adultery at time of husband's death.*]—Sect. 127 (1) of Administration Act, R. S. B. C., 1924, as amended, provides : " If a wife has left her husband & is living in adultery at the time of his death, she shall take no part of her husband's estate " :—*Held :* the words " living in adultery at the time of his death " mean exactly what they say, *i.e.*, they refer to a state of affairs existing at that time, & it is not sufficient to prove that the wife was living in adultery, say for two years, for a period which ended before his death, or that she had committed isolated acts of adultery a long time prior to his death.—BURNS *v.* BURNS, [1937] 2 W. W. R. 673 ; 52 B. C. R. 4 ; *affd.* [1938] 4 All E. R. 173, P. C.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.

sk. *Effect of charge.*]—*Held :* the widow is not entitled to any portion of the real estate in specie.—CUNNINGHAM *v.* CUNNINGHAM, [1920] 1 I. R. 119.—**IR.**

sl. *S. P.* DUNICAN *v.* DUNICAN, [1920] 1 I. R. 212.—**IR.**

PART V. SECT. 3, SUB-SECT. 3.—A.

213 i. *Covenant to secure payment of sum of money—Satisfaction pro tanto.*]—F. on his marriage executed a bond, whereby, in the event of his death in the lifetime of his wife, a sum of money was to be paid to two trustees in trust for his wife. F. predeceased his wife, intestate & without issue :—*Held :* the sum secured by the bond was to be regarded, in the absence of evidence of any other intention, as satisfaction *pro tanto* of the widow's share of her husband's estate.—MATHEWS *v.* DONEGAN & COOKE, [1925] 1 I. R. 201.—**IR.**

PART V. SECT. 4, SUB-SECT. 1.

229 v. ——.]—The words " child or children of a deceased brother or sister " in Intestate Successions Act, R. S. A., 1922 (c. 143), s. 7 (2), mean issue in the first generation only, & do not include grandchildren or more remote descendants.—*Re* EMSLEY (Alta.), [1925] 1 W. W. R. 816.—**CAN.**

229 vi. ——.]—An intestate died unmarried leaving him surviving several brothers & sisters & a nephew & grandnephew. The nephew was the son of a sister who predeceased testator, & the grandnephew was the grandson of said sister. On the question did the share of the estate that would have gone to said sister, had she been alive at testator's death, pass to the nephew & grandnephew in equal shares or did it all go to the nephew :—*Held :* under sect. 12 of Devolution of Estates Act, R. S. M., 1913, the whole share went to the nephew.—*Re* BUDD ESTATE, HARMON *v.* FURBER, [1934] 2 W. W. R. 182 ; 3 D. L. R. 587 ; 42 Man. L. R. 152.—**CAN.**

229 vii. ——.]—*Re* GALL ESTATE, [1937] 3 W. W. R. 266.—**CAN.**

a i. —— ——.]—*Held :* such child not entitled in Saskatchewan to share in the estate of the father dying intestate & domiciled in Saskatchewan before the coming into force of Adoption of Children Act, 1922.—BURNFIEL *v.* BURNFIEL, [1926] 2 D. L. R. 129 ; [1926] 1 W. W. R. 657 ; 20 Sask. L. R. 407.—**CAN.**

a ii. —— ——.]—The word " child " in a will made in Saskatchewan by testator domiciled therein, who died before the coming into force of Adoption of Children Act, 1922, held not to include an adopted child, even though under the law of the foreign state where the child & its adopting parents were domiciled & in which it was adopted the effect of the adoption was to entitle it to all the rights of a child of its adopting father born in lawful wedlock.—*Re* DONALD ESTATE, BALDWIN *v.* MOONEY, [1928] 4 D. L. R. 181 ; [1928] 2 W. W. R. 636 ; *affd.*, [1929] 2 D. L. R. 244 ; S. C. R. 306 ; *subsequent proceedings*, [1928] 4 D. L. R. 771.—**CAN.**

a iii. —— *Child Welfare Act—Rights of inheritance.*]—Child Welfare Act does not create a new canon for the construction of wills. Therefore, where the adopted daughter was the niece of the foster father's wife & his will, after making provision for said adopted daughter by name, gave part of the residue of his estate to his & his wife's next-of-kin, said daughter took under the residuary bequest as his wife's niece & not as the testator's child.—*Re* SCOTT ESTATE, [1928] 1 W. W. R. 168.—**CAN.**

PART V. SECT. 3.

sp. *Not widow of only brother predeceasing intestate.*]—*Re* HENDERSON, [1926] 2 D. L. R. 536.—**CAN.**

st. *Brothers & sisters—Of infant dying after father who predeceased grandfather—Infant's share in grandfather's estate—Devolution of Estates Act, R. S. S.*, 1920 (c. 73), *ss.* 18, 23.]—*Re* GEORGET ESTATES (Sask.), [1928] 1 D. L. R. 230 ; [1927] 3 W. W. R. 769.—**CAN.**

sw. —— *Whether half-blood included.*]—" Brothers & sisters " within sect. 116 of Administration Act, R. S. B. C., 1924, as amended by 1925, include brothers & sisters of the half-blood. Therefore where an intestate had been predeceased by three half-brothers & sisters, each of whom left issue surviving the intestate, & he was survived also by a brother of the whole blood :—*Held :* one-quarter of the real & personal estate went to the brother & three-quarters to the nephews & nieces, *per stirpes*.—JOHNSON *v.* LINEKER, [1936] 1 W. W. R. 393 ; 4 D. L. R. 435 ; 50 B. C. R. 378 ; 6 F. L. J. (Can.. 36 ; *affd. sub nom. Re* LINEKER'S ESTATE, 50 B. C. R. 508.—**CAN.**

239. For "**Mother, brothers & sisters—Mother takes half & brothers & sisters half—Subject to right of widow.]**" read "**Mother, brothers & sisters—Share moiety equally—Widow taking half.]**"

256. *Add. Annotation :* — **Consd.** *Re* Merrall, Greener *v.* Merrall, [1924] 1 Ch. 45.

Part Va.—Distribution under Administration of Estates Act, 1925.

See Administration of Estates Act, 1925 (c. 23), ss. 33 (4), 45–52.

283a. **Rights of surviving spouse—Interest on sum charged—Payable out of corpus of estate.]**—Under Administration of Estates Act, 1925 (c. 23), s. 46 (1) (i), interest becoming payable on the sum of £1,000, thereby charged on the estate of an intestate in favour of a surviving wife or husband is not a charge upon the income but upon the corpus of the estate.—*Re* SAUNDERS, PUBLIC TRUSTEE *v.* SAUNDERS, [1929] 1 Ch. 674; 98 L. J. Ch. 303; 141 L. T. 27; 45 T. L. R. 283.

283b. —— **Contingent partial intestacy.]**—Testator devised & bequeathed his residuary estate upon trust for his widow for life, with remainder to such of his brothers & sisters as should survive her. The last of the brothers & sisters died in the widow's lifetime :—*Held :* the widow's estate would be entitled upon her death, as a result of the intestacy consequent upon the widow's survival, to a sum of £1,000, with interest at the rate of 5 per cent. per annum from the date of testator's death, under Administration of Estates Act, 1925 (c. 23), s. 46, but the widow was not entitled to have the reversion expectant on her death sold & the proceeds of sale invested, in order that she might enjoy the interest on such investments during her life as part of testator's estate devolving as upon an intestacy.—*Re* MCKEE, PUBLIC TRUSTEE *v.* MCKEE, [1931] 2 Ch. 145; 100 L. J. Ch. 325; 145 L. T. 605; 47 T. L. R. 424; 75 Sol. Jo. 442, C. A.

Annotation :—**Consd.** *Re* Thornber, Crabtree *v.* Thornber, [1936] 2 All E. R. 1594.

283c. **Descent to heir—Estate of lunatic—No committee or trustee appointed.]**—For six years before her death a lady was a certified patient at a mental home, & without any testamentary capacity. She was not, however, a lunatic so found by inquisition, & never had a committee or receiver. She died at the home on Feb. 1, 1929, a spinster & intestate, aged seventy-six :—*Held :* her real estate went to her heir-at-law under Administration of Estates Act, 1925 (c. 23), s. 51 (2), which exemption section, read with the definition section, sect. 55 (1) (viii.), was not confined to cases where a lunatic or defective had a committee or receiver.—*Re* GATES, GATES *v.* GATES, [1930] 1 Ch. 199; 99 L. J. Ch. 161; 142 L. T. 327.

283d. —— —— **Proceeds of sale of land in court —Lunacy Act, 1890 (c. 5), s. 123.]**—Testatrix made a will in 1877 & was subsequently in that year found to be of unsound mind. She remained in that condition until her death in 1932. At her death all the persons who would have been interested under her will were dead, with the result that her property (which included the proceeds of sale of an undivided three-fourths share in certain freehold land) devolved as under an intestacy. Her share in the freehold land had been sold in 1923. A summons was taken out by her administrator for the determination of the question whether the proceeds of the sale of the property devolved upon her heirs at law or upon her next of kin : —*Held :* the capital devolved upon the heirs at law under Lunacy Act, 1890 (c. 5), s. 123 (1), & was not affected by the transitional provisions of Law of Property Act, 1925 (c. 20), but fell within the exceptions provided for by Administration of Estates Act, 1925 (c. 23), s. 51 (2); & with regard to the dividends, so much thereof as had accrued before the death of testatrix devolved upon the next of kin as personal property, & so much thereof as had accrued since her death devolved upon the persons who became entitled to the real estate.—*Re* HARDING, WESTMINSTER BANK, LTD. *v.* LAVER, [1934] Ch. 271; 103 L. J. Ch. 121; 150 L. T. 277; 77 Sol. Jo. 853.

283e. —— —— **Effect of Legitimacy Act, 1926**

PART V. SECT. 7.

249 ii. —— —— ——.]—M. who was unmarried died intestate. He had one sister still living, & another sister who had predeceased him, left one son living. One brother was still living. A second brother who had predeceased him left three children still living, & a third brother (A.) who had predeceased him left nine children still living, & a tenth child (E.) who had predeceased M. left four children (grandchildren of M.) still living. On a petition for directions :—*Held :* the one-fifth share of the estate to which the brother A. would have been entitled should be divided into ten parts, & one of the ten parts should be divided equally amongst Edward's four children.—*Re* MCKAY (1927), 39 B. C. R. 51.—**CAN.**

249 iii. —— —— ——.]—CARTER *v.* PATRICK, [1935] 1 W. W. R. 383; 2 D. L. R. 811.—**CAN.**

251 iii. —— —— ——.]—*Re* GRANT ESTATE, GRANT *v.* MORRISON (B. C.), [1929] 3 W. W. R. 644; [1930] 1 D. L. R. 365; 41 B. C. R. 511.—**CAN.**

PART V. SECT. 8.

h i. —— *Uncle & children of deceased uncles.*]—*Re* KROESING ESTATE, [1928] 1 D. L. R. 643; [1928] 1 W. W. R. 224. —**CAN.**

h ii. —— *Uncles & aunts & cousins.*]—The surviving next of kin of an intestate, who had never married, were three paternal uncles & a maternal aunt & uncle. Two aunts had predeceased the intestate leaving children : —*Held :* under sects. 117, 118, 119 of Administration Act, R. S. B. C., 1924, the estate was distributable *per capita* solely among the surviving aunts & uncles.—*Re* CROMARTY ESTATE, [1937] 2 W. W. R. 682; 51 B. C. R. 531.—**CAN.**

PART V. SECT. 9.

273 iv a. *S. P. Re* JENSEN (Alta.), [1927] 1 D. L. R. 76; [1926] 3 W. W. R. 737.—**CAN.**

273 vi.—— *Exception as to ancestral property.*]—*Held :* the proviso to sect. 126 of Administration Act, R. S. B. C., 1924, excludes, without qualification, those who are not of the blood of the ancestor. "Ancestor," within the meaning of the sect. is the person from whom the estate in question is derived. He need not be a progenitor of the successor or lineal ancestor so long as he really preceded in the estate, & may be brother, aunt, uncle, nephew or cousin.—*Re* PARSHALLE ESTATE, SHAW *v.* COX, [1930] 1 W. W. R. 767; 3 D. L. R. 438; 42 B. C. R. 413.—**CAN.**

(c. 60).]—E. M. B., who had for many years been a person of unsound mind, died on Feb. 22, 1933, intestate & a spinster, without parents or brother or sister of the whole blood. Her estate consisted of real & personal property. There were two claimants to her real estate, the first deft., who would be entitled apart from & before the coming into force of Legitimacy Act, 1926 (c. 60), & the second deft., who was not legitimate at the time of her birth, but by reason of the subsequent marriage of her parents was legitimated by virtue of Legitimacy Act, 1926 (c. 60), & who would have been entitled if legitimate :—*Held :* on the true construction of Administration of Estates Act, 1925 (c. 20), ss. 45 (1), 51 (2), the descent of the real estate of a person who was of unsound mind before the commencement of the Act & who died intestate while still of unsound mind remained unaltered and the real estate passed to the persons who would have taken it before the commencement of the Act, & accordingly, the first deft. was the person entitled to the real estate of the intestate.—*Re* BERREY, LEWIS *v.* BERREY, [1936] Ch. 274 ; 105 L. J. Ch. 38 ; 154 L. T. 335.

283f. —— —— **" In accordance with the general law "—Exclusion of custom of gavelkind.**]—An intestate, who was, at the date of her death, a spinster of full age had, since before Jan. 1, 1926, been a person of unsound mind. She died in 1933, possessed of land in Kent which had, before 1926, been subject to the custom of gavelkind. Administration of Estates Act, 1925 (c. 20), s. 51 (2), which applied to the case, requires that the land shall " devolve in accordance with the general law in force before " 1926 :—*Held :* the requirement that the land should devolve in accordance with the general law prevented the application of the special custom of gavelkind, & the land devolved upon the heir-at-law according to the common law.—*Re* HIGHAM, HIGHAM *v.* HIGHAM, [1937] 2 All E. R. 17.

283g. —— **Estate tail—1925 Act, s. 51 (3)—Application to notional settlement on intestacy.**]—In 1925 an infant S. inherited land as eldest son & heir of an intestate, subject to his mother's right to dower. On Jan. 1, 1926, the Settled Land Act, 1925 (c. 18), came into operation, & under sect. 1 (2) S. was treated as deriving his title under the settlement deemed to have been made by the intestate, his mother's right to dower being preserved by sect. 1 (3). On Oct. 8, 1930, S. died an infant & unmarried :—*Held :* Administration of Estates Act, 1925 (c. 23), s. 51 (3), applies to the case of a notional settlement on intestacy, so that S.'s interest had become an entail & ceased on his death as an unmarried infant. Consequently the estate went to S.'s younger brother as next heir of the intestate & not to S.'s mother under Administration of Estates Act, 1925 (c. 23), s. 46 (1) (iv.).—*Re* TAYLOR, PULLAN *v.* TAYLOR, [1931] 2 Ch. 242 ; 100 L. J. Ch. 374 ; 145 L. T. 417.

283h. **Distributive share—Right of murderer of intestate.**]—*Semble :* the rule of public policy which prevents a sane murderer from taking any benefit under his victim's will prevents him also from taking a distributive share under his victim's intestacy.

In the present case the murderer was insane, but if the point arose for decision, the views of FRY, L.J., in *Cleaver* v. *Mutual Reserve Fund Life Association*, [1892] 1 Q. B. 147, 157, 158, would probably prevail over those of JOYCE, J., in *In re Houghton*, No. 170, & the peremptory provisions of Administration of Estates Act, 1925 (c. 23), s. 46, would be read & construed subject to the public policy rule.—*Re* PITTS, COX *v.* KILSBY, [1931] 1 Ch. 546 ; 100 L. J. Ch. 284 ; 145 L. T. 116 ; 47 T. L. R. 293.

Annotations :—**Followed.** *Re* Sigsworth, Bedford *v.* Bedford, [1935] Ch. 89. **Refd.** Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

283i. —— ——.]—A coroner's jury found a verdict against X. of wilful murder of his mother & of *felo de se*. X. was named as the sole beneficiary under his mother's will. On a summons taken out to determine the devolution of the mother's estate :—*Held :* the rule of public policy which prevented X. (or his estate) from benefiting under the mother's will also debarred his personal representative from participating as such in the intestacy arising from the death of the mother caused by the son's act.—*Re* SIGSWORTH, BEDFORD *v.* BEDFORD, [1935] Ch. 89 ; 104 L. J. Ch. 46 ; 152 L. T. 329 ; 51 T. L. R. 9 ; 78 Sol. Jo. 735.

Annotation :—**Refd.** Beresford *v.* Royal Insurance Co., [1937] 2 K. B. 197.

Part VII.—Escheat and bona vacantia.

285. *Add. Annotations :*—**Consd.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475. **Refd.** Toronto (City) Corpn. *v.* R., [1932] A. C. 98.

286. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

292. *Add. Annotations :*—**Consd.** *Re* O'Hagan, O'Hagan *v.* Lloyd's Bank, Ltd., [1932] W. N. 188. **Refd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56 ; *Re* Tong, Hilton *v.* Bradbury (1930), 144 L. T. 260.

298a. —— **Failure of devise—No heir of testator—Death of testator before Intestates Estates Act, 1884—Trustee holds for own benefit.**]—*Re* RAWLINSON, WILSON *v.* BANKS (1934), 78 Sol. Jo. 602.

301. *Add. Annotation :*—**Consd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

311. *Add. Citations :*—[1924] 2 Ch. 19 ; 93 L. J. Ch. 483 ; 130 L. T. 800 ; 68 Sol. Jo. 419.

312. *Add. Annotations :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617 ; *Re* Rawlinson, Wilson *v.* Banks (1934), 78 Sol. Jo. 602.

315. After this case add " **Land in Alberta granted by Crown.**]—*See* DEPENDENCIES, No. 98a."

319. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

323. *Add. Annotation :*—**Refd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

328a. Funds appointed — Appointor illegitimate— Death of appointee in lifetime of appointor.]—Testatrix, who was illegitimate, exercised by her will a power of appointment over certain funds in favour of her husband. Her will contained the prefatory words "to the intent that this my will shall take effect whether I survive or predecease my husband." Her husband predeceased her:—*Held:* the presence in the will of the prefatory words was not sufficient, in the absence of a substitution of other legatees in the event of her husband predeceasing her, to show an intention, within the meaning of the authorities, that the husband's estate should take the benefit of the appointed funds. Consequently there was a lapse of those funds, &, as testatrix was illegitimate, & had never had issue, the funds became *bona vacantia* & went to the Crown.—*Re* LADD, HENDERSON *v.* PORTER, [1932] 2 Ch. 219; 101 L. J. Ch. 392; 147 L. T. 433.

329. *Add. Annotations:*—**Refd.** *Re* Cullum, Mercer *v.* Flood, [1924] 1 Ch. 540; *Re* Rawlinson, Wilson *v.* Banks (1934), 78 Sol. Jo. 602.

329a. Proceeds of sale under Settled Land Act, 1925 (c. 18).]—*Re* RAWLINSON, WILSON *v.* BANKS (1934), 78 Sol. Jo. 602.

330. After this case add "**Property in Alberta.**]—*See* DEPENDENCIES, No. 98a."

331. *Add. Annotation:*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

336a. —— ——.]—A lunatic, at the date of her death in 1798, was entitled to certain funds in ct. representing the residuary estate of her father. In 1794 the master had reported that the lunatic had no heir-at-law or next of kin. In 1798 & 1801 the Crown made *ex gratiâ* grants of the funds to certain persons & obtained an indemnity in respect of the grants. In 1926 a petition was presented by persons claiming to be the next of kin of the lunatic for the payment to them of the whole of her personal estate. The parties sought a determination of the following questions: (1) whether the petition was maintainable on the assumption that no part of the funds ever came into the hands of or was dealt with by his present Majesty or his nominees or grantees or was carried to the Consolidated Fund; (2) whether the petition was barred by any Statute of Limitations; (3) whether in view of Petitions of Right Act, 1860 (c. 34), s. 5, suppliants could proceed without serving the petition upon the successors in title of the persons to whom the *ex gratiâ* grants had been made:—*Held:* the first question must be answered in favour of suppliants.—*Re* MASON, [1928] Ch. 385; 97 L. J. Ch. 321; 139 L. T. 477; 44 T. L. R. 225; *affd.*, [1929] 1 Ch. 1, C. A.

Annotation:—**Consd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

337a. —— ——.]—*Re* MASON, No. 336a, *ante*.

—— **Limitation of action.**—*See* LIMITATION OF ACTIONS, Nos. 1761a, 1761b, *post*.

PART VII. SECT. 2, SUB-SECT. 5.

sc. *Descent to University of Alberta under Ultimate Heir Act, 1931—Action by heirs to recover estate—Defence.*]—Where an estate of an intestate has been transferred to the University of Alberta in accordance with Ultimate Heir Act, 1931, & then afterwards persons who allege that they are the heirs or next-of-kin of the intestate, but that the University has refused to recognise their claim, bring an action for a declaration of their right to the estate & for its transfer to them under sect. 6 of the said Act, it is not a good defence to the action that their claim was not substantiated before the action. —MACKLEY *v.* ALBERTA UNIVERSITY (GOVERNORS), [1933] 2 W. W. R. 330; 3 D. L. R. 726.—CAN

DISCOVERY, INSPECTION, AND INTERROGATORIES.

Part I.—In General.

17. *Add. Annotation :*—**Refd.** Hillman's Airways, Ltd. *v.* Société Anonyme D'Éditions Aéronautiques Internationales, [1934] 2 K. B. 356.

Part II.—Discovery of Documents.

60. *Add. Annotation :*—*As to* (2) **Refd.** Elliott *v.* Albert, [1934] 1 K. B. 650.

77a. —— **Inquiry as to damages.**]—There is no different principle applicable to an application for discovery of documents on an inquiry as to damages from that which prevails on an application for discovery where any other issue has to be tried between opposing parties.—BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* LAMBERT HOWARTH & SONS, LTD. (1929), 46 R. P. C. 315.

Annotation :—**Refd.** Draper *v.* Hubert H. P. Trist & Tristbestos Brake Linings, Ltd. (1935), 53 R. P. C. 66.

86. *Add. Annotation :*—**N.F.** Wakefield *v.* Board (1928), 45 R. P. C. 261.

87a. —— ——.]—WAKEFIELD & CO., LTD. *v.* BOARD (TRADING AS J. P. BOARD & CO.) (1928), 45 R. P. C. 261.

99. *Add. Annotations :*—*As to* (2) **Apld.** Cavendish *v.* Cavendish (1925), 42 T. L. R. 134. **Distd.** Elliott *v.* Albert, [1934] 1 K. B. 650.

126. *Add. Annotation :*—**Folld.** Seddon *v.* Commercial Salt Co. (1924), 69 Sol. Jo. 159.

127. *Add. Annotation :*—**Overd.** Seddon *v.* Commercial Salt Co., [1925] Ch. 187.

127a. ———— ——.]—By an underlease lands & works were demised to the first defts. for the term of twenty-one years less one day. The underlease contained a covenant by these defts. that they would not assign, transfer or part with possession of the demised premises or any part thereof without the consent of the underlessor, & that in case of the breach of such covenant it should be lawful for the underlessor to re-enter upon the demised premises, & that thereupon the demise should absolutely determine. Pltf., the purchaser of the reversion on the underlease, brought an action to recover possession of the premises. By his statement of claim he alleged that the first defts., in breach of their covenant, had transferred, underlet or parted with the possession of the premises to the second defts., &/or the third defts. By their respective defences defts. traversed the allegations in the statement of claim. On a summons taken out by pltf. asking that the second defts. might be ordered to file a full & sufficient affidavit of documents, the judge, considering himself bound by *Powis (Earl)* v. *Negus*, No. 127, made the order asked for :—*Held :* there was one issue only between pltf. & the three defts., namely, whether the underlease, subject to which pltf. as he alleged derived his title to the possession of the land in question, was still subsisting or had been determined by the exercise by pltf. of his right of re-entry, & that being so, the well-established rule that the ct. would not assist a forfeiture by ordering discovery of documents applied, & the order made against the second defts. must be discharged. *Powis (Earl)* v. *Negus*, No. 127, *overd.*—SEDDON *v.* COMMERCIAL SALT CO., LTD., [1925] Ch. 187 ; 94 L. J. Ch. 225 ; 132 L. T. 437 ; 69 Sol. Jo. 159, C. A.

135. *Add. Annotation :*—**Folld.** Gale *v.* Denman Picture Houses, Ltd., [1930] 1 K. B. 588.

PART I. SECT. 1.

sa. *Whether experiments ordered—Not necessary for proper determination of issues.*]—NICHOLS *v.* T. T. C., [1928] 2 D. L. R. 364 ; 34 Can. Ry. Cas. 252 ; 62 O. L. R. 124.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.

130 iv. ——.]—BAILIE *v.* INGLIS & CO., LTD. & JAMISON, [1926] N. 53.—**IR.**

130 v. ——.]—Deft. co. sought production of a diary which had been kept by one of pltfs.' solrs., & which, it was alleged, recorded an interview between such solr. & a person other than pltfs. in the action, at which interview the preparation of a debenture was discussed :—*Held :* the diary was the solrs.' property, & as they were not parties to the action, there was no power in the present proceedings to order production & inspection of their diary.—KEEP BROS. *v.* BIRCH & BRADSHAW, [1928] N. Z. L. R. 360.—**N.Z.**

k 1. ———— ——.]—**In an action by an injured workman against three defts.** claiming damages for injuries suffered through the breaking of the gear used in lifting a heavy weight, where discovery had been ordered in favour of one deft. against another deft. on a motion to review the order so made :—*Held :* as in the event of the ct. holding that the accident was due to the gear used being defective there was still an issue between defts. in question, namely, as to which was responsible for the use of the gear, the stevedore or the shipowner, on the implied warranty that the gear supplied was effective there were consequently rights to be adjusted between defts., & the order for discovery was properly made.—CLARKE *v.* ELLERMAN, BUCKNALL & CO., LTD., [1930] N. Z. L. R. 722.—**N.Z.**

sb. *Miners union—Defence filed raising question whether defendants legal entity.*]—A miners' union entered an appearance in an action, & by statement of defence raised the objection that it was not shown that deft. was a legal entity capable of being sued :—*Held :* deft. by so pleading must be deemed, before the trial of the action, to be a corpn. for the purpose of the litigation, & so compellable to make discovery.—CENTRE STAR MINING CO., LTD. *v.* ROSSLAND MINERS' UNION (1902), 9 B. C. R. 190.—**CAN.**

sd. *Common informer.*]—Although the cts. will not readily assist a common informer by their procedure, yet, as against the Crown when it has made a contract with a person to procure information for its own purposes, that principle is inapplicable, & such a person is entitled to discovery in any proceedings instituted upon the contract.—HEIMANN *v.* COMMONWEALTH (1935), 41 Argus L. R. 501.—**AUS.**

PART II. SECT. 4, SUB-SECT. 2.

161 ii. ———— ———— ————.]—An individual who brings an action at law against the Commonwealth in the Supreme Ct. of New South Wales may, by invoking the auxiliary jurisdiction of that ct. in equity, obtain an order for the discovery of documents against deft.—HEIMANN *v.*

162. *Add. Annotation :—Generally,* **Refd.** Robinson *v. South Australia State (No. 2), [1931] A. C.* 704.

171. *Add. Annotations :—As to* (2) **Consd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21. **Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

173. *Add. Annotation :*—**Consd.** Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 677.

214a. ——.]—The ct. will not, save in very exceptional circumstances, order a deft. to produce documents in his possession before pltf. has delivered his statement of claim.—GALE *v.* DENMAN PICTURE HOUSES, LTD., [1930] 1 K. B. 588 ; 99 L. J. K. B. 351 ; 143 L. T. 31 ; 46 T. L. R. 282 ; 74 Sol. Jo. 187, C. A.

238. *Add. Annotations:*—**Refd.** Tecalemit *v* Ex.-A-Gun (1926), 44 R. P. C. 62 ; Gerrard Industries, Ltd. *v.* Box Wiring Co. (1933), 50 R. P. C. 125.

241. *Annotation :*—**Consd.** Draper *v.* Hubert H. P. Trist & Tristbestos Brake Linings, Ltd. *(1935), 53 R. P. C. 66.*

242. *Add. Annotation :*—**Consd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

254a. Liberty to apply reserved.]—POISSON & WOODS *v.* ROBERTSON & TURVEY (1902), 86 L. T. 302 ; 50 W. R. 260 ; 46 Sol. Jo. 196, C. A.

254b. Pursuant to undertaking on injunction.]—FARROW *v.* SMITH (1915), Yearly Supreme Court Practice.

259. *Add. Annotation :*—**Consd.** Berry & Stewart *v.* Tottenham Hotspur Football & Athletic Co., [1935] Ch. 718.

SECT. 7.—**GROUNDS FOR RESISTING.**

(Vol. XVIII., p. 71).

For " Sect. 3, sub-sect. 2, *ante*," read " Part III., sect. 9, *post*."

COMMONWEALTH (1936), 54 C. L. R. 126 ; 9 A. L. J. 384.—**AUS.**

a. *Citation :*—For " [1908] S. C. 335 " read " [1909] S. C. 335."

a i. —— —— *Statutory right to sue Crown.*]—When a statute gives the right to sue an officer or representative of the Crown according to the ordinary practice & procedure of the ct., it must be taken to subject the officer or representative to the compulsory process of the ct. in relation to ordinary incidents of practice & procedure, subject to any special saving or exemption.

The South Australian Harbours Board is an incorporated agent of the Crown under the Harbours Act, 1913, & is empowered to sue & be sued, & by sect. 75 (2), if default is made in the performance of any duty authorised, such actions or suits may be brought as might be brought if the contract had been made between private persons. In an action in respect of such an authorised contract pltf. applied for discovery against deft. Harbours Board :—*Held :* the general tenor of the Harbours Board Act, 1913, is more consistent than otherwise with the intention to subject deft. Board to the ordinary jurisdiction of the ct. with regard to discovery, & accordingly deft. was compellable to make discovery.—GONINAN (A.) & CO., LTD. *v.* SOUTH AUSTRALIAN HARBOURS BOARD, [1931] S. A. S. R. 128.—**AUS.**

a ii. —— —— *Common informer.*]—An individual who for reward contracts with the Crown to furnish information leading to the conviction of persons for evasion of customs duty & to the recovery of duty evaded & the penalties provided by law cannot be regarded, for the purpose of an action brought by him against the Crown on the contract, as a " common informer," & is not disentitled to an order for discovery of documents.—HEIMANN *v.* COMMONWEALTH (1936), 54 C. L. R. 126 ; 9 A. L. J. 384.—**AUS.**

PART II. SECT. 4, SUB-SECT. 3.

d i. —— *Discovery against infant.*]—SAGAN *v.* PATAN, [1931] 3 W. W. R. 772.—**CAN.**

sk. *Action of damages for negligence.*]—An infant pltf. in an action for damages for injuries sustained in an automobile accident *held* examinable for discovery.—RUTHERFORD *v.* CONSOLIDATED PLATE GLASS CO., LTD., [1936] 1 W. W. R. 377 ; 43 Man. L. R. 589.—**CAN.**

sp. *Procedure.*]—In determining whether an order should be made for the examination for discovery of a child of tender years the judge applied to should determine for himself, before making the order, whether the child would be competent to give evidence, & should also determine whether an oath should or should not be administered to the child. In determining these questions resort should be had to sect. 19 of Alberta Evidence Act, R. S. A., 1922, c. 87. If it is made to appear that the child is not possessed of sufficient intelligence to justify the reception of his evidence the order should be refused. If it appears that he is possessed of such intelligence & does understand the duty of speaking the truth, but does not understand the nature of an oath, the order should provide that no oath should be administered, or it may be that the matter should be adjourned to have the child instructed as to the nature of an oath.—HEBERT *v.* CALGARY CITY, [1938] 2 W. W. R. 25.—**CAN.**

PART II. SECT. 4, SUB-SECT. 4.—A.

182 i. *Whether next friend may make affidavit.*]—The ct. will not order a party to an action who is of unsound mind, or his next friend or the Public Trustee administering such person's estate under Mental Defectives Act, 1911, s. 100 (*h*), to make an affidavit of documents in compliance with an order for discovery under Rule 161A ; & Rule 167A does not apply to persons of unsound mind.—TASKER *v.* ALGAR, [1928] N. Z. L. R. 529.—**N.Z.**

PART II. SECT. 5, SUB-SECT. 1.

se. *Not till issues defined.*]—When it is necessary, before an order for discovery can be made, that certain questions in the suit should first be decided, the proper order to make is that the suit should be set down for the settlement of the issues. The judge will then be in a position to decide which of the issues are necessary to be determined before the question of inspection or discovery can be decided.—EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. *v.* DINANATH (1922), I. L. R. 47 Bom. 509.—**IND.**

[PART II. SECT. 5, SUB-SECT. 3.

218 i. *Not till after defence delivered—Interlocutory judgment signed.*]—After pltf. had signed interlocutory judgment against deft. in an action of tort, deft. sought to examine the pltf. for discovery, the action being about to come on at the assizes for assessment of damages. R. 489 states that the examination of pltf. by deft. may take place at any time after such deft. has delivered his statement of defence :—*Held :* deft. could not examine pltf.—ASHLEY *v.* BRENTON (1889), 13 P. R. 98.—**CAN.**

218 ii. —— ——.]—FONG YOUNG *v.* SHING WAH, [1928] 3 D. L. R. 481 ; 62 O. L. R. 370.—**CAN.**

PART II. SECT. 5, SUBsSECT. 4.

p i. —— ——.]—BRITISH COLUMBIA LIQUORS CO., LTD. *v.* CONSOLIDATED EXPORTERS CORPN., LTD., [1930] 2 W. W. R. 379 ; [1931] 1 D. L. R. 195 ; 42 B. C. R. 481.—**CAN.**

240 ii. —— —— ——.]—In a case wherein it appears that deft. knows the facts & pltf. does not, deft. should give discovery before pltf. delivers particulars. In such a case where the order for particulars provided that they should be given by pltf. after examination of deft. for discovery, the order also extended the time for delivery of the defence until after the delivery of the particulars.—ALBERTA WHEAT POOL *v.* NAHAJOWICZ, [1930] 1 W. W. R. 483 ; 2 D. L. R. 759 ; 24 Alta. L. R. 400 ; *affg.*, [1930] 1 D. L. R. 344 ; [1929] 3 W. W. R. 673.—**CAN.**

sf. *Discretion of judge.*]—BLYGH *v.* SOLLOWAY MILLS & CO., LTD., [1930] 2 W. W. R. 208 ; 4 D. L. R. 582 ; 42 B. C. R. 531.—**CAN.**

PART II. SECT. 6.

255 iii. —— ——.]—Resp., a member of the Permanent Defence force of the Union & discharged therefrom as medically unfit, applied for an order on applt. to furnish him with a true copy of the medical certificate issued under Act 27 of 1923, s. 54. He alleged he had sustained injuries in the discharge of & specially attributable to his duties, that he was entitled to receive compensation in manner provided under the sect., that he was desirous of bringing an action to obtain compensation & that it was imperative that a copy of the prescribed medical certificate referred to in sect. 54 should be disclosed to him before any legal steps were taken to enable him to determine the form of relief to which he was entitled. A Provincial Div. having granted the application :—*Held :* as the real dispute between the parties was whether resp.'s ill-health was occasioned in the discharge of his official duties or not &, as it was only when the cause of his ill-health had been established in his favour as a fact, that the necessity for the inspection of the certificate might arise, the application was premature & should have been refused.—UNION GOVERNMENT MINISTER OF DEFENCE *v.* VAN ZYL, [1929] App. D. 131.—S. AF.

256 i. —— —— *Alleged partnership.*]—HARNAM SINGH *v.* KAPOOR SINGH (1927), 39 B. C. R. 485.—**CAN.**

279. *Citations :*—For " BITT. PRAC. CAS. 1 " read " BITT. PRAC. CAS. 13."

324. *Add. Annotation :*—**Consd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

372. *Add. Annotation :*—**Consd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

373. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1930] A. C. 558.

373a. —— ——.]—THE CITY OF BARODA, No 874a, *post.*

377. *Add. Annotations :*—**Refd.** Minter *v.* Priest, [1930] A. C. 558 ; Infields, Ltd. *v.* Rosen & Son, [1938] 3 All E. R. 591.

380. *Add. Annotation :*—*As to* (1) **Consd.** Reddaway & Co., Ltd. *v.* Hartley (1930), 48 R. P. C. 10.

382. *Add. Annotation :*—**Apld.** Reddaway *v.* Hartley (1928), 72 Sol. Jo. 502.

389. *Add. Annotation :*—*As to* (1) **Apld.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

390. *Add. Annotation :*—**Consd.** Infields, Ltd. *v.* Rosen & Son, [1938] 3 All E. R. 591.

394. *Add. Annotations :*—*As to* (2) **Folld.** The Hopper No. 13, [1925] P. 52. **Apld.** The City of Baroda (1926), 134 L. T. 576 ; Ogden *v.* London Electric Ry. Co. (1933), 49 T. L. R. 542. **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

437a. **Effect of rule.**]—REDDAWAY (F.) & Co. *v.* HARTLEY (1928), 72 Sol. Jo. 502 ; 45 R. P. C. 432.

437b. ——.]—Before the hearing of the action, an application by pltfs. that deft. be ordered to make a further & better affidavit of documents, or in the alternative, that an order be made, under R. S. C., Ord. 31, r. 19A (3), was refused by the master, on the ground that such an order would be contrary to practice. Pltfs. appealed. It appeared from certain letters that had been disclosed that there were certain letters relative to the issues in the action, as well as other documents, which had not been disclosed ; but it was contended on behalf of deft. that, since the coming into operation of the rule, it was no longer open to a pltf. in such a case to ask for a general further & better affidavit, but that he was confined to the remedy given to him by the rule. It was held by ROMER, J., that the rule did give to persons objecting to an affidavit of documents certain rights which did not exist before the rule was framed ; but that it should not be read as interfering with the rights which were possessed before it came into force ; & that it was apparent, from sources which might be referred to, that the deft. had in his possession other documents not disclosed in his affidavit. Deft. was ordered to file a further affidavit. Deft. appealed to the Ct. of Appeal, where the appeal was dismissed on the ground that the service of the notice was out of due time. Deft. filed a further affidavit, whereupon pltfs. applied for a further & better affidavit before MAUGHAM, J., who made an order under R. S. C., Ord. 31, r. 19A (3), ordering deft. to state by affidavit whether the particular documents referred to by the judge, including any documents relating to distribution by deft. of samples of belting & including other specific documents, had at any time been in deft.'s possession, & if not then in his possession, when he parted with them & what had become thereof. Pltfs. appealed, by leave, to the Ct. of Appeal :—*Held :* the appeal should be allowed with costs in any event ; R. S. C., Ord. 31, r. 19A (3), did not cut down the powers of the ct. as expressed in the case of *Jones* v. *Monte Video Gas Co.*, L. R. 5 Q. B. D. 556 ; the order of ROMER, J., must be complied with ; it was an order which was intended to be based upon *Jones* v. *Monte Video Gas Co.*, & there were materials which showed that a further affidavit was necessary ; & a further affidavit must be made by deft.—REDDAWAY (F.) & Co., LTD. *v.* HARTLEY (1930), 48 R. P. C. 10, C. A.

440a. ——.] — ASTRA - NATIONAL PRODUCTIONS, LTD. *v.* NEO-ART PRODUCTIONS, LTD., [1928] W. N. 218.

442. *Add. Annotation :*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

447. *Add. Annotation :*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

449. *Add. Annotation :*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

450. *Add. Annotation :*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

451. *Add. Annotation :*—**Folld.** Leon *v.* Casey (1932), 48 T. L. R. 452.

451a. —— —— ——.]—By a policy in the form of a Lloyd's policy of marine insurance underwriters insured certain goods & merchandise upon the steamship *L.* or other steamers or conveyances at & from Cairo to Jaffa. The risks insured against included damage by

---

PART II. SECT. 9, SUB-SECT. 4.

p i. —— " *Pleadings & proceedings* " *in specified action.*]—ISITT & ISITT *v.* HAMMOND & NATIONAL RESOURCES SEC. CO. (1924), 34 B. C. R. 133.—**CAN.**

PART II. SECT. 9, SUB-SECT. 5.

369 v. —— ——.]—REID *v.* VANCOUVER TUG BOAT CO., LTD., [1928] 2 D. L. R. 244 ; [1928] 1 W. W. R. 800 ; 39 B. C. R. 479.—**CAN.**

370 iii. ——.]—When in an affidavit of discovery privilege is claimed in respect of any document or documents, such document or documents must be specified individually in the schedule attached to the affidavit of discovery, & not referred to as being included among others contained in a bundle.—RUSHBROOKE *v.* O'SULLIVAN & HIBERNIAN FIRE INSURANCE CO., LTD., [1926] I. R. 500 ; 59 I. L. T. 161.—**IR.**

370 iv. ——.]—Where privilege is claimed with respect to documents deponent is not required to describe the documents in such a manner as would disclose the nature or particulars of such documents. " A bundle of documents marked ' A ' & numbering 1 to 160, all of which documents were initialled by this deponent," is a sufficient identification of the documents.—CAMPBELL *v.* WOODS, IRMIE & THE CANADIAN PRESS (Alta.), [1926] 2 D. L. R. 805 ; [1926] 2 W. W. R. 99.—**CAN.**

PART II. SECT. 10.

385 iv. —— ——.]—Where deft. obtained an order for discovery, & in the affidavit of discovery it was sworn on behalf of pltf. that a document in his possession related solely to pltf.'s case & did not support deft.'s case, & the Supreme Ct. had refused an application by deft. for inspection of the document : —*Held :* on the evidence there was no substantial ground upon which to base a conclusion that the statement in the affidavit was made erroneously or under a misconception of the character of the document, & the application was properly refused.—SMITH, ETC. *v.* SUNDAY TIMES (1923), 31 C. L. R. 552.—**AUS.**

388 i. —— *Claim of privilege.*]—Where an affidavit sets out positively & definitely that privilege is claimed for certain documents, on the ground that they arose out of negotiations carried on " without prejudice," that statement cannot be contradicted by affidavits or material from the other side ; but it can be attacked or impugned only by some admission or qualification coming from that side.—BLACK *v.* OCEAN ACCIDENT & GUARANTEE CO. (Man.), [1926] 2 D. L. R. 985 ; [1926] 1 W. W. R. 883.—**CAN.**

PART II. SECT. 11, SUB-SECT. 2.

h i. ——.]—HUTCHINSON & DOWDING *v.* BANK OF TORONTO (No. 2), [1934] 1 W. W. R. 446 ; 48 B. C. R. 315.—**CAN.**

fire, & the policy contained a warehouse to warehouse clause. The adventure consisted of a journey by land from Cairo to Alexandria & thence by sea on the steamship *L.* to Jaffa. In an action upon the policy the assured alleged that the goods had been damaged by fire in the course of transit by lorry from Cairo to Alexandria :—*Held :* upon a summons for directions an order was properly made that pltfs. should make an affidavit of ship's papers, the policy being substantially one of marine insurance.—LEON *v.* CASEY, [1932] 2 K. B. 576 ; 101 L. J. K. B. 578 ; 147 L. T. 165 ; 48 T. L. R. 452 ; 37 Com. Cas. 330 ; 18 Asp. M. L. C. 300, C. A.

452. *Add. Annotation :*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

453. *Add. Annotation :*—**Expld. & Distd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

454. *Add. Annotation :*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

455. *Add. Annotation :*—**Refd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

456. *Add. Citations :*—93 L. J. K. B. 169 ; 130 L. T. 139 ; 16 Asp. M. L. C. 236.

Add. Annotation :—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

457. *Add. Annotation :*—**Expld.** Leon *v.* Casey (1932), 48 T. L. R. 452.

461. *Add. Annotation :*—**Refd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

462a. —— —— **Effect of.**]—Where in an action on a marine policy the usual order is made for the filing of an affidavit of ship's papers & for a stay of proceedings meanwhile, this stay does not operate to paralyse the activities of either party & prevent him preparing his case ; & on a taxation of costs it is for the taxing master to determine, having regard to the stay & all other material factors, whether the costs were reasonably or prematurely incurred.—PÊCHERIES OSTENDAISES (SOC. ANON.) *v.* MERCHANTS' MARINE INSURANCE CO., [1928] 1 K. B. 750 ; 97 L. J. K. B. 445 ; 138 L. T. 532 ; 44 T. L. R. 270 ; 72 Sol. Jo. 102 ; 17 Asp. M. L. C. 404, C. A.

Annotation :—**Refd.** The Channel Queen, [1928] P. 157.

468. After this case add " For form of order for production of ship's papers, *see* R. S. C. (No. 1), 1915, r. 11."

Part III.—Production and Inspection.

478. *Add. Annotation :*—**Refd.** Infields, Ltd. *v.* Rosen & Son, [1938] 3 All E. R. 591.

494. After this case add "**Receiver & manager appointed by debenture-holders—Liability to produce.**]—*See* COMPANIES, No. 5067a, *ante.*"

PART III. SECT. 3.

sa. *County court.*]—The county ct. has power to make an order for the production of documents apart from an examination for discovery.—MCDONALD *v.* HOWIE, [1931] 3 W. W. R. 773 ; 40 Man. L. R. 302.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.

sb. *Right to examine officers & employees in any order.*]—In the absence at least of special circumstances, the right of pltf. to examine for discovery the officer & employees of a deft. co. in whatever order he wishes will not be interfered with.—COTE *v.* CANADIAN NATIONAL RY. CO., [1930] 1 W. W. R. 591 ; 2 D. L. R. 999.—**CAN.**

sd. *Right to examine several officers.*]—HARRISON MILLS, LTD. *v.* ABBOTSFORD LUMBER CO., LTD., [1935] 1 W. W. R. 480 ; 49 B. C. R. 301.—**CAN.**

sg. *Solicitor acting as servant of company.*]—Where duties which can be, & usually are, performed by an official, servant or agent of a co. are performed by a solr., the fact that he is a solr. does not render him immune from examination for discovery with respect to the transactions so performed.—CANARY *v.* VESTED ESTATES, LTD., [1930] 1 W. W. R. 996 ; 3 D. L. R. 989 ; 43 B. C. R. 1.—**CAN.**

sd. *Officer — Who is — Architect.*]—HYSLOP *v.* NEW WESTMINSTER BOARD OF SCHOOL TRUSTEES, [1930] 3 W. W. R. 227 ; 4 D. L. R. 1030.—**CAN.**

sm. —— —— *Insurance adjuster.*]—The adjuster who had been engaged by the fire insurance cos. to make the adjustment of pltf. lumber co.'s loss held not to have been under the circumstances of this case, an " officer " of the insurance cos. within rule 370c (1) providing for the examination for discovery of one who has been an officer of a corpn.—KAPOOR LUMBER CO., LTD. *v.* CANADIAN NORTHERN PACIFIC RY. CO., [1932] 2 W. W. R. 417 ; 3 D. L. R. 487 ; 45 B. C. R. 213.—**CAN.**

so. —— —— *Insurance agent.*]—TREWIN *v.* WAWANESA MUTUAL INSURANCE CO., [1938] 1 W. W. R. 303 ; 1 D. L. R. 793.—**CAN.**

sp. —— *When compelled to answer.*]—In an action under Fatal Accidents Act for the death of a trainman from injuries sustained during switching operations pltf. alleged that while the deceased was coupling the air-hose between the end car & the caboose his foot became caught in a switch-point & without warning to him the train was moved & passed over his foot. Deft. pleaded that deceased's injury was due to his own negligence in that contrary to deft.'s instructions he had gone between the end of the train & the caboose while the end of the train was moving towards the caboose & was knocked over or stumbled in front of the end of the train. Pltf., after examining for discovery the conductor, the engineer & a trainman who were working with deceased at the time of the accident, examined P. as an officer of deft. P. refused to answer certain questions & an order was moved for to require him to do so. Pltf. contended that P. must, from the information he had obtained, form a belief as to what in fact occurred on the occasion of the accident & must upon the examination state that belief as an admission of what did actually occur : —*Held :* since deft. had pleaded its belief as to how deceased was injured it could not be heard to say that it had no belief with respect thereto ; therefore P. must answer questions directed toward ascertaining from him what did in fact occur.—MACGREGOR *v.* CANADIAN PACIFIC RY. CO., [1938] 1 W. W. R. 865; *revsd.*, [1938] 2 W. W. R. 426.—**CAN.**

PART III. SECT. 4, SUB-SECT. 7.

se. *Deponent on application for security for costs—Production of documents referred to in affidavit.*]—COLLEGE BRAND CLOTHES CO., LTD. *v.* BROWN & FITZPATRICK, [1928] 2 D. L. R. 502 ; [1928] 1 W. W. R. 778 ; 23 Alta. L. R. 363.—**CAN.**

sf. *Employee — Who is — Agent — Burden of proof.*]—Where an order for the examination for discovery of an employee is sought under rule 234 & there is a dispute as to whether the persons sought to be examined are in fact employees, the burden of proving the employment rests on the party asking for the examination. An agent is not an employee within the meaning of said rule.—HOSKINS *v.* MINNEAPOLIS THRESHING MACHINE CO., [1930] 1 W. W. R. 369 ; 2 D. L. R. 696 ; 24 Alta. L. R. 437.—**CAN.**

sl. *Executor.*]—On an examination for discovery, the principle relating to officers & agents of a co. which requires that they shall obtain information when they do not have it of their own personal knowledge, does not apply in the case of an exor. ; & he will not be compelled to answer questions concerning matters of which he has no personal knowledge.—BRIESE *v.* DUGARD, [1935] 3 W. W. R. 68 ; 43 Man. L. R. 339.—**CAN.**

PART III. SECT. 5, SUB-SECT. 1.

525 ii. ——.]—HAMILTON *v.* STREET (1850), 1 Gr. 327.—**CAN.**

525 iii. —— *Documents supporting case—Or repelling defendant's case.*]—As a general rule pltf. in equity is entitled to a discovery, not only of that which constitutes his own title, but also of whatever is material to repel the case set up by deft. ; &, as a part of that discovery, to the production of such documents as are material for the same purpose.—LAWLOR *v.* MURCHISON (1852), 3 Gr. 553.—**CAN.**

r i. —— ——.]—In an action on a policy of insurance against liability for damages, to recover the amount of a judgment which the insured had paid

528a. —— **Action on bill of exchange—Deed giving time to principal debtor.**]—Where an action on bills of exchange was brought against deft., who pleaded that he was liable, if at all, as a surety only :—*Held :* he was not entitled to the inspection of a deed in pltf.'s possession, by which it was suggested time had been given to the principal debtor, but to which deed the surety was no party.—SMITH *v.* WINTER (1838), 3 M. & W. 309 ; 6 Dowl. 386 ; 1 Horn & H. 45 ; 7 L. J. Ex. 79 ; 150 E. R. 1162.

532a. —— **Action to avoid policy for non-disclosure—Documents relating to other policies containing disclosures.**]—Pltfs., a motor insurance co., issued a policy to deft. D. covering liability to third parties by accident caused in connection with a certain motor-cycle. During the currency of the policy, D., while riding the motor-cycle, was involved in an accident which resulted in injuries to deft. O. entitling him to claim damages from D. Pltfs., in order to get the benefit of Road Traffic Act, 1934 (c. 50), s. 10 (3), brought an action against D. & O. claiming a declaration that pltfs. were entitled to avoid the policy on the ground that it had been obtained by non-disclosure of material facts, namely, two previous convictions of deft. D. for driving a motor-car without a licence & for driving a motor-cycle in a dangerous manner, respectively. Defts. in their defences denied the materiality of these undisclosed convictions. The defence of deft. O. contained an allegation that pltfs. had not refused the risk in cases similar to that of deft. D. where disclosure of the facts had been made to them. Pltfs. made an application for an order striking out the above-mentioned allegation in the defence of deft. O. Each of defts., desiring to show that the undisclosed convictions were not "material" facts within sub-sects. (3) & (5) of sect. 10, made an application for an order for discovery by pltfs. of all documents in the possession of pltfs. relating to proposals for motor insurance made to them by persons disclosing the fact of a previous conviction of any such person similar to either of the above-mentioned convictions of deft. D. :—*Held :* (1) the application of pltfs. to strike out the said allegation in the defence of the deft. O. should be granted, on the ground that that allegation amounted to no more than a pleading of evidence ; (2) the application of each of defts. for the discovery desired should be refused, inasmuch as documents tending to show that pltfs., as insurers, had not regarded the previous conviction of an insured person as a material fact preventing them from accepting the risk, in a case where that conviction had been fully disclosed to them at the time of the proposal for insurance, would not be relevant evidence to show that a similar conviction was not a "material" fact within sub-sects. (3) & (5), in a case, such as the present, in which the conviction had not been disclosed to the insurer.—MERCHANTS' & MANUFACTURERS' INSURANCE CO., LTD. *v.* DAVIES, [1938] 1 K. B. 196 ; [1937] 2 All E. R. 767 ; 106 L. J. K. B. 433 ; 156 L. T. 524 ; 53 T. L. R. 717 ; 81 Sol. Jo. 457, C. A.

539. *Add. Annotation :*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

539a. —— **Action for slander.**]—DAY *v.* TUCKETT (1846), 7 L. T. O. S. 234.

544. *Add. Annotation :—As to* (2) **Apld.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

551a. **Document relating to compromise with third party.**]—A party to a suit cannot be required to produce documents relating to the compromise of a dispute between himself & a person not a party to the suit.—WARRICK *v.* QUEEN'S COLLEGE, OXFORD (No. 2) (1867), L. R. 4 Eq. 254.

555a. ——.]—In an action of slander imputing to pltf. that he was the writer of a scandalous letter reflecting upon deft., the latter in one of his pleas set forth the letter & justified the words spoken :—*Held :* pltf. should inspect the letter with witnesses, in order that he might be prepared at the trial to show that it was not in his handwriting.—CURTIS *v.* CURTIS (1833), 3 Moo. & S. 819.

575a. **Applies to answers to interrogatories.**]—I am of opinion that the word "affidavits" in r. 15 is wide enough to include an answer to interrogatories, & I cannot see why the meaning should be narrowed so as to exclude it (DENMAN, J.).—MOORE *v.* PEACHEY, [1891] 2 Q. B. 707 ; 65 L. T. 759 ; 39 W. R. 592 ; 7 T. L. R. 748, D. C.

588. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1930] A. C. 558.

594. For existing para. substitute :—

In a suit by a contractor against a ry. co., in respect of works done for them, a motion was by defts., that pltf. should produce all written communications which had passed between certain persons, naming them, & all account books, documents, papers

---

& which had been recovered against them in an action in which the insurance co. had conducted the defence :—*Held :* pltfs. were entitled on discovery to know all that was done by the insurance co. in defending the action & to see all papers & documents connected therewith, & also were entitled to the benefit of all investigations made, & opinions obtained, by the co.—WILLIAMS *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 1 W. W. R. 1023.—**CAN.**

PART III. SECT. 5, SUB-SECT. 3.

577 iii. ——.]—BRADBURY *v.* MOFFATT & CARMAN (1884), 1 Man. L. R. 92.—**CAN.**

583 i. *Possession of agent—Agency must be established—Pay-in slips in hands of banker.*]—A bank, retaining pay-in slips which have accompanied payments into a customer's account, does not hold them as the agent of the customer, who, consequently, will not be ordered in an action to which he is a party to produce them as documents in his possession or power. In such an action the ct. also declined to make any order relating to those documents under Evidence Act, 1915, s. 89.—LEVER *v.* MAGUIRE, [1928] V. L. R. 262 ; [1928] Argus L. R. 169. —**AUS.**

sg. *Documents not produced at first hearing—Official records needed to assist court—Leave granted to admit at later stage.*]—Where a party has not produced at the first hearing, as required by Ord. 13, r. 1, the documents in his possession or power on which he relies, the leave of the ct. under r. 2, admitting them at a later stage, should not ordinarily be refused if the documents are official records of undoubted authenticity which may assist the ct. to decide rightly the issues before it. —GOPIKA RAMAN ROY *v.* ATAL SINGH (1929), L. R. 56 Ind. App. 119.—**IND.**

sh. *Documents voluntarily delivered to agent of Attorney-General.*]—It appearing from the affidavits filed on an application by pltfs. for an order that defts. file a further & better affidavit of documents, that the books & documents in question had been voluntarily turned over to the duly authorised representative of the Attorney-General of British Columbia & that the documents were now in the sole possession & power of the representative, the application was refused. —MACKEL *v.* SOLLOWAY MILLS & CO., LTD. (No. 2), [1931] 1 W. W. R. 624 ; 2 D. L. R. 822 ; 44 B. C. R. 42.—**CAN.**

& writings relating to the contracts in the bill mentioned. Defts.' solr. made an affidavit in support of the motion, that he believed that pltf. had documents as stated in the notice of motion; & pltf., by an affidavit in answer, admitted that he had in his possession a great mass of documents relating to the works in question, but stated that to ascertain which of them came within the terms of the motion would be productive of great expense & inconvenience to him. The ct. made the order according to the terms of the motion.—M'INTOSH *v.* GREAT WESTERN RY. Co. (1852), 1 Sm. & G. 4.

597a. ——.]—Where one party has a document in his possession in which both parties have a common interest, as, for instance, a document containing the terms of the contract sued upon, & the other party seeks inspection of such document, he is entitled to discovery at common law & independently of the . . . rules (MATHEW, J.).—BROWN *v.* LIELL (1885), 16 Q. B. D. 229; 55 L. J. Q. B. 73; 2 T. L. R. 4.

599a. —— —— —— **Co-defendant not party to application.**]—Upon motion on behalf of a deft. in a suit, for production by pltf. of a document of which pltf. had obtained production by an order against his co-deft., the ct. refused to make an order in the absence of the latter.—REYNOLDS *v.* GODLEE (1858), 4 K. & J. 88; 32 L. T. O. S. 35; 70 E. R. 37.

614. After this case add :—

—— —— **In possession of director after appointment as receiver for debenture-holders.**]—*See* COMPANIES, No. 5067a, *ante*.

640a. Broker's book.]—BROWNING *v.* AYLWIN (1827), 7 B. & C. 204; 9 Dow. & Ry. K. B. 801; 5 L. J. O. S. K. B. 320; 108 E. R. 699.

Annotations :—**Distd.** Smith *v.* Winter (1838), 3 M. & W. 309; Day *v.* Tuckett (1846), 10 J. P. Jo 358. **Refd.** Mutter *v.* Eastern & Midland Ry. (1888), 38 Ch. D. 92.

650a. —— ——.]—ROSS *v.* LAUGHTON (1813), 1 Ves. & B. 349; 35 E. R. 136.

Annotations :—**Consd.** Griffiths *v.* Griffiths (1843), 12 L. J. Ch. 397; Simmonds *v.* G. E. Ry. (1868), 3 Ch. App. 797; *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1; *Re* Rapid Road Transit Co., [1909] 1 Ch. 96. **Refd.** Bozon *v.* Bolland, Husband *v.* Bolland (1839), 4 My. & Cr. 354.

651a. —— ——.]—BAKER *v.* HENDERSON (1830), 4 Sim. 27; 58 E. R. 11.

Annotations :—**Distd.** Warburton *v.* Edge (1839), 9 Sim. 508. **Refd.** *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1.

653. *Add. Annotations :*—**Apld.** *Re* Cameron's Coalbrook, etc., Ry. (1859), 25 Beav. 1. **Refd.** Lockett *v.* Cary (1864), 3 New Rep. 405; Fowler *v.* Fowler (1881), 29 W. R. 800; *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1.

714. *Add. Annotations :*—*As to* (1) **Distd.** The City of Baroda (1926), 134 L. T. 576. **Folld.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527, C. A. *As to* (2) **Expld.** Bank of Russian Trade, Ltd. *v.* British Screen Productions, Ltd., [1930] 2 K. B. 90. **Consd.** Ogden *v.* London Electric Ry. Co. (1933), 49 T. L. R. 542.

736. *Add. Annotation :*—**Apld.** Minter *v.* Priest, [1929] 1 K. B. 655.

740. *Add. Annotation :*—**Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

743. *Add. Annotation :*—**Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

747. Add para. :—

"Such privilege being the privilege of the client & not of the attorney."

754. *Add. Annotation :*—*As to* (2) **Refd.** Minter *v.* Priest, [1930] A. C. 558.

757. *Add. Annotation :*—**Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

759. *Add. Annotation :*—**Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

763. *Add. Annotation :*—**Apld.** Minter *v.* Priest, [1929] 1 K. B. 655.

805a. ——.] — Completed drafts of documents [settled by counsel] in support of an application for the fiat of the A.-G. to counterclaim for revocation of a patent are privileged documents, & defts. are not bound to produce them for inspection by pltfs.—VIGNERON-DAHL (BRITISH & COLONIAL), LTD. *v.* PETTIT (1925), 69 Sol. Jo. 693; 42 R. P. C. 431.

821. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1930] A. C. 558.

823. *Add. Annotations :*—*As to* (1) **Apld.** The City of Baroda (1926), 134 L. T. 576. **Consd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527; Ogden *v.* London Electric Ry. Co. (1933), 49 T. L. R. 542.

843a. —— ——.]—ANKIN *v.* LONDON & NORTH EASTERN RY. Co., No. 1209a, *post*.

PART III. SECT. 5, SUB-SECT. 5.—F.

sj. *General rule.*]—In the case of public documents there is a common law right of inspection, but that right must necessarily be exercised within certain limits. The right ought to be restricted to those persons who can prove themselves to be interested, & there are documents which, for reasons of State, ought not to be disclosed.—*Re* FITZGERALD, [1925] 1 I. R. 42.—**IR.**

sk. *Register of titles to land kept under Local Registration of Title (Ireland) Act*, 1891 (*c.* 66).]—The above register is a public register, & the documents kept in the office for registration of titles are public documents.—*Re* FITZGERALD, [1925] 1 I. R. 42.—**IR.**

PART III. SECT. 6.

o i. —— *May be dispensed with.*]—The master has jurisdiction to provide, in an order for directions which calls for the production of documents, that "the service of a notice to produce such documents be dispensed with & that the service of a copy of this order upon the solrs. of the respective parties shall have the same effect as the service of a notice to produce."—ROYAL TRUST CO. *v.* CANADIAN PACIFIC RY. Co., [1925] 4 D. L. R. 772; [1925] 3 W. W. R. 571.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—A.

r i. —— *Letter dictated by solicitor—& reply thereto.*]—*Held :* privileged.—MERCHANTS BANK *v.* MOFFATT (1876), 6 P. R. 348.—**CAN.**

r ii. —— *Notes of evidence taken during arbitration.*]—*Held :* not privileged from discovery & inspection in a subsequent action between the same parties.—EAST TAMARI CO-OPERATIVE DAIRY CO. *v.* NORNEN, [1928] N. Z. L. R. 395.—**N.Z.**

r iii. —— *Confined to legal advisers—Patent agent—Communications in respect of pending application for patent—Not privileged.*] — MCKERCHER *v.* VANCOUVER-IOWA SHINGLE CO., LTD. (B. C.), [1929] 4 D. L. R. 231; 2 W. W. R. 287.—**CAN.**

r iv. —— *Solicitor acting employee of party.*]—DE LA GIRODAY *v.* MCCAFFERY, [1930] 2 W. W. R. 576.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—B.

718 i. *General rule.*]—Communications between solr. & client which are privileged from production do not cease to be so privileged in a subsequent action merely because of the fact that pltf. therein was deft. in the former action.—NORTH-WESTERN UTILITIES, LTD. *v.* CENTURY INDEMNITY CO., [1934] 3 W. W. R. 139.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—C. (a).

s i. —— —— ——.]—KEEP BROS. *v.* BIRCH & BRADSHAW, [1928] N. Z. L. R. 360.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 1.—C. (b).

807 ii. —— *Letter included in—Not privileged.*]—MOFFATT *v.* HANGAR, [1923] N. Z. L. R. 448.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 1.—D.

823 i. *General rule.*]—BELL *v.* TORONTO TRANSPORTATION COMMISSION (1936), 5 F. L. J. (Can.) 246.—**CAN.**

874a. —— ——.]—Pltfs. claimed for short delivery of certain parcels of bristles, in respect of which they were holders of bills of lading, loaded at Shanghai upon defts.' steamship. Defts. denied liability alleging that the loss was due to pilferage by an organised band of thieves. Defts. had called for reports from the first, second, third, & fourth officers of the steamer, in order to investigate the question of the management of the vessel & the conduct of their officers in the prevention of theft, which reports were in due course obtained through defts.' agents in China. Defts. claimed that these reports were privileged from discovery:—*Held:* (1) the reports were not privileged. (2) Observations upon the form & contents of an affidavit claiming privilege from discovery for deponent's documents.—THE CITY OF BARODA (1926), 134 L. T. 576; 70 Sol. Jo. 1044; 17 Asp. M. L. C. 27.

Annotation:—Generally, **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

890. *Add. Annotation:*—**Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

891a. ——.]—In obedience to general instructions issued by the Port of London Authority to the masters of their vessels that, in the event of a casualty, the circumstances of the occurrence were to be reported on a printed form supplied for the purpose, the master of one of the Authority's dredgers reported the details of a collision with a sailing barge belonging to pltfs. The form was headed, "Confidential report for the information of the Authority's solr. . . ." The report was sent to the master's superior officers, who passed it on to the manager of the Authority's insurance department, & he in turn sent it to the solrs. who acted for the Authority's underwriters. Pltfs. contended that the report must be produced:—*Held:* there having been a collision it was to be anticipated that there would be litigation, & although the report went through various hands, it was made for the purpose of being put before the solrs.; the report therefore complied with the tests laid down by BUCKLEY, L.J., in *Birmingham & Midland Motor Omnibus Co.* v. *London & North Western Ry. Co.*, No. 394, *ante*, & was privileged from production.—THE HOPPER No. 13, [1925] P. 52; 94 L. J. P. 45; 132 L. T. 736; 41 T. L. R. 189; 16 Asp. M. L. C. 473, D. C.

Annotations—**Distd.** The City of Baroda (1926), 134 L. T. 576. **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1903] 1 K. B. 527.

893. *Add. Annotation:*—**Distd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

904. *Add. Annotations:*—**Dbtd.** Ogden *v.* London Electric Ry. Co. (1933), 49 T. L. R. 542. **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

905. *Add. Annotation:*—**Refd.** The Hopper No. 13, [1925] P. 52.

906a. ——.]—Reports by servants of a railway co. of an accident, made for the information of the railway co.'s solrs. & in anticipation of litigation, are privileged from inspection. —OGDEN *v.* LONDON ELECTRIC RY. CO. (1933), 149 L. T. 476; 49 T. L. R. 542, C. A.

926. *Add. Annotation:*—**Refd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 370.

933. *Add. Annotation.*—**Consd.** Minter *v.* Priest, [1930] A. C. 558.

941. *Add. Annotation:*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

PART III. SECT. 9, SUB-SECT. 1.—F. (a).

856 i. *No privilege—Litigation not contemplated.*]—SMITH *v.* C. N. RY. (Alta.), [1926] 2 D. L. R. 372.—**CAN.**

g i. —— —— *Report of local manager—To head office of insurance company.*] —*Held:* privileged.—GRAIN CLAIMS BUREAU, LTD. *v.* CANADIAN SURETY CO. (Man.), [1927] 4 D. L. R. 297; [1927] 2 W. W. R. 407.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—F. (b) ii.

e i. *S. P.* STEPHENSON *v.* E. D. & B. C. R. (Alta.), [1926] 2 D. L. R. 680.—**CAN.**

e ii. —— ——.]—Where following a railway accident in which personal injury or property damage is incurred the railway co. obtains reports thereof from its employees for the use of its solr. as material on which he may give it his professional advice & conduct its defence with respect to an action or actions which it anticipates will, in default of settlement be brought against it as a result of the accident, said reports are privileged from production even though made before such an action has been actually brought or threatened, & although obtained, not solely for such use by the solr., but also for the use of other officials of the co. in determining, *e.g.*, what, if any, discipline should be given the employees in the accident.—MAYGARD *v.* CANADIAN PACIFIC RY. CO. (Alta.), [1929] 2 D. L. R. 953; 2 W. W. R. 27; 35 C. R. C. 288.—**CAN.**

e iii. —— *Reports of claims agent.*]—STEPHENSON *v.* E. D. & B. C. R. (Alta.), [1926] 2 D. L. R. 680.—**CAN.**

f i. —— *Report of investigator for insurance co.*]—In an action by an insurance co. to recover from a person whose fidelity it had insured the amount paid by it under the bond:—*Held:* reports made to it by an investigator whom it had instructed to investigate after the insured had given notice of the loss were privileged from production, since there was nothing to suggest any lack of good faith in the setting up of the claim & the affidavit in support thereof satisfied the requirements for such a claim in that it showed that the reports were obtained for the co.'s solr. as material on which his advice should be taken with respect to an anticipated action.—GILLESPIE GRAIN CO., LTD. & GRAIN INSURANCE & GUARANTEE CO. *v.* WACOWICH, [1932] 1 W. W. R. 916; 3 D. L. R. 255; 26 Alta. L. R. 263.—**CAN.**

886 ii. ——.]—LAURENSON *v.* WELLINGTON CITY CORPN., [1927] N. Z. L. R. 510.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 1.—F. (c).

a. *Citation:*—For "[1908] S. C. 335" read "[1909] S. C. 335."

p i. ——.]—Resp. herein had recovered judgment against an insured for damages arising out of a motor-car accident. The judgment was not paid & resp. therefore sued the insurance co., applt. herein. The co.'s defence denied liability under the policy. Resp. in her reply alleged that the co. had defended the original action in the name of & on behalf of the deft. therein &, therefore, was now estopped from denying liability under the policy. Issue being joined on this reply, the co. filed an affidavit of documents in which it claimed privilege with respect to certain documents, viz. reports of the co.'s adjuster, doctors' reports, & confidential communications between the co. & its solrs. at Vancouver & its legal advisers in the U.S.A. Resp. obtained an order for production free from privilege & the co. appealed:—*Held:* the documents were privileged & the appeal should be allowed.—MANN *v.* AMERICAN AUTOMOBILE INSURANCE CO., [1938] 1 W. W. R. 538; 2 D. L. R. 261; 7 F. L. J. (Can.) 308.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—H.

924 i. *Privileged — Communication with view to compromise—Copy not retained by solicitor.*]—*Held:* although the occasion on which the document was written was not privileged, the document, owing to its nature & effect, was privileged from production.—MOFFATT *v.* HANGAR, [1923] N. Z. L. R. 148.—**N.Z.**

924 ii. —— —— *Stipulation in event of failure to agree.*]—Negotiations carried on "without prejudice," & with a view to the settlement of an action, & all letters & communications arising out of such negotiations, are privileged from production.—BLACK *v.* OCEAN ACCIDENT & GUARANTEE CO. (Man.), [1926] 2 D. L. R. 985; [1926] 1 W. W. R. 883.—**CAN.**

PART III. SECT. 9, SUB-SECT. 2.—A.

b i. —— *Adjuster's report to fire insurance company.*]—In an action on a fire-insurance policy held that a confidential report made by an adjuster to deft. was protected from inspection by pltf., where it was objected in deft.'s affidavit on production, that the report related solely to the case of deft. & not to that of pltf. & did not tend to support the latter.—LITWIN *v.* GREAT AMERICAN INSURANCE CO., [1932] 2 W. W. R. 472; 4 D. L. R. 195; 40 Man. L. R. 461.—**CAN.**

that part of deft.'s ancient freehold tenements, situate within one of the reputed manors, consisted of uninclosed lands, & that some portion thereof was waste land, held of the ancient manor, & that of such the informant was tenant in common with the deft.; deft. admitted, by his answer, that there were such waste lands, but stated that the same were allotted, & formed part of deft.'s ancient freehold tenements, & that deft., in the year 1829, obtained from the lord of the reputed manor in which his ancient tenements were situate, a conveyance of the manorial & other rights, fine rents, etc., belonging to the lord over those tenements, except the right to tin-stuff & sporting. The information insisted that the uninclosed lands, except the ancient tenements, were held by the two lords as tenants

1144. *Add. Citation :*—1 Leach, 300, n.

Add. Annotation :—**Refd.** R. *v.* Elworthy (1867), 37 L. J. M. C. 3.

1150a. —— ——.]—To a bill stating deft.'s marriage with a particular woman, plea, that she is his sister, protects him from discovery of any fact forming a link in the chain.—CLARIDGE *v.* HOARE (1807), 14 Ves. 59; 33 E. R. 443.

1197. *Add. Annotation :*—**Refd.** Seddon *v.* Commercial Salt Co., [1925] Ch. 187.

1198. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker (1924), 132 L. T. 15.

1202. *Add. Annotations :*—**Consd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704; Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Rowell *v.* Pratt, [1938] A. C. 101.

ART III. SECT. 9, SUB-SECT. 4.

1116 ii. ——.]—SYDNEY CHEESE & BUTTER FACTORY ASSOCN. *v.* BROWER (1900), 19 P. R. 152.—**CAN.**

sh. *Servant.*]—A servant cannot be compelled to produce the documents of his master where the suit or proceeding is one to which the master is not a party & it is not shown that he has given authority for their production, even though the master is outside the jurisdiction of the ct.—CHAPMAN & SONS *v.* STODDART & CO., [1930] 3 W. W. R. 171; 4 D. L. R. 1013.—**CAN.**

PART III. SECT. 9, SUB-SECT. 5.

1132 i. *Objection attaches to production not discovery.*]—MILLS *v.* MERCER CO., LTD. (1893), 15 P. R. 276.—**CAN.**

1136 i. *Discovery tending to incriminate—Not enforced.*]—Where a person who has been required to make an affidavit of documents refuses to produce certain documents on the ground that they are privileged because they may criminate him or, where he makes the affidavit as an officer of a co., may criminate the co., & after inspection thereof the judge finds that the documents may be criminating to him or the co., their production cannot be compelled, where such ground of privilege is not taken away by statute or by a rule having the force of a statute. There is no such statute or rule in force in Alberta.—WEBSTER & KIRKNESS *v.* SOLLOWAY MILLS & CO., LTD. (No. 2), [1931] 1 D. L. R. 831; [1930] 3 W. W. R. 445; 25 Alta. L. R. 8; *affg.*, [1930] 3 W. W. R. 381.—**CAN.**

1136 ii. —— ——.]—The fact that the party against whom the inspection is sought has already been prosecuted & there is no probability of any further prosecution does not deprive him of the privilege, where, at any rate, the judge is not prepared to say that there is really no possibility of any prosecution by any one & that, therefore, the documents have lost the criminating tendency which they otherwise would have.—LOCKETT *v.* SOLLOWAY MILLS & CO., LTD. (No. 2), [1931] 3 W. W. R. 389; 46 B. C. R. 211.—**CAN.**

b i. —— *Not taken away by Alberta Evidence Act, R. S. A.*, 1922 (c. 87), *ss.* 3, 7.]—CAMPBELL *v.* WOODS, IRMIE, & THE CANADIAN PRESS (Alta.), [1926] 2 D. L. R. 805; [1926] 2 W. W. R. 99.—**CAN.**

sj. *Waiver of objection—Propriety of production cannot be raised on appeal.*]—On the trial of an action for conversion deft. co. refused at first to produce its books, its ground being that their production might tend to criminate the co. The trial judge ruled that unless they were produced he would strike out the statement of defence. Thereupon deft.'s counsel produced them & evidence founded on them was taken, & judgment given for pltf.:—*Held :* by so electing the objection was in effect withdrawn & the question whether the co. had been improperly compelled to produce the books could not be raised on an appeal from the judgment.—LOCKETT *v.* SOLLOWAY MILLS & CO., LTD., [1932] 1 W. W. R. 886; 3 D. L. R. 600; 45 B. C. R. 375; *affg.*, [1931] 3 W. W. R. 302.—**CAN.**

sl. *Statements made to detective.*]—In an action to recover back the prize money in a lottery which it was alleged had been won by fraud pltf. issued a subpœna to a detective to whom sundry people had made statements in writing relating to the adjudicator. These were made with a view to criminal proceedings:—*Held :* the documents were privileged from production.—CALL & MIRROR NEWSPAPERS, LTD. *v.* HUMBLE, [1933] W. A. L. R. 54.—**AUS.**

PART III. SECT. 9, SUB-SECT. 8.

f i. —— ——.]—HELLET *v.* SOUTH AFRICAN RAILWAYS & HARBOURS (1927), 48 N. L. R. 65.—**S. AF.**

h i. —— ——.]—In an action for damages for personal injuries sustained in 1928 in a motor car collision, defender averred that certain knee injuries which pursuer ascribed to the collision were due to gunshot wounds received by pursuer during war service, & he craved a diligence for recovery of the medical history sheets & other military records applicable to pursuer. The War Dept. objected to produce these documents:—*Held :* while the ct. has power to order production of documents in the custody of a public dept., even though the dept. pleaded public interest as a ground for refusing to produce them, the documents here in question did not appear to be of such material value to the case as to warrant an order for their production. —CAFFREY *v.* INVERCLYDE (LORD), [1930] S. C. 762.—**SCOT.**

h ii. —— ——.]—In every civil case whether the Crown is a party or not, & whether, if the Crown is a party, it is a party in a trading or in an administrative capacity, where privilege is claimed for a document on the ground that its disclosure would be contrary to the interests of the public, the ct. has always in reserve the power of examining the document for which protection is sought, in order to ascertain whether the public interest would be prejudiced by its production, & to require some indication of the injury which would result from such production.—GIBORNE FIRE BOARD *v.* LUNKEN, [1936]

1207. *Add. Annotation :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256.

1208. *Add. Annotation :*—**Consd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

1208a. ——— ——— **Objection to class of documents—Statements to police in running-down cases—Not privileged.**]—Pltf. in an action for damages for negligence called as a witness a sergeant of police, who gave evidence of an oral statement made by deft. when he (the police sergeant) arrived on the scene of the accident. He went on to say that three days later he took a further statement from deft., after duly cautioning him, that that statement was reduced to writing & that a prosecution of deft. was in contemplation. An objection to the production of that document was taken on behalf of the Comr. of Police on instructions from the Secretary of State for Home Affairs on the ground that it belonged to a class of documents which it would be contrary to the public interest to produce in a ct. of justice :—*Held :* the objection had not been taken in the manner in which the law requires an objection of this kind to be taken, in order to render it effective ; the objection, therefore, failed & the documents must be produced.—SPIGELMAN *v.* HOCKEN, GOLDBLATT *v.* HOCKEN (1933), 150 L. T. 256 ; 50 T. L. R. 87 ; 77 Sol. Jo. 852.

1209a. ——— ———.]—(1) In an action to recover damages for personal injury incurred in an accident on defts.' railway, an order having been made for discovery of documents, defts. in an affidavit stated that they had in their possession a copy of a report made by them to the Ministry of Transport under Regulation of Railways Act, 1871 (c. 78), s. 6. They objected to produce this document on the ground that it was a copy of a confidential document made in discharge of their duty to the Crown & that it was privileged inasmuch as it could not be disclosed without injury to the public interest. The deponent also produced & verified a copy of a letter written by him to the Minister of Transport, & the reply thereto of the Minister to the effect that reports made in pursuance of sect. 6 of the Act aforesaid were furnished for his own information & guidance & that it was his practice in the public interest to decline any request to inspect these reports or to obtain copies of them :—*Held :* it was the practice of the ct. to accept the statement of a Minister of the Crown upon the question whether production of a document would be contrary to the public interest ; & consequently the document in question was privileged from production.

(2) Privilege was also claimed for other documents on the ground that they were "confidential communications at the instance & request & for the use of defts.' solr. between the officials of the deft. co. & between those officials & third persons after this action was threatened or anticipated for the purpose of obtaining for & furnishing to the defts.' solr. evidence & information as to the evidence which will be obtained & otherwise for the use of the said solr. to enable him to defend this action & to advise defts." :—*Held :* these documents were also privileged.—ANKIN *v.* LONDON & NORTH EASTERN RY. Co., [1930] 1 K. B. 527 ; 99 L. J. K. B. 293 ; 142 L. T. 368 ; 46 T. L. R. 172 ; 74 Sol. Jo. 26, C. A.

Annotations :—As to (1) **Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

1210. *Add. Annotations :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1212. *Add. Annotation :*—**Consd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

1213. *Add. Annotation :*—**Consd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1218. *Add. Annotations :*—**Consd.** Isaacs *v.* Cook, [1925] 2 K. B. 391 ; Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527. **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1223. *Add. Annotations :—As to* (2) **Refd.** Brown *v.* Dagenham Urban District Council, [1929] 1 K. B. 737 ; Errington *v.* Minister of Health, [1935] 1 K. B. 249 ; Frost *v.* Minister of Health, [1935] 1 K. B. 286 ; Cooper *v.* Wilson, [1937] 2 K. B. 309.

1223a. **Report of railway company to Ministry of Transport—Under Regulation of Railways Act, 1871 (c. 78), s. 6.**]—ANKIN *v.* LONDON & NORTH EASTERN RY. CO., No. 1209a, *ante.*

1266a. ———.]—An application before decree to have documents produced for inspection to intended witnesses is a special application, & only to be made on special grounds.

Where defts. did not by their answer deny the genuineness of a deed, but merely stated that they did not know whether they had executed it, & after an ordinary inspection applied for an order allowing inspection of it by witnesses, which application was not supported by any affidavit as to the deed being forged, but only by an affidavit of defts.' solr. to the effect that he was advised

---

N. Z. L. R. 894 ; *sub nom.* RODDA *v.* LUNKEN, [1936] G. L. R. 604 ; 12 N. Z. L. J. 291.—**N.Z.**

o. *Citation :*—For "[1908] S. C. 335" read "[1909] S. C. 335."

q. *Add. Citation :*—60 J. P. 152.

sk. *Publication against public policy—Objection by Attorney-General.*]—Where, in an action to which a State is a party, the State objects to produce for inspection documents which are in fact State papers, a statement by the A.-G. for that State, that their production for inspection would be prejudicial to the public interests, is conclusive & an answer to an application for an order for inspection.—GRIFFIN *v.* STATE OF SOUTH AUSTRALIA (1925), 36 C. L. R. 378.—**AUS.**

PART III. SECT. 12.

o i. ———.]—The party who has obtained an order for production of documents may insist on obedience to that part of the order which requires the documents produced to be deposited with the prothonotary.—BLOOMFIELD *v.* MONARCH, ETC., CO. (No. 1), [1927] 1 W. W. R. 140 ; *affd.*, [1927] 3 D. L. R. 335 ; [1927] 2 W. W. R. 196 ; 36 Man. L. R. 603.—**CAN.**

sa. *Purpose — Criminal trial in progress—Making copies available for civil trial.*]—When the criminal trial of defts. now in progress is completed, it is at present entirely uncertain what will become of the books & documents in question. They may be handed over to defts. if they are acquitted, & thereupon removed out of the jurisdiction, or, if retained by the Crown, it may become necessary to remove them out of Ontario in connection with criminal prosecutions in other Provinces of Canada. It is therefore proper that an order should be made under rule 350, not for discovery, but so that certified copies of these documents & papers may be available as evidence at the trial of this action.—WALKER *v.* SOLLOWAY MILLS & CO., [1931] 4 D. L. R. 296 ; O. R. 650.—**CAN.**

1039a. —— ——.]—GREENWOOD *v.* ROTHWELL (1844), 7 Beav. 291; 13 L. J. Ch. 226; 2 L. T. O. S. 496; 49 E. R. 1077.

1087a. —— ——.]—Notwithstanding a statement in deft.'s answer that a deed of conveyance, the production of which is sought by pltf. for his inspection, is his title deed, & does not in any manner evidence pltf.'s title, the deed will be ordered by the ct. to be produced if it appear on the face of the answer that its contents may prove material to pltf.'s case.

A partition was made, prior to the reign of King Henry VIII., of an ancient manor, by dividing it into two reputed manors, to which divers tenements were respectively allotted in severalty, but a considerable portion of waste lands of the original ancient manor continued undivided, the property of the two lords of the reputed manors, as tenants in common. The information stated that part of deft.'s ancient freehold tenements, situate within one of the reputed manors, consisted of uninclosed lands, & that some portion thereof was waste land held of the ancient manor, & that of such the informant was tenant in common with the deft.; deft. admitted, by his answer, that there were such waste lands, but stated that the same were allotted, & formed part of deft.'s ancient freehold tenements, & that deft., in the year 1829, obtained from the lord of the reputed manor in which his ancient tenements were situate, a conveyance of the manorial & other rights, fine rents, etc., belonging to the lord over those tenements, except the right to tin-stuff & sporting. The information insisted that the uninclosed lands, except the ancient tenements, were held by the two lords as tenants in common, & were subject to tin-bounds, & that waste & unallotted lands only were subject to tin-bounds. Deft. stated that there was a difference of opinion, as to whether lands subject to tin-bounds were always waste lands, & insisted that the deed of conveyance of 1829 was the title deed of deft., & in no manner evidenced the informant's title. The deed & the map delineated thereon, were, notwithstanding, ordered to be produced for the informant's inspection.—A.-G. OF PRINCE OF WALES *v.* LAMBE (1848), 11 Beav. 213; 17 L. J. Ch. 154; 10 L. T. O. S. 498; 12 Jur. 386; 50 E. R. 798.

1087b. —— **Deed pleaded.**]—PENARTH HARBOUR, DOCK & RY. CO. *v.* CARDIFF WATERWORKS CO. (1860), 7 C. B. N. S. 816; 29 L. J. C. P. 230; 1 L. T. 551; 6 Jur. N. S. 942; 8 W. R. 215; 141 E. R. 1036.

Annotation :—**Consd.** Price *v.* Harrison (1860), 8 C. B. N. S. 617.

1144. *Add. Citation :*—1 Leach, 300, n.

Add. Annotation :—**Refd.** R. *v.* Elworthy (1867), 37 L. J. M. C. 3.

1150a. —— ——.]—To a bill stating deft.'s marriage with a particular woman, plea, that she is his sister, protects him from discovery of any fact forming a link in the chain.—CLARIDGE *v.* HOARE (1807), 14 Ves. 59; 33 E. R. 443.

1197. *Add. Annotation :*—**Refd.** Seddon *v.* Commercial Salt Co., [1925] Ch. 187.

1198. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker (1924), 132 L. T. 15.

1202. *Add. Annotations :*—**Consd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704; Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Rowell *v.* Pratt, [1938] A. C. 101.

ART III. SECT. 9, SUB-SECT. 4.

1116 ii. ——.]—SYDNEY CHEESE & BUTTER FACTORY ASSOCN. *v.* BROWER (1900), 19 P. R. 152.—**CAN.**

sh. *Servant.*]—A servant cannot be compelled to produce the documents of his master where the suit or proceeding is one to which the master is not a party & it is not shown that he has given authority for their production, even though the master is outside the jurisdiction of the ct.—CHAPMAN & SONS *v.* STODDART & CO., [1930] 3 W. W. R. 171; 4 D. L. R. 1013.—**CAN.**

PART III. SECT. 9, SUB-SECT. 5.

1132 i. *Objection attaches to production not discovery.*]—MILLS *v.* MERCER CO., LTD. (1893), 15 P. R. 276.—**CAN.**

1136 i. *Discovery tending to incriminate—Not enforced.*]—Where a person who has been required to make an affidavit of documents refuses to produce certain documents on the ground that they are privileged because they may criminate him or, where he makes the affidavit as an officer of a co., may criminate the co., & after inspection thereof the judge finds that the documents may be criminating to him or the co., their production cannot be compelled, where such ground of privilege is not taken away by statute or by a rule having the force of a statute. There is no such statute or rule in force in Alberta.—WEBSTER & KIRKNESS *v.* SOLLOWAY MILLS & CO., LTD. (No. 2), [1931] 1 D. L. R. 831; [1930] 3 W. W. R. 445; 25 Alta. L. R. 8; *affg.*, [1930] 3 W. W. R. 381.—**CAN.**

1136 ii. —— ——.]—The fact that the party against whom the inspection is sought has already been prosecuted & there is no probability of any further prosecution does not deprive him of the privilege, where, at any rate, the judge is not prepared to say that there is really no possibility of any prosecution by any one & that, therefore, the documents have lost the criminating tendency which they otherwise would have.—LOCKETT *v.* SOLLOWAY MILLS & CO., LTD. (No. 2), [1931] 3 W. W. R. 389; 46 B. C. R. 211.—**CAN.**

b i. —— *Not taken away by Alberta Evidence Act, R. S. A.*, 1922 (c. 87), *ss.* 3, 7.]—CAMPBELL *v.* WOODS, IRMIE, & THE CANADIAN PRESS (Alta.), [1926] 2 D. L. R. 805; [1926] 2 W. W. R. 99.—**CAN.**

sj. *Waiver of objection—Propriety of production cannot be raised on appeal.*]—On the trial of an action for conversion deft. co. refused at first to produce its books, its ground being that their production might tend to criminate the co. The trial judge ruled that unless they were produced he would strike out the statement of defence. Thereupon deft.'s counsel produced them & evidence founded on them was taken, & judgment given for pltf.:—*Held :* by so electing the objection was in effect withdrawn & the question whether the co. had been improperly compelled to produce the books could not be raised on an appeal from the judgment.—LOCKETT *v.* SOLLOWAY MILLS & CO., LTD., [1932] 1 W. W. R. 886; 3 D. L. R. 600; 45 B. C. R. 375; *affg.*, [1931] 3 W. W. R. 302.—**CAN.**

sl. *Statements made to detective.*]—In an action to recover back the prize money in a lottery which it was alleged had been won by fraud pltf. issued a subpœna to a detective to whom sundry people had made statements in writing relating to the adjudicator. These were made with a view to criminal proceedings:—*Held :* the documents were privileged from production.—CALL & MIRROR NEWSPAPERS, LTD. *v.* HUMBLE, [1933] W. A. L. R. 54.—**AUS.**

PART III. SECT. 9, SUB-SECT. 8.

f i. —— ——.]—HELLET *v.* SOUTH AFRICAN RAILWAYS & HARBOURS (1927), 48 N. L. R. 65.—**S. AF.**

h i. —— ——.]—In an action for damages for personal injuries sustained in 1928 in a motor car collision, defender averred that certain knee injuries which pursuer ascribed to the collision were due to gunshot wounds received by pursuer during war service, & he craved a diligence for recovery of the medical history sheets & other military records applicable to pursuer. The War Dept. objected to produce these documents:—*Held :* while the ct. has power to order production of documents in the custody of a public dept., even though the dept. pleaded public interest as a ground for refusing to produce them, the documents here in question did not appear to be of such material value to the case as to warrant an order for their production.—CAFFREY *v.* INVERCLYDE (LORD), [1930] S. C. 762.—**SCOT.**

h ii. —— ——.]—In every civil case whether the Crown is a party or not, & whether, if the Crown is a party, it is a party in a trading or in an administrative capacity, where privilege is claimed for a document on the ground that its disclosure would be contrary to the interests of the public, the ct. has always in reserve the power of examining the document for which protection is sought, in order to ascertain whether the public interest would be prejudiced by its production, & to require some indication of the injury which would result from such production.—GIBORNE FIRE BOARD *v.* LUNKEN, [1936]

1207. *Add. Annotation :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256.

1208. *Add. Annotation :*—**Consd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

1208a. —— —— Objection to class of documents—Statements to police in running-down cases—Not privileged.]—Pltf. in an action for damages for negligence called as a witness a sergeant of police, who gave evidence of an oral statement made by deft. when he (the police sergeant) arrived on the scene of the accident. He went on to say that three days later he took a further statement from deft., after duly cautioning him, that that statement was reduced to writing & that a prosecution of deft. was in contemplation. An objection to the production of that document was taken on behalf of the Comr. of Police on instructions from the Secretary of State for Home Affairs on the ground that it belonged to a class of documents which it would be contrary to the public interest to produce in a ct. of justice :—*Held :* the objection had not been taken in the manner in which the law requires an objection of this kind to be taken, in order to render it effective ; the objection, therefore, failed & the documents must be produced.—SPIGELMAN *v.* HOCKEN, GOLDBLATT *v.* HOCKEN (1933), 150 L. T. 256 ; 50 T. L. R. 87 ; 77 Sol. Jo. 852.

1209a. —— ——.]—(1) In an action to recover damages for personal injury incurred in an accident on defts.' railway, an order having been made for discovery of documents, defts. in an affidavit stated that they had in their possession a copy of a report made by them to the Ministry of Transport under Regulation of Railways Act, 1871 (c. 78), s. 6. They objected to produce this document on the ground that it was a copy of a confidential document made in discharge of their duty to the Crown & that it was privileged inasmuch as it could not be disclosed without injury to the public interest. The deponent also produced & verified a copy of a letter written by him to the Minister of Transport, & the reply thereto of the Minister to the effect that reports made in pursuance of sect. 6 of the Act aforesaid were furnished for his own information & guidance & that it was his practice in the public interest to decline any request to inspect these reports or to obtain copies of them :—*Held :* it was the practice of the ct. to accept the statement of a Minister of the Crown upon the question whether production of a document would be contrary to the public interest ; & consequently the document in question was privileged from production.

(2) Privilege was also claimed for other documents on the ground that they were " confidential communications at the instance & request & for the use of defts.' solr. between the officials of the deft. co. & between those officials & third persons after this action was threatened or anticipated for the purpose of obtaining for & furnishing to the defts.' solr. evidence & information as to the evidence which will be obtained & otherwise for the use of the said solr. to enable him to defend this action & to advise defts." :—*Held :* these documents were also privileged.—ANKIN *v.* LONDON & NORTH EASTERN RY. Co., [1930] 1 K. B. 527 ; 99 L. J. K. B. 293 ; 142 L. T. 368 ; 46 T. L. R. 172 ; 74 Sol. Jo. 26, C. A.

Annotations :—As to (1) **Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

1210. *Add. Annotations :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1212. *Add. Annotation :*—**Consd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

1213. *Add. Annotation :*—**Consd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1218. *Add. Annotations :*—**Consd.** Isaacs *v.* Cook, [1925] 2 K. B. 391 ; Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527. **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1223. *Add. Annotations :—As to* (2) **Refd.** Brown *v.* Dagenham Urban District Council, [1929] 1 K. B. 737 ; Errington *v.* Minister of Health, [1935] 1 K. B. 249 ; Frost *v.* Minister of Health, [1935] 1 K. B. 286 ; Cooper *v.* Wilson, [1937] 2 K. B. 309.

1223a. Report of railway company to Ministry of Transport—Under Regulation of Railways Act, 1871 (c. 78), s. 6.]—ANKIN *v.* LONDON & NORTH EASTERN RY. Co., No. 1209a, *ante*.

1266a. ——.]—An application before decree to have documents produced for inspection to intended witnesses is a special application, & only to be made on special grounds.

Where defts. did not by their answer deny the genuineness of a deed, but merely stated that they did not know whether they had executed it, & after an ordinary inspection applied for an order allowing inspection of it by witnesses, which application was not supported by any affidavit as to the deed being forged, but only by an affidavit of defts.' solr. to the effect that he was advised

---

N. Z. L. R. 894 ; *sub nom.* RODDA *v.* LUNKEN, [1936] G. L. R. 604 ; 12 N. Z. L. J. 291.—**N.Z.**

o. *Citation :*—For " [1908] S. C. 335 " read " [1909] S. C. 335."

q. *Add. Citation :*—60 J. P. 152.

sk. *Publication against public policy—Objection by Attorney-General.*]—Where, in an action to which a State is a party, the State objects to produce for inspection documents which are in fact State papers, a statement by the A.-G. for that State, that their production for inspection would be prejudicial to the public interests, is conclusive & an answer to an application for an order for inspection.—GRIFFIN *v.* STATE OF SOUTH AUSTRALIA (1925), 36 C. L. R. 378.—**AUS.**

PART III. SECT. 12.

o i. ——.]—The party who has obtained an order for production of documents may insist on obedience to that part of the order which requires the documents produced to be deposited with the prothonotary.—BLOOMFIELD *v.* MONARCH, ETC., Co. (No. 1), [1926] 1 W. W. R. 140 ; *affd.*, [1927] 3 D. L. R. 335 ; [1927] 2 W. W. R. 196 ; 36 Man. L. R. 603.—**CAN.**

sa. *Purpose — Criminal trial in progress—Making copies available for civil trial.*]—When the criminal trial of defts. now in progress is completed, it is at present entirely uncertain what will become of the books & documents in question. They may be handed over to defts. if they are acquitted, & thereupon removed out of the jurisdiction, or, if retained by the Crown, it may become necessary to remove them out of Ontario in connection with criminal prosecutions in other Provinces of Canada. It is therefore proper that an order should be made under rule 350, not for discovery, but so that certified copies of these documents & papers may be available as evidence at the trial of this action.—WALKER *v.* SOLLOWAY MILLS & Co., [1931] 4 D. L. R. 296 ; O. R. 650.—**CAN.**

& believed that it was necessary to his clients' case that the deed should be so inspected by witnesses :—*Held :* an order for inspection by witnesses ought not to be made. —BOYD *v.* PETRIE (1868), 3 Ch. App. 818.

Annotation :—**Refd.** A.-G. *v.* Whitwood Local Board, A.-G. *v.* Castleford Local Board (1871), 40 L. J. Ch. 592.

1283a. ——.]—AKT. FÜR AUTOGENE ALUMINIUM SCHWEISSUNG *v.* LONDON ALUMINIUM CO., LTD. (No. 2) (1921), 38 R. P. C. 361.

1309. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1310a. ——.]—In an action in the Ch. Div., pltfs. upon discovery claimed privilege for certain documents. Upon a summons before the master, & by agreement between the parties, the master inspected the documents under R. S. C., Ord. 31, r. 19A (2), & ordered production, subject to the parties' right to have the matter adjourned to the judge. This right being exercised, the judge decided without himself examining the documents or receiving from the master a report as to their nature & contents. In an affidavit in other proceedings, the pltfs. had referred to the same documents :—*Held :* (1) by consenting to the master reading the documents, the parties did not deprive themselves of the right of having the matter adjourned to the judge ; (2) thereupon the judge must not content himself with the view of the master, but must first either examine the documents for himself or receive a report of their nature & contents from the master, & then form his own opinion as to the legal validity of the claim of privilege ; (3) the fact that a party claiming privilege for certain documents in one action refers to them in an affidavit in another proceeding or action does not deprive the documents of their privilege.—INFIELDS, LTD. *v.* ROSEN & SON, [1938] 3 All E. R. 591, C. A.

1311a. ——.]—An affidavit in support of a claim to seal up certain passages in a book not being sufficiently explicit, the ct. inspected the disputed passages in order to determine their right to protection.—LAFONE *v.* FALKLANDS ISLANDS CO. (1857), 27 L. J. (Ch.) 25.

1311b. ——.]—The ct. will examine documents claimed to be privileged to see whether they establish a case of privilege.—VETTER *v.* SCHREIBER (1888), 53 J. P. 39.

Part IV.—Interrogatories.

1314. *Add. Annotation :*—*As to* (1) **Consd.** Sutherland *v.* British Dominions Land Settlmt. Corpn., [1926] Ch. 746.

1316a. By whom settled.]—On application being made by motion in an action in regard to reserved costs of interrogatories delivered, the question arose as to the persons to settle them :—*Held :* it was no part of the business of the judge in chambers nor the master. They had to see that they were neither oppressive nor irrelevant. The duty of settling was on the party who drew them.—" PRACTICE NOTE " (1930), 169 L. T. Jo. 123 : [1930] W. N. 24.

PART III. SECT. 15.

1311 iia. ——.]—Ord. 31, r. 14, sub-r. (2), of the South Australian Rules of Court—which, like R. S. C., Ord. 31, r. 19A, sub-r. (2), of the English rules, provides that where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the ct. or a judge to inspect it for the purpose of deciding as to the validity of the claim, applies where privilege is claimed for an official document on the ground that its disclosure would be contrary to the interests of the public, even though the claim is supported by a statement to that effect by the Minister responsible. The ct. has always had in reserve the power to inquire into the nature of the document for which protection is so sought, & to require some indication of the injury which would result from its production. When a State, being a party to litigation & bound to give discovery, claims privilege for documents upon the ground above stated, the claim should be made under oath by a responsible Minister whose mind has been directed to the material question. A claim to protection in the case of documents relating to the trading, commercial or contractual activities of a State can rarely be sustained, especially in time of peace. That documents would prejudice the case of the State in the litigation, or assist the other party, is a compelling reason for their production only to be overborne by the gravest reasons of State policy or security. Applt. brought an action in the Supreme Ct. of South Australia against resp. State claiming damages for alleged negligence in the care of wheat placed in the control of the State under Wheat Harvest Acts, 1915-17. Upon an order for discovery the respondent State, by an affidavit made by a civil servant, claimed privilege in respect of 1,892 documents tied in three bundles, & stated to be State documents, comprising communications between officers administering the department concerned ; there was exhibited to the affidavit a minute by the responsible Minister stating (*inter alia*) that disclosure of the documents would be contrary to the interests of the State & of the public :—*Held :* the minute was inadequate to support the claim of privilege, as it was too vague in the circumstances of the case, & was not a statement on oath showing that the Minister had himself considered each of the documents, or indicating the nature of the suggested injury to the interests of the public ; & the Supreme Court should exercise its power under Ord. 31, r. 14, sub-r. (2), to inspect the documents, that course being less likely to cause delay than an order for a further and better affidavit of documents.—ROBINSON *v.* SOUTH AUSTRALIA STATE (No. 2), [1931] A. C. 704 ; 100 L. J. P. C. 183 ; 145 L. T. 408 ; 47 T. L. R. 454 ; 75 Sol. Jo. 458, P. C.—**AUS.**

1311 v. ——.]—Where a claim of privilege is made in an affidavit on production of documents, it is not necessary that it should first be made to appear that the claim of privilege is improper before the judge can direct the production for his inspection under rule 372 (2) of the documents for which privilege is claimed.—WEBSTER *v.* SOLLOWAY MILLS & CO., LTD., [1931] 1 D. L. R. 749 ; [1930] 2 W. W. R. 514 ; 24 Alta. L. R. 632.—**CAN.**

PART IV. SECT. 1.

1314 vii. ——.]—With respect to the scope of an examination for discovery, the practice is now settled in favour of a full examination " touching the matters in question in the action," & is not confined to matters respecting which discovery might have been sought under the old Chancery practice in England.—HARVIE *v.* CANADIAN PACIFIC RY. CO. & HURST ENGINEERING & CONSTRUCTION CO., LTD., [1928] 1 D. L. R. 696 ; [1928] 1 W. W. R. 187 ; 22 Sask. L. R. 361.—**CAN.**

r i. —— ——.]—Under r. 328 a foreign pltf. has not a *primâ facie* right to be examined for discovery at his place of residence. The place & manner of his examination are matters to be determined by the ct., having regard to what is " just & convenient."—SWEENY *v.* MANUFACTURERS HOLDING CORPN., [1924] 2 D. L. R. 296 ; 54 O. L. R. 250.—**CAN.**

r ii. —— —— *Temporary absence—Rules* 270, 272, 275.]—ABRAMSON *v.* UNITED STATES FIRE INSURANCE CO., [1927] 1 D. L. R. 834 ; [1927] 1 W. W. R. 252 ; 21 Sask. L. R. 372.—**CAN.**

sl. *Oral examination—Restriction by Order 31a of New Brunswick Rules.*]—DUNN *v.* MCLEAN (N. B.), [1929] 1 D. L. R. 106.—**CAN.**

sp. *Grounds for—Saving of costs & expenses.*]—ROCHE *v.* GRANT, [1935] 1 D. L. R. 78.—**CAN.**

1374a. ——.]—As regards the person from whom the information is to be obtained, *primâ facie* the secretary is the best person; but I quite admit that they were entitled to have information from such persons as can best give it with respect to the matters which are the proper subject for the interrogatories, though I am not prepared at present to decide who should answer them; except that, as at present advised, I do not think the traffic manager would be the proper person for the purpose (NORTH, J.).—A.-G. *v.* NORTH METROPOLITAN TRAMWAYS Co., [1892] 3 Ch. 70; 61 L. J. Ch. 693; 67 L. T. 283; 36 Sol. Jo. 665; *affd.* (1895), 72 L. T. 340, C. A.

1379a. Executor.]—R. sold some Indian miniatures to K. by auction. R. died & his exors. brought this action for the balance of the purchase price. K. alleged that the miniatures were not genuine & that R. was guilty of fraud. K. obtained leave to administer interrogatories asking the circumstances in which R. had obtained the miniatures; whether he believed that their description in the auction catalogue was accurate & that they corresponded with it; & whether the goods were spurious &, if so, whether R. or the auctioneers knew it. The exors. appealed:—*Held:* (1) the interrogatory asking where R. had obtained the

PART IV. SECT. 2, SUB-SECT. 1.

s1. *Probate of will.*]—Probate Rules, 1916, r. 32, makes provision for discovery of documents but not for discovery by interrogatories.—IN THE WILL OF DENIS, [1928] V. L. R. 266; [1928] Argus L. R. 136.—**AUS.**

PART IV. SECT. 3.

f (p. 184) i. ——.]—Rule 267 (Sask.) provides that a person for whose immediate benefit an action is prosecuted or defended shall be regarded as a party for the purpose of examination in discovery, but where a party to the action wishes to avail himself of the rule & the pleadings do not disclose that the action has been brought for the immediate benefit of the person sought to be examined the registrar is not in a position to say that the party seeking the appointment is entitled to examine such person, & he should therefore not issue an appointment without an order of the ct. or a judge.—JOHNSON *v.* HAWKES, [1924] 3 D. L. R. 524; [1924] 2 W. W. R. 965.—**CAN.**

f (p. 184) ii. ——.]—In order to obtain an order for the examination for discovery of a person who is not a party to the action, appct. must show that pltf. in whose name the action was brought is not really pltf., but that the person whose examination is asked for is the real pltf. & that the action is being prosecuted for his benefit.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* MORTON, [1925] 1 W. W. R. 772.—**CAN.**

f (p. 184) iii. ——.]—An order is necessary for the examination for discovery under rule 267 of a person for whose immediate benefit an action is prosecuted or defended.—IMPERIAL LUMBER YARDS, LTD. *v.* MCMANUS, [1928] 2 D. L. R. 150; [1928] 1 W. W. R. 409; 22 Sask. L. R. 278.—**CAN.**

f (p. 184) iv. ——.]—One of two defts. in an action of ejectment who allows judgment to go by default is liable to be examined.—BACON *v.* CAMPBELL (1875), 6 P. R. 275.—**CAN.**

sn. *Person for whose immediate benefit action defended—Beneficiary under will—Action against trustees.*]—In an action against trustees under a will to rescind a contract for the sale of property of the estate:—*Held:* a beneficiary who was entitled to the rents & profits of such property, whether sold or not, was not "a party for whose immediate benefit the action was defended," & was not examinable for discovery.—WOOLWORTH CO. *v.* POOLEY, [1925] 2 W. W. R. 481.—**CAN.**

g (p. 185) i. —— *Co-defendant not actively defending.*]—Where pltfs. sued C. & G. to recover the balance of the purchase-price of land, & C. did not defend otherwise than by delivering demand of notice, & G. alleged that C. shared in a secret commission paid by one of the pltfs. to procure G. to enter into the agreement of purchase:—*Held:* G. was not a person "adverse in interest" to C. so as to make C. examinable for discovery by G. under r. 234.—HEGLER *v.* MACNAB, [1924] 3 D. L. R. 501; [1924] 2 W. W. R. 649.—**CAN.**

k (p. 185) i. —— *Different issues against two sets of defendants.*]—Under the British Columbia Rules governing discovery the examination is restricted to the issues between appct. & the party examined. Therefore, where the claim against one set of defts. was that they had wrongfully conspired to induce another set of defts. to break the latter's contract with pltf., & the claim against the second set of defts. was for breach of that contract, they not being charged as parties to the conspiracy:—*Held:* this second set could not be examined on discovery by pltf. as to any knowledge they might have with respect to matters tending to establish the alleged conspiracy.—WHEELDON *v.* MORRISON, [1934] 3 W. W. R. 126; 4 D. L. R. 366; 48 B. C. R. 492.—**CAN.**

k (p. 185) ii. —— *One of two co-defendants.*]—If issues between co. defts. are material to pltf. he may examine a deft. upon them, although there is no issue between that deft. & himself.—ALEXANDER *v.* DIAMOND (1882), 9 P. R. 274.—**CAN.**

m (p. 185) i. *Counterclaim for balance of account—Assignment from assignee of insolvent stockbroker.*]—*Held:* the stockbroker was examinable, at the instance of pltf., under r. 285, O. J. Act.—CARNEGIE *v.* COX (1886), 11 P. R. 311.—**CAN.**

r (p. 186) i. *Defendant out of jurisdiction.*] — SHANDLY *v.* HERNDON (Alta.), [1929] 4 D. L. R. 1086; 1 W. W. R. 240.—**CAN.**

s (p. 186) i. *Employee.*]—In order to be examinable for discovery under r. 234 an employee of a party must have been directly connected with the transaction in issue, not merely as a witness, but because of the character of his employment.—WEISS *v.* SCHIESCEL (Alta.), [1926] 1 W. W. R. 154.—**CAN.**

s (p. 186) ii. —— *Does not include minister of Crown.*]—R. (PROVINCIAL TREASURER OF ALBERTA) *v.* SMITH, [1927] 2 D. L. R. 69; [1927] 1 W. W. R. 474; 22 Alta. L. R. 544.—**CAN.**

c (p. 186) i. ——.]—Under County Ct. Ord. 8, r. 17, an infant, a party to an action, may be examined by the opposite party for discovery before the trial.—LANCASTER *v.* VAUGHAN (1924), 33 B. C. R. 159.—**CAN.**

c (p. 186) ii. ——.]—An infant pltf., who is competent to testify at the trial, is subject to examination for discovery.—WATSON *v.* MOTOR LIVERY CO. (Alta.), [1926] 1 W. W. R. 652.—**CAN.**

l (p. 186) i. —— ——.]—Deft., in an action by a corpn., has a right to select the officer of the corpn. whom he will examine.—TRINITY COLLEGE *v.* LEVINTER, [1924] 2 D. L. R. 584; 54 O. L. R. 290.—**CAN.**

l (p. 186) ii. —— ——.]—In an action for libel against the publishers of a newspaper, wherein the only questions in issue were those of malice & damages, an order was made designating an officer of deft. co. as its officer to be examined for discovery as to matters affecting damages.—KAFT *v.* STAR PUBLISHING CO., [1925] 1 W. W. R. 774.—**CAN.**

e (p. 187) i. —— ——.]—*Held:* an officer of the railway co.—GORDANIER *v.* C. N. R. (1904), 15 Man. L. R. 1.—**CAN.**

m (p. 187) i. —— —— *Street foreman.*]—*Held:* not an officer examinable for discovery.—WEBSTER *v.* TORONTO CORPN. (1892), 15 P. R. 21.—**CAN.**

n (p. 187) i. —— —— *Fire warden.*]—*Held:* an officer examinable for discovery.—KING LUMBER MILLS *v.* CANADIAN PACIFIC RY. CO. (1912), 19 W. L. R. 959; 17 B. C. R. 26; 2 D. L. R. 345.—**CAN.**

s (p. 188) i. —— —— *Whether limited to officers employed when cause of action arises.*]—The pltf. having examined for discovery, under rule 266 an officer of each of the two deft. cos., applied for leave to examine, as servants, two other men who at the time of the accident in question were employed by one deft., a contracting co., & at the time of the application were employed by the other deft., a railway co.:—*Held:* the leave should be given, but, in view of the facts disclosed in the material filed, pltf. should be allowed by this order to examine only one of said servants, she to elect which one. Rule 266 did not limit the examination to officers & servants who were employed by the corpn. when the cause of action arose.—HARVIE *v.* CANADIAN PACIFIC RY. CO. & HURST ENGINEERING & CONSTRUCTION CO., LTD., [1928] 1 D. L. R. 696; [1928] 1 W. W. R. 187; 22 Sask. L. R. 361.—**CAN.**

s (p. 188) ii. —— —— *Chief trader.*]—A man employed by a co. as "chief trader" for its Vancouver office, having complete charge of the order department, his duties including the handling or filling of buy & sell orders for clients & for the co., is an "officer" & subject to examination for discovery.—JOHNSON *v.* SOLLOWAY MILLS & CO., LTD. (1931), 45 B. C. R. 35.—**CAN.**

e (p. 188) i. —— ——.]—An order may be made for the examination of a deft. corpn. by its officer outside the jurisdiction. The question is one of convenience.—CAVEN *v.* CANADIAN PACIFIC RY. CO., [1924] 2 D. L. R. 1112; [1924] 2 W. W. R. 200.—**CAN.**

f (p. 188) i. —— ——.]—In an action against a landlord for damages for illegal distress, the bailiff not being a party to the action is not examinable for discovery.—HARVEY *v.* SYLVIA COURT, LTD., [1924] 3 W. W. R. 849.—**CAN.**

sp. *Minister of Crown.*]—*Held:* not an officer within r. 250.—R. (PROVINCIAL TREASURER OF ALBERTA) *v.* SMITH, [1927] 2 D. L. R. 69; [1927] 1 W. W. R. 474; 22 Alta. L. R. 544.—**CAN.**

miniatures, though it might be an admissible question in cross-examination, was a fishing interrogatory; (2) exors. ought not to be asked to swear to the belief of deceased; (3) a party should not be interrogated on a question which he can only answer by consulting an expert & repeating the expert's opinion.—ROFE *v.* KEVORKIAN, [1936] 2 All E. R. 1334; 80 Sol. Jo. 719, C. A.

1422. *Add. Annotation:*—**Refd.** Wakefield *v.* Board (1928), 45 R. P. C. 261.

1442a. ——.]—Deft., a shipowner, was sued by the cargo owners & charterers for non-delivery of the cargo. Deft. alleged that the non-delivery was caused by perils of the sea excepted in the charterparty & bill of lading: —*Held:* interrogatories asking pltfs. whether the cargo was insured, & if so, with whom, by whom, & to what amount, were irrelevant & inadmissible.—BOLCKOW, VAUGHAN & Co. *v.* YOUNG (1880), 42 L. T. 690; 4 Asp. M. L. C. 301.

1444. *Add. Annotation:*—**Consd.** Sutherland *v.* British Dominions Land Settlmt. Corpn., [1926] Ch. 746.

1462a. —— —— ——.]—The owners of the steamship *N.*, one of two ships found jointly to blame in a collision action, limited their liability & paid the amount into ct. Claims against the fund were in due course filed by the owners of the *N.* & the owners of the other ship, the *S.*, & also by the owners of cargo on the *S.* The same solrs. presented the claims on behalf of the owners of both ships. The owners of cargo on the *S.*, who were not parties to the collision action, then sought leave to administer four interrogatories to the owners of the *S.* Nos. 1 & 2 asked whether there had been, as between the owners of the two ships, a mutual abandonment of claim or a settlement on other terms. No. 3 inquired whether there had been any assignment of the claim of the owners, master, & crew of the *S.*; & No. 4 asked by whom the particular solrs. were instructed to present the claim of the owners of the *S.*:—*Held:* the first three interrogatories were necessary either for disposing fairly of the cause or matter or for saving costs, within R. S. C., Ord. 31, r. 2, & must be allowed. No. 4 was not pressed.—THE NEDENES (1924), 41 T. L. R. 243.

1464. *Add. Annotation:*—**Refd.** Perlak Petroleum Maatschappij *v.* Deen (1923), 93 L. J. K. B. 158.

1465. *Add. Citations:*—93 L. J. K. B. 158; 130 L. T. 234.

Add. Annotation:—**Refd.** La Radiotechnique *v.* Weinbaum, [1928] Ch. 1.

1469. *Add. Annotation:*—**Consd.** South Suburban Co-operative Society, Ltd. *v.* Orum & Croydon Advertiser, Ltd., [1937] 3 All E. R. 133.

1470a. ——.]—ROFE *v.* KEVORKIAN, No. 1379a, *ante.*

1514. *Add. Annotation:*—**Consd.** Hillman's Airways, Ltd. *v.* Société Anonyme D'Éditions

---

PART IV. SECT. 4.

m i. ——.]—While a judge or master in chambers has jurisdiction to direct that a party shall not examine an opposite party for discovery until the examining party has himself made discovery of documents, such jurisdiction should be exercised only under special circumstances. — MILLER *v.* GREAT WEST NATURAL GAS CORPN., PAGE HERSEY IRON TUBE & LEAD CO. *v.* GREAT WEST NATURAL GAS CORPN. (1923), 20 Alta. L. R. 379; [1924] 1 W. W. R. 1100.—**CAN.**

sr. *After amendment of pleadings.*]—If a party, after all discovery ordered has been made, desires to amend his pleadings & then desires to have a further examination for discovery, this can be granted by a judge or master under r. 234.—MILLER *v.* GREAT WEST NATURAL GAS CORPN., PAGE HERSEY IRON TUBE & LEAD CO. *v.* GREAT WEST NATURAL GAS CORPN. (1923), 20 Alta. L. R. 379; [1924] 1 W. W. R. 1100.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 6.

1416 v. ——.]—A party cannot be required to state what course he proposes to adopt at the trial, or to disclose the names of his informants or witnesses.—NEMEROVSKY *v.* MCBRIDE (No. 2) (Man.), [1927] 1 D. L. R. 148; [1926] 3 W. W. R. 436.—**CAN.**

1428 iv. ——.]—Pltf. having marked judgment by default in an action brought to recover damages for trespass to & flooding pltf.'s lands, defts. applied to set aside the judgment. In support of this application an affidavit was filed on behalf of defts. by their solrs., setting out their defence to the action, & in that affidavit documents were made exhibits for the purpose of substantiating the defence alleged. The interlocutory judgment was set aside on July 11, 1890, after which no further steps were taken in the action, owing to proposals for a compromise being made. On Jan. 21, 1891, pltf. applied to defts. for inspection of the documents made exhibits in the affidavit:—*Held:* pltf. was entitled to inspection.—HUNTER *v.* DUBLIN, ETC. RY. CO. (1891), 28 L. R. Ir. 489.—**IR.**

PART IV. SECT. 5, SUB-SECT. 7.

1432 iii. ——.]—If the answers to an interrogatory can disclose anything which can be fairly said to be material to enable pltf. either to maintain his own case, or to destroy that of his adversary, the interrogatory ought to be answered, but if the answers cannot be material for either of these purposes deft. ought not to be ordered to answer. —HEIDNER & Co. *v.* THE HANNA NIELSEN, [1926] 2 D. L. R. 1059; [1926] 2 W. W. R. 397; 37 B. C. R. 207.—**CAN.**

1434 iv. ——.]—Under r. 423, imported into county ct. procedure, interrogatories must be directly relevant to the matters in issue.—DUNLOP DRUG DEPOT *v.* HARTT BOOT & SHOE CO. (Man.), [1926] 2 W. W. R. 92.—**CAN.**

1446 x. ——.]—In an action claiming damages for alleged shortages in weight of grain at the point of delivery:—*Held:* questions upon the examination for discovery as to the loading of cars other than the ones in dispute were irrelevant & properly excluded.—GRAIN CLAIMS BUREAU, LTD. *v.* CANADIAN PACIFIC RY. CO., [1934] 2 W. W. R. 277; 4 D. L. R. 707; 42 Man. L. R. 282.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 8.

1454 ii. —— *Admission of breach of contract—Questions as to reasons for breach.*]—WHIELDON *v.* FRASER VALLEY MILK PRODUCERS ASSOCN. (No. 2), [1934] 1 W. W. R. 751; 48 B. C. R. 317.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 9.

1457 i. *How far admissible.*]—In a suit to set aside an agreement on the ground of fraudulent misrepresentations:—*Held:* deft. was entitled to ask for the substance of the conversations.—WEST *v.* CONWAY (1923), 23 S. R. N. S. W. 344; 40 N. S. W. W. N. 50.—**AUS.**

1457 ii. ——.]—WEDIN *v.* ROBERTSON (1907), 7 W. L. R. 72.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 12.

1476 i. —— *Material in part.*]—On an application to set aside interrogatories, on the ground that they were prolix, oppressive, & unnecessary:—*Held:* they should be set aside as a whole, even though some of them, taken by themselves, might be unobjectionable.—LYTE *v.* CURREY, [1927] V. L. R. 472; 49 A. L. T. 47; [1927] Argus L. R. 353.—**AUS.**

PART IV. SECT. 5, SUB-SECT. 15.—E (a).

f i. ——.]—In an action for libel said to be contained in a letter written by deft. to the husband of pltf. deft. on being examined for discovery, admitted the authorship of the letter but refused to answer questions directed to finding out who the person referred to in the letter as "lady friend" was. pltf. not being named in the letter. Deft. in his statement of defence denied all the allegations of the statement of claim, & said that, if the words were written & published of & concerning pltf., as alleged, it was without malice & upon a privileged occasion:—*Held:* deft. should answer the questions; the alleged libel having made a reference that could only be understood having regard to extraneous circumstances, the questions were relevant to show that pltf. was the person who would be understood by her associates or persons acquainted with the circumstances, to have been referred to, & the questions were also relevant upon the issue as to malice raised by the defence of privilege.—MORLEY *v.* PATRICK (1910), 21 O. L. R. 240.—**CAN.**

Aéronautiques Internationales, [1934] 2 K. B. 356.

1514a. ——.]—The right of a pltf. who alleges that he has been libelled in a newspaper to obtain discovery " of the name of any person concerned as printer, publisher, or proprietor " of the newspaper, " or of any matters relative to the printing or publishing " thereof, provided by 6 & 7 Will. 4, c. 76, s. 19, still exists &, since the Judicature Acts, is enforceable by the administration of interrogatories, the procedure by bill of discovery specified in sect. 19 of the statute having fallen into disuse.—HILLMAN'S AIRWAYS, LTD. *v.* SOCIÉTÉ ANONYME D'ÉDITIONS AÉRONAUTIQUES INTERNATIONALES, [1934] 2 K. B. 356; 103 L. J. K. B. 670; 151 L. T. 451; 50 T. L. R. 569.

1515. *Add. Annotation :—As to* (2) **Consd.** Hillman's Airways, Ltd. *v.* Société Anonyme D'Éditions Aéronautiques Internationales, [1934] 2 K. B. 356.

1516a. ——.]—HILLMAN'S AIRWAYS, LTD. *v.* SOCIÉTÉ ANONYME D'ÉDITIONS AÉRONAUTIQUES INTERNATIONALES, No. 1514a, *ante.*

1523. *Add. Annotation :*—**Refd.** Franklin *v.* Daily Mirror Newspapers, Ltd. (1933), 149 L. T. 433.

1523a. ——.]—FRANKLIN *v.* DAILY MIRROR NEWSPAPERS, LTD. (1933), 149 L. T. 433, C. A.

1526. *Add. Annotation :—As to* (3) **Refd.** South Suburban Co-operative Society, Ltd. *v.* Orum & Croydon Advertiser, Ltd., [1937] 3 All E. R. 133.

1528. *Add. Annotation :*—**Consd.** South Suburban Co-operative Society, Ltd. *v.* Orum & Croydon Advertiser, Ltd., [1937] 3 All E. R. 133.

1531. *Add. Annotation :*—**Consd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

1532. *Add. Annotations :*—**Consd.** South Suburban Co-operative Society, Ltd. *v.* Orum & Croydon Advertiser, Ltd., [1937] 3 All E. R. 133. **Refd.** Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675.

1534. *Add. Annotation :*—**Consd.** South Suburban Co-operative Society, Ltd. *v.* Orum & Croydon Advertiser, Ltd., [1937] 3 All E. R. 133.

1536. *Add. Annotation :—As to* (1) **Consd.** South Suburban Co-operative Society, Ltd. *v.* Orum & Croydon Advertiser, Ltd., [1937] 3 All E. R. 133.

1542. *Add. Annotation :*—**Consd.** Franklin *v.* Daily Mirror Newspapers, Ltd. (1933), 149 L. T. 433.

1549. *Add. Annotation :* — **Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

1555. *Add. Annotation :*—**Refd.** Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675.

1556. *Add. Annotations :—As to* (1) **Consd.** Hearts of Oak Assurance Co. *v.* A.-G., [1931] 2 Ch. 370. **Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

1564a. State of mind of author—Action against printer.]—A party interrogated is not bound to procure information from persons who are not his servants or agents, or who have not been acting as such.

Pltf. sued defts., the printers & publishers of a book, written by one P., which contained statements which pltf. alleged were defamatory of him. To that action P. was not made a deft. Defts. pleaded fair comment made in good faith & without malice. Pltf., who pleaded in reply that the words were written falsely & maliciously, sought to administer an interrogatory to defts. asking (*inter alia*), " What information had P. when he wrote the words complained of . . . which induced you &/or the said P. & which of you to believe that the expressions of opinion or any & which of them in the said words contained & which you allege . . . are fair comment made in good faith & without malice, were true " :—*Held :* the interrogatory in this form was inadmissible, as defts. could not be asked as to the information which P., who was not their servant or agent, had on the subject at the time of the publication of the book. Defts. could only be asked what information, if any, they themselves had as to the knowledge of P. when they respectively printed & published the book.—CROZIER *v.* WISHART BOOKS, LTD., [1936] 1 K. B. 471; 105 L. J. K. B. 257; 154 L. T. 363; 52 T. L. R. 255; 80 Sol. Jo. 144; *sub nom.* CROZIER *v.* WISHART & CO., LTD. & WESTERN PRINTING SERVICES, LTD., [1936] 1 All E. R. 1, C. A.

1571. *Add. Annotations :*—**Consd.** Tudor-Hart *v.* British Union for Abolition of Vivisection, [1938] 2 K. B. 329. **Refd.** Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675.

1571a. Proceedings against contributor—Identity of informants.]—Where, to an action for libel in respect of a letter published in a newspaper there are pleas that the letter is

---

1535 i. *Persons to whom libel published.*]—In an action against a mercantile agency for libel pltf. in his statement of claim & particulars gave the names of certain cos. to whom the alleged defamatory reports were published & added " & other individuals, organisations & cos. at present unknown to pltf." Deft.'s affidavit on production of documents, after referring to a certain document, denied that there was in its possession or power any other document relating to the matter in question. The deponent was examined on the affidavit &, he, in answer to certain questions, stated that he did not know & he refused to answer other questions. Pltf. obtained an order from the master that the deponent submit to another examination & answer the questions set out in the order. Deft. appealed, contending that pltf. had no right to the disclosure of any matter relating to reports to persons other than those named by pltf. :—*Held :* since the admitted document containing the libel bore intrinsic evidence of having emanated from deft. & there was also evidence that similar reports had been received by other persons, it could not be said that the claim was " a sham or bogus claim " or that the application was mere " fishing," &, therefore, the master was right.—CHERTKOW *v.* RETAIL CREDIT CO., [1932] 1 W. W. R. 905; 3 D. L. R. 390; 26 Alta. L. R. 291.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 15—E. (c).

p i. ——.]—In an action for libel brought against newspaper publishers wherein they pleaded absence of actual malice & of gross negligence, & that they had published an apology & made a payment into ct. in full satisfaction of damages, they contended that, since they had thereby assumed the onus of disproving actual malice & gross negligence, their information on these matters was strictly private & need not be disclosed on examination for discovery :—*Held :* the contention was unsound; malice & negligence were relevant & important matters at issue since they had a direct bearing on the quantum of damages, & whether the onus was on pltf. to prove them or on defts. to disprove them the result was the same in respect to defts.' obligation to answer the questions; the facts were in issue, &, therefore, the questions concerning them must be answered.—POPOVICH *v.* LOBAY, [1937] 2 W. W. R. 64; 45 Man. L. R. 323.—**CAN.**

fair comment made in good faith & without malice on a matter of public interest, an issue being thus raised as to the attitude of mind of deft. at the time when the letter was published, the special rule of practice which in such a case exempts a deft. who is the proprietor or the publisher of the newspaper from disclosing the name of a person who supplied information contained in the letter, notwithstanding that such information is otherwise relevant to that issue, does not extend to protect a deft. who is the writer or contributor of the letter from disclosing the names of his informants.—SOUTH SUBURBAN CO-OPERATIVE SOCIETY, LTD. *v.* ORUM, [1937] 2 K. B. 690; [1937] 3 All E. R. 133; 106 L. J. K. B. 555; 157 L. T. 93; 53 T. L. R. 803; 81 Sol. Jo. 497, C. A.

1625a. —— ——.]—In an action for infringement of a patent, defts. alleged prior user by V., & prior publication by J.:—*Held:* (1) defts. alleging that the prior user was by machine, they ought to state whether any such machine existed, &, if so, whether any such machine was in their possession, custody, or power, & the present address of V.; (2) defts. alleging that the prior publication was by document, they ought so to state & sufficiently identify the document & the present address of J.—GENERAL ELECTRIC CO. (1900), LTD. *v.* SAFETY LIFT & ELEVATOR CO. (1903), 21 R. P. C. 109.

1626a. Prior publication.]—GENERAL ELECTRIC CO. (1900), LTD. *v.* SAFETY LIFT & ELEVATOR CO., No. 1625a, *ante*.

1631a. Chemical composition of infringing substance.]—This is a summons by pltfs. in the action asking for liberty to interrogate defts. The few interrogatories which it is desired to make have been amended in certain respects by the master. Pltfs. are not satisfied entirely with these amendments, & in order to make the matter clearer pltfs. themselves have before now suggested an amendment to the proposed interrogatory No. 1 in lieu of the amendment proposed by the master . . . of course, it is perfectly plain that interrogatories may be delivered in a case of this kind as to the chemical composition & constitution of the alleged infringing substances (ASTBURY, J.).—SHARPE & DOHME, INCORPORATED *v.* BOOTS PURE DRUG CO., LTD. (1927), 44 R. P. C. 69.

1631b. General question as to process used in manufacturing infringing article.]—*Held:* inadmissible.—OSRAM LAMP WORKS *v.* POPE'S ELECTRIC LAMP CO., LTD. (1914), 31 R. P. C. 313, C. A.

1677a. —— **Ownership—Alleged fraudulent representations by seller.**]—In an action against an auctioneer for the price of a horse sold by him for pltf., deft., who pleaded fraud, was not allowed to ask whether the horse was pltf.'s & if so how did it become his.—SIVIER *v.* HARRIS (1876), Bitt. Prac. Cas. 98; 2 Char. Cham. Cas. 54.

1690a. As to ingredients of infringing articles.]—COCA COLA CO. *v.* DUCKWORTH & CO. (1928), 45 R. P. C. 225.

1702a. Enticement of husband—Questions not directed to adultery.]—Pltf. brought an action against deft., a married woman, for wrongfully enticing away pltf.'s husband. She alleged that deft. solicited the affections of her husband by providing him with large sums of money, & that on Jan. 10, 1928, pltf.'s husband in consequence of deft.'s enticement deserted pltf., & that since then deft. & pltf.'s husband had lived together as man & wife. Pltf. also alleged that in consideration of her abandoning her claim to maintenance under a maintenance order, her husband agreed to hand over to her a certain house which he had purchased, that she took possession of the house & had been forcibly evicted therefrom by deft.'s servants. Deft. in her affidavit of documents admitted that she had made certain loans & gifts of money to pltf.'s husband & had in her possession certain documents relating thereto, but she objected to produce them on the ground "that they may tend to expose me to ecclesiastical censure & punishment." Deft. successfully resisted an application for the production of the documents. Pltf. then applied for liberty to administer to deft. certain interrogatories relating, mainly, to the gifts of money & to the purchase & mtge. of the house. The Master of the Judge in Chambers refused to allow pltf. to administer the interrogatories to deft. On appeal:—*Held:* inasmuch as the cause of action was not based on adultery & the object of the action was not to prove adultery, & the interrogatories which it was sought to administer were not addressed directly or indirectly to

---

PART IV. SECT. 5, SUB-SECT. 15.—F.

1590 i. *Document in hands of third party.*]—On examination for discovery the party being examined can be asked to tell what are the contents of a document not under his control & not produced to him.—HARRISON *v.* KING, [1925] 1 D. L. R. 1072; [1925] 1 W. W. R. 649; 21 Alta. L. R. 373.—**CAN.**

sm. *Telegram—Meaning of word.*]—An officer of a co. examined on discovery cannot be compelled to answer a question as to the meaning of a word in a telegram sent to another officer, it not being shown that this would help pltf. in establishing his case.—LEVI *v.* BRITISH COLUMBIA DISTILLERY CO., [1936] 4 D. L. R. 205; 50 B. C. R. 481.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 15.—G.

1596 ii. ——.]—HILLMAN *v.* IMPERIAL BANK OF CANADA, [1926] 3 D. L. R. 192; [1926] 2 W. W. R. 276; 20 Sask. L. R. 507.— **CAN.**

PART IV. SECT. 5, SUB-SECT. 15.—H.

1601 i. *Circumstances in which injury occurred.*]—In an action for negligence arising out of a collision deft. was interrogated about his speed & the position of the colliding vehicles. In his answers he stated that he was unable to answer these interrogatories except as to his opinion upon the matters involved, & did not answer what the speed & position were:—*Held:* these answers were insufficient.—MAY *v.* BOWERING, [1928] S. A. S. R. 226.—**AUS.**

sd. *Escape of gas.*]—In an action against a gas co. for damages from a fire alleged to have been caused by an escape of gas from deft.'s mains & pipes:—*Held:* deft.'s officer, who was questioned on examination for discovery as to systems of inspection alleged to have been adopted after the fire, was not obliged to answer said questions in so far as they referred to measures taken with respect to matters or objects away from the locus of the fire. However, questions as to leaks & explosions alleged to have occurred after the accident should be answered, because they came within the Rule as "touching the matter in question." The manager of pltf.'s hotel, the property which was burned, who had been examined under Rule 234 as an employee, was held obliged to answer as to what statements or reports about the fire were made to him by two employees who were on duty at the time of the fire.—LONDON GUARANTEE & ACCIDENT CO. *v.* NORTH-WESTERN UTILITIES, LTD., [1933] 1 W. W. R. 744.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 15.—I.

1614 i. *Partnership accounts.*]—MACDONALD *v.* MCARTHUR (1887), 4 Man. L. R. 56.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 15.—R.

1700 i. *Agency—Whether representations made by agent—Name of agent—Disallowed.*]—WEST *v.* CONWAY (1923), 23 S. R. N. S. W. 344; 40 N. S. W. W. N. 50.—**AUS.**

the sole proof of adultery but were intended to show the means by which the desertion of pltf. by her husband was procured, & to prove the trespass to a house in which pltf. was living by permission of her husband, therefore the interrogatories were admissible & deft. was bound to answer them.—ELLIOTT *v.* ALBERT, [1934] 1 K. B. 650; 103 L. J. K. B. 305; 151 L. T. 13; 78 Sol. Jo. 206, C. A.

1705a. Shares—Refusal of company to register transfer—Grounds for refusal.]—Art. 27 of a co.'s arts. of assocn. was as follows: "The directors may without assigning any reason decline to register any transfer of shares not fully paid up made to any person not approved by them or made by any member jointly or alone indebted or under any liability to the co." Pltf. was the holder of 10,000 partly paid cumulative preference shares of £1 each in the co., & in Dec. 1925, executed a transfer of 8,000 of these shares to a transferee. Registration of the transfer was refused, & pltf. brought an action claiming a declaration that deft. co. was not entitled to refuse registration of the transfer & rectification of the co.'s register accordingly. Earlier in 1925 the co. had issued debentures secured by a debenture trust deed, in which the co. covenanted with the trustees that it would not in regard to 100,000 preference shares register until the shares were fully paid any transfer of any of them to any proposed transferee not approved by the trustees, & would not, except with the previous written consent of the trustees, release any of the holders of these shares from any money payable or which might become payable in respect of such shares. Pltf. alleged by his statement of claim that deft. co. had wrongfully refused to register the transfer, that the directors did not exercise any proper discretion under the arts., & that they had abdicated their discretion by entering into the above covenant with the trustees. Defts. by their defence claimed to have exercised the discretion under the art. *bonâ fide*. Pltf. sought to interrogate deft. co. by asking: (1) Whether the co. said that the directors had declined registration in exercise of the power to decline to register any transfer made to any person not approved by them or in exercise of the power to decline to register any transfer by a member jointly or alone indebted to the co.; (2) whether they said that the transfer was to a person of whom the directors did not approve; (3) whether they said pltf. was in fact a person jointly or alone indebted to the co.; (4) whether the debenture trust deed was referred to by any one at any meeting at which the question of registering the transfer was discussed:—*Held:* all the interrogatories were proper to be allowed. Deft. co. was not entitled to refuse to state which of the grounds mentioned in the art. the directors had acted under, although it might refuse to say what reasons influenced them in exercising their discretion upon that ground.—SUTHERLAND (DUKE) *v.* BRITISH DOMINIONS LAND SETTLEMENT CORPN., LTD., [1926] Ch. 746; 59 L. J. Ch. 542; 135 L. T. 732.

Annotation:—**Distd.** Berry *v.* Tottenham Hotspur Football & Athletic Co., [1935] Ch. 718.

1705b. —— —— ——.]—Art. 16 of the co.'s articles of association provided: "The directors may decline to register any transfer of shares made by a member who is indebted to the co. or in case the transferee shall be a person of whom the directors do not approve or shall be considered by them objectionable, or the transfer shall be considered as having been made for purposes not conducive to the interests of the co. & the directors shall not be bound to specify the grounds upon which the registration of any transfer is declined under this article. . . ."

The co. refused to register the transfer by pltf. B. to pltf. S. of a share in the co.'s capital of which B. was the registered holder. By this action pltfs. claimed (*inter alia*) a declaration that the co. was not entitled to decline to register the transfer, & an order that the register of members of the co. should be rectified by the deletion of B.'s name as holder of the share & by the insertion in lieu thereof of S.'s name. Pltfs. sought to administer to the co. the following among other interrogatories: (2) Did the directors refuse to register the said transfer as one made by a member indebted to the co.? (3) Did the directors in fact disapprove of pltf. S. as a transferee of the said share? (4) Did the directors in fact consider pltf. S. objectionable as a transferee of the said share? (5) Did the directors in fact consider the transfer of the said share as having been made for purposes not conducive to the interests of the co.? The master refused leave to administer these interrogatories. On this summons by pltfs. claiming to be entitled to administer them, it was contended for pltfs. that the word "grounds" in the clause "& shall not be bound to specify the grounds" in Art. 16 had the same meaning as the word "reason" in the phrase "without assigning any reason" in an article which was considered by the ct. in *Sutherland (Duke)* v. *British Dominions Land Settlement Corpn., Ltd.*, No. 1705a, in which the interrogatories which it was sought to administer were allowed as being directed to eliciting under which branch of the power given by the article the directors had acted. For the co. it was contended that the two words had not the same meaning:—*Held:* on the true construction of Art. 16 "specifying grounds" was not the same thing as "assigning reasons," & the interrogatories were not proper to be allowed.—BERRY & STEWART *v.* TOTTENHAM HOTSPUR FOOTBALL & ATHLETIC CO., LTD., [1935] Ch. 718; 104 L. J. Ch. 342; 154 L. T. 10; 79 Sol. Jo. 642.

1709 i. *Wrongful dismissal—Acts justifying dismissal.*]—Pltf., a doctor, sued defts. for wrongful dismissal. He had been dismissed on the ground that he had recommended, as a suitable person to be a nurse in defts.' hospital, a woman with whom he had lived in adultery. Upon an application to compel pltf. to answer questions as to his relations with the woman:—*Held:* he was bound to answer such as referred to his alleged adultery.—INES *v.* CALGARY GENERAL HOSPITAL (1899), 4 Terr. L. R. 58.—**CAN.**

sa. *Action for alienation of affections.*]—On examination for discovery in an action for alienation of affections, the wife having been deft.'s housekeeper, he may be required to answer the question whether he ever heard from her of any objection by her husband to her working at his house.—HARRISON *v.* KING, [1925] 1 D. L. R. 1072; [1925] 1 W. W. R. 649; 21 Alta. L. R. 373.—**CAN.**

sd. *Action by trustee in bankruptcy—Against auditor—Trustee auditor.*]—In an action by a trustee in bkpcy. of a co. against a firm of auditors:—*Held:* the trustee, who was himself an auditor, should not be required to

1710. *Add. Citations :*—93 L. J. K. B. 158 ; 130 L. T. 234.

Add. Annotation :—**Refd.** La Radiotechnique *v.* Weinbaum (1927), 137 L. T. 638.

1740. *Add. Annotation :*—**Consd.** Bank of Russian Trade, Ltd. *v.* British Screen Productions, Ltd., [1930] 2 K. B. 90.

1742. *Add. Citation :—previous proceedings, sub nom.* STUART *v.* BUTE (LORD) (1841), 11 Sim. 442.

1752. *Add. Annotation :—As to* (1) **Consd.** Crozier *v.* Wishart & Co. & Western Printing Services, Ltd., [1936] 1 All E. R. 1.

1757. *Add. Annotation :*—**Consd.** Bank of Russian Trade, Ltd. *v.* British Screen Productions, Ltd., [1930] 2 K. B. 90.

1806a. Answer by one officer—No inquiry as to information available to other officers.]—In an action by indorsees of a number of bills of exchange alleged to have been drawn by a German co., accepted by defts., an English co., indorsed to the pltfs. & dishonoured, defts. among other pleas denied the drawing & indorsement of the bills. Pltfs. administered to defts. the following, among other, interrogatories : (1) " Were not all or some or one & which of the said bills drawn by " the German co. " or their agent or agents duly authorised in that behalf ? " (2) " Were not all or some or one & which of the said bills indorsed by " the German co. " or their agent or agents duly authorised in that behalf to the order of " certain named indorsees ? (3) " Was not " the German co. " at all material times a corpn. duly incorporated under the laws of the German Republic ? " Appended to the interrogatories was a direction that defts. should answer them by their secretary to the best of his knowledge, information & belief. To each of them the secretary answered simply : " I say that I do not know " :—*Held :* the answer on examination for discovery a question as to his own practice in conducting an audit.—BLUE BAND NAVIGATION CO., LTD. (TRUSTEE) *v.* PRICE, WATERHOUSE & CO. (NO. 1), [1933] 3 W. W. R. 49 ; 4 D. L. R. 447 ; 47 B. C. R. 258.—**CAN.**

sf. *Foreclosure action.*]—LONDON & CANADIAN INVESTMENT CO., LTD. *v.* BRITISH COLUMBIA REALTY DEVELOPMENT CORPN., LTD. & GRIFFITHS, [1934] 3 W. W. R. 319.—**CAN.**

sk. *Specific performance—Sale of shares.*]—In an action for specific performance of an agreement to sell shares in a co. made by deft. S. the issues were (*inter alia*) whether after the agreement was made S. transferred the shares to the two other defts. R., & whether before acceptance of the transfer defts. R. knew of the agreement between pltf. & S., & that the transfer was in breach of the agreement. Pltf. interrogated defts. as to the dispatch of a cablegram by S., stating that he could not sell his shares to pltf. for family reasons ; as to the belief of defts. that he had agreed to sell his shares to pltf. ; as to why he was unable to sell ; as to the family reasons ; & as to references to the family reasons between defts. :—*Held :* the interrogatories as to the cablegram were permissible, & the other questions were *primâ facie* relevant, some to the issue as to the making of the alleged agreement, & others on the issues of notice to defts. R.—JORDAN *v.* SANDERS, [1934] S. A. S. R. 424.—**AUS.**

PART IV. SECT. 6, SUB-SECT. 1.

t i. —— *Whether interfered with by Court of Appeal.*]—The discretion of the local ct. judge or a special magistrate in allowing some interrogatories & not allowing others should not be reviewed unless the need for the interference of the Supreme Ct. is clearly made out, & only on very strong grounds.—BLUSTON *v.* DALLY, [1930] S. A. S. R. 89.—**AUS.**

sk. *Under Marginal Rules, rr.* 344 (2), 348.]—ESQUIMALT & NANAIMO RY. CO. *v.* GRANBY CONSOLIDATED MINING, SMELTING & POWER CO. (B. C.), [1926] 3 W. W. R. 240.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 2.

l i. —— *Service on solicitor of company—Insufficient.*]—EASTMAN *v.* PACIFIC FORWARDING CO., [1934] 1 W. W. R. 539.—**CAN.**

PART IV. SECT. 7.

o i. ——.]—FLETCHER, TURNEY & HANBURY, LTD. *v.* COLQUHOUN, DEWOLF & CO., LTD., [1934] 1 W. W. R. 752 ; 48 B. C. R. 322.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 1.

1732 xiv. ——.]— The person examined must make full disclosure of information which he has secured from others that has a bearing on the issue ; & he must give his belief, if any, with reference to the matters in issue ; this belief may be founded on information which he has secured from others, but he must state what it is ; & he may also give his reasons therefor.—KIRKPATRICK *v.* CANADIAN PACIFIC RY. CO. (Sask.), [1926] 3 D. L. R. 542 ; [1926] 2 W. W. R. 861.—**CAN.**

1748 ix. —— ——.]—Where a party is interrogated as to matters in issue done by his agents or servants, or done or omitted in their presence in the course of their employment, he is bound to obtain the information they have, & does not sufficiently answer by saying that he does not know & has no information on the subject.—DUNLOP DRUG DEPOT *v.* HARTT BOOT & SHOE CO. (Man.), [1926] 2 W. W. R. 92.—**CAN.**

1748 x. —— ——.]—A witness on his examination for discovery as an officer of a co. must not only answer as to his individual knowledge, but must also inquire & get such information as he can from the other officers & servants of the co. who have personal knowledge of the facts.—GOODBUN *v.* MITCHELL, [1928] 3 D. L. R. 709 ; [1928] 2 W. W. R. 594 ; 37 Man. L. R. 451.—**CAN.**

1748 xi. —— ——.]—A party under examination for discovery is bound to impart any information touching the matters in question which at the time discovery is sought he has either of his own knowledge or has actually received from third persons.—CULVER & CULVER *v.* LLOYDMINSTER TOWN, [1928] 2 D. L. R. 93 ; [1928] 1 W. W. R. 406 ; 22 Sask. L. R. 314.—**CAN.**

1748 xii. —— ——.]—ROGERS *v.* BELBY, [1928] 3 W. W. R. 584.—**CAN.**

1748 xiii. —— *By officer of company.*]—JURSZSZYN *v.* WEIDMAN BROS., LTD., [1934] 2 W. W. R. 153.—**CAN.**

1752 i. —— —— *Agent having left employment.*]—An officer of a corpn. who is being examined for discovery is not excused from the duty of informing himself of the facts by inquiry of an employee who knows them merely because the employee who has the desired information gained in the course of his employment has ceased to be employed by the corpn. ; provided such employee is available & is willing to give the information.—ABEL *v.* COOKE, [1937] 1 W. W. R. 705 ; 7 F. L. J. (Can.) 19.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 3.

1803 i. *Officers acting as solicitor—Claim of professional privilege.*]—*Held :* the fact that the chancellor of pltf. corpn. was a member of the firm acting for the corpn. was not a reason for refusing to allow him to be examined : if he had as solr. information which pltf corpn. had the privilege of preventing him from disclosing, the privilege could be exercised when a question was put as to something which he had learned in his professional capacity.—TRINITY COLLEGE *v.* LEVINTER, [1924] 2 D. L. R. 584 ; 54 O. L. R. 290.—**CAN.**

1806 i. *Officer's information acquired in course of employment—Whether answers amount to admissions by company.*]—*Qu. :* whether, when an offi of a co. has been examined for discovery under rule 266 (3), answers of his which are qualified as being based on information acquired by him from the co.'s servants & other officers can be read against the co. as an admission. —ANWEILER *v.* G. T. P. R. CO., [1928] 3 D. L. R. 626 ; [1928] 2 W. W. R. 514.—**CAN.**

o i. —— *Action against municipality.*]—A police officer is an officer or servant of the municipality for the purpose of discovery.—HOWES *v.* VANCOUVER CITY, [1934] 1 W. W. R. 800 ; 48 B. C. R. 195.—**CAN.**

q i. —— *Equivalent to examination of corporation.*]—Under the present Alberta rules as to examination for discovery, there is no room for making any distinction between individual parties & corpn. parties, & the examination of a corpn.'s officer, selected in accordance with r. 250, is the examination of the corpn.—CAVEN *v.* CANADIAN PACIFIC RY. CO., [1924] 2 D. L. R. 1112 ; [1924] 2 W. W. R. 200.—**CAN.**

sw. *Action against trustee in bankruptcy of company.*]—In an action against the trustee in bkpcy. of a co. there is no right to examine an officer of the co.—MAY *v.* ROBERTS (NO. 2), [1934] 1 W. W. R. 798 ; 48 B. C. R. 411.—**CAN.**

sz. *Application to examine former officer after examination of another officer.*]—HARRISON MILLS, LTD. *v.* ABBOTSFORD LUMBER CO., LTD., [1935] 1 W. W. R. 32, 480 ; 49 B. C. R. 301.—**CAN.**

sa. ——.]—On an application under Ord. 31, r. 1, for leave to examine for discovery, a past officer of a co., an officer of the co. having been examined previously, the leave was given.—DES BRISAY *v.* CANADIAN GOVERNMENT MERCHANT MARINE, LTD., [1936] 3 W. W. R. 383 ; 51 B. C. R. 57.—**CAN.**

answer was insufficient, inasmuch as other officers of defts. might in the course of their duties have acquired the requisite information; if they had, this would have been the information of the co., & it did not appear from the answer whether the secretary had made any inquiries to ascertain whether such information was available.—BANK OF RUSSIAN TRADE, LTD. *v.* BRITISH SCREEN PRODUCTIONS, LTD., [1930] 2 K. B. 90; 99 L. J. K. B. 562; 143 L. T. 305; 74 Sol. Jo. 337, C. A.

1817. *Add. Annotation:* — **Refd.** Cavendish *v.* Cavendish (1925), 42 T. L. R. 134.

1855. *Add. Annotation:* — **Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Minter *v.* Priest, [1929] 1 K. B. 655.

1856a. Communications between solicitors of opposite parties.]—*See* EVIDENCE, Vol. XXII., p. 415, No. 4252.

1895. *Add. Annotation:*—**Refd.** British Thomson-Houston Co. *v.* British Insulated & Helsby Cables, [1924] 2 Ch. 160.

PART IV. SECT. 8, SUB-SECT. 4.—B.

1813 xii. ——.]—The provisions of Canada Evidence Act, R. S. C., 1906 (c. 145), & Alberta Evidence Act, R. S. A., 1922 (c. 87), that a witness shall not be excused from answering a question on the ground that the answer may tend to criminate him, do not apply to an examination for discovery, but his common law right to refuse to answer a question tending to criminate does apply; & on discovery the person examined may on such ground refuse to answer the question whether he has committed adultery.—HARRISON *v.* KING (No. 2), [1925] 3 D. L. R. 395; [1925] 2 W. W. R. 407; 21 Alta. L. R. 381; *revsg.*, [1925] 2 D. L. R. 1111; [1925] 2 W. W. R. 276.—**CAN.**

1813 xiii. ——.]—Under the English practice relating to interrogatories, deft. is excused from answering questions that may tend to criminate him. Sect. 5 of British Columbia Evidence Act provides that no witness shall be excused from answering any question upon the ground that the answer to the question may tend to criminate him. On an application to compel deft. to answer interrogatories: —*Held:* a party being examined on interrogatories is not treated as a witness & is in the same position as a party being examined on interrogatories in England & is protected.—BLUMBERGER *v.* SOLLOWAY MILLS & CO., LTD., [1931] 2 W. W. R. 56; [1931] 2 D. L. R. 204; 44 B. C. R. 41.—**CAN.**

1813 xiv. ——.]—In an action for damages for negligence in driving a motor-car whereby a person was injured & died, interrogatories were administered to deft., the alleged driver of the car. The first interrogatory asked whether deft. was the driver, & the remaining interrogatories related to acts of deft. or of deceased. Deft. objected to answer on the ground that the answers might tend to incriminate her. The accident took place on Dec. 17, 1930, & resulted in the death of deceased on Dec. 29, 1930. It was admitted that no inquest had been held, & deceased's employers had paid his widow workman's compensation. It was also admitted that no criminal proceedings had been taken up to Oct. 20, 1931:—*Held:* a ct. could not be clearly satisfied that all danger of criminal proceedings had passed, & the claim of privilege should be sustained; also, it was immaterial that the answers, being obtained under compulsion of an order of ct., could not be used in evidence against deft. in criminal proceedings.—SHERRING (J. H.) & CO. *v.* HINTON, [1932] S. A. S. R. 233.—**AUS.**

PART IV. SECT. 8, SUB-SECT. 4.—C.

1847 i. *Communication with legal adviser or agents—Contract of employment or agency not established.*]—*Re* U.S.A. *v.* MAMMOTH OIL CO., [1925] 2 D. L. R. 966; 56 O. L. R. 635; *affd.*, [1925] 2 D. L. R. 66; 56 O. L. R. 307. —**CAN.**

t i. ——.]—While members of the Executive Council of the Irish Free State, sued as corpn. sole, are liable to the ordinary orders for discovery by way of interrogatories & discovery of documents, & to orders for better discovery on filing inadequate answers to interrogatories, a claim to privilege made by them on grounds of public interest is conclusive, & must be recognised as paramount, on the same principle as that underlying the recognition of a similar claim by a British Minister under the royal prerogative.—LEEN *v.* PRESIDENT OF THE EXECUTIVE COUNCIL, ETC., [1926] I. R. 456.—IR.

PART IV. SECT. 8, SUB-SECT. 4.—D.

st. *Disclosure of name of person on whose behalf privilege claimed.*]—Privilege may be claimed without disclosing to the ct. the name of the client or person on whose behalf it is claimed.—*Re* U.S.A. *v.* MAMMOTH OIL CO., [1925] 2 D. L. R. 966; 56 O. L. R. 635; *affg.*, [1925] 2 D. L. R. 66; 56 O. L. R. 307.—**CAN.**

PART IV. SECT. 9.

1877 iv. ——.]—Where the only question which appct. for an order for a re-examination for discovery wished to put was one which the party to be examined was entitled to refuse to answer, & his counsel stated that he would instruct him to refuse to answer it, the order was refused.—HARRISON *v.* KING (No. 2), [1925] 3 D. L. R. 395; [1925] 2 W. W. R. 407; 21 Alta. L. R. 381.—**CAN.**

1877 v. ——.]—SHANNON *v.* KING (No. 2), [1932] 1 W. W. R. 156; 1 D. L. R. 700; 45 B. C. R. 7.—**CAN.**

PART IV. SECT. 10.

m i. —— *Effect of consent to use inadmissible evidence.*]—The parties to an action cannot by consent make something evidence which is not evidence; although in a proper case they may be estopped from taking the objection. Therefore they cannot by consent provide that the examination for discovery of employees may be used at the trial as evidence against their respective employers, where there is no rule making their examinations available as evidence.—DENCH *v.* ALBERTAN PUBLISHING CO., [1931] 2 W. W. R. 116; 3 D. L. R. 260; 25 Alta. L. R. 326.—**CAN.**

p i. ——.]—A trial judge should not use as evidence a portion of the examination for discovery not put in at the trial.—GWIN *v.* STARRS (Sask.), [1929] 3 W. W. R. 704; [1930] 2 D. L. R. 54; 24 S. L. R. 221.—**CAN.**

p ii. ——.]—Where on the trial of an action or issue pltf. had put in certain parts of the examination of the opposite party, it is the duty of the judge, either *ex mero motu* or at the request of counsel to "look at the whole of the examination," to see if he could form the "opinion that any other part of it is so connected with the part to be used that the last-mentioned part ought not to be used without such other part," & in so doing the object sought to be accomplished by putting in the original part must be taken into consideration as one of the elements in the forming of that opinion.—CANARY *v.* VESTED ESTATES, LTD., [1931] 1 D. L. R. 997; 43 B. C. R. 365.—**CAN.**

sp. *Discovery of one defendant—Use against co-defendant.*]—Testimony given on an examination for discovery of one deft. cannot, as a general rule, be used on the trial as evidence against a co-deft.—SYGNATOWICZ *v.* SYGNATOWICZ, [1933] 1 W. W. R. 132; 1 D. L. R. 758; 41 Man. L. R. 42.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

1898 i. *Contempt of court—Answer to interrogatories.*] — HARWOOD & COOPER *v.* WILKINSON, [1929] 4 D. L. R. 734; 64 O. L. R. 392; *revsd.*, [1930] 2 D. L. R. 199; 64 O. L. R. 658.—**CAN.**

PART V. SECT. 3.

a i. —— *Service of copy of appointment on examinee's solicitor.*]—STAFFORD *v.* MACKENZIE (Alta.), [1929] 1 D. L. R. 605; 1 W. W. R. 271.—**CAN.**

sw. *Conditions precedent to order—Decision that questions properly put & refusal to answer questions on further examination.*]—HANSON *v.* GLEANER, LTD., [1925] 3 D. L. R. 189.—**CAN.**

sz. *Effect of concluding examination without adjournment.*]—SOBKOW *v.* ANDRUCHOW, [1930] 2 W. W. R. 272, 368. —**CAN.**

DISTRESS.

Part I.—In General.

2. *Add. Annotation :*—**Distd.** Bevir *v.* British Wagon Co. (1935), 80 L. Jo. 162.

Part II.—Distress for Rent.

43. For the paragraph " Defts. were partners in business . . . for his quiet tenantship " substitute :—" Defts. were partners in business & one of them, in the name of the firm, signed a warrant of distress authorising a broker to levy off the goods of pltf. for rent due 'to me.' Pltf. held under a lease from the Board of Ordnance & defts. were sureties for pltf. :—*Held :* it was an illegal distress because the rent was not due to the partner authorising the distress but to the Board of Ordnance."

Add. Annotations : — **Refd.** The Koursk, [1924] P. 140 ; Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

46. *Add. Annotation :—As to* (.) **Refd.** Cohen *v.* Donegal Tweed Co. (1935), 79 Sol. Jo. 343.

63. *Add. Annotations :—As to* (1) **Distd.** Borman *v.* Griffith, [1930] 1 Ch. 493. **Refd.** Carrington Manufacturing Co. *v.* Saldin (1925), 133 L. T. 432 ; Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

71a. —— **No exclusive user.**]—Pltfs. had an agreement with certain manufacturers to have the goods purchased from them, stored at the manufacturers' premises until such time as they might take delivery. The goods were not stored continuously in the same room, but the room was changed from time to time to suit the convenience of defts. Invoices were sent in respect of this storage from time to time & the word " rent " was used. The second-named deft. was landlord of these premises & authorised deft. co. to enter the premises & levy a distress upon all the goods thereon, including the goods belonging to pltfs. Pltfs. then served upon defts. the usual notice under Law of Distress Amendment Act, 1908 (c. 53), but defts. proceeded with the distress. Pltfs. then took out a summons under Law of Distress Amendment Act, 1908 (c. 53) s. 2, & defts. were ordered by the magistrate to return the goods to pltfs., which, under certain conditions pending the hearing of a case stated, they did. Pltfs. then brought this action for trespass & illegal distress claiming substantial damages :—*Held :* (1) upon the facts pltfs. had no exclusive use of any part of deft. co.'s premises & were not tenants or undertenants thereof ; (2) the distress was illegal ; (3) though no actual damage was proved pltfs. were entitled to substantial damages.—INTEROVEN STOVE CO., LTD. *v.* HIBBARD & PAINTER & SHEPHERD, [1936] 1 All E. R. 263.

128. *Add. Annotation :*—**Refd.** Prout *v.* Hunter, [1924] 2 K. B. 736.

145. *Add. Annotation :*—**Refd.** Consolidated Entertainments, Ltd. *v.* Taylor, [1937] 4 All E. R. 432.

PART II. SECT. 3, SUB-SECT. 2.—A.

44 viii. —— ——.]—When a new lease is substituted for an existing one, the right of distress for rent due under the prior lease is at an end.—CRYSTALL *v.* OLSEN (Alta.), [1927] 3 D. L. R. 85 ; [1927] 2 W. W. R. 35.—**CAN.**

d i. —— —— *Alleged lessors unable to enter into lease—Unincorporated body.*]—CANADA MORNING NEWS, LTD. *v.* THOMPSON, [1930] S. C. R. 338 ; 3 D. L. R. 833 ; *revsg.*, [1929] 2 D. L. R. 144 ; 1 W. W. R. 548 ; 41 B. C. R. 24 ; *revsg.*, [1928] 4 D. L. R. 628 ; [1928] 3 W. W. R. 35.—**CAN.**

e i. —— *Demise substituted—Strict proof necessary.*]—Where a distress is justified on the ground that the distrainor substituted a demise for a former agreement of sale, this must be clearly proved.—KILLAM *v.* MCLEOD, [1935] 3 D. L. R. 414 ; 9 M. P. R. 465.—**CAN.**

PART II. SECT. 3, SUB-SECT. 5.

m i. —— *Based on price of gasoline.*]—Pltf. leased an automobile service station from deft. oil co. at a rental of $200 per month payable in advance. A few days later it was agreed that the rent should be paid by the addition of a charge of two & a half cents per gallon, payable on delivery, to the price of the gasoline to be bought by the lessee from deft. The lease provided that it should be at the pleasure of the lessor & determinable forthwith on the delivery of a written notice to the lessee. The original lease provided that the first payment of rent should be on July 1, but pltf. went into occupation on June 16 & agreed to pay one-half of the previous tenant's rent for that month. On Aug. 1, seizure was made under a warrant of distress stated to be for one & a part month's rent due on July 1, & pltf. being unable to pay the amount demanded, agreed to deft.'s demand that he take a certain amount for his goods from a suggested new tenant who was then present. Out of this amount the alleged rent was paid & pltf. drove away. The written notice provided for in the lease had not been given to pltf. In an action for illegal distress & eviction :—*Held :* even if the sum mentioned in the warrant was due for rent on Aug. 1, the distress was wrongful. The distress was expressed to be for rent due on July 1, but under the arrangement varying the lease no fixed rent fell due & payable on any day & no sum was in fact due & payable on July 1, & since the rent for the part of June had been all paid at the time of the seizure it was wrongful to include it in the distress.—DENYER *v.* BRITISH AMERICAN OIL CO. (Man.), [1929] 4 D. L. R. 1063 ; 2 W. W. R. 677.—**CAN.**

PART II. SECT. 3, SUB-SECT. 8.

sp. *Debt Adjustment Acts—Seizure of grain without permit.*]—Accused was convicted on a charge that he " did make a seizure from E., a resident farmer, & dispose of 334 bushels of wheat without having a permit from Debt Adjustment Board, contrary to sect. 27 of Debt Adjustment Act, 1936 " :—*Held :* the conviction was bad because, (*a*) wilfulness, which is of the essence of the offence, was not charged ; (*b*) the charge was one for two offences, since both from the language of the sects. involved & from the nature of the acts themselves a seizure & disposition are two offences.—R. *v.* BALL, [1937] 1 W. W. R. 482.—**CAN.**

PART II. SECT. 4, SUB-SECT. 7.—B. (a) i.

160 vii. ——.]—A mtgee. of land who under an attornment clause distrains for arrears of interest or principal due under his mtge. can make a valid distress only on the goods & chattels of the mtgor. or his assigns, & the word " assigns " does not include a purchaser from the mtgor. under an executory contract of sale of land, even though such purchaser be actually in possession.—KLENMAN *v.* ISMAN, [1924] 2 D. L. R. 146 ; 1 W. W. R. 883 ; 18 Sask. L. R. 171.—**CAN.**

160 viii. —— *Distress Act, R. S. A., 1922 (c. 97), s. 6—Effect.*]—BANK OF MONTREAL *v.* LYON (Alta.), [1927] 4 D. L. R. 1012 ; [1927] 3 W. W. R. 520.—**CAN.**

175. *Add. Annotation :—As to* (1) **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

229. *Add. Annotation :*—**Refd.** Smith *v.* Tsakyris (1929), 167 L. T. Jo. 92.

234. *Add. Citation :—sub nom.* HUDSON *v.* SNELLGAR, 2 Roll. Rep. 212.

319. *Add. Annotation :—Generally,* **Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

356. *Add. Annotation :—As to* (1) **Refd.** Swaffer *v.* Mulcahy, Hooker & Mulcahy, Smith *v.* Mulchay, [1934] 1 K. B. 608.

369. For existing citations read "(1836), 1 M. & W. 633; Tyr. & Gr. 1086; 2 Gale, 158; 6 L. J. Ex. 34; 150 E. R. 588."

400. For "No. 369, *ante*," read "No. 251, *ante*."

160 ix. ——.]—Default having been made in irrigation rates levied against land in the L. N. Irrigation District, proceedings were taken which resulted in the land becoming vested in the board of trustees for the district. The land was subject to a mtge., containing an attornment clause, the mtge. having been given prior to the formation of the district. The board rented the land on the crop-payment plan, & its tenant, having disposed of his share of the crop, the mtgee. caused the share reserved to the board to be seized for arrears of interest under its mtge.:—*Held:* the mtgee. was not entitled to distrain for interest on the goods of the board, &, therefore, the board was entitled to said share of the crop.—INCORPORATED SYNOD OF HURON DIOCESE *v.* LETHBRIDGE NORTHERN IRRIGATION DISTRICT TRUSTEES, [1930] 2 W. W. R. 503; 4 D. L. R. 1035.—**CAN.**

sa. *Effect of judgment on covenant for payment.*]—The right to distrain for rent due under an attornment clause in a mtge. is not merged in a judgment on the covenant for payment in the mtge. even though the judgment is for the whole of the principal & all the interest then due.—COMMERCIAL LIFE ASSURANCE CO. OF CANADA *v.* CADENHEAD, [1931] 3 W. W. R. 653.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

q (p. 303) **i.** —— *Goods in which tenant has beneficial interest.*]—Under Distress for Rent Act, 1888, a landlord, who has distrained for rent on goods, the property of another, in which his tenant has a beneficial interest under agreement to purchase at the time of distress, is entitled to exercise his remedies against such goods, notwithstanding that at the time of making the declaration referred to in sect. 10 such other person may have rightfully determined the tenant's beneficial interest.—STALLEY *v.* HAIGH, [1928] S. A. S. R. 239.—**AUS.**

sb. *Goods sold after seizure for taxes & left in charge of city chamberlain.*]—*Held:* liable to seizure for rent due to the original landlord.—LANGTON *v.* BACON (1859), 17 U. C. R. 559.—**CAN.**

PART II. SECT. 5, SUB-SECT. 3.

261 ii. ——.]—The remedy of distress is not available against the Crown, & the interest of the Crown cannot be affected by any distress made by the landlord.—A.-G. FOR CANADA *v.* GORDON, [1925] 1 D. L. R. 654; 56 O. L. R. 48.—**CAN.**

262 ii. —— ——.]—Under a writ in the King's name, issued out of the Superior Ct. of the province of Quebec, goods which are the property of His Majesty & in the possession of His Majesty's officers cannot be seized & sold to satisfy a pecuniary claim of a subject. Under the English law, the rule is absolute that no proceeding having for its purpose the issue of any process against His Majesty himself or against any of His Majesty's property is competent in any of His Majesty's cts.; & there is nothing in the Quebec Act of 1774, in the two ordinances of 1777 establishing the cts. of Quebec & regulating the proceedings in those cts. or in the Civil Code or the Code of Civil Procedure, justifying an inference that there was any intention of in any way impairing such immunity of the sovereign from processual coercion in his own cts.—R. *v.* CENTRAL RAILWAY SIGNAL CO., INCORP. & CANADIAN NATIONAL CHEMICAL WORKS, [1933] S. C. R. 555; 4 D. L. R. 737.—**CAN.**

PART II. SECT. 5, SUB-SECT. 4.—B.

b i. —— *Dealer in second-hand goods.*]—A dealer in second-hand goods is not carrying on a public trade within the meaning of the rule under which things delivered to a person exercising a public trade to be carried, wrought, worked up or managed in the way of his trade or employment are exempt from distress for rent owing by him. The fact that in the present instance the goods in question were consigned to the tenant for sale on a commission basis was held not to render them exempt.—LAWRENCE *v.* TURNER, [1934] 3 W. W. R. 353; 49 B. C. R. 99.—**CAN.**

PART II. SECT. 5, SUB-SECT. 4.—C.

285 ii. —— ——.]—L. was the tenant of deft., & carried on a public trade of salesman of motor supplies, & he also acted as agent of pltf. co., receiving goods manufactured by pltf. for sale or return, subject to certain conditions. These goods were delivered under a memorandum, which on its face was a delivery only to L. as agent. A consignment account was kept showing the goods sold & in stock. This was signed by L. as consignment agent, & given from time to time to pltf. L. fell into arrears with his rent, & secretly left the premises. Deft. distrained on L.'s property on the premises, including goods which had been delivered by pltf. to L. on sale or return:—*Held:* under the memorandum the goods delivered to L. by pltf., & unsold, remained the property of pltf.; at the time of distress L. was tenant of deft. & had custody of pltf.'s goods upon the premises; the goods were exempt from liability to distress, & deft. was ordered to deliver them to pltf.—PERDRIAU RUBBER CO., LTD. *v.* SADEK, [1928] S. R. Q. 144.—**AUS.**

PART II. SECT. 5, SUB-SECT. 4.—D.

sd. *Market—Goods in.*]—Where pltf. was not using premises as a market, but simply as a shop in which to offer, in the ordinary way, goods purchased to be sold for a profit:—*Held:* a claim for exemption, on the ground that the goods seized were in a public market for sale, failed.—BENT *v.* MCDOUGALL (1881), 2 R. & G. 468; 2 C. L. T. 262.—**CAN.**

PART II. SECT. 5, SUB-SECT. 7.

se. *Application of English law.*]—There is nothing in the conditions of life in, or climate of, Alberta which justifies the ct. in holding that the common law as interpreted in England in 1870, as to what goods of a tenant or members of his family are exempt from distress for rent, is not "applicable," within sect. 16 of Alberta Act, 1905 (Dom.). Therefore, the ct. cannot enlarge such exemptions so as to cover household goods & wearing apparel which is in use from time to time but not "in actual use," *i.e.*, not on the tenant's back.—STOTT *v.* RABY, [1934] 3 W. W. R. 625.—**CAN.**

PART II. SECT. 5, SUB-SECT. 10.

sf. *Not grain removed & sold under execution before claim for rent made.*]—DOUGLAS *v.* CARRINGTON (1914), 29 W. L. R. 90; 7 W. W. R. 59; 7 Sask. L. R. 80; 20 D. L. R. 919.—**CAN.**

PART II. SECT. 5, SUB-SECT. 11.

393 i. *Not privileged.*]—HENDERSON & HENDERSON *v.* MCGUGAN, THOMPSON & BENNINGTON, LTD.; PATERSON *v.* MCGUGAN, [1933] 3 W. W. R. 230.—**CAN.**

393 ii. ——.]—Goods otherwise subject to distress under an attornment clause are not rendered exempt from distraint by the fact that they belong to a stranger to the agreement.—HENDERSON & HENDERSON *v.* MCGUGAN, THOMPSON & BENNINGTON, LTD., PATERSON *v.* MCGUGAN, [1933] 3 W. W. R. 230.—**CAN.**

h i. —— ——.]—BLOEMFONTEIN MUNICIPALITY *v.* JACKSONS, LTD., [1929] App. D. 266.—**S. AF.**

q i. —— *Goods assigned.*]—FARR *v.* ANNABLE, [1926] 2 D. L. R. 127; 58 O. L. R. 387.—**CAN.**

q ii. —— —— *Liability of goods assigned while assignor tenant of distrainor.*]—One R., some years prior to becoming the tenant of applts., had given resp. a chattel mtge. on her household goods & furniture. During the tenancy, applts. made a distress for overdue rent & seized the goods found on the premises. Resp. claimed the goods under the chattel mtge. & asserted that they were exempt from applts.' distress for rent. An interpleader issue between the parties was directed to be tried:—*Held:* the goods & chattels covered by the mtge. were subject to applts.' distress for rent.—STOTT *v.* HENINGER, [1935] S. C. R. 408; 3 D. L. R. 700; 5 F. L. J. (Can.) 115.—**CAN.**

r i. —— —— ——.]—The goods of a stranger not a party nor a privy to the estoppel created by an attornment of tenancy to a person having no reversion are not liable to distress although found upon the premises the subject of the attornment.—PARTRIDGE *v.* MCINTOSH & SONS, LTD. (1934), 49 C. L. R. 453.—**AUS.**

PART II. SECT. 5, SUB-SECT. 12.—A.

405 i. *General rule — Goods not privileged.*]—When a lessee sublets premises to a sub-lessee, the head landlord may distrain upon the goods of the sub-lessee for all the rent owing by the lessee.—*Re* CHAMBERLAIN & PEERLESS BUMPER & ACCESSORIES, LTD., [1924] 4 D. L. R. 298.—**CAN.**

PART II. SECT. 5, SUB-SECT. 12.—B. (a) II.

414 ii. —— ——.]—HENDERSON & HENDERSON *v.* MCGUGAN, THOMPSON & BENNINGTON, LTD.; PATERSON *v.* MCGUGAN, [1933] 3 W. W. R. 230.—**CAN.**

414 iii. —— ——.]—In order to be entitled to the protection afforded by Distress Act, R. S. B. C., 1924, to boarders & lodgers the person alleging that he is a boarder or lodger must prove an arrangement between him & the tenant which is definite as to the amount payable by him & as to the time & manner of payment.—HENDERSON & HENDERSON *v.* MCGUGAN, THOMPSON & BENNINGTON, LTD., PATERSON *v.* MCGUGAN, [1933] 3 W. W. R. 230.—**CAN.**

421a. —— —— **Agreement with one of two joint tenants.**]—Premises were demised to two persons jointly: one of them hired from applts. a piano under a hire-purchase agreement:—*Held:* the piano was liable to distress for arrears of rent of the premises under Law of Distress Amendment Act, 1908 (c. 53), s. 4 (1), although the other of the joint tenants had not been a party to the hire-purchase agreement.—GAMAGE (A. W.), LTD. *v.* PAYNE (1925), 134 L. T. 222; 90 J. P. 14; 42 T. L. R. 138, D. C.

423. *Add. Annotations:*—**Distd.** Smart Bros., Ltd. *v.* Holt, [1929] 2 K. B. 303. **Consd.** Drages, Ltd. *v.* Owen (1935), 154 L. T. 12. **Refd.** Druce & Co. *v.* Beaumont Property Trust, Ltd., [1935] 2 K. B. 257.

424. *Add. Annotations:*—**Distd.** Smart Bros., Ltd. *v.* Holt, [1929] 2 K. B. 303. **Consd.** Drages, Ltd. *v.* Owen (1935), 154 L. T. 12. **Refd.** Times Furnishing Co. *v.* Hutchings, [1938] 1 K. B. 775.

424a. —— ——.]—The tenant of a dwelling-house hired goods from pltfs. under a hire-purchase agreement, by which he agreed to pay punctually the instalments & also the rent of the premises on which the goods might be. By a clause of the agreement, in case of any breach, the owners might, by written notice, forthwith determine the agreement, & thereupon neither party thereafter should have any rights under it. The instalments being in arrear, pltf. served on the hirer a notice terminating the agreement, & claiming a return of the goods. A distress was subsequently levied on behalf of the landlord, & the goods the subject of the hire-purchase agreement were seized. In an action by the owners for illegal distress, the county ct. judge gave judgment for pltfs.:—*Held:* as soon as the notice terminating the agreement was given the right of the hirer to possession of the goods was at an end, & neither party to the agreement had any rights under it. When the distress was levied there was therefore no hire-purchase agreement in force relating to the goods, & they were not at that time "comprised in any hire-purchase agreement" within Law of Distress Amendment Act, 1908 (c. 53), s. 4, & the distress was illegal.—SMART BROS., LTD. *v.* HOLT, [1929] 2 K. B. 303; 98 L. J. K. B. 532; 141 L. T. 268; 45 T. L. R. 504; 35 Com. Cas. 53.

Annotations:—**Consd.** Drages, Ltd. *v.* Owen (1935), 154 L. T. 12. **Refd.** Druce & Co. *v.* Beaumont Property Trust, Ltd., [1935] 2 K. B. 257; Times Furnishing Co. *v.* Hutchings, [1938] 1 K. B. 775.

424b. —— —— **Provision also for automatic determination.**]—By a clause in a hire-purchase agreement made between pltfs. & a hirer it was provided that "this agreement, & the co.'s consent to the hirer's possession of the furniture comprised therein, shall automatically determine & come to an end . . . if any landlord of the hirer threatens or takes any step to levy a distress for rent upon the furniture of or in possession of the hirer. . . ." During the continuance of the agreement the hirer was in arrear with his rent, his landlord signed a distress warrant, & a distress was levied, some goods which were the property of pltfs. & were in the possession of the hirer under the hire-purchase agreement being seized. Pltfs. served on the bailiff a declaration pursuant to Law of Distress Amendment Act, 1908 (c. 53), s. 1, that the goods were their property; but the goods were sold. In an action brought by pltfs. against the landlord & the bailiff for illegal distress:—*Held:* the effect of the clause in the agreement was that when the landlord signed the distress warrant & so took a "step to levy a distress for rent" the agreement automatically determined & the goods were no longer "comprised in any hire-purchase agreement" within sect. 4 (1) of the Act of 1908 so as to exclude the operation of sects. 1 & 2 of that Act, under which pltfs. brought the action, but that at the time of the distress the goods were "in the possession, order, or disposition" of the hirer "by the consent & permission of the true owner in such circumstances that" the hirer was "the reputed owner thereof" within sect. 4 (1), since, in the absence of any steps by pltfs. to indicate their intention to withdraw their consent & to assert their right to the goods which had been left in the possession, order, or disposition of the hirer, the clause in the agreement did not operate automatically to determine the consent of pltfs., & defts. were, therefore, entitled to succeed.—TIMES FURNISHING CO., LTD. *v.* HUTCHINGS, [1938] 1 K. B. 775; [1938] 1 All E. R. 422; 107 L. J. K. B. 432; 158 L. T. 335; 54 T. L. R. 390; 82 Sol. Jo. 315.

424c. —— **When notice operative—From time of posting.**]—A hire-purchase agreement contained a clause entitling the owners of the goods hired to terminate the agreement in certain events, which had happened "by written notice sent by post (or otherwise) to, or left at, the hirer's last known address" & providing that "thereupon the hirer shall no longer be in possession of the goods with the owners' consent":—*Held:* a notice sent by post pursuant to that clause operated to terminate the agreement from the moment when it was put in the post for delivery to the addressee, & therefore from that moment the goods were no longer comprised in a hire-purchase agreement within Law of Distress Amendment Act, 1908 (c. 53), s. 4 (1), & could not be distrained on by the hirer's landlord for arrears of rent.—DRAGES, LTD. *v.* OWEN (1935), 154 L. T. 12; 52 T. L. R. 108; 80 Sol. Jo. 55.

428. *Add. Annotation:*—*As to* (3) **Refd.** Druce & Co. *v.* Beaumont Property Trust, Ltd., [1935] 2 K. B. 257.

428a. ——.]—By Law of Distress Amendment Act, 1908 (c. 53), s. 1 (*c*), if a superior landlord levies a distress on the goods of any person not being a tenant of the premises & not having any beneficial interest in any tenancy of the premises, such person may serve the superior landlord with a declaration in writing setting forth that the immediate tenant "has no right of property or beneficial interest in the . . . . goods . . . so distrained . . . upon, & that such . . . goods . . . are the property or in the lawful possession of such . . . person aforesaid, & are not goods . . . to which this Act is expressed not to apply":—*Held:* omission to state that the goods were not goods to which the Act was expressed not to apply is a fatal defect in a declaration.—DRUCE & CO., LTD. *v.* BEAUMONT PROPERTY TRUST, LTD., [1935] 2 K. B. 257; 104 L. J.

K. B. 455; 153 L. T. 183; 51 T. L. R. 444; 79 Sol. Jo. 435.

430. *Add. Annotation :*—**Consd.** Druce & Co. *v.* Beaumont Property Trust, Ltd., [1935] 2 K. B. 257.

451. *Add. Annotation :*—**Consd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

460. *Add. Annotation :*—**Refd.** Oakley *v.* Lyster, [1931] 1 K. B. 148.

475. *Add. Annotation :*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

482. *Add. Annotation :*—**Refd.** Cohen *v.* Donegal Tweed Co. (1935), 79 Sol. Jo. 592.

509. *Add. Annotation :*—*As to* (3) **Refd.** *Re* Winterbottom (Leeds), Ltd., [1937] 2 All E. R. 232.

517. *Add. Annotation :*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

523. *Add. Annotation :* — **Consd.** Drughorn *v.* Moore, [1924] A. C. 53.

524. *Add. Annotation :*—**Refd.** Tredegar Viscount *v.* Harwood, [1929] A. C. 72.

531. *Add. Annotation :* —**Refd.** Eaton *v.* Donegal Tweed Co. (1935), 79 Sol. Jo. 342.

532. *Add. Annotation :*—*As to* (2) **Refd.** Eaton *v.* Donegal Tweed Co. (1935), 79 Sol. Jo. 342.

538. *Add. Annotation :*—*As to* (2) **Refd.** Brooks Wharf & Bull Wharf, Ltd. *v.* Goodman Bros., [1937] 1 K. B. 534.

581. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

583. *Add. Annotation :*—*As to* (1) **Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

599. *Add. Annotation :*—**Apld.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

600. *Add. Annotation :*—*Generally*, **Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

601. *Add. Annotation :*—**Consd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

623. *Add. Annotation :*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

654a. —— —— —— **Distress by landlord in person.**]—There is nothing in the above Act to prevent an uncertificated landlord from distraining in person.—JACKSON *v.* BENNAN (1893), 37 Sol. Jo. 282.

686. *Add. Annotation :* — **Refd.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

714a. Removal of goods at tenant's request—Estoppel.]—Upon a distraint being made upon such a sewing machine, & a man being put in possession, a letter was written to the landlord: "I hereby request you to remove the sewing machine & other goods you have distrained on my premises":—*Held:* this did not estop resp. from raising the question whether the machine could be distrained upon at all.—MASTERS *v.* FRASER (1901), 85 L. T. 611; 66 J. P. 100; 18 T. L. R. 31.

723. *Add. Annotation :*—**Expld.** Davies *v.* Property & Reversionary Investments Corpn., Ltd., [1929] 2 K. B. 222.

731. *Add. Citation :*—after "Ex. Ch." add S. C. *sub nom.* LEYLAND *v.* TANCRED (1850), 16 Q. B. 664."

PART II. SECT. 5, SUB-SECT. 13.

sj. *Conditional Sales Act—Interest of seller under conditional sale.*]—A landlord is not entitled to distrain on the interest of a seller in goods bought by the tenant under a conditional sale agreement, even though the above Act has not been complied with.—BELL & SCHIESEL *v.* JACOBSON & WEITZER, [1925] 2 D. L. R. 393; [1925] 1 W. W. R. 913.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.

440 iv. ——.]—ALBERT *v.* STOREY, [1925] 4 D. L. R. 374.—**CAN.**

440 v. ——.]—The attornment clause in question herein, which was contained in an agreement for the sale of land, held not to be affected by the acceleration clause in said agreement; &, therefore, since there was no rent due under the attornment clause at the time the distress, with respect to which this action was brought, was made, the distress was bad & the purchaser entitled to damages therefor.—BURRELL *v.* WATT & HARDINGE, [1928] 3. D. L. R. 505; [1928] 2 W. W. R. 482.—**CAN.**

PART II. SECT. 6, SUB-SECT. 4.

sk. *Covenant to summer-fallow—Forfeiture clause on execution.*]—A lease of farm lands on the crop-payment plan also provided by a clause following the *habendum* that the lessee should pay yearly a certain sum per acre for each acre of the portion agreed to be summer-fallowed which should not be summer-fallowed, & a further sum per acre at the expiration of the term for every acre not left ploughed as agreed. A forfeiture clause provided that in the event (*inter alia*) of the goods of the lessee being taken in execution or a writ of execution being issued against them, the then current year's rent should immediately become due & payable & the term should immediately become forfeited & void. On a motion, in an action for wrongful distress, to continue an injunction until trial:—*Held:* assuming but without deciding that the clause following the *habendum* was part thereof, the forfeiture clause could not be applied so as to render immediately payable the amount agreed on as payable for failure to summer-fallow; such amount did not fall due until the day after the latest day the lessee had to do the work, &, since that period had not expired when the lessor distrained with respect to said amount, the distress was *semble* illegal.—GARROW *v.* BAIRD, [1931] 1 W. W. R. 129; 39 Man. L. R. 367.—**CAN.**

PART II. SECT. 6, SUB-SECT. 5.

456 iii. —— ——.]—A distress for rent, when made at night, is invalid even as against a third party, when the tenant has not waived the objection.—ROACH *v.* LAPPAS, [1926] 1 D. L. R. 391; [1926] 1 W. W. R. 74; 20 Sask. L. R. 246.—**CAN.**

461 i. *Waiver of irregularity by tenant—Whether distress valid as against third party.*]—ROACH *v.* LAPPAS, [1926] 1 D. L. R. 391; [1926] 1 W. W. R. 74; 20 Sask. L. R. 246.—**CAN.**

PART II. SECT. 6, SUB-SECT. 6.—B.

482 ii. ——.]—8 Anne, c. 7, which continues the right to distrain for six months after the expiration of the term if the landlord's title & the possession of the tenant continue, is inapplicable where the term has been put an end to by a forfeiture. The question whether a tenant's term has been ended does not depend upon the fact of possession but upon the continued existence of his right to possession. The taking by a vendor of an order for specific performance of the agreement for sale & for a writ of possession is inconsistent with the continuance of the relationship of landlord & tenant created by the agreement between him & the purchaser; & a distress made after the issue of the writ of possession is wrongfully made.—SWENSON *v.* MCILMOYLE, [1930] 2 W. W. R. 382; 3 D. L. R. 959.—**CAN.**

PART II. SECT. 7.

496 i. *General rule—Land out of which rent issues.*]—The distress was void *ab initio* on the ground that it was not made on the premises in respect to which the rent was claimed.—BURRELL *v.* WATT & HARDINGE, [1928] 3 D. L. R. 505; [1928] 2 W. W. R. 482.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.

g i. *Not limited to one year's rent.*]—The contention that a distress cannot be made for more than one year's rent cannot be upheld.—COMMERCIAL LIFE ASSURANCE CO. OF CANADA *v.* CADENHEAD, [1931] 3 W. W. R. 653.—**CAN.**

PART II. SECT. 9, SUB-SECT. 3.

566 iii. ——.]—Where there was a crop payment lease, & prior to the lease there was a mtge. over the property & the mtgees had exercised their right to take possession:—*Held:* the lessor had no right to distrain.—R. *v.* SULLIVAN, [1924] 2 D. L. R. 429; 42 Can. Crim. Cas. 44.—**CAN.**

PART II. SECT. 9, SUB-SECT. 6.—A.

584 i. *Necessity for tender—Condition precedent to replevin.*]—Where a distress for rent is legally justified the tenant in order to render the continuance of the distress wrongful & to have the right to replevin must tender the proper amount due the landlord before he replevies.—STANILOFF *v.* LARSON, [1936] 2 W. W. R. 177; 6 F. L. J. (Can.) 38.—**CAN.**

PART II. SECT. 9, SUB-SECT. 7.

a i. —— *Chattel mortgage given to landlord.*]—ESAW *v.* ANTONIADES, [1937] 3 W. W. R. 353; 7 F. L. J. (Can.) 148.—**CAN.**

732. *Add. Annotation :—As to* (1) **Follld.** Davies *v.* Property & Reversionary Investments Corpn., [1929] 2 K. B. 222.

737a. —— ——.]—(1) A notice of distress which specifically sets out each article that has been distrained, or which, while not specifically setting them out, is to be interpreted as meaning that all the goods on the premises have been distrained, is good.

(2) A notice which, after setting out certain specified articles, continued " & all other goods upon the premises (unless specially exempt) sufficient to satisfy the amount of this distress " :—*Held :* bad.—DAVIES *v.* PROPERTY & REVERSIONARY INVESTMENTS CORPN., [1929] 2 K. B. 222 ; 98 L. J. K. B. 515 ; 141 L. T. 256 ; 93 J. P. 167 ; 45 T. L. R. 434 ; 73 Sol. Jo. 252 ; 27 L. G. R. 500, D. C.

738. *Add. Annotation :—As to* (2) **Refd.** Davies *v.* Property & Reversionary Investments Corpn., [1929] 2 K. B. 222.

739. *Add. Annotation :—As to* (3) **Refd.** Davies *v.* Property & Reversionary Investments Corpn., [1929] 2 K. B. 222.

743. *Add. Annotation :*—**Apld.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

755. *Add. Annotation :*—**Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

772. *Add. Annotation :—As to* (2) **Refd.** Bushell *v.* Timson, [1934] 2 K. B. 79

796. *Add. Annotation :—Generally,* **Refd.** *Re* Eastcheap Alimentary Products, Ltd., [1936] 3 All E. R. 276.

802a. Relationship of landlord & tenant must exist.]—By an agreement made in 1934 & expressed to be between the S. Ry. Co. & " T.C.B. & M.G. trading as E.A.P., Ltd." thereinafter called " the tenants," certain premises were let to " the tenants," & it was provided (*inter alia*), that " the tenants hereby jointly & severally agree to pay the rent," etc. In the *testimonium* clause " the tenants respectively set their hands, etc." In 1936 judgment was obtained against E.A.P., Ltd., a writ of *fieri facias* issued against certain goods of E.A.P., Ltd., at the above-mentioned premises, & the sheriff's officer took possession of the goods. The sheriff received notice from the S. Ry. Co. that a certain sum was due to them for rent of the premises. The execution creditors sent a cheque for that amount to the sheriff. E.A.P., Ltd., then went into voluntary liquidation & on the same day the S. Ry. Co. applied to T.C.B. & M.G. for the rent due. The liquidators of E.A.P., Ltd., wrote to the sheriff, undertaking to reimburse the sheriff in respect of the rent if he should be found entitled to it, & the sheriff thereupon delivered to the liquidators the goods which had been taken in execution. The execution creditors took out a summons, asking for an order that the liquidators should repay to the execution creditors or to the sheriff on their behalf the sum paid by the execution creditors to the sheriff for the rent due to the S. Ry. Co. The execution creditors based their claim on the Landlord & Tenant Act, 1709 (c. 18), s. 1. The liquidators contended that the relationship of landlord & tenant did not exist between the S. Ry. Co. & E.A.P., Ltd., & that in the absence of such relationship, the Act of 1709 did not apply :—*Held :* (1) the relationship of landlord & tenant must exist between the person claiming the rent & the execution debtor to make the Landlord & Tenant Act, 1709 (c. 18), applicable. Upon a proper construction of the lease of 1934, the tenants were T.C.B. & M.G. & not E.A.P., Ltd. The Act of 1709 did not therefore apply, & the execution creditors were not entitled to the order asked for.—*Re* EASTCHEAP ALIMENTARY PRODUCTS, LTD., [1936] 3 All E. R. 276 ; 155 L. T. 521 ; 80 Sol. Jo. 932.

808. *Add. Annotation :*—**Consd.** *Re* Eastcheap Alimentary Products, Ltd., [1936] 3 All E. R. 276.

851. *Add. Annotation :—As to* (1) **Consd.** *Re* Eastcheap Alimentary Products, Ltd., [1936] 3 All E. R. 276.

897. *Add. Annotation :*—**Refd.** Ellis *v.* Noakes, [1932] 2 Ch. 98, n.

923. *Add. Annotations :*—**Distd.** Blaustein *v.* Maltz, Mitchell & Co., [1937] 2 K. B. 142. **Refd.** Karflex, Ltd. *v.* Poole, [1923] 2 K. B. 251.

931. *Add. Annotation :*—**Refd.** Day *v.* Davies, [1938] 2 K. B. 74.

932. *Add. Annotation :—As to* (1) **Consd.** Queen Anne's Bounty *v.* Thorne, [1934] 1 K. B. 297.

934. *Add. Annotation :*—**Consd.** Day *v.* Davies, [1938] 2 K. B. 74.

PART II. SECT. 11, SUB-SECT. 1.—B. (b).

752 i. *Expulsion from premises—Not permissible.*]—A landlord distraining is not entitled to lock up the whole of the demised premises so as to exclude the tenant therefrom.—BLACK *v.* STEBNICKI, [1930] 4 D. L. R. 715 ; 2 W. W. R. 656 ; 39 Man. L. R. 123 ; *revsg.*, [1930] 2 D. L. R. 675 ; 1 W. W. R. 437.—**CAN.**

PART II. SECT. 12, SUB-SECT. 3.—A.

779 iv. ——.]—MACDONALD *v.* CUMMINGS (1892), 8 Man. L. R. 406.—**CAN.**

PART II. SECT. 12, SUB-SECT. 3.—C. (e).

833 i. *Effect of—Property seized under Absconding Debtors Act.*]—Property seized upon a warrant issued under the above Act is not liable to the landlord for a year's rent, though notice of his claim is given to the sheriff before the delivery of the property to the trustees. —STANTON *v.* JOHNSTON (1858), 4 All. 54.—**CAN.**

PART II. SECT. 13, SUB-SECT. 1.

sv. *Orderly Payment of Debts Act, 1932—Whether applicable to landlord holding under distress.*]—A right of distress is not a security within the Act. —BERMACK *v.* BLANK, [1932] 3 W. W. R. 507 ; [1933] 1 D. L. R. 187 ; 40 Man. L. R. 601.—**CAN.**

PART II. SECT. 13, SUB-SECT. 2.

880 i. *Bar to action for rent—Goods insufficient to satisfy rent.*]—The existence of a distress is, until the sale, an answer to an action for rent, regardless of whether the distress be sufficient or not to satisfy the amount for which the levy is made.—FAWELL *v.* ANDREW, [1917] 2 W. W. R. 400 ; 34 D. L. R. 12 ; 10 Sask. L. R. 162.—**CAN.**

PART II. SECT. 13, SUB-SECT. 7.

k i. ——.]—In the absence of an agreement with all parties interested, a landlord cannot be the purchaser at a sale under a distress for rent.—HART *v.* YARWOOD, [1932] 2 W. W. R. 74 ; 4 D. L. R. 169 ; 45 B. C. R. 331.—**CAN.**

k ii. ——.]—The landlord levying distress cannot, at the auction sale of the chattels distrained upon for rent, buy in so as to acquire a good title, &, consequently, the chattels remain the property of the tenant & liable to seizure by the execution creditor of the tenant.—HONE *v.* THORPE & EDILSON, [1932] N. Z. L. R. 1101.—**N.Z.**

PART II. SECT. 13, SUB-SECT. 10.

sl. *On goods sold under conditional sale by wife to husband—Bailiff's sale a mere pretence.*]—BARLOW *v.* BREEZE (B. C.), [1917] 1 W. W. R. 270.—**CAN.**

PART II. SECT. 13, SUB-SECT. 11.

sn. *Taxes unpaid—Sale valid as between landlord & tenant.*]—MATHESON *v.* CALKIN (1931), 3 M. P. R. 9.—**CAN.**

PART II. SECT. 14.

b i. —— *Costs of Distress Act, R. S. O., 1927—Agreement between finance company & bailiff—No offence by bailiff.*]—R. *v.* ANDERSON (1931), 55 Can. C. C. 190.—**CAN.**

934a. —— —— Agreement between bailiff & tenant.]—D., a bailiff, having distrained on the goods & chattels of pltf. for arrears of rent due in respect of certain premises, pltf. on the same day that he had received notice of the distraint, entered into a written agreement with D. that D., in consideration of his not leaving a man in possession, should have "walking possession," & that pltf. would pay all costs. D. did not go into real possession but visited the premises for a few minutes on each of five days & charged the pltf. 6*s.* on each of the days. On the last day on which D. came, pltf. paid him a total sum which included £1 6*s.* for possession fees. On an application being made to the registrar of the county ct. by pltf. for the return of the sum so paid to D. for possession fees, judgment was given in his favour. The county ct. judge on an appeal by D. having dismissed his appeal, D. now appealed to the Ct. of Appeal. The particular question before the ct. was whether D. was entitled to charge what he did in view of the fact that he only had "walking possession" under the special agreement:—*Held:* D. was only entitled to charge the amount specified in & authorised by the Distress for Rent Rules, 1920, Appendix II., Scale II. (2), & that the fees so authorised could only be charged by a man actually in possession. No charges could be made otherwise than those provided by the Sched. D. never was actually in possession & therefore had no power to charge, the prohibition under the Rules being absolute. The special agreement to pay a charge for walking possession could not be relied on to take the case out of the statutory rules, since, the prohibition under the statutory rules being absolute, it could not be waived by the parties or be the subject of a valid contract. Such an agreement could not be enforced & the appeal must be dismissed.—DAY *v.* DAVIES, [1938] 2 K. B. 74; [1938] 1 All E. R. 686; 158 L. T. 306; 54 T. L. R. 488; 82 Sol. Jo. 256, C. A.

944. *Add. Annotation:*—**Consd.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

951. *Add. Annotation:*—**Apld.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

952. *Add. Annotation:*—**Refd.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

953. *Add. Annotation:*—**Refd.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

955. *Add. Annotation:*—**Refd.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

956. *Add. Annotations:*—*As to* (1) **Consd.** Swaffer *v.* Mulcahy, Hooker & Mulcahy, Smith *v.* Mulcahy, [1934] 1 K. B. 608. *As to* (2) **Apld.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412. *Generally*, **Refd.** Queen Anne's Bounty *v.* Thorne, [1934] 2 K. B. 175.

964. *Add. Annotation:*—**Refd.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

1065. *Add. Annotation:*—**Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

1069. *Add. Annotation:*—**Apld.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

1069a. —— Distrainor allowing use of goods distrained.]—Permission to use vehicles which have been seized under a distress does not justify a pound-breach.—BEVIR *v.* BRITISH WAGON CO., LTD. (1935), 80 L. Jo. 162.

1069b. Who may be liable—Pound breach by tenant—Subsequent removal of goods by contractor.]—Goods of a tenant which are distrained on for rent & are impounded on the tenant's premises are impounded not merely against the tenant but against any stranger, because they are in the custody of the law. If, however, the tenant breaks the pound by the removal of the goods on to a landing outside the pound & afterwards, on the instructions of the tenant, they are taken away by removal contractors acting in the ordinary course of their business, such contractors are not guilty of pound-breach.—LAVELL & CO., LTD. *v.* O'LEARY, [1933] 2 K. B. 200; 102 L. J. K. B. 449; 149 L. T. 227; 49 T. L. R. 388, C. A.

1069c. —— Stranger.]—LAVELL & CO. *v.* O'LEARY (A. & E.), No. 1069b, *ante*.

PART II. SECT. 17, SUB-SECT. 1.—C.

t 1. —— *Removal must be during tenancy.*]—*Held:* the rights of the landlord, under Distress for Rent Act, 1737 (c. 19), s. 1, to follow goods removed by the tenant, applies only to goods removed during the tenancy.—*Re* MCKAY & ADAMS, *Ex p.* VEST (1929), 47 N. S. W. W. N. 88.—**AUS.**

a 1. ——.]—To entitle a landlord to follow & distrain & sell goods which his tenant has removed from the demised premises it is necessary that the rent should be actually due at the time of the tenant's removal of the goods. If no rent is due at the date of removal, & the landlord follows & distrains & sells the goods for rent subsequently falling due, the distress & sale are illegal & the landlord is liable in damages.—ZUROUVINSKI *v.* DUKE, [1924] 4 D. L. R. 326; 3 W. W. R. 49.—**CAN.**

e 1. —— *Necessity for.*]—A landlord on becoming aware that his tenant who was in arrear with his rent was removing the *invecta et illata*, prevented the tenant from doing so by force without any application to the ct. for an attachment or interdict:—*Held:* the landlord's hypothec was inoperative until an order of attachment was obtained from the ct., & the landlord was not entitled to prevent forcibly the removal of the *invecta et illata*.—REDDY *v.* JOHNSON (1923), 44 N. L. R. 190.—**S. AF.**

PART II. SECT. 17, SUB-SECT. 1.—F.

1000 iv. ——.]—A lease to C. provided that in case the lessee attempted to abandon the premises or to remove his goods & chattels so that there would not be sufficient distress for three months' rent, the rent for the current & ensuing three months should immediately become due. The premises were in fact occupied by a co., of which C. was a shareholder & official, though no assignment of the lease was made. The co. proceeded to abandon the premises & to remove its goods, & the lessor distrained:—*Held:* this clause did not justify a seizure of the co.'s goods, upon which there was no right to distrain for rent not in arrear.—CRYSTAL, LTD. *v.* WILLARD KITCHEN, LTD., [1924] 2 D. L. R. 1051; 2 W. W. R. 344.—**CAN.**

PART II. SECT. 18, SUB-SECT. 2.

1064 i. *What constitutes—Goods not in actual possession of distrainor.*]—Where goods distrained for rent have been impounded on the premises, it is not essential that the landlord or any one on his behalf should remain on the premises in possession of the goods; & where such goods are afterwards removed by a person claiming them as the true owner thereof under a bill of sale, the landlord, in the absence of proof of abandonment of such distress, may maintain an action for pound breach for treble the value of the goods so removed.—CLEAVE *v.* COMMERCIAL LOAN & FINANCE CO., LTD., [1930] N. Z. L. R. 925.—**N.Z.**

g 1. —— *Distress on goods subject of hire-purchase agreement—Repossession by owner without knowledge of distress.*]—FORREST *v.* WASHING, [1929] W. A. L. R. 49.—**AUS.**

PART II. SECT. 18, SUB-SECT. 3.

1071 i. *Reception — Upon fresh pursuit—Loss of right.*]—In the case of pound breach or rescue of goods distrained, the right of reception on fresh pursuit, which is explained to mean without delay, is not defeated by mere lapse of time, but by some want of diligence on the part of the party seeking to exercise the right.—MAY *v.* MORRIS (1929), 30 S. R. N. S. W. 355; 47 N. S. W. W. N. 152.—**AUS.**

1081. *Add. Annotation :*—**Refd.** Lavell & Co. *v.* O'Leary, [1933] 2 K. B. 200.

1090. *Add. Annotation :*—**Refd.** Owen & Smith (trading as Nuagin Car Service) *v.* Reo Motors (Britain), Ltd. (1934), 151 L. T. 274.

1131. In *Citation*, for " (1847), 1 Car. & Kir. 626 " read " (1848), 2 Car. & Kir. 626."

1253. *Add. Annotation :*—**Consd.** Queen Anne's Bounty *v.* Thorne, [1934] 1 K. B. 297.

1266a. —— **Evidence—Terms of tenancy.**]—If a tenant suing his landlord for a wrongful distress does not put in the agreement of tenancy, the jury, as against him, may infer its terms from his own admission or his own evidence in the case.—COWNE *v.* CORDERY (1862), 10 W. R. 347.

1271. *Add. Annotation :*—**Refd.** Elliott *v.* Boynton, [1924] 1 Ch. 236.

1283a. Substantial damages—Although no actual damage.]—INTEROVEN STOVE CO., LTD. *v.* HIBBARD & PAINTER & SHEPHERD, No. 71a, *ante*.

1328. *Add. Annotation :*—**Refd.** Holmes *v.* Watt, [1935] 2 K. B. 300.

1337. *Add. Annotation :*—**Refd.** Interoven Stove Co. *v.* Hibbard & Painter & Shepherd, [1936] 1 All E. R. 263.

PART II. SECT. 19, SUB-SECT. 3.

m i. —— ——.]—A distress is excessive when the value of the goods seized was unreasonably greater than the amount of rent due, &, in such a case, nominal damages will be presumed.—ROWAN *v.* COSTELLO, [1928] 3 D. L. R. 744; [1928] 2 W. W. R. 343. —**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—C. (a).

1127 i. *Taking of goods privileged from distress—Failure to claim exemption.*]—A tenant whose goods had been distrained & advertised for sale was written to by the bailiffs, the letter drawing his attention to his failure to select his exemptions, & notifying him that if they were not claimed before the time of sale the sale would be proceeded with. No reply was made or other notice thereof taken by the tenant; instead, he brought a replevin action, alleging that the goods were unlawfully distrained. The sale had not taken place :—*Held :* the distress was lawful & the action for replevin premature & unnecessary.—LONG *v.* SIMMONS, [1935] 1 W. W. R. 577; 2 D. L. R. 410; 43 Man. L. R. 86.—**CAN.**

t i. ——.] — DICKS *v.* BARROUR (P. E. I.), [1927] 4 D. L. R. 478.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—C. (d).

1147 i. *General rule.*]—Pltfs., the sons & daughters of a farmer whose live stock had been distrained for the amount overdue on a mtge. which contained an attornment clause, brought a replevin action in respect of certain of the animals. Pltfs. lived on the farm with their father & mother, the mtgors. ROY, C.C.J., found that pltfs. did not own the animals, & dismissed the action. On appeal :—*Held :* the appeal should be dismissed. —HARTMAN *v.* GALLAGHER, [1938] 2 W. W. R. 529.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—E. (b).

g i. ——.]—*Held :* a replevin bond with one surety was sufficient.—TAYLOR *v.* BURPEE (1861), 10 N. B. R. (5 All.) 191.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—E. (c) i.

s i. —— ——.]—P. brought a replevin action, & the goods were delivered to him. The judgment in his favour was reversed, but return of the goods or damages for their detention was neither demanded nor adjudged: —*Held :* as the obligees could in the replevin action have claimed & obtained an order for return of the goods or for damages, they could not claim it in an action on the replevin bond.—PETRIE *v.* RIDEOUT, [1925] 1 D. L. R. 1078; [1925] S. C. R. 347.—**CAN.**

s ii. —— ——.]—TRAVIS *v.* SMITH, [1930] 3 D. L. R. 231; 1 M. P. R. 57. —**CAN.**

s i. —— *Goods liable to seizure.*]—MARTIN *v.* PASSARINI, [1928] 1 D. L. R. 636; 59 N. S. R. 460.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—F. (a).

p (p. 380) **i.** —— *Breach of covenant forfeiting rent claimed—Admissible.*]—In an action of replevin by a sub-lessee against the lessor, pltf. is entitled to prove, on cross-examination of the lessor, that there had been a breach of a covenant in the lease which forfeited the rent claimed, the sub-lessee being entitled to the benefit of such covenant, though there has been no assignment of the lease in writing.—RIGNUETTE *v.* HEBERT (1905), 37 N. B. R. 68.—**CAN.**

st. *Stay of proceedings—When ordered.*]—DEWHURST *v.* MCCOPPIN (1870), 17 Gr. 572.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—F. (d).

l i. —— *Warehouseman—Joinder of parties.*]—In a replevin action against a warehouseman :—*Held :* a co. in whose name the warehouse receipts were taken was entitled to be added as a party deft.—NORTHERN FISH CO. *v.* WINNIPEG COLD STORAGE, LTD., [1932] 2 W. W. R. 231; 3 D. L. R. 427; 40 Man. L. R. 340.—**CAN.**

ll. —— *Constables' Protection Act, R. S. N. S.*, 1923.]—In an action of replevin for wrongful distress, Constables' Protection Act, R. S. N. S., 1923, does not apply.—HILL *v.* WARNER, [1933] 3 D. L. R. 771; 7 M. P. R. 37; 60 C. C. C. 360.—**CAN.**

sv. *By what persons—" Owner " of goods.*]—Pltf. offered for sale at public auction certain cattle, for which deft. bid & was declared the purchaser. The terms of the sale were that for any cattle sold the purchaser was either to pay cash or deliver an endorsed promissory note to be approved of by pltf. Deft. having a money claim against pltf. & desiring to make a settlement with him, openly took the stock to his farm without paying cash or giving an approved note :—*Held :* pltf. was not, when he commenced this action for replevin, the " owner " of the cattle & there was not a wrongful taking within Replevin Act, R. S. O., 1927, s. 2.—MCKEE *v.* FISHER, [1930] 2 D. L. R. 14; 64 O. L. R. 634.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—F. (e).

s i. —— *Effect of.*]—ALEXANDER *v.* COWIE (1880), 19 N. B. R. (3 P. & B.) 599.—**CAN.**

ss. *Statement of claim—Necessity for.*] —In a replevin action in the county ct., there must be a statement of claim whether damages are claimed or not.—BROWN *v.* MORGAN NICHOLSON, LTD., [1936] 1 W. W. R. 267; 1 D. L. R. 522.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—F. (f).

sd. *Plaintiff ordered to return goods.*] —Pltf. obtained possession of goods by virtue of an order for replevin & subsequently discontinued his action :—*Held :* the ct. had power to order the return of the goods.—PASSARINI *v.* MARTIN, [1925] 2 D. L. R. 914; 58 N. S. R. 121.—**CAN.**

PART II. SECT. 19, SUB-SECT. 5.—A. (a).

1259 i. *Against landlord—Pleading.*] —SCOTT *v.* MCCABE (1871), 31 U. C. R. 220.—**CAN.**

so. *Whether proof of value of goods necessary—Value admitted by defendant accepted.*]—MARTIN *v.* PASSARINI, [1928] 1 D. L. R. 636; 59 N. S. R. 460.—**CAN.**

sp. *Against bailiff & auctioneer—Right of defendants to protection of Magistrates Courts Act*, 1908.]—Where a bailiff acting in good faith seizes goods belonging to A., under a distress warrant directed against B., & where an auctioneer at the request of the bailiff & in good faith sells such goods, both the bailiff & the auctioneer are entitled to the protection afforded by above Act.—KEWENE *v.* BUCHLAND & SONS, [1928] N. Z. L. R. 818.—**N.Z.**

PART II. SECT. 19, SUB-SECT. 5.—A. (b).

1275 i. *Illegal entry—Entry at night —Prevention of removal of goods—Actual damage.*]—BALDRY *v.* DIXON, [1931] 2 D. L. R. 437; 1 W. W. R. 21; 39 Man. L. R. 273.—**CAN.**

d i. ——— —.]—Where a landlord follows & distrains & sells goods for rent subsequently falling due, & the distress & sale are illegal :—*Held :* the *quantum* of damages is the full value of the goods lost to the tenant after allowing for depreciation, but exemplary damages cannot be awarded where the landlord considered that he was acting within his rights & did not act in a wanton or insolent manner in making the seizure.—ZUROUVINSKI *v.* DUKE, [1924] 4 D. L. R. 326; 3 W. W. R. 49.—**CAN.**

PART II. SECT. 19, SUB-SECT. 5.—C. (a).

s i. —— ——.]—While it seems that an action for distraining for more rent than is due cannot be maintained without a tender of the sum that is actually due, this principle does not apply to an action for an excessive distress.—ROWAN *v.* COSTELLO, [1928] 3 D. L. R. 744; [1928] 2 W. W. R. 343. —**CAN.**

Part III.—Distress for Rates.

1376. After this case add :—

——.]—*See, now,* Rating & Valuation Act 1925 (c. 90), s. 62.

1384. *Add. Annotation :*—**Consd.** Swaffer *v.* Mulcahy, Hooker & Mulcahy, Smith *v.* Mulcahy, [1934] 1 K. B. 608.

1396. *Add. Annotation :*—**Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1409. *Add. Citation :*—2 B. R. A. 949.

1412. *Add. Citation :*—1 B. R. A. 450.

Add. Annotation :—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1413. *Add. Annotation :*—**Folld.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1413a. —— ——.]—Where a rate, duly made & confirmed, has been levied in respect of a vacant building, occupied by a caretaker only, not being held in readiness for use, & not being fitted for any use, & a distress warrant has been issued by justices in enforcement of payment of such rate, an action of replevin will not lie ; the jurisdiction of the justices depends simply on occupation within the parish, & not on beneficial occupation.—LONDON COUNTY COUNCIL *v.* HACKNEY BOROUGH COUNCIL, [1928] 2 K. B. 588 ; 97 L. J. K. B. 694 ; 139 L. T. 407 ; 92 J. P. 138 ; 44 T. L. R. 592 ; 26 L. G. R. 366 ; (1926-31), 1 B. R. A. 249.

Annotation :—**Refd.** Townley Mill Co. (1919), Ltd. *v.* Oldham Assessment Committee, [1936] 1 K. B. 585.

1414. *Add. Citation :*—2 B. R. A. 919.

Add. Annotations :—**Refd.** Kingston Mill, Stockport *v.* Owen (1928), 92 J. P. Jo. 75[illegible] ; L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1419a. —— ——.]—The poor rate payable in respect of a dwelling-house of which pltf. was weekly tenant was £5 10*s.* a year. A demand note for a half-year's rate, namely £2 15*s.*, was served on pltf., but he failed to pay the money & a summons was issued against him. Pltf. did not appear before the justices, who refused to hear his landlord's daughter on his behalf. Evidence having been given on the part of the overseers, the justices issued a distress warrant against pltf.'s goods, although, before they signed the warrant, the landlord's daughter had addressed them again & intimated that pltf. was a weekly tenant, a fact of which one of the justices was aware :—*Held :* although, if the full facts had been proved, it would have been apparent to the justices that they had no jurisdiction to issue the warrant, they ought to consider only facts known to them in their judicial capacity from materials properly before them, & they had acted correctly in point of law on the evidence which had been so proved.—PALMER *v.* CRONE, [1927] 1 K. B. 804 ; 96 L. J. K. B. 604 ; 137 L. T. 88 ; 91 J. P. 67 ; 43 T. L. R. 265 ; 25 L. G. R. 161.

1420. *Add. Annotation :*—**Refd.** Gateshead Assessment Committee *v.* Redheugh Colliery, [1925] A. C. 309.

1422. *Add. Annotations :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804 ; Lowery *v.* Kingston-upon-Hull Corpn., [1930] 1 K. B. 368.

1423. *Add. Annotation :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

1424. *Add. Annotation :*—**Refd.** Pigg *v.* Weardale Union Tow Law Overseers (1923), 22 L. G. R. 17.

1431. *Add. Annotation :*—*As to* (2) **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

1438. *Add. Annotation :*—*As to* (1) **Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1446. *Add. Annotation :*—*As to* (2) **Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

1459. *Add. Annotation :*—**Refd.** *Re* Airedale Garage Co., Anglo-South American Bank, Ltd. *v.* Airedale Garage Co. (1932), 101 L. J. Ch. 289.

1462. *Add. Annotation :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

PART III. SECT. 1, SUB-SECT. 1.

pi. —— —— ——.]—Where a tenant under a lease has covenanted to pay all municipal taxes, the landlord, against whom the taxes are assessed, is a person liable therefor with the tenant under Mercantile Law Amendment Act, 1856, s. 5, & payment by the landlord to the creditor, the city, is a prerequisite to the landlord becoming entitled to the securities or to use the remedies of the city. But the city's right of distress is not a security under the Act, nor is it a remedy which, upon payment, the landlord can use.—*Re* HINGSTON-SMITH, *Ex p.* MACPHERSON ESTATE, [1924] 3 D. L. R. 844 ; 2 W. W. R. 1081 ; 34 Man. L. R. 312 ; 5 C. B. R. 41.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

sg. *Goods held as purchaser under conditional sale agreement.*]—Under the Medicine Hat Charter goods in the possession of the person taxed may be seized & sold for such taxes as are made a lien on land, even though his interest therein is only that of a vendee under a conditional sale agreement : where, however, the taxes with respect to which the distress is made are not a lien on land, it is only the interest of the taxpayer in goods held by him under a conditional sale agreement that may be sold.—CANADIAN HOFFMAN MACHINERY CO., LTD. *v.* MEDICINE HAT CITY, [1931] 2 W. W. R. 121 ; 3 D. L. R. 196.—**CAN.**

sk. *Animals subject of chattel mortgage—In possession of tenant.*]—Deft. municipality seized & sold certain goods & chattels, including animals, for arrears of taxes on several quarter sections of land, the owner of which had given to pltf a chattel mtge. covering the seized property. At the time of the seizure the animals were on one of such quarter sections & in the possession of a tenant thereof :—*Held :* the mtge. passed the property included therein to the pltf. ; the definition of " occupant " in sect. 2 (18) of Rural Municipality Act, 1935, includes a tenant ; & since the animals seized were the property of a person other than the defaulter or occupant or any relative of either they came within the third proviso to sect. 352 (*c*) of said Act & could not, therefore, be the subject of a distress & sale for taxes due by the defaulter.—ROYAL BANK OF CANADA *v.* DUFFERIN RURAL MUNICIPALITY, [1936] 3 W. W. R. 684.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—A.

1427 i. *By whom made—Collector.*]—The right to serve notice & the right to receive payment of municipal taxes rest in the collector of taxes & not in the city, & the service of the notice is not a remedy of the city which, upon payment, the landlord is entitled to use against his tenant.—*Re* HINGSTON-SMITH, *Ex p.* MACPHERSON ESTATE, [1924] 3 D. L. R. 844 ; 2 W. W. R. 1081 ; 34 Man. L. R. 312 ; 5 C. B. R. 41.—**CAN.**

1427 ii. —— *Under Village Act, R. S. S.,* 1920 (c. 88).]—The duties of the secretary-treasurer of a village under this Act do not include that of levying distress. Where no person is appointed by the Act for such purpose, the village must appoint some person when necessary, & where distress has been levied by a person not authorised, the village may subsequently ratify & adopt his acts.—MANITOBA OIL PRODUCTS, LTD. *v.* LANGENBURG VILLAGE, [1923] 4 D. L. R. 260 ; 3 W. W. R. 308.—**CAN.**

Part VIII.—Distress for other Purposes.

1870. *Add. Citations:—sub nom.* R. v. FORDHAM, L. R. 8 Q. B. 501; 42 L. J. M. C. 153; 22 W. R. 85.

1 W. W. R. 132; 56 D. L. R. 735; 14 Sask. L. R. 25.—**CAN.**

k ii. —— ——.]—Where there is nothing indicating the presence of a brand on an impounded animal the poundkeeper is not obliged to feel all over its body in search of a possible brand, in order properly to describe the animal in the prescribed advertisement.

The sale of an impounded horse by a poundkeeper:—*Held:* defective because notices of the impounding & of the sale had not been properly posted, & both the pound-keeper & the municipality which employed him were liable in conversion for the value of the horse at the time of sale.—BROWN v. RURAL MUNICIPALITY OF ST. FRANCOIS XAVIER & BRELAND (Man.), [1925] 1 W. W. R. 42.—**CAN.**

l i. —— —— ——.]—Where the posted & published notices of the impounding of an animal under Stray Animals Act, R. S. S., 1920, c. 124, the owner of the animal was unknown, did not describe the brand correctly & the description of the animal was insufficient to satisfy the requirements of sect. 26 (1) of the Act, it was held that the sale was invalid, & that the municipality & the poundkeeper were liable for the value of the animal, which was placed at the amount for which it was sold at said sale.—MILLER AND MUTCH v. LOREBURN AND KELLY RURAL MUNICIPALITY, [1928] 4 D. L. R. 251; [1928] 2 W. W. R. 66; 22 Sask. L. R. 486.—**CAN.**

sd. *Payment of residue to owner—Domestic Animals Act*, 1921 (c. 50)—*Municipal District Act*, 1911 (c. 3).]—The effect of the amendment made by ss. 27, 28 of the former Act extends the period of twelve months provided by s. 213 of the latter Act, for application for payment to the owner of the residue of the proceeds of sale of an impounded animal, to twenty-four months from the date of sale.—GOLLAN v. STERLING, [1924] 3 W. W. R. 209.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 2.—A.

1838 li. —— —— *Payment by uncertified cheque.*]—The delivery of an uncertified cheque to the poundkeeper is not a "deposit of the amount claimed for damages" within Stray Animals Act, R. S. S., 1920, c. 124, s. 34 (1), even though the poundkeeper treats the cheque as cash. What the Act contemplates is the payment of money. The deposit of the money is a condition precedent to the right of the owner of the impounded animal, which is released under the sect., to institute proceedings against the person impounding it.—WILEY v. BOOKER, [1928] 2 W. W. R. 329.—**CAN.**

PART VII. SECT. 9.

sf. *Conviction — Under Stray Animals Act*, 1920 (c. 124).]—Where the evidence showed that accused had been wrongfully convicted of an offence of unlawfully rescuing cattle under a provincial Act, in that he had merely made an attempt:—*Held:* (1) the offence, not being an indictable offence, could not be remitted to the magistrate to convict of an attempt under Criminal Code, s. 949; (2) s. 49 (d) of the above Act did not apply to the portion of the province within which the offence was charged to have been committed.—R. v. GURSKI (1922), 69 D. L. R. 1913 38 Can. Crim. Cas. 139; [1922] ; W. W. R. 540.—**CAN.**

PART VII. SECT. 12.

g i. —— —— *Measure of damages.*]—Damages were fixed on the basis of prices obtained at auction sales, for while it may be that prices paid at auction sales are not as large as are usually obtained at private sales, still the prices obtained at auction sales very often have a great deal to do with fixing the price of an animal in he community.—SINWICK v. ELFROS, [1924] 2 W. W. R. 755.—**CAN.**

g ii. —— —— *Allowance for poundkeeper's fees & expenses.*]—In an action for damages for the conversion of animals illegally sold at a pound-sale, defts. have no right to an allowance for the pound-keeper's fees or expenses.—LEACH v. MANTARIO RURAL MUNICIPALITY No. 262 & MOIR, [1921] 1 W. W. R. 132; 56 D. L. R. 735; 14 Sask. L. R. 25.—**CAN.**

g iii. —— *Complaint under Stray Animals Act, R.S.S.*, 1930, s. 41.]—An owner of impounded animals who gives a notice under sect. 41 of Stray Animals Act, R.S.S., 1930, that he intends to complain against the person impounding the animals has two courses open to him: (*a*) he may make a deposit & get immediate possession of the animals; or (*b*) he may not make any deposit & let the animals remain with the poundkeeper until the adjudication &, if it is adjudged that the animals are illegally impounded, the justice shall order that they be returned to the owner. A cheque, if accepted by the poundkeeper as a deposit, is a good deposit under the Act.—CADRAIN v. NASH, [1935] 1 W. W. R. 622; *affd.*, [1935] 2 W. W. R. 383.—**CAN.**

k i. —— —— ——.]—Pltf. impounded with a poundkeeper cattle which had come on to his land through a wire fence & claimed damages. The poundkeeper, without obtaining payment of the damages or security therefor, released the cattle to the owner on receipt of the latter's cheque, payment of which was stopped. On appeal by the owner the council of the municipality decided that the fence was not a lawful fence & that pltf. was not entitled to damages. Pltf. sued the poundkeeper & the municipality for the damages:—*Held:* pltf. was entitled as against both defts. to the damages claimed.—JOHNSON v. MUNICIPAL DISTRICT OF BEAVER DAM, [1925] 4 D. L. R. 299; [1925] 3 W. W. R. 369.—**CAN.**

PART VIII. SECT. 5.

sg. *Effect of Distress Act, R. S. S.*, 1930, s. 8.]—The right conferred by sect. 8 of Distress Act, R. S. S., 1930 (which confers upon mtgees. & vendors of land a certain extraordinary right against third parties with whom they have not entered into any contract, but who occupy, by lease from the mtgor. or vendor, or otherwise, the land which constitutes their security) is the right to receive from the occupant of the land its rent or its rentable value, & may be exercised against the occupant whether or not the mtgor. or vendee has attorned tenant to the mtgee. or vendor. It has nothing to do with the rights & remedies of parties who are by contract in the position, in respect of each other, of landlord & tenant.—BAILEY v. MILLER & BROATCH, [1932] 3 W. W. R. 260.—**CAN.**

sh. *Distress for relief advances—Application of Debt Adjustment Act.*]—The distraining by a municipality of the goods of a "resident" for the purpose of satisfying claims for relief advances or hospital aid is a proceeding to which Debt Adjustment Act, 1933, applies.—BANQUE CANADIENNE NATIONALE v. WOOD RIVER RURAL MUNICIPALITY, [1935] 3 W. W. R. 9.—**CAN.**

sq. *Distress by mortgagee—Validity.*]—Seizure by distress for arrears of interest under a short form mtge. containing no attornment clause is illegal if made at night.—SHAW v. GOODBERRY, [1936] 4 D. L. R. 198: O. R. 497.—**CAN.**

EASEMENTS AND PROFITS À PRENDRE.

Part I.—Nature and Characteristics of Easements.

4. *Add. Annotation :—As to* (1) **Refd.** Sack *v.* Jones, [1925] Ch. 235.

8. *Add. Annotation :—As to* (1) **Refd.** I. R. Comrs. *v.* New Sharlston Collieries Co., [1937] 1 K. B. 583.

20. *Add. Annotation :—As to* (1) **Consd.** Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224.

25. For "**Distinguished from running powers over railway.**]" read "——.]"

27. *Add. Annotations :*—**Refd.** Simpson *v.* Weber (1925), 133 L. T. 46; Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138; Keewatin Power Co., Ltd. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

35. *Add. Annotation :—As to* (1) **Refd.** Callard *v.* Becney, [1930] 1 K. B. 353.

48. *Add. Annotations :*—**Refd.** Back *v* Daniels (1924), 69 Sol. Jo. 160; Hackney B. C. *v.* Metropolitan Asylums Board (1924), 31 L. T. 136; Bertram *v.* Wightman, [1936] 2 All E. R. 487.

56. *Add. Annotations :*—**Refd.** Secretary of State for India in Council *v.* Fourcar & Co. (1934), 50 T. L. R. 241; Symes & Jaywick Associated Properties, Ltd. *v.* Essex Rivers Catchment Board, [1937] 1 K. B. 548.

60. For words at commencement of para. (2) "There is no distinction" read "There is a distinction."

Add. Annotations :—As to (2) **Consd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319. **Refd.** Aldridge *v.* Wright, [1929] 1 K. B. 381.

68. *Add. Annotations :—As to* (1) **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117; Greg *v.* Planque, [1936] 1 K. B. 669.

69. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

73. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

Part III.—Creation of Easements.

89. *Add. Annotation :*—**Refd.** Lord Strathcona S.S. Co. *v.* Dominion Coal Co. [1926] A. C. 108.

97. *Add. Annotations :*—**Expld. & Distd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Consd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557. **Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

98. *Add. Annotations :*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

100. *Add. Annotation :*—**Refd.** *Re* Newhill Compulsory Purchase Order, 1937, Payne's Application, [1938] 2 All E. R. 163.

103. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* New Sharlston Collieries Co., [1937] 1 K. B. 583.

121. *Add. Annotation :*—**Consd.** Keewatin Power Co., Ltd. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

124. *Annotations :*—For "**Mentd.** Poulton *v.* Moore (1913), 83 L. J. K. B. 875," read "**Consd.** Poulton *v.* Moore (1913), 83 L. J. K. B. 875."

139. *Add. Annotations :—As to* (1) **Distd.** Aldridge *v.* Wright, [1929] 2 K. B. 117. *Generally*, **Refd.** Liddiard *v.* Waldron, [1934] 1 K. B. 435.

145. *Add. Annotation :*—**Consd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

147a. According to intention of parties — Common approach—Not effective until approach cleared.]—SWAN *v.* SINCLAIR, No. 515, *post.*

153. To first para. of headnote add :—

Qu.: whether such intention can be collected from anything *dehors* the deed, as, from a plan of the premises marked on particulars of sale referred to in the deed.

PART I. SECT. 2, SUB-SECT. 2.

20 v. ——.]—GAPES *v.* FISH, [1927] V. L. R. 88; 48 A. L. T. 161; [1927] Argus L. R. 111.—**AUS.**

PART II.

76 i. *Distinguished from profits à prendre.*]—BRATT *v.* TOWNSHIP OF MALDEN, [1927] 1 D. L. R. 1116; 60 O. L. R. 102.—**CAN.**

80 i. *Distinguished from licence.*]—WHIPP *v.* MACKEY, [1927] I. R. 372.—**IR.**

PART III. SECT. 1, SUB-SECT. 1.

sa. *Public right.*]—Though the public cannot acquire ownership of a land, it can acquire over it an easement by grant.—USSAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

PART III. SECT. 1, SUB-SECT. 2.—A.

98 i. *Must not be ultra vires.*]—A corpn. having agreed to grant an easement to lay pipes over certain land :—*Held :* the granting of such easement being quite consistent with the purposes for which the corpn. was authorised to hold land, it was competent for the corpn. to make such grant.—BANKS PENINSULA ELECTRIC POWER BOARD *v.* AKAROA BOROUGH COUNCIL, [1923] N. Z. L. R. 880.—**N.Z.**

98 ii. —— *Quebec Public Utility Commission.*]—*Held :* the above commission had no power to create a servitude, or any other right, in property of a "public utility."—MONTREAL TRAMWAYS CO. *v.* MONTRÉAL-NORD VILLE, [1924] A. C. 994.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.

107 i. *Easement cannot be reserved or excepted.*]—An easement cannot strictly be made the subject either of exception or reservation in a deed of conveyance of land.—OTTAWA ELECTRIC RY. CO. *v.* FEDERAL DISTRICT COMMISSION, [1931] 1 D. L. R. 437; 66 O. L. R. 154.—**CAN.**

PART III. SECT. 1, SUB-SECT. 5.

sb. *Devise of adjoining plots to two devisees—Condition for maintenance of right of way.*]—VANSICKLE *v.* KELLY (1877), 42 U. C. R. 274.—**CAN.**

PART III. SECT. 1, SUB-SECT. 6.—A.

n. For "n" substitute "**147a i.**"
o. For "o" substitute "**147a ii.**"
p. For "p" substitute "**147a iii.**"

Semble: not.—BARLOW *v.* RHODES (1833), 1 Cr. & M. 439.

156. *Add. Annotation:*—**Apld.** Borman *v.* Griffith, [1930] 1 Ch. 493.

161. *Add. Annotation:*—**Consd.** Greg *v.* Planque, [1936] 1 K. B. 669.

166. *Add. Annotations:*—*As to* (1) **Expld.** Aldridge *v.* Wright, [1929] 2 K. B. 117. *As to* (2) **Dbtd.** Liddiard *v.* Waldron, [1934] 1 K. B. 435.

173. *Add. Annotations:*—**Refd.** Aldridge *v.* Wright (1929), 98 L. J. K. B. 582; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

178. *Add. Annotation:*—*As to* (2) **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

C. (Vol. XIX., p. 35).

Conveyancing Act, 1881 (c. 41), s. 6, is now replaced by Law of Property Act, 1925 (c. 20), s. 62.

181a. —— —— —— **Whether preventing acquisition by prescription.**—Land was conveyed to pltf.'s predecessor in title by a conveyance dated Dec. 30, 1907, at which time no house had been erected on the land conveyed. The conveyance was expressed not to include "any easements or implied easements of light & air over any other land now or formerly part of the A. estate." A house was subsequently erected on the land conveyed, & this was conveyed to pltf. by a deed dated Jan. 17, 1934, together with such rights, easements & appurtenances & subject to such reservations as are set out" in the conveyance of Dec. 30, 1907. Defts., who had acquired land which was part of the A. estate, erected a wall near a window of pltf.'s house, which substantially interfered with the light coming thereto. Pltf. claimed damages on the ground that she had, under Prescription Act, 1832 (c. 71), s. 3, acquired an easement of light, with which defts. had interfered:—*Held:* pltf. was entitled to damages, as under the above sect. she had acquired a prescriptive right to the light in question, which the terms of the two above-mentioned conveyances did not operate to exclude.—HAPGOOD *v.* MARTIN & SON, LTD. (1934), 152 L. T. 72; 51 T. L. R. 82.

181b. —— —— **Right of way struck out of draft conveyance.**]—CLARK *v.* BARNES, No. 196a, *post.*

182. *Add. Annotation:*—**Refd.** Clark *v.* Barnes, [1929] 2 Ch. 368.

183. *Add. Annotations:*—**Consd.** Gregg *v.* Richards (1926), 95 L. J. Ch. 209. **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

185. *Add. Annotation:*—**Consd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

186a. —— ——.]—In the conveyance to pltf. of a house & land there was an express grant to her of a way described as coloured green on the plan indorsed on the deed. The part coloured green was four feet wide & formed part of a wider roadway running along the back of the adjoining houses to the back premises of pltf.'s house. At the time of the conveyance a right of access for vehicles to pltf.'s back premises over the whole roadway was enjoyed with the house conveyed. The habendum in the conveyance was "to hold same with the benefit of all such easements & privileges in the nature of easements as are now subsisting in respect of the property hereby conveyed." Pltf. claimed that the right to use the whole width of the roadway for the purpose of access of vehicles to her back premises passed to her under her conveyance:—*Held:* that the right claimed passed to pltf. by virtue of sect. 6 (2) of the above Act, there being no unequivocal "contrary intention" expressed in the deed within sect. 6 (4), sufficient to negative the passing of such right.—GREGG *v.* RICHARDS, [1926] Ch. 521; 95 L. J. Ch. 209; 135 L. T. 75; 70 Sol. Jo. 443, C. A.

Annotation:—**Apld.** Hapgood *v.* Martin & Son, Ltd. (1934), 152 L. T. 72.

189. *Add. Annotations:*—*As to* (1) **Consd.** Beauchamp *v.* Frome Rural District Council, [1937] 4 All E. R. 348. **Refd.** Barlett *v.* Tottenham, [1932] 1 Ch. 114.

190. *Add. Annotation:*—*As to* (1) **Refd.** Gregg *v.* Richards (1926), 95 L. J. Ch. 209.

195. *Add. Annotations:*—*As to* (1) **Distd.** Aldridge *v.* Wright, [1929] 2 K. B. 117. *As to* (3) **Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

196a. —— **Right reputed to be enjoyed with land.**]—Pltf. at the date of the action was the owner in fee simple of certain plots of land in the village of C. in the county of Sussex, numbered on the Ordnance Survey Map 634, a portion of 635 & 636; also of a strip of land coloured brown on the plan on the conveyance to pltf., leading from the plot 634 & part of 635 to the high road running from C. to a common. Deft. became in Oct. 1926, the owner of other plots, numbered 652, 653, 654 & 618 in the same parish. Pltf. had previously purchased the strip coloured brown in 1925, the parcels being as follows: "All that strip of land leading from W. Fields"—which were the plots 652 & 653—"to the high road running from the village of C. to . . . C. common in the parish of P. . . ."; the *habendum* being to pltf. in fee simple "to the use that the vendor his heirs & successors in title owner or owners . . . of the hereditaments coloured red"—which were the plots 634, 653 & 652—". . . shall have full right & liberty . . . to pass & repass . . . over & along the piece of land coloured brown on the said plan . . ." Pltf. subsequently, in June, 1925, purchased at an auction sale the plots referred to above, 634, part of 635, 652 & 653; deft. also bought the plots numbers 618 & 654. The plots purchased by pltf., being Lot 24 in the sale, were described as including a right of way for all purposes over the brown strip. By that purchase pltf., having become the legal owner of the dominant & servient tenements, the right of way became merged. Pltf. subsequently contracted to sell plots 653 & 652 to deft. In the draft conveyance submitted to pltf.'s solrs. by deft.'s solrs., a right of way was inserted in favour of the purchaser (deft.) over pltf.'s land to the brown strip. This was struck out by the solrs. for the vendor (pltf.); & no grant was shown in the conveyance ultimately executed by the parties in Oct. 1926, of any right of way. Pltf. found later that deft. was passing over a track in plot 634 in order to make use of the brown strip for the purpose of taking farm carts from his own land over pltf.'s property to the high road; & he claimed a right of way. Pltf. sought a declaration that deft. was not entitled to any such right of

way as he claimed, & further that the conveyance to deft. of plots 652 & 653 might be rectified by the express exclusion therefrom of any implied right of way which might arise under Law of Property Act, 1925 (c. 20), s. 62 :—*Held :* though the right to use the track was one reputed to be enjoyed with the land, that was plots 653 & 652, & to that extent deft. was entitled to succeed, yet pltf. was entitled to have the conveyance rectified. The evidence showed that neither pltf. nor deft. intended that any such right should pass on the conveyance of plots 653 & 652. The conveyance therefore would be rectified by the insertion therein of proper words limiting the implication of any right of way which might arise under the Law of Property Act, 1925 (c. 20), s. 62.—CLARK *v.* BARNES, [1929] 2 Ch. 368; 99 L. J. Ch. 20; 142 L. T. 88.

Annotation :—**Refd.** Borman *v.* Griffith, [1930] 1 Ch. 493.

196b. **What amounts to "assurance of property or of an interest therein"—Agreement for lease exceeding three years.**]—By an agreement in writing dated Oct. 10, 1923, J. agreed to demise to pltf. The Gardens, "with the paddock, orchard, & adjoining gardens," for seven years from Sept. 29, 1923. These premises were situate in a large park called Wood Green Park, & were not approached by any public road. The agreement did not expressly reserve any right of way to pltf. In 1926, J. executed a lease to deft. of The Hall, & the remainder of the park, for fourteen years from May 25, 1926. The Hall had previously been let to H., who had surrendered his lease. A carriage drive ran from a public highway called Silver Street, through Wood Green Park, by the side of the front door of The Gardens, & on to The Hall. At the date of the agreement of Oct. 1923, J. was constructing, & afterwards completed, an unmetalled way from Silver Street to the back of The Gardens : but after that date pltf. constantly used the drive. Deft. obstructed pltf. in his use of the drive. In an action by pltf., claiming to be entitled to a right of way over the drive :—*Held :* (1) an agreement for a lease exceeding a term of three years is not an "assurance of property or of an interest therein," within Law of Property Act, 1925 (c. 20), s. 205 (1) (ii), & therefore cannot be deemed to include the general words of sect. 62 of that Act; (2) the tenant was in the same position as if the ct. had granted specific performance of the agreement, *i.e.*, in regard to rights of way, as if, before the coming into force of the Conveyancing Act, 1881, the property had been demised with no mention of rights of way; &, in the circumstances, a demise to pltf. of a right to use the drive upon terms must be implied.—BORMAN *v.* GRIFFITH, [1930] 1 Ch. 493; 99 L. J. Ch. 295; 142 L. T. 645.

Annotation :—*As to* (2) **Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

204a. —— **Intention of parties—No evidence of intention to determine status quo.**]—Two adjoining houses, originally belonging to one person, subsequently became vested in pltf. & deft. respectively. For some years before the severance of ownership, a creeper had been growing in what was now deft.'s garden with its foliage spreading along the wall of pltf.'s house. Also, again before the severance of ownership, the post of a gate leading from what was now deft.'s garden had been fastened by plugs & nails into pltf.'s wall. The growth of the creeper had from time to time reached pltf.'s gutter, & he had been obliged to cut it back. Pltf. brought an action for trespass in respect of the two above-mentioned acts, & the county ct. judge found both acts to be trespasses :—*Held :* both the growth of the creeper on pltf.'s wall & the fastening of the gate to pltf.'s wall would amount to trespasses, unless they could be justified by the existence of an easement; the implied reservation of an easement in a grant of property depends on the common intention of the parties; here there was no evidence that it was not the intention of the parties to the conveyance that creeper & gate-post should remain, & therefore an easement in each case was impliedly reserved; there was, however, a duty on the part of the grantee to use care that the grantor's property was not unduly interfered with; deft. in allowing the creeper to obstruct pltf.'s gutter had failed to use necessary care, & as to this part of the case the award as to damages must stand.—SIMPSON *v.* WEBER (1925), 133 L. T. 46; 41 T. L. R. 302, D. C.

210a. —— —— ——.]—A grantor cannot ordinarily reserve an easement otherwise than by express words for the benefit of land which he retains.

The common owner of two adjoining houses, A. & B., at the back of which ran a paved path, sold A. without reserving any right to use the path except for one specific purpose, & afterwards sold B. :—*Held :* in the absence of any evidence of a claim of user as of right admitted or acquiesced in, the purchaser of B. was not entitled to use the path at the back of A. for all purposes, but was limited to the use which was specifically reserved.—LIDDIARD *v.* WALDRON, [1934] 1 K. B. 435; 103 L. J. K. B. 172; 150 L. T. 323; 50 T. L. R. 172, C. A.

210b. —— —— **Matter of convenience & not necessity.**]—Where real property is severed by the grant of a part of it, there can be no implied reservation, in favour of the property retained, of an easement of convenience; but only of an easement of necessity.

Two adjoining messuages in a terrace, Nos. 28 & 30, in common ownership, were leased on a ninety-nine years' lease, which, in 1896, was assigned to G., who in 1901 assigned the lease of No. 30 to pltf.'s predecessors in title, without reserving expressly in favour of No. 28, the property retained, any right of way across the garden of No. 30. In 1904 G. assigned the lease of No. 28 to deft.'s predecessor in title. Pltf. claimed in the county ct. an injunction restraining deft. from crossing on a path across the garden of No. 30 from a gate in the fence between the

† i. ——.]—NANTAIS *v.* PAZNER, [1926] 4 D. L. R. 258; 59 O. L. R. 63.—CAN.

† ii. ——.]—EDINBURGH LIFE ASSURANCE CO. *v.* BARNHART (1886), 17 C. P. 318.—CAN.

† iii. ——.]—LANCASTER *v.* LLOYD (1927), 27 S. R. N. S. W. 379; 44 W. N. 89.—AUS.

two properties, to a gate opposite, which led into a passage-way giving access to the road in front of the terrace. Deft. claimed a right of footway across this path by reason of her occupation of No. 28. The county ct. judge found that both at the time when there was unity of possession of Nos. 28 & 30, & from the time when the lease of No. 30 had been assigned, the path had always been used for the limited purpose of removing dust & refuse & for bringing in coal, & for no other purpose. But he did not find whether this user was by pltf.'s leave & courtesy, or whether there was an apparent & continuous easement from some certain time. Confusing the dates & thinking that the lease of the alleged dominant tenement, No. 28, was first assigned, when in fact the lease of No. 30 was first assigned, he held that although deft. had no unrestricted right of way across the path, yet, in 1901, there was an implied grant of an apparent quasi-easement enuring to deft. for the limited purpose of removing refuse & bringing in coal, & he made a declaration to that effect:—*Held:* there was no evidence that on the grant in 1901 to the pltf.'s predecessor in title where was an implied reservation of a right of way in favour of deft. across the garden of pltf. for the removal of dust & refuse & the delivery of coal.—ALDRIDGE *v.* WRIGHT, [1929] 2 K. B. 117; 98 L. J. K. B. 582; 141 L. T. 352, C. A.

Annotation:—**Consd.** Liddiard *v.* Waldron, [1934] 1 K. B. 435.

215. *Add. Annotation:*—*As to* (1) **Consd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

216. *Add. Annotation:*—*As to* (1) **Refd.** Aldridge *v.* Wright, [1929] 1 K. B. 381.

223. *Add. Annotations:*—**Refd.** Sack *v.* Jones, [1925] Ch. 235; Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

226. *Add. Annotations:*—*As to* (1) **Consd.** Liddiard *v.* Waldron, [1934] 1 K. B. 435. *As to* (4) **Consd.** Aldridge *v.* Wright, [1929] 1 K. B. 381.

229. *Add. Annotations:*—**Apld.** Sack *v.* Jones, [1925] Ch. 235. **Refd.** Simpson *v.* Weber (1925), 133 L. T. 46; Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

238a. —— **Way.**]—BORMAN *v.* GRIFFITH, No. 196b, *ante.*

250. *Add. Annotations:*—*As to* (1) **Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114. *As to* (3) **Refd.** Aldridge *v.* Wright (1929), 98 L. J. K. B. 285; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

252a. —— —— ——.]—Pltf. was the owner of a cottage & farm land (the pink land) under two conveyances made to his predecessors in title in 1919, & deft. was the owner of adjoining land (the blue land) conveyed to her in 1929 by the same common owners. More than forty years ago the common owners constructed a collecting tank for water, mainly on the pink land, which fed a tank (Tank Z) on the edge of the blue land. Tank Z was used as a drinking trough for cattle & horses, & it had no outlet, but was tipped towards the south so that it overflowed on to the pink land through a wall between the pink & the blue land. The overflow was then conducted by a stone drain to an open watercourse along which the water flowed to the southern boundary of the pink land. The watercourse then turned & flowed along inside the southern boundary, being joined at the bend by a natural stream. At least from the bend the watercourse was a natural stream, & at two points along it were dipping points, one used for watering pltf.'s cattle & the other used by cottagers & other persons, including the occupants of the cottage on the pink land & of two other cottages near by which also belonged to pltf. In Feb. 1920, deft. substituted for Tank Z a covered brick tank connected by an underground pipe laid along the southern boundary of the blue land to a ram which pumped water to deft.'s house. There was also an overflow outlet to the new tank by which the overflow still passed through the boundary wall on to the pink land, but the flow was substantially diminished. In laying the pipe along the southern boundary of the blue land in a trench, springs were tapped & damage was said to have resulted from the escape of this water on to the surface of the pink land:—*Held:* (1) as Tank Z had been constructed simply for supplying water to cattle & horses grazing on the blue land & not for the benefit of the pink land, there could be no expectation that the overflow from it would be other than temporary, & the right to the continuance of the overflow did not pass under the general words implied in the conveyances of the pink land in 1919 by Conveyancing Act, 1881 (c. 41), s. 6, now Law of Property Act, 1925

PART III. SECT. 2, SUB-SECT. 1.—B.

223 1. *Whether reservation will be implied—Easement of necessity—Support—Subsequent sale by grantor.*]—NATIONAL TRUST CO. *v.* WESTERN TRUST CO. (1912), 21 W. L. R. 571; 2 W. W. R. 667; 4 D. L. R. 455.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C.

§ i. —— —— —— *Land bounded by private road.*]—Pltf., a lessee, claimed to be entitled to a right of way over a private road existent at the time of the lease & maintained by the lessor, owner of adjoining lands, as one of the approaches from the highway to his own house, & permitted to be used by tenants in prior years without objection. The leased property as described in the lease did not embrace this road, but the lessee claimed that he & prior occupiers of the leased house had the use of it, &, as one of the named boundaries was the roadway, the lease impliedly gave him a right of way over it:—*Held:* the lessee was not entitled to the right-of-way.—BREADY *v.* MCLENNAN (No. 2), [1924] 3 W. W. R. 924; 33 B. C. R. 460.—**CAN.**

§ ii. —— —— —— *Land bounded by lane.*]—A conveyance or lease of land described as abutting on, or bounded by, a lane or right of way, or a conveyance by reference to a plan indicating that the land in fact abuts on, or is bounded by, a lane or right of way, is equivalent to a grant to the conveyee or lessee of access to & fro over that lane or right of way, if the ownership of the same is vested in the conveyor or lessor.—COWLISHAW *v.* PONSFORD (1928), 28 S. R. N. S. W. 331; 45 N. S. W. W. N. 94.—**AUS.**

§ iii. —— —— ——.]—The decisions in England prior to 1881 were not uniform on the question whether a right of way was a continuous easement or not; but the Indian Easements Act adopted the view that it was not. Hence on a partition of two tenements, a right of way even over a well-formed & metalled road does not pass to the grantee as a continuous easement. It is this view, as enacted in the Act, that must govern wherever the Act is in force, in preference to the now well-established view in England. The way may, however, pass to the grantee if it is an easement of necessity; but an easement of way cannot be termed "necessary" though the way was used as a way before the partition or even though it may be the most convenient or reasonable means of access, if in fact there is another way.—NARAYONA GAJAPATIRAJU *v.* RATNAYAMMAJI (1929), I. L. R. 53 Mad. 449.—**IND.**

(c. 20), s. 62; (2) pltf. had no prescriptive right to have the water naturally flowing in the stream along the southern boundary of the pink land augmented by the overflow from Tank Z along an artificial watercourse which had been constructed for a temporary purpose only.—BARTLETT *v.* TOTTENHAM, [1932] 1 Ch. 114; 101 L. J. Ch. 160; 145 L. T. 686.

253. *Add. Annotations:—As to* (1) **Apld.** Aldridge *v.* Wright, [1929] 2 K. B. 117. **Consd.** Liddiard *v.* Waldron, [1934] 1 K. B. 435. **Refd.** Simpson *v.* Weber (1925), 133 L. T. 46; Greg *v.* Planque, [1936] 1 K. B. 669. *As to* (2) **Consd.** Aldridge *v.* Wright, [1929] 2 K. B. 117: Borman *v.* Griffith, [1930] 1 Ch. 493; Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

261. *Add. Annotations:—As to* (1) **Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114. *As to* (6) **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

264. *Add. Annotation:*—**Refd.** O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123.

267. *Add. Annotations:*—**Refd.** Vanderpant *v.* Mayfair Hotel Co., Ltd., [1930] 1 Ch. 138; Liddiard *v.* Waldron, [1933] 2 K. B. 319.

267a. —— **Intention to use property for working mill.**]—KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO., LTD., No. 273a, *ante*.

271. *Add. Annotation:*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

273a. —— **Right to take water from artificial channel—Limited to capacity of channel at time of grant.**]—In 1894 the Crown, by an Ontario patent, granted to applts. the banks & bed of a natural outflow from a very large lake, & the adjoining water power. The grant provided that it was not to be construed as conferring exclusive rights elsewhere upon the lake or upon other streams, nor as authority to restrict any powers or privileges therebefore enjoyed by the Crown. Applts. used water power from the outflow to work an electrical power plant. In 1892 & 1891 the Crown had similarly granted to resps.' predecessors in title land the boundaries of which, in each case, included a mill & an artificial channel from a bay of the lake. The mills had been erected & the channels made by the grantees with the approval of the Crown; the grants mentioned the mill races, but did not expressly include water power. Resps. used water power from the channels to work their mills. Water passing through the channels & the mill sluices, when open, flowed into the river formed by the outflow at a point below applts.' works. Applts. brought actions to restrain resps. from diverting water from the lake:—*Held:* having regard to the circumstances in which the grants of 1892 & 1891 were made they each conferred an easement upon the respective resps. to use water from the channel for the purpose of working a mill, & the grant to applts. was subject to that easement. The easement was limited only by the capacity of the respective channels when granted, not by the size or character of the mill then existing thereon; although the water could be used only for working a mill, it could be used to develop electrical power to work or light a mill.—KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO., LTD., [1930] A. C. 640; 100 L. J. P. C. 1; 143 L. T. 633, P. C.

274. *Add. Annotation:*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

278. *Add. Annotation:*—**Consd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

282. *Add. Annotations:—As to* (2) **Apprvd.** Gregg *v.* Richards, [1926] Ch. 521. **Refd.** Hapgood *v.* Martin & Son, Ltd. (1934), 152 L. T. 72. *As to* (3) **Distd.** Aldridge *v.* Wright, [1929] 2 K. B. 117. **Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

291. *Add Annotations:—As to* (1) **Refd.** Simpson *v.* Weber (1925), 133 L. T. 46. *As to* (2) **Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114. *As to* (5) **Refd.** Beauchamp *v.* Frome Rural District Council, [1937] 4 All E. R. 348.

299. In the last line of the first paragraph add the word "not" after the word "ought."

Add. Annotations:—**Consd.** Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841. **Refd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254; Layzell *v.* Thompson (1926), 43 T. L. R. 58; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549; Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

309. *Add. Annotation:*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

320. *Add. Annotation:*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

PART III. SECT. 2, SUB-SECT. 1.—D.

k 1. —— *Right of way reserved to some grantees only.*]—MAUGHAN *v.* CASCI (1884), 5 O. R. 518.—**CAN.**

284 l. *Conveyances not simultaneous—Right of way.*]—PHILLIPS *v.* ROSS, [1926] 1 D. L. R. 605; 58 N. S. R. 326.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.

sm. *The public.*]—To a suit by a private person against the Govt. for a declaration of his ownership of a land, the acquisition of an easement over it by the public is no defence. Though the public cannot acquire ownership of a land, it can acquire over it an easement by prescription.—URBAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

sp. *Mortgagor against mortgagee.*]—Where the owner of the servient tenement is mtgee. of the dominant tenement for the whole of the prescriptive period, the mtgor. in possession of the dominant tenement cannot claim an easement against the mtgee. by prescription.—WALKER *v.* HENNIGAR, [1935] 1 D. L. R. 285.—**CAN.**

o i. —— *In land of lessor.*] — Although a tenant cannot acquire a prescriptive right of easement in land belonging to his lessor, he may claim a right of easement based on immemorial user.—FINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

sr. *Weekly tenant.*]—A weekly tenant, suing without joining his landlord, can establish a right of way against another tenant of the same landlord.—TALLON *v.* ENNIS, [1937] I. R. 549.—**IR.**

PART III. SECT. 3, SUB-SECT. 3.

s i. ——.]—In India a tenant can establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

sw. *Not right to use railway.*]—MEAGHER *v.* CANADIAN PACIFIC RY. CO. (1912), 42 N. B. R. 46.—**CAN.**

sz. *Right to trap.*]—RICI LAKE FUR CO., LTD. *v.* MCALLISTER, [1925] 2 D. L. R. 506; 56 O. L. R. 440.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—A.

326 x. ——.]—Pltf. claimed that he & his predecessors in title for 20 years preceding the commencement of the action had enjoyed as of right a way for themselves & their servants on foot & with horses, carriages, vehicles, cattle, sheep & other farming stock from the public highway over deft.'s land to pltf.'s land & from pltf.'s

329. *Add. Annotation :—As to* (1) **Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

346. *Add. Annotations :—Generally,* **Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons. [1930] A. C. 549.

347. *Add. Annotations :—*Refd. Stoney *v.* Eastbourne R. D. C., [1927] 1 Ch. 367. Hue *v.* Whiteley, [1929] 1 Ch. 440.

349. *Add. Annotation :—*Folld. Willoughby *v.* Eckstein, [1936] 1 All E. R. 650.

358. *Add. Annotations :—As to* (2) **Refd.** Wirral Estates, Ltd. *v.* Shaw (1932), 48 T. L. R. 281. *Generally,* **Refd.** Wheeler *v.* Wirral Estates, Ltd., [1935] 1 K. B. 294.

359. *Add. Annotation :—*Refd. Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

360. *Add. Annotation :—As to* (1) **Consd.** Green *v.* Matthews & Co. (1930), 46 T. L. R. 206.

361. *Add. Annotations :—As to* (5) & (6) **Folld.** Green *v.* Matthews & Co. (1930), 46 T. L. R. 206. *Generally,* **Refd.** Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 2 All E. R. 1367.

361a. ——.]—A person cannot set up a right either by prescription or under the doctrine of lost grant to cause sewage or trade refuse to fall or flow into a stream or watercourse, & thereby to pollute it, where the right claimed would be in contravention of a statutory prohibition such as is contained in Rivers Pollution Prevention Act, 1876 (c. 75).—GREEN *v.* MATTHEWS & CO. (1930), 46 T. L. R. 206.

*Annotation :—*Refd. Legge & Son, Ltd. *v.* Wenlock Corpn., [1936] 2 All E. R. 1367.

363. *Add. Annotation :—*Refd. Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

381. *Add. Annotation :—Generally,* Refd. Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224.

389. *Add. Annotation :—As to* (3) **Refd.** Slack *v.* Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46.

399. *Add. Annotation :—*Consd. Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

---

land to such public highway & that deft. had wrongfully obstructed him in the enjoyment of such right of way. Deft. pleaded that there had been no such user or enjoyment of the way claimed by pltf. as supported a prescriptive right or claim thereto, & alleged (*inter alia*) that deft.'s predecessor in title had no knowledge of the alleged claim, & further, that pltf. during the said period of 20 years had himself claimed the ownership of part of the land over which the way was claimed to have been enjoyed :—*Held :* deft.'s predecessor in title in any event had had a reasonable opportunity of becoming aware of the enjoyment by pltf. of a right over his land & for that reason the enjoyment of the right of way could not be alleged to be secret.—HOUGH *v.* TAYLOR, [1927] W. A. L. R. 97.—**AUS.**

326 xl. ——.]—*Held :* where a person has possessory rights over a piece of land, the title to the land being vested in Govt., another person may establish a right of access to a tomb erected on such land & to worship there. Such a right must have been openly enjoyed without leave, stealth, or force for a length of time which suggests originally an agreement or an usage that has become a customary law of the place in respect of the persons or things in which it is concerned.—DAWSON *v.* ROUHAE ZAMANI BEGUM (PRINCESS) (1928), I. L. R. 6 Ran. 456.—**IND.**

ss. *User as one of public.*]—To constitute a legal possession of land, not only must there be a corporeal detention, or that quasi-detention which, according to the nature of the right, is equivalent thereto, but, also, the intention to act as owner of the land : no legal possession is acquired by the exercise of a supposed right as one of the public. The rear portions of pltf.'s & deft.'s lands abutted on a public lane, a strip of land between the fence erected on deft.'s land & the boundary of the lane being unenclosed. Pltf., for over 20 years, believing this strip to be a part of the lane, had been accustomed to drive over it to get to his stable, doing so in the exercise of a supposed right as one of the public, & not as an easement to his land :—*Held :* he had not acquired any right to use the strip.—ADAMS *v.* FAIRWEATHER (1906), 7 O. W. R. 785 ; 8 O. W. R. 886 ; 13 O. L. R. 490.—**CAN.**

sb. *Dominant & servient tenement in same occupation—Occupation of servient tenement wrongful.*]—The time for acquisition of an easement by prescription does not run while the dominant & servient tenements are in the occupation of the same person, even though the occupation of the servient tenement be wrongful & without the privity of the true owner.—INNES *v.* FERGUSON (1894), 21 A. R. 323 ; *affd.* (1895), 24 S. C. R. 703.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B.

339 lv. —— ——.]—Pltfs. & defts. occupy lands very near each other, the land of a third party intervening between. Defts. had been taking water, flowing through an artificial channel, into their land, for the purpose of irrigation, for nearly thirty-two or thirty-five years without interruption, every monsoon through the land of the third person, by cutting the ridge (ail) of a plot of land, belonging to pltfs., in one place. Pltfs. sued for permanent injunction to restrain defts. from cutting the ail :—*Held :* defts. had acquired a prescription right to take water by cutting the ail.—BIPIN BEHARI GHATAK *v.* RAMNATH GHATAK (1929), I. L. R. 56 Calc. 161.—**IND.**

sc. *Continuous user—Right exercised from year to year.*]—*Held :* where deft., in an action for trespass to land, claimed a right of way by prescription over the land, it was necessary for him to show continuous user of a definite way & exercise of the right from year to year. —PETIPAS *v.* MYETTE (1913), 12 E. L. R. 537.—**CAN.**

sd. —— *Whether as of right or by permission.*]—Pltf. & deft. were the owners & occupiers of adjoining farms, & deft. claimed to have acquired, by prescription, a right of way over a road or track on pltf.'s property. The way over pltf.'s property had been used by deft. whenever he wished to visit his brother or whenever he wished to go past his brother's house into the main road. Deft. used the way for all the purposes for which he required to use it in connection with his farm. This user commenced at a time when pltf.'s farm was owned by deft.'s brother & continued through subsequent changes of occupancy until & since pltf. became the owner & occupier of the farm. Pltf. alleged & deft. denied that permission had been given to deft. to use the road, & that the use of the road by deft. was not as a right : —*Held :* deft.'s right of way over the road had been established.—AUSTIN *v.* WRIGHT, [1927] W. A. L. R. 55.—**AUS.**

PART III. SECT. 3, SUB-SECT. 5.—A.

345 i. *Origin of doctrine.*]—When enjoyment of a right of easement has continued uninterrupted for a long series of years, such enjoyment should be attributed to a legal origin, & the ct. should presume a grant or an agreement.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART III. SECT. 3, SUB-SECT. 5.—E.

se. *Proof of commencement of tenancy — User immemorial.*] — Where the origin of a tenancy is known, but the origin of a right of easement has not been traced, the tenancy does not rebut the presumption of a grant which arises upon proof of immemorial user. —TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART III. SECT. 3, SUB-SECT. 6.—C. (b) i.

t i. *S. P.* SUBBA RAO *v.* LAKSHMANA RAO (1925), I. L. R. 49 Mad. 820.—**IND.**

t ii. ——.]—CARPET IMPORT CO., LTD. *v.* BEATH & CO., LTD., [1927] N. Z. L. R. 37.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 6.—C. (b) ii.

413 i. *Evidence that user not of right —Parol licence granted during statutory period.*]—Parol licence is of no moment unless it is applied for & granted within the period of forty years prescribed by Limitations Act, R. S. O., 1914, s. 35, in which case it will negative the enjoyment of the easement as of right for forty years.—BOWES *v.* REID, [1924] 2 D. L. R. 399 ; 54 O. L. R. 253.—**CAN.**

PART III. SECT. 3, SUB-SECT. 6.—C. (b) iii.

s i. —— *Way.*]—FERGUSON *v.* INNES (1895), 24 S. C. R. 703.—**CAN.**

sf. *Forty years — Whether conclusive.*] — Limitations Act, R. S. O., 1914, s. 35, makes a right which has been enjoyed for the full period of forty years indefeasible, unless it appears that it was enjoyed by virtue of some consent or agreement expressly given by deed or writing.—BOWES *v.*

435. *Add. Annotations :—As to* (1) **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312 ; Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

452. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

466. *Add. Annotation :—As to* (3) **Refd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

467. *Add. Annotation :*—**Distd.** Wade (Gabriel) & English, Ltd. *v.* Dixon & Cardus, Ltd., [1937] 3 All E. R. 900.

467a. —— ——.]—Where a party is relying upon the legal fiction of a lost grant, the ct. will not make an order for particulars thereof.—WADE & ENGLISH, LTD. *v.* DIXON & CARDUS, LTD., [1937] 3 All E. R. 900 ; 81 Sol. Jo. 703.

475. *Add. Annotation :—Generally,* **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

Part V.—Preservation and Repair of Easements.

482. *Add. Annotation :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235.

483. *Add. Annotation :*—**Refd.** Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

Part VI.—Extinguishment of Easements.

487. *Add. Annotation :—Generally,* **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

493. *Add. Annotations :—As to* (1) **Apld.** Swan *v.* Sinclair, [1924] 1 Ch. 254. **Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

494. *Add. Annotation :—As to* (2) **Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

502. *Add. Annotation :*—**Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

505. *Add. Annotation :*—**Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

511. *Add. Annotation :—As to* (1) **Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

515. For the paragraph in the original volume substitute the following paragraph :—

—— **Acquiescence in obstruction of way.**]—In 1870 a row of houses was put up for sale by auction in eleven lots. One of the conditions was that a strip of land fifteen feet in width, running the entire length of the lots & being the rear portions of the back gardens of the houses, was intended to form a right of way from the back garden of each house into Church Road, which bounded the side of lot 1 on the south, & that the lots would be sold subject to & with the benefit of such right of way, & that the respective purchasers should at the earliest possible moment remove the fifteen feet of end garden wall & form the right of way. This condition was recited in each of the conveyances. Lot 1 was conveyed subject to the right of way of the owners of the other lots & lots 2 & 3 with the benefit of & subject to the right of way. The purchaser of lot 1 let it for a term of fifty years, which expired on June 15, 1922, subject to the right of way. In 1904 pltf. took an assignment of this lease, & in 1911 he purchased the fee simple of lots 2 & 3, with the benefit & subject to the right of way. Deft. was the present owner of lot 1. For fifty years from the date of the original sale

---

REID, [1924] 2 D. L. R. 399 ; 54 O. L. R. 253.—**CAN.**

433 i. *Against whom time computed—Reversioner.*]—EISENHAUER *v.* WHYNACHT (1902), 35 N. S. R. 295.—**CAN.**

PART III. SECT. 3, SUB-SECT. 6.—C. (c) iii.

448 i. *Must be adverse obstruction—With knowledge & assent of servient owner.*]—Acts done by the tenant of a servient tenement which interfere with the possession of the dominant owner do not constitute interruption of user unless the acts are done with the knowledge & assent of the servient owner as an assertion of adverse right.

Circumstances in which held that temporary obstructions placed periodically across an access right of way by the tenant of the servient tenement, without the knowledge or assent of the owner of the servient tenement & merely for the protection of the tenants own crops, had not been placed there as an assertion of adverse right ; &, accordingly, interruption of user had not been established.—STEVENSON *v.* DONALDSON, [1935] S. C. 551.—**SCOT.**

PART III. SECT. 5, SUB-SECT. 2.

sg. *Plea of user—Road within well-defined limits—Slight variation of via trita—Sufficient.*]—BOWES *v.* REID, [1924] 2 D. L. R. 399 ; 54 O. L. R. 253.—**CAN.**

PART IV. SECT. 1.

sh. *Whether assignable.*]—In July, 1916, deft. & another granted to S. a right to lay down a tramway through deft.'s land for the purpose of removing S.'s timber. In 1919 S. assigned his rights under the agreement to pltf., who continued to use the tramway. The assignment was known to deft., who raised no objection. Deft., in Aug. 1922, placed obstructions across the tramway. On a motion for an injunction, deft. contended that the contract granting the tramline was not assignable :—*Held :* the grant was not a personal one, & pltf. had an equitable interest by assignment from S. in the easement.—MACDONALD *v.* PEDDLE, [1923] N. Z. L. R. 987.—**N.Z.**

PART VI. SECT. 2, SUB-SECT. 2.—B.

507 i. *Non-user alone as presumption of abandonment—Abandonment question of fact.*]—While mere non-user is not sufficient to amount to abandonment of a right of way, it is a fact to be taken into consideration, as it is from all such facts that the ct. has to decide whether or not a clear intention to abandon can be inferred or is indicated. Where pltf. & his predecessors in title had failed to exercise a right of way, had fenced off their land, so as to shut off the right of way & had omitted any specific mention of the right in various conveyances :—*Held :* an abandonment was established.—CHRISTOPHER *v.* COHEN (1924), I. L. R. 2 Ran. 534.—**IND.**

508 v. ——.]—Non-user is not of itself evidence of abandonment.—NANTAIS *v.* PAZNER, [1928] 4 D. L. R. 258 ; 59 O. L. R. 318.—**CAN.**

508 vi. —— *Onus of proof.*]—LISCOMBE *v.* MAUGHAN, [1928] 3 D. L. R. 397 ; 62 O. L. R. 328.—**CAN.**

g i. ——.]—A mutual right of way was established in 1907 & 1908 by grants conveying adjoining parcels of land respectively to the predecessors in title of pltf. & deft. covering 5 feet in width of one parcel & 2 feet in width of the other, extending from the westerly limit of a street westerly for 75 feet. There was a dispute as to the westerly 15 feet, as to which deft. alleged that pltf.'s right of way had been abandoned :—*Held :* the evidence did not justify the inference that the right of way had been abandoned, although it was first used by deft. or her predecessor only.—BAKER *v.* HARRIS, [1930] 1 D. L. R. 354 ; 64 O. L. R. 513.—**CAN.**

no attempt was made to form the proposed roadway, the garden walls dividing the several lots remained intact, & the wall separating lot 1 from Church Road was not breached. Church Road was six feet above the level of the back gardens. In 1883 the original lessee of lot 1 in the course of erecting some stables in his back garden raised the surface of the strip of land at the end of his lot to the level of Church Road, with the result that there was a drop of six feet from that strip into lot 2. In 1919 pltf., in anticipation of the expiration of his lease, proposed to build a garage on lots 2 & 3. With that object in view he pulled down part of the wall which separated the rear portion of lot 1 from Church Road & erected gates there, & he also raised the level of the rear portion of lot 2; & subsequently he caused a car to be driven through the gates over the strip in lot 1 into lot 2. On the expiration of the lease deft. blocked up the gates & obstructed the way. In an action by pltf. as owner of lots 2 & 3 to enforce his right of way against the deft.:—*Held:* (1) until the land was cleared there could be no effectual creation of a right of way; (2) having regard to the time which had elapsed before any purchaser attempted to assert his rights under the original conveyance, the inevitable inference was that the arrangement made in 1870 had been abandoned by common consent.—SWAN *v.* SINCLAIR, [1925] A. C. 227; 94 L. J. Ch. 104; 132 L. T. 577; 89 J. P. 38; 41 T. L. R. 158; 22 L. G. R. 705, H. L.

558. Alternative headnote in 15 R. R. 508, n.:—

"Unity of seisin of the land to which a right of way is appurtenant, with the land over which the way lies, extinguishes the right of way. But if there is a subsequent severance, the continued use of the way may be given in evidence of its necessity, although the owner claiming such way of necessity has acquired other land through which it would be physically possible to make a way; no such way having been in fact made or used."

Part VII.—Rights of Way.

571. *Add. Annotation:—Generally,* **Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

571a. Contiguity between dominant tenement & way unnecessary.]—(1) A right of way can validly be made appurtenant to land with which the way has no physical contiguity, but it must be beneficial in respect of the occupation of that land.

Pltf. was the owner of a house in St. Ives, Cornwall, & of a private roadway to the south of the house leading from a highway to the west to garages at the eastern end, which also belonged to pltf. Property which included the roadway & garages had been conveyed to his predecessor in title by N. by a conveyance dated Oct. 15, 1921, which contained a reservation to N. & his successors of a perpetual right of way along the roadway with power to extend it some yards to land further east belonging to N., which was shown on a plan attached to the conveyance & coloured blue. Subsequently N. bought some land north of the blue land, & by a deed dated Mar. 22, 1926, a right to extend the roadway to this land was substituted for the right to extend it directly on to the blue land. The result of this was that when the roadway was so extended it could substantially only obtain access to the blue land over an intervening strip of the land to the north of it. Deft. co. having purchased the blue land & the land to the north of it built a garage for motor omnibuses on the blue land & proceeded to extend the roadway to the intervening strip & carry it over the strip to the blue land. As the part of the blue land where the garage stood was much higher than the roadway deft. co., in order to obtain a gradual slope, continued the roadway on pltf.'s land by means of a concrete ramp, which by the time it reached the five foot wall between pltf.'s land & the intervening strip was almost the height of the wall. Pltf. objected strongly to the making of this ramp, which made access to his garages more difficult, & brought an action claiming (*a*) that defts. had no right of way over the roadway for the reason that the right alleged to have been given pertained only to the blue land to which there was no direct access from the roadway; or alternatively (*b*) that there had been excessive user of the right (i.) by reason of the building of the ramp, and (ii.) by reason of the user of the roadway for motor buses:—*Held:* it was sufficient that a right of way should be beneficial in respect of the

---

PART VI. SECT. 3, SUB-SECT. 1.

1 i. ——.]—The unity of the dormant & servient estates in the same person extinguishes the easement appurtenant to the dominant estate.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

1 ii. —— *Easement of support.*]—BACKUS *v.* SMITH (1880), 5 A. R. 341.—**CAN.**

549 i. *Unity of possession without unity of seisin—Suspension of easement—Water.*]—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

n i. —— ——.]—An easement may be revived after it has been extinguished, by the union of the dominant & servient tenements in one owner, by their subsequent severance, provided the easement is apparent, continuous & essential to the enjoyment of the dominant tenement.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART VI. SECT. 4.

sk. *Sale of servient tenement for taxes under statutory power.*]—Under Calgary Charter a sale for taxes of the servient tenement does not extinguish a true easement.—HUTCHINGS *v.* CAMPBELL, WILSON & HORNE, LTD., [1924] 2 D. L. R. 299; 1 W. W. R. 1070; 20 Alta. L. R. 275.—**CAN.**

PART VII. SECT. 1.

566 ii. —— *Agreement between co-owners.*]—Deft. & B, each of whom owned one-half of a lot of land, entered into an agreement for a right of way to a building in the rear, each contributing from his half one foot nine inches, so as to make a right of way, three feet six inches in width:—*Held:* the deed providing for the establishment of the way must be construed as a mutual conveyance from each party to the other of an interest in the land necessary to be used in common for the alleged right of way, & not as an agreement to establish a right of way by grant or otherwise.—TRAVIS INVESTMENT CO. *v.* POWER, [1925] 1 D. L. R. 232; 57 N. S. R. 432.—**CAN.**

r. For "BADHANATH" read "RADHANATH."

ownership of the land to which it purported to be made appurtenant, & there need be no physical contiguity between the way & the dominant tenement; but (2) there had been excessive user in regard both to the building of the ramp & to the user of the roadway for motor omnibuses.—TODRICK *v.* WESTERN NATIONAL OMNIBUS CO., LTD., [1934] Ch. 561; 103 L. J. Ch. 224; 151 L. T. 163; 78 Sol. Jo. 318, C. A.

Annotation:—As to (1) **Consd.** *Re* Salvin's Indenture, Pitt *v.* Durham County Water Board, [1938] 2 All E. R. 498.

580. *Add. Annotation:*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

581. In the cross-references following this case for "**Church ways.**]—*See* HIGHWAYS," substitute "**Church ways.**]—*See* ECCLESIASTICAL LAW, p. 307, *post.*"

598. *Add. Annotation:*—**Refd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

607. *Add. Annotations:*—**Distd.** Aldridge *v.* Wright, [1929] 2 K. B. 117. **Apld.** Borman *v.* Griffith, [1930 1 Ch. 493. **Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

641. *Add. Annotation:*—**Refd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

652. *Add. Annotation:*—**Refd.** Symes & Jaywick Associated Properties, Ltd. *v.* Essex Rivers Catchment Board, [1937] 1 K. B. 548.

658. *Add. Annotation:*—*Generally*, **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

664. *Add. Annotation:*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

683. *Add. Annotation:*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

684. *Add. Annotations:*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211; Todrick *v.* Western National Omnibus Co., [1934] Ch. 190.

687. *Add. Citations:*—[1924] 1 Ch. 211; 130 L. T. 273; 88 J. P. 37.

Add. Annotation:—As to (2) **Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

687a. ——.]—In 1923 pltf. conveyed a freehold farm to defts.' predecessor in title by a deed which contained the following words: "& together also with a right of way 14 feet wide as shown on the said plan marked A in & over the portion of the field numbered 171 belonging to the vendor for the purpose of access to & from the point marked X on the said plan to the field numbered 169." The property consisted of seventy acres, forming part of a property of 102 acres originally conveyed to pltf., of which pltf. retained the manor house & park:—*Held:* the dominant tenement in this grant was the whole of the lands assured by the deed, that the right of way was appurtenant to those lands, & was not limited to the right to use the way for purposes connected with field 169 only.—CALLARD *v.* BEENEY, [1930] 1 K. B. 353; 99 L. J. K. B. 133; 142 L. T. 45.

Annotation:—**Refd.** Todrick *v.* Western National Omnibus Co., [1934] Ch. 561.

687b. ——.]—Pltf.'s predecessor conveyed to deft. a certain field of which deft. was tenant, & granted to him as a means of access to the field a right of way "as at present enjoyed" over a drive which passed through the vendor's property. The field had been used mainly for agricultural purposes & to a small extent as a camping ground. After the conveyance, the number of people using the field for camping & consequently passing over the drive increased considerably. In an action for a declaration that deft. was not entitled to use the drive so as substantially to increase the burden of the easement over the drive by altering its character, nature or extent:—*Held:* the words "as at present enjoyed" had no reference to the purposes for which deft. was using the field nor to the quantity of the user, but referred to the quality of the user, *i.e.*, on foot, with horses & with vehicles, by deft. at the time of the conveyance.—HURT *v.* BOWMER, [1937] 1 All E. R. 797; 53 T. L. R. 325; 81 Sol. Jo. 118.

688a. Excessive user—What amounts to.]—TODRICK *v.* WESTERN NATIONAL OMNIBUS CO., LTD., No. 571a, *ante.*

PART VII. SECT. 2, SUB-SECT. 5.

602 i. *Extent of user of way—Grant subject to existing obstruction.*]—When a right of way is granted over land on which there exists an obstruction at the date of the grant, it is a question of interpretation of the grant whether the easement is subject to the obstruction or free from it.—SPEAR *v.* ROWLATT, [1924] N. Z. L. R. 801.—**N.Z.**

PART VII. SECT. 3, SUB-SECT. 2.—B.

620 vi. ——.]—A side door in the wall of the back garden of pltf.'s premises opened into an avenue leading to deft.'s house. Pltf. claimed a right of way from this door, along the avenue, to the avenue gates. Pltf.'s premises were the end house of a terrace of six similar houses, which formed the base of a triangle in the apex of which stood deft.'s house. The avenue from the latter house ran alongside the garden wall of pltf.'s house, & its gates opened on the same street as the front entrance of the terrace of houses. All seven houses had been built by the same person, & continued for some years in the ownership of members of his family. But, by the will of his daughter, who died in 1919, a severance of ownership as between pltf.'s house & deft.'s house was created; &, subsequently, pltf. purchased the fee simple of his house. He gave evidence that he had entered the premises in 1917 under an agreement for a twelve-months' letting, & continued as tenant until he acquired the fee simple interest; & that he had used the door in the garden wall for the purpose of bringing in coal & manure, & of bringing bicycles in & out. Evidence was also given by the tenant of the premises from 1899 to 1907 that he received the key for the door or found it hanging in the premises, that he used the door for the purpose of getting in coal & for porters delivering goods, that his original landlord, who died in 1905, used to get a little path connecting the door with the avenue cindered, & that he gave up the key on the expiration of his tenancy; & evidence was given by the tenant from 1911 to 1916 that he used the door for bringing goods in & out & for getting in coal & manure. Pltf.'s tenancy agreement was not proved, nor was there evidence of any agreement as to a right of way or easement. Only one other house in the terrace of six houses had a back entrance, & this back entrance, which also opened into deft.'s premises, had become disused before action brought. There was no evidence as to its previous user, nor was there any evidence as to the origin of either back entrance:—*Held:* pltf. had failed to establish his claim.—M'DONAGH *v.* MULHOLLAND, [1931] I. R. 110.—**IR.**

PART VII. SECT. 3, SUB-SECT. 2.—D.

g i. ——.]—FIELDER *v.* BANNISTER (1860), 8 Gr. 257.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—B. (a).

683 v. ——.]—TRAVIS INVESTMENT CO. *v.* POWER, [1925] 1 D. L. R. 232; 57 N. S. R. 432.—**CAN.**

si. —— ——.]—Where there was a grant of way to & from claimant's warehouse solely for the purpose of taking goods to & from the warehouse, & at the time of the grant claimant had no building which could be described as a warehouse, but was then contemplating the building of one:—*Held:* when the grant was made the parties must have intended to create a right of way in connection with the warehouse to be erected in the future, & the grant ought to be so considered.—PATERSON & BARR, LTD. *v.* OTAGO UNIVERSITY, [1925] N. Z. L. R. 191.—**N.Z.**

700a. ——— ———.]—ROBERTSON *v.* ADAMS (1930), 69 L. Jo. 301; *sub nom.* ROBERTSON *v.* ABRAHAMS, 169 L. T. Jo. 305; [1930] W. N. 79.

702. *Add. Annotation :—As to* (2) **Consd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

706. *Add. Annotation :*—**Consd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

710. *Add. Annotations :—As to* (1) **Consd.** Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224. **Refd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

713. *Add. Annotation :*—**Refd.** Williams-Ellis *v.* Cobb, [1935] 1 K. B. 310.

721a. Includes motor cars.]—A.-G. *v.* HODGSON, [1922] 2 Ch. 429; 91 L. J. Ch. 426; 127 L. T. 329; 87 J. P. 121; 38 T. L. R. 601; 66 Sol. Jo. 538; 20 L. G. R. 425.

738. *Add. Annotations :*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211; Todrick *v.* Western National Omnibus Co., [1934] Ch. 190.

740. *Add. Annotation :*—**Refd.** Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224.

743. *Add. Annotation :*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

754. *Add. Annotations :*—**Refd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284; Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224.

PART VII. SECT. 6, SUB-SECT. 3.—B. (b).

690 i. *Limited by user proved—Only when terminus ad quem of special nature.*]—The only cases in which servitudes of way acquired by prescription are limited by reference to the purposes of the traffic carried by them are those cases in which there is some special feature attached to the terminus to which the roadway leads, as in a way to a mill, kirk, or peat moss.—CARSTAIRS *v.* SPENCE, [1924] S. C. 380.—**SCOT.**

PART VII. SECT. 6, SUB-SECT. 3 — B. (o).

701 i. *Whether over whole width—Via trita.*]—The right of pltf. to a way over a fenced driveway or lane, 49 feet in width, part of a parcel of land owned by deft., was held to have been established by prescription, but the right was limited to the *via trita* or the part of the lane actually used by pltf. & his predecessors in passing over it with horses & vehicles.—PICKARD *v.* KERNICK, [1929] 1 D. L. R. 493; 63 O. L. R. 225.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—B. (f).

716 i. *Whether way for general purposes.*]—Where proprietors of certain lands sought to interdict the proprietor of adjoining lands from carting building materials for dwelling-houses over a roadway or track which traversed their lands :—*Held :* during a period defenders had acquired a servitude right of access for cart traffic; & the fact that the carting had been for agricultural purposes did not limit the servitude to a right of passage for such purposes, but a right of access by cart for all purposes, including the carting of building materials, had been acquired.—CARSTAIRS *v.* SPENCE, [1924] S. C. 380.—**SCOT.**

716 ii. ———.]—Where a dominant owner, who has acquired a right of way over the servient heritage for the agricultural uses of his land, seeks to use that right of way for non-agricultural purposes, he has a right to do so, provided that additional burden is not thereby imposed on the servient heritage.—MANCHERSHA SORABJI *v.* VIRJIVALLABHDAS JEKISONDAS (1926), I. L. R. 50 Bom. 635.—**IND.**

PART VII. SECT. 6, SUB-SECT. 3.—B. (g).

ak. *Includes right to excavate ground—Grading to street level necessary.*]—The grant of a right of way, impliedly for use as a passage for an automobile, carries with it the right to excavate the ground in order to grade it to street level.—SMITH *v.* MORRIS, [1935] O. R. 260.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—C.

735 i. *Whether corresponding alteration of user permissible—Interpretation of grant.*]—A right-of-way was granted by a memorandum of transfer under the Land Transfer Act to the respective owners of the dominant tenements, one of whom was pltf., "& every part thereof (to be appurtenant to the said land)," in the following terms: "Full & free right & liberty for themselves & each of them their & each of their respective tenants servants & workmen & all persons going to & from (the dominant tenements) to pass & repass along the said piece of land . . . hereby intended to be transferred for a right-of-way." In an action claiming a declaration of right, injunction, & damages :—*Held :* (1) taking into consideration the circumstances when the grant was made, as the ct. was entitled to in interpreting the grant, pltf. was entitled to a declaration of right that the right of pltf., etc., to pass & repass along & over the land comprised the right-of-way was "with or without horses & other animals, carts & vehicles of all descriptions for all reasonable purposes of the farming or other occupation" of pltf.; (2) as the words of the grant made the way appurtenant to the land in the dominant tenements & every part thereof, the way might be used for the purposes for which such land was from time to time used, though such purposes might differ from the purposes for which the dominant tenements were used at the date of the grant.—FLAVELL *v.* LANGE, [1937] N. Z. L. R. 444; 13 N. Z. L. J. 139.—**N.Z.**

PART VII. SECT. 6, SUB-SECT. 3.—D. (a).

754 i. ——— *Method of—Whether reasonable.*]—Deft. leased to pltf. an island, standing in a shallow lake, which in the dry season became a muddy marsh. The land surrounding the island belonged to deft., & the lease provided that pltf. should have a right of way across it, nothing being said as to the mode of exercising the right. Pltf. having built a trestle bridge from the island to the main land :—*Held :* pltf.'s mode of user was reasonable, & deft. was not justified in interfering with the bridge.—BUTCHART *v.* DOYLE (1897), 24 A. R. 615.—**CAN.**

si. *Removal of existing obstruction—Way granted free of obstruction.*]—Where a right of way is granted over land on which there exists an obstruction at the date of the grant, but free from it, it is for the grantee to get rid of the obstruction by his own act. The grantor is not under any obligation in the absence of a contract to that effect.—SPEAR *v.* ROWLATT, [1924] N. Z. L. R. 801.—**N.Z.**

sp. *Alteration—Carriageway into motorway.*]—An easement intended as a driveway may be excavated & used for a motor if this can be done without causing injury to other lands.—SMITH *v.* MORRIS, [1935] 2 D. L. R. 780.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—D. (b).

759 i. *General rule.*] — Apart from special custom or express contract, the owner of a servient tenement is not bound to execute any repairs necessary to ensure the enjoyment of the easement by the owner of the dominant tenement.—SPEAR *v.* ROWLATT, [1924] N. Z. L. R. 801.—**N.Z.**

760 ii. ———.]—Pltf. claimed to be entitled to a right of way from his land over adjoining grazing or agricultural land of deft. to a public highway, & that he was entitled to enter on deft.'s and to effect reasonably necessary repairs to the way. Deft. admitted that pltf. & his predecessors in title had, since the year 1861, at all times of the year passed & repassed over a defined portion of deft.'s land between pltf.'s land & the highway :—*Held :* pltf. was entitled to a right of way & was entitled to enter on the land of deft. to effect reasonably necessary repairs to the way.—BYRNE *v.* STEELE, [1932] V. L. R. 143.—**AUS.**

PART VII. SECT. 8.

p i. ——— ——— ———.]—Deft. having, by grant, a right of way over a strip of land, the property of pltf. :—*Held :* pltf. was entitled to erect a fence upon the boundary between the strip & deft.'s land, allowing deft. reasonable access by a gate or gates to the way.—LEWIS *v.* WAKELING (1923), 54 O. L. R. 647.—**CAN.**

s i. ——— ——— *Whether duty on dominant owner to close.*]—A landowner over whose holding an adjoining owner had a general right of way erected a gate across the passage over which the right existed. There was no intention on the part of the servient owner to derogate from the rights of the dominant owner, but the latter, objecting to the obstruction, left the gate open after he had used the way. The servient owner, suing by civil bill, claimed damages for the failure & refusal by the dominant owner to close the gate. No actual damage was caused :—*Held :* the gate having been erected by the servient owner in the reasonable & proper exercise of his rights in his own property, that an obligation was cast upon the dominant owner to shut it.—GEOGHEGAN *v.* HENRY, [1922] 2 I. R. 1.—**IR.**

s ii. ——— ——— ———.]—When a gate is erected across a private road there is no absolute obligation on the owner of the dominant tenement to close such gate after passing or repassing on the private road.—HENDER *v.* GOHL, [1926] S. A. S. R. 325.—**AUS.**

783. *Add. Annotation :—As to* (2) **Refd.** Robertson *v.* Adams (1930), 69 L. Jo. 301.

787. *Add. Annotations :—As to* (3) **Consd.** Callard *v.* Beeney, [1930] 1 K. B. 353; Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224.

795. *Add. Annotation :—As to* (1) **Apld.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

Part VIII.—Light.

829. *Add. Annotations :*—**Consd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402. **Refd.** Hapgood *v.* Martin & Son, Ltd. (1934), 152 L. T. 72.

830. *Add. Annotations :—As to* (1) **Folld.** Price *v.* Hilditch, [1930] 1 Ch. 500. **Consd.** Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515; Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128. *As to* (3) **Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336. *As to* (6) **Consd.** Slack *v.* Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46. *As to* (10) **Refd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402.

833. *Add. Annotation :—As to* (1) **Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

834. *Add. Annotation :—As to* (2) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

841. *Add. Annotation :—As to* (3) **Consd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402.

842. *Add. Annotations :—As to* (2) **Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336. **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

850. In passage commencing "*Held :* (3) in order to satisfy Prescription Act, 1832 (c. 71), s. 2," for "s. 2" read "s. 3."

858. *Add. Annotations :*—**Consd.** Foster *v.* Lyons (1926), 70 Sol. Jo. 1182. **Apld.** Hapgood *v.* Martin & Son, Ltd. (1934), 152 L. T. 72. **Consd.** Willoughby *v.* Eckstein (No. 2), [1937] Ch. 167.

860. *Add. Annotation :*—**Refd.** Willoughby *v.* Eckstein (No. 2), [1937] Ch. 167.

864. *Add. Annotation :*—**Refd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

878. *Add. Annotation :*—**Refd.** Merstham Manor, Ltd. *v.* Coulsdon & Purley Urban District Council, [1937] 2 K. B. 77.

896. *Add. Annotation :—As to* (1) **Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

898. *Add. Annotations :—As to* (1) **Folld.** Foster *v.* Lyons (1926), 70 Sol. Jo. 1182. **Consd.** Willoughby *v.* Eckstein (No. 2), [1937] Ch. 167. *As to* (2) **Consd.** Spillers, Ltd. *v.* Cardiff Assessment Committee, [1931] 2 K. B. 21.

898a. —— —— ——.]—A reservation in a lease empowering the lessor to build on adjoining land, notwithstanding such building might obstruct any lights on the demised land, prevents the lessee from acquiring a right to light under Prescription Act, 1832 (c. 71), s. 3.—FOSTER *v.* LYONS & Co., [1927] 1 Ch. 219; 96 L. J. Ch. 79; 136 L. T. 372; 70 Sol. Jo. 1182.

Add. Annotation :—**Consd.** Willoughby *v.* Eckstein (No. 2), [1937] Ch. 167.

898b. —— ——.]—Pltf. & deft. were lessees of adjoining premises under leases granted by a common landlord. Deft. having, as pltf. alleged, so rebuilt & altered his premises as to constitute a nuisance or illegal obstruction to certain of pltf.'s windows, pltf. commenced an action for an order (*inter alia*) directing deft. to pull down so much of the buildings erected by him as caused the nuisance or illegal obstruction complained of. Subsequently a question was raised as a point of law in the defence & brought before the ct. upon an agreed statement of facts whether the access of light to the windows of pltf.'s premises was enjoyed by consent or agreement expressly given for that purpose by deed or writing within Prescription Act, 1832 (c. 71), s. 3. In the lease under which pltf. acquired the premises rights of light or other easements over other premises were expressly excluded, & the lease was subject to all rights & easements belonging to adjacent property & to the adjacent buildings or any of them being at any time rebuilt or altered according to plans as to height, elevation, extent or otherwise as might be approved by the ground landlord :—*Held :* the exception from the lease to pltf. of any right to light coupled with the right expressly reserved for the adjacent buildings to be rebuilt constituted a grant by the lessee to the lessor of the right to build during the term of the lease on the adjacent land (including deft.'s premises), notwithstanding the effect of such rebuilding on the light to pltf.'s premises, & constituted an agreement by pltf. that any enjoyment of light to her premises was throughout her lease permissive only. There was therefore a sufficient agreement or consent in writing relating to the enjoyment of light to the pltf.'s premises to satisfy the proviso to sect. 3 of Prescription

a iii. —— —— ——.]—Where, in respect of land held in fee simple under Real Property Act, 1886, there was a grant to an adjoining owner of "fee & unrestricted right of way," which words, by sect. 89 of the Act, imply "full & free right & liberty to pass & repass," the erection of a gate was not in the circumstances disclosed in evidence an obstruction or interference with that right. There is a duty on the owner of the dominant tenement & others using & enjoying the right of way through him in normal circumstances to shut the gate after opening & passing through it if leaving it open occasions damage to the owner of the servient tenement or others claiming through him.—GOHL *v.* HENDER, [1930] S. A. S. R. 158.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.

ak. *Joint wall.*]—Pltfs. sued for the establishment of an easement of light & air through the windows which they had built in the southern wall between their house & deft.'s land. Deft. contended that the wall was a joint wall & therefore acquisition of easement of light & air was not possible :—*Held :* the wall being the joint wall of pltfs. & deft., the easement of light & air through the windows opened in the joint wall could not be acquired by prescription.—NARAYAN BALWANT *v.* SHANKAR WAMAN GOVEIKAI, I. L. R. [1938] Bom. 53.—**IND.**

Act, 1832 (c. 71), & to prevent pltff. acquiring any statutory right to light under the sect.—WILLOUGHBY *v.* ECKSTEIN (No. 2), [1937] Ch. 167; [1937] 1 All E. R. 257; 106 L. J. Ch. 86; 156 L. T. 187; 53 T. L. R. 251; 81 Sol. Jo. 98.

905. *Add. Annotation :*—**Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

910. *Add. Annotation :*—**Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336.

911. *Add. Annotations :*—**Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128. **Refd.** Smith *v.* Evangelization Society (Incorporated) Trust (1933), 102 L. J. Ch. 275.

912. *Add. Annotation :*—**Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

914. *Add. Annotation :—As to* (1) **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

918. *Add. Annotation :—As to* (2) **Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

920. *Add. Annotation :—Generally,* **Refd.** Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515.

923. *Add. Annotation :—As to* (1) **Refd.** Smith *v.* Evangelization Society (Incorporated) Trust (1933), 102 L. J. Ch. 275.

932. *Add. Annotations :*—**Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336; Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

934. *Add. Annotation :*—**Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 79 Sol. Jo. 434.

934a. ——.]—The standard as to the amount of light required to be left so as to prevent a nuisance is an absolute one, & if an obstruction to an ancient light renders a room inadequately lighted & causes an actionable nuisance, the obstruction does not cease to be actionable because the room is situated in a manufacturing town.—HORTON'S ESTATE, LTD. *v.* BEATTIE, LTD., [1927] 1 Ch. 75; 96 L. J. Ch. 15; 136 L. T. 218; 42 T. L. R. 701; 70 Sol. Jo. 917.

Annotation :—**Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

934b. ——.]—A right of light by prescription to a room in a residential house is not to be measured by the use to which the room has been put in the past.

Pltf. owned a freehold house built in & occupied since 1907, & continuously having adequate light to the windows & openings, including kitchen & scullery windows, on its north side, on which it was bounded by deft.'s house. Up to Jan. 1929, the two houses were separated by narrow passages on either side of a dwarf boundary wall belonging to deft., which was also the boundary wall between the back gardens. At the beginning of Jan. 1929, without intimation to pltf., building operations were begun on deft.'s premises, the boundary wall being raised to form a side wall of the new building. On Jan. 28 pltf.'s solrs. wrote to deft., her builders & her architect, asking that the work should cease at once. Two days later the building was still proceeding, & on Feb. 4 the wall was 15 feet high. On the next day pltf. issued a writ, & on Feb. 15 a motion came before the ct. By that date the wall had been raised to its full height of 23 feet, & an undertaking by deft. not to raise it further was useless. In an action by pltf. for a mandatory injunction & damages: —*Held :* (1) pltf.'s right of light to the scullery windows was not limited by the use to which the scullery had been put in the past; (2) in the circumstances, the case was not one for a mandatory injunction.—PRICE *v.* HILDITCH, [1930] 1 Ch. 500; 99 L. J. Ch. 299; 143 L. T. 33.

Annotation :—As to (1) **Refd.** Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515.

934c. ——.]—The burden on a servient tenement cannot be increased by any merely voluntary action of the owner of the dominant tenement.

In an action to restrain interference with light to a window in a room lighted also, at the beginning of the period of twenty years before action brought, by skylights which during that period were blocked up but which though not ancient lights could not have been obstructed except by the action of the owner of the dominant tenement himself, the ct. in deciding the issue as to nuisance must treat the skylights as reinstated & will not disregard the vertical light which the skylights would afford, even if it is established that for some purposes of user that vertical light would be unsatisfactory. —SMITH *v.* EVANGELIZATION SOCIETY (INCORPORATED) TRUST, [1933] Ch. 515; 102 L. J. Ch. 275; 149 L. T. 6; 49 T. L. R. 262, C. A.

934d. Light received through windows on different sides of building—Extent of right to each window.]—When a room in a building receives light through windows on different sides which are ancient lights, the owner of land on either side as a general rule can build only to such a height as, if a building of like height were erected on the other side, would not deprive the room of so much light as to cause a nuisance.—SHEFFIELD MASONIC HALL CO., LTD. *v.* SHEFFIELD CORPN., [1932] 2 Ch. 17; 101 L. J. Ch. 328; 147 L. T. 474; 48 T. L. R. 336.

Annotations :—**Refd.** Smith *v.* Evangelization Society (Incorporated Trust (1933), 149 L. T. 6; Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

938. *Add. Annotation :*—**Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

PART VIII. SECT. 4, SUB-SECT. 1.—B.

911 viii. ——.]—*Held :* interpreting the term "ordinary light" in a common-sense manner, a pltf. is not claiming more than ordinary light because he claims a reasonable amount of direct light where he may expect to find it in a room laterally lighted, & the deprivation of such direct light may be taken into account in considering the effect of a deprivation of light by an obstruction on the servient tenement. If so much latitude be not given to the expression "ordinary light" the flexibility of the legal principle stressed in *Colls* v. *Home & Colonial Stores* is lost & a rigid standard set up by experts is introduced.

Pltfs. were the owners in fee of certain premises in which they had for many years carried on the manufacture & repair of cotton & jute bags & the colour printing of same. The said premises had been re-built by them in or about the year 1903. In May, 1934, defts. demolished a theatre, their property, & constructed a new theatre of a much greater height upon the site. The light which pltfs.' premises had enjoyed was diminished as a result, & pltfs. alleged that their business suffered in consequence. Pltfs. brought an action claiming an injunction to restrain defts. from permitting to remain any portion of the said theatre which had caused or would cause a nuisance or illegal obstruction to the access of light to the windows of pltfs.' premises.—SMYTH & SMYTH *v.* DUBLIN THEATRE CO., LTD., [1936] I. R. 692.—**IR.**

940. *Add. Annotation :—As to* (6) **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

942. *Add. Annotation :—As to* (1) **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

953. *Add. Annotations :—As to* (4) **Consd.** Price *v.* Hilditch, [1930] 1 Ch. 500. **Refd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336.

956. *Add. Annotations :*—**Consd.** Slack *v.* Leeds Industrial Co-op. Society, [1924] 2 Ch. 475. **Refd.** Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515.

982. *Add. Annotations :—As to* (1) **Refd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475; Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515.

983. *Add. Annotations :—As to* (2) **Refd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402. **Refd.** Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515.

985. *Add. Annotations :*—**Consd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402; Smith *v.* Evangelization Society (Incorporated) Trust, [1933] Ch. 515.

987a. —— **Increase of burden on servient tenement.**]—An owner of ancient light cannot so diminish his ancient-light area as to increase the burden on the servient tenement.

The observations of LORD LINDLEY in *Colls* v. *Home & Colonial Stores*, No. 830, to the effect that in considering whether a proposed obstruction would amount to a nuisance, non-ancient light from other quarters of which the dominant owner might be deprived at any time ought not to be taken into account were not intended to interfere with this paramount principle. If, therefore, the dominant tenement is rebuilt in such a way that the area of coincidence between an old & new window is much smaller than the old window, so that the ancient-light area is greatly diminished, the dominant owner cannot ask the ct. to measure the nuisance, if any, by treating the rest of the new window, rendered obstructible by his own act, as blocked up.—NEWS OF THE WORLD, LTD. *v.* FAIRHEAD (ALLEN) & SONS, LTD., [1931] 2 Ch. 402; 100 L. J. Ch. 394; 146 L. T. 11.

Annotation :—**Refd.** Smith *v.* Evangelization Society (Incorporated) Trust (1933), 149 L. T. 6.

Part IX.—Water.

997a. —— —— **Water from pond.**]—A right to take water from the pond of another is a mere easement, & not a *profit à prendre*.—MANNING *v.* WASDALE (1836), 5 Ad. & El. 758; 2 Har. & W. 431; 1 Nev. & P. K. B. 172; 6 L. J. K. B. 59; 111 E. R. 1353.

Annotations :—**Apld.** Franks *v.* Quinsee (1839), 2 Will. Woll. & H. 58; Race *v.* Ward (1855), 4 E. & B. 702.

1012. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

1016. *Add. Annotation :*—**Apld.** Attwood *v.* Llay Main Collieries (1925), 70 Sol. Jo. 265.

1046. *Add. Annotation :*—**Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1054. *Add. Annotation :—As to* (2) **Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1055. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1055a. —— ——.]—BARTLETT *v.* TOTTENHAM, No. 252a, *ante*.

1070. *Add. Annotation :—As to* (1) **Consd.** Keewatin Power Co., Ltd. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

1092a. —— ——.]—GREEN *v.* MATTHEWS & Co., No. 361a, *ante*.

1117. *Add. Annotations :*—**Consd.** Ilford U. D. C. *v.* Beal & Judd, [1925] 1 K. B. 671. **Refd.** Noble *v.* Harrison, [1926] 2 K. B. 332.

PART IX. SECT. 2, SUB-SECT. 2.—A.

1000 i. *Subterraneous water.*]—The principles of English law regarding underground streams (defined or undefined) do not apply to irrigation channels taking sub-surface water in India.—BASAVANA GOWD *v.* NARAYANA REDDI (1930), I. L. R. 54 Mad. 793.—**IND.**

PART IX. SECT. 2, SUB-SECT. 2.—B.

si. *By natural right.*]—Applt. & resp. were the owners of adjoining agricultural farms, the natural fall of which was from that of resp. to that of applt. In the farming of his property resp. kept open certain surface drains constructed many years before, the effect of which was to convey the surface water from his farm to that of applt. On a claim by applt. for an injunction to restrain resp.'s action :—*Held :* when two contiguous fields, one of which stands upon higher ground than the other, belong to different proprietors, nature itself may be said to constitute a servitude on the inferior tenement by which it is obliged to receive the water which falls from the superior; & if the water which would otherwise fall from the higher ground without hurting the inferior tenement should be collected in one body by the owner of the superior in the natural use of his property for draining or otherwise improving it, the owner of the inferior is, without the positive constitution of any servitude, bound to receive that body of water on his property. Injunction refused.—BAILEY *v.* VILE, [1930] N. Z. L. R. 829.—**N.Z.**

PART IX. SECT. 2, SUB-SECT. 2.—C.

1035 iii. ——.]—CARTER *v.* SUDDABY (Ont.), [1927] 1 D. L. R. 812.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 3.—D. (c).

c i. —— ——.]—*Held :* pltf. corpn. had obtained by prescription an easement to cast upon the land of defts. surface waters to the same extent as at a date 20 years before the commencement of the action, but it had no right to increase the volume & force of the current beyond that which existed 20 years ago, to the extent to which the volume & force of the current at times of flood was now greater than it was 20 years ago, pltf. corpn. was a trespasser.—WEST FLAMBOROUGH *v.* PRETUSKI, [1931] 1 D. L. R. 520; 66 O. L. R. 210.—**CAN.**

PART IX. SECT. 3.

1133 iii. ——.]—FOLTIN *v.* CARON (Can.), [1927] 4 D. L. R. 336.—**CAN.**

sm. *Irrigation from tank—Prescription by lessee.*]—In India, a tenant can establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART IX. SECT. 4.

sn. *Unity of seisin for different estates—Enjoyment of irrigation rights continued by tenant.*]—Where the tenancy in execution of a rent decree was sold & purchased by the landlord, but the tenant continued in occupation in the undisturbed enjoyment of the right of irrigation & the rent was substantially enhanced :—*Held :* in such circumstances the right of irrigation was not extinguished, but momentarily suspended & revived.—TINKOWRI, ETC., *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

sp. *Right to water for mill—Limited to existence of dam.*]—RIVERIN & BELANGER *v.* PRICE BROS., LTD., [1932] 3 D. L. R. 730.—**CAN.**

Part X.—Support.

1140. *Add. Annotations :—As to* (1) **Refd.** Elliott *v.* Burn, [1934] 1 K. B. 109 ; *Re* Beckermet Mining Co., Ltd.'s Application, [1938] 1 All E. R. 389.

1150. *Add. Annotation :—As to* (1) **Refd.** Elliott *v.* Burn, [1934] 1 K. B. 109.

1152. *Add. Annotation :*—**Refd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

1155. *Add. Annotations :*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931). 101 L. J. Ch. 33 ; Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488 ; *Re* Wilson Syndicate Conveyance, Wilson *v.* Shorrock, [1938] 3 All E. R. 599.

1156. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* New Sharlston Collieries Co., [1937] 1 K. B. 583.

1157. *Add. Annotations :*—**Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488 ; Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

1165. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 31.

1174. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

1193. *Add. Annotation :*—**Consd.** Ilford U. D. C. *v.* Beal & Judd, [1925] 1 K. B. 671.

1197. *Add. Annotations :*—**Consd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488. **Refd.** Wath-upon-Dearne Urban District Council *v.* Brown & Co., [1936] Ch. 172.

1198. *Add. Annotation :*—**Refd.** Warwickshire Coal Co. *v.* Coventry Corpn., [1934] Ch. 488.

1206. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

1223. *Add. Annotation :*—**Apld.** Sack *v.* Jones, [1925] Ch. 235.

1226a. Whether party-wall entitled to support—From adjacent building.]—Pltf. & deft. were the owners of adjoining houses, separated by a party-wall, & with implied mutual rights of support. Pltf. alleged that owing to lack of repair & underpinning deft.'s house was subsiding, dragging the party-wall over, & thereby damaging pltf.'s house :—*Held :* pltf.'s allegations had not been substantiated by the evidence. *Semble :* even if they had been substantiated pltf. would have had no cause of action.—SACK *v.* JONES, [1925] Ch. 235 ; 94 L. J. Ch. 229 ; 133 L. T. 129.

1231. *Add. Annotations :—As to* (1) **Refd.** Honeywill & Stein, Ltd. *v.* Larkin Bros. (London's Commercial Photographers), Ltd., [1934] 1 K. B. 191. *As to* (2) **Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

Part XI.—Miscellaneous Easements.

1247a. —— ——.]—Pltf.'s statement of claim contained a claim for infringement of pltf.'s right to light from ancient windows & a further claim for nuisance alleging that the carrying up of deft.'s building to a greater height had interfered with the proper escape of smoke & fumes from pltf.'s chimneys & such interference had caused a nuisance to the pltf. :—*Held :* having regard to *Bryant* v. *Lefever*, No. 349, the claim for nuisance disclosed no cause of action & should be struck out. The ct. is entitled to deal with the law as it think it stands.—WILLOUGHBY *v.* ECKSTEIN, [1936] 1 All E. R. 650, C. A.

1270. *Add. Annotations :*—**Refd.** Vanderpant *v.* Mayfair Hotel Co., Ltd., [1930] 1 Ch. 138 ; Chesham (Lord) *v.* Chesham Urban District Council (1935), 79 Sol. Jo. 453.

1282. *Add. Annotations :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588. **Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160 ; Hackney B. C. *v.* Metropolitan Asylums Board (1924), 131 L. T. 136.

1322a. To attach creeper to wall.]—SIMPSON *v.* WEBER, No. 204a, *ante*.

1322b. To attach post to wall.]—SIMPSON *v.* WEBER. No. 204a, *ante*.

PART X. SECT. 1, SUB-SECT. 1.—A. (a).

1139 iii. —— ——.]—Every owner of land in its natural state has a right to lateral support of his land by the adjacent land of another landowner. Such a right is not an easement, but is a right of property. The ct. will interfere by injunction to prevent irreparable damage to land when anything is done by the owner of the adjacent land in his own land so as to let the former land slip or go down or subside even if no actual damages are sustained by the former land.—TAMLUK TRADING & MANUFACTURING CO., LTD. *v.* NABADWIPCHANDRA NANDI (1932), I. L. R. 59 Calc. 363.—**IND.**

PART X. SECT. 1, SUB-SECT. 1.—A. (b).

1143 i. *General rule — Support in natural state.*]—A person must not excavate on his land so as to destroy the lateral support sufficient to maintain the soil on his neighbour's adjoining land in its natural state.—METROPOLITAN LIFE ASSURANCE CO. *v.* MCQUEEN, [1924] 2 D. L. R. 942 ; 2 W. W. R. 981.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—B. (b).

1189 i. *Weight of building contributing to subsidence.*]—Where a person by an excavation on his land causes subsidence on his neighbour's land, because of the added weight of a building thereon, he is not liable. The neighbour is not entitled to sufficient support to maintain his building.—METROPOLITAN LIFE ASSURANCE CO. *v.* MCQUEEN, [1924] 2 D. L. R. 942 ; 2 W. W. R. 981.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—C.

sq. *No right of support—Demolition of adjoining building—Whether negligence.*]—Where no right of support exists, the mere demolition of a building resulting in the removal of support previously enjoyed by an adjoining building does not constitute negligence provided that due warning of the demolition is given.—UNITED BUILDING SOCIETY *v.* LENNON, LTD., [1934] App. D. 149.—**S. AF.**

PART X. SECT. 3, SUB-SECT. 2.

p i. ——.]—An opening in the soil, not reaching the sub-soil, & not proved to be consequent upon excavations in the adjacent land, is not actionable against the excavator.—CITADEL BRICK, LTD. *v.* GARNEAU, [1937] 3 D. L. R. 169.—**CAN.**

PART XI. SECT. 11.

ar. *Burial.*]—A right to bury dead bodies is not a right of easement.—SHEO RAJ CHAMAR *v.* MUDEER KHAN (1934), I. L. R. 57 All. 166.—**IND.**

Part XII.—Disturbance of Easements.

1330a. ——— ———.]—PENWARDEN *v.* CHING (1829), Mood. & M. 400; 173 E. R. 1203, N. P.

Annotations:—**Consd.** Bryant *v.* Foot (1867), L. R. 2 Q. B. 161; Dalton *v.* Angus (1881), 6 App. Cas. 740.

1339a. Power to make grant must be shown.]—PAINE & CO., LTD. *v.* ST. NEOTS GAS & COKE CO., [1938] 4 All E. R. 592; 55 T. L. R. 150.

1352. *Add. Annotation:*—*As to* (2) **Consd.** Freeborn *v.* Leeming, [1926] 1 K. B. 160.

1356. *Add. Annotations:*—*As to* (1) **Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159. *As to* (2) **Consd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475; Horton's Estate *v.* Beattie (1926), 42 T. L. R. 701. **Apld.** Price *v.* Hilditch, [1930] 1 Ch. 500. **Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128. **Refd.** Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533. *Generally*, **Refd.** Wiltshire Bacon Co. *v.* Associated Cinema Properties, Ltd., [1938] Ch. 268.

1395. *Add. Annotation:*—*As to* (1) **Refd.** Medcalf *v.* Strawbridge, Ltd., [1937] 2 K. B. 102.

1396. *Add. Annotation:*—**Refd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475.

1399. For the paragraph in the original volume substitute the following paragraph:—

——.] — Chancery Amendment Act, 1858 (c. 27), s. 2, confers on the Ct. of Ch. jurisdiction to award damages in lieu of an injunction in the case of a threatened injury. Notwithstanding the repeal of that Act by Statute Law Revision & Civil Procedure Act, 1883 (c. 49), the combined effect of Jud. Act, 1873 (c. 66), s. 16, & Statute Law Revision Act, 1898 (c. 22), s. 1, is to maintain in force the jurisdiction conferred by Chancery Amendment Act, 1858, s. 2.

Where therefore an action was brought in the Ch. Div. for an injunction to restrain an obstruction of ancient lights, & the ct. found that defts.' buildings when completed would cause an actionable obstruction to pltf.'s lights, but that no such obstruction had yet taken place:—*Held:* the ct. had jurisdiction to award damages in lieu of an injunction.—LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD. *v.* SLACK, [1924] A. C. 851; 93 L. J. Ch. 436; 131 L. T. 710; 40 T. L. R. 745; 68 Sol. Jo. 715, H. L.; *revsg.* S. C. *sub nom.* SLACK *v.* LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD., [1923] 1 Ch. 431, C. A.; *subsequent proceedings*, [1924] 2 Ch. 475, C. A.

Annotations:—**Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128. **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

1399a. ——.]—In an action brought by pltf. against deft. society for an injunction & damages in respect of an alleged obstruction of ancient lights, the judge found that defts.' buildings when completed would cause an actionable obstruction to pltf.'s lights, but that no such obstruction had yet taken place, & he expressed the opinion that the interference with pltf.'s legal rights when the building was completed would be small, & could be adequately compensated by damages, but held, contrary to his own opinion, that he was bound by the opinion of the Ct. of Appeal in *Dreyfus* v. *Peruvian Guana Co.* (1889), 43 Ch. D. 316, that there was no jurisdiction under Chancery Amendment Act, 1858 (c. 27), to give damages in lieu of an injunction where the injury was threatened but had not been sustained, & he therefore granted an injunction. The Ct. of Appeal, without going into the merits, by a majority, upheld the view that the ct. had no jurisdiction in such a case to award damages in lieu of an injunction. The House of Lords, by a majority, reversed this decision, & remitted the case to the Ct. of Appeal to deal with it on its merits:—*Held:* the findings of the judge brought the case within the "good working rule" suggested by A. L. SMITH, L.J., in *Shelfer* v. *City of London Electric Lighting Co.*, No. 1356, *ante*, as that which might guide the ct. in exercising the discretion given it by Chancery Amendment Act, 1858, to award damages in lieu of an injunction; that was still the rule to be adopted by the ct. as a guide & was not affected by anything that was decided in *Colls* v. *Home & Colonial Stores*, No. 830, *ante*; therefore, there being evidence to support the findings of the judge, the injunction granted by him, contrary to his own opinion, ought to be discharged, & in lieu thereof an inquiry directed as to damages.—SLACK *v.* LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD., [1924] 2 Ch. 475; 94 L. J. Ch. 46, C. A.

Annotation:—**Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

1406a. —— **Erection of building interfered with acquiesced in by defendant.**]—Where pltf. & deft. held adjoining pieces of ground under a common landlord, & pltf., with the licence of the landlord, & without objection by deft., had erected a manufactory, an injunction was granted to restrain deft. so building as to obstruct the lights of pltf.'s manufactory pending trial.—CROOK *v.* WILSON (1855), 3 W. R. 378.

1408. *Add. Annotations:*—*As to* (1) **Consd.** Slack *v.* Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46. **Refd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

1419. *Add. Citation:*—11 Jur. N. S. 576.

1433a. ——— ——— ———.]—PRICE *v.* HILDITCH, No. 934b, *ante*.

1442a. —— **Against lessee—Freeholder not party to action—Light.**]—BARNES *v.* ALLEN (1927), 64 L. Jo. 92; 164 L. T. Jo. 83.

1444a. ——.]—SLACK *v.* LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD., No. 1399a, *ante*.

PART XII. SECT. 2, SUB-SECT. 2.—B. (a).

st. ***Mortgagee—Though not in possession.***]—A mtgee. of land, though not in possession, has a right to have his security left unimpaired, & if the owner of adjoining land excavates on the mortgaged land, although the mtgee. may not be entitled to maintain an action for trespass, he has a right of action for injunction or damages, independent of any that the owner of the mortgaged land might have.—METROPOLITAN LIFE ASSURANCE CO. *v.* MCQUEEN, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 2.—D. (b) i.

1451 fii. ——— ———.]—Under Specific Relief Act, 1877, the question of an

1444b. ——.]—FISHENDEN *v.* HIGGS & HILL, LTD. (1935), 153 L. T. 128; 79 Sol. Jo. 434, C. A.

1468. *Add. Annotation :*—**Consd.** Fishenden *v.* Higgs & Hill, Ltd. (1935), 153 L. T. 128.

1471. *Add. Annotations :*—**Folld.** Horton's Estate *v.* Beattie (1926), 42 T. L. R. 701. **Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336. **Apld.** Hapgood *v.* Martin & Son, Ltd. (1934), 152 L. T. 72.

Part XIII.—Profits à Prendre.

1490. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

1494. After this case add :—

—— ——.]—Stat. Frauds, s. 4, is now replaced by Law of Property Act, 1925 (c. 20), s. 40.

1496. *Add. Annotation :*—**Refd.** *Re* Timber Regulations, Refund of Dues under, [1935] A. C. 184.

1497. *Add. Annotations :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Apld.** Nicholls *v.* Ely Beet Sugar Factory, [1931] 2 Ch. 84. **Refd.** Wenner *v.* Morris (1935), 79 Sol. Jo. 252; Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

1499. *Add. Annotations :*—*As to* (1) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. *As to* (2) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

1501. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

1503. *Add. Annotation :—Generally,* **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. K. B. 312.

1511. *Add. Annotation :*—**Refd.** Cleobury Mortimer Rural District Council *v.* Childe, [1933] 2 K. B. 368.

1528. *Add. Annotation :*—**Refd.** Todrick *v.* Western National Omnibus Co. (1934), 103 L. J. Ch. 224.

1570. *Add. Annotation :— As to* (2) **Refd.** The Fagernes, [1926] P. 185.

1589. *Add. Annotations :*—**Refd.** Abrahams *v.* Mac Fisheries, [1925] 2 K. B. 18; Roe *v.* Russell, [1928] 2 K. B. 117.

1590. *Add. Annotation :—As to* (1) **Consd.** Nicholls *v.* Ely Beet Sugar Factory, Ltd., [1936] Ch. 343.

injunction to restrain a party from erecting a building so as to interfere with his neighbour's easements of light & air presents itself in a different light to what it does in the English cts.; & the ct. has a discretion, & may issue an injunction where the injury is such that pecuniary compensation would not afford adequate relief.—MAHOMED AUZAM ISMAIL *v.* JAGANATH JAMNADAS (1925), I. L. R. 3 Ran. 230.—**IND.**

PART XIII. SECT. 3.

sk. *Right of cultivation.*]—A. died in 1908 intestate, leaving a widow & thirteen children. He left a farm consisting of about 100 acres. The widow died in 1914. In 1927 & 1928 the St. John River Power Co. acquired from each of the heirs all their interest in 7 & 6-tenths acres of the farm. Each deed contained the following clause: "Excepting & reserving, however, unto the said grantors, their heir & assigns the right to cultivate any part of the above described lands not damaged by the flowage due to the development at Grand Falls":—*Held:* pltf.'s interest was a *profit à prendre*, & the reservation above must be treated as a grant *de novo* to each of the heirs.—AKERLEY *v.* BELLEFLEUR (1937), 12 M. P. R. 299.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 1.—A.

sw. *Who may acquire — Public.*]—Though the public cannot acquire ownership of a land, it can acquire *profits à prendre* over it by grant.—USSAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

PART XIII. SECT. 4, SUB-SECT. 2.—B.

1536 i. *The public.*]—Though the public cannot acquire ownership of a land, it can acquire *profits à prendre* over it by prescription.—USSAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

ECCLESIASTICAL LAW.

Part I.—In General.

1a. Church Assembly—Legislative Committee.]—Neither the Legislative Committee of the Church Assembly, nor the Church Assembly itself, is a body to which a writ of *certiorari* or of prohibition will issue, as neither of them is a body which is under a duty to act in a judicial capacity.—R. *v.* CHURCH ASSEMBLY LEGISLATIVE COMMITTEE, *Ex p.* HAYNES SMITH, [1928] 1 K. B. 411; 97 L. J. K. B. 222; 138 L. T. 399; 44 T. L. R. 68; 71 Sol. Jo. 947, D. C.

2a. Compulsory acquisition of freehold in premises used for "public religious worship"—Part of public only admitted.]—Two tenements known respectively as "the Salvation Army Hall" or "the Citadel of the Salvation Army, Weston-super-Mare" & "the Young People's Hall" & comprised in one lease were held under a trust deed executed after the lease upon trust to be used as a place of worship. The Salvation Army Hall was in fact used for religious worship: the rooms in the upper part of the Young People's Hall were used for teaching. The two buildings were separated by a yard. The lessees, in pursuance of the powers given by Places of Worship (Enfranchisement) Act, 1920 (c. 56), gave to the lessors notice in writing requiring the lessors to treat contract & agree with the lessees for the sale to the lessees of all the lessors' estate & interest in the premises, subject to the provisions of the Act, & to give particulars of the lessors' estate & interest in the premises & of their claims in respect thereof & of their claim for compensation. The lessors contended that under the trust deed the premises demised by the lease were not held on trust for the purposes of a place of worship, either at the date of the notice or at the date of the Act. In an action by the lessors claiming a declaration that the lessees were not entitled, under the Act or otherwise, to acquire the freehold reversion in all or any part of the premises, & an injunction to restrain them from proceeding under the notice:—*Held:* (1) "public religious worship" may include worship to which, on any or all occasions, only certain sections of the public are admitted; (2) a trust for the use of premises for the purposes of public religious worship is carried out although minor parts of the premises are not so used.—STRADLING *v.* HIGGINS, [1932] 1 Ch. 143; 101 L. J. Ch. 119; 146 L. T. 383.

2b. —— Minor parts of premises not so used.]—STRADLING *v.* HIGGINS, No. 2a, *ante*.

Part III.—Constitution of the Church of England.

16. *Add. Annotations:—As to* (4) **Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417. *Generally*, **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

19. *Add. Annotations:*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378; *Re* Ogden, Brydon *v.* Samuel, [1933] Ch. 678.

41. *Add. Annotation:—As to* (2) **Consd.** Notley *v.* Birmingham (Bp.), [1931] 1 Ch. 529.

70. *Add. Annotation:—As to* (1) **Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

90a. Right of public to attend.]—Under letters patent from the Crown & statutes pursuant thereto Westminster Abbey is made a Royal Peculiar the govt. of which belongs to the dean. Applt. was a professional guide for sightseers, &, after a special permit to him to act as a guide to the Abbey had elapsed, the dean made an order that he was to be excluded therefrom. On a subsequent day, which was neither a Sunday nor a holy day, applt. was in the Abbey during divine service wearing his ordinary guide's badge, when resp., a police constable, after having requested him to leave, ejected him without unnecessary violence. Applt. laid an information in the police ct. against resp. for having unlawfully assaulted him. Applt. made no claim to be a parishioner of the Abbey, & could produce no evidence of permission having been given to him to be there, but it was found that there had been no misconduct by him on the day of his ejection. The magistrate dismissed the information. On a case stated which set out these facts:—*Held:* the dean had authority to make the order excluding applt.; on applt.'s refusal to leave when requested resp. was justified in ejecting him; &, therefore, the magistrate had rightly dismissed the information.

Semble: a person who is not a parishioner has no legal right to attend a parish church even on Sundays or holy days, but if he is prevented from attending his own parish church on such days, he may present himself for admission to some other church where service is usually held.—COLE *v.* POLICE CONSTABLE 443A, [1937] 1 K. B. 316; [1936] 3 All E. R. 107; 106 L. J. K. B. 171; 155 L. T. 498; 53 T. L. R. 40; 80 Sol. Jo. 855; 34 L. G. R. 561, D. C.

PART I.

1 i. *Church—Religious community—Schism—Whether provided for by constitution.*]—BRENDZIJ *v.* HAJDIJ, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—**CAN.**

1 ii. —— —— —— *What amounts to.*]—BRENDZIJ *v.* HAJDIJ, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—**CAN.**

1 iii. —— —— —— *Effect of—Members adhering to original constitution entitled to use of church property.*]—BRENDZIJ *v.* HAJDIJ, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—**CAN.**

1 iv. *S. P.* HENNIG *v.* TRAUTMAN (Alta.), [1926] 2 D. L. R. 280; [1926] 1 W. W. R. 912.—**CAN.**

135. *Annotations :*—For " *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1923] 2 Ch. 504," read " *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53."

185. *Add. Annotation :—As to* (2) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

185a. —— **Former Royal chapel—Grant by Crown for use as parish church.**]—The ct. held that the rector & the parish church of St. Mary, Stafford, in the diocese of Lichfield, were subject to the ordinary episcopal jurisdiction, including the right of visitation.—LICHFIELD (BISHOP) *v.* LAMBERT (1929), 46 T. L. R. 24.

199. *Add. Annotation :—As to* (3) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

204. *Add. Annotation :*—**Consd.** Notley *v.* Birmingham (Bp.), [1931] 1 Ch. 529.

270. *Add. Annotation :*—**Refd.** R. *v.* Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68.

276. *Add. Annotation :—As to* (2) **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

292. *Add. Citations :—sub nom.* AYER *v.* ORME, 2 Dyer 221b ; Ben. 129 ; *sub nom.* ANON., Dal. 53 ; 1 And. 9.

Add. Annotations :— **Refd.** Cromwel's Case (1601) 2 Co. Rep. 69b ; Lyn *v.* Wyn (1665), O. Bridg. 122.

346. After this case add :—

—— ——.]—*See, now,* Cathedrals Measure 1931 (No. 7), s. 24.

388. Before this case add " *See* Parochial Registers and Records Measure, 1929 (No. 1).

401. *Add. Annotation :*—**Consd.** A.-G. *v.* Mallock (1931), 48 T. L. R. 107.

415. *Add. Annotations :*—**Consd.** A.-G. *v.* Mallock (1931), 48 T. L. R. 107. **Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

418. *Add. Annotation :*—**Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

420. *Add. Annotation :—As to* (4) **Consd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

472. *Add. Annotations :*—**Apld.** Hauxton Parochial Church Council *v.* Stevens, [1929] P. 240. **Consd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

472a. —— **Liability of lay-impropriation to sequestration.**]—WALWYN *v.* AWBERRY, No. 2599a, *post.*

472b. —— **Personal liability.**]—The impropriator of an impropriate rectory in the receipt of the profits thereof is personally liable for the repair of the chancel of the parish church, although at the time of the conveyance to him of the lands forming part of the rectory he had no notice of the liability.—HAUXTON PAROCHIAL CHURCH COUNCIL *v.* STEVENS, [1929] P. 240.

Annotation :—**Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

472c. —— —— **Right to contribution from other tithe owners.**]—The liability of a lay impropriator of a tithe rentcharge to pay the costs of the repair of the chancel of a parish church is personal & several & not joint & is not limited to the amount of the tithe rent received by him.

In an action by pltf. council against deft. under Chancel Repairs Act, 1932 (c. 20), calling upon her to pay £123 12*s.* 6*d.*, the reasonable estimated cost of repairing the chancel of the parish church, on the ground that she was the owner of an impropriate rentcharge of the value of £39 11*s.* 9*d.*, deft. contended that but for sect. 2 (3) of Chancel Repairs Act, 1932 (c. 20), she could only have been held liable if she was a person who would have been liable to be admonished by the appropriate Ecclesiastical Cts., & that she could not in fact have been so admonished, since the amount she had received from the tithe rentcharge was less than the cost of the repairs. The county ct. judge accepted this view & dismissed the action. On appeal :—*Held :* (1) the liability of deft. being personal & several & not joint, she would have been liable to be admonished by the appropriate Ecclesiastical Cts. to repair the chancel, & was therefore liable to do so notwithstanding that the sum received by her in respect of the rentcharge was less than the estimated cost of the repairs ; (2) deft. on payment of the cost of the repairs would be entitled to obtain contribution from the other tithe owners.—WICKHAMBROOK PAROCHIAL CHURCH COUNCIL *v.* CROXFORD, [1935] 2 K. B. 417 ; 104 L. J. K. B. 635 ; 153 L. T. 187 ; 79 Sol. Jo. 418, C. A. ; *sub nom. Re* CHANCEL REPAIRS ACT, 1932, WICKHAMBROOK PAROCHIAL CHURCH COUNCIL *v.* CROXFORD, 51 T. L. R. 424, C. A.

472d. —— **No notice of liability—At time of conveyance of lands.**]—HAUXTON PAROCHIAL CHURCH COUNCIL *v.* STEVENS, No. 472b, *ante.*

472e. —— **Although tithe insufficient for costs of repair—Chancel Repairs Act, 1932 (c. 20).**]—WICKHAMBROOK PAROCHIAL CHURCH COUNCIL *v.* CROXFORD, No. 472c, *ante.*

473. *Add. Annotation :*—**Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

474. *Add. Annotation :*—**Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

475. *Add. Annotations :*—**Consd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417. **Refd.** Hauxton Parochial Church Council *v.* Stevens, [1929] P. 240.

482a. —— —— ——.]—A tenant of premises rated at £125, who sublet the greater part & retained for his personal occupation a portion which was over £40 in ratable value, but not separately assessed :—*Held :* qualified as a vestryman under Metropolis Management Acts, 1855 (c. 120), & 1856 (c. 112).—GORDON *v.* WILLIAMSON, [1892] 2 Q. B. 459 ; 61 L. J. Q. B. 820 ; 67 L. T. 214 ; 57 J. P. 166 ; 40 W. R. 692 ; 8 T. L. R. 705, C. A.

Annotation :—**Refd.** London & India Docks Co. *v.* Woolwich Borough (1902), 71 L. J. K. B. 394.

569. *Add. Annotation :—As to* (3) **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60

627. After this case add :—

Right of presentation where patronage vested in parishioners.]—*See* No. 1981a, *post.*

627a. Removal of name from roll—Order for restoration by lay electoral commission—Whether court will interfere.]—A parishioner whose name was removed by the parochial church council from the electoral roll of a

parish appealed to the lay electoral commission, the appellate tribunal constituted under rule 18 of Sched. to Representation of the Laity Measure, 1929. The commission, after obtaining from the council their reasons in writing for the removal of the name, directed that the name should be restored to the roll. The council failed to comply with this direction, & the parishioner whose name had been removed commenced an action in which he sought an order directing the council to restore his name to the roll & an injunction restraining the council from preventing him from attending & voting at church parochial meetings :—*Held :* the commission had duly come to a decision & in doing so had acted in no way contrary to natural justice. The name of pltf. must therefore be restored to the roll & he was entitled to the injunction asked for. —STUART *v.* HAUGHLEY PAROCHIAL CHURCH COUNCIL, [1936] Ch. 32 ; 104 L. J. Ch. 314 ; 153 L. T. 311 ; 51 T. L. R. 538 ; 79 Sol. Jo. 559, C. A.

627b. Condition precedent—Electoral roll.]—By sect. 1 of Benefices (Exercise of Rights of Presentation) Measure, 1931, a vacancy or impending vacancy in a benefice shall be notified by the Bishop to the parochial church council :—*Held :* the giving of this notification was a condition precedent to the power of the Bishop to institute an incumbent to the vacant benefice, even though there was no parochial church council in existence.—KING *v.* TRURO, BISHOP, [1937] P. 36 ; 106 L. J. Ch. 257 ; *sub nom.* R. *v.* TRURO, BISHOP, 53 T. L. R. 4.

758. *Add. Annotation :*—**Consd.** A.-G. *v.* Mallock (1931), 48 T. L. R. 107.

983. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

1016. *Add. Annotation :—As to* (2) **Consd.** R. *v.* Daily Herald Editor, etc. & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News Editor, etc. & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

1017. *Add. Annotation :*—**Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

1049a. —— ——.]—COLE *v.* POLICE CONSTABLE 443A, No. 90a, *ante*.

1063. *Add. Annotation :—As to* (1) **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

1065. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

Part IV.—Ecclesiastical Courts.

1069. *Add. Annotation :—As to* (1) **Consd.** R. *v.* Daily Herald Editor, etc. & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News Editor, etc. & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

1115. *Add. Annotations :—As to* (1) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

1145. *Add. Annotations :—As to* (1) **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243. *As to* (8) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1. *Generally*, **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

1146. *Add. Annotations :—As to* (2) **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243. *As to* (7) **Consd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. **Apld.** *Re* St. Saviour's, Hampstead, [1932] P. 134.

1148. *Add. Annotation :—As to* (2) **Refd.** R. *v.* North, *Ex p.* Oakey, [1927] 1 K. B. 491.

1149. *Add. Annotation :*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

1150. *Add. Annotation :—As to* (1) **Refd.** Huntley *v.* Norwich (Bp.), [1931] P. 210.

1280a. —— Alternative remedy.]—Prohibition will issue in respect of an order of an ecclesiastical ct. made without jurisdiction, notwithstanding an appeal lie from such order to a higher ecclesiastical ct. & thence to the Privy Council.—R. *v.* NORTH, *Ex p.* OAKEY, [1927] 1 K. B. 491; 96 L. J. K. B. 77; 136 L. T. 387; 43 T. L. R. 60 ; 70 Sol. Jo. 1181, C. A.

1349. *Add. Annotation :*—**Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

1372. *Add. Annotation :—As to* (1) **Refd.** Raeburn *v.* Raeburn (1928), 138 L. T. 672.

1392. *Add. Annotation :—Generally*, **Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

1400. *Add. Annotation :*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

1585. *Add. Annotations :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. **Refd.** O'Connor *v.* Waldron, [1935] A. C. 76.

1596. *Add. Annotation :—As to* (3) **Refd.** *Re* Colonial Bishoprics Fund, 1841, [1935] Ch. 148.

1605. *Add. Annotation :*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

1721. *Add. Annotations :*—**Refd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459; *Re* Carroll, [1931] 1 K. B. 317.

1755. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

1756. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

1768a. —— —— ——.]—*Held :* a faculty ought to issue for the removal of (1) a tabernacle, (2) a sacring gong, (3) four out of six candlesticks on the retable, (4) two candlesticks on

the credence which had been used ceremonially, (5) a censer which had been used ceremonially, (6) the Stations of the Cross, (7) a second Holy Table introduced after a faculty for it had been refused, (8) an image of the Blessed Virgin Mary with candles & vases, (9) a holy water stoup, (10) two brass candelabra used in a service of adoration of the Sacrament, & a hanging lamp in the chancel used to denote the presence of the reserved Sacrament; a faculty ought not to issue for the removal of (11) books & pamphlets displayed on tables in the church, (12) notices as to times when confessions could be heard, (13) notices asking for prayers for deceased persons, (14) a kneeling stool used by persons making their confessions, & (15) the rector's books of devotion on the Holy Table, but these articles were not proper subjects for a confirmatory faculty; a faculty ought not to issue for the removal of (16) a crucifix on the wall above the kneeling stool, used to assist the devotions of those making their confessions, & a confirmatory faculty till further order ought to issue in respect of it; a faculty ought not to issue for the removal of (17) a crucifix behind the Holy Table which had been proved to have been the object of veneration, the rector having undertaken not to genuflect to it or cense it, & not to allow any other officiating clergymen to do so, & a confirmatory faculty till further order ought to issue in respect of it.

(18) Memorials purporting to be signed by parishioners, as to which no evidence is given in proof of the signatures or of the representations made to those who sign them, are inadmissible in a faculty suit.—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, [1927] P. 289; *subsequent proceedings*, [1928] P. 69.

Annotation:—As to (3) **Consd.** *Re* St. Saviour's, Hampstead, [1932] P. 134.

1775a. —— —— **"Till further order."**]—(1) Where a cause of faculty has been remitted by the Ct. of Arches to a consistory ct. to decree a faculty as directed by the Ct. of Arches, a party to the suit who is aggrieved by a condition proposed to be inserted in the faculty may appeal to the Ct. of Arches by way of the assertion of a grievance, & the Ct. of Arches may hear & determine the appeal without retaining the cause.

(2) A condition in a confirmatory faculty "that if any of the articles included in the faculty are treated with superstitious reverence we reserve to ourselves the right to order their removal at any time hereafter upon being satisfied hereon" is an improper condition, & such a condition is not substantially similar to, but wholly different from, a condition that the faculty is granted "till further order."

(3) Observations upon the object & effect of granting a faculty till further order, the proceedings required by the practice of the cts. before such further order can be made, the distinction between the order of the ct. in a faculty suit & the faculty, & the matters which are proper to be included in each.—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, [1928] P. 69.

1784. *Add. Annotation:*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

1789a. Cause remitted to decree faculty—Objection to condition proposed to be inserted in faculty—Right of aggrieved party to appeal.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1775a, *ante*.

Part V.—Clergy.

1806. *Add. Annotation:*—**Consd.** Clergy Orphan Corpn. *v.* Christopher, [1933] Ch. 267.

1808. *Add. Annotation:*—**Refd.** *Re* Little Gaddesden Churchyard, *Ex p.* Cuthbertson, [1933] P. 150.

1821. For "Who are exempt—Military Service Act, 1916 (c. 104), Sched. I. (4)—Lay member" read "Who are exempt—Military Service Act, 1916 (c. 104), Sched. I. (4)—Lay reader."

1846. *Add. Annotation:*—**Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 102 L. J. K. B. 113.

1851. *Add. Annotation:*—**Apld.** *Re* Clerical Disabilities Act, 1870, *Ex p.* Cowan (1927), 71 Sol. Jo. 272.

1851a. *S. P. Re* CLERICAL DISABILITIES ACT, 1870, *Ex p.* COWAN (1927), 137 L. T. 515; 71 Sol. Jo. 272.

SECT. 4.—**PATRONAGE OF BENEFICES** (p. 370).

To cross ref. add "*See, also*, Benefices (Diocesan Boards of Patronage) Measure, 1932 (No. 1).

1971. *Add. Annotation:—Generally*, **Refd.** Notley *v.* Birmingham (Bp.) (1930), 99 L. J. Ch. 305.

1981. *Add. Annotation:*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

1981a. Patronage vested in parishioners—Transfer to parochial church council—Parochial Church Council (Powers) Measure, 1921 (No. 1), s. 4 (1).]—*Re* LICHFIELD CATHEDRAL GRANT, CHAPEL-EN-LE-FRITH PAROCHIAL CHURCH COUNCIL *v.* BAGSHAW (1929), 45 T. L. R. 583.

SUB-SECT. 2.—TRANSFER AND TRANSMISSION OF PATRONAGE (p. 379).

To cross-reference add "*See, also*, Benefices (Transfer of Rights of Patronage) Measure, 1930 (No. 8)."

2104a. Whether vendor bound to make marketable title—Whether stamp necessary.]—WILMOT *v.* WILKINSON (1827), 6 B. & C. 506; 9 Dow. & Ry. K. B. 620; 5 L. J. O. S. K. B. 196; 108 E. R. 538.

Annotation:—**Refd.** Doogood *v.* Rose (1850), 9 C. B. 132.

2105a. —— **Non-completion of purchase—Default of vendor.**]—WEDDALL *v.* NIXON (1853), 17 Beav. 160; 22 L. J. Ch. 939; 21 L. T. O. S. 147; 17 Jur. 642; 51 E. R. 994.

2198. After this case add :—

——.]—*See* Benefices (Exercise of Rights of Presentation) Measure, 1931 (No. 3), s. 5.

2272. *Add. Annotation :—Generally*, **Consd.** Notley *v.* Birmingham (Bp.), [1931] 1 Ch. 529.

After this case add :—

——.]—*See, now*, Benefices Act, 1898 (Amendment) Measure, 1923 (No. 1), s. 3.

2320. Before this case add " *See, now*, Benefices (Exercise of Rights of Presentation) Measure, 1931 (No. 3), s. 1.

2355a. Jurisdiction of court of equity to order admission—No lawful excuse for refusal shown.]—A ct. of equity can make an order on a bishop to admit & licence to a perpetual curacy a duly qualified nominee who has been duly presented by the patron, unless lawful excuse for refusal by the bishop to admit & licence be shown.—NOTLEY *v.* BIRMINGHAM, BISHOP (1930), 99 L. J. Ch. 305 ; 46 T. L. R. 347.

2355b. —— Refusal to obey order—Discharge of order.]—A bishop refused to admit & licence X., a clerk in holy orders, to the perpetual curacy of Z. on the presentation of the patrons. The patrons then commenced an action in the Ch. Div., claiming that the bishop was bound to admit & licence X. to the benefice. The bishop not having entered an appearance the action came before the ct. on Apr. 2, 1930, as a short cause, upon a motion for judgment in default of appearance, & an order was made that the bishop should admit & licence X. to the benefice in due form according to law. The bishop refused or neglected to admit & licence X. to the benefice, & to comply with the order. The patrons then moved the ct. that a writ should issue to the Archbishop of Canterbury, commanding him to admit & licence X. to the benefice at the nomination or presentation of the patrons :—*Held :* so much of the order of Apr. 2, 1930, as ordered the bishop to admit & licence X. to the benefice might be discharged, & in lieu thereof & in substitution thereof it might be ordered that a writ should issue directed to the Archbishop of Canterbury commanding him to admit a fit person to the benefice at the nomination or presentation or other legal requisition of pltfs. as patrons thereof.—NOTLEY *v.* BIRMINGHAM (BISHOP) (No. 2), [1931] 1 Ch. 529 ; 100 L. J. Ch. 303 ; 145 L. T. 251 ; 47 T. L. R. 257.

2355c. —— —— Issue of writ to Archbishop.]—NOTLEY *v.* BIRMINGHAM (BISHOP) (No. 2), No. 2355b, *ante*.

2437. *Add. Citation :*—2 B. R. A. 932.

2440. *Add. Citation :*—2 B. R. A. 831.

2443a. Grounds for approval or disapproval of scheme.]—Although it may seem desirable on grounds of economy & administration to unite two country benefices with small populations, yet a scheme for such union will not be affirmed on special reference by the Judicial Committee of the Privy Council if there is united opposition to it on the part of the inhabitants.—*Re* GUSSAGE ALL SAINTS & GUSSAGE ST. MICHAEL, DORSET, PARISHES (1925), 69 Sol. Jo. 493, P. C.

Annotations :—**Folld.** Great Massingham & Little Massingham (Benefices), [1931] A. C. 328. **Apld.** *Re* Thelnetham & Hinderclay Benefices, [1934] A. C. 119.

2443b. ——.]—Having regard to Union of Benefices Measure, 1923, s. 2 (6), which sub-sect. contains the only statement in the Measure as to the principles governing the union of benefices thereunder, it is not enough, in order to justify a union, to show that one incumbent could serve the parishes affected, & that the union would save man power and might also produce surplus income available for other benefices. The circumstances & interests of the parishes themselves must be regarded.—*Re* GREAT MASSINGHAM & LITTLE MASSINGHAM, BENEFICES OF, [1931] A. C. 328 ; 100 L. J. P. C. 93 ; 144 L. T. 654 ; 47 T. L. R. 294, P. C.

Annotations :—**Apld.** *Re* Thelnetham & Hinderclay Benefices, [1934] A. C. 119. **Refd.** *Re* Bolton-Le-Moors Benefices, [1933] A. C. 556.

2443c. ——.]—Where a scheme under the Union of Benefices Measure, 1923, includes a recommendation by the Ecclesiastical Comrs. under sect. 15 that surplus revenue of the united benefice shall be applied to the spiritual needs of another benefice in the diocese, it is not fatal to the validity of the scheme that the comrs. of inquiry while reporting in its favour have stated that apart from the proposed diversion of surplus revenue, a matter beyond their cognisance, they would have found it difficult to justify. The report of the comrs. can be regarded as a recognition & fulfilment of the duty imposed upon them by sect. 2 (6) of the Measure to have regard to the interests of religion in England generally. —*Re* BOLTON-LE-MOORS, ST. PAUL, CHRIST CHURCH, & EMMANUEL, LANCASHIRE, UNION OF BENEFICES, [1933] A. C. 556 ; 102 L. J. P. C. 165 ; 149 L. T. 370 ; 77 Sol. Jo. 446, P. C.

2443d. ——.]—*Re* THELNETHAM & HINDERCLAY BENEFICES, No. 2443e, *post*.

2443e. Charge on endowments of united benefice—In favour of other benefices—Validity.]—The power conferred by sect. 15 of the Union of Benefices Measure, 1923, is a power to dispose of surplus revenue after competent provision has been made for the united benefices. The sect. therefore does not authorise the creation of a charge on the endowments in favour of other benefices, because upon a diminution of the endowments a competent provision might not remain. The power under sect. 16 to create a rent-charge cannot be utilised to alter the character of the operation authorised by sect. 15. Scheme set aside.—*Re* THELNETHAM & HINDERCLAY BENEFICES, [1934] A. C. 119 ; 103 L. J. P. C. 32 ; 150 L. T. 202 ; 50 T. L. R. 119 ; 77 Sol. Jo. 852, P. C.

2443f. Approval of bishop—What amounts to.]—The report of a commission of inquiry constituted under the Union of Benefices Measure, 1923, recommended the union of two benefices, & stated that the united endowments were not too much. The bishop of the diocese endorsed on the report his approval, with the reservation that the income of the united benefices should be limited to £500 net, & the surplus allocated to other benefices. The Ecclesiastical Comrs. prepared a scheme for union which provided that a substantial part of the endowments should be alienated :—*Held :* (1) there had been no approval of the report by the bishop as required by sect. 4 (1) of the Measure, & that there was no jurisdiction to prepare the scheme ; (2) the chairman of the commission on inquiry nominated by the Ecclesiastical

Comrs. under sect. 3 (*d*) of the Measure should not be in any way officially connected with the Comrs., nor one so frequently nominated as chairman as to afford any ground for the suggestion that he is present to represent their views. Scheme set aside.—*Re* EDBURTON & POYNINGS BENEFICES, [1934] A. C. 115; 103 L. J. P. C. 22; 150 L. T. 201; 50 T. L. R. 105; 77 Sol. Jo. 852, P. C.

2443g. Chairman of Inquiry Commission—Who may be appointed.]—*Re* EDBURTON & POYNINGS, BENEFICES, No. 2443f, *ante*.

2443h. Application by interested party—Settlement of locus standi at preliminary hearing—Form of Order in Council.]—Under a scheme, put forward by the Ecclesiastical Comrs., two benefices in the city of London were to be united. It was further proposed that the parish church of the second benefice should be closed & taken down, & the site sold. The scheme was opposed by the corpn. of the city of London, by certain learned societies, & by a gentleman who had at one time been a parishioner. It was contended, on behalf of the Ecclesiastical Comrs., while admitting the right of the city of London to appear, that the various learned societies had no such right, on the ground that they had no *locus standi*, although the Order in Council provided that their petition & objection should be considered by the Judicial Committee of the Privy Council when the appeal was being heard:—*Held:* the Judicial Committee were themselves bound by the terms of the Order in Council to hear the petition & objection as well as the appeal of the city of London. Their Lordships were further of the opinion that, in future, in cases of a like nature, the Order in Council "should make provision to enable a resp. to take a preliminary point, should he so desire, & an opportunity should be afforded to the parties to have that preliminary point disposed of before the hearing of the main appeal," & so obviate a party being put to the expense of preparing his case for the main appeal, only to find, perhaps, that, on a preliminary objection, he was not entitled to be heard because he was not an interested party.—*Re* ALL HALLOWS, LOMBARD STREET, [1937] 2 All E. R. 64; 53 T. L. R. 386; 81 Sol. Jo. 355, P. C.

2488. *Add. Annotation:*—*As to* (2) **Refd.** Ladies Hosiery & Underwear, Ltd. *v.* Parker, [1930] 1 Ch. 304.

2491. *Add. Annotation:*—**Refd.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97.

2496. *Add. Citation:*—*sub nom.* CURLEWS *v.* BUTTS, 9 L. J. O. S. K. B. 69.

2539. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2595. *Add. Annotation:*—*As to* (2) **Consd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2599a. ——Failure to repair chancel.]—(1) A justification in trespass, that pltf. was the rector of such a church, & that the goods were taken under a sequestration of the profits of the rectory, for the reparation of the chancel, must aver that no more was taken than was necessary to the expense of reparation. (2) But the profits of a lay-impropriation cannot be sequestered for the repair of the chancel.—WALWYN *v.* AWBERRY (1677), 1 Mod. Rep. 258; 2 Mod. Rep. 254; Freem. K. B. 230; 86 E. R. 866; *sub nom.* ANON., 2 Vent. 35; 3 Keb. 829.

Annotations:—*As to* (2) **Consd.** Hauxton Parochial Church Council *v.* Stevens, [1929] P. 240; Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

2607. *Add. Annotation:*—*As to* (1) **Consd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2676. *Add. Annotation:*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

2715. Before this case add "*See* Benefices (Ecclesiastical Duties) Measure, 1926 (No. 8).

2717a. Appointment of commission under Benefices (Ecclesiastical Duties) Measure, 1926, s. 3 (1)—Necessity for notice to incumbent—In respect of what duties.]—By Benefices (Ecclesiastical) Duties) Measure, 1926, s. 3 (1), where the bishop has reason to think that the ecclesiastical duties of a benefice are inadequately performed he may appoint a commission to inquire into the facts, & on their report that the inadequate performance of the duties is due to the negligence of the incumbent, has power under sect. 5 (1) to inhibit him. By sect. 2 (*a*) "ecclesiastical duties" include the observance of ordination promises, & also (iii) "an obligation binding the incumbent to manifest in his acts, conduct & course of life, due respect for his sacred office, & a due solicitude for the moral & spiritual welfare of his parishioners." A commission reported to the bishop that the ecclesiastical duties of a benefice were inadequately performed owing to the negligence of the incumbent, & also found certain charges proved which were a violation both of the ordination promises of the incumbent & of the provisions of sect. 2 (*a*) (iii). By sect. 2 (*b*): "No incumbent shall be deemed to have been negligent in the observance or performance of any of his ordination promises . . . unless such observance or performance has been required of him in writing by the bishop, who shall give him opportunity of replying, before issuing any commission under the provisions of section three of this Measure." No such requirement was made:—*Held:* the commission had jurisdiction to hold the inquiry, although the above notice had not been given, because the inadequate performance of ecclesiastical duties charged was that of ecclesiastical duties not expressly set out in sect. 2 (*b*), it being in respect of the inadequate performance of the latter only that such notice is required. The requirement in sect. 2 (*b*) applies only where the neglect charged is that of ordination promises, as such, or of duties imposed by the Rules for the Representation of the Laity, as such, & the charges against applt. were not charges of this character.—HUNTLEY *v.* NORWICH (BISHOP), [1931] P. 210.

2719a. Conduct.]—RICE *v.* OXFORD (BP.), No. 1150, *ante*.

——.]—*See, now,* Benefices (Ecclesiastical Duties) Measure, 1926 (No. 8), s. 2 (*a*) (iii.).

2719b. ——.]—HUNTLEY *v.* NORWICH (BISHOP), No. 2717a, *ante*.

Part VI.—Public Worship and Church Ministrations.

2744. *Add. Annotation :*—**Refd.** Matthews *v.* King, [1934] 1 K. B. 505.

2751. *Add. Annotation : — Generally,* **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2762. *Add. Annotation :—As to* (1) **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2764a. —— —— ——.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *post.*

2768. *Add. Annotations :—As to* (7) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (8) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (9) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *Generally,* **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1928] P. 69.

2786. *Add. Annotation :—As to* (1) **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2797. *Add. Annotation :—As to* (3) **Refd.** St. Margaret's, Toxteth Park (1924), 40 T. L. R. 687.

2801a. ——.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2809a. —— ——.]—CAPEL *v.* ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2812. *Add. Annotation :—As to* (3) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2816a. —— —— —— **Must be limited to two.**]—(1) The old English use in parish churches being to place not more than two & at least one light on the Holy Table in service time, this was retained at the Reformation. Consequently the use of six lights on the Holy Table or a retable is unlawful. The vicar of a parish having introduced without a faculty six candlesticks placed on a retable behind the Holy Table, the Chancellor granted a confirmatory faculty for two of them. Upon an undertaking being given by the vicar that the remaining four should not be used on or in connection with the Holy Table, their removal from the church was not insisted on.

(2) In the absence of evidence of superstitious reverence or use the placing of a crucifix so as to be visible to the penitent during confession is not unlawful.—*Re* ST. SAVIOUR'S, HAMPSTEAD, [1932] P. 134.

Annotation :—**Refd.** *Re* St. Hilary, Cornwall (1938), 54 T. L. R. 975.

2818a. —— —— **On credence table.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2824a. ——.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2825. For the paragraph in the original volume substitute the following paragraph :—

—— **As of course.**]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *post.*

2831. For the paragraph in the original volume substitute the following paragraph :—

—— —— **Approval of decorations & fittings.**]—On the hearing in the Consistory Ct. of London of a petition as to the furniture & fittings of the Church of St. Magnus-the-Martyr, in the City of London, a faculty was granted for, amongst other things : (1) a second Holy Table ; (2) an image of the Virgin & Holy Child placed behind the second Holy Table ; & (3) a crucifix fixed to a pillar at a considerable height from the floor & near the pulpit. On appeal the Ct. of Arches dismissed the appeal as to (1) & (3), but allowed it as to (2) :—*Held :* (1) the law was the same for every kind of sacred image in a church, including a crucifix or rood, & although such an image was not illegal *per se,* it could not lawfully be placed in a church without a faculty.

On an application for such a faculty, the question to be considered is whether, if the faculty be granted, there is or is not, in the particular case, a danger of the image being used for purposes of worship or adoration condemned by Article of Religion 22. After discussion of the kind of evidence proper to this inquiry :—*Held :* (2) there was a danger of the proposed image of the Virgin & Holy Child being so used ; (3) an image used for purposes of worship or adoration was an ornament & was illegal, because not included amongst the ornaments of the church sanctioned by the Ornaments Rubric in the Book of Common Prayer ; (4) a faculty authorising the erection of an image in a church should not be absolute, but until further order.

(5) The other matter of appeal is the second Holy Table. The church holds, or will hold, between three hundred & four hundred people, & there are a large number of celebrations every week. In those circumstances it would be a matter of course to allow a second Holy Table, but for the exceptional character of the ceremonial & services of this church. I am not, however, disposed to interfere with the exercise of the learned Chancellor's discretion in this part of the case. I think there ought to be full plans & particulars of the decorations & fittings of & surrounding the second Holy Table, & these fittings ought to be subject to the approval of the learned Chancellor & to be specifically included in the faculty (SIR LEWIS DIBDIN).—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), [1925] P. 1 ; *sub nom.* ST. MAGNUS THE MARTYR, LONDON BRIDGE, 41 T. L. R. 3.

Annotation :—Generally, **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2842. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2844. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2859. *Add. Annotation :—As to* (3) **Dbtd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2861. *Add. Annotation :—As to* (1) **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2862. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2871. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2872. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2873. For the paragraph in the original volume substitute the following paragraph :—

—— —— —— **Ordinary rules as to images apply.**]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.

2874. *Add. Annotation :*—**Reld.** Vincent *v.* St. Magnus the Martyr, etc., [1895] P. 1.

2875. *Add. Annotation :*—**Reld.** Vincent *v.* St. Magnus the Martyr, etc., [1895] P. 1.

2876. *Add. Annotation :*—**Reld.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2882. *Add. Annotation :*—**Reld.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2883. *Add. Annotations :*—**Apld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. **Reld.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2888. *Add. Annotation :*—**Reld.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2889. *Add. Annotation :*—**Reld.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2892. *Add. Annotation :—Generally*, **Reld.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2893. *Add. Annotation :*—**Reld.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2893a. —— —— **When visible to penitent during confession.**]—*Re* ST. SAVIOUR'S, HAMPSTEAD, No. 2816a, *ante*.

2896. For the paragraph in the original volume substitute the following paragraph :—

——— ——— ———.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.

2899a. —— **Above confessional stool—Whether permissible.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2899b. —— **Behind Holy Table—Whether permissible.**] — CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2900. *Add. Annotations :—As to* (2) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1. *As to* (3) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2903. *Add. Annotations :—As to* (3) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (5) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (6) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (7) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *Generally*, **Reld.** Capel St. Mary, Suffolk *v.* Packard, [1928] P. 69.

2904a. ———.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2906. For the paragraph in the original volume substitute the following paragraph :—

———.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.

2913. *Add. Annotation :*—**Reld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2915a. —— **With candles & vases—Whether permissible.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2916. For the paragraph in the original volume substitute the following paragraph :—

The Virgin & Child—Probability of veneration.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.

2924a. ———.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

(*n*) *Lights* (Vol. XIX., p. 449).

Add the following cross-references :—

Used in service of adoration of Sacrament.]—*See* No. 1768a, *ante*.

To denote presence of reserved Sacrament.]—*See* No. 1768a, *ante*.

2947a. Books & pamphlets displayed in church.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2947b. Notices—Times for hearing of confessions.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2947c. —— **Asking for prayers for dead.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2947d. Confessional stool.] — CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2948. *Add. Annotation :—As to* (1) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2965a. Books of devotion—On Holy Table.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2972a. —— ———.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2975. *Add. Annotation :*—**Reld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2985. After this case, for

"**Registration of baptism.**]—*See* REGISTRATION OF BIRTHS, MARRIAGES & DEATHS," read "**Registration of baptism.**]—*See* Canon 70 of 1603; Parochial Registers Act, 1812 (c. 146).

—— **Admissibility in evidence.**]—*See* EVIDENCE, Vol. XXII., pp. 336, 337, Nos. 3358–3378."

3006. *Add. Annotation :—Generally*, **Reld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

3015a. Sounding sacring gong—Whether permissible.] — CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

PART VI. SECT. 4.

st. *Registration of right to marry.*]—The governing body mentioned in sect. 3 of Marriage Act, 1930, is not the governing body by which the minister or clergyman in question has been ordained but means the governing body of a religious body as defined by sect. 2 thereof, viz., any church or any religious denomination, sect, congregation, or society having jurisdiction in the province. It is not necessary that the person for whom application is made for registration "as authorised to solemnise marriage" should be ordained. Therefore, if there is a religious body as defined by the Act, with a governing authority having jurisdiction in the province, such governing body may apply under said Act for such authority on behalf of a minister or clergyman, as defined by the Act, belonging to it.—*Re* VICTORIA CITY TEMPLE'S APPLICATION, [1934] 3 W. W. R. 761; *sub nom. Re* THOMPSON, 59 B. C. R. 278.—CAN.

Part VII.—Property of the Church of England.

3049. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

(*b*) *Neglect to Repair* (p. 460).

Jurisdiction of county court—Repair of chancel.]—*See* Chancel Repairs Act, 1932 (c. 20).

3081a. —— **Demolition of private chapel.**]—A metropolitan borough council contracted to purchase the site of a charitable institution on the removal of the institution to other premises in the suburbs. The institution included a private chapel for the benefit of the inmates, with some seats for members of the public on payment of pew rents. The purchasers & vendors presented a petition for a faculty for the demolition of the chapel. The Chancellor of the diocese ordered the issue of a faculty on condition that the Holy Table & all other furniture & fittings be removed for incorporation & use in the chapel to be provided on the new premises ; that, subject to any expression of opinion by relatives of those commemorated, the memorial windows, if not capable of being used in the new chapel, were to be preserved & used, if possible, in a new church or chapel to be built in the London diocese ; that the chapel site was to be preserved for ever unbuilt on, & to secure that object the instrument of transfer was to contain a restrictive covenant to that effect by the purchasers with the vicar of the parish ; that the title to the site was to be registered in the Land Registry ; & that the site was to be marked & a tablet with an inscription stating that the site was consecrated ground, not to be built on, was to be let into the surface of the ground.—*Ex p.* St. Pancras Metropolitan Borough Council & Journeymen Tailors' Benevolent Institution (1937), 53 T. L. R. 456.

3105a. —— **Removal of illegal ornaments—Ornaments subsequently brought back.**]—A clear distinction must be maintained between ornaments which have been held by the ct. to be by their very nature illegal, & those which, though not necessarily illegal, may become so by reason of their being used for superstitious purposes or in connection with illegal ceremonies. No faculty, whether confirmatory or otherwise, can be granted in respect of ornaments of the first class. The ct. has a discretion whether or not to authorise ornaments of the second class, but the discretion is a judicial one, to be exercised only after weight has been given to the various factors to which decisions of the cts. require the Consistory Ct. to have regard. In exercising that discretion, the ct. must take into account the fact that the existing incumbent of the parish has not at any time during his incumbency used any of the ornaments of that class for any superstitious purpose or in connection with any illegal ceremony ; the necessity of not hampering the incumbent in his work ; & the beauty & decorative value of the ornaments in question. Where articles which have been removed from a church under a faculty granted by a Consistory Ct. are subsequently improperly brought back into the church, the ct. is not bound in law to follow its own decision with regard to those articles. The case must be treated like an ordinary case of the introduction of articles into a church without a faculty, in view of the fact that what may have been proper or necessary in the case of a previous incumbent of the parish may not be necessary in the case of the new incumbent.—*Re* St. Hilary, Cornwall (1938), 159 L. T. 324 ; 54 T. L. R. 975 ; 82 Sol. Jo. 607 ; *on appeal*, [1938] 4 All E. R. 147.

3112. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

3113a. Whether faculty absolute—Erection of image.]—Vincent *v.* St. Magnus the Martyr, etc. (Rector & Churchwardens), No. 2831, *ante*.

3391a. —— —— **Tithable where landed.**]—By custom, fish taken in the sea is tithable where landed.—Anon (1632), Cro. Car. 264 ; 79 E. R. 830.

3406. *Add. Annotation :—As to* (1) **Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3449. *Add. Citation :*—West. Tithe Cas. 44.

Add. Annotation :—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3451. *Add. Annotation :—As to* (1) **Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3454a. —— **Whether premises exempted from prescribed rate—Onus of proof.**]—By the above Act & a decree made pursuant to it & having the force of a statute, the lessees of houses & all other hereditaments, with certain immaterial exceptions, situated in the City of London, are liable to pay a tithe of 2*s.* 9*d.* for every rent of 20*s.* by the year, " & so above the rent of 20*s.* by the year by the rate aforesaid." The decree contained a proviso that in the case of premises in respect of which less sums had been accustomed to be paid for tithes before 1545, the date of the above Act, the premises should be exempted from the prescribed rate. In an action by the owners of tithes against the occupiers of premises in the City for tithe at the rate prescribed by the Act :—*Held :* (1) the *onus* was on defts. to prove that the tithe paid before 1545 in respect of the premises was less than the sum prescribed by the Act ; (2) defts. had not discharged the *onus*.—Busby *v.* Avgherino, [1928] A. C. 290 ; 97 L. J. Ch. 291 ; 139 L. T. 170 ; 92 J. P. 129 ; 44 T. L. R. 551 ; 26 L. G. R. 401, H. L.

3455a. —— **Whether payable on reserved or improved rent.**]—A lease of premises was granted at the yearly rent of £102 10*s.* in consideration of the lessee expending £2,000 in building thereon. The improved annual value was £250 :—*Held :* tithes were payable upon the annual value, & not on the rent

eg. *Control of court.*]—*Held :* the jurisdiction of the ct. to intervene in the internal affairs of the Church of England was based on property rights, & as the action was a direct claim to the right to the possession of property the ct. had jurisdiction.—Cherrington *v.* Bell (1934), 29 M. C. R. 105.—N.Z.

reserved.—VIVIAN *v.* COCHRANE (1855), 4 De G. M. & G. 818; 25 L. J. Ch. 553; 26 L. T. O. S. 17; 19 J. P. 131; 1 Jur. N. S. 809; 3 W. R. 254; 43 E. R. 728, L. C.

3455b. —— **Whether non-payment a defence.**]—Mere non-payment of tithes under the Act is not an answer.—ST. PAUL'S WARDEN, ETC. *v.* KETTLE (1813), 2 Ves. & B. 1; 35 E. R. 218, L. C.

Annotations :—**Refd.** Payne *v.* Esdaile (1888), 13 App. Cas 613; Busby *v.* Avgherino, [1928] A. C. 290.

3455c. —— ——.]—PAYNE *v.* ESDAILE, No. 3451, *ante*.

3456. *Add. Annotation* :—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3465. *Add. Annotations* :—*As to* (4) **Consd.** Queen Anne's Bounty *v.* Thorne, [1934] 1 K. B. 297. *Generally*, **Refd.** Queen Anne's Bounty *v.* Blacklocks' Executors, [1934] 1 K. B. 599.

3465a. —— **What words operate to pass.**]—A tithe rentcharge will not, upon a conveyance of land without more, pass to the purchaser by virtue of Conveyancing Act, 1881 (c. 41), s. 63. Tithe rentcharge is, like tithe, a hereditament separate from the land, & express words are necessary to pass it.—PUBLIC TRUSTEE *v.* LANCASTER DUCHY, [1927] 1 K. B. 516; 96 L. J. K. B. 188; 136 L. T. 468; 43 T. L. R. 163; 71 Sol. Jo. 19, C. A.

3466. After this case add "**Transfer to Queen Anne's Bounty.**]—*See* Tithe Act, 1925 (c. 87), s. 3."

3466a. —— **Meaning of "rectory with cure of souls"—Sinecure.**]—Pltf. having been instituted & inducted to a rectory by the Bishop in 1917, read himself in & presented himself to the vicarage. He was the only person in the parish with cure of souls, & since his institution he had been in receipt of the tithes in respect of the vicarage & also of the rectory, & had resided throughout in the parish. Since 1849 the rectory & vicarage had been held by the same person, & for many years the rectory had been what is commonly called a sinecure. If the rectory was a benefice with cure of souls the tithe rentcharge attached to the rectory would vest in Queen Anne's Bounty & be paid to pltf. free of rates; if not, pltf. would be liable for certain rates. In an action by pltf. against Queen Anne's Bounty for a declaration that by the Tithe Act, 1925, the rectorial tithe rent which was attached to the benefice was transferred to & became vested in defts. for all the interest therein & for the purposes of the Act:—*Held*: though pltf. was the vicar with cure of souls, yet, since the expression "rectory with cure of souls" in Tithe Rentcharge (Rates) Act, 1899 (c. 17) meant a real cure of souls *actualiter* & did not include a rectory which was a sinecure, & since a sinecure could not be turned by residence into a rectory with cure of souls, pltf. was not a rector with cure of souls within the definition of "benefice" in Tithe Rentcharge (Rates) Act, 1899 (c. 17), & the action failed.—GREENING *v.* QUEEN ANNE'S BOUNTY, [1932] 1 Ch. 348; 101 L. J. Ch. 260; 146 L. T. 447; 48 T. L. R. 155; 76 Sol. Jo. 10; 30 L. G. R. 181.

3466b. —— **Meaning of "benefice."**]—GREENING *v.* QUEEN ANNE'S BOUNTY, No. 3466a, *ante*.

3468. *Add. Annotations* :—*As to* (2) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. *Generally*, **Refd.** Queen Anne's Bounty *v.* Blacklock's Executors, [1934] 1 K. B. 599.

3470. *Add. Annotations* :—**Consd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417. **Refd.** Hauxton Parochial Church Council *v.* Stevens, [1929] P. 240.

3475a. —— ——.]—UNIVERSITY COLLEGE, OXFORD (MASTER & FELLOWS) *v.* GARTON (1847), 10 Q. B. 760; 16 L. J. Q. B. 381; 9 L. T. O. S. 245; 11 Jur. 907; 116 E. R. 289.

Annotation :—**Refd.** R. *v.* England & Wales Tithe Comrs. (1852), 21 L. J. Q. B. 208.

3487. After this case add:

—— ——.]—*See, now*, Extraordinary Tithe Act, 1897 (c. 23), s. 1 (1).

3488. For "*Held*: the ct. had jurisdiction to deal with the costs, & they would have to be paid by W., the landlord seeking compulsory redemption" read "*Held*: (1) the ct. had jurisdiction to deal with the costs; (2) they must be paid by W., the landowner seeking compulsory redemption."

Add. Annotations :—*As to* (1) **Apprvd.** *Re* Wartling Tithe Redemption, [1924] 2 Ch. 123. *As to* (2) **Overd.** *Re* Wartling Tithe Redemption, [1924] 2 Ch. 123.

3490a. —— **What may be taken—All goods upon land.**]—The right given by the Tithe Act, 1836 (c. 71), s. 81, to a person entitled to tithe rentcharge to distrain for arrears thereof upon the land liable thereto extends to all the goods & chattels upon the land, which are not specially protected from distress by law, & is not limited to things which were titheable before the passing of the Act.—QUEEN ANNE'S BOUNTY *v.* THORNE, [1934] 1 K. B. 297; 150 L. T. 135; 50 T. L. R. 20; 77 Sol. Jo. 764, D. C., *revsd. on other grounds*, [1934] 2 K. B. 175, C. A.

Annotation :—**Consd.** Swaffer *v.* Mulcahy, [1934] 1 K. B. 608.

3490b. —— —— **Beasts which gain the land.**]—The owners of certain tithe rentcharge applied to the county ct. under Tithe Act, 1891 (c. 8), s. 2, for the recovery of arrears due from F., J. & W. The county ct. made orders accordingly & appointed X., an officer of the ct., to distrain. X. gave to F., J. & W. respectively ten days' notice in writing of his intention to distrain, as required by Tithe Act, 1836 (c. 71), s. 81. He took no further steps, & eight months later the county ct., on the application of the tithe owners, appointed M., an officer of the ct., to distrain in place of X. M. served no further notices but seized in the case of F. 10 ewes, 19 lambs & 5 tegs; in the case of J., 5 cows & 1 horse, which was at the time of the seizure in use drawing a cart; in the case of W., 43 sheep, 1 cow, 1 heifer & 1 cart horse (in actual use), of which W. was a bailee, but not the owner.

Actions of replevin by F., J. & W., respectively against M. were removed by *certiorari* into the High Ct. Pltfs. contended that the distress was illegal (*a*) because M. had not served ten days' notice of his intention to distrain; (*b*) because, by the statute 51 Hen. 3, stat. 4, known as Les Estatuz del Eschekere, "beasts which gain the land & sheep" are privileged from distress if other distress is available, which they asserted was the case on the facts; (3) because, in the case of J. & W., the horses seized were in actual use.

(This point was conceded by deft., subject, in the case of W., to the question whether a bailee was entitled to maintain an action of replevin.)

Deft. relied on the notices given by X., & contended that no further notices were necessary. He did not admit the existence of the statute cited as 51 Hen. 3, stat. 4, or as Les Estatuz del Eschekere, & said that its true construction (if it existed) was not that contended for by pltfs., & that it had no application to the cases before the ct.:—*Held:* (1) the purpose of the ten days' notice of intention to distrain being merely to give the tithe-payer an opportunity to pay & avoid the inconvenience of a distress, that purpose had been fulfilled by X.'s notice, & no further notice by M. was necessary; (2) whether or not the so-called statute 51 Hen. 3, stat. 4, known as Les Estatuz del Eschekere, was a statute properly so called or not, it had for centuries been treated as a declaration of the common law binding on the cts.; (3) the true meaning of "bestes ke gaignent sa terre" was "beasts of the plough" which, with sheep, were privileged from distress, in those cases to which the statute applied, if other distress was available; (4) the applicability of the statute depended on whether the right of distress for tithe rentcharge was in the nature of execution like a distress for poor rates, or was subject to the same limitations as a landlord's distress for rent. On the true construction of Tithe Act, 1836 (c. 71), s. 81, the words "otherwise to act & demean himself in relation thereto as any landlord may" refer only to the last of the three branches "to distrain," "to dispose of the distress," & "& otherwise to act & demean himself" & do not limit the distress itself, which is analogous to an execution. The ancient statute therefore does not apply to a distress for tithe rentcharge; (5) in the case of W., a bailee may maintain replevin.—SWAFFER *v.* MULCAHY, HOOKER *v.* MULCAHY, SMITH *v.* MULCAHY, [1934] 1 K. B. 608; 103 L. J. K. B. 347; 150 L. T. 240; 50 T. L. R. 179; 77 Sol. Jo. 899.

3490c. —— Necessity for notice.]—Where, under Tithe Act, 1836 (c. 71), s. 81, & Tithe Act, 1891 (c. 8), s. 2, the bailiff of a county ct. levies a distress for unpaid tithe, he must give the tenant ten days' previous notice.—NEW COLLEGE, OXFORD, WARDEN & SCHOLARS *v.* DAVISON (1933), 49 T. L. R. 579; 77 Sol. Jo. 589.

Annotations:—**Overd.** Queen Anne's Bounty *v.* Thorne, [1934] 2 K. B. 175. **Reld.** Swaffer *v.* Mulcahy, Hooker *v.* Mulcahy, Smith *v.* Mulcahy, [1934] 1 K. B. 608.

3490d. —— ——.]—SWAFFER *v.* MULCAHY, HOOKER *v.* MULCAHY, SMITH *v.* MULCAHY, No. 3490b, *ante*.

3490e. —— ——.]—An officer appointed by the county ct. under Tithe Act, 1891 (c. 8), s. 2, to distrain on land occupied by the owner thereof for the sum ordered to be paid in respect of arrears of tithe rentcharge together with costs has conferred on him by sect. 2 (2), "the like powers of distraint for the recovery of the sum ordered to be paid as are conferred by the Tithe Acts on the owner of a tithe rentcharge for the recovery of arrears of tithe rentcharge":—*Held:* the obligation to give ten days' notice of intention to distrain imposed by Tithe Act, 1836 (c. 71), s. 81, is not imported into Tithe Act, 1891 (c. 8), s. 2 (2), as part of the power to levy a distress created by sect. 81 so as to require the officer appointed to distrain to give that notice before levying a distress.—QUEEN ANNE'S BOUNTY *v.* THORNE, [1934] 2 K. B. 175; 103 L. J. K. B. 473; 151 L. T. 101; 50 T. L. R. 294; 78 Sol. Jo. 206, C. A.

Annotation:—**Folld.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412.

3491. *Add. Annotation:*—**Consd.** Queen Anne's Bounty *v.* Thorne, [1934] 1 K. B. 297.

3491a. —— —— By bailee.]—SWAFFER *v.* MULCAHY, HOOKER *v.* MULCAHY, SMITH *v.* MULCAHY, No. 3490b, *ante*.

3492a. —— Abortive sale by auction—Second distress & sale by auction—Jurisdiction to order.]—Upon the application of the tithe owners a county ct. judge made an order for the recovery of tithe rentcharge issuing out of certain lands, & he directed that an officer of the ct. should distrain upon those lands for the sum. The officer of the ct. distrained & offered the goods seized for sale by auction. A number of persons attended the sale & by their conduct prevented it from being successful, not bidding themselves & preventing others from bidding. The tithe owners thereupon applied to the county ct. for a further order for the recovery of the same tithe rentcharge, together with the costs & expenses of the abortive sale. The county ct. judge accordingly made an order that a second distress be levied for the recovery of the same tithe rentcharge, together with the costs, & directed that the goods seized should be sold by tender. A rule *nisi* for *certiorari* was obtained to remove the second order of the county ct. judge into the High Ct. upon the ground that he had no jurisdiction to entertain or adjudicate upon the application or to make the order:—*Held:* (1) the county ct. judge had not exceeded his jurisdiction in ordering a second distress, in view of the fact that there was a combination of persons to prevent the sale on the first distress from being effective, or in ordering that the goods seized should be sold by tender; (2) the application for the second distress was properly made by the tithe owners, & it was not necessary that it should be made by the officer of the ct.—R. *v.* CLEMENTS (JUDGE), *Ex p.* FERRIDGE, [1932] 2 K. B. 535; 76 Sol. Jo. 414; *sub nom.* R. *v.* KENT COUNTY COURT JUDGE, *Ex p.* FERRIDGE, 101 L. J. K. B. 603; 147 L. T. 353.

Annotations:—*As to* (1) **Apld.** Rawlence & Squarey *v.* Spicer, Withers & Co. *v.* Spicer, [1935] 1 K. B. 412. *Generally*, **Reld.** Queen Anne's Bounty *v.* Blacklock's Executors, [1934] 1 K. B. 599.

3492b. —— —— —— ——.]—An order having been made by the county ct. directing the recovery from a landowner of a sum of about £30 on account of tithe rentcharge & appointing an officer to distrain therefor, the officer seized three hayricks of the market value of £170. By reason of a local agitation against tithes & of threats by the landowner a sale of the hayricks by auction could not be held. Under an order for sale by tender only two tenders were forthcoming, the higher being one of £10 by the landowner himself which was accepted. An application by the parties entitled to the tithe rentcharge for an order

for a second distress having been refused by the county ct. :—*Held :* the case was excepted from the general rule of law that a second distress cannot be made for the same sum, on either of these grounds : (1) that the officer in levying the first distress had in the circumstances made a *bonâ fide* & excusable mistake in underestimating the true value of the hayricks seized ; (2) that the misconduct of the landowner himself had contributed to prevent the first distress from being effective ; & the case should be remitted to the county ct. judge, who in the exercise of his judicial discretion should make such an order &, if necessary, give such further directions, as were in accordance with the principles of law which the ct. had laid down.

(3) Under sect. 10 (2) of the Tithe Act, 1891 (c. 8), s. 10 (2), the proceedings which are required to be commenced before the expiration of two years from the date at which the sum on account of tithe rentcharge became payable are the original proceedings for the recovery of that sum & not proceedings subsequently initiated by direction of the county ct. under sect. 2 (2) of the Act.

Qu. : whether the rules by which the cts. have limited the powers of distress in ordinary cases apply to a case of distress for tithe rentcharge under the Tithe Acts where the conduct of the distress is not left to the judgment or initiative of the tithe-owner, but has to be exercised at every stage under the directions of the county ct.—RAWLENCE & SQUAREY *v.* SPICER, WITHERS & CO. *v.* SPICER, [1935] 1 K. B. 412 ; *sub nom.* WITHERS *v.* SPICER, RAWLENCE & SQUAREY *v.* SPICER, 104 L. J. K. B. 89 ; 152 L. T. 81 ; 51 T. L. R. 89 ; 78 Sol. Jo. 802, C. A.

3492c. —— —— Who may apply for second distress — Tithe owner.]—R. *v.* CLEMENTS (JUDGE), *Ex p.* FERRIDGE, No. 3492a, *ante.*

3492d. —— Mistake as to value—Jurisdiction to order second distress.] — RAWLENCE & SQUAREY *v.* SPICER, WITHERS & CO. *v.* SPICER, No. 3492b, *ante.*

3492e. —— Limitation of time for.]—The owner of tithe rentcharge obtained from the county ct. judge in May, 1932, an order for the payment of a sum on account of arrears for three consecutive half-years ending Oct. 1, 1931. In Nov. 1933, application was made to the county ct. judge to direct the officer of the ct. to distrain for that sum under Tithe Act, 1891 (c. 8), s. 2 (2). He refused, on the ground that by the proviso to Tithe Act, 1836 (c. 71), s. 81, " not more than two years' arrears shall at any time be recoverable by distress " & that the arrears claimed went back more than two years before the date of the proposed distraint :—*Held :* there is nothing in sect. 81 of 1836 Act which limits the two years' arrears to the period immediately antecedent to the date of the distress, but the sect. deals with *quantum* only. The time limit is found in sect. 10 (2) of 1891 Act, which enacts that tithe rentcharge shall not be recoverable unless proceedings for its recovery have been commenced before the expiration of two years from the date at which it became due. The present proceedings having been so commenced the owner of the tithe rentcharge was entitled to have a distress levied by the officer of the county ct., & the judge should have directed him accordingly.—QUEEN ANNE'S BOUNTY *v.* BLACKLOCKS' EXORS., [1934] 1 K. B. 599 ; 103 L. J. K. B. 183 ; 150 L. T. 479 ; 50 T. L. R. 223 ; 78 Sol. Jo. 135, D. C.

3492f. —— Form of order.]—An order for distress for arrears of tithe rent is not invalid by reason of its referring to lands in two or more parishes.—QUEEN ANNE'S BOUNTY *v.* COOKE (1934), 151 L. T. 172 ; 50 T. L. R. 339 ; 78 Sol. Jo. 337, D. C.

3492g. Commencement of proceedings—What proceedings must be commenced within two years.]—RAWLENCE & SQUAREY *v.* SPICER, WITHERS & CO. *v.* SPICER, No. 3492b, *ante.*

3494a. Tithe Rentcharge Recovery Rules, 1891–1933, rr. 5, 8—Validity.]—(1) Applications had been made to the county ct. for the appointment of a receiver for the recovery of certain tithe rentcharge. The landowner gave no notice of opposition to the applications, but he attended the ct. & claimed a right to be heard under Tithe Act, 1891 (c. 8), s. 2 (1). The county ct. judge offered an adjournment to enable the landowner to file his notice of opposition, but this was refused, the landowner maintaining his claim to be heard then & there & saying that Tithe Rentcharge Recovery Rules, 1891–1933, r. 8, & the other rules which purported to extend the power of the county ct. under sect. 2 (1) of the Act of 1891, were *ultra vires* the rule committee. The judge withdrew the offer of an adjournment & made an order for the appointment of a receiver. The landowner applied to the High Ct. for a writ of prohibition to issue to the county ct. judge, to the receiver & to the titheowner to prohibit them from proceeding further in the matter of the applications. The judge in chambers dismissed the summons & the landowner appealed :—*Held :* the rule committee had power to make the rules & regulations which they had made with regard to the recovery of rentcharge, & the landlord did not have an unregulated right of audience under the Tithe Act, 1891 (c. 8), s. 2 (1).

(2) A landowner, who is dissatisfied with the order of a county ct. judge directing him to pay a sum on account of tithe rentcharge & desires to have it set aside, ought only to be granted a writ of prohibition to the judge for that purpose in a clear case of want of jurisdiction or excess of jurisdiction on the part of the judge ; & in any other case he should proceed by appeal, more especially as a right of appeal is expressly given by Tithe Act, 1891 (c. 8), s. 7.—QUEEN ANNE'S BOUNTY, GOVERNORS OF *v.* PITT-RIVERS, [1936] 2 K. B. 416 ; 2 All E. R. 161 ; 105 L. J. K. B. 608 ; 154 L. T. 627 ; 80 Sol. Jo. 487 ; *sub nom.* PITT-RIVERS *v.* QUEEN ANNE'S BOUNTY, 52 T. L. R. 449, D. C.

3494b. Appeal against order for payment—Whether prohibition lies.]—QUEEN ANNE'S BOUNTY, GOVERNORS OF *v.* PITT-RIVERS, No. 3494a, *ante.*

3494c. Tithe Act, 1936—" Arrears."—Meaning of.] —Pltfs. were owners within Tithe Act, 1936 (c. 43), s. 20 (3), of a tithe rentcharge charged

upon certain lands of which R. was the owner & occupier. In Sept. 1934, & in Sept. 1936, pltfs. applied to the county ct. for an order for the recovery of sums due in respect of the tithe rentcharge. On each occasion an order was made for the recovery by distress of the sum due together with a sum for costs. On Apr. 17, 1937, pltfs. gave notices to R. & to the Tithe Redemption Commission in accordance with Tithe Act, 1936 (c. 43), s. 20 (3). The Tithe Redemption Commission contended that the sums in respect of which orders had been made by the county ct. were not "arrears" within sect. 20, & that the commission had no power to recover & to give a discharge for such sums:—*Held:* (1) "arrears" in sect. 20 referred to the sums which became due on account of tithe rentcharge before the appointed day (Oct. 2, 1936), but not to any right or liability in respect of sums which may have accrued or become due before the appointed day. The two sums in respect of costs in the county ct., were, therefore, not "arrears"; (2) "arrears" included the sums due for tithe rentcharge in respect of which an order for recovery by distress had been made as well as sums in respect of which no such order had been made.—QUEEN ANNE'S BOUNTY *v.* TITHE REDEMPTION COMMISSION, [1938] Ch. 229; [1937] 3 All E. R. 515; 107 L. J. Ch. 85; 157 L. T. 334; 53 T. L. R. 969; 81 Sol. Jo. 588.

494d. —— —— Limitation of time for recovery.]—Tithe Act, 1936 (c. 43), abolished tithe rentcharge on Oct. 2, 1936, but preserved the right to recover tithe rentcharge accrued due before that date, subject to the provision that after Apr. 1, 1937, arrears could only be recovered by the Tithe Commission. After that date no proceedings for arrears could be commenced by the Commission until the expiration of one month after the tithe-owner had given particulars of the arrears claimed to the tithe-payer & the Commission. The arrears recoverable are limited to two years by the Tithe Act, 1891 (c. 8). On Sept. 30, 1937, pltfs. posted to the Commission & to the tithe-payers particulars of arrears due on Oct. 1, 1935, & it was admitted that such notices were received on Oct. 1, 1937, & that the receipt on such date was in time for the purposes of the two-years' limitation prescribed by the Tithe Act, 1891 (c. 8), which period would expire at midnight Oct. 1–Oct. 2, 1937. It was also admitted that, upon such receipt on Oct. 1, 1937, the period of one month above referred to would commence immediately after midnight on Oct. 1–Oct. 2, 1937. By Tithe Act, 1936 (c. 43), s. 10 (*a*), in the calculation of the two-years' limitation period, time after the service of the particulars by the tithe-owner during which proceedings cannot be commenced is to be excluded. The proceedings for recovery of the arrears were commenced in the county ct. on Nov. 2, 1937. It was contended that, although the period of one month commenced on Oct. 2, 1937, "time after" the service of the particulars began on Oct. 1, 1937, or, in the alternative, in calculating these times regard must be had to the exact time of service:—*Held:* (1) the proceedings were out of time because the two years' period under the Tithe Act, 1891, ended on Oct. 1, 1937, & "time after" the service of the particulars did not commence until Oct. 2, 1937. The arrears, therefore, became irrecoverable before the excluded period began; (2) Tithe Act, 1936 (c. 43), s. 20 (10) (*a*), cannot be construed as referring to the exact time at which notices are served or proceedings begun, & the legislature did not thereby intend to deal with fractions of a day.—QUEEN ANNE'S BOUNTY *v.* TITHE REDEMPTION COMMISSION (No. 2), [1938] 3 All E. R. 664; 54 T. L. R. 1106; 82 Sol. Jo. 645. *affd.* [1938] 4 All E. R. 368, C. A.

3501. *Add. Annotation:*—**Consd.** Queen Anne's Bounty *v.* Thorne, [1934] 1 K. B. 297.

3506. *Add. Annotation:*—**Refd.** R. *v.* Customs & Excise Comrs., [1928] A. C. 402.

3513a. Mode of payment of compensation—At election of limited owner—Whether election revocable.]—*Re* WARTLING TITHE REDEMPTION, No. 3513b, *post.*

3513b. Cost of investment of redemption money—Compulsory redemption—Jurisdiction of court to deal with.]—By a settlement dated in 1893 certain tithe rentcharges payable out of lands situate at W. were settled, subject to certain life interests which had determined, to the use of H. for life with remainders over. The settlement contained a proviso appointing the trustees of the settlement trustees for the purposes of the Settled Land Acts, & providing that a sole trustee should be competent to act for all the purposes of the Acts, including the receipt of capital money. In 1899 H. assigned his life interest in the rentcharges to C. In 1905 C. died, having by his will devised his real & personal estate to resps. & appointed them his exors. In 1922 applt., who was the owner of the land out of which certain of the tithe rentcharges were payable, in exercise of the power given him by Tithe Act, 1918 (c. 54), s. 3, applied to the Ministry of Agriculture & Fisheries for the redemption of certain of these charges, amounting to £48 10*s.* 8*d.* & 5*s.* respectively, & for the determination by the Minister of the amount of the consideration money payable in respect thereof. On Sept. 20, 1922, resps., in exercise of their option under Tithe Act, 1846 (c. 73), s. 9, signed a form of consent which had been sent to them by the Ministry to the payment of the consideration money to the surviving trustee of the settlement of 1893. A month later they wrote to the Ministry revoking their consent & requesting that the money might be paid into ct. The Ministry thereupon wrote to applt., directing him to pay the money into ct., which he accordingly did. On Feb. 12, 1923, resps. took out an originating summons for an order that the fund in ct. might be invested & the income therefrom paid to resps. or the survivor of them as & when received during the life of the tenant for life:—*Held:* (1) on an application to invest money paid into ct. representing compensation paid under the Tithe Acts on the redemption of rentcharges, there was no general principle that required the ct. to direct that the person exercising the compulsory powers under the Acts should bear the burden of the costs, but the costs were, under Jud. Act, 1890 (c. 44), s. 5, in the discretion of the

ct. entirely unfettered by any such general principle; the ct. below ought to have exercised its discretion by holding that applt., who had been brought before the ct. solely for the purpose of making him liable for costs, was not so liable, & to have dismissed the application as against him with costs.

(2) *Semble:* there is no power in the Tithe Acts which enables a tithe owner who has once exercised the option given him by the Act of 1846, s. 9, to revoke or alter the exercise of it.—*Re* WARTLING TITHE REDEMPTION, [1924] 2 Ch. 123; 93 L. J. Ch. 562; 131 L. T. 185; 88 J. P. 133; 68 Sol. Jo. 518; 22 L. G. R. 349, C. A.

Compare original volume, p. 492, No. 3488.

3543. *Add. Citations:*—[1924] 1 K. B. 151; 93 L. J. K. B. 116; 130 L. T. 383; 88 J. P. 33; 68 Sol. Jo. 541.

3579a. —— **What amounts to incumbrance affecting land.**]—WRENCH *v.* LORD (1837), 3 Bing. N. C. 672; 4 Scott, 381; 6 L. J. C. P. 193; 132 E. R. 569.

3614. *Add. Citations:*—1 And. 47; 3 Dyer, 338 b; *sub nom.* BELFORD *v.* FOORD (1595), Cro. Eliz. 447; *sub nom.* BETFORD *v.* FORD, Cro. Eliz. 472; *sub nom.* FOORD'S CASE, 5 Co. Rep. 81 a.

Add. Annotation:—**Refd.** Betesworth *v.* St. Paul's (Dean) (1726), Cas. *temp.* King, 66.

3615. *Add. Citations:*—*sub nom.* BETFORD *v.* FORD, Cro. Eliz. 472; *sub nom.* FOORD'S CASE, 5 Co. Rep. 81 a; *sub nom.* ANON. (1574), 1 And. 47; 3 Dyer, 338 b; Ben. 238. *Add. Annotation:*—**Refd.** Betesworth *v.* St. Paul's (Dean) (1726), Cas. *temp.* King, 66.

3648. To cross-reference before this case add "*See* Ecclesiastical Dilapidations (Amendment) Measure, 1929 (No. 3)."

3665. *Add. Annotation:*—**Refd.** Wickhambrook Parochial Church Council *v.* Croxford, [1935] 2 K. B. 417.

3787. After this case add:—

"**Extinguishment or redemption of first fruits & tenths.**]—*See* First Fruits & Tenths Measure, 1926 (No. 5)."

3827. *Add. Annotation:*—**Refd.** R. *v.* Customs & Excise Comrs., [1928] A. C. 402.

3900. The order of the cross-references following this case should be inverted.

3907. *Add. Annotations:*—**Apld.** Patton (W. R.) *v.* Toronto General Trusts Corpn., [1930, A. C. 629. **Consd.** *Re* May, Eggar *v.* May] [1932] 1 Ch. 99.

Part VIII.—Religious Bodies other than the Church of England.

3967. After this case add:—

—— ——.]—*See, now,* Minister of Religion (Removal of Disqualifications) Act, 1925 (c. 54).

3987. *Add. Annotation:*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

4017a. Premises of Salvation Army—Whether used for public religious worship—Places of Worship (Enfranchisement) Act, 1920 (c. 56).]—STRADLING *v.* HIGGINS, No. 2a, *ante.*

PART VII. SECT. 5, SUB-SECT. 4.—I.

sd. *Necessity for consent of Ministry of Finance.*]—The estate of G., which vested in the Land Purchase Commission by Northern Ireland Land Act, 1925, was subject to two ecclesiastical tithe rentcharges. The vendor served notice of motion to redeem these charges, & the redemption price was fixed by the Judicial Comr. at nineteen years' purchase in each case, the Ministry of Finance objected:—*Held:* ecclesiastical tithe rentcharges cannot be redeemed under Land Purchase Acts without the consent of the Ministry of Finance as representing the Treasury, —*In the Estate of* GUNNING, [1929] N. I. 61.—IR.

PART VII. SECT. 6, SUB-SECT. 3.

3536 i. *Proceeds of sale—Application—Church of Scotland (Property & Endowments) Act,* 1925 *(c.* 33*), s.* 30.]—MILLIGAN, PETITIONER, [1927] S. C. 692.—SCOT.

d i. —— —— *Action for trespass.*]—Where land is granted to a church corpn. as a glebe, & a rector has been duly inducted, he has the possession, & an action of trespass for entering on the land & cutting down trees must be brought in his name, & not in the name of the corpn.—ST. STEPHEN RECTOR *v.* TORTELOT (1842), 1 Kerr, 537.—CAN.

PART VII. SECT. 7, SUB-SECT. 2.—A.

sk. *Ontario Act of* 1889 *simplifying sales of property held in trust for Church of England—Effect of.*]—*Re* ST. JOHN'S CHURCH, [1927] 3 D. L. R. 535; 60 O. L. R. 491.—CAN.

PART VII. SECT. 16, SUB-SECT. 1.

sa. *Spiritual corporation aggregate —Power to borrow.*]—An ecclesiastical corpn., being a non-trading corpn., has no implied power to borrow money, unless such power is expressly or impliedly given by its constitution. Although an Act constituting such a corpn. does not expressly give power to borrow or to erect a church, but does expressly give power to mortgage, the power to borrow for the purpose of erecting a church is implied, since the erection of a church is the principal reason for the incorporation.—LEONARD *v.* ST. PATRICK'S PARISH, [1922] 1 W. W. R. 601; 66 D. L. R. 304; 17 Alta. L. R. 262.—CAN.

PART VIII. SECT. 2, SUB-SECT. 1.

ti. —— ——.]—The canon law of the Roman Catholic Church is foreign law, which must be proved accordingly.—O'CALLAGHAN *v.* O'SULLIVAN, [1925] 1 I. R. 90.—IR.

a i. —— *Power to remove parish priest.*]—Applt., a parish priest, was removed from his parish by a decree of removal issued by the bishop of the diocese in which the parish was situated. Applt. claimed a declaration that the decree was illegal & void on the grounds that (1) there was no power under the canon law to issue such a decree unless a "citation" had been first served on him, & he had an opportunity to meet the charges made against him; (2) alternatively, if the canon law did not require the service of a "citation" or the granting of a personal hearing, yet the making of the decree without notice to him was contrary to natural justice:—*Held:* the decree was not illegal on either ground.—O'CALLAGHAN *v.* O'SULLIVAN, [1925] 1 I. R. 90.—IR.

sb. *Corporation — Parish — Borrowing for church building.*]—LEONARD *v.* ST. PATRICK'S PARISH, [1922] 1 W. W. R. 601; 66 D. L. R. 304; 17 Alta. L. R. 262.—CAN.

sd. *Relation to civil law — Archbishop of Edmonton—As to parishes in Calgary diocese.*]—LEONARD *v.* ST. PATRICK'S PARISH, [1922] 1 W. W. R. 601; 66 D. L. R. 304; 17 Alta. L. R. 262.—CAN.

PART VIII. SECT. 3, SUB-SECT. 3.—A.

q i. —— ——.]—Land was conveyed to certain persons in trust for a religious body called the United Brethren in Christ, & a congregation was organised & a church built. Subsequently a division took place in the religious body, & it was held that the party to which the congregation in question adhered were seceders. This congregation continued to use the church, &, some of the original trustees having died, appointed new trustees to act with the survivors, & these trustees refused to give up possession to the representative of what had been declared to be the true body:—*Held:*

4027. *Add. Citation :*—3 Macq. 827.

4033a. —— ——.]—DOE d. KIRK *v.* ROE (1838), 2 Jur. 945.

4034. *Add. Citation :—sub nom.* —— *v.* ——, 3 Jur. 460.

4034a. —— ——.]—Special service in ejectment where possession of a chapel is sought to be recovered.—DOE d. SOMERS (EARL) *v.* ROE (1840), 8 Dowl. 292.

4034b. —— ——.]—Special service in an action of ejectment for the recovery of a chapel & free school.—DOE d. SMITH *v.* ROE (1840), 8 Dowl. 509 ; *sub nom.* DOE d. SMYTHE *v.* ROE, 4 Jur. 338.

4047a. Who are.]—The word "Jew" in English law has almost always been confined to persons practising the Jewish religion ; the disabilities of Jews have not attached to persons of Jewish race who have become baptised (SLESSER, L.J.).—KEREN KAYEMETH LE JISROEL, LTD. *v.* INLAND REVENUE COMRS., [1931] 2 K. B. 465 ; 100 L. J. K. B. 596 ; 145 L. T. 320 ; 47 T. L. R. 461, C. A. ; *on appeal*, [1932] A. C. 650, H. L.

4055. After this case add the following new sections :—

SECT. 9.—**PRESBYTERIANS.**

See cases *infra*.

---

the trustees must be treated as being trustees for the true body, who were entitled to enforce the trust & to have possession of the church, & it was not necessary to organise another congregation & appoint new trustees for that congregation under Religious Institutions Act.—BREWSTER *v.* HENDERSHOT (1900), 27 A. R. 232.—**CAN.**

sg. *Transfer by trustees to church corporation—Representing denomination of original congregation.*]—Pltfs. claimed certain land & a church edifice thereon, the title to which was in defts. until they transferred it to the congregation incorporated under the name of "The Evangelical Lutheran Trinity Church of the Synod of Missouri, Ohio, & other States at Neudorf, Saskatchewan" ; & the question in dispute was, whether pltfs. or defts. represented the congregation for which the land was bought & the edifice erected :—*Held :* all the original members of the congregation belonged to the Missouri Synod of the Evangelical Lutheran Church in the United States & Canada, & the church was built & dedicated as a mission church of the Missouri Synod, & not as an independent church, & the question in litigation should be decided in favour of defts., & it should be declared that it was no breach of trust on their part to transfer the property to the above-mentioned church corpn. —STEIN *v.* HAUSER (1913), 26 W. L. R. 452 ; 5 W. W. R. 971 ; 15 D. L. R. 223 ; 6 Sask. L. R. 383.—**CAN.**

sh. *Church books—Right to retain—Clerk of sessions of Presbyterian church.*]—GRIFFITHS *v.* FRASER, [1928] 2 D. L. R. 540 : 60 N. S. R. 71.—**CAN.**

si. *Church records, correspondence, etc.—Right to inspect—Church member—Whether court will interfere.*]—The principle that the ct. will not interfere with the decision of the members of a voluntary assocn., professing to act under their rules, where it is not shown that there was *mala fides* in arriving at the decision, or that the rules wer contrary to natural justice, or that anything was done which was contrary to the rules themselves, was applied herein to the decision of the board of directors of a local church, ratified by the congregation, refusing to allow a member thereof to inspect all the records, correspondence & files of said local church.—WETMON *v.* BAYNE, [1928] 1 D. L. R. 848 ; [1928] 1 W. W. R. 519 ; 23 Alta. L. R. 446.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 3.—C.

4026 ii. —— ——.]—Pltfs. & those associated with them, being a minority of the members of a Regular Baptist Church, refused to sign an acceptance of certain "articles of faith" proposed to them by defts. representing the majority, & were, in consequence of their refusal, if certain resolutions passed at meetings of the congregation, pltfs. dissenting, were to govern, excluded from membership :—*Held :* there was no inherent or other power in defts. to change the statement of doctrines, & the trustees had no authority to hold the property on any other trusts than those declared by the deed.—WODELL *v.* POTTER, [1929] 3 D. L. R. 525 ; 64 O. L. R. 27 ; *varied*, 1 D. L. R. 726 ; *on appeal*, 2 D. L. R. 449.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 3.—E.

sk. *Power to sell—With consent of governing body—Contract to sell by representative of congregation—Invalid.*]—IRVING *v.* MCLACHLAN (1856), 5 Gr. 625.—**CAN.**

sq. *"Waisenamt" of Mennonite Church—Power to sue.*]—Pltfs. who were elected orphan-administrators by the Reinland Mennonite congregation held to constitute the "Waisenamt," a special department of the congregation organised for the purpose of managing the estates of deceased members, & to be entitled to sue in their own names to recover moneys loaned by them out of the funds thereof.—NEUFELD & NEUFELD *v.* FEHR, [1929] 4 D. L. R. 1070 ; 1 W. W. R. 908 ; 38 Man. L. R. 194.—**CAN.**

PART VIII. SECT. 4.

sl. *Authority of the yearly meeting—Right to hold property—Members refusing to accept book of discipline.*]—The supreme or governing body of the Society of Friends, or Quakers, in Canada, as well in respect to matters of discipline as to the general govt. of the society, is the Canada yearly meeting. The Canada yearly meeting having adopted a book of discipline which certain members of the society refused to accept, these dissentient members, therefore, could not hold, nor exercise any right over, property granted to a subordinate branch of the society to which they had formerly belonged.—JONES *v.* DORLAND (1886). 14 S. C. R. 39.—**CAN.**

PART VIII. SECT. 7.

b i. —— *Irregular marriage in presence of minister followed by prayer—Minister not guilty of offence under Marriage Notice (Scotland) Act*, 1878 (c. 43), s. 12.]—STRATHERN *v.* STUART, [1926] S. C. (J.) 114.—**SCOT.**

sl. *Minister's stipend—Obligation to provide.*]—GREENOCK (PROVOST) *v.* PETERS, [1893] A. C. 258.—**SCOT.**

PART VIII. SECT. 9.

sm. *Plan of co-operation adopted by Presbyterian & Methodist congregations—Whether unit for voting on church union.*]—*Re* CONN PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 385.—**CAN.**

sn. *Right of minister to invoke authority of civil courts.*]—Action by a Presbyterian minister against the General Assembly for a declaration that a sentence of dismissal was illegal & void & for a *mandamus* to restore him to office :—*Held :* not a violation of pltf.'s vow of submission to the cts. of the Church.—MACQUEEN *v.* FRACKLETON (1908), 8 C. L. R. 673.—**AUS.**

so. *Members—Who are—Name on roll.*]—RODNEY CASE (Ont.), [1926] 2 D. L. R. 516.—**CAN.**

sp. —— —— —— *Name also on roll of another church.*]—*Re* MAPLE VALLEY PRESBYTERIAN CHURCH (Ont.), 1926] 4 D. L. R. 378.—**CAN.**

sq. —— —— —— *Old roll.*]—*Re* BURLINGTON PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 380.—**CAN.**

sr. *S. P. Re* DALHOUSIE MILLS PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 383.—**CAN.**

st. —— —— —— *Reserve or appendix roll.*]—WICK CASE (Ont.), [1926] 1 D. L. R. 829.—**CAN.**

sv. —— —— ——.]—*Re* RICHMOND HILL PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 365.—**CAN.**

sw. *Meetings—Calling—How regulated—Meeting relating to entry into Church Union.*]—CAMERON *v.* ST. LUKE'S SALT SPRINGS (TRUSTEES), [1927] 2 D. L. R. 760 ; 59 N. S. R. 272 ; *affd. sub nom.* ST. LUKE'S SALT SPRINGS (TRUSTEES) *v.* CAMERON, [1929] 3 D. L. R. 497 ; S. C. R. 452 ; *affd.*, [1930] A. C. 673.—**CAN.**

sy. *Property—Statutory disposal of.*]—*Re* UNITED CHURCH (P. E. I.), [1927] 2 D. L. R. 1169.—**CAN.**

sz. ——.]—MCLEAN *v.* BALLANTYNE, [1928] 4 D. L. R. 37 ; 62 O. L. R. 443.—**CAN.**

sa. —— —— .]—A majority of the congregation of a Presbyterian Church at G. in Jan. 1925, voted in favour of union with two other denominations. Pltf., who had voted against union, brought this action, on behalf of himself & other members of the congregation who had voted against union, for an injunction restraining the trustees of the property of the church at G. from using or disposing of it otherwise than by transfc ring it to pltf. or trustees for pltf. & other members of the Presbyterian Church in Canada at G. ; & for other relief :—*Held :* the congregaton of the Church at G. after entering the union, was entitled to consent, & did effectually consent to the application of United Church of Canada Act, 1925, s. 4, to the property in question ; & the Act having vested in the United Church the power of determining how the trusts upon which the property was held were to be performed, & having provided that what was done in pursuance of the Act should not be deemed a breach of the trusts, but a compliance therewith, the ct. had no jurisdiction to grant the relief asked.—AIRD *v.* JOHNSON, [1929] 4 D. L. R. 664 ; 64 O. L. R. 233.—**CAN.**

sb. —— ——.]—Pltfs., as representing all communicants, pewholders & adherents of St. James Presbyterian Church, Newcastle, N.B., not concurring in church union, claimed the church property, or a share therein,

SECT. 10.—**GREEK CHURCH.**

See cases *infra.*

SECT. 11.—**WELSH CHURCH.**

4055a. Jurisdiction of Commissioners—Welsh Church Act, 1914 (c. 91), s. 11.]—Sect. 11 of Welsh Church Act, 1914 (c. 91), confers upon the Welsh Comrs. exclusive jurisdiction over those matters with which they are given power to deal under sects. 8 & 9 of that statute. The provisions of sect. 11 have not excluded from the jurisdiction of the ct. consideration of matters of dispute between the Welsh Comrs. on the one side & the King's subjects on the other, & it is only when property is vested in the Welsh Comrs. that the purposes of the Act over which they have exclusive jurisdiction arise.—WINGROVE *v.* MORGAN, [1934] Ch. 423; 103 L. J. Ch. 52; 150 L. T. 471; 50 T. L. R. 100; 77 Sol. Jo. 867; *on appeal*, 103 L. J. Ch. 209, C. A.

4055b. Holder of office—Bequest of annuity—Effect of appointment to new office with special stipend.] Pltf. was at the date of the coming into force of the Welsh Church Act, 1914 (c. 91), rector of the parish of C. in the county of Glamorgan. The emoluments of his office included tithe rentcharge & an annual sum derived from the redemption of tithe rentcharge amounting to the total annual sum of £528 13*s.* 6*d.* In 1933 pltf. resigned the rectory of C. on being instituted as vicar of another parish—namely, P., the incumbent of which was entitled under the will of one N., who died in 1917, to the perpetual annual income derived from the investment of a legacy thereby bequeathed to the vicar for the time being. The income amounted to the sum of about £243 a year.

By his statement of claim pltf. claimed a declaration that, so long as he held the office of vicar of P. or any other ecclesiastical office in the Church in Wales, he was entitled to the full sum of £528 13*s.* 6*d.*, & that defts. were not entitled—so long as he held the office of vicar of P.—to deduct from the said annuity the amount of the income to which he, as incumbent of the parish of P., was entitled under the trusts of N.'s will. Defts. claimed that pltf. was only entitled to the annual sum of £258 13*s.* 6*d.*, & that he must bring into account the amount of the said income payable to him as incumbent of P. in respect of the legacy under N.'s will:—*Held:* pltf. had accepted the living of P. on the terms of being paid the same stipend as he had received for the living of C.; also, on the construction of the Welsh Church Act, 1914 (c. 91), although the commutation effected by sect. 18 of the Act had the result of rendering inapplicable the provisions of sect. 8 (2), relating to the existing interests of ecclesiastical offices & also the provisions of sect. 15 & that part of sect. 14 which dealt with the preservation & duration of existing interests against the transferees of alienated property, nevertheless it did not render inapplicable the proviso to sect. 14 (1), which, although in form a proviso, was in effect a substantive enactment imposing upon the holder of the office, upon such transfer, the obligation to pay over the whole of the net income of the original office, &, as such proviso applied to all tithe rentcharges, it followed that it applied to the annuity which pltf. claimed. Therefore pltf. was only entitled to receve so much of his annuity of £528 13*s.* 6*d.* as with the £243 arising from the N. bequest would made up the £528 13*s.* 6*d.*—PRICE *v.* REPRESENTATIVE BODY OF THE CHURCH IN WALES, [1938] Ch. 434; [1938] 1 All E. R. 351; 107 L. J. Ch. 185; 158 L. T. 156; 54 T. L. R. 380; 82 Sol. Jo. 93, C. A.

SECT. 12.—**IRISH CHURCH.**

See case *infra.*

---

attacking the legality of the congregational votes, one taken under the provincial Act & the other under the Dominion Act, aforesaid, in favour of union, & contending that, in any case, the property fell within sect. 6 of 14 Geo. 5, N.B., & therefore, there having been no "consent" under that sect., the property had not vested in the United Church but belonged to the continuing Presbyterians of the congregation:—*Held:* the congregation not having passed a vote of non-concurrence, it became, by statutory operation, a congregation of the United Church, &, even if the property fell within sect. 6 of 14 Geo. 5, N.B., yet, after the Union, it was held for the benefit of the congregation as a congregation of the United Church; the absence of consent under sect. 6 merely leaving the property unaffected by the trusts, & not subject to the terms & conditions, set out in the Model Deed.—FERGUSON *v.* MACLEAN, [1930] S. C. R. 630; [1931] 1 D. L. R. 61; *affg.*, 2 M. P. R. 61.—**CAN.**

PART VIII. SECT. 10.

sc. *Selection of priests—Right of majority of members.*]—Where emigrants to Canada who before coming here were adherents of the Greek Catholic Church have organised a church & erected a church building with the intention that the services conducted therein should be of the Greek Orthodox faith & that the officiating priests should be of that faith, but the congregation has never expressed a wish to belong to, or submitted itself to, the jurisdiction of any particular branch of that church, it is the right of the majority of the members to select through their trustees such priest as they see fit, regardless of the particular "mission" to which he belongs, provided only that he must be a priest in good standing in the Greek Orthodox faith. *Qu.:* whether by allying himself with the Ukrainian movement in said Greek Church a priest has done something uncanonical is not a matter for the church cts., & not for a ct. of law, to decide.—DWIRNICHUK *v.* ZAICHUK (Sask.), [1926] 3 W. W. R. 508.—**CAN.**

se. *Congregation—Whether liable for debts.*]—There is no legal relation between a member of a religious congregation & a creditor of the congregation unless it is created by contract between them.

Under Religious Societies Land Act, R. S. S., 1930, a religious congregation, although not otherwise incorporated or registered, is a body corporate which can be sued under the name of the congregation for debts incurred by the trustees on its behalf.—KICUL (OTHERWISE KITZIEL OR KITZUL) *v.* BULYCZ & SPILCHUK, [1933] 1 W. W. R. 45.—**CAN.**

sf. —— *Expulsion from—Whether actionable.*]—The wrongful dismissal of a parishioner from an office in the congregation without salary is not actionable, but the cts. will interfere in the case of expulsion from membership & consequently from the right to vote upon matters connected with a church in which he owned a pew.—ZAWIDOSKI *v.* RUTHENIAN GREEK CATHOLIC PARISH OF ST. VLADIMIR & OLGA, [1937] 2 D. L. R. 509—**CAN.**

sg. *Bishop of Canada—Who is—Declaratory judgment.*]—Declaration granted as to who is the lawful Bishop of Canada of the "Russian Greek Catholic Orthodox Church."—SCHERBANUK *v.* SKORODOUMOV, [1935] O. R. 342.—**CAN.**

PART VIII. SECT. 12.

sk. *General Synod—Whether prohibition lies.*]—*Held:* prohibition will only issue to a ct. or tribunal or body of persons, other than the Superior Cts., having, under statute or common law, authority to impose liabilities upon, or to determine questions affecting the rights of, individuals, & having the duty to act judicially. The ct. of the General Synod of the Church of Ireland derives its authority solely from the consent or agreement of the members of that Church & is, therefore, not a tribunal to which an order of prohibition will lie, though the legality of its decisions may be otherwise questioned & determined in the High Ct. of Justice.—THE STATE (COLQUHOUN) *v.* D'ARCY. [1936] I. R. 641.—**IR.**

EDUCATION.

Part I.—In General.

5. *Add. Annotation :*—**Refd.** B. *v.* B., [1924] P. 176.

Part II.—Central and Local Education Authorities.

13. *Add. Annotation :—As to* (2) **Folld.** Richardson *v.* Abertillery U. D. C., Thomas *v.* Same (1928), 44 T. L. R. 333.

14a. —— ——.]—Pltfs., assistant teachers in the employ of deft. council, claimed injunctions to restrain the council from acting on resolutions to dismiss them from their employment & notices sent to them in pursuance thereof. The council were in financial difficulties, & had approached the Minister of Health with a view to obtaining a further loan. This had been refused, unless the finances were placed on a sound footing & expenses reduced. With a view to achieving this result they appointed a sub-committee with full powers to scrutinise expenditure & effect reductions & savings. This committee recommended that pltfs., who were remunerated on the Burnham scale, should have their engagements determined by notice. Acting in pursuance thereof the committee passed the resolutions complained of, & notices were sent out determining the contracts signed by

PART I.

sa. *Right of child—To receive instruction.*]—The governing principle of School Act, R. S. S. 1920, c. 110, is that children between the ages referred to in sect. 202 (2) (as amended by 1928, c. 48, s. 18) have the right to attend school & receive instruction. The right is the right of the child itself; & it is not a matter left to the discretion of its parents or the school board.—WILKINSON *v.* THOMAS (Sask.), [1928] 2 W. W. R. 700.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

sd. *Officers—Who are.*]—The Superintendent of Maintenance to the Toronto Board of Education, & its Chief Clerk of Works in the Architect's Dept., are "officers" entitled by statute to old age pensions.—*Re* TORONTO BOARD OF EDUCATION & DOUGHTY, [1935] 1 D. L. R. 290; O. R. 85.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

sb. *School board—Election—Method of voting.*]—*Re* EDMONTON SCHOOL BOARD ELECTION (Alta.), [1927] 1 D. L. R. 411.—**CAN.**

sd. —— *Nature of.*]—A School Board is a creation of Primary Education Act, 1923, & has a separate & independent existence apart from the District Local Board. It is a corporate body & liable to be sued as such.—BIJAPUR DISTRICT SCHOOL BOARD *v.* BHAGWAN VASUDER (1932), I. L. R. 57 Bom. 60.—**IND.**

sg. *Education Board—Distinct entity from Crown—Right of sub-contractor—Charge on money due from board to contractor.*]—The effect of Education Act, 1924, s. 24, is to constitute an Education Board an entity separate & distinct from the Crown, & in consequence a claim of charge can be validly established by a sub-contractor upon moneys due to a contractor by an Education Board in respect of work done for the Board by such contractor.—MCCALLUM *v.* OFFICIAL ASSIGNEE OF SAGAR & LUSTY, [1928] N. Z. L. R. 292.—**N.Z.**

si. —— *Inability to act as landlord—& tenant of same school.*]—Where a demand was made upon a municipal council for $25,000 to be spent in repairing, improving & enlarging one public school building in the town in order that it might serve as the sole public school for the town, another building erected & paid for by public school supporters being used for high school purposes only, & the intention being to charge the high school an adequate rental :—*Held :* this purpose of the board was not authorised by clause (*s*) or clause (*v*) of sect. 88 of Public Schools Act, R. S. O., 1927, & was *ultra vires* of the board.—*Re* ALMONTE BOARD OF EDUCATION & ALMONTE, [1930] 1 D. L. R. 568; 64 O. L. R. 505.—**CAN.**

sr. *Duty of trustees—To summon meeting—Requisition by majority of ratepayers—Power of inspector on refusal.*]—If a requisition is made to the trustees of schools, by a majority of the ratepayers of a district, to call a special meeting for a purpose authorised by Common School Act, 1871, it is their duty to call the meeting under sect. 28 of the Act; & if they refuse, the inspector is authorised to appoint new trustees, under sect. 37 of the Act.—*Ex p.* GILBERT (1873), 14 N. B. R. (1 Pug.) 231.—**CAN.**

ss. —— *To take legal advice—In important matters of law.*]—School trustees should not act with respect to important matters of law, such as the legal right of a child to receive instruction in the school, without consulting their solr. & counsel; &, if they do so, it must be at the risk of having to pay costs if they are wrong.—WILKINSON *v.* THOMAS, [1928] 2 W. W. R. 700.—**CAN.**

sv. —— *Meeting not formally summoned—All trustees present—Necessity to record waiver of proper notice.*]—Where all the members of a board of school trustees are present at a meeting thereof & tacitly waive the written notice called for by School Act, R. S. S. 1920, c. 110, s. 104 (1), the fact that their consent to the waiver is not recorded in the minutes & subscribed by each member of the board is a mere informality.—WATERMAN-WATERBURY MANUFACTURING CO., LTD. *v.* SLAVANKA SCHOOL DISTRICT, [1928] 4 D. L. R. 522; [1928] 3 W. W. R. 16.—**CAN.**

sx. —— *Contract—Formalities necessary—Executed contract.*]—The contention that a contract in the form prescribed by School Act, R. S. A. 1922, c. 51, s. 194, between a school teacher & a school district was not binding on the latter because not entered into pursuant to a resolution of the board of trustees or adopted at a meeting of the board was held not applicable to an executed contract, &, in any event, was completely met by School Act, R. S. A. 1922, c. 51, s. 195, which provides that "The contract shall be deemed valid & binding if signed by the teacher & by the chairman on behalf of the board."—SOMERS *v.* LIBERTY SCH. DIST., [1928] 2 D. L. R. 334; [1928] 1 W. W. R. 884.—**CAN.**

sz. —— —— —— *Tenders not called for.*]—The fact that before awarding a contract for the erection of a schoolhouse the board of trustees did not advertise for or obtain formal written tenders held to have been a mere informality in the internal management of the board which did not affect the rights of the contractor to whom the contract was awarded.—WATERMAN-WATERBURY MANUFACTURING CO., LTD. *v.* SLAVANKA SCHOOL DISTRICT, [1928] 4 D. L. R. 522; [1928] 3 W. W. R. 16; *revsd.*, [1929] 2 D. L. R. 161; 1 W. W. R. 598; 23 S. L. R. 338.—**CAN.**

sd. —— —— —— *Benefits of contract accepted.*]—School Act, R. S. S. 1920, c. 110, s. 105, is imperative; & where it has not been complied with in respect to a contract the contract is absolutely void; & the fact that the work has been done & the benefits thereof accepted by the board does not entitle the contractor to recover from the board an amount due thereunder.—WATERMAN-WATERBURY MFG. CO., LTD. *v.* SOUTH ARCOLA SCHOOL DIST., [1929] 2 D. L. R. 214; 23 S. L. R. 227; [1928] 3 W. W. R. 690.—**CAN.**

sf. —— —— —— *Hiring of teacher.*]—MCDONALD *v.* ELDON SCHOOL DISTRICT NO. 3 (1929), 1 M. P. R. 253.—**CAN.**

sh. —— —— —— —— ——.]—Where a statute provides that no act or proceeding of certain corpns., in this instance a school corpn., "which is not adopted at a regular or special meeting of the trustees, shall be valid or binding on any person affected thereby," a proposed contract is not binding on the corpn., unless a formal vote on the question of its approval was put to the trustees, even though the contract has been signed with the corpn.'s seal. Evidence that the chairman & secretary were warranted in inferring that the majority assented to a motion which was made, but not put to the meeting, for the adoption of the proposed contract, is not sufficient.—WARDROP *v.* WHITEMOUTH SCHOOL DISTRICT, [1931] 3 W. W. R. 499; 4 D. L. R. 861; 40 Man. L. R. 1.—**CAN.**

their clerk :—*Held :* (1) it was clear that it had become necessary to practise strict economy, & judicial notice could be taken of the fact that at the time pltfs. were remunerated on the highest scale of the Burnham award. The council in considering these questions were acting in pursuance of their statutory obligations, & no objection could be entertained as to the validity of the notices on the ground of motive. (2) There was power to delegate under 1921 Act, s. 4 (2), & the committee had vested in them the duty of ascertaining how best savings could be brought about. On their report the notices of dismissal had been prepared & sent to pltfs., signed by the clerk of the council. That was a sufficient ratification of what the committee had done, & pltfs.' claim failed.—RICHARDSON *v.* ABERTILLERY URBAN DISTRICT COUNCIL, THOMAS *v.* SAME (1928), 138 L. T. 688 ; 92 J. P. 59 ; 44 T. L. R. 333 ; 72 Sol. Jo. 226.

19. *Add. Annotation :*—**Consd.** Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30.

---

sl. *Removal of trustees—By Board of Commissioners—Under 4th R. S., c. 32.*]—*Held :* where no vacancy had occurred & no proof was produced of any refusal or neglect by & on the part of the trustees to act or perform their duties as such, their dismissal by the Board of Comrs. was *ultra vires*.—SCHOOL SECTION 16 TRUSTEES *v.* CAMERON (1877), 11 N. S. R. (2 R. & C.) 328.—**CAN.**

sm. —— *Improper dealings with trust funds—Action—Whether Attorney-General necessary party.*]—In an action by an incorporated educational institute for the removal of one of the trustees, who also acted as secretary, for alleged improper dealing with the corporate funds, judgment was given, but without any finding of wilful misconduct, directing such trustee's removal, on the ground that so much doubt was cast upon his dealings with the trust funds that it would not be proper to allow him to remain a member of the board. Such an action is maintainable without making the A.-G. a party.—WILBERFORCE EDUCATIONAL INSTITUTE *v.* HOLDEN (1887), 17 O. R. 439.—**CAN.**

so. —— *Neglect of duty—Proceedings for removal informal—One applicant not ratepayer.*]—Although on an appeal by school trustees from a judgment removing them from office the Ct. of Appeal agreed with the judge appealed from that applts. had been guilty of a neglect of duty in disregarding School Act, R. S. S. 1920, c. 110, with respect to procuring a new site for a school house, it was held, nevertheless, that the appeal must be allowed on the ground, raised apparently for the first time in the notice of the appeal, that one of the five persons by whom the proceedings for removal were commenced was not at the time they were commenced on the last revised assessment roll for the district, &, therefore, was not a "ratepayer" within the meaning of sect. 124 of the Act.—R. *v.* RUWNY & PESECHNICK, [1929] 2 D. L. R. 347 ; 23 S. L. R. 281 ; [1928] 3 W. W. R. 728.—**CAN.**

sp. —— *Improper election.*]—*Re* BLADES & GREAT BEND CONSOLIDATED SCHOOL DISTRICT, [1937] 3 W. W. R. 466.—**CAN.**

sq. *Appointment of trustee—Whether valid—Made at annual meeting of ratepayers—No notice of special business.*]—The election of a trustee at the annual meeting of ratepayers in question herein to fill a vacancy on the board caused by resignation was held invalid, since by School Act, R. S. S. 1920, c. 110, s. 125, such a vacancy must be filled at a special meeting ; &, since sect. 92 (2) requires the notice of a special meeting to set forth its purpose, & the notice of said annual meeting made no mention of the election of a trustee to fill the vacancy, it could not be said that the annual meeting was such a special meeting.—LACOURSE *v.* MCLELLAN & DEGRAW, [1929] 3 D. L. R. 73 ; 23 S. L. R. 159 ; [1928] 3 W. W. R. 680.—**CAN.**

st. —— —— *Reports not read as directed in School Act.*]—An election of trustees under School Act, R. S. S. 1920, c. 110, is not rendered invalid by the fact that the reports referred to in sect. 70 were not read before they were elected.—LACOURSE *v.* MCLELLAN & DE GRAW, [1929] 3 D. L. R. 73 23 S. L. R. 159 ; [1928] 3 W. W. R. 680.—**CAN.**

sv. *Qualification of trustees—"Able to read & write"—Whether "in the English language" implied.*]—The words "able to read & write" in Public Schools Act, R. S. M. 1913, c. 165, s. 24 (2) (C. A. 1924, c. 165, s. 8), which prescribes the qualifications of school trustees, are not to be read as if modified by the addition of the words "in the English language."—*Re* MACZEWSKI, [1928] 2 W. W. R. 24.—**CAN.**

sw. *Effect of trustee teaching in public school—Office vacated.*]—*Re* EAST YORK PUBLIC SCHOOL BOARD & MACKENZIE, [1931] 2 D. L. R. 558.—**CAN.**

sx. *School district—Annual meeting—Commenced after time fixed by School Act—Whether valid.*]—The fact that the annual meeting of a school district was not commenced until after two o'clock in the afternoon, the hour appointed by School Act, R. S. S. 1920, c. 110, s. 64, does not render the proceedings at such meeting invalid.—LACOURSE *v.* MCLELLAN & DE GRAW, [1929] 3 D. L. R. 73 ; 23 S. L. R. 159 ; [1928] 3 W. W. R. 680.—**CAN.**

sz. *School division—Validity of order constituting.*]—The contention that because an order by the Minister of Education constituting a school division purported to be made in pursuance of sect. 231 of School Act, which Act had ceased to be in force, instead of under sect. 231 of School Act, 1931, therefore the whole proceedings under the order were a nullity :—*Held :* not sustainable.—ALWARD *v.* MCINTOSH & MINISTER OF EDUCATION, [1938] 1 W. W. R. 690 ; 2 D. L. R. 522.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.

k i. —— ——.]—Sect. 48 (1) of Public Schools Act, 1934, which requires the trustees of a district created under sect. 47 thereof to provide "conveyance to & from school once a day" of all pupils "who would have farther than one mile to walk to reach the school," should not be construed strictly or literally, & does not require the trustees to provide transportation beyond what is reasonably adequate, reasonable adequacy being a question of fact varying with the circumstances. —R. (KOWALSKI) *v.* OAK BLUFF SCHOOL DISTRICT, [1937] 3 W. W. R. 352 ; 4 D. L. R. 368 ; 45 Man. L. R. 409.—**CAN.**

k ii. —— *Meaning of "residence" in Schools Act, R. S. N. B., 1927—Residence of child.*]—*Ex p.* LAMBERT (1930), 1 M. P. R. 12.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.

17 i. *Negligence of education authority —Defective state of playground.*]—Applts. planted a number of young trees upon a portion of the playground of a school under their control, & erected wooden stakes with sharp & jagged points round each tree. These stakes were pressed into the ground & brought together at the top in the form of a pyramid. The area covered by the trees had become overgrown with grass, & in that area a hole had been dug, & the earth heaped up at the side of it, forming a mound two or three feet in height. Resp.'s daughter, a child of six years, when playing fell on one of the stakes, which pierced her eye :—*Held :* applts. had been negligent in not taking steps to obviate the danger, & were liable in damages.—TRANSVAAL PROVINCIAL ADMINISTRATION *v.* COLEY, [1925] App. D. 24.—**S. AF.**

17 ii. —— *Defective playground equipment.*]—A school board which provides a piece of playground equipment, *e.g.* a "teeter-totter," for the use of its pupils is, apart from its statutory duty of keeping the school property in repair, under the duty of seeing that the thing provided is so constructed & kept in repair as to be reasonably fit for the purpose for which it is intended ; & is liable in damages where injuries sustained by a pupil were caused by its negligence with respect to such duty.—SCHULTZ *v.* GRASSWOLD SCHOOL DISTRICT TRUSTEES, [1930] 1 W. W. R. 579 ; 3 D. L. R. 600.—**CAN.**

17 iii. —— *Defective playroom equipment.*]—The infant pltf., a pupil in defts.' school, while swinging on a horizontal ladder attached to the ceiling of the basement of the school, fell to the cement floor & broke her arm. She was under a legal compulsion to attend the school & defts. were under a statutory duty to provide such material & appliances for school sports & games as might be deemed necessary & to repair & keep in order all school property :—*Held :* having provided play rooms & equipped them with horizontal ladders for the use of the pupils, it was defts.' duty to keep the premises & equipment reasonably safe for such use ; but, since, apart from the question whether the omission to put mats or similar protections under the ladders was a breach of that duty, the evidence was not sufficiently certain to justify the conclusion that their absence caused the injury, it appearing just as probable on the evidence that it would have occurred even had mats been there, the action must fail.—BOIVIN & BOIVIN *v.* GLENAVON SCHOOL DISTRICT, [1937] 2 W. W. R. 170.—**CAN.**

o i. —— *Supervision of rifle-shooting competition.*]—A school board has a duty to see that the school premises are not used in a manner dangerous to the children. If it authorises or permits a shooting competition with rifles in the course of school sports on a holiday granted for such purpose, it must provide efficient supervision, including efficient inspection of the rifles used, & a breach of that duty will subject it to damages for injury to a boy caused through his having a defective rifle.—WALTON *v.* VANCOUVER BOARD OF SCHOOL TRUSTEES, [1924] 2 D. L. R. 387 ; 2 W. W. R. 49 ; 34 B. C. R. 38. —**CAN.**

21a. —— **Cookery class—No guard on gas-cooker.**]—Pltf., a child aged 11, attended a school maintained by deft. authority. Whilst she was being instructed in cooking, her apron caught fire from a gas-cooker, & she received injuries. There was no guard round the cooker:—*Held:* the danger was one which ought reasonably to have been anticipated, & one which a local authority ought to have taken precautions to prevent by the provision of a guard round the stove or otherwise.—FRYER *v.* SALFORD CORPN., [1937] 1 All E. R. 617; 101 J. P. 263; 81 Sol. Jo. 177; 35 L. G. R. 257, C. A.

21b. —— **Slippery floor.**]—GILLMORE *v* LONDON COUNTY COUNCIL, [1938] 4 All E. R. 331; 159 L. T. 615; 55 T. L. R. 95; 82 Sol. Jo. 932.

23. *Add. Annotations:*—**Consd.** Langham *v.* Wellingborough School Governors & Fryer (1932), 96 J. P. 236; Wray *v.* Essex County Council, [1936] 3 All E. R. 97.

23a. —— —— **Order to play alleged dangerous game.**]—The infant pltf., who was 17 years of age & was an unemployed person undergoing a compulsory course of instruction at a county council instruction centre, was ordered by the council's instructor, a man of experience, to take part in an organised game called "riders & horses," in which one boy mounted the back of another & endeavoured to bring to the ground the foot of the boy who was acting as "rider" in an opposing pair. During the game the infant pltf., who was taking the part of a "horse," fell on the wooden floor & seriously injured his arm. In an action against the council for negligence, on the ground that the game was so dangerous in itself that to order a boy to play it amounted to negligence, the evidence of the instructor was that for 20 years he had seen the game played without serious accident:—*Held:* there was no evidence of negligence, & therefore the action failed.—JONES *v.* LONDON COUNTY COUNCIL (1932), 96 J. P. 371; 48 T. L. R. 577; 30 L. G. R. 455, C. A.

23b. —— —— **Accident at gymnastics.**]—In the course of gymnastic training a schoolboy was required to vault over a horse. For some reason the boy landed "in a stumble" & was injured. The master in charge did nothing to assist the boy in landing:—*Held:* the master had not taken reasonable care & the Education Authority were liable in damages to the injured boy.—GIBBS *v.* BARKING CORPN., [1936] 1 All E. R. 115, C. A.

23c. —— ——.]—Pltf., a boy of 12 years of age attending a school owned & conducted by deft. council, was "trotting" from one classroom to another, when at a blind corner he collided with another boy, B., carrying an oil can. The spout of the oil can, about 6 ins. long, struck pltf. in the eye & severely injured him. The boy B., who was carrying the can in a perfectly proper way, had been told to take it from one room to another by a master. Pltf. sued the council as the employer of the master, alleging that the latter was negligent in not taking special precautions when entrusting a boy with a dangerous article:—*Held:* the oil can was not an inherently dangerous thing, nor was it a dangerous thing in the special circumstances of a school for young children, & the master was under no duty in such a case to take special precautions.—WRAY *v.* ESSEX COUNTY COUNCIL, [1936] 3 All E. R. 97; 155 L. T. 494; 80 Sol. Jo. 894, C. A.

23d. —— ——.]—CAHILL *v.* WEST HAM CORPN. (1937), 81 Sol. Jo. 630.

Part III.—Schemes as to Powers and Duties.

24a. **For organisation of education—What amounts to "scheme."**]—In determining whether proposals put forward by a local education authority for the development & organisation of education in its area & submitted to the Board of Education for approval constitute a "scheme" within Education Act, 1921 (c. 51), s. 11, so as to render necessary to its validity the performance by the authority of the conditions precedent to

---

o ii. —— *Pupil injured on dangerous ground near school premises.*]—A school board is not liable for injuries caused a pupil while on a highway close to but outside the school grounds by the falling of a dead tree which stood on the property of a third person.—PATTERSON *v.* BOARD OF SCHOOL TRUSTEES OF NORTH VANCOUVER, PATTERSON *v.* CANADIAN ROBERT DOLLAR CO., [1929] 3 D. L. R. 33; 2 W. W. R. 181; 41 B. C. R. 123.—CAN.

o iii. —— *Pupil left with unguarded chemicals.*]—An action by a pupil against a board of school trustees for damages for personal injuries resulting from the alleged negligence of a master in leaving chemicals furnished to him by the board, unguarded in a schoolroom, must be brought within the time limited by Public Schools Act, R. S. B. C., 1924 (c. 226), s. 81.—DUNCAN *v.* LADYSMITH, BOARD SCHOOL TRUSTEES, [1930] 3 W. W. R. 175; 1 D. L. R. 176; 43 B. C. R. 154.—CAN.

o iv. —— *Necessity for notice of action.*]—Action for negligence against a school board dismissed, because of the lack of the notice required by sect. 32 of Public Schools Act Amendment Act, 1929.—RITCHIE *v.* GALE & VANCOUVER BOARD OF SCHOOL TRUSTEES, [1934] 3 W. W. R. 703; [1935] 1 D. L. R. 362; 49 B. C. R. 251.—CAN.

22 i. *Negligence of teacher—Injury to pupil.*]—At the conclusion of a knitting class in a day school the children left the classroom on their way home, carrying, along with their knitting, knitting needles with exposed ends. While crossing the playground a child, ten years of age, was accidentally injured in the eye by a knitting needle carried by a schoolmate of the same age:—*Held:* while teachers had a duty to take reasonable care to protect children under their charge from danger, the pursuer had not averred either (*a*) that the children did not appreciate the danger, or (*b*) that it was usual for teachers to ensure that such needles were made safe when not in use; action dismissed as irrelevant; further, a teacher has no duty to warn a normal child, ten years of age, of such an obvious danger as the exposed ends of knitting needles.—MACDONALD'S TUTOR *v.* INVERNESS COUNTY COUNCIL, [1937] S. C. 69.—SCOT.

st. *Negligence of driver of school van.*]—Under sect. 140 (3) of Public Schools Act, 1930, the duty imposed upon a union school district to provide for the conveyance of certain pupils to & from school is imperative; &, therefore, the fact that the district has employed an independent contractor to transport the pupils does not free it from liability for injuries resulting to a pupil because of his negligence.—COCHRANE *v.* ELGIN CONSOLIDATED SCHOOL DISTRICT, [1934] 2 W. W. R. 409; 42 Man. L. R. 257.—CAN.

sy. ——.]—In an action for injuries sustained by a pupil through the overturning of a horse-drawn van in which he was being driven to school:—*Held:* the accident was due to the negligence of the driver in using unreliable harness & deft. school board which employed him was liable, he being its servant; & would be liable even if he were an independent contractor.—TYLER & TYLER *v.* ARDATH SCHOOL DISTRICT, [1935] 1 W. W. R. 337; 2 D. L. R. 814.—CAN.

the submission of a scheme specified in sect. 14 (2) of the Act, the test to be applied is whether both the education authority & the Board of Education intend that which is put forward to be a "scheme" within sect. 11 so as to make the education authority bound, under sect. 15 (1), to give effect to it. The magnitude & quality of the proposals are not material considerations.—R. *v.* EAST HAM BOROUGH COUNCIL, *Ex p.* HUNT, [1930] 2 K. B. 64; 99 L. J. K. B. 497; 143 L. T. 709; 94 J. P. 135; 46 T. L. R. 334; 28 L. G. R. 646, D. C.

Part IV.—Elementary Schools.

30. *Add. Annotation :*—**Consd.** Northern Theatres Co. *v.* Shillito, [1925] 2 K. B. 100.

32. *Add. Annotation :*—**Consd.** Griffiths *v.* St. Clement's School, Liverpool, [1938] 3 All E. R. 537.

32a. —— **Provision of concrete paving in playground.**]—A local education authority paid for the concrete paving & flagging of the playgrounds of two non-provided schools. The expenses so incurred were disallowed by the district auditor on the ground that the local education authority had no statutory authority to expend money on alterations or improvements of a schoolhouse not provided by them. On a case stated by the Minister of Health under Audit (Local Authorities) Act, 1927 (c. 31), s. 2 :—*Held :* the concrete paving or flagging of the playgrounds was not an alteration or improvement in the buildings, & that therefore the obligation to pay for such work was not thrown upon the managers of the schools by Education Act, 1921 (c. 51), s. 20 (2) (*d*), but the local education authority were bound to pay for such work under their obligation to maintain & keep efficient all public elementary schools within their area which are necessary.—LANCASTER (COUNTY PALATINE) COUNCIL *v.* CROWE (No. 1), [1929] 1 K. B. 587; 98 L. J. K. B. 353; 140 L. T. 554; 93 J. P. 38; 45 T. L. R. 170; 73 Sol. Jo. 13; 27 L. G. R. 96, D. C.; *subsequent proceedings*, [1929] 1 K. B. 604, D. C.

35. *Add. Annotation :*—*As to* (2) **Consd.** Griffiths *v.* St. Clement's School, Liverpool, [1938] 3 All E. R. 537.

45a. **Variation of order as to foundation managers —Powers of Board of Education.**]—The Board of Education has power under Education Act, 1902 (c. 42), s. 11 (8), to make an order varying any order previously made, & this power, subject to due observance of the conditions of the sect., is practically unfettered. Therefore, when under a trust deed of 1860 the vicar & wardens of a parish were made managers of a non-provided school, & by an order of the Board made in 1903 it was provided that there should be four foundation managers of the school, one of which should be the vicar as *ex officio* manager, it was not *ultra vires* the Board to make in 1922 a varying order under Education Act, 1902 (c. 42), s. 11 (8), excluding the vicar & appointing as managers one warden & three nominees of the Archdeacon of Suffolk. The provisions of sect. 11 (1), (2), did not make the order of 1903 part of the trust deed in such a way that it was impossible to vary that order without showing that all the provisions of the trust deed as to managers were insufficient, inapplicable, or inconsistent with the Act.—FALCONER *v.* STEARN, [1932] 1 Ch. 509; 101 L. J. Ch. 231, 232; 146 L. T. 461; 30 L. G. R. 187.

47. *Add. Annotation :*—**Refd.** Sadder *v.* Sheffield Corpn., Dyson *v.* Sheffield Corpn., [1924] 1 Ch. 483.

PART IV. SECT. 2, SUB-SECT. 1.

q i. ——,]—THURGOOD *v.* VIGNEAU (N. S.). [1929] 4 D. L. R. 857.—**CAN.**

q ii. —— *Who may sue.*]—An orphanage consisted of a number of detached houses in each of which a certain number of children lived under the charge of a lady or a married couple, who were known as the "fathers" & "mothers" of the children. These "fathers" & "mothers" were appointed by the founder & general manager of the orphanage, who had the power to dismiss them at any time. They had the same authority over the children for ordinary domestic purposes as if they were their own, but the ultimate disposal of the children by emigration or otherwise rested with the founder, to whose disposal they were committed at entry. In an action at the instance of these "fathers" & "mothers" against a school board for declaration that defenders were bound to provide school accommodation for the children in the orphanage :—*Held :* the pursuers were not the "parents" of the children within the Education Act, & had no title to sue.—M'FADZEAN *v.* KILMALCOLM SCHOOL BOARD (1903), 40 Sc. L. R. 440.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2.

26 i. *Duty to "maintain & keep efficient"—School transferred to local authority.*]—Trustees of a voluntary Episcopal school transferred it to the local education authority, the school then being conducted as a primary school, with a supplementary course. Two years after the transfer, the education authority altered the system & began to conduct it in sequence with a neighbouring school. In an action against the education authority at the instance of the former trustees :—*Held :* under Education (Scotland) Act, 1918, s. 18 (3), defenders were bound to hold, maintain, & manage the transferred school as a public school of the same character & status as at the date of the transfer & provide similar instruction to that provided at that date.—NORFOR *v.* ABERDEENSHIRE EDUCATION AUTHORITY, [1924] S. C. 590.—**SCOT.**

26 ii. —— *Performance of duty disputed—Jurisdiction of court.*]—*Held :* while questions as to due fulfilment or observance by the education authority of their statutory obligations were questions of fact which fell to be determined by the Education Department under Education (Scotland) Act, 1918, s. 18 (4), where the question involved the measure of these obligations, that was a question of law, with regard to which the jurisdiction of the ct. had not been excluded.—NORFOR *v.* ABERDEENSHIRE EDUCATION AUTHORITY, [1923] S. C. 881.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 3.

28. *Teachers—Employment of sisters of Order of Roman Catholic Church—Whether sectarian education.*]—ROGERS *v.* BATHURST SCHOOL DISTRICT NO. 2 (TRUSTEES) (1896), 1 N. B. Eq. Rep. 266. —**CAN.**

28. —— *Contracts with—Duty of trustees to confirm.*]—DES ROSIERS *v.* BALMORAL & DALHOUSIE SCHOOL DISTRICTS NO. 1 (N. B.), [1927] 3 D. L. R. 505.—**CAN.**

28. *Admission to separate school—Powers of trustees.*]—The obligation of the trustees of a separate school to admit children only extends to those who appear on the annual enumeration with an indication that the parents are separate school supporters.—RENAUD *v.* BOARD TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOL (TILBURY NORTH), [1933] 3 D. L. R. 172; O. R. 565.—**CAN.**

49a. Liability for assault—Excessive punishment by schoolmaster.]—Pltf., a schoolboy of ten years of age attending a non-provided school, was by reason of his lack of discipline boxed on the ear by his schoolmistress. As a result of the blow, which was found not to have been a violent one, the boy became deaf in one ear. The class in which the boy was working at the time of the accident was a large one, consisting of forty-six boys. In an action for damages to which the managers of the school were made defts. with the schoolmistress, it was proved that there was an agreement between the schoolmistress & the managers, which was not proved to have been brought to the notice of parents, whereby she agreed to teach & conduct the school "in accordance with the requirements of the Board of Education & in accordance with the directions given from time to time by the managers." The only regulations dealing with corporal punishment proved in evidence were certain regulations of the borough education committee, made without the consent of the managers & not adopted by them. As between defts., the managers claimed contribution from the mistress in respect of any damages awarded. It was contended that, as between employed & employer this was a claim for an indemnity, &, therefore, not within the Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 6 (1), (2):—*Held:* (1) the blow, though a moderate one, exceeded reasonable & lawful correction; (2) the schoolmistress was the servant of the managers, & the latter were jointly liable to [illegible] with her; (3) the act of punishing the boy was one within the general scope of the employment of the mistress, &, as against third parties, the managers could not plead a limitation of her powers of punishment not known to the parents. On the facts, no such limitation was proved; (4) Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 6 (1), (2), although it speaks of contribution & excludes the case of a person entitled to be indemnified in respect of the liability in respect of which contribution is sought, contemplates a contribution amounting to 100 per cent. of the damages, which is in effect an indemnity; (5) the sect. applies where an employer claims to be indemnified by his employee; (6) the fact that the class was a large one was not material in considering the question of contribution, which should be a contribution of 100 per cent., amounting to a complete indemnity by the mistress of the managers.—RYAN *v.* FILDES, [1938] 3 All E. R. 517.

52. *Add. Annotation:—As to* (1) **Refd.** Griffiths *v.* St. Clement's School, Liverpool, [1938] 3 All E. R. 537.

52a. —— Injury to Invitee—Non-repair of building.]—Pltf.'s son was at the material time a pupil of a non-provided school. Pltf. was invited to attend an exhibition of the pupils' work. The invitation was signed by the headmaster, & was issued with the authority of the managers of the school. Pltf. attended, & was injured through the collapse of a floor due to want of repair. It was alleged that the managers of the school were in occupation only as the servants or agents of the general committee of the Church of England Schools Society. Defts. also relied upon Public Authorities Protection Act, it being admitted that the action was not commenced within six months of the act complained of:—*Held:* (1) the pltf. was an invitee, & not a mere licensee; (2) the managers of the school were in occupation thereof, & not the general committee of the Church of England Schools Society; (3) the duty to repair was imposed upon them by the Education Act, 1902 (c. 42), s. 7; (4) the managers were a public authority within the Public Authorities Protection Act, & the action was therefore barred.—GRIFFITHS *v.* ST. CLEMENT'S SCHOOL, LIVERPOOL (MANAGERS) & CHURCH OF ENGLAND SCHOOLS SOCIETY TRUSTEES, [1938] 3 All E. R. 537.

52b. Public Authorities Protection Act—Application of.]—Pltf., an infant, was injured at

---

PART IV. SECT. 5.

sg. *Contribution by one education authority to another—Parents not residing in area in which school situate.*]—The B. education authority granted bursaries to a number of children of persons resident in Arran for the purpose of facilitating their secondary education. There was no secondary school in Arran, & the children attended Ardrossan Academy, which is within the education authority. Except for two months in summer, the children left Arran for Ardrossan on Monday mornings, & they were boarded during the week with persons resident in Ardrossan, with whom they lived in family. On Saturday they returned home for the week-end, & they spent their holidays at their homes in Arran. The A. education authority claimed repayment of the cost of educating the children at Ardrossan from the B. education authority:—*Held:* pursuers were entitled to recover the cost of the children's education from defenders. Education (Scotland) Act, 1918 (c. 48), s. 10, discussed.—AYRSHIRE EDUCATION AUTHORITY *v.* BUTESHIRE EDUCATION AUTHORITY, [1926] S. C. 169.—**SCOT.**

PART IV. SECT. 6.

sl. *Alteration of school section boundaries—Sufficiency of notice.*]—By a township bye-law, certain land was detached from one school section & added to another. Notice of the proposed alteration had been given by the township council by posting fourteen notices, seven in each of the sections, & publicity was given in the public press, though not by advertisement containing the formal notice. On an application for a declaration that the bye-law was invalid:—*Held:* Public Schools Act, 1920, s. 15 (1) (*b*), should be construed as leaving the notice to be given entirely to the discretion of the township council.—*Re* HOYLAND & YORK (1923), 55 O. L. R. 185.—**CAN.**

sj. *Alteration of school districts—By whom sanctioned*—7 *Vict. c.* 29, *ss.* 14, 24.]—MCFEE *v.* DUNDAR (1860), 10 C. P. 94.—**CAN.**

sk. —— *Award under Public Schools Act*, 1896 (c. 70) (*Ont.*)—*Validity.*]—*Re* CHESTERVILLE PUBLIC SCHOOL BOARD (1898), 29 O. R. 321.—**CAN.**

sm. *Union of sections*—40 *Vict. c.* 16 (*Ont.*)—*Effect of.*]—*Re* MINISTER OF EDUCATION PETITION (1877), 28 C. P. 325.—**CAN.**

so. *Refusal of some trustees to join in transfer—Right of majority of trustees to require execution by minority.*]—The managers & a majority of the trustees of B. public elementary schools decided that the schools should be transferred to the County Council of L. under Education Act (Northern Ireland), 1923. Four trustees refused to join in the necessary deed of conveyance:—*Held:* the majority of the trustees could require the minority to join in the deed for the purpose of transferring the schools under the Act.—LONDONDERRY C. C. *v.* M'GLADE, [1929] N. I. 47.—**IR.**

sq. *Under Education (Scotland) Act*, 1918 (*c.* 48), *s.* 18 (7)—*Necessity for consent of Education Authority.*]—The trustees of a Roman Catholic school, established after the passing of Education (Scotland) Act, 1918, obtained in 1926 the consent of the Department to the transfer of the school to the Education Authority, & thereafter they intimated to the Authority their intention to transfer the school. The Authority refused to accept the proposed transfer, &, in an action of declaration brought by the trustees, maintained that its consent was a condition precedent to a valid transfer:—*Held:* the consent of the Authority was not a condition precedent to a valid transfer, &, as the Education Department had given its consent, the authority was bound to accept the transfer.—BONNYBRIDGE ROMAN CATHOLIC SCHOOL *v.* STIRLINGSHIRE EDUCATION AUTHORITY, [1930] S. C. 27; *sub nom.* SMITH *v.* STIRLINGSHIRE EDUCATION AUTHORITY, 46 T. L. R. 137.—**SCOT.**

school during an authorised recreation period by the swinging to of a pair of iron gates which crushed his hand. The accident happened on Apr. 8, 1937, & on Nov. 10, 1937, more than six months later, a writ was issued against defts. who were respectively head teacher & managers of the school, claiming damages for breach of duty. Defts. pleaded Public Authorities Protection Act, 1893 (c. 61). The school was a non-provided voluntary school which under Education Act, 1921 (c. 51), received a grant towards the costs of education. The school & its body of managers were in existence before the passing of the Education Act, 1921 (c. 51). For the purposes of carrying out the provisions of the Act, supervision & instruction, including recreation, were among the duties which the managers with the assistance of the head teacher had to perform. Pltf. contended that the duty of supervision was not a public duty, but was owed to a particular class of children:—*Held:* (1) the managers were a statutory body acting in the execution of the Education Acts; (2) the duty of supervision was a duty owed to all the children who attended the school, & was a public duty protected by Public Authorities Protection Act, 1893 (c. 61); (3) the head teacher was acting as the servant of the managers; (4) the action was therefore barred as being out of time.—GREENWOOD *v.* ATHERTON, [1938] 2 All E. R. 475; *affd.* [1938] 4 All E. R. 686 C. A.

Annotation:—As to (2) **Refd.** Griffiths *v.* St. Clement's School, Liverpool, Managers, & Church of England Schools Society, Trustees, [1938] 3 All E. R. 537.

Part V.—School Attendance.

62. *Add. Annotation:*—**Apld.** Woodward *v.* Oldfield (1927), 96 L. J. K. B. 796.

72. *Add. Annotation:—As to* (3) **Consd.** Thomas *v.* Hughes (1928), 139 L. T. 613.

78. *Add. Annotation:*—**N.F.** Rednall *v.* Beamish (1926), 135 L. T. 155.

78a. —— ——.]—Where an education authority has refused an application for exemption from school attendance on the ground of employment, the fact of such employment can be neither a "reasonable excuse" for non-attendance, nor an extenuating circumstance entitling the justices under Probation of Offenders Act, 1907 (c. 17), to dismiss a summons against the parent.—THOMAS *v.* HUGHES, [1929] 1 K. B. 226; 98 L. J. K. B. 42; 139 L. T. 613; 92 J. P. 169; 44 T. L. R. 818; 28 Cox, C. C. 542; 26 L. G. R. 545, D. C.

79a. —— ——.]—Resp., a share-fisherman & the father of a boy of fourteen years of age & of six other children of school age, placed the boy out at work at 5*s.* 6*d.* a week, & applied to the local education authority to exempt the boy from school attendance. Exemption was refused, &, on an information against resp. for failing, without reasonable excuse, to cause the boy, being between five & fifteen years of age, to attend school, as required by the bye-laws of the education authority, the justices held that the fact of the boy's having obtained regular employment of a beneficial nature was a reasonable excuse, & they dismissed the information:—*Held:* the fact of the boy's employment was not a reasonable excuse, & the case must be remitted to the justices.—REDNALL *v.* BEAMISH (1926), 135 L. T. 155; 90 J. P. 153; 42 T. L. R. 538; 24 L. G. R. 391; 28 Cox, C. C. 245, D. C.

82. *Add. Annotation:*—**Distd.** L. C. C. *v.* Maher, [1929] 2 K. B. 97.

88a. —— ——.]—The words "under efficient instruction in some other manner" mean that the child is receiving the whole of its instruction in some other manner, & do not entitle a parent to withdraw a child for one hour a week for the purpose of attending private lessons in a subject not approved by the Board of Education for elementary schools.—OSBORNE *v.* MARTIN (1927), 138 L. T. 268; 91 J. P. 197; 44 T. L. R. 38; 25 L. G. R. 532, 28 Cox, C. C. 465, D. C.

89a. —— —— **Child taken to hop fields.**]—HAYNES *v.* TURTON, HAYNES *v.* LEAR (1938), 82 Sol. Jo. 585, D. C.

96a. ——.]—1921 Act (c. 51), s. 49, provides that any of the three reasons therein set out, which may be summarised as follows: (*a*) sickness; (*b*) no school open within three miles; (*c*) efficient instruction in some other manner, shall be a reasonable excuse for not causing a child to attend school:—*Held:* those three reasons were not an exhaustive

---

PART V. SECT. 1, SUB-SECT. 2.

s. *By whom taken.*]—A father, charged with failure to provide efficient education for his child upon a complaint at the instance of "the person appointed by the education authority for the county of Lanark to prosecute," objected on the ground that the proper prosecutor was the school management committee for the area, or the person appointed by them:—*Held:* the power, previously vested in school boards, to prosecute for education offences was included in the powers transferred to the education authority by 1918 Act, & had not been restricted by s. 3 (2); & the education authority, or the person appointed by them, could competently prosecute.—HIDDLESTON *v.* WILSON, [1924] S. C. (J.) 62.—**SCOT**

sb. *Under Education (Scotland) Act, 1872 (c. 62), s. 70.*]—The above sect. has not been impliedly repealed by Education (Scotland) Act, 1908 (c. 63), s. 8, & a prosecution under sect. 70 is competent, even though the real question at issue between the parent & the education authority is the selection of the school which the children are to attend. *Semble:* proceedings should not be taken under sect. 70 where there is a question of principle at issue between the parties.—CALDER *v.* ALEXANDER, [1926] S. C. (J.) 51.—**SCOT.**

PART V. SECT. 2.

sd. *To regulate age of admission of pupils to grade I—Power of town district trustees.*]—The power which School Act, R. S. S. 1920, c. 110, s. 110 (27), gives the trustees in town districts to determine in the case of graded schools at what time pupils may be admitted to grade I. is not conferred on the trustees of districts which are not town districts.—WILKINSON *v.* THOMAS, [1928] 2 W. W. R. 700.—**CAN.**

PART V. SECT. 3.

89 i. —— *No school within three miles—Parent's refusal of offer of travelling facilities.*]—A father was charged with failure to provide efficient education for his son aged twelve years, contrary to Education (Scotland) Act, 1908 (c. 63), s. 7 (1). The boy had passed out of the primary school, & there was no secondary school within three miles of his place of residence. The education authority offered to pay an allowance towards the cost of conveying the boy to a secondary school. The father refused the offer:—*Held:* the father had a "reasonable excuse" for failure to provide education within Education (Scotland) Act, 1883 (c. 56), s. 11.—MACKENZIE *v.* SMITH, [1927] S. C. (J.) 47.—**SCOT.**

enumeration of what would be a reasonable excuse, but that if facts were established showing an excuse within one of the categories (*a*), (*b*) & (*c*), the tribunal must accept the excuse as being a reasonable excuse. If, however, parents sought to find a reasonable excuse outside the named categories (*a*), (*b*) & (*c*), the tribunal were not bound to accept it; the tribunal must decide whether the facts, in their opinion, showed a reasonable excuse. —LONDON COUNTY COUNCIL *v.* MAHER, [1929] 2 K. B. 97; 98 L. J. K. B. 492; 142 L. T. 69; 93 J. P. 178; 45 T. L. R. 534; 73 Sol. Jo. 269; 29 Cox, C. C. 1; 27 L. G. R. 444, D. C.

Part VI.—Blind, Deaf, Defective and Epileptic Children.

99a. —— —— **Who is "parent."**]—The parent, whose consent is required to be given or unreasonably withheld before a defective child can be ordered, under 1921 Act, s. 54 (1), to be sent to a special school which is not within reach of the child's residence or to a boarding school, is the parent who has *de facto* custody of the child; & where the father of a defective child was a convict serving a term of penal servitude, & the child resided with its mother:—*Held:* the mother was the parent for the purposes of the sect.—WOODWARD *v.* OLDFIELD, [1928] 1 K. B. 204; 96 L. J. K. B. 790; 136 L. T. 731; 91 J. P. 151; 43 T. L. R. 488; 25 L. G. R. 296; 28 Cox, C. C. 363, D. C.

Part VIII.—Health and Well-Being of Scholars.

104a. —— **Responsibility of "parent"—Whether mother liable to fine.**]—For the purposes of Education Act, 1921 (c. 51), s. 87 (1), in a case where a father, mother & child are living together, "parent" refers only to the father, & does not include the mother.—LONDON COUNTY COUNCIL *v.* STANSELL (1935), 154 L. T. 241; 100 J. P. 54; 80 Sol. Jo. 92; 34 L. G. R. 52; 30 Cox, C. C. 335, D. C.

Part X.—Acquisition, Appropriation, and Alienation of Land.

120a. —— **Whether consent to sale within School Grants Act, 1855 (c. 131).**]—In 1872 a piece of land was conveyed to a vicar & churchwardens upon educational trusts, &, in accordance with the provisions of School Grants Act, 1855 (c. 131), the conveyance was subject to a condition that no sale should be valid unless either the consent of the

---

PART VII. SECT. 1.

se. *Duty of education authority—Whether bound to provide free secondary education.*]—An education authority, with the approval of the Education Department, provided free post-primary education in certain schools in their area. They also provided a bursary scheme, under which children who passed a qualifying examination, & whose parents required financial assistance, might receive free secondary education at certain additional schools. The fathers of two children, one of whom had failed to pass the authority's bursary examination, while the other had passed the examination, but its father had failed to satisfy the authority that he required financial assistance, brought actions against the authority concluding, *inter alia*, for declarator that the defenders were bound to provide free secondary education for their respective children: —*Held:* (1) Education (Scotland) Act, 1918 (c. 48), s. 6 (1) (*a*), does not impose upon an education authority any obligations to provide free secondary education for all children within its area, but merely imposes an obligation to submit a scheme dealing with free secondary education, & (2) it was for the Education Department, & not for the ct., to determine whether the scheme submitted was or was not adequate; & actions accordingly dismissed.—QUINN *v.* DUNDEE EDUCATION AUTHORITY, HAY *v.* DUNDEE EDUCATION AUTHORITY, [1930] S. C. 77.—SCOT.

PART VII. SECT. 2.

sg. *Appointment of teacher—Necessity for deed.*]—A contract as a teacher in a continuation school must be under seal, being governed by Public Schools Act, R. S. O., 1927, s. 103 (1).—PARKER *v.* LION'S HEAD PUBLIC SCHOOL BOARD, [1934] O. R. 14; 1 D. L. R. 430.—CAN.

sl. *Ontario Training Schools Act, 1931—Meaning of "resident."*]—The term "resident" in Ontario Training Schools Act, 1931 (Ont.), must be construed strictly as meaning sleeping & eating within the municipality.—*Re* RIX, [1935] 2 D. L. R. 815.—CAN.

PART VIII.

105 i. *Conveyance of children to school—Duty of school trustees—Under School Act, R. S. S.*, 1920 (c. 110), *ss.* 188, 207 (1).]—RIDINGS *v.* ELMHURST SCHOOL DISTRICT NO. 3665 BOARD OF TRUSTEES (NO. 2), [1927] 3 D. L. R. 173; [1927] 2 W. W. R. 159; 21 S. C. R. 471.—CAN.

sm. *Lease by school trustees—Validity.*]—NIAGARA PUBLIC SCHOOL BOARD *v.* QUEENSTON WOMEN'S INSTITUTE, [1926] 4 D. L. R. 13; 59 O. L. R. 213.—CAN.

PART X.

m l. —— —— *Penalty for non-compliance with School Act—Whether applicable where schoolhouse rebuilt on same site.*]—WATERMAN-WATERBURY MANUFACTURING CO., LTD. *v.* SLAVANKA SCHOOL DISTRICT, [1928] 4 D. L. R. 522; [1928] 3 W. W. R. 16; *revsd.*, [1929] 2 D. L. R. 161; 1 W. W. R. 598; 23 S. L. R. 338.—CAN.

m ll. —— —— *Trustees of separate school—Originally rural school.*]—A board of trustees of a separate school which originally was a rural school, but which, because of the incorporation of a town covering the territory under the jurisdiction of the board became *de facto* an urban school, may pass a bye-law for the selection of a site for a school house without the consent of a majority of the supporters of the school as required in the case of boards of rural schools by Separate Schools Act, R. S. O., 1927, s. 33 (1).—*Re* FORTIN & HEARST ROMAN CATHOLIC SEPARATE SCHOOL TRUSTEES, [1932] O. R. 52; 1 D. L. R. 331.—CAN.

o l. —— *Who is "owner."*]—There can be no "owner" within sect. 70 (2) of School Act, R. S. A., 1922, until the land in question has been patented & a certificate of title issued to some one. The sect. was never intended to apply to a case where the ownership of the land was still in the Crown.—*Re* BALLAS & MINISTER OF EDUCATION, [1931] 1 W. W. N. 290; 25 Alta. L. R. 359.—CAN.

o ll. —— *"Adjoining" land—Meaning of.*]—The word "adjoining" as applied to parcels of land does not necessarily imply that the parcels are in physical contact with each other. Therefore under sect. 135 of Public Schools Act, 1930, land may be "adjoining" an existing school site although separated therefrom by a

Home Secretary were given or the grant (a grant of £736 towards the purchase money had been made out of public funds) were repaid to the Treasury. In 1929 the Liverpool Corpn., after confirmation of the order by the Board of Education, acquired the land compulsorily, & an arbitrator assessed the compensation. The corpn. paid to the vicar & churchwardens the compensation money less £736, the amount of the grant, which it paid into ct. Upon an application by the A.-G. for that sum to be paid out to the Treasury, it was contended that (*a*) the confirmation of the order by the Board of Education amounted to the consent to the sale required by the Act of 1855, (*b*) if there was no such consent, the sale was invalid :—*Held :* (1) the confirmation by the Board of Education was not a consent to the sale, but a mere approval of the exercise of the power of compulsory purchase ; (2) the sale was not invalid. The strict course would have been to pay the whole purchase money into ct., but all that was essential was that the grant should be repaid, & that could be secured by an order for the payment out of the money in ct. to the Treasury.—*Re* MILL LANE LAND, EVERTON, *Re* LIVERPOOL EDUCATION (EMMANUEL SCHOOL PURCHASE) ORDER, 1929, *Ex p.* LIVERPOOL CORPN., [1937] 4 All E. R. 197 ; 81 Sol. Jo. 921.

121a. Provision of education by county council—Payment of rent to borough council—Assessment.]—By Education Act, 1902 (c. 42), the duty of supplying higher education in a borough was transferred from the borough council to the county council. In pursuance of its duties as the authority for higher education in the borough, the county council occupied a technical school owned by the borough council. The school in question was built by the borough council when it was the local authority for higher education. Part of the cost of building the technical school was borne by the borough council, while the county council made a series of annual grants towards the cost. The borough council undertook that the school premises should be used exclusively for higher education. But since its powers in regard to higher education had been transferred to the county council, the borough council could no longer use the school for that purpose. Education Act, 1902 (c. 42), contained no provisions dealing with the financial adjustments which became necessary in consequence of the transfer of powers from one local authority to another :—*Held :* (1) there was nothing in the Education Acts to prohibit the county council from paying, or the Gravesend council from receiving, an economic rent in respect of the occupation of the school by the county council for higher education ; (2) the county council had no interest in the premises, except an equitable interest, which resulted from the grants which it had made towards the cost of the premises. In assessing the rent to be paid, allowance must be made for that equitable interest. The rent payable on that basis would be arrived at by arbn. in the absence of agreement, & the arbitrator would proceed in the manner recognised as proper in valuing public buildings.—GRAVESEND CORPN. *v.* KENT COUNTY COUNCIL, A.-G. *v.* GRAVESEND CORPN., [1935] 1 K. B. 339 ; 104 L. J. K. B. 169 ; 152 L. T. 116 ; 99 J. P. 57 ; 51 T. L. R. 109 ; 32 L. G. R. 524.

public highway. — MCKENZIE *v.* MINIOTA MUNICIPAL SCHOOL DISTRICT, [1931] 2 W. W. R. 105 ; 2 D. L. R. 695.—**CAN.**

o iii. —— *Appropriate tribunal for assessing compensation.*]—By sect. 20 of School Sites Act, 1928, the Official Arbitrator is the sole tribunal for fixing the price of school sites in a municipality for which an arbitrator has been appointed. Such an arbitrator having been appointed, proceedings before a county ct. judge were declared *coram non judice*, & his award was set aside.—*Re* NORTH YORK PUBLIC SCHOOL BOARD & DUFF, [1931] 1 D. L. R. 198 ; 66 O. L. R. 1.—**CAN.**

o iv. —— *Deed not registered—Subsequent closure of school.*]—A.-G. FOR BRITISH COLUMBIA *v.* PARKER, [1937] 3 W. W. R. 705 ; 4 D. L. R. 242.—**CAN.**

p i. —— *Power of trustees—Sale of old site.*]—Under School Act, R.S.A., 1922, a board of trustees has power to purchase a new site for a school & remove the school building to it, &, with the Minister's approval, to sell the old site.—OLSTEAD *v.* COAL VALLEY SCHOOL DISTRICT NO. 1053, [1924] 1 W. W. R. 211.—**CAN.**

l (p. 574) **i.** —— *Validity of bye-law prohibiting.*]—A bye-law passed by a city council under Municipal Act of Ontario, s. 399A, prohibiting in a certain district the erection of buildings except for use as private residences, is enforceable in respect of a school erected by the trustees of a separate school under their statutory powers.—TORONTO CORPN. *v.* ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES, [1926] A. C. 81 ; 95 L. J. P. C. 12 ; 133 L. T. 779 ; 41 T. L. R. 658.—**CAN.**

PART XI.

sk. *Powers of education authority—Assistance by way of loan.*]—Education (Scotland) Act, 1918 (c. 48), s. 4 (1), does not empower an education authority to grant assistance by way of loan.—BANFFSHIRE COUNTY COUNCIL *v.* SCOTTISH EDUCATION DEPT., [1934] S. C. 353.—**SCOT.**

d i. —— —— *Submission condition precedent to payment by municipal council.*]—Where a school board had failed to submit an estimate to the municipal council, as required by Public Schools Act, R. S. O., 1927, s. 88 (*p*), a motion for a *mandamus* to compel the council to pay over to the school board certain sums requisitioned by the school board was dismissed.—*Re* BEAVERTON PUBLIC SCHOOL BOARD OF TRUSTEES & THORAH TOWNSHIP, [1932] 4 D. L. R. 458 ; O. R. 663.—**CAN.**

g. Add citation :—19 Alta. L. R. 623.

g i. —— *Annexation by urban municipality—Effect of.*]—WINDSOR *v.* TURNER, [1925] 2 D. L. R. 684 ; [1925] S. C. R. 413 ; *revsg.* 26 O. W. N. 221.—**CAN.**

g ii. —— *Assessment by—Whether property temporarily in district liable.*]—*Re* EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY. CO. & MCLELLAN SCHOOL DISTRICT, *Re* MANNIX & WALGREN & MCLELLAN SCHOOL DISTRICT, [1928] 2 W. W. R. 684.—**CAN.**

k i. —— —— *For county pupils attending urban collegiate institute.*]—*Re* GRIMSBY & LINCOLN COUNTY, [1928] 4 D. L. R. 589 ; 62 O. L. R. 470.—**CAN.**

o (p. 576) **i.** —— —— ——.]—By sect. 9 of the award dated Sept. 3, 1870, made in pursuance of British North America Act, 1867 (c. 3), s. 142, it was directed that all moneys received by the Province of Ontario since June 30, 1867, from the school lands set apart by Canadian statutes & called the common school fund should be paid to the Dominion, & that the income derived therefrom should be paid to the Provinces of Ontario & Quebec in the proportions specified in sect. 5 of that statute.

On Apr. 10, 1893, the three Govts. of the Dominion, Ontario, & Quebec entered under statutory authority into an agreement of submission as to matters in difference in the settlement of accounts between them under the award of 1870, & for the ascertainment & distribution of the said school fund. Thereunder Quebec claimed that certain moneys, which it was admitted had not been actually received by Ontario, had been constructively received, since they were deductions which Ontario was not authorised to make except at her own expense, & should be the subject of distribution between them :—*Held :* the Supreme Ct. was right in affirming an award to the effect that the arbitrators had no jurisdiction. Moneys actually received by Ontario were alone the subject of the submission, the terms of which could not be extended so as to force a contribution from a large constructive receipt.—A.-G. FOR QUEBEC *v.* A.-G. FOR ONTARIO, [1910] A. C. 627, P. C.—**CAN.**

p (p. 576) **i.** —— *Demand upon for money collected for erection of school—Resolution of trustees insufficient—Subsequent bye-law invalid.*]—*Re* SANDWICH TOWN SCHOOL TRUSTEES & SANDWICH TOWN (1864), 23 U. C. R. 639.—**CAN.**

p (p. 576) **ii.** —— *Demand upon—expenses of conducting high school.*

Part XII.—Reformatory and Industrial Schools.

See, now, Children & Young Persons Act, 1932 (c. 46), Part II., Sched. I.

135. *Add. Annotation :*—**Refd.** L. C. C. *v.* Wiltshire County Council (1927), 137 L. T. 526.

137a. —— —— ——.]—A youthful offender committed an offence while on a temporary visit to the place in W. where it was committed. Until about three weeks previously he had resided in L., but at the date of the offence had neither home nor employment in L. to which he could have returned. He was ordered to be sent to a reformatory school, & his place of residence was specified to be L. :—*Held :* as there was no proof of his actual residence in L. at the date of the offence, his place of residence should have been specified as W., not because of his actual residence there, which was admittedly only temporary, but because the presumed residence in the place where the offence was committed provided for by the above sect. had not been successfully displaced.—LONDON COUNTY COUNCIL *v.* WILTSHIRE COUNTY COUNCIL (1927), 137 L. T. 526 ; 91 J. P. 122 ; 43 T. L. R. 563 ; 25 L. G. R. 384 ; 28 Cox, C. C. 416, D. C.

138. *Add. Citations :*—[1924] 1 K. B. 248 ; 93 L. J. K. B. 65 ; 130 L. T. 414 ; 27 Cox, C. C. 581.

Alleged irregularity in description of applicants, etc.]—*Re* PORT ROWAN HIGH SCHOOL TRUSTEES & WALSINGHAM TOWNSHIP CORPN. (1873) 23 C. P. 11.—**CAN.**

p (p. 576) iii. —— *Money raised by sale of debentures—For erection of school building—Right to unexpended balance.*]—It is the duty of a municipal council to pay over to a school board or boards, from time to time, upon request, moneys raised by the sale of municipal debentures for the erection of a school building. The unexpended balance of such moneys is not the property of the municipality in its own right, at most it is a trustee or custodian of the moneys for the boards.—CLARKSON *v.* ALLISTON CORPN., [1928] 2 D. L. R. 715 ; 62 O. L. R. 149.—**CAN.**

p (p. 576) iv. —— *Agreement exempting taxpayer from taxes—Whether school taxes included.*]—*Ex p.* BATHURST CO., [1928] 4 D. L. R. 65.—**CAN.**

p (p. 576) v. —— *Appeal against equalised assessment—Duty of equaliser.*]—On an appeal against the equalised assessments made under Public Schools Act, s. 133, as amended by 1928, c. 48, s. 13, the only question for the judge to decide is whether the equaliser has done what the statute as amended requires him to do, *i.e.* made his equalisation on the basis of the equalisation made by Manitoba Tax Commission.—*Re* BEAUSEJOUR SCHOOL DISTRICT (Man.), [1928] 3 W. W. R. 310.—**CAN.**

p (p. 576) vi. —— *Correction of errors in school assessment.*]—Sect. 70 of School Assessment Act, R. S. S., 1930, as amended, which provides for the making or correction, by order of the Minister, of the assessment or tax levy of any school district " which has not been made in any year as provided by law or has been incorrectly or improperly made," is retrospective ; &, therefore, applies to errors made in years prior to that in which the amendment became law.—EPP SCHOOL DISTRICT *v.* PARK RURAL MUNICIPALITY, [1936] 2 W. W. R. 331.—**CAN.**

p (p. 576) vii. —— *Assessment by.*]—Sects. 9 & 10 of School Assessment Act, 1931, c. 33, which provide that the assessed values fixed pursuant to Alberta Municipal Assessment Commission Act, 1935, c. 63, shall in certain school districts be taken as the assessed values for school assessment purposes, have no application to districts which are within class (*a*) of sect. 3, *i.e.* village districts, or to those which are within class (*c*) thereof, *i.e.* those districts, or to those which are within class (*e*) thereof, *i.e.* those districts which are empowered by the Minister to make an assessment and levy taxes in respect to their whole areas. Sect. 55 of the Act authorises the Minister to order that any district which has not power to make an assessment shall have power to do so. If such an order included some districts which already had the power to assess & levy taxes under a former order of the Minister :—*Held :* such inclusion was no doubt due to an excess of caution.—ATLAS COAL CO., LTD. & REGAL COAL CO., LTD. *v.* EAST COULEE VILLAGE SCHOOL DISTRICT BOARD OF TRUSTEES, [1937] 3 W. W. R. 674.—**CAN.**

sn. *City board—School in adjoining rural section—Equalisation of assessment.*]—An agreement was made in 1917 between the trustees of a rural school section adjoining a city & the board of education for the city for the erection & maintenance by the latter of a school house in the rural section, the pupils in the rural section to have the right to attend the school & the higher grade schools in the city, & the trustees of the rural section agreeing to pay a fixed annual sum to be raised by taxation :—*Held :* assuming the agreement was a valid one, School Law Amendment Act, 1922, s. 14, did not apply to the agreement, as it was not one for payment of any proportion of the cost of erecting & maintaining the school ; & a judgment restraining the city board & arbitrators appointed to equalise the assessment in respect of the school from proceeding to do so, was affirmed.—YORK PUBLIC SCHOOL BOARD *v.* TORONTO BOARD OF EDUCATION (1923), 54 O. L. R. 216.—**CAN.**

so. *School board—Liability for cost of vocational training—Refused by school board—Granted by vocational board.*]—FREDERICTON SCHOOL TRUSTEES *v.* KINGSCLEAR SCHOOL TRUSTEES, [1928] 4 D. L. R. 13.—**CAN.**

sd. —— *Payment to member—Whether breach of School Act, R. S. S., 1930, s. 239.*]—Deft. & his brother were two of the three members of the board of trustees of a school district. The board awarded a contract to one R. for repairs to the school house & provided that the excavation of the basement should be done by the ratepayers by day labour. Some of this work was done by deft. & his brother who were paid for it by cheque of the board issued by them as chairman & secretary of the board. Pltfs. sued on behalf of all other ratepayers of the district to recover the amount so paid deft. on the ground that its payment was a violation of sect. 239, School Act, R. S. S., 1930, as amended by sect. 21, c. 52, 1931, & also of sect. 130 of said Act :—*Held :* neither sect. could be relied upon in support of the action. —MCNABB & JARNAGIN *v.* FINDLAY, [1932] 3 W. W. R. 255.—**CAN.**

sp. *Joint board of grammar & common school trustees—Claim against district municipality—Joint board illegal.*]—*Re* TRENTON SCHOOL TRUSTEES & TRENTON VILLAGE CORPN. (1867), 26 U. C. R. 353.—**CAN.**

sq. —— *Remittance to bank of county treasurer for grammar school trustees—Failure of bank—Liability of county treasurer.*]—CALEDONIA GRAMMAR & COMMON SCHOOL TRUSTEES *v.* FARRELL (1868), 27 U. C. R. 321.—**CAN.**

sr. *Collection of school rates by de facto trustees—Validity.*]—School trustees are *de facto* officers, although they have failed to make declaration of office, if they have actually acted, & an assessment for school rates & execution by them is valid as against the taxpayer.—GUNTER *v.* PRINCE WILLIAM SCHOOL DISTRICT NO. 3 TRUSTEES, [1934] 3 D. L. R. 439 ; 8 M. P. R. 113. —**CAN.**

ss. *School rates on lands of Protestant husband & Roman Catholic wife—Not applicable to separate school.*]—School rates on lands held by a Protestant husband & a Roman Catholic wife jointly, are applicable to public school purposes only & are not applicable as to any part to separate school purposes.—HOLMES *v.* STIVER, [1934] 4 D. L. R. 358 ; *sub nom. Re* HOLMES & STIVER, [1934] O. R. 645.—**CAN.**

sx. *Assessment of corporations to school rates—Roman Catholic shareholders.*]—Consideration of questions arising from assessment of corpns. to school rates where some shareholders may be Roman Catholics.—DILLON *v.* CATELLI FOOD PRODUCTS, [1937] 1 D. L. R. 353 ; *sub nom. Re* DILLON, [1937] O. R. 114.—**CAN.**

sz. *Failure to raise rates—Mandamus.*]—If a county fails to perform its statutory duty in raising school rates, the proper remedy is by *mandamus.*—PORT PERRY BOARD OF EDUCATION *v.* ONTARIO COUNTY, [1936] 4 D. L. R. 394 ; O. R. 540.—**CAN.**

sd. *Liability for school rates—Although exempt from municipal taxation.*]—The exemption, by bye-laws of the City of Brandon, of the property in question herein from " municipal taxation " :—*Held :* not to render it exempt from taxation for school purposes under sect. 240 of Public Schools Act, 1930.—*Re* ASSESSMENT APPEAL OF L'INSTITUTE DE NOTRE DAME DES MISSIONS & BRANDON, [1938] 2 W. W. R. 557.—**CAN.**

sf. *Effect of repeal of statute.*]—*Re* UNION STOCK YARDS OF TORONTO, LTD., [1938] 2 D. L. R. 361.—**CAN.**

PART XII. SECT. 1.

b i. —— ——.]—*Re* R. *v.* ST. PETERS (1927), 47 Can. Crim. Cas. 204 ; 59 N. S. R. 198.—**CAN.**

Part XIII.—Powers and Duties of Poor Law Authorities.

See, now, Poor Law Act, 1930 (c. 17), ss. 53–58.

Part XIV.—Universities and Public Schools.

176. *Add. Annotation :—As to* (2) **Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

178. *Add. Annotation :*—**Expld.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643.

180. *Add. Annotation :*—**Consd.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643.

182. *Add. Annotation :*—**Apld.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643.

182a. —— ——.]—The Girls' Public Day School Trust was incorporated as a co., but its memorandum & articles were framed with the object of establishing schools that would give a good education at the lowest possible cost. The Trust School was open to the general public, a large proportion of its pupils were scholars from the public elementary schools, & a great proportion of its governing body were nominated by the local education authority, &, further, the school was largely maintained by public moneys, & in the view of the Board of Education the school satisfied the regulation which prohibited any Parliamentary grant to a school conducted for private profit. In accordance with the Board's wishes it was provided that the co. should be converted into an educational trust at the end of a period & exceeding fifty years from 1905, & that in the event of a winding up before the end of that period the surplus assets of the co. should be subject to an educational trust & should not be distributed among the shareholders; that during the period above-mentioned the dividend paid on share capital should not exceed a sum equal to 4 per cent. a year. The Comrs. found on the facts the Trust School was a public school, & as such entitled to the benefit of the exemption from income tax :—*Held :* there was ample evidence on which the Comrs. could find that this school was a public school, & the possibility of profit arising to an individual in the course of carrying on a school did not of necessity prevent the school having the character of a public school.

The existence of a perpetual foundation is not by itself conclusive but only one of the factors to be considered. There is no distinction between money used for a public school raised by debentures at interest, & money raised by preference shares with limited interest. The judgments in *Blake* v. *London Corpn.*, No. 178, were not intended to lay down a rule that no school from the conduct of which any person could derive pecuniary benefit could in any circumstances be a public school.—GIRLS' PUBLIC DAY SCHOOL TRUST *v.* EREAUT (INSPECTOR OF TAXES), [1931] A. C. 12; 99 L. J. K. B. 643; 95 J. P. 3; 46 T. L. R. 638; 74 Sol. Jo. 612; *sub nom.* EREAUT *v.* GIRLS' PUBLIC DAY SCHOOL TRUST, LTD., 143 L. T. 715; 28 L. G. R. 603; 15 Tax Cas. 529, H. L.

PART XIV. SECT. 1.

st. *Taranaki scholarships—Meaning of "worthy."*]—The University Senate, in exercise of the powers conferred by New Zealand University Amendment Act, 1914, s. 18, enabling it to make regulations for the carrying out of the objects of sect. 17 of that Act, which established Taranaki Scholarships that were to be awarded on the conditions set out therein, made a regulation containing the words that "no scholarship shall be awarded to a candidate unless he obtains credit in the examination & is deemed worthy by the Council." Pltf. qualified for a scholarship within sect. 17 by obtaining credit in an examination, but the Senate refused to award him one. On a claim by him for a declaration that he was entitled to a scholarship, the funds available being sufficient for the purpose, it was contended for deft. that the word "worthy" in the regulation meant worthy from the scholastic point of view :—*Held :* granting the declaration as prayed, the word "worthy," if so interpreted, would make the regulation invalid, as being inconsistent with the provisions of sect. 17, & must be construed in its primary sense as meaning worthy from the point of view of character, &, the Senate having misinterpreted its regulations, pltf. was entitled to the relief sought.—SYME *v.* NEW ZEALAND UNIVERSITY, [1931] N. Z. L. R. 952. —N.Z.

s. *Injury to student—Liability of University.*]—POWLETT & POWLETT *v.* ALBERTA UNIVERSITY, [1934] 2 W. W. R. 209.—CAN.

PART XIV. SECT. 2, SUB-SECT. 4.

n i. —— ——.]—When pltf. was appointed to a professorship in 1916, no definite term was fixed :—*Held :* the ordinary rule that such a contract of employment could be terminated by reasonable notice on either side would apply, unless the particular nature of the contract or the circumstances in which it was made overrode the rule; & an appointment to a professorship without limitation of time could not be an appointment for life, subject only to good behaviour & ability to perform his duties, as such a contract must be mutual, & could be binding neither on the university nor on the professor.—CRAIG *v.* UNIVERSITY OF TORONTO (GOVERNORS) (1923), 53 O. L. R. 312.—CAN.

PART XV. SECT. 8, SUB-SECT. 2.—A.

192 i. *Modification of scheme—Powers under Educational Endowments (Scotland) Act*, 1882 (c. 59).]—Where a scheme approved by the Education Department is submitted which is reasonable & consistent with the Act, it is not the function of the ct. to remodel or alter it.—*Re* CAMPBELL ENDOWMENT TRUST, ARGYLL EDUCATION AUTHORITY *v.* CAMPBELTOWN CORPN., [1928] S. C. 171.—SCOT.

Part XVI.—Grant of Land for Educational Purposes.

259a. —— ——.]—By deed poll dated Dec. 30, 1876, & enrolled in the High Ct. of Justice, Ch. Div., a piece of land was, by express reference to the power conferred by Schools Sites Act, 1841 (c. 38), s. 2, & to no other, granted to trustees for the purposes of a school within that Act. On Mar. 22, 1932, the school was closed & the land so granted ceased to be used for the purposes of the Act. In spite thereof, the trustees, in the purported exercise of their powers for that purpose under sect. 14 of the Act, proceeded to sell the land, & in the course of the negotiations for the sale objections were raised against their title on the ground that the land had, in the circumstances, reverted in pursuance of the proviso in sect. 2 of the Act:—*Held:* upon Mar. 22, 1932, the date when the land ceased to be used for the purposes of the Act, the grant of the land had no operation otherwise than by virtue of & subject to the provisions contained in sect. 2 of the Act, with the result that the question raised by the summons must be answered in the affirmative & a declaration to that effect made accordingly.—DENNIS *v.* MALCOLM, [1934] Ch. 244; 103 L. J. Ch. 140; 50 T. L. R. 170; *sub nom. Re* CHEAM COMMON SCHOOL, DENNIS *v.* MALCOLM, 150 L. T. 304.

Part XVII.—Schoolmasters and Teachers.

268a. —— ——.]—Wrongful expulsion of a pupil from a school does not of itself, without more, constitute an actionable tort.—HUNT *v.* DAMON (1930), 46 T. L. R. 579.

271. *Add. Annotation:—As to* (2) **Consd.** Ryan *v.* Fildes, [1938] 3 All E. R. 517.

273. *Add. Annotations:*—**Consd.** R. *v.* Newport (Salop) Justices, *Ex p.* Wright, [1929] 2 K. B. 416; Ryan *v.* Fildes, [1938] 3 All E. R. 517.

275. *Add. Annotation:*—**Apld.** R. *v.* Newport (Salop) Justices, *Ex p.* Wright (1929), 98 L. J. K. B. 555.

275a. —— ——.]—At a school for boys there was a rule prohibiting smoking by pupils during the school term, whether on the school precincts or in public. During the term a pupil rather less than sixteen years old, after having left the school for the day & returned home, smoked a cigarette in the public street, & next day the schoolmaster administered to him five strokes of the cane as a punishment for breach of the rule. On the hearing of an information against the schoolmaster for an alleged assault on the boy the justices found that the rule in question was reasonable, that the father of the boy by sending him to the school authorised the schoolmaster to administer reasonable punishment to the boy for breach of a school rule, & that the punishment administered was reasonable; & they dismissed the information. An order *nisi* having been obtained calling upon the justices to show cause why they should not state a case on a question of law:—*Held:* the decision of the justices was right, that no question of law arose on which they could state a case, & that the order *nisi* should be discharged.—R. *v.* NEWPORT (SALOP) JUSTICES, *Ex p.* WRIGHT, [1929] 2 K. B. 416; 98 L. J. K. B. 555; 141 L. T. 563; 93 J. P. 179; 45 T. L. R. 477; 73 Sol. Jo. 384; 27 L. G. R. 518; 28 Cox, C. C. 658, D. C.

277a. —— **Excessive punishment—Liability of managers.**]—RYAN *v.* FILDES, No. 49a, *ante*.

PART XVII. SECT. 4, SUB-SECT. 1.

st. *Duty of teacher to obey order of school board to suspend pupil.*]—If a teacher knows of no reason why a pupil be suspended or expelled & has received no complaint against the pupil, he is justified in refusing to obey an order of the school board to suspend such pupil.—LECLERC *v.* PERIGORD SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—**CAN.**

sv. *Duty of master—Pupil guilty of "wilful opposition to authority."*]—A pupil who remains away from school because he finds certain school work uninteresting, or because he does not like the teacher's manner of teaching, is guilty of "wilful opposition to authority" within School Act, R. S. A., 1922 (c. 51), s. 202, & it is not only the teacher's right, but his duty, to suspend him.—FINLAYSON *v.* POWELL, [illegible]ER *v.* POWELL, [1926] 2 D. L. R. [1926] 1 W. W. R. 939; 22 Alta. L. R. 171.—**CAN.**

PART XVII. SECT. 4, SUB-SECT. 2.

l i. ——.]—A teacher has a right to use reasonable force to enforce discipline.—R. *v.* CORKUM, [1937] 1 D. L. R. 79; 67 Can. C. C. 114.—**CAN.**

sw. *General rule.*]—Where a child is sent by its parent or guardian to a school, they must be held to have given an implied consent to the infliction of such reasonable punishment as may be necessary for the purpose of school discipline, & the purpose with which the parental authority is delegated to the schoolmaster must to some extent include authority over the child when it is outside the school walls; but when the school is closed for any length of time for a period of regular holidays, the child then returns to the charge of its parent or guardian & the authority of the schoolmaster ceases.—R. *v.* MAUNG BA THAUNG (1925), I. L. R. 3 Ran. 659.—**IND.**

l i. —— *Moderate & reasonable.*]—A schoolteacher has the right to inflict corporal punishment on a pupil for violating the rules of the school, provided the punishment is not excessive, the instrument with which it is inflicted is a proper one for the purpose & there is no malice or ill will on the part of the teacher.—R. *v.* METCALFE (Sask.), [1927] 3 W. W. R. 194.—**CAN.**

PART XVII. SECT. 5.

q i. —— *Night school teacher—Liability of school board.*]—A night school teacher may recover on his contract with a school board, although it is not in the prescribed form or in writing.—LECLERC *v.* PERIGORD SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—**CAN.**

q ii. —— *Computation of teaching period—Teacher prevented from teaching.*]—Where a school board wrongfully prevents a teacher from teaching, the time during which he is thereby unable to teach will be counted in his favour in determining whether he has been teaching continuously for the four months or more required to entitle him to the benefits of School Act, R. S. S., 1920 (c. 110), s. 195 (1). Holidays under sect. 177 of the Act should not be counted as actual teaching days under sect. 195 (1).—LECLERC *v.* PERIGORD SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312 19 Sask. L. R. 435.—**CAN.**

q iii. —— —— *School arbitrarily* [illegible] a school is closed

ELECTIONS.

Part II.—Male Franchise.

SECT. 1.—PARLIAMENTARY

(Vol. XX., p. 8).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.

24. *Add. Annotation :*—**Reld.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

SUB-SECT. 2.—RESIDENCE QUALIFICATION

(Vol. XX., p. 11).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.

SUB-SECT. 3.—BUSINESS PREMISES QUALIFICATION

(Vol. XX., p. 16).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.

92. *Add. Citation :*—13 L. T. 762.

96a. —— **Exclusive occupation of room by director —At yearly rent.**]—By an agreement in writing a limited co. gave one of its directors the exclusive possession of a room in its premises at a yearly rent of £20. The director occupied the room solely for the purpose of carrying out his duties as director :—*Held :* (1) the room constituted "premises" within Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1 (3), (2) it was occupied by the director for the purpose of his business within the meaning of the same subsection, & he thereby had the requisite business premises qualification within Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1 (1) (2), which entitled him to be on the register of voters.—FROST *v.* CASLON, FROST *v.* WILKINS, [1929] 2 K. B. 138 ; 98 L. J. K. B. 523 ; 141 L. T. 281 ; 45 T. L. R. 417 ; 93 J. P. 192 ; 73 Sol. Jo. 333 ; 27 L. G. R. 480, C. A.

Annotation :—Generally **Reld.** Union Cold Storage Co. *v.* Adamson (1931), 16 Tax Cas. 293.

SUB-SECT. 4.—UNIVERSITY QUALIFICATION

(Vol. XX., p. 18).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.

SECT. 2.—LOCAL GOVERNMENT FRANCHISE

(Vol. XX., p. 18).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 2.

123a. —— —— ——.]—Applt., an assistant to a wine merchant at weekly wages, resided on his employer's premises, occupying a room at a rent of 5*s.* a week, & having the sole use of it for the qualifying period :—*Held :* he was duly qualified as a lodger voter.—BENNETT *v.* EVANS (1892), 68 L. T. 765 ; 9 T. L. R. 57.

PART I.

a i. —— *Voters in township added to city.*]—R. *v.* WILSON (1888), 12 P. R. 546.—**CAN.**

a ii. —— *Persons omitted from verified copy of collector's roll—Persons omitted from collector's roll.*]—R. *v.* STEPHENSON (1851), 1 G. L. Ch. 270.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—A. (d) ii.

84 v. —— ——.]—A person, who resided ordinarily in Glasgow & was on the electoral roll there, was tenant at a rent of £4 *per annum* of a plot of ground in the County of Stirling, on which he had erected a wooden hut which he used as a summer residence. To qualify for the electoral franchise it was necessary for him, under the Representation of the People Acts, to have "resided" in the hut for three months prior to & including June 15, 1935. In 1935 he had occupied the hut from Friday night to Monday morning every week-end in April, May & June. It also appeared that he had occupied it for the whole months of July & August, & for week-ends in September : —*Held :* his use of the hut during the qualifying period was merely incidental to his residence in Glasgow, & did not satisfy the statutory residential requirements for franchise purposes.—FERRIS *v.* WALLIS, [1936] S. C. 561.—**SCOT.**

PART II. SECT. 1, SUB-SECT. 1.—B. (n).

sx. *Local agent of corporation—No office maintained—Not permanently employed—Whether "chief resident officer."*]—A local agent for a corpn. in a town where it does not maintain an office of its own & who is not permanently employed thereby or in receipt of a salary therefrom is not a "chief resident officer" of the corpn. who under Town Act, 1927 (Sask.), c. 24, s. 284, is entitled to vote on its behalf where a vote is taken on a bye-law.—R. *v.* HOLZ, [1928] 3 W. W. R. 80 ; 50 Can. Crim. Cas. 298.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—A.

sy. *No right to vote—Municipal District Act,* 1926.]—Under Municipal District Act, 1926 (c. 41), neither tenants nor their wives are eligible as voters at an election for councillors ; except in the case where a tenant votes for a non-resident landlord as provided by sect. 195 (3). A tenant is not a "purchaser" within the meaning of said Act.—R. *v.* CAWTHORNE, [1930] 3 W. W. R. 273 ; [1931] 1 D. L. R. 317 ; 25 Alta. L. R. 19 ; *affg.*, [1930] 1 W. W. R. 991 ; 4 D. L. R. 154.—**CAN.**

sz. —— *Village Act,* 1927.]—(1) Under Village Act, 1927 (c. 54), tenants as such are not qualified to vote at an election of councillors held prior to the completion of the first voters' list. At such an election unless a voter votes for the number of candidates to be elected his ballot should not be counted.

(2) The words "liable to a business tax therein" in sect. 171 of said Act mean "subject to be assessed" or "assessable" for the business tax within the municipal district, provided they are persons so assessed or assessable with respect to a business carried on in that part of the district which is within the area of the village.—R. *v.* FOWLER, [1930] 3 W. W. R. 327.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—B.

sb. *Ownership—Proof of—Registration.*]—In order to qualify as a voter at municipal elections under Municipal Elections Act, s. 6, as enacted by Municipal Elections Act Amendment Act, 1902, s. 2, with respect to real estate, it is necessary that appct. should be the registered owner of such real estate under Land Registry Act, 1906, c. 23, s. 74.—*Re* KAMLO MUNICIPAL VOTERS' LIST (1907), 12 B. C. R. 362.—**CAN.**

sc. —— *Of corporation as trustee.*]—*Semble :* a corpn. acting as a trustee, exor. or administrator of an estate has not the right under Town Act, 1927 (Sask.), c. 24, to have its name placed on the voters' list with respect to the property of an estate which it represents.—R. *v.* HOLZ, [1928] 3 W. W. R. 80 ; 50 Can. Crim. Cas. 298.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—B.

sd. *Gaoler—Living in county gaol rent free—Not a householder within 14 & 15 Vict. c.* 109, *Sched. A., No.* 12.]—*Re* CHARLES *v.* LEWIS & MCMAHON (1851), 2 C. L. Ch. 171.—**CAN.**

Part III.—Female Franchise.

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12).

Part IV.—Naval or Military Voters.

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 2.

Part V.—Registration.

146a. —— Sufficiency of—Christian name in full not necessary.]—R. *v.* HARTLEPOOL CORPN. (1851), 2 L. M. & P. 666; 21 L. J. Q. B. 71; 15 J. P. 835; 15 Jur. 1158; *sub nom.* R. *v.* HARTLEPOOL CORPN., *Ex p.* DOBING, 18 L. T. O. S. 111.

Annotations :—**Apld.** R. *v.* Avery (1852), 18 Q. B. 576. **Refd.** R. *v.* Bradley (1861), 30 L. J. Q. B. 180; R. *v.* Plenty (1869), 38 L. J. Q. B. 205.

245. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

263a. Who may appeal—Claimant for vote.]—An appeal to the county ct. judge under Representation of the People Act, 1918 (c. 64), s. 14, was brought by an election agent in his own name instead of in the name of the claimant, & the agent was cited throughout the proceedings as the applt. :—*Held :* the county ct. judge had no jurisdiction to deal with the matter & an order made by him thereon must be set aside.—HAMPSHIRE PARLIAMENTARY COUNTY REGISTRATION OFFICER *v.* AINSLIE (1933), 148 L. T. 496; 97 J. P. 121; 49 T. L. R. 233; 31 L. G. R. 165, C. A.

263b. Order for alteration of register—Whether necessary.]—No order for altering the register, pursuant to the decision of the ct. need be drawn up.—WHITMORE *v.* BEDFORD (1843), 5 Man. & G. 9; 134 E. R. 460.

Part VI.—Parliamentary Election.

306a. ——.]—(1) The words "conduct & management of the election" contemplate an election which is reasonably imminent, but many circumstances may be included in the "commencement of the election," *e.g.* a vote adverse to the ministry. The uncertainty of the date does not affect this point.

(2) In order to invalidate an election because an agent has performed duties additional to those for which he was expressly engaged, it would be necessary, at least, that we should have a case very clearly proved . . . so far as I can see, there is no restriction on the right of a paid agent or officer to render services to the candidate such as he may think fitting, except that he cannot be employed in the payment of election expenses unless he is the sub-agent (LORD M'LAREN).—ELGIN & NAIRN CASE (1895), 5 O'M. & H. 1.

329a. —— Candidate's wife.]—A candidate's wife, if she interfere in the election, is *ipso facto* his agent.—HASTINGS CASE (1869), Leigh & Le Marchant, 4th ed., 1885, p. 81.

329b. —— Extent of duties.]—ELGIN & NAIRN CASE, No. 306a, *ante.*

361a. Act involving persuasion of voters.] — The expression "to get votes" must be taken with some limitation, because in one sense

---

PART V. SECT. 1, SUB-SECT. 3.—A. (a).

sg. *No claim after final revision.*]—A voter whose name is not registered after final revision of the lists has no redress.—FERGUSON *v.* MACDONALD, [1936] 3 D. L. R. 580; 11 M. P. R. 49.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.

249 vii. For "1 D. L. R. 84" read "1 D. L. R. 265," & for "22 Man. L. R. 597" read "22 Man. L. R. 16."

249 xiii. —— ——.]—MARION *v.* HERBERT, [1937] 2 W. W. R. 507; 3 D. L. R. 585; 45 Man. L. R. 300.—**CAN.**

f i. —— *Non-compliance with statutory qualifications—Election Laws Amendment Act,* 1920, *s.* 6 (1), (2).]—Votes cast by persons whose names were on the lists, but who had not been residents of the electoral district for three months next preceding the day of polling :—*Held :* illegal.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

f ii. —— *Register wrongfully prepared —Right of court to investigate.*]—There is in every ct. having jurisdiction in such matters an inherent power to hold a scrutiny for the purpose of investigating the legality of the votes cast at an election.

On a motion under Controverted Municipal Elections Act, R. S. S. 1920, c. 91, s. 19, to set aside an election, the ct. is not limited to ascertaining whether any violation of the Act has taken place in the actual conduct of an election, &, therefore, if there has been an extraneous illegality which is shown to have a direct bearing on the result of the election, that is a fit subject for inquiry. The provisions of Village Act, R. S. S. 1920, c. 88, do not prevent such an inquiry being made.—R. *v.* JOHANSICK, [1928] 2 D. L. R. 913; 1928] 2 W. W. R. 315.—**CAN.**

sf. *Only when so declared by statute.*]—A voters' list is final & conclusive only if made so by statute either expressly or by implication.—R. *v.* JOHANSICK, [1928] 2 D. L. R. 913; [1928] 2 W. W. R. 315.—**CAN.**

PART VI. SECT. 5.

323 i. *Who is a candidate.*]—Where pltf. was selected as a candidate, & statements were published concerning him, & a writ in an action for libel was issued before the issue of the writ for the election, but after the vacancy had occurred :—*Held :* pltf. was a candidate for a Parliamentary constituency when the libel was published.—CULLEN *v.* STANLEY, [1926] I. R. 73.—**IR.**

sg. *Deposit payable—Return of—Successful candidate entitled to return notwithstanding refusal to take prescribed oath.*]—O'DONOGHUE *v.* REDMOND ROCHE (1), [1927] I. R. 152.—**IR.**

all work whatsoever which is done for a candidate at an election is done to get votes, & I think in this connection the words mean something in the nature of canvassing, soliciting & persuading individual voters, though, of course, not necessarily one by one separately, to vote for a candidate (TALBOT, J.).—PLYMOUTH ELECTION CASE (1929), 7 O'M. & H. 101.

390. *Add. Annotation :—As to* (3) **Consd.** Plymouth Borough Case (1929), 7 O'M. & H. 101.

390a. ——.]—NORTH NORFOLK CASE, No. 626a, *post.*

442a. —— ——.]—There is, first of all, the strictest of all principles, that which is applicable to a criminal charge, & there a man is responsible for nothing at all except his own individual guilt. There is then the principle that is applicable to actions of a civil kind raised against a party on the ground of a wrong done, & in which it is proved that the wrong was done by the defender's agent—*i.e.*, a person employed by the defender while he was doing the thing which he was employed to do; but then there comes in the principle that he was employed to do the particular work, & that he was not employed to do the wrong. Then there is the third class of cases, with which we are at present engaged, where in these election petitions, it being proved that a candidate is having his election carried on by a committee or by certain canvassers, those canvassers do something which, if the candidate is responsible for it, will invalidate the election; & it is held that he is responsible for it in the sense of making the validity of the election depend on it (LORD BARCAPLE).—GREENOCK CASE (1869), 1 O'M. & H. 247.

478a. —— ——.]—NORTH NORFOLK CASE, No. 626a, *post.*

482a. —— ——.]—(1) If it could be proved that those things [intimidation & violence] had been in any way done or sanctioned by the sitting member or his election agent, we should have had no difficulty whatever in declaring the election void (FIELD, J.).

(2) We do not feel justified in unseating resp.; we think there was such a reasonable case for inquiry that we do not think resp. ought to have his costs in reference to that matter (FIELD, J.).—THORNBURY CASE (1886), 4 O'M. & H. 65; *on appeal*, 16 Q. B. D. 739.

595a. Gift on one occasion.]—Shortly before the election a sovereign was given by the resp. to a clergyman to be passed on to a distressed voter :—*Held :* the gift under such circumstances was a matter of degree; if it were a habit on the part of a candidate to make gifts of a like kind, *e.g.* upon the event of a birth or death in the family of a voter, it would be hard to come to any other conclusion than that it was done for the purpose of obtaining votes, but it is a different question where the gift is single & isolated.—WINDSOR CASE (1869), 1 O'M. & H. 1; 19 L. T. 613.

624a. —— ——.]—PLYMOUTH ELECTION CASE (1929), 7 O'M. & H. 101.

626a. Meaning of "corruptly."]—(1) "Corruptly" . . . means, with the object & intention of doing that thing which the statute intended to forbid (BLACKBURN, J.).

(2) The agency at the election which was solely from the canvassing before the election expires with the election (BLACKBURN, J.).

(3) When a man . . . says "I will look after a particular set of voters, my own tenants," & he does, in fact, canvass them & nobody else does, I think he is an agent for the purpose of canvassing his tenants (BLACKBURN, J.).—NORTH NORFOLK CASE (1869), 1 O'M. & H. 236.

626b. Benefit of corrupt agreement adopted by new candidate.]—Where a corrupt agreement to return A. is alleged, but in the event B. becomes a candidate in the place of A., evidence of such agreement can be given before the candidature of B. commenced.—DOVER CASE (1860), Wolf. & B. 121.

697. *Add. Annotation :*—**Refd.** Plymouth Election Case (1929), 7 O'M. & H. 101.

771a. —— **Impersonation procured by agent—Voter innocent.**]—Agents may be guilty of aiding & abetting personation by corruptly inducing a person to vote, although the voter himself is not guilty of personation since he did not know he was entitled to vote.—HEXHAM CASE (1892), Day, 68.

F. Incurring of Expenses by Person Other than Election Agent (Vol. XX., p. 98).

Add the following case :—

774a. What amounts to.]—During an election at which there were three candidates, Conservative, Liberal & Labour respectively, applt., who was a Conservative in politics but disapproved of the existing Conservative

---

PART VI. SECT. 7.

480 i. *Refusal of nomination by returning officer—Jurisdiction of court—To compel returning officer to accept nomination & grant poll.*]—*Re* ADDINGTON ELECTION, [1927] 1 D. L. R. 188; 59 O. L. R. 570.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—A. (a) i.

sh. *To candidate—To induce withdrawal of candidature—What amounts to.*]—*Re* SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON *v.* MCCALLUM (1927), 61 O. L. R. 392; 33 O. W. N. 135; *varied* [1928] 1 D. L. R. 104; 61 O. L. R. 392.—**CAN.**

sj. —— —— ——.]—*Re* NORTH BRUCE PROVINCIAL ELECTION, FENTON *v.* MEWBINNEY, [1927] 4 D. L. R. 397; 61 O. L. R. 99.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—B. (a).

681 iv. —— —— —— *Speech at picnic instead of hiring hall.*]—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

r (p. 91) i. —— ——.]—The act of an agent in treating an elector to a drink, without the knowledge or consent of the candidate, & at the emphatic request of the elector :—*Held :* not to have been a corrupt practice.—ADAMS *v.* HUCK (No. 2), [1926] 1 W. W. R. 313; 20 Sask. L. R. 433.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—B. (b).

695 xix. For "23 D. L. R. 573" read "26 D. L. R. 573."

695 xxv. —— *Entertainment & picnic—At meeting of supporters for speech by candidate—Expense of hiring hall saved.*]—Payments were made by resp., through his official agent, for the services of a band & an entertainer at a picnic, a gathering of members of the party organisation supporting resp.'s candidature, & at which he made a speech :—*Held :* these payments, though they might be considered corrupt practices, were not made with corrupt intent, but with a belief in their propriety, as resp. by addressing the electors at the picnic was saved the expense of hiring halls, which would have been a legitimate expense.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—D.

sg. *Arrest—Whether warrant necessary.*]—A person arrested for personation under Election Act, R. S. Q., 1925, must be taken *in flagranti delicto* or be taken upon warrant.—R. *v.* LAPLANTE (1936), 66 Can. C. C. 124.—**CAN.**

Govt. on special grounds, incurred expenses on account of issuing posters, circulars & publications which were antagonistic to the Conservative candidate & advised the constituents not to vote for him, but did not in express terms advise them to vote for the other candidates or either of them :—*Held :* applt. had acted in contravention of Representation Act, 1918, s. 34 (1).—R. *v.* HAILWOOD, R. *v.* HAILWOOD & ACKROYD, LTD., [1928] 2 K. B. 277 ; 97 L. J. K. B. 394 ; 138 L. T. 495 ; 44 T. L. R. 343 ; 28 Cox, C. C. 489 ; 20 Cr. App. Rep. 177, C. C. A.

802. Add the following para. :—

(4) The person who obtains relief always has himself to bear the costs of obtaining it. If, therefore, resp. delays until the last moment to ask for it, so that the whole case has to be fought out, he has only himself to thank for not taking an earlier opportunity of giving notice of what it is he intends to do, & thereby giving petitioners an opportunity of reconsidering their position (CAVE, J.).

817a. Payment for damage by banner.]—(1) Illegal payments excused on ground of inadvertence.

I do not say that if I found a precisely similar course taken on any future occasion I might not feel constrained to hold otherwise, but I cannot but give some weight to the consideration that the Act had never before come before any judicial tribunal ; that it is an Act by no means easy to master ; & that the blot which has been hit upon after full investigation is one which was so far from obvious that neither resp.'s counsel nor the counsel for the Director of Public Prosecutions relied upon it until the ct. pointed out its bearing upon the recriminatory charge (DENMAN, J.).

(2) Payment for damage done by rope for banner not illegal.

(3) Until a vote is declared invalid, an election ct. is prohibited by rule 41 in the Sched., to the Ballot Act from discovering how such vote has been given (DENMAN, J.). —STEPNEY CASE (1886), 17 Q. B. D. 54 ; 55 L. J. Q. B. 331 ; 54 L. T. 684 ; 34 W. R. 547 ; 2 T. L. R. 559 ; 4 O'M. & H. 34.

851. *Add. Annotation :*—**Distd.** Everett *v.* Ryder (1926), 135 L. T. 302.

859. *Add. Citation :—sub nom.* JONES *v.* PICKERING, 29 L. T. 210.

865a.——.]—By the common law the principle seems to be firmly established that where a candidate is in point of fact disqualified at the time of an election, all votes given for him with knowledge of the fact upon which such qualification is founded must be considered as thrown away. This knowledge may be established either by distinct notice or by notoriety, & it will in all cases be inferred that where the voter is aware of the facts he is aware of the legal deduction from those facts, however intricate & doubtful such deduction may be.—CLITHEROE BOROUGH (2ND CASE) (1853), 2 Pow. R. & D. 276.

878. Before this case add :—

Blind Voters.]—*See* Blind Voters Act, 1933 (c. 27).

PART VI. SECT. 9, SUB-SECT. 3.

b i. *Band & entertainment at picnic.*] —MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 10, SUB-SECT. 7.

n i. —— *Presumption that duties properly carried out.*]—*Re* PROVINCIAL ELECTIONS ACT, SMITH *v.* CATHERWOOD, [1925] 3 D. L. R. 770 ; [1925] 3 W. W. R. 54.—**CAN.**

n ii. —— *Breach of duties—Effect of.*] —Breaches by a presiding officer of the rules of procedure prescribed for the performance of his duties do not necessarily render an election void.—*Re* PROVINCIAL ELECTIONS ACT, SMITH *v.* CATHERWOOD, [1925] 3 D. L. R. 770 ; [1925] 3 W. W. R. 54.—**CAN.**

PART VI. SECT. 11, SUB-SECT. 2.

881 i. *Name wrongly inserted on register—Voter under age—Voter exercising right innocently.*]—A.-G. *v.* CUNNINGHAM, [1929] I. R. 187.—**IR.**

si. *Ballot paper borrowed by candidate —Corrupt practice.*]—At the request of a candidate at a municipal election a deputy returning officer gave him an uninitialled blank ballot which he said he wanted as a sample. There was no evidence of the use actually made of the ballot. Apparently it was returned to the deputy at the close of the poll in the same condition as it was in when received by the candidate. Said candidate was declared elected, & the defeated candidate moved to set aside the election :—*Held :* both the deputy returning officer & the candidate were guilty of a corrupt practice.—GARNETT *v.* LANGFORD & OSWALD, [1937] 1 W. W. R. 497 ; 45 Man. L. R. 25.—**CAN.**

PART VI. SECT. 11, SUB-SECT. 3.—A.

d (p. 109) i. *Counterfoil not wholly detached.*]—Ballots, from which the counterfoil has not been detached by the officer taking the ballot, should be counted on an election under Provincial Elections Act, 1920. Ballots to which only a small portion of the counterfoil remained attached, such portion furnishing no means of identifying the voter, should be counted.—*Re* DEWDNEY ELECTION APPEAL, SMITH *v.* CATHERWOOD, [1924] 3 W. W. R. 947.—**CAN.**

f i. —— —— *On counterfoil.*]—Where the deputy returning officer did not initial the ballots in the manner prescribed by the statute, but initialled the counterfoils, which he afterwards destroyed :—*Held :* this irregularity did not affect the election.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

a (p. 110) i. —— *Signed voting paper.*] —MAPLE VALLEY CASE (Ont.), [1926] 1 D. L. R. 808.—**CAN.**

c (p. 110) i. —— ——.]—At a general provincial election a plebiscite was also taken. Of twenty election ballots of absentee voters only nine were enclosed in envelopes bearing the affidavit required of such voters with respect to the election, while the other eleven were found in plebiscite envelopes bearing plebiscite affidavits. The affidavits required of such eleven absentee voters in the election were not sent to the returning officer nor accounted for in any way, & there was no evidence to show from which envelopes the votes for the respective candidates had been taken :—*Held :* in the absence of any evidence of fraud or collusion, the above facts were not grounds for declaring the election void.—*Re* PROVINCIAL ELECTIONS ACT, SMITH *v.* CATHERWOOD, [1925] 3 D. L. R. 770 ; [1925] 3 W. W. R. 54.—**CAN.**

c (p. 110) ii. —— —— *Non-compliance by presiding officer.*]—Absent voters' ballots, which have been enclosed in envelopes on which the presiding officer has failed to affix, as required by Provincial Elections Act, s. 106 (3), his official mark across the line where the envelope is closed, should be counted.—*Re* DEWDNEY ELECTION APPEAL, SMITH *v.* CATHERWOOD, [1924] 3 W. W. R. 947.—**CAN.**

PART VI. SECT. 11, SUB-SECT. 3.—B.

890 v. —— *Alberta Election Act,* 1924 (c. 34), *s.* 82.]—The above sect. is mandatory & must be substantially complied with, & the use of the words, one, two, three, etc., instead of the figures, 1, 2, 3, etc., renders a ballot void ; but if it is clear that a figure can reasonably be said to have been honestly intended for the figure 1, it is sufficient, even though it is not precisely the same form of the figure as that printed in the Act.—*Re* ALBERTA ELECTION ACT, *Re* BOW VALLEY ELECTION (Alta.), [1926] 4 D. L. R. 117 ; [1926] 3 W. W. R. 1.—**CAN.**

sk. *Preferential voting—Method of marking ballot papers.*]—Six candidates nominated for election for the State of Victoria to the Senate of the Federal Parliament. Three of the candidates had to be elected ; but one of them died before the polling day, & his name was as far as possible withdrawn from the ballot-papers. 'A number of ballot papers were rejected as informal where the electors had marked their ballot papers with the numbers 1, 2, 3, 4, 6, opposite the names of the candidates standing for election at the date of the poll :—*Held :* by the terms of Commonwealth Electoral Act, 1918-1928, it was imperative that voters should indicate their preferences by numbers in numerical succession, & that the ballot-papers marked as above stated were rightly rejected as informal. —BLAKEY *v.* ELLIOTT, FINDLEY *v.* ELLIOTT (1929), 41 C. L. R. 502 ; 2 A. L. J. 406 ; [1929] Argus L. R. 86.—**AUS.**

892. *Add. Annotation :—As to* (1) **Apld.** *Re* Barnes Corpn., *Ex p.* Hutter (1932), 97 J. P. 76.

967. *Add. Annotation :*—**Refd.** Plymouth Election Case (1929), 7 O'M. & H. 101.

Part VII.—Municipal and Other Elections.

1012. *Add. Annotation :*—**Distd.** Baldwin *v.* Ellis, [1929] 1 K. B. 273.

1021. *Add. Annotation :*—**Apld.** Baldwin *v.* Ellis, [1929] 1 K. B. 273.

1025a. —— —— —— **Description as commonly understood.**]—A nomination paper at an election of town councillors was subscribed with the full & correct name of " Charles

PART VI. SECT. 12.

915 x. —— *Unqualified persons allowed to vote—Illegal votes exceeding majority.*]—Resp. was returned as elected by a majority of only 15 votes. The evidence showed that 21 votes were cast by persons who had no right to vote :—*Held :* the election should be declared void, although it could not be shown in whose favour the illegal votes were cast.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

915 xi. —— *Ballot papers issued & accepted in excess of voters on register.*]—Where in a polling sub-division 137 ballots were found in the box & only 134 names appeared in the poll-book : —*Held :* an irregularity, which did not affect the result of the election.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 13.

m. For " —— *Power of Supreme Court to compel* " substitute " *Recount —Power of Supreme Court to compel.*"

m i. —— *Under Manitoba Election Act—Not applicable to election under proportional representation system.*]—*Re* MANITOBA ELECTION ACT, *Re* WINNIPEG ELECTORAL DISTRICT, [1927] 3 W. W. R. 92 ; 37 Man. L. R. 87.—**CAN.**

PART VI. SECT. 15, SUB-SECT. 2.—B.

964 i. *Error in return—Liability of candidate to penalties—Not for accidental omission of one small item.*]—MCINNES *v.* BIRD, [1926] N. Z. L. R. 638.—**N.Z.**

PART VII. SECT. 1.

sl. *Place of election—Outside ward—Election void.*]—R. *v.* PRESTON (1851), 2 C. L. Ch. 178.—**CAN.**

sm. *When election completed—Effect of declaration of returning officer.*]—The election of candidates takes place, not as a result of the declaration of the returning officer, but by virtue of the methods prescribed by Village Act, 1927; the declaration is merely a formal indication that the persons named have been elected under that Act.—R. *v.* LOUNT, [1928] 3 D. L. R. 61 ; [1928] 2 W. W. R. 15.—**CAN.**

sx. *Edmonton Charter—Construction of.*]—R. *ex rel.* SHEPPARD *v.* COLLISSON (Alta.), [1929] 1 D. L. R. 555.—**CAN.**

sy. *Disclaimer.*]—The term " complained of " in sect. 37 of Controverted Municipal Elections Act providing for a disclaimer by the person elected before his election is complained of refers to the launching of the legal proceedings under sect. 19 of said Act.

(2) Although a candidate duly nominated was ineligible for nomination, yet, if he receives the highest number of votes as the result of a poll, he shall be declared elected & treated as a person elected until such time as the ct. in the manner provided by the Act otherwise determines, unless he disclaims meanwhile in accordance with Controverted Municipal Elections Act, or unless he has exercised his right to resign under sect. 51 of Rural Municipality Act or his seat has been forfeited under sects. 52 or 81 thereof.

(3) Where a vacancy has been created by disclaimer under said Controverted Municipal Elections Act a new election must be held.

(4) It is only when the person elected has not disclaimed, in the manner provided by the Act, & the seat has been declared vacant by the ct., that the ct. has discretion to fill such a vacancy by declaring the minority candidate elected. Even in such cases, with few exceptions, the cts. have refused to fill the vacancy in this way, & have considered it to be in the public interest to order a new election. This is more particularly true where the electors were not aware of any objection to the nomination of the candidate on the ground of qualifications, until after the time for receiving nominations had expired.—R. (GALLOWAY) *v.* ECKEL, [1931] 1 W. W. R. 242 ; 2 D. L. R. 589.—**CAN.**

sc. *Right of voter to entry on assessment roll.*]—Once a person's name is entered on the Voters' List he must be entered on the Assessment Roll of the corpn. as a voter.—*Re* STEPHENSON, [1936] 1 D. L. R. 304.—**CAN.**

PART VII. SECT. 3.

d i. ——]—On a motion in the nature of a *quo warranto* to set aside the election of resp., who had been declared elected as a councillor for a municipal district by a majority of one vote :—*Held :* although the evidence showed that in some respects the formalities of Municipal District Act, 1926, as to the conduct of the election had not been complied with, yet since there was no reason to think that the result of the election had been affected thereby, & since the secrecy of the ballot had not been jeopardised & a fair & free opportunity had been afforded the voters to express their will, the motion should be dismissed.—R. (CHRISTENSEN) *v.* WHEATLEY, [1937] 1 W. W. R. 756.—**CAN.**

f (p. 121) i. —— ——.]—R. *v.* JACKSON, [1927] 2 D. L. R. 977; 60 O. L. R. 264.—**CAN.**

h i. —— ——.]—A candidate for the office of deputy reeve of a township, who was declared duly elected, was found to be disqualified by reason of the fact that he had not before or on the day of his nomination paid the taxes chargeable against him.—R. *v.* BODDY, [1931] 2 D. L. R. 661 ; O. R. 20.—**CAN.**

a (p. 122) i. *S. P.* SMILEY *v.* EVANS, [1927] 4 D. L. R. 629 ; 38 B. C. R. 468.—**CAN.**

sg. *Appeal.*]—No appeal lies from orders of district ct. judges in proceedings in the nature of *quo warranto* taken under Controverted Municipal Elections Act, R.S.S., 1930.—R. (ISMAN) *v.* TRAN, [1935] 1 W. W. R. 81.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—C.

n i. —— —— *Casting vote given by lot.*]—On an election for a councillor of a municipality, the votes cast showed a tie between the two candidates. The returning officer then prepared a number of slips which were put in a hat & mixed up. The returning officer asked a voter to draw, stating he would give the casting vote to the candidate whose name first appeared. On the petition of the unsuccessful candidate :—*Held :* the election was void & a new election ordered.—*Re* MUNICIPAL ELECTIONS ACT & TOMSETT, [1924] 1 D. L. R. 921 ; 33 B. C. R. 377.—**CAN.**

n ii. —— —— *Striking out vote wrongly entered.*]—New election ordered.—R. *v.* RANKIN (1861), 2 C. L. Ch. 161.—**CAN.**

n iii. —— —— *Improperly closing poll.*]—New election ordered.—R. *v.* MARCHANT (1851), 2 C. L. Ch. 189.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—D.

t i. —— —— *Onus of proving irregularity not material.*]—The onus of showing that in an election under Rural Municipality Act, R. S. S. 1920, c. 89, the failure to comply with the requirements of the Act as to posting notices of the poll " did not affect the result of the election " is on the person upholding the election.

Under said Act the notice of poll is required to be posted in at least two widely separated conspicuous places in each division of the municipality. In the present case no notice at all was posted in one of the divisions, a number of voters in that division did not vote, & resp. was declared elected by one vote :—*Held :* it could not be said that the omission to post the notice did not affect the result, & the election was declared invalid & resp. unseated. —R. *v.* REID, [1928] 3 D. L. R. 747 ; [1928] 2 W. W. R. 436 ; 22 Sask. L. R. 595.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—E. (a).

sn. *Withdrawal of nomination—Declaration of intention—Not made formally.*]—A candidate cannot withdraw under the Ontario Election Act by making a declaration of his intention to do so to a few persons.—*Re* SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON *v.* MCCALLUM, [1928] 1 D. L. R. 104 ; 61 O. L. R. 392.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—E. (b).

1013 i. *Delivery of—Time for—Paper returned for amendment—Power of returning officer to extend time.*]—Where a nomination paper when delivered to the returning officer is so incomplete as not to constitute a valid nomination & it is subsequently amended, it is " received " by the returning officer when it is handed back to him in its amended state, & if then the time limited by statute for the receipt of nominations has expired the nomination is bad. It is not within the discretion of a returning officer at an election under Village Act, 1927, c. 54, to receive a nomination paper after the time fixed by the statute nor has he power to say that a nomination paper delivered to him after that time constitutes a good nomination.— R. *v.*

Arthur Burman" as an assenting burgess; but his name was erroneously entered upon the burgess roll as "Charles Burman" only: —*Held:* the defect was not such as was remedied by Municipal Corporations Act, 1882 (c. 50), s. 241, the words "commonly understood" in that sect. meaning "commonly understood by any person comparing the nomination paper & the burgess roll."—MOORHOUSE *v.* LINNEY, THORPE *v.* LINNEY (1885), 15 Q. B. D. 273; 53 L. T. 343; 49 J. P. 471; 33 W. R. 704; 1 T. L. R. 500, D. C.

Annotations:—**Distd.** Bowden *v.* Besley (1888), 21 Q. B. D. 309; Gledhill *v.* Crowther (1889), 23 Q. B. D. 136.

1038a. —— **From election address.**]—An election address not exhibited for general display, but only circularised in envelopes by post or by hand:—*Held:* not a "bill, poster or placard" within Municipal Corrupt Practices Act, 1884 (c. 70).—*Re* ELECTION OF COMMON COUNCILMEN FOR THE WARD OF FARRINGDON WITHOUT IN THE CITY OF LONDON (1925), 161 L. T. Jo. 26, D. C.

1038b. False statements—Allegation that candidate is communist.]—Pltfs., six labour candidates for the office of borough councillor at a municipal election then about to be held, moved to restrain defts. from publishing statements to the effect that pltfs. were communists:—*Held:* the statements complained of were not false statements as to personal character within Municipal Elections (Corrupt & Illegal Practices) Act, 1884 (c. 70).—BURNS *v.* ASSOCIATED NEWSPAPERS, LTD. (1925), 89 J. P. 205; 42 T. L. R. 37.

1038c. —— **Misleading circular—Injunction.**]—MILLS *v.* DRUMMOND (1934), 78 Sol. Jo. 192.

1042. *Add. Annotation:*—*As to* (2) **Apld.** Baldwin *v.* Ellis, [1929] 1 K. B. 273.

1052a. Recount—General recount unnecessary.]—At an election for a school board under Municipal Elections Act, 1884 (c. 70), s. 36, applying Municipal Corpns. Act, 1882 (c. 50), Part IV., there were eight candidates for five seats. The five highest on the poll, of whom resp. was fifth, were declared by the returning officer to be elected. A petition was presented by the candidate who was sixth on the poll against the election of resp., on the ground that certain votes given for petitioner had been wrongly counted for resp. or for some other candidate, & petitioner claimed the seat. A recount having been had of the votes given for the resp. & petitioner, it appeared that petitioner had a majority over the resp. The votes of the other candidates were not recounted:—*Held:* petitioner was entitled to the seat, for it was enough for him to establish that he had more votes than resp., & nt the was unnecessary for him to recouthat it votes given for the first four candidates.—MONKSWELL *v.* THOMPSON, [1898] 1 Q. B. 479; 67 L. J. Q. B. 378; 78 L. T. 116; 62 J. P. 212; 14 T. L. R. 224; 42 Sol. Jo. 291; 46 W. R. 382.

1057. *Add. Annotation:*—*As to* (1) **Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

1075. *Add. Citation:*—*sub nom. Re* SAFFRON WALDEN ELECTION, *Ex p.* ROBSON, 51 J. P. 199.

LOUNT, [1928] 3 D. L. R. 61; [1928] 2 W. W. R. 15.—**CAN.**

1013 ii. —— ——.]—Where nomination papers are to be in the hands of the presiding officer on a certain day it is sufficient if they are handed to him on the previous day.—MCLEOD *v.* MCKENZIE, [1933] 1 D. L. R. 374; 6 M. P. R. 22.—**CAN.**

t i. —— —— *Remedy for wrongful rejection.*]—A writ of prohibition or *mandamus* does not lie for the purpose of determining whether a returning officer has wrongly & illegally rejected the nomination paper of a candidate for a municipal election. Such a case is provided for by Municipal Corpns. Act, 1882, s. 87, & the proper mode of determining the question is by an election petition.—R. *v.* DUBLIN TOWN CLERK (1909), 43 I. L. T. 169.—**IR.**

t ii. —— —— *Although receipt given.*]—The intention of Provincial Elections Act, R.S.B.C., 1924, is that the receipt of the Returning Officer required by sect. 53 (2) must be given at the time the nomination paper is handed to the Returning Officer, & sect. 54 shows that, notwithstanding the giving of the receipt, the Returning Officer has the right after the nominations have been closed & before declaring the names of the candidates to reconsider the validity of the nomination papers received by him. In satisfying himself of their validity he must do so from an examination of the nomination papers themselves.—*Re* HARTLEY, [1934] 1 W. W. R. 108.—**CAN.**

k i. —— ——.]—In the election in question herein there was only one member to be elected. After the expiration of the time for nominations, the returning officer continued & completed the checking of the nomination-papers, & considered an objection, made before the close of nominations, to H.'s paper, viz., that four of the assentors on it were also on S.'s paper. He held that these four voters could not be assentors to both papers, & that as S.'s paper had been received first & no objection made thereto the voters assenting to it must be taken to have exercised their rights & could not be considered as assentors to H.'s paper, & that, as without these four names H.'s paper was not signed by the required number, it must be rejected. He, therefore, declared it invalid & that the three other persons who filed nomination-papers were nominated:—*Held:* the decision of the returning officer was right.—*Re* HARTLEY, [1934] 1 W. W. R. 108.—**CAN.**

so. *Rejection of—Declaration of election by acclamation—Time for nomination expired.*]—The rejection of nomination papers & a declaration of election by acclamation may properly be made by the returning officer after the time limited for the nomination of candidates.—R. *v.* LOUNT, [1928] 3 D. L. R. 61; [1928] 2 W. W. R. 15.—**CAN.**

sp. *Conclusiveness.*]—If a nomination paper filed with the deputy returning officer under Rural Municipality Act, 1929, is legal on its face, it is not his duty to go behind it & inquire into the qualifications of the candidate.—R. (GALLOWAY) *v.* ECKEL, [1931] 1 W. W. R. 242; 2 D. L. R. 589.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—F. (a).

sq. *Must be strictly proved.*]—R. (GLOVER) *v.* LITTLE & ARMSTRONG, [1926] 2 D. L. R. 1056; 59 O. L. R. 28.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—G. (a).

sr. *Copy of collector's roll not furnished to returning officer.*]—*Held:* an irregularity, for which the election might be avoided.—*Re* CHARLES *v.* LEWIS & MCMAHON (1851), 2 C. L. Ch. 171.—**CAN.**

p i. —— *Black lead pencil obligatory.*]—Ballots must be marked with a black lead pencil, as Election Act, R. S. O., 1927, s. 99, is obligatory.—NESBITT *v.* CONACHER, [1937] 4 D. L. R. 663; *sub nom. Re* NESBITT & CONACHER, [1937] O. R. 918.—**CAN.**

q i. —— *Ballot papers not initialled—Result of election affected.*]—Under Rural Municipality Act, R. S. S. 1920, c. 89, as amended, a ballot cast at an election thereunder, which has not been marked on the back thereof with the initials of the deputy returning officer, must be rejected by him, & by the returning officer & by a judge conducting a recount. Where, however, the result of the rejection of ballots on the above ground was that a candidate was elected who would not have been elected had it been possible to count the ballots not properly initialled, the ct. should declare the election invalid & the seat vacated.—R. *v.* SLUGGETT, [1928] 3 D. L. R. 702; [1928] 2 W. W. R. 431; 22 Sask. L. R. 551.—**CAN.**

c i. —— *No right to vote—Except to give casting vote.*]—*Ex p.* TUTTLE (1860), 4 All. 615.—**CAN.**

st. *Recount—Ballot not initialled by deputy returning officer must be counted—Although required to be rejected on count by returning officer.*]—*Re* RURAL MUNICIPALITY ACT, *Re* CARROT RIVER, RURAL MUNICIPALITY, MINAKER *v.* SANDERSON (Sask.), [1927] 1 W. W. R. 439.—**CAN.**

sw. —— *When granted.*]—A county ct. judge may grant a recount upon the strength of an affidavit by a scrutineer at the polls.—*Re* WICKS, [1936] 4 D. L. R. 722.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.—A.

k i. —— *Failure to comply with—Nomination.*]—*Held:* Town Act, 1927, c. 55, s. 224, requires a candidate to do what had not been required of him

1089. *Add. Citation:—sub nom.* R. *v.* EXETER (MAYOR), 3 J. P. 49.

1090. For the existing paragraph substitute the following paragraph:—

S.P.—R. *v.* GLOUCESTER (MAYOR) (1838), 2 J. P. 777.

1103. After this case add "*See, now*, Municipal Corporations Act, 1882 (c. 50), s. 34 (1)."

1104a. Chairman at first election—Persons named in charter all candidates.]—*Re* BARNES CORPN., *Ex p.* HUTTER, No. 1109a, *post.*

1109a. —— **Voting papers not "openly produced & read."**]—At the first meeting of the council of a borough for the election of aldermen, the chairman, acting in pursuance of an arrangement to that effect previously made by the councillors, read aloud from the voting papers to the meeting only the surnames of the persons voted for, & did not read therefrom the other matters therein contained in accordance with Municipal Corporations Act, 1882 (c. 50), s. 60 (4), namely, the Christian names, places of abode & descriptions of these persons, & the names of the persons by whom the voting papers were signed, & as the result of the voting certain councillors were declared to have been elected aldermen & acted as such:—*Held:* (1) the chairman did not "openly . . . read" the voting papers within sub-sect. 5 of that sect. &, instead of the open election provided for by the Act, there had been a ballot or secret election which was not in accordance with the law; (2) as there had been no lawful election & the offices of aldermen were unfilled, the proper remedy was not a *quo warranto*, or an election petition under sect. 87 of the Act, but a *mandamus* under sect. 225 to hold an election of aldermen, & the writ should be peremptory, notwithstanding any inconvenience that might be caused by the displacement of persons who were then acting as aldermen.

(3) The charter of incorporation of a municipal borough, which was granted in accordance with the Municipal Corporations Act, 1882 (c. 50), provided that a named person, or in case of his death, inability, refusal or default a second named person, or in case of his death, inability, refusal or default a third named person, should perform the duties of chairman of the first meeting of the borough council for the election of aldermen. The first named of these persons having already been elected mayor, & he & the second named of them being candidates for the office of aldermen, & the third named of them not being present, a councillor who was not one of these three persons was elected chairman of that meeting & acted as such without protest at the time by any of the three named persons:—*Held:* in the circumstances, the councillor who had been elected chairman was entitled to act as such although he was not one of the three named persons.—*Re* BARNES CORPN., *Ex p.* HUTTER, [1933] 1 K. B. 668; 102 L. J. K. B. 641; 148 L. T. 328; 97 J. P. 76; 49 T. L. R. 152; 31 L. G. R. 110, D. C.

1140. Before this case add "*See, now*, Urban District Councillors Election Rules, 1931."

1145. Before this case add "*See, now*, Rural District Councillors Election Rules, 1931."

1145a. —— —— **Omission of parish for which nominee qualified.**]—The nomination papers of four persons nominated for election as rural district councillors merely stated in column 5, under the heading "how qualified," that the persons nominated were "local government electors," & did not state the name of the parish for which they were qualified as local government electors, as required by Rural District Councillors Election Order, 1898, r. 4. The deputy returning officer rejected the nomination papers as being invalid, because the parish within the poor law union for which qualification was claimed was not stated. Upon an election petition:—*Held:* (1) the omission to state in the nomination paper the name of the parish for which the person nominated was qualified as a local government elector was a non-compliance with Rural District Councillors Election Order, 1898, r. 4; (2) that defect was not cured by Ballot Act, 1872 (c. 33), s. 13, because that sect. only applied to a case where there had been a wrongful admission of a nomination paper, & did not apply to a case where a nomination paper had been rejected; (3) neither was the omission an "inaccurate description" of the person nominated within r. 33 of the 1898 Order, but was a non-compliance with the requirements of r. 4 of that Order, & therefore was not cured by r. 33.—BALDWIN *v.* ELLIS, [1929] 1 K. B. 273; 98 L. J. K. B. 71; 140 L. T. 278; 93 J. P. 86; 27 L. G. R. 72, D. C.

1146a. —— **Rejection—Whether Ballot Act, 1872 (c. 33), s. 13, applies.**]—BALDWIN *v.* ELLIS, No. 1145a, *ante.*

1146b. —— **Inaccurate description of nominee—What amounts to.**]—BALDWIN *v.* ELLIS, No. 1145a, *ante.*

1148. Before this case add "*See, now*, Parish Councillors Election Rules, 1931."

---

before, it must be read strictly; & where two candidates' acceptances of their nominations omitted all but one of the statements included in said form the acceptances & nominations were invalid & their election must be set aside.—R. *v.* PHILLIPS, [1928] 2 W. W. R. 51.—**CAN.**

sl. *Acceptance of nomination—Failure to sign form.*]—Under the St. Boniface Charter failure by a candidate for the office of mayor to sign the form of acceptance of nomination does not invalidate the nomination if it is otherwise correct & the prescribed declaration is signed.—R. (WARMAN) *v.* POULAIN (1934), 43 Man. L. R. 20.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.—C.

sw. *Secrecy of ballot — Necessity for.*]—Where at an election of a mayor & aldermen the provisions of Consolidated Municipal Act, 1922, enjoining secrecy of the ballot were generally ignored:—*Held:* the non-compliance with the provisions of the Act had effected the result of the election, & a new election ordered.—R. (JACQUES) *v.* MITCHELL (1924), 55 O. L. R. 286.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 3.—C.

sx. *Secrecy of ballot — Necessity for.*]—Where at an election of aldermen of a city the provisions of Consolidated Municipal Act, 1922, requiring secrecy of the ballot were generally ignored:—*Held:* the election was invalid.—R. (JACQUES) *v.* MITCHELL (1924), 55 O. L. R. 286.—**CAN.**

sy. *Mandamus for recount—Costs—Liability of successful candidate.*]—*Re* WINNIPEG CHARTER, 1918, [1933] 2 W. W. R. 68.—**CAN.**

PART VII. SECT. 5. SUB-SECT. 5.—G (a)

sc. *Invalid return—After recount—Certiorari.*]—*Certiorari* will lie to quash an invalid return after a recount at a municipal election.—R. *v.* BEAN, *Ex p.* SCHOFIELD; R. *v.* QUINN, *Ex p.* SCHOFIELD, [1934] 2 D. L. R. 705.—**CAN.**

1154a. ——.]—R. *v.* ST. MARY NEWINGTON (GOVERNORS) (1848), 6 Dow. & L. 162; Cripps Church Cas. 117; 2 Saund. & C. 303; 17 L. J. Q. B. 220; 11 L. T. O. S. 205; 12 Jur. 918.

1163. After this case add:—

Abolition of guardians.]—*See* Local Government Act, 1929 (c. 17), Part I.

Part VIII.—Authorised Excuses and Exceptions.

1172a. —— ——.]—STEPNEY CASE. No. 817a, *ante*.

1191a. —— —— **Illness.**]—*Re* LLOYD GEORGE (RIGHT HON. DAVID), APPLICATION OF (1932), 76 Sol. Jo. 166.

Part IX.—Petitions.

1290a. —— **Reservation of ballot papers—Right to take copies.**]—Where ballot papers are reserved for the consideration of the judges, the parties may be allowed to take copies.—FINSBURY CASE (1892), Day, 19.

1290b. —— —— ——.]—CIRENCESTER CASE (1893), Day, 19.

1290c. —— **Recount by judge.**]—STEPNEY CASE, No. 817a, *ante*.

1410a. For whom vote cast.]—STEPNEY CASE, No. 817a, *ante*.

1430a. —— ——.]—Statement of resps.' agent after the election is not admissible as evidence against resp.—CHELTENHAM BOROUGH ELECTION CASE (1880), 3 O'M. & H. 86.

1539a. —— ——.]—THORNBURY CASE, No. 482a, *ante*.

1581. *Add. Annotation:—As to* (2) **Refd.** White *v.* Altrincham Urban District Council, [1936] 2 K. B. 138.

1593. *Add. Annotation:—As to* (2) **Consd.** Cambridge County Council Petn., Fordham *v.* Webber, [1925] 2 K. B. 740.

1593a. —— **"Candidate"—Necessity for declaration or nomination.**]—An election for the office of county aldermen took place at a

PART IX. SECT. 1, SUB-SECT. 1.

h i. ——.]—*Held:* it was not the duty of the ct. to pronounce upon the constitutional right of the executive to direct the issue of a new writ.—*Re* NIPISSING DOMINION ELECTION, KLOCK *v.* VARIN, 21 C. L. T. 258.—**CAN.**

h ii. —— *To make preliminary order.*]—*Re* NORTH HURON ELECTION, [1926] 1 D. L. R. 590; 58 O. L. R. 197.—**CAN.**

sf. *County court judge—Sufficiency of affidavit—Application for recount.*]—On an application for a recount under Manitoba Election Act, 1931, the sufficiency of the affidavit required by sect. 117 of the Act is a matter for the county ct. judge; & he is not subject to prohibition if he acts on a *bonâ fide* affidavit which in his opinion is sufficient.—*Re* BIRTLE ELECTION RECOUNT, [1936] 3 W. W. R. 261; 44 Man. L. R. 261.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—E.

p i. —— ——.]—*Held:* Controverted Elections Act, R. S. S. 1920 (c. 5), s. 4 (c), had been complied with by a petition which alleged that resp. "was guilty of, by himself & his agents, corrupt practices within Saskatchewan Election Act, R. S. S., 1920 (c. 3), ss. 247, 249, 251 & 252, & amendments thereto."—ADAMS *v.* HUCK, [1925] 3 W. W. R. 546.—**CAN.**

sx. *Proof of identity of petitioners & execution of petition.*]—The identity of petitioners & their execution of the petition should be proved by calling each petitioner to prove his own identity & status.—*Re* MUNICIPAL ACT, HEATHER *v.* MADDOCK, [1925] 2 W. W. R. 464.—**CAN.**

sy. *What may be claimed.*]—In an election petition, a claim to the seat on behalf of a candidate defeated according to the return & a claim for the voiding of the election are not so incompatible as to render the petition illegal & void.—BOUCHER *v.* VEILLEUX, [1933] S. C. R. 65; 1 D. L. R. 505.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 4.—B.

m i. —— *From dismissal before trial of petition for irregularity.*]—*Held:* the Supreme Ct. of Canada had no jurisdiction to entertain such an appeal.—VALIANTES *v.* BELL, [1927] 3 D. L. R. 796; [1927] S. C. R. 341.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 4.—D. (a).

sz. *Time for application.*]—LAMB *v.* MCLEOD (No. 2), [1931] 2 W. W. R. 847; 25 S. L. R. 321.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 5.—B.

sm. *Who may appoint—Judge of Court of Appeal.*]—LAMB *v.* MCLEOD (No. 4), [1932] 1 W. W. R. 686.—**CAN.**

sn. *During session—Jurisdiction to order.*]—LAMB *v.* MCLEOD (No. 3), [1932] 1 W. W. R. 412.—**CAN.**

sp. *Jurisdiction of Court.*]—When acting in cases of provincial election petitions, the ct. is not exercising its ordinary civil or criminal jurisdiction. The Legislative Assembly is the guardian of its own prerogatives & privileges; & the ct. has nothing to do with questions affecting membership in the Assembly except in so far as it has been specially designated by law to act in such matters. Therefore, the ct., being unwilling to interfere without undoubted authority, will always approach questions concerning its jurisdiction over election contests with great caution. In the present case:—*Held:* whatever doubt there may be as to the ct.'s jurisdiction had been set at rest by the Legislative Assembly itself when in directing the amendment of the returning officer's return it ordered that the amendment was to be made "without prejudice to the rights of any person with respect to the said election under Controverted Elections Act."—LAMB *v.* MCLEOD (No. 1), [1932] 1 W. W. R. 206.—**CAN.**

sq. ——.]—LAMB *v.* MCLEOD (No. 5), [1932] 3 W. W. R. 106; *affd.*, [1932] 3 W. W. R. 596.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 5.—E.

k i. —— *Failure to establish—Effect.*]—BUCKMASTER *v.* KNICKLE, [1926] 2 D. L. R. 798; 58 N. S. R. 492.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

p i. —— *United Provinces Municipalities Act*, 1916.]—There is no right of appeal against the order of a comr. on an election petition presented to him under United Provinces Municipalities Act, 1916.—ABDUR RAHMAN, SON OF ISMAIL *v.* ABDUR RAHMAN, SON OF ZAHURI (1925), I. L. R. 47 All. 513.—**IND.**

sa. *Jurisdiction of judge to fix time & place of trial—Notwithstanding absence of rules.*]—*Re* SLOCAN MUNICIPAL ELECTION (1902), 9 B. C. R. 113.—**CAN.**

sb. *Whether civil action lies.*]—A suit will not lie in a civil ct. for a declaration that the result of a municipal election has been wrongly declared & that pltf. is the person entitled to be declared elected.—ABDUR RAHMAN, SON OF ISMAIL *v.* ABDUR RAHMAN, SON OF ZAHURI (1925), I. L. R. 47 All. 513.—**IND.**

sd. *Jurisdiction of District Court judge.*]—The judge of the District Ct. of the judicial district of B. made an order setting aside the election of appt. herein as councillor for division 4 of the rural municipality of B. L. Another election was consequently held in said division. The appt. herein & resp. were both candidates & resp. was declared elected. The appt. then applied by way of *certiorari* to have said order of the District Ct. judge quashed on the ground that the rural municipality of B. L. was & is mainly situate in the judicial district of P. A., & that, therefore, the judge had acted without jurisdiction. MACDONALD, J., dismissed the application on the preliminary objections to the appt.'s material. The appt. appealed:—*Held:* it had not been established by the evidence that the District Ct. judge acted without jurisdiction &, therefore, the appeal should be dismissed.—R. (ONISHENKO) *v.* NESDOLY, [1938] 2 W. W. R. 261.—**CAN.**

meeting of a county council, & voting papers were signed & personally delivered to resp., who was chairman of the county council & of the meeting, & were openly produced & read by him. Amongst the voting papers was one containing a vote for petitioner, by writing his name & address on the voting paper, as a county alderman. Forty-four voting papers contained votes for resp. as a county alderman. Neither petitioner nor resp. had before the election declared himself to be a candidate at the election of county aldermen. Resp. declared himself to be elected amongst others a county alderman, & petitioner was not elected. Petitioner, alleging himself to have been a candidate at the election, presented a petition against the election of resp.:—*Held:* petitioner was not right in alleging himself to have been a candidate at the election for county aldermen, as he had not been elected & had not declared himself before the election as a candidate for election, & the writing by the voter of petitioner's name & address on the voting paper did not amount to a nomination of him as candidate within Municipal Corporations Act, 1882 (c. 50), s. 77, & he was not, under s. 88 of the Act, entitled to present a petition for the purpose of questioning the election of resp.—CAMBRIDGE COUNTY COUNCIL CASE, FORDHAM *v.* WEBBER, [1925] 2 K. B. 740; 94 L. J. K. B. 891; 89 J. P. 181; 41 T. L. R. 634; 69 Sol. Jo. 779, D. C.

1598a. Time for—Last day falling on holiday.]—An election of rural district councillors was held on Apr. 5, 1937. The period of six weeks allowed for presenting election petitions ended on May 17, which was a bank holiday. On May 18 a petition was presented against one of the successful candidates alleging that he had committed an illegal practice contrary to Municipal Corpns. (Corrupt & Illegal Practices) Act, 1911 (c. 7), s. 1. Local Govt. Act, 1933 (c. 51), s. 295 (1), provides: "Where . . . the last day on which any thing is required or permitted by or in pursuance of this Act to be done is [any of certain specified days one of which is a bank holiday] the requirement or permission shall be deemed to relate to the first day thereafter which is not one of the days before mentioned."

HAWKE, J., in Chambers refused to strike out the petition as out of time, holding that this sub-sect. applied. On appeal by resp. the Div. Ct. struck out the petition, holding that the sub-sect. did not apply. On appeal by petitioner:—*Held:* the petition was presented within the time required by the statutes; the effect of sect. 40 (2) of Local Govt. Act, 1933 (c. 51), was to incorporate the enactments there enumerated with the Act of 1933, so as to make the presentation of a petition in accordance with those Acts a "thing required or permitted by or in pursuance of" the Act of 1933, to which sect. 295 applied; &, further, rule 38 of the Municipal Election Petition Rules, 1883, had no bearing on the question within what time a rural district council election petition might be presented, but dealt only with the mode of filing the petition on a day when the master's office was closed owing to a holiday at the Supreme Ct.—*Re* COUNTER'S PETITION, BUCKINGHAM *v.* COUNTER, [1938] 2 K. B. 90; [1938] 1 All E. R. 186; 107 L. J. K. B. 193; 158 L. T. 144; 102 J. P. 138; 54 T. L. R. 329; 82 Sol. Jo. 93; 36 L. G. R. 177, C. A.

1626. *Add. Citation:—sub nom. Re* HEREFORD MUNICIPAL ELECTION PETITION, *Ex p.* GARROLD, 5 T. L. R. 411.

1627a. —— ——.]—PLYMOUTH ELECTION CASE (1929), 7 O'M. & H. 101.

Part X.—Criminal Law, Penal Actions, and Injunctions.

1693. *Add. Annotation:*—Consd. Thomas *v.* Bolton (1928), 130 L. T. 397.

PART IX. SECT. 2, SUB-SECT. 2.

sd. *Joinder of parties.*]—Consolidated Municipal Act, 1922, s. 172 (1) (*a*), does not give power to join a city corpn. as an "other person," as a party to proceedings to avoid a municipal election.—R. (JACQUES) *v.* MITCHELL (1924), 55 O. L. R. 286.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 3.

sf. *Absence of—Effect.*]—DAVIES *v.* MILLS, [1930] 1 W. W. R. 672; 42 B. C. R. 506.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 8.

s i. —— "*As nearly as may be*" *county court scale.*]—*Re* MCBRIDE & STEWART, [1932] 1 D. L. R. 624; O. R. 176.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.

sg. *Against candidate—For corrupt practice—Proof required.*]—*Re* SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON *v.* MCCALLUM, [1928] 1 D. L. R. 104; 61 O. L. R. 392.—**CAN.**

sh. *Against voter—Casting more votes than lawful—Mens rea.*]—The doctrine of *mens rea* applies to the case where a person is charged under Town Act, 1927 (Sask.), c. 24, s. 136, with having voted oftener than he was entitled to do at a municipal election.—R. *v.* HOLZ, [1928] 3 W. W. R. 89; 50 Can. Crim. Cas. 298.—**CAN.**

sm. *Who may sue.*]—In an action to recover a penalty for voting at an election of a member of the Legislative Assembly, contrary to sect. 4 of Election Act:—*Held:* though forfeiture & penalties belong to the Crown unless otherwise disposed of, the sum forfeited under sect. 4 is a penalty within sect. 182 (1) for which an action may be maintained by any person who will sue.—SHRIGLEY *v.* TAYLOR (1884), 4 O. R. 396.—**CAN.**

ELECTRIC LIGHTING AND POWER.

Part I.—Powers of Board of Trade and Electricity Commissioners.

1. *Add. Annotations :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513. **Consd.** R. *v.* Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 91 J. P. 191 ; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98. **Refd.** R. *v.* Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68 ; R. *v.* Health Minister, *Ex p.* Davis, [1929] 1 K. B. 619 ; R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397 ; Shell Co. of Australia, Ltd. *v.* Federal Commissioner of Taxation (1930), 47 T. L. R. 115 ; Minister of Health *v.* R., [1931] A. C. 494 ; R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226 ; R. *v.* Milk Marketing Board, *Ex p.* North (1934), 50 T. L. R. 559.

3a. —— **Amendment or revocation of special order.**]—The power conferred by Electricity (Supply) Act, 1919 (c. 100), s. 26, to amend or revoke by special order any provisional order made under Electric Lighting Acts & confirmed by Parliament, does not include a power to amend or revoke a special order by another special order.—R. *v.* TRANSPORT MINISTER, *Ex p.* LEICESTERSHIRE & WARWICKSHIRE ELECTRIC POWER CO. (1928), 139 L. T. 660 ; 92 J. P. 171 ; 44 T. L. R. 823 ; 26 L. G. R. 572, D. C.

3b. **Alteration from direct to alternating current —Consent of Commissioners—Assessment of compensation.**]—The Electricity Comrs. gave their consent to the supply of electricity by a corpn. being changed from direct to alternating current, subject to the following clause : " Unless otherwise agreed the undertakers shall at their own expense carry out the necessary alterations to consumers' existing apparatus to suit the altered system & pressure of the supply or pay to each consumer injuriously affected by the alteration of system & pressure such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator to be appointed on the application of either party by the Minister of Transport as the reasonable cost of & incidental to the change of system & pressure, including compensation for any loss or damage incurred in consequence of the alteration." The claimant, who was an engineer, had in his business used for charging batteries an apparatus which was rendered useless by the change to alternating current :—*Held :* the claimant was entitled to receive from the corpn. as compensation, (*a*) the cost of supplying converting apparatus which would enable him to continue charging batteries after the system had been changed, & (*b*) damages for interference with his business during the process of change.—LAKEMAN *v.* CHESTER CORPN. (1933), 148 L. T. 564 ; 97 J. P. 141 ; 49 T. L. R. 288 ; 77 Sol. Jo. 198 ; 31 L. G. R. 196.

Part II.—Powers, Duties, and Liabilities of Undertakers.

5. *Add. Annotations :*—*As to* (1) **Folld.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. *As to* (2) **Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. *As to* (3). **Apld.** A.-G. *v.* Gravesend Corpn., [1936] Ch. 550. **Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. *Generally*, **Consd.** Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

6a. —— **Meaning of terms—" Supply."**]—For the purposes of the Electricity (Supply) Acts, " consumer's terminals " are the ends of the lines of supply on the consumer's premises ; & " supply " means supply at the consumer's terminals.—A.-G. *v.* GRAVESEND CORPN., [1936] Ch. 550 ; 105 L. J. Ch. 202 ; 155 L. T. 409 ; 52 T. L. R. 205 ; 80 Sol. Jo. 74 ; 34 L. G. R. 412.

6b. —— —— **" Consumer's terminals."**]—A.-G. *v.* GRAVESEND CORPN., No. 6a, *ante*.

6c. **Abstraction of water—" Other source."**]—The King George Reservoir, belonging to the Metropolitan Water Board, is a " river,

---

PART I. SECT. 2.

sa. *Whether under jurisdiction of Public Utilities Board of Commissioners —Not St. John Power Commissioners.*]—*Ex p.* NEW BRUNSWICK POWER CO. (N. B.), [1926] 1 D. L. R. 483.—**CAN.**

sb. —— *Andover & Perth Electric Light Commissioners.*]—*Ex p.* ANDOVER & PERTH ELECTRIC LIGHT COMRS. (N. B.), [1926] 1 D. L. R. 569.—**CAN.**

sd. *Commissioner of Toronto Hydro-Electric Commission—Reappointment—Validity.*]—Comr. of the Toronto Hydro-Electric Commission is not a municipal officer & may be reappointed to his office.—REID *v.* CHRISTIE, [1935] 2 D. L. R. 185 ; *sub nom.* R. *v.* CHRISTIE, [1935] O. R. 212.

PART II. SECT. 1.

sg. *Indian Electricity Act—Scope of Act.*]—The Indian Electricity Act is not a complete code making the holders of licences issued thereunder free from the control of any other law or authority in respect of their operations, building, machinery & apparatus.—MADRAS CORPN. *v.* MADRAS ELECTRIC TRAMWAYS, LTD. (1930), I. L. R. 54 Mad. 364.—**IND.**

sm. *Contract with local authority of adjoining district for supply—Meaning of " adjoining district."*]—Sect. 282 of Municipal Corpns. Act, 1920, provides that a council having established electric light works for the use of the borough & its inhabitants may " contract with the local authority of any adjoining district to supply electricity to such local authority . . ." :—*Held :* the word " adjoining " in the sub-sect. must be construed in its primary meaning of " lying next to " or " in actual contact with," & therefore, deft. borough, which had established such electric light works, was not entitled to contract to supply electricity to two boroughs situate respectively six & eight miles from deft. borough.—NEW PLYMOUTH BOROUGH COUNCIL *v.* TARVNAKI ELECTRIC POWER BOARD, [1933] A. C. 680 ; 102 L. J. P. C. 212 ; 149 L. T. 594.—**N.Z.**

stream, canal, inland navigation or other source," within Electricity (Supply) Act, 1919 (c. 100), s. 15 (1).—METROPOLITAN WATER BOARD *v.* TRANSPORT MINISTER (1925), 90 J. P. 52; 42 T. L. R. 165; 24 L. G. R. 289.

6d. **Statutory authority incorporated by Electricity Commissioners—Power to promote bill for purposes of scheme—Extent of power.**]—Defts. were a statutory body incorporated on July 29, 1925, by the Electricity Comrs. under Electricity (Supply) Act, 1919 (c. 100), & a scheme made thereunder. This scheme strictly defined their district & gave them only some of the powers available under the Electricity (Supply) Acts; but clause 10 authorised them to promote "any" bill "for the purposes of this scheme":—*Held:* defts., as a purely statutory body, were strictly bound by their scheme, & were neither expressly nor impliedly authorised by their scheme or the Acts to expend their funds in promoting a Bill for the improvement of their scheme by enlarging their district, or by obtaining additional powers omitted from their scheme, though adumbrated in the Acts.—A.-G. *v.* LONDON & HOME COUNTIES JOINT ELECTRICITY AUTHORITY, [1929] 1 Ch. 513; 98 L. J. Ch. 162; 140 L. T. 578; 93 J. P. 115; 45 T. L. R. 235; 27 L. G. R. 337.

10. *Add. Annotation:*—**Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

11. *Add. Annotation:*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

After this case add:—

——.]—*See, now,* Electricity (Supply) Act, 1926 (c. 51), s. 48.

12. *Add. Annotation:*—*As to* (1) **Consd.** Caerphilly U. D. C. *v.* Griffin (1927), 44 T. L. R. 132.

13. *Add. Annotation:*—**Refd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

SECT. 9.—EXECUTION OF WORKS.

SUB-SECT. 1.—IN GENERAL.

17a. **Right of undertakers to support—Pylons.**]—WEST MIDLANDS JOINT ELECTRICITY AUTHORITY *v.* PITT, MINISTER OF TRANSPORT *v.* PITT, No. 30a, *post.*

25. *Add. Annotations:*—*As to* (1) **Consd.** St. Nicholas Acons, London *v.* L. C. C., [1928] P. 102. **Refd.** St. Nicholas Acons *v.* L. C. C., [1928] A. C. 469.

30. *Add. Annotation:*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

30a. **Wires carried over land—Sanction of Minister of Transport—"Terms, conditions & stipulations."**]—(1) In the absence of consent by the landowner, it is for the Minister of Transport to consider whether a proposal to place electric lines across any land, under Electricity (Supply) Act, 1919 (c. 100), s. 22, should be sanctioned, &, if he decides to sanction the proposal, what "terms, conditions & stipulations" should be attached to his sanction. Such "terms, conditions & stipulations" do not mean or include pecuniary terms, conditions or stipulations. (2) The Minister has no power to assess compensation payable to the landowner for a wayleave taken under Electricity (Supply) Act, 1919 (c. 100), s. 22 (1). The claim of the landowner for compensation is to be

---

PART II. SECT. 9, SUB-SECT. 2.

g i. —— —— *Erection of poles.*]—The Hydro-Electric Power Commission of Ontario has no right, either under Power Commission Act, 1915, s. 5, or otherwise, without the consent of the municipal corpn. controlling a highway, to place poles & wires upon the highway.—HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO *v.* GREY COUNTY (1924), 55 O. L. R. 339. —**CAN.**

PART II. SECT. 9, SUB-SECT. 5.

s d. *Removal of poles by county council—Liability for cost.*]—Where an electric-power Board in pursuance of the provisions of the Electric-power Boards Act, 1925, has erected electric-light poles on a road which is subject to the control & management of a county council, & subsequently the county council effects improvements on such road, thereby necessitating the removal of the poles to new positions on the road, the county council is liable for the cost of such removal.—WAITEMATA COUNTY COUNCIL *v.* WAITEMATA ELECTRIC-POWER BOARD, [1932] N. Z. L. R. 94.—**N.Z.**

See, also, case in Sect. 13, sub-sect. 2, *post.*

PART II. SECT. 11, SUB-SECT. 2.

l i. —— —— *Failure by default of undertaker.*]—In an action for damages for failure to supply electric power under a contract made in Nov. 1912 between the parties, it was admitted that defts. had developed enough power in Jan. 1921, when the shortage occurred, to have supplied all requirements of pltfs., & that they did not give them the power owing to the requirements of other customers:—*Held:* defts. could not set up the requirements of other customers as modifying what on the face of the contract with pltfs. made compliance with pltfs.' demands an absolute undertaking.—HOLLINGER CONSOLIDATED GOLD MINES, LTD. *v.* NORTHERN CANADA POWER CO., LTD., [1923] 4 D. L. R. 1205; 54 O. L. R. 508.—**CAN.**

l ii. —— —— *Whether agreement terminable by notice.*]—If a power to terminate a contract on reasonable notice is to be implied it must be available to either party. Where, however, the power to terminate a contract, *e.g.* one for the supply of electric energy, is expressly given only to the party purchasing the energy, & there is a provision for a continuous payment by the purchaser, whether he avails himself of the counter consideration or not, it is impossible to extend the power to terminate to the other party, the vendor, by implication of law.—CONIAGAS REDUCTION CO., LTD. *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1933] 3 W. W. R. 134; [1932] 2 D. L. R. 811; *affd.,* [1933] 3 D. L. R 337, P. C.—**CAN.**

l iii. —— *Under agreement with municipality—Construction of agreement.*]—MAPLE RIDGE CORPN. *v.* WESTERN POWER CO. OF CANADA, [1926] 2 D. L. R. 525; 37 B. C. R. 252.—**CAN.**

m i. —— *While arrears of charges unpaid—Liability for injury in darkness.*]—HUMPHRIES *v.* PICTOU COUNTY POWER BOARD, [1931] 2 D. L. R. 571; 3 M. P. R. 25.—**CAN.**

m ii. —— *Installation by tenant—Refusal of consent by landlord.*]—The Electric Lighting Orders Confirmation (No. 14) Act, 1890, enacts by the Schedule (Glasgow Corpn. Electric Lighting Order, 1890), s. 21, that the undertakers "shall," upon the request of an owner or occupier of any premises situated within a certain distance from a distributing main, "give & continue to give a supply of [electrical] energy" for such premises in accordance with the provisions of the Order.

The tenant of a dwelling-house, which formed part of a tenement, & was within the requisite distance from one of the undertakers' distributing mains, employed, with his landlord's knowledge, his own contractor to make an installation of electricity in the dwelling-house. The landlord owned the whole tenement, including a main electric cable connecting the tenant's dwelling-house with the undertakers' distributing main in the street. On the completion of the work, the undertakers, having been requested by the tenant to supply electrical energy to the dwelling-house, refused to do so until the landlord's consent had been obtained. The landlord, however, refused to consent to the supply & to the use of the main cable on the ground that the cable used in the tenant's installation was not of the type which it was his practice to require for his properties. The tenant having, with concurrence of the procurator-fiscal, charged the undertakers, by way of complaint, with breach of their statutory obligation to supply electrical energy in terms of sect. 21 of the Order:—*Held:* (1) without the landlord's consent to the supply & to the use of the main cable, the tenant was not, legally or in fact, in a position to receive a supply of electrical energy in terms of sect. 21 of the Order; (2) in these circumstances, the undertakers were not bound to supply such energy.—BRAND *v.* GLASGOW CORPN., [1935] S. C. (J.) 83.—**SCOT.**

determined by an arbitrator under the provisions of the Electric Lighting Act, 1882 (c. 56), & Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), but not under Lands Clauses Consolidation Act, 1845 (c. 18). The enactments with respect to the purchase & taking of lands otherwise than by agreement in Lands Clauses Consolidation Act, 1845 (c. 18), are expressly excepted from incorporation in Electric Lighting Act, 1882 (c. 56), which is to be read with Electricity (Supply) Act, 1919 (c. 100), as one Act, & therefore cannot be incorporated in these Acts by implication.

(3) A contiguous owner may have to give support to the land in which the pylon is erected (LORD HANWORTH, M.R.).—WEST MIDLANDS JOINT ELECTRICITY AUTHORITY *v.* PITT, MINISTER OF TRANSPORT *v.* PITT, [1932] 2 K. B. 1; 101 L. J. K. B. 401; 147 L. T. 122; 96 J. P. 159; 48 T. L. R. 332; 30 L. G. R. 219, C. A.

Annotation :—As to (1) **Refd.** Canadian Electrical Association *v.* Canadian National Railways, [1934] A. C. 551.

33a. —— **To "person" requiring supply—Who is —Receiver.**]—A colliery co., at the time of the appointment of a receiver in a debenture holders' action, owed a sum of money to an electrical distribution co. for electricity supplied to them. The distribution co. threatened to cut off the supply of electricity from the colliery co. unless payment of the arrears was guaranteed by the receiver. The receiver commenced an action to restrain the distribution co. from cutting off the supply. By South Wales Electrical Power Distribution Company Act, 1900, s. 40, it is provided that: "the co. shall give a supply of energy to any person who requires a supply which may be given by this Act other than a supply in bulk upon that person entering into a binding agreement to take the energy upon such terms as failing agreement shall be fixed by a single arbitrator appointed by the Board of Trade":—*Held:* the receiver was a "person" within the sect. & was therefore entitled to require a supply of electricity upon the terms set out in the sect.; & the distribution co. must be restrained from withholding or threatening to withhold from him a supply of electricity.—GRANGER *v.* SOUTH WALES ELECTRICAL POWER DISTRIBUTION CO., [1931] 1 Ch. 551; 100 L. J. Ch. 191; 145 L. T. 93; 29 L. G. R. 209.

38a. —— —— **General strike—Refusal to employ naval ratings—Agreement with union workers to abandon supply of power.**]—Pltfs., who carried on business in S., were entitled, by statute & by contract, to receive from the S. borough council a supply of electrical power, but were deprived of this supply on certain days in May, 1926, when the general strike was in operation. In respect of this deprivation of supply pltfs. sued defts., who were the members of the Electricity Supply Committee of the S. borough council, to whom the council had lawfully delegated the management of the electricity supply, alleging that defts. had wrongfully & maliciously conspired & combined among themselves & with the London District Committee of the Electrical Trades Union to procure & induce the borough council, its servants & agents, to discontinue the supply of electrical power to pltfs. The writ in the action was issued on Jan. 13, 1927. Defts. denied pltfs.' allegations, & pleaded Public Authorities Protection Act, 1893 (c. 61). At the trial it was proved that at the end of Apr. 1926, when the general strike was threatened, the Govt. made preparations for the maintenance of essential services & offered to provide naval ratings to take the place of workers who might go on strike. The Govt. also issued an Emergency Order relieving the S. borough council from its obligation to supply the whole of the previous requirements of consumers of power by 50 per cent. Defts. did not accept the Govt.'s offer of naval ratings to work the electricity plant, considering it unwise to do so in view of the likelihood of disorder in the borough; but they discussed the position with the Trades Union Council & eventually resolved that if the union workers would continue the supply of light they would abandon the supply of power. The result of this was that the supply of power to pltfs., as to all other occupiers of premises in the borough, was discontinued, whereby pltfs. suffered damage. The jury found that defts. in making the agreement whereby power was not supplied to pltfs. were not acting in good faith & in the honest belief that they were carrying out their statutory duties, & that they were actuated by an indirect motive to injure pltfs. & to further the interests of those taking part in the strike. Upon these findings judgment was entered for pltfs. Defts. appealed:—*Held:* there was no evidence to support the jury's findings.—SCAMMELL G. & NEPHEW, LTD. *v.* HURLEY, [1929] 1 K. B. 419; 98 L. J. K. B. 98; 140 L. T. 236; 93 J. P. 99; 27 L. G. R. 53, C. A.

Annotation :—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

39a. —— **Injunction to restrain supply by another person.**]—Pltfs., a local authority empowered to supply electricity within a certain area, sought an injunction under Electric Lighting Act, 1909 (c. 34), s. 23, to restrain deft. from supplying electricity to certain consumers in the area:—*Held:* as the supply of electrical energy was not deft.'s primary business, the action failed.—CAERPHILLY URBAN DISTRICT COUNCIL *v.* GRIFFIN, [1928] Ch. 171; 97 L. J. Ch. 139; 138 L. T. 516; 92 J. P. 5; 44 T. L. R. 132; 26 L. G. R. 38.

39b. Negligence in supply—Whether action lies.]—Where a statutory duty is imposed on undertakers to supply electricity & default is made in ensuring a proper & sufficient supply which causes loss to a consumer who has received his supply by virtue of the statutory right & not under a special contract, no action lies at common law for damages for negligence against the undertakers. The only remedy is to enforce against the undertakers the penalty provided by statute.—STEVENS *v.* ALDERSHOT GAS, WATER & DISTRICT LIGHTING CO. (NOW MID-SOUTHERN DISTRICT UTILITY CO.) (1932), 102 L. J. K. B. 12; 31 L. G. R. 48.

39c. Contract to supply for mining life of property—Company dissolved—Sale of mine.]—In 1931, the La Roche co., the owner of two mining claims, contracted as a consumer with the Northern Ontario Power Co. for the supply of electric power, a term of the contract being that it should "extend for the mining life of the properties now or hereafter operated or

owned or controlled by the consumer in the Porcupine district." The contract was made upon a printed form supplied by the power co., & did not contain any definition clause extending the meaning of the word "consumer." The contract was not assignable except with the consent of the power co. Power was supplied at intervals during 1932, 1933 & 1934 as required, & on Oct. 31, 1934, the La Roche co. sold its mining claims to the Delnite Mines, Ltd., no assignment being made of the power agreement, as Delnite Mines, Ltd., did not wish to become bound by it, nor to become entitled to the benefit of it. In Nov. 1934, the La Roche co. informed the power co. that they no longer had any ownership in the property, & that they were going into voluntary liquidation. In the course of the liquidation, a claim was submitted by the power co. for damages for breach of the contract of 1931. The power co. claimed that, by reason of the acts of the La Roche co. in selling its mining properties, going into voluntary liquidation & refusing further to carry out the terms of its agreement, the power co. had suffered damage to the amount of $524,163.24. The La Roche co. pleaded that, as a result of the sale of their mining claims, they had ceased to operate, own or control any mining properties or other properties in the district of Porcupine, and that the contract had thereby ceased to be operative or binding on the parties thereto:—*Held:* the clause stating the period of the contract was so worded that the mining life which it contemplated was, in the events which had happened, the mining life while the properties were being operated or owned or controlled by the La Roche co. As there was no extended definition of "consumer," it meant the La Roche co. only. If an effective assignment had been executed, the assignee would have become the consumer for the purposes of the contract; but, no one having become by assignment the consumer under the contract, the contract necessarily came to an end.—NORTHERN ONTARIO POWER CO., LTD. *v.* LA ROCHE MINES, LTD., LA ROCHE MINES, LTD. *v.* NORTHERN ONTARIO POWER CO., LTD., [1938] 3 All E. R. 755; 82 Sol. Jo. 779, P. C.

a. —— **Supply to premises partly outside area—Point of supply within area.**]—Defts. were authorised by the County of London (Northern Extensions) Electric Lighting Order, 1897, made under Electric Lighting Acts, 1882 (c. 56) & 1888 (c. 12), to supply electricity within an area adjoining the relators' area of supply. Sect. 6 of the Order prohibited the supply of energy by defts. beyond their area of supply, & Electric Lighting Act, 1909 (c. 34), s. 23, contains a general prohibition against supplying energy outside an authorised area. Defts. entered into a contract to supply a firm having a small part of its premises within defts.' area of supply & the remainder of the premises in the relators' area of supply. For the purpose of this contract defts. erected their apparatus on the part of the premises of the firm within their area, & the consumers' terminals, that is, the point where the electricity was passed from defts.' service lines to the lines on the firm's premises owned & controlled by them, were also on that part of the premises. The use of electricity on this part of the premises was trivial. In the circumstances the A.-G. brought an action on the relation of the relators to restrain defts. from supplying energy to the firm outside their area:—*Held:* the point of supply was the consumers' terminals, & as the firm's terminals were within defts.' area, defts. had not committed any breach of the prohibitions in their Order & the Act of 1909.—A.-G. *v.* COUNTY OF LONDON ELECTRIC SUPPLY CO., [1926] Ch. 542; 95 L. J. Ch. 357; 135 L. T. 601; 42 T. L. R. 328; 70 Sol. Jo. 486.

Annotation:—**Apld.** A.-G. *v.* Gravesend Corpn. (1935), 52 T. L. R. 205.

43a. **Supply to railway company by order of Minister — Amalgamation of railways.**]—The corpns. of Birkenhead & Liverpool were each authorised undertakers for the supply of electricity within their respective areas of supply. The L. M. & S. Ry. Co., an amalgamated co. within Railways Act, 1921 (c. 55), desired to obtain a supply of electricity for working the Wirral Railway, which was absorbed by the L. M. & S. Ry. Co. & was a detached portion of their system lying partly within the Birkenhead, but wholly without the Liverpool, area of supply. They obtained tenders from Liverpool & Birkenhead, & the Liverpool tender being the lower, they accepted it subject to the consent of the Minister of Transport, which was given after the holding of a local inquiry. It was proposed to give a supply at a point in Liverpool belonging to the L. M. & S. Ry. Co., & to convey it to the Wirral Railway through the Mersey Railway tunnel under a wayleave agreement. Plff. brought this action at the relation of the Birkenhead Corpn. against the Liverpool Corpn. & the L. M. & S. Ry. Co., claiming that deft. corpn. had no power to give or the railway co. to take such a supply:—*Held:* (1) the Wirral Railway was not for the purpose of the powers of electrification a separate undertaking but part of the undertaking of the L. M. & S. Ry. Co., which were the owners of a railway partly within & partly without the area of supply of the Liverpool Corpn.; (2) the L. M. & S. Ry. Co. was not restricted in regard to obtaining a supply of electricity for electrification of the Wirral Railway to the powers conferred by the Wirral Railway Act, 1900, s. 6, which was an enabling sect. & did not prevent sect. 47 of Electricity (Supply) Act, 1926 (c. 51), from conferring the requisite power; (3) the words "may supply" in sect. 47 did not refer exclusively to the power to supply electricity conferred by sect. 5 of Electric Lighting Act, 1909 (c. 34); (4) by supplying electricity within their area of supply to the L. M. & S. Ry. Co. for general purposes, the Liverpool Corpn. were, as part of that supply was being used for the operation of capstans & traversers, "supplying within their area or district of supply electricity for haulage or traction" within sect. 47; (5) the words "so supply electricity" in sect. 47 meant supply electricity within their district or area of supply. Therefore sect. 47 enabled the Liverpool Corpn. within their area of supply to supply, & the L. M. & S. Ry. Co. to take, electricity for the electrification of the Wirral Railway.—A.-G. *v.* LIVERPOOL CORPN., [1938] Ch. 76; [1937] 3 All E. R. 691; 106 L. J. Ch. 296; 157 L. T. 214; 101 J. P. 519; 53 T. L. R. 989; 81

Sol. Jo. 628; 35 L. G. R. 520; 26 Ry. & Can. Tr. Cas. 40, C. A.

47. *Add. Annotations:—As to* (1) **Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447. *As to* (2) **Refd.** Western Power Co. of Canada, Ltd. *v.* Matsqui Corpn., [1934] A. C. 322.

50. *Add. Annotation:*—**Refd.** Western Power Co. of Canada, Ltd. *v.* Matsqui Corpn., [1934] A. C. 322.

52. For the paragraph in the original volume substitute the following paragraph:—

—— **Not incompatible with performance of statutory duties.**]—By a Provisional Order of 1898 the B. Council were constituted electricity undertakers in B. with power to charge up to a certain maximum price, but with authority to make special agreements with particular consumers as to price. By a transfer deed of Dec. 31, 1901, approved by the Board of Trade, the B. Council transferred the undertaking to defts. with a provision for retransfer if defts. made default in their obligations as undertakers. By a supplemental deed of same date, made without the approval of the Board of Trade, defts. agreed with the B. Council not to charge higher prices than those charged in the adjoining borough of S. In 1911 the B. district & the contractual rights of the B. Council were transferred to pltfs., the S. Corpn., but defts. still remained electricity undertakers in B. Defts. having recently begun to charge higher prices than pltfs., pltfs. brought an action to restrain their breach of agreement. Defts. contended that their agreement was *ultra vires* both under Electric Lighting Act, 1882 (c. 56), s. 11, which prevented them from divesting themselves of their statutory powers without the consent of the Board of Trade, & also under the general law applicable to statutory undertakings:—*Held:* the agreement was a business transaction into which defts. might reasonably enter; it did not fetter the powers of defts. & was not incompatible with the performance by them of their statutory duties, & was not therefore *ultra vires.*—SOUTHPORT CORPN. *v.* BIRKDALE DISTRICT ELECTRIC SUPPLY CO., [1925] Ch. 794; 94 L. J. Ch. 371; 133 L. T. 354; 89 J. P. 149; 69 Sol. Jo. 523; 23 L. G. R. 490, C. A.; *affd. sub nom.* BIRKDALE DISTRICT ELECTRIC SUPPLY CO. *v.* SOUTHPORT CORPN., [1926] A. C. 355; 95 L. J. Ch. 587; 134 L. T. 673; 90 J. P. 77; 42 T. L. R. 303; 24 L. G. R. 157, H. L.

Annotations:—**Refd.** Brown *v.* Dagenham Urban District Council, [1929] 1 K. B. 737; *Re* Heywood's Conveyance, Cheshire Lines Committee *v.* Liverpool Corpn., [1938] 2 All E. R. 230.

54a. —— ——.]—A local authority were the undertakers for the supply of electricity in their district, but no electric inspector had been appointed for that district, & consequently the meters which the local authority supplied to their consumers, although standard meters, were not duly certified as required by Electric Lighting (Clauses) Act, 1899 (c. 19), Sched., s. 49. A consumer of electricity objected to the demand made upon him for electricity alleged to have been consumed by him during a summer quarter. He alleged that either the meter had incorrectly registered the amount consumed or that the meter had been incorrectly read. After a long correspondence the local authority cut off the consumer's supply of electricity, alleging that they had the

---

PART II. SECT. 11, SUB-SECT. 5.—A.

p 1. —— *At fixed rate for definite period—Whether valid.*]—In the absence of an express or necessarily implied grant of power to pltf. town to contract to supply electric energy from its municipal plant for a definite period at a fixed rate, held that such a contract was *ultra vires*, since it wiped out during its currency the statutory power of the town to fix from time to time such rates as it may deem necessary in the proper management of the utility, of which the council are in a sense trustees for the public.—BROADVIEW TOWN *v.* SASKATCHEWAN CO-OPERATIVE CREAMERIES, LTD., [1928] 1 D. L. R. 1119; [1928] 1 W. W. R. 324; 22 Sask. L. R. 356.—**CAN.**

sc. *Powers of municipality as undertaker—No power to surcharge for delay in payment.*]—A municipal corpn., though it may allow discounts for prompt payment for supplies of gas or electricity, cannot surcharge for delay in payment unless it is given statutory authority so to do, & no such authority at present exists.—NELSON CITY CORPN. *v.* BUSBRIDGE, [1930] N. Z. L. R. 269.—**N.Z.**

se. *Prohibition against discrimination in grant to company—Construction of grant.*]—By a contract made in 1913, resp. municipal corpn. granted to applt. co. the right & privilege to sell electric energy for lighting, heating, power, industrial & other purposes incidental thereto, within the municipality for a period of forty years. By clause 11 the co. agreed not to make any charge for supplying the corpn. or any of the inhabitants of the municipality greater than that paid for similar services by any municipality or the inhabitants thereof, & that it would not discriminate against the corpn. or residents of the municipality:—*Held:* (1) the prohibition against making higher charges was not limited to charges made by applt. co. itself, but extended to charges made by any supplier in the Province; (2) the words "similar services" did not refer to the character of the areas supplied according as it rendered the service more or less costly, but to the purpose or user of the electric energy supplied according to classifications in schedules of rates.—WESTERN POWER CO. OF CANADA, LTD. *v.* MATSQUI CORPN., [1934] A. C. 322; 103 L. J. P. C. 67; 150 L. T. 441, P. C.—**CAN.**

sg. *Reduction—Grounds for order.*]—Decrease in costs of energy is not alone sufficient ground for the Public Utility Commission to order a reduction of rates to the consumer.—R. *v.* PUBLIC UTILITIES COMMISSIONERS, [1935] 1 D. L. R. 456; 9 M. P. R. 1.—**CAN.**

PART II. SECT. 11, SUB-SECT. 5.—B.

q 1. —— *Inaccurate accounts submitted.*]—Applts., a private co. which generated & supplied electrical power in the City of Fredericton, New Brunswick, were, however, a "public utility" co. within Public Utilities Act, R. S., 1927, of New Brunswick, & were accordingly under a statutory duty to furnish reasonably adequate service & facilities, & were strictly limited, in accordance with filed scheds. open to public inspection, as to the rates, tolls & charges which they could make & exact. Resps., who carried on a dairy business in Fredericton, bought from applts. electric energy which they used in the manufacture of butter, ice-cream & other milk products. To arrive at the correct amount of electric energy supplied it was necessary to multiply the meter dial reading by ten, but owing to a mistake on the part of the applts. that was not done over a period of twenty-eight months, with the result that during that time the resps. were charged with only one-tenth of the electric energy supplied to them. On a claim by applts. to recover the balance of nine-tenths:—*Held:* applts. were not estopped from recovering the sum claimed. The duty imposed by the Public Utilities Act on applts. to charge, & on resps. to pay, at scheduled rates, for all the electric current supplied by the one & used by the other could not be defeated or avoided by a mere mistake in the computation of accounts. The relevant sects. of the Act were enacted for the benefit of a section of the public, & in such a case where the statute imposed a duty of a positive kind it was not open to resps. to set up an estoppel to prevent it. An estoppel is only a rule of evidence, & could not avail to release applts. from an obligation to obey the statute, nor could it enable resps. to escape from the statutory obligation to pay at the scheduled rates. The duty of each party was to obey the law.—MARITIME ELECTRIC CO., LTD. *v.* GENERAL DAIRIES, LTD., [1937] A. C. 610; [1937] 1 All E. R. 748; 106 L. J. P. C. 81; 156 L. T. 444; 53 T. L. R. 391; 81 Sol. Jo. 156, P. C.

sk. *Whether entitled to lien—Under Public Utilities Act, R. S. O.*, 1914 (c. 204), s. 27.]—WELLAND CITY *v.* ELECTRIC STEEL & METALS CO., LTD., [1927] 2 D. L. R. 168; 60 O. L. R. 127.—**CAN.**

sl. —— —— *Supply to tenants—Tenants evicted.*]—*Held:* the only right of the undertakers was to recover damages for the refusal of the consumers to carry out their contract.—*Re* MCKITTRICK PROPERTIES, LTD., [1927] 2 D. L. R. 93; 60 O. L. R. 132.—**CAN.**

right to do so under Electric Lighting Act, 1882 (c. 56), s. 21. In an action in a county ct. by the consumer for an injunction to restrain the local authority from cutting off his supply of electricity the county ct. judge held there was a *bonâ fide* dispute between the consumer & the local authority as to the amount due & that therefore the local authority were not entitled to cut off the customer's supply of electricity by reason of sect. 18 of the Electric Lighting Act, 1909. On an appeal by the local authority :—*Held :* (1) having regard to the finding of fact by the county ct. judge that there was a *bonâ fide* dispute between the parties the local authority were not entitled to cut off the consumer's supply of electricity by reason of Electric Lighting Act, 1909 (c. 34), s. 18, as the cutting off of a supply of electricity was a most effective & practical refusal of supply; (2) inasmuch as the meter furnished by the local authority to the consumer was not a duly certified meter as required by Electric Lighting (Clauses) Act, 1899 (c. 19), Sched., s. 49, the register of that meter was not conclusive evidence of the value of the supply. JOSEPH *v.* EAST HAM CORPN., [1936] 1 K. B. 367; 105 L. J. K. B. 410; 153 L. T. 444; 99 J. P. 431; 51 T. L. R. 579; 79 Sol. Jo. 625; 33 L. G. R. 431, C. A.

56a. **Refusal of supply—Bonâ fide dispute pending.**]—JOSEPH *v.* EAST HAM CORPN., No. 54a, *ante*.

63a. —— **Overhead wires—What statutes applicable.**]—WEST MIDLANDS JOINT ELECTRICITY AUTHORITY *v.* PITT, MINISTER OF TRANSPORT *v.* PITT, No. 30a, *ante*.

64. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn. (1927), 138 L. T. 435.

64a. **Notice by highway authority of intention to reinstate road—Liability of undertaker for injury to public.**]—The receipt of a notice under Electric Lighting (Clauses) Act, 1899 (c. 19), Sched., para. 16, does not relieve the undertakers from their duty to protect the public from injuries sustained owing to the roadway not having been reinstated after an excavation has been made by them, if the highway authority fails to comply with their requisition.

Semble : a notice under para. 16 to the undertakers need not be a written notice & can be inferred from a course of conduct.—PEARCE *v.* COUNTY OF LONDON ELECTRIC SUPPLY CO., LTD. (1935), 34 L. G. R. 349.

64b. —— **Whether writing necessary.**]—PEARCE *v.* COUNTY OF LONDON SUPPLY CO., LTD., No. 64a, *ante*.

65a. **Liability for—Under Electric Lighting (Clauses) Act, 1899 (c. 19).**]—Pltf., who was a farmer, was the occupier of property in the neighbourhood of an electricity power station which had been erected by deft. corpn. under Parliamentary powers & which emitted fumes heavily charged with sulphur & sulphur compounds so as to damage the property occupied by the pltf. In an action for a nuisance :—*Held :* (1) above Act did not expressly make defts. liable for a nuisance, but (2) as defts. had not proved the nuisance to be the inevitable result of the exercise of their statutory powers pltf. was entitled to an injunction & damages.—MANCHESTER CORPN. *v.* FARNWORTH, [1930] A. C. 171; 99 L. J. K. B. 83; 46 T. L. R. 85; 73 Sol. Jo. 818; 94 J. P. 62; *sub nom.* FARNWORTH *v.* MANCHESTER CORPN., 142 L. T. 145; 27 L. G. R. 709, H. L.

Annotation :—Generally **Refd.** Markland *v.* Manchester Corpn., [1934] 1 K. B. 566.

67. *Add. Annotations :*—**Refd.** Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533; Price *v.* Hilditch, [1930] 1 Ch. 500; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

70a. **Fumes—Injunction.**]—MANCHESTER CORPN. *v.* FARNWORTH, No. 65a, *ante*.

72. *Add Annotations :*—**Consd.** Nobie *v.* Harrison, [1926] 2 K. B. 332. **Distd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1; Bartlett *v.* Tottenham, [1932] 1 Ch. 114; Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215; Wilkins *v.* Leighton (1932), 76 Sol. Jo. 232. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650; Hale *v.* Jennings Bros., [1938] 1 All E. R. 579. **Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671; Booth *v.* Thomas (1926), 95 L. J. Ch. 160; Smith *v.* G. W. Ry. (1926), 135 L. T. 112; Glanville *v.* Sutton (1927), 44 T. L. R. 98; G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57; Pontardawe R. D. C. *v.* Moore-Gwyn, [1929] 1 Ch. 656; Sycamore *v.* Ley (1932), 147 L. T. 512; Bishop *v.* Consolidated London Properties, Ltd. (1933), 102 L. J. K. B. 257; Knott *v.* London County Council, [1934] 1 K. B. 126; Ryan *v.* Youngs, [1938] 1 All E. R. 522; Sedleigh-Denfield *v.* St. Joseph's Society for Foreign Missions & Hillman, [1938] 3 All E. R. 321.

73. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

PART II. SECT. 13, SUB-SECT. 1.

sp. *Injury to workman—Limitation of action—Electric-Power Boards Act, 1925, s. 127.*]—Applt., who was employed by respts., a body corporate constituted under the provisions of Electric-Power Boards Act, 1925, alleged that on June 6, 1930, while working on a transformer connected with high powered lines he met with an accident & sustained injuries. He issued a writ against the respts. on Apr. 1, 1932, claiming general & special damages. On July 5, 1932, he delivered an amended statement of claim, basing his claim alternatively on (*a*) a breach of an implied term of his contract of employment, or (*b*) a breach of duty owed by the respts. to him as a workman in their employ :—*Held :* the claim was out of time under sect. 127 of the Act. The statutory words were characterised by the utmost amplitude, & the action was one against respts. for something done or omitted to be done in the execution or intended execution of the Act within sect. 127. It mattered not whether applt.'s claim was regarded as based on implied contract or tort.—VINCENT *v.* TAURANGA ELECTRIC-POWER BOARD, [1937] A. C. 196; [1936] 3 All E. R. 884; 106 L. J. P. C. 11; 156 L. T. 151; 80 Sol. Jo. 1034, P. C. **N.Z.**

PART II. SECT. 13, SUB-SECT. 2.

st. *Falling wires—Compensation.*]—Damage to land or stock from falling wires, arising apart from unauthorised or negligent acts on the part of a power board for which claimants would have a remedy by action at law :—*Held :* improbable & too speculative to form a subject of compensation.—WOOD *v.* TARANAKI ELECTRIC-POWER BOARD, [1927] N. Z. L. R. 392.—**N.Z.**

PART II. SECT. 13, SUB-SECT. 3.

73 ii. ——— ———.]—The use of electric energy for lighting or other domestic purposes is so reasonable & prevalent that to bring electricity upon land or premises for such purposes is to use the land or premises in a natural & not an unnatural way. A person who keeps on his premises electric energy for domestic purposes is bound to exercise reasonable care to prevent damage therefrom accruing, but he is not responsible for damage not due to his own default.—DHANAL SOORMA *v.* RANGOON INDIAN TELEGRAPH ASSOCN., LTD. (1935), I. L. R. 13 Ran. 369.—**IND.**

i (p. 213) **i.** ——— *Fuse during storm—Contributory negligence.*]—A fuse between high tension wires & a transformer was ignited during a storm & a person killed :—*Held :* the co. was not liable, as the deceased had approached too near the live wire without excuse.—POTVIN *v.* GATINEAU ELECTRIC LIGHT CO., [1935] 4 D. L. R. 1; 5 F. L. J. (Can.) 99.—**CAN.**

o i. ——— ——— *Injury to licensee with*

76. *Add. Annotation :*—**Apld.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

84a. Fire caused by faulty circuit—Damage by water.]—(1) In premises adjoining those of pltf. a fire originated, owing to some unknown defect in the electrical wiring. Pltf.'s premises were damaged by the water used for extinguishing the fire :—*Held :* in the absence of any proof of negligence by defts. in the installation or the maintenance of the electrical wiring, they were not liable in damages to pltf. under the doctrine of *Rylands* v. *Fletcher*.

(2) For the purpose of reinstating both premises a hoarding was erected just outside pltf.'s premises, interfering with access to them. Pltf.'s trade in fact increased during that period :—*Held :* it was impossible to say that there was no interference with pltf.'s trade by reason of the erection of the hoarding & damages were assessed under this head at £15, if upon appeal they should be held to be recoverable.—COLLINGWOOD *v.* HOME & COLONIAL STORES, LTD., [1936] 1 All E. R. 74 ; 80 Sol. Jo. 167 ; *affd.*, [1936] 3 All E. R. 200, C. A.

84b. —— Measure of damages—Erection of hoarding during rebuilding—Interference with access.]—COLLINGWOOD *v.* HOME & COLONIAL STORES, LTD., No. 84a, *ante*.

88a. Basis of assessment—Deduction of sinking fund payments.]—An electricity undertaking carrying on business under statutory powers was required by statute to set aside out of revenue certain sinking fund payments to provide for the value of its physical assets when the undertaking would be transferred to a joint electricity authority in 1971 :—*Held :* in arriving at the rateable value of the undertaking, on the " profits " basis, the sinking fund payments were not to be deducted from the profits.—ST. JAMES' & PALL MALL ELECTRIC LIGHT CO., LTD. *v.* WESTMINSTER ASSESSMENT COMMITTEE, [1934] A. C. 33 ; 103 L. J. K. B. 9 ; 150 L. T. 123 ; 98 J. P. 20 ; 50 T. L. R. 75 ; 77 Sol. Jo. 815 ; 32 L. G. R. 1, H. L.

Annotation :—**Refd.** *Re* Southern Railway Co. Appeals (1935), 152 L. T. 299.

---

notice of danger.]—An action for damages for personal injuries sustained by pltf. as the result of his fishing-rod coming into contact with an electrical transmission wire which deft. co. maintained under an easement therefor granted by the owner of the land over which the wire was carried. The land was in the possession of a tenant & the pltf. had, apparently, the implied assent of the tenant to go on the land. The jury found deft. negligent in maintaining the wire too near the ground, but also found that pltf. had been contributorily negligent, & apportioned the damages. The judge dismissed the action, on the ground that the cause of action as set up in the pleadings was confined to alleged breaches of the regulations for such wires under Electrical Energy Inspection Act, R. S. B. C., 1924 (c. 77) :—*Held :* the appeal should be dismissed, on the ground that pltf. was aware of the danger but took no care to avoid it, & deft. owed no duty to him to have its wire strung higher.—SALE *v.* EAST KOOTENAY POWER CO., LTD. (No. 2), [1931] 3 W. W. R. 117 ; 4 D. L. R. 221 ; 44 B. C. R. 141 ; *affd.*, [1931] 4 D. L. R. 593 ; S. C. R. 712.—**CAN.**

o ii. —— —— *On standard.*]—Pltf., a boy of ten years, claimed damages for personal injuries occasioned by the negligence of defts. His injuries were sustained by coming in contact with wires carrying an electric current at the top of a standard & of falling from the standard :—*Held :* defts. not liable.—KENNY *v.* ELECTRICITY SUPPLY BOARD, [1932] I. R. 73.—**IR.**

o iii. —— *Power line in tree—Short circuit during storm.*]—CREPIN *v.* OTTAWA ELECTRIC CO., [1931] 1 D. L. R. 792 ; *affd.*, [1931] S. C. R. 407 ; 3 D .L. R. 113.—**CAN.**

o iv. —— *Improper supply of high tension current.*]—One of pltfs., a boy lying in bed in the house of his mother, the other pltf., was burned by a current of electricity from the town supply :—*Held :* (1) the town corpn. was liable for the acts of the Boards of Comrs. appointed under a bye-law ; (2) the system was defective, since it consisted of a high tension current ; (3) there was no contributory negligence, although the iron bedstead was in contract with a radiator in contact electrically with the earth, for this was usual & common.—YOUNG *v.* GRAVENHURST (1910), 22 O. L. R. 291 ; *affd.* (1911), 24 O. L. R. 467.—**CAN.**

78 i. —— *Limitation of—Statutory authority.*]—The principle of *Rylands* v. *Fletcher*, No. 72, does not apply to persons properly exercising their statutory powers.—HANCOCK *v.* MIDLAND JUNCTION MUNICIPALITY CORPN. (1926), 28 W. A. L. R. 91.—**AUS.**

sk. *Liability of licensee for leakage—Although supply line constructed by consumer.*]—Where a supply line is constructed by the consumer the licensee remains liable for leakage of the current through the supply line.—RANGOON ELECTRIC TRAMWAY & SUPPLY CO., LTD. *v.* KING-EMPEROR (1933), I. L. R. 11 Ran. 162.—**IND.**

sg. *Standard of care required.*]—Cos. supplying electricity for lighting & power are engaged in an operation of a dangerous nature & are bound to exercise over their systems a supervision & diligence proportionate to the peculiar & dangerous character of the commodity in which they deal.—BLUMSEN *v.* NATIONAL LIGHT & POWER CO., LTD., [1934] 1 W. W. R. 257.—**CAN.**

PART II. SECT. 16.

so. *Assessment of franchise — Validity.*]—Applt. had a special franchise for supply of electric light & power to resp. town. It had only a distribution system within the town, its generating plant being elsewhere. The town assessed the pole line & distribution system at $3,000 & the franchise at $7,000. Applt. contended that, as it had no property in the town except that assessed at $3,000 as aforesaid, the $7,000 assessment on the franchise was illegal :—*Held :* the assessment did not violate sect. 413 (6) of Town Act, Sask, 1927. Assessment must be made of the land &, " in addition," of the special franchise according to the method of determination laid down. Any argument that might otherwise be based on " double assessment " was met by the express statutory provision.—CANADIAN UTILITIES, LTD. *v.* STRASBOURG TOWN, [1931] S. C. R. 72 ; 2 D. L. R. 43.—**CAN.**

sr. *Offices of Power Commission.*]—Nova Scotia Power Commission is expressly exempted from taxes for offices occupied under a lease, by Power Commission Act, 1930.—*Re* NOVA SCOTIA POWER COMMISSION & BANK OF NOVA SCOTIA, [1935] 3 D. L. R. 495 ; 9 M. P. R. 475.—**CAN.**

st. *Plant of Power Board.*]—The exemption of " machinery, whether fixed to the soil or not," from the definition of " rateable property " in Rating Act, 1925, s. 2, includes the whole of the plant of an electric-power board for the generation of electricity by water-power, & is not applicable only to the moving parts of such plant—namely, the turbines which drive the generator together with the generator itself.—GREY COUNTY *v.* GREY ELECTRIC-POWER BOARD, [1936] N. Z. L. R. 247.—**N.Z.**

sw. *Hydro-electric works—Basis of assessment.*]—In valuation of a hydro-electric works :—*Held :* the contractor's principle was properly applied, but no addition should be made to the capital cost in respect of pre-war construction, & a 33⅓ reduction should be made for depreciation & obsolescence.—BRITISH ALUMINIUM CO. *v.* INVERNESS-SHIRE ASSESSOR, [1937] S. L. T. 375.—**SCOT.**

PART II. SECT. 24.

sq. *What must be shown.*]—To establish the offence, under sect. 47 (1) of the Electric Light & Power Act, 1928, of fraudulently using electricity of any undertakers, it must clearly appear that the person charged used the electricity with intent to defraud the undertakers by depriving them of their electricity without due payment therefor.—FOSTER *v.* DAMYON, [1932] Argus L. R. 477.—**AUS.**

PART II. SECT. 25.

sa. *Property in apparatus on premises—Transformers, switches & bulbs.*]—*Held :* the words " dynamos, poles & wires " in 3 Edw. 7, 1903, c. 45, s. 20, refer to the equipment necessary to render electricity available for the ratepayers generally, as contrasted with equipment necessary to supply any individual ratepayer. The expression " all other machinery " construed *ejusdem generis* with the words " dynamos, poles & wires " does not include transformers, switches or electric bulbs in private houses or factories, & which would only benefit the individual ratepayers & not the general body of the ratepayers.—*Ex p.* LEWIS, [1923] 1 D. L. R. 146 ; 50 N. B. R. 446.—**CAN.**

PART II. SECT. 27.

sb. *Whether compulsory—Agreement with provision for arbitration confirmed by statute.*]—An agreement between a municipality & a co. for the supply of electric light & other services to the citizens of the municipality contained a clause for the adjustment of rates in future between the parties with provision for arbn., & an Act was passed in 1906

103a. —— **What amounts to employment by "authorised undertaking" — Employment when claim arises.**]—The claimant N. had been employed as an electrical engineer by a co. supplying electricity at P. The co. entered into an agreement with an authorised undertaking at N. to take electricity in bulk from that undertaking, & ceased itself to supply electricity from the date of the agreement. The co. then dismissed the claimant, having no further need for his services. He claimed to be entitled to compensation under Electricity (Supply) Act, 1919 (c. 100), s. 16, on the ground that he had suffered loss of employment in consequence of an agreement between authorised undertakers within that sect.; & he based the amount of his claim on the fact that he had been in receipt of an annual salary. The referee held, subject to the opinion of the ct. on a special case, that the claim of the claimant was correct, & that the amount of compensation to which he was entitled was £1,160:—*Held:* on argument of the special case, (1) although at the time when the agreement was made between the P. co. & the N. undertaking the co. was not an authorised undertaker, it had since become an authorised undertaker & was one at the time when this claim arose, & it was therefore covered by the reference in sect. 16 to authorised undertakers; & (2) on the facts, the claimant was employed at a weekly & not an annual salary, & the compensation due to him must be calculated accordingly.—NAYLOR *v.* PEACEHAVEN ELECTRIC LIGHT & POWER CO., LTD. (1931), 47 T. L. R. 535.

103b. —— **Employment at "annual salary"— What amounts to.**]—NAYLOR *v.* PEACEHAVEN ELECTRIC LIGHT & POWER CO., LTD., No. 103a, *ante*.

103c. —— **Meaning of "scheme."**]—Electricity (Supply) Act, 1919 (c. 100), s. 16, provided that "if . . . within five years from the date when under this Act . . . a scheme for the improvement of the supply of electricity in any district has come into operation," any servant who has been regularly employed in any authorised undertaking proves that in consequence of the scheme he has suffered loss of employment or diminution of wages he shall be entitled to compensation. The Electricity Comrs., in order to provide for the improvement of the existing organisation for the supply of electricity in a district, made an Order under sect. 7 of the Act of 1919, constituting an electricity district & establishing an Electricity Advisory Board for that district. The Order, which provided that the Scheme set out in the Sched. to the Order should operate & have effect, came into operation on June 4, 1924, having been previously confirmed by the Board of Trade & approved by resolutions passed by both Houses of Parliament. Under the Scheme set out in the Sched. the Advisory Board could only make recommendations to the constituent bodies composing it & to the Electricity Comrs. Para. 11 of the Scheme provided as follows: "(1) The main outlines of the Technical Scheme for the improvement of the supply of electricity in the district, to which the general approval of the Comrs. is hereby given, are set forth in the Second Annex hereto, which Annex shall be deemed to form part of this Scheme & shall have effect accordingly. (2) The Board shall take all steps within their power to secure the carrying into effect of the Technical Scheme, which may be modified or varied with the approval of the Comrs." The main outlines of the Technical Scheme in the Second Annex provided that certain generating stations, including a new one belonging to the Leicester Corpn., should be utilised under the Scheme & extended as might hereafter be determined, & that certain generating stations, including two belonging to the Leicester Corpn., should be utilised until the load could be transferred to the new stations. Those two stations were closed down in Aug. & Sept. 1930, & a number of workmen employed therein in consequence lost their employment or suffered a diminution of wages, & on Nov. 5, 1930, they claimed compensation from the Leicester Corpn. under Electricity (Supply) Act, 1919 (c. 100), s. 16. It was contended on their behalf that the word "scheme" in that section referred not to the Scheme in the Sched. to the Order, under which the Advisory Board was established, but to the Technical Scheme set out in the Annex, which provided for the closing of the two generating stations & under which they were closed:—*Held:* the word "scheme" in sect. 16 meant the Scheme for the improvement of the existing organisation for the supply of electricity in any district which the Electricity Comrs. had to approve or formulate under sect. 5 of the Act of 1919, & the Order giving effect to which in the present case came into operation under sect. 7 of that Act, as soon as it was confirmed by the Board of Trade & approved by resolutions of both Houses of Parliament, the last of which in the present case was June 4, 1924, & consequently the claims for compensation were out of time. Further, even if the word "scheme" in sect. 16 meant Technical Scheme, inasmuch as para. 11 of the Sched. provided that the Second Annex, in which the main outlines of the Technical Scheme were set out, should be deemed to form part of the Scheme & should have effect accordingly, therefore it came into operation on the same date as the Scheme.—BETTS *v.* LEICESTER CORPN., [1932] 1 K. B. 579; 101 L. J. K. B. 263; 146 L. T. 466; 96 J. P. 114; 48 T. L. R. 223; 76 Sol. Jo. 129; 30 L. G. R. 163.

106a. **Time for ascertaining value of property.**]—Under an Electric Lighting Confirmation Order Act, it was directed that a co. should sell, & a local authority might, & should purchase that part of the undertaking & business of the co., which was situate in the area of the local authority. After a notice to treat had been given the co. incurred a

confirming it & declaring it binding upon the parties:—*Held:* the effect of the Act was not to turn the clause in the agreement into a statutory obligation to go to arbn. but the Act only made valid & binding what without it might have been an invalid agreement.—RED DEER (CITY) *v.* WESTERN GENERAL ELECTRIC CO., [1924] 2 D. L. R. 317; 1 W. W. R. 1092; 20 Alta. L. R. 372.—**CAN.**

sd. *Authority of council to refer dispute to arbitration—Validity of consequent award—Power Commission Act, R. S. O.*, 1914 (c. 39), s. 16.]—BEACH *v.* HYDRO ELECTRIC POWER COMMISSION OF ONTARIO, [1927] 1 D. L. R. 277; [1927] S. C. R. 251.—**CAN.**

considerable amount of further capital expenditure in respect of the undertaking. The purchase-price having been left to arbitration & the arbitrators referring it to an umpire, the umpire in fixing the purchase price considered that the adjustment of the rights of the parties in respect of such capital expenditure, did not come within the award, & fixed the price without considering it. On an action brought by the co. for specific performance, it was submitted by the local authority that the co. could not show a good title to certain property comprised in the purchase. At the time of the hearing of the action the local authority were endeavouring to obtain leave to borrow the purchase money on the security of their rates:— *Held:* (1) the High Ct. in this action was the proper party to adjust the rights of the parties as to the additional capital expenditure, that an inquiry must be directed on the matter of the additional expenditure, the local authority being entitled to the undertaking of the co., as it was at the date of purchase subject to necessary fluctuations before completion, & that it could not have thrust on it an unduly enlarged undertaking; (2) there must be an inquiry as to the title of the co. to the property sold, for the purpose of seeing if the local authority were entitled to any compensation; (3) a decree for specific performance would be made in favour of the co., & a date fixed for completion; with liberty to apply to extend the date. —METROPOLITAN ELECTRIC SUPPLY CO., LTD. *v.* MARYLEBONE CORPN. (1903), 67 J. P. 382; 1 L. G. R. 673.

Annotation:—As to (1) **Apld.** Oxford Corpn. *v.* Oxford Electric Co., Ltd. (1930), 143 L. T. 577.

106b. ——.]—By the Oxford Electric Lighting Order, 1890, which was a provisional order granted by the Board of Trade under the Electric Lighting Acts, 1882 (c. 56), & 1888 (c. 12), power was given to the predecessors of applt. electric co. to supply electricity in O. In 1892 applt. co. became the successors of the undertakers named in the order of 1890. Under sect. 63 of the order the local authority, resp. corpn., could within forty-two years give notice requiring the undertakers to sell, subject to all subsisting rights & contracts, at a price to be ascertained by either of two methods, the one selected in this case being by capitalising the net profits of the undertaking at 5 per cent. *per annum* upon the capital of the co. shown by the books of the co. to have been properly expended on the undertaking at the date of the notice requiring the undertakers to sell. Sect. 4 provided that if the undertaking was purchased in accordance with the provisions of the order the local authority should from the date of such purchase be the undertakers. By sect. 8, the undertakers were required to keep accounts of the capital employed for the purpose of the business distinct from any other accounts. In accordance with sect. 63 notice was given by the corporation on Dec. 3, 1928, to the co. to sell. An action was brought by the corpn. to determine what was the proper method for ascertaining the purchase price to be paid by the corpn., & what was the date as from which the sale was effected & the corpn. became entitled to take the profits of the going concern. The corpn. claimed that the price should be arrived at by capitalising upon a basis which the order did not fix, a sum of 5 per cent. upon the capital of the co. shown by their books to have been properly expended upon the undertaking, upon the footing that that sum represented the annual net profits of the co.'s undertaking, & that they were entitled to the profits as from the date notice was given, namely, Dec. 3, 1928. The co. asserted that the price ought to be fixed by capitalising the annual net profits of their undertaking upon a 5 per cent. basis, in other words, to first ascertain what the annual net profits were & then the capital sum which, if invested at 5 per cent., would produce those profits, & that they were entitled to retain the profits down to the date when the purchase money had been ascertained, & the obligation of the corpn. to pay it had arisen. The judge accepted the view of the corpn. on both points, holding that the date from which the purchase was to take effect was not dependent on the fixing thereof by the Electricity Commissioners under Electric Lighting Act, 1888 (c. 12), s. 2, but was to be ascertained by reference to the provisional Order of 1890 alone:— *Held:* there would be difficult calculations necessitated by the co.'s method of arriving at the purchase price, & sect. 8 might be used as indicating that the method suggested by the corpn. was right & would simplify the calculation. Where there was no special indication of the date when property was to change hands the date of the transfer would be that of taking possession after a good title was shown, but here there were certain indications. The co. relied on sect. 4 of the order as showing that the date must be when the local authority acquired their rights & responsibilities upon payment of the purchase-money, but sect. 4 dealt with a different matter to sect. 63, & did not elucidate the interpretation of sect. 63, subclause 1, the clause elected as the basis for arriving at the price. The words "at the date of such notice" in that sect. showed that to be the crucial date.—OXFORD CORPN. *v.* OXFORD ELECTRIC CO., LTD. (1930), 143 L. T. 577; 94 J. P. 229; 29 L. G. R. 1, C. A.

106c. Purchase of part of undertaking—Price—Construction of provisional order.]—Applts. were statutory undertakers for the supply of electricity in the Sale Urban District & in parts of the Bucklow Rural District under Ashton-on-Mersey Electric Lighting Order, 1896, confirmed by the Electric Lighting Orders Confirmation (No. 6) Act, 1896. The question involved in the appeal was whether on the true construction of sect. 58 of the Ashton-on-Mersey Electric Lighting Order, 1896, the price to be paid by the Sale Urban District Council (resps.) on the purchase of the part of the undertaking authorised by the said order, which was situate within the district of resps., was a sum equal to the total expenditure on the whole undertaking or only a sum equal to the expenditure on a part of that undertaking. By sect. 58 of Ashton-on-Mersey Electric Lighting Order, 1896: "(4) The price payable by the local authority shall be ascertained as follows: If the accumulated profits of the undertaking shall at the expiration of the notice

amount to or exceed a return of seven & a half per cent. per annum on the total expenditure of the undertakers upon the undertaking including the cost of additions & alterations the purchase money shall be a sum equal to such total expenditure. If the accumulated profits of the undertaking shall at the said time not amount to such a return as aforesaid the purchase money shall be a sum equal to the total expenditure as aforesaid together with such further sum as will with the accumulated profits if any made by the undertakers amount to a return of seven & a half per cent. *per annum* as aforesaid " :— *Held:* in sect. 58 (4) of the 1896 Order, " total expenditure of the undertakers upon the undertaking " meant the total expenditure on the whole undertaking authorised by that order.—ALTRINCHAM ELECTRIC SUPPLY, LTD. *v.* SALE URBAN DISTRICT COUNCIL (1936), 154 L. T. 379; 100 J. P. 243; 80 Sol. Jo. 204; 34 L. G. R. 215, H. L.

Part IV.—Special Legislation—Power Acts.

111. *Add. Annotation:*—**Consd.** Southport Corpn. *v.* Birkdale District Electric Supply Co., [1925] Ch. 794.

111a. **Act authorising application by another party for power to supply energy within area of supply—Consent of undertakers unnecessary.**] —R. *v.* ELECTRICITY COMRS., *Ex p.* YORKSHIRE ELECTRIC POWER CO. (1927), 138 L. T. 230; 91 J. P. 191; 44 T. L. R. 26; 25 L. G. R. 524, D. C.

Part V.—Undertakings not Specially Authorised.

114. *Add. Annotation* :—**Consd.** *Re* Insole's Settled Estate, [1938] 3 All E. R. 406.

PART IV.

sf. *Power Commission Act, R. S. O.,* 1927—*Submission of question to electors Who— are "electors of the municipality."*]—ELDRIDGE *v.* SOUTHAMPTON, [1929] 3 D. L. R. 629; 62 O. L. R. 645.—**CAN.**

21
21

EQUITY.

Part II.—Equitable Maxims.

30. *Add. Annotation :*—**Refd.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

31. *Add. Annotation :*—**Refd.** *Re* Anchor Line (Henderson Bros.), Ltd., [1937] Ch. 483.

41. *Add. Annotation :*—**Consd.** Sutherland Publishing Co. *v.* Caxton Publishing Co., [1936] 1 All E. R. 177.

44. *Add. Annotations :*—**Refd.** Wright *v.* Morgan, [1926] A. C. 788 ; A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743 ; Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157 ; Solloway *v.* Johnson, [1934] A. C. 193.

59. *Add. Annotation :*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

63. *Add. Annotations :*—**Folld.** *Re* Arden, Short *v.* Camm, [1935] Ch. 326. **Refd.** I. R. Comrs. *v.* Raphael, I. R. Comrs. *v.* Ezra, [1935] A. C. 96.

63a. —— ——.]—When strict conveyancing phraseology is not employed in the limitation of an equitable estate in freehold hereditaments, the grant thereof will carry the fee simple, if the instrument upon its proper construction discloses a clear intention to pass it.—*Re* ARDEN, SHORT *v.* CAMM, [1935] Ch. 326 ; 104 L. J. Ch. 141 ; 152 L. T. 453 ; 79 Sol. Jo. 68.

76. *Add. Citation :*—132 L. T. 21.

86. *Add. Annotation :*—*As to* (1) **Apld.** Berry *v.* Berry, [1929] 2 K. B. 316.

101. *Add. Annotation :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

108. *Add. Annotation :*—**Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

133. *Add. Annotations :*—*Generally*, **Refd.** Maine & New Brunswick Electrical Power Co., Ltd. *v.* Hart, [1929] A. C. 631 ; Simpson *v.* Maurice's Exors. (1929), 45 T. L. R. 581.

140a. *S. P.* RICH *v.* SYDENHAM (1671), 1 Cas. in Ch. 202 ; 3 Rep. Ch. 74 ; 21 E. R. 733.

149. *Add. Annotation :*—**Refd.** Harrods, Ltd. *v.* Tester, [1937] 2 All E. R. 236.

159. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Wait, [1927] 1 Ch. 606. **Refd.** Cotton *v.* Heyl, [1930] 1 Ch. 510. *As to* (2) **Consd.** *Re* Wait, [1927] 1 Ch. 606. *Generally*, **Refd.** *Re* Gillott's Settlement, Chattock *v.* Reid, [1934] Ch. 97 ; *Re* Warren, Wheeler *v.* Mills, [1938] 2 All E. R. 331.

173. *Add. Annotations :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606 ; Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

177. *Add. Annotation :*—**Consd.** *Re* Blackwell, Blackwell *v.* Blackwell, [1929] A. C. 318.

186. *Add. Annotation :*—**Refd.** *Re* Blackwell, Blackwell *v.* Blackwell, [1929] A. C. 318.

PART I.

1 vi. ——.]—Even if an English equitable doctrine should be applied in any case so as to modify the effect of an Indian Act, which may well be doubted, the English doctrine of part performance affecting the provisions of an English statute as to the right to sue upon a contract, cannot be applied so as to create without writing an interest which Transfer of Property Act, s. 107, enacts can be created only by a registered instrument.—ARIFF *v.* JADUNATH MAJUMDAR (1931), 58 L. R. Ind. App. 91, P. C.—**IND.**

1 vii. ——.]—The law in India recognises no distinction between legal & equitable estates.—CHHATRA KUMARI DEVI *v.* MOHAN BIKRAM SHAH (1931), 58 L. R. Ind. App. 279, P. C.—**IND.**

1 viii. ——.]—The principles of equity as applied to the practice of the cts. in England should be observed in the cts. of British India in cases in which there is no law extant, which lays down a different procedure.—NABAKUMAR SINGH DUDHURIA *v.* FATEH SINGH NAHAR (1934), I. L. R. 61 Calc. 986.—**IND.**

1 ix. ——.]—The rules of equity that can be applied in India are well recognised rules which have been accepted in England. It is hardly open to an Indian ct. to invent a new rule of equity for the first time contrary to the principles laid down in English cts.—AJUDHIA PRASAD *v.* CHANDAN LAL, I. L. R., [1937] All 860. —**IND.**

22 i. *No interference with operation of statute.*]—It is not open to the cts. in India to introduce & enforce equities modifying the statute law.—BASLINGAWA *v.* CHINNAVA (1931), I. L. R. 56 Bom. 556.—**IND.**

22 ii. ——.]—The ct. cannot dispense with the express terms of a statute by construing them as subordinate to the considerations of equity.—*Re* MICHAELIS, [1933] 1 W. W. R. 465.—**CAN.**

PART II. SECT. 5. SUB-SECT. 1.

97 i. *Imposition of equitable terms—As condition of relief.*]—A person who seeks equity must do equity, & therefore one who demands performance of an agreement to hold property in trust for him must be content to have the agreement equitably construed.—*Re* REGAL PHONOGRAPH CO., *Ex p.* TRUSTEE, [1924] 1 D. L. R. 947 ; 4 C. B. R. 418.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.

ca. *Applicable to school corporation.*] —NIAGARA PUBLIC SCHOOL BOARD *v.* QUEENSTON WOMEN'S INSTITUTE, [1926] 4 D. L. R. 13 ; 59 O. L. R. 213. —**CAN.**

PART II. SECT. 6.

130 vi. —— ——.]—MCGUIRE *v.* PROSSER, [1925] 3 D. L. R. 866.—**CAN.**

PART II. SECT. 7.

157 i. *Application of maxim—Confined to persons entitled to enforce obligation.*]—When the obligation to do what ought to be done is not an absolute duty but only an obligation arising from contract, the maxim "equity looks at that as done which ought to have been done" is applicable only in favour of some person entitled to enforce the contract as against the person liable to perform it.—*Re* MICHAELIS, [1933] 1 W. W. R. 465.—**CAN.**

c i. —— *Executory agreement for lease—Acts of ownership—Ejectment.*]—ARIFF *v.* JADU NATH MAJUMDAR (1928), I. L. R. 55 Calc. 1090.—**IND.**

c ii. —— *Assignment of future property.*]—In the absence of any statutory enactment, the principle of *Collyer* v. *Isaacs*, No. 173, *supra*, should be adopted in British India.—CO-OPERATIVE HINDUSTHAN BANK, LTD. *v.* SURENDRANATH DE (1931), I. L. R. 59 Calc. 667.—**IND.**

PART II. SECT. 11, SUB-SECT. 1.

192 iv. —— ——.]—In April, 1923, pltf. co. entered into an agreement in writing with B. for a lease to the co. for five years of certain land. B. died in Feb. 1924. This action was brought on May 20, 1924, against the exors. of B. & against G., to whom the exors. had, in May, 1924, agreed to sell the same land ; & the M. co.. to which the land was (by direction of G.) conveyed by the exors. of B. on July 13, 1924, was added as a deft. Pltf. co. claimed specific performance of its agreement with B., a declaration that its rights were paramount to the rights of defts., in the land, & in the alternative damages for delay in carrying out the agreement & for breach thereof. A certificate of *lis pendens* was registered on May 21, 1924. On May 20, 1924, which was after the making of the second agreement, but before its registration on that day, defts. received notice of the claim made by pltf. co. Defts. G. & the M. co. contended that they were purchasers in good faith without notice of pltf. co.'s claim & were entitled to the benefit of the Registry Act, R. S. O. 1914, c. 124, ss. 71, 72, 73 & 75 :—*Held :* sect. 71 was applicable to the facts of the case ; at the time of the purchase these defts. had no actual notice of pltf. co.'s claim or agreement, & their agreement was registered before pltf. co.'s—in fact the latter was never registered at all—& the provisions of the Act afforded them a complete defence, but, leaving aside the provisions of the Registry Act, defts. had the better equity.—PARAMOUNT THEATRES, LTD. *v.* BRANDENBERGER, [1928] 4 D. L. R. 573 ; 62 O. L. R. 579.—**CAN.**

sb. *Defence of purchase for value without notice—Not pleaded—Right to raise on appeal.*]—The plea of *bonâ fide* purchase for value is one which ought to be specifically alleged & proved by

193a. —— —— **Purchase pendente lite.**]—A purchase *pendente lite*, though without actual notice, & for a valuable consideration, shall be set aside.—SORRELL *v.* CARPENTER (1728), 2 P. Wms. 482; 24 E. R. 825, L. C.

Annotations:—**Consd.** Bellamy *v.* Sabine (1857), 1 De G. & J. 566; Wigram *v.* Buckley, [1894] 3 Ch. 483. **Refd.** Metcalfe *v.* Pulvertoft (1813), 2 Ves. & B. 200.

219. *Add. Annotation:*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

233a. —— ——.]—Pltf. filed a bill to have a conveyance set aside. Deft. had conveyed the estate to mtgees.:—*Held:* they, as purchasers for valuable consideration without notice, could not be interfered with.—BULLEY *v.* BULLEY (1874), 9 Ch. App. 739; 44 L. J. Ch. 79; 30 L. T. 848; 22 W. R. 779, L. JJ.

239a. —— ——.]—HARRISON *v.* FORTH (1695), Prec. Ch. 51; 1 Eq. Cas. Abr. 331; 24 E. R. 26.

252. *Annotations:*—For "**Refd.** Stickney *v.* Keeble [1915] A. C. 386" read "**Consd.** Stickney *v.* Keeble, [1915] A. C. 386."

Add Annotations:—**Apld.** Bernard *v.* Williams (1928), 139 L. T. 22. **Refd.** Lock *v.* Bell [1931] 1 Ch. 35.

253. *Add. Annotations:*—**Consd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277; Lock *v.* Bell, [1931] 1 Ch. 35. **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22; Harold Wood Brick Co. *v.* Ferris, [1935] 2 K. B. 198; Pincott *v.* Moorstons, Ltd. (1936), 80 Sol. Jo. 207.

255. *Add. Annotation:*—*As to* (1) **Refd.** Watson & Everitt *v.* Blunden (1934), 18 Tax Cas. 402.

Part III.—Equitable Jurisdiction or Equitable Relief.

258a. *S. P.* DREWRY *v.* BARNES (1826), 3 Russ. 94; 5 L. J. O. S. Ch. 57; 38 E. R. 511.

290a. ——.]—An agent cannot file a bill against a principal, or a principal against an agent, for an account, except in the case of complicated accounts, where there is an insufficient remedy at law.

Pltf. filed a bill against persons who claimed various interests in a fund then in his hands, praying for an account, & that the rights of such persons might be ascertained, & for an injunction to restrain an action which had been brought against him by one of such persons for the recovery of the fund, to which action the pltf. had pleaded equitable pleas. Pltf. admitted by his bill that he held the fund as agent or trustee, & himself claimed an interest. Upon demurrer by the different defts. to the bill for want of equity:—*Held:* pltf. was entitled to maintain his bill, being in the nature of a bill of interpleader, to ascertain his rights as well as those of third parties. The demurrers were, therefore, overruled.—BLYTH *v.* WHIFFIN (1872), 27 L. T. 330.

292a. —— —— **Pleading.**]—STURTON *v.* RICHARDSON (1844), 13 M. & W. 17; 2 Dow. & L. 182; 13 L. J. Ex. 281; 8 Jur. 476; 153 E. R. 7; *sub nom.* RICHARDSON *v.* STURTON, 3 L. T. O. S. 164.

Annotations:—**Refd.** Eason *v.* Henderson (1848), 12 Q. B. 986; Henderson *v.* Eason (1851), 17 Q. B. 701.

293a. —— **One tenant in common locking gate & taking away grass.**]—*Held:* the circumstances did not amount to an ouster, nor to a destruction of the common property, & the only remedy was a proceeding for an account.—JACOBS *v.* SEWARD (1872), L. R. 5 H. L. 464; 41 L. J. C. P. 221; 27 L. T. 185; 36 J. P. 771, H. L.

Annotation:—**Refd.** Birkin *v.* Smith, [1909] 2 K. B. 112.

303. *Add. Annotation:*—**Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

329. *Add. Annotation:*—**Refd.** Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465.

347. *Add. Annotation:*—**Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

358. *Add. Annotation:*—**Refd.** *Re* Barratt, National Provincial Bank *v.* Barratt, [1925] Ch. 559.

412. *Add. Annotation:*—**Refd.** *Re* Lynch-White, Smith *v.* Lynch-White, [1937] 3 All E. R. 551.

414a. —— ——.]—*Re* BATE, PUBLIC TRUSTEE *v.* BATE, [1938] 4 All E. R. 218.

those who rely on it. Where, therefore, defts. did not plead that they were *bonâ fide* purchasers for value without notice & no issue was raised on this point, which was for the first time taken in argument in the appellate ct.:—*Held:* the defence was not available to defts. at the appellate stage.—MURAT SINGH *v.* PHEKO SINGH (1928), I. L. R. 7 Pat. 584.—**IND.**

PART III. SECT. 3, SUB-SECT. 1.

sc. *Right to maintain action—Disputed allegations raised by pleadings—Whether preliminary points raised.*]—Pltf. having brought an action against deft. for an account of moneys received by deft., an order was made in chambers for an account under the Rules of the Supreme Ct., 1909, Ord. 15, r. 1. Prior to the order being made pleadings had been delivered, & in his defence deft. made certain allegations which were disputed by pltf.:—*Held:* these allegations did not raise preliminary points to be decided before the taking of the accounts, but points which would arise upon the taking of the accounts.—LE MESURIER *v.* CONNOR, [1927] W. A. L. R. 66.—**AUS.**

PART III. SECT. 3, SUB SECT. 8.—B. (a).

sd. *Materiality of error—Parties in fiduciary relationship.*]—The cts. will grant permission to reopen an account that has been settled for errors less considerable than usual where the parties stand in a fiduciary relationship.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART III. SECT. 3, SUB-SECT. 8.—B. (b).

318 iv. ——.]—Where a single fraudulent error is discovered in settled accounts, the proper order for the ct. to make is for the reopening of the whole account.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART III. SECT. 3, SUB-SECT. 8.—C.

362 ii. —— *For what mistakes.*]—Where an error of importance has been proved in an account stated, though such error may not be important enough to justify the opening of the settled accounts, the ct. should permit the accounts to be surcharged & falsified generally.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

362 iii. —— —— *Parties in fiduciary relationship.*]—The cts. will grant permission to surcharge & falsify an account that has been settled for errors less considerable than usual where the parties stand in a fiduciary relationship.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

366 i. *Overcharge—Acquiesced in.*]—Where an overcharge has been paid by a principal with knowledge of the overcharge & without protest, he cannot be permitted to question such payment after the accounts have been settled.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART III. SECT. 7.

439 i. *General rule.*]—FORT FRANCES PULP & PAPER CO. *v.* SPANISH RIVER PULP & PAPER MILLS, LTD., [1931] 2 D. L. R. 97.—**CAN.**

Part IV.—Exercise of Equitable Jurisdiction by the High Court.

494. *Add. Annotations :*—**N.F.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

495. *Add. Annotations :*—**N.F.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

495a. —— ——.]—In an action for an account where the plea of limitation is raised, a reply that there has been a fraudulent concealment of the true facts is a good answer to the plea, & the doctrine of equity will apply & time only begin to run from the time the truth became known.—LEGH *v.* LEGH (1930), 143 L. T. 151.

Annotation :—**Folld.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

495b. —— ——.]—Since the Jud. Acts the equitable principle that active & fraudulent concealment on the part of deft. constitutes a good reply to the Stat. Limitations is applicable even to pure common law causes of action; & even without the element of active concealment the Statute is no answer to a claim based on fraud.

In 1921 deft. sold pltf. plum trees warranted as "Purple Pershore." Pltf. some years afterwards, finding that the trees were not "Purple Pershore," brought an action in 1928 claiming damages for breach of warranty. Deft. denied the breach & pleaded the Stat. Limitations. In his reply pltf. alleged fraudulent representation by deft. & also fraudulent concealment of the breach :—*Held :* either of these pleas was relevant in answer to the Stat. Limitations. However, pltf. upon the evidence had failed to establish the charge of fraud.—LYNN *v.* BAMBER, [1930] 2 K. B. 72; 99 L. J. K. B. 504; 143 L. T. 231; 46 T. L. R. 367; 74 Sol. Jo. 298.

497a. —— **Variation of specialty by parol agreement.**]—Since by Jud. Act, 1873 (c. 66), s. 25 (11), as re-enacted by Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 44, in the case of a conflict between the rules of law & the rules of equity the rules of equity are to prevail, a contract under seal may be varied by a subsequent parol agreement.—BERRY *v.* BERRY, [1929] 2 K. B. 316; 98 L. J. K. B. 748; 141 L. T. 461; 45 T. L. R. 524, D. C.

501. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

504. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Wait, [1927] 1 Ch. 606.

506. *Add. Annotation :*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

Part VI.—Priority.

509a. ——.]—ANON. (1675), 2 Cas. in Ch. 208; 22 E. R. 913.

511. *Add. Annotations :*—**Apld.** Commonwealth Trust *v.* Akotey, [1926] A. C. 72. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

591. *Add. Annotation :*—*As to* (2) **Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

595. *Add. Annotation :*—*Generally*, **Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

Part VII.—Notice.

643. *Add. Annotations :*—*As to* (1) **Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475. *Generally*, **Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

647. *Add. Annotation :*—**Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

SECT. 3.—**CONSTRUCTIVE NOTICE.**

(Vol. XX., p. 316.)

Conveyancing Act, 1882 (c. 39), s. 3, is now replaced by Law of Property Act, 1925 (c. 20), s. 199.

PART IV. SECT. 2.

81. *In Ontario—Deprivation of right to present claim to Department of Crown Lands.*]—JOHNSTON *v.* STEACY, [1926] 4 D. L. R. 902; 59 O. L. R. 475.—**CAN.**

PART IV. SECT 4.

86. *Judgment in Supreme Court of Province.*]—A judgment recovered in the Supreme Ct. may be attacked in the Ct. of Ch.—DAN SMALLMAN *v.* WOODSIDE & BRYAN, [1932] 4 M. P. R. 1.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 1.—A.

513 ii. —— ——.]—Where two claimants to a fund have equal rights in equity to that fund, and one of the claimants has the legal title to it, the latter's claim will prevail over that of the other.

H., a dealer in motor cars, agreed to buy a car from the owner thereof for cash provided pltf. co. would finance the purchase. Accordingly, under an arrangement made with pltf. co. he had a lien contract executed by the owner as vendor & himself as purchaser. This contract, which was assigned by the owner to the co., was discounted by it. H. then sold & delivered the car to one K. under a lien contract which deft. co., having no notice of pltf. co.'s rights, discounted on H.'s assignment & delivery of the contract to it. H. absconded & the present action between the two cos. was brought to determine which of them was entitled to the unpaid portion of the purchase-price due from K. :—*Held :* K. was entitled to enforce his contract of purchase even as against pltf. co., & as between the two cos. deft., having the possession & the right to retain the possession of H.'s contract with K., had the superior right to receive the payments thereunder.—IMPERIAL FINANCE CORPN., LTD. *v.* FIDELITY TRUST CO., [1930] 2 W. W. R. 769; 4 D. L. R. 827; *affd.*, [1931] 2 W. W. R. 720; 3 D. L. R. 801; 39 Man. L. R. 573.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.—A.

614 i. *Time alone insufficient to give priority.*]—A widow & administratrix had carried on the business of deceased, & appointed her son to act as manager, giving him cheques blank as to the amount, & signed on behalf of the trading co. With this money the son purchased various securities which he lodged with the bank to secure overdrafts for himself & for the co. The next of kin sought a declaration that the securities were assets of deceased, & were held by the bank in trust for them :—*Held :* the equitable estate of the bank took precedence over the equity of the next of kin in spite of the latter's priority of time.—SCOTT *v.* SCOTT (1924), 58 I. L. T. 137.—**IR.**

649a. ——.]—The doctrine of constructive notice operates adversely to a person who neglects to inquire; it does not entitle such a person to claim for his own advantage to be treated as having knowledge of the facts which inquiry would have disclosed.—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, [1927] 1 K. B. 246; 96 L. J. K. B. 25; 136 L. T. 140, C. A.; *affd.*, [1928] A. C. 1, H. L.

Annotations:—**Apld.** Evans *v.* Employers' Mutual Insurance Association, Ltd. (1935), 152 L. T. 333. **Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., Ltd., [1929] 2 K. B. 356.

659. *Add. Annotations:*—**Apld.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28. **Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356; The Njegos, [1936] P. 90.

661a. —— ——.]—As a general rule the equitable doctrines of constructive notice are not to be extended to purely commercial transactions. —GREER *v.* DOWNS SUPPLY CO., [1927] 2 K. B. 28; 96 L. J. K. B. 534; 137 L. T. 174, C. A.

671. *Add. Annotation:*—**Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

676. *Add. Annotation:*—**Distd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715.

685. After this case add:—

Statutory restriction on inquiry—Exclusion of constructive notice.]—*See* Law of Property Act, 1925 (c. 20), s. 44 (2)—(5).

686. *Add. Annotation:*—*Generally*, **Refd.** Manchester & County Bank *v.* Monk (1929), 73 Sol. Jo. 465.

687. *Add. Annotation:*—*As to* (1) **Refd.** Kreditbank Cassel G.m.b. H. *v.* Schenkers, [1926] 2 K. B. 450.

688a. —— **Purchase of property from company—Property charged with annuity—Sale to company by executors as "beneficial owners."**]—Testator, who died in 1914, bequeathed his business & other assets & devised freehold property to his two sons, charged with an annuity in favour of his widow of £300 *per annum*. In 1923, the sons, who were also the exors. of the will, formed a co., & "as beneficial owners" conveyed the property to the co. In 1925 the co. sold the property to J. The conveyance recited that the co. were seised in fee simple in possession, free from incumbrances, & it purported to convey a like estate to J. The co. afterwards became insolvent. The annuitant claimed that the co. were liable to pay the annuity, & also that J. held the property subject to the charge, by reason of the fact that the circumstances attending the conveyance to him should have put him upon inquiry as to its existence:—*Held:* (1) the co. had notice of the charge & were liable, & debenture holders of the co. could not take the co.'s assets free from the liability, but (2) J. had not been put upon inquiry either (*a*) because the sons had purported to convey not as executors but as "beneficial owners"; or (*b*) by the fact that the assignment to the co. was one not only of testator's freeholds & leaseholds, but also of leaseholds acquired since his death; or (*c*) because in the deed assigning to the co. there was a recital which showed that a leasehold had been deposited with a bank to secure an overdraft; or (*d*) because in the deed of 1923, the seal of the co. as purchasers, was fixed in the presence of two directors, one of whom was one of the sons. These facts did not amount to constructive notice to J. that the sons were not selling as exors., & he was therefore entitled to hold the property freed from the annuity.—PARKER *v.* JUDKIN, [1931] 1 Ch. 475; 100 L. J. Ch. 159; 144 L. T. 662, C. A.

688b. —— —— —— **Assignment to company of leaseholds acquired since testator's death.**]—PARKER *v.* JUDKIN, No. 688a, *ante*.

688c. —— —— —— **Recital in assignment to company.**]— PARKER *v.* JUDKIN, No. 688a, *ante*.

688d. —— —— —— **Assignment to company in presence of two directors—One director executor.**]—PARKER *v.* JUDKIN, No. 688a, *ante*.

699. *Add. Annotations:*—**Refd.** Torbay Hotel *v.* Jenkins, [1927] 2 Ch. 225; White *v.* Bijou Mansions, Ltd., [1937] 3 All E. R. 269.

719a. —— ——.]—HALL *v.* SMITH (1808), 14 Ves. 426; 33 E. R. 584.

Annotations:—**Consd.** Pope *v.* Garland (1841), 4 Y. & C. Ex. 394; Drysdale *v.* Mace (1854), 2 Sm. & G. 225; Grosvenor *v.* Green (1858), 28 L. J. Ch. 173; Phillips *v.* Miller (1875), L. R. 10 C. P. 420. **Refd.** Adams *v.* Lambert (1838), 2 Jur. 1078; Carroll *v.* Keays, Keays *v.* Carroll (1873), 22 W. R. 243.

727. *Add. Annotations:*—**Apld.** Melzak *v.* Lilienfeld, [1926] Ch. 480; Flexman *v.* Corbett, [1930] 1 Ch. 672.

729. *Add. Annotation:*—**Apld.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

746. *Add. Annotation:*—**Refd.** *Re* Des Reaux & Setchfield's Contract, [1926] Ch. 178.

755a. **Stock standing in joint names—Whether notice of trust.**]—The fact that stock or shares are standing in the names of joint owners is not notice to persons buying, or lending money on the stock or shares that the owners are trustees, nor does it put on such persons the duty of inquiring whether the property is held in trust.—KAEMENA *v.* CENTRAL BANK OF LONDON, LTD (1888), 4 T. L. R. 657.

759. For "(1836)" read "(1839)."

760a. **Notice of mortgage—After payment of purchase-money countermanded—Countermand withdrawn.**]—An owner of a house mortgaged to first, second & third mtgees. He then sold it, subject to the first two incumbrances only, to a purchaser who paid for it & took the assignment, but owing to misgivings he countermanded payment of the cheque, & then for the first time received notice of the existence of the third mtge. Being, however, threatened with a summons in bkpcy., he withdrew his countermand, & the cheque was

---

PART VII. SECT. 3, SUB-SECT. 1.

648 i. *Nature of doctrine.*]—HENDERSON *v.* GRAVES (1856), 2 E. & A. 9.—CAN.

PART VII. SECT. 3, SUB-SECT. 2.

659 i. *Commercial transactions—Doctrine not applicable.*]—Attention drawn to *Greer* v. *Downs Supply Co.*, No. 661a, *supra*.—R. *v.* MCPHERSON & QUIGLEY & UNION BANK OF CANADA (Alta.), [1927] 4 D. L. R. 937; 3 W. W. R. 416.—CAN.

PART VII. SECT. 3, SUB-SECT. 6.

730 iv. ——.]—Possession is in itself notice of the title under which such possession is retained which any one dealing with the property cannot, without risk, ignore.—NATIONAL BANK OF AUSTRALASIA, LTD. *v.* JOSEPH, [1921] 1 W. W. R. 379.—CAN.

she was entitled to have all the property of testator, including the reversionary interest in the annuity, treated as converted at the time of testator's death.—JOHNSON *v.* ROUTH (1857), 27 L. J. Ch. 305; 6 W. R. 6.

Annotation :—**Refd.** Harrington (Countess) *v.* Atherton (1864), 4 New Rep. 206.

1049a. —— ——.]—Testator devised his real & personal estate to trustees, charging them not to sell, if they could avoid it, the real property till the end of nineteen years; but if they should sell part, to apply the proceeds to pay off his mortgage debts, & to hold the residue till the end of the nineteen years, when the proceeds were to be paid to his children, A., B. & C. in certain shares. The trustees declined to accept the trust. All the *cestuis que trust* then executed a deed of trust, by which they agreed to divide the property into two classes. Class 1 was to be sold immediately, to pay testator's debts. Class 2 was to be held by the trustees named, in trust for the purposes of the will, so far as not inconsistent with the trust deed, to pay the rents accruing to the parties as entitled under the will, & with power to a majority of the trustees to sell even within the nineteen years, at the end of which period, however, the property was to be sold absolutely, & the proceeds divided as the will directed. B. died before the end of the nineteen years: —*Held :* (1) under the trust deed there was a conversion out & out of class 1 from the date of that deed; but that there was a conversion of class 2 only at the end of the nineteen years, or, if sold before that period, then at the time of such sale; & the intermediate rents of the part remaining unsold went to those entitled to the real estate; (2) *semble :* under the will taken by itself, there was no conversion till the end of the nineteen years of that part of the real property which was then unsold, any conversion possible before that period being only for a certain limited purpose, that is, to pay debts of testator.—FERRIE *v.* ATHERTON (1852), 20 L. T. O. S. 170, H. L.

1061a. —— **Discretion to sell immediately for limited purpose.**]—FERRIE *v.* ATHERTON, No. 1049a, *ante*.

1065. *Add. Annotation :*—**Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

1068a. ——.]—When property is given by will on trusts for conversion & investment, & to hold the investments on trust for a tenant for life & remaindermen, with a discretionary power to the trustees to postpone the conversion, & a provision that the income until conversion is to go to the tenant for life, that provision extends to property, such as a reversionary interest, which is not producing income as well as to property of a wasting character.

In adjusting the rights as between tenant for life & remaindermen in respect of a reversionary interest which ought to have been but has not been converted by trustees, interest should be calculated at the rate of 3 per cent.—ROWLLS *v.* BEBB, *Re* ROWLLS WALTERS *v.* TREASURY SOLICITOR, [1900] 2 Ch. 107; 69 L. J. Ch. 562; 82 L. T. 633; 48 W. R. 562; 44 Sol. Jo. 448, C. A.

Annotations :—**Consd.** *Re* Woods, Gabellini *v.* Woods, [1904] 2 Ch. 4; *Re* Baker, Baker *v.* Public Trustee, [1924] 2 Ch. 271. **Refd.** *Re* Hargreaves, Hargreaves *v.* Hargreaves (1902), 86 L. T. 43; *Re* Whiteford, Inglis *v.* Whiteford, [1903] 1 Ch. 889; *Re* Beech, Saint *v.* Beech, [1920] 1 Ch. 40.

1079. *Add. Annotations :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617; *Re* Rawlinson, Wilson *v.* Banks (1934), 78 Sol. Jo. 602.

1180. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard, [1933] Ch. 29.

1184. *Add. Annotation :*—**Folld.** *Re* Walpole, Public Trustee *v.* Canterbury, [1933] Ch. 431.

1187a. —— **Income & accumulation from land—Heir-at-law entitled.**]—By a codicil to her will, a testatrix left three-fourths of her residuary estate, subject to certain payments, upon trust to apply the income for the benefit, maintenance & support of her daughter, who was of unsound mind, & during the lifetime of her daughter to accumulate all the residue not applied under the discretionary trust by way of compound interest by investing the surplus income & the resulting income thereof in certain investments & for certain purposes mentioned in the codicil. Testatrix died in 1901, & in 1922, twenty-one years after her death, the trusts for accumulations determined, & as from that date they were held to be undisposed of. The question then arose whether: (*a*) the undisposed income & accumulations derived from the income of the residuary real estate; & (*b*) the income & accumulations derived from the income of accumulations of income of the real estate were divisible among the next-of-kin of the testatrix, or whether they went to the representative of her heir-at-law, who died in 1931 :—*Held :* the personal representative of the heir-at-law of the testatrix was entitled to (*a*) & (*b*).—*Re* WALPOLE, PUBLIC TRUSTEE *v.* CANTERBURY, [1933] Ch. 431; 102 L. J. Ch. 209; 148 L. T. 526.

1232. *Add. Annotation :*—**Consd.** *Re* Walpole, Public Trustee *v.* Canterbury, [1933] Ch. 431.

1268. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475.

1283a. Reconversion by foreclosure—Effect of Conveyancing Act, 1911 (c 37), s. 9—Intention to accept reconversion.]—Testator, who died in 1861, devised his real estate in strict settlement & empowered the trustees, with the consent of the tenant for life, to sell the same or any part thereof, & directed them with such consent to invest the proceeds of sale in the purchase of freehold land or in the public funds or on real securities to be respectively settled & held to & upon such uses & trusts corresponding as nearly as might be with the uses & trusts therein declared concerning the land sold, with power for the trustees from time to time with the like consent to vary such investments

---

PART IX. SECT. 3, SUB-SECT. 2.

1062 i. *Interest payable to tenant for life.*]—*Re* RUTHERFORD, [1933] 4 D. L. R. 222; O. R. 707.—CAN.

PART IX. SECT. 4, SUB-SECT. 3.—E. ss. *Settled Land Act*, 1882 (*c.* 38), *s.* 22 (5)—*Construction.*]—*Held :* this sub-sect. by its terms applies in favour of persons for, & to whom, the land, if not disposed of, would have been held & gone under the settlement. Once the beneficial interest has become absolutely vested in possession in a remainderman, the settlement has come to an end, & any subsequent devolution from such remainderman cannot be said to be under the settlement.—BENNETT *v.* LUCAS, [1929] I. R. 606.—IR.

In the events which happened the material limitations of the will resulted as follows: To the use of E., T. & J. successively for life in the order named, with remainder to the use of E., T. & J. as tenants in common in tail general, with cross-remainders between them in tail general, with remainders over. In 1867 part of the land was sold & the proceeds invested in mtge. of freehold land. In 1871 E. died leaving an only daughter. In 1881 T. died a bachelor. In 1898 the surviving trustee foreclosed, & in 1899, by a deed appointing a new trustee to which J. was party, the foreclosed land was conveyed to the uses & upon the trusts of the will as if the same had been thereby specifically devised. On the death of J. in 1916 without issue, his executrix, who was also executrix of T., claimed that the foreclosed land in fact represented personalty & was subject to a trust for sale by Conveyancing Act, 1911 (c. 37), s. 9, & that she was entitled to two-thirds of the proceeds. The only daughter of E. claimed the foreclosed land as tenant in tail under the limitations of the will, E., T. & J. never having disentailed:—*Held*: (1) owing to the power to vary investments, the crucial time for determining the character of each investment was the death of J., the surviving tenant for life, & that the mtges. having been then foreclosed the mere foreclosure operated as a reconversion of the property into realty, & that there was no equity on the part of any *cestui que trust* under the will to have the personal character of the investment restored to it; (2) by the deed of 1899, to which all the parties able to control the character of the investment of the trust fund were parties, the foreclosed land was duly adopted as real estate & settled to the uses of the will; (3) although Conveyancing Act, 1911 (c. 37), s. 9 (5), may apply to land foreclosed before the commencement of the Act & remaining at the passing of the Act in the condition determined by the foreclosure, it would be unreasonable to extend the retrospective operation of the section to a case like the present where previously to the commencement of the Act the foreclosed land had been definitely accepted & settled as land & rights acquired thereby; (4) even if, by virtue of sub-sect. 5, Conveyancing Act, 1911 (c. 37), s. 9, was to be deemed to apply to foreclosed lands as from the date of foreclosure, the terms of both sub-sects. 3 & 4 had in the present case been complied with sufficiently to prevent the reconversion of the land into money under sub-sects 1 & 2; (5) the foreclosed land had become legally vested in the daughter of E. in tail as the heir in tail of E.—*Re* BOGG, ALLISON *v.* PAICE, [1917] 2 Ch. 239; 86 L. J. Ch. 536; 116 L. T. 714.

Annotation:—*Generally*, **Refd.** *Re* Twopeny, Monro *v.* Twopeny (1924), 130 L. T. 816.

1290. Add. citation:—
affg. S. C. *sub nom.* COOKSON *v.* REAY (1842), 5 Beav. 22.

1296. *Add. Annotation:*—**Refd.** *Re* Rawlinson, Wilson *v.* Banks (1934), 78 Sol. Jo. 602.

1316a. Contingent reversionary interest—In personalty.]—Testator, who was entitled in reversion expectant upon the determination of his wife's interest &, contingently upon no issue of the marriage living to attain a vested interest, to the proceeds of sale of certain real estate conveyed by him, upon his marriage in 1880, to trustees upon trust for sale, died in 1886 in his wife's lifetime, having devised the real estate, which had remained unsold, to the use of his wife for life with remainders over by way of legal limitations in strict settlement. There was no issue of the marriage. The real estate was not sold in the lifetime of the wife, who accepted the benefits under her husband's will & died in 1921:—*Held*: inasmuch as at his death testator's interest was a contingent reversionary interest in personalty, contingent upon the event of no posthumous child being born who might attain a vested interest, & reversionary because it was expectant upon his wife's life interest, testator was not competent to effect a reconversion by his will, because he never became entitled to an absolute interest in the property before his death, & the property passed under his will as personalty.—*Re* STURT, DE BUNSEN *v.* HARDINGE, [1922] 1 Ch. 416; 91 L. J. Ch. 289; 126 L. T. 460; 66 Sol. Jo. 236.

1410. *Add. Annotation:*—**Consd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

Part X.—Election.

1419. *Add. Annotation:*—*As to* (2) **Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

1424a. —— **Legacy to heir-at-law—Will inoperative to pass real estate.**]—C., by his will, gave all he should leave in the world to trustees to pay his debts & legacies, among which was £1,000 to A., his brother & heir, & as to the residue in trust for natural children. Testator had real estate in Nova Scotia, but, as there were no witnesses to his will, it descended to the heir-at-law:—*Held*: supposing the words of the will would have passed real estate, if attested in due form, which was doubted, A. was entitled to his legacy, & also to the real estate.—FARQUHARSON *v.* COLVILLE (LORD) (1772), Rom. 129, L. C.

1428a. —— ——.]—GAINER *v.* CUNYNGHAM (1750), 1 Bli. 27, n.; 4 E. R. 10, L. C.

Annotation:—**Consd.** Ker *v.* Wauchope (1819), 1 Bli. 1.

1438a. —— ——.]—Where by her will a wife expressly refrained from exercising a power of appointment, which she had, but abstained

---

PART IX. SECT. 9, SUB-SECT. 2.—A.

1284 i. *Election by person absolutely entitled.*]—Although there may be a trust for conversion, the beneficiaries may, if absolutely entitled, elect to take the property in its actual state.—CRAWFORD *v.* LUNDY (1876), 23 Gr. 244.—CAN.

PART IX. SECT. 9, SUB-SECT. 2.—E. (c).

1349 i. *Election on behalf of infant—By court.*]—Where circumstances make it highly advantageous for an infant devisee, an order will be made on his behalf granting election, to take property in its actual state before its conversion *de facto* where the will directs conversion.—*Re* CANN (1916), 34 W. L. R. 296; 10 W. W. R. 447; 26 Man. L. R. 285.—CAN.

from extinguishing it & confined the operation of her will to her own property, & there was nothing in the husband's will which either put the wife to her election or put her in the position of seeking at the same time to approbate & to reprobate its provisions:—*Held:* she was in no way precluded from exercising her power of appointment by a subsequent will.—GRAY *v.* PERPETUAL TRUSTEE CO., [1928] A. C. 391; 97 L. J. P. C. 85; 139 L. T. 469; 44 T. L. R. 654, P. C.

1462. *Add. Annotation:*—**Refd.** *Re* Williams, Williams *v.* All Souls, Hastings (Parochial Church Council), [1933] Ch. 244.

1516a. Two claims under marriage settlement—One claim statute-barred but satisfied by legacy in will—Other claim ignored by will.]—A testator by a settlement made on his first marriage in 1884 covenanted (*a*) that he would take out a policy of insurance of £2,000 payable on his death to the trustees of the settlement, & (*b*) that he would by his will bequeath to the same trustees all his interest in every copyright to which he was entitled. Testator never took out a policy of insurance, but by his will he bequeathed to the trustees of the settlement £2,000 in full satisfaction of all obligations arising out of the covenant to effect such a policy, & he left the residue of his property, which included the copyrights, by way of a general bequest to his widow, who was a second wife & not a party to the marriage settlement. Testator died in 1935, & a summons was taken out to determine whether the trustees of the settlement could claim both the £2,000 under the will & an assignment to them of the copyrights or damages in lieu thereof, or whether they were put to their election between the two claims:—*Held:* (1) the covenant applied to all copyrights to which testator was entitled at the date of his death; (2) if the trustees claimed the benefit under the will, they ought on the general principles of election to give effect to the whole will, including testator's plain intention that the copyrights should not go to them, although any remedy upon the covenants in the marriage settlement was statute-barred.—*Re* FLETCHER'S SETTLEMENT TRUSTS, MEDLEY *v.* FLETCHER, [1936] 2 All E. R. 236; 80 Sol. Jo. 486.

1552a. Provision for forfeiture in case of dispute—Election.]—*Re* WHITWELL, SENIOR *v.* WILSON, [1890] W. N. 171.

Annotation:—**Refd.** Haynes *v.* Foster, [1901] 1 Ch. 361.

1578a. ——.]—**Where successive irrevocable appointments are made in favour of the same person, the latter appointment will be held to be in substitution for the former, if such appears to be the intention of the donee of the power, & the person in whose favour the appointments are made will be compelled to elect between them.**—ENGLAND *v.* LAVERS (1866), L. R. 3 Eq. 63; 15 W. R. 51.

Annotations:—**Expld.** *Re* Tancred's Settlmt., Somerville *v.* Tancred, *Re* Selby, Church *v.* Tancred, [1903] 1 Ch. 715. **Refd.** *Re* Eardley's Will, Simeon *v.* Freemantle, [1920] 1 Ch. 397.

1580a. Appointment to object within extent of power—No object in fact in existence—No election.]—BULWER *v.* HOARE (1825), 3 L. J. O. S. Ch. 227.

1581. *Add. Annotation:*—**Refd.** *Re* Beresford's Will Trusts, Sturges *v.* Beresford, [1938] 3 All E. R. 566.

1581a. Invalid delegation of power—Gifts conferred on persons entitled under appointment exercised under delegated power—No election.]—*Re* STEVENS (1912), 134 L. T. Jo. 83.

1601. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Beresford's Will Trusts, Sturges *v.* Beresford, [1938] 3 All E. R. 566.

1619a. —— **Marriage settlement—Husband not entitled to elect against interests of other parties to marriage settlement.**]—CROKER *v.* MARTIN (1827), 1 Bli. N. S. 573; 1 Dow. & Cl. 15; 4 E. R. 987, H. L.

Annotation:—**Consd.** Anstey *v.* Newman (1870), 39 L. J. Ch. 769.

1637a. —— —— ——.]—Testator having directed his exors. to sell whatever real estates he might die possessed of, & having given benefits to his heir-at-law, afterwards acquired other lands:—*Held:* the heir was not bound to elect.—BACK *v.* KETT (1822), Jac. 534; 37 E. R. 952.

Annotations:—**Consd.** Churchman *v.* Ireland (1831), 1 Russ. & M. 250. **Refd.** Schroder *v.* Schroder (1854), 3 Eq. Rep. 97; Hance *v.* Truwhitt (1862), 2 John. & H. 216.

1643a. Bequest of debt to mortgagor—Devise of reversion in property mortgaged.]—Testator having a debt secured on lands, gives the mtge. money to the mtgor., & desires that he will give a reversionary interest therein to a third person. The mtgor. selling the estate shall bring the mtge. money into ct., for the use of the devisee, subject to the life estate.—LEWIS *v.* KING (1789), 2 Bro. C. C. 600; 29 E. R. 330, L. C.

Annotation:—**Consd.** Whittaker *v.* Whittaker (1792), 4 Bro. C. C. 31.

1724. *Add. Annotation:*—**Refd.** *Re* Gower's Settlement, [1934] Ch. 365.

PART X. SECT. 2, SUB-SECT. 1.—B. (e).

so. *Income of estate left to widow by will for life—Widow's property left after her death to son by codicil—Income received by widow till will & codicil proved—Liability of widow on election against will.*]—Testator by his will left the income of his estate to his wife for life, & directed that after her death it should be disposed of as set out in a codicil, not to be opened until after her death. By the codicil he disposed of all his estate among his children, giving to two of them, after the death of his wife, a certain property, which in reality belonged to her. His widow, without proving the will, received all the income of the estate for five years after the lapse of which the will & codicil were proved. She then elected against the will:—*Held:* her election related back to, & she was liable to account from, the date of testator's death; but, as she was not called upon to elect until this action was brought, she should not be charged with interest in the meantime.—DAVIS *v.* DAVIS (1896), 27 O. R. 532.—**CAN.**

PART X. SECT. 3, SUB-SECT. 9.

sp. *Widow taking different interests under will.*]—Under S.'s will his widow took absolutely thirty-four acres devised to her worth $1,000; she also took for life his house & lot garden worth about $1,500, but subject to a son's & a daughter's right "to have a home" there "as long as they are single." The son took absolutely the rest of testator's land, worth about $3,500, & at the widow's death took "the house & lot & garden" also:—*Held:* the widow was not put to her election.—*Re* SEXSMITH (1925), 57 O. L. R. 283.—**CAN.**

sq. *Gift of legacy & maintenance to son—Gift of mortgage debt to mortgagor—Mortgage debt previously assigned to son.*]—ROSBOROUGH *v.* ST. ANDREW'S CHURCH, THE TRUSTEES OF (1917), 55 S. C. R. 360; 38 D. L. R. 119.—**CAN.**

sr. *Preferred beneficiary under policy—Election between policy & will.*]—A wife who is a preferred beneficiary under Insurance Act, R. S. O., 1927, cannot be compelled to elect between the policy & her husband's will.—*Re* MULLISS, [1933] 3 D. L. R. 573; O. R. 638.—**CAN.**

PART X. SECT. 7, SUB-SECT. 2.

1691 ii. —— ——.]—P. in Feb. 1921, conveyed certain lands to a trust co., & by a declaration of trust of even date,

Part XI.—Satisfaction and Ademption.

1753. *Add. Annotation :*—**Folld.** *Re* Ware, *Re* Rouse, Ware *v.* Rouse (1926), 70 Sol. Jo. 691.

1769. *Add. Annotations :—As to* (1) **Apld.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677. **Refd.** *Re* Vaux, Nicholson *v.* Vaux, [1938] Ch. 581.

1770. *Add. Annotation :*—**Refd.** *Re* Vaux, Nicholson *v.* Vaux, [1938] Ch. 581.

1772a. ——.]—WALPOLE *v.* CONWAY (LORD) (1740), Barn. Ch. 153 ; 27 E. R. 593, L. C.

Annotations :—**Distd.** Tolson *v.* Collins (1799), 4 Ves. 483. **Apld.** Douglas *v.* Willes (1849), 7 Hare, 318. **Refd.** Kirkham *v.* Smith (1749), 1 Ves. Sen. 258.

1785. *Add. Annotations :*—**Consd.** *Re* Vaux, Nicholson *v.* Vaux, [1938] Ch. 581. **Refd.** *Re* Vaux, Nicholson *v.* Vaux (No. 2) (1938), 82 Sol. Jo. 332.

1786. *Add. Annotations :*—**Apld.** *Re* Vaux, Nicholson *v.* Vaux, [1938] Ch. 581. **Refd.** *Re* Vaux, Nicholson *v.* Vaux (No. 2) (1938), 82 Sol. Jo. 332.

1788a. Gift of shares—Partial intestacy.]—A testator by his will gave legacies of investments to the value of £20,000 to each of his two daughters, & then settled the residue of his estate for the benefit of his four children upon trusts which the ct. held were void for perpetuity. He subsequently settled shares in a co. of considerable value equally upon his four children :—*Held :* the rule against double portions was applicable so that the legacies must be adeemed *pro tanto* to the extent of the value of the shares settled on the daughters. But the rule must be applied for the benefit of children only, & not so as to increase any share of residue to which the widow of the testator became entitled on his death intestate as to such residue. The rule so laid down in *Meinertzagen* v. *Walters* (1872), L. R. 7 Ch. 670 ; 20 Digest 455, *1785*, applies as well to the ademption of a legacy as of a share in the residue.—*Re* VAUX, NICHOLSON *v.* VAUX, [1938] Ch. 581 ; [1938] 2 All E. R. 177 ; 158 L. T. 519 ; 54 T. L. R. 658 ; 82 Sol. Jo. 215 ; *on appeal*, [1938] 4 All E. R. 297, C. A.

1840. *Add. Annotation :*—**Distd.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677.

1873. *Add. Annotation :*—**Apld.** *Re* Ware, *Re* Rouse, Ware *v.* Rouse (1926), 70 Sol. Jo. 691.

1873a. —— ——.]—There is no such obligation, according to the rules of equity, on a mother to advance or make a provision for her child, as in the case of a father ; &, therefore, when a mother makes a purchase or investment in the name of her child, or in the joint names of herself & her child, that does not of itself afford the presumption of advancement ; in such a case the intention to advance is a question of evidence.—BENNET *v.* BENNET (1879), 10 Ch. D. 474 ; 40 L. T. 378 ; 27 W. R. 573.

Annotation :—**Refd.** *Re* Orme, Evans *v.* Maxwell (1883), 50 L. T. 51.

1873b. —— ——.]—(1) No presumption arises in cases of dispositions in favour of children by a mother unless she has placed herself *in loco parentis* towards them, & evidence that such is the case must be forthcoming.

(2) Where testatrix exercised a general power of appointment by will in favour of her daughter, & subsequently on the daughter's marriage covenanted in her daughter's marriage settlement to pay a similar amount to the trustees thereof, & later by codicil recited the appointment of a certain sum by the will :—*Held :* the provision in the marriage settlement was by way of satisfaction or ademption of the powers made by the will, & the codicil was not inconsistent with such a view.—*Re* WARE, *Re* ROUSE, WARE *v.* ROUSE (1926), 70 Sol. Jo. 691.

1878. *Add. Annotation :—As to* (3) **Refd.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677.

1894a. —— Funds transferred by trustees—In pursuance of appointment & surrender of life interest.]—Funds transferred by the trustees of a marriage settlement to a son in pursuance of an appointment in his favour made by his father in exercise of a special power of appointment amongst his children & of a surrender of the father's life interest, are not money or property by way of advance-

---

accepted by the trust co., declared certain trusts upon which the lands were to be held. P.'s wife was to have a life interest in three of the parcels conveyed, & certain other benefits, & at her death the property was to be distributed among P.'s children ; this life interest was to be in lieu of dower in all P.'s lands. On Feb. 21, 1921, P., by letter, requested the trust co. to sign a declaration of trust to the effect that it held one of the parcels of land conveyed to it, in which the wife was given a life interest, in trust, for payment to an investment society of $7,500 " which pays off the loan on stock for that amount held by my wife," & this the trust co. did. By P.'s will, made on the date of the execution of the conveyance & declaration, he appointed the trust co. his exor. & trustee. The wife took nothing under the will. P. died in July, 1921. In Jan. 1923, the trust co. made a mtge in favour of an assurance co. upon three of the properties in which the widow claimed a life estate, to secure repayment of a large sum of money which was advanced to the trust co. & which the trust co. applied in paying off loans made to P. In an action by the widow against the assurance co. for a declaration as to her rights under the trust deed & declaration & for other relief :—*Held :* pltf. having taken & continued in possession of the properties in which she claimed to have a life interest, had elected to take the benefits given to her by the trust deed & declaration, & was, therefore, tenant for life of the three properties referred to.—PURDOM *v.* NORTHERN LIFE ASS'CE CO. OF CANADA, [1928] 4 D. L. R. 679 ; 63 O. L. R. 12 ; *affd. sub nom.* FIDELITY TRUST CO. OF ONTARIO *v.* PURDOM & NORTHERN LIFE ASSCE. CO. OF CANADA, [1930] S. C. R. 119 ; 1 D. L. R. 1003.—**CAN.**

PART XI. SECT. 1.

1743 l. *Satisfaction defined.*]—Satisfaction is the donation of a thing, with the intention, either expressed or implied, that it is to be taken, either wholly or in part, in extinguishment of some prior claim of the donee. The doctrine has no application to cases where the prior portion has actually been transferred or paid.

One whose life was insured assigned to his son a portion of the insurance moneys $1,000, in consideration of an undertaking by the son to advance from time to time moneys necessary to pay parts of the premiums. Subsequently the insured made his will by which he gave to his son $1,000 " out of the money payable at my death out of my life insurance policy " :—*Held :* the $1,000 given by the will could not be regarded as a satisfaction of the $1,000 assigned to the son.—*Re* MARKS (1921), 64 D. L. R. 516 ; 50 O. L. R. 473.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 2.—A. (a).

sr. *By payments to legatee—In testator's lifetime.*]—*Held :* a sum of money paid by testator to persons to whom he had bequeathed one-half of his effects, was an anticipated payment of their provision, & not a donation.—BUCHANAN *v.* CRAWFORD (MOLLISON) (1824), 2 Sh. Sc. App. 445. —**SCOT.**

ment paid to the son by the father within Administration of Estates Act, 1925 (c. 23), s. 47 (1) (iii), & are not liable to be brought into account in or towards satisfaction of that son's share in the estate of the father upon the father's death intestate. Even assuming the life interest of the intestate in the appointed share of the settlement funds surrendered by him to the appointee to be money or property paid by way of advancement within clause (iii) aforesaid, in view of the fact that the value of that life interest to be brought into account under that clause has to be reckoned as at the date of the death of the intestate & therefore could be of no value, the surrender could have no effect upon the proposition first above stated.—*Re* REEVE, REEVE *v.* REEVE, [1935] Ch. 110; 104 L. J. Ch. 101; 152 L. T. 254.

1895a. ——.]—*Re* ASHTON, SIER *v.* ASHTON (1934), 78 Sol. Jo. 803.

1912. *Add. Annotation :*—**Refd.** *Re* Vaux, Nicholson *v.* Vaux, [1938] Ch. 581.

After this case add :—

——.]—*See, now,* Administration of Estates Act, 1925 (c. 23), s. 49 (a).

1918a. ——.]—If a father devises to a daughter a portion equal or greater than what she is entitled to out of his land by settlement, that is a satisfaction, but the daughter may have her election.—BRIDGES *v.* HALES (1729), Mos. 108; 25 E. R. 298, L. C.

1920a. ——.]—BRIDGES *v.* HALES, No. 1918a, *ante.*

2006a. ——.]—The principle deducible from the dictum of the Ct. of Appeal expressed in *Re Scott, Langton* v. *Scott,* No. 1840, namely that, in the distribution of a testator's estate amongst his children & the children of deceased children, children claiming to take by substitution the share of their deceased parent must bring into account an advancement made by testator, in his lifetime to their parent, is not applicable to the case of a parent's indebtedness to testator; so that, where a testator gave his residuary estate in trust for his children living at the period of distribution & the children of any child then dead, grandchildren are not liable, upon claiming their deceased parents' share, to bring into account a debt owing by the parent to testator's estate.—*Re* BINNS, PUBLIC TRUSTEE *v.* INGLE, [1929] 1 Ch. 677; 98 L. J. Ch. 307; 141 L. T. 91.

2009. *Add. Annotation :*—**Consd.** *Re* Ashton, Sier *v.* Ashton (1934), 78 Sol. Jo. 803.

2012. *Add. Annotation :*—**Mentd.** Chaney *v.* Maclow (1928), 97 L. J. Ch. 345.

2046a. —— **Although interest unpaid at date of death.**]—A person, who borrowed £100 carrying interest at 5 per cent. *per annum,* by his will left a legacy of £100 free of duty to his creditor. The will did not contain any direction to pay debts. At the date of the debtor's death there was interest due & unpaid in respect of the debt. The exors. of the deceased paid the creditor the amount of the legacy & interest on the debt, up to the date of payment. The creditor then sued for the amount of the debt :—*Held :* the rule, that a legacy to a creditor of an amount equal to or greater than the debt owed by the testator to the creditor operated as a satisfaction of the debt, applied notwithstanding that there was interest due & unpaid in respect of the debt at the date of testator's death.—FITZGERALD *v.* NATIONAL BANK, LTD., [1929] 1 K. B. 394; 98 L. J. K. B. 382; 140 L. T. 406.

2047a. —— **Bequest antecedent to debt.**]—ROBERTS *v.* BENNET (1690), 2 Vern. 136; 23 E. R. 695.

Annotation :—**Refd.** Northcote *v.* Northcote (1702), Colles 287, H. L.

2057a. —— **Although interest unpaid at date of death.**]—FITZGERALD *v.* NATIONAL BANK, LTD., No. 2046a, *ante.*

2075a. ——.]—*Re* SHAFTO, FAWCETT *v.* SHAFTO (1903), 48 Sol. Jo. 68, C. A.

2102a. ——.]—HOBBS *v.* TAITE (1738), West *temp.* Hard. 582; 25 E. R. 1096, L. C.

Annotation :—**Consd.** Wallace *v.* Pomfret (1805), 11 Ves. 542.

2138. *Add. Citation :*—3 Bro. C. C. 242.

2188a. —— ——.]—KEMP (LADY) *v.* KEMP (1671), 2 Rep. Ch. 63; 21 E. R. 617.

2224. *Add. Annotations :*—*As to* (5) **Refd.** *Re* Vaux, Nicholson *v.* Vaux, [1938] Ch. 581. *Generally,* **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

PART XI. SECT. 3, SUB-SECT. 3.—C.

1902 l. *In respect of realty.*]—DOE d. SHORE *v.* SAUNDERS (1842), 2 Kerr, 18.—**CAN.**

PART XI. SECT. 4, SUB-SECT. 2.—A.

2037 li. —— ——.]—A testator by his will, after directing the payment of all his just debts, appointed F. to be one of his three exors. & trustees, & went on to declare that F. should " be paid out of my estate the debt or sum of money owing by me to him the amount of which the said F. will disclose to my other trustees." F. renounced probate & lodged with the exors. a statement of the amount of his claim :—*Held :* the words of the will did not create a legacy, but the testator's purpose was to acknowledge that he was indebted to F. in an uncertain amount & that F. was entitled to payment of the sum which he named as owing, without further investigation or inquiry on the part of the exors.—FITZPATRICK *v.* GILBERT, GILBERT *v.* FITZPATRICK, 22 Tas. L. R. 29.—**AUS.**

PART XI. SECT. 4, SUB-SECT. 3.—B.

2069 l. *Addition to annuity.*]—COLE *v.* COLE (1838), 5 O. S. 744.—**CAN.**

PART XI. SECT. 4, SUB-SECT. 3.—G.

2102 l. *Presumption of satisfaction rebutted.*]—A legacy to a creditor equal to or greater than the debt owing him by the testator is presumed to be a satisfaction of the debt, but this presumption will be rebutted by slight circumstances, either appearing in the will or incident to the nature of the debt & of the legacy. A simple direction to pay debts is sufficient to rebut the presumption, *a fortiori* a direction, as in this instance, to pay debts & " thereafter " legacies.—SPARROW *v.* ROYAL TRUST CO., [1932] 1 W. W. R. 379; 40 Man. L. R. 211.—**CAN.**

PART XI. SECT. 5.

sj. *Separation agreement providing for support of infant son—Provision in will for support.*]—By a separation agreement the husband agreed to pay the wife a certain sum *per annum* for " support & otherwise " of their child until it should become self-supporting or attain majority or leave the custody of the wife; & she agreed to accept said sum in full settlement of all claims which she then had or might thereafter have for the support & otherwise of the child. By his will executed four years later, which disposed of all his property, the husband directed his trustees to pay the income of the residue of his estate " towards the maintenance & education of " said child " during his minority " :—*Held :* said provision in the will was in substitution for, & not in addition to, that in the agreement; & the wife had an election between them, but was not entitled to both.—Ross *v.* Ross, [1930] 1 W. W. R. 375; 2 D. L. R. 42; *sub nom.* Ross *v.* FOSSUM & TORONTO GENERAL TRUSTS CO., 42 B. C. R. 272.—**CAN.**

Part XII.—Performance.

2280a. —— —— ——.]—*Re* ASHTON, SIER *v.* ASHTON (1934), 78 Sol. Jo. 803.

2291. *Add. Annotation :*—**Folld.** *Re* Ashton, Sier *v.* Ashton (1934), 78 Sol. Jo. 803.

2294a. Covenant by tenant for life—To pay money to trustees—Expenditure on improvement of trust property.]—The tenant for life under a settlement voluntarily expended monies in erecting necessary buildings on the trust property. He also paid the expenses of the investment of the trust funds in land :—*Held :* his exors. could not set off this outlay as a satisfaction *pro tanto* of a covenant, on his part, to pay £3,000 to the trustee of the settlement.—HORLOCK *v.* SMITH (1853), 17 Beav. 572 ; 23 L. J. Ch. 962 ; 22 L. T. O. S. 232 ; 2 W. R. 117 ; 51 E. R. 1157.

Part XIV.—Merger of Estates and Charges.

2345. *Add. Annotation :*—**Apld.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

2348. *Add. Annotation :*—**Apld.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

2354. *Add. Annotation :*—**Consd.** *Re* Warwick's Settlement Trusts, Greville Trust Co. *v.* Grey, [1938] Ch. 530.

2367a. —— ——.]—NORFOLK *v.* GIFFORD (1690), 2 Vern. 208 ; 23 E. R. 735.

2373a. —— ——.]—Where under a marriage settlement the trusts of the wife's property were for the wife for her life & after her death for the husband for his life, with a common form protected life interest proviso in respect of the husband's interest, & the usual trusts for the issue of the marriage, with a gift over in default of issue, which event happened, as the wife should by deed or will appoint with an ultimate trust for next of kin, & the wife died & her will operated as an exercise of the power of appointment in the husband's favour, on an application by the husband to have the trust transferred to him on the ground of merger of his interests :—*Held :* there had been no merger of the husband's life estate in the reversion, because the two estates were not coterminous, & an estate might come into existence on an alienation of his life estate in favour of possible children on a re-marriage.—*Re* CHANCE'S SETTLEMENT TRUSTS, CHANCE *v.* BILLING (1918), 62 Sol. Jo. 349.

2379. *Add. Annotation :*—**Refd.** Symons *v.* Southern Ry. Co. (1935), 153 L. T. 98.

2395. *Add. Annotation :*—*As to* (2) **Distd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

2397. *Add. Annotations :*—*As to* (2) **Consd.** *Re* Chesters, Whittingham *v.* Chesters, [1934] W. N. 174. **Folld.** *Re* Chesters, Whittingham *v.* Chesters, [1935] Ch. 77.

2399a. ——.]—When a tenant for life in remainder pays off a mtge. on the property the mtge. is, in the absence of evidence of a contrary intention, kept alive for his benefit.—*Re* CHESTERS, WHITTINGHAM *v.* CHESTERS, [1935] Ch. 77 ; 104 L. J. Ch. 65 ; 152 L. T. 210 ; 78 Sol. Jo. 634.

2419. *Add. Annotation :*—*As to* (3) **Consd.** *Re* Warwick's Settlement Trusts, Greville Trust Co. *v.* Grey, [1938] Ch. 530.

Part XV.—Subrogation.

2424. *Add. Annotation :*—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

Part XVI.—Penalties and Forfeiture.

2440. *Add. Annotation :*—**Expld.** Mussen *v.* Van Dieman's Land Co., [1938] Ch. 253.

2440a. —— **Provision for retention of instalments.**]—By an agreement in writing dated Nov. 2,

---

PART XII. SECT. 3, SUB-SECT. 2.

sk. *Failure to pay contributions—Joint venture—Whether abandonment.*]—DADSON *v.* GREST & GREST, [1928] 1 D. L. R. 479 : [1928] 1 W. W. R. 286 22 Sask. L. R. 253.—**CAN.**

PART XIII. SECT. 3.

sv. *General rule.*]—In order to marshal, not only must there be two creditors of the same person, but one of them must have two funds belonging to the same person to which he can resort.—ROYAL BANK OF CANADA *v* IZEN, [1921] 2 W. W. R. 929.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 1.

sk. *Merger not beneficial.*]—To prevent the merger of a charge in the inheritance of the estate upon which it is charged there must, in the absence of evidence of intention, be either existing circumstances, or at least a reasonable probability of their occurrence, in which it would be to the advantage of the owner of the charge & of the estate to preserve their separate existence.—*Re* ALEXANDER'S ESTATE, [1938] I. R. 23.—**IR.**

PART XV.

2424 i. *Definition.*]—As a general rule the doctrine of subrogation does not apply in favour of a party who has not paid money or given something in satisfaction or extinguishment of a security, claim, or demand, or partly so, or who has not paid something by way of getting in a security, or the like.—COURSOLLES *v.* FOOKES (1889), 16 O. R. 691.—**CAN.**

sx. *Whether doctrine applicable to volunteer paying debt.*]—Subrogation is never applied in aid of a mere volunteer who pays the debt of another.—CAMPBELL AUTO FINANCE CO., LTD. *v.* WARREN, [1933] O. R. 774 ; 4 D. L. R. 509.—**CAN.**

1927, pltf. agreed to purchase from defts. land in Tasmania for the sum of £321,000, the money to be paid by instalments as therein set forth & on dates therein stated. Time was made of the essence of the contract. By clause 12 it was agreed that if pltf. made default in paying any of the instalments defts. could rescind the contract & that thereupon all moneys already paid by the purchaser should be absolutely forfeited to defts. It was also a term of the contract that on the payment of certain moneys defts. would convey to pltf. two named blocks of land. In May, 1930, defts. conveyed to pltf. the two blocks of land, the value of which was taken to be £99,300. Pltf. had then paid to defts. sums amounting to £139,500, leaving a difference of £40,200. Subsequently pltf. failed to pay an instalment of £37,500 falling due on May 2, 1931, & by letter dated May 4, 1931, defts. gave him notice, pursuant to clause 12, that they rescinded the contract. By letters dated Mar. 15, 1933, & Sept. 9, 1936, pltf. demanded payment of the £40,200. This demand defts. refused to comply with. Pltf. then brought this action :—*Held :* the retention by the defts. of the £40,200 was not in the nature of a penalty, & in view of the terms of clause 12 it was not unconscionable on the part of defts. to retain the £40,200. Action dismissed.—MUSSEN *v.* VAN DIEMEN'S LAND Co., [1938] Ch. 253 ; [1938] 1 All E. R. 210 ; 107 L. J. Ch. 136 ; 158 L. T. 40 ; 54 T. L. R. 225 ; 82 Sol. Jo. 35.

2459. *Add. Annotation :*—**Consd.** Mussen *v.* Van Dieman's Land Co., [1938] Ch. 253.

Part XVII.—Equitable Relief in Cases of Fiduciary Relationships.

SECT. 1.—**THE FIDUCIARY CHARACTER.**

(p. 521.)

2478a. Agreement to form club—One party to engage other as secretary.]—MITCHELL *v.* ALEXANDER (1935), 79 Sol. Jo. 381, C. A.

Part XVIII.—Equitable Defences.

2483. *Add. Annotation :*—**Apld.** R. *v.* Essex JJ., *Ex p.* Perkins, [1927] 2 K. B. 475.

2489a. ——.]—WHALLEY *v.* WHALLEY (1860), 2 De G. F. & J. 310 ; 45 E. R. 641, L. JJ.

2490. *Citations :*—For " 3 Bro. C. C. 646 " read " 3 Bro. C. C. 639, n."

Add. Annotation :—As to (2) **Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

2497. *Add. Annotation :—As to* (1) **Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

2512. *Add. Annotations :—As to* (4) **Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

2513. *Citations :*—For " L. R. 5 C. P. 221 " read " L. R. 5 P. C. 221.

Add. Annotations :—As to (2) **Apld.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

2520. *Add. Annotation :*—**Consd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

2521. *Add. Annotations :*—**Consd.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

2525. *Add. Annotations :*—**Consd.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

2527. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670 ; Queen Anne's Bounty *v.* Blacklocks' Executors, [1934] 1 K. B. 599.

2552. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank, Ltd. (1929), 34 Com. Cas. 263.

2554. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank, Ltd. (1929), 34 Com. Cas. 263.

PART XVI. SECT. 1, SUB-SECT. 2.—A.

2428 i. *What is a penalty—Goods delivered under hire-purchase agreement—Right to seize goods on failure to pay instalment.*]—A hire-purchase agreement relating to a motor truck provided for payment in nine monthly instalments. The hirer could become the owner of the truck on payment in full of the instalments & a rupee extra. On failure on part of the hirer to pay any instalment as it became due, the owner was entitled to seize the truck & credit its value as against the amount due, but subject to a condition that the owner in no case would credit the hirer with more than the amount still due on the contract :—*Held :* the clause of the agreement which enabled the owner to seize the truck, & keep it without making any payment to the hirer even though the value of the truck may be very greatly in excess of the amount due under the agreement, was a stipulation by way of penalty which the ct. can relieve against under Contract Act, s. 74.—MAUNG BA OH *v.* MOTOR HOUSE CO. (1929), I. L. R. 7 Ran. 431.—**IND.**

PART XVI. SECT. 1, SUB-SECT. 2.—C.

sw. *Discount for prompt payment.*]—*Held :* a penalty, & relief granted.—COLGROVE *v.* GUNDY (1914), 28 W. L. R. 731 ; 17 D. L. R. 45.—**CAN.**

PART XVI. SECT. 1, SUB-SECT. 2.—D.

1 i. —— ——.]—In the case of a sale when the conditions are that the purchaser shall forfeit the money which he has paid if he makes default in any future payment, the ct. will relieve the purchaser from forfeiture where the non-payment has been the result of the deliberate misrepresentations of the vendor, in order to expose the purchaser to forfeiture.—*Re* STANLEY & BUNTING, [1924] 3 D. L. R. 599 ; 5 C. B. R. 18.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 1.

sz. *Penalty being reservation only of existing legal right—Relief not granted.*]—BOLAND *v.* MCCARROLL (1876), 38 U. C. R. 487.—**CAN.**

PART XVIII. SECT. 4, SUB-SECT. 4. B.

2579 i. *Rescission on ground of fraud.*]—Where deft. raises a defence of fraud & misrepresentation, the ct. will not grant him relief if he has been guilty of *laches*. On discovering the fraud or misrepresentation it is the duty of deft. to repudiate the transaction immediately.—MEIKLEJOHN *v* HUGO, [1924] 1 D. L. R. 272.—**CAN.**

Part XIX.—Ne exeat regno.

2637a. —— ——.]—A.-G. *v.* MUCKLOW (1815), 1 Price, 289; 145 E. R. 1405.

2667a. **Not residuary legatee.**]—A residuary legatee cannot have a writ of *ne exeat regno* against a debtor of testator, on the ground that he colludes with the exor.—GRAVES *v.* GRIFFITH (1820), 1 Jac. & W. 646; 37 E. R. 514, L. C.

Part XX.—Quia Timet Actions.

2702a. **Nature of action.**]—A *quia timet* action is a proceeding by which the ct. is enabled to prevent its jurisdiction from being stultified.—*Re* ANDERSON-BERRY, HARRIS *v.* GRIFFITH, [1928] Ch. 290; 97 L. J. Ch. 111; 138 L. T. 354, C. A.

2703. *Add. Annotation:*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

2705. *Add. Annotation:*—**Consd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

2705a. **Threatened injury to property by waterworks.**]—It is open to the owners of property threatened with injury by authorised waterworks to bring a *quia timet* action to restrain the undertakers from doing an act which threatens to injure such property.—GRAIGOLA MERTHYR CO., LTD. *v.* SWANSEA CORPN., [1928] Ch. 31; 97 L. J. Ch. 129; 43 T. L. R. 600; 71 Sol. Jo. 681; *affd.* on another point, [1928] Ch. 235, C. A.; [1929] A. C. 344, H. L.

2710. *Add. Annotation:*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

2712. *Add. Annotations:*—**Consd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2713. *Add. Annotations:*—**Refd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105; Hood's Trustees *v.* Southern Union General Insce. Co. of Australasia, [1928] Ch. 793.

2713a. **Threatened disclosure of confidential information.**]—The manager of deft. cos. endeavoured by dishonest means to procure for his cos. information to which they had no right whatever. He had attempted to secure this information from employees of pltf. co., but the attempts were unsuccessful. These employees were under stringent service agreements, prohibiting them from disclosing confidential matters. Pltfs. & defts. were interested in television, & pltfs. were a research co., going through the preparatory stages in order to perfect & render commercial a method of television which had not yet reached a commercial stage. The disclosure of the information to defts. would have caused pltfs. irreparable damage. Pltfs. prepared a draft letter complaining of these matters, which was shown to defts., & the latter promised that the attempts should cease; but whatever was done proved quite ineffective to stop such attempts. Pltfs. then issued the writ in this action asking for an injunction to restrain defts. & their servants & agents from making such attempts:—*Held:* (1) it being proved that defts. through their manager were wrongfully endeavouring to persuade employees of pltfs. to disclose information, & that such disclosure would cause irreparable damage to pltfs., the latter were entitled to the injunction asked for, although such attempts had been wholly unsuccessful; (2) pltfs. were not under any duty to take any further steps before issuing the writ in this action; (3) it was no answer to the claim for an injunction that the manager who made the attempts was now employed by defts. in a different capacity. The important fact was that he was still in their employment.—SCOPHONY, LTD. *v.* TRAUB, [1937] 4 All E. R. 279; 81 Sol. Jo. 981, C. A.

ESTATE AND OTHER DEATH DUTIES.

Part I.—In General.

1. *Add. Annotations:—As to* (1) **Refd.** Straits Settlements Comr. of Stamps *v.* Oei Tjong Swan, [1933] A. C. 378. *As to* (2) **Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

Part II.—Estate Duty.

19. *Add. Annotation:—Generally,* **Refd.** *Re* Previté, Sturges *v.* Previté, [1931] 1 Ch. 447.

22a. —— ——.] — Testator bequeathed "B. House & contents" & the stables held therewith, the leases of which would expire in 1995, to trustees upon trust to allow C. to have the use & enjoyment thereof for life, & after her death upon the like trust for the benefit of L. for life. Testator directed "the rent, outgoings, rates & taxes for the time being payable in respect of the messuage & premises, & keeping same & the contents thereof insured against fire & burglary & in a proper state of preservation, shall always be paid by my trustees out of the income of my residuary personal estate." C. having died, was succeeded as tenant for life by L.:—*Held:* (1) on the death of C., the property which passed was the right to enjoy the benefit of the annual sum, & the case fell within 1894 Act, s. 1; (2) the principal value of the property should be ascertained under sect. 7 (5) (8), the special facts of the case being taken into consideration by the comrs.; (3) the duty must be borne by L., but on equitable terms, namely, it should in the first instance be borne by residue, which should be recouped by a policy on the life of L. to be vested in the trustees which at her death would produce a sum equal to the duty, & the interest on the duty & the policy premiums should be retained & paid by the trustees in each year out of the sum which would otherwise be expended by them on B. House. —*Re* CASSEL, PUBLIC TRUSTEE *v.* MOUNTBATTEN, [1927] 2 Ch. 275; 96 L. J. Ch. 483; 137 L. T. 785; 43 T. L. R. 743; 71 Sol. Jo. 804.

Annotations:—As to (1) **Consd.** *Re* Northcliffe, Arnholz *v.* Hudson, [1929] 1 Ch. 327; Christie *v.* Lord Advocate, [1936] 1 All E. R. 443. *As to* (2) **Refd.** I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762.

26. *Add. Annotations:—As to* (1) **Consd.** A.-G. *v.* Llewelyn, [1935] 1 K. B. 94. **Refd.** De Trafford *v.* A.-G., [1935] A. C. 280; Scott *v.* I. R. Comrs., [1937] A. C. 174. *As to* (3) **Consd.** Adamson *v.* A.-G. (1932), 102 L. J. K. B. 129. *Generally,* **Refd.** I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762.

27. *Add. Annotations:—As to* (1) **Apld.** *Re* Cassel, Public Trustee *v.* Mountbatten, [1927] 2 Ch. 275. **Foll.** De Trafford *v.* A.-G., [1935] A. C. 280. **Appld.** Christie *v.* Lord Advocate, [1936] 1 All E. R. 443. **Consd.** A.-G. *v.* Burrell (1935), 153 L. T. 393. **Refd.** Parr *v.* A.-G., [1926] A. C. 239; Burrell & Kinnaird *v.* A.-G., [1937] A. C. 286. *As to* (5) **Consd.** Parr *v.* A.-G., [1926] A. C. 239; Adamson *v.* A.-G. (1932), 102 L. J. K. B. 129; I. R. Comrs. *v.* Crossman, I. R. Comrs. *v.* Mann, [1936] 1 All E. R. 762. **Refd.** A.-G. *v.* Lloyds Bank, Ltd. (1934), 151 L. T. 268; Scott *v.* I. R. Comrs., [1935] Ch. 246; A.-G. *v.* Lloyd's Bank, Ltd., [1935] A. C. 382. *Generally,* **Refd.** *Re* Northcliffe, Arnholz *v.* Hudson, [1929] 1 Ch. 327.

27a. **Interest passing free from liability to pay annual sum.**]—At the date of the order of the Chancery Div. hereinafter mentioned an estate of great value consisting of real property, invested funds, & policies of insurance was by a deed of resettlement &

PART II. SECT. 3, SUB-SECT. 1.—A.

d i. ——.]—A testator directed his trustees to divide the balance of the annual income of his estate into ten equal shares, & (*inter alia*) to pay one such share to each of his four daughters during their respective lives, & further, on the death of any daughter leaving issue, to apply her share for her issue. Testator further directed that, after the death of his widow, the amount payable in respect of each of these shares was not to exceed £600 *per annum.* One of the four daughters, who survived testator, predeceased his widow leaving issue. At the time of the daughter's death her one-tenth share of income amounted to £2,800 *per annum.* The trustees having been assessed to estate duty upon one-tenth of the trust estate, they & the daughter's exors. petitioned for recall of the assessment. Petitioners maintained that, on the daughter's death, a passing of property, within Finance Act, 1894, s. 1, had taken place, & that the daughter's interest in income being restrictable upon the widow's death to £600, the principal value of the property passing on her death fell to be estimated, under sect. 7 (5) of the Act, upon an actuarial basis:—*Held:* the case was one in which property passed on the death of the daughter within sect. 1, & the property which passed was the property which produced the one-tenth share of the income which she enjoyed immediately before her death, & which immediately thereafter became applicable for the benefit of her issue, no account falling to be taken of the circumstance that the beneficiaries' interest in the property was restrictable on the death of testator's widow.—DUNDERDALE'S TRUSTEES *v.* INLAND REVENUE, [1936] S. C. (H. L.) 20.—**SCOT.**

sa. *Licence—& interest in licensed premises.*]—The interest of a deceased person in the business carried on in licensed premises leased from him & in the license thereof is "property" within Death Duties Act, 1909, s. 5, on the value of which his estate is liable for payment of estate duty over & above the amount of the valuation made under Valuation of Land Act, 1908.—*Re* GILMER, PUBLIC TRUSTEE *v.* STAMP DUTIES COMR., [1929] N. Z. L. R. 61.—**N.Z.**

sb. *Provincial bonds exempt from succession duty.*]—Alberta provincial bonds, exempt from succession duty, must be included in the net value of an estate in order to arrive at the percentage of duty payable by any beneficiary, but such inclusion does not make the amount of the bonds subject to succession duty.—*Re* MILLS ESTATE, [1928] 3 D. L. R. 106; [1928] 2 W. W. R. 65; 23 Alta. L. R. 521.—**CAN.**

two private Acts of Parliament vested in trustees for the life of Sir H. F. de T., the late baronet, to uses for raising £250,000 for portions for the late baronet's younger children & subject thereto to the use of Sir H. E. de T., the present baronet, for life with remainder to his first & other sons in tail male; & it was provided that the annual income of the estate should during the life of the late baronet be held & applied by the trustees in making certain payments & among them a payment of an annual sum of £8,000 to the present baronet during the joint lives of the late baronet & the present baronet; furthermore, the present baronet was authorised to charge the estate with sums amounting to £50,000, not to be raised or paid during the life of the late baronet. The late baronet exercised to its full extent his power of appointing portions for his younger children by various deeds poll charging the estate with various sums to be raised & paid after his death. The present baronet borrowed from the trustees sums amounting to £50,000 &, in pursuance of the authority above mentioned, charged the estate with payment thereof after the death of the late baronet. By an order of the Chancery Div. dated July 28, 1928, & referred to above, the trustees were empowered to raise & pay in the lifetime of the late baronet the two sums of £250,000 & £50,000. At some time after Aug. 15, 1928, the £250,000 was accordingly raised & paid as portions to the younger children of the late baronet, & the £50,000 was treated as repaid to the trustees. On Jan. 10, 1929, the late baronet died. On an information by the A.-G. claiming estate duty at the appropriate rate under Finance Act, 1894 (c. 30), s. 1, in respect of the principal value of the estate as property passing on the death of the late baronet, including the sums of £250,000 & £50,000 as property deemed to have passed thereon under Finance Act, 1900 (c. 7), s. 11, as amended by Finance (1909-10) Act, 1910 (c. 8), s. 59 (1), the trustees contended that they were entitled to deduct from the estate alleged to pass: (1) a principal sum sufficient to produce a yearly sum of £8,000, being the yearly sum payable to the present baronet immediately before the death of the late baronet; (2) the two sums of £250,000 & £50,000 mentioned above:—*Held:* (1) the property passing on the death of the late baronet included the principal sum sufficient to produce the yearly £8,000 inasmuch as the yearly sum ceased to be payable on the death of the late baronet; (2) the sums of £250,000 & £50,000 fell within the words of the 1900 Act, s. 11, as amended by 1910 Act, s. 59 (1), being sums in which the trustees had an interest limited to cease on the death of the late baronet, which had been surrendered within three years before the death for the benefit of persons entitled to an interest in reversion, & which therefore were deemed to pass on the death of the late baronet.—DE TRAFFORD *v.* A.-G., [1935] A. C. 280; 104 L. J. K. B. 396; 153 L. T. 17; 51 T. L. R. 298; 79 Sol. Jo. 194, H. L.

Annotation:—As to (1) **Refd.** Burrell & Kinnaird *v.* A.-G., [1937] A. C. 286.

27b. Restricted estate under protective trust—Lands passing to tenant in tail.]—By a deed of settlement made in July, 1889, the Fifth Earl of C. & his eldest son settled the C. Estates to the use of the eldest son as tenant for life with remainder to the use of his sons successively in tail male & in default of such issue to the use of the second son of the said Fifth Earl for life with remainder to the use of his sons successively in tail male with remainders over. In 1893 the Fifth Earl bought the life estate of his said second son, & this interest was conveyed to trustees their heirs & assigns for the life of the said second son upon discretionary trusts in favour of the said second son, his wife & his children or remoter issue &, subject to this trust, upon trust to accumulate the surplus of the rents & profits, invest it, & apply the proceeds in discharging debts or incumbrances upon the estates, with a proviso limiting the duration of this trust. In 1908 the eldest son of the Fifth Earl died. In 1910 the only son of that son died. In 1915 the Fifth Earl died & was succeeded by his said second son as Sixth Earl & the life estate of the Sixth Earl became an estate in possession. In 1933 the Sixth Earl died & was succeeded by his only son as Seventh Earl & tenant in tail male in possession of the estates:—*Held:* estate duty became payable on the death of the Sixth Earl when the property passed to the Seventh Earl & his estate became an estate in possession instead of an estate in remainder; he then became entitled to receive the whole income of the property which was formerly applicable for the benefit of the objects of the discretionary trust, & it mattered not that he was himself one of the objects of that trust.—SCOTT & COUTTS & CO. *v.* INLAND REVENUE COMRS., [1937] A. C. 174; [1936] 3 All E. R. 752; 106 L. J. Ch. 36; 156 L. T. 33; 53 T. L. R. 130; 81 Sol. Jo. 12, H. L.

Annotation:—**Refd.** Burrell & Kinnaird *v.* A.-G. [1937] A. C. 286.

27c. Discretionary trust for payment to class—Death of member of class—Trust for payment to new class.]—A testator devised all his real property to trustees in fee simple upon trust in their absolute discretion to pay a yearly allowance of such amount as the trustees should think fit to his son H. for life or to pay or apply the same for the benefit of H. or his wife or children or other specified persons & after the death of H. in trust for the first & other sons of H. successively in tail male; & in default of such issue to pay to his son R. during his life a similar yearly allowance & after the death of R. in trust for the first & other sons of R. successively in tail male; & in default of such issue as therein directed. The will contained a proviso that if any equitable tenant in tail should be born in testator's lifetime the interest of such person should be excised from the will, & the trustees should hold the property in trust to pay him a yearly allowance of such amount from time to time as they should in their uncontrollable discretion think fit, & after his death in trust for his first & other sons in tail male. After certain other dispositions the will devised the property in ultimate remainder to testator's right heirs. Each beneficiary who should be entitled to an allowance was given power to appoint a jointure to his wife & to charge

the property with portions for his children. During the life of H. the persons who were beneficially interested in the discretionary trusts were H. himself, his wife, his sons W. & M. & his daughter G. After the death of H. the persons beneficially interested in the trust were W., his wife & his brother M. :—*Held :* on the death of H. the title to the beneficial interest in the property passed under Finance Act, 1894 (c. 30), s. 1, from the first named group of persons to the secondly named group, notwithstanding that certain persons were members of both groups. —BURRELL & KINNAIRD *v.* A.-G., [1937] A. C. 286 ; [1936] 3 All E. R. 758 ; 106 L. J. K. B. 134 ; 156 L. T. 36 ; 81 Sol. Jo. 96, H. L.

33a. **Death gratuity payable to representatives of teacher.**]—Estate duty is payable on a death gratuity granted under Teachers (Superannuation) Act, 1925 (c. 59), s. 5 (1), by the Board of Education to the personal representatives of a deceased intestate teacher as property passing on the death of the teacher, such gratuity being property of which the deceased was at the time of her death competent to dispose within Finance Act, 1894 (c. 30), ss. 2 (1) (*a*), 22 (2) (*a*) as deceased had an authority enabling her to appoint or dispose of the gratuity as she thought fit, whether exercised by instrument, *inter vivos*, or by will, or by both.—A.-G. *v.* QUIXLEY (1929), 98 L. J. K. B. 652 ; 141 L. T. 288 ; 93 J. P. 227 ; 45 T. L. R. 455 ; 27 L. G. R. 693, C. A.

Annotation :—**Refd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R. 485.

35. *Add. Annotation :—Generally*, **Refd.** A.-G. *v.* Llewelyn, [1935] 1 K. B. 94.

36. *Add. Annotation :*—**Consd.** A.-G. *v.* Adamson (1932), 146 L. T. 358.

37. *Add. Annotations :*—**Refd.** A.-G. *v.* De Trafford (1933), 150 L. T. 24 ; Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484 ; *Re* White, Skinner *v.* A.-G., [1938] 2 All E. R. 691.

39. *Add. Citation :*—132 L. T. 704. After this case add :—

—— ——.]—*See, now*, Finance Act, 1930 (c. 28), s. 39.

40a. —— **Liability to reduction in lifetime of annuitant.**]—Testator by a trust disposition & settlement & codicils thereto, after providing for his debts & other expenses & making other dispositions, directed his trustees to divide the balance of the annual income of the trust into ten equal shares & to pay five of these to his wife & one to each of his four daughters & his sister-in-law during their respective lives. Should any of his daughters die leaving issue, the share of income which would have been payable to her was to be applied for the maintenance & education of her issue until the youngest of them should have attained the age of twenty years & thereafter should be paid in equal portions during their lives to such of them only as were daughters. After certain other declarations he further provided that after the death of his wife no beneficiary should receive more than £600 *per annum* from the income of the trust & that the balance should be otherwise disposed of as directed. Testator was survived by his wife, his four daughters & his sister-in-law, & for a time the income of the trust fund belonged, & was paid, as to one moiety to the widow, as to one-tenth to the sister-in-law, & as to one-tenth to each of the four daughters. One-tenth of the income of the fund amounted annually to £2,800. Mrs. N., one of the four daughters, died leaving three children her surviving. At the date of her death her mother was still living :—*Held :* as Mrs. N. was immediately before her death entitled to the income of one-tenth of the residuary estate property which produced that income passed on her death under sect. 1 of 1894 Act.—CHRISTIE *v.* LORD ADVOCATE, [1936] A. C. 569 ; [1936] 1 All E. R. 443 ; 105 L. J. P. C. 65 ; 154 L. T. 441 ; 80 Sol. Jo. 384, H. L.

Annotation :—**Refd.** Inland Revenue Comrs. *v.* Crossman Inland Revenue Comrs. *v.* Mann, [1936] 1 All E. R. 762.

42. *Add. Annotations :*—**Consd.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605 ; A.-G. *v.* Llewelyn, [1935] 1 K. B. 94. **Refd.** A.-G. *v.* De Trafford (1933), 150 L. T. 24.

42a. ——.]—DE TRAFFORD *v.* A.-G., No. 27a, *ante*.

PART II. SECT. 3, SUB-SECT. 2.—D. (b).

45 ii. —— *By deed incompletely executed.*]—FEDERAL COMR. OF TAXATION *v.* TAYLOR (1929), 42 C. L. R. 80 ; 3 A. L. J. 65 ; [1929] Argus L. R. 169. —**AUS.**

sc. *Gift made within three years before death—Money spent on improving house —Whether gift to wife.*]—A husband & wife, with their children, lived together in a house which belonged to the wife ; each enjoyed a separate income. The husband paid to a builder with whom he had made contracts about £2,000 for improvements & repairs to the house. A few months later he died at the age of fifty-three. It was found that the transaction was not entered into with intent to diminish the value of the husband's estate, but that the object was simply to improve the family home in accordance with their means & station in life ; & that there was no reason to believe that the husband would not enjoy the normal span of life, or that he would necessarily predecease his wife :—*Held :* the payments did not constitute a gift to the wife of the deceased within Death Duties Act, 1921, of New Zealand, ss. 38, 39, so as to be deemed to be part of the husband's estate for the purposes of that Act.—FINCH *v.* STAMP DUTIES COMR., [1929] A. C. 427.—**N.Z.**

sd. —— *Shares in company issued to children of deceased—Payment by company's cheque debited to deceased's personal account—Subsequent transfer of debits to children's accounts—Re-transfer of debits to deceased's account within three years of death.*]—PERPETUAL TRUSTEE CO. *v.* COMR. OF STAMP DUTIES (1929), 29 S. R. 153 ; 46 W. N. 58 ; *revsd.*, 43 C. L. R. 247 ; 30 S. R. N. S. W. 215 ; 47 N. S. W. W. N. 108 ; (1930), Argus L. R. 33.—**AUS.**

sf. —— *Settlement—Trust property not transferred to trustees.*]—In 1918 a resident in New Zealand held mtges. & debentures securing £57,200, the deeds & certificates being in the custody of his agents, who managed his private affairs under a general power of attorney, & kept accounts relating thereto. He wrote to them giving particulars of a settlement of £30,000 which he proposed to make on his children, & instructing them to take that sum from his capital for the trusts. Thereupon they debited his capital account with £30,000, & credited it to a special trust account. By the deed of settlement, which was executed by all the necessary parties, the trustees acknowledged the receipt of the £30,000, & the trusts were declared. No money, however, was paid, nor any securities transferred, to the trustees. Further sums were settled in 1919, 1920, & 1924, similar entries being made in the agents' books. Interest at a flat rate was paid to the beneficiaries on the sums settled on them respectively, the payments being made out of the income received by the settlor from the securities in his agents' custody. Those securities varied from time to time, but the amount always exceeded that settled. Upon the settlor's death in 1928, his estate was assessed to duty under Death Duties Act, 1921 (N.Z.), as including the settled sums, less capital which more than three years before the settlor's death had been paid out to two of the beneficiaries under power in the settlements, & subject to an allowance for gift duty paid when the sums were settled :—*Held :* having regard to sect. 5 (1) of the Act the assessment had been rightly made, as the settlements could not be treated as gifts perfected either by transfer of property or declaration of trust ;

47. *Add. Annotation :—Generally,* **Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

48. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

54. *Add. Annotation :—Generally,* **Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

55. *Add. Annotation :—Generally,* **Refd.** A.-G. for Ontario *v.* Perry, [1934] A. C. 477.

59. *Add. Annotation :—As to* (2) **Consd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

61. *Add. Annotation :*—**Refd.** Bird *v.* I. R. Comrs. (1924), 12 Tax Cas. 785.

63. *Add. Annotation :*—**Folld.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605.

63a. —— —— —— **Disentailing deed & resettlement.**]—By a disentailing deed & a deed of resettlement, A. & his mother appointed property to trustees upon trust for the mother for life, & then upon certain trusts for management. There followed a discretionary trust in favour of A., his wife or children, with remainder in trust for A.'s sons, & with ultimate remainder to E. The mother died in 1925, & estate duty was paid on the value of the settled property. The trustees, under their discretion, then paid £50 a month to A. & the balance of income to E. In 1926 A. died, unmarried, & estate duty was claimed :—*Held :* A., in executing the disentailing deed & resettlement, had acted as a person " competent to dispose of property " within 1894 Act, s. 22 (2) (*a*), & the discretionary trust in his favour was a reservation by him of an " interest " in the property within Customs & Inland Revenue Act, 1881 (c. 12), s. 38 (2) (*c*). Therefore, by that sub-sect. read with 1894 Act, s. 2 (1) (*c*), the property was deemed to have passed on A.'s death & estate duty was payable.—A.-G. *v.* FARRELL, [1931] 1 K. B. 81 ; 99 L. J. K. B. 605 ; 143 L. T. 639 ; 46 T. L. R. 587, C. A.

Annotation :—**Consd.** A.-G. *v.* Burrell (1935), 153 L. T. 393.

67a. —— **Contingent succession—Accumulations.**] By a deed, dated Mar. 1924, appointing trustees of a large sum of money, the settlor, who died in Mar. 1928, provided that during his life the income of the whole was to be paid or applied by the trustees for the benefit of all or any of his children in such manner as he should direct, & so far as any direction should not extend the income was to be held as an accretion to the capital of the settled funds. After his death the capital & income of the funds not already distributed were to be held in trust for his children living at his death in such manner as he should by deed or will appoint, & in default of appointment in trust as to two-fifths for his son, & the remaining three-fifths for equal division among his three daughters as tenants in common. The settlor made no direction by deed or will, & on his death the Crown claimed that the property the subject of the trust " passed " within Finance Act, 1894 (c. 30), s. 1, or that the children's interests which arose on his death were interests provided by the settlor within sect. 2 (1) (*d*), & that in either case estate duty was payable on the whole of the funds & accretions :—

though a charge probably was created upon the settlor's capital it was not a debt for which, by the terms of sect. 9 (2), an allowance could be made. —GOULD *v.* STAMP DUTIES COMR., [1934] A. C. 69 ; 103 L. J. P. C. 25 ; 150 L. T. 162.—N.Z.

sg. —— *Land transferred to children subject to partnership agreement.*]—In 1909 M., the owner of 35,000 acres of land in New South Wales on which he carried on the business of a grazier, verbally agreed with his six children that thereafter the business should be carried on by him & them as partners under a partnership at will, the business to be managed solely by M., & each partner to receive a specified share of the profits. In 1913, by six registered transfers in the form prescribed by the Real Property Act, 1900, M. transferred by way of gift all his right title & interest in portions of his land to each of his four sons & to trustees for each of his two daughters & their childen. The evidence showed that the transfers were taken subject to the partnership agreement, & on the understanding that any partner could withdraw & work his land separately. In 1919 M. & his children entered into a formal partnership agreement, which provided that during the lifetime of M. no partner should withdraw from the partnership. On the death of M. in 1929 the land transferred in 1913 was included in assessing his estate to death duties under Stamp Duties Act, 1920–1931 (N. S. W.), on the ground that they were gifts dutiable under sect. 102 (2) (*a*), of that Act :—*Held :* (1) the property comprised in the transfers was the land separated from the rights therein belonging to the partnership, & was excluded by the terms of sect. 102 (2) (*a*) from being dutiable, because the donees had assumed & retained possession thereof, & any benefit remaining in the donor was referable to the partnership agreement of 1909, not to the gifts ; (2) the transfers did not mention the rights of the partnership, & therefore under sect. 42 of Real Property Act, 1900 (N. S. W.), might in law give a title free from those rights, was not material, because the substance of the transaction had to be ascertained, as liability to taxation ought not to be based upon refinements but on clear words.—MUNRO *v.* STAMP DUTIES COMR., [1934] A. C. 61 ; 103 L. J. P. C. 18 ; 150 L. T. 145.—**AUS.**

sk. *Property subject of gift inter vivos.*]—1936 (N. S.), c. 13, which subjects to taxation, Nova Scotia property taken as a gift, however long before death, is retroactive.—ATTORNEY-GENERAL FOR NOVA SCOTIA *v.* DAVIS, [1937] 3 D. L. R. 673.—**CAN.**

sm. ——.]—On the death of the donor of a gift *inter vivos* subsequently to the death of the donee the gift forms part of the donee's estate.—*Re* BOYD, [1937] 4 D. L. R. 791.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—E.

p i. —— ——.]—By an indenture T., who was entitled in fee simple to certain lands subject to certain leases then current, conveyed the lands to A., his daughter, for life, or until the happening of certain events, with remainder to her children, in consideration of covenants by her to make annual payments to him & his wife during their lives, & to indemnify him in respect of covenants contained in the unexpired leases. T. & his wife predeceased the daughter, & she died leaving children. Her life estate had not determined in her lifetime :—*Held :* the lands comprised in the indenture did not form part of the dutiable estate of A. by virtue of sect. 102 (2) (*k*) of " Stamp Duties Act, 1920–24." The dominant words of that provision are " under or by virtue of any agreement made by the deceased," & they mean that the passing of the property shall proceed from the volition of deceased.—ANGUS *v.* COMR. OF STAMP DUTIES (1930), Argus L. R. 337 ; 4 A. L. J. 163.—**AUS.**

se. *Reservation of life interest to settlor —On surviving wife.*]—By a marriage settlement made in 1876, £30,000 was settled upon trust to pay the income to the settlor's wife for life, after her death to the settlor for life, & after the death of the survivor upon trust for the children or remoter issue as they should by deed jointly appoint, or in the absence of a joint appointment as the survivor should by will or deed appoint, & in default of appointment for the children as therein provided. The settlor died in 1925, without having exercised the joint power of appointment, leaving his wife & children him surviving. For the purpose of death duty under the Stamp Duties Act, 1920–1924, of N. S. W. :—*Held :* as the settlement contained a trust to take effect " after the death " of the deceased settlor & in reference thereto, his property was to be " deemed to include " the property subject to the trust, without deducting the value of his widow's life interest therein.—RABETT *v.* STAMP DUTIES COMR., [1929] A. C. 444.—**AUS.**

sf. —— *Jointly with wife.*]—In 1896 a husband settled property in N. S. W., directing that the income therefrom should be paid to his wife during their joint lives, & upon the death of either of them to their daughters equally for their respective lives. The settlor died in 1914, & was survived by his wife :—*Held :* the settlement contained a trust " to take effect after his " (the settlor's) " death " within Stamp Duties Act, 1898, of New South Wales, s. 58, & accordingly upon the death of the settlor duty under that sect. became payable.—THOMSON *v.* STAMP DUTIES COMR., [1929] A. C. 450.—**AUS.**

Held: the funds & accretions did not pass on the settlor's death & estate duty was not payable in respect thereof under sect. 1, but that on the true construction of sect. 2 (1), the beneficial interest of each child of the settlor in the settled funds & accumulations to the extent to which the principal value of such beneficial interest upon the death of the settlor exceeded the actual value, if any, of the expectant beneficial interest of each child before such death was an interest accruing or arising on his death, & was, therefore, to be deemed to be property passing on the death of the settlor, & that estate duty on the principal value of such excess was leviable & payable accordingly.—ADAMSON *v.* A.-G., [1933] A. C. 257; 102 L. J. K. B. 129; 49 T. L. R. 169; *sub nom.* A.-G. *v.* ADAMSON, 148 L. T. 365, H. L.

Annotations:—**Consd.** A.-G. *v.* De Trafford (1933), 150 L. T. 24. **Apld.** A.-G. *v.* Lloyds Bank, Ltd. (1934), 151 L. T. 268. **Expld. & Folld.** A.-G. *v.* Lloyds Bank, Ltd., [1935] A. C. 382. **Consd.** A.-G. *v.* Burrell (1935), 153 L. T. 393; Scott *v.* I. R. Comrs., [1937] A. C. 174; *Re* Hodson's Settlement, Brookes *v.* A.-G., [1938] 3 All E. R. 341.

67b. ——— ———.]—By a deed of settlement the settlor caused to be issued to or transferred into the names of trustees certain shares in a co. in trust for all such one or more of her children or remoter issue, or the husbands or wives of the children or remoter issue, as she, the settlor, should by deed revocable or irrevocable or by will appoint, & until & in default of appointment upon trust to divide the trust fund into three equal shares & appropriate one share to each of her three named children, but so that the three shares should be retained by the trustees upon the trusts therein declared.

By a deed of appointment the settlor directed the trustees of the settlement to hold the trust fund in trust during her life to accumulate the income & after her death to stand possessed of the trust fund & accumulations in trust for her three named children in equal shares, but so that the share which after her death was to be held for each of the said three children should not vest absolutely, but should be retained by the trustees upon trust during the life of each child to pay to him or her the income of his or her share & after the death of such child to hold that child's share in trust for the children or remoter issue of that child as he or she should appoint, & in default of such appointment in trust for all or any of the children of that child who being sons or a son should attain the age of twenty-one years or being daughters or a daughter should attain that age or marry if more than one in equal shares. There followed a hotchpot clause, & an accruer clause in case the trusts declared concerning the share of any child should fail. Finally, the deed reserved to the settlor a power of revocation by deed or will. The settlor died without having revoked the appointment. She left her surviving the three children unmarried:—*Held:* the rule in *Lassence* v. *Tierney* (1849), 1 Mac. & G. 551, applied to the settlement; under it the three children took absolute & immediate interests in the trust fund (though liable to defeasance) & nothing passed to them under it on the death of the settlor within Finance Act, 1894 (c. 30), s. 1; also, the life interest of each child was deemed to be property passing on the death of the settlor within sect. 2 (1) (*d*) of the Act, & the duty thereunder was leviable on the excess, if any, of the value of the expectant life interest of each child after the death of the settlor over its previous value.—A.-G. *v.* LLOYDS BANK, LTD., [1935] A. C. 382; 104 L. J. K. B. 523; 152 L. T. 577, H. L.

Annotations: **Consd.** *Re* Hodson's Settlement, Brookes *v.* A.-G., [1938] 3 All E. R. 341. **Refd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R. 485; Scott *v.* I. R. Comrs., [1937] A. C. 174.

67c. ——— ——— ———.]—A settlor vested a trust fund in trustees upon trust that they should, if the income were sufficient, pay the clear yearly sum of £1,200 to S. during her life. During the joint lives of the settlor & S. the residue of the income was to be accumulated & form an accumulations fund. If the income of the principal trust fund was at any time insufficient to pay S. £1,000 *per annum*, the deficiency was to be made up out of the capital or income of the accumulations fund. After the death of the settlor, if S. survived him, the annual income of the accumulations fund was to be paid to S., & after the death of S. the trust fund & the accumulations fund were subject to a special power of appointment given to S., & in default of appointment for the children of S. By a second settlement the residue of the income during the life of S. was given to the trustee. The settlor died in the lifetime of S., & the question was as to the estate duty payable on his death:—*Held:* (1) the estate duty payable in respect of the accumulations fund was on the amount of the difference between the values of the interests of S. in that fund immediately after & before the death of the settlor; (2) the above difference was to be treated as an estate in itself & not aggregated with the settlor's other property.—*Re* HODSON'S SETTLEMENT, BROOKES *v.* A.-G., [1938] Ch. 916; [1938] 3 All E. R. 341; 107 L. J. Ch. 364; 159 L. T. 160; 54 T. L. R. 929; 82 Sol. Jo. 522.

72. *Add. Annotation:*—*As to* (2) **Refd.** *Re* Wilkinson, Page *v.* Public Trustee, [1926] Ch. 842.

PART II. SECT. 3, SUB-SECT. 2.—H.

73 ii. ———.]—An assured took out a policy of assurance on his life in 1910. He assigned the policy to a donee in 1924. Thereafter he continued to pay the premiums until 1927; & he thus paid fourteen premiums before the date of the assignation and four premiums after that date. After 1927 the donee paid the premiums falling due, seven in number, until the death of the assured in 1935. The Comrs. of Inland Revenue imposed an assessment of estate duty on the donee in respect of four-elevenths of the proceeds of the policy, being the proportion which the premiums paid by the deceased after the date of the assignation bore to the whole premiums paid after that date:—*Held:* estate duty was chargeable in respect of four-twenty gifts only of the proceeds of the policy, being the proportion which the four premiums paid by the deceased after the date of the assignation bore to the whole premiums, twenty-five in number, paid under the policy since it was first taken out.—INZIEVAR ESTATES *v.* LORD ADVOCATE, [1937] S. C. 645.—SCOT.

73 iii. ———.]—In 1916 a person took out a policy of assurance on his life, payable to his exors., administrators or assigns. In 1931 he assigned the policy to trustees, directing them to maintain the policy during his life, & on his death to apply the proceeds (*a*) in paying to his testamentary trustees the amount necessary to settle the death duties payable by reason of his death, & (*b*) in paying the residue among his children. On his death in 1935 the net proceeds of the policy amounted to £75,328 13*s.* 7*d.* The death duties exceeded this amount, &, accordingly, the whole proceeds were paid over to the testamentary trustees. The Comrs. of Inland Revenue having assessed the said sum of £75,328 13*s.* 7*d.* for estate duty on the basis that it was property which, for the purpose of determining

75. *Add. Citations :*—94 L. J. K. B. 139 ; 132 L. T. 717.
Add. Annotation :—Generally, **Refd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R. 485.

76. *Add. Annotation :*—**Refd.** A.-G. *v.* Llewelyn, [1935] 1 K. B. 94.

80a. —— **Assignment to donee.**]—S. effected a policy on his life for £20,000 in 1910. In 1925, having by then paid fourteen premiums, he executed a gratuitous assignment of the policy in favour of resps. After the assignment S. paid the next four premiums, & resps. paid the remaining seven to the date of the death of S. when the policy money was paid to resps. :—*Held :* the proceeds were liable to estate duty to the extent of the proportion which the number of premiums paid by the donor after the assignment bore to the total number of premiums paid during that period—namely, on four-elevenths of the policy money.—LORD ADVOCATE *v.* INZIEVAR ESTATES, [1938] A. C. 402 ; [1938] 2 All E. R. 424 ; 107 L. J. P. C. 65 ; 159 L. T. 97 ; 54 T. L. R. 692 ; 82 Sol. Jo. 372, H. L.

90a. —— —— **Trust established in England.**]—By his will, made in English form, testator, who declared that the instrument was to take effect according to the law of Hong Kong where he was domiciled, devised & bequeathed his property, which was situate out of the United Kingdom, to trustees on trust to invest a sum to produce an annuity for his wife, to pay certain legacies & to stand possessed of the residue to pay the annual income thereof to his sons or son during their or his lives or life, & on the death of the last survivor of his sons in trust for his son's children. The tenant for life, who was the only son of testator living at his death, wished to borrow money &, at the request of the lenders, he appointed, in England, four new trustees of the will, three of whom were resident in England. Between 1913 & 1922, owing to the tenant for life's dealings with the trust funds, proceedings in the Ch. Div. were instituted & orders were made in connection with the administration of the trusts of the will. In 1922 the tenant for life died, leaving him surviving his widow & two infant sons, who were domiciled in Hong Kong but had been made wards of ct. by virtue of the proceedings in the Ch. Div. & the orders made therein. The trust property was situate abroad :—*Held :* the succession of the infants to testator's residuary estate was at his death a succession by virtue of Hong Kong law & to Hong Kong property, & it had never lost that character or fallen within 1853 Act, s. 2, & the property was not liable to estate duty under 1894 Act, s. 2 (2). —A.-G. *v.* BELILIOS, [1928] 1 K. B. 798 ; 97 L. J. K. B. 139 ; 138 L. T. 204 ; 44 T. L. R. 214 ; 72 Sol. Jo. 49, C. A.

Annotation :—**Refd.** *Re* Drake's Settlement Trusts, Wilson *v.* Drake, [1938] Ch. 133.

94. *Add. Annotation :*—**Apld.** A.-G. *v.* Howe (1925), 94 L. J. K. B. 540.

94a. Property situate in Northern Ireland—Testator domiciled in Northern Ireland.]—The testator, who died on July 27, 1923, domiciled in Northern Ireland, had, by a testamentary disposition dated Dec. 2, 1920, given an annuity of £7,500 to his wife. At the date of his death, only property to the value of £66 was locally situate in Great Britain, & no estate duty was then payable in Great Britain. Duty was, however, paid in Northern Ireland. On Feb. 5, 1936, testator's widow died, & at that date the property charged with the payment of her annuity consisted in part of investments locally situate in England, in part of invest-

the rate of duty, fell to be aggregated with the other estate of the deceased :—*Held :* the sum in question was not property in which the deceased "never had an interest" & therefore did not fall to be treated as "an estate by itself" within sect. 4 of the Act &, accordingly, the Comrs. had rightly aggregated it with the rest of the estate for the purpose of determining the rate of estate duty.—TENNANT'S TRUSTEES *v.* LORD ADVOCATE, [1938] S. C. 224.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—J.

82 i. *Benefit retained by disponer.*]—By deed of Apr. 11, 1927, a farm, together with the farmhouse & its contents, the live stock thereon & the chattels & effects, were assigned absolutely to deft., A. O'D., in consideration of natural love & affection by his cousin J. O'D. "subject however to the right of the said J. O'D. to the exclusive use of a room in the dwelling-house upon the said lands with the use in common with the said A. O'D. of the kitchen & passages of the said house & to the right of his support therein which is to include all necessary fuel at the expense of the said A. O'D. & to the use of a donkey & trap when required." Deft. also covenanted with the said J. O'D. to permit him to enjoy the said rights & to provide personal attendance on him. On the death of J. O'D., deft. was assessed to estate duty upon all the property comprised in the said deed. Upon a motion for attachment for failure to pass an estate duty account : —*Held :* the property transferred by J. O'D. to deft. was not possessed or enjoyed by the latter to the entire exclusion of the donor or of any benefit to him by contract or otherwise &, accordingly, estate duty was payable thereon under sect. 2 (1) (*c*) of Finance Act, 1894.—REVENUE COMRS. *v.* O'DONOHOE, [1936] I. R. 342.—**IR.**

8h. *Property situate abroad—Shares.*] Deceased, not a British subject, was at the date of his death domiciled in the Colony of the Straits Settlements. The Comr. of Stamps for the Colony in determining the value of deceased's estate for the purposes of estate duty included the value of his movable property outside the Colony, which consisted chiefly of shares valued at over $27,000,000 :—*Held :* such movable assets outside the Colony fell within the words "all property which passes on the death" in sect. 68 (1) of Ordinance No. 103 (Stamps) of the Colony & were accordingly assessable to estate duty.—STRAITS SETTLEMENTS COMR. OF STAMPS *v.* OEI TJONG SWAN, [1933] A. C. 378 ; 102 L. J. P. C. 90 ; 149 L. T. 145 ; 49 T. L. R. 428, P. C.—**STRAITS SETTLEMENTS.**

PART II. SECT. 3, SUB-SECT. 3.

8l. *Shares in company domiciled in Irish Free State—Testator & life tenant domiciled in Northern Ireland—Death of life tenant.*]—Testatrix, B., died domiciled in Northern Ireland. By her will she gave all her property to trustees to allow same to remain in the state of investment in which it might be at the time of her death or to change said investments as the trustees in their absolute discretion might think fit & to pay the income thereof to testatrix's daughter, N., during her life, & after her death to hold the principal & income of the property in trust for testatrix's granddaughter, H., absolutely. She appointed W. & her daughter, N., exors. of her will. The assets included shares in a co. situate in the Irish Free State. N., the life tenant, died on Apr. 23, 1928, within two months of the death of B., & before representation to the estate of B. had issued. A claim for estate duty arose on the death of N. in respect of the residuary estate of B., passing on the death of N. under the will. It was contended on behalf of the Crown that the residuary estate of B. as at the death of N., constituted a Northern Ireland chose in action, as B. died domiciled in Northern Ireland & the forum of administration of her estate was the Northern Ireland Cts. The exor. of the estate of B., however, contended that the estate of B. passed in specie on the death of N. :—*Held :* after the death of B., N. has a proprietary interest in her mother's estate & estate duty was payable in the Irish Free State & not in Northern Ireland, the residuary estate having passed on the death of N., & having consisted of shares in a co. situate in the Irish Free State.—A.-G. *v.* WALKER, [1934] N. I. 179.—**IR.**

8o. *Situs of shares.*]—The *situs* of shares is at the place where the register of shareholders is kept, & duty is payable there in accordance with the law of the locality, & this is so even though the name of a deceased owner was not actually on the register at the time of death.—*Re* FERGUSON, [1935] I. R. 21. —**IR.**

ments locally situate in Northern Ireland, & in part of property situate in the United States of America. A claim was put forward for estate duty in England in respect of the English investments as property deemed to pass on the death of the widow. It was contended (i) that the widow had no interest in these investments, but only a right to bring an administration action in Northern Ireland, & (ii) that, by the operation of Finance Act, 1894 (c. 30), s. 5 (2), no duty was payable on the death of the widow, as estate duty had been paid on the death of her husband :—*Held :* the annuity was an interest within the meaning of Finance Act, 1894, s. 2, in the property situate in England ; the words "estate duty" in Finance Act, 1894 (c. 30), s. 5 (2), mean estate duty in England. The fact that duty is still levied under the same Act, since the passing of the Govt. of Ireland Act, 1920 (c. 67), does not make the duties levied in the two countries one duty.—*Re* WHITE, SKINNER *v.* A.-G., [1938] 2 All E. R. 691 ; 107 L. J. Ch. 357 ; 158 L. T. 503 ; 54 T. L. R. 838 ; 82 Sol. Jo. 432, C. A.

96a. —— —— **Shares.**]—Testator, a German subject, was, at the outbreak of the European War, entitled to stocks, shares, & securities in English, South African, & American cos. The certificates were in all cases situate in London, & the securities themselves were transferable in London at the outbreak of war, & at the date of testator's death. Testator died in 1915, in Berlin, being domiciled in Germany. By his will three-fifths of his property were bequeathed to German & Austrian beneficiaries, & two-fifths to British & Polish beneficiaries. In 1915 the will was proved in Germany by the exors. named therein. In 1922, grant of administration in England was made to pltf. By virtue of Treaty of Peace Orders, the whole of the interests of the German & Austrian beneficiaries became charged with & subject to the claims of the Custodian of Enemy Property. In 1922 all the South African securities were transferred to the South African Custodian, an exor. dative was appointed in South Africa to administer testator's South African estate, & estate duty in South Africa was paid by him in respect thereof. Some of the American securities were transferred to the American Alien Property Custodian, administration of testator's American estate was granted in America, & the securities were transferred to the American Custodian to be distributed by the American administrator among the beneficiaries. All the remaining American securities, with the exception of a small balance, were released to pltf. by the English Custodian. In May, 1924, pltf. filed a corrective affidavit, including therein those of the American securities which had been released to him at that date, & he paid estate duty & interest in respect thereof :—*Held :* (1) all the shares were locally situate in England & the administrator was bound to include them as property of which testator was competent to dispose, & was accountable to the extent of the assets he had received for the estate duty in respect thereof ; (2) the basis of valuation of such shares was the price similar shares would fetch in the open market at the date of testator's death.—*Re* ASCHROTT, CLIFTON *v.* STRAUSS, [1927] 1 Ch. 313 ; 96 L. J. Ch. 205.

99. *Add. Annotation :—As to* (4) **Refd.** *Re* Bateman, [1925] 2 K. B. 429.

102a. —— **Release of life interest—In exchange for remainder.**]—Deceased, under a settlement, was entitled to certain lands & capital moneys for life with remainder to deft. By a deed of exchange made between deceased & deft., deft. conveyed to deceased his remainder in the above lands, & in return the deceased conveyed to deft. his life interest in the capital moneys to the intent that the life interest should merge in deft.'s estate in remainder. Deceased died within three years. The Crown claimed estate duty on these moneys :—*Held :* the property, the life interest, did not pass by reason of the purchase, because that interest ceased on death, & consequently 1894 Act, s. 3 (1), did not apply, &, deceased having died within three years of the making of the deed, Finance Act, 1900 (c. 7), s. 11, as amended, applied, & the property was deemed to pass notwithstanding its disposition by the above deed.—A.-G. *v.* LLEWELYN, [1935] 1 K. B. 94 ; 103 L. J. K. B. 497 ; 152 L. T. 545.

106. *Add. Annotation :—As to* (2) **Refd.** A.-G. *v.* Llewelyn, [1935] 1 K. B. 94.

107a. —— —— ——.]—By settlements made in 1906 & 1911, a lady, in consideration of £5,100 which was paid over to her by her son, conveyed certain furniture upon trust for herself for life with remainder to her son absolutely. At her death in 1918 the furniture was sold for £45,000, & the Crown claimed succession duty & estate duty upon the difference between the two sums from the trustee of the settlements :—*Held :* (1) the transaction was a *bonâ fide* sale between mother & son, & no succession duty was payable ; (2) as to the claim for estate duty, there had been a "purchase for partial consideration" within 1894 Act, s. 3 (2), the consideration paid represented four-fifths of the value of the property at the date of such purchase, & estate duty was payable only upon one-fifth of the value as at the date of the death of the tenant for life ; (3) "partial consideration," in sect. 3 (2), meant something less than the full & fair value as between buyer & seller.—*Re* BATEMAN (BARONESS), [1925] 2 K. B. 429 ; 95 L. J. K. B. 199 ; *sub nom. Re* BATEMAN (BARONESS), A.-G. *v* WREFORD-BROWN, 134 L. T. 153.

PART II. SECT. 4, SUB-SECT. 1.

s i. *S. P.* HOLMES *v.* STAMP DUTIES COMR., [1927] N. Z. L. R. 753.—**N.Z.**

s ii. —— *Discharge by son of legitim.*]—A father granted a bond for £30,000 in implement of an undertaking by him in his second son's marriage contract, in contemplation of the son's marriage, & in consideration of a conveyance executed by the son's intended wife for behoof of the spouses. In the marriage contract the son accepted the obligations therein contracted by his father as in full satisfaction in any event of all legal claims for legitim or otherwise he might have upon his father's estate. At the date of the marriage contract & of the bond the only claim to legitim possible to the son was in the event of his elder brother predeceasing his father. That event happened, & at the father's death the amount of legitim to which the second son would have had a claim, had he not discharged it, was £25,000 :—*Held :* the bond could not be regarded as a debt incurred by the father for full consideration in money or money's worth wholly for deceased's own use & benefit in the sense of 1894 Act, s. 7 (1), & did not form a proper deduction in determining the value of his estate for the purposes of estate duty.—LORD ADVOCATE *v.* WARRENDER'S TRUSTEES (1906), 8 F. (Ct. of Sess.) 371.—**SCOT.**

117a. —— —— **Who is person "competent to dispose"—Donee of power.**]—The donee of a power who can freely appoint the whole of the fund to himself & so acquire the right to dispose of the fund in accordance with his own volition is "competent to dispose" of that fund within Finance Act, 1894 (c. 30), s. 5 (2). The word "power" in the phrase "power . . . to appoint or dispose of property as he thinks fit" in Finance Act, 1894 (c. 30), s. 22 (2) (*a*), is not used in the strict sense attaching to it when used with reference to a power of appointment, but in the sense of capacity.—*Re* PENROSE, PENROSE *v.* PENROSE, [1933] Ch. 793; 102 L. J. Ch. 321; 149 L. T. 325; 49 T. L. R. 285.

120. *Add. Annotation:—As to* (4) **Distd.** *Re* Grinlinton, Public Trustee *v.* Grinlinton (1932), 102 L. J. Ch. 4.

121. *Add. Annotations:—As to* (2) **Distd.** *Re* Grinlinton, Public Trustee *v.* Grinlinton (1932), 102 L. J. Ch. 4. **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

121a. —— —— —— **Enures for benefit of residuary legatees—Where annuities free of duty given out of residue.**]—Testator who died in 1910 directed the payment of an annuity to his son E., & on the latter's death "to his present wife," free of duty. Settlement estate duty was paid on so much of testator's residuary estate as was required to provide for the annuities payable under the will. E. died in 1930 & his widow, A., became entitled to the annuity. Estate duty was payable, but an allowance of interest was claimed under Finance Act, 1914 (c. 10), s. 14 (*b*), as a set-off in respect of the settlement estate duty already paid on testator's death:—*Held:* the annuities having been paid in full, the persons entitled to the allowance were the persons entitled to the residuary estate.—*Re* GRINLINTON, PUBLIC TRUSTEE *v.* GRINLINTON, [1933] Ch. 344; 102 L. J. Ch. 4; 148 L. T. 191.

127a. Property in which deceased never had an interest—Accumulations of income of volun-

---

PART II. SECT. 4, SUB-SECT. 2.

c i. —— *Annuity paid out of general income—No property settled.*]—Sect. 4 of Estate Duty Ordinance, 1932, of Hong Kong, provides that estate duty shall be paid on the principal value of "all property passing on the death" of a deceased person, which, by sect. 5 (1), "shall be deemed to include . . . (*b*) property in which deceased or any other person had an interest ceasing on the death of deceased, to the extent to which a benefit accrues or arises by the cesser of such interest, . . ." By sect. 25 (1) of the Ordinance: "If estate duty has already been paid in respect of any settled property since the date of the settlement, upon the death of one of the parties to a marriage, no estate duty shall be payable on the death of the other party to the marriage unless such person was at the time of his or her death or had been at any time during the continuance of the settlement competent to dispose of such property. (2) For the purposes of this section, the term settlement means any . . . will, . . . under or by virtue of which instrument . . . any property, or any estate or interest in any property, stands for the time being limited to or in trust for any persons by way of succession, & the term settled property means the property comprised in a settlement."

A testator by his will bequeathed to his wife an annuity of £10,000 during her life. No specific fund was set aside by the trustees of the will to meet the annuity, which was in fact paid out of the general income of the estate. The whole of that income was not applied in meeting the annual payments. The annuitant was not at any time competent to dispose of the property out of the income of which her annuity was payable. Estate duty had been paid in Hong Kong on the whole of the testator's estate when probate was granted. On a claim by the Estate Duty Comr. that upon the death of the annuitant estate duty became payable under sect. 5 (1) of Estate Duty Ordinance, 1932, to the extent to which a benefit accrued by the cesser of the annuity:—*Held:* (1) there was property of testator in which the annuitant had an interest ceasing at her death within the meaning of sect. 5 (1) (*b*) of the Ordinance, & therefore to the extent to which a benefit accrued by the cesser of the annuity that property was deemed to be included in property passing on the death of the annuitant; (2) there was not a "settlement" within the meaning of sect. 25 (2) of the Ordinance, under or by virtue of which any property, or any estate or interest in property, stood during the lifetime of the annuitant limited to or in trust for any person by way of succession, & therefore the exemption conferred by sect. 25 (1) did not operate, & estate duty was accordingly payable. The phrase "any property, or any estate or interest in any property" in sect. 25 (2) of the Ordinance, coupled with the words "stands limited," referred to definite property or an estate or interest in it which actually existed & could be precisely defined. There was no such definite property allocated in the present case, & a hypothetical slice of the property passing by the will could not properly be treated as an interest in that property within the meaning of sect. 25 (2).—ARMSTRONG *v.* ESTATE DUTY COMR., [1937] A. C. 885; [1937] 3 All E. R. 484; 106 L. J. P. C. 133; 157 L. T. 376; 81 Sol. Jo. 587, P. C.—**HONG KONG.**

sa. "*Interest in business*"—*What is* —1914 *Act, s.* 15.]—A father & two of his sons carried on business in partnership. By a re-arrangement of the partnership relations the father accepted £124,646 in full of his whole rights in the old firm & its assets, & agreed to allow this sum to remain as a loan to the new firm at 4 per cent. interest, on condition that, if called up by him, or in any event on his death, it was to be repaid by ten yearly instalments. The father contributed no capital to the new firm apart from the loan, but had an interest in the profits to the extent of a one-tenth share. He died in 1922, leaving a will by which he bequeathed the residue of his estate, including the loan, to his family, & estate duty was duly paid thereon. The two sons came to an arrangement with their father's exors., under which the sons agreed to repay the loan at once in return for a certain discount; & in settling with the exors., they retained in the business the respective shares of the loan falling to them, by crediting themselves with the amounts in the books of the firm. Within two years of the father's death one of the sons died, & estate duty became payable on his estate. His exor. having claimed a reduction, under the above sect., of the estate duty payable on the sum credited to the son in the firm's books in respect of his share of his father's loan:—*Held:* the father's right to repayment of the loan was not an "interest in the business" within the sect., & the sum standing in the son's name in the books of the firm was an interest in the assets of the firm, & was not identical with his father's interest in the *jus credit* of the loan.—GLEN *v.* INLAND REVENUE, [1926] S. C. 44.—**SCOT.**

sc. —— —— ——.]—The proprietor of a wine & spirit business, by his trust-disposition & settlement, directed his trustees to convey the residue of his estate to his only daughter on her attaining twenty-five years of age, with a destination over in the event of her predeceasing the period of conveyance, & to pay her the income of the residue until that date. He directed his trustees to sell the business. The daughter died eight days after testator, under the age of twenty-five, & before the direction to sell had been implemented. The trustees having claimed a reduction, under Finance Act, 1914, s. 15, of the estate-duty payable on the daughter's death, in so far as assessable on the value of the business, the Comrs. of Inland Revenue refused the claim:—*Held:* sect. 15 applied, in respect that the beneficial possession & enjoyment of the residue, including the business, had passed to the daughter on testator's death, & had again passed on her death; & the trustees were, accordingly, entitled to the relief claimed.—WARREN'S TRUSTEES *v.* INLAND REVENUE, [1928] S. C. 806.—**SCOT.**

PART II. SECT. 4, SUB-SECT. 4.

d. For "*Charitable purposes—In Australia & abroad,*" read "*Charitable purposes—In Australia—& abroad.*"

d i. —— ——.]—By Estate Duty Assessment Act, 1914, s. 8 (5), estate duty is not to be assessed upon so much of the estate as is bequeathed "for religious, scientific, charitable or public educational purposes":—*Held:* as no contrary intention appeared, the word "charitable" was to be construed in its legal & not its popular sense.—CHESTERMAN *v.* FEDERAL COMR. OF TAXATION, [1926] A. C. 128; 95 L. J. P. C. 39; 134 L. T. 360; 42 T. L. R. 121.—**AUS.**

d ii. —— "*Public benevolent institution*"—*What is.*]—*Held:* the expression "public benevolent institution" in sect. 8 (5) of Estate Duty Assessment Act, 1914-1928, does not include organisations which do not promote the relief of poverty, suffering, distress or misfortune. The "Royal Naval House" is, therefore, not a "public benevolent institution" within the sect. — PERPETUAL TRUSTEE CO., LTD. *v.* TAXATION COMR., [1931] Argus L. R. 240; 5 A. L. J. 109.—**AUS.**

tary settlement.]—Deceased transferred certain stocks & shares to trustees on trust to accumulate the income thereof at compound interest during a certain period by way of accretion to the settled fund, & after that period to deal with that fund on certain trusts for the benefit of others. The income was so accumulated for several years. On the death of the deceased the Comrs. contended that for determining the rate of estate duty the said accumulations should under Finance Act, 1894 (c. 30), s. 4, be aggregated with the rest of the settled property passing on the death, & that they were not property in which deceased "never had an interest" within the meaning of the proviso to that sect. :—*Held :* the contention of the Comrs. was correct.—A.-G. *v.* DICKINSON & BARON, [1937] 2 K. B. 574 ; [1937] 2 All E. R. 485 ; 106 L. J. K. B. 615 ; 157 L. T. 550 ; 53 T. L. R. 568 ; 81 Sol. Jo. 339.

Annotation :—**Consd.** *Re* Hodson's Settlement, Brookes *v.* A.-G., [1938] 3 All E. R. 341.

128. *Add. Annotations :*—**Refd.** *Re* Exmouth's Annuity, [1925] Ch. 280 ; *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

128a. —— **"Land & chattels" — What are "chattels."**]—By an Act of 54 Geo. 3 an annuity of £2,000 was inalienably settled on Lord E. & his successors in title. In 1892 the redemption of the annuity for a sum of £55,890 was agreed upon, & that amount was paid into ct. & invested in the purchase of Consols. The fifth Viscount E. died in Aug. 1922, & the sixth Viscount in Feb. 1923. Questions having arisen as to the payment of estate duty, the ct. was asked whether estate duty became payable (*a*) upon the capital of the sum of Consols, or (*b*) upon the value of the interest of the successor to the title in such sum of Consols, & if estate duty became so payable, then whether, for the purpose of determining the rate of estate duty, such sum of Consols ought (*a*) to be aggregated with the other property, or (*b*) to be treated as an estate by itself :—*Held :* "chattels" in collocation with settled lands in 1894 Act, s. 5 (5), did not suggest personalty generally, but those particular items of it which were usually settled upon trusts that followed the devolution of the settled land, & the sum of Consols was not "chattels" within the sub-sect., & must be aggregated with the other property for the purpose of paying estate duty.—*Re* EXMOUTH'S ANNUITY, [1925] Ch. 280 ; 94 L. J. Ch. 208 ; 133 L. T. 39 ; 69 Sol. Jo. 411.

129a. —— **Where duty commuted—Not aggregated with unsettled property.**] — Where estate duty has been commuted under 1894 Act, s. 12, the property in respect of which the commutation has been made is not property on which "estate duty is leviable" within s. 4 of that Act & is not to be aggregated with other property of the same person on which estate duty is leviable.—A.-G. *v.* HOWE (EARL) (1925), 94 L. J. K. B. 540 ; 133 L. T. 801 ; 41 T. L. R. 610 ; 69 Sol. Jo. 791, C. A.

131. *Add. Citations :—affd. sub nom.* PARR *v.* A.-G., [1926] A. C. 239 ; 95 L. J. K. B. 417 ; 134 L. T. 321 ; 42 T. L. R. 217, H. L.

After cross-reference following this case add :—

—— —— **Death after July 29, 1927.**]—*See, now,* Finance Act, 1927 (c. 10), s. 51.

PART II. SECT. 6.

132 l. *Aggregated property—Whether property aggregated more than once on same death.*]—Testator, who had two sons, H. & J., by his will devised certain real property to his son, H., in trust for H. for his life, with remainder to H.'s children as H. should appoint, &, if there should be no son of H. who should attain the age of 21 years, then in trust for his, testator's, other son, J. Testator died in 1893, & H. entered into possession of the lands under the trusts of the will. J. died intestate & unmarried in 1897, leaving his brother, the said H., his heir-at-law. By an order of the ct. made in 1908 it was declared that on the death of J., H. took an estate for life, with a vested absolute interest in remainder, subject to being divested if he left issue, in the freehold lands devised by his father's will, &, accordingly, that H. could make a valid testamentary disposition or otherwise dispose of his estate or interest in the lands. On the death of J., H. took out a grant of administration, & paid duty in respect of the personal property which passed on the death of J., but he did not pay any estate duty in respect of the contingent interest in the lands which had been devised to J. by his father's will, & which passed to him, H., as his brother's heir-at-law. H. died without issue in 1920, & estate duty was paid by his exor. on the value of the property which passed on his death, including the lands in question :—*Held :* the Revenue Comrs. were entitled to claim estate duty on the death of J. in respect of his contingent estate in the lands which passed on his death to H., & the rate of estate duty was to be calculated according to the value of that interest when it fell into possession on the death of H., together with the value of the rest of the estate of J.—*Re* O'CONNOR'S ESTATE, HENDRICK *v.* REVENUE COMRS., [1931] I. R. 98.—**IR.**

sd. *Degree of relationship—Calculation of—Beyond third degree.*]—The words "not beyond the third degree" occurring in Deceased Persons' Estates Duties Act, 1921, Sched. (2), Part II., para. 2, refer to the method of calculation according to the civil law, in which the degrees were calculated up to the common ancestor, & then down to the beneficiary in question :—*Held :* a son of a first cousin of testatrix was beyond the third degree of relationship to testatrix, & the Comr. of Taxes had rightly assessed the duty payable in respect of the benefit he took under her will, in accordance with Sched. (2), Part II., para. 3, of the said Act.—*Re* COOK (1925), 21 Tas. L. R. 11.—**AUS.**

se. —— *Selected class of relatives.*]—The benefit of Estate Duty Assessment Act, 1914-1922, s. 8 (6), extends to all property which by force of the will, or by the law as to the distribution of the estates of intestates, passes directly from testator or intestate to a member of the selected class, provided in the case of a will that on the death of testator it can be shown, from the terms of the will & by reference to the state of his family, that the property must go directly from him to persons within the class & that in no conceivable event can it pass from the testator to any person who is outside the class. —SMITH *v.* THE FEDERAL COMR. OF TAXATION (1928), 40 C. L. R. 467 ; [1928] Argus L. R. 189.—**AUS.**

PART II. SECT. 7, SUB-SECT. 1.

m l. —— ——.]—Testator was, at the time of his death, chairman & managing director of a co. carrying on business as tea & wine merchants. The business had been established by testator's grandfather many years ago, & had been carried on by his family ever since. The business had been turned into a limited co. in 1898, with a share capital of £30,000, divided into 30,000 shares of £1 each, of which 23,007 had been issued, & it was turned into a private co. in 1908. At the date of his death the testator held 18,501 shares, & his son, the assistant managing director, held 4,251. The shares were transferable, subject to the right of the directors to refuse to register any transfer of shares upon which the co. had a lien, or a transfer to a transferee of whom the directors did not approve. The co. was a solvent one ; the last balance sheet, prior to the date of the death of the testator, showed a surplus of assets over liabilities of £36,399, the principal asset consisting of the stock-in-trade, valued in the last balance sheet at £23,329. The shares, which were all held by members of testator's family, had never been dealt with on the Stock Exchange, & therefore they had no market quotation. As the co. was a private co., in which practically no one was interested except the directors, the profits could be divided up either as salaries or dividends as the directors chose, & they decided to give the profits as salaries. At the time of his death the salary of testator was £2,000 & that of his son £1,000 *per annum.* For the six years previous to testator's death the actual dividend paid averaged 5–3 per cent. on the issued capital of £23,007. Both testator & his son had special knowledge of the business, to which they gave constant daily attention. Testator's exors. when making their return for the purpose of estate duty, valued testator's shares at 15*s.* each, basing their estimate of value on the average dividend for the preceding period of six years & the market price of similar shares, a valuation which they subsequently offered to increase to 17*s.* 6*d.*, but the Revenue Comrs.

136a. —— Shares.]—*Re* ASCHROTT, CLIFTON *v.* STRAUSS, No. 96a, *ante*.

136b. —— —— Subject to restriction on transfer.]—A testator at the time of his death was entitled to a number of ordinary shares of £100 each in a co. the articles of assocn. of which imposed rigid restrictions upon the alienation & transfer of the shares in the co. :—*Held :* the value of the shares for the purpose of estate duty was to be estimated at the price which they would fetch if sold in the open market on the terms that the purchaser should be entitled to be registered & to be regarded as the holder of the shares, & should take & hold them subject to the provisions of the articles of assocn., including those relating to the alienation & transfer of shares in the co.

There was evidence that the value of the shares in the open market would be enhanced if Trust Cos. were to be included among possible competitors in the open market :—*Held :* the value of the shares should not be appreciated by reason of the special value of the shares to such cos.—INLAND REVENUE COMRS. *v.* CROSSMAN, INLAND REVENUE COMRS. *v.* MANN, [1937] A. C. 26 ; [1936] 1 All E. R. 762 ; 52 T. L. R. 415 ; 80 Sol. Jo. 485 ; *sub nom. Re* CROSSMAN, *Re* PAULIN, 105 L. J. K. B. 450 ; 154 L. T. 570, H. L.

136c. —— How ascertained—Special facts to be considered.]—*Re* CASSEL, PUBLIC TRUSTEE *v.* MOUNTBATTEN, No. 22a, *ante*.

137. *Add. Annotation :*—**Consd.** A.-G. *v.* Burrell (1935), 153 L. T. 393.

137a. Bequests of shares of residue—Accruer clause—Calculation of value of interest of deceased beneficiary.]—Viscount N. by his will & three codicils thereto disposed by clause 6 of his will of 74½ hundredths of the income of his residuary estate. By sub-clause 28 he provided that on the death of any of the legatees, his or her share should accrue to the survivors. By sub-clause 29 he provided for the application of the remaining income in payment of other legacies, & these being paid the remainder was to be applied in the same manner as the 74½ hundredths. By clause 10 it was directed that the capital should go in moieties to charities. By an order made on July 28, 1924, the income was divided into one hundred & thirds. Two of the income beneficiaries had now died. On a summons taken out in these circumstances asking whether the estate duty payable by reason of the death of any person entitled to any share of the income was to be paid upon the value of the share in the capital equal to that of the income previously enjoyed by such person or upon the like proportion of the actuarial capital value of the income during the respective lives of the several persons entitled thereto or other the period during which the trusts in respect of such income should be subsisting or how otherwise the same ought to be calculated & out of what fund the same was payable :—*Held :* (1) the property which passed on the death of any such person must be taken to be a share of capital in the residuary trust fund, & that estate duty must be paid on the value of such share ; (2) the duty payable on any such death was a first charge on that portion of the residue out of which the income was payable, & must be borne by the corpus of such estate.—*Re* NORTHCLIFFE, ARNHOLZ *v.* HUDSON, [1929] 1 Ch. 327 ; 98 L. J. Ch. 65 ; 140 L. T. 300.

Annotation :—As to (1) **Refd.** Christie *v.* Lord Advocate, [1936] 1 All E. R. 443.

137b. "Proceeds of sale"—Objects of art.]—Where works of art or any other objects of national, scientific, historic or artistic interest within Finance Act, 1930 (c. 28), s. 40, passing on the death of any person, are exempt from death duties while enjoyed in kind, & are subsequently sold, the estate & other death duties, which then become chargeable on the proceeds of sale, are to be charged not on the gross proceeds of sale, but on the net proceeds, after deduction of commission & all other expenses incurred in selling the property to the best advantage.—TYSER *v.* A.-G., [1938] Ch. 426 ; [1938] 1 All E. R. 657 ; 107 L. J. Ch. 247 ; 159 L. T. 186 ; 54 T. L. R. 481 ; 82 Sol. Jo. 174.

144a. Debts—Whether deduction allowed against gifts inter vivos.]—Deceased, within the period of three years before his death, made gifts to members of his family & friends of shares in a co. of which he was the governing director, & also of freehold & leasehold property & cash, amounting in value to a total of £185,101. At the time of his death his only property was certain wearing apparel, valued at £10, & two deferred shares & one ordinary share, each of the nominal value of £1, in the aforesaid co., & he owed debts amounting, together with the expenses of his funeral, to £90,390. It was admitted that the gifts *inter vivos* were liable to estate duty, but it was claimed that, in determining the principal value of the property passing on the death of the deceased for the purpose of estate duty, all the property of deceased must be aggregated to form one estate, & allowance made for the funeral expenses of the deceased & his debts & incumbrances, within Finance Act, 1894

declined to accept these values :—*Held :* the co. could be fairly regarded as capable of earning on a commercial basis 10 per cent. on its capital, but, taking this as the principal test of value, it must be subject to the consideration, on the one hand, of the restriction upon the transfer of the shares, &, on the other, to the added value by reason of the security of the co.'s position. Also, the Comrs.' contention that testator's shares would be most likely sold *en bloc* to a single purchaser, & that their value should be fixed accordingly, was unsustainable as the possibility of the shares being divided up among several purchasers, either members of testator's family or of the public, must be considered, for Finance Act, 1894 (c. 30), s. 7 (5), does not contemplate in the term "open market" not only a market which is hypothetical, but also only hypothetical purchasers wanting a block of shares.—SMYTH *v.* REVENUE COMRS., [1931] I. R. 643.—IR.

m ii. —— *At date of death—Property transferred by gift within three years of death.*]—A mother transferred certain securities in gift to each of her children, the total value of the securities at the date of transfer being £406,662. She died within three years of the date of the gifts. The value of the securities at the date of her death was £453,212 :—*Held :* the value of the securities for the purpose of estate duty was the value at the date of the donor's death, & not that at the date of the gifts.—STRATHCONA, LORD *v.* INLAND REVENUE COMRS., [1929] S. C. 800.—SCOT.

PART II. SECT. 7, SUB-SECT. 2.

b i. —— *Secured on home & foreign assets—Foreign assets alone sufficient security.*]—The estate of a deceased person consisted of property in N. S. W. & of property outside the State. Amongst other debts there was one of £32,279 which was secured by mtge. or charge over a part of his home assets &, also, over certain of his foreign assets which were valued at £33,427 :—*Held :* the case fell within Stamp Duties Act, 1920, s. 109 (3), & in assessing death duty on the estate no allowance should be made for the debt or any part thereof.—SOLLAS *v.* STAMP DUTIES COMR. (1928), 28 S. R. N. S. W. 207 ; 45 N. S. W. W. N. 52.—AUS.

(c. 30) :—*Held :* sect. 7 (1) only contemplated allowance being made for liabilities of the estate which were met out of available assets of the estate, & the debts & funeral expenses of the deceased could not therefore be set off against the gifts *inter vivos*, which were not available for the purpose.—*Re* BARNES, [1938] 2 K. B. 684 ; [1938] 3 All E. R. 327 ; 107 L. J. K. B. 620 ; 159 L. T. 437 ; 54 T. L. R. 980 ; 82 Sol. Jo. 648 ; *affd.* [1938] 4 All E. R. 870, C. A.

146. To cross-references before this case add " *See, also*, Law of Property Act, 1925 (c. 20), s. 17 (3)."

147a. Payment by instalments—Real property—Land held in undivided shares—Effect of Law of Property Act, 1925 (c. 20), Sched. I., Part IV.]—*Re* WHEELER, JAMESON *v.* COTTER, No. 209d, *post.*

147b. —— —— —— ——.]—A.-G. *v.* PUBLIC TRUSTEE & TUCK, No. 209e, *post.*

155. *Add. Annotations :—As to* (1) **Expld.** *Re* Portman (No. 2), [1925] Ch. 294. **Distd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559 ; *Re* Lomer, Public Trustee *v.* Victoria Hospital for Children, [1929] 1 Ch. 731. **Refd.** *Re* Northcliffe, Arnholz *v.* Hudson, [1929] 1 Ch. 327.

161. *Add. Annotations :—***Folld.** *Re* Portman (No. 2), [1925] Ch. 294. **Distd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

161a. —— ——.]—A rentcharge of £50,000 *per annum* charged on L. settled estates was limited to the use of deft., the fourth Viscount P., for life with remainder to the use of his eldest son during his life, to commence from their respective successions to the title & to be paid without any deduction except for death duties, & a similar rentcharge was limited in remainder, in the event of any other issue of the fourth Viscount succeeding to the title, to the use of the sons of such eldest son & other sons of the fourth Viscount in tail male. Subject to such rentcharge, the L. settled estates were limited to the use of pltf. for life with remainder to the use of his eldest son for life with remainders over. By a deed poll dated Oct. 15, 1913, provision was made for the abatement of the £50,000 rentcharge in certain events. The third Viscount, who was tenant for life of the estates in question, had died in 1923, while nine of the sixteen half-yearly instalments of estate duty payable in respect of the death of the second Viscount, who had died in 1919, remained unpaid. One of the questions for the decision of the ct. at the original hearing of the summons (*Re Portman (Viscount)*, No. 249, *post*) was as to what proportion of the balance remaining unpaid at the death of the third Viscount of the estate duty, which became assessable on the death of the second Viscount in respect of the L. estates, should be borne by the yearly rentcharge of £50,000, & it was admitted in argument that there was no difference in principle in respect of that unpaid balance between that duty & that which was assessable upon the death of the third Viscount. After judgment had been delivered & before the minutes had been finally drawn up, leave was given to withdraw the admission made in argument as aforesaid, & it was directed that the question with regard to the liability of the rentcharge in respect of the unpaid instalments of estate duty assessable on the death of the second Viscount should be argued :—*Held :* the effect of 1894 Act, s. 14 (1), was to throw the incidence of the duty ratably & in proper proportions upon all persons becoming beneficially interested in the property upon which the duty was constituted a first charge by force of sect. 9 (1) of the Act ; the rentcharge, or the abated rentcharge, must be dealt with, as regards these unpaid instalments, in the manner indicated in the original judgment ; & the order would be in the terms of the minutes prepared in accordance with that judgment.—*Re* PORTMAN (VISCOUNT) (No. 2), [1925] Ch. 294 ; 94 L. J. Ch. 329 ; 133 L. T. 389.

166a. Effect of hotchpot clause—Whether advances made over three years before death brought into charge.]—*Re* TOLLEMACHE, FORBES *v.* PUBLIC TRUSTEE (1930), 69 L. Jo. 423 ; 169 L. T. Jo. 519 ; [1930] W. N. 138.

170a. ——.]—*Re* NORTHCLIFFE, ARNHOLZ *v.* HUDSON, No. 137a, *ante.*

173a. —— ——.]—*Re* ASHTON, SIER *v.* ASHTON (1934), 78 Sol. Jo. 803.

176. *Add. Annotation :—As to* (1) **Consd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

186. *Add. Annotations :—As to* (1) **Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347 ; *Re* Bullock-Webster, Royal Exchange Assurance *v.* Royal Trust Co. of Canada, [1936] Ch. 1.

203. *Add. Annotation :—***Refd.** *Re* Previté, Sturges *v.* Previté, [1931] 1 Ch. 447.

209a. Effect of Law of Property Act, 1925 (c. 20), s. 16 (5).]—*Re* MELLISH, CLARK *v.* BUCHANNAN (1927), cited in [1929] 2 K. B. at p. 82, n.

Annotations :—**Folld.** A.-G. *v.* Public Trustee & Tuck, [1929] 2 K. B. 77 ; *Re* Wheeler, Jameson *v.* Cotter, [1929] 2 K. B. 81, n. **Distd.** *Re* Kempthorne, Charles *v.* Kemp, thorne (1929), 46 T. L. R. 15 ; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

209b. ——.]—The above sub-sect. preserves the liability of real estate to pay its own duties.—*Re* MORRIS, SKINNER *v.* SANDERS (1927), 71 Sol. Jo. 472.

209c. —— **Incorporation of Form 8 of Statutory Will Forms, 1925.**]—Testator by his will, after making specific & pecuniary bequests, gave to his wife absolutely any freehold or leasehold house belonging to him & in which he should be residing at his death. He declared that all legacies thereby given should be free of all death duties & devised & bequeathed all his residuary real & personal estate to his trustees, & declared that (*inter alia*) Form 8 of the Statutory Will Forms, 1925, should be incorporated in his will so far as it was applicable to his residuary estate. The only real estate testator possessed at the time of his death was a

---

PART II. SECT. 9, SUB-SECT. 1.—B.

a i. ——.]—By his will testator directed that all his debts & funeral & testamentary expenses should be paid is conveniently as might be after his decease, & thereafter proceeded by his will to devise & bequeath all his real & personal property not otherwise disposed of :—*Held :* (1) estate duty was under the direction payable actually out of the residuary estate ; (2) in the event of the residuary estate being insufficient to pay the estate duty, the life interests were not liable for a portion of the deficiency, but the annuitants & specific devisees of real estate should jointly contribute to the deficiency.—CALDWELL, ETC. *v.* FLEMING, [1927] N. Z. L. R. 145.—**N.Z.**

freehold house in which he was then residing. Questions arose: (*a*) whether having regard to Form 8, clause 4 (*c*), of the Statutory Will Forms, 1925, the estate duty payable in respect of testator's freehold house on his death should be borne by the testator's widow or by the residuary estate, & (*b*) whether upon the true construction of the will, the estate & succession duties payable by reason of the testator's death in respect of the freehold house were payable out of the residuary estate:—*Held:* (1) although the exor. was by reason of the provisions of Law of Property Act, 1925 (c. 20), s. 16, now accountable for estate duty on realty, the incidence of the duty remained unchanged & was still charged by virtue of the Finance Act, 1894 (c. 30), s. 9 (1), on the realty in respect of which it was paid. Form 8, clause 4 (*c*), therefore, had no application, & apart from the question of construction the estate duty on the freehold house must be borne by the widow; (2) on the true construction of the will testator had used the word "legacies" not in its strict sense, but as including the gift of the house in which he was residing at his death, although that house was of freehold tenure. The estate & succession duties payable by reason of testator's death in respect of the freehold house in question were therefore properly payable out of the residuary estate. *Re* PREVITÉ, STURGES *v.* PREVITÉ, [1931] 1 Ch. 447; 100 L. J. Ch. 286; 145 L. T. 40.

209d. Land held in undivided shares—Effect of Law of Property Act, 1925 (c. 20), Sched. I., Part IV.]—Where an undivided share in land disposed of by will has become subject to a statutory trust, the incidence of estate duty remains unchanged & where the exors. in such a case have, as exors., paid the estate duty on the share as a testamentary expense, the amount so paid is repayable to them by the devisee of the share, & the repayment may, at his option, be by instalments.—*Re* WHEELER, JAMESON *v.* COTTER, [1929] 2 K. B. 81, n.; 141 L. T. 322.

Annotations:—**Follid.** A.-G. *v.* Public Trustee & Tuck, [1929] 2 K. B. 77. **Distd.** *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

209e. —— ——.]—Notwithstanding the provisions of Law of Property Act, 1925 (c. 20), which abolish tenancies in common of land & direct such land to be held by certain persons as trustees for sale upon statutory trusts, the death duty to be paid on freehold land which just before the commencement of Law of Property Act, 1925 (c. 20), was held in undivided shares, & in respect of which there have been no dealings since the commencement of that Act, is, even where the duty only became payable after the commencement of that Act, deemed to be "duty due upon an account of real property" within Finance Act, 1894 (c. 30), s. 6 (8), & under that sub-sect. as amended by Finance Act, 1896 (c. 28), s. 18, & Finance Act, 1919 (c. 32), s. 30, the duty may be paid by instalments extending over a period of eight years with interest at 4 per cent. *per annum* as therein provided.—A.-G. *v.* PUBLIC TRUSTEE & TUCK, [1929] 2 K. B. 77; 98 L. J. K. B. 462; 141 L. T. 398; 73 Sol. Jo. 299.

220. *Add. Annotation:*—*Generally*, **Consd.** *Re* Cassel, Public Trustee *v.* Mountbatten, [1927] 2 Ch. 275.

226. *Add. Annotations:*—*As to* (1) **Apld.** *Re* Laidlaw, Wilkinson *v.* Lyde, [1930] 2 Ch. 392; *Re* Trimble, Wilson *v.* Turton, [1931] 1 Ch. 369. **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31. *As to* (2) **Refd.** *Re* Hicks, Bach *v.* Cockburn, [1933] Ch. 335.

227a. —— ——.]—By his will a testator who died on Nov. 3, 1915, directed that all legacies & annuities thereby given should be paid & enjoyed free of death duties, & the question arose whether the exemption from duties was limited to duties payable on the death of testator or extended to those payable in future in respect of settled legacies:—*Held:* the duties, other than the legacy duties from which the legatees were relieved, were those payable on the death of testator & not those accruing in the future.—*Re* LAIDLAW, WILKINSON *v.* LYDE, [1930] 2 Ch. 392; 99 L. J. Ch. 463; 143 L. T. 761.

227b. —— ——.]—Testator by his will dated Feb. 24, 1930, after giving several pecuniary & specific legacies, directed by clause 6 that all the pecuniary legacies & specific bequests & devises given by his will "shall be free from all death duties which (whether presently or presumptively or prospectively payable) shall be paid out of any general personal estate."

He then directed his exors. to invest a sum of £5,000 upon trust to pay the income to his daughter L. during her life with provision for forfeiture in certain events & after her death or forfeiture to hold the investments in trust for her daughter A. absolutely. He devised & bequeathed his residuary real & personal estate to his exors. upon trust for sale & conversion & out of the proceeds (*inter alia*) to pay his testamentary expenses (including all estate duty leviable at his death in respect of his residuary estates). Testator died on Dec. 6, 1931. Questions arose whether under the terms of the will the estate duty which would become payable on the death of the daughter & the legacy duty which might become payable in the event of the forfeiture of her life interest would be payable out of the residuary estate or out of the settled legacy:—*Held:*

PART II. SECT. 9, SUB-SECT. 3.

1f. *Aggregation of settled funds—Whole estate subject to duty at higher rate.*]—Deceased made a settlement of property on her marriage, & on her death left a will. The rate at which duty was assessed was 6½ per cent., & if the value of the settled property had not been included in the final balance, the rate would have been 4½ per cent. The exors. claimed that the trustees of the settlement were liable to bear the difference:—*Held:* the incidence of the duty was governed by Death Duties Act, 1909, s. 31 (4), & the exors.' claim could not be sustained.—BROWN *v.* BROWN, [1924] N. Z. L. R. 427.—**N.Z.**

PART II. SECT. 9, SUB-SECT. 4.

216 l. *Gift inter vivos—Gift within three years of settlor's death.*]—Testator, after devising & bequeathing all his real & personal estate upon certain trusts, declared that "all probate & estate duties shall be paid by each beneficiary in proportion to the value of the share or interest taken by him or her under this my will." Within three years prior to his death testator disposed of a certain sum by way of gift to his wife, & after his death that sum had been assessed for State death duty:—*Held:* the death duty payable in respect of the gift *inter vivos* fell within the words "all probate & estate duties" in the declaration in the will.—ASHBY *v.* HAYDEN (1931), 31 S. R. N. S. W. 324; 48 N. S. W. W. N. 61.—**AUS.**

as the words used in clause 6 were found in precedent books published prior to the passing of Finance Act, 1914, they could not be held to apply exclusively to the future estate duties imposed by that Act, the words of the will showed that the mind of testator was directed to the duties payable at his death, & did not provide a context which would justify a more extended construction being imposed upon clause 6, & the estate duties which would become payable on the death of the tenant for life upon the settled legacy would not be payable out of the residuary estate, but the legacy duty would be so payable.—*Re* HICKS, BACH *v.* COCKBURN, [1933] Ch. 335; 102 L. J. Ch. 177; 148 L. T. 466.

229. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

232. *Add. Annotation :*—**Distd.** *Re* Laidlaw, Wilkinson *v.* Lydé, [1930] 2 Ch. 392.

233. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

234. *Add. Annotation :*—**Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

234a. Bequest to pay duties—Duties payable at death of testator.]—Testator who died in 1912 gave, by clause 7 of his will, certain shares to his exor. " upon trust to sell so many of such shares as shall be sufficient to pay all my debts & funeral & testamentary expenses . . . & all duties of every description, including settlement estate duty where payable, to which my estates, both real & personal, or any part thereof, shall be liable, &, subject to such payments, in trust for my son G. absolutely ": & he devised & bequeathed his residuary real & personal estate to his trustee free of all duties upon trust to pay the income thereof to his wife during her life, & after her death in trust for his two daughters for their lives, with remainders over. The question having been raised whether the duties payable on the deaths of testator's daughters under Finance Act, 1914 (c. 10), s. 14, were charged under or by virtue of clause 7 of the will on the shares bequeathed by that clause :—*Held :* what testator contemplated by clause 7 was an immediate process under which the shares were to be sold & applied in paying duties which were presently payable, & under which, after those duties had been paid, the residue of the shares or the proceeds were to be handed over to G.—*Re* FENWICK, LLOYD'S BANK, LTD. *v.* FENWICK, [1922] 2 Ch. 775; 92 L. J. Ch. 97; 128 L. T. 191; 66 Sol. Jo. 631.

Annotations :—**Apld.** *Re* Trimble, Wilson *v.* Turton [1931] 1 Ch. 369. **Refd.** *Re* Sutherland (Duke), Chaplin *v.* Leveson Gower, [1922] 2 Ch. 782.

238. *Add. Annotations :*—**Apld.** *Re* Forder, Forder *v.* Forder (1927), 137 L. T. 538. **Refd.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

238a. —— ——.]—*Re* JONES, LAMBERT *v.* COLBOURN, [1928] W. N. 227.

239. *Add. Citations :*—94 L. J. Ch. 155; 132 L. T. 339.

243a. Gift of all legacies " free from all death duties "—Legacy construed to include devise of realty.]—*Re* PREVITÉ, STURGES *v.* PREVITÉ, No. 209c, *ante*.

244a. —— ——.]—An assignee for value of a sum of £10,000 to be paid " absolutely & free from incumbrances," being part of a portions fund of £15,000 charged on settled land :—*Held :* in the absence of a special contract in that behalf, not to be liable to pay a ratable proportion of the estate duty borne & payable by the portions fund upon the death of the tenant for life of the settled land.

Sect. 14 (1) of the above Act provides for a ratable recoupment between the person who has paid estate duty in respect of property passing on death, & the person entitled to a sum charged on that property. It does not go on to provide for further recoupment by persons entitled derivatively to various parts of the sum so charged, but leaves their rights to be determined by their contractual arrangements.—*Re* DRAKE, DRAKE *v.* WILSON, [1926] Ch. 559; 95 L. J. Ch. 386; 134 L. T. 362, C. A.

246. *Add. Annotation :*—**Refd.** *Re* Portman (No. 2), [1925] Ch. 294.

249. *Add. Citation :*—132 L. T. 440.

253. *Add. Annotation :*—**Apld.** *Re* Ashton, Sier *v.* Ashton (1934), 78 Sol. Jo. 803.

254a. Beneficiary & residue—Equitable terms.]—*Re* CASSEL, PUBLIC TRUSTEE *v.* MOUNTBATTEN, No. 22a, *ante*.

261. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Abergavenny S. E., Abergavenny *v.* Nevill, [1926] Ch. 465.

262. *Add. Annotation :*—**Consd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

264. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559; *Re* Reeves, Reeves *v.* Pawson, [1928] Ch. 351.

265a. Bequests to several charities successively—Intention to exonerate earlier charities.]—By his will dated 1911 a testator devised & bequeathed his residuary real & personal estate to his exors., the Public Trustee & another, upon trust for sale & conversion &, after payment of his debts & funeral & testamentary expenses, he desired the balance (called his residuary trust fund) to be placed with the Public Trustee & the income paid to his wife for life. Testator then directed that after his wife's death four capital sums amounting to £10,000, free of estate duty & settlement estate duty but not free of legacy duty, should be set apart & the respective income paid to certain life tenants respectively. By clause 9 testator directed that on the cesser of the respective life tenancies the respective capital sums should be paid to thirteen charities thereinafter named " in the order of priority in which the names appear in this my will as far as the money will go, no. 1 being first paid; no. 2 next & so on, that is to say: " Testator then enumerated thirteen consecutive charities, giving nos. 1 to 10 £500 apiece; no. 11, £1,000; & nos. 12 & 13 £2,000 apiece, thereby exhausting the £10,000. The residue, after providing for the settled £10,000 was given to a daughter. Testator died on June 11, 1914, before Finance Act, 1914 (c. 10), s. 14, abolishing settlement estate duty & the relief thereby conferred, was passed. The estate was cleared & the residuary trust fund paid to the Public Trustee, who paid the income to the wife till her death on July 1, 1928, & then set apart the £10,000 settled legacies

One of these was immediately distributable, without further payment of estate duty, owing to the life tenant having predeceased the wife; but on the cesser of subsequent life tenancies estate duty would be payable, & the Public Trustee therefore issued a summons to determine how it was to be borne, as between the successive charities:—*Held:* clause 9 conferred an absolute priority as between the successive charities, & was sufficient as between the earlier & the later charities to exempt the former from their *primâ facie* statutory liability to contribute to the estate duty under Finance Act, 1894 (c. 30), s. 8 (4).—*Re* LOMER, PUBLIC TRUSTEE *v.* VICTORIA HOSPITAL FOR CHILDREN, [1929] 1 Ch. 731; 98 L. J. Ch. 201; 140 L. T. 687.

265b. **Devise with option to sell to specified person—Purchaser to pay annuities & road charges—No reference to death duties.**]—Testator, by his will, devised land to P. subject to the payment of certain annuities, of road-making charges for which testator was liable, & of estate & other death duties, & subject also to the proviso that if within twenty-years of testator's death P. should desire to sell the land, he was to give the Governors of the N. Grammar School the option of purchasing the land at the price of £300 an acre, such offer to be subject to the payment by the Governors of the said annuities & road charges, & acceptance to be notified within three months. The land, of about 22 acres in area, was in fact worth £670 an acre at the date of the testator's death. In accordance with the condition P. offered it to the School Governors at £300 an acre, & the offer was duly accepted & the land sold & conveyed to the Governors for £6,688. The value of the land for the purposes of death duties was assessed at £14,720. On a summons being taken out to determine whether the Governors were liable to pay a rateable proportion of the estate & succession duties levied upon the value of the property:—*Held:* that the Governors having acquired the land, not under any disposition by testator, but by the voluntary act of P. in selling instead of retaining the property, took no benefit under testator's will, & they acquired the land expressly subject to annuities & road-making charges, but impliedly free from any charge for death duties.—*Re* COCKERILL, MACKANESS *v.* PERCIVAL, [1929] 2 Ch. 131; 98 L. J. Ch. 281; 141 L. T. 198.

271a. —— **By devisee—Estate duty on undivided moiety of land paid out of residuary estate.**]—*Re* MELLISH, CLARK *v.* BUCHANNAN (1927), cited in [1929] 2 K. B. at p. 82, n.

Annotations:—**Folld.** *Re* Wheeler, Jameson *v.* Cotter, [1929] 2 K. B. 81, n. **Refd.** A.-G. *v.* Tuck, Public Trustee, [1929] 2 K. B. 77; *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

271b. —— —— ——.]—*Re* WHEELER, JAMESON *v.* COTTER, No. 209d, *ante*.

272a. —— **By Dominion executors—Duty paid on Dominion property—Out of English assets.**]—The right conferred by sect. 9 (4) of 1894 Act on exors. who have paid estate duty on property not passing to them as such to be repaid by the trustees or owners of the property the rateable part of the estate duty on the estate, in proportion to the value of the property not passing to them as such, applies to personal property in British possessions to which sect. 20 of the Act applies, notwithstanding the special relief given by sect. 20 in respect of the estate duty on any such property. The charge in respect of the rateable part enacted by sect. 9 (1) is made inapplicable to property in such a British possession by sect. 20 (2), but there is nothing in sect. 20 to take away the right conferred by sect. 9 (4).—*Re* BULLOCK-WEBSTER, ROYAL EXCHANGE ASSURANCE *v.* ROYAL TRUST OF CANADA, [1936] Ch. 1; 105 L. J. Ch. 291; 153 L. T. 448, C. A.

272b. **To trustees—Duty paid in respect of forfeited interest.**]—On the death of a settlor in 1924 estate duty had been paid by testator's trustees in the belief that testator's residuary estate passed on that event, & the rate of duty was computed on the same footing:—*Held:* the trustees were entitled to recover the amount of the estate duty paid, the settlor having forfeited his interest in the estate before his death.—INLAND REVENUE COMRS. *v.* RAPHAEL, INLAND REVENUE COMRS. *v.* EZRA, [1935] A. C. 96; 51 T. L. R. 152, *sub nom. Re* SASSOON, INLAND REVENUE COMRS. *v.* RAPHAEL, *Re* SASSOON, INLAND REVENUE COMRS. *v.* EZRA, 104 L. J. Ch. 24; 152 L. T. 217, H. L.

272c. **Surrender of Victory Bonds—Amount repayable—Whether assessed duty or market value.**]—*Re* TICEHURST'S SETTLEMENT, WYATT *v.* TICEHURST (1930), 170 L. T. Jo. 9; [1930] W. N. 166.

274a. **Out of corpus—Estate settled by Act of Parliament—Whether duty unpaid.**]—Where the formal assessment of estate duty on an inalienable estate settled by Act of Parliament is not made until after the passing of Finance Act, 1922 (c. 17), although sufficient money has before the passing of the Act been paid over to the Inland Revenue, the duty is still unpaid within sect. 44 of the Act &, at the option of the tenant in tail in possession, may be raised & paid out of the corpus of the settled estate. A person entitled to a rentcharge on such an estate under a private Act of Parliament which gives the owner for the time being of the estate the right to create a rentcharge is not entitled to exercise a similar option. The estate duty is payable out of the rentcharge itself.—*Re* ABERGAVENNY SETTLED ESTATES, ABERGAVENNY (MARQUIS) *v.* NEVILL, [1926] Ch. 465; 95 L. J. Ch. 289; 134 L. T. 662; 70 Sol. Jo. 634.

277a. —— **Deduction of income tax.**] — In accordance with 1896 Act, s. 18 (1), trustees paid to the Crown certain sums of interest on unpaid estate duty without

---

PART II. SECT. 11.

c. Add the following para.:—

A. disponed an estate to himself in liferent, & after his death to B. in liferent & to C. in fee. On A.'s death B. paid estate duty & presented a petition for an order on C. to grant a bond & disposition in security over the estate in her (B.'s) favour for the amount of the duty:—*Held:* (1) the subject chargeable with the duty was the fee of the estate & not merely the liferent, & B. was entitled to have the duty charged on the estate by way of bond & disposition in security, & was not bound to charge it by way of terminable charge; (2) B. was entitled to an order on C. to grant the bond notwithstanding an averment by C. that B. had in her hands the proceeds of sales of timber, the fee of which belonged to him.—TURNBULL *v.* TURNBULL (1910), 47 Sc. L. R. 688.—**SCOT.**

deduction of income tax:—*Held:* for the purposes of assessment to income tax under Income Tax Act, 1918 (c. 40), sched. D, Case III., in respect of untaxed interest received by the trustees, they were not entitled to any deduction therefrom in respect of the interest on estate duty paid by them.—INVERCLYDE'S (LORD) TRUSTEES *v.* MILLAR, [1924] A. C. 580; 9 Tax Cas. 14; *sub nom.* INVERCLYDE'S (LORD) TRUSTEES *v.* INLAND REVENUE COMRS., 93 L. J. P. C. 266; 131 L. T. 739, H. L.

Part III.—Settlement Estate Duty.

287. *Add. Annotation:*—**Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

288. *Add. Annotations:*—**Consd.** *Re* White, Skinner *v.* A.-G., [1938] Ch. 366. **Refd.** *Re* Ryder & Steadman's Contract, [1927] 2 Ch. 62; Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

290. *Add. Annotation:*—*As to* (1) **Consd.** Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484.

292. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Alington & L. C. C.'s Contract, [1927] 2 Ch. 253. **Refd.** Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484.

293. *Add. Annotation:*—*Generally*, **Refd.** Armstrong *v.* Estate Duty Comr., [1937] 3 All E. R. 484.

296. *Add. Annotations:*—**Consd.** Adamson *v.* A.-G. (1932), 102 L. J. K. B. 129. **Refd.** Scott *v.* I. R. Comrs., [1935] Ch. 246.

Part IV.—Legacy Duty.

337. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Park, Public Trustee *v.* Armstrong, [1932] 1 Ch. 580.

345. *Add. Annotations:*—**Consd.** A.-G. *v.* Dickinson & Baron, [1937] 2 All E. R. 485. **Refd.** Jones *v.* Wright (1927), 44 T. L. R. 128.

349. *Add. Annotation:*—**Refd.** Jones *v.* Wright [1928] A. C. 143.

359. *Add. Annotation:*—*As to* (1) **Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

384a. **Gift of equitable life interest in personalty—Absolute interest on payment of debts in lifetime of life tenant—Beneficiary legatee.**]—Testator by his will conveyed to trustees all his personalty in Scotland, & after providing for the payment of his debts, directed the trustees to make an inventory of the collection of "marbles, bronzes, objects of vertu, buhl, pictures, ornamental china, & the library," in his house, which were to remain vested in the trustees as part of the trust estate, the life-rent use thereof being given to his son D., whom failing to the heir of entail entitled to succeed to the estate. He further provided that, if all his debts were paid in the lifetime of D., the trustees should convey the whole of the personalty by deed to D. The debts were paid in the lifetime of D., but the art collection was never conveyed by the trustees to him, but was held by them during his life:—*Held:* the collection had vested in D. as beneficial owner, & that his estate was liable to pay duty thereon.—HAMILTON (DUKE) *v.* LORD ADVOCATE (1892), 68 L. T. 94; 1 R. 70. H. L.

385. *Add. Annotation:*—**Refd.** *Re* Cousen's Will Trusts, Wright *v.* Killick, [1937] Ch. 381.

386. *Add. Annotation:*—**Refd.** *Re* Cousen's Will Trusts, Wright *v.* Killick, [1937] Ch. 381.

405. *Add. Annotations:*—**Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9.

413. *Add. Annotation:*—**Apld.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

414. *Add. Annotations:*—*As to* (2) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444. **Refd.** Herd *v.* Herd, [1936] 2 All E. R. 1516.

430. *Add. Annotations:*—**Refd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; Ross *v.* Ross, [1930] A. C. 1; Peal *v.* Peal (1930), 143 L. T. 768; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9; Boldrini *v.* Boldrini & Martini, [1932] P. 9.

448. *Add. Annotation:*—**Apld.** A.-G. *v.* Rudge [1928] 2 K. B. 515.

PART IV. SECT. 2, SUB-SECT. 2.

334 ii. —— *Subject to condition.*]—A will contained the following provision: "I desire that J. S. shall assist my wife in the working & management of my property during her life, or as long as she retains any interest therein, & in recognition of such services I direct that my said wife shall pay to J. S. an annuity of fifty pounds, the first payment to be made at the expiration of twelve months from my decease, but such annuity shall only be payable so long as the said J. S. shall act as aforesaid": —*Held:* this constituted a legacy to J. S., in respect of which he was bound to furnish an account to the Revenue Comrs., & to pay such duty as might be assessed thereon.—REVENUE COMRS. *v.* SHIRLEY & BROWN, [1930] I. R. 45.—**IR.**

348 i. *Legacy to executor—Secret verbal trust.*]—Testator by his will bequeathed (*inter alia*) £850 to his exors. "to be disposed of by them as I shall verbally direct them." The verbal direction given to the exors. by the testator was to pay the said sum to testator's widow, & this was communicated to the exors. by testator contemporaneously with the making of the will. The exors. paid the said sum to the window. The Revenue Comrs. claimed legacy duty from the exors. in respect of this sum, which claim the exors. declined to pay, contending that the money was given to them upon a secret trust, viz. for testator's widow, who was the actual beneficiary, & that it had been paid to her:—*Held:* the gift was a legacy to the exors. & liable to legacy duty notwithstanding that a secret trust appeared on the face of the will; the benefit to the *cestui que trust* under the secret trust was a benefit derived *dehors* the will & not by virtue of the will.—REVENUE COMRS. *v.* STAPLETON & O'BRIEN, [1937] I. R. 225.—**IR.**

459. *Add. Citation :*—L. R. 4 Ex. 327.

462a. Settled articles not yielding income.]—For the purposes of legacy duty the value of such articles is to be taken as at the time when they vest absolutely, & not as at the death of testator.—A.-G. *v.* RUDGE, [1928] 2 K. B. 515; 97 L. J. K. B. 710; 140 L. T. 536; 44 T. L. R. 708; 72 Sol. Jo. 487.

531a. —— ——.]—*Re* HICKS, BACH *v.* COCKBURN, No. 227b, *ante*.

541a. —— **"Death duties (payable in consequence of my death)."**]—The testator by his will gave a number of legacies free of duty, & other legacies which were not expressly stated to be free of duty. The residuary clause provided for the payment of funeral & testamentary expenses, "& all death duties (payable in consequence of my death)." It was contended that the legacies which were not expressly given free of duty were by these last words made free of duty :—*Held :* the words "death duties (payable in consequence of my death)" here meant the duties which would in any event be payable in respect of property passing on the death, whatever disposition might be made of it by the testator, or even if he made no disposition of it at all. The legacy duty on the legacies not given free of duty therefore was not payable out of the residue.—*Re* BOROUGH, PUBLIC TRUSTEE *v.* ROBERTS-GAWEN, [1938] 1 All E. R. 375; 82 Sol. Jo. 174.

568. *Add. Annotation :*—**Refd.** *Re* Cox, Public Trustee *v.* Eve, [1938] Ch. 556.

576a. —— **Direction to pay legacies free of duty.**]—*Re* TANQUERAY, SEWELL *v.* WOODFIELD, [1924] W. N. 142; 59 L. Jo. 252; 157 L. T. Jo. 324.

577. *Add. Annotation :*—**Distd.** *Re* Tanqueray, Sewell *v.* Woodfield, [1924] W. N. 142.

Part V.—Succession Duty.

591. *Add. Annotation :*—*As to* (3) **Refd.** Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460.

602. *Add. Annotations :*—*As to* (1) **Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798; A.-G. *v.* De Trafford, [1934] 1 K. B. 1. **Refd.** A.-G. *v.* Glyn, Mills & Co., [1938] 3 All E. R. 605.

622. *Add. Annotations :*—*Generally*, **Refd.** Parr *v.*

PART IV. SECT. 3.

c i. —— *Not restricted to purposes in Province.*]—Application by exors. for determination of certain questions arising under a will whereby testatrix bequeathed "unto the society called the British Union for the abolition of vivisection $75,000 free of legacy duty" :—*Held :* 9 Edw. 7, c. 12, s. 6 (2), absolving from succession duties "property devised or bequeathed for religious, charitable or educational purposes to be carried out in Ontario," only applied to objects which must of necessity be carried out in Ontario, not to those which might be carried out in Ontario without occasioning a breach of trust.—*Re* GWYNNE (1912), 22 O. W. R. 405; 3 O. W. N. 1428; 5 D. L. R. 713.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 2.—B.

m i. —— *"Free of probate, legacy & succession duties."*]—The will in question herein held not to direct that all probate, legacy & succession duties be paid out of the corpus of the estate, but only such duties with respect to three legacies.—*Re* BLOWEY ESTATE, [1935] 3 W. W. R. 95; 50 B. C. R. 222.—**CAN.**

PART V. SECT. 1.

sg. *Distinct from estate & probate duty—Application of doctrine of mobilia sequuntur personam.*]—Ontario Succession Duty Act is a succession duty Act, & not an estate & probate duty Act; the duty is imposed on the succession, & the doctrine of *mobilia sequuntur personam* applies.—ERIE BEACH CO. *v.* A.-G. FOR ONTARIO, [1928] 1 D. L. R. 739; 61 O. L. R. 507; *revsd.*, 40 T. L. R. 33, P. C.; *affd.*, [1929] 2 D. L. R. 754; 63 O. L. R. 469.—**CAN.**

sj. *Jurisdiction of court to determine validity of Act.*]—The ct. has not jurisdiction on proceedings taken under sect. 35 of Succession Duties Act, 1932 (Alta.), to determine whether that Act is *ultra vires*.—ROYAL TRUST CO. (EXECUTOR OF COCHRANE ESTATE) *v.* A.-G. FOR ALBERTA (No. 1), [1934] 1 W. W. R. 824.—**CAN.**

sk. *Determination of liability.*]—(1) The exors. of an estate are entitled as a matter of right under sect. 35 of Succession Duties Act, 1932 (Alta.), to have the amount of the duty for which the estate is legally liable determined in the manner provided by that sect. regardless of the state of the payments between them & the Minister. This right is not affected by the fact, if it be a fact, that there is no way of obtaining, without the consent of the Crown, repayment of any sums overpaid.

(2) Whatever liability by the Crown, if any, may arise as a result of overpayment of succession duties, it is not a "liability under this Act," within the meaning of said sect. 35. Said words refer only to the liability of the subject to the Crown. Therefore, exors. are not entitled in proceedings under said sect. to a declaration that the Crown is liable to repay any moneys paid it.—ROYAL TRUST CO. (EXECUTOR OF COCHRANE ESTATE) *v.* A.-G. FOR ALBERTA (No. 2), [1934] 1 W. W. R. 831.—**CAN.**

sl. *Bond by executors to secure payment—Succession Duty Act declared ultra vires—No further liability for duty.*]—GODSON *v.* A.-G. FOR BRITISH COLUMBIA, [1934] 3 W. W. R. 475; [1935] 1 D. L. R. 92; 49 B. C. R. 131.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

599 i. *"Property"—Transfer of stock, etc., to wife—Dividends paid to husband.*]—*Held :* deceased retained an interest in the gift to his wife to the extent of the dividends to be derived therefrom, & the stock, etc., were subject to succession duty.—FOWKES *v.* MINISTER OF FINANCE, [1927] 2 D. L. R. 717; 38 B. C. R. 395.—**CAN.**

d i. —— —— ——.]—*Held :* taxes imposed on movable property by the Quebec Succession Duty Act, 1892, & the amending Acts apply only to property which the successor claims under or by virtue of Quebec law; & have no application to the several items in this case, which formed part of a succession devolving under the law of Ontario.—LAMBE *v.* MANUEL, [1903] A. C. 68, P. C.—**CAN.**

sp. *Includes life insurance moneys.*]—Life insurance was held chargeable with succession duty, although it was payable to a preferred beneficiary, & the estate was insolvent even after including the life insurance.—*Re* A.'s ESTATE (1933), 43 Man. L. R. 89.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—A.

e i. —— *Property appointed.*]—*Re* NORMAN'S TRUSTS, [1926] 3 M. P. R. 571.—**CAN.**

g i. ——.]—*Re* LITTRIDGE (B. C.), [1927] 3 D. L. R. 250.—**CAN.**

g ii. —— *Marriage settlement.*]—A transfer of property by a husband to trustees for the benefit of his wife & the issue of their marriage, pursuant to a covenant in an ante-nuptial settlement, is not a "gift" so as to be chargeable upon his death with succession duty under Ontario Succession Duty Act, 1914, s. 7 (2) (*b*), as amended in 1914.

The words at the end of the above enactment, beginning "of which property actual & *bond fide* possession & enjoyment shall not have been assumed by the donee . . .," apply only to the third description of "property taken" there mentioned.—A.-G. FOR ONTARIO *v.* PERRY, [1934] A. C. 477; 153 L. J. P. C. 145; 151 L. T. 405; 10 T. L. R. 1; 78 Sol. Jo. 488, P. C.—**CAN.**

sh. *Insurance policy.*]—A policy of life-insurance on the life of the manager of a co. was taken out at the instance of the co. Assured, the manager, signed the application. The co. was named as sole beneficiary. Two years later the co. transferred for a cash consideration its beneficial interest in the policy to the assured; & on his application his wife was substituted as beneficiary. Thereafter the premiums were paid by or on behalf of assured. Later the assured created a trust fund comprising (*inter alia*) said policy, & at the request of himself & wife the trustee was substituted as beneficiary, &, at the time of assured's death, the trustee held the policy pursuant to

A.-G., [1926] A. C. 239 ; *Re* Drake Settlement Trusts, Wilson *v.* Drake, [1938] Ch. 133.

627. *Add. Annotation :*—**Refd.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605.

632. *Add. Annotations :—As to* (1) **Distd.** A.-G. *v.* Adamson, [1932] 2 K. B. 159 ; Lord Advocate *v.* Inzievar Estates, [1938] A. C. 402. *As to* (2) **Refd.** Tilling-Stevens Motors *v.* Kent County Council & Transport Minister (1928), 97 L. J. Ch. 371 ; Inland Revenue Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542.

640. *Add. Annotation :*—**Apld.** A.-G. *v.* Adamson, [1932] 2 K. B. 159.

660. *Add. Annotations :—As to* (2) **Apld.** A.-G. *v.* De Trafford, [1934] 1 K. B. 1. *As to* (4) **Consd.** *Re* Drake's Settlement Trusts. Wilson *v.* Drake, [1938] Ch. 133. *As to* (5) **Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

662. *Add. Annotations :*—**Overd.** A.-G. *v.* De Trafford, [1934] 1 K. B. 1. **Refd.** Parr *v.* A.-G., [1926] A. C. 239.

666. *Add. Citation :*—132 L. T. 699.

Add. Annotation :—**Overd.** A.-G. *v.* De Trafford, [1934] 1 K. B. 1.

666a. —— **Effect of disentailing deed.**]—A tenant in tail in remainder of settled estates barred the entail & by a re-settlement dated May 8, 1914, granted the settled estates (subject to his father's life estate) to the use that trustees should raise a sum of £160,000 as portion for the younger children of the tenant for life & their issue as the tenant for life should appoint with remainders over. By various appointments the tenant for life appointed the sum of £160,000 between his two younger sons & the issue of one of them. The tenant for life died in 1929 & the question arose whether succession duty was payable on his death in respect of this sum at the rate of 5 per cent. as on a succession from the tenant in tail or at the rate of 1 per cent. as on a succession from the tenant for life :—*Held :* the tenant in tail's succession had to the extent of this sum of £160,000 become vested during the lifetime of the tenant for life by "alienation" within Succession Duty Act, 1853 (c. 51), s. 15 ; & succession duty was therefore payable by virtue of that sect. at the same rate as if there had been no alienation, with the result that duty was payable at the rate of 1 per cent. only as on a succession from the tenant for life.—A.-G. *v.* De Trafford, [1934] 1 K. B. 1 ; 103 L. J. K. B. 401 ; 150 L. T. 24 ; 49 T. L. R. 577, C. A. ; *affd. on another point, sub nom.* De Trafford *v.* A.-G., [1935] A. C. 280, H. L.

694. *Add. Annotations :—As to* (3) **Consd.** A.-G. *v.* Glyn, Mills & Co., [1938] 3 All E. R. 605. *As to* (8) **Refd.** Parr *v.* A.-G., [1926] A. C. 239; A.-G. *v.* De Trafford (1933), 150 L. T. 24. *Generally,* **Refd.** *Re* Drake's Settlement Trusts, Wilson *v.* Drake, [1938] Ch. 133.

694a. **Resettlement by party with defeasible estate & party with contingent interest subject thereto.**]—The time for ascertaining the predecessor or predecessors from whom a successor derives his succession for the purposes of the Succession Duty Act, 1853 (c. 51), is the time when the disposition is made creating the succession & not the time when the succession falls into possession. Under the will of a testator A. was entitled to property for an estate in fee simple in remainder expectant upon the death of a tenant for life but defeasible if A. failed to survive a certain date, in which event B. would become absolutely entitled to an estate in fee simple. Before that date had arrived, A. & B. agreed to settle the property upon certain trusts & afterwards joined in making a settlement accordingly. In the events which happened the contingency on which A.'s interest would cease & B. would become entitled never took place :—*Held :* that a

the terms of said trust :—*Held :* the policy was dutiable under sect. 7 (2) (*e*) of Succession Duty Act, 1930, as an "interest purchased or provided by the deceased . . . to the extent of the beneficial interest accruing . . . on the death of the deceased."—*Re* Thacker Estate, [1931] 1 W. W. R. 97 ; 1 D. L. R. 1015 ; 39 Man. L. R. 375.—**CAN.**

sl. ——.]—*Re* Byrne Estate, [1931] 1 W. W. R. 228 ; 43 B. C. R. 396.—**CAN.**

sm. ——.]—Deceased was one of three holders of a policy of assurance & was the first of them to die. The policy provided that in consideration of an annual premium the insurers should, on the death of the first to die of the three policy-holders, pay the survivors a certain sum. The annual premium was paid by the policy-holders in equal proportions. On the death of deceased in Apr. 1931, the assurance moneys were paid to the two survivors. Succession duty was assessed on one-third of the proceeds of the policy, on the ground that there was a disposition within sect. 4 of Succession & Probate Duties Acts, 1892 to 1931 :—*Held :* there was no disposition of property ; further, the covenant by the insurers to pay moneys was not a disposition of property, but a mere contract.—*Re* Isles, [1933] S. R. (Q.) 338.—**AUS.**

PART V. SECT. 2, SUB-SECT. 2.—B.

624 i. ***When succession accrues.***]—Stamp Duties Comr. (Queensland) *v.* Donaldson (1927), 39 C. L. R. 539. —**AUS.**

642 i. *Death as cause or occasion of succession.*]—Eastern Trust Co. *v.* Plummer, [1932] 3 D. L. R. 158.—**CAN.**

642 ii. ——.]—A. executed a deed under which securities were delivered to plff., dividends from them being payable to A.'s son until a certain date when the securities were to be transferred to the son or his nominees, if the son die before that date, to his personal representatives to be held by them on the same trusts as they held the estate of the son as a gift from the grantor to the beneficiaries of the estate who are members of his family. The son died before the date fixed for the transfer of the securities :—*Held :* they were liable to succession duty as property passing or deemed to pass.—*Re* Plummer's Estate (1932), 5 M. P. R. 161.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

h i. —— *Person entitled after death of successor before property paid over.*]—Where a share in a residuary estate was not paid to the residuary devisee during her lifetime but passed under her will, her death occurring eighteen months after that of testator :—*Held :* the Crown was entitled to succession duty thereon, although succession duty had been paid by the exors. under the first will on the residuary estate.—*Re* Lunn Estate (B. C.), [1925] 2 W. W. R. 608.—**CAN.**

h ii. —— *Residuary gift in trust for Presbyterian Church of New Zealand—For purpose of assisting foreign missionary work.*]—*Held :* the Presbyterian church was a "successor" under Death Duties Act, 1921, s. 16.—[illegible]ial Trustees, Estate & Agency Co., Ltd., of New Zealand *v.* Stamp Duties Comr., [1927] N. Z. L. R. 714.—**N. Z.**

sd. *"Competent to dispose"—Heir of entail—Consent necessary to disentail.*]—The right to charge succession duty on an entailed estate depends on the provisions (as amended) of Finance Act, 1894, s. 18 (1), &, accordingly, an heir of entail who is not entitled to disentail the estate without consents is not entitled to charge succession duty on the estate.—Blythswood's (Lord) Judicial Factor *v.* Douglas, [1935] S. C. 511.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 5.—A.

670 iv. —— *Donor of trust fund—Succession Duties Act, R. S. A.,* 1922 (c. 28), *s.* 6.]—A.-G. of Alberta *v.* Cowan, [1926] 1 D. L. R. 29 ; [1926] S. C. R. 142.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.—B. (b).

sl. *Succession Duty Act,* 1915 (c. 27) *(N. B.)—Absolute power of appointment.*]—Provincial Secretary-Treasurer *v.* Schofield (N. B.), [1923] 2 D. L. R. 1144.—**CAN.**

successor under the agreement & settlement derived his succession from both A. & B. as predecessors, &, as the proportional interest derived from each predecessor was at the critical time not distinguishable, the successor must, pursuant to Succession Duty Act, 1853 (c. 51), s. 13, be deemed to have derived his succession in equal proportions from A. & B.—*Re* DRAKE'S SETTLEMENT TRUSTS, WILSON *v.* DRAKE, [1938] Ch. 133; [1937] 4 All E. R. 171; 107 L. J. Ch. 39; 157 L. T. 559; 54 T. L. R. 98; 81 Sol. Jo. 921, C. A.

697. *Add. Annotation :*—**Refd.** *Re* Drake Settlement Trusts, Wilson *v.* Drake, [1938] Ch. 133.

699. *Add. Annotations :—As to* (1) **Apld.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605. **Refd.** A.-G. *v.* De Trafford, [1934] 1 K. B. 1.

699a. Subsequent private Act avoiding restraint upon alienation—Effect on succession.]—Under a settlement of 1888, out of property brought into settlement by cousins of the deceased, deceased was given a life interest subject to forfeiture in the event of alienation, &, subject thereto, the settled property was entailed in tail male in the usual form. In 1918, the entail was barred & the settled property made subject to the joint appointment of the deceased & his eldest son. At the same time, the settled property was resettled, the material clause of the resettlement being that the eldest son was given a power to charge the settled property with the payment after the death of the deceased of any sum not exceeding £50,000 free of death duties, such charge not to take effect unless the eldest son survived the deceased. By a private Act, passed in 1921, it was provided that the above power to charge might be exercised during the lifetime of the deceased, &, notwithstanding the provision for forfeiture in the event of alienation, the deceased might release his life interest in any sum so charged. The Act also contained a general saving to His Majesty of all estate, right, title, interest, claims or demands. In 1923 & 1925, by three charges the sum of £50,000 was raised. The eldest son died on July 30, 1930. Deceased died on Oct. 3, 1932, &, this date being more than three years after the £50,000 had been raised, there was no claim to estate duty in respect thereof. The Crown claimed succession duty in respect of the £50,000 under the Succession Duty Act, 1853 (c. 51), ss. 2, 12, 15, upon a succession by the eldest son to the settlors in the 1888 settlement :—*Held :* (1) the resettlement in 1918 was a disposition by the eldest son within Succession Duty Act, 1853 (c. 51), s. 12, & the private Act of 1921 did not dispose of the property, but left the parties free to determine whether or not they would exercise their powers of disposition under the resettlement, the Act only being necessary to enable the deceased to alienate his interest. By joining in the raising of the charges, the deceased had accelerated the title of the eldest son by surrendering *pro tanto*, within Succession Duty Act, 1853 (c. 51), s. 15, his life interest; (2) the Crown clearly had a claim to succession duty before the Act of 1921 was passed, & the Act saved every claim on the part of the Crown upon the settled property, including the liability to succession duty.—A.-G. *v.* GLYN, MILES & Co., [1938] 3 All E. R. 605; 82 Sol. Jo. 730.

714. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

718. *Add. Annotations :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798. **Consd.** *Re* White, Skinner *v.* A.-G., [1938] 2 All E. R. 691.

719. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios [1928] 1 K. B. 798.

PART V. SECT. 2, SUB-SECT. 7.—A.

p i. —— *Bonds issued by Dominion Government to testator resident in province.*]—Certain bonds were issued to a testator resident in Alberta by the Govt. of Canada under statutory authority, & on his death his exors. raised the question whether succession duties with respect to the bonds were assessable by the Province of Alberta under Succession Duties Act of Alberta, s. 27, which provided that "all property of the owner thereof situate within the Province & passing on the death shall be subject to succession duties." The bonds passed on the death of testator. The register of bondholders was at Ottawa in Ontario: —*Held :* as the bonds constituted a statutory obligation they were debts by specialty & therefore in point of liability to taxation had their local situation at the testator's place of residence in Alberta & were subject to the duties in question.—ROYAL TRUST CO. *v.* A.-G. FOR ALBERTA [1930] A. C. 144; 46 T. L. R. 25.—**CAN.**

PART V. SECT. 2, SUB-SECT. 7.—B.

718 i. *Realty outside province—Devised under trust for sale—Testator domiciled in province.*]—Where by the will of testator, who died domiciled in British Columbia, land outside the province is devised to a trustee under direction to convert it into money, it is not, while at least it is yet unsold, subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—ALEXANDER *v.* A.-G., [1927] 1 D. L. R. 602; [1927] 1 W. W. R. 143; 38 B. C. R. 28.—**CAN.**

q i. —— —— *Agreement for sale.*]—V., resident & domiciled in U.S.A., agreed by writing under seal to sell land owned by him in the province of Alberta, the purchaser going into possession. The purchase-money was to be paid, with interest, in U.S.A. At V.'s death in U.S.A., there was a balance owing him under the agreement :—*Held :* V., at his death, was the owner of property situated in Alberta or of an interest in the land, liable to duty in Alberta under Succession Duties Act, 1914 (c. 5), the question not being determined by the locality of the debt, but by the nature of the interest held by deceased in the Alberta land.—VAUGHN *v.* A.-G. FOR ALBERTA, [1924] 3 D. L. R. 467; 2 W. W. R. 821; 20 Alta. L. R. 424.—**CAN.**

sk. *Mortgages on land outside province—Owner domiciled within province.*]—*Held :* subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—*Re* PARKER, [1926] 1 D. L. R. 783

PART V. SECT. 2, SUB-SECT. 7.—C.

b i. —— *Shares held in company incorporated in province.*]—Shares in a co. incorporated in Ontario, which were recorded in the name of a foreigner domiciled in the State of Michigan, who died there, were held liable to succession duty in Ontario.—ERIE BEACH CO. *v.* A.-G. FOR ONTARIO, [1930] A. C. 161, P. C.—**CAN.**

b ii. —— *Shares held in company with head office in province.*]—The Province has no power to levy succession duty on the shares of a co. merely because the co. has a head office within the province.—*Re* MACFARLANE, [1933] 1 D. L. R. 345; O. R. 44.—**CAN.**

b iii. —— ——.]—Succession duty in Quebec is not payable on shares in the stock of a co. having its head office in Montreal, belonging to a person domiciled in Ontario, registration being made in Montreal, but the certificates being in Toronto at the time of death.—TORONTO GENERAL TRUSTS CORPN. *v.* R., [1938] 1 D. L. R. 40.—**CAN.**

b iv. —— *Simple contract debt.*]—For the purpose of succession duty a simple contract debt owed by a co. with its head office & place of business outside the Province is property outside the Province.—A.-G. FOR ONTARIO *v.* FASKEN, [1935] 1 D. L. R. 718; *affd.*, [1935] 3 D. L. R. 100; O. R. 288.—**CAN.**

k i. —— ——.]—*Held :* subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—*Re* SUCCESSION DUTY ACT, A.-G. FOR BRITISH COLUMBIA *v.* WILSON (B. C.), [1926] 4 D. L. R. 139; [1927] 1 W. W. R. 265.—**CAN.**

k ii. —— ——.]—Testator, whose domicil was in Ontario, possessed securities, which were in a safety deposit box in a bank in Michigan :—*Held :* the securities were subject to duty under Succession Duty Act, R. S. O., 1914 (c. 24).—A.-G. FOR ONTARIO *v.* BABY, [1927] 1 D. L. R. 1105; 60 O. L. R. 1.—**CAN.**

724. *Add. Annotation :*—**Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

725. *Add. Annotation :*—**Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

726. *Add. Annotation :*—**Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

732. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

755a. ——.]—*Re* BATEMAN (BARONESS), No. 107a, *ante*.

765. *Add. Annotation :* — **Consd.** *Re* Bateman, [1925] 2 K. B. 429.

---

k iii. —— ——.]—Debenture stock of a city in Nova Scotia, transferable & redeemable at the office of the city treasurer, & money in a bank at the same city, belonging to testator domiciled in New Brunswick :—*Held :* not liable to duty under Succession Duty Act, C. S., 1903 (c. 17).—RECEIVER GENERAL OF NEW BRUNSWICK *v.* ROSBOROUGH (1915), 43 N. B. R. 258.—**CAN.**

n i. —— *Specialty debt.*]—A mtge. debt due in New Brunswick at the time of the foreign creditor's death is property of the creditor's estate which may be liable to duty under Succession Duty Act, 1915.—ROYAL TRUST CO. *v.* PROVINCIAL SECRETARY, TREASURER OF NEW BRUNSWICK, [1925] 2 D. L. R. 49 ; [1925] S. C. R. 94 ; *revsg.*, 52 N. B. R. 21.—**CAN.**

n ii. —— ——.]—Specialty debts secured by bond & mtge. of real estate situate in Nova Scotia, the bonds & mtges. being in the possession of testator in New Brunswick at the time of his death :—*Held :* liable to duty under Succession Duty Act, C. S., 1903 (c. 17).—RECEIVER GENERAL OF NEW BRUNSWICK *v.* ROSBOROUGH (1915), 43 N. B. R. 258.—**CAN.**

n iii. —— ——.]—The Crown, in the right of the province of Quebec, by its action claimed the sum of $15,775.95, as representing succession duties alleged to be due by resp., as sole trustee & exor. of the estate of the late S. who died in New York in 1929 & was at the time of his death domiciled in the province of Ontario. Amongst the assets of his estate were certain bonds or debentures of the Grand Trunk Pacific Railway Co. & the Canadian National Railway Co., respectively, guaranteed by the Govt. of Canada. These bonds or debentures, registered in Montreal, were at the time of S.'s death in the possession of the latter in Toronto. Succession duties were paid to the Govt. of the province of Ontario : but the Govt. of the province of Quebec also claimed succession duties on the ground that these bonds or debentures were to be considered for succession duty purposes as property situate in the province of Quebec according to the definition of the word "property" in sect. 5 of Succession Duties Act, because the two cos. debtors had their head offices at Montreal & the bonds & debentures were registered & transferable on the cos.' registers in that city :—*Held :* these bonds or debentures had not, in the relevant sense, a local situation within the province of Quebec, &, therefore, were not subject to the payment of succession duties in that province. Debentures authorised by the Parliament of Canada & charged by statute upon the Consolidated Revenue Fund have the character of specialties. The Grand Trunk Pacific Railway Co. has statutory powers to create bonds having the character of specialties. The bonds in this case must, as respects the obligation of the railway co., be considered specialties, although the head office of the co. is fixed by statute in Quebec ; &, in view of the statute law applicable to the case, it must be held such a specialty has its *situs* in Ontario. Neither, for the reasons fully stated in the judgment, have the bonds of the Canadian National Railway Co. in question in this case a *situs* in Quebec. —R. *v.* NATIONAL TRUST CO., [1933] S. C. R. 670 ; 4 D. L. R. 465.—**CAN.**

n iv. —— ——.]—The vendor under an agreement for the sale of land in Sask. died domiciled in Alta. At his death there was a large amount still payable under the agreement. The agreement was made in Sask. & described the parties as both resident at S. in that province ; & the purchaser continued to live there. It also provided that the money payments as well as the deliveries of grain thereunder were to be made in Sask. & that it should for all purposes be construed according to the laws of Sask. All the beneficiaries of the estate were domiciled elsewhere than in Alta. The agreement was executed in duplicate under seal. Upon the vendor's death his copy was found in his safety deposit box in Edmonton & was there reduced into the possession of the administrator of his estate ; the purchaser's copy was then & had at all material times been in the possession of the purchaser within Sask. The province of Alta. contended that the debt due under the agreement was subject to succession duties under Succession Duty Act, 1934 (Alta.) :—*Held :* the rule that the *situs* of a specialty debt is the place where it is found in the creditor's possession at his death was not affected by the fact that the purchaser's copy of the duplicate agreement was in the latter's possession in Sask. Therefore, ARa. had the right to impose the tax. All the cases dealing with the *situs* of specialty debts in which the test put is where is the specialty "found," or where is it "conspicuous," or where does it happen "to be," relate as a matter of course to the specialty as the property of the creditor in his possession or in some place where he has placed it.—SCHMIDT *v.* ALBERTA PROVINCIAL TREASURER & A.-G. FOR ALBERTA, [1935] 3 W. W. R. 498 ; 4 D. L. R. 752 ; 5 F. L. J. (Can.) 211.—**CAN.**

n v. —— ——.]—B., who died domiciled & residing in Minnesota, had deposited $50,000 in the Winnipeg branch of a Canadian bank & received a receipt by which the bank undertook to repay the money to him or order, on 15 days' notice, with interest at 2½ per cent. "until further notice," & which stated : "This receipt is negotiable." The receipt was found among B.'s possessions in Minneapolis upon his death there. His exors. & beneficiaries all live in the United States. Manitoba contended that duties under Succession Duties Act, 1934, were payable on said deposit & interest. Montague, J., allowed the claim, & the exors. appealed :—*Held :* the appeal should be allowed.—*Re* BENNETT ESTATE, MANITOBA PROVINCIAL TREASURER *v.* BENNETT, [1936] 1 W. W. R. 691 ; 2 D. L. R. 291 ; 44 Man. L. R. 63 ; *on appeal*, [1937] S. C. R. 128 ; 2 D. L. R. 1.—**CAN.**

n vi. —— ——.]—Bonds of the Dominion & Provincial Govts. belonging to a person domiciled in the U.S.A. & kept in a bank in the Province of Ontario are specialty debts taxable under the Succession Duty Act (Ont.). —*Re* MOORE, [1937] 2 D. L. R. 746.—**CAN.**

o i. —— —— *Registered outside province.*]—A banking co., with a head office at Montreal in the Province of Quebec, had power by statute to maintain in any province a registry office at which alone shares held by residents in that province were to be registered & could validly be transferred. A. resided at Halifax in the Province of Nova Scotia, & died there, owning shares registered at an office of the co. at Halifax under the above statutory power. Under Succession Duty Act (Que.), 1909, art. 1376, duty was imposed upon "property actually situate within the province, whether the transmission takes place within or without the province" :—*Held :* as the ownership of the shares could be effectively dealt with only in Nova Scotia, they were not property situate in Quebec, & the claim could not be maintained. —BRASSARD *v.* SMITH, [1925] A. C. 371 ; 94 L. J. P. C. 81 ; 132 L. T. 647 ; 41 T. L. R. 203.—**CAN.**

o ii. —— —— ——.]—The words "or elsewhere" in sect. 42 (5) of Bank Act, both under their ordinary meaning & in the light of prior legislation, are adequate to provide for the establishment of places for registration & transfer of shares outside the Canadian territory, in respect of shares owned by persons not resident in Canada.—R. *v.* CUFFING, [1932] S. C. R. 410 ; 3 D. L. R. 273.—**CAN.**

p. For the paragraph in the original volume substitute the following paragraph :—

—— *Owner not domiciled within province—Recognition of status of "wives."*]—If a person domiciled in a country whose laws permit polygamous marriages is married there to two wives, & dies while still domiciled there though temporarily residing in British Columbia, the status of the wives will be recognised by the cts. of British Columbia for the purpose of fixing the succession duty payable on property in British Columbia going under deceased's will to each of the wives.—YEW *v.* A.-G. FOR BRITISH COLUMBIA, [1924] 1 D. L. R. 1166 ; 1 W. W. R. 753 ; 33 B. C. R. 109 ; *revsg.* S. C. *sub nom. Re* LEE CHEONG, [1923] 1 W. W. R. 867.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

sl. *Declaration of trust several years before death.*]—Ten years before his death an owner of debentures executed a declaration of trust whereby he declared that he held them in trust for his children & deposited the debentures & the declaration in a bank where they remained until his death. He never received any benefit from the debentures, & there was no evidence of any scheme or reservation whereby he retained any beneficial interest. No part of the income was paid to the beneficiaries, but the trustee invested it in trust or placed it to the credit of a trust account in the same bank where it accumulated until he died :—*Held :* the fund was not liable to succession duties under Succession Duties Act, R. S. A. 1922 (c. 28).—COWAN *v.* A.-G., [1925] 2 D. L. R. 647 ; [1925] 1 W. W. R. 993 ; 21 Alta. L. R. 241 ; *revsd.*, [1926] 1 D. L. R. 29.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.

sm. *When exemption applicable.*]—The exemption from the payment of the 1 per cent. succession duty payable under Succession Duty Act, 1853 (c. 51), s. 10, & the additional ten shillings per cent. payable under Customs & Inland Revenue Act, 1888 (c. 8), only arises where estate duty is payable under Finance Act, 1894 (c. 30), & the principal value of the estate does not exceed £15,000.—A.-G. *v.* JAFFÉ, [1935] N. I. 97.—**IR.**

777a. —— **Devise for life "free of all duties"—Liability for succession duty on death of tenant for life.**]—Testator devised "free of all duties" certain premises to his trustees upon trust to permit S. to have the use & occupation of the same during her life, & after her death he directed his trustees to stand possessed thereof in trust for M. absolutely in fee simple. He also devised & bequeathed the residue of his real & personal estate to his trustees upon trust, after payment of his debts, funeral & testamentary & trust expenses & legacy, succession & other duties, to divide the same into thirty-four equal parts, & to stand possessed of one of such equal parts in trust for each of thirty-four residuary legatees named therein. A question arose whether the succession duty payable on the death of S. would be payable out of the residuary estate or out of the property so devised & by the person or persons entitled thereto upon her death:—*Held:* upon the true construction of the will the words "free of all duties" applied only to the succession duty presently payable on the death of testator, & did not extend to the succession duty payable on the death of S.—*Re* TRIMBLE, WILSON *v.* TURTON, [1931] 1 Ch. 369; 100 L. J. Ch. 73; 144 L. T. 612.

780. *Add. Annotations:—As to* (1) **Consd.** A.-G. *v.* De Trafford (1933), 49 T. L. R. 577. *As to* (2) **Consd.** A.-G. *v.* De Trafford, [1934] 1 K. B. 1. *Generally*, **Reld.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

796. *Add. Annotations:*—**Consd.** A.-G. *v.* Bedford, [1926] 2 K. B. 184. **Reld.** A.-G. *v.* Belilios, [1928] 1 K. B. 798; *Re* Drake's Settlement Trusts, Wilson *v.* Drake, [1938] Ch. 133.

796a. —— —— **Finance Act, 1925 (c. 36), s. 24.**]—Circumstances (*see* No. 90a, *ante*) in which:—*Held:* succession duty was not payable, since the above sect. was not retrospective.—A.-G. *v.* BELILIOS [1927] 2 K. B. 439; 43 T. L. R. 669; *revsd.* without affecting this point, [1928] 1 K. B. 798, C. A.

799a. ——.]—Where a person, who has succeeded to the life interest in leasehold property, subsequently receives the rack rents from the property when the leases fall in, the increased value of the succession for the purpose of succession duty is to be calculated by reference to the age of the successor at the expiration of the leases & to the value of the property as at that date, less the ground rents, & not to the value of the property when the succession first arose, less the ground rents.—A.-G. *v.* BEDFORD (DUKE), [1926] 2 K. B. 184; 95 L. J. K. B. 517; 135 L. T. 541; 42 T. L. R. 346; 70 Sol. Jo. 465.

PART V. SECT. 3, SUB-SECT. 7.

c i. —— *Validity.*]—There is nothing in Succession Duty Act, 1923 (c. 13), or other statutes of Saskatchewan to prevent a testator from directing that legacies be paid free from succession duty.—*Re* ANDERSON ESTATE, CANADA PERMANENT TRUST CO. *v.* MCADAM, [1928] 4 D. L. R. 51; [1928] 2 W. W. R. 365; 22 Sask. L. R. 610.—**CAN.**

c ii. —— *Bequest of residue not exonerated.*]—Testator made bequests out of residue, *inter alia*, to two educational institutions in Ontario & to two Minnesota charities. By the will, all legacies, funds & stocks transferred to trustees were declared to be "free of succession duty" & certain other legacies were to be "free of all succession duty":—*Held:* the gifts of residue to the four charities not being in any sense free of succession duties, each must bear its share of the duties imposed in respect of its share of the residue.—*Re* WHITNEY (1930), 66 O. L. R. 339.—**CAN.**

sq. *Legacy subject to payment of all succession duty payable on estate—Whole legacy included in estate in determining rate of duty—Portion of legacy applied in payment of duty exempt from duty.*]—STAMP DUTIES COMR. *v.* LANSDOWNE (1927), 40 C. L. R. 115.—**AUS.**

PART V. SECT. 4.

so. *Provincial duty—Assets in province forming part of larger estate—Deceased domiciled outside province.*]—Deceased, domiciled outside British Columbia, left personal property of $1,000,000 of which $10,000 was in British Columbia:—*Held:* under R. S. B. C., Acts 1911 (c. 217) & 1921 (c. 58), the duty payable on the net amount should be 1½ per cent. on the first $100,000, 2½ per cent. on the second $100,000 & 5 per cent. on the balance; of the sum thus ascertained the $10,000 within the province was charged with its proportion which was taken by the province.—*Re* SUCCESSION DUTY ACT, *Re* HECHT, [1924] 1 W. W. R. 1153; 33 B. C. R. 154.—**CAN.**

sd. *Construction of Succession Duty Act*, 1930 (*Man.*), *s.* 8 (1).]—*Re* TILT ESTATE, [1933] 1 W. W. R. 694.—**CAN.**

se. *Deceased domiciled outside Province—Property within Province.*]—Under Succession Duty Act, R. S. B. C., 1924, in the case of an estate subject to sect. 7 thereof, all the property subject to duty is taxed, not under a graduated scale, but at the rate opposite the highest group in Sched. "D" in which the estate is arranged when classified for the purposes of said schedule according to its net value, even though only part of the estate is property situate within the Province.—*Re* UNTERMEYER ESTATE, [1933] 1 W. W. R. 705; 46 B. C. R. 547.—**CAN.**

sf. *Surtax under* 1932 *Act—Not applicable where death before Act in force.*]—*Re* MCINTYRE ESTATE, [1933] 2 W. W. R. 257.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

t i. —— *Between date of gift & death.*]—Where a gift of co. shares is subject to succession duty any increase in the value of the shares between the date of the gift & the date of the death of the donor must be taken into account in determining the value under Succession Duty Acts, 1930, 1935.—R. (A.-G. FOR SASKATCHEWAN) *v.* MEILICKE (NO. 2), [1938] 2 W. W. R. 97.—**CAN.**

d i. —— —— *Shares.*]—*Held:* with respect to a very large block of shares in a mining co., the "fair market value" could not be said to be the price which probably would have been obtained had the whole block of shares been put on the market at once, in view of the number of shares & the limited market, that course would undoubtedly have depressed the market price, & the exors. were not bound to offer the shares for sale at one time or at all; nor should said value be fixed at the price which would probably have been obtained from underwriters had a sale *en bloc* been made to them at the time of the death.—UNTERMEYER ESTATE *v.* A.-G. FOR BRITISH COLUMBIA, [1928] 3 D. L. R. 311; [1928] 2 W. W. R. 209; 39 B. C. R. 533; *affd.*, [1929] 1 D. L. R. 315; S. C. R. 84.—**CAN.**

d ii. —— ——.]—"The fair market value" in sect. 3 of Succession Duty Act, 1934, is the price which could probably have been obtained in the open market at said date.—*Re* LEISER, FORMAN & FOWKES *v.* MINISTER OF FINANCE, [1937] 2 D. L. R. 341; 2 W. W. R. 428; 51 B. C. R. 368.—**CAN.**

h i. —— ——.]—Although exors., when applying for ancillary letters patent in British Columbia, had placed a value on the estate in the province for the purpose of succession duty &, being accepted by the Crown, had given a bond to secure payment of the duty, they are not bound by such valuation & its acceptance by the Crown; but they have still the right to present a petition under Succession Duty Act, s. 42, to a judge of the Supreme Ct. of the province who has jurisdiction to determine what property of the estate is liable to duty & the amount due.—BLACKMAN *v.* R., [1924] 4 D. L. R. 123; [1924] S. C. R. 406.—**CAN.**

h ii. —— ——.]—In an action on a bond to secure payment of duties under Succession Duties Act, R. S. A., 1922 (c. 28), wherein the defence was that the true value of the estate did not exceed $5,000 & no duty was payable:—*Held:* the question of value was concluded by the values sworn to in the affidavits filed for the purpose of obtaining the letters probate, which values had been accepted as satisfactory by the Crown.—R. *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. (Alta.), [1926] 4 D. L. R. 874; [1926] 3 W. W. R. 461.—**CAN.**

h iii. —— ——.]—The essential precedent to the jurisdiction of the ct. under Succession Duties Act, 1922, c. 28, s. 38, is that there is property the liability of which to duty is in question & has to be determined by the judge. Therefore, when an exor. on applying for probate placed a valuation on the estate for the purpose of succession duty & this valuation was accepted by the Crown, the ct. cannot grant relief under said section.—*Re* SPENCE ESTATE, [1928] 1 D. L. R. 644; [1928] 1 W. W. R. 71; 23 Alta. L. R. 109.—**CAN.**

sp. *Aggregate value—Succession Duty Act, C. S.*, 1903 (c. 17).]—RECEIVER GENERAL OF NEW BRUNSWICK *v.* ROSBOROUGH (1915), 43 N. B. R. 258.—**CAN.**

sq. *Legacy to beneficiary—Share*

824. *Add. Annotation :*—**Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

853. *Add. Annotation :*—**Refd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

861. For citation read " No. 268, *ante*."

SUB-SECT. 2.—POWER TO RAISE THE DUTY (p. 114).

861a. Provision for payment by court—Extent of powers.]—The power of the ct. under sect. 53 of the Succession Duty Act, 1853 (c. 51), s. 53, to direct payment out of any fund under the control of the ct. in an administration action, of legacy or succession duty, does not enable the duty payable in respect of a bequest, etc., to one person to be deducted from the assets comprised in a bequest, etc., to another person. It only enables duty owing by a legatee to be paid out of any other property to which he is entitled & which is under the control of the ct.—*Re* EIGHMIE, COLBOURNE *v.* WILKS, [1935] Ch. 524 ; 104 L. J. Ch. 254 ; 153 L. T. 295 ; 51 T. L. R. 404.

---

of residue to same beneficiary.]—Testator gave a pecuniary legacy to A., & the residue of his estate upon trust to pay the income to the mother of A. for life, & after her death to divide the capital among her children, of whom A. was one. Succession duty was assessed as if A. were the sole survivor entitled to the residue, & to this amount was added the legacy. Duty was then assessed at the rate appropriate to this total :—*Held :* duty was not to be assessed on the legacy as though the whole of residue had been given to A. subject only to the life interest.—*Re* SHORT, SHORT *v.* REGISTRAR OF PROBATES, [1928] S. A. S. R. 220.—**AUS.**

sr. *Gift inter vivos—Value at time of death.*]—Succession Duty Act of Ontario by sect. 8 charges to duty all property situate in Ontario passing on the death of any person, & provides that property so passing is to be deemed to include (*inter alia*) any property taken under a disposition operating as an immediate gift *inter vivos* made since July 1, 1892. It is provided by sect. 4 that the dutiable value of property is to be its fair market value at the date of the death of the deceased. A resident of Ontario died in 1929, having in 1925 transferred to his wife as a gift shares in a co. registered & having its office in Ontario. The value of the shares at the date of the gift was $50,240, & at the date of the death of the deceased $264,183.50. It was not disputed that the shares were dutiable under the Act :—*Held :* the duty was payable upon the value at the date of the death of deceased.—A.-G. FOR ONTARIO *v.* NATIONAL TRUST CO., LTD., [1931] A. C. 818 ; 100 L. J. P. C. 215 ; 145 L. T. 673 ; 47 T. L. R. 625, P. C.—**CAN.**

st. —— ——.]—Under Succession Duty Act, R. S. A., 1922, the value of property which was the subject of a gift *inter vivos* is to be taken for the purpose of calculating the duty as of the date of the death of the donor.—A.-G. FOR ALBERTA *v.* PEARCE, [1931] 3 W. W. R. 400 ; [1932] 1 D. L. R. 587 ; 25 Alta. L. R. 553.—**CAN.**

sw. *Agreement between parties as to value.*] — *Re* RYALL ESTATE, *Re* MCMENEMY ESTATE, [1934] 2 W. W. R. 288.—**CAN.**

sz. *Determination of present value of income.*]—*Held :* sect. 30, Succession Duty Act, 1934, does not authorise the finding of an annual income by a calculation of 5 per cent. on the net value of an estate ; its sole purpose is to fix the present value of a known fixed annual income.—*Re* HAMILTON ESTATE, [1935] 1 W. W. R. 549 ; 5 F. L. J. (Can.) 51.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

sv. *" Net value "—Mode of calculation —Aggregate value including life insurance money.*]—R. *v.* MEIBACH, [1927] 2 D. L. R. 1020 ; [1927] 1 W. W. R. 981 ; 22 Alta. L. R. 482.—**CAN.**

sx. *Debts, encumbrances & expenses.*] —*Held :* under Succession Duty Act, R. S. N. B., 1927, the debts, encumbrances & expenses should be deducted from the value of all the property passing on the death of testator within the meaning of the Act, including both the assets liable for the payment of debts, encumbrances & expenses & the property not so liable.—FRASER *v.* PROVINCIAL SECRETARY-TREASURER, [1935] S. C. R. 133.—**CAN.**

PART V. SECT. 6, SUB-SECT. 1.

sw. *Valuation of estate & acceptance by Crown of surety bond—Right of executor to distribute estate—Succession Duty Act, R. S. B. C.*, 1911 (*c.* 217).]—MINISTER OF FINANCE *v.* CALEDONIAN INSURANCE CO., *Re* LAND REGISTRY ACT & HIGGINSON, [1923] 4 D. L. R. 439 ; [1923] 3 W. W. R. 925.—**CAN.**

PART V. SECT. 6, SUB-SECT. 2.

sa. *Postponement — Disputed claim against estate.*]—Where deceased's estate is subject to a claim, not admitted, on bonds made as surety for another, while it is right to postpone the final settlement of the exor.'s liability for succession duty as to the sum represented by such alleged indebtedness, an order dealing with the matter should postpone the date of payment to a time certain, & should contain a term directing payment of duty upon the sum should it be determined that the estate is not liable for the claim, & a further term that, if the estate is liable, the exor. should pay duty upon his claim against the principal debtor. —*Re* SUCCESSION DUTY ACT & SPROULE, [1924] 2 W. W. R. 1087 ; 34 B. C. R. 110.—**CAN.**

sg. *Before interest vested in possession.*]—The word " passes " in Succession Duty Act, 1934, s. 38 (1), is not restricted to property finally vesting in the beneficiary upon distribution of the estate.—*Re* DRUMMOND ESTATE, MINISTER OF FINANCE *v.* DRUMMOND, [1936] 2 W. W. R. 635 ; 4 D. L. R. 164 ; 50 B. C. R. 485.—**CAN.**

PART V. SECT. 6, SUB-SECT. 3.—A.

sb. *" Sister " of deceased—Succession Duty Act Amendment Act*, 1899, *s.* 2 (4) *—Includes half-sister.*]—*Re* OLIVER (1901), 8 B. C. R. 91.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.

sd. *From what date payable—Succession Duty Act, R. S. B. C.*, 1924 (*c.* 244).]—*Re* OLDFIELD ESTATE, *Re* SUCCESSION DUTY ACT (B. C.), [1927] 4 D. L. R. 711 ; [1927] 3 W. W. R. 361.—**CAN.**

se. —— ——.]—Where under Succession Duty Act, R. S. B. C. 1924, c. 244, the exors. elect to pay the duty on a contingent estate within two years from the death of the deceased, & a time is fixed by the Lieutenant-Governor in Council for the payment thereof, no interest on said duty is chargeable except from the date so fixed. — WILSON *v.* MINISTER OF FINANCE, [1928] 3 D. L. R. 253 ; [1928] 2 W. W. R. 585.—**CAN.**

sf. —— *Succession Duty Act*, 1924, *declared ultra vires—Interest under new Succession Duty Act*, 1934.]—Testator died on Aug. 16, 1933, when the then Succession Duty Act, R.S.B.C., 1924, purported to be in force. By a judgment delivered on Nov. 29, 1933, & affirmed by the Ct. of Appeal on Feb. 20, 1934, said Act was declared to be *ultra vires*. On Mar. 29, 1934, the new Succession Duty Act, 1934, came into force ; & sect. 50 of that Act provided that it should be retroactive & should apply in respect of persons who had died since Apr. 11, 1894, & further provided that that Act should be deemed to be & to declare the law relating to the matter of succession duty payable upon the death of any person dying before the commencement of the Act, whether or not the matter was pending or has been adjudicated on by any ct., etc. :—*Held :* since an *ultra vires* Act is one which never had any legal being the present application must be dealt with as if there had been no succession duty Act prior to the present one, & since the present Act was not passed until more than six months after the death of testator, appct. had brought himself within said sect. 38 (1) ; &, therefore, interest should be chargeable from May 31, 1934.—*Re* MERCER ESTATE, [1934] 3 W. W. R. 382 ; 49 B. C. R. 294.—**CAN.**

sg. *Exclusion of date from which interest runs—Application for—Time for making.*]—*Held :* such an application might be made after the expiration of the six months during which, if payment were then made, no interest was chargeable.—*Re* FARMER, [1926] 1 D. L. R. 894 ; [1926] 1 W. W. R. 366 ; 36 B. C. R. 334.—**CAN.**

PART V. SECT. 8, SUB-SECT. 3.

sj. *Hearing of summons under Succession Duty Act, R. S. B. C.* 1924 (*c.* 244), *s.* 34—*Must be before judge who issued summons.*] — *Re* CLAPHAM, MINISTER OF FINANCE *v.* BURKE-ROCHE (B. C.), [1925] 4 D. L. R. 325 ; *on appeal sub nom.* R. *v.* BURKE-ROCHE (1926), 37 B. C. R. 313.—**CAN.**

PART V. SECT. 9.

sl. *When repayment carries interest.*]—Succession Duties Act, 1893, s. 34 (2), relating to the payment of interest on succession duty repaid applies only to the repayments of succession duty assessed under sect. 34 (1).—*Re* KNOX (1927), S. A. S. R. 264.—**AUS.**

Part VI.—Probate Duty.

894. *Add. Annotation :*—**Refd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

902. *Add. Annotation :—As to* (1) **Refd.** Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

914. *Add. Annotations :*—**Apprvd.** Brassard *v.* Smith, [1925] A. C. 371. **Apld.** Baelz *v.* Public Trustee, [1926] Ch. 863; Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771. **Consd.** Erie Beach Co., Ltd. *v.* A.-G. for Ontario, [1929] 46 T. L. R. 33. **Refd.** A.-G. *v.* Sudeley, [1896] 1 Q. B. 354; A.-G. *v.* New York Breweries Co., [1898] 1 Q. B. 205; *Re* Aschrott, Clifton *v.* Strauss, [1927] 1 Ch. 313; London & South American Investment Trust *v.* British Tobacco Co. (Australia), [1927] 1 Ch. 107.

917. *Add. Annotations :—As to* (1) **Consd.** Baker *v.* Archer-Shee, [1927] A. C. 844. **Refd.** Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; A.-G. *v.* Belilios, [1928] 1 K. B. 798; Daw *v.* Inland Revenue Comrs., Duff-Dunbar *v.* Inland Revenue Comrs. (1928), 14 Tax Cas. 58. *Generally*, **Refd.** Inland Revenue Comrs. *v.* Smith, [1930] 1 K. B. 713; Corbett *v.* I. R. Comrs., [1938] 1 K. B. 567; *Re* White, Skinner *v.* A.-G., [1938] 2 All E. R. 691.

919. *Add. Citation : — Subsequent proceedings* (1833), 5 B. & Ad. 78.

949. *Add. Annotation :*—**Refd.** Stepney Borough Council *v.* Walker (John) & Sons, Ltd., [1934] A. C. 365.

Part VIII.—Foreign Duties.

958. *Add. Annotation :*—**Refd.** *Re* Rooke, Jeans *v.* Gatehouse, [1933] Ch. 970.

959. *Add. Annotation :—Generally*, **Refd.** *Re* Rooke, Jeans *v.* Gatehouse, [1933] Ch. 970.

PART VI. SECT. 1.

so. *Payment to registrar.*]—Probate duty is assessed & collected by the registrar, who is an "officer of the ct. generally." On payment he must issue probate.—*Re* SAYWARD (1934), 49 B. C. R. 307.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.—B.

886 i. *Not liable to duty—Under Probate Duty Act, R. S. B. C.*, 1924 (c. 202).]—BOWMAN *v.* A.-G. (B. C.) [1926] 4 D. L. R. 834.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.

900 iv. ——.]—S. at the time of his death was beneficially entitled to a certain share in his deceased father's estate. That estate was vested in a certain co. & one W. E. S. as trustee. The co. carried on business & had its head office in Victoria &, although registered in N.S.W., had no independent office of its own there but carried on its business in the office of another co. W. E. S. resided in N.S.W. All the administrative work in the estate had always been done in Melbourne, where all meetings of the trustees were held, all income received, & all investments made. Duty on the assets in question had been paid in Victoria :—*Held :* S.'s interest in his deceased father's estate was not subject to probate duty in N.S.W.—PERPETUAL TRUSTEE CO., LTD. *v.* STAMP DUTIES COMR. (SARGOOD'S CASE), (1936), S. R. N. S. W. 160; 53 N. S. W. W. N. 28.—**AUS.**

PART VI. SECT. 3.

a i. —— —— *Deed of gift.*]—STAMPS COMR. *v.* SKINNER (1926), 29 W. A. L. R. 58.—**AUS.**

PART VI. SECT. 5, SUB-SECT. 1.

d i. ——.]—The value on an open market is the best guide to the value of stocks for valuation purposes.—*Re* COLLINS, TORONTO GENERAL TRUSTS *v.* A.-G. FOR BRITISH COLUMBIA, [1935] 3 D. L. R. 603.—**CAN.**

ESTOPPEL.

Part I.—Nature and Classification.

5. *Add. Annotation :—As to* (3) **Refd.** H. *v.* H., [1928] P. 206.

7. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

8. *Add. Annotations :* — **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; Russell (Countess) *v.* Russell (Earl), [1935] P. 39; Knott *v.* Knott, [1935] P. 158.

9. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

10. *Add. Annotation :*—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

10a. ——.]—Estoppel is a rule of evidence, & not a bar to the jurisdiction.—H. *v.* H., [1928] P. 206; 97 L. J. P. 116; 139 L. T. 412; 44 T. L. R. 711; 72 Sol. Jo. 598.

11. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

28. *Add. Annotations :*—**Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557; Bartlam *v.* Evans, [1936] 1 K. B. 202.

Part II.—Estoppel by Matter of Record.

52. *Add. Annotation :*—**Apld.** Morriss *v.* Winter (1929), 45 T. L. R. 643.

63. *Add. Annotation :*—**Consd.** Selby *v.* Atkins (1926), 135 L. T. 45.

72. *Add. Annotation :*—**Refd.** A.-G. *v.* Arthur Ryan Automobiles, Ltd., [1938] 2 K. B. 16.

96. *Add. Annotations :*—**Distd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155. **Refd.** L. *v.* L. (1934), 50 T. L. R. 441; Lindsay *v.* Lindsay (1934), 103 L. J. P. 100.

103a. ——.]—Money-lenders Act, 1900 (c. 51), s. 1 (1), does not empower a judge to re-open a money-lending transaction where the money-lender has brought an action in respect of that transaction, & deft. borrower has consented to judgment, although the judgment may never have been drawn up & entered. The agreement to pay has become merged in the judgment, which is *res judicata* & not an agreement within the sect.—COHEN *v.* JONESCO, [1926] 1 K. B. 119; 95 L. J. K. B. 100; 90 J. P. 18; 42 T. L. R. 41; 70 Sol. Jo. 138; *revsd.* on other grounds, [1926] 2 K. B. 1; 95 L. J. K. B. 467; 134 L. T. 690; 90 J. P. 74; 70 Sol. Jo. 386; 42 T. L. R. 204, C. A.

104a. —— ——.]—An order by consent is binding unless & until it has been set aside in proceedings constituted for that purpose. Pltf. in an action based upon charges which he has

PART II. SECT. 1.

8a. *Prior action must be identical.*]—Upon appeal from the order of a judge summarily dismissing an action upon the ground that the issues therein had been determined by a ct. of concurrent jurisdiction in an earlier action between the same parties :—*Held :* the identity of the issues in the two actions was not clear upon the material before the ct., & therefore the order should be set aside & the action allowed to proceed to trial, the question of *res judicata* being left open.—ANDERSON *v.* AMELIASBURG, [1931] 2 D. L. R. 359; 66 O. L. R. 583.—**CAN.**

8d. *Assessment by income tax officer.*]—An income tax officer does not constitute a ct. &, therefore, the doctrine of *res judicata* can have no application to an assessment made by him.—TRICHINOPOLY TENMORE HINDU PERMANENT FUND, LTD. *v.* COMR. OF INCOME TAX, I. L. R., [1938] Mad. 183.—**IND.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) i.

8x. *Issue withdrawn from jury.*]—In a petition for restitution the husband alleged cruelty in his cross-petition. After evidence had been given counsel abandoned the claim on the cross-petition & the jury were thereupon discharged from finding upon this issue. In a subsequent suit where cruelty was again alleged :—*Held :* these facts did not amount to an estoppel.—CARNEGIE *v.* CARNEGIE (1886), 17 L. R. Ir. 430.—**IR.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) ii.

8b. *Irregularities in procedure.*]—The dismissal of prior motions for irregularities in procedure does not prevent an adjudication on a subsequent proper & regular motion.—*Re* DOFF & MARKS, [1925] 4 D. L. R. 740.—**CAN.**

8c. *Action on immoral contract.*]—On the trial of an action the judge came to the conclusion that the evidence disclosed an illegal contract under which defts. were to receive part of the money obtained by pltf. while engaged in prostitution, & that the action was of an indecent character & unfit to be dealt with, & he dismissed it, the formal judgment stating that "this ct. does of its own motion & without adjudicating as between pltf. & defts. on the matters in dispute between them, order that this action be dismissed out of this ct., with costs":—*Held :* the order precluded pltf. from again suing in respect of any of the causes of action included in the statement of claim.—GUILBAULT *v.* BROTHER (1904), 24 C. L. T. 342; 10 B. C. R. 449.—**CAN.**

8f. *Dismissal of motion for mandamus.*]—Dismissal of a motion for *mandamus* to levy a tax for school purposes is *res judicata* barring renewal of such motion.—*Re* OTTAWA COLLEGIATE INSTITUTE, [1937] 2 D. L. R. 230.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) iii.

9 i. —— ——.]—While a judgment dismissing an action on default of appearance by pltf. at the trial has the same effect as a judgment for deft. upon the merits it does not follow necessarily that from such a judgment an estoppel by *res judicata* arises. On that question being raised in a subsequent action it is the duty of the ct. to look into the proceedings in the previous action & ascertain definitely what matters were in fact decided by the judgment therein. & if that judgment was founded on proceedings which do not disclose a vital defect which existed in a contract set up therein, such as the defect of illegality or invalidity it cannot be said to have made that contract valid & enforceable notwithstanding the defect.—ELIAS *v.* DUERKSEN & DUERKSEN, [1930] 2 W. W. R. 481; 4 D. L. R. 677; 24 S. L. R. 562.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) iv.

104 i. —— *Consent order.*]—Where an order was made at chambers by consent of the parties, & an appeal was subsequently taken by the solr. for one of the parties that at the time of the making of the order he was under a misapprehension as to the effect of two judgments of the Supreme Ct. :—*Held :* the consent order operated as an estoppel.—*Re* KLINE, [1924] 1 D. L. R. 295; 56 N. S. R. 389.—**CAN.**

104 ii. —— ——.]—*Re* DRUMMOND, BENN *v.* HAWTHORNE, [1931] 4 D. L. R. 188; [1932] S. C. R. 73.—**CAN.**

t i. ——.]—Action for foreclosure of a mtge. Pltf. & deft. P. had been

withdrawn by a consent order in a previous action between the parties is estopped by the order, & cannot effectively plead in reply that his consent was induced by fraudulent concealment.—KINCH *v.* WALCOTT, [1929] A. C. 482 ; 98 L. J. P. C. 129 ; 141 L. T. 102, P. C.

114. *Add. Annotation :*—**Consd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

122. *Add. Annotation :*—**Refd.** King *v.* Sunday Pictorial Newspapers (1920), Ltd. (1924), 133 L. T. 397.

140. *Add. Annotation :*—*As to* (2) **Refd.** Lindsay *v.* Lindsay, [1934] P. 162.

148. *Add. Annotation :*—**Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

151. After this case add "**Decree for restitution of conjugal rights.**]—*See* HUSBAND & WIFE, No. 4767a."

153a. **Re-registration of birth of illegitimate child.**] —The re-registration, as provided for in the schedule to Legitimacy Act, 1926 (c. 60), of the birth of a child originally illegitimate; the child having become legitimate by virtue of the provisions of that Act, is not a record of a binding decision. In authorising the re-registration the Registrar-General does not act in a judicial capacity & the re-registration of the birth does not create a *res judicata*. —JONES *v.* JONES (1929), 98 L. J. P. 74 ; 140 L. T. 647 ; 45 T. L. R. 292 ; 73 Sol. Jo. 192.

163. *Add. Annotation :*—**Consd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

183. *Citation :*—For "*subsequent proceedings*" read "*affd.*"

190. After this case add "—— ——.]—*See, also,* INSURANCE, Vol. XXIX., pp. 122, 182–184. Nos. 752, 1404–6, 1408, 1409, 1420, 1422."

204a. —— **For deduction of costs—Not res judicata.**] —Pltf., who had been negotiating for the purchase of a house, handed to deft., as his agent, the amount of the deposit & the balance of £490 payable to the vendor on completion & instructed deft. to pay the balance to the vendor when completion took place. Completion did not take place, & pltf. demanded the above balance from deft. & brought an action against him to recover it. The vendor claimed that pltf. was liable to him for £100 damages & directed deft. not to pay over that sum to pltf. Deft. thereupon issued an interpleader summons in respect of the £100, & the master directed an issue, & ordered that deft. should pay into ct. the £100 less his costs. On the trial of the issue the vendor's claim was dismissed. Pltf. then obtained leave to sign judgment for £390, for which deft. admitted liability. Pltf. now claimed the additional £100 in full without any deduction of deft.'s costs. Deft. contended that the master's order allowing deft. to deduct his costs was final :—*Held :* the master's order allowing the deduction of costs was not *res judicata*, but merely relieved deft. from paying the full £100 until the decision of the interpleader issue & the result of the action, & pltf. was entitled to recover the full £100.—ALLNUTT *v.* MILLS (1925), 42 T. L. R. 68.

209. To the cross-reference following this case add "**In proceedings before Railway & Canal Commission—Under Mines (Working Facilities & Support) Act, 1923 (c. 20).**]—*See* MINES, Vol. XXXIV., pp. 635, 636, No. 325."

parties to a prior action in which the main issue was the ownership of the land covered by the mtge. & in which a consent judgment was given dismissing the action as against the present pltf. & declaring that the title to the land was subject to the mtge. now sought to be foreclosed & vesting the land in P. subject to said mtge. P. now raised the defence of adverse possession, a point which had not been brought forward by her in the former action :—*Held :* on the principle of *res judicata* or, at least, on the principle that a judgment is conclusive proof between the parties of the matters actually decided, said defence was not open to P.—CANADA PERMANENT CORPN. *v.* CHRISTENSEN (B. C.), [1929] 3 D. L. R. 864 ; 2 W. W. R. 198.—**CAN.**

h 1. ——.]—AIKINS *v.* BLAIN (1865), 11 Gr. 212.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) viii.

r 1. —— *Code of Civil Procedure*, s. 207.]—Applt., who had brought an action in his unregistered business name against resp. to recover the balance of moneys alleged to be due on a running account, obtained a decree of the District Ct. in his favour subject to his complying with the terms of the Ceylon Business Names Registration Ordinance within a limited period. Against that decree resp. appealed to the Supreme Ct. of Ceylon, & the present applt., faced with the possibility that if resp.'s appeal succeeded any further proceedings might be barred by limitation, instituted a second suit against resp. in respect of the same subject-matter. This second action was dismissed in the District Ct. on the ground of *res judicata*, & against that decision the present applt. appealed. The Supreme Ct. of Ceylon allowed resp.'s appeal in the first action, & dismissed the present applt.'s appeal in the second action. On an appeal to the Privy Council in the second action :—*Held :* under sect. 207 of the Civil Procedure Code no decree from which an a[illegible] been taken, but not yet determined, is final between the parties so as to form *res judicata*, & therefore the second action would be remitted to the District Ct. to proceed as accords.—ANNAMALAY CHETTY *v.* THORNHILL, [1931] A. C. 697 ; 145 L. T. 415 ; 47 T. L. R. 459 ; 75 Sol. Jo. 393, P. C. ; *sub nom.* CHETTY *v.* THORNHILL, 100 L. J. P. C. 174.—**IND.**

PART II. SECT. 2, SUB-SECT. 1.—B. (c).

201 l. *In administration suit—Originating summons against administrator—Subsequent probate action by administrator.*]—D.'s father was believed to have died intestate, & D. took out a grant of letters of administration *de bonis non*. Subsequently a sister of D. issued an originating summons, an order for administration was made, & also an order that four payments should be made to four sisters of D. out of the funds in ct. to the credit of the matter. D. was represented by counsel at the hearing of the summons upon which this last order was made. Subsequently D. was advised by his solr. that a will which he knew his father had made, & which had been burned by his father's directions, was not legally revoked, & D. instituted an action to revoke the grant of letters of administration *de bonis non* to himself, & to prove the will in solemn form :—*Held :* being an originating summons by a next-of-kin for administration against D. as administrator, it was not open to D. to challenge in those proceedings the fact that he was an administrator, & D. was not estopped by the above orders.—DOOLEY *v.* DOOLEY, [1927] I. R. 190.—**IR.**

204 i. ——.]—An interlocutory judgment, which definitely decides a question of law, & from which no appeal is taken, may be *res judicata* when the question is raised between the same parties, even in the same action.—DIAMOND *v.* WESTERN REALTY CO., [1924] 2 D. L. R. 922 ; [1924] S. C. R. 308.—**CAN.**

s*f. Order striking out guardian ad litem's name from record.*]—*Held :* not to operate as *res judicata*.—KUMAR GANGANAND SINGH *v.* MAHARAJAH SIR RAMESHWAR SINGH BAHADUR (1927), I. L. R. 6 Pat. 388.—**IND.**

s*k. Order giving leave to renew application for security for costs.*]—An application by deft. in a libel action for security for costs was dismissed by the referee. On sustaining the dismissal ADAMSON, J., gave deft. leave to renew his application. The referee on the renewed application gave an order for security. On appeal it was contended that under Libel Act, R. S. M., 1913, deft.'s right to apply for security was limited to one application :—*Held :* while the judgment of ADAMSON, J., stood unaltered by the Ct. of Appeal the matter was *res judicata* in the Ct. of King's Bench & the judgment was binding on the referee & the judges of the King's Bench, & that no case had been made out for interfering with the discretion exercised by the referee under sect. 10 of said Act.—SEDZIAK *v.* POLISH WORKERS ASSOCIATION (No. 2), [1937] 3 W. W. [illegible] **CAN.**

213. *Add. Annotations:—As to* (1) **Refd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241; Freshwater *v.* Bulmer Rayon Co., Ltd., [1933] 1 Ch. 162; Smith *v.* Cutler & Sons, Ltd. (1932), 25 B. W. C. C. 408; Lindsay *v.* Lindsay, [1934] P. 162; Rentit, Ltd. *v.* Duffield, [1937] 3 All E. R. 117; British & French Trust Corpn. *v.* New Brunswock Ry. Co., [1937] 4 All E. R. 516; Marginson *v.* Blackburn Borough Council, [1938] 2 All E. R. 539. *As to* (4) **Refd.** Jacobson *v.* Franchon (1927), 138 L. T. 386.

214a. ——.]—A previous decision on a matter in dispute between parties does not create an estoppel unless (1) the decision was given by a competent tribunal, & (2) the matter was raised & controverted before that tribunal & was clearly & finally decided by it.—EASTWOOD & HOLT *v.* STUDER (1926), 31 Com. Cas. 251.

215. *Add. Annotations:—As to* (2) **Refd.** Eastwood & Holt *v.* Studer (1926), 31 Com. Cas. 251. *As to* (4) **Refd.** Smith *v.* Cutler & Sons, Ltd. (1932), 25 B. W. C. C. 408.

222a. ——.]—In July & Aug. 1920, the shareholders of a co. carrying on the business of whiskey distilling passed resolutions for its voluntary winding up. With a view to selling the distillery as a going concern the liquidator continued distilling up to Mar. 31, 1921, but not after, & pending the sale of the business he sold the co.'s stocks of whiskey as opportunity offered. Such sales of whiskey extended over a period of more than two years. An assessment to income tax was made upon the co. for the year 1921-22 in respect of the profits of its business on the footing that the liquidator was carrying on the trade in that year. This assessment was discharged by the Special Comrs. on appeal on the ground that an assessment on the co. for the preceding year had been discharged by the recorder on appeal to him from the determination of the Special Comrs., & that they were bound to follow his decision:—*Held:* the Special Comrs. were not bound by the decision of the recorder regarding the 1920-21 appeal to discharge the 1921-22 assessment.—EDWARDS *v.* "OLD BUSHMILLS" DISTILLERY CO., LTD. (IN LIQUIDATION) (1926), 10 Tax Cas. 285, H. L.

Annotation:—**Refd.** I. R. Comrs. *v.* "Old Bushmills" Distillery Co., Ltd. (1927), 12 Tax Cas. 1148.

224a. Finding of adultery.]—A finding of adultery as a fact on which a decree *nisi* has proceeded is not *res judicata*, so that it cannot subsequently be questioned in the Divorce Div. in any event, nor is resort to the Ct. of Appeal the only means of reviewing it.—CHALMERS *v.* CHALMERS, [1930] P. 154; 99 L. J. P. 60; 142 L. T. 654; 46 T. L. R. 269; 74 Sol. Jo. 216.

229a. Judgment in action on bond—Subsequent action on another bond of same series.]—Defts., a Canadian corpn., registered under the laws of New Brunswick, issued on Aug. 1, 1884, 6,000 first mtge. gold bonds of like amount, tenor, & date. The bonds were secured by a mtge. trust deed, & all became due on Aug. 1, 1934. The bonds stated that on that date defts. for value received promised "to pay to bearer or registered holder thereof £100 sterling gold coin of Great Britain of the present standard of weight & fineness at its agency in London, England, with interest thereon" at 5 per cent. *per annum*, payable in London or, at the holder's option, at defts.' office in New Brunswick. The interest coupon stated that the co. would pay the bearer £2 10*s.* sterling at its agency in London, England, or at its office in New Brunswick, on Aug. 1, 1934. Pltfs., holders of 992 such bonds, claimed in respect of each bond the sum in sterling calculated on Aug. 1, 1934, then representing the gold value of £100 on Aug. 1, 1884. Defts. contended that they were bound to pay only £100 sterling upon each bond & interest upon the same basis. In an action between the same parties upon another of the said bonds, pltfs. obtained judgment on Nov. 7, 1934, upon the gold basis now claimed, defts. not having put in any defence to that action. The statement of claim in that action did not allege that all the bonds were identical in their terms. On Jan. 16, 1936, judgment was given in the present action in favour of defts. Pltfs. appealed, but, before the appeal could be heard, the legislature of New Brunswick, on Apr. 2, 1937, & that of Canada, on Apr. 10, 1937, both passed legislation affecting gold-clause obligations:—*Held:* (1) defts. were estopped from raising any argument about the construction of the bonds, as a contract in identical terms & between the same parties had already been construed by the ct. in the earlier action; (2) defts. were not estopped from raising as a defence the dominion or provincial legislation, as that had been passed after delivery of judgment in the ct. below, & had not, therefore, been available to defts. as a defence at the first hearing; (3) (*per* SCOTT, L.J.): by virtue of the British North America Act, 1867 (c. 3), s. 92, & 44 Vict. (Can.), c. 42, s. 1, the Parliament of Canada was entitled to legislate in respect of deft. co., although such parts of deft. co.'s undertaking as were within Canada were situate wholly within New Brunswick. The Federal Gold Clauses Obligations Act, 1937, was therefore *inter*

PART II. SECT. 3, SUB-SECT. 1—A.

213 x. ——.]—VILLAGE OF HAGERSVILLE *v.* HAMBLETON, [1927] 4 D. L. R. 1044; 61 O. L. R. 327.—CAN.

PART II. SECT. 3, SUB-SECT. 1.—B. (b).

ak. *Agency.*]—Where a judgment for indemnity has been pronounced between two parties, on the ground that one was the principal & the other the agent, the judgment is conclusive as to that fact.—PLUMB *v.* MACDONALD (W. C.) REGISTERED, LATIMER *v.* FOSTER TOBACCO CO., LTD., [1926] 1 D. L. R. 899; 58 O. L. R. 322.—CAN.

al. *Decided by jury in ejectment action.*]—The judgment in an action of ejectment is only an estoppel between the parties as to the statutory issue whether the claimant was entitled to possession on the day named in the writ, & not as to any facts decided by the jury in such action.—BURNHAM *v.* CARROLL MUSGROVE THEATRES, LTD. & VICTORIA ARCADE, LTD. (1927), 28 S. R. N. S. W. 169; 45 N. S. W. W. N. 23; *affd.*, 41 C. L. R. 540.—AUS.

am. *In action of ejectment.*]—The judgment in an action of ejectment is only an estoppel between the parties on the statutory issue as to whether or not the claimant was entitled to possession on the day named in the writ, & not as to any facts decided by the jury in such action.—BURNHAM *v.* CARROLL MUSGROVE THEATRES, LTD. & VICTORIA ARCADE, LTD. (1928), 29 S. R. N. S. W. 51; 46 N. S. W. W. N. 22.—AUS.

PART II. SECT. 3, SUB-SECT. 1.—B. (c).

225 i. *General rule.*]—Where the cause of action is different from what it was in the first action, the matter is not *res judicata*.—BRANIGAN *v.* SARA, [1924] N. Z. L. R. 481.—N.Z.

vires the Canadian Parliament; (4) although the contract was as a whole governed by Canadian law, questions as to mode of payment & as to measure of the amount of payment were to be settled by the *lex loci solutionis*, which in this case was English law; (5) the clause in the bonds was a gold clause, & both principal & interest must be calculated on a gold basis.—BRITISH & FRENCH TRUST CORPN. *v.* NEW BRUNSWICK RY. CO., [1937] 4 All E. R. 516; 54 T. L. R. 172; 81 Sol. Jo. 1038; 43 Com. Cas. 110, C. A.; *varied sub nom.* NEW BRUNSWICK RY. CO. *v.* BRITISH & FRENCH TRUST CORPN., [1938] 4 All E. R. 747, H. L.

232. *Add. Annotations:*—**Apld.** Jaeger Co., Ltd. *v.* Jaeger (1929), 46 R. P. C. 336. **Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155; Lindsay *v.* Lindsay, [1934] P. 162.

251. *Add. Annotations:*—**Refd.** British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516; Marginson *v.* Blackburn Borough Council, [1938] 2 All E. R. 539.

253. *Add. Annotation:*—**Refd.** Green *v.* Weatherill' [1929] 2 Ch. 213.

253a. Judgment relating to right of set-off—Claim to set off contingent liability under guarantee—Subsequent application as to disposition of dividend—After payment under guarantee.]—F., having guaranteed advances by certain banks to the T. Assocn., in which he was interested, subsequently executed two deeds of arrangement in favour of his creditors. The Assocn. having gone into liquidation, the liquidator lodged a proof against F.'s estate in respect of sums due by F. to the Assocn. The trustee of F.'s estate rejected the proof & claimed to set off the various sums which had been advanced by the banks to the Assocn. for which F. had given his personal guarantee. At that time, although one or more of the banks had proved against F.'s estate under the guarantees, nothing had been paid to any of them. The Assocn. was admitted to prove against F.'s estate for a very large sum, & the trustee declared an interim dividend of 1*s.* in the pound. The banks were paid the dividend in respect of their admitted proofs, which also amounted in the aggregate to a considerable sum. The sums constituting the amount of the banks' proofs represented the amount of the Assocn.'s debt which had been guaranteed by F. The question arose whether the trustee of F.'s estate was under the circumstances entitled to pay to the liquidation of the Assocn. the sum representing the interim dividend declared in respect of the admitted proof. The matter came before the ct. by way of motion on behalf of the trustee, the question being whether this declared dividend was properly payable to the liquidator of the Assocn. or the trustee was entitled to withhold payment of all or any part thereof. On behalf of the Assocn. it was urged that the previous proceedings reported *Re Fenton*, [1931] 1 Ch. 85, had concluded the matter, that the question was now *res judicata*, & that, notwithstanding the payment to the banks of the amount of the dividend since that decision, the liquidator of the Assocn. was entitled to the full dividend in respect of the Assocn.'s admitted proof:—*Held:* the question raised by the motion had not been determined by the Ct. of Appeal in the previous proceedings. —*Re* FENTON (NO. 2), *Ex p.* FENTON TEXTILE ASSOCN., LTD., [1932] 1 Ch. 178; 146 L. T. 229; [1931] B. & C. R. 59; *sub nom. Re* FENTON (NO. 2), *Ex p.* TRUSTEE UNDER DEED OF ARRANGEMENT *v.* FENTON TEXTILE ASSOCN., LTD., 101 L. J. Ch. 1.

253b. Plaintiff in second action third party in first.]—Pltf. sued deft. for damages in respect of injuries received by his daughter & himself, & in respect of the death of his wife, arising out of a collision between a car driven by pltf.'s wife, & a motor omnibus driven by deft.'s servant. Prior to the commencement of this action, a third person, whose premises had been damaged as a result of this accident, had, in a county ct. sued both the present pltf. & present deft., each of whom then served upon the other a third-party notice claiming indemnity & contribution in respect of any sum which pltf. in the county ct. action might recover. In this prior action judgment was given against the present pltf. & present deft. jointly & severally, & it was ordered that they should be liable for the sum & costs in equal shares. Deft. contended that, by reason of the judgment in the county ct., pltf. was estopped from proceeding in the present action, which was on the same facts as was the action in the county ct. Deft.'s contention was argued as a preliminary point:—

PART II. SECT. 3, SUB-SECT. 1.—B. (d).

230 xvii. ——.]—Resp. claimed to deduct £1,000 in computing the profits for the year ending Mar. 31, 1921, & the recorder allowed the deduction claimed. The question came again before the Special Comrs. by way of an appeal from an assessment for 1922–23; —*Held:* the recorder's decision on the assessment for 1921–22 was binding, & the question was *res judicata*.—ALYMER *v.* MAHAFFEY, [1925] N. 167 10 Tax Cas. 594.—IR.

230 xviii. ——.]—WILSON *v.* CAMERON (1842), 1 Kerr, 542.—CAN.

230 xix. ——.]—CHAMBERS *v.* DOLLAR & STEVENSON (1870) 29 U. C. R. 599.—CAN.

230 xx. ——.]—JONES *v.* CITY OF ST. JOHN (1901), 31 S. C. R. 320.—CAN.

230 xxi. ——.]—FOSTER *v.* REAUME, [1926] 1 D. L. R. 1024; 60 O. L. R. 63.—CAN.

r i. —— ——.]—A vendor of land sued for cancellation of the agreement for sale, & for possession, alleging the purchaser's default in payment of interest & taxes; & recovered judgment for possession & a declaration that the agreement had become null & void. The purchaser counterclaimed for repayment of all amounts paid by him &, by the judgment, recovered all amounts in excess of the first payment. The vendor subsequently brought the present action, claiming damages for loss on a re-sale of the land, & sums expended by him in repairs & for taxes:—*Held:* while, in the first action, the claims now made were not all claimed directly as specific relief to which the vendor would be entitled upon cancellation of the agreement, yet they were all urged as separate reasons why the amount recovered by the purchaser should not be returned to him. The claims now made were thus all before the ct. in the first action; & therefore could not be made the subject of another action.—KRAUSE *v.* YORK, [1932] S. C. R. 548; 2 D. L. R. 701; *affg.*, [1932] 1 D. L. R. 270; O. R. 29.—CAN.

sh. *Action to set aside fraudulent conveyance — Finding that plaintiff secured creditor.*]—In an action by a judgment creditor against a husband & wife to set aside as in fraud of the husband's creditors a transfer made by him to his wife:—*Held:* a finding, in a prior action by the same creditor against the husband, that pltf. was an amply secured creditor at the time of the transaction, estopped pltf. as against the husband, who had pleaded *res judicata*, from again raising the issue as to the sufficiency of the pltf.'s security.—BAXTER *v.* DERKASZ & DERKASZ, [1929] 2 D. L. R. 443; 1 W. W. R. 673; 10 C. B. R. 473; 23 S. L. R. 444.—CAN.

PART. II SECT. 3, SUB-SECT. 1.—B. (e).

254 xi. ——.]—CHAMBERS *v.* UNGER (1875), 25 C. P. 180.—CAN.

Held: the actual questions in this action had never been decided, & pltf. was not estopped from proceeding in his action.—MARGINSON *v.* BLACKBURN BOROUGH COUNCIL, [1938] 2 All E. R. 539.

256a. ——.]—Applts.' mine was worked during the years 1919, 1920, & 1921 during two hundred & five days only owing to strikes & the low price obtainable for ore, though maintenance was continued during the whole period:—*Held:* the question of average annual value was not *res judicata* by a decision of the High Ct. of Australia between the parties as to the valuation for a previous year.—BROKEN HILL PROPRIETARY CO. *v.* BROKEN HILL MUNICIPAL COUNCIL, [1926] A. C. 94; 95 L. J. P. C. 33; 134 L. T. 335. P. C.

Annotation:—**Apld.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

257. *Add. Annotation:*—**Distd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

259a. Order for maintenance out of fund—Subsequent order negativing title to fund.]—*Semble:* the existence of an order for the maintenance of an infant out of the income of a fund does not prevent the ct., in a subsequent proceeding in which the title to the principal comes directly in question, from making an order negativing the infant's title to the fund.—SAUNDERS *v.* VAUTIER (1841), Cr. & Ph. 240; 10 L. J. Ch. 354; 41 E. R. 482, L. C.

265a. Decision that patent valid—Subsequent action for infringement—Whether defendant estopped from disputing validity of patent.]—In an action for infringement of a patent deft. denied infringement & pleaded that the patent was invalid by reason of lack of novelty & lack of subject-matter owing to common general knowledge & prior publication, want of utility, insufficiency & false suggestion in the specification, & he counterclaimed for revocation of the patent. In a previous action the patent had been attacked only on the ground of prior publication of two specifications, G. & V., & the issue of infringement had not been contested. In that action the patent had been held to be valid. It was contended by deft. that the ct. was bound by the prior decision only as to construction of the specification & not as to subject-matter, that the additional documents relied on showed features claimed in the specification not disclosed by G. or V., & that, owing to the issue of infringement not having been contested it had been unnecessary for the ct. to define the ambit of the claims:—*Held:* the ct. was not strictly bound by a prior decision as to anticipation, & it was open to deft. to prove anticipation by documents not before the ct. in the previous action.—HIGGINSON & ARUNDEL *v.* PYMAN, SAME *v.* SAME (1926), 43 R. P. C. 291, C. A.

276. *Add. Annotations:*—*As to* (3) **Apprvd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155. **Apld.** Green *v.* Weatherill, [1929] 2 Ch. 213; West *v.* Automatic Salesman, Ltd., [1937] 2 K. B. 398. **Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 44 T. L. R. 15; Mould *v.* Mould (1933), 49 T. L. R. 242; British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516; Marginson *v.* Blackburn Borough Council, [1938] 2 All E. R. 539.

285. *Add. Annotation:*—**Refd.** Sagar *v.* Ridehalgh (H.) & Son, Ltd., [1930] 2 Ch. 117.

291. *Add. Annotations:*—*As to* (2) **Refd.** British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516. *Generally*, **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

292. *Add. Annotation:*—**Refd.** British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516.

293. *Add. Annotations:*—**Refd.** Lindsay *v.* Lindsay (1931), 103 L. J. P. 100; British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516.

294. *Add. Annotations:*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155; Lindsay *v.* Lindsay (1834), 103 L. J. P. 100; British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516.

295. *Add. Annotation:*—**Refd.** British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516.

296a. —— Action for arrears of maintenance—Agreement to release—Judgment by consent—No evidence that consent based on agreement.]—Pltf. & deft. were divorced in 1925, & an interim order for maintenance was made on Dec. 21, 1925, for payment to pltf. of £3 10*s.* a week. In Feb. 1927, an agreement was entered into whereby deft. was to continue to pay £182 *per annum* but the payments were to be quarterly. The agreement also provided *inter alia*, that each party should give to the other full discharge of all sums claimed & that all actions, claims, demands at law & otherwise were withdrawn by consent. Payment fell into arrears & pltf. brought an action in the Mayor's Ct. for the amount then owing. The defence was withdrawn & judgment consented to. Payments again fell into arrears & the present action was brought in respect of them. Deft. contended that, as the agreement provided for the payment of a sum which deft. was already liable to pay, it was void for want of consideration. Pltf. replied that deft. was

---

PART II. SECT. 3, SUB-SECT. 1.—B. (f).

274 ix. ——.]—*Re* GLOBE WINE CO. (Sask.), [1926] 1 D. L. R. 213.—CAN.

274 x. ——.]—CASSIDY *v.* INGOLDSBY (1875), 36 U. C. R. 339.—CAN.

PART II. SECT. 3, SUB-SECT. 1.—B. (g).

276 ii. ——.]—An action was brought by a co. to remove two of its trustees for refusing to obey an order of the ct. made in a previous action directing them to join with the other trustee in assessing certain shares:—*Held:* deft. trustees were estopped by the judgment in the previous action from objecting to the status of directors who had ordered the assessment of the stock, as that was a question which should have been raised in that action. —FRASER RIVER MINING CO. *v.* GALLAGHER (1896), 5 D. C. R. 82.—CAN.

276 iii. ——.]—FORSYTH *v.* BURY (1887-8), 15 S. C. R. 543.—CAN.

276 iv. ——.]—If the *res*, the thing actually & directly in dispute, has been already adjudicated upon by a competent ct. it cannot be litigated again. Pltf. having raised in a former action a dispute as to the precise facts & questions involved in the second action must admit that which has been judicially declared to be the truth with respect to that dispute. The plea of *res judicata* applies, except in special cases, not only to points upon which the ct. was actually required by the parties to form an opinion & pronounce a judgment, but to every point which properly belonged to the subject of litigation, & which the parties, exercising reasonable diligence, might have brought forward at the time.—CAMERON *v.* ROUNSEFELL, [1933] 3 W. W. R. 121; 47 B. C. R. 401.—CAN.

estopped from relying on this defence by the proceedings in the Mayor's Ct. which arose out of a breach of the same agreement:—*Held:* (1) there was no estoppel inasmuch as there was no evidence that judgment in the Mayor's Ct. was based on the agreement. It might have been consented on because the money was in any event due under the maintenance order; (2) the settlement of all accounts & claims was good consideration for the agreement & pltf. was entitled to succeed.—MANN *v.* MANN, [1936] 1 All E. R. 952; 80 Sol. Jo. 324.

296b. Admission.]—Under a will the annual income from an estate in Australia was divisible by the trustees between testator's daughters. The trustees objected to an assessment for the financial year 1918–1919 under Land Tax Assessment Act, 1910–1916, of Australia; they claimed under sect. 38 (7) of the Act a deduction of £5,000 in respect of the share of each daughter, & a case was stated for the opinion of the Full Ct. of the High Ct. upon the questions: (1) whether the shares of the joint owners, or of any & which, of them, in the land were original shares within sect. 38; (2) how many deductions of £5,000 resp. should make. The Full Ct. answered these questions as follows: (1) the shares of the six children surviving at the date of the assessment; (2) six. Upon the assessment for 1919–192[illegible] the comr. allowed only one deduction of £5,000, contending that the beneficiaries were not joint owners within the Act. Upon a case stated the Full Ct. upheld that view, & held that the comr. was not estopped by the previous decision:—*Held:* the comr. was estopped, since although in the previous litigation no express decision had been given whether the beneficiaries were joint owners, it being assumed & admitted that they were, the matter so admitted was fundamental to the decision then given.—HOYSTEAD *v.* TAXATION COMR., [1926] A. C. 155; 94 L. J. P. C. 79; 134 L. T. 354; 42 T. L. R. 207, P. C.

Annotations:—**Consd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 44 T. L. R. 15; I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241; British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516; Marginson *v.* Blackburn Borough Council, [1938] 2 All E. R. 539. **Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

315a. —— **Fraud—Fraud alleged in letter to registrar in previous proceedings.**]—Resp. co. took proceedings to recover certain instalments, amounting to about £6, due under a hire-purchase agreement. In the ordinary course, & under County Cts. (Amendment) Act, 1934 (c. 17), s. 19, the case came before the registrar. Resp. co. was represented & was admittedly a consenting party; applt. was not represented, but he wrote to the registrar alleging that the contract had been obtained by fraud. The registrar gave judgment for resp. co. Subsequently resp. co. started a second action to recover further amounts due under the same contract. Applt. counterclaimed for cancellation of the contract on the ground that it had been obtained by fraud. The county ct. judge found that the contract had been obtained by fraud, but he held that applt. was estopped from raising this defence, as the registrar had already decided this point against him. On appeal applt. contended that the registrar had had no jurisdiction to hear the case, as applt. had not applied to the registrar to hear the case:—*Held:* applt.'s letter to the registrar amounted to an application to the registrar to hear the case, & applt. could not therefore raise the question of fraud which was *res judicata*.—RENTIT, LTD. *v.* DUFFIELD, [1937] 3 All E. R. 117, C. A.

334. *Add. Annotations:*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155; Marginson *v.* Blackburn Borough Council, [1938] 2 All E. R. 539.

339a. Between co-defendants.]—A decision operates as *res judicata* between co-defts. provided that (*a*) there was a conflict of interest between them; (*b*) it was necessary to decide that conflict in order to give pltf. the relief which he claimed; (*c*) the question between co-defts. was finally decided.—MUNNI BIBI *v.* TIRLOKI NATH (1931), 58 L. R. Ind. App. 158, P. C.

366. *Add. Annotation:*—**Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

PART II. SECT. 3, SUB-SECT. 1.—B. (i).

303 i. *General rule.*]—CARPENTER *v.* COMMERCIAL BANK OF CANADA (1862), 2 E. & A. 111.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (a) i.

329 xxvii. —— *Co-defendants.*]—If the relief given to pltf. does not require or involve a decision of any case between co-defts., they will not be bound as between each other by any proceeding which may be necessary only to the decree pltf. obtains.—MA PAN NYUN *v.* MAUNG SIT PHAUNG (1928), I. L. R. 6 Rang. 575.—**IND.**

329 xxviii. —— ——.]—The Judicial Committee have approved of the *dictum* acted upon by the cts. in India that to apply the doctrine of *res judicata* as between co-defts. three conditions are requisite, *viz.* (1) there must be a conflict of interest between the defts. concerned; (2) it must be necessary to decide this conflict in order to give pltf. the relief he claims; (3) the question between defts. must have been finally decided.—LALMOHAN DHUPI *v.* RAMLAKHIMI DASEE (1931), I. L. R. 59 Calc. 636.—**IND.**

329 xxix. ——.]—A judgment was obtained against A. & two others without service of process on A. or his having any knowledge of the suit; an attorney retained by the other defts. having appeared for A. also. He was afterwards arrested on a *ca. sa.* issued on the judgment, & was discharged by a judge's order on an affidavit denying knowledge of the suit & of any authority to the attorney to appear for him. In an action for false imprisonment against pltf. in that suit:—*Held:* A. was not estopped by the judgment from denying his liability.—SULIS *v.* FERGUSON (1861), 10 N. B. R. (5 All.) 110.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (b).

346 ii. —— *Exception to—Action on covenant of indemnity.*]—An action on a covenant of indemnity is an exception to the general rule that an estoppel is binding only on privies.—LONDON GUARANTEE & ACCIDENT CO. *v.* DAVIDSON, [1926] 1 D. L. R. 66; [1926] 1 W. W. R. 148; 36 B. C. R. 301.—**CAN.**

g i. —— *One plaintiff president of company defendant in other proceedings.*]—LONDON LOAN & SAVINGS CO. *v.* OSBORN, [1928] 3 D. L. R. 258; [1928] S. C. R. 451.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (c).

sm. *Action by reversioner—How far binding on other reversioners.*]—*Held:* it is well settled that a suit for a declaration by a reversioner to contest an alienation made by a widow in possession, is a representative suit on behalf of all the reversioners, & a decree fairly & properly obtained against the reversioner in such a suit binds not only him but the whole body of reversioners on the one hand, & the alienee or his representatives on the other.—THAKARSINGH *v.* UTTAMKAUR (1929), I. L. R. 10 Lah. 613.—**IND.**

sp. *Action by ratepayer against municipality.*]—A judgment rendered upon an action brought by a ratepayer of a municipality in which it was alleged that a resolution adopted by a municipal council was illegal, constitutes *res judicata* as to all other ratepayers of that municipality; & such judgment can be invoked as such in a subsequent action where the legality of the same resolution is challenged. Municipal corpns. represent before the cts. all the ratepayers, & a judgment rendered in favour of the corpn. or against it in an action brought by a ratepayer can be opposed to any other ratepayer.—DE DESCHÊNES CORPN. *v.* LOVEYS &

382a. ——.]—KNIGHT *v.* LEGH (1828), 4 Bing. 589; 1 Moo. & P. 528; 6 L. J. O. S. C. P. 128; 130 E. R. 895.

385a. ——.]—Pltfs.' steamer stranded in the Black Sea, & deft. L. agreed to try to salve her on the terms (*inter alia*) that security for payment of his remuneration should be arranged in London & that he would not arrest the ship unless there was an attempt to remove her before the security had been given. Security was given in London in accordance with the salvage contract, & the ship was refloated & taken to Constantinople for temporary repairs. Before she was ready to leave, the deft. L. brought an action against the master in the Turkish ct. on the ground that the ship was about to be removed without security having been given. By order of the Turkish ct. the ship was arrested, &, as the master had no evidence of what had been done in London & L. took an oath that security had not been given, the Turkish ct., awarded L. £23,890. L. then disposed of the ship, & pltfs. brought this action, (*a*) for damages for breach of contract, (*b*) for a declaration that the Turkish judgment was invalid, & (*c*) for an injunction to prevent the Turkish judgment from being enforced:—*Held:* as pltfs. were not parties to the Turkish proceedings the doctrine of *res judicata* could not apply to the question of breach of contract.—ELLERMAN LINES, LTD. *v.* READ (1927), 44 T. L. R. 7; *on appeal*, [1928] 2 K. B. 144, C. A.

398. *Add. Annotations:*—*As to* (2) **Refd.** *Re* Davy, [1935] P. 1. *Generally*, **Refd.** United Molasses Co. *v.* National Petroleum, Ltd. (1934). 50 T. L. R. 266.

404a. Decision as to property passing on death—Crown not a party—Not binding on Crown.]—The Crown is not bound by a decision as to construction in proceedings to which it is not a party, where that decision implicitly determines whether or not property passed on the death of a person who is already dead.—*Re* SASSOON, INLAND REVENUE COMRS. *v.* RAPHAEL, *Re* SASSOON, INLAND REVENUE COMRS. *v.* EZRA, [1933] Ch. 858; 102 L. J. Ch. 374; 149 L. T. 217; 49 T. L. R. 407, C. A.; *affd.*, [1935] A. C. 96.

405. *Add. Annotation:*—**Refd.** Wilson *v.* Maple Mill (1925), 95 L. J. K. B. 666.

422. *Add. Annotations:*—**Refd.** Ingenohl *v* Wing On (Shanghai) (1927), 44 R. P. C. 343; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

432. *Add. Annotation:*—**Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

443. *Add. Annotation:*—*As to* (2) **Consd.** Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139.

447a. ——.]—To sustain a second action on the same contract or the same facts there must be a distinct cause of action, not merely different damages.—CONQUER *v.* BOOT, [1928] 2 K. B. 336; 97 L. J. K. B. 452; 139 L. T. 18; 44 T. L. R. 486, D. C.

Annotation:—Follid. Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90.

447b. ——.]—Pltfs., a limited co., were the successors in business of a firm A. R. & Sons. They had taken over the firm's business as a going concern & had (*inter alia*) acquired all the firm's stock-in-trade & the benefit of all the firm's pending contracts. In the course of the business it was necessary to use caustic soda, & before the assignment of the business to pltfs. the firm had bought from defts., who knew the purpose for which it was required, a supply of caustic soda sufficient to last for three years. This caustic soda turned out to be of inferior quality, & in consequence the firm, using it without knowledge of its defects, suffered a loss in their business before the date of the assignment to pltfs. After the assignment pltfs., not knowing that the loss had been caused by the fact that the caustic soda was defective, continued to use it in the business, & suffered further loss in consequence. Ultimately, when the loss had been traced to the caustic soda, pltfs. brought an action against defts. for damages in respect of the loss suffered by the firm before the assignment, & in that action obtained judgment for a sum of £292 10*s.* 3*d.* Subsequently they brought this action to recover damages from defts. in respect of the loss which they had themselves suffered by using the remainder of the caustic soda after they had taken over the business. Defts. pleaded *res judicata* & contended that the action was not maintainable, & an order was made for the trial of a preliminary issue, whether pltfs. had a cause of action:—*Held:* where the same breach of contract has caused the same kind of damage a pltf. cannot bring two actions for different parts of the same kind of damage; he can recover in one action for all damage actual or prospective, & if he does not ask for both in that action he cannot afterwards bring another action for damages for which he omitted to ask in the first action.—ROWNTREE (ALFRED) & SONS, LTD. *v.* ALLEN (FREDERICK) & SONS (POPLAR), LTD. (1935), 41 Com. Cas. 90.

454a. ——.]—Deft., in an action in a county ct., gave notice of set-off, but failed in proving it, through the improper rejection of evidence, & the judge adjudicated against it:—*Held:*

BETCHERMAN, [1936] S. C. R. 351.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (d).

374 ii. ——.]—SONACHALAM PILLAI *v.* KUMARAVELU CHETTIAR (1927), I. L. R. 51 Mad. 128.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.—C. (g).

80. *Ejectment—Fictitious lessee party to first action—Second action against lessor.*]—At the trial of an ejectment, under 14 & 15 Vict. c. 114, recovery was proved in favour of John Doe, on the demise of the now deft. against the now pltf.; & it appeared that the question there decided, being one of boundary, was precisely the same as that again brought up in this case:—*Held:* clearly no estoppel, for that judgment was between different parties, & under the old practice.—CLUBINE *v.* MCMULLEN (1854), 11 U. C. R. 250.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—E.

sg. *Libel.*]—Liability in an action for damages for libel is not *res judicata* in criminal proceedings for libel, nor *vice versa*.—MENARD *v.* R., [1934] 1 D. L. R. 155; 60 C. C. C. 334.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—A.

a i. —— ——.]—Where an application for a writ of possession was dismissed because no notice of determination of the lease had been given:—*Held:* the landlord was not thereby barred from making another application after giving such notice.—*Re* ERNEWEIN & WELCH, [1928] 4 D. L. R. 498; [1928] 2 W. W. R. 628.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (a) i.

g i. —— ——.]—JONES *v.* RYDER, [1928] 3 D. L. R. 301; [1928] 2 W. W. R. 302; 39 B. C. R. 547.—**CAN.**

the adjudication was a bar to an action for the same claim.—DANKS *v.* FARLEY (1853), 1 C. L. R. 95; 1 W. R. 291.

457. *Add. Annotation :*—**Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

463. *Add. Annotations :*—**Refd.** *Re* Wilson, Wilson *v.* Bland, [1937] 3 All E. R. 297; *Re* Wilson, *Ex p.* Wilson *v.* Trustee, [1937] Ch. 675.

464. *Add. Annotation :*—**Refd.** Berry *v.* Berry, [1929] 2 K. B. 316.

473. *Add. Annotations :*—**Consd.** Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139. **Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

479. *Add. Annotation :—Generally,* **Refd.** Marginson *v.* Blackburn Borough Council, [1938] 2 All E. R. 539.

480. *Add. Annotations :*—**Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336. **Refd.** Debenham *v.* Perkins (1925), 133 L. T. 252; British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13; Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90; Rose *v.* Ford, [1937] 3 All E. R. 359; Workington Harbour & Dock Board *v.* Trade Indemnity Co. (No. 2), [1937] 3 All E. R. 139; British & French Trust Corpn. *v.* New Brunswick Ry. Co., [1937] 4 All E. R. 516; Marginson *v.* Blackburn Borough Council, [1938] 2 All E. R. 539.

482. *Add. Annotation :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

483. *Add. Annotation :*—**Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

489. *Add. Annotation :*—**Refd.** British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13.

492. *Add. Annotation :—As to* (1) **Refd.** Eastwood & Holt *v.* Studer (1926), 31 Com. Cas. 251.

494. *Add. Annotation :*—**Refd.** Rose *v.* Ford, [1937] 3 All E. R. 359.

498a. ——.]—*Held :* a statement of claim should be struck out, & the action dismissed, on the ground that the matter was *res judicata* by a previous decision.

The ct. has inherent jurisdiction to strike out as frivolous or vexatious a claim or defence, which has either been already decided in previous proceedings, against the party raising it, or might have been raised in a previous proceeding in which the facts necessary to raise it have been decided against the person who desires to raise them (SCRUTTON, L.J.).—MACKENZIE-KENNEDY *v.* AIR COUNCIL, [1927] 2 K. B. 517; 96 L. J. K. B. 1145; 43 T. L. R. 733; 71 Sol. Jo. 633, C. A.

505. *Add. Annotation :*—**Refd.** British & French Trust Corpn., Ltd. *v.* New Brunswick Ry. Co., [1936] 1 All E. R. 13.

508a. ——.] — MACKENZIE-KENNEDY *v.* AIR COUNCIL, No. 498a, *ante*.

510. *Add. Annotations :*—**Consd.** West *v.* Automatic Salesman, Ltd., [1937] 2 K. B. 398. **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

511. *Add. Annotation :—As to* (2) **Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

520. *Add. Annotations :*—**Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213; Marginson *v.* Blackburn Borough Council, [1938] 2 All E. R. 539.

521a. Proceedings in respect of registered trade mark—Former proceedings before registration.]—Pltfs. commenced an action for infringement of their registered trade marks & passing off, & delivered their statement of claim alleging acts of infringement & passing off by defts. Defts. moved to strike out the statement of claim, on the ground that the alleged acts of infringement & passing off had been already adjudicated upon or were subsequent to the issue of the writ in the present action. The judge held that there was a total absence of any evidence that the alleged acts had ever been adjudicated upon. Defts. appealed :—*Held :* the reasons for the decision of the judge were right.—JAEGER CO., LTD. *v.* JAEGER (1929), 46 R. P. C. 336, C. A.

PART II. SECT. 3, SUB-SECT. 2.—B. (a) ii.

465 i. *Lease—Unsuccessful action for breach of covenant against subletting—Action for ejectment on conviction under licensing laws.*]—Applt., lessee from resp. & licensee of an hotel, was convicted of an offence under Liquor Act, 1912 (N. S. W.). After the conviction, by a writ issued on the same day, resp. brought an action for ejectment against applt. claiming to be entitled to possession on the ground of a breach by applt. of his covenant not to assign or sublet without resp.'s leave, & judgment was entered for applt. By a writ issued about a year after the issue of the writ in the first action, resp. brought another action for ejectment against applt., claiming to be entitled to possession on the ground of the conviction :—*Held :* resp. was not debarred from relying on the conviction by reason of the fact that in the first action he might have asserted the right of re-entry which it gave him.—COHEN *v.* LAPIN (1924), 35 C. L. R. 247; 25 S. R. N. S. W. 291; 42 N. S. W. W. N. 7.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—B. (a) iii.

474 i. *Fraud — Action for fraudulent conversion of partnership assets.*]—EASTERN TRUST CO. *v.* BUSCH, [1930] 1 D. L. R. 723; 1 M. P. R. 140.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (b).

496 iii. ——.]—WILLIAMS & SEARS *v.* RICHARDS (1918), 25 B. C. R. 19.—**CAN.**

496 iv. ——.]—The chief test of *res judicata* is identity of issue. The issue raised in the present motion for an extension of time for serving the statement of claim held not to be identical with any issue that had been adjudicated in the earlier proceedings in this matter.—GOODBUN *v.* MITCHELL, [1928] 2 W. W. R. 12.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (d).

507 vi. ——.]—Where a cause of action is shown & the claim is defended, tried & decided, or where the real issue between the parties, although not set out in the statement of claim, is tried & decided, it is not open to pltf., by a subsequent action relating to the same matters involved in the earlier proceedings, to put forward a claim or plea which he had an opportunity of putting forward in the earlier proceedings but which he either omitted or chose not to put forward at that time. Such claim or plea is *res judicata*.—WAHL *v.* NUGENT, [1924] 3 D. L. R. 679; [1924] 2 W. W. R. 1138; 18 Sask. L. R. 592; *revsg.*, [1924] 2 D. L. R. 97; [1924] 1 W. W. R. 939.—**CAN.**

507 vii. ——.]—A suit is not barred by *res judicata* where, though the matter which forms the ground of attack might have been made a ground of attack in the former suit, pltfs. were not bound to do so.—ABID-UD-DIN *v.* BISHARAT, ALI, ETC., RAOOF-UN-DIN, ETC. (1927), I. L. R. 8 Lah. 308.—**IND.**

507 viii. ——.]—SOKOLOSKI *v.* WINISKI, [1927] 2 D. L. R. 1029; [1927] 1 W. W. R. 972; 21 Sask. L. R. 455.—**CAN.**

507 ix. ——.]—WINTER *v.* DEWAR & CO., [1929] 4 D. L. R. 389; 2 W. W. R. 518.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (e).

e i. —— *Action for judicial separation—Subsequent action for separation & restitution of conjugal rights.*]—HOPKINSON *v.* HOPKINSON, [1931] 3 W. W. R. 62; *affd.*, [1932] 1 W. W. R. 623.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (f).

d i. *Award of damages for delay—Subsequent proceedings for compensation for further delay.*]—Where there was only one cause of action, & it was pltf.'s right to have his damages assessed once for all :—*Held :* the finding that pltf. could recover no damages after commencement of a

529a. Judgment against separate estate of married woman—Action to obtain payment into court.] —Where the ct. in giving judgment against a married woman who is a defaulting trustee orders that the judgment be satisfied out of her separate estate & execution proves useless it is not open to pltf. in a new action to obtain against her judgment in a different form for payment of the moneys into ct. As against her the matter is *res judicata*. But if it appear that she has transferred the moneys to a person with knowledge of the proceedings against her action will lie against the transferee as constructive trustee. Pltf. obtained against the first deft. a married woman judgment for payment out of her separate estate of the sum in dispute & costs. Evidence disclosed that the first deft. had parted with the whole of the sum, having transferred most of it to her sister, the second deft., who was not a party to the proceedings but knew of them at the time. Execution in respect of the judgment thus proving useless pltf. now brought this action alleging that the first deft. had paid the money to the second deft. in order to defeat any judgment for pltf., & that the second deft. received the money as constructive trustee :—*Held :* in regard to the first deft. the matter was *res judicata*, as pltf. had already obtained judgment against her separate estate & therefore could not now on the same facts obtain against her another form of judgment for payment of the moneys into ct.—GREEN *v.* WEATHERILL, [1929] 2 Ch. 213 ; 98 L. J. Ch. 369 ; 142 L. T. 216 ; 45 T. L. R. 494.

Annotation :—**Refd.** Marginson *v.* Blackburn Borough Council, [1938] 2 All E. R. 539.

538. *Add. Annotations :—As to* (1) **Distd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162. **Consd.** Holmes *v.* Watt, [1935] 2 K. B. 300. **Refd.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197 ; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023 ; Cumberland *v.* Lanarkshire Tram Co. (1927), 20 B. W. C. C. 780. *Generally*, **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

540. *Add. Annotations :*—**Apld.** Pirie *v* Richardson, [1927] 1 K. B. 448. **Refd.** *Re* Pennington & Owen, [1925] Ch. 825 ; Bennett *v.* Whitehead (1926), 96 L. J. K. B. 268 ; Hardie & Lane *v.* Chiltern (1927), 96 L. J. K. B. 773 ; Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162 ; Holmes *v.* Watt, [1935] 2 K. B. 300.

546. *Add. Annotation :*—**Refd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

550. In the last line for " case of the law " read " case out of the law."

Add. Annotations :—**Refd.** Pirie *v.* Richardson, [1927] 1 K. B. 448 ; Cumberland *v.* Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.

After this case add " *Compare* Contract, No. 163a."

555. Before this case add :—

See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 6.

Add. Annotation :—**Distd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

555a. ——.]—BARKER *v.* MARTIN (1647), Sty. 20 ; 82 E. R. 498.

556. *Add. Annotations :—As to* (1) **Consd.** Ellis *v.* Stenning & Son, Ltd. (1932), 101 L. J. Ch. 401. **Distd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162. **Apld.** Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489. *As to* (2) **Refd.** South Bedfordshire Electrical Finance, Ltd. *v.* Bryant, [1938] 3 All E. R. 580. *Generally*, **Refd.** Cumberland *v.* Lanarkshire Tram Co. (1927), 20 B. W. C. C. 780.

557. *Add. Annotation :—As to* (1) **Refd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

559. *Add. Annotations :—As to* (1) **Apld.** Brooke *v.* Bool, [1928] 2 K. B. 578. **Refd.** Debenham *v.* Perkins (1925), 133 L. T. 252 ; Rowntree & Sons, Ltd. *v.* Frederick Allen & Sons (Poplar), Ltd. (1935), 41 Com. Cas. 90 ; Ash *v.* Hutchinson & Co. (Publishers), Ltd., [1936] Ch. 489.

566. *Add. Annotations :*—**Expld.** Ellis *v.* Stenning (John) & Sons, Ltd., [1932] 2 Ch. 81. **Consd.** *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

567. *Add. Annotations :*—**Expld.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401. **Refd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

568. *Add. Annotation :—As to* (1) & (2) **Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

569a. ——.]—Where two are bound, jointly & severally, & the obligee has judgment against one, he may sue the other.—[HIGGENS' CASE (1605), 6 Co. Rep. 46a ; 77 E. R. 322.

573. *Add. Annotation :—As to* (2) **Refd.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., [1926] A. C. 761.

---

subsequent action was binding upon both parties & was not, though erroneous, open to dispute. The judgment had not been appealed from & the question was *res judicata* between the parties.—MCINTOSH *v.* PARENT, [1924] 4 D. L. R. 420 ; 55 O. L. R. 552.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (g).

8a. *Action for rent—Eviction pleaded by tenant—Reduction of rent granted—Right to bring action for trespass.*]—If a tenant defends an action for rent, & a reduction is made on the amount claimed on the ground that he has been evicted by the landlord from part of the premises, he cannot afterwards maintain trespass against the landlord for the same action which he relied on as an eviction in the former action. —ROURKE *v.* MCCULLOUGH (1859), 9 N. B. R. (4 All.) 361.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—C. (b) i

546 i. —— —— *Application to set aside judgment & add new party.*]—HUDSON'S BAY CO. *v.* SCOTT (B. C.), [1929] 4 D. L. R. 978 ; 3 W. W. R. 232. —**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—C. (c)

572 i. *Unsatisfied judgment.*]—The fact that a decree has been obtained against one of a number of joint & several obligants does not preclude a fresh action being brought against the others, if satisfaction has not been got under the decree already obtained.—STEVEN *v.* BROADY NORMAN & Co., [1928] S. C. 351.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—C. (d) i.

n i. ——.]—Where it had not been established that in contracting to pay a commission, deft. had been acting as the agent of H. & that pltf. had elected to look to H. for payment :—*Held :* a judgment by default recovered by pltf. against H. did not render pltf.'s claim against deft. *res judicata* since the cause of action against deft., which it was admitted pltf. had before he sued H., did not exist against the latter & was not affected by the judgment.—WILLIAMS *v.* RODGERS, [1921] 2 W. W. R. 185 ; 56 D. L. R. 691 ; 60 S. C. R. 664.—**CAN.**

o i. —— *Judgment by default against husband.*]—Where two persons are sued jointly & judgment by default is entered against one of them pltf. then cannot turn round & say that that deft. was an agent of the other & recover judgment against the latter as the principal.—CARROLL *v.* KENNERLEY (Sask.), [1929] 4 D. L. R. 1062 ; 2 W. W. R. 437.—**CAN.**

575a. —— —— —— **Power to set aside judgment.**]—A judgment in Penang against deft., described in the writ by the group of letters under which a money-lending firm there carries on business followed by the name of the firm's local representative, is a judgment against the local representative personally, whether he is a partner in, or merely an agent for, the firm. A subsequent suit for the same debt against the firm itself is barred. The ct., including the appellate ct., has no jurisdiction on motion to set aside the earlier judgment on the ground that pltf. was ignorant of its effect in law.—FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., [1926] A. C. 761; 135 L. T. 645; *sub nom.* FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., R. M. K. R. M. SOMASUNDARAM CHETTY *v.* M. R. M. V. L. SUPRAMANIAN CHETTY, 95 L. J. P. C. 197; 42 T. L. R. 686, P. C.

Annotation:—**Folld.** Kinch *v.* Walcott, [1929] A. C. 482.

577. *Add. Annotations*:—**Consd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380. **Refd.** Anderson *v.* Equitable Assce. Soc. of United States (1926), 134 L. T. 557; De Bearn (Prince) *v.* La Compagnie D'Assurances La Federale De Zurich (1937), 42 Com. Cas. 189.

577a. —— **Action against partner—Subsequent action against firm.**]—FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., No. 575a, *ante*.

579. *Add. Annotations*:—*As to* (2) **Consd.** Christopher (Hove), Ltd. *v.* Williams, [1936] 3 All E. R. 68. **Refd.** Debenham *v.* Perkins (1925), 133 L. T. 252; Bennett *v.* Whitehead, [1926] 2 K. B. 380; Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

580. *Add. Annotation*: — **Distd.** Debenham *v.* Perkins (1925), 133 L. T. 252.

581a. —— —— —— **Judgment for debt incurred after separation.**]—Where an action for goods sold is brought against a wife on a bill containing a number of items, & judgment is recovered against her on all items purchased after a certain date, on the ground that since that date she has been acting as principal by reason of her having separated from her husband on that date, proceedings may subsequently be taken against the husband as agent for the items purchased prior to that date, since there are two distinct causes of action, & there has been no election by suing of the wife to judgment on the whole or part of one undivided debt.—DEBENHAM'S, LTD. *v.* PERKINS (1925), 133 L. T. 252, D. C.

582. Before this case add:—
See, now, Law Reform (Married Women & Tortfeasors) Act, 1935 (c. 30), s. 6.

585. *Add. Annotations*:—*As to* (2) **Consd.** Ellis *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 81. **Refd.** *Re* Simms, [1930] 2 Ch. 22.

585a. **Nuisance—Unsatisfied judgment against one tortfeasor—Action against another tortfeasor.**]—In 1931, the owners & occupiers of a farm on the banks of a river brought an action against a limited co. (hereinafter called the selling co.), manufacturers of artificial silk, for polluting the stream & causing damage & injury to the farm & to their business as farmers from 1925 to May, 1928. The selling co. in their defence pleaded that in Mar. 1928, they sold the goodwill of their business & all their property to a purchasing co. as from Feb. 1, 1928, & that it was agreed between them & the purchasing co. that the latter should satisfy & discharge all liabilities & obligations of the selling co. & indemnify them against all actions & claims in respect thereof; that in Sept. 1928, the same pltfs. had brought an action against the purchasing co. in respect of the same damage & injury from May, 1928, & that it was then agreed between pltfs. & the purchasing co. that, for the purpose of calculating the amount of damages suffered by pltfs., the damages caused by the selling co. should be added to those caused by the purchasing co.; that in Oct. 1929, pltfs. recovered judgment whereby an inquiry was directed what damages pltfs. had sustained through the pollution of the river by the purchasing co. or their predecessors in title, the selling co.; that these damages were assessed at £265, & that the judgment remained in force. Subsequently an order was made for the compulsory winding-up of the purchasing co. & the judgment was wholly unsatisfied:—*Held*: the facts pleaded in the defence afforded no answer to the action against the selling co., inasmuch as they suggested neither a release of the selling co. from the causes of action complained of, nor *semble* an accord & satisfaction thereof or any merger of them in the judgment.—BULMER RAYON CO., LTD. *v.* FRESHWATER, [1933] A. C. 661; 102 L. J. Ch. 318; *sub nom.* FRESHWATER *v.* BULMER RAYON CO., LTD., 149 L. T. 409, H. L.

586. *Add. Annotation*:—**Consd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

589. *Add. Annotations*:—*As to* (2) **Consd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401. **Refd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

590. *Add. Annotation*:—**Apld.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

593. *Add. Annotations*:—**Apld.** Dexters *v.* Hill Crest Oil Co. (Bradford), [1926] 1 K. B. 348. **Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

PART II. SECT. 3, SUB-SECT. 2.—C. (d) ii.

sa. *Libel.*]—A judgment for libel against a wholesale news agency with respect to its distribution of defamatory matter to its several retail selling agents is not a bar to actions against the retail agents based on the sale of the same matter to the public. The wholesale agency & the retail vendor are not joint tortfeasors.—LAMBERT & LAMBERT *v.* ROBERTS DRUG STORES, LTD., [1933] 2 W. W. R. 508; 4 D. L. R. 193.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—C. (e).

586 iv. ——.]—ABDUR RAHIM MAHOMED BARKAT ALI (1927), 55 L. R. Ind. App. 96.—**IND.**

PART II. SECT. 3, SUB-SECT. 2.—E.

594 i. *Summons for assault—Dismissal—Subsequent action for same assault.*]—In an action for assault & battery, deft. pleaded that an information had been made against him by pltf. before a magistrate in respect to the trespass declared on, under Dominion Act, 32 & 33 Vict. c. 20, s. 43, & that the magistrate, after hearing, dismissed the information & gave deft. a certificate of dismissal, whereby & by force of the statute he was released from the action:—*Held*: the plea was insufficient in not stating that the complainant had prayed the magistrate to proceed summarily.—WILSON *v.* CODYRE (1866), 26 N. B. R. 516.—**CAN.**

sc. *Acquittal on charge of murder—Subsequent charge of assault occasioning actual bodily harm.*]—After being acquitted on a trial for murder the accused were charged with assault & battery occasioning actual bodily harm to the man whom they had been acquitted of murdering. They pleaded *res judicata*:—*Held*: since the fact of the assault in question was involved in the alleged murder, i.e. if there was a murder it could only be because there was the assault, &, therefore, it must

597a. ——— ——— ——— **Meaning of "forthwith".**]—"Forthwith" means, forthwith upon demand by the person entitled to the certificate, & not forthwith upon the dismissal of the complaint. A certificate was applied for by the person entitled, five days after the complaint had been dismissed, & granted two days after the application, but dated as of the day upon which the complaint was made:—*Held:* to have been made out "forthwith" within Offences Against the Person Act, 1828 (c. 31), s. 27, & to be a good defence, under sect. 28, to a subsequent action for the same assault.—COSTAR *v.* HETHERINGTON (1859), 1 E. & E. 802; 8 Cox, C. C. 175; 28 L. J. M. C. 198; 33 L. T. O. S. 105; 23 J. P. 663; 5 Jur. N. S. 985; 7 W. R. 413; 120 E. R. 1111.

599a. ——— ——— ——— **What amounts to conviction.**]—To an action for an assault deft. pleaded that, before action brought, pltf. caused deft. to be summoned before a magistrate to answer a complaint in respect of the assault, & that the magistrate "adjudged & determined the said complaint & charge, & then ordered deft. then to pay, & then convicted him, deft., in the costs as well of the said complaint & charge as of the hearing thereof, but did not further order or convict deft." The magistrate had decided only that deft. should enter into recognisances to keep the peace & pay the costs thereof, & such costs only had been paid. No record of a conviction was produced, but the magistrate's clerk stated that it was not the practice to draw up a formal conviction in such cases:—*Held:* the plea was no bar to the action within Offences Against the Person Act, 1861 (c. 100), s. 45, & taking it as it stood it was not proved.—HARTLEY *v.* HINDMARSH (1866), L. R. 1 C. P. 553; Har. & Ruth. 607; 35 L. J. M. C. 255; 14 L. T. 795; 12 Jur. N. S. 502; 14 W. R. 862.

Annotations:—**Expld.** R. *v.* Miles (1890), 24 Q. B. D. 423. **Refd.** Police Comr. for the Metropolis *v.* Donovan (1903), 52 W. R. 14.

600a. ——— **Defendant bound over—Subsequent action for same assault.**]—JONES *v.* LAMOND (1935), 79 Sol. Jo. 859, C. A.

623. *Add. Annotation:*—**Consd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

631. *Add. Annotation:*—*As to* (1) **Consd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

647. *Add. Annotation:*—*As to* (1) **Consd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

659. *Add. Annotation:*—*As to* (2) **Apld.** The Point Breeze, [1928] P. 135.

After this case add "*See, also,* ADMIRALTY, No. 706b."

Part III.—Estoppel Quasi of Record.

672. *Add. Annotation:*—**Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

686. *Add. Annotations:*—**Distd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284. **Refd.** *Re* Pitts, Cox *v.* Kilsby (1931), 47 T. L. R. 293.

687. *Add. Annotation:*—**Refd.** York Glass Co. *v.* Jubb (1925), 134 L. T. 36.

---

have been considered & directly adjudicated on by the jury, the acquittal on the charge of murder rendered the matter of the assault *res judicata* as between the Crown & the accused, & was a bar to the second charge.—R. *v.* GOSSELIN, [1928] 1 W. W. R. 134; 50 Can. Crim. Cas. 287. —CAN.

598 iii. ——— ——— ——— *Necessity for certificate of conviction.*]—JUDE *v.* ARCHER & GOODMAN, [1924] 1 D. L. R. 448; [1924] 1 W. W. R. 279; 41 Can. Crim. Cas. 289; 18 Sask. L. R. 32.—CAN.

g i. ——— *Subsequent conviction for same offence—Whether appeal in action constituted "further proceedings."*]—Pltf. sued deft. by civil bill for £20 damages for assault. The Recorder held in pltf.'s favour, & gave a decree for £14 5*s.* Deft. appealed from the decree, & entered into a recognisance as provided by 45 & 46 Vict. c. 29, s. 6. After the case had been at hearing before the judge of Assize for a short time, deft. admitted the assault & the reasonableness of the damages awarded, & raised a new defence which had not been available to him in the county ct. Deft. relied upon Offences Against the Person Act, 1861, c. 100, s. 43, & it was contended on his behalf that deft.'s conviction coupled with the payment of the penalty operated as a release from "all further or other proceedings," including the re-hearing of the civil bill on appeal:—*Held:* the appeal did not constitute "further or other proceedings" within Offences Against the Person Act, 1861, s. 45.—MAGEE *v.* STOREY, [1929] N. I. 134.—IR.

g ii. ——— *Conviction for same offence—Whether bar to action.*]—A conviction of a servant for having refused & neglected to obey the lawful commands of his master:—*Held:* to render the servant's claim herein for damages for wrongful dismissal *res judicata.*—SCHILL *v.* BALFOUR, [1937] 2 W. W. R. 249.—CAN.

sf. *Order for maintenance of infant—Subsequent criminal proceedings—No bar.*]—*Re* BROOKS (1930), 54 Can. C. C. 334.—CAN.

PART II. SECT. 4, SUB-SECT. 3.

623 i. *General rule.*]—Lack of jurisdiction in the ct. deprives a judgment of any effect whether by estoppel or otherwise, even though the party alleged to be estopped sought the assistance of the ct. whose jurisdiction is impugned.—MCINTOSH *v.* PARENT, [1924] 4 D. L. R. 420; 55 O. L. R. 552.—CAN.

PART II. SECT. 5, SUB-SECT. 1.

638 x. ———.]—JOURNEAY *v.* RAILWAY PASSENGERS ASSURANCE CO., [1924] 1 D. L. R. 308; 50 N. B. R. 501.—CAN.

PART II. SECT. 5, SUB-SECT. 2.

st. *Should not be pleaded in statement of claim.*]—VICTORIA LUMBER & MANUFACTURING CO., LTD. *v.* THOMSEN & CLARK (B. C.), [1926] 4 D. L. R. 971; [1926] 3 W. W. R. 459.—CAN.

sa. *Should not be pleaded in counter-claim.*]—VICTORIA LUMBER & MANUFACTURING CO., LTD. *v.* THOMSEN & CLARK (B. C.), [1926] 4 D. L. R. 971; [1926] 3 W. W. R. 459.—CAN.

PART III. SECT. 1, SUB-SECT. 5.

sb. *Dismissal of first petition based on alleged fraudulent preference.*]—The doctrine of *res judicata* is applicable to proceedings in insolvency. Therefore, the dismissal of a petition in respect of a sale by the insolvent on the ground that the sale did not amount to a fraudulent preference:—*Held:* a bar to a subsequent petition by a creditor in respect of the same sale.—RANGAPPA *v.* RANGAPPA (1933), I. L. R. 56; Mad. 395.—IND.

Part V.—Estoppel by Deed.

734. *Add. Annotation :*—**Reld.** Torbay Hotel *v.* Jenkins, [1927] 2 Ch. 225.

736. *Add. Annotation :*—**Reld.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162.

771. *Add. Annotations :*—*As to* (2) **Consd.** *Re* Parent Trust & Finance Co., [1936] 3 All E. R. 432. **Apprvd.** Greer *v.* Kettle, [1938] A. C. 156.

776. *Add. Annotation :*—*As to* (1) **Reld.** Parr *v.* A.-G., [1926] A. C. 239.

786a. ——.]—The recital, in a deed, of a former deed between the same parties, proves, as between the parties, so much of the former deed as is recited, but no more.—GILLETT *v.* ABBOTT (1838), 7 Ad. & El. 783; 3 Nev. & P. K. B. 24; 1 Will. Woll. & H. 91; 7 L. J. Q. B. 61; 2 Jur. 300; 112 E. R. 665.

Annotation :—**Reld.** Fishmongers Mystery Wardens & Commonalty *v.* Robertson & Staines (1848), 18 L. J. C. P. 55.

790. *Add. Annotation :*—**Dbtd.** Greer *v.* Kettle, [1938] A. C. 156.

810. *Add. Annotation :*—*As to* (1) & (2) **Consd.** Greer *v.* Kettle, [1938] A. C. 156.

813a. Existence of shares.]—By an agreement made between A. co. & M. co. A. co. in consideration of an advance to it of £250,000 by M. co., agreed to repay that sum with interest, & charged certain specified shares as security, among these being 275,000 fully paid shares of £1 each in the I. co. By another agreement of even date made between the P. co. & the M. co., which recited that in consideration of the M. co. having, at the request of the P. co., advanced to the A. co. the said sum of £250,000 on the security of the above mentioned charge, which was set out in the Sched., & showed the 275,000 shares in the I. co. to be included in the charge, the P. co. covenanted that, in the event of the A. co. failing to repay that sum, that P. co. should be considered & held as principal debtors for all moneys secured by the first agreement, & it further provided that, as guarantors, the P. co. should not be released or their liability affected by time being given to the borrowers or by the M. co. omitting or neglecting to protect the security created thereby, or by any other act, omission or thing whatsoever whereby but for this provision the guarantors, as sureties only, would have been released. When these agreements were entered into, both the M. co. & the P. co. believed that the 275,000 shares in the I. co. had been validly issued; but later it was discovered that those shares had not been issued, & that accordingly the debt had never been secured on these shares. The A. co. not having repaid the whole of the loan to the M. co., the liquidator of the latter co. claimed the unpaid balance from the P. co. :—*Held :* (1) as what P. co. agreed to guarantee was the repayment of a debt effectively secured by (*inter alia*) 275,000 fully paid shares in the I. co., & as in fact the debt was not so secured, the P. co. was under no liability, & was not estopped by the terms of the recital in the guarantee; (2) on the true construction of the guarantee the recital was intended to be the statement of the M. co. & not to be that of the P. co.—GREER *v.* KETTLE, [1938] A. C. 156; [1937] 4 All E. R. 396; 107 L. J. Ch. 56; 158 L. T. 433; 54 T. L. R. 143; 82 Sol. Jo. 133, H. L.; *sub nom. Re* PARENT TRUST & FINANCE CO., LTD., [1936] 3 All E. R. 432, C. A.

828. *Add. Annotations :*—**Distd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294. **Reld.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715; Abigail *v.* Lapin, [1934] A. C. 491.

828a. ——.]—In order to keep the trusts of a settlement off the title, the settlor conveyed the property to certain grantees by deed of gift in consideration of his love & affection for them. The grantees at the same time executed a deed poll declaring trusts in favour of the settlor & other beneficiaries. The conveyance & the title deeds were handed to the grantees, the deed poll being retained by the settlor's solr. The grantees purporting to be absolute owners created equitable incumbrances on the property in favour of certain incumbrancers for value without notice of the trusts :—*Held :* as the settlor's conveyance contained a direct misrepresentation necessarily implying that the

PART V. SECT. 1.

sc. *Inapplicable in India.*]—The doctrine of "estoppel by deed" in its technical sense cannot be said to exist in India.—JOHNSTON *v.* GOPAL SINGH (1931), I. L. R. 12 Lah. 546.—**IND.**

PART V. SECT. 2, SUB-SECT. 1.

sf. *Lease null & void—Lessor under disability.*]—Where the Nawab of M. executed a lease of certain immovable property for a term of 21 years in consideration of the sum of rupees 5 lacs as advance of the total rent payable for & during the said term of 21 years, on a suit being brought by the Nawab for recovery of possession :—*Held :* as the lease contravened condition (1) of the Murshidabad Act it was null & void & the Nawab was entitled to recover possession of the demised property. The Nawab was not estopped from denying the validity of the lease by reason of the Act as he was a person under disability.—MURSHIDABAD NAWAB *v.* BILAS ROY CHOUDHURI (1928), I. L. R. 56 Calc. 252.—**IND.**

PART V. SECT. 2, SUB-SECT. 2.

709 i. *General rule.*]—T., to whom a patent of land issued, by deed poll made prior thereto, sold the land to L.: —*Held :* in obtaining the patent T. was estopped by the deed from setting up title in himself under the patent.—ROBERTSON *v.* DALEY (1886), 11 O. R. 352.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

sc. *By nominee of Crown to convey land—Subsequent grant to stranger.*]—Where the nominee of the Crown gave a bond for a deed of the land to be made when the patent should issue, & in the same bond conveyed & covenanted to guarantee the title :—*Held :* on ejectment by a grantee of the nominee under a deed executed after the patent issued, this bond gave to the obligee no title by estoppel.—DOE d. MCGILL *v.* SHEA (1846), 2 U. C. R. 483.—**CAN.**

PART V. SECT. 4, SUB-SECT. 3.—C.

sx. *Release of mortgage.*]—Deft., a mtgor., wishing to pay off the mtge. & substitute another, arranged with one M. that money in the hands of M.'s solr. should be appropriated for that purpose. A mtge. was executed by deft. in favour of M. & a release of the existing mtge. duly executed by pltfs. was received by the solr. & exhibited to both deft. & M. It was not registered, however, & the solr. absconded without paying over the money to the mtgees. or being requested by the mtgees. to do so, although over a year had elapsed before the solr. left. Pltf., who had particular charge of the transaction, said that he had forgotten the matter. Deft. twice paid interest to M. on his mtge., they both thinking that it was in effect & that pltfs.' mtge. had been satisfied :—*Held :* pltfs. were not entitled to enforce their mtge., since they had put in the power of the wrongdoer to commit the wrong, & because they were estopped by the release & by their conduct from asserting that their mortgage had not been paid.—THOM & LAMONT *v.* WALKER, [1930] 3 W. W. R. 33; 3 D. L. R. 915; 43 B. C. R. 142.—**CAN.**

grantees were absolute owners, the settlor & the other beneficiaries claiming under him were estopped from denying this statement against the equitable incumbrancers, & their prior equity was therefore postponed.—*Re* KING'S SETTLEMENT, KING *v.* KING, [1931] 2 Ch. 294; 100 L. J. Ch. 359; 145 L. T. 517.

Annotations :—**Refd.** Tsang Chuen *v.* Li Po Kwai, [1932] A. C. 715; Abigail *v.* Lapin, [1934] A. C. 491.

831. *Add. Annotation :*—**Refd.** Liddiard *v.* Waldron, [1933] 2 K. B. 319.

847. *Add. Annotation :*—**Refd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

851. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

916. *Add. Citation :*—94 L. J. Ch. 159.

948. *Add. Annotation :*—**Consd.** Greer *v.* Kettle, [1938] Ch. 156.

965. *Add. Annotation :*—**Refd.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

993a. *S. P.* SEABOURNE *v.* POWEL (1686), 2 Vern. 11; 23 E. R. 619.

Annotation :—**Refd.** Smith *v.* Osborne (1857), 6 H. L. Cas. 375.

993b. ——.]—CLAYTON *v.* NEWCASTLE (DUKE) (1682), 2 Cas. in Ch. 112; 22 E. R. 871, L. C.

Annotation :—**Refd.** Morse *v.* Faulkner (1792), 3 Swan 429, n.

1018. *Add. Annotation :*—**Refd.** Greer *v.* Kettle, [1938] A. C. 156.

Part VI.—Estoppel in Pais.

1019. *Add. Annotations :*—*As to* (1) **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607. *As to* (2) **Apld.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Farrow *v.* Orttewell, [1933] Ch. 480; Square *v.* Square, Cowan *v.* Cowan, [1935] P. 120; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85.

1020. *Add. Annotations :*—*As to* (1) **Refd.** Ropner S.S. Co. *v.* Morgan, Miller *v.* Morgan, [1935] 1 K. B. 1. *As to* (4) **Consd.** Rodenhurst Estates, Ltd. *v.* Barnes, Ltd., [1936] 2 All E. R. 3. *Generally*, **Refd.** De Wonsiatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330; Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

1021. *Add. Annotations :*—*As to* (1) **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. *As to* (2) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. *Generally*, **Refd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167; Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

1022. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Bruce, Brudenell *v.* Brudenell, [1932] 1 Ch. 316; Wirral Estates, Ltd. *v.* Shaw (1932), 96 J. P. 143.

PART V. SECT. 4, SUB-SECT. 6.

848 vii. ——.]—Applt. & resp. entered into a contract for the sale & purchase of certain leasehold land & property of applt. at a price payable by instalments. The agreement contemplated a transfer of the lease before payment of the whole purchase, & after transfer applt. had the right either to require resp. to give a mtge. or himself to enter a caveat against dealings. Applt. lodged a caveat. The transfer contained statements acknowledging receipt of the purchase price & that the price was the same as that referred to in the agreement :—*Held :* the statements in the transfer did not work an estoppel by deed, & there was no need to obtain rectification of the transfer.—GOWER *v.* WAPLES, [1930] S. A. S. R. 120.—**AUS.**

853 i. *Operation of rule—Money paid to solicitor producing executed deed—No intention that money should be paid over to party to deed.*]—A solr. obtained from pltf., his client, a cheque for $1,100, representing that he would invest it upon the security of a mtge. upon land which had been mortgaged to his sister, whose mtge. would be paid off by the $1,100. In the receipt given to pltf. by the solr. it was stated that the cheque was given to him "*re* mtge. 10 R. St.", which was a brief description of land upon which defts. had made a mtge. to the solr.'s father's exors. The solr. notified defts. that the exors. desired payment of this mtge., & that he had a client who would advance the money necessary to pay it off. A mtge. by defts. to pltf. upon this land was thereupon prepared by the solr. & executed by defts. in Mar. 1923. They made payments from time to time upon the mtge. by cheque to the solr., who paid off the mtge. held by the exors., & consequently did not obtain a discharge of it. The $1,100 was misappropriated by the solr., who absconded in 1926. It was intended that the mtge. moneys should be paid to the exors. & not to the mtgors., & this pltf. understood. This action was brought to enforce the mtge., & pltf. in her evidence at the trial stated that the solr. showed her the mtge. in Mar. 1923 :—*Held :* the facts that the mtgor. delivered the mtge. to the solr. & that he showed it to pltf. did not amount to a representation that the moneys advanced by pltf. had been paid to the holders of the first mtge., & that it had been discharged, & it could not be said that the mtgors. were estopped from disputing the fact that the moneys had been advanced to them.—MURRAY *v.* CROSSLAND, [1929] 4 D. L. R. 721; 64 O. L. R. 403.—**CAN.**

PART V. SECT. 5.

sd. *Transfer under Real Property Act—Without special covenants—Equitable interest subsequently acquired by transferor.*]—A transfer of land, in the form provided in the Real Property Act, made by the registered owner & without any special covenants or recitals, does not operate as an estoppel & does not vest in the transferee an equitable interest subsequently acquired by the transferor in the absence of any fraud or misrepresentation by the latter.—BENNETT *v.* GILMOUR (1906), 16 Man. L. R. 304.—**CAN.**

se. *Deed of adoption—Accompanied by all necessary ceremonies.*]—Where an adoption had taken place with great publicity & with due performance of all the necessary ceremonies, & a formal deed of adoption had been executed & registered & the adopted son had been received into the family of his adoptive father, & where, further, the adoption was not challenged for several years :—*Held :* an estoppel was created whereby the adoptive mother was precluded from afterwards disputing the adoption.—DHARAM PRAKASH *v.* KALAWATI DEBI (1928), I. L. R. 50 All. 885.—**IND.**

PART V. SECT. 8, SUB-SECT. 3.—C.

993 vii. ——.]—DOE d. TIFFANY *v.* MCEWAN (1837), 5 O. S. 598.—**CAN.**

PART V. SECT. 9.

See cases in Part II., Sect. 5, subsect. 2, *ante*.

PART VI. SECT. 1.

1019 i. *General rule.*]—The reason for precluding a party from relying upon an actual state of affairs as the foundation of his rights lies in the injustice of permitting him to depart from some contrary assumption if another party has based his conduct upon it. The injustice of allowing him to disregard the assumption must arise from the circumstances attending its adoption by the other party. There are well recognised grounds for compelling adherence to such an assumption. One such ground is that the assumption has been made because a belief in its correctness has been induced by the representation or the conduct of the party seeking to depart from it. But what makes it unjust to permit the departure from an assumption so induced is that, were it permitted, the party so induced would through making the assumption find himself in a position occasioning material detriment to himself. Without this element there is no estoppel. It must appear that upon the faith of his belief by act or omission he has placed himself in a position which, if his belief proved incorrect, would be productive of loss.—NEWBON *v.* CITY MUTUAL LIFE ASSURANCE SOCIETY, LTD. (1935), 52 C. L. R. 723; 9 A. L. J. 78.—**AUS.**

1032. *Add. Annotations :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371; Farrow *v.* Orttewell, [1933] Ch. 480; Square *v.* Square, Cowan *v.* Cowan, [1935] P. 120; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85.

1036. *Add. Annotations :*—**Consd.** Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

1036a. ——.]—If a man misrepresents a fact, to that fact he is bound, if any other person misled by such misrepresentation acts upon it, & thereby suffers damage.—BEATTIE *v.* EBURY (LORD) (1874), L. R. 7 H. L. 102; 44 L. J. Ch. 20; 30 L. T. 581; 38 J. P. 564; 22 W. R. 897, H. L.; *affg.* (1872), 7 Ch. App. 777, L. JJ.

1038. *Add. Citation :*—132 L. T. 22.

1039. *Add. Annotation :—As to* (1) **Refd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

1040. *Add. Annotations :*—**Apld.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82. **Consd.** Maritime Electric Co. *v.* General Dairies, Ltd., [1937] A. C. 610.

1041. *Add. Annotations :—As to* (1) **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330; Bartlam *v.* Evans, [1936] 1 K. B. 202; Provident Accident & White Cross Insurance Co. *v.* Dahne & White, [1937] 2 All E. R. 255.

1043. *Add. Annotation :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

1054a. Construction of agreement.]—If a person authorises or permits another to make a representation intended to be acted upon & it is acted upon, that person cannot afterwards be heard to say that the representation is not true. This applies when the representation is as to the legal effect of a document if there is no qualification in the representation suggesting that the document & not its effect as represented is to govern the relations of the parties. In a prospectus issued by deft. co. there was a clause referring to an agreement with that co. & purporting to set out its effect. The statements in this clause were made with the knowledge & acquiescence of the other party to the agreement, & were also known to & acquiesced in by the duly authorised agent of that party :—*Held :* the contracting party & his agent were thereby estopped from setting up any other construction of the agreement than that stated in the clause in the prospectus.—DE TCHIHATCHEF *v.* SALERNI COUPLING, LTD., [1932] 1 Ch. 330; 101 L. J. Ch. 209; 146 L. T. 505.

Annotation :—**Refd.** Farrow *v.* Orttewell, [1933] Ch. 480.

1057. *Add. Annotation :—As to* (1) **Apld.** Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corpn., Ltd. (1934), 151 L. T. 1.

1065. In the twelfth line on p. 297, after the word "agreement," insert "defts. pleaded that the agreement."

1066. *Add. Annotations :*—**Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. **Distd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443. **Consd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

1068. *Add. Annotations :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

1081a. ——.]—A man petitioning for a decree of nullity of an English marriage on the ground of the survivorship of a former husband of the woman to whom, as petitioner alleged, she had been married previously in Scotland was met by a plea of estoppel *in pais*. Particulars of the alleged estoppel were that in an earlier suit in this ct. by the former husband of the

PART VI. SECT. 3, SUB-SECT. 1.—A.

1032 i. *How estoppel arises.*]—Estoppel arises where a man is precluded from denying the truth of anything which he has represented to be a fact, though it is not a fact.—*Re* MONTGOMERY *v.* DIAMOND, DIAMOND *v.* MONTGOMERY, [1925] 4 D. L. R. 736.—**CAN.**

1040 i. *Where all parties know the truth—No representation.*]—A tenant after the expiry of his original lease received from his landlord notice to quit at the end of the following month. In reply, he wrote a letter which contained (*inter alia*) an admission that he was a monthly tenant. At the hearing of a suit in ejectment the tenant contended that his original lease being for manufacturing purposes he had a tenancy from year to year, & was entitled to six months' notice :—*Held :* he was not estopped from so contending as the facts affecting the tenancy were within the knowledge of both parties.—JACKS & CO. *v.* JOOSAB MAHOMED (1923), I. L. R. 48 Bom. 38.—**IND.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (a).

1041 xiv. ——.]—In 1894 applt. granted a lease of land "from year to year" to resps. In 1903 resps. wished to build a house on the land & applt. wrote that the lease was a permanent one, though the rent was liable to enhancement. Resps. built a house & applt. received a bonus in respect of it. In 1916 applt. sought to eject resps. :—*Held :* whether the lease was a permanent one under the agreement, applt.'s statement in the letter that it was so was a representation of fact & not an expression of opinion, & he was estopped from denying it.—FORBES *v.* RALLI (1925), L. R. 52 Ind. App. 178.—**IND.**

1041 xv. ——.]—The principal question in this case being whether the purchasers of some of the plots abutting on the land in question, which was described in their conveyance as "land kept for the proposed 100 feet drainage road of the Calcutta Improvement Trust," or as "the proposed drainage road of the Trust," had a right of way over the land by reason of any rule of estoppel :—*Held :* in order that a representation may operate as an estoppel, it must be a representation of an existing fact & not of a mere intention or future promises. It was a statement of what the Improvement Trust was going to do with regard to the land, which was described to be on the boundary of the plots sold, & did not confer any title on the purchasers of the plots sold, either by express grant or by implication. Hence no right of easement was created.—HINDUSTHAN CO-OPERATIVE INSURANCE SOCIETY, LTD. *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1929), I. L. R. 56 Calc. 989.—**IND.**

1044 i. —— ——.]—In order to found an estoppel a representation must be of an existing fact, not of a mere intention, & a promise which is a mere statement of an intention to do something in the future is not sufficient.—RAZANSOFF *v.* BROUNSTEIN, [1924] 2 D. L. R. 1170; 2 W. W. R. 500.—**CAN.**

1044 ii. *S. P.* ONTARIO EQUITABLE LAW & ACCIDENT INSURANCE CO. *v.* BAKER, [1926] 2 D. L. R. 289; [1926] S. C. R. 297.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (b).

sg. *Construction of contract.*] — A party who represents to another that he places a particular construction upon a clause in a written contract thereby inducing the other to enter into the contract is not entitled in an attempt to enforce the contract to set up a different construction though the latter construction may be correct in law.—SAMPSON *v.* UNION & RHODESIA WHOLESALE, LTD., [1929] A. D. 468.—**S. AF.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (f).

1072 x. ——.]—WIETING & RICHTER, LTD. *v.* BRAID TUCK & CO., LTD., [1936] 3 W. W. R. 286; 51 B. C. R. 135.—**CAN.**

woman for divorce from her on the ground of her adultery with the present petitioner, petitioner as co-resp. in that suit had expressly adopted a plea of the woman denying the validity of the Scotch marriage, & further that in certain proceedings then taken by the woman in the Scotch ct. seeking a declaration that she & petitioner were husband & wife & praying that the former husband of the woman should be " put to silence in respect of false & calumnious allegations by him that he was married " to the woman, the petitioner had not only been a party to those proceedings as " curator & administrator " of the woman & " for his own interest in the premises " but had also been a party to the settlement of them, resulting in the former husband of the woman admitting that there had been no legal marriage in Scotland between him & the woman & withdrawing his suit & subsequently marrying another woman in England :—*Held :* none of the requirements for an estoppel had been fulfilled. Although petitioner had adopted the plea by the woman denying the validity of the Scotch marriage he had not done so with intention to mislead the woman, whose knowledge of the facts was greater than his own. Both parties were simultaneously making the same statement for a common purpose, & neither could be estopped as against the other by the making of it. Finally, in the proceedings taken by her in the Scotch ct. the woman relied upon her own knowledge of the facts as to the alleged Scotch marriage in which the petitioner had no part, & if she had acted to her own detriment she did not do so on the faith of any statement by the petitioner.

Qu. : whether the decision of an issue as to the validity of a marriage which involves status & is of public interest can be governed by an estoppel *inter partes*.—SQUARE *v.* SQUARE (OTHERWISE BEWICKE), COWAN (OTHERWISE YOUELL) *v.* COWAN, [1935] P. 120 ; 104 L. J. P. 46 ; 153 L. T. 79 ; 79 Sol. Jo. 403.

1108. *Add. Annotations :*—**Apld.** Silver *v.* Ocean S.S. Co. (1929), 46 T. L. R. 78. **Refd.** Evans *v.* Webster (1928), 45 T. L. R. 136 ; United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266 ; The Skarp, [1935] P. 134 ; Square *v.* Square, Cowan *v.* Cowan, [1935] P. 120.

1111. *Add. Annotations :*—**Distd.** Reckitt *v.* Barnett, Pembroke & Slater (1927), 44 T. L. R. 63. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670 ; British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92 ; Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134 ; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292 ; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

1130. *Add. Annotation :*—**Refd.** Provident Accident & White Cross Insurance Co. *v.* Dalmo & White, [1937] 2 All E. R. 255.

1132a. —— —— **Quantity of estate.**]—Vendor, representing & contracting to sell the estate as his own, cannot object, that he has only a partial interest.—MORTLOCK *v.* BULLER (1804), 10 Ves. 316 ; 32 E. R. 857.

1147. *Add. Annotation :*—**Refd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223.

1148a. ——.]—Defts., warehousemen & wharfingers, held 600 quarters of maize belonging to A., who sold 200 quarters thereof to W. & Co., who sold them to pltfs., giving to the latter a delivery note, which they lodged with defts. Defts. did not acknowledge it or object to it, but some days later, no weighing out or appropriation of the 200 quarters having taken place, A. stopped

---

PART VI. SECT. 3, SUB-SECT. 1.—B. (g) ii.

1096 xviii. ——.]—If a person sets up estoppel he must show that he has altered his position to his prejudice owing to the conduct of the other party whom he claims is estopped.—ST. JOHN COUNTY HOSPITAL *v.* PECK, [1924] 2 D. L. R. 163 ; 51 N. B. R. 324.—**CAN.**

1096 xix. ——.]—A tenant in reply to a month's notice to quit wrote a letter containing (*inter alia*) an admission that he was a monthly tenant. At the hearing of a suit in ejectment, he contended that he was entitled to six months' notice :—*Held :* he was not estopped from so contending, as the landlord having already given notice to quit had not shown that he had altered his position by reason of the admission.—JACKS & CO. *v.* JOOSAB MAHOMED (1923), I. L. R. 48 Bom. 38.—**IND.**

1096 xx. ——.]—In order to create an estoppel *in pais* it must be shown that he who desires to take advantage of it has acted upon the untrue representation, as true not knowing it to be untrue, thereby altering his position to his prejudice.—HUFFMAN *v.* ROSS (1925), 57 O. L. R. 329.—**CAN.**

1096 xxi. ——.]—Where a person, in reliance on the statement of a third person, pays over money which he has a legal right to get back, it is not true, as a general proposition, that in order to establish prejudice sufficient to support an estoppel against such third person he must show that the payee is insolvent.—BOYES *v.* BORLEY, [1928] 4 D. L. R. 302 ; [1928] 3 W. W. R. 69. —**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—C.

1113 i. *General rule.*]—Although an estoppel may have the effect of creating substantive rights as against the person estopped, nevertheless this doctrine cannot be successfully invoked to support an illegal contract.—*Re* RELVEA CONSTRUCTION, LTD., CUSHING *v.* SNADDON, [1938] 2 W. W. R. 171.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—F.

sk. *Representation as to value.*]—Where D., the owner of a house, represented to M., who afterwards purchased it, that any person building a house adjoining would have to pay the owner of the existing house £150 for the use of the flank wall thereof :—*Held :* D. was not thereby estopped from showing that the value of such user was less than £150.—MARTIN *v.* DOUGLAS (1867), 16 W. R. 268.—**IR.**

PART VI. SECT. 3, SUB-SECT. 2.—A.

1144 xi. ——.]—Pltf. was induced to buy certain lots of land at R. by the representations of the vendor's agent that a near-by block of land was a public park to the free user of which, as a bathing beach & recreation ground. pltf. & his family would be entitled, The vendor, who owned said block, afterwards fenced it off & demanded a fee from pltf. & others for admission to it :—*Held :* on the ground of estoppel, pltf. was entitled to a declaration that he & all persons claiming through or under him were entitled to free passage to & free use of said block at all times as though it were a public park, & to an injunction restraining vendor from doing anything to prevent such passage & use.—HUGG *v.* LOW, [1928] 4 D. L. R. 315 ; [1928] 2 W. W. R. 710 ; *on appeal*, [1929] 3 D. L. R. 725 ; 2 W. W. R. 55 ; 23 S. L. R. 592.—**CAN.**

1144 xii. ——.]—Pltf. municipality having become the tax-sale purchaser of a quarter section of land leased it, before obtaining title thereto, to the deft. on the crop-payment plan. After deft. had put in his crop the registered owner interfered with deft.'s possession & he invoked the assistance of pltf's. officials to protect the crop from the registered owner. They decided that pltf. would seize the crop for arrears of taxes due by the registered owner. Pltf.'s secretary made out the seizure papers & handed a notice of seizure to deft., & deft. accepted it & treated it as a seizure of a quarter of the crop for the arrears of taxes. Later deft. removed & disposed of all the crop, & pltf. sued for the value thereof :—*Held :* even if the arrangement did not amount to a valid seizure deft. could not, under the circumstances, be heard to say that it did not.—HEART'S HILL, RURAL MUNICIPALITY *v.* HELMER, [1930] 2 W. W. R. 535 ; 3 D. L. R. 1004 ; 24 S. L. R. 513.—**CAN.**

sd. *As to fault for accident.*]—The fact that pltf., the driver of a vehicle which came into collision with a motor car, stated immediately after the accident that he misjudged the distance of the motor car :—*Held :* not to raise any estoppel.—HUNT *v.* MORGAN (Alta.), [1926] 3 W. W. R. 804 ; [1927] 1 D. L. R. 267.—**CAN.**

delivery. It was contended that on the sale to W. & Co. the latter became tenants in common with A. of the 600 quarters, with the right in W. & Co. to assign their interest therein to pltfs., although no appropriation of the 200 quarters had taken place:—*Held:* (1) pltfs. had no claim to the maize; (2) defts. & A. were not estopped from denying that pltfs. were the owners of the 200 quarters of maize.

No doubt property can be acquired by estoppel. In one aspect estoppel does not create a title but merely enables pltf. to rely upon the doctrine & to treat the property as if it had been transferred (SANKEY, J.).—LAURIE & MOREWOOD *v.* DUDIN (JOHN) & SONS, [1925] 2 K. B. 383; 94 L. J. K. B. 928; 30 Com. Cas. 280; *affd.*, [1926] 1 K. B. 223; 95 L. J. K. B. 191; 134 L. T. 309; 42 T. L. R. 149; 31 Com. Cas. 96, C. A.

Annotation:—As to (1) **Apld.** *Re* Walt, [1927] 1 Ch. 606.

1164. *Add. Annotation:*—**Refd.** Vandepitte *v.* Preferred Accident Insurance Co. of New York, [1933] A. C. 70.

1213. *Add. Annotation:—As to* (2) **Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

1219. *Add. Citation:*—1 B. R. A. 210.

Add. Annotation:—As to (1) **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

1223. *Add. Annotations:*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258. **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628; Sullivan *v.* Constable (1932), 48 T. L. R. 369.

1224a. ——.]—If, whatever a man's real intention may be, he so conducts himself in making a contract that a reasonable man would believe that he was assenting to the terms proposed by the other party, & if that other party upon that belief enters into the contract with him, the man so conducting himself is equally bound as if he had intended to agree to the other party's terms.—SULLIVAN *v.* CONSTABLE (1932), 48 T. L. R. 369, C. A.

1227. *Add. Annotations:*—**Consd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76. **Refd.** *Re* Porter (William) & Co., [1937] 2 All E. R. 361.

1228a. As to performance of statutory duty or exercise of statutory discretion.]—Performance of a statutory duty, or exercise of a statutory discretion, by a corporate local authority is not prejudiced by any prior action which that authority may have taken without aid from the statutes. No estoppel can arise in such a case.—SUNDERLAND CORPN. *v.* PRIESTMAN, [1927] 2 Ch. 107; 96 L. J. Ch. 441; 137 L. T. 688; 26 L. G. R. 64.

Annotation:—**Refd.** Stockwell *v.* Southgate Corpn., [1936] 2 All E. R. 1343.

1232. *Add. Annotation:—As to* (1) **Refd.** Bartlam *v.* Evans, [1936] 1 K. B. 202.

1238. *Add. Annotations:*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601. **Refd.** May *v.* May (1929), 98 L. J. K. B. 770; Bartlam *v.* Evans, [1936] 1 K. B. 202.

1247. *Add. Citations:*—94 L. J. P. C. 93; 132 L. T. 511.

PART VI. SECT. 3, SUB-SECT. 2.—B. (a).

q i. —— —— —— —— ——.]—*Held:* the sellers were not estopped from proving their ownership of the safe.—WALKER *v.* HYMAN (1877), 1 A. R. 345.—**CAN.**

q ii. —— —— —— —— ——.]—*Held:* there was evidence of an estoppel.—WEST *v.* O'LEARY (1894), 32 N. B. R. 286.—**CAN.**

sk. *Statements relating to statutory duty.*]—Estoppel cannot be invoked against a public body in its performance of its statutory duty. A board of assessors cannot bargain in taxation matters so as to give rise to such an estoppel.—TURNBULL REAL ESTATE CO. *v.* SEWELL, [1937] 2 D. L. R. 218; 12 M. P. R. 136.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—B. (c).

1173 iv. —— —— *Allegation of previous judgment—Made by attorney ad litem.*]—Acquiescence in a judgment cannot be presumed & must be unequivocal; it must be made by the party himself or by his attorney specially authorised & it is not binding upon the principal if made by an attorney *ad litem* acting under his general mandate.—DUBUC *v.* CORPN. DE MARSTON, [1928] 1 D. L. R. 225; [1927] S. C. R. 526.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—B. (e).

sf. *Document evidencing loan.*]—Where deft. executed a document evidencing a loan received by him from applt. & constituting an order, for the amount of the advance upon a co. about to be formed for the purpose of acquiring & conducting resp.'s business:—*Held:* the document constituted an estoppel which precluded resp. from giving evidence to contradict or vary the terms thereof, & the money advanced, not having been paid by the co. to applt., resp. was personally liable on the contract.—HEMPENSTALL BROS., LTD. *v.* POULSON (1928), 22 Q. J. P. R. 156.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 3.—A.

1221 i. *General rule.*]—DEMINGS *v.* BEDELL, [1925] 3 D. L. R. 1063.—**CAN.**

1221 ii. ——.]—PATTERSON *v.* SMITH (1877), 42 U. C. R. 1.—**CAN.**

1221 iii. ——.]—Where pltf. induced the ct. to grant him a judgment recognising deft.'s right to timber:—*Held:* he was estopped from afterwards contending that deft. had no right to dispose of timber.—MANLEY *v.* O'BRIEN, *Re* MACKINTOSH (1901), 22 C. L. T. 74; 8 B. C. R. 280.—**CAN.**

1221 iv. ——.]—BAKER *v.* BAKER (1904), 40 N. S. R. 470.—**CAN.**

1225 i. *As to position of party estopped.*]—A party is not disabled by law from explaining a matter of evidence, only because his explanation consists of circumstances which include wrongdoing on his part.—PRESS *v.* MATHERS, [1927] V. L. R. 326; 48 A. L. T. 183; [1927] Argus L. R. 197.—**AUS.**

sk. *Transfer of business.*]—Pltf. sued deft. for the price of goods sold & delivered. For several years pltf. had sold to deft. tailoring materials. Deft. carried on a tailoring business, trading as T. S. & Son. Deft. by deed in 1925 assigned the premises in which he was carrying on his business to E. S. & G. S., who continued to trade as tailors under the name of T. S. & Son. No assignment in writing was made of the business or of the debts due to deft., & no notice of the assignment of the premises or of any change in the ownership of the business was given to pltf. Deft. came to the place of business after the transfer & appeared to act in relation to the business in the same way as before the transfer.—*Held:* deft. was estopped from denying that at the time the goods whose price was sued for were sold & delivered, he was the owner of the business, & pltf. was entitled to judgment.—DUNN *v.* SHANKS, [1932] N. I. 66.—**IR.**

sm. *Payment of mortgagee—Assignment of mortgage as collateral—Payment by mortgagor to assignee.*]—Where a mtgor., knowing that mtgee. has been fully paid, permits mtgee. to assign the mtge. to a bank as collateral, & continues to make payments of interest & principal to the bank, he will be estopped from pleading that the mtge. has been fully discharged.—ROYAL BANK OF CANADA *v.* GREEN, [1935] 2 D. L. R. 724; 9 M. P. R. 387.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—B.

1233 ii. ——.]—The fact that a person, who has recovered a judgment, takes part in a reference directed thereby, does not bring him within the rule that a person, who after recovering a judgment puts it into effect & accepts benefits under it, is estopped from appealing therefrom.—MAINFROID *v.* MAINFROID (Alta.), [1926] 4 D. L. R. 1060; [1926] 3 W. W. R. 617.—**CAN.**

1241 i. —— *Property afterwards claimed under another title.*]—CONNORS *v.* MYATT (1915), 49 N. S. R. 139.—**CAN.**

1243 i. —— *Title subsequently acquired by possession.*]—SMITH *v.* SMITH (1884), 5 O. R. 690.—**CAN.**

q i. —— *Sale of reversionary interest.*]—FLEMING *v.* WEST (1881), 14 N. S. R. (2 R. & G.) 294; 1 C. L. T. 709.—**CAN.**

a i. *Acceptance of credit from unauthorised agent.*]—A co., knowing a vendor of goods was giving it credit in a case where the person buying on its behalf has no proper authority so to do, is estopped afterwards from disputing liability on the ground of want of authority.—GREAT WEST SADDLERY CO. *v.* CANADIAN INGOT IRON CO., [1924] 4 D. L. R. 881.—**CAN.**

1257. *Add. Annotation :*—**Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

1259. *Add. Citation :*—132 L. T. 99.

Add. Annotation :—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

1265. *Add. Annotation :*—**Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

1285a. Acquiescence by trustees—In proceedings for administration of trust.]—DOYLE *v.* DOYLE (1850), 12 Beav. 471 ; 19 L. J. Ch. 246 ; 15 L. T. O. S. 498 ; 50 E. R. 1141.

1294. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

1297a. Preparation of deed by solicitor.]—A conveyance was made by L. to his son for the purpose of giving the latter a colorable qualification to kill game :—*Held :* the solr. who prepared & attested the deed, knowing the purpose for which it was to be used & himself actively furthering the object of the parties, could not afterwards, in trover by the son for the deed, contend that nothing passed to him under it.—LORD *v.* WARDLE (1837), 3 Bing. N. C. 680 ; 4 Scott, 402 ; 1 Jur. 382 ; 132 E. R. 572.

1311. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

1318a. —— Payment of rent not due.]—The predecessors in title of defts. were owners in fee simple of land including both the surface & the strata below the surface. They conveyed the land to pltfs.' predecessors by a deed which contained an exception & reservation of all mines & veins of coal in or under the land. Defts. & their predecessors worked the coal mines under the land & made an underground road which was not confined to the seams of coal, but was cut also through the adjacent strata. Along this road they carried coal obtained from mines beyond the limits of the land conveyed to pltfs.' predecessors. Defts. & their predecessors had for some years paid rent to pltfs. in the belief that they were bound to do so under a licence from pltfs. :—*Held :* (1) by virtue of the exception, the property in the strata below the surface remained in defts. sufficiently to entitle them to construct roads therein & use them in any way they pleased ; (2) the payment being voluntary & made under a supposed legal liability created in law no obligation at all, & defts. were not thereby estopped from setting up their title under the conveyance.—BATTEN POOLL *v.* KENNEDY, [1907] 1 Ch. 256 ; 76 L. J. Ch. 162.

1319a. Objections to account stated not pressed.]—BURROUGH'S ADDING MACHINE, LTD. *v.* ASPINALL (1925), 41 T. L. R. 276, C. A.

1326. *Add. Annotations :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

1328. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

1330. *Add. Annotations :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607 ; Algemeene Bankvereeniging *v.* Langton (1935), 40 Com. Cas. 247.

1331. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1345. *Add. Annotation :*—**Apld.** Coplovitch *v.* Williams (1929), 73 Sol. Jo. 484.

PART VI. SECT. 3, SUB-SECT. 3.—C. (a).

1260 iv. ——.]—Estoppel by acquiescence connotes that the person estopped has represented to the person who is infringing his right that he is not entitled to complain, & that the other party relying upon this representation has altered his position to his detriment.—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), I. L. R. 52 Calc. 748.—**IND.**

1260 v. ——.]—In order that the protection of the equitable doctrine of acquiescence may be successfully claimed, the following circumstances must subsist. The party claiming the benefit of the doctrine must have made a mistake as to his legal rights & must have expended some money or done some act on the faith of his mistaken belief ; & the possessor of the legal right must have known of the existence of his own right which is inconsistent with the right claimed by the other party, he must have known of the other party's mistaken belief in his own rights, & he must have encouraged the other party in his expenditure of money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right.—JAI NARAIN *v.* JAFAR BEG (1926), I. L. R. 48 All. 353.—**IND.**

1260 vi. ——.]—CROCKER *v.* HUTCHINSON (1861), 10 N. B. R. (5 All.) 139.—**CAN.**

1260 vii. ——.]—NAUGLER *v.* JENKINS (1899), 32 N. S. R. 333.—**CAN.**

1262 i. *Who bound—Crown—Entry on Crown lands.*]—R. *v.* CANADIAN PACIFIC RAILWAY (Can. Ex.), [1929] 2 D. L. R. 641 ; 35 Can. Ry. Cas. 248.—**CAN.**

1268 ii. —— *Or ultra vires.*]—Acquiescence cannot rehabilitate or render valid a transaction which is *ultra vires* or illegal.—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), I. L. R. 53 Calc. 748.—**IND.**

PART VI. SECT. 3, SUB-SECT. 3.—C. (b) i.

1270 vi. ——.]—Where under a contract between pltfs., U.S. citizens, & defts., a Canadian co., payments had been made in different currencies at different times :—*Held :* as under the contract payments should be in Canadian currency, payments made in U.S. currency could not operate as an estoppel, as they were made under misapprehension of rights.—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—C. (c).

sg. *Assent to sale of goods—Acquiescence in condition of goods.*]—In an action to recover for work & labour in pressing a quantity of straw, evidence showed that deft. was of opinion that the straw was not in a fit condition to be pressed, & that he only consented to have the work done on pltf. offering to buy the straw, & that pltf. subsequently made a sale of the straw which was delivered at his request :—*Held :* pltf. was precluded from setting up the unmerchantable condition of the straw in answer to deft.'s counterclaim for the price agreed to be paid.—PEPPARD *v.* WOOD, PEPPARD *v.* CAMERON (1924), 57 N. S. R. 222.—**CAN.**

sh. *In registration of motor car in name of another.*]—CAIRNS *v.* WORTHY (P. E. I.), [1929] 3 D. L. R. 123.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—E. (a).

m i. ——.]—MILLER *v.* R., [1927] Exch. C. R. 52; *affd.*, [1928] S. C. R. 318—**CAN.**

sn. *Application of doctrine—Guarantee induced by fraud—Delay in repudiation.*]—A. was induced to guarantee a debt by fraud of debtor. On learning of the fraud from the creditor he did not repudiate the guarantee :—*Held :* it was afterwards too late to set a defence based on the fraud.—MANTLE LAMP CO. OF AMERICA *v.* NIXON, [1924] 3 D. L. R. 1073.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—E. (b) ii.

so. *Delay in taking security—Creditor estopped from relying on agreement by debtor to give security.*]—*Re* MCINTYRE, TRUSTEE *v.* CANADA METAL CO., [1925] 2 D. L. R. 889 ; 5 C. B. R. 629.—**CAN.**

sp. *Delay by vendor in giving notice that goods not paid for by agent—Agent's drafts on principal duly met.*]—In an action by pltf. co. against deft. co. for the price of goods :—*Held :* the latter had accepted the London agency's drafts for the goods in the belief that the amounts due in respect thereof had been paid to pltf. co. & pltf. co. had by its conduct induced deft. co. to believe that such was the case, & was not entitled to recover.—SOPWITH AVIATION & ENGINEERING CO., LTD. *v.* MAGNUS MOTORS, LTD., [1928] N. Z. L. R. 433.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—F. (a).

s i. —— *Adoption of one of two alternative remedies.*]—HUTCHISON *v.* PAXTON, [1928] 4 D. L. R. 704 ; 63 O. L. R. 74.—**CAN.**

1380. *Add. Annotation :*—**Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

1395. *Add. Annotation :—As to* (2) **Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

1402. *Add. Annotations :*—**Distd.** Reckitt *v.* Barnett, Pembroke & Slater [1929] A. C. 176. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

1418. *Add. Annotations :*—**Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294; Abigail *v.* Lapin, [1934] A. C. 491.

1419. *Add. Annotations :*—**Distd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294. **Refd.** Abigail *v.* Lapin, [1934] A. C. 491.

1425. *Add. Annotation :—As to* (1) **Consd.** Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

1435a. ——.]—LAURIE & MOREWOOD *v.* DUDIN (JOHN) & SONS, No. 1148a, *ante.*

1439. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

1441a. ——.]—*Held :* in order to exclude an equity in respect of acquiescence it was not necessary that the notice of his claim, given by the claimant to the party in possession, should disclose any particulars relating to his title; nor, if the claim which he made exceeded what he was entitled to, was the party in possession justified in disregarding it, or supposing it to be unfounded.—CLARE HALL *v.* HARDING (1848), 6 Hare, 273; 17 L. J. Ch. 301; 10 L. T. O. S. 439; 12 Jur. 511; 67 E. R. 1169.

1449. *Add. Annotations :*—**Distd.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414. **Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

1450. *Add. Annotation :*—**Apld.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

1456a. —— ——.]—A colliery proprietor constructed a railway from his colliery across the lands of several other persons by agreement, & his solrs. wrote a letter to deft., across whose lands he desired to carry the railway, referring to the powers of a local Act of Parliament, supposed to enable him to take lands within a certain area for roadways, & offering, on the part of the pltf., to pay him for the land at a fair valuation. Deft. did not reply to the letter, & the railway was made across his land without further communication with him. A year or two afterwards pltf. & deft. had an interview, but did not agree as to the price to be paid for the land, & three or four years after the railway was made deft. brought his ejectment, whereupon pltf. filed his bill for an injunction, charging acquiescence. The ct., on motion, restrained the action, upon pltf. giving judgment in the ejectment, & paying a sum into ct. not less than the amount of the utmost valuation of

---

PART VI. SECT. 3, SUB-SECT. 3.—F. (b).

sq. *Special contract denied—Not available to defeat claims.*]—STOCK *v.* GREAT WESTERN RY. CO. (1858), 7 C. P. 526.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—F. (c).

h i. ——.]—*Re* KEARNEY'S ESTATE, WHITEHURST, APPELLANT (1927), 27 S. R. N. S. W. 386; 44 N. S. W. W. N. 117.—**AUS.**

h ii. ——.]—Where a vendor, on default of payment of an instalment of the purchase price of land, takes out an order *nisi* for foreclosure, he cannot afterwards proceed by way of execution against the purchaser.—STANDARD TRUST CO. *v.* LITTLE (1915), 31 W. L. R. 769.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—G. (a).

q i. —— *Manager of hotel—Whether agent of executors of deceased proprietor.*]—In an action to recover for services rendered & coal supplied for the carrying on of an hotel, defts., who were exors. of the former owner of the hotel, were held liable on the ground that they were estopped from denying that one M., who was operating the hotel & had ordered the coal & services, was their manager or agent for that purpose. An alternative claim for judgment against M. was dismissed. The exors. appealed :—*Held :* the evidence did not support the finding of estoppel, & since it had been properly found that there was no actual contract between the exors. & M. authorising him to act as their agent or manager of the hotel, the appeal must be allowed; & since there was no appeal or cross-appeal against the dismissal of the action as against M. the ct. could make no order respecting it.—WILSON *v.* WILLOUGHBY, [1934] 3 W. W. R. 539.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—G. (b).

ar. *Nationality of party.*]—Where pltf. was ignorant when he made a contract that deft. was a person of enemy origin & that under War Legislation & Statute Law Amendment Act, 1918, s. 6, the contract was illegal :—*Held :* in an action for breach of contract, deft. would be estopped from alleging that the contract was void on account of his enemy origin since the deft. well knew that fact.—BRANIGAN *v.* SABA, [1924] N. Z. L. R. 481.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—G. (c).

1425 i. *Goods transferred to third party—Through third party's fraud.*]—Whenever one of two innocent persons must suffer by the act of a third person, he who has enabled such third person to occasion the loss must sustain it.—DOMINION PAPER CO. *v.* N. RATTENBURY, LTD. (1933), 6 M. P. R. 411.—**CAN.**

h i. ——.]—WELLBAND *v.* WALKER (Man.) (1911), 16 W. L. R. 408.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (a.)

1438 i. *A form of acquiescence.*]—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), I. L. R. 52 Calc. 748.—**IND.**

o i. ——.]—Departure from an assumption upon which another person has acted to his detriment is not permitted to a party who, knowing or believing the other labours under a mistake in adopting it, has refrained from correcting him when it was his duty to do so Applt. opened an account with resp. bank for the purposes of a business conducted for him by his son, & authorised it to pay cheques drawn on the account by his son & countersigned by his wife. After some months the son arranged with a teller employed by the bank to honour cheques on his signature alone. Some time later this arrangement came to the notice of the applt., but he took no step to stop the practice & made no communication to the bank & in one instance indorsed negotiable instruments so drawn. The practice continued. Later applt. brought an action against the bank to recover moneys paid by it on cheques bearing only the signature of his son :—*Held :* applt. was precluded by his conduct from denying the regularity of the drawings so made from his account & was not entitled to recover the moneys claimed.—WEST *v.* COMMERCIAL BANK OF AUSTRALIA, LTD. (1936), 55 C. L. R. 315.—**AUS.**

t i. —— ——.]—HUTCHINSON BROTHERS & CO., LTD. *v.* PERKINS (B. C.) (1908), 8 W. L. R. 16.—**CAN.**

st. *Claim to distinctive colour design—Objection not raised in previous proceedings.*]—Pltf. co., which had adopted a certain design of contrasting black & white colours for the painting of its cabs, dissimilar to any previously in use in the city in which it conducted its operations, sought by injunction to restrain defts. from using cabs painted a similar design of contrasting blue & white, on the ground that, although the respective cabs might readily be distinguished in daylight, those of defts. were so got up as to be calculated, at night, to deceive people into believing them pltfs.' cabs. No instance of actual deception on defts.' part was proved, nor was any fraudulent intention of their part to mislead the public established :—*Held :* pltf. having, in previous proceedings, concurred in the painting of defts.' cabs in a particular design & colour now had no ground for complaint.—BLACK & WHITE CABS, LTD. *v.* NICHOLSON, NICHOLSON *v.* BLACK & WHITE CABS, LTD., [1928] N. Z. L. R. 273.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (b).

b i. ——.]—The equitable principle prohibiting a party from lying by & reaping the benefit of the expenditure of another's money on his property, applied.—PUBLIC PROPERTY TRUSTEES *v.* GILLIS (1881), 14 N. S. R. (2 R. & G.) 262.—**CAN.**

the land.—POWELL *v.* THOMAS (1848), 6 Hare, 300; 67 E. R. 1180.

1472. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1472a. ——.]—In 1925, a certain piece of land, known as B. Lodge, was sold to J. & M. In the conveyance a quantity of timber trees, saplings, etc., was excepted out of the sale by the vendors, who reserved to themselves the right to cut & remove them before Oct. 11, 1927. In 1926 pltf. purchased the timber trees, etc., & proceeded to cut & remove them. A large amount of the cut timber was, however, left on the land after Oct. 11, 1927, & in these circumstances J. & M. stated that pltf. had lost his title thereto & forfeited his right to remove it, & they claimed it as their property. As the result of an action in 1930 against J. & M. it was held that the property in the timber remained in pltf. after Oct. 11, 1927, & a certain sum by way of damages for conversion against J. & M. was at the instance of the judge agreed between all parties to the proceedings & awarded pltf. In the meanwhile J & M. purported to sell the cut timber to the present defts.

Pltf., who had taken no steps to enforce the order which he had obtained against J. & M., gave notice on June 10, 1930, to defts. that the sale by J. & M. to them was ineffective, as J. & M. had no title to the timber, & requesting the return of the timber to him. Defts. having refused & repudiated liability, pltf. commenced an action, & by his statement of claim asked for a sum by way of damages for conversion; the conversion relied on being the refusal by deft. co. to return the timber in compliance with the notice of June 10, 1930 :—*Held :* no special circumstances existed sufficient to constitute any confirmation by pltf. of any title to the timber in J. & M., nor did pltf. by accepting judgment in the form he did against J. & M. confer any title on them or deft. co. by estoppel.—ELLIS *v.* STENNING (JOHN) & SON, [1932] 2 Ch. 81; 101 L. J. Ch. 401; 147 L. T. 449; 76 Sol. Jo. 232.

1477a. Money paid on forged cheque—Failure to inform bank of forgery.]—Pltf. had an account with deft. bank, & his wife forged his signature on cheques & thereby drew out all the money left in the account, & she lent it to her sister. Pltf., on discovering the facts, did not at once inform the bank, but about nine months later, when his wife told him that she wanted more money for her sister, he stated his intention of going to the bank, & that night his wife committed suicide. Pltf. then went to the bank & told the manager about the forged cheques. In an action by pltf., claiming to be credited by deft. bank with the amount of the forged cheques, the bank pleaded (*a*) adoption & ratification, & (*b*) that pltf. was estopped by his silence from alleging that the signatures were forgeries. The tribunal of first instance found that the forged cheques were honoured through the carelessness of the bank officials. There was no evidence that pltf. had ever adopted the forged cheques as his own :—*Held :* ratification had no applicability to a forged signature, but pltf. was estopped from alleging the forgeries because his silence until after his wife's death had caused the bank to lose their right of action against the forger, & therefore the action failed.—GREENWOOD *v.* MARTINS BANK, LTD., [1933] A. C. 51; 101 L. J. K. B. 623; 147 L. T. 441; 48 T. L. R. 601; 76 Sol. Jo. 544; 38 Com. Cas. 54, H. L.

Annotations :—**Apld.** *Re* National Benefit Assurance Co. (1932), 48 T. L. R. 612. **Refd.** Imperial Bank of Canada *v.* Begley, [1936] 2 All E. R. 367; Official Trustee of Charity Lands *v.* Ferriman Trust, Ltd., [1937] 3 All E. R. 85; Refuge Assurance Co. *v.* Pearlberg, [1938] 2 All E. R. 25.

1537. *Add. Annotation :*—**Refd.** R. *v.* Essex JJ., *Ex p.* Perkins, [1927] 2 K. B. 475.

1549. *Add. Annotation :*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

1550. *Add. Annotation :*—**Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

1556. *Add. Annotation :*—**Refd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

1557. *Add. Annotations :*—**Refd.** Macaura *v.* North-

1465 i. *Works executed by local authority.*]—SANDRINGHAM CITY CORPN. *v.* RAYMENT (1928), 40 C. L. R. 510; [1928] V. L. R. 312; [1928] Argus L. R. 173.—**AUS.**

1465 ii. ——.]—A municipal council prepared plans, specifications & estimates for the construction of a street formed or set out on private property. Before the notice to property owners provided for by the Local Govt. Act, 1915, had been sent out a contract for the work had been entered into by the council & the work commenced. In an action by one of the property owners for a declaration that the municipality was not entitled to a charge on his land for the proportion of the cost of making the said street alleged to be due by him :—*Held :* pltf. had not by conduct waived compliance with the statutory provisions nor was he by conduct estopped from asserting his rights.—DUNN *v.* SHIRE OF BRAYBROOK, [1928] V. L. R. 454; [1928] Agus L. R. 286.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (c).

sk. *Registration of car in name of another.*]—BAZAR *v.* GRANT & GRANT (Man.), [1929] 4 D. L. R. 1075; 1 W. W. R. 281.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (e).

e i. —— *Failure of surety to inform creditor of matter leading to discharge of guarantee.*]—A surety is under no legal duty to the guaranteed party to warn him that something he is doing or some misapprehension he is under may have the legal effect of discharging the suretyship. In an action by an employer on an employee's fidelity bond the fact that deft. co. which had received a letter from pltf.'s solr. allowed him to rest under a misapprehension, disclosed by his letter, as to when the theft was discovered was held not to estop the co. from relying on a term in the contract that an action thereunder must be brought within a specified period after the discovery of the theft.—BIRCH LAKE, MUNICIPAL DISTRICT *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1931] 1 D. L. R. 600; [1930] 3 W. W. R. 634.—**CAN.**

ii. —— —— *Claim by silent partner.*]—PEARSON *v.* DRAKE, [1937] 1 W. W. R. 12; 1 D. L. R. 417.—**CAN.**

sw. *Acquiescence of agent—Holding goods as agent for sale—Goods seized in execution.*]—Deft., having obtained an order in a ct. of petty sessions against pltf.'s son, informed the police in charge of a distress warrant that the judgment debtor had a motor lorry at L.'s premises; that he did not know its registered number, but that L. would point out the lorry to the constable executing the warrant. The lorry was seized on L.'s premises. It was the property of pltf., & was in the possession of L. as his agent for sale. L. did not inform the police of pltf.'s claim, & refrained from giving any information of the seizure to pltf. until after the lorry had been sold. In an action by pltf. for conversion of the lorry :—*Held :* pltf. was not estopped by his agent's silence or conduct from asserting that he was the owner of the lorry.—MORT *v.* BARNES, [1928] V. L. R. 56.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 3.—I (a) ii.

s i. —— *On policy.*]—DORSHT *v.* TRANS-CANADA INSCE. CO., [1933] O. R. 98.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—I. (b) ii.

m (p. 387) *Citation :*—For "AGRICULTURAL INSURANCE CO. OF WATERTOWN *v.* ANSLEY" read "ANSLEY *v.* WATERTOWN INSURANCE CO."

ern Assce., [1925] A. C. 619; Locker & Woolf *v.* Western Australian Insurance Co. (1936), 154 L. T. 667.

1561. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

1584. *Add. Annotation :*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

1593. *Add. Annotation :*—**Refd.** Fisher, Ltd. *v.* Eastwoods, Ltd., [1936] 1 All E. R. 421.

1594. *Add. Annotation :*—**Refd.** Smith *v.* Kinsey, [1936] 3 All E. R. 73.

1599. *Add. Annotation :*—**Consd.** Mercantile Bank of India, Ltd. *v.* Central Bank of India, Ltd., [1938] A. C. 287.

1601. *Add. Annotations :*—**Refd.** Bishun Chand Firm *v.* Seth Girdhari Lal (1934), 50 T. L. R. 465; Paton *v.* I. R. Comrs., [1938] A. C. 341.

1602. *Add. Annotation :*—**Refd.** Guildford Trust *v.* Goss (1927), 136 L. T. 725.

1603. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

1604. *Add. Annotations :*—**Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737; Jones *v.* Waring & Gillow, [1926] A. C. 670; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

1605. *Add. Annotations :*—**Consd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1928] 97 L. J. K. B. 609; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

1610a. ——.]—Defts. received a consignment of wheat & issued a delivery order for it, which came into the hands of B. Upon this delivery order B. obtained advances from pltfs. Shortly afterwards defts. issued a second delivery order in respect of the same consignment of wheat. The two delivery orders were different, & such as might reasonably be supposed to relate to distinct consignments of wheat. Upon this second delivery order B. obtained further advances from pltfs., who were under the belief that the delivery orders related to distinct consignments of wheat. B. having afterwards become insolvent :—*Held :* defts. having been guilty of culpable negligence, & such negligence having been the proximate cause of pltfs. loss, were estopped from alleging that the two delivery orders related to the same consignment of wheat, & were liable to compensate pltfs. for the loss sustained by them through the advances to B.—COVENTRY *v.* GREAT EASTERN RY. CO. (1883), 11 Q. B. D. 776; 52 L. J. Q. B. 694; 49 L. T. 641, C. A.

Annotation :—**Apld.** Seton *v.* Lafone (1887), 19 Q. B. D. 68.

PART VI. SECT. 3, SUB-SECT. 3.—I. (b) iii.

11. —— *To nature of goods delivered.*]—*Held :* the purchasers were estopped from alleging that the goods were not as contracted for.—J. I. CASE THRESHING MACHINE CO. *v.* MITTEN (Sask.), [1919] 3 W. W. R. 601; 49 D. L. R. 30.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—J.

81. *Negotiations with committee of municipal council—Party not estopped from setting up lack of jurisdiction.*]—SIMON *v.* GASTONGUAY, [1931] 2 D. L. R. 75; 2 M. P. R. 470.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 4.—A.

1596 x. ——.]—Deft. wished to purchase a piece of land & approached S. for a loan of the amount which he required to make up the price. S., without the knowledge of deft., obtained from pltf. the money which deft. needed, & presented a mtge. in pltf.'s favour to deft. to sign. Deft. never read the mtge., but understood from the representations of S. that the writing which he signed was merely an acknowledgment of the receipt of the money from S. who, he thought, was advancing it :—*Held :* the mtge. was not the deed of deft. & he was not estopped from alleging that it was not.—COOIL *v.* CLARKSON, [1925] 2 D. L. R. 493; [1925] 1 W. W. R. 1094; 35 B. C. R. 308.—**CAN.**

1596 xi. ——.]—As a general rule the owner of property is not estopped from asserting his title thereto merely because his carelessness in the custody of it, or of his documents of title, has enabled some one to fraudulently sell the property to another.—ANACONDA OIL CO., LTD. *v.* ALADDIN OILS, LTD., [1930] 1 W. W. R. 943; 3 D. L. R. 776.—**CAN.**

1605 vi. ——.]—Where taxes were paid to a municipal employee who had no authority to receive them :—*Held :* the fact that the municipality kept its tax-receipt books, cashier's stamp & tax roll in such a manner that the employee was enabled to get possession of the books, etc., & give a receipt for the taxes, did not estop the municipality from showing his lack of authority, even if it amounted to negligence, since such negligence did not occur in the transaction itself & was not the proximate cause of the taxpayer's payment of his taxes to the employee.—RICHES *v.* CITY OF MOOSE JAW, [1925] 3 D. L. R. 1176; [1925] 3 W. W. R. 127.—**CAN**

PART VI. SECT. 5.

1619 xii. ——.]—The facts relied upon to establish an estoppel of any kind should be pleaded in any case in which it is intended to rely upon it.—HUGHES *v.* J. H. WATKINS & CO., [1927] 3 D. L. R. 302; 60 O. L. R. 448; *affd.*, [1928] 2 D. L. R. 1176; 61 O. L. R. 587—**CAN.**

EXECUTION.

Part II.—Matters Common to all Modes of Execution.

22. *Add. Annotation :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

SUB-SECT. 11.—FOREIGN SOVEREIGNS AND AMBASSADORS.

Ambassadors & other diplomatic persons.]—*See* CONSTITUTIONAL LAW, Vol. XI., pp. 536–542, Nos. 390–467.

60. *Add. Annotations :*—**Refd.** Capron *v.* Capron, [1927] P. 243 ; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

61. *Add. Annotation :*—**Refd.** Kayley *v.* Hothersall, [1925] 1 K. B. 607.

63. *Add. Citation :*—[1925] 1 K. B. 607.

80a. **Procedure by judgment summons.**]—In an action by pltf. against an unincorporated body & seventeen named persons, described as its committee, in which pltf. claimed damages for libel, judgment was given in the High Ct. for deft. with costs. On a bkpcy. notice founded on that judgment not being complied with, defts. presented a petition in bkpcy. ; but this petition was dismissed by the registrar as being wrong in form, on the ground (*inter alia*) that the petition was by an agent on behalf of an unincorporated assocn. & others, whereas such an assocn. cannot sue or be sued, either in its own name or by a purported agent. Subsequently, defts. took out a judgment summons in the county ct., & the county ct. judge ordered pltf. to pay by instalments the sum due under the judgment of the High Ct., together with the costs of the summons :—*Held :* (1) as procedure by judgment summons is a mode of enforcing a judgment & directly in connection with the action, as distinguished from a bkpcy. petition, which is not, the county ct. judge had jurisdiction to make the order :—*Held :* (2) the death of one of the successful defts. since the judgment did not render it necessary for the survivors to obtain the leave of the ct. before they could enforce the judgment.—BUNDY *v.* MOTOR CAB OWNER DRIVERS' ASSOCIATION (1930), 143 L. T. 334 ; 46 T. L. R. 422.

PART II. SECT. 1. SUB-SECT. 1.

oi. —— *In criminal proceedings.*]—A criminal proceeding is not an "action" within the meaning of sect. 2 of Execution Act, R. S. B. C., 1924, &, therefore, a judgment recovered in a criminal proceeding cannot be enforced under sect. 38 thereof.—R. *v.* BERU, [1936] 2 W. W. R. 574 ; 4 D. L. R. 805 ; 66 Can. C. C. 295 ; 50 B. C. R. 444.—**CAN.**

PART II. SECT. 3.

17 iii. —— ——.]—CULLEN *v.* CULLEN (1866), 2 Ch. Ch. 94.—**CAN.**

17 iv. —— ——.]—*Re* MCLELAN (B. C.), [1926] 1 W. W. R. 198.—**CAN.**

sm. *Judgment on promissory note taken for "cash" payment on agreement for sale of land—Issue of execution on note before sale of land—Valid.*]—COTTON *v.* DEMPSTER (Alta.), [1925] 1 W. W. R. 954.—**CAN.**

so. *Before action commenced—Meaning of "writ."*]—Under Attachment of Debts Act a garnishee order may issue before action is commenced. In this connection "has issued a writ" includes a "summons" in the county ct.—FLEISHMAN *v.* ALLAN (T. A.) & SONS (1932), 45 B. C. R. 553.—**CAN.**

PART II. SECT. 4.

sp. *Extension of time for filing renewal—Right of master in chambers to grant.*]—*Re* RENEWAL OF A CERTAIN EXECUTION, [1917] 1 W. W. R. 113.—**CAN.**

st. ——.]—There is no authority for an extension of the time for renewal o an execution either before the execution has lapsed for want of renewal or after that date. There is no doubt an inherent power in the ct. in exceptional cases to make an order *nunc pro tunc, e.g.*, where an officer of the ct. has frustrated an application to renew. An execution, by statutory provision carried into the Rules, has force for a fixed period. At the end of that period, unless previously renewed, it is not in force, & however meritorious it may appear to overlook a slip or omission of pltf. in renewing within the time, there is no provision warranting that procedure.—JOHNSTON *v.* DIMOND, [1934] 3 W. W. R. 340.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.

sc. *Solicitor purporting to act for one defendant—Authority to act for second only—Validity of execution against first defendant.*]—OVERN *v.* STRAND, [1931] S. C. R. 720 ; [1932] 1 D. L. R. 490.—**CAN.**

PART II. SECT. 6, SUB-SECT. 3.

sg. *One tortfeasor assignee of judgment—May not issue execution against joint tortfeasor.*]—A judgment in tort was assigned by the pltf. to one of the joint defts. :—*Held :* the assignee could not issue execution against the other deft., since he had no right of contribution against him.—REID *v.* ACORN & MCDONALD, [1932] 3 D. L. R. 239 ; 4 M. P. R. 341.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—B.

sk. *Amount recoverable — Judgment debt & six years' interest.*]—KAULBACH *v.* LAVENDER (N. S.), [1929] 1 D. L. R. 238.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—C. (o).

o i. ——.]—The assignee of a judgment debt can enforce execution only after obtaining leave under K. B. Rule 451, even though the assignment expressly purports to assign the execution issued by the judgment creditor.—CONDON *v.* GASSALL & DRINKLE, [1928] 3 W. W. R. 719.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—H.

sm. *Debt Adjustment Acts,—Application to pending actions.*]—In a foreclosure action begun before Debt Adjustment Act, 1932, came into force, an application for a final order of foreclosure can be entertained although the provisions of sect. 6 of said Act have not been complied with. Sect. 5 of said Act applies to the bringing or continuing of the actions therein referred to & the effect of the words "or continued" is that the sect. applies to the continuing of actions or proceedings begun when the Act came into force ; sect. 6, however, which does not contain the words "or continued" applies only to the bringing of the actions or proceedings therein referred to.—EDDY *v.* STEWART, [1932] 3 W. W. R. 71 ; *revsg.*, [1932] 2 W. W. R. 699.—**CAN.**

sn. —— *Whether applicable to execution on judgment for tort.*]—Under Debt Adjustment Act, 1933, a permit from the Debt Adjustment Board is not a prerequisite to the issue of an execution on a judgment recovered in an action founded on tort.—HILL *v.* BAADE (No. 2), [1934] 2 W. W. R. 16.—**CAN.**

sp. —— *Right to initiate proceedings by way of garnishment.*]—HUTCHISON *v.* CONN, ANDERSON *v.* CONN, [1933] 2 W. W. R. 505.—**CAN.**

sr. —— ——.]—Sub-sect. (5) of sect. 7 of Debt Adjustment Act, 1934, applies only to garnishee proceedings which are incidental to the classes of actions enumerated in sub-sect. (1) (*a*) of said sect. Therefore, garnishee proceedings in an action under the small debt procedure are not subject to the restrictions of sub-sect. (5), even where wages or salary are sought to be attached. In view of the language of said sub-sect. (5) the words "actions or suits" in sub-sect. (1) (*a*) include garnishee proceedings.—FILER *v.* MEYERS & CANADIAN NATIONAL RYS., [1937] 1 W. W. R. 554.—**CAN.**

st. —— *Powers of sheriff.*]—Debt Adjustment Act, 1934, does not prevent the placing of an execution in the sheriff's hands for the purpose of investigating whether anything can be realised thereon, or prevent the sheriff from making inquiry in pursuance thereof & reporting to the execution creditor.—GEORGIA INVESTMENT CO., LTD. *v.* LONDON BUILDING & INVESTMENT CO., LTD., [1936] 1 W. W. R. 3.—**CAN.**

sz. *Orderly Payment of Debts Act, 1932—To what judgments applicable.*]—*Held :* the amount referred to in Orderly Payment of Debts Act, 1932, s. 2 (1) is

87. *Add. Annotation :*—**Refd.** Newport *v.* Pougher, [1937] Ch. 214.

88a. **Against co-surety—Judgment debt paid by surety.**]—Where a surety has paid a judgment debt & has obtained an assignment of the judgment under Mercantile Law Amendment Act, 1856 (c. 97), s. 5, he must obtain the leave of the ct. under R. S. C., Ord. 42, r. 23, before he can issue execution against his co-surety to enforce contribution to the judgment debt.—KAYLEY *v.* HOTHERSALL, [1925] 1 K. B. 607 ; 94 L. J. K. B. 348 ; 132 L. T. 468 ; 69 Sol. Jo. 310, C. A.

146a. ——— **Omission to claim costs.**]—Where, at the trial, the judge grants a certificate for speedy execution under 1 Will. 4, c. 7, s. 2, pltf. should issue one writ of execution for the amount of the damages & costs. Where deft. had been arrested under a *ca. sa.* for the damages only, & had paid them, & been discharged out of custody, the ct. refused to allow pltf. to issue another *ca. sa.* for the costs.—SMITH *v.* DICKINSON (1844), 5 Q. B. 602 ; Dav. & Mer. 468 ; 13 L. J. Q. B. 151 ; 2 L. T. O. S. 368 ; 8 Jur. 123 ; 114 E. R. 1376.

260. *Add. Annotation :*—**Refd.** *Re* A Debtor, No. 549 of 1928, [1929] 1 Ch. 170.

262. *Add. Annotation :*—**Refd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524.

263. *Add. Annotation :*—**Refd.** *Re* Judgment Debtor (1935), 51 T. L. R. 524.

313. *Add. Annotation :*—**Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

318. *Add. Annotation :*—**Refd.** Macaulay *v.* Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.

366a. **Payment of irrevocable sum—Title of plaintiff not proved—Should not be ordered.**]—Pltf. was the widow of a man employed by deft. co. as a derricker. The deceased had left the barge on which he was employed & volunteered to act temporarily as tipper on a second barge in order to relieve a fellow-workman. The fellow-workman was in fact a director of the co., but at the time he was acting merely as a foreman over the job, & was not there as representing the board of directors. While engaged as a tipper in these circumstances he stumbled & fell into the hold, sustaining minor injuries. He was removed to hospital & given an anæsthetic under which he collapsed & died. The post-mortem examination showed that he had a diseased heart, but neither the history of the man's activities nor the use of a stethoscope did or would have disclosed the man's condition. At the trial it was held that the death was due to the negligence of defts., who were ordered to pay to pltf. £785, of which sum £300 was not to be recoverable in any event. On appeal :—*Held :* (1) on the facts there was no negligence on the part of the defts. ; (2) the fact that the fellow-worker was a member of the board of directors did not in a case where he was in fact acting as a foreman bar the defence of common employment ; (3) on the work upon which the deceased was engaged at the time he was merely a volunteer & the defence of *volenti non fit injuria* applied ; (4) the administration of the anæsthetic was not a wrongful act intervening between the accident & the death, & could not be relied on as a case of *novus actus interveniens ;* (5) where there is an appealable matter, the ct. should not, as a condition of granting a stay of execution, order to be paid to pltf. & to be irrecoverable in any event any sum to which it is possible that it may ultimately be decided that pltf. has no title.—BLOOR *v.* LIVERPOOL DERRICKING & CARRYING CO., LTD., [1936] 3 All E. R. 399, C. A.

380. *Add. Citation :—sub nom.* WALTER *v.* DAVIES, *Ex p.* GLAMORGAN (FORMER SHERIFF), 31 L. T. O. S. 169.

392a. ———.]—If a pltf. or his attorney has received the debt & costs, in a case where the debtor had been taken in execution, it is the duty of pltf. or his attorney to discharge him ; & so, if he tenders the amount, it is the duty of pltf. or his attorney to discharge him, & the omission to do so is *primâ facie* evidence of

---

the amount of the original judgment & the application of the clause is not affected by the fact that that amount has been increased by interest, costs of execution or costs of an appeal so as to bring it over $800.—DOMINIK *v.* STRYK, [1935] 2 W. W. R. 555 ; 4 D. L. R. 269 ; 43 Man. L. R. 262.—CAN.

PART II. SECT. 8, SUB-SECT. 2.

891. *Affidavit in support—Attachment of property of absconding debtor—Contents.*]—*Re* LONG, *Ex p.* MOORE (1883), 23 N. B. R. 229.—CAN.

891. —— *Sufficiency of—Action by two plaintiffs.*]—In an action by two pltfs. an attachment order under K. B. r. 814, should not be made where the affidavit in support of the application for the order states that "defts. are justly & truly indebted to pltfs. or one of them or are legally liable to pltfs. or one of them," since this is not that positive & definite statement of indebtedness or liability which the rule requires.—FIELDS *v.* NORTHLAND CO., [1933] 1 W. W. R. 734 ; 2 D. L. R. 366 ; 29 Man. L. R. 200.—CAN.

PART II. SECT. 11.

s1. *Prior proceedings under Absconding Debtors Act.*]—*Held :* a subsequent execution was defeated.—KERR *v.* SCOVIL (1870), 13 N. B. R. (2 Han.) 16. —CAN.

PART II. SECT. 15, SUB-SECT. 1.

254 i. *Appeal from judgment.*]—The broad principle in India as regards execution matters is that time is not computed from the date when the right to apply accrues, but is postponed in cases where there is an appeal. —NAGENDRANATH BANERJI *v.* AMBIKACHARAN CHAKRAVARTI (1929), I. L. R. 57 Calc. 549.—IND.

PART II. SECT. 15, SUB-SECT. 4.—B. (a) i.

315 iii. ——— ———.]—In the absence of special circumstances, & where it was unlikely that leave to appeal would be granted by the Privy Council, the Appellate Div. refused to stay execution of a judgment for £2,801 damages & £1,414 costs pending an application to the Privy Council for special leave to appeal & refused also to order that security *de restituendo* should be given by the party levying execution.—FISHER *v.* THORNTON, [1929] App. D. 17.—S. AF.

PART II. SECT. 15, SUB-SECT. 4.—B. (a) ii.

k i. ——— ——— *Stay permitted only as to amount involved in suit pending.*]—SCUILLI *v.* PLANTA (1928), 39 B. C. R. 450.—CAN.

PART II. SECT. 15, SUB-SECT. 5.

sj. *Protection of successful party's interests.*]—Upon motion by defts. for stay pending appeal :—*Held :* the ct. had inherent jurisdiction to stay proceedings, but a stay should not be granted unless defts. could devise a scheme by which pltfs. would be adequately protected.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO. (1924), 55 O. L. R. 127.—CAN.

PART II. SECT. 19, SUB-SECT. 4.—E. (c) i.

s1. *Necessity for actual seizure.*]—Before there is any right to act upon a replevin bond there must be a replevin, & this involves the actual seizure of the goods & putting them in the hands of pltf.—SCOTT *v.* SMITH (1932), 6 M. P. R. 85.—CAN.

PART II. SECT. 20, SUB-SECT. 1.—A. (a).

396 ii. ———.] — MCDONALD *v.* MITCHELL (1878), 12 N. S. R. (3 R. & C.) 274.—CAN.

malice (PARKE, B.).—TEBBUTT *v.* HOLT (1844), 1 Car. & Kir. 280; 174 E. R. 811.

Annotation :—**Refd.** Clissold *v.* Cratchley, [1910] 2 K. B. 244.

417a. Service of writ—On clerk in court.]—*Held :* not good.—ELLISON *v.* PICKERING (1803), 8 Ves. 319; 32 E. R. 377.

Annotation :—**Refd.** Ward *v.* Arch (1839), 8 L. J. Ch. 255.

417b. Sheriff's officer remaining in house—Until money paid.]—MOORE *v.* BEAMONT (1795), 6 Term Rep. 137; 101 E. R. 476.

Part III.—Particular Forms of Execution.

512. *Add. Annotations :*—*As to* (3) **Refd.** The Beldis, [1936] P. 51. *Generally*, **Refd.** The Point Breeze, [1928] P. 135.

556a. ——.]—HODGES *v.* MARKS (1618), Cro. Jac. 485; 79 E. R. 414.

563a. —— ——.]—A sheriff's officer, having a *fi. fa.* against A., called at his house when he was from home, waited till be returned, & then informed him of his business :—*Held :* sufficient evidence to warrant the jury in finding that the writ was executed at the time of the officer's entry.—BIRD *v.* BASS (1843), 6 Man. & G. 143; 5 Scott, N. R. 928; 1 L. T. O. S. 231; 134 E. R. 841.

574a. —— ——.]—ANON. (1704), 6 Mod. Rep. 105; 87 E. R. 864.

574b. —— ——.]—BURDETT *v.* ABBOT (1811), 14 East, 1; 104 E. R. 501; *affd. sub nom.* BURDETT *v.* ABBOT, BURDETT *v.* COLMAN (1817), 5 Dow. 165, H. L.

Annotation :—**Consd.** Harvey *v.* Harvey (1884), 26 Ch. D. 644.

582a. —— Original entry unjustifiable.]—PARKE & PERCIVAL *v.* EVANS (1615), Hob. 62; 80 E. R. 211.

Annotations :—**Refd.** Lee *v.* Gansel (1774), 1 Cowp. 1; Sandon *v.* Jervis (1859), E. B. & E. 942.

614. *Add. Annotation :*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

615. *Add. Annotation :*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

PART II. SECT. 20, SUB-SECT. 4.—A. (a).

459 i. —— *In action by third party.*]—Where a third party brings an action against the sheriff for seizure of goods under an execution & establishes a *primâ facie* case of title as against the execution debtor, the sheriff must prove a judgment as well as an execution.—KIRCHHOFFER *v.* CLEMENT (1897), 11 Man. L. R. 460.—**CAN.**

PART II. SECT. 20, SUB-SECT. 4.—A. (b).

sa. *Judgment irregular.*]—A seizure of chattels under an execution issued on a judgment which is afterwards set aside as irregular gives rise to a cause of action for damages for the trespass in taking the chattels out of their owner's possession.—DEMERS *v.* DESROSIER (No. 2) (Alta.), [1929] 3 D. L. R. 401; 2 W. W. R. 241.—**CAN.**

PART II. SECT. 20, SUB-SECT. 4.—B. (a).

q i. —— —— *Onus of proof on sheriff—To justify seizure.*]—JOHNSON *v.* BUCHANAN (1896), 29 N. S. R. (17 R. & G.) 27.—**CAN.**

PART II. SECT. 21.

494 i. *When ordered.*]—HART *v.* RUTTAN (1874), 23 C. P. 613.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

506 i. *In respect of what judgment or order—Judgment for instalments of purchase money.*]—WORTH *v.* DAVIE, [1917] 1 W. W. R. 615; 11 Alta. L. R. 461.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—B. (b).

532 iii a. *S. P.* HOWARD *v.* HIGH RIVER TRADING CO. (1899), 4 Terr. L. R. 109.—**CAN.**

532 v. ——.]—SNARR *v.* WADDELL (1864), 24 U. C. R. 165.—**CAN.**

532 vi. —— —— *Earlier writ not renewed within year.*]—BANK OF MONTREAL *v.* TAYLOR (1864), 15 C. P. 107.—**CAN.**

c i. —— ——.]—HAMILTON PROVIDENT & LOAN SOCIETY *v.* CAMPBELL (1884), 12 A. R. 250.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (b).

f i. *S. P.* HINCKS *v.* SOWERBY (1879), 4 A. R. 113.—**CAN.**

i i. —— *Goods listed.*]—NOSEWORTHY *v.* CAMPBELL, [1929] 1 D. L. R. 964; 60 N. S. R. 377.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (c) ii.

si. *Not last case.*]—MCLEAN *v.* WATSON (1858), 2 Thom. 406.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (c) iii.

sn. *Scisin in fee.*]—*Held :* not saleable under an execution against goods.—DOE d. KEOGH *v.* CALHOUN (1843), 1 U. C. R. 157.—**CAN.**

sp. *Interest of assignee of leasehold property in lease.*]—*Held :* not saleable under an execution against goods.—DOE d. SIMPSON *v.* PRIVAT (1848), 5 U. C. R. 215.—**CAN.**

st. *Interest in land charged for maintenance.*]—*Held :* saleable under execution.—RATHBUN *v.* CULBERTSON (1875), 22 Gr. 465.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (c) iv.

607 i. *General rule.*]—DOE d. AUSMAN *v.* MINTHORNE (1846), 3 U. C. R. 423.—**CAN.**

608 iii. ——.]—GILBERT *v.* JARVIS (1869), 16 Gr. 265.—**CAN.**

sv. *Purchaser's interest in land under agreement to buy.*]—A purchaser's interest in land which he has agreed to buy is not bound by an execution against him, unless he has become the registered owner.—HUDSON'S BAY CO. *v.* BULLOCK FARMS, LTD., [1925] 2 W. W. R. 559.—**CAN.**

sx. *When bound by execution.*]—A *chose in action* is not bound by execution put in the sheriff's hands, but only by seizure thereunder.—RENNIE *v.* QUEBEC BANK (1900), 1 O. L. R. 303.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) v.

o i. —— —— *On homestead transferred to wife.*]—Where a husband transfers his homestead to his wife who becomes the real manager of the farming operations with him as her assistant, the crops grown by her are not exigible under an execution, even though she admits that the farm has been managed in such way because of the existence of the execution.—STANDARD TRUSTS CO. *v.* BRIGGS, [1926] 2 D. L. R. 379; [1926] 1 W. W. R. 832; 22 Alta. L. R. 113.—**CAN.**

o ii. —— —— *On wife's farm worked by debtor.*]—*Held :* in the circumstances the crop belonged to the husband & could be seized in execution.—PARENTEAU *v.* HARRIS (1884), 3 Man. L. R. 329.—**CAN.**

o iii. *S. P.* SLINGERLAND *v.* MASSEY MANUFACTURING CO. (1894), 10 Man. L. R. 21.—**CAN.**

p i. —— *Undivided crop—Debtor servant of owner of land.*]—Crop Payments Act, R. S. S., 1920, c. 126, as amended by 1924, c. 28, which allows a sheriff to seize & sell the interest of an execution debtor in an undivided crop, does not apply to a case where the debtor's interest does not arise under a lease, agreement for sale or mtge., but only under an arrangement under which he was to act as manager or servant of the owner of the land on which the crop was grown.—DONOVAN *v.* BELIVEAU (Sask.), [1929] 4 D. L. R. 900; 3 W. W. R. 107.—**CAN.**

p ii. —— —— *What amounts to division.*]—DONOVAN *v.* BELIVEAU, [1931] 1 W. W. R. 158; 1 D. L. R. 992.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) vii.

e i. —— *Interest in shares.*]—SAYRE *v.* GILFOY, [1925] 1 W. W. R. 992.—**CAN.**

e ii. —— ——.]—The ct. has no jurisdiction to appoint a receiver by way of equitable execution for the sale of the equity in shares of a co.—GOODBUN *v.* MITCHELL (No. 5) (Man.), [1929] 3 W. W. R. 622; [1930] 1 D. L. R. 580; 38 Man. L. R. 395; *revsg.*, 38 Man. L. R. 298; [1929] 2 W. W. R. 90.—**CAN.**

e iii. —— *Interest of vendor of land.*]—A vendor who has retained the legal

645. *Add. Annotation :*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

680. *Add. Citation :—sub nom.* DICKINSON *v.* KITCHEN, 8 E. & B. 789 ; 120 E. R. 293.

Add. Annotations :—**Refd.** The Feronia (1868), L. R. 2 A. & E. 65 ; Keith *v.* Burrows (1876), 1 C. P. D. 722.

title as security for payment of his purchase money, has, until full payment has been made, a beneficial interest in the land which, coupled with the legal title, may be seized & sold under execution.—WEIDMAN *v.* MCCLARY, [1917] 2 W. W. R. 210; 33 D. L. R. 672.—**CAN.**

e iv. ——.]—The provisions of Land Titles Act (Alta.) are such, that a legal execution against land cannot bind an equitable interest in lands registered in the name of a person other than an execution debtor, some form of equitable execution is necessary for the purpose.—SEAY *v.* THE SOMMERVILLE HARDWARE CO., LTD., [1917] 1 W. W. R. 1497 ; 33 D. L. R. 508.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) viii.

sa. *Article claimed as fixture by third party—Interpleader issue directed—Effect of.*]—Where an article seized under a writ of execution against goods is claimed by a third person as a fixture the directing of an interpleader issue with respect to it in no way decides that it is a chattel.—FINDLAY *v.* MENZIES, [1928] 1 W. W. R. 457.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) x.

n i. —— *Paid to debtor's solicitor—For payment of costs of action.*]—*Held :* not liable to attachment.—*Re* FORT FRANCES PULP & PAPER CO. *v.* TELEGRAM PRINTING CO., PHILLIPPS & SCARTH *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 4 D. L. R. 204.—**CAN.**

f i. —— —— *In name of wife & son.*]—ROBERT DOLLAR CO. *v.* WALKER (1926), 36 B. C. R. 405.—**CAN.**

l (p. 488) i. —— *Shares—Company outside province.*]—Shares in a co. which has no place within Manitoba where service of process may be legally made upon it are not subject under sect. 14 of Executions Act, R. S. M., 1913, c. 66, to legal execution.—GOODBUN *v.* MITCHELL (No. 5) (Man.), [1930] 1 D. L. R. 580 ; 38 Man. L. R. 395 ; [1929] 3 W. W. R. 622 ; *revg.*, 38 Man. L. R. 298 ; [1929] 2 W. W. R. 90.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xiii.

f i. ——.]—KASSOF *v.* EVANS (1900), 8 Nfld. L. R. 396.—**NFLD.**

f ii. —— *Not ship sold under Admiralty judgment.*]—VANEVERY *v.* GRANT (1862), 21 U. C. R. 542.—**CAN.**

si. *Property of wife under bill of sale—Execution creditor of husband.*]—The execution creditor of husband cannot seize a ship owned by the wife under an unregistered bill of sale.—DICKS *v.* KEAYS, [1936] 2 D. L. R. 58 ; 6 F. L. J. (Can.) 69.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xv.

q i. ——.]—In order to be entitled to an exemption from execution with respect to the tools or implements of his trade, debtor must have been actually following the trade at the time of the seizure.—MCLEOD *v.* GIRVIN CENTRAL TELEPHONE ASSOCN. (Sask.), [1926] 1 D. L. R. 216; [1926] 1 W. W. R. 38.—**CAN.**

s i. *Automobile—Used for business.*]—The judgment debtor, the salaried manager of a building co., claimed exemption for an automobile which he used exclusively & continuously in superintending the erection of houses by his co. in different parts of the city. The contract between him & the co. did not require him to supply an automobile, & did not define his duties or the method to be followed in performing them :—*Held :* the automobile was not exempt under Exemptions Act, R. S. M. 1913, c. 66, s. 29 (*f*), as amended by 1925 Act, c. 20.—GOLDSMITH *v.* HARRIS, [1928] 3 D. L. R. 478; [1928] 2 W. W. R. 401 ; 37 Man. L. R. 389.—**CAN.**

s ii. —— *Used for agriculture.*]—An automobile is not exempt under Exemptions Act Amendment Act, 1935, unless *inter alia* it is one used for agricultural purposes.—WESTERN GROCERS, LTD. *v.* KAY, [1935] 3 W. W. R. 320 ; *affd.*, [1936] 1 W. W. R. 381.—**CAN.**

s iii. ——.]—A motor car used by its owner, whose sole occupation was that of a fisherman, to haul fish from the lake where they were caught to market :—*Held :* a "necessary" within Executions Act, R.S.M., 1913, s. 29 (*f*), as amended, & therefore exempt from seizure.—ZELENISKY *v.* ISFIELD, [1935] 2 W. W. R. 45 ; 43 Man. L. R. 100.—**CAN.**

sw. *Agricultural implements.*]—Under sect. 29 (*f*) of Executions Act, R.S.M., 1913, which exempts *inter alia* "agricultural implements" to the value of $800, the exemption is not restricted to one set of implements.—BANQUE CANADIENNE NATIONALE *v.* HOUDE, [1935] 1 W. W. R. 421 ; 2 D. L. R. 808 ; 43 Man. L. R. 27.—**CAN.**

sz. *Building materials.*]—Materials acquired by a debtor for the purpose of building a house on his homestead to replace one thereon which has been destroyed by fire are not made by Executions Act, R. S. M., 1913, or otherwise, exempt from seizure under executions. The words "or other person" following "mechanic, artisan, machinist, builder, contractor," in sect. 39 of said Act must be construed as *ejusdem generis.*—ROSMUS *v.* BAZAY, [1936] 2 W. W. R. 175 ; 2 D. L. R. 736 ; 44 Man. L. R. 192.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xvi.

c (p. 493) i. —— —— *Part of proceeds consisting of mortgage.*]—*Held :* not exempt. — MASSEY-HARRIS CO. *v.* SCHRAM (1902), 5 Terr. L. R. 338.—**CAN.**

c (p. 493) ii. —— —— *Whether proceeds exempt.*]—PURDY *v.* COLTON (1908), 1 Sask. L. R. 288 ; 7 W. L. R. 820.—**CAN.**

c. (p. 493) iii. —— —— *Effect of Exemptions Act, R. S. M.*, 1913, *s.* 40.]—Property exempt from seizure under a writ of execution, disposed of by the judgment debtor to a third person, cannot be reached by the judgment creditor, whether on grounds of fraud or otherwise. The contention that the claim for exemption must be made by the debtor is met by the prohibition in Exemptions Act, R. S. M., 1913 (c. 66), s. 40.—SPRUHS *v.* GREGORYK & BOYCUM, [1930] 1 W. W. R. 378 ; 1 D. L. R. 896 ; 38 Man. L. R. 477.—**CAN.**

d (p. 493) i. ——.]—MASSEY *v.* MCCLELLAND, BAKER *v.* MCCLELLAND (1895), 2 Terr. L. R. 179.—**CAN.**

d (p. 493) ii. *S. P.* BOCZ *v.* SPILLER (1905), 6 Terr. L. R. 225 ; 1 W. L. R. 366 ; 2 W. L. R. 280.—**CAN.**

h (p. 493) i. —— ——.]—A motion for final judgment for the sale of land under a registered certificate of judgment will not be granted unless pltf. has pleaded in his statement of claim or shown by affidavit that the land is not exempt as the homestead of the debtor. Where a transfer of a homestead is colourable only & the title is held upon a secret trust for the transferor, it does not deprive him of his right of exemption.—DAYHOLOS *v.* KUNIEC, [1928] 1 W. W. R. 691.—**CAN.**

k (p. 493) i. ——.]—Pltf. brought this action for a declaration that executions registered by deft. in the execution register in a land titles office, against the lands of pltf., were not a charge or lien on certain land described, which pltf. claimed as his homestead, & for the removal of the executions from the register :—*Held :* if pltf. had established that the land described was his "homestead," within Exemptions Ordinance, it was so only for the time that it was occupied by the debtor & his family ; there might be a change ; & any declaration would apply only at the particular moment when made.—GILMORE *v.* CALLIES (1911), 10 W. L. R. 545.—**CAN.**

k (p. 493) ii. ——.]—Pltf. applied to have taken off the register of the title of land transferred to her by her husband, a certain execution obtained against her husband, on the ground that at the time of such transfer the land was her husband's homestead & as such exempt under Exemptions Ordinance. On the facts :—*Held :* the land was, at the time of the transfer to pltf., her husband's homestead, &, therefore, exempt from seizure.—HART *v.* RYE (1914), 27 W. L. R. 9.—**CAN.**

k (p. 493) iii. ——.]—A homestead under Homesteads Act (Sask.) means the home of the debtor, the actual residence of himself & his family, & includes the lot upon which the dwelling-house is situate, according to the registered plan of the same :—*Held :* Exemptions Act, s. 2 (10), applied.—OVERTON *v.* GERRITY (1916), 34 W. L. R. 875.—**CAN.**

k (p. 493) iv. —— *Whether exemption extends to members of family.*]—MEUNIER *v.* DORAY (1905), 6 Terr. L. R. 194.—**CAN.**

k (p. 493) v. —— *Whether exemption extends to proceeds of voluntary sale.*]—There is nothing in Exemptions Act, R. S. A., 1922 (c. 95), which carries the exemptions accorded a homestead into the proceeds resulting from a voluntary sale of it by the execution debtor.—JOHN DEERE PLOW CO., LTD. *v.* MCEACHRAN, [1930] 1 W. W. R. 622 ; 2 D. L. R. 796 ; *affg.*, [1930] 1 W. W. R. 561.—**CAN.**

k (p. 493) vi. —— *Building used for business.*]—Under Exemptions Act, R. S. A. 1922 (c. 95), a debtor's right to the homestead exemption is not affected by the fact that the building occupied in part by him as his home is used in the main for business or other purposes ; nor is it affected by the nature of his title to the land, *e.g.* by the fact that he is a tenant in common.—*Re* CHERNIAK ESTATE, [1930] 1 W. W. R. 676 ; 11 C. B. R. 323 ; *affd.*, [1930] 2 W. W. R. 336 ; 3 D. L. R. 994 ; 11 C. B. R. 444.—**CAN.**

k (p. 493) vii. —— ——.]—Under Exemptions Act, R. S. A., 1922, a debtor's right to exemption with respect to his home is not affected by the fact that the building occupied in part by him as his home is used in the main for business or other purposes.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* UMBEL & GILLESPIE GRAIN CO., LTD., [1931] 3 W. W. R. 145.—**CAN.**

k (p. 493) viii. —— *Crop grown on*

718a. Debtor's goods sold by public auction—Debtor remaining in possession—Execution creditor present at sale.]—*Held:* the goods could not be taken in execution by such execution creditor.—WOODERMAN *v.* BALDOCK (1819), 8 Taunt. 676; 3 Moore, C. P. 11; 129 E. R. 547.

Annotations:—**Refd.** Aldred *v.* Constable (1844), 3 L. T. O. S. 299; Hickman *v.* Cox (1857), 30 L. T. O. S. 279; Barker *v.* Furlong, [1891] 2 Ch. 172.

730. *Add. Annotation:*—**Consd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

homestead.]—Exemptions Act, R. S. S., 1920 (c. 51), does not exempt the crop grown on a homestead.—LUCIUK *v.* KRAUS, [1930] 1 W. W. R. 17; 1 D. L. R. 927; 24 S. L. R. 350.—**CAN.**

k (p. 493) ix. —— *Debtor tenant in common.*]—The fact that the interest of a debtor in the property occupied by him as a home is that of a tenant in common does not disentitle him to the benefits of sect. 2 (*f*) of Exemptions Act, R. S. A., 1922 (c. 95).—NEVE, RANAGHAN & COPE, LTD. *v.* MOTLEY & MOTLEY, [1930] 3 W. W. R. 109; 4 D. L. R. 69.—**CAN.**

k (p. 493) x. ——.]—The homestead exemption which is allowed by Judgments Act, R. S. M., 1913, is more than a mere personal right in the male head of the family. Therefore, where an insolvent husband made a voluntary transfer to his wife of the house, valued at $3,500, in which they & their family were residing & on which they continued after the transfer to reside, & a creditor of the husband who recovered judgment against the husband shortly after the transfer sought an order for the sale of the property without regard to the transfer:—*Held:* the right of exemption continued, & while the judgment creditor could proceed to a sale because it appeared that the property was of a value in excess of $1,500, yet that such proceedings, if taken, must be in accord with the provisions of the statute, which in particular require that $1,500 be provided for by the judgment creditor in advance of the completion of the sale. Deft. wife would in such event be the party to whom such amount should be paid.—DOMINION BANK *v.* LITSTER, [1933] 2 W. W. R. 359; 41 Man. L. R. 404.—**CAN.**

p (p. 493) i. —— —— *Personal residence not necessary.*]—A homestead can be "in the use & enjoyment of the widow & children or widow or children," within sect. 6 of Exemptions Act, R. S. S., 1930, without personal residence by the widow or children thereon. The right to use & enjoy includes the right to let & to the rents & profits therefrom. Therefore where provision must be made for the maintenance & support of a deceased's dependants, & it is not feasible nor in their interests to continue in actual personal residence of the homeplace or homestead, they may claim the rents & profits therefrom for maintenance & support.—*Re* MCEACHEN ESTATE, [1933] 2 W. W. R. 177.—**CAN.**

11 ——.]—When debtor is in actual residence on certain property belonging to him, such property is *primâ facie* exempt under Exemptions Act, R. S. S., 1920, & the fact that the wife of debtor happens to own a house that had been previously used as the family home cannot deprive debtor of the right to claim the exemption.—SALTER & ARNOLD, LTD. *v.* DILLMAN, [1924] 2 W. W. R. 1225.—**CAN.**

1 ii. ——.]—Under Exemptions Act, R. S. S., 1920, the home of a debtor is free from seizure under execution so long as he uses it as his home, even though its value is in excess of $3,000. There is no power given to the sheriff to sell the home & carmark $3,000 of the proceeds for the benefit of the debtor. The intention of sect. 23 of Bkpcy. Act is that the exemptions Act of each province should stand unimpaired & be effective notwithstanding the federal legislation.—*Re* HAYES, [1931] 1 W. W. R. 301; 25 S. L. R. 257; 12 C. B. R. 225.—**CAN.**

m (p. 493) i. —— —— ——.]—BAKER *v.* GILLUM (1908), 1 Sask. L. R. 498; 9 W. L. R. 436.—**CAN.**

q i. —— —— ——.]—MCLATCHIE *v.* MCLEOD (1890), 6 Man. L. R. 452.—**CAN.**

q ii. —— *Exemptions Act, Alta.—Not applicable against Crown.*]—R. *v.* O'BRIEN, [1924] 1 D. L. R. 222; [1924] 1 W. W. R. 104.—**CAN.**

q iii. —— *Rents & profits of.*]—The exemption of a homestead from seizure under execution does not extend to the rents & profits thereof, beyond the personal property specified.—WILKINS *v.* MINER (Alta.), [1927] 1 D. L. R. 286; [1926] 3 W. W. R. 778.—**CAN.**

q iv. —— *Proceeds of sale of.*]—There is nothing in Exemptions Act, R. S. A., 1922, which carries the exemption accorded a homestead into the proceeds resulting from a voluntary sale of it by the execution debtor, even though he is still in the actual occupation of it.—REGAL DISTRIBUTORS, LTD. *v.* FREELE, [1931] 1 W. W. R. 299; 1 D. L. R. 943; 25 Alta. L. R. 279.—**CAN.**

q v. —— *Crops.*]—The unexpired portion of a lease of land is not exempt under Exemptions Act, R.S.A., 1922.—*Re* SCOTT ESTATE, [1935] 1 W. W. R. 325; 5 F. L. J. (Can.) 3.—**CAN.**

s (p. 493) i. *Goods of business—Carried on in name of wife—Managed entirely by husband.*]—MEAKIN *v.* SAMSON (1878), 28 C. P. 355.—**CAN.**

a (p. 494) i. *Income of trust fund.*]—Deft.'s father devised his estate to trustees upon the trust, among others, "to pay my son A. [deft.] the interest of the sum of $800 annually during the term of his natural life." An order was made by the master in chambers, directing the trustees to pay over the interest, from time to time accruing, to pltf., who was a judgment creditor of the son.—LLOYD *v.* WALLACE (1882), 9 P. R. 335.—**CAN.**

a (p. 494) ii. *Goods of third party subject to landlord's lien.*]—Where goods belonging to a third party are subject to a landlord's lien such goods are liable to execution in respect of a magistrate's ct. judgment for arrear rent, without a separate action against the owner of such goods.—COLUMBIA FURNISHING CO. *v.* GOLDBLATT, [1929] App. D. 27.—**S. AF.**

k (p. 494) i. ——.]—BYERS *v.* MURPHY (1893), 3 Terr. L. R. 169.—**CAN.**

k (p. 494) ii. —— *Personal property of Indian—Motor boat.*]—A gasoline boat of which deft., an unenfranchised Indian, was a part owner:—*Held:* under the circumstances not to be property of an Indian on a reserve & not property which sects. 102 & 105 of Indian Act, R. S. C., 1927, prevented from being seized under execution.—POPE *v.* PAUL, [1937] 2 W. W. R. 449.—**CAN.**

sk. *Truck of truckman—Exempt.*]—*Re* LYONS, [1934] 1 D. L. R. 432.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) i.

710 iii. ——.]—*Re* BANK OF MONTREAL *v.* TANNAS, TANNAS *v.* BANK OF MONTREAL, [1925] 3 D. L. R. 1079.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) ii.

p i. —— *Sale—No change of possession.*]—Judgment in favour of the execution creditor affirmed.—PETTIGREW *v.* THOMAS (1885), 12 A. R. 577.—**CAN.**

p ii. —— —— *Of land.*]—Where an agreement for the sale of land provides that in case the vendor becomes entitled to cancel the contract, he shall have the right to enter into & possess any improvements on the land, & to apply the net receipts therefrom upon the contract, the taking possession by the vendor will prevent the goods so possessed from being exigible under writs of execution against the purchaser.—*Re* CANADIAN PACIFIC RY. CO., CROWN LUMBER CO. *v.* MCKENZIE (1916), 10 W. W. R. 1370.—**CAN.**

a i. ——.]—JEANETTE DRESS CO. *v.* HENISH, [1932] 2 D. L. R. 811; 5 M. P. R. 1.—**CAN.**

sm. *Restraint of sale — Interest necessary.*]—In order for a third party claiming an interest in goods seized under execution to be able to prevent the sale of such interest, whether in whole or in part, he must have an exclusive right in such interest.—SEITZ *v.* BANK OF MONTREAL, [1933] 2 W. W. R. 70.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) iii.

b i. ——.]—The fact that goods exempt from seizure under execution are included in a chattel mtge. made by the debtor does not deprive the debtor of his right of exemption.—FINDLAY *v.* MENZIES, [1928] 1 W. W. R. 457.—**CAN.**

c i. —— *Not in possession of debtor—Onus of proof.*]—On an interpleader issue between an execution creditor & a claimant of goods which, at the time of their seizure under the execution, were not in the possession of the execution debtor, the onus is on the execution creditor of showing that the execution debtor was the owner of the goods or had an interest therein capable of being seized under the execution; & he must make out a *primâ facie* case before the claimant can be put to proof of his case.—STEWART *v.* CURRIE, CANADIAN PACIFIC RY. CO. *v.* STEWART, [1928] 1 D. L. R. 842; [1928] 1 W. W. R. 206; 22 Sask. L. R. 351.—**CAN.**

c ii. ——.]—The husband's interest in property owned by husband & wife as joint tenants is not liable to be taken in execution by a judgment creditor of the husband.—MARTIN *v.* MARTIN, [1937] 3 D. L. R. 418; O. R. 759.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) x.

g i. *S. P.* KILBRIDE *v.* CAMERON (1867), 17 C. P. 373.—**CAN.**

g ii. *S. P.* MASSEY-HARRIS *v.* MOORE (1905), 6 Terr. L. R. 75.—**CAN.**

k i. *Transfer of property to trustee—In fraud of creditors—Attachment sustained.*]—THOMPSON *v.* ELLIS (1883), 16 N. S. R. (4 R. & G.) 307.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xi.

d (p. 500) i. —— —— ——.]—SEALE *v.* GRAY, [1932] 3 D. L. R. 567.—**CAN.**

sd. *Property of husband—Standing in name of wife.*]—In an action against a man & his wife, brought by an execution creditor of the man, for a declaration that certain property standing in the name of the wife was exigible under the execution against the hus-

750. *Add. Citation :—previous proceedings*, 3 C. & P. 524, N. P.

783a. ——.]—FURBER *v.* STURMEY (1859), 32 L. T. O. S. 259 ; 23 J. P. 88 ; 5 Jur. N. S. 45 ; 7 W. R. 162.

804. *Add. Annotation :*—**Refd.** Bosworthick *v.* Bosworthick (1926), 136 L. T. 211.

805. *Citations :*—Omit " C. A."

817a. ——.]—TOCOCK *v.* HONYMAN (1602), Yelv. 6 ; 80 E. R. 5.

Annotations :—**Refd.** Meriton *v.* Stevens (1741), Willes 271 ; Giles *v.* Grover (1832), 9 Bing. 128.

835. For " —— —— & finally " read " —— —— **Not finally.**"

880. *Add. Annotation :*—**Refd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

881a. May be compelled to sell.]—ANON. (1702), 7 Mod. Rep. 118 ; 87 E. R. 1135.

883a. ——.]—BOTTOMLEY *v.* HEYWARD (1862), 7 H. & N. 562 ; 31 L. J. Ex. 500 ; 7 L. T. 44 ; 158 E. R. 595 ; *sub nom.* BOTHAMLEY *v.* HEYWARD, 8 Jur. N. S. 1156.

954. *Add. Annotation :—As to* (3) **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

961. *Add. Annotation :*—**Refd.** *Re* Andrew, Official Receiver *v.* Standard Range & Foundry Co., [1936] 3 All E. R. 450.

1002a. —— —— **Who is purchaser for valuable consideration—Creditor-trustee under deed of assignment.**]—Sect. 26 (1) of the Sale of Goods Act, 1893, provides that a writ of *fi. fa.* shall bind the debtor's goods from the time when the writ is delivered to the sheriff, provided that no such writ shall prejudice the title to goods acquired by any person in good faith & for valuable consideration without notice of the writ.

A judgment creditor issued a writ of *fi. fa.* on June 23 & posted it on the same day to

---

band :—*Held :* the facts & circumstances adduced in evidence did not warrant the inference that the husband intended to defraud creditors. Fraudulent intent should not be found except upon substantial grounds & upon clear evidence.—ROBERTSON *v.* ROBINSON, [1928] 2 D. L. R. 343 ; 62 O. L. R. 12 ; *affd.*, [1929] 4 D. L. R. 1072 ; S. C. R. 175.—**CAN.**

sf. *Business carried on by husband & wife—Determination of ownership of goods.*]—MAYLAND *v.* DICKS, [1930] 3 D. L. R. 393.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xii.

sx. *Execution against hirer—Equitable interest of third party in goods.*]—Circumstances in which such interest was preferred to the execution creditor's claim to the proceeds of the goods.—BLACK *v.* DROUILLARD (1877), 28 C. P. 107.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xiv.

m i. —— —— *Fixtures affixed to mortgaged freehold.*]—CARSON *v.* SIMPSON (1894), 25 O. R. 385.—**CAN.**

n i. ——.]—FERRIE *v.* CLEGHORN (1860), 19 U. C. R. 241.—**CAN.**

n ii. —— *C. S. U. C. c. 45, s. 3—Effect of.*]—ROSS *v.* SIMPSON (1876), 23 Gr. 552.—**CAN.**

n iii. ——.]—SMITH, LTD. *v.* VANCOUVER CREMATION SOCIETY (1914), 29 W. L. R. 150 ; 20 D. L. R. 214.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xv.

p i. ——.]—GURNEY *v.* JAMES (1860), 10 U. C. R. 156.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xvi.

s i. —— *Assets in futuro.*]—An execution on a judgment of assets *in futuro* is invalid if issued without leave after application made under r. 451.—*Re* SMITH'S ESTATE, CANADIAN GUARANTEE TRUST CO. *v.* DELISLE, [1924] 4 D. L. R. 1288 [1924] 3 W. W. R. 815.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (g) ii.

317 i. *Property still remains in debtor.*]—RUSSELL *v.* REID, [1928] 1 D. L. R. 628.—**CAN.**

sy. *Attachment under Absconding Debtors Act.*]—STARR *v.* MUNCEY (1845), 3 N. S. R. (2 Thom.) 244.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—F. (a).

t i. —— —— ——.]—RAFELJE (SHERIFF) *v.* FINCH (1856), 14 U. C. R. 249.—**CAN.**

y i. *Right to place husband or wife of debtor in possession.*]—Though Act 32 of 1917, Ord. 25, r. 5, does not expressly forbid the appointment of the husband or wife of a debtor as a person in whose charge property attached may be left by the messenger, a husband who is a man of no standing & worth nothing is not a suitable person to place in charge of property attached in respect of a debt of his wife.—KOTZE *v.* JOHNSON, [1928] App. D. 313.—**S. AF.**

PART III. SECT. 1, SUB-SECT. 4.—F. (o).

e i. —— ——.]—Where execution has been levied upon goods, the sheriff is not bound to leave an officer continuously in possession, & the absence of such officer, if satisfactorily explained, does not amount to such an abandonment of possession as will entitle other persons claiming the goods to take possession of them.—*Re* MURPHY (1927), 27 S. R. N. S. W. 503 ; 44 N. S. W. W. N. 189.—**AUS.**

PART III. SECT. 1, SUB-SECT. 4.—H. (a).

sz. *Place of sale.*]—A sheriff cannot lawfully sell goods on deft.'s premises without his permission, & any person going on the premises to purchase may be treated as a trespasser.—MCMASTER *v.* MCPHERSON (1839), 6 O. S. 16.—**CAN.**

sa. *Payment—What amounts to.*]—CARRALL *v.* MONTREAL BANK (1861), 21 U. C. R. 18.—**CAN.**

sb. *Setting aside sale—After confirmation.*]—In the absence of fraud or collusion, a sale in execution, which has once been confirmed, cannot be set aside because the decree under which it was held was at first incorrectly drawn up, & has since been amended.—AGHA HUSAIN *v.* QASIM ALI (1925), I. L. R. 48 All. 94.—**IND.**

PART III. SECT. 1, SUB-SECT. 4.—H. (b).

sd. *Notwithstanding notice of alleged defect in execution.*]—MCPHAIL *v.* MCKINNON (1868), 7 N. S. R. 168.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—H. (i) ii.

915 vii. —— ——.]—An execution creditor can take only the precise interest, & no more, which the debtor possesses in the property seized.—OVERRY *v.* MCLEAN, [1928] 4 D. L. R. 917 ; [1928] 3 W. W. R. 328 ; 37 Man. L. R. 525.—**CAN.**

sf. *Purchaser estopped from claiming goods as his own.*]—RUTTAN *v.* WELLER (1855), 14 U. C. R. 44.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—H. (j).

940 iv. —— ——.]—MACFIE *v.* HUNTER (1882), 9 P. R. 149.—**CAN.**

sg. *Proceeds not exceeding amount of landlord's claim.*]—Where the sheriff sells goods for a sum not exceeding the landlord's claim, & the execution creditor claims the money, it is a sufficient answer to show that the landlord has a good claim to the money, although it has not been paid over to him.—LAMBERT *v.* CLEMENT (1897), 11 Man. L. R. 519.—**CAN.**

sj. *Payment of preference claim for wages—When wage-earner entitled to preference.*]—CAMPBELL *v.* CLEUGH (1920), 28 B. C. R. 352.—**CAN.**

PART III. SECT. 1, SUB-SECT. 5.—A.

o i. —— ——.]—STREET *v.* GLASS (1840), 3 N. B. R. (1 Kerr) 165.—**CAN.**

965 ii. —— ——.]—HART *v.* REYNOLDS (1863), 13 C. P. 501.—**CAN.**

967 i. *In respect of what goods—Not property seized under Absconding Debtors Act.*]—STANTON *v.* JOHNSTON (1858), 9 N. B. R. (4 All.) 54.—**CAN.**

967 ii. —— *Not goods of third party.*]—ROBINSON *v.* MCINTOSH (1899), 4 Terr. L. R. 102.—**CAN.**

s i. —— *Right of sheriff to inquire into claim.*]—Where a landlord makes a claim for rent to be deducted out of the proceeds of an execution, the sheriff is entitled to a reasonable time to inquire into the demand ; & where the tenant had denied that any rent was due, & the landlord refused to allow the sheriff time to make the inquiry, the ct. refused the cost of an application to compel the sheriff to pay the rent.—NOWLIN *v.* ANDERSON 1849), 6 N. B. R. (1 All.) 497.—**CAN.**

sk. *In respect of what goods—Goods held under conditional sale agreement.*]—Where goods in the possession of a tenant under a conditional sale agreement are seized under an execution against the tenant the landlord is entitled to the protection of 8 Anne, c. 14, only to the extent to which his claim for rent exceeds the conditional vendor's lien, even though the agreement was not registered as required by Conditional Sales Act, & was, therefore, invalid as against the execution creditor.—OGILVIE FLOUR MILLS CO., LTD. *v.* BECKER & WOOD & SNIHUR, [1931] 1 W. W. R. 273 ; 2 D. L. R. 445 ; 25 Alta. L. R. 257.—**CAN.**

the sheriff's officer, who received it at 9 a.m. on June 24. At 5 p.m. on June 24 the debtors executed a deed of assignment to the claimant as trustee for their creditors. On June 25 the sheriff took possession of the debtors' goods. The trustee was himself one of the creditors, but no other creditor had assented to the deed before the seizure: —*Held:* as the trustee was a creditor he had given consideration by executing the deed of assignment & thereby releasing the debtors from their debt to him & he was therefore within the proviso to Sale of Goods Act, 1893 (c. 71), s. 26 (1).—BEEBEE & Co. *v.* TURNER'S SUCCESSORS (1931), 48 T. L. R. 61.

1043. *Add. Annotation:*—**Distd.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

1069. *Add. Annotation:*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1224a. Failure to remove goods—Liability to execution creditor—Measure of damages.]—Pltf. recovered judgment against C. for a certain sum, the order providing for payment by instalments & providing that, in the case of default in payment of any instalment, execution might issue for the whole debt & costs remaining unpaid. C. defaulted in the payment of one instalment & pltf. immediately caused an execution to be levied upon C.'s business premises. The bailiff, by an assistant, went into possession & seized certain furniture. C. paid the amount of an instalment into ct. & the amount then owing, together with certain fees, was £41 19*s.* 8*d.* C. urged the assistant bailiff not to remove the furniture, some of which C. had agreed to sell. L., a friend of C., said there was an application being made to the ct. to stay the execution & that he was ready to pay the money into ct. as a deposit pending the application. The assistant bailiff accepted this arrangement & gave a receipt for the £41 19*s.* 8*d.*, stated to be "received of C. on account of the debt, etc.," with a note at the foot "paid by L. as deposit pending application." Upon the application being made it was ordered that, upon C. undertaking to discharge the balance of the debt & costs by regular instalments & paying the costs of the execution, the warrant of execution should be set aside & the £41 19*s.* 8*d.* returned to L., but in default of the payment by C. of the costs of the execution the £41 19*s.* 8*d.* was to remain in ct. to attend the further order of the ct. Pltf. appealed to the Ct. of Appeal. The appeal was allowed & a new trial ordered to determine whether L. paid the money as agent for C. or otherwise. The county ct. judge's order was held to be irregular, for, if L. paid as such agent, the debt was discharged & the execution was at an end, & no further order could be made with regard to it, & if he was not an agent no order could be made in respect of the sum paid as a deposit, as L. was not a party to the action. Further, the county ct. judge had jurisdiction only to stay the execution & not to set it aside. L. was then joined as a party & at the new trial the judge held that the payment by L. gave pltf. no right to the money, & being satisfied that C. was unable to discharge the instalments due under the judgment he ordered the execution to be suspended upon the terms of a new order for payment by instalments. Pltf. was ordered to pay L.'s costs of that application, & C.'s costs of both applications, such costs to be set off against the costs payable by C. to pltf. under the order of the Ct. of Appeal. C. failed to make any payment under the new order for instalments & pltf. thereupon claimed from the bailiff, as damages suffered by reason of the assistant bailiff's breach of his duty to remove the furniture seized under the execution, the amount of his judgment debt, L.'s costs, C.'s costs, his own costs &

PART III. SECT. 1, SUB-SECT. 7.

q i. —— ——.]—MAHON *v.* CROWE 1896), 28 N. S. R. (16 R. & G.) 250.—**CAN.**

q ii. —— —— *Sale bonâ fide.*]—On an interpleader issue between a buyer of goods from an execution debtor & an execution creditor whose execution was in the hands of the sheriff prior to the sale:—*Held:* the sale was *bonâ fide*, it was followed by "an actual & continued change of possession" sufficient to satisfy Executions Act, R. S. S. 1920, c. 52, s. 2, &, the buyer's absence of knowledge of the execution having been established, the buyer was entitled to the goods under the proviso in said sect.—WILSON *v.* MATTHEWSON BROS. & MAGERNIN, [1928] 3 D. L. R. 276; [1928] 2 W. W. R. 136; 22 Sask. L. R. 543.—**CAN.**

q iii. —— —— *Necessity for continued change of possession.*]—The fact that a purchase of goods from a person against whom the sheriff held writs of execution was made in the utmost good faith does not, under Executions Act, R. S. S., 1930, entitle the buyer to hold the goods against the execution creditor unless he can also establish both that he did not know of the existence of the execution, & that the sale was followed by an actual change of possession of the goods from the debtor to himself which was continued. —MORROW *v.* WESTERN EMPIRE LIFE ASSURANCE CO., LTD., [1933] 2 W. W. R. 393.—**CAN.**

sl. *Assignee—Assignment not filed.*]—*Held:* the execution prevailed.—CARSCALLEN *v.* MOODIE (1856), 15 U. C. R. 92.—**CAN.**

sm. —— *Want of notice of writ—Onus of proof.*]—ROSS *v.* CREIGHTON (1890), 40 N. S. R. 131.—**CAN.**

PART III. SECT. 1, SUB-SECT. 9.

sp. *On application of Creditors' Relief Act,* 1922.]—TERMINAL GRAIN CO. *v.* SODERBERG, [1925] 1 D. L. R. 313; [1925] 1 W. W. R. 9.—**CAN.**

sq. ——.]—A seizure of goods having been made under execution an order was obtained for their removal & sale. Before the day set for the sale, the debtor paid the whole amount of the execution to the sheriff.—*Held:* the money so paid was money "levied" within Creditors' Relief Act, 1922, it having been paid by the compulsion of the seizure & the means taken to realise.—BADIUK *v.* MOORE (Alta.), [1930] 1 D. L. R. 47; [1929] 3 W. W. R. 115.—**CAN.**

PART III. SECT. 1, SUB-SECT. 10.—A.

1020 i. *Return as evidence—Conclusive against sureties.*]—SHUTER *v.* GRAHAM (1848), 2 U. C. R. 164.—**CAN.**

1 i. —— *Prisoner not deprived of supersedeas.*]—The issuing of a *fi. fa.*, which is not returned, will not deprive a prisoner of a supersedeas.—JACKSON *v.* BLACK. BAINBRIDGE *v.* BLACK, CARVILL *v.* BLACK (1858), 9 N. B. R. (4 All.) 79.—**CAN.**

ar. *Indorsement of writ.*]—It is a condition precedent to an action under CON. ACT, s. 55, that an execution against a co. is returned unsatisfied in whole or in part; & to enable the action to be brought, even where the co. has become bkpt., a return is not sufficient unless it is indorsed on the writ as required by r. 629, & a certificate is filed as required by r. 632.—CROWDER *v.* COLEMAN, [1924] 1 D. L. R. 849; 1 W. W. R. 374; 20 Alta. L. R. 1.—**CAN.**

PART III. SECT. 1, SUB-SECT. 11.

d i. —— *Conflicting claims.*]—The ct. will not grant a rule *nisi* to compel a sheriff to pay over money collected under execution where there are conflicting claims to the fund, but will leave the parties to their remedy by action.—SCOTT *v.* ANGUS* (1854), 2 N. S. R. (James) 183.—**CAN.**

e i —— *For money realised by bailiff—Onus of proof.*]—A sheriff is responsible for all money realised by a bailiff in executing a *fi. fa.*, where the bailiff was appointed by & paid by the sheriff, & in an action against a sheriff for money realised on a *fi. fa.* by his bailiff & not accounted for, the burden is on the sheriff to prove that the bailiff was appointed by the Lieutenant-Governor in Council.—ROSS *v.* FISET, [1926] 3 D. L. R. 289; [1926] 2 W. W. R. 422; 20 Sask. L. R. 553.—**CAN.**

e ii. —— *Time for bringing—Public Officers Protection Act,* 1923 (c. 19).] —HOLDEN *v.* MILBURN (Sask.), [1927] 1 D. L. R. 271; [1926] 3 W. W. R. 701.—**CAN.**

the costs of the appeal :—*Held :* (1) in view of the prospective sale of some of the furniture by C., there was a chance that in order to prevent the removal of the furniture C. might have made a payment on account of the debt. Pltf. had lost this chance of payment by the bailiff's action, & this chance ought in the circumstances to be valued at £15 ; (2) the bailiff was liable for the amount of the costs of the second hearing. The costs of the ineffective first hearing & of the appeal, for which the bailiff was not responsible, were too remote.—DOMINE *v.* GRIMSDALL, [1937] 2 All E. R. 119 ; 106 L. J. K. B. 386 ; 156 L. T. 456 ; 53 T. L. R. 498 ; 81 Sol. Jo. 295.

1231a. —— —— **What amounts to.**] — Where, under process of execution from a county ct., some goods of a stranger had been taken, the mere fact that the execution creditor told the bailiff that goods would be claimed by a third party, but that such claim was not to be regarded :—*Held :* not to amount to a direction to take all the goods, or any which were not liable to be seized, so as to make the execution creditor personally liable.—CRONSHAW *v.* CHAPMAN (1862), 7 H. & N. 911 ; 31 L. J. Ex. 277 ; 6 L. T. 54 ; 10 W. R. 323 ; 158 E. R. 738.

1243. *Add. Annotation :*—**Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1244. *Add. Annotation :*—**Refd.** Williams *v.* Williams & Nathan, [1937] 2 All E. R. 559.

1244a. —— —— ——.]—Where, on a claim being made to goods seized by a bailiff, the execution creditor does not direct the bailiff to give up the goods to the claimant, but appears & contests his title in interpleader proceedings :—*Held :* no evidence of a ratification by the execution creditor of the bailiff's detention.—TOPPIN *v.* BUCKERFIELD & CROSS (1883), Cab. & El. 157.

1250. *Add. Citations :*—1 New Pract. Cas. 476 ; *sub nom.* ROLLS *v.* SENIOR, 7 L. T. O. S. 60.

1257. *Add. Annotation :*—**Consd.** Swaffer *v.* Mulcahy, Hooker *v.* Mulcahy, Smith *v.* Mulcahy, [1934] 1 K. B. 608.

1281a. Sale without order of court—Sale not confirmed.]—R. *v.* BLUNT (1828), 2 Y. & J. 120 ; 148 E. R. 857.

1293. *Add. Citation :*—8 Dowl. 97.

1334a. —— **Appeal from—Lies to Court of Appeal.**]—SMITH *v.* TSAKYRIS, [1929] W. N. 39 ; 167 L. T. Jo 92, C. A.

1370a. —— **Subject to mortgage by sub-demise.**]—SMITH *v.* TSAKYRIS, [1929] W. N. 39 ; 167 L. T. Jo. 92, C. A.

1380a. —— ——.]—SMITH *v.* TSAKYRIS, [1929] W. N. 39 ; 167 L. T. Jo. 92, C. A.

1381. In para. for " case " read " estate."

PART III. SECT. 1, SUB-SECT. 12.—C.

r i. ——.]—MAY *v.* HOWLAND, FITCH & WEBB (1859), 19 U. C. R. 66.—**CAN.**

1230 v. —— ——.]—A., after delivering an execution to a constable, took him down upon land owned by B., showed him hay owned by B., & said it was the property of C. The constable having seized the hay under an execution in a suit to which B. was not a party :—*Held :* A. was answerable for the consequence of what the constable did in obeying his instructions.—GRAVES *v.* SPRAGUE (N. B.) (1920), 53 D. L. R. 337.—**CAN.**

1230 vi. —— ——.]—Deft., having obtained an order in a ct. of petty sessions against pltf.'s son, informed the police in charge of a distress warrant that the judgment debtor had a motor lorry at L.'s premises ; that he did not know its registered number, but that L. would point out the lorry to the constable executing the warrant. The lorry was seized on L.'s premises. It was the property of pltf., & was in the possession of L. as his agent for sale. L. did not inform the police of pltf.'s claim, & refrained from giving any information of the seizure to pltf. until after the lorry had been sold. In an action by pltf. for conversion of the lorry :—*Held :* deft. had so intermeddled in the distress as to be liable for conversion.—MORT *v.* BARNES, [1928] V. L. R. 56.—**AUS.**

1243 i. *Ratification by creditor—Whether giving rise to liability—Wrongful seizure.*]—Where a sheriff acting under a valid writ, by the command, & as the servant, of the ct., seizes the wrong person's goods, a subsequent declaration by the execution creditor ratifying & approving the taking cannot alter its character & make it a wrongful taking by the creditor.—BALLANTYNE *v.* MCCULLOCH & CO. & SIMS (B. C.), [1927] 4 D. L. R. 525 ; [1927] 3 W. W. R. 148.—**CAN.**

PART III. SECT. 1, SUB-SECT. 13.—A.

o i. —— *After receipt of attachment.*]—*Held :* the sale could not be upheld, & the attachment must prevail.—RILEY *v.* NIAGARA DISTRICT BANK (1866), 26 U. C. R. 21.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.

st. *Not after debt treated by creditor as satisfied.*]—BANK OF UPPER CANADA *v.* MURPHY (1850), 7 U. C. R. 328.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.

sv. *Delivery of writ—Land bound from time of delivery.*]—DOE d. NESMITH *v.* WILLISTON (1844), 4 N. B. R. (2 Kerr) 459.—**CAN.**

sw. —— *Proof of.*]—The sheriff's deed is *primâ facie* evidence that the writ was delivered to the sheriff & the land seized & sold under it.—MITCHELL *v.* GREENWOOD (1854), 3 C. P. 465.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.—C.

1340 i. *False return.*]—YOUNG *v.* BABY (SHERIFF) (1855), 4 C. P. 537.—**CAN.**

PART III. SECT. 2, SUB-SECT. 5.—A.

f i. —— *Land of patentee of free grant.*]—An execution against the lands of a patentee under the Free Grants & Homesteads Act, R. S. O. 1887, c. 25, on a judgment obtained for a debt incurred before location of the lands, does not operate as a charge against the lands when sold by his devisee, even after the expiry of twenty years from the date of the location.—*Re* BEATTY & FINLAYSON (1896), 27 O. R. 642.—**CAN.**

1356 i. *Land held under joint tenancy.*]—Lands were conveyed to a man & his wife as joint tenants & not as tenants in common :—*Held :* estates by entireties having been abolished, the joint estate was severable, & the interest of one joint tenant could be sold under execution.—*Re* CRAIG, [1929] 1 D. L. R. 142 ; 63 O. L. R. 192.—**CAN.**

sx. *Land held by tenant in common—Claim by other tenants in common for rent received in excess.*]—MCPHERSON *v.* MCPHERSON (1883), 10 P. R. 140.—**CAN.**

sy. ——.]—Under a judgment obtained against a person in a district ct. the registrar of the ct., in executing such judgment, may seize & take under a writ of execution the interests of such person in lands as a tenant in common & upon the writ being forwarded to the Registrar-General, it is his duty to note it on the *folium* of the register which certifies the title of the registered proprietor as a tenant in common.—*In re* GUSS (1927), 28 S. R. N. S. W. 226 ; 45 N. S. W. W. N. 32.—**AUS.**

sz. *Land held by debtor at time of death—On judgment against representative.*]—Lands & tenements held in fee simple by a debtor at the time of his decease, may be legally taken in execution on a judgment against his exor. or administrator.—FORSYTH & RICHARDSON *v.* HALL (1830), Dra. 304.—**CAN.**

sb. *Estate in hands of executor—Judgment against debtor.*]—*In the Estate of* CARTER, ASCOT TIMBER CO. PTY., LTD. *v.* CARTER, [1928] V. L. R. 290 ; [1928] Argus L. R. 199.—**AUS.**

g i. ——.]—RUSSELL *v.* RUSSELL (1881), 28 Gr. 419.—**CAN.**

g ii. —— ——.]—PARKE *v.* RILEY, 3 E. & A. 215.—**CAN.**

g iii. —— *By heir or devisee—Before execution issued.*]—*Held : a bonâ fide* purchaser for value would have a good title as against creditors.—REID *v.* MILLER (1865), 24 U. C. R. 610.—**CAN.**

sc. *Land registered in name of debtor—Ownership vested in third party.*]—*Held :* not executable.—UNION GOVERNMENT (MINISTER OF JUSTICE) *v.* BOLAM, [1927] App. D. 467.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 5.—C.

g i. —— —— ——.]—After a mtge. in fee has become forfeited by nonpayment of the mtge. money, the mtgee.'s interest in the premises cannot be sold under an execution against land.—DOE d. CAMPBELL *v.* THOMPSON (1843), 2 Ont. Dig. 2640.—**CAN.**

g ii. —— *Right of dower v. equity of redemption.*]—CANADIAN BANK OF COMMERCE *v.* ROLSTON (1902), 22 C. L. T. 232 ; 4 O. L. R. 106 ; 1 O. W. R. 351.—**CAN.**

k i. *Interest of unpaid vendor.*]—The interest of an unpaid vendor of

1423. To cross-references before this case add "*See, now,* Land Charges Act, 1925 (c. 22)."

1500. *Add. Annotation :—As to* (3) **Refd.** Smith *v.* Tsakyris (1929), 167 L. T. Jo. 92.

land made exigible under an execution against him by Land Titles Act, R. S. A., 1922, s. 112, includes the legal estate as affected by the contract together with the rights of the vendor under the contract; & it is that estate & those rights which are bound by the writ & may be sold by the sheriff.—MORTON & COWELL *v.* HOFFERT, [1924] 3 D. L. R. 16; [1924] 2 W. W. R. 529.—**CAN.**

k ii. *Assignee of purchaser under contract of sale.*]—The equitable interest of an assignee from the purchaser of a contract for the sale of land is exigible under a writ of *fi. fa.* against the land of such assignee.—WARD *v.* ARCHER (1894), 24 O. R. 650.—**CAN.**

k iii. ——.]—Pltf. sold certain land to deft. S. under agreement for sale, whereby he became entitled to a transfer upon payment of the agreed purchase price & compliance with stated conditions. Subsequently the A. Co. recovered a judgment against S., & registered execution in usual form against his land. S., after such registration, assigned his whole equitable interest in such land to deft. T. The legal title during this time remained in pltf. In an action by pltf. under the contract, the A. Co. claimed a right to intervene as having an interest in the land under their writ of execution :—*Held :* having regard to the provisions of the Land Titles Act, it was evidently the intention of the Legislature that writs of execution should bind only the interests of registered owners of land, & the execution did not bind the equitable interest of deft. S.; (2) no lien is created by an execution against land, only such rights being acquired as are given by the Land Titles Act, & which are not available as against equitable interests.—CANADIAN PACIFIC RAILWAY *v.* SILZER, 3 S. L. R. 162.—**CAN.**

sd. *Debtor interested in land held by wife—Interest sufficient to discharge debt.*]—MACDONALD & Co. *v.* TEASDALE (1913), 24 O. W. R. 534.—**CAN.**

se. *What interests may be seized—Under amendment to Land Titles Act, s.* 125.]—FOSS *v.* STERLING LOAN (1915), 8 W. W. R. 569; 23 D. L. R. 540; 8 Sask. L. R. 289.—**CAN.**

sf. *Equitable interest held as trustee.*]—C., who had an interest in certain land, as purchaser from W., the full price not having been paid, assigned his interest to pltf. upon trust that the latter should support C. & his wife for the remainder of their lives, & on their death pay all their debts & funeral expenses, whereupon the trust should cease, & pltf. should be entitled to all the interest of C. in the property free from any trust; & pltf. agreed to pay to W. the balance of the purchase price :—*Held :* C.'s equitable interest as a purchaser, if transferred to pltf., gave the latter no estate in the land, save to the extent to which a ct. of equity would give C. specific performance of his agreement with W., & that interest would be taken by pltf. as a trust estate, & would not be saleable under a writ of *fi. fa.* against pltf.'s lands.—KIMNIAK *v.* ANDERSON [1929] 2 D. L. R. 904; 63 O. L. R. 428.—**CAN.**

PART III. SECT. 2, SUB-SECT. 5.—G.

sg. *Timber.*]—Where the owner of land sells the timber after a writ against his land is placed in the sheriff's hands, & the purchaser cuts down & removes the timber before an injunction is obtained, he is accountable to the execution creditor for such timber.—BROWN *v.* SAGE (1865), 11 Gr. 239.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

u i. —— —— *Where prior assignment for benefit of creditors.*]—B. made an assignment to C. for benefit of his creditors. Various executions were issued against B.'s lands & notice thereof filed with the Registrar of Titles. C. applied for a certificate of title to B.'s lands :—*Held :* registrar must issue the certificate without endorsing thereon the executions of which he has received notice.—*Re* BROOKS (1900), 12 W. L. R. 303.—**CAN.**

a i. —— *Effect as against assignment for benefit of creditors.*]—MCINTYRE *v.* SHAW (1866), 12 Gr. 295.—**CAN.**

a ii. —— *Effect as against unrecorded deed.*]—GRINDLEY *v.* BLAKIE (1886), 19 N. S. R. (7 R. & G.) 27; 7 C. L. T. 50.—**CAN.**

c i. —— *Effect on judgment mortgage.*]—*Held :* a judgment mtge. did not obtain priority over a judgment registered under 3 & 4 Vict. c. 105, but not re-registered within five years next before the registration of the judgment mtge.—REID *v.* MILLER, [1928] N. I. 151.—**IR.**

e i. —— *Judgment for alimony.*]—Where, at the time a judgment for alimony is registered against the husband's interest in certain land held by him under an uncompleted agreement for sale, he is in a position to compel specific performance of the agreement, the judgment is a charge on the husband's interest; & if, subsequently to the registration of the judgment, & with knowledge of it, the vendor accepts from the husband a quit-claim deed of all of the latter's estate & interest in the land, the vendor holds that interest subject to the charge until the charge is extinguished.—BRIGGS *v.* CARSON, [1924] 4 D. L. R. 774; [1924] 3 W. W. R. 465; 19 Sask. L. R. 59.—**CAN**

e ii. —— *How far binding—Defendant mere conduit pipe to convey title from vendor to third party.*]—OWEN *v.* LYNCH (1877), 11 N. S. R. (2 R. & C.) 406.—**CAN.**

e iii. —— —— 5 *R. S. c.* 84, *s.* 21—*Effect of.*]—LOISBURG LAND CO. *v.* TUTTY (1884), 16 N. S. R. (4 R. & G.) 401.—**CAN.**

p (p. 570) i. —— —— *Priority.*]—An unregistered assignment of a mtge. takes priority over the claim of an execution creditor under an execution registered at a date later than the assignment; & if the unregistered assignment was of the entire mtge. there is no interest in the assignor which can be seized & sold under the writ of execution.—MARKLE *v.* SCILAND & LUDGATE, [1931] 2 W. W. R. 123.—**CAN.**

sh. *Duty of registrar—With notice of writ of execution—Patent not issued for lands entered as homestead.*]—*Re* CLAXTON (1890), 1 Terr. L. R. 282.—**CAN.**

sj. *Judgment not registered—Priority of mortgage.*]—MINERAL PRODUCTS CO. *v.* CONTINENTAL TRUST CO. (1906), 37 S. C. R. 517.—**CAN.**

s (p. 571) i. ——.]—As between the execution creditors of a vendor, & the assignee of his interest under an agreement of sale, whose assignment was acquired subsequently to registration of the executions :—*Held :* the instalment of purchase-money paid into ct. should belong to the execution creditors, but as the money had been obtained under execution, it should be treated as money realised from the sale of the vendor's interest, & being in the sheriff's hands should be subject to distribution under Creditors' Relief Act.—MORTON & COWELL *v.* HOFFERT, [1924] 3 D. L. R. 16; 2 W. W. R. 529.—**CAN.**

PART III. SECT. 2, SUB-SECT. 8.—A.

1459 i. *Right to possession—As against third parties in possession—Not asserting title through debtor.*]—EDWARDS *v.* BENNETT (1869), 5 P. R. 161.—**CAN.**

1459 ii. —— —— *Possession taken forcibly.*]—DOE d. PECK *v.* ROE (1845), 2 U. C. R. 27.—**CAN.**

sm. *Duty of sheriff to retain.*]—DOE d. CREW *v.* CLARKE (1841), 1 Ont. Dig. 233.—**CAN.**

PART III. SECT. 2, SUB-SECT. 10.—A.

a (p. 576) i. —— —— *Mortgage not registered.*]—MOFFAT *v.* GROVER (1855), 4 C. P. 402.—**CAN.**

a (p. 576) ii. —— —— *In hands of receiver.*]—A judgment creditor can sell properties in the hands of a receiver of the ct. in execution of a mtge. decree, although the receiver, who was appointed subsequently to the institution of the mtge. suit, was not made a party to the suit.—TOOMEY *v.* BRUPENDRA NATH BOSE (1928), I. L. R. 7 Pat. 520.—**IND.**

h (p. 576) i. ——.]—JONES *v.* JONES (1868), 15 Gr. 40.—**CAN.**

bb (p. 576) i. —— *Proof of—In ejectment on sheriff's deed.*]—MORAN *v.* PATTON (1853), 10 U. C. R. 640.—**CAN.**

bb (p. 576) ii. —— —— ——.]—DELISLE *v.* DEWITT (1859), 18 U. C. R. 155.—**CAN.**

bb (p. 576) iii. —— —— ——.]—LOW *v.* HICKS (1876), 21 C. P. 113.—**CAN.**

bb (p. 576) iv. —— *Relation back.*]—The title conveyed by a sheriff's deed to land, sold under an execution issued upon a judgment recovered in an action brought on a former judgment in the same ct., does not relate back to the time of signing the first judgment, so as to defeat a conveyance made between the times of signing the first & second judgments.—DOE d. PEABODY *v.* MCKNIGHT (1838), 2 N. B. R. (Ber.) 567.—**CAN.**

bb (p. 576) v. —— —— *To day of sale.*]—Although a sheriff's deed relates back to the day of sale, for the purpose of defeating intermediate conveyances, the vendee cannot bring ejectment until the execution thereof.—GAVILLER *v.* BEATON (1862), 12 C. P. 519.—**CAN.**

cc (p. 576) i. —— —— *Into debtor's title.*]—A purchaser of lands on an execution, is entitled to recover in ejectment against the debtor or his representative, without proof of the debtor's title, or that he was in possession of the premises.—MORAN *v.* PATTON (1853), 10 U. C. R. 640.—**CAN.**

cc (p. 576) ii. —— *To growing crops on land sold.*]—Crops growing at the time of the confirmation of a sheriff's sale of the land under an execution pass with the land to the purchaser.—ANDERSON *v.* STASIUK [1926] 1 D. L. R. 347; [1926] 1 W. W. R. 107; 20 Sask. L. R. 269.—**CAN.**

cc (p. 576) iii. —— *Right to claim partition.*]—An order made on the appln. of purchaser at a sheriff's sale of the interest of a husband, holding as joint tenant, for partition or sale was affirmed.—*Re* CRAIG, [1929] 1 D. L. R. 142; 63 O. L. R. 192.—**CAN.**

t (p. 577) i. —— —— *No issue for two weeks.*]—JOHN ABELL ENGINE & MACHINE WORKS CO. *v.* SCOTT (1907), 6 Terr. L. R. 302; 6 W. L. R. 272.—**CAN.**

g (p. 577) i. —— *Land held adversely by third party.*]—A sheriff selling under execution is not within the class of

1506. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak (1927), 43 T. L. R. 495.

1536a. —— —— **Effect of Law of Property Act 1925 (c. 20), s. 195 (3).**]—A judgment creditor obtained a judgment for payment of £1,250. A writ of *elegit* was issued & the sheriff took possession of certain freehold land of the debtor. The writ was registered in the Land Registry as a charge. The judgment creditor made an application for an order for the sale of the debtor's interest in the land within one year after the date of the judgment:—*Held:* sect. 4 of the Judgments Act, 1864 (c. 112), s. 4, was not impliedly repealed by Law of Property Act, 1925 (c. 20), & a writ of *elegit* having been issued & registered in the Land Registry, the judgment creditor was entitled to the order he asked for.—*Re* CHANCE, [1936] Ch. 266; 105 L. J. Ch. 67; 154 L. T. 493.

1552a. —— **Equitable interest—Amendment—Costs.**]—KIDD *v.* TALLENTIRE, [1877] W. N. 21.

1564a. Issue into county palatine—Indorsement for less than £50.]—BROWN *v.* M'MILLAN (1840), 7 M. & W. 196; 10 L. J. Ex. 147; 151 E. R. 736; *sub nom.* BROWN *v.* MACMILLAN, SAME *v.* MACPHERSON, 8 Dowl. 852; H. & W. 46; 4 Jur. 1090.

1569. *Add*—ANON. (1774), Lofft, 390.

1576a. When completed.]—OWEN *v.* OWEN (1831), 2 B. & Ad. 805; 109 E. R. 1341.

1577a. —— **Whether defendant discharged.**]—HODGSON *v.* TOWNING (1837), Will. Woll. & Dav. 53; *sub nom.* ANON., 1 Jur. 84.

Annotation:—**Consd.** Aga Kurboolie Mahomed *v.* R. (1843), 4 Moo. P. C. C. 239.

1578a. Right to break outer doors.]—MALEVERER *v.* SPINKE (1537), 1 Dyer, 35 b; 73 E. R. 79.

1578b. —— **After escape of prisoner.**]—ANON. (1774), Lofft, 390; 98 E. R. 709.

1578c. ——.]—HOPKINS *v.* NIGHTINGALE (1794), 1 Esp. 99; 170 E. R. 292, N. P.

1579a. —— **Opening of door obtained by trick.**]—*Held:* an unlawful entry.—PARKE & PERCIVAL *v.* EVANS (1615), Hob. 62; 80 E. R. 211.

Annotations:—**Refd.** Lee *v.* Gansel (1774), 1 Cowp. 1; Sandon *v.* Jervis (1859), E. B. & E. 942.

1579b. ——.]—ANON. (1695), 12 Mod. Rep. 73; 88 E. R. 1172.

1580a. —— **What is outer door—Whether hole in wall.**]—Where it was proved that a hole in the outer wall of a house was not intended to have either a door or window put into it, but was to remain open, so that the place should be used as a conservatory:—*Held:* if the hole in the wall had been intended to have had a door or window put into it, it must be considered that the outer fence of the house was left open, but if the hole was always intended to be left open, the staircase window must be considered as the outer fence of the house.—WHALLEY *v.* WILLIAMSON (1836), 7 C. & P. 294; 173 E. R. 130.

---

cases which apply to a person selling land held adversely by another.—DOULL *v.* KEEFE (1901), 34 N. S. R. 15.—**CAN.**

h (p. 577) i. —— —— *Error in judgment.*]—*Held:* the sheriff's deed could give no title.—VAREY *v.* MUIRHEAD (1831), Dra. 486.—**CAN.**

h (p. 577) ii. —— —— *Too much sold.*]—*Held:* no ground for invalidating the sale.—DOE d. HAGERMAN *v.* STRONG (1848), 4 U. C. R. 510.—**CAN.**

h (p. 577) iii. —— —— *Sale in separate lots.*]—*Held:* permissible.—DOE d. ROBERTS *v.* WATSON (1850), 6 N. B. R. (1 All.) 675.—**CAN.**

h (p. 577) iv. —— —— *Part only sold—Duty of sheriff to designate portion offered for sale.*]—KNAGGS *v* LEDYARD (1866), 12 Gr. 320.—**CAN.**

h (p. 577) v. —— —— *Sale of undivided interest in township lots.*]—RATHBUN *v.* CULBERTSON (1875), 22 Gr. 465.—**CAN.**

h (p. 577) vi. —— —— *Time of sale.*]—*Held:* the sheriff might sell at any time between the hours named in 27 Geo. 3, c. 12.—DOE d. ROBERTS *v.* WATSON (1850), 6 N. B. R. (1 All.) 675.—**CAN.**

h (p. 577) vii. —— —— *Sheriff disregarding judgment creditor's instructions—Bidding at once full amount instead of bidding gradually.*]—*Held:* the judgment creditor had no ground of action against the sheriff.—MARKLE *v.* THOMAS (SHERIFF) (1856), 13 U. C. R. 321.—**CAN.**

h (p. 577) viii. —— —— *Proof of.*]—ROE *v.* MCNEIL (1863), 13 C. P. 189.—**CAN.**

h (p. 577) ix. —— —— ——.]—FIELDS *v.* LIVINGSTON & WIGHTMAN (1866), 17 C. P. 15.—**CAN.**

h (p. 577) x. —— —— *Purchaser estopped from disputing validity.*]—FERGUSON *v.* FERGUSON (1869), 16 Gr. 309.—**CAN.**

h. (p. 577) xi. —— *Effect of—Sale of equity of redemption—Purchase by assignee from execution creditor—Subsequent conveyance to debtor.*]—CHITTICK *v.* LOWERY (1903), 24 C. L. T. 15; 6 O. L. R. 547; 2 O. W. R. 957.—**CAN.**

h (p. 577) xii. —— —— *Covenants.*]—The implied covenants between vendor & purchaser, including those implied by Land Titles Act, R. S. S., 1920 (c. 67), s. 64 (2), do not come into existence where land is sold by the sheriff under execution.—ANDERSON *v.* STASIUK (No. 3), [1927] 1 D. L. R. 529; [1927] 1 W. W. R. 49; 21 Sask. L. R. 276.—**CAN.**

h (p. 577) xiii. —— *Right to proceeds—Two writs lodged with registrar.*]—*Re* THE MASSEY MANUFACTURING CO. *v.* HUNT, THE MCCORMICK HARVESTING MACHINE CO. *v.* HUNT (1895), 2 Terr. L. R. 84.—**CAN.**

h (p. 577) xiv. —— *Under writ of execution lodged prior to agreement for sale to third party—Priorities—Affidavits in support of confirmation of sale irregular.*]—*Re* PRICE (1912), 21 W. L. R. 299.—**CAN.**

dd (p. 577) i. *Lands sold subject to "incumbrances"—Whether subject to subsequent executions.*] — GRIESE *v.* WALKER (1913), 23 W. L. R. 709; 4 W. W. R. 77.—**CAN.**

ss. *Confirmation of sale—Right of appeal.*]—A local master, in confirming a sale of land sold under execution, is not acting in a matter or an action in ct. but as *persona designata* under Land Titles Act, R. S. S., 1920, c. 67, & the only appeal is to the Ct. of Appeal.—ETHIER *v.* NOLLE, [1924] 1 W. W. R. 493.—**CAN.**

sb. *Distribution of proceeds of sale.*]—The proceeds of a sale of land under execution when paid over to the registrar of the ct. are distributable by him as if they were money in the hands of the sheriff distributable under Creditors' Relief Act. An appeal lies to a judge from the registrar's scheme of distribution.—CAUDWELL *v.* GEORGE, [1925] 2 D. L. R. 229; [1925] 1 W. W. R. 579; 35 B. C. R. 134.—**CAN.**

sc. *Right to sell—To realise judgment of county court.*]—Queen's Bench Act, 1895, rr. 804 to 806, do not authorise proceedings to be taken in a summary way under them for the purpose of realising a registered judgment of a county ct. by sale of land, such rules being applicable only to judgments in the Q. B.—PROCTOR *v.* PARKER (1897), 11 Man. L. R. 485.—**CAN.**

sd. *Affidavit of execution of transfer—Sworn before unauthorised person.*]—JOHN ABELL ENGINE & MACHINE WORKS CO. *v.* SCOTT (1907), 6 W. L. R. 272; 6 Terr. L. R. 302.—**CAN.**

se. *Proceedings to confirm sale—How intituled.*]—JOHN ABELL ENGINE & MACHINE WORKS CO. *v.* SCOTT (1907), 6 W. L. R. 272; 6 Terr. L. R. 302.—**CAN.**

sk. *Interest acquired by purchaser.*]—A purchaser at a sheriff's sale only acquires the interest of the judgment debtor in the land bound by the judgment.—PERRO *v.* ANTIGONISH, [1936] 2 D. L. R. 119; 10 M. P. R. 315.—**CAN.**

PART III. SECT 2, SUB-SECT. 11.

1557i. *Order of court—When court will set aside sale—On equitable grounds.*]—WOOD *v.* LEEMING (1827), Tay. 463.—**CAN.**

1557 ii. —— —— ——.]—CAMPBELL *v.* SMITH (1863), 10 Gr. 206.—**CAN.**

1557 iii. —— —— *Notice of motion not given to purchaser.*]—*Held:* the ct. would not interfere.—MCGILLIS *v.* MCDONALD (1839), 2 Ont. Dig. 2662.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A.

sg. *Proceedings after surrender—Set aside.*]—WARD *v.* STOCKING (1825) Tay. 216.—**CAN.**

1581a. ——.]—RING *v.* HYDE (1850), 14 L. T. O. S. 377.

1584a. —— ——.]—*Held:* valid.—ANON. (1702), 7 Mod. Rep. 8; 87 E. R. 1060.

Annotation:—**Apld.** Sandon *v.* Jervis (1858), E. B. & E. 935.

1584b. —— **Window broken to take into custody.**]—*Held:* valid.—LLOYD *v.* SANDILANDS (1818), 8 Taunt. 250; 2 Moore, C. P. 207; 129 F. R. 379.

1614. *Add. Annotations:*—*As to* (2) **Consd.** Ellis *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 81; *Re* Simms, *Ex p.* Trustee, [1934] Ch. 1.

1615. *Add. Annotations:*—**Distd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401. **Consd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162. **Refd.** South Bedfordshire Electrical Finance, Ltd. *v.* Bryant, [1938] 3 All E. R. 580.

1617. *Add. Annotation:*—**Consd.** Ellis *v.* Stenning (John) & Son, Ltd., [1932] 2 Ch. 81.

1618. *Add. Annotations:*—**Consd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 101 L. J. Ch. 401. **Refd.** Freshwater *v.* Bulmer Rayon Co., [1933] Ch. 162; South Bedfordshire Electrical Finance, Ltd. *v.* Bryant, [1938] 3 All E. R. 580.

1658a. —— **More than amount of rent due—Redelivery of surplus**]—Several crops having been taken under an *habere facias possessionem* issued on an ejectment brought against a tenant for holding over, the ct. refused a rule for the lessors of pltf. to pay over the value of them to deft. after deducting the amount of rent due.—DOE d. UPTON *v.* WITHERWICK (1825), 3 Bing. 11; 10 Moore, C. P. 267; 3 L. J. O. S. C. P. 126; 130 E. R. 417.

Annotation:—**Refd.** Kelly *v.* Webber (1860), 3 L. T. 124.

1667a. Irregular execution—Part of premises within Rent Acts—Failure to warn sheriff—Liability of landlord.]—The first deft. had obtained a writ of possession in respect of a house; the second deft., who was a sheriff's officer, proceeding under this writ, evicted pltf., who alleged that the portion of the house that he occupied was controlled under the Rent Restrictions Acts. Pltf. brought an action against the landlord & the sheriff's officer for damages for trespass. The landlord was present at the time of the eviction but did not tell the officer that part of the house was controlled:—*Held:* (1) the landlord, although present at the eviction, had not taken any part in it, or given the sheriff's officer any such directions as would make him his agent. He was therefore not liable; (2) the sheriff's officer was, in the course of his duty, executing a judgment of the ct., & so was not liable in an action for damages, however wrong the judgment might have been.—WILLIAMS *v.* WILLIAMS & NATHAN, [1937] 2 All E. R. 559; 81 Sol. Jo. 435, C. A.

1667b. —— —— —— **Liability of sheriff's officer.**]—WILLIAMS *v.* WILLIAMS & NATHAN, No. 1667a, *ante*.

1677. *Add. Citation:*—*sub nom.* WILSON *v.* CHANTON (1862), 6 L. T. 255.

1704. *Add. Annotations:*—**Folld.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65. **Refd.** Windsor *v.* Chalcraft, [1938] 2 All E. R. 751.

1706a. —— —— **Payment of rent—How rent calculated.**]—Upon a motion to set aside an ejectment & restore possession upon payment of the rent due & costs, the rent must be calculated only to the last rent day, not to the day of computing.—DOE d. HARCOURT *v.* ROE (1813), 4 Taunt. 883; 128 E. R. 579.

1720. *Add. Annotations:*—**Apld.** Burrowes. *v.* Burrowes (1929), 141 L. T. 201. **Refd.** Capron *v.* Capron, [1927] P. 243.

1745. *Add. Annotation:*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

1753. *Add. Annotations:*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

1754. *Add. Annotations:*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

1754a. ——.]—*Semble:* arrears of alimony accrued due come within the scope of R. S. C., Ord. 43, as constituting disobedience to an order not merely to pay money, but to do so within a limited time.—CAPRON *v.* CAPRON, [1927] P. 243; 96 L. J. P. 151; 137 L. T. 568; 43 T. L. R. 667; 71 Sol. Jo. 711.

1758. *Add. Annotation:*—**Refd.** *Re* Nelson, Norris *v.* Nelson, [1928] Ch. 920, n.

1769. *Add. Annotation:*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

1847. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

1855. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

1882a. *S. P. Re* RUSH (1870), L. R. 10 Eq. 442; 39 L. J. Ch. 759.

1912. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

1944. *Add. Citations:*—*sub nom.* KIRLEW *v.* BUTTS, 2 B. & Ad. 736, n.; 109 E. R. 1318.

Add. Annotations:—**Apld.** Britten *v.* Wait (1832), 3 B. & Ad. 915. **Refd.** Newland *v.* Watkin (1832), 2 Moo. & S. 174; Colebrooke *v.* Layton (1833), 1 Nev. & M. K. B. 374.

1955. *Add. Annotation:* — **Refd.** *Re* Woods (Bristol), Ltd. (1931), 47 T. L. R. 464.

PART III. SECT 3, SUB-SECT. 5.—A.

a i. —— *By mistake—Second writ refused.*]—**BRADBURY** *v.* **LONEY** (1842), 6 O. S. 291.—**CAN.**

a ii. —— *Where proof of no intention to leave province—Ownership of property sufficient to satisfy debt.*]—**TOOLE** *v.* **HENNEBERRY, [1928] 3 D. L. R. 38.—CAN.**

ak. *Not granted—Debtor having interest in land not subject to execution.*]—*Re* **GELDERT** *v.* **HOAR,** *Ex p.* **GELDERT** (1899), 34 N. B. R. 612.—**CAN.**

PART III. SECT. 5, SUB-SECT. 3.

r i. —— *By whom signed & issued—By clerk of court & not by judge.*]—**ALLENACH** *v.* **DESBRISAY** (1866), N. B. Dig. 493.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 5.

2020 ii. —— —— *Burden of proof of reasonableness of charges.*]—**MCGREGOR** *v.* **KLOTZ, [1929] 4 D. L. R. 792; 3 W. W. R. 183.—CAN.**

Part V.—Analogous Proceedings.

2046. In the cross-reference before this case, for "METROPOLIS" read "MAYOR'S & CITY OF LONDON COURT."

2058. *Add. Annotations :*—**Apld.** Anantapadmanabhaswami *v.* Secunderabad Official Receiver, [1933] A. C. 394. **Refd.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

2059a. Judgment by default—Against dissolved foreign corporation.]—Before the Bolshevik Revolution of Oct. 1917, in Russia the M. Bank in London owed a Russian Bank a large sum of money. At the same time the Russian Bank was largely indebted to L. Brothers, also bankers in London. Between Oct. 1917, & Aug. 3, 1921, numerous decrees of the Govt. of Russia & orders of various Departments thereof were made & published purporting to nationalise or liquidate all banking corpns. in Russia, including the Russian Bank above mentioned. In Oct. 1930, L. Brothers, having filed an affidavit stating that the Russian Bank was a co. registered & domiciled in Russia, obtained leave under R. S. C., Ord. 9, r. 2, to issue a writ against the Russian Bank & to serve notice of the writ by sending it by registered post to the former address of the Bank in Moscow. Having then signed judgment in default of appearance against the Russian Bank, L. Brothers obtained a garnishee order *nisi* against the M. Bank attaching all debts due from the M. Bank to the Russian Bank, & an issue was subsequently directed to be tried, whether the M. Bank was indebted to the Russian Bank to any & what extent. On the evidence of Russian lawyers who had practised in Russia since the Revolution :—*Held :* the Russian Bank had ceased to exist in & before Oct. 1930, & consequently the writ, the judgment & the garnishee proceedings, were null & void & must be set aside.—LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., [1933] A. C. 289 ; 102 L. J. K. B. 191 ; 148 L. T. 242 ; 49 T. L. R. 94 ; 76 Sol. Jo. 888, H. L. ; *affg.* S. C. *sub nom.* LAZARD BROS. & CO. *v.* BANQUE INDUSTRIELLE DE MOSCOU, [1932] 1 K. B. 617, C. A.

Annotations :—As to (1) **Refd.** Burr *v.* Anglo-French Banking Corpn., Ltd. (1933), 49 T. L. R. 405 ; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

2084a. Person out of jurisdiction.]—R. S. C., Ord. 45, r. 1, contemplates both a garnishee & a debt recoverable within the jurisdiction.

A judgment debtor had a balance in an English bank with foreign branches where foreign currency was in use. It was claimed that a garnishee order obtained in England against the bank should extend to possible balances to the credit of the judgment debtor at its foreign branches :—*Held :* the foreign balances, not constituting a debt recoverable within the jurisdiction, could not be attached by a garnishee order.—RICHARDSON *v.* RICHARDSON, [1927] P. 228 ; 96 L. J. P. 125 ; 137 L. T. 492 ; 43 T. L. R. 631 ; 71 Sol. Jo. 695.

PART V. SECT. 1, SUB-SECT. 2.—A.

sl. *Magistrate's order for maintenance of deserted wife—Affirmed by county court.*]—*Held :* a judgment enforceable by the attachment of a debt due to the husband.—BROWN *v.* BROWN, [1927] 4 D. L. R. 314 ; [1927] 3 W. W. R. 172 ; 38 B. C. R. 473.—**CAN.**

sm. *Judgment by consent—Not to be entered till subsequent date.*]—Where a consent judgment provides that it shall not be entered until a subsequent date the party for whom the judgment is given cannot in the meantime truthfully make the affidavit required by King's Bench Act, s. 759, for the obtaining of a garnishee order.—HODGKINS *v.* HARRIS INVESTORS, LTD., [1929] 1 D. L. R. 189 ; [1928] 3 W. W. R. 540.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—B.

n i. —— *Making assignment in bankruptcy.*]—Where after recovering a judgment the judgment creditor makes an assignment in bkpcy., & there has been no re-assignment of the judgment to him, a garnishee summons issued by him, on an affidavit which states that the judgment debtor is indebted to him in respect of such judgment, is a nullity & cannot be cured by acquiescence, particularly in the absence of knowledge on the part of the garnishee.—LANIN *v.* ZAWISLAK & DEMOSKY (Sask.), [1927] 2 W. W. R. 71.— **CAN.**

PART V. SECT. 1, SUB-SECT. 2.—C.

2077 ii. —— ——.]—An application to set aside a garnishee summons, on the ground that the money attached is trust money & does not belong to appct., will not be entertained.—THOMPSON *v.* FRASER (Sask.), [1926] 3 W. W. R. 251.—**CAN.**

k. Read now "**2084a i.** *Person out of jurisdiction.*"

l. Read now "**2084a ii.**"

m. Read now "**2084a iii.**"

n. Read now "**2084a iv.**"

o. Read now "**2084a v.**"

2084a vi. —— *Debt payable within province.*]—While ordinarily Attachment of Debts Act, R. S. S., 1930, does not apply to persons resident outside Saskatchewan, yet it does apply when such persons submit themselves to the jurisdiction of the Saskatchewan cts. & are temporarily within the province & the debt garnished is payable within the province.—MCILRATH LUMBER CO., LTD. *v.* SHORE & SHORE & DENNISSON, [1931] 2 W. W. R. 785 ; 4 D. L. R. 894. —**CAN.**

2084a vii. —— *Licensed to do business in Canada.*]—Applt., in May, 1928, issued in the United States an insurance policy to F., an American subject, by which it agreed to indemnify F. against loss by reason of her legal liability to pay damages to others arising out of the ownership, operation or use of her automobile within the United States or Canada. Resp. adduced evidence that on Mar. 23, 1929, applt. was licensed to carry on the business of automobile & other insurance in Ontario, & showing its head office for the province, & its assets in Ontario (moneys in bank) & its assets deposited with the Receiver-General of Canada for the protection of Canadian policy holders, as shown by its annual statement filed as required by law :—*Held :* applt. was a "person within Ontario" & was "indebted to the judgment debtor," within r. 590 of the Ontario Rules of Ct.—CENTURY INDEMNITY CO. *v.* ROGERS & FITZGERALD, [1932] S. C. R. 529 ; 2 D. L. R. 582 ; *affg.*, [1931] 3 D. L. R. 225 ; O. R. 342.—**CAN.**

ao. *Debtor out of jurisdiction—Writ obtained ex parte—Leave to execute.*]—JONES *v.* JONES, [1928] V. L. R. 24.—**AUS.**

aq. *Company in liquidation.*]—When a co. is in liquidation its funds are not subject to garnishment.—RUDDELL GRAIN GROWERS ASS'N., LTD. *v.* CLEATOR & SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD., [1928] 1 W. W. R. 222.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—A.

r (p. 621) i. —— ——.]—Money paid into ct. cannot be attached by garnishing the clerk of the ct.—ROYAL BANK OF CANADA *v.* VAN BUREN & MCKAY (Alta.), [1927] 1 W. W. R. 268.—**CAN.**

r (p. 621) ii. —— ——.]—Money paid into ct. as compensation due to the dependants of a deceased workman under Workmen's Compensation Act, 1925 (c. 84), is not subject to arrestment.—WILLIAM BAIRD & CO. *v.* CAMPBELL, [1928] S. C. 314.—**SCOT.**

r (p. 621) iii. —— *Money deposited with returning officer.*]—*Held :* not attachable.—CREAGH *v.* SUTHERLAND & READE (1895), 3 Terr. L. R. 303.—**CAN.**

k (p. 622) i. —— ——.]—HIME *v.* COULTHARD (1910), 15 W. L. R. 288; 20 Man. L. R. 164.—**CAN.**

k (p. 622) ii. —— —— *For destruction of exempt property.*]—Where a claim for damages for the destruction of exempt property has been converted into a debt, the amount thereof is not exempt from garnishment.—ROSS *v.* ROGERS & CANADIAN NATIONAL RYS. (Sask.), [1927] 3 W. W. R. 169.—**CAN.**

k (p. 622) iii. —— —— *Interest as.*]—A claim for interest as damages is not one for a debt or liquidated demand within Attachment of Debts Act, R. S. S., 1930.—BUCKOLZ *v.* P. W. GRAHAM & SONS, LTD., [1931] 2

2086a. ——.]—FASSNIDGE *v.* FLINT & SON (1892), 8 T. L. R. 213.

2087a. —— **Third party insurance.**]—An insurance co. agreed to indemnify the owner of a motor car against liability for accidental injury to third persons caused by the use of the car. The policy contained conditions relating to the giving of notice of any accident & the obtaining of an award of an arbitrator, & gave the co. power to control or settle any proceedings which might be brought against the assured by an injured third party. Judgment having been recovered by such a person against the assured :—*Held :* the liability of the co. under the policy was not a debt which could be attached by the judgment creditor in garnishee proceedings under R. S. C., Ord. 45, r. 1.—ISRAELSON *v.* DAWSON, [1933] 1 K. B. 301 ; 102 L. J. K. B. 387 ; 148 L. T. 420, C. A.

2088. *Add. Citation :—sub nom.* MACDONALD *v.* HOLLISTER (1855), 3 W. R. 522.

2099. *Add. Annotation :*—**Refd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Obschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

2107. *Add. Annotations :*—**Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde Des Olivaes, [1929] 1 Ch. 221 ; Hirschhorn *v.* Evans, [1938] 3 All E. R. 491.

2108. *Add. Annotation :*—**Expld.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

2120. *Add. Annotation :*—**Refd.** Israelson *v.* Dawson (1932), 102 L. J. K. B. 387.

2121. *Add. Annotations :*—**Apld.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Obschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47. **Refd.** Richardson *v.* Richardson, [1927] P. 228 ; Plunkett *v.* Barclays Bank, Ltd., [1936] 1

W. W. R. 90 ; *on appeal*, [1931] 2 W. W. R. 737 ; 4 D. L. R. 854.—**CAN.**

k (p. 622) **iv.** —— —— *Against stockbroker.*]—MACKEE *v.* SOLLOWAY MILLS & Co., LTD., [1930] 1 W. W. R. 563 ; 3 D. L. R. 145 ; 42 B. C. R. 438. —**CAN.**

l (p. 622) **i.** —— *Conditional annuity.*]—Testator bequeathed his estate to trustees upon trust (*inter alia*) to pay out of the income to his widow an annuity of £200 "subject to the obligation of maintaining & educating thereout such of my children as shall for the time being be minors & shall not be married. On a motion to make absolute a charging-order *nisi* affecting to attach the widow's interest in the annuity :—*Held :* the annuity, being a debt subject to a condition, could not be attached, & the motion should be dismissed.—PUBLIC TRUSTEE *v.* POLSON, [1931] N. Z. L. R. 321.—**N.Z.**

l (p. 624) **i.** —— *Deposit paid under agreement to purchase.*]—Judgment debtor by memorandum in writing agreed to purchase from applts. (garnishees) land on which a house was to be erected. He agreed to pay & paid to applts. £100 deposit & "balance" purchase-money when house is completed. No price was specified. It was not clear on the evidence whether the price had been subsequently agreed or not, but, on an account being rendered to debtor for £1,150, he said he would consider the matter, & continued to negotiate either as to the price or arrangements for payment until he was served with the garnishee order *nisi*, when he agreed to take the land for £1,150 :—*Held :* the amount of the deposit was neither a debt owing or accruing from the garnishees to judgment debtor, the deposit was intended to remain with applts. until it was certain that negotiations for the contract had failed, & was not subject to attachment.—MAYWALD *v.* RIEDEL, [1927] S. A. S. R. 345.—**AUS.**

m (p. 624). *Revsd.*, [1924] 1 D. L. R. 1154 ; [1924] 1 W. W. R. 707 ; 18 Sask. L. R. 158.

m (p. 624) **i.** —— ——.]—The balance of purchase-money owing under an agreement of sale of land, though all overdue, & assuming that the vendor is able & willing to convey & that the contract contains the usual provisions as to transfer, free from encumbrances on payment of the purchase-money, but where no transfer has been given or tendered, is not attachable by garnishment, as the debt is not a perfected & unconditional one.—REED *v.* RENTON & PETTINGER, [1924] 2 W. W. R. 223.—**CAN.**

m (p. 624) **ii.** —— ——.]—MOORE *v.* NYLAND, MCPHERSON, [1930] 1 W. W. R. 627 ; 3 D. L. R. 203 ; 42 B. C. R. 444.—**CAN.**

m (p. 624) **iii.** —— *Balance of payment to mortgagee under policy taken out by mortgagor.*]—A hail-insurance policy taken out by a mtgor. on a crop growing on the mortgaged land provided that all loss thereunder should be payable to the mtgees., "as their interests may appear" & that the policy was held as collateral security to the mtge. On a loss occurring, the amount thereof was paid by the insurance co. to the mtgees., who applied part of it in payment of arrears then due on the mtge. & entered the surplus in their books "to the credit of the mtgor. account." On being served with a garnishee order the mtgees. paid the amount claimed into ct. :—*Held :* the money in ct. should be paid to the garnishing creditor.—ROYAL BANK OF CANADA *v.* KENWARD, [1925] 4 D. L. R. 905 ; [1925] 3 W. W. R. 549.—**CAN.**

m (p. 624) **iv.** —— *Purchase-money deposited in escrow.*]—The purchase price of land deposited in escrow pending the showing of proper title & delivery of the conveyance :—*Held :* garnishable, where there was no suggestion that there was any defect of title, or that there would be any obstacle to the execution & delivery of the conveyance.—HANKEY & Co., LTD. *v.* VERNON, [1926] 1 D. L. R. 684 ; [1926] 1 W. W. R. 375 ; 36 B. C. R. 401.—**CAN.**

r (p. 624) **i.** —— *Money due on mortgage.*]—Moneys due on a mtge. of land are subject to garnishment, even though, as in Alberta, Judicature Act requires that, unless the ct. otherwise order, the land be sold before the mtgee. issues execution.—ROYAL BANK OF CANADA *v.* LEE & W. B. MOFFATT & Co. (Alta.), [1929] 4 D. L. R. 975 ; 3 W. W. R. 260.—**CAN.**

r (p. 624) **ii.** —— *Money in hands of garnishee as proceeds of sale by debtor—Sale set aside.*]—At the time of the service of the garnishee order herein the garnishees were holding a sum of money under the following circumstances : The garnishee had bought cattle from the judgment debtors ; the sale had been set aside as void against creditors ; but the garnishees received the money in question from the government as compensation for some of the cattle which the government had ordered to be destroyed. After the service of the garnishee order the garnishees agreed with the judgment debtors that the bill of sale for the cattle should be regarded as *non est* & that the moneys in question should be treated as the property of the judgment debtors :—*Held :* the moneys were attachable.—MARSHMAN *v.* BREADIN, CHRISTIE, SCOTT & PEDEN, [1933] 1 W. W. R. 668 ; 3 D. L. R. 312. 46 B. C. R. 537.—**CAN**

2102 i. *Cheque given to satisfy debt.*]—On an issue as to whether a garnishee owed his creditor an amount in excess of that paid by him into ct. it was found that a cheque given by the garnishee to his creditor was delivered before the garnishee summons was served & that it was taken as payment. The fact that the garnishee had an opportunity to stop payment of the cheque after service of the garnishee summons but did not do so did not assist the garnishor.—MCCALLUM *v.* MUNTON, [1936] 3 W. W. R. 32.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B

2113 i. —— *At date of service of order—Necessity for—Salary payable at end of month in which order served.*]—STUMP *v.* BATZOLD & ZION UNITED CHURCH, [1931] 2 W. W. R. 784 ; 44 B. C. R. 282.—**CAN.**

2115 iii. —— ——.]—Where at the time of the issuance of the garnishee order the obligation to pay the money is dependent upon conditions which may or may not be fulfilled there is no debt due or accruing due. An accruing debt is one which, although not yet payable, is yet an existing obligation.—VATER *v.* STYLES & METROPOLITAN LIFE INSURANCE CO., [1930] 2 W. W. R. 241 ; 3 D. L. R. 509 ; 42 B. C. R. 463. —**CAN.**

d (p. 626) **i.** —— *Payment of purchase-money conditioned on clearing off encumbrances.*]—Where payment of purchase-money on a sale of land is conditional on the clearing off of encumbrances, it is not garnishable at a time when a transfer showing a clear title in the purchaser has not yet been registered.—FAAS *v.* MCMANUS (Alta.), [1930] 1 D. L. R. 302 ; 24 Alta. L. R. 317 ; [1929] 3 W. W. R. 598.—**CAN.**

sj. *Must be at time of issue of summons.*]—THORESON *v.* BLAIRMORE SCHOOL DISTRICT TRUSTEES (Alta.), [1927] 3 D. L. R. 641 ; [1927] 2 W. W. R. 439.—**CAN.**

sk. *Claim by dismissed servant.*]—Where the debt alleged to be due from the garnishee to deft. was based on an oral agreement of service for one year, & deft. had been dismissed by the garnishee & had retained a solr., who wrote stating that deft. intended to hold the garnishee to his contract & threatening legal proceedings, but no writ had been issued at the time of the service of the garnishee summons : —*Held :* there was no debt due or accruing due from the garnishee to deft.—MASON *v.* MCLEOD & FOSTER, [1925] 1 D. L. R. 752 ; [1925] 1 W. W. R. 165 ; 19 Sask. L. R. 221.—**CAN.**

All E. R. 653; Hirschhorn *v.* Evans, [1938] 3 All E. R. 491.

2124a. Must be recoverable within jurisdiction.]—RICHARDSON *v.* RICHARDSON, No. 2084a, *ante.*

2131. *Add. Annotation:*—**Reld.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

2134. *Add. Annotation:*—**Consd.** Hirschhorn *v.* Evans, [1938] 3 All E. R. 491.

2135. *Add. Annotations:*—**Reld.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378; Hirschhorn *v.* Evans, [1938] 3 All E. R. 491.

2140. *Add. Annotation:*—*As to* (2) **Dbtd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Obschestro Komseverputj & Bank for Russian Trade, Ltd., [1933] 1 K. B. 47.

2140a. —— ——.]—Judgment debtors instructed their bank to transfer their account to the account of another body which had diplomatic privilege & to close their account, & that transaction was then entered in the books of the bank, but before any notice of or acquiescence in the transfer by the proposed transferees the judgment creditor served a garnishee order *nisi* on the bank attaching the judgment debtors' account:—*Held:* (1) after the bank received notice to close & transfer the account, & the appropriate book entries had been made, but no notice of the transfer had been given to the proposed transferees, the relation of banker & customer still existed; (2) the judgment debtors had power to revoke the direction to close & transfer their account at the time when the garnishee order was served; (3) at the time the garnishee order was served it operated in law as a revocation of the direction to transfer the account so long as no notice of or acquiescence in the transfer had been received by the proposed transferee.—REKSTIN *v.* SEVERO SIBIRSKO GOSUDARSTVENNOE AKCIONERNOE OBSCHESTRO KOMSEVERPUTJ & BANK FOR RUSSIAN TRADE, LTD., [1933] 1 K. B. 47; 102 L. J. K. B. 16; 147 L. T. 231; 48 T. L. R. 578; 76 Sol. Jo. 494, C. A.

---

sm. *Debt payable on performance of acts by other party.*]—When a contractor has completed his part of a contract, there is an accruing obligation which can be garnished, notwithstanding that payment is not to be due until after the performance of other acts by the other party.—RAYNER *v.* NGURAUTER (1932), 45 B. C. R. 353.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—E.

2124 ii. ——.]—PARKER *v.* MCILWAIN (1896), 17 P. R. 84.—**CAN.**

2124 iii. ——.]—To enable a judgment creditor to obtain an order compelling a garnishee to pay to him a debt which he would otherwise have to pay to the judgment debtor, the debtor must be in a position to maintain an action for it against the garnishee.—KIRKHAM *v.* KIRKHAM (1936), 50 B. C. R. 321.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—F.

2131 ii. —— ——.]—Garnishee orders take effect only as against that which debtor can properly, & without violation of any other rights of any one else, grant.—CAMPBELL *v.* GEMMELL (1890), 6 Man. L. R. 355.—**CAN.**

t i. *Debt due to judgment debtor in hands of co-defendant.*]—*Held:* not attachable.—GILCHRIST *v.* WILEY (1881), 28 Gr. 425.—**CAN.**

sl. *Debt due from one partnership to debtor of another partnership—One partner common to both firms.*]—MCCORMICK *v.* PARK (1859), 9 C. P. 330.—**CAN.**

so. *Money lodged by candidate for election—Before election held.*]—Moneys lodged by a candidate for election under Local Government Act, 1915, s. 127, are not, before the election has taken place, attachable as a debt due by the returning officer to the candidate.—HUNT *v.* BALFOUR, [1928] V. L. R. 488; [1928] A. L. R. 313.—**AUS.**

PART V. SECT. 1, SUB-SECT. 3.—H.

o i. —— *Effect of defect.*]—Pursuant to a garnishee order issued by a judgment creditor in a county ct. action the garnishee, having been notified by a bank that the bank held an assignment from deft. co. of all book debts due to said co., paid the amount into ct. The assignment had been executed by deft. co. under seal by its president & its secretary-treasurer. The president was the garnishor. The assignment stated that it was made "for valuable consideration," & the accompanying affidavit by an agent of the bank stated that the assignment was "for good or valuable consideration, as set forth in said conveyance or assignment":—*Held:* although the assignment was defective because it did not comply with sect. 3 of Bills of Sale & Chattel Mtge. Act, C.A., 1924, which governed the assignment in question, in that the assignment did not set out the full & true consideration for which it was given, nevertheless said defect was of no avail to the garnishor since the right to garnish depends upon the debt belonging to deft. when the order is taken out, & if the debtor has already parted with the debt under an assignment good as between him & his assignee the defect is immaterial.—MCKAY *v.* BANK OF MONTREAL, [1932] 1 W. W. R. 897; 3 D. L. R. 226; 40 Man. L. R. 391.—**CAN.**

p i. *Assignment of earnings of farm implement.*]—An assignment of 25 per cent. of the earnings of a farm implement in favour of the vendor takes priority over a garnishee order attaching such earnings, even though the notice required to be given by the vendor was not served until after the service of the garnishee order.—TURNER *v.* WATERLOO MANUFACTURING CO., [1926] 2 D. L. R. 706; [1926] 1 W. W. R. 949; 35 Man. L. R. 472.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—I.

2142 iv. ——.]—The word "debts," as used in Code of Civil Procedure, s. 60, applies only to debts actually due; it cannot include debts, *e.g.* rent, which may become due in the future. Rent which has not yet become due cannot be attached either as a debt or as an actionable claim.—LACHMAN *v.* JARBANDHAN (1927), I. L. R. 50 All. 507.—**IND.**

PART V. SECT. 1, SUB-SECT. 3.—J.

c (p. 633) **i.** —— *Amount of exemption—Not affected by payments made on account.*]—CONTINENTAL GUARANTY CORPN. OF CANADA, LTD. *v.* HORODYSKE & CANMORE COAL CO., LTD. (Alta.), [1927] 1 W. W. R. 401.—**CAN.**

d (p. 633) **i.** —— *Deputy sheriff & gaoler.*]—*Ex p.* BOWES (1896), 34 N. B. R. 76.—**CAN.**

d (p. 633) **ii.** —— *Workman—Duration of employment.*]—DOMINION LUMBER & FUEL CO. *v.* KNAPP, [1928] 2 W. W. R. 257; 37 Man. L. R. 353.—**CAN.**

d (p. 633) **iii.** —— *Wages Act, s.* 1.]—Pltfs., having an unsatisfied judgment against deft. attached a sum of money said to be due to him, in the hands of the W. Co., which paid it into ct. Deft. was in the employment of the co.; he was obliged by his contract with it to give his whole time & attention to its service; the sum attached was remuneration for the services he rendered to the co. as its manager, being a share of the profits agreed to be paid in addition to salary; in his employment he agreed to act under the policies prescribed by the directors of the co.; & the sum attached was not payable to him in any capacity other than that of an employee of the co.:—*Held:* the sum attached was "wages" within Wages Act, s. 1, & should be dealt with in accordance with s. 7.—CRAVEN *v.* LALONDE, [1929] 4 D. L. R. 674; 64 O. L. R. 135.—**CAN.**

d (p. 633) **iv.** ——.]—The word "attachment" in rule 661 includes any process by which the wage-earner would be deprived of his wages.—COLEMAN *v.* EIGHT MILE CONSOLIDATED SCHOOL DISTRICT, [1936] 1 W. W. R. 557.—**CAN.**

d (p. 633) **v.** —— *Assignment of all property by debtor.*]—A debtor's assignment of all his property under Collection Act (N. S.), to secure a judgment creditor, will not apply to wages exempt by law as necessary for life & family maintenance.—POUSHAY *v.* WELLS, [1937] 3 D. L. R. 59; 11 M. P. R. 464.—**CAN.**

2146 i. *Superannuation allowance—Civil servant.*]—Money lying to the credit of a retired Govt. servant in the General Provident Fund is not liable to attachment in execution of a decree against him.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* HAR CHARAN DAS (1929), I. L. R. 51 All. 845.—**IND.**

s (p. 633) **i.** —— ——.]—On the proper construction of Dried Fruits Act, 1924, in acquiring under that Act dried fruits on behalf of His Majesty the Minister of Agriculture acts merely as the instrument of the Crown. The obligation to pay for the fruits is upon the Crown & not upon the Minister as such, & therefore is not subject to attachment by garnishee proceedings. — MILDURA CO-OPERATIVE FRUIT CO., LTD. *v.* NOYCE, *Re* NOYCE, *Ex p.* MINISTER OF AGRICULTURE, [1928] V. L. R. 390; [1928] Argus L. R. 234. —**AUS.**

r (p. 634) **i.** —— ——.]—The rule, whereby the remuneration of the holders of public offices is exempt from arrestment, applies to the wages of an ordinary workman in the employment of a Govt. Department.—MULVENNA *v.* THE ADMIRALTY, [1926] S. C. 842.—**SCOT.**

d (p. 634) **i.** —— ——.]—HAYDON *v.* HAYDON & CANADIAN NATIONAL RAILWAYS, [1937] 3 W. W. R. 537; 4

2156. ***Add. Annotation :—As to*** (1) **Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde Des Olivaes, [1929] 1 Ch. 221.

2169. ***Add. Annotations :—*** **Refd.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95; Richardson *v.* Richardson, [1927] P. 228.

2170. ***Add. Annotations :—*** **Folld.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95. **Refd.** Richardson *v.* Richardson, [1927] P. 228.

2170a. —— —— ——.]—Pltfs. had brought an action & had signed a judgment against a Russian co. in default of appearance. Service of the writ had been effected by leaving a true copy of the writ of summons with one C., who was the person authorised by registration in England to accept service on behalf of deft. co. under Companies (Consolidation) Act, 1908 (c. 69), s. 274. The co. had been liquidated in Russia but this liquidation took no account of debts due to the co. by English debtors or by the co. to English creditors, & an order had since been made to wind up the co. in England. The English liquidator decided not to attack the judgment. C. had endeavoured without success to have his name removed from the register :—*Held :* the judgment creditors were entitled to a garnishee order attaching money due to the Russian co. from a debtor of that co. in this country.—SEDGWICK COLLINS & Co. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1; 95 L. J. K. B. 7; 133 L. T. 808; 41 T. L. R. 663, C. A.; *affd. sub nom.* EMPLOYERS' LIABILITY ASSURANCE CORPN. *v.* SEDGWICK, COLLINS & CO., [1927] A. C. 95; *sub nom.* SEDGWICK, COLLINS & Co., LTD. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, 136 L. T. 72, H. L.

Annotations :—**Consd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 148 L. T. 242. **Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333; Sabatier *v.* Trading Co., [1927] 1 Ch. 495; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525; *Re* Russian Bank for Foreign Trade, [1933] Ch. 745.

D. L. R. 617; 45 Man. L. R. 465; 7 F. L. J. (Can.) 147.—**CAN.**

t (p. 634) i. —— ——.]—Under School Act, R. S. A., 1922 (c. 51), a teacher's salary is not a debt accruing due from day to day.—THORESON *v.* BLAIRMORE SCHOOL DISTRICT TRUSTEES (Alta.), [1927] 3 D. L. R. 641; [1927] 2 W. W. R. 439.—**CAN.**

f (p. 634) i. —— —— *Assistant surgeon.*]—The pay of a European Military Assistant Surgeon, second-class, of the Indian Medical Dept., who is a warrant officer & not a commissioned officer, is not liable to attachment in execution of an order for alimony & maintenance passed by a civil ct.—NUGENT *v.* NUGENT, I. L. R. [1937] All. 350.—**IND.**

f (p. 634) ii. —— *Army surgeon.*]—The pay of an assistant-surgeon, attached to a British regiment serving in India, is not liable to attachment in execution of a decree of a civil ct.—BROWNE *v.* PEARCE (1925), I. L. R. 48 All. 73.—**IND.**

f (p. 634) iii. —— *Soldier.*]—The salary of a soldier to whom Army Act, 44 & 45 Vict. c. 58, applies, is attachable in execution of a decree in accordance with the provisions of Civil Procedure Code, s. 60 (1).—HUSAIN BAKESH *v.* BRIGGEN SHAW (1933), I. L. R. 55 All.—**IND.**

h (p. 634) i. —— *Police court interpreter.*]—The wages or salary of the official Italian police court interpreter of Vancouver paid by the city is exempt from attachment under Attachment of Debts Act, R. S. B. C. 1924, s. 3.—TODD *v.* DE PAOLA (1932), 46 B. C. R. 278.—**CAN.**

sl. *Postal savings.*]—Postal savings are not liable to attachment or garnishment.—LUBIX *v.* BRISKIN, [1938] 2 D. L. R. 68.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.

sn. *To what court—Court of division where garnishee resides.*]—*Re* SAVORD *v.* DESJARDINS, [1927] 1 D. L. R. 541; 59 O. L. R. 645.—**CAN.**

s. *Revsd.*, 17 Alta. L. R. 109.

cc. For "the affidavit was" not sufficient" read "not insufficient."

d (p. 637) i. —— ——.]—In an affidavit in support of a garnishee summons, deponent must swear positively to the indebtedness & the amount thereof, & if his affirmation as to the amount is upon information & belief only his previous positiveness as to the indebtedness is thereby qualified; & as to a judgment debt the affidavit must show not only the existing indebtedness, but also the amount for which judgment was recovered.—FROST *v.* ROCHON & VERHELST, [1924] 3 W. W. R. 422.—**CAN.**

d (p. 637) ii. —— ——.]—An affidavit in support of a garnishee summons with respect to a judgment debt. need not state the original amount of the judgment, but only the amount still due thereon.—PONTIUS *v.* SMITH & CONNAUGHTY, [1925] 3 D. L. R. 513; [1925] 2 W. W. R. 293; 19 Sask. L. R. 497.—**CAN.**

d (p. 637) iii. —— ——.]—An affidavit for a garnishee order is not sufficient, unless it states that it is founded upon information & belief, or that deponent has knowledge of the facts.—TILLICUM ATHLETIC CLUB *v.* BURICK, [1925] 3 W. W. R. 368.—**CAN.**

d (p. 637) iv. —— ——.]—Where the affidavit in support of a garnishee order states that the garnishee is a certain named bank, it describes the garnishee sufficiently.—VAN WASSENAER *v.* ADAMS, [1927] 3 D. L. R. 180; [1927] 2 W. W. R. 287; 38 B. C. R. 275.—**CAN.**

d (p. 637) v. —— ——.]—An affidavit for garnishing order before judgment must state shortly & concisely the cause of action in common & plain language, & a garnishing order issued where the affidavit filed is defective in this respect will be set aside.—HUBIN *v.* BOGACH, [1928] 3 W. W. R. 422.—**CAN.**

d (p. 637) vi. —— ——.]—Although in an affidavit in support of a garnishee summons the fact of deft.'s indebtedness to pltf. must be sworn to positively & not on mere information & belief, this does not mean that pltf.'s knowledge thereof must necessarily be absolute & complete.—POMFRET *v.* MORIE & IMPERIAL BANK OF CANADA, [1931] 2 W. W. R. 477; 3 D. L. R. 557; 25 Alta. L. R. 481.—**CAN.**

d (p. 637) vii. —— ——.]—WILSON *v.* DOUGLAS, [1931] 2 D. L. R. 413; 3 M. P. R. 84.—**CAN.**

d (p. 637) viii. —— ——.]—CURLEY *v.* SINSER, [1931] 3 W. W. R. 763; 45 B. C. R. 20.—**CAN.**

d (p. 637) ix. —— ——.]—BANQUE CANADIENNE NATIONALE *v.* LABINE & COURTEMANCHE, [1933] 1 W. W. R. 385; 2 D. L. R. 432.—**CAN.**

d (p. 637) x. —— ——.]—SOKOL *v.* PACIFIC FORWARDING CO., LTD., REIFEL & ROYAL BANK OF CANADA, [1933] 3 W. W. R. 352.—**CAN.**

d (p. 637) xi. —— ——.]—Garnishing proceedings before judgment are extraordinary remedies & the statutory requirements must be strictly complied with.

Sect. 263 of County Courts Act, R. S. M., 1913, provides that a garnishing order & summons may be issued pending action when there is filed an affidavit "in one of the forms appropriate to the purpose in the schedule of forms." In the present instance the appropriate form was No. 27, which says: "The said primary debtor is justly & truly indebted . . . to the primary creditor in the sum of . . ." The affidavit which was filed said: "The deft. is indebted to pltf. in the sum of $100";—*Held :* the omission from the affidavit of the words "justly & truly" was a substantial variation from the statutory form; &, therefore, the filing of said affidavit did not give the clerk of the county ct. jurisdiction to issue the garnishee summons.—HAUG *v.* BROWN & B. & B. TRANSFER, [1934] 1 W. W. R. 183; 2 D. L. R. 302.—**CAN.**

d (p. 637) xii. —— ——.]—Where the affidavit in support of a garnishee summons does not set out sufficiently the nature of pltf.'s claim the summons will be set aside as issued without jurisdiction. Such non-compliance with rule 648 is a fatal defect & cannot be cured under rule 273.—JONCAS *v.* PLOTKINS & LION REFINING CO. & IMPERIAL BANK OF CANADA, [1934] 2 W. W. R. 142; 3 D. L. R. 799.—**CAN.**

d (p. 637) xiii. —— ——.]—An affidavit on which a garnishing order before judgment is issued which does not state, as required by sect. 3 of Attachment of Debts Act, R. S. B. C., 1936, that the claim is justly "due & owing" is fatally defective. The omission of the words "due & owing" is not an irregularity which can be cured. The use of the words "deft. is justly indebted" does not meet the requirement that the claim must be sworn to as "due & owing."—BROWN *v.* STRICKLAND, [1938] 1 W. W. R. 399; ; D. L. R. 785; 7 F. L. J. (Can.) 260.—**CAN.**

h (p. 637) i. —— *Time for swearing.*]—The fact that the affidavit in support of a garnishee summons was sworn before the action was begun, although on the same day on which the statement of claim was issued, is ground for setting the garnishee summons aside.—MCPARLAND *v.* SEYMOUR, [1925] 4 D. L. R. 944; [1925] 3 W. W. R. 666; *revsg.*, [1925] 4 D. L. R. 325; [1925] 3 W. W. R. 256.—**CAN.**

h (p. 637) ii. —— —— *Made before action begun—Invalid.*]—NEON PRODUCTS OF WESTERN CANADA, LTD. *v.* BANCROFT, [1935] 2 W. W. R. 337; 50 B. C. R. 81.—**CAN.**

2188. *Add. Annotations :*—**Consd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578 ; Hirschhorn *v.* Evans, [1938] 3 All E. R. 491. **Refd.** Richardson *v.* Richardson, [1927] P. 228 ; Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263 ; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

2210a. —— Not necessary to make judgment debtor a party.]—LEVENE *v.* MATON (1907), 51 Sol. Jo. 532.

2220a. Irregular service of notice of writ.]—LAZARD BROS. & Co. *v.* MIDLAND BANK, LTD., No. 2059a, *ante*.

2236. *Add. Annotation :*—**Refd.** Plunkett *v.* Barclays Bank, Ltd., [1936] 1 All E. R. 653.

2236a. —— Of army agent.]—Attachment of the produce of the sale of a commission in the army, in the hands of the army agents, held ineffectual as against the lien & right of set-off of such agents & as against a prior equitable assignment.—WEBSTER *v.* WEBSTER (1862), 31 Beav. 393 ; 31 L. J. Ch. 655 ; 8 Jur. N. S. 1047 ; 10 W. R. 503 ; 54 E. R. 1191.

PART V. SECT. 1, SUB-SECT. 5.—B.

q i. ——.]—Service of a garnishee summons set aside, the copy served not having been a true copy.—LIVERGANT *v.* CAPITAL JOBBERS, LTD., [1925] 3 W. W. R. 719.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—B. (a).

2206 i. *Claim by third party—Duty of court—Rights of third party.*]—*Held :* when it is suggested by the garnishee on the return of an order *nisi* for the attachment of a debt that there is a claim by a third person in respect of that debt the justices should, in accordance with Justices Act, 1915, s. 131, direct such third person to appear & state the nature & particulars of his claim ; & where such third person appears, & his claim is disregarded by the justices, he has a right to be heard & is entitled to review an order of the justices as a "person who feels aggrieved" within sect. 150 of the same Act.—HUNT *v.* BALFOUR, [1928] V. L. R. 488 ; [1928] Argus L. R. 313.—**AUS.**

h i. —— *Affidavit of denial—Cross-examination on—What questions must be answered.*]—WILSON *v.* FLEMING (1900), 19 P. R. 203.—**CAN.**

h ii. —— *Attachment of Debts Act.*]—There is strong authority for holding that a garnishee has not the right to have a garnishee summons set aside on an application based merely on the ground that there is no debt due from the garnishee to deft., since Attachment of Debts Act, s. 8, makes provision for determining such an issue.—SIMONSON *v.* SIMONSON, [1928] 3 D. L. R. 31 ; [1928] 1 W. W. R. 863 ; 22 Sask. L. R. 481.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—B. (b).

s i. —— —— *Form of issue.*]—An issue directed in garnishee proceedings should be so framed as to dispose of the claims of all the claimants.—DOMINION BANK *v.* R. P. CLARK & CO. (VANCOUVER), LTD.'S TRUSTEE (1933), 46 B. C. R. 486.—**CAN.**

sp. *Onus of proof.*]—ADOLPH *v.* HILTON & STEPHENS (1907), 7 Terr. L. R. 407 ; 6 W. L. R. 119.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—C. (b).

t i. —— *Jurisdiction of district court judge to set aside.*]—RABINOVITCH *v.* FEIST, [1927] 3 D. L. R. 892 ; [1927] 2 W. W. R. 673 ; 21 Sask. L. R. 582.—**CAN.**

st. *Debt not liable to be garnisheed—Indian Act, R. S. C.*, 1906, *ss.* 99, 102.]—ARMSTRONG GROWERS' ASSOCN. *v.* HARRIS, [1924] 1 D. L. R. 1043 ; 1 W. W. R. 729 ; 33 B. C. R. 285.—**CAN.**

sv. *Error in form.*]—ARMSTRONG GROWERS' ASSOCN. *v.* HARRIS, [1924] 1 D. L. R. 1043 ; 1 W. W. R. 729 ; 33 B. C. R. 285.—**CAN.**

sw. *Who may apply.*]—A "person claiming to be interested in the money attached," within Attachment of Debts Act, R. S. S. 1920 (c. 59), s. 7, is some person, other than pltf., deft. or garnishee, who claims some interest in the money attached by the garnishee summons.—PONTIUS *v.* SMITH & CONNAUGHTY, [1925] 3 D. L. R. 513 ; [1925] 2 W. W. R. 293 ; 19 Sask. L. R. 497.—**CAN.**

sy. ——.]—BOYD & ELGIE *v.* KERSEY (B. C.), [1927] 2 D. L. R. 679 ; [1927] 1 W. W. R. 665 ; 38 B. C. R. 342.—**CAN.**

sz. ——.]—RAWLYK *v.* BURDEGA, MELNYK & KOSTIUK, [1938] 1 W. W. R. 464 ; 7 F. L. J. (Can.) 278.—**CAN.**

sd. *Application to set aside—Necessity for appearance.*]—Where a deft. has not entered an appearance in the action he is not entitled to move to have an attaching order obtained by pltf. set aside. If deft. has so moved without having appeared the objection to his right to do so cannot be cured by a subsequent entry of appearance.—MCDONALD *v.* COCOS ISLAND TREASURES, LTD., [1933] 1 W. W. R. 189 ; 46 B. C. R. 360.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—C. (c).

sc. *Money paid into court—Garnishee summons set aside—Second summons—Payment out.*]—SECURITY LUMBER CO., LTD. *v.* ROLICK & ROLICK PLAXIN, [1937] 2 W. W. R. 394.—**CAN.**

PART V. SECT. 1, SUB-SECT. 7.

s i. —— *Against execution by sheriff.*]—The service of an attaching summons, although not a transfer of the debt, creates a charge on it in favour of the attaching creditor which is not taken away by the subsequent receipt of writs of execution by the sheriff.—R. B. ANDERSON & SON *v.* DAWBER, 22 B. C. R. 218.—**CAN.**

t i. *Against prior assignment—Validity of assignment—Trial of issue to determine—Power to order.*]—PAQUET CO., LTD. *v.* WIESE & KRANT (Alta.), [1927] 1 W. W. R. 685.—**CAN.**

t ii. —— *Creditors Relief Act, R. S. B. C.*, 1924 (c. 59).]—VERNON HARDWARE CO. *v.* REID & REINHARD (B. C.), [1927] 2 W. W. R. 117.—**CAN.**

b i. ——.]—Sect. 2A of Builders' & Workmen's Act, R. S. M., 1913, added thereto by 1932 (c. 21), s. 1, does not apply to moneys merely owing to & not yet "received" by the contractor.—CASTELEIN *v.* BOUN, [1934] 1 W. W. R. 772 ; 3 D. L. R. 351 ; 42 Man. L. R. 97.—**CAN.**

sm. *Joint & several debt—Rights of creditor of individual debtor.*]—Where money is levied under an execution with respect to a joint & several debt a creditor to whom one of said debtors is individually indebted is not entitled to share in its distribution under Creditors' Relief Act, R. S. A., 1922, except as to the surplus, if any, which remains after the money has been applied in satisfaction of said debt.—DONAGHUE *v.* CANADIAN BANK OF COMMERCE (Alta.), [1929] 4 D. L. R. 540 ; 3 W. W. R. 109.—**CAN.**

sa. *Of garnishing creditors—Amendment of summons—Power of court.*]—K., an administrator, had in his hands moneys of the estate, a distributive share of which M. as one of the next of kin was entitled to receive. J., a creditor of M., served on K. a garnishee summons, in which K. was described simply as "K." T., another creditor, then served a similar summons on K., in which K. was described as "administrator of the estate." The judge amended J.'s summons by adding "administrator of the estate" :—*Held :* the judge had no power to give retroactive effect to the amendment, & thus give J. priority of T. on the basis of his earlier service.—TURVILLE *v.* MALLOY, [1929] 3 D. L. R. 25 ; 63 O. L. R. 612.—**CAN.**

sb. *Against wage-earners—Effect of Creditors' Relief Act, R. S. A.*, 1922.]—Creditors' Relief Act, R. S. A., 1922, s. 5 (14), which gives priority to persons who "at the time of the seizure by the sheriff," or within one month prior thereto, were employed by the execution debtor, does not entitle them to priority with respect to moneys which the sheriff received by virtue of garnishee proceedings.—LINTON *v.* FLANNIGAN, [1929] 3 D. L. R. 911 ; 1 W. W. R. 921 ; 24 Alta. L. R. 27 ; *revg.*, [1929] 1 W. W. R. 495.—**CAN.**

sc. *Priority of equitable assignee—Over subsequent garnishor.*]—M. made an arrangement with an auctioneer to sell her chattels on Nov. 27, 1929. Before that date she gave to a creditor a letter addressed to the auctioneer asking him to pay to the creditor a specified sum of money out of the proceeds of the sale to be held on Nov. 27. By the same document M. purported to assign to the creditor the specified sum out of the proceeds of the sale. She gave similar documents to other creditors & all were delivered to the auctioneer before the day of the sale : —*Held :* these documents were valid equitable assignments ; the subject-matter of the assignments was assignable in that way ; & the claims of the assignees were paramount to the claims of pltfs. in four Division Ct. actions, who sought to garnish the proceeds of the sale in the hands of the auctioneer garnishee.—UXBRIDGE HARDWARE CO. *v.* MUSSELMAN, [1931] 1 D. L. R. 857 ; 66 O. L. R. 435.—**CAN.**

sm. *Against assignee of book debts.*]—A customer made a general assignment of book debts to his bank, the customer continuing to get in & deal with debts until default or notice by the bank. A judgment creditor then garnished one book debt :—*Held :* the bank could not get priority by giving notice of the assignment, since this was in the nature of a floating charge.—GREAT LAKES PETROLEUM CO. *v.* BORDER CITIES OIL, LTD., [1934] 2 D. L. R. 743 ; O. R. 244.—**CAN.**

PART V. SECT. 1, SUB-SECT. 8.

2242 ii. —— ——.]—BRETHOUR *v.* TAYLOR & BANK OF MONTREAL (B. C.), [1927] 3 W. W. R. 166.—**CAN.**

2242 iii. —— —— *After notice of assignment of reversion.*]—FOULDS *v.* CHAMBERS (1896), 11 Man. L. R. 300.—**CAN.**

sd. —— *By judgment debtor—To sheriff.*]—*Held :* payment by the judgment debtor to the sheriff of the amount of the execution did not entitle him to have the garnishees discharged.—KOLEGA *v.* GENSER (Man.) (1912), 22 W. L. R. 197 ; 6 D. L. R. 188.—**CAN.**

2278. After this case add :—

See, generally, INFANTS, Vol. XXVIII., pp. 234–236.

2279. *Add. Annotation :*—**Refd.** C. L. *v.* C. F. W., [1928] P. 223.

2280. *Add. Annotation :*—**Refd.** C. L. *v.* C. F. W., [1928] P. 223.

2295a. —— **Private company.**]—FENTON *v.* EAST (1910), Y. S. C. P.

2311a. Stock held in trust for debtor—Debtor having discretionary trust as to part of fund.]—A testator by his will directed that certain stock should stand in the names of his exors., & the dividends should be paid to G., during his life, & on his death to E., his widow, " she to lay it out for the good of his children," & that when the youngest child should come of age, the fund should be sold out & divided amongst the children. In an action in which E., after the death of G., was a deft. :—*Held :* an order might be made under Judgments Act, 1838 (c. 110), ss. 14, 15, for charging " so much of the dividends as were payable to E. for her own use & benefit."—FOWLER *v.* CHURCHILL (1843), 11 M. & W. 57 ; 2 Dowl. N. S. 562 ; 12 L. J. Ex. 230 ; 7 Jur. 156 ; 152 E. R. 714.

Annotation :—**Consd.** South Western Loan & Discount Co. *v.* Robertson (1881), 8 Q. B. D. 17.

2335. *Add. Citation :*—" *sub nom. Re* HUTCHINSON, *Ex p.* HUTCHINSON (1885), 16 Q. B. D. 215.

2350. After the word " *Held* " add " (ERLE, J., *diss.*) "

Annotations :—For the annotations in the original volume substitute as follows :—

Annotations :—**Dbtd.** Beavan *v.* Oxford (1856), 6 De G. M. & G. 507. I prefer the opinion of ERLE, J., to that of the other three judges (TURNER, L.J.). **N.F.** Kinderley *v.* Jervis (1856), 22 Beav. 1 ; Scott *v.* Hastings (1858), 4 K. & J. 633. **Consd.** Nicholls *v.* Rosewarne (1859), 6 C. B. N. S. 480. **N.F.** Benham *v.* Keane (1861), 1 John. & H. 685. **Dbtd.** Pickering *v.* Ilfracombe Ry. (1868), L. R. 3 C. P. 235 ; Robinson *v.* Nesbitt (1868), L. R. 3 C. P. 264. The opinion of the majority of the ct. in that case is no longer law (BOVILL, C.J.). **N.F.** Gill *v.* Continental Union Gas Co. (1872), L. R. 7 Exch. 332. **Dbtd.** Punchard *v.* Tomkins (1882), 31 W. R. 286. The case of *Watts* v. *Porter* is itself unsound law, but ERLE, J.'s construction of Judgments Act, 1838 (c. 110), is now held to be the law (CHITTY, J.). **N.F.** *Re* General Horticultural Co., *Ex p.* Whitehouse (1886), 32 Ch. D. 512 ; *Re* Leavesley, [1891] 2 Ch. 1 ; Vacuum Oil Co. *v.* Ellis, [1914] 1 K. B. 693. **Refd.** Hirsch *v.* Coates (1856), 18 C. B. 757 ; Croft *v.* Lumley (1858), 6 H. L. Cas. 672 ; Baker *v.* Tynte (1860), 2 E. & E. 897. **Mentd.** Whistler *v.* Forster (1863), 14 C. B. N. S. 248.

2430a. —— —— ——.]—5 Vict. c. 5, s. 4, conferred on the ct. no new summary jurisdiction with respect to granting injunctions ; but the remedy provided thereby was intended only for limited & interim purposes, viz. to protect stock until the party having a claim to it can have time to assert that claim by bill. H. obtained a restraining order under the above statute on May 30, but he neglected to file a bill. Upon motion made June 30 to discharge the order :—*Held :* the order could not stand without a bill filed ; & although the ct. had power to continue the order until a bill should be filed, yet that this was not, by reason of H.'s delay in filing a bill, a proper case for the exercise of such power.—*Re* SUISSE (1842), 6 Jur. 597, 654.

2436. *Add. Citation :*—" Madd. & G. 1."

2438a. —— —— **Beneficial owner.**]—A *cestui que trust* or equitable mtgee. of shares who is entitled to restrain a transfer can apply to the High Ct. under Ct. of Chancery Act, 1811 (c. 5), s. 4, & R. S. C., Ord. 46, for an order restraining the co. from allowing a transfer to be made, & this appears to me to be his only remedy where he is not himself a transferee, & as such entitled to be registered as a shareholder (LINDLEY, L.J.).—SOCIÉTÉ GÉNÉRALE DE PARIS *v.* TRAMWAYS UNION CO., LTD. (1884), 14 Q. B. D. 424 ; 54 L. J. Q. B. 177 ; 52 L. T. 912 C. A. ; *affd. on other grounds, sub nom.* SOCIÉTÉ GÉNÉRALE DE PARIS *v.* WALKER (1885), 11 App. Cas. 20, H. L.

f i. —— *Distribution—Under Creditors Relief Act.*]—WARD (ROBERT) & CO., LTD. *v.* WILSON (1907), 7 W. L. R. 37 ; 13 B. C. R. 273.—**CAN.**

f ii. —— *Deduction of solicitor's fee.*]—There is no authority for the deduction of a solr.'s fee when a garnishee in a county ct. action pays the garnished money into ct.—SEGUIN *v.* RANDALL & DOMINION BANK, [1933] 3 W. W. R. 675.—**CAN.**

sl. *Discontinuance of action.*]—Upon discontinuance of an action the garnishment proceedings therein automatically terminate.—INTERNATIONAL PETROLEUM & LAND TRADING CO., LTD. *v.* ROSS & ROYAL BANK OF CANADA, ALDOUS *v.* ROSS & ROYAL BANK OF CANADA, WILLIAMS, MANSON, BROWN & HARVEY, [1933] 3 W. W. R. 648.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.—A.

2289 i. *Fund in court—Paid under garnishee proceedings.*]—PRAT *v.* HITCHCOCK, JONAH *v.* HITCHCOCK, [1925] 3 D. L. R. 1142.—**CAN.**

PART V. SECT. 2, SUB-SECT. 6.—A.

se. *Costs of obtaining orders—On winding-up of company—By whom payable.*]—*Re* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD., DAVIDSON *v.* SWANSON (S.), [1928] 2 W. W. R. 256.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—D.

2393 i. *Right of assignor to fund.*]—*Re* DAVIDSON & SMITH, *Ex p.* LONDON GUARANTEE & ACCIDENT CO., [1925] 2 D. L. R. 433.—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.

e i. —— *Compensation for dependants of deceased workman.*]—Money paid into ct. as compensation due to the dependants of a deceased workman under the Workmen's Compensation Act, 1925, is not subject to arrestment.—WILLIAM BAIRD & CO., LTD. *v.* CAMPBELL, [1928] S. C. 314.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 6.

sf. *Order obtained without notice of prior assignment—Notice of assignment entered in accountant's office.*]—COTTINGHAM *v.* COTTINGHAM (1886), 11 O. R. 294.—**CAN.**

PART V. SECT. 5. SUB-SECT. 1.

2448 i. *Not execution but equitable relief.*]—Equitable execution is a means of freeing exigible assets from impediments in the way of execution & reaching them when such impediments prevent them from being taken in the ordinary course ; it will not be awarded unless it is reasonably clear that benefit will be derived from the appointment of a receiver.—STRANG *v.* BEAL, [1923] 3 D. L. R. 1141 ; 52 O. L. R. 208.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

sg. *Of master.*]—The master of the High Ct. has no jurisdiction to make an order appointing a receiver by way of equitable execution.—BAIRD *v.* MURPHY, [1928] I. R. 125.—**IR.**

sh. *Effect of County Courts Act, R. S. M.*, 1913, *s.* 57.]—Under the above sect. county ct. judges in Manitoba have no jurisdiction to make an order for the appointment of a receiver if the order is, in effect, an injunction against deft. restraining him from receiving the moneys therein referred to.—MCFARLANE, *v.* FRANKLIN, [1924] 3 D. L. R. 605 ; 2 W. W. R. 1036 ; 34 Man. L. R. 293.—**CAN.**

sj. *Action commenced in one judicial district—Appointment of receiver—Land in another district.*]—INTERNATIONAL HARVESTER CO., LTD. *v.* KIRK, [1928] 1 W. W. R. 303 ; 22 Sask. L. R. 485.—**CAN.**

sk. *Property outside jurisdiction.*]—The Calcutta High Ct. on its original side can, in a proper case, appoint a receiver of property outside its territorial jurisdiction in execution of a money decree.—PRAMATHANATH MALIA *v.* LOW & CO. (1929), I. L. R. 57 Calc. 964.—**IND.**

PART V. SECT. 5, SUB-SECT. 3.—A. (a).

2453 v. ——.]—A pltf. who holds a judgment on which he is entitled to issue a writ of execution against goods only, & who seeks the appointment of a receiver to take possession of the goods, must show (*inter alia*) that he is entitled to have the goods seized, but that it is impossible owing to some impediment in law of deft.'s interest.—LANGSTAFF *v.* SQUIRRELL, [1924] 2 D. L. R. 930 ; [1924] 1 W. W. R. 1265 ; 18 Sask. L. R. 250.—**CAN.**

2453 vi. ——.]—The appointment of a receiver by way of equitable execution will not as a general rule be made, unless there exists some

2454. *Add. Annotation:*—**Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

2463. *Add. Annotation:*—**Refd.** *Re* Bueb, [1927] W. N. 299.

2465. *Add. Annotation:*—**Refd.** *Re* Bueb, [1927] W. N. 299.

2502. *Add. Annotation:*—**Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

2526. *Add. Annotation:*—**Refd.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955.

Part VI.—Discovery in Aid of Execution.

2547a. —— On foreign debtor—Temporarily within jurisdiction—Form of order.]—PRACTICE NOTE, [1928] W. N. 209.

special difficulty or legal impediment to obtaining execution in the ordinary course by garnishment of the debt due to the execution debtor.—ROYAL TRUST CO. *v.* KRITZWISER, [1924] 3 D. L. R. 596; [1924] 2 W. W. R. 760.—**CAN.**

2453 vii. ——.]—Before a receiver by way of equitable execution can be appointed, there must be a legal right in the creditor to be paid out of the particular asset, which he cannot reach unless aided by the ct.; but the creditor cannot by this process reach a kind of asset not exigible under legal execution.—EATON *v.* BRANT (1924), 55 O. L. R. 346.—**CAN.**

2453 viii. ——.]—THOMSON *v.* CUSHING (1889), 30 O. R. 123.—**CAN.**

2453 ix. ——.]—NOVA SCOTIA MINING CO. *v.* GREENER (1898), 31 N. S. R. (19 R. & G.) 189.—**CAN.**

2453 x. ——.]—A receiver will not be appointed by way of equitable execution with respect to property which is capable of being reached by way of ordinary legal process, unless the ct. is satisfied that there are special circumstances which would justly entitle applt. to such relief.—MENNONITE MUTUAL FIRE INSURANCE CO. *v.* HEINRICHS & HEINRICHS, [1932] 1 W. W. R. 218.—**CAN.**

2453 xi. *Whether granted as of right.*]—It is erroneous to assume that because property of a judgment debtor is not liable to the ordinary processes of execution, the judgment creditor must be able successfully to invoke the equitable jurisdiction of the ct. to obtain realisation of the property.—MATTHEWSON *v.* STREDICKE, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.—A. (b).

2490 xm. *Property exempt from seizure—Homestead.*]—A judgment creditor cannot have equitable execution with respect to property which could not be taken under execution at law if the debtor had the legal, instead of only an equitable interest therein. Therefore equitable execution cannot be obtained against a judgment debtor's equitable interest in land which is his homestead, where homesteads are made exempt from seizure under a writ of execution.—STOEHR & MCPHERSON *v.* MORGAN (Sask.), [1929] 4 D. L. R. 301; 2 W. W. R. 577.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.—C.

2490 ii. ——.]—The ct. has no jurisdiction to enforce payment of a judgment debt by appointing a receiver of the future earnings of the judgment debtor.—SIMPSON *v.* SIMPSON (1934), 49 B. C. R. 288.—**CAN.**

2491 i. *Legal estate in remainder.*]—A vested interest in land subject to another person's life estate does not constitute a sufficient present interest in land to justify the appointment of a receiver with a view to realisation.—MATTHEWSON *v.* STREDICKE, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—**CAN.**

2491 q i. ——.]—BARNES *v.* SHARPE, [1924] 2 D. L. R. 1119 2 W. W. R. 462.—**CAN.**

2491 sp. *License.*]—An ordinary hotel lease containing all the usual terms in favour of the lessor with respect to the license shows a *prima facie* interest of the lessor in the license, which a Ct. of Equity will in a proper case protect by the interlocutory appointment of a receiver.—METROPOLITAN THEATRES, LTD. *v.* HARRIS (1935), 35 S. R. N. S. W. 228; 52 N. S. W. W. N. 68.—**AUS.**

2491 sr. *Profits of hotel.*]—Pltfs. claimed to be entitled to possession of the land on which a hotel was erected & also to the furniture in the hotel:—*Held:* an order appointing a receiver of the profits of the business should be set aside, as under no circumstances could pltfs. be entitled to the profits arising from the business carried on by deft.—CLYDESDALE *v.* MCMANUS, [1934] W. A. L. R. 89.—**AUS.**

PART V. SECT. 5, SUB-SECT. 7.

2491 sw. *Subsequent execution liens—Registered before mortgage.*]—Where a mtge. has been executed before execution liens were filed against the property but registration has been delayed for non-compliance with statutory formalities until the execution liens have been registered, the mtge. has priority over the execution liens.—LAROSE *v.* WHITE PACKING CO., [1937] 2 D. L. R. 765; O. R. 470.—**CAN.**

PART VI.

2491 h i. —— ——.]—Where an order under Rule 478 (1) for the examination of a judgment debtor orders his attendance for examination, it is not necessary to serve him with a *subpœna* under Rule 480; the service of the order & appointment on him with payment of conduct money is sufficient. But if such order provides only that he be orally examined & does not order him to attend for examination or to produce his books or documents, it is then necessary to serve a *subpœna* to compel his attendance or to produce such books & documents as may be required.—GREAT WEST LIFE ASSCE. CO. *v.* WRIGHT, [1928] 4 D. L. R. 144; [1928] 2 W. W. R. 94; 22 Sask. L. R. 409.—**CAN.**

2491 s i. —— —— *Mortgagor—Although execution stayed.*]—FRANCO-BELGIUM INVESTMENT CO. *v.* MCNAMARA (Alta.), [1918] 2 W. W. R. 929.—**CAN.**

2491 a i. —— ——.]—Order made for examination, where it was disclosed that judgment debtor had purchased & put in his wife's name certain land & had paid out money on account of the purchase price & for interest & taxes.—BEAU MONDE LADIES' TAILORING CO. *v.* GARRETT, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—**CAN.**

2491 a ii. —— *Mother-in-law of judgment debtor.*]—Order made for examination, where it was disclosed that judgment debtor had made payments to his mother-in-law of sums which it was alleged she had lent him.—BEAU MONDE LADIES' TAILORING CO. *v.* GARRETT, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—**CAN.**

2491 b i. —— *Transferee of land in another Province.*]—CRUCIBLE STEEL CO. *v.* FFOLKES (1912), 21 O. W. R. 302; 3 O. W. N. 750; 1 D. L. R. 381.—**CAN.**

2552 i. *Nature of examination.*]—The questions should be limited to the scope of the order for examination.—FLANAGAN *v.* ENGLAND, [1926] 3 D. L. R. 360; [1926] 2 W. W. R. 428; 20 Sask. L. R. 579.—**CAN.**

2552 ii. —— *Judgment on contract readjusting earlier contracts.*]—On examination for discovery in aid of execution on a judgment recovered on a contract, debtor may be required to answer questions relating to his property & his dealings with it prior to the date of the contract sued on, where it is shown, even by evidence adduced on an application to a judge to compel debtor to answer the questions, that the contract had replaced earlier contracts between the same parties & was merely a readjustment of a liability incurred prior to its date.—STANDARD TRUST CO. *v.* WALTER, [1926] 1 D. L. R. 86; [1926] 1 W. W. R. 16; 22 Alta. L. R. 176.—**CAN.**

2552 st. *Refusal to attend.*]—K. B. Rules (Sask.), Ord. 33, contains no provision for compelling the attendance of a person ordered to attend for examination other than that contained in r. 480.—SASKATOON HARDWARE CO. *v.* MCMANUS, [1924] 3 D. L. R. 344; 2 W. W. R. 809.—**CAN.**

2552 sz. —— *Non-attendance on previous day waived.*]—Where non-attendance on the day fixed by an order for deft.'s attendance for examination as a judgment debtor is waived by pltf., deft. cannot be committed for failure to attend upon a subsequent day, the effect of the order being spent.—HYATT *v.* OWENS, [1927] 3 D. L. R. 563; 60 O. L. R. 489.—**CAN.**

2552 sa. *Scope of examination—Evidence admissible as proof of ability to pay.*]—On an application under King's Bench Act, s. 51 (*a*), the ct. has no jurisdiction to adjudicate upon the question of a fraudulent conveyance, yet the circumstances under which the debtor has transferred his property may be considered for the purpose of assisting the ct. in concluding whether the debtor's failure to pay his debts was due to inability or unwillingness to pay.—BELL *v.* LONG, [1928] 3 W. W. R. 208.—**CAN.**

2552 sb. *What must be shown.*]—Under Alberta, rule 634, it is not necessary for a judgment creditor applying to the clerk of the ct. for an appointment for the examination of the judgment debtor to show that the judgment is still unsatisfied or that an execution has been returned by the sheriff *nulla bona*; nor is he required to obtain a judge's order for the appointment.—CONWAY'S, LTD. *v.* RYAN, [1929] 3 D. L. R. 292; 2 W. W. R. 80; 24 Alta. L. R. 124.—**CAN.**

2552 sd. *Disobedience to order—Contempt of court.*]—STANDARD BANK OF CANADA & CANADIAN BANK OF COMMERCE *v.* RABY (Alta.), [1929] 3 W. W. R. 746.—**CAN.**

EVIDENCE.

Part I.—General Principles.

4. *Add. Annotation :*—**Refd.** Butcher Wetherly & Co. *v.* Norman, [1934] 1 K. B. 475.

31a. **Interview—Dictaphone record.**]—The dictaphone record of an interview may be accepted in evidence.—BUXTON *v.* CUMMING (1927), 71 Sol. Jo. 232.

37. *Add. Annotations :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39. Purkis *v.* Walthamstow Borough Council (1934), 151 L. T. 30.

55. *Add. Annotations :*—**Consd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657. **Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39 ; Place *v.* Searle, [1932] 2 K. B. 497.

55a. ——.]—At the close of pltf.'s case, deft. applied for a nonsuit, on the ground that there was no evidence given of such negligence as to render deft. liable. The judge refused to stop the case, but reserved leave to move for a nonsuit. The jury having found for pltf. :—*Held :* (1) when at the close of pltf.'s case there was no evidence upon which the jury could reasonably & properly find a verdict, the judge ought to have directed a nonsuit ; (2) in every case before evidence is left to the jury there is a preliminary question for the judge, not whether there is literally any evidence, but whether there is any evidence upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed.—GIBLIN *v.* MCMULLEN (1869), L. R. 2 P. C. 317 ; 5 Moo. P. C. C. N. S. 434 ; 38 L. J. P. C. 25 ; 21 L. T. 214 ; 17 W. R. 445 ; 16 E. R. 578, P. C.

55b. ——.]—Where pltf. has closed his evidence, & the judge who tries the case is of opinion that there is no case to go to the jury, he ought to direct accordingly.—DANIEL *v.* METROPOLITAN RY. CO. (1871), L. R. 5 H. L. 45 ; 40 L. J. C. P. 121 ; 24 L. T. 815 ; 35 J. P. 708 ; 20 W. R. 37, H. L.

Annotation :—**Refd.** Williams *v.* G. W. Ry. (1874), L. R. 9 Exch. 157.

55c. —— **Power of judge to change ruling.**]—In an action for personal injuries the judge refused to nonsuit on the ground of there being no evidence of negligence, & the jury, having heard the whole case, disagreed :—*Held :* the judge was entitled to enter judgment for deft.—PETERS *v.* PERRY & CO. (1894), 10 T. L. R. 366.

Annotation :—**Consd.** Skeate *v.* Slaters, [1914] 2 K. B. 429.

55d. —— ——.]—SHEARS *v.* MENDELOFF (1914), 30 T. L. R. 342.

55e. —— ——.]—In an action tried with a jury the judge was asked at the conclusion of pltf.'s case to withdraw the case from the jury on the ground that pltf. had failed to make any case against defts. The judge refused to do so. Witnesses were then called for the defence. The jury disagreed. Subsequently an application was made to the judge to enter judgment for defts. upon the above ground & also upon the ground that upon all the evidence in the case the jury could not reasonably have found a verdict for pltf. The judge having refused to enter judgment for defts. :—*Held :* (1) a judge at the trial had power to enter judgment for deft. if upon the case as a whole the evidence of pltf. was so weak that a verdict in his favour would have been set aside as unreasonable.

(2) A judge who at the conclusion of pltf.'s case has ruled that there is some evidence for the jury, is entitled at the conclusion of the whole case to reconsider his ruling & to enter judgment for deft., if he is then of opinion that pltf.'s evidence fails to disclose any cause of action against deft.—SKEATE *v.* SLATERS, LTD., [1914] 2 K. B. 429 ; 83 L. J. K. B. 676 ; 110 L. T. 604 ; 30 T. L. R. 290, C. A.

Annotations :—*As to* (1) **Consd.** Winterbotham, Gurney *v.* Sibthorp & Cox, [1918] 1 K. B. 625. **Refd.** Everett *v.* Griffiths, [1921] 1 A. C. 631. *As to* (2) **Refd.** Cooke *v.* Wilson (1915), 85 L. J. K. B. 888 ; Place *v.* Searle, [1932] 2 K. B. 497. *Generally,* **Refd.** Gascoigne *v.* Gascoigne (1917), 87 L. J. K. B. 333 ; Croker *v.* Croker (1932), 48 T. L. R. 597.

57. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

58. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

59a. —— ——.]—GIBLIN *v.* MCMULLEN, No. 55a, *ante.*

77. The names of the parties should be reversed in each court.

80. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Davy, [1935] P. 1.

101. *Add. Annotation :*—**Folld.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

116. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

117. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

PART I. SECT. 1.

1 i. *Civil & criminal trials distinguished.*]—Where the question to be determined in a civil action is whether or not a criminal offence has been committed, but this question does not arise directly upon the pleadings, the ct., in deciding whether or not an offence has been committed, should apply the ordinary civil rule as to the sufficiency of proof, & not the rule which prevails in a ct. of criminal jurisdiction that the ct. must be satisfied beyond reasonable doubt that the crime alleged has been committed.—MOTCHALL *v.* MASSOUD, [1926] V. L. R. 273 ; [1926] Argus L. R. 271.—**AUS.**

PART I. SECT. 3, SUB-SECT. 1.

5 iv. ——.]—CONSOLIDATED WAFER CO., LTD. *v.* INTERNATIONAL CONE CO., LTD., [1926] 4 D. L. R. 74 ; 59 O. L. R. 205.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.

55 ix. ——.]—ROBINSON *v.* ASSINIBOIA TOWN, [1927] 3 D. L. R. 514 ; [1927] 2 W. W. R. 499 ; 21 Sask. L. R. 658.—**CAN.**

n i. ——.]—DOE d. PETIT *v.* RENARD (1850), 6 U. C. R. 501.—**CAN.**

n ii. ——.]—MONTREAL TRUST CO. *v.* CANADIAN PACIFIC RY. CO., [1927] 4 D. L. R. 873 ; 61 O. L. R. 137.—**CAN.**

155. *Add. Annotations :*—**Distd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39. **Consd.** The Kite, [1933] P. 154. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

198a. —— **Replevin.**]—In replevin, if there be any affirmative issue on pltf., he is entitled to begin.—CURTIS *v.* WHEELER (1830), Mood. & M. 493; 4 C. & P. 196; 172 E. R. 668, N. P.

198b. —— ——.]—In replevin there was a cognisance for rent in arrear. To this there were two pleas, the one stating that a certain agreement had been entered into between the landlord & tenant, & that the tenant was subsequently induced by the landlord to enter into another agreement, which second agreement was the demise in the cognisance mentioned; & that this latter agreement had been abandoned by mutual consent before any rent became due. The other plea was similar, except, that it averred that the tenant was induced to enter into the second agreement by fraud. Replication to the one, denying the abandonment; & to the other, denying the fraud :—*Held :* on these pleadings, pltf. had the right to begin.—WILLIAMS *v.* THOMAS (1830), 4 C. & P. 234; 172 E. R. 684, N. P.

198c. —— ——.]—In replevin any issue in which the affirmative is on pltf. gives him the right to begin.—JAMES *v.* SALTER (1835), 1 Mood. & R. 501, N. P.

220a. **One counsel on each side to be heard.**]—Only one counsel on each side is to be heard on the claim of right to begin, & the counsel for deft. has the right to reply.—RAWLINS *v.* DESBOROUGH (1837), 2 Mood. & R. 70.

227. *Add. Annotation :*—**Refd.** Herniman *v.* Smith, [1938] A. C. 305.

288. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

Part II.—Admissibility of Evidence.

301a. **Effect of letter written by plaintiff's solicitor.**]—A letter written by pltf.'s attorney, demanding payment of an inclosed bill, does not confine pltf. from going into evidence of other matters not included in the bill so inclosed.—SHORT *v.* EDWARDS (1795), 1 Esp. 373; 170 E. R. 390, N. P.

311a. —— **Murder of employer—Books with false entries on which commission payable to employee found by body.**]—Applt. was indicted for the murder of his employer, whose dead body was found in the latter's locked garage. Evidence was given (*inter alia*) that on the seat of a car in the garage at the time of the discovery of the body there were found books which had contained entries or impressions of fictitious orders showing that applt. had been paid commission thereon. These entries or impressions had apparently been made by applt.'s employer, & the leaves had been torn out. Evidence was also given that in the garage there was found a letter written to applt. by his employer & making an appointment. This letter was found open & crumpled, but it was not

PART I. SECT. 6, SUB-SECT. 1.—A.

119 xxv. —— *Payment.*]—BRONDSON *v.* NORTHGRAVES (Sask.), [1925] 3 W. W. R. 456.—**CAN.**

119 xxvi. —— *Loan not repaid.*]—To establish a claim for money lent pltf. must allege & prove non-payment. On the hearing of a complaint in a ct. of petty sessions for money lent, evidence was given by deft. that he had repaid the money, & by the complainant denying the repayment. The justices, being unable to decide whether or not repayment of the loan had been made, dismissed the complaint :—*Held :* as the complainant had not established his case, the justices were right in dismissing the complaint.—NELSON *v.* CAMPBELL, [1928] V. L. R. 364; [1928] Argus L. R. 221.—**AUS.**

PART I. SECT. 7, SUB-SECT. 1.

q i. —— ——.]—Where practically all the correspondence between the parties save one letter, had been placed in evidence :—*Held :* the way had been opened, & the entire correspondence was properly admissible.—EAGLES *v.* CANADIAN BANK OF COMMERCE (1920), 47 N. B. R. 480.—**CAN.**

266 ii. ——.]—Where there was no unfairness to accused in admitting as evidence only a portion of a statement :—*Held :* the judge was not bound to admit the whole statement.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

PART I. SECT. 8.

sf. *Evidence tendered after hearing & before entry of formal judgment.*]—While after a trial has been closed & oral judgment rendered the trial judge has jurisdiction to grant either party leave to adduce further evidence before the entry of formal judgment, yet this leave should never be given unless it seems imperative in the interests of justice that the case should be re-opened.—SALES *v.* CALGARY STOCK EXCHANGE, [1931] 3 W. W. R. 392.—**CAN.**

PART II. SECT. 1.

h (p. 54) i. —— *Evidence of absence of previous accident.*]—In an action for damages for injuries resulting from a fall sustained by the female pltf. when entering deft.'s hotel on a visit to one of the sample rooms, evidence of the hotel manager that during the ten years he had been manager he had never heard of any accident at or complaint of the entrance in question was held admissible.—WAY *v.* LELAND HOTEL CO., LTD., [1928] 2 D. L. R. 235; [1927] 3 W. W. R. 224.—**CAN.**

sg. *In action for breach of contract—Correspondence irrelevant to issue—Affecting conduct of parties before & at trial.*]—BURKARD & Co., LTD. *v.* WAHLEN (1928), 28 S. R. N. S. W. 607; 45 N. S. W. W. N. 201.—**AUS.**

sj. *By consent—Evidence otherwise inadmissible.*]—Evidence not otherwise admissible, or which would have been liable to rejection if any objection were taken to it, may be perfectly good evidence if admitted by the consent of the parties.—RADHA KISHAN *v.* KEDAR NATH (1924), I. L. R. 46 All. 815.—**IND.**

PART II. SECT. 3, SUB-SECT. 2.—A.

306 i. —— *Circumstances of case.*]—A promissory note was discounted with private funds advanced by a bank manager as agent for the lender. In an action against the original maker & another party, who signed the note as a maker, at the request of the manager, before its maturity, but several months after it was discounted, & while it was in the bank for collection :—*Held :* evidence of the conversation between the manager & such party at the time the latter signed was admissible on his defence of want of consideration as part of the *res gestæ*.—ROGERS *v.* WEIR (Alta.), [1927] 4 D. L. R. 445; [1927] 3 W. W. R. 177.—**CAN.**

o i. —— *Telephone conversation—Proof of authority of agent.*]—*Held :* a telephone conversation was admissible, where evidence existed from which it could be inferred that the telephone conversation took place with a person authorised to engage in such a conversation.—*Re* DREYFUS (LOUIS) & SOUTH AUSTRALIAN MILLING & TRADING CO., [1923] S. A. S. R. 475.—**AUS.**

sl. *Telegrams—Between Civil Commissioner & Mines Dept.—On request for cancellation of certificate.*]—Where a request for the cancellation of a certificate granted to the discoverer of diamonds is made by the holder, who knows that the consent of the Mines Dept. is necessary, telegrams which pass between the Civil Comr. to whom the request is made & the Mines Dept. are admissible against the holder in subsequent legal proceedings in which the cancellation is in issue as part of the *res gestæ*.—CAPE COAST EXPLORATION, LTD. *v.* SCHOLTZ, [1932] App. D. 56.—**S. AF.**

proved that it had reached applt. The theory of the prosecution was that, the fictitious character of the orders having been discovered by the employer, an altercation had arisen & the applt. had murdered him. Applt. was convicted:—*Held:* evidence above described was admissible as part of the circumstances of the case, & the conviction must be affirmed.—R. *v.* PODMORE (1930), 46 T. L. R. 365; 22 Cr. App. Rep. 36, C. C. A.

311b. Charge by deposit of title-deeds—Memorandum relating to charge.]—In an action which pltfs., exors. of M., claimed that they were entitled as part of their share in the estate of T., the father of M., to a charge for £300 on a farm called "W.," they sought to prove in support of their claim a certain memorandum which was signed by H. the exor. & trustee of the will of T. & with whom the title deeds of "W." had been deposited to secure the sum of £300 with interest, & was also signed by M. & her sister E., which memorandum related the facts upon which pltfs. relied to prove their claim & in which memorandum M. accepted the £300 charge as partial satisfaction of her share in the estate of T.:—*Held:* the memorandum was admissible in evidence because (1) it ought to be treated as part of the *res gestæ*, as it was sufficiently contemporaneous with the allocation of the charge; it might be described as an incident of the event under consideration; & (2) the statement in the memorandum whereby M. accepted the £300 in partial satisfaction of her share was a declaration against her proprietary interest & therefore was excepted from the rule against hearsay evidence.—HOMES *v.* NEWMAN, [1931] 2 Ch. 112; 100 L. J. Ch. 281; 145 L. T. 140.

312. For "Letters from agent—Forming part of contract" substitute "—— Letters from agent—Forming part of contract."

In the cross-reference following this case, for "—— **After contract complete**" **substitute** "—— —— **After contract complete.**"

343. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

348a. Public capacity.]—Evidence of T.'s acting as the deputy of the sheriff:—*Held:* sufficient *primâ facie* of his appointment.—FAULKNER *v.* JOHNSON (1843), 11 M. & W. 581; 1 Dow. & L. 346; 12 L. J. Ex. 433; 7 Jur. 584; 152 E. R. 937.

370. *Add. Annotation:*—**Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

395. *Add. Annotation:*—**Apld.** Thompson *v.* London, Midland & Scottish Ry. (1929), 98 L. J. K. B. 615.

397. *Add. Annotations:*—*As to* (1) **Refd.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692. *As to* (2) **Refd.** L'Estrange *v.* Graucob. Ltd., [1934] 2 K. B. 394.

417. *Add. Citation:*—132 L. T. 229.

421a. ——.]—SMITH *v.* WILKINS (1833), 6 C. & P. 180; 172 E. R. 1198, N. P.

425. *Add. Annotation:*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

440. *Add. Annotation:*—**Refd.** A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

447. *Add. Annotation:*—**Refd.** *Re* Davy, [1935] P. 1.

448. *Add. Annotation:*—**Refd.** Woolmington *v.* Public Prosecutions Director, [1935] A. C. 462.

PART II. SECT. 3, SUB-SECT. 2.—D. (a).

332 i. *Accident—Statement made after accident.*]—A statement explaining the circumstances of an accident, made by deft.'s employee half an hour afterwards, is not part of the *res gestæ*, nor, in making the statement, is the employee acting within the scope of his employment so as to render his statement admissible against his employer.—WISHART *v.* MASON, [1931] N. C. R. 530.—**S. AF.**

1 i. —— *Statement made by driver.*]—An explanation made by the driver of a vehicle as to the circumstances in which injury has been caused by that vehicle to another party is admissible in evidence in an action arising out of the injury if made at, or very near, the time of the injury.—HITCHINS *v.* UMFOLOSI CO-OPERATIVE SUGAR PLANTERS ASSOCN. (1929), 50 N. L. R. 117.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 2.—D. (b).

sn. *Report by agent to principal.*]—*Held:* a telegram & a letter dispatched shortly after a sale of goods by the seller's agent to his employers recording his version of the transaction may competently be referred to for the purpose of testing his credibility.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 4.—A.

s i. ——.]—Resp. had sued applt. in the ct. below for the return of certain sheep or their value. The evidence was that resp. had been losing sheep & that seeing sheep at a place near applt.'s kraal he collected a flock in the possession of deft. & undertook certain experiments with them, in which the sheep behaved as though they belonged to resp.:—*Held:* the evidence of the behaviour of the sheep was not hearsay evidence in relation to their identity & was admissible.—POSWA *v.* CHRISTIE, [1934] N. L. R. 178.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 5.—C.

r i. —— *Of defendant.*]—In an action under Customs Act to recover unpaid customs duties & penalties:—*Held:* evidence of a conversation between deft. & a customs official subsequent to the transactions in issue was admissible, since it tended to show that deft. was again proposing to defraud the customs in practically the same manner in which he was alleged to have done so in the case at bar.—R. *v.* ZIZU NATANSON (No. 1), [1927] 3 D. L. R. 591; [1927] 2 W. W. R. 139; 48 Can. Crim. Cas. 134; 21 Sask. L. R. 518.—**CAN.**

PART II. SECT. 3, SUB-SECT. 8.—A.

h i. —— *Indecent assault.*]—In an action for damages for indecent assault evidence of the general reputation for unchastity of pltf. is admissible, but evidence of specific acts of impropriety is not.—GROSS *v.* BRODRECHT (1897), 24 A. R. 687.—**CAN.**

n i. ——.]—EDWARDS *v.* OTTAWA RIVER NAVIGATION CO. (1876), 39 U. C. R. 264.—**CAN.**

so. *Sparks from engine causing fire—Previous fires caused by engine.*]—*Held:* admissible.—CANADA CENTRAL RY. CO. *v.* MCLAREN (1883), 8 A. R. 564.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A.

447 vii. ——.]—Before a statement based on information can amount to an admission of the truth of that information there must be an expression by declarant affirming his own acceptance of its truth.—BLACK *v.* HARDWELL & GLOECKLER, [1935] 2 W. W. R. 172.—**CAN.**

447 viii. ——.]—The girl the subject of a charge for ill-treatment of a State child gave evidence under cross-examination that she had made a statement to the police, but was not cross-examined by counsel for the defence as to such statement, nor was its production called for at that stage. Later a constable stated under cross-examination that he had taken the statement which was then called for, but the police magistrate ruled that it was privileged from production. On appeal on the ground of the wrongful rejection of evidence:—*Held:* even if the document were not privileged, it could not have been put in evidence, both because counsel for the defence had not laid the basis, by the cross-examination of the girl, for its admission as an inconsistent statement, & also because the girl not being the complainant, her statement was not admissible as between the parties, & that, therefore, there had been no wrongful rejection of evidence.—MCCLINTOCK *v.* NOFFKE, *Ex p.* NOFFKE, [1937] Q. S. R. 73; 30 Q. J. P. R. 45.—**AUS.**

456 lx. ——.]—IVEY *v.* SMITH (1929), 40 B. C. R. 475.—**CAN.**

496a. Admission relating to cause of accident.]—Evidence of admissions made by a deceased man as to the cause of an accident which resulted in his death is admissible against his widow in an action by her under Fatal Accidents Act, 1846 (c. 93).—MARKS *v.* PORTSMOUTH CORPN. (1937), 157 L. T. 261.

515. *Add. Annotation :—As to* (1) **Distd.** Marks *v.* Portsmouth Corpn. (1937), 157 L. T. 261.

535a. Admissions "without prejudice."]—At the trial of an action, pltfs. proposed to put in evidence the examination, taken on commission, of a representative of pltfs. as to admissions alleged to have been made by a representative of defts. Defts. contended that the alleged admissions had been made at interviews which, although they had not been expressed to be "without prejudice," were such that they would be regarded as having been made "without prejudice," & that the examination was inadmissible :—*Held :* the examination was inadmissible.—SCOTT PAPER CO. *v.* DRAYTON PAPER WORKS, LTD. (1927), 44 R. P. C. 151 ; *on appeal*, 44 R. P. C. 529, C. A.

537. *Add. Annotation :*—**Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

544. *Add. Annotation :*—**Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

580a. Admission by author—As to copyright.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 624a, *post*.

595. *Add. Annotations :*—**Consd.** Bevis *v.* Bevis, [1935] P. 86. **Refd.** Warren *v.* Warren, [1925] P. 107.

624a. Agent of predecessor in title—Licensee of copyright.]—(1) By an agreement in writing dated June 30, 1898, one G., the author & sole proprietor of the right to perform a certain play, granted to pltf. the sole & exclusive right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1898, G.'s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a certain place :—*Held :* a copy of the letter of Sept. 22, 1898, the original having been lost, was admissible as evidence in a copyright action between pltf. & third parties, who claimed a right to produce cinematograph films of the play under an agreement for value with G., dated Sept. 6, 1919, to prove that the first performance of the play took place in this country as stated in the letter since (*a*) being written by G.'s agent, it constituted an admission by G., a person who, although not named on the record, had a substantial interest in the result ; & (*b*) it constituted an admission by defts.' predecessors in title.

(2) An entry in the register of first performances of dramatic productions at Stationers' Hall is admissible in evidence as a public register. If such an entry is incorrect, the party producing a certified copy of it may be precluded from relying on it as *primâ facie* proof of a right to produce or reproduce the play to which it relates, but it can be regarded by the ct. as corroboration of other evidence of title.—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., [1926] 1 K. B. 393 ; 95 L. J. K. B. 148 ; 134 L. T. 246 ; 42 T. L. R. 91 ; *affd.*, [1926] 2 K. B. 474 ; 96 L. J. K. B. 88 ; 135 L. T. 650 ; 42 T. L. R. 666 ; 70 Sol. Jo. 756, C. A.

653. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

688. *Add. Annotation :*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

700. *Add. Annotation :*—**Consd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

PART II. SECT. 4, SUB-SECT. 1.—C.

n i. ——.]—DEVERER *v.* ROOP (1876), 16 N. B. R. (3 Pug.) 295.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.—A.

485 ii. ——.]—Admissions in civil cases should be considered, made use of, & interpreted in the same way as confessions in criminal cases.—ROGERS *v.* WEIR (Alta.), [1927] 4 D. L. R. 445 ; [1927] 3 W. W. R. 177.—**CAN.**

485 iii. ——.]—Words or conduct amount to an admission receivable in evidence against a party if they disclose an intention to affirm or acknowledge the existence of a fact whatever be the party's source of information or belief. Although the meaning of his words or conduct may depend upon the state of his knowledge, once that meaning appears & an intention is disclosed to assert or acknowledge the state of facts, its admissibility in evidence as an admission is independent of the party's actual knowledge of the true facts. When admitted in evidence, however, its probative force must be determined by reference to the circumstances in which it is made & may depend altogether upon the party's source of knowledge.—LUSTRE HOSIERY, LTD. *v.* YORK. (1936), 54 C. L. R. 134.—**AUS.**

496 ii. ——.]—LARGE *v.* PERKINS (1823), Tay. 62.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.—G. (c) ii.

578 i. *Admission by cestui que trust—As against trustee.*]—On a suit by the exor. of A. against the exor. of A.'s wife for a declaration that at the time of her death the wife held certain land in trust for herself & A. as tenants in common, evidence of a statement by the wife that she had executed a declaration of trust to that effect, but had done so under duress, was rejected.—ROBINSON *v.* TRUSTEES EXECUTORS & AGENCY CO., LTD., [1931] V. L. R. 369. —**AUS.**

PART II. SECT. 4, SUB-SECT. 2.—G. (m) i.

a i. —— —— *Admission at inquest at which employer not represented.*]—MUIR *v.* SARNIA BRIDGE CO., [1931] 1 D. L. R. 742 ; 66 O. L. R. 365.—**CAN.**

c i. —— *Admission in former proceeding.*]—By English law, which is by statute the law of evidence in Southern Rhodesia, statements made in evidence by an agent called by his principal in a suit to which the latter is a party will not in general bind the principal in a subsequent action by a stranger & are not admissible in evidence against the principal in such later action.—RHODESIAN CORPN., LTD. *v.* GLOBE & PHŒNIX GOLD MINING CO., LTD., [1934] A. D. 293.—**S. AF.**

PART II. SECT. 4, SUB-SECT. 2.—G. (m) ii.

627 ii. ——.]—LYSNAR *v.* NATIONAL BANK OF NEW ZEALAND, LTD., [1935] 1 W. W. R. 625.—**N.Z.**

PART II. SECT. 5, SUB-SECT. 1.

684 i. *As corroborative evidence.*]—Statements made by deceased after the execution of her will are admissible to corroborate a witness who has deposed to the execution with all the prescribed formalities.—HOWITH *v.* MCFARLANE, [1925] 2 D. L. R. 395 ; 56 O. L. R. 375.—**CAN.**

sp. *Must be statement of fact.*]—Evidence of a statement made by deceased who died as the result of a blow, struck by accused, that he hoped accused would not get into any trouble with the police over it as it was not his fault :—*Held :* inadmissible, as the words only amounted to an expression of hope & opinion.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

sq. *Declaration as to religion.*]—Where the religion of a deceased person is a fact in issue, his own solemn declaration about his religion, made in a formal document, *e.g.*, in his will, is admissible in evidence & is entitled to great weight. Such declaration would be admissible under Evidence Act, ss. 11 (2), 14, & 21 (2).—LEONG HONE WAING *v.* LEON AH FOON (1929), I. L. R. 7 Ran. 720.—**IND.**

st. *Declaration of testator—To prove invalidity of will.*]—Declarations of a testator are not admissible in evidence to show that a will executed by him was invalid.—*Re* ROSENBLAT ESTATE, [1932] 2 W. W. R. 433 ; 4 D. L. R. 518 ; 40 Man. L. R. 380.—**CAN.**

sv. *Statement constituting motive for crime—How proved.*]—Where a statement by a deceased person is said to constitute a motive for another to commit a crime, it cannot be proved by one who heard the deceased make the statement.—*Re* VENKATASUBBA REDDI (1931) I. L. R. 54 Mad. 931.—**IND.**

725. *Add. Annotation :—Generally,* **Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

730a. ——.]—E. G. by her will gave to R. B., her sole exor., all her residuary real & personal estate for the purpose of creating a fund known as the "E. G. Charity," the income of which was "to be expended by him as I have directed." E. G. died in Nov. 1934, & her will was duly proved by the exor., R. B. Before he died in Apr. 1935, R. B. made a statement in writing as to the purpose or purposes for which E. G. told him to hold her residuary estate :—*Held :* (1) the statement in writing made by R. B., not being against his immediate pecuniary or proprietary interest, was not admissible in evidence ; (2) E. G. had by her will disclosed a general charitable intention, & the fund must be disposed of in accordance with a scheme to be settled by the ct.—*Re* GARDNER'S WILL TRUSTS, BOUCHER *v.* HORN, [1936] 3 All E. R. 938 ; 81 Sol. Jo. 34.

739. *Add. Annotation :*—**Refd.** *Re* Gardner's Will Trusts, Boucher *v.* Horn, [1936] 3 All E. R. 938.

745. *Add. Annotations :*—**Folld.** Republica de Guatemala *v.* Nunez (1926), 135 L. T. 436. **Consd.** Homes *v.* Newman, [1931] 2 Ch. 112.

754. *Add. Annotation :*—**Refd.** Simon *v.* Simon, [1936] P. 17.

775. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez (1926), 135 L. T. 436.

811a. Memorandum accepting charge in partial satisfaction of share in estate.]—HOMES *v.* NEWMAN, No. 311a, *ante.*

815. *Add. Annotation :*—**Consd.** Marks *v.* Portsmouth Corpn. (1937), 157 L. T. 201.

816. *Add. Annotation :*—**Refd.** Jones *v.* Cory (1926), 20 B. W. C. C. 251.

819. *Add. Annotation :*—**Refd.** Davy *v.* A.-G. (1934), 50 T. L. R. 588.

859. *Add. Annotation :*—**Refd.** Simon *v.* Simon, [1936] P. 17.

864. *Add. Annotation :*—**Consd.** Simon *v.* Simon, [1936] P. 17.

864a. Certificate & memoranda of case.]—A husband petitioning for divorce was countercharged by his wife with adultery with a named woman, who had at a material date been examined by a surgeon as to her sexual condition. The surgeon gave a certificate & in addition made memoranda of the case. He died before the trial of the present countercharge. On these documents being tendered in evidence :—*Held :* the circumstances founded no exception to the general rule that evidence must be given in open ct. & subject to cross-examination. The exception is limited to cases where it was the duty of deceased to perform a particular act & record having done so. In the present case the surgeon had no duty to perform which brought him within the exception, & the documents were therefore inadmissible.—SIMON *v.* SIMON, HOGARTH, PRESTON & SHAW, [1936] P. 17 ; 105 L. J. P. 14 ; 154 L. T. 63 ; 52 T. L. R. 91 ; 79 Sol. Jo. 861.

871. *Add. Annotation :*—**Refd.** Jones *v.* Cory (1926), 20 B. W. C. C. 251.

927. *Add. Annotation :*—**Consd.** *Re* Davy, [1935] P. 1.

935. *Add. Annotation :*—**Refd.** *Re* Davy, [1935] P. 1.

959. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Davy, [1935] P. 1.

968. *Add. Annotations :*—*As to* (2) **Refd.** *Re* Davy, [1935] P. 1. *As to* (4) **Refd.** United Molasses Co. *v.* National Petroleum, Ltd. (1934), 50 T. L. R. 266. *Generally,* **Refd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

969. *Add. Annotation :*—**Refd.** R. *v.* Copestake *Ex p.* Wilkinson (1926), 90 J. P. 191.

979a. —— ——.]—The date of *lis mota* for the purpose of making a dividing line between declarations made before or after is not at the commencement of the actual litigation or the moment when a lawful cause of action arises, but it is when a controversy originates in a family sufficient to create a bias in the

---

PART II. SECT. 5, SUB-SECT. 2.—E. (b).

752 ii. ——.]—In so far as words used by deceased were statements of facts :—*Held :* they were inadmissible, as there was nothing to show that deceased knew them to be contrary to his pecuniary or proprietary interests when he made them ; & in so far as they related to opinion on what was in accused's mind they were not admissible, as they were not statements of fact.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

PART II. SECT. 5, SUB-SECT. 3.—D. (b) iii.

858 i. *In diary—As to preparation of deed.*]—Notes made by a deceased solr. for the primary purpose of having a record of what transpired at interviews in regard to negotiations for a deed of family settlement (the negotiations extending over a considerable time) & which it was advisable for the solr. to keep in order properly to discharge his ultimate duty of approving or not approving of the settlement, were held admissible in evidence.—HARRIS *v.* LAMBERT, [1932] I. R. 504.—**IR.**

PART II. SECT. 5, SUB-SECT. 3.—D. (b) iv.

ak. *Letters, records & statements.*]—Letters, records & statements of a deceased physician made in the course of professional duty held admissible.—PALTER CAP CO. *v.* GREAT WEST LIFE ASSCNE. CO., [1936] 2 D. L. R. 304 ; O. R. 341.—**CAN.**

PART II. SECT. 5, SUB-SECT. 5.—A.

908 iii. ——.]—SEWELL *v.* URQUHART, [1930] 2 D. L. R. 547.—**CAN.**

PART II. SECT. 5, SUB-SECT. 5.—B.

936 vi. ——.]—CROFT *v.* WAMBOLT, [1930] 2 D. L. R. 996 ; 1 M. P. R. 415.—**CAN.**

PART II. SECT. 5, SUB-SECT. 5.—E.

965 v. ——.]—Under sect. 32 (6) of the Indian Evidence Act, 1872, as by the long established rule in England, in questions of pedigree the statements of deceased members of the family, made before the question in dispute was raised, are evidence to prove pedigree.—ABDUL GHAFUR *v.* HUSSAIN BIBI (1931), I. L. R. 12 Lah. 336.—**IND.**

965 vi. ——.]—The matter in controversy in resp.'s action involved the title to & ownership of 200 acres of wilderness or woodland. Resp. claimed title to the property through a conveyance dated May 3, 1920, from John & James F., the sons & heirs of one David F., deceased, who, in turn, was alleged to have been the only child of one Elizabeth F., the original grantee from the Crown. Applt. co. claimed a documentary title to the property through a series of five conveyances from the first deed in 1897 to the last in 1909, & also claimed a title by continuous, exclusive & adverse possession in itself & its predecessors in possession for a period of over twenty years. The trial judge, after having admitted as evidence, subject to objection by applt.'s counsel, the declarations made to witnesses by the two brothers, John & James F., concerning their own pedigree, excluded them in his judgment & dismissed resp.'s action, finding that applt. co. had established its title to the property. The Appeal Div. reversed the judgment :—*Held :* the trial judge was justified in excluding the declarations of the deceased grantors in the deed to resp., John & James F., as evidence that they were grandsons of Elizabeth F., the original grantee from the Crown & that he was also justified in reaching the conclusion that resp. had failed to establish his title.—PEJEPSCOT PAPER CO. *v.* FARREN, [1933] S. C. R. 388 ; 4 D. L. R. 92.—**CAN.**

minds of members of the family at the moment of their declarations.—*Re* DAVY, [1935] P. 1; *sub nom.* DAVY *v.* A.-G., 103 L. J. P. 115; 151 L. T. 562; 50 T. L. R. 588; 78 Sol. Jo. 618.

1004. *Add. Annotation :*—**Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

1024. *Add. Annotations :*—**Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312; Hue *v.* Whiteley, [1929] 1 Ch. 440. **Refd.** Trafford *v.* Trafford (1929), 45 T. L. R. 502; A.-G. *v.* Mallock (1931), 48 T. L. R. 107.

1026. *Add. Annotation :*—**Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. K. B. 312.

1033. *Add. Annotation :*—**Refd.** Davis *v.* McNamara & Co. (1921), Ltd. (1932), 25 B. W. C. C. 550.

1040. *Add. Annotation :*—**Consd.** Tolley *v.* Fry, J. S. & Sons (1929), 46 T. L. R. 108.

1057. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

1060. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

1060a. ——.]—PALIN *v.* PONTING, No. 5571a, *post.*

Part III.—Modes of Proof and Weight of Evidence.

1088. *Add. Annotation :*—*As to* (1) **Refd.** Muscroft *v.* Stewarts & Lloyds (1928), 140 L. T. 64.

1130. *Add. Annotation :*—**Refd.** De Stempel *v.* Dunkels, [1938] 1 All E. R. 238.

1181. *Add. Annotation :*—**Refd.** *Re* Warren; Wheeler *v.* Mills, [1938] 2 All E. R. 331.

1200a. —— ——.]—All statutes which concern the King are general laws, of which the judges will take notice without pleading.—CROMWELL'S (LORD) CASE (1578), 4 Co. Rep. 12, b; 76 E. R. 877.

1260. *Add. Annotation :*—**Refd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

1264a. —— ——.]—It is the settled practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State, & the information so received is conclusive.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1924] A. C. 797; 93 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.

Annotations :—**Apld.** Engelke *v.* Musmann, [1928] A. C. 433. **Refd.** North Charterland Exploration Co. (1910), Ltd. *v.* R., [1931] 1 Ch. 169; Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485.

1265. *Add. Annotation :*—*As to* (1) **Refd.** Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 677.

1267. *Add. Annotations :*—*As to* (1) **Consd.** The Jupiter (No. 3) (1927), 137 L. T. 333. **Apld.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8; The Arantzazu Mendi, [1938] 3 All E. R. 333. **Refd.** Banco de Bilbao *v.* Rey, [1938] 2 All E. R. 253; Haile Selassie *v.* Cable & Wireless, Ltd., [1938] 3 All E. R. 384. *As to* (2) **Refd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 148 L. T. 242. *Generally*, **Refd.** Compania Naviera Vascongada *v.* Cristina S.S., The Cristina, [1937] 4 All E. R. 313.

PART II. SECT. 7, SUB-SECT. 1.

sd. *Number of witnesses.*]—Evidence Act, R. S. O., 1927, s. 9, which requires leave in order to call more than three witnesses to give opinion evidence, refers to expert evidence.—MCLACHLIN *v.* DUNWICH MUTUAL FIRE INSCE. CO., [1935] 3 D. L. R. 194.—**CAN.**

PART II. SECT. 10, SUB-SECT. 1.

1048 ii. ——.]—The first proviso to sect. 33 of Indian Evidence Act, 1872, which prescribes the circumstances in which the evidence of a witness in a judicial proceeding, who has since died, is admissible in a subsequent proceeding, requires, upon its true construction, that the party to the first proceeding should have represented in interest the party to the second proceeding in relation to the question in issue in the first proceeding to which the facts which the evidence states were relevant. The proviso does not reproduce English law on the subject.—KRISHNAYYA RAO *v.* PITTAPUR (RAJA) (1933), 60 L. R. Ind. App. 336.—**IND.**

m i. ——.]—COURT *v.* HOLLAND. *Ex p.* HOLLAND & WALSH (1879), 8 P. R. 219.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.

g i. —— *Contract based on terms of another contract.*]—The fact that the parties to a contract have expressly based the contract on the terms of a contract between other parties does not give the former parties the right to have evidence given of the latter contract in order that their contractual rights may be ascertained.—*Re* MACKLIN, TRIBUNE NEWSPAPER CO. *v.* FORT FRANCES PULP & PAPER CO., LTD., [1932] 2 W. W. R. 443; 4 D. L. R. 179; 40 Man. L. R. 401.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—B.

1182 i. *Records of the court.*]—LEVI *v.* COWAN, [1933] 2 W. W. R. 140.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—C.

s i. —— —— ——.]—The means by which a judicial officer may become acquainted officially with the law are not limited to those provided by sect. 10 of Manitoba Evidence Act, R. S. M., 1913, for the proof of proclamations, orders, etc.; judges & magistrates are entitled to act on their own knowledge that a certain Act is in force without having before them the proclamation bringing it into force.—R. *v.* WAGNER, [1931] 2 W. W. R. 650; 4 D. L. R. 761; 56 Can. C. C. 213; 39 Man. L. R. 532.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—D.

1217 i. *Duty of court to take notice of—Contract contrary to Lord's Day Act.*]—Although the Lord's Day Act is not pleaded, it is the duty of the ct. to take cognisance of the statute & to raise the point *ex mero motu* even if not pleaded or raised by counsel.—LISTER *v.* BURNS & CO., [1931] 3 D. L. R. 105; 55 Can. C. C. 197; 43 B. C. R. 468.—**CAN.**

1217 ii. —— *Contract against public policy.*]—The ct. will take notice of its own motion of any ground of public policy on which a contract before the ct. is illegal.—BEATTIE *v.* UNITED STATES FIDELITY & GUARANTY CO. & HOME INSURANCE CO. OF NEW YORK, LINDAL *v.* UNITED STATES FIDELITY & GUARANTY CO. & HOME INSURANCE CO. OF NEW YORK, [1933] 1 W. W. R. 334; *revsd. on other grounds*, [1934] S. C. R. 33; 1 D. L. R. 497.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—E.

st. *Native law, customs & usages.*]—NGCOBO *v.* NGCOBO, [1929] App. D. 233.—**S. AF.**

sv. *Right of privacy.*]—It is well established & recognised that a customary right of privacy exists generally in these Provinces, & it is open to a ct. to take judicial notice under sect. 57 of Evidence Act of the general prevalence of such a custom having the force of law. It is, therefore, not necessary that such a custom should be alleged & proved by evidence produced in each case to establish it.—NIHAL CHAND *v.* BHAGWAN DEI (1935), I. L. R. 58 All. 370.—**IND.**

PART III. SECT. 5, SUB-SECT. 4.

sy. *Time of darkness.*]—A ct. in Manitoba can take judicial notice of the fact that on a fine evening in Aug. in that province it is not dark a few minutes after eight o'clock.—BELL *v.* HUTCHINGS & HUTCHINGS, [1932] 1 W. W. R. 49; 1 D. L. R. 468.—**CAN.**

PART III. SECT. 5, SUB-SECT. 5.—C.

sb. *What is foreign State within Civil Procedure Code, s. 84—Gadwal State.*]—*Held :* Gadwal State is neither a sovereign State nor a foreign State within sect. 84 of the Civil Procedure Code.—VENKATARAMI *v.* RAJA OF GADWAL (1930), I. L. R. 53 Mad. 968.—**IND.**

1268. *Add. Annotations :*—**Refd.** Bank of Ethiopia *v.* National Bank of Egypt & Liguori, [1937] 3 All E. R. 8 ; Banco de Bilbao *v.* Rey, [1938] 2 All E. R. 253.

1269. *Add. Annotation :*—**Refd.** The Fagernes, [1927] P. 311.

1270. *Add. Annotations :*—**Consd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824 ; The Arantzazu Mendi, [1938] 3 All E. R. 333. **Refd.** Compania Naviera Vascongada *v.* Cristina S.S., [1938] A. C. 485.

1273. *Add. Annotation :*—**Refd.** Compania Naviera Vascongada *v.* Cristina S.S., [1937] 4 All E. R. 313.

1273a. Constitution of foreign state.]—An English ct. cannot take judicial cognisance of the internal constitution & economy of a foreign state. These matters must be proved by evidence.—A/S RENDAL *v.* ARCOS, LTD., [1936] 1 All E. R. 623, C. A. ; *revsd. on other grounds*, [1937] 3 All E. R. 577, H. L.

1301. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 94 L. J. K. B. 48.

1304. *Add. Annotation :*—*As to* (1) **Refd.** Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125.

1305. *Add. Annotation :*—**Refd.** Wray *v.* Essex County Council, [1936] 3 All E. R. 97.

1306. *Add. Annotations :*—*As to* (1) **Refd.** Addie (R.) & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358 ; Cunard *v.* Antifyre, Ltd. (1932), 49 T. L. R. 184 ; Donovan *v.* Union Cartage Co. (1932), 49 T. L. R. 125. *As to* (2) **Refd.** Ellis *v.* Fulham Corpn., [1937] 3 All E. R. 454.

1319. *Add. Annotations :*—**Consd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1951] A. C. 351 ; Sparey *v.* Bath Rural District Council (1930), 23 B. W. C. C. 263. **Refd.** Lawrence *v.* Matthews (1924), Ltd. (1928), 97 L. J. K. B. 758 ; Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519 ; Smith *v.* Stepney Corpn. (1929), 22 B. W. C. C. 451 ; Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320 ; Brooker *v.* Thomas Borthwick & Sons (Australasia), Ltd. & Connected Appeals (1933), 77 Sol. Jo. 556 ; Martin *v.* Finch, [1937] 2 All E. R. 631.

1338. *Add. Citations :*—[1925] 1 K. B. 399 ; 94 L. J. K. B. 497 ; 132 L. T. 267 ; 17 B. W. C. C. 221.

Add. Annotations :—**Apprvd.** Keane *v.* Mount Vernon Colliery Co., [1933] A. C. 309. **Refd.** Welsh Navigation Steam Coal Co. *v.* Evans, [1927] A. C. 834 ; Nugent *v.* Londonderry Collieries (1929), 141 L. T. 619.

After this case add :—

Compare MASTER & SERVANT, Vol. XXXIV., p. 391, Nos. 3180-3184.

1338a. Production of plan from photograph.]—UNITED STATES SHIPPING BOARD *v.* THE ST. ALBANS, No. 3935a, *post*.

1362. *Add. Annotation :*—**Refd.** R. *v.* Triffitt, [1938] 2 All E. R. 818.

1377. *Add. Annotations :*—**Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312 ; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258 ; Anglo-Scottish Beet Sugar Corpn., Ltd. *v.* Spalding Urban District Council, [1937] 3 All E. R. 335.

1379. *Add. Annotation :*—**Refd.** Provident Accident & White Cross Insurance Co. *v.* Dahne & White, [1937] 2 All E. R. 255.

PART III. SECT. 5, SUB-SECT. 5.—D.

f. For "(1886)" read "(1866)."

PART III. SECT. 5, SUB-SECT. 6.—A.

sd. *"Unorganised territory."*]—On an appeal by the Crown from the dismissal of a charge under Govt. Liquor Act, it was objected that the notice of intention to appeal was not filed until the 20th day after the conviction, & that there was no proof before the ct. that the place where the cause of the information or complaint arose was situate in unorganised territory :—*Held :* In view of sect. 103 of Summary Convictions Act, & of the definition of "unorganised territory" in the Interpretation Act, the ct. must take judicial notice of the fact that said place was in unorganised territory.—R. *ex rel.* NELSON *v.* CASSANDRA (B. C.), [1929] 1 W. W. R. 866 ; 52 Can. Crim. Cas. 326.—**CAN.**

PART III. SECT. 5, SUB-SECT. 6.—B.

r i. ——.]—The ct. refused to take judicial notice that a place where an offence was alleged to have been committed was within the jurisdiction of the stipendiary magistrate.—R. *v.* MACMILLAN (1932), 4 M. P. R. 499 ; 58 C. C. C. 200.—**CAN.**

e i. ——.]—Judicial notice cannot be taken of the fact that a particular place is within a certain judicial district or of the distance of one place from another or of the identity of a place referred to in one document with that of a place referred to in another document, even though the names be the same.—HYNES *v.* ALTON, [1928] 3 W. W. R. 261.—**CAN.**

PART III. SECT. 5, SUB-SECT. 7.—A.

sf. *Vicious habits of bees.*]—The ct. will not take judicial notice of the vicious habits of bees.—ROBINS *v.* KENNEDY & COLUMB, [1931] N. Z. L. R. 1134.—**N.Z.**

PART III. SECT. 5, SUB-SECT. 7.—B.

1301 i. *Period of gestation.*]—In a case in which a particular period of pregnancy is a material fact to be established a judge is not at liberty to base his finding upon his own scientific knowledge or the testimony of experts given before him in other similar cases, or on the presumption of fact as to the average period of pregnancy. The period in question must be proved, like any other fact, by such evidence, given in that particular case, as may serve to bring conviction to the mind of the judge trying that case. The ct. is entitled to take judicial notice of the course of nature only in so far as it is a notorious fact that nature follows a certain course. It will take judicial notice of the fact that the average period of human gestation is nine calendar months ; it will also, however, take judicial notice that the exact limits of this period are both legally & scientifically unsettled & that it varies in different cases.—FLETCHER *v.* KONDRATIUK, [1933] 2 W. W. R. 225 ; 3 D. L. R. 532 ; 60 C. C. C. 119.—**CAN.**

PART III. SECT. 5, SUB-SECT. 7.—D.

h i. *Bar-room—Place where liquor kept.*]—On the description of a room as a bar-room of licensed premises, judicial notice is to be taken that this is a room where alcoholic liquor is kept.—FRANCE *v.* HUMPHREYS, [1926] S. A. S. R. 214.—**AUS.**

sg. *Financial depression.*]—EDDY *v.* STEWART, [1932] 2 W. W. R. 699.—**CAN.**

sk. ——.]—Judicial notice should be taken of the financial depression throughout the province of Saskatchewan, & especially in the southern portion thereof, during the last three years.—MILLS *v.* ANGUS, [1933] 2 W. W. R. 218.—**CAN.**

sl. *World unemployment.*]—Judicial notice will be taken of the present world-wide unemployment situation & the distress resulting or likely to result therefrom.—*Re* CALGARY CITY CHARTER, [1933] 3 W. W. R. 385.—**CAN.**

so. *Service stations.*]—Judicial notice taken of the existence of "service stations" & of the nature of the business done by them & by garages known as "servicing."—*Re* GOLLAN & EDMONTON CREDIT CO., [1938] 1 W. W. R. 670 ; 8 F. L. J. (Can.) 4.—**CAN.**

PART III. SECT. 5, SUB-SECT. 7.—G.

q i. *S.P.*—R. *v.* MCPHERSON (1915), 33 W. L. R. 21 ; 9 W. W. R. 613 ; 8 Sask. L. R. 412.—**CAN.**

q ii. *Home-brew—Intoxicating liquor.*]—The ct. will not take judicial notice of the fact that home-brew is an intoxicating liquor.—R. *v.* MARSHALL, [1925] 1 D. L. R. 1132 ; 43 Can. Crim. Cas. 253 ; [1924] 3 W. W. R. 865.—**CAN.**

s i. *Mode of conducting traffic—Stopping-places for trams.*]—*Held :* the ct. could take judicial notice of the mode of conducting traffic on an established system of tramways in a city & its suburbs, including the fact that there were recognised stopping-places for trams.—*Re* BYE-LAW MADE BY PROSPECT DISTRICT COUNCIL, *Ex p.* HILL, [1926] S. A. S. R. 326.—**AUS.**

1382a. ——.]—HALIFAX'S (LORD) CASE (undated), cited in Bull. N. P. at p. 298a.

Annotation :—**Consd.** Williams *v.* East India Co. (1802), 3 East, 192.

1402. *Add. Annotation :*—**Expld.** Lal Chand Marwari *v.* Mahant Ramrup Gir (1925), 42 T. L. R. 159.

1413a. —— —— ——.]—Ejectment, in 1849, by reversioner for premises demised, in 1801, for three lives, & twenty-one years. Two of the *cestui que vies* had died before 1828. No witness was called who had ever known the third ; &, except the mention of him in the lease (which described him as aged ten years), there was no proof that he had ever existed. No evidence of search for him was given :—*Held :* to raise the presumption of his death, there should have been evidence that he had not been heard of by those persons who would naturally have heard of him had he been alive, or that search had been ineffectually made to find such a person ; & that the mere fact that no witness called had heard of him was not sufficient.—DOE d. FRANCE *v.* ANDREWS (1850), 15 Q. B. 756 ; 117 E. R. 644.

1418a. —— ——.]—*In the Goods of* SERGEANT (1872), 26 L. T. 669 ; 36 J. P. 696 ; *sub nom. In the Goods of* SERJEANT, 20 W. R. 872.

1421a. —— ——.]—(1) If a person has not been heard of for a term of not less than seven years, there is a presumption of law that he is dead. (2) The *onus* of proving the death of the person at any particular date must rest with the person to whose title that fact is essential.—LAL CHAND MARWARI *v.* MAHANT RAMRUP GIR (1925), 42 T. L. R. 159, P. C.

1437a. ——.]—A husband appealed from a maintenance order of 2*s.* 6*d.* a week made by justices on the ground that the wife was previously married in 1919, that she had admitted her previous husband was alive in 1922, & she had not proved his death so as to validate her marriage to applt. on Feb. 28, 1930 :—*Held :* the justices were wrong in ruling that the onus was upon applt. to prove that the previous husband was alive. The justices ought to have concluded from the wife's evidence that the marriage in Feb. 1930, was void. Fresh evidence, now admitted, showed that the wife & the previous husband were still living together as a married couple in 1925. The appeal was allowed & the order discharged.—IVETT *v.* IVETT (1930), 143 L. T. 680 ; 94 J. P. 237 ; 28 L. G. R. 479 ; 29 Cox, C. C. 172.

Annotation :—**Consd.** Hogton *v.* Hogton (1933), 103 L. J. P. 17.

1437b. ——.]—After twenty-two years of married life a man left his wife & she summoned him for desertion. He claimed that she was not really his wife as she had been previously married & it had not been established that the former husband, who was last heard of alive some six years before the second marriage, was dead at the time of that ceremony, which took place in 1910. The magistrates accepted evidence that fruitless inquiries had

PART III. SECT. 6, SUB-SECT. 6.—A

st. *Evidence of—Whether Public Administrator requires same as court of law.*]—*Re* TJERSTROM (1905), 1 W. L. R. 385.—**CAN.**

sv. *Question of fact.*]—Death is a question of fact which must be established by the preponderance of evidence ; either by direct evidence of death or by the proof of such circumstances as may reasonably lead the ct. to conclude, that there can be no other satisfactory accounting for the disappearance or absence of the person whose death is sought to be established. The evidence submitted in the present case was held insufficient to warrant that conclusion.—*Re* BAILLIE ESTATE, MONTREAL TRUST CO. *v.* BAILLIE, [1930] 3 W. W. R. 92 ; 4 D. L. R. 1011. —**CAN.**

PART III. SECT. 6, SUB-SECT. 6.—B.

sw. *General rules.*]—There are two grounds upon which the ct. will make an order presuming death : (*a*) when the time elapsing between disappearance & the application is so long as to raise the inference that the person is dead ; (*b*) when the person disappeared in circumstances which lead to the inference that he died at a particular time.—*Re* WIDDICOMBE (1929), 50 N. L. R. 311.—**S. AF.**

1410 xviii. —— ——.]—*Re* JELFS, [1925] 1 W. W. R. 735.—**CAN.**

1410 xix. —— ——.]—*Re* DE MILLE (Alta.), [1926] 3 D. L. R. 140 ; [1926] 2 W. W. R. 148.—**CAN.**

1410 xx. —— ——.]—*Re* HICKEY, DWYER *v.* HICKEY, [1925] V. L. R. 270 ; 31 Argus L. R. 261.—**AUS.**

1410 xxi. —— ——.]—H. married M. in 1899, who deserted her in 1900. Casual inquiries as to his whereabouts were made, but he was not afterwards heard of. B. made his will on May 14, 1915, & went through a form of marriage with H. on June 24, 1915 :—*Held :* the death of M. should be presumed so as to qualify H. to remarry B. in 1915, & therefore B.'s will was revoked by his marriage.—*In the Estate of* BARNETT, 22 Tas. L. R. 83.—**AUS.**

1410 xxii. —— ——.]—The ct. has jurisdiction to declare that a person who has not been heard of for more than seven years shall be presumed to be dead, even though the sole object of appt. in obtaining the declaration is to clear the way for his or her remarriage.—*Re* DELOLI, [1929] 3 D. L. R. 763 ; 2 W. W. R. 327 ; 38 Man. L. R. 279.—**CAN.**

1410 xxiii. —— —— *Order of court obtained by fraud—Setting aside.*]—Petitioner herein sought the rescission of an order which had been obtained by his present wife allowing her to swear that her former husband was dead prior to a date which was over seven years prior to the making of the order. The order was obtained solely to assist her, appct. therefor, in obtaining a government pension. The present petitioner alleged that the order had been obtained by deceiving the ct. & that she had used it so as to lead him to believe that she was free to marry him :—*Held :* since it had not been shown that the present petitioner has now, or had at the time the order was made, any interest therein or in the effect which might result therefrom, he had no status sufficient to support his petition to have the order set aside.—*Re* HOLL, *Re* COWPER, [1933] 1 W. W. R. 17 ; 46 B. C. R. 297.—**CAN.**

1410 xxiv. —— ——.]—An order will not be made declaring that a person who has not been heard of for a long time is dead, except as incidental to the exercise of some jurisdiction, *e.g.* the jurisdiction to admit a will to probate.—*Re* SELL (1924), 56 O. L. R. 32.—**CAN.**

1413 v. —— —— ——.]—*Re* TOMES (Man.), [1927] 2 D. L. R. 864 ; [1927] 1 W. W. R. 429.—**CAN.**

1413 vi. —— —— —— *Strong incentive to disappear—Death not presumed.*]—O'DONNELL *v.* NORTH AMERICAN LIFE ASSURANCE CO., [1927] 3 D. L. R. 412 ; 60 O. L. R. 502.—**CAN.**

o i. —— *Disappearance at sea.*]—*Re* HONEYMAN, [1930] 1 W. W. R. 999. —**CAN.**

o ii. —— *Disappearance of aged & infirm person.*]—Testator, who was aged seventy-seven, & failing in health & mental vigour, disappeared in 1925 from his home, which was situated in very rough country, & twelve miles from the nearest railway station. A careful search in the surrounding country was made by two constables, assisted by black trackers & about 150 other persons, for a week after his disappearance, but he was not seen or heard of again :—*Held :* was sufficient evidence on which the ct. might presume that he was dead, & he had died on or about the date of his disappearance.—*Re* HORN (1930), Argus L. R. 280.—**AUS.**

sx. *Death of writer of old letters.*]—Where papers about 45 years old are produced before a ct. it may presume, in the absence of evidence to the contrary, that the writer was dead at the time they were produced.—JABBAR ALI SARDAR *v.* MONMOHAM PANDEY (1928), I. L. R. 55 Calc. 1216.—**IND.**

PART III. SECT. 6, SUB-SECT. 6.—C. (a).

1423 ii. ——.]—Under Indian Evidence Act, 1872, s. 108, when the ct. has to determine the date of the death of a person who has not been heard of for a period of more than seven years, there is no presumption that he died at the end of the first seven years, or at any particular date.—LAL CHAND MARWARI *v.* RAMRUP GIR (1925), 53 L. R. Ind. App. 24.—**IND.**

1423 iii. ——.]—Although there is a presumption of death after absence for seven years, there is no presumption that death took place at any particular time within the seven years.—HICKEY *v.* GREAT WEST LIFE ASSURANCE CO. (1933), 7 M. P. R. 104.—**CAN.**

been made as to the former husband's whereabouts up to the second marriage, & made an order for maintenance on the basis that the former husband could be presumed to have been dead at the material date. The husband appealed on the grounds that there was no evidence admissible that the first marriage was not subsisting, & that the magistrates were wrong in law in holding that the burden of proof was on the applt. to prove that that marriage was subsisting: —*Held:* the issue before the magistrates was whether the wife was free to marry in 1910, & whether it could be inferred from the evidence that the former husband was then dead. The magistrates had ample material for their decision, & the appeal failed.—HOGTON *v.* HOGTON (1933), 103 L. J. P. 17; 150 L. T. 80; 97 J. P. 303; 50 T. L. R. 18; 77 Sol. Jo. 780; 31 L. G. R. 391; 30 Cox, C. C. 23 D. C.

1445a. On party to whose title fact essential.]—LAL CHAND MARWARI *v.* MAHANT RAMRUP GIR, No. 1421a, *ante*.

1453a. ——— ———.]—In July, 1852, H. quitted England for America, & wrote home announcing his safe arrival at New York. There was evidence that he was in declining health when he quitted England, & that, from his character, education, & previous life, he would, if living, have communicated with his friends in England. Advertisements requesting information concerning him had been inserted in the principal American newspapers, but he was never heard of again. The father of H. died in Sept. 1853, intestate. Pltf., who was one of the next of kin of the father, supposing the son to have predeceased him, filed his bill for the administration of the father's estate:—*Held:* there was *primâ facie* evidence of the death of H. in his father's lifetime to entitle pltf. to have the personal estate secured in ct.—DANBY *v.* DANBY (1859), 5 Jur. N. S. 54.

1454. *Add. Annotation:*—**Consd.** Monckton *v.* Tarr (1930), 23 B. W. C. C. 504.

1459a. ——— ———.]—DOE d. FRANCE *v.* ANDREWS (1850), 15 Q. B. 756; 117 E. R. 644.

Annotations:—**Consd.** Prudential Assce. *v.* Edmonds (1877), 2 App. Cas. 487; Lyell *v.* Kennedy (1887), 56 L. T. 647; *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

1472. For cross-reference before this case "*See, now,* Law of Property Act, 1925 (c. 20), s. 184."

1489a. ———.]—There is no presumption of law as to survivorship among persons whose death is occasioned by one & the same cause. The question is one of fact, & if the evidence does not establish the survivorship, the law will treat it as a matter incapable of being determined.—*Re* NIGHTINGALE, HARGREAVES *v.* SHUTTLEWORTH (1927), 71 Sol. Jo. 542.

1499a. ———.]—DOE d. BANNING *v.* GRIFFIN, No. 164, *ante*.

1505. *Add. Annotations:*—**Refd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56; I. R. Comrs. *v.* Bone (1927), 13 Tax Cas. 20.

1526a. ———.]—HALIFAX'S (LORD) CASE (undated), cited in Bull. N. P. at p. 298a.

Annotation:—**Consd.** Williams *v.* East India Co. (1802), 3 East, 192.

1531. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

1550. *Add. Annotation:*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

1567. *Add. Annotation:*—**Refd.** Monckton *v.* Tarr (1930), 23 B. W. C. C. 504.

1580. *Add. Annotation:*—**Refd.** Saunders *v.* Automotive Spares, Ltd. Registered Design No. 747,128 of Albert Saunders (1932), 49 R. P. C. 450.

1586. *Add. Annotation:*—**Apld.** *Re* Davis's Trade Marks, Davis *v.* Sussex Rubber Co., [1927] 2 Ch. 345.

PART III. SECT. 6, SUB-SECT. 6.—D.

t i. ———.]—*Re* FORSYTH (N. S.), [1927] 2 D. L. R. 72.—**CAN.**

PART III. SECT. 6, SUB-SECT. 6.—E.

1493 i. *Onus of proof—Rests on party asserting affirmative.*]—CAMPBELL *v.* COX & MITCHELL, [1930] 1 D. L. R. 649; 42 B. C. R. 120.—**CAN.**

b i. ———.]—There is no presumption of survivorship from age or death in case of common death.—*Re* WARWICKER, MCLEOD *v.* TORONTO GENERAL HOSPITAL, [1936] 3 D. L. R. 368; O. R. 379.—**CAN.**

PART III. SECT. 6, SUB-SECT. 6.—F.

1497 i. *Whether presumption exists.*]—Although death will, in a proper case, be presumed, there is no presumption that the person died without issue.—*Re* SAUNDERS, PARK *v.* AUSTIN, [1928] N. Z. L. R. 391.—**N.Z.**

PART III. SECT. 6, SUB-SECT. 7.

f i. ———.]—MACRAE *v.* WALSH (1927), 27 S. R. N. S. W. 290; 44 N. S. W. W. N. 71.—**AUS.**

PART III. SECT. 6, SUB-SECT. 8.

1526 ii. ———.]—R. *v.* O'HARA (N. B.), (1927), 48 Can. Crim. Cas. 231.—**CAN.**

f (p. 178) i. *As to delivery of package by common carrier to consignee.*]—Where a package is delivered to a railway or express co., or other similar common carrier, for transportation to a named consignee, & the consignee receives a package answering the description of that sent by the consignor, it will be held, in the absence of proof to the contrary, that the package sent was identical with that received; & where a package has been so delivered to such a common carrier for transportation, it will be held that it was received by the consignee in due course, unless there is proof to the contrary.—R. *v.* PINNO, [1925] 1 W. W. R. 737.—**CAN.**

r (p. 179) i. *As to party being administrator.*]—SMITH *v.* MCLEAN (1868), 7 N. S. R. (1 G. & O.) 310.—**CAN.**

PART III. SECT. 6, SUB-SECT. 10.

1556 i. *Receipt of letter—Whether presumed from posting.*]—The presumption that a letter shown to have been mailed in the usual course of business to a proper address was received is rebuttable by the addressee's denial of its receipt, where there is nothing to throw doubt on his credibility.—SHUCKETT *v.* LOCKHART & KYLE, [1932] 2 W. W. R. 330; 3 D. L. R. 466; 40 Man. L. R. 344.—**CAN.**

sa. *Identity of persons — From identity of names.*]—SEWELL *v.* URQUHART, [1930] 2 D. L. R. 547.—**CAN.**

sb. *Accuracy of scientific instrument.*]—The working accuracy of a scientific instrument will not be presumed unless it appears to the ct., either by judicial notice, assisted, if necessary, by consulting standard works of reference, or by appropriate evidence, that the instrument in question is a scientific instrument.—CRAWLEY *v.* LAIDLAW (1930), Argus L. R. 311; V. L. R. 370.—**AUS.**

PART III. SECT. 7, SUB-SECT. 1.

t i. ——— ———.]—REILY *v.* LONDON CORPN. 1891), 14 P. R. 171.—**CAN.**

t ii. ——— ———.]—CLOUSE *v.* COLEMAN (1895), 16 P. R. 541.—**CAN.**

PART III. SECT. 7, SUB-SECT. 2.

b i. ——— ——— *Accretion.*]—A view by the ct. of the place of the alleged accretion is not merely for the purpose of appreciating the other evidence but also for the purpose of assisting the ct. in reaching a proper conclusion.—CLARKE *v.* EDMONTON (Can.), [1929] 4 D. L. R. 1010; *revg.*, [1928] 2 D. L. R. 154; 1 W. W. R. 553; 23 Alta. L. R. 233.—**CAN.**

PART III. SECT. 8.

1593 x. ——— ———.]—In the estimation of the value of evidence in ordinary cases, the testimony of credible witnesses who swear positively to a fact should receive credit in preference to witnesses who testify to a negative.—HALLETT *v.* BANK OF MONTREAL (1918), 46 N. B. R. 62.—**CAN.**

1593 xi. ———*Nature & application of rule.*]—The principle that the evidence

1602a. —— —— **Outweighs several negative witnesses.**]—The rule of law is, that one affirmative witness outweighs several negative witnesses (Sir JOHN NICHOLL).—TOCKER *v.* AYRE (1821), 3 Phillim. 539; 161 E. R. 1408.

Part IV.—Documentary Evidence.

1624a. Document to be put in—Notice should be given.]—It is desirable that notice be given in advance to the other side of the document intended to be put in, so that they may be ready with any other admissible document directed to the same issue.—FINLAND S.S. OWNERS *v.* CORNISH ROSE S.S. OWNERS, THE CORNISH ROSE, [1936] P. 174; [1936] 2 All E. R. 805; 105 L. J. P. 114; 52 T. L. R. 648.

1633a. Entry in marriage register.]—WYATT *v.* ROCHFORT (1837), 1 Jur. 592, N. P.

1664a. ——.]—R. *v.* MCCARTNEY & HANSEN (1928), 20 Cr. App. Rep. 179, C. C. A.

1726a. —— —— **Will.**]—Where a person had been dead a great number of years, whose handwriting was required to be proved, it was done by showing the similarity of the handwriting in question to the handwriting of his will, & no objection was taken to it, either at the bar or by the ct.—MOREWOOD *v.* WOOD (1791), 14 East, 327; 4 Term Rep. 157; 104 E. R. 626.

1766. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

1829a. —— —— ——.]—Where an order is given verbally for goods, & the person to whom it is given puts down the terms of it in writing, as a memorandum, but it is not signed by the person ordering the goods, the terms of the order may be given in evidence, without producing the written memorandum.—DALISON *v.* STARK (1802), 4 Esp. 163; 170 E. R. 677, N. P.

Annotation :—**Refd.** R. *v.* Wrangle (1835), 1 Har. & W. 41.

1867. *Add. Annotation :*—**Refd.** R. *v.* Anderson (1929), 142 L. T. 580.

1877. Add para. :—

Parol evidence of inscriptions & devices on banners & flags displayed at a meeting is admissible, without producing the originals. —R. *v.* HUNT (1820), 3 B. & Ald. 566.

1900. *Add. Citation :*—R. *v.* DOUGLAS (1846), 16 L. J. Q. B. 417.

1933a. ——.]—Where pltfs. called defts.' solr. :—*Held :* he could state whether he had a lease in his possession, but as he knew nothing about it except as attorney for defts., he could not be called upon to give any evidence about it.—ROUPELL *v.* HAWS (1863), 3 F. & F. 784, N. P.

1955a. ——.]—A deed may be pleaded as lost by time & accident without *profert*.—READ *v.* BROOKMAN (1789), 3 Term Rep. 151; 100 E. R. 504.

1998a. —— —— **Answers to inquiries.**]—In accounting for the absence of an attesting witness, or loss of a written instrument, general answers to inquiries that nothing is known concerning them, are admissible in evidence; but not declarations as to particular facts, if the party making them is

---

of a witness who testifies affirmatively that a conversation took place is more valuable than the evidence of one equally trustworthy who denies the conversation, is not a rule of law, & should only be used with a due regard to the circumstances of each case & should not be resorted to until other means of testing credibility have failed; & it should not be applied in a case wherein the conversation in question constitutes the particular matter at issue between the parties.—MONARCH LUMBER CO., LTD. *v.* PERRY (Sask.), [1927] 3 D. L. R. 861; [1927] 3 W. W. R. 71.—**CAN.**

1596 i. —— *Telephone conversation overheard by bystander.*]—*Held :* the nature of the testimony, the possibility of dishonesty & the connection of the witness with the matter, were circumstances to determine the weight of testimony, but were not valid grounds for rejecting the evidence so long as it was not hearsay.—WARREN GZOWSKI & CO. *v.* FORST & CO. (1912), 23 O. W. R. 311; 46 S. C. R. 642.—**CAN.**

n i. —— *Evidence of perjured witness.*]—The evidence of a witness proved to have committed perjury is of no value whatsoever & cannot be used for any purpose; that is, by itself, or to corroborate or be corroborated by truthful evidence.—EMPEROR *v.* UJAGAR (1933), I. L. R. 55 All. 639.—**IND.**

PART IV. SECT. 2, SUB-SECT. 10.

1782 ii. ——.]—FOULDS *v.* BOWLER (1908), 8 W. L. R. 189.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 2.—B.

s i. —— *Will filed in office of Surrogate-General of another province.*]—Secondary evidence of a will devising real estate in this province, the original will being filed in the office of the Surrogate-General of Nova Scotia, is not admissible, there being no evidence of any law of Nova Scotia prohibiting the removal of the will.—DOE d. GILMOUR *v.* WHITNEY (1838), 2 N. S. R. (Ber.) 514.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 3.—A.

b i. ——.]—SMITH *v.* NEVILLES (1859), 18 U. C. R. 473.—**CAN.**

b ii. ——.]—GLEN BAIN RURAL MUNICIPALITY *v.* HALEY (Sask.), [1927] 3 D. L. R. 474.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—C.

1941 i. *Duplicate originals.*]—Deft. let land to pltf., & a lease having been written, A. affixed seals & signed their names to it. It was then agreed that A. should make a copy of the lease & execute it for them in the same manner; he did so. & afterwards, in the presence of both parties, delivered one copy to pltf. & the other to deft. :—*Held :* they were duplicate originals, & either of them was primary evidence.—LEONARD *v.* YOUNG (1858), 4 All. 111.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—A.

o i. —— ——.]—GOUGH *v.* MCBRIDE (1860), 10 C. P. 106.—**CAN.**

q i. —— —— *Reconstructed cash book.*]—A fire in the office of the secretary-treasurer of the pltf. municipality having destroyed most of the pltf.'s records therein, including the record of payment of taxes made since the last audit, the secretary-treasurer, under the authority of the council, employed an office assistant & canvassers, who compiled from the surviving records & from receipts, cheques & other evidence in the hands of taxpayers a statement called "the reconstructed cash book," showing the amounts paid by them during two months of 1921. In an action against the secretary-treasurer to recover an amount alleged to have been misappropriated by him during 1921, pltf. sought to charge him with the receipt of the sum which was shown by said "reconstructed cash book" as received & said book was submitted in evidence :—*Held :* said book was not admissible against deft.; its contents were not obtained in the manner contemplated by Rural Municipality Act &, therefore, it did not, even if it had been wholly compiled by deft., constitute an acknowledgment by him, as the entries in the original cash book would have done; he had not so recognised or acted upon it as to make its contents evidence against him; it was not secondary evidence of the destroyed cash book; &, the necessary foundation not having been laid for the purpose, it was not admissible as secondary evidence of the taxpayers' receipts & cheques.—GLEN BAIN RURAL MUNICIPALITY *v.* HALEY, [1928] 3 D. L. R. 806; [1928] 2 W. W. R. 184, 288; 22 Sask. L. R. 559.—**CAN.**

capable of being called.—DOE d. JOHNSON *v.* JOHNSON (1818), 2 Chit. 196.

Annotation:—**Refd.** Pytt *v.* Griffith (1822), 6 Moore, C. P. 538.

2088. *Add. Annotation:*—**Refd.** *Re* Spollon & Long's Contract, [1936] 2 All E. R. 711.

2118. *Citation:*—For "1 Esp. 125" read "1 Esp. 127."

2129a. —— ——.]—Copies cannot be put in of letters of which notice to produce ought to be given.—R. *v.* MORGAN, [1925] 1 K. B. 752; 94 L. J. K. B. 672; 133 L. T. 94; 89 J. P. 135; 28 Cox, C. C. 1; 18 Cr. App. Rep. 180, C. C. A.

2282. Add para.:—

Where the witness swearing to the words spoken by way of oath by the prisoner when he administered the same, said, that he held a paper in his hand at the same time when he administered the oath, from which it was supposed that he read the words; yet held that parol evidence of what he in fact said was sufficient, without giving him notice to produce such paper.—R. *v.* MOORS (1801), 6 East, 419, n.

2285. *Add. Annotation:*—**Apld.** Williams *v.* Russell (1933), 149 L. T. 190.

2285a. Policy of third party insurance—Prosecution under Road Traffic Act, 1930 (c. 43), Part II.]—Resp. was charged with using a motor vehicle without there being in force in respect of such user a policy of insurance satisfying the requirements of Road Traffic Act, 1930 (c. 43). A police officer sought to give evidence of the contents of a certificate of insurance produced by resp., but it was objected on behalf of resp. that, no notice to produce the policy having been given, secondary evidence of its contents was not admissible. The justices upheld the objection, &, in the absence of other evidence, dismissed the information:—*Held:* the evidence ought to have been received.

Per TALBOT, J. *Semble:* the onus of proving the possession of a policy was on resp., & it was not necessary for the prosecution to tender evidence on the matter at all.—WILLIAMS *v.* RUSSELL (1933), 149 L. T. 190; 97 J. P. 128; 49 T. L. R. 315; 77 Sol. Jo. 198; 31 L. G. R. 182; 29 Cox, C. C. 640, D. C.

2288. *Add. Annotation:*—*As to* (1) **Consd.** R. *v.* Triffitt, [1938] 2 All E. R. 818.

2345a. —— ——.]—DORRETT *v.* MEUX (1854), 15 C. B. 142; 2 C. L. R. 807; 23 L. J. C. P. 221; 23 L. T. O. S. 144; 2 W. R. 480; 139 E. R. 374.

2475a. —— ——.]—DOE d. ST. JOHN *v.* HORE (1799), 2 Esp. 724; 170 E. R. 510, N. P.

2476a. —— ——.]—WALLISS *v.* BROADBENT (1836), 4 Ad. & El. 877; 2 Har. & W. 40; 6 L. J. K. B. 269; 111 E. R. 1014.

2477a. —— ——.]—CHEVELEY *v.* FULLER (1853), 13 C. B. 122; 1 W. R. 152; 138 E. R. 1143; *sub nom.* FULLER *v.* CHEVELEY, Saund. & M. 101; 20 L. T. O. S. 278; 17 J. P. 105; 17 Jur. 736.

2480a. —— ——.]—HARRIS *v.* CHAPMAN (1868), 17 L. T. 517, N. P.

2486a. —— **Though receipt for penalty erased.**]—APOTHECARIES' CO. *v.* FERNYHOUGH (1826), 2 C. & P. 438; 172 E. R. 199, N. P.

Annotation:—**Refd.** R. *v.* Preston (1834), 3 Nev. & M. K. B. 31.

2513a. To prove amount originally claimed.]—WICKES *v.* TANNER (1848), 10 L. T. O. S. 504, N. P.

2544a. —— —— ——.]—One paper containing two different contracts for the purchase of different lots by different persons, one stamp affixed on that part of the paper which contained the contract of sale with deft., & to which the stamp officer's receipt for one penalty referred:—*Held:* sufficient to legalise the evidence of such contract.—POWELL *v.* EDMUNDS (1810), 12 East, 6; 104 E. R. 3.

Annotations:—**Refd.** Ogilvie *v.* Foljambe (1817), 3 Mer. 53; Bradshaw *v.* Bennett (1831), 5 C. & P. 48; Shelton *v.* Livius (1832), 2 Cr. & J. 411; Bartlett *v.* Pernell (1836), 2 Har. & W. 16; Evans *v.* Pratt (1842), 3 Man. & G. 759; Eden *v.* Blake (1845), 13 M. & W. 614; Brett *v.* Clowser (1880), 5 C. P. D. 376.

PART IV. SECT. 5, SUB-SECT. 5.—D. (c).

sr. *Affidavit of petitioner—Absence of particulars of search made.*]—*Re* BELL (1871), 3 Ch. Ch. 239.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—E. (a).

2058 iv. —— ——.]—MARVIN *v.* CURTIS (1857), 6 C. P. 212.—**CAN.**

2058 v. —— —— *Evidence of subscribing witness.*]—In ejectment by trustees of a Wesleyan Methodist congregation for the parsonage property, a search for & the loss of the deed from the patentee to the trustees at the parsonage home having been proved:—*Held:* the evidence of the subscribing witness as to the execution of the deed & memorial, with a copy of the memorial certified by the registrar, was clearly sufficient secondary evidence.—AINLEYVILLE TRUSTEE WESLEYAN METHODIST CHURCH *v.* GREWER (1874), 23 C. P. 533.—**CAN.**

2063 i. *Written declaration by testator—Lost will.*]—A lost will may be proved by secondary evidence. The evidence of a single witness, though interested, whose veracity & competency is unimpeachable, is sufficient, & probate will be granted to such an extent as he is able to prove it. Declarations relative to the will became secondary evidence if it is lost.—*Re* PIKE'S WILL (1882), 6 Nfld. L. R. 445.—**NFLD.**

st. *Lost deed—Memorandum made by predecessor in title.*]—In seeking to prove the existence & contents of a lost deed, a memorandum made in a book, by a person through whom petitioner claimed, was held not to be evidence in favour of petitioner.—*Re* BELL (1871), 3 Ch. Ch. 239.—**CAN.**

sv. —— *Copy produced from custody of successors of grantee—With indorsement signed by three predecessors in title.*]—SEETHAYYA *v.* SUBRAMANYA SOMAYAJULU (1929), L. R. 56 Ind. App. 146.—**IND.**

PART IV. SECT. 9, SUB-SECT. 3.—A.

sw. *Of power of attorney—Proof of contents of original only.*]—Where an office copy of a power of attorney, purporting to have been executed, was put in evidence:—*Held:* Conveyancing & Law of Property Act, 1881, s. 48 (4), merely obviates the necessity for production of an original instrument by enacting that an office copy of an instrument deposited as therein provided shall, without further proof, be sufficient evidence of its contents, but the sect. does not make such copy evidence either of the truth of the contents or of the identity of the person by whom the original was made.—O'KANE *v.* MULLAN, [1925] N. I. 1.—**IR.**

PART IV. SECT. 9, SUB-SECT. 4.—B.

g i. —— —— *Books of Government Liquor Control Commission.*]—Government Liquor Control Commission is a "Department of the Government of Manitoba" within sect. 17 of Manitoba Evidence Act, R. S. M., 1913, &, therefore, copies of entries in its books are receivable in evidence by virtue of said section.—R. *v.* PAUWELS, [1932] 1 W. W. R. 68; 2 D. L. R. 339; 40 Man. L. R. 117.—**CAN.**

PART IV. SECT. 9, SUB-SECT. 5.—A.

f. *Revsd.* on other grounds, 18 A. R. 135.

PART IV. SECT. 9, SUB-SECT. 5.—B.

g i. ——.]—The copy of a will bearing the certificate of the Registrar of Deeds that it was registered, but certified by the Registrar of Probate, was held admissible, by the combined effect of sects. 34, 57 of the Registry Act.—MCMILLAN *v.* COLFORD (1932), 5 M. P. R. 127.—**CAN.**

PART IV. SECT. 10, SUB-SECT. 4.—B.

sx. *To what documents rule applicable—Notice of appeal.*]—As a notice of appeal is not an instrument tendered in evidence, but merely a step in the procedure of appeal, the failure to stamp it cannot be rectified under the proviso to sect. 22 (1) of Act 30, 1911.—ANNAMA *v.* EXPRESS COLLECTION AGENCY (1929), 50 N. L. R. 77.—**S. AF.**

1602a. —— —— **Outweighs several negative witnesses.**]—The rule of law is, that one affirmative witness outweighs several negative witnesses (Sir JOHN NICHOLL).—TOCKER *v.* AYRE (1821), 3 Phillim. 539; 161 E. R. 1408.

Part IV.—Documentary Evidence.

1624a. Document to be put in—Notice should be given.]—It is desirable that notice be given in advance to the other side of the document intended to be put in, so that they may be ready with any other admissible document directed to the same issue.—FINLAND S.S. OWNERS *v.* CORNISH ROSE S.S. OWNERS, THE CORNISH ROSE, [1936] P. 174; [1936] 2 All E. R. 805; 105 L. J. P. 114; 52 T. L. R. 648.

1633a. Entry in marriage register.]—WYATT *v.* ROCHFORT (1837), 1 Jur. 592, N. P.

1664a. ——.]—R. *v.* MCCARTNEY & HANSEN (1928), 20 Cr. App. Rep. 179, C. C. A.

1726a. —— —— **Will.**]—Where a person had been dead a great number of years, whose handwriting was required to be proved, it was done by showing the similarity of the handwriting in question to the handwriting of his will, & no objection was taken to it, either at the bar or by the ct.—MOREWOOD *v.* WOOD (1791), 14 East, 327; 4 Term Rep. 157; 104 E. R. 626.

1766. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

1829a. —— —— ——.]—Where an order is given verbally for goods, & the person to whom it is given puts down the terms of it in writing, as a memorandum, but it is not signed by the person ordering the goods, the terms of the order may be given in evidence, without producing the written memorandum.—DALISON *v.* STARK (1802), 4 Esp. 163; 170 E. R. 677, N. P.

Annotation :—**Refd.** R. *v.* Wrangle (1835), 1 Har. & W. 41.

1867. *Add. Annotation :*—**Refd.** R. *v.* Anderson (1929), 142 L. T. 580.

1877. Add para. :—

Parol evidence of inscriptions & devices on banners & flags displayed at a meeting is admissible, without producing the originals. —R. *v.* HUNT (1820), 3 B. & Ald. 566.

1900. *Add. Citation :*—R. *v.* DOUGLAS (1846), 16 L. J. Q. B. 417.

1933a. ——.]—Where pltfs. called defts.' solr. :—*Held :* he could state whether he had a lease in his possession, but as he knew nothing about it except as attorney for defts., he could not be called upon to give any evidence about it.—ROUPELL *v.* HAWS (1863), 3 F. & F. 784, N. P.

1955a. ——.]—A deed may be pleaded as lost by time & accident without *profert*.—READ *v.* BROOKMAN (1789), 3 Term Rep. 151; 100 E. R. 504.

1998a. —— —— **Answers to inquiries.**]—In accounting for the absence of an attesting witness, or loss of a written instrument, general answers to inquiries that nothing is known concerning them, are admissible in evidence; but not declarations as to particular facts, if the party making them is

---

of a witness who testifies affirmatively that a conversation took place is more valuable than the evidence of one equally trustworthy who denies the conversation, is not a rule of law, & should only be used with a due regard to the circumstances of each case & should not be resorted to until other means of testing credibility have failed; & it should not be applied in a case wherein the conversation in question constitutes the particular matter at issue between the parties.—MONARCH LUMBER CO., LTD. *v.* PERRY (Sask.), [1927] 3 D. L. R. 861; [1927] 3 W. W. R. 71.—**CAN.**

1596 i. —— *Telephone conversation overheard by bystander.*]—*Held :* the nature of the testimony, the possibility of dishonesty & the connection of the witness with the matter, were circumstances to determine the weight of testimony, but were not valid grounds for rejecting the evidence so long as it was not hearsay.—WARREN GZOWSKI & CO. *v.* FORST & CO. (1912), 23 O. W. R. 311; 46 S. C. R. 642.—**CAN.**

n i. —— *Evidence of perjured witness.*]—The evidence of a witness proved to have committed perjury is of no value whatsoever & cannot be used for any purpose; that is, by itself, or to corroborate or be corroborated by truthful evidence.—EMPEROR *v.* UJAGAR (1933), I. L. R. 55 All. 639.—**IND.**

PART IV. SECT. 2, SUB-SECT. 10.

1762 ii. ——.]—FOULDS *v.* BOWLER (1908), 8 W. L. R. 189.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 2.—B.

s i. —— *Will filed in office of Surrogate-General of another province.*]—Secondary evidence of a will devising real estate in this province, the original will being filed in the office of the Surrogate-General of Nova Scotia, is not admissible, there being no evidence of any law of Nova Scotia prohibiting the removal of the will.—DOE d. GILMOUR *v.* WHITNEY (1838), 2 N. S. R. (Ber.) 514.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 3.—A.

b i. ——.]—SMITH *v.* NEVILLES (1859), 18 U. C. R. 473.—**CAN.**

b ii. ——.]—GLEN BAIN RURAL MUNICIPALITY *v.* HALEY (Sask.), [1927] 3 D. L. R. 474.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—C.

1941 i. *Duplicate originals.*]—Deft. let land to pltf., & a lease having been written, A. affixed seals & signed their names to it. It was then agreed that A. should make a copy of the lease & execute it for them in the same manner; he did so, & afterwards, in the presence of both parties, delivered one copy to pltf. & the other to deft. :—*Held :* they were duplicate originals, & either of them was primary evidence.—LEONARD *v.* YOUNG (1858), 4 All. 111.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—A.

o i. —— ——.]—GOUGH *v.* MCBRIDE (1860), 10 C. P. 106.—**CAN.**

q i. —— —— *Reconstructed cash book.*]—A fire in the office of the secretary-treasurer of the pltf. municipality having destroyed most of the pltf.'s records therein, including the record of payment of taxes made since the last audit, the secretary-treasurer, under the authority of the council, employed an office assistant & canvassers, who compiled from the surviving records & from receipts, cheques & other evidence in the hands of taxpayers a statement called "the reconstructed cash book," showing the amounts paid by them during two months of 1921. In an action against the secretary-treasurer to recover an amount alleged to have been misappropriated by him during 1921, pltf. sought to charge him with the receipt of the sum which was shown by said "reconstructed cash book" as received & said book was submitted in evidence :—*Held :* said book was not admissible against deft.; its contents were not obtained in the manner contemplated by Rural Municipality Act &, therefore, it did not, even if it had been wholly compiled by deft., constitute an acknowledgment by him, as the entries in the original cash book would have done; he had not so recognised or acted upon it as to make its contents evidence against him; it was not secondary evidence of the destroyed cash book; &, the necessary foundation not having been laid for the purpose, it was not admissible as secondary evidence of the taxpayers' receipts & cheques.—GLEN BAIN RURAL MUNICIPALITY *v.* HALEY, [1928] 3 D. L. R. 306; [1928] 2 W. W. R. 184, 288; 22 Sask. L. R. 559.—**CAN.**

capable of being called.—DOE d. JOHNSON *v.* JOHNSON (1818), 2 Chit. 196.

Annotation:—**Refd.** Pytt *v.* Griffith (1822), 6 Moore, C. P. 538.

2088. *Add. Annotation:*—**Refd.** *Re* Spollon & Long's Contract, [1936] 2 All E. R. 711.

2118. *Citation:*—For "1 Esp. 125" read "1 Esp. 127."

2129a. —— ——.]—Copies cannot be put in of letters of which notice to produce ought to be given.—R. *v.* MORGAN, [1925] 1 K. B. 752; 94 L. J. K. B. 672; 133 L. T. 94; 89 J. P. 135; 28 Cox, C. C. 1; 18 Cr. App. Rep. 180, C. C. A.

2282. Add para.:—

Where the witness swearing to the words spoken by way of oath by the prisoner when he administered the same, said, that he held a paper in his hand at the same time when he administered the oath, from which it was supposed that he read the words; yet held that parol evidence of what he in fact said was sufficient, without giving him notice to produce such paper.—R. *v.* MOORS (1801), 6 East, 419, n.

2285. *Add. Annotation:*—**Apld.** Williams *v.* Russell (1933), 149 L. T. 190.

2285a. Policy of third party insurance—Prosecution under Road Traffic Act, 1930 (c. 43), Part II.]—Resp. was charged with using a motor vehicle without there being in force in respect of such user a policy of insurance satisfying the requirements of Road Traffic Act, 1930 (c. 43). A police officer sought to give evidence of the contents of a certificate of insurance produced by resp., but it was objected on behalf of resp. that no notice to produce the policy having been given, secondary evidence of its contents was not admissible. The justices upheld the objection, &, in the absence of other evidence, dismissed the information:—*Held:* the evidence ought to have been received.

Per TALBOT, J. *Semble:* the onus of proving the possession of a policy was on resp., & it was not necessary for the prosecution to tender evidence on the matter at all.—WILLIAMS *v.* RUSSELL (1933), 149 L. T. 190; 97 J. P. 128; 49 T. L. R. 315; 77 Sol. Jo. 198; 31 L. G. R. 182; 29 Cox, C. C. 640, D. C.

2288. *Add. Annotation:*—*As to* (1) **Consd.** R. *v.* Triffitt, [1938] 2 All E. R. 818.

2345a. —— ——.]—DORRETT *v.* MEUX (1854), 15 C. B. 142; 2 C. L. R. 807; 23 L. J. C. P. 221; 23 L. T. O. S. 144; 2 W. R. 480; 139 E. R. 374.

2475a. —— ——.]—DOE d. ST. JOHN *v.* HORE (1799), 2 Esp. 724; 170 E. R. 510, N. P.

2476a. —— ——.]—WALLISS *v.* BROADBENT (1836), 4 Ad. & El. 877; 2 Har. & W. 40; 6 L. J. K. B. 269; 111 E. R. 1014.

2477a. —— ——.]—CHEVELEY *v.* FULLER (1853), 13 C. B. 122; 1 W. R. 152; 138 E. R. 1143; *sub nom.* FULLER *v.* CHEVELEY, Saund. & M. 101; 20 L. T. O. S. 278; 17 J. P. 105; 17 Jur. 736.

2480a. —— ——.]—HARRIS *v.* CHAPMAN (1868), 17 L. T. 517, N. P.

2486a. —— **Though receipt for penalty erased.**]—APOTHECARIES' CO. *v.* FERNYHOUGH (1826), 2 C. & P. 438; 172 E. R. 199, N. P.

Annotation:—**Refd.** R. *v.* Preston (1834), 3 Nev. & M. K. B. 31.

2513a. To prove amount originally claimed.]—WICKES *v.* TANNER (1848), 10 L. T. O. S. 504, N. P.

2544a. —— —— ——.]—One paper containing two different contracts for the purchase of different lots by different persons, one stamp affixed on that part of the paper which contained the contract of sale with deft., & to which the stamp officer's receipt for one penalty referred:—*Held:* sufficient to legalise the evidence of such contract.—POWELL *v.* EDMUNDS (1810), 12 East, 6; 104 E. R. 3.

Annotations:—**Refd.** Ogilvie *v.* Foljambe (1817), 3 Mer. 53; Bradshaw *v.* Bennett (1831), 5 C. & P. 48; Shelton *v.* Livius (1832), 2 Cr. & J. 411; Bartlett *v.* Pernell (1836), 2 Har. & W. 16; Evans *v.* Pratt (1842), 3 Man. & G. 759; Eden *v.* Blake (1845), 13 M. & W. 614; Brett *v.* Clowser (1880), 5 C. P. D. 376.

PART IV. SECT. 5, SUB-SECT. 5.—D. (c).

sr. *Affidavit of petitioner—Absence of particulars of search made.*]—*Re* BELL (1871), 3 Ch. Ch. 239.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—E. (a).

2058 iv. —— ——.]—MARVIN *v.* CURTIS (1857), 6 C. P. 212.—**CAN.**

2058 v. —— —— *Evidence of subscribing witness.*]—In ejectment by trustees of a Wesleyan Methodist congregation for the parsonage property, a search for & the loss of the deed from the patentee to the trustees at the parsonage home having been proved:—*Held:* the evidence of the subscribing witness as to the execution of the deed & memorial, with a copy of the memorial certified by the registrar, was clearly sufficient secondary evidence.—AINLEYVILLE TRUSTEE WESLEYAN METHODIST CHURCH *v.* GREWER (1874), 23 C. P. 533.—**CAN.**

2063 i. *Written declaration by testator—Lost will.*]—A lost will may be proved by secondary evidence. The evidence of a single witness, though interested, whose veracity & competency is unimpeachable, is sufficient, & probate will be granted to such an extent as he is able to prove it. Declarations relative to the will became secondary evidence if it is lost.—*Re* PIKE'S WILL (1882), 6 Nfld. L. R. 445.—**NFLD.**

st. *Lost deed—Memorandum made by predecessor in title.*]—In seeking to prove the existence & contents of a lost deed, a memorandum made in a book, by a person through whom petitioner claimed, was held not to be evidence in favour of petitioner.—*Re* BELL (1871), 3 Ch. Ch. 239.—**CAN.**

sv. —— *Copy produced from custody of successors of grantee—With indorsement signed by three predecessors in title.*]—SEETHAYYA *v.* SUBRAMANYA SOMAYAJULU (1929), L. R. 56 Ind. App. 146.—**IND.**

PART IV. SECT. 9, SUB-SECT. 3.—A.

sw. *Of power of attorney—Proof of contents of original only.*]—Where an office copy of a power of attorney, purporting to have been executed, was put in evidence:—*Held:* Conveyancing & Law of Property Act, 1881, s. 48 (4), merely obviates the necessity for production of an original instrument by enacting that an office copy of an instrument deposited as therein provided shall, without further proof, be sufficient evidence of its contents, but the sect. does not make such copy evidence either of the truth of the contents or of the identity of the person by whom the original was made.—O'KANE *v.* MULLAN, [1925] N. I. 1.—**IR.**

PART IV. SECT. 9, SUB-SECT. 4.—B.

g i. —— —— *Books of Government Liquor Control Commission.*]—Government Liquor Control Commission is a "Department of the Government of Manitoba" within sect. 17 of Manitoba Evidence Act, R. S. M., 1913, &, therefore, copies of entries in its books are receivable in evidence by virtue of said section.—R. *v.* PAUWELS, [1932] 1 W. W. R. 68; 2 D. L. R. 339; 40 Man. L. R. 117.—**CAN.**

PART IV. SECT. 9, SUB-SECT. 5.—A.

f. *Revsd.* on other grounds, 18 A. R. 135.

PART IV. SECT. 9, SUB-SECT. 5.—B.

g i. ——.]—The copy of a will bearing the certificate of the Registrar of Deeds that it was registered, but certified by the Registrar of Probate, was held admissible, by the combined effect of sects. 34, 57 of the Registry Act.—MCMILLAN *v.* COLFORD (1932), 5 M. P. R. 127.—**CAN.**

PART IV. SECT. 10, SUB-SECT. 4.—B.

sx. *To what documents rule applicable—Notice of appeal.*]—As a notice of appeal is not an instrument tendered in evidence, but merely a step in the procedure of appeal, the failure to stamp it cannot be rectified under the proviso to sect. 22 (1) of Act 30, 1911.—ANNAMA *v.* EXPRESS COLLECTION AGENCY (1929), 50 N. L. R. 77.—**S. AF.**

2570. *Add. Annotations :*—**Refd.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168; *Re* National Benefit Assce. (1927), 71 Sol. Jo. 880.

2583a. —— **Objection doubtful.**]—An objection that a document requires a stamp will not be given effect to if the point is doubtful.—WESTLAKE *v.* ADAMS (1858), 1 F. & F. 183, N. P.

2587. *Add. Annotation :*—**Refd.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168.

2603. *Add. Annotation :*—**Refd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889.

2639. *Add. Annotation :*—**Refd.** R. *v.* Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192.

2642a. —— **Solicitor not bound to produce.**]—The solr. under a commission of bkpcy. is not bound to produce the proceedings under it, though called upon by *subpœna duces tecum*.—BATESON *v.* HARTSINK (1801), 4 Esp. 43, N. P.

Annotation :—**Refd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

2707a. ——.]—DAVIES *v.* LOWNDES (1835), 1 Bing. N. C. 597; 1 Hodg. 125; 2 Scott, 71; 4 L. J. C. P. 214; 131 E. R. 1247; *on appeal* (1838), 4 Bing. N. C. 478, Ex. Ch.

2709. *Add. Annotation :*—**Folld.** Little *v.* Little, [1927] P. 224.

After this case add, "*See, also*, HUSBAND & WIFE, No. 2763a."

2722. *Add. Annotation :*—**Consd.** Partington *v.* Partington & Atkinson, [1925] P. 34.

2723. *Add. Annotation :*—**Consd.** Partington *v.* Partington & Atkinson, [1925] P. 34.

2757a. —— ——.]—In a suit for restitution of conjugal rights, the validity of the marriage in Jamaica having been proved in a previous suit of a similar nature between same parties, further proof of its validity was not required.—VERNEY *v.* VERNEY (1920), 36 T. L. R. 203.

2880. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham Urban Council, [1929] 1 K. B. 737.

2960a. —— **Inadmissible.**]—Parol evidence of the oaths required by the Toleration Act having been taken, is not admissible.—R. *v.* HUBE (1792), Peake, 180, N. P.; (1794), 5 Term Rep. 542; 101 E. R. 305.

3036. *Add. Annotation :*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45.

3115. *Add. Annotation :*—**Refd.** Finland S.S. Owners *v.* Cornish Rose Owners, The Cornish Rose, [1936] 2 All E. R. 805.

3122a. —— ——.]—In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a communication from the Crown &, therefore, conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385; 92 L. J. Ch. 273; 129 L. T. 290; 39 T. L. R. 187; 67 Sol. Jo. 260, C. A.

Annotation :—**Apld.** Engelke *v.* Musmann, [1928] A. C. 433.

3122b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 1264a, *ante*.

3122c. —— ——.]—During the course of the argument a question arose as to the nature of the relationship of the Crown to the territory of which the North Charterland Concession formed part, & in order to settle this question I submitted to His Majesty's Secretary of State for the Colonies for his decision under the Foreign Jurisdiction Act, 1890 (c. 37), s. 4, two questions: "Was the territory now known as Northern Rhodesia on Mar. 22, 1928, under the protection of His Majesty?" or "Was it at that date part of His Majesty's Dominions?" The decision of His Majesty's Secretary of State for the Colonies, which by the provisions of the Act is conclusive, is that on Mar. 22, 1928, Northern Rhodesia was a territory under His Majesty's protection. It did not then & does not now form part of His Majesty's Dominions (LUXMOORE, J.).—NORTH CHARTERLAND EXPLORATION CO. (1910), LTD. *v.* R., [1931] 1 Ch. 169; 99 L. J. Ch. 483; 143 L. T. 623; 46 T. L. R. 566.

3125. *Add. Annotation :*—**Consd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

PART IV. SECT. 10, SUB-SECT. 8.

2608 i. *Finality of judge's ruling.*]—Once the trial judge, with the question of the want of proper stamp present in his mind, has actually admitted a document in evidence, Stamp Act, s. 36, prevents such admission being called in question, except as provided in s. 61, at any stage of the same suit or proceeding, & hence in appeal, on the ground that the instrument has not been properly stamped.—GURDAS MAHAM CHAND *v.* GURANDITTA MAL (1929), I. L. R. 11 Lah. 77.—**IND.**

PART IV. SECT. 11, SUB-SECT. 2.

2634 ii. —— —— ——.]—Where, in an action for wages & overtime, based on the award of the Commonwealth Ct. of Conciliation & Arbn., the only evidence of the award was a printed document purporting to be a copy of the award bearing the imprint "By authority: H. J. Green, Govt. Printer, Melbourne":—*Held:* the award was not proved.—MID-NORTH ELECTRICITY CO., LTD. *v.* RUTHERFORD, [1927] S. A. S. R. 273.—**AUS.**

PART IV. SECT. 11, SUB-SECT. 4.—A.

2667 i. —— *Res inter alios acta—Conviction for murder.*]—On an application by a husband, who has killed his wife, or his attorney for a grant of administration a certified copy of the conviction is admissible, not merely as proof of the conviction, but also as presumptive proof of the commission of the crime.—*Re* NOBLE (Sask.), [1927] 1 W. W. R. 938.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 4.—C.

2690 i. *Evidence of commission of crime—Presumptive evidence.*]—*Re* NOBLE, No. 2667 i, *ante*.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 6.—A. (a).

2739 i. *No opportunity to cross-examine.*]—*Held:* the evidence was inadmissible.—JOHNSON *v.* R. (Ont.) (1911), 13 Exch. C. R. 389.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 12.

3004 i. *How proved—Production of copy printed in Stationery Office.*]—The District Ct. Rules are rules made by a minister within Documentary Evidence Act, 1925, s. 4, & the production of a copy of the rules, printed in the Stationery Office, is *primâ facie* evidence that the rules have been validly made.—TANGNEY *v.* DISTRICT JUSTICE FOR COUNTY OF KERRY, [1928] I. R. 358.—**IR.**

PART IV. SECT. 11, SUB-SECT. 15.—A.

sx. *Proof—Writ of execution.*]—STUART *v.* ANDREWS (1827), N. B. Dig. 332.—**CAN.**

sy. —— ——.]—DOE d. STOCKING *v.* WATTS (1842), 2 Ont. Dig. 2665.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 10.—A. (b).

sa. *British consul abroad—Certificate on point of law.*]—A British consul may prove by his certificate a point of foreign law which he is competent to prove by affidavit.—*Re* BERGMAN ESTATE, [1928] 1 W. W. R. 601.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 10.—A. (d).

sb. *Certificate of professor of anatomy.*]—A certificate from the professor of anatomy at the Grant Medical College, Bombay, as to certain bones submitted to him for examination, is not *per se* admissible in evidence, but must be proved by calling the professor as a witness.—R. *v.* AHILYA (1922), I. L. R. 47 Bom. 74.—**IND.**

3157. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3158. *Add. Annotation :*—**Overd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3159. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3163. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3164. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3165a. —— **Marriage of parents.**]—In an action brought by pltfs., who claimed to be two of the next of kin of an intestate, for administration of her estate, the usual order for inquiries as to the next of kin & heir-at-law of the intestate was made. In taking those inquiries before the master it became necessary to prove the lawful marriage of the parents of the intestate before her birth &, as no record of the marriage could be found, a summons was taken out by pltfs. for the determination of the question whether three certificates of birth of three of the children, including the intestate, of those parents & a certificate of death of one of those children were *primâ facie* or any evidence of the lawful marriage of the parents :—*Held :* the certificates were admissible, but not alone sufficient, because taken by themselves they did not identify the persons therein mentioned. It would be for the master at the inquiry to determine whether the certificates, taken in conjunction with the other evidence adduced before him, were sufficient to establish the fact of marriage between the parents in question. *Re Wintle*, No. 3158, overd.—*Re* STOLLERY, WEIR *v.* TREASURY SOLICITOR, [1926] Ch. 284 ; 95 L. J. Ch. 259 ; 134 L. T. 430 ; 90 J. P. 90 ; 42 T. L. R. 253 ; 70 Sol. Jo. 385 ; 24 L. G. R. 173, C. A.

3177a. —— **Marriage of parents of deceased.**]—*Re* STOLLERY, WEIR *v.* TREASURY SOLICITOR, No. 3165a, *ante*.

3179. *Add. Annotation :*—**Distd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3287. *Add. Annotations :*—**Apprvd.** Hendon Paper Works Co. *v.* Sunderland Assmt. Com., [1915] 1 K. B. 763. **Folld.** Fowler (Leeds) *v.* Hunslet Assmt. Com., [1917] 1 K. B. 720. **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

3288. *Add. Citation :*—1 B. R. A. 210.

Add. Annotations :—**Folld.** Fowler (Leeds) *v.* Hunslet Assmt. Com., [1917] 1 K. B. 720. **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309. **Refd.** Davis *v.* Pontypridd Union Assmt. Com., Rhondda Overseers & Rhondda U. C. (1916), 85 L. J. K. B. 1545.

3289. *Add. Citation :*—2 B. R. A. 592.

Add. Annotation :—**Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

3309. *Add. Annotation :*—*As to* (2) **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1932), 48 T. L. R. 296.

3349. *Add. Annotation :*—**Consd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

3371. *Add. Annotation :*—**Refd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3377. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3388. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3389. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

PART IV. SECT. 12, SUB-SECT. 10.—B. (b) i.

3157 i. *Admissibility.*]—In an action in which the alleged infancy of pltf. was in issue :—*Held :* (1) his testimony that he had seen his birth certificate, which was not produced, & that he was not of age was not sufficient to prove his minority since it amounted to no more than hearsay evidence ; (2) a certificate of registry of birth purporting to be issued under the Births & Deaths Registration Act, 1874 (Imp.), would not be admissible in England as evidence of pltf.'s age, since it did not comply with the requirements of sect. 38 of Births & Deaths Registration Act, 1836, & sect. 38 of 1874 Act, & should not be admissible here. Moreover, since the certificate did not contain or purport to contain a copy of or extract from the original register of births & did not identify or furnish information sufficient to identify pltf. as the person referred to in the certificate, it was not sufficient to establish his minority. —ANTHONY *v.* CHARTER, [1933] 1 W. W. R. 310 ; 1 D. L. R. 684.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 14.

se. *Regulation of Minister of Crown—In possession of prosecuting counsel—Whether amounts to production.*]—The fact that counsel for the prosecution has a copy of a regulation made by a Minister of the Crown in his possession at the trial & available for the perusal of the justice hearing the case, does not amount to its "production" within Canada Evidence Act, s. 21, at least when no opportunity is given the accused's counsel to peruse it or object to it.—R. *v.* YEE CLUN & YEE LOW (Sask.), [1929] 1 D. L. R. 194 ; 50 Can. Crim. Cas. 440 ; [1928] 3 W. W. R. 558.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 15.—A. (a).

1 i. —— *Value as evidence.*]—HEATH *v.* PORTAGE LA PRAIRIE CORPN. (1909), 18 Man. L. R. 693.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 19.—C. (d) iii.

se. *Certificate of baptism—Admissible.*]—SUTHERLAND *v.* YOUNG (1884), 1 Man. L. R. 38.—**CAN.**

sg. *Evidence of marriage—Authenticated certificate—Inadm.*]—H. proved desertion by W. & asked for an order for restitution of conjugal rights, failing which a divorce. The marriage had been solemnised in India & was sworn to by H. The marriage certificate was not authenticated :—*Held :* an order for restitution would be granted, but no further proceedings must be taken in the matter until a duly authenticated certificate of the marriage was produced.—DWYER *v.* DWYER, [1933] N. L. R. 598.—**S. AF.**

PART IV. SECT. 12, SUB-SECT. 19.—C. (e).

so. *Evidence of marriage—Certified extract from register.*]—The Crown in a trial for bigamy called a Roman Catholic priest, a native of Yugoslavia, who produced what purported to be a certified extract from the marriage register of a parish in Yugoslavia, showing an entry which the accused admitted was that of his own marriage with a woman in that country. The witness himself had not officiated at the ceremony. He stated that he was well acquainted with the priest who had issued the certificate, & that he could identify the signature thereon. The identity of the parties was established :—*Held :* (1) the strict rule of the common law of England relating to the proof of foreign marriages applies in New Zealand despite the greater difficulty in the Dominion of proof & in obtaining evidence ; (2) the priest, who, on being recalled, stated that the parish priest was paid a fee by the Government for keeping the register & issuing certificates of marriage & that such certificates were accepted in the cts. of Yugoslavia in proof of the marriage, was an expert qualified to testify as to the marriage law of Yugoslavia ; (3) the copy of the register was admissible in evidence.—R. *v.* ILICH, [1935] N. Z. L. R. 90.—**N.Z.**

PART IV. SECT. 12, SUB-SECT. 19.—C. (f).

3406 i. *Admissibility.*]—An extract from a marriage register kept in a Scottish parish & duly authenticated & signed by the registrar is admissible in a Canadian ct. to prove the marriage of accused charged with bigamy, by virtue of 1854 Act (Imp.).—R. *v.* INNES, [1933] 2 D. L. R. 110 ; O. R. 169 ; 59 C. C. C. 339.—**CAN.**

3414a. —— Primâ facie of validity.]—A petition for nullity of marriage, on the ground that at the time of the marriage, which was a marriage by declaration in Scotland, & which had been registered, neither petitioner nor resp. had lived in Scotland for twenty-one days next preceding the marriage, was dismissed on the ground that petitioner had failed to satisfy the ct. of the untruth of the statement in the register that resp. had lived in Scotland for twenty-one days preceding the marriage.—WINTERBOTTOM *v.* WINTERBOTTOM (OTHERWISE APPLETON) (1922), 38 T. L. R. 813.

3419a. *S. P.* MONEY *v.* MONEY & TURNER (1927), 71 Sol. Jo. 666.

3422a. —— —— ——.]—AS Jersey is in the diocese of Winchester, it is unnecessary to call a Jersey lawyer to prove a marriage celebrated in a church in Jersey.—PRITCHARD *v.* PRITCHARD (1920), 37 T. L. R. 104.

3428a. —— —— ——.]—A marriage performed by a Church of England clergyman in an Anglican Church in British India may be proved either (1) by production of the India Office certificate, or (2) under Evidence (Colonial Statutes) Act, 1907 (c. 16), by production of the marriage certificate issued from the Church & signed by the clergyman, together with the relevant Indian Act.—PAWSON *v.* PAWSON (1930), 99 L. J. P. 142; 143 L. T. 440; 46 T. L. R. 543.

3428b. —— —— Of entry in ecclesiastical register—With relevant Indian Act.]—PAWSON *v.* PAWSON, No. 3428a, *ante*.

3435a. —— —— ——.]—A marriage in the Anglican Cathedral at Shanghai, China, may be proved by the production of the marriage certificate, duly signed by the clergyman, as a common law marriage.—MATTHEWS *v.* MATTHEWS (1930), 99 L. J. P. 142; 143 L. T. 440; 46 T. L. R. 543.

3436a. —— —— —— **South Africa.**]—WATERFIELD *v.* WATERFIELD & PRETORIUS (1929), 73 Sol. Jo. 300.

3437a. —— —— —— ——.]—L. (OTHERWISE B.) *v.* L. (1919), 36 T. L. R. 148; 64 Sol. Jo. 225.

3437b. —— —— British North Borneo.]—WINMILL *v.* WINMILL (1934), 78 Sol. Jo. 536.

(e) Foreign Countries (p. 342).

See Evidence (Foreign, Dominion & Colonial Documents) Act, 1933 (c. 4).

3451a. —— —— Belgium—Evidence (Foreign, Dominion & Colonial Documents) Act, 1933 (c. 4).]—For the first time in divorce proceedings the solemnisation of a marriage abroad was proved by means of the procedure permitted by above Act, & the Evidence (Belgium) Order, 1933, made thereunder. The duly authenticated Belgian certificate of marriage was accepted as proof of the marriage.—NORTH *v.* NORTH & OGDEN (1936), 105 L. J. P. 56; 154 L. T. 498; 52 T. L. R. 380; 80 Sol. Jo. 208.

3466. *Add. Annotation:*—**Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

3483a. —— ——.]—*Held:* the production of the register from the custom house was conclusive evidence of ownership.—MARSH *v.* ROBINSON (1802), 4 Esp. 98; 170 E. R. 655, N. P.

3513a. Stationers' Hall register—Of first performances of dramatic productions.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 624a, *ante*.

3526. *Add. Annotation:*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

3543. *Add. Annotations:*—*As to* (2) **Consd.** Falcon *v.* Famous Players Film Co. (1926), 135 L. T. 650. **Apld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3547. *Add. Annotation:*—**Refd.** Stoney *v.* Eastbourne R. D. C., [1927] 1 Ch. 367.

3572. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3580. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3584. *Add. Annotation:*—**Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 135 L. T. 281.

3589. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

PART IV. SECT. 12, SUB-SECT. 19.—G.

sf. *Register of titles to land kept under Local Registration of Title (Ireland) Act*, 1891 (c. 66).]—The above register is a public register & the documents kept in the office for registration of titles are public documents.—*Re* FITZGERALD, [1925] 1 I. R. 42.—**IR.**

sg. *Proprietor's Registry Book.*]—FULTON *v.* CREELMAN, [1930] 4 D. L. R. 43; *on appeal*, [1931] S. C. R. 221; 1 D. L. R. 733.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 20.

sh. *Weight of evidence.*]—The importance as evidence of revenue records, admissible under Indian Evidence Act, s. 35, varies with the circumstances.—GANGABAI *v.* FAKIRGOWDA (1929), I. L. R. 54 Bom. 336.—**IND.**

PART IV. SECT. 12, SUB-SECT. 21.

si. —— *How proved.*]—The contents of a statute of any province within the King's dominions may be proved by the production of a copy purporting to be printed under the authority of the Legislature of that province.—NORTHERN TRUSTS CO. *v.* MCLEAN, [1926] 3 D. L. R. 93; 58 O. L. R. 683.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 22.

m i. ——.]—In order to prove the atmospheric temperature in Sydney on certain days the Chief Clerk in the New South Wales division of the Meteorological Department was called. He produced a small book bearing the imprint of the Federal Govt. Printer, & entitled "Commonwealth Meteorological Bureau, Division No. 4, New South Wales Meteorological Observations taken at Sydney" on the material dates. He also gave evidence that the book was kept in the Department by the permanent officers of the Department in Sydney; that these officers were public officers in the Department making records, in the book, of temperatures & other things; & that, in his experience, observations & records had been made in a similar manner for the past twenty-eight years. On this evidence the book was admitted in evidence. On appeal:—*Held:* the book was a public document, &, consequently, it had rightly been admitted in evidence.—BATLOW PACKING HOUSE & COOL STORES RURAL CO-OPERATIVE SOCIETY, LTD. *v.* COMMONWEALTH & DOMINION LINE, LTD. (1937), 37 S. R. N. S. W. 314; 54 N. S. W. W. N. 83.—**AUS.**

sj. *Records of secretary of province—Entry as to delivery of patent—In secretary's handwriting—Whether proof of possession of patent.*]—*Qu.:* whether the evidence of the secretary of the province, that it appears by an entry in his own handwriting, in a book kept for such entries, that a patent was delivered to A., & that he therefore felt sure that it was delivered to A. or his servant, but has no recollection of it, is sufficient to charge A. in trover with the possession of such patent.—HAMPSON *v.* BOULTON (1836), 5 O. S. 23.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—A.

3679 v. ——.]—Account books are admissible in evidence, under Evidence Act, 1872, s. 34, without any formal proof that they were regularly kept in the course of business. The Legislature, in sect. 34, has dispensed with the necessity of such formal proof, which was required by the former Act II. of 1855. In order that account

3686. *Add. Annotation :—As to* (2) **Consd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

3757. *Add. Annotation :*—**Refd.** A/S Rendal *v.* Arcos, Ltd., [1937] 3 All E. R. 577.

3784. *Add. Citation :*—2 B. R. A. 582.

3802a. ——.]—HAYNES *v.* HAYTON (1828), 6 L. J. O. S. K. B. 231.

Annotations :—**Consd.** Bessey *v.* Windham (1844), 6 Q. B. 166 ; White *v.* Morris (1852), 11 C. B. 1015.

3824. *Add. Annotation :*—**Consd.** De Stempel *v.* Dunkels, [1938] 1 All E. R. 238.

3831. *Add. Annotation :*—**Refd.** De Stempel *v.* Dunkels, [1938] 1 All E. R. 238.

3832. *Add. Annotation :*—**Consd.** De Stempel *v.* Dunkels, [1938] 1 All E. R. 238.

3850a. —— Following letters.]—Letters following a letter written "without prejudice" should be treated as being also inadmissible, unless there is a clear break in the chain of correspondence to indicate that the ensuing letters are open.—INDIA RUBBER, GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. *v.* CHAPMAN (1926), 20 B. W. C. C. 184, C. A.

3860. *Add. Annotation :*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

3889. *Add. Annotation :—As to* (1) **Refd.** *Re* Davy, [1935] P. 1.

3902. *Add. Annotation :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

3907. *Add. Annotation :—As to* (3) **Refd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

3911. *Add. Annotations :*—**Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312 ; Trafford *v.* Thrower (1929), 45 T. L. R. 502. **Refd.** Hue *v.* Whiteley, [1929] 1 Ch. 440.

3914. After this case add "*See, also,* HIGHWAYS, Nos. 355a, 355b."

3919a. —— To prove state of premises.]—DOE d. FENTON *v.* BUTCHER (1847), 9 L. T. O. S. 82.

3921. After this case add :—

—— ——.]—*See* Rights of Way Act, 1932 (c. 45), s. 1 (4).

3932. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

3933. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

3934. *Add. Annotation :*—**Consd.** United States, Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

3935a. —— Dimensions & relative proportions of subject-matter.]—(1) Clearly a photographic picture cannot be relied upon as proof in itself of the dimensions of the depicted object or objects, & cannot be made properly available to establish the relative proportions of such objects except by evidence of personal

---

books may be deemed regularly kept in the course of business, it is not necessary to show that they had been entered up as & when the transactions took place.—EMPEROR *v.* NARMADA PRASAD (1929), I. L. R. 51 All. 864.—**IND.**

sl. *Corporation or partnership books.*]—Defts., stockbrokers, were indicted & tried (*a*) for conspiracy by fraudulent means to defraud customers ; (*b*) for conspiracy by fraudulent means to affect the public market price of stocks publicly sold ; (*c*) for that with intent to make gain or profit by the rise or fall of stocks they made agreements for the sale or purchase of stocks in respect of which no delivery was ever made or intended to be made :—*Held :* books of account, records, & other documents of defts. were properly admitted at the trial.—R. *v.* SMART & YOUNG ; R. *v.* PATERSON & CAMPBELL ; R. *v.* STOBIE & FORLONG, [1931] 2 D. L. R. 207 ; O. R. 176 ; 55 Can. C. C. 310.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—B.

sb. *To prove to whom credit given.*]—WHITE *v.* MILLER (1888), 27 N. B. R. 143.—**CAN.**

sd. *To prove sale of goods—Entry in ledger.*]—In an action for the price of goods sold & delivered entries in the pltf.'s ledger are not proof of the sales.—LISCHINSKY *v.* AULD, [1932] 3 W. W. R. 691.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 4.

sf. *Books of railway companies—Repair book.*]—CANADA CENTRAL RY. CO. *v.* MCLAREN (1883), 8 A. R. 564.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 5.

d i. —— ——.]—A book maintained by members of a family of hereditary bards, containing entries of domestic events occurring in the family to which they rendered service, the events recorded being such as are usually known to a family bard in connection with his calling :—*Held :* admissible as evidence concerning the relationship of the members of the family, whose history was entered therein.—ANANDI *v.* NAND LAL (1924), I. L. R. 46 All. 665.—**IND.**

PART IV. SECT. 13, SUB-SECT. 6.—A.

11. —— *In pursuance of common object.*]—*Held :* letters, written by the mother of a petitioner in a suit for restitution of conjugal rights, which, if written by petitioner would have been evidence of her lack of sincerity, were admissible against her on it being proved that they were written in pursuance of an object common to petitioner & her mother.—THOMAS *v.* THOMAS (1931), 31 S. R. N. S. W. 159 ; 48 N. S. W. W. N. 21.—**AUS.**

PART IV. SECT. 13, SUB-SECT. 7.—B.

3843 il. *S P.* MERRY *v.* MACHIN (1926), 47 N. L. R. 236.—**S. AF.**

1 i. —— *Subsequent correspondence on same subject.*]—In order to render letters written "without prejudice" inadmissible as evidence it must appear that there was a dispute or negotiations pending between the parties & that the letters were written *bonâ fide* with a view to its settlement. Letters written "without prejudice" protect subsequent correspondence on the same subject-matter.—MCLEOD *v.* PEARSON, [1931] 3 W. W. R. 4 ; 4 D. L. R. 673.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 11.

3870 i. *Admissibility.*]—*Held :* a telegram received by pltf. from deceased was not admissible in evidence without proof that deceased had sent a telegram in those terms, & that the original telegram, signed by deceased, had been destroyed or lost.—ADAMSON *v.* VACHON (Sask.) (1912), 22 W. L. R. 494.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 12.

q i. —— ——.]—Will proved before a notary public, & recorded during the lifetime of testator, properly admitted in evidence.—MURRAY *v.* DUFF (1895), 33 N. B. R. 351.—**CAN.**

sd. *Necessity for production of.*]—Where pltf.'s counsel in opening his case stated it as a question of legitimacy, & that deft. claimed under a will, & the defence was conducted without the production of the will, as if the statement of the counsel had rendered that unnecessary :—*Held :* it ought to have been produced.—DOE d. BREAKEY *v.* BREAKEY (1846), 2 U. C. R. 349.—**CAN.**

PART IV. SECT. 15.

a i. —— ——.]—The maps & surveys made in India for revenue purposes are official documents prepared by competent persons & with such publicity & notice to persons interested as to be admissible as valuable evidence of the state of things at the time they were made.—RAI BAHADUR RADHA KISHUN *v.* SHYAM DAS (1934), I. L. R. 13 Pat. 51.—**IND.**

sa. *Necessity for evidence of nature of plan.*]—A plan will not be admitted where no evidence is called to show what it really was, or that it was a certified copy of a plan deposited in the Crown Land Office.—CORMIER *v.* LEBLANC, [1935] 2 D. L. R. 803 ; 9 M. P. R. 164.—**CAN.**

PART IV. SECT. 17.

sb. *Reconstruction of crime.*]—In the course of a culpable homicide trial arising out of the shooting by the accused, a warder, of one of a gang of convicts in his charge, the Crown tendered in evidence, through the photographer, photographs of the scene of the shooting taken two days afterwards & showing a partial reconstruction of the incident. The evidence was objected to :—*Held :* the photographs were not admissible.—R. *v.* PRETORIUS (1930), 51 N. L. R. 352.—**S. AF.**

sd. *Photograph of body of murdered person.*]—Photographs of the body are admissible against one accused of murder.—R. *v.* O'DONNELL, [1936] 2 D. L. R. 517 ; 65 Can. C. C. 299.—**CAN.**

knowledge or scientific experience to demonstrate accurately the facts sought to be established.

(2) The extent to which & the processes by which an accurate topographic plan can be produced from a pictorial delineation of a scene are matters of common knowledge could hardly be said, though such questions have long occupied the attention of men of science (LORD MERRIVALE, P.).—UNITED STATES SHIPPING BOARD *v.* THE ST. ALBANS, [1931] A. C. 632; 100 L. J. P. C. 73; 144 L. T. 601; 47 T. L. R. 245; 18 Asp. M. L. C. 196, P. C.

3959. *Add. Citation :*—130 L. T. 445.

Part V.—Witnesses.

3975a. ——.]—A judge cannot exclude a child-witness from the box on the ground that the case is unfit for him or her to be concerned in; his power is limited to the usual inquiry about the child's understanding of an oath or of the duty of telling the truth.—R. *v.* MOSCOVITCH (1924), 18 Cr. App. Rep. 37, C. C. A.

3980a. —— —— **Examination by judge in private —Illegal.**]—The examination of a child witness by the judge in private in order to ascertain whether the witness was capable of understanding the nature of an oath is illegal & is sufficient to invalidate a conviction.—R. *v.* DUNNE (1929), 99 L. J. K. B. 117; 143 L. T. 120; 21 Cr. App. Rep. 176; 29 Cox, C. C. 149, C. C. A.

4013. *Add. Annotations :—As to* (1) **Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256. **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704; Rowell *v.* Pratt, [1936] 2 K. B. 226.

4014. *Add. Annotation :—As to* (1) **Consd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

4015. *Add. Annotation :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256.

4019. *Add. Annotation :*—**Consd.** Spigelman *v.* Hocken, Goldblatt *v.* Hocken (1933), 150 L. T. 256.

4027. *Add. Annotation :*—**Refd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

4028. *Add. Annotations :*—**Refd.** Hearts of Oak

PART IV. SECT. 18, SUB-SECT. 2.

3958 i. *Surveyor's report.*]—*Held:* not admissible to prove the extent of the lands he was employed to survey.—R. *v.* PRICE BROTHERS & CO., [1925] 3 D. L. R. 595; *revsg.*, [1924] 3 D. L. R. 817.—**CAN.**

PART IV. SECT. 20.

3962 i. *Accounts—Carbon copies—Whether books within County Courts Act*, 1913, *s.* 138.]—*Qu.:* whether carbon copies of slips showing an account for goods alleged to have been sold & delivered are "books" within sect. 138 of County Courts Act, R. S. M., 1913, c. 44.—FARGEY *v.* HOLYK, [1929] 3 D. L. R. 682; 2 W. W. R. 204; 38 Man. L. R. 220.—**CAN.**

q i. —— ——.]—*Held:* a certificate of guardianship was not a public or other official book, register or record within sect. 35 of Evidence Act, & an entry therein relating to the age of a minor was not in itself admissible in evidence to prove the age.—SAID-UN-NISSA BIBI *v.* RUQAIYA BIBI (1930), I. L. R. 53 All. 428.—**IND.**

ss. *Certificate of weighmaster.*]—*Held: primâ facie* evidence only of weight at the time of weighing.—TENOLD & TANNAS *v.* CANADIAN PACIFIC RY. CO., [1927] 3 D. L. R. 695; [1927] 2 W. W. R. 491; 33 Can. Ry. Cas. 86; 21 Sask. L. R. 665.—**CAN.**

sg. *Resolution of Bar Association.*]—In order to enable a ct. to admit in evidence a resolution of a Bar Association it is necessary to establish that it was passed at a meeting specially & properly convened for the purpose, which implies that the meeting should have been convened after reasonable notice in the manner prescribed by the regulations of the Association, &, in the absence of any regulations on the subject, personal notice to all the available members of the Association, so that they may have proper opportunity to attend the meeting & to express their views thereat.—CHATUR BHUJ *v.* CROWN (1930), I. L. R. 12 Lah. 385.—**IND.**

PART V. SECT. 1, SUB-SECT. 1.—A. (a).

3974 iii. ——.]—New trial ordered in an action for negligence, on the ground that the trial judge had not expressly directed the jury that the law required that the case should not be decided on the testimony of the infant pltf., seven years old, who was not sworn, unless it was corroborated by some other material evidence; although he had warned the jury to consider her testimony very carefully.—ROBINSON *v.* BURNS & CO., LTD. & CHURCH, [1928] 1 D. L. R. 610; [1928] 1 W. W. R. 76; 23 Alta. L. R. 170.—**CAN.**

3974 iv. ——.]—"Other material evidence" within the requirement of Alberta Evidence Act, s. 19, that the unsworn testimony of a child of tender years must be corroborated, means evidence material to the issue which must be sustained by the party on whose behalf the child's evidence is adduced; therefore, where that issue is negligence, it means evidence relating to the alleged negligence. The evidence relied on as corroborative in the present case did not go so far as to touch the question of negligence.—CUTHBERTSON *v.* LETHBRIDGE, [1928] 2 D. L. R. 562; [1928] 1 W. W. R. 815; *revsd.*, [1929] 4 D. L. R. 1052; S. C. R. 176.—**CAN.**

3976 ii. ——.]—A child of ten said, "I know I have got to tell the truth, I know where you go when you don't tell the truth, to gaol":—*Held:* this answer was not inconsistent with an understanding of the nature & quality of an oath, although showing no appreciation of reward & punishment in a future state.—SPOONER *v.* TAYLOR, [1926] S. A. S. R. 396.—**AUS.**

3979 iv. —— —— *Canada Evidence Act*, s. 16.]—SANKEY *v.* R., [1927] 4 D. L. R. 245; [1927] S. C. R. 436; 48 Can. Crim. Cas. 97.—**CAN.**

3979 v. —— ——.]—R. *v.* FITZPATRICK, [1929] 1 D. L. R. 806; 1 W. W. R. 393; 51 Can. Crim. Cas. 146; 40 B. C. R. 478.—**CAN.**

3979 vi. —— ——.]—A witness, although only five years & about nine months old, found competent to take the oath:—*Held:* therefore, it was the clear duty of the ct. to administer the oath.—STRACHAN *v.* MCGINN, [1936] 1 W. W. R. 412; 50 B. C. R. 394.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.—B.

g (p. 390) **i.** —— *Agent conducting case.*]—An agent conducting a case in the Burgh police ct. is a competent witness in the cause.—CAMPBELL *v.* COCHRANE, [1928] S. C. (J.) 25.—**SCOT.**

p (p. 391) **i.** ——.]—A prosecutor who has conducted a preparatory examination in a magistrate's ct. is a competent witness for the Crown at the trial.—R. *v.* BECKER, [1929] App. D. 167.—**S. AF.**

sg. *Juryman in first action—On hearing of new trial.*]—At the hearing of a new trial, a juryman in the first action was called to give evidence as to what he saw whilst on a view with his fellow jurymen. His evidence was rejected on the ground that having been a juryman in the first action he was not competent to give evidence at the new trial:—*Held:* the witness was competent to give evidence of what he actually saw & observed provided the evidence was otherwise admissible.—MACKAY *v.* ELIAS (1928), 28 S. R. N. S. W. 340; 45 N. S. W. W. N. 86.—**AUS.**

4001 i. —— *Solicitor.*]—A solr. is a competent witness for his client, &, when he is not also acting as an advocate, there is nothing reprehensible in his being a witness. While an advocate can testify for a party whose cause he is conducting, the practice is highly objectionable.—PARRY *v.* PARRY, [1926] 3 D. L. R. 95; [1926] 2 W. W. R. 185; 20 Sask. L. R. 474.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

1i. —— ——.]—ANDREWS *v.* HOPKINS, [1932] 3 D. L. R. 459; 5 M. P. R. 7.—**CAN.**

Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579; O'Connor *v.* Waldron, [1935] A. C. 76.

4029. *Add. Annotation :*—**Apld.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

4030. *Add. Annotation :*—**Consd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

4077. *Add. Annotations :*—**Apprvd. & Apld.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85. **Refd.** *Re* Jawett, [1929] 1 Ch. 108.

4085a. Return to Potato Marketing Board—Agricultural Marketing Act, 1931 (c. 42), s. 17 (2).]—A return made by a grower of potatoes to the Potato Marketing Board set up under Agricultural Marketing Act, 1931 (c. 42), is privileged from production in all legal proceedings other than those specifically mentioned in the proviso to sect. 17 (2) of the Act—namely, "legal proceedings (including arbns.) under this Act or any scheme made thereunder, or for the purpose of any report of such proceedings, or in so far as the disclosure is required or authorised by this Act, or any scheme made thereunder."

Per LORD MAUGHAM: If a litigant is unable to secure the production at the trial of a document in the hands of a third party who has no just excuse for withholding it, that alone is not a ground for holding that a substantial wrong or miscarriage of justice has been occasioned, or for ordering a new trial. Such a litigant is in no better position to demand a new trial than one who failed to secure the attendance on subpœna of a witness, the other party to the litigation being in no way responsible for the failure.—ROWELL *v.* PRATT, [1938] A. C. 101; [1937] 3 All E. R. 660; 106 L. J. K. B. 790; 157 L. T. 369; 53 T. L. R. 982; 81 Sol. Jo. 765, H. L.

4130. *Add. Annotation :*—**Refd.** R. *v.* Bath Compensation Authority, [1925] 1 K. B. 685.

4148. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4161a. —— Acting for partner.]—A., a solr., being engaged in negotiations for the sale of an estate of his own, devolved the conduct of the business with regard to it on his partner, & made certain statements to him :—*Held :* the relation of solr. & client existed between them, & the communications were privileged. —BEAMISH *v.* OWENS (1846), 7 L. T. O. S. 66.

4190. *Add. Annotation :*—**Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4192. *Add. Annotation :*—**Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4199. *Add. Annotation :*—**Apld.** Minter *v.* Priest, [1929] 1 K. B. 655.

4201. *Add. Annotation :*—**Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4213a. —— —— ——.]—(1) Communications passing between a solr. & a prospective client with a view to the client retaining the solr. on professional business are privileged from disclosure, even if the solr. does not accept the retainer.

(2) Conversations between a solr. & client relating to the business of obtaining a loan for the deposit on the purchase of real estate are privileged from disclosure, as the business is professional business within the ordinary scope of a solr.'s employment.

(3) Where the relation of solr. & client is established, any conversation passing between them, to be protected from disclosure, must be fairly referable to that relation; it must be for the purpose of giving or receiving professional advice. — MINTER *v.* PRIEST, [1930] A. C. 558; 99 L. J. K. B. 391; 143 L. T. 57; 46 T. L. R. 301; 74 Sol. Jo. 200, H. L.

Annotation :—*Generally*, **Consd.** Harris *v.* Harris (1930), 47 T. L. R. 15.

4217. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4218a. —— ——.]—MINTER *v.* PRIEST, No. 4213a, *ante*.

4228a. —— —— ——.]—Pltf., who had been employed by deft. to take care of his house, but who had subsequently left it, brought an action against him for breach of promise of marriage. Deft. had threatened to proceed criminally against her on a charge of taking away some of his property from the house. The ct. refused to compel pltf.'s attorney to disclose her place of residence, as deft. knew who she was, & had avowed that he sought the information with the view of effecting her arrest on the criminal charge.—HARRIS *v.* HOLLER (1849), 19 L. J. Q. B. 62.

Annotation :—**Refd.** Cox *v.* Beckett (1865), 18 C. B. N. S. 239.

4237a. —— ——.]—Communications made by one of the spouses pending the possible institution of proceedings for divorce to a solr. who has hitherto acted as their common adviser are within the scope of professional privilege. In subsequent matrimonial proceedings in a ct. of summary jurisdiction between the spouses, the solr. is not an admissible witness to prove a statement made by one of them involving an admission of adultery.—HARRIS *v.* HARRIS, [1931] P. 10; 99 L. J. P. 149; 144 L. T. 159; 95 J. P. 1; 47 T. L. R. 15; 74 Sol. Jo. 755; 28 L. G. R. 641; 29 Cox, C. C. 189.

4259. *Add. Annotation :*—**Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4269a. Admission of adultery.]—HARRIS *v.* HARRIS, No. 4237a, *ante*.

4275. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4286. The first line of the text of the paragraph should read "Where at law the party calls."

4305. *Add. Annotation :*—**Consd.** Watt *v.* Longsdon, [1930] 1 K. B. 130.

4309a. —— —— —— **Effect of Evidence Amendment Act, 1853 (c. 83), s. 3.**]—SHENTON *v.*

PART V. SECT. 2, SUB-SECT. 4.—B. (a).

4060 xxi. ——.]—Under Canada Temperance Act, 1878, s. 123, accused is not bound to criminate himself.—R. *v.* HALPIN (1886), 12 O. R. 330.—**CAN.**

4060 xxii. ——.]—The refusal "to answer any question touching the case" in Liquor License Act, s. 115, means any question which may be lawfully put, which the witness is otherwise bound to answer.—*Re* ASKWITH (1899), 31 O. R. 150.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.—C.

4105 i. *Who may take objection—Not counsel.*]—The claim for protection against incriminating questions is a personal one & must be made by the party himself & under oath. The objection of his counsel will not do.—R. *v.* MCINTYRE (1909), 7 E. L. R. 50. —**CAN.**

PART V. SECT. 2, SUB-SECT. 4.—F.

sb. *Privilege taken away by provincial statute—Right to claim special privilege under Canada Evidence Act, s. 5—Witness must have objected to giving evidence.*]—R. *v.* HARCOURT, [1930] 3 D. L. R. 59; 53 Can. C. C. 156.—**CAN.**

TYLER, [1938] 4 All E. R. 501; 55 T. L. R. 143; 82 Sol. Jo. 950.

4409. *Add. Annotation:*—**Refd.** Rowell *v.* Pratt, [1937] 3 All E. R. 660.

4420. *Add. Annotation:*—*As to* (1) **Refd.** Elias *v.* Pasmore, [1934] 2 K. B. 164.

4428a. —— **Application to set aside—Whether "in" action.]**—*Held:* an application by a person, who had been served by one of the parties to an action with a *subpœna duces tecum*, to set the subpœna aside was an application "in" the action within R. S. C., Ord. 52, r. 2, although appct. was not a party to the action, & the application could not be heard.—R. *v.* INVESTORS' REVIEW, LTD., *Ex p.* WHEELER, [1928] 2 K. B. 644; 97 L. J. K. B. 802; 140 L. T. 43; 44 T. L. R. 724; 72 Sol. Jo. 570, D. C.

4461a. ——.]—The possession of a solr. is, for the purpose of a *subpœna duces tecum*, the possession of the client.—JORDAN *v.* ROBERTS (1862), 7 L. T. 68.

4472a. —— **Court not entitled to impound.]**—*Re* TILL, *Ex p.* PARSONS (1871), 19 W. R. 325.

4477. *Add. Annotations:*—**Refd.** *Re* Cameron's Coalbrook, etc. Ry. (1859), 25 Beav. 1; Lockett *v.* Cary (1864), 3 New Rep. 405; Fowler *v.* Fowler (1881), 29 W. R. 800; *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1.

4481. *Add. Annotation:*—**Refd.** Rowell *v.* Pratt, [1936] 2 K. B. 226.

4521a. —— **Put in witness-box but not examined.]**—*Held:* his costs of travelling & attending the trial ought to be allowed.—FLOWER *v.* GARDNER (1857), 3 C. B. N. S. 185; 27 L. J. C. P. 56; 30 L. T. O. S. 135; 140 E. R. 710.

4586. *Add. Annotation:*—**Refd.** The Massilia, [1926] P. 180.

4594a. —— **Witness not called.]**—Where a charge for the attendance of such witness was allowed, because counsel in advising on evidence thought that the witness was necessary:—*Held:* that was a dangerous ground on which to proceed, & one upon which an allowance or disallowance ought not to be founded.—THE LORD STRATHCONA (No. 3), [1926] W. N. 270, C. A.

4649. For "(*circa* 1660)" read "(*circa* 1670)."

4722. *Add. Annotation:*—**Refd.** R. *v.* Huntingdon Confirming Authority, [1929] 1 K. B. 698.

PART V. SECT. 2, SUB-SECT. 9.

c i. ——.]—There is no protection afforded by the Evidence Act to a doctor as such. When a doctor is called to give evidence he is in the same position as any other person not exempted by the Act. It is his duty to assist the ct. in every way possible & to disclose to the ct. all the information in his possession relevant to the matter in issue. He cannot claim privilege, on the allegation that the relationship of doctor & patient is confidential.—HARDLESS *v.* HARDLESS (1932), I. L. R. 55 All. 134.—**IND.**

PART V. SECT. 2, SUB-SECT. 10.

sk. *Whether Act of* 1696, *c.* 25, *applies in questions between.*]—GALLOWAY *v.* GALLOWAY, [1929] S. C. 160.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 3.—B. (d).

sa. *Notes made by police officer.*]—Notes made by a police officer for the purpose of making a report to his superior officer are confidential, & their production cannot be insisted on by accused.—HINSHELWOOD *v.* AULD, [1926] S. C. (J.) 4.—**SCOT.**

sb. *When amounting to contempt of court.*]—B., the Acting Secretary of the Dried Fruits Board of South Australia, was served with a *subpœna duces tecum* to produce certain minute books of the Board at the hearing of an action against the Minister for Agriculture for the State of South Australia & others. Acting on the direction of the Minister, B. refused to bring the books into ct., but produced a certificate by the Minister that the disclosure of the books would be contrary to public policy & prejudicial to the public interest:—*Held:* the order to bring the books into ct. as directed by the *subpœna* being made by a competent ct., the refusal to obey that order was a contempt of ct.—JAMES *v.* COWAN, *Re* BOTTEN (1929), 42 C. L. R. 305.—**AUS.**

PART V. SECT. 3, SUB-SECT. 5.—A.

4493 iii. —— *Expert witness.*]—*Held:* a medical witness could not refuse to give evidence because his fees had not been paid.—R. *v.* HUBLEY (N. S.), [1925] 1 D. L. R. 494; 43 Can. Crim. Cas. 208.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.—D. (a).

4548 v. —— ——.]—Where there was sufficient evidence before the trial judge to warrant him in finding that deft. came from Cuba to St. John, not merely because he was a necessary witness & wished to testify at a trial on his own behalf, but that he would have come as he did had there been no trial of the cause expected:—*Held:* deft. was not entitled to be paid travelling expenses under such conditions.—PURITY ICE CREAM CO. *v.* O'CONNELL (1924), 52 N. B. R. 422.—**CAN.**

4548 vi. —— ——.]—A witness, who resides abroad, is entitled to the expenses of being brought before the ct. to give evidence & also to the subsistence money due during the period of detention. The same principle applies to the case of a party whose evidence is reasonably necessary & material for the purpose of his case & on his behalf.—LANGLEY *v.* D'ARCY (1929), I. L. R. 54 Bom. 62.—**IND.**

1 i. —— *Whether applicable to Royal Commission.*]—The right of a witness in a civil proceeding to prepayment of conduct money & expenses to & from where he is ordered to be in attendance is well settled, & the same principle which applies to a civil proceeding in one of H.M. Superior cts. of record must *a fortiori* apply to a Royal Commission in the absence of express statutory power.—R. *v.* MCADAM (1927), 50 Can. Crim. Cas. 31; 39 B. C. R. 101.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.—F.

b i. —— *Award silent as to fees of witnesses—Power to grant fees vested in arbitrator.*]—Under Public Works Act, R. S. B. C. 1924, c. 211, s. 24, the arbitrators only are vested with authority to grant or withhold witness fees in the case of any particular witness, at any rate to the extent of deciding whether such fees should be included in the bill of costs for taxation or not, & what amount of preparation was reasonably necessary.—*Re* GALT BROS. & BURNABY (1928), 39 B. C. R. 470; [1928] 1 W. W. R. 798.—**CAN.**

PART V. SECT. 3, SUB-SECT. 6.—A. (a).

sg. *Quebec—Application of common law.*]—The law applicable in Quebec to the privilege from arrest of witnesses is the English Common Law of the date of the Royal Proclamation of 1763.—QUEBEC LIQUOR COMMISSION *v.* BASTIEN, [1933] 1 D. L. R. 514; 59 C. C. C. 39.—**CAN.**

PART V. SECT. 3, SUB-SECT. 6.—A. (d).

sz. *Defendant without notice of privilege.*]—An action for false arrest does not lie for the arrest, under a *capias*, of a person who was a witness in another suit.—THOMPSON *v.* SCHNEIDER, [1929] 1 D. L. R. 989; 60 N. S. R. 329.—**CAN.**

PART V. SECT. 3, SUB-SECT. 7.—A. (c) i.

4645 i. *General rule—Clear case must be made out.*]—DESROCHERS *v.* QUEBEC LIQUOR COMMISSION & SIMARD (1922), 37 Can. Crim. Cas. 17; 23 Q. P. R. 427.—**CAN.**

4649 iv. ——.]—A witness, summoned by the High Ct. to give evidence, left the jurisdiction without being discharged as a witness & without the permission of the ct., in order to avoid giving evidence:—*Held:* such conduct amounted to contempt, & the High Ct. had inherent jurisdiction to punish for that contempt.—EBRAHIM MAMOOJEE PAREKH *v.* R. (1926), I. L. R. 4 Ran. 257.—**IND.**

PART V. SECT. 4, SUB-SECT. 1.—B. (a).

e i. ——.]—The fact that a deponent, who on being sworn raised his right hand, did not kiss or touch the Bible held not a ground for holding that the affidavit was not validly sworn.—BOURGOUIN *v.* ROMAN (Man.), [1929] 4 D. L. R. 1006; 3 W. W. R. 399.—**CAN.**

sm. *Oath in English—Subsequent use of interpreter.*]—The fact that during the examination of a Crown witness whose native tongue was a foreign language it was found advisable to make use of an interpreter:—*Held:* not to lead necessarily to the conclusion that he had not understood the nature of the oath which had been administered to him in the English language.—R. *v.* DEFILLIPI, [1932] 1 W. W. R. 545; 26 Alta. L. R. 134; 57 C. C. C. 401.—**CAN.**

sp. *Oath in India—Unsatisfactory.*]—

4729. *Add. Annotation :—As to* (2) **Refd.** R. *v.* Anderson (1929), 142 L. T. 580.

4729a. Whether obligations of oath understood—When witness may be asked.]—A judge is entitled to question a witness at any stage of his evidence with a view to ascertaining whether he recognises the obligations of an oath.—R. *v.* WILSON (1924), 18 Cr. App. Rep. 108, C. C. A.

4734. *Add. Annotation :*—**Consd.** Lala Indar Prasad *v.* Lala Jagmohan Das (1927), 43 T. L. R. 536.

4815a. —— ——.]—In an action for revocation of probate the party propounding the will, being obliged to call as a witness one of the attesting witnesses whose evidence was adverse to the plea of due execution, was held to be entitled to cross-examine the witness as a witness of the ct.—OAKES *v.* UZZELL, [1932] P. 19 ; 100 L. J. P. 99 ; 146 L. T. 95 ; 47 T. L. R. 573 ; 75 Sol. Jo. 543.

4815b. —— **Witness called to produce document.**]—A petitioning creditor called for the mere purpose of producing such a document cannot, although he has been sworn, be cross-examined by deft.—REED *v.* JAMES (1815), 1 Stark. 132, N. P.

4816. *Add. Annotations :—As to* (2) **Consd.** More *v.* Weaver, [1928] 2 K. B. 520. **Expld.** Minter *v.* Priest, [1929] 1 K. B. 655. **Consd.** Minter *v.* Priest, [1930] A. C. 558.

4816a. —— **Intention to discredit witness.**]—R. *v.* HART (1932), 23 Cr. App. Rep. 202, C. C. A.

4831a. —— ——.]—There being two claimants as the eldest surviving son of testator's cousin J. referred to in testator's will, one being pltf. in the action & the other a co-deft. with X., on the trial of the issue which of them occupied that position :—*Held :* cross-examination on behalf of X. of witnesses called by her co-deft. could not be allowed.—*Re* WAGSTAFF, WAGSTAFF *v.* JALLAND, [1907] 2 Ch. 35 ; 76 L. J. Ch. 369 ; 96 L. T. 605 ; 23 T. L. R. 426 ; *on appeal*, [1908] 1 Ch. 162, C. A.

4831b. —— ——.]—Deft. S. performed a minor operation on pltf. in deft. council's hospital. After she had left the hospital pltf. complained of pains, & upon examination by her doctor she was found to be suffering from pyelitis, & a wad of surgical gauze was found in & removed from her body. Pltf. brought an action against S. for breach of duty & neglect to remove the plugging after the operation, & against deft. council for breach of duty & negligence arising out of a failure to nurse her properly. The negligence alleged against the council was that the nurses in their hospital had failed to remove the plugging, had failed to observe or report to the doctor in charge certain symptoms in pltf.'s condition, & had failed to take her temperature on the morning on which she had left the hospital. At the hearing counsel for S. put leading questions to witnesses for deft. council :—*Held :* the causes of action against the two defts. were quite distinct & arose to a substantial extent out of different facts, & counsel for the one deft. was entitled to cross-examine a witness for the other.—DRYDEN *v.* SURREY COUNTY COUNCIL & STEWART, [1936] 2 All E. R. 535 ; 80 Sol. Jo. 656.

4834a. —— ——.]—OAKES *v.* UZZELL, No. 4815a, *ante*.

4859. *Add. Annotations :*—**Apld.** Grinham *v.* Davies, [1929] 2 K. B. 249. **Refd.** Jones *v.* Birch Bros., Ltd. (1933), 49 T. L. R. 586.

4859a. As to previous accidents—Running down case.]—Where a deft. in a running-down action is charged with negligence in a particular case it is not competent to ask him a question to obtain an answer which would show that he has been negligent on some other occasion or occasions. Much less is it competent to ask him a question which merely shows that he has been involved in some other accident for which it is not suggested that he was to blame. On the other hand, a question properly directed so as to test his credibility as a witness, or his skill or competence as a driver, if these matters are in issue, is not to be excluded merely because it shows that he has previously been involved in one or more other accidents.—JAMES *v.* AUDIGIER (1932), 48 T. L. R. 600 ; 76 Sol. Jo. 528, D. C. ; *affd.*, 49 T. L. R. 36.

4859b. —— —— **Time for objection.**]—The Ct. of Appeal dismissed this appeal by deft. from the decision of a Div. Ct. as to the permissibility of certain questions, put to deft. in a running-down case, as to another accident which he had had. The ground of the dismissal was that no formal objection to the

---

The oath administered in Indian cts. to Indian witnesses is of an unsatisfactory nature.—EMPEROR *v.* UJAGAR (1933), I. L. R. 55 All. 639.—**IND.**

PART V. SECT. 5, SUB-SECT. 2.

4759 ii. —— —— *Two plaintiffs witnesses.*]—*Semble :* when there are two pltfs. & both are witnesses, deft. has not the right to insist that while one of them is giving his testimony the other shall be excluded.—MCINTYRE *v.* MCINTYRE, [1925] 2 W. W. R. 581.—**CAN.**

PART V. SECT. 6, SUB-SECT. 1.—A.

4b. *Evidence of foreign witness—When interpreter allowed.*]—While it is desirable that a foreigner should not be allowed to give his testimony through an interpreter if he really understands English, yet where a witness persists in stating his ignorance of English & that he does not understand the questions put to him, & there is no evidence that he is not speaking the truth, he should not be forced to testify in English, especially where the result is a mass of unintelligible evidence.—PONOMOROFF *v.* PONOMOROFF, [1925] 3 W. W. R. 673.—**CAN.**

—— —— *In criminal trials.*]—*See* CRIMINAL LAW, Vol. XIV., p. 264.

PART V. SECT. 6. SUB-SECT. 2.—B.

4830 i. —— *Other defendant & his witnesses.*]—On the trial of a civil action, other than for divorce, against more than one deft., when defts. have pleaded separately, but there is no substantial difference in their interests, the judge may refuse to allow separate cross-examination of co-deft.'s witnesses ; in other circumstances separate counsel may be allowed to be heard, with the consequential right to cross-examine co-deft. or his witnesses.—MILLAR *v.* B. C. RAPID TRANSIT CO., LTD., [1926] 1 D. L. R. 1171 ; [1926] 1 W. W. R. 543 ; 36 B. C. R. 345.—**CAN.**

PART V. SECT. 6, SUB-SECT. 2.—D.

4839 vi. ——.]—The testimony of a witness may not be contradicted in respect of a matter relevant only as affecting his credibility. Evidence Act, ss. 45, 46, requires that the statement to be contradicted shall be relative to the subject-matter of the cause, &, therefore, in an action where a wife claims ownership of certain property, evidence of statements made by the husband to a third party indicating that he owned the property are not admissible to contradict the husband's testimony, & should not be acted upon in determining the question of ownership.—ZWICKER *v.* YOUNG, [1929] 1 D. L. R. 602 ; 60 N. S. R. 233.—**CAN.**

4839 vii. ——.]—In an action for libel a pltf. may not be cross-examined, in mitigation of damages, about violent & abusive language used by him on occasions & about people, having no connection with the libel sued on.—JUDD *v.* SUN NEWSPAPER, LTD. (1929), 30 S. R. N. S. W. 224 ; 47 N. S. W. W. N. 96.—**AUS.**

questions had been taken at the time.—JAMES *v.* AUDIGIER (1932), 49 T. L. R. 36, C. A.

4869a. —— —— ——.]—If a witness called for pltf. be asked, on the part of deft., whether pltf. had any conversation with him on a particular subject, & the witness state anything that pltf. said on that subject, pltf.'s counsel may examine as to every part of the same conversation; but, if the witness state that pltf. had no such conversation with him, this does not let in pltf.'s counsel to examine as to anything else that pltf. said.—DICAS *v.* BROUGHAM (LORD) (1833), 6 C. & P. 249, Ex. Ch.; 1 Mood. & R. 309; 3 State Tr. N. S. 569; 172 E. R. 1228, N. P.

4875. *Add. Annotation:*—**Distd.** R. *v.* Harris, [1927] 2 K. B. 587.

4884a. —— —— **Book written by witness.**]—A book written by a witness cannot be put in as part of his examination-in-chief, but the witness may be cross-examined on its contents.—R. *v.* ALLAWAY (1922), 17 Cr. App. Rep. 15, C. C. A.

4886a. —— ——.]—During a trial, counsel for the prosecution cross-examined the accused on the contents of an alleged document. The document was not produced, but counsel for the prosecution, believing that the original would be in his hands before the end of the trial, suggested to the jury that the original was in existence:—*Held:* such cross-examination, where the original document was in fact incapable of being produced, was irregular & invalidated the conviction.—R. *v.* ANDERSON (1929), 142 L. T. 580; 21 Cr. App. Rep. 178; 29 Cox, C. C. 102, C. C. A.

4902. *Add. Annotation:*—**Refd.** R. *v.* Anderson (1929), 142 L. T. 580.

4997. *Add. Annotation:*—**Refd.** Jacobson *v.* Frachon (1927), 138 L. T. 386.

5022. *Add. Annotation:*—**Refd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

5023. *Add. Annotation:*—**Refd.** Cammell, Laird & Co. *v.* Manganese Bronze & Brass Co., [1933] 2 K. B. 141.

5027. *Add. Annotation:*—**Consd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

5050. For existing citations substitute "[1916] W. N. 47."

5099. *Add. Annotation:*—**Refd.** R. *v.* Liddle (1928), 21 Cr. App. Rep. 3.

5107. The second line of this paragraph should read "out to be unfavourable to the party calling him is not."

5112. *Add. Annotation:*—**Refd.** R. *v.* Harris (1927), 20 Cr. App. Rep. 144.

PART V. SECT. 6, SUB-SECT. 4.

4874 iii. ——.]—*Re* HAYES WILLIAMS (1926), 26 S. R. N. S. W. 383; 43 N. S. W. W. N. 101.—**AUS.**

PART V. SECT. 6, SUB-SECT. 6.—C.

4899 i. *Production of document—Necessity for—Document written by witness.*]—Counsel for defts., in cross-examining pltf., asked him if certain things happened as set out in a letter of his & the reply thereto. At the close of pltf.'s case, counsel for deft. stated that he did not intend to call evidence, & thereupon counsel for pltf. asked that deft. be compelled to put the letters in evidence. The request was refused:—*Held:* the judge was right in not compelling deft. to put the letters in evidence.—WALTON *v.* DEATON (1931), 31 S. R. N. S. W. 393; 48 N. S. W. W. N. 152.—**AUS.**

PART V. SECT. 6, SUB-SECT. 7.—D.

4955 iii. —— *Although inadmissible—Because produced too late.*]—JEWAN LAL DAGA *v.* NILMANI CHAUDHURI (1927), L. R. 55 Ind. App. 107.—**IND.**

sk. *Statement by deceased—Not read over or signed.*]—A statement by a deceased person of the circumstances leading to his death recorded by a witness but not read over to or signed by such deceased person is admissible in evidence as a record of what deceased said at the time from which the witness could refresh his memory.—*Re* KRISHNAMA NAICKEN (1930), I. L. R. 54 Mad. 678.—**IND.**

PART V. SECT. 6, SUB-SECT. 7.—E.

s i. ——.]—Before a witness is allowed to refresh his memory of a statement made by another by reference to a memorandum of it made at the time, he must be able to state that such statement was truly & correctly entered in the memorandum, & where a copy of the memorandum is sought to be used the witness must be able to show that while the entry was fresh in his mind he compared the copy with the original entry, & that he found the copy correct.—R. *v.* ELDER, [1925] 3 D. L. R. 447; [1925] 2 W. W. R. 545; 44 Can. Crim. Cas. 75; 35 Man. L. R. 161.—**CAN.**

PART V. SECT. 6, SUB-SECT. 7.—G.

5012 i. —— *By jury.*]—O'BRIEN *v.* O'BRIEN (1888), Cout. Dig. 554, 992; Cam. Cas. 282.—**CAN.**

so. *Whether document admissible as evidence.*]—The fact that a witness is allowed to refresh his memory, by referring to a memorandum made by him, does not make such memorandum admissible as evidence in corroboration of his testimony.—YOUNG *v.* DENTON, [1927] 1 D. L. R. 426; [1927] 1 W. W. R. 75; 21 Sask. L. R. 319.—**CAN.**

PART V. SECT. 6, SUB-SECT. 8.

e i. —— *Resulting presumption.*]—When a deft. refuses to give evidence upon matters at issue, & particularly within his knowledge, the presumption is raised that such facts do not exist.—SHANKLIN *v.* SMITH (1932), 5 M. P. R. 204; *affd.*, [1933] S. C. R. 340; 4 D. L. R. 815.—**CAN.**

5020 i. *Refusal to answer questions—Penalties—Punishment for contempt—Power of magistrate.*]—*Re* AYOTTE (1905), 15 Man. L. R. 156.—**CAN.**

5020 ii. —— ——.]—Deft. was committed for contempt of ct., for not answering a question asked by the magistrate:—*Held:* the magistrate had power to commit deft.—R. *v.* ENDLER (1909), 7 E. L. R. 150, 151, 152.—**CAN.**

PART V. SECT. 7, SUB-SECT. 1.

5021 vi. ——.]—A counsel who had acted for deft. throughout the trial of an action to set aside on the ground of undue influence certain gifts made by a donor since deceased applied, after judgment was reserved but before it was delivered, to be allowed to testify as to his discussions with the donor as her solr. with respect to said gifts. He had considered his position before the trial & had decided to act as counsel & not as a witness, his reason being that the testimony which he then was able to give was deficient as to dates & would, therefore, not have much effect; & he believed the other evidence at his command would be sufficient. After the hearing he found a memorandum which enabled him to fix the missing dates & to recollect with certainty the subject of said discussions:—*Held:* in view of the doubtful state of the law on the point, the evidence should be admitted.—BRETT *v.* BRETT (No. 1), [1937] 2 W. W. R. 689.—**CAN.**

5027 i. *Grounds for refusing.*]—In an arbn. under Workmen's Compensation Acts where evidence is known to be available & is not called on the arbn., leave will not be granted by an appeal to ct. to take further evidence.—GATES *v.* WILLIAMS, [1928] S. A. S. R. 252.—**AUS.**

PART V. SECT. 7, SUB-SECT. 2.

n i. —— *Recall by jury.*]—The jury in a criminal case is entitled after it has retired to consider its verdict, to return to ct., & have a witness recalled & questioned.—A.-G. *v.* MCDERMOTT, [1933] I. R. 513.—**IR.**

PART V. SECT. 7, SUB-SECT. 6.—A.

5054 ii. —— ——.]—STERLING TRUSTS CORPN. *v.* MELNECHUK (Sask.), [1927] 4 D. L. R. 521; [1927] 3 W. W. R. 131.—**CAN.**

5059 i. *Whether party entitled to split evidence into two parts—As part of his case—& partly as evidence in reply.*]—Pltf. is not allowed in presenting evidence to divide his case, either by omitting to give evidence originally upon a material point & offering such evidence in reply, or by giving some evidence upon a particular point in his original case & offering other evidence upon the same point in reply.—HARVEY *v.* CANADIAN PACIFIC RY. CO. (1885), 3 Man. L. R. 266.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.—A.

5082 ii. —— ——.]—The duty of determining whether a witness may be treated as adverse or hostile is one peculiarly within the discretion of the trial judge.—MAYFIELD RURAL MUNICIPALITY, No. 406 *v.* LONDON & LANCASHIRE GUARANTY & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—**CAN.**

5140. *Add. Annotation :*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5182. *Add. Annotation :*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5197. *Add. Annotation :*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5199. *Add. Annotation :*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5309a. ——.]—PALIN *v.* PONTING, No. 5571a, *post.*

5318. *Add. Annotation :*—**Apld.** Palin *v.* Ponting, [1930] P. 185.

5320. *Add. Annotation :*—**Apld.** Palin *v.* Ponting, [1930] P. 185.

5388a. —— ——.]—OAKES *v.* UZZELL, No. 4815a, *ante.*

PART V. SECT. 8, SUB-SECT. 1.—C. (b)

sd. *Statement made on examination for discovery.*]—*Held :* a "previous" or "former" statement within Saskatchewan Evidence Act, R. S. S., 1920 (c. 44), ss. 32-34.—MAYFIELD RURAL MUNICIPALITY, No. 406 *v.* LONDON & LANCASHIRE GUARANTY & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—**CAN.**

PART V. SECT. 8, SUB-SECT. 2.—B.

k i. —— *Questions tending to show bad character—Directed to prove issue in case.*]—Evidence Amendment Act, 1925, s. 12 (*c*), provides that a person charged & called as a witness in pursuance of this Act shall not be asked, & if asked, shall not be required to answer, any question tending to show that he is of bad character :—*Held :* questions not directed to show an accused's bad character, but to prove his guilty knowledge, which was one of issues, are not inadmissible, because they may also tend to show his bad character.—R. *v.* BAXTER, [1927] S. A. S. R. 321.—**AUS.**

PART V. SECT. 8, SUB-SECT. 2.—C. (a).

n i. —— *To shake evidence given by witness.*]—Evidence of a previous statement inconsistent with the testimony of a witness is not admissible as evidence on the issues to be decided in the action, but can only be looked to to neutralise or cut down the evidence given by the witness.—HAMMER *v.* S. HOFFNUNG & CO., LTD. (1928), 28 S. R. N. S. W. 280; 45 N. S. W. W. N. 71.—**AUS.**

PART V. SECT. 8, SUB-SECT. 2.—C. (b).

5168 i. *Letter written by witness.*]—Where a telegram & a letter were dispatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction :—*Held :* not corroboration of the agent's oral testimony, although they might competently be referred to for the purpose of testing his credibility.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

PART V. SECT. 8, SUB-SECT. 2.—D.

5172 ii. ——.]—A judgment of conviction for theft is not admissible as proof of the theft in a civil action. It may be admissible for the purpose of discrediting a witness.—SHAW *v.* GLEN FALLS INSURANCE CO., [1938] 1 D. L. R. 502; 12 M. P. R. 386.—**CAN.**

PART V. SECT. 9, SUB-SECT. 1.

5209 i. *Whether necessary.*]—MCNAB *v.* COWARD, [1925] 4 D. L. R. 712; *affg.*, [1925] 1 D. L. R. 741.—**CAN.**

5211 i. *What constitutes corroboration—Whether letter written by witness—About time of event in question.*]—*Held :* a telegram & a letter despatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction were not corroboration of the agent's oral testimony.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

5211 ii. —— *Evidence of fact essential to success of party.*]—The corroboration required by Evidence Act, R. S. O. 1914, c. 76, s. 12, must be of something essential to be shown before pltf. can, upon his own evidence, obtain a decision in his favour upon the cause of action he is setting up. Evidence which is consistent with two views corroborates neither. The corroborating evidence must be of some fact essential to the success of pltf., though it is not required that all such facts be corroborated.—ELGIN *v.* STUBBS, [1928] 2 D. L. R. 838; 62 O. L. R. 128.—**CAN.**

sf. *Of telephone conversation.*]—A person who hears a telephone conversation may give evidence to corroborate the person whom he was with & who was the actual speaker.—HANSON *v.* GLEANER, LTD., [1925] 3 D. L. R. 139.—**CAN.**

PART V. SECT. 9, SUB-SECT. 2.

5213 iv. ——.]—The corroborative evidence required by Evidence Act, R. S. N. S., 1923, s. 37, need not establish pltf.'s whole case, but it must prove more than a suggestion of the genuineness of his claim.—ROCKOLA *v.* NOVA SCOTIA TRUST CO. (1937), 11 M. P. R. 298.—**CAN.**

PART V. SECT. 9, SUB-SECT. 4.

c (p. 494) i. ——.]—The rule, that claims against the estate of a deceased person require to be corroborated by other evidence than that of pltf., is a rule of practice rather than of law, & is only applied where the *onus* of proof rests upon pltf., & has no application where the *onus* of proof of the facts which determine the issue or issues involved rests upon the representative of the deceased person.—TAMARA TE ANGIANGI *v.* TREADWELL, [1926] N. Z. L. R. 693.—**N.Z.**

c (p. 494) ii. ——.]—PIEPER *v.* ZINKANN (1927), 60 O. L. R. 443.—**CAN.**

c (p. 494) iii. ——.]—B. made a claim against the estate of C., deceased, for services rendered, which was allowed by the surrogate judge of probate :—*Held :* setting aside the decision with costs, under R. S. c. 107, the evidence of B. was inadmissible in support of his claim.—*Re* CONDON ESTATE (1896), 28 N. S. R. (16 R. & G.) 208.—**CAN.**

c (p. 494) iv. ——.]—*In re* MALLOWS, FLETCHER *v.* INTESTATE ESTATES CURATOR (1926), 29 W. A. L. R. 62.—**AUS.**

c (p. 494) v. ——.]—Although a trial judge ought not to disallow a claim against the estate of a deceased merely because the claimant's evidence is not corroborated, nevertheless he should examine such evidence with care, & even suspicion, & should not allow the claim unless completely satisfied of its truth.—JOHNSON *v.* BERRY, [1928] 4 D. L. R. 286; [1928] 2 W. W. R. 410; 22 Sask. L. R. 402.—**CAN.**

c (p. 494) vi. ——.]—*Re* LUTZ, [1928] 1 D. L. R. 72.—**CAN.**

c (p. 494) vii. ——.]—Where an agent accepted commission from both parties, & in consideration thereof his principal since deceased signed an agreement to pay the agent a reduced commission :—*Held :* the making of the agreement being proved & corroborated by its production, Evidence Act, R. S. O., 1927, does not require corroboration of the disclosure.—BAYLEY *v.* TRUSTS & GUARANTEE CO., [1931] 1 D. L. R. 500; 66 O. L. R. 254; *affg.*, [1930] 3 D. L. R. 625; 65 O. L. R. 315.—**CAN.**

c (p. 494) viii. ——.]—A son filed a claim against the estate of his deceased father for money alleged to have been advanced for a trip to England. Claimant alleged that he drew the money out of the bank & purchased an English draft out of the proceeds : —*Held :* corroboration necessary under Evidence Act, s. 37.—*Re* COOK, *Ex p.* COOK, [1932] 2 D. L. R. 805; 4 M. P. R. 492.—**CAN.**

c (p. 494) ix. ——.]—PAUL *v.* MYLES (1930), 2 M. P. R. 20.—**CAN.**

c (p. 494) x. ——.]—Evidence in corroboration of a claim against the estate of a deceased person required. —COSENS *v.* MCEWAN, [1933] 3 D. L. R. 794; *affd.*, [1934] 4 D. L. R. 802, P. C. —**CAN.**

c (p. 494) xi. ——.]—Under sect. 11 of Evidence Act, R. S. B. C., 1924, a party seeking to establish a claim against an estate is only required in order to succeed on his own evidence to adduce corroboration of something essential to the case to be proved by him; the sect. does not apply when the onus of proof which determines the issue rests upon the representative of deceased.—SHEPPARD *v.* TORONTO GENERAL TRUSTS CORPN., [1937] 2 W. W. R. 9; 51 B. C. R. 149.—**CAN.**

c (p. 494) xii. ——.]—In a claim against an administrator for the value of shares delivered to deceased, what amounts to corroboration by other material evidence within Nova Scotia Evidence Act, s. 7, considered.—RIGBY *v.* NOVA SCOTIA TRUST CO., [1938] 2 D. L. R. 583.—**CAN.**

c (p. 494) xiii. ——.]—ROCKOLA *v.* NOVA SCOTIA TRUST CO., [1937] 3 D. L. R. 594.—**CAN.**

f (p. 495) i. —— *Claim made up of separate items.*]—GERARD *v.* HUDSON, [1928] 1 D. L. R. 839.—**CAN.**

PART V. SECT. 10, SUB-SECT. 2.—C. (a) iv.

f i. ——.]—CUVILLIER *v.* THIBODO (1849), 5 U. C. R. 328.—**CAN.**

Part VI.—Expert Evidence.

5403a. Limitation of volume of evidence.]—In cases involving expert evidence the expert advisers of the parties, whether legal or scientific, are under a special duty to the ct. to limit in every possible way the contentious matters of fact to be dealt with at the hearing (TOMLIN, J.).—GRAIGOLA MERTHYR CO., LTD. *v.* SWANSEA CORPN., [1928] Ch. 31; 97 L. J. Ch. 129; 43 T. L. R. 600; *on appeal*, [1928] Ch. 235, C. A.; [1929] A. C. 344, H. L.

5403b. *S. P.* A.-G. *v.* RINGWOOD RURAL DISTRICT COUNCIL (1928), 92 J. P. 65; 26 L. G. R. 174.

5403c. Limitation of number of expert witnesses.]—In cases involving expert evidence only two experts are to be heard on each side, unless the judge is satisfied that by reason of special circumstances justice cannot be done without hearing further expert evidence. This rule does not exclude either side from calling any one to speak to matters he has seen, even though an expert, but in such a case the examination must be confined to matters of fact, & such person must not be treated as an expert witness.—GRAIGOLA MERTHYR CO., LTD. *v.* SWANSEA CORPN. (1926), 71 Sol. Jo. 142; *subsequent proceedings*, [1928] Ch. 31.

5407a. —— Only medical witnesses—Not research student in toxicology.]— NIGHTINGALE *v.* BIFFEN, HEWITT *v.* BIFFEN (1925), 18 B. W. C. C. 358, C. A.

5433. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

5452. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

5468. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

5478. After this case add :—

——.]—*See, now*, R. S. C., Ord. XXXVIIA.

5479. *Add. Annotations :* — **Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183; Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

Part VII.—Evidence by Affidavit.

5493. *Add. Citations :*—94 L. J. Ch. 73; 132 L. T. 540.

5523a. —— Proceedings on which affidavit made no longer pending.]—CATHOLIC PUBLISHING & BOOKSELLING CO., LTD. *v.* WYMAN (1863), 1 New Rep. 468; 7 L. T. 849; 11 W. R. 399.

5547a. —— ——.]—WARNER *v.* MOSSES, No. 6254, *post*.

PART VI. SECT. 1.

5402 iii. —— *Foreign law as to title.*]—On the question of ability to make title to foreign land, the foreign law is to be proved to the ct., & on that law, as proved, the ct. has to draw the proper conclusion. All that the expert called to prove the foreign law can do is to state the law which affects the documents of title in question; his opinion as to whether they have the legal effect of constituting title is not evidence.—BONDHOLDERS SECURITIES CORPN. *v.* MANVILLE (No. 2), [1933] 3 W. W. R. 677; *affd.*, [1935] 1 W. W. R. 452.—**CAN.**

m. Read now " **5403c i.**"

n. Read now " **5403c ii.**"

o. Read now " **5403c iii.**"

5403c iv. —— *Construction of Ontario Evidence Act, s.* 10.]—BUTTRUM *v.* UDELL, [1925] 3 D. L. R. 45; 57 O. L. R. 97.—**CAN.**

5403c v. —— *Waiver.*]—Sect. 10 of Alberta Evidence Act, R. S. A., 1922, which limits the number of witnesses entitled to give opinion evidence who may be called, deals with practice & procedure in a civil matter & so may be waived by the fact that a party takes no objection to the violation of its provisions at trial.—MARCHYSHYN *v.* FANE AUTO WORKS, LTD., [1932] 3 W. W. R. 232; 4 D. L. R. 618.—**CAN.**

s. For " *Conflict of opinion as to value* " read " *Conflict of opinion—Duty of court—Conflict of opinion as to value.*"

s i. —— ——.]—HAY *v.* BAIN, [1925] 2 D. L. R. 948.—**CAN.**

s ii. —— ——.]—Where a case is complicated by the introduction of opinion evidence, particularly in cases where the testimony is that of medical men, it is the duty of the judge to arrive at his own conclusion after carefully considering the evidence of the experts, & it is not enough for him to say, " I doubt & cannot resolve the doubt because an expert also doubts."—BENNETT *v.* PRATTIE (1925), 57 O. L. R. 233.—**CAN.**

sg. *Weight of evidence.*]—WILLIAM HAMILTON MANUFACTURING CO. *v.* VICTORIA LUMBERING & MANUFACTURING CO. (1896), 26 S. C. R. 96.—**CAN.**

sh. ——.]—GUELPH WORSTED SPINNING CO. *v.* GUELPH CORPN., GUELPH CARPET MILLS CO. *v.* GUELPH CORPN. (1914), 30 O. L. R. 466; 18 D. L. R. 73; 5 O. W. N. 761.—**CAN.**

sj. ——.]—The law makes no distinction between the evidence given by experts & that given by ordinary witnesses: the testimony of experts must be appreciated & weighed by the cts. in the same manner as that of any other witness. A judgment would therefore be wrong, if based upon the sole fact that the successful party had a greater number of experts testifying on his behalf.—SHAWINIGAN ENGINEERING CO. *v.* NAUD, [1929] 4 D. L. R. 57; S. C. R. 341.—**CAN.**

sm. *Must speak from personal knowledge.*]—The evidence of a witness who does not speak from any special knowledge but from information derived from an entry in a confidential record not produced before the ct., is not admissible as expert evidence.—JAFFARUL HOSSAIN *v.* EMPEROR (1931), I. L. R. 59 Cal. 1046.—**IND.**

PART VI. SECT. 2, SUB-SECT. 1.

5406 i. *What witnesses may be heard —Nurse.*]—A nurse's evidence, as to the physical condition of a child, & her opinion as to its sufferings :—*Held :* admissible as an expert up to a certain point.—HEPENSTAL *v.* MERRITT (1895), 33 N. B. R. 91.—**CAN.**

s i. —— *Distance at which gun held.*]—R. *v.* PREEPER (1890), 22 N. S. R. 174.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 10.

e i. —— *Fingerprints.*]—Evidence of an expert as to identification by fingerprints is not conclusive evidence of a fact but is opinion to which the ordinary rules governing such evidence apply. With respect to fingerprints there is no statutory provision, similar to sect. 8 of Canada Evidence Act, R.S.C., 1927, respecting handwriting, which permits fingerprints to be used for the purpose of evidence *per se*.—R. *v.* DE'GEORGIO & SERVELLO, [1934] 3 W. W. R. 374, B. C.—**CAN.**

e ii. —— ——.]—In convicting an accused person on the evidence of a fingerprint expert, the ct. need not insist upon corroboration of the evidence, but the ct. must satisfy itself as to the value of the evidence of the expert in the same way as it must satisfy itself of the value of other evidence.—FAKIR MAHOMED *v.* EMPEROR (1935), I. L. R. 60 Bom. 187.—**IND.**

PART VII. SECT. 1.

sk. *As proof of settlement of action.*]—The question whether or not an action has been settled should not be disposed of on affidavits, where the evidence is conflicting.—PULKRABEK *v.* PULKRABEK (Alta.), [1927] 4 D. L. R. 635; [1927] 3 W. W. R. 239.—**CAN.**

5568. After this case add " *See, also,* PRACTICE, p. 306, Nos. 338, 339."

5570. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

5571. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

5571a. ——.]—On the trial of a probate action in which a will was propounded in solemn form neither of the attesting witnesses could be called. An affidavit by one of them sworn for the purpose of obtaining probate in common form before the commencement of litigation was admitted as evidence of execution & the state of the will when executed.—PALIN *v.* PONTING, [1930] P. 185; 99 L. J. P. 121; 143 L. T. 23; 46 T. L. R. 310; 74 Sol. Jo. 234.

5626. *Add. Annotation :*—**Distd.** Earles Utilities, Ltd. *v.* Jacobs (1934), 51 T. L. R. 43.

5627a. —— **Witness not called.**]—Where a pltf. has filed affidavits & they were read to the ct. at the hearing of a motion for interlocutory relief, deft., when the action comes on for trial, is entitled, if the persons who made the affidavits are not called by pltf., to give evidence, to refer to their affidavits for the purpose of commenting on their testimony & calling attention to what he suggests are discrepancies in the evidence given by witnesses who were called for pltf. & that given in the affidavits of those who were not called.—EARLES UTILITIES, LTD. *v.* JACOBS (1934), 51 T. L. R. 43; 52 R. P. C. 72; *sub nom.* Practice Note [1934], W. N. 198.

5639a. —— **Affidavit of agent used by principal.**]—An affidavit of an agent cannot be used to prove a fact against his principal where he can himself be called; but where the principal has used an affidavit of the agent in an application to the ct., in which a particular fact is stated, the affidavit of the agent may be used as evidence of that fact.—JOHNSON *v.* WARD (1806), 6 Esp. 47; 170 E. R. 826.

5676a. ——.]—*Ex p.* STEPHENS (1848), 11 L. T. O. S. 152.

5873a. —— ——.]—The *jurat* of an affidavit of the due taking of an acknowledgment had an interlineation in the body of it, & an erasure in the *jurat*. The ct. refused to allow it to be filed, & refused to enlarge the time for returning the commission, in order to get the defects remedied, the time for the return having expired.—*Re* TIERNEY (1855), 15 C. B. 761; 24 L. T. O. S. 260; 139 E. R. 625.

5880a. —— ——.]—*Re* TIERNEY, No. 5873a, *ante*.

5951a. —— **In material part of affidavit—Proof of time of erasure.**]—The ct. allowed a certificate of acknowledgment & affidavit of verification, taken in New South Wales, to be received & filed, notwithstanding an erasure in a material part of the affidavit, there being satisfactory evidence, by affidavit, that the erasure was made before the acknowledgment & affidavit were taken & sworn.—*Re* BINGLE (1854), 15 C. B. 449; 2 C. L. R. 1793; 23 L. T. O. S. 177; 139 E. R. 500.

6052a. ——.]—ANON. (1839), No. 6108a, *post*.

6053a. —— **No commissioner available.**]—*Re* GROOM, No. 6066a, *post*.

6056. *Add. Annotation :*—**Folld.** *Re* Eastern United Assce. Corpn. (1928), 72 Sol. Jo. 353.

6056a. —— ——.]—*Re* EASTERN UNITED ASSURANCE CORPN. (1928), 72 Sol. Jo. 353.

6066a. Notary public—No commissioner available.]—The ct. allowed a certificate of acknowledgment under Fines & Recoveries Act, 1833 (c. 74), s. 84, to be filed under s. 85 where the affidavit verifying the certificate was sworn before a notary public in the Hebrides, as the affidavit on which the application was made deposed that there was no comr. of the ct. in the Hebrides or nearer than the mainland.—*Re* GROOM (1869), 17 W. R. 589.

PART VII. SECT. 4, SUB-SECT 1.

r i. —— *County Courts Act, R. S. M., 1913 (c. 44), s. 138—Effect of.*]—R. *v.* GUYOT, [1927] 1 D. L. R. 191; 36 Man. L. R. 178; [1926] 3 W. W. R. 584.—**CAN.**

PART VII. SECT. 6.

sl. *Affidavit on application for security for costs—Right to require production of documents—Relating to defence.*]—On a cross-examination on an affidavit in support of an application for security for costs, the deponent can be required, without an order by a judge to do so, to produce documents relating to the defence alleged in the affidavit, even though such cross-examination is held before the statement of defence is filed.—COLLEGE BRAND CLOTHES CO., LTD. *v.* BROWN & FITZPATRICK, [1928] 2 D. L. R. 502; [1928] 1 W. W. R. 778; 23 Alta. L. R. 363.—**CAN.**

sm. *Discretion of judge to order.*]—ELSTON *v.* PURDY (1930), 2 M. P. R. 14.—**CAN.**

PART VII. SECT. 11, SUB-SECT. 2.—A.

sp. *Affidavit filed on rule nisi—Intituled differently from rule—Right to amend.*]—Where the heading of an affidavit, on which a rule *nisi* was obtained, differed from the heading of the rule *nisi*, the ct. gave leave for the affidavit to be amended so as to agree with the rule *nisi*.—*Ex p.* HIGGS, *Re* SMITH'S NEWSPAPERS, LTD. (1927), 28 S. R. N. S. W. 85.—**AUS.**

PART VII. SECT. 11, SUB-SECT. 5.—F.

5832 v. ——.]—In the absence of a statute or rule requiring a comr. for oaths or other officer entitled to take an affidavit to state in the *jurat* the official capacity in which he signed it, an affidavit is not rendered invalid because of the fact that the officer before whom it was taken did not add to his signature any designation of such capacity.—CAMERON-HUTT, LTD. *v.* MACMILLEN, [1933] 3 W. W. R. 241.—**CAN.**

PART VII. SECT. 11, SUB-SECT. 7.—B.

5904 i. *What is an interlocutory proceeding—Not an application for prohibition.*]—An application for prohibition is not an interlocutory motion; hence, under K. B. Rule 392, statements made on information & belief in the affidavits filed thereon are not admissible.—BEAUCHENE & PELTIER *v.* GUNSON, [1928] 3 D. L. R. 692; [1928] 2 W. W. R. 497; *sub nom. Ex p.* BEAUCHENE, 50 Can. Crim. Cas. 57.—**CAN.**

f i. —— —— *Where source a corporation.*]—An affidavit which states that deponent has been informed by a certain incorporated co. is objectionable, because a corpn. being a purely legal entity is incapable of itself apprehending facts or giving information, & it can do so only by one or more of its officers, & such officer or officers should be mentioned.—*Re* MINTZ, MALOUF *v.* MINTZ, [1930] 2 D. L. R. 777; 1 W. W. R. 198; 24 S. L. R. 290; 11 C. B. R. 227.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 1.—B.

6022 iii. —— ——.]—Affidavits sworn before an attorney, who is a partner of counsel engaged in the cause, but not otherwise connected therewith, may be read.—WILDE *v.* CROW (1861), 10 C. P. 406.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 2.—A.

p i. —— *Proof of appointment of notary.*]—The proper method of proving the appointment of a notary public is that provided for by Saskatchewan Evidence Act, s. 7, but where no objection is raised at the trial to the method of proof used thereon leave to file the necessary proof was given.—ADVANCE-RUMELY THRESHER CO. *v.* ZOMAR (Sask.), [1929] 4 D. L. R. 65; 2 W. W. R. 544.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 2.—B. (c).

6075 i. *Justice of the peace—New South Wales.*]—An affidavit taken before a justice of the peace in New South Wales, but without any certificate annexed that the person before whom it was sworn was duly authorised to administer oaths in New South Wales, may be used in evidence in the cts. of the Irish Free State.—APPLEBE *v.* APPLEBE, [1931] I. R. 286.—**IR.**

6081a. ——.]—*Re* STREET (1845), 2 C. B. 364; 135 E. R. 987.

6081b. ——.]—*Ex p.* STEPHENS (1848), 11 L. T. O. S. 152.

6083. *Add. Annotation :*—**Folld.** *Re* Eastern United Assce. Corpn. (1928), 72 Sol. Jo. 353.

6083a. *S. P. Re* EASTERN UNITED ASSURANCE CORPN. (1928), 72 Sol. Jo. 353.

6092a —— ——.]—*Re* CRAWFORD (1847), 4 C. B. 626; 136 E. R. 653.

6096a. Italy—British minister.]—The ct. refused to direct the proper officer under Fines & Recoveries Act, 1833 (c. 74), to receive & file an acknowledgment, where the affidavit of verification was sworn before the British minister at Florence, it not appearing that there was any difficulty in getting it sworn before some properly constituted authority at that place.—*Re* DUNSANY (1849), 7 C. B. 119; 137 E. R. 49.

6108a. —— —— ——.]—The ct. refused to file the certificate of the acknowledgment of a deed by a married woman resident in America, verified by an affidavit made before a notary public, without an affidavit that notaries public are the proper officers for taking affidavits in America, & also as to the identity of the comrs.—ANON. (1839), 3 Jur. 125.

Part VIII.—Evidence out of Court.

6201. *Add. Annotation :*—**Consd.** Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

6269a. —— **To issue pleaded.**]—Pltfs. in an action for passing off, in which they complained of the get-up of defts.' goods as calculated to deceive, asked for a commission to take certain evidence in Australia showing actual deception. It was alleged that defts.' goods were sold in Great Britain, & also were exported to Australia for sale by retail. There was no allegation of actual deception in the statement of claim. Two affidavits were filed by pltfs. in support of the application :—*Held :* upon the pleadings it would not be open to pltfs. to give evidence of actual deception, &, on the present state of the pleadings, & on the materials before the ct., pltfs. had not given any sufficient reason for issuing a commission.—WHITE, TOMKINS & COURAGE, LTD. *v.* UNITED CONFECTIONERY CO., LTD. (1914), 31 R. P. C. 286.

6080 i. *Commissioner—New Guinea.*]—Upon the hearing of a suit for dissolution of marriage the ct. accepted an affidavit purporting to have been sworn in the mandated territory of New Guinea before a comr. of the central ct. of the territory for taking affidavits & bearing a certificate under the seal of that ct. that there was no comr. of the supreme ct. of Victoria or notary public resident in the territory.—CUNNINGHAM *v.* CUNNINGHAM, [1929] V. L. R. 232; [1929] Argus L. R. 211.—**AUS.**

ak. *No deputy authorised—Affidavit sworn before deputy inadmissible.*]—Where a statute, *e.g.*, sect. 42 (*d*) of Alberta Evidence Act, R. S. A., 1922, requires affidavits sworn in another province to be sworn before a certain designated official & there is no general statute of Alberta authorising his deputy to act in his place, an affidavit sworn before the deputy is not sworn before the proper officer & should not be received.—GROSE *v.* GROSE, [1936] 2 W. W. R. 210.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.

6170 vi. ——.]—NATIONAL TRUST CO. *v.* PORTERFIELD, [1931] 2 W. W. R. 456.—**CAN.**

6176 x. ——.]—KOURI *v.* NEMEROVSKY, [1927] 4 D. L. R. 928; [1927] 3 W. W. R. 357; 37 Man. L. R. 9.—**CAN.**

6176 xi. ——.]—Although no order has been taken out on a master's fiat or decision an appeal lies therefrom under K.B. Rule 592.—DAVIS *v.* RALLS, [1937] 2 W. W. R. 206.—**CAN.**

an. *Application on motion to add defendant—No grounds shown for addition.*]—RENE *v.* CARLING EXPORT BREW. & MALT CO., [1928] 1 D. L. R. 634; 61 O. L. R. 495.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.

ao. *Extradition proceedings.*]—Commission to take evidence outside Canada cannot be issued in extradition proceedings.—*Re* INSULL, [1934] 2 D. L. R. 696; 61 C. C. C. 336.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—A.

f i. ——.]—On appeal from an order granting leave to take evidence on commission :—*Held :* the materials submitted to the judge were so meagre that they did not afford a reasonable ground for the exercise of his discretion in granting the order, &, therefore the appeal should be allowed.—ROMANO *v.* MAGGIORA (No. 2), [1936] 1 W. W. R. 423; 2 D. L. R. 329; 50 B. C. R. 273.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—B.

6258 vii. ——.]—In order to justify the issue of a commission to take evidence abroad, it must be shown that the evidence is directly material to the issue raised.

Applt.'s statement of claim alleged that for the use of "trichlorethylene" for dry-cleaning applt. had installed special machinery & had been trading in New Zealand under the fancy name of "Tri-cleaning" & that resp. co. had been formed under its name "Tri-cleaning" Co. with a view to causing confusion to the public & so obtaining a portion of the goodwill that had been built up by applts., or, alternatively, that the name of resp. co. was calculated to deceive the public into believing that that co. was the applt. co. or a subsidiary thereof. Resps.' defence was a bare denial of the allegations in the statement of claim, from which it might possibly be inferred that the issue raised was whether "Tri-cleaning" was a fancy name. The evidence sought to be taken in Australia was sworn to be material because it was from persons familiar with the trade of dry-cleaning by trichlorethylene & the manner in which the same is described or referred to. These witnesses could only speak as to conditions in Australia, but not as to those as to its use in New Zealand :—*Held :* such evidence could not be material in the action.—NEW ZEALAND TOWEL SUPPLY & LAUNDRY, LTD. *v.* N. Z. TRI-CLEANING CO., LTD., [1935] N. Z. L. R. 204.—**N Z.**

PART VIII. SECT. 1, SUB-SECT. 5.—D.

6282 i. *As to foreign law.*]—Where in an action to recover the purchase-money alleged to be due under an agreement for the sale of land situated in a foreign state deft. pleaded that under the law of that state pltf. was unable to make title :—*Held :* pltf. was entitled to ascertain through the testimony of witnesses in that state the truth of the allegation, & entitled to a commission to take evidence in that state in support of his allegation that he was ready, willing & able to make title; he was not obliged to allege in his statement of claim what the law of that state is & plead such law as a statement of fact.—CAMPBELL *v.* FUNK, [1935] 3 W. W. R. 561.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—E.

6296 iii. ——.]—Where there is nothing to show that deft. administrator is not lawfully & properly, according to his ordinary course of life, entitled to be away from Saskatchewan, he may obtain an order for his own examination *de bene esse* in the foreign jurisdiction wherein he resides.—JACQUES *v.* JACQUES, [1928] 1 W. W. R. 447.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—F.

m i. ——.]—WILLIAMS & WILLIAMS *v.* FRASER (1925), 35 B. C. R. 481.—**CAN.**

m ii. ——.]—Applt., exor. of the will of a Chinaman killed by a motor lorry owned & driven by resp., sued as such exor. & also on behalf of deceased's widow & her two infant children who had never lived in New Zealand, claiming damages from resp. for alleged negligence. Applt. asked

6362a. ——.]—MACAULAY *v.* GLASS (1902), 47 Sol. Jo. 71.

6561a. ——.]—*Re* TIERNEY, No. 5873a, *ante*.

6633a. —— —— **Witness out of the jurisdiction.**]—Appointment of an examiner to take orally the evidence of a witness residing out of the jurisdiction of the ct.—CROFTS *v.* MIDDLETON (1852), 9 Hare (App. 1) XVIII.; 22 L. J. Ch. 706; 20 L. T. O. S. 189; 1 W. R. 74; 68 E. R. 765.

6649a. Application by Attorney-General—Affidavit unnecessary.]—Where an information has been filed at the suit of the Crown by Her Majesty's Attorney-General, acting in virtue of his office, a rule for a mandamus may issue to Colonial judges, commanding them to examine witnesses in respect of such information, upon reading the roll containing the information, without the production of any affidavit whatever.—R. *v.* DOUGLAS (1842), 7 Jur. 305.

6743a. —— **Application after judgment entered.**]—COBBOLD *v.* GARRETT, [1929] W. N. 16.

6749. *Add. Annotation :*—**Consd.** *Re* Potts, *Ex p.* Epstein *v.* Trustee & Bankrupt, [1935] Ch. 334.

Part IX.—Action for Perpetuation of Testimony.

6823. *Add. Citation :—affd.* (1918), Times, July 24, H. L.

6831a. Depositions in action to perpetuate testimony.]—ANSON *v.* TOOTH & A.-G., [1917] W. N. 234; 143 L. T. Jo. 177.

for a commission to examine the widow & others before the Registrar of the Supreme Ct. at Hong Kong to prove that the widow had been married to deceased in a form that the cts. in New Zealand would recognise as valid, that she remained his wife to the date of his death, & that deceased was the father of her children :—*Held :* as the cost of bringing the witnesses to New Zealand made such a course practically impossible & as the commission asked for was to an official of a Supreme Ct. in a British colony equipped with a Judiciary & a Bar trained in English law & procedure, fully competent to elicit the truth from Chinese witnesses & better qualified than the legal profession in New Zealand to investigate the validity of the marriage, resp. would not be unduly prejudiced by the issue of the commission, which should be granted on terms as to applt. finding security for the costs thereof.—WONG DOO *v.* KANA BHANA, [1933] N. Z. L. R. 1455.—**N.Z.**

a i. ——.]—*Re* WEINGARDEN, [1925] 2 D. L. R. 1036; 5 C. B. R. 606.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—G.

e i. ——.]—BURROUGHS *v.* INTERCOLONIAL GOLD MIN. CORPN. (N. S.), [1927] 3 D. L. R. 371.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—H.

6338 iv. —— —— *Party.*]—PHANINDA KRISHNA DOTT *v.* PRAMATHA NATH MALIA (1927), I. L. R. 55 Calc. 748.—**IND.**

l i. —— *Illness of plaintiff.*]—Under Supreme Ct. Ord. 37, r. 5 (B. C.), pltf. may, on the grounds of serious illness, obtain leave to issue a writ of commission to have his evidence taken for use on the trial before the time for appearance has elapsed.—KELLY *v.* KELLY, [1925] 1 W. W. R. 332.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—I.

6361 vi. ——.]—SHORT *v.* GUELPH & ONTARIO INVESTMENT & SAVINGS SOCIETY, [1930] 2 W. W. R. 21; 2 D. L. R. 986; 24 S. L. R. 422.—**CAN.**

6362 iii. —— ——.]—Where the inconvenience & expense of compelling a pltf. & his witnesses to appear at the trial would have been equivalent to a denial of justice to him, & deft. would not suffer an injustice through not seeing the witnesses face to face a foreign commission for the examination of pltf. & his witnesses was granted, on terms as to costs.—CHASE *v.* NORTHERN TRUSTS CO. (No. 2), [1932] 2 W. W. R. 476; 4 D. L. R. 143; 40 Man. L. R. 458.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 6.—B. (a).

r i. ——.]—The *onus* of establishing that an examination on commission of a party outside the jurisdiction is "necessary for the purposes of justice" is on the party applying for the order.—STAPLES *v.* MILOFF (Man.) [1927] 2 D. L. R. 847; [1927] 1 W. W. R. 435.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 6.—B. (c).

6408 i. *Of necessity of examination—Belief of deponent.*]—Evidence based on information & belief, if the grounds thereof are sufficiently stated, is admissible on an application for a commission to examine witnesses out of the jurisdiction of the ct.—SYDNEY FERRIES, LTD. *v.* S.S. TAHITI (1928), 28 S. R. N. S. W. 307; 45 N. S. W. W. N. 74.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 1.—C.

6523 i. *What must be included—Names of witnesses.*]—There is no rigid rule that such names must be given in the order for the commission.—WATKINS (J. R.) Co. *v.* CAFFERKY, [1925] 3 D. L. R. 805; [1925] 2 W. W. R. 588.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.—D.

6540 i. *What must be inserted—Names of witnesses.*]—There is no rigid rule that such names must be given in the commission.—WATKINS (J. R.) Co. *v.* CAFFERKY, [1925] 3 D. L. R. 805; [1925] 2 W. W. R. 588.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

a i. —— ——.]—A clerk of the peace should not open a package of documents taken on commission without a judge's order.—SPEYER *v.* R. (1931), 55 Can. C. C. 399.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—A.

6681 vi. ——.]—*Held :* whereas in the present case evidence had been taken on commission & no objection had been raised, & the matter to be proved was purely formal, the ct. was entitled to accept the evidence as *primâ facie* sufficient.—SOPWITH AVIATION & ENGINEERING CO., LTD. *v.* MAGNUS MOTORS, LTD., [1928] N. Z. L. R. 433.—**N.Z.**

so. *May be put in by other side.*]—GAINERS *v.* CANADIAN NORTHERN RY Co., [1925] 3 D. L. R. 369.—**CAN.**

PART VIII. SECT. 4.

m i. *For use of foreign court.*]—Under Foreign Tribunals Evidence Act, 1856, the ct. is empowered to order the examination of witnesses within its jurisdiction, whose examination is applied for by a ct. of competent jurisdiction in a foreign country.—LORD ADVOCATE, THE PETITIONER, [1925] S. C. 568.—**SCOT.**

PART VIII. SECT. 5.

6739 i. *Whether allowed to successful party—When order obtained by consent.*]—A commission to examine a witness was granted of consent of parties in a case in which proof had been allowed by the sheriff-substitute. The allowance of proof was subsequently recalled by the sheriff, whose decision was affirmed on appeal. While the appeal against the sheriff's interlocutor was pending, the commission was executed :—*Held :* in this particular case, the expenses of obtaining & executing the commission fell to be allowed, in respect that it had been granted of consent.—GILCHRIST *v.* NATIONAL CASH REGISTER CO., [1929] S. C. 272.—**SCOT.**

PART IX. SECT. 2.

sp. *To prove testamentary capacity—Will made before testator found insane.*]—A suit will lie at the instance of an insane testator in his lifetime, to perpetuate testimony as to his testamentary capacity at the time of his will, made before he was found insane.—RANKEN *v.* PEARCE (1927), 27 S. R. N. S. W. 410; 44 N. S. W. W. N. 123.—**AUS.**

PART X.

k i. —— *Proof of absence of witness from country.*]—The absence from Canada of a witness whose former evidence is sought to be produced on appeal must be strictly proved. Hearsay evidence is not enough.—BUELL *v.* R. (1938), 12 M. P. R. 441.—**CAN.**

Part XI.—Colonial and Foreign Law.

6851. *Add. Annotation :*—**Consd.** Elliot *v.* Joicey, [1935] A. C. 209.

6852a. —— —— ——.]—No doubt in the cts. below the law of Scotland is a matter of fact & must be vouched there by evidence or admission. But in your Lordship's House the law of Scotland is a matter not of fact but of law, for this House is the *commune forum* of both England & Scotland, & your lordships have judicial knowledge of the laws of both countries (LORD MACMILLAN).—ELLIOT *v.* JOICEY, [1935] A. C. 209 ; 104 L. J. Ch. 111 ; 51 T. L. R. 261 ; 79 Sol. Jo. 144 ; *sub nom. Re* JOICEY, JOICEY *v.* ELLIOT, 152 L. T. 398, H. L.

6861. To cross-reference following this case add " now replaced, as to High Ct., by S. C. J. (Consolidation) Act, 1925 (c. 49), s. 102."

6861a. —— ——.]—A question of foreign law is matter of fact to be decided by a judge, not by a jury, upon the evidence given at the trial in each case. Former decisions upon similar questions, but upon other evidence, are not binding.—LAZARD BROS. & Co. *v.* MIDLAND BANK, LTD., [1933] A. C. 289 ; 102 L. J. K. B. 191 ; 148 L. T. 242 ; 49 T. L. R. 94 ; 76 Sol. Jo. 888, H. L. ; *affg.*, S. C. *sub. nom.* LAZARD BROS. & Co. *v.* BANQUE INDUSTRIELLE DE MOSCOU, [1932] 1 K. B. 617, C. A.

6864. *Add. Annotation :*—**Apld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

6865. *Add. Annotations :*—**Apld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4. **Expld. & Distd.** Spivack *v.* Spivack (1930), 99 L. J. P. 52.

6866. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6867. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

6869. *Add. Annotation :*—**Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

6872. *Add. Annotations :* — **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692 ; Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6874. *Add. Annotations :*—**Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930 ; De Beéche *v.* South American Stores, Ltd. & Chilian Stores, Ltd., [1935] A. C. 148.

6876a. —— ——.]—Pltf. divorced her husband in France & made a verbal agreement with him pending the divorce proceedings that she would not ask for alimony if he would promise to assist her when he should be in a position to do so, unless in the meantime she had married a wealthy man or had ceased to live a chaste life :—*Held :* (1) the validity in French law of such an agreement could not be presumed by the judge when the expert witnesses as to French law had given no evidence on the point ; (2) the French witnesses having returned to France after having given their testimony, it would not be just to allow the pleadings to be amended so as to allow further proof of the French law.—DENNISTOUN *v.* DENNISTOUN (1925), 69 Sol. Jo. 476.

6880a. —— ——.]—LAZARD BROS. & Co. *v.* MIDLAND BANK, LTD., No. 6861a, *ante*.

6894a. —— ——.]—In the absence of evidence to the contrary one must assume that the foreign law is the same as the English (SLESSER, L.J.).—THE TORNI, [1932] P. 78, 90 ; 101 L. J. P. 44 ; 147 L. T. 208 ; 48 T. L. R. 471 ; 18 Asp. M. L. C. 315, C. A.

6896. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6900. *Add. Annotation :*—**Apld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

6901. *Add. Annotation :*—**Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

6904a. —— **Legal adviser to Governor—Marriage in Malta.**]—GOSSAGE *v.* GOSSAGE & HEATON (1934), 78 Sol. Jo. 551.

6906. *Add. Annotation :*—**Apld.** Perry *v.* Equitable Life Assce. Society of U.S.A. (1929), 45 T. L. R. 468.

6907. *Add. Annotation :*—**Refd.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

PART XI. SECT. 1.

sq. *Jurisdiction to order.*]—*Held :* even if it was within the power of the ct. to examine foreign written law so as to ascertain what that law was, it was always competent, if the ct. considered it necessary, to order a proof of foreign law, whether written or unwritten.—HIGGINS *v.* EWING'S TRUSTEES, [1925] S. C. 440.—**SCOT.**

sr. *Decree passed by foreign Government before recognition.*]—Observations upon the powers & duties of the ct. to examine & construe for itself foreign written law : (1) where the expert evidence adduced to prove the law was conflicting, & (2) where the law under consideration was a decree abolishing inheritance, which had been passed by the Soviet Govt. of Russia before its recognition by the British Govt.—KOLBIN & SONS *v.* KINNEAR & Co., [1930] S. C. 724 ; *affd.*, [1931] S. C. 128.—**SCOT.**

PART XI. SECT. 2.

n i. —— ——.]—The Supreme Ct. of Canada is bound to take judicial notice of the laws of all the provinces of the Dominion.—CANADIAN PACIFIC RY. Co. *v.* PARENT (1917), 86 L. J. P. C. 123.—**CAN.**

q i. ——.]—The cts. of one country do not take judicial notice of the laws of another country ; they must be proved like any other fact.—WALKERVILLE BREW. Co. *v.* MAYRAND, [1929] 2 D. L. R. 945 ; 63 O. L. R. 573 ; *revsg.*, [1928] 4 D. L. R. 500 ; 63 O. L. R. 5.—**CAN.**

PART XI. SECT. 3.

6869 vi. —— ——.]—The canon law of the Roman Catholic Church is foreign law, which must be proved as a fact & by the testimony of expert witnesses according to the well-settled rules as to proof of foreign law. The foreign law applicable to a case must be taken from the statement of the expert witness as to what the law is, & not from text-books or codes referred to by him.—O'CALLAGHAN *v.* O'SULLIVAN, [1925] 1 I. R. 90.—**IR.**

PART XI. SECT. 4, SUB-SECT. 2.

6890 xv. —— ——.]—The general foreign law is presumed to be the same as our own ; & the *onus* of proving that it is different is on those who contend that it is.—KEY *v.* KEY, [1930] 3 D. L. R. 327 ; 65 O. L. R. 232.—**CAN.**

PART XI. SECT. 5, SUB-SECT. 2.

s i. —— ——.]—The opinion of a lawyer alone does not prove the law—he must be in a position to testify that such is in fact the law.—WESTGATE *v.* HARRIS, [1929] 4 D. L. R. 643 ; 64 O. L. R. 358.—**CAN.**

a i. —— —— ——.]—The Crown in a trial for bigamy called a Roman Catholic priest, a native of Yugoslavia, who produced what purported to be a certified extract from the marriage register of a parish in Yugoslavia, showing an entry which the accused admitted was that of his own marriage with a woman in that country. The witness himself had not officiated at the ceremony. He stated that he was well acquainted with the priest who had issued the certificate, & that he could identify the signature thereon. The identity of the parties was established :—*Held :* the priest, who, on being recalled, stated that the

6916. *Add. Annotations :*—**Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Refd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 148 L. T. 242.

6917. *Add. Annotation :*—**Apld.** Perry *v.* Equitable Life Assce. Society of U.S.A. (1929), 45 T. L. R. 468.

6917a. —— —— **As to law of Russia.**]—Perry *v.* Equitable Life Assce. Society of United States of America (1929), 45 T. L. R. 468.

6918. *Add. Annotations :*—*As to* (1) **Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183. *As to* (2) **Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Refd.** Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1932), 49 T. L. R. 94.

6923. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6928. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6937a. ——.]—Resps. were jointly bound to fulfil the obligations contained in leases of premises in Santiago de Chile granted by the predecessors in title of applts. The leases provided the following way in which the rents should be payable : " Payment shall be effected monthly in advance in Santiago de Chile on the first day of each month by first-class bills on London." In 1931, Chilean legislation supervened which resps. maintained prevented them from acquiring foreign exchange in Chile or from paying the rents in Chile by drafts on London without the authorisation of the committee established by the legislation to control exchanges, & that requests by them for such authorisation from time to time had been refused by the committee. The Chilean legislation established a control of international operations of exchange & the transfer of funds abroad, entrusting such control to a committee or commission. The legislation defined international exchange transactions as " the purchase & sale of all kinds of currency & gold in any form & the bills of exchange, cheques, drafts, letters of credit, telegraphic orders, & document of any other nature requiring the transfer of funds from Chile or vice versa." Conflicting evidence by Chilean experts was given as to the meaning in Chile of first-class bills on London. The evidence accepted was that " payable in Chile in first-class bills on London " had a special mercantile meaning in Chile, namely, " bills drawn in Chile by one or other of a select list of bankers & mercantile houses in Chile upon one or other of a select list of bankers & mercantile houses in London " & these were known technically as F. C. L. bills. An advocate in Chile who had been Minister of Justice gave evidence that the F. C. L. bills came within the mischief of the Chilean legislation :—*Held :* (1) the conditions precedent to the admissibility of evidence as to the meaning in Chile of first-class bills on London had been fulfilled, namely, the evidence did not conflict with a statutory definition, was of a usage common to the place in question & expoinded without contradicting the terms of the contract ; (2) though witnesses could be called to prove foreign law, the ct. was at liberty to look at a translation of the passages in question & to consider what was their proper meaning, but the ct. would have regard not only to its own view of the foreign law but to the interpretation put upon it by a competent foreign authority.—De Beéche *v.* South American Stores (Gath & Chaves), Ltd., & Chilian Stores (Gath & Chaves), Ltd., [1935] A. C. 148 ; 104 L. J. K. B. 101 ; 152 L. T. 309 ; 51 T. L. R. 189 ; 40 Com. Cas. 157, H. L.

6957a. Document under seal of U.S.A.—Photostatic copy—Certificate of naturalisation.]—At the trial of applt., who was a British subject by birth, for an offence against art. 6, para. 1 (*a*) of Aliens Order, 1920, & for making an untrue statement for the purpose of procuring a passport, the prosecution endeavoured to prove by means of a photostatic copy of a certificate of naturalisation authenticated by the seal of the United States of America that applt. had lost his British nationality. Applt. was convicted on both charges, & on appeal it was conceded by the Crown that the document ought not to have been admitted in evidence, inasmuch as the mode of authenticating the document did not fulfil the requirements of Evidence Act, 1851 (c. 99), s. 7 :—*Held :* though the prosecution might have proceeded at the trial on the basis that under Aliens Restriction Act, 1914 (c. 12), s. 1 (4), the burden of proving that he was not an alien lay on applt., they had not taken this course, but had themselves accepted the burden of proof & endeavoured to discharge it by putting in evidence an inadmissible document, & accordingly the conviction must be quashed.—R. *v.* Beadon (1933), 24 Cr. App. Rep. 59, C. C. A.

6957b. Secondary evidence—When admissible.]—In 1916 & 1917 a number of ships were owned by pltf. cos., who were a group of Finnish shipowners. These ships were requisitioned by the Russian Govt. & placed at the disposal of the British Govt., & were used by the latter during the War. A certain number of the ships were sunk, & the British Govt. appeared to have paid the Russian Govt. for the use of the ships & compensation for those which were sunk. Pltf. cos., having received no

---

parish priest was paid a fee by the Government for keeping the register & issuing certificates of marriage & that such certificates were accepted in the Cts. of Yugoslavia in proof of the marriage, was an expert qualified to testify as to the marriage law of Yugoslavia.—R. *v.* Ilich, [1935] N. Z. L. R. 90.—**N.Z.**

b i. —— ——.]—Foreign law, being a question of fact, must be proved as any other fact by a competent & qualified witness. Any person whose occupation makes it necessary for him to have knowledge of the law of such foreign country may be a competent & qualified witness, the competency & qualification being a matter for the appreciation of the ct.—Hanson *v.* Collette (1931), 5 M. P. R. 363.—**CAN.**

b ii. —— *Holder of position requiring knowledge of law.*]—In order to prove the law of a foreign country it is not necessary that the witness should be a lawyer actually practising his profession in that country ; but, inasmuch as foreign law is a question of fact which must be proved as any other fact by a competent & qualified witness, any person whose occupation makes it necessary for him to have knowledge of the law of such foreign country may be a competent & qualified witness, the competency & qualification of such witness being a matter for the appreciation of the ct.—Gold *v.* Reinblatt, [1929] 1 D. L. R. 959 ; S. C. R. 74 ; *affg.*, 45 Que. K. B. 136 ; *revsg.*, Que. S. C. 17.—**CAN.**

PART XI. SECT. 8, SUB-SECT. 1.

6939 xi. ——.]—Tilton *v.* McKay (1874), 24 C. P. 94.—**CAN.**

payment from the Russian Govt., brought this action against deft. bank to recover various sums of money held by deft. bank. The bank admitted that they held funds placed with them as bankers for the Russian Govt. under the Tsarist régime. Pltfs. claimed to be legal assignees of specific parts of these funds. The assignments on which pltfs. based their claim were various orders & directions issued by Russian Govt. Departments during the Tsarist régime. Pltfs. could not produce the originals of these documents, nor obtain duly authenticated copies, as the Soviet Govt., who had the originals, if they still existed, refused to assist. Pltfs. did produce copies of these documents, which they had found on their own files. Defts. objected to the admissibility of such copies on the ground that documents constituting acts of a foreign State can only be proved either by examined copies or by copies authenticated in the manner provid d by sect. 7 of Evidence Act, 1851 (c. 99):—*Held:* the provisions of Evidence Act, 1851 (c. 99), are not exhaustive, & in any case where it is impossible to obtain from the proper source examined copies or the form of proof required by the Act, the best secondary evidence of the original orders can be given.—FINSKA ANGFARTYGS A/B *v.* BARING BROS. & Co., LTD. (1937), 157 L. T. 585; 54 T. L. R. 147; 81 Sol. Jo. 1022.

PART XI. SECT. 10.

s v. *Who may refer—Lord Ordinary.*] —*Held:* while it was to a "superior" ct. of another part of the Dominions that a remit in terms of British Law Ascertainment Act, 1859, s. 1, fell to be made, nevertheless the interlocutor making the remit, in view of the expression "any ct." in sect. 1, might competently be pronounced by a Lord Ordinary without the intervention of the Inner House.—MACOMISH'S EXORS. *v.* JONES, [1932] S. C. 108.—**SCOT.**